

Regulatory Committee

Meeting to be held on 25 January 2017

Electoral Division affected: Rossendale North
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Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Deletion of Footpath 339 Rawtenstall, at Turton Hollow Road, Rossendale Borough
File No. 804-460
(Annex 'A' refers)

Contact for further information:

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Executive Summary

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

Recommendation

1. That the application for the deletion of Footpath 339 Rawtenstall, at Turton Hollow Road, Rossendale Borough, in accordance with File No. 804-460, be accepted.
2. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3) (c) (iii) of the Wildlife and Countryside Act 1981 to delete part of Footpath 339 Rawtenstall from the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B -C.
3. That being satisfied that the test for confirmation can be met the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 was received in 2007 for the route shown on the Revised Definitive Map (First Review) as Footpath 339 Rawtenstall to be deleted from the Definitive Map and Statement of Public Rights of Way on the grounds that the map incorrectly recorded the route of the footpath as being along a line recorded to the south of Turton Hollow Road.

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

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

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

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

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

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

Consultations

Rossendale Borough Council

The Borough Council were consulted but no response was received.

Parish Council

There is no Parish Council for this location.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

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

Description of Route

A site inspection was carried out on 30 November 2016.

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

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

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

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

The total length of the route is 145 metres.


Map and Documentary Evidence

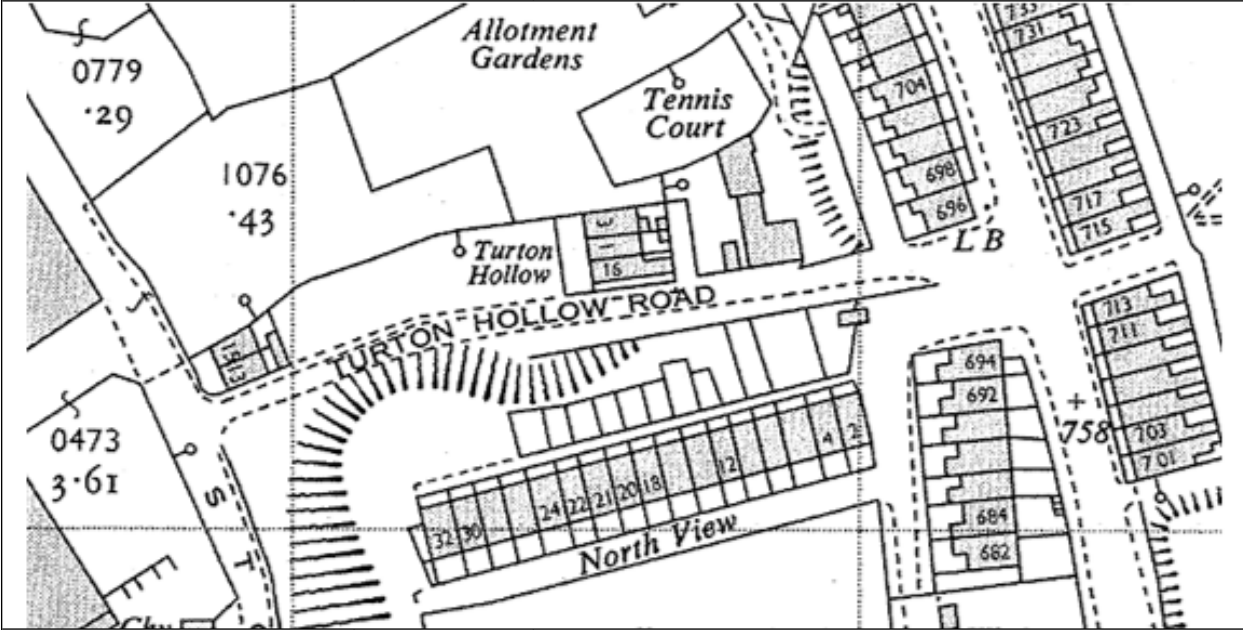
Prior to the application to delete the footpath being received investigations into the correct route of the footpath were carried out by the County Council in response to a report that recorded route of the footpath was blocked. At that time it was the view of the investigating officer that the route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

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

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

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

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

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

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



339. ✓	Footpath	Nocliffe Eaves in S.W. direction along Bottomley Bank Lane to junction with Bonfire Hill Lane. <i>road</i>	✓ 0.48
340. ✓	Footpath	From Stoneholme Road along Turton Hollow Road to Burnley Road.	✓ 0.09
		S.E. from F.P. No. 338 to Bonfire Hill	

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

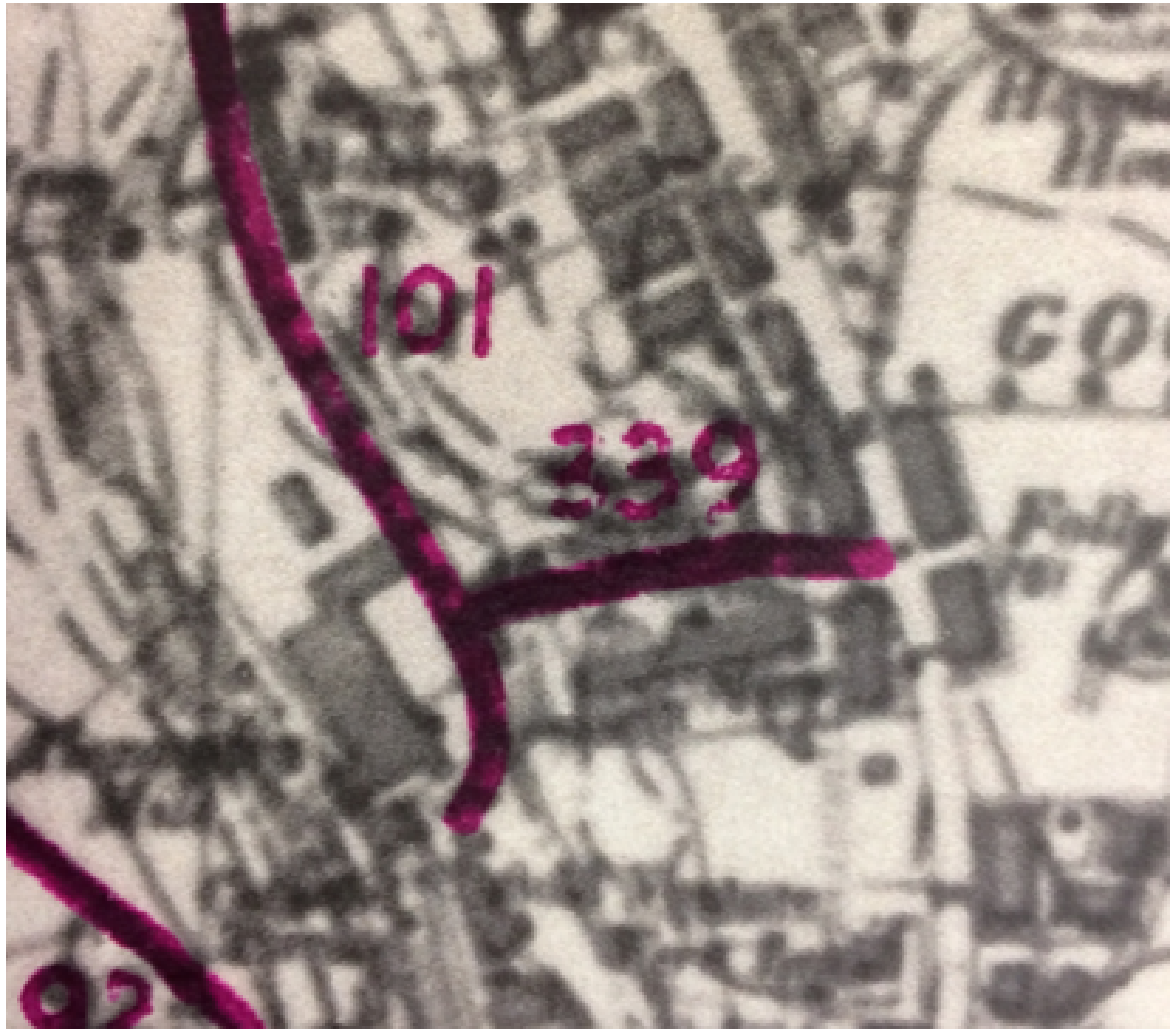


Observations

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

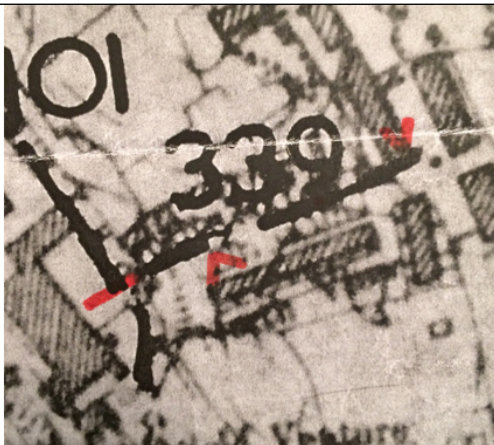
The First Definitive Map and Statement

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



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

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

		<p>marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
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Observations		<p>There is no Handover Map for Rawtenstall. A County Council plan of maintainable 'streets' shows Turton Hollow Road as a publicly maintainable highway as recorded on the List of Streets.</p> <p>Details from the Rossendale Street Register compiled in December 1986 states that Turton Hollows Road is adopted from Burnley Road for a length of 146m and an average width of 3 metres but there is no given date for the adoption.</p>
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		The route proposed to be deleted is not recorded in the List of Streets as being publicly maintainable except in as much as it overlaps Turton Hollow Road at the east end.
Investigating Officer's Comments		The route to be deleted, i.e. where it diverges from Turton Hollow Road, is not recorded on the List of Streets as being publicly maintainable. Turton Hollow Road is recorded in the List of Streets confirming that it is a publicly maintainable route.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No legal Orders have been found regarding the public status of Turton Hollow Road or Footpath 339.
Investigating Officer's Comments		<p>There is no evidence to suggest that Turton Hollow Road was incorrectly recorded as being at least a public footpath in the 1950s or that it had been legally extinguished or diverted onto the route proposed to be deleted.</p> <p>The fact that most of Turton Hollow Road is no longer recorded as a public footpath appears to be a drafting error.</p>

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

Landownership

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

Properties affected by this application are:

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

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

Summary

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

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

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

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

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

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

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

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

Information from Others

None.

Information from the Landowner

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

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

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

Against Making an Order(s)

- Initial presumption that it exists

Conclusion

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

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

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

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

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

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

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

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

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

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

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

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

Alternative options to be considered - N/A

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-460		Jayne Elliott, Environment and Planning Group, 01772 537663
Reason for inclusion in Part II, if appropriate N/A		