

Regulatory Committee

Meeting to be held on 27th January 2021

Part I

Electoral Division affected:
Mid Rossendale

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of Public Footpath from Goodshaw Avenue to Goodshaw Lane, Goodshaw Chapel, Rawtenstall

File No. 804-610

(Annex 'A' refers)

Contact for further information:

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Executive Summary

Application for the addition of a Footpath from Goodshaw Avenue to Goodshaw Lane, Goodshaw Chapel, Rawtenstall to be recorded on the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-610.

Recommendation

- (i) That the application for a Footpath from Goodshaw Avenue to Goodshaw Lane, Goodshaw Chapel, Rawtenstall to be recorded on the Definitive Map and Statement of Public Rights of Way, in accordance with File No. 804-610, be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add a Footpath from Goodshaw Avenue to Goodshaw Lane on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D-E.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background and Advice

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for a footpath from Goodshaw Avenue to Goodshaw Lane, Goodshaw

Chapel, Rawtenstall to be recorded on the Definitive Map and Statement of Public Rights of Way.

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

Rossendale Borough Council

Rossendale Borough Council provided no response to our consultation.

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	8130 2617	Open junction with Goodshaw Avenue
B	8131 2617	Point on application route immediately north west of corner of wall around grounds forming part of a children's nursery
C	8134 2617	Location of historical line (probable gate) across the application route on Ordnance Survey maps adjacent to nursery (former school /Sunday school building).
D	8141 2618	Path leading from graveyard meets the application route to the rear (west) of St Mary and All Saints Church.
E	8145 2618	Open junction with Goodshaw Lane immediately north of St Mary and All Saints Church.

Description of Route

A site inspection was carried out in August 2019.

The application route commences at a point on Goodshaw Avenue approximately 25 metres north east from the junction of Rawtenstall Footpath 334 with Goodshaw Avenue (point A on the Committee plan).

At point A access onto the application route is open and unrestricted and the route crosses the corner of an area surfaced with compacted gravel and used for car parking at the front of the entrance to a children's nursery.

After approximately 8 metres the surface changes adjacent to the north west of corner of a wall around the grounds forming part of a children's nursery (point B). The route continues in an east north easterly direction along a sunken overgrown grassy track to the north of the boundary wall of the nursery grounds to the corner of the nursery building (point C).

The route passes on the north side of the nursery building and rises uphill continuing in an east north easterly direction and then east south easterly direction between a stone retaining wall on the north side and on the south side a wall separating it from the graveyard of St Mary and All Saints Church.

A gated path from the graveyard meets the application route (point D) and the route continues between, on the north side, a wall and then fence of Harvey Longworth Court, and on the south side by a stone wall of the church and a further gateway leading from the side of the church grounds onto the application route. The route

exits onto Goodshaw Lane immediately north of St Mary and All Saints Church at point E.

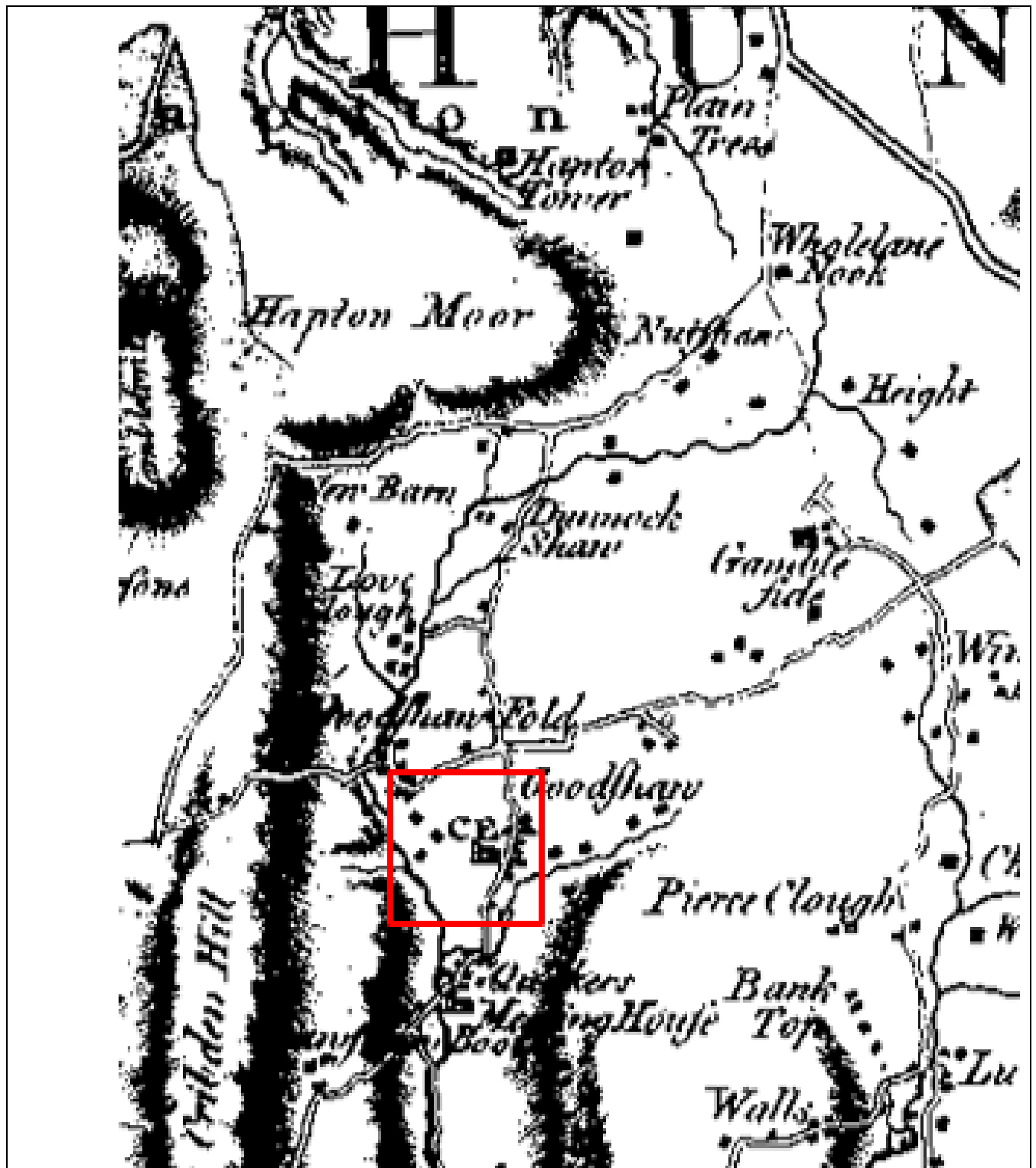
When inspected in August 2020 the whole of the route was passable but overgrown with no evidence of recent frequent use. There were no signs indicating whether the route was considered to be public or private.

The total length of the route is 150 metres.


Map and Documentary Evidence

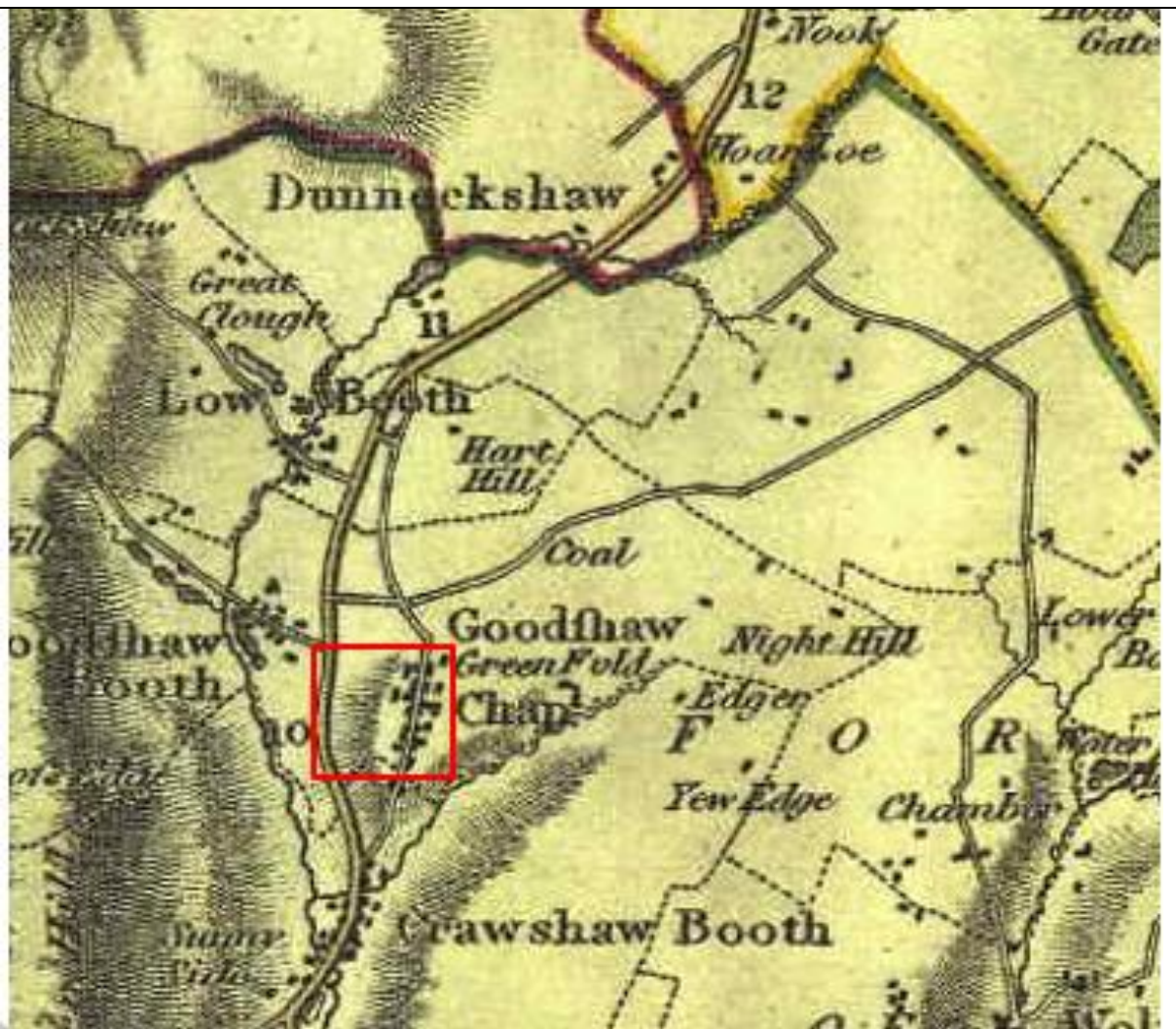
Various maps, plans and other documents were examined to discover when the route came into being, and to try to determine what its status may be.

Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.



Observations		The application route is not shown. Goodshaw Lane is shown and a church is shown which appears to be in the correct location for St Mary and All Saints Church but the route itself is not shown.
Investigating Officer's Comments		The application route may have existed in 1786 but does not appear to have been considered a substantial public vehicular highway at that time.

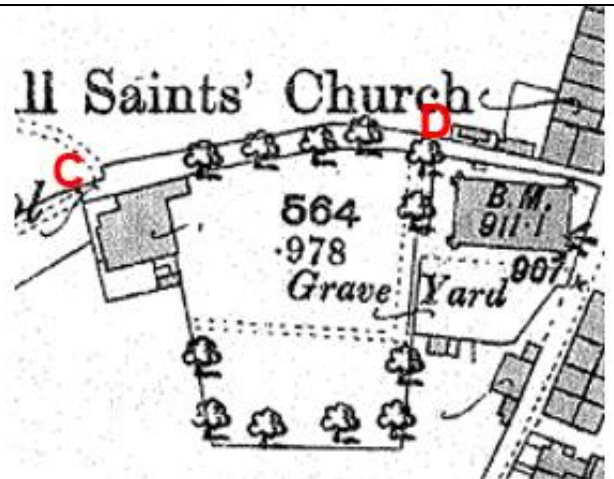
Honour of Clitheroe Map	1804-1810	A privately produced map of land owned by the Honour of Clitheroe – Henry Duke of Buccleuth and Elizabeth Duchess of Buccleuth. It specifically shows the boundaries of coal leases granted by them. 'Roads' were identified in the key but there was no apparent distinction between those which may have been considered to be public or private.
		
Observations		The application route is not shown. Goodshaw Lane and Burnley Road are shown but Goodshaw Avenue is not.
Investigating Officer's Comments		The route did not exist as a major route at that time although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



Observations		The application route is not shown.
Investigating Officer's Comments		The route did not exist as a major route in 1818 although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
Documents relating to the extension of St Mary's and All Saints graveyard	1823-1824	<p>Documents relating to St Mary's and All saints Church are deposited at Manchester Archives. Copies of two documents were requested to see whether there was any reference to the application route:</p> <ol style="list-style-type: none"> 1. Copy of court roll of the manor of Accrington New Hold recording purchase by Rev. George Haworth from James and Mary Hardman of Goodshaw, yeoman, of part, 19 Jul 1823 Ref: GB127.L82/1/15/1 2. Sentence of consecration of additional burial ground in Chapel Meadow, 11 Oct 1824 Ref: GB127.L82/1/15/2



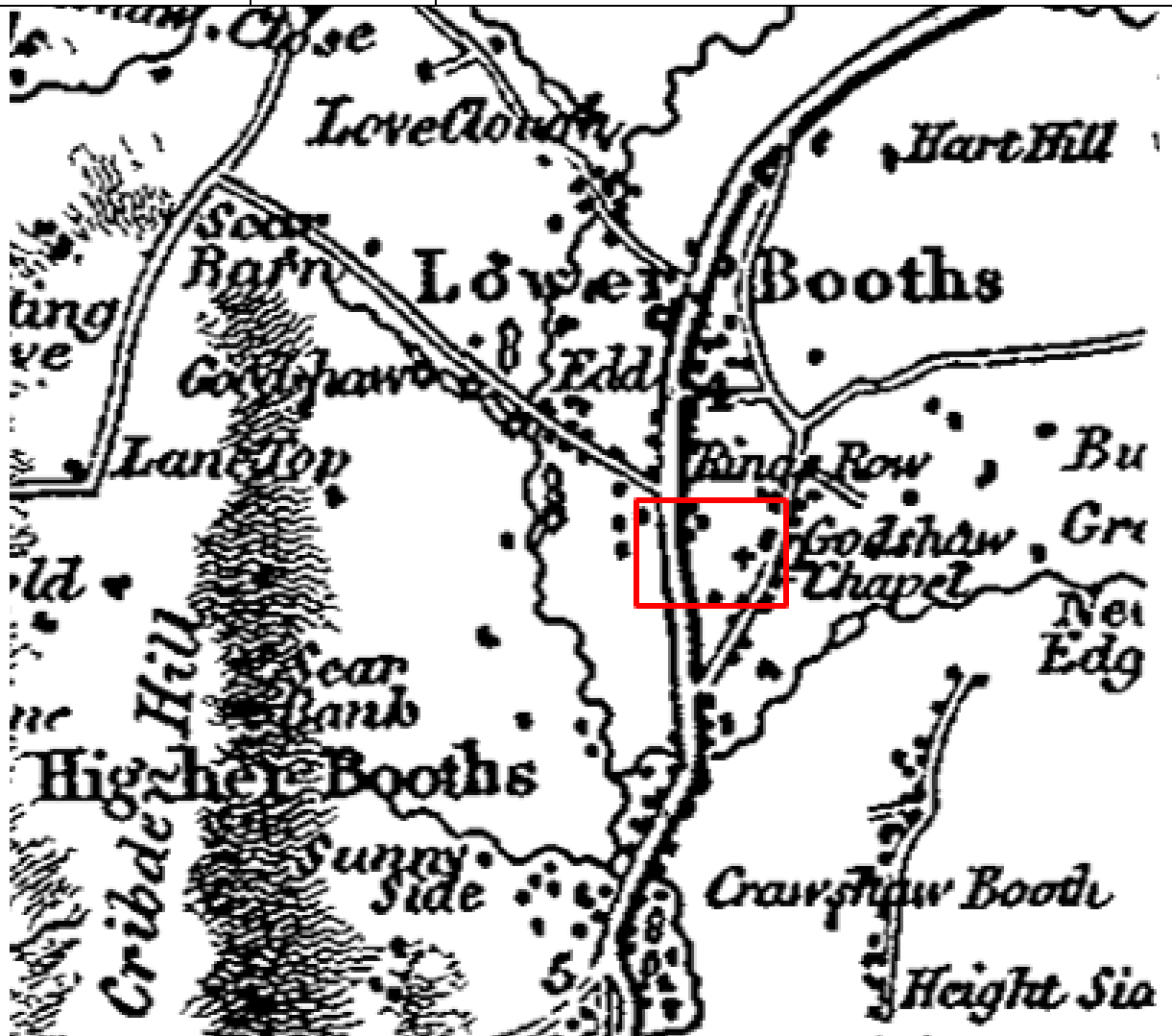
6 inch OS Map published 1849



25 inch OS Map published 1893

Observations		<p>The documents relate to the purchase of additional land by the Rev. George Haworth for the purpose of extending the existing church burial ground in 1823 and the subsequent consecration of the new burial ground the following year.</p> <p>The document detailing the sale of the land in 1824 makes no reference to the application route but does detail the plot of land to be sold as being part of a field known as the Great Meadow and measured as being 499 yards. This measurement is not inconsistent with the measurement given for plot 564 on the 25 inch Ordnance Survey map detailed above which is shown as being .978 acres and includes both the new and old graveyards.</p> <p>The later document, which is difficult to read, details the consecration of the newly purchased burial ground and describes the land to be consecrated as being bounded on the north partly by a footway leading to Goodshaw and partly by the old chapel yard.</p> <p>Again, by reference to later Ordnance Survey maps (namely the first edition 6 inch and 25 inch maps) the description of the land purchased and subsequently consecrated for use as a burial ground is consistent with the location of the plot of land situated immediately to the south of the application route between the church and the Sunday School and fits with the description of the application route as a 'footway'.</p>
Investigating Officer's Comments		<p>The application route existed in the 1820s and was recognised as a footway. It is not known whether this 'footway' was for public or private use but the fact that it was described as a footway leading to Goodshaw is more suggestive of a public route than a route that only provided access to the church.</p>

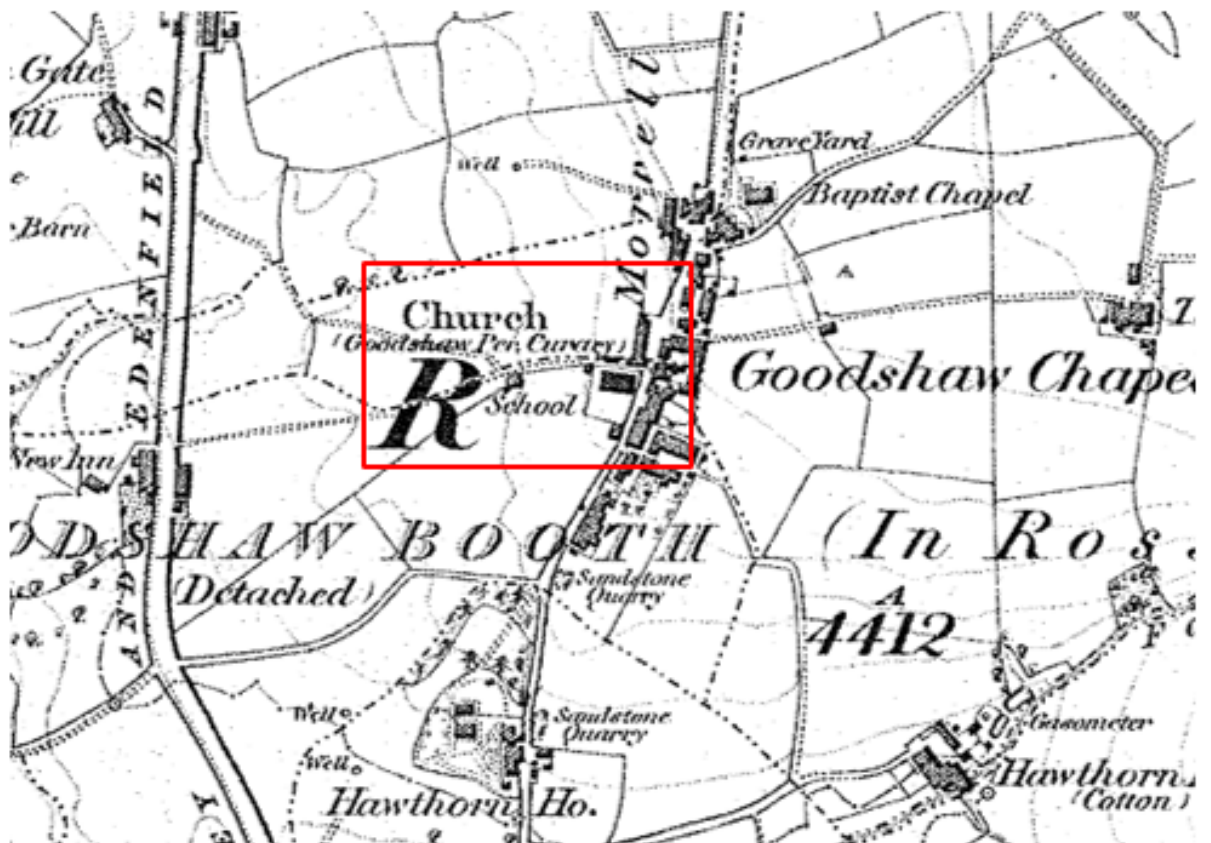
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.
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Observations		The application route is not shown although Goodshaw Lane is shown and the existence of the church is marked by a cross on the map.
Investigating Officer's Comments		The route did not exist as a major route in 1830 although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways

		and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		There are no proposed, dismantled or existing canals or railways crossing the area investigated.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Tithe Map and Tithe Award or Apportionment		Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		There is no Tithe Map available at the County Records Office for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
6 Inch Ordnance Survey (OS) Map	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-7 and published in 1849. ¹

¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the




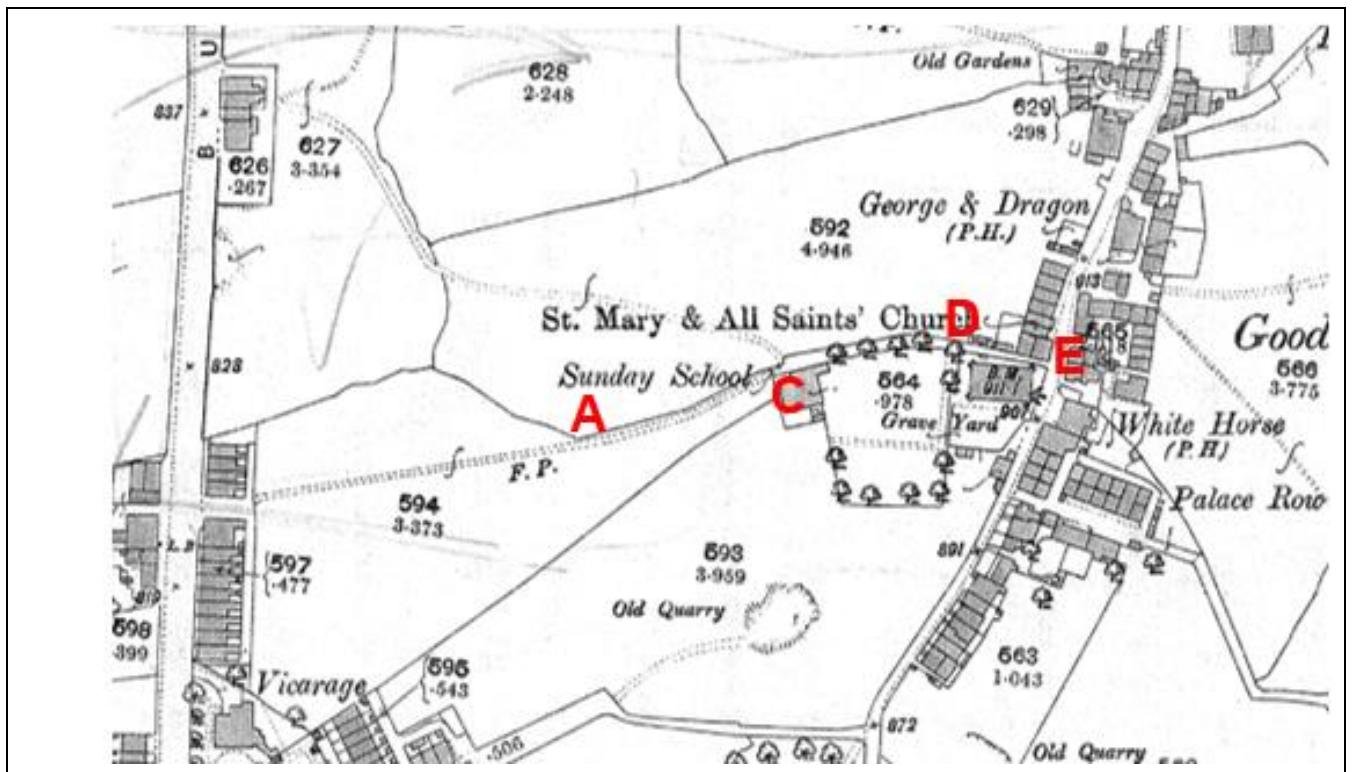
Observations

The application route is shown as part of a longer route from Burnley Road (a former turnpike road) to Goodshaw Lane. The application route can be seen passing directly to the north of a building marked as 'school' and together with a route to the north (which was subsequently recorded as part of Footpath Rawtenstall 39) provided access to (and past) the school and church (rebuilt 1828) and onto Goodshaw Lane. Goodshaw Avenue as a bounded route is not shown. The application route is shown shown largely as an unbounded track with another unbounded track (which was later recorded as a public footpath) joining it from the north. The graveyard which now runs alongside much of the application route between point C and point D is not shown

Investigating Officer's Comments

The application route existed in 1844-7 (date of survey) as part of a longer route and appeared capable of being used at least on foot linking to existing highway network and enabling access to school and graveyard and church. Goodshaw

		Avenue as a named route did not exist in the mid-1800s.
Cassini Map Old Series Blackburn & Burnley Sheet 103	1842-1859	The Cassini publishing company produced maps based on Ordnance Survey mapping. These maps have been enlarged and reproduced to match the modern day 1:50, 000 OS Landranger Maps and are readily available to purchase.
		
Observations		The application route is shown as part of a longer route between Burnley Road and Goodshaw Lane.
Investigating Officer's Comments		The original scale of the map (1 inch to the mile) means that only more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that roads shown had public rights for those travellers.
25 Inch OS Map Sheet 72.01	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1893.



Observations

The earliest large scale map available. The application route is shown as part of a longer route extending from Burnley Road to Goodshaw Lane.

Housing has now been built on Burnley Road and a gap left where the old route was. From Burnley Road the gap is shown between two rows of houses (possibly access to the back street) from which it appears that a gated route (as indicated by the fact that there is a solid line from which a double pecked line extends east) extends across an open field. The route is shown by a double pecked line and is labelled as a footpath 'F.P.' The route goes across the field via point A to the north west corner of a building labelled as 'Sunday School' where it appears to pass through a boundary (presumably gated) at point C to continue along a bounded strip which narrows between points D and E where it exits onto Goodshaw Lane. Access onto Goodshaw Lane appears to be open.

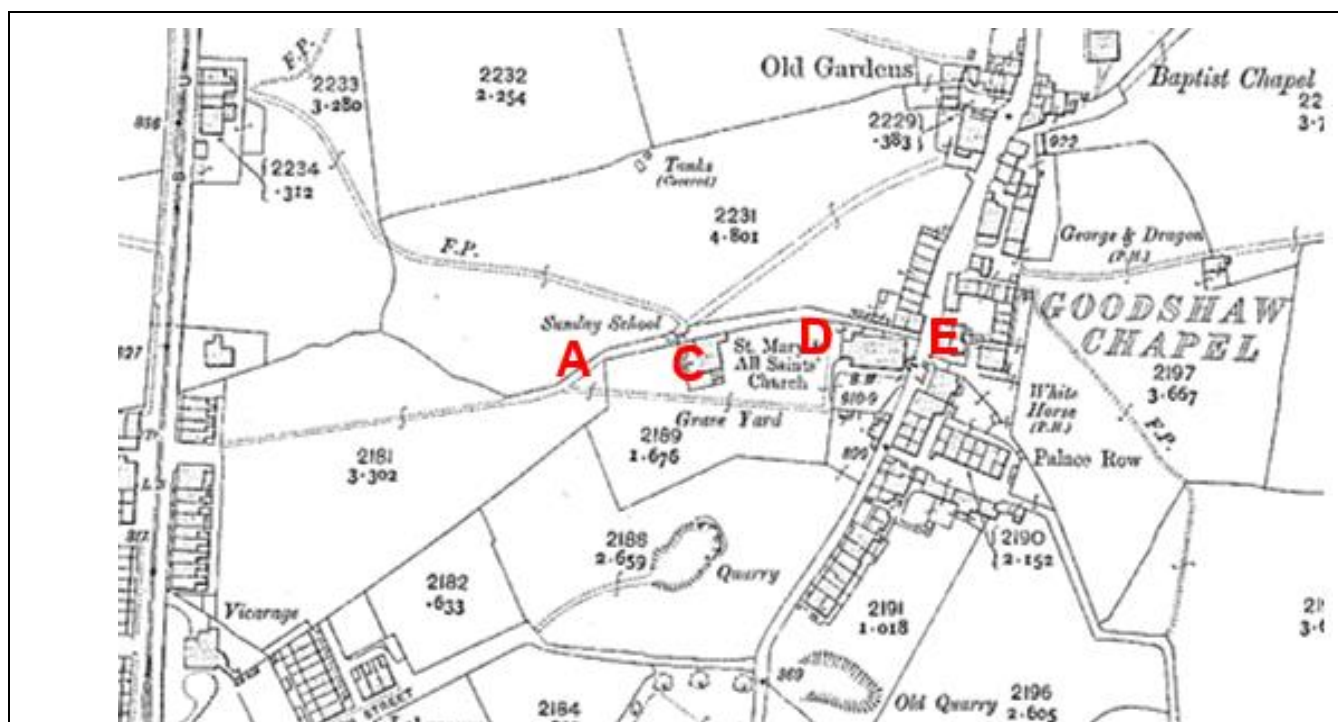
The graveyard to the church has been extended to the rear of the church and a Sunday school built. The size and position of the additional graveyard are consistent with that described in the documentation from 1822-23 which detailed the sale of land for the purpose of extending the church graveyard.

A path is shown exiting the graveyard to the rear of the church onto the application route at point D with

		another path joining the application route from the north west at point C (subsequently recorded as Footpath Rawtenstall 39).
Investigating Officer's Comments		<p>The application route existed as part of a longer route in 1892. There was a gap left in the housing line. This suggests that when the land was developed for housing there was a recognition that the route from Burnley Road through to Goodshaw Lane was an existing public highway which was required to be retained with the access to the 'back street' also giving access to this highway route.</p> <p>A gate near the housing on Burnley Road. It was probably at the exit from the field onto the enclosed section at point C. The existence of gates across a route at the entrance into and out of a field is not inconsistent with public use of a route – particularly where a route crosses open farmland where gates would be required for stock control purposes.</p> <p>The route leading east from Burnley Road and including the application route between points A-B-C is shown by the OS as a footpath (F.P.) across an open field. The OS state that such a notation should not be taken as evidence of a public right of way. However, it does indicate that a route was physically evident on the ground when the land was surveyed by the OS and that its appearance was such as to indicate pedestrian use.</p>
1 inch OS map Sheet 76 - Rochdale	1896	Small scale 1 inch OS map.



Observations		The application route is shown as part of a longer route from Burnley Road to Goodshaw Avenue. A distinction is made between the western part which was unfenced and the eastern part (all of which forms part of the application route) which is shown as being fenced. A clear distinction is made in the map key between roads (which were shown as double dashed lines) and footpaths (which were shown by a single dashed line) with the application route being shown as either a third class or unmetalled road.
Investigating Officer's Comments		The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The application route is shown as a minor road connecting and open to two public roads and although this does not indicate its public status it does suggest that it may have been available to use on foot, horseback and possibly with vehicles at that time.
25 inch OS Map Sheet 72-01	1911	Further edition of the 25 inch map surveyed in 1892, revised in 1909 and published in 1911.



Observations		<p>The application route is again shown as part of a longer route from Burnley Road to Goodshaw Lane and is shown unaltered from how it was shown on the 1st edition of the 25 inch OS map in the 1890s apart from the fact that it was no longer denoted as a footpath (F.P.) along the section crossing the open field west of point A</p> <p>Routes are shown connecting to the application route at point C and point D and the application route still appears to be gated at point C.</p>
Investigating Officer's Comments		<p>The application route existed as part of a longer route from Burnley Road to Goodshaw Lane providing access to and past the Sunday school and appeared to be capable of being used, at least on foot. It is not known why that part of the route west of point A was no longer shown as a footpath (F.P.) by the Ordnance Survey. This may have been because by 1909 a more substantial track existed across the field which indicated that the route was not just used on foot. However, it is shown in the same way (with double pecked lines) as the route leading to point C which crosses fields to the north, and which is notated as a footpath.</p>
Bartholomew half inch Mapping	1904-1941	<p>The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to</p>

depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.



1904



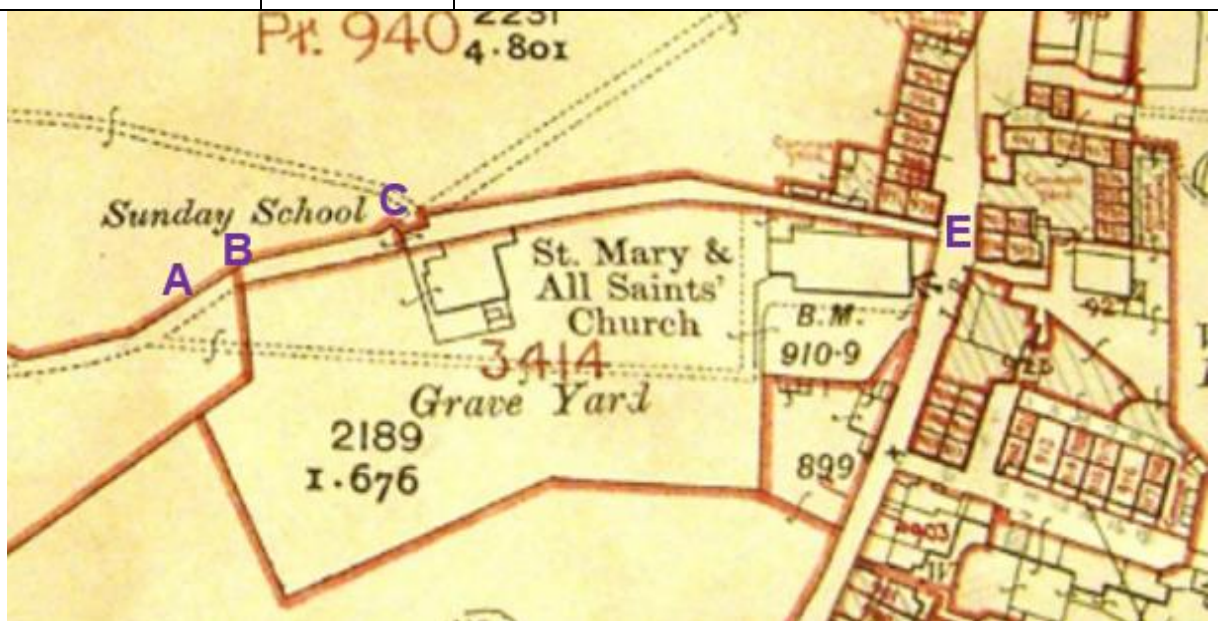
1920



1941

Observations		The three editions of Bartholomew's half inch maps all show the application route existing as a substantial through route from Burnley Road to Goodshaw Lane.
Investigating Officer's Comments		The application route existed as part of a longer through route in the first half of the 1900s and is shown consistent with how routes carrying public bridleway or vehicular rights are shown suggesting that it may have been accessible for pedestrians and also by use on horseback and with vehicles.
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where</p>

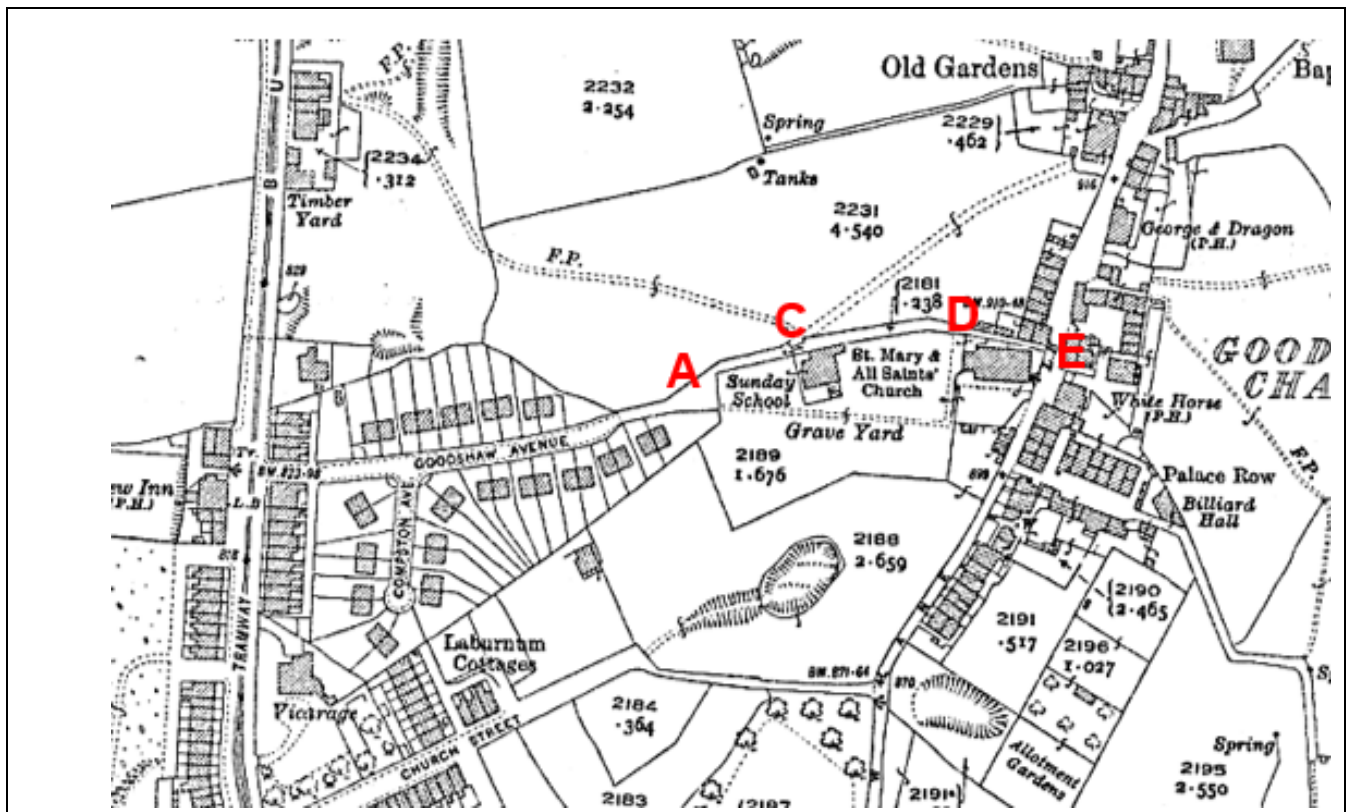
		<p>applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
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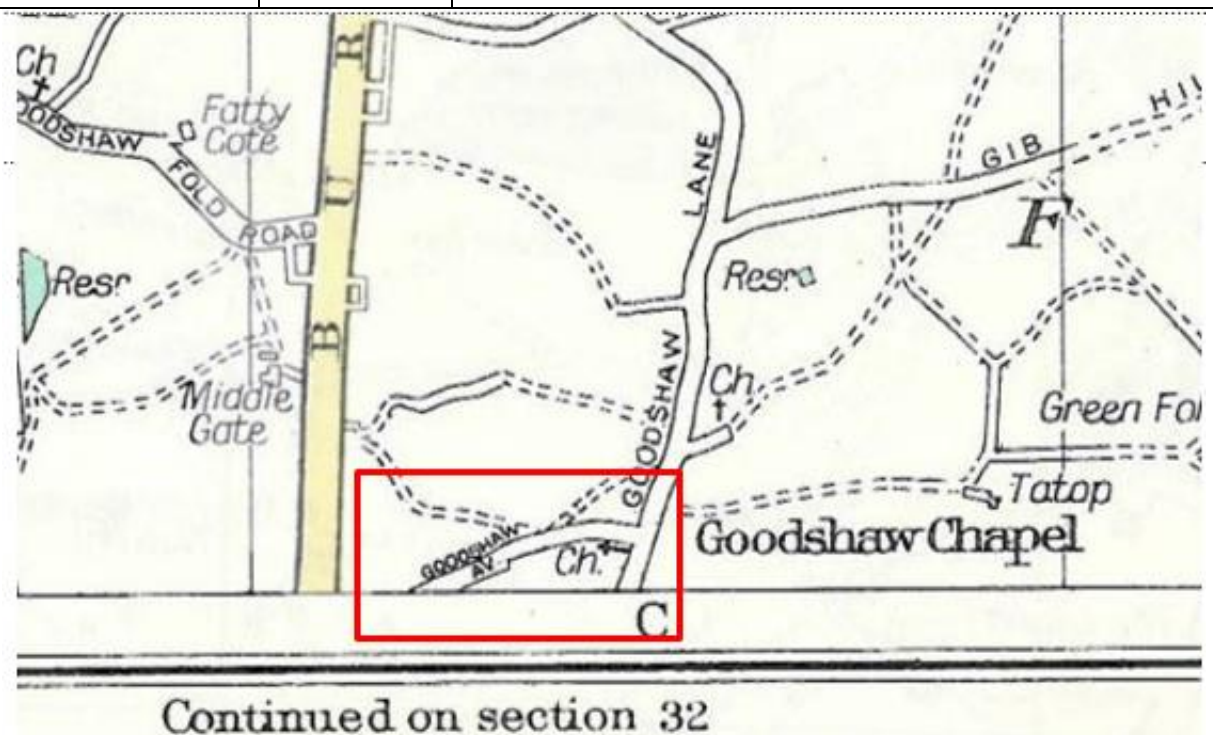
<p>Observations</p>		<p>There is no Finance Act map for the area deposited in the County Records Office so it was necessary to request a copy of the Finance Map deposited at The National Archives.</p> <p>The first part of the application route (between point A and point B) is included in hereditament 1151. The Finance Act Valuation Book deposited in the County Records Office was searched which listed this plot of land as being occupied by Mr Ashworth and owned by Sir John Thursby Bar. A £20 deduction was listed for public rights of way or user.</p> <p>The section of the route between point B and point</p>
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		<p>C appears to have been drawn to include the application route as a plot on its own but this plot is not numbered so no further information could be sought in reference to it. The remaining part of the application route (from point C to point E) and is not numbered and is contiguous with the general road network.</p>
Investigating Officer's Comments		<p>A substantial deduction of £20 is made in relation to a public right of way (or ways) included in plot 1151 – equating to around £2,400 today. Whilst the Valuation Book and Map do not specify the exact route (or routes) this deduction applies to the OS base map only shows the route which extends from Burnley Road east to point A – where two routes are then shown – one which includes the application route between point A and point B and the other leading to the graveyard (FP 334). A deduction of £20 was a substantial amount and strongly suggests that the landowner at that time acknowledged the existence of a public right of way of at least footpath status which lead to – and most probably included – part of the application route.</p> <p>Between point B and point C the application route appears to have been included in a plot - possibly because it was enclosed with a gate at point C. Ownership of this section of the route is not registered (or known) and the Finance Act information provides no further information to assist in this matter.</p> <p>From point C to point E the application route has been excluded from the numbered plots in the same way as public vehicular highways have been excluded suggesting that it was considered to be a significant public route – possibly vehicular – at that time.</p>
25 Inch OS Map Sheet 72-1	1930	<p>Further edition of 25 inch map (surveyed 1892, revised in 1928 and published in 1930.</p>




<p>Observations</p>		<p>Significant changes have taken place in the 20 years since the previous 25 inch OS map was published. Housing has been built on the field east of Burnley Road but the through route shown on the earlier OS maps examined is still shown. The route from Burnley Road through to point A is no longer an unfenced route across a field but is now the route of Goodshaw Avenue off which houses have been built on either side. The avenue follows the same alignment as the original route through to point A from where the application route is then shown continuing as a bounded route to the north of the Sunday school to exit onto Goodshaw Lane. A gate still appears to exist across the route at point C and two other routes are shown to meet the application route at point C. Access from the graveyard onto the application route is shown at point D and the route is shown to narrow between point D and point E.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed in 1930 and appeared to be capable of being used. The fact that Goodshaw Avenue was constructed along the same alignment as the original route of which the application route formed part, suggests that when the land was developed for housing there was a recognition that the route from Burnley Road through to Goodshaw Lane was an existing public</p>


		highway which was required to be retained.
Authentic Directory of Lancashire Geographia	Map of South by	<p>Circa 1934</p> <p>An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.</p> <p>The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.</p>

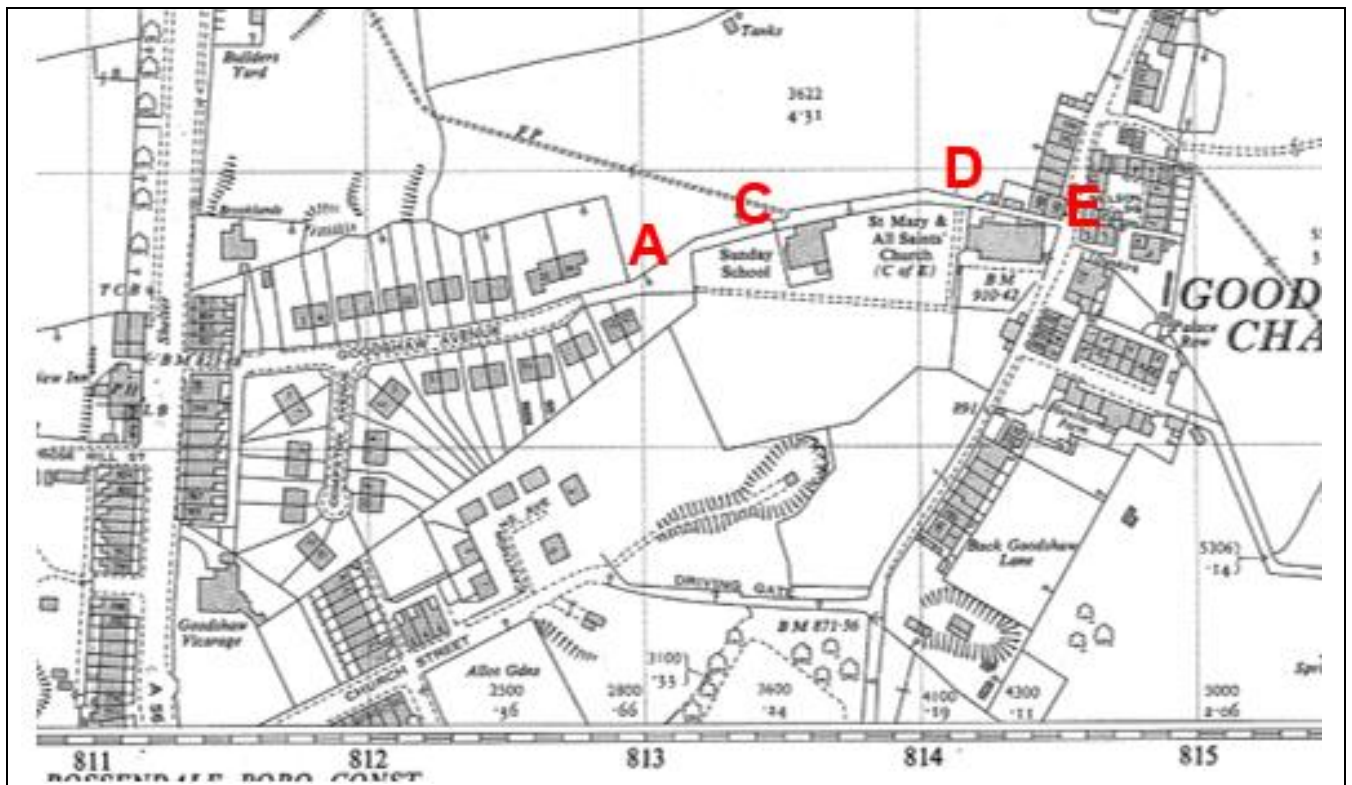


Observations		<p>The application route is shown as part of a longer through route from Burnley Road through to Goodshaw Lane. The fact that the western end is named on the map as Goodshaw Avenue suggest that the map was drawn following the construction of the housing shown on the 25 inch OS map published in 1930.</p>
Investigating Officer's Comments		<p>The full length of the through route – including the application route - is shown consistent with how public vehicular routes were shown on the map although the section comprising the Order route is noticeably narrower than the eastern part which is labelled as Goodshaw Avenue.</p>

Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
		
Observations		The photograph confirms the construction of Goodshaw Avenue from Burnley Road through to the start of the application route at point A. The application route is visible on the photograph from point A following a defined track – narrower than Goodshaw Avenue - to the north of the Sunday School building close to point C where the two paths converging on the application route (and subsequently recorded as Footpath Rawtenstall 39) can clearly be seen. Beyond the Sunday School it is difficult to see the application route on the photograph due to trees although the exit of the application route onto Goodshaw Lane at point E is visible as a clearly defined 'white line' immediately north of the church.
Investigating Officer's Comments		The application route probably existed in the 1940s although it was not visible as a clearly defined route on the aerial photograph.
6 Inch OS Map SD 82NW	1956	The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised

² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.

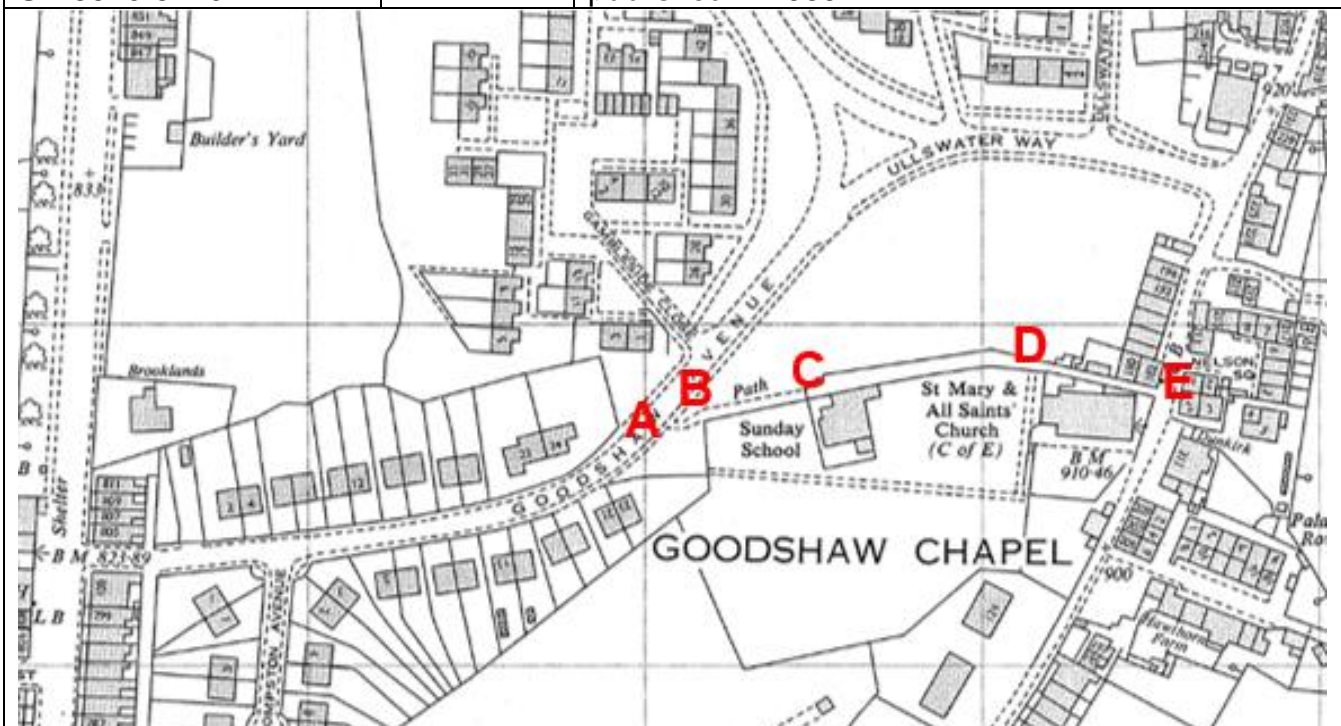
		before 1930 and is probably based on the same survey as the 1930s 25-inch map.
		
Observations		The application route is shown as part of a longer through route from Burnley Road along Goodshaw Avenue and then continuing from point A to point E to Goodshaw Lane. A line can be seen across the route at point C suggesting the existence of a gate.
Investigating Officer's Comments		The application route existed in the 1930s (date of revision of the map) and appeared to be capable of being used by the public. The gate at point C may have restricted access, particularly to vehicles and the existence of the 'triangular' shaped area at the eastern end of Goodshaw Avenue/Point A may have served as a turning area for vehicles.
1:2500 OS Map SD 8026-8126	1962	Further edition of 25 inch map reconstituted from former county series and revised in 1961 and published in 1962 as national grid series.





Observations		The application route is shown continuing from the eastern end of Goodshaw Avenue from point A, gated at point C and narrowing between point D and point E to link to Goodshaw Lane.
Investigating Officer's Comments		The application route existed as part of a longer through route in 1961 and appeared to be capable of being used at least on foot.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		The application route between point A and point C is clearly shown leading to the north of the Sunday school building. Beyond point C the application route is not clearly visible due to tree cover and buildings.
Investigating Officer's Comments		The application route between point A and point C existed as a substantial track in the 1960s. No inference can be drawn with regards to the remainder of the route as it cannot be seen due to trees coverage and buildings.
1:2500 OS Map SD 8026-8126	1969	Further edition of 25 inch map revised and published in 1969.



Observations		By 1969 it can be seen that further development had taken place to the north of the application route with additional housing and a link through from Goodshaw Avenue which is shown to have been extended to continue past point A in a north easterly direction and then east along the newly constructed Ullswater Way to exit onto Goodshaw Lane. The application route is shown between point A and point C as an unbounded 'path' and then beyond point C it is shown as a bounded track consistent with how it is shown on all earlier maps examined.
Investigating Officer's Comments		The application route existed in 1969 largely unaltered to how it appears today. A vehicular route was available between Burnley Road and Goodshaw Avenue with the application route appearing to provide a route more consistent with pedestrian access from Goodshaw Avenue through to Goodshaw Lane.

OS Outdoor Leisure Map 21 South Pennines	1995	1:25 000 OS map revised and published 1995.
		
Observations		The application route is shown in the same way as it is shown on the OS map published in 1969.
Investigating Officer's Comments		The application route existed in 1995 supporting the user evidence submitted with the application.
Google Street View Images	2009	Google Street view images captured in 2009 and available to view online.
		
Point A		



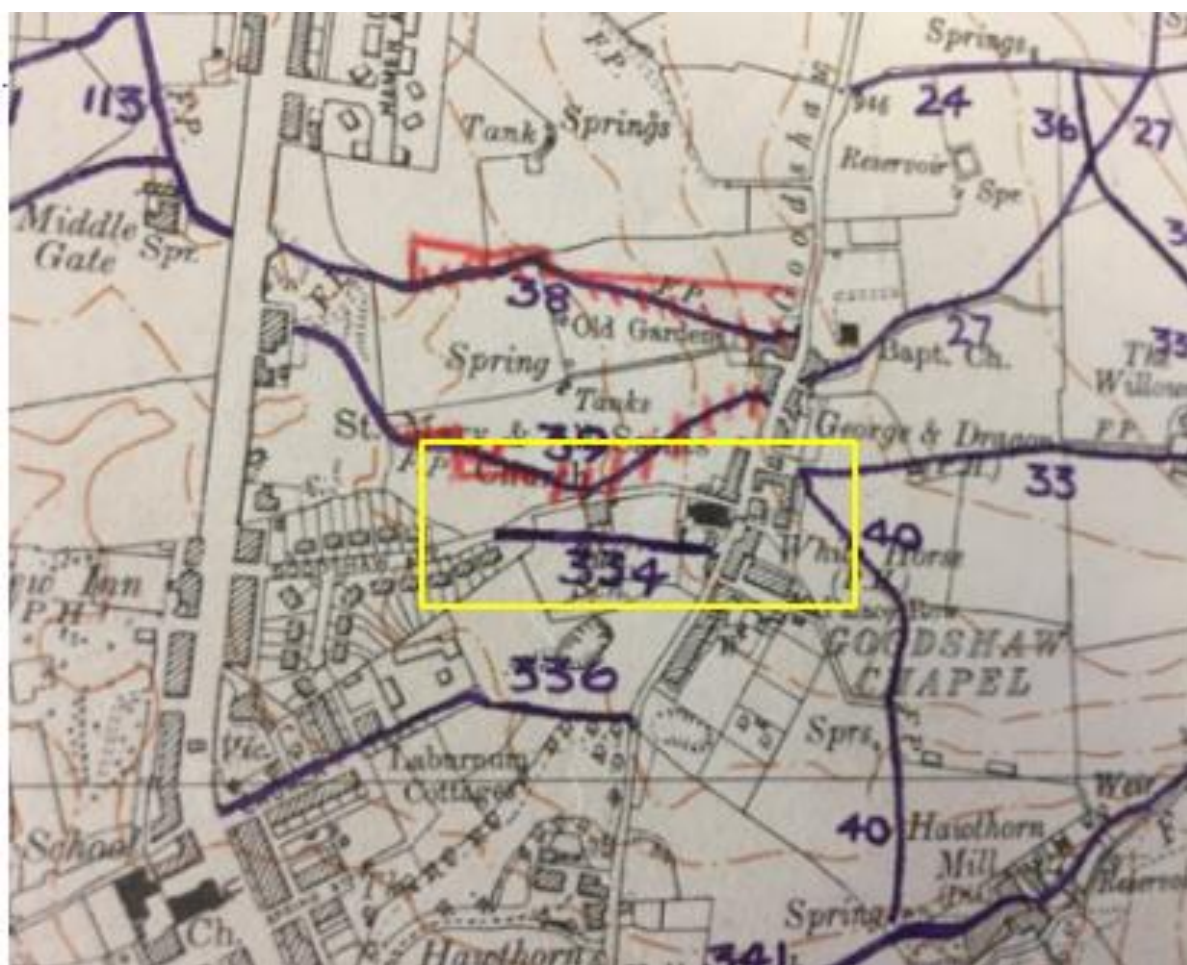
Point E

Observations		<p>The photograph taken from point A shows the application route as a clearly defined stone surfaced track which appeared to be wide enough – from point A, passing through point B and leading to the north side of the nursery building (former Sunday school) for vehicular access in 2009. A path can also be seen running parallel to the application route within the nursery grounds which looks to provide direct (pedestrian) access to the nursery. Beyond point C it is not possible to see the application route on the photograph.</p> <p>The photograph taken from Goodshaw Lane shows the application route at point E as a narrower grass surfaced path.</p>
Investigating Officer's Comments		<p>The application route appeared to be accessible from both point A and point E in 2009 and it looks likely that vehicular access was available from point A to at least point C (adjacent to the nursery/Sunday school) at that time.</p>
Aerial Photograph	2014	Aerial photograph available to view on GIS.
Observations		The application route can be seen as a faint track

		between point A and point C but is not visible for most of its length beyond point C due to tree cover and buildings. An access route to the nursery building can be seen running parallel to the application route on the south side of the wall separating the nursery grounds from the application route
Investigating Officer's Comments		The application route between point A and point C is far less visible than it was on the Google Street view image in 2009 suggesting that use of the route had possibly declined by this time.
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>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		The application route is within Rawtenstall which was a municipal borough in the early 1950s so a parish survey map was not compiled.
Draft Map		The Draft Maps were given a "relevant date" (1 st 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 st 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 application route was not shown on the Draft Map and no objections or representations were made to the county council about it. It is considered that Footpath 39 may have reached the application route but it was described in the Draft Statement as commencing from behind Block 250 feet.south of the start of Footpath 38 on Burnley Road and travelling in an easterly direction north of St Mary's Church to Goodshaw Chapel with no specific reference to a connection to the application route.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.



Observations

The application route was not shown on the Provisional Map and no objections or representations were made to the county council about it. Footpath Rawtenstall 39 is shown crossed out in red and details in the London Gazette confirm that the route was diverted by Rawtenstall Borough Council in 1965 to allow for the construction of a new road (Ullswater Way). There was no reference to the application route in the diversion order. The Provisional Map was republished as the First Definitive Map in 1962 but the Diversion Order was 1965 so the crossing out must have been a later amendment/annotation and not part of the statutory process. This does not assist with determining the status of the application route.

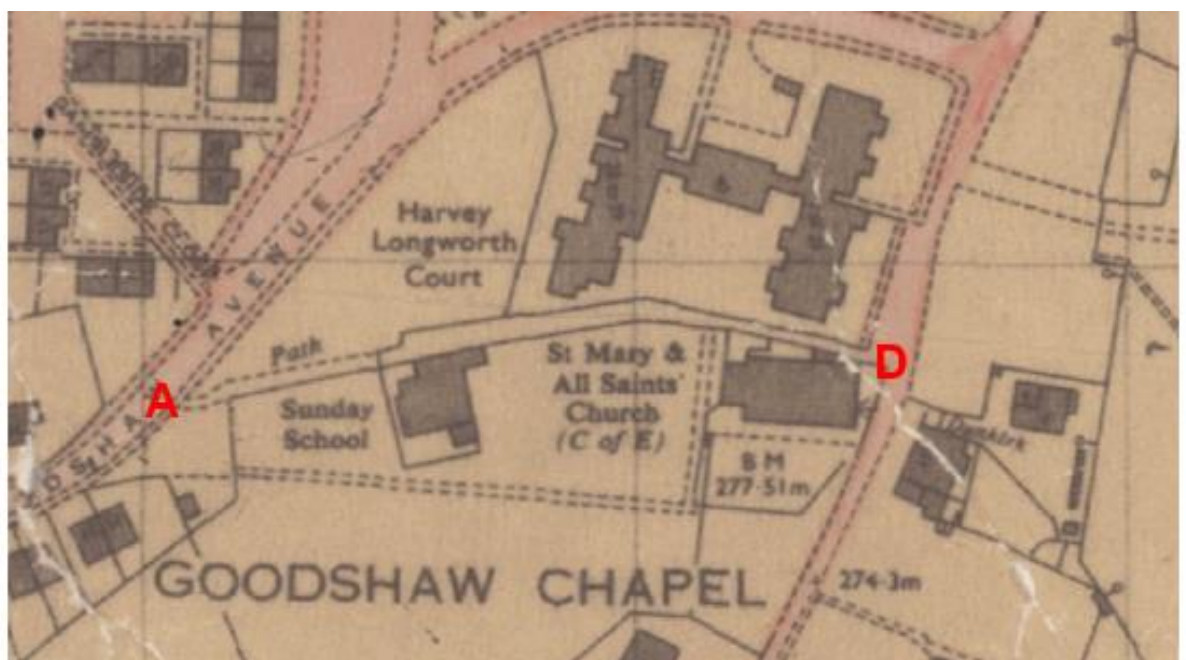
The First Definitive Map and Statement

The Provisional Map, as amended, was published as the Definitive Map in 1962.



Observations		The application route was not shown on the First Definitive Map.
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 recorded on the Revised Definitive Map (First Review).
Investigating Officer's		From 1953 through to 1975 there is no indication

Comments		that the application route was considered to be a public right of way of the type to be recorded on the Definitive Map and Statement by the Surveying Authority. There were no objections or representations made with regard to the fact that the route was not shown on the map when the maps were placed on deposit for inspection or 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 as the record can be amended to be accurate.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		A search of records held at the County Records Office was made and no legal Orders affecting the application route were found.
Investigating Officer's Comments		There is no record of any public rights that may be found to exist along the application route having been legally extinguished.
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 route under investigation 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 is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land.

Landownership

Between point A and point B the land crossed by the application route is owned by Together Housing Association as part of a larger former council housing estate previously owned by Rossendale Borough Council. Rossendale BC sold the plot of housing and associated land in 2006 to a housing association and had already sold land to the north of the application route to another housing association in 1977.

The section of the old route west of point A had already become a bounded road called Goodshaw Avenue through an earlier Council housing development being built by Haslingden Council by 1930 on plot 1151 of the Finance Act record, save for the furthest NE corner. This NE corner was acquired by the District Council as part of its enlarged council housing estate. Goodshaw Avenue was then extended into the Council estate on a different line from the application route.

From point B through to point E the land crossed by the application route is on unregistered land but has a private right of way granted on it by the church "so far as it could grant same" when it sold the former Sunday school building. A Deed of 22nd July 1983 shows the Church ownership stopping at the south wall of the application route and the Council owned land stopping at the north wall of the application route. The consecration of the churchyard in 1824 had referred to it as the footway into Goodshaw not seeming to indicate that the Church owned it. Whether Church owns the application route B-E is not entirely clear but seems unlikely.

Summary

The application route is not shown on any small scale early commercial maps pre-dating the Ordnance Survey mapping. This is not however necessarily surprising as such maps were produced primarily to show routes to be used on horseback and in particular with horses and carts/carriages.

The map and photographic evidence available from the 1840s through to the current time supports the view that the route physically existed and was capable of being used by the public at least on foot.

The application route is referred to as a footway in 1824 and shown on the first edition 6 inch Ordnance Survey map surveyed 1844-7 and published 1849. At that time it is shown as part of a longer through route from Burnley Road to Goodshaw Lane.

It is then consistently shown on all OS and commercial small scale maps examined as part of this longer through route passing directly to the north of the Sunday School building through a gate at point C and continuing as a bound route to Goodshaw Lane to run alongside the church building to exit onto the lane immediately adjacent to the church. Its inclusion on a series of small scale commercial maps in the early 1900s suggests that it existed as part of a longer substantial route at that time.

By the 1930s the western end of the route commencing on Burnley Road was incorporated into development but the historical line of the route was retained as part of Goodshaw Avenue through to the start of the application route at point A and then continuing, unaltered from how it was shown from the 1800s through to point E.

By the late 1960s a vehicular link was provided from Goodshaw Avenue through to Goodshaw Lane via Ullswater Avenue but the application route appeared unaltered.

The route is consistently shown to exist on all maps and photographs examined from the 1840s through to the current day supporting the user evidence submitted as part of the application. Google Street images dated 2009 show the start of the route from point A as being a well-defined surfaced track and access at point E being clear of vegetation – again consistent with the user evidence and the fact that several users refer to the route no longer being maintained and recently becoming overgrown and more difficult to use (as evidenced by the site inspection carried out in 2019).

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicants are of the view that the route applied for is of indeterminate age although refer to it being shown on the 1849 OS 6 inch map. They consider that the route could date from the late 1700s when the turnpike road (Burnley Road) was opened in 1799 and the route would have provided a route from the village to the turnpike road. They also point out that until the 1960s the route provided the only way through from Goodshaw Lane to Goodshaw Avenue.

They make reference to the route being known locally as 'Church Pad' and that the evidence of use submitted dates back to 1927.

In support of the application the applicants submitted:

Location plans and aerial photographs identifying the route of the path applied for
OS map SD 82 1:25 000 map dated by applicant 1937-1961
OS 6 inch map published 1849
OS 25 inch map published 1890
29 User evidence forms.

The applicant stated on the application form that 30 user evidence forms had been provided. However only 29 forms were received, the applicant has since clarified that the information on the application form was in error and the number of forms submitted is correct. This user evidence is summarised below.

Duration of Use

The user evidence forms collectively provide evidence of use going back as far as 1927 and up to 2017. Due to a two year gap between the completion of these forms and the submission of the application users were consulted to clarify whether their use of the route as described in the user evidence forms continued during the subsequent two years up to 02 July 2019, the date of the application. Information from the responses to these consultations along with information from the user evidence forms is presented in the table below.

20+ Years including the years 1999 to 2019	20+ Years not including the years 1999 to 2019	1-19 Years	Other
4	11	11	3

Several users provided other responses, one stating that they had used the route all their life, one stating they used the route when they were younger and another stating they had used the route for 'many years'.

Frequency of Use

The majority of the twenty nine users stated that they used the route weekly, monthly or yearly, five did not specify or could not remember.

Daily	Weekly	Monthly	Yearly	Other	Not Specified
2	8	6	7	1	5

One user simply stated that they used the route 'often'.

Reasons for Use

Of those who specified their reason for using the route, the most common answer was for walking and accessing Goodshaw Lane and other parts of the village, travelling to and from home. Picking up children from school, access to the church and dog walking were reasons noted by several users.

Other Users of the Route

The majority of users recollected seeing others using the route, seven did not specify, four stated that they had not seen others using the route.

Other Users Seen				
On Foot	On Horseback	On Motorcycle / In Vehicle	Not Specified	Not Seen
18	6	6	7	4

Consistency of the Route

The majority of the twenty nine users stated that the application route had always followed the same course. Four did not specify.

Has the Application Route Always Followed Same Course?			
Yes	No	Other	Not Specified
23	0	2	4

Two users provided other answers stating 'not that I am aware of' and 'not to my knowledge'.

Unobstructed Use of the Route

None of the twenty nine users recalled having been prevented from using the route, one did not specify.

None of the twenty nine users recollected seeing any signs or notices restricting or prohibiting access on the route, nor did they record having been stopped, turned back or told the route was not public, one did not specify.

None of the twenty nine users recorded any gates, stiles or obstructions along the application route. One did not specify.

Information from Others

Of the statutory undertakers consulted only one responded, Atkins Global sent a reply stating that they had no objection to the application but they provided no further information.

Information from the Landowner

Consultations were conducted with the known landowners and consultations were also sent to the Diocese of Manchester and the Vicar, Church Wardens and Lay Chair of the Parochial Church Council of St Mary and All Saints Church.

The Reverend Casey, formerly of St Mary and All Saints responded that he had recently moved on from this post and that a new Vicar would not be appointed for another 18 months. No other responses were received to these consultations.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order to record the route as a footpath

User evidence

Documentary evidence

- noting of FP by OS surveyor
 - reference to footway in the Consecration document
 - 1969 OS reference to it as path
- Availability of route

Against Making an Order(s)

No real evidence save gate across route

In support of Making an Order to record the route as restricted Byway being old vehicular route.

Documentary evidence

- shown as if more than footpath on Cassini map , small scale OS, Bartholomew's, Geographia
- FP notation disappears on the route
- finance act map routes outside hereditaments,
- substantial allowance for public right on Finance Act map even across the field,
- Other footpaths reach it on draft Definitive Map but it is not shown as footpath

Against making the Order for Restricted Byway

Evidence of Footpath

Difficulty in being sufficiently sure on balance that it was shown as vehicular on the various maps referred to above
still shown largely within hereditament in 1910 . Substantial allowance may refer instead to heavy foot traffic

Gate across route

No mention of improving old road when Goodshaw Avenue created – more likely footpath being subsumed into new vehicular highway.

Footpath 39

Conclusion

This route is not presently recorded on the Definitive Map and Committee is invited to consider whether there is sufficient evidence of a dedication.

There is no express dedication and so Committee is first of all invited to consider whether the provisions of S31 Highways Act 1980 can be satisfied on balance such that a dedication may be deemed in law.

It is advised that there is a reasonable amount of user evidence by the public and that the use is as of right with no evidence of interruption or actions taken by any owner to challenge or indicate a sufficient lack of intention to dedicate. It is suggested that the criteria set out in S31 may be satisfied on balance with the application in July 2019 being the calling into question and the use being during the twenty years 1999 to 2019.

There is also a case in this matter that the route is a much older public route dedicated to public use many decades ago. It is part of a route from Burnley Road to Goodshaw Road.

The western half of the old route is now Goodshaw Avenue. The eastern half is the claimed route running past the old school building and the church and into Goodshaw. There is documentary evidence and the use from which this earlier dedication may be inferred. How the route was shown on various documents and has continued to be used may on balance indicate that the inference is that the route was already a highway route from many decades ago. There ought to be some consideration as to whether it was initially a footpath and developed into a highway for use with carts and on horseback as well as on foot and some of the documentary evidence does raise this. However considering all the documentary evidence it is suggested that on balance there is insufficient evidence on balance of it being a vehicular highway route but it may be considered that there is sufficient evidence of it being part of an old footpath to the school and church and beyond linking the two main roads.

If however Committee were to consider the evidence sufficient the effect of the Natural Environment and Rural Communities Act 2006 would mean that modern mechanically propelled vehicular rights will have ended and the route be able to be recorded as a restricted byway.

Taking all the evidence into account it is suggested that the Committee may be content that dedication of a footpath could be inferred at common law from all the evidence including the use and/or that a dedication of a footpath may be deemed from the more modern user of the route under S31 Highways Act 1980.

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: 804-610		Simon Moore, 01772 531280, County Secretary and Solicitors Group
Reason for inclusion in Part II, if appropriate		
N/A		