Regulatory Committee
Meeting to be held on 15 November 2017

Electoral Division affected:
Pendle Rural

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Application for Recording on the Definitive Map and Statement a Bridleway along Part of Birch Hall Lane, Footpath Earby 38 and Dark Lane to County boundary
File No. 804-507
(Annex 'A' and Appendix A refer)

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Executive Summary

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

Recommendation

(i) That the application to record on the Definitive Map and Statement, a bridleway along part of Birch Hall Lane, Footpath Earby 38 and Dark Lane to County boundary**,** in accordance with File No. 804-507, be accepted in part. Section C-D shown on the committee plan being accepted as a bridleway and section A-B-C shown on the committee plan being rejected.

(ii) That an Order(s) be made pursuant to Section 53(2)(b) and Section 53(3)(b) and/or Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, to add a bridleway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points C-D.

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

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 was submitted to the County Council in 2009 by Trawden Forest and Border Bridleway

Association, for the lane known as Dark Lane, Earby to be recorded on the Definitive Map and Statement as a bridleway.

A corresponding application was also made to North Yorkshire County Council, comprising the same evidence for the continuation of Dark Lane from the County boundary to be recorded as bridleway, and also for a lane known as Dodgson Lane to be recorded as bridleway.

North Yorkshire County Council investigated the application for the route within their area, and determined to make an Order for part, but not all of the application route. An Order was subsequently made to record Dodgson Lane as a restricted byway. The section which it was decided not to make an Order for was the continuation of Dark Lane from the County boundary to its junction with Dodgson Lane. A copy of the report considered by North Yorkshire County Council Planning and Regulatory Functions Committee on 22 June 2012 is attached at Appendix A to this report.

The County Council is required by law to consider the application submitted to the County Council, and 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”

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

The Borough Council supports the application to record Dark Lane as a public bridleway but notes that the proposed bridleway will only run as far as the county boundary, and asks what measures are in place to continue the route into Craven District.

Earby Town Council

The Town Council have expressed several concerns about the application and object to it.

They are concerned that, between points A-B-C, the application route is used by farm vehicles as well as walkers, and to allow horses and cyclists would pose a risk of accident due to the narrowness of the route.

They are also concerned about the impact on wildlife if there was an increase in traffic of any kind of the route particularly as the landowners have planted trees adjacent to the route.

The Town Council have provided photographs illustrating the fact that the route between points C and D is fenced off and very overgrown, and states that the fences have been in place for over 40 years. They are concerned about the effects on the biodiversity of the site which would be caused by opening up the route, the cost of clearing the route and the fact that the route, if cleared, would be dangerous as it runs along the bottom of a narrow 'gully' which is 2-4 metres deep in places. They are concerned that if an incident occurred on the route, there was nowhere for horses/pedestrians/cyclists to go. They also refer to the fact that there are deer in the area, which need the cover of the trees to be safe and thrive.

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	9180 4676	A point on Birch Hall Lane (U40266) at the junction with Bridleway 29 Earby
B	9185 4675	A point on Birch Hall Lane (U40266) at the junction with Footpaths 25 and 38 Earby
C	9186 4684	Junction of Birch Hall Lane (U40266) and Footpath 38 with Dark Lane and Footpath 32 Earby
D	9210 4680	Boundary post in Dark Lane marking the County boundary

Description of Route

With reference to the Committee plan, the whole length of the application route can be broken down into the following sections:

1) The first 50 metres of the route (between points A-B on the Committee plan) is not currently recorded on the Definitive Map, but is recorded as an unclassified publicly maintainable highway on the List of Streets, known as U40266 Birch Hall Lane.

2) The second 90 metres of the route (between points B-C) is recorded as part of Footpath 38 Earby, and is also recorded as an unclassified publicly maintainable highway on the List of Streets, known as U40266 Birch Hall Lane.

3) The remaining 240 metres of the route (between point C-D) is not recorded on the Definitive Map or the List of Streets, but is known locally and named on Ordnance Survey maps as Dark Lane.

The total length of the route is 380 metres.

A site inspection was carried out on 3 April 2017.

The application route commences at the unmarked junction of Birch Hall Lane and Public Bridleway 25 Earby (known as Standridge Clough Lane) at point A on the Committee plan.

From point A, the application route runs in a generally east south easterly direction along Birch Hall Lane which is a tarmacked road approximately 4 metres wide. The route descends gently downhill to cross Standridge Clough via a stone bridge (LCC Structure Reference 6312B1).

Immediately after crossing the bridge the application route turns to continue in a northerly direction with two access roads branching off at point B – one of which is recorded as Footpath 25 Earby, and provides access to Lower Verjuice Bank, the other being a private access road to Windle Field.

From point B, the application route continues in a generally northerly direction along Birch Hall Lane (also recorded from this point as Footpath 38 Earby), crossing a further culverted watercourse and continuing as a tarmacadam road rising quite steeply to point C.

At point C, the route is crossed by Footpath 32 Earby while Footpath 38 Earby continues north, passing through a gate and on to Marlfield and the County boundary.

At point C, Footpath 32 Earby is clearly signed on both sides of the lane. The eastern section of Footpath 32 leaves the application route via a wooden stile in the field boundary and then continues in an easterly direction along the top edge of a pasture field running parallel to the application route whilst from point C, immediately north of the stile, the application route continues along a sunken lane known as Dark Lane.

Access to Dark Lane from point C is blocked off by fencing and the route beyond is very overgrown. Whilst it is not possible to walk the application route from point C, it is possible to walk along Footpath 32 Earby, which runs parallel to the route at a higher level along the edge of the field.

From point C, the application route runs along the bottom of a sunken lane bounded by trees and hedges on either side. In places, it is possible to climb down the banking into the route which is largely overgrown and quite boggy.

The application route ends at point D as the route crosses the County boundary. At point D, it was possible to climb down into the route to find an old boundary post marking the historical boundary between Earby Urban District Council and Skipton Rural District and close to point D – but on the field edge on Footpath 23 Earby – there is a stone bench mark.

From point D, the sunken route continues in an east north easterly direction (with Footpath 32 Earby running along the field edge parallel to it) for approximately 375 metres to a gateway through which the route known as Dark Lane passes, and then continues as an unenclosed path across rough moorland recorded as Footpath 23 in the Parish of Thornton in Craven (District of Craven, North Yorkshire) to the junction with Dodgson Lane (Restricted Byway).

Map and Documentary Evidence

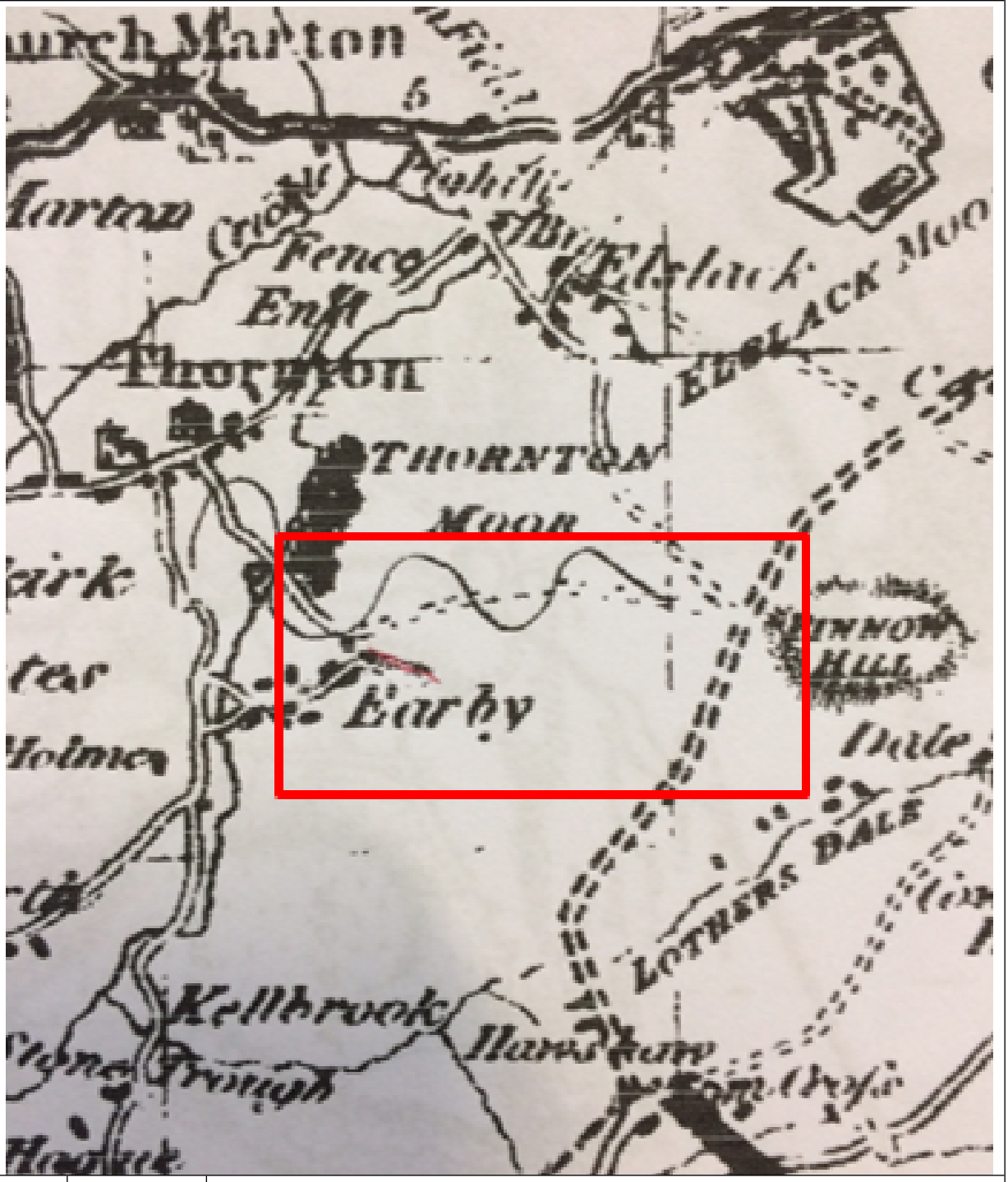
Various maps, plans and other documents were examined with reference to the route under investigation.

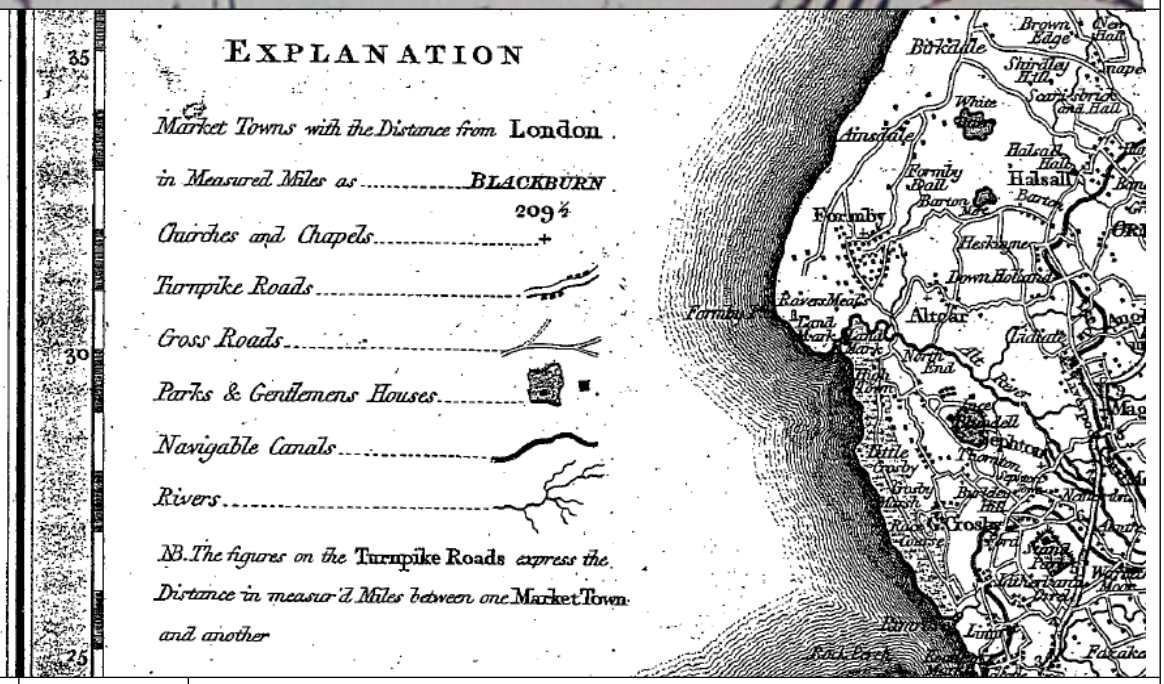
Document Title	Date	Brief Description of Document & Nature of Evidence
Thomas Jeffrey's Map	1775	Jeffreys' Map of Yorkshire was published in 1775 at a scale of 1 inch to 1 mile. It was originally surveyed from 1767-1770, 69 and a half miles to 1 degree (approx.). It was published in a book of 42 leaves by Act of Parliament dated 25 March 1772. The map extract was provided by the applicant and is annotated with red pen to indicate the route claimed.

Extract of Jeffreys' Map provided by the applicant

Extract of Modern OS Explorer Map showing comparative routes

Observations		Jeffreys' Map shows a line extending east out of Earby which may include all or part of the application route. This is not shown as a through route but is shown ending as it meets the higher ground. Jeffrey's Map shows a route to the north east of Earby extending in an easterly direction consistent with the alignment of a route further north known as Booth Bridge Lane, Gaylands Lane and Hawber Lane which still exists today.
Investigating Officer's Comments		Jeffrey's Map was a small scale commercial map, drawn to show the main routes used by the travelling public. A route extending east from Earby is shown which may include part or all of the application route but the route is not shown as a through route suggesting that it was not considered to be a significant public route at that time. The extension of the route may have existed as a route of lesser importance used predominantly on foot or horseback but was not shown. A route further north is clearly shown as a through route which crossed lower ground and this may have been the more regularly used, or easier route to use at that time.
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		Yate's Map of Lancashire does not show the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
John Tuke's	1787	Photocopy of early commercial map submitted by the applicant

Map		and annotated by the applicant with red pen to indicate the route claimed.
		
Observations		The application route is not shown although a route is shown extending east out of Earby which may have led to the application route. A route across the moor north of the application route is shown.
Investigating Officer's Comments		The application route, if it did exist, was not considered to be a significant through route used by the travelling public at that time. No inference can be drawn.
Smith's Map	1822	Charles Smith was a London engraver and map seller. Smith's and Cary's Maps are very similar but one is not the copy of the

		other as there are significant differences in detail. Smith calculated longitude from the London meridian, Cary from Greenwich but both appeared to have used common sources since both were aiming their publications at the same market – the increasing number of private and commercial travellers – so it is hardly surprising that they published similar maps.
		
Observations		A route is shown extending east from Earby but is more consistent with the alignment of part of Booth Bridge Lane, Gaylands Lane and Hawber Lane north of the application route.
Investigating Officer's		The route, if it did exist, was not considered to be of such significance as to be included on a small scale commercial map at

Comments		this time.
Teesdale's Map of Yorkshire	1829	Commercial map published by Teesdale and Stocking constructed from a survey commenced in 1817 and corrected in 1827 and 1829. It forms part of 9 separate sheets bounded together in one volume and stated by the publishers to have been published for 'the nobility, gentry and Clergy of Yorkshire'.
Observations		Moor Hall and Windle Field are shown, both of which still exist today. A route is shown passing between Marl Field and Windle Field which appears to end south of Marl Field. This route appears to correspond to the alignment of either part of Standridge Clough Lane - which leaves Birch Hall Lane from the start of the application route at point A or the route to Windle Field from point B but not the application route. The route to the north of the application route – which had been shown as a through route on earlier commercial maps - is shown as far as Booth House but is not shown as a through route. Gaylands Lane and Hawber Lane are not shown.
Investigating Officer's Comments		The application route may have existed in 1829 but the route did not appear to form part of a through route providing access to the public travelling by horse and cart/carriage.
Greenwood's Map of Yorkshire	1834	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 number of properties – including Marl Field – which is located to the north of the application route are shown but access to the various properties is not shown. The application route is not shown.
Investigating Officer's Comments		The application route may have existed in 1834 but the route did not appear to form part of a through route considered by Teesdale to be a significant route providing access to the public travelling by horse and cart/carriage.
David Charles Map	1840	Small scale commercial map submitted by the applicant.

Observations		The application route is clearly shown as part of a longer through route.
Investigating Officer's Comments		The application route existed in 1840 and is shown connecting to and consistent with the way that routes recorded as public vehicular highways are shown.
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		No inference can be drawn.

Officer's Comments		
Tithe Map and Tithe Award or Apportionment		Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		No records are deposited at the Lancashire County Records Office for the area crossed by the application route and no Tithe Map is listed as being in existence at the National Archives.
Investigating Officer's Comments		No inference can be drawn.
Private Inclosure Act	1819	A copy of The Private Act (Printed), 59 George III, 1819 c. 30 was obtained from the House of Lords. It is titled 'An Act for inclosing and exonerating from Tithes, Lands in the Manor and Parish of Thornton in Craven, in the County of York'.
Observations		The Act received royal assent on 14 June 1819. It concerns the inclosure of an area of land described as being of little economic value and known as Thornton Moor, Kelbrook Moor, Bleary Haugh and Howshaw covering an area of approximately 1000 acres. The Act appoints William Pilkington as the Commissioner for setting out and executing the provisions of the Act and refers to another Act passed in the 45th year of the reign of King George III (1805) which was an Act described as consolidating into one Act certain provisions usually inserted into Acts of Inclosure and for facilitating the mode of proving the several facts usually required for the passing of such Acts. There is also reference to the fact that any plans prepared as a result of the earlier inclosure purpose could, if it was appropriate, be used as part of the second inclosure process rather than commissioning a new map or plan. The 1819 Act gave the Commissioner, where he considered it to be necessary, the power to divert, stop up, alter or change any 'old public carriage roads or footways' except Turnpike Roads, leading into, through, over or upon the land to be inclosed or upon the old inclosures lying within the parish.
Investigating Officer's Comments		The parish of Earby was historically part of the old parish of Thornton in Craven which consisted of the 'modern' parishes of Thornton, Earby, Kelbrook and Harden. The Inclosure Act confirms that the appointed Commissioner had the legal power to create, divert or to stop up public highways including carriageways and footways but not Turnpike Roads. The Inclosure Act refers to an earlier Act (which has not been found). The Act does not specify the boundaries of the land affected by the inclosure process but it does not appear to have

		included the whole parish. It is not therefore certain that the inclosure would have included the land crossed by the application route.
Notice given in the Leeds Intelligencer	1819	Extract from local newspaper submitted by the South Pennines Packhorse Trails Trust.
Observations		The Notice was lodged (as required by the 1819 Act detailed above) giving notice of the Inclosure of land in the parish of Thornton by William Pilkington, who is described as the Sole Commissioner appointed by an Act of Parliament for the Inclosure of land in the parish of Thornton. The Commissioner states that he is giving notice that he has set out and appointed a public carriage road and public bridle and private carriage and occupation road described as Wentcliffe Head Road and Dodgson House Road. The route of Dodgson House Road is described as commencing at an ancient gate in land belonging to Henry Alcock, Esq. near Dodgson House and leading in a south east direction across Thornton Moor to the Township of Lothersdale. The Commissioner also gives notice that he has prepared a plan in which such roads are laid out and described and gives details of where the plan can be seen and how to object.
Investigating Officer's Comments		Neither route described in the Notice forms part of the application route. The application route does, however continue from point D across the moor to connect to Dodgson House Road although there is no indication in the Notice as to whether this route existed or was considered to be a public bridleway at that time. However, as Dodgson House Lane was created by the Inclosure process as a public carriage road, it appears reasonable to conclude that the route connected to an existing public carriage road beyond 'the ancient gate' if it were to provide a through route.
Thornton Inclosure Act Award and Maps	1825	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. A copy of the Inclosure Award and a plan believed to have been produced in 1825 as part of the Inclosure process were provided by the applicant.

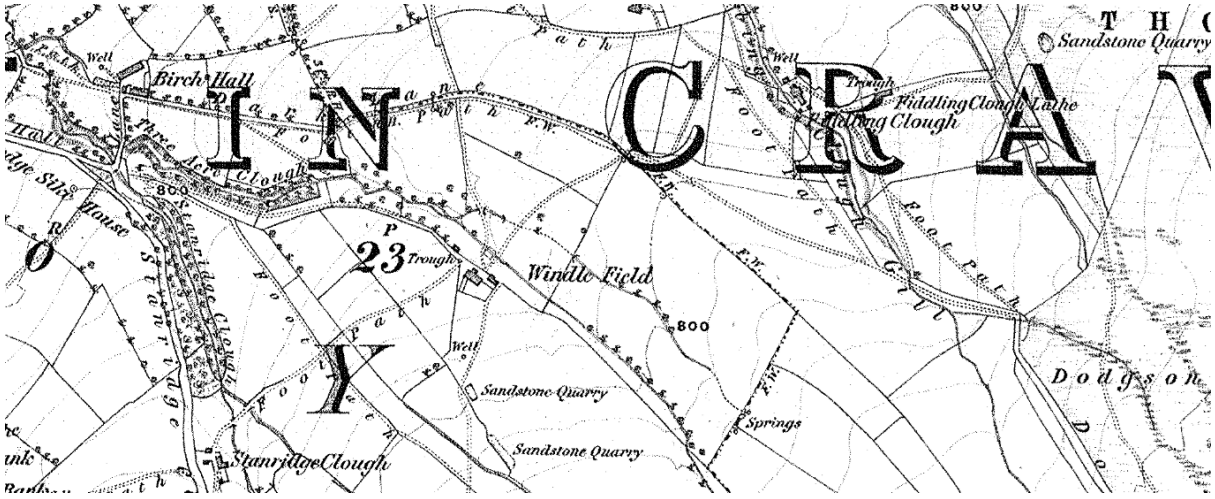
Observations		The application route is shown on the photocopy of the plan of the township titled as describing the allotments set out by the Commissioner under the Thornton Inclosure Award and dated 1825. The route is shown as part of a longer enclosed route extending east out of Earby and passing through points A-B-C and continuing towards point D. A small break is shown in the route between point C and point D but then the route continues through point D towards Fiddling Clough. There is no enclosed way shown providing access to Fiddling Clough or across the moor to join Dodson House Road. The application route is not named on the map. The map shows a large area (but not all) of the former parish and only in two small areas of the parish are fields and plots numbered; one being a strip of land to the west of Earby and the other being a small area right on the edge of the map south east of the application route and labelled as Thornton Moor. The key to the map is titled 'reference to small allotments' and lists owners, locations and size of numbered plots but does not give details for all the plots numbered on the map. The Inclosure Award provides details of both the public carriage roads set out under the Award and of Private Carriage Roads and provides details of widths and maintenance responsibilities. The application route is not listed as being a route that was either created, stopped up or diverted as part of the Inclosure process as

		either a public or private route. A private carriage road is named in the Award as Standridge Clough Road and is described as commencing at Dodgson House Road on Bleary Moor and leading in a north-westerly direction 'to an ancient lane leading to Standridge Clough'. From the description of this route and from an inspection of the Map it is possible that the 'ancient road' referred to could be the junction of Standridge Clough Road and the application route at point A.
Investigating Officer's Comments		At the time of the Inclosure process Thornton in Craven parish consisted of an area recorded as being in the region of over 5000 acres and the portion of the parish enclosed under the Award was about 1000 acres. From the information available it does not appear that the land crossed by the application route was included as part of the Inclosure process and it does not appear that the application route was created as part of that process. The Inclosure plan submitted however shows the route existed in 1825 as part of a clearly defined longer route leading out from Earby onto the moorland. It is not shown as a through route connecting to Dodgson House Lane although access may have been possible across the moor between the two routes. The route of Standridge Clough Road is described in the Award as a private carriage road between Dodgson House Road (a public carriageway) and 'an ancient lane' which appears to correspond to the junction of Standridge Clough Road and the application route at point A suggesting that the application route existed and was already considered as an old established route at that point.
Hobsons Map	1844	Poor photocopy of enlarged section of engraved privately produced commercial map submitted by the Applicant.
Map extract provided by applicant 		
Plate 41 Hobson's Foxhunting Atlas by J and C Walker		

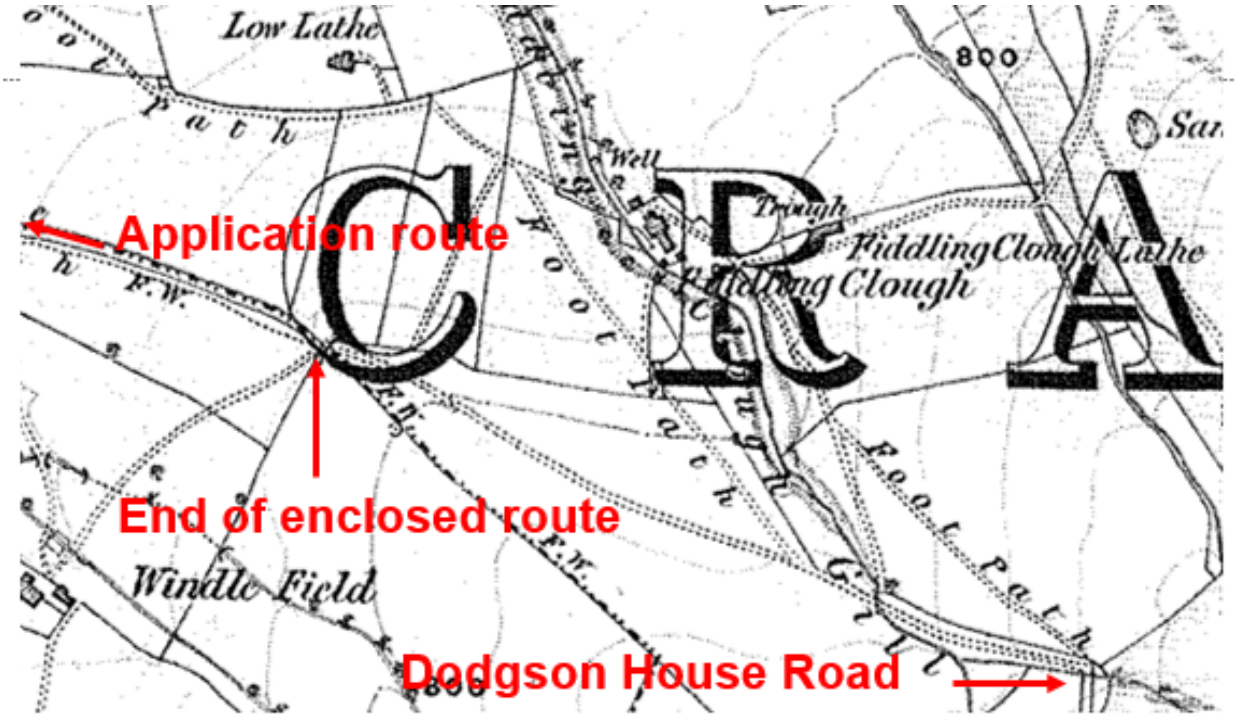
Observations		The map extract provided by the applicant was stated to show the application route. The extract is of such poor quality it is difficult to see whether part of the route is shown but it certainly doesn't appear to show the route as part of a longer through route across the moor. An online search by the Investigating Officer located a copy of Hobson's Fox Hunting Atlas by J and C Walker dated 1850. The atlas comprised of 42 County Maps produced in 1837 showing the meeting places for foxhunts across the country. The title page of the atlas stated that the maps also showed 'roads, railways, canals, parks etc., etc.' A copy of the map contained in the atlas has been enlarged and examined. It does not appear to be the same as the map extract provided by the applicant. The application route is not shown on the map contained within the atlas.
Investigating Officer's Comments		The application route was not considered by Hobson to be a significant route providing access to the public travelling by horse and cart/carriage in the mid-19th Century.
6 Inch Ordnance	1853	The earliest Ordnance Survey 6 inch map for this area surveyed in 1848-50 and published in 1853.[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

Survey (OS) Map Yorkshire Sheet 184		

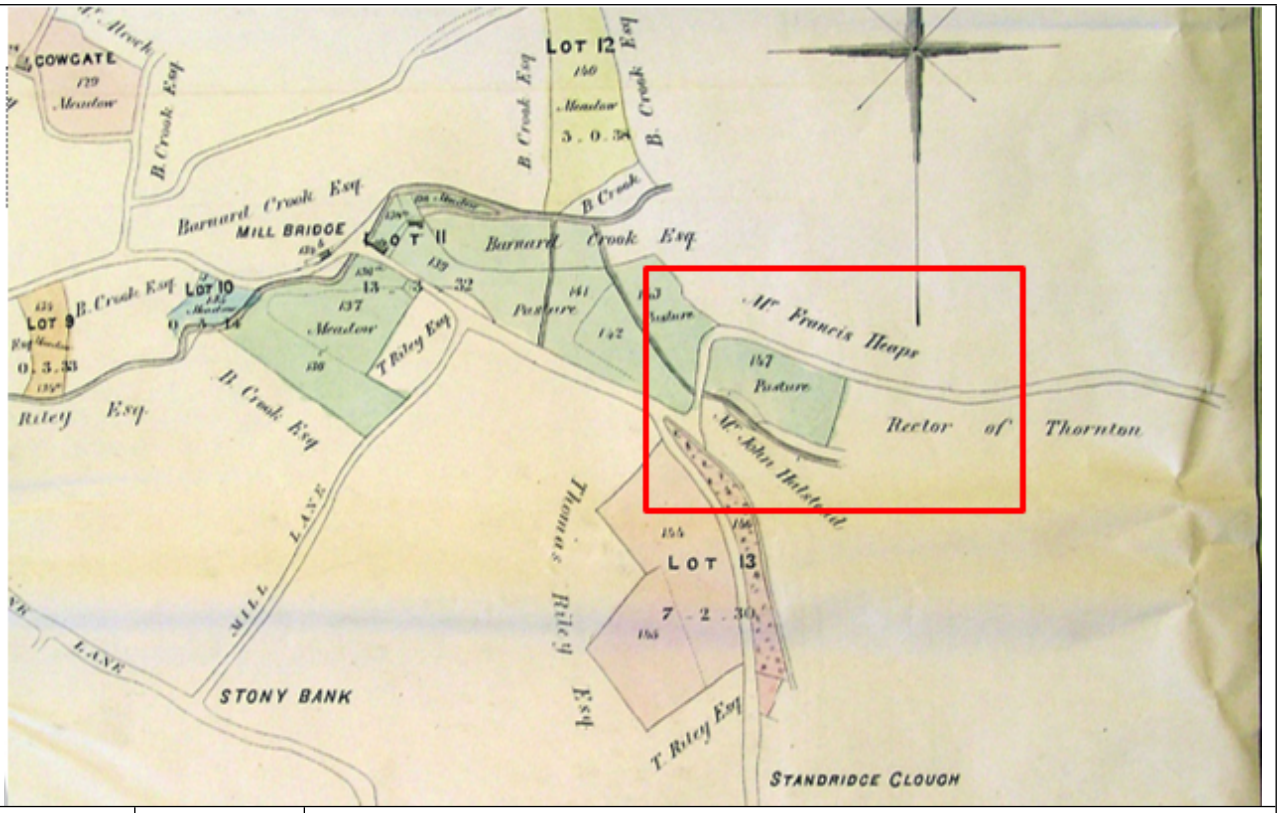


legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.



Observations		The earliest Ordnance Survey map available shows the application route as a bounded lane named as part of 'Birch Hall Lane' between points A-B-C and providing direct access to Birch Hall which was situated north east of point C. From point C the application route can be seen continuing east as a bounded route to point D and named as 'Dark Lane'. It continues through point D in an easterly direction as a bounded track to the corner of a field boundary. From this point (annotated as 'end of enclosed route' on map extract inserted above) an unbounded route marked by double pecked lines continues in a south easterly direction connecting to Dodgson House Lane. Branching off this route, in a north north easterly direction is a further unenclosed route providing access to Fiddling Clough. Running parallel to the application route between point C and point D is a pecked line annotated on the map as 'footpath' which continues to the end of the bounded route annotated as Dark Lane.
Investigating Officer's Comments		The application route existed in 1853 and appeared capable of being used on horseback. The route between point A-B-C provided access to Birch Hall (no longer in existence) but also continued as an unrestricted but enclosed route between point C and point D and beyond. A footpath is shown to exist running parallel to Dark Lane (the application route between point C and point D) up until the point where the route is no longer enclosed (east of point D) from whence an unbounded track connecting to the bounded route known as Dodgson House Road is shown. The geography of the route may explain why a footpath existed running parallel to the enclosed section of Dark Lane as an

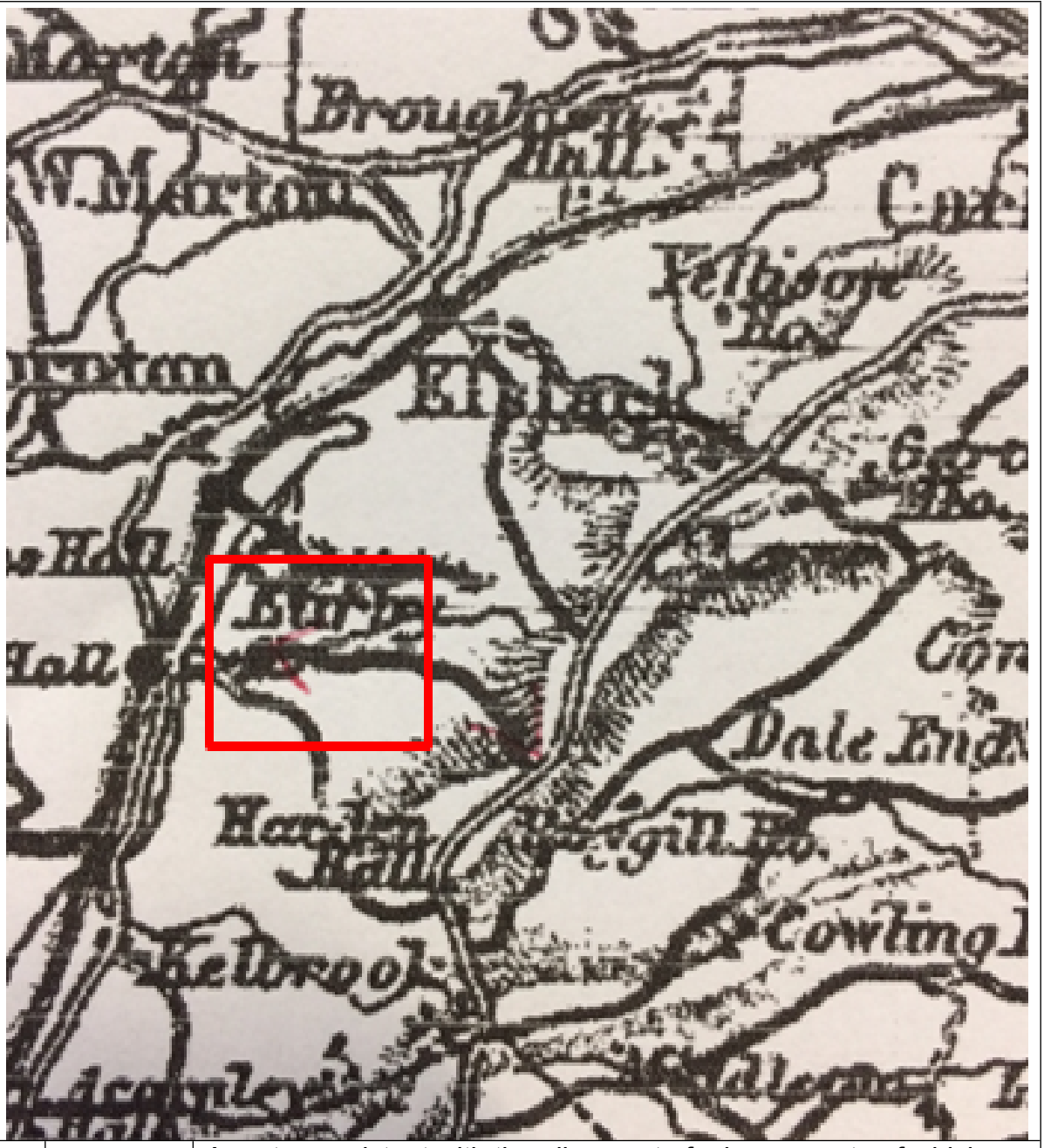
		inspection of the route confirms that it is sunken and enclosed and in winter not have been suitable underfoot for pedestrians (i.e. wet and muddy in comparison to the well-drained land above). Such an arrangement is not uncommon. The fact that both the lane and a parallel footpath are shown to exist suggests a considerable level of use.
6 Inch OS Map	1896	OS map at a scale of 6 inch to the mile. Surveyed in 1892 and published in 1896.
Observations		The application route is shown as part of a longer route consistent with the way that it was shown on the earlier edition of the 6 inch map with a footpath marked running parallel to the route between point C and point D (and beyond). A bench mark is marked on the route close to point C, a further one is marked midway between point C and point D and a another located further east from point D on the enclosed section of Dark Lane. Beyond the enclosed section of Dark Lane east of point D a quarry is shown adjacent to the unenclosed track. Birch Hall north of point C is not shown suggesting that it no longer existed.
Investigating Officer's Comments		The application route existed as part of a longer route in 1896. Bench marks were located along a line of levelling, and often followed lines of communication. However, they can also be found on rocks in the middle of private land. Consequently it cannot be assumed that a bench mark is indicative of a public right of way.
Auction Sale Plan	1857	Details of the sale of 2400 acres of land in the Manor of Midhope and Manor and Rectory of Thornton were found online. The auction was to be held at the Devonshire Arms Hotel, Skipton on 19 October 1857. The Sales brochure was accompanied by a plan titled 'Plan of Earby and Kelbrook Estates 1857'.



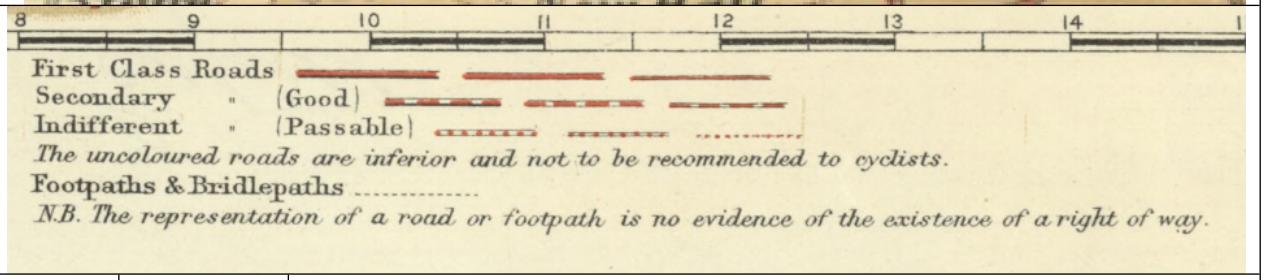
Observations		The plan shows the application route as part of a longer route. It is not named on the plan. Land on either side of the application route between point A and point C is coloured and numbered as parts of lots 11 and 13 but the application route is not included in either plot.
Investigating Officer's Comments		The application route existed in 1857 and is shown as a wide enclosed route forming part of a longer route suggesting that it would have been capable of being used by horses and possibly horse drawn vehicles at that time. The route is not referred to in the sale documents but it can clearly be seen that lot 11 comprised of land on either side of the route but did not include the route itself suggesting that the route was considered not to be part of the land either side at that time.
Cassini Old Series Mapping	1842-1859	Extract of the Blackburn & Burnley Sheet 103. 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 application route is shown as part of a longer route and depicted in the same way as the public vehicular highway network.
Investigating Officer's Comments		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.
1 inch OS Map	1896-99	Annotated photocopy submitted by the applicant. 1 inch OS Map described as 'Road Map' revised 1896-99 and published 1912

Observations		The application route is shown as part of an uncoloured longer route connecting coloured routes now recorded as public vehicular routes.
Investigating Officer's Comments		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, as suggested by the title, 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.
Henry Speight 'Upper Wharefdale' Map	1900	Photocopy of enlarged small scale commercial map published in 1900.



Observations		A route consistent with the alignment of a longer route of which the application route formed part is shown.
Investigating Officer's Comments		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 at the start of the 1900s 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.
Bartholomew Map Sheet 6 - Harrogate	1906	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.
		
Observations		The application route is shown on the map as part of a longer through route. It is shown as an uncoloured road which is described in the key as being inferior to roads shown by a series of red dashes or dots and not to be recommended for cyclists.
Investigating Officer's Comments		The original scale of the map (half inch to the mile) means that only the more significant routes are generally shown. The route is clearly shown as part of a longer through route and is indicated as being a road as opposed to a footpath or bridleway. Whilst the map does not indicate whether the road was considered to be public or private its inclusion on the map as a through route linking other public vehicular routes suggests that it was considered as

		such and that it was capable of being used as such at that time. The fact that the route was not recommended for cyclists (when an alternative was available further south) is not surprising as the route passes along a sunken track adjacent to which there is evidence that the public walked along an adjacent path and due to the fact that the route crossed an area of moorland.
Cassini New Series Mapping	1903-1904	An enlarged reprint of a map first published in 1903-1904 and based on the OS 1 inch mapping.
Observations		The application route is clearly shown on the map as part of a longer route which appeared to connect to Dodgson House Road.
Investigating Officer's Comments		The application route existed as part of a longer route in the early 1900s and was considered to be sufficiently important to be included on a commercially produced small scale map sold to the public suggesting not only that it existed but that it was capable of being used by the public at that time.
6 inch OS Map	1910	Further edition of the 6 inch map, revised in 1906 to 1907 and published in 1910.
Observations		The application route is shown as part of a longer route and remains unaltered from earlier editions of the OS map. The quarry

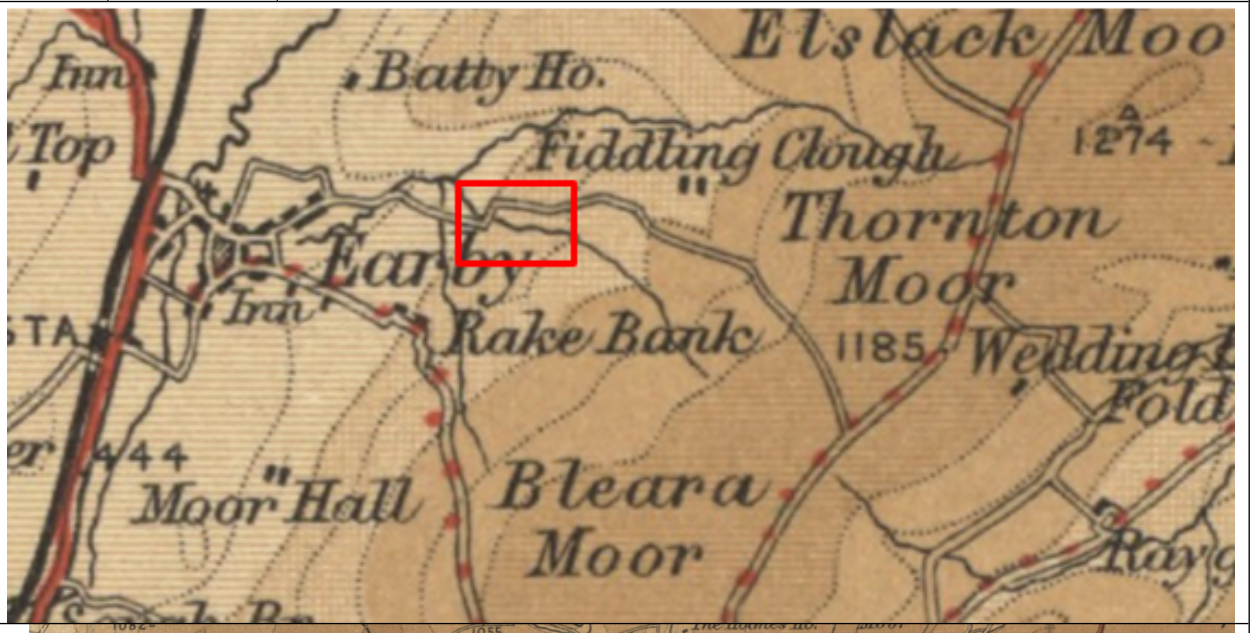
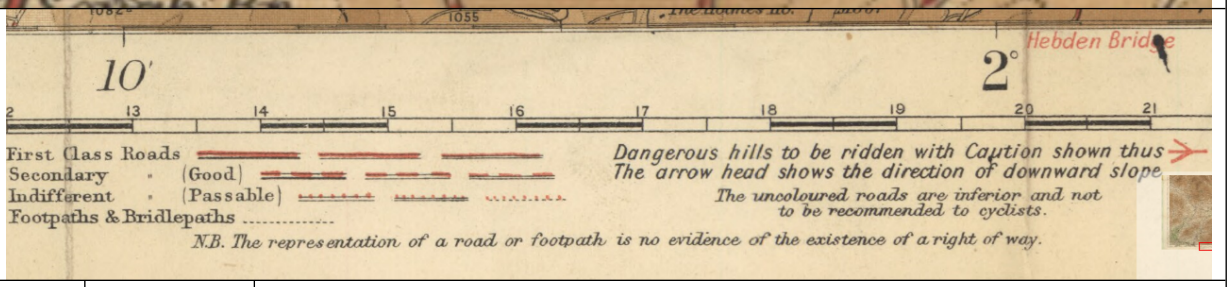
		workings at the eastern end of the enclosed section of Dark Lane are described as 'old quarries'.
Investigating Officer's Comments		The application route existed as part of a longer route in 1910 and appeared to be capable of being used. If the route had previously provided access to a quarry it now appears that the quarry has ceased to be in operation but that the route was still in existence.
Finance Act 1910 Map	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted. Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable). An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.

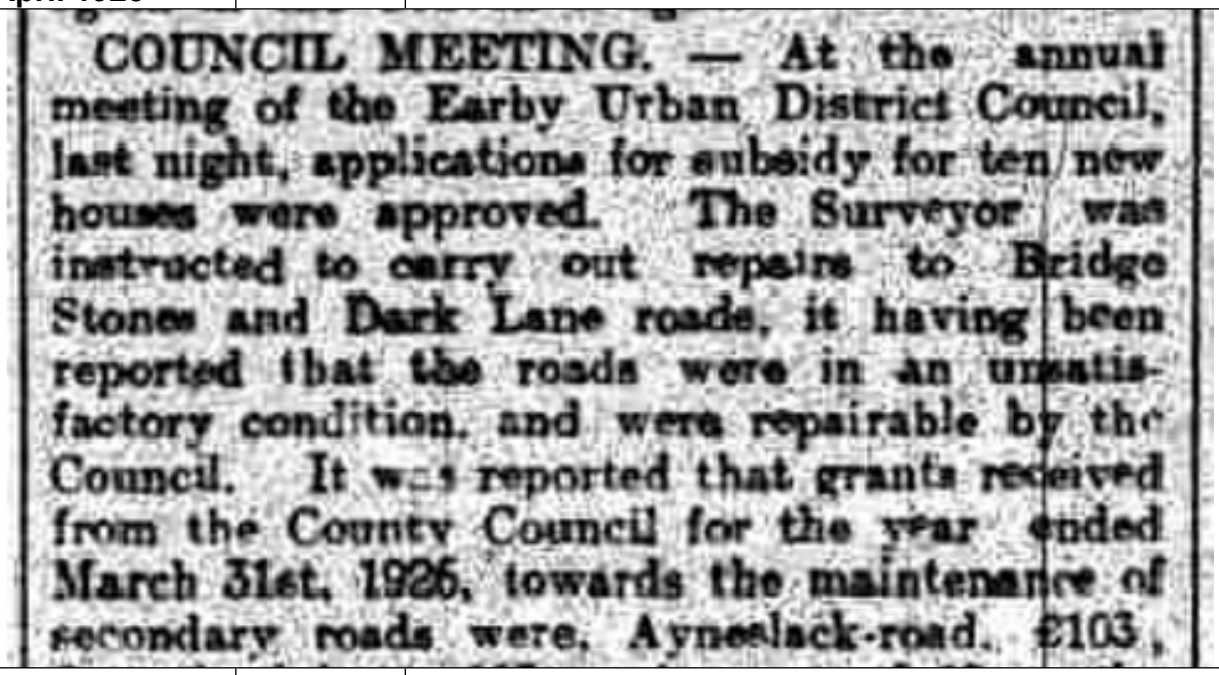
Waterfall
296
7·208
293
3·504
F.P.
298
10·013
294
3·871
B.M.539·7
B.M.587·6
C
Hall Lane
607
295
1·471
338
1·810
333
2·183
639
D
670
676
A
550
580
331
2·128
B
Three Acre Clough
339
5·211
332
1·923
330
·491
334
1·255
Scale 1/2500
PRICE 2½ NET

Low Laithe
Fiddling Clough
D
A
Three Acre Clough
Old Quarries
Windle Field

Observations		There are no Finance Act records available to view for the area in the Lancashire County Records Office. Finance Act maps were obtained from The National Archives with three separate maps having been viewed (scales are different or different authority information). The whole of the application route is shown excluded from the adjacent hereditaments (plots) beyond point D and up to the point where the enclosed route meets a gate and continues across the moor as an unbounded track. The Field Book entry for plot 42 – through which the continuation of the route beyond the enclosed section ran was described as 'Fidling Clough, Thornton' and comprised of 106 acres of land. It was listed as being owned by Reverend A E Ayer and occupied by John Lowcock and access to the property was described as being 'really bad'. A deduction of £18 was listed as being made for public rights of way or user and under the heading 'Charges, Easements and restrictions affecting market value' was written 'Footpaths £18'.
Investigating Officer's Comments		The exclusion of the application route from the taxable hereditaments is good evidence of, but not conclusive of, public carriageway rights. 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 routes considered to be public footpaths or bridleways at that time to be included in the numbered hereditaments for which a deduction would be claimed. The maps showed land in private ownership and, by implication, land not included within numbered plots, including this route, were not taxable. In this case it is likely to be because the route was for use by the public. The continuation of the route from point D through to the end of

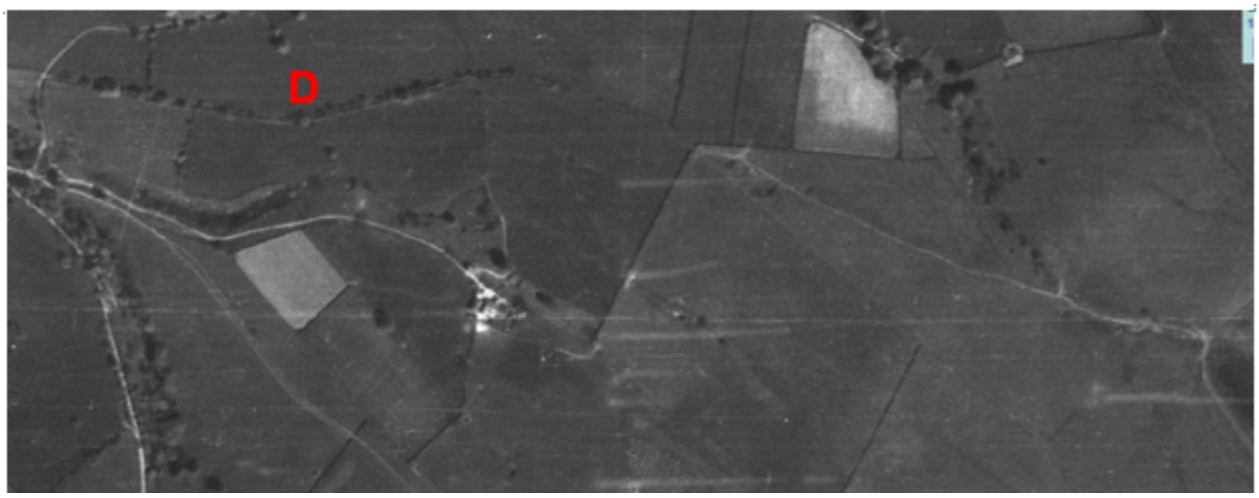
		the enclosed section at SD 9245 4677 is also shown as being excluded but beyond that point the section of the route across open moorland was included in a numbered plot (42) for which a deduction was made for the existence of a route or routes described as footpaths. Access to Fidling Clough is described in the Field Book as being 'really bad' but it is not known whether this relates to access across the 106 acre plot itself or whether it refers to access along either the application route or another route. The details in the field book relating to plot 42 confirm that routes described as public footpaths existed across the plot but do not support the view that a public vehicular route existed across the moor at that time.
Scarborough's Map of Yorkshire (engraved)	1913	Photocopy of a further commercial map submitted by the applicant. The green and yellow colouring on the map is thought to have been added by the applicant.
Observations		A route consistent with the alignment of a longer route across the moor is shown of which the application route forms part.
Investigating		The application route existed as part of a longer route in the early

Officer's Comments		1900s and was considered to be sufficiently important to be included on a commercially produced small scale map sold to the public suggesting not only that it existed but that it was capable of being used by the public at that time.
Bartholomew 1/2 inch map	Published 1919-1924	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.
		
		
Observations		The early 1900s saw a significant increase in the use of motorised vehicles and the classification of minor roads was constantly being revised by Bartholomew as some were improved to cope with the increasing traffic while 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 the time considered adequate for horse drawn vehicles, to be shown. The application route is shown on the map supporting the view that it physically existed in the 1920s.

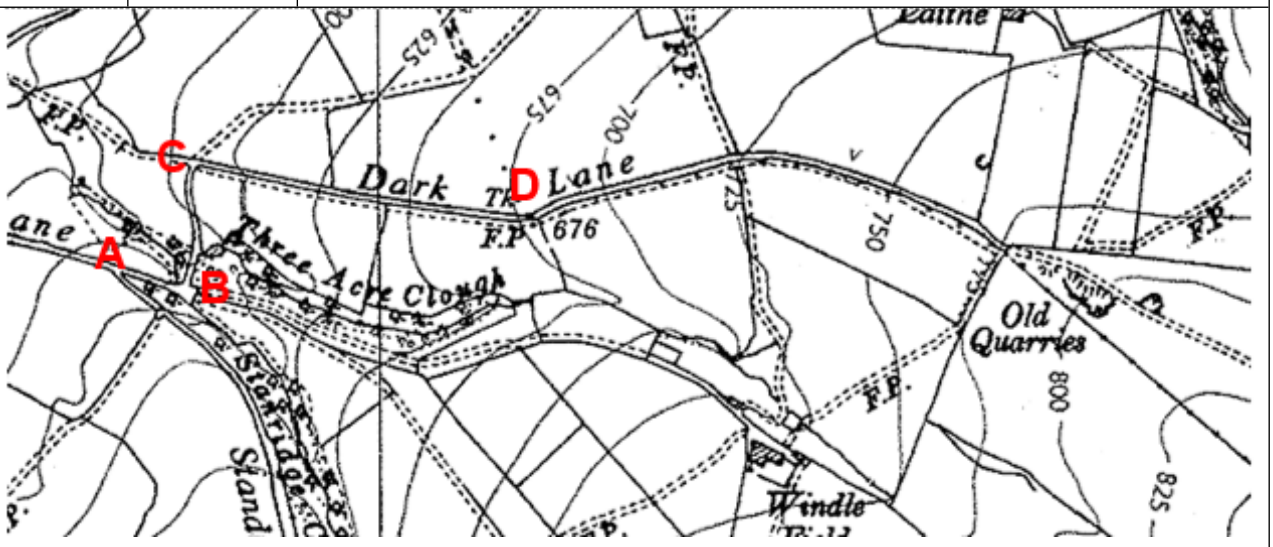
Investigating Officer's Comments		The application route existed in the 1920s as a significant route and appeared capable of being used on horseback and possibly with vehicles. It was not marked up as being a route considered suitable for cyclists at that time but it is noted that a number of short routes through Earby village are not marked as being suitable for cyclists either and it appears that the route marked up for cyclists (south of the application route) may have been chosen as the preferable route across the moor for cycle tourists.
Extract from the Burnley News Saturday 18th April 1925	1925	Newspaper extract detailing the Annual Meeting of Earby Urban District Council submitted by the South Pennines Packhorse Trust.
 COUNCIL MEETING. — At the annual meeting of the Earby Urban District Council, last night, applications for subsidy for ten new houses were approved. The Surveyor was instructed to carry out repairs to Bridge Stones and Dark Lane roads, it having been reported that the roads were in an unsatisfactory condition, and were repairable by the Council. It was reported that grants received from the County Council for the year ended March 31st, 1926, towards the maintenance of secondary roads were, Ayneslack-road, £103,		
Observations		It was reported that the Surveyor of Earby Urban District Council was instructed to carry out repairs to 'Dark Lane' because it was in an unsatisfactory condition and was repairable by the Council. The extent of the route described as 'Dark Lane' was not specified but the route between points C and D is shown on Ordnance Survey maps published both before and after this time is labelled as 'Dark Lane'.
Investigating Officer's Comments		The application route between point C and point D was publicly maintainable in 1925 and was described at a meeting of Earby Urban District Council as a 'road' suggesting that it was considered to be a public vehicular route at that time.
6 Inch OS Map	1948	Further edition of 25 inch map, revised in 1938 and published in 1948.

Observations		The whole of the application route is shown as part of a longer through route with the section between point C and point D named as 'Dark Lane'. A footpath is shown running parallel to the application route between point C and point D.
Investigating Officer's Comments		The application route existed in the 1940s as part of a longer route.
Aerial Photograph[2]	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

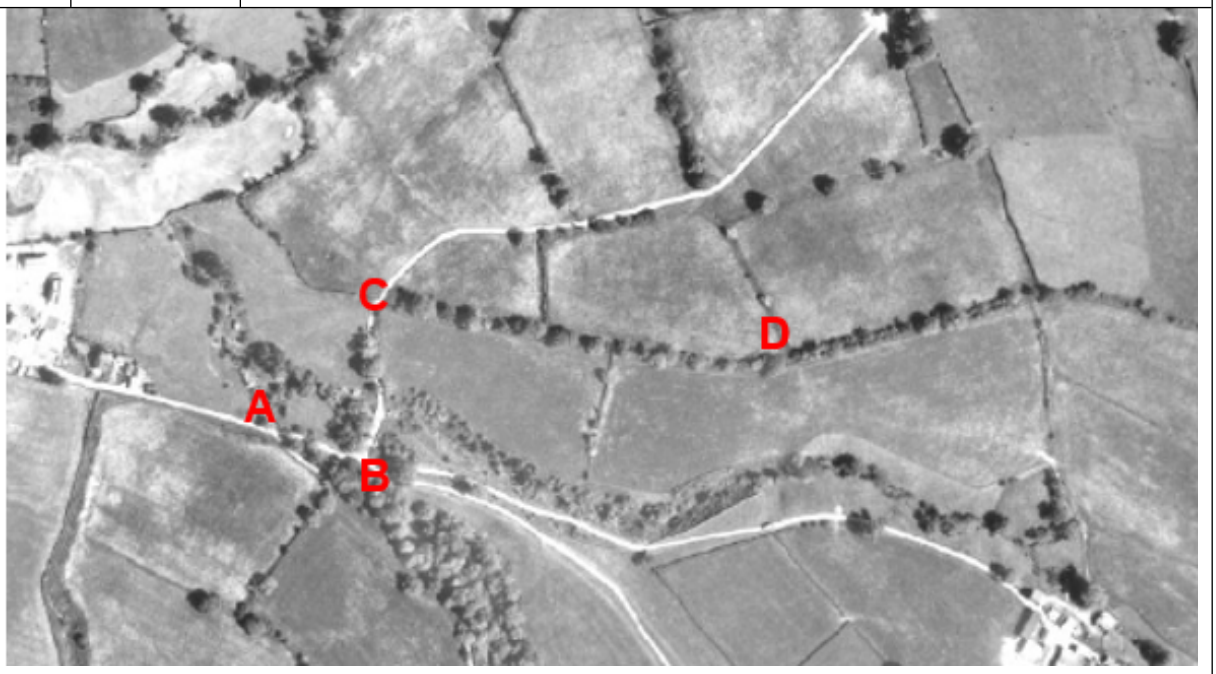
[2] Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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



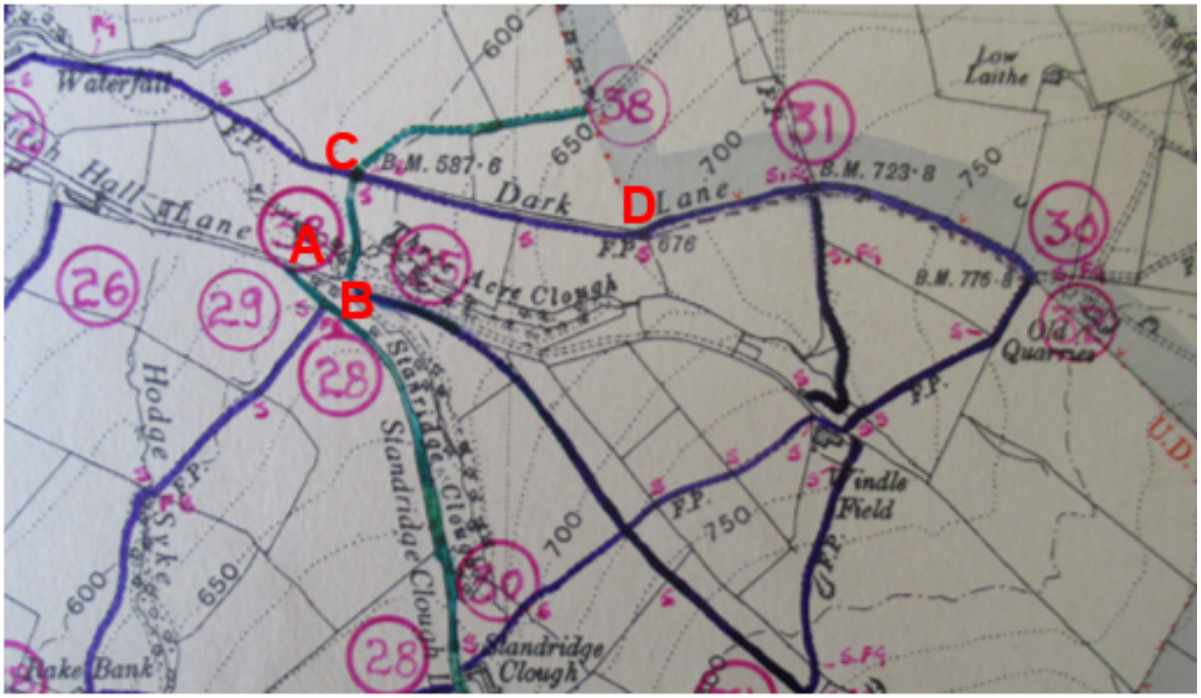
Observations		The application route can be clearly seen between points A-B-C. between points C-D it is possible to see the line of route but because it is a sunken tree lined route it is not possible to see whether it was capable of being used at that time. The route of the public footpath running parallel to the application route between point C and point D is visible. East of point D where the continuation of the application route leaves the sunken track to continue across open moorland a route is clearly visible linking through to Dodgson Lane.
Investigating Officer's Comments		The application route between points A–B-C existed and appeared capable of being used by horses and by vehicles. It is not possible to see whether the route between point C and point D was accessible due to tree cover but it is clear that the parallel footpath was receiving a significant level of use at that time.
6 Inch OS Map	1956	The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



Observations		The application route is shown as part of a longer route. It is named on the map as Dark Lane between point C and point D. A

		footpath is shown and labelled 'F.P' running parallel to Dark Lane.
Investigating Officer's Comments		The route existed in 1956 and may have been capable of being used.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.
		
Observations		The application route can be clearly seen as part of a longer route between point A-B-C. The outline of the route can be seen between point C and point D but it is not possible to see whether the route was accessible.
Investigating Officer's Comments		The route existed in the 1960s and appeared to be capable of being used by horses and vehicles between points A-B-C. Between point C and point D it is not possible to see whether the route was capable of being used.

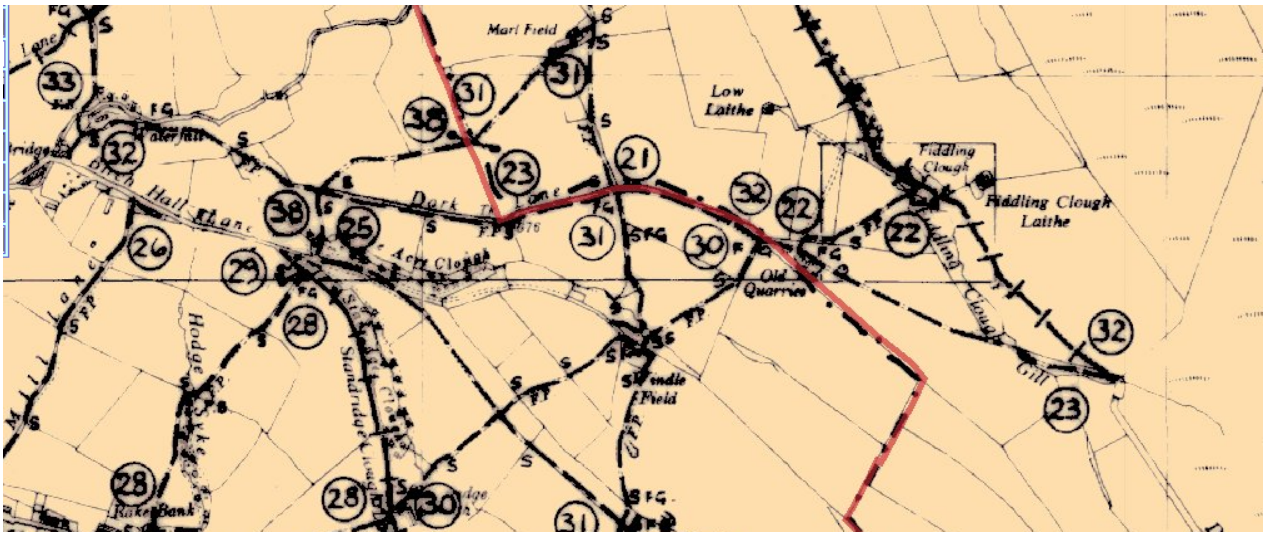
Aerial Photograph	2014	Aerial photograph available to view on GIS.
Observations		The application route can be seen as part of a longer route between point A-B-C. The outline of the route can be seen between point C and point D but it is not possible to see whether the route was accessible.
Investigating Officer's Comments		The route existed in the 2014 and appeared to be capable of being used by horses and vehicles between points A-B-C. Between point C and point D it is not possible to see whether the route was capable of being used.
Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required all highway authorities to prepare a Definitive Map and Statement of Public Rights of Way. At the time that the Definitive Maps were originally prepared Earby was an Urban District Council in the West Riding of Yorkshire. When the area became part of Lancashire as part of the Local Government reorganisation in 1974 records relating to the preparation of the Definitive Map were passed to Lancashire County Council and the current record – the Revised Definitive Map and Statement (First Review) was prepared.
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.

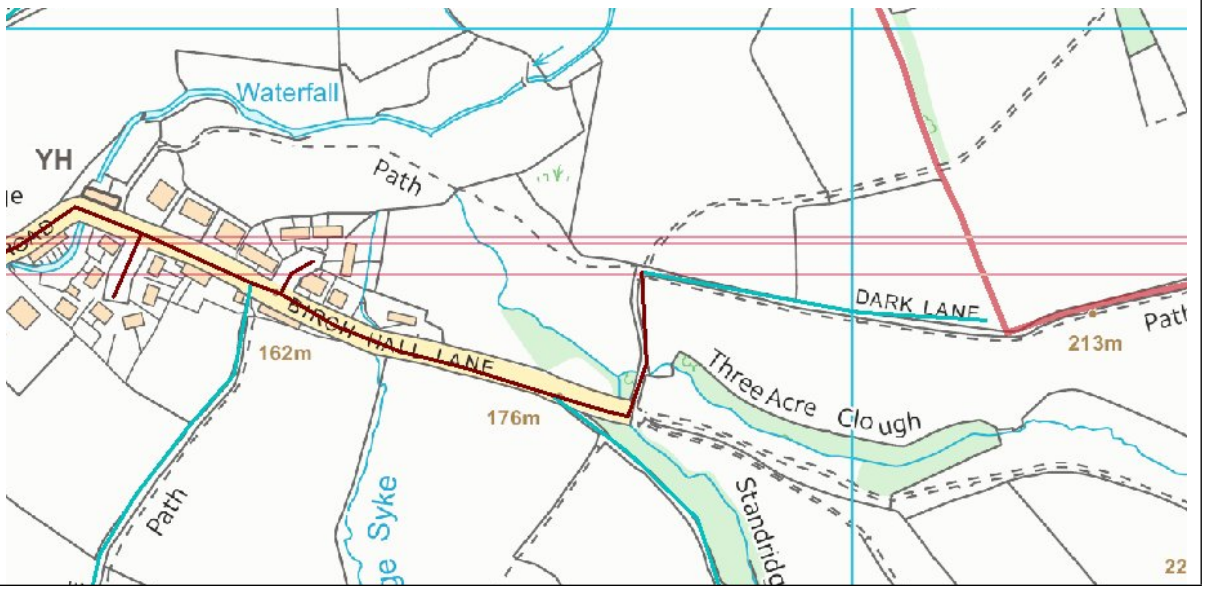
Observations		Parish survey maps and cards were not prepared for the area crossed by the application route.
Draft Map		The Draft Maps for the West Riding of Yorkshire were given a "relevant date" (22nd September 1952) and notice was published that the draft map for the West Riding of Yorkshire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 6th June 1953 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 Draft Map does not show the application route between point

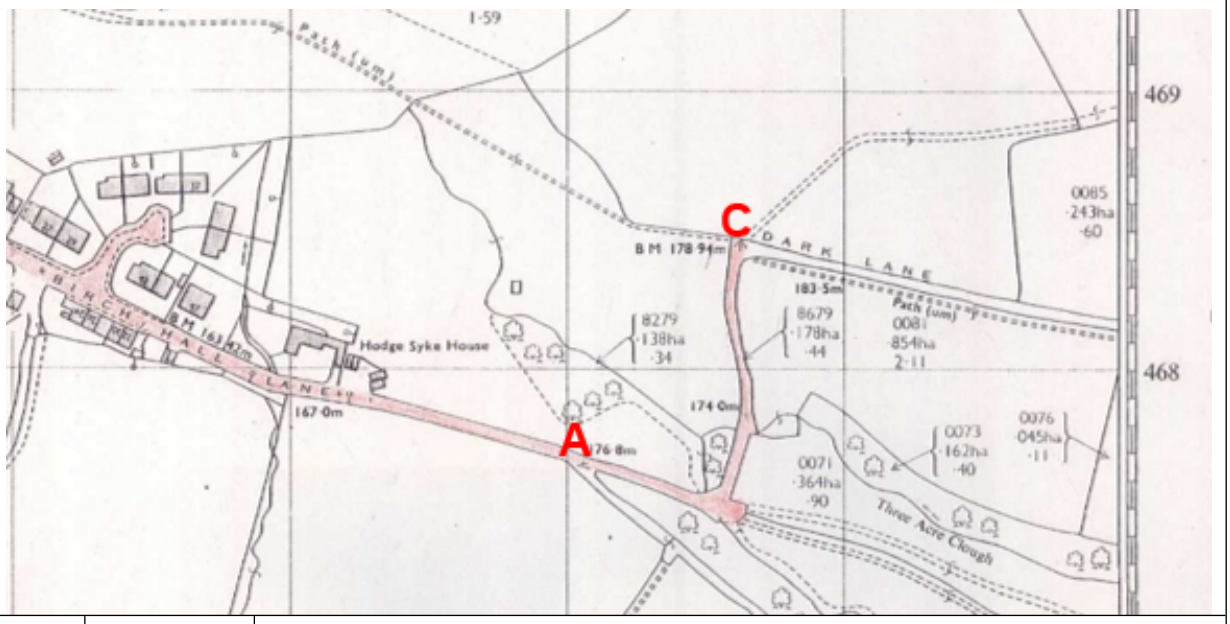
		A and point B. Bridleway 38 and Footpath 25 are shown to start from the route at point B. Between point B and point C the application route is recorded as part of a route coloured green and numbered 38. The accompanying draft statement for the route numbered 38 states 'Bridle Road from Three Acre Clough near Birch Hare Lane, north eastwards crossing No. 32 to the Urban District boundary.' A pencil has been used to cross out 'Bridle Road' and replace it with 'Footpath' and to cross out 'Hare' and replace it with 'Hall'. The surface of the route is described as being grass. From point C a purple line is shown extending along the start of Dark Lane (the application route) for approximately 30 metres and then the thick purple line appears to cross over the southern boundary of Dark Lane to run along the field edge parallel to Dark Lane to point D from where it is shown to continue within the boundaries of Dark Lane. It is numbered on the map as Footpath 32 and three stiles (marked with the letter 's' are recorded on the map between point C and point D. The Draft Statement for Footpath 32 states 'Footpath commencing at Mill Bridge on Birch Hall Lane and proceeding eastwards alongside Dark Lane to the junction of Dark Lane and the Urban District Boundary at old quarries.' The Statement for Footpath 31 describes the route as commencing at Lower Verjuice Bank and proceeding northwards to Windle Field 'continuing to Dark Lane'.
Investigating Officer's Comments		Between point A and point B the application route appears to have been to be a public route not to be recorded on the Definitive Map (i.e. a public vehicular route) from which three routes recorded as public footpaths or bridleways were drawn. Between point B and point C the application route initially appears to have been recorded as a Bridle Road but was then altered to Footpath with no record of the reason for this change being found. Between point C and point D it appears that the route recorded as Footpath 32 ran alongside Dark Lane not along it although the thick purple pen used to draw the route onto the base map shows the footpath in the lane for the first 30 metres east of point C. Three stiles are recorded to exist along the route recorded adjacent to Dark Lane– as opposed to gates – suggesting that the footpath was accessible to pedestrians but not horses.
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 1970, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.

Observations		The application route is not recorded as a public right of way between point A and point B or between point C and point D. It is recorded as a public footpath 23 between point B and point C. No representations were made to the County Council about the application route.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1973 (Relevant Date 22 September 1952).

Observations		The route was shown in the same way on the First Definitive Map as on the Provisional 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 25th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published by Lancashire County Council with a relevant date of 1st September 1966. This Map included the parishes of Grindleton and Sawley which now formed part of Lancashire although these would have had a relevant date inherited from West Riding. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.



Observations		When the Map and Statement were reviewed the route was shown in the same way as it had been shown on the (West Riding) First Definitive Map.
Investigating Officer's Comments		Following the alteration of Footpath 38 being initially recorded as Bridle Road to being shown as a Footpath on the Provisional Map, there is no indication that the route was considered to be a public right of way between points A-B and C-D or that the route between points B-C was considered to be of any higher public status than public footpath by the Surveying Authority. The fact that Dark Lane is named in the Statements prepared as a Lane to which a number of public footpaths connected or ran alongside suggests that it may have been considered as a route carrying higher public rights.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded. 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. 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.
		



Observations		The section between point A-B-C is recorded as being publicly maintainable on the List of Streets by the County Council.
Investigating Officer's Comments		Although section A-B-C is coloured consistently with other public vehicular highways this is not conclusive evidence of more than footpath rights as the purpose was to show what highways were publicly maintainable. Similarly the lack of colouring of Dark Lane indicates it was not considered publicly maintainable without precluding it being highway.
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 orders have been found in relation to the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		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). 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).
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 a landowner under this provision of non-intention to dedicate public rights of way over their land.
The existence of a boundary stone at point D		Boundary stone marking the boundary between Skipton Rural District and Earby Urban District Council.
Observations		There is a boundary stone indicating the boundary between Skipton Rural District Council and Earby Urban District Council at point D on the application route which was referred to by the applicant as providing evidence of its public status.
Investigating Officer's Comments		The existence of the boundary stone on Dark Lane suggests that the route was public at some point in the past because the provision (and maintenance) of such a stone at public expense would only be appropriate where it made a material difference such as on a highway, particularly but not only, a publicly maintainable highway. If Dark Lane had been for private use only there would be no purpose in a boundary stone in the holloway and it would be reasonable to expect one only by the footpath, particularly as the corner in the boundary was there, according to the maps.
'Life at Fiddling Clough in the 1920's and 30's' by Stephanie Carter		Online article about the history of the area in direct proximity of the application route was found on an online website dedicated to the history of the Pendle area at https://www.oneguyfrombarlick.co.uk/viewtopic.php?f=59&t=14391
Observations		The article describes life at Fiddling Clough – a property which, now derelict, is located east of the application route and which would have been accessed from Earby along the application route. The article describes the property as being located "below Dodgsons, at the top of Dark Lane, in Thornton Parish". It explains that the property was once owned by Thornton Church and then purchased in 1919 by Amos Nelson of the Gledstone Estate. The farm was rented out to tenant farmers in the 1920s and 30s and sold by Amos Neilson in 1949 to Tom Lumb. At the time that the article was written it was stated that the house was derelict and

		owned by David Wood of Oakslack. The article states that in the 1920s and 30s Dark Lane was passable for horses and carts but that it is now overgrown and impassable. It also explains that Fiddling Clough is set in a deep ghyll near the edge of the moor and there were two ways in and out - from Earby up Dark Lane and from Lothersdale left at Dodgsons Lane. Once a year a motor rally would make its way down Dodgsons Lane, across the moor and down Dark Lane. The article also describes how the children went that way to Earby on foot sometimes taking Dark Lane for shelter but mostly using the fields. Dark Lane was also used for driving pigs to market where they met the wagon at Brigstones (near point C).
Investigating Officer's Comments		The article provides useful information regarding the history of the area in the early 20th Century and in particular life at the farm which was accessed from the application route. It appears that the full length of the application route was accessible in the 1920s and 1930s and was used to access the farm but also appeared to be a known route across the moor from Earby through to Dodgson Lane. Dark Lane is named and there is reference to a car rally and route being a driveable through route by car in the 1920s (but not by wagon which collected the pigs at the end of Dark Lane). There is no indication whether the car rally was by right or permission. Similarly the use for herding pigs indicates it was passable but not whether it was private or public.

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

Landownership

Ownership of the land crossed by the application route between point A-B-C is not registered with the Land Registry and is unknown.

Ownership of the land crossed by the application route between points C-D is registered with the Land Registry as being owned by Suzanne Joy Beresford of Deerstone House, Windlefield Farm, Birch Hall Lane, Earby, Barnoldswick, Lancashire BB18 6JY.

Summary

The site evidence supports the view that the application route could have been used and probably has been used by the public on horseback and possibly with horse drawn vehicles and mechanically propelled vehicles between points A-B-C.

The route between points C-D is known historically (and still today) as Dark Lane and the site evidence clearly supports the view that it is a very old (sunken) route. It is not currently accessible due to fencing and overgrowth, but if cleared of overgrowth would be wide enough for horses and small carts to use.

The route is currently recorded as an unclassified county road between points A-B-C, a footpath between point B-C and there is no recorded public status between point C-D. There is no reason to suppose that the tarmac unclassified road, which is part of the road network, has lesser rights at this point than the same road with the same surface further into Earby, and therefore A-B-C remains an all-purpose highway which should not be added to the Definitive Map and Statement.

It is the view of the Investigating Officer, that on appraising the evidence available, there is no single piece of documentary or map evidence which provides compelling evidence that the route should be correctly recorded as a public bridleway, or restricted byway, and it is therefore necessary to look at the evidence as a whole over a long period of time to try to establish what, if any, public rights exist.

Additional information has been looked at to the information available (and/or relevant) to the application determined by North Yorkshire County Council for the continuation of the route beyond point D.

There is a significant body of both map and documentary evidence supporting the physical existence of the route since at least the early 1800s, and a degree of conjecture that it had existed for a long time prior to that. The route did not appear to be a significant or primary route from Earby if travelling east and routes to the north and south of the application route are shown consistently on the early commercial maps suggesting that they – and not the application route – provided the main public vehicular routes east to west. This may, in part, be due to the fact that the continuation of the through route beyond point D crossed open moorland and was less suitable for use by the public.

The application route is clearly shown on an 1825 map, produced as part of the Inclosure process, but was not created as part of the Inclosure process. Its inclusion on the map of the township, in the same manner as other routes which now have public vehicular status suggests however, that it existed and was capable of being used on horseback and possibly by horse and cart and the route is clearly shown as a substantial through route on the private commercial map produced by David Charles in 1840.

The full length of the application route is clearly shown on all editions of the OS mapping from 1853 through to the current day as part of a longer route, connecting public vehicular highways and providing access to a number of properties, and the section between points C-D is consistently named on the maps (Dark Lane) suggesting that it would have been capable of being used by the public on horseback and possibly with horse and cart.

The application route is shown in the same way as the public highway network on an auction plan dated 1857 with land on either side of the application route being sold – but not the route itself. The route is then shown on a series of commercially produced small scale maps, produced in the late 19th and early 20th Century, suggesting possibly that the route had become better used during that period.

The whole of the application route was excluded from the numbered hereditaments on the Finance Act plans which is good (but not conclusive) evidence of a route

considered to carry public vehicular rights and ties in with the fact that the route was maintained by Earby RDC as a 'road' in the 1920s and that a boundary stone was placed within it (at point D). The route beyond point D across the open moor was not excluded or referred to as a public bridleway or road, but a deduction of £18 was claimed for 'footpath' and access to Fiddling Clough was described as being 'really bad'.

When the Definitive Map was prepared in the 1950s, the first part of the route (between point A-B) was not included – most probably because it was an all-purpose road. The section from point B to point C is also tarmac, although the route was described as having a grass surface in the Draft Statement. It was originally recorded as a public bridleway and then amended to a footpath although the reasons for this change are unknown.

The application route between point C and point D (Dark Lane) was not recorded, suggesting that Earby District Council either considered the route to be private or that it was a public vehicular route which would not be recorded on the Definitive Map and Statement. There are references in the Definitive Statements to footpaths meeting Dark Lane (FPs 30 and 31 Earby) or running parallel to Dark Lane (FP 32 Earby) suggesting that Dark Lane was considered to be a road of some sort and consistent with the information identified which provided details of Dark Lane being maintained by Earby Urban District Council as a road.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant submitted the following evidence in support of their application:

1. Extract of the Revised Definitive Map (First Review)
2. Extract of the Thornton Inclosure Award Map 1825 and transcript of the Inclosure Award
3. Area Highways Map
4. OS Map dated 1839
5. OS Map dated 1913
6. OS Map dated 1940
7. Public Rights of Way Schedule 1949
8. OS Map dated 1954
9. OS Map dated 1956
10. OS Map dated 1971
11. Notes on Dark Lane by H Tattersall
12. Multi Map 2005
13. Photographs of the route
14. Evidence Forms

Additional evidence was submitted at a later date:

1. OS Map dated 1940
2. Jeffrey's Map 1775
3. John Tuke Map 1787

4. Greenwoods Map 1834
5. OS Map 1840 reprinted by David Charles
6. Hobson Map 1844
7. 6 inch OS map published 1845
8. 6 inch OS map published 1892
9. H Speight Map published 1900
10. 1 inch OS Map published 1912
11. Scarborough's Map of Yorkshire, 1913

The Maps and historical evidence submitted have been considered earlier in this report.

The evidence forms submitted are dated between 1994 and 1997.

User 1

Explained that he was 70 years old (in 1994) and that as a boy and man had lived at Dodgson's Farm with his parents and used the route from Birch Hall Lane from 1928 to 1947 on a daily basis on foot and on horseback to go to school, and to get to the shops. He believed the route to be public and described its status as 'horse and cart track'. He refers to the route linking to Dodgson's Lane and the existence of two gates – 1 at the bottom of Dodgson's Lane and 1 at the top of Dark Lane. He explains that the route became obstructed by overgrowth in approximately 1939, and that when he lived at the farm the lane was maintained by Skipton Rural District Council from the boundary stone eastwards and by Earby Urban District Council westwards.

User 2

An 83 year old retired school teacher. Used the route as part of a longer route through to Dodgson's Lane and believed it to be a cart track and regarded the route as public. He had known the route all his life and refers to using it himself on foot as a child from 1915 up until 1941, but also refers to others using it on horseback and with farm carts. He states that the route was never blocked until it got overgrown by trees following World War II (1939-45). He also explained that 'Mr Holden' lived with his parents and family at Fiddling Clough which was served by the lane as a boy and young man and refers to the existence of the boundary stone on the route at point D.

User 3

An 83 year old retired farmer. Used the route as part of a longer route through to Dodgson's Lane and then on to the Colne/Skipton Road. Explains that he had known the route for 80 years and believed it to be public. He used the route between 1921 and 1940 on a daily basis for school, work and to buy produce and refers to using the route on foot and with horse and cart. He states that Dark Lane was maintained by Earby UDC to the boundary stone and beyond by Skipton RDC.

User 4

Was 86 years old when he completed the form and stated that he had known the route, which he described as the road to Dodgson and Fiddling Clough all his life. He stated that he believed the route to be public and that he frequently used it 'pre-war' for walking and bilberrying. He refers to tarmac being tipped on the route during the war years and that the route was the only way down to Earby by the nearest route from Dodgson's and Fiddling Clough.

User 5

An 80 year old retired male nurse. He refers to route as the road to Dodgson and Fiddling Clough and says that he had known the route all his life and believed it to be public. He states that he used the route 'pre-war' for walking and picking bilberries but had seen horses and carts on the route. He states that in the war years the route was obstructed to avoid invasion. He states that he was told that it was a county road.

User 6

Refers to use of the route for 58 years and describes it as an old road, and that the lower part has become overgrown and is now only useable as a path through the fields which he used two or three times a year and believed to be public.

Information from the Landowner

No information has been provided by the registered landowners.

Information from Others

Whilst Pendle Borough Council are in support of the application to record Dark Lane as a public bridleway, they question what measures are in place to continue the route beyond the Lancashire Boundary.

Earby Town Council object to the application and have raised a number of concerns, namely:

- Concerns as to the risk of accident between points A-B-C of the route due to its narrowness should horses and cyclists be allowed access in addition to the farm vehicles and walkers which they claim already use this section of the route.
- The impact on wildlife should there be increased traffic along the route, in particular due to the trees which have been planted adjacent to the route.
- With regards to the section of the route C-D. The effects on the biodiversity of the site which would be caused by opening this up, the costs of clearing it and the safety of users. Reference is also made to deer in the area which require the cover of the trees for their safety and to thrive.

Response from Lancashire County Council's Public Rights of Way Team

In response to the issues raised by Pendle Borough Council and Earby Town Council outlined above, the Public Rights of Way Team have confirmed as follows:

- With regards to the comment made by Pendle Borough Council. The Public Rights of Way Team are in contact with the Public Rights of Way Officer for North Yorkshire County Council. Should the application be accepted by the Lancashire County Council and an Order made and confirmed for Dark Lane up to the County Boundary as shown on the Committee Plan between points C-D then North Yorkshire propose to re-visit the historical evidence for making a Definitive Map Modification Order to connect to C-D or to discuss with the relevant landowners the creation of a link.
- With reference to the concerns expressed by Earby Town Council, namely with regards to the width of the route, safety of users and the impact of opening up the route C-D. The Lancashire County Council are not seeking to create new public rights but to record public rights deemed already to exist. As such, issues regarding the width of the route, sustainability of the route, impact on wildlife and biodiversity, whilst important issues regarding the future use or management of the route are not relevant to the making or confirmation of the Order. Concerns with regards to the width of the route, safety of users and the necessary work required to make the route useable can be considered in respect of the future management of the route should an Order be confirmed.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

- User evidence
- Map and other documentary evidence supporting the physical existence of the route since at least the 1800's
- Absence of evidence of gates/fences/stiles along the route in question
- Absence of signs and notices along the route
- Absence of action taken by landowners to discourage the use of the route

Against Making an Order(s)

- Relatively low user numbers if considering user evidence
- Inability to clearly see the route C-D on aerial photographs due to obstruction from overgrowth.

Conclusion

The claim is that the route is already a bridleway in law and should be recorded as such on the Definitive Map and Statement.

Committee should note that whilst not currently recorded on the Definitive Map that the tarmac section of the claimed route between points A-B-C is already recorded as an unclassified publicly maintainable highway on the List of Streets and remains an all-purpose highway. It is suggested that there is no reason to assume that this part of the route has lesser rights than further along the same stretch of road having the same surface and therefore the section of the route A-B-C should not be added to the Definitive Map and Statement. In view of this the following evaluation relates to the route C-D only.

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 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 bridleway.

From at least the early 1800's there is significant map and documentary evidence of the route having existed and having continued beyond point D into North Yorkshire. However, Committee will note the decision of The North Yorkshire County Planning and Regulatory Functions Committee on 22nd June 2012 not to make an Order in respect of the continuation of Dark Lane from point D into the North Yorkshire Boundary. However, as noted in the Summary section of this Report, should this application be accepted by Lancashire County Council and an Order be made and confirmed, it is the intention of North Yorkshire County Council to re-consider the historical evidence for making an Order to connect to the route C-D.

The early map evidence also indicates that the route appeared to be capable of being used on horseback and horse and cart and records appear to present a consistent view of the claimed route being a section of a through highway route, indeed it is shown as a substantial through route on the private commercial map produced by David Charles in 1840. Further to this the route is consistently shown on the Ordnance Survey maps from 1853 onwards, as a route connecting public vehicular highways and providing access to properties, albeit the section of the route C-D becomes much less visible due to overgrowth. It is considered that where as in this instance a named route passing through a named hamlet and connecting to a network of other public highways would on balance have been at the very least a public bridleway.

The Finance Act Map 1910 also adds further weight, although not conclusive that the route under consideration had public carriageway rights and the existence of the boundary stone at point D provides further an indication that the route was public at some point in the past.

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. However, should committee have any reservations as to the strength of the map and documentary evidence it may wish to also consider whether deemed dedication under S31 Highways Act 1980 or inference at common law can be satisfied from the user of the route.

Looking secondly 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.

Looking at the evidence it is suggested that the route was called into question in 1939 when it became obstructed by overgrowth. Whilst reference is made by users to the presence of stiles and gates along the route, of the users who made such reference there is no evidence to show that these were located within the claimed route in question. Where users have marked the said gates on a map appended to their user evidence form these markings do not fall within the claimed route but rather are situated beyond point D within the North Yorkshire boundary. Other users do not specify exactly where the gates and stiles are located and provide no map in support. In any event none of the users state that the stiles or gates prevented use of the route. It is therefore considered that the period of use from which dedication can be deemed would be 1919-1939.

Six user evidence forms have been submitted. Of the six users, all users have claimed to have used the route during the period under consideration providing clear evidence of use over the 20 year period. All six users claim to have known and used the route and beyond point D over the North Yorkshire border to 'the shooting box on the Colne Skipton Road', to Dodgson Lane and to Dodgsons Farm and the Moor Road on foot on a regular basis 'as of right' with one user claiming to also have used the route on horseback, another by horse and cart and one user making reference to use of a vehicle and cycling. The main purposes stated for use of the route include travelling to school, shopping and bilberrying. Whilst there are a relatively low number of users in this instance, 5 of the 6 users make reference to having witnessed other users using the route both on foot and on horseback/with horse and cart None of the users state that they have ever asked permission to use the route or refer to having ever been turned away. None of the users saw signs or notices along the route.

Whilst the route C-D is not currently accessible due to fencing and overgrowth, if cleared this would be wide enough for use by horses and small carts.

In response to Consultations representations were received from both Pendle Borough Council and Earby Town Council, with Earby Town Council also objecting to the application. These have been addressed in the Summary section to this Report above and whilst they are acknowledged, it is submitted that for the purposes

of this application the concerns raised are not relevant considerations under either S31 Highways Act 1980 or under Common Law.

Taking all of the evidence into account, the Committee on balance may consider that the provisions of section 31 Highways Act can be satisfied and there is also sufficient evidence on balance from which to infer dedication at common law of a bridleway in this matter and the claim can be accepted in part.

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.

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: 804-507		Claire Blundell , 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A