

Lancashire County Council

Regulatory Committee

Wednesday, 11th March, 2020 at 10.30 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston

Agenda

Part I (Open to Press and Public)

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

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

5.	Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Investigation into the public rights over the route from Keighley Road at Parson Lee Farm along Smithy Clough, Trawden, Borough of Pendle File No. 804-611	(Pages 33 - 102)
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- 6. Wildlife and Countryside Act 1981 (Pages 103 - 134)**
Definitive Map Modification Order Investigation
Addition of a Footpath from Footpath Preesall 1
running along the sea embankment and ramp to
Fluke Hall Lane, Wyre Borough
File No. 804-502
- 7. Wildlife and Countryside Act 1981 (Pages 135 - 174)**
Definitive Map Modification Order Investigation
Addition of Footpath between Lightfoot Lane and
Tanterton Hall Road, Preston
File No. 804-379a
- 8. Wildlife and Countryside Act 1981 (Pages 175 - 226)**
Definitive Map Modification Order Investigation
i) Addition of public footpaths from Walker Lane
to Tanterton Hall Road, Preston
ii) Addition of a public footpath from Walker
Lane to Lightfoot Lane, Preston File No. 804-379b
- 9. Wildlife and Countryside Act 1981 (Pages 227 - 264)**
Definitive Map Modification Order Investigation
Addition of Footpaths from Manor Court and
Greenacres across Sharoe Brook to Footpath
Fulwood 43, Preston
File No. 804-379c
- 10. Wildlife and Countryside Act 1981 (Pages 265 - 306)**
Definitive Map Modification Order Investigation
Addition of footpath between FP Preston 64 and the
east bank of Sharoe Brook, Preston
File No. 804-379d
- 11. Wildlife and Countryside Act 1981 (Pages 307 - 354)**
Definitive Map Modification Order Investigation
i) Addition of Footpaths from Lower Greenfield
to the east bank of Sharoe Brook with a spur to
Walker Lane, Preston
ii) Addition of Footpath from Walker Lane to FP
Fulwood 43, Preston
File No. 804-379e

12. 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.

13. Date of Next Meeting

The next scheduled meeting will be held at 10.30am on 24 June 2020 in Cabinet Room 'B' - the Diamond Jubilee Room at County Hall, Preston.

L Sales
Director of Corporate Services

County Hall
Preston

Lancashire County Council

Regulatory Committee

Minutes of the Meeting held on Wednesday, 29th January, 2020 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	T Aldridge
I Brown	D Howarth
P Steen	B Dawson
J Marsh	H Khan
J Parr	

1. Apologies

County Councillor Dawson replaced County Councillor Cox.

County Councillor Khan replaced County Councillor Burns.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

No pecuniary or non-pecuniary interests were disclosed.

3. Minutes of the last meeting

Resolved: That the minutes of the meeting held on 18th September 2019 be confirmed and signed by the Chair.

4. Guidance

A report was presented providing 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.

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

5. Amendments to the Terms of Reference - Regulatory Committee and Amendments to the Scheme of Delegation to Chief Officers - Delegation of Functions relating to dealing with Applications for Public Path Orders under the Highways Act 1980

A report was presented relating to the addition of restricted byways into the terms of reference of the Committee and possible amendments to the Scheme of Delegation, the effect of which would provide for the delegation of functions relating to dealing with applications for public path orders for the diversion or extinguishment of footpaths, bridleways and restricted byways under the Highways Act 1980.

It was reported that, at present, the Committee could decide, under the Highways Act 1980, whether to approve agreements or make or not make Orders relating to footpaths and bridleways. Since 2006, the various statutory provisions have also referred to restricted byways - a right of way on foot, on horseback or leading a horse, and a right of way in or on vehicles other than mechanically propelled vehicles. The Committee were advised, therefore, that the various powers in respect of restricted byways be added to their terms of reference.

In addition, a change was suggested in relation to the powers in paragraphs (c) and (g) of Section 2 of the terms of reference, to delegate the power to refuse to make public path diversion or extinguishment orders under Sections 119 and 118 of the Highways Act 1980, to the Head of Service for Planning and Environment, and that he be delegated to decide that an Order not be made in the circumstances set out below, if he considers it appropriate after taking relevant officer advice:

- Where a new route for a diversion under S119 would be, for a significant distance, less than Lancashire County Council's standard minimum width of 2m for footpath, 3m for bridleway or restricted byway;
- Where a new route for a diversion under S119 would be subject to the right to have unnecessary structures or unnecessarily restrictive structures;
- Where a new route for a diversion under S119 would be substantially less convenient in terms of alignment or gradient;
- Where a new route for a diversion under S119 would result in the enjoyment of the path as a whole being significantly reduced because a feature visible from the old route would no longer be visible;
- Where a footpath, bridleway or restricted byway proposed to be extinguished under S118 is currently used to more than a trivial extent and no new public route is proposed as an alternative;
- Where a footpath, bridleway or restricted byway proposed to be extinguished under Section 118 has only recently become available to the public and no new public route is proposed as an alternative;
- Where a footpath, bridleway or restricted byway proposed to be extinguished under S118 is unavailable to the public or there has been significant deterrent to public use and no new public route is proposed as an alternative.

Resolved: The Committee approved:

(i) That Section 2 of the terms of reference of the Regulatory Committee be amended to reflect the powers in connection with restricted byways and therefore read:

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

(ii) The delegation of the power to refuse to make public path diversion or extinguishment orders under Sections 119 and 118 of the Highways Act 1980, to the Head of Service for Planning and Environment in the circumstances as set out within the report.

(iii) That the decision to not make an Order in the circumstances listed above be no longer a function power or responsibility solely reserved to the Regulatory Committee, but instead able to be made by the Head of Service for Planning and Environment under the county council's Scheme of Delegation to Heads of Service (Appendix B in the Constitution), noting that the power to decide to make such an Order would still rest only with Regulatory Committee.

(iv) That Section 2 of the terms of reference of the Regulatory Committee be further amended to read:

2. To exercise the following functions, duties and powers of the Council under the Highways Act 1980:

(c) to decide whether to make and promote to confirmation Orders for the extinguishment of footpaths, bridleways and restricted byways in accordance with Section 118, **with the exception of those which are delegated to the Head of Service for Planning and Environment.**

(g) to decide whether to make and promote to confirmation Orders for the diversion of footpaths, bridleways and restricted byways in accordance with Section 119, **with the exception of those which are delegated to the Head of Service for Planning and Environment.**

(v) That Full Council be asked to ratify the necessary changes to the Constitution as a result of the above.

**6. Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Deletion and addition of part of Footpath Oswaldtwistle 287,
Hyndburn
File No. 804-612**

A report was presented on an investigation into the deletion and addition of part of Footpath Oswaldtwistle 287 from the Definitive Map and Statement of Public Rights of Way.

A CON29 local authority search had shown that the recorded legal line of Footpath Oswaldtwistle 287 passed through the property known as 186 Belthorn Road, Oswaldtwistle, Hyndburn, BB1 2NY, along the line marked by a solid black line between points A-B on the Committee plan attached to the agenda papers. The footpath, as recorded on the Definitive Map and Statement had not been subject to a legal Order to divert or extinguish any part of the footpath, and therefore the legal line of the footpath remained along that line.

The Committee noted that a thorough search conducted by the county council in relation to the history of the footpath identified that all maps pre-dating the publication of the Revised Definitive Map (First Review) and Statement recorded Footpath Oswaldtwistle 287 along Chapel Street, on the route shown as a thick dashed line between point C and point B as shown on the Committee plan.

The Investigating Officer was satisfied that, in this instance, the Revised Definitive Map (First Review) was incorrect due to a drafting error which showed a 'kink' created on the line of the footpath, placing it through the property along the route A-B. It was reported that the correct line of the footpath should be

recorded along Chapel Street, between point C and point B on the Committee plan.

The owners, who were in the process of selling the property had been advised that a detailed report would be presented to Regulatory Committee Members, seeking approval for a Definitive Map Modification Order to be made to delete the footpath through the property, and for the addition of the footpath on it's correct line.

Resolved:

(i) That an Order be made pursuant to Section 53 (2)(b) and Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to delete from the Definitive Map and Statement of Public Rights of Way part of Footpath Oswaldtwistle 287 through 186 Belthorn Road, and shown between points A-B on the Committee plan.

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

(iii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a footpath from Belthorn Road along Chapel Street to a point on Footpath Oswaldtwistle 287 as shown on the Committee plan between points C-B.

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

7. Determination of Town and Village Green Application VG107 relating to land at 'Waterbarn Recreation Ground', Waterbarn Lane, Stacksteads, Bacup

A report was presented in relation to the appointment of an Inspector to hear the evidence and report in respect of Application No. VG107 relating to land at 'Waterbarn Recreation Ground', Waterbarn Lane, Stacksteads, Bacup.

The Committee had considered a report at their meeting in June 2019 on the establishment of a Special Sub-Committee with power to act in relation to this application and resolved as follows:

(i) Approved the establishment of a Special Sub-Committee to determine Application No. VG107 relating to land at Waterbarn Recreation Ground, Waterbarn Lane, Stacksteads, Bacup.

(ii) Agreed that, subject to the above, the membership of the Special Sub-Committee for VG 107 be drawn from 3 members of the Regulatory Committee, on the basis of 2 members of the Conservative Group and 1 member of the Labour Group.

(iii) Agreed that nominations to serve on the Special Sub-Committee be submitted by the respective political group secretaries.

(iv) Agreed that the quorum for the Special Sub-Committee be 2 members.'

It was reported that, following Committee's meeting in June 2019, the legal representatives of the current landowners (TMJ Contractors Limited) had raised concerns with regards to the Authority's proposed use of a "hearing before members" to test the evidence, which was a procedure sitting outside the statutory provision for an Inquiry before an Inspector. The Committee was advised that although the non-statutory procedure was a lawful and proper procedure, a challenge to its use would involve the authority in expense and officer time.

The documents related to this matter were also becoming larger by number and size and significant new decisions dealt with by the senior courts in connection with Town Green law had recently been handed down.

In view of the above, the Committee were advised that the primary preference to deal with this application to hold a non-statutory hearing in front of Members was now considered less suitable.

In the circumstances, the details of which were provided in the report, it was advised that a public Inquiry be held, as prescribed under the Commons Registration (England) Regulations 2014, appointing an Inspector to hold the Inquiry, and to provide a report and recommendation to the determining authority. Committee Members were advised they could attend the inquiry and listen if they so wished but that it would be the Inspector who would prepare the report and recommendation.

It was reported that, following the public inquiry, the independent Inspector would make a recommendation as to whether the application met the statutory criteria under Section 15 of the Commons Act 2006. Once the Inspector's report and recommendation had been received, the officer would prepare a report for consideration by the Special Sub-Committee, including all the relevant documents. In addition, the Special Sub-Committee would have received relevant information and training.

Resolved: That the Registration Authority hold a "public inquiry" as prescribed under the Commons Registration (England) Regulations 2014 (the Regulations) in particular Part 3 thereof to appoint an Inspector to hold the inquiry and to provide a report and recommendation to the determining authority in connection with the Application VG107 relating to land at 'Waterbarn Recreation Ground', Waterbarn Lane, Stacksteads, Bacup.

8. Action taken under the Urgent Business Procedure - Highways Act 1980 - Section 25 Public Path Creation Agreement for a Public Bridleway at Dertern Lane, Bolton le Sands

A report was presented on the proposed dedication by agreement of a publically maintainable bridleway at Dertern Lane, Bolton le Sands. On 7 October 2019, Dertern Lane had been stopped up to vehicular traffic by an order made by Lancaster magistrates court. The Lane retained bridleway rights meaning that pedestrians, equestrians and cyclists could use the route. However, Dertern Lane was gated to prevent vehicular use by the public and a small by pass route around the gate was to be dedicated as bridleway.

The report had been dealt with under the Urgent Business Procedure as, although the landowner had signed the dedication agreement, until the agreement was completed, the landowner could technically ask for this back, leaving the county council in a vulnerable position, so the matter could not therefore wait until the next Regulatory Committee meeting.

Resolved: The Committee noted the following decision taken which had been taken under the Urgent Business Procedure, after consultation with the Chair and Deputy Chair of the Regulatory Committee, in relation to a proposed dedication by agreement of a publically maintained bridleway at Dertern Lane, Bolton le Sands:

'That a Public Path Creation Agreement be entered into under Section 25 of the Highways Act 1980 between the owners of the land at Dertern Lane, Bolton le Sands and Lancashire County Council, to dedicate as bridleway an area of land 2.5 x 6.5 metres shown edged and hatched pink on the plan attached at Appendix A.'

9. Urgent Business

There were no items of Urgent Business.

10. Date of Next Meeting

It was noted that the next meeting would be held at 10.30am on Wednesday 11 March 2020 in Cabinet 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 11 March 2020

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 11 March 2020

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 11 March 2020

Part I

Electoral Division affected:
Pendle Rural

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Investigation into the public rights over the route from Keighley Road at
Parson Lee Farm along Smithy Clough, Trawden, Borough of Pendle
File No. 804-611
(Annex 'A' refers)

Contact for further information:

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Executive Summary

Investigation into the public rights over the route from the eastern end of Keighley Road at Parson Lee Farm along Smithy Clough to the junction with Bridleway Trawden 191 and Byway Open to all Traffic (BOAT) Trawden 254, Pendle, in accordance with File No. 804-611

Recommendation

- (i) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add a Restricted Byway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D.
- (ii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An investigation has been carried out into the existence of public rights over a route starting at the eastern end of Keighley Road at Parson Lee Farm along Smithy Clough, Trawden to the junction with Bridleway Trawden 191 and BOAT Trawden 254 and shown between points A-B-C-D on the Committee plan.

The route forms part of promoted footpath – the Bronte Way - and the Pennine Bridleway National Trail but has no recorded public status.

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

Pendle Borough Council

A response was received from the Borough Council's Countryside Access Officer, Mr Tom Partridge. He provided a number of undated maps relating to the creation of the Pennine Bridleway National Trail through the Borough showing the proposed route of the Pennine Bridleway. One set of maps has a key indicating the status of the different parts of the route as Road, Bridleway and Footpath and also the position of

road crossings. On these maps the route from Wycoller up to Parsons Lee and then along the route under investigation is marked as Footpath.

A second set of plans mark up the same route but provide no information about the status (or believed status) of the route and is accompanied by a set of numbered notes corresponding to locations on the map. The map and notes relate to a survey of the whole of the proposed Pennine Bridleway route through Pendle and with regards to the route under investigation a gate and overhanging trees were noted at point B a small stream across the track was noted between point B and point C, overgrown hawthorn hedges were noted between point C and point D, and a gate and stile was noted at point D.

Mr Partridge explains in the letter that he was appointed as Countryside Access Officer. He was part of the Highways and Transportation department and was told by his manager that the route was an adopted highway and that he could drive his vehicle along the route. He recalled in 1999 or 2000 driving along there but being fearful that the Land Rover may end up in the watercourse.

He also recalled that prior to 2006 Pendle Council carried out the highways maintenance function within part of the Borough and possessed large map books showing adopted and un-adopted highways. His recollection was that one of the map books showed the route under investigation as an adopted highway but that the Borough Council did not retain these books and that he believed that they had been passed to the county council.

Trawden Forest Parish Council

A response was received explaining that the Chairman of the Parish Council, John Hodgson, had lived at Parson Lee Farm (close to point A on the Committee plan) from 1987 to 2016 and travelled up the 'road' daily. He believed that the 'road' was likely to have been used by the Bronte's when visiting Wycoller Hall and Burnley and that it went through Wycoller linking to Haworth and Yorkshire before the road from Laneshaw Bridge was fully linked to Height Laithe.

He refers to the fact that a traffic restriction was put on the route into Wycoller by Lancashire County Council when the county council took over the land from the 'Water Board' (now comprising of Wycoller Country Park – but not including the route under investigation) and refers to a proposal to build a dam in the valley which would have flooded the road lower down and necessitated Parson Lee Farm and Dean Farm to access their properties solely via the route under investigation.

The Chairman explained that when the plans for the dam were scrapped the road into Wycoller was re-opened but that access along the route under investigation was needed in 1947, 1963, 2001 and again after 2001 as Herders Hill was blocked by snow. He refers to the occupant of Brink End Farm, who worked for Trawden Urban District Council in the 1960s using the route daily.

More recently, after the designation of Wycoller Country Park and the demise of Trawden Urban District Council, he explains that Lancashire County Council had a verbal agreement with the owner of Parson Lee Farm that they would maintain the

road into Wycoller but did not maintain the route under investigation and put an 'access only' condition on it at point B on the Committee plan.

He refers to recent erosion of the route by water which resulted in him constructing his own track to access his property and that if an order was to be made to record the route so that it was open to all traffic that it should be made fit for purpose at public expense.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	9420 3873	Junction with Keighley Road (U40299) at Parson Lee
B	9424 3870	Field Gate
C	9462 3861	Junction with Footpath Trawden 194a
D	9485 3847	Junction with Bridleway Trawden 191 and BOAT Trawden 254

Description of Route

n.b. Reference to public rights of way shown on the Definitive Map and Statement are generally given in the form '13-07-BW 191' or Bridleway 'Trawden 191' but are referenced below in the abbreviated form 'Bridleway 191' for brevity since all those referred to are in Trawden in the Borough of Pendle.

A site inspection was carried out in May 2019.

Access to the start of the route under investigation at point A is from Keighley Road (U40299) which is an unclassified county road running through the hamlet of Trawden to terminate adjacent to the entrance to Parson Lee Farm at point A on the Committee plan. From Wycoller to point A Keighley Road is also part of the Pennine Bridleway National trail and is signposted as such in the hamlet.

Approaching point A, Keighley Road comprises of a gravelled track providing vehicular access through to Parson Lee Farm. At point A the route under investigation continues from the end of Keighley Road and the junction with Footpath 197 and leaves the gravel track leading onwards to the farm to run south east to the south of Smithy Clough and signposted as the route of the Pennine Bridleway.

From point A, the route is bounded on the right (south) by the remains of a stone wall above which the land rises steeply towards the farm and on the left hand side (north) by the banking of Smithy Clough. The route follows a compacted stone and earth track for approximately 25 metres to point B where it is crossed by a metal field gate and adjacent wooden bridleway gate shown as being newly erected structures on a photograph taken by the county council in 2006 as part of work carried out in relation to the implementation of the Pennine Bridleway route.

An official road sign is shown as existing at point B in 2006 (looking back from point B towards point A) which specifies no motor vehicles (a round sign with a picture of a motorbike and car surrounded by red) underneath which is an additional sign stating that there is an exception for disabled badge holders and for access. In 2019, the round sign was no longer evident but the post and advisory notice referring to disabled badge holders and access remained.

Beyond point B the route continues rising gradually uphill along a stone and earth surfaced track adjacent to Smithy Clough with the land rising steeply to the north. After approximately 95 metres from point B the route starts to move further away from Smithy Clough traversing up the hillside to continue in an east south easterly direction parallel to Smithy Clough but at a higher level. A further marker post indicates that the route forms part of the Pennine Bridleway.

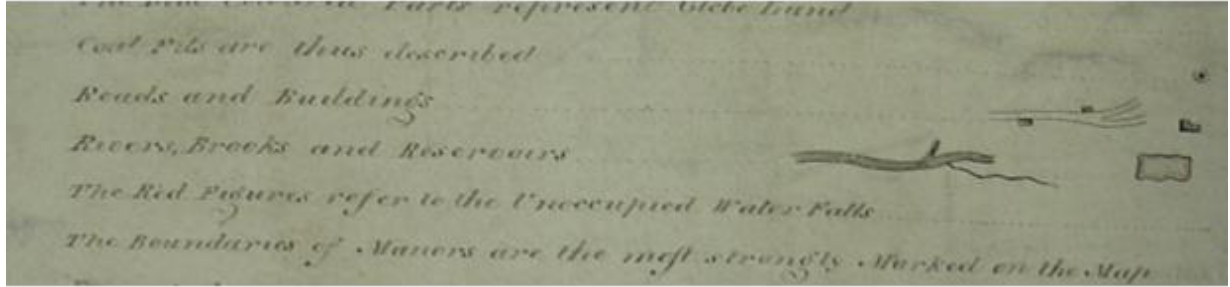
The route continues along a clearly defined track fenced off separate to the moorland to the south but open to the rough pasture to the north which lies between the track and Smithy Clough. It rises gently uphill passing through the unmarked junction with Footpath 194a at point C until it reaches a metal field gate and adjacent wooden stile in a stone wall at point D immediately beyond which it meets the junction of tracks recorded as Bridleway 191 (the continuation of the Pennine Bridleway) and Byway Open to all Traffic 254.

The total length of the route is 715 metres.

Map and Documentary Evidence

A variety of maps, plans and other documents were examined to discover when the route came into being, and to try to determine what its status may be.

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.

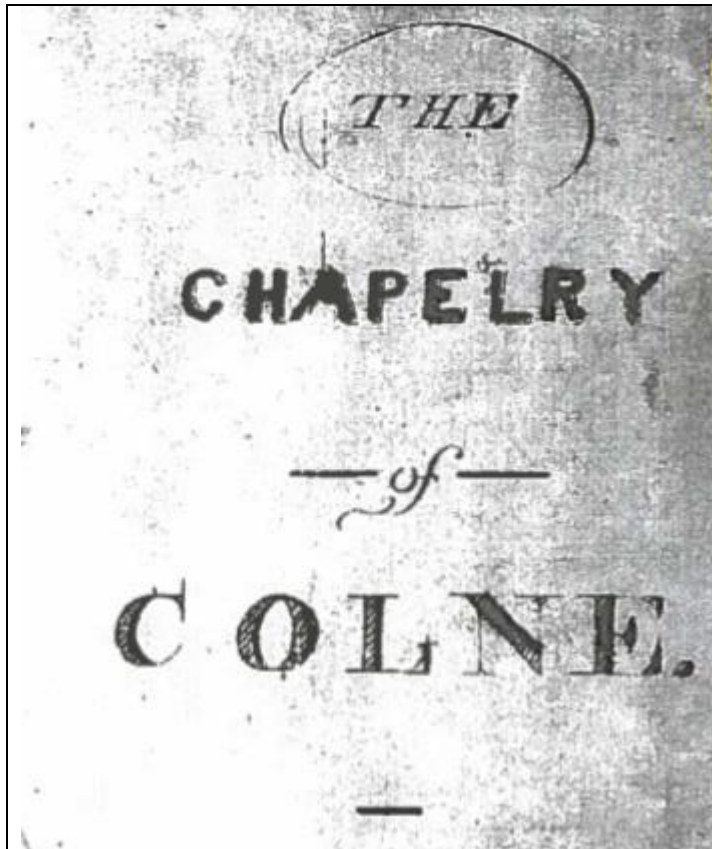
		<p>shown on the map is turnpike roads and the routes inclusion on such a small scale commercial map is consistent with how a route used as a public vehicular highway was shown on early commercial maps.</p> <p>It is not known whether the routes now recorded as BW 191 and BOAT 254 existed to provide access from point D at that time. It may have been that Yates did not consider these routes to be public vehicular highways or that they were unenclosed or that the hedges/fences/walls were in disrepair or possibly that these routes were not surveyed, as surveys were expensive.</p>
<p>Honour of Clitheroe Map</p>	<p>1804-1810</p>	<p>A privately produced map of land owned by the Honour of Clitheroe – Henry Duke of Buccleuth and Elizabeth Dutches of Buccleuth. It specifically shows the boundaries of coal leases granted by them. 'Roads' were identified in the key but there was no apparent distinction between those which may have been considered to be public or private.</p>
 <p><i>Coal Pits are thus described</i></p> <p><i>Roads and Buildings</i></p> <p><i>Rivers, Brooks and Reservoirs</i></p> <p><i>The Red Figures refer to the Unoccupied Water Falls</i></p> <p><i>The Boundaries of Manors are the most strongly Marked on the Map</i></p>		



<p>Observations</p>		<p>The full length of the route under investigation is shown as part of a longer route passing through Wycoller and past Parson Lee (named on the map). The route under investigation is shown to meet the junction of the routes now recorded as BW 191 and BOAT 254 at point D – both of which appear to be shown shaded but bound with dashed lines (as opposed to the route under investigation which is shaded and bound with solid lines). From point D the route now recorded as a BOAT through to Lancashire Moor Road is shown exiting onto the Road close to Combe Hill Cross (named on the map).</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation existed in the early 1800s as a significant route depicted in the same way as many other routes which are currently classed as public bridleways or</p>

		<p>carriageways. It is shown coloured yellow, like the other roads, but there is no indication of what status these roads are. The fact that it is shown with solid lines suggests that it was probably a bounded route as opposed to the routes of BW 191 and BOAT 254 which may have been unbounded routes across the moor – possibly suggesting why they were not shown on Yate's Map of 1786.</p> <p>From point D it is shown to continue to connect to a public vehicular highway (Lancashire Moor Road) suggesting that it would have been capable of being used by horses and vehicles travelling through Wycoller at that time.</p>
<p>Chapelry of Colne Map</p>	<p>1818</p>	<p>A copy of a map submitted to the county council in relation to a number of applications in Pendle. Referred to by the local bridleway group as 'The Chapelry of Colne Map'.</p>





<p>Observations</p>		<p>The origins of this map are unknown and it has not been possible to locate the original map or a better copy.</p> <p>The route under investigation is shown as part of a longer route passing through the hamlet of Wycoller and passes buildings which appear to be located where Parson Lee is situated. The route continues past the buildings to point D and is shown bounded largely by solid lines where it meets a route (now recorded as BW/BOAT) shown with double pecked lines.</p>
<p>Investigating Officer's Comments</p>		<p>The route existed as part of a longer through route in 1818.</p> <p>There is no available key to the road notation and therefore we are unable to infer road status or that a difference in solid (enclosed) or pecked (unenclosed) lines suggests that there was a difference in significance.</p> <p>Like previous early commercial maps, routes at this time were only likely to be recorded on available maps if they were able to be used. Public footpaths did not tend to be shown.</p>
<p>Inclosure Act Award and</p>	<p>1821</p>	<p>Inclosure (or enclosure) was the mechanism by which Britain sought to modernise its</p>

Maps

medieval arrangements of communal agricultural land to achieve the improvements in efficiency desperately needed to feed the nation. Inclosure sought to divide up the open land and convert rights to the open land into exclusive use of smaller parcels. The process was done by passing local acts of parliament for each inclosure award, which might only cover part of a parish or hamlet so there were many hundreds of such acts before and throughout the 18th Century. In order to streamline the process to make it less costly and encourage more inclosure, general acts were passed containing all the standard provisions so that they did not have to be repeated in every subsequent local act. The first of these was an Inclosure Consolidating Act in 1801. The local acts generally appointed a commissioner(s) to execute the act subject to the rules of the specified general act.

The relevance to public rights of way is that in this reorganisation of land it had to be able to reorganise the transport corridors at the same time or it would have greatly reduced the effectiveness of the process.

There were further general acts, notably in 1836 and 1845.

The Court of Appeal case generally referred to as *Andrews* ²¹ found that the 1801 Act does give the power for commissioners to set out public bridleway and footpaths, contrary to the earlier finding in *Andrews* ¹². There has been much dispute about the correct interpretation of 'private carriage roads' (i.e. does private qualify the carriage or the road?) but the *Dunlop* case, which many consider incorrectly decided in saying that this mean private rights, has not been challenged in court

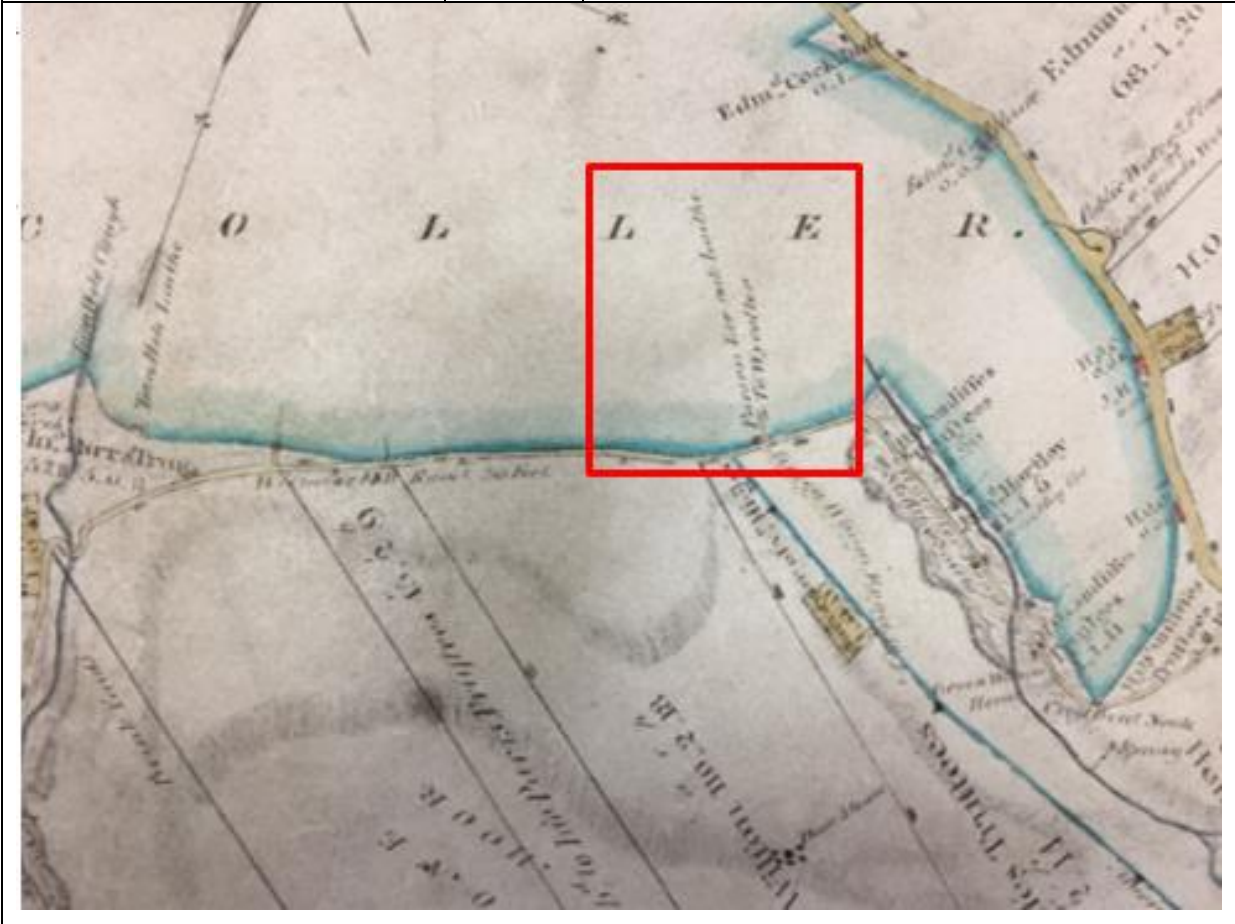
The Inclosure Act for Trawden and Whalley (which referred to the 1801 consolidating Act) enabled an inclosure award to be made in the 57th year of the reign of King George III i.e. 1817. The subsequent Award was for

¹ R v Secretary of State for the Environment, Food and Rural Affairs, ex parte *Andrews* 2015

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

the Inclosing of lands in the Township of Trawden, in the Chapelry of Colne, and Parish of Whalley, in the County of Lancaster and made in 1821.

(Ref - UDTR/4/1)

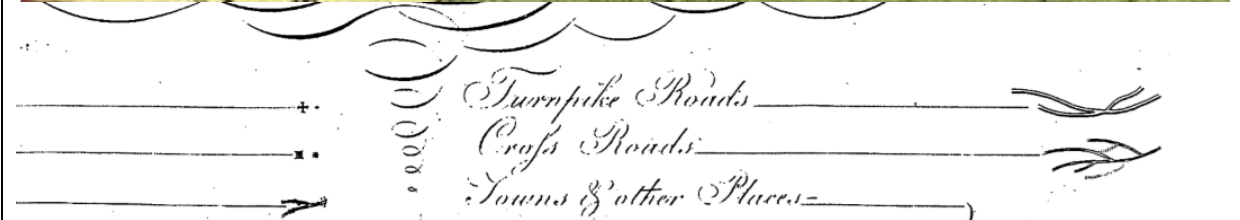




<p>Observations</p>		<p>The Inclosure Award did not cover the land crossed by the route under investigation. However the end of the route (point D) is shown on the boundary of the land to be enclosed and is labelled on the Inclosure plan as 'to Wycoller'. It is clearly shown as a coloured route connecting to other routes at point D. The route now recorded as BOAT 254 from point D to which continues through to Lancashire Moor Road (close to Comb Hill cross) is shown and labelled 'Wycoller Road'.</p> <p>The route extending west from point D – now recorded as Bridleway 191 - is shown coloured and labelled as Whitemoor Hall Road (30 feet). A further route shown coloured but bounded by dashed lines is shown extending south from point D direct to a property and labelled as 'Green Wham road'.</p>
<p>Investigating Officer's Comments</p>		<p>Early commercial maps pre-dating the Inclosure Award show the route under investigation and also the two routes</p>

		<p>connecting to it at point D (now recorded as BOAT 254 and BW 191) suggesting that all three routes existed prior to the Inclosure process.</p> <p>The route under investigation it is shown from point D as a route to Wycoller connecting to routes described on the Inclosure plan as 'roads' suggesting that when the Inclosure Award was drawn up the route under investigation was already in existence and likely to have been considered to have been a public carriageway or at least a bridleway.</p>
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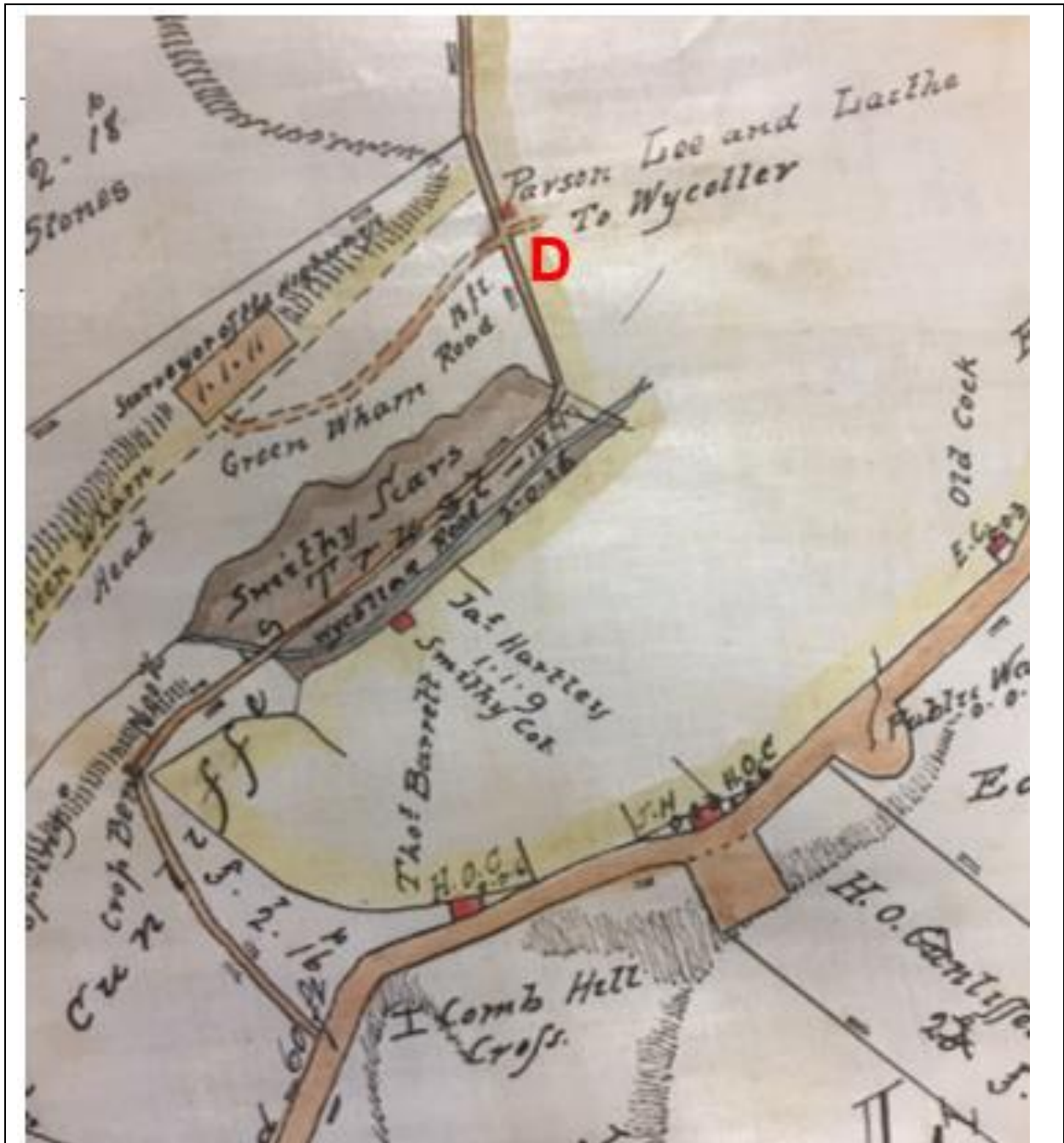
<p>Greenwood's Map of Lancashire</p>	<p>1818</p>	<p>A further small scale commercial map.</p>
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<p>Observations</p>		<p>The full length of the route under investigation is shown as a bounded cross road and as part of a longer route connecting to other public vehicular highways, passing through Wycoller and continuing beyond point D along the routes now recorded as BW 191 and BOAT 254.</p>
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		Parson Lee is shown but not named on the map and Combe Hill Cross is shown located on the Turnpike Road (Lancashire Moor Road) which is accessed from point D along the route now recorded (and shown on the map) as a BOAT.
Investigating Comments	Officer's	Greenwoods map was published in 1818 which is the same year in which the Chapelry of Colne Map is stated to have been produced. Both maps show the route under investigation as existing in 1818 as a significant through route and both maps pre date Inclosure of land in the area. The inclusion of the route on this and other small scale commercially produced maps of this kind is suggestive of the fact that the route is likely to have been considered to have been a public carriageway or at least a bridleway. It is unlikely that a map of this scale would show footpaths. It is not known what Greenwood meant by the term 'cross road' but he only categorised roads as 'cross roads' and 'turnpike roads' according to the key to his map but the fact that the route linked to other routes with public vehicular rights and provided access to the Turnpike Road is suggestive of public carriageway rights.
Plan of the allotments in the Hamlets of Trawden, Winewall and Wycoller	1821	A plan of the allotments in the hamlets of Trawden, Winewall and Wycoller is available to viewed at the Lancashire Records Office (ref – DDSP/50/8).

COPY,
PLAN
— of —
the Allotments
— in —
THE HAMLETS OF
Crawden, Wirewall,
— and —
Cuncoller,
1821.



Observations		<p>This map was intended to show the (recently enclosed) allotments of Trawden, Winewall and Wycoller, including the size of each allotment with the specified owner at the time. It is dated 1821 but is also noted in the title as being a copy.</p> <p>The route under investigation is shown at point D and the continuation (although not shown) is labelled as being 'to Wycoller'.</p>
Investigating Officer's Comments		<p>This map is clearly related to, or intended to show the effect of, the Inclosure Award of the same year and hence no different inferences can be drawn.</p>
John Cary's Map of	1825	Cary was a cartographer, engraver and

Lancashire

publisher who published a series of atlases, maps, canal plans etc. His 1789 map of Lancashire is a close copy of Yates' map.

1789 (ref: DP/187):



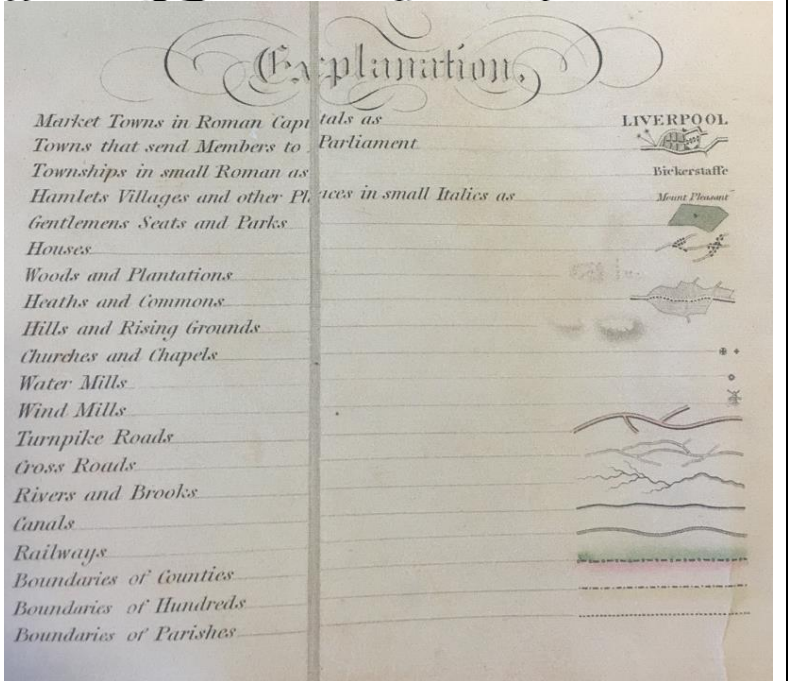
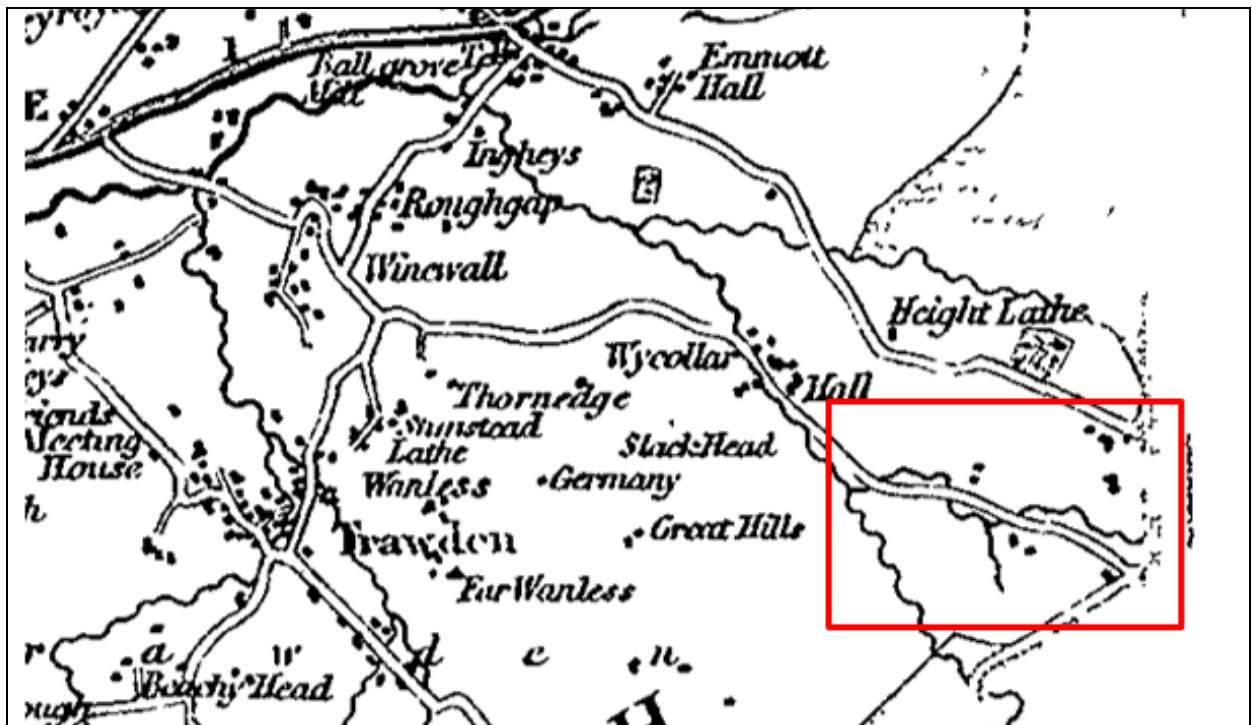
1806 (ref: DP/188):



1814 (ref: DP/232):



Observations		The route under investigation is not shown. The map published in 1806 shows Wycoller and part of Keighley Road passing through Wycoller to continue towards Parson Lee but the route is not shown to continue as far as point A.
Investigating Officer's Comments		Cary did not consider the route to be significant enough to be shown on such small scale maps which tended to concentrate primarily on showing the main arterial public vehicular routes. The route to (and through) Wycoller was probably included on the 1806 map because Cary included a number of halls – but not other properties – on his maps.
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.



<p>Observations</p>		<p>The full length of the route under investigation is clearly shown as part of a longer route referred to in the map key as a 'cross road' passing through Wycollar and connecting to routes recorded as public vehicular highways.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The route under investigation existed in 1830 and is shown as a 'cross road'. It is not fully known what is meant by this term. As the only other category of 'road' shown on the map are turnpike roads, it is possible that a cross road was regarded as either a</p>

		<p>public minor cart road or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i>).</p> <p><i>Hollins v Oldham Manchester High Court (1995) [C94/0205]</i> Judge Howarth examined various maps from 1777-1830 including Greenwoods, Bryants and Burdetts. Maps of this type, which showed cross roads and turnpikes, were maps for the benefit of wealthy people and were very expensive. There was “no point showing a road to a purchaser if he did not have the right to use it.”</p> <p>It is unlikely that a map of this scale would show footpaths. Many properties are shown on this map with no access road or track to them but the route under investigation is shown passing properties and connecting to routes that are now recorded as public vehicular highways. It is considered likely that Hennessey's map shows routes depicted as through routes that were generally available to the travelling public in carts or on horseback and therefore suggests that by inclusion on the map the route was considered to be a public bridleway or carriageway in 1830.</p>
Canal and Railway Acts		<p>Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.</p>
Observations		<p>The route does not cross land affected by the planned construction of a canal or railway.</p>
Investigating Officer's Comments		<p>No inference can be drawn.</p>
Trawden Local Board Surveyors Records CRO Ref: UDT 8/4/1	1868	<p>Records prepared by Thomas Bannister on 16th April 1868 listing the length of highways in Trawden, Wine Wall and Wycoller.</p>

or 2 Miles and 753 yards

Length of Highways within the Hamlet of Wycoller

From Bent's Hook to Wycoller Hall	955
From Wycoller Hall to Parson Lee Out Barn	1985
From Parson Lee Out Barn to Cross Bent Nook	1078
From Cross Bent Nook to Standing Stone	1760
From Cross Bent Nook to Herd's House	1302
From Herd's House to Rotten Clough	1631
	8711

or 4 Miles and 1671 yds

Total in the Waste Township

Wroaster Hamlet	5 Miles	470 Yds
Wine Walk	2	753
Wycoller	4	1671
		1142 Yards

or 13 Miles and 1142 yards

Thomas Bamister
April 16th 1868

Observations	<p>Six routes are described as highways within the hamlet of Wycoller but no map is provided.</p> <p>The second listed is 'From Wycoller Hall to Parson Lee Out Barn' 1985 yards, and the third listed is 'From Parson Lee Out Barn to Cross Bent Nook' 1078 yards.</p> <p>From the description the route from Wycoller Hall to Parson Lee Out Barn appears to be that of the route of that now recorded as Keighley Road - an unclassified county road from the remains of Wycoller Hall passing through point A at Parson Lee and continuing along the route under investigation to point D where a building can be seen on the Tithe Award Map dated 1844 titled 'Parson Lee Out Lathe'.</p> <p>The route from Parson Lee Out Barn to Cross Bent Nook appears to be the route from point D along the route now recorded</p>
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		as BOAT 224 which leads to an area named on the 1 st edition 6 inch OS map as 'Cross Bent'.
Investigating Comments	Officer's	<p>The fact that the list was compiled for or by the Trawden Local Board Surveyor suggests that the routes listed were considered to be public. There is no definition of 'highway' so it is not possible to know whether the routes listed were public carriageway, bridleway or footpath but it is suggested that to be included on this list then the routes were likely to be at least bridleway and more probably vehicular.</p> <p>The list predates the publication of the earliest Ordnance Survey maps and the early commercial maps are too small scale to identify most of the places referred to.</p>
Tithe Map and Tithe Award or Apportionment	1844	<p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p> <p>(Ref – DRB 1/188)</p>

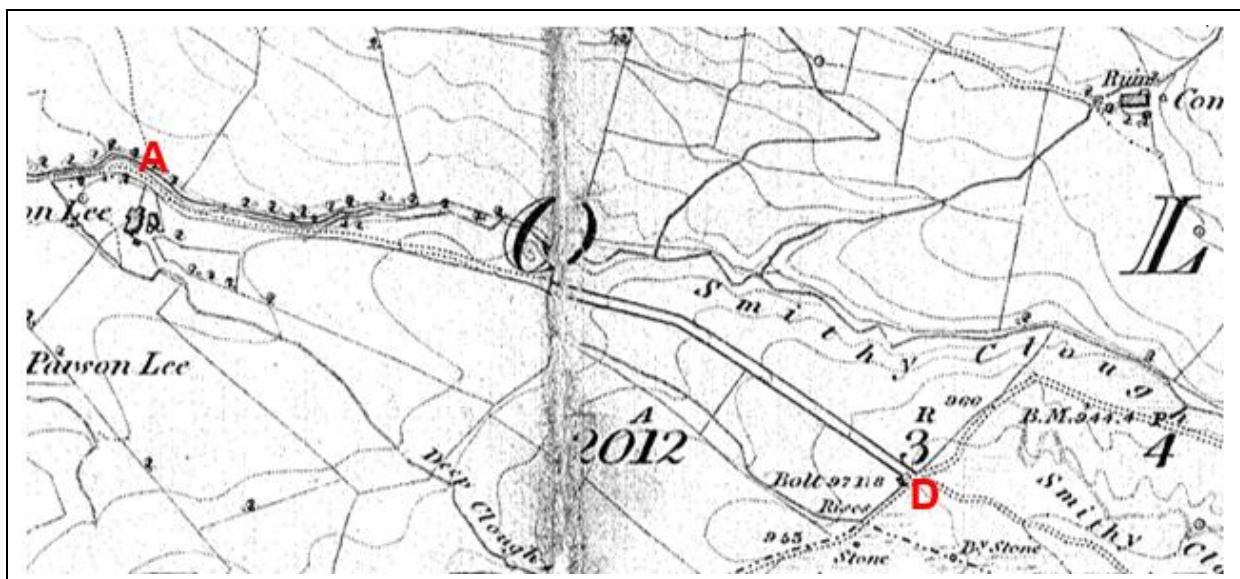




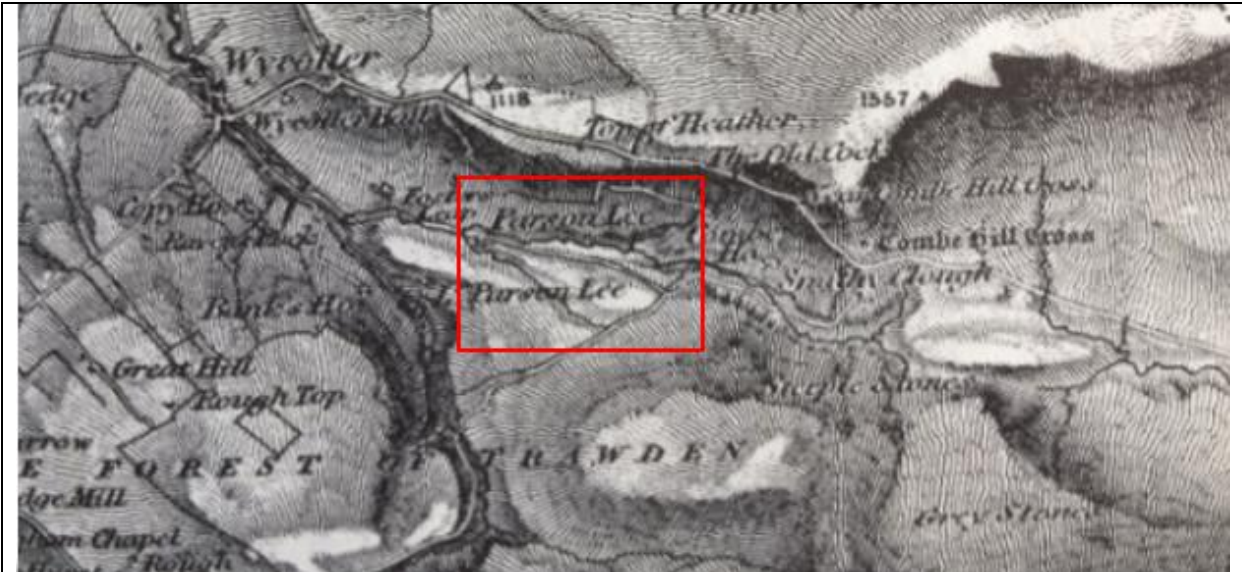
<p>Observations</p>	<p>The full length of the route under investigation is shown as part of a longer route.</p> <p>The route under investigation is numbered 1273 and described as 'Highway Road'.</p> <p>The route from Wycoller to Parson Lee (which is named on the map) is numbered 1284 which is described in the Tithe Award as being a 'Highway Road' owned and occupied by the 'Surveyor of Highways' for which no tithe was payable. It is included</p>
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		<p>within a list of various other routes – some described as 'Highways', some as Occupation Roads' others as named routes – for example 'Lancashire Moor Road' or as 'Road'. All are listed as being owned and occupied by the Surveyor of Highways and none are listed as having tithes payable. A number of quarries are also listed under this section.</p> <p>From point D the route now recorded as BOAT 254 is numbered on the Tithe Map as 1547 which is described in the Award as being a 'Highway Road to Wycoller' owned and maintained by the Surveyor of Highways. In contracts, extending west from point D the route now recorded as BW 191 is numbered 1518 and described in the Tithe Award as 'Cote Meadow' owned by James Hartley and occupied by William Waughbank.</p>
Investigating Comments	Officer's	<p>The route under investigation existed as part of a longer through route in 1844 and was numbered separately to the adjacent fields. It connected at either end to routes described in the Tithe Award as highways and is described as a 'Highway Road' itself suggesting that in the 1840s the route was considered to be most probably a public vehicular route under the jurisdiction of the Surveyor of Highways.</p>
6 Inch Ordnance Survey (OS) Map	1848	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1848.³</p>

³ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.



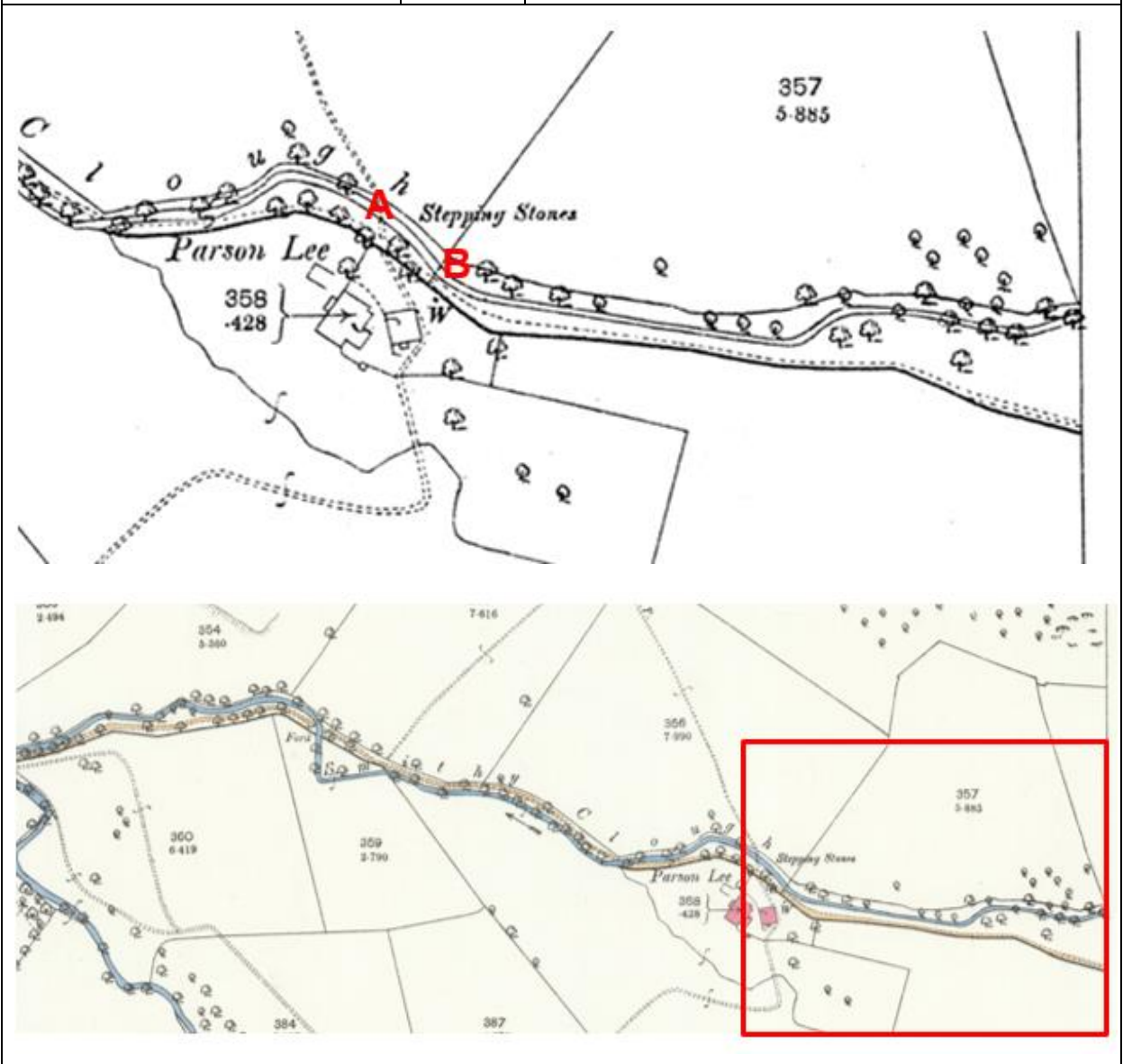
<p>Observations</p>		<p>The full length of the route under investigation is shown passing to the north of buildings labelled as Parson Lee. The route is shown as part of a longer route which passes Wycoller Hall and continues to Parson Lee. From point A the route under investigation is shown unenclosed (denoted by double pecked lines) to approximately midway between point A and point D at which point there appears to be a gate across the road. From there through to point D the route is shown bounded on either side and not gated at point D. From point D three unbounded tracks are shown extending out across the open moorland – one of which is now recorded as a BOAT through to Lancashire Moor Road, another as a BW extending south west towards Boulsworth Road and one (which is unrecorded) continuing south east from point D across the moor.</p>
<p>Investigating Officer's Comments</p>		<p>The full length of the application route existed in 1844 (date of survey) and appeared to be capable of being used. It is considered that a substantial bounded route providing access past a property and connecting to a network of other public highways would have been at least a public bridleway and may have carried public vehicular carriageway rights.</p>
<p>First edition Ordnance Survey Maps one inch to the mile</p>	<p>1857/ 1858</p>	<p>One inch Ordnance Survey map.</p>



Observations		The full length of the application route is shown as a substantial bounded route in the same way as other connecting public vehicular and bridleway routes are shown.
Investigating Officer's Comments		The small scale one inch OS map was predominantly published with the main market being the travelling public so the inclusion of the route on this map is suggestive of a route that was capable of being used at least on horseback and possibly by horse and carts.
Cassini Map Old Series		The Cassini publishing company produced maps based on Ordnance Survey mapping. These maps have been enlarged and reproduced to match the modern day 1:50,000 OS Landranger Maps and are readily available to purchase.



Observations		The route under investigation is clearly shown as part of a longer bounded route.
Investigating Comments	Officer's	The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown had public rights for those travellers.
25 Inch OS Map Sheet 57-2	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1893.



Observations		The First edition 25" map is at a larger scale than the 6" map showing the area in more detail. Only one of the First Edition OS map sheets covering the land crossed by the
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		route has been found. This map shows the first part of the route From point A coloured and shaded in the same way as the route through Wycoller and continuing east along Smithy Clough to Parson Lee. A gate is shown across the route at point B.
Investigating Comments	Officer's	<p>The route under investigation existed from point A in 1892 (date of survey) and appeared to be capable of being used. The existence of gates along a public route would not have been considered unusual in the 1800s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p> <p>The route is shown shaded (and coloured) on the map. Shading was often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. All metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. The route under investigation is shown in such a way suggesting that when the area was surveyed in 1892 the route was considered to be part of a longer public vehicular highway.</p>
1 inch OS Map	1898	OS small scale 1 inch Revised New Series mapping. Sheet 68 – Clitheroe, surveyed 1842-49 and first published 1858, revised and published 1898.



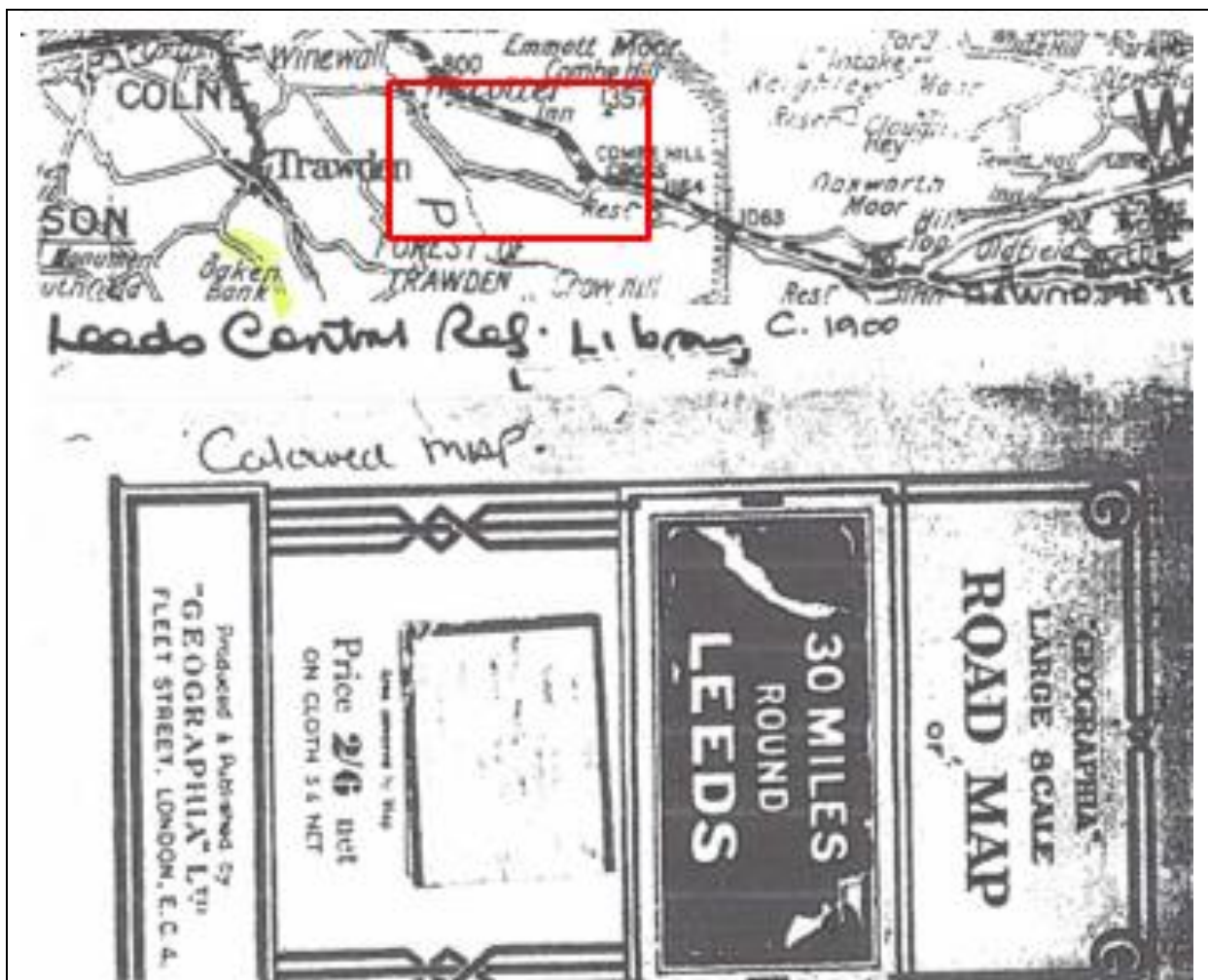
<i>Metalled Roads, First Class</i>	Fenced	5 (Mile distance) (Altitude) 211	Unfenced
" " <i>Second Class</i>			
" " <i>Third Class</i>			
<i>Unmetalled Roads</i>			
<i>Footpaths</i>			
			<i>Level Crossing //</i>

Observations		<p>The full length of the route under investigation is shown as part of a longer route.</p> <p>From the map key it appears to have been shown as a third class metalled road fenced on the south side and unfenced on the north side. From point D the BOAT leading up to Lancashire Moor Road is also shown as an unfenced third class road whilst the BW extending south west from point D is shown as an unmetalled road and footpath.</p>
Investigating Officer's Comments		<p>The full length of the route under investigation existed as a substantial route in 1898 and appeared to be part of the road network.</p>
Bacons Map of Lancashire	Reprint of 1904	<p>G W Bacon was a publisher of maps and in 1890 his 'Commercial and Library Map of Lancashire from the Ordnance Surveys' was published, and later reprinted. As the title states, the maps he published were derived from Ordnance Survey maps.</p> <p>The maps of the British Isles were at a small scale and as such only the more significant</p>


		<p>routes are generally shown. Commercial maps of this nature were expensive to produce and to purchase and as a result routes shown were often considered to be public through routes.</p>
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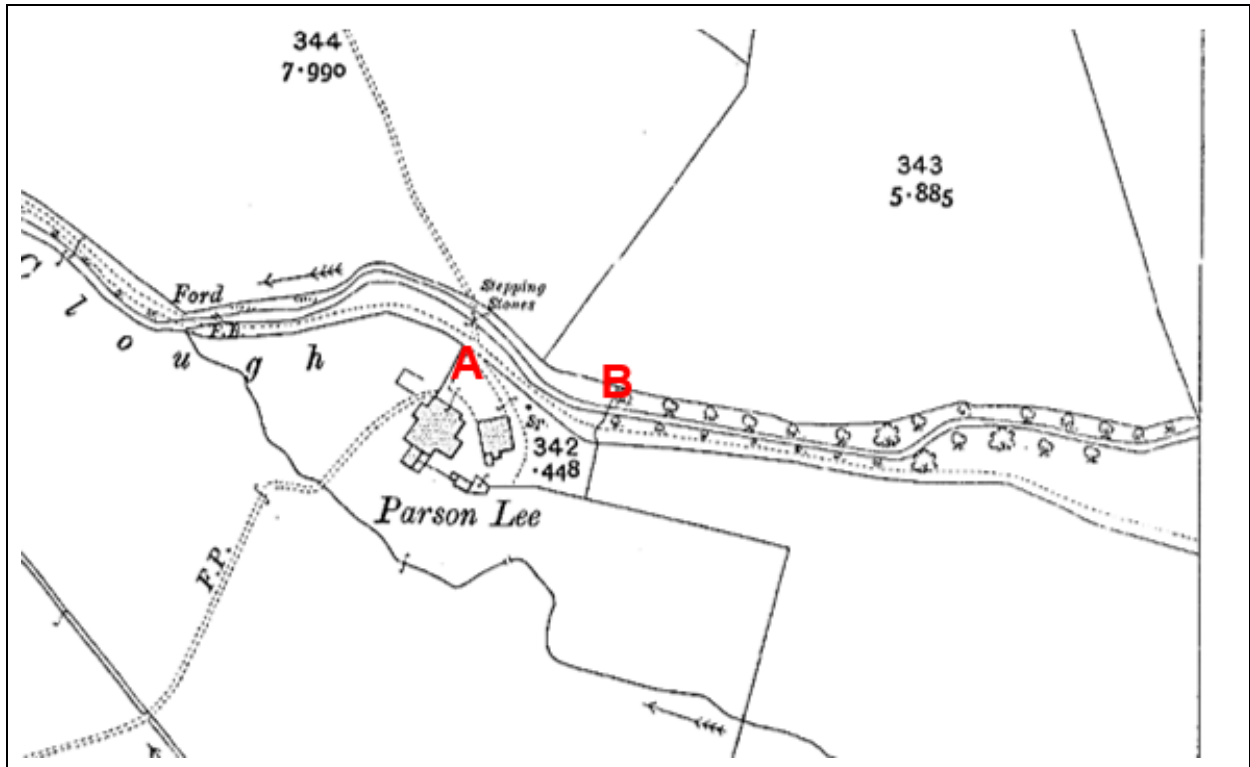


<p>Observations</p>		<p>Wycoller and Parson Lee are named on the map and the watercourse passing both is shown but the route under investigation is not shown.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation was not considered to be sufficiently important to be included on a commercially produced small scale map sold to the public.</p>
<p>Geographia large scale road map of 30 miles round Leeds</p>	<p>C1900</p>	<p>A copy of a map forming part of a Geographia road map copied from a deposit at Leeds Central Library.</p>



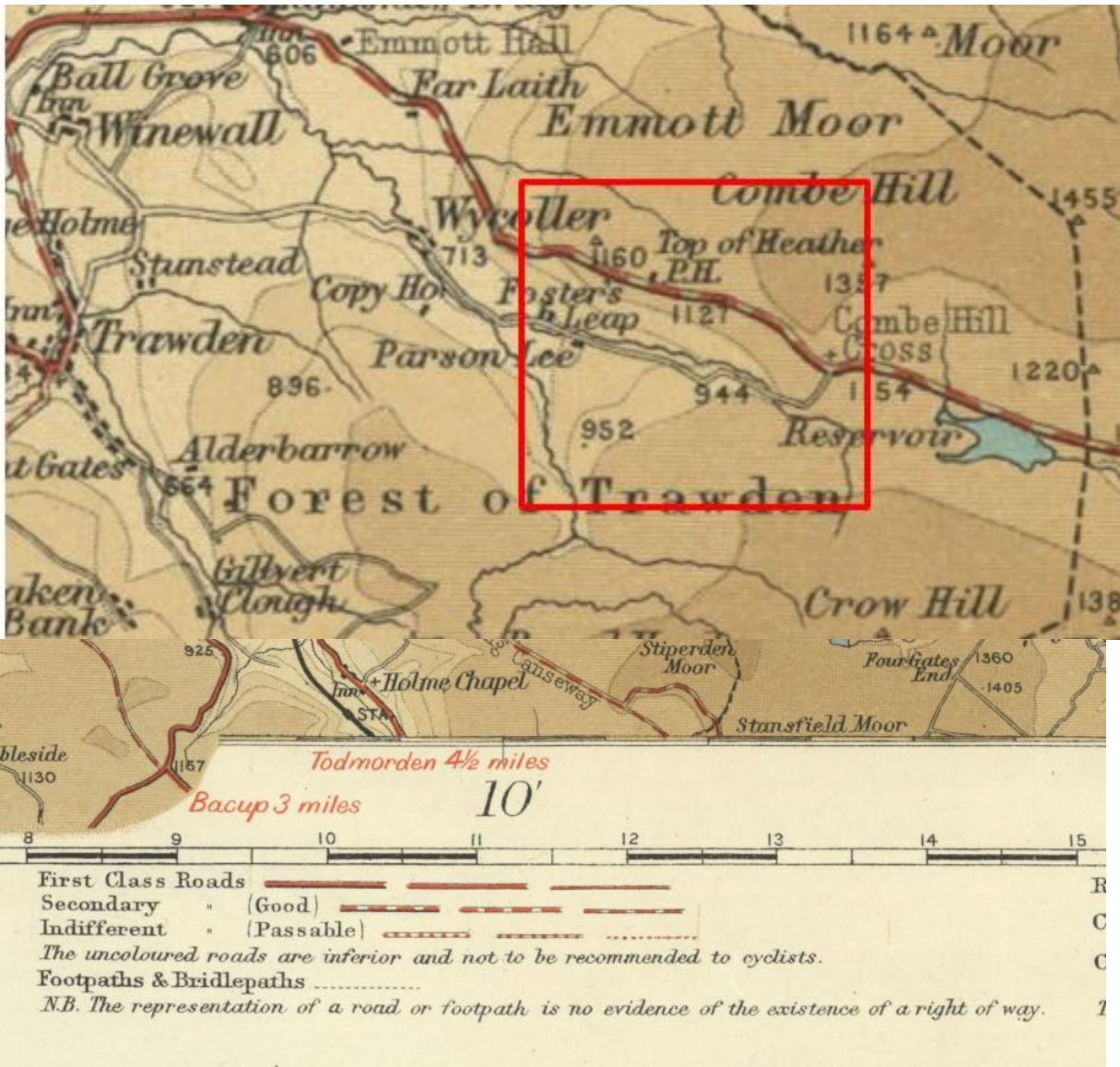
<p>Observations</p>		<p>The map extract was originally provided in relation to an application to record a different route further south west of this route as a public bridleway.</p> <p>No key was provided with the extract but the map shows the route under investigation as part of a longer route passing through Wycoller to exit onto the public road (Lancashire Moor Road) at Coombe Hill Cross (via BOAT 224). The route under investigation is shown in the same way as other public roads and due to the small scale of the map routes recorded as public footpaths and bridleways are not shown.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The map covered a large area and due to its scale could only show main routes. The map would have been sold primarily to the public travelling by vehicle and horseback suggesting that the route under investigation was used by the public on horseback and with vehicles in the early 1900s.</p>

Cassini Map, New Series	1903	An enlarged reprint of a 1 inch map of Lancashire first published in 1903 and based on 1inch mapping.
		
Observations		The full length of the route under investigation is shown as part of a longer route passing through Wycoller and Parson Lee through to Lancashire Moor Road at Combe Hill Cross.
Investigating Officer's Comments		The route under investigation was considered to be sufficiently important to be included on a commercially produced small sale map sold to the public suggesting not only that it existed but that it was capable of being used by the public on horseback and possibly vehicles in 1903.
25 inch OS Map Map Sheet 57-2	1912	Further edition of the 25 inch map surveyed in 1892, revised in 1910 and published in 1912.



<p>Observations</p>		<p>Only one OS Sheet covering part of the route under investigation has been found (Sheet 57-2) which shows the route under investigation as part of a longer route passing the entrance to Parson Lee at point A and continuing east through the gate at point B.</p> <p>The use of colouring and shading to indicate public status is no longer used by the Ordnance Survey so the route is no longer shown with a thickened line along the south side.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation from point A existed in 1910 and still appeared to be capable of being used by the public.</p>
<p>Bartholomew half inch Mapping</p>	<p>1902-1906</p>	<p>The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged</p>

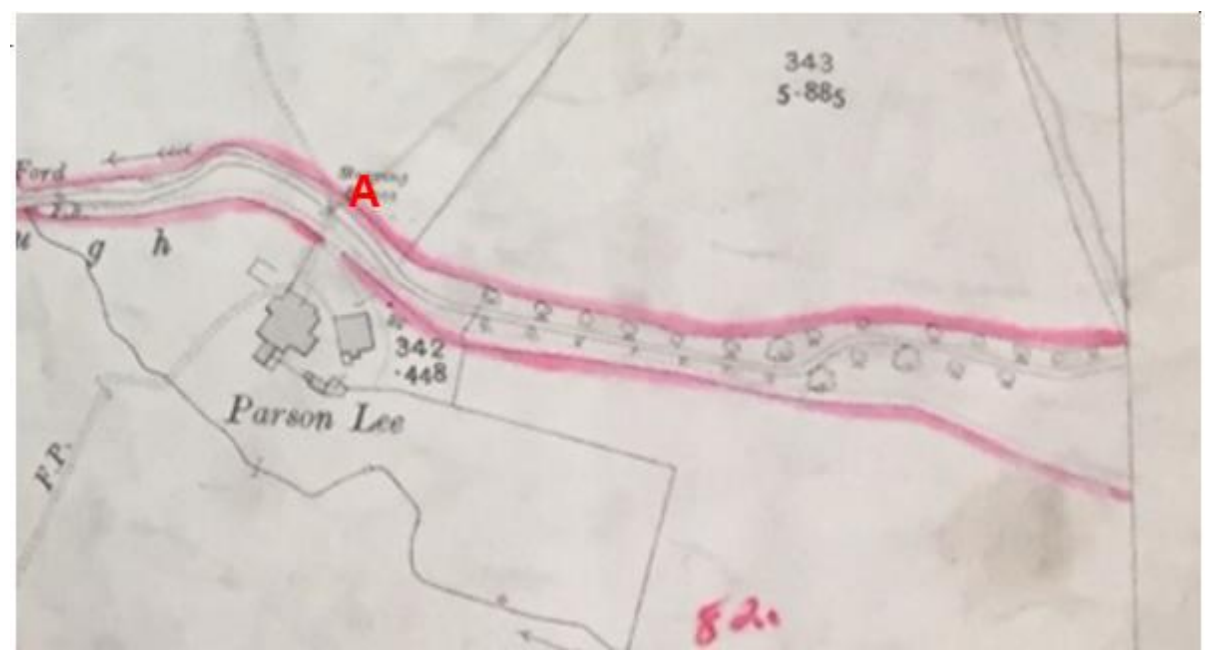
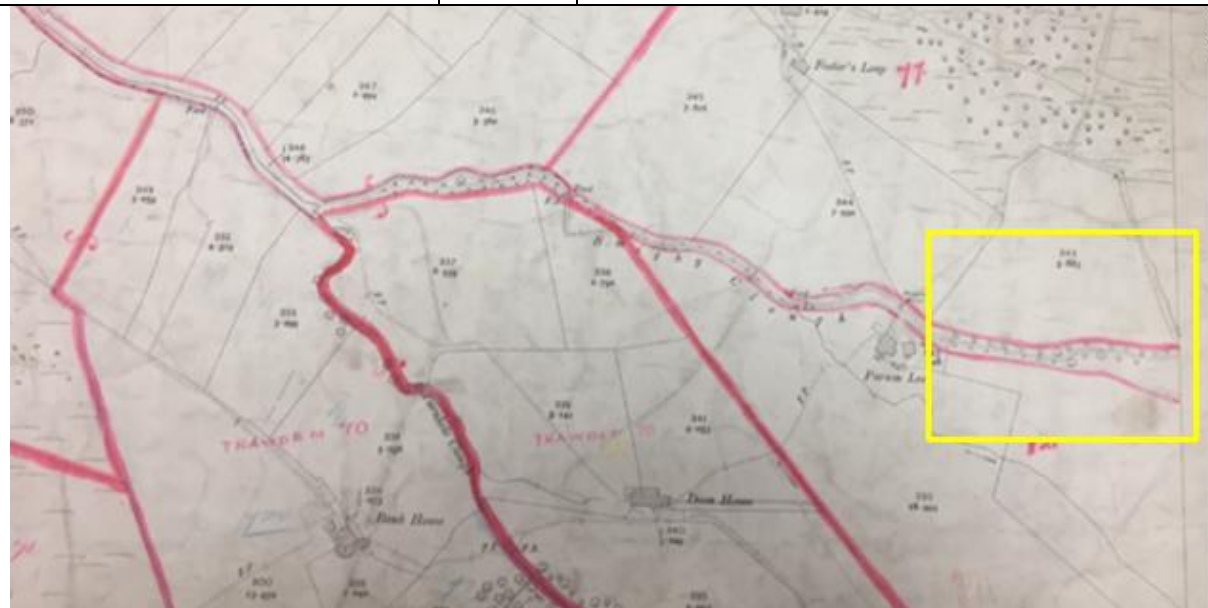
that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.



<p>Observations</p>		<p>The route under investigation is shown as part of a much longer route from Trawden to Wycoller and then continuing past Parson Lee, along the route under investigation and then continuing along BOAT 224 to exit onto the road marked as a 'secondary' road at Combe Hill Cross. The full length of the route described above is shown as an uncoloured road which, in the key, is described as being 'inferior and not to be recommended to cyclists'.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The early 1900s saw a significant increase in the use of motorised vehicles and the classification of minor roads was constantly</p>

		<p>being revised by Bartholomew as some of the routes were improved to cope with the increasing traffic and others were virtually abandoned and fell into disrepair. Before 1920, few roads other than main roads were tarred but the travelling public had lower expectations of surface conditions than today and it would not be uncommon for an unsealed road, at that time considered adequate for horse drawn vehicles or early motor cars, to be shown. The route under investigation is shown on the map supporting the view that it physically existed in the early 1900s.</p> <p>The map contains the logo of the Cycling Touring Club who were known to have an arrangement with Bartholomew regarding the revision of the maps. Cyclists were only allowed to use public carriageways at that time. The route under investigation is described as being an inferior road not to be recommended to cyclists. This does not suggest however that cyclists were not allowed to use it.</p>
<p>Finance Act 1910 Map</p>	<p>1910</p>	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant</p>

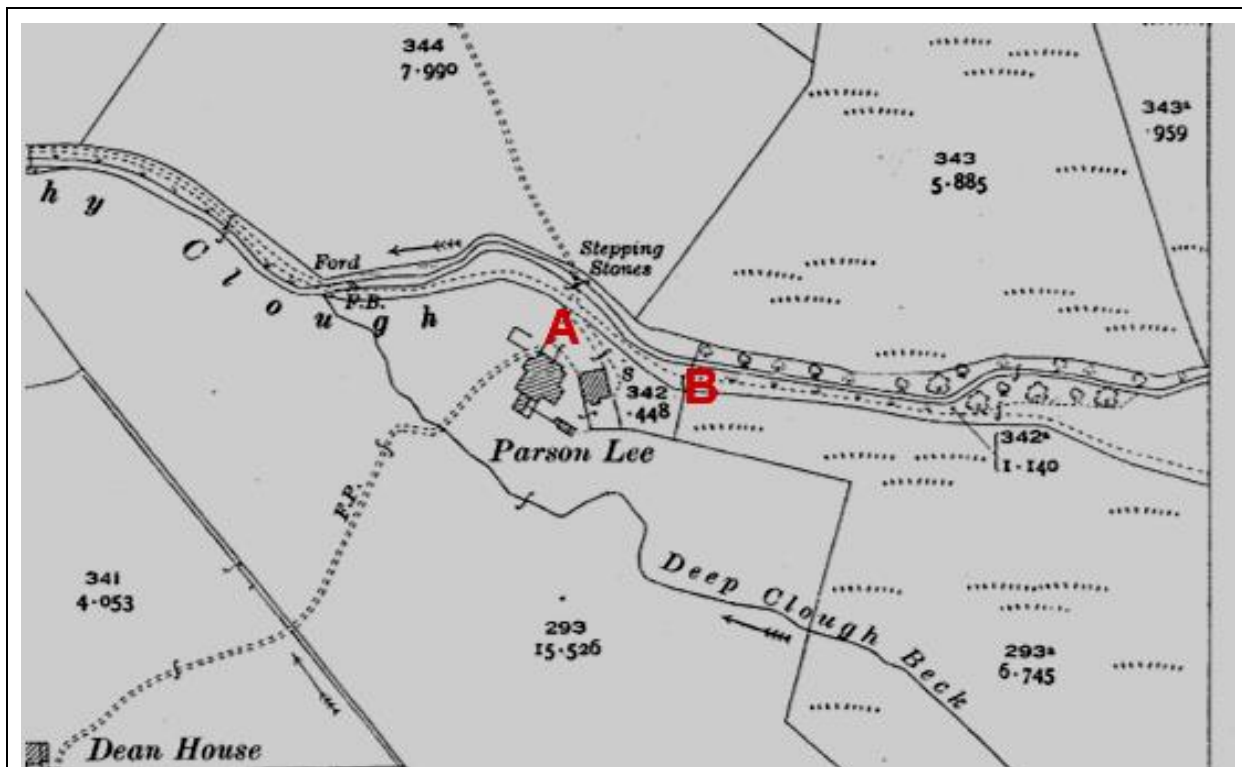
valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many 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 National Archives and County Records Office only have the Finance Act map

		<p>Sheet 57-2 which covers the start of the route under investigation from point A. The adjacent map sheet showing the land crossed by the remainder of the route is not available.</p> <p>The map available shows the route now recorded as Keighley Road from Wycoller through to Parson Lee (point A) as being excluded from adjacent land which is recorded in private ownership. The route under investigation from point A extending east to the edge of the map is also shown as being excluded although the boundaries of the area excluded include not only the route but the watercourse as well.</p>
Investigating Comments	Officer's	<p>No map was available to view for the majority of the route under investigation. The fact that the route from point A to the edge of the map sheet is shown as being excluded in the same way as the route from Wycoller to Parson Lee (now recorded as Keighley Road) is consistent with the view that the route under investigation was a public vehicular highway but as information on much of the route is not available little inference can be drawn.</p>
25 Inch OS Map Sheet 57-2	1932	<p>Further edition of 25 inch map (surveyed 1892, revised in 1930 and published 1932.</p>



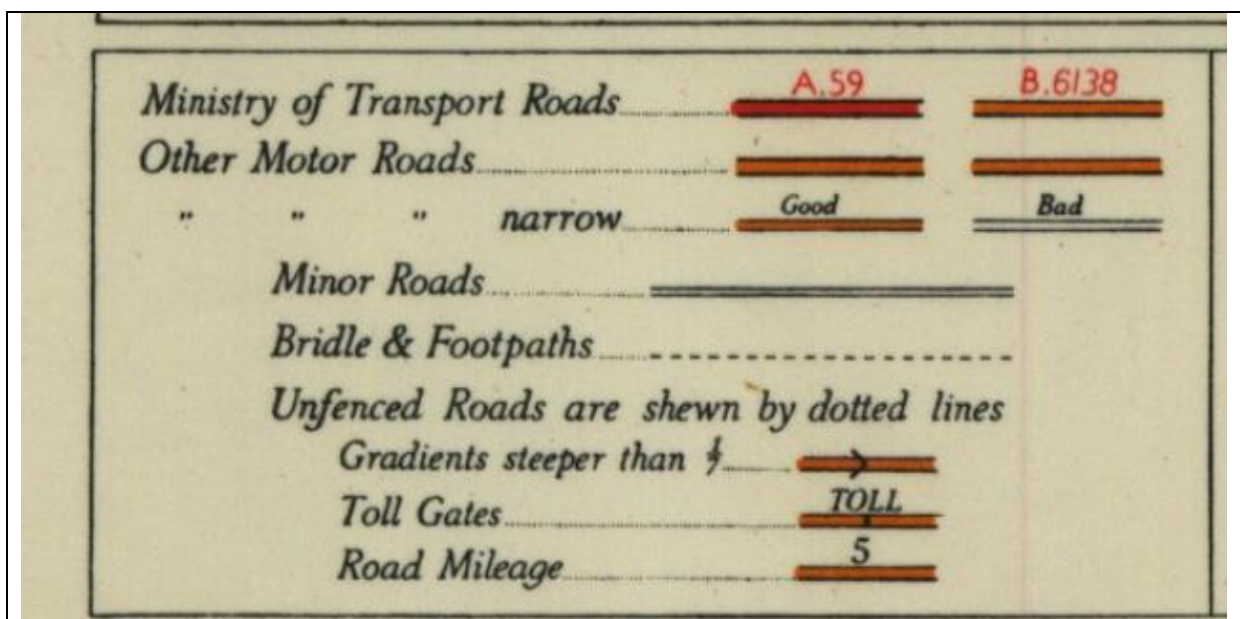
Observations		The route under investigation is shown in the same way as it is shown on earlier editions of the OS 25 inch survey map.
Investigating Officer's Comments		The route under investigation from point A existed in 1910 and still appeared to be capable of being used by the public.
Aerial Photograph⁴	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

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

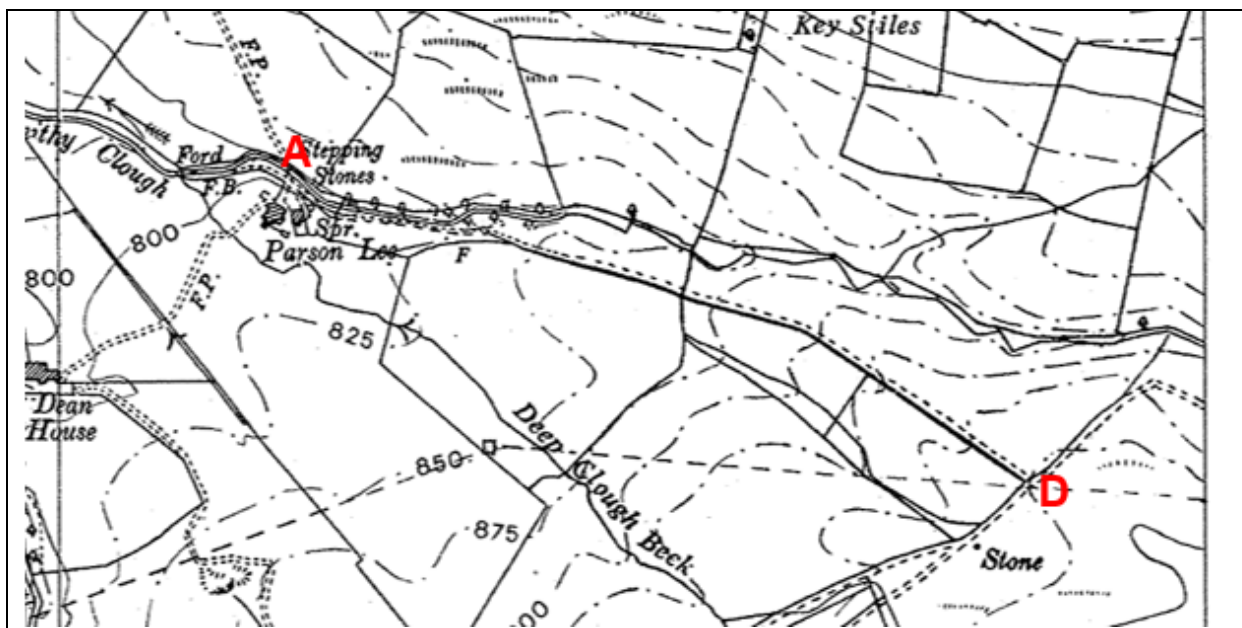


Observations		The route under investigation can be clearly seen on the photograph continuing from Wycoller through point A to point D where it meets the routes recorded as BOAT 224 and BW 191.
Investigating Officer's Comments		The route under investigation existed in the 1940s as a significant track.
1 inch OS Map	1947	1 inch OS Map Sheet 95 – Blackburn & Burnley revised 1924 with later corrections and published 1947.

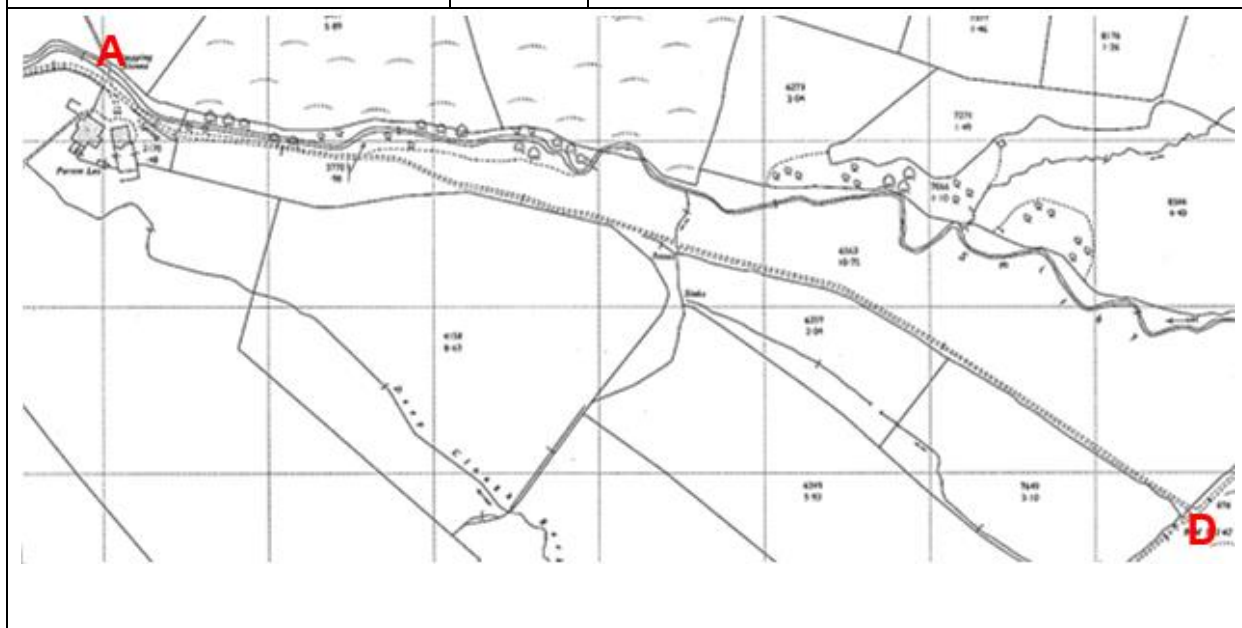


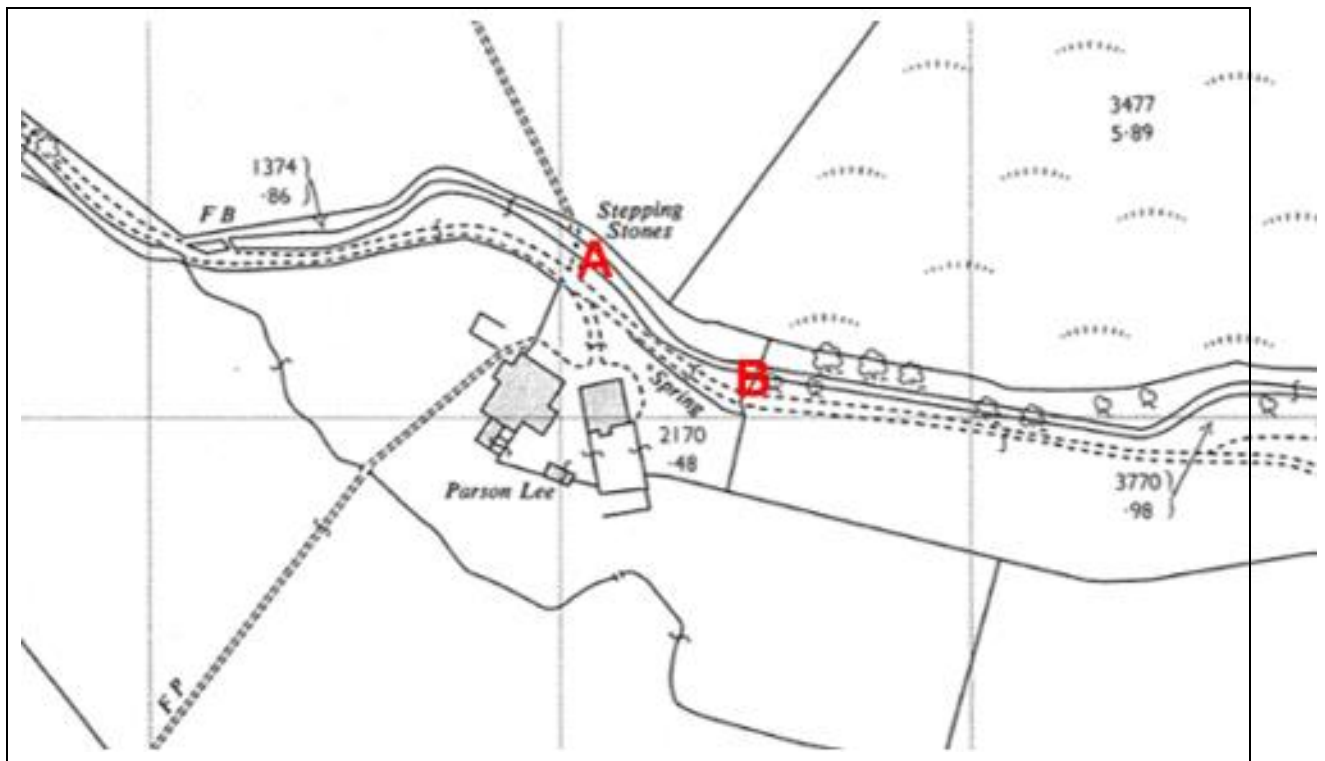


Observations		The route under investigation is shown but appears much less significant than on earlier maps. The route down into Wycoller is shown as a narrow road coloured orange but the route through Wycoller to Parson Lee is barely visible and from Parson Lee the route under investigation appears to be shown as a route bounded on one side (the south).
Investigating Officer's Comments		The route under investigation existed as part of a longer route but appeared much less significant than it had done previously. Use may, by the mid-1940s have started to decline – particularly with vehicles - due to the narrowness and surface of the route.
6 Inch OS Map	1956	The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised between 1930-1945 and is probably based on the same survey as the 1930s 25-inch map.

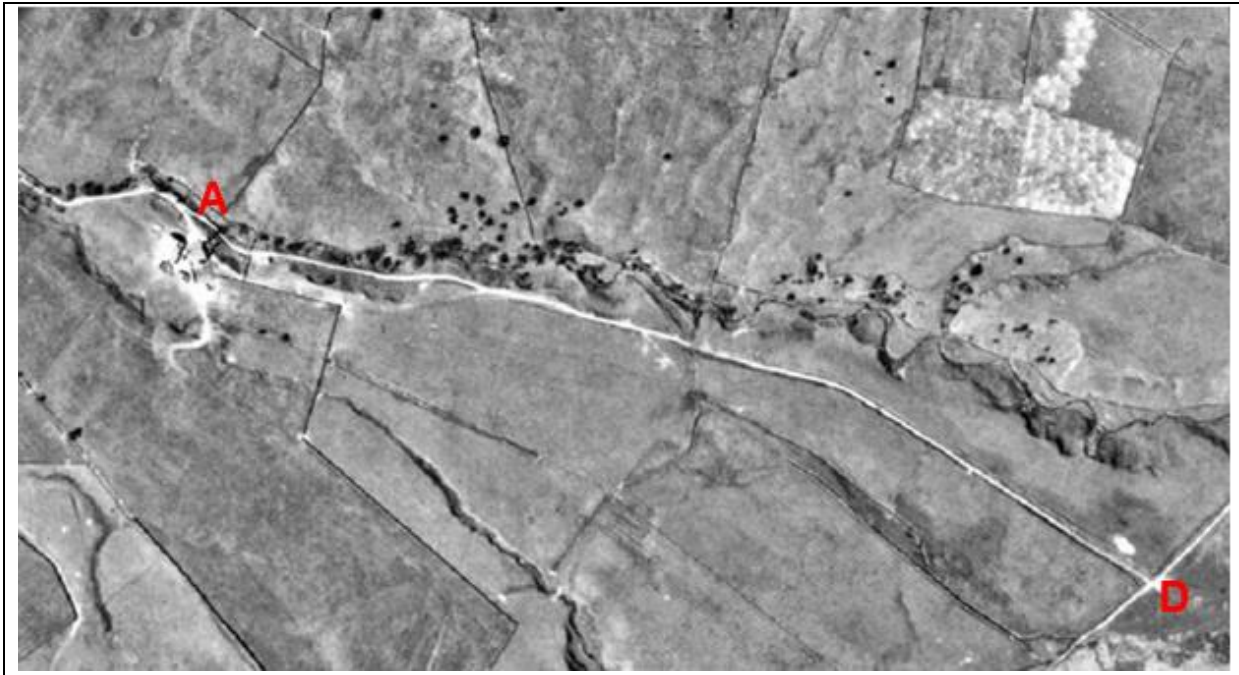


Observations		The full length of the route under investigation is shown but appears to be a less significant track than in the past bounded on the south.
Investigating Officer's Comments		The route under investigation existed but use of the route – particularly with vehicles may have declined.
1:2500 OS Map SD 9438-9538	1964	Further edition of 25 inch map reconstituted from former county series and surveyed 1962 and published 1964 as national grid series.

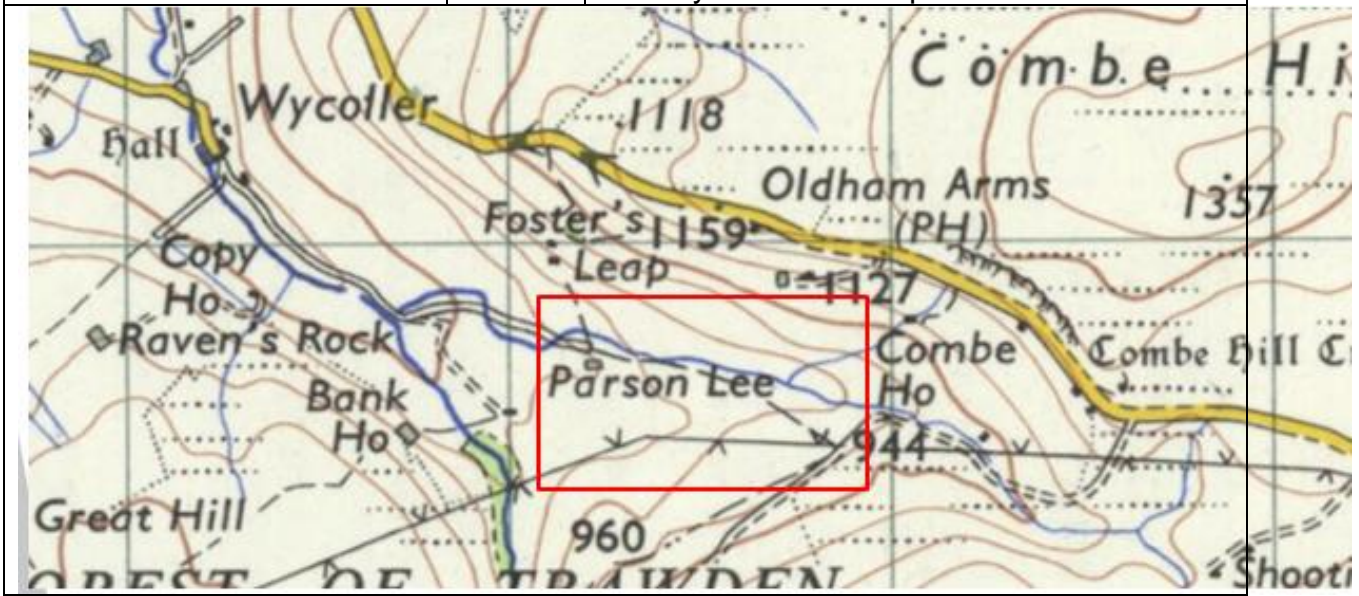




Observations		The full length of the application route is shown as part of a longer route gated at point B and point D. The route is shown largely as being unenclosed from the adjacent land (as indicated by the fact that it is denoted by double pecked lines) although it runs alongside a field boundary to point D.
Investigating Officer's Comments		The route under investigation existed as part of a longer through route in the 1960s and appeared capable of being used by the public.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.

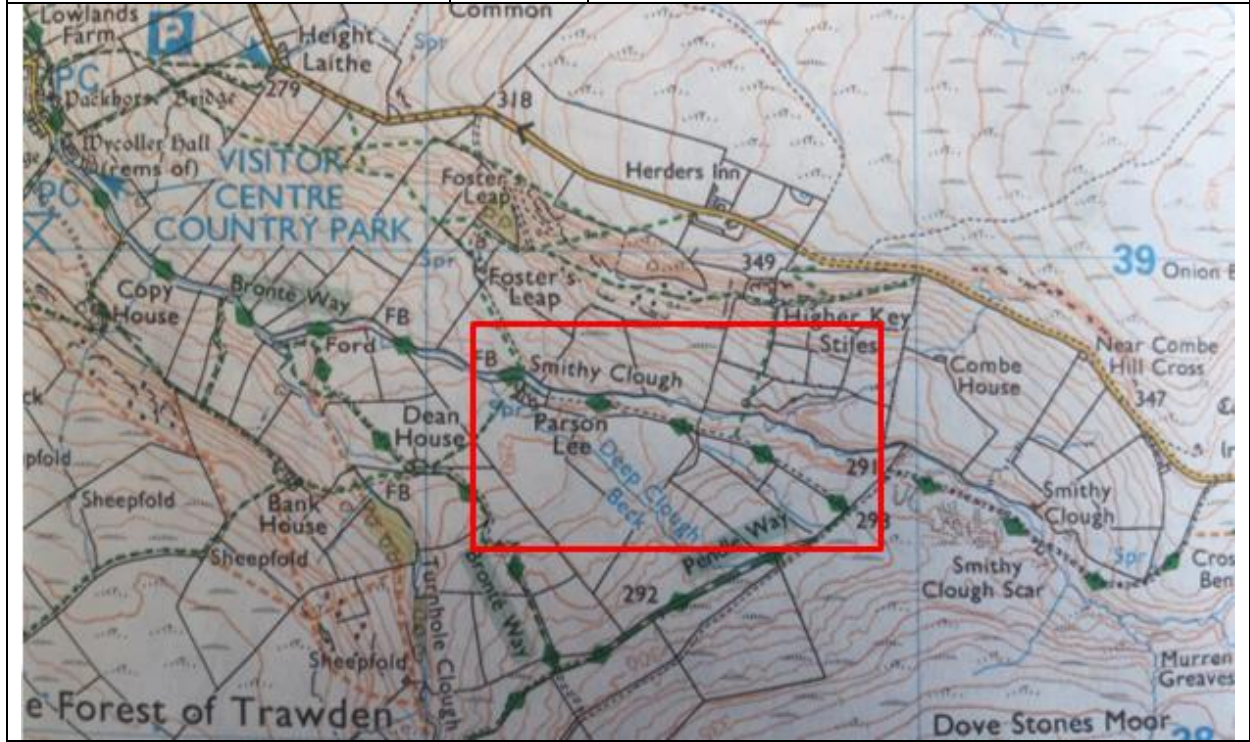


Observations		The route under investigation can be clearly seen on the photograph continuing from Wycoller through point A to point D where it meets the routes recorded as BOAT 224 and BW 191.
Investigating Officer's Comments		The route under investigation still existed in the 1960s as a significant track.
1 inch OS map	1961	1 inch OS Map Sheet 95 – Blackburn & Burnley revised 1958 published 1961.



Roads	Ministry of Transport, Motorway	MI or A 6 (M)	
	" " " Trunk	A 59(T)	
	" " " Class 1	A 671	Ra
	" " " " 2	B 6232	
	14 ft of Metalling & over (not included above)		Woo
	Under 14ft of Metalling, Tarred	TOLL	
	" " " " Untarred	Gate	Orcl
	Minor Roads in towns, Drives and Unmetalled Roads (Unfenced Roads are shown by pecked lines)		Elec (with Pipe
	Under construction		
	Steep Gradient 1 in 5 or steeper	↔↔↔	1 in 7 to under 1 in 5
Footpaths and Tracks	---		
Heights in feet above Mean Sea Level	surveyed by levelling	275	Rou
	not surveyed by levelling	1091	Bo

Observations		The route under investigation is shown but is denoted on this small scale plan as a footpath or track.
Investigating Officer's Comments		The way the route is denoted on this small scale OS map suggests use and importance of the route under investigation as a vehicular through route had probably declined by the 1960s.
Ordnance Survey 1:25 000 Outdoor Leisure Map 21 South Pennines		OS map published 1995 (date of revision not stated).



----- Path Pennine Way Named path
 ◆ ◆ National trail or Recreational path
 - - - - - Permitted Path
 - - - - - Permitted Bridleway

Paths and bridleways along which landowners have permitted public use but which are not rights of way. The agreement may be withdrawn

PUBLIC RIGHTS OF WAY
 (Not applicable to Scotland)
 Public rights of way shown on this map may not be evident on the ground

----- Public paths
 - - - - - Footpath
 - - - - - Bridleway
 + + + + + Byway open to all traffic
 + + + + + Road used as a public path

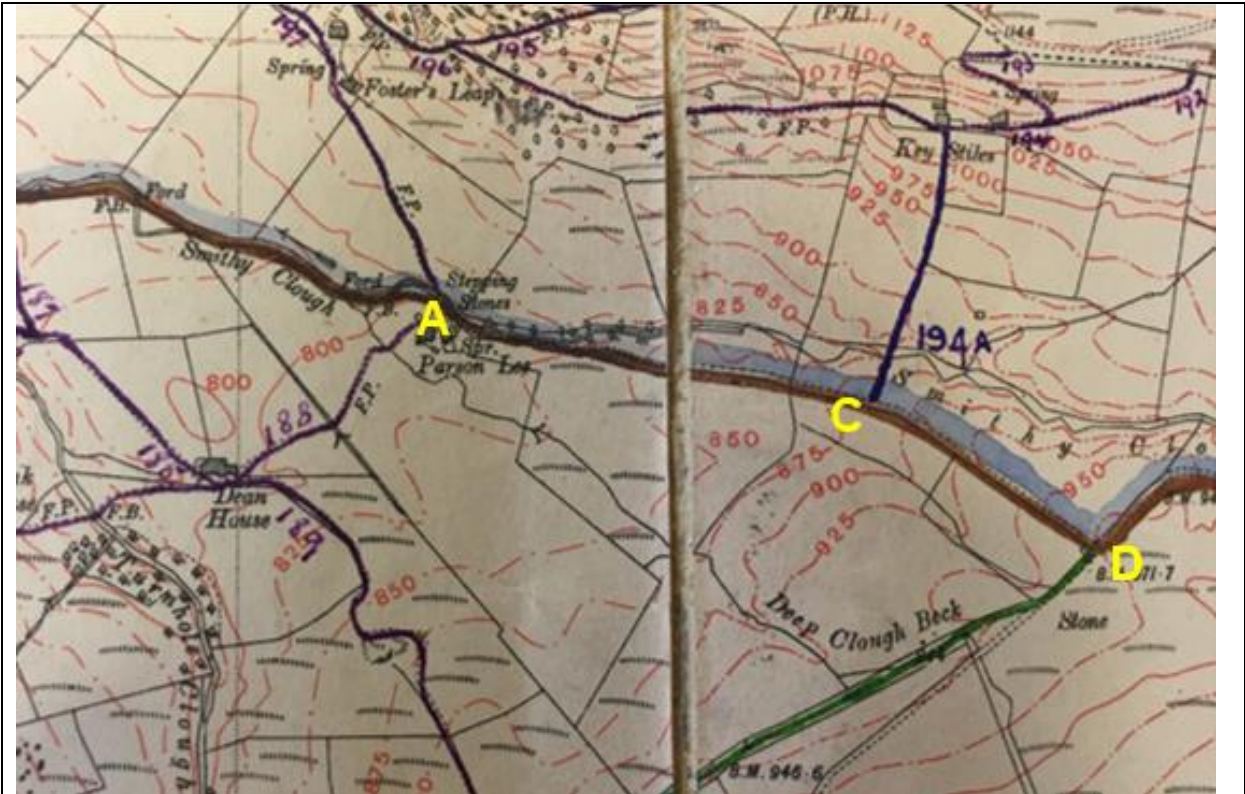
Information not available in uncoloured areas

Public rights of way indicated by these symbols have been derived from Definitive Maps as amended by later enactments or instruments held by Ordnance Survey on 1st Jul 1994 and are shown subject to the limitations imposed by the scale of mapping.
 Later information may be obtained from the appropriate County or London Borough Council

Observations		The route under investigation is shown as part of a 'National trail or Recreational path' although it is not clear from the map which trail this is or whether the trail is for pedestrian use or other types of users.
Investigating Officer's Comments		The route under investigation was promoted for public use in the 1990s.
Aerial Photograph	2014	Aerial photograph available to view on GIS.



Observations		The route under investigation can be clearly seen on the photograph.
Investigating Officer's Comments		The route under investigation still existed in the 2014 as a significant track.
Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way. Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		Trawden was an Urban District Council in the 1950s and no parish survey was carried out.
Draft Map		A Draft Map was produced and 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.



1.	2.	3.	4.	5.
✓ 188.	Footpath.	Dean House Farm to Parson Lee Farm (Smithy Clough).	.19	None known.
✓ 189.	do.	Dean House to Bridleway 190 & 191.	.35	do.
✓ 190.	Bridleway.	Junction with 189 in westerly direction to junction with Public Highway at Beaver Gate.	1.04	do.
✓ 191.	Bridleway.	Junction with 189 in easterly direction to junction with Public Highway in Smithy Clough.	.42.	do.


URBAN DISTRICT OF TRAVDEN.
NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT 1949.

SURVEY OF PUBLIC RIGHTS OF WAY.

Statement annexed to the Draft Map of Way map
Section 27(A).

Relevant date 1st January 1953

AREA. "12"

Edged.  "Bounded by Skipton Road, Keighley Road, Wycoller Lane, Wycoller Dene, Smithy Clough, Lancashire Moor Road (part), U.D. & Union Boundary, & U.D. & Municipal Boundary."

No. of Path.	Kind of Path.	Position.	Length in miles to 2 places decimals.	Other particulars (Limitations or affecting the of-way).
✓ 192. X	Footpath.	Lancashire Moor Road (Cart Track) to Nr. Keystiles junctions 193 & 194.	.12	None known.
✓ 193. X	do.	Lancashire Moor Road to Nr. Keystiles junction 192 & 194.	.15	do.
✓ 194. X	do.	Nr. Keystiles junction 192 & 193 to junction 195 & 196.	.40	do.
✓ 194a. /	do.	From Road in Smithy Clough across stream to Keystiles joining No. 194.	.18	do.
✓ 195. X	do.	Junction 194 & 196 to Lancashire Moor Road Nr. Oldham Arms.	.24	do.
✓ 195a. X	do.	From a point in footpath 195 near Foster's Leap following in line with Lancashire Moor Road to a point where footpath No. 198 is met.	.43	do.
✓ 196. X	do.	Junction 194 & 195 to junction 197 & 198 Nr. Foster's Leap.	.14	do.
✓ 197. X	do.	Foster Leap Farm junction 196 & 198 to Parson Lee Farm.	.23	do.
✓ 198. /	do.	Junction 196 & 197 (Nr. Foster Leap Farm) to junction 199 & 201 (Old Private Coach Road).	.39	do.
✓ 198a. X	do.	From a point in footpath 198 crossing the parish footpath (195a) to Lancashire Moor Road (near Height Laith Farm).	.10	do.

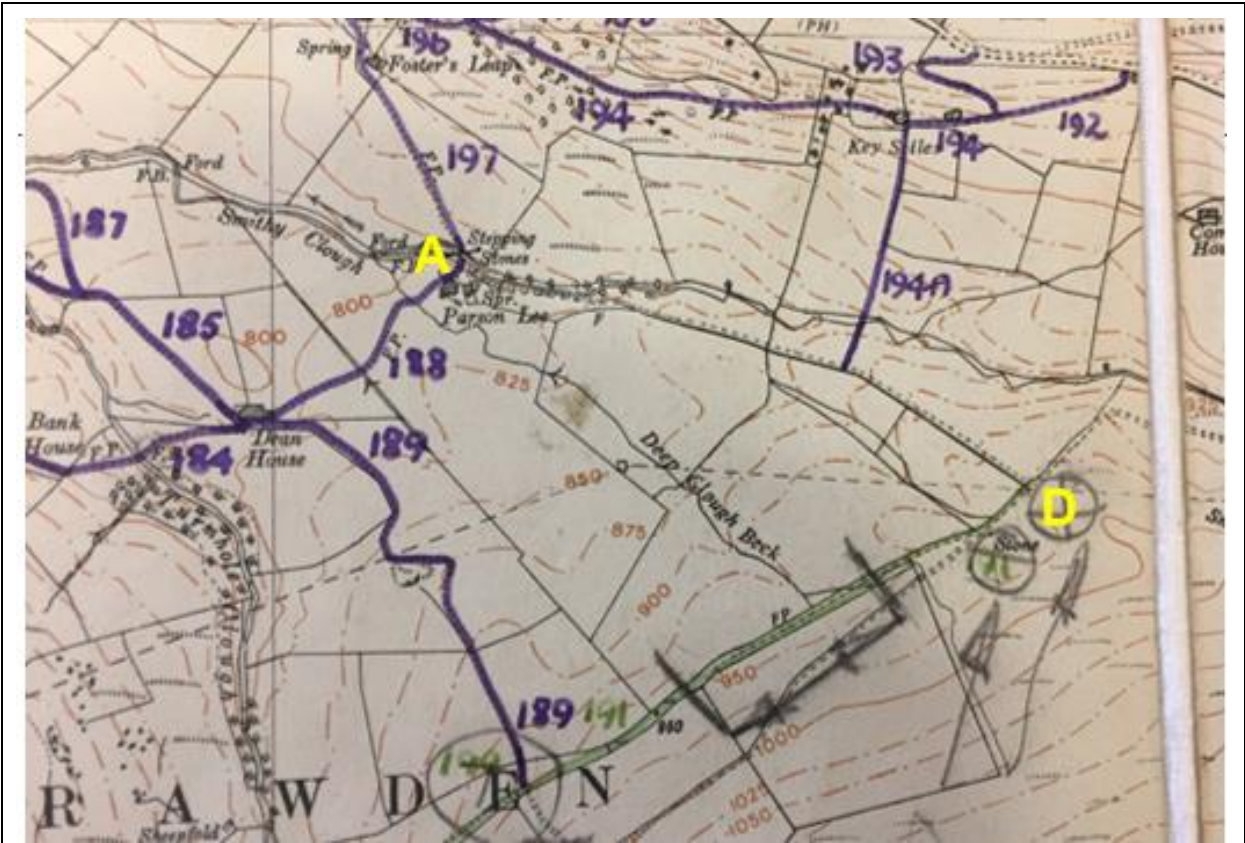
Observations

The route under investigation is not recorded on the Draft Map with the brown line shown denoting a parish boundary. Footpath 194a is shown to terminate at point C on the route under investigation which is described as being a 'Road' in the Draft Statement.

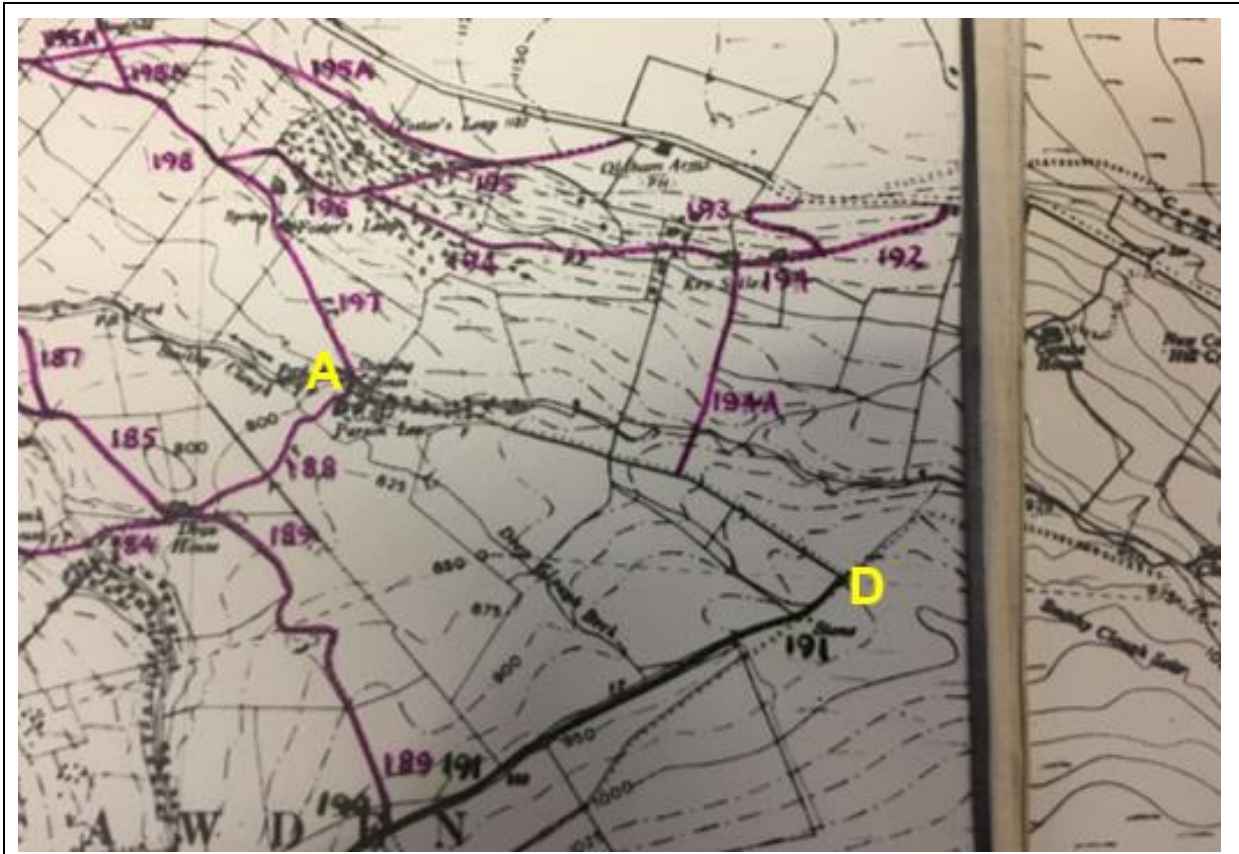
Bridleway 191 is described in the Draft Statement as meeting the public highway in Smithy Clough (point D).

Provisional Map

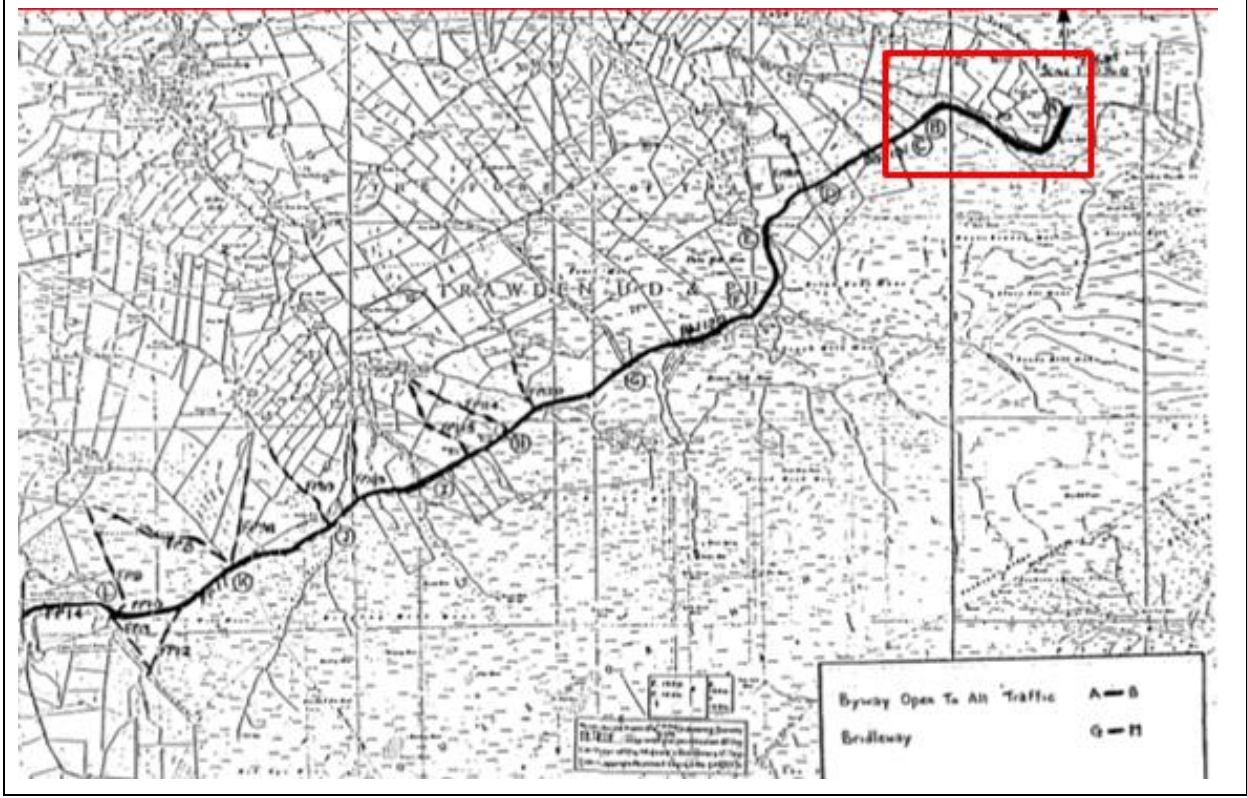
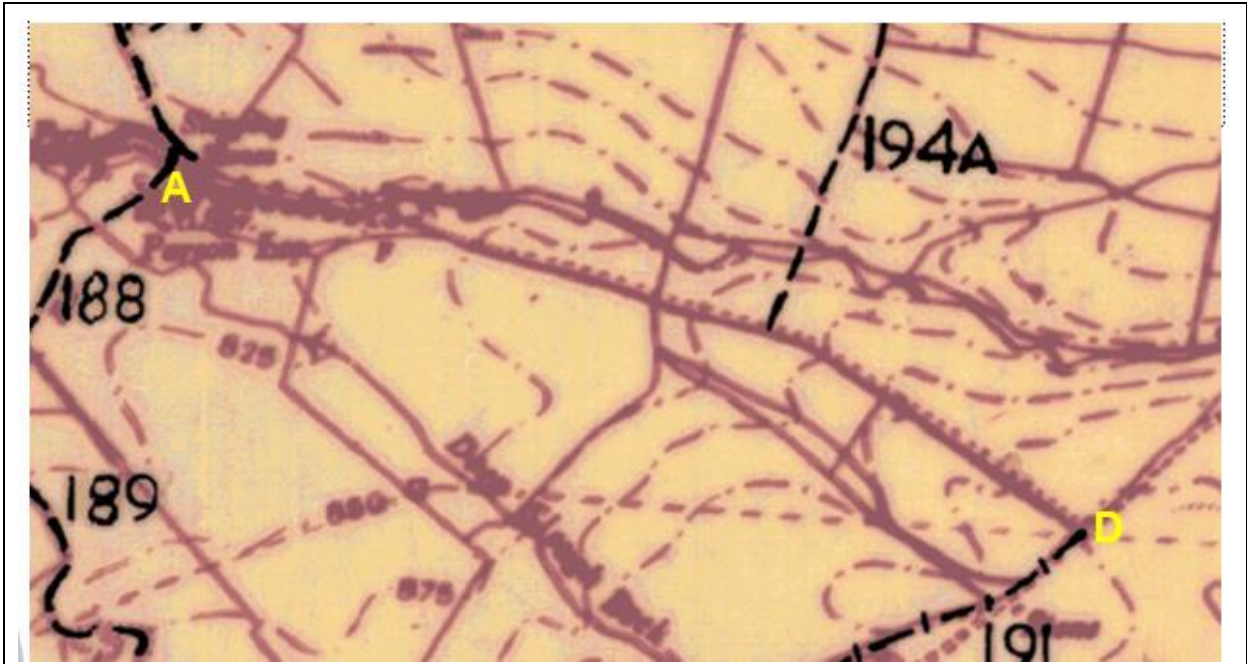
Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.



Observations		The route under investigation was not shown on the Provisional Map and no objections or representations were made.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.



Observations		The route under investigation was not shown on the first Definitive Map and no objections or representations were made.
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.



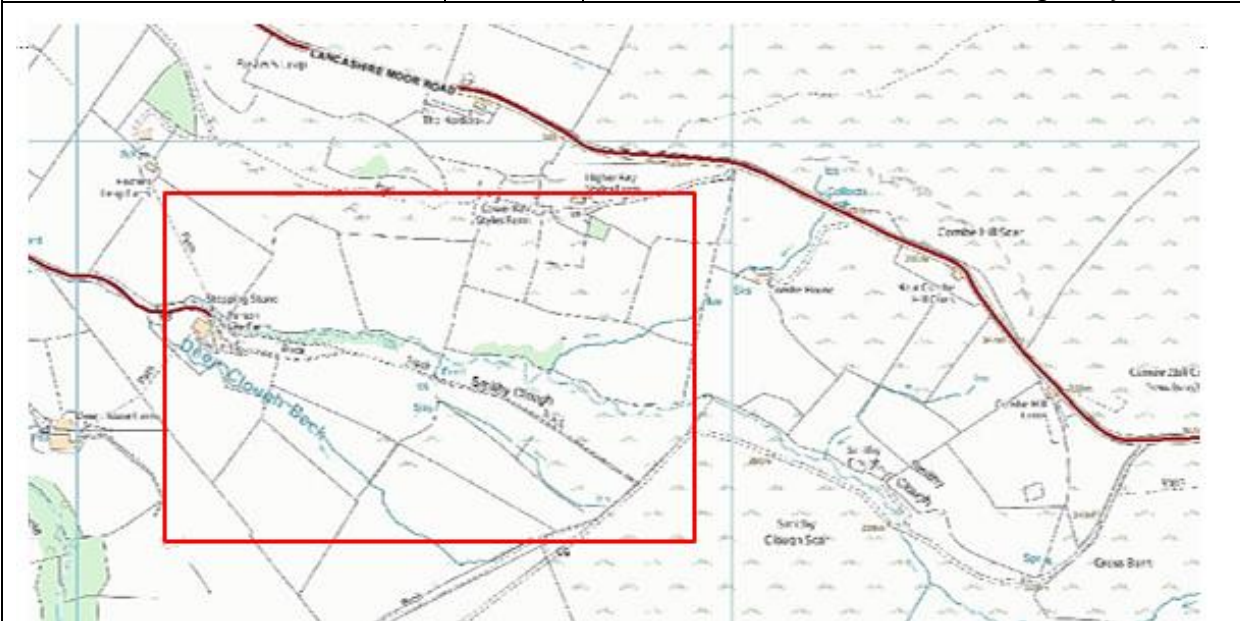
On the 16th August, 1996, the Secretary of State for the Environment confirmed without modification the above-mentioned Order.

The effect of the Order, as confirmed, is to modify the Definitive Map and Statement of Public Rights of Way for Trawden, Borough of Pendle, by adding to the Definitive Map and Statement of Public Rights of Way the Byway Open to All Traffic from a point on the Laneshawbridge to Haworth Road, near Coombe Hill Cross, (GR.9562 3857) to the junction with Wycoller Road and Bridleway No. 191, (GR9485 3848), Trawden, Pendle Borough, a total distance of approximately 970 metres.

A copy of the Order as confirmed, and the map contained in it has been deposited at the offices of the Pendle Borough Council, Town Hall, Nelson, and at my offices where they may be inspected, free of charge, during normal office hours. If required, copies of the Order and Map may be purchased from my offices.

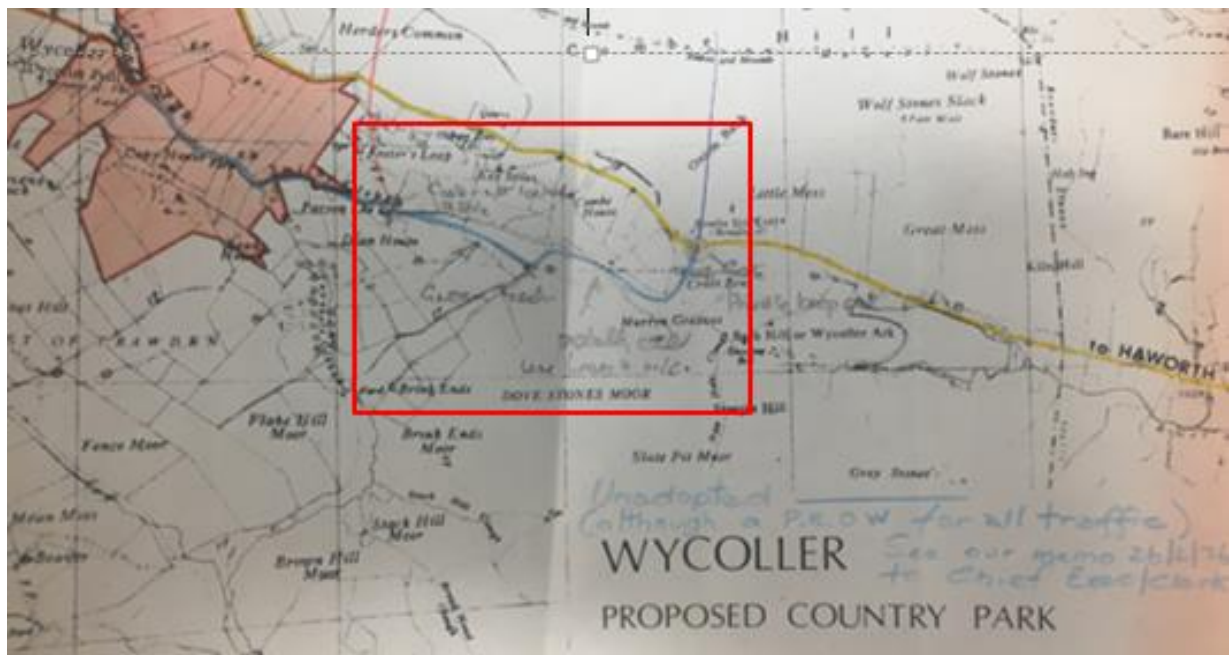
Observations		The route under investigation is not shown on the Revised Definitive Map (First Review). However, since the map was published a definitive map modification order has been made (1991) and confirmed (1996) to record the route now known as BOAT 254 from Lancashire moor Road to point D which is described in the Order as the junction with Wycoller Road and Bridleway 191.
Investigating Officer's Comments		The route under investigation does not appear to have been considered to be a public path which should have been recorded on the Definitive Map and Statement during the relevant period. However, the fact that other routes joined it at point C and point D and that it was described as a 'road' and 'public highway' in the Draft Statements suggest that in the 1950s it was considered to be a public highway with vehicular rights. In 1991, when an Order was made to record BOAT 254 on the Definitive Map and Statement the route under investigation was described in the Order as 'Wycoller Road' and at that time it appears that the public status of the route – or whether it should be recorded on the Definitive Map – was not considered.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county.

		<p>These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
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<p>Observations</p>		<p>None of the plans available to inspect in relation to the county councils List of Streets show the route to be inspected as being publicly maintainable. Trawden was an Urban District Council and the responsibility for the highway network was retained by them until 1974. As such there are no 1929 Road Transfer Maps for the area crossed by the application route.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The route under investigation is not recorded as a publicly maintainable highway</p>

		on the county council's List of Streets but that does not mean that it does not carry public rights of access.
Internal Lancashire County Council memorandum	1976	A memorandum found on the public rights of way parish files dated 1976 from the County Surveyor (responsible at that time for public highways) to the Chief Executive and Clerk (the county council's legal department).



Road from Wycoller Hall by Parson Lee to the Haworth Road at Combe Hill Cross

This route is not shown on the Definitive Map. The road from Colne to the ford opposite Wycoller Hall (coloured brown on the attached plan) is an unclassified county road.. Beyond this point up to the Haworth road at Combe Hill Cross the road is considered to be unadopted although there is, no doubt, a public right of way for all traffic. This route is shown on Teesdale's Map 1828 and all subsequent maps that I have seen. I understand that the former Trawden Urban District Council occasionally put some quarry bottoms or old tarmacadam, taken from other roads, on the length between Wycoller Hall and Parson Lee and on the adjacent length to the Haworth road, the farmers on either side were provided with similar material to lay themselves. This appears to have been done as an act of goodwill and not as an acceptance of any responsibility for maintenance.

Observations		The memorandum is titled 'Wycoller Country Park' and relates to concerns about the closure of what are described as 'two ancient public rights of way for motorcycles'. One of the routes described is a longer
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		<p>through route from Wycoller Hall through to Lancashire Moor Road and includes the route under investigation. The route between points A-B-C-D is said to be considered as being unadopted but the memorandum states 'there is no doubt that it is a public right of way for all traffic'. It is also stated that Trawden Urban District Council would occasionally provide old tarmac or quarry bottoms to the farmers to lay themselves along this section of the route but that this was done as a good will gesture and not as an acceptance of responsibility for maintenance.</p> <p>The route is labelled as a grass track on the accompanying plan.</p>
Investigating Officer's Comments		<p>The memorandum appears to relate to the traffic regulation order made in 1977 and detailed below.</p> <p>The views expressed by the County Surveyor at that time support the view that the route under investigation was considered to be an ancient public right of way for vehicles in the 1970s.</p>
Highway Stopping Up Orders	1835 - 2014	<p>Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.</p>
Observations		<p>A search of the records held by the county council and those deposited in the County Records Office was made and no legal orders relating to the route under investigation were found.</p> <p>One Order, made by Pendle Borough Council in 1977 was located titled 'The Borough of Pendle (Trawden Road, Wycoller) (Prohibition of Driving) Order 1977. This Order prohibited vehicles (subject to certain exceptions) from using the route described as Trawden road at Wycoller passing through the hamlet of Wycoller as far as Parson Lee. The making of this Order (which is still in force) explains</p>

		<p>why there are circular road signs indicating that vehicles are not allowed (with the exception of disabled badge holders) at point B on the route under investigation looking west towards point A and Parson Lee. The copy of the plan attached to the Order is poor but appears to show the route subject to the Order including the first 25 metres of the route under investigation from point A.</p>
<p>Investigating Officer's Comments</p>		<p>If any unrecorded public rights exist along the route they do not appear to have been stopped up or diverted.</p> <p>With regards to the Road Traffic Regulation Order made in 1977 the fact that road signs were located at point B on the route under investigation positioned to be visible if approaching from point D suggests that when erected the Borough Council (who made the Order) considered that public vehicular rights existed along the route under investigation.</p>
<p>Statutory deposit and declaration made under section 31(6) Highways Act 1980</p>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be</p>

		counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the county council for the area over which the route under investigation runs.
Investigating Officer's Comments		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.
Inclusion of the route as part of the Bronte Way	1985	The Bronte Way is a 40 mile promoted walking trail which dates back to approximately 1985. It was signposted throughout and was promoted by the publication of a set of four walking leaflets.



Wycoller - Watersheddles

The Bronte Way follows Smithy Lane between the hamlet of Wycoller and to within about 80 metres (90 yards approx.) of the Haworth - Laneshawbridge road. For most of the way the route follows a clearly defined and surfaced track. The section between Parson Lee Farm and the junction with the access road to Brink Ends Farm, however, is unsurfaced. If you are setting off from Wycoller, keep to the road alongside the stream.

Between the Water Authority land at Watersheddles and Smithy Lane the path runs along the outside of the reservoir enclosure wall, follows a fence line for a short distance and crosses a section of open moorland. Follow the waymarked route in order to use the footbridges and stiles provided.

Observations		One of the four walk leaflets describes the section of the trail between Wycoller Dean and the Bronte Parsonage and explains that the section between Parson Lee Farm (point A) and the junction with a track leading to Brink Ends Farm (point D) is unsurfaced. There is no reference to the public status of the route under investigation although it was noted that the leaflet shows part of the route further east with a dashed line indicating that it was a 'concession path' whereas the route under investigation is shown by a solid line.
Investigating Officer's Comments		The route has formed part of a promoted walking route since 1985 with no apparent suggestion that the public did not have a right of access along it.
Designation of the route as part of the Pennine Bridleway	1995-2000	The route under investigation forms part of the Pennine Bridleway National trail which provides access for horse riders, cyclists and walkers along a 205 mile trail from Derbyshire to Cumbria. Following a feasibility study and Government approval granted in 1995 work to create the trail was carried out as a partnership between local authorities with funding from the Countryside Agency (now part of Natural England). The trail through Lancashire was largely implemented by the early 2000s.

		<p>Since its creation the route has been well used by walkers, horse riders and cyclists.</p>
Observations		<p>The route promoted as part of the Pennine Bridleway the route under investigation and is signposted as being part of the Pennine Bridleway.</p> <p>A record of many of the Public Path Creation Agreements and Orders made to create or upgrade existing routes to bridleways as part of the development of the Pennine Bridleway in Lancashire has been kept but there is no record of any Orders being made in respect of the route under investigation.</p> <p>Officers involved in the implementation of the route at that time have now left the county council but inquiries were made of existing staff so it is not known if the public status of the route was considered at the time.</p> <p>The county council signposted the route, carried out drainage improvements and replaced the gate at point B as part of the Pennine Bridleway work and the Pennine Bridleway Officer employed partly by the county council has confirmed that the route has been regularly in use by horse riders and cyclists since its implementation.</p>
Investigating Officer's Comments		<p>Since approximately the year 2000 it appears that the whole length of the route under investigation has been promoted as part of a national long distance bridleway and has been used by the public as such to a significant extent.</p> <p>The ethos of the implementation of the trail was to secure, wherever possible public rights of access. The fact that there is no record of the county council seeking to secure any public rights along this section suggests that Officers were of the view at that time that public bridleway or carriageway rights already existed.</p>

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

Landownership

All the land crossed by the route under investigation is in registered ownership of Parson Lee Farm between point A and point B on the Committee plan. Ownership of the remainder of the route (from point B to point D) is registered to Bronte and Pendle Way Limited.

The Natural Environment and Rural Communities Act 2006

This Act effected a blanket extinguishment of unrecorded public rights for mechanically propelled vehicles (MPVs) with certain exceptions. Prior to this carriageway rights did not discriminate between vehicles which were mechanically propelled, such as cars and motorbikes, and those which were not, such as bicycles, wheelbarrows, horse-drawn carriages, donkey carts, etc. if Committee concludes that the evidence shows that, on the balance of probability, public carriageway rights exist along the route under investigation between point A and point D it is then necessary to consider whether the Natural Environment and Rural Communities Act 2006 has extinguished public rights for MPVs. The route was, at the time of the act not recorded as a public footpath/bridleway and was not on the List of Streets (maintained at public expenses) and it does not appear to have been used mainly by the public in MPVs. There is no claim that any other of the other exemptions apply. Therefore, in the event that public carriageway rights are shown to exist the appropriate status for the route to be recorded on the Definitive Map and Statement would be Restricted Byway, with public rights with non-mechanically propelled vehicles, horses or on foot.

Summary

It is rare to find one single piece of map or documentary evidence which is strong enough to conclude that public rights exist and it is often the case that we need to examine a body of evidence, often spanning a substantial period of time, from which public rights can be inferred.

In conclusion, a range of commercial maps and other documents were examined which consistently show the route existed as part of a longer through route connecting to public vehicular highways from at least the late 1700s or beginning of the 1800s including numerous references to it being a public highway and ancient route in key documents such as documents prepared in relation to the inclosure of adjacent land in 1821, the Tithe Map and Award 1844 and Trawden Local Board Surveyor's records dated 1868 and taken as a whole, the map and documentary evidence available indicate that the route was considered to be a public vehicular highway in the 1800s, the use of which gradually declined with vehicles – possibly due to it being a rough stone track - and more recently as a result of the traffic regulation order placed on the section of route leading to Parson Lee and point A.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

In this particular case there is no applicant for an Order to be made.

Information from Others

Nothing received

Information from the Landowner

Nothing received

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

- Map and other documentary evidence supporting the physical existence of a substantial through route since at least the late 1700's.
- Absence of evidence of gates/fences/stiles which prevent use by the public on foot, horseback and non-mechanically propelled vehicles along the route in question (whilst there is evidence of gates and stiles located at points B and D on the route (as detailed in the Map and Documentary Evidence section of this Report) the existence of gates along a public route in the 1800's, particularly in close proximity to farms and in rural areas, would not have been considered unusual and does not necessarily indicate that the route was private).
- Absence of signs and notices along the route in relation to public use other than motor vehicular.
- Absence of action taken by landowners to discourage use of the route.

Conclusion

The investigation was carried out in order to determine whether public rights already exist in law and whether accordingly the route A-B-C-D should be recorded on the Definitive Map and Statement.

The route forms part of a promoted footpath, the Bronte Way and the Pennine Bridleway National Trail but currently has no recorded public status.

It is advised that as there is no express dedication in this matter, Committee should consider, on balance, whether there is sufficient evidence from which to have dedication inferred at common law from all the circumstances or for the criteria in S31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years "as of right" use to have taken place ending with this use being called into question.

Firstly looking at deemed dedication under S31 Highways Act 1980, Committee will be aware that in order to satisfy the criteria for S31, there must be sufficient evidence of use of the claimed route by the public, as of right and without interruption, over the twenty year period immediately prior to its status being brought into question, in order to raise a presumption of dedication. This presumption may be rebutted if there

is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way. Committee will note that there is no user evidence in relation to this matter, rather that the investigation looks at whether the route is a historical public right of way which came into existence hundreds of years ago.

Secondly, looking at whether dedication can be inferred on balance at common law, Committee is advised to consider whether the evidence presented within this report from the various map and documentary evidence does, on balance, indicate how the route should have been recorded. The analysis of such evidence by the Head of Service – Planning and Environment provides strong evidence to conclude that the route was a historical public route available as a restricted byway.

From at least the late 1700's /early 1800's, there is map and documentary evidence which consistently shows the route as having existed as part of a significant through route, depicted in the same way as many other routes currently classed as public bridleways or carriageways, and connecting to public vehicular highway at point D. The evidence suggests that the route would have been capable of use by horses and vehicles at that time.

Subsequent map and documentary evidence suggests that the route was considered to be at least public bridleway or possibly public vehicular highway. Various references are made within the map and documentary evidence to the route as a public highway and an ancient route. In the late 1800s the route was shaded on OS Maps indicating the route to be part of a longer vehicular highway and in on 1898 OS Map the full length of the route is shown to exist as a substantial route and appeared to be part of the road network.

Whilst the historical mapping evidence, when considered as a whole, indicates that the route was considered to be a public vehicular highway in the 1800s, it would appear that vehicular use subsequently declined potentially due to the surface of the route and more recently as a consequence of the traffic regulation order placed on the section of the route leading to point A.

References are made in the consultee's responses to past vehicular use, this however appears to have been predominantly for access purposes and mention is made in both responses to the route not being fit for purpose for use by vehicles.

In addition to this an official road sign, present at point B in 2006 specified no motor vehicles (with the exception of disabled badge holders and access). Whilst the section of the sign specifying no motor vehicles was no longer present at the time of inspection in 2019, the advice note detailing the exceptions remained; there is also a metal field gate and adjacent bridleway gate present along the route at point B, erected as part of the works undertaken in relation to the implementation of the Pennine Bridleway route.

On balance, the map and other documentary evidence is in itself considered sufficient to conclude that the route was a historical public highway, and it is therefore suggested to Committee that inferred dedication can on balance be satisfied. Although the route has historical evidence of public carriageway rights, it is

no longer possible, in any event, to record the route as a byway open to all traffic due to the introduction of section 67 Natural Environment and Rural Communities Act 2006. The implication of this section means that the highest status that can be achieved by this route is that of a restricted byway.

Taking all of the evidence into account and noting how the route was recorded on the old county maps and the investigations of the Head of Service Planning and Environment, it is suggested to Committee that on a balance of probabilities there is sufficient evidence that the route ought to be shown as a restricted byway.

Committee is therefore advised to accept the recommendation, make an Order and promote the Order to confirmation.

Risk management

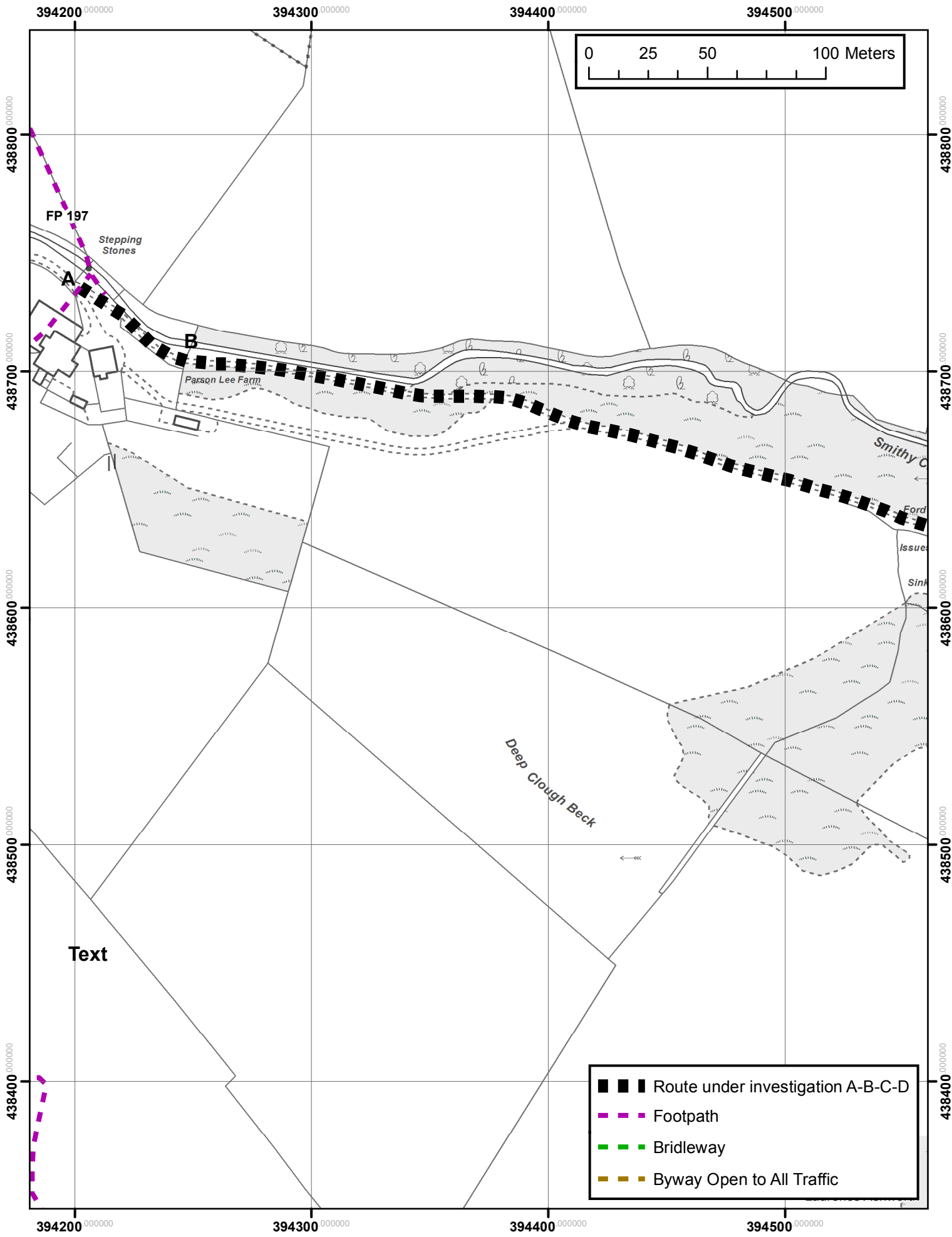
Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda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

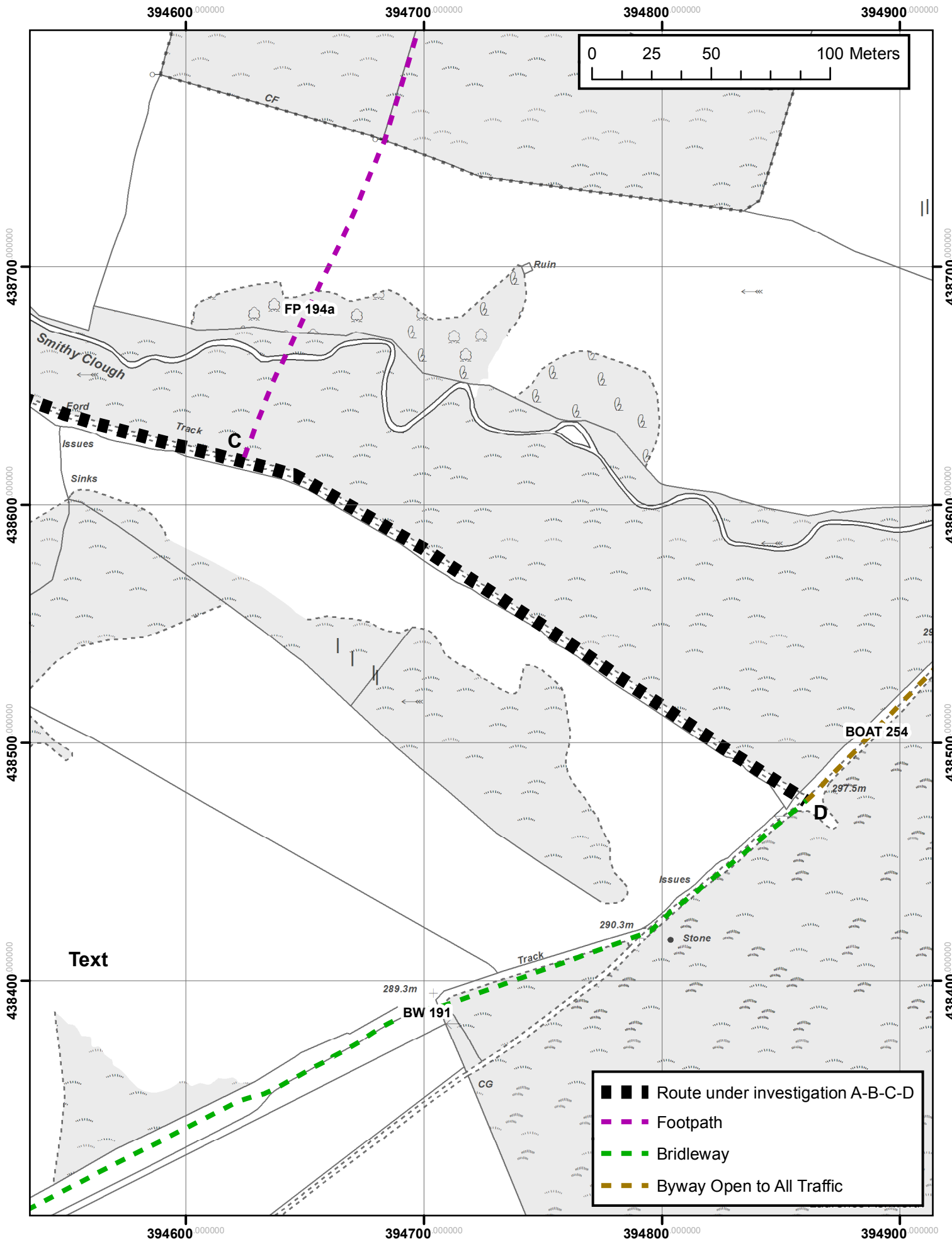
Local Government (Access to Information) Act 1985 List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-611		Simon Moore, 01772 531280, Legal and Democratic Services

Reason for inclusion in Part II, if appropriate

N/A





Regulatory Committee

Meeting to be held on 11 March 2020

Part I

Electoral Division affected:
Wyre Rural Central

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of a Footpath from Footpath Preesall 1 running along the sea embankment and ramp to Fluke Hall Lane, Wyre Borough

File No. 804-502

(Annex 'A' refers)

Contact for further information:

Simon Moore, 01772 531280, Paralegal Officer, Legal and Democratic Services, simon.moore@lancashire.gov.uk

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

Executive Summary

Investigation into the addition of a Footpath to be recorded on the Definitive Map and Statement of Public Rights of Way from a point on Footpath Preesall 1 running along the sea embankment and ramp to Fluke Hall Lane, Wyre Borough, in accordance with File No. 804-502.

Recommendation

- (i) That the application for a Footpath from a point on Footpath Preesall 1 to 'the public ramp' to be recorded on the Definitive Map and Statement, and shown on the Committee plan by a thick dashed line between point A and point B, in accordance with File no. 804-502, 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 public footpath from a point on Footpath Preesall 1 along the sea embankment and ramp to a point on Fluke Hall Lane on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An application was submitted in 2009 under Schedule 14 of the Wildlife and Countryside Act 1981 for the addition of a public footpath from a point on Footpath Preesall 1 to a location described by the applicants as, 'the public ramp' and shown on the Committee plan by a thick dashed line between point A and point B.

The application was submitted by Pilling Parish Council because, as they explained, the recorded length of Footpath Preesall 1 did not extend as far as the ramp and that it exited the top of the embankment at point A on the Committee plan to continue down a grassy slope and join Fluke Hall Lane at point D on the Committee plan.

The ramp referred to in the application has no recorded public status and the investigations carried out following receipt of the application have therefore also considered the use of the ramp to exit the sea wall onto Fluke Hall Lane (i.e. the route shown on the Committee plan by a bold dashed line between point B and point C).

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 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 route has 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 route to be added or deleted varies in length or location from what was originally considered.

Consultations

Wyre Borough Council

When consulted about the application to add the route A-B the Borough Council commented that the modification appeared to be a reasonable request in order for people to safely leave the embankment by the ramp. They also commented that the route was currently in use and had been for many years.

Preesall Town Council

Both Preesall Town Council and Pilling Parish Council consider this route makes sense with the way public use the footpath at present.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	3890 5001	Junction with Footpath Preesall 1 on top of sea embankment
B	3892 5001	Point on ramp on top of sea embankment
C	3893 5000	Junction with Fluke Hall Lane and Bridleway Preesall 6 at bottom of ramp
D	3891 5000	Junction of Footpath Preesall 1 and Public Bridleway 6 Preesall

Description of Route

A site inspection was carried out by the county council prior to the submission of the application in 2008 and photographs taken recording what the route looked like at that time. These photographs have been used to describe what the route looked like

at that time and a further site inspection was carried out by the Investigating Officer in 2019 to note any changes since that time.

The route applied for commences at point A on the Committee plan which is the point at which the recorded route of Footpath Preesall 1 leaves the concrete surfaced footpath which runs along the top of the sea embankment approximately 20 metres before the concrete path meets the ramp.

From Point A Footpath Preesall 1 is recorded as leaving the top of the sea embankment to descend down a grassy slope onto the route now recorded as Bridleway Preesall 6 at point D on the Committee plan. Whilst the footpath is accessible between point A and point D it is not marked and there is no worn or surfaced track indicating regular use.

A well-trodden route off the top of the sea wall, down the grassy slope onto Bridleway Preesall 6, does however exist 85 metres west south west of point D providing access down from the top of the embankment (Footpath Preesall 1) to a parking layby which was signed in 2008 as a public footpath from Bridleway Preesall 6. In 2019 when the site was re-inspected this sign was no longer present.

From point A the route applied for continues along a concrete surfaced path, approximately 1.8 metres wide for a distance of approximately 20 metres to the open junction with a concrete ramp which provides access from Fluke Hall Lane, over the embankment to the foreshore (point B).

Access onto the ramp is not gated or restricted in anyway and the only signage located on or close to the ramp in 2008 was a Lancashire Constabulary sign stating 'No Unauthorised Vehicles' positioned with reference to access over the ramp onto the foreshore and a small printed notice in a plastic cover stating that the beach was closed to cockling from 31st May 2008 to 30th April 2009.

Painted onto the surface of the route just before point B were the words 'No Cycling' which is something that was repeated at a number of locations along Footpath Preesall 1.


The application submitted by Pilling Parish Council was described as extending from point A to point B which was described as the public slipway onto Fluke Hall Lane.

The slipway has no recorded public status and to access Fluke Hall Lane and Bridleway Preesall 6 it is necessary to walk down the concrete slipway from point B to point C. The slipway is approximately 4 metres wide and access onto it/from it is not gated or restricted in any way.

From point B (on top of the embankment) a tarmac surfaced route existed over the slipway to continue north east along the top of the embankment for a short distance before this route was blocked off by fencing and it was impossible to continue along the embankment towards Pilling. This is not part of the route under consideration.

The total length of the route under investigation is 30 metres.

Map and Documentary Evidence

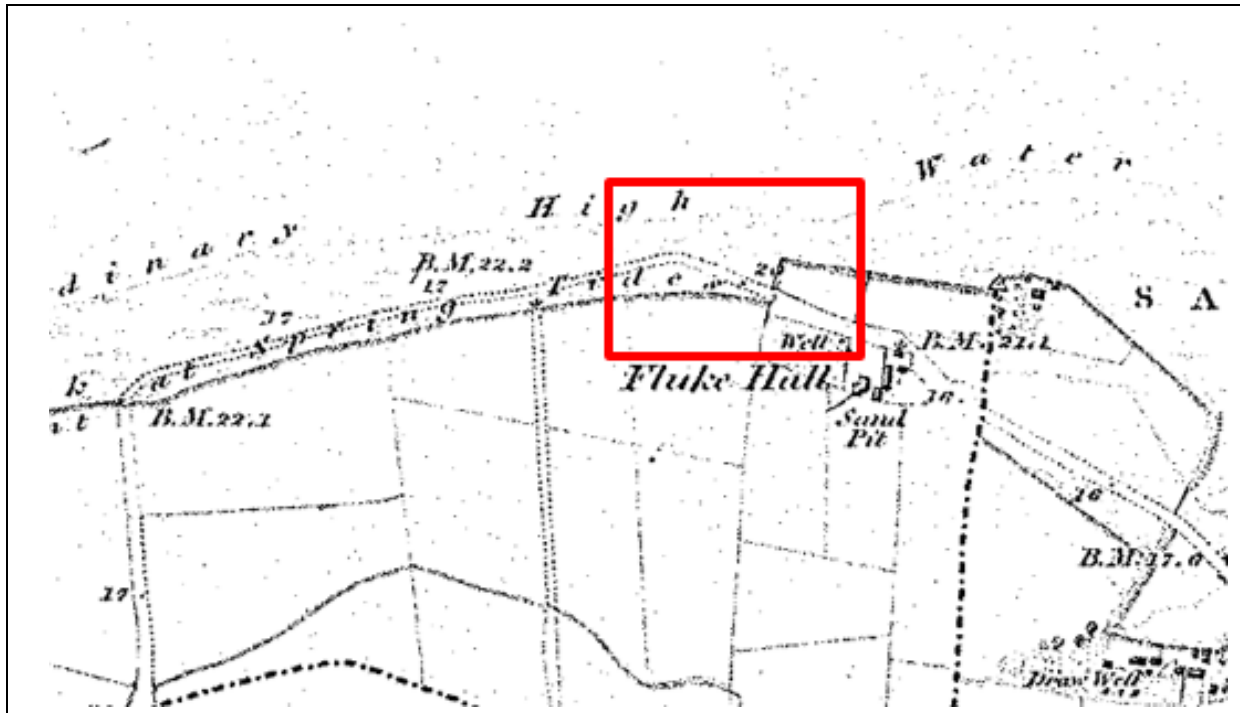
Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
		
Observations		The route under investigation is not shown and the area crossed by it appears to be either undeveloped or foreshore. Fluke Hall and Fluke Hall Lane are not shown on the map.
Investigating Officer's Comments		The route under investigation did not exist as a major route at that time. This map pre-dates the ramp and current embankment. It may have existed as a minor route but due to limitations of scale would not have been shown no inference can be drawn in this respect.
Greenwood's Map of Lancashire	1818	Small scale commercial map.



Observations		The route under investigation is not shown. A 'Hall' likely to be Fluke Hall is marked but Fluke Hall Lane is not shown.
Investigating Officer's Comments		The route under investigation did not exist as a major route at that time. This map pre-dates the ramp and current embankment. It may have existed as a minor route but due to limitations of scale would not have been shown no inference can be drawn in this respect.
Hennet's Map of Lancashire	1830	A further 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 route under investigation is not shown.
Investigating Officer's Comments		The route under investigation did not exist as a major route at that time. This map pre-dates the ramp and current embankment. It may have existed as a minor route but due to limitations of scale would not have been shown no inference can be drawn in this respect.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today,

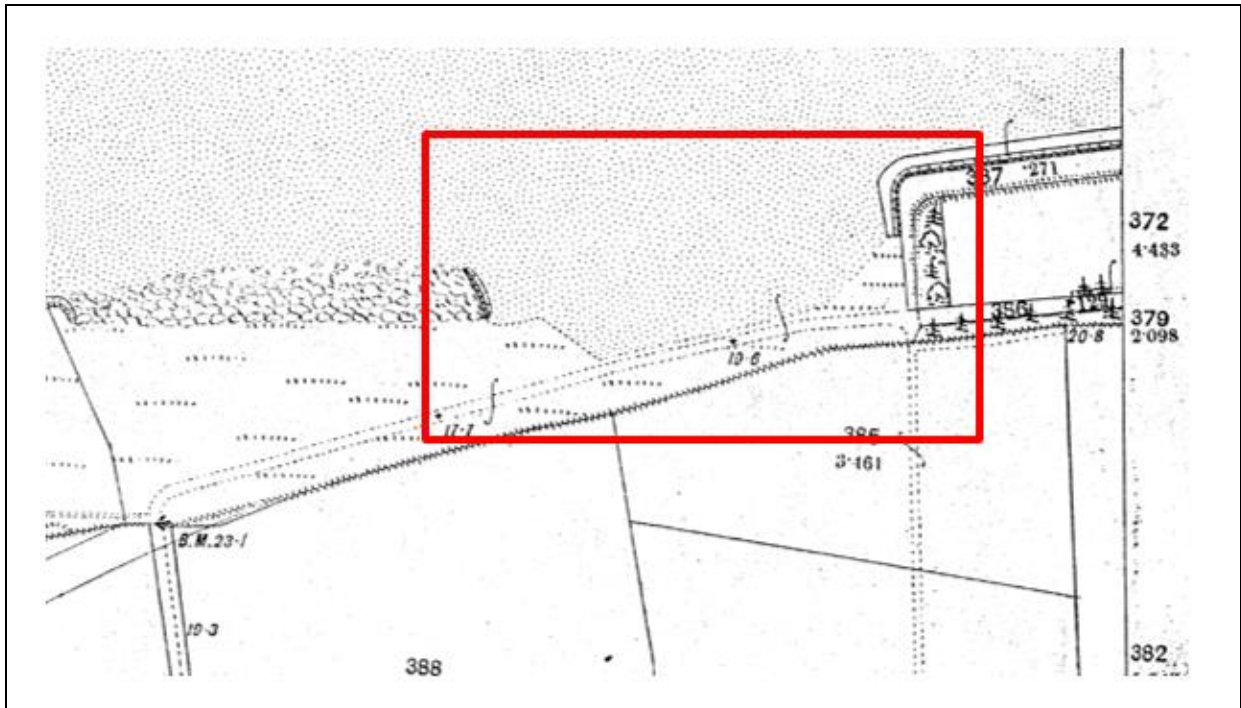
		legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The land crossed by the route under investigation is not affected by any canals or railways and there do not appear to have been any proposals to construct either in the past.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment	1839	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 Preesall with Hackensall was not inspected as its publication pre-dated the construction of the sea wall and ramp.
Investigating Officer's Comments		No inference can be drawn.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award for Preesall.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1848. ¹

¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the

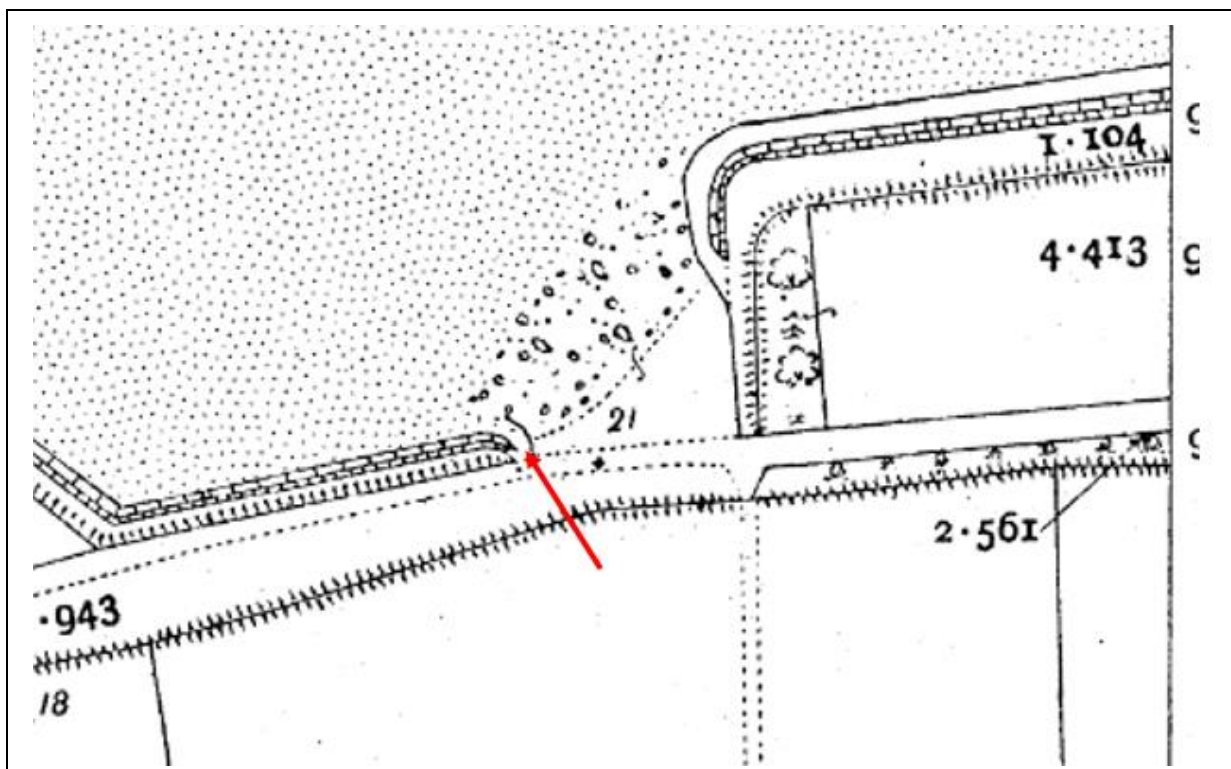


Observations		<p>The route under investigation is not shown.</p> <p>Fluke Hall Lane and the route now recorded as Bridleway Preesall 6 are shown but the sea embankment along which Footpath 1 is recorded to run, and the ramp providing access from Fluke Hall Lane are not shown.</p>
Investigating Officer's Comments		<p>This map pre-dates the ramp and current embankment. The route under investigation did not exist in 1844-45.</p>
25 Inch OS Map	1892	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1892.</p>

time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.

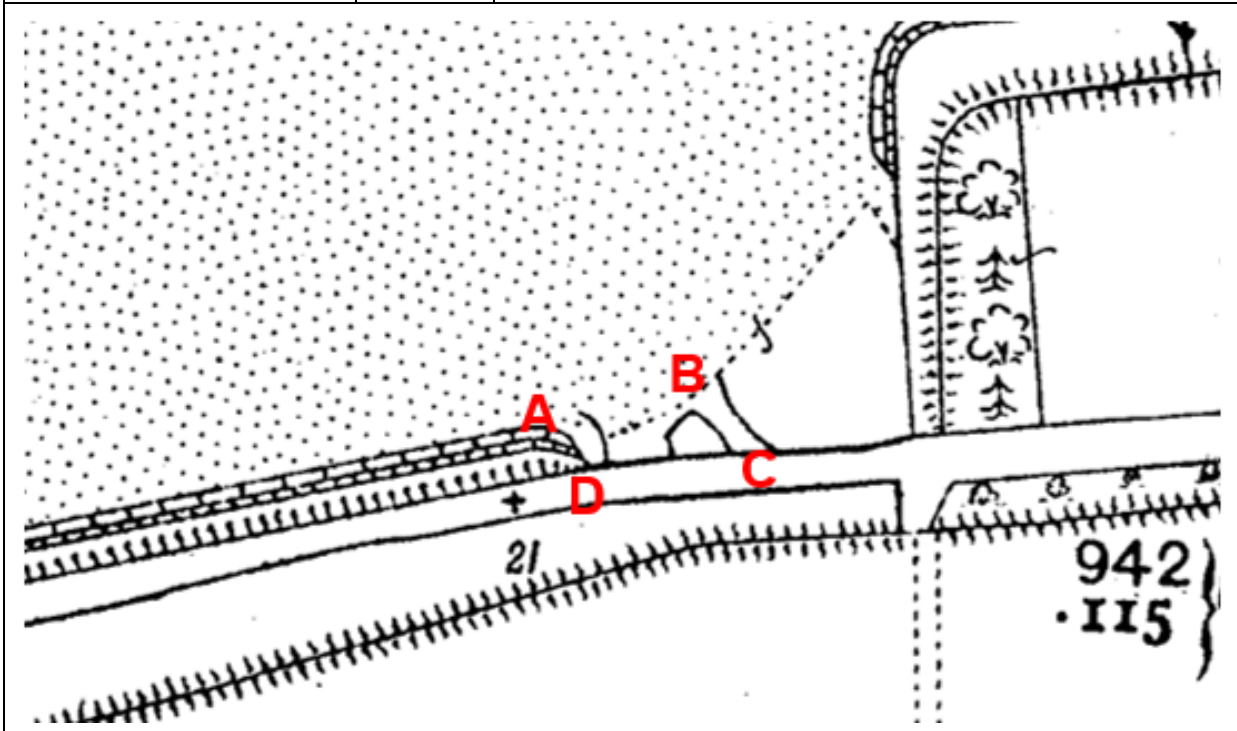


Observations		The route under investigation is not shown. Fluke Hall Lane and the route recorded as Bridleway Preesall 6 are shown but the sea embankment and ramp providing access to the shore are not shown.
Investigating Officer's Comments		This map pre-dates the ramp and current embankment. The route under investigation did not exist in 1890.
25 inch OS Map	1912	Further edition of the 25 inch map re-surveyed in 1890, revised in 1910 and published in 1912.

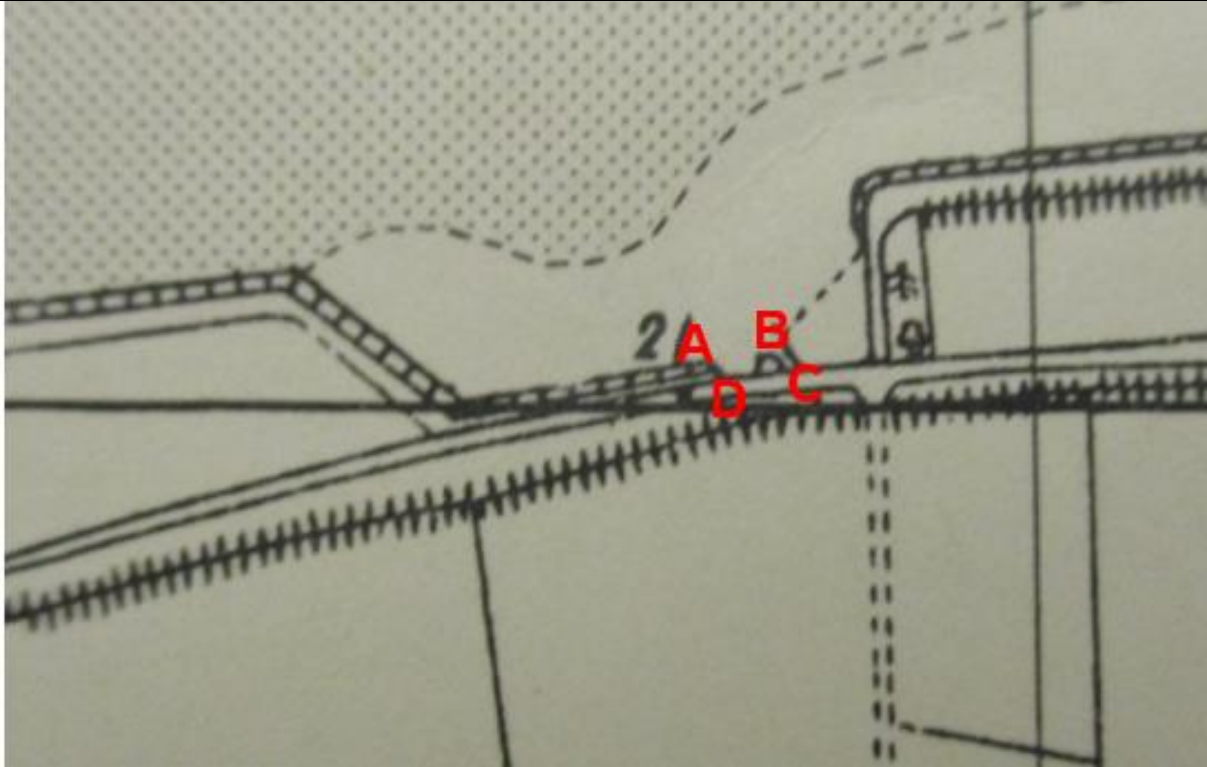


Observations		The sea embankment, or its predecessor, along which Footpath Preesall 1 runs is recorded and shown on the map and there appears to be access from Fluke Hall Lane to the shore. A walked route is not shown along the top of the embankment.
Investigating Officer's Comments		The route under investigation probably did not exist in 1910.
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p>

		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 Finance Act Map was not available to view at the County Records Office.
Investigating Officer's Comments		No inference can be drawn.
25 Inch OS Map	1932	Further edition of 25 inch map (re-surveyed 1890, revised in 1930 and published 1932.

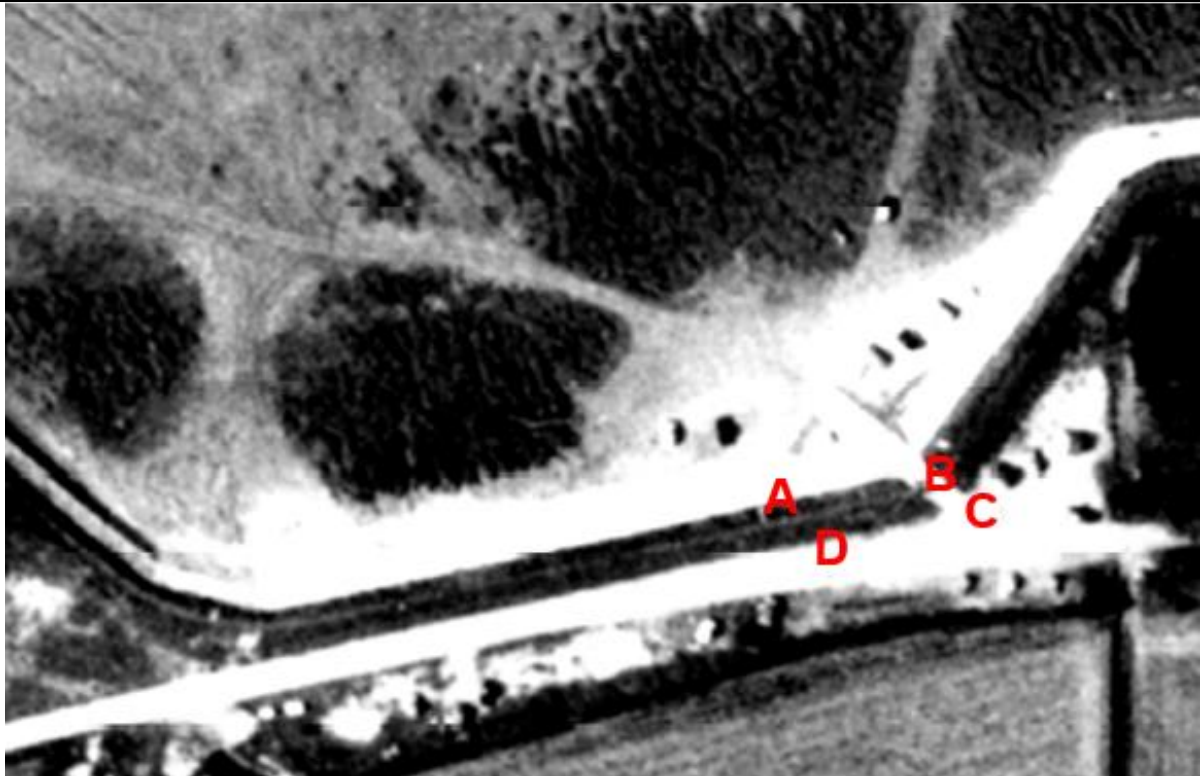


Observations		The route under investigation is not shown. Measurements taken from the map indicate that the sea embankment ended at the approximate position of point A adjacent to an access point onto the shore. A further access is shown between point C and point B that corresponds to the location of the modern day ramp.
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Investigating Officer's Comments		The route under investigation probably did not exist in 1930.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
Observations		No aerial photograph of the land crossed by the route under investigation was available to view.
Investigating Officer's Comments		No inference can be drawn.
6 Inch OS Map	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.
		
Observations		The area is shown in the same manner as it was on the 1932 25 inch map.
Investigating Officer's Comments		The 1955 OS was revised in the 1930s and the 1955 OS map largely reflects what the area looked like at that time. It appears that the route under investigation probably did not exist in the

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

		1930s and although it is not possible to be certain that changes to the sea wall had not occurred by 1955 it is likely that anything significant (for example the extension of the sea wall through to point B) may have been shown.
1:2500 OS Map	1968	Further edition of 25 inch map reconstituted from former county series and revised in 1967 and published 1968 as national grid series.
Observations		The sea wall is shown to have been significantly changed including that it was extended from point A to the ramp at point B. A track (double pecked line) is shown along the top of the embankment between point A and point B. The ramp is shown providing access from Fluke Hall Lane to the shore. Access appears to be available at point B onto the ramp and down the ramp to point C. No path is shown continuing north east along the embankment from point B. Access off the embankment at point A (along the route recorded as Footpath Preesall 1) to point D is not shown and would involve a steep slope.
Investigating Officer's Comments		The route under investigation appears to be capable of being used in 1967 and is the only marked route off the embankment and onto Fluke Hall Lane.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		The aerial photograph shows the route under investigation between point A and point B and clearly shows the ramp between point B and point C. No worn track between point A and point D (the recorded route of Footpath 1) is visible.
Investigating Officer's Comments		The route under investigation existed and appeared to be used in the 1960s.
Aerial Photograph		Aerial photograph taken 18 May 1988 available to view at County Records Office.



Observations		on the photograph and the brightness of the feature suggests that it may have recently been replaced/repared. The ramp between point B and
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		point C also shows up clearly.
Investigating Officer's Comments		The route under investigation probably existed in 1988.
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations		A faint line can be seen along the top of the embankment and the ramp is clearly visible. The faint line extends from point A to point B to meet the ramp and no worn track can be seen between point A and point D.
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Investigating Officer's Comments		The route under investigation appeared to be capable of being used in 2000.
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Aerial Photograph	2010	Aerial photograph available to view on GIS.
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Observations		The route along the top of the embankment can be clearly seen extending through point A to point B onto the ramp. Access onto and over the ramp appears to be available.
Investigating Officer's Comments		The route under investigation appeared to be capable of being used in 2000.
Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way. Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		The route under investigation is in Preesall which is a former Urban District Council. No parish survey map or cards are therefore available.
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.

				right of way
.1	Footpath	Commences at Clarence Avenue runs eastwards along top of sea embankment to Fluke Hall Road. Path varies from being on Grass to Concrete - to loose sand and stones and passes round two defence emplacements and is joined at intervals by paths 2,3,4 and 5 on route.	2-50	Not known
.2	Footpath	Footpath from Shore southwards	0-12	Not known

Observations		No Draft Map was available to view but the route of Footpath Preesall 1 was included in the Draft Statement and was described as being along the top of the sea embankment to Fluke Hall Lane.
Provisional Map		Once all representations relating to the publication of the Draft Map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.



Observations		The route under investigation is not shown on the
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		<p>Provisional Map and there is no record of any representations being made regarding the fact that it was not included. The OS base map used for the production of the Provisional Map was surveyed in the 1930s. The section of map that is relevant to this investigation is on the fold of the map and is not easy to see. Footpath (Preesall) 1 is shown and extends as far as point A on the Committee plan. The section of sea embankment that carries the route under investigation between point A and point B is not shown on the OS base map that was used to produce the Draft Map and the ramp (point B to point C) is not shown.</p>
<p>The First Definitive Map and Statement</p>		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>

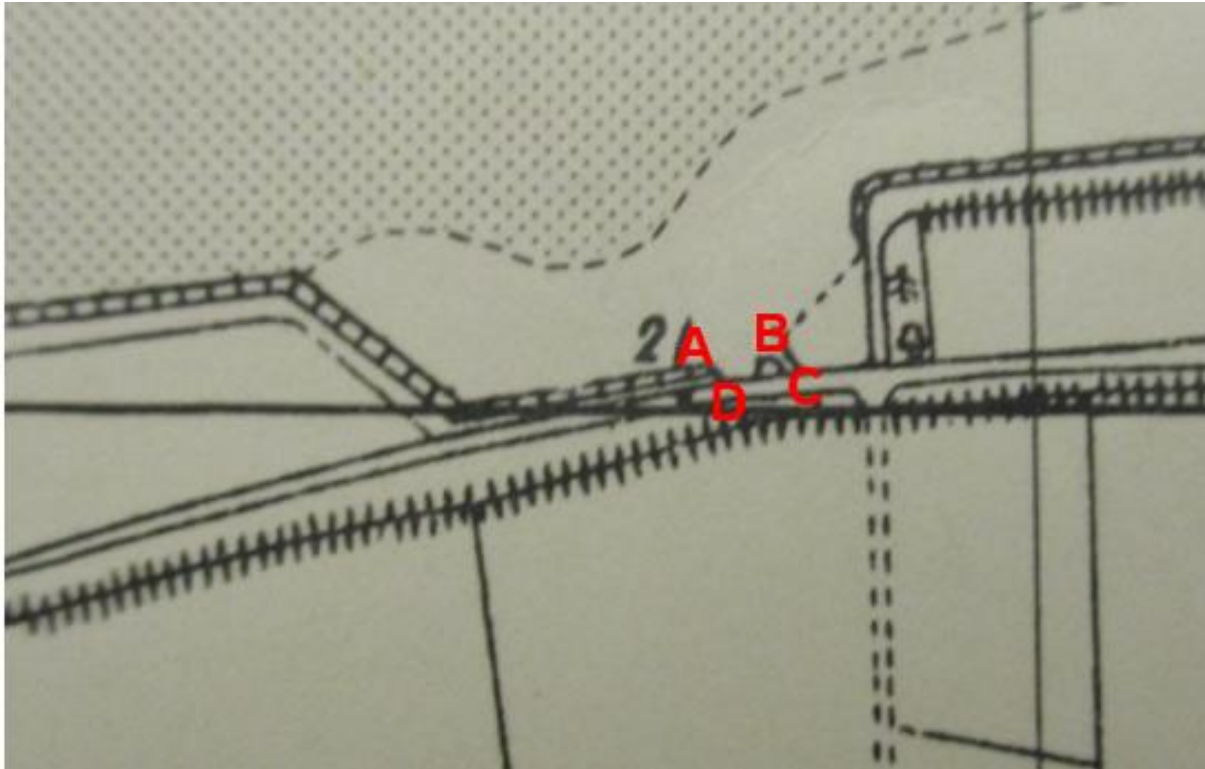


<p>Observations</p>		<p>The route under investigation was not shown on the First Definitive Map and no representations were made to the county council.</p>
<p>Revised Definitive Map of Public Rights of Way (First Review)</p>		<p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25th April 1975 (except in small areas of the</p>

County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.



Extract from the Revised Definitive Map (First Review)



Extract from the 6 inch to 1 mile scale OS base map used for the publication of the Revised Definitive Map (First Review) Revised 1932 & published 1955

Administrative County of the County Palatine of Lancaster
National Parks and Access to the Countryside Act, 1949
System of Definitive Rights of Way Map.

1. No. of Path	2. Kind of Path	3. Position	Length in miles to 2 places decimals
1.	Footpath	Commences at Clarence Avenue runs eastwards along top of sea embankment to Fluke Hall Road; path varies from being on grass to concrete - to loose sand and stones and passes round two defence emplacements and is joined at intervals by paths 2,3,4 and 5 on route.	2.50

Observations

The route under investigation is not shown. Footpath Preesall 1 is described as running along the sea embankment to Fluke Hall Lane but there is no description of how the route exits the embankment to join the road. The OS base map used to produce the map was of a small scale which limited the detail that could be shown and in this particular case the section of embankment and ramp – which existed by at least the 1960s – were not actually shown on the OS base map used to draw the routes of the public rights of way on.

Investigating Officer's

It appears that from the 1950s through to 1973

Comments		<p>there is no indication that the route under investigation was considered to be public right of way by the Surveying Authority. There were no objections or representations made with regards to the fact that the route was not shown on the map when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.</p> <p>However, as the Definitive Statement is unclear how the footpath exactly got to Fluke Hall Lane and the map was drawn at a small scale and using a base map which did not show the section of sea embankment and ramp which were in existence in the 1960s it is possible that the route under investigation may have been the route used by the public at that time.</p>
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		<p>No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the route under investigation runs.</p>
Investigating Officer's Comments		<p>There is no indication by a landowner under this provision of non-intention to dedicate public rights</p>

		of way over their land.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
Observations		There is no Handover Map deposited in the county records office for the area crossed by the route under investigation and the route is not recorded as being publicly maintainable on the List of Streets by the County Council.
Investigating Officer's Comments		No inference can be drawn regarding the existence of public rights.
Information obtained from LCC PROW parish files	1950 - 2015	A search was made of the Lancashire county council public rights of way files for the parish of Preesall.
Observations		<p>Records searched indicated that the sea wall was subject to two temporary closure orders in the 1980s to allow North West Water to carry out works to improve the sea wall. The first closure order was made on 2nd July 1984 for a period of three months and was described as closing the path along the sea embankment to the point 'where Public Footpath No. 1 Preesall leaves the embankment.' No plan showing the extent of the closure was attached.</p> <p>The second closure Order came into force on 6th April 1987 and remained in force until 6th</p>

		November 1987. It was described as including that part of Footpath 1 Preesall from its junction with Footpath 3 Preesall, for a distance of 1980 metres to its junction with Fluke Hall Lane. No plan was attached to the Order.
Investigating Officer's Comments		The closure Orders would have affected use of the route in 1984 and 1987 whilst work was carried out to improve the sea embankment.
Pilling Parish Council website		Details about the history of the embankment on Pilling Parish Council website.



Pilling Embankment

Observations		The website explains that the embankment north of Fluke Hall Lane to Lane Ends car park was constructed in 1981 and that access is allowed on a concessionary basis along the route on the attached plan. There appears to be no public access from the ramp at point B along the embankment in a north westerly direction until you reach Pilling embankment as shown on the plan.
Investigating Officers comments		There is no public access along the embankment north east of the ramp at point B which would indicate that people walking along the embankment from Knott End/Preesall to Fluke Hall Lane would need to exit the sea embankment along the route between points A-B-C (if not before) and if they did cross the slipway would not have been able to continue along the embankment towards Pilling.

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

Landownership

The majority of the land crossed by the route under investigation is in the registered landownership of the Holden Family of Proctors Farm, Pilling Lane, Preesall, FY6 0HH. Title numbers LA931180 and LAN149004.

The remaining small proportion of the land crossed by the route under investigation is registered in the landownership of Mrs Mary Whiteside of New Ridge Farm, Fluke Hall Lane, Pilling, Preston, Lancashire PR3 6HQ. Title Number LAN72125.

Summary

The route under investigation did not physically exist until at least the 1930s. The sea defence wall between point A and point B is shown to have existed by the 1960s (as shown on aerial photographs and the 25 inch OS map revised in 1967 and published 1968). The exact date of its construction is unknown and when the Definitive Map was prepared in the 1950s it appears that the route of Footpath Preesall 1 was only considered to extend as far as the original section of sea wall that terminated at point A.

From the 1960s until the present time the map and photographic evidence examined supports the user evidence and suggests that the route under investigation was capable of being used. It appears likely that once the section of sea wall extending from point A to the ramp (point B) had been constructed this was more likely to be the route used by people walking the route of Footpath 1 as opposed to traversing the steep bank between point A and point D.

No documentary evidence relating to the public status of the ramp crossed between point B and point C has been found although it clearly existed and was accessible from the route between point A and point B from the 1960s.

The 1988 aerial photograph shows the embankment and ramp as being recently repaired/improved which is consistent with the information that temporary closure notices were in place for Footpath 1 in 1984 and 1987 but which would have affected use of the route at that time.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The Applicant, Pilling Parish Council, submitted an application for a Modification Order on 9th November 2009. Along with this, they submitted 46 User Evidence Forms, a MARIO map showing the route in red and photographs of the location as it appears at present.

The User Evidence Forms that were completed in 2009 report usage of the route to or from Fluke Hall Lane, via 'the ramp', going back as far as 1929 and up to 2009

when the application to record the right of way was made. 23 people report 40+ years of regular usage. 24 of the users reported using the route more than once a month and of those 24, claimed use varies between 'at least 730 times' per year and 15-20-times per year.

Duration and Frequency of Usage					
Less than 20 Years Use	20-39 Years Use	40-49 Years Use	50-59 Years Use	60+ Years Use	Unspecified
14	10	11	2	7	2
Of these 14, 1 user reported use of at least 730 times a year, 1 at least 4 times a week, 1 at 150times a year, 1 around twice a week, 1 in excess of 100 times per year, 1 at 52 times per year, 3 at 25 times plus per year, 2 at 12 times per year and 1 at 10 times per year. 1 failed to identify frequency and another was 'unable to say'	Of these 10, 1 user reported use as 365 days per year, 1 at 100-150 times per year, 1 approximately 30 times per year, 2 at 20 times per year, 1 at 10 times per year and 4 at less than 10 times per year.	Of these 11, 1 user reported use as 'almost daily', 1 at least once a week, 1 at 50 times per year, 1 at 40 times per year, 1 at 20 times per year, 1 at 11 times per year and 5 at 10 times per year or less.	Of these 2, 1 user reported use of a minimum of 52 times per year/at least once a week and 1 user at 30 times per year..	Of these 7, 1 user reported use at 5 days per week, 1 at 3 or 4 times per week, 1 at 15-20 times per year, 1 at once a month, 1 at 10 times per year, 1 at '5ish' times per year and 1 reported use as 'Often'.	Of these 2, 1 user reported use as 'several times a year' and 1 reported use twice per week 'most years since being a child' (user born in 1961).

44 of the 46 users reported using the route on foot. Other reported usage consisted of vehicular, horseback and bicycle and the most common reason of use reported was for pleasure and enjoyment.

Mode of Use			
On Foot	Bicycle	Horseback	Vehicular
44	16	19	8
Of these 44, 31 have used the route on foot for 20 or more continuous years.	Of these 16, 9 have used the route on bicycle for more than 20 continuous years. 3 have failed to specify exactly when or for how long they used the route via bicycle. Use has been reported between 1930 and 2009 on bicycle.	Of these 19, 5 have used the route on horseback for more than 20 continuous years. Use has been reported between 1944 and 2009 on horseback.	Of these 8, 4 have used the route via a motorised vehicle for more than 20 continuous years. 2 have not specified. Use has been reported between 1965 and 2009 via vehicle.

Reason for Use		
Pleasure and Enjoyment	Dog Walking	Other/not specified
29	15	2

Of the 46 Forms submitted, nobody reported ever being prevented from using the route or being told that there was not a public right of way on foot. One User reported that, recent to 2009, a police sign went up which read "no unauthorised vehicles", this however does not discourage use on foot. Two users mention stiles but these appear to be off the route that is under investigation. Another user mentions 'large stones (boulders)' blocking the way during 2001 due to foot and mouth regulations, which were later removed. The user states that horses could get past but not cars. It is not made clear whereabouts on the route this may have taken place. The remaining 43 user evidence forms report that there were never any obstructions on the route under investigation.

41 of the 46 Users reported that to their knowledge the way has always run over the same route. In response to this question, the other 5 users stated as follows:

- 'more or less'
- 'very much the same'
- 'roughly same route'
- 'believe changes made in 1984'
- 'to my knowledge since the sea wall was re-done after the 1977 floods'

Nobody reported having ever been given permission to use the route.

9 people make reference to either using the route with others or seeing others using the route. This includes using the route with friends and family, some reporting the

use over several generations including with children, grandchildren and great grandchildren.

Family	Friends	Strangers	Clients
<p>4 people reported using the route with immediate family.</p> <p>2 of those people also reported using the route with children, grandchildren and great grandchildren.</p>	<p>3 people reported using the route with friends.</p>	<p>3 people reported seeing 'the community, residents and visitors' using the route on a regular basis.</p>	<p>1 person reported using the ramp as a means of disability access for clients when working as a care assistant.</p>

Information from Others

A response was received from a nearby landowner, Mr Wells, who was concerned that the application may affect his land. A copy of the plan and a guidance leaflet was sent to Mr Wells' Solicitor. Mr Wells replied on 20th April 2010 asking what would be gained by the proposed modification and pointed out that there was an existing sign saying no cycling on the path in question.

Information from the Landowner

Mr Raymond Holden wrote to LCC on 24th March 2010 to fully support the order, which he said reflected the public usage over many years.

Since the Original Application Mr Holden has also registered his three sons as landowners to his land. They have since been consulted and comments invited. Mr Graham Holden Contacted LCC via telephone where he verbalised that he supported the order.

Mrs Whiteside did not respond to the Consultations.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

- There is consensus that the footpath reflects the public use and will provide a way for the public to safely leave the embankment by the ramp.
- Substantial user evidence.
- Absence of signs and notices along the route stating that the route was not public.
- Absence of action taken by landowners to discourage use of the route.

- Map and other documentary evidence supporting the physical existence of the route since at least the 1960's.

Against Making an Order(s)

Conclusion

The application is that the route A-B has already become a footpath in law and should be recorded on the Definitive Map and Statement of Public Rights of Way.

Committee will note that the application was described as extending from point A to point B, referred to as the public slipway onto Fluke Hall Lane. The slipway currently has no recorded public status. However, to access Fluke Hall Lane it is necessary to walk down the concrete slipway/ramp from point B to point C. The route under investigation therefore also includes the additional section of the route B-C and the evaluation is on this basis.

It is advised that as there is no express dedication that Committee should consider, on balance, whether there is sufficient evidence from which to have its dedication inferred at common law from all the circumstances or for the criteria in section 31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years "as of right" use to have taken place ending with this use being called into question.

Considering initially whether there are circumstances from which dedication could be inferred at common law. It is advised that Committee has to consider whether evidence from the maps and other documentary evidence coupled with user evidence indicates that it can be reasonably inferred that in the past the landowner(s) intended to dedicate the route as a public right of way.

The analysis of the map and documentary evidence indicates that the route under investigation A-B existed from at least the 1960s. From the 1960s the evidence supports the physical existence of the route A-B and the evidence of use and suggests that the route under investigation was capable of being used. Whilst no documentary evidence as to the public status of the ramp shown on the route between points B and C has been located, it is clear that this section of the route existed and was also available for use from the 1960s.

Sufficient as of right use acquiesced in by the owners may also be circumstances from which dedication can be inferred. From looking at the user evidence it would appear that there has never been any clear action by owners to prevent use by the public and use by the public has continued for many years such that, on balance, there may be sufficient evidence from which to infer dedication at common law.

Looking secondly at the criteria for a deemed dedication under section 31 of the Highways Act 1980, use of the route needs to be by the public 'as of right' (without force, secrecy or permission) and without interruption over a sufficient 20 year period immediately prior to the route being called into question. In this matter, the evidence indicates that access to the route was denied for two periods during 1984 and 1987 as a result of temporary closure orders to allow North West Water to carry out works

to improve the sea wall. However, whilst it is acknowledged that the temporary closure orders were in place, none of the users refer to the same or indicate that use was prevented as a result of such. Accordingly, it is suggested on balance that the "calling into question" would be the application itself in 2009 and that the 20 year period under consideration for the purposes of establishing deemed dedication would therefore be 1989-2009.

The applicant has provided 46 user evidence forms in support of the application which show use of the route from as early as 1929. All users have provided evidence of use during the period under consideration. A number of users have also made reference to having used the route with others or having witnessed other users whilst using the route. 44 of the users claim to have used the route on foot on a regular basis 'as of right' with others also referring to having used the route on pedal cycle, on horseback and vehicular use. Whilst one user refers to large stone boulders blocking the way in 2001 due to foot and mouth, it is also stated that these did not prevent use on horseback, only by vehicle. In any event the Planning Inspectorate Advice Note 15 (Breaks in User caused by Foot and Mouth Disease) provides that 'it does not seem that the temporary cessation of use of ways solely because of the implementation of measures under the Foot and Mouth Disease Order 1983 could be classified as an "interruption" under section 31(1).'

Whilst, in addition to use on foot, reference is made to vehicular use, use on pedal cycle and on horseback it is suggested that there is a lack of clear evidence provided on the user forms indicating which parts of the route, if any, were used by these other users with evidence provided such as 'going on and off the beach at Fluke Hall', 'access horse to the shore' and 'used the bridleway on horseback'. In addition to this, officers of the county council recall that in the early 1990's there were reports of unlawful use of Footpath Preesall 1 by horse riders and cyclists and that this involved the erection of signs by public rights of way officers. From hereon in at the latest, it is therefore that use on horseback and by cyclists was questioned/challenged. In addition to this there is the Lancashire Constabulary sign located on or close to the ramp stating 'No Unauthorised Vehicles' and painted signage present along the route and Footpath Preesall 1 stating 'No Cycling'.

None of the users recall having ever been told that the route was not a public right of way, nor do any users refer to having been turned back or having asked permission to use the route. It is therefore suggested that there is sufficient evidence of use of the claimed route by the public as of right to raise a presumption of dedication for the period 1989-2009.

A representation has been received from a nearby landowner expressing concerns with regards to how the application may affect the land. However, whilst this representation is acknowledged, it is submitted that the concerns are not relevant considerations under either s31 Highways Act 1980 or under common law.

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

Committee is therefore advised to accept the application, make an Order and promote the Order to confirmation.

Risk Management

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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-502		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

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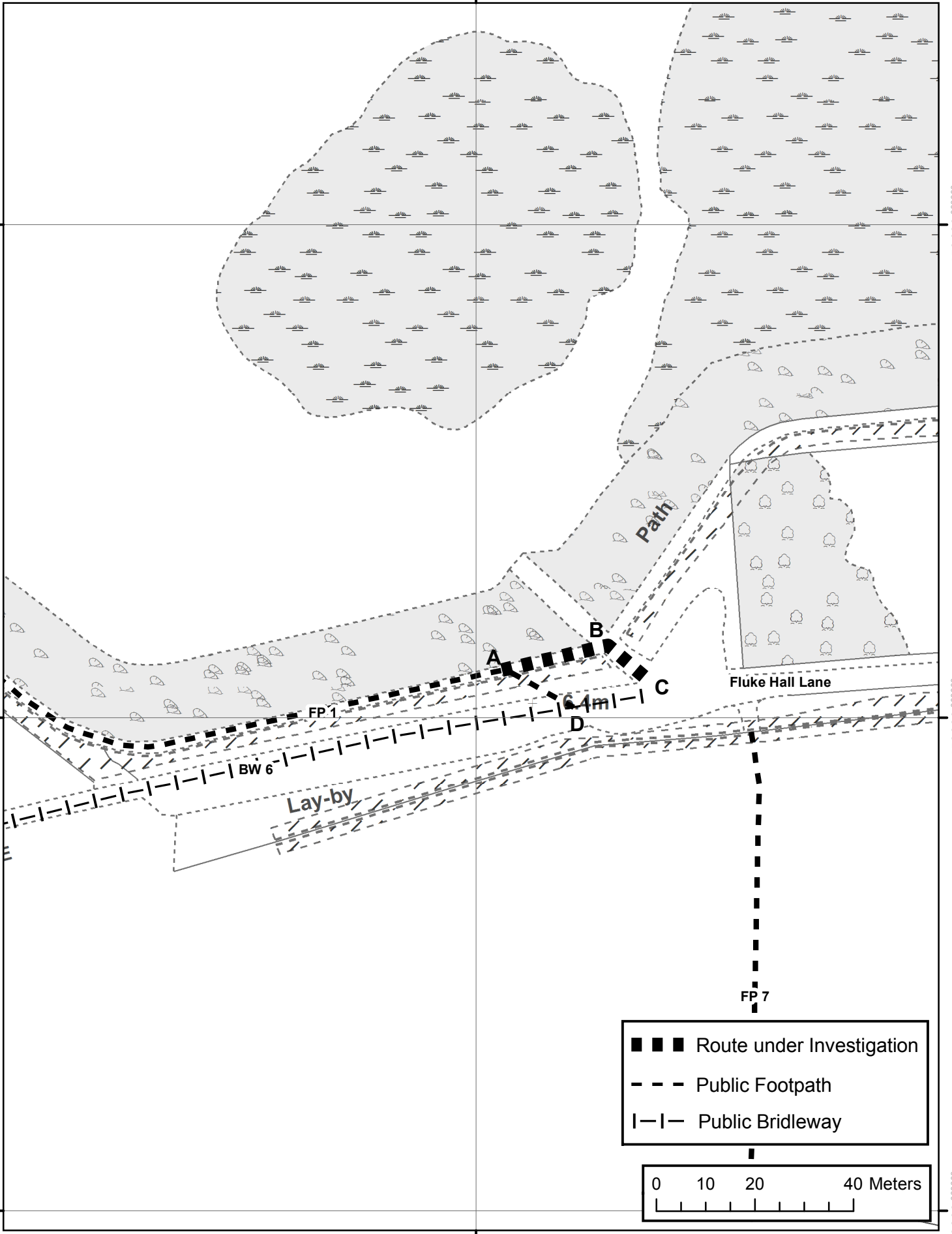
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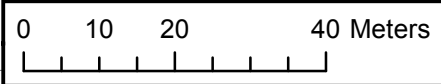
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■ ■ ■	Route under Investigation
- - -	Public Footpath
- -	Public Bridleway



Andrew Mullaney
Head of Planning and Environment

Wildlife and Countryside Act 1981
Addition of public footpath from Public Footpath 1 Preesall to
Fluke Hall Lane, Preesall, Wyre Borough

1:1,000



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

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Regulatory Committee

Meeting to be held on 11 March 2020

Part I

Electoral Division affected:
Preston West

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of Footpath between Lightfoot Lane and Tanterton Hall Road, Preston

File No. 804-379a

(Annex 'A' refers)

Contact for further information:

Simon Moore, 01772 5331280, Paralegal Officer, Legal and Democratic Services,
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Jayne Elliott, 07917 836626, Public Rights of Way, Planning & 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 footpath lengths between Lightfoot Lane and Tanterton Hall Road, Preston, in accordance with file 804-379a.

Recommendation

- (i) That the application to add to the Definitive Map and Statement footpath lengths between Nog Tow and Tanterton, Preston, in accordance with file 804-379a, be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add two footpaths between Lightfoot Lane and Tom Benson Way and between Tom Benson Way and Tanterton Hall Road, Fulwood, Preston City to the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C and D-E-F-G-H-I-J-K-L.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

In 2000, an application under Schedule 14 of the Wildlife and Countryside Act 1981 was received for the addition of a number of footpaths which were described by the

applicant as being situated on land forming part of Ingol Golf Course and as having been provided by the former Central Lancashire Development Corporation.

Five separate sets of routes were listed and numbered 1 to 5 and evidence in support of each route was provided.

The application was originally submitted by the Area Footpath Secretary of the Ramblers Association (Mid Lancashire Area) but sadly, since submission, the applicant has died.

Soon after the application was submitted, research was carried out by two former members of the county council's Public Rights of Way team and initial consultations carried out but reports were never prepared or presented to the Regulatory Committee and the officers originally involved in the investigation have subsequently retired. Various development proposals were thought likely to accommodate the routes but this has not been achieved. Further work has now been done to get the reports finalised.

The original application made by the Ramblers Association was split down into five separate ones. The bulk of the evidence provided by the Applicant in support of the applications consisted of completed user evidence forms and on a review of the application bundle it has been decided to consider each route separately.

This report considers the route referred to as 'Route 1' – the addition of footpath length from Lightfoot Lane to Tom Benson Way and continuing to meet Footway F8513 at Tanterton Hall Road. It is shown between points A-B-C and D-E-F-G-H-I-J-K-L on the Committee plan.

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

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

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

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

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

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 (as explained in

Planning Inspectorate's Advice Note No. 7) makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate's website also gives guidance about the interpretation of evidence.

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

Consultations

Preston City Council

The City Council were consulted and responded explaining that the areas of land in Council ownership adjacent to the golf course were transferred from the Commission for the New Towns in January 1999 and that the Estates Section of the City Council had no comments to make regarding this land.

Comments from the City Council Highways Department (as they dealt with some Highways functions at that time) confirmed the physical existence of the paths claimed by the Ramblers Association and the department states that they have always been aware of the paths and that they were created by the Central New Towns Commission. They could offer no evidence of use of the paths but reported that they had received numerous enquiries from the public about the condition of the paths and had observed that local residents believed the paths to be public footpaths.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	5106 3323	Open junction with Lightfoot Lane north east of 147A

		(Thorpe Lodge)
B	5108 3319	Wooden stile across the route
C	5109 3317	Open junction with north side of Tom Benson Way adjacent to 149 Lightfoot Lane
D	5109 3316	Open junction with south side of Tom Benson Way directly opposite point C
E	5107 3311	Route crossed by old field boundary and original site of wooden stile
F	5103 3309	Edge of woodland
G	5101 3307	Ditch crossing
H	5096 3305	Ditch crossing
I	5091 3303	Edge of woodland adjacent to boundary of New Rough Hey Housing Estate
J	5093 3299	Edge of woodland
K	5109 3290	Fence across the route
L	5113 3283	Open junction with Footway F8513 at Tanterton Hall Road

Description of Route

The application was submitted in 2000 but a site inspection was not carried out by the county council until 2006. Although the route has recently been inspected because the application relates largely to user evidence predating 2000 details of the 2006 site inspection are included in this report rather than a detailed description of the site in 2016 because the 2006 inspection provides a better indication of what existed on the ground closer to the time that the routes were said to have been used.

Route A-B-C

The route is approximately 70 metres long and commences on Lightfoot Lane, at point A on the Committee plan. In 2006 it was reported that there was a grey metal post to the westerly side of the start of the route. The officer carrying out the site inspection considered that the post appeared to have been a footpath direction sign although noted that the fingerpost was missing. The route was described as extending from the rear of the footway, over a macadam surface. After approximately 4 metres the surface changed to stone and remained approximately 2 metres wide and in good condition. There was a timber panel fence to the easterly side with a mature hedge to the westerly side. After approximately 30 metres a timber panel fence took the place of the hedge.

At point B on the committee plan it was reported that there was a substantial timber, two-step stile between the two timber panel fences. This stile was in very good condition and the officer carrying out the investigation considered that it had been installed by the Central Lancashire Development Corporation.

From point B it was reported that the stone surface continued for approximately 15 metres with the timber fence to the westerly side and an open grass verge to the east to Tom Benson Way, B6241, at point C.

In summary, in 2006 the whole of the claimed route between point A-C was reported to be clear and easily available for public use with a firm and level surface throughout. The stile at point B was of the design used by the Development Corporation and the route appeared to have been signed in the past.

When the route was re-inspected in 2016 it was found still to exist on the ground. The remains of a metal post was still visible at point A and the wooden stile still existed at point B. The route was overgrown but passable.

Route D-E-F-G-H-I-J-K-L

The route is approximately 565 metres long between points D-E-F-G-H-I-J-K-L.

The route commences on the south side of Tom Benson Way directly opposite point C. In 2006 it was reported that access onto the route at point D was open and unrestricted but that between point D and point E the route was inaccessible due to overgrowth. A trodden route from point D heading in a more southerly direction was reported to exist which provided access to the golf course and then south west to meet point E.

At point E there was a timber, two-step stile, in a section of timber railing fence which appeared to the officer making the inspection to have been installed by the Development Corporation and was reported to be in good condition. The area around the stile was badly overgrown and inaccessible.

From point E the route claimed continued in a west south westerly direction along the edge of the golf course following a faint trodden path before entering the woodland at point F near a stone gatepost with white paint on its top part.

It was noted that the route through the woodland was difficult to identify and there was no visible path through the planting although the trees had been planted in rows, which could easily have accommodated a route between. Storm damage and lack of maintenance was referred to which had resulted in branches falling onto the ground along the route claimed and making access difficult.

At point G there was a wooden railway sleeper crossing of small dry ditch. It was described as being a single sleeper in poor condition.

At point H there was a second damaged railway sleeper ditch crossing on the claimed route, which was noted as originally being 10 sleepers wide. Although it had suffered from damage and rotted, it could still be used with care. The ditch that it crossed was noted as being shallow and dry, even after a prolonged period of heavy rain when the inspection was carried out.

Further brambles and overgrowth were reported on the section leading from point H to point I and then south east to point K with various alternative paths through and into the woodland referred to.

From point I the route was described as running generally parallel to metal fence enclosing the housing development to the west.

The route from point I to point J was described as being divided from this development by a metal security fence with no formal access available from the development, although there was an area where the fence had been damaged and access had been gained onto the golf course. This length of the claimed route was noted as being available for use although there was no trodden path visible and there were areas where rubbish had been left on the land causing obstructions.

From point J to point K the route was reported to be overgrown with various trodden routes through and round the overgrowth but with no clearly defined use of the claimed route.

At point K the route was blocked by metal security fencing and to the south east of the fencing were four concrete bollards positioned across the route. Beyond that a clearly defined and laid out pathway existed along the north eastern perimeter of the housing development but was largely overgrown and obstructed by garden waste through to point L where it met the adopted footway on the north side of Tanterton Hall Road, U 10657, at the point where the footway from the east and the footway from the south and west join. A section of brickwork across the path at a low level which could be stepped over was reported at point L.

In summary, it appeared to the officer carrying out the site inspection in 2006 that a route was originally laid out by the Development Corporation along the alignment of the route claimed including sections of surfaced path, a route through the woodland with sleeper crossings of ditches, and stiles in sections of fences but that since the provision of this route it had become overgrown and obstructed at various locations with members of the public making unofficial alternative routes to avoid them.

When the route was re-inspected in 2016 there was no visible trace of the route between point D and point E. The stile at point E was no longer in existence and although various trodden pathways existed across the land and through the woodland most of the route between points E-F-G-H-I-J-K was overgrown and difficult to follow. The security fencing blocking access at point K was still in place and concrete bollards still evident. Between point K and point L the laid out, surfaced section of the route was visible and passable with much of the garden waste and overgrowth that covered the route in 2006 having been removed.

Map and Documentary Evidence

A variety of maps, plans and other documents were examined to discover when the route came into being, and to try to determine its status. The route is not shown on any of the early commercial maps, the Tithe Map of Broughton dated 1839 or OS maps published in 1849, 1893, 1912, 1932, 1938, 1961 or 1978. Neither is it shown on the aerial photographs taken in the 1940s or 1960s.

The route crosses land which is within an area which was designated as the Central Lancashire Development Corporation. A Development Corporation was a body set up across parts of England and Wales and charged with the urban development of an area. It operated under the New Towns Act of 1965, outside the usual Town and Country Planning legislation.

The Central Lancashire New Town (Designation) Order was approved on 14 April 1970 and the Development Corporation formerly constituted on 17 February 1971. The Commission was in existence for 16 years until it was formally dissolved on 31 March 1986 and during that time the area to the north of Preston – referred to as Ingol East – underwent significant development.

The application route came into existence as part of the development of Ingol East – with particular reference to an Extinguishment Order under The New Towns Act 1965, which was made on 29th June 1978 by the Secretary of State for the Environment. The New Towns Act gave the power to extinguish existing public rights of way to allow for development, and alternative paths were often shown on plans accompanying extinguishment orders. The New Town Commission could create new highways like any other owner.

The routes claimed were described in the application as having been provided by the former Central Lancashire Development Corporation as a replacement for Fulwood Footpath 49 and Lea Footpath 43 which were extinguished by the 1978 Order and further details of the order and evidence post-dating the designation of the area as part of the Central Lancashire New Town are detailed below and assessment made of the relevant map and documentary evidence discovered:

Document Title	Date	Brief Description of Document & Nature of Evidence
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the county council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the county council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the county council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for</p>

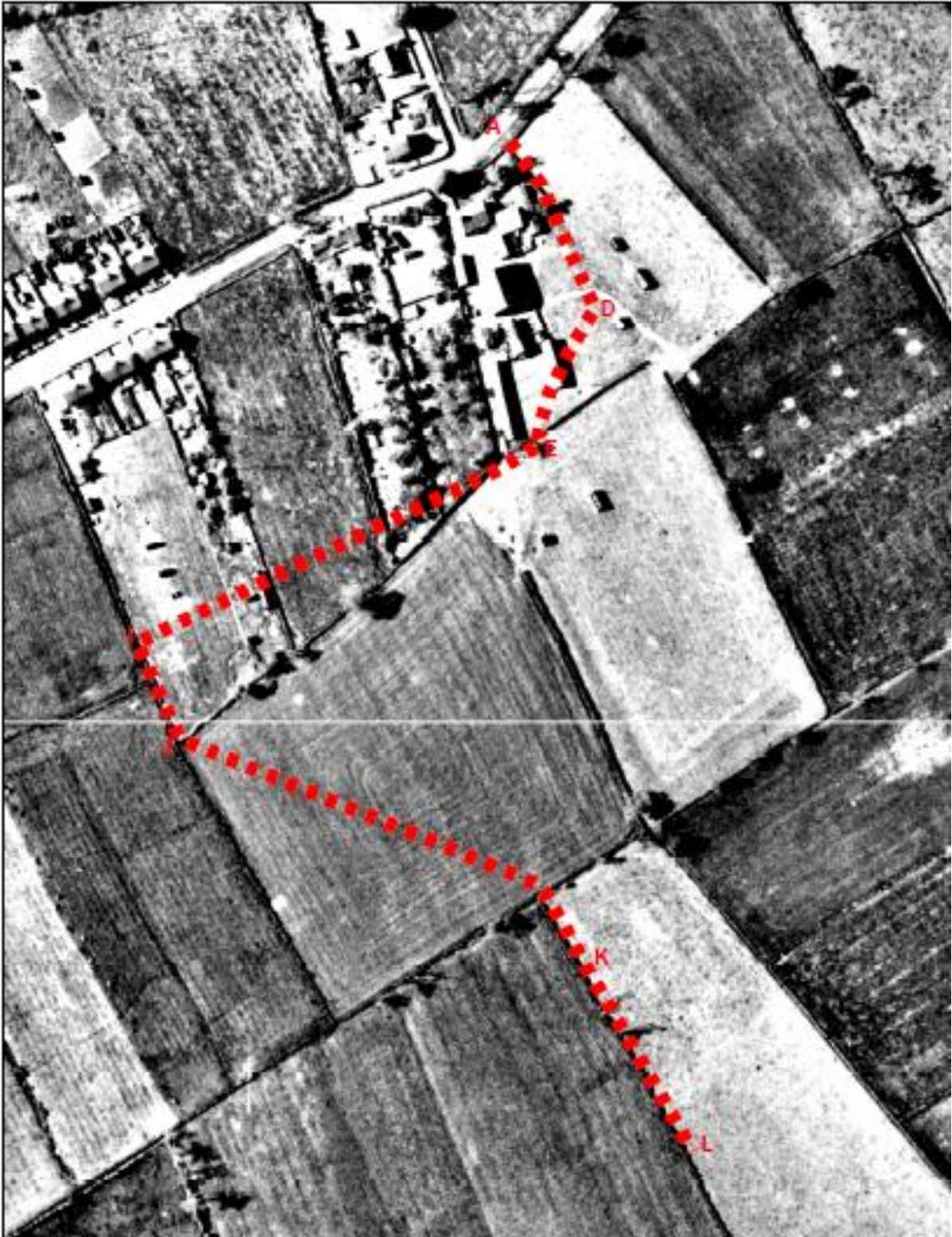
		most parishes but not for unparished areas.
Observations		Fulwood was an Urban District Council for which no parish survey was carried out.
Draft Map		The Draft Maps were given a “relevant date” (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft 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 routes under investigation were not shown on the Draft Map of Public Rights of Way for Fulwood and there were no representations made to the county council in relation to it.
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 routes were not shown on the Provisional Map of Public Rights of Way for Fulwood and there were no representations made to the county council in relation to it.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The routes were not shown on the First Definitive Map and Statement.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April

		<p>1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process. By 1975 Central Lancashire Development Corporation had been in existence only four years and had just achieved its planning consent and extinguishment of footpaths 49 and 43 had not yet happened.</p>
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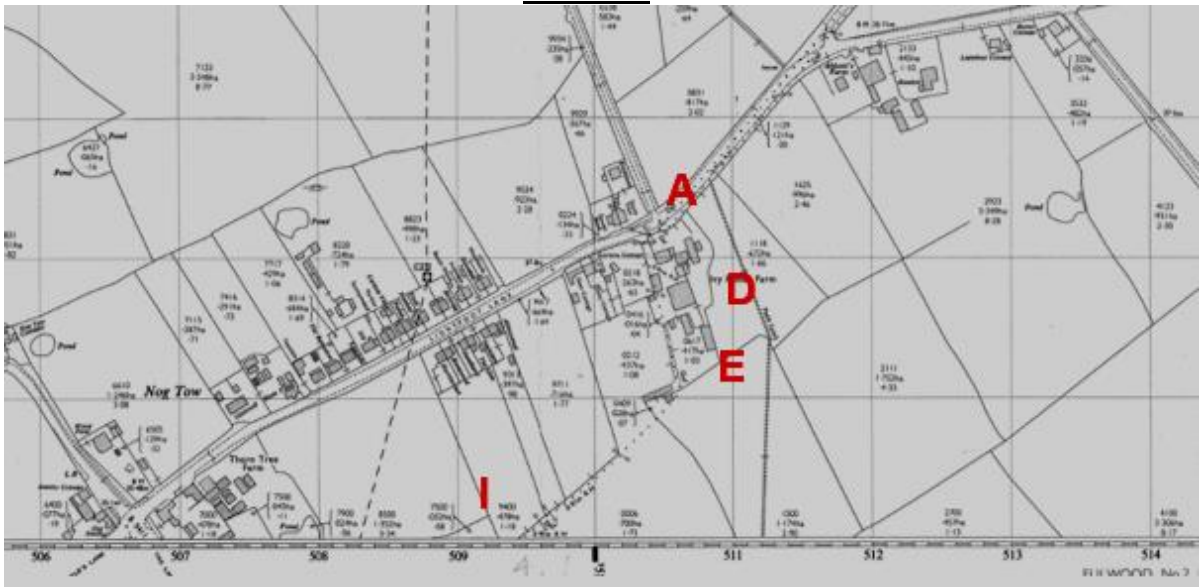
<p>Observations</p>		<p>The routes were not shown on the Revised Definitive Map of Public Rights of Way (First Review). The dash dot line is a boundary line. Footpath 49 is the dashed line.</p>
<p>Investigating Officer's Comments</p>		<p>From 1953 through to 1975 there is no indication that the routes were considered to be public right of way by the Surveying Authority. There were no objections to the fact that the routes were not shown from</p>

		the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.

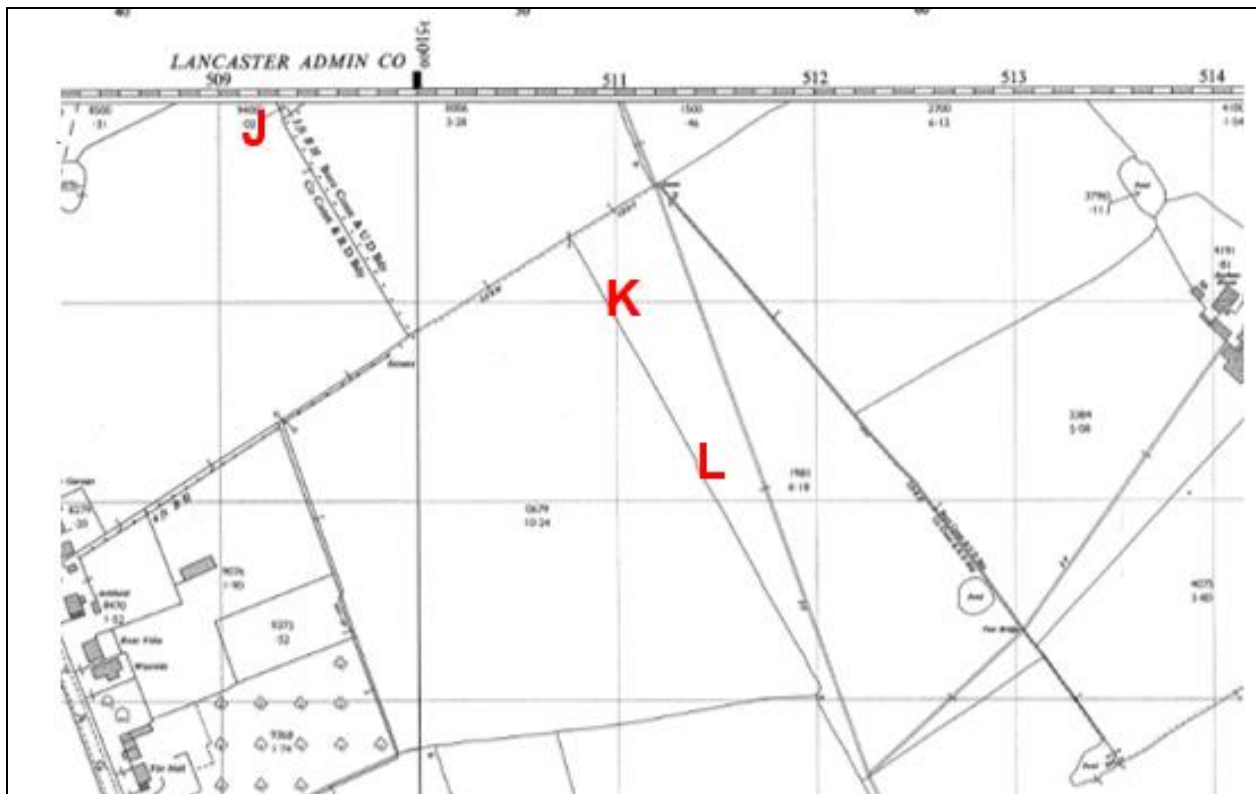


Observations		<p>The routes under investigation are not shown.</p> <p>The photograph predates the development of Ingol golf course, adjacent housing and construction of the Tom Benson Way.</p>
Investigating Officer's Comments		<p>The routes under investigation did not exist when the photograph was taken in the 1960s.</p>
OS 1:2500 Map	1963 and 1978	<p>1:2500 OS map 5032 5132 revised 1960 and published 1963 and OS map 5033 5133 revised 1970 and published 1973</p>

1963 OS



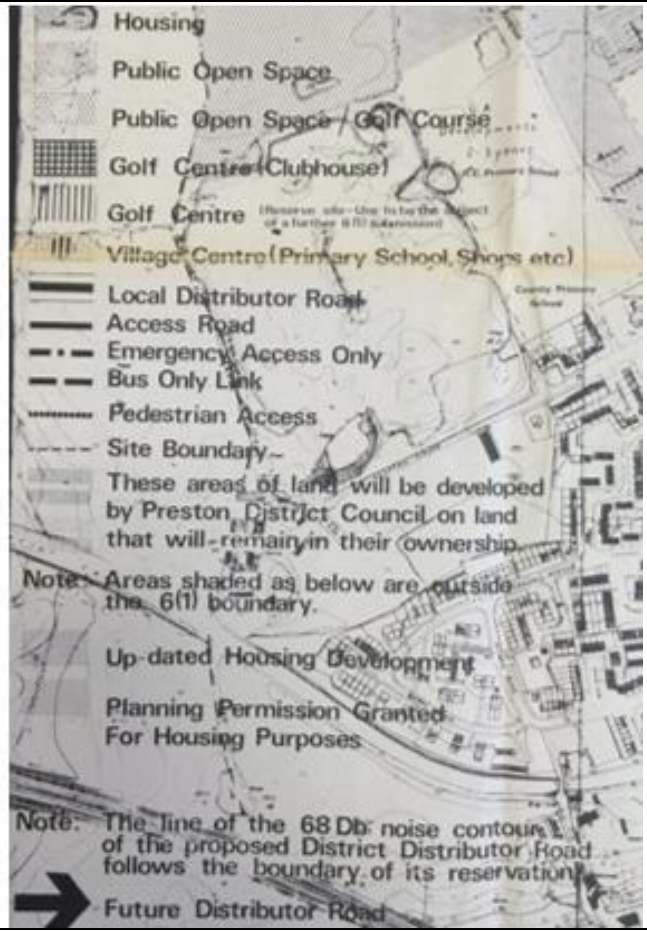
1978 OS

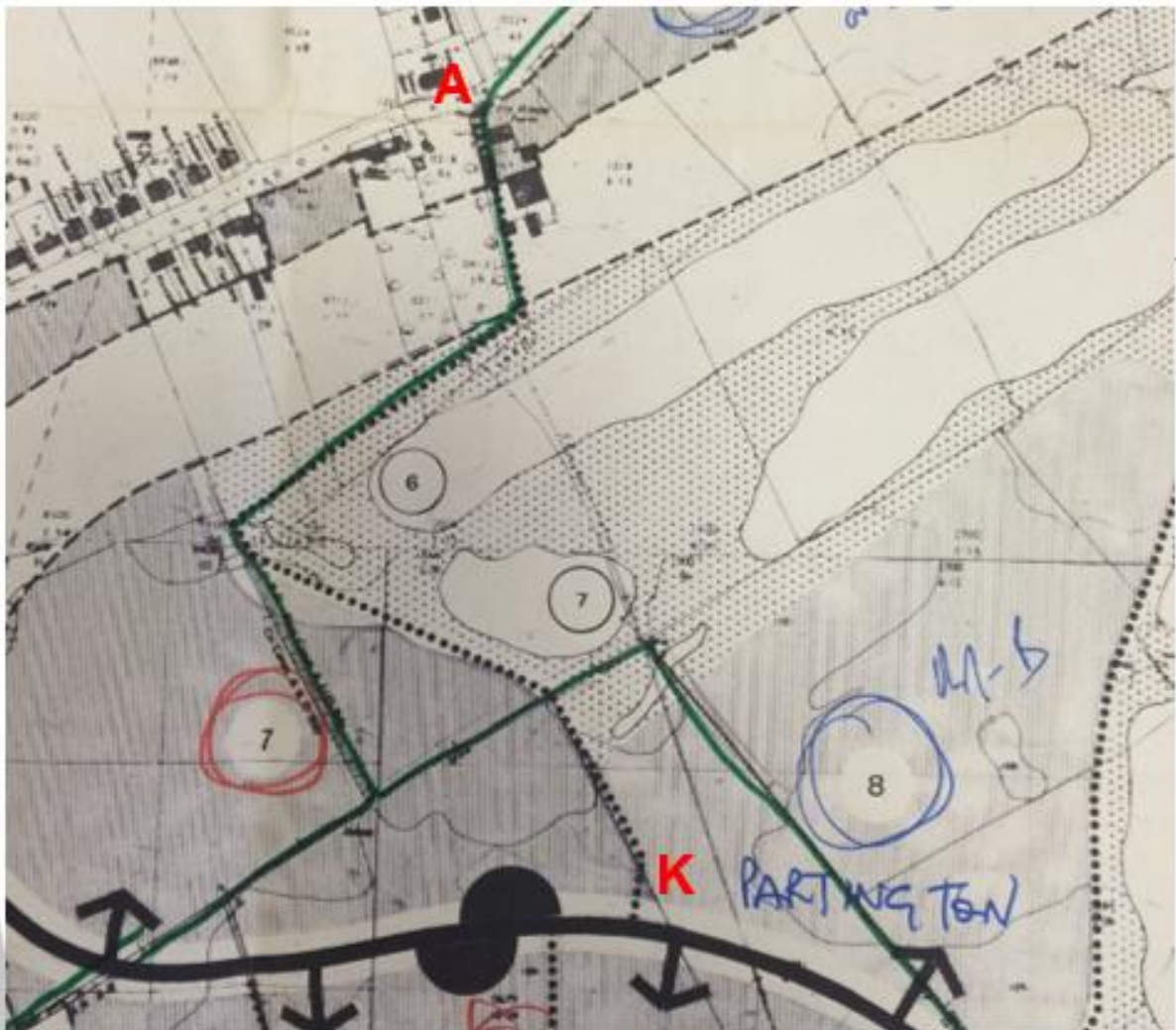


Observations		<p>The routes under investigation are not shown.</p> <p>Both Ordnance Survey map sheets pre date the development of Ingol golf course, adjacent housing and construction of the Tom Benson Way.</p>
Investigating Officer's Comments		<p>The routes under investigation did not exist between 1963 and 1978.</p>
Central Lancashire Development Corporation Planning Statement	1974	<p>Copy of Central Lancashire Development Corporation Ingol East, Residential and Associated Development Planning Statement prepared with reference to Section 6(1) New Towns Act 1965</p>
<p>... with bus-only links and this system should be capable of development from the existing services in the area. Discussions have taken place with the public transport undertakings operating in the area.</p> <p>5.7.5</p> <p>The site is crossed by a network of public footpaths, the extent of which will be retained although diversions may be necessary to take account of development. New footpaths will be constructed so that the whole will form a pedestrian framework associated with the golf course and open space system. Wherever possible, major footpaths will be aligned to incorporate existing natural features such as trees and hedgerows and they will be designed to link housing areas, facilities and amenities conveniently and without major conflict with the road network. The design of the footpaths will allow for their use also as cycleways. Care will be taken to ensure that the footpaths within the site are linked in a logical manner with those immediately outside the boundaries of the site.</p>		
Observations		A copy of the Planning Statement

		<p>prepared in relation to the development of the area crossed by the application route was obtained from the submissions made in relation to a request for planning permission in 2010 (Ref 06/2010/0626).</p> <p>The Planning Statement was prepared in 1974 by the Development Corporation seeking approval to develop the Ingol site under the New Town legislation. It explains that the site – consisting of 430 acres – was in 22 ownerships all of which were being purchased by the Commission under compulsory purchase orders with the exception of the land owned by Preston Borough Council which was being transferred by agreement. The Statement lists the development proposals including housing, schools and other facilities, the golf course, public open spaces and communications.</p> <p>Under the heading titled 'Communications' is a paragraph 5.7.5 relating to public rights of way which explains that the existing extent of public rights of way will be retained – or diverted where necessary to allow for development - and that a new network of footpaths would be constructed to link housing areas, facilities and amenities the design of which would also allow for use as cycleways.</p>
Investigating Officer's Comments		<p>Whilst not specifically referring to the creation of 'public' footpaths the inference is that the land to be developed – which would all be within the ownership of the Central New Town Commission – would be developed in such a way as to include a network of existing and additional footpaths to be used by the public on foot and also capable of being used on bicycle.</p>
Central Lancashire Development Corporation plan 'Ingol East'	1977	<p>Plan deposited in the County Records Office dated 1977 at a scale of 1:2500 and referenced as Drawing No. 6/34/17c (CRO reference NTC5/2/53). Originally titled as 'Support Drawing' which is crossed out in pen and replaced by 'Local Plan'.</p>

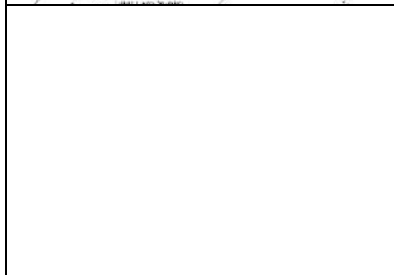
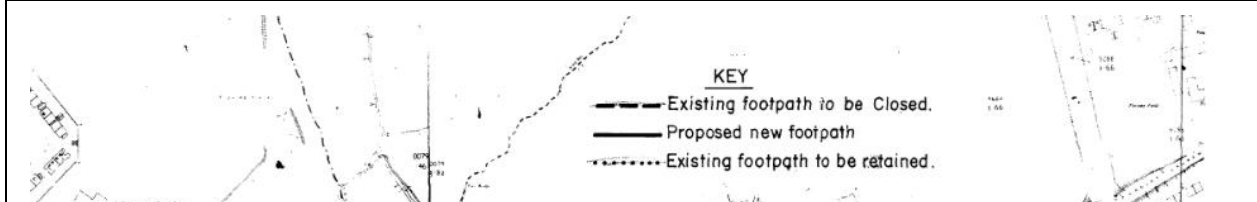
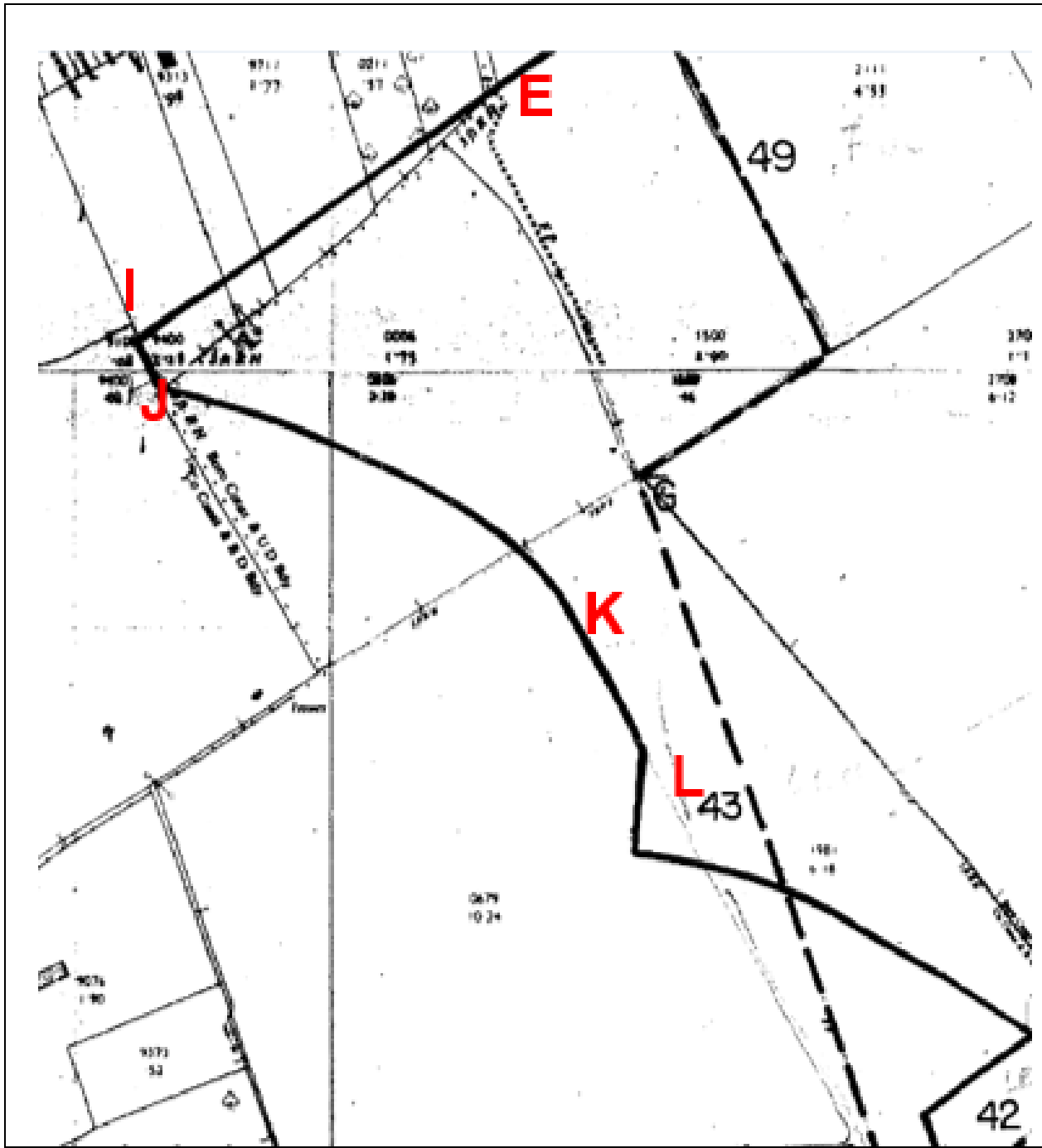
Rev	Date	Description	Sig
Central Lancashire Development Corporation			
Job Title INGOL EAST			
Dwg Title Support Drawing NEW LOCAL PLAN			
Scale	Date	Drawn	Checked
1:2500	5.9.74	ARB	MM
Job No	Dwg No	Dwg	
	6/34/17c	jan 77	
CROWN COPYRIGHT RESERVED.			
NTC 5/2/53			





Observations		The plan shows the routes under investigation marked by dots as 'pedestrian access'. Tom Benson Way's actual carriageway width is not shown on the plan but its corridor is shown and the route of Tanterton Hall Hey is shown as 'Future Distributor Road'
Investigating Officer's Comments		This is the earliest plan inspected to show the route crossing land to be developed as part of the golf course. The route is described as 'pedestrian access' although there is no indication on the plan whether this referred to the dedication of a public right of way.
Final Draft Agreement for lease relating to development of golf course and housing	1978	A copy of a draft agreement was found in the County Records Office annotated as being the 'final draft agreement' between Central New Towns Development Corporation and Miller Buckley Golf Services (Ingol) Limited dated 13 March 1978 for the lease relating to the development of the golf course and

		housing.
Observations		<p>The agreement contains information regarding the provision of footpaths across the land. Within Schedule 3 it states that within the golf course parcel the corporation will provide certain footpaths shown on a drawing referenced 6/34/308A and that the general line of these footpaths may be subject to variation by agreement between the corporation and the company. It also stated that any closure of an existing footpath will require an order which is within the discretion of the Secretary of State.</p> <p>The agreement also stated that footpaths must be kept open and useable on foot at all times although private footpaths could be temporarily closed by the lessee if necessary for the proper management of the golf course and that the corporation would not unreasonably withhold permission to divert public or private footpaths at a future date if it was necessary for the implementation of the scheme.</p>
Investigating Officer's Comments		<p>A copy of the plan referred to in the agreement could not be found in the County Records Office so it is not possible to confirm whether the routes under investigation were the ones shown. However, the draft agreement does refer specifically to the provision of public access along footpaths across the site although it appears that there were to be both public and private routes created.</p>
New Towns Act 1965 Order for the Extinguishment of Public Rights of Way Central Lancashire Development corporation Borough of Preston	1978	<p>Order made by Secretary of State on 29th June 1978 to extinguish parts of Footpaths 41, 43, 49, 48, 50, 42 and 5 as shown on the Order plan and described in the Order Schedule.</p>

















The Order came into effect on the day that it was made. There was no reference to the creation of alternative or 'new' public rights of way in the wording of the Order but the key to the Order plan showed proposed new footpaths with a solid black line, existing footpaths to be closed with a

		<p>long dashed line and existing footpaths to be retained by short dashed lines.</p> <p>The route under investigation between points A-B-C and D-E is not shown on the plan as an existing path to be retained or as a proposed path on the Order plan but a route is shown to the west of it as an existing footpath to be retained linking Lightfoot Lane to the original route of FP 49 (to be extinguished) and then from there along a line marked as proposed footpath to point E. From point E the proposed footpath is shown consistent with the route under investigation to continue along the application route between points E-F-G-H-I-J-K-L.</p>
Observations		<p>The Order plan showed a number of routes by the use of short dashed lines which were described as existing footpaths to be retained but which were not recorded as public footpaths. It also showed "proposed new footpaths" – including part of the route under investigation from point E-L.</p> <p>It appears that an Order was made to extinguish a number of existing footpaths but that a number of other paths already existed on the ground which were not proposed to be extinguished but which would link to paths to be created as alternatives to those extinguished. Part of the route under investigation (from point E-L) was shown on the plan as a proposed route to be created. The Order does not specify that the route was to be created as a public right of way by the Order, Central Lancashire Development Corporation could create highways as owner but it appears reasonable to infer that the intention was to create alternative public rights of access along the routes shown as proposed new routes.</p>
Ingol Golf Villages - Leaflet published and produced by Central Lancashire Development Corporation	1980	Copy of leaflet produced providing details of the proposed development of a golf course and housing in Ingol and contact details for the various housing developers and Central Lancs New Towns Development Corporation. The leaflet

included a map of the 18 hole golf course and the key to the map details, amongst other things, routes shown as public footpaths, existing and new roads and roads to be made into footpaths.



	<p>Key to map</p> <ul style="list-style-type: none">  New housing areas  Existing development  Village centres  Golf centre and clubhouse  Golf course fairways and greens  Golf course 'roughs'  Direction of play on golf course 13 Green numbers  Public open space  Tree belts  New roads  Existing roads  Existing road made into a footpath  Public footpaths  Emergency exit road
Observations	Tom Benson Way is not shown but a route shown as a public footpath is clearly shown corresponding to the application route from point A through to point L and linking to Tanterton Hall Road.
Investigating Officer's Comments	The leaflet was distributed to the public showing details of the proposed development and clearly indicates the intention that the application route was to be provided as a public footpath reiterating the intention to provide alternative routes for those paths extinguished by the 1978 Order detailed above.
Aerial Photograph	Aerial photograph available to view in the County Records Office.

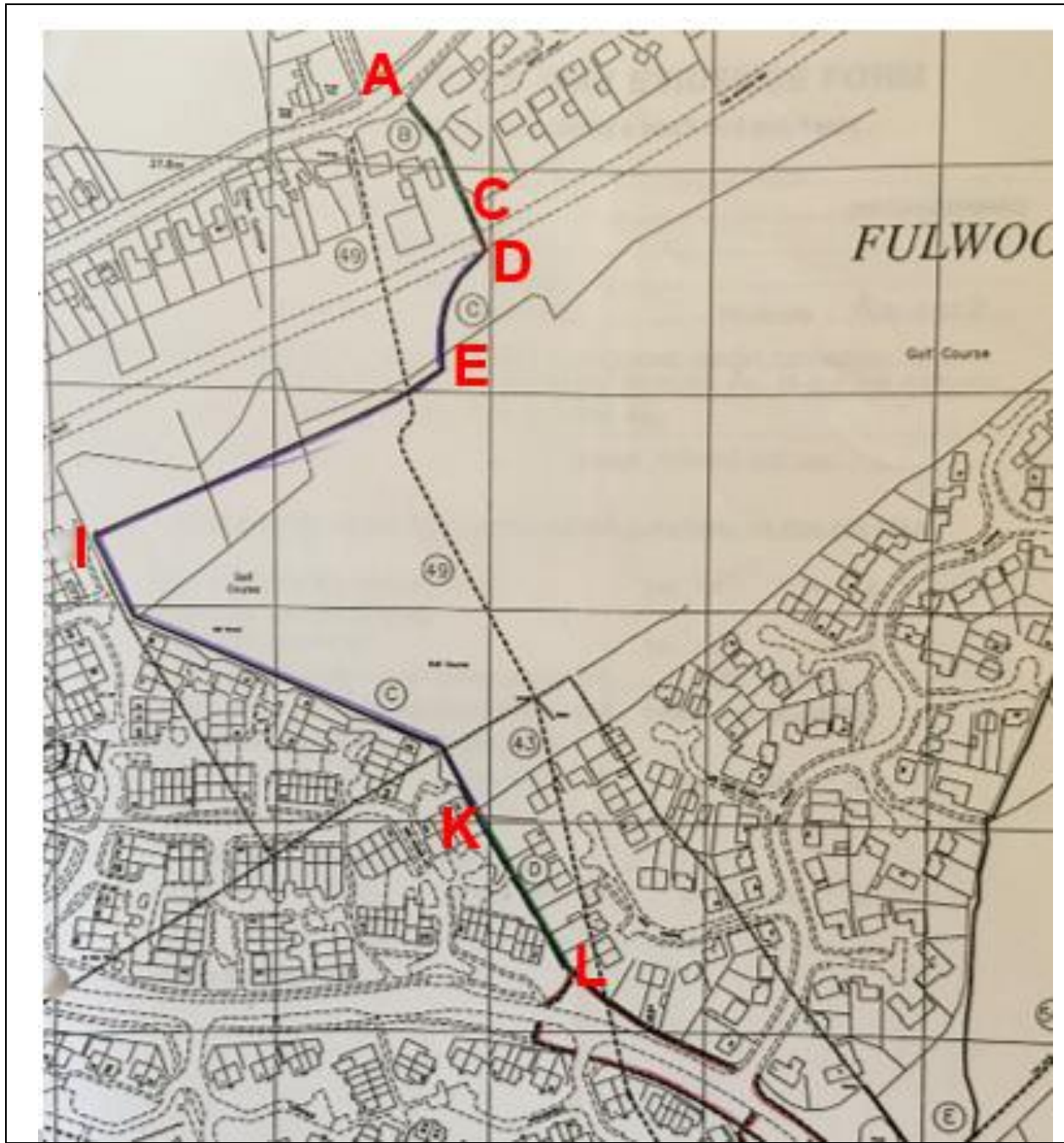


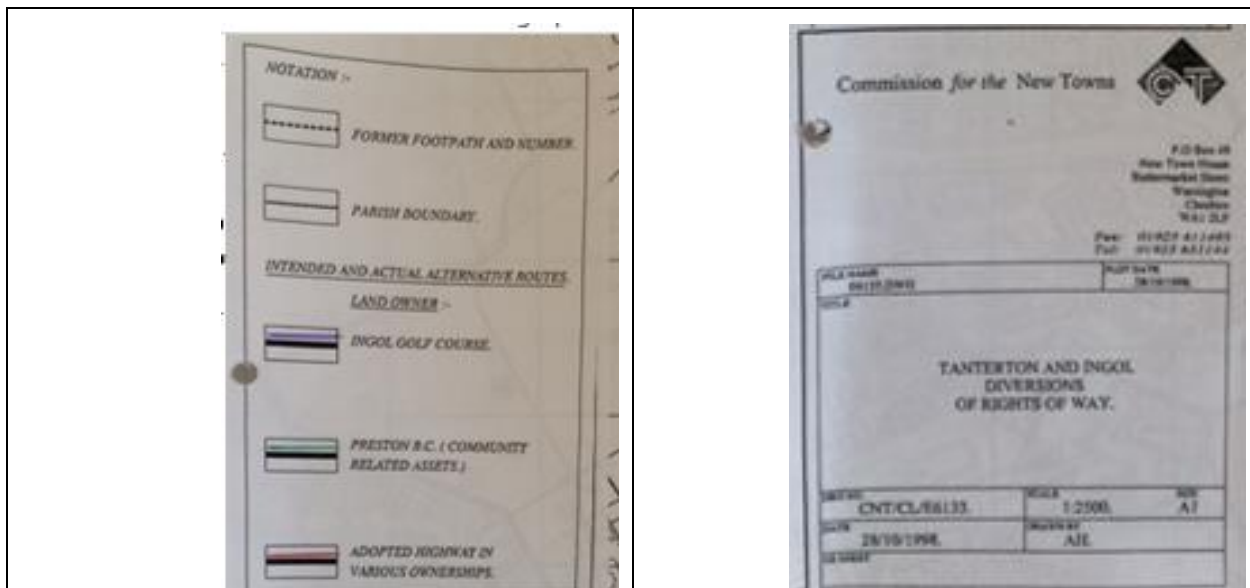
Observations

The photograph has been enlarged but it is still difficult to see parts of the route due to its scale and shadowing from houses and trees.

Part of the application route can be seen between point B and point C leading out onto Tom Benson Way. Between D and E the route is not visible although a route can be seen along the edge of the golf course

		running to point E. No worn track can be seen between point F and point G and from point G the route passes into woodland where a line consistent with the application route can be seen extending from point G to point H and through to point I. A worn track cannot be seen between point I and point J or along the boundary of the golf course to point K. Between point K and point L parts of the route are visible – particularly leading up to point L.
Investigating Officers Comments		Traces of parts of the route can be seen as worn paths but it is not possible to determine whether the full length of the route was open and accessible at that time.
Plan used as part of application to show route	1998	Plan provided by Commission for New Towns (North) to the applicant together with a letter in response to the applicant querying the status of the application route with them prior to submitting the application.





Observations

This plan was provided to the applicant by Mr R Robson, Commission for New Towns (CNT) North, in a letter dated 06 November 1998. The drawing – referenced CNT/CL/E6133, is stated to be based on the latest OS plan of the Ingol and Tanterton area (at that time) and is described as being marked up with the routes of the former footpaths and the approximate routes of the various alternative footpaths provided in respect of the various footpath closures.

The plan was marked up with details of the various landowners and annotated with letters of the alphabet.

With regards to 'Route 1' the following comments were made in the letter by Mr Robson:

Length B (Point A-B-C on Committee plan) – described as an 'amenity footpath' and alternative to Footpath 49 in the ownership of Preston Borough Council.

Length C (Point D-E-F-G-H-I-J-K) described as an alternative to Footpaths 43 and 49 in the ownership of Ingol Golf Course. It was also noted that the route deviated from the intended route at the north edge of the golf course).

Length D (Point I-J on the Committee plan) – described as an alternative to Footpath 43, owned by Preston Borough Council.

		The letter accompanying the plan also explains that Central Lancashire Development Corporation sold the golf course to Hemm Inns Limited in 1985 and put provisions in the transfer to ensure that the footpaths indicated in the original layout approved in 1978 were not obstructed or interfered with. The lines of the routes across the golf course are indicated in blue but CNT make reference to the routes now in use deviating from the routes marked in blue in several places.
Investigating Officer's Comments		The letter and plan provide further evidence regarding the construction of the application route as an alternative to those routes extinguished to allow for the development of the site and evidence of intention to dedicate by the owner. The letter appears to suggest that whilst the route was originally provided on the route shown the public had subsequently deviated from the route in a number of unspecified locations.
Land Registry Title Number LA512320	1985	The land covered by this title includes the application route between points D-K.
<p>annoyance to the Property or the occupier or owners thereof."</p> <p>7 A Transfer which included the land in this title dated 1 April 1985 made between (1) Central Lancashire New Town Development Corporation (Transferor) and (2) Hemm-Inns Limited (Transferee) contains the following covenants:-</p> <p>"THE Transferee for itself and its successors in title for the benefit of the Transferor's retained land at Ingol adjacent to the property hereby transferred hereby covenants that the Transferee will not obstruct or interfere with any footpaths or footpath routes now crossing the property whether presently adopted or included in the Definitive Map maintained by Lancashire County Council under the terms of the National Parks and Access to and the Countryside act 1949 or any subsequent legislation or are shown on the drawings referred to in the planning approval for the development of the Gold Course on the property given under Section 6 (2) of the New Towns Act 1965 on the twenty second day of August one thousand nine hundred and seventy eight."</p>		
Observations		The transfer of land from the Central Lancashire New Town Development Corporation to Hemm-Inns Limited included a covenant regarding footpaths or footpath routes which were either currently recorded on the Definitive Map, were adopted, or which were shown on drawings referred to in the planning approval for the development of the golf course on 2 nd August 1978. The covenant

		specified that those routes should not be obstructed or interfered with.
Investigating Officer's Comments		There appears to be a clear intention by the Central New Towns Development Corporation that all existing public footpaths and proposed public footpaths across the land sold should be recognised and protected against future obstruction or interference.
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 Section 31(6) deposits have been lodged with the County Council for the area over which the Route runs.
Investigating Officer's Comments		There is no intention by a landowner under this provision of non-intention to dedicate public rights of way over their land.
Aerial Photograph	2000	Aerial photograph available to view on




Observations

It is not possible to see the route between point A and point C due to tree cover although a worn area can be seen at point C where the route meets Tom Benson Way.

From point D the land crossed by the route appears open and not overgrown but is not visible on the photograph as a trodden

		<p>track. A route can be seen from point D extending in a general south easterly direction through a gap in the hedge/woodland and then cutting back in a more westerly direction onto the mown area of the golf course. A route through the trees from point G to point I may have existed and from point I to point J a route can be seen on the ground.</p> <p>The route is not visible on the ground as a worn track between point J and point L and it is not possible to see whether access would have been available along this section.</p>
Investigating Officer's Comments		<p>The photograph was taken the year that the application was submitted. Traces of parts of the route can be seen as worn paths but it is not possible to determine whether the full length of the route was open and accessible at that time.</p>
<p>Highway Adoption Records including maps derived from the '1929 Handover Maps'</p>	<p>1929 to present day</p>	<p>In 1929 the responsibility for district highways passed from rural district 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 36 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. If a road is not on this record it may still be an existing highway. Alongside the List is a</p>

		coloured up plan of the extent of the highways on the List. Footpaths and Bridleways are often not shown on these plans.
		
Observations		The claimed route is not recorded on the coloured up adoption record as being publicly maintainable. Existing Public Footpaths are not shown such as FP88.
Investigating Officer's Comments		The routes were not recorded as being publicly maintainable but no inference can be drawn regarding public rights.

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

Since the applications to record public footpaths across the former golf course were submitted the golf course has ceased to operate and a number of planning applications have been submitted to Preston Borough Council for the land to be redeveloped. Two substantial applications were made in 2010 and 2014 (Planning References 06/2010/0626 and 06/2014/572). Information submitted as part of the applications was viewed and it is noted that on various plans prepared existing public footpaths are shown together with the routes applied for – which are shown separately as being routes subject to Definitive Map Modification applications.

No further information relevant to the applications was however found.

Landownership

The land crossed by the route under investigation between points A-B-C is registered in the ownership of Preston City Council. When the application was originally submitted this land was registered in the ownership of the Homes and Communities Agency which were the successor body to the Commission for New Towns.

Between points D-E-F-G-H-I-J-K the land crossed by the route under investigation is registered in the ownership of Cleator Manor Limited (since 2006). The ownership is still subject to the covenant referred to above.

Between points K-L the land crossed by the route is registered in the ownership of Preston City Council.

Summary

There is no map or documentary evidence supporting the existence of the application route prior to the development of the area by the Central Lancashire Development Corporation in the mid to late 1970's and it is clear that the route only came into being as a result of the development of the site as a golf course and residential area.

The first plan found as part of this investigation which showed the route is dated 1977 and shows the route as 'pedestrian access'. A year later, in 1978, an extinguishment order was made to extinguish public footpaths across the site to enable development to take place. The Order included a plan and written schedule which detailed the application route as a 'proposed new footpath' and the order came into effect once made. The Central Lancashire Development Corporation had legal power to extinguish routes by order and it appears from further maps, plans, agreements, land transfer documentation and publicity information provided in the early 1980s shows that the Development Corporation intended to provide a pedestrian route to the public.

From the Development Corporation records searched, together with the site evidence and information provided by the applicant it appears that the route was provided and was capable of being used by the public and the map and documentary evidence detailed above appears to support the user evidence submitted.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant submitted 64 user evidence forms together with a copy of a letter that she had sent to members of the Ramblers Association in August 2000 explaining that staff at Ingol Golf Club had been preventing walkers using the paths across the golf course and that she was putting together an application to record the routes on the Definitive Map and asking people to complete user evidence forms if they had used the routes.

The user evidence forms all included a map provided by the applicant showing the route claimed.

5 of the forms stated that the users had known the route for more than 50 years and that they had walked the area prior to development. One user claimed to have known the route all his life and wrote that he was 71 years old. A further form stated that the user had known the routes since they had come into existence but failed to specify any dates.

9 users claimed to have used the path in excess of 20 years providing dates ranging between 1972 and 2000. A further 14 users had used the route for between 15 and 20 years between 1980 and 2000. 18 users stated they had used the route for between 10 and 15 years during the period 1980 to 2000 and 13 users specified less than 10 years use during that period.

All of the users completing the forms stated that they regarded the path as public. Use was primarily for leisure with a high percentage of users stating that they used the route to walk their dogs. Other reasons for using the path were listed as visiting friends, going to the pub, feeding the ducks, for exercise and for recovery from ill health.

3 of the users make reference to the fact that the route between point D and point E was overgrown and that they had been using an alternative path (not marked) to get round it.

One user stated that he worked as a security and maintenance officer at Ingol golf course and that he used the route 2 or 3 times a day as part of his employment. He stated that he considered the route to be public and had used it for 18 years. He refers to having to deal with various anti-social issues on the land including issues with dog walkers and vandalism.

Information from the Landowner

Following receipt of the application consultations were carried out with the owners of Ingol Golf Course at that time (Tee Jay Leisure Limited, Sagar House, Ecclestone, Chorley). They instructed Kevills Solicitors who requested a meeting with the County Council in 2006 in the hope that a 'pragmatic solution' could be found.

No meeting was arranged and a further Land Registry search has identified that some of the land crossed by the application routes was subsequently sold to Cleator Manor Limited.

English Partnerships were consulted and replied with details of land ownership stating that length J - M (now L - D) crossed land owned by Preston City Council and Ingol Golf Course and length N - O (now C - A) crossed land owned by Preston City Council at the time of consultation.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

User evidence

Evidence of Central Lancashire Development Corporation's intention.

Against Making an Order(s)

Actual Central Lancashire Development Corporation planning consent drawings not available.

Conclusion

As there is no express dedication it is advised that Committee consider whether there is sufficient evidence on balance for a deemed dedication from use under S31 Highways Act 1980 and/or an inferred dedication at common law from all the circumstances pointing to an intention to dedicate by the owner.

It would seem to be the case that the route did not exist prior to the ownership by Central Lancashire Development Corporation established by the Minister under the New Towns Act 1965. The land for the golf club had been taken by the Commission by compulsory purchase powers or in the shadow thereof and planning consent obtained by the Commission by submitting proposals and the Minister making a Development Order. The Development Order and its drawings has not been located but it is suggested that other documents are of assistance.

At common law to infer a dedication from all the circumstances can involve consideration of both user evidence and documents. The Planning Statement referred to earlier in the report clearly shows that the Central Lancashire Development Corporation had an intention to create footpaths and to retain the extent of the existing network. The New Towns Act says that a Development Corporation had the power to do anything necessary or expedient for the purposes incidental to its main objectives. Central Lancashire Development Corporation is obviously unusual as it was developing huge areas of land.

Committee must consider whether there is sufficient evidence of the intention to create the actual route being considered in this report.

It is suggested that there is sufficient evidence to indicate an intention to dedicate this claimed route – save for a different line D-E in the planting swathe of Tom Benson Way - appears on the "Local Plan" appearing to be the replacement for FP49 and to a large extent on the Order plan itself re the extinguishment of existing footpath and on the leaflet produced by the owners and the plan supplied by CNT.

The route has actually been constructed on the ground for some of its length and the style of construction and of stiles would seem on the information to be consistent with that of the Central Lancashire Development Corporation.

The blocking of the route at point K blocked a laid out pathway.

The unavailability of length D-E and difficulty accessing the route in the woodland in 2016 does not mean that it was not available when created and up to 2000 when the application arrived.

The user evidence is significant and collected and submitted by the Ramblers Association.

The user adds force to the evidence of Central Lancashire Development Corporation's intention to dedicate this route and accepts the routes on the part of the public.

It is suggested that Committee may find sufficient evidence from which to infer an actual dedication by Central Lancashire Development Corporation and acceptance by the public can reasonably allege to have occurred or found to have occurred on this claimed route.

The user evidence also enables Committee to consider whether as of right use has been for the twenty years without interruption and without indication of a lack of intention to dedicate such that dedication may be deemed to have occurred under S31 Highways Act 1980. Again the user evidence is supported by plans completed by the users and collected by the Ramblers Association. There is reference to use by the Association for guided walks. It is suggested that the calling into question was the submission of the application or possibly just before then when the challenges by the Golf Club are referred to. It is advised that the user evidence is sufficient for which to deem dedication.

Taking the evidence into account it is suggested that the Committee may decide that an Order can be made for this route to be added to the Definitive Map and Statement and be promoted to confirmation.

Risk Management

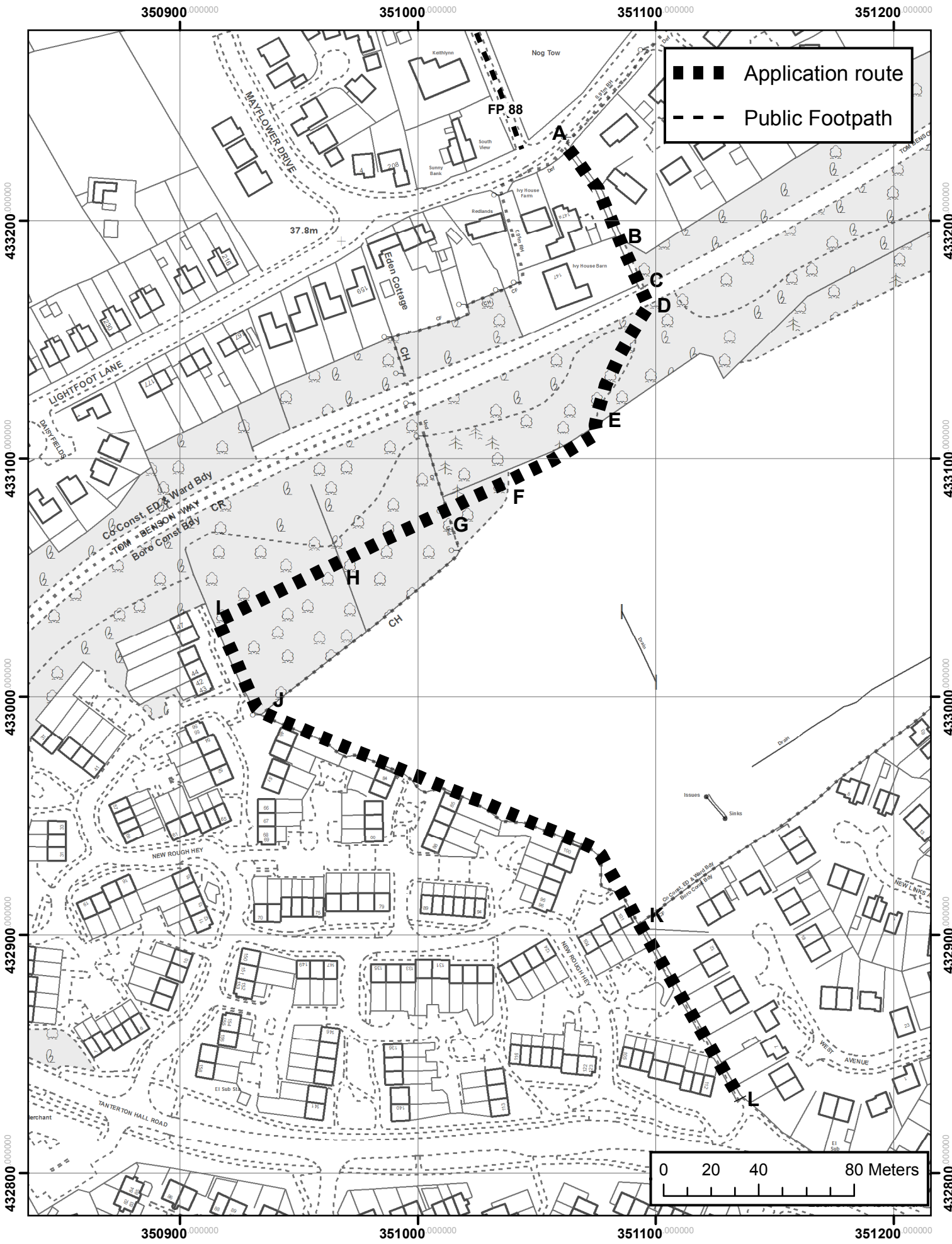
Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-379a		Simon Moore, 01772 5331280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A



Andrew Mullaney
Head of Planning and Environment

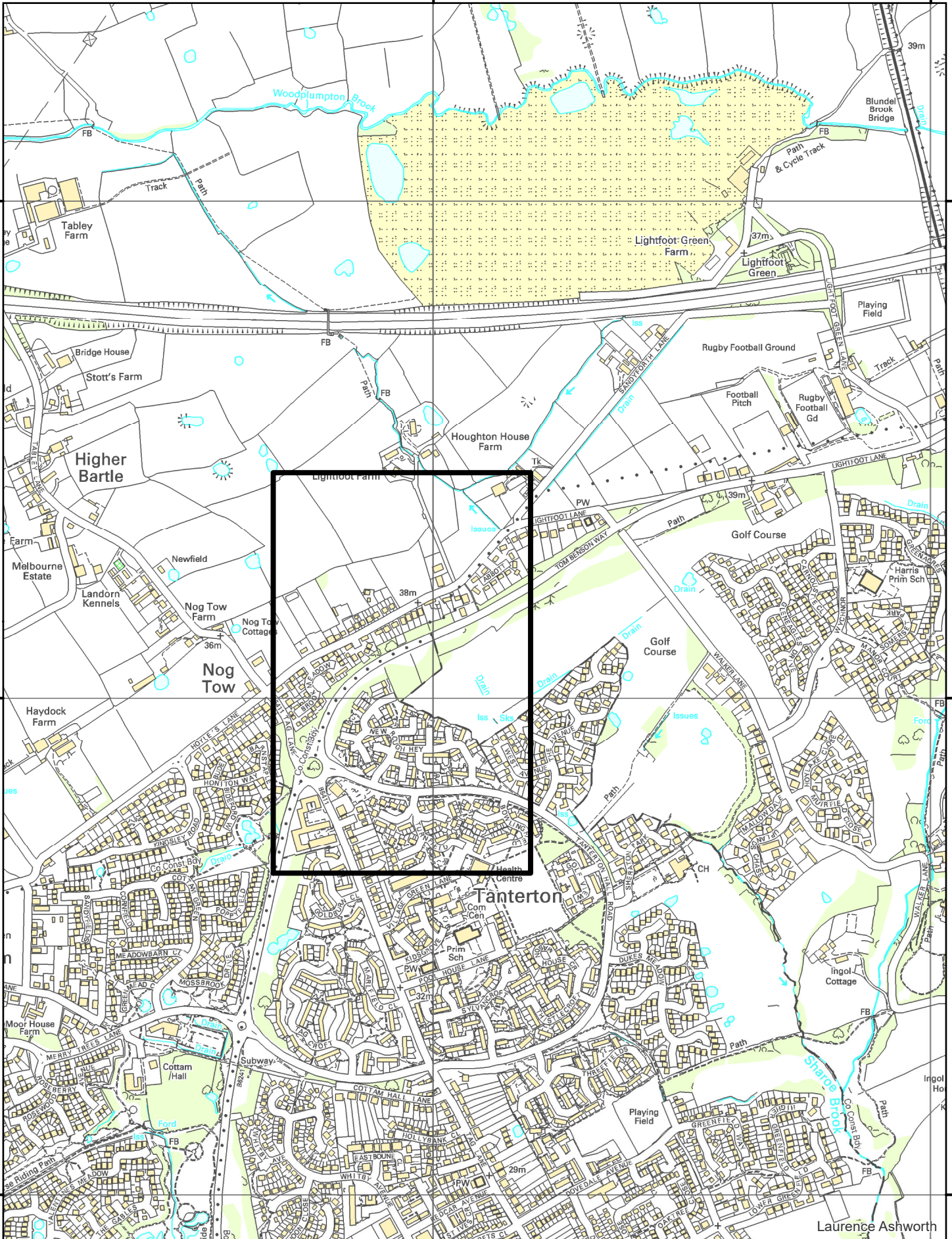
Wildlife and Countryside Act 1981
Addition of public footpath from Sandyforth Lane to Tanterton Hall Road, Fulwood

1:2,000



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

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Regulatory Committee

Meeting to be held on 11 March 2020

Part I

Electoral Division affected:
Preston West

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

- i) Addition of public footpaths from Walker Lane to Tanterton Hall Road, Preston
- ii) Addition of a public footpath from Walker Lane to Lightfoot Lane, Preston

File No. 804-379b

(Annex 'A' refers)

Contact for further information:

Simon Moore, 01772 531280, Paralegal Officer, Legal and Democratic Services,
simon.moore@lancashire.gov.uk

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

Executive Summary

Application for footpaths to be added to the Definitive Map and Statement of Public Rights of Way from:

- i. Walker Lane to Tanterton Hall Road, Preston
- ii. Walker Lane to Lightfoot Lane, Preston

in accordance with file 804-379b.

Recommendation

(i) That the application to add to the Definitive Map and Statement footpath lengths from Walker Lane to Tanterton Hall Road, Preston, in accordance with file 804-379b, be accepted.

(ii) That the application to add to the Definitive Map and Statement footpath lengths from Walker Lane to Lightfoot Lane, Preston, in accordance with file 804-379b, be accepted.

(iii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way two footpaths from Walker Lane to Tanterton Hall Road, Preston as shown on Committee Plan between A-B-C-D-E-F-G and H-I-J-K-L-E.

(iv) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a footpath from Walker Lane to Lightfoot Lane at Ingol Golf Course, Preston as shown on Committee Plan between V-W-X-Y.

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

Background

In 2000, an application under Schedule 14 of the Wildlife and Countryside Act 1981 was received for the addition of a number of public footpaths which were described by the applicant as being situated on land forming part of Ingol Golf Course and as having been provided by the former Central Lancashire Development Corporation.

Five separate sets of routes were listed and numbered 1 to 5 and evidence in support of each route was provided.

The application was originally submitted by the Area Secretary of the Ramblers Association (Mid Lancashire Area) but sadly, since submission, the applicant has died.

Soon after the application was submitted, research was carried out by two former members of the county councils Public Rights of Way team and initial consultations carried out but reports were never prepared or presented to the Regulatory Committee and the officers originally involved in the investigation have subsequently retired. Various development proposals were thought likely to accommodate the routes but this has not been achieved. Further work has now been done to get the reports finalised.

The original application made by the Ramblers Association was split down into five separate ones. The bulk of the evidence provided by the Applicant in support of the application consisted of completed user evidence forms and on a review of the application bundle it has been decided to consider each route separately.

This report considers the routes referred to by the applicant as 'Route 2' and because of its lengths and the fact that it is split by Walker Lane it has been split down further into routes 2A and 2B for the purpose of this report as described below:

Route 2A - Two footpaths from Walker Lane to Tanterton Hall Road shown on Committee Plan 1 by a thick dashed line between points A-B-C-D-E-F-G and H-I-J-K-L-E.

Route 2B - A footpath from Walker Lane to Lightfoot Lane shown on Committee Plan 2 by a thick dashed line between points V-W-X-Y.

When an application is made, the county council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of

way exists, and if so its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

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

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

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

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

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

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

Consultations

Preston City Council

The City Council were consulted and commented that it was their recollection that the Council had dealt with a query from a member of the public in 2000 regarding part of the length of path from Tanterton Hall Road to Durham House. They state that at that time they had sight of a copy of the Public Path Extinguishment Order made by the Commission for the New Towns and that the Order extinguished a number of public rights of way in that area.

They also state that further queries were raised by a resident regarding the status of other paths on the golf course and that a copy of the transfer/lease of the land to the golf club was seen by the Council which indicated that the 'new' paths were

'permissive paths', created as a condition of the transfer/lease. The Council referred the matter to English Partnerships but were not aware whether they had then pursued it with the golf club.

Comments from Preston City Council Highways department were that 'the paths most certainly exist' in terms of them being physically constructed and that they had been created by the Central New Towns Commission but that despite receiving numerous enquiries regarding the condition of the paths over the years the Council had no power to act with respect to such 'permissive paths'.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plans.

Route 2A (Committee plan 1)

Point	Grid Reference (SD)	Description
A	5147 3320	Open junction with Walker Lane (U10628)
B	5139 3314	South side of field boundary
C	5139 3310	Boundary of golf course adjacent to rear boundary of 47 The Avenue, Ingol
D	5132 3281	Boundary of golf course adjacent to rear boundary fence of 7 The Avenue, Ingol
E	5131 3275	Unmarked point in field
F	5130 3273	Watercourse on boundary between Fulwood and Lea
G	5128 3272	Open junction with Tanterton Hall Road (U10657)
H	5155 3309	Open junction with Walker Lane (U10628) adjacent to Parr Lodge
I	5151 3304	Track adjacent to rear boundary of Parr Lodge
J	5147 3297	Track enters area of woodland
K	5140 3287	Unmarked point in field
L	5138 3282	Trodden path (with no recorded public status)

Route 2B (Committee plan 2)

Point	Grid Reference (SD)	Description
V	5140 3330	Timber two step stile in boundary fence at junction

		with Walker Lane (U10628)
W	5145 3332	Edge of woodland
X	5154 3337	Timber two step stile and site of adjacent wicket gate
Y	5157 3341	Open junction with Lightfoot Lane (B6241) directly opposite properties known as Sunnybank and The Oaks

Description of Routes

The application was submitted in 2000 but a site inspection was not carried out by the county council until 2006.

Because the application relates largely to user evidence pre-dating 2000 details of the 2006 site inspection are included in this report. This provides a better indication of what existed on the ground closer to the time that the routes were said to have been used.

Further site inspections were carried out in 2016 and 2017 to see what changes may have occurred since the 2006 inspection.

Route 2A

The route commences from point A on Walker Lane where, in 2006, it was reported that there was a mound of earth on the grass verge and signs of considerable pedestrian use over and around the mound. At point A it was noted that there was a break in the hedge-line and a circular grey metal post was located on the north westerly side of the opening. The officer carrying out the inspection was of the view that the post appeared to be a footpath direction sign although the finger was missing. No reference was made to permission.

In 2017 there was no evidence of the metal post or mound of earth but a gap in the hedge existed at point A providing access from Walker Lane onto the golf course. The gap appeared to be used by golfers crossing Walker Lane from one part of the course to another.

Beyond point A in 2006 it was noted that there was an area of grass with a stone pathway running parallel to Walker Lane forming part of the Golf Course. The claimed route ran diagonally over the stone path to follow the southern side of a ditch and a line of trees in a south westerly direction.

After approximately 90 metres at point B, the application route turns to run over rougher grass in a more southerly direction to the easterly side of the housing development of "The Avenue" (C). In 2006 it was noted that there was no trodden path visible over this length and in 2017 there was still no visible path and a post and wire fence had been erected across the route midway between point B and point C.

The application route then follows the rear of the garden boundaries and passes between the fence line and a pond to the rear of 39 and 40 The Avenue. In 2006 it was noted that it was not possible to walk between the pond and the boundary fence and in 2017 this section was impassable due to overgrowth.

The route then continues to the rear of the garden boundaries over rough grass forming part of the golf course and is shown on the Committee plan to pass between a further pond and the garden fences to the rear of 25 and 26 The Avenue. In 2006, it was noted that the pond extended up to the slope that was the base of the fencing and that it was not possible to walk on this section because of the steepness of the slope.

When the route was inspected in 2017 it was noted that it was still not possible to walk this part of the route claimed.

Beyond the pond the claimed route is shown as continuing alongside the garden fences to point D and it was noted in 2006 that the route was difficult to follow through the overgrown wooded area and that there were also sections where garden refuse and conifer cuttings had been placed onto the route making access very difficult.

From point D the route diverges from following a line along the boundary of the golf course adjacent to the rear of 7 The Avenue and in 2006 was reported as continuing through brambles and nettles and then over rough grassland at the side of the golf course to point E where it was described as joining the overgrown line of an old track leading from the north east.

The application route was then described as continuing along the line of a track for approximately 20 metres through rough grass and brambles, to point F where there was a high, metal security fence placed at what appeared to have been a gap in a mature boundary hedge.

On the far side of the security fence there was a deep drainage ditch with no apparent sign of there being a footbridge crossing although the officer carrying out the 2006 site inspection noted that the Ordnance Survey map indicated that there had been a bridge at the time of their survey. The ditch was noted as being heavily overgrown and difficult to see but it appeared that it may have been culverted.

From point F the claimed route was described as curving to the west and crossing a wide grass verge to join the footway adjacent to Tanterton Hall Road.

In 2006 it was noted that the route from point D to point E was overgrown with rough grass and brambles and that there was no evidence of a worn track.

In 2017 the land crossed by the route from point E-F and F-G was so overgrown with thick dense brambles (even in January) that it was not possible to gain access to see whether the metal fence still existed at point F and neither route was accessible.

The Ramblers Association also included a further section of path within their application described as the 'original route of FP 50 through Durham House'. It commences on Walker Lane at point H on the Committee plan adjacent to Parr Lodge.

From point H the application route follows a bounded track in a south westerly direction to point I and then continues as an open track across the golf course to point J where it passes through the former site of a building marked as “Durham House” on Ordnance Survey maps. This area was noted in 2006 as having been used recently as a materials storage compound.

The route continues along the track in a south westerly direction through the remains of the former house and grounds and continues as a worn track across the golf course to point K. From point K the track bends to continue in a more south south westerly direction to the junction with a surfaced path (with no recorded public status) at point L on the Committee plan.

From point L the route continues in a south westerly direction through an area of rough grass and brambles. In 2006 this area was noted as being overgrown and in 2017 it was completely overgrown and not possible to walk between point L and point E along the route claimed.

The whole of the length of the track described above from point H to point L, was described in 2006 as being extremely well used, with signs of pedestrian and cycle use and use particularly by vehicles. The surface was described as stone although this had been covered by mud and leaf debris and the vehicular use of the track was noted by the officer carrying out the inspection as appearing to be in connection with the golf course.

When the route was inspected in 2017 there still appeared to be a significant level of pedestrian use along the route H-I-J-K-L.

In summary, there appeared to be no current use of the application route between points A-B-C-B-E-F-G or L-E in 2006 or 2017. There was evidence that access was available at point A but beyond that the route was not evident as a trodden route. Both in 2006 and 2017 it was noted that although the application route was overgrown and difficult to follow there was evidence of use of trodden routes across land roughly parallel to the application route and in 2006 the officer carrying out the inspection considered that those routes had possibly been created by people deviating around overgrown sections of the application route or to link to other paths across the land.

The application route between point H-I-J-K-L was accessible in 2006 and still appeared to be in use in 2016.

Route 2B

The route commences at a point on Walker Lane where it leaves the highway verge at a timber two step stile in a boundary fence (point V). In 2006 it was noted that adjacent to the stile there was a circular grey metal post which was thought to be the remains of a footpath direction sign with the finger missing. When inspected in 2016 the post was no longer there. No reference was made to permission.

The stile referred to in 2006 was still in position in 2016 although the wood was becoming quite worn. A gap in the fencing south east side of the stile was noted in

2006 and was still there in 2016. The ground was worn suggesting regular pedestrian use of the gap.

Beyond the stile the route extends in an east north easterly direction across the corner of Ingol Golf Course for approximately 60 metres before entering an area of woodland at point W. It passes along a strip of land bounded by a fence to the north and woodland to the south. In 2006 it was reported that this section consisted of a 3.5 metre wide grass track. It was noted that trees had fallen across the track but that it was still useable. In 2016 it was not possible to walk along this enclosed section due to overgrowth, the growth of some small self-seeded trees and some more mature fallen trees.

The overgrown section of the route extends from point W for approximately 100 metres to a wooden stile at point X.

In 2016 a worn track – consistent with pedestrian use was visible from point V continuing towards and avoiding the overgrown section of the route between point W and point X to re-join the route at point X.

In 2006 the route was described as crossing a timber two step stile with a wicket gate to the south east side at point X. The stile and gate were noted to be in good condition and the wicket gate was described as being padlocked.

In 2016 the stile still existed but was in poor condition and the gate and field boundary fence through which it passed were no longer evident.

From point X the route passes through the wooded area curving northwards in an arc to exit onto Lightfoot Lane at point Y.

In 2006 it was noted that a trodden track was visible on the ground but that the wooded area was poorly maintained and the surface of the path was covered with broken branches and twigs.

At point X the route was described as opening directly onto the footway on Lightfoot Lane where there was a circular grey metal post located to the rear of the footway, which it was considered could have originally been a direction signpost.

In 2016 it was still possible to follow a worn track through the woodland to exit at point Y. The track did not, however, follow the precise route shown on the committee plan but 'wiggled' through the trees avoiding fallen trees and obstacles.

The total length of the route is 220 metres. It was considered to be useable – although overgrown and poorly maintained in 2006. When inspected in 2016 it was possible to pass from point V to point Y but necessary to deviate from the application route, particularly between point W and point Y, due to overgrowth and fallen trees. There was evidence of pedestrian use of parts of the route.

Map and Documentary Evidence

A variety of maps, plans and other documents were examined to discover when the routes came into being, and to try to determine what its status they may be. The routes are not shown on any of the early commercial maps, the Tithe Map of Broughton dated 1839 or OS maps published in 1849, 1893, 1912, 1932, 1938, 1961 or 1978. Neither is it shown on the aerial photographs taken in the 1940s or 1960s.

The routes cross land which is within an area which was designated as the Central Lancashire Development Corporation. A Development Corporation was a body set up across parts of England and Wales and charged with the urban development of an area. It operated under the New Towns Act of 1965, outside the usual Town and Country Planning legislation.

The Central Lancashire New Town (Designation) Order was approved on 14 April 1970 and the Development Corporation formerly constituted on 17 February 1971. The Commission was in existence for 16 years until it was formally dissolved on 31 March 1986 and during that time the area to the north of Preston – referred to as Ingol East – underwent significant development.

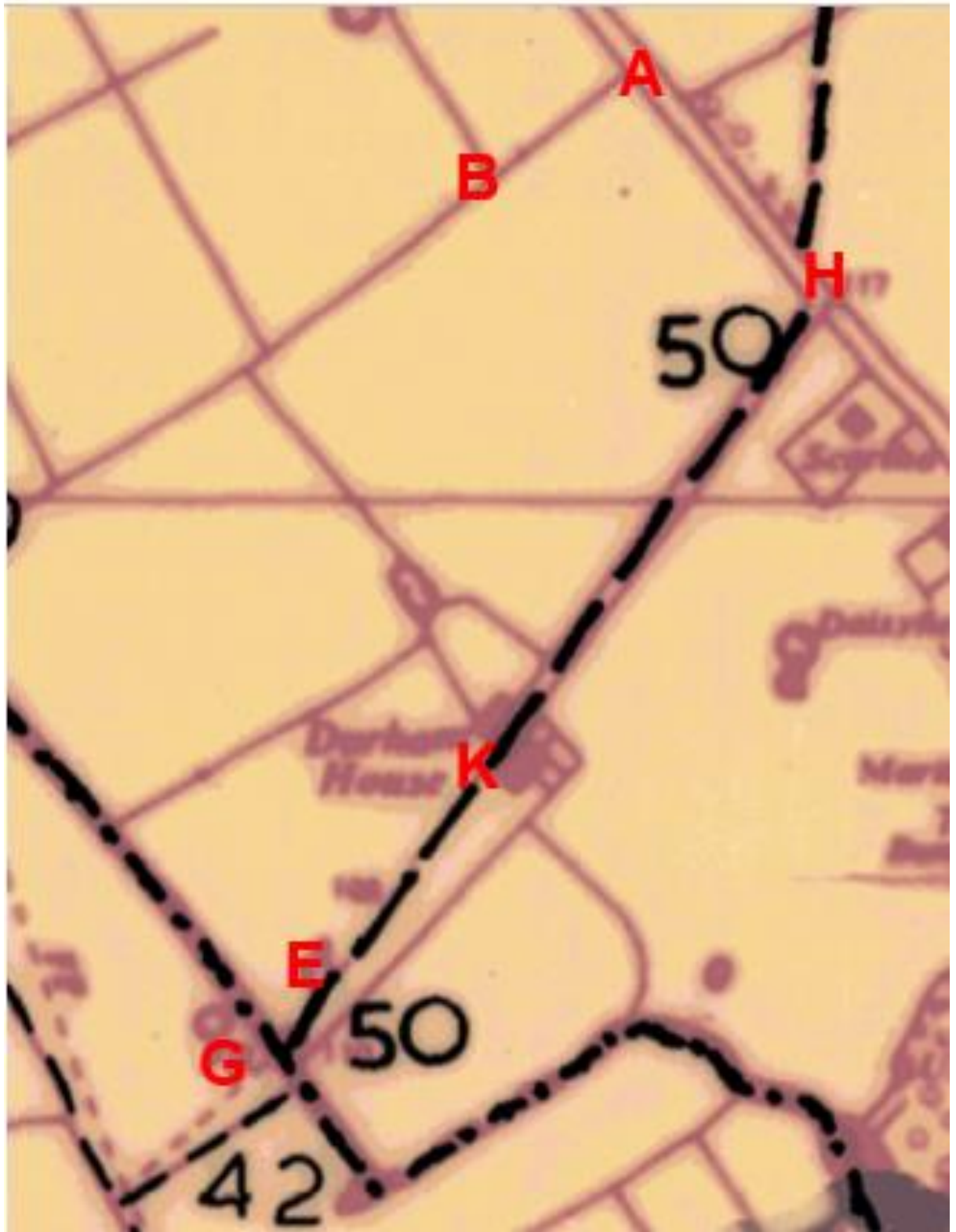
The application route came into existence as part of the development of Ingol East – with particular reference to an Extinguishment Order under The New Towns Act 1965, which was made on 29th June 1978 by the Secretary of State for the Environment. The New Towns Act gave the power to extinguish existing public rights of way to allow for development, and alternative paths were often shown on plans accompanying extinguishment orders. The New Town Commission could create new highways like any other owner.

The routes claimed were described in the application as having been provided by the former Central Lancashire Development Corporation as a replacement for Fulwood Footpath 49 and Lea Footpath 43 which were extinguished by the 1978 Order and further details of the order and evidence post-dating the designation of the area as part of the Central Lancashire New Town are detailed below and assessment made of the relevant map and documentary evidence discovered:

Document Title	Date	Brief Description of Document & Nature of Evidence
Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required the county council to prepare a Definitive Map and Statement of Public Rights of Way. Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or

		<p>municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the county council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the county council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>
Observations		<p>Fulwood was an Urban District Council for which no parish survey was carried out. Lea Parish Survey Map does not show the route claimed.</p>
Draft Map		<p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		<p>The routes under investigation were not shown on the Draft Map of Public Rights of Way for Fulwood or Lea (with the exception of the route between points H-K and E-F which formed part of the original route of Footpath Fulwood 50) and there were no representations made to the county council in relation to them.</p>
Provisional Map		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>

Observations		The routes were not shown on the Provisional Map of Public Rights of Way for Fulwood or Lea (with the exception of the route between points H-K and E-F which formed part of the original route of Footpath Fulwood 50) and there were no representations made to the county council in relation to them.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The routes were not shown on the First Definitive Map and Statement with the exception of the route between points H-K and E-F which formed part of the original route of Footpath Fulwood 50.
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. By 1975 Central Lancashire Development Corporation had been in existence only four years and had just achieved its planning consent and extinguishment of footpaths 49 and 43 had not yet happened.
<u>Route 2A</u>		

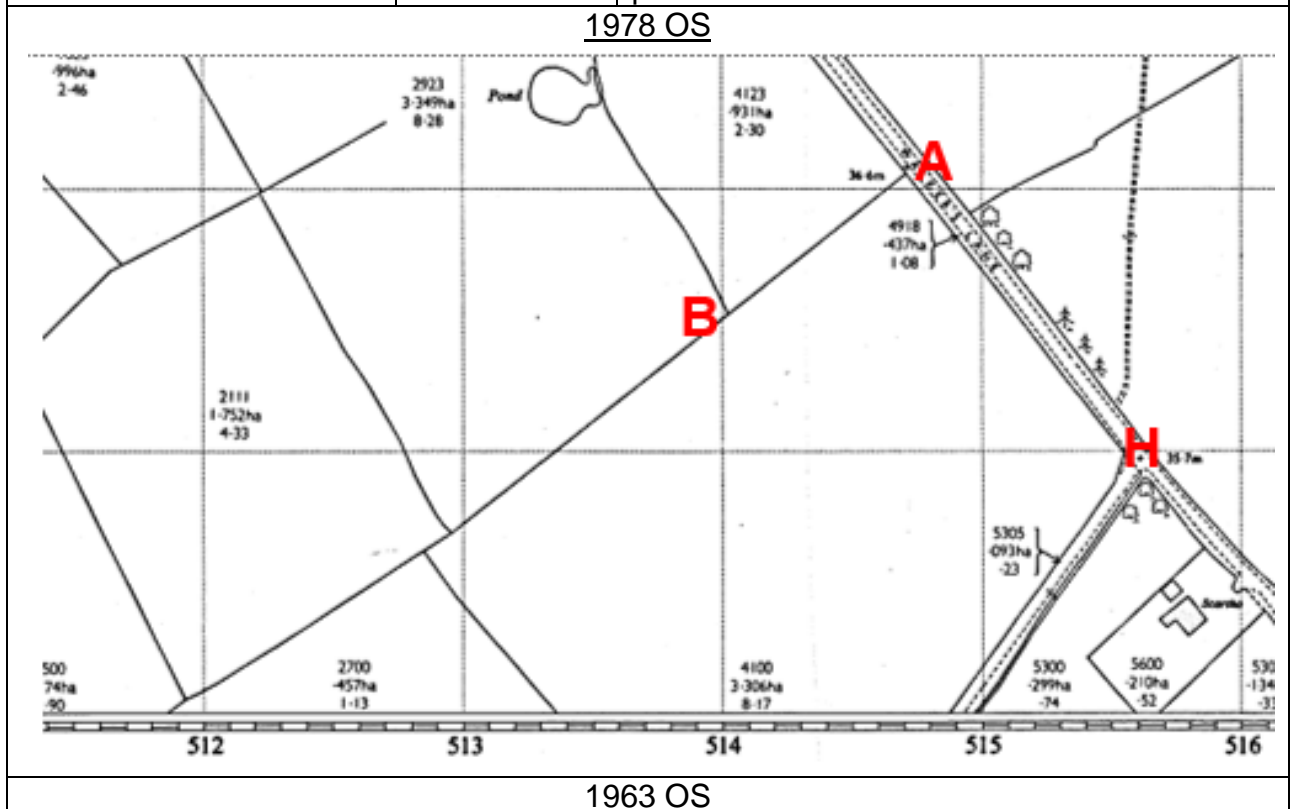


Route 2B



Observations		The routes were not shown on the Revised Definitive Map of Public Rights of Way (First Review) with the exception of the route between points H-K and E-F which formed part of the original route of Footpath Fulwood 50.
Investigating Officer's Comments		<p>From 1953 through to 1975 there is no indication (with the exception of Fulwood 50) that the routes were considered to be public right of way by the Surveying Authority. There were no objections to the fact that the routes were not shown from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.</p> <p>An Order was made by Secretary of State on 29th June 1978 to extinguish parts of various public footpaths crossing land owned by the Central New Towns Commission – including Fulwood 50 and details of this order are provided later in the report.</p>
Aerial photograph	1960s	The black and white aerial photograph taken

		in the 1960s and available to view on GIS.
Observations		Aerial photographs dating from the 1960s pre date the development of Ingol golf course and associated housing and do not show the claimed routes (with the exception of the route of Footpath Fulwood 50 predating its extinguishment.
Investigating Officer's Comments		No inference can be drawn.
OS 1:2500 Map	1963 and 1978	1:2500 OS map revised 1976 and published 1978 and OS sheet revised 1960 and published 1963





Observations		The routes did not exist on the ground when the maps were revised in 1960 and 1976 with the exception of the route of Fulwood 50 through Durham House which was recognised as a public footpath prior to being legally extinguished.
Investigating Officer's Comments		The application routes did not exist on the ground prior to the development of the golf course. The original route of Fulwood 50 existed and appeared useable in 1960 (prior to its extinguishment).
Central Lancashire Development Corporation Planning Statement	1974	Copy of Central Lancashire Development Corporation Ingol East, Residential and Associated Development Planning Statement prepared with reference to Section 6(1) New Towns Act 1965

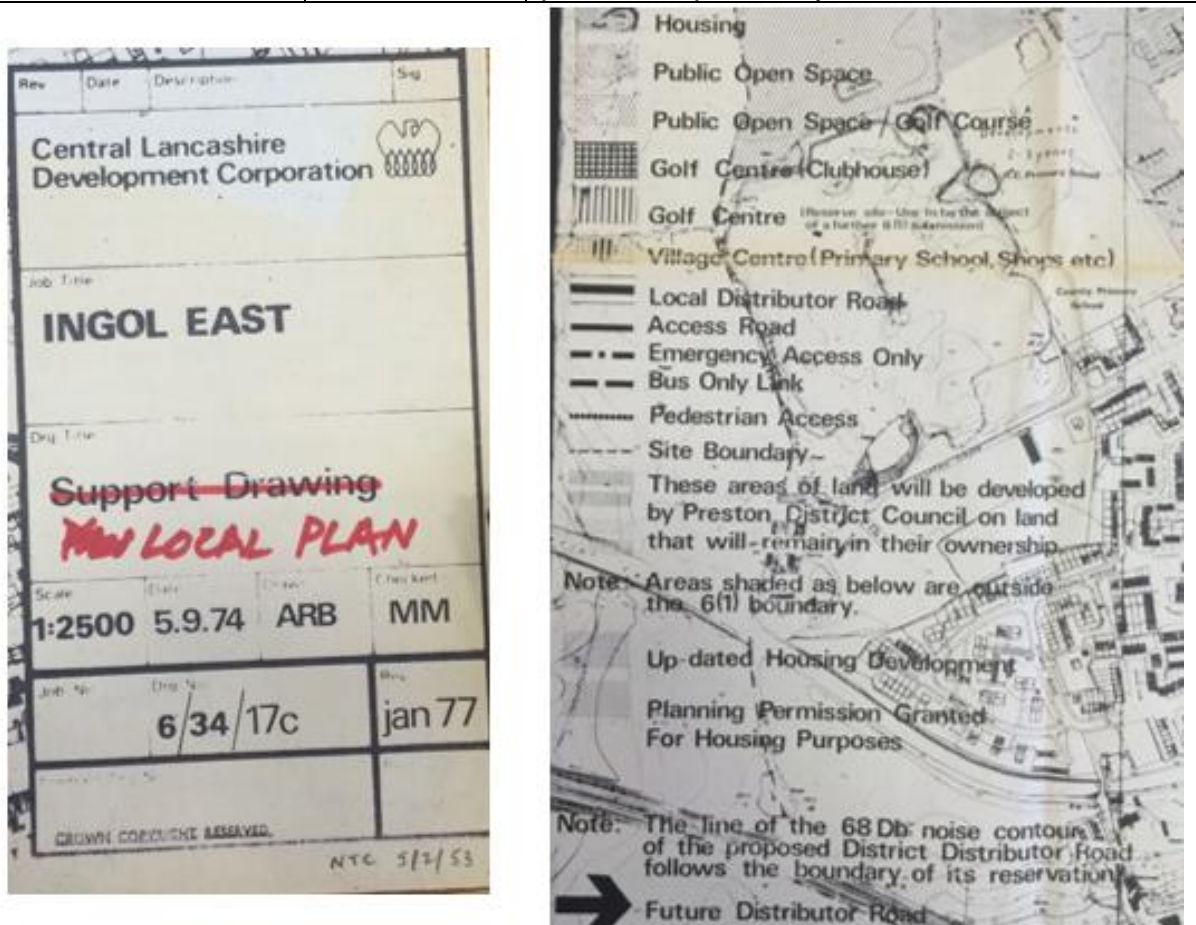
loops with bus-only links and this system should be capable of development from the existing services in the area. Discussions have taken place with the public transport undertakings operating in the area.

5.7.5

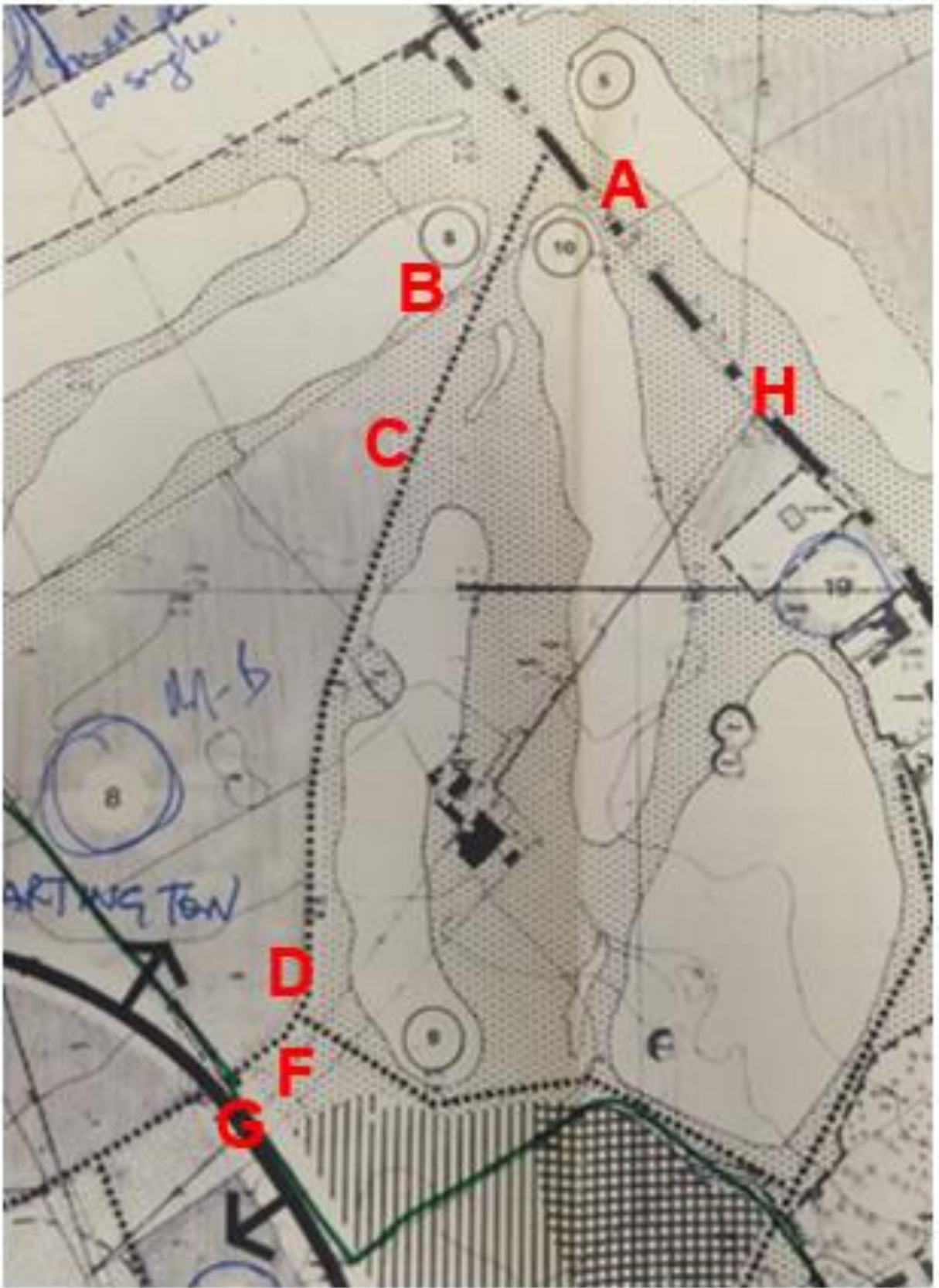
The site is crossed by a network of public footpaths, the extent of which will be retained although diversions may be necessary to take account of development. New footpaths will be constructed so that the whole will form a pedestrian framework associated with the golf course and open space system. Wherever possible, major footpaths will be aligned to incorporate existing natural features such as trees and hedgerows and they will be designed to link housing areas, facilities and amenities conveniently and without major conflict with the road network. The design of the footpaths will allow for their use also as cycleways. Care will be taken to ensure that the footpaths within the site are linked in a logical manner with those immediately outside the boundaries of the site.

<p>Observations</p>		<p>A copy of the Planning Statement prepared in relation to the development of the area crossed by the application route was obtained from the submissions made in relation to a request for planning permission in 2010 (Ref 06/2010/0626).</p> <p>The Planning Statement was prepared in 1974 by the Development Corporation seeking approval to develop the Ingol site under the New Town legislation. It explains that the site – consisting of 430 acres – was in 22 ownerships all of which were being purchased by the Commission under compulsory purchase orders with the exception of the land owned by Preston Borough Council which was being transferred by agreement. The Statement lists the development proposals including housing, schools and other facilities, the golf course, public open spaces and communications.</p> <p>Under the heading titled 'Communications' is a paragraph 5.7.5 relating to public rights of way which explains that the existing extent of public rights of way will be retained – or diverted where necessary to allow for development - and that a new network of footpaths would be constructed to link housing areas, facilities and amenities the design of which would also allow for use as cycleways.</p>
<p>Investigating Officer's Comments</p>		<p>Whilst not specifically referring to the creation of 'public' footpaths the inference is that the land to be developed – which would all be within the ownership of the Central New Town Commission – would be</p>

		developed in such a way as to include a network of existing and additional footpaths to be used by the public on foot and also capable of being used on bicycle.
Central Lancashire Development Corporation plan 'Ingol East'	1977	Plan deposited in the County Records Office dated 1977 at a scale of 1:2500 and referenced as Drawing No. 6/34/17c (CRO reference NTC5/2/53). Originally titled as 'Support Drawing' which is crossed out in pen and replaced by 'Local Plan'.



Route 2A

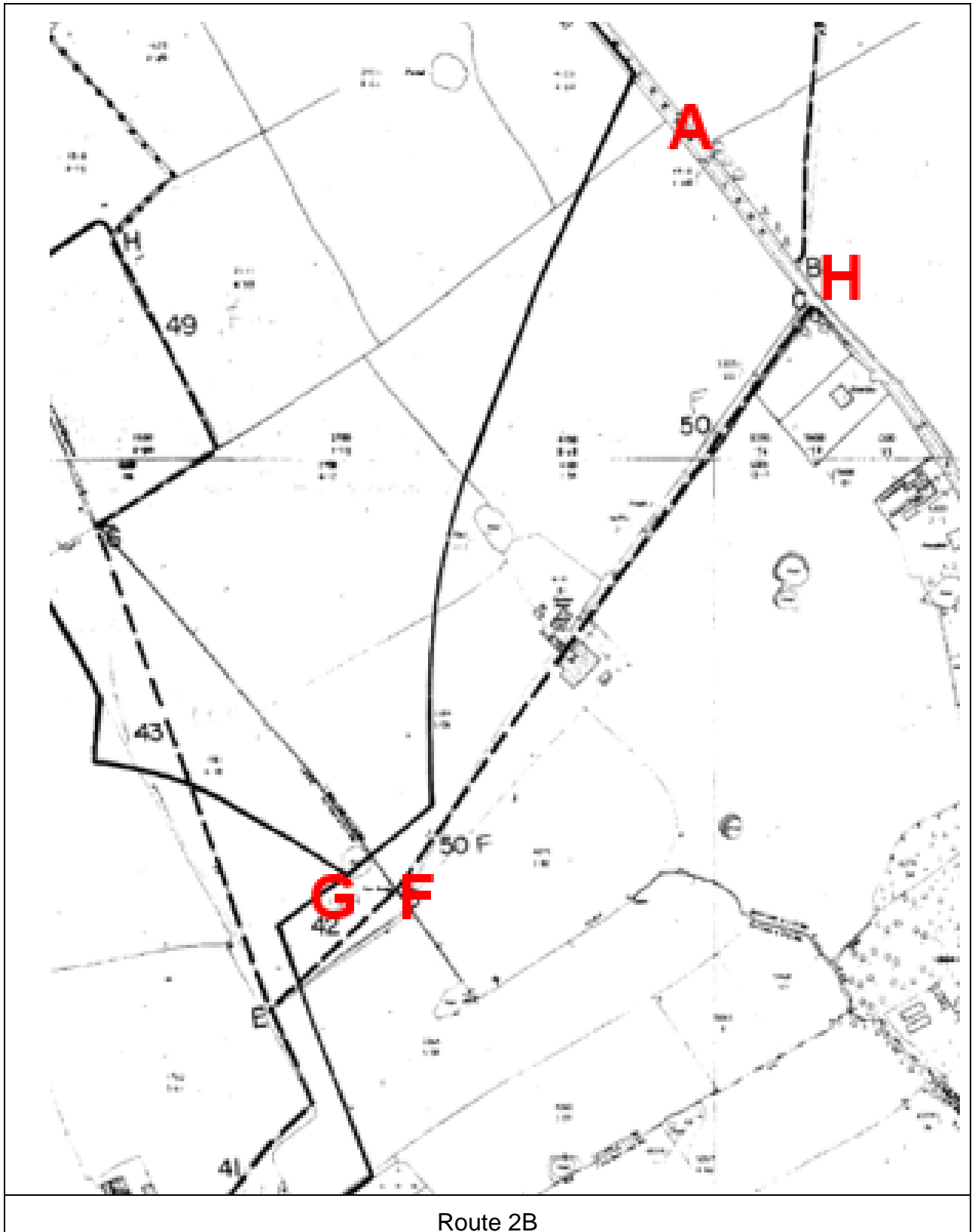


Route 2B

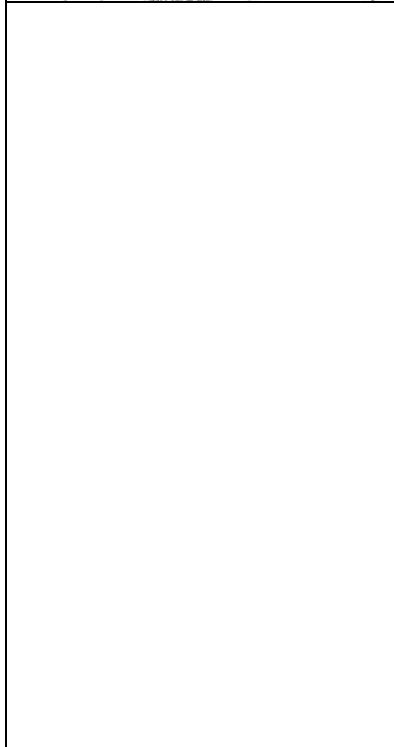
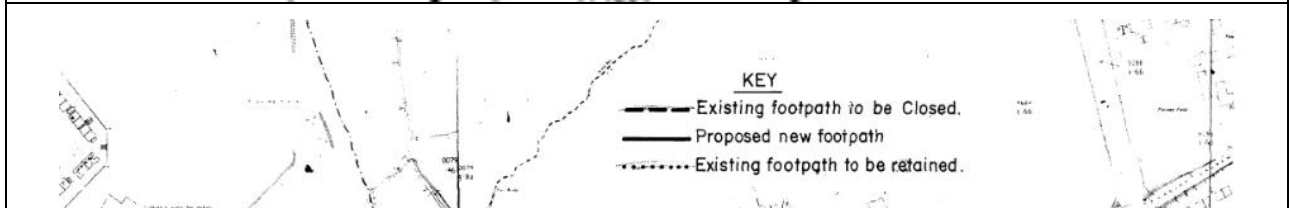
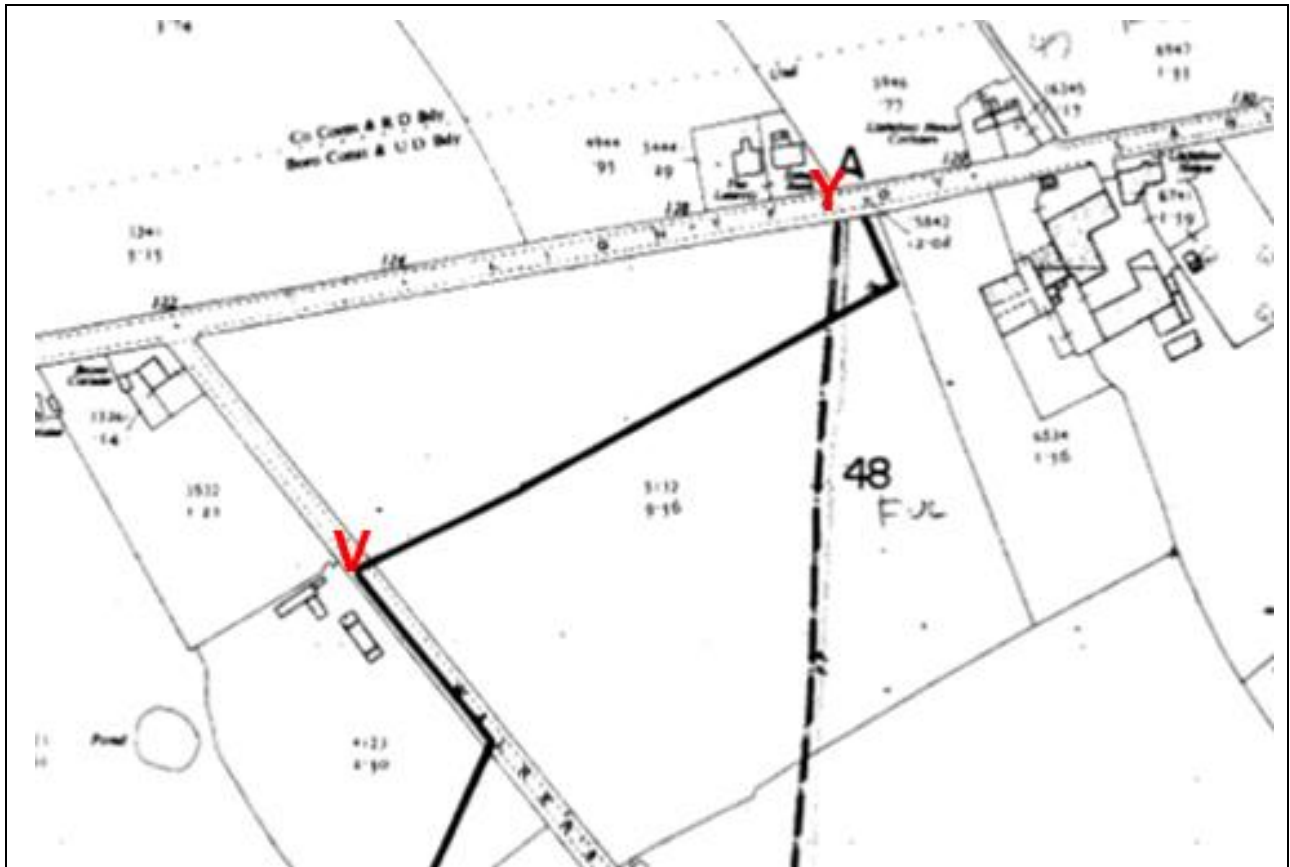


<p>Observations</p>		<p><u>Route 2A</u> The plan shows routes across the golf course described as 'pedestrian access' in the key. A route similar, but not entirely along the same alignment as route 2A is shown commencing on Walker Lane north west of point A and then passing between golf holes numbered 8 and 10 to then follow along the edge of the golf course along the claimed route between points C-D. It then continues along the edge of the residential housing to exit onto Tanterton Hall Road north west of point G. The former route of Footpath Fulwood 50, or the application route between points H-I-J-K-L-E-F-G is not shown as a pedestrian access route.</p> <p><u>Route 2B</u> The route is shown from point V passing through point W and point X but exiting onto Lightfoot Lane slightly further east than point Y.</p>
<p>Investigating Officer's Comments</p>		<p>This is the earliest plan inspected to show routes crossing land to be developed as part of the golf course. The routes are described as 'pedestrian access' but there is no indication on the plan whether pedestrian access was for public or private use or whether the routes shown were proposed access routes or whether access had already been provided along those lines.</p>
<p>Final Draft Agreement for lease relating to development of golf course and housing</p>	<p>1978</p>	<p>A copy of a draft agreement was found in the County Records Office annotated as being the 'final draft agreement' between Central New Towns Development Corporation and Miller Buckley Golf Services (Ingol) Limited dated 13 March 1978 for the lease relating to the development of the golf course and housing.</p>

Observations		<p>The agreement contains information regarding the provision of footpaths across the land. Within Schedule 3 it states that within the golf course parcel the corporation will provide certain footpaths shown on a drawing referenced 6/34/308A and that the general line of these footpaths may be subject to variation by agreement between the corporation and the company. It also stated that any closure of an existing footpath will require an order which is within the discretion of the Secretary of State.</p> <p>The agreement also stated that footpaths must be kept open and useable on foot at all times although private footpaths could be temporarily closed by the lessee if necessary for the proper management of the golf course and that the corporation would not unreasonably withhold permission to divert public or private footpaths at a future date if it was necessary for the implementation of the scheme.</p>
Investigating Officer's Comments		<p>A copy of the plan referred to in the agreement could not be found in the County Records Office so it is not possible to confirm whether the routes under investigation were the ones shown. However, the draft agreement does refer specifically to the provision of public access along footpaths across the site although it appears that there were to be both public and private routes created and in fairness some confusion over terminology and the changes possible to them once constructed.</p>
New Towns Act 1965 Order for the Extinguishment of Public Rights of Way Central Lancashire Development corporation Borough of Preston	1978	<p>Order made by Secretary of State on 29th June 1978 to extinguish parts of Footpaths 41, 43, 49, 48, 50, 42 and 5 as shown on the Order plan and described in the Order Schedule.</p>
<u>Route 2A</u>		



Route 2B



The Order came into effect on the day that it was made. There was no reference to the creation of alternative or 'new' public rights of way in the wording of the Order but the key to the Order plan showed proposed new footpaths with a solid black line, existing footpaths to be closed with a long dashed line and existing footpaths to be retained by short dashed lines.

Route 2A

The Order plan shows a proposed alternative footpath from Walker Lane but commencing at a point north east of point A which then extends in a general southerly direction in an arc towards the route of Fulwood 50 (to be extinguished) and then in a more south westerly direction passing through a pond located north west of the application route between points F and G.

		<p>Route 2B</p> <p>The route under investigation between points V-W-X is shown as a proposed path on the Order plan but is shown to exit onto Lightfoot Lane to the east of point Y.</p>
Observations		<p>The Order plan showed a number of routes described as "proposed new footpaths" – including routes which were similar but not entirely consistent with the application routes.</p> <p>The Order does not specify that the route was to be created as a public right of way by the Order, Central Lancashire Development Corporation could create highways as owner but it appears reasonable to infer that the intention was to create alternative public rights of access along the routes shown as proposed new routes. As the order plan was drawn using an Ordnance Survey base map which pre-dated the development of the golf course and associated housing it appears that whilst the existing routes to be extinguished were correctly shown on their legally recorded alignment the proposed alternatives routes were possibly approximations of the routes to be provided once the development took place.</p>
Ingol Golf Villages - Leaflet published and produced by Central Lancashire Development Corporation	1980	<p>Copy of leaflet produced providing details of the proposed development of a golf course and housing in Ingol and contact details for the various housing developers and Central Lancs New Towns Development Corporation. The leaflet included a map of the 18 hole golf course and the key to the map details, amongst other things, routes shown as public footpaths, existing and new roads and roads to be made into footpaths.</p>



Key to map

-  New housing areas
-  Existing development
-  Village centres
-  Golf centre and clubhouse
-  Golf course fairways and greens
-  Golf course 'roughs'
-  Direction of play on golf course
-  Green numbers
-  Public open space
-  Tree belts
-  New roads
-  Existing roads
-  Existing road made into a footpath
-  Public footpaths
-  Emergency exit road

Observations

The plan included in the leaflet is a large scale drawing showing routes described as public footpaths which correspond to the routes shown as proposed footpath in the 1978 extinguishment order detailed above.

A route is shown from Walker Lane to Tanterton Hall Road which appears to include that part of the claimed route between point C and point D but which differs from the route claimed between point A and point C and point D and point G. the former route of FP 50 claimed between point H-I-J-K and the route K-L-E are not shown on the plan.

A route consistent with Route 2B is shown as a public Footpath from point V to point X but

		beyond point X the route is shown to take a different route and to exit onto Lightfoot Lane east of point Y.
Investigating Officer's Comments		<p>The leaflet was distributed to the public showing details of the proposed development and clearly indicates the intention that a number of routes shown on the 1978 extinguishment order were to be provided as public footpaths reiterating the intention to provide alternative routes for those paths extinguished by the 1978 order detailed above.</p> <p>Routes consistent with – but not on the exact alignment of Route 2A between points A-B-C-D-E-F-G and 2B between points V-W-X-Y are shown as public footpaths. The former route of Fulwood 50 is not shown indicating that there was no intention to retain it as a route to which the public had a right of access.</p>
Aerial Photograph	1988	Aerial photograph taken May 1988 and available to view in the County Records Office
<u>Route 2A</u>		





Route 2B



Observations

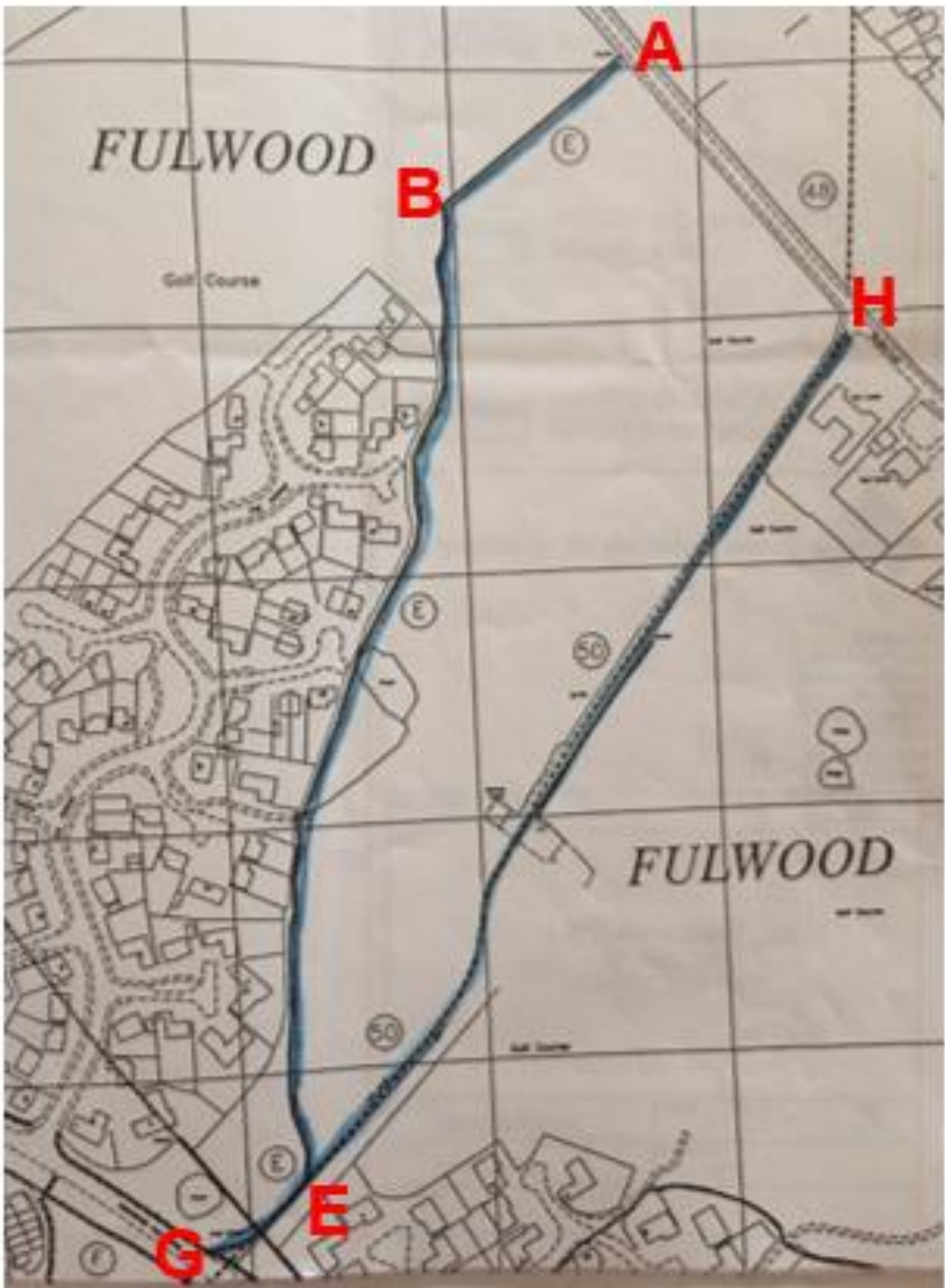
Route 2A

It is not possible to see whether access was available from Walker Lane at point A. Access along the route appears to be available between point A-B-C although there is no visible track. From point C it appears possible to walk the application route along the boundary of the golf course to point D but it is not possible to see whether there was access between the houses and ponds due to tree cover. Again, there is no visible worn track along this section. From point D-E the route crosses rough grass and there is no worn track visible.

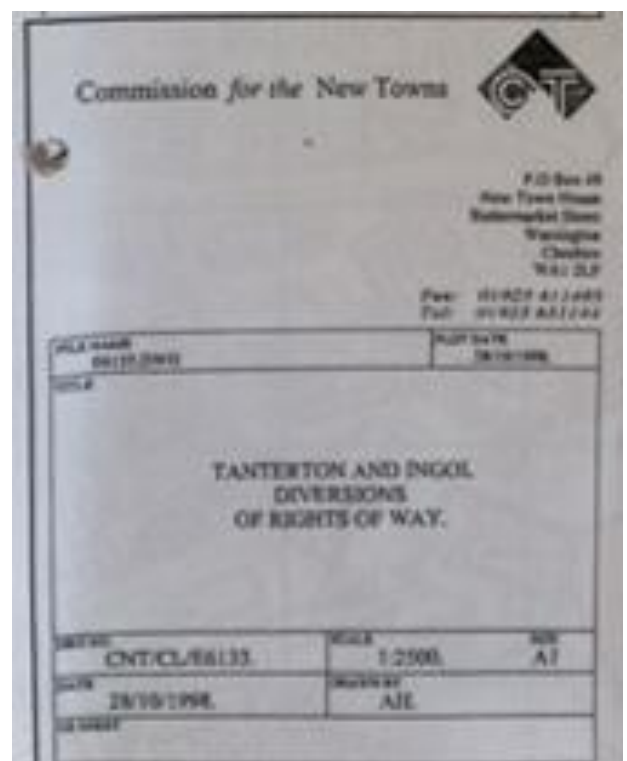
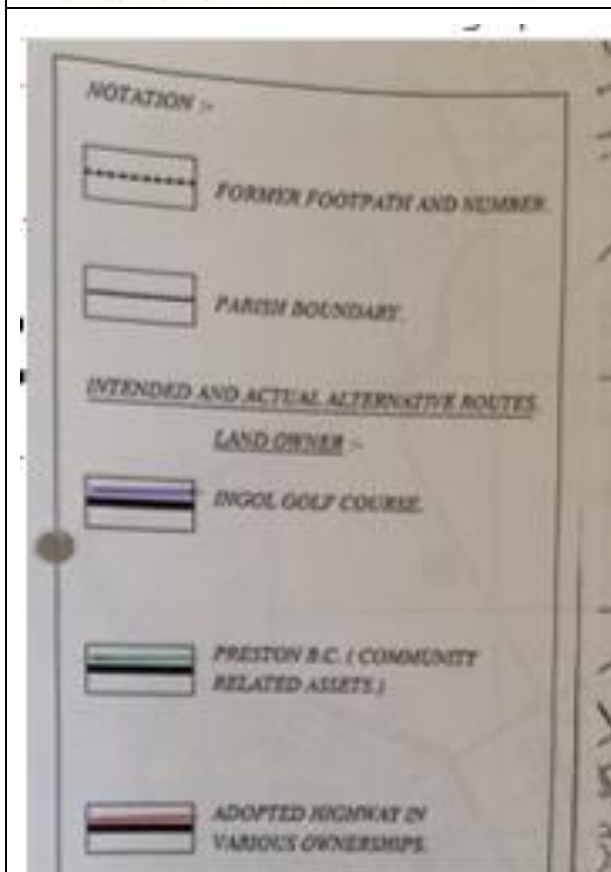
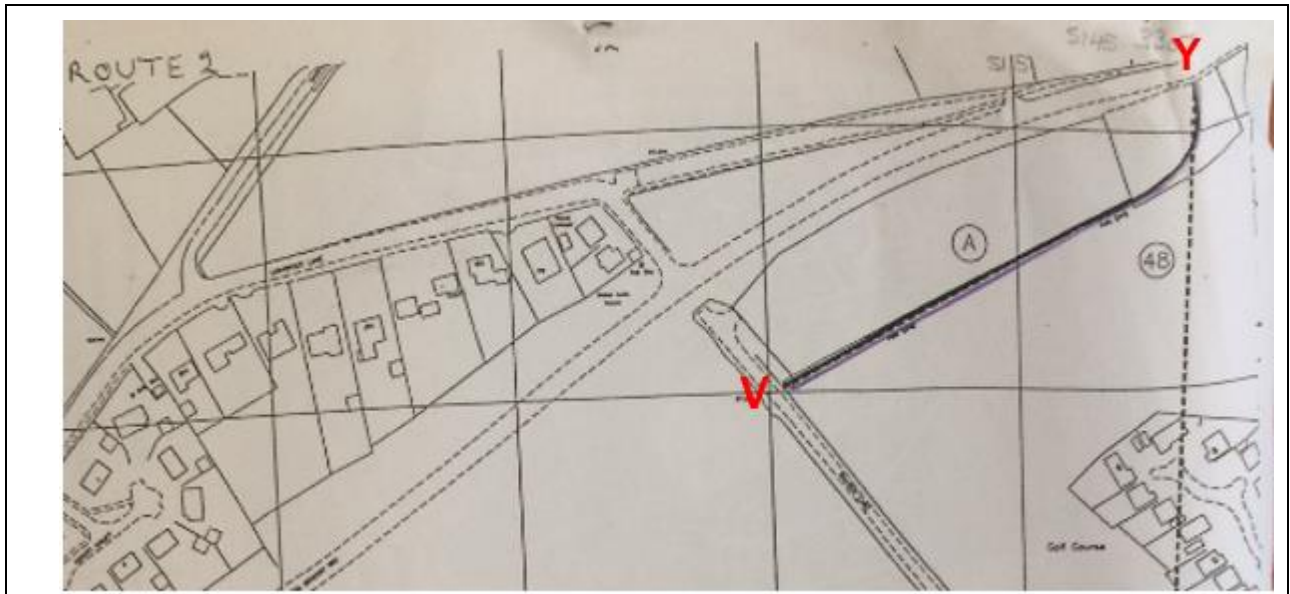
At point F a clearly visible route can be seen across the watercourse and access appears available from point F to point G.

The former route of Fulwood 50 from point H-I-J can be seen and appears accessible. The farm and outbuildings can be seen on the photograph and it appears that there could have been a route through to point K.

		<p>Between point K and point L the route crosses open ground and may have been available. At point L the route is crossed by another visible path and from point L along the application route to point F a path is visible which appears consistent with pedestrian use.</p> <p>Route 2B</p> <p>The route is not visible as a track on the ground between point V-W-X although there does not appear to be anything across the route which would prevent access. From point X to point Y a worn track is visible which is consistent with the claimed route.</p>
Investigating Officer's Comments		<p>The route between point H-I-J-K-L-E-F-G existed and appeared capable of being used in 1988. The route between point A-B-C-D-E may have been available to use but the aerial photograph does not show up a route consistent with regular and consistent use (i.e. a visible worn track).</p> <p>The route between point V-W-X-Y probably existed in 1988.</p>
Plan used as part of application to show route claimed	1998	<p>Plan provided by Commission for New Towns (North) to the applicant together with a letter in response to the applicant querying the status of the application route with them prior to submitting the application.</p>
<u>Route 2A</u>		



Route 2B



Observations

This plan was provided to the applicant by Mr R Robson, Commission for New Towns (CNT) North, in a letter dated 06 November 1998, CNT was the successor to Central Lancashire Development Corporation. The drawing – referenced CNT/CL/E6133, is stated to be based on the latest OS plan of the Ingol and Tanterton area (at that time) and is described as being marked up with the routes of the former footpaths and the

		<p>approximate routes of the various alternative footpaths provided in respect of the various footpath closures.</p> <p>The plan was marked up with details of the various landowners and annotated with letters of the alphabet.</p> <p>The letter accompanying the plan also explains that Central Lancashire Development Corporation sold the golf course to Hemm Inns limited in 1985 and put provisions in the transfer to ensure that the footpaths indicated in the original layout approved in 1978 were not obstructed or interfered with. The lines of the routes across the golf course are indicated in blue but CNT make reference to the routes now in use deviating from the routes marked in blue in several places.</p> <p>With regards to 'Route 2' the following comments were made in the letter by Mr Robson:</p> <p>Route 2A – The route deviates from the intended line or is unclear and that the original route of Fulwood 50 was still in use even though there was an official footpath sign on the west side of Walker Lane marking the 'blue route'</p> <p>Route 2B – the route follows the line intended in the golf course layout.</p>
Investigating Officer's Comments		<p>The letter and plan provide further evidence regarding the construction of the application route as an alternative to those routes extinguished to allow for the development of the site and evidence of intention to dedicate by the owner.</p> <p>The letter appears to suggest that the routes were provided on the routes shown on the plan. The plan was subsequently used as the plan submitted By the Ramblers Association to show the routes applied for. It was suggested however that in respect of the route shown on the Committee plan between points A-B-C-D-E-F-G that the public had subsequently deviated from the intended route in a number of unspecified locations.</p>
Land Registry Title		The land covered by this title includes the

Number LA512320 and LAN183407		application route
<p>A Transfer which included the land in this title dated 1 April 1985 made between (1) Central Lancashire New Town Development Corporation (Transferor) and (2) Hemm-Inns Limited (Transferee) contains the following covenants:-</p> <p>"THE Transferee for itself and its successors in title for the benefit of the Transferor's retained land at Ingol adjacent to the property hereby transferred hereby covenants that the Transferee will not obstruct or interfere with any footpaths or footpath routes now crossing the property whether presently adopted or included in the Definitive Map maintained by Lancashire County Council under the terms of the National Parks and Access to and the Countryside act 1949 or any subsequent legislation or are shown on the drawings referred to in the planning approval for the development of the Gold Course on the property given under Section 6 (2) of the New Towns Act 1965 on the twenty second day of August one thousand nine hundred and seventy eight."</p>		
Observations		<p>The transfer of land from the Central Lancashire New Town Development Corporation to Hemm-Inns Limited included a covenant regarding footpaths or footpath routes which were either currently recorded on the Definitive Map, were adopted, or which were shown on drawings referred to in the planning approval for the development of the golf course on 2nd August 1978. The covenant specified that those routes should not be obstructed or interfered with. The land has subsequently been sold to Cleator Manor Limited (freehold) in 2006 and part was sold (leashold) in 2016 to Ingol Golf Club Limited with the same covenant remaining.</p>
Investigating Officer's Comments		<p>There appears to be a clear intention by the Central New Towns Development Corporation that all existing public footpaths and proposed public footpaths across the land sold should be recognised and protected against future obstruction or interference.</p>
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</p>

		<p>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 Section 31(6) deposits have been lodged with the County Council for the area over which the route runs.
Investigating Officer's Comments		There is no intention by a landowner under this provision of non-intention to dedicate public rights of way over their land.
Aerial Photograph	2000	Aerial photograph available to view on GIS.
<u>Route 2A</u>		



Route 2B



<p>Observations</p>		<p>Route 2A</p> <p>No visible worn track can be seen along the route A-B-C-D-E-F-G and it is not possible to see whether access was available along the route.</p> <p>The route between point H-I-J-K appears to exist as a substantial track although it is partially obscured by trees. Beyond point K the route may have been available but is not visible as a worn track.</p> <p>Route 2B</p> <p>No visible worn track can be seen although the route may have been available on the ground.</p>
<p>Investigating Officer's Comments</p>		<p>The photograph was taken the same year that the application was submitted. The sections of route crossing open ground are not visible as worn tracks suggesting that if the routes were available on the ground they were not receiving a significant level of use sufficient to create a visible trodden route on the ground.</p>
<p>Highway Adoption Records including</p>	<p>1929 to present day</p>	<p>In 1929 the responsibility for district highways passed from rural district councils</p>

<p>maps derived from the '1929 Handover Maps'</p>		<p>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 36 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. If a road is not on this record it may still be an existing highway. Alongside the List is a coloured up plan of the extent of the highways on the List. Footpaths and Bridleways are often not shown on these plans.</p>
<p>Observations</p>		<p>Neither route is recorded on the List of Streets as being publicly maintainable.</p>
<p>Investigating Officer's Comments</p>		<p>The routes were not recorded as being publicly maintainable but no inference can be drawn regarding public rights.</p>

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

Since the applications to record public footpaths across the former golf course were submitted the golf course has ceased to operate and a number of planning applications have been submitted to Preston Borough Council for the land to be redeveloped. Two substantial applications were made in 2010 and 2014 (Planning References 06/2010/0626 and 06/2014/572). Information submitted as part of the applications was viewed and it is noted that on various plans prepared existing public footpaths are shown together with the routes applied for – which are shown separately as being routes subject to Definitive Map Modification applications.

No further information relevant to the applications was found.

Landownership

Route 2A

The land crossed by the route under investigation shown on Plan 1 is registered in the ownership of Cleator Manor Limited.

Route 2B

The land crossed by the route under investigation shown on Plan 2 is registered in the ownership of Cleator Manor Limited.

Summary

There is no map or documentary evidence supporting the existence of the application route prior to the development of the area by the Central Lancashire Development Corporation in the mid to late 1970's and it is clear that the routes (with the exception of the route of Fulwood 50) only came into being as a result of the development of the site as a golf course and residential area.

Fulwood 50 existed as a public footpath recorded on the Definitive Map and Statement until it was legally extinguished in 1978.

Since 1978 the map and documentary evidence examined suggest that the route of the former footpath from point H-I-J-K remained in existence as a track which was capable of being used even after the demolition of the house and out buildings (Durham House) sometime between 1988 and 2000 and the claimed route between K-L-E-F-G appeared to be available and in use in 1988 (aerial photograph) supporting the user evidence with reference to this particular part of the route.

The first plan found as part of this investigation which showed routes similar to, but not exactly the same as the claimed routes between points A-B-C-D-E-F-G and V-W-X-Y-Z is dated 1977 and shows the routes as 'pedestrian access'. A year later, in 1978, an extinguishment order was made to extinguish public footpaths across the site to enable development to take place. The Order included a plan and written schedule which detailed the route between points A-B-C-D-E-F-G and V-W-X-Y 'proposed new footpath(s)'.

It appears from the 1987 extinguishment order and from further maps, plans, agreements, land transfer documentation and publicity information provided in the early 1980s that the Development Corporation intended to provide a pedestrian route to the public and from the Development Corporation records searched, together with the site evidence and information provided by the applicant it appears that routes were provided.

It is difficult to conclude from the map and documentary evidence alone however, whether the exact routes claimed were made available and whether they were the ones used (in their entirety) by the public.

Despite an extensive search of the County Records Office and further inquiries being made with the Borough Council it has not been possible to locate a copy of the plan referred to in the land registry title deeds as forming part of the grant of planning permission for the golf course in 1978 although as this plan would have been produced around the same time as the footpath extinguishment order plan referred to above it seems reasonable to conclude that the two plans would have shown the proposed footpaths in a similar manner.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant submitted 79 user evidence forms together with a copy of a letter that she had sent to members of the Ramblers Association in August 2000 explaining that staff at Ingol Golf Club had been preventing walkers using the paths across the golf course and that she was putting together an application to record the routes on the Definitive Map and asking people to complete user evidence forms if they had used the routes.

The user evidence forms all included a map provided by the applicant showing the two application routes which were referred to as 'alternative to be provided by the former Central Lancashire Development Corporation for Fulwood nos. 48 and 50 marked A and E on the attached map, and the original Footpath no. 50 through Durham House still in use.'

10 of the user evidence forms refer to use of the routes by more than one family member but individual forms were not completed. A further 12 people are therefore noted as having used the routes in addition to the 79 who completed the forms.

All of those users completing the forms have indicated that they regarded the routes as public, and that their friends and family regarded them as public.

Only one user who completed the form specified use of only one of the routes (Route 2B) and all others indicated use of both routes.

5 users recount use from between 1940-1955 onwards and explains that they used the path across the fields prior to development. A further 7 users refer to use of the routes in excess of 20 years – including use pre 1980.

The majority of use refers to the period between 1980 and 2000 with ten users specifying exactly 20 years use between those dates and a further 46 users having used the routes for between 10 and 19 years during that period. A further 10 people specifying use of the routes for less than 10 years during the 20 year period.

Some users did not specify accurately the period of use so have not been included in the above figures relating to years of use given above.

Five users refer to the presence public footpath signs (exact locations not specified) and one user stated that signs had been in place for 20 years until golf club staff

removed them in 1998/99 – although stated that the original posts were still evident. One of the users also refers to the removal of a 'footbridge.'

One user refers to using paths until being threatened with being sued for trespass (in 2000) by golf club staff and another recounted being told to 'keep off' in 2000. A third user refers to the erection of private signs erected by the golf club.

Use of the paths was predominantly for pleasure purposes with a high percentage of frequent users (at least daily) referring to walking their dogs. Other specific references to type of use included to get to work, to catch the bus, as a route to school and to visit friends.

One user stated that 'these public footpaths are an invaluable amenity to the people of Ingol' and three users explained that the location of the footpaths were a significant factor when deciding to buy their properties.

One user referred to the route of Fulwood 50 being marked on maps and that she had always considered it to be a right of way and another user also referred to the route of Fulwood 50 being on old (pre 20th century) maps. There is no mention of permission being given.

Information from the Landowner

Following receipt of the application consultations were carried out with the owners of Ingol Golf Course at that time (Tee Jay Leisure Limited, Sagar House, Eccleston, Chorley). They instructed Kevills Solicitors who requested a meeting with the County Council in 2006 in the hope that a 'pragmatic solution' could be found.

No meeting was arranged and a further Land Registry search has identified that the land crossed by the application routes was subsequently sold to Cleator Manor Limited C/o Whittle Jones Limited, Lynton House, Ackhurst Park, Chorley PR7 1NY in 2006 and that a further sale of part of the land affected by the proposal was completed in 2016 to Ingol Golf Club Limited, 45 Plunginton Road, Preston PR1 7EP.

Information from others

English Partnerships (successor to CNT consulted in 2005)

With regards to Route 2A between points A-B-C-D-E-F-G on Committee plan 1 they believed the land to be owned by Ingol Golf Club and understood that the golf club had tried to obstruct the route in recent years.

The route between H-I-J-K-E ON THE Committee plan was believed by English Partnerships to be on land in the ownership of Ingol Golf Club and English Partnerships understood the route to have been closed by the Central Development Corporation and that the route A-B-C-D-E-F-G was the intended alternative route but that the former route of FP 50 effectively remained in use until 2000 as the preferred less constrained route.

With regards to Route 2B they commented that they believed that the land crossed by the route was in the ownership of Ingol Golf Course and that English Partnerships had no knowledge about how long the route may have been in use.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order

User evidence

Evidence of Central Lancashire Development Corporation's intention.

Against Making an Order

Actual Central Lancashire Development Corporation planning consent drawings not available.

Conclusion

As there is no express dedication it is advised that Committee consider whether there is sufficient evidence on balance for a deemed dedication from use under S31 Highways Act 1980 and/or an inferred dedication at common law from all the circumstances pointing to an intention to dedicate by the owner.

It would seem to be the case that the routes did not exist prior to the ownership by Central Lancashire Development Corporation established by the Minister under the New Towns Act 1965. The land for the golf club had been taken by the Corporation by compulsory purchase powers or in the shadow thereof and planning consent obtained by the Corporation by submitting proposals and the Minister making a Development Order. The Development Order and its drawings has not been located but it is suggested that other documents are of assistance.

At common law to infer a dedication from all the circumstances can involve consideration of both user evidence and documents. The Planning Statement referred to earlier in the report clearly shows that the Central Lancashire Development Corporation had an intention to create footpaths and to retain the extent of the existing network. The New Towns Act says that a Development Corporation had the power to do anything necessary or expedient for the purposes incidental to its main objectives. Central Lancashire Development Corporation is obviously unusual as it was developing huge areas of land.

Committee must consider whether there is sufficient evidence of the intention to create the actual route being considered in this report.

Route 2A A-G

It is suggested that there is sufficient evidence to indicate that this claimed route – save for A-B appears on the "Local Plan" appearing as an alternative to footpath 50.

A-B is on a slightly different line and the route is to a large extent on the Order plan itself re the extinguishment of FP50 and on the leaflet produced by the owners. A-B is shown on a slightly different alignment.

The difficulty accessing the route in the woodland in 2016 does not mean that it was not available when created and up to 2000 when the application arrived.

The user evidence is significant and collected and submitted by the Ramblers Association.

The user adds force to the evidence of Central Lancashire Development Corporation's intention to dedicate this route and accepts the route on the part of the public with A-B being the line used.

It is suggested that Committee may find sufficient evidence from which to infer an actual dedication by Central Lancashire Development Corporation and acceptance by the public can reasonably allege to have occurred or found to have occurred on this claimed route. The slight difference of the line A-B means Committee needs to consider whether there is sufficient evidence for this section. It is suggested that the evidence of a route on a similar alignment being intended remains and the actual route dedicated and user not challenged by Central Lancashire Development Corporation became the line as claimed.

The user evidence also enables Committee to consider whether as of right use has been for the twenty years without interruption and without indication of a lack of intention to dedicate such that dedication may be deemed to have occurred under S31 Highways Act 1980. Again the user evidence is supported by plans completed by the users and collected by the Ramblers Association. There is reference to use by the Association for guided walks. It is suggested that the calling into question was the submission of the application or possibly just before then when the challenges by the Golf Club are referred to. There is reference to paths being permissive.

Taking the evidence into account it is suggested that the Committee may decide that an Order can be made for this route to be added to the Definitive Map and Statement and be promoted to confirmation.

Route 2A eastern arm D-H

This claimed route does not appear on the "Local Plan" or on the Order plan itself re the extinguishment of footpath 50 and not on the leaflet produced by the owners. It does not have the same documentary evidence as others to indicate Central Lancashire Development Corporation's intention. It is advised that Committee concentrate on the user evidence re this route. The user evidence would indicate that FP50 was extinguished but was used again. It is suggested that given Central Lancashire Development Corporation extinguished FP50 by Order it would be difficult to infer an intention to dedicate again.

However the user evidence enables Committee to consider whether as of right use has been for the twenty years without interruption and without indication of a lack of intention to dedicate such that dedication may be deemed to have occurred under

S31 Highways Act 1980. Again the user evidence is supported by plans completed by the users and collected by the Ramblers Association. It is suggested that the calling into question was the submission of the application or possibly just before then when the challenges by the Golf Club are referred to. The user evidence is supported by the early site information.

Taking the evidence into account it is suggested that the Committee may decide that an Order can be made for this route to be added to the Definitive Map and Statement and be promoted to confirmation.

Route 2B V-Y

It is suggested that there is sufficient evidence to indicate that this claimed route – save for X-Y (the eastern end) appears on the "Local Plan". X-Y is there but on a slightly different line. The route is to a large extent on the Order plan itself re the extinguishment of footpath 48 and on the leaflet produced by the owners. X-Y is again shown on a slightly different alignment.

The difficulty accessing the route in the woodland in 2016 does not mean that it was not available when created and up to 2000 when the application arrived.

The user evidence is significant and collected and submitted by the Ramblers Association.

The user adds force to the evidence of Central Lancashire Development Corporation's intention to dedicate this route and accepts the route on the part of the public with X-Y being the line used.

It is suggested that Committee may find sufficient evidence from which to infer an actual dedication by Central Lancashire Development Corporation and acceptance by the public can reasonably allege to have occurred or found to have occurred on this claimed route. The slight difference of the line X-Y means Committee needs to consider whether there is sufficient evidence for this section. It is suggested that the evidence of a route on a similar alignment being intended remains and the actual route dedicated and user not challenged by Central Lancashire Development Corporation became the line as claimed.

The user evidence also enables Committee to consider whether as of right use has been for the twenty years without interruption and without indication of a lack of intention to dedicate such that dedication may be deemed to have occurred under S31 Highways Act 1980. Again the user evidence is supported by plans completed by the users and collected by the Ramblers Association. There is reference to use by the Association for guided walks. It is suggested that the calling into question was the submission of the application or possibly just before then when the challenges by the Golf Club are referred to.

Taking the evidence into account it is suggested that the Committee may decide that an Order can be made for this route to be added to the Definitive Map and Statement and be promoted to confirmation.

Risk management

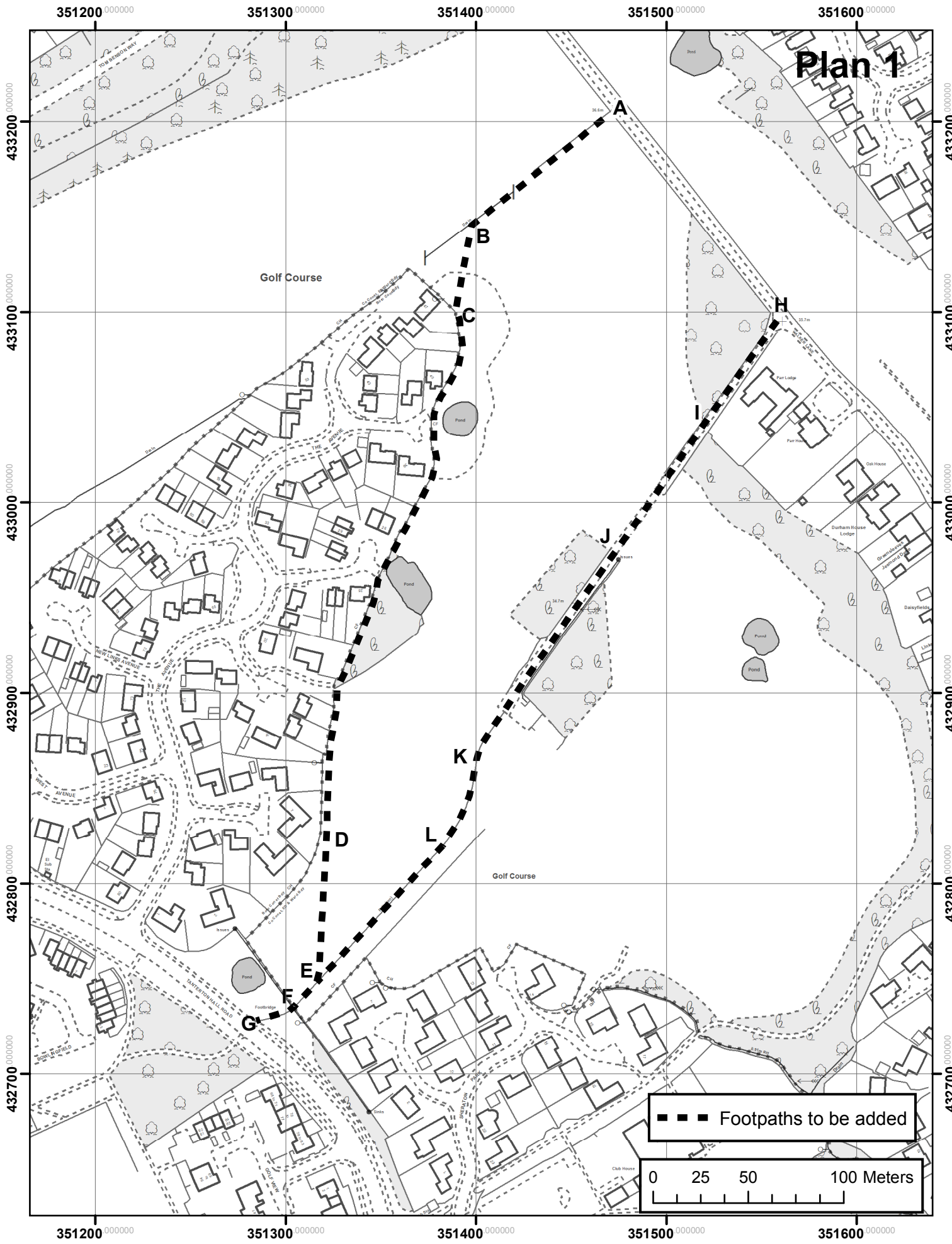
Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda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

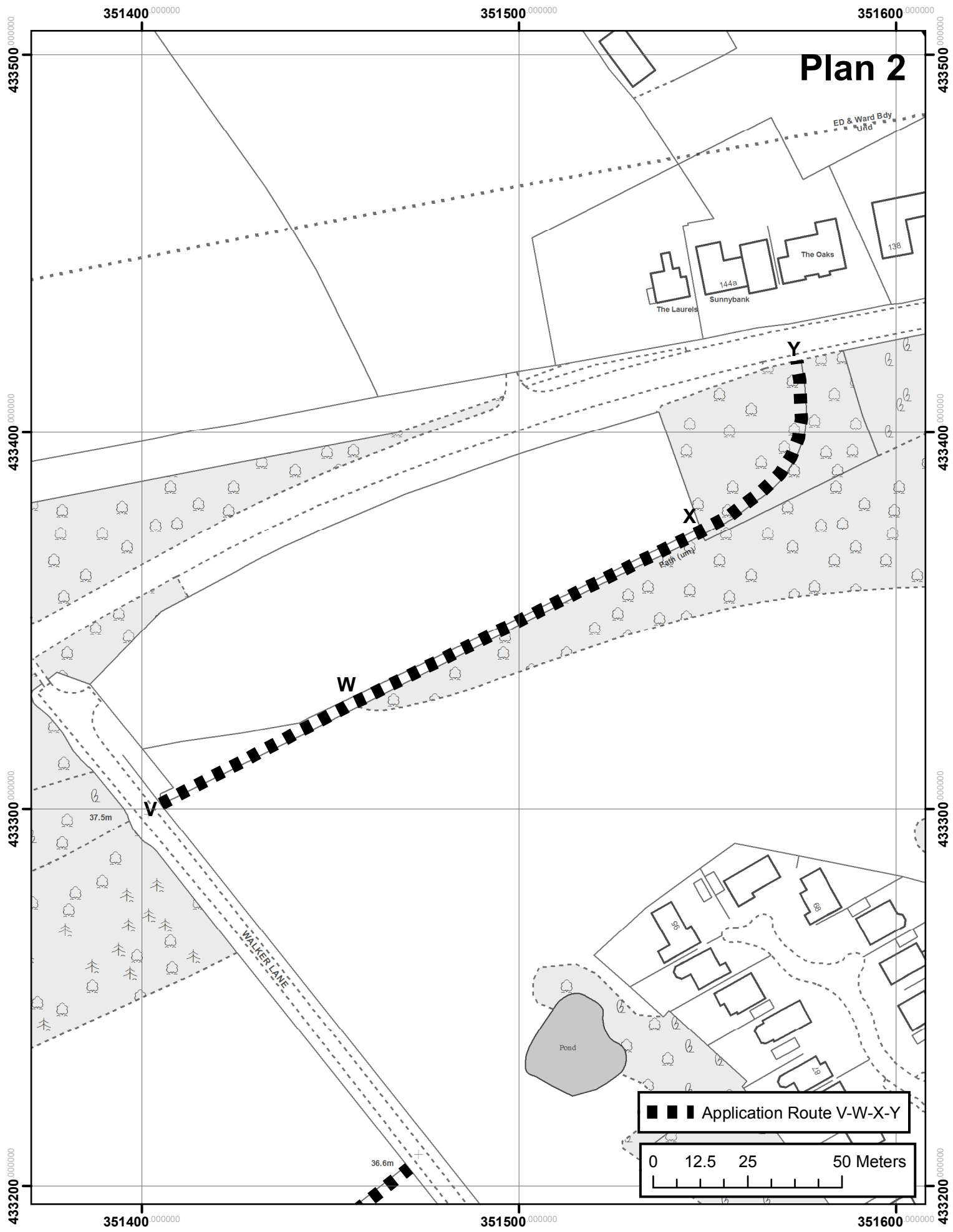
Local Government (Access to Information) Act 1985 List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-379b		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

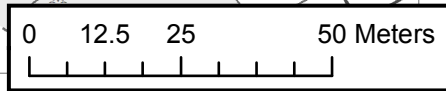
N/A





Plan 2

■ ■ ■ Application Route V-W-X-Y



Andrew Mullaney
Head of Planning and Environment

Wildlife and Countryside Act 1981
Route 2B - Addition of public footpath from Walker Lane to Lightfoot Lane,
Fulwood, Preston City

1:1,250



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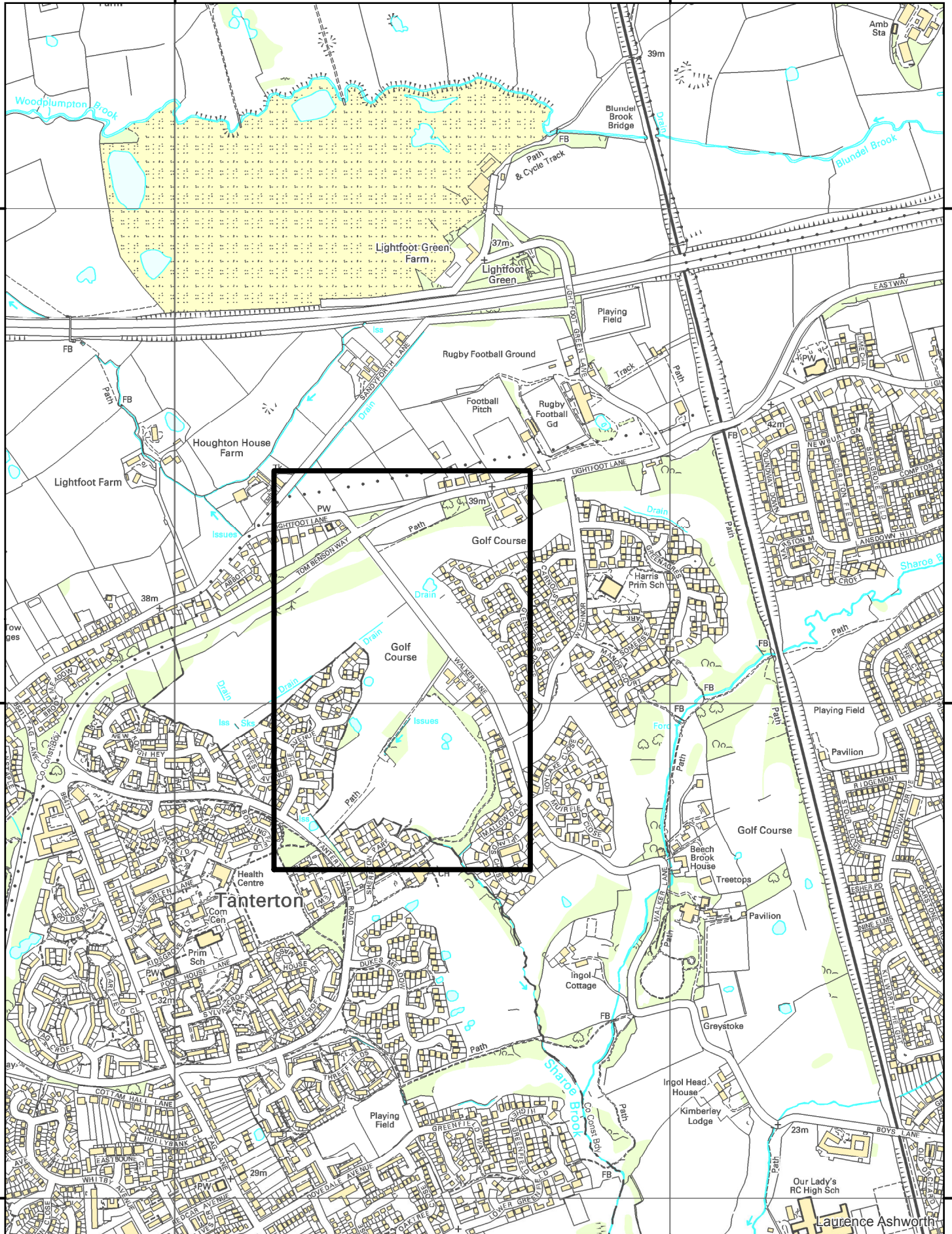
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Andrew Mullaney
Head of Planning and Environment

Wildlife and Countryside Act 1981 LOCATION PLAN
Addition of footpaths from Walker Lane, Fulwood, Preston City

1:10,000



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Regulatory Committee

Meeting to be held on 11 March 2020

Part I

Electoral Divisions affected:
Preston West and
Preston North

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of Footpaths from Manor Court and Greenacres across Sharoe Brook to Footpath Fulwood 43, Preston

File No. 804-379c

(Annex 'A' refers)

Contact for further information:

Simon Moore, 01772 531280, Paralegal Officer, Legal and Democratic Services,
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Jayne Elliott, 07917 836626, Public Rights of Way, Planning & Environment Group,
Jayne.elliott@lancashire.gov.uk

Executive Summary

Application for footpaths to be added to the Definitive Map and Statement of Public Rights of Way from Manor Court and Greenacres across Sharoe Brook to 2 points on Footpath Fulwood 43, Preston in accordance with File No. 804-379c.

Recommendation

- (i) That the application to add to the Definitive Map and Statement footpath lengths between Manor Court and Greenacres across Sharoe Brook to Footpath Fulwood 43, Preston, in accordance with File Number 804-379c, be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way footpaths from Manor Court and Greenacres across Sharoe Brook to Footpath Fulwood 43, Preston as shown on the Committee Plan between points A-B-C, B-D-E-F, G-H-I-J and H-L-K.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

In 2000, an application under Schedule 14 of the Wildlife and Countryside Act 1981 was received for the addition of a number of public footpaths which were described by the applicant as being situated on land forming part of Ingol Golf Course and as having been provided by the former Central Lancashire Development Corporation.

Five separate sets of routes were listed and numbered 1 to 5 and evidence in support of each route was provided.

The application was originally submitted by the Area Secretary of the Ramblers Association (Mid Lancashire Area) but sadly, since submission, the applicant has died.

Soon after the application was submitted, research was carried out by two former members of the county council's Public Rights of Way team and initial consultations carried out but reports were never prepared or presented to the Regulatory Committee and the officers originally involved in the investigation have subsequently retired. Various development proposals were thought likely to accommodate the routes but this has not been achieved. Further work has now been done to get the reports finalised.

The original application made by the Ramblers Association was split down into five separate applications. The bulk of the evidence provided by the Applicant in support of the application consisted of completed user evidence forms and on a review of the application bundle it has been decided to consider each route separately.

This report considers the route referred to by the applicant as 'Route 3' and is shown on the committee plan by a thick dashed line between points A-B-C, B-D-E-F, G-H-I-J and H-L-K.

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

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

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

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

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

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

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

Consultations

Preston City Council

The City Council were consulted and commented queries were raised by a resident regarding the status of paths on the golf course and that a copy of the transfer/lease of the land to the golf club was seen by the Council which indicated that the 'new' paths were 'permissive paths', created as a condition of the transfer/lease. The Council referred the matter to English Partnerships, a successor of Central Lancashire Development Corporation, but were not aware whether they had then pursued it with the golf club.

Comments from Preston City Council Highways department were that 'the paths most certainly exist' in terms of them being physically constructed and that they had been created by the Central New Towns Commission but that despite receiving numerous enquiries regarding the condition of the paths over the years the Council had no power to act with respect to such 'permissive paths'.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Route 3A

Point	Grid Reference (SD)	Description
A	5198 3306	Junction with Manor Court immediately south of the boundary fence between 6 and 7 Manor Court
B	5199 3307	Three way junction of paths north of 8 Manor Court
C	5200 3313	Junction with Greenacres adjacent to 53 and 55 Greenacres
D	5200 3308	Kissing gate
E	5206 3301	Footbridge across Sharoe Brook
F	5207 3300	Junction with Footpath Fulwood 43
G	5193 3303	Junction with Manor Court between 12 and 15 Manor Court
H	5200 3297	Junction of made up paths
I	5202 3296	Footbridge across Sharoe Brook
J	5203 3296	Junction with Footpath Fulwood 43
K	5201 3296	Ford crossing of Sharoe Brook
L	5202 3295	Junction with Footpath Fulwood 43

Description of Routes

The application was submitted in 2000 but a site inspection was not carried out by the county council until 2005.

Because the application relates largely to user evidence pre-dating 2000 details of the 2005 site inspection are included in this report. This provides a better indication of what existed on the ground closer to the time that the routes were said to have been used.

A Further site inspection was carried out in 2019 to see what changes may have occurred since the 2005 inspection.

Addition of Footpath from between house nos. 12 and 15 Manor Court to Footpath Fulwood 43 shown between points G-H-I-J and H-L-K on the Committee plan.

In 2005 the Officer completing the site inspection described the route as follows:

The application route is from point G on the adopted footway on the south side of Manor Court where there is a wide access way with planting to both sides. After a length of approximately 7 metres is a notice placed to the westerly side, reading, "*Warning Steep hill ahead*" The macadam surface also stops at this point and is replaced by a well compacted stone surface. At a point approximately 15 metres from Manor Court there is a fence and gateway across the application route. No gate is in position. To the westerly side of the gateway there is a kissing gate although it was not possible to gain access to the kissing gate because of the shrub planting. To the easterly side of the gateway there is a section of timber railing fence, also

overgrown and it was the view of the Officer inspecting the route at that time that all of the structures described appeared to have been provided by the Development Corporation.

The application route was described as continuing to follow a very well used stone path within a wide open area leading down the hill. After approximately 85 metres from point G, there appeared to be the remains of a timber seat placed to the north of the route where the area opens out, to overlook the valley. Again, the officer carrying out the inspection was of the view that the seat appeared to have been provided by the Development Corporation.

The stone path was described as continuing down the hill dividing into two separate parts at point H. One, a well-trodden path to the north leading directly to a timber footbridge crossing Sharoe Brook at point I to then continue to meet Footpath Fulwood 43 at point J.

The second part of the divided path was to the south and led to what was described as a concrete apron, sloping down into a ford (point L) in Sharoe Brook, with a similar concrete slope for the exit, which then lead up onto Footpath Fulwood 43 at point K - approximately 8 metres south west of point J.

The ford was described as appearing to be very well used by vehicles, presumably in connection with the golf course, as it formed part of a track from the north east. The Officer carrying out the inspection was of the view that both the footbridge, and the ford, appeared to have also been erected by the Development Corporation.

When the route was inspected in 2019 it was noted that the sign stating 'Steep Hill' was no longer in place. The routes were still accessible and appeared to be being used. The footbridge at point I was in poor condition and the path to the ford crossing and beyond (H-L-K) was more overgrown and did not appear to be as well used. There were no signs indicating permission.

Addition of a Footpath from Manor Court to Greenacres and across Sharoe Brook to Footpath Fulwood 43

In 2005 the officer carrying out an inspection of the route described the route as commencing at point A on the surfaced footway of Manor Court. After approximately 10 metres the footway divided (at point B) with one length going to the north-east towards point C, (described below in this report) whilst the other route continued in a north-easterly then south-easterly direction following a less used but well surfaced footway to a timber kissing gate in a rail fence at the boundary of the housing development (point D). The kissing gate and rail fence were described as being in good condition although they did have some moss growth on them. The officer carrying out the inspection was of the opinion that the fencing and kissing gate had been provided by the Development Corporation.

On the far side of the kissing gate the route was described as following a stone path leading down through a sloping area that has been planted with shrubs and trees with brambles growing from both sides of the route.

After approximately 15 metres from the kissing gate were the remains of what appeared to have been a section of old fencing and possibly a seating area, described in very poor condition and badly overgrown. There were also timber steps on the path as it continued down the slope. The application route was described as becoming quite narrow as it continued through the undergrowth to a more open rough grass area to level out and cross a track worn by vehicles leading to and from the ford at point L. The application route was then described as following a trodden muddy path with stone surface, over a large span timber footbridge crossing Sharoe Brook (at point E) to continue along another short length of muddy, trodden path on top of a stone surface to meet Footpath Fulwood 43 at point F.

The officer summarised that in 2005 the whole of the application route described above was being used by the public, although it was very overgrown in places and that the entire route seemed to have been constructed by the Development Corporation with a macadam or stone surface, fencing and a kissing gate originally constructed to a high standard; a seating area and extensive tree and shrub planting. It has also been provided with a large footbridge across Sharoe Brook providing a useful link between the area of housing and Footpath Fulwood 43.

When the application route was inspected again in 2019 it was noted as still being accessible. The section A-B was tarmacked and in good condition. The route from point D-E was a visible trodden path which was quite muddy in places. The footbridge at point E had deteriorated and was in poor condition.

From the division of routes at point B the other branch of the application route was described in 2005 as extending in a north north westerly direction following a well-surfaced footway alongside the tall brick garden wall of 7 Manor Court with an area of planting on the north-east side.

The application route was then described as moving away from the garden wall before turning north to follow the side of a tall brick boundary wall to 53 Greenacres, with a widening triangle of grass to the westerly side. There was a street light at the end of this area of grass with a metal railing fence to the easterly side replacing the brick wall.

The route was described as turning again at a metal bollard in the centre of the macadam path, and continuing to follow the surfaced path alongside the metal railing fence to the south east and an open lawn area of 54 and 55 Greenacres to the north west to join the footway at the end of Greenacres at point C.

The officer carrying out the inspection commented that the route between points A-B-C had been constructed with a macadam surface and was in very good condition throughout, with areas of grass and planting to the sides. He was of the opinion that the work to establish the path appeared to have been carried out as part of the original housing development.

The officer investigating the route in 2005 also noted that between points A-B-C the route was recorded in the county council's highway records as a publicly maintainable footway (F5997).

When the route was re-inspected in 2019 the route between points A-B-C was accessible and in good condition.

There was no mention of signs indicating permission.

Map and Documentary Evidence

A variety of maps, plans and other documents were examined to discover when the routes came into being, and to try to determine what its status they may be. The routes are not shown on any of the early commercial maps, the Tithe Map of Broughton dated 1839 or OS maps published in 1849, 1893, 1912, 1932, 1938, 1961 or 1978. Neither are they shown on the aerial photographs taken in the 1940s or 1960s.

The routes cross land which is within an area which was designated as that of the Central Lancashire Development Corporation. A Development Corporation was a body set up across parts of England and Wales and charged with the urban development of an area. It operated under the New Towns Act of 1965, outside the usual Town and Country Planning legislation.

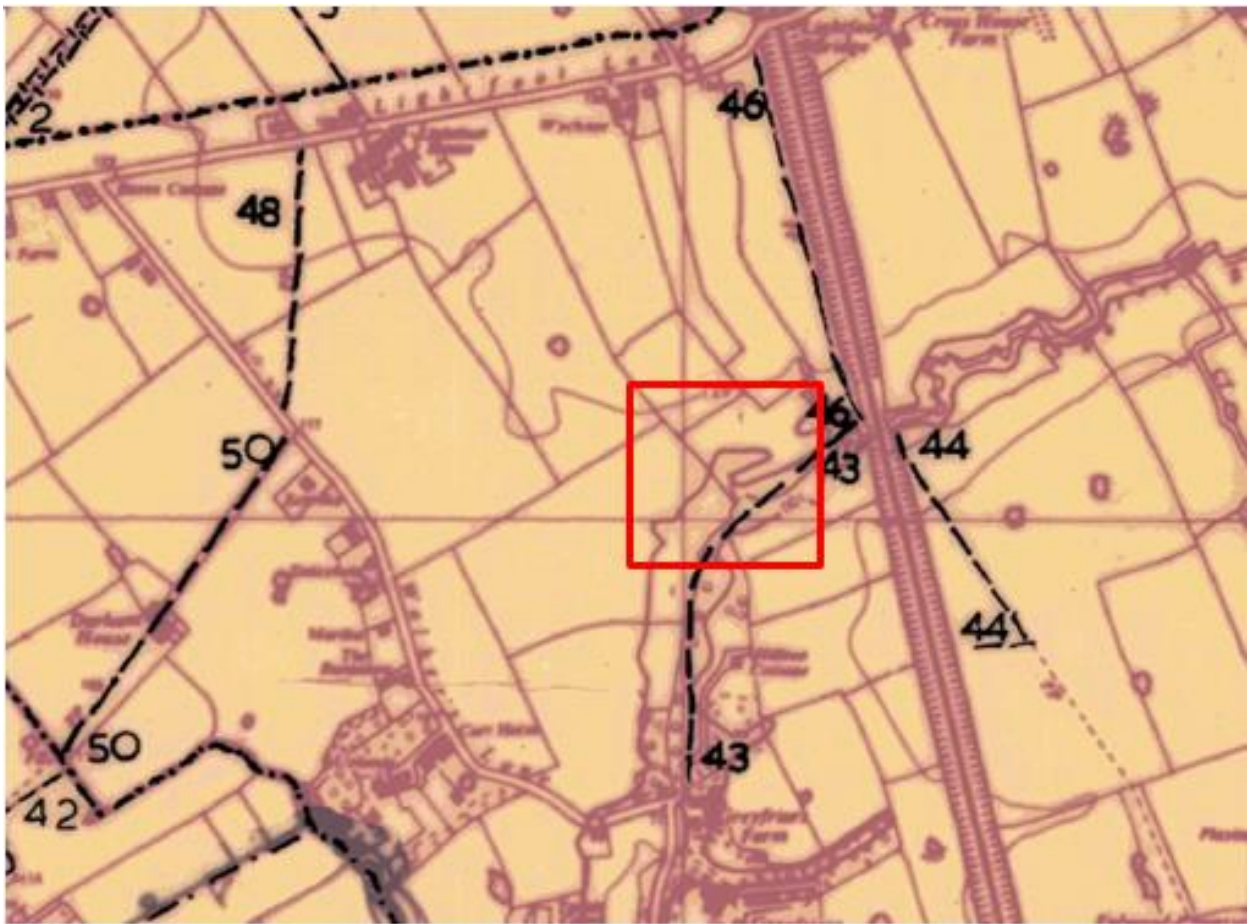
The Central Lancashire New Town (Designation) Order was approved on 14 April 1970 and the Development Corporation formerly constituted on 17 February 1971. The Commission was in existence for 16 years until it was formally dissolved on 31 March 1986 and during that time the area to the north of Preston – referred to as Ingol East – underwent significant development.

The routes claimed were described in the application as having been provided by the former Central Lancashire Development Corporation. Further details and evidence post-dating the designation of the area as part of the Central Lancashire New Town are detailed below in the assessment made of the relevant map and documentary evidence discovered:

Document Title	Date	Brief Description of Document & Nature of Evidence
Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required the county council to prepare a Definitive Map and Statement of Public Rights of Way. Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the

		maps and schedules were submitted to the county council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the county council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		Fulwood was an Urban District Council for which no parish survey was carried out.
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 routes under investigation were not shown on the Draft Map of Public Rights of Way for Fulwood and there were no representations made to the county council in relation to them.
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 routes were not shown on the Provisional Map of Public Rights of Way for Fulwood and there were no representations made to the county council in relation to them.
The First Definitive Map		The Provisional Map, as amended, was

and Statement		published as the Definitive Map in 1962.
Observations		The routes were not shown on the First Definitive Map and Statement.
Revised Definitive Map of Public Rights of Way (First Review)		<p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process. By 1975 Central Lancashire Development Corporation had been in existence only four years and had just achieved its planning consent and extinguishment of footpaths 49 and 43 had not yet happened.</p>

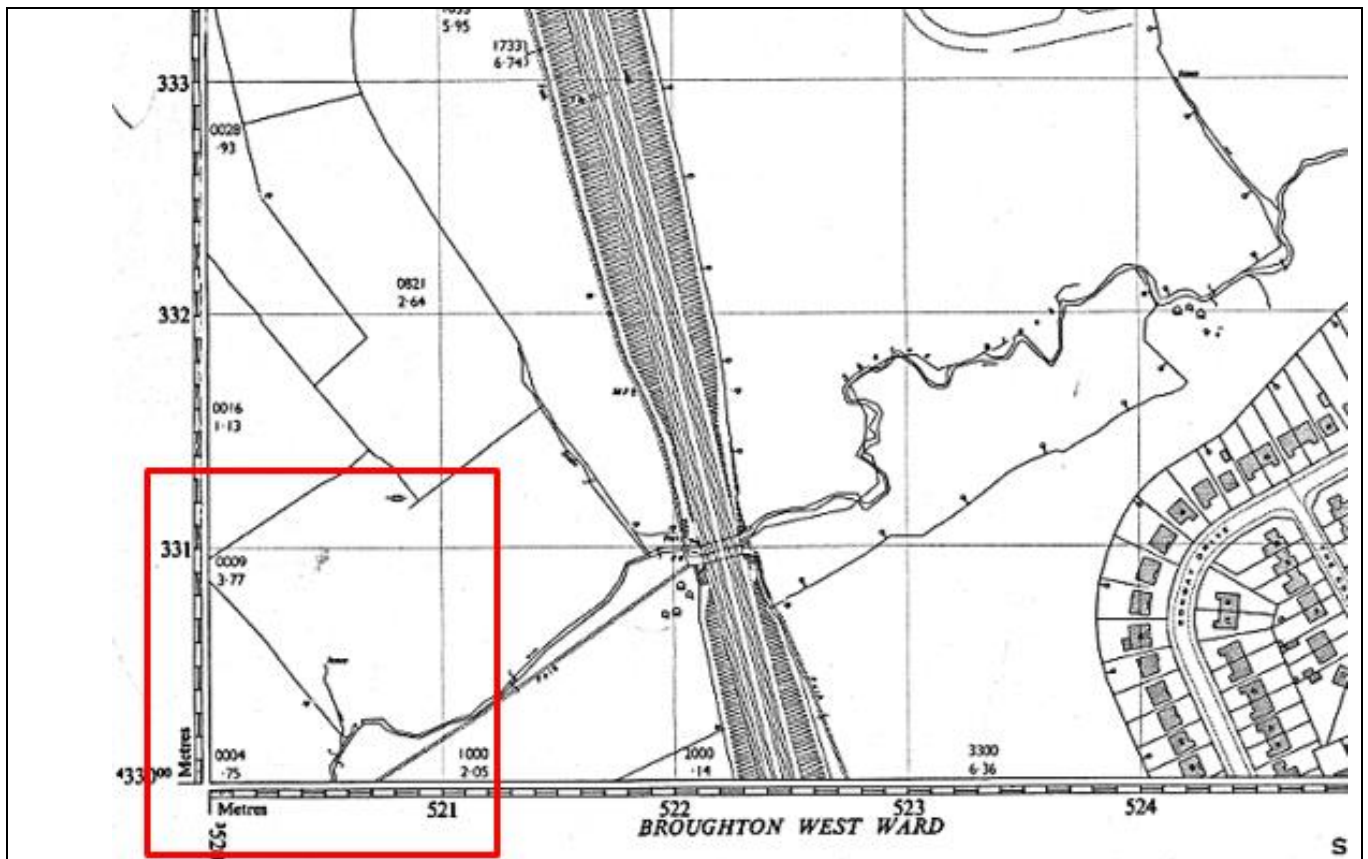


Observations		The routes were not shown on the Revised
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		Definitive Map of Public Rights of Way (First Review).
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the routes were considered to be public right of way by the Surveying Authority. There were no objections to the fact that the routes were not shown from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.
Observations		Aerial photographs dating from the 1960s pre date the development of Ingol golf course and associated housing and do not show the application routes.



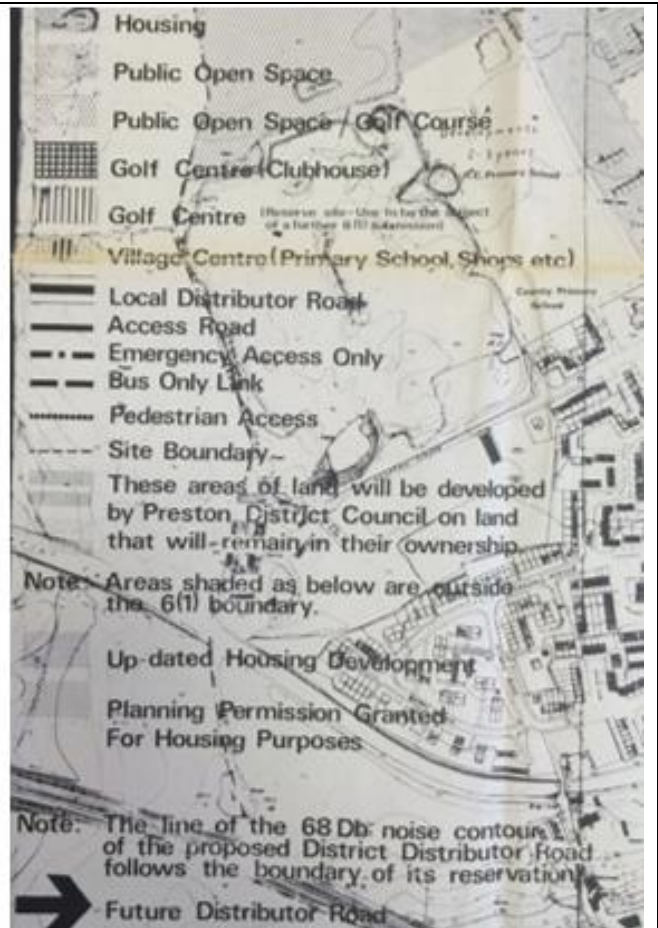
Investigating Officer's Comments		The routes under investigation did not exist in the 1960s.
OS 1:2500 Map	1969	1:2500 OS map revised 1967 and published 1969.

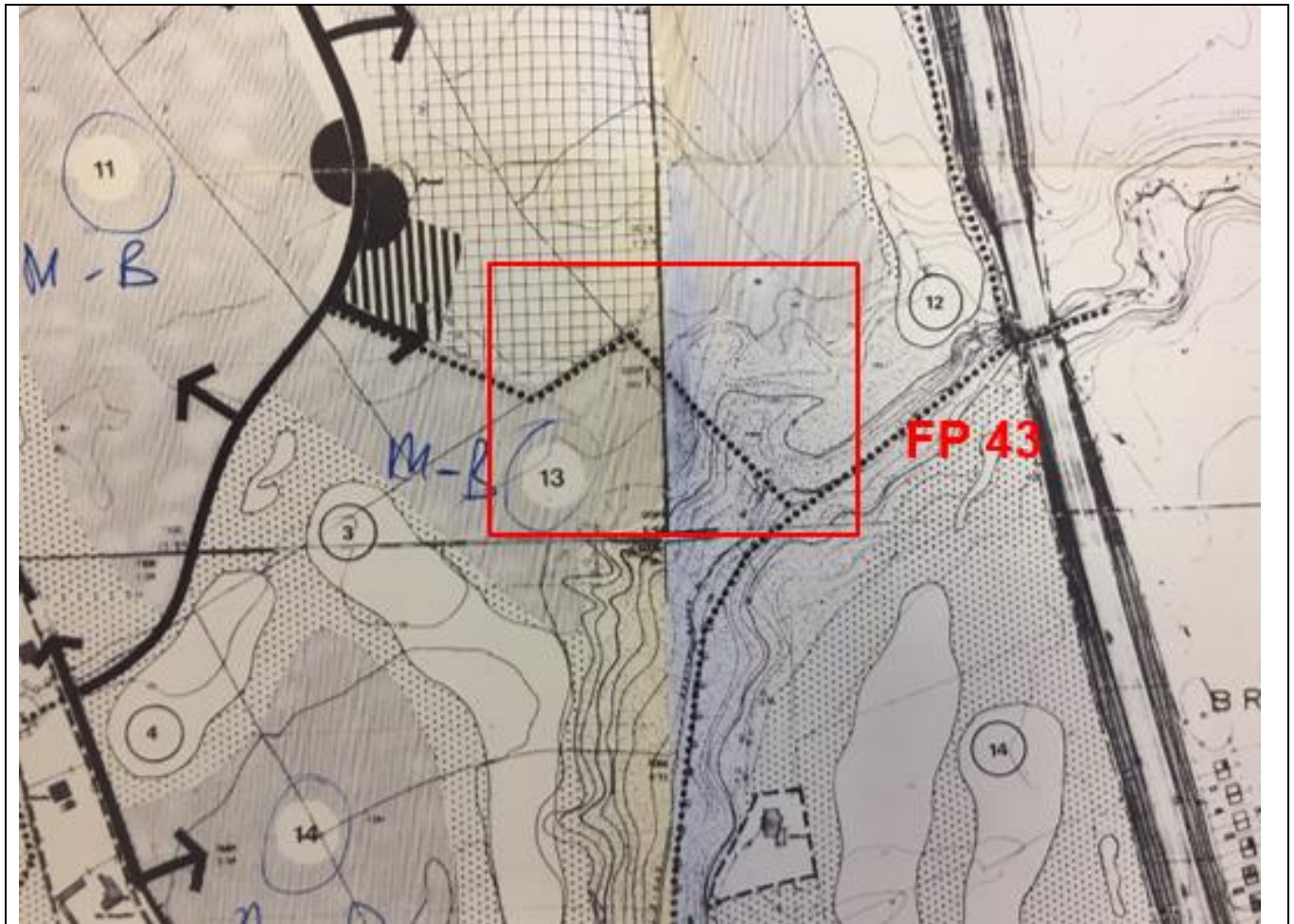


Observations		The application routes are not shown. The housing estate, Greenacres and Manor Court had not been built.
Investigating Officer's Comments		The application routes did not exist on the ground prior to the development of the golf course and associated housing.
Central Lancashire Development Corporation Planning Statement	1974	Copy of Central Lancashire Development Corporation Ingol East, Residential and Associated Development Planning Statement prepared with reference to Section 6(1) New Towns Act 1965
<p>...with the only links and this system should be capable of development from the existing services in the area. Discussions have taken place with the public transport undertakings operating in the area.</p> <p>5.7.5</p> <p>The site is crossed by a network of public footpaths, the extent of which will be retained although diversions may be necessary to take account of development. New footpaths will be constructed so that the whole will form a pedestrian framework associated with the golf course and open space system. Wherever possible, major footpaths will be aligned to incorporate existing natural features such as trees and hedgerows and they will be designed to link housing areas, facilities and amenities conveniently and without major conflict with the road network. The design of the footpaths will allow for their use also as cycleways. Care will be taken to ensure that the footpaths within the site are linked in a logical manner with those immediately outside the boundaries of the site.</p>		
Observations		A copy of the Planning Statement prepared

		<p>in relation to the development of the area crossed by the application route was obtained from the submissions made in relation to a request for planning permission in 2010 (Ref 06/2010/0626).</p> <p>The Planning Statement was prepared in 1974 by the Development Corporation seeking approval to develop the Ingol site under the New Town legislation. It explains that the site – consisting of 430 acres – was in 22 ownerships all of which were being purchased by the Commission under compulsory purchase orders with the exception of the land owned by Preston Borough Council which was being transferred by agreement. The Statement lists the development proposals including housing, schools and other facilities, the golf course, public open spaces and communications.</p> <p>Under the heading titled 'Communications' is a paragraph 5.7.5 relating to public rights of way which explains that the existing extent of public rights of way will be retained – or diverted where necessary to allow for development - and that a new network of footpaths would be constructed to link housing areas, facilities and amenities the design of which would also allow for use as cycleways.</p>
Investigating Officer's Comments		<p>Whilst not specifically referring to the creation of 'public' footpaths the inference is that the land to be developed – which would all be within the ownership of the Central New Town Commission – would be developed in such a way as to include a network of existing and additional footpaths to be used by the public on foot and also capable of being used on bicycle.</p>
Central Lancashire Development Corporation plan 'Ingol East'	1977	<p>Plan deposited in the County Records Office dated 1977 at a scale of 1:2500 and referenced as Drawing No. 6/34/17c (CRO reference NTC5/2/53). Originally titled as 'Support Drawing' which is crossed out in pen and replaced by 'Local Plan'.</p>

Rev	Date	Description	By
Central Lancashire Development Corporation 			
Job Title INGOL EAST			
Draw Title Support Drawing NEW LOCAL PLAN			
Scale	Date	Drawn	Checked
1:2500	5.9.74	ARB	MM
Job No	Draw No	Rev	
	6/34/17c	jan 77	
CROWN COPYRIGHT RESERVED.			
NTC 5/2/53			





<p>Observations</p>		<p>The plan shows routes described in the key as 'pedestrian access'. The route of Footpath Fulwood 43 is shown with a path (denoted as pedestrian access) shown extending from the solid black line indicating a 'future distributor road' along an alignment which seems to fit with Manor Road and then south east to connect to Footpath Fulwood 43.</p>
<p>Investigating Officer's Comments</p>		<p>This is the earliest plan inspected to show routes crossing land to be developed as part of the golf course and associated housing. The routes are described as 'pedestrian access' but there is no indication on the plan whether pedestrian access was for public or private use or whether the routes shown were proposed access routes or whether access had already been provided along those lines. There appears to be at least an intention to create a link to Footpath Fulwood 43 in proximity of the application routes.</p>
<p>Final Draft Agreement for lease relating to development of golf course and housing</p>	<p>1978</p>	<p>A copy of a draft agreement was found in the County Records Office annotated as being the 'final draft agreement' between Central New Towns Development Corporation and</p>

		Miller Buckley Golf Services (Ingol) Limited dated 13 March 1978 for the lease relating to the development of the golf course and housing.
Observations		<p>The agreement contains information regarding the provision of footpaths across the land. Within Schedule 3 it states that within the golf course parcel the corporation will provide certain footpaths shown on a drawing referenced 6/34/308A and that the general line of these footpaths may be subject to variation by agreement between the corporation and the company. It also stated that any closure of an existing footpath will require an order which is within the discretion of the Secretary of State.</p> <p>The agreement also stated that footpaths must be kept open and useable on foot at all times although private footpaths could be temporarily closed by the lessee if necessary for the proper management of the golf course and that the corporation would not unreasonably withhold permission to divert public or private footpaths at a future date if it was necessary for the implementation of the scheme.</p>
Investigating Officer's Comments		A copy of the plan referred to in the agreement could not be found in the County Records Office so it is not possible to confirm whether the routes under investigation were the ones shown. However, the draft agreement does refer specifically to the provision of public access along footpaths across the site although it appears that there were to be both public and private routes created and some confusion of terminology such as 'private footpath'.
Ingol Golf Villages - Leaflet published and produced by Central Lancashire Development Corporation	1980	Copy of leaflet produced providing details of the proposed development of a golf course and housing in Ingol and contact details for the various housing developers and Central New Towns Corporation. The leaflet included a map of the 18 hole golf course and the key to the map details, amongst other things, routes shown as public footpaths, existing and new roads and roads to be made into footpaths.

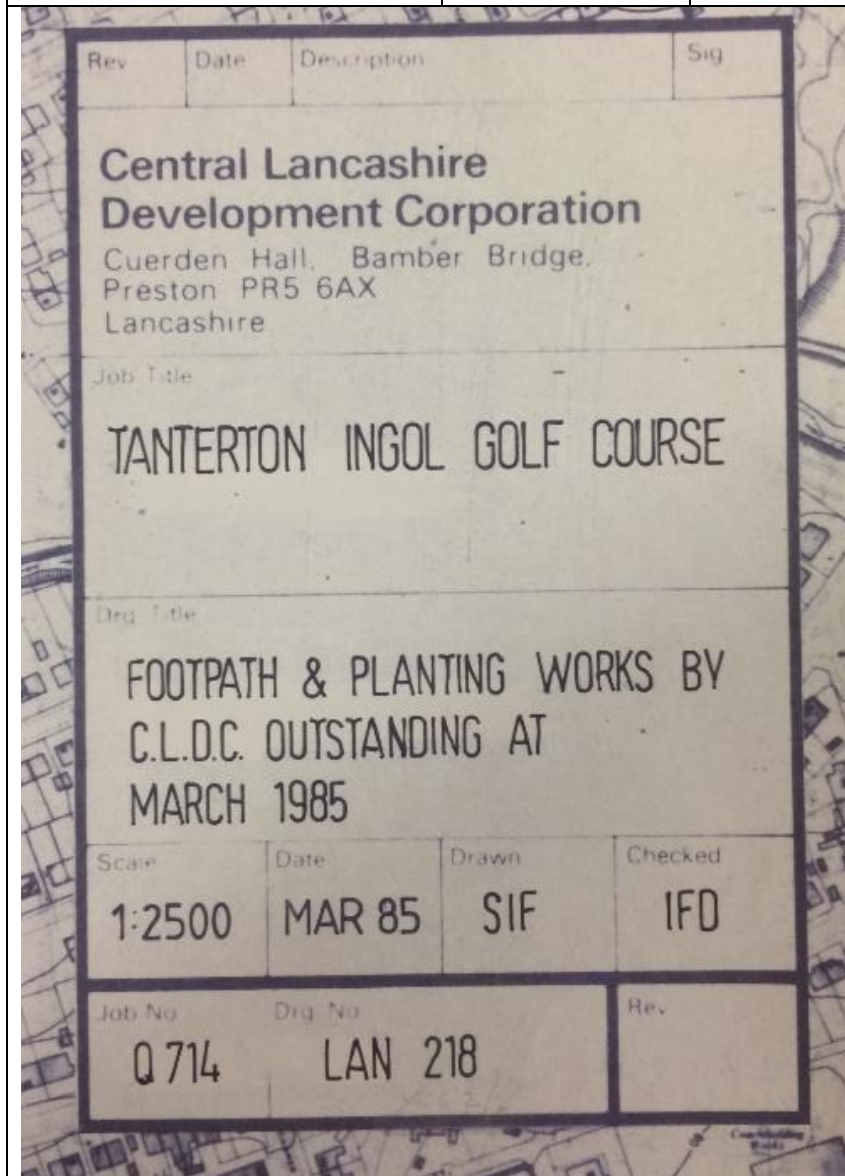


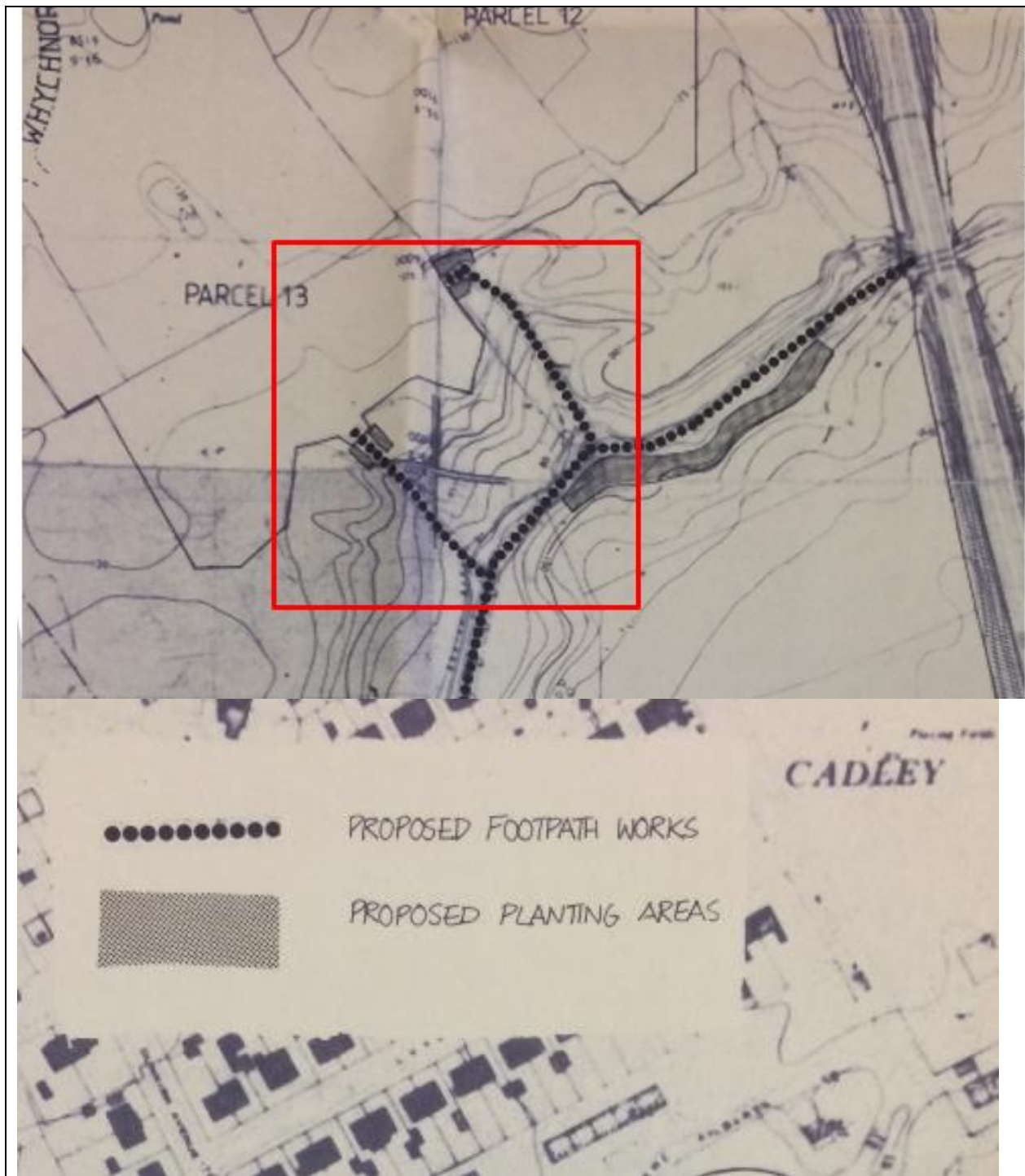
Key to map

-  New housing areas
-  Existing development
-  Village centres
-  Golf centre and clubhouse
-  Golf course fairways and greens
-  Golf course 'roughs'
-  Direction of play on golf course
- 13** Green numbers
-  Public open space
-  Tree belts
-  New roads
-  Existing roads
-  Existing road made into a footpath
-  Public footpaths
-  Emergency exit road

<p>Observations</p>		<p>The plan included in the leaflet is a large scale drawing showing routes described as public footpaths. The route of Footpath Fulwood 43 is shown with a path (also denoted as a public footpath) shown from a point on Wychnor (public vehicular road) along an alignment with Manor Road and then south east to connect to Footpath Fulwood 43.</p>
<p>Investigating Officer's Comments</p>		<p>It is not clear from the plan whether the route shown is either of the two application routes that link to Footpath Fulwood 43 (its line is possibly closer to route D-E-F) but the leaflet does indicate that at least one route was to be provided as a public footpath linking the housing development to Fulwood 43. The</p>

		leaflet was distributed to the public showing details of the proposed development and clearly indicates the intention that a number of routes were to be provided as public footpaths reiterating the intention to provide alternative routes for public paths extinguished to allow for the development to be carried out and to provide areas of public open space and public access routes as part of the Ingol Golf Course/Village scheme.
Central Lancashire Development Corporation plan	1985	Plan showing 'footpath and planting works by the Central Lancashire Development Corporation outstanding at March 1985' deposited in the County Records Office.





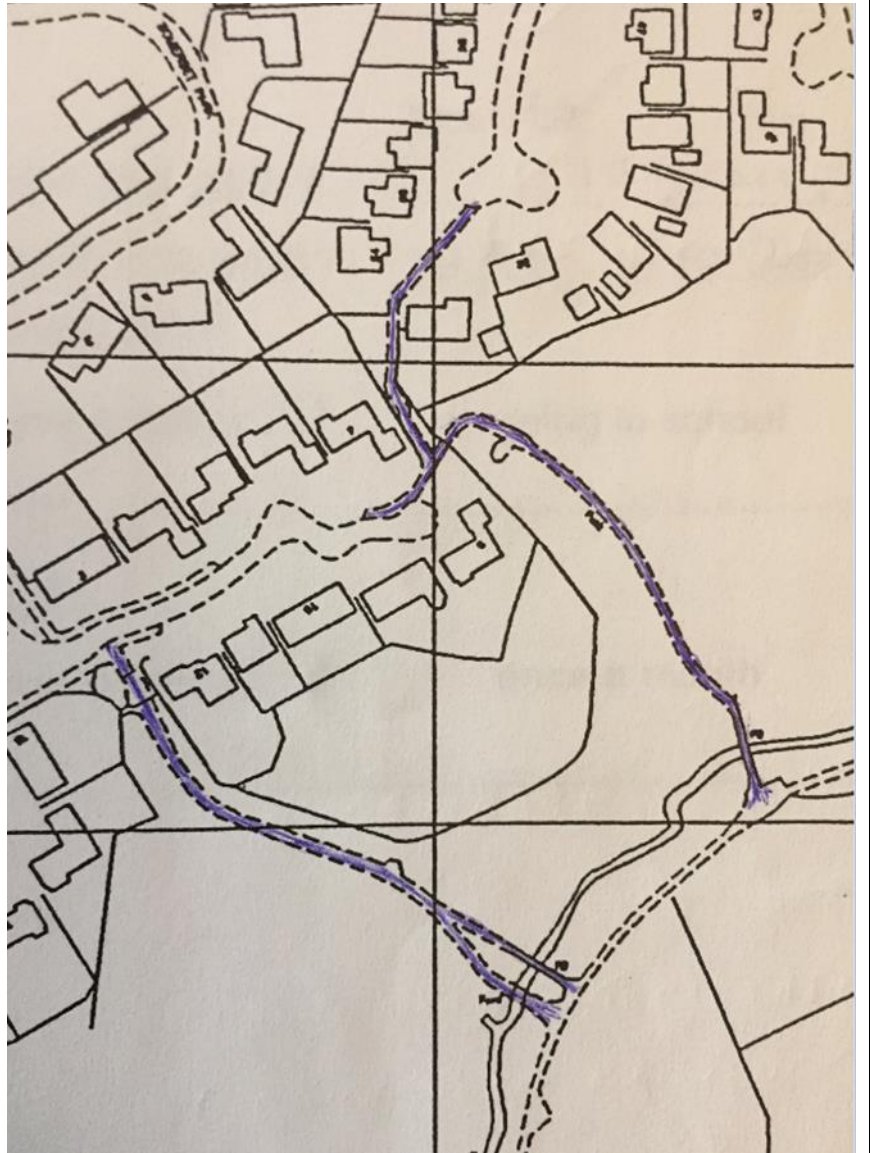
<p>Observations</p>		<p>The plan is labelled as showing outstanding 'proposed footpath works' at Ingol Golf Course. The application route between points D-E-F is shown as well as the route from point G down to Sharoe Brook connecting to Footpath Fulwood 43 although it is not clear whether this was via the bridge at point I or ford crossing at point L.</p>
<p>Investigating Officer's Comments</p>		<p>The plan suggests that work to create part of the application route was still to be carried</p>


		out in March 1985. The key to the plan does not indicate whether the 'footpaths' were considered to be public or private but as they were linking areas of housing to an existing public footpath it seems likely that they were to be built for public use.
Aerial Photograph	1988	Aerial photograph taken May 1988 and available to view in the County Records Office.



Observations		<p>The application routes across the golf course land can be clearly seen as surfaced tracks between points D-E-F and G-H-I-J and H-L-K.</p> <p>The application route linking the housing estates between points A-B-D-C can only partially be seen due to tree cover and shadowing.</p>
Investigating Officer's		The application routes across the golf course

Comments		land had been constructed as substantial routes by 1988.
Plan used as part of application to show routes applied for	1998	Plan provided by Commission for New Towns (North) to the applicant together with a letter in response to the applicant querying the status of the application route with them prior to submitting the application.



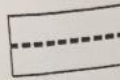
Commission for the New Towns 

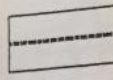
P.O Box 49
New Town House
Buttermarket Street
Warrington
Cheshire
WA1 2LF

Fax: 01925 411493
Tel: 01925 651144

FILE NAME E6133.DWG	PLOT DATE 28/10/1998.	
TITLE TANTERTON AND INGOL DIVERSIONS OF RIGHTS OF WAY.		
DWG NO. CNT/CL/E6133.	SCALE 1:2500.	SIZE A1
DATE 28/10/1998.	DRAWN BY AH.	
OS SHEET		

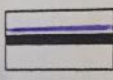
NOTATION :-

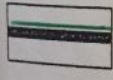
 FORMER FOOTPATH AND NUMBER.

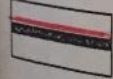
 PARISH BOUNDARY.

INTENDED AND ACTUAL ALTERNATIVE ROUTES.

LAND OWNER :-

 INGOL GOLF COURSE.

 PRESTON B.C. (COMMUNITY RELATED ASSETS.)

 ADOPTED HIGHWAY IN VARIOUS OWNERSHIPS.

Observations

This plan was provided to the applicant by Mr R Robson, Commission for New Towns (CNT) North, in a letter dated 06 November 1998. The drawing – referenced CNT/CL/E6133, is stated to be based on the latest OS plan of the Ingol and Tanterton area (at that time) and is described as being marked up with the routes of the former footpaths and the approximate routes of the various alternative footpaths provided in respect of the various footpath closures.

The plan was marked up with details of the various landowners.

The letter accompanying the plan also explains that Central Lancashire Development Corporation sold the golf course to Hemm Inns limited in 1985 and put provisions in the transfer to ensure that the footpaths indicated in the original layout approved in 1978 were not obstructed or interfered with. The lines of the routes across

		<p>the golf course are indicated in blue but CNT make reference to the routes now in use deviating from the routes marked in blue in several places.</p> <p>Some of the other map extracts provided show letters adjacent to the routes which are crossed referenced to comments made in the letter. The map extract provided for these particular routes was not annotated with lettering and specific comments made in the letter do not appear to refer to them</p>
Investigating Officer's Comments		<p>The letter and plan provide further evidence regarding the construction of the application route as an alternative to those routes extinguished to allow for the development of the site and evidence of intention to dedicate by the owner.</p> <p>The plan clearly shows the routes applied for and indicates that they crossed land owned by Ingol Golf Course.</p>
Land Registry Title Number LA512320 and LAN183407		The land covered by this title includes the application route
<p>A Transfer which included the land in this title dated 1 April 1985 made between (1) Central Lancashire New Town Development Corporation (Transferor) and (2) Hemm-Inns Limited (Transferee) contains the following covenants:-</p> <p>"THE Transferee for itself and its successors in title for the benefit of the Transferor's retained land at Ingol adjacent to the property hereby transferred hereby covenants that the Transferee will not obstruct or interfere with any footpaths or footpath routes now crossing the property whether presently adopted or included in the Definitive Map maintained by Lancashire County Council under the terms of the National Parks and Access to and the Countryside act 1949 or any subsequent legislation or are shown on the drawings referred to in the planning approval for the development of the Gold Course on the property given under Section 6 (2) of the New Towns Act 1965 on the twenty second day of August one thousand nine hundred and seventy eight."</p>		
Observations		<p>The transfer of land from the Central Lancashire New Town Development Corporation to Hemm-Inns Limited included a covenant regarding footpaths or footpath routes which were either currently recorded on the Definitive Map, were adopted, or which were shown on drawings referred to in the planning approval for the development of the golf course on 2nd August 1978. The covenant specified that those routes should not be obstructed or interfered with. The land has subsequently been sold to Cleator</p>

		Manor Limited (freehold) in 2006 and part was sold (leasehold) in 2016 to Ingol Golf Club Limited with the same covenant remaining.
Investigating Officer's Comments		There appears to be a clear intention by the Central New Towns Development Corporation that all existing public footpaths and proposed public footpaths across the land sold should be recognised and protected against future obstruction or interference.
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 Section 31(6) deposits have been lodged with the County Council for the area over which the route runs.
Investigating Officer's Comments		There is no intention by a landowner under this provision of non-intention to dedicate public rights of way over their land.
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations

Parts of the route between points A-B-C are visible but some of the route is obscured by tree cover and shadows. Between point D and point F a faint track consistent with the application route is visible with a more substantial visible track crossing the

		<p>application route at about the midpoint.</p> <p>Most of the application route between point G-H-J and H-K can be seen but is much less visible than the route had been in 1988.</p>
Investigating Officer's Comments		<p>The photograph was taken the same year that the application was submitted. Whilst the routes across the golf course appear far less visible than in 1988 they can still be seen and appear to have still existed.</p>
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from rural district 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 36 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. If a road is not on this record it may still be an existing highway. Alongside the List is a coloured up plan of the extent of the highways on the List. Footpaths and Bridleways are often not shown on these plans.</p>



Observations		The application route between points A-B-C is recorded on the List of Streets as a publicly maintainable highway. The rest of the application route is not recorded.
Investigating Officer's Comments		The route between points A-B-C was recorded as being a publicly maintainable highway suggesting that the route carries at least public footpath status. No inference can be drawn regarding public rights along the remainder of the route – which, unlike the route between point A-B-C is not tarmacked and does not provide a direct link between two housing areas.

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

Since the applications to record public footpaths across the former golf course were submitted the golf course has ceased to operate and a number of planning applications have been submitted to Preston Borough Council for the land to be redeveloped. Two substantial applications were made in 2010 and 2014 (Planning References 06/2010/0626 and 06/2014/572). Information submitted as part of the applications was viewed and it is noted that on various plans prepared existing public

footpaths are shown together with the routes applied for – which are shown separately as being routes subject to Definitive Map Modification applications.

No further information relevant to the applications was however found.

Landownership

The land crossed by the route under investigation between points A-B-C is registered in the ownership of Preston City Council.

The land crossed by the route under investigation between point D-E-F is registered in the ownership of Cleator Manor Limited.

The land crossed by the route under investigation running from point G for approximately 20 metres is registered in the ownership of Preston City Council.

From this point the route under investigation crosses roughly 7 metres of unregistered land.

The rest of the land crossed by this route to point H and between points H-I-J and between points H-LK is registered in the ownership of Cleator Manor Limited.

Summary

There is no map or documentary evidence supporting the existence of the application routes prior to the development of the area by the Central Lancashire Development Corporation in the mid to late 1970's and it is clear that the routes only came into being as a result of the development of the site as a golf course and residential area.

Since 1978 the map and documentary evidence examined suggest that the routes were constructed as part of the development of the housing estates and as links to Footpath Fulwood 43 when the golf course was constructed.

The first plan found as part of this investigation which showed an intended route linking from the houses to Fulwood 43 is dated and shows the route as 'pedestrian access'.

Plans of outstanding work to construct footpaths show both routes linking to Fulwood 43 in 1985 (although it is not clear whether the bridge or ford crossing is shown from point G but aerial photographs examined from 1988 suggest that by that time all of the paths were available to use and that the paths leading down to Footpath Fulwood 43 were substantial constructed routes (not just trodden footpaths) by that time.

The map and documentary evidence on its own may be considered insufficient to show dedication of the routes as public rights of way but the maps, documents and aerial photographs examined clearly support the substantial body of user evidence submitted.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant stated in the application that they had submitted 80 user evidence forms together with a copy of a letter that she had sent to members of the Ramblers Association in August 2000 explaining that staff at Ingol Golf Club had been preventing walkers using the paths across the golf course and that she was putting together an application to record the routes on the Definitive Map and asking people to complete user evidence forms if they had used the routes.

The user evidence forms all included a map provided by the applicant showing the application route which was coloured blue on the map and indicated in the key as being an 'intended and actual alternative route' owned by Ingol Golf Course.

Each of the user evidence forms referred to the route as being 'From 54 Greenacres to between 7 and 8 Manor Court through a gate onto a stepped footpath and over a footbridge to join Fulwood Footpath no. 43. From next to 12 Manor Court via a wicket gate past a notice "STEEP HILL" to a footbridge with a paved ford alongside leading to Fulwood FP no. 43.'

Of the forms submitted the majority provided clear information about their use of the routes. However one of the user evidence forms refers to use of the routes by two family members but individual forms were not completed by both. Another referred to use by 4 family members but only one form was completed. Two of the forms were completed by users who stated that they had known the routes for 10 years but not actually used them, 1 form was completed by a user who stated to have used the routes once a week but didn't specify any dates. A further form was completed by a person who stated that he was 71 years old and had used the routes all of his life and another simply stated that they had used the paths all of their life.

All of those users completing the forms have indicated that they regarded the routes as public, and that their friends and family regarded them as public.

Only one user who completed the form specified use of only one of the routes (Routes G-H-I-J, H-L-K) and all others indicated use of both routes.

2 users recount use from between 1935-1943 onwards and explain that they used routes across the fields prior to development of Ingol Golf Course and the associated housing.

15 users refer to use in excess of 20 years with the majority of users (47) referring to use from between 10 and 20 years and 13 users specifying use of less than 10 years.

The majority of use (64) refers to the period between 1980 and 2000 with the remaining users (where dates are specified) dating back before then but also including the 20 year period 1980-2000). All but 6 users claim to have used the route up until 2000.

Use of the paths was predominantly for pleasure purposes with a high percentage of frequent users (at least daily) referring to walking their dogs. Other specific references to type of use included to get to work, to get to the paper shop, as a route to school and to visit friends and for school nature walks.

Specific comments provided on the use evidence forms included:

- A very pleasant path in dry weather but when wet is being ruined by heavy machinery etc. running on it.
- Never considered the path to be part of Ingol Golf Course.
- Used as an alternative way from school especially in the summer as it was more pleasant than walking through built up areas.
- One reason for moving to the area was local access to the footpaths around and across the golf course.
- There is a bench on the path that would indicate that it is public.
- The walkways have been ruined by the actions of the golf course.
- The footpath has deteriorated in recent years due to the golf course driving heavy machinery across it.
- Several accidents with pedestrians have only narrowly been avoided on the steep hill section.
- Used the fields before the golf course was built.
- The golf course seem to view this path as access to the golf course and removed a locked twin barred gate by the wicket gate many years ago for this purpose.
- When the land was owned by the Central Lancashire New Town Development the body employed a firm to construct the path and erect a five barred gate and kissing gate by the side of my property.
- In August 2000 a user was forced off the path and hit by the handle of a strimmer and mower being carried by a golf course vehicle. It was reported to the police and they were told that they should not be on the path.
- Why would children's play areas be built if no one was allowed to use these paths.
- We paid £10 to the Central Lancashire New Town Agency when we moved to Manor Court for the upkeep of paths, bridges, seats, the ford, fitness furniture etc.

Information from the Landowner

Following receipt of the application consultations were carried out with the owners of Ingol Golf Course at that time (Tee Jay Leisure Limited, Sagar House, Eccleston, Chorley). They instructed Kevills Solicitors who requested a meeting with the County Council in 2006 in the hope that a 'pragmatic solution' could be found.

No meeting was arranged and a further Land Registry search has identified that the land crossed by the application routes was subsequently sold to Cleator Manor Limited C/o Whittle Jones Limited, Lynton House, Ackhurst Park, Chorley PR7 1NY in 2006 and that a further sale of part of the land affected by the proposal was completed in 2016 to Ingol Golf Club Limited, 45 Plunginton Road, Preston PR1 7EP.

Information from others

English Partnerships (consulted in 2005)

With regards to the length A-B-C English Partnerships commented that this is an adopted highway and they were surprised that it was being claimed as a footpath. The route between points G-H-I-J and H-L-K was believed by them to be in the ownership of Ingol Golf Club and the line of the permissive route constructed by CNT in approximately 1986.

The route between points B-D-E-F was also believed to be in the ownership of Ingol Golf Club and the line of the permissive route constructed by CNT in approximately 1986.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order

User evidence.

Evidence of Central Lancashire Development Corporation's intention.

Against Making an Order

Actual Central Lancashire Development Corporation planning consent drawings not available.

Conclusion

As there is no express dedication it is advised that Committee consider whether there is sufficient evidence on balance for a deemed dedication from use under S31 Highways Act 1980 and/or an inferred dedication at common law from all the circumstances pointing to an intention to dedicate by the owner.

Route A-B-C

It would seem to be the case that the route D-F did not exist prior to the ownership by Central Lancashire Development Corporation established by the Minister under the New Towns Act 1965. A-C was constructed and adopted by Preston Council on behalf of the County Council highway authority. The Adoption plan was coloured up and this route is clearly a narrow path for footpath use, not vehicular. This was not added to the definitive Map and so is included in the application. The legal agreement or dedication is not available but the coloured up plan is good evidence of the adoption by Preston City Council as a footpath. Other documents reference the intention to dedicate and this route should therefore be added to the definitive map.

Route F-E-D

The land for the golf club had been taken by the Corporation by compulsory purchase powers or in the shadow thereof and planning consent obtained by the Corporation by submitting proposals and the Minister making a Development Order. The Development Order and its drawings has not been located but it is suggested that other documents are of assistance.

At common law to infer a dedication from all the circumstances can involve consideration of both user evidence and documents. The Planning Statement referred to earlier in the report clearly shows that the Central Lancashire Development Corporation had an intention to create footpaths and to retain the extent of the existing network. The New Towns Act says that a Development Corporation had the power to do anything necessary or expedient for the purposes incidental to its main objectives. Central Lancashire Development Corporation is obviously unusual as it was developing huge areas of land.

Committee must consider whether there is sufficient evidence of the intention to create the actual routes being considered in this report.

It is suggested that there is sufficient evidence to indicate that this claimed route F-D appears on the "Local Plan" and on the leaflet produced by the owners and on the plan of footpath and planting works and the plan provided by CNT in 1998.

The route has actually been constructed on the ground for some of its length and the style of construction and of stiles would seem on the information to be consistent with that of the Central Lancashire Development Corporation. It links to a footpath coloured up on the adoption plan.

The user evidence is significant and collected and submitted by the Ramblers Association.

The user adds force to the evidence of Central Lancashire Development Corporation's intention to dedicate this route and accepts the route on the part of the public.

It is suggested that Committee may find sufficient evidence from which to infer an actual dedication by Central Lancashire Development Corporation and acceptance by the public can reasonably allege to have occurred or found to have occurred on this claimed route.

The user evidence also enables Committee to consider whether as of right use has been for the twenty years without interruption and without indication of a lack of intention to dedicate such that dedication may be deemed to have occurred under S31 Highways Act 1980. Again the user evidence is supported by plans completed by the users and collected by the Ramblers Association. There is reference to use by the Association for guided walks. It is suggested that the calling into question was the submission of the application or possibly just before then when the challenges by the Golf Club are referred to.

Taking the evidence into account it is suggested that the Committee may decide that an Order can be made for this route F-D to be added to the Definitive Map and Statement and be promoted to confirmation.

Routes G-J and H-K

The documentary evidence pointing to intention to dedicate these routes is as for D-F. not the same. The routes however have been constructed and appeared on the 1998 plan supplied by the Commission. Given the other routes and the reasons for the plan it would arguably be sufficient from which to infer dedication by Central Lancashire Development Corporation.

The user evidence also enables Committee to consider whether as of right use has been for the twenty years without interruption and without indication of a lack of intention to dedicate such that dedication may be deemed to have occurred under S31 Highways Act 1980. Again the user evidence is supported by plans completed by the users and collected by the Ramblers Association. It is suggested that the calling into question was the submission of the application or possibly just before then when the challenges by the Golf Club are referred to. Use would appear to be different and as of right with no lack of intent to dedicate evident.

Taking the evidence into account it is suggested that the Committee may decide that an Order can be made for this route to be added to the Definitive Map and Statement and be promoted to confirmation.

Risk management

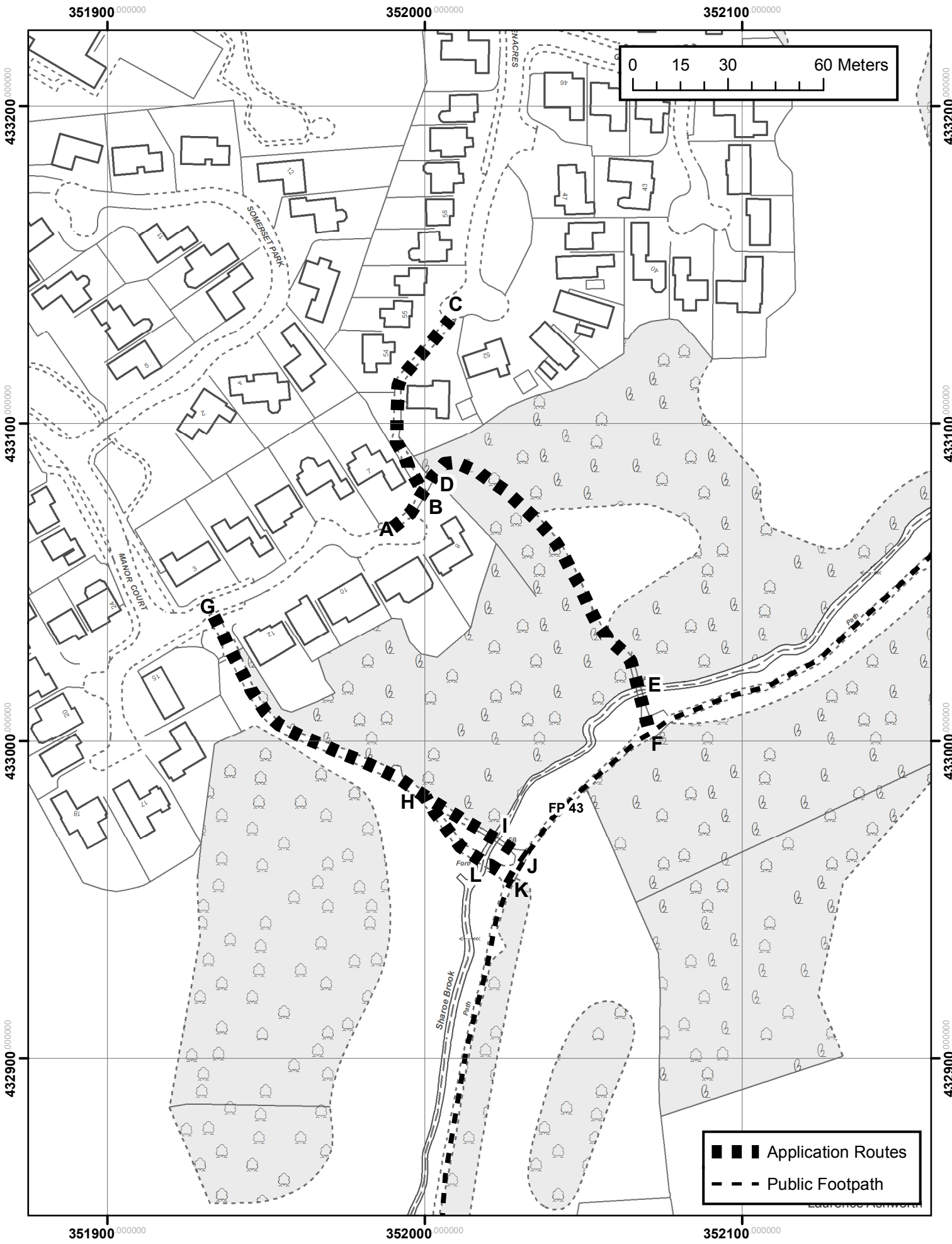
Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-379c		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A



Application Routes
 Public Footpath



Andrew Mullaney
 Head of Planning and Environment

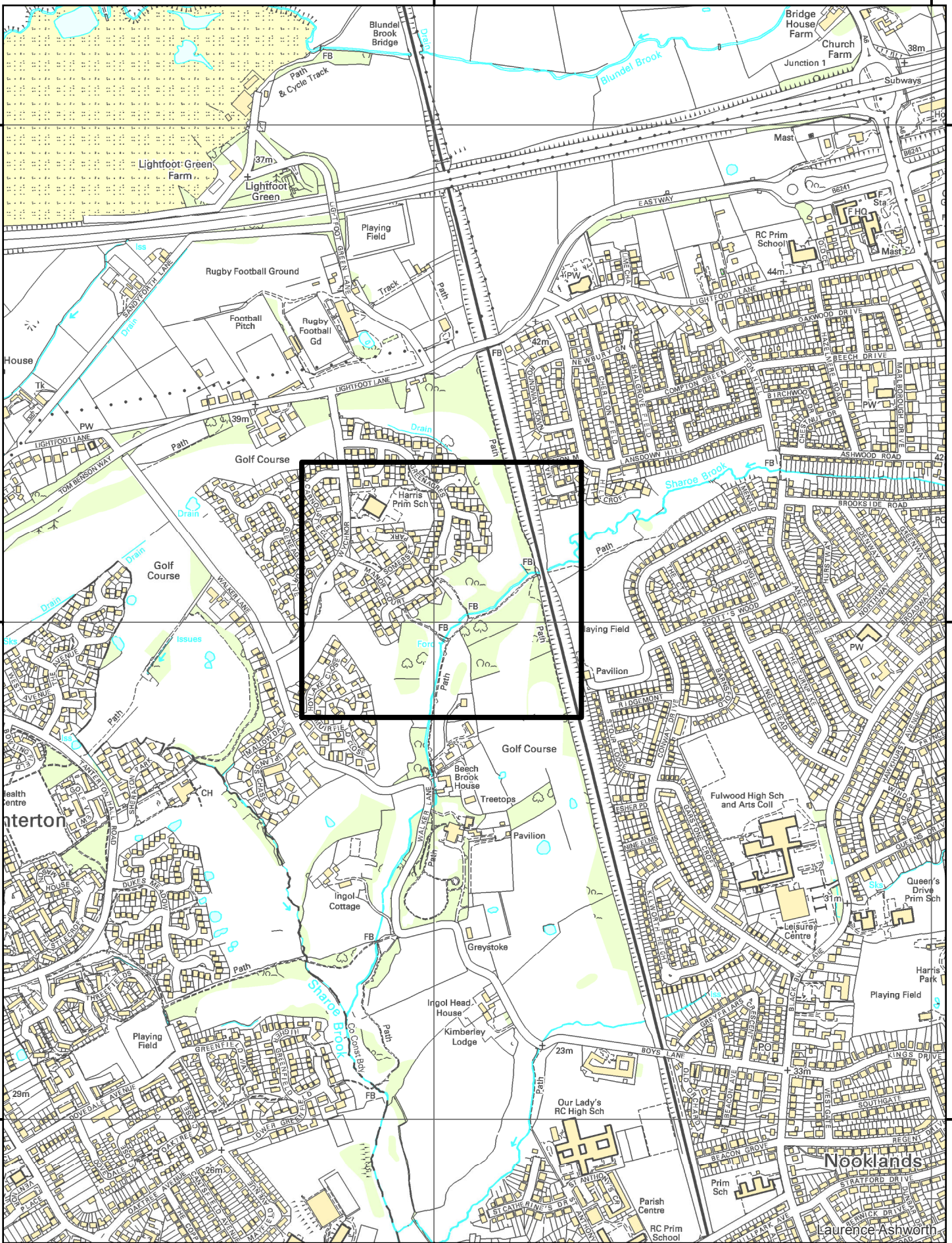
Wildlife and Countryside Act 1981
Addition of public footpaths from Manor Court and Greenacres across
Sharoe Brook to Fulwood Footpath 43, Preston City

1:1500



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

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Regulatory Committee

Meeting to be held on 11 March 2020

Part I

Electoral Divisions affected:
Preston West and
Preston North

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of footpath between FP Preston 64 and the east bank of Sharoe Brook, Preston
File No. 804-379d
(Annex 'A' refers)

Contact for further information:

Simon Moore, 01772 531280, Paralegal Officer, Legal and Democratic Services,
simon.moore@lancashire.gov.uk

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

Executive Summary

Application for a footpath to be added to the Definitive Map and Statement of Public Rights of Way between FP Preston 64 and the east bank of Sharoe Brook, Preston in accordance with File No. 804-379d.

Recommendation

- (i) That the application to add to the Definitive Map and Statement footpath lengths between Ingol and Walker Lane at Ingol Golf Course, Preston, in accordance with File No. 804-379d, be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a footpath between Ingol and Walker Lane at Ingol Golf Course, Preston as shown on Committee Plan between A-B-C-D.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

In 2000, an application under Schedule 14 of the Wildlife and Countryside Act 1981 was received for the addition of a number of public footpaths which were described

by the applicant as being situated on land forming part of Ingol Golf Course and as having been provided by the former Central Lancashire Development Corporation.

Five separate sets of routes were listed and numbered 1 to 5 and evidence in support of each route was provided.

The application was originally submitted by the Area Secretary of the Ramblers Association (Mid Lancashire Area) but sadly, since submission, the applicant has died.

Soon after the application was submitted, research was carried out by two former members of the county council's Public Rights of Way team and initial consultations carried out but reports were never prepared or presented to the Regulatory Committee and the officers originally involved in the investigation have subsequently retired. Various development proposals were thought likely to accommodate the routes but this has not been achieved. Further work has now been done to get the reports finalised.

The original application made by the Ramblers Association was split down into five separate ones. The bulk of the evidence provided by the Applicant in support of the application consisted of completed user evidence forms and on a review of the application bundle it has been decided to consider each route separately.

This report considers the route referred to by the applicant as 'Route 4'.

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

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

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

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

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

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 (as explained in Planning Inspectorate’s Advice Note No. 7) makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners

cannot be considered. The Planning Inspectorate's website also gives guidance about the interpretation of evidence.

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

Consultations

Preston City Council

The City Council explained that the land crossed by the application route (between point B-C-D on the Committee plan) was transferred to the Council from the Commission for the New Towns in January 1999 and that the Council's Estates section had no comments to make regarding that land.

The City Council also commented that it was their understanding that the transfer/lease of the land from the Commission for the New Towns to the golf club indicated that as part of the Public Path Extinguishment Order made to extinguish a number of paths across the site prior to the construction of the golf course the 'new' paths were 'permissive paths', created as a condition of the transfer/lease.

Comments from Preston City Council Highways department were that 'the paths most certainly exist' in terms of them being physically constructed and that they had been created by the Central New Towns Commission but that despite receiving numerous enquiries regarding the condition of the paths over the years the Council had no power to act with respect to such 'permissive paths'.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plans.

Point	Grid Reference (SD)	Description
A	5145 3222	Junction with Footpath Preston 64
B	5174 3232	Bridge across Sharoe Brook on former boundary between Preston and Fulwood
C	5185 3234	Application route crosses Footpath Fulwood 51
D	5188 3235	2 metres east of bridge across Sharoe Brook where application route meets application 'Route 5'

Description of Routes

The application was submitted in 2000 but a site inspection was not carried out by the county council until 2005.

Because the application relates largely to user evidence pre-dating 2000 details of the 2005 site inspection are included in this report. This provides a better indication of what existed on the ground closer to the time that the routes were said to have been used.

A further site inspection was carried out in 2019 to see what changes may have occurred since the 2005 inspection.

In 2005 the Investigating Officer described the application route as commencing at point A on Footpath Preston 64, approximately 100 metres north of the point where it crosses the junction between Dovedale Avenue and Greenfield Way. The route was described as a wide stone path, which, after 10 metres met a substantial timber railing fence with a kissing gate in it. The kissing gate was described as being in very good condition and of the type erected by the Development Corporation. The application route continued along a stone path within a wider area with mature hedges to both sides. It continued for a distance of approximately 150 metres from point A to just beyond the housing development, to a point where a track that appeared to be part of the golf course crossed the application route.

The application route continued in an east north easterly direction as a well-defined and heavily used path with mature hedges to both sides and was crossed by a second track, again as part of the golf course. Before this crossing point there was a single stone gatepost on the northern side of the application route.

Beyond the crossing point the application route continued down a slope towards a large footbridge, described by the Investigating Officer as being of the type erected by the Development Corporation, crossing a tributary of Sharoe Brook and the former Fulwood Urban District Council boundary at point B. The bridge was described as carrying vehicular traffic in connection with the golf course as well as pedestrians and cyclists.

Immediately north of point B is the western end of Footpath Fulwood 51 which was described as having been planted over by a wooded area as part of the landscaping works carried out by the Development Corporation. The Investigating Officer

commented that the Definitive Map route of the footpath had become unusable and that this had probably been the case for many years.

From point B the application route continued from the bridge to follow the stone surfaced path rising up a gentle slope and then following around the side of a planted earth mound to overlook the valley of Sharoe Brook. The planting on the mound was described as obstructing the route of Footpath Fulwood 51.

After approximately 60 metres from the bridge at point B, there was a timber seat on the north side of the route whilst the application route was described as continuing along a stoned path to curve around the hill and then down a gentle slope to point C where it was crossed by the Definitive Map line of Footpath Fulwood 51.

The application route then continued to follow the stoned path leading down to a large timber bridge crossing the Sharoe Brook 2 metres west of point D (and immediately north of the Definitive Map line of Footpath Fulwood 51) and continues across the bridge to point D from where application 'Route 5' continues to Walker Lane along a stoned track. 'Route 5', part of the same application package, is considered in a separate Committee Report.

The bridge across the tributary to Sharoe Brook was noted in 2005 as carrying vehicular traffic in connection with the golf course.

In summary, in 2005 the whole of the length of the application route was described as clear and available for use, in good condition and was described by the Investigating Officer as being well used by the public, on foot and on bicycles. The Officer also commented that the entire length seemed to have been constructed by the Development Corporation with extensive surfacing works, a timber fence and kissing gate, a seat and two large bridge structures along the route.

A further site inspection was carried out in 2019 and found to be accessible throughout although 3 fallen trees across the route required slight deviations to get round them. The path appeared to be well used.

Map and Documentary Evidence

A variety of maps, plans and other documents were examined to discover when the routes came into being, and to try to determine what its status they may be.

The route crosses land which is within an area which was designated as that of the Central Lancashire Development Corporation. A Development Corporation was a body set up across parts of England and Wales and charged with the urban development of an area. It operated under the New Towns Act of 1965, outside the usual Town and Country Planning legislation.

The Central Lancashire New Town (Designation) Order was approved on 14 April 1970 and the Development Corporation formerly constituted on 17 February 1971. The Commission was in existence for 16 years until it was formally dissolved on 31 March 1986 and during that time the area to the north of Preston – referred to as Ingol East – underwent significant development.

In this particular case the application route came into existence as part of the development of Ingol East – with particular reference to an Extinguishment Order under The New Towns Act 1965, which was made on 29th June 1978 by the Secretary of State for the Environment. The New Towns Act gave the power to extinguish existing public rights of way to allow for development, but no power to legally create new or alternative routes, although alternative paths were often shown on plans accompanying extinguishment orders.

The application route came into existence as part of the development of Ingol East – with particular reference to an Extinguishment Order under The New Towns Act 1965, which was made on 29th June 1978 by the Secretary of State for the Environment. The New Towns Act gave the power to extinguish existing public rights of way to allow for development, and alternative paths were often shown on plans accompanying extinguishment orders. The New Town Commission could create new highways like any other owner.

The routes claimed were described in the application as having been provided by the former Central Lancashire Development Corporation as a replacement for Fulwood Footpath 49 and Lea Footpath 43 which were extinguished by the 1978 Order and further details of the order and evidence post-dating the designation of the area as part of the Central Lancashire New Town are detailed below and assessment made of the relevant map and documentary evidence discovered:

Document Title	Date	Brief Description of Document & Nature of Evidence
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the county council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<u>The application route between point A and point B:</u>		
Borough Survey Map	1972-1976	<p>The initial survey of public rights of way was carried out by parish councils in rural districts in the early 1950s and the maps and schedules were submitted to the county council. In the case of urban districts and municipal boroughs the map and schedule produced, was used, without alteration, as the Draft Map and Statement. County boroughs were not surveyed until later. In this instance the application route between point A and point B was in Preston County Borough and the initial survey for this part of Preston County Borough was carried out between 1972 and 1976 by Lancashire County Council officers with assistance from the</p>



Observations		A route is shown on the north side of a field boundary running parallel to the application route between point A and point B and is numbered '5'.
Draft Map	1979	The Draft Map was given the 'relevant date' of 1 February 1979 and notice was published that the Draft Map had been prepared. The Draft Map was placed on deposit for a minimum period of 4 months on 24th April 1979 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into some of these objections, and recommendations made to accept or reject them on the evidence presented.



<p>Observations</p>		<p>The route shown along the north side of the field boundary (consistent with the dashed line annotated 'F.P' on the Ordnance Survey map, and shown on the Borough Survey Map) is not shown. A route consistent with the application route is shown between point A and point B and is numbered '65'. The Statement accompanying the map describes the route as a footpath from Footpath No. 64 north of Culgaith Farm in a north easterly direction to the Fulwood boundary.</p>
<p>Modified Draft Map</p>	<p>1982</p>	<p>Modified Draft Map was published and placed on deposit in September 1982.</p>



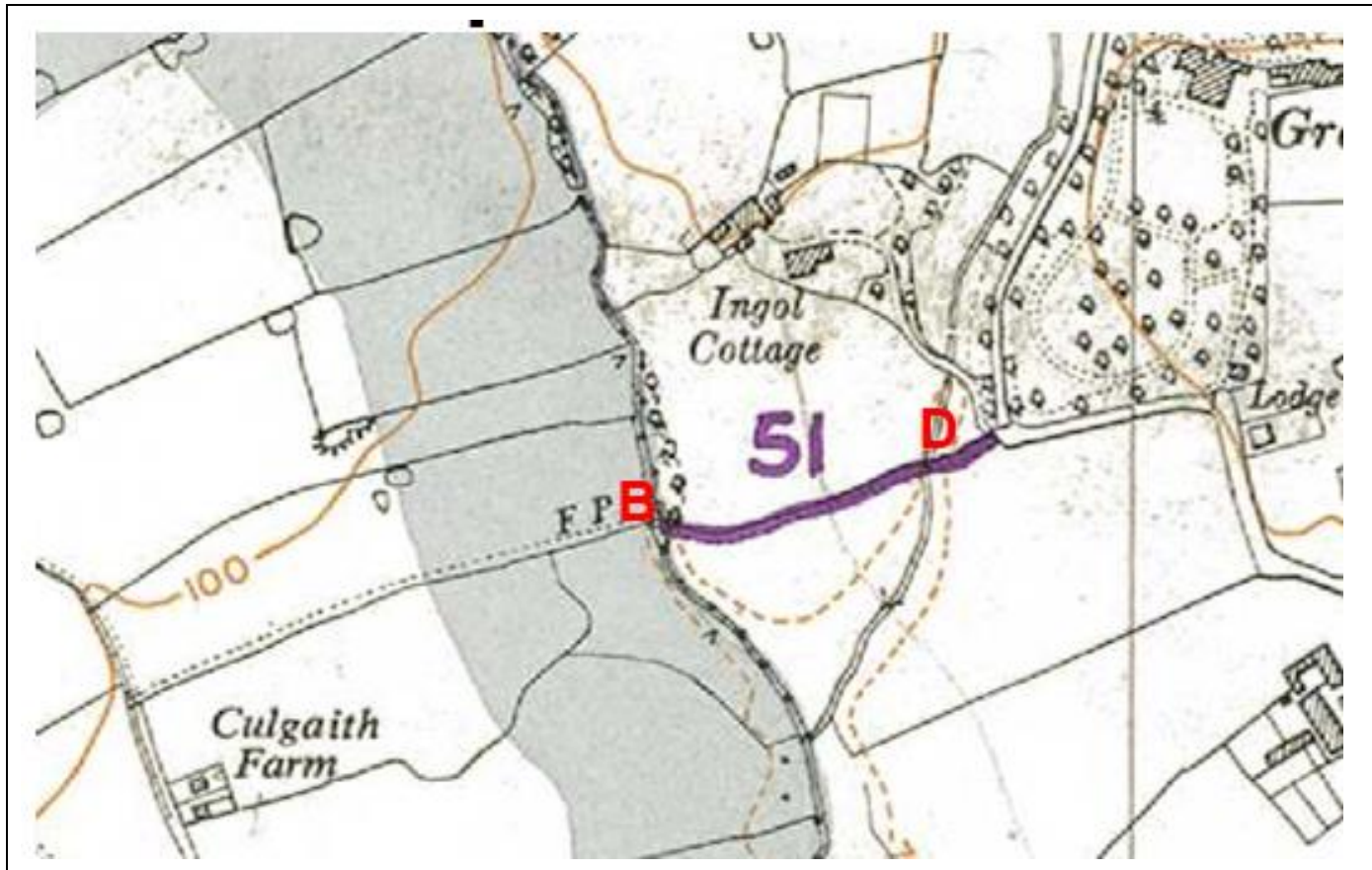
<p>Observations</p>		<p>The route is shown in the same way as it was on the Draft Map with the application route shown as Preston Footpath 65 between point A and point B. No objections or representations to how it was shown were made.</p>
<p>Provisional Map</p>		<p>Once all representations relating to the publication of the draft map were resolved, the modified Draft Map became the Provisional Map.</p>
<p>The Definitive Map and Statement</p>	<p>1983</p>	<p>The Provisional Map, as amended, was published as the Definitive Map in 1983 with a relevant date of 1st February 1979 and is the current legal record.</p>



65	-do-	No 63 From Footpath No 64 north of Culgaith Farm in a north-easterly direction to the Fulwood boundary	524 305
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Observations		The application route is shown between point A and point B as Preston Footpath 65 on the Definitive Map.
Investigating Officer's Comments		A route was originally shown running parallel to the application route to the north of the field boundary (and consistent with the footpath (F.P) shown on the Ordnance Survey base map and numbered '5'.) However, The Draft Map showed the route on the south side of the field boundary (consistent with the application route). An Order was made by Secretary of State on 29 th June 1978 to extinguish parts of various public footpaths crossing land owned by the Central New Towns Commission – including Ingol Footpath 5 which was described as being along the route shown north of the field boundary (as shown on the survey map) and details of this Order are provided later in the report.
<u>The application route between point B and point D:</u>		
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas

		<p>formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p> <p>In this particular case the land crossed by the application route was within Fulwood Urban District for which no survey was carried out.</p>
Draft Map		<p>Within the Urban District of Fulwood the preliminary survey work was carried out by Fulwood Urban District Council who produced a draft map of routes they believed to be public drawn onto a 6-inch Ordnance Survey map.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		<p>The application route is not shown. The route of Footpath Fulwood 51 is shown and there were no objections or representations made.</p>
Provisional Map		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>



Observations		The application route was not shown. No representations or objections were made in respect of Fulwood 51 or the fact that the application route was not shown.
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.
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. By 1975 Central Lancashire Development Corporation had been in existence only four years and had just achieved its planning consent and extinguishment of footpaths 49 and 43 had

not yet happened.

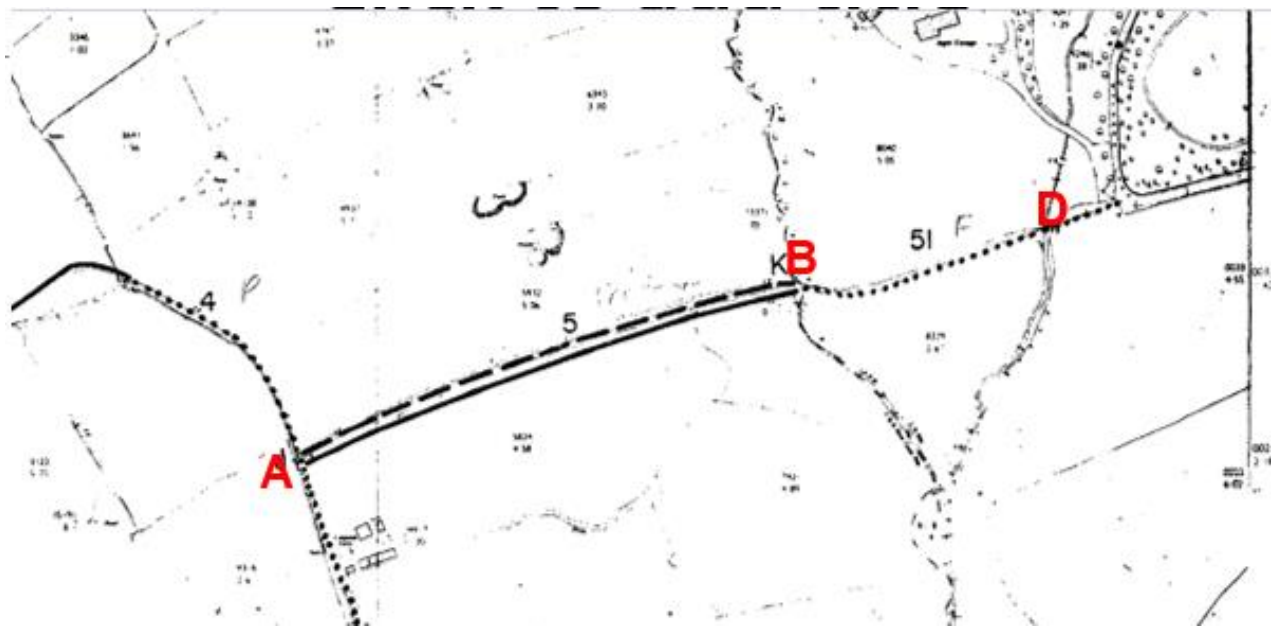


51	"	<p>a field to a stile 8 yards from the corner. This stile is on the U.D. Boundary.</p> <p>To Lane leading to Mayfield Avenue (Preston R.D.). Starts from a stile by the entrance to Ingol Cottage off Walker Lane then runs alongside the hedge to Sharoe Brook which it crossed by means of a footbridge and continues along the hedge side of a stile in the corner of the first field beyond the brook, U.D. Boundary.</p>	0.27
52	"	To Cadley Causeway. Starts from a set of posts	0.12

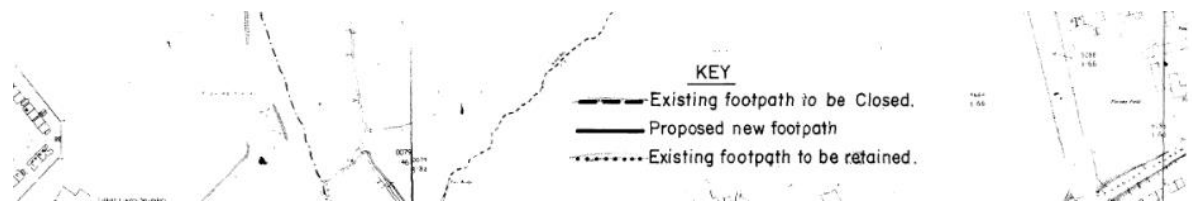
Observations		The application route was not shown. Fulwood 51 is shown as it was on the earlier edition of the Definitive Map.
Investigating Comments	Officer's	<p>The Definitive Map process for Fulwood was started in the 1950s prior to the construction of Ingol Golf Course and associated housing. The route shown (Fulwood 51) appears to be the original route which continued west as Footpath Preston 65 when the footpath crossed fields.</p> <p>From investigations carried out (and detailed in this report) the application route between points</p>

		C-D-E does not appear to have come into existence before 1 st September 1966 (the relevant date of the Revised Definitive Map) so it is not surprising that it is not shown.
Central Lancashire Development Corporation Planning Statement	1974	Copy of Central Lancashire Development Corporation Ingol East, Residential and Associated Development Planning Statement prepared with reference to Section 6(1) New Towns Act 1965
<p>...with existing lines and this system should be capable of development from the existing services in the area. Discussions have taken place with the public transport undertakings operating in the area.</p> <p>5.7.5</p> <p>The site is crossed by a network of public footpaths, the extent of which will be retained although diversions may be necessary to take account of development. New footpaths will be constructed so that the whole will form a pedestrian framework associated with the golf course and open space system. Wherever possible, major footpaths will be aligned to incorporate existing natural features such as trees and hedgerows and they will be designed to link housing areas, facilities and amenities conveniently and without major conflict with the road network. The design of the footpaths will allow for their use also as cycleways. Care will be taken to ensure that the footpaths within the site are linked in a logical manner with those immediately outside the boundaries of the site.</p>		
Observations		<p>A copy of the Planning Statement prepared in relation to the development of the area crossed by the application route was obtained from the submissions made in relation to a request for planning permission in 2010 (Ref 06/2010/0626). The Planning Statement was prepared in 1974 by the Development Corporation seeking approval to develop the Ingol site under the New Town legislation. It explains that the site – consisting of 430 acres – was in 22 ownerships all of which were being purchased by the Commission under compulsory purchase orders with the exception of the land owned by Preston Borough Council which was being transferred by agreement. The Statement lists the development proposals including housing, schools and other facilities, the golf course, public open spaces and communications.</p> <p>Under the heading titled 'Communications' is a paragraph 5.7.5 relating to public rights of way which explains that the existing extent of public rights of way will be retained – or diverted where necessary to allow for development - and that a new network of footpaths would be constructed to link housing areas, facilities and amenities the</p>

		design of which would also allow for use as cycleways.
Investigating Comments	Officer's	Whilst not specifically referring to the creation of 'public' footpaths the inference is that the land to be developed – which would all be within the ownership of the Central New Town Commission – would be developed in such a way as to include a network of existing and additional footpaths to be used by the public on foot and also capable of being used on bicycle.
New Towns Act 1965 Order for the Extinguishment of Public Rights of Way Central Lancashire Development corporation Borough of Preston	1978	Order made by Secretary of State on 29 th June 1978 to extinguish parts of Footpaths 41, 43, 49, 48, 50, 42 and 5 as shown on the Order plan and described in the Order Schedule.



Extract from the Plan accompanying the Order

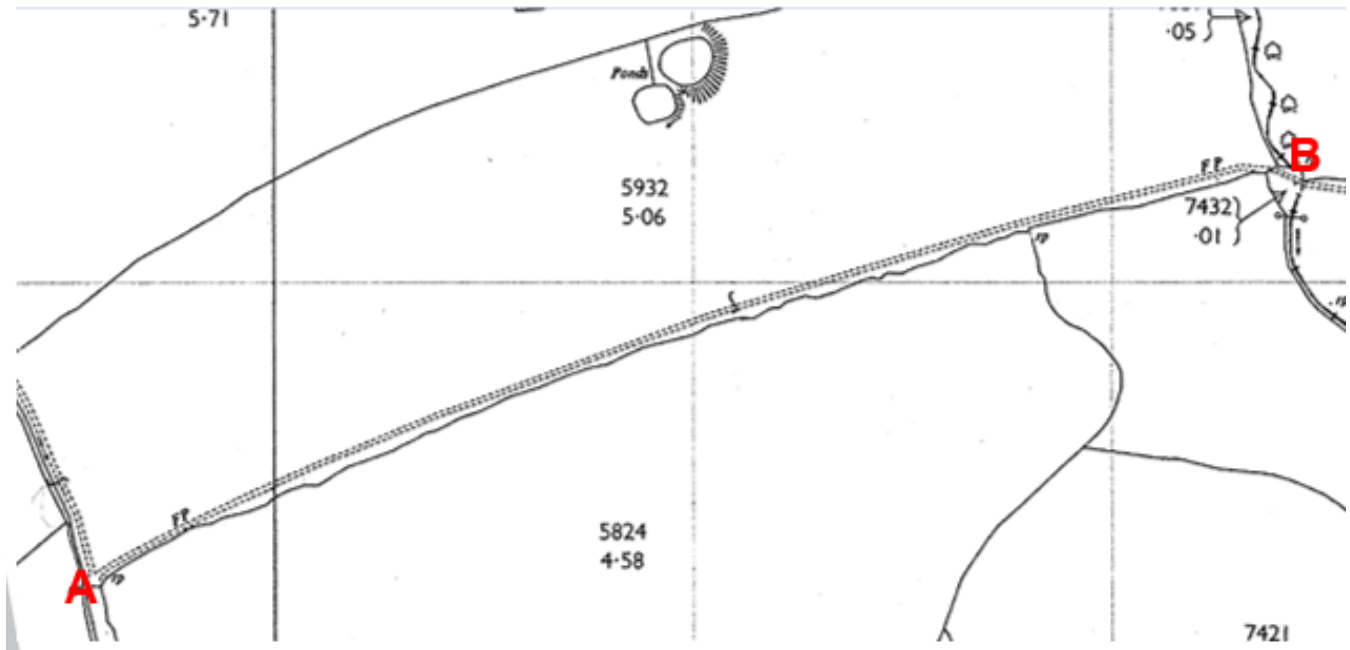


Key to the Plan

That part of footpath number 5 starting from a point marked 'J' on the map approximately 50 metres north of Culgaith Farm, and extending in a generally easterly direction along the southern boundary of Field Ordnance Survey Number 5932 for a distance of approximately 305 metres to a point marked 'K' on the map.


1110 #


Extract from the Order



Extract from 1:2500 OS Map published 1963

<p>Observations</p>	<p>The Order came into effect on the day that it was made (in 1978). There was no reference to the creation of alternative or 'new' public rights of way in the wording of the Order but the key to the Order plan showed proposed new footpaths with a solid black line, existing footpaths to be closed with a long dashed line and existing footpaths to be retained by short dashed lines.</p> <p>The copy of the Order plan is of poor quality but it is clear that a route described as 'footpath number 5' and shown between points J and K was to be extinguished. The route of this footpath is clarified in the Order Schedule which states that the route to be extinguished runs</p>
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		<p>along the southern boundary of Ordnance Survey Field number 5932 which corresponds to the route recorded on the Borough Survey Map as 'Footpath 5' for the former Preston County Borough which was not subsequently recorded on the Definitive Map.</p> <p>A proposed new route is shown running parallel to the Footpath to be extinguished connecting to Footpath Fulwood 51 at point B consistent with the route of the application route between point A and point B and also consistent with what was subsequently recorded as the route of Footpath Preston 65 on the Definitive Map for the Former County Borough of Preston.</p> <p>The application route between point B and point D is not shown.</p>
Investigating Officer's Comments		<p>The Order plan showed a number of routes described as proposed footpaths – including a route consistent with the application route between point A and point B.</p> <p>The Order does not specify that the routes were to be created as a public right of way (because there was no legal power to do so) but it appears reasonable to infer that the intention was to create alternative public rights of access along the routes shown as proposed new routes.</p>
Aerial Photograph	1960s	Aerial photograph available to view on GIS.
		
Observations		Aerial photographs dating from the 1960s pre date the development of Ingol golf course and

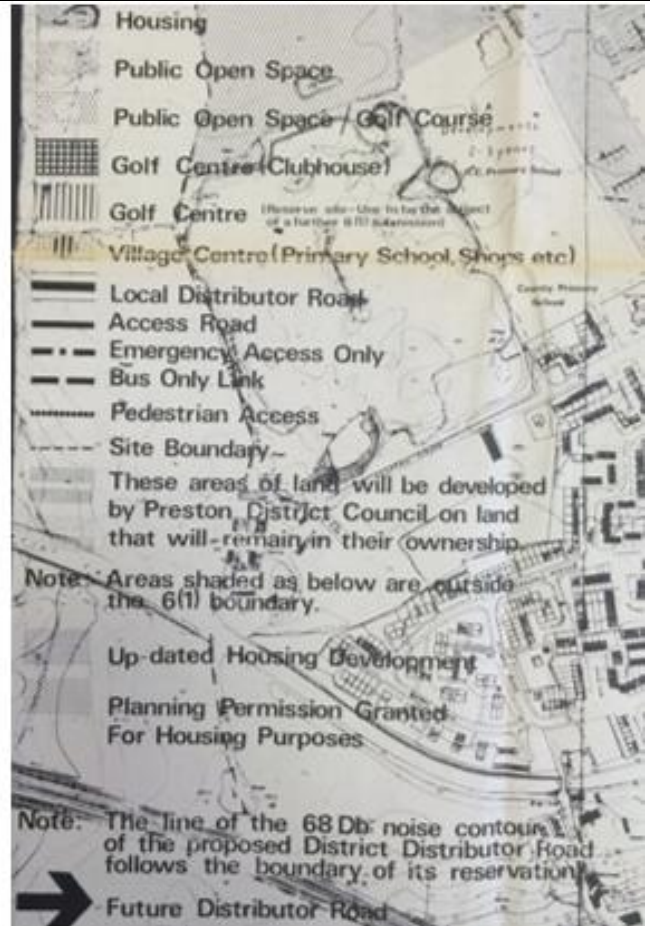
		associated housing and do not show the application route. The routes of Footpath Preston 65 and Footpath Fulwood 51 cannot be seen although the photograph is consistent with the early Ordnance Survey maps examined in showing that the footpath was rural – crossing fields and following alongside field boundaries.
Investigating Officer's Comments		The application route did not exist in the 1960s – prior to the construction of the golf course and associated housing.
OS 1:2500 Map	1963	1:2500 Ordnance Survey map revised in 1960 and published 1963.
		
Observations		The application route is not shown. A footpath (FP) is shown from close to point A extending in a generally east north easterly direction to the south of a watercourse within OS Field number 5932 to point B where it crosses Sharoe Brook and continues south of a field boundary to cross a further bridge at point D and then in a generally easterly direction to Walker Lane. Between point B and D (through to Walker Lane) the path shown is consistent with the route of Fulwood 51.
Investigating Officer's Comments		The application route did not exist on the ground prior to the development of the golf course. However a route parallel to the application route between point A and point B existed and Footpath Fulwood 51 existed and appeared useable in 1960 – which is likely to explain why a number of people completing user evidence forms (detailed later in the report) refer to walking the route across the fields prior to the development from as early as the 1940s and 1950s.

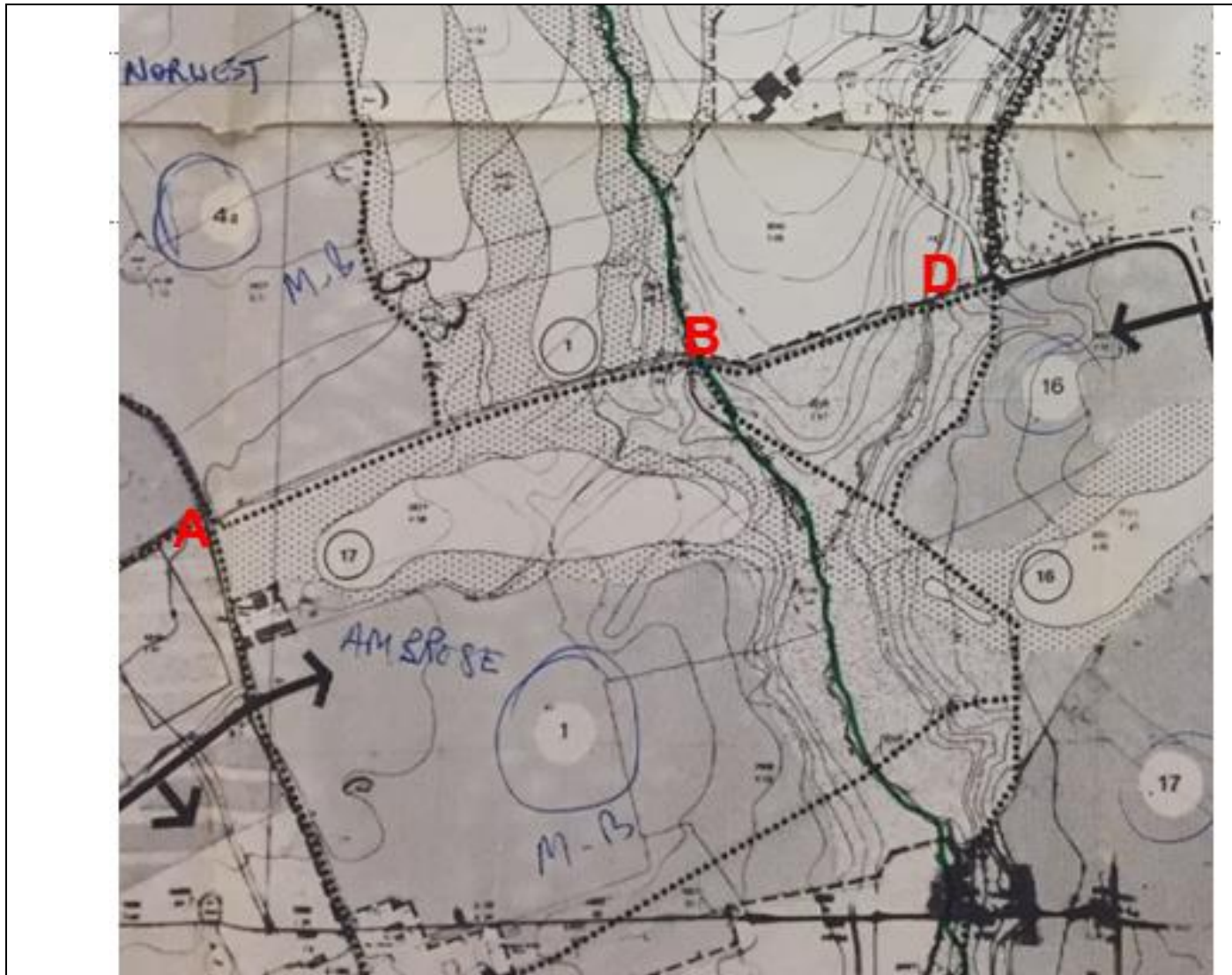
**Central Lancashire
Development Corporation
plan 'Ingol East'**

1977

Plan deposited in the County Records Office dated 1977 at a scale of 1:2500 and referenced as Drawing No. 6/34/17c (CRO reference NTC5/2/53). Originally titled as 'Support Drawing' which is crossed out in pen and replaced by 'Local Plan'.

Rev	Date	Description	Sig
<p>Central Lancashire Development Corporation</p>			
<p>Job Title INGOL EAST</p>			
<p>Draw Title Support Drawing NEW LOCAL PLAN</p>			
Scale	Date	Drawn	Checked
1:2500	5.9.74	ARB	MM
Job No.	Draw No.	Rev.	
	6/34/17c	jan 77	
<p>CROWN COPYRIGHT RESERVED.</p> <p style="text-align: right;">NTC 5/2/53</p>			



















<p>Observations</p>		<p>This is the earliest plan found in relation to the development of the golf course (pre dating the making of the 1978 Extinguishment Order) showing the proposed layout of the golf course and pedestrian access. A route consistent with the application route is shown between point A and point B continuing from point B along the south side of the field boundary through point D to Walker Lane. Between point B and point D the route shown differs from the application route and is more consistent with (but not exactly) the route of Fulwood 51. Areas were shown designated 'open space'.</p>
<p>Investigating Officer's Comments</p>		<p>This is the earliest plan inspected to show routes crossing land to be developed as part of the golf course. The routes are described as 'pedestrian access' but there is no indication on the plan whether pedestrian access was for public or private use or whether the routes shown were proposed access routes or whether access had</p>


		<p>already been provided along those lines or reflected the existence of existing (recognised) public rights of way.</p> <p>The plan does, however suggest an intention for a pedestrian route to be retained across the golf course between point A and point D as areas were designated open space and sometimes that can make use by right as under The Open Spaces Act people had statutory permission for recreation.</p>
Final Draft Agreement for lease relating to development of golf course and housing	1978	<p>A copy of a draft agreement was found in the County Records Office annotated as being the 'final draft agreement' between Central New Towns Development Corporation and Miller Buckley Golf Services (Ingol) Limited dated 13 March 1978 for the lease relating to the development of the golf course and housing.</p>
Observations		<p>The agreement contains information regarding the provision of footpaths across the land. Within Schedule 3 it states that within the golf course parcel the corporation will provide certain footpaths shown on a drawing referenced 6/34/308A and that the general line of these footpaths may be subject to variation by agreement between the corporation and the company. It also stated that any closure of an existing footpath will require an order which is within the discretion of the Secretary of State.</p> <p>The agreement also stated that footpaths must be kept open and useable on foot at all times although private footpaths could be temporarily closed by the lessee if necessary for the proper management of the golf course and that the corporation would not unreasonably withhold permission to divert public or private footpaths at a future date if it was necessary for the implementation of the scheme.</p>
Investigating Officer's Comments		<p>A copy of the plan referred to in the agreement could not be found in the County Records Office so it is not possible to confirm whether the route under investigation was one of the routes shown. However, the draft agreement does refer specifically to the provision of public access along footpaths across the site although it appears that there were to be both public and private routes created. Terminology was somewhat confused referring to 'private footpaths'.</p>
Ingol Golf Villages -	1980	<p>Copy of leaflet produced providing details of the</p>

Leaflet published and produced by Central Lancashire Development Corporation

proposed development of a golf course and housing in Ingol and contact details for the various housing developers and Central Lancs New Towns Development Corporation. The leaflet included a map of the 18 hole golf course and the key to the map details, amongst other things, routes shown as public footpaths, existing and new roads and roads to be made into footpaths.




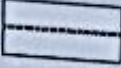
	<p>Key to map</p> <ul style="list-style-type: none">  New housing areas  Existing development  Village centres  Golf centre and clubhouse  Golf course fairways and greens  Golf course 'roughs'  Direction of play on golf course 13 Green numbers  Public open space  Tree belts  New roads  Existing roads  Existing road made into a footpath  Public footpaths  Emergency exit road 	
Observations		<p>The plan included in the leaflet is a large scale drawing showing routes described as public footpaths which correspond to the routes shown as proposed footpaths in the 1978 extinguishment order detailed above.</p> <p>A route is shown through to Walker Lane which appears to include the application route between points A-B-C-D but which differs from the route applied for between point B and point D suggesting that the route along this section followed Fulwood Footpath 51.</p>
Investigating Officer's Comments		<p>The leaflet was distributed to the public showing details of the proposed development and clearly indicates the intention that a number of routes shown on the 1978 extinguishment order were to be provided as public footpaths reiterating the</p>

		<p>intention to provide alternative routes for those paths extinguished by the 1978 order detailed above.</p> <p>Routes consistent with the application route between point A and point B is shown as a public footpath suggesting that even though the original route of Footpath 65 Preston (5 Ingol) was extinguished it was the intention to provide an alternative public footpath parallel to the route extinguished. From point B the route shown appears more on the alignment of Fulwood Footpath 51 and not along the application route B-C-D.</p>
Aerial Photograph	1988	Aerial photograph taken May 1988 and available to view in the County Records Office.
		
Observations		Despite tree cover a route can be seen to exist consistent with the application route between point A and point B. From point B to point D the application route can be clearly seen as a well-defined track.
Investigating Officer's Comments		The application route existed in 1988 and appeared capable of being used.
Plan used as part of application to show route claimed	1998	Plan provided by Commission for New Towns (North) to the applicant together with a letter in response to the applicant querying the status of the application route with them prior to submitting the application.




NOTATION :-


 FORMER FOOTPATH AND NUMBER.


 PARISH BOUNDARY.


INTENDED AND ACTUAL ALTERNATIVE ROUTES.

LAND OWNER :-

 INGOL GOLF COURSE.

 PRESTON B.C. (COMMUNITY RELATED ASSETS.)

 ADOPTED HIGHWAY IN VARIOUS OWNERSHIPS.

Commission for the New Towns 

P.O Box 49
New Town House
Buttermarket Street
Warrington
Cheshire
WA1 2LP

Fax: 01925 411493
Tel: 01925 651144

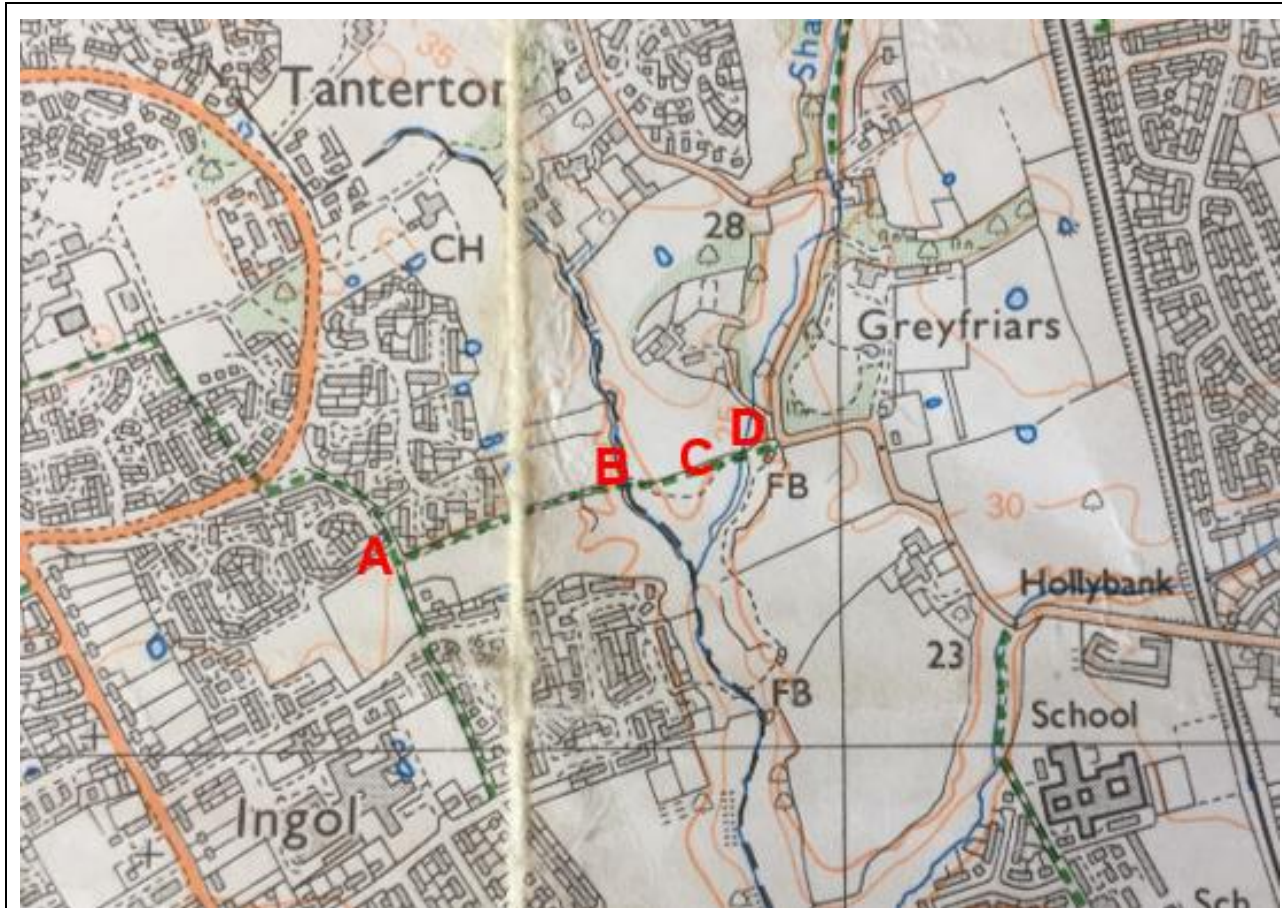
FILE NAME E6133.DWG	PLOT DATE 28/10/1998.	
TITLE		
TANTERTON AND INGOL DIVERSIONS OF RIGHTS OF WAY.		
DWG NO. CNT/CL/E6133.	SCALE 1:2500.	SIZE A1
DATE 28/10/1998.	DRAWN BY AHL.	
OS SHEET		

Observations


This plan was provided to the applicant by Mr R Robson, Commission for New Towns (CNT) North, in a letter dated 06 November 1998. The drawing – referenced CNT/CL/E6133, is stated to be based on the latest OS plan of the Ingol

		<p>and Tanterton area (at that time) and is described as being marked up with the routes of the former footpaths and the approximate routes of the various alternative footpaths provided in respect of the various footpath closures.</p> <p>The plan was marked up with details of the various landowners and annotated with letters of the alphabet.</p> <p>The letter accompanying the plan also explains that Central Lancashire Development Corporation sold the golf course to Hemm Inns limited in 1985 and put provisions in the transfer to ensure that the footpaths indicated in the original layout approved in 1978 were not obstructed or interfered with. The lines of the routes across the golf course are indicated in blue but CNT make reference to the routes now in use deviating from the routes marked in blue in several places.</p> <p>The Ordnance Survey base map used shows the application route between points A-B-C-D as a double pecked line subsequently coloured blue to indicate ownership by Ingol Golf Course. The route of Fulwood Footpath 51 between point B and point D is not shown.</p>
<p>Investigating Officer's Comments</p>		<p>The letter and plan provide further evidence regarding the construction of the application route as an alternative to those routes extinguished to allow for the development of the site and evidence of intention to dedicate by the owner.</p> <p>The letter appears to suggest that whilst the route was originally provided on the route shown the public had subsequently deviated from the route in a number of unspecified locations.</p> <p>The plan shows a route on the exact alignment of the application route suggesting that this was the route physically constructed on the ground (and apparent when the Ordnance Survey revised their map).</p> <p>The exact date of the Ordnance Survey map is not known but it appears that the route applied for existed on the ground by at least 1998 (and most probably at an earlier date).</p>
<p>Land Registry Title Number LA512320 and</p>		<p>The land covered by this title includes the application route.</p>

LAN183407		
<p>A Transfer which included the land in this title dated 1 April 1985 made between (1) Central Lancashire New Town Development Corporation (Transferor) and (2) Hemm-Inns Limited (Transferee) contains the following covenants:-</p> <p>"THE Transferee for itself and its successors in title for the benefit of the Transferor's retained land at Ingol adjacent to the property hereby transferred hereby covenants that the Transferee will not obstruct or interfere with any footpaths or footpath routes now crossing the property whether presently adopted or included in the Definitive Map maintained by Lancashire County Council under the terms of the National Parks and Access to and the Countryside act 1949 or any subsequent legislation or are shown on the drawings referred to in the planning approval for the development of the Gold Course on the property given under Section 6 (2) of the New Towns Act 1965 on the twenty second day of August one thousand nine hundred and seventy eight."</p>		
Observations		<p>The transfer of land from the Central Lancashire New Town Development Corporation to Hemm-Inns Limited included a covenant regarding footpaths or footpath routes which were either currently recorded on the Definitive Map, were adopted, or which were shown on drawings referred to in the planning approval for the development of the golf course on 2nd August 1978. The covenant specified that those routes should not be obstructed or interfered with. The land has subsequently been sold to Cleator Manor Limited (freehold) in 2006 and part was sold (leasehold) in 2016 to Ingol Golf Club Limited with the same covenant remaining.</p>
Investigating Officer's Comments		<p>There appears to be a clear intention by the Central New Towns Development Corporation that all existing public footpaths and proposed public footpaths across the land sold should be recognised and protected against future obstruction or interference.</p>
Ordnance Survey Pathfinder 679 (SD 43/53)	1991	<p>1:25,000 OS map published 1991, compiled from larger scale surveys dated between 1956 and 1986, revised for selected changes 1990.</p>



<p>Observations</p>		<p>The application route between point A and point B is shown as a public footpath on the Ordnance Survey Pathfinder Map. The route between point B-C-D is shown partly as a public footpath with a black dashed line shown deviating from the footpath between point B and point C.</p>
<p>Investigating Officer's Comments</p>		<p>Public rights of way indicated have been derived from Definitive Maps as amended held by the Ordnance Survey on 1st march 1990 and are shown subject to the limitations imposed by the scale of the mapping.</p> <p>As stated by the Ordnance Survey, the representation on this map of any other road, track or path is not evidence of the existence of a right of way.</p>
<p>Statutory deposit and declaration made under section 31(6) Highways Act 1980</p>		<p>The owner of land may at any time deposit with the county council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection</p>

		<p>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 Section 31(6) deposits have been lodged with the County Council for the area over which the route runs.
Investigating Officer's Comments		There is no intention by a landowner under this provision of non-intention to dedicate public rights of way over their land.
Aerial Photograph	2000	Aerial photograph available to view on GIS.
		



Observations		The application route cannot be seen between point A and point B due to tree cover. Between point B and point D the application route can be clearly seen as a substantial track.
Investigating Officer's Comments		The photograph was taken the same year that the application was submitted.
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 rural district 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 36 of the Highways Act 1980, an</p>

		up to date List of Streets showing which 'streets' are maintained at the public's expense. If a road is not on this record it may still be an existing highway. Alongside the List is a coloured up plan of the extent of the highways on the List. Footpaths and Bridleways are often not shown on these plans.
Observations		Neither route is recorded on the List of Streets as being publicly maintainable.
Investigating Officer's Comments		The routes were not recorded as being publicly maintainable but no inference can be drawn regarding public rights.

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

Since the applications to record public footpaths across the former golf course were submitted the golf course has ceased to operate and a number of planning applications have been submitted to Preston Borough Council for the land to be redeveloped. Two substantial applications were made in 2010 and 2014 (Planning References 06/2010/0626 and 06/2014/572). Information submitted as part of the applications was viewed and it is noted that on various plans prepared existing public footpaths are shown together with the routes applied for – which are shown separately as being routes subject to Definitive Map Modification applications.

No further information relevant to the applications was however found.

Landownership

The land crossed by the route under investigation between points A-B is registered in the ownership of Cleator Manor Limited.

The land crossed by the route under investigation between points B-C-D is registered in the ownership of Preston City Council since it was transferred to them from the Central New Town Commission in 1997.

Summary

Prior to the construction of the golf course it appears that a recognised public footpath existed parallel to the application route between point A and point B which was initially known as Ingol Footpath 5. This route was legally extinguished by the Central Lancashire Development Corporation in 1978.

When the Draft Definitive Map for the Former County Borough of Preston was prepared a route was recorded on it as Preston Footpath 65 which is consistent with the application route between point A and point B and this route is shown to exist on the maps and aerial photographs examined post-dating the development of the golf course.

From point B through to point D it appears that when the golf course was constructed a path was put in which differed from the legally recorded route of Fulwood Footpath 51 but which effectively started (at the parish boundary) and ended (on Walker Lane) as did Footpath 51. Since 1978 the map, documentary and aerial photography considered all suggest that the application route was available to be used as opposed to the route of the definitive footpath and that all the map and documentary evidence considered supports the user evidence submitted for 'Route 4' as being a route made available and used by the public.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant submitted 75 user evidence forms providing evidence from 77 users together with a copy of a letter that she had sent to members of the Ramblers Association in August 2000 explaining that staff at Ingol Golf Club had been preventing walkers using the paths across the golf course and that she was putting together an application to record routes marked on a plan on the Definitive Map and asking people to complete user evidence forms if they had used any of the routes marked.

The user evidence forms all described the route applied used as the 'alternative to be provided by the former included a map provided by the applicant showing the two application routes which were referred to as 'alternative to be provided by the former Central Lancashire Development Corporation for Ingol Footpath no. 5' which was marked 'J' on the map attached to the forms.

Each form was accompanied by a map supplied by the applicant showing the route applied for coloured purple along the section marked J (points A – B on the Committee plan indicating in the key that it was owned by Ingol Golf Course, and marked with a letter K and coloured green between points B-D indicating that this part of the route was across land owned by Preston Borough Council. The section marked green was annotated with 'FP 51'.

Following receipt of the application the Investigating Officer discussed the application with the applicants to explain that the Definitive Route of Footpath 51 was not on the same alignment as the route shown on the application plan (and available on the ground). The applicant confirmed that the route shown coloured green on the application plan (and between points B-C-D on the Committee plan) was the route used and that the user evidence submitted referred to that route and not the Definitive route of Footpath 51.

All of those users completing the forms have indicated that they regarded the routes as public, and that their friends and family regarded them as public.

1 user described using the route as long as the path has existed and another states that they have used it 'all their life' and 'all year round' which provides insufficient detail to include in the statistics given below.

9 users recount use prior to 1978 (when Ingol Footpath 5 was extinguished) but all 9 continued to use the route following 1978 through to 1999-2000.

21 users refer to use of the routes in excess of 20 years – including use pre 1980.

The majority of use refers to the period between 1978 and 2000 with 12 users specifying in excess of 20 years use between those dates and a further 41 users having used the route for between 10 and 19 years during that period. A further 12 people specifying use of the routes for less than 10 years during the 22 year period.

Use of the path was predominantly for pleasure purposes with a high percentage of frequent users (at least daily) referring to walking their dogs. Other specific references to type of use included to get to work, as a route to school, to get to the shops, for exercise, running and nature activities, for taking family members and grandchildren for walks, to get to Walker Lane and for use as part of a school fun run.

Specific comments included:

- A very frequently used path.
- Paths used by school children, walkers, runners, dog walkers on a daily basis. Cyclists also use these paths.
- Used the route for 60 years, parents took her on circular walks as a child and has often used the path since then and her husband used the route to lead walking groups along the path.
- The reason for moving to the area was local access to the footpaths around and across the golf course.
- Uses the footpath every morning to walk their dogs. The first part is extremely muddy and hasn't been maintained since it was first built and it is obvious that the golf club don't want people to use it. The second part (owned by the Council) is used by the Golf Club as a short cut for their tractors.
- Has lived in the area since 1969 and believes that the countryside should be available for all to enjoy – not just golfers.
- Used the route on Ramblers Association Wednesday walks.
- The path is clear, well surfaced and can be used in all weathers with ordinary footwear. There is a bench provided from which you can enjoy the views.
- A popular path with people of all ages.
- A popular picnic spot.

Information from the Landowner

Following receipt of the application consultations were carried out with the owners of Ingol Golf Course at that time (Tee Jay Leisure Limited, Sagar House, Eccleston, Chorley). They instructed Kevills Solicitors who requested a meeting with the County Council in 2006 in the hope that a 'pragmatic solution' could be found. No meeting was arranged.

Information from others

The Ramblers Association submitted a letter they had received from Central New Towns North dated 6 November 1998 enclosing a plan referenced CNT/CL/E6133 dated October 1998 which they explained was based on the latest Ordnance Survey plan, marked up with routes of the former footpaths and the approximate routes of the various alternative footpaths provided in respect of closures to public footpaths as part of the development of the area by the Central Lancashire Development Corporation.

They explained that several of the alternative footpaths crossed Ingol Golf Course and the layout of the course indicated alternative routes for footpaths, which were shown in blue on the plan provided. They explained that the Central Lancashire Development Corporation sold the golf course to Hemm Inns Limited in 1985 and put provisions in the transfer to ensure that footpaths indicated in the original layout approved in 1978 were not obstructed or interfered with.

Included in the plan provided was the application route with the section A-B coloured blue. This plan was subsequently used by the applicant when gathering user evidence for the routes.

With regards to the application route CNT North described the route between point A and point B as an alternative route to Footpath 5 across land in the ownership of Ingol Golf Course. They comment that the route followed the line intended on the Golf Course layout and that it was shown as a Public Right of Way on the current Pathfinder 1:25000 map.

Route K – which comprised of the application route from point B-C-D continuing through to Walker Lane as an amenity footpath following a different line from that indicated as a public right of way on the current Pathfinder 1:25000 map.

English Partnerships (consulted in 2005) responded to the county council consultation by stating that they believed the application route – including both the section across Ingol Golf Club, and the section across Preston City Council land – was believed to be a permissive route.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order

User evidence.

Evidence of Central Lancashire Development Corporation's intention.

Against Making an Order

Actual Central Lancashire Development Corporation planning consent drawings not available.

Conclusion

As there is no express dedication it is advised that Committee consider whether there is sufficient evidence on balance for a deemed dedication from use under S31 Highways Act 1980 and/or an inferred dedication at common law from all the circumstances pointing to an intention to dedicate by the owner.

It would seem to be the case that the route did not exist prior to the ownership by Central Lancashire Development Corporation established by the Minister under the New Towns Act 1965. The land for the golf club had been taken by the Corporation by compulsory purchase powers or in the shadow thereof and planning consent obtained by the Corporation by submitting proposals and the Minister making a Development Order. The Development Order and its drawings has not been located but it is suggested that other documents are of assistance.

At common law to infer a dedication from all the circumstances can involve consideration of both user evidence and documents. The Planning Statement referred to earlier in the report clearly shows that the Central Lancashire Development Corporation had an intention to create footpaths and to retain the extent of the existing network. The New Towns Act says that a Development Corporation had the power to do anything necessary or expedient for the purposes incidental to its main objectives. Central Lancashire Development Corporation is obviously unusual as it was developing huge areas of land.

Committee must consider whether there is sufficient evidence of the intention to create the actual route being considered in this report.

It is suggested that there is sufficient evidence to indicate that this claimed route A-B was intended to be dedicated. A-B appears on the "Local Plan" appearing to be the replacement for FP5 and to a large extent on the Order plan itself re the extinguishment of existing footpath 5 and on the leaflet produced by the owners.

B-D follows a different alignment than FP51 but a different line from the claimed route. It does not appear on the Local Plan on the claimed line and again on the leaflet is more straight. It does however appear on the plan sent by CNT in 1998.

The routes have actually been constructed on the ground for some of its length and the style of construction and of stiles and bridge would seem on the information to be consistent with that of the Central Lancashire Development Corporation.

It is advised that the section B-D which crosses land designated "Public Open Space" on the Local Plan document and within Preston City ownership can still be "as of right". It is suggested that the use of the route is linear and asserting a public right of way would be capable of establishing a public right of way over the route despite the possibility that Preston City Council's powers to hold land as open space

may also apply – to hold in trust to allow enjoyment thereof by the public as an area used for the purposes of recreation – i.e. use "by right". Whether Preston City do have public open space designated is not known but it is suggested that the use would still be capable of building a public right in this matter on this section.

The user evidence is significant and collected and submitted by the Ramblers Association.

The user adds force to the evidence of Central Lancashire Development Corporation's intention to dedicate this route and accepts the route on the part of the public. The line of the route B-D was constructed and this may indicate the line as intended.

It is suggested that Committee may find sufficient evidence from which to infer an actual dedication by Central Lancashire Development Corporation and acceptance by the public can reasonably allege to have occurred or found to have occurred on this claimed route.

The user evidence also enables Committee to consider whether as of right use has been for the twenty years without interruption and without indication of a lack of intention to dedicate such that dedication may be deemed to have occurred under S31 Highways Act 1980. Again the user evidence is supported by plans completed by the users and collected by the Ramblers Association. There is reference to use by the Association for guided walks. It is suggested that the calling into question was the submission of the application or possibly just before then when the challenges by the Golf Club are referred to.

Taking the evidence into account it is suggested that the Committee may decide that an Order can be made for this route to be added to the Definitive Map and Statement and be promoted to confirmation.

Risk management

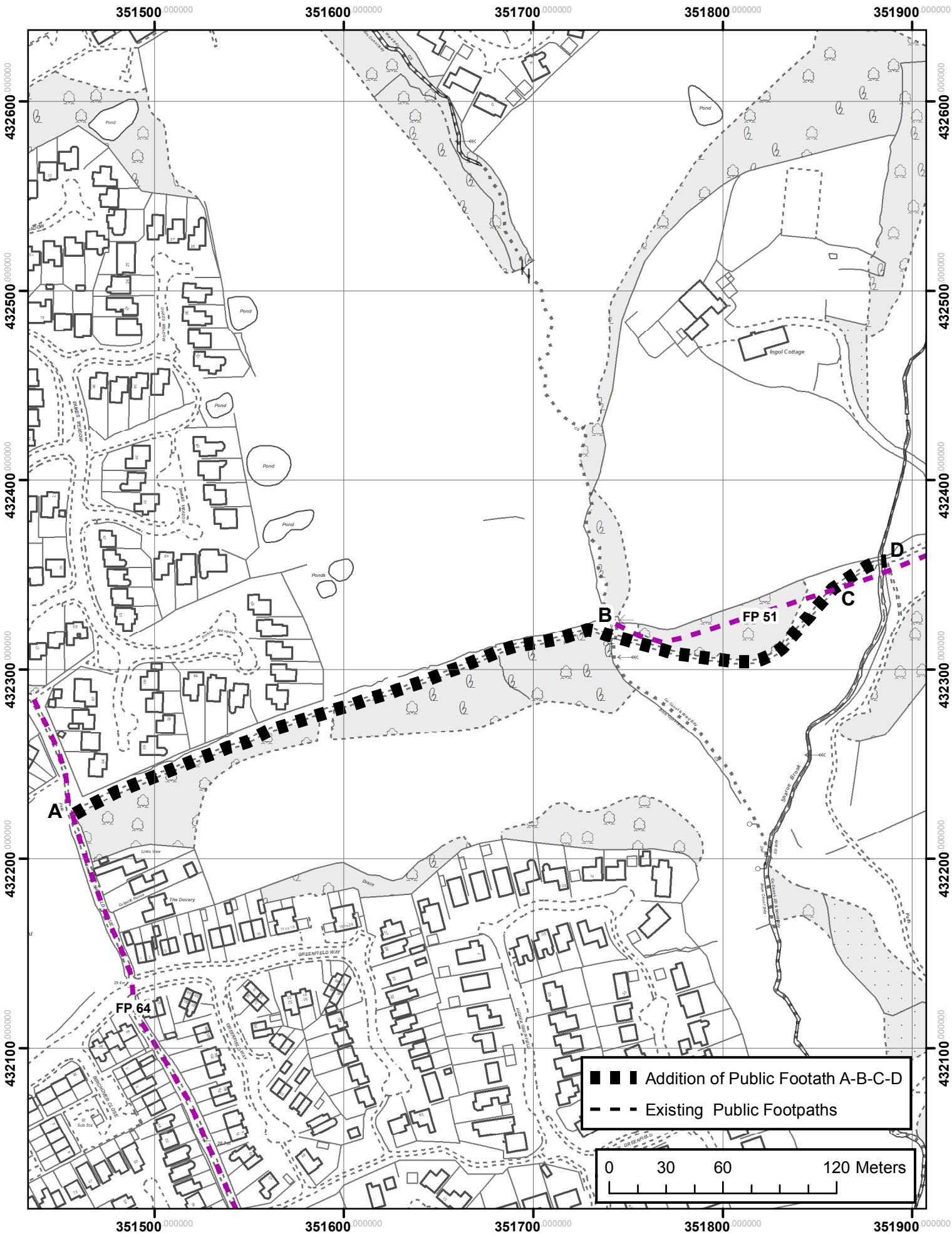
Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-379d		Simon Moore, 01772 531280, 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 Footpath from Preston Footpath 64 to Fulwood Footpath 51 across the former Ingol Golf Course

1:2500



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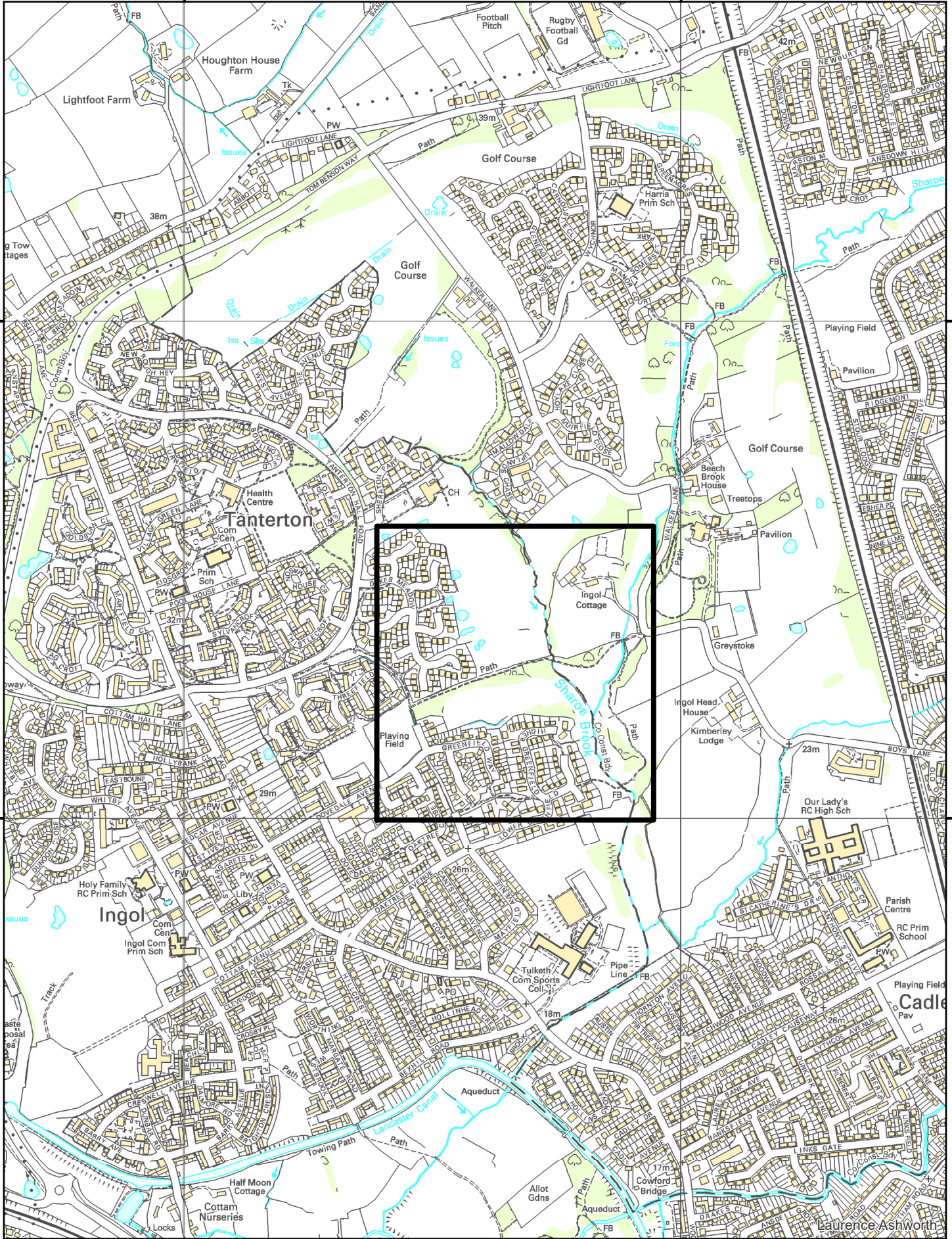
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Andrew Mullaney
Head of Planning
and Environment

Wildlife and Countryside Act 1981 LOCATION PLAN
Addition of footpath from Preston Footpath 64 to Fulwood Footpath 51 across the former Ingol Golf Course

1:10,000



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Route 4

Regulatory Committee

Meeting to be held on 11 March 2020

Part I

Electoral Divisions affected:
Preston North and
Preston West

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

i) Addition of Footpaths from Lower Greenfield to the east bank of Sharoe Brook with a spur to Walker Lane, Preston

ii) Addition of Footpath from Walker Lane to FP Fulwood 43, Preston

File No. 804-379e

(Annex 'A' refers)

Contact for further information:

Simon Moore, 01772 531280, Paralegal, Legal and Democratic Services,
simon.moore@lancashire.gov.uk

Jayne Elliott, 01772 537663, Public Rights of Way, Planning & 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:

1. Footpaths from Lower Greenfield to the east bank of Sharoe Brook with a spur to Walker Lane, Preston
2. Footpath from Walker Lane to the junction of Footpaths Fulwood 43 and 46 at Sharoe Brook, Preston

in accordance with File No. 804-379e.

Recommendation

(i) That the application for the addition to the Definitive Map and Statement of a Footpath from Lower Greenfield to two different points on Walker Lane, Fulwood, Preston City, in accordance with File No. 804-379e, be accepted.

(ii) That the application for the addition to the Definitive Map and Statement of a Footpath from Walker Lane to the junction of Footpaths Fulwood 43 and 46 at Sharoe Brook, Preston City in accordance with File No. 804-379e, be accepted.

(iii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add a Footpath from Lower Greenfield to a point on the east bank of Sharoe Brook and

a point on Walker Lane with a further spur to a different point on Walker Lane, Fulwood, Preston City on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plans between points A-B-C-D-E-F-G, E-G and D-H.

(iv) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add a Footpath from Walker Lane to the junction of Footpaths Fulwood 43 and 46 at Sharoe Brook, Preston City on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plans between points I-J-K-L-M-N.

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

Background

In 2000, an application under Schedule 14 of the Wildlife and Countryside Act 1981 was received for the addition of a number of public footpaths which were described by the applicant as being situated on land forming part of Ingol Golf Course and as having been provided by the former Central Lancashire Development Corporation.

Five separate sets of routes were listed and numbered 1 to 5 and evidence in support of each route was provided.

The application was originally submitted on behalf of the Ramblers Association (Mid Lancashire Area) but sadly, since submission, the applicant has died.

Soon after the application was submitted, research was carried out by two former members of the county council's Public Rights of Way team and initial consultations carried out but reports were never prepared or presented to the Regulatory Committee and the officers originally involved in the investigation have subsequently retired. Various development proposals were thought likely to accommodate the routes but this has not been achieved. Further work has now been done to get the reports finalised.

The original application made by the Ramblers Association was split down into five separate ones. The bulk of the evidence provided by the Applicant in support of the application consisted of completed user evidence forms and on a review of the application bundle it has been decided to consider each route separately.

This report considers the route referred to by the applicant as 'Route 5' and because of its length and the fact that it is split by Walker Lane it has been split down further into two routes:

Route 5(1) - Application to record a public footpath from Lower Greenfield to two different points on Walker Lane, Fulwood, Preston, and shown on the Committee plans by a thick dashed line between points A-B-C-D-E-F-G, E-G and a spur D-H.

Route 5(2) – Application to record a public footpath from Walker Lane across the former Ingol Golf Course to the junction of Footpaths Fulwood 43 and 46 near Sharoe Brook, Preston and shown on the Committee Plans by a thick dashed line between points I-J-K-L-M-N.

In respect of the application for Route 5(1) the original description of Route 5 provided by the applicant only described the route from the footbridge near the east end of Greenfield (point C) but it was subsequently clarified with the applicant that the route also included the length shown between points A-B-C. Further clarification was also sought with regards to the route E-F-G and E-G as the applicant had described the route as being to/from Walker Lane and the junction with Footpath Fulwood 51. The routes shown on the Committee plan were confirmed by the applicant as being those they intended.

In respect of the application for Route 5(2) the applicant also confirmed that both routes shown between points M and N were included in the application.

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

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

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

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

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

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

The county council’s decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by the applicant, landowners, consultees and other interested parties produced to the county council before the date of the decision. Each piece of evidence will be tested and the evidence overall weighed on the balance of probabilities. It is possible that the Council’s decision may be different from the status given in any original application.

The decision may be that the routes have public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists. The decision may also be that the routes to be added or deleted vary in length or location from those that were originally considered.

Consultations

Preston City Council

The City Council were consulted and commented that the areas of land in Council ownership which are adjacent to Ingol Golf Course were transferred to the Council from the Commission for the New Towns in January 1999 and that the Council had no information on its records regarding neighbouring landowners or tenants.

It was their recollection that the Council had dealt with a query from a member of the public in 2000 regarding a path from Tanterton Hall Road to Durham House. They state that at that time they had sight of a copy of the Public Path Extinguishment Order made by the Commission for the New Towns and that the Order extinguished a number of public rights of way in that area.

They also explained that further queries were raised by a resident regarding the status of other paths on the golf course and that a copy of the transfer/lease of the land to the golf club was seen by the Council which indicated that the 'new' paths were 'permissive paths', created as a condition of the transfer/lease. The Council referred the matter to English Partnerships but were not aware whether they had then pursued with the golf club.

Comments from Preston City Council Highways department were that 'the paths most certainly exist' in terms of them being physically constructed and that they had been created by the Central New Towns Commission but that despite receiving numerous enquiries regarding the condition of the paths over the years the Council had no power to act with respect to such 'permissive paths'.

It was also noted that from experience of dealing with enquiries about routes crossing the golf course, the Highways Department were of the opinion that the local residents considered that these paths were public footpaths and, on that basis, they had continued to use paths which abut, and in some cases, cross the golf course.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plans.

Point	Grid Reference (SD)	Description
A	5178 3206	Open junction with Lower Greenfield between house numbers 40 and 41
B	5182 3207	Kissing gate
C	5188 3206	Footbridge over Sharoe Brook
D	5187 3220	Junction of application routes
E	5189 3232	Junction of application routes
F	5188 3235	Junction of application route with unrecorded path
G	5192 3236	Kissing gate adjacent to metal field gate
H	5211 3228	Junction with Walker Lane – access via a metal stile and gap in 2006
I	5212 3229	Junction with Walker Lane – access via gap adjacent to wooden field gate in 2006
J	5210 3235	90 degree bend in route
K	5228 3271	Route enters woodland from Ingol Golf course
L	5223 3294	Security fence across route erected in 2018
M	5221 3304	Junction of application routes at top of hill in woodland adjacent to railway line
N	5220 3309	Junction of application routes with Footpaths Fulwood 43 and 46

Description of Routes

The application was submitted in 2000 and a site inspection was carried out by the county council until 2006.

Because the application relates largely to user evidence pre dating 2000 details of the 2006 site inspection are included in this report. This provides a better indication of what existed on the ground closer to the time that the routes were claimed to have been used.

A further site inspection was carried out in 2018 to see what changes had occurred since the 2006 inspection.

Route 5(1)

Application route from Point A – Point E

The application route commences on Lower Greenfield at point A on the Committee plan and in 2006 was described as following a tarmac path between numbers 40 and 41 Lower Greenfield to descend a flight of concrete steps to a kissing gate at point B.

From point B the application route followed a stoned path through an open grassed area, descending in a generally south easterly direction to a timber footbridge crossing Sharoe Brook at point C. From point C a stoned path ascended through a stoned area with the remains of a wooden seat to then continue in a north easterly direction through a grassed area planted with trees and shrubs to ascend a curving

flight of timber steps and then continued along a stoned path constructed with timber edging boards in a generally north westerly direction rising gently uphill through long grass and shrubs with the golf course to the east.

Golf tees were noted as being visible to the side (east) of the route and at the top of the hill two short grey metal posts were noted as being in the ground close to point D.

From point D the surfaced track continued in a generally northerly direction towards Sharoe Brook through an area of mown grass and shrubs to point E.

Application route from point E-F-G and E-G

From point E the route was described as splitting with the more westerly route following a stone path approximately 1.5 metres wide through a mown grassed area along the side of the brook. After approximately 20 metres it passes through the line recorded as footpath Fulwood 51 and continues a further 5 metres to the junction of a track running west to east at point F.

From point F the application route turned right (east) at this point to follow a stoned path rising gradually uphill for 40 metres to a metal gate (locked) and adjacent wooden kissing gate which provided access out onto Walker Lane.

Also included in the application was a second route from point E which extended in a north easterly direction ascending a flight of wooden steps to provide direct access to the metal gate (locked) and pedestrian wooden kissing gate at point G.

The Investigating Officer was of the opinion that the gates and associated fencing and steps all appeared to have been provided by the Development Corporation and were in good condition.

Application route between point D and point H

From point D, where in 2006 the Investigating Officer noted the existence of two short, grey metal posts at the junction between the rough grass and the fairway of the golf course. The application route was described as crossing the rough grassed area running parallel to the boundary hedge and approximately 10 metres to the south of it. There was no visible trodden path through the grass along the line of the route.

After a distance of approximately 100 metres it was noted that the application route was crossed by a very well-defined trodden path running across the field and golf course.

The application route was described as continuing through an area covered by brambles coming from the field boundary hedge, approximately 20 metres from the hedge into the golf course. There was a trodden path around the brambles which then continued past a flooded area. The trodden path then turned a little to the south and crossed a golf fairway to join a stone pathway. Near the point where the

application route joined the stoned path there was a grey metal post with a notice on it saying 'INGOL GOLF CLUB PRIVATE PROPERTY'.

The route followed the stoned pathway to Walker Lane at point H where access was available via a gap and adjacent metal stile.

In summary, the length D to H was described as being predominantly over rough grass alongside the golf course with a trodden path only visible over a short part of the route, with a stoned path giving access from Walker Lane at point H, where access was provided through an opening and a metal stile alongside.

When the routes described above were investigated again in 2018 it was noted that they were all extremely well used with a number of walkers seen using them at the time of inspection. The steps and wooden edging boards described in 2006 were still in existence although becoming quite worn and the wooden footbridge at point C, although still useable was becoming rotten.

The route between point D and point H passed through an area of rough grass and overgrowth and there was no trodden path visible. A wooden gate existed at point H which was in an open position and there was a sign stating 'Ingol Golf Club Private Property'. The golf course was no longer in existence and the former course had been left untended.

Route 5(2)

Application route between point I and point N

The application route started from point I at the junction with Walker Lane, opposite point H, where there was a stone surfaced lay-by area providing access to the golf course to the east through a wide opening restricted by metal barriers. The lay-by was approximately 20 metres long and at its northerly end there was a timber field gate. The gate was locked at the time of inspection but there was a visible well-trodden path worn around the side of the eastern stone gate post, between it and the mature hedge.

The trodden path then crossed to the rear of the gate and remained visible through the open field, following alongside the boundary hedge for approximately 60 metres to point J. From here the trodden path turned to continue east north east passing through a narrow part of the field which then opened out on the north side. The application route then continued along the northern side of the hedge to a line of trees and then out onto the golf course near to a bunker.

From here the route was described as running along the edge of the fairway and the rough grass, for approximately 200 metres to the end of a well-established hedge. There was no trodden path reported as being visible on the ground over this section of the well-maintained golf course at the time of inspection.

The path was described as then crossing a rough grass area leading away from the hedge line. After 100 metres it passed down a slope to the west of a pond. The route then continued up a slope and crossed a stone path made for golf club use. There

was no trodden path visible through the area of rough grass. The application route was described as continuing across part of the golf course to the edge of a wooded strip running alongside the railway line at point K where it was noted that although there was no evidence of a trodden path over the well-maintained golf course, there was a trodden path clearly visible into the wooded area at point K.

From point K the Investigating Officer described there being a very well-used path running south through the wooded area at the side of the railway line. This path was not included in the application although it linked to it.

The application route continued north north west from point K over a well-compacted soil pathway, approximately 2 metres wide, constructed with timber edging boards. The surface was described as very well used and worn bare of vegetation although there were tree roots and stumps within the path. The high metal security fence of the West Coast Mainline railway is on the east side of the path for approximately 340 metres to a point where the route divided into two at point M. One part – immediately alongside the railway fence – was described as narrow and indistinct, dropping down a steep planted slope towards point N. The final section of this length was over a vertical timber retaining wall approximately 450 mm high. There were no steps or gap for access over this onto the banking.

The other part of the application route continued from point M to follow what was described as a well-used and clearly visible path towards the north-west through the tree planted area, where despite storm damage resulting in fallen trees across the route, there was an alternative well-trodden path visible around them. After approximately 20 metres the path led onto the curving stone track leading from the golf course. This part of the route was also used by the golf club, including use with vehicles and ran down to point N, which was on the south side of a timber footbridge crossing Sharoe Brook at the junction with Footpaths Fulwood 43 and 46, and the other part of the application route alongside the railway and down the steep planted slope referred to above.

In summary, in 2006:

- Access from Walker Lane at point I was possible at the side of the locked timber field gate into the open field, and showed signs of being well used.
- The visible trodden path became less obvious through the fields and over the golf course.
- A trodden path – constructed in places with timber edging boards and stone – ran from immediately before point K and continued alongside the railway line to point M.
- From point M, the challenging route through the wooded area alongside the railway fencing was a steep slope down with no visible path and the curving path, away from the railway, was very well used over a gentle gradient.

In conclusion, the Investigating Officer at that time was of the opinion that whilst there was no visible trodden path over the golf course it would appear that the application route was in regular use by the public.

When the route was re-inspected in 2018 metal security fencing had been erected across the route at point I and access through it was not possible. The golf course was no longer in existence and the land forming part of it was fenced off and overgrown. There was no access along the route through to point L where a further metal security fence had been built across the route. Beyond point L to point M a trodden track through the woodland was still visible which curved north west at point M to take the gently sloped track which curved round to point N. The land across which the route from point M to point N ran parallel to the railway fence was steep and vegetated with no sign of a trodden or useable track.

Map and Documentary Evidence

A variety of maps, plans and other documents was examined to discover when the routes came into being, and to try to determine what status they may be. The routes are not shown on any of the early commercial maps, the Tithe Map of Broughton dated 1839 or OS maps published in 1849, 1893, 1912, 1932, 1938, 1961 or 1978. Neither are they shown on the aerial photographs taken in the 1940s or 1960s.

The routes cross land which is within an area which was designated as the Central Lancashire Development Corporation. A Development Corporation was a body set up across parts of England and Wales and charged with the urban development of an area. It operated under the New Towns Act of 1965, outside the usual Town and Country Planning legislation.

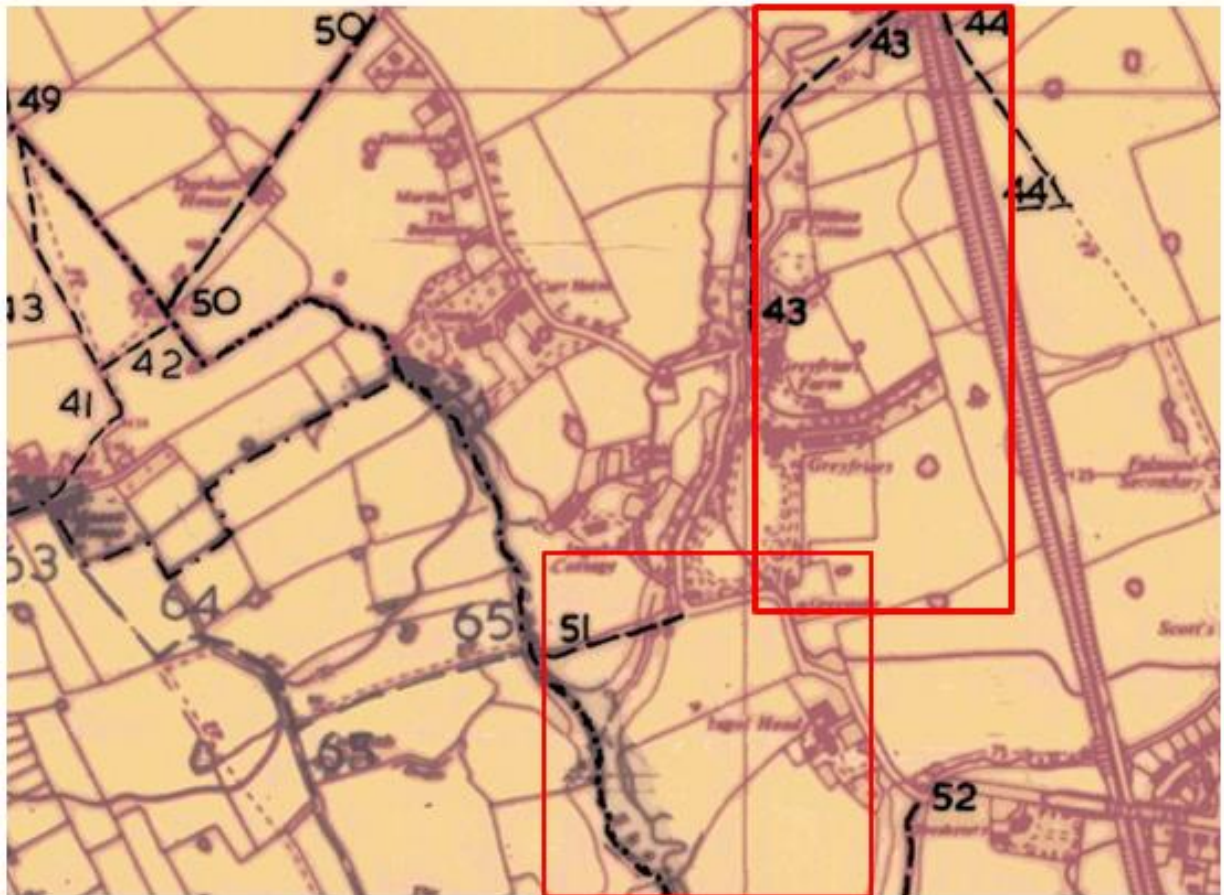
The Central Lancashire New Town (Designation) Order was approved on 14 April 1970 and the Development Corporation formerly constituted on 17 February 1971. The Commission was in existence for 16 years until it was formally dissolved on 31 March 1986 and during that time the area to the north of Preston – referred to as Ingol East – underwent significant development.

The routes applied for came into existence as part of the development of Ingol East and in particular the construction of Ingol Golf Course and associated housing and there is no evidence to suggest that they existed prior to that time.

Document Title	Date	Brief Description of Document & Nature of Evidence
Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required the county council to prepare a Definitive Map and Statement of Public Rights of Way. Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following

		completion of the survey the maps and schedules were submitted to the county council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the county council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		Fulwood was an Urban District Council for which no parish survey was carried out.
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 routes were not shown and there were no representations made to the county council in relation to them.
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 routes were not shown and there were no representations made to the county council in relation to them.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application routes were not shown.
Revised Definitive Map of Public Rights of Way		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion

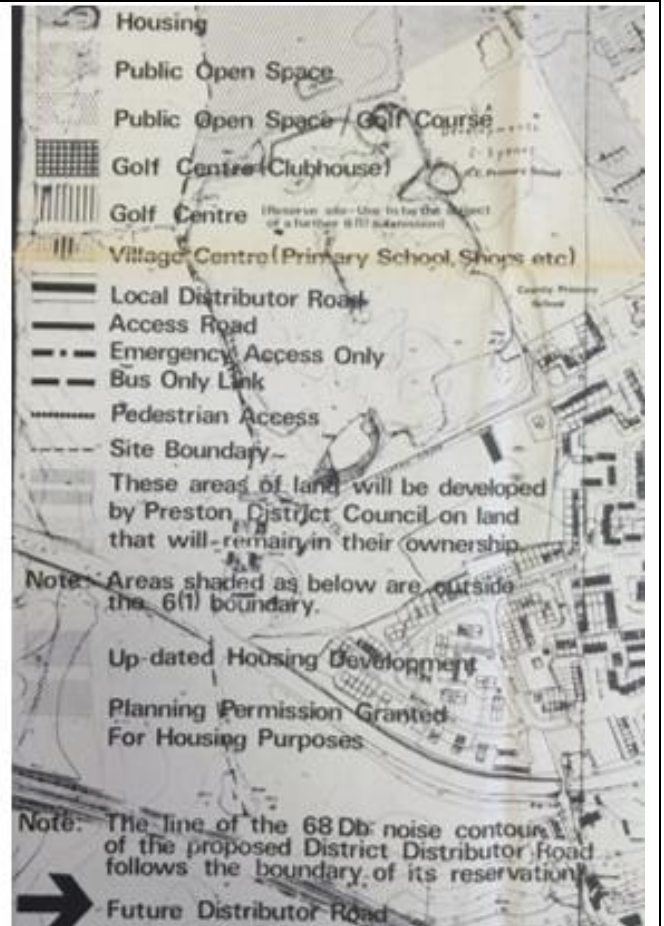
(First Review)		orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. 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.
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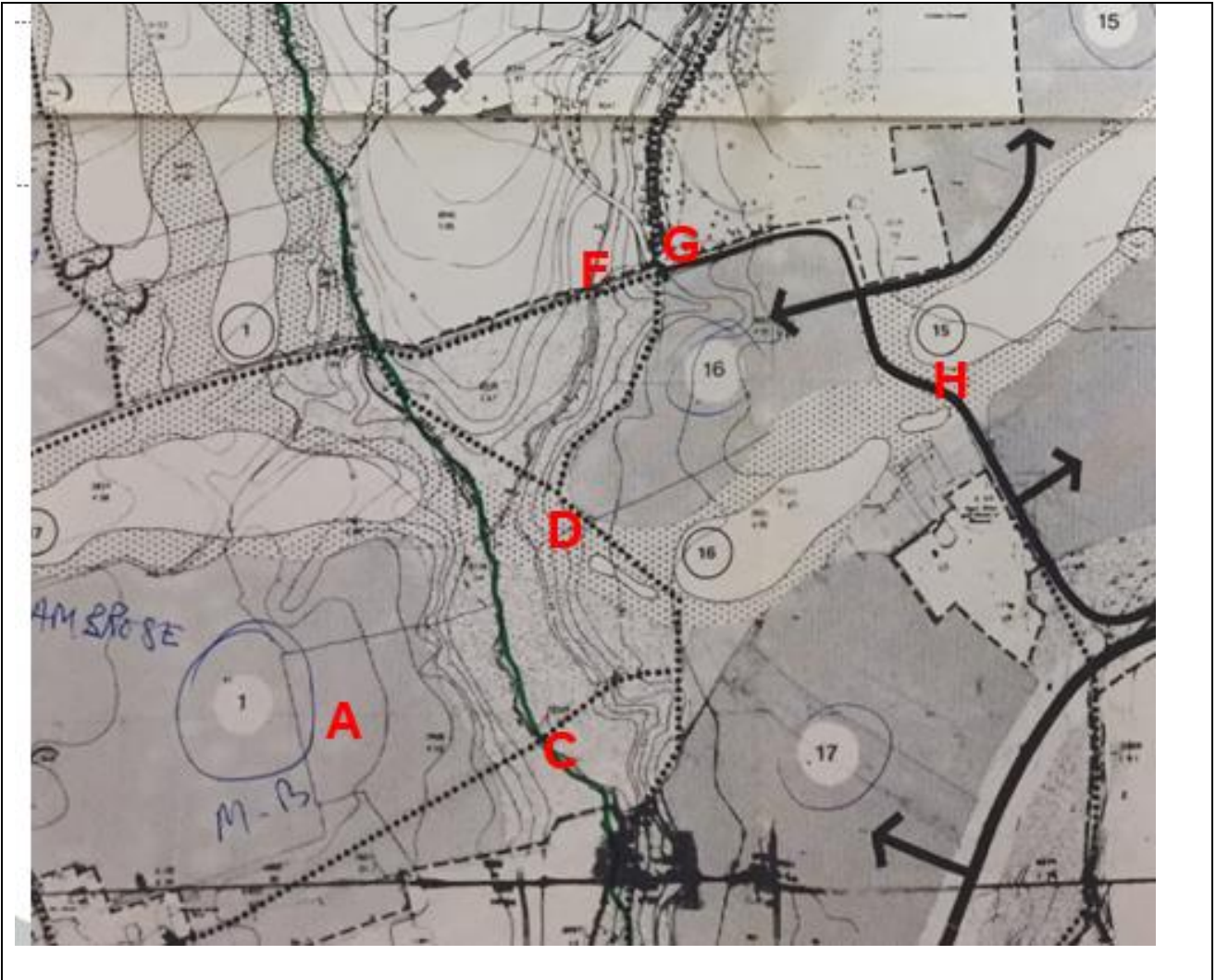


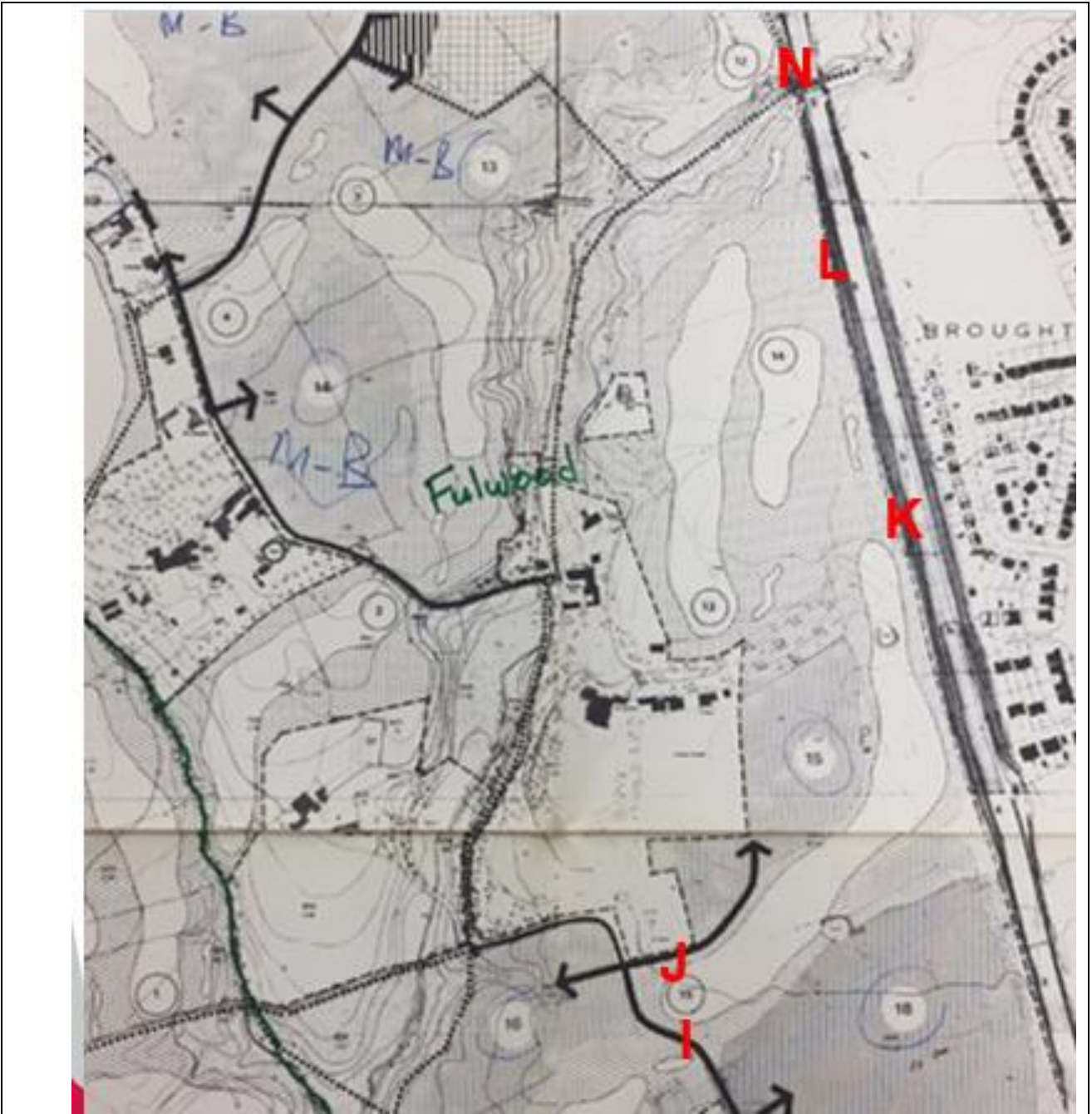
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the routes were considered to be public right of way by the Surveying Authority. There were no objections to the fact that the routes were not shown from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Central Lancashire Development	1974	Copy of Central Lancashire Development Corporation Ingol East, Residential and

Corporation Planning Statement		Associated Development Planning Statement prepared with reference to Section 6(1) New Towns Act 1965.
<p>...with bus-only lanes and this system should be capable of development from the existing services in the area. Discussions have taken place with the public transport undertakings operating in the area.</p> <p>5.7.5</p> <p>The site is crossed by a network of public footpaths, the extent of which will be retained although diversions may be necessary to take account of development. New footpaths will be constructed so that the whole will form a pedestrian framework associated with the golf course and open space system. Wherever possible, major footpaths will be aligned to incorporate existing natural features such as trees and hedgerows and they will be designed to link housing areas, facilities and amenities conveniently and without major conflict with the road network. The design of the footpaths will allow for their use also as cycleways. Care will be taken to ensure that the footpaths within the site are linked in a logical manner with those immediately outside the boundaries of the site.</p>		
Observations		<p>A copy of the Planning Statement prepared in relation to the development of the area crossed by the application route was obtained from the submissions made in relation to a request for planning permission in 2010 (Ref 06/2010/0626).</p> <p>The Planning Statement was prepared in 1974 by the Development Corporation seeking approval to develop the Ingol site under the New Town legislation. It explains that the site – consisting of 430 acres – was in 22 ownerships all of which were being purchased by the Commission under compulsory purchase orders with the exception of the land owned by Preston Borough Council which was being transferred by agreement. The Statement lists the development proposals including housing, schools and other facilities, the golf course, public open spaces and communications.</p> <p>Under the heading titled 'Communications' is a paragraph relating to public rights of way which explains that the existing network of public rights of way will be retained – or diverted where necessary to allow for development - and that a new network of footpaths would be constructed to link housing areas, facilities and amenities the design of which would also allow for use as cycleways.</p>
Investigating Officer's Comments		Whilst not specifically referring to the creation of 'public' footpaths the inference is that the land to be developed – which would all be

		within the ownership of the Central New Town Commission – would be developed in such a way as to include a network of existing and additional footpaths to be used by the public on foot and also by bicycle.
Central Lancashire Development Corporation plan 'Ingol East'	1977	Plan deposited in the County Records Office dated 1977 at a scale of 1:2500 and referenced as Drawing No. 6/34/17c (CRO reference NTC5/2/53). Originally titled as 'Support Drawing' which is crossed out in red pen and replaced by 'Local Plan'.





















<p>Observations</p>	<p>This is the earliest plan inspected to show the proposed layout of the golf course, areas to be designated as public open space/golf course, separate areas of public open space and land allocated for housing and site boundaries. The plan also showed pedestrian access routes crossing land to be developed. With regards to Route 5(1) the application route from point A-B-C-D is not shown (and neither are the houses or road system leading into Lower Greenfield). A route is shown south of point A leading to the approximate position of point C and then through to point D (on a similar alignment to the application route).</p>
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		<p>From point D to point G a route is shown broadly consistent with the application route D-E-G. The route E-F is not shown but a route is shown between point F and point G. The application route from point D to point H is not shown.</p> <p>In respect of Route 5(2) none of the application route is shown.</p>
Investigating Officer's Comments		<p>The routes are described as 'pedestrian access' but there is no indication on the plan whether pedestrian access was for public or private use or whether the routes shown were proposed access routes or whether access had already been provided along those lines. However, it appears that the area was in the very early stages of development and the plan shows a mixture of existing public and private access routes, the routes of some existing public footpaths and a number of proposed pedestrian access routes.</p> <p>With regards to application route 5(1) it appears that it was the intention to create pedestrian access routes along much of the application route (with the exception of the route D to point H) and that what is shown on this plan was later adapted and implemented on the ground.</p> <p>The application route 5(1) did not however appear to have existed in 1977.</p> <p>With regards to application route 5(2) no part of the route is shown on the plan to exist or be proposed and it does not appear to have existed in 1977. Routes across open spaces can sometimes mean that use is by right as under The Open Spaces Act people have statutory rights for recreation.</p>
Final Draft Agreement for lease relating to development of golf course and housing	1978	<p>A copy of a draft agreement was found in the County Records Office annotated as being the 'final draft agreement' between Central New Towns Development Corporation and Miller Buckley Golf Services (Ingol) Limited dated 13 March 1978 for the lease relating to the development of the golf course and housing.</p>
Observations		<p>The agreement contains information regarding the provision of footpaths across the land. Within Schedule 3 it states that within the golf course parcel the corporation will provide certain footpaths shown on a drawing referenced 6/34/308A and that the general line of these footpaths may be subject to variation</p>

		<p>by agreement between the corporation and the company. It also stated that any closure of an existing footpath will require an order which is within the discretion of the Secretary of State.</p> <p>The agreement also stated that footpaths must be kept open and useable on foot at all times although private footpaths could be temporarily closed by the lessee if necessary for the proper management of the golf course and that the corporation would not unreasonably withhold permission to divert public or private footpaths at a future date if it was necessary for the implementation of the scheme.</p>
Investigating Officer's Comments		<p>A copy of the plan referred to in the agreement could not be found in the County Records Office so it is not possible to confirm whether the routes under investigation were the ones shown. However, the draft agreement does refer specifically to the provision of public access along footpaths across the site although it appears that there were to be both public and private routes created.</p>
<p>New Towns Act 1965</p> <p>Order for the Extinguishment of Public Rights of Way</p> <p>Central Lancashire Development corporation</p> <p>Borough of Preston</p>	1978	<p>Order made by Secretary of State on 29th June 1978 to extinguish parts of Footpaths 41, 43, 49, 48, 50, 42 and 5 as shown on the Order plan and described in the Order Schedule.</p>
		<p>The Order came into effect on the day that it was made. There was no reference to the creation of alternative or 'new' public rights of way in the wording of the Order but the key to the Order plan showed proposed new footpaths with a solid black line, existing footpaths to be closed with a long dashed line and existing footpaths to be retained by short dashed lines.</p> <p>Whilst the order plan showed the area crossed by the application routes they are not shown as either existing footpaths to be retained or closed and are not shown as proposed new footpaths.</p>
Observations		<p>The creation of the application routes was not</p>

		considered as part of the order making process and they were not shown on the order plan or referred to in the order.
Ingol Golf Villages - Leaflet published and produced by Central Lancashire Development Corporation	1980	Copy of leaflet produced providing details of the proposed development of a golf course and housing in Ingol and contact details for the various housing developers and Central New Towns Corporation. The leaflet included a map of the 18 hole golf course and the key to the map details, amongst other things, routes shown as public footpaths, existing and new roads and roads to be made into footpaths.

Key to map

-  New housing areas
-  Existing development
-  Village centres
-  Golf centre and clubhouse
-  Golf course fairways and greens
-  Golf course 'roughs'
-  Direction of play on golf course
- 13** Green numbers
-  Public open space
-  Tree belts
-  New roads
-  Existing roads
-  Existing road made into a footpath
-  Public footpaths
-  Emergency exit road





Observations		<p>A leaflet titled 'Ingol Golf Villages' was submitted as part of the application and a copy is available to view in the County Records Office.</p> <p>The leaflet was produced to promote the housing scheme to be implemented in Ingol and explains that Miller Buckley Golf Services, in association with the Central Lancashire Development Corporation were developing a golf course and housing complex in Ingol.</p> <p>The golf course is described as an 18 hole championship course which was to be carefully integrated with the housing and open space 'system' with particular reference to access to and along Sharoe Brook and that there would be additional areas of woodland planted within the woodland and open space. It was also stated that picnic spots and park areas were to be provided.</p> <p>A plan included in the leaflet was a large scale drawing showed the golf course in detail with areas to be developed for housing marked brown. Routes described as public footpaths were shown on the map crossing the golf course and passing through the areas marked for new housing.</p> <p>The area within which Lower Greenfield is now situated is coloured brown (to indicate new housing) with a route shown as a public footpath passing through it through to the approximate location of point D and appears to be consistent with the application route A-B-C-D. From point D the application route is shown as a public footpath through point E to point G and the route from point F to point G is shown as part of a longer route. The application routes between point E and point F and point D and point H are not shown.</p> <p>The route referred to as Route 5(2) is largely shown on the plan as a public footpath although it is shown to start on Walker Lane north east of point I and only the route immediately adjacent to the railway is shown between point M and point N.</p>
Investigating Officer's Comments		<p>The leaflet was distributed to the public showing details of the proposed development and clearly indicates the intention that a</p>

		<p>number of routes were to be provided across the golf course and through the housing areas as public footpaths reiterating the intention of the landowners and Central Lancashire Development Corporation to create a network of public footpaths across the golf course and surrounding areas.</p> <p>Most of the application routes are shown (with the exception of the route between point E and point F and point D and point H) although the scale of the map and diagrammatic format mean that it is not possible to confirm that the routes were shown on the exact alignment claimed.</p>
Aerial Photograph	1988	Aerial photograph taken May 1988 and available to view in the County Records Office





Observations

The application route can clearly be seen between points A-D-C-D and looks to be a surfaced path. The continuation of the route from point D to point E can also be seen and the route splits at point E and despite the tree cover it looks like the routes between point E-F-G and E-G were also in existence. The route between point D and Point H may have been accessible but no worn track is visible.

The route between point I and point J is not visible on the photograph although there appears to be a gap in the hedging at point J that looks quite worn. Traces of two worn 'paths' can be seen across the golf course between point J and point K but neither are entirely consistent with the application route.

		Tree cover means that it is not possible to see whether the application route existed between point K and point N.
Investigating Officer's Comments		<p>The photographs were taken 12 years before the application was submitted.</p> <p>The application route referred to as Route 5(1) between points A-B-C-D-E and E-F-G and E-G existed on the ground in 1988 as a physically constructed route suggesting that it had been physically created for use by the public (rather than as access to or for the golf course). The route between point D and point H was not visible as a worn track or constructed route although it may have been possible to walk it.</p> <p>Route 5(2) is largely obscured by tree cover. It did appear that worn tracks existed across the golf course – one of which followed reasonably closely to part of the application route between point J and point K but there was no clear evidence that the application route existed.</p>
Aerial Photograph	2000	Aerial photograph available to view on GIS.







Observations

The photographs were taken in the same year as the application was submitted.

With regards to Route 5(1) it is not possible to see the route between point A and point B due to tree cover but a clearly visible route continues from point B to point C and through to point D. This route appears to be more significant than a trodden track but looks to have been physically created and surfaced. From point D a clearly visible path continues to point E where it splits and although tree cover obscures the view routes E-F-G and E-G appear to exist.

The application route from point D to point H

		<p>may have been useable but there is no visible worn track (which would indicate significant use or that the path had been physically constructed) along that route.</p> <p>Route 5(2) is not visible on the photograph. From point I-J-K there is no clearly visible route although between point J and point K the route crosses the golf course and appears to have been accessible on the ground. The remainder of the route from point K to point N passes through trees and it is not possible to see whether a route existed or not.</p>
Investigating Officer's Comments		<p>The photographs were taken the year the application was submitted.</p> <p>The application route referred to as Route 5(1) between points A-B-C-D-E and E-F-G and E-G existed on the ground as a physically constructed route suggesting that it had been physically created for use by the public (rather than as access to or for the golf course). The route between point D and point H was not visible as a worn track or constructed route although it may have been possible to walk it.</p> <p>Route 5(2) is not visible across the golf course – although it may have been possible to walk the application line and the rest of the route is largely obscured by tree cover so no inference could be drawn.</p>
Land Registry Title Number LA512320		<p>The land covered by this title includes a substantial part of the application route.</p>
<p>A Transfer which included the land in this title dated 1 April 1985 made between (1) Central Lancashire New Town Development Corporation (Transferor) and (2) Hemm-Inns Limited (Transferee) contains the following covenants:-</p> <p>"THE Transferee for itself and its successors in title for the benefit of the Transferor's retained land at Ingol adjacent to the property hereby transferred hereby covenants that the Transferee will not obstruct or interfere with any footpaths or footpath routes now crossing the property whether presently adopted or included in the Definitive Map maintained by Lancashire County Council under the terms of the National Parks and Access to and the Countryside act 1949 or any subsequent legislation or are shown on the drawings referred to in the planning approval for the development of the Golf Course on the property given under Section 6 (2) of the New Towns Act 1965 on the twenty second day of August one thousand nine hundred and seventy eight."</p>		
Observations		<p>The transfer of land from the Central Lancashire New Town Development Corporation to Hemm-Inns Limited included a covenant regarding footpaths or footpath</p>

		<p>routes which were either currently recorded on the Definitive Map, were adopted, or which were shown on drawings referred to in the planning approval for the development of the golf course on 2nd August 1978. The covenant specified that those routes should not be obstructed or interfered with. The land has subsequently been sold to Cleator Manor Limited (freehold) in 2006 and part was sold (leasehold) in 2016 to Ingol Golf Club Limited with the same covenant remaining.</p>
Investigating Officer's Comments		<p>There appears to be a clear intention by the Central New Towns Development Corporation that all existing public footpaths and proposed public footpaths across the land sold should be recognised and protected against future obstruction or interference. Despite making enquiries with Preston City Council and searching the records deposited at the County Records Office a copy of the drawings referred to in the deeds has not been found.</p>
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</p>

		the status of the route into question).
Observations		No Highways Section 31(6) deposits have been lodged with the county council for the area over which the routes run.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.
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 its highway status.</p>



Observations		<p>The application route is recorded as a publicly maintainable between point A and point B on the Highways maintenance sheets.</p> <p>The remainder of the application routes are not recorded as being publicly maintainable.</p>
Investigating Officer's Comments		<p>With the exception of the section between point A and point B the routes were not recorded as being publicly maintainable but no inference can be drawn regarding public rights.</p>

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

Since the applications to record public footpaths across the former golf course were submitted the golf course has ceased to operate and a number of planning applications have been submitted to Preston Borough Council for the land to be redeveloped. Two substantial applications were made in 2010 and 2014 (Planning References 06/2010/0626 and 06/2014/572). Information submitted as part of the applications was viewed and it is noted that on various plans prepared existing public

footpaths are shown together with the routes applied for – which are shown separately as being routes subject to Definitive Map Modification applications.

No further information relevant to the applications was found.

Landownership

The route under investigation between points D-H and between a point approximately 80 metres south east of point D and a point approximately 40 metres north west of point D crosses land registered in the ownership of Cleator Manor Limited. The route under investigation also crosses land registered in the ownership of Cleator Manor Limited between a point approximately 25 metres south of point M and point N.

The route under investigation between a point approximately 25 metres west of point J and a point approximately 25 metres south of point M crosses land registered in the ownership of Preston North End Limited. This area of land is subject to planning permission for a sports facility.

The remainder of the route under investigation crosses land registered in the ownership of Preston City Council.

Summary

There is no map or documentary evidence supporting the existence of the application routes prior to the development of the area by the Central Lancashire Development Corporation in the mid to late 1970's and it is clear that the routes only came into being as a result of the development of the site as a golf course and residential area.

It appears from maps, plans, agreements, land transfer documentation and publicity information provided in the early 1980s that the Development Corporation intended to provide pedestrian routes to the public from the areas of new residential housing, across the golf course and along Sharoe Brook and from the Development Corporation records searched, together with the site evidence and information provided by the applicant it appears that the route referred to in this report as Route 5(1) was physically constructed and made available between points A-B-C-D-E-F and E-G. Application route D-H appears to have been physically capable of being walked but is not shown on any maps, plans or aerial photographs examined.

With regards to the route referred to in this report as Route 5(2) it is shown as a public footpath (albeit on a small scale diagrammatic map) in the Ingol Golf Village leaflet – a leaflet produced jointly by the Development Corporation and landowners – suggesting an intention to create the route as a public footpath.

A footpath does not appear to have been physically constructed although there is some indication of the route across the golf course on the aerial photograph taken in 1988 and site photographs from 2006 (after the application was received) suggest

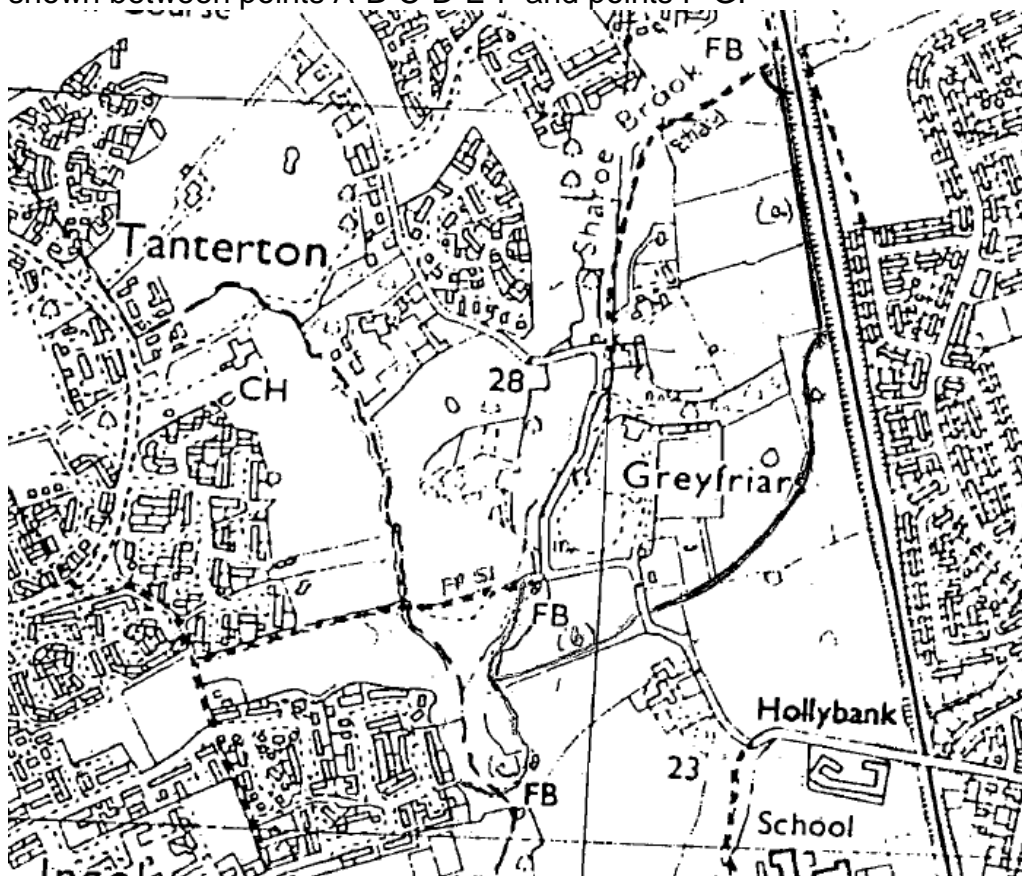
regular use of the application route between point K and point N and access being available at point I.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant submitted 88 user evidence forms together with a copy of a letter that she had sent to members of the Ramblers Association in August 2000 explaining that staff at Ingol Golf Club had been preventing walkers using the paths across the golf course and that she was putting together an application to record the routes on the Definitive Map and asking people to complete user evidence forms if they had used the routes.

A plan was attached to each form showing the routes to which the evidence of use referred to as routes (a) – which corresponds to the route shown on the Committee plan between points I-J-K-L-M-N, route (b) shown between points D-H and route (c) shown between points A-B-C-D-E-F and points F-G.



The forms were completed in 2000 and submitted as part of the application to add the routes to the Definitive Map and Statement in that same year. All evidence of use considered is therefore pre the application date in 2000.

Of the 88 forms completed one has been partially discounted as the user claims only to have used the routes (b) and (c) - Route 5(1)) in the belief that they were public footpaths but did not consider Route 5(2) to be public. No further information was given as to why they did not believe that route to be public.

The remaining 87 user evidence forms actually included evidence of use from a total of 93 people. All forms were signed and dated and were accompanied by the above map showing the routes claimed to have been used. A number of people completing the forms also referred to regular use of the route by themselves and other family members.

- From the information provided 15 users stated that they had used the routes for over 20 years:

37 years (1964-2000), 45 years (1954-1999), 55 years (1945-2000), 64 years (1935-1999), 71 years (states use 'all of their life'), 30 years (1970-2000), 26 years (1974-2000), 28 years (1972-2000), 32 years (1968-2000), 22 years (1978-2000), 60 years (1940-2000), 35 years (1965-2000), 30 years (1970-2000).

Many of those stating to have used the route in the years prior to the development of the golf course and associated housing often stated that they walked across the fields prior to development and then used the routes thereafter.

14 of the above users used the routes during the period 1980-2000 and all 15 users stating to have used the routes from 1979-1999.

- 44 users stated that they had used the routes for between 10 and 20 years (inclusive) and provided dates whilst one user stated that they had used it for 10 years but provided no dates.

14 years (1986-2000), 12 years (1988-2000), 12 years (1988-2000), 10 years (1990-2000), 16 years (1974-2000), 10 years (1990-2000), 10 years (1990-2000), 18 years (1982-2000), 18 years (1982-2000), 18 years (1988-2000), 18 years (1988-2000), 13 years (1987 – 1999), 20 years (1980-2000), 16 years (1984-2000), 14 years (1986-2000), 20 years (1980-2000), 20 years (1980-2000), 10 years (1990-2000), 18 years (1982-2000), 15 years (1985-2000), 18 years (1982-2000), 14 years (1985-1999), 20 years (1980-2000), 15 years (1985-2000), 13 years (1987-2000), 12 years (1988-2000), 14 years (1986-2000), 13 years (1987-2000), 11 years (1989-2000), 15 years (1985-2000), 12 years (1988-2000), 18 years (1982-2000), 13 years (1986-1999), 11 years (1989-2000), 19 years (1981-2000), 19 years (1981-2000), 12 years (1988-2000), 14 years (1986-2000), 14 years (1986-2000), 12 years (1998-2000), 17 years (1983-2000), 16 years (1984-2000), 20 years (1980-2000), 19 years (1981-2000).

All use between 10-20 years was within the time period 1980-2000 with 4 of the users claiming to have used the routes for the full 20 year period 1980-2000.

- 11 users stated that they had used the routes for under 10 years:

6 years (1994-2000), 2 years (1998-2000), 2 years (1998-2000), 8 years (1993-2000), 8 years (1992-2000), 3 years (1997-2000), 8 years (1992-2000), 3 years (1997-2000), 8 years (1992-2000), 4 years (1996-2000), 9 years (1990-1999).

All use fell within the period 1980-2000.

In addition, some users provided no dates or details of how long they used the routes. One couple, for example, completing a single form stated that they had 'always' used them once a week. 2 users provided no details of dates during which they used the routes but one stated that they had used them 2-3 times a year and another used them once a week.

Reasons for use

The predominant reason given for using the routes was described as being 'for pleasure'. A significant number of users referred to using the route to walk dogs – often at least once a day. Other reasons listed included for exercise, to go running, visiting friends and relatives, to get to the shops and school, as a short cut, to link to other local footpaths, as part of a circular route and because it was considered to be a scenic and safe route.

All users (with the exception of one) stated that they believed the routes to be public.

Frequency of use

38 users stated that they used the route once a day – and some referred to use twice or three times a day – particularly when exercising their dogs.

10 users stated that they used the route several times a week.

33 users stated that they used the routes once a week.

7 users stated that they used the routes once a month or less frequently.

Additional comments included on the forms

One user stated that they had never been challenged when using the routes but knew of others who had been 'rudely treated'.

Several referred to recent (2000) intimidation by the golf course.

Parts of the route were used as part of the 'Tulketh Trundle' between 1995-2000, an event which attracted over 100 people with no known access problems.

One user stated that the routes were widely regarded as public by the people of Ingol.

Another user stated that the routes were provided as an amenity to the area when the golf course was built and that they were 'absolutely invaluable'

Another stated that they were a major resource for local people which had been in place for 'many, many years'.

Further comments included:

The routes had been used as part of a circular route.

The route was signposted as a public footpath and stiles had been erected.

One user stated that they were angry at the golf course actions and that they had a right to access public rights of way.

The route was picturesque and you could see moorhens, ducks, a heron on the pond, wild flowers and an owl.

One user explained that they had been told about the path by other people and started to use it.

Used as part of walks organised by the Ramblers Association and was included in the Ramblers Association book 'Rambles round Preston'.

The footpath was one of the reasons why they moved to the area.

Her husband (now deceased) used to lead walking groups along it.

The routes provided an excellent nature trail.

Information from the Landowner

Following receipt of the application consultations were carried out with the owners of Ingol Golf Course at that time (Tee Jay Leisure Limited, Sagar House, Eccleston, Chorley). They instructed Kevills Solicitors who requested a meeting with the County Council in 2006 in the hope that a 'pragmatic solution' could be found.

No meeting was arranged and a further Land Registry search has identified that the land crossed by the application routes was subsequently sold to Cleator Manor Limited C/o Whittle Jones Limited, Lynton House, Ackhurst Park, Chorley PR7 1NY in 2006 and that a further sale of part of the land affected by the proposal was completed in 2016 to Ingol Golf Club Limited, 45 Plunginton Road, Preston PR1 7EP.

Information from others

English Partnerships (consulted in 2005)

English Partnerships replied to the consultation explain that Route 5(1) – as shown between points A-B-C-D-E-F and E-G on the Committee plan was partly in the ownership of Ingol Golf Club and part owned by Preston City Council and that the route was believed (by English Partnerships) to be permissive.

With regards to the application route between point D and point H this was said to be on land owned by the Commission for New Towns and part was believed to affect ownership of Ingol Golf Club. English Partnerships refer to the fact that they would like to propose a slightly amended route to that claimed which would require the construction of a ditch and hedge crossing which they state that they would be willing to undertake but without any future maintenance liability. They refer to an enclosed plan but the plan does not show the proposed alternative.

With regards to Route 5(2) the route between points I-J-K was stated to be across land owned by English Partnerships but they also believed that it affected land owned by Ingol Golf Course. Again, English Partnerships refer to a proposal for an alternative route which is shown on a plan attached to the consultation letter and which appears to 'cut the corner' at point E so as to follow the boundary of their landownership.

They believed that the application route between point K and point N was owned by Ingol Golf Club but provided no further comments.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order

User evidence.

Evidence of Central Lancashire Development Corporation's intention.

Against Making an Order

Actual Central Lancashire Development Corporation planning consent drawings not available.

Conclusion

As there is no express dedication it is advised that Committee consider whether there is sufficient evidence on balance for a deemed dedication from use under S31 Highways Act 1980 and/or an inferred dedication at common law from all the circumstances pointing to an intention to dedicate by the owner.

It would seem to be the case that the routes did not exist prior to the ownership by Central Lancashire Development Corporation established by the Minister under the New Towns Act 1965. The land for the golf club had been taken by the Corporation by compulsory purchase powers or in the shadow thereof and planning consent obtained by the Corporation by submitting proposals and the Minister making a Development Order. The Development Order and its drawings has not been located but it is suggested that other documents are of assistance.

At common law to infer a dedication from all the circumstances can involve consideration of both user evidence and documents. The Planning Statement referred to earlier in the report clearly shows that the Central Lancashire Development Corporation had an intention to create footpaths and to retain the extent of the existing network. The New Towns Act says that a Development Corporation had the power to do anything necessary or expedient for the purposes incidental to its main objectives. Central Lancashire Development Corporation is obviously unusual as it was developing huge areas of land.

Committee must consider whether there is sufficient evidence of the intention to create the actual route being considered in this report.

Section A-B was clearly constructed and then adapted by Preston Council acting on behalf of the County Council as highway authority. It is clearly footpath rather than vehicular and is therefore included in the application as it needs to be recorded on the Definitive Map.

It is suggested that there is sufficient evidence to indicate the intention to provide other parts of this claimed route – C-D appears on the "Local Plan" but on a more angled line, D-G is arguably shown there but not the rest of the claimed routes. The

same length C-G appears on the leaflet produced by the owners. F-G is also shown as is J-N (a link from Walker Lane to J is on a different line).

The route has actually been constructed on the ground for some of its length and the style of construction and of stiles would seem on the information to be consistent with that of the Central Lancashire Development Corporation.

It is advised that the section B-C and towards D which crosses land designated "Public Open Space" on the Local Plan document and within Preston City ownership can still be "as of right" . It is suggested that the use of the route is linear and asserting a public right of way would be capable of establishing a public right of way over the route despite the possibility that Preston City Council's powers to hold land as open space may also apply – to hold in trust to allow enjoyment thereof by the public as an area used for the purposes of recreation – ie use "by right". Whether Preston City do have public open space designated is not known but it is suggested that the use would still be capable of building a public right in this matter on this section.

The user evidence is significant and collected and submitted by the Ramblers Association.

The user adds force to the evidence of Central Lancashire Development Corporation's intention to dedicate sections of these routes and accepts the route on the part of the public. The difficulty here is whether the leaflet is enough to indicate owner intention to be evidence of a dedication. It is suggested that where the route is also shown on the planning documentation the evidence is stronger.

It is suggested that Committee may find sufficient evidence from which to infer an actual dedication by the owner of A-B and Central Lancashire Development Corporation of B-C-D-E-G and J-N and F-G and the user evidence indicates acceptance by the public can reasonably allege to have occurred or found to have occurred on this claimed route. The other sections of the route have insufficient evidence from which to infer dedication.

The user evidence also enables Committee to consider whether as of right use has been for the twenty years without interruption and without indication of a lack of intention to dedicate such that dedication may be deemed to have occurred under S31 Highways Act 1980. Again the user evidence is supported by plans completed by the users and collected by the Ramblers Association. There is reference to use by the Association for guided walks. It is suggested that the calling into question was the submission of the application or possibly just before then when the challenges by the Golf Club are referred to. The use is as of right, without interruption and without sufficient lack of intention to dedicate for the twenty year period.

Taking the evidence into account it is suggested that the Committee may decide that an Order can be made for these routes to be added to the Definitive Map and Statement and be promoted to confirmation.

Risk Management

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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-379e		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

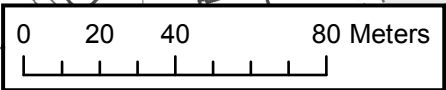
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Andrew Mullaney
Head of Planning and Environment

Wildlife and Countryside Act 1981
Addition of Public Footpaths from Lower Greenfield to Walker Lane and
Walker Lane to Footpath 43 Fulwood, Preston City

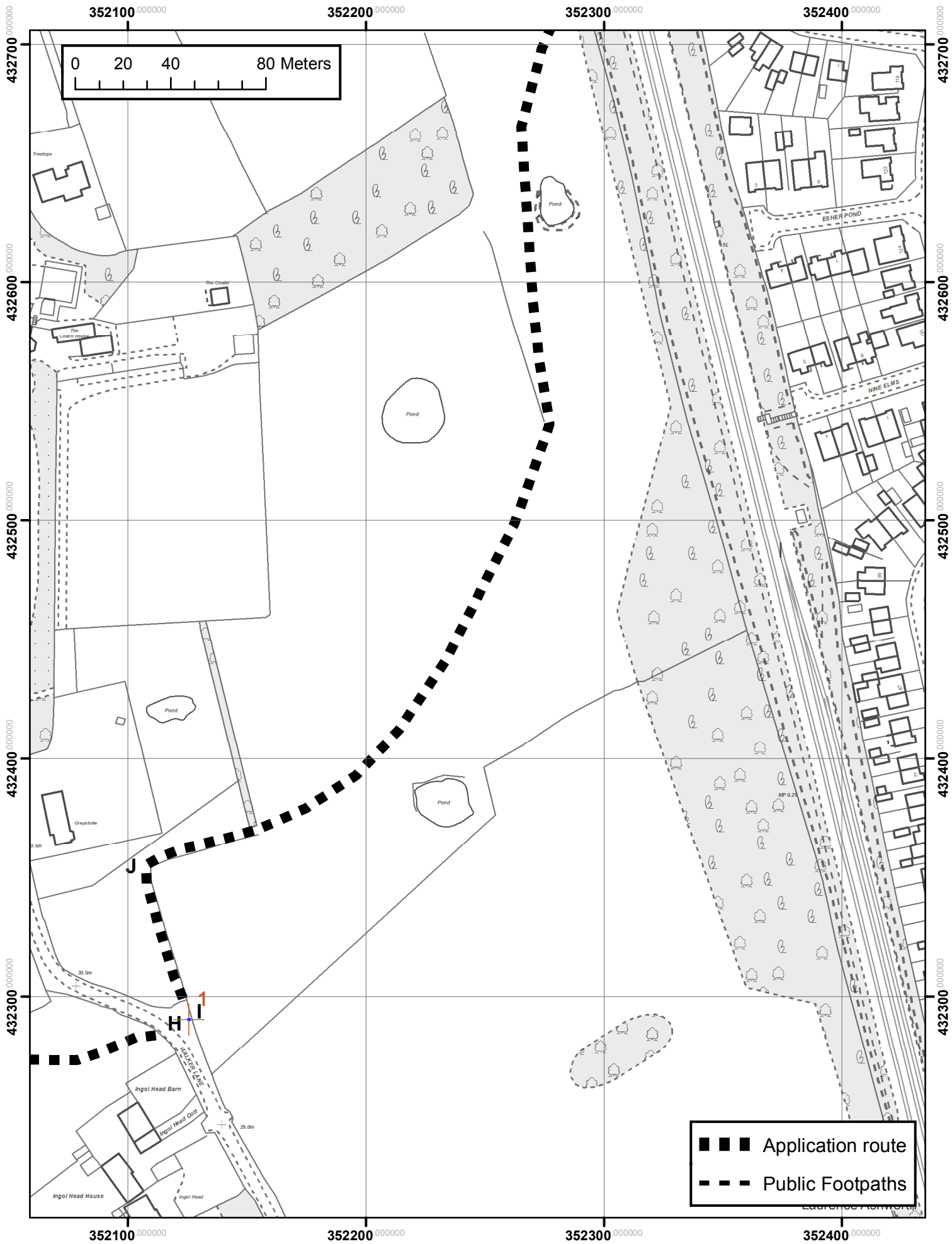
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Plan 1/3



Andrew Mullaney
Head of Planning and Environment

Wildlife and Countryside Act 1981
Addition of Public Footpaths from Lower Greenfield to Walker Lane and
Walker Lane to Footpath 43 Fulwood, Preston City

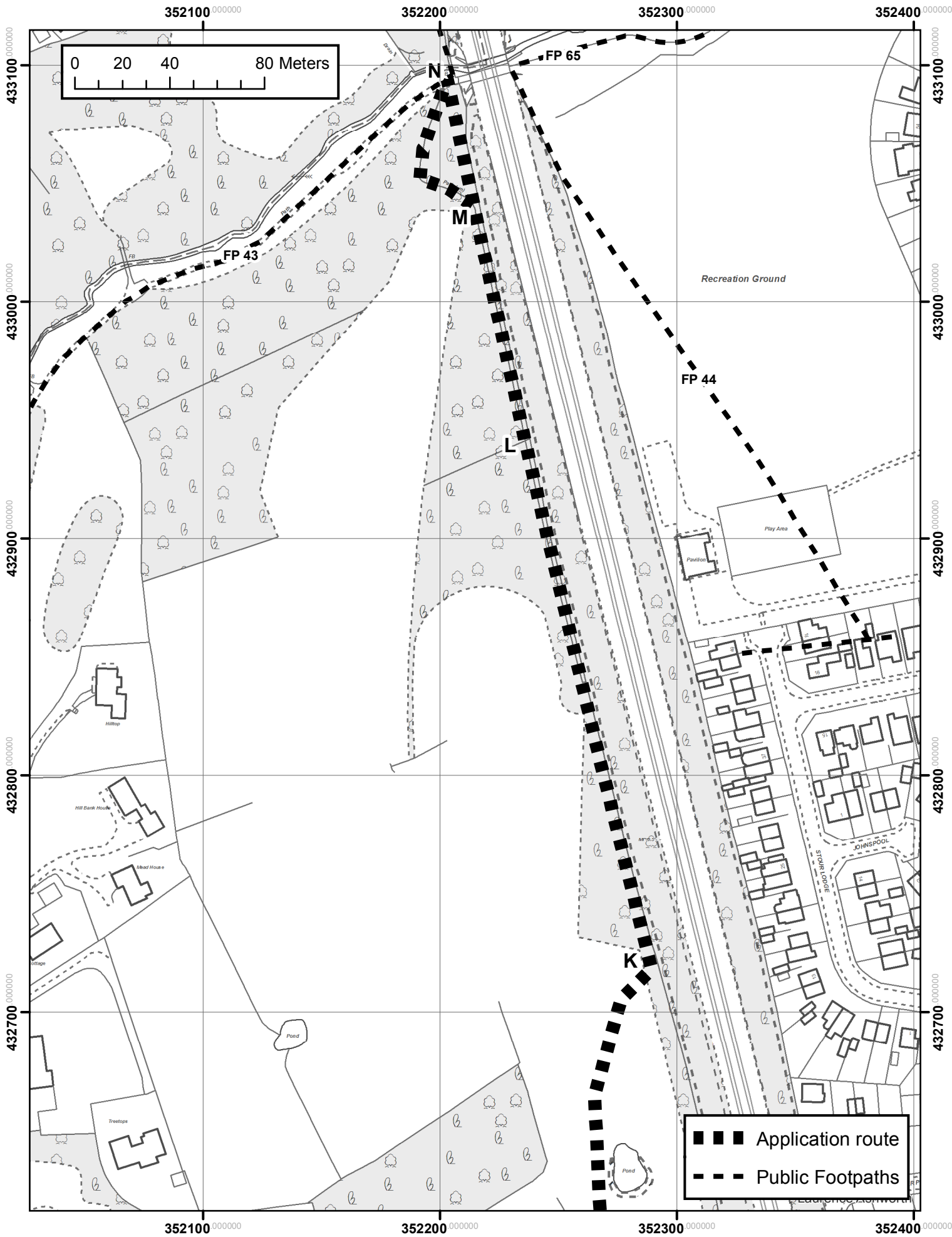
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Plan 2/3



Andrew Mullaney
Head of Planning and Environment

Wildlife and Countryside Act 1981
Addition of Public Footpaths from Lower Greenfield to Walker Lane and
Walker Lane to Footpath 43 Fulwood, Preston City

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Plan 3/3

