

Lancashire County Council

Regulatory Committee

Wednesday, 6th June, 2018 at 10.30 am in Committee 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	(Pages 1 - 6)
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4.	Guidance	(Pages 7 - 30)
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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.	Wildlife and Countryside Act 1981 Claimed Bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge, to Castle Road, Colne, Pendle Borough. Claimed No. 804.440a	(Pages 31 - 72)
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6.	Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Application for recording on the Definitive Map and Statement a Restricted Byway along Aldcliffe Hall Drive, Lancaster	(Pages 73 - 118)
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7. **Application for a Transfer of a Right of Common in gross to be recorded in respect of some of the Rights of Common, being grazing rights severed from the land at Ireby Green, Ireby, being entry 4 in the Rights Section of Register Unit CL23 known as Ireby Fell in the Parish of Ireby** (Pages 119 - 126)

8. **Urgent Business**

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

9. **Date of Next Meeting**

The next scheduled meeting will be held at 10.30am on Wednesday 18th July 2018 in Cabinet Room 'B' - the Diamond Jubilee Room at County Hall, Preston.

L Sales
Director of Corporate Services

County Hall
Preston

Agenda Item 3

Lancashire County Council

Regulatory Committee

Minutes of the Meeting held on Thursday, 15th March, 2018 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston

Present:

County Councillor Jimmy Eaton BEM (Chair)

County Councillors

M Barron	J Marsh
I Brown	J Parr
T Burns	K Snape
A Clempson	P Steen
B Dawson	

1. Apologies

No apologies for absence were received.

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 last meeting held on 17th January 2018 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. Slideshow of Works Completed

Steve Williams, Senior Public Rights of Way Officer, provided a presentation on a selection of works completed by the Public Rights of Way team in 2017.

The Committee noted that there was no inspection regime but that work was done in response to reports from members of the public, councillors and landowners which was prioritised according to what would give the greatest benefit to the greatest number of people.

County Councillor Steen wished his thanks to be placed on record for the staff who had done excellent work on the Rossendale cycle route.

County Councillor Snape raised a query in relation to tracking developer funding. David Goode informed the Committee that an officer had been tasked with identifying projects and ensuring work was done where money had previously been applied for.

County Councillor Parr thanked the officers for their work on the Lancaster footpaths.

The Chair wished to place on record his thanks to all the staff involved in the completed works, for their hard work and commitment.

Resolved: The Committee noted the presentation on the works completed in 2017.

**6. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of a Restricted Byway at Lathom High School,
Skelmersdale, West Lancashire
File No. 804-591**

A report was presented on an application for the addition to the Definitive Map and Statement, of a restricted byway from a point on the un-numbered cycleway east of the subway under Glenburn Road, passing through the grounds of Lathom High School, to a point on highway F8761, known as Summer Street, as shown between points A-B-C-D on the Committee plan attached to the agenda papers.

It was reported that the application route crossed land forming part of Lathom High School, running along a tarmac road, immediately south of the school buildings and between the buildings and adjacent school fields and tennis courts.

A site inspection had been carried out on 13 September 2017.

The applicant had provided 5 user evidence forms that indicated knowledge and use of the route, and all 5 users stated that they had used the route for 20 years or more, with 2 users claiming to have used the route on pedal cycle, whilst the other 3 users claimed only to have used the route on foot.

The Committee noted that West Lancashire District Council had been consulted and no response had been received, therefore it was assumed they had no comments to make.

The Committee noted that the main purpose given for using the route was to access local amenities, including the doctors, vets and shops; the users also claimed to have used the route for pleasure including visiting friends/family and dog walking.

Section 31, Highways Act 1980, as amended by section 68 of NERC 2006, provides that use of a way by non-mechanically propelled vehicles (such as a pedal cycle) can give rise to a restricted byway. The Committee was therefore asked to consider whether the use by two users on pedal cycles would be sufficient to deem dedication by the owner as a route for non-mechanically propelled vehicles. It was suggested that such use was insufficient in this matter. It was further suggested that the small number of users in the context of this urban setting was insufficient to deem any public rights.

The Committee also needed to consider whether there were circumstances from which dedication could be inferred at common law. The map evidence suggested that the application route did not exist before the development of the school which opened in 1969. The route was shown on a plan of Tawd Valley Park dated 1974 but did not form part of the park.

In 1985, the route was shown on the 1:2500 OS Map noted as Summer Street, however the original line of Summer Street was the subject of a Highway Extinguishment Order in 1972.

Therefore, it was considered that the mapping and user evidence taken together were insufficient from which to infer dedication under common law.

Resolved: That the application for a Restricted Byway from a point on the un-numbered cycleway east of the subway under Glenburn Road, passing through the grounds of Lathom High School to a point on highway F8761 (known as Summer Street) and shown on the Committee plan between points A-B-C-D, in accordance with File No.804-591, be not accepted.

**7. Wildlife and Countryside Act 1981
Claimed Public Footpath from Public Footpath No.39 Newburgh to
Public Footpath No.40 Newburgh, West Lancashire Borough
Claim No. 804/491**

A report was presented on the withdrawal of support for "The Lancashire County Council Definitive Map and Statement of Public Rights of Way (Definitive Map Modification) (No.3) Order 2011", on the basis that although the County Council considered that there was sufficient evidence to satisfy the test to make the Order, information had come to light since the original decision that suggested

the evidence would not be sufficient to meet the higher test that it subsists on the balance of probabilities.

It was reported that, on 12th May 2010, the Authority gave consideration as to whether or not an Order should be made to add a Public Footpath, extending from a point on Public Footpath No. 39 Newburgh, to a point on Public Footpath No. 40 Newburgh, West Lancashire Borough to the Definitive Map and Statement of Public Rights of Way. This report was attached as Appendix A to the agenda papers. The decision of the County Council had been that there was sufficient evidence that a Public Footpath was reasonably alleged to subsist or to subsist along the route.

The Committee noted that a Definitive Map Modification Order had been duly made on 12th January 2011. However, an objection had been received to the making of the Order by the landowner who had referred to post and rail fencing extending earlier chestnut paling and having witnesses regarding this, and having evidence of work redirecting walkers. Statutory provisions stated that, where there are objections, the Order Making Authority should submit the Order to the Secretary of State for formal determination. Although the Order Making Authority had previously assessed the evidence and considered that there had been sufficient evidence to satisfy the test to make the Order and also to promote it to confirmation, now in considering information that had come to light since including that from interviews had been carried out, on the balance of probabilities, it was advised that officers no longer considered that the evidence would be sufficient to meet the higher test for confirming the Order, that the route already subsists as a footpath on the balance of probabilities.

Details of the issues that had arisen were provided to the Committee in the agenda papers.

The Committee noted that the actions of the owners, and the weak evidence of use, on balance, made it difficult to argue inferred or deemed dedication. It was felt therefore, that it would be difficult to justify promoting this Order to confirmation as originally thought. The Committee were advised they may therefore feel that although the County Council as Order Making Authority had made the correct decision regarding the making of the Order it should reverse its previous decision in respect of the confirmation, in light of the new evidence, and agree that the Order be submitted to the Secretary of State for formal determination, but notify the Secretary of State that it does not actively support the Order and adopt a "neutral stance" as regards confirmation of the Order.

Resolved: That the County Council as Order Making Authority should submit The Lancashire County Council (Definitive Map and Statement of Public Rights of Way (Definitive Map Modification) (No.3) Order 2011 to the Secretary of State for Environment, Food and Rural Affairs for formal determination, but notify the Secretary of State that it does not actively support the Order and adopts a "neutral stance" as regards confirmation of the Order.

**8. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath from Lancaster Road to Public Footpath 19,
Pilling, Wyre Borough
File No. 804-459**

A report was presented on an application for the addition to the Definitive Map and Statement of a footpath from Lancaster Road, Pilling to Public Footpath 19 Pilling, Wyre Borough, shown on the Committee plan between point A and point E attached to the agenda papers.

A site inspection had been carried out in November 2007.

The applicant had provided 33 user evidence forms which showed use of the route from as early as 1940. The user forms suggest that, on balance, the route had been used as of right and without force, secrecy or interruption.

Considering the historical map evidence, it was suggested that there was insufficient historical map evidence from which public rights could be inferred from this but looking at the user evidence it appeared that no clear actions were taken by owners, and use by the public continued over several years prior to 1989, such that on balance there may be sufficient evidence from which to infer dedication at common law.

The Committee noted that Wyre Borough Council had been consulted and confirmed that they had no comments to make. Pilling Parish Council supported the application stating that the route had been used for many years.

It was reported that numerous alterations to properties along the route had been made.

A dedication under S31 cannot be deemed if changes to the route interrupted use or served to indicate sufficiently an intention that the route was not a public right of way. Where the boundaries had changed over the qualifying period, the only part of the width of the way which could be deemed to have been dedicated was that which had been available and used by the public throughout that period. This was about 2m width despite the fact that for much of the period a greater width had been available to one side or the other of that 2m. There was no evidence that use of this width was interrupted, and no evidence of a lack of intention to dedicate a public route.

The Committee noted that, on balance, and after careful consideration, it was suggested that the criteria under S31 could be satisfied. Taking all the information into account, the Committee were advised they may consider that a dedication of a footpath could be deemed or inferred, and that it was appropriate that an Order be made and promoted to confirmation.

Resolved:

(i) That the application for a Footpath from Lancaster Road, Pilling to Footpath 19 Pilling, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-459 be accepted.

(ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add a Footpath from Lancaster Road, Pilling to Footpath 19 Pilling to the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A and E.

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

9. Urgent Business

There were no items of Urgent Business.

10. Date of Next Meeting

It was noted that the next meeting of the Committee would be held at 10.30am on Wednesday 6th June 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 6th June 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 6th June 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 Wednesday, 6 June 2018

Electoral Division affected: Pendle East

Wildlife and Countryside Act 1981

Claimed Bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge, to Castle Road, Colne, Pendle Borough

Claimed No. 804.440a

(Annex 'A' and Appendix 'A' refers)

Contact for further information:

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Executive Summary

An application for a Public Bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge to Castle Road, Colne to be added to the Definitive Map and Statement of Public Rights of Way was considered by the Regulatory Committee in May 2007. "The Lancashire County Council (Cob Lane/ Cockhill Lane to Kelbrook Wood) Definitive Map Modification Order 2014" was made on 30 December 2014 on the basis that the county council considered that there was sufficient evidence to satisfy the test to make Order. The Order was advertised and received objections and needs to be sent to the Secretary of State for consideration. This report requests that Committee considers the stance that should be taken by the authority when the Order is submitted to the Secretary of State.

Recommendation

That the county council as order making authority should send The Lancashire County Council (Cob Lane/Cockhill Lane to Kelbrook Wood) Definitive Map Modification Order 2014 to the Secretary of State for Environment, Food and Rural Affairs for formal determination, but should notify the Secretary of State that it does not actively support the Order and adopts a "neutral stance" as regards confirmation of the Order.

Background and Advice

On 9th May 2007, the authority gave consideration as to whether or not an Order should be made to add a Bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge ('the blue route' on the Committee Plan) and to upgrade from Public Footpath to Bridleway, Footpath No.65 Foulridge and Nos. 19, 18, 16, 14, 12 and 8 Colne ('the yellow route' on the Committee Plan) to the Definitive Map and Statement of Public Rights of Way. Appendix A refers (Committee Report 9 May 2007).

The decision of the county council was that there was sufficient evidence that a bridleway on the blue route was reasonably alleged to subsist. However, the county council found there to be insufficient evidence to upgrade from public footpath to bridleway the yellow route (which required the higher test of bridleway rights subsist on the balance of probabilities).

An Order for the blue route was made on 22 August 2007 and this received objections. It was also noted that the Order contained incorrect notations. On 17 December 2014, the county council's Regulatory Committee approved the recommendation to submit the 2007 Order to the Planning Inspectorate for non-confirmation / rejection for reasons contained in the report. Appendix B refers. (Committee Report 17 December 2014).

A further Definitive Map Modification Order in respect of the blue route was duly made on 30th December 2014. Objections were received to the making of the Order. Statutory provisions state that where there are objections, the order making authority should submit the Order to the Secretary of State for formal determination.

Although the order making authority previously assessed the evidence and considered that there was sufficient evidence to satisfy the test to make the Order on the basis that the claimed right of way was reasonably alleged to subsist, the Committee must now consider whether the higher statutory test, that of the balance of probabilities, is met for confirming the Order. The county council's stance in this respect has not yet been considered, only the test for making the Order.

The Cob Lane/Cockhill Lane to Kelbrook Wood Order were it to be confirmed would create a cul de sac, as the route of the bridleway way leads only to public footpaths. The route originally claimed by the applicant was a much longer route which seeks to upgrade the yellow route from footpath to bridleway, the evidence for that upgrade was not considered by Committee to be adequate, and so the Committee determined not to make the Order to upgrade from public footpaths to bridleways. The applicant appealed and the planning inspector determined that, although the evidence was finely balanced, he felt it was sufficient to demonstrate that the yellow route does carry bridleway rights. The Order to upgrade the route was made, as required by the planning inspectorate, with Committee resolving on 17 March 2011 that as it had determined not to make the Order originally, and had opposed the application on appeal, that it take a neutral stance in respect of the Order if objections were received. Objections have been received and the Order for the yellow route is to be submitted to the Secretary of State.

In considering the making of the Order for the blue route, the subject of this report, in 2007, the Committee felt that the documentary evidence for the route was good. The route was shown on the Honour of Clitheroe map and the maps of Greenwood and Hennett of the early 19th century. In addition, the tithe map and 1910 Finance Act map are indicative of its public status of greater than footpath rights. However, the Committee did not go on to consider the anomaly of promoting a route that is a cul de sac.

Whilst it is possible for a right of way to end in a cul de sac, that is usually the case where the right of way is the only way to a place of public interest, or where changes to the highway network have turned what was a through route into a cul de sac. Planning inspectors in the Definitive Map Modification Orders Consistency guidelines are advised that 'before recognising a cul de sac as a highway, inspectors will need to be persuaded that special circumstances exist'.

The county council's position is that because it does not accept the evidence to upgrade the yellow route to bridleway, promoting the 2014 Order for the blue route would in fact be the promotion of a cul de sac where no special circumstances exist and where there is no evidence of use, only historical evidence which is not, in the county council's opinion strong for the yellow route.

The Committee may therefore feel that the county council as order making authority in considering whether the higher test for confirming a route has been made out, that on balance that test has not been met. Therefore, the Order should be submitted to the Secretary of State for formal determination, but to notify the Secretary of State that the county council does not actively support the Order and adopts a "neutral stance" as regards confirmation of the Order. This course of action would mean that the county council would be adopting a neutral stance for the entire route which is now the subject of two Orders which would provide consistency.

It would be usual for the Applicant to be invited to promote the Order. The Objectors would make their own submissions.

Alternative Options

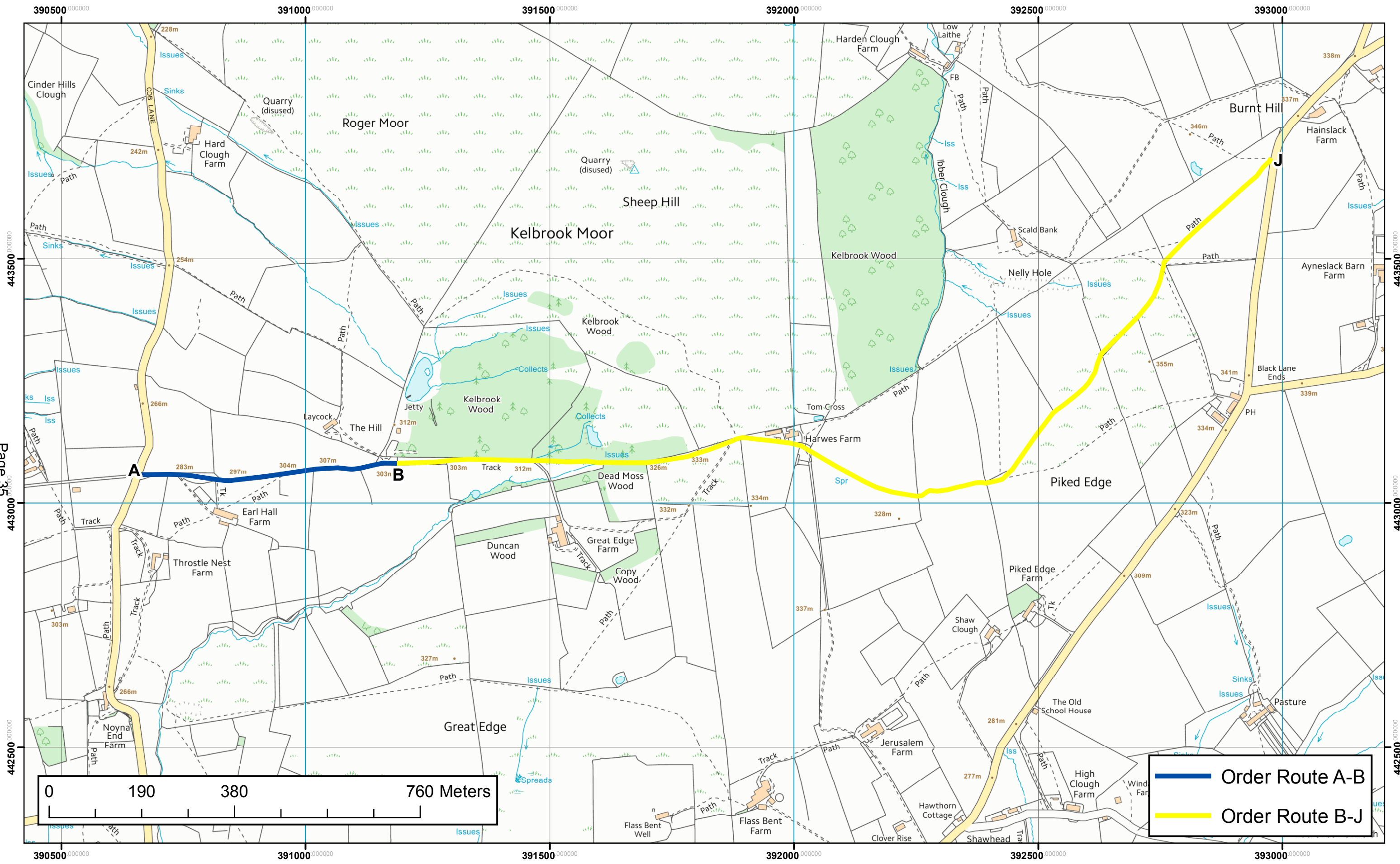
To decide to promote the Order to confirmation.
To decide to oppose the Order made.

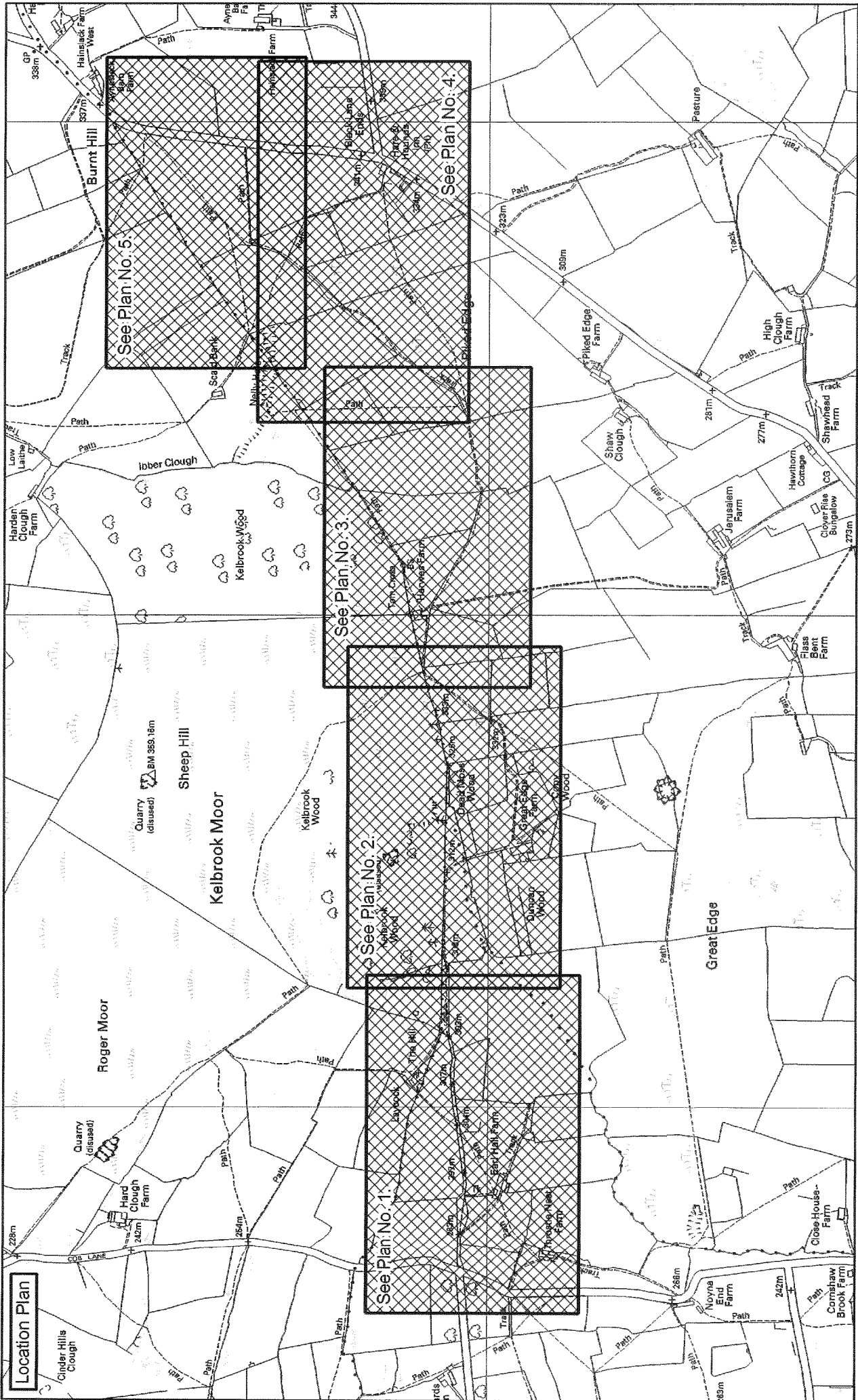
Local Government (Access to Information) Act 1985 List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on Claim File Ref: 804/440+440a	06/06/2018	C Blundell, County Secretary & Solicitor's Group, 01772 533196

Reason for inclusion in Part II, if appropriate

N/A



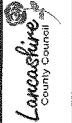


804/440

Wildlife & Countryside Act 1981.

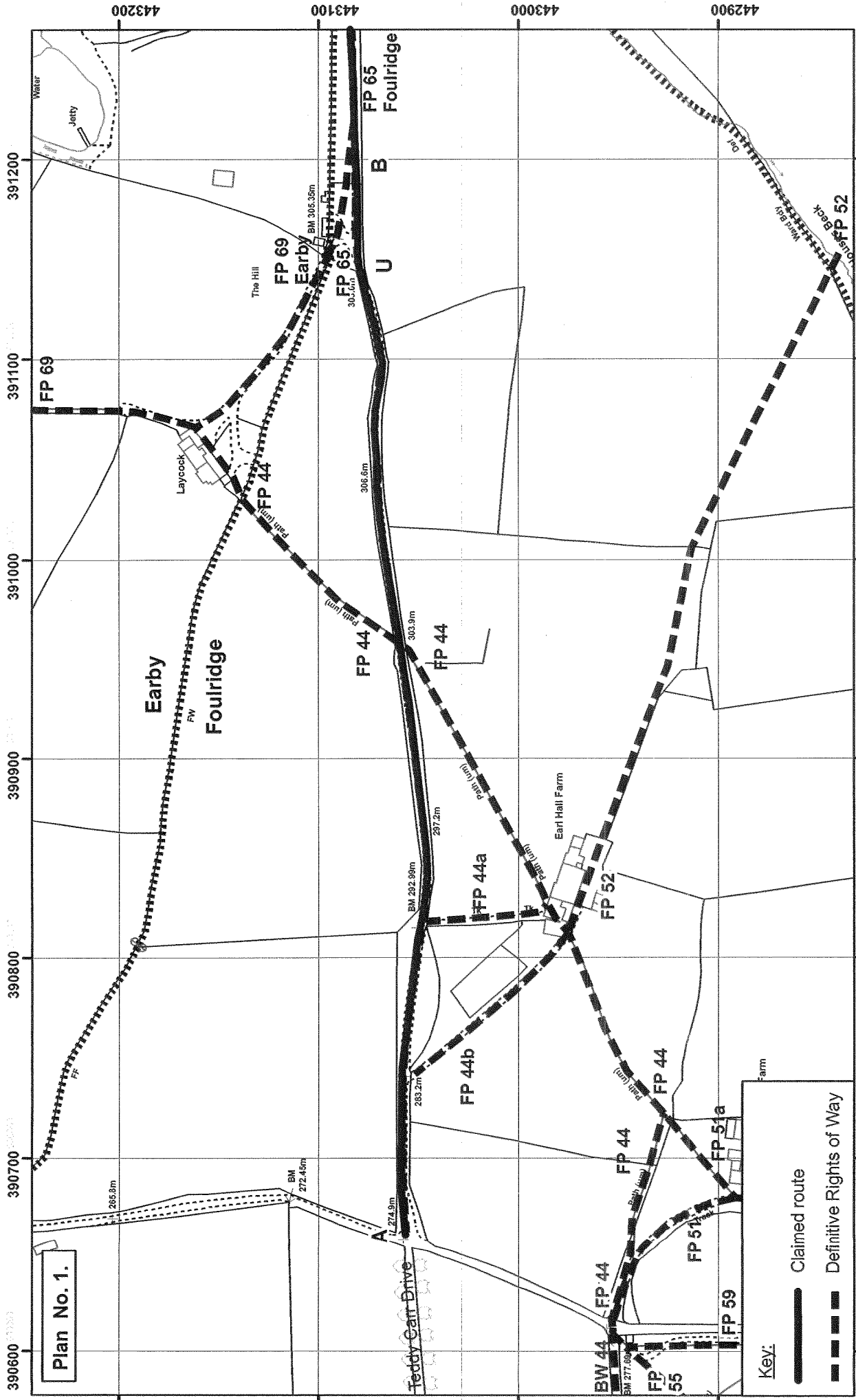
- a) Claimed Bridleway from Cob Lane / Cockhill Lane, to junction with Public Footpath No 65, Fourlidge, Pendle Borough.
- b) Claimed upgrading to Bridleway of Public Footpath Nos 65, (pt) Fourlidge: 19, 18, 15, 14, 12 and 8, Colne, Pendle Borough.

G. Harding B.Eng., C.Eng.,
FICE, FIMT, MCMIL.
Environment Director



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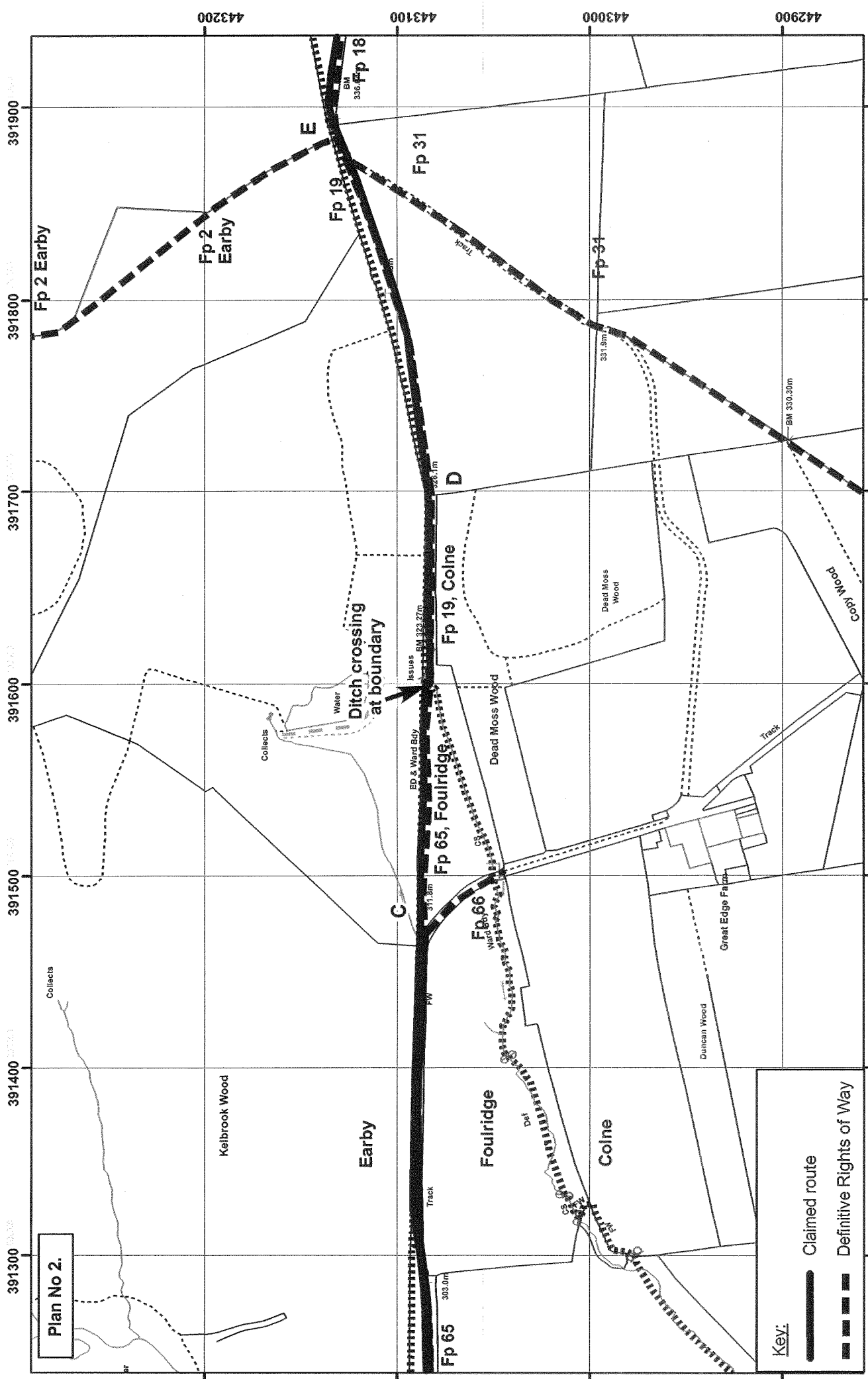
Plan No. 1.

Key:

- Claimed route
- Definitive Rights of Way

 Lancashire County Council	G. Harding B.Eng., C.Eng., FICE, FRII, MCMI, Environment Director	Wildlife & Countryside Act 1981. a) Claimed Bridleway from Cob Lane / Cockhill Lane, to junction with Public Footpath No 65, Foulridge, Pendle Borough. b) Claimed upgrading to Bridleway of Public Footpaths Nos 65, (pt) Foulridge: 19, 18, 16, 14, 12 and 8, Coline, Pendle Borough.	804/440 1:2,500
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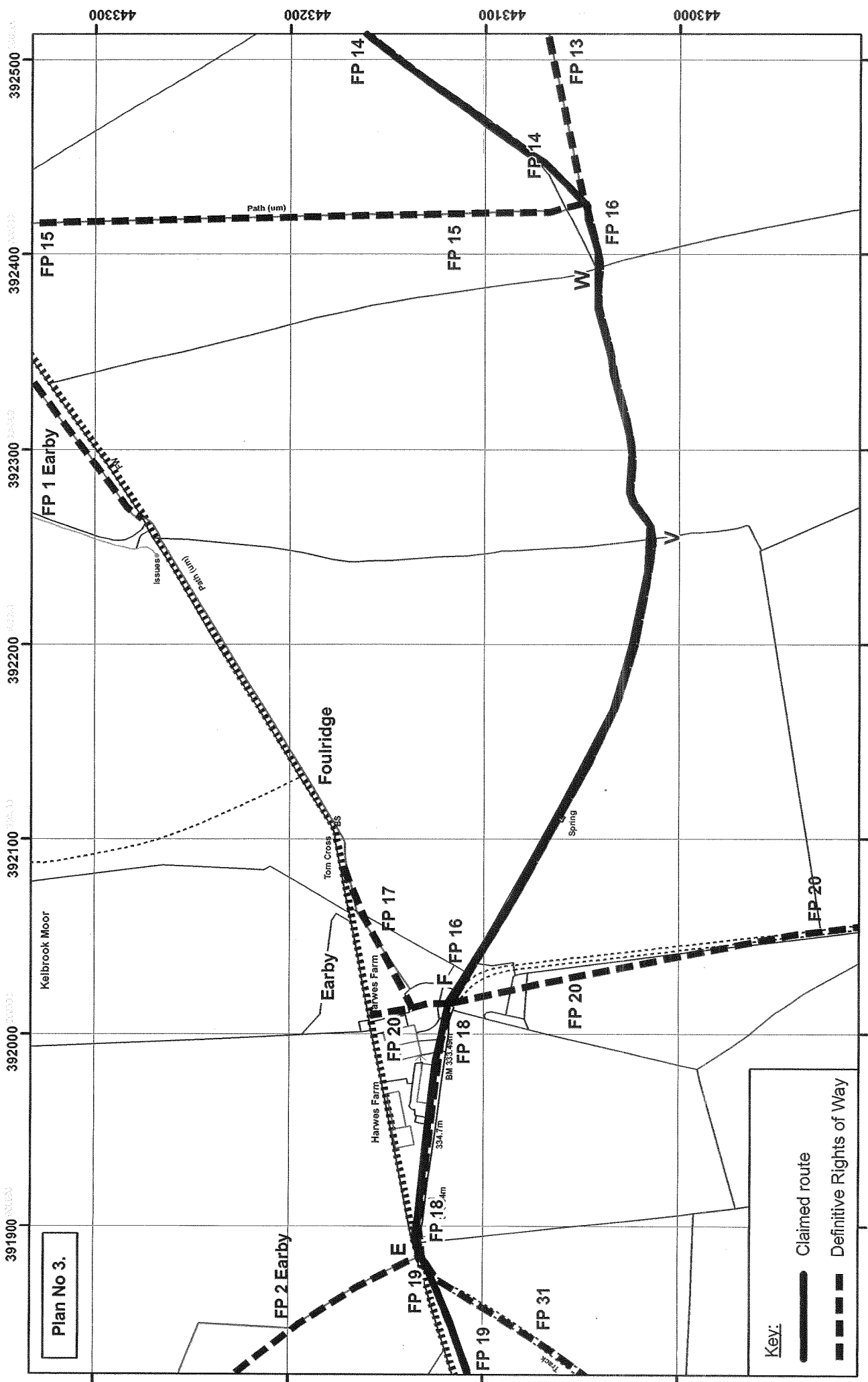
Plan No 2.

Key:

— Claimed route

- - - Definitive Rights of Way


	G. Harding B.Eng., C.Eng., FICE, FRII, MCIML Environment Director	804/440	
	Wildlife & Countryside Act 1981. a) Claimed Bridleway from Cob Lane / Cockhill Lane, to junction with Public Footpath No 65, Foulridge, Pendle Borough. b) Claimed upgrading to Bridleway of Public Footpath Nos 65, (pt) Foulridge: 19, 18, 16, 14, 12 and 8, Colne, Pendle Borough.	1:2,500	
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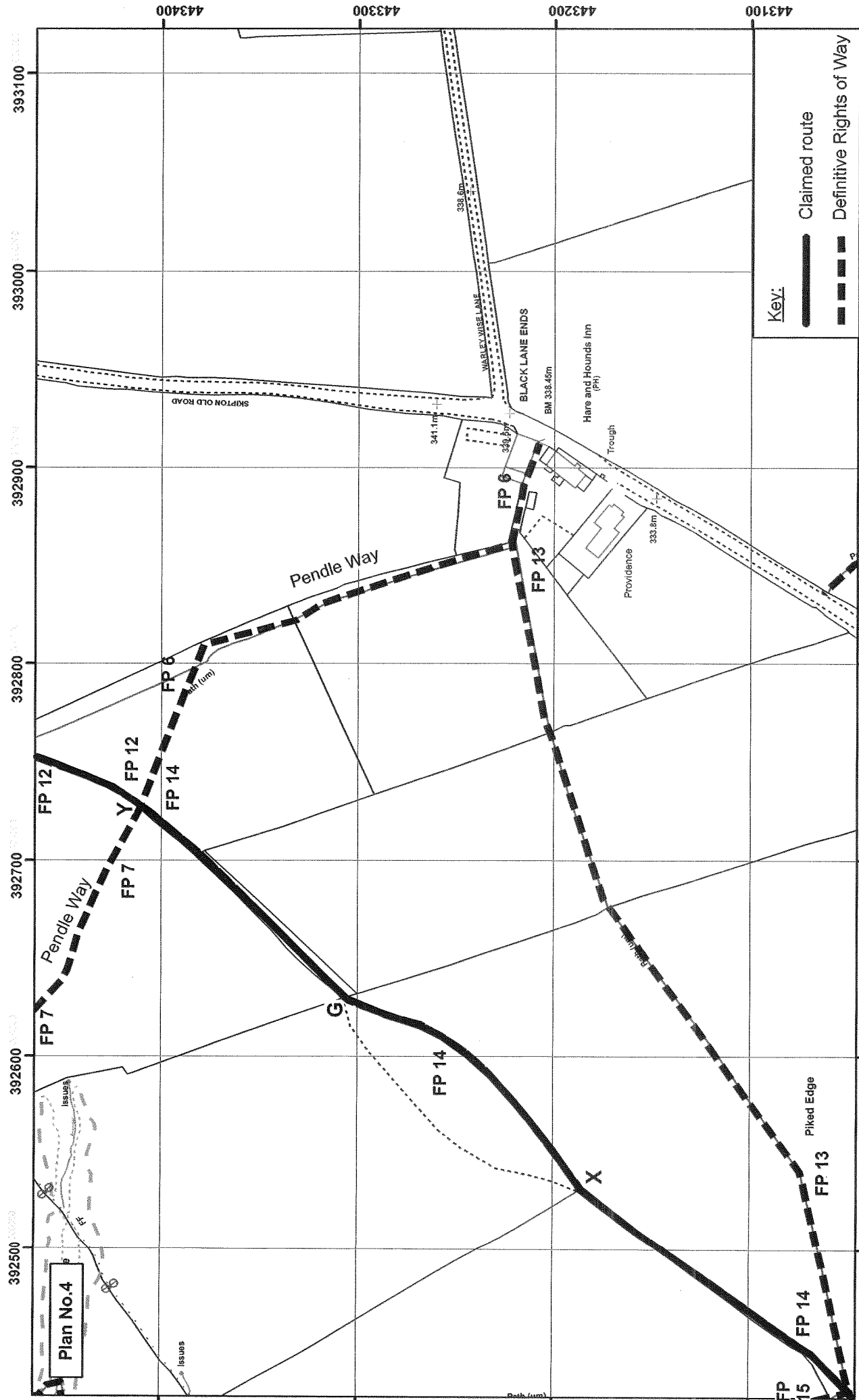


Plan No 3.

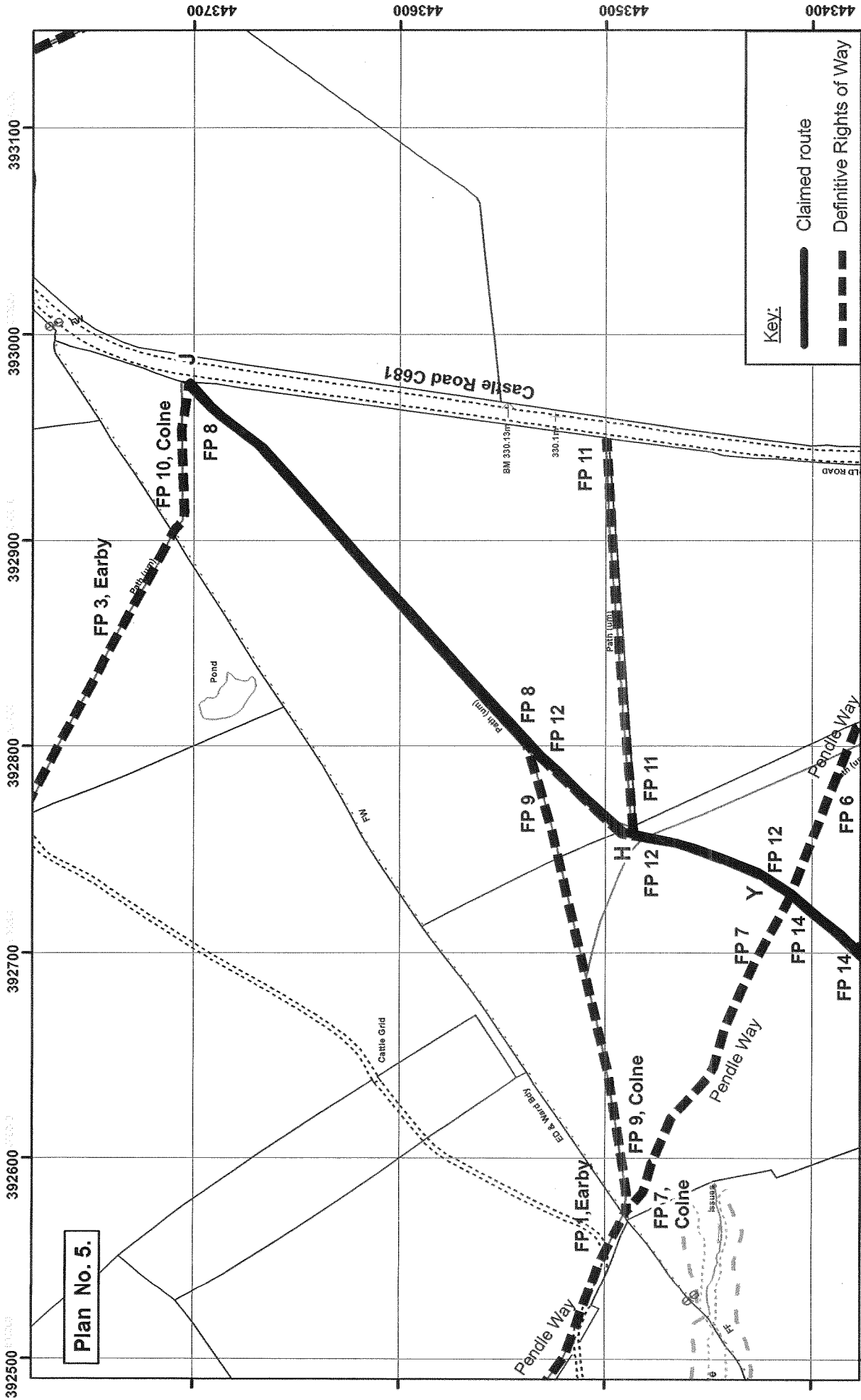
Key:


- Claimed route
- Definitive Rights of Way

	<p>G. Harding B.Eng., C.Eng., FICE, F.IHT., M.C.M.I. Environment Director</p>	<p>804/440</p>	<p>1:2,500</p>
<p>Wildlife & Countryside Act 1981.</p>			
<p>a) Claimed Bridleway from Cob Lane / Cookhill Lane, to junction with Public Footpath No 65, Fourridge, Pendle Borough.</p>			
<p>b) Claimed upgrading to Bridleway of Public Footpath Nos 65 (pt) Fourridge: 19, 18, 16, 14, 12 and 8, Coline, Pendle Borough.</p>			
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 Lancashire County Council	G. Harding B.Eng., C. Eng., FICE., FHT., MCIML. Environment Director	Wildlife & Countryside Act 1981. a) Claimed Bridleway from Cob Lane / Cockhill Lane, to junction with Public Footpath No 65, Foulridge, Pendle Borough. b) Claimed upgrading to Bridleway of Public Footpath Nos 65,(pt) Foulridge: 19, 18,16, 14, 12 and 8, Colne, Pendle Borough.	804/440 1:2,500
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Regulatory Committee

Meeting to be held on 9 May 2007

Part I - Item No. 6

Electoral Division affected:
Pendle East

Wildlife and Countryside Act 1981

Claimed Bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge, to Castle Road, Colne, Pendle Borough.

Claim No. 804/440

(Annex 'A' refers)

Contact for further information:

Ms J Blackledge, 01772 533427, County Secretary & Solicitor's Group

Mrs A Taylor, 01772 534608, Environment Directorate

Executive Summary

The claim for

- a) a Public Bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge, to Public Footpath No. 65 Foulridge, Pendle Borough, to be added to the Definitive Map and Statement of Public Rights of Way; and
- b) Public Footpaths Nos. 65(part) Foulridge and Nos. 19, 18, 16, 14, 12 and 8 Colne, Pendle Borough, to be upgraded to the status of Bridleway in the Definitive Map and Statement,

in accordance with Claim No. 804/440.

Recommendation

That the Claim for

- a) a Public Bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge, to Public Footpath No. 65 Foulridge, Pendle Borough to be added to the Definitive Map and Statement of Public Rights of Way, and
- b) Public Footpaths Nos. 65(part) Foulridge and Nos. 19, 18, 16, 14, 12 and 8 Colne, Pendle Borough, to be upgraded to the status of Bridleway in the Definitive Map and Statement

in accordance with Claim No. 804/440; be accepted in part namely that Claim a) section A-U-B be accepted and Claim b) section B-J be not accepted.

That an Order be made pursuant to Section 53(2)(b) and Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge, to the western end of Public Footpath No. 65 Foulridge, Pendle Borough, for a distance of approximately 565 metres, (GR 9066 4305 to GR 9118 4308) and shown between points A-U-B on the attached plan.

Background

A claim has been received for a Bridleway extending from a point at the junction of Cob Lane and Cockhill Lane, Foulridge, Pendle Borough (GR 9066 4305), running in a general easterly direction, crossing the line of Public Footpath No. 44 Foulridge at GR 9095 4305, for a distance of 565 metres to join Public Footpath No. 65 Foulridge at GR 9118 4308, then following the line of Public Footpath No. 65 Foulridge in an general easterly direction for a distance of approximately 280 metres to its junction with Public Footpath No. 19 Colne, then following the line of Public Footpath No. 19 Colne in a general easterly, then east north-easterly direction for a distance of approximately 424 metres to GR 9188 4313, the junction with Public Footpath No. 2 Earby, then following the line of Public Footpath No. 18 Colne running to the south of Harwes Farm for a distance of 136 metres in an east south easterly direction to its junction with Public Footpath No. 20 Colne (GR 9202 4311), then following the line of Public Footpath No. 16 Colne in a general south easterly, then easterly direction for a distance of approximately 438 metres to the junction of Public Footpaths Nos. 13, 14 and 15, Colne then following the line of Public Footpath No. 14 Colne in a general north easterly direction for a distance of approximately 473 metres to its junction with Public Footpaths Nos. 6 and 7 Colne (GR 9272 4341), from where it turns to follow the line of Public Footpath No. 12 Colne in a north north easterly direction for a distance of approximately 80 metres to its junction with Public Footpath No. 11 Colne, and then follows the line of Public Footpath No. 8 Colne in a north-easterly direction for a distance of approximately 306 metres to join Castle Road, Colne, Pendle Borough, and shown between points A - J on the attached plan, to the Definitive Map and Statement of Public Rights of Way.

Consultations

Pendle Borough Council

The Borough Council offers no objection to this Claim.

Parish Council

The Parish Councils for the claimed route are Foulridge, Kelbrook & Sough, and Laneshawbridge

Foulridge Parish Council recalls a public inquiry regarding the footpaths in the area of the claim approximately 10 years ago following a review of the Definitive Map. They are insistent that the section of the route between the junction of Cob Lane and

Cockhill Lane, Foulridge, and the point where the claimed route crosses Public Footpath No. 44 is not a right of way and suggest that any upgrade to bridleway should apply to Public Footpath No. 44 Foulridge, which links up with Bridleway No. 44 Foulridge.

There has been no comment from Kelbrook & Sough or Laneshawbridge parish Councils.

Claimant/Landowners/Supporters/Objectors

The evidence submitted by the claimant/landowners/supporters/objectors and observations on those comments is included in 'Advice – County Secretary & Solicitor's Observations'.

Advice

Environment Director's Observations

Description of Claimed route

a) Claimed Bridleway from the junction between Cob Lane and Cockhill Lane, Foulridge, to the junction with Public Footpath no. 65 Foulridge, shown between points A and B on the attached plan.

The route subject to part a) of this claim is from point A at the junction of Cob Lane and Cockhill Lane, (both classified as U40347). This is directly opposite the end of the private road known as 'Teddy Carr Drive' which has no public rights of way recorded over it. This appears to be an extension of the claimed route but is not part of this claim. However to provide additional information about this area to assist in the consideration of this claim, Teddy Carr Drive is a tree lined, rough stone surfaced access track leading to the west and appearing to provide access to two farms. It is gated with notices stating its private status on the gate and also on a nearby tree. This track extends in almost a straight line, as far as Skipton Old Road, Foulridge (U20921) a total distance of approximately 1,150 metres.

Part a) of this claim, from point A, is over a tarmac surfaced access road approximately 3.5 metres wide, although the entrance from Cockhill Lane/Cob Lane is considerably wider at approximately 16 metres wide. The entrance to the lane is bounded by a dry stone wall on the southern side and a timber post and wire fence to the north. The macadam surface was in very good condition and appeared to have recently been provided. The access road continues, approximately 3.5 metres wide, within an overall width of approximately 6 metres for a distance of approximately 80 metres to the point where the end of Public Footpath No 44b Foulridge joins the claimed route. Public Footpath No 44b follows a stone surfaced access road to the south east.

The claimed route rises up a slope and the overall width between stone walls increases, and after approximately 80 metres Public Footpath No 44a Foulridge joins the claimed route from the south at an old metal gateway. The rusty gate was fixed against a timber post in a position approximately 1metre wide and there were large

loose stones and timber poles for walkers to climb over between the gate and the stone wall.

The claimed route continues to follow the surfaced access road to the top of the slope and after a distance of approximately 140 metres from Public Footpath No 44a Public Footpath No 44 Foulridge crosses the claimed route. The surfaced track is approximately 3 metres wide and the overall width varies from between 5.5 and 7.5 metres between the stone walls. The claimed route follows this access road down the slope for approximately 190 metres to point U at the end of the surfaced road where there was a wooden field gate between two stone gateposts 3 metres apart. The gate was open at the time of inspection and although there was a chain to fasten it, it appeared as if it was normally left open. To the northerly side of the gateway the stone boundary wall turns away from the lane to the north east and there is an area between this corner and the stone gate post where it appears that there had previously been a gap. This has been filled with stone up to the wall height.

The claimed route is then over a stone surfaced track which divides after approximately 15 metres with one track leading up and to the north east towards the buildings and 'Kelbrook Lodge', and the other to the east, following the stone wall for a distance of approximately 45 metres to a point where there is an open metal field gate, with a concrete post, in place, in a length of timber railing fence on both sides of the track. The railing fence on the southern side of the gateway has a notice fixed to the top rail stating 'Dogs to be kept on lead'. The claimed route continues to follow the stone track for a distance of approximately 30 metres to point B where Public Footpath No 65 Foulridge joins the access track and the end of part a) of this claim, and also the start of part b) of this claim.

b) Claimed upgrading to Bridleway of Public Footpath Nos 65 Foulridge (part); 19, 18, 16, 14, 12 and 8 Colne, Pendle Borough.

The route subject to part b) of this claim continues from point B on the plan and is over the stone surfaced access roadway, approximately 3 metres wide, with a narrow grass verge to a ditch and then a grass bank on the northern side, and a grass verge to the stone wall on the south, the overall width being approximately 7 metres, and with a second stone boundary wall approximately 7 metres further to the north.

The stone track continues and curves slightly to the north with the overall width narrowing to approximately 4.5 metres between the stone wall on the north and the timber post and wire fence to the south. The claimed route follows Public Footpath No 65 Foulridge from point B for a distance of approximately 250 metres to the curve in the track where the access track carries Public Footpath No 66. This continues to the south towards Great Edge Farm from point C. However the claimed route continues to follow Public Footpath No 65 where it crosses the grass verge of the access road to a timber stile against the stone wall with a section of railing fence that appears to be removable, to its southerly side. The stile was in a poor condition on the day of inspection but was negotiable. It had a wide piece of timber forming the cross step and was not level, and part of the supporting timbers were in need of replacement. It had way-marker arrows on one of the timber posts.

The claimed route follows Public Footpath No 65 Foulridge over the open field where there was no obvious trodden route visible through the grass. After a distance of approximately 130 metres Public Footpath No 65 ends at the boundary of Foulridge with Colne. This boundary follows the very small stream which is known as Moss Houses Beck. This stream is crossed by a timber ditch crossing. It is approximately 1 metre long and in good condition and easily used despite it not being long enough to warrant a handrail. The bridge crossing is approximately 10 metres to the west of the point where the open field narrows down to approximately 7 metres wide between stone walls. The trodden route of Public Footpath No 19 is to the south of this section and after approximately 50 metres there are trees and shrubs growing on the northerly side with the claimed route following a visible trodden path close to the southern stone wall. This section was wet on the day of inspection and appears to flood easily, with the ground soft under foot. Planks of wood had been laid on the surface to improve ease of access. After a distance of approximately 90 metres from the ditch crossing, there are two sections of railing fence, similar to those at point C, across the track between the corner of the stone wall and an old stone gatepost at point D. The part of the railings reaching the gatepost was lying on the ground at the time of inspection and as well as this allowing access, there was a timber stile to the north of the gatepost. This stile was in a reasonable condition, but slightly over-hung by branches from trees in the adjacent woodland. This stile had a large timber step also similar to the one at point C.

From point D the claimed route continues to follow the route of Public Footpath No 19 Colne which runs along the southern side of a stone wall and over a large open grass field. There appears to be no indication that there was a track formerly over this section, although, after a distance of approximately 85 metres, there is a drain running to the south which begins at a point approximately 7 metres away from the boundary wall. After approximately 190 metres from point D, the path joins an open stone surfaced access track crossing the field from the south west, which carries Public Footpath No 31 Colne. At point E, Public Footpath No 19 and 31 join Public Footpath No 18 Colne, together with Public Footpath No 2 Earby, which joins the route from the north by a ladder stile over the wall to the west of an open gateway in the stone wall along which the stone track continues.

At this point Public Footpath No 18 Colne follows a grass track for approximately 10 metres to an old metal field gate. This gate was held closed by a length of chain over a post against the stone wall on the southern side. To the north of the gate there is a length of approximately 600mm of wall where there appears to have previously been a gap between the stone wall and the gateway, but this has been filled with stone built up to the adjoining wall. Immediately beyond this section is a timber post with way-marker arrows in place. These way-markers had a notice with them indicating that they were part of the Kelbrook Moor Circular Walk.

The claimed route continues to follow Public Footpath No 18 over the grass and stone track following the stone wall on its southern side with a widening area of open land leading to farm buildings and Harwes Farm (formerly Copy House) to the north. After approximately 60 metres there was a metal field gate with a chain and hook fastener. The track continues past the gate and between the stone wall and farm

building to another metal field gate at the far end of the barn. There was a way-marker arrow on the gatepost.

The track, and Public Footpath No 18, then continues for another approximately 7 metres to a timber field gate between stone posts. This gate was held closed by a length of chain, but opened easily onto the surfaced area in front of the farmhouse. Public Footpath No 18 Colne continues for approximately 25 metres over the tarmac surfaced area, passing through two large open timber gates and then onto the macadam surfaced access road as far as point F, where Public Footpath No 18 ends at the junction with Public Footpath Nos 16, 17 and 20 Colne.

The claimed route follows Public Footpath No 16 from point F and leaves the access road at the apex of the corner and crosses a grassed verge, passing along the southern side of a stone wall. After approximately 25 metres there was a timber railing fence with a two-step timber stile in it close to the wall. This stile was in a very good condition and had way-marker arrows and 'Kelbrook Moor Circular Walk' fixed to the hand post. Approximately 7 to 10 metres to the south of the stile was a timber field gate at the end of the timber railing fence.

Beyond the point where the route is crossed by the stile/gate and fence Public Footpath No 16 continues over the large open field running along the southerly side of the stone wall. After approximately 100 metres, it passes to the northern side of a stone-built natural spring in the field, approximately 4 metres from the wall. Along this section there appears to be a level strip, 4 to 5 metres wide, which may have been a track at some time with a possible drain alongside.

After approximately 240 metres, at point V, there is a stone wall across the field boundary. Immediately before the stone wall there is a section of timber railing across the corner with a stile and way-marker arrows, and 'Kelbrook Moor Circular Walk' on it. Immediately beyond the timber stile, the wall itself has a stone step-stile built into it. To the southerly side of this stone stile there is an old stone gatepost and then a section of approximately 2.3 metres of stone wall that appears to have been built up to a second old stone gate post. The two stone gate posts were in a position where any former track would pass through the field boundary.

Public Footpath No 16 and the claimed route continue to pass through a large open grass field, rising for approximately 145 metres towards a stone boundary wall at point W. This section of the claimed route is open to the field on both sides. It passes over a very wet and muddy area on entering the field and then follows a rough grassed area that appears to be a sunken track approximately 7 metres wide. This becomes level with the field surface as it approaches the stone wall at point W. Here there is an opening in the wall with a timber stile and way-marker arrows and 'Kelbrook Moor Circular Walk' between the stone corner of the adjacent field and an old stone gate post, and then a section of wall that appears to have been built up more recently than the rest of the wall. This section is approximately 3 metres wide and has a very clearly visible line at the joint with the rest of the wall to the south. There is no gate post at this junction.

Public Footpath No 16 then continues over the next field for a distance of approximately 35 metres leading away from the stone wall following a sunken area

of the field approximately 6 metres wide, where it ends at the junction with Public Footpath Nos 13, 14, and 15 Colne. At this junction Public Footpath No 15 Colne passes through a field gateway approximately 10 metres to the north, with Public Footpath No 13 continuing in a straight line over the open area towards the east.

The claimed route follows Public Footpath No 14, and is over grassland towards the stone boundary wall which it then follows for approximately 175 metres to point X. There appears not to have been an old track on this section although there is a length close to point X that is lower than the adjoining field level which is somewhat wetter with reeds growing in it.

The section beyond the end of the wall at X follows an old track, approximately 4 metres wide and slightly raised above the field level, as it curves and passes through the rough moorland type of vegetation for approximately 160 metres to point G. At point G there is a substantial stone step-stile in the stone boundary wall, which is to the northern side of the end of a walled track that has been blocked off by the boundary wall. In this wall there are two stone gate posts, approximately 3 metres apart, and on the southern side of the stile. Between these a stone wall has been built up.

Beyond point G the claimed route continues to follow Public Footpath No 14 Colne, which is over a sloping track, overgrown by reeds. This is enclosed between stone walls, which are in a generally poor condition, particularly on the northern side. This track extends for a distance of approximately 100 metres to where the stone wall on the southern side forms a corner and then runs in a southeasterly direction. The northern wall continues over the rough moorland and is in very poor condition and barely visible. It extends for a further 40 metres approximately to the junction of Public Footpath No 14 with 6, 7 (part of the Pendle Way) and 12 Colne, at point Y.

The route then passes over areas that appear to have been portions of an old raised track approximately 2-3 metres wide at its top. It follows Public Footpath No 12 Colne for a distance of approximately 80 metres over an uneven surface across the moorland, to point H where there is a timber stile, with way-marker arrows, in the timber and wire fence at the end of the stone boundary walls.

From point H the claimed route continues over Public Footpath No 12 from the junction with Public Footpath No 11 Colne (with Public Footpath No 11 running along the northerly side of the stone wall). This route passes over moorland and after approximately 70 metres Public Footpath No 12 ends at the junction with Public Footpath No 8 and 9 Colne, with the claimed route being over Public Footpath No 8. This continues over open grassland for approximately 245 metres and meets Public Footpath No 10 Colne at a point where there are two metal field gates in the stone wall that is the boundary of Castle Road, (C681). At the gateway there is a stone surface under the grass and to the south of this is a grey metal post in the grass verge with 'Public Footpath' finger posts indicating the direction of Public Footpaths Nos 8 and 10. These gates were chained and locked together at the date of inspection and there was no stile or other means of access available through them onto the verge and Castle Road at point J at the end of the claim.

Site inspection summary

Part a) Starting from the western end of the claimed bridleway at point A, the first section A – U is an enclosed surfaced access road with a gate at U. There appears to have been a gap by the gate at point U which has been blocked up with stones. The next section, U – B, is a stone access track within a much wider area between walls. Another gate is located approximately 30 metres west of point B. A – B is in good condition and is easily accessible for pedestrians and horse riders, with no restriction for use, as well as being in regular use by vehicles. There was no visible evidence at the time of the site inspection of use of this claimed route by cycles or horses. (While cycle tracks would be difficult to see on the surface, metal hoof marks or horse droppings would have been more noticeable). The gates along this route were open at the time of inspection.

Part b) Section B – C is enclosed between stone walls. C – D has a wall on one side only, and is over rough grass with no visible track, with a width restriction at the timber ditch crossing on the Foulridge-Colne boundary at Moss House Beck. Along the length D – E there is no obvious signs of a second boundary within the field to indicate that it had formerly been enclosed, other than the drainage ditch that starts approximately 7 metres from the stone wall. The length F – V does have features that seem to indicate the former enclosure of the route, such as the position of a stone spring set back from the one remaining wall, and a noticeable, uniformly wide, strip of land along the route with a possible drain at its side. The length V - W is a clearly visible sunken strip, approximately 7 metres wide, with a rough grass surface crossing a large field. The length between W and X initially follows a sunken track into the field for a short distance and then turns to the north-east to follow the stone wall. Whilst no track could be seen in the section in the area of the shallow brow, the part closer to point X does give the appearance of a former track as the route approaches the moorland. The length X - G is also visible as a raised grassed strip, approximately 1.5 to 3 metres wide, running through the rough moorland, with no sign of boundary walls to either side. Approximately 40 metres south west of point Y are the remains of a stone wall extending from the enclosed track at point G onto the open moorland. Length Y - H is an extension of the track from point G with only a single boundary. It crosses moorland and is very uneven and generally above the surrounding level of the moor. From point H the claimed route runs across rough pasture with no apparent indication of an enclosed route.

The whole of the route claimed for upgrading from public footpath to bridleway is available for use by pedestrians, with easy access over the whole route, with the exception of the closed gate at point J on Castle Road. There was evidence of a considerable amount of use by pedestrians over the whole length despite no trodden path being visible on the ground, probably because of the width of land available. With respect to the possible use by horses or cycles, there was no visible evidence of use by these classes of user and there are several locations where access for them would be difficult or impossible at present.

There are a number of restrictions to free access as a bridleway. There is the water course across the route between points C and D with only a narrow plank at an angle across.

There are gates at U, B, E to F (5 gates) and J. All of the gates, except the locked ones at point J, were easy to open by a pedestrian, but any horse rider would need to dismount and remount to open them. There are also only stiles at points C, D, F, V, W, G and H. These at present prevent use on horseback or bicycle. The stiles at points V, W and G are at positions where the stone wall has been built up in a former gateway which, if unblocked, would have allowed access for higher rights in addition to any occupation uses at that time. C, D and F all have fences constructed across the width.

Where the claimed route is only partly enclosed, or not enclosed at all, there seems to be a general indication that it may well have formerly been a track. Some parts clearly indicate the former existence of an old track, i.e. V - W (including a length beyond W), and X - G. There is lesser indication of an old track along sections D - E, F - V, and Y - H. There is no obvious sign of an old track along section H - J.

Map and Documentary Evidence

A variety of maps, plans and other documents were examined to find out when the claimed route came into being and to try to determine what its status might be. The maps and documents supplied with the application were also examined. The descriptions of documents supplied with the application, and examined by the Environment Directorate, are detailed below in approximately chronological order.

The applicant submitted two documents from the Lancashire Court Rolls about the blocking of a highway in 1655. Further investigation at the County Record Office has revealed other documents relating to this highway. It appears that there was a 'high way' from the Foulridge area over Kelbrook Moor and on the north side of Piked Edge to a 'causey' (defined by the Oxford English Dictionary as a raised way especially across wet ground, sometimes paved) called Jepp Causey. This causeway joined the road from Colne to Skipton, now called Castle Road. This causeway was for 'all travellers and passengers horses and other cattle with carts or carriages'. In September 1655 a local farmer was brought before the Lancaster Assizes for blocking the causeway by building two walls across it. He was ordered to take them down. At the November assizes the highway overseers of the parish confirmed that the walls had been taken down. It was agreed that he could erect gates in place of the walls large enough to accommodate 'horsepacks', carts and carriages. The track was used again for a time, but then the farmer chained the gates, and walled up the gaps. Local people brought the matter before the courts again, claiming that they had to make a detour of one or two miles before they could join the Colne to Skipton road, or go further north to join the Gisburn to Skipton road. There are no records to show if the farmer was successfully prosecuted again. No reference has been found in any other documents or maps to Jepp/s Causey.

There is not sufficient information to give the location of this matter or the outcome of the court action.

As the claimed route passes near to the former county boundary with Yorkshire (before local government re-organisation in 1974), early maps and other documents of that county were also examined along with those of Lancashire. Early maps included Jeffries' map of Yorkshire of 1772, Cary's map of the West Riding 1787,

Smith's map of 1801 and Teesdale and Stocking's map of 1828. None of these maps show any part of the claimed route, although 3 of them do show and name the location of one of the two Tom's Crosses (old county boundary stones) in the area which is to the north-east of point J on Castle Road.

Of the 18th and 19th century maps of Lancashire, Moll's map of 1724 and Bowen's map of 1765 are probably of too small a scale to show the route if it existed at the time. Yates' map of 1786, a much larger map, does not show any part of the claimed route. A map produced for the Honor of Clitheroe between 1804 and 1810 shows the western end of the claimed route between points A and B approximately as a 'road', but none of the rest of the route is shown. Coloured lines shown on the map along the line of part of the claimed route are referred to in the key to the map as boundaries of divisions of land, such as each separate manor, and the 'townships of Rossendale', and do not relate to the claimed route itself.

Greenwood's map of 1818 only shows the length A to B, referred to in the key as a 'cross road'. None of the rest of the route is shown. It is not known exactly what was meant by the term 'cross road' but it does show that a track of some sort existed at the time. Hennet's map of 1830 shows the claimed route in the same way as Greenwood.

It is considered that these were maps for travellers and routes shown were likely to have some public status.

There are no inclosure maps and awards for this part of Lancashire covering the claimed route, but a short section is shown on the inclosure map for Thornton in Craven in Yorkshire, prepared in 1825. Although the inclosure map relates to land in Yorkshire, a short length of the claimed route around point B is shown and named as Moor Lane. The land to the south of Kelbrook Moor to be enclosed in Yorkshire, across which the claimed route lies, is referred to in the Inclosure Award as 'open common in the county of Lancaster'.

Two tithe maps cover the claimed bridleway – Foulridge and Colne – both compiled in 1842. The Foulridge tithe map covers the western end of the claimed route from point A to point D. From Cob Lane/Cockhill Lane to the point to the west of where Public Footpath No. 65 Foulridge joins the route (A - U) the claimed route is shown as an enclosed track with no colouring or numbering, and therefore no owner or occupier recorded in the written schedule that accompanies the map. From point U eastwards to the parish boundary at point D the claimed route enters a wider area described in the written schedule as 'lane and waste' with no owner or occupier. The claimed route then enters Colne into a triangular area of land which has no obvious number. When the claimed route enters the narrow enclosed part of Public Footpath No. 19 to the west of point D the tithe schedule refers to this length as a 'road' with no owner or occupier. The claimed route continues eastwards across 'pasture' until part-way along Public Footpath No. 16 (point E) it becomes an enclosed track again. The claimed route continues across pasture and then enters land of a different ownership at point V. The route is enclosed on both sides, and is listed as a 'road' in the schedule, with both an owner and occupier named (V – W). This enclosed track continues into land of a different ownership where it is called 'Cow Lane' between points W and G, but is used as pasture. The land across which the claimed route

runs then changes ownership again and is called a 'road', and is recorded as being uncultivated. The claimed route then continues across two open fields of pasture before ending at Castle Road at point J.

In summary, evidence from the tithe maps shows the route as an enclosed track along about half its length. The part of the claimed route in Foulridge is not shown in private ownership, and could therefore have been regarded as part of the public highway network of the parish but only part is denoted Road. In contrast, 80% of the claimed route in Colne is in private ownership. Only 33% of the route in private ownership is described as a road or lane. These sections of road or lane do not join with each other to form a through route.

The applicant has submitted a map of the township of Colne, surveyed in 1843. A copy of this map has also been examined at the County Records Office. It is very similar to the Colne tithe map of 1842, drawn with the same style, layout and lettering. The claimed route is shown in the same way as on the tithe map, with the same numbers in the fields and other plots. There is no accompanying field book to explain what the numbers refer to. This town map, unlike the tithe map, has a key. The key refers to 'turnpike roads', 'bye or cross roads', 'footpaths', and 'open roads'. 'Turnpike' and 'bye or cross roads' are shown edged with solid lines (though it is hard to see what the difference is between the lines that represent the two types of road). Footpaths are shown by a single dotted line, and open roads by parallel dotted lines. This map does not show any part of the claimed route by dotted lines, either with one row or two. As on the tithe map, some stretches of the claimed route are bounded on both sides by solid lines, and may therefore be included in the map category as a 'bye or cross road' (there are no turnpike roads in the immediate area). It is not known what is meant by this term, but it was presumably more than a footpath (as these had their own notation) and would therefore have been usable on horseback at least.

Ordnance Survey maps were examined from the first edition of the 1" map. The applicant has submitted a 1" map, dated 1840, reprinted by the publishers David and Charles. This shows the western end of the claimed route in Foulridge between points A and B, and a further length between V and G. The rest of the claimed route is not shown.

The first edition of the 6" OS map published in 1848 shows the claimed route as a partly enclosed track from Cob Lane/Cockhill Lane (point A) to point U. From point U to just east of B the route is shown by a dotted line to the north of the field boundary. A path or track is not shown again until Harwes Farm (point F). From here until point V the claimed route is shown as a double row of pecked lines alongside the field boundary. From V - Y approximately, the claimed route is shown as an enclosed track; between W and Y as a double row of pecked lines within a greater enclosed width. The final part of the route between points Y and J is shown as a single dotted line which denotes a footpath. The applicant has pointed out that there are a number of bench marks along the route (points where the Ordnance Survey calculated the height above sea level and marked a symbol on a gate-post or building). However, such marks are not found exclusively on buildings or stones along paths, tracks or roads – they can be found on isolated barns or on features in fields well away from any highway.

The applicant has submitted a photocopy of a 1" OS dated 1870/80. The copy is of poor quality, but seems to show the claimed route in the same way as the 1840 1" map.

The applicant has submitted a plan from a sales document for the Copy House (now Harwes Farm) and Shaw Head estates in 1873. The estate was offered for sale in 28 lots. Part of the claimed route is shown in Lot 14 from point E to point V. Public Footpath No. 18 Colne is shown on the sale map as an enclosed track, and is referred to in the catalogue as a 'Road'. What is now Public Footpath No.16 is shown on the map as a 'cart road' and shown across pasture. A gate is shown at points E and V. The sale document also states that there is a right of road over Lot 13 'for all purposes whatsoever' to the highway leading from Colne to Skipton. It also adds as follows 'Lots 13 and 14 are about 3 miles from the market town of Colne, the latter Lot lying contiguous to the old highway leading from that place to Skipton'. It is submitted by the applicant that this reference to an 'old highway' from Colne to Skipton refers to the claimed route.

The word "contiguous" means "very close or connected to" and would seem to indicate that the highway was near rather than across the Lot.

The applicant has also submitted a map described as the Chapelry Map of Colne. She says that is based on Greenwood's map of 1818, amended in 1875. This map only shows the western end of the claimed route from points A - U as an enclosed track but any status is not shown on any key.

The first edition of the 25" map published in 1894 shows the whole of the claimed route. Field boundaries extend across the route in ten locations, which would indicate that there was a gate or other barrier at each point. As the Ordnance Survey surveyor recorded a continuous track across the fields and between boundary walls it is likely that there was a gate or other removable closure at each location to allow passage along the continuous track. The first part of the claimed route between points A and U is shown enclosed between solid lines, which would indicate walls, fences or hedges. From point U a track delineated by parallel pecked lines is shown across rough pasture as far as the boundary between Foulridge and Colne. The next short length of route to D is shown between solid lines again, before opening out as a track across rough pasture to the approach to Copy House (now Harwes) farm at point E. The route then becomes enclosed again (between E and F) before opening out from point F with a field boundary on one side, and open to fields on the other. The claimed route crosses six fields between Copy House/Harwes farm and Castle Road, in some cases across open fields, whilst across others there is a field boundary to one side, or enclosed on both sides between boundaries. The most easterly end of the claimed route between points H and J is shown with the notation 'FP' denoting a footpath. There is no notation on any other part of the claimed route. Elsewhere on this edition of the 25" map the notation for bridleway is used ('BR'), but not on any part of the claimed route.

The 1912 edition of the 25" map shows the claimed route in much the same way as on the earlier maps. The maps have obviously been re-surveyed since the earlier edition as there are many minor changes to a variety of features across the map.

Where the claimed route crosses open pasture or fields, there are some slight changes in alignment of the track to that shown on the earlier edition. All the field boundaries shown on the earlier edition remain.

The 1914 edition of the 1" map supplied by the applicant shows the route in the same way as the 1912 25" map. The 1924 edition, also supplied, is of too poor a quality to clearly identify the route.

Most of the c1932 edition of the 25" map is not available at the County Records Office.

Aerial photographs taken around 1945 show most of the claimed route. Lengths A - C and E - F show up clearly and are probably surfaced farm tracks. The stone walls can be seen between points W and H. The eastern end of the claimed route between points H and J can be seen crossing the open field to Castle Road.

The 1958 reprint of the 2½" map shows the entire claimed route apart from a short length between point C and the Foulridge/Colne boundary. The notation 'FP' for footpath is shown in two places on this map, at points D and G.

A plan obtained from the Land Registry by the applicant, being a plan attached to a Conveyance dated 1956, shows the holding for Harwes Farm and rights of way are coloured some of which are along the claimed route. However, the written extract from the said Conveyance refers to these as private rights of way but the plan does show D - E as part of a bridlepath but this does not continue to F - V. It is suggested that a private Conveyance is not showing public rights.

The 1972 edition of the 25" map shows all of the claimed route with the exception of the length from point C - E. The rest of the route is shown, with some parts open to adjacent fields, and other sections enclosed between walls. There are nine locations along the route where there may be a gate across it, as a solid line is shown on the map across the track. At point D where no track is shown, the field boundary is continuous across the claimed route, and any former gateway may now be blocked off.

The maps prepared under the provisions of the 1910 Finance Act were examined. The Act required all land to be valued, and maps were produced showing land in private ownership. All the claimed route is shown in private ownership, apart from the western end of the claimed route in Foulridge between points A and U which is outside private ownership plots, and the length U to the Foulridge/Colne boundary which is recorded as being in the ownership of Foulridge Parish Council.

Aerial photographs of 2002 show the claimed route in much the same way as the earlier 1945 edition.

The claimed route is not shown as a bridleway on the current Definitive Map, nor on any map produced in preparation of the Definitive Map. There were no objections to the depiction of the route at any stage of preparation of the Map. Public Footpaths Nos. 44A and 44B Foulridge join the claimed route to the east of point A. As this part of the claimed route has no recorded public status, these footpaths are in effect

dead-ends. The survey map and accompanying cards that describe each path shown on it were produced by Foulridge parish council in around 1950. The descriptions of paths 44A and 44B both state that they end on a 'road'. It is not known why the parish council showed the footpaths ending in this way, but it is possible that the council believed that as the claimed route had the character of a road, it should not be included in the survey of public rights of way. No objection was made to the way these paths were shown on the subsequent Draft Map for Burnley Rural District, which was placed on deposit for 4 months in 1955. The reference to the footpaths in Foulridge joining a road has been carried through to the present Definitive Statement.

Extracts from parish histories were included with the application. Reference is made in them to 'Joseph's Place' which is described as adjoining Kelbrook Moor, near the Shooting Box at point U, and that this land, 4 acres in size, was formerly the 'town's piece of land on the moors', land which was leased to the owner of the Shooting Box. It is not known where this land is, or if the claimed route crosses it.

Reference is also made to the 'dissenters well' beside the Tom Cross. It is not known where this well is located. There was considerable animosity towards non-conformists in the 18th century, and legislation was passed which made their religious gatherings illegal within a 5 mile radius of a parish church. Meetings were therefore held in remote locations, such as on moors. This well is said to be connected with these meetings. No evidence has been produced to show that worshipers visited the well on horseback, or in carts.

An extract has been submitted from the Colne and Nelson Times dated June 1911 describing action taken by people in the Foulridge area to pull down fences and walls erected across public rights of way. A sentence in the newspaper article refers to the protest continuing onto the bridleway to Hallam Moor and Lothersdale. Lothersdale is in Yorkshire, to the north-east of the eastern end of the claimed route, and Hallam Moor is to the north-east of Foulridge village. The exact location of the bridleway referred to not exactly described.

Part of evidence submitted at a public inquiry in 2002 into a successful claim record bridleway rights along what are now Bridleways Nos. 43 and 44 Foulridge has also been included with the application. The Inquiry evidence quotes a former resident of Great Edge farm (now deceased) who referred to 'an old bridlepath running up beside Kelbrook Wood (which) used to be the old lime route to Lothersdale'. Kelbrook Wood is to the north of Public Footpath No. 65 between points B and C. The evidence statement refers to tracing this route on the Colne tithe map as 5 parcels of land referred to in the written schedule as 'roads'. This not the case with this claimed route as only 3 parcels are described as roads, and 1 as a lane. The 'old bridle path' referred to in the 2002 statement is also described as passing Earl Hall and Laycock. Earl Hall lies to the south of the claimed route on Public Footpath No. 44 Foulridge, and Laycock on the same footpath to the north of the route.

The extract of evidence presented at the Public Inquiry also refers to a route mentioned in 'A History of Barnoldswick' by J L Savage from Barnoldswick to Lothersdale. This old route was claimed to run along Bridleways nos. 43 and 44

Foulridge, then via Earl Hall to Laycocks. The route currently claimed as a bridleway does not pass through either of these properties.

Summary

Site evidence indicates that most of the claimed bridleway has the appearance of a walled track. Some walls still exist on both sides of the route, while only one remains along other lengths, and none at all in others. Where the route is not walled on both or either side there are indications on the ground that there used to be a track there, with evidence of a ditch along where a boundary may have been, or that a spring was set to one side. Old gateways on the route have been walled up in places, and stiles inserted instead to allow use by pedestrians.

Documentary and map evidence starts with the cases heard at the Lancaster Assizes in the mid 1600s. The case related to a highway for all types of traveller on the north side of Piked Edge. A farmer who had erected walls across the highway was ordered to take them down, and was taken to court again after he re-erected them after initially opening up the route as instructed.

Maps produced before the first Ordnance Survey maps were published in the mid 1800s only show the route at its western end between points A and B.

The claimed route is shown on two adjoining tithe maps both drawn in 1842. Evidence from the tithe maps show the route as an enclosed track along about half its length. Part of the claimed route in Foulridge is shown as not being in private ownership, and could therefore have been regarded as part of the public highway network of the parish especially section A - B. In contrast, 80% of the claimed route in Colne is in private ownership. Only 33% of the route in private ownership is described as a road or lane. The 1843 map of the Township of Colne shows some of the route with the status of 'bye or cross road'.

A sale document for the Copy House/Harwes Farm and Shaw Head estates dated 1873 shows length E – V as a cart road. The document also refers to the sale Lot as lying contiguous with the old highway from Skipton to Colne, but the specific route of this is not shown.

Ordnance Survey information from the 1894 25" map continues to reflect the appearance of the route evident from the 1842 tithe maps, and modern site evidence, namely that the route has existed from that time, mostly edged with one wall or with two. The 1894 map show that there were gates across the track in 10 locations.

The map prepared under the provisions of the 1910 Finance Act show that the part of the route in Foulridge was either excluded from land in private ownership, or owned by the parish council, whilst all the route in Colne was privately owned.

The length A – B has never been shown on the Definitive Map or on any maps produced in preparation of the Map. The parish council described the footpaths joining this section of the claimed route as joining a road, and it is presumed that this is why A – B was not shown on the parish survey map. There were no objections to the depiction of the claimed route at any stage of preparation of the Definitive Map.

It is not understood why the Parish Council today take the view that it is not public when their predecessors seem to have considered otherwise.

In conclusion, there appears to be evidence that the claimed route may have been the old road from Skipton to Colne in the 1600s, with remnants of this old road appearing in tithe maps and other maps produced around 1840. This was still in local memory in 1873 when one of the estates of the area was sold, and confirmed by the recollection of a local farmer at a public inquiry in 2002. No evidence has been found to show that this old route has ever been legally closed.

County Secretary & Solicitor's Observations

In support of the claim the Applicant has submitted considerable map and other documentary evidence, details of much of which appears under the heading "Environment Director's Observations".

Also submitted are the following:-

1. photographs of the claimed route, including aerial photographs, one dated 1940 and one undated.
2. extracts from Fay Oldland's book "The Story of Foulridge" giving information about a plot of land known as "Joseph's Place" and also about Dissenter's Well,
3. copy document dated 1655 ref DBB/62/15 (Lancashire Records Office), with transcription, referring to the making by James Hartley of two gates large enough to take carriages, packhorses etc at
4. copy document dated 1665 ref DDB/62/14 (Lancashire Records Office) with transcription, referring to James Hartley being fined for the blocking of a highway running from Foulridge over Kelbrook Moor and Pike Edge, via a "causey" known as Jepps Causey to meet the highway which runs between Colne and Skipton. Users of the highway so described are referred to as including "horses, and other cattle with carts or carriages".
5. extract from Colne & Nelson Times dated 9th June 1911 which refers to a right of way dispute of the time and the opening of some of the local routes by protestors.
6. extract from Statement of Carole England in which she refers to a verbal statement by Mr Robinson to part of the claimed route being "an old bridlepath" and "the old lime route to Lothersdale". She stated that Mr Robinson has since died. This Statement was made in support of a separate bridleway claim brought in 1992 but it is not clarified who Carole England is.
7. Copy letter dated July 1991 by Susan Rogers of the Countryside Commission in which she refers to an identical statement by Mr Robinson.

Information from Others

Nine owner/occupiers were consulted, of which three have replied. None of these have offered any objection to the claim.

One owner, Mr Robinson, has seen walkers on the claimed route but has not seen it used as a bridleway for many years. He requests that if the claim is accepted signs be erected where the route crosses open fields and makes the point that where the route crosses a wet and boggy area he would not expect to have to undertake works at his own expense.

Letters have been received from two local residents who live within a few hundred yards of the start of the claimed route. Both raise objections to the claim on the grounds that the claimed route passes land run by the owners of "The Shooting Lodge" as a shooting business. This business is open all day six days a week and noise from the clay pigeon shoot is loud, being audibly a mile away, and is likely to "spook" horses passing on the claimed route, with potentially fatal consequences. The Committee will, of course, be aware that while this may be of concern to potential users, and is of importance to the objectors, it can have no bearing on whether or not the path exists in law. The two objectors also make the point that the lane leading from Cob Lane as far as the Shooting Lodge is for access only.

A further local resident telephoned to express concern at any increase the number of horses using Cob Lane, which is single track only, but has not put her concerns in writing

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

There is strong documentary evidence for section A - B

Against Accepting the Claim

The documentary evidence is less strong for section B - J

Conclusion

The Claim in this matter is that the long route across rural terrain is already a bridleway in status. No user evidence has been submitted and so it is a case where consideration of the historical documents and the way the route has been recorded and referred to therein can lead to a decision that on balance, it can be inferred that the owner(s) must have given the route over to public use. The Applicant has sent various documents and the Environment Director has further investigated and found others.

It appears that there is older and different historical evidence for Section A - B and it is suggested that Section A - B and B - J be considered separately.

Section A - U - B

This section is shown on the honour of Clitheroe map and significantly on both Greenwood and Hennesstys maps of early 19th century. Shown on different

independent maps is an indication of public status of at least bridleway. Information from the tithe maps can also assist and again most of this Section A-U is shown not recorded with an owner or occupier and on balance seemed to have been regarded as part of the highway network. Section A-U is also excluded from hereditaments on the 1910 Finance Act map and again this is very indicative of public status as the surveyors were to exclude "road ways". In 1950 footpaths were recorded to join this section of the route and it indicates that it was considered to carry public rights which the footpaths could lead into which were greater than footpath rights along this section of route.

Taking into account all the evidence in the Report it would indicate that this section in particular is recorded as being highway but least by the way status from many decades ago and it is suggested that Committee may consider that the claim for this section being accepted.

Section B-J

It is noted that east of B there is no evidence of it being a route at all on any of the old commercial maps. There is however physical existence of a route although some of the gateways are now blocked across and only a stile provided. A physical existence of a route however does not mean that it is public, it could equally have carried private access traffic.

The historical evidence of this long section of track carrying public rights is significantly less than Section A - B. Sections B - D appear on the tithe as a "lane or waste" with an owner occupier and other sections further east appear fragmented as sections of "road" again with owners and occupiers. Section B - J is within hereditaments in the Finance Act Map and there are other pieces of evidence which again do not amount to the standard of evidence for Section A - B.

It is suggested taking all the evidence into account there may not be sufficient evidence from which to infer that there are already public bridleway rights on this section on the line as claimed.

Whole Route

It is the case that there are references to an old highway in this area. However, it is the case that the location of the blocking of the "high way" in 1655 is not known and equally the outcome of the Court Case is not known. Similarly regarding the "old highway" contiguous to lot 14 in 1873, it is not clear where that highway lies. Bridleway 44 to the east of Point A was found to be a significant route carrying bridleways rights with an appearance of some antiquity by the Inspector following a Public Enquiry in 2002 but this route linked highways running north to south and may not have continued further east as a longer route all the way to Point J.

It may be that in the future the precise route of a dedicated public bridleway route can be shown east of Part B but until then it is suggested that there is sufficient evidence of the western end of this route to already carry a bridleway right but less evidence for the rest of the route.

The Committee, in considering all the evidence may take the view that any part of the Claim be accepted has already carrying public bridleway rights on balance, and the Claim for only Section A - B be accepted in this matter and Section B - J be not accepted.

Alternative options to be considered –

N/A

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

Paper	Date	Contact/Directorate/Ext
All documents on Claim File Ref: 5.27606(804/440)		J Blackledge, County Secretary & Solicitor's Group, 01772 533427

Reason for inclusion in Part II, if appropriate

N/A

Regulatory Committee

Meeting to be held on 17 December 2014

Electoral Division affected: Pendle East

Wildlife and Countryside Act 1981

Addition of Bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge to Public Footpath 65 Foulridge, Pendle Borough

File No. 804-440

(Annex 'A' refers) (Appendices A, B, C and D refer)

Contact for further information:

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Executive Summary

The consideration of the Order for a public bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge to Public Footpath 65 Foulridge, Pendle Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with part of the application reference. 804-440.

Recommendation

1. That 'The Lancashire County Council Definitive Map and Statement of Public Rights of Way (Definitive Map Modification (No. 7) Order 2007' made pursuant to the Committee decision on 9 May 2007 in relation to:

The claimed addition for a public bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge to Caslte Road, Laneshaw Bridge, be submitted to the Planning Inspectorate for non-confirmation / rejection for reasons as detailed in the report.

2. That a further Order be made pursuant to Section 53 (2)(b) and Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add a public bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge to Public Footpath 65 Foulridge on the Definitive Map and Statement of Public Rights of Way using the correct notation o the Order Map and clarifying the modifications to be made to the Definitive Statement should the Order be confirmed.
3. That being satisfied that the higher test for confirmation can be met the newly made Order be promoted to confirmation.

Background

Committee at its meeting on 9 May 2007 considered the report attached as Appendix A and accepted that part of application 804-440 for a public bridleway from the junction of Cob Lane and Cockhill Lane, Foulridge to Public Footpath 65 Foulridge to be added to the Definitive Map and Statement of Public Rights of Way.

The report also considered evidence for the continuation of a linear route which included part of Footpath 65 Foulridge and Footpaths 19, 18, 16, 14, 12 and 8 Colne, Pendle Borough, to be upgraded to public bridleway through to Castle Road, Laneshaw Bridge. This part of the application was rejected by Committee but was subsequently appealed by the applicant and an Order made in 2013.

An Order for the route accepted by Committee in 2007 was made on 22 August 2007 (Appendix B) and 35 objections were received. The main points of the objections were that the Order Making Authority had created a 'cul-de-sac' route and that there is enough evidence to suggest it should be a restricted byway. However since the 2013 has been made 19 objections have subsequently been withdrawn as a further Order has been made to extend to route. 1 objection has been received to the 2013 Order due to danger to the horses and the riders from the shooting school, noise pollution, the fact they were not aware even a public footpath exists and that the bridleway would be very narrow with no passing places. As objections have not been withdrawn, Lancashire County Council as the Order Making Authority cannot confirm the Orders but must submit them to the Planning Inspectorate for determination.

The Order Map for the 2007 Order contains the incorrect notation to depict the route to be added as a public bridleway. The notation which should have been used on the Order Map to show the public bridleway is either a continuous green line, a continuous line with cross bars at intervals or by a broken line with cross bars in the intervals. The Order map however, shows the public bridleway which is to be added as a broken black line with short intervals instead, and as such this does not comply with the Regulations.

Orders are drawn up under Regulations of 1993 which prescribe what notations have to be used on a definitive map but also states that these same notations should be used on Order Maps. This provision was not appreciated by many authorities and notations which were technically incorrect had become standard.

It has also been identified that the 2007 Order did not correctly specify the grid reference of the junction of the Order route with Footpath 65 Foulridge, provide details of any limitations that existed on the route or detail the amendments that would be required to be made to the descriptions of other public paths that connected to the Order route in the Definitive Statement should the Order be confirmed. If a second Order is subsequently made it will therefore be redrafted to include all of the above.

The Planning Inspectorate had in the past accepted many orders with incorrect notations and having appreciated that this was not correct issued their Advice Note 22 entitled "Use of correct notation on definitive map modification orders and public path orders" dated December 2011 (attached as appendix C) in which they advised

that '*...an order is considered fatally flawed if the wrong notation or non-standard notation is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation. However, in our letter to authorities of 7 September 2011, we advised that we would accept any order containing incorrect notation if the order was made prior to 7 September 2011.*' The Authority had therefore reasonably assumed that when this Order was ready to be referred to the Planning Inspectorate the deletion Order would be accepted and the incorrect notation would be dealt with by the Planning Inspectorate as a modification, as this was an Order that had been made prior to 7 September 2011.

However, without notice, the Planning Inspectorate Advice Note 22 was revised on 1st May 2013, attached as appendix D, and this no longer allows Authorities to submit Orders where an incorrect notation is used and states at paragraph 6, '*all new opposed orders are checked by us to ensure they are valid in terms of the relevant regulations. One of the things we check is the notation used on the order map to depict the way being stopped-up/deleted, added, diverted, upgraded or downgraded'..and an order is considered to be fatally flawed if the wrong notation or non-standard notation (i.e. notation other than that set out in SI 1993 No.12) is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation.*'

Committee should note that as the Order Map is part of the Order it is not possible for the Order Making Authority to make modifications to the Order once it has been made and advertised without it being referred to the Planning Inspectorate. It is suggested to the Committee that in the circumstances the Order will not be capable of being confirmed. It is advised that the Order be submitted to the Planning Inspectorate and its rejection be expected.

As the authority still has evidence concerning a bridleway at this location the making of a new Order should properly be considered.

It is suggested to Committee that in order to comply with the regulations for the confirmation of the Order, it may be considered preferable to remake a new Order which deals with both the wrong notation and the other modifications required. It is therefore suggested to Committee that a new Order be made and the original Order made in 2007 are submitted to the Planning Inspectorate requesting it is not to be confirmed or rejection expected. This course of action would resolve the issue of the incorrect notation; the concerns raised in the outstanding objections; the issue of modifications that are required and enable a more modern Order to be made which would clarify the modifications to be made to the Definitive Statement should the Order be confirmed.

Committee it is advised that no further evidence has come to light or information from any objector which would alter the evaluation of evidence and recommendations made in the Committee Report of 9 May 2007, attached as appendix A and Committee should note that the content of the report has not been repeated for the purposes of this report however; the entire report considered by Committee on 9 May 2007 is applicable and as a result Committee should note that all the advice and assessment of the evidence will need to be considered again in deciding this matter.

Objections to the 2007 Order have produced no further evidence since the original Committee decision to alter the view that the route should be recorded as at least a public bridleway and it is therefore still the view that the new Order, if made, can be promoted through to confirmation.

Alternative options to be considered - N/A

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-440	various	Megan Brindle , 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

WILDLIFE AND COUNTRYSIDE ACT 1981
THE LANCASHIRE COUNTY COUNCIL
(DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY)
(DEFINITIVE MAP MODIFICATION) (NO.7) ORDER 2007

This Order is made by the Lancashire County Council under Section 53(2)(b) of the Wildlife and Countryside Act, 1981 ("the Act") because it appears to that Authority that the Definitive Map and Statement of Public Rights of Way for the County of Lancashire require modification in consequence of the occurrence of an event specified in Section 53(3)(c)(i) namely the discovery by the Surveying Authority of evidence which (when considered with all other relevant evidence available to them) shows 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 to which Part III of the Act applies.

The Authority have consulted with every local authority whose area includes the land to which the Order relates. The Lancashire County Council hereby order that:

1. For the purposes of this Order, the "relevant date" is the 5th December 2007.
2. The Definitive Map and Statement of Public Rights of Way for the County of Lancashire shall be modified as described in Part I and Part II of the Schedule and shown on the map attached to the Order.
3. This Order shall take effect on the date it is confirmed and may be cited as the Lancashire County Council (Definitive Map and Statement of Public Rights of Way) (Definitive Map Modification) (No. 7) Order, 2007.

Dated this 5th day of December 2007.

THE COMMON SEAL of the Lancashire County Council was hereunto affixed in the pursuance of a Resolution passed at a meeting of the Regulatory Committee duly convened and held on the 9th May 2007



Authorised Signatory



17673

SCHEDULE

PART I

MODIFICATION OF THE DEFINITIVE MAP DESCRIPTION OF WAY TO BE ADDED

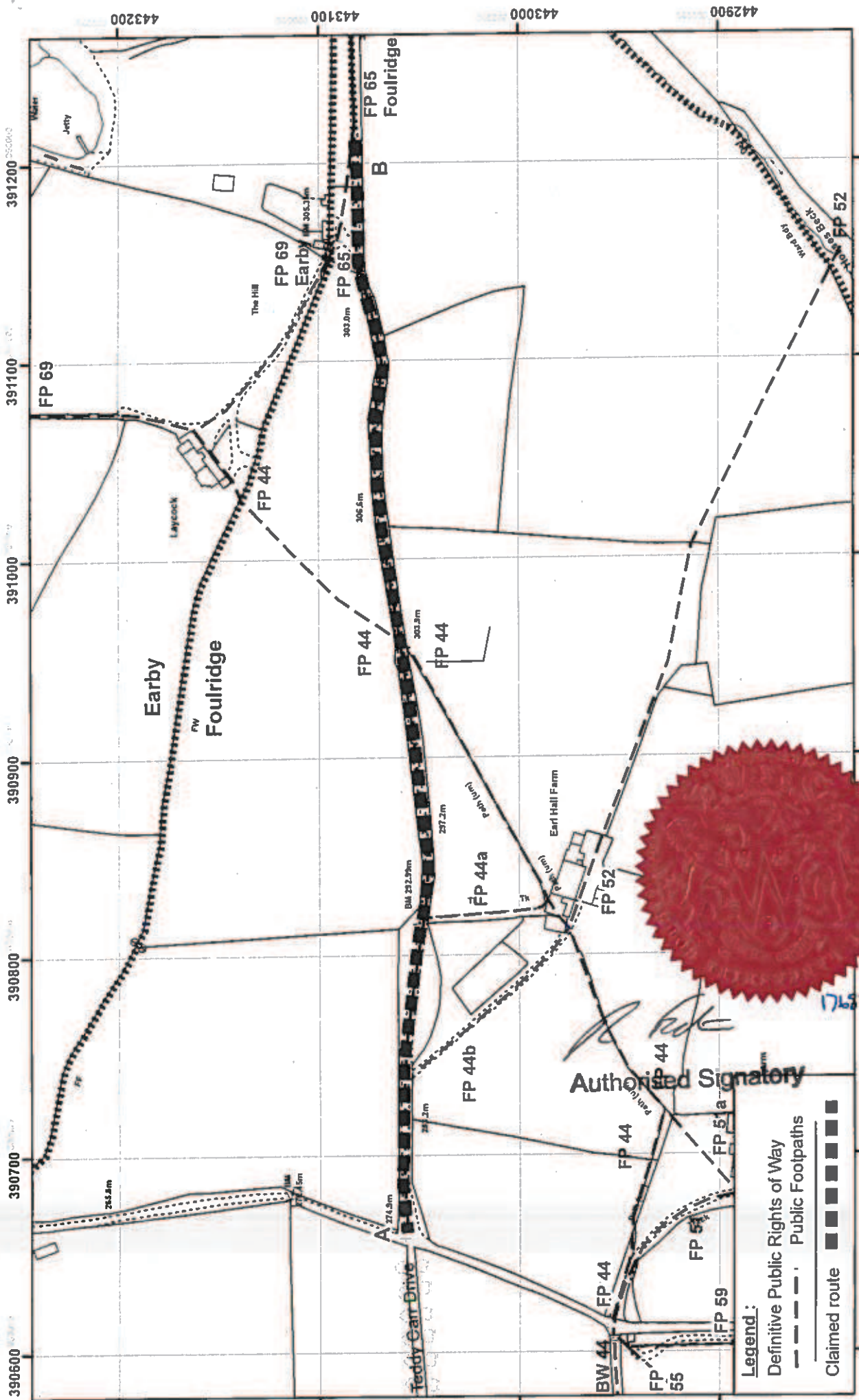
Public bridleway, being 6 metres wide for 160 metres, then ranging between 5.5 metres and 7.5 metres according to the width between walls for 330 metres, and then 3 metres wide for 75 metres, from the junction of Cob Lane and Cockhill Lane, Foulridge, Pendle Borough, running in a general easterly direction to Public Footpath No. 65, Foulridge, Pendle Borough, a distance of approximately 565 metres, shown A – B on the attached plan

PART II

MODIFICATION OF DEFINITIVE STATEMENT

The following entry be added:-

“Bridleway, from a point at GR 9066 4305 at the junction of Cob Lane and Cockhill Lane (U40347), Foulridge, Pendle Borough, running in a general easterly direction along a track 6 metres wide, for a distance of approximately 80 metres to a point where it is joined by Public Footpath No. 44b. Foulridge, then running uphill for a further 80 metres to the point where Public Footpath 44a Foulridge joins the route from the south. The track continues between stone walls varying in width between 5.5 and 7.5 metres, continues in an easterly direction, being crossed after approximately 140 metres by Public Footpath No. 44 Foulridge, then runs downhill for approximately 190 metres to pass through a field gate between stone gateposts 3 metres apart. The track, 3 metres wide and now stone surfaced, passes the entrance drive to Kelbrook Lodge on the northern side, continues in an easterly direction for a further 45 metres to pass through a field gate, and then continues for a further 30 metres to its junction with Public Footpath No. 65, Foulridge at GR 9121 4380.”



	<p>Scale 1:2,500</p>
<p>804/440</p>	<p>Claimed Bridleway from Cob Lane / Cockhill Lane, to junction with Public Footpath No 65, Foulridge, Pendle Borough. Shown A - B.</p>
<p>Wildlife & Countryside Act 1981.</p>	<p>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. This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of Her Majesty's Stationery Office (C) Crown Copyright. Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320</p>

G. Harding B.Eng., C. Eng.,
FICE, FIMT, MCIM,
Environment Director



USE OF CORRECT NOTATION ON DEFINITIVE MAP MODIFICATION ORDERS AND PUBLIC PATH ORDERS

Introduction

1. The purpose of this Advice Note is to inform all Order Making Authorities (OMAs) about the Planning Inspectorate's expectations in terms of the notation to be used in order maps. It supersedes the advice contained in our letter of 7 September 2011 which was issued to all OMAs in England.
2. This advice note is publicly available but has no legal force.

Background

3. All new opposed orders are checked by us to ensure they are valid in terms of the relevant regulations. One of the things we check is the notation used on the order map to depict the way being stopped-up/deleted, added, diverted, upgraded or downgraded.

Definitive Map Modification Orders

4. Regulation 3 of the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (SI 1993 No.12) states that '*Rights of Way to which part III of the Act (public rights of way) applies shall be shown on the definitive map as indicated in Schedule 1 of these Regulations*'. Schedule 1 sets out the various line styles to be used to depict footpaths, bridleways, restricted byways and byway open to all traffic. The notation for a restricted byway is the same as that previously used to depict a road used as a public path – either a green broken line or a broken line and small arrow heads as thus: v_v_v_v_. Different options are provided for each type of way.
5. Regulation 6 of SI 1993 No.12 clearly states that '*Regulations 2 (map scale) and 3 (notation) above shall apply to the map contained in the modification...order as they apply to a definitive map*'.
6. On this basis, an order is considered to be fatally flawed if the wrong notation or non-standard notation (i.e. notation other than that set out in SI 1993 No.12) is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation.
7. If the same order happens to contain a new route of the same type, for example the deletion and addition of a restricted byway, then the route to be deleted could be shown as a broken green line and the route to be added as a broken line and small arrowheads or vice-versa.
8. In our view, the unaffected routes should also be shown using the appropriate notation as it helps with clarity. In all cases, the map key should clearly identify the different notation types used and what they

mean. For additional clarity, the map key should also clearly describe the points of the order route i.e. A-B-C against the relevant notation style.

9. In addition to using the correct notation, OMAs are reminded that the Regulations also set out specific colours for the various line styles. These must be adhered to. The Regulations do not refer to the use of red ink for any line style but, in any event, we prefer you not to use this colour as it is used by Inspectors if they need to modify an order.
10. It has been argued that the increasing reliance on the use of digitally prepared maps makes it difficult to apply the correct notations. We do not consider this to be an acceptable excuse for not adhering to the notations set out in the Regulations.
11. Another concern that has been expressed is the fact that a map produced in colour may become unclear if reproduced in black and white. We do not consider this to be a problem so long as the map key clearly identifies the different line styles used and what they mean. Again the map key should clearly describe the points of the order route i.e. A-B-C against the relevant notation style.

Public Path Orders

12. Authorities should ensure that they follow the appropriate Regulations¹ when preparing public path orders. Public path orders are considered to be fatally flawed if the wrong notation or non-standard notation is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation.
13. Again, our view is that the unaffected routes should be shown using the appropriate notation as set out in SI 1993 No.12 as this helps with clarity (paragraph 8 above refers).

Combined Orders

14. Combined orders are covered by the Public Rights of Way (Combined Orders)(England) Regulations 2008 as amended by the Public Rights of Way (Combined Orders)(England) (Amendment) Regulations 2010. Whilst they do not specifically state what notation should be used on order maps, Regulation 5 (of the 2008 Regulations) requires that, where a combined order is to be made, the combined order shall be in the form prescribed for an order of the type in question (e.g. a creation order or a diversion order). This is supported by the Guidance for English Surveying Authorities issued in October 2010 which contains, at Annex 1, model forms for each type of order. These clearly state that routes to be stopped-up/diverted shall be shown by a bold continuous line and ways to be added as a bold broken line.
15. On this basis, and unless further guidance is produced by Defra, OMAs will be expected to use the notation set out in the form of order under the relevant public path order regulations.

¹ SI 1993 No.10 for orders under the Town and Country Planning Act 1990 and SI 1993 No.11 for orders under the Highways Act 1980

Regulatory Committee

Meeting to be held on Wednesday, 6 June 2018

Electoral Division affected:
Lancaster Central;

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Application for recording on the Definitive Map and Statement a Restricted
Byway along Aldcliffe Hall Drive, Lancaster
File No. 804-592
(Annex 'A' refers)

Contact for further information:

Claire Blundell, 01772 533196, 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 Group, jayne.elliott@lancashire.gov.uk

Executive Summary

Application for the addition to the Definitive Map and Statement of Public Rights of Way, of a restricted byway along Aldcliffe Hall Drive, Aldcliffe with Stodday, in accordance with File No. 804-592.

Recommendation

- (i) That the application for a restricted byway along the route known as Aldcliffe Hall Drive, in accordance with File No. 804-592, be accepted in part.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (3)(c)(i) the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a bridleway as shown on Committee Plan between points A-B-C-D.
- (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 a Restricted Byway to be recorded on the Definitive Map and Statement of Public Rights of Way, along the route known as Aldcliffe Hall Drive from Aldcliffe Road to Aldcliffe Hall Lane in the Parish of Aldcliffe with Stodday, Lancaster City as shown between points A-B-C-D on the Committee plan.

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

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

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

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

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

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

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

Consultations

Lancaster City Council

The Lancaster City Borough Council responded to consultations and provided that they do not have any interest in the area in question.

Aldcliffe with Stodday Parish Council

The parish council submitted and support the application.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	4694 6041	Junction with Aldcliffe Road
B	4681 6030	Field gates adjacent to either side of the route
C	4673 6028	Posts in surface of application route
D	4660 6016	Junction with Aldcliffe Hall Lane

Description of Route

A site inspection was carried out on 10th March 2018.

The application route is approximately 430 metres long. It starts at a point on Aldcliffe Road (point A) adjacent to the Lancaster canal and passes immediately between two large stone gateposts adjacent to East Lodge (a Grade 2 listed building) and along the tarmac driveway and within a fenced off grass strip of land lined with trees and with grazing fields beyond.

The route ascends gently uphill following the tarmac driveway to point B, where field gates are located on either side of the route, which open across the route to allow animals to pass between the fields on either side of the driveway.

Beyond point B, the route continues along the tarmac drive passing the entrances to Ashlar House and Ashlar Lodge on the right (north) to point C where concrete posts have been erected in the surface of the route which prevent vehicular access (although motorbikes and quad bikes could get through). To the south of the route a housing estate is being constructed which is accessed from Aldcliffe Road although access is also available to some of the newly built houses from the application route between points C-D.

Google Street View images taken in 2015 (and included later in the report) show the bollards at point C extending across the tarmac driveway and adjacent grass verge in 2015 whereas in 2018, due to the new housing development, the tarmac driveway and bollards appear unaltered, but the adjacent grass verge no longer exists.

West of point C, the application route continues as a tarmac road providing access to properties on either side. The last 95 metres of the route (from the property known

as Rydal Mount to point D) separate footways also exist on either side of the tarmac road.

At point D, the application route meets Aldcliffe Hall Lane where a street sign is located naming the application route as 'Aldcliffe Hall Drive'.

Map and Documentary Evidence

The application route crosses land which formed part of the Aldcliffe Hall Estate in the 1800s through to the 1950s.

Online research (Wikipedia) about the history of Aldcliffe Hall revealed that the Hall was built by Edward Dawson in 1817 and replaced an older medieval hall which existed on a slightly different site and which originally formed part of the Dalton Estate.

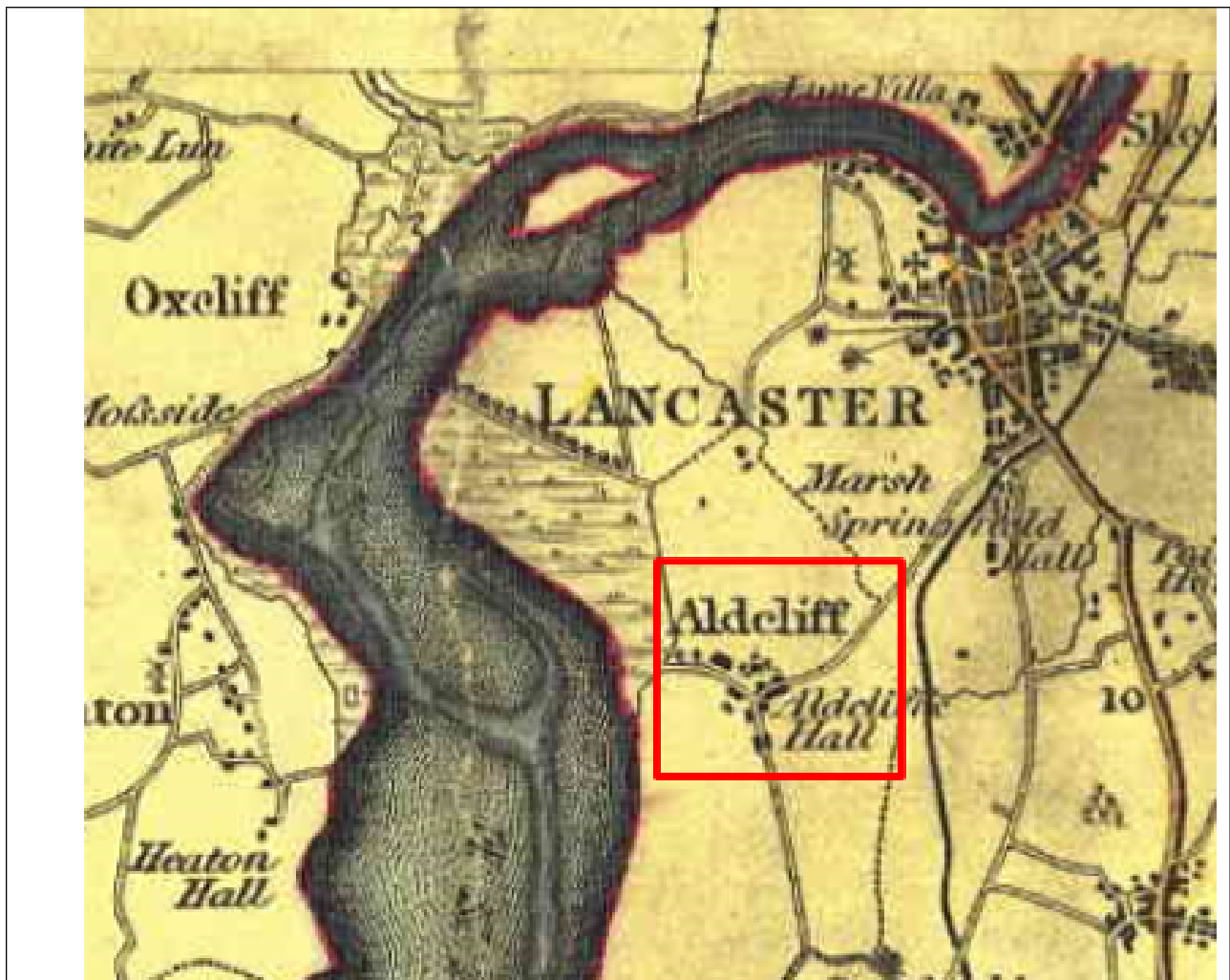
By 1827, Edward Dawson is said to have added a drive, a lodge and a tree lined carriageway.

In 1946, the contents of the Hall were sold and in 1950 the Hall became a hostel for displaced foreign workers until it was sold by the Dawson family in 1953. The Hall was demolished in 1960 and the land subsequently sold for housing.

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 village of Aldcliffe is shown with the existing public vehicular network of Aldcliffe Road, Stodday Lane and Aldcliffe Hall Lane but the application route is not shown.
Investigating Officer's Comments		It is likely that the route, if it existed in 1786, was of little significance and was therefore not included on the map.
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. The village of Aldcliffe is shown and Aldcliffe Hall labelled (although it is not clear which building it is).
Investigating Officer's Comments		The application route may have existed as access to Aldcliffe Hall in 1818 but it was of little significance and was therefore not included on the map.
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.



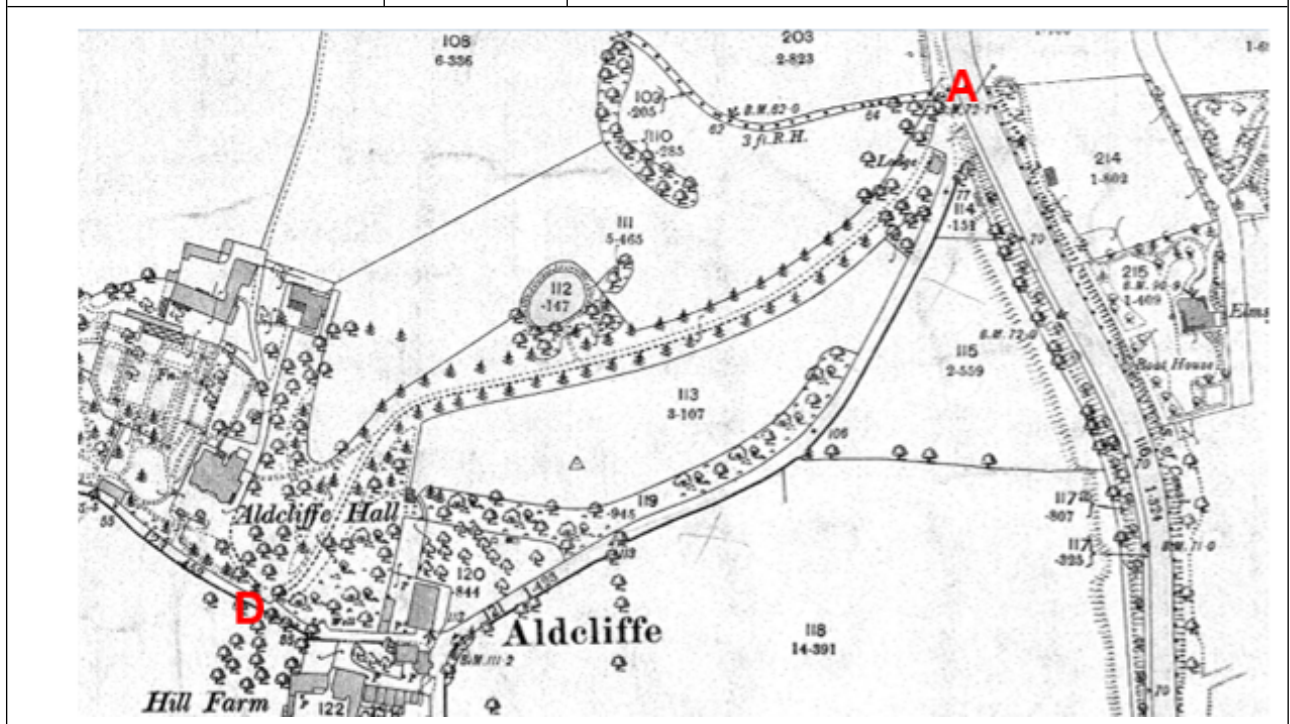
Observations		The application route is shown as providing direct access to Aldcliffe Hall.
Investigating Officer's Comments		The application route existed in 1830 and provided access to Aldcliffe Hall. It did not appear to be shown as a through route connecting to two public vehicular highways (Aldcliffe Road and Aldcliffe Hall Lane).
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 is not crossed by any proposed, existing or disused railway or canals.
Investigating Officer's		No inference can be drawn with regards to the

Comments		existence of public rights.
Tithe Map and Tithe Award or Apportionment	1847	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		The Tithe Map for Aldcliffe was inspected in the County Records Office but did not cover the whole of the parish and did not cover the land crossed by the application route.
Investigating Officer's Comments		No inference can be drawn with regards to 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 for Aldcliffe or Ashton with Stodday deposited in the County Records Office.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
6 Inch Ordnance Survey Map	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1848. ¹

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

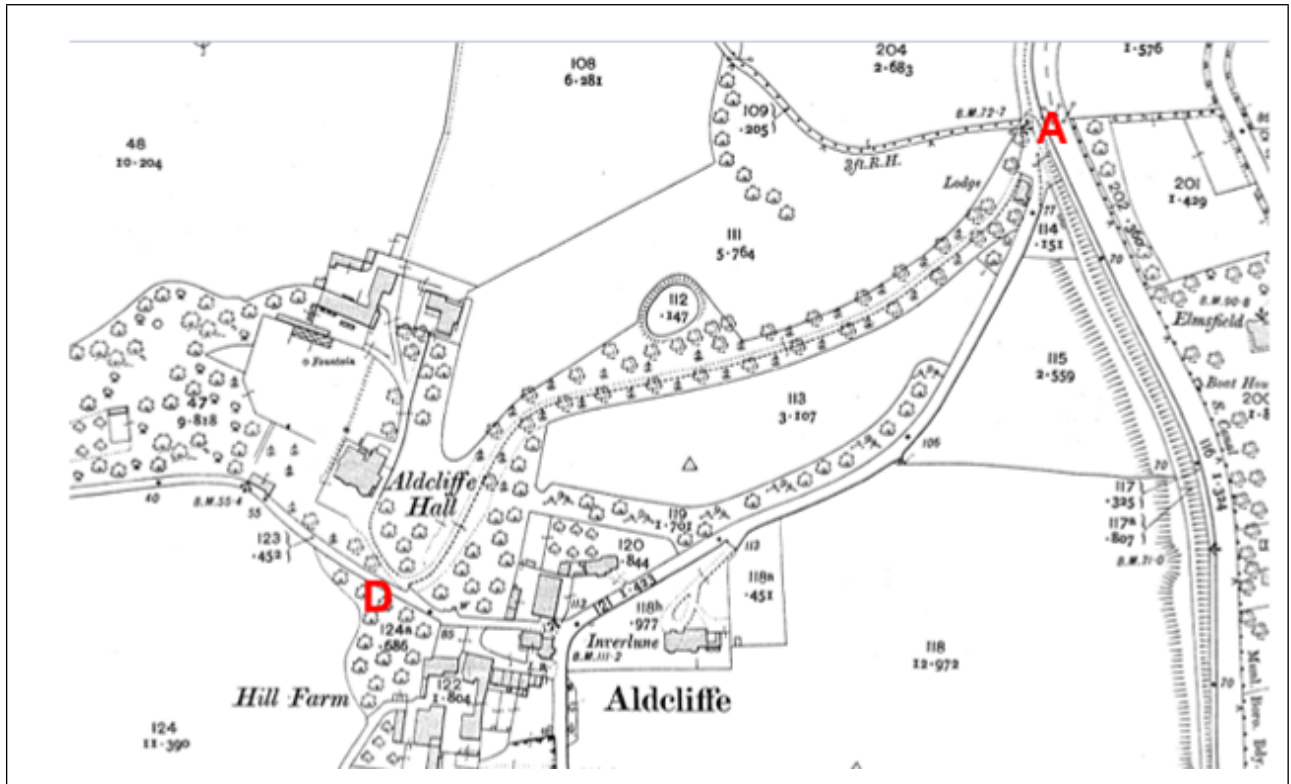


Observations		The full length of the application route is shown as an unbounded track. From point A the route passes a building named as Lodge and is shown to pass through a shaded area indicating parkland. The route is shown to run from Aldcliffe Road (point A) through to Aldcliffe Hall Lane (point D) and also appears to provide access to Aldcliffe Hall itself.
Investigating Officer's Comments		The application route existed in 1848 as a through route.
25 Inch Ordnance Survey Map	1893	The earliest Ordnance Survey map at a scale of 25 inch to the mile. Surveyed in 1890-91 and published in 1893.





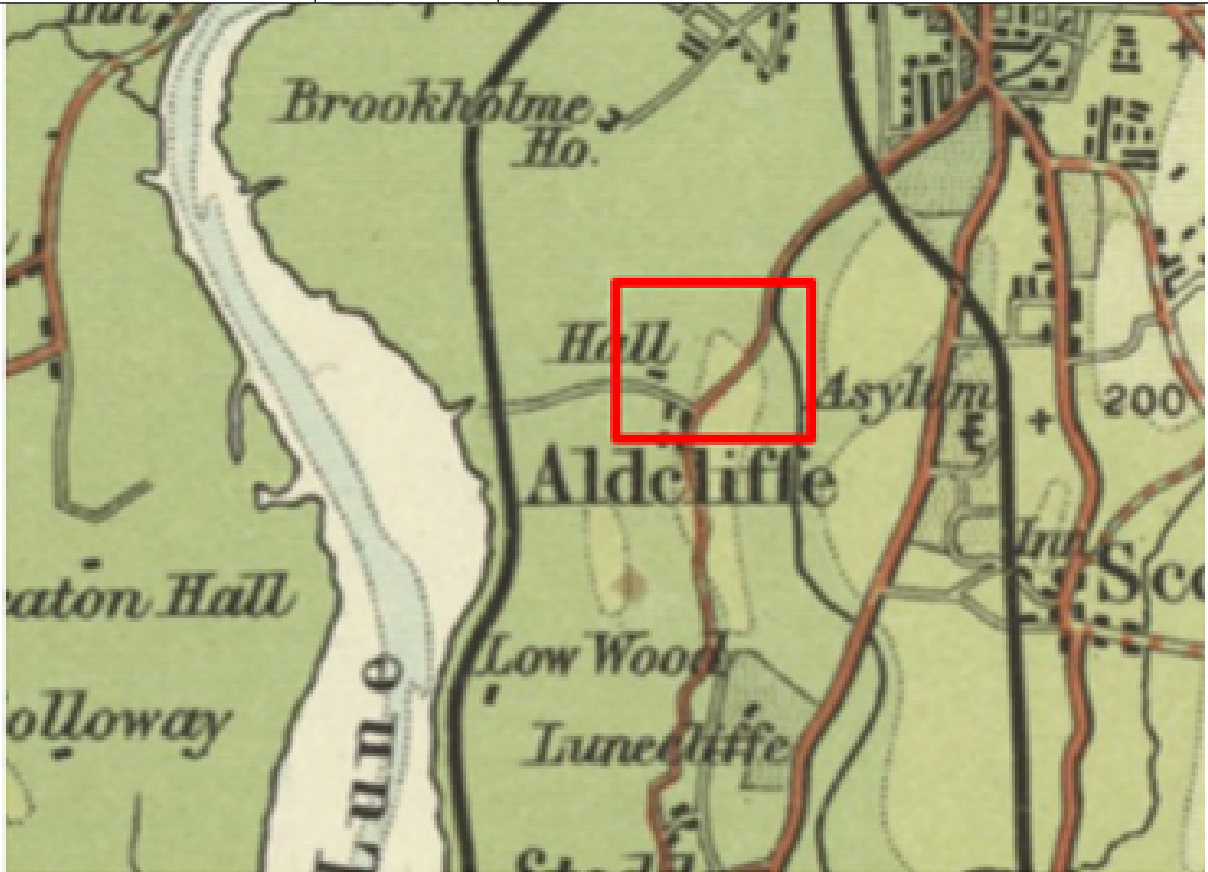
<p>Observations</p>		<p>The full length of the application route is shown. A line is shown across the route adjacent to the lodge at point A suggesting that entry onto the route from Aldcliffe Road was gated. The route is then shown passing between an enclosed strip of land planted with trees along the same alignment as the route now claimed. Aldcliffe Hall is shown west of the application route with a track (double pecked lines) leading off from the application route directly to the Hall before reaching point D. At point D there appears to be a further track curving back round to the Hall from the application route. Access from the application route onto Aldcliffe Hall Lane at point D appears to be gated.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed in 1893 but appeared to be gated at point A and point D and did not appear to form part of the public vehicular highway network at that time. The fact that it is shown as a tree lined route with a gated lodge at point A and as a route providing access to Aldcliffe Hall suggests that it was constructed as an estate access road to the Hall as opposed to a public vehicular through route.</p>
<p>25 inch Ordnance Survey Map</p>	<p>1913</p>	<p>Further edition of the 25 inch map surveyed in 1890-91, revised in 1910 and published in 1913.</p>





Observations		The application route is shown in the same way as it was shown on the earlier edition of the 25 inch map. It is gated at both ends (points A and D) and is shown as providing access to Aldcliffe Hall from a track which leaves the application route at point D.
Investigating Officer's Comments		The application route existed in 1913 and provided gated access to Aldcliffe Hall. It may have been possible to travel along the application route from point A to point D but the way the route is shown depicted on the map is consistent with a route whose primary purpose was access to a property (Aldcliffe Hall).
Bartholomew half inch Mapping	1905-1940	The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate

		<p>road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the Ordnance Survey small scale map was inferior to Bartholomew at that time for the use of motorists.</p>
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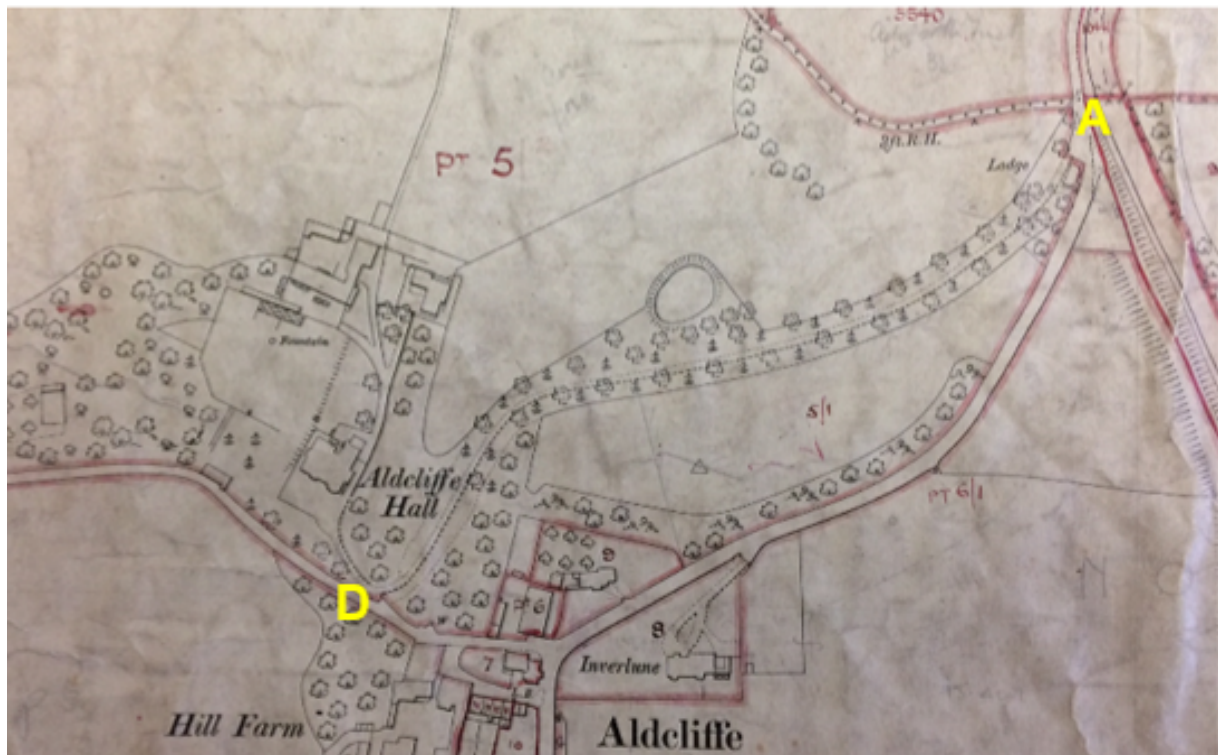
1905 edition

Observations		Bartholomew 1/2 inch maps published in 1905, 1920 and 1940 were inspected. None of the three maps show the application route.
Investigating Officer's Comments		The application route was not considered to be a public vehicular highway of such significance to be included on Bartholomew's Maps.
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 claimed so although there was a financial incentive a public right of way did not

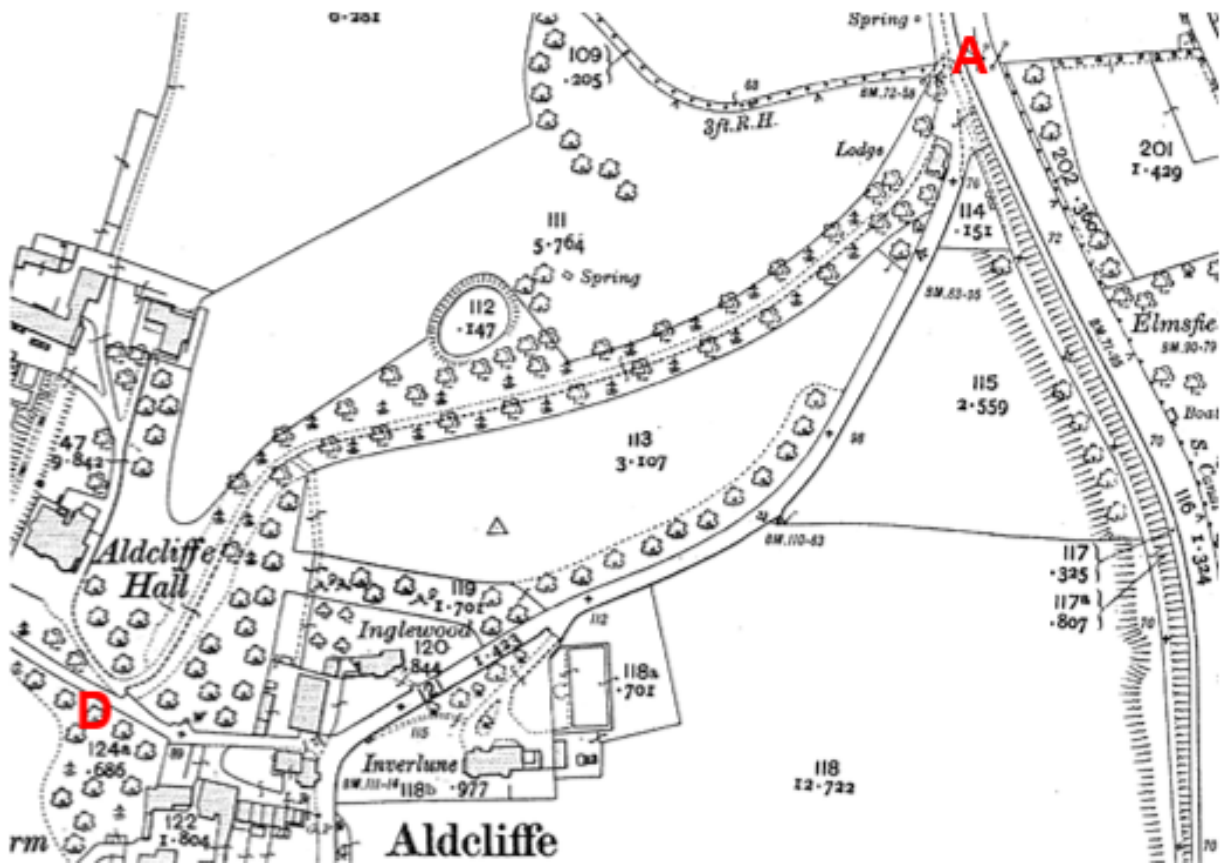
have to be admitted.

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

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

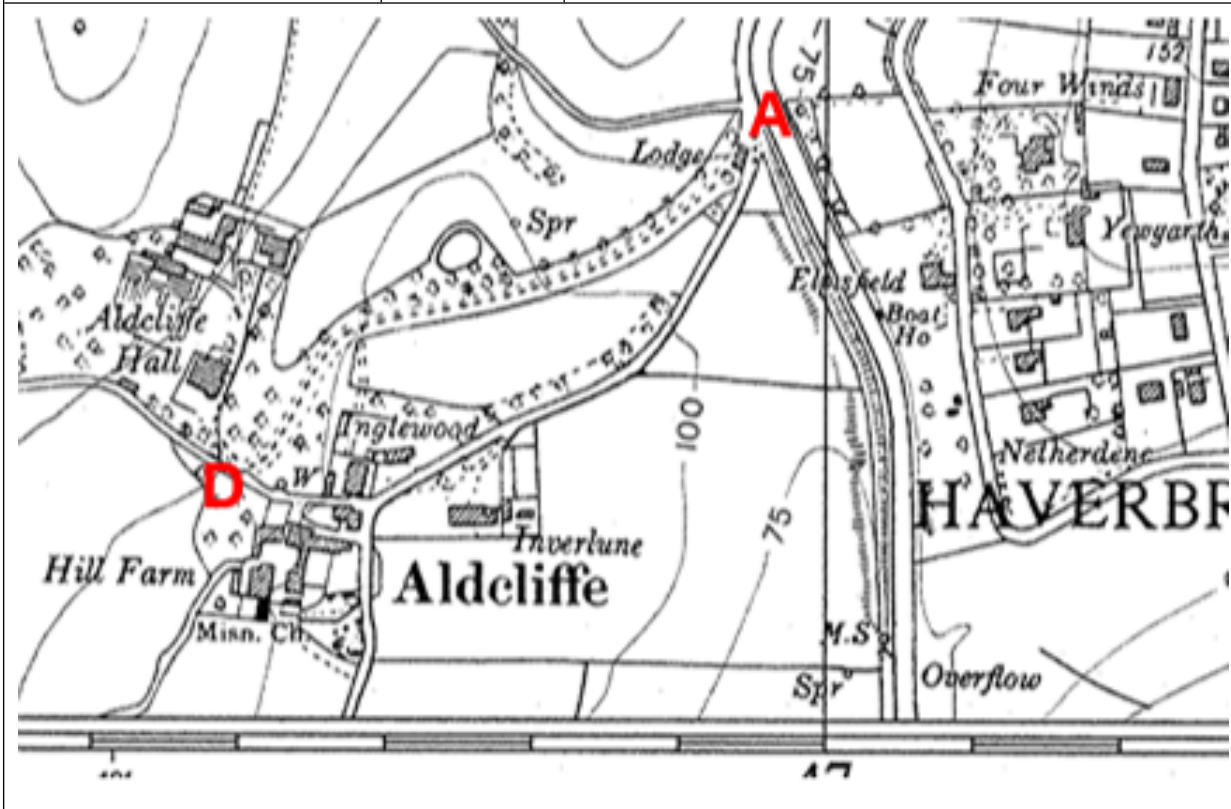


Observations		The whole of the application route is shown within numbered plot 5. The Valuation Book documents the land as being owned by E B Dawson and it is described as agricultural land at Aldcliffe Hall. No deductions are listed for public rights of way or user.
Investigating Officer's Comments		The fact that the whole of the application route was included within a numbered plot suggests that it was not considered to be a public vehicular highway at the time of the survey and no deductions are claimed for the existence of public rights of way or user suggesting that the route was either not considered to be a public right of way at the time of the survey or that the landowners chose not to claim a deduction.
25 Inch Ordnance Survey Map	1933	Further edition of 25 inch map (surveyed 1890-91, revised in 1931 and published in 1933.



Observations		The application route is shown as a gated route in the same manner as it is shown on the earlier editions of the 25 inch map.
Investigating Officer's Comments		The application route existed but did not appear to form part of the public vehicular highway network in 1933.

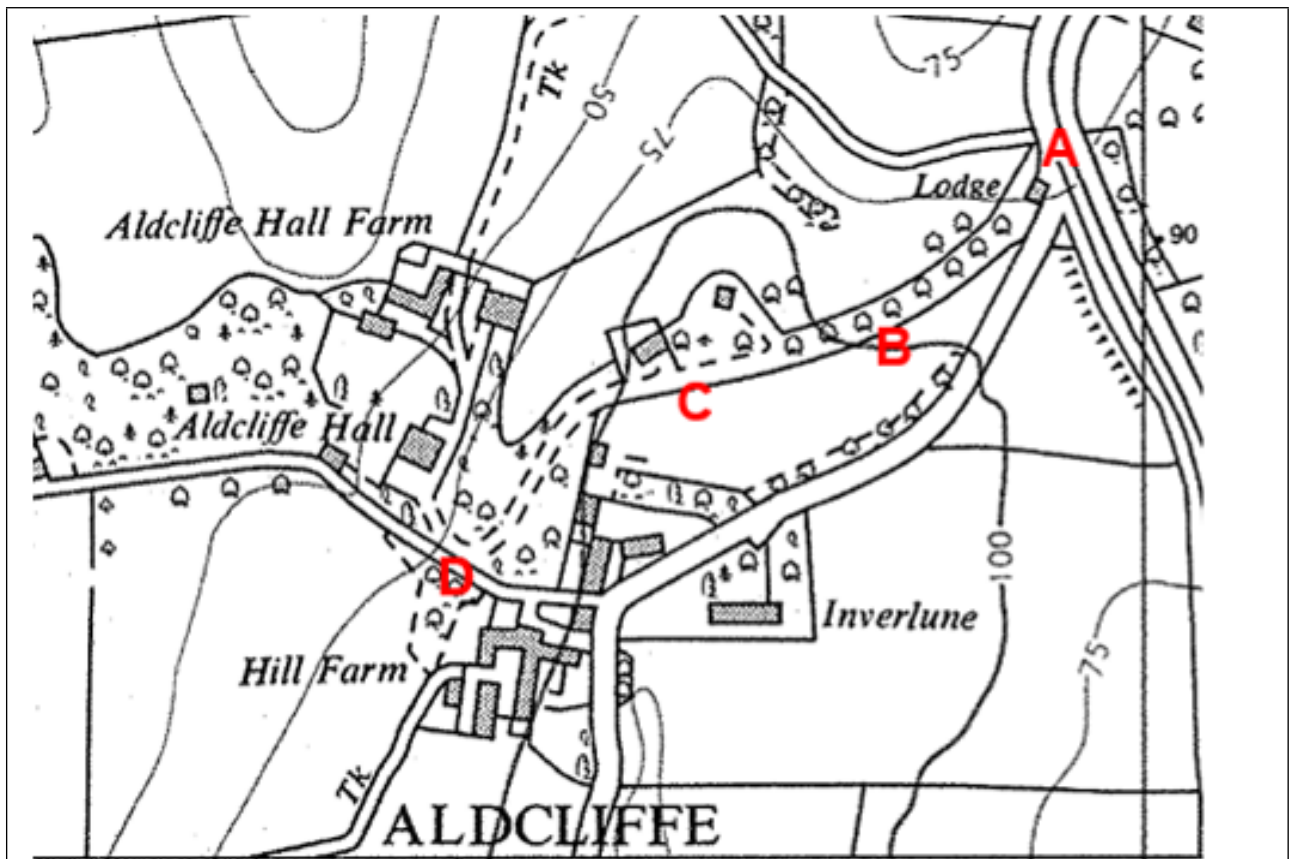
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on Geographic Information System. The clarity is generally very variable.
Observations		There is no 1940s aerial photograph available to view in the County Records Office or online of 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 Map	1957	The Ordnance Survey base map for the Definitive Map, First Review, was published in 1957 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.
Investigating Officer's Comments		The application route existed and may have been capable of being used as a through route but did not appear to form part of the public

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.

		vehicular network.
1:2500 Ordnance Survey Map	1958	Further edition of 25 inch map reconstituted from former county series and revised in 1956-57 and published 1958 as national grid series.
Observations		The application route is shown in the same way as it is shown on earlier editions of the 25 inch map and gates are still shown at point A and point D. Two new properties – named Ashlar House and Cortina are shown on the map and are directly accessed from the application route.
Investigating Officer's Comments		The application route existed in 1956-7 providing access to Aldcliffe Hall and two residential properties. It may have been possible to use the route as a through route connecting to public vehicular highways at point A and point D.
6 inch Ordnance Survey Map	1968	Further edition of the Ordnance Survey 6 inch map revised between 1956-63 and published 1968.



<p>Observations</p>		<p>The application route from point A leading up to point C is shown as a strip of fenced off land planted with trees but without any track or path indicated within it.</p> <p>From midway between point B and point C the application route is shown providing access to an un-named building and is then shown continuing through to point D where it is unclear whether access extended out onto Aldcliffe Hall Lane.</p>
<p>Investigating Officer's Comments</p>		<p>The style of this 6 inch Ordnance Survey edition differs from previous maps published. Maps pre-and post-dating this map all show the full length of the application route suggesting that it did exist in 1968 but that the eastern section from point A to midway between point B and point C was, perhaps used less frequently or was less evident on the ground than it had been in the past. The route is not shown as a route that you would expect to be able to use as a public vehicular through route.</p>
<p>Aerial photograph</p>	<p>1960s</p>	<p>The black and white aerial photograph taken in the 1960s and available to view on Geographic Information System.</p>



Observations		Tree cover means that it is not possible to see the application route in detail.
Investigating Officer's Comments		The application route existed in the 1960s but it is not possible to see whether it was open and accessible throughout the full length. No inference can be drawn with regards to the existence of public rights.
Ordnance Survey Pathfinder 648 Lancaster & Morecambe	1988	Extract from 1:25000 Ordnance Survey map revised 1988.



Observations		The application route is shown as a through route. Significant housing development has taken place since the 1960s with a number of properties being accessed directly from the application route.
Investigating Officer's Comments		The application route existed in 1988 and appeared to be capable of being used.
Aerial Photograph	2000	Aerial photograph available to view on Geographic Information System.



Observations		Tree cover means that it is not possible to see the application route in detail. The photograph shows that a number of residential properties had been built adjacent to the route between point C and point D by 2000.
Investigating Officer's Comments		The application route existed in the 2000 but it is not possible to see whether it was open and accessible throughout the full length. No inference can be drawn with regards to the existence of public rights.
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</p>

		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		The area crossed by the application route formed part of Lancaster Municipal Borough in the 1950s and no parish survey map was produced.
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 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 application 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 application route was not shown on the First Definitive Map and no representations were made to the county council.
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.
Observations		The application route is not shown.
Investigating Officer's Comments		There is no indication that the application route was considered to be a public right of way by the Surveying Authority.
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</p>

		not.
Observations		The application route is not recorded 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 along the application route.
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 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 intention by a landowner under this provision of non-intention to dedicate public rights of way over their land.
Google Street View Images	2009 and 2015	Google Street View images captured in 2009 and 2015.



2009 – Point A



2015 – Point A



2015 – Point C



2015 – Point C

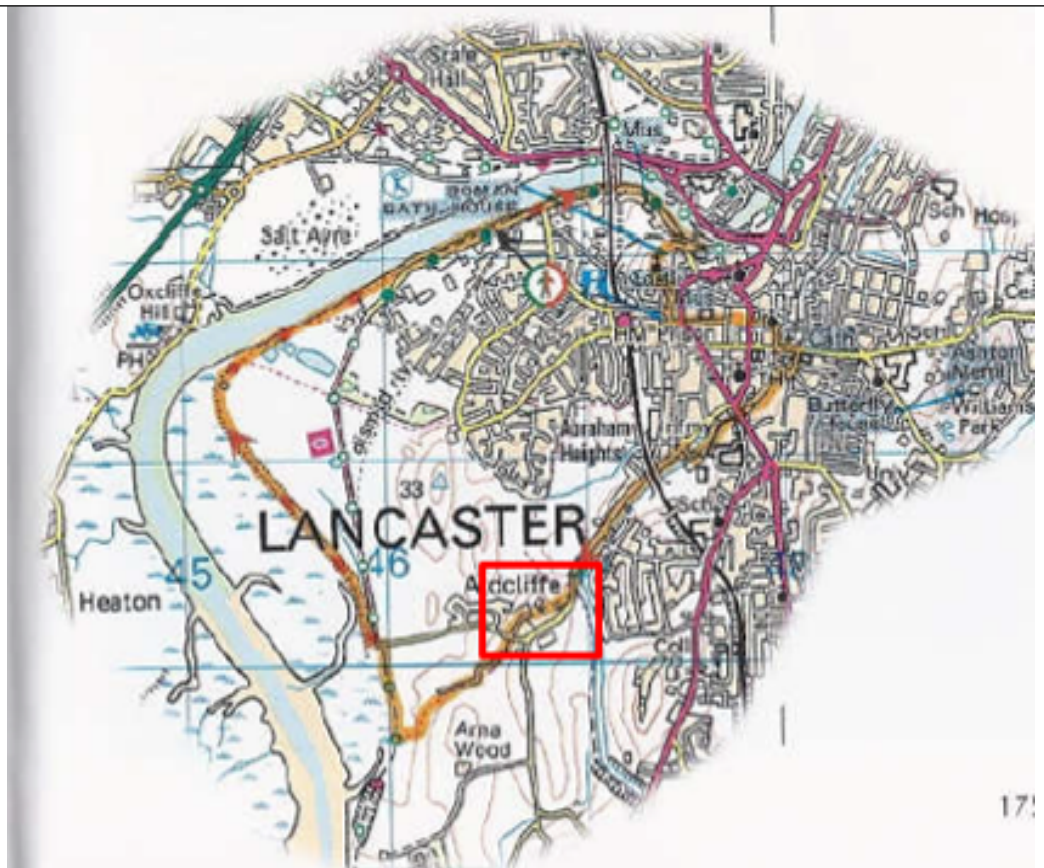
Observations

Google images captured in 2009 show the route open and accessible at point A with two people walking along the route and in 2015 show the route at point A open.

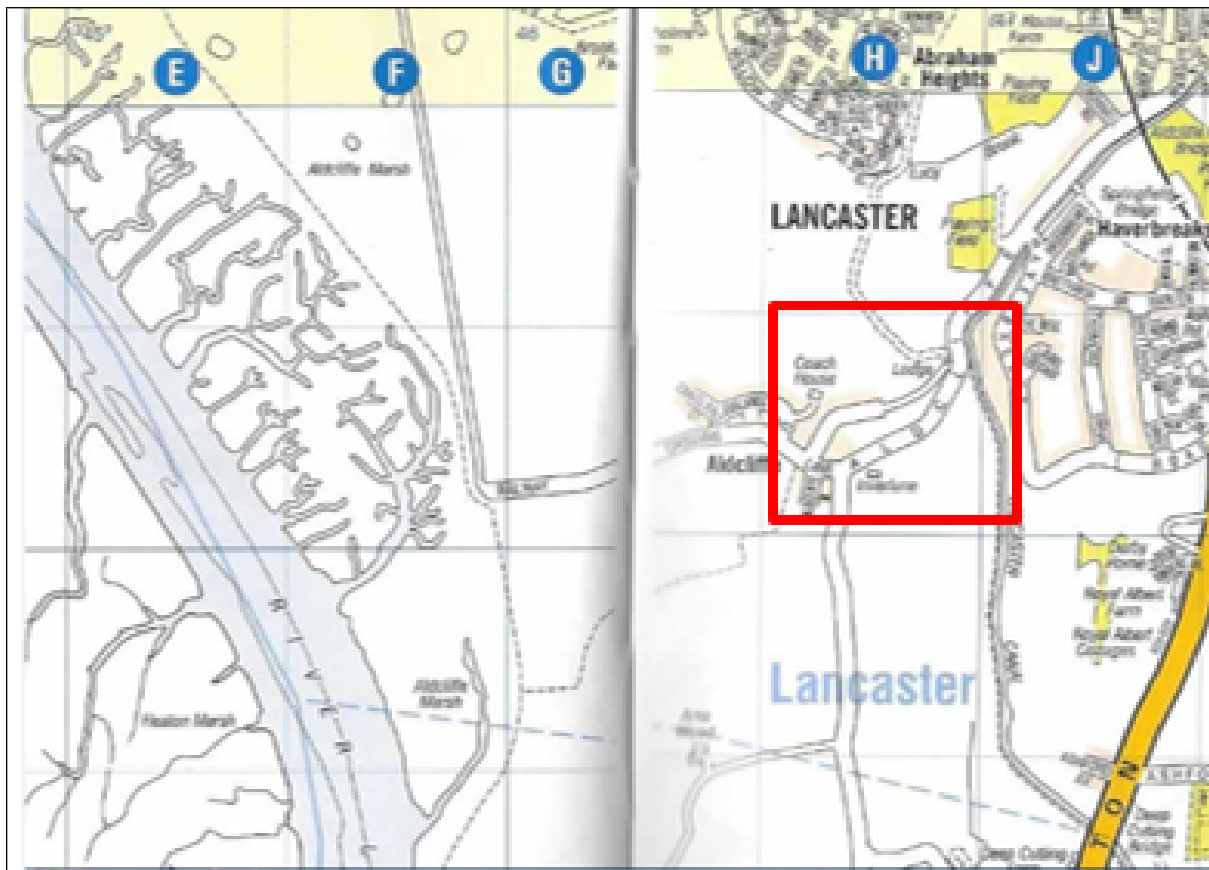
		The 2015 images of the route at point C show bollards across the tarmacked route and extending across the mown grass strip to prevent vehicular access.
Investigating Officer's Comments		The photographs suggest that the route would have been capable of being used by the public in 2009 and 2015 but that access was restricted to a width of just less than 2m at point C in 2015.
Books and leaflets referred to in the application		<p>The Following books and leaflets were referred to in the user evidence submitted as part of the application:</p> <ol style="list-style-type: none"> 1. Lancaster and Morecambe A-Z dated 2000 2. Walk 4 in 'Walks around Lancaster' published in 2006 and reprinted 2015 by the Ramblers Association, Lancaster Group. 3. Lancaster Ramblers Association Group leaflet published 1994 – Walk 17



Walks Around Lancaster City – walk 4



'The Lune Valley and The Howgills' – Walk 35 – Around Lancaster



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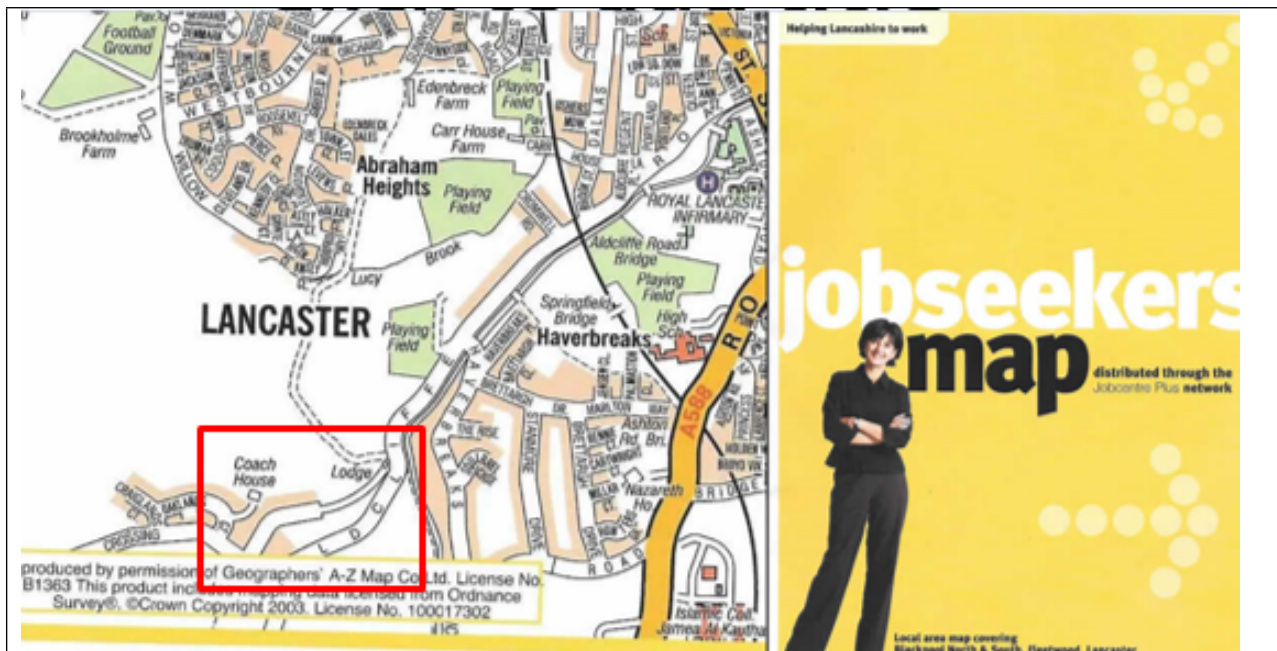
High Green, Sevenoaks, Kent, TN15 8PP
 01892 81000 (General Enquiries & Trade Sales)

London, WC1X 9HX
 020 7463 1000 (Retail Sales)

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Lancaster and Morecambe A-Z



Lancaster Job Seekers Map

<p>Observations</p>		<p>In the Lancaster Ramblers Association publication 'Walks Around Lancaster City' the application route is included as part of a circular walk described as part of 'Walk 4'. The route is described as passing some houses and continuing along a pleasant tree lined road 'to exit Old Hall Drive' by East Lodge. The hand-drawn map contained within the book shows the application route forming part of the walk. There is no indication in either the text or on the map that the route was not considered to be a public highway.</p> <p>In a walk contained within a cicerone guidebook titled 'The Lune Valley and The Howgills' published in 2012 the application route is described as a lane through parkland which then drops down past houses to a junction (point D on Committee plan). There is no indication in the text or on the Ordnance Survey based map showing the walk that the route was not considered to be a public highway.</p> <p>User's referred to the fact that the route was shown as an 'open road' in the Lancaster A-Z and on a Jobseekers Map of Lancaster. The route is shown on both maps with the section A-C shown to be narrower than the section C-D. No keys to the maps were provided.</p>
<p>Investigating Officer's Comments</p>		<p>The inclusion of the route in an A-Z is not necessarily an indication that public rights of</p>

		<p>access exist along it (even if shown as a named route) but its inclusion would support the physical existence of the route and the fact that it may have been accessible at that time.</p> <p>The inclusion of the route in two walking publications – one of which was published by the local Lancaster Ramblers Association – supports the view that the route was used at least on foot buy the public and was considered to be part of the public highway network.</p>
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The affected land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land.

Landownership

The entire claimed route is registered to Aldcliffe Hall Estates (Guernsey) Limited.

Summary

To summarise, the Investigating Officer was of the opinion that there was insufficient historical map and documentary evidence from which public rights could be inferred.

The map evidence supports the historical research in that the route appears to have physically existed on the same alignment since the early 1800s.

The driveway appears to have been originally constructed as access to Aldcliffe Hall, with a lodge built at the gated entrance (point A) and a tree lined driveway provided from point A to the Hall and a further gated access leading to and from the Hall (and application route) at point D.

The Finance Act documentation from the early 1900s does not show the route excluded from the numbered hereditaments and there is no deduction listed for public rights of way or user suggesting that the landowner at that time did not consider (or acknowledge) the route to be a public vehicular right of way or a public footpath or bridleway.

Following demolition of the Hall in the 1960s further houses have been constructed along either side of the application route between point C and D and this part of the route is now tarmacked with footways either side of much of it.

Vehicular access appears to be possible from point A to point C and from point D to point C but not for those wider than about 2m as a through route due to the existence of bollards at point C. The bollards are shown on google photographs taken in 2015 but no earlier map or documentary evidence was found confirming how long they had been in place or who erected them.

Reference has been made by a number of residents living adjacent to the route of a right to erect a fence across the route in deeds from the 1950s but no deeds have been made available to the county council as part of this investigation so no inference can be drawn.

The map and documentary evidence does support the user evidence submitted with regards to the fact that a route physically existed and appeared to be capable of being used throughout the period claimed but bollards at point C have restricted vehicular access along the full length since at least 2015 and most probably for longer.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The application was supported by the following:

1. 105 Evidence forms gathered from local residents of the western area of Lancaster
2. 88 emails responding to the initial call for evidence
3. 1 letter sent jointly by two City Councillors from Scotforth Ward
4. A report prepared for the Parish Council by a working party, including the historical status of Aldcliffe Hall Drive and analysing the evidence statements
5. A spreadsheet summarising the data from 105 forms used by the working party in the preparation of their report
6. Map showing route of proposed Public Right of Way to be added to the Definitive Map
7. Map showing location of Aldcliffe Hall Drive in relation to the City of Lancaster, the M6 motorway, the River Lune and Lancaster Canal.

User Evidence Forms

The application route use varies between the years 1954 and 2017.

Of 105 users, 67 have used the route over a continuous period of 20 years up until 2017. 1 user used the route between the years 1954 and 2011. 38 users have used the claimed route over a continuous period of 30 years up until 2017.

Usage on foot up until 2017:

- 13 users confirmed that they used the route daily since:
1960; 1977; 1978 (2); 1980 (2); 1992 (2); 1996; 1988 (2); 2001; 2007
- 35 users confirmed they used the route weekly since:
1969; 1974; 1977; 1978; 1979; 1980 (2); 1981; 1983 (3); 1985; 1987; 1988; 1989; 1990; 1993; 1994; 1995; 1996 (3); 1998; 1999; 2001 (4); 2002 (2); 2004; 2005; 2008; 2012; 2015
- 17 users confirmed they used the route monthly since:
1973; 1974; 1976; 1977 (2); 1980 (2); 1982; 1988; 1991; 1992; 1995; 1996; 2000; 2001; 2007; 2014
- 15 users confirmed they used the route every few months since:

1969; 1970 (2); 1977; 1980; 1985; 1986; 1990; 1994 (2); 1995; 2002 (3); 2007

- 2 users confirmed that they used the route on foot between 2 - 5 times per week since:
1971; 1994
- 1 user confirmed that they used the route once a year since 1990.
- 1 user confirmed that they used the route 7 times since 2014.
- 1 user confirmed that they used the route about 50 times per year not at regular intervals since 1985.
- 1 user confirmed that they used the route on foot intermittently since 1970.
- 1 user confirmed that they used the route daily from 1996 until 2009. Another confirmed using the route every few months from 1995 until 2011.

Usage on pedal cycle up until 2017:

- 3 users confirmed that they used the route daily since:
1992; 2001; 2007
- 17 users confirmed that they used the route weekly since:
1971; 1973; 1977 (2); 1980; 1988; 1994; 1995; 1996 (2); 1997; 2001 (2); 2005; 2008; 2009; 2015
- 19 users confirmed that they used the route monthly since:
1976; 1980 (2); 1981; 1983; 1986; 1988; 1989; 1991; 1992; 1993; 1996; 1998; 2001 (2); 2007 (2); 2011; 2012
- 1 user confirmed that they used the route weekly during the summer and every few months during the winter since 1999.
- 18 users confirmed that they used the route every few months since:
1969; 1970; 1974; 1977 (3); 1978; 1980; 1983; 1988; 1990; 1994 (2); 1995; 1996 (2); 2002; 2004
- 3 users confirmed that they used the route once a year since:
1985; 2002; 2005.

Usage by foot and bicycle:

- 1 user confirmed using the route a couple times a week by foot and bicycle from 2007 until 2015.
- 1 user confirmed using the route 7 times per year by foot and bicycle since 1990 until 2017.
- 1 user confirmed using the route monthly since 1988 until 2017 by foot and bicycle but when the weather is good they will use it weekly.
- 1 user confirmed that they used the route between 1980 – 1983 and 1996-2017 by foot and bicycle weekly or monthly depending upon the weather.
- 1 user confirmed using the route on a daily basis in the school holidays by foot and bicycle from 1954 until 2011.
- 1 user confirmed using the route by both foot and bicycle on a weekly basis between the years 1976-1992 and 1994-2017.
- 1 user confirmed using the route by both foot and bicycle on a weekly basis between the years 1972- 1982 and 1983-2017.

- 1 user confirmed using the route by both foot and bicycle every few months from 1997 – 2003 and on a weekly basis between the years 1994 - 1997 and 2003 – 2017, minus the year in-between 2006 and 2007.

No users claimed to have used the route on horseback or in a vehicle.

91 of the 105 users confirmed that the application route has always followed the same course.

The main reasons for the use of the route were for pleasure, leisure, walking, exercise, running, dog walking, going into Lancaster, visiting friends, going to school/work, cycling and for safety.

103 of the users have seen others using the claimed route at the same time as them.

100 users provided that they have seen others using the claimed route on foot.

34 users provided that they have seen people on horseback on the claimed route.

89 users provided that they have seen people cycling on the claimed route

16 users provided that they have seen people in vehicles on the claimed route.

4 users provided that they had seen wheelchairs, prams and mobility scooters using the claimed route.

65 users comment that there are bollards on the route near to Ashlar Lodge which prevent vehicle access.

98 users answered NO to ever seeing any signs or notices suggesting that the route is not a public right of way. 2 answered don't know and 4 didn't provide answers. 1 user provided that there was for some years, a sign attached to the gatepost at East Lodge stating that it was not a bridleway.

103 of the users answered NO to having worked for the landowner whilst using the claimed route. 2 users did not provide an answer.

When asked approximately how wide the application route is there was a wide range of answers:

Width description	No. of users	Width description	No. of users
Car width	10	6 metres	1
2 metres	7	Width of a lane	1
2.5 – 3 metres	1	Width of a single carriageway/track	3
2-3 metres	3	Width of a narrow track	1
3 metres	16	3-4 walkers wide	1
3.5 metres	3	2 cars wide	1
3-4 metres	6	7 feet	1
2.5 – 4 metres	1	8 feet	1
4 metres	7	8–15 feet	1
3 – 4.5 metres	1	10 feet	1
4–5 metres	1	12 feet	1
5 metres	3	15 feet	1

76 users provided that the surface of the route is tarmac; whilst others described it as 'gravel-tarmac, sealed road, hard road surface, road surface, metalled, hard surface, asphalt, hard flat surface, mostly surfaced, solid concrete base, semi paved and paved'. 11 users didn't provide an answer to the surface or didn't know.

2 users provided that they had been given permission to use the claimed route by landowners – 1 provided that a resident of one of the houses on the claimed route granted permission. Another user owns one of the properties, 'Silver Lune' on the claimed route and provided a copy of their deed allowing them and their visitor's free passage on foot north and south along the drive.

5 people responded 'YES' to having been told that the claimed route is not public; 3 users provided that their deeds give them and any visitors access to their properties on the Drive. 1 user claimed to know from local and Ordnance Survey map knowledge and another user answered yes but didn't provide where, when or by whom they had been told of this.

None of the users have ever been stopped or turned back when using the application route nor were they aware of anyone else being stopped or turned back.

2 users answered 'YES' to having a private right to use the application route, again these refer to deeds.

7 users answered 'YES' to having knowledge of documentary evidence of the claimed route which documents and responses included:

- A year 2000 copy of the Lancaster & Morecambe A-Z which they claim shows the route as an open road and also 'Jobseekers 2003 map' also does. Copies were not provided;
- Various historical accounts on the internet of Aldcliffe Hall, of which this route was the drive to.
- A map they had bought in 1995, showing the claimed route marked was attached to the user form.
- 'Aldcliffe Hall Drive appears in a number of walk books, though often by description rather than name. For example in Dennis and Jan Kellsall's 'Lune Valley and Howgills – A Walking Guide' (Cicerone Press Ltd. 2012), Walk 35 contains the following passage: "...continue beside Aldcliffe Road and beneath the railway. After a little less than ½ mile (800m), where road and canal part, abandon the towpath, crossing to a lane beside a lodge. It climbs through parkland to Aldcliffe, dropping past houses to a junction. A footpath signed to the River Lune leads through a gate opposite". Copies were not provided.

The drive is also a feature of the leisure mobile application Strava used by both runners and cyclists. The 'heatmaps' show the number of users of this app who have recorded their use:

<http://labs.strava.com/heatmap/#15/-2.79973/54.03899/blue/run>

<http://labs.strava.com/heatmap/#15/-2.79973/54.03899/blue/bike> '

- The route is described in the walking guide "Walks Round Lancaster City", published in 2006 by Lancaster Group of The Ramblers Association (walk 4 - page 9, map – page 8). The document was not provided.
- Another user simply provided the response 'Old maps'.

Parish Council Report

The report describes the claimed route and its features and situation and provides a short history. It describes how the local residents were asked about their use of the route through residents' newsletters and responses handled by a Parish Council working party. Evidence forms were also delivered to each house on Aldcliffe Hall Drive and some were passed on through personal contacts. Between 15/08/17 and 15/10/17 a total of 105 Evidence Statements were returned. Two forms were returned by local councillors and two Scotforth Ward City Councillors.

The report concluded that the majority of the 105 respondents used their evidence to provide that they wished to see the claimed route recorded as a 'restricted byway'. A number expressed concerns over the use of horses but none provided that they thought the route should not be a public right of way. The theme of the responses was to maintain access for the public in just the same way as it has been for the last half century. The report was received and approved at the meeting of the parish council on 12th December 2017.

Additional comments made by users are as follows:

- The application route provides a direct and safe access to The Lune footpath.
- The alternative route is the busy narrow Aldcliffe Road with blind bends, high hedges and fast traffic with no street lighting, footpaths or cycle ways. It is not suitable nor safe for non-vehicle users, particularly those with pushchairs/prams.
- They believe the route is well used by many people including people who live in the houses nearby.
- The route links the established footpaths FP41, FP49 and FP50.
- This route is the only safe, low traffic walking and cycling route between Aldcliffe and Lancaster.
- The route is a pleasant tree lined drive with lovely views.
- One user provided that whenever using the claimed route it was assumed that it was already a public right of way and they have never seen any evidence to the contrary or been challenged whilst using it.
- The route connects various other paths all of which are either traffic free or low traffic.
- One user provided that without the claimed route they would be unable to walk their children to school and another user walks their dog down the drive every day and has never been told that they cannot use the route
- The route provides an important link in an off road loop from the canal to the estuary (and onwards to Glasson Village or back into Lancaster).
- The route is a very useful connection between the Lancaster Canal footpath/cycleway and the Bay Cycleway (National Route 6).

- The route has been freely used for many years and there has never been an indication that it was private land and not a public right of way.
- A resident of Aldcliffe who claims to have co-written 'the history of Aldcliffe' states that Aldcliffe Hall Drive has been in constant daily use by local residents, Lancaster townsfolk and visitors primarily on foot and bicycle. Pedestrians and cyclists have always been welcomed. However, horse riders have always been turned back as they have been abusive and uncooperative in cleaning up their horses' dung which is a serious tripping hazard at night on the unlit road. In addition the horses' hooves have damaged the ageing tarmac and grass verges.

Information from Landowners

Bannister Bates Property Lawyers acting on behalf of the landowner, Aldcliffe Hall Estates (Guernsey) Limited object to the application. Their concerns are understandable but not strictly relevant in considering whether or not public rights already exist. These are:

- safety and well-being of the residents who access their properties from the route.
- The landowner is responsible for the proper maintenance of the route.
- The landowner only grants such legal rights of access over it as is necessary for access.
- The landowner has allowed the continued use of the roadway by the public on foot, or cycle, by consent without a formal legal right and not for general public vehicular access.
- Bollards have been in place for a substantial number of years and more recently the landowner has granted an adjoining landowner a legal right to place and maintain bollards on the route, to prevent vehicular thoroughfare.
- If the roadway is designated a restricted byway then the landowner would incur ongoing financial expense in cleaning the roadway and the removal of litter and other materials which will inevitably be caused by its use as a public byway.
- The Parish Council did not consult them prior to making the decision to submit the application, therefore had no opportunity to make representations at the parish council meeting.

The county council responded to the Bannister Bates Property Lawyers to clarify on a few points raised in their original response:

- (1) As to the consent given, the form and manner of consent or permission allegedly given and (2) Whether the owners have ever attempted to erect gates or whether gates have previously existed on the route.
- The Solicitor responded, incorrectly assuming the county council was referring to consent to place and maintain bollards and advised that consent has been given to a purchaser of one of the new units to maintain retractable bollards in place of the current concrete bollards. The landowner claims the consent forms part of the title of that unit.

- The landowner's solicitor also states that there are two large stone gateposts besides East Lodge at the entrance to Aldcliffe Hall Drive from Aldcliffe Road and therefore gates may have been there in the past, but no gates have been erected during their ownership of the land.
- The county council replied to request clarification as to what consent has been given to cyclists, pedestrians and those on or leading a horse using the route, and to specify the form and manner of the consent/permission given including to any horse riders. The response provided was that the landowner has not taken any action to prevent such use by claiming trespass against cyclists and pedestrians in the past by erection of signage or other obstructions to such use. They have, therefore, given their consent impliedly to the continued use by such parties since they purchased the land some decades ago.

Information from others

Some of owners of properties on Aldcliffe Hall Drive object to the application and have made similar comments to the landowners. They have also expressed the following concerns which whilst understandable to not have a direct bearing on whether or not public rights already exist:

1. The route is a private road, not a designated public right of way and only provides vehicle access for owners of the properties down the Drive that cannot get access to their houses through Aldcliffe village.
2. Horse riders, cyclists and walkers can use Aldcliffe Road to gain access to Aldcliffe Hall Lane and the footpath off Aldcliffe Hall Lane and therefore do not need to use Aldcliffe Hall Drive.
3. There is also a concern that an increase in public use will result in damage to grass verges and an increase in litter, degrading the natural environment and habitats along either side of the drive.
4. An increase in dog fouling.
5. There is a particular concern about horse dung and damage to verges by hooves and to this end, residents have requested riders to be more considerate. This has resulted in a number of riders being aggressively offensive to the extent that the Police were called and asked to visit the stables. Their concerns are that should the claim be accepted and the route made a restricted byway then they will have no means to preventing such behaviour.
6. They have concern over the speed at which cyclists travel down the drive.
7. The gates at East Lodge apparently remained in place until at least 1990 when the current owners of the Lodge bought the property.
8. From 1956 the use of the Drive by members of the public has been as 'tolerated trespassers', under sufferance, not because of any granted or permitted rights of way.
9. Designation may encourage improper use, such as illegal parking on the Drive and verges.
10. The designation may increase insurance costs for public liabilities and may result in misuse of their own private land which abuts the Drive.

11. Costs of signage and other protective measures, to avoid some future claim of public rights of way over the private verges and driveways which now abut the Drive.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

- There is substantial user evidence of the route being used on foot and on pedal cycle for 20 years and longer.
- 67 people say they have used the route over a continuous period of 20 years and longer.
- 38 users have used the claimed route over a continuous period of 30 years
- None of the users were ever stopped or turned back from using the route.
- The majority of maps listed above shows that the route has existed for a long time.
- The route features in booklets and publications as a walking route, suggesting it was accessible.

Against Making an Order(s)

- Finance Act 1910 shows there are no deductions for public rights of way.
- Landowners and residents consider the route not to have public rights.
- One user claims a notice was erected to state that the route was not a bridleway.

Conclusion

In this matter it is claimed that this route has already become a public bridleway under section 31 of the Highways Act 1980. This means that a route which has been used by the public as of right and without interruption for a full period of 20 years is deemed to have been dedicated as a highway, unless there is sufficient evidence that there was no intention during that period to dedicate it.

A route can also become a bridleway inferred from all the evidence under common law. However, this is harder to prove as the current landowners and residents indicate that there is no intention to dedicate and therefore, for inferred dedication, we would need to consider whether rights had been dedicated before the current landowner and residents had any interest in this route.

There is no actual document referring to a dedication by the any previous or current landowner.

Deemed dedication under Highways Act 1980

Considering first the provisions of Section 31 Highways Act 1980. It cannot be properly determined if ever the route has been called into question before the date of

the application for the route to be recorded was submitted. (20/12/2017). Therefore, the period of use to satisfy the statutory test is 20 years from 20/12/1997 to 20/12/2017. The user evidence in this matter is substantial, there is ample user evidence that the route has been used throughout this period on foot and on pedal cycle. The Committee may consider that there has been as of right use for the twenty year period without any interruption and without any sufficient overt acts demonstrating an intention not to dedicate by the owners.

In order to counter the deeming of dedication by 20 years use as of right there needs to be overt indication by the landowner. There was only one notice mentioned by one user (from a total of 105) stating that it is not a bridleway. However, it should be noted that s.31 requires that the evidence of having no intention to dedicate needs to "sufficient". To this end, the details of the alleged notice are extremely limited; there is no date available as to when it was erected; only one user out of 105 has mentioned the notice and none of the users were ever stopped from using this route. The Committee may therefore consider that this notice is not sufficient evidence of no intention to dedicate.

Inferred dedication at Common Law

The use by the public over two to three decades and owner's acquiescence may also be circumstances from which to infer dedication at Common Law. In this regard the comments from the users who have stated to have used the route for over 20/30 years are important as it shows extensive use with no-one stopping them and there being a clear full-length link between highways.

The fact that the route is shown on a majority of maps as a through route and is also mentioned as a walking route on the Rambler's Association publications indicates the route was reputed to be available to the public at that point (earliest in 1994). Although the status of the route cannot be confirmed from the maps alone, the existence of the route connecting two vehicular highways could mean that it was used as a thoroughfare.

However, the landowners and residents have clearly expressed an intention not to dedicate and therefore we would need to refer to the time when the current landowner and residents had no interest in the route. The Committee may consider that there is insufficient evidence to infer dedication of public rights before 1997.

Taking all the evidence into account on balance, the Committee may consider that there is insufficient evidence from which a dedication of this route as a bridleway can be deemed under section 31 of the Highways Act 1980 and that the claim be accepted.

Alternative options to be considered

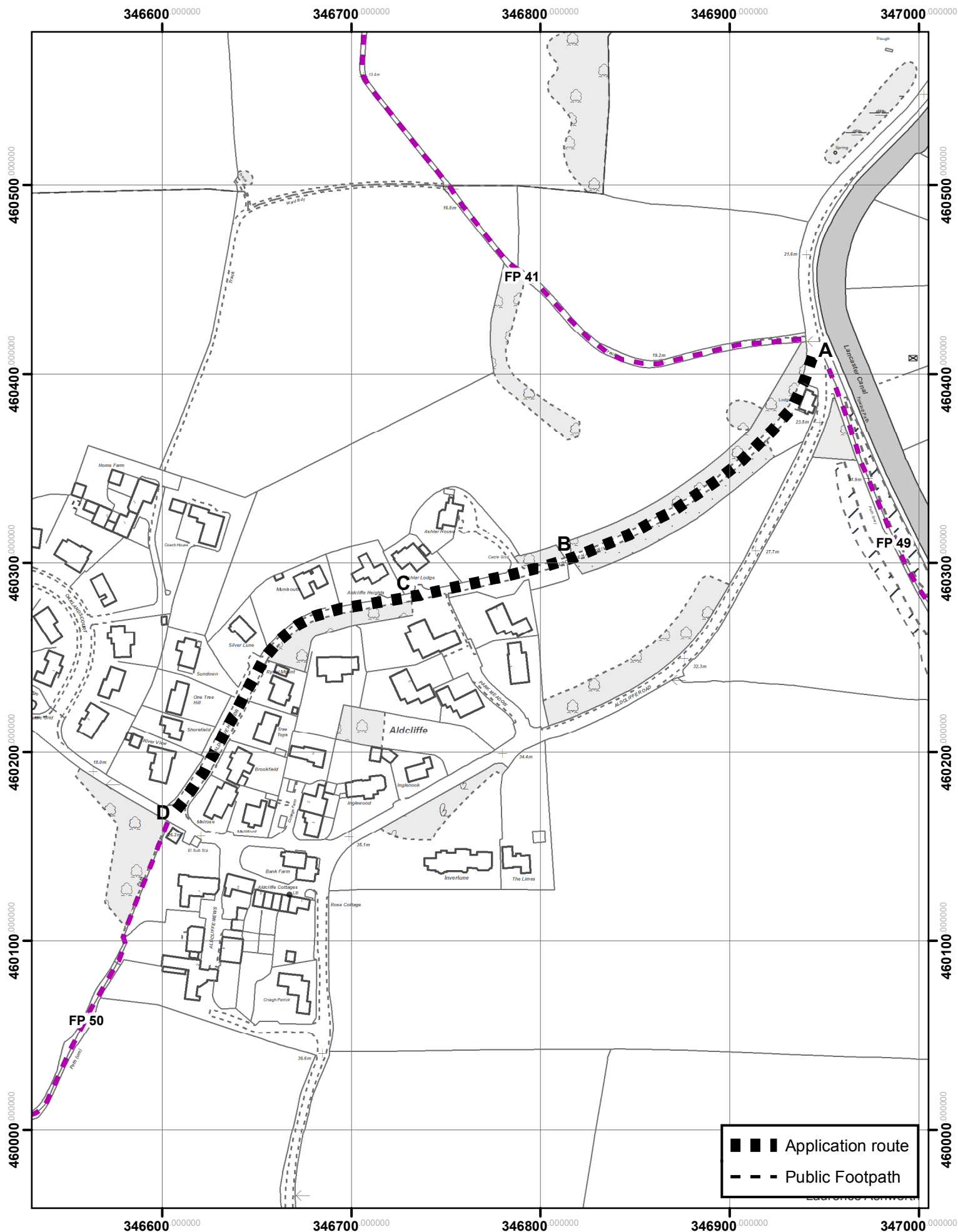
That the evidence is insufficient for deemed dedication of any public rights.
That the evidence shows a status other than bridleway.

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-592		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

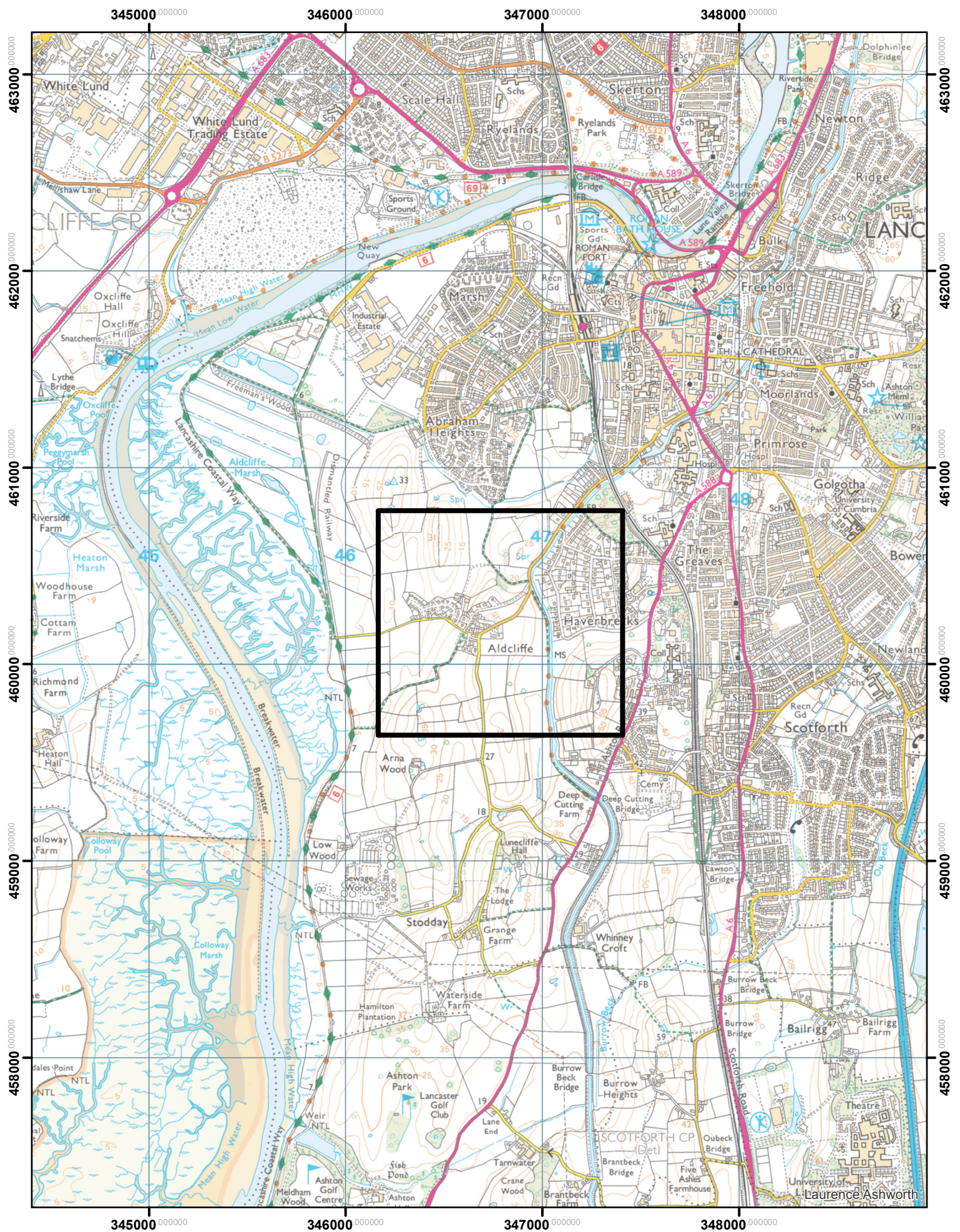
Wildlife and Countryside Act 1981
Addition of Restricted Byway along Aldcliffe Hall Drive

1:2500



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Andrew Mullaney
Head of Planning and Environment

Wildlife and Countryside Act 1981
Addition of restricted byway along Aldcliffe Hall Drive, Ashtown with Stoddy,
Lancaster City, LOCATION PLAN

1:24,000



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Regulatory Committee

Meeting to be held on 6th June 2018

Electoral Division affected: Lancaster Rural East
--

Commons Act 2006 Section 12

The Commons Registration (England) Regulations 2014

Application for a Transfer of a Right of Common in gross to be recorded in respect of some of the Rights of Common, being grazing rights severed from the land at Ireby Green, Ireby, being entry 4 in the Rights Section of Register Unit CL23 known as Ireby Fell in the Parish of Ireby

(Appendices 'A' and 'B' refer)

Contact for further information:

Lindsay Campy, (01772) 533439, Legal and Democratic Services

lindsay.campy@lancashire.gov.uk

Executive Summary

An application from John Douglas James Welbank and Sylvia Margaret Welbank to record a transfer of rights in gross, namely the right to graze 26 sheep gaits, between John Stephen Brown, the Transferor and the Applicants, the transferees, on 6th November 2012 which were previously attached to Ireby Green, Ireby.

Recommendation

That the application be accepted and the transfer of rights in gross be recorded in the Commons Register in accordance with section 12 of the Commons Act 2006 that Mr John Douglas James Welbank and Mrs Sylvia Margaret Welbank are entitled to exercise the right to graze 26 sheep gaits on common land unit CL23.

Background and Advice

Section 12 of the Commons Act 2006 states that a transfer of rights in gross only has effect if it complies with such requirements as to form and content as regulations may provide and does not operate at law until, on an application under this section, the transferee is registered in the register as the owner of the right. Applications under Section 12 can only be made by the registered owner of the right in gross, or the transferee of that right, meaning the person to whom the right in gross will be transferred. If the applicant is the transferee, consent must have been obtained from the registered owner of the rights in gross.

In this matter, the rights had previously been attached to Ireby Green, Ireby, shown edged red on the supplemental map in Appendix 'A'. The rights attached to this land were to graze 101 sheep gaits, with 1 sheep gait representing a right to graze 1 sheep or 4 lambs; 10 sheep gaits representing a right to graze 1 horse over register unit CL23.

It is currently recorded at CL23 Rights Entry 4 that Stephen Harold Brown and Mary Eleanor Brown are entitled to exercise the right to graze 101 sheep gaits over Ireby Fell. However, in a conveyance dated 1st December 1990, between (1) Mary Eleanor Brown and Thomas Fawcett Brown and (2) Stephen Edward Brown, the full 101 sheep gaits were transferred to John Stephen Brown. The conveyance dated 1st December 1990 also conveyed approximately 64.3% of the land contained in CL23 Rights Entry 4 to John Stephen Brown. By virtue of other conveyances, on 1st December 1990, the remainder of the land contained in CL23 Rights Entry 4 was conveyed to third parties without the benefit of commons rights and therefore the commons rights formerly attached to that land were severed from the land on 1st December 1990 and held in gross by John Stephen Brown. CL23 Rights Entry 4 has never been updated to reflect this.

By Transfer of Common Rights dated 11th March 2015, attached as Appendix 'B', made between John Stephen Brown, the Transferor and John Douglas Welbank and Sylvia Margaret Welbank, the Transferees, it was declared by the Transferor that he was the owner of all the rights referred to in Rights Entry 4. Part held in gross and part attached to the land contained in the Conveyance of 1st December 1990.

By virtue of a transfer of the Green dated 6th November 2012 made between John Stephen Brown and the Applicants, John Stephen Brown transferred the commons rights attached to The Green, and by virtue of a contract for the sale of the Green between the Transferor and the Transferee dated 5th November 2012, it was agreed that the equivalent of 69.33% of the commons rights held in gross be transferred to the Applicants, with the intention that they shall be registered as being the owner of those commons rights in gross.

It is advised that if the application is well founded then the application be accepted and the transfer of the right of common be recorded in the Commons Register.

Consultations

Notice of the application was served in accordance with Schedule 7 of the Commons Registration (England) Regulations 2014. Notice was also given on the county council web site and also to all parties who have requested to be notified of applications and proposals made under the Commons Act 2006.

Implications:

This item has the following implications, as indicated:

Risk management

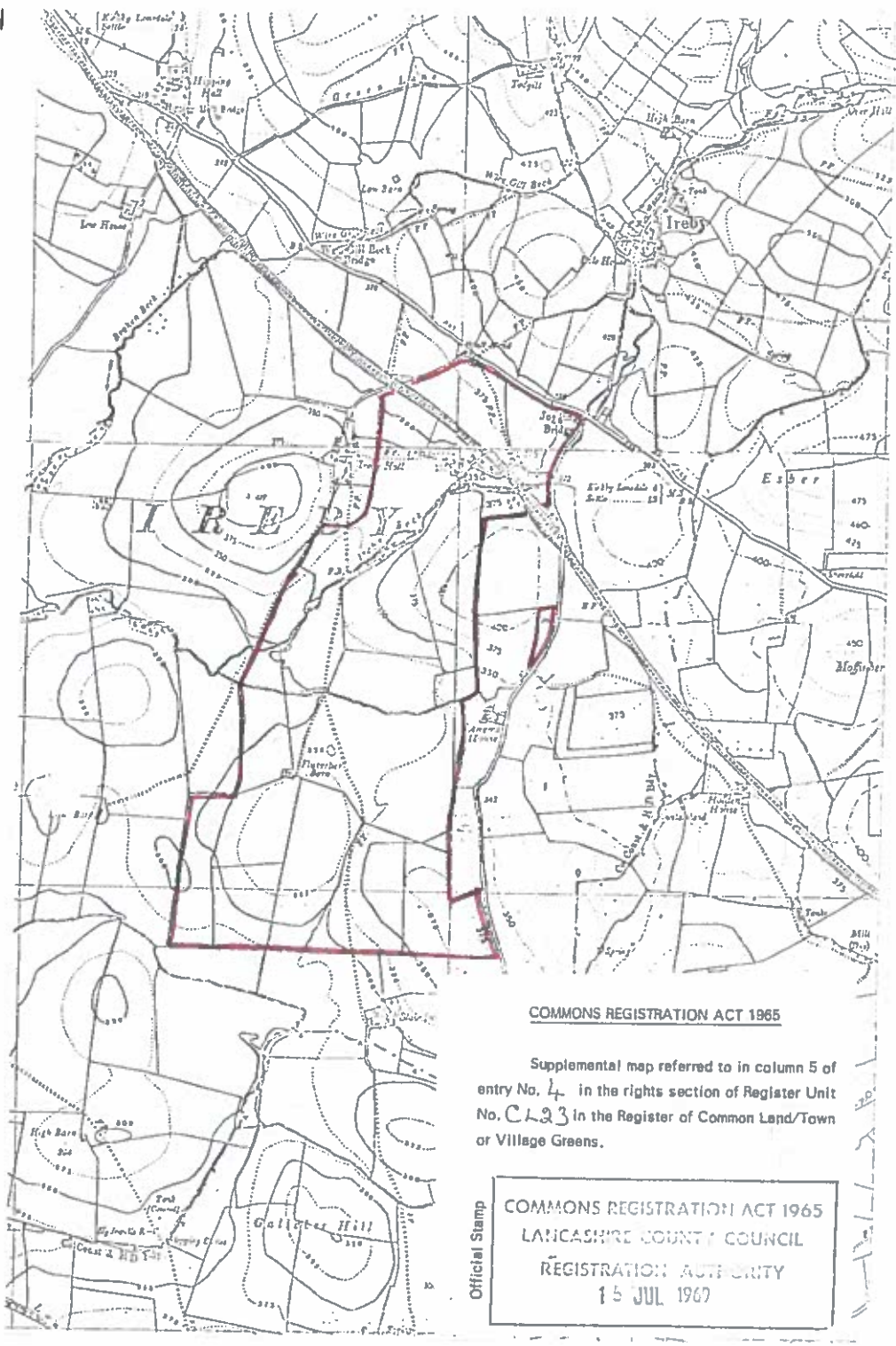
Consideration has been given to the risk management implications associated with this proposal. The Committee is advised that provided the decision is taken in accordance with the advice and guidance given, and is based upon relevant information contained in the report there are no significant risks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

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

Paper	Date	Contact/Directorate/Tel
File of papers denoted 3.751		Lindsay Campy Legal and Democratic Services Ext 533439

Reason for inclusion in Part II, if appropriate

N/A



COMMONS REGISTRATION ACT 1965

Supplemental map referred to in column 5 of entry No. 4 in the rights section of Register Unit No. CL23 in the Register of Common Land/Town or Village Greens.

Official Stamp

COMMONS REGISTRATION ACT 1965
LANCASHIRE COUNTY COUNCIL
REGISTRATION AUTHORITY
15 JUL 1967

TRANSFER OF COMMON RIGHTS

Dated 17th March 2015

1. PARTIES

"the Transferor" **JOHN STEPHEN BROWN** of The Green, Ireby, Carnforth, Lancashire, LA6 2JH

"the Transferee" **JOHN DOUGLAS JAMES WELBANK and SYLVIA MARGARET WELBANK** both of The Old Stables, Catlow Road, Slaidburn, BB7 3AQ

2. BACKGROUND

2.1 Stephen Harold Brown and Mary Eleanor Brown of The Green, Ireby, Lancashire are registered to graze 101 sheep gaits over Ireby Fell in Lancashire County Council's Register Unit Number CL 23, common right entry number 4.

2.2 In a conveyance of certain land dated 1 December 1990 and made between (1) Mary Eleanor Brown, Thomas Fawcett Brown, the Transferor and Stephen Edward Brown and (2) the Transferor ("the Conveyance"), the full 101 sheep gaits were transferred to the Transferor.

2.3 The Conveyance conveyed approximately 64.3% of the land contained in CL 23 entry 4 to the Transferor and as such 64.3% of the common rights contained in CL 23 entry 4 remain attached to the property contained in the Conveyance and now owned by the Transferor.

2.4 By virtue of other conveyances on 1 December 1990 the remainder of the land contained in CL 23 entry 4 was conveyed to third parties without the benefit of the common rights. As such the common rights formally attached to this land were severed from that land on 1 December 1990 and as such these rights are held by the Transferor in gross.

2.5 CL 23 entry 4 has never been updated to reflect the above changes but it is hereby declared by the Transferor that he is the owner of the full 101 sheep gaits referred to in CL 23 entry 4 as to part held in gross and as to part attached to the land contained in the Conveyance.

2.4 By virtue of a transfer of The Green between the Transferor and the Transferee dated [6th November 2012], the Transferor transferred the common rights attached to The Green and by virtue of a contract for the sale of The Green between the Transferor and the Transferee dated [5th November 2012] the Transferor agreed to transfer the equivalent of 69.33% (rounded to the nearest whole figure) of the common rights held in gross to the Transferee, with the intent and purpose that the Transferee shall be registered as the legal owner of those common rights.

OPERATIVE PROVISIONS

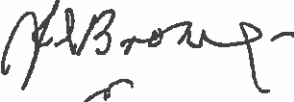
The Transferor with full title guarantee and in consideration of the transfer of The Green dated [6th November 2012] hereby transfers to the Transferee the

Document 1


WE HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL dated this 17 day of 03 2015
Naphens LLP Solicitors
Greenbank Court
Greenbank Business Park
Blackburn BB1 6QB

ownership of [26] sheep gaites which are currently held in gross under common right entry 4 in commons register unit number 23.

SIGNED as a Deed
by John Stephen Brown
in the presence of:-



Witness
Signature:
Full Name:
Address:


ZAN FISHWILL
13 MANLY SQUARE
KIMBY LONDON N6
L40 2AN
SO/ARTIST

Occupation:

SIGNED as a Deed
by John Douglas James Welbank
in the presence of:-

Witness
Signature:
Full Name:
Address:

Occupation:

SIGNED as a Deed
by Sylvia Margaret Welbank
in the presence of:-

Witness
Signature:
Full Name:
Address:

Occupation: