

## Regulatory Committee

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

### Part I

Electoral Division affected:  
Hoghton with Wheelton

## **Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition and Deletion of Footpath Hoghton 11, Chorley (Annex 'A' refers)**

Contact for further information:

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### **Executive Summary**

Investigation into the addition to and deletion from the Definitive Map and Statement of part of Footpath Hoghton 11, Chorley.

### **Recommendation**

- (i) That an Order be made pursuant to Section 53(2)(b) of the Wildlife and Countryside Act 1981 to add to and delete from the Definitive Map and Statement parts of Footpath Hoghton 11 as shown on the Committee Plan.
- (ii) That the Order be promoted to confirmation.

### **Background**

A query was received by the Public Rights of Way team in July 2018, regarding the recorded position of Public Footpath Hoghton 11, Chorley. The query arose from the sale of a property where a CON 29 Local Authority Search highlighted the existence of a footpath which is recorded on the Definitive Map as going directly through the property. The property itself, three terraced cottages, appears to have been in existence for over 100 years, and therefore it is apparent that an investigation is required to determine the correct legal line of the footpath.

The route to be determined is shown on the attached committee plan, the suggested part addition is shown between points A-B-C-D-E, and part deletion is shown between points E-F-G.

Upon discovery of this evidence, the county council is required by law to investigate all the relevant evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

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

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

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

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

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

- That there is no public right of way over land shown in the map and statement as a highway of any description.

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

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

## Consultations

### Hoghton Parish Council

Hoghton Parish Council initially responded by questioning how the application arose and informing us that they would consult on it. The Clerk to Hoghton Parish Council confirmed by email dated 18/09/2018 that Hoghton Parish Council has no comment on this proposal.

### Chorley Borough Council

Chorley Borough Council have not responded to the consultation therefore it is assumed that they have no objections to make.

### Landowners/Supporters/Objectors

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

## Advice

### Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

n.b. The public rights of way are usually referenced in the form 9-18-FP11 or Footpath Hoghton 11 but for convenience in this report where the area affected is all within Hoghton the shorthand Footpath 11 will be used.

Point	Grid Reference (SD)	Description
A	6259 2714	Open junction with Valley Road (U9063)
B	6258 2714	Field gate and stile
C	6257 2716	Narrowed width adjacent to properties
D	6257 2718	Pedestrian gate, stile and fencing
E	6257 2718	Junction with the recorded line of Footpath 11, adjacent to woodland
F	6258 2717	Footpath 11 as it passes through the properties of Tallentine Farm
G	6258 2714	Footpath 11 at the junction of the stoned driveway in front of the properties.

## Description of Route

An initial site inspection was carried out on 3<sup>rd</sup> August 2018, with a further site inspection on 23<sup>rd</sup> November 2018.

### **Footpath to be added**

There is a clear used line on the ground which starts at the junction with Valley Road, Point A. Here a public footpath sign is situated pointing along a stoned driveway in front of the properties towards Point B. The route heads west along this stoned driveway for approximately 15 metres to a field gate (chained on the day of inspection) and a stile at Point B. The gate was attached to an old stone gate post, and despite being chained the stile was easily accessible, with waymarker discs attached indicating the direction of the footpath around the properties.

The route passes through the structures into a field where it heads north along the western side of the properties. It passes through a narrow grassed section between a retaining wall and the western cottage, Point C, and continues as it opens up along the line of the garden boundary wall and onto a gradual incline to join a pedestrian gate, stile and fencing at Point D. It is noted that there were other used lines on the ground over this stretch of land, including a well-trodden route along the fence line of the adjoining woodland, which was separate and above a significant incline from the route to be added. The route to be added then continues from Point D a further 7 metres to join the recorded position of Footpath 11 at an unmarked point, Point E, as the footpath continues through the woodland.

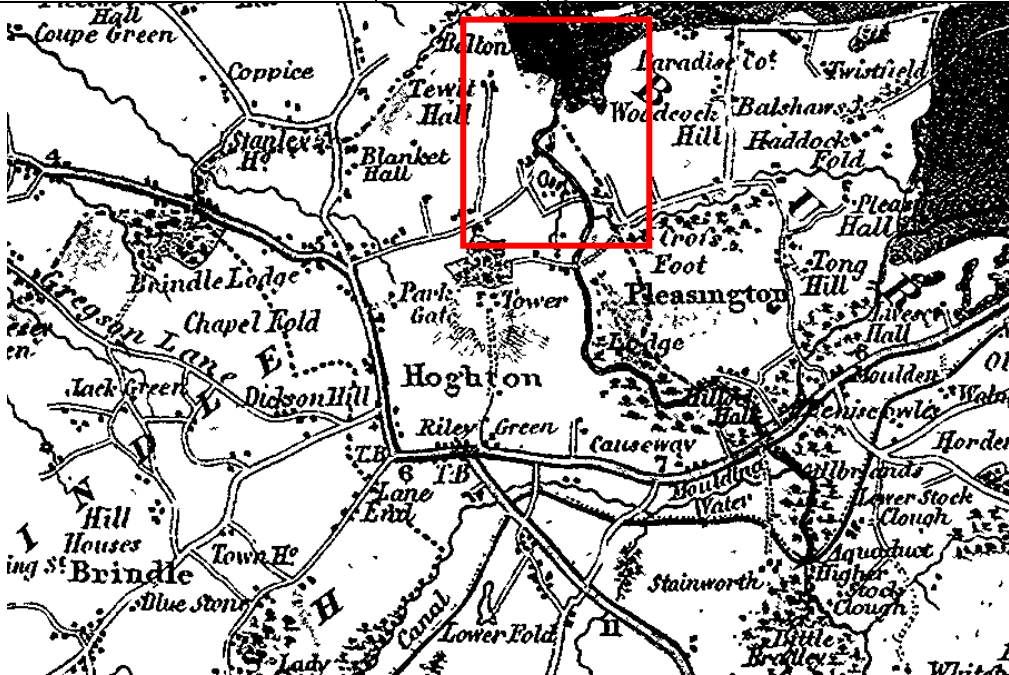
The used route was signposted and waymarked as a public footpath with a well-defined trodden line. The signs of an old gate post and the accessible structures also indicate that this was considered to be the line of the footpath.

### **Footpath to be deleted**

The recorded line of Footpath 11 was impossible to walk through the buildings of Grassdale and Tallantine Cottages and their fences, gardens and associated land. The footpath, as recorded on the Definitive Map, heads south east from point E, passing the pedestrian gate, stile and fencing at Point D and passes through the enclosed gardens to the buildings at Point F. It then passes through the front garden to join the used route (between points A and B) at the stoned driveway at point G.

The route was inaccessible as a through route due to the properties and gardens. It was not signposted, waymarked or appeared to have ever been available for use.

## Map and Documentary Evidence

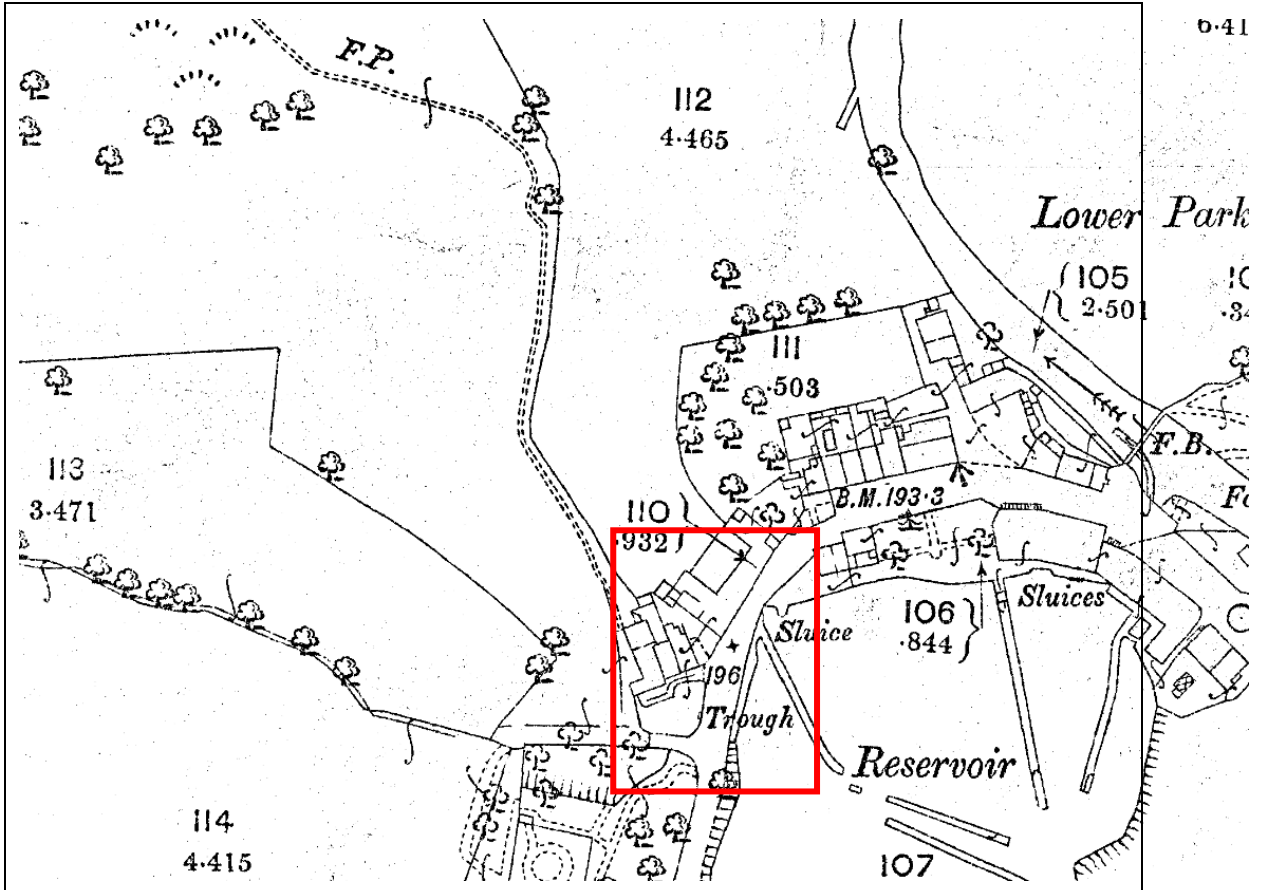
Document Title	Date	Brief Description of Document & Nature of Evidence
Hennet's Map of Lancashire	1829	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more 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.
		
Observations		Houghton Tower can be seen on Yates map in close proximity to the route under investigation. From the Tower heading north to Tewit Hall is Footpath 10 which Footpath 11 splits from. Footpath 11 however is not shown.
Investigating Officer's Comments		The route under investigation is not shown on Hennet's map. Due to the scale of the map it is not uncommon for footpaths not to be shown. The fact Footpath 10 is shown indicates that that particular route is very old and more than likely would have had links to the

<p><b>Tithe Map and Tithe Award or Apportionment</b></p>	<p>1842</p>	<p>surrounding land.</p> <p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p> <p>(Ref – DRB 1/107)</p>
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<p>Observations</p>	<p>A footpath is not denoted on the</p>
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		<p>Tithe Map and is included in hereditament no. 241. Hereditament 241 is listed on the Tithe Schedule as 'Browes' and 'Pasture'. The driveway between points A and B is shown excluded by boundaries in front of the cottages. The cottages are numbered 252 and listed as 'house and two cottages'.</p> <p>Both hereditaments were owned by Sir Henry Hoghton, who owned a lot of land and property at the time.</p>
Investigating Officer's Comments		<p>The Tithe Schedule did not list the footpath as a highway but the Tithe Map did show the line of the path excluded from the cottages and with boundaries between points A and B. There were no pecked lines indicated that the rest of the route was in existence at this time.</p>
<b>25 Inch OS Map</b>	1893	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1893.</p>

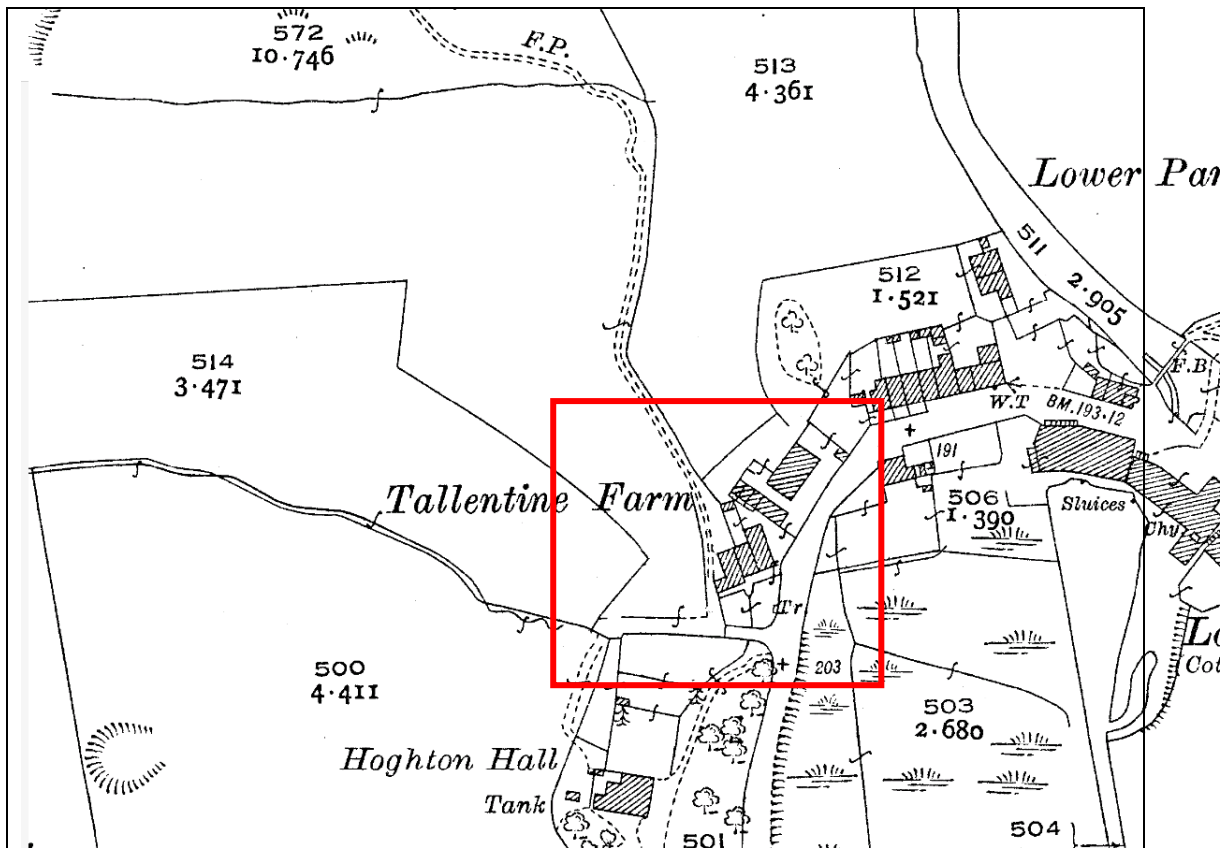


<p>Observations</p>	<p>The route is shown as a double pecked line and annotated 'FP' heading south towards the cottages which are shown to be in existence at this time. The route passes to the west of the cottages.</p> <p>A solid line is shown at Point B where the gate and stile are currently located, and a bounded strip is shown in front of the cottages heading along the current stone driveway, to the junction with Valley Road at Point A.</p> <p>The route as shown on the Definitive Map could not have been used at this time due to the existence of the cottages.</p>
<p>Investigating Officer's Comments</p>	<p>The pecked lines of the footpath head towards the west of the properties and follows what is currently used and available on the ground today.</p> <p>There is no indication of a route</p>




		<p>being in existence between the properties. This evidence supports the addition and deletion.</p> <p>There was a gate across the track at point B indicated by the line – it is impossible to deduce whether there was a stile alongside the fieldgate.</p>
<b>25 inch OS Map</b>	1911	Further edition of the 25 inch map re-surveyed in 1892, revised in 1909 and published in 1911.
Observations		<p>The route is shown exactly the same as the previous 1893 OS map. The properties have not changed, nor has the position of the route was which considered to be used at the time, which is shown to the west of the properties.</p> <p>There is no available route to walk as shown on the Definitive Map.</p>
Investigating Officer's Comments		The used route at the time is shown again to the west of the properties in the same way that the 1893 map did previously. There has been no amendment to the properties or an indication of a route heading between the properties. This evidence also supports the proposed addition and deletion.
<b>Finance Act 1910 Map</b>	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private</p>

		<p>ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where 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> <p>(Ref: DVPR/1/6 LXX.1)</p>
Observations		<p>Lancashire Archives did not have a copy of the relevant Finance Act map for this area (sheet LXX.1 (70.01)). Without the map to see whether the line of the footpath was excluded, the Valuation Book was of little assistance.</p>
Investigating Officer's Comments		<p>These documents were not inspected and therefore no inference can be made.</p>
<b>25 inch OS Map</b>	1931	<p>Further edition of the 25 inch map re-surveyed in 1892, revised in 1929 and published in 1931.</p>

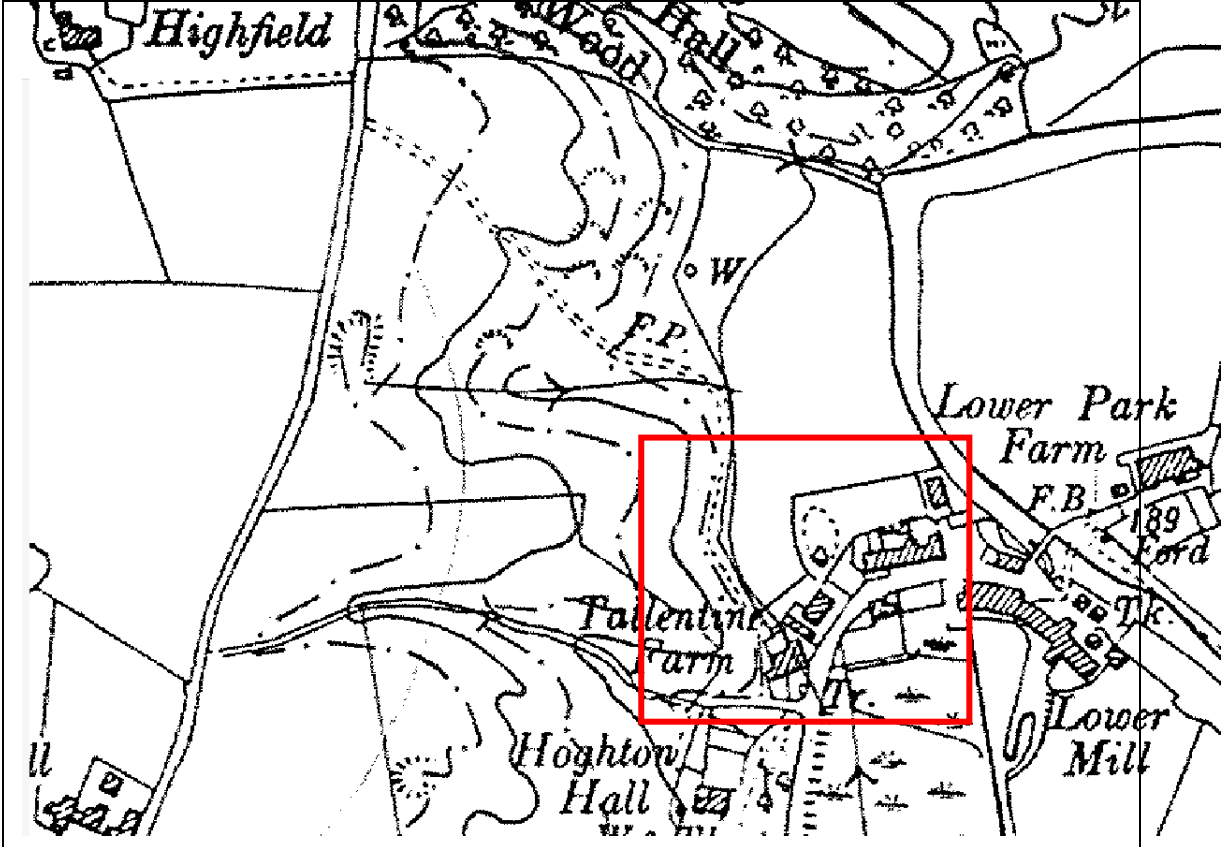


Observations		<p>As shown on previously inspected maps, the route is shown as a double pecked line annotated as 'FP', leading south to the properties, now labelled as Tallentine Farm. The route keeps west of the properties and continues to a solid line at Point B, indicating a gate and possibly a stile. It then again follows a bounded stretch along the current stone driveway, to the junction with Valley Road at Point A.</p> <p>There is no available route to walk as shown on the Definitive Map.</p>
Investigating Officers Comments		<p>This map supports the proposed addition and deletion and shows that the used route at this time was as the previous maps had shown, and was located to the west of the properties.</p>
Aerial Photograph <sup>1</sup>	1940s	The earliest set of aerial

<sup>1</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.

		<p>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.</p>
		
<p>Observations</p>		<p>The quality of the 1940's aerial photograph is pixelated, however a substantial route can be seen which leads south. The properties are visible and located in the same position as they currently are. The route heads to the west of the properties, and continues south to Point B, where it then follows a bounded track to the junction of Valley Road.</p> <p>There is no available route to walk as shown on the Definitive Map.</p>
<p>Investigating Officer's Comments</p>		<p>The 1940's aerial photograph supports the proposed addition and deletion, and shows that a significant route was available to the west of the properties in the 1940's.</p>
<p><b>6 Inch OS Map</b></p>	<p>1956</p>	<p>The OS base map for the Definitive Map, First Review, was published</p>

in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



Observations

The route is shown in a similar way as the previous OS maps, a double pecked line annotated as 'FP' leading to Tallentine Farm. The map is less clear due to its scale and the positioning of the lettering of 'Tallentine Farm', however the way through appears to be to the west of the properties. It then joins a bounded track to join Valley Road. No line is shown across the track.

There is no available route to walk as shown on the Definitive Map.

Investigating Officer's Comments


Although not as clear as the previous OS maps due to the scale and lettering, it appears that the footpath is to the west of the properties. This map also supports the proposed addition and deletion. No gate is shown but this may be

		due to a limitation of the scale.
<b>Aerial Photograph<sup>2</sup></b>	1960s	The black and white aerial photograph taken in the 1960s.
		
Observations		The 1960 aerial photograph is much clearer and shows the line of the used footpath as it heads south towards the properties. The trodden lines are shown passing to the west of the properties at Point C, although there do appear to be numerous trodden lines along this section of land. There does not appear to be a gate in position at Point B but it may be hidden from view due the trees which are in close proximity. The route is shown as bounded by walls or fencing as it heads along the stone driveway in front of the properties and gardens to join Valley Road at

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<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.

		<p>Point A.</p> <p>There is no available route to walk as shown on the Definitive Map.</p>
<p>Investigating Officer's Comments</p>		<p>The 1960 aerial photograph supports the proposed addition and deletion. The photograph shows that use was apparent along the route under investigation for addition and that there was no evidence that the route as recorded on the Definitive Map could have been used.</p>
<p><b>1:2500 OS Map</b></p>	<p>1968</p>	<p>OS 1:2500 map levelled 1961 and revised 1967, published in 1968.</p>
<p>Observations</p>		<p>As shown on the previous OS maps, the double pecked line is shown as heading south towards the properties and skirting on the western side near Point C. The route continues to a solid line at Point B, an indication of a gate possibly with a stile, and continues along a bounded stretch in front of the properties to the junction with Valley Road at Point A.</p> <p>There is no available route to walk as shown on the Definitive Map.</p>
<p>Investigating Officer's</p>		<p>The 1968 OS map supports the</p>

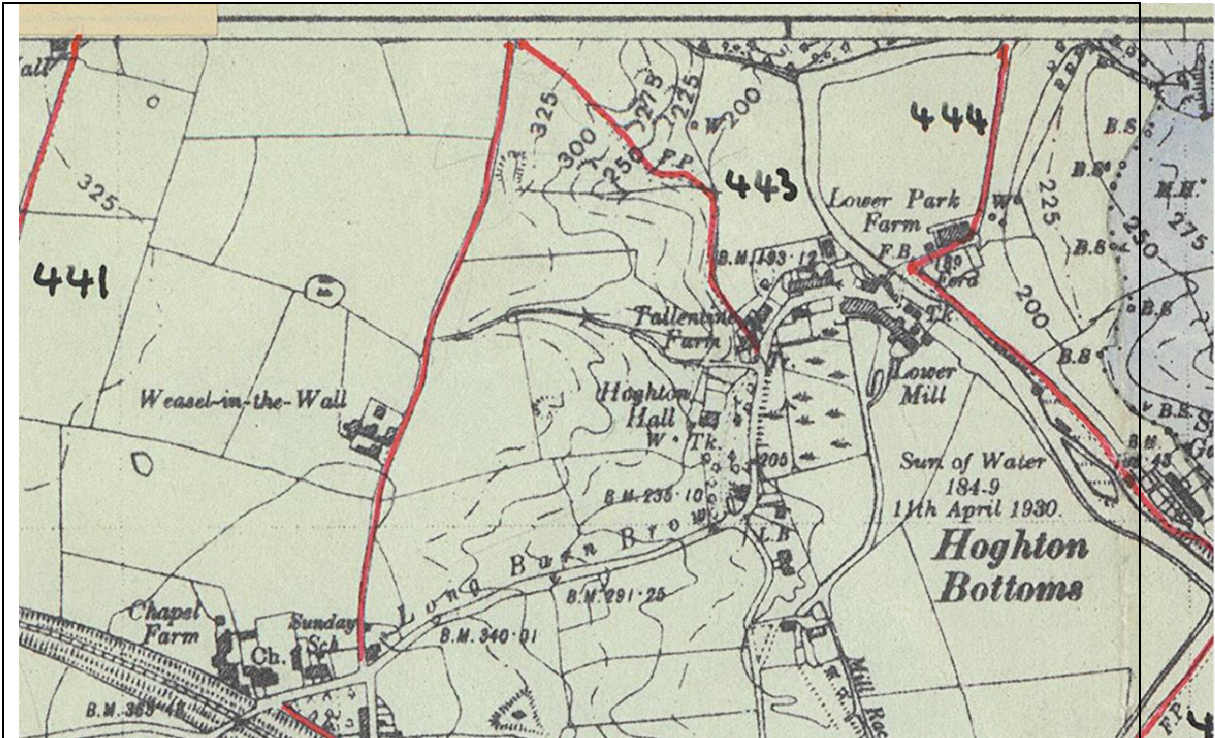
Comments		proposed addition and deletion, and shows that the available route was considered to the west of the properties.
<b>Aerial Photograph</b>	2010	Aerial photograph available to view on GIS.
		
Observations		The route under investigation is shown on the 2010 aerial photograph, although a woodland to the north west hinders the view slightly. The trodden line past the properties (amongst other trodden lines) can be seen with the link to the junction with Valley Road. There is no available route to walk as shown on the Definitive Map.
Investigating Officer's Comments		This supports the proposed addition and deletion and shows that the route is shown similarly to the previous aerial photographs inspected.
<b>Definitive Map Records</b>		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.
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish



council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.

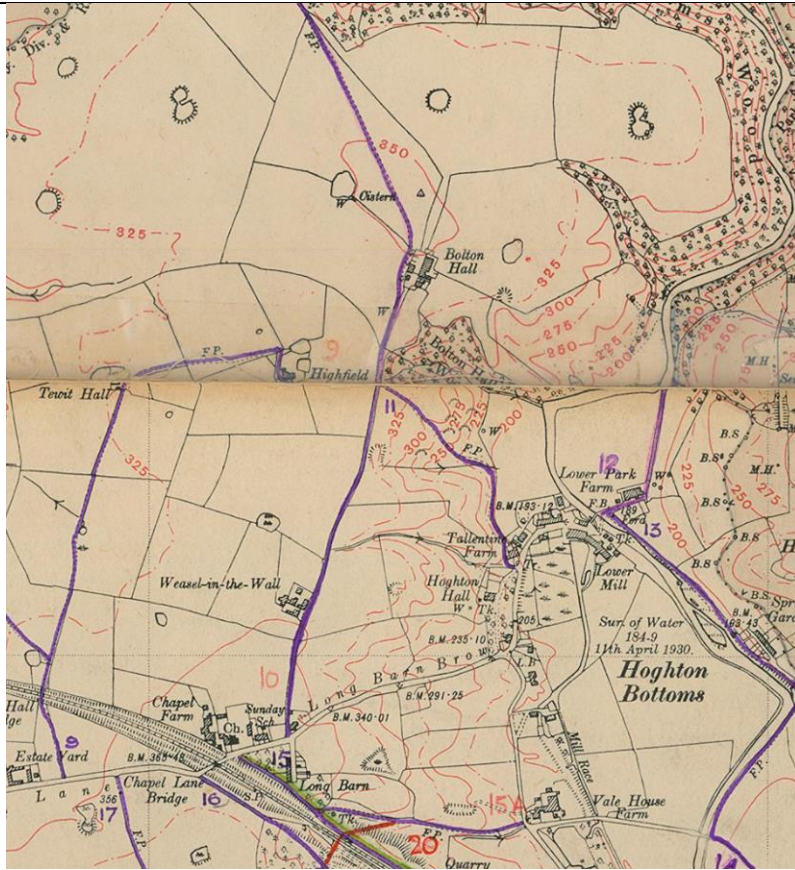
Hoghton came under Chorley Rural District and they compiled both a Parish Survey Card and Map.

DISTRICT <i>Chorley Rural</i>	PARISH <i>Hoghton</i>	No. <i>443</i>
MAP SHEET No. <i>3</i>	LENGTH <i>0.21</i> miles	(to two decimal places)
BRIEF DESCRIPTION (Field F.P. or otherwise)		
<i>Field Foot Path</i>		
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).		
<i>Footpath No 442, Chapel Lane to beasel in the wall by Limestone road to stile near Balton Hall Field Foot Path to stile at Tallantus Farm, carriage road to Lower Mill.</i>		
SURVEYED BY :—		
Name	<i>Boeding</i>	
Address	<i>Lid Lane Hoghton</i>	
Date	<i>22.9.50</i>	



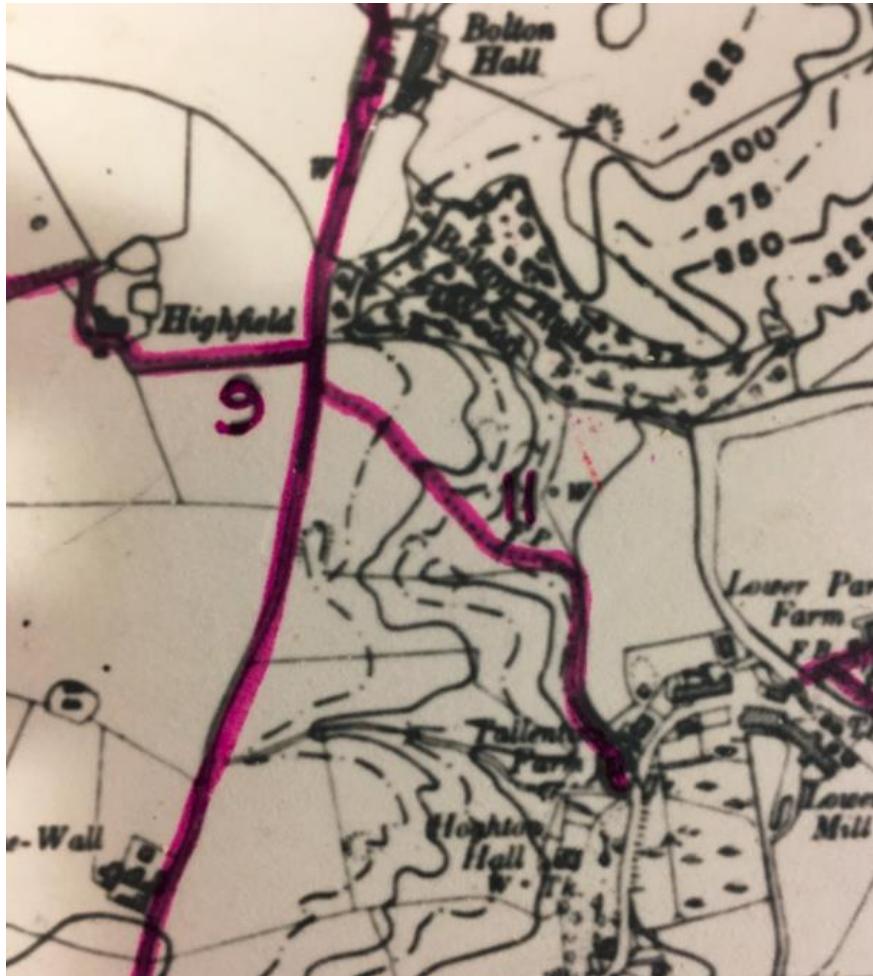
<p>Observations</p>	<p>The Parish Survey Map originally showed footpath 11 as number 443, which also incorporates footpath 10 [shown on Hennets Map 1829]. The footpath is marked in red and has been distinctively drawn through the properties rather than the established route which can be seen on the base map and previous Ordnance Survey maps.</p> <p>The purpose of the accompanying survey card was to describe the route in more detail, this states: 'field footpath to stile at Tallentine Farm, carriage road to Lower Mill'. The description doesn't specify how the footpath went through the farm, it also includes footpath 10 and the carriage road in its description.</p> <p>With reference to how the previous Ordnance Survey maps consistently showed a boundary at Point B, this would be the more prominent and understandable place for the mentioned stile to be. However as the map does not</p>
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		<p>follow this line, it is unclear as to where the mentioned stile may have been situated. It is possible that the map was drawn incorrectly and that the card was correct in leading to the stile at Point B. However, given how the previous Ordnance Survey maps and aerial photographs consistently showed the footpath and surrounding land, it is suggested that the map was incorrectly drawn and that the description of the stile on the card was the stile currently in situ at Point B.</p>
<p>Investigating Officer's Comments</p>		<p>Looking at the previous Ordnance Survey maps which show a route to the west of the properties for a substantial period of time, it is unclear as to why the Parish Survey Map records the route on a different alignment and through the properties which have been in existence for a very long time. The mention of a stile on the Survey card would reflect the stile at Point B.</p> <p>It is suggested that the Parish Survey Map was drawn incorrectly at this stage.</p>
<p><b>Draft Map</b></p>		<p>Lancashire County Council prepared the Draft Map and Statement.</p> <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>



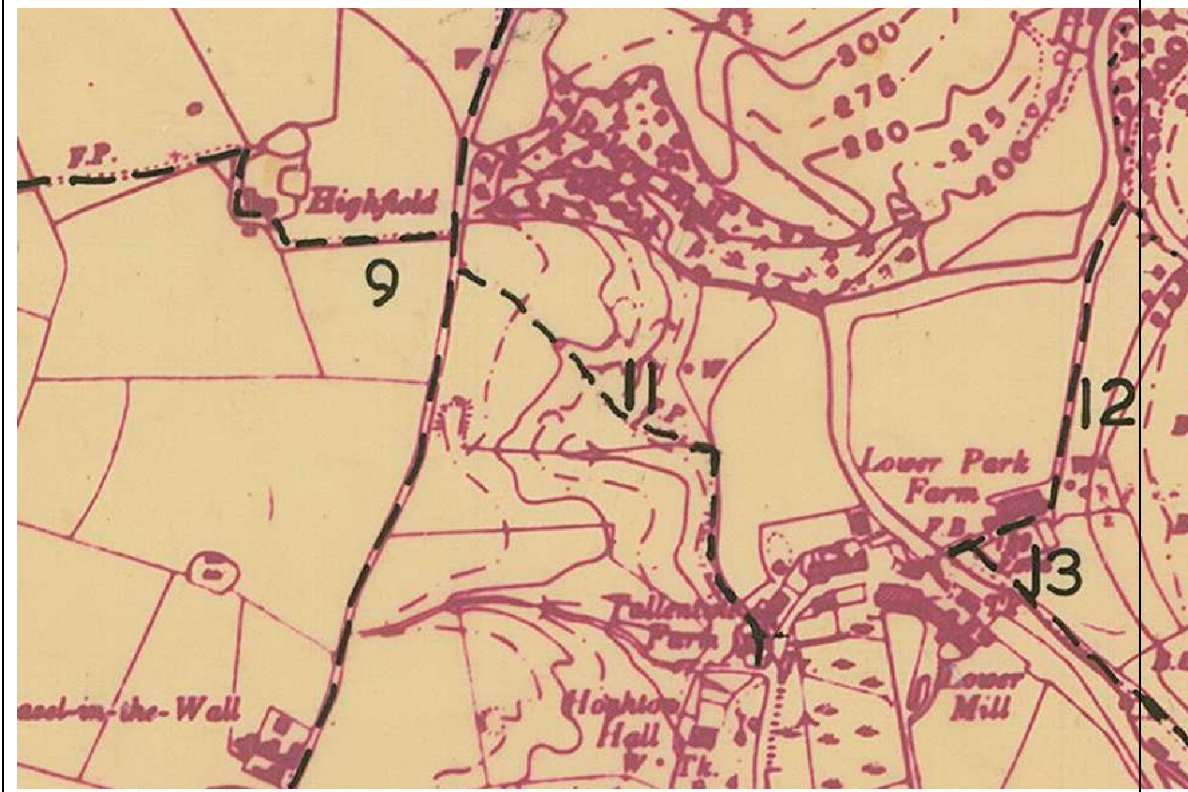
<p>Observations</p>	<p>The Draft Map records the footpath passing to the west of the properties, as shown on previous OS maps. It then continues down the track to join Valley Road. This is distinctively and carefully drawn around the properties in comparison to the previous Parish Survey Map. There is no record of an explanation as to why this</p>
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		change was made. However, the draft map supports the addition and deletion and confirms that the footpath was recorded to the west of the properties and not through them, and continued to the junction with Valley Road at Point A.
<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		We do not have a copy of the Provisional Map sheet for this area.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.



<p>Observations</p>		<p>The hand drawn pink line is thick but follows the line of the footpath shown on the previous OS maps as it heads south towards the properties. There is a curve in the pen line as it reaches the properties but as it is so thick it does go over the properties, but it also includes the used line for addition. The curve indicates a deliberate attempt to avoid the properties but due to the width stroke of the pen this places it over the properties.</p>
<p><b>Revised Definitive Map of Public Rights of Way (First Review)</b></p>		<p>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</p>

	<p>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.</p>
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<p>Observations</p>	<p>The Definitive Map records the footpath as going through the properties. The route to the west can be seen on the base map but the line of the path distinctively is drawn through the houses with the pen stroke much thinner than the previous First Definitive map.</p>
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<p>Investigating Officer's Comments</p>	<p>From 1953 through to 1975 there is indication that a footpath was considered to run in a southerly direction to the properties and to the junction with Valley Road. However, there are distinct variations in what each map showed, and has resulted in the</p>
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		<p>Definitive Map recording the footpath through the cottage properties.</p> <p>There were no objections or representations made to any stage of the preparation of the Definitive Map (Draft, Provisional, Definitive) with regards to the route being recorded as a public footpath or the line which it took when the maps were placed on deposit for inspection.</p> <p>There is no documented reason as to why the line of the footpath varied, it therefore appears that this may have been in error.</p>
<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</p>



		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).
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the route under investigation runs.
Investigating Officer's Comments		There is no indication by any landowners under this provision of non-intention to dedicate public rights of way over their land.
<b>Physical Landscape Features</b>		A lane is a good indication of a lot of traffic historically, an old flag culvert or remains of bridge footings, gateposts or stiles can also be helpful.
Observations		<p>The route for addition is signposted and waymarked for its entirety as a public footpath. A field gate and stile located at Point B also appears to have been in existence for a number of years, with a solid stone gate post in situ as an extension of the brick wall. The route is in use and appears to have been in existence for a number of years.</p> <p>The properties have been in existence since at least 1893, of which there was no evidence of any way through.</p>
Investigating Officer's Comments		It is apparent that the route used and considered to be the footpath by the general public is along the route for addition.
<b>Google Streetview</b>	2009 and 2011	Photographs taken from Google Streetview



Observations	The 2009 Streetview image shows a grassed but trodden stretch with
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		<p>a public footpath signpost pointing towards the field gate and stile at Point B.</p> <p>The 2011 Streetview image is a very good reflection of how the route is now currently on site. Since 2009 it has been landscaped with stone into a more defined driveway. A public footpath signpost is shown pointing down the track leading to the field gate and stile at Point B.</p>
Investigating Officer's Comments		<p>In both 2009 and 2011, although slightly altered in its appearance, it is apparent that this is where the footpath was considered to be, instead of over the garden area and through the buildings.</p>

### **Landownership**

The land crossed by the route to be added between points A to B and C to E is unregistered land.

The owner of the land crossed by the route to be added between points B and C is Hoghton Tower.

The owners of the land crossed by the route to be deleted between a point mid-way between points E and F and point G are the owners of Grassdale Cottage.

From the point mid-way between points E and F to point E the route to be deleted crosses land which is unregistered.

### **Summary**

The Ordnance Survey maps distinctively show that from 1893 to at least 1968, that the route considered to be available on foot to reach Valley Road was to follow the line to be added, by heading south, passing to the west of the houses and on to the road. The cottages were in their current position in 1893, and therefore have stood on that footprint for over a hundred years. The Ordnance Survey maps fully support the addition and deletion of the footpath.

The Definitive Map evidence however, shows that there was a change within the different stages of the maps, particularly what was shown on the Parish Survey Map and on the Draft map, to what then got recorded on the Definitive Map. The Survey Map records the footpath through the houses whilst the Draft map amends it to circulate the houses, following the line which is currently used and also shown on the Ordnance Survey Maps for many

consecutive years. This route appears to have been used for a substantial amount of time, with no apparent way through the properties.

The aerial photographs also support the evidence in that a substantial route was available for use to the west of the properties, and that the Definitive route was shown as going over gardens and through properties which are well over 100 years old.

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

### Information from Landowners

Both owners of Grassdale Cottage responded to consultations by stating that they confirm that the route to be added is correct and the route to be deleted should be removed.

John Forrester Chartered Surveyor responded on behalf of Houghton Tower. He requested how the application arose and stated that the properties have been in existence for some time and agreed with the investigation to delete and add on the used line.

## **Assessment of the Evidence**

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

#### In support of making an Order for the *addition* of footpath between A – E

- Documentary evidence of route being available.
- Footpath shown running on the line A - E on the O/S Map 1893, O/S Map 1911, O/S Map 1931, O/S Map 1956 and O/S Map 1968
- Footpath could not have been used as shown on Definitive Map due to existence of building(s)
- 1940 and 1960's aerial photographs showing the footpath to the west of the building(s).
- Draft Map showing footpath curving to the west of the properties

#### Against making an Order for the addition of footpath between A – E;

- No particular evidence against

#### In support of making an Order for the *deletion* of footpath E – G;

- Lack of any historical and documentary evidence
- This line is impossible to use because of the existence of building(s) that have been in situ since at least 1893
- Alternative route A – E in existence
- This line is not depicted on O/S Map 1893, O/S Map 1911, O/S Map 1931, O/S Map 1956, O/S Map 1968

### Against making an Order for the *deletion* of footpath E – G;

- Initial presumption that it exists as it was recorded on Definitive Map and Statement by due process.

### **Conclusion**

In this matter it is suggested that part of Footpath Hoghton 11 shown on the Revised Definitive map (First Review) between points E – G should be deleted, and a section of footpath should be added between points A – E.

It is suggested that the line shown on the Committee Plan from points E – G was recorded as a public footpath in error, and that the public footpath should be recorded between points A – E.

To remove a route from the Definitive Map requires cogent evidence that it was put on the Definitive Map in error. In this matter, the line of the route to be deleted (E - G) was first shown on the Parish Survey Map in the early 1950's. The error therefore needs to be shown to have been made in the preparation of this map.

Committee is advised to first consider whether section A - E is already a footpath in law and should be added to the Definitive Map, and then whether this means it was the correct route of the footpath network in 1966 when the route was recorded on the Definitive Map along E – G, meaning that E – G should now be deleted from the record.

The route A – E is shown on the Ordnance Survey maps from 1893 onwards as available for the public to use on foot. This would suggest an acceptance by landowners and the public of the existence of the right of way along that line. The route E – G is impossible to use because of the existence of building(s) that have been in situ since at least 1893.

Committee is advised that the evidence points strongly towards the conclusion that the footpath has always run along line A – E. Accordingly it is recommended that the error in the Definitive map be corrected and the route A – E can be considered to subsist as a public footpath.

With regards to the deletion of the footpath between E – G, the DEFRA Rights of Way Circular 1/09 <sup>3</sup> advises that "the evidence needed to remove what is shown as a public right from such an authoritative record as the Definitive Map and Statement...will need to fulfil certain stringent requirements." The requirements are that the evidence must be (a) new; (b) of sufficient substance to displace the presumption that the Definitive map and Statement is correct; and (c) cogent.

On the historical Ordnance Survey Maps from 1893 to 1968 and aerial photographs from the 1940s and 1960s, there appears to be no route between E – G which was accessible to the public on foot. In fact, the route appears to run through building(s).

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When the Parish Survey Map was drawn in the early 1950s, the line of the footpath was drawn E - G. The Draft Map differed and was shown to record the footpath along A – E. The First Definitive Map and Statement and the Revised Definitive Map (First Review) then went on to record the footpath on its original position as shown on the Parish Survey Map, though this may have been the result of issues with the thickness of the pen on a hand drawn small scale map.

Post 1966 evidence from Google Street View image 2009 and 2011 shows the building(s) that section E - G runs through. This property appears to have been in existence for a considerable amount of time, and looks to have a footprint consistent with the building(s) depicted on the documentary evidence pre-dating 1966.

Overall the evidence supports the conclusion that on 1<sup>st</sup> September 1966 no public right of way existed along the section of Footpath Hoghton 11 depicted between E – G, and that a simple drafting error with regard to the recording of the exact line of the footpath resulted in the path being drawn on the Definitive Map along the line E- G instead of line A – E.

With regards to the criteria for removing the right of way from the Definitive Map, the Committee is advised that the evidence of the drafting error is "new" in the sense that it was previously unknown to the County Council and was only discovered when the Public Rights of Way Team were contacted by a potential purchaser of one of the buildings after the results of a local authority search revealed a public footpath running through the property. The evidence is of sufficient substance to rebut the presumption that the Definitive Map correctly records the right of way and is cogent.

Committee may consider that on balance the route A - E subsists as a public footpath and should be added to the Definitive Map and Statement, and that the route to be deleted E - G did not exist on the ground in 1966 and was recorded in error.

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-601		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A