**Regulatory Committee**

Meeting to be held on 27 September 2017

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| Electoral Division affected:  Rossendale East |

**Wildlife and Countryside Act 1981**

**Definitive Map Modification Order Investigation**

**Addition of and Upgrade to Bridleway from Blackwood Road and Newchurch Road to Acre Mill Road, Bacup, Rossendale Borough**

File No. 804-520

(Annex ‘A’ refers)

Contact for further information:

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| Executive Summary An application for the addition of a bridleway and upgrade to bridleway of Footpaths Bacup 651 and 527 (part) from Blackwood Road and Newchurch Road to Acre Mill Road, Bacup, Rossendale Borough on the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-520. RecommendationThat the application for the addition of and upgrade to bridleway, in accordance with File No. 804-565, be accepted in part.  1. That an Order(s) be made pursuant to Section 53(2)(b) and Section 53(3)(b) and Section 53(3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981 to add a bridleway and upgrade to bridleway Footpaths Bacup 651 and 527 (part) on the Definitive Map and Statement of Public Rights of Way, as shown on the Committee Plan between points A-B-C-D-E-G, C-H-I-J-K-L-M and J-O-N. 2. That, being satisfied that the test for confirmation can be met the said Order(s) be promoted to confirmation if necessary by submission to the Secretary of State. 3. That the application for sections D-H and E-F be not accepted |

**Background**

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a bridleway and upgrade to bridleway of Footpaths Bacup 651 and 527 (part) from Blackwood Road and Newchurch Road to Acre Mill Road, Bacup, on the Definitive Map and Statement of Public Rights of Way.

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 sets 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 evidence shows that:

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

An order for adding a way 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 once 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 such as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists. The decision may also be that the routes to be added or deleted vary in length or location from those that were originally considered.

# Consultations

Rossendale Borough Council

Rossendale Borough Council has been consulted and no response has been received, therefore it is assumed that they have no comments to make. They are landowners of the central sections of the route and of the bridge over the river at K

Parish Council

There is no Parish Council for the area affected.

Applicant/Landowners/Supporters/Objectors

The evidence submitted by the applicant/landowners/supporters/objectors and observations on those comments is 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.

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| **Point** | **Grid Reference (SD)** | **Description** |
| A | 8526 2160 | Line of posts at edge of Blackwood Road (U7778) south of Blackwood Bridge |
| B | 8535 2159 | Junction of path with Footpath Bacup 257 south of Brandwood Footbridge |
| C | 8535 2161 | North end of Brandwood Footbridge (adjacent to wooden fence) |
| D | 8535 2162 | Made up path at the rear of 21 Blackwood Court. |
| E | 8533 2168 | Junction of narrow path with wider path on dismantled railway |
| F | 8532 2171 | Junction with Newchurch Road (A681) between properties 302 and 304 Newchurch Road |
| G | 8527 2166 | Junction with Blackwood Road (U7778) |
| H | 8536 2161 | Unmarked point on made up path |
| I | 8544 2168 | Footbridge across tributary stream flowing into River Irwell |
| J | 8548 2170 | Area laid with setts forming staggered cross-roads of paths north of River Irwell |
| K | 8550 2166 | Corner at north east end of footbridge over River Irwell |
| L | 8550 2160 | Junction of Footpaths Bacup 651 and 529 by corner of derelict mill |
| M | 8563 2158 | Open junction with Acre Mill Road (U7799) |
| N | 8544 2179 | Junction with Newchurch Road (A681) between Rose 'n' Bowl public house and Toll Bar Business Park |
| O | 8547 2172 | Footbridge crossing tributary leading into River Irwell |

**Description of Route**

A site inspection was carried out in February 2017.

The application to record the route as a public bridleway was submitted in 2011 but a site inspection was not carried out until 2017 (i.e. 6 years after the status of the route was brought into question by submission of the application). As the evidence submitted with the application consists of user evidence pre dating 2011 this should be borne in mind when considering details of the site inspection and when viewing the site photographs presented to Committee.

The application route consists of a network of paths exiting onto public vehicular highways at 5 separate points, with parts of the route following alongside the River Irwell. The route is signed and promoted as part of Stacksteads Riverside Park and part is also recognised as the Irwell Sculpture trail.

Part of the route is recorded as public footpath (between points B-C and points N-O-J-K-L-M). The remainder of the route has no publicly recorded status.

Part of the route (between points A-B-C-H-I-J-K-L-M) has also been identified as part of the East Lancashire Cycleway but is not currently recorded as cycleway or bridleway.

Section A-B (not currently recorded on Definitive Map and Statement)

The route starts at the edge of Blackwood Road where a line of posts and a police notice indicate that vehicles are not permitted (point A). The route, signed as part of Stacksteads Riverside Park leading to Bacup and Lee Quarry, runs east for 80m along a 2m wide tarmac path separated by fences from the River Irwell on the north and woodland on the south. Here (point B) the route turns north by another Stacksteads Riverside Park finger post.

Section B-C (recorded as Footpath Bacup 527)

The route crosses Brandwood footbridge, 1m wide and 9m long, over the River Irwell.

Points C-D-E-G (not currently recorded on Definitive Map and Statement)

From the north end of Brandwood footbridge (point C) the route follows the east side of a tall wooden fence separating the public grassed area from the gardens of Blackwood Court for about 15m north north east (point D) then in a more northerly direction joining a stone surfaced path which it follows to beyond the northerly boundary of Blackwood Court, curving round onto the line of the former railway running west south west, 3-4m wide, past the junction with a cut-through to Newchurch Road (point E) and a further 65m to a row of bollards, 2 being drop-down to allow maintenance access (point G).

Section E-F (not currently recorded on Definitive Map and Statement)

From the old railway (point E) this section of the route runs north along a short path, through a 1m wide gap in fencing and onto a tarmac access road, serving the rear of properties on Newchurch Road, passing between numbers 302 and 304 to join Newchurch Road (point F).

Section D-H & C-H-I-J (not currently recorded on Definitive Map and Statement)

From the north end of Brandwood footbridge (point C) another section of the route follows a tarmac path, 1.5m wide, east north east for 13m (point H) where it is joined by another arm of the route running from near the fencing of Blackwood Court (point D) south east across the grass to the tarmac path (point H). The route follows the tarmac path for a further 100m north east, running parallel to the River Irwell; it is joined by a stone path leading from the old railway and passes some stone sculptures and picnic tables. It crosses a 2.7m long bridge (point I) with a non-slip surface and continues for a further 40m to an area laid with setts and a junction with other paths forming a staggered cross roads (point J).

Section N-O-J-K-L-M (Recorded as Footpath Bacup 651)

From a junction with Newchurch Road between the Rose 'n' Bowl public house and Toll Bar Business Park (point N) the route follows a tarmac access road and footway south south east gradually downhill to where the footway continues as a 1.5m wide bridge (point O) over a stream flowing into the River Irwell. The road used to cross via a ford which is now fenced off at either end. The route continues briefly as a flagged footway and sett surfaced road through the staggered cross-roads junction (point J) with the section of route described above (C-H-I-J) and immediately afterwards another path running east. The route bends to run south east with a tarmac surface between stone walls for 40m then turns south west (point K) over a 2.4m wide bridge over the River Irwell and immediately south on a tarmac and sett path to the east of an all-weather sports pitch for 50m to a junction at the corner of a derelict mill (point L). The route turns east south east on a 3m wide track surfaced with setts which in places have been patched with tarmac. The route follows this track between the old mill on the north and a wall on the south for 80m then east for a further 50m bounded on the north by the garden fences of Acre Park to join Acre Mill Road where a rusty metal barrier restricts the width (point M).

Summary

Access is available to pedestrians, horse riders and cyclists from any entrance/exit onto the application route, from Newchurch Road, Blackwood Road, or Acre Mill Road and such use does not appear to be prevented at any point consistent with the user evidence and a horse rider and hoof prints were observed at points along the route.

The bridge between points B and C was quite narrow for equestrian use but appeared passable.

The triangle of paths claimed between points C-D-H is an open area of grass with only section C-H on a tarmac path and no current trod elsewhere.

**Map and Documentary Evidence**

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| **Document Title** | **Date** | **Brief Description of Document & Nature of Evidence** |
| **Yates’ Map**  **of Lancashire** | 1786 | Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown. |
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| Observations |  | The route under investigation is not shown. |
| Investigating Officer's Comments |  | The route did not exist as a major route at that time. It may have existed as a minor route but due to the limitations of scale, this would not have been shown. Therefore no inference can be drawn. |
| **Honour of Clitheroe Map** | 1804-1810 | A privately produced map of land owned by the Honour of Clitheroe – Henry Duke of Buccleuch and Elizabeth Duchess of Buccleuch. It specifically shows the boundaries of coal leases granted by them. 'Roads' were identified in the key but there was no apparent distinction between those which may have been considered to be public or private. |
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| Observations |  | The river Irwell forms the boundary of the land contained within the map and those parts of the route under investigation to the north of the river are not shown. |
| Investigating Officer's Comments |  | The route did not exist as a major route at that time. It may have existed as a minor route but due to the limitations of scale, this would not have been shown. Therefore no inference can be drawn. |
| **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. |
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| Observations |  | The route under investigation is not shown. |
| Investigating Officer's Comments |  | The route did not exist as a major route at that time. It may have existed as a minor route but due to the limitations of scale may not have been drawn. |
| **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 71/2 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. |
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| Observations |  | The route under investigation is not shown. |
| Investigating Officer's Comments |  | The route did not exist as a major route at that time. It may have existed as a minor route but due to the limitations of scale may not have been drawn. |
| **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 line for the East Lancashire Railway (now dismantled) is located approximately 160 metres from the application route. No documentation from this or any proposed railways or canals in the vicinity was found showing the area crossed by the application route.  The railway operated from 1852 through to 1968 and there is reference online to the tracks being removed as early as 1969 <http://www.disused-stations.org.uk/s/stacksteads/> |
| Investigating Officer's Comments |  | That part of the route following the dismantled railway between point G and point E and parts of the route between point E and point F and point D and point E could not have existed until 1968 at the earliest. |
| **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 |  | There is no Tithe Map or Apportionment available to view at Lancashire Archives for the area of Bacup. |
| Investigating Officer's Comments |  | No inference can be made. |
| **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 Act Award or Map available to view at Lancashire Archives for the area of Bacup. |
| Investigating Officer's Comments |  | No inference can be made. |
| **6 Inch Ordnance Survey (OS) Map** | 1849 | The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1849.[[1]](#footnote-1) |
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| Observations |  | Access appears unobstructed but not marked between point A and point B continuing east past point B along a track to point L.  From point B there is no access shown across the River Irwell along the application route and the route between points H-C-D-E-F, much of which was in the mill pond, and G-E and H-I-J are not shown.  The application route is shown from point N extending south east to cross a watercourse at point O via a 'Foot Bridge' and continues to near point K crossing a further bridge described on the map as 'Foot Bridge'. A route depicted by double dashed lines then continues south, partly consistent with the application route but then veering in a south westerly direction to join a track to the west of point L. This track passes through point L and then appears to continue east along the route claimed towards Acre Mill and point M. |
| Investigating Officer's Comments |  | Access may have been available along several parts of the route in 1849 (A-B, N-O-J-K and L-M) but it is not possible to determine whether access was available on horseback – particularly as there is reference to footbridges at point O and south west of point K. |
| **25 Inch OS Map** | 1893 | The earliest OS map at a scale of 25 inch to the mile was surveyed in 1891 and published in 1893. (sheet no. 72/15) |
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| Observations |  | The map shows that there has been significant development of the area crossed by the application route since the beginning of the 1800's.  The application route between point A and point B does not appear to be accessible and is not shown. From point B the route to point C follows the line of the Lancashire and Yorkshire Railway (Bacup Branch) across the River Irwell and was not accessible on foot or horseback. From point C-D-E-G the application route is on the route of the railway and would not be available.  The access at point F is shown as access to the rear of a row of terrace properties and hotel but there is no access along the application route from point F to point E.  There is no evidence from on the map of the application route along the northern bank of the River Irwell being in existence between point C-H-I-J.  A route largely consistent (except for the footbridge near point K) with the application route from point N-O-J-K-L-M passing under the railway between point O and point J with the route between point M and point L providing access to a row of cottages (Moss cottages). |
| Investigating Officer's Comments |  | The route under investigation appears to have existed along the length N-O-J-K-L-M in 1893 (with the exception of the bridge near point K repositioned by 4m in 2005) and may have been capable of being used on foot and on horseback. The rest of the application route did not exist in 1893. |
| **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. |
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| Observations |  | Finance Act records were not available to view in the County Records Office. Maps deposited at the National Archives show the route between point A and point B largely contained within hereditament 4774 with the access to the rear of the cottages at point A being shown excluded from the numbered hereditaments and shown in the same manner as Blackwood Road.  Part of the map showing the area crossed by the application route from point B-C-D and G-E has been damaged but it does not appear that any of the land crossed by those routes has been excluded from numbered plots with the exception of the route from point F towards point E where the access route from point F providing access to the rear of some terraced houses has been excluded.  The route between point N and point O is shown excluded from the numbered hereditaments from Newchurch Road to the railway. Between point O and point J the route passes under the railway line which is included in hereditament 5323 (the railway) but the route itself is probably still excluded.  From point J-K-L the route is excluded from the numbered hereditaments along with the River Irwell and from point L at Moss Cottages through to point M the application route is also excluded. |
| Investigating Officer's Comments |  | A copy of the relevant Field book entries have not been located at the National Archives.  The fact that most of the route between point N and point M is shown excluded from the numbered hereditaments is good evidence that in 1910 the surveyor completing the initial valuation, and the adjoining landowners in completing the appropriate forms as part of the Finance Act process, either considered that part of the route to be outside the boundary of their ownership or that it was a public highway that should be exempted from the valuation process. Routes believed to be either public footpath or bridleway were normally included within numbered hereditaments so the fact that this part of the route was excluded may provide good evidence that public vehicular rights may have existed along this part of the route. In the absence of any other supporting evidence it may, however be that the route comprised largely of a shared access road that none of the adjoining landowners claimed to own and which may or may not have also carried public rights of some sort. |
| **25 Inch OS Map** | 1910 | The second edition of the OS map at a scale of 15 inch to the mile. Re-surveyed in 1891, revised in 1909 and published 1910 |
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| Observations |  | The second edition 25 inch Ordnance Survey map shows the area largely unaltered from when the map was first published in 1893 with the exception of the fact that both the exception of a footbridge and ford crossing are marked at point O. |
| Investigating Officer's Comments |  | The route under investigation appears to have existed along the length N-O-J-K-L-M in 1910 (noting the subsequently repositioned bridge near K) and may have been capable of being used on foot and on horseback – particularly as a ford crossing point is marked at point O. The rest of the application route did not exist in 1910. |
| **1:2500 OS Map** | 1930 | Further edition of 25 inch map resurveyed 1891, revised and re-levelled in 1928 and published in 1930. |
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| Observations |  | The route is not shown between point A and point B. Between point B and point C the railway that had previously been shown to exist along this length no longer exists but a track is shown crossing the river between point B and point C which may have been accessible.  The route between point G and point E did not exist as it ran along the route of the railway.  The access point at point F providing access to the rear of properties on Newchurch Road existed but the application route through to point E did not exist.  The route is not shown between point C and point J and there is no access shown across the water course at point I.  The application route between points N-O-J-K-L-M is shown. |
| Investigating Officer's Comments |  | The route under investigation appears to have existed along the length N-O-J-K-L-M in 1930 (noting the subsequently repositioned bridge near K) and may have been capable of being used on foot and on horseback – particularly as a ford crossing point is marked at point O. The rest of the application route probably did not exist in 1930. |
| **Authentic Map Directory of South Lancashire by Geographia** | 1934 | 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.  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'. |
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| Observations |  | The Map Directory of South Lancashire records the application route between points M-N as a substantial bounded route.  A track is also shown crossing the river at point B but no other parts of the application routes were shown on this map. |
| Investigating Officers' Comments |  | The application route between point N and point M appears to be recorded as substantial through route leading from Newchurch Road to Acre Mill Road (noting the subsequently repositioned bridge near K). This could be an indication that public bridleway or possibly public vehicular rights may have existed along this section of the application route. |
| **Aerial Photograph[[2]](#footnote-2)** | 1940s | The earliest set of aerial photographs available was taken just after the Second World War in the 1940s. The clarity is generally very variable. |
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| Observations |  | The aerial photograph for 1940 is of very poor quality. The black and white contrast is blurred and therefore the application route is difficult to make out. |
| Investigating Officer's Comments |  | No inference can be made. |
| **6 Inch OS Map** | 1955 | The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map. |
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| Observations |  | The railway remains in situ, and there is no evidence of the route between points G-E or F-E existing.  The houses that were previously shown to exist at point A are not shown and a track appears to exist between point A and point B. From point B a track is shown crossing the River Irwell to pass through point C continuing towards point E.  The application route between points C-H-I-J or D-H is not shown.  The route between points N-M can be clearly seen as a substantial track, leading from Newchurch Road to Acre Mill Road. |
| Investigating Officer's Comments |  | The route existed between point N and point M (noting the subsequently repositioned bridge near K) and appeared capable of being used by horses and possible vehicles.  The route between points A-B-C may also have existed and been capable of being used when the map was revised in the 1930s. |
| **1:2500 OS Map** | 1963 | Further edition of 25 inch map reconstituted from former county series and revised in 1961 and published in 1963 as national grid series. |
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| Observations |  | The route between points N-M can clearly be seen as a bounded track. Footbridges have been recorded at two separate points along it (point O and near point K) along with a ford at point O, with access under the railway between point O and point J. The route is labelled as 'FP' (footpath) between point J and point K and between point K and point L and this part of the route appears to be narrower than the section between point N and point O or that between point L and point M.  The rest of the application route is not shown. |
| Investigating Officer's Comments |  | The route existed between point N and point M and appeared capable of being used by horses except possibly for the footbridge near point K which it is not possible to tell from the map and which was subsequently repositioned. The rest of the application route probably did not exist in 1961. |
| **Aerial photograph** | 1960s | The black and white aerial photograph was taken in the 1960s. |
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| Observations |  | The 1960 Aerial Photograph is of generally good quality.  A route is shown between point A and point B although the first part of the route from point A does not follow the same alignment as the application route.  The route from point B, crossing the river to point C and then continuing a little west of point D and towards point E appears to exist. Before reaching point E a track can be seen to the west which appears to exit onto Blackwood Road close to point G.  The route between point G and point E does not appear to exist as it looks like the railway was still in existence. The route between point F and point E does not appear to exist.  A well-defined route can be seen between point C and point J which follows closely to the alignment of the application route.  The route between point N to point J and from point J to point M appears to exist although several sections are obscured by trees. The bridge across the River Irwell at point K appears to be on a slightly different alignment to the current bridge. |
| Investigating Officer's Comments |  | The 1960 Aerial photograph supports much of the application, and shows the existence of a well-used track for the majority of the application routes. There are however, variations to the alignment of the application routes in a number of locations – between point A and point B, point I and point J, point D and point H and the bridge at point K.  The only sections which are not shown are parts G-E and E-F which are covered by the still-existing railway line. |
| **Definitive Map Records** |  | The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.  Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s. |
| **Parish Survey Map** | 1950-1952 | The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas. |
| Observations |  | Bacup is a municipal borough and therefore did not have a parish survey map. |
| **Draft Map** |  | Lancashire County Council prepared the Draft Map and Statement.  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. |
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| Observations |  | A short section of the application between point B and point C is shown as part of Footpath 527 but no other part of the application route is recorded on the Draft Map.  Footpath 529 was shown on the Draft Map terminating at point L on the Committee plan and described in the Draft Statement as 'terminating at Moss Brow via some stone steps'. |
| **Provisional Map** |  | Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court. |
|  | | |
| Observations |  | The footpaths previously recorded on the Draft Map are shown in purple on the Provisional Map. However the red lines show the addition of several other routes. Footpath 651 and 652 were added to the map and the Provisional Statement for Footpath 651 reads - 'From Acre Mill Road at a point 120 yds. South west of Brunswick Terrace, westwards to Moss Row and thence northwards to meet Newchurch Road at a point 100 yds west of Booth Road (Known as Shed End).  The Provisional Statement for Footpath 652 (which does not form part of the application route) reads: 'From Newchurch Road at a point 100 yds. West of Booth Road (i.e. opposite Shed End) northwards to Booth Road'. |
| Investigating Officer's Comments |  | The route under investigation between points N-O-K-L-M was added to the Provisional Map and shown as a public footpath (noting the subsequently repositioned bridge near K). No details regarding the reason why it was added at this stage in the process, or why it had been originally left off the map could be found. However, the fact that Footpath 529 was originally shown to terminate on the application route at point L suggests that the route added as Footpath 651 may have originally been considered to be of a higher public status (vehicular).  The rest of the application route (with the exception of the short section between point B and point C) was not shown and no representations were made regarding it. |
| **The First Definitive Map and Statement** |  | The Provisional Map, as amended, was published as the Definitive Map in 1962. |
| Observations |  | The route under investigation between points N-O-K-L-M is shown as a footpath and there is no record of any further representations made regarding its inclusion.  The rest of the application route (with the exception of the short section between point B and point C) is not shown and no representations were made regarding it. |
| **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 with a relevant date of 1st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process. |
|  | | |
| Observations |  | The Revised Definitive Map (First Review) shows the route which had previously been added as Footpath 651 between point M and point N with a gap in it where it ran under the railway bridge between point O and point J. The application route between point N and point O is shown as a footpath and is (incorrectly) numbered Footpath 652. The application route between point O and point P is not shown across the railway although all of the Ordnance Survey maps examined show a crossing existing between these points.  From point P to point M the application route is shown as Footpath 651.  The Revised Definitive Statement (First Review) remains unaltered from the First Definitive Map and Statement describing the whole of the application route from point M to point N as Footpath 651.  No extinguishment or diversion orders were found relating to the route recorded as Footpath 651 on the First Definitive Map indicating that the omission of the route between point O and point J was most likely to be a drafting error. |
| Investigating Officer's Comments |  | From 1953 through to 1975 there is no indication that the application route between point M and point N, and point B and point C were considered to be of any higher status than public footpath by the Surveying Authority. Once added to the Map at the Provisional Stage no objections to the depiction of the status of the route from the public were found at any later stage of the preparation of the Definitive Map.  The numbering of part of the application route as Footpath 652 instead of Footpath 651 appears to be a drafting error when the Revised Definitive Map (First Review) was drawn. The Statement for 651 and 652 indicate that the numbering changed at Newchurch Road not at the railway. The gap in the route recorded as Footpath between point O and point J appear to be to indicate that the footpath passed under the railway bridge as the Statement does not indicate any discontinuity.  The remaining lengths of the application route were not shown on any of the maps, and therefore it can be assumed that they were probably not considered to be public at the time. |
| **OS 1/1250 Plan** | 1978 | Extract of OS plan used as base map for various Land Registry plans covering the area crossed by the application route. Plan SD 8521 published 1978 but date of revision unknown. |
|  | | |
| Observations |  | The plan shows the railway line still in existence and does not show the application route between 20m south of point F and point E or between point G and point E.  The plan shows the ford crossing adjacent to the footbridge at point O and labels the continuation of the route towards point J as a footpath (FP). |
| Investigating Officer's Comments |  | The date that the OS plan was revised is unknown. It was published in 1978 suggesting that the railway tracks may still have been in situ and that the application route between point F and point E and point G and point E may not have been accessible.  The route from point N to point O is clearly shown and the ford crossing adjacent to the footbridge appears to be accessible. The fact that the route is labelled as a footpath by the Ordnance Survey may indicate that the route was physically characteristic of a footpath. |
| **Aerial Photograph** | 2000 | Colour aerial photograph taken in 2000. |
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| Observations |  | The 2000 aerial photograph shows clear lines along the application routes (with the exception of part of the route between points E-F and L-M which is obscured by trees and buildings). The bridge near point K had not been repositioned at that time. |
| Investigating Officer's Comments |  | The aerial photographs show that the application routes existed on the ground in 2000, except for part of E-F, L-M and the current bridge about which no inference can be made. |
| **Diversion of part of Footpath 651 Bacup** | 2005 | Diversion of part of Footpath 651 Bacup under the Town and Country Planning Act 1995. |
| Extract from Committee plan | | |
| Plan contained within LCC records refering to possible bridleway agreement | | |
| Observations |  | In 2005 planning permission was granted to the County Council to replace the footbridge across the River Irwell at point K. A 15 metre long bridge was required and to enable it to be erected with the least disturbance to the public and to site it in the most suitable location the footpath was diverted under the Town and Country Planning Act 1995 so that the bridge could be located 4 metres downstream from the original bridge.  In a report to the County Council Development Control Committee the bridge engineer stated that 'the design of the bridge is capable of being up-rated to allow safe use by alternative users'. The report did not, however, refer to current use by horse riders.  The report to the Development Control Committee seeking agreement to make an order to divert the public footpath wrongly refers to the footpath as being numbered 652. The report lists the consultations carried out regarding the proposed diversion and notes that the British Horse Society Regional Officer had not submitted any comments.  An Order was subsequently made to divert the footpath (numbered 652 in the Order) to the route shown on the Committee plan above and was confirmed on 23 August 2005.  Correspondence on the public rights of way parish files from that period refer to queries being made as to whether the route to be diverted had been the subject of a possible bridleway agreement dating back to around the early 1990s for the route marked green on the plan (showing the application route between points A-B-C-H-I-J-K-L-M).  During the 1990s Rossendale Borough Council maintained the public rights of way throughout the borough and they were asked whether such an agreement had been made. No details of an agreement or order were found. It was noted however that Groundwork Rossendale – who were very active in the area in the 1990s - were stated as knowing that the routes were regularly used by horses. |
| Investigating Officer's Comments |  | The altered line of the footbridge means that if historical bridleway rights existed in 2005 they continue to exist, albeit without a means of crossing the river on that line. Bridleway rights over the bridge would depend on dedication, expressed or inferred, since that time. |
| **Google Street View** | 2009 | Photographs captured by Google Street View in 2009. |
| Point A | | |
| Point G | | |
| Point F | | |
| Point N | | |
| Point M | | |
| Observations |  | Photographs captured in 2009 show that access was available onto the application routes at all 5 access points (point A, point G, Point F, point N and point M). |
| Investigating Officer's Comments |  | Access onto the route appeared to be accessible to horse riders at all 5 access points in 2009 and bollards existed across the route at point A and a gate existed across part of the width of the route at point G. Neither the bollards or the gate would have prevented equestrian access. |
| **Aerial Photograph** | 2010 | Colour aerial photograph available to view on GIS. Photograph described as 'current aerial on GIS layer but believed to date from 2010. |
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| Observations |  | The 2010 aerial photograph again shows trodden lines on the ground, indicating usage of all routes in this application was being used at the time with the exception of north from point E and around point L (obscured by trees), D-H is visible but faint. |
| Investigating Officer's Comments |  | The aerial photograph supports the alignment of most of the application and is consistent with equestrian use although it is not possible to distinguish pedestrian from equestrian use. |
| **Stacksteads Countryside Park** | Post 2012 | Stacksteads Countryside Park Group is registered charity comprising of volunteers who live in the local area. The group were established in 2007 with the aim of improving the local environment. During 2012-13 they secured substantial funding for some major projects including the development of the Stacksteads Countryside Park. They took leases of land near or including the claimed route from LCC and Rossendale BC in 2000 and 2007 |
| Information board located at point A | | |
| Plan submitted as part of entry into Lancashire Environmental Fund’s ‘Best Practice’ Award 2013 | | |
| Observations |  | The information board located at point A on the application route includes a map of the routes through the area promoted and managed by the Countryside Park Group. The plan shows the application route between points A-B-C, G-E, F-E, most of the route between points D-E, points C-H-I-J and points J-K-L as 'paths' through the park. There is no reference on the board as to whether horse riding or cycling is permitted.  Information on the internet in relation to the Group included details of the work that they had carried out in 2012-13 to surface paths and provide signage. An extract of a plan of the site shows the proposed work to be carried out to include the provision of horse stiles 'at path ends' to deter motorcycle use. |
| Investigating Officer's Comments |  | Work carried out by the group on the land crossed by the application routes post-dates the applications. The work carried out appears to have taken into account access to the site for horse riders although it is not known whether this was because there was already acknowledged use of the routes prior to the work being carried out. The intention of owner and tenant is indicated. |
| **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 |  | There are no Highways Act 1980 Section 31(6) deposits lodged with the County Council for the area over which the application routes run. |
| Investigating Officer's Comments |  | There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land. |

The application route does not cross a Site of Special Scientific Interest or Biological Heritage, nor does it cross access land under the provisions of the Countryside and Rights of Way Act 2000.

The affected land is not registered common land.

**Landownership**

Ownership of the land crossed by the application route between points N and point O, between point M and point L and for 15 metres from point A extending towards point B is unregistered and unknown.

Ownership of the rest of the land crossed by the application route is registered and affected properties/owners are listed below:

Lancashire County Council,

County Hall,

Preston

Rossendale Borough Council,

Kingfisher Business Centre,

Futures Park, Bacup

Stacksteads Riverside Park Group,

316 Newchurch Road,

Stacksteads,

Bacup

Glengarth Construction Limited

Piercy Works

Piercy Road

Waterfoot

Rossendale BB4 9JP

37 Windyhill Drive,

Deane,

Bolton,

BL3 4TH

**Summary**

Looking firstly at the route from Newchurch Road through to Acre Mill Lane (as shown between points N-O-J-K-L-M on the Committee plan); this route is consistently shown to exist on the Ordnance Survey maps 1849 to the present day (noting the repositioning of the bridge near point K). It forms a through route linking two public vehicular roads and historically provided access to a row of cottages (Moss Row), mill buildings and also provided access to a recreation field from at least in the 1930s.

Whilst the central section of the route is annotated as a 'footpath' on OS maps this may indicate that use as a through route became less frequent with the introduction of mechanically propelled vehicles. It is a bounded route throughout and when the railway was constructed in the 1800s an underbridge was provided. At point O a footbridge and ford crossing are consistently shown to exist suggesting that the route was not just used by pedestrians but that horses and possibly horse drawn vehicles may have used the ford. The route was excluded from the numbered hereditaments on the Finance Act plans suggesting that it was considered to be a route carrying more than footpath and more likely a public bridleway or possibly a public carriageway.

More recent map and photographic evidence, together with site evidence suggest that the route was capable of being used on horseback consistent with the user evidence submitted as part of the application.

The current footbridge immediately south west of point K has only existed on this alignment since 2005 at the earliest and was previously located approximately 4 metres upstream. The existing footpath rights were diverted in 2005 to allow for the footbridge to be relocated.

With regards to the remaining part of the application route there is no early historical mapping evidence supporting this application.

The railway closed in 1968 and online research suggests that the tracks could have been removed as early as 1969 although an OS plan published in 1978 suggest that the route along the track bed (between points G-E) and across the railway (points E-F) may not have been available until later.

Aerial photography from the 1960s, 2000 and 2010 supports the user evidence in that most (if not all) of the routes were available in the 1960s and most of the routes appear to have been available on the ground since at least 2000 – the exception being some doubt about E\_F.

**Head of Service – Legal and Democratic Services Observations**

Information from the applicant

The applicant provided 34 User Evidence forms with the application.

These forms indicate knowledge of the route for up to 46 years:-

41 – 50 (2), 31 – 40 (9), 21 – 30 (13), 11 – 20 (7), 0 – 10 (2).

The forms also indicate that the route has been used for over 40 years, with use for the following lengths of time taking place within that:- 41 – 50 (1), 31 – 40 (5), 21 – 30 (8), 11 – 20 (15), 0 – 10 (4). One user stated that they used the route during 2 separate periods of time, for 5 years between 1978 and 1983 and then for a further 10 years between 2001 and 2011.

33 of the users indicated that they had used the route on horseback/leading a horse, 23 users indicated that they had used the route on foot, with the majority of these using it for dog walking. 2 of the users also indicated that they had used the route on a bicycle.

19 of the users indicated that their use was for leisure or pleasure, with 12 describing their use as riding or hacking.

The amount of use each year varied within the users, 3 users did not give an indication of their use but the remaining users indicated as follows:-

6 times a year (3), 10 and 15 times a year (3), 20 times a year (3), 26 times a year (1), 30 times a year (3), 50 times a year (3), 60 times a year (1), 75 times a year (1), 100 times a year (1), 3 times a week (1), weekly (7), monthly (1), numerous (1), now and then (1). One user stated that their use varied from between 10 and 200 times a year depending on how old they and also the horse they were riding were.

Generally the users agree that the way has always run the same route, however some say that there were slight alterations to the route when Groundworks did refurbishments in 1986. One user states that the route has been the same with the addition of a footbridge when the slaughter house was knocked down. Another said one footbridge could no longer be used with horses when properties were built on the north side of the river. Two users also make reference to a footbridge being unsuitable for horses for a short period when a hole developed in it.

The users had some difference of opinion as to whether there were gates or stiles on the route. 5 users indicated that there were gates and horse crossings, 3 stated that there was a gate behind The Commercial pub and 4 that there is a horse stile at the Shed End of the route, 1 referred to a horse stile at the riverside end of the route, 2 users just make reference to there being horse stiles on the route. 2 users stated that there used to be horse stiles and gates on the route.

The users are all in agreement that there have never been any signs indicating that the route is private and they have never been prevented from using the route.

It is noted that the user evidence forms submitted with the application describe the route by way of grid references (8566-2161 to 8527-2167 via grid ref 8548-2170 to 8544-2179) as per the original plan submitted with the application. These references appear to exclude the sections of the route marked A-B, E-F and D-H. However, a subsequent revised plan, as per the Committee plan was subsequently submitted by the applicant.

In view of this, clarification was sought from the applicant in response to which a letter was received confirming that the map, as presented to Committee ' is the correct map to be used when determining my application for a bridleway along the river in Stacksteads.' This letter also confirms that the 'user evidence may not include the sections E-F and J-N as these were thought to be highways on the list of streets, but were included for certainty in case they were ever stopped up.'

In addition, contact was also made with the original users in order to clarify their route of use. From the 8 responses received to date the additional evidence clearly indicates that 4 of those users used the entire route as marked on the Committee plan, one user clarifies that in addition to the route identified by grid references on their original form they used the route E-F but makes no reference to use of A-B or D-H, 1 user appears to have used the whole route with the exception of A-B and 2 of the users do not provide any further clarification as to their route of use. This would indicate evidence for E-F based on 6 and for A-B by 4 and D-H by 5

In addition to this the further evidence provides evidence of the users having witnessed others using the route on foot, horseback, bicycle, in wheelchairs, with horse drawn-vehicles, for dog walking, with prams and buggies and for jogging. The users refer to use being for such as to visit friends, travel to and from work, to catch the bus and to visit shops.

One user refers to a locked barrier which was in place in the 1970s at point G and prevented use at this point on a horse. Another user makes reference to the route being unavailable between points G-E-C for a number of weeks as the result of a murder investigation in 2001.

Further reference is made to a horse stile at point J on the route, a gate and barrier at point G on the route put in place in 2011 to prevent vehicular access, to a gate which was never locked between points E and D and to a post and barrier across half of the route at point M. All of these are said to have been *in situ* at varying times, however none appear to have prevented use.

**Assessment of the Evidence**

**The Law - See Annex 'A'**

In Support of the Claim

- User evidence.

- Arial photography from 1960s, 2000 and 2010 in respect of the whole route

- Ordnance Survey Maps 1849 to present day and other documentary evidence in respect of the route shown between points N-O-J-K-L-M on the Committee Plan.

- Absence of signs along the route indicating that the route is private.

- Absence of action taken by landowners to discourage use of the route

- Provision of horse-stiles and a bridge suitable for horses on the route

Ownership at the bridge at K is the Borough Council

Against Accepting the Claim in full

- No early historical mapping evidence supporting parts of the route.

- Relatively low number of users confirming use of some parts of the route, particularly E-F, A-B and D-H and even N-J.

- Diversion of route at K causing a break in the historical route

**Conclusion**

The claim is that the lengths making up the claimed route are already bridleways in law and should be recorded as such on the Definitive Map and Statement.

Committee will note that the route under consideration between points B-C and N-O-J-K-L-M on the Committee Plan is currently recorded as public footpath and the application is to upgrade these sections of footpath to a bridleway, as it is suggested that the public footpath carries higher public rights. The remaining sections of the route on the Committee Plan are not currently recorded as public rights of way.

Committee should note that as part of the route already appears on the Definitive Map as a public footpath, it is not sufficient to satisfy the lesser test of reasonably alleging the existence of highway rights, neither it is necessary for there to be conclusive evidence of the existence of a higher public right than a public footpath, instead the standard of proof required is the balance of probability.

It is advised that as there is no express dedication in this matter that the Committee

should consider, on balance, whether there is sufficient evidence from which to have its dedication inferred at common law from all the circumstances including documentary evidence and use and what owners have done on the land 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.

Looking firstly at whether dedication can be inferred on balance at common law it is advised that the Committee has to consider whether evidence from the maps and other documentary evidence coupled with the evidence on site does on balance indicate how the route should be recorded. Committee should then look at other circumstances and the use of the route. Committee will have noted that the evidence is different along different lengths of the claimed route.

Section N-M

The analysis of the map and documentary evidence by the Head of Service – Planning and Environment suggests that with regards the section of the route marked N-O-J-near K and near K-L-M on balance such map and documentary evidence may be considered sufficient to conclude that that route was a historical public bridleway.

The section of the route N-O-J-near K-L-M is consistently shown on Ordnance Survey Maps from 1849 until the present day (noting the repositioning of the bridge near K) and forms a through route which links two public vehicular roads. This section of the route also historically provided access to properties, mill buildings and a recreation ground from at least the 1930s. Further to this a footbridge and ford crossing are consistently shown to exist at Point O implying that the route was used not only by pedestrians but also possibly by horses and horse drawn vehicles.

The Finance Act Map 1910 adds further weight, although not conclusive, that the route under consideration was regarded as a route carrying more than a footpath and more likely a public bridleway or possibly a public carriageway.

The more recent map and photographic evidence together with the site evidence supports and is consistent with the user evidence in suggesting that the route was capable of being used on horseback.

It is suggested that the documentary evidence for route N-M is reasonably strong but it is advised that the rights on horse across the river may remain on the old bridge line near K following the Diversion Order under the Town and Country Planning Act leaving a break in the historical evidence on the route as claimed which is on the more recent bridge.

Should committee have any reservations as to the strength of the map and documentary evidence for the line as claimed on N-M and in any event when considering the section of bridge at K it is advised that committee should also consider whether deemed dedication under S31 Highways Act 1980 or inference at common law can be satisfied from the user of the route and other circumstances.

Looking firstly at inferred dedication due to use in certain periods from which actual intention to dedicate might be inferred. There is evidence of the horse-stiles implying that owners made provision for horses in the park and from that end the bridge on its new line at K was the only way they could have taken. The bridge was more than a footbridge. The land at the bridge at K is owned by the Borough Council and they are one of the authorities who have leased land to the Park Group and it is suggested that the actions of the Council and the Group would indicate an intention to dedicate bridleway in particular at the bridge on their land and use of the bridge even for the few years since it was put in may be sufficient at common law from which to infer dedication of at least section J-M.

In connection with this section of the route the users generally agree that the way has always run the same route with the exception being the references to the slight alterations to the route when the groundworks were carried out in 1986, the repositioning of the bridge near K and to the addition of footbridges.

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 make reference to having seen signs or notices along the route.

As well as common law inference committee should also consider S31 Highways Act 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 in this matter it is suggested that the route was called into question by the application itself in 2011. Differing recollections are made by many of the users as to the presence of gates, stiles and barriers along the route. However, with the exception of the 2 users making reference to a footbridge being unsuitable for use on horseback for a short period of time when a hole developed in it, one of the users claiming that this was 'at some point in 2011'. It is therefore suggested that the period of use from which dedication can be deemed would be 1991-2011.

Looking at the twenty years 1991-2011. 34 user evidence forms have been submitted. Of the 34 users, 32 users have claimed to have used the route during the period under consideration with 9 of these users claiming to have used the route for the full period under consideration providing clear evidence of use over the 20 year period. All users claim to have known and used the route on a regular basis 'as of right' with 33 of the users claiming to have used the route on horseback/ leading a horse, 23 on foot, including dog walking and 2 of the users referring to use on a cycle. The purposes stated for use of the route include leisure or pleasure, riding or hacking, visiting friends, travel to and from work and to visit the shops.

The route used however cannot have been for the necessary twenty years across the new line at the bridge at K. On this section the twenty years cannot be satisfied.

Other sections of the route

With regards to the remainder of the route there is no such early historical mapping evidence to support these sections of this application. However, aerial photographs from the 1960s, 2000 and 2010 support the user evidence in that the majority of, if not every section of the claimed route were available in the 1960s and that all sections of the route have been available on the ground since at least 2000.

Whilst, as noted in the Head of Service – Legal and Democratic Services Observations section of the Report above, it is unclear whether the user evidence originally provided with the application refers to the sections of the route marked A-B, E-F and D-H Committee will note that upon recently seeking clarification in this regard that 4 of the original users have to date confirmed that their evidence relates to the whole of the route as marked on the Committee Plan including these sections with a further single user for E-F and one for E-F and D-H. In addition to this the further evidence provides reference to the users having witnessed others using the route on foot, horseback, bicycle, in wheelchairs, with horse drawn-vehicles, for dog walking, with prams and buggies and for jogging.

The users generally agree that the way has always run the same route

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 make reference to having seen signs or notices along the route. User numbers are generally the thirty plus users referred to above save for sections A-B, E-F and D-H which have low user numbers. The number of users is low on these sections for such an accessible semi-urban location and Members may wish to consider whether there is sufficient evidence on balance from which to deem or infer dedication of bridleway.

A-B however does have horse stiles provided and whilst use numbers are low there would seem to be the works done as part of the Park without any owner taking issue and it may be that it is from these circumstances together with the low user evidence that could be sufficient from which to infer intention

Use of the remainder of the route is also supported by the horse-stile provision, paths to a multi-user standard and lack of notices /challenge despite use happening in a location where it cannot have gone unnoticed. The exception to this is E-F which did not have the same standard path and was too narrow to take a horse without being a potential nuisance to other users and D-H which had no constructed path and a faint line on the aerial photos so no visual guide for users to be sure they followed a consistent line.

Taking all of the user evidence into account and the lack of evidence of intention not to dedicate , the Committee on balance may consider that the inference of dedication and/or provisions of section 31 Highways Act can be satisfied on the sections of the claimed route being considered except for the sections E-F, D-H.

Summary

In this matter there is historical evidence on some sections, use and other circumstances from which to infer dedication at common law of some other sections and use from which to deem dedication of other sections.

It is not an easy matter to apply all these different ways of inferring or deeming a dedication of bridleway on balance to each section but taking all the relevant information into account the Committee may consider the evidence is sufficient for common law dedication or deemed dedication of bridleway to be found to have happened on A-B-C-D-E-G, C-H-I-J and N-O-J -K-L-M but not E-F or D-H.

**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/Ext |
| All documents on Claim File Ref: 5.44309 (804/520) | Various |  |
| Reason for inclusion in Part II, if appropriate  N/A | | |

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. [↑](#footnote-ref-1)
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. [↑](#footnote-ref-2)