

Regulatory Committee

Meeting to be held on 28 September 2016

Electoral Division affected:
Chorley North

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Upgrading to Bridleway of Footpaths 1 (part) and 8 (part) Chorley, known as Common Bank Lane

File No. 804-575

(Annex 'A' refers)

Contact for further information:

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Executive Summary

Application for the upgrading to Bridleway of parts of Footpaths 1 and 8 Chorley, known as Common Bank Lane, in accordance with File No. 804-575.

Recommendation

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

Background

Regulatory Committee considered an application to upgrade part of the route under investigation in 2002 with further evidence considered in 2003 together with an application to upgrade a greater length of Public Footpath 1. The application rejected and copies of both reports are included as Appendix 1 of this report.

In 2016 a further application was submitted for part of the route previously investigated, providing additional map and documentary evidence.

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 upgrading or downgrading a way shown on the Definitive Map and Statement will only be made if the evidence shows that:

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

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"

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

An order for modifying the particulars contained within the Definitive Statement as to the position, width, limitations or conditions will be made if the evidence shows that:

- The particulars contained in the Definitive Map and Statement require modification

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

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

Consultations

Chorley Borough Council

Chorley Borough Council have been consulted as the local authority affected by the application and as a landowner. They have responded outlining their ownership and make a comment that the southern end of their ownership was sold to Ruttle Plant Hire in November 2005.

There is no Parish Council for this area.

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	5628 1729	Unmarked parish boundary in River Yarrow situated part way across ford adjacent to Bark House Bridge at eastern end of German Lane (U8880)
B	5635 1733	Kissing gate across the route at junction of two parts of Footpath 1 Chorley
C	5640 1740	Junction of Footpaths 1 and 8 Chorley
D	5668 1756	Entrance into Chorley Sewage Works from Footpath 8 (Common Bank Lane)
E	5681 1765	Further entrance into Chorley Sewage Works from Footpath 8 (common Bank Lane) at the point from which Common Bank Road is recorded as an unclassified county road (U60050)
F	5686 1773	Junction of Common Bank Road (U60050)/Footpath 8 with Ackhurst Road
X	5635 1737	Point on Common Bank Road where route changes from being recorded as part of FP 1 to part of FP 8 Chorley

Description of Route

The route under investigation is currently recorded as part of Footpath 1 and Footpath 8 Chorley and is fully accessible on foot.

The route starts on the parish boundary between Charnock Richard and Chorley which is located along the centre of the River Yarrow midway across the ford crossing at the eastern end of German Lane. It crosses the river by means of a cobbled ford at point A on the map. Adjacent to the ford crossing is a pedestrian footbridge.

As the route leaves the watercourse there is evidence of a cobbled surface which is now becoming covered over and damaged. The route continues in a north easterly direction rising gradually uphill. Again there is evidence of a cobbled surface which

has now fallen into disrepair. The route is bounded by an old metal railing fence on the south side and the remains of a metal fence can also be seen in places on the north side suggesting that it was once bounded from the adjacent land on either side. As you approach point B the route is overgrown and an alternative trodden path has developed to the north which circumnavigates the overgrown section and connects back to the route under investigation before reaching point B.

At point B the route passes through a metal kissing gate which is positioned between the fencing around an electricity sub-station and large stone boulder which is known to have been positioned in a 'gap' in 2014 –. When inspected, it was, however possible to gain access on foot or on horse to and from the section of the route between point A and point B through a gap on the other side of the electricity sub-station.

A footpath signpost is located at point B pointing down towards point A.

From point B the route joins a wide surfaced track which is currently heavily used by lorries accessing a quarry on the site of the old bleach works south of the route under investigation.


The route continues north from point B passing the house and buildings at Common Bank and then curving round to continue east and then north east along a bounded tarmac road along which the lorries are travelling at regular frequency to and from the sand quarry. North of the route is the sewage works which are currently undergoing further development work with access to them available at point D and point E.

The route ends at the open junction with Ackhurst Road at point F.

The total length of the route is 770 metres.

Map and Documentary Evidence

Document Title	Date	Brief Description of Document & Nature of Evidence
Private Estate Map	1769	Private Estate Map drawn to show the lands owned by Thomas Gillibrand in 1769 and deposited in Lancashire Records Office (Ref: DDX 986/1.

		
Observations		<p>The map is described as showing lands lying within the several townships of Adlington, Blackrod, Chorley, Duxbury and Euxton in the County of Lancaster belonging to Thomas Gillibrand Esq. The map is quite faded with no key and no information regarding the status of any roads shown. The existence of a bridge at point A on the boundary of the land mapped is shown and labelled as Bark House Bridge. Buildings can be seen at Common Bank and a route appears to exist from Bark House Bridge to the buildings. The route under investigation does not appear to be shown from Common Bank (point B) through to point F (or beyond).</p>
Investigating Officer's Comments		<p>The earliest map of the area available to view appears to show that access existed at point A via a bridge known as Bark House Bridge although no reference is made to the ford with access through to Common Bank at point B. The rest of the route is not shown suggesting that it did not exist as either a public or private route in 1769.</p>
Yates' Map of Lancashire	1786	<p>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</p>

		of scale also limited the routes that could be shown.
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Observations		<p>The route under investigation is not shown (it would be located to the south of an area that was darkly shaded (Fox Hole Wood). German Lane is shown extending east from the main road through Charnock Richard (now known as the A49 between Wigan and Preston) but is not shown extending as far as the river at point A. The River Yarrow is shown and the name 'Gillibrand Esquire' is written on the map south of the shaded area containing the land crossed by the route under investigation. Yate's marks the location of a number of Hall's in the area (for example Astley Hall, Old Hall and Park Hall) and also names a number of large estate owners (Gillibrand Esq, Anderton Esq, Hoghton Esquire) illustrating that he mapped the large landowning estates at that time.</p>
Investigating Officer's		The route, if it did exist in 1786, was not

Comments		considered by Yate's to be a public vehicular route. It may, however, have existed but not be shown due to limitations of scale or because it was considered to be private so no inference can be drawn in that respect.
Cary's Map	1789	<p>John Cary was described as 'the most representative, able and prolific of English cartographers'. He was as busy a publisher as he was a cartographer and engraver, and until his death in 1835 published a constant flow of atlases, maps, road maps, canal plans, globes and geological surveys. He set new high standards of engraving and map design and in 1787 he published a 'New and Correct English Atlas' containing 46 maps which was re-issued ten times until 1831.</p> <p>In 1794 the Postmaster General commissioned Cary to survey the main roads of Great Britain and his information on roads may be viewed with above average confidence.</p>



Observations		The route under investigation is not shown.
Investigating Officer's Comments		The route may not have existed in 1789 or if it did exist it was not considered to be a public vehicular highway or a route of sufficient significance to be included on the map.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not

differentiated between within the key panel.



Observations

A route which approximates to the route under investigation is clearly shown on Greenwood's Map as part of a longer route leaving the main north-south route shown as a Turnpike Road (now known as the A49), along the route now known as German Lane, crossing the River Yarrow and continuing towards Astley Hall to exit onto the road now known as Southport Road. It is shown on the map as a 'cross road'.

Investigating Officer's Comments

The depiction of the route on this commercially produced small scale map suggests that a route existed as a through route in 1818 and may have been capable of being used on horseback or horse-drawn vehicle but no inference can be drawn regarding its public status. The scale is insufficient to distinguish between the alignment of the modern route and that of the older route.

Stockdale's Map of the country round Manchester

1818

A further early commercial map included in a book titled 'A description of the country from thirty to forty miles round Manchester' by J Aikin MD and is titled 'A new map of the country round Manchester' dated 1818. There is some uncertainty about the date of the map as the book was originally published in 1795. There is no key to the map.



Observations		The route under investigation is not shown.
Investigating Officer's Comments		The route is not shown on a map believed to have been published around the same time as Greenwoods Map which clearly shows it, suggesting that the route may have existed at this time and may have been capable of being used but was not considered to be a public vehicular highway.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.



Observations		A route which approximates to the route under investigation is clearly shown on Hennet's Map as part of a longer route leaving the main north-south route shown as a Turnpike Road (now known as the A49), along the route now known as German Lane, crossing the River Yarrow and continuing towards Astley Hall to exit onto the road now known as Southport Road.
Investigating Officer's Comments		A route appears to have existed in the approximate location of the route under investigation and is shown in the same way as routes that now exist as public vehicular routes indicating that it may have been capable of being used on horseback and possibly horse drawn vehicles. It is not possible to distinguish between the alignment of the route under investigation and the historical alignment at this scale but the route does form part of a longer route connecting at either end to the existing highway network. The route is shown as a through route on this and other small scale commercial maps but these maps do not show every bend and any width variations. Better

		detail of alignment, widths and existence of gates for example is not available until what is considered to be the same route is considered on maps produced at higher scale
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 route under investigation is not crossed by a canal or railway and is not across land over which it was proposed to construct either.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment	1842	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.

Chorley Tithe Map 1839



Charnock Richard Tithe Map 1842



Observations

A route is shown on the Chorley Tithe Map extending from point A (on the parish boundary) to buildings numbered 449 and then continuing to point F. There is a line across the route immediately to the east of the buildings marked 449 and the route marked ends at point F and is not shown to connect to Southport Road.

The crossing at point A appears to consist of a ford with no bridge shown.

The route shown is shaded and bounded and follows the approximate, but not precisely the modern, alignment of the route under investigation. It is not numbered on the Tithe Map. The Tithe Award details plot 449 as being owned by Henry Fazakerley and occupied by George Brown. It is described as 'House, buildings and garden' with no reference to the route. Township Roads and Streets are listed at the back of the Award and are numbered 2821.

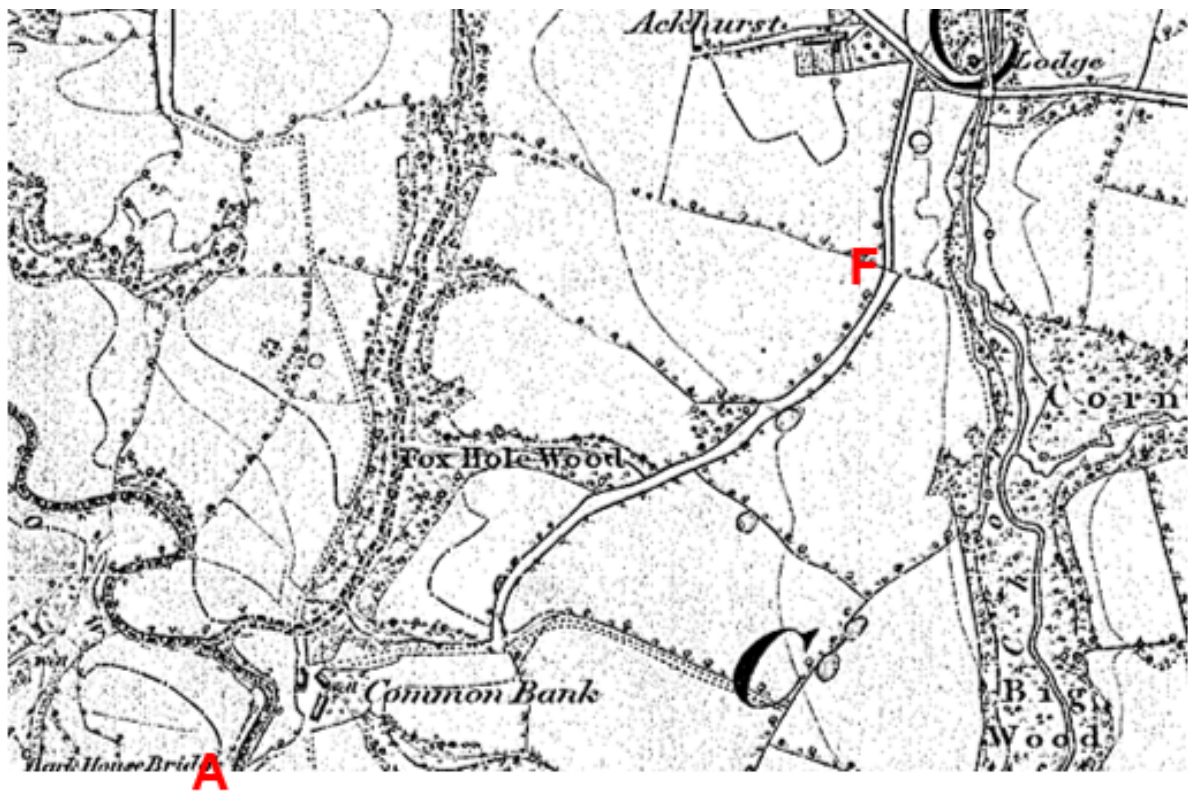
The Tithe Award for Charnock Richard dated 1842 shows German Lane extending as far as the river (parish boundary) at point A. The river crossing is shown forked suggesting the existence of a ford and bridge. German Lane is numbered 244 and is listed as being owned and occupied and described as 'Road and Waste'.

Investigating Officer's Comments		A route similar to but not precisely the route under investigation is shown as a cul de sac route and it appears to be gated. Although coloured it is not numbered or described in the Award as a public road suggesting that it was not a public road
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 the area over which the route is found.
Investigating Officer's Comments		No inference can be drawn.
Cassini Map, Series 108 - Liverpool	1840-43	Reproduction extract of Map sheet 108 (Liverpool) originally published 1840-43. The Cassini publishing company produced maps based on Ordnance Survey one inch maps. These early maps have more recently been enlarged and reproduced to match the modern day 1:50, 000 OS Landranger Maps and are readily available to purchase.

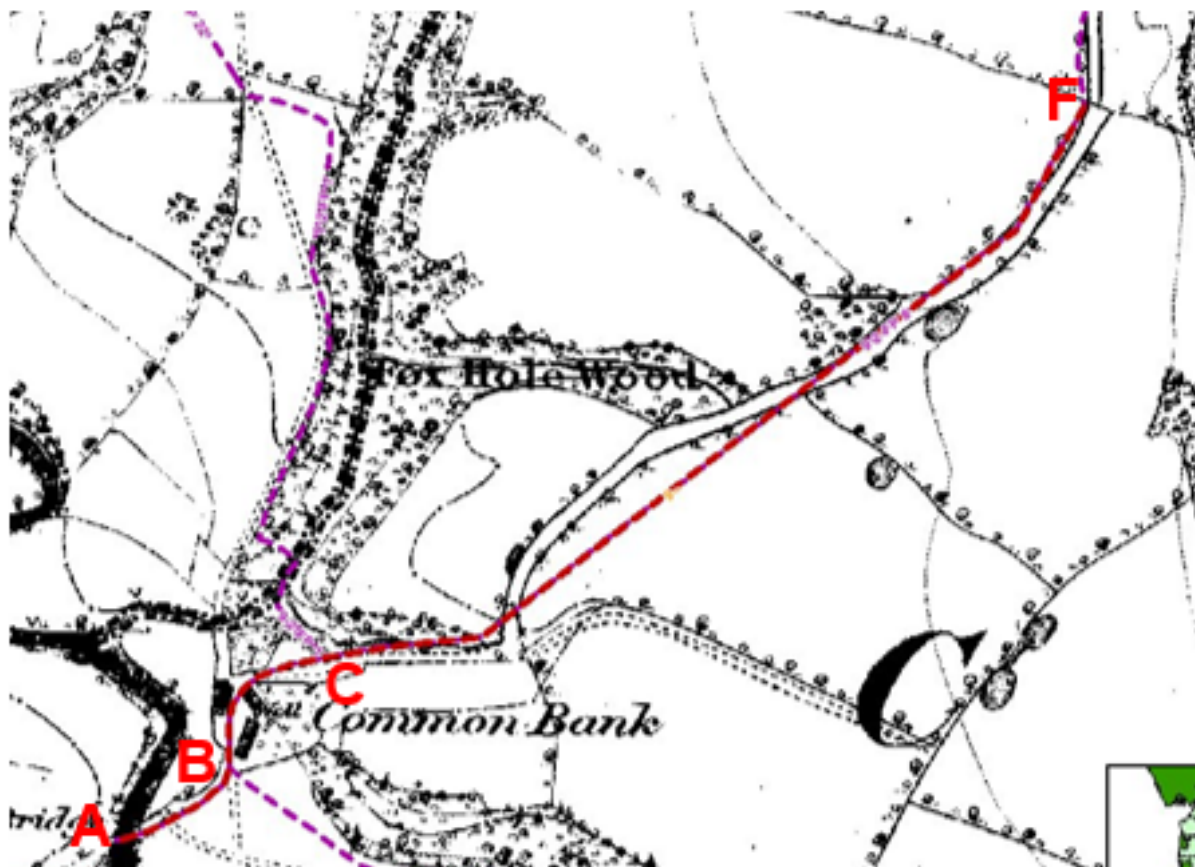


Observations		A route is clearly shown as part of a longer route extending from the eastern end of German Lane and across the river at point A. It can be seen
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		extending to buildings known as Common Bank and then beyond Common Bank, passing through point F to continue to exit onto Southport Road (historically known as Ackhurst Lane). However this route depicted does not correspond precisely with the route under investigation which is the modern straighter alignment.
Investigating Officer's Comments		Although a substantial through route existed on a similar alignment between point A and point F in the 1840s which may have been accessible to travellers on horses or vehicles at that time ththis was on a different line from the route under investigation.
6 Inch Ordnance Survey (OS) Map	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-47 and published in 1849 ¹



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

Bark House Bridge is named on the map at point A and the route is shown between point A and point B providing access to Common Bank. The route appears accessible between point B and point C as it passes through Common Bank and then continues towards point F as largely a bounded route but its alignment does differ slightly to the modern day alignment (as can be seen from the map extract with the route overlaid). The 1849 route appears to be gated near point F and then continues as a much narrower bounded track to exit onto Southport Road (named on the 6 inch map as Ackhurst Lane).

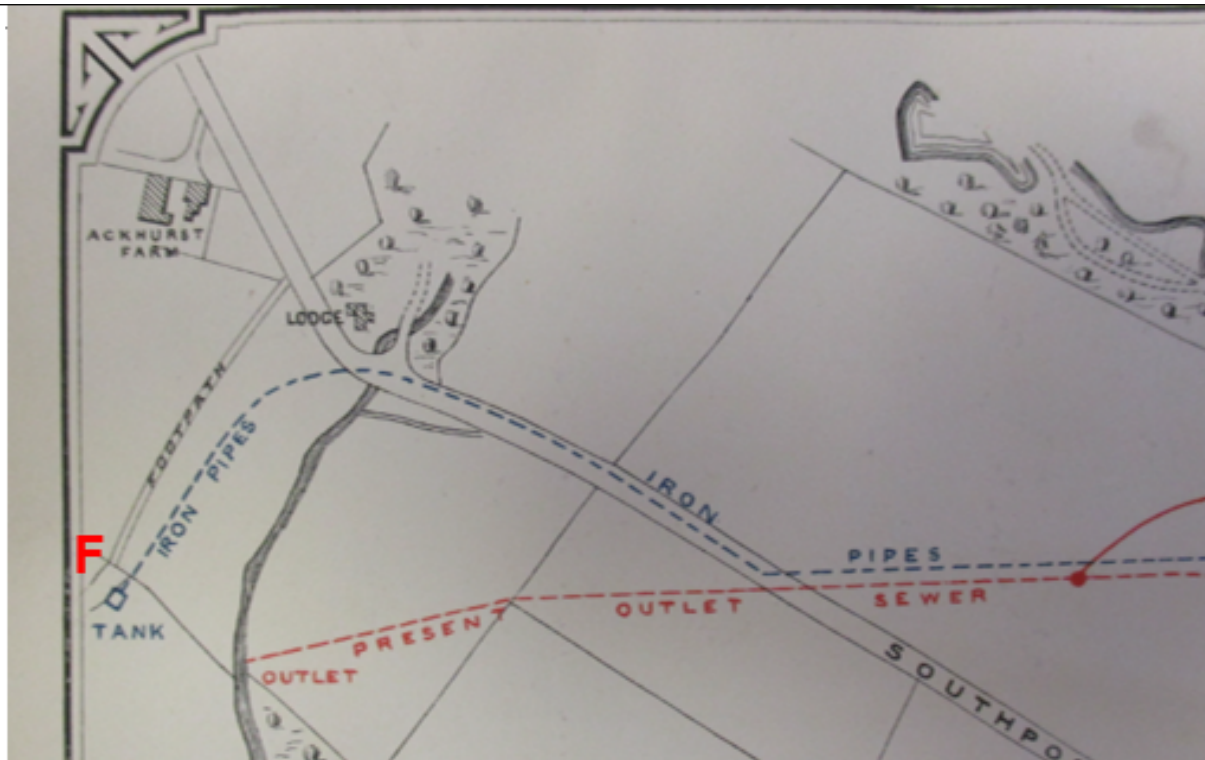
Just west of point A (and not shown on the map extract included in the report) is Bark House which presumably gave its name to Bark House bridge adjacent to point A.

Investigating Officer's Comments

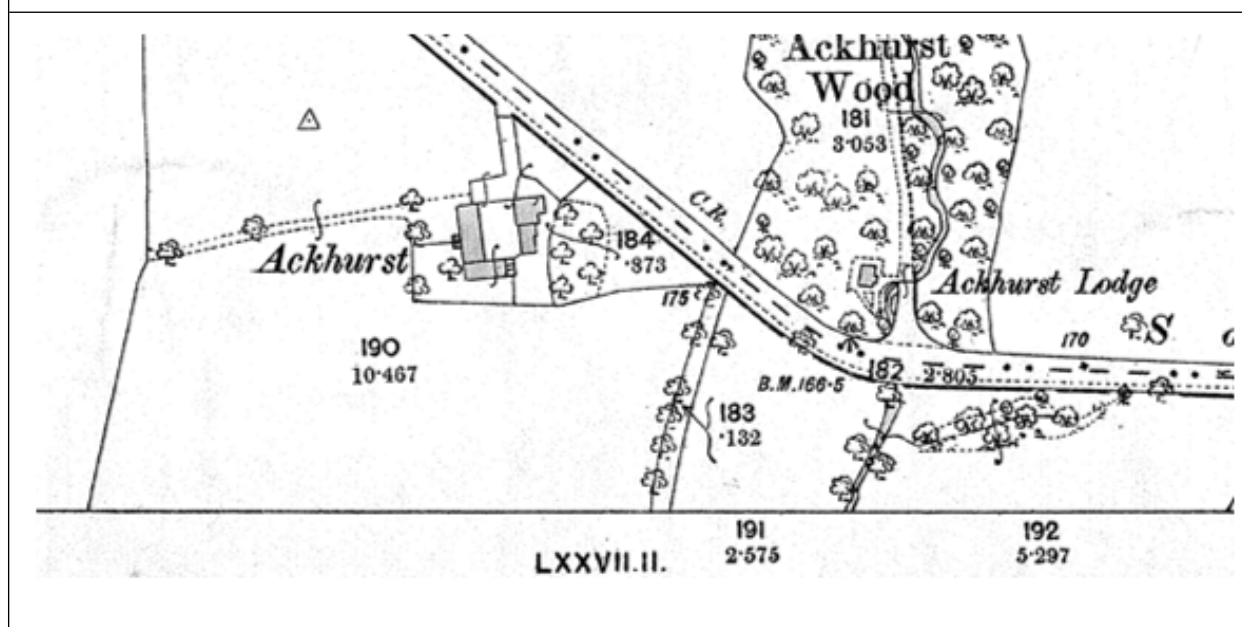
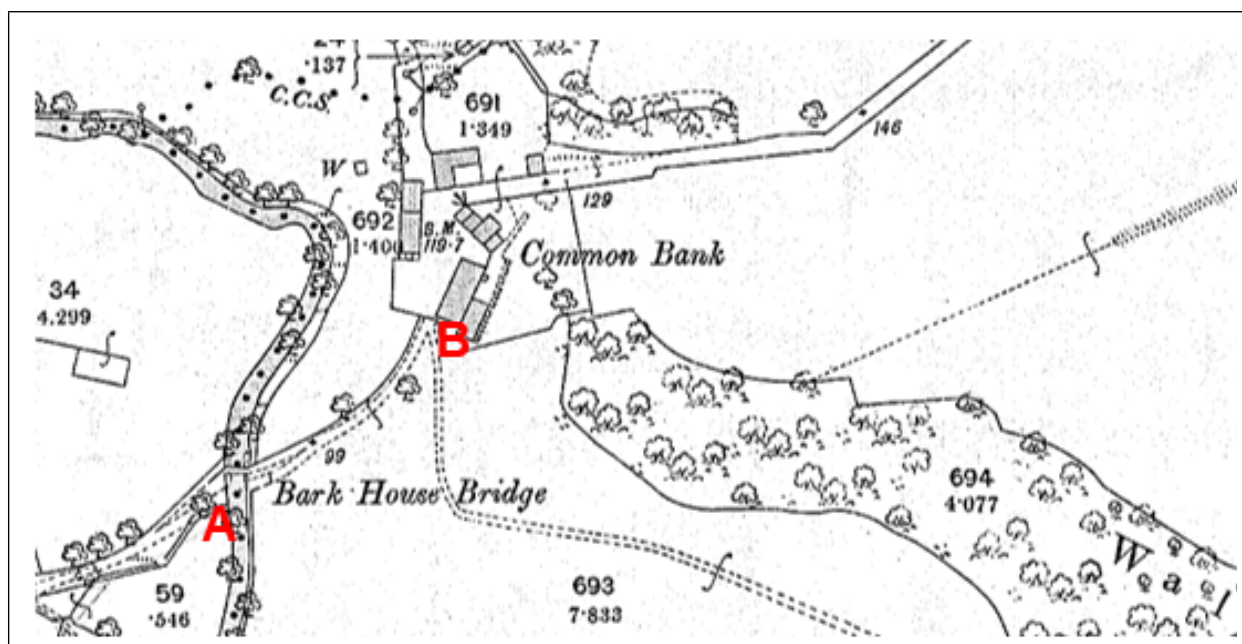
A route from point A to point F existed in 1848 and may have been part of a longer through route from the road now known as the A49 (Wigan-Preston Road) to Southport Road although the NE end section of this through route was much narrower and gated from the

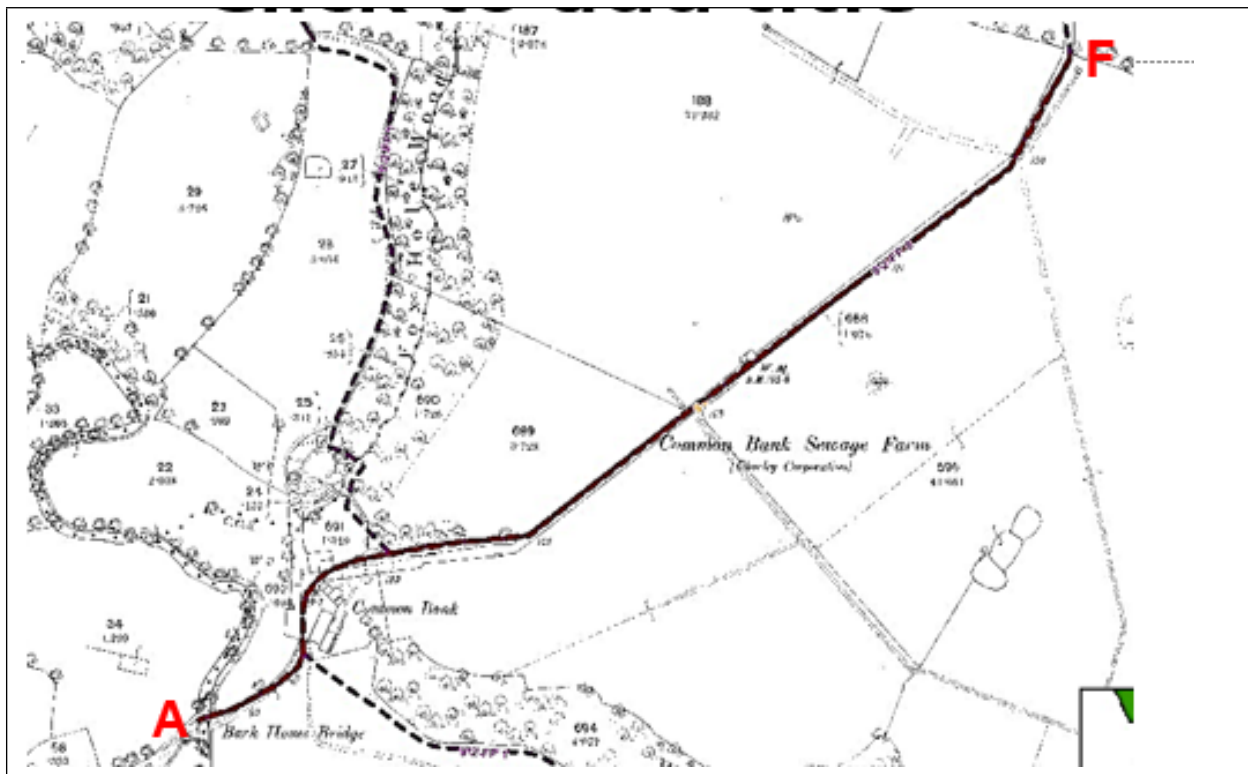
		claimed route. The route existed on a slightly different alignment between point C and point F and was gated near point F. It appeared wide enough to be capable of being used by horses and possibly horse drawn vehicles until point F when the through route was much more narrow .
Plans relating to Sewage Scheme	1886	Plans included within a report by the Borough Surveyor with reference to making new sewers for the efficient drainage of the Borough and deposited in the County Records Office (Ref MBCH 6/11)





Observations		Two of the plans included within the report show the north easterly end of the route under investigation (point F) and the second one included in this report shows the route continuing from point F to Southport Road (the modern day route of part of Footpath 8). Both plans label the route as a footpath. The route connecting the claimed route to the vehicular highway is also labelled as footpath. n.b. the annotation 'A' on the first of the above plans is in connection with the proposed pipe and does not coincide with point A on the Committee Plan.
Investigating Officer's Comments		The document is prepared by the Borough surveyor and the route was shown as a footpath in 1886. The connection to the vehicular highway was also by a footpath section it seems unlikely that the route under investigation was a public bridleway or vehicular highway.
25 Inch OS Map	1894	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1893 and published in 1894.





Observations

This larger scale OS map provides more detail than the earlier 6 inch map.

Bark House Bridge is shown and named and the ford crossing is also clearly shown. The route is shown between point A and point B as an unenclosed track and appears to be gated at the entrance to Common Bank at point B.

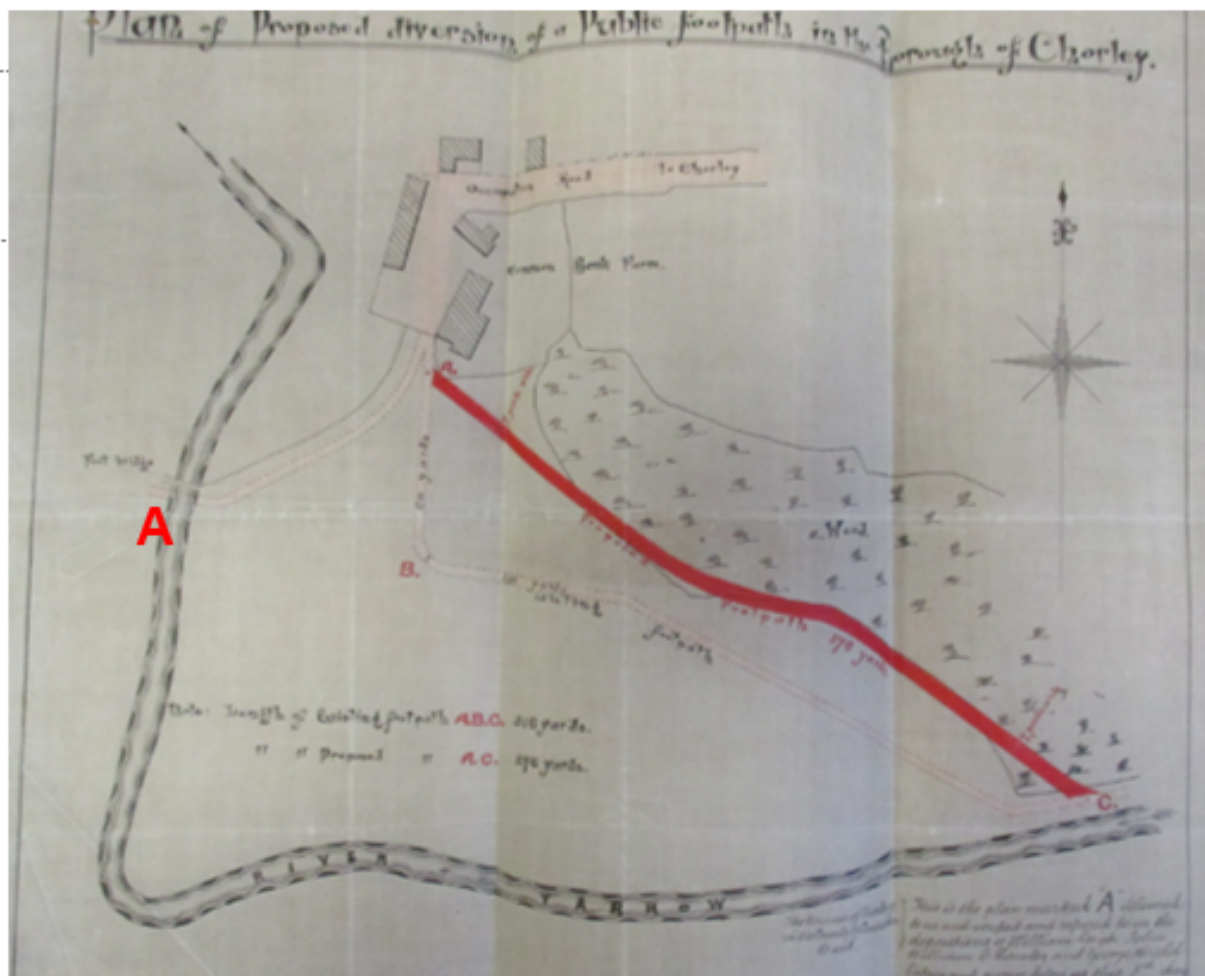
From point B the route appears accessible through the buildings at Common Bank and is then shown as a substantial enclosed route (not named) through Common Bank and continuing to point F. The route has been straightened on the approach to point F since the publication of the 6 inch map and Common Bank sewage farm (Chorley Corporation) is marked on the map just south of the route. A line is shown across the route at point F suggesting the existence of a gate and the route then continues in a north easterly direction to exit onto Southport Road (possibly gated) at Ackhurst.

The main access to Common Bank appears to be from Southport Road via point F and is gated.

Investigating Officer's Comments

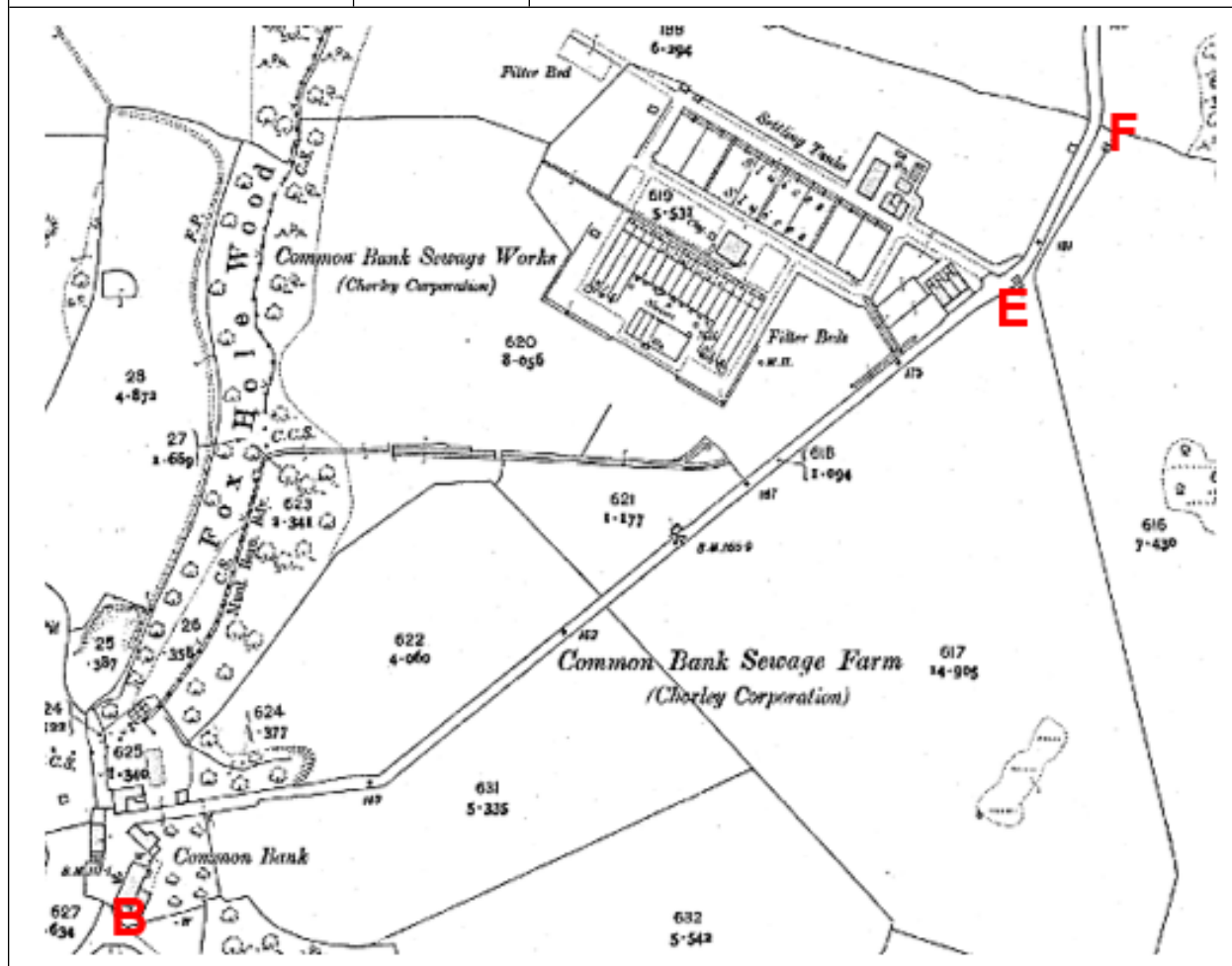
The route under investigation existed on its modern alignment in 1893 and appeared wide enough to be used by horses and possibly by horse drawn vehicles via the ford crossing. The

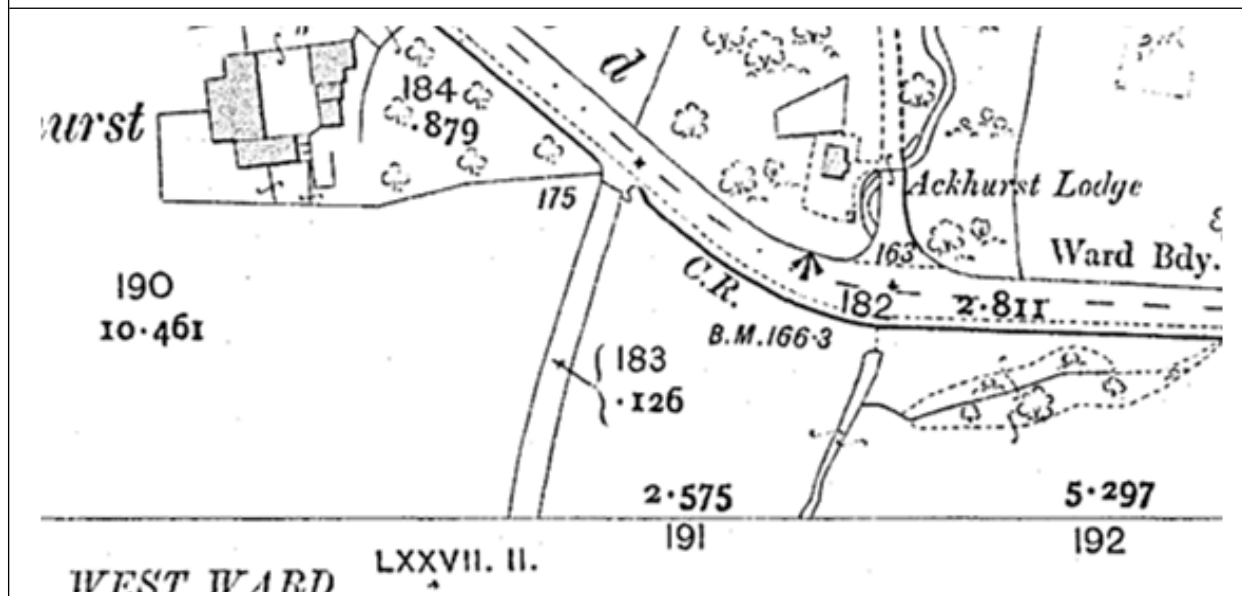
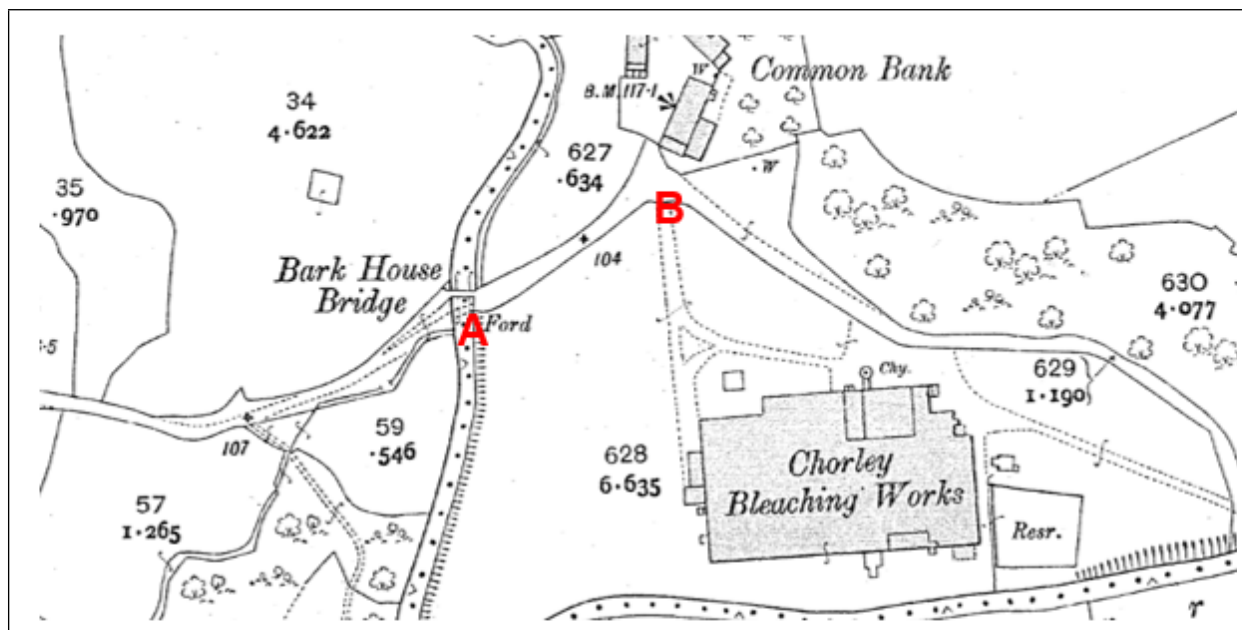
		<p>ford crossing is shown alongside the footbridge indicating that use was made of it by horses and possibly horse drawn vehicles (as opposed to just providing pedestrian access via the bridge). The fact that the route appeared to be gated does not necessarily indicate that use was private but the fact that the north eastern end is gated at the junction with Southport Road suggests that the route was possibly not used as a public vehicular highway at that time. It is not known when and why the alignment of the route was straightened but no reference to a legal diversion has been found which may suggest that it was not considered necessary to divert it as it was not a public highway. . The straightening of the route is thought likely to be linked to the sewage farm</p>
Quarter Session Diversion Order		<p>Before County Councils came into being the only way that a highway (carriageway, bridleway or footpath) could be diverted or stopped up was by application to the Justices of the Peace at the Courts of Quarter Session.</p>



Observations		A route described as a public footpath which
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		joined the route under investigation south of Common Bank farm was diverted at the Magistrates Quarter Sessions in 1900. Both the route to be extinguished and the new route were described as public footpaths. The plan accompanying the Order shows part of the route currently under investigation described as an occupation road to Chorley (from point X through point C). The route from point A to point B and on to Common Bank Farm is shown with the footbridge and ford at point A. this section is not labelled but leads to what appears to be the gated access to Common Bank Farm.
Investigating Officer's Comments		The route from point A through Common Bank Farm existed in 1900 and appears to have been considered as a footpath and occupation road.
25 inch OS Map	1910	Further edition of the 25 inch map surveyed in 1892, revised in 1909 and published in 1910.





Observations

By the early 1900s there appears to have been some significant development with Chorley Bleach works existing to the east of the route between point A and point B. Access to the bleach works appears to have been via the route between points A and point B although it may also have been available through Common Bank and via point F.

Entrance to Common Bank just north of point B appears to be gated although it appears that the route was open between the buildings and up to point F.

Common Bank Sewage Works are shown and are accessed via the route. Access at point F is no longer gated but the junction of the route north of point F with Southport Road is still

		gated.
Investigating Officer's Comments		The route existed in 1909 and appeared wide enough to be used on horseback and by vehicles. It provided access to the bleaching works and to the sewage works together with Common Bank and a number of other properties and may have been used as a through route by the public.
Ordnance Survey Object Names Book		When the Ordnance Survey was collecting information to put on its second series of published maps the surveyors recorded the names of anything that was to be shown on the maps. The Ordnance Survey Object Names Book for an area records these names, the description of the item named, and the local person attesting to the name. The descriptions usually state where the road started and finished, and often described them as a road, lane or drove road. The descriptions often drew a distinction between what was believed to be public and private and included information about who owned or maintained bridges.
Observations		Entries made into the Object Names Book were checked at the National Archives but there was no reference to the route under investigation.
Investigating Officer's Comments		No inference can be drawn.
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way</p>

		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.
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Finance Act Map deposited in The National Archives



Finance Act Map deposited in County Records Office



Finance Act Map deposited in County Records Office



Observations

The Valuation Maps deposited in both the County Records Office and National Archives were inspected.

The route is not shown excluded from the numbered hereditaments.

On the Maps deposited in the County Records office German Lane to the west of point A is shown excluded from the adjacent hereditament (122) but on the map deposited in the National Archives it is included in hereditament 122. The Valuation book entry for plot 122 describes it as 'land and buildings' situated at German Lane for which no deductions are claimed for public rights of way or user.

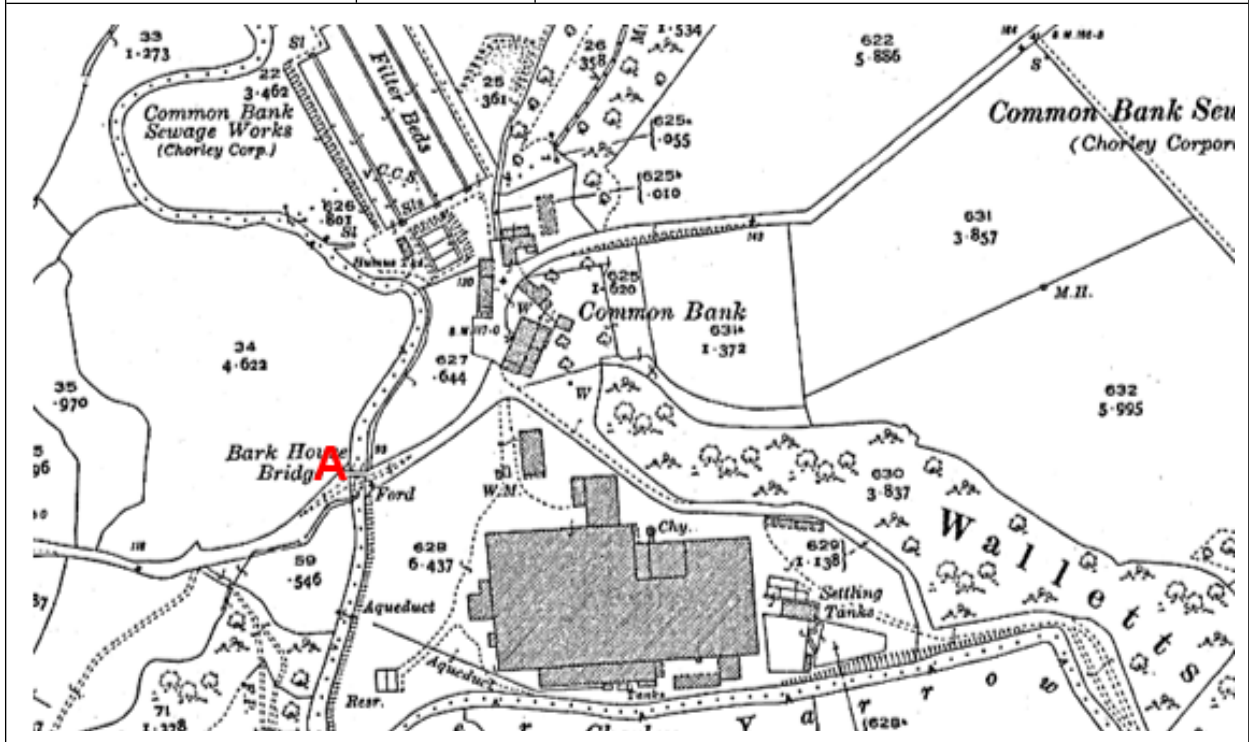
From the river at point A to the gated entrance to Common Bank north of point B the route under investigation is shown included within hereditament 6966 described in the Valuation Book as Chorley Bleaching Works and for which no deductions are claimed for public right of way or user.

The Field Book deposited at The National

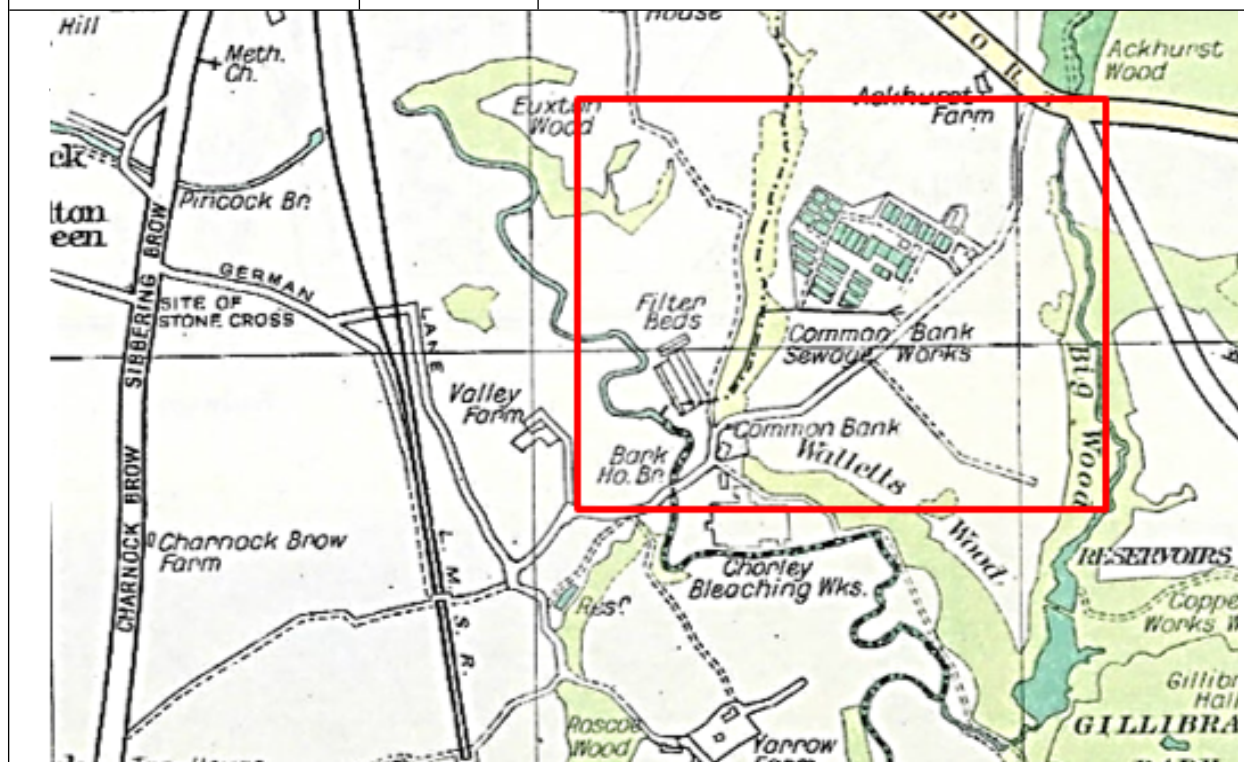
		<p>Archives provides little additional information. It is described as being owned and occupied by Chorley Bleaching Co. Ltd and the Valuation is stated to have been 'dealt with by Superintending Valuer'. The rest of the field book had not been completed.</p> <p>From Common Bank through to point F the route runs through part of hereditament 6921.</p> <p>The Valuation Book entry for plot 6921 states that the land was owned and occupied by Chorley Corporation and no deduction listed for public right of way or user. The Field Book entry contains the same information.</p>
Investigating Officer's Comments		<p>The Finance Act information does not support the existence of a public bridleway in 1910. It is normal to see an acknowledged public vehicular highway excluded from the numbered hereditaments as part of the process of compiling the taxation records and for ways considered to be public footpaths or bridleways at that time to be included in the numbered hereditaments for which a deduction is claimed.</p> <p>The maps showed the land crossed by the route in private ownership for which no deductions are claimed for public rights of way or user suggesting that if they did exist, the landowners did not acknowledge any public rights of user over the routes at that time.</p>
Bartholomew's 1 inch Map, Liverpool & Manchester, Sheet 8	1920	<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 that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists</p>



Observations		The full length of the route is shown as part of a longer route connecting public vehicular highways.
Investigating Officer's Comments		The route existed and was of sufficient width and character to be shown on a small scale map used primarily by the public travelling on horseback and by vehicle suggesting that it was accessible at that time.
25 Inch OS Map	1928	Further edition of 25 inch map (surveyed 1893, revised in 1927 and published 1928).

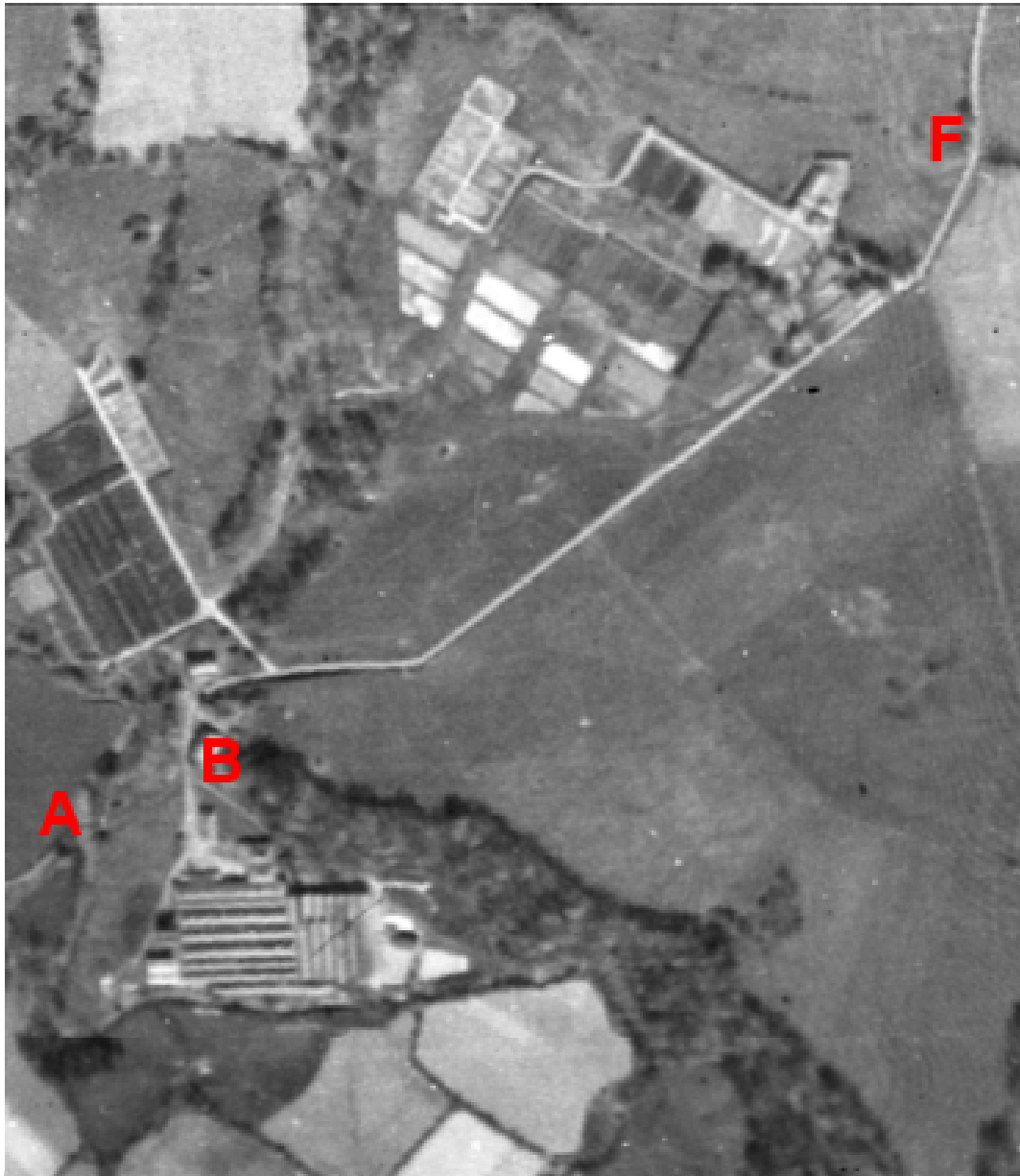


Observations		The full length of the route is shown as part of a longer route extending as far as Southport Road. The bleach works and sewage works had both expanded in size and both were accessed from the route. Common Bank was still shown gated north of point B.
Investigating Officer's Comments		The route existed and appeared to be wide enough to be used by horses and vehicles.
Authentic Map Directory of South Lancashire by Geographia	Circa 1934	<p>An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.</p> <p>The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.</p>



Observations		The full length of the route is shown as part of a longer route connecting to public vehicular highways but is not named. It is shown as being the same width as German Lane (a public vehicular route) and as a bounded route and
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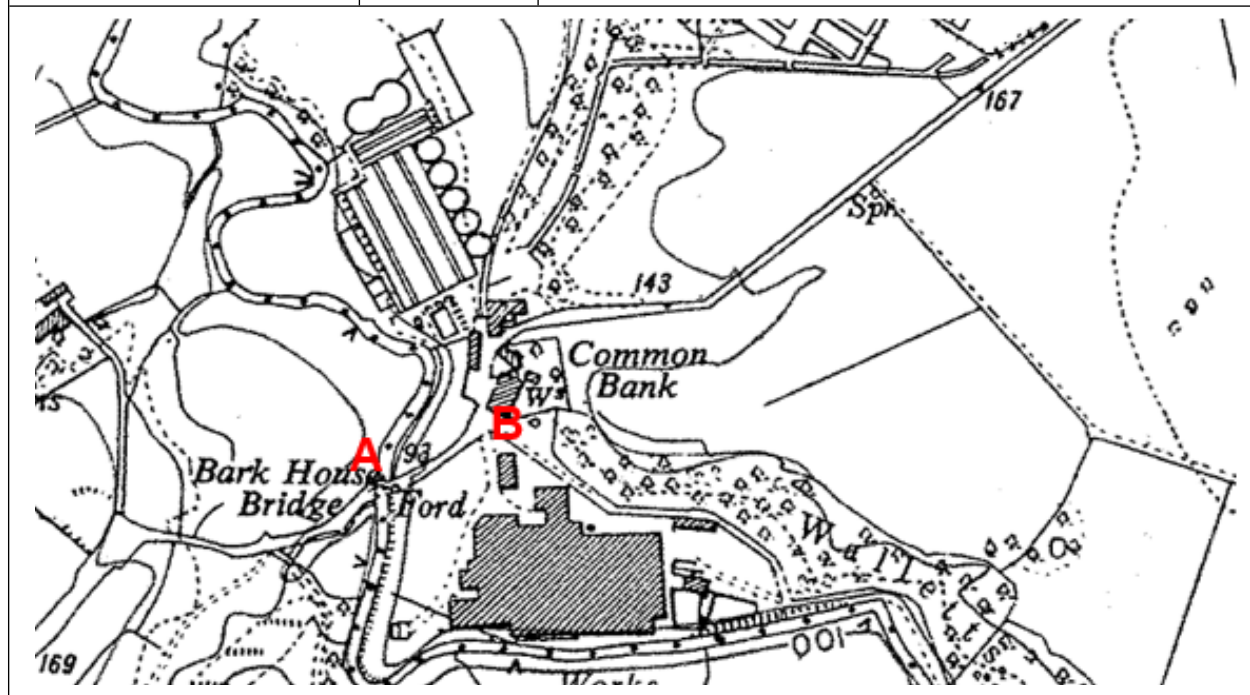
		consistent with how other public vehicular routes are shown.
Investigating Officer's Comments		The route existed in the 1920s and appeared to be accessible for use by horses and possibly vehicles.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.



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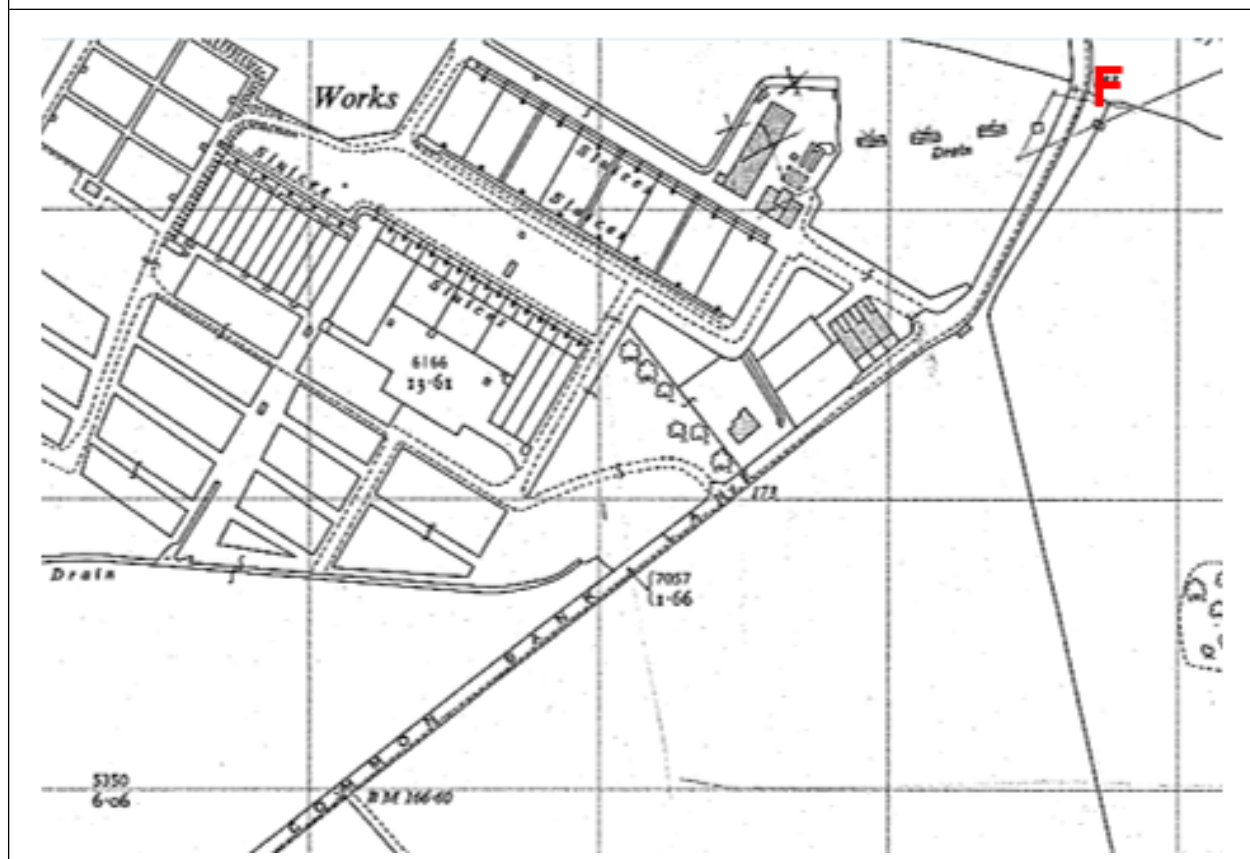
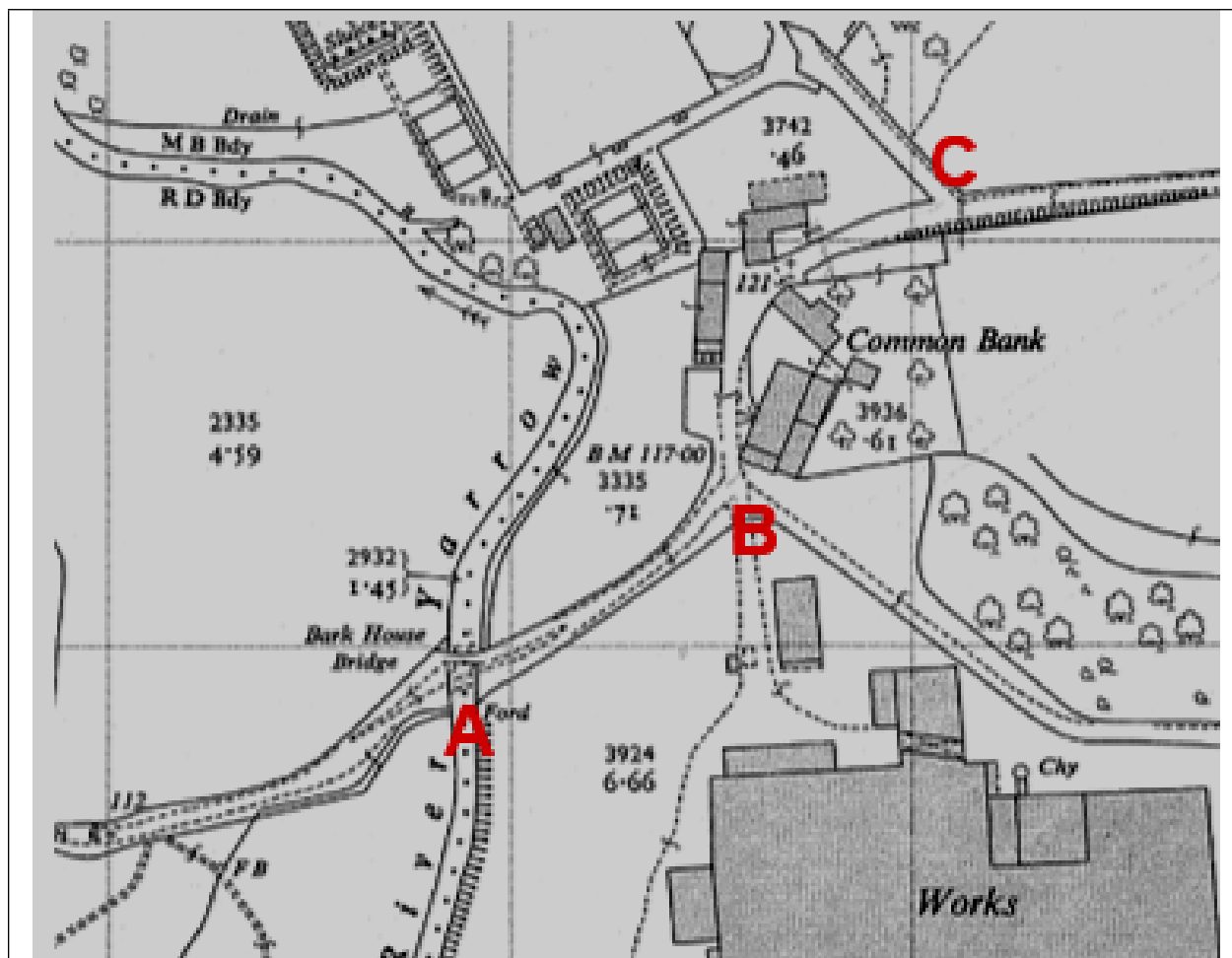
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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

		seen but the route under investigation, between point A and point B can only faintly be seen on the photograph. The route between point B and point F (and beyond) can be clearly seen with the access to the bleach works looking to be predominantly from the north (from point F) rather than from the route between point A and point B.
Investigating Officer's Comments		The route existed in the 1940s and the way it shows up on the photograph is consistent with vehicular use over the length B-F. The route between point A and point B can be seen as a faint track more consistent with use on foot or possibly on horseback at that time.
6 Inch OS Map	1956	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 between 1930-45 and is probably based on the same survey as the 1930s 25-inch map.





Observations		The full length of the route is shown and may have been gated at the junction with Southport Road (beyond point F).
Investigating Officer's Comments		The route existed in the 1940s and appeared to be capable of being used.
1:2500 OS Map	1960	Further edition of 25 inch map reconstituted from former county series and revised in 1959 and published 1960 as national grid series.



Observations		The full length of the route is shown and for the first time on an OS sheet the route is named (Common Bank Lane).
Investigating Officer's Comments		The route existed in the 1960s and appeared wide enough to be used by horses and vehicles.
6 inch OS Map	1968	Further edition of the 6 inch OS map revised 1954-63 and published 1968.



Observations		The full length of the route is shown and is named on the map as Common Bank Lane.
Investigating Officer's Comments		The route existed and appeared capable of being used.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		Only part of the route can be viewed on the photographs available. The route from Southport road to point F and then down to the entrance of the sewage works at point E is clearly visible and the route from point E heading in a south westerly direction past point D and towards point C can be seen.
Investigating Officer's Comments		The route between point D and point F existed as a substantial bounded route.
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations		The route from Common Bank to point F can be seen. Tree cover obscures the view of the route between point A and point B although two lines consistent with pedestrian use and possibly equestrian use can be seen from point A.
Investigating Officer's Comments		The route existed in 2000 and appeared capable of being used.
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

		<p>Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>
Observations		<p>The route is within the former county borough of Chorley for which no parish survey map or cards were produced.</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 route under investigation was recorded as part of Footpath 1 between point A and point B and point B and point X and as part of Footpath 8 between point X and point F. No representations were made to the County Council regarding its inclusion on the map as a public footpath.</p>
Provisional Map		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>
Observations		<p>The route under investigation was shown as a public footpath (unaltered from the Draft Map) and no representations were made to the County Council regarding its inclusion on the Provisional Map as a public footpath.</p>
The First Definitive		<p>The Provisional Map, as amended, was</p>

Map and Statement		published as the Definitive Map in 1962.
Observations		The route under investigation was shown in the same way on the First Definitive Map as on the Draft Map.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the route under investigation was considered to be of any higher status than public footpath by the Surveying Authority. There were no objections to the depiction of the status of the route from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
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</p>

		up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense is not synonymous with whether it is a highway or not. In the 1990s Foxhole Road and Ackhurst Road were added to the records. Point F connects to them..
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<p>Observations</p>		<p>The 1929 Handover Map for Chorley Rural District shows German Lane as a publicly maintainable highway to point A. It does not indicate the status of the route under investigation because this was within Chorley Urban District for which no Handover maps were compiled.</p> <p>The County Council's current list of publicly maintainable streets records the route under investigation between point E and point F as part of the general vehicular public highway network. This may have been a change at the time Foxhole Road and Ackhurst Road were created.</p>
<p>Investigating Officer's Comments</p>		<p>The route between point A and point E is not recorded as a publicly maintainable vehicular highway although no inference can be drawn with respect to public rights to use the route.</p> <p>The section of the route between point E and point F is recorded as a public vehicular highway maintained by the County Council. It is</p>

		tarmacked and primarily used by motorised vehicles. This would infer that this section is known to the county council as being publicly maintainable as a vehicular highway as the County council is unlikely to take on this liability lightly.
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		There are no Highways Act 1980 Section 31(6) deposits lodged with the County Council for the area over which the route under investigation runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over this land.
'Follow Any Stream' by Geoff Birtell	1968	Local history book written by Geoff Birtell and published 1968. The book was referred to by the Applicant and a copy examined in Ecclestone library.
Observations		The book gives an account of the local history of the area. It explains that the 'Charnocks'

		owned both the Charnock Richard Estate and Astley Estate in the 1500s and suggests that when the Charnocks rode from Charnock Richard to Astley they would most likely have taken the route along German Lane to cross the River Yarrow at the ford at Common Bank.
Investigating Officer's Comments		No inference can be drawn. The earliest maps examined as part of this investigation which show the route are from the 1800s. It is not known when the ford crossing or the route came into being and the Tithe Map of Chorley suggests that there was no link through to Astley Hall in the 1830s.

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 southern end of the route starting from the River Yarrow to the junction with Public Footpath No.1 Chorley is in the ownership of Ruttle Plant Holdings Limited, Lancaster House, Ackhurst Road, Chorley, Lancs PR7 1NH.

The middle part of the route starting from the junction with Public Footpath No.1 Chorley to the junction of the entrance to Chorley Sewage Treatment Works is in the ownership Chorley Borough Council, Town Hall, Chorley, Lancs, PR7 1DP.

The northern end of the route starting from the entrance to Chorley Sewage Treatments Works to the junction of Ackhurst Road is unregistered.

Summary

The application is for the route to be recorded as a public bridleway.

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 this instance it appears that a route existed as a continuation of German Lane via Common Bank Farm to Southport Road shown on commercial maps since at least the early 1800s and most of its length shown on the Tithe Map. However prior to the 1890s the alignment of the route was not that of the route now known as Common Bank Lane and to which the application relates. From the 1890s it is consistently shown on Ordnance Survey maps as a bounded track. A gate originally appears to have existed across the route north of point B where it entered into Common Bank Farm and also at point F. This northern end was considered to be a footpath in the 1886 Borough Surveyor report.

The physical characteristics of the route show that it would have been possible, prior to the modern obstruction at point B, to ride or drive the full length of the route. The cobbled ford and cobbled surface of the route leading from point A suggest that the crossing would have received substantial use in the past by horses and vehicles in addition to pedestrian use which was specifically catered for by the provision of a footbridge (Bark House Bridge).

Although the early maps suggest that the original route may have been a vehicular highway to apply the presumption of regularity with respect to a legal diversion to the post-1890s alignment is difficult given that there is other documentation available from that time concerning the sewage works but no mention of a diversion.

Since 1890s and still today the current route has provided access to a number of businesses including the bleach works, sand quarry and sewage works and vehicular access along the route could have been private access to these rather than or as well as public use as a through route. This limits the inference that can be made about public rights from the substantial nature and connectivity of the way.

None of the various pieces of post-1890s documentary evidence examined including the Sewage Works proposals, Quarter Session records and Finance Act maps and records suggest that the route was historically considered to be a public bridleway or carriageway. It is referred to as occupation road in the Quarter Sessions record which whilst it does not preclude public bridleway in addition to occupation road for vehicular access did not provide any supporting evidence for bridleway rights.

The depiction of the route on Bartholomew and Geographia supports at least bridleway status but is insufficient evidence on their own.

The section of the route currently recorded as part of Footpath 8 Chorley between point E and point F is on the County Council's List of Streets as a publicly maintainable highway and appears to have become a publicly maintainable carriageway in 1992 when the new road passing by point F was constructed. It is tarmac and it appears that it was mostly used by mechanically propelled vehicles (MPVs) in the relevant period prior to the commencement of the Natural Environment and Rural Communities Act 2006 to access a number of residential properties as well as the quarry and sewage works. For this reason it is not correct to seek to record this section of the route as bridleway or byway but due to a deficiency in the legislation it is not possible to delete the incorrect status of footpath from the Definitive Map and Statement.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant has submitted 3 user evidence forms in support of his application, the information supplied in these forms is set out below.

All 3 users have used the route on foot and on bicycle, 1 of the users has also used the route on a motorised vehicle. The user that used the route by all three means

used it between the years of 1985-1995 but did not use the route on a mountain bike between 1987-present day. 1 user used the route on foot between the years of 1984-1987 and by bicycle between 1989-present day and the other user used it on foot and on bicycle between 1989-present day.

1 user has seen others using the route on foot and 2 users have seen others using the route by bicycle, all 3 user agree the other users they saw were using the same route they use.

1 user used this route on foot about once a month but used is on a bicycle weekly, and other user used it on foot and by bicycle both monthly. 1 user did not provide a response to this question.

The main reasons for using this route were to visit places on the route, use the route as part of a longer journey, use the route as part of a circular route and to visit friends and to use it for other appointments.

2 users agree the route has always followed the same line, 1 user did not provide a response to this question.

None of the users provided any information about being / knowing any landowners, tenants, employees or family members of the land affected by the route.

1 user has not been given permission to use this, the other 2 users did not provide a response to this question. 2 users confirm they have never been asked to turn back when using the route.

All 3 users never provided a response when asked if they had ever seen any notices along the route, if there are any stiles / gates / fences / bridges along the route or if there has ever been an obstruction along the route.

As well as the 3 user forms the applicant has also provided a document that refers to historical evidence about the route, the documents the applicant refers to have been examined by the Environment team in detail above and are listed below:

- Ordnance Survey 6" First Edition
- Yates 1786
- Greenwood 1818
- Hennet 1829
- Ordnance Survey 6" – 1 mile First Edition
- Photograph showing cobbles at Bark House Ford
- Photograph showing a stretch a cobbles on the brow of Bark House
- Ordnance Survey 25" – 1 mile First Edition 1890's
- Lancashire Archives plot numbers for the Tithes of Chorley
- 1840 Tithe Map
- Finance Act 1910
- Photo of Plot 6966 Chorley Bleaching Works
- Photo of Plot 122 indicates land and buildings
- Photo belonging to Chorley Corporation which is marked as Refutation Works

- Cassini Historical Map 1923-1924 Edition
- Cassini Historical Map 1947 Edition

Information from others

An objection has been received from Ruttle Plant Holdings Ltd who object on the grounds that the lane is unsuitable for bridleway use in view of the private vehicular traffic. Whilst this is a concern for management of the way it is not a material consideration for deciding whether the way is already a bridleway.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

Present line available since 1890s
user evidence on pedal cycle
Probably available route for several decades

Against Making an Order(s)

weak user evidence
difficulties re modern line not existing until after 1845
noted in contemporaneous document as footpath in 1886
shown within taxable hereditament plots in 1910
difficulties in proving dedication of more than footpath by owners in twentieth century
from all the circumstances

Conclusion

]The claim is that this route on this line of bounded track is already a bridleway in law and should therefore be recorded on the Definitive Map as such..

As there is no express dedication Committee must consider whether there is sufficient user from which the deemed dedication provided for under S31 Highways Act might be satisfied or such circumstances from which dedication might be inferred at common law.

Looking firstly at circumstances from which dedication might be properly inferred at common law.

There may be user which the owner has acquiesced in for such time to indicate that they intended a dedication or other historic map and documentary evidence pointing to their intention.

In this matter it seems there is no such sufficient historic or documentary evidence. The route firmed up to take the line as claimed by 1890s. The owner of much of the route was the local authority. Gates seem to be in place at point F Even in 1910

they showed the route within their taxable plot and at the time of the Definitive Map were content to see the route recorded as footpath. There is no equestrian user evidence presented. It is suggested that it is difficult to see sufficient circumstances from which to infer the owners who still own much of the route today dedicated this route as a bridleway.

Looking secondly at deemed dedication under S31 Highways Act 1980.

S31 requires there to be sufficient use of a route for twenty years before the route was called into question. In this matter the date the route was called into question for bridleway use would be when the boulder was placed on the route at point B in 2014 or possibly the application itself. To deem dedication of bridleway it would be usual to see that use being on horseback.

In the *Whitworth* case it was suggested that subsequent use by cyclists of an accepted, but unrecorded, bridleway, where use of the bridleway would have been permitted by virtue of section 30 of the Countryside Act 1968, could not give rise to anything other than a bridleway. The use on pedal cycle would have to show earlier acceptance of the route as bridleway for the cycle use to be supporting use to evidence bridleway.

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

Section 31, Highways Act 1980, as amended by section 68 of NERC 2006, provides that use of a way by non-mechanically propelled vehicles (such as a pedal cycle) can give rise to a restricted byway. Committee is therefore asked to also look at whether the use by three users on pedal cycles, one using it weekly and one monthly and one with unknown frequency of use and one user ceasing in 1995 would be sufficient to deem dedication by the owner as a route for non mechanically propelled vehicles. It is suggested that the use is insufficient in this matter.

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

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: 804-575		Megan Brindle, 01772 535604, Legal and Democratic Services

Reason for inclusion in Part II, if appropriate

N/A