

## **Regulatory Committee**

Meeting to be held on 15<sup>th</sup> March 2018

Electoral Division affected:  
Skelmersdale West

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

#### **Definitive Map Modification Order Investigation**

#### **Addition of a Restricted Byway at Lathom High School, Skelmersdale, West Lancashire**

**File No. 804-591**

(Annex 'A' refers)

Contact for further information:

Claire Blundell, 01772 533196, Paralegal Officer, County Secretary and Solicitors Group, [Claire.blundell@lancashire.gov.uk](mailto:Claire.blundell@lancashire.gov.uk)

Jayne Elliott, 07917 533196, Public Rights of Way Officer, Environment and Planning Group, [jayne.elliott@lancashire.gov.uk](mailto:jayne.elliott@lancashire.gov.uk)

### **Executive Summary**

Application for the addition to the Definitive Map and Statement of Public Rights of Way, of a restricted byway from a point on the un-numbered cycleway east of the subway under Glenburn Road, passing through the grounds of Lathom High School, to a point on highway F8761 (known as Summer Street), in accordance with File No. 804-591.

### **Recommendation**

That the application for a Restricted Byway from a point on the un-numbered cycleway east of the subway under Glenburn Road, passing through the grounds of Lathom High School to a point on highway F8761 (known as Summer Street) and shown on the Committee plan between points A-B-C-D, in accordance with File No. 804-591, be not accepted.

### **Background**

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for a Restricted Byway to be recorded on the Definitive Map and Statement of Public Rights of Way, from a point on the un-numbered cycleway east of the subway under Glenburn Road, passing through the grounds of Lathom High School, to a point on highway F8761 (known as Summer Street).

The County Council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out

the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

An order will only be made to add a public right of way to the Definitive Map and Statement if the evidence shows that:

- A right of way “subsists” or is “reasonably alleged to subsist”

An order for adding a way to or upgrading a way shown on the Definitive Map and Statement will be made if the evidence shows that:

- “the expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path or restricted byway”

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

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

## **Consultations**

West Lancashire District Council has been consulted and no response has been received, therefore it is assumed that they have no comments to make.

There is no Parish Council for the area.

### Applicant/Landowners/Supporters/Objectors

The evidence submitted by the applicant/landowners/supporters/objectors and observations on those comments are included in Advice – Head of Service – Legal and Democratic Services Observations.

## **Advice**

### **Head of Service – Planning and Environment**

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	4759 0741	Open junction with cycleway
B	4760 0741	Barrier across the route
C	4763 0742	Access from school buildings to tennis courts
D	4770 0749	Barrier at junction with Summer Street

### **Description of Route**

A site inspection was carried out 6 October 2017.

The application route crosses land forming part of Lathom High School, running along a tarmac road, immediately south of the school buildings and between the buildings and adjacent school fields and tennis courts.

Whilst the school buildings have been secured with fencing the grounds, including the playing fields, have not.

The application route starts at an unmarked point on a tarmac path which is marked out on the ground and signed as a cycleway. At point A on the Committee plan, the cycleway turns north leading round to the main entrance to the school, and then continues past the school looping back round to link to the application route at the eastern end of the application route.

From point A, the application route leaves the cycleway and follows a tarmac roadway in an easterly direction. At point B, a metal barrier has been erected across the route which was fixed in an open position on the day the route was inspected, but which the school said would normally be kept padlocked shut to prevent vehicles from accessing the school fields.

A notice on the barrier stated 'No entry' and on the school wall close to point A - and pointing along the cycle track towards the main entrance to the school – there was a sign stating 'Alternative footpath around the front of the school, follow arrow'. A representative of the school pointed out the location of a pedestrian route, with two flights of steps, along the edge of the building, which provided access from the cycle route north of point A onto the application route east of the barrier, and stated that this access could be used by pedestrians if they wished to use the application route on foot instead of using the alternative signed.

From point B, the application route runs east along a tarmac road to the rear of the school fence and open to school fields to the south. At point C, there is access from the school buildings via gates in the fencing and across the application route to the tennis courts and outdoor all weather sports pitches.

From point C, the application route continues along the tarmac road, following the school fence initially east north east, curving round to the north to point D where a second metal barrier is located across the route. Again, this barrier was open on the

day of inspection. Metal fencing had been erected to the side of the barrier with a gap through which it was possible to walk. A sign on the school fence adjacent to barrier states 'Private School Grounds, Trespassing or causing a nuisance may result in prosecution' and a further sign duplicated the information at point A regarding the use of an alternative footpath around the front of the school.

At point D, the application route meets the western end of Summer Street which is recorded as F8761 on the List of Streets (i.e. the record of publicly maintainable highways as required by S36 of the Highways Act 1980).

The total length of the route is 160 metres.

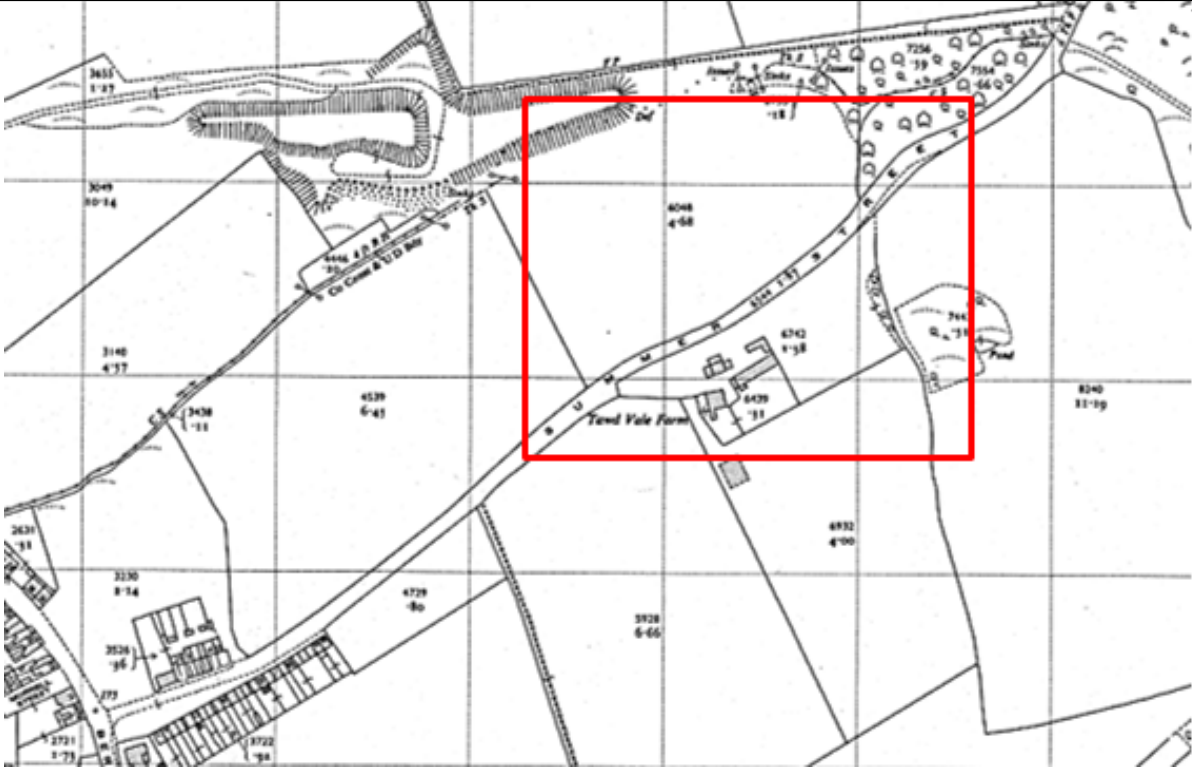
### **Map and Documentary Evidence**

Several maps, plans and other documents were examined to discover when the route came into being, and to try to determine what its status may be. The route is not shown on early commercial maps or the Ordnance Survey maps published in 1849, 1893, 1908, 1927, 1955 and 1960 and is not visible on aerial photographs taken in the 1940s or 1960s.

The route crosses land which is within an area which was designated as Skelmersdale New Town in 1961 and over the next 20 years the area was extensively developed to provide new housing, shops, business areas and road systems.


The area was subsequently redeveloped and Lathom High School (formerly Tawd Vale High school) built – including the access road around the rear of the school along which the application route runs.

The school opened in 1969.

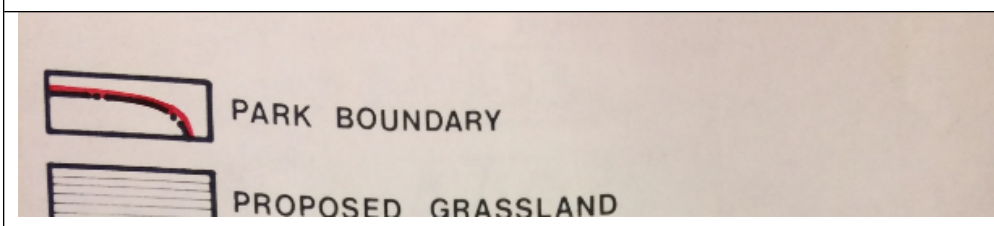
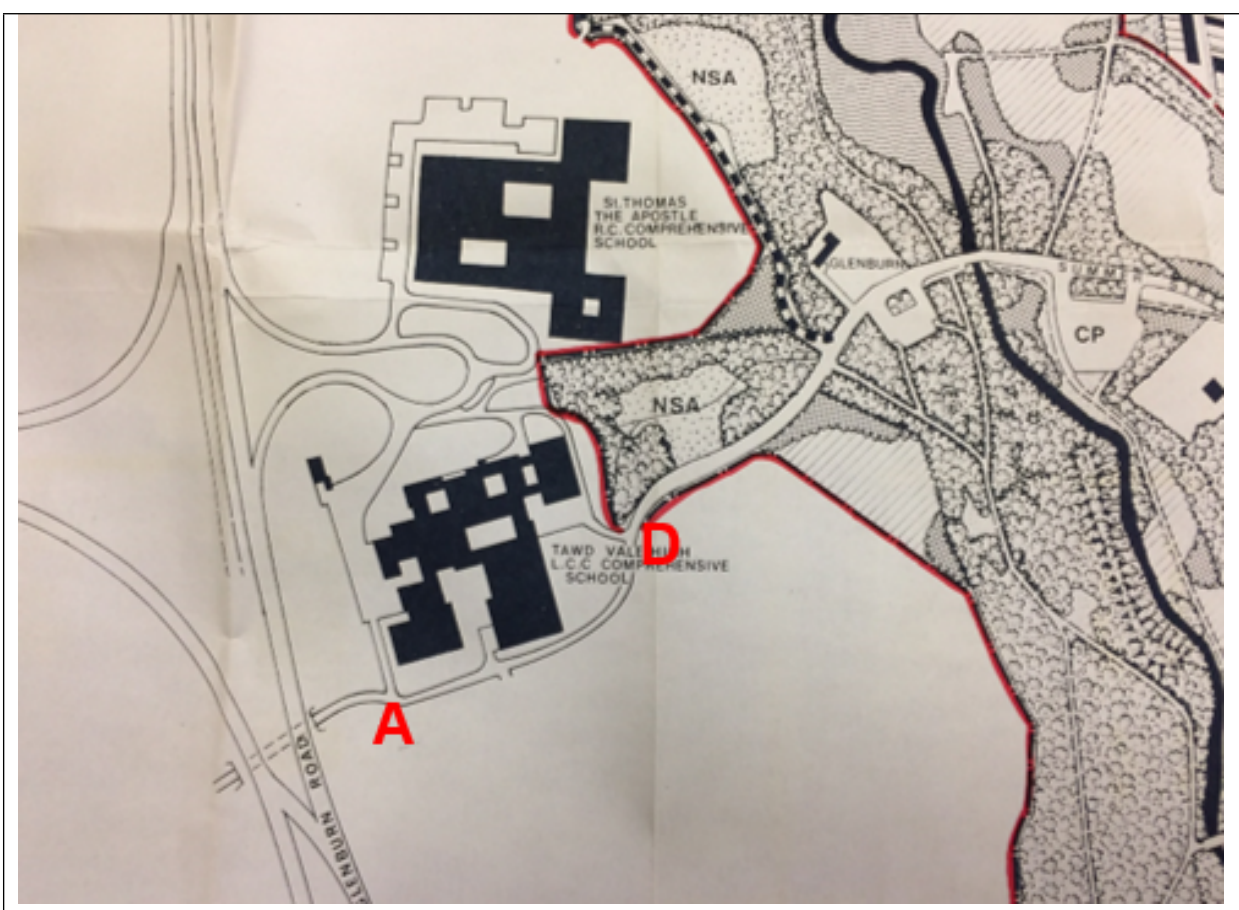
Document Title	Date	Brief Description of Document & Nature of Evidence
<b>1:2500 OS Map</b>	1960	1:2500 OS map revised 1959 and published 1960.
		
Observations		The map shows the land crossed by the application route prior to the construction of the school. A road named as Summer Street is shown cutting through the land now comprising of the school buildings and grounds but the application route is not shown.
Investigating Officer's Comments		The application route did not exist in 1959.
<b>Aerial photograph</b>	1960s	Aerial photograph available to view on GIS with the position of the application route shown marked in red.



<p>Observations</p>	<p>The photograph clearly shows the route of Summer Street prior to the area being redeveloped. The alignment of the application route has been digitised to overlay the aerial photograph to show how the application route is not on the same alignment as Summer Street.</p> <p>An unedited version of the photograph is also included to show the land under the digitised line and the fact that the application route cannot be seen to have existed as a worn route on the</p>
---------------------	---

		ground at that time.
Investigating Officer's Comments		The application route did not exist in the 1960s.
<b>Highway Extinguishment Order</b>	1972	<p>On the 26<sup>th</sup> September 1972 The Secretary of State for the Environment made an order to extinguish public rights over part of Summer Street.</p> <p>The Order – titled 'The Urban District of Skelmersdale and Holland (Skelmersdale Development Corporation: Part of Summer Street and Parts of Footpaths Nos 102 and 103) Rights of Way Order 1972' extinguished all public rights along part of Summer Street shown between points A – B on the Order plan shown below.</p>
		
Observations		The 1972 Order extinguished all public rights along Summer Street between point A and point B on the above plan including that part of the route east of the application route which is now recorded on the List of Streets as footpath. The application route did not form part of Summer Street and was not referred to in the order.
Investigating Officer's Comments		The application route was not affected by the 1972 Order but the fact that it is not referred to or shown in the Order suggests that it did not exist in 1972.
<b>Tawd Valley Park landscape plan</b>	1974	Plan deposited in the County Records Office Ref NTSK4/1/582



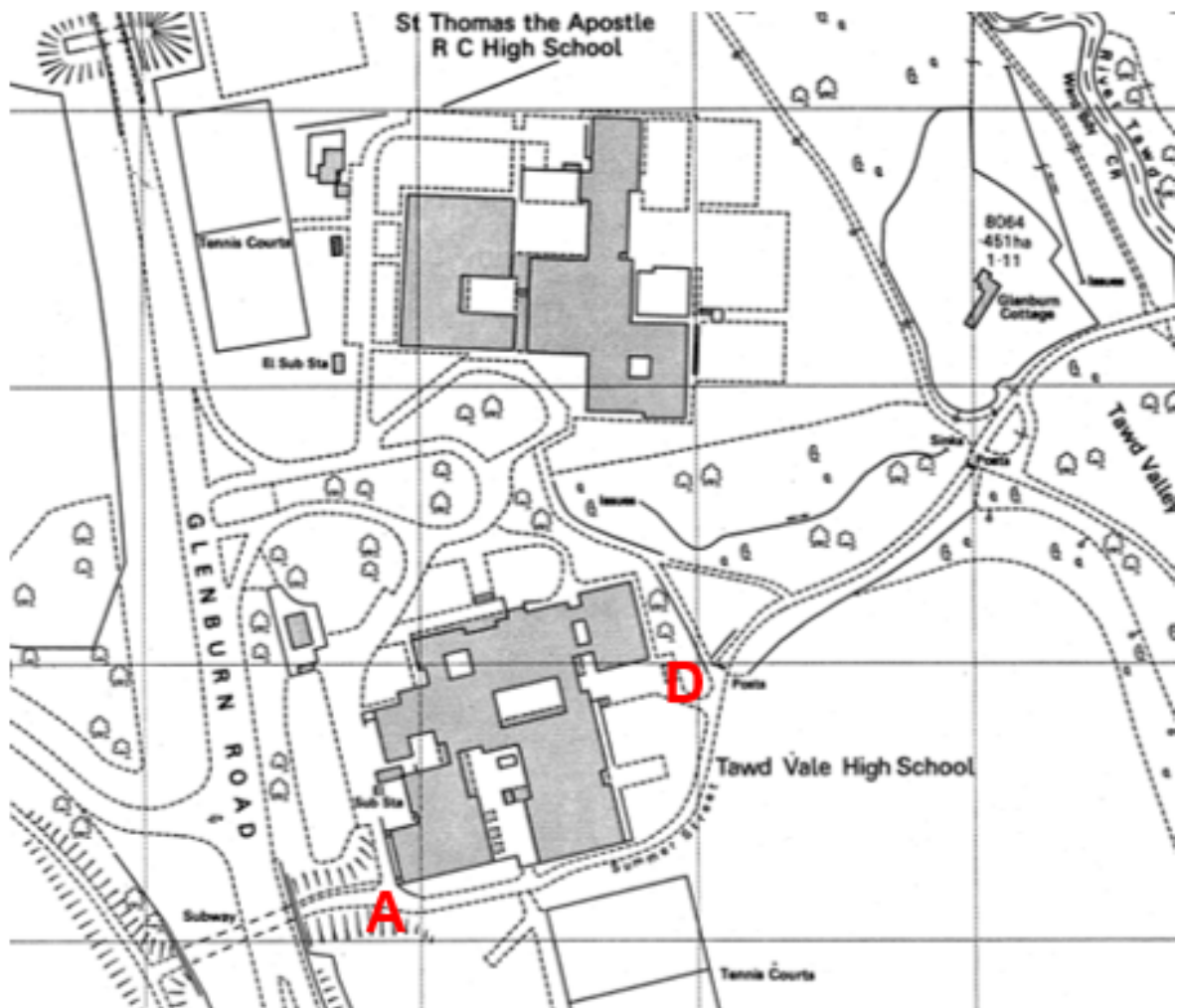


SKELMERSDALE DEVELOPMENT CORPORATION <b>TAWD VALLEY PARK 3</b> SECTION 42(I) NEW TOWNS ACT 1965		
Scales <b>1:2500</b>	Drawn G. HOUGH Traced Checked Date March 1974	Org. No. <b>L.P.Tv.28d</b>
A.D.HALL BSc, ARTC, CEng, MICE, FIMunE, MIHE Chief Engineer		J.D.PROCTER BArch(LPool), MCD, ARIBA, MRTPI Chief Architect & Planning Officer

Observations		A plan of Tawd Valley Park dated 1974 was inspected. The application route lies outside the
--------------	--	---



		boundary of the country park but is shown on the plan as part of a longer route providing access into the park. There is no indication what the status was thought to be but the route is shown as part of a substantial track and access appears to be open.
Investigating Officer's Comments		The application route existed in 1974 and appeared capable of being used.
<b>1:2500 OS Map</b>	1985	Further edition of 25 inch map reconstituted from former county series and revised in 1983 and published 1985 as national grid series.



Observations		The application route is shown as part of a longer route and is named on the map as Summer Street. The route appears to be fairly wide and open at point A and point D (i.e. no barriers or gates are shown across it).
Investigating Officer's Comments		The application route existed in 1983 and appeared to be capable of being used. It appears likely that it would have been possible to use the route with vehicles as it was wide

		<p>enough and without barriers. However it could not have been used by most vehicles beyond point D due to the narrow width of the northern path and posts across the eastern.</p>
Aerial Photograph	1988	<p>Aerial photograph available to view in the Lancashire County Records Office dated 1988.</p>
		
Observations		<p>The application route can be clearly seen as part of a longer route passing the school. It appears to have a substantial surface and looks like it would have been wide enough to have been used by vehicles. It is not possible to see whether the posts beyond point D (as shown on the 1985 OS map) existed due to tree coverage</p>

		and the scale of the map.
Investigating Officer's Comments		The application route existed as part as a longer through route in 1988 and appeared to be capable of being used.
<b>Ormskirk-Skelmersdale Cycle Leaflet</b>	2013	A leaflet produced by Lancashire County Council to promote cycling in West Lancashire.



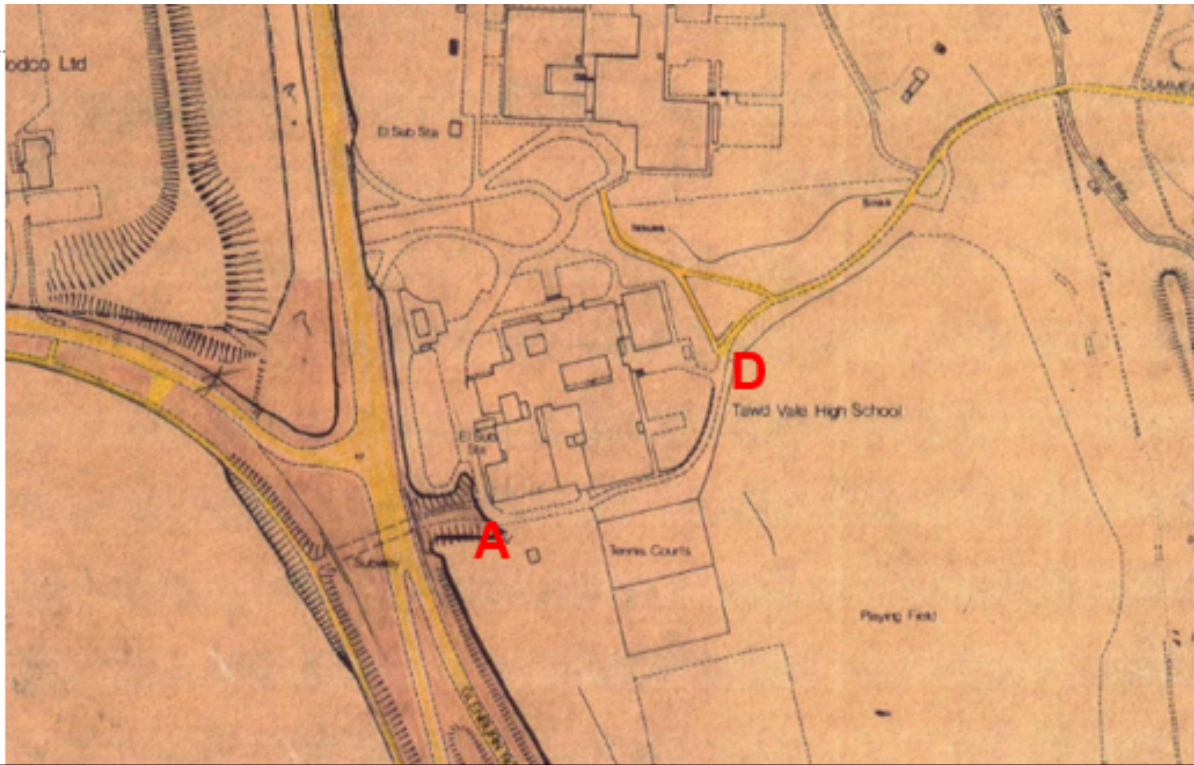
		<h3>Key</h3> <ul style="list-style-type: none"> <li>Main road</li> <li>Minor road</li> <li>Recommended on-road cycle route (not all signed)</li> <li>Cycle track</li> <li>Proposed cycle track</li> <li>Cycle lane</li> <li>Bridleway (cycling allowed)</li> <li>Footpath (dismount, no cycling)</li> <li>Toucan/Pelican*/Zebra* crossing (*cyclist's dismount)</li> <li>One way</li> <li>National Cycle Route number</li> <li>Regional Cycle Route number</li> <li>Rail line and Station</li> <li>Bus Station</li> <li>Rural area</li> <li>Park and open space</li> <li>Urban area</li> <li>Pedestrian area (no cycling)</li> <li>Place of interest</li> <li>Schools Et Colleges</li> <li>Major employment site</li> <li>Shops</li> <li>Cycle Shop</li> <li>Hospital</li> <li>Other buildings</li> </ul>
Observations		<p>The leaflet promotes the benefits of cycling across Skelmersdale. It states that a network of high quality routes were being developed across Skelmersdale linking housing estates, schools and employment areas.</p> <p>The map shows a network of existing cycle tracks (solid green line) and proposed cycle tracks (green dashed lines).</p> <p>The application route is not shown on the map but a route is shown around the north of Lathom High School (as currently exists) which passes through point A.</p>
Investigating Officer's Comments		<p>The application route was not considered to be part of the existing cycle network in 2013 and was not identified by the County Council as a proposed cycleway. Neither is it shown as a recognised footpath link.</p>
<b>Definitive Map Records</b>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<b>Parish Survey Map</b>	1950-1952	<p>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</p>

		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		The route under investigation is in Skelmersdale which is a former Urban District Council. No parish survey map or cards are therefore available.
<b>Draft Map</b>		The Draft Maps were given a "relevant date" (1 <sup>st</sup> 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 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 these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The route under investigation was not shown on the Draft Map and no representations were made to the County Council.
<b>Provisional Map</b>		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 route under investigation was not shown on the Provisional Map and no representations were made to the County Council.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.



Observations		The route under investigation was not shown on the First Definitive Map and no representations were made to the County Council.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		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 with a relevant date of 1 <sup>st</sup> 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 route under investigation is not shown.
Investigating Officer's Comments		There is no indication that the application route was considered to be a public right of way by the Surveying Authority.
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>

## Highway adoption records





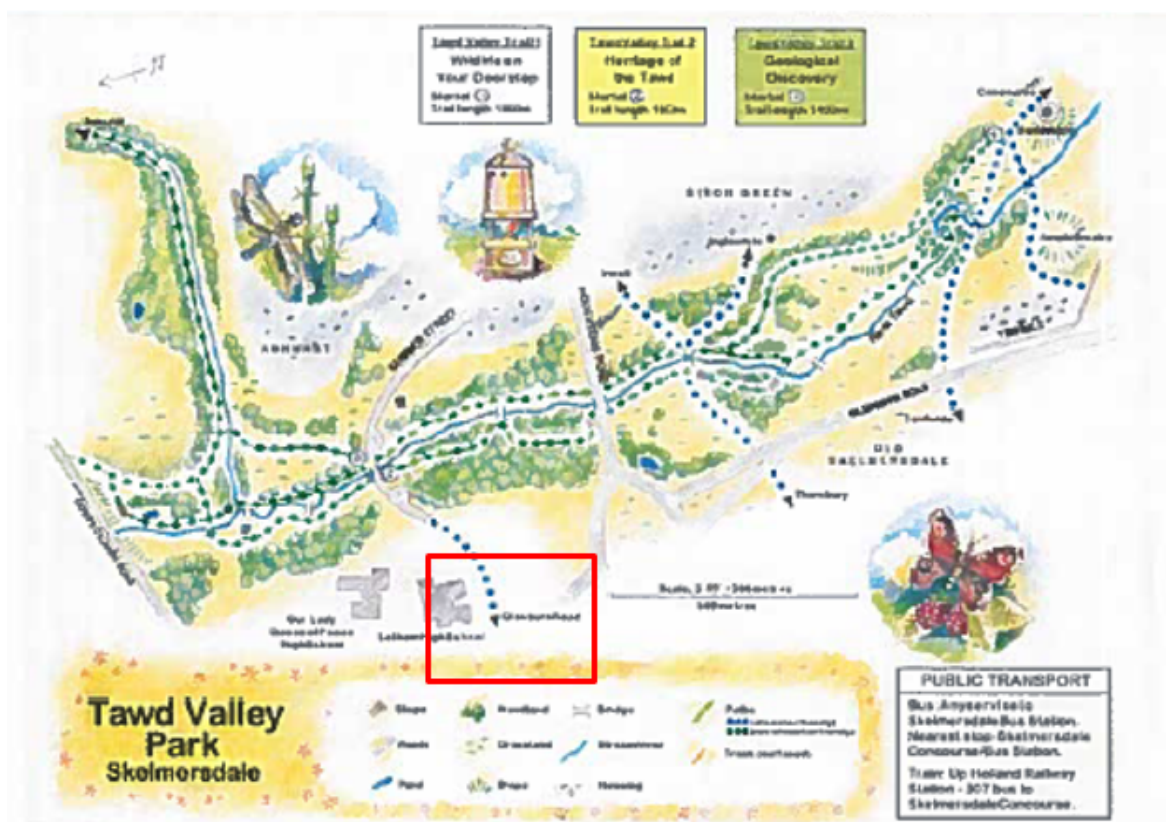
Lancashire County Council record of cycle routes

Observations		<p>The application route is not recorded as a publicly maintainable route on the List of Streets by the County Council. The two routes continuing beyond point D are recorded as a footpaths F8761 (Summer Street) and F570.</p> <p>The route linking to point A (from under the subway and continuing north around the front of the school) is recorded on the County Council records as an off road cycle route and is signposted and marked out on the ground.</p>
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights along the application route.</p>
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection</p>

		<p>to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		No Highways Act Section 31(6) deposits have been lodged with the County Council for the area over which the route under investigation runs.
Investigating Officer's Comments		There is no intention by a landowner under this provision of non-intention to dedicate public rights of way over their land.

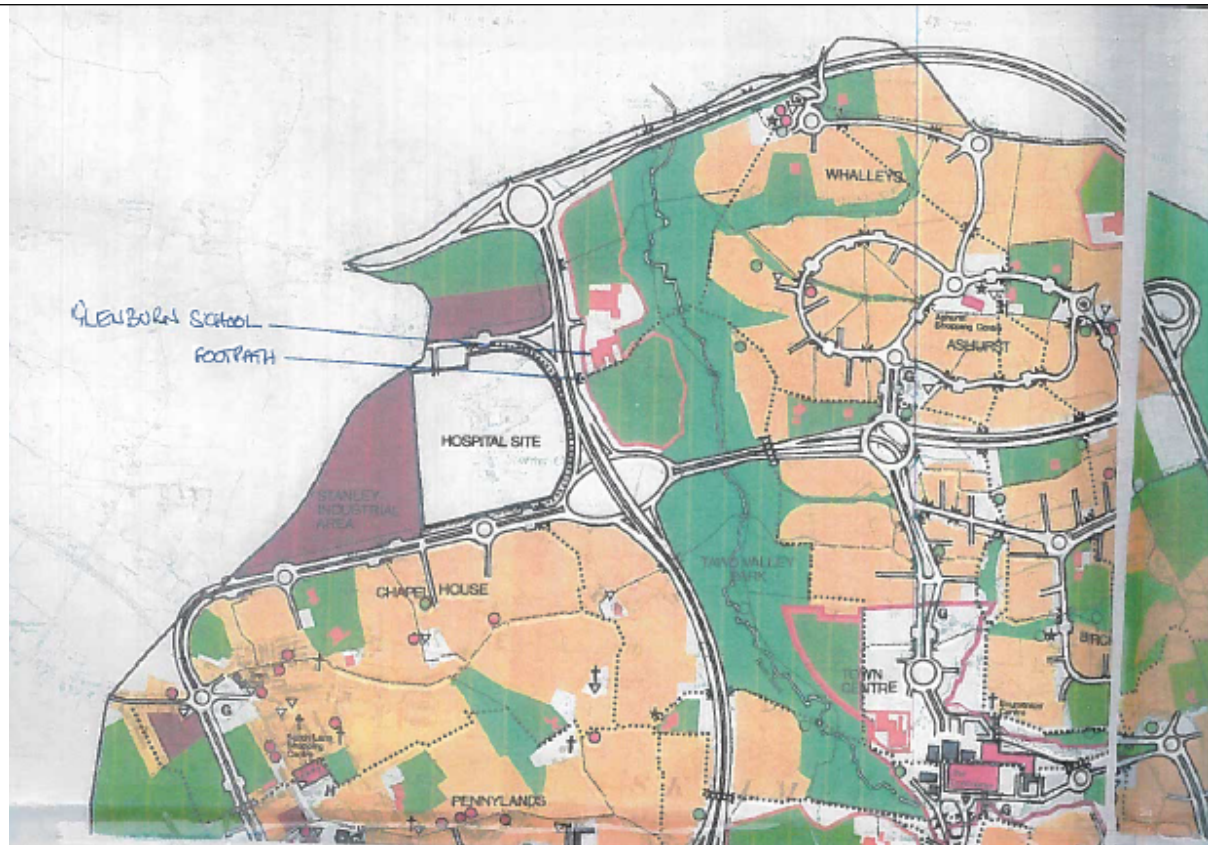
Plans and Maps  
submitted by the  
applicant

1975

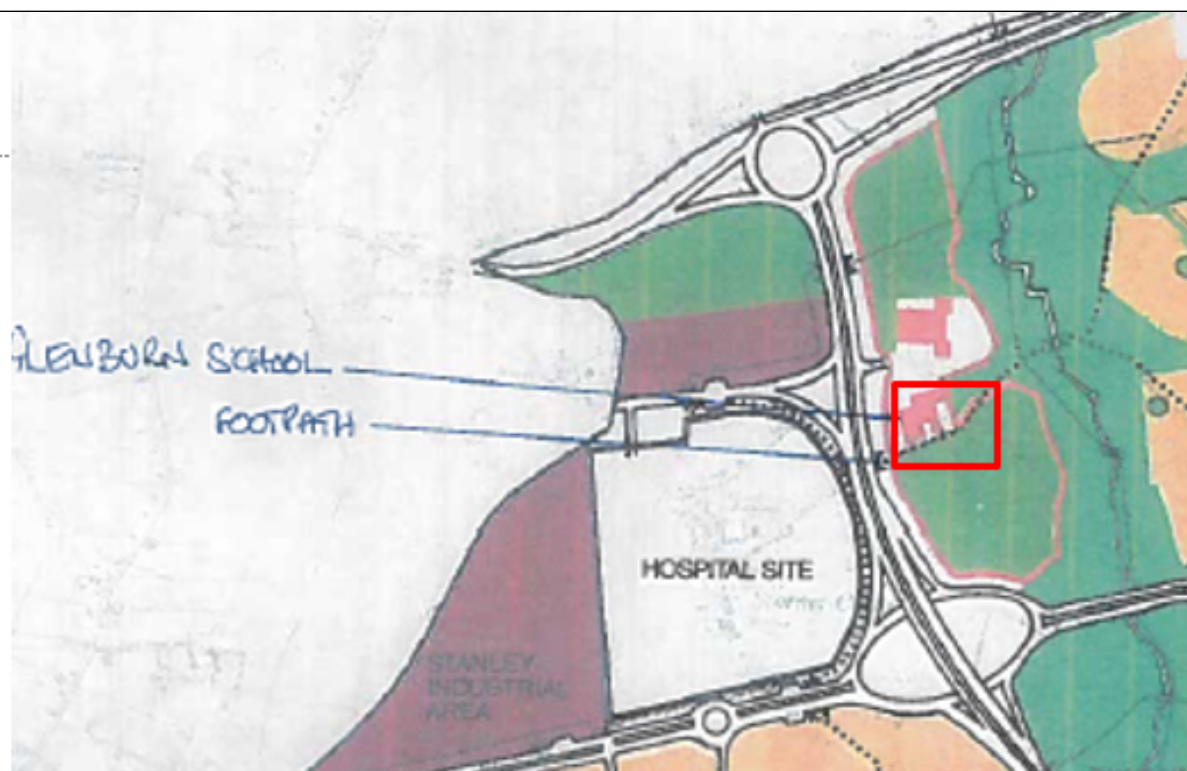


West Lancashire District Council Plan of Tawd Valley Park





Skelmersdale New Town Basic Plan 1975



### Observations

Tawd Valley Park was created as part of the new town development and still exists today. The site surrounds the River Tawd as it meanders its way from Yewdale across a large

		<p>section of the historical town of Skelmersdale through to Cobbs Clough Brow. The country park is maintained by West Lancashire District Council Ranger Service and contains an extensive path network set out as part of the New Town development.</p> <p>The leaflet submitted by the applicant provides details of three trails within the park and marks the paths according to whether they are wheelchair friendly or 'less' wheelchair friendly. There is no indication on the leaflet as to whether the routes are recorded as public rights of way.</p> <p>A route is shown annotated with blue dots (wheelchair friendly) which passes Lathom High School. This route is described as going from Summer Street to Glenburn Road and appears to include the application route.</p> <p>The second plan submitted by the applicant is described as 'Skelmersdale New Town Basic Plan' and said to be dated 1975. It shows a route believed to indicate the application route as part of a longer route. There is no key to the plan to indicate the status or intended status of the route and it is unclear whether the plan shows features that had already been constructed or aspirational (for example the hospital site).</p>
<b>Investigating Officer's Comments</b>		<p>The West Lancashire District Council plan of walking trails in Tawd Valley Country Park indicates that the application route was considered to be part of a longer route providing access into the county park at least on foot. However the plan (brochure) is undated but must post-date 2015 as the school is described as Lathom High School and was known as Glenburn High School prior to that time.</p> <p>The plan dated 1975 is indicative of the fact that it was at least proposed to construct a longer route – part of which included the application route. But it is unclear whether it was intended to be permissive or dedicated as a public path.</p>
<b>CCTV coverage submitted by Lathom High School</b>	2016	CCTV coverage dated 5 September 2016 submitted by the School.

<b>Observations</b>		<p>The CCTV coverage consists of a series of still shots spanning a period of 10 minutes and 50 seconds over the lunch break (1.30pm) on a school day.</p> <p>The camera is positioned looking down onto the application route at point C at which point students cross the route to gain access from the school buildings to the playing fields.</p> <p>The coverage shows students crossing the route on foot going to and from the school buildings and some students sitting on the grass immediately to the east of the application route. Two adults are shown stood on the application route at point C who appear to be supervising the pupils.</p> <p>Several cars are shown parked adjacent to the route immediately before reaching point C.</p> <p>Approximately half way through the footage four cyclists can be seen riding along the route through point C. The cyclists all appear to be teenage boys carrying rucksacks but it is not clear whether they are pupils of the school. A short time after the cyclists are seen three mini-motorcycles are seen being ridden along the application route through point C. The riders appear to be young males.</p>
<b>Investigating Officer's Comments</b>		<p>The CCTV footage illustrates the fact that pupils have access to and across the application route.</p> <p>Cyclists and motorcyclists are seen travelling along the route whilst pupils are crossing it illustrating a management issue for the school.</p> <p>If the cyclists are pupils attending the school no inference can be drawn; if they are not then it could suggest a reputation that the route is a public bridleway or restricted byway.</p> <p>Use of the route by mini-motorbikes is illegal and no inference can be drawn.</p>

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

## **Landownership**

Ownership of the land crossed by the application route between points A-B-C-D is registered with the Land Registry as being owned by The Lancashire County Council of County Hall, Preston, PR1 8XJ.

## **Summary**

The application is for the route to be recorded as a restricted byway.

The available map and documentary evidence has been inspected by the County Council who have looked at the history of the route.

The route applied for did not exist until the development of Skelmersdale New Town – most probably in the early 1970s. The section of Summer Street – a public vehicular highway which crossed the land on which Lathom High School was built was extinguished (in part) in 1972 but was not on the same alignment as the application route.

It appears that the application route was probably constructed when the school was built following the extinguishment of Summer Street (part) but there is no evidence that the route was legally created as an alternative to the route extinguished.

The routes connecting to the application route are not recorded as public vehicular routes but, since the construction of the New Town appear to have been recognised as footways and cycle routes.

Map and documentary evidence suggest that the application route formed part of a network of routes leading into Tawd Vale Country Park and the route appears to have been physically capable of being used on foot, horse and bicycle.

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

### Information from the Applicant

In support of the application for the addition of a restricted byway from Glenburn Road to Summer Street to the rear of Lathom High School, the applicant has provided copies of 5 user evidence forms, the information provided on these forms is summarised below.

All 5 users have used the route on foot, 2 of the users also have used the route on bicycle. None of the users have ever used the route on a horse or by motorised vehicle.

4 of the users have seen other users using the route on foot, bicycle and on horse. The years in which the users have used the route vary from 1949 to present day:  
1983 – Present      1995 – 2016      1949 – 2005      1996 – 2017      1970 – 2017

1 user mentions not being able to access the route during 1970's when the schools were being built.

Below sets out how often the users used the route:

On foot daily (1)      On foot weekly (1)      On foot monthly (1)

On foot weekly and bicycle monthly (1)      On foot and bicycle weekly (1)

All 5 of the users used the route for pleasure reasons; dog walking, cycling, visiting the shops. 1 user used the route to get to the doctors and the vets. 1 user used the route to visit family members on Summer Street between 1949 & 1960 and later for pleasure.

All 5 of the users agree that the route is tarmacked and has always run over the same line. Whenever they saw others they were also using the same route. All 5 users agree there have never been any stiles or gates. 3 users provide that in December 2016 a barrier was erected blocking access to the route.

All of the users answered 'no' to ever having worked for a landowner/tenant of the affected land.

None of the 5 users have been given permission to access the route or told that the route wasn't public.

1 user commented that lots of families use the public route to walk and cycle to old Skelmersdale.

In addition to the user evidence details above, the applicant provided the following, which he asserts support the claim for the route to be recorded as a restricted byway:

1. Email to the school
2. Reply from the school
3. Ordnance survey map of Skelmersdale
4. Ordnance survey map of Stanley/Ashurst
5. Mario map overlay of school and pre-school construction
6. Mario map of old Glenburn Colliery
7. Mario aerial view of pre-school construction
8. Mario map of school & paths
9. Mario aerial photo
10. Google aerial photo
11. Newly installed barriers
12. Newly installed gate – west side
13. Newly installed gate – east side
14. Signage for 'alternative route' and barriers – east side
15. West Lancs Council map showing disabled access to Tawd Park
16. Planning application for temp classroom provision
17. Skelmersdale New Town basic plan 1975.



### Information from Others

A response to the consultations had been received from the School Business Manager at Lathom High School, which stated that the land at the back of school was separated by a path which meant open access to the back of school via the subway and Summer Street. They have had numerous instances of illegal motorbikes and cars being driven at the back of school on the path, tennis courts, all weather pitch and fields during the school day. This puts all students and staff at risk of serious injury or death. They have installed drop down bar gates at either end of the school building to prevent motorbike and car access to the back of school but state that it does not prevent access for able bodied walkers. To ensure access is available for all regardless of physical ability they have clearly marked the public footpath route that takes people around the front of school giving them the same access to the subway and summer street.

### Information from the Landowner

Lancashire County Council object to the creation of a new restricted byway on the grounds that its creation would adversely affect the development potential and future value of the County Council's landholding at Lathom High School. Estates have looked at historical OS maps and aerial survey photographs and state there was a roadway leading from Stormy Corner to Summer Street which would have passed directly through the centre of the High School buildings. They provide that this road must have been closed or diverted when the High School was built so there must be some record of the closure or diversion orders, which may throw some light on the reason why this access route exists.

## **Assessment of the Evidence**

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

#### In Support of the Claim

- A small amount of User Evidence
- Present line available since 1974
- Some user evidence on pedal cycle

#### Against Accepting the Claim

- Relatively low user numbers if considering user evidence
- Lack of historical evidence

### Conclusion

The claim is that the route A- D is an existing public right of way as a restricted byway and should be added to the Definitive Map and Statement of Public Rights of Way.

It is therefore advised as there is no express dedication 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.

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 20 year period. The first consideration is to determine when the route was called into question. In this matter, the information from 3 of the users indicate that the route was called into question in December 2016 by the installation of gates/barriers across the route and the erection of signs, it is considered that the period of use from which dedication can be deemed would be 1996 – 2016.

Five user evidence forms have been submitted to indicate knowledge and use of the route and all 5 users state that they have used the route for 20 years or more, with two of the users claiming to have used the route on pedal cycle whilst the other 3 users claim only to have used the route on foot.

The main purpose given for using the route is to access local amenities including the doctors, vets and shops, the users also claim to have used the route for pleasure including visiting friends/family and dog walking.

Reference is made by some of the users to the presence of notices and signs discouraging use of the route erected in December 2016.

Taking all the user evidence information into account, it is suggested there does not appear to be any evidence to demonstrate no intention by the land owner to dedicate over the twenty years prior to 2016.

Objections have been received from Lathom High School and Lancashire County Council Estates team. However, whilst these objections are acknowledged, it is submitted that the concerns raised are not relevant considerations under either S31 Highways Act 1980 or under Common Law.

It is suggested that the limited user evidenced in this matter is not sufficient evidence of use from which dedication of a restricted byway could be deemed just from the limited use presented and no other evidence of a historical or long-standing use.

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

Considering also whether there are circumstances from which dedication could be inferred at common law. The map evidence suggests that the application route did not exist before the development of the school which opened in 1969. The route is shown on a plan of Tawd Valley Park dated 1974 but does not form part of the park.

In 1985, the route is shown on the 1:2500 OS Map noted as Summer Street, however Summer Street was extensively redeveloped and the subject of a Highway Extinguishment Order in 1972 and is also not recorded as publicly maintainable on the Lists of Street held by the County Council. Therefore the mapping and user evidence taken together are insufficient from which to infer dedication under common law.

Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex A included in the agenda papers. Provided any decision is taken strictly in accordance with the above then there is no significant risks associated with the decision making process.

**Alternative options to be considered - N/A**

**Local Government (Access to Information) Act 1985  
List of Background Papers**

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-591		Claire Blundell, 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A