

Regulatory Committee

Meeting to be held on 18th November 2020

Part I

Electoral Division affected:
Ribbles Valley North East

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of a Footpath along dismantled railway from Footpath Read 11 to Martholme Viaduct, north of Bridge Heyward Caravan Park, Read

File No. 804-618

(Annex 'A' refers)

Contact for further information:

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Executive Summary

Application for the addition to the Definitive Map and Statement of Public Rights of Way of a footpath from Footpath Read 11 along the dismantled railway to Martholme Viaduct, Read, in accordance with File No. 804-618.

Recommendation

That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a public footpath from the junction with Footpath Read 11 along the dismantled railway to Martholme Viaduct, in accordance with File No. 804-618, be not accepted.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a public footpath on the Definitive Map and Statement of Public Rights of Way along the dismantled railway from Footpath Read 11 to Martholme Viaduct, north of Bridge Heyward Caravan Park, Read.

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 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

Ribble Valley Borough Council

No response was received from Ribble Valley Borough Council.

Read Parish Council

Read Parish Council voted in support of the application but provided no further information.

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	7588 3413	Open junction with Footpath Read 11
B	7586 3413	Metal gate and fence across application route
C	7521 3395	Junction with north eastern end of Martholme Viaduct

Description of Route

The application to record the route as a public footpath has been made based on user evidence predating 2001.

As such how the route looks today – in 2020 – is not necessarily relevant because whilst there is no uncertainty as to the alignment of the application route being along the dismantled railway the existence of any signs, gates, barriers, ditches or overgrowth for example, may now be very different.

Whilst the application route ends at point C – on the boundary of the viaduct – it is noted that in 2020 it is now possible to continue south west from point C to cross the viaduct and continue along the dismantled railway. It should also be considered that the viaduct itself is of interest both for the spectacular view it provides and for the historical railway architecture.

The viaduct is owned by Railway Paths Limited who purchased it in 2001. The applicants explained that since 2017 permissive access onto the viaduct has been allowed from the south western end of the bridge although a barrier remains across the north eastern end of the viaduct (on the land ownership boundary) at point C.

When a previous application was made to record the route (including the section across the viaduct) as a public footpath a site visit was carried out in 2004 by the county council and photographs taken. This inspection forms the basis of the observations detailed below as it gives a better indication of what the route looked like towards the end of the period of time during which public use of the route is claimed (mid 1960s to 2001).

The application route is shown on the Committee plan between points A-B-C and is a total length of approximately 730 metres.

It commences at a point where the access road leading to Bridge Heyward Caravan Park, Heyward House and Squires Cottage crosses a dismantled railway. This is an open junction with Footpath Read 11 (point A on the Committee plan).

The application route extended in a westerly direction across a wide area as a substantial track along the former railway for a short distance to point B, where in 2004 the Investigating Officer reported that the route was crossed by a large metal gate and fencing. The gate was reported as being locked and warning notices stating that the land was private and that persons should not trespass were clearly evident.

At that time it was noted that it was possible to get round the fencing and gate on foot by squeezing through some broken fencing and trees to get back onto the former railway line (application route).

Beyond the gate at point B the application route extends in a generally westerly direction along the dismantled railway. In 2004 it was apparent that this initial stretch was being used by vehicles and a wide (4-5 metres) track was in existence running along the dismantled railway with access branching off the track into adjacent fields and pedestrian access from the caravan park onto the dismantled railway (and application route).

Midway between point B and point C the track became less visible and it was noted that it did not appear to be used regularly by vehicles. It passed through trees along a 4-5 metre wide track to continue to point C where further signage stating that the land was private was evident.

At point C the application route meets the north eastern end of the Martholme Viaduct where in 2004 it was reported that there was a barricade of trees and bushes placed across the end of the structure and an excavated trench to a depth of approximately 1 metre. It was noted at that time that it was possible to climb over the trees and that there were three points where people may have crossed this feature to gain access onto the viaduct.

Details of previous application for a footpath along the same route

In 2002 the county council received an application to add this same route to the Definitive Map and Statement based on user evidence. At that time the application also included claimed use of the route across the Martholme railway viaduct (continuing south west from point C) to link to its junction with land owned by the county council on which there was (and still is) a concessionary bridleway along a former railway line.

The application was rejected by the county council's Regulatory Committee meeting held on 15th September 2004 with further information considered at its meeting on 14th November 2004. Both reports are included as Appendix A to this Committee Report.

Further to the Regulatory Committee rejecting the 2002 application the applicant appealed the decision to The Government Office for the North West.

The Government Office considered the evidence submitted in support of the application and issued a decision letter dated 25 April 2005 (Appendix B to this report). The Secretary of State dismissed the appeal stating that they did not propose to direct the county council to make a Modification Order because based on the evidence before them they did not believe, on balance of probability that a public footpath existed or was reasonably alleged to exist over the claimed route.

This new application to be considered in 2020 relates to most – but not all - of the route considered in 2004-2005.

The original application was made based on user evidence from the 1960s when the railway ceased to exist until late in 2001 when the county council erected a secure fence at the viaduct. This new application is also based on user evidence prior to 2001 with some additional supporting map and documentary evidence.

The objectors to the original 2002 application stated that there was no public right of way along the route and that since the closure of the railway barriers and gates had been in place at various locations along the route and signs erected stating that it was private.

Specific reference was made to a challenge being made to the use of the route by a gate being locked at the viaduct in 1993 and then a substantial fence being erected at the viaduct in 2001. Neither of these structures were located on the application route to be considered in this report although their relevance will be assessed in the section headed Legal and Democratic Services observations.

In addition, in refusing the original application in 2004 it was reported that there was some suggestion of a barrier at 'the Read end' of the application route (point B on the current application route) and an argument put forward by the objectors that whilst barriers and signs erected along the route did not prevent access they argued strongly that they indicated an unwillingness on the part of the landowners to dedicate the route as a public right of way.

In 2020 a new application was submitted for a route commencing at a point on Footpath Read 11 (point A on the Committee plan) extending as far as, but not across, the viaduct – to point C on the Committee plan together with an explanation that the applicants had been successful in getting the Martholme railway viaduct opened up 'to the general public' again in 2017.

Map and Documentary Evidence

The application route is based entirely on a disused railway track. The railway line was built in the second half of the nineteenth century as the Lancashire and Yorkshire Railway, Great Harwood loop, with the line from Great Harwood to Padiham being completed in 1877. The last passenger train ran in 1957, with goods traffic ending in around 1964 with the track removed shortly afterwards.

The usual comprehensive list of maps, plans and other documents examined as part of a Definitive Map Modification application process – dating back to the late 1700s – have not been examined in this case.

The fact that the route could only have come into existence following the closure of the railway in around 1964 is not disputed and whilst modern OS digital mapping shows the route denoted as a 'track' with lines across it at point B and point C it is not known from the map evidence when these structures were erected across the route or whether it was possible to pass through them.

The application is therefore primarily one based on user evidence and whilst modern mapping (post 1960s) confirms the physical existence of the route since that time, the map evidence does not assist in determining what its status may be.

However, items of map and documentary evidence submitted by the applicant are detailed below together with Ordnance Survey maps located by the Investigating Officer followed by a summary of highway records and the Definitive Map records held by the county council.

Aerial photographs are not included as part of the investigation as when they were inspected they provided no assistance in determining the status or existence of the route and tree cover meant that it was not possible to see what access restrictions may have existed along the route at any point in time.

Document Title	Date	Brief Description of Document & Nature of Evidence
OS 1 inch OS map Sheet 95 Blackburn & Burnley	1967	1 inch OS map fully revised 1958, major roads revised 1966 and reprinted 1967



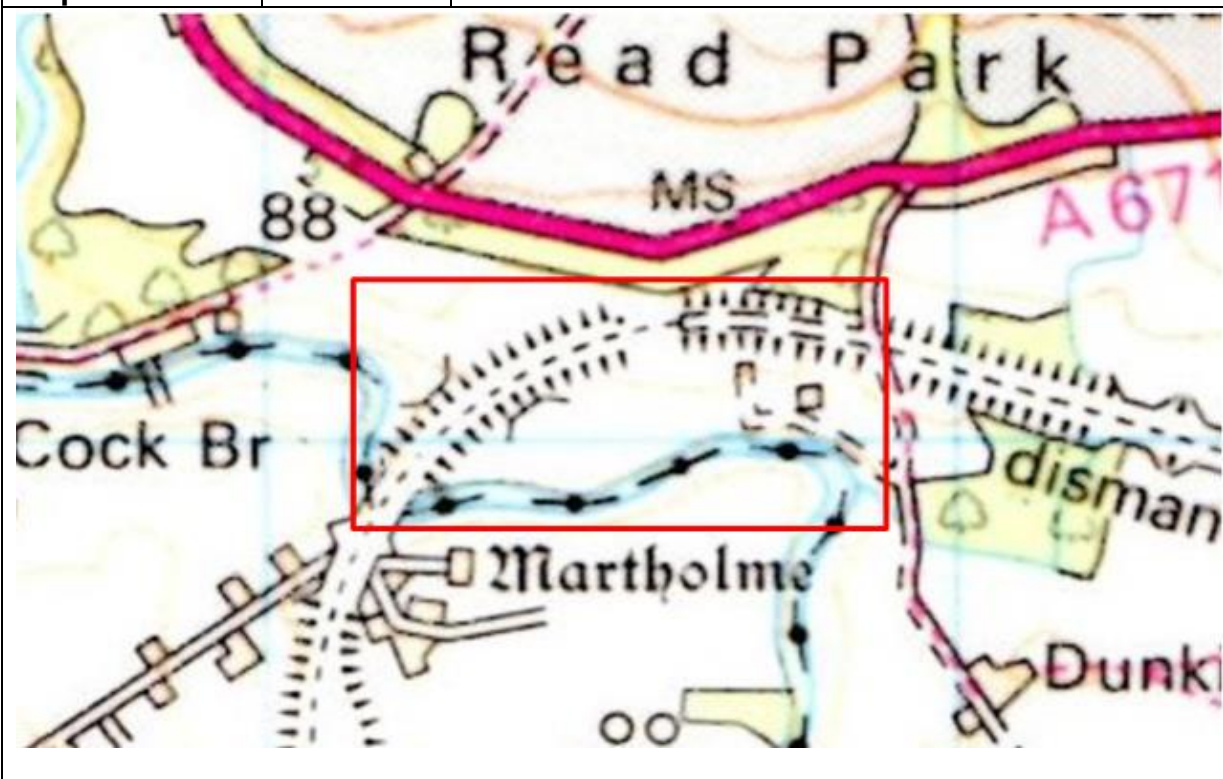
Steep Gradient 1 in 5 or steeper	1 in 7 to under 1 in 5	Marsh
Paths and Tracks		Bracken, Heath & Rough Grassland
Heights in feet above Mean Sea Level	<div> <div>surveyed by levelling</div> <div>not surveyed by levelling</div> </div>	<div> <div>275</div> <div>1091</div> </div>
Triangulation Pillar		Boundaries
Intersection, Lat & Long at 5' intervals (not shown where it confuses important detail)		National
		Civil Parish
		Co Boro or Cou
Public Paths	<div> <div>Footpath (right of way on foot)</div> <div>Bridleway (right of way on foot and on horseback)</div> </div>	Publ on The
Road used as public path		

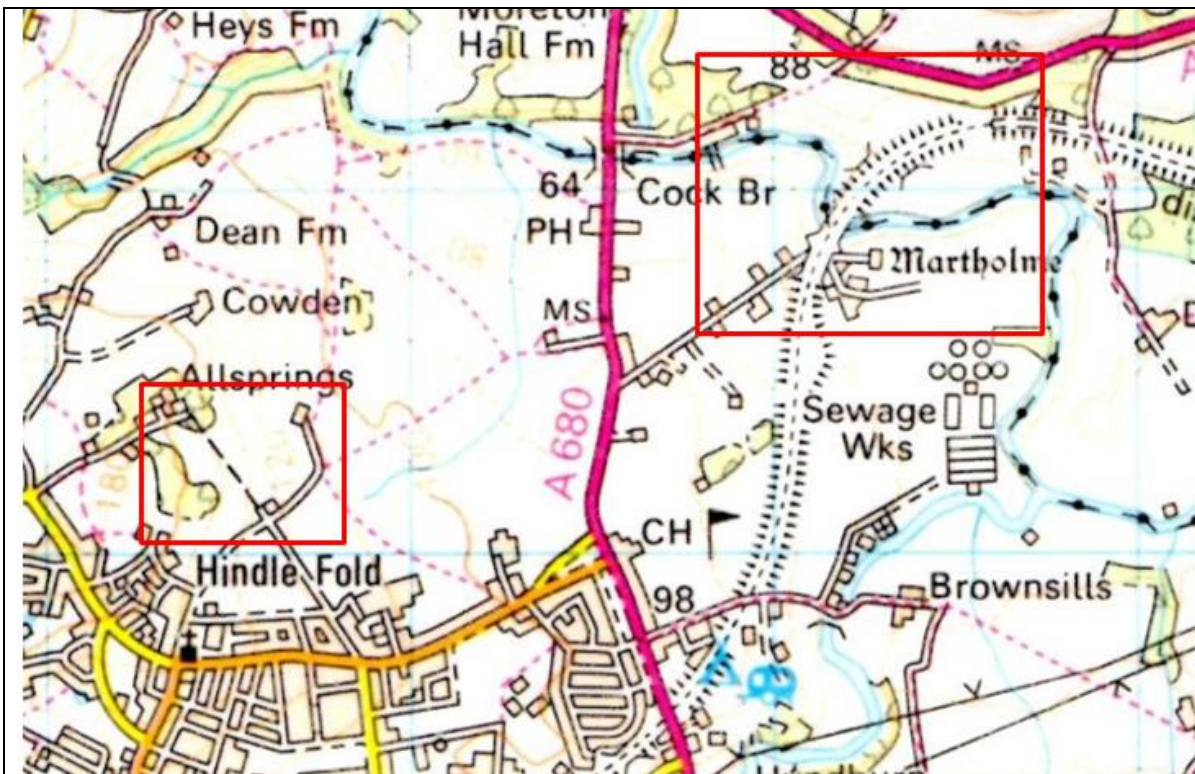
Observations		This small scale OS map clearly shows the former railway line and labels 'Tk of old Rly' (track of old railway) further south. The section of railway line crossed by the application route is shown and a long dashed line is shown along the former railway (including the application route) and denoted in the map key as 'Paths and Tracks'.
Investigating Officer's Comments		This map was revised in 1966 and shows the railway track as having been removed and a track along it. This is consistent with the information regarding the closure of the railway in 1964 and the removal of the track (rails and sleepers) shortly afterwards. It is also consistent with the track bed (ballast and sub-ballast) still being visible. The fact that the application is shown in such a way on this map is consistent with the earliest user evidence provided and suggests that access along the route was possible on foot in 1966.
OS 1:50,000 Landranger Map	1973	Extract of OS Landranger map at a scale of 1:50,000 submitted by the applicant and stated as being the 1973 edition. Date of survey not known.



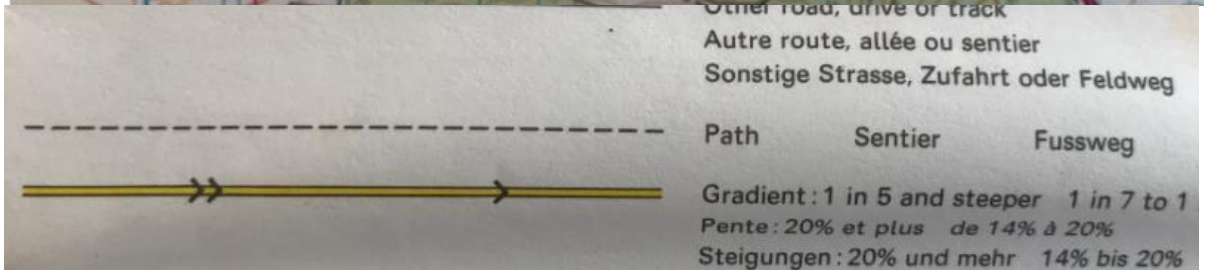
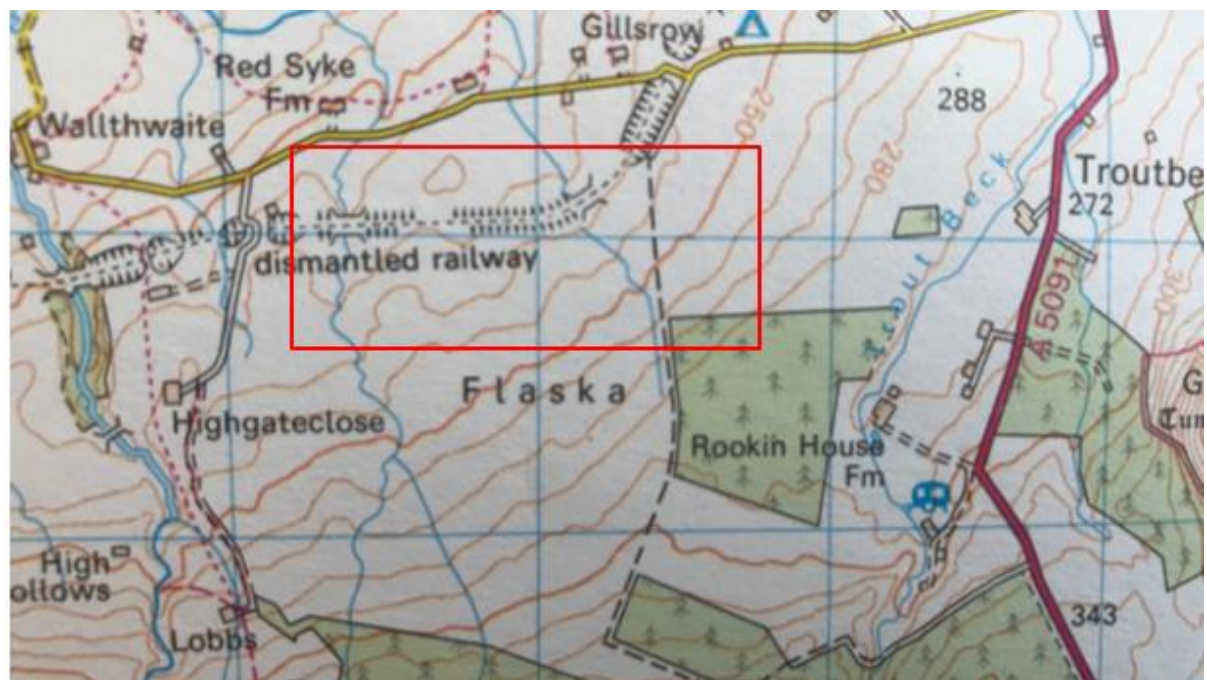
Observations		The map extract provided by the applicant shows the application route in the same way as the earlier
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		1 inch OS map published in 1967. A track (black dashed line) is shown along the former railway bed including not only the application route but also the sections continuing from point A and point C either way along the dismantled railway.
Investigating Officer's Comments		A track is shown on the map which may have been accessible to walk along at the time that the map was published (1973) consistent with the user evidence detailing use of the route at that time. However it is also consistent with the track bed (ballast and sub-ballast) still being on the ground at the time.
OS 1:50,000 Landranger Map	1986	Map extract provided by the applicant and said to be dated 1986. Date of map revision unknown.

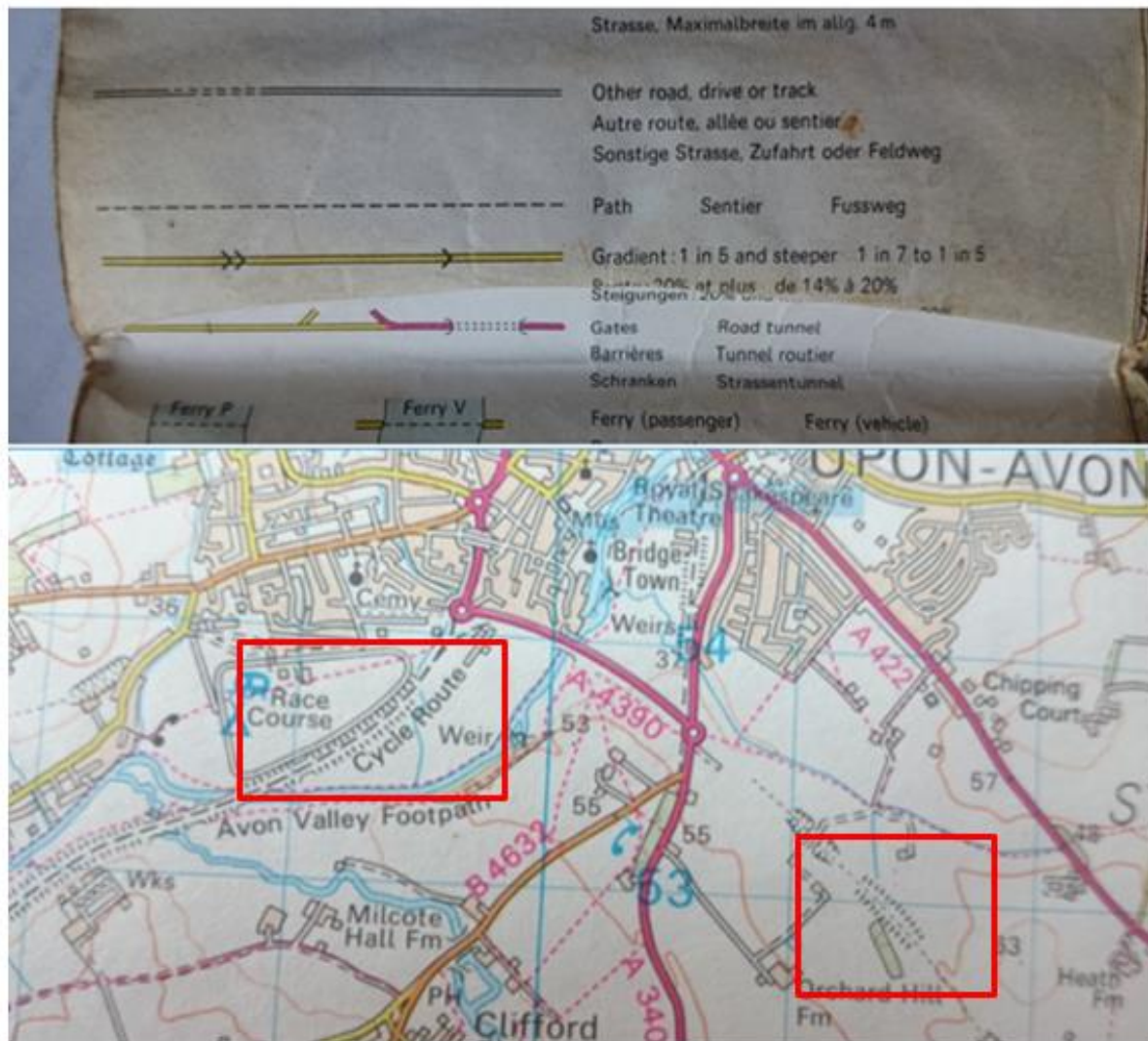




OS Map provided by applicant



OS Sheet 90 revised 1987 published 1988



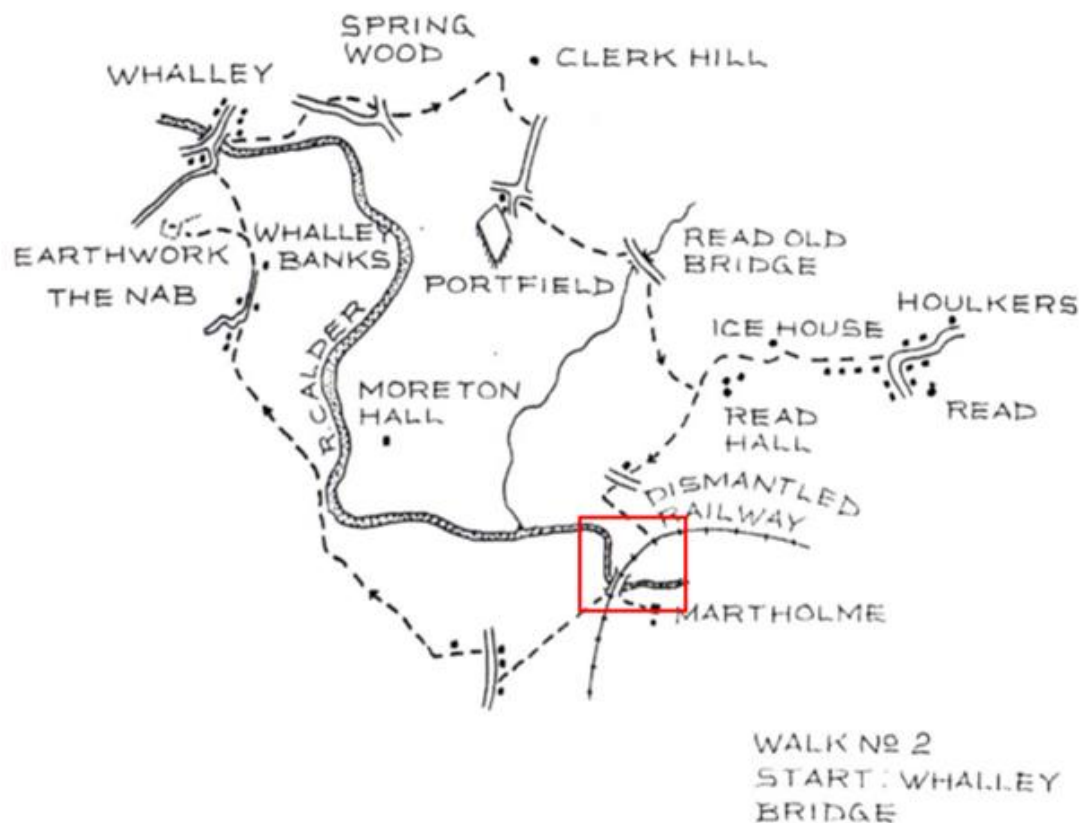
Observations

This map extract was provided by the applicant and shows the application route with a short-dashed line along most of its length. The key to the map was not included but there are distinct differences between the length of the dashes shown along the dismantled railway (including the application route) and other dashed lines shown on the map which appear to indicate the existence of paths or tracks and which are clearly shown as longer lines between the spaces.

On the OS map provided by the applicant, access along the application route appears to be unrestricted apart from at the end of the embankment which extends west from point A where a line is shown across the route.

Looking at a different 1:50 000 OS Landranger map (Sheet 90 – Penrith, Keswick and Ambleside) published in 1988 it can again be seen that a different length of line was used along a dismantled railway as was used to denote a path (as detailed in

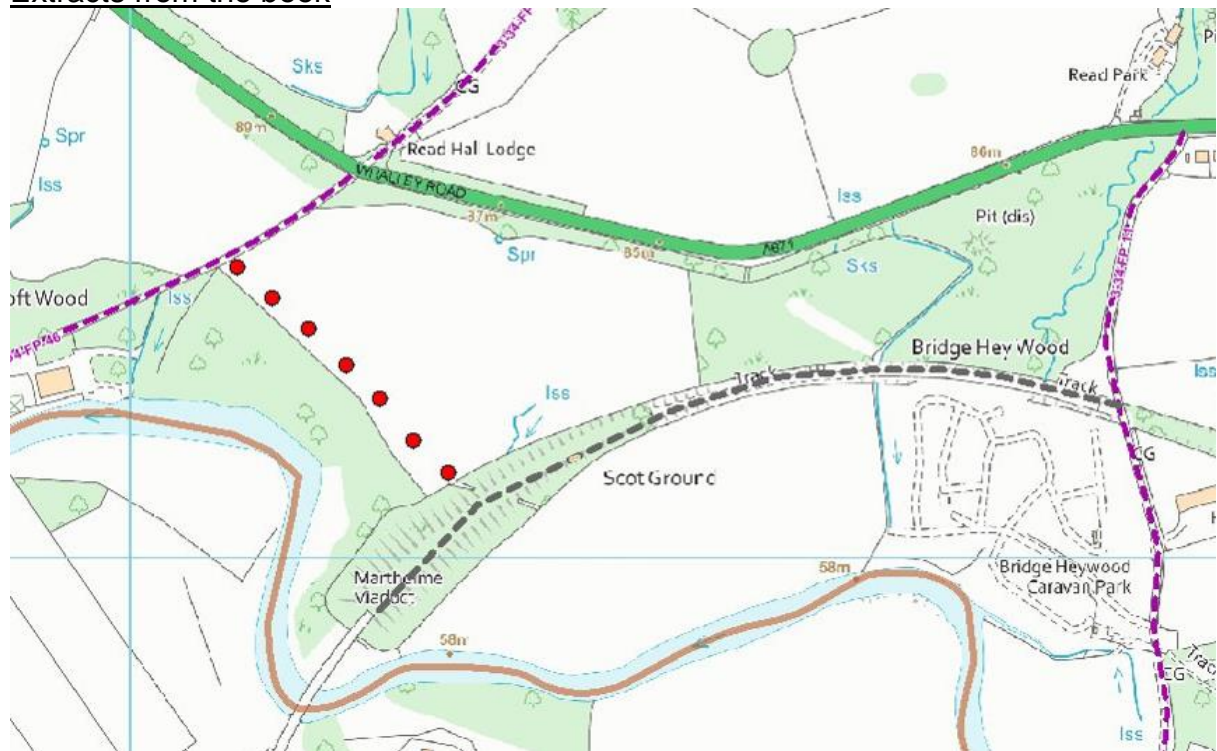
		the map key) nearby. This is in comparison to a further OS Landranger Map published in 1992 which shows the longer dashes along a section of dismantled railway which is clearly denoted as cycletrack as opposed to another section of dismantled railway shown with shorter dashes/lines.
Investigating Officer's Comments		The application route may have been accessible to walk along at the time that the map was published (1986). However, the depiction with short dashes when a long dash version for 'path' was available and used on maps published at that time is inconsistent with depicting a path with significant use. This is further illustrated by the fact that a route labelled as a cycletrack along a dismantled railway (in another part of the country) was also shown depicted with longer dashed lines.
Historical Walks Around Pendle	1988	Extract from a book titled 'Historic walks around Pendle' by John Dixon published 1988 ISBN: 0852 06 9340



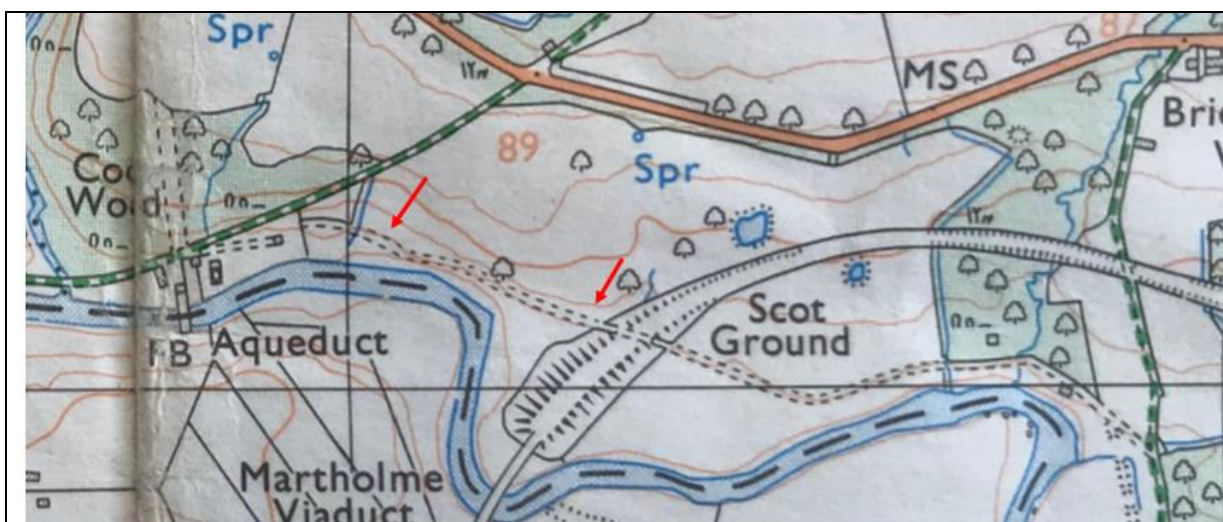
Read Hall to Martholme

Walk down the lane on to road. Cross road to go through a gate opposite. Walk on to go over stile by a gate on the left. Walk across the field directly to go over stile by a tunnel and up the banking on to the disused railway line. Go right and walk along the path to cross the bridge. At the end of the bridge go down the steep banking on the right to the roadway, turn right and walk on to Martholme. (The dismantled railway is now a much used track by walkers from Great Harwood and Padiham).

Extracts from the book




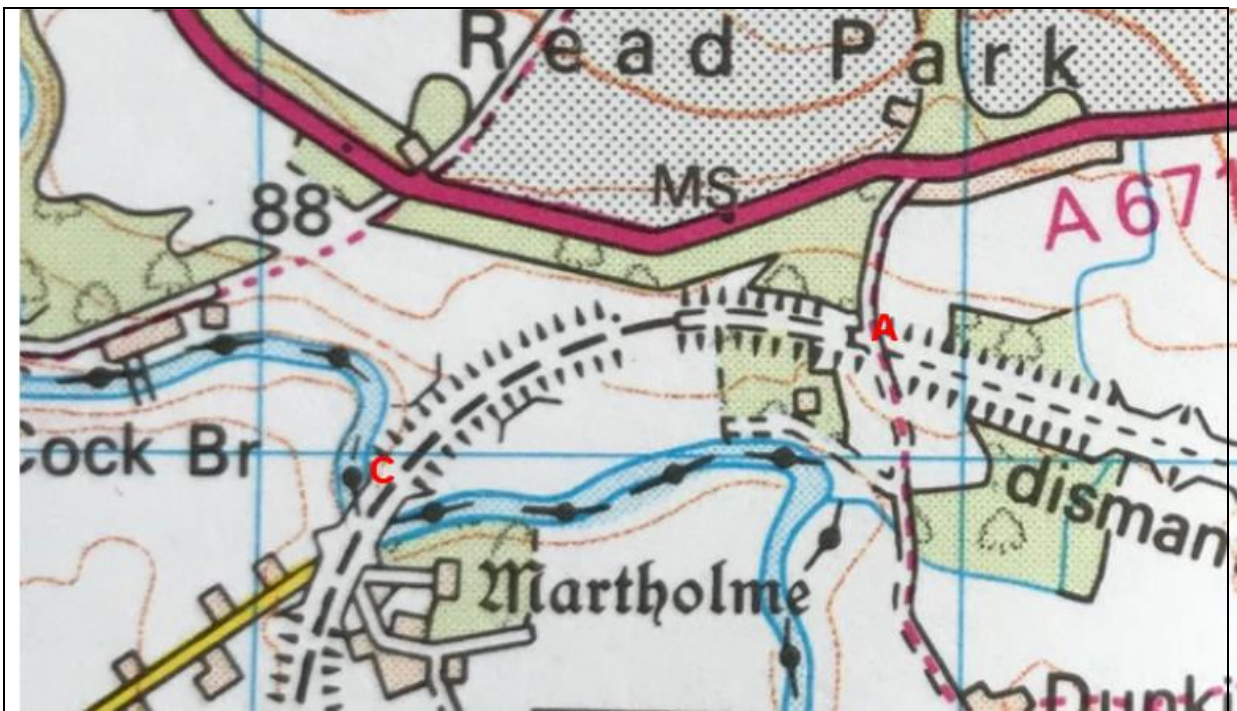
Plan showing recorded public footpaths (in purple) and the approximate route of the path described in the book marked by a series of red circles linking Footpath Read 46 to the application route (grey dashes)

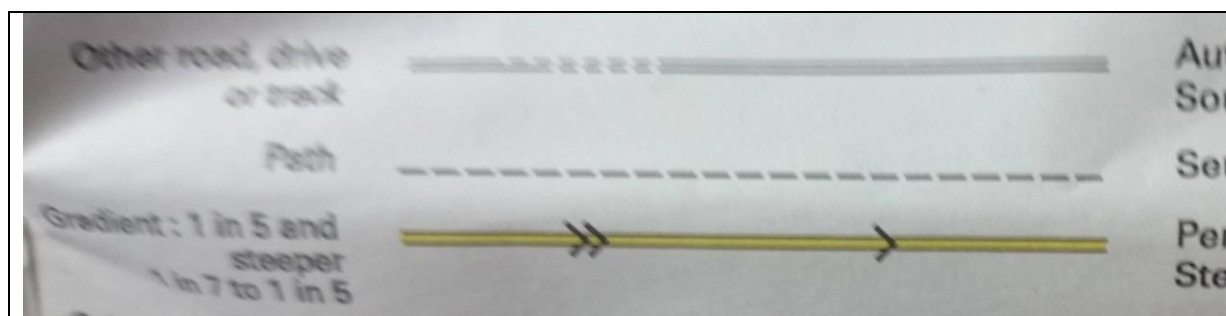


OS Pathfinder Map showing track (denoted with double dashed lines) between Footpath Read 46 and passing under the application route (dismantled railway)

Observations		<p>The author describes a walk around Read and Whalley that includes use of part of the application route. From the description of the walk it appears that having walked from the village of Read past Read Hall on Footpath Read 2 you then crossed Whalley Road to continue a short way along Footpath Read 46. The route is then shown on the hand drawn map to leave Footpath 46 and continue in a south easterly direction across a field to a stile over which it was possible to gain access to the dismantled railway (and application route) part way between point B and point C. The route across the field is not recorded as a public footpath although a track – partly consistent with what is described - is shown on the OS Pathfinder Map 680 (SD 63/73) leading to a tunnel under the dismantled railway which appears to be the tunnel referred to in the book. The walking book then describes the route as continuing along the application route past point C and over the railway viaduct.</p> <p>The writer also notes that the dismantled railway is much used by walkers.</p>
Investigating Officer's Comments		<p>The inclusion of the route in a local walking guide supports the view that the route was used at least on foot by the public in 1988 and that access was available onto the viaduct at point C at that time. It should be noted however that the route onto the dismantled railway (application route) was not recorded as a public footpath and is not evident as a path on OS maps and it is not known by what authority that route – or the application route - were included in the walking guide or whether the author considered them to be part of the public rights of way network or not. The note that the dismantled</p>

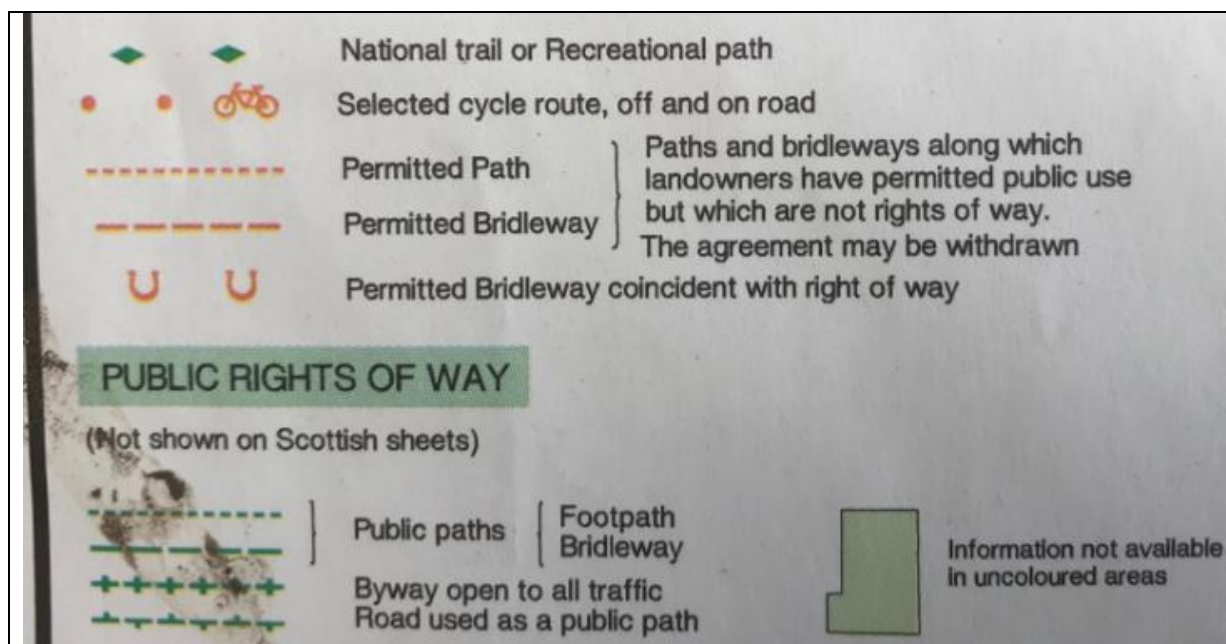
		<p>railway was much used by walkers from Gt Harwood and Padiham, the towns at either end of this section of old railway, is not particularly necessary to people following the walk from the book and suggests some certainty in the writer's mind for including it.</p>
Ordnance Survey Pathfinder 680 (SD 63/73) 1:25 000 scale	1988	<p>OS Pathfinder map compiled from large scale surveys carried out between 1955 and 1975, Revised for significant changes 1979, Major Roads revised 1981, selected revisions 1985.</p>
		
Observations		<p>The map shows the disused railway line between point A and point C. No track is shown along the dismantled railway but access along the route does not appear to be restricted. The old railway is surrounded by a continuous line but no line across the 2 ends of the application route i.e. along the old railway.</p>
Investigating Officer's Comments		<p>The application route existed and unrestricted access along it appeared to be possible. No inference can be made about whether access onto the route was possible.</p>
OS Landranger 103 Blackburn, Burnley and Surrounding area	1994	<p>1:50,000 OS map revised 1989, reprinted with selected changes 1990-93 with major roads revised 1994.</p>



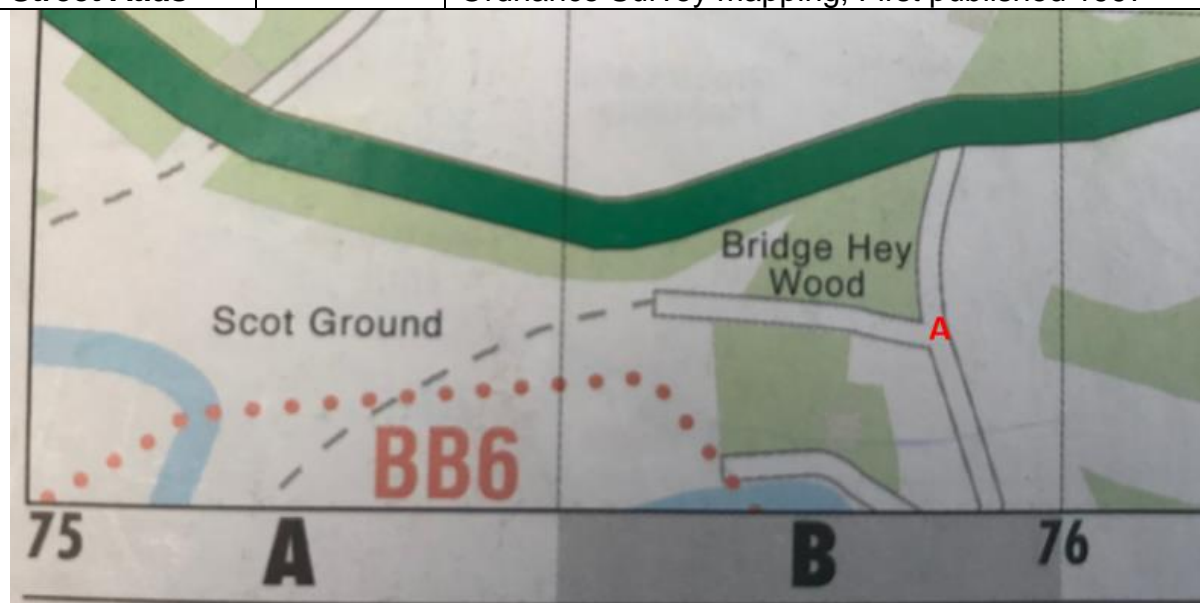


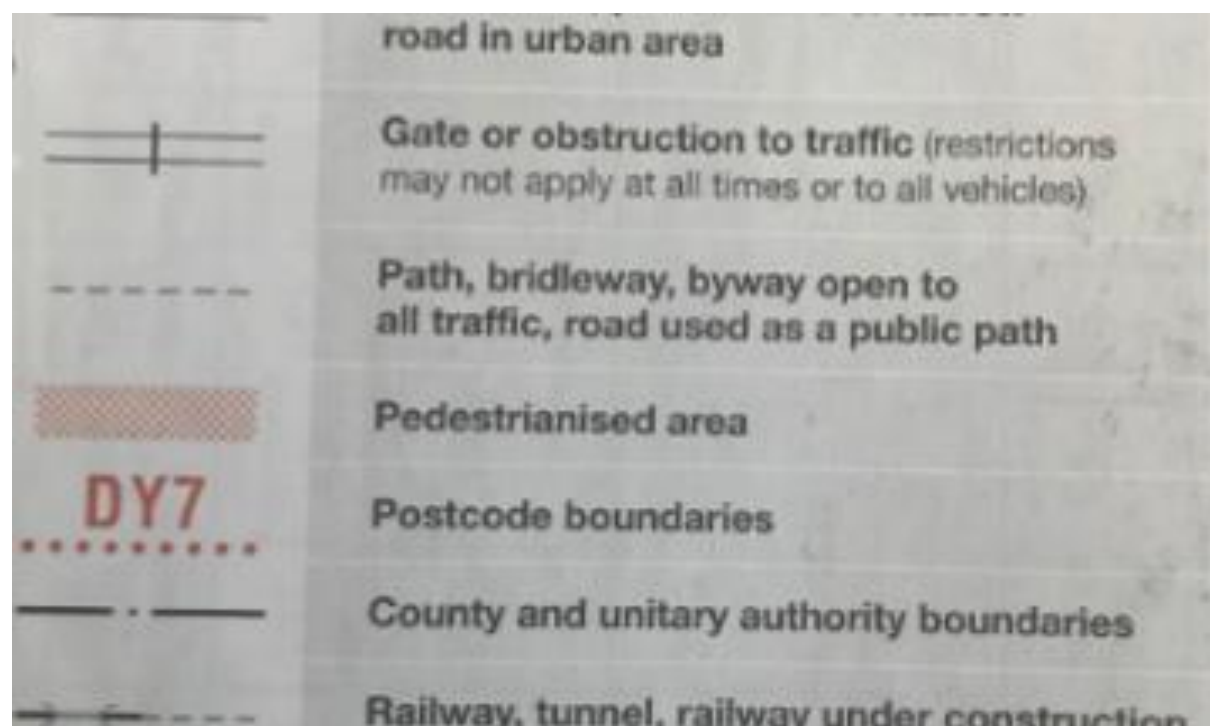
Observations		The application route is shown with a path (black dashed line) shown extending along about two-thirds of its length. From point A access onto the application route is shown then there is a line across the route at point B. A further line is shown across the route approximately 220 metres west of point B at the end of the section marked as a cutting. The continuation of the old railway eastwards from point A, i.e. away from the application route, is shown as a short-dashed line not as a 'path'.
Investigating Officer's Comments		The application route may have been accessible in 1994 but access may have been restricted at point B and partway between point B and point C.
OS Explorer Map 19 West Pennine Moors 1:25,000 scale	1996	OS Explorer map revised and published 1996.



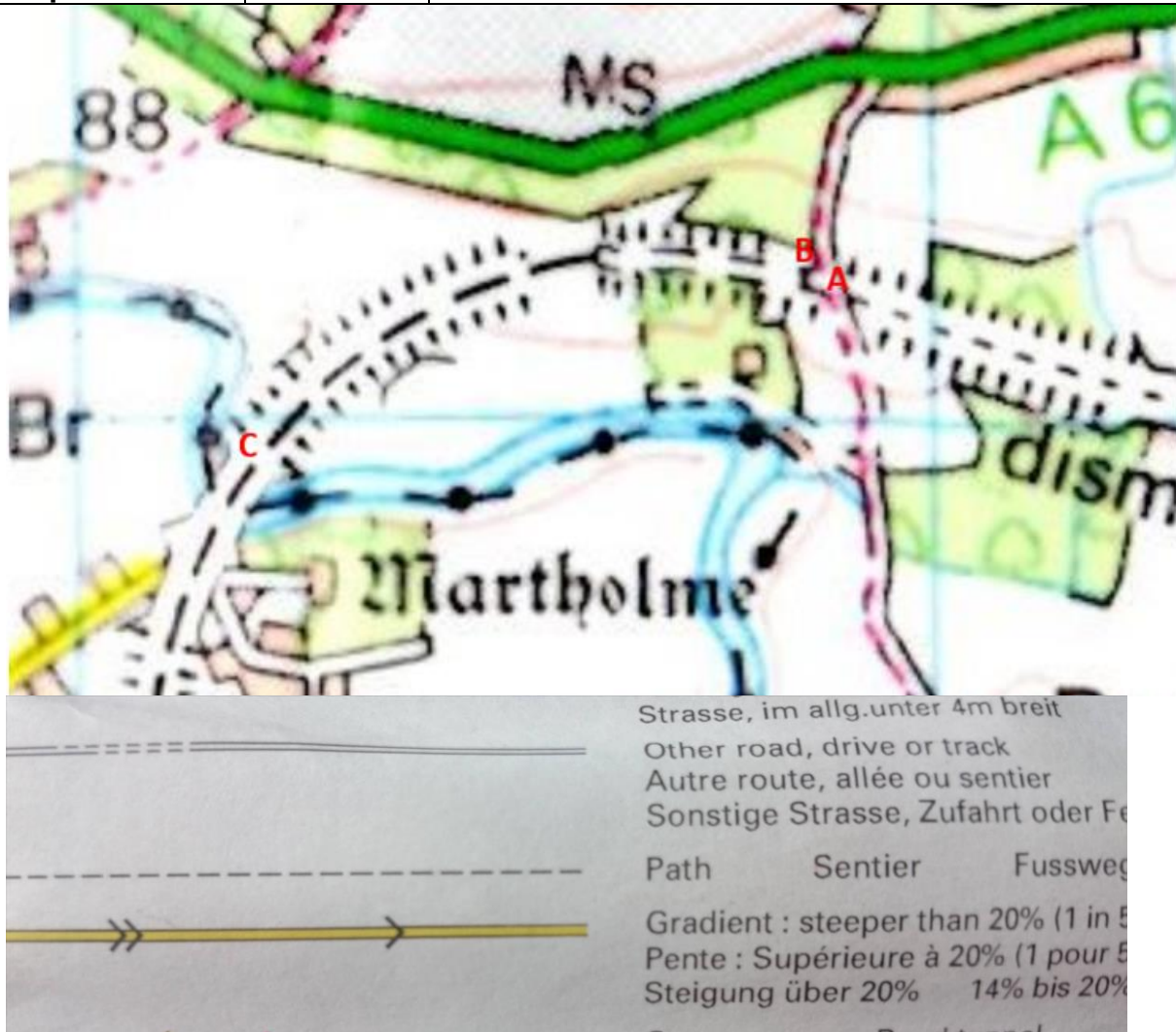


Observations		The map shows the disused railway line between point A and point C. No track is shown along the dismantled railway but access along the route is not shown to be restricted at the (unknown) survey date. A route marked as a permitted bridleway is shown along the old railway to the south of Martholme Viaduct. The boundaries of the old railway are shown as unbroken lines
Investigating Officer's Comments		The application route existed and unrestricted access along it appeared to be possible. No access is shown onto the application route except for continuations along the old railway from points A and C.
Lancashire Street Atlas	1997	Street Atlas published by Philip's based on Ordnance Survey mapping, First published 1997





Observations		The application route is shown as a substantial route extending from point A to midway between point B and point C. It is then shown to continue across the viaduct (through point C) marked as a thick dashed line which is defined in the key as being a 'Path, bridleway, byway open to all traffic, road used as public path'.
Investigating Officer's Comments		The application route existed in 1997. The inclusion of the application route as part of a longer route in this street atlas is suggestive of the fact that access was available along the route at that time.

OS Landranger Map	2001	Further map extract provided by the applicant said to be dated 2001. Date of revision not known.
 <p>Strasse, im allg. unter 4m breit Other road, drive or track Autre route, allée ou sentier Sonstige Strasse, Zufahrt oder Fe Path Sentier Fussweg Gradient : steeper than 20% (1 in 5) Pente : Supérieure à 20% (1 pour 5) Steigung über 20% 14% bis 20%</p>		
Observations		The application route is shown with a path (black dashed line) shown extending along 2/3 of it. From point A access onto the application route is shown with a line across the route at point B. A further line is shown across the route approximately 220 metres west of point B at the end of the section of the section indicated as running along an embankment on the map. A shorter-dashed line is shown along the old railway east of point A.
Investigating Officer's Comments		The application route may have been accessible in 2001 but access may have been restricted at point B and partway between point B and point C. A path, in contrast to the shorter-dashed line, is shown along much of the route.
Definitive Map Records		<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>The Parish Survey, Draft, Provisional and First</p>

		Definitive Maps all pre-dated the closure of the railway and therefore do not shown the application route.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th 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 st 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 application route is not shown on the Definitive Map of Public Rights of Way (First Review).
Investigating Officer's Comments		From the dismantling of the railway through to 1975 there is no indication that the application route was considered to be a public footpath by the Surveying Authority. There were no objections or representations made regarding the route when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	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>

Observations		The application route is not recorded as a publicly maintainable highway on the county council's List of Streets.
Investigating Officer's Comments		The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of access.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<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 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 1980 Section 31(6) deposits have been lodged with the county council for the area over which the application route runs.
Investigating Officer's Comments		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.

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

Landownership

All of the land crossed by the application route has been in the registered ownership of Mr P Hanson and Mrs J Hanson since 2008 (registered title LAN857376). Prior to this time it was in the registered ownership of other members of the Hanson family.

Of particular interest to the applicants is the exact date from which the Hanson family have owned the dismantled railway. The original application for a footpath across this land referred to ownership of this stretch of the application route commencing following closure of the railway and although not stated in the report – or Secretary of State report - the assumption appeared to have been that this dated back to the track being removed and claimed use of the route being made.

Landownership documentation refers to a conveyance dated 12 October 1979 between British Railways Board and Hilda Hanson and refers to land tinted blue on the Land Registry plan. The land tinted blue is the dismantled railway suggesting that the Hanson family purchased the land crossed by the application route in 1979 and that prior to that time it was owned by British Railways Board.

The landowners have been asked to confirm when exactly they purchased the land crossed by the application route and confirmed that it was circa 1976.

Summary

There is very little map or documentary evidence to support or counter the application to record the route as a public footpath. Ordnance Survey maps confirm the existence of the railway and the fact that once the railway had closed the line was dismantled. The one inch OS map published in 1967 confirms that the railway had been dismantled by that time and shows a 'path' along the former railway line including the application route.

There is no modern map evidence to corroborate exactly when any gates or barriers were erected across the route although a structure is shown across the route at point B on the 1994 edition of the Landranger OS map which was revised in 1989. This shows a line across the route at point B and another at the western end of the embankment midway between point B and point C and these are also shown on later editions of the same map. The Landranger map submitted by the applicant and said to be dated 1986 shows the line across the route at the end of the embankment midway between point B and point C but not at point B. The existence of gates and/or barriers does not necessarily mean that access was prevented along the route but this will require further clarification from the user evidence and from information provided by the landowners and others.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicants explained the reasons why this route would be beneficial but such reasons cannot be considered in connection with a definitive map modification order which must be assessed on whether or not public rights already exist.

The applicants consider that the original application (as reported to the county council's Regulatory Committee on 15th September 2004) had some issues which needed to be redressed. The new application to be considered by Committee will take account of all available relevant written evidence recounting people's recollections of the route. The county council has no reason to believe that those

giving evidence in support of or objection to the application are untruthful in their recollections relating to the route although they will inevitably vary. The new application presented being to Regulatory Committee, whilst taking into account the relevant information available when the first application was considered, is a new application for only part of the original route and with some different evidence to consider. It is not an opportunity to review the original decision, made on the basis of evidence presented at that time and which was reviewed and dismissed by the Secretary of State but it is an opportunity to consider all relevant evidence in support of or against this new application.

32 user evidence forms were submitted in support of the application, 25 with the application, a further 7 on 24th July 2020. The user evidence is summarised below.

Duration of Use

The user evidence forms collectively provide evidence of use going back as far as 1965 and up to 2001.

20+ Years	Unambiguous use from 1981 to 2001	1-19 Years
10	6	16

Frequency of Use

The majority of the 53 users stated that they used the route weekly, monthly or yearly with four stating that they used the route daily.

Daily	Weekly	Monthly	Yearly (From 1 to 7 times per year)
4	10	9	9

Reasons for Use

The majority of users specified pleasure or recreation as their reason for using the route. Three users specified dog walking as a reason for use, two noted using the route to commute to work and one mentioned using the route to enjoy local wildlife.

The majority of users recorded their use as on foot, with many also noting use on bicycle.

One user noted using the route on a mobility scooter as well as using it on foot.

One user did not specify how they used the route.

Foot	Bicycle	Foot and Bicycle	Foot and Mobility Scooter	Not Specified
16	4	10	1	1

Other Users of the Route

All users recorded having seen others using the route, with others' use varying from on foot to on horseback and mobility scooter.

Other Users Seen				
Foot	Foot and Bicycle	Foot and Horseback	Foot, Bicycle and Horseback	Foot, Bicycle, Horseback and Mobility Scooter
8	10	4	9	1

Consistency of the Route

The majority of the 32 users stated that the route had always followed the same route, only two recorded an answer of 'no' to this question but both went on to refer to sometimes following a different route branching off at the opposite side of Martholme Viaduct and not relating to the application route.

Unobstructed Use of the Route

None of the 32 users recalled having been prevented from using the route before 2001. From this point many noted they were prevented from using the route by a fence erected across the end of the Viaduct.

Ten users noted a fence blocking the route where it meets Martholme Viaduct with six of these seven stating that the fence was erected in 2001. One user noted a fence and barbed wire at this location circa 1996 or 1997.

Four users stated the obstruction erected at the viaduct in 2001 was a gate, rather than a fence.

Nine users noted a ditch/depression/dip at the end of the viaduct prior to 2001 which did not prevent use.

Two users noted refuse and/or farm waste blocking the route circa 2001, one of these also noted rotting carcasses dumped on the route.

Only one user mentioned stiles though it appears the location of the stile is not along the specific section which forms the application route.

Five users recorded seeing signs/notices along the route. Two noted these as foot and mouth notices erected in 2001. One noted a sign at the caravan park denoting it as an archery area in the 1980s. One noted seeing signs after 2001 but provided no further details and one noted a No Entry sign erected in 2000.

In addition to the user evidence the applicant also provided correspondence route from Burnley and Ribble Valley MPs expressing support for the application route but this correspondence provided no further evidence in support of recording the route.

Information from Others

The acting Head of Estates Management for Railway Paths Limited (RPL) – who own the Martholme Viaduct – responded and explained that they are a charity which holds land with a view to its development as walking and cycling routes.

Martholme Viaduct is held by RPL in isolation from any adjoining land so does not form a part of any route as such. He explained that for many years access to the viaduct was prevented by security gates and fencing at the SW end but that since taking ownership they agreed with a local volunteer group that they would permit limited access if they were able to maintain the deck of the viaduct in a safe condition.

He explained that RPL support 'the creation of a through route' and would prefer this to be open to pedestrians, cyclists and potentially equestrians. However they would oppose the creation of public rights over the viaduct but would however be keen to allow permissive access.

These comments of RPL refer to creation of rights – this is not relevant to whether rights already exists except to indicate that RPL do not wish to dedicate public rights over the viaduct itself which they have owned since 2001.

Friends of Padiham Greenway provided a letter in support of the application noting that the application route falls between the two sections of cycle route 685 which follows the old East Lancs loop line to Great Harwood and Padiham and that these existing routes are used extensively.

Whilst this letter of support states that it is in favour of the application and states use of adjoining public rights of way no further information supporting the existence of public rights over the application route was provided.

Information from the Landowner

The owners of Bridge Heywood Caravan Park over which the length of the application route runs provided further information relating to when the land entered family ownership the stated date of transfer being 10th May 1978.

The owners also stated that they never wished to dedicate the land as 'open to the public' and raised an objection to the application whilst noting the previous refused application.

They highlight a barrier hung on metal posts and locked in place, erected where the application Route meets Dunkirk Farm Lane soon after the land was purchase, along with a home-made wooden painted sign stating 'Private Land No Right of Way'. Photographs were provided, as shown below. This was followed by a new gate and fence in later years.



Old original gate at Dunkirk Farm end of viaduct
(Always kept locked before new gate was made)



Old gate post, behind new gate (closed)

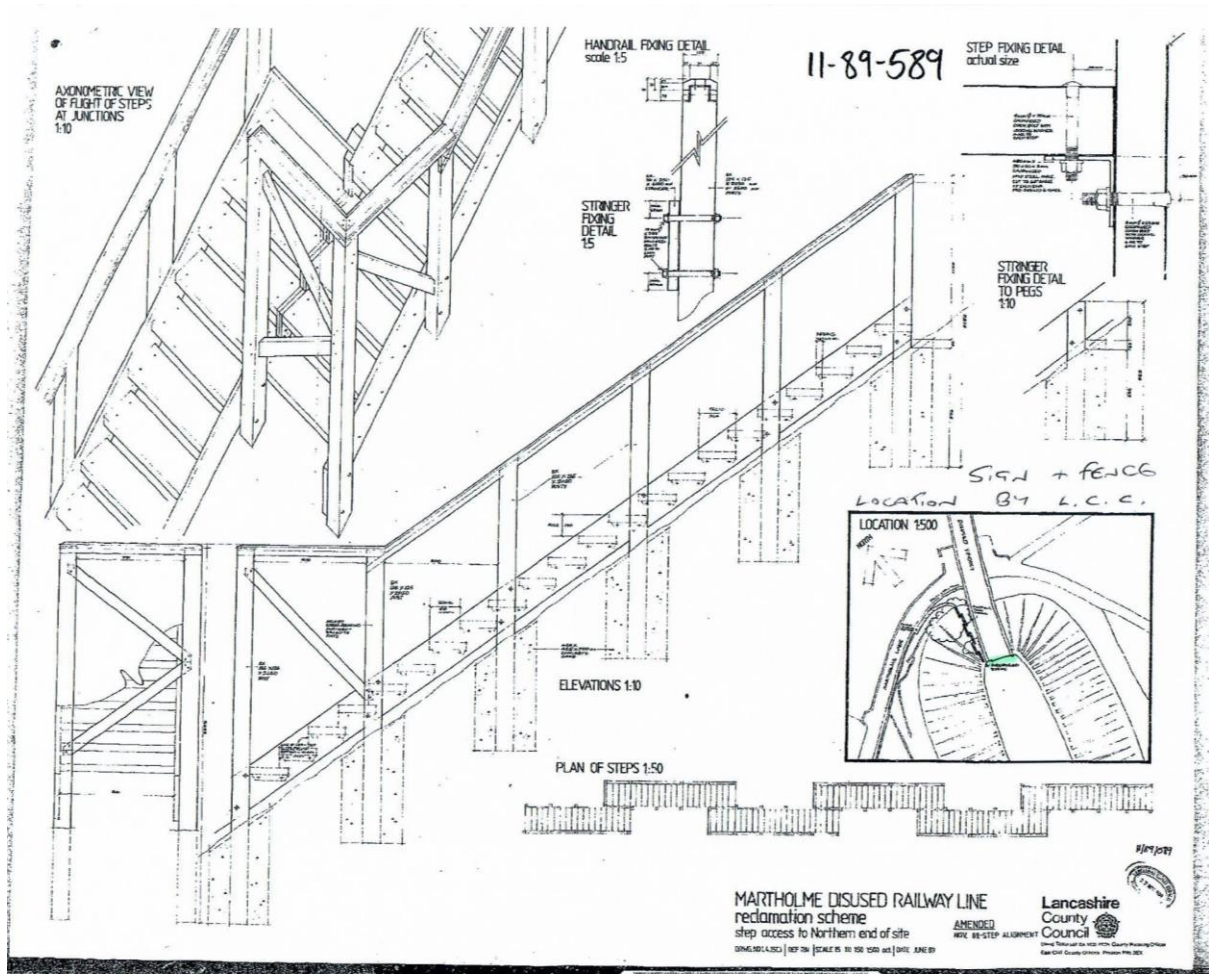


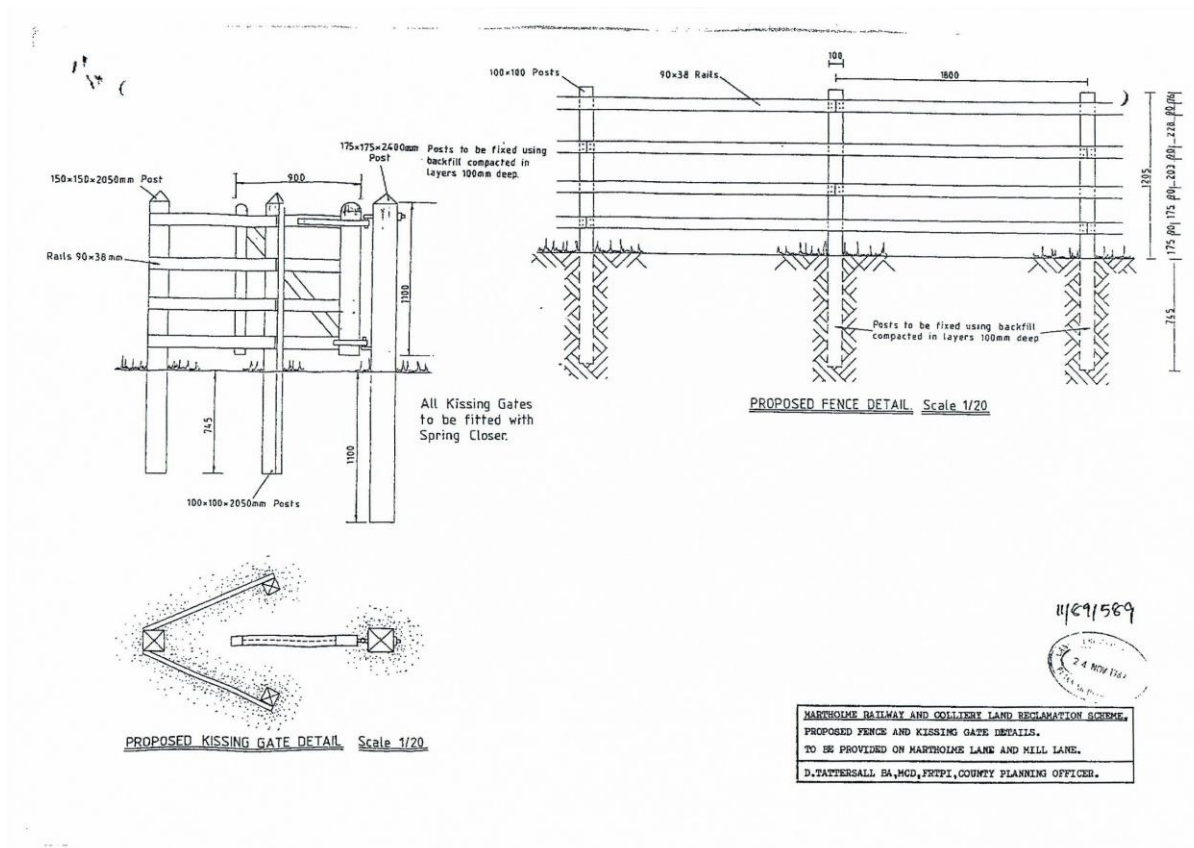
The landowner also states a similar sign was erected where the viaduct meets their land and that brackets and metal cables supporting a mesh fence were erected here, again soon after the land was purchased, a photograph of the fixing points was provided.



The landowner states that over time this fence was disturbed and consequently trees were felled and the ditch noted in the user evidence was dug to create a barrier.

Prior to this the landowner noted a planning application made by Lancashire County Council in 1989 to establish a path to the southern end of the viaduct but not across it, with steps created down to Martholme Lane. The landowner highlights that a wooden fence and sign were erected at this time to prevent access across the viaduct which they believe to have been in the ownership of British Rail at the time. Details of the steps and fence are shown below.





The landowner notes that this wooden fence was eventually replaced in 2001 by the metal fence currently situated at the northern end of the viaduct, erected as a result of the foot and mouth outbreak.

In addition to the landowner's written statement and the photographs and other documents several letters were provided, dating from 2002, written by residents of Bridge Heywood Caravan Park in response to the previous application. In summary these letters state that the land was always understood to be private with no public right of access. Some respondents wrote of concerns of vandalism and loss of privacy were a footpath to be recorded through the caravan park. Some noted the private, no access signs, the gates and other obstructions as well as clear recollections of the landowner and farm workers confronting people and informing them that the land was private.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order

User evidence forms

Some of the map evidence

Against making an Order

Gates/fencing/barriers across the route

Some of the map evidence

Landowner's actions

Conclusion

Committee is invited to consider whether a dedication of public rights can be inferred, on a balance of probabilities, from all the circumstances at common law or deemed under S31 Highways Act 1980 or whether a public right of way is reasonably alleged to subsist.

Committee will be aware that an application was made in 2002 and included the route currently under consideration. The Regulatory Committee considered the application on 15 September 2004 and it was not accepted. The applicant appealed the decision and on 25 April 2005, the Government Office for the North West considered the application on appeal and dismissed the appeal. The current application relates to most but not the entire route considered previously by the Regulatory Committee. The route claimed is from Point A and ends at point C which is the boundary of the viaduct. Additional map and documentary evidence have been provided and it is therefore necessary to consider this new information along with all previous relevant evidence as a stand-alone application and the Committee's decision must be based on the evidence before it which may lead to the same or a different conclusion to previous decisions.

Looking firstly, at whether dedication can be inferred at common law. It is necessary to look at all the circumstances from which a dedication could be inferred. This can be from how the route was recorded on various documents or from circumstances. It is necessary to consider the period of use and the actions of landowners must also be considered to see whether they acquiesced in the use or whether they demonstrated by taking overt actions that they did not intend the route to be a public highway.

The landowners have taken overt action as there is reference to signs and physical barriers having been put up across the route during the relevant period and evidence to show these were replaced after becoming damaged. It is therefore suggested that to find actual dedication of this route by the owners at Common Law is difficult.

The Head of Service – Planning and Environment has considered the historical map and documentary evidence and concluded there was very little map or documentary evidence to support or counter the application.

Therefore, it is suggested that on balance there is insufficient evidence to infer dedication at common law.

Committee are advised to consider whether deemed dedication under S.31 Highways Act 1980 can be satisfied.

Committee will be aware that in order to satisfy the criteria of S.31 Highways Act 1980, there must be sufficient evidence of use of the claimed route by the public, as of right and without interruption, over the twenty-year period immediately prior to its status being brought into question, in order to raise a presumption of dedication. This presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way.

In support of the application, 32 user forms were provided. Use of the route stems from 1965 until 2001 (when the fence was erected at the end of the viaduct). One user recalls a fence and barbed wire at this location during 1996/1997. Nine users recall a ditch/depression at the end of the viaduct prior to 2001 however; they maintain this did not prevent use. Five users claim seeing a sign/notice along the route and only one of these users state a sign was put up in 2000 stating no entry.

It appears on balance that the route was called into question in 2001 when Lancashire County Council erected a substantial security fence at the viaduct thus challenging the public's right to use the whole of the route. Committee should note that although this application is not claiming a route which continues past the viaduct, the fencing erected at the viaduct brought the whole of the route into question. For the current application under consideration, only one user recalls barbed wire and fencing in around 1996/1997 but states this did not prevent them from using the route but it does indicate the landowners challenging use. The 2004 Committee report found the route was also potentially brought into question in 1993 hence, as this is not a standalone application we can on balance be satisfied that the route was also brought into question in 1993. It is therefore reasonable to conclude that the 20 year periods under consideration would be from 1981-2001 and 1973-1993.

Committee will need to consider whether use was, 'as of right' and uninterrupted. Committee will note that the previous Committee report of 2004 also highlighted that at Point C of the current committee plan there was a barrier, trees and shrubs placed within an excavated trench which the landowners dug in an attempt to discourage use. Users continued to climb over the trees, this is confirmed by the user evidence presented however; it is maintained the trench did not prevent them using the route. The landowners maintain this was done to prevent use and after gate/fencing was damaged. The landowners state that at point B, a gate was placed and Ordnance Survey maps from 1994 support the assertion that access was restricted at Point B and partway between B-C, although again user evidence suggests this did not prevent them using the route. The landowner also states he put up signage along the route clearly stating land was private and replacing gates/barriers however; despite this the route continued to be used. There is also evidence from the tenants of the caravan site that there has always been a fence and gates which have been replaced by barriers along the route, they also suggest that there were signs stating private land - no right of way during the relevant period. On balance, it seems users may have been aware their use was being challenged and despite the challenge, they continued in defiance ignoring the landowner, climbing over dug trenches

avoiding gates/barbed wire and therefore; use was not 'without force' (*nec vi*) but on balance use cannot be said to be uninterrupted.

A presumption of dedication may be rebutted if there is sufficient evidence on the part of the landowner to demonstrate that they had no intention to dedicate a public footpath during the relevant period. It is understood that in 1979 Hilda Hanson purchased the land forming the route from the British Railways Board. It appears that ownership of the route has since run within the Hanson family. The use of the path it seems on balance, has been consistently challenged by the landowner, by the erection of signs, gates and barriers which have been replaced after becoming damaged, In refusing the application in 2004 it was suggested there was a barrier at point B on current application route – objectors argued that whilst barriers and signs erected along the route did not prevent access they argued they strongly indicated an unwillingness on the part of the landowners to dedicate the route as a public right of way.

Committee should also note that the route in question stops at the boundary of the viaduct and does not link both ends of the application route to a public highway. It is understood that the Railway Paths Limited now own the viaduct and have since 2017 agreed with a local volunteer group to permit limited access onto the viaduct allowing users to continue walking onwards to Martholme Lane; however; this is permissive use and as such permission can be withdrawn at any time hence; the application route does not link to a public highway at both ends. There are exceptional circumstances where a public right of way may end in a cul-de-sac, for example at a point of interest. Although it is understood the viaduct offers spectacular views none of the user evidence forms suggest that the route is being used as a cul-de-sac route as no user is turning back on themselves after reaching the viaduct, Most of the user evidence forms have a plan attached to the end of the forms which identifies the route they use. None of the users are claiming to have only used the route subject to this application but instead show their journey continuing past Point C and the viaduct or taking alternative routes, however; it does seem the viaduct itself is a place of public interest as the historical railway structure and views offered at this location could be an aspect enjoyed by users despite them continuing onwards in their journey.

It is suggested to Committee that taking all the relevant evidence into account on balance dedication cannot be inferred under common law nor deemed under s.31 Highways Act 1980 nor can a public right of way on the application route be reasonably alleged to subsist.

Risk management

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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-618		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A