

## Regulatory Committee

Meeting to be held on 23<sup>rd</sup> June 2021

### Part I

Electoral Division affected:  
Oswaldtwistle

**Wildlife and Countryside Act 1981**  
**Definitive Map Modification Order Investigation**  
**Addition of Footpath between Aspen Lane and Mill Lane near West End**  
**Primary School**  
(Annex 'A' refers)

Contact for further information:

Reference File No. 804-641

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### Executive Summary

Application for the addition of a Footpath from Aspen Lane (also recorded as Bridleway Oswaldtwistle 300) to Mill Lane (also recorded both as Footpath Oswaldtwistle 23 and F6365) south west of West End Primary School, in accordance with File No. 804-641.

### Recommendation

- (i) That the application for a public footpath from Aspen Lane to Mill Lane, in accordance with File No. 804-641, be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a Footpath from Aspen Lane (Bridleway Oswaldtwistle 300) to Mill Lane (Footpath Oswaldtwistle 23) as shown on Committee Plan between points A-B.
- (iii) That not being satisfied that the higher test for confirmation can be met with the information available the matter be returned to Committee for a decision regarding confirmation once the statutory period for objections and representations to the Order has passed.

## Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received to record on the Definitive Map and Statement of Public Rights of Way a public footpath from Aspen Lane to Mill Lane. (n.b. Aspen Lane is recorded both on Highways records as unclassified road U11327 and also on the Definitive Map and Statement as Bridleway Oswaldtwistle 300). Mill Lane is recorded both on Highways records as Peel Bank Road F6365 and on the Definitive Map and Statement as Footpath Oswaldtwistle 23. In this report, the highways at the 2 ends of the application route will be referred to as Aspen Lane and Mill Lane.

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 upgrading or downgrading a way shown on the Definitive Map and Statement will only be made if the evidence shows that:

- "it ought to be there shown as a highway of a different description"

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

### Hyndburn Borough Council

Hyndburn Borough Council did not provide a response to the 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     | 7298 2795           | Open junction with Aspen Lane |
| B     | 7295 2799           | Open junction with Mill Lane  |

## Description of Route

A site inspection was carried out on 10<sup>th</sup> September 2020.

The total length of the application route is 60 metres. It commences at an open junction with Aspen Lane (point A on the Committee plan).

From Aspen Lane the route passes through the entrance (no gate) onto a stone surfaced access road leading to All Saints Church with a stone gatepost located at the north east side of the gap. Instead of continuing up the slope to the church carpark, the application route branches off from the access road to run north north west along the a compacted stone path approximately 1 metre wide in the middle of a 2m wide strip between the bottom of a rough grass bank to the west and metal railings on the east, i.e. between the plot of land on which the church is situated and Oswaldtwistle West End Primary School playing field.

The application route follows the boundary along the stone surfaced path for approximately 60 metres passing a stone gatepost (no gate) about 3 metres before it meets Mill Lane at an open junction (point B).

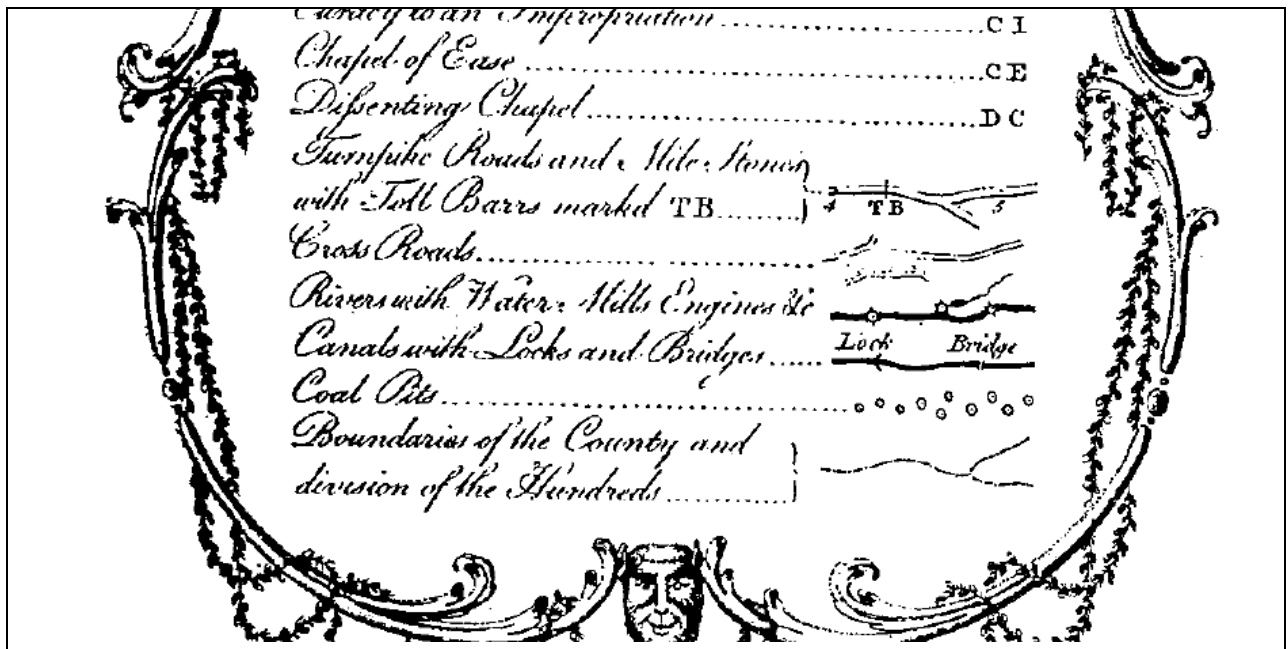
No signs indicate whether the route is considered to be public or private but it was noted that a local authority dog waste bin had been located part way along it and people were seen using the route on foot at the time that the route was inspected.

## Map and Documentary Evidence

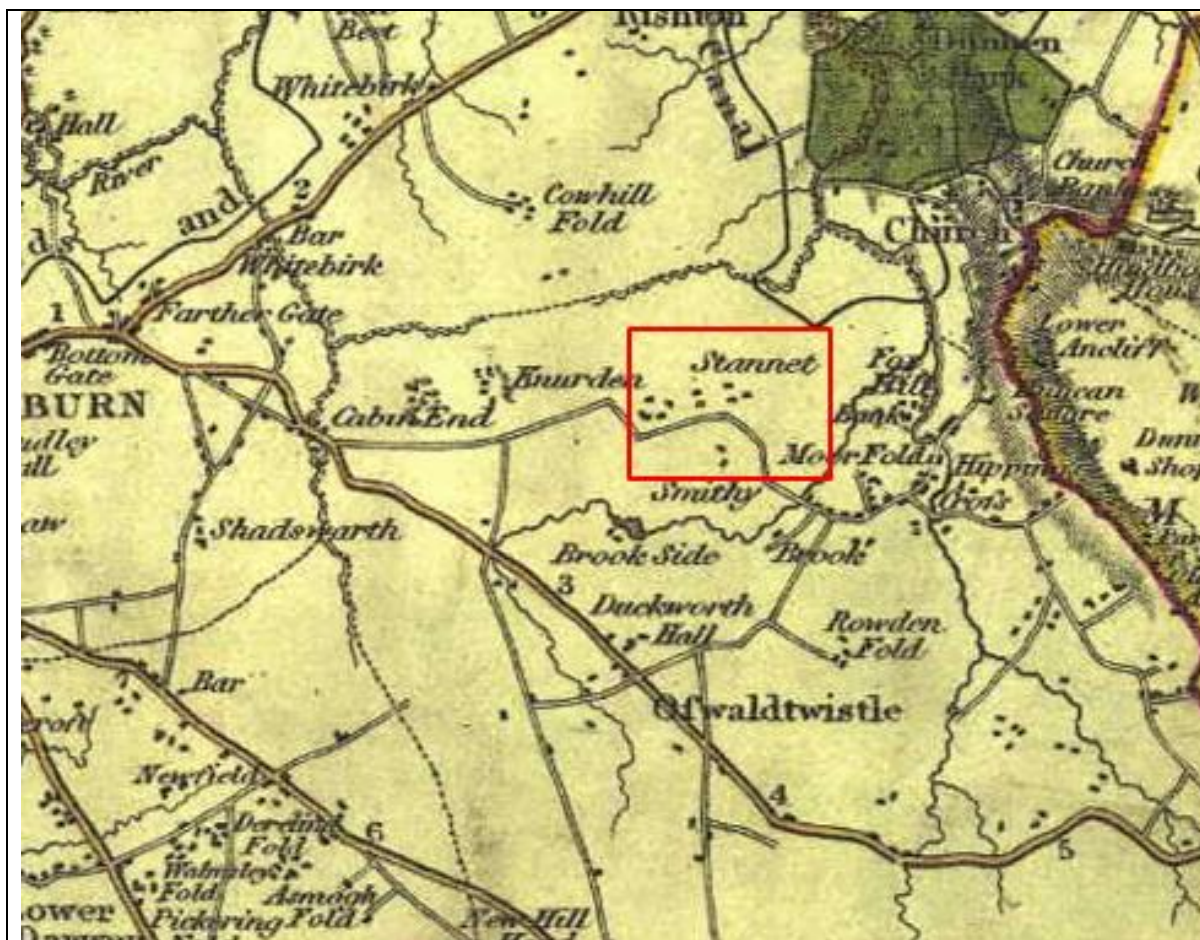
A variety of maps, plans and other documents were examined to discover when the route came into being, and to try to determine what its status may be.

| 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 constrained the routes that could be shown. |





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| Observations                         |      | The application route is not shown.                                                                                                                                                                                                                                                         |
| Investigating Officer's Comments     |      | It is unusual to find public footpaths recorded on small scale commercial maps of this era as they were generally published for the use of travellers although the application route may have existed as a private access route or as a public footpath. No further inference can be drawn. |
| <b>Greenwood's Map of Lancashire</b> | 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.                                                                |



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| Observations                     |      | The application route is not shown.                                                                                                                                                                                                                                                                                                                                                                                                |
| Investigating Officer's Comments |      | The application route may have existed but if it did was not considered by Greenwood to be a significant public vehicular route at that time. It may have existed as a private access route or as a public footpath but such routes were not normally shown due to the scale and purpose for which they were published. No further inference can be drawn.                                                                         |
| 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.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Investigating<br>Comments     | Officer's | The application route may have existed but if it did was not considered by Hennet to be a significant public vehicular route at that time. It may have existed as a private access route or as a public footpath but such routes were not normally shown due to the scale and purpose for which they were published. No further inference can be drawn.                                                                                                                                                                               |
| <b>Canal and Railway Acts</b> |           | 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                  |           | The land over which the application route is located is not crossed by any canals or railways and there are no known proposals to have constructed either across that land in the past.                                                                                                                                                                                                                                                                                                                                               |
| Investigating<br>Comments     | Officer's | No inference can be drawn with regards to the existence of public rights.                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

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| <b>Tithe Map and Tithe Award or Apportionment</b>                                            |      | 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 or 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.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Inclosure Act Award and Maps</b><br><b>Enclosure Award 1776</b><br><b>CRO Ref: AE/2/7</b> | 1776 | 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                                                                                 |      | The Inclosure Map and Award do not cover the area crossed by the application route.                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Investigating Officer's Comments                                                             |      | No inference can be drawn.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>6 Inch Ordnance Survey (OS) Map</b><br><b>Map Sheet 63</b>                                | 1848 | The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-1846 and published in 1848. <sup>1</sup>                                                                                                                                                                                                                                                                                                                                                                                                                                          |

<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.





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| Observations                     |      | The application route is clearly shown as a bounded route from Aspen Lane (which is named on the map) through to Mill Lane and continuing through to Blackburn Road (a former Turnpike Trust Road) via buildings marked as New Inn and an engraving shop. One line is shown across the application route which suggests that it was not gated at the ends and the dotted line which crosses the route part-way along appears to be a contour line indicating height above sea level rather than a physical feature across the route. |
| Investigating Officer's Comments |      | The application route existed in 1844-46 (when the area was surveyed) and appeared to be capable of being used.                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Extract of Map supplied</b>   | 1863 | Extract of map supplied by applicant. No                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

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| by applicant |  | scale is given for the map and the date of the survey is unknown. Date of publication is stated to be 1863. |
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| Observations |  | This annotated map provided by the applicant has no details regarding the scale of the map or the date that the land was surveyed. It shows the application route in a similar way as it was shown on the earlier 6 inch OS map detailed above. |
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| Investigating Officer's Comments |  | The application route appears to have existed in the 1860s. |
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| <b>25 Inch OS Map Sheet 63-14</b> | 1893 | The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890-1891 and published in 1893. |
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| Observations                     |      | The application route is now shown as an unbounded track through a field with lines across the route at point A and near point B suggesting that it was gated at either end.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Investigating Officer's Comments |      | The application route still existed in 1890-91 but was no longer shown as a bounded route. It is shown as an unenclosed track across a field – gated at point A and near point B. The fact that the gate was slightly set back from Mill Lane and the angled boundaries beyond that suggest it was used for access not only on foot. The existence of gates along a public route would not have been considered unusual in the 1800s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground. And does not necessarily mean that access was not available. |
| 6 inch OS Map                    | 1894 | OS 6 inch map surveyed 1890 to 1891                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

LXIII.SW

and published 1894.



Observations

The application route is shown as an unbounded track.

Investigating Officer's Comments

The application route existed in 1890-91 and appeared capable of being used.


**25 inch OS Map  
Map Sheet 63-14**

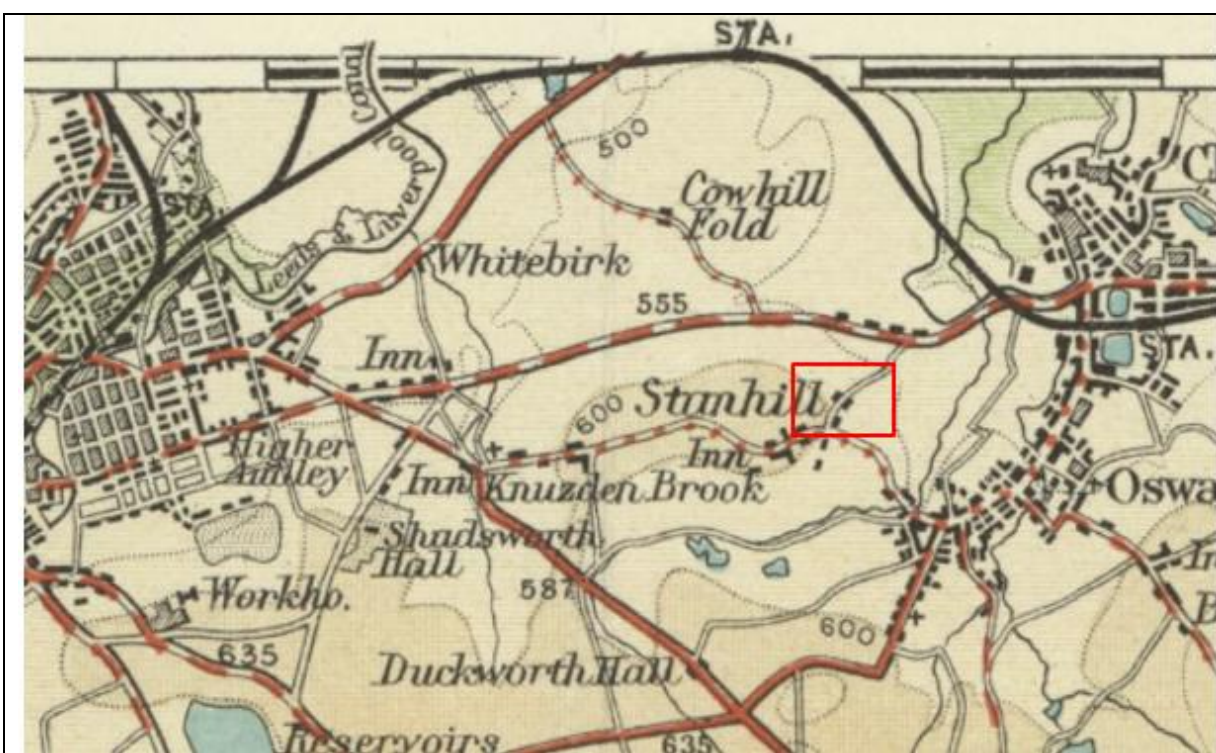
1911

Further edition of the 25 inch map surveyed in 1890-1891, revised in 1909 and published in 1911.



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| Observations                     |  | The application route is shown in the same way as it is shown on the first edition of the 25 inch map crossing the field numbered as 905 on the OS map. |
| Investigating Officer's Comments |  | The application route existed in 1909 and appeared to be capable of being used.                                                                         |
| 6 inch OS Map                    |  | 6 inch OS map submitted by the                                                                                                                          |

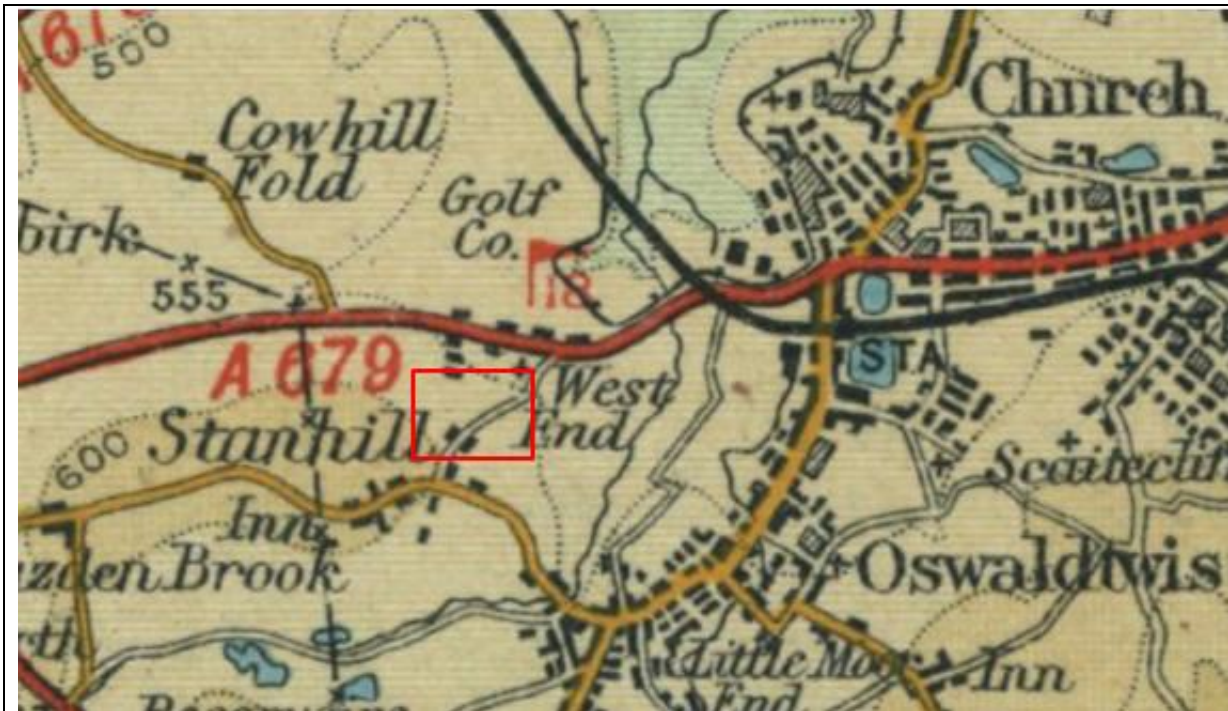
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| LXIII.SW                                                                           |           | applicant, revised 1909 and published 1912.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|  |           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Observations                                                                       |           | The application route is shown.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Investigating Officer's Comments                                                   |           | The application route existed in 1909 and appeared to be capable of being used.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Bartholomew half inch Mapping</b>                                               | 1902-1906 | <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 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.</p> |



1904



1920



1941

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| Observations                     |      | The application route is not shown on any of the ½ inch maps produced by Bartholomew in the first half of the 1900s.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Investigating Officer's Comments |      | Bartholomew's small scale ½ inch maps were published with the main market being the travelling public with emphasis on the use of motorised vehicles and cyclists.<br>It is not uncommon for routes regarded as public footpath – particularly those across fields – not to be shown on these maps due to the scale and purpose for which they were produced.                                                                                                                                                                                                                                           |
| <b>Finance Act 1910 Map</b>      | 1910 | 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.<br><br>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 |

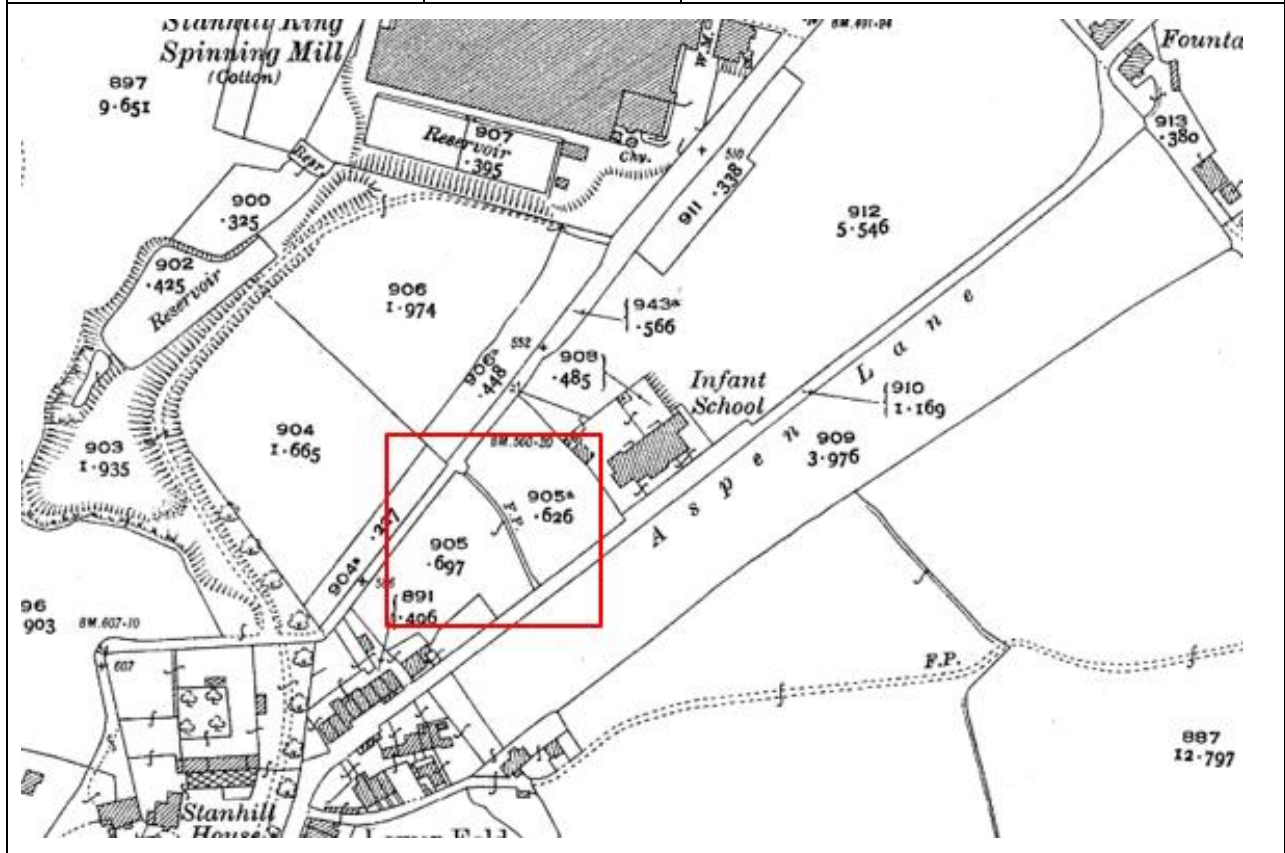


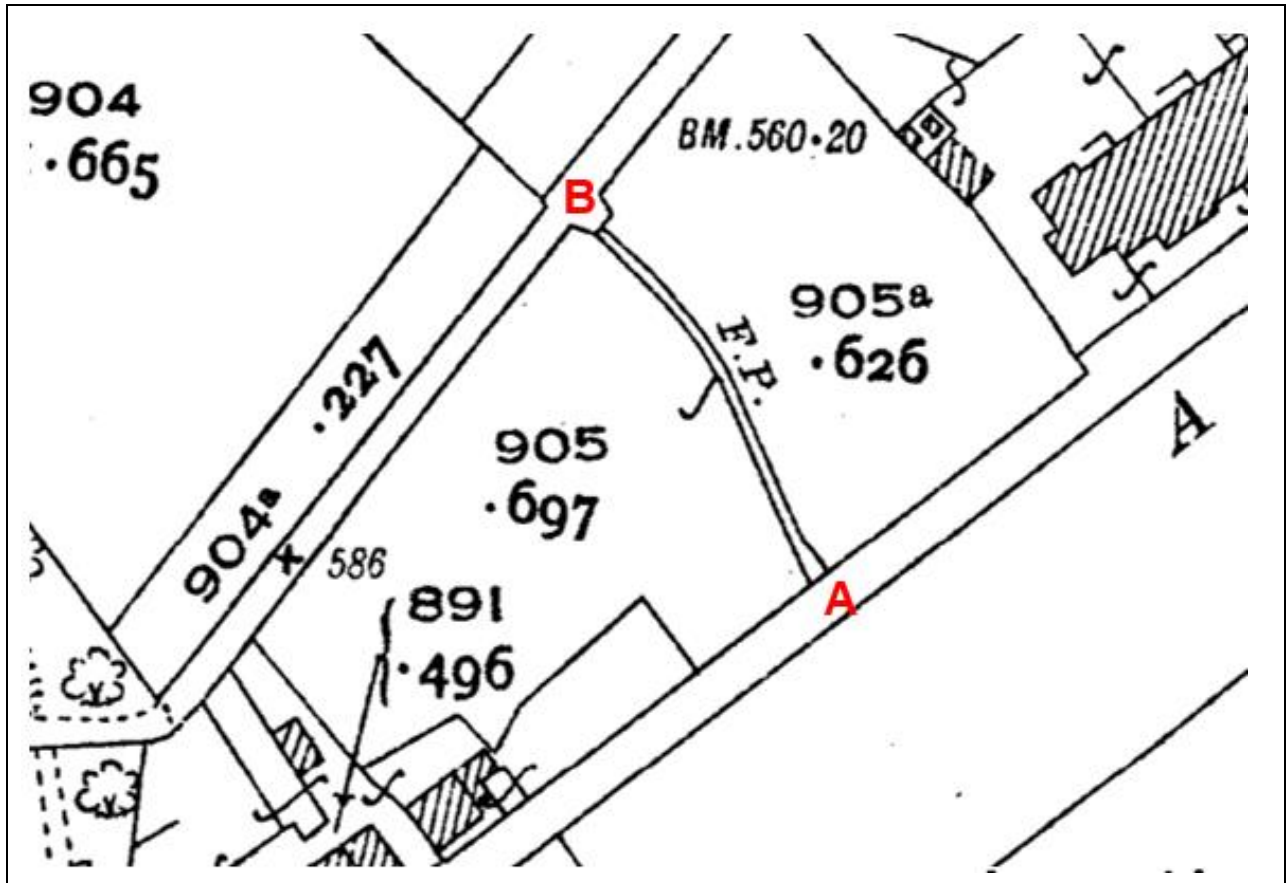
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|  | <p>could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where 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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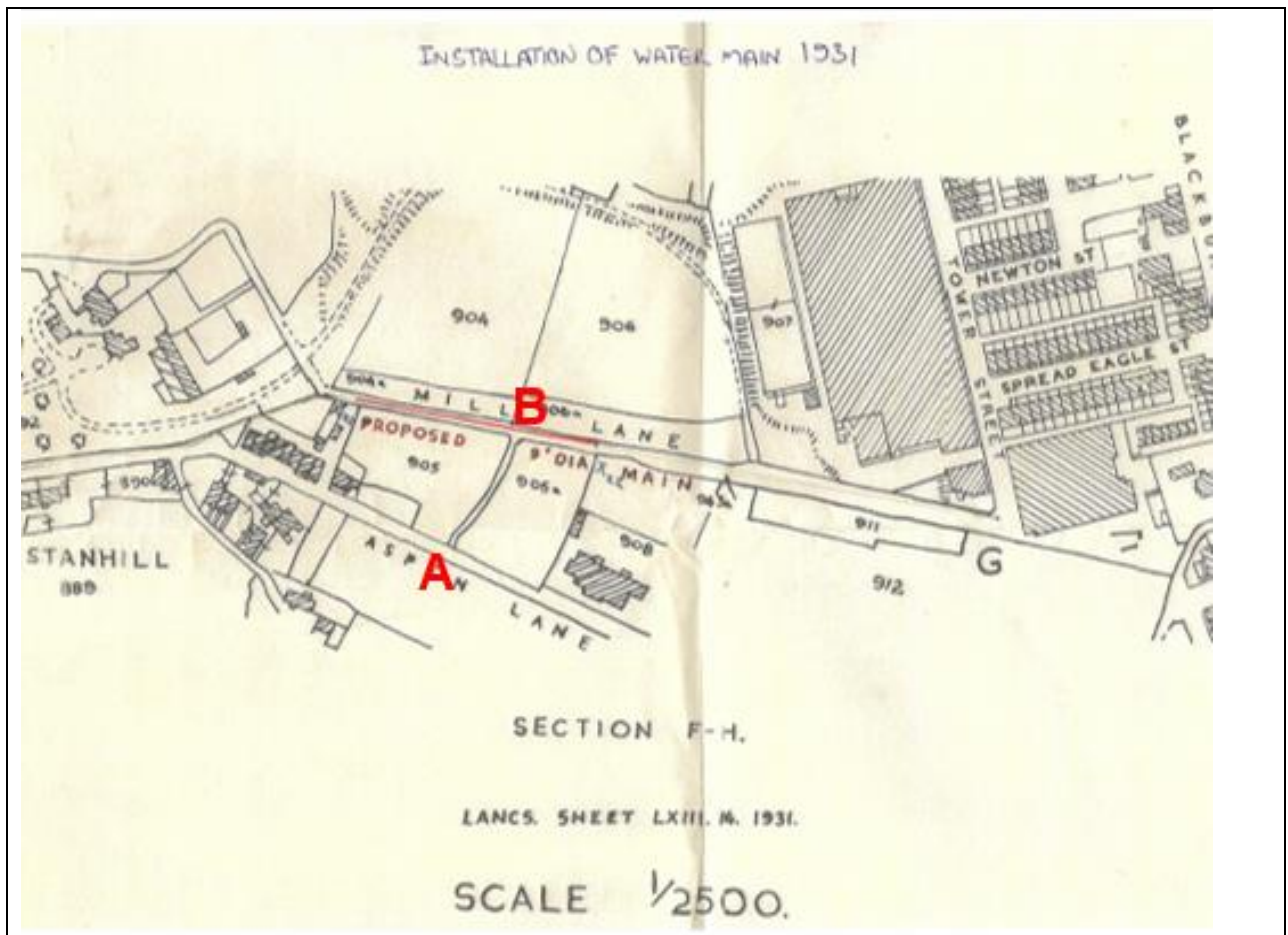
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| Observations | The 25 inch scale OS map sheet available at the National Archives does |
|--------------|------------------------------------------------------------------------|

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|---------------------------------------|-----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                       |           | not show the area crossed by the application route but refers to the 1:1250 sheet 63.24.SW and a copy of the relevant 1:1250 map sheet could not be found at the County Records Office or amongst records obtained from the National archives. |
| Investigating<br>Comments             | Officer's | No inference can be drawn.                                                                                                                                                                                                                     |
| <b>25 Inch OS Map<br/>Sheet 63-14</b> | 1931      | Further edition of 25 inch map (surveyed 1844-1846, revised in 1930 and published 1931.                                                                                                                                                        |

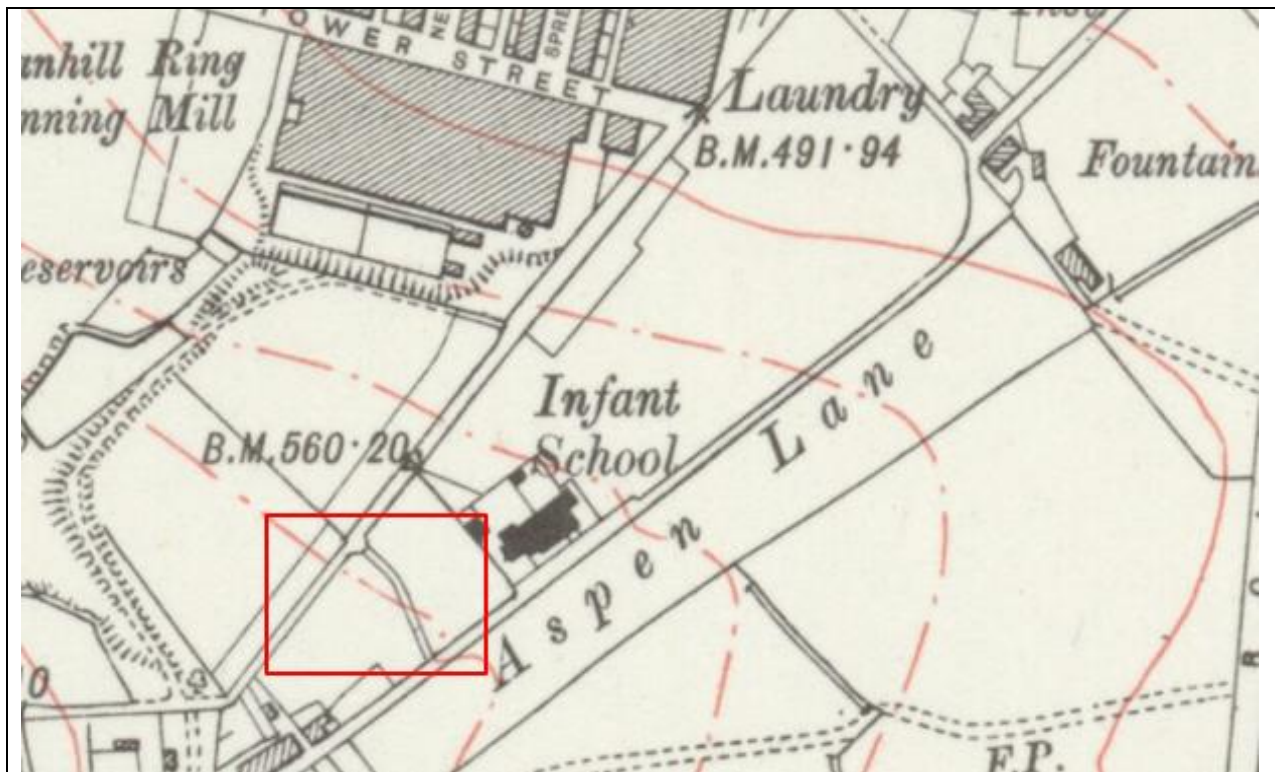




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| <p>Observations</p>                                                                            |             | <p>The application route is shown once more as a bounded route separate from adjacent fields numbered with individual parcel numbers 505 and 605a. Lines are shown across the route at point A and near point B and the route is annotated as a footpath – 'F.P.'. Although the bell-mouth at Mill Lane appears unchanged from the earlier 25" maps the path has been enclosed to a narrower width, consistent with the 'F.P.' annotation.</p> |
| <p>Investigating Officer's Comments</p>                                                        |             | <p>The application route existed in 1930 as a clearly defined bounded route splitting what was previously shown as one field (numbered 905) into two (numbered 905 and 905a). It was shown marked as a footpath indicating that its appearance and width was that of a route used on foot. Its width had been reduced from that previously depicted.</p>                                                                                       |
| <p>Copy of OS 25 inch map LXIII.14 published 1931 titled 'Installation of Water Main 1931'</p> | <p>1931</p> | <p>Map extract provided by the applicant.</p>                                                                                                                                                                                                                                                                                                                                                                                                  |



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| <p>Observations</p>                        |             | <p>The plan submitted has been drawn supposedly from copying the OS 25 inch map published in 1931 (detailed above) and shows the location of pipes proposed to be laid along Mill Lane north of the application route. The plan shows the application route but gives no indication as to its status (i.e. whether it was considered to be a public or private path).</p> |
| <p>Investigating Officer's Comments</p>    |             | <p>The application route was drawn on the plan – which was dated 1931. No inference can be drawn regarding its legal status.</p>                                                                                                                                                                                                                                          |
| <p><b>6 inch OS Map Sheet LXIII.SW</b></p> | <p>1932</p> | <p>Extract of 6 inch OS map submitted by the applicant revised 1928 to 1929 and published 1932.</p>                                                                                                                                                                                                                                                                       |



|                                                                  |            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------------------------------------------|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Observations                                                     |            | The application route is shown as a bounded route gated at point A and near point B and possibly at an intermediate point. It is shown wider than on the 1931 Ordnance Survey sheet.                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Investigating Officer's Comments                                 |            | The application route existed in 1928-1929 as a clearly defined bounded route and appeared capable of being used.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Authentic Map Directory of South Lancashire by Geographia</b> | Circa 1934 | <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> |

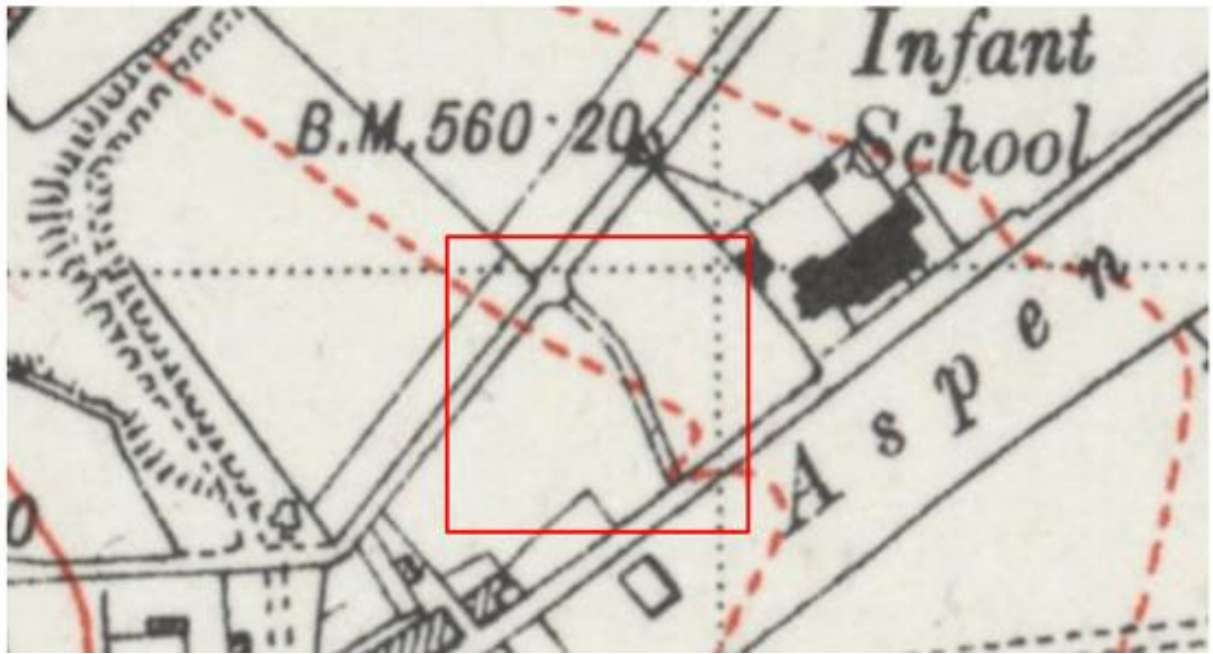


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| Observations                     |       | Aspen Lane and Mill Lane are shown but the application route is not shown.                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Investigating Officer's Comments |       | The Street Atlas was published primarily to show public roads and due to its scale bridleways and footpaths – unless substantial in their nature – were not shown. The application route existed – as evidenced by the fact that it is shown on OS maps pre-dating and post-dating this map directory – and the fact that the route is not shown on this map is consistent with the view of the applicant that the route should be recorded as a public footpath rather than with higher rights. |
| Aerial Photograph <sup>2</sup>   | 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.                                                                                                                                                                                                                                                                                                                        |

<sup>2</sup> 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.

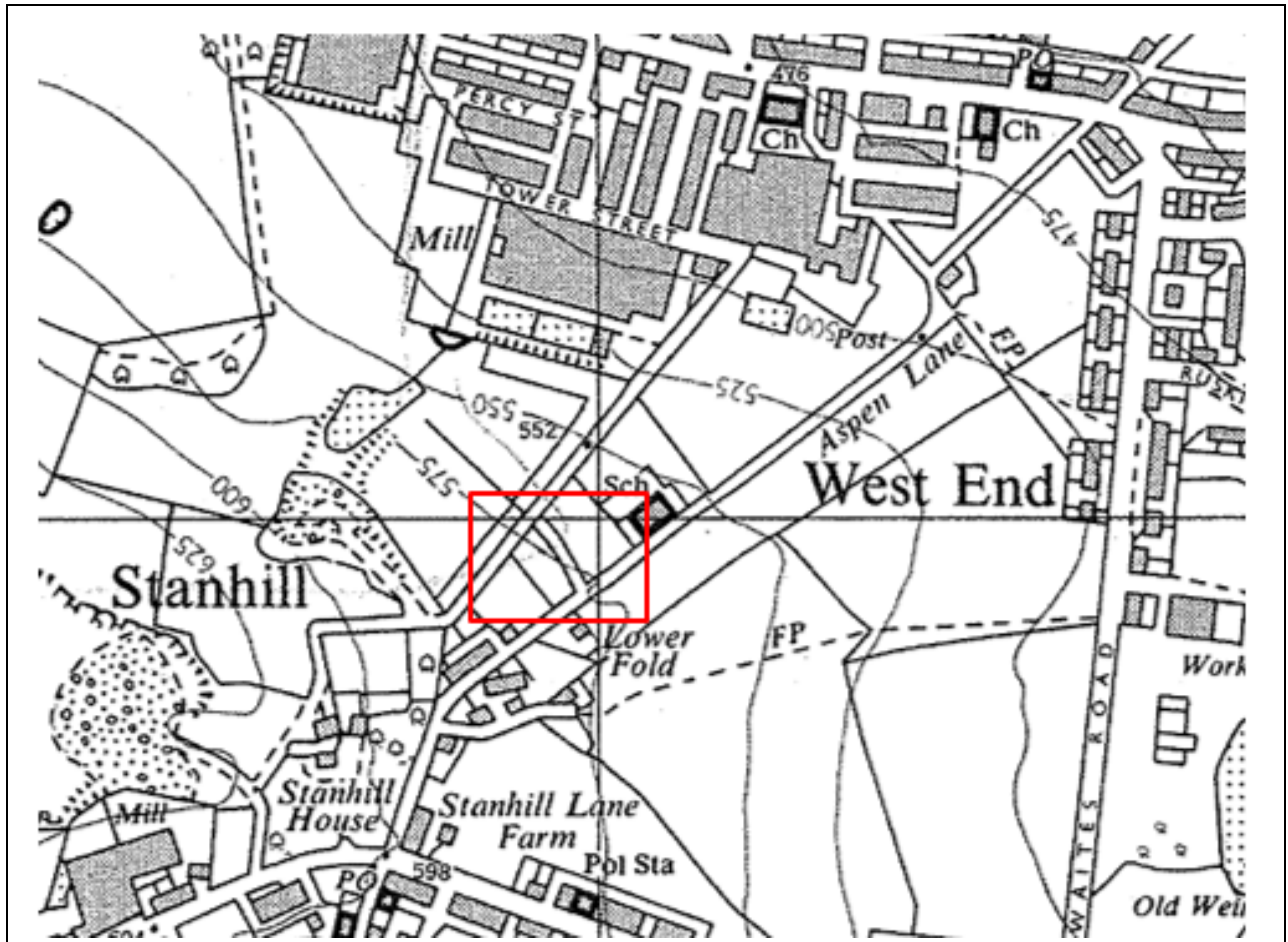


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| Observations                     |      | The application route is clearly shown. It is not possible to see whether the route was fenced or whether gates or stiles existed across it at point A and/or point B and the width of the trodden line (lighter on the photograph) appears more consistent with use as a footpath or possibly use by equestrians and cyclists rather than vehicles. |
| Investigating Officer's Comments |      | The route existed in the 1940s and appeared to be well used.                                                                                                                                                                                                                                                                                         |
| <b>6 inch OS Map LXIII.SW</b>    | 1947 | 6 inch map extract provided by the applicant, revised 1938 and published 1947.                                                                                                                                                                                                                                                                       |



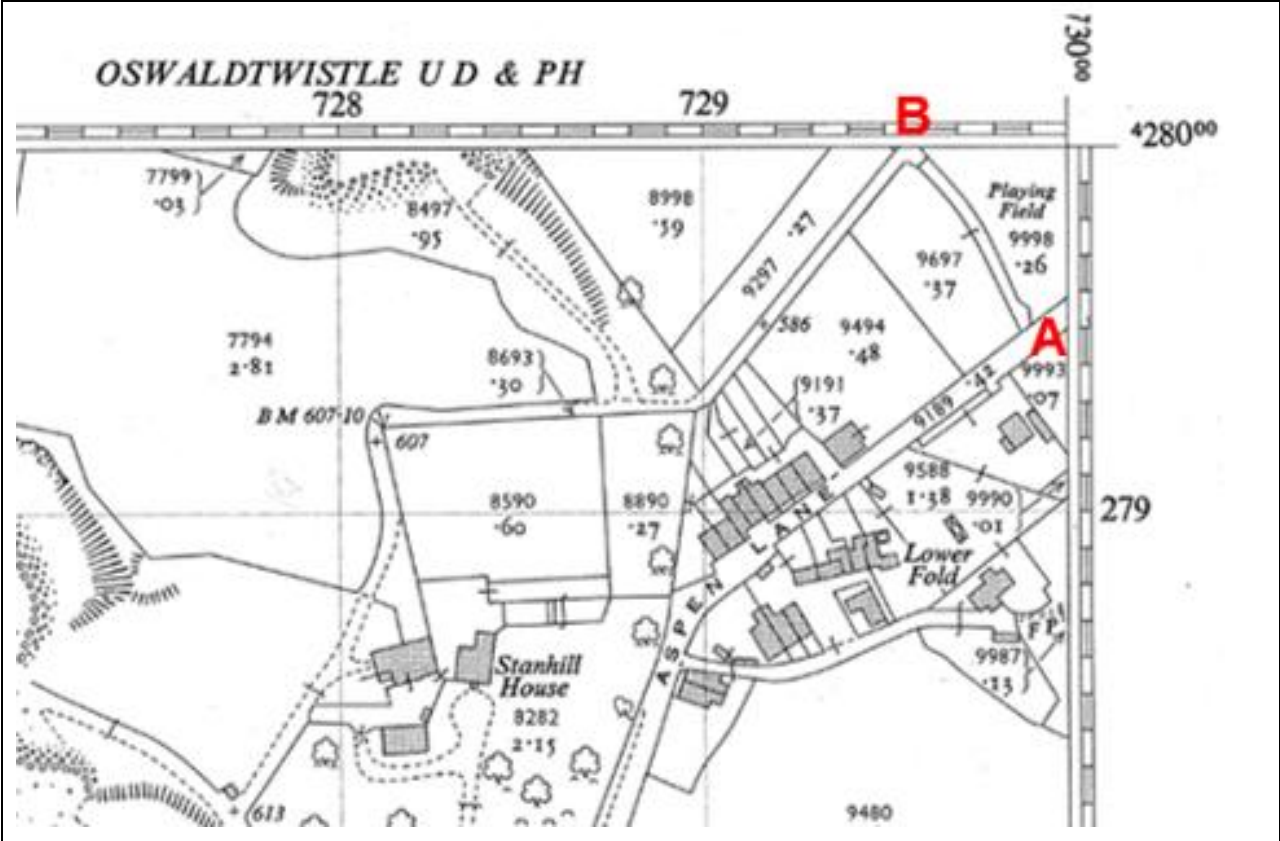
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|----------------------------------|------|------------------------------------------------------------------------------------------------------------------------|
| Observations                     |      | The application route is again shown. Gates or other barriers are shown at/near each end and at an intermediate point. |
| Investigating Officer's Comments |      | The application route existed and appeared capable of being used in 1938.                                              |
| <b>6 Inch OS Map<br/>SD 72NW</b> | 1965 | 6 inch OS map published in 1965 and revised between 1956 and 1963.                                                     |





|                                   |                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-----------------------------------|------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Observations</p>               |                  | <p>The application route is again shown as a bounded route. It appears to be open and unrestricted at point A but a line is shown across it at point B. The route is shown to be as wide as Aspen Lane and Mill Lane on the map.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <p>Investigating<br/>Comments</p> | <p>Officer's</p> | <p>The application route existed in the 1950s and appeared to be capable of being used. The width of the route is shown to be the same as many public vehicular roads on the map sheet. This is not considered to be an accurate depiction of the width of the route – which is better shown on the larger scale 25 inch OS maps. This particular map series appears to have been drawn with in a particular style whereby bounded routes – including public roads and the application route are all shown in a very similar way. That style also shows the gate (line) across the end of the path at B rather than set back into the path as most of the other maps</p> |

|                                             |      |                                                                                                                                   |
|---------------------------------------------|------|-----------------------------------------------------------------------------------------------------------------------------------|
|                                             |      | show.                                                                                                                             |
| <b>1:2500 OS Map<br/>Map Sheet SD 72-27</b> | 1957 | Further edition of 25 inch map reconstituted from former county series and revised and published in 1957 as national grid series. |

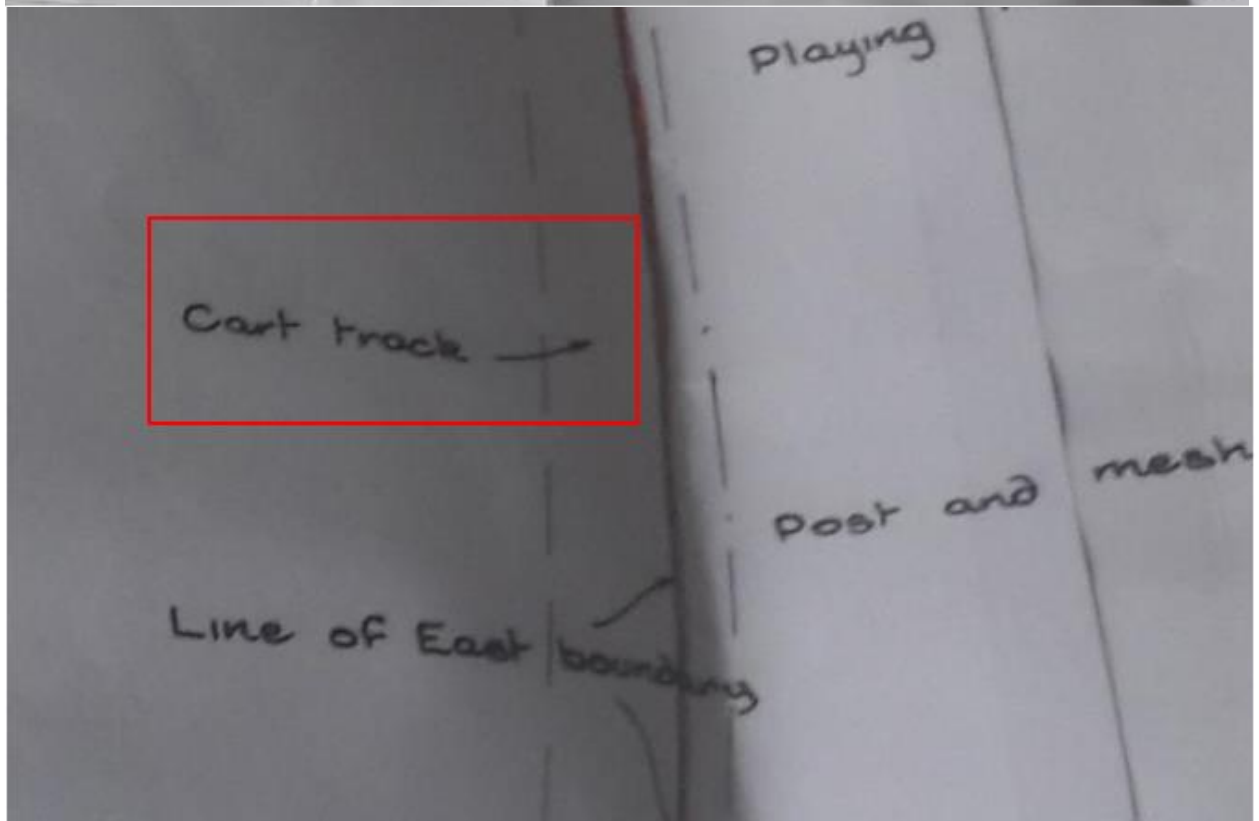
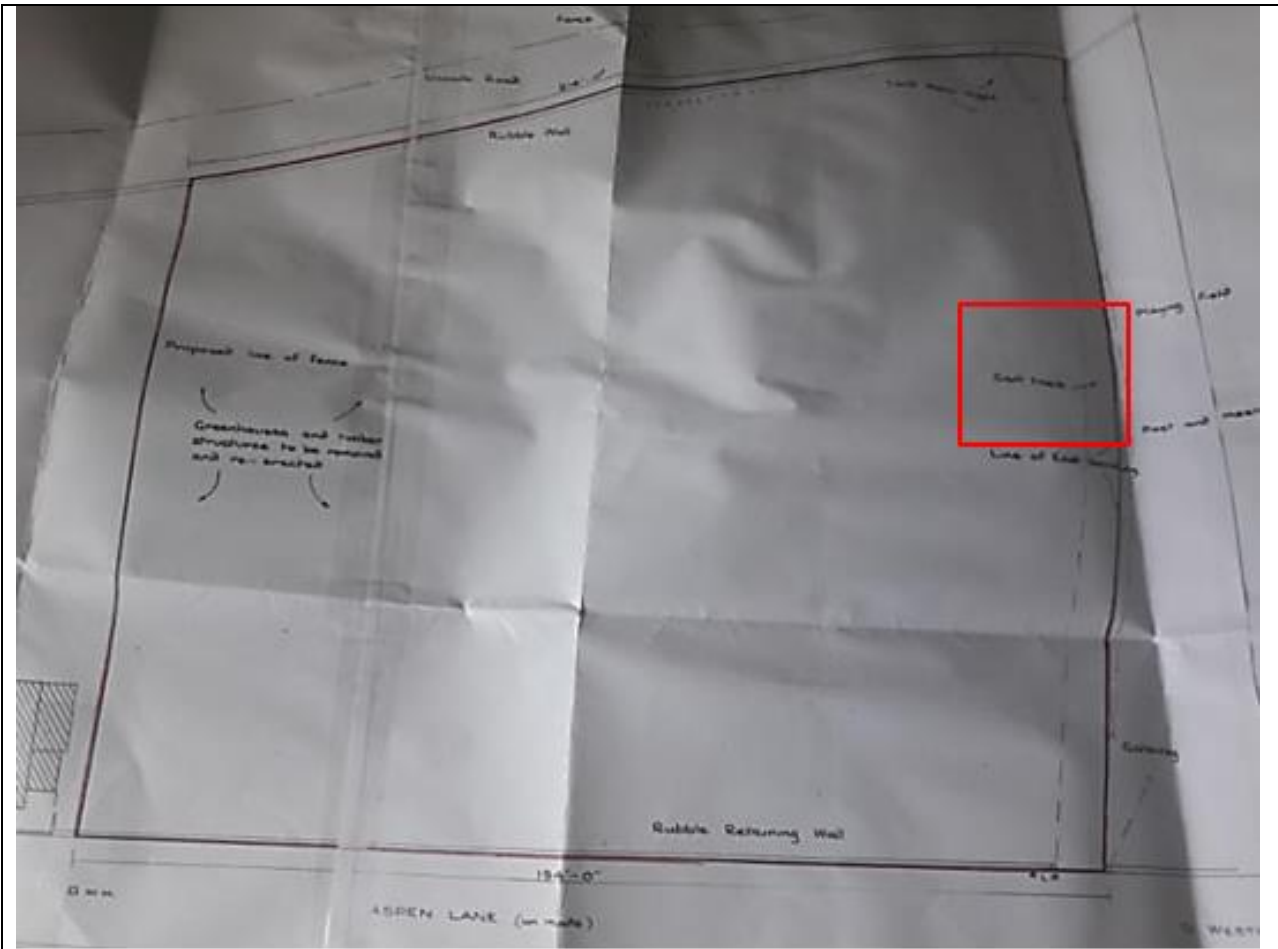


|                                  |       |                                                                                                                                                                                                                                                                                                                                           |
|----------------------------------|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Observations                     |       | The application route is shown as a bounded route with lines across it at point A and near point B. The width is similar to a vehicle-width track not the narrowed footpath shown on the 1931 sheet. The field immediately east of the route is labelled as a playing field with the application route braced with the field to the east. |
| Investigating Officer's Comments |       | The application route existed in 1957 and appeared capable of being used.                                                                                                                                                                                                                                                                 |
| <b>Aerial photograph</b>         | 1960s | The black and white aerial photograph taken in the 1960s and available to view on GIS.                                                                                                                                                                                                                                                    |



|                                                                                 |      |                                                                                                                                                                                                                                                                                                                            |
|---------------------------------------------------------------------------------|------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Observations                                                                    |      | The application route can be clearly seen as a worn track consistent with at least pedestrian use although it is not possible to see what fencing existed adjacent to the route or whether gates existed at point A and point B. The photograph pre-dated the construction of All Saints Church which was founded in 1961. |
| Investigating Officer's Comments                                                |      | The application route existed and appeared to be capable of being used.                                                                                                                                                                                                                                                    |
| <b>Conveyance for the Sale of the Land supplied by All Saints Church Warden</b> | 1962 | Conveyance dated January 1962 between Mrs Doris Evans of 17 aspen Lane and the Parochial Church council and Blackburn Diocesan Board of Finance for the sale of the plot of land crossed by the application route.                                                                                                         |

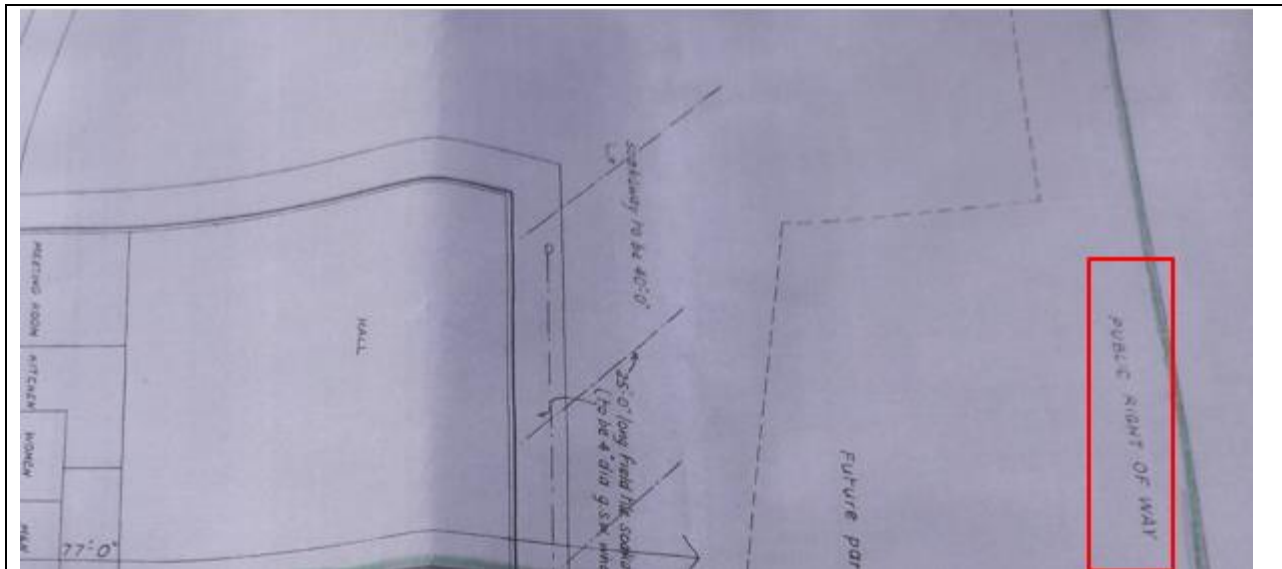
2. THE Grantor as Beneficial Owner by direction of the Council HEREBY CONVEYS unto the Authority A L L THAT the said property T O HOLD the same unto the Authority in fee simple Subject only to the rights of the public over and along the footway or cart track shown on the plan annexed hereto



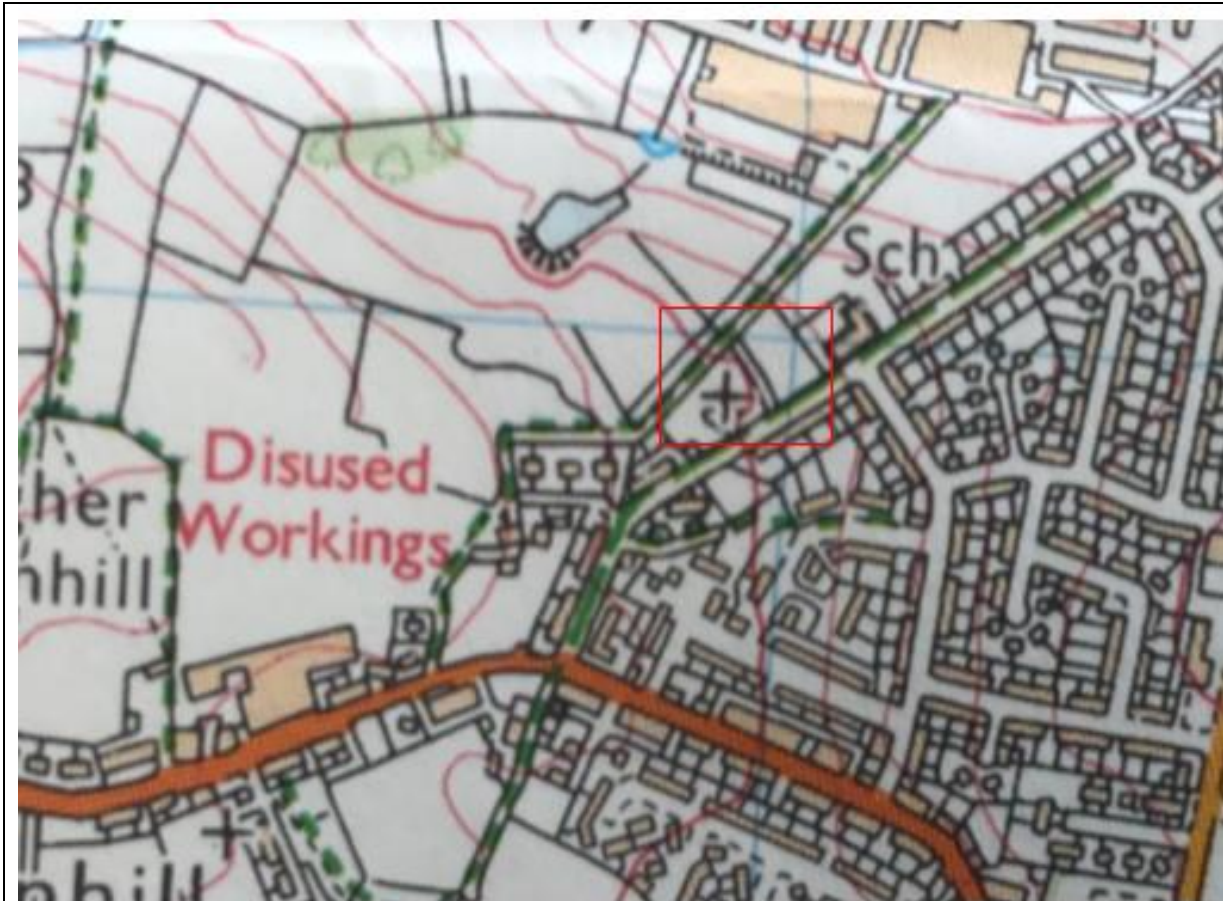
|              |  |                                                                                |
|--------------|--|--------------------------------------------------------------------------------|
| Observations |  | The conveyance expressly states that the land is to be conveyed subject to the |
|--------------|--|--------------------------------------------------------------------------------|

|                                                                                          |      |                                                                                                                                                                                                                                                                                                                                                   |
|------------------------------------------------------------------------------------------|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                          |      | rights of the public over and along the footway or cart track shown on a plan annexed to the conveyance. The plan attached to the conveyance shows the route referred to as being the application route and labels it as a cart track.                                                                                                            |
| Investigating Officer's Comments                                                         |      | The owner of the land prior to its sale in 1962 acknowledged the existence of the application route as at least a footpath (footway) and sold the land subject to the rights of the public being retained over and along the route.                                                                                                               |
| <b>Conveyance and Plan for transfer of the land supplied by All Saints Church Warden</b> | 1965 | A copy of a Conveyance and plan transferring the land and church from the Diocese and Parochial Church Council to the Commissioners and the Incumbent on trust for the purposes laid out in the relevant legislation (Parochial Church Councils (Powers) Measure 1956) was supplied by the Church when they were consulted about the application. |





|                                                                             |             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-----------------------------------------------------------------------------|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Observations</p>                                                         |             | <p>The 1965 conveyance makes no specific reference to the application route but the plan attached to the conveyance shows the land crossed by the application route within an area marked by a green boundary. The words 'public right of way' are written along the eastern side of the land consistent with the alignment of the application route in keeping with the fact that the land had been sold in 1962 subject to the rights of the public. There is no key on the plan extract and it appears to be a plan drawn up with regards to the proposed construction of the church.</p> |
| <p>Investigating Officer's Comments</p>                                     |             | <p>The plan contained within the conveyance documentation indicates that when the church was constructed and transferred to the Commissioners and the Incumbent on trust there was an acknowledgement of the existence of a 'public right of way' along the application route.</p>                                                                                                                                                                                                                                                                                                           |
| <p><b>OS Explorer Map 287<br/>West Pennine Moors<br/>Scale 1:25 000</b></p> | <p>2004</p> | <p>OS Explorer Map revised and published 2004</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |



|                                  |      |                                                                                                                                                                    |
|----------------------------------|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Observations                     |      | The application route is shown as a bounded route with gates at each end. A cross is shown to the west of the route indicating the existence of All saints Church. |
| Investigating Officer's Comments |      | The application route existed in 2004 and appeared to be capable of being used.                                                                                    |
| <b>Aerial Photograph</b>         | 2014 | Aerial photograph available to view on GIS.                                                                                                                        |

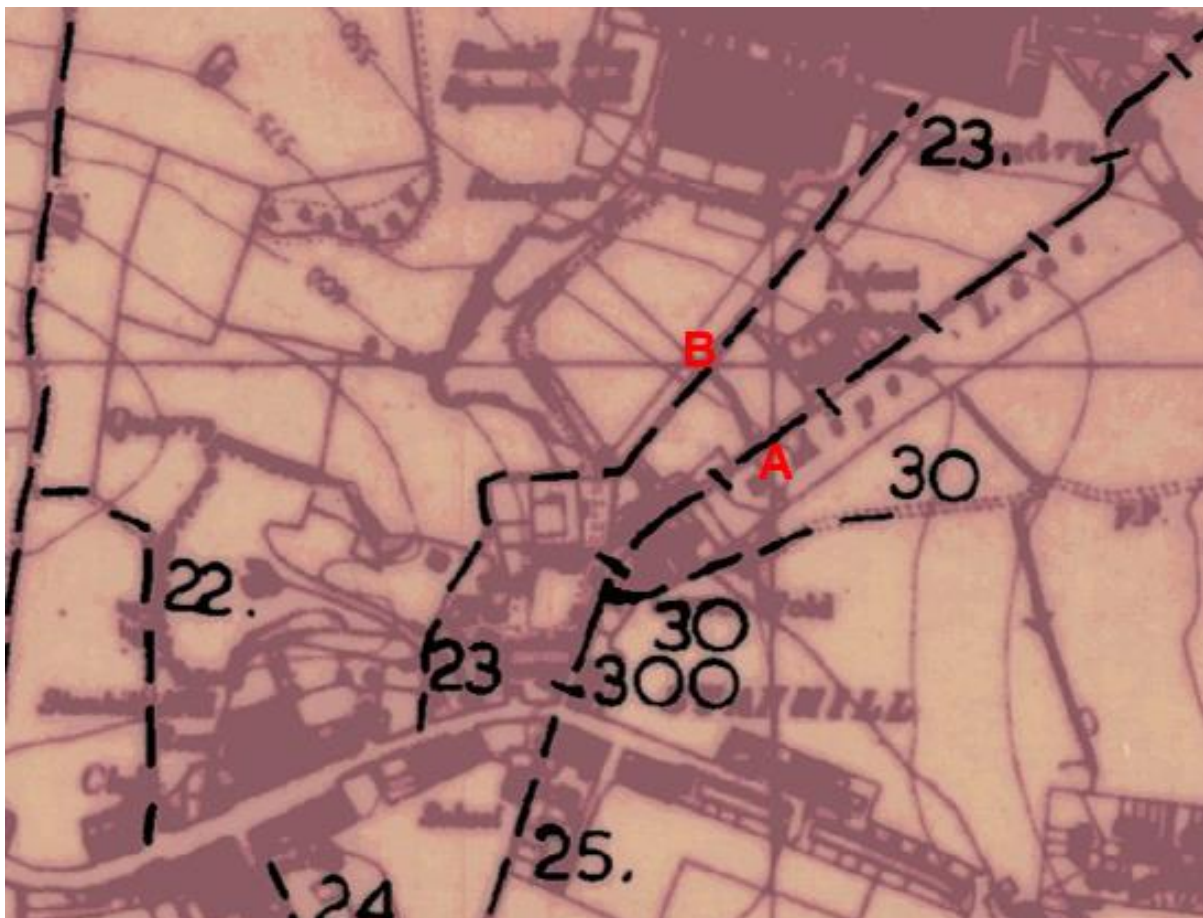




|                                         |                  |                                                                                                                                                                                                                                                                                                                               |
|-----------------------------------------|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Observations</p>                     |                  | <p>The application route can be seen as a less prominent route alongside the boundary of the school. It does not appear to be gated at point A or point B and from point A appears to follow the start of the access road up to the church.</p>                                                                               |
| <p>Investigating Officer's Comments</p> |                  | <p>The application route existed in 2014 and appeared to be capable of being used on foot.</p>                                                                                                                                                                                                                                |
| <p><b>Definitive Map Records</b></p>    |                  | <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> |
| <p><b>Parish Survey Map</b></p>         | <p>1950-1952</p> | <p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and</p>                                     |

|                        |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|------------------------|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                        |  | <p>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.</p> |
| Observations           |  | <p>Oswaldtwistle was an Urban District Council in the 1950s and no parish survey map was produced.</p>                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Draft Map</b>       |  | <p>The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>       |
| Observations           |  | <p>The application route was not shown on the Draft Map and there were no representations made regarding the fact that it was not shown.</p>                                                                                                                                                                                                                                                                                                                                                      |
| <b>Provisional Map</b> |  | <p>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.</p>                                                                                          |
| Observations           |  | <p>The application route was not shown on the Provisional Map and there were no representations made regarding the fact</p>                                                                                                                                                                                                                                                                                                                                                                       |

|                                                                      |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|----------------------------------------------------------------------|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                      |  | that it was not shown.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>The First Definitive Map and Statement</b>                        |  | 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 and Statement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Revised Definitive Map of Public Rights of Way (First Review)</b> |  | Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process. |



|                                                                                      |                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|--------------------------------------------------------------------------------------|---------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Observations                                                                         |                     | The application route is not shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Investigating Officer's Comments                                                     |                     | The application route was not considered to be public during the preparation of the 1 <sup>st</sup> Definitive Map and Statement through to the 1960s.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b> | 1929 to present day | <p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p> |



|                                   |             |                                                                                                                                                                                                                                                                                                                           |
|-----------------------------------|-------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Observations                      |             | The application route is not recorded as a publicly maintainable highway on the county council's records.                                                                                                                                                                                                                 |
| 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. No further inference can be drawn.                                                                                                                                               |
| <b>Highway Stopping Up Orders</b> | 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                      |             | No records relating to the stopping up, diverting or creation of public rights along the application route were found.                                                                                                                                                                                                    |
| Investigating Officer's Comments  |             | If any unrecorded public right exist along the route they do not appear to have been stopped up or diverted.                                                                                                                                                                                                              |

|                                                                                            |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|--------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b></p> |  | <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> |
| <p>Observations</p>                                                                        |  | <p>No Highways act 1980 Section 31(6) deposits have been lodged with the county council for the area over which the application route runs.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p>Investigating Officer's Comments</p>                                                    |  | <p>There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

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

### **Landownership**

The entire length of the application route crosses land which is unregistered however the conveyance dated January 1962 confirms that the church owns the land even though it is not registered

## **Summary**

It is rare to find one single piece of map or documentary evidence which is strong enough to conclude that public rights exist and it is often the case that we need to examine a body of evidence, often spanning a substantial period of time, from which public rights can be inferred.

In conclusion, the application route is not shown on any of the small-scale commercial maps predating the first Ordnance Survey map published in 1848. Neither is it shown on some of the later small-scale commercial maps published in the early 1900s.

However it is consistently shown to have physically existed along the same route from the 1840s to the current day on all Ordnance Survey maps inspected and is shown on most – but not all of the maps - to have been a bounded route, originally splitting a single field which later became two separately numbered fields. On a number of the OS maps the application route is annotated as a Footpath (F.P) and it appears that gates may have existed at either end.

By the 1950s the land to the east of the route appears to have become a playing field (as described on the 1957 OS map) and remains fenced off as part of Oswaldtwistle West End Primary School. In 1962 the land crossed by the application route was sold to provide for All Saints Church to be built. The application route was not affected by the construction of the church and appears to have remained unaltered. The 1962 conveyance specifically states that the land was sold subject to the rights of the public over and along the 'footway or cart track' identified as being the application route on a plan. The existence of a 'public right of way' is subsequently marked on a plan showing the church which was attached to a conveyance of the land transferring the land and church from the Diocese and Parochial Church Council to the Commissioners and the Incumbent on trust in 1965.

In summary, it is clear that the application route has existed since at least the mid-1800s and appears to have been accessible at least on foot since that time.

The 1962 conveyance of land crossed by the application route clearly refers to the landowners' acknowledgement of the existence of a public right of way along the application route and their sale of the land subject to those rights being retained.

The Ordnance Survey maps and aerial photographs, together with more recent site evidence all support the application and the user evidence provided.

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

Information from the Applicant

The applicant provided extracts of maps published in 1848, 1863, 1894, 1912, 1931, 1932 and 1947 all of which have been considered earlier in the report.

The applicant also included a copy of a letter regarding the sale of land by Miss D Evans to Blackburn Diocese for the building of All Saints Church in 1960, 4 statements from people claiming to have used the route and two undated photographs.

The letter from the Reverend F. Creears to Miss D Evans postmarked 23 November 1960 discusses the sale of the land in Standhill for the construction of All Saints Church, seeking clarification of whether Miss Evans would be willing to sell the land and if so how much the asking price would be. The back of the envelope seemingly includes a draft reply from Miss Evans stating that she is willing to sell upon clarification of the land required and provided an agreeable settlement could be reached.

As noted 4 user statements were included with the application, these provided evidence use going back at least 51 years, their evidence is summarised below.

The first user recalled using the route over a period of 51 years for their morning walk. No further details of use were provided.

The second user recalled having used the application route since they could walk, having been born in 1925. No further details of use were provided.

The third user recalled having used the application route over a period of 50+ years having moved to an address close to the route in 1969. They record using the route frequently to access school, church and West End to catch the bus and access the shops there. The user also reported that their mother used the route daily whilst employed at the local school.

The fourth user recalled using the route for 40+ years. They noted that although they only moved to the area 12 years prior to the application they had visited for 40+ years and used the application route on a number of occasions. They also noted that the route is an integral part of Stanhill Village Heritage Trail and is a popular daily walk for many in the locality.

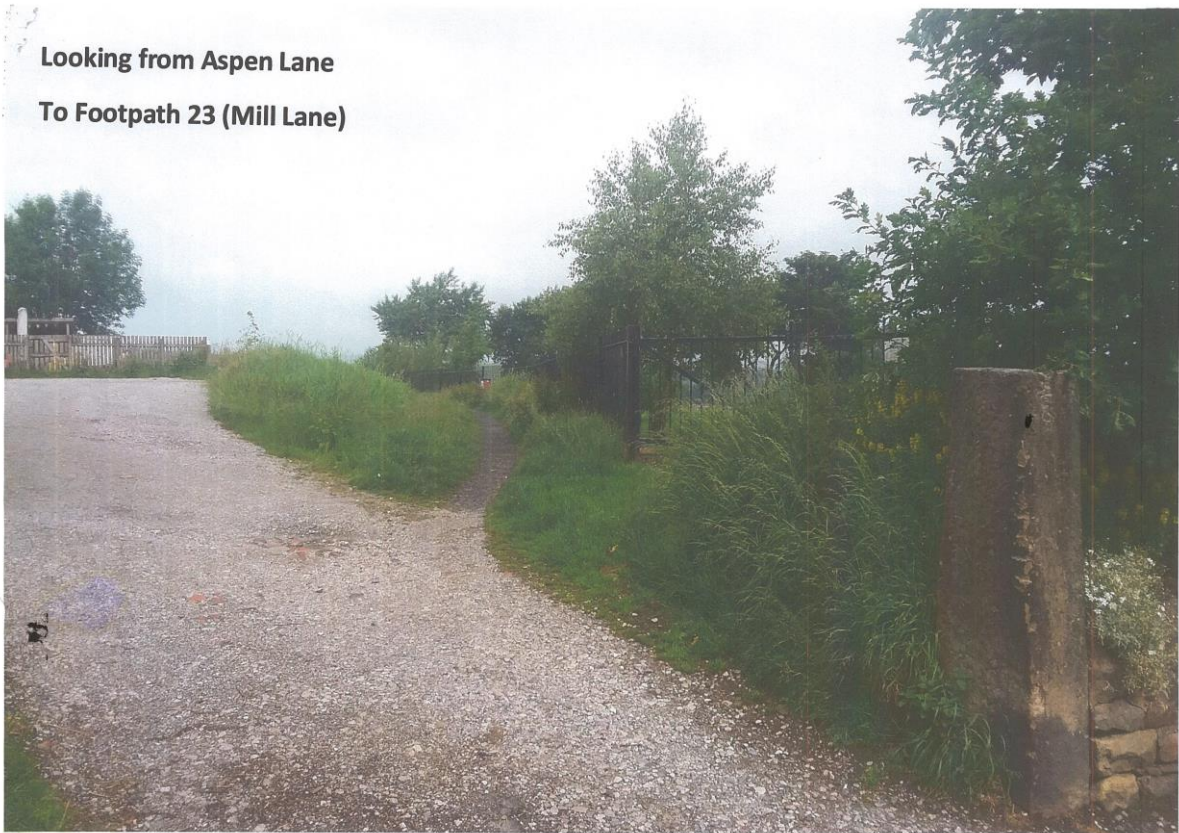
The undated photographs provided by the applicant are included below.



Looking from Footpath 23 (Mill Lane)  
To Aspen Lane



Looking from Aspen Lane  
To Footpath 23 (Mill Lane)



## Information from Others

Nick Bower, LCC Estates Surveyor was consulted as LCC own land adjacent to the application route forming the grounds of West End Primary School. Nick clarified that LCC has a boundary fence along the line of its boundary, which fences out the application route. He stated that he would contact the school to seek any comment or further information they may be able to provide, no response has been provided.

## Information from the Landowner

The Churchwarden of All Saints Church was consulted and advised that they had contacted the Diocesan Registry in order to access the relevant deeds, they subsequently provided the 1962 and 1965 conveyances and associated plans referred to previously.

The congregation were consulted and recollected use of the route since at least 1990, probably longer.

Blackburn Diocese was consulted but provided no additional response.

## **Assessment of the Evidence**

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

#### In Support of Making an Order(s)

- Some user evidence
- Map and other documentary evidence supporting the physical existence of the route
- Absence of signs and notices along the route stating that the route was not public.
- Absence of action taken by landowners to discourage use of the route.

#### Against Making an Order(s)

- Low number of user evidence

## Conclusion

The application before us is that the route A-B has already become a public footpath in law and should be recorded on the Definitive Map and Statement of Public Rights of Way.

It is advised that as there is no express dedication in this matter Committee should consider, on balance, whether there is sufficient evidence from which to have dedication inferred at common law from all the circumstances or for the criteria in section 31 Highways Act 1980 for a deemed dedication to be satisfied based on

sufficient twenty years "as of right" use to have taken place ending with this use being called into question.

Firstly looking at whether there are circumstances from which dedication could be inferred at common law, Committee is advised to consider whether the evidence presented within this report from the map and other documentary evidence coupled with the evidence on site and submitted user evidence, indicates that it can reasonably be inferred that in the past the landowner(s) intended to dedicate the route as a public right of way.

The Head of Service – Planning and Environment has considered the historical map and documentary evidence and concluded that, that the route A-B has physically existed and was capable of being used since at least 1844/46.

Sufficient as of right use agreed by the owners may be circumstances from which dedication can be inferred. Significantly, the 1962 conveyance specifically states that the land was sold subject to the rights of the public over and along the 'footway or cart track' identified as being the application route on a plan. The existence of a 'public right of way' is subsequently marked on a plan showing the church which was attached to a conveyance of the land transferring the land and church from the Diocese and Parochial Church Council to the Commissioners and the Incumbent on trust in 1965.

The 1962 conveyance demonstrates that at such time it was considered that a public route already existed, and the owner intended for such to be maintained.

The four users present evidence that there has never been any clear action by owners to prevent use by the public and use by the public has continued for many years such that, on balance, there may be sufficient evidence from which to infer dedication at common law.

Looking next at the criteria for a deemed dedication under section 31 of the Highways Act 1980, use of the route needs to be by the public 'as of right' (without force, secrecy or permission) and without interruption over a sufficient 20 year period immediately prior to the route being called into question. This application is before committee following an application made to the County Council in June 2020, therefore the 20-year period under consideration for the purposes of establishing deemed dedication would be 2000-2020.

The applicant has provided four user evidence forms in support of the application, which refer to use of the route for 50 plus years. All four users provide evidence of use during the period under consideration. The details of the four users is set out above under the heading Head of Service – Legal and Democratic Services Observations.

None of the users noted that they had been ever told that the route was not a public right of way. However, it is suggested that there is insufficient evidence of use of the route by the public as of right to raise a presumption of dedication for the period 2000 – 2020. There is no formula for the number of users or amount of use to give rise to this presumption but four would be at the very bottom of any such amount and

as this is not in a remote area it is suggested that this use on its own would not be sufficient.

Committee's attention is drawn to the fact that although four users can be viewed as a relatively low number, Guidance from the Planning Inspectorate indicates that use of the route must be by a sufficient number of people who together may sensibly be taken to represent the public at large. Committee may consider that these four users of the route are representative of the public at large and therefore the evidence does raise a presumption of dedication of a footpath and does satisfy the statutory test.

In conclusion, Committee on balance may consider that the provisions of section 31 of the Highways Act 1980 cannot be satisfied. However, in the alternative, Committee may consider that it can be reasonably alleged that there is sufficient evidence from which to infer dedication of a public footpath at common law.

Committee is therefore advised to accept the application, make an Order and promote the Order to confirmation.

### **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:<br>804-641 |      | Simon Moore, 01772<br>531280, County Secretary<br>and Solicitors Group |

Reason for inclusion in Part II, if appropriate

N/A