

3. WILDLIFE AND COUNTRYSIDE ACT 1981  
CLAIMED UPGRADING TO BYWAY OPEN TO ALL TRAFFIC OF  
PUBLIC FOOTPATH NOS 61,71,72,73,74,95,97 and 99 TRAWDEN  
PENDLE BOROUGH (ANTLEY GATE VIA ALDER HURST HEAD FARM  
TO BURNLEY ROAD)  
CLAIM NO 804/88/13/7/2

Description and Location of the Claim

The claimed route extends for a total distance of approx. 1945 in a general south easterly direction from Burnley Road (Alder Hurst Lane) to Antley Gate. The claimed route ends at a point south east of Antley Gate on the track known as Will Moor Hill Road which route is also the subject of another byway claim (see claim No 804/87). The entire route is already shown on the Definitive Map as a public footpath ie FP Nos 61,74,73,72, 71, 95, 97,99 in the former Urban District of Trawden.

The route is shown marked 'A' to 'I' on the attached plan and extends between 05 Grid References SD 918365 to SD 906379. (See also Claims Nod 804/87 and 804/89 elsewhere in this Agenda).

Consultations

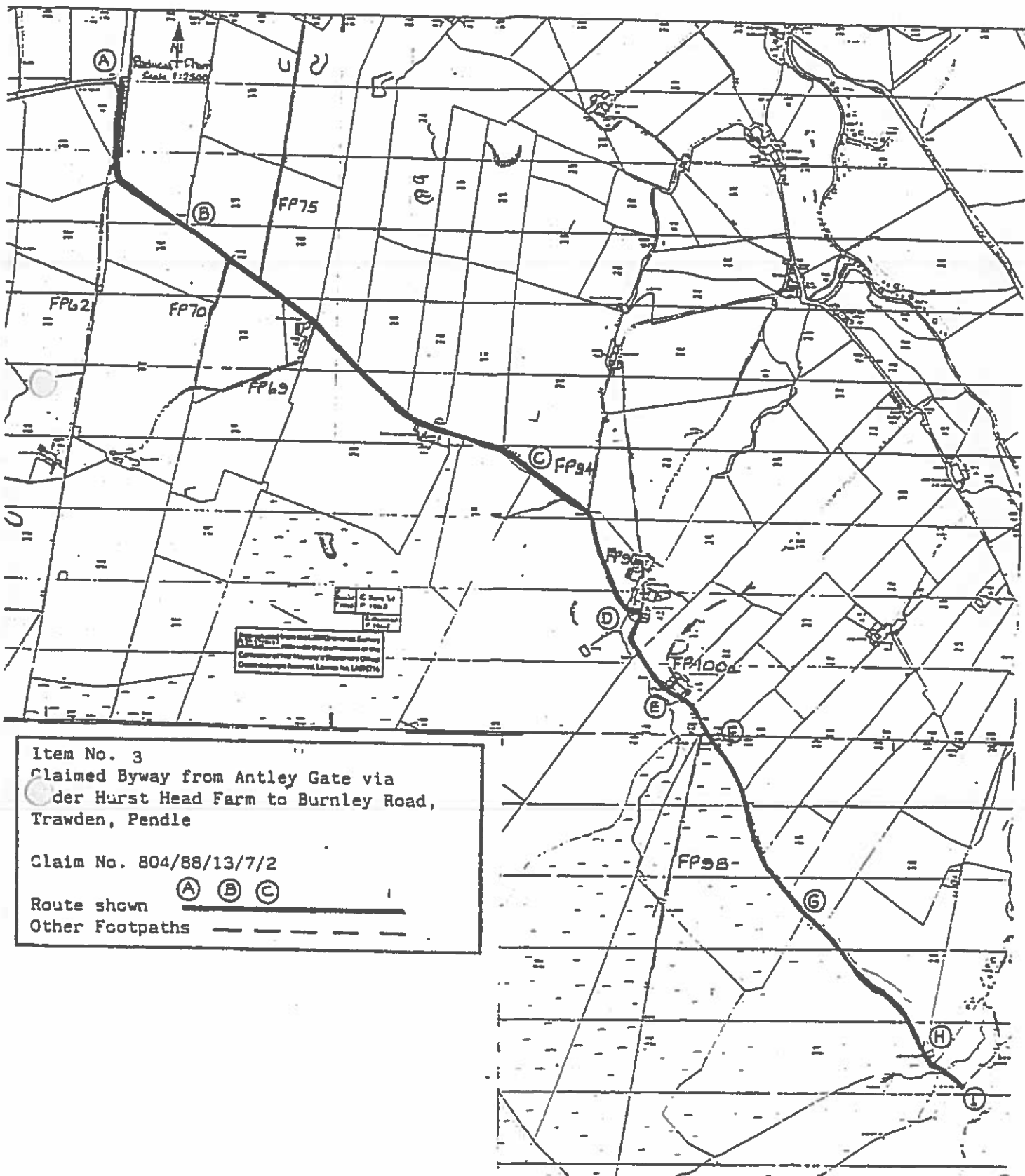
Pendle Borough Council

The claims have been considered by the Borough Council who wish to register its objection to all the claims on the following grounds:-

- (i) serious detriment would occur to the amenities and enjoyment of local residents, walkers, horse riders and cyclists if the routes were open to motor vehicles;
- (ii) the routes have physical limitations which would make their use by motor vehicles difficult and dangerous and, in particular, one of the routes is too narrow to permit the passage of motor vehicles;
- (iii) the Council has been involved, with other organisations, in environmental projects in the areas concerned, particularly the creation of a nature reserve at Coldwell Reservoir, the opening up of access to moorland on Boulsworth Hill and the designation of Boulsworth Hill as a Site of Special Scientific Interest.

Also, Boulsworth Hill is an important breeding ground for birds and a major water catchment area where the Council has a duty to the Water Authority to ensure that pollution does not occur. It is felt that the opening up of the routes to motor vehicles, with the consequent possibility of motor cycle scrambling, etc., taking place, would be detrimental to environmental interests and could result in pollution occurring in this water catchment area.

There is no Parish Council for this area.



## County Surveyor's Observations

The route commences at point A on the plan, where there is a notice indicating "Little Moss Farm, and as far as point B, comprises a hard surfaced, stone and earth track approximately 2.5m wide. At A the track is constructed in a cutting, about 5m below field level and gradually climbs to field level at point B. There are grass covered bankings to each side of the track, with fences at the field level giving an overall width of between 15m at A to 4m at B. The track surface is of reasonable condition, with some potholes, and is clearly used by vehicles, though such use is probably mainly to gain access to properties, along the route.

From point B to C the route continues generally as a 2.5m wide track, comprising a hard stone surface, though for considerable lengths, more especially towards point C, the centre width of the track is grassy. The surface is of reasonable condition and the route is clearly in use, providing vehicular access to properties along the route and to fields. The route is mostly at field level though some lengths are a few metres below, indicating a considerable age to the track. The route is well defined between stone walls or fences of overall width between 8 m and 4 m, and there are grassed verges or bankings at either side. At point C there is a 2.5 m wide openable metal field gate across the route.

From point C to D Oaken Bank, the route comprises a 2.5 m wide hard surfaced stone track, with a wall and fence to the east side but open to rough grass land to the west. This section appears to be little used by any form of vehicle as there are grass, and weeds growing up through the surface stones. At point D there is an openable 3 m wide metal field gate.

Beyond point D the route loops through part of the farm yard to Oaken Bank and comprises a reasonable hard surface, though the width of the route varies where it passes through the farm yard. The route leaves the yard by means of an openable metal field gate and then deteriorates to become a rough earth and grass surface track about 2 m wide. The surface is well trodden mainly by animals and appears only to be used, otherwise by pedestrians. A further gate exists between points D and E, being a newish openable wooden gate some 2m wide. Beyond this gate, to point E, at Alder Hurst Head the route comprises a 2m wide grass surfaced track in reasonable condition, though showing evidence only of limited pedestrian use. There are stone walls to either side of this section of route, though some lengths are delapidated, with an overall width of approximately 5 m. This section climbs quite steeply from point D, Oaken Bank, to point E Alder Hurst Head, and for a considerable length is below adjoining field level. At point E a certain amount of fill material has been placed across the route forming an access into the yard of Alder Hurst Head. Though not preventing pedestrian use of the claimed route, the fill would make any attempt at vehicular use more difficult.

The route continues past Alder Hurst Head to point F as a very rough, grass surface track, some 3 to 5 m wide between stone walls. At point F there is an openable metal field gate about 3 m wide. Generally this section is lower than surrounding field levels.

From point F to G the route is only discernable as a depression, 2 or 3 m wide and up to a metre deep, across rough moorland grazing land. The route is bounded to the east by a stone wall but is open to the west. The route is very overgrown, with sections which are boggy and water-logged. There is no obvious evidence of any use of the actual route itself, though there is evidence of some limited pedestrian use of rough sheep tracks which run parallel to, and immediately to the side of the route, but on the slightly higher firmer ground. At point G there is a 2 m wide wooden field gate which is wired shut, with a stone stile alongside. There is some evidence of there having been a wider gateway at this point which is now blocked off.

From G to H the route continues as a barely discernable depression across the moorland. The route is overgrown with rough grasses and reeds and in places is very water-logged and difficult to negotiate even on foot. The route is open to the moorland on either side. From point H, Antley Gate (now in ruins) to point I the route becomes a rough stone surface track, but still open to the moorland at each side. There is a shallow ford where the track crosses a small stream between points H and I and there is evidence of tractor use and pedestrian use. There is an openable wooden field gate, 3 m wide, at point I, which gives access to the track known as Will Moor Hill Road, which is itself the subject of another claim (No. 804/87).

In summary, this route falls into two distinct sections. The first section extends from point A to point D and generally comprises a reasonable hard stone surface track, bounded almost throughout by stone walls. The track width is about 2.5 m and the overall width varies between 4 m and 15 m. There is evidence of pedestrian use of the whole section and there is evidence of vehicular use of most of the length. However, it is not possible to determine whether or not this is public vehicular use or purely private use to gain access to a number of properties along the route. There are no notices or signs deterring use of the route and the two field gates across the route are openable. The general condition, alignment and character of this section suggests a route of a very considerable age.

The greater part of the second section is across open moorland and comprises a barely discernable, very rough, overgrown, and often water-logged track. There is virtually no evidence of any use of the route, and the condition of much of this length would make even pedestrian use difficult, though there are rough sheep tracks immediately to the side of the route which appear to be used by walkers. However, despite the above, the full line of the route is visible throughout as a 2 to 3 m wide depression in the moorland and thus suggests that a more obvious track probably existed at an earlier date which has gradually been neglected and deteriorated. On this section one gate has been wired shut and this now prevents all but pedestrian use.

The site evidence indicates that the full route is probably only used at present by pedestrians and that any equestrian or vehicular use would be virtually impossible. However, it is clear that a definite track must have existed for very many years and all the site indications are that this would have been of sufficient width and construction to be used by all types of traffic. The fact that all the properties along the route are distinctly to the side of the track suggests that the route provided a continuous through route, not merely giving access to one or two properties. However, this does not, in itself, prove that the full route has been used as a public vehicular route.

### Chief Executive/Clerk's Observations

The evidence submitted by the applicant in support of the claim consists solely of the assertion that the claimed byway is shown on several early maps, these being cited as Greenwood's Maps of 1818 and 1830, Teesdale Hennes's Map of 1830, 1st Edition OS 6 inch to 1 mile and the reprinted 1st edition OS 1" to 1 mile. This assertion is not disputed but it may be noted that there is no supporting evidence of any usage of the claimed byway as "byway open to all traffic". The route was shown on the original Parish Survey as a series of footpaths and is similarly recorded on the Definitive Map and Statement. There is therefore no suggestion in the mapping process that the route was now regarded as being of a higher status.

Five letters of objection have been received from or on behalf of landowners (only seven landowners are affected by the claim) and in addition one from a local parish councillor and also a letter from the local MP in support of one of the landowners.

The objections raised cover several matters including disturbance which may be caused to adjoining landowners, the possible danger to livestock caused by straying, affects on wildlife, fire risk, damage to trees (a newly planted conifer forest), access problems to properties along the route of the claim, and the possible need for the installation of cattle grids. Similar points are made by the Borough Council about conservation and the unsuitability of the route for motor vehicles. However, whereas the problems which may arise on such an upgrading to byway status are appreciated, it must be borne in mind that such considerations are not relevant in determining the status of the route and similarly, in relation to the County Surveyor's observations the present condition of the route is not material in determining the claim.

As well as the objections outlined, there are further specific objections based on specific evidence.

One letter of objection details that one part of the route of the claim is shown on an Inclosure Award of 1821 as "private carriage and occupation road" and also that other parts are shown on the Tithe Award Map for Trawden of 1844 and the index to this Award refers to these as being again "occupation roads". One of the other letters of objection received similarly refers to the Tithe Map and another to the Inclosure Award.

On consideration of the evidence put for and against the claim it must be said that the map evidence standing alone, though relevant is not conclusive in support of the claim and indeed it has been pointed out by way of objection that the route is not shown on earlier maps. However, the evidence of the Inclosure Award and Tithe Award is very strong if not conclusive evidence that the route was originally a private vehicular access road to the adjoining farms. There is no evidence of usage by the public or any other evidence to suggest that it has changed its status over the years, except for the fact that the present designation of the route as a series of footpaths implies there must have been usage on foot. It is appreciated that only parts of the claimed route are described as "occupation roads" but it is difficult to see how the remainder of the route could be a public highway in these circumstances. It is therefore felt that the weight of the evidence is such that the claim be rejected.

### Recommendation

That the claim to upgrade Public Footpaths Nos. 61, 71, 72, 73, 74, 95, 97 and 99, Trawden, Pendle Borough to Byway open to all traffic, in accordance with Claim No. 804/88/13/7/2, be not accepted.