

## **Regulatory Committee**

Meeting to be held on 12 May 2010

### **Part I - Item No. 4**

Electoral Division affected:  
West Lancashire East

#### **Wildlife and Countryside Act 1981**

#### **Claimed Public Footpath from Public Footpath No. 39 Newburgh to Public Footpath No. 40 Newburgh, West Lancashire District**

#### **Claim No. 804/491**

(Annex 'A' refers)

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#### **Executive Summary**

The claim for a Public Footpath from Public Footpath No. 39 Newburgh to Public Footpath No. 40 Newburgh, West Lancashire District to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/491.

#### **Recommendation**

- i. That the Claim for a Public Footpath from Public Footpath No. 39 Newburgh to Public Footpath No. 40 Newburgh, in accordance with Claim No. 804/491 be accepted.
- ii. That an Order be made pursuant to Section 53 (2) (b) and Section 53 (3) (c) (i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a Public Footpath 2 metres in width from Public Footpath No. 39 Newburgh to Public Footpath No. 40 Newburgh, West Lancashire District for a distance of approximately 330 metres (grid reference SD 4889 0906 to SD 4869 0931) and shown between points A – C on the attached plan.
- iii. That, being satisfied that the test for confirmation can be met, the Order be confirmed if no objections are received. If objections are received, that the Order be submitted to the Secretary of State and promoted for confirmation, if necessary at a hearing or public inquiry.

#### **Background**

An application has been made under section 53(5) of the Wildlife and Countryside Act 1981 for an Order to amend the Definitive Map and Statement of Public Rights of

Way in Lancashire by adding a public footpath extending from a point on Public Footpath No. 39 Newburgh to a point on Public Footpath No. 40 Newburgh, West Lancashire District shown between Points A and C on the attached plan.

The claimed public footpath is approximately 330 metres long extending from a point on the existing Public Footpath No. 39, Point A on the plan, to a point on the existing Public Footpath No. 40 Newburgh, Point C on the plan. On the date that the claimed route was inspected access was physically blocked by a wooden post and rail fence at Point C and it was also partially obstructed by a recently constructed drainage channel that crossed the claimed route near to Point B. Despite these obstructions it was still possible to walk the full length of the claimed route by deviating around the fence at Point C and climbing across the drainage ditch close to Point B.

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 should only be made if the evidence shows that:

- A right of way “subsists” or is “reasonably alleged to subsist”(to be satisfied that an Order to add a route can be confirmed it would be necessary to decide on balance of probabilities that the right of way subsists, that it can only "be reasonably alleged to subsist" is too low a test for confirmation of an Order – Committee are also asked to consider if the Order can satisfy the confirmation test when considering an addition of a route)
  - “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”
  - The status of a recorded right of way needs to be changed
  - There is no right of way over land as recorded on the Definitive Map and Statement
- or
- Details of the Definitive Map and Statement need to be changed.

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; this is until a legal order stopping up or diverting the rights has taken effect. 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 landowners, consultees and other interested parties produced to the County Council before the date of the decision. Each piece of evidence will be tested on the balance of probabilities. It is possible that the Council’s decision may be different from the status given in the 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.

## **Consultations**

### West Lancashire District Council;

West Lancashire District Council has been consulted but has not responded to the consultation. It is therefore assumed they do not have any comments to make on the claim.

### Newburgh Parish Council

Newburgh Parish Council is the applicant in this matter.

## **Executive Director of the Environment's Observations**

### **Description of Route**

A site inspection was carried out on 29<sup>th</sup> September 2009.

The claimed route commences at Point A on the plan (Grid Reference SD 4889 0906). Point A is a point on Public Footpath No. 39 Newburgh approximately 356 metres from Cobbs Brow Lane. Beyond Point A Public Footpath No. 39 Newburgh continues in an easterly direction crossing the brook which forms the boundary between the parishes of Newburgh and Parbold. It then continues in an east north easterly direction as Public Footpath No. 34 Parbold.

From Point A the claimed route extends in a general north westerly direction across a small area of rough grass (unfenced) to follow the edge of an arable field.

There are no signs indicating the existence or otherwise of the claimed route at Point A and no physical restrictions preventing access onto the claimed route. The route of Public Footpath No. 39 Newburgh is waymarked from the footbridge that forms part of the public footpath but the claimed route is not.

From Point A the claimed route follows the eastern edge of the field. There is no worn track apparent in the grass. After travelling a short distance a shallow hole has been dug in the ground which can easily be walked round. The claimed route is not fenced off from the field. To the east of the claimed route is an area of woodland within which runs the brook that marks the parish boundary. There is no access into the area of woodland from the claimed route.

In places a faint track can be followed in the grass. The grass along this section is quite long and doesn't appear to have been recently cultivated. Although the field to the west has been cultivated it appears that a wide strip had been left within which the claimed route runs.

Recent work has been carried out along the western side of the claimed route (in the field) to dig a substantial ditch approximately 1 metre deep and 2 metres wide. The ditch extends nearly the whole length between Point A and Point B and is part of a

land drainage scheme that is currently being completed. It appears likely that a large land drain will be inserted into the ditch which will then be filled and covered. The ditch only looks to have been dug in the past few months.

Close to Point B the drainage ditch crosses the claimed route. The ditch then continues into the woodland and down to the brook. It is possible to climb down into the ditch and then back out. It would also be possible to walk a route parallel to the claimed route on the other side of the ditch to get from Point A to Point B.

Beyond the drainage ditch the claimed route continues around the edge of the field. The ground is dry and compact with short grass and the claimed route follows what appears to be an unsurfaced vehicular access track. The unsurfaced track passes through Point B and continues in a north north westerly direction branching off the route of the claimed footpath just before Point C to join Public Footpath No. 40 Newburgh.

The claimed route continues to follow the edge of the field in a north north westerly direction towards Point C (SD 4869 0931). Just before reaching Point C the claimed route is blocked by wooden post and rail fencing. The existence of older palisade fencing suggests that the post and rail fencing is a more recent addition/repair. In addition, some tree branches have been cut and placed across the claimed route next to the fencing. It is possible to walk around the fencing to gain access to Public Footpath No. 40 Newburgh and Point C.

Beyond the fence the claimed route meets Public Footpath No. 40 Newburgh approximately 261 metres from its junction with Cobbs Brow Lane. At Point C, facing Public Footpath No. 40 Newburgh the words 'NO FOOTPATH AHEAD' have been written onto the wooden post and rail fencing with a black marker pen. The wording appears to refer to the route of the claimed footpath. The word 'FOOTPATH' with an arrow has also been written pointing in the direction of Public Footpath No. 40 Newburgh with the words 'TO COBBS BROW LANE ONLY'. At the end of the section of fencing a yellow public footpath waymark disc has been nailed onto the fence in the direction of Public Footpath No. 40.

As the route is a field edge path it is suggested that the width of said claimed route would be 2 metres, being sufficient width for 2 users approaching from opposite directions to pass each other comfortably where there are no immediate physical constraints.

### **Map and documentary evidence relating to claimed addition**

A variety of maps, plans and other documents were examined with reference to the claimed route.

DOC NO.	DOCUMENT TITLE	Date	BRIEF DESCRIPTION OF DOCUMENT & NATURE OF EVIDENCE
1.	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

	Observations		<p>system of consultation or checking. Limitations of scale also limited the routes that could be shown.</p> <p>Cobbs Brow Lane and the watercourse forming the parish boundary are shown but the map does not show the claimed route (or the existing routes of Public Footpath Nos. 39 and 40 Newburgh).</p>
	Investigating Officer's comments		No inference can be drawn.
2.	Greenwood's Map of Lancashire  Observations	1818	<p>Greenwood's map of 1818 is a small scale commercial map.</p> <p>Cobbs Brow Lane and the watercourse are shown; also a building that could be Balls Barn situated on Public Footpath No. 39 Newburgh is shown. The claimed route and the existing routes of Public Footpath Nos. 39 and 40 Newburgh are not shown.</p>
	Investigating Officer's comments		No inference can be drawn.
3.	Hennet's Map of Lancashire  Observations	1830	<p>Small scale commercial map.</p> <p>Cobbs Brow Lane and the watercourse are shown but not the claimed route or recorded public footpaths.</p>
	Investigating Officer's comments		No inference can be drawn.
4.	Tithe Map and Tithe Award or Apportionm'nt          Observations	1845	<p>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.</p> <p>A tithe map for Newburgh dated 1845 includes the area crossed by the claimed route. The map shows a double pecked line from Point A extending north along the claimed route for approximately 45 metres to the edge of the extent of the map on the parish boundary. It also shows a double pecked line signifying the existence of a track between Point B and Point C on the claimed route with the claimed route meeting a field boundary at Point B. The remainder of the claimed route is not shown.</p> <p>Note that Public Footpath No. 40 Newburgh is not shown from Cobbs Brow Lane to Point C. The property known as Mount Pleasant is shown but access to it is via a track south and east then following the claimed route between</p>

		<p>Points B and C and then continuing along what is now known as Public Footpath No. 40 Newburgh or via a track that leads towards Ball's Farm, then along part of Public Footpath No. 39 Newburgh to Point A, along a short section of the claimed route towards Point B and across the boundary into Dalton.</p> <p>The Schedule accompanying the Tithe Map describes the field over which section B-C of the claimed route passes as 'Richards Hey' which was owned by Thomas Woodcock and leased by James Taylor. It is described as plot 450 – fallow. The field over which section A-B of the claimed route passes is plot 452, also known as 'Richards Hey' and owned by Thomas Woodcock and farmed by James Taylor. It was described as being planted with potatoes and turnips.</p>
	Investigating Officer's comments	<p>This shows/suggests that at the time that the Tithe Map was produced there was movement between Point B and Point C along the claimed route and that access to Mount Pleasant appeared to be via that part of the claimed route at that time. There is no indication as to the status of this field edge path.</p> <p>The route shown from Point A but not on the claimed line, as far as the parish boundary (where the map ends) is presumed to have continued on the other side of the watercourse in the parish of Dalton as there was no apparent place of resort at the boundary. There is no indication as to the status of this route.</p>
5.	Finance Act 1910 Map	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.
	Observations	No such map was found in the Lancashire Records Office.
	Investigating Officer's comments	No inference can be drawn but it is unlikely, even if a map did exist, that it would be possible to say with any certainty that any reference to a public right of way was to the claimed route and not to one of the other recorded public right of way across the land.
6.	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	No inclosure award for Newburgh was made.
	Investigating Officer's comments	No inference can be drawn.
7.	Ordnance Survey maps	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.
	6 Inch OS map Observations	1848	<p>The earliest OS 6 inch map for this area.</p> <p>The claimed route is not shown. However, Public Footpath No. 39 is shown and a property titled Ball's Barn is shown to exist just off Cobbs Brow Lane. Public Footpath No. 40 Newburgh is also shown. Partway along the route is a property known as Mount Pleasant. Access to the property appears to have been from Cobbs Brow Lane along Public Footpath No. 40 with another route shown coming across the fields from Ball's Barn. Close to Point C on the claimed route and coming off Public Footpath No. 40 Newburgh there is a double pecked line shown extending south south east through the edge of the woodland running parallel to the claimed route up to Point B. From here it turns south west away from the claimed route towards Ball's Barn. Whilst the claimed route follows the field edge just to the west of the woodland this track is shown to exist parallel to it but just within the boundary of the woodland.</p>
	Investigating Officer's comments		Both Public Footpaths No. 39 and 40 are shown, as is route near to and partly parallel to the claimed route, but not the claimed route therefore it can be inferred that the claimed route was not in use in 1848.
	25 Inch OS map Observations	1894	<p>First Edition published at the larger scale showing the area in more detail.</p> <p>None of the claimed route is shown on this map and neither is the track parallel to the claimed route between Points B - C that had been shown on the earlier 6-inch edition. The routes of Public Footpath Nos. 39 and 40 are shown, as is Mount Pleasant but Ball's Barn is not shown. The claimed route meets a field boundary close to Point A and another at Point B.</p>
	Investigating Officer's comments		It can be inferred that the claimed route was not in use in 1894.
	25 Inch OS map Observations	1908	<p>Further edition of 25 inch map.</p> <p>The claimed route is not shown. The routes of Public Footpath Nos. 39 and 40 are shown, as is Mount Pleasant. The claimed route meets a field boundary close to Point A and another at Point B.</p>
	Investigating Officer's		It can be inferred that the claimed route was not in use in

	comments		1908.
	25 Inch OS map Observations	1928	Further edition of 25 inch map.  The claimed route is not shown although Public Footpath Nos. 39 and 40 are shown, as is Mount Pleasant. The claimed route meets a field boundary close to Point A and another at Point B.
	Investigating Officer's comments		It can be inferred that the claimed route was not in use in 1928.
	6 Inch OS map  Observations	1955	The Ordnance Survey base map for the Definitive Map, First Review, was published in 1955 (although the date of revision was before 1930) at a scale of 6 inches to 1 mile. This map is probably based on the same survey as the 1928 25-inch map.  The claimed route is not shown although the routes of Public Footpath Nos. 39 and 40 are shown. The claimed route meets a field boundary close to Point A and another at Point B.
	Investigating Officer's comments		It can be inferred that the claimed route was not in use in the 1928 when the survey is believed to have been carried out.
	25 Inch OS map Observations	1960	Revised edition of 25 inch map.  This edition does not show the claimed route. However, the routes of Public Footpath Nos. 39 and 40 Newburgh are shown. The claimed route meets a field boundary close to Point A and another at Point B. Mount Pleasant is shown as a 'ruin' and beyond it the route of Public Footpath No. 40 Newburgh has been enclosed between two field boundaries leaving a narrow strip of land (approximately 2 metres wide) as an enclosed footpath. Access onto the claimed route from Public Footpath No. 40 at Point C would pass through one of these field boundaries.
	Investigating Officer's comments		It can be inferred that the claimed route was not in use in 1960.
8.	Aerial Photographs  Observations	1945	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.  The earliest set available was taken just after the Second World War in about 1945. The clarity is generally very variable but in this case appears to be quite good.  There is no track or walked route apparent along the length of the claimed route and it appears to meet a field boundary at Point B.
	Investigating Officer's comments		It can be inferred that the claimed route was not in use in 1945.



	Aerial photograph	1960s	The black and white aerial photograph taken in the 1960's was not available to view in the Lancashire Record Office. It can be viewed on the County Council's computer mapping system (Mario or Map Zone) but the clarity is poor.
	Observations		A track does appear evident along the claimed route between Points B and C.
	Investigating Officer's comments		It can be inferred that part of the claimed route between points B and C was in existence in 1960s.
	Aerial photograph	1988	Aerial photograph taken on 21 <sup>st</sup> May 1988
	Observations		It is not possible to see the claimed route as it is obscured by trees.
	Investigating Officer's comments		No inference can be drawn.
	Aerial photograph	2000	Aerial photograph taken on 8 <sup>th</sup> May 2000
	Observations		There is a faint line between Point A and Point B which may indicate the claimed route but the route is again partly obscured by trees.
	Investigating Officer's comments		No strong inference can be drawn but there is some suggestion that part of the claimed route between points A and B was in use in 2000.
9.	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.
	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.
	Observations		<p>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.</p> <p>There is no parish survey map for Newburgh. Newburgh formed part of Ormskirk Urban District and the initial maps were produced by Ormskirk Urban District Council automatically becoming the Draft Map and Statement of Public Rights of Way.</p>
	Investigating Officer's comments		No inference can be drawn.
	Draft Map		The preliminary survey work was carried out in Lancashire

	Observations		<p>from the early 1950s. An accompanying description was usually written for each path. In this area it was undertaken by Ormskirk Urban District Council who produced a map of routes they believed to be public drawn onto a 6-inch Ordnance Survey map. It was given a "relevant date" (1<sup>st</sup> January 1953) and notice was published that the draft map had been prepared. The Draft Map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into some of these objections, and recommendations made to accept or reject them on the evidence presented.</p> <p>The claimed route was not shown on the Draft Map of Public Rights of Way. In this instance, there were no formal objections or other comments about the omission of the claimed route.</p>
	Investigating Officer's comments		The claimed route was not considered to be public in the 1950s.
	Correspondence relating to the preparation of the Definitive Map  Observations		<p>Records were searched in the Lancashire Record Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p> <p>In the 1990's the West Lancashire branch of the Ramblers Association archived a great deal of material with the Lancashire Record Office. Within the deposit are a number of Ordnance Survey maps at a scale of 6 inch to 1 mile which have been annotated by the Ramblers Association following a survey that they carried out to check the rights of way recorded by the Parish Councils and Urban District Councils following the completion of the parish surveys. The maps were complemented by a series of written reports which provided detailed descriptions of footpaths as they were circa 1927-1933.</p> <p>The maps and written reports were originally intended to be complementary and the maps are frequently annotated to indicate the precise location of features mentioned in the reports. Later the maps were used as working records of the Draft Map and finally of the Definitive Map and were extensively annotated.</p> <p>Within the Ramblers records there is a copy of Ordnance Survey Map Sheet SD 84SE which covers the area of the claimed route. Public Footpath Nos. 39 and 40 Newburgh are shown coloured red and have been numbered in purple. The claimed route is also shown in red but has been subsequently crossed out with a series of 9 crosses drawn with blue ink between Point A and Point C. It has</p>

		<p>been circled in pencil and the number 13 written next to it, also in pencil. The word 'claimed' has been written in pencil above the number 13.</p> <p>A further search of the Ramblers records found a letter dated 7<sup>th</sup> January 1953 from the Ramblers Association to Ormskirk Urban District Council. In the letter the Ramblers Association query the omission of two routes in Newburgh. The first path queried is the route that subsequently became Public Footpath No. 39 on the Definitive Map. The second path queried is parallel to the claimed route from Point A running north along the parish boundary to Point C and then a route continuing to a footbridge where it crosses the parish boundary (now recorded as part of Public Footpath No. 40 Newburgh).</p> <p>In response, a letter from Ormskirk Urban District Council to the Ramblers Association dated 20<sup>th</sup> January 1953 stated that a footpath shown on the Ordnance Survey map linking Public Footpath Nos. 39 and 40 was shown on the other side of the parish boundary in the Wigan Rural District area. A sketch map accompanying the letter shows the routes of Public Footpath Nos. 39 and 40 numbered and coloured red. It also shows a single dashed line on the east side of the parish boundary running parallel to the claimed route indicating the existence of a track but it does not indicate the status of the route.</p> <p>The Parish Survey Map for Dalton does not show this route as a public footpath and neither does the Draft Map or any other map associated with the preparation of the Definitive Map.</p> <p>It appears that following this response and the omission of the claimed route from the Draft Map the Ramblers Association annotated their schedule of 'Footpath Queries' by writing that the claimed route was not put on the Definitive Map. They accompanied this comment with the word 'claim'. No further correspondence relating to the claimed route could be found.</p>
	Investigating Officer's comments	<p>It appears that the West Lancashire group of the Ramblers Association surveyed the area in 1927-33 and carried out considerable work in the 1950's to check routes to be included on the parish surveys and Draft Maps. They queried the existence of the claimed route and whether it should be included on the Definitive Map. It did not get included on the Map but their correspondence could be taken to suggest that they thought that it should be claimed at some point in the future.</p>
	Provisional Map	<p>Once all these representations 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</p>

	Observations		to the Crown Court.  The claimed route was not shown on the Provisional Map of Public Rights of Way and here were no formal objections or other comments about the omission of the claimed route.
	Investigating Officer's Comments		Landowners did not admit the claimed route to be a public right of way in the 1950s.
	The First Definitive Map and Statement Observations		The Provisional Map, as amended, was published as the Definitive Map in 1962.  The claimed route was not shown on the First Definitive Map and Statement of Public Rights of Way.
	Investigating Officer's comments		The claimed route was not considered to be a public footpath in the 1950s.
	Revised Definitive Map of Public Rights of Way (First Review)  Observations		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published. 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 The claimed route is not shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).
	Investigating Officer's comments		The claimed route was not considered to have become a public footpath by the 1960s.
10.	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

	Observations		<p>claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p> <p>A statutory deposit and declaration was made by the current landowner. The deposit was received on 12<sup>th</sup> March 2008 and acknowledges the existence of the routes already recorded on the Definitive Map but stated that no other land had been dedicated as highways. The statement was signed by Mr Martin John Ainscough, Giants Hall, Newburgh, Wigan WN8 7XA who stated that he had owned the land (affected by the claimed route) since 12<sup>th</sup> April 2007. No previous plans or deposits have been submitted by previous landowners.</p>
	Investigating Officer's comments		<p>The Statutory deposit and declaration was submitted approximately 6 months prior to the submission of the claim. The exact date of the calling into question of the status of the claimed route has been considered by the County Secretary and Solicitor.</p>

The land crossed by the route claimed for addition to the Definitive Map is not a biological heritage site or a site of special scientific interest.

## Summary

In summary, early map evidence does not show that the claimed route existed as a worn track on the ground. The Tithe Map of Newburgh dated 1845 does show a route corresponding to the claimed route between Point B and Point C, suggesting that there was movement along the claimed route at that time. However, the first Ordnance Survey 6 inch map that was examined (dated 1848) does not show any part of the claimed route in existence although it does show a route running parallel to the claimed route between Point B and Point C within the boundary of the woodland. No further Ordnance Survey or privately produced map examined through to the 1960's shows the claimed route existing as a physical feature evident on the ground.

An aerial photograph taken in the 1960's shows a track visible along the route of the claimed footpath between Point B and Point C. The most recent aerial photograph taken in 2000 shows a faint line along the claimed route between Point A and Point B which could indicate a walked route. The remainder of the route between Point B and Point C is obscured by trees.

The claimed route is not shown on the Definitive Map or on any of the maps prepared as part of the preparation of the Original Definitive Map or Definitive Map (First Review). However, the West Lancashire group of the Ramblers Association queried whether the route existed in the 1950's and whether it should be included on the map. Although no official application was made by them to have it added to the

Definitive Map correspondence on their files suggests that they believed that it should be claimed at some point in the future.

## **County Secretary & Solicitor's Observations**

### **Information from the Applicant**

Twenty-two user evidence forms have been submitted in support of the claim. These forms indicate knowledge and use of the route as follows - for 72 years (1) 61-70 years (1); 51-60 years (0); 41-50 years (2); 31-40 years (3); 21-30 years (7); 11-20 years (7); 0-10 years (1). The route has been predominantly used for leisure walking and running.

The range of use varies from being used 4 times per annum, every week to over 250 times per annum. All the users agree the route has only been used on foot and has always run over the same route.

One user says that there is a stile on the footpath from Newburgh Village past Derby House. All other users state that there are no stiles and gates across the route. One user states at the end of year 2007 he was prevented because of a fence/hedge from using the route. All users except for one states he was stopped from using the route and turned back from using the footpath and in 2008 witnessed someone being told by an employee of the land owner they could not use the path in future and a notice stating 'private' was displayed. There is no indication from the form where along the route this notice was situated. All the users state there has never been any gates locked along the route.

The applicant, Newburgh Parish Council, has provided in support of their application a leaflet and map produced by the Footpath Committee of Newburgh Parish Council dated February 1986. This leaflet attempts to explain the official and unofficial footpaths there are in the area.

The leaflet details that there is an 'unofficial' footpath which is not on the Definitive Map which continues south along the edge of the woods, down to Public Footpath No. 39. This illustrates the fact that the footpath had been recognised by the Footpath Committee when the leaflet was produced.

### **Information from Others**

A land owner, Mr Ainscough who has tenanted the land to Martin Ainscough Farms Limited in which he is a shareholder and director has stated he has a significant amount of evidence to refute this claim and he would be instructing solicitors to represent him to prevent the claim from going any further. However, despite writing to Mr Ainscough he has not provided any evidence to refute this claim at this moment in time.

## **Assessment of the Evidence**

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

#### In Support of the Claim

- Evidence of use
- Aerial photograph 1960 and 2000
- West Lancashire group of the Ramblers Association queries
- No contrary intention from owner until 2007/8

#### Against Accepting the Claim

- The majority of the Map and Documentary evidence indicates that the claimed route was not in use nor considered to be public prior to 1960
- Statutory deposit and declaration made and received 12 March 2008

#### Conclusion

The claim is that this route is an existing Footpath and should be added to the Definitive Map and Statement of Public Rights of Way.

It is therefore advised 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 or for the criteria in Section 31 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.

Statutory inference of dedication under section 31 Highways Act 1980 is satisfied where 20 years as of right use of a way has occurred without interruption unless there is sufficient evidence of a contrary intention by the landowner. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question. Often it is the application to have the route recorded which brings the path into question but here the new owner seems to have begun to challenge use and take some action in 2007 and 2008. In particular a statutory deposit and declaration received under section 31(6) of the Highways Act 1980 provides sufficient evidence to negative the intention of the owner to dedicate any such additional way as a highway and further inclusion on the County Councils register brings about knowledge among landowners, users of rights of way, and the general public about applications concerning ways which landowners do not intend to dedicate as public rights of way. The date the way was brought into question is when the statutory deposit and declaration was received on 12 March 2008.

Considering initially the criteria for a deemed dedication under Section 31 of the Highways Act, that use needs to be “as of right” and also sufficient for the period 1988-2008. Twenty-two user evidence forms indicate knowledge and use of the route for many years. Fourteen users of the twenty-two state they have used the route claimed for 20 years or more for leisure and recreation purposes providing strong user evidence. One user states at the end of 2007 he was prevented from using the path, another user in 2008 witnessed someone being told by an employee

of the land they could not use the path in future and a notice stating 'private' was displayed but these incidents may not in isolation have brought the route into question. It is advised that even if the route was called into question in 2007 there is still sufficient evidence of qualifying use 1987- 2007.

It is to be noted that current landownership is claimed by Mr Ainsworth since 13 April 2007 evidenced by a copy of a transfer signed as a deed, however land registry documentation does not currently reflect this landownership detail. Mr Ainsworth has written to the Order Making Authority and stated his landownership and also that he does have a significant amount of evidence to refute the claim and whilst he advised he would be instructing a solicitor to put his evidence together no evidence has been received by the County Council to date. Although the current owner submitted a statutory deposit and declaration dated 12 March 2008 no previous plans or deposits have been submitted by previous landowners. The transfer indicates that the land was previously held on trust and the trustees have been consulted on the claimed route and no observations or comments have been received. Trustees of land held on trust for sale generally have power to dedicate rights of way and, although in this case the powers of the trustees are unknown it is presumed that they did have such capacity.

Considering also whether there are circumstances from which dedication could be inferred at common law, early map evidence does not show that the claimed route existed on the ground as a through route. Only the Tithe Map of Newburgh dated 1845 shows a route corresponding to the claimed route between Point B and Point C, suggesting that there was movement along that part of the claimed route at the time. The claimed route is not shown on the Ordnance Survey maps and there is no documentary evidence of its existence as a through route until aerial photography in 1960's shows a track visible along the route of the claimed footpath between Point B and Point C suggesting that part of the route was in existence and further aerial photography in 2000 shows a faint line along the claimed route between Point A and Point B, the route between Point B and Point C being obscured by trees. The West Lancashire group of the Ramblers Association queried in the 1950s whether it should be included on the Definitive Map: this suggests it was believed by the group that the now claimed route should be claimed at some point in the future.

It is suggested that the way this route is recorded on documentary evidence is not itself sufficient circumstances from which dedication could be inferred, however, sufficient as of right use acquiesced in by the owners may also be circumstances from which dedication can be inferred. The use as evidenced corroborated by the documentary evidence outlined above would suggest that on balance there are sufficient circumstances to infer at common law that the owners in the 1960s to 2007, in acquiescing in the use and taking no overt actions actually intended dedicating the claimed route as a footpath and it had become a footpath accepted by the public.

Taking all the evidence into account, the Committee on balance may consider that the provisions of S31 Highways Act can be satisfied and there is also sufficient evidence on balance from which to infer dedication at common law of a footpath in this matter and that the claim be accepted.



## **Risk**

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 are 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: 804/491	Various	S Khalid, County Secretary & Solicitor's Group, (01772) 533427

Reason for inclusion in Part II, if appropriate

N/A