

Regulatory Committee

Meeting to be held on 15th September 2021

Part I

Electoral Division affected:
Great Harwood, Rishton and
Clayton-le-Moors

Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Restricted Byway along Limers Lane, Great Harwood (Annex 'A' refers)

Contact for further information quoting the reference number 804-689:
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Executive Summary

Investigation into the existence of public rights of access along Limers Lane, Great Harwood.

Recommendation

- (i) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to record on the Definitive Map and Statement of Public Rights of Way a restricted byway along Limers Lane, Great Harwood as shown on Committee Plan between points A-B-C-D.
- (ii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

It was brought to the attention of officers that Limers Lane, between Blackburn Old Road and Clinkham Road, Great Harwood was not recorded on the Definitive Map and Statement of Public Rights of Way and was not recorded on the county council's List of Streets as a publicly maintainable highway.

Having looked at the fact that the route was included on a number of old commercial maps officers considered that the route may in fact be a public highway and that its legal status should be investigated.

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

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

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

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

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

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate’s website also gives guidance about the interpretation of evidence.

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

Consultations

Hyndburn Borough Council

Hyndburn Borough Council provided no response to our consultation.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	7240 3283	Open junction with Blackburn Old Road adjacent to Blackleach Farm
B	7238 3269	Point at which Footpath 11-4-FP96 meets Limers Lane
C	7242 3255	Point at which Footpath 11-4-FP98 meets Limers Lane
D	7241 3236	Open junction with Clinkham Road

Description of Route

A site inspection was carried out on 1st February 2021 and the total length of the route is 500 metres.

The route commences at point A on the Committee Plan on Blackburn Old Road adjacent to a property known as Blackleach Farm.

From Blackburn Old Road the route under investigation ascends gently along a roughly tarmacked access track which provides access into Blackleach Farm. The route under investigation leaves the tarmac access track approximately 15 metres from point A and continues in a generally south westerly direction along an unsurfaced track around the back of the property. The route is bounded on both sides and was largely overgrown with brambles at the time it was inspected although there was a narrow trodden track down the centre indicative of pedestrian use.

In places the bounded route opened up with less vegetation but the grassy surface was wet and boggy.

As the route curves to continue in a more southerly direction it is joined via a wooden stile with stone posts on either side at point B by Footpath 11-4-FP96. A trodden track leads from the stile to continue onto the route.

Between point B and point C the route continues as a bounded track which was boggy underfoot and overgrown in places.

At point C the route is joined by Footpath 11-4-FP98 and again there was evidence that the footpath was being used and that people were continuing along the route under investigation on foot.

From point C the route continues – still bounded by a combination of fences, overgrown hedges and broken stone walls - to cross a culverted watercourse and

then ascend uphill to continue for approximately 70 metres along a stone surfaced track which provides direct access from an adjacent field along the route to point D.

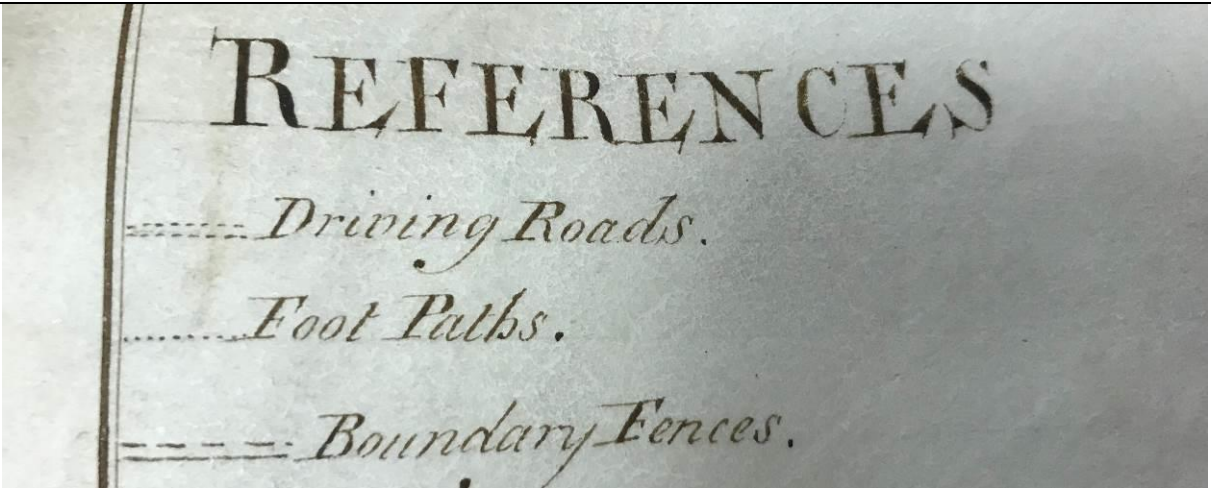
At point D the route meets the cobbled surface of Clinkham Road.

In summary, whilst now largely out of repair the bounded route appeared to be one of some antiquity which would, if maintained be wide enough to be capable of being used by vehicles. There were no gates across the route and no signs indicating whether it was considered to be public or private.

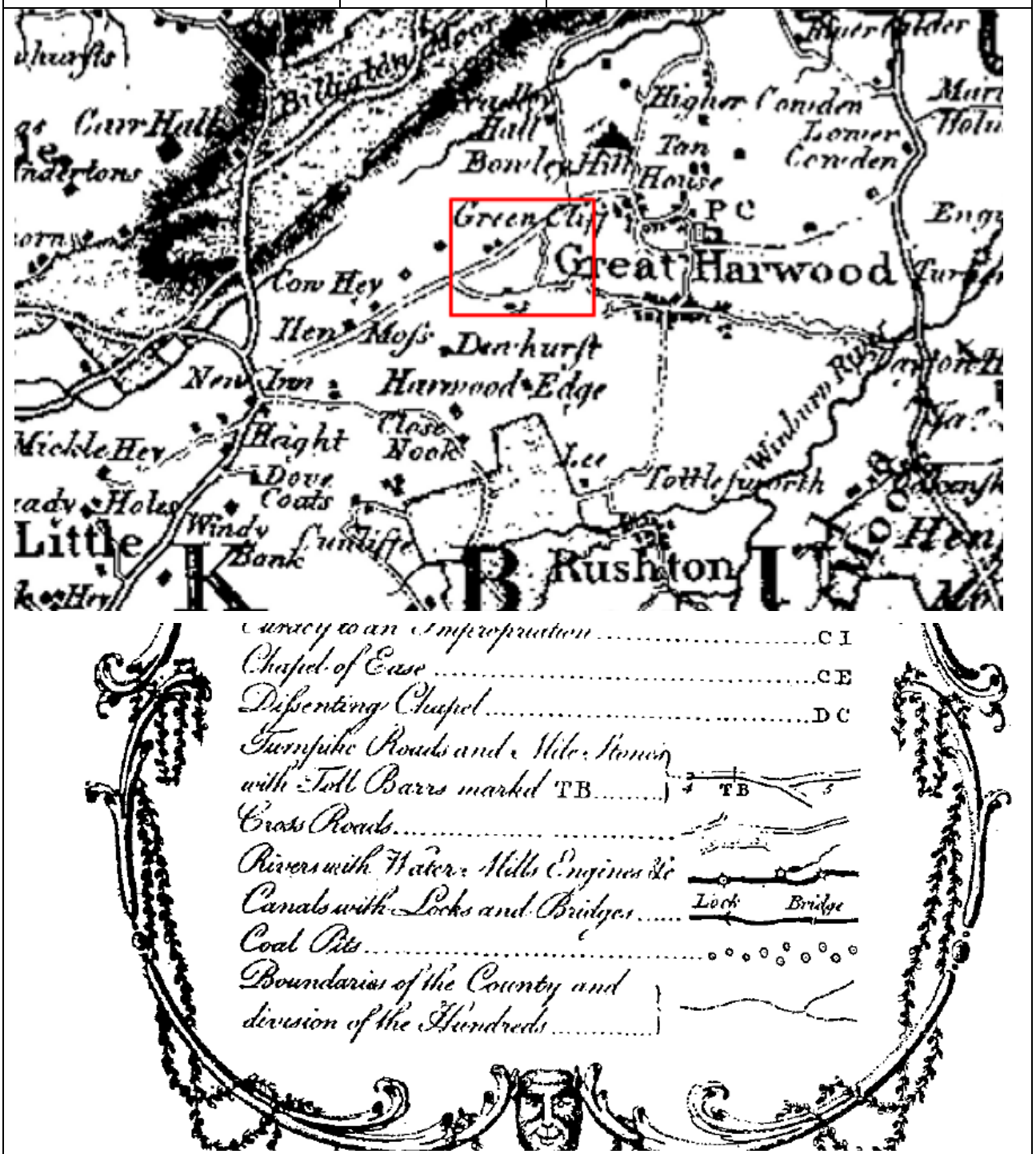
Map and Documentary Evidence

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.

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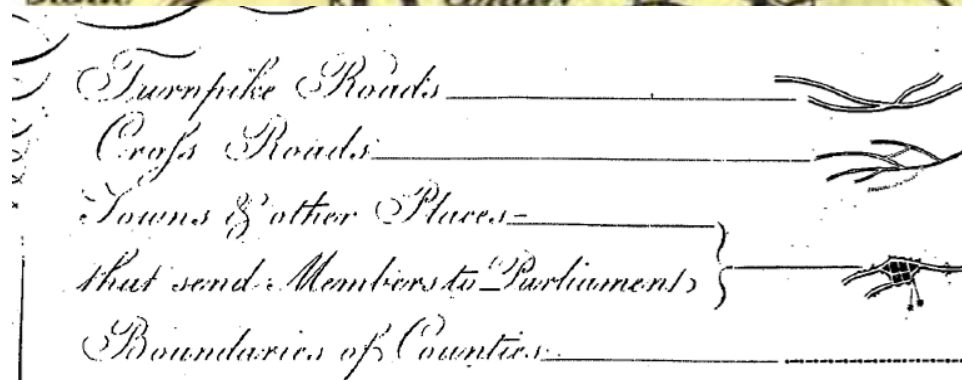
		
Observations		<p>This is the earliest map examined which shows Limers Lane. The Map is titled 'A Map of Great Harwood Moor. According as the same as is apportioned and allotted to Sir Thomas Hesketh Baronet and Alexander Norwell Esquire ..'. It is dated 1762 and its purpose seems to be to resolve a dispute between landowners following on from an Inclosure Award for the apportionment of an area crossed by the route under investigation.</p> <p>The route under investigation is not named but is clearly shown on the map in the same way as the public vehicular routes to which it connects. There is no specific reference in the agreement to the route but there is reference to existing 'high roads' although the location of these is not specifically detailed. Reference is made to routes which crossed the land to be inclosed which were shown on the map as foot paths and driving roads but the route under investigation itself is not mentioned.</p>
Investigating Officer's Comments		<p>The route under investigation existed as a substantial route in 1762. It appears that it probably already existed prior to the inclosure of land in the area and it is shown on the map in the same way as other public vehicular routes to which it connects suggesting that it formed part of a historical network of routes used by the public prior to 1762. The owners of the common were content it be shown in this way.</p>

Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
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Observations		A route denoted in the map key as a
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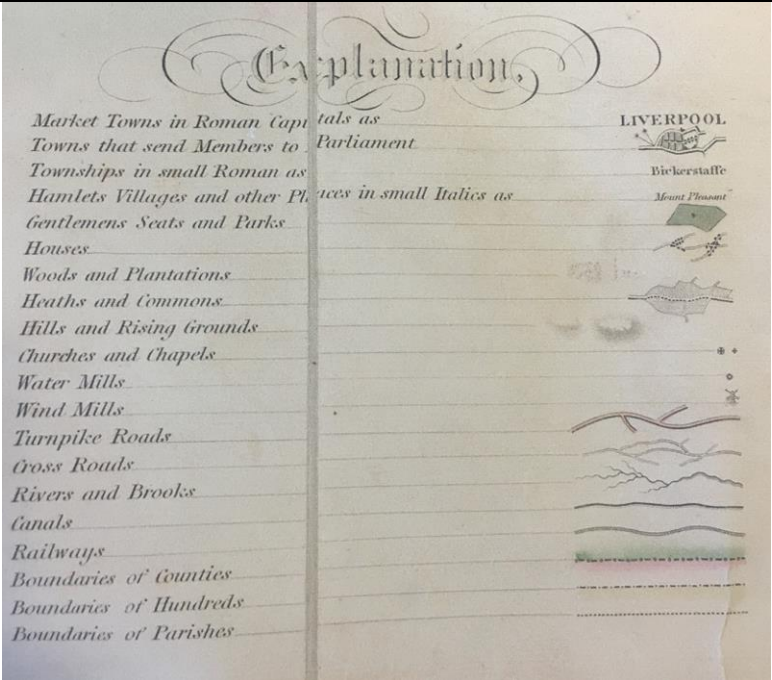
		cross road and consistent with the route under investigation is shown between Blackburn Old Road and Clinkham Road.
Investigating Officer's Comments		<p>The route under investigation existed in 1786.</p> <p>It is not known what is meant by the term 'cross road' but the only other category of highway shown on the map is turnpike roads. The inclusion of the route on a small scale commercially produced map of this kind is suggestive of the fact that the route is likely to have been considered to have been a public carriageway or at least a bridleway at that time. It is unlikely that a map of this scale would show footpaths. It is not known what Yates meant by the term 'cross road' but he only categorised roads as 'cross roads' and 'turnpike roads' according to the key to his map.</p>
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



Observations		The route under investigation is shown as a cross road on the map. The section of Clinkham Road which leaves Blackburn Old Road west of point A is not shown and access to and from the hamlet labelled as 'lower town' from Blackburn Old Road appears to be either via the route under investigation or by taking the longer route through Great Harwood.
Investigating Comments	Officer's	Limers Lane existed as a substantial through route in 1818. The inclusion of the route on a small scale commercially produced map of this kind is suggestive of the fact that the route is likely to have been considered to have been a public carriageway or at least a bridleway. It is

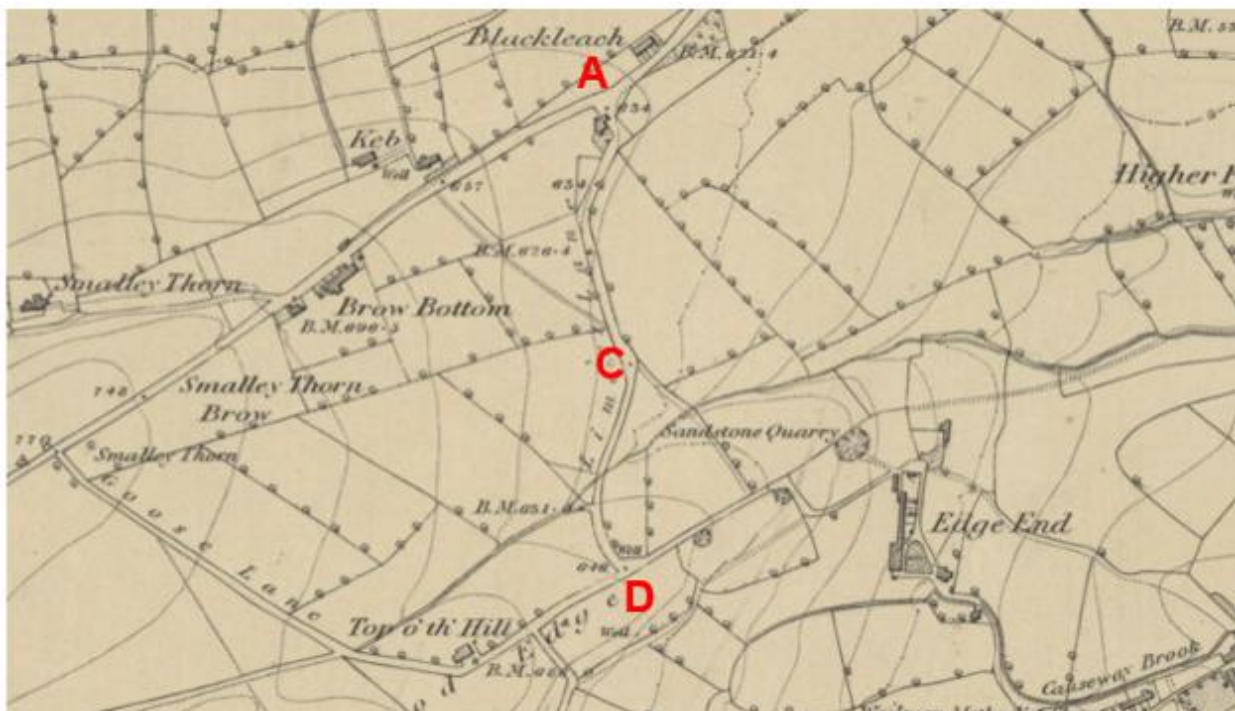
		unlikely that a map of this scale would show footpaths. It is not known what Greenwood meant by the term 'cross road' but he only categorised roads as 'cross roads' and 'turnpike roads' according to the key to his map.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale 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.



		
Observations		Only the start of the route under investigation from point A is shown.
Investigating Officer's Comments		It is not known why the rest of the route was not shown on the map – as it had been shown on the two earlier maps inspected and is known to have existed at this time as it is subsequently shown on the first edition 6 inch Ordnance Survey map detailed below. It may have been that Hennet did not consider the route to be a public highway or that it was unenclosed or that the hedges/fences/walls were in disrepair or possibly that this section was not surveyed, as surveys were expensive.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		There are no existing or dismantled/disused canals or railways in the area

		crossed by the route.
Investigating Officer's Comments		No inference can be drawn in this respect.
Tithe Map and Tithe Award or Apportionment		Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		There is no Tithe Map deposited in the County or National Archives for Great Harwood.
Investigating Officer's Comments		No inference can be drawn in this respect.
6 Inch Ordnance Survey (OS) Map Sheet 63	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 to 1846 and published in 1848. ¹

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

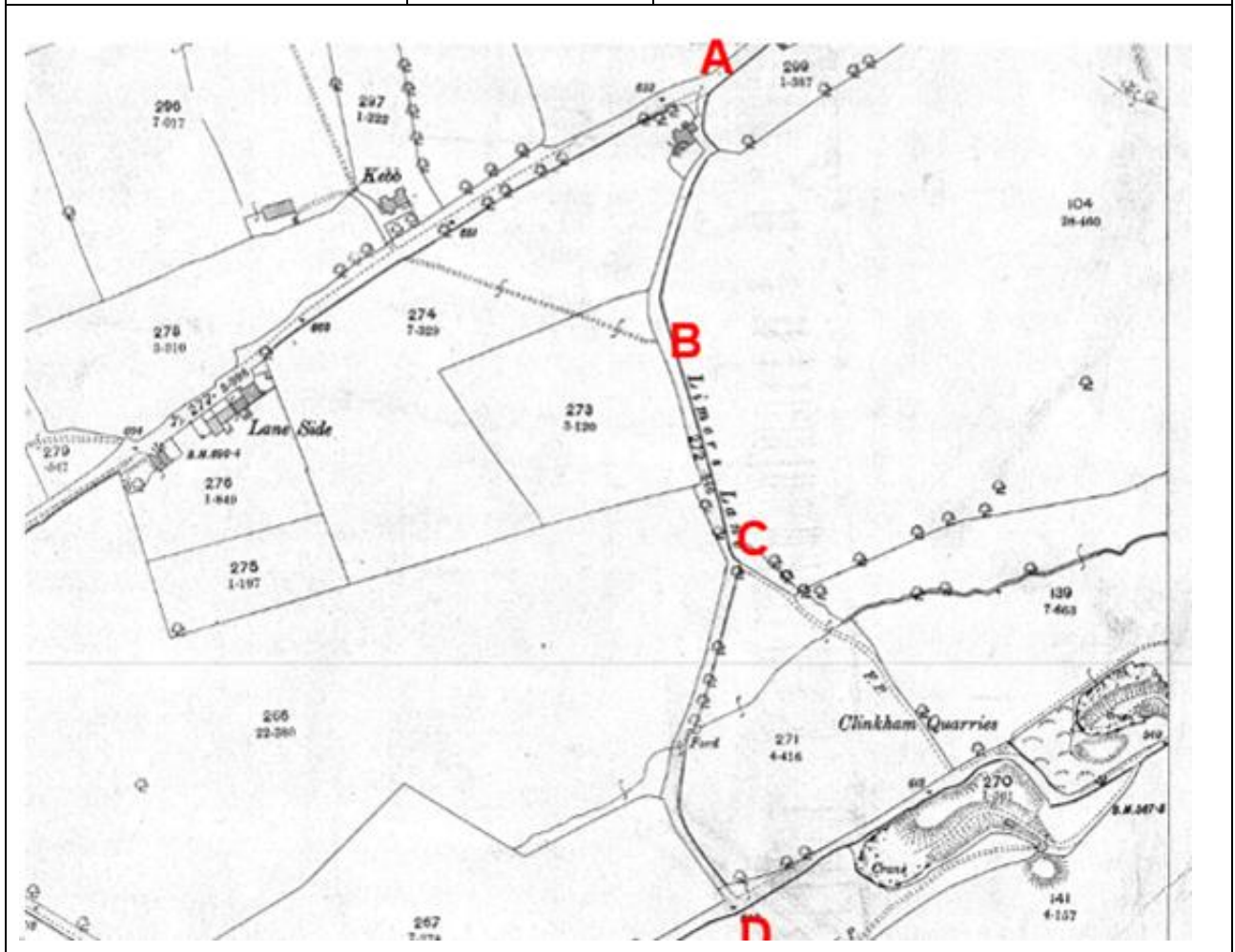


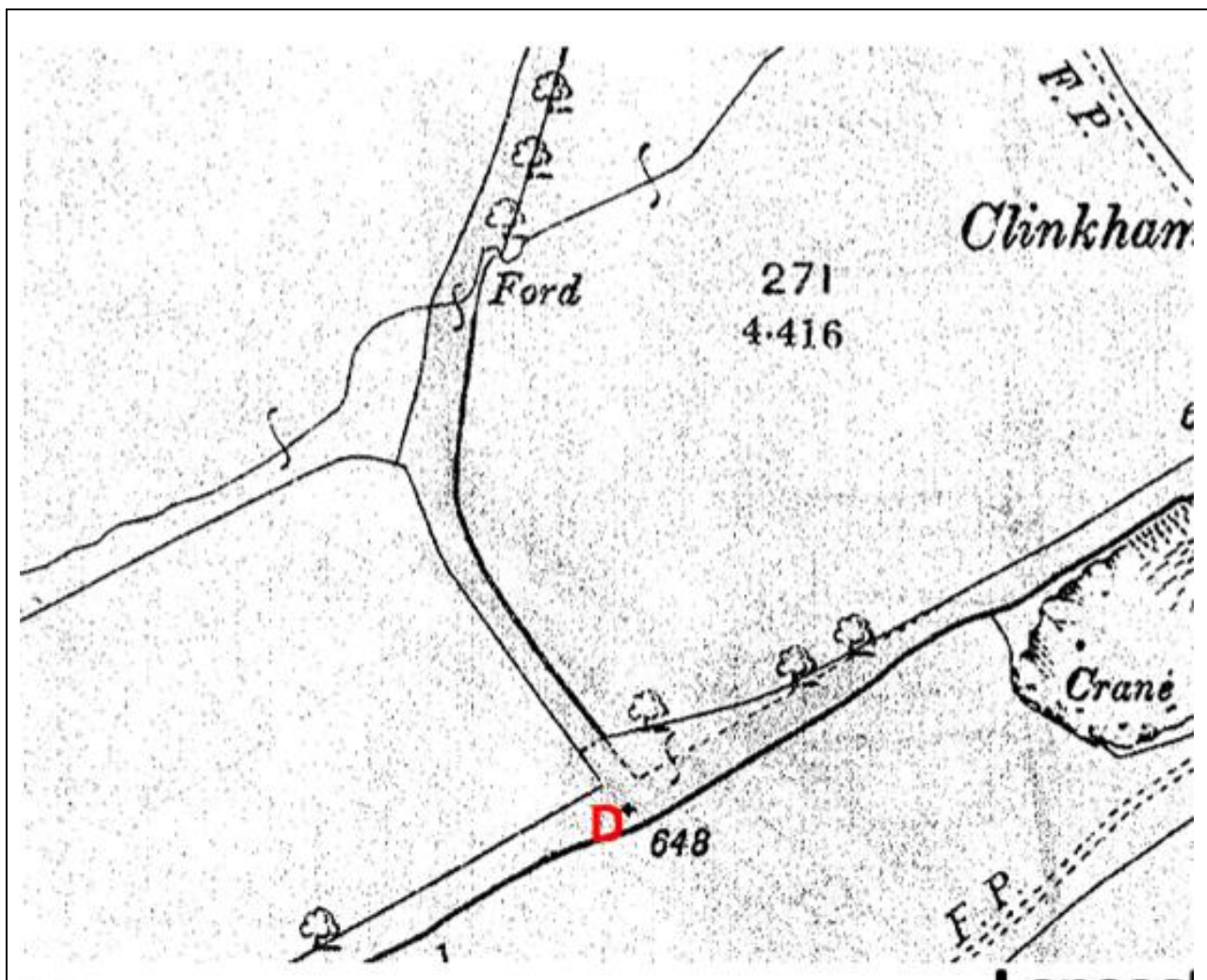
Observations		<p>The full length of the route under investigation is shown as a substantial bounded through route connecting to public vehicular highways at either end. The route is named on the map as Limers Lane with a property shown immediately adjacent to the route at point A.</p> <p>Access onto the route is shown as being open and unrestricted at either end and there are no lines shown across the route at any point which may indicate the existence of gates.</p>
Investigating Officer's Comments		<p>The whole length of the route under investigation is shown in the same manner of the general road network and it is reasonable to conclude that it existed as a substantial route in the 1840s which would have been wide enough to be used by vehicles by the public. Its appearance on the map is consistent with how other connecting public vehicular highways are shown and the fact that it was named on the map suggests that it was known locally as a name route which is often suggests a route is known and used by the public but is not conclusive of that fact.</p>

**25 Inch OS Map
Sheet 63-1**

1893

The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890-1892 and published in 1893.





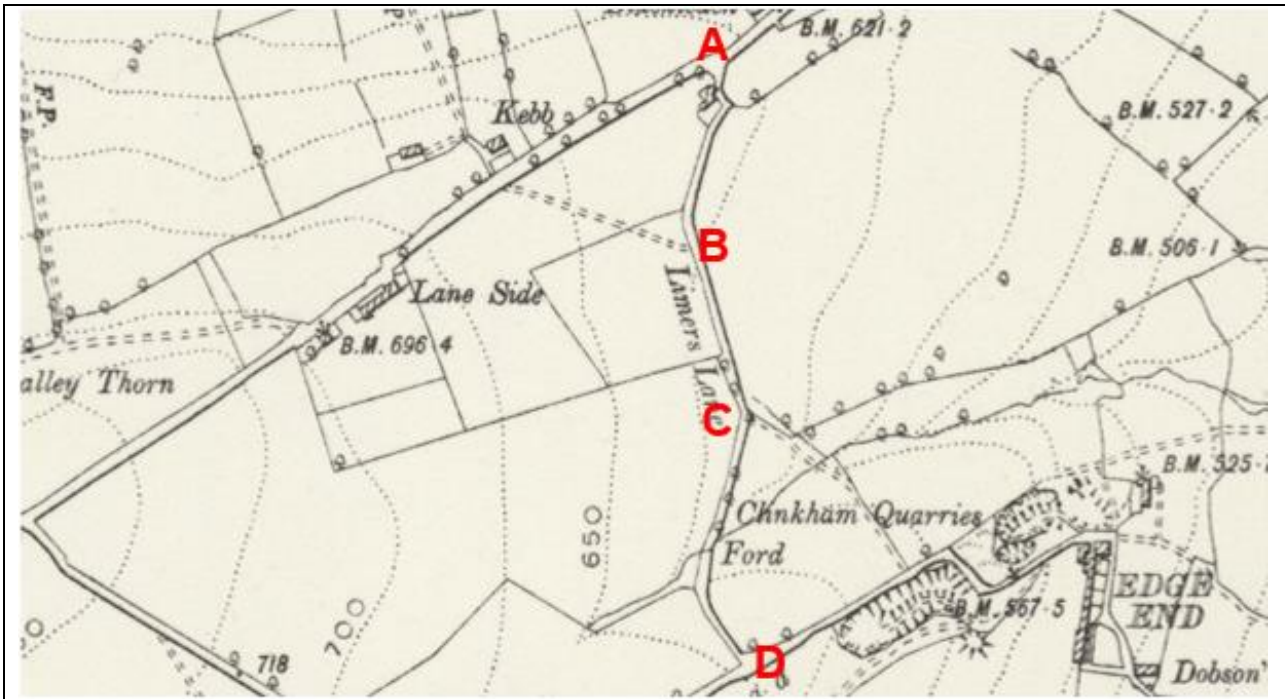
Observations

The full length of the route under investigation is shown. No solid lines are shown across the route which suggests that it was not gated. However, dashed lines are shown across the route at point A and close to point D suggesting a change in surface. A ford is also marked where a watercourse crosses the route approximately 100 metres north of point D.

The route is named on the map as Limers Lane and a thickened line is shown along the eastern side of the route.

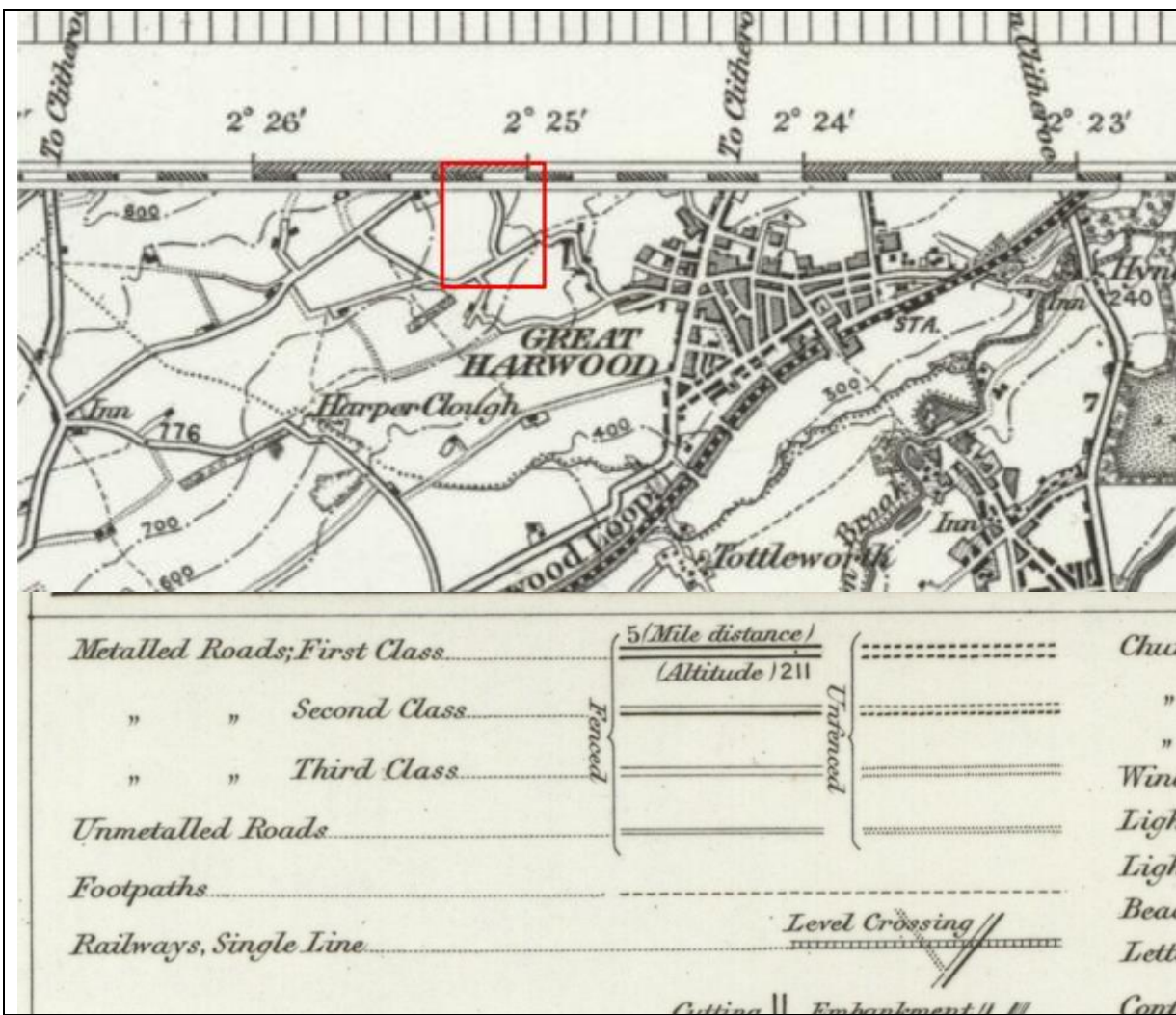
The two routes now recorded as Footpaths 11-4-FP96 and 98 which connect to the route under investigation at point B and point C are both shown – with the route of 11-4-FP98 from point C labelled as a footpath (F.P).

		A separate parcel number and acreage is allocated to the route from the land on either side.
Investigating Comments	Officer's	<p>The route under investigation existed as a substantial route in the late 1800s and is shown consistent with how other public vehicular routes were shown. Shading and colouring were often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. The Ordnance Survey specified that all metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. 'Good repair' meant that it should be possible to drive carriages and light carts over them at a trot so the fact that the route is shown in this way is consistent with how it was included on early small scale commercial maps and indicated that the route was probably capable of being used by the public with vehicles at that time.</p> <p>The fact that it was named as a road on the map is evidence that it was known locally by that name and is again consistent with use of the route by the public at least on horseback at that time. The Planning Inspectorate Consistency Guide states "Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage." However, it goes on to say that this is far from conclusive evidence of highway status.</p>
6 inch OS Sheet 63 NW	1895	Surveyed 1890 to 1892 and published 1895.

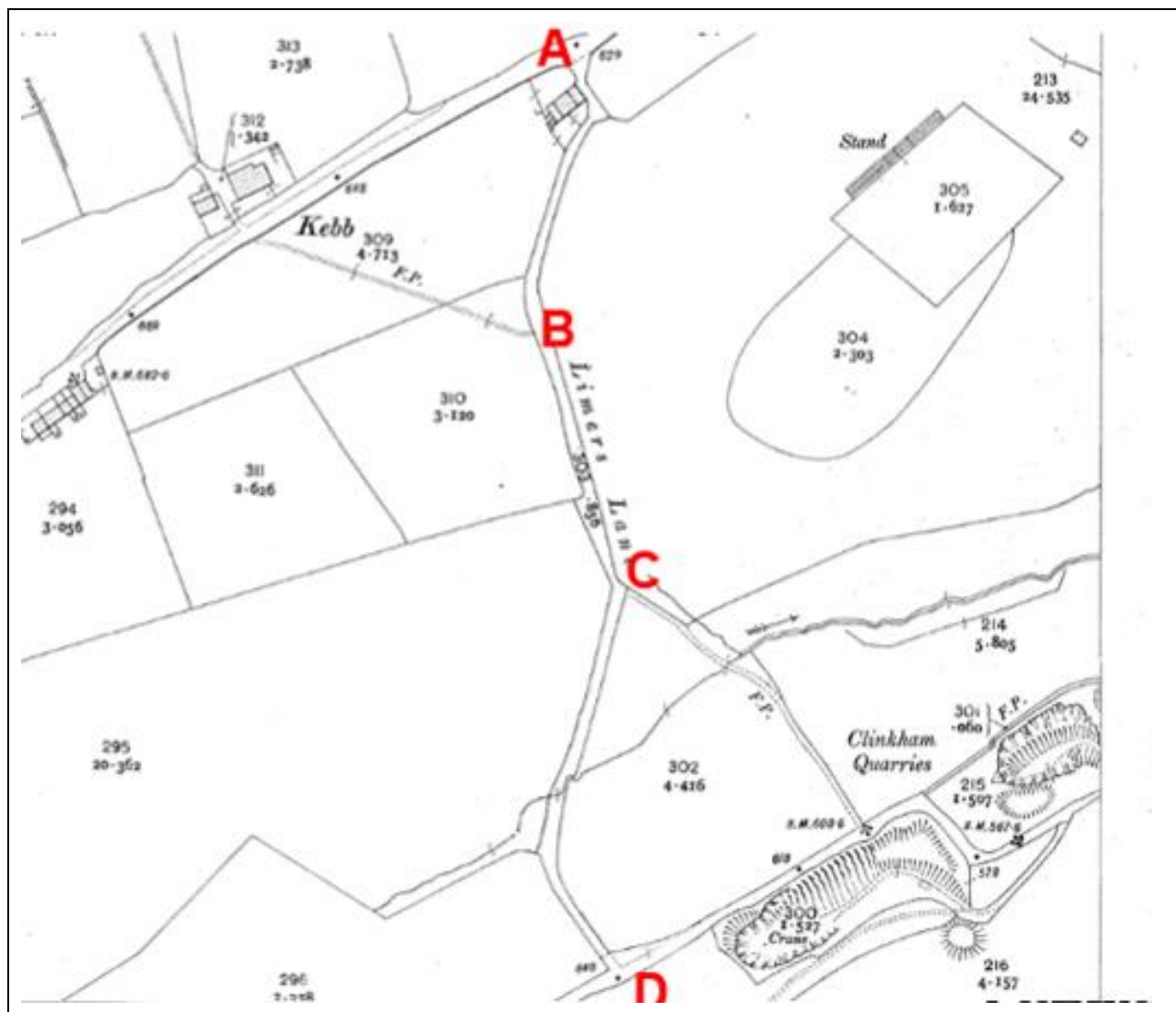


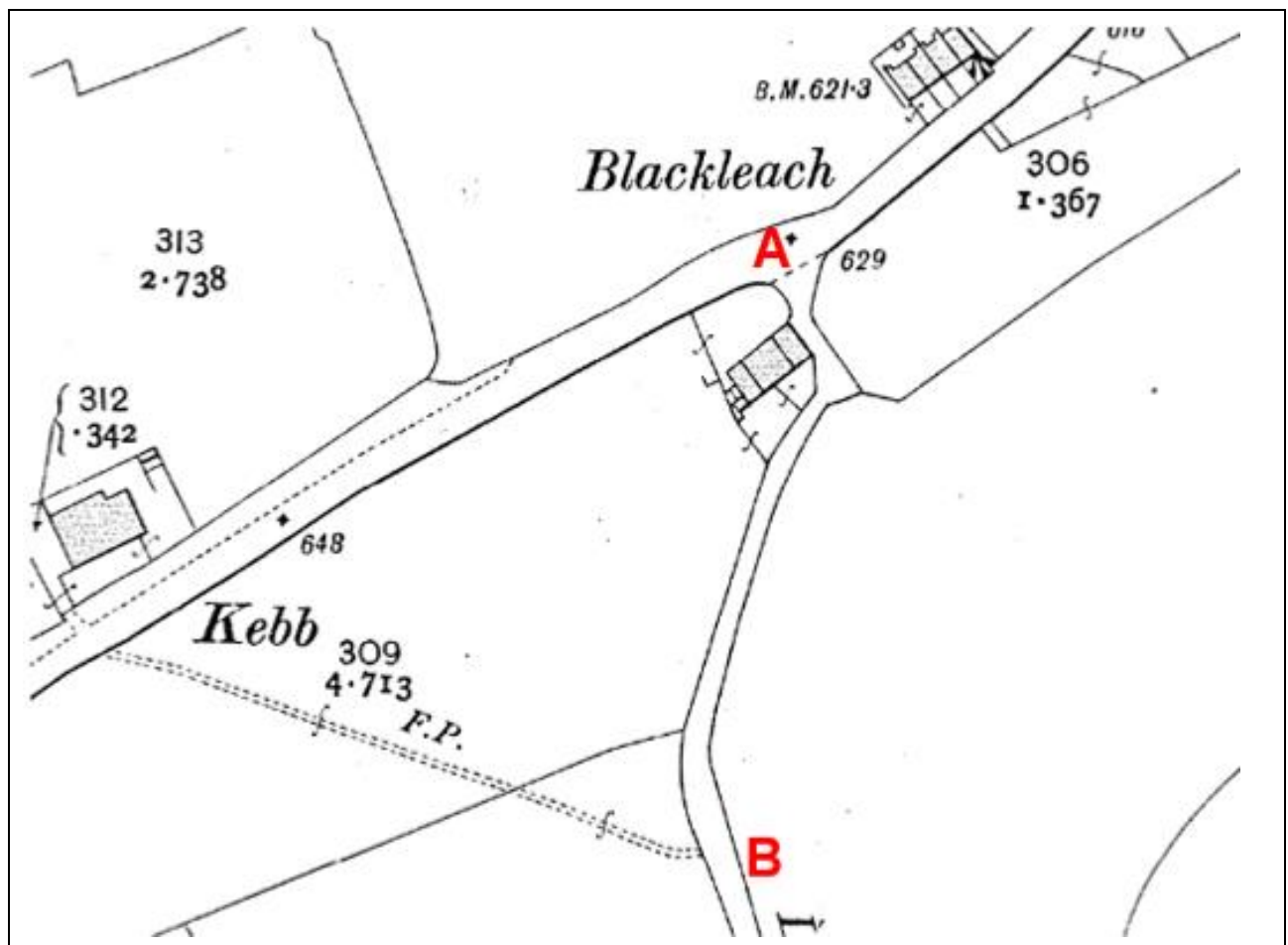
Observations		This map was most likely derived from the same survey as the 25 inch OS Map published in 1893. It again shows the route under investigation as a substantial named and bounded through route consistent with how other public vehicular routes were shown. Shading is still shown
Investigating Officer's Comments		Limers Lane existed in 1895 and appeared to be capable of being used on horseback and with vehicles.
1 inch OS Map Sheets 68 and 76	1896-1898	Small scale Ordnance Survey maps published 1896-1898. Date of survey not given.





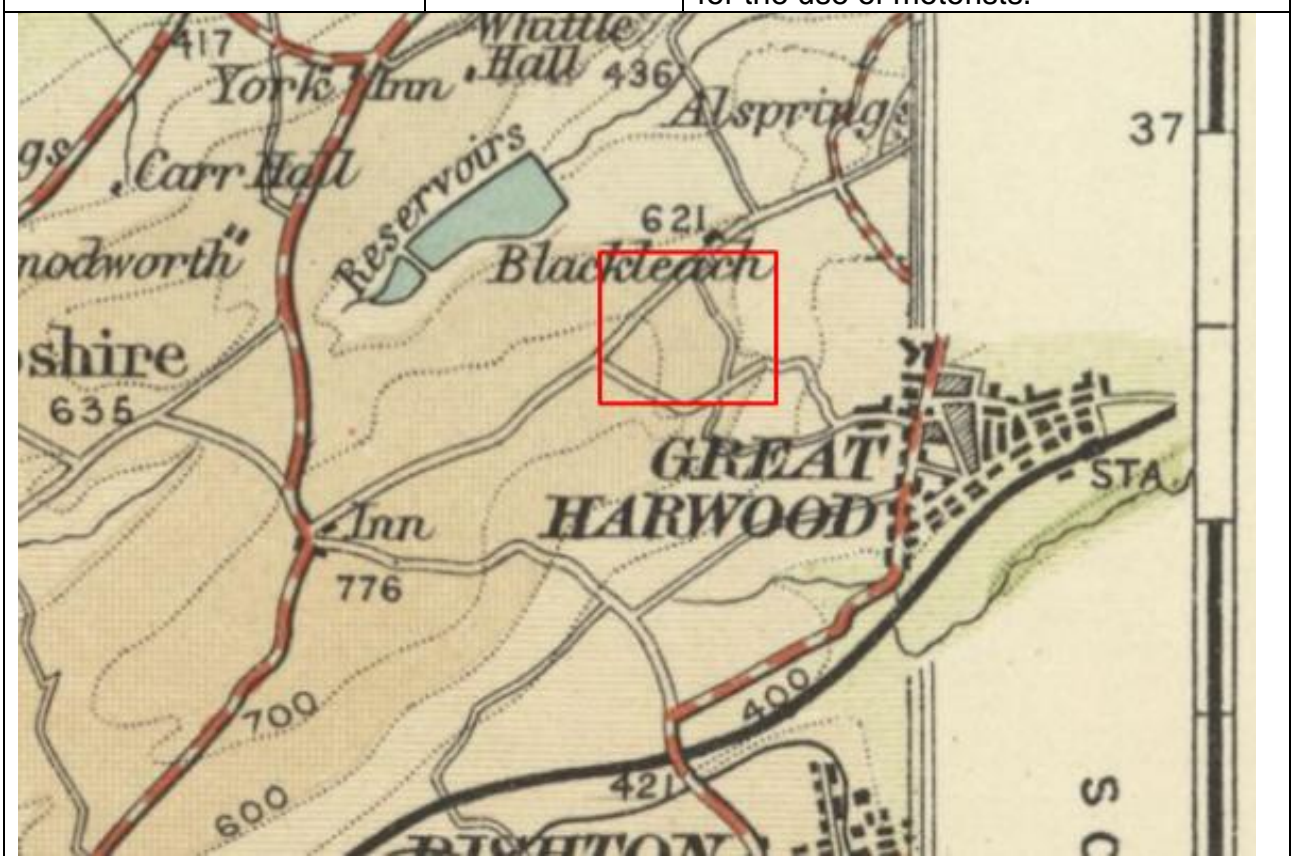
Observations		The route under investigation is shown as a second class metalled road.
Investigating Comments	Officer's	The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown – and in this case Limers Lane - had public rights for those travellers.
25 inch OS Map Sheet 63-1	1912	Further edition of the 25 inch map surveyed in 1890-92, revised in 1909 and published in 1912.

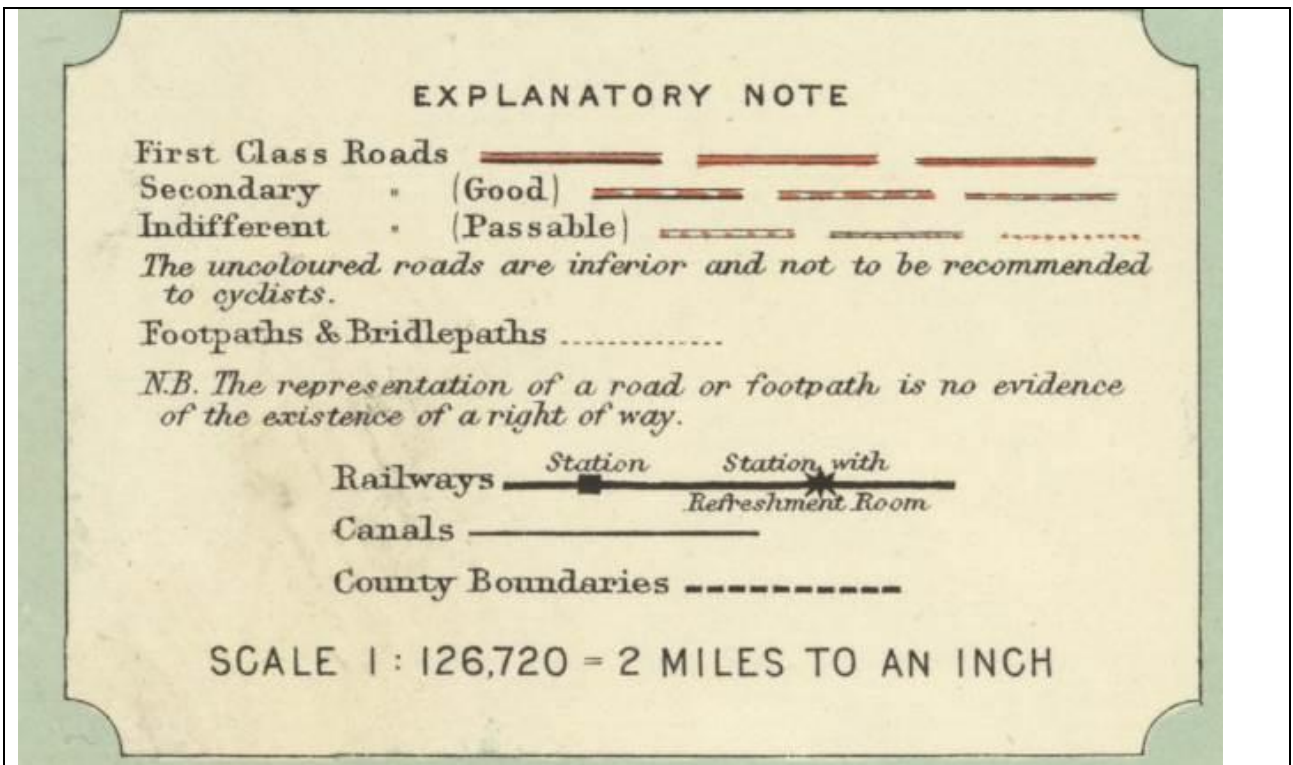




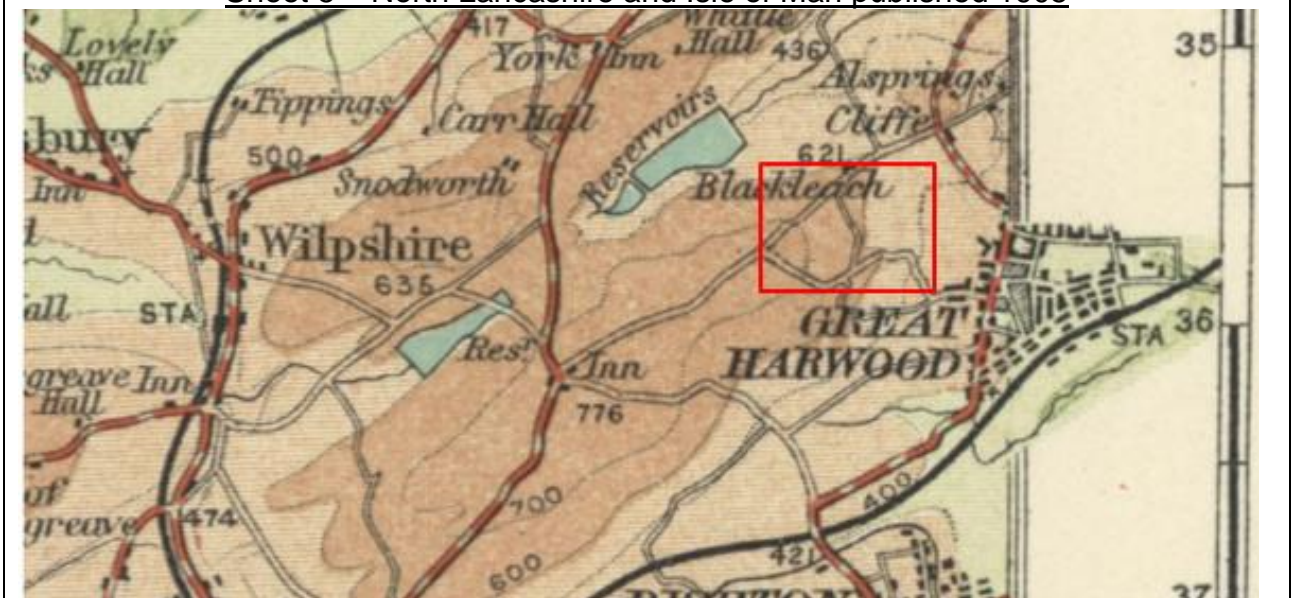
Observations		The route under investigation is shown in the same way as it is shown on the first edition of the 25 inch map although the thickened lines previously used to indicate the administrative status of roads are no longer shown on this map series by the Ordnance Survey. Both footpaths recorded as meeting Limers Lane are annotated as footpaths on the map. A change of surface condition is indicated at point A and just south of point D suggesting that the route may have been surfaced to a different standard to that of Blackburn Old Road and Clinkham Road.
Investigating Officer's Comments		Limers Lane existed as a substantial named through route in 1909 and appeared capable of being used on horseback and with vehicles.
Bartholomew half inch Mapping	1902-1906	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

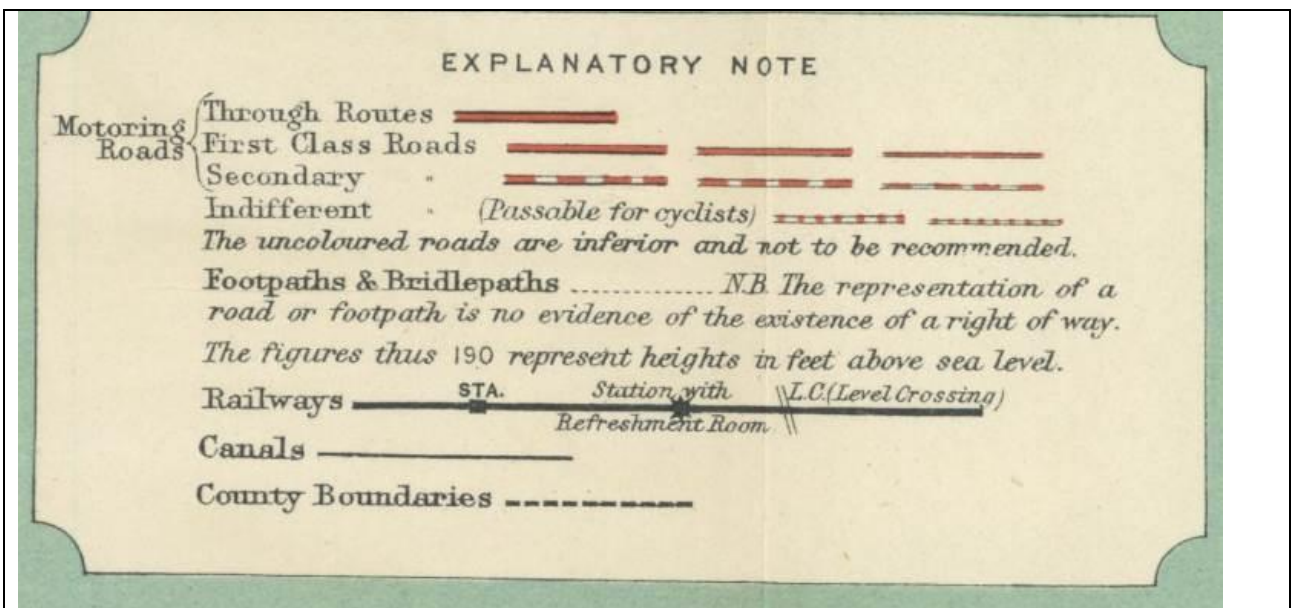
their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished 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.



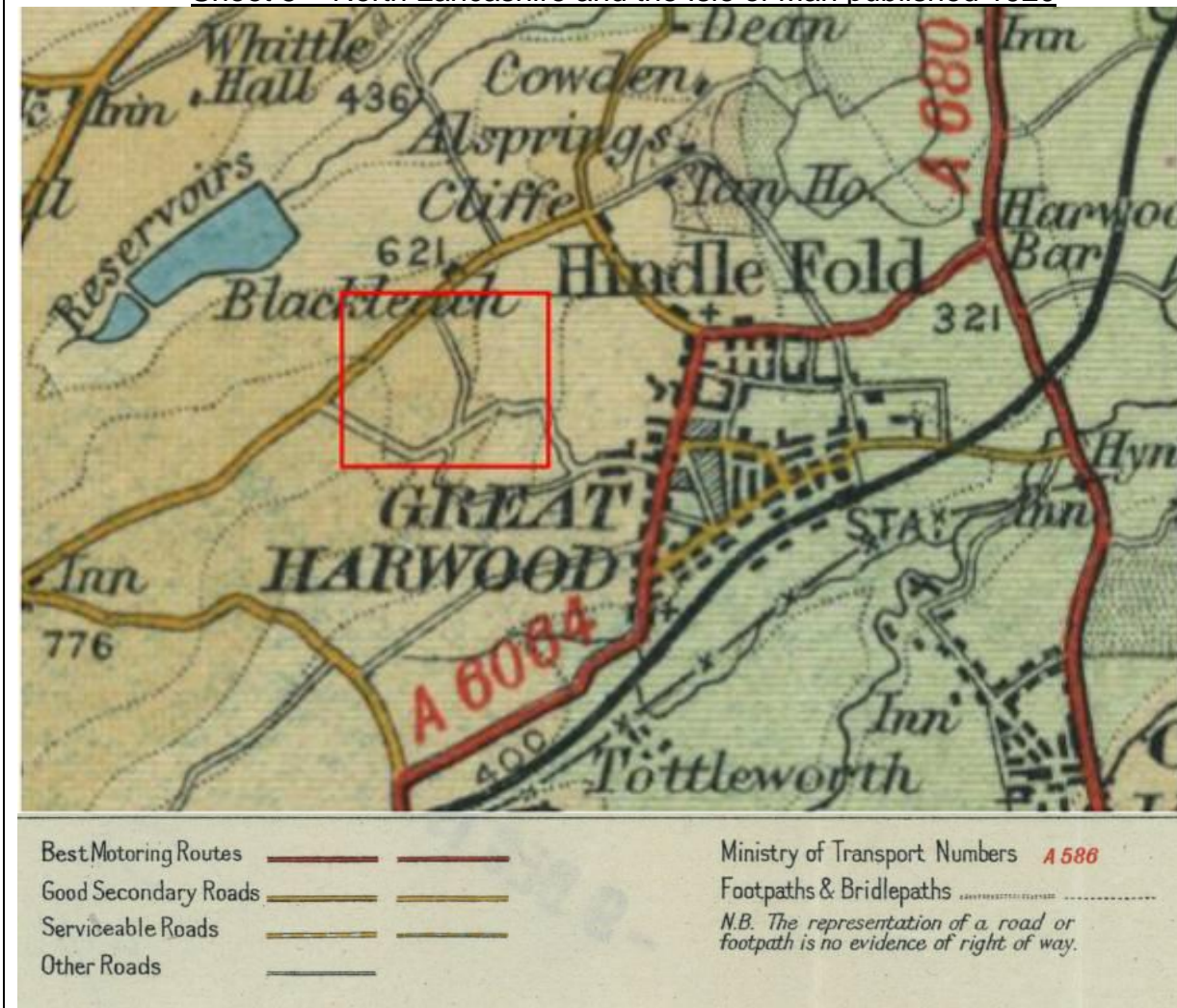


Sheet 5 – North Lancashire and Isle of Man published 1905





Sheet 5 – North Lancashire and the Isle of Man published 1920



Sheet 31 – North Lancashire published 1941

Observations		The route under investigation is shown on all three maps. It is shown as an uncoloured road in 1905 and 1920
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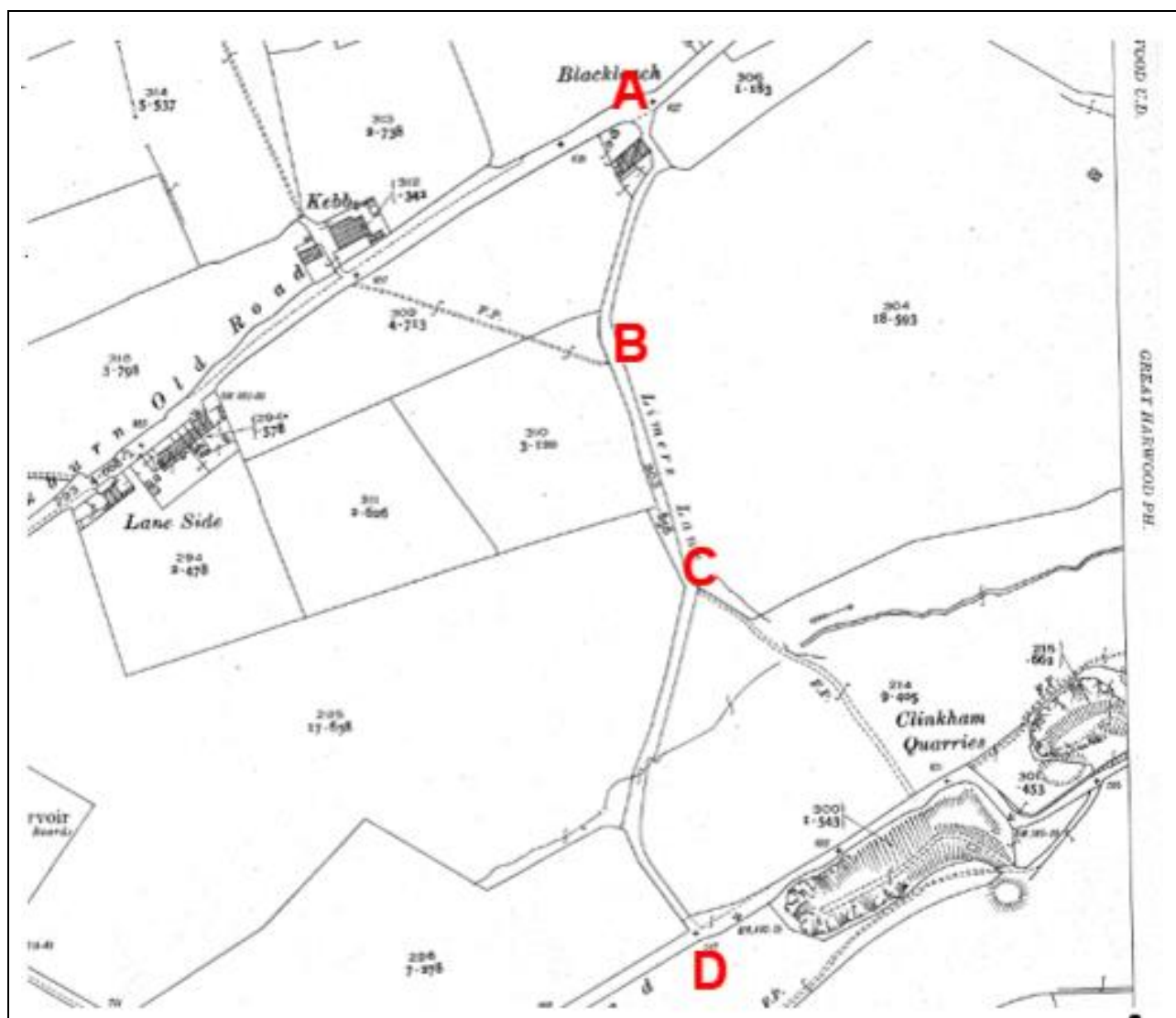
		<p>which is described in the map key as being inferior and not to be recommended to cyclists. All three map keys include symbols to indicate routes considered to be footpaths and bridleways although very few are actually shown. The 1941 map shows the route under investigation as 'other roads'.</p>
Investigating Officer's Comments		<p>The early 1900s saw a significant increase in the use of motorised vehicles and the classification of minor roads was constantly being revised by Bartholomew as some were improved to cope with the increasing traffic while others were virtually abandoned and fell into disrepair. Before 1920 few roads other than main roads were tarred but the travelling public had lower expectations of surface conditions than today and it would not be uncommon for an unsealed road, at the time considered adequate for horse drawn vehicles, to be shown.</p> <p>Whilst the key to the map states that the representation of a road or footpath is no evidence of a right of way the fact that the route is clearly shown as a road connecting to other public vehicular highways suggests that it was considered to be a public highway in the early 1900s.</p>
Finance Act 1910 Map The National Archives Ref: IR133/2/124	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>The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation</p>

		<p>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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Observations		The full length of the route under investigation is shown excluded from the numbered plots in the same way that Blackburn Old Road and Clinkham Road are excluded with the exception of the first 35 metres from point A. From point A it appears that the plot of land numbered parcel 306 to the east of the route is also excluded with no number allocated to it with no indication on the OS base map used to prepare the map why this may be.
Investigating Comments	Officer's	The map prepared under the provisions of 1910 Finance Act shows the whole of the route excluded from adjacent land in private ownership. The Act required all land in private ownership to be recorded so that it could be valued and the owner

		<p>taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and the accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable). The Instruction No. 560 to the surveyors said that the parcels 'should continue to be exclusive of the site of the external roadways'. It is advised that roadways were said to be routes 'subject to the rights of the public' and therefore exclusion of a route may indicate that public use was known but not necessarily vehicular status. Whilst there may be other reasons for a route to be excluded – notably cases of private roads set out in Inclosure Awards with no assigned landownership - but in this instance there is no evidence to suggest that the route derived from the Inclosure process and current landownership details show landownership is unregistered and unknown, indicating that the route's status was more likely than not excluded because it was considered to be public. In this instance therefore the exclusion of the route from the taxable hereditaments is good evidence of, but not conclusive of, public carriageway rights. There are no other reasons evident to account for its exclusion</p>
25 Inch OS Map Sheet 63-1	1931	<p>Further edition of 25 inch map (surveyed 1890-92, revised in 1929 and published in 1931.</p>

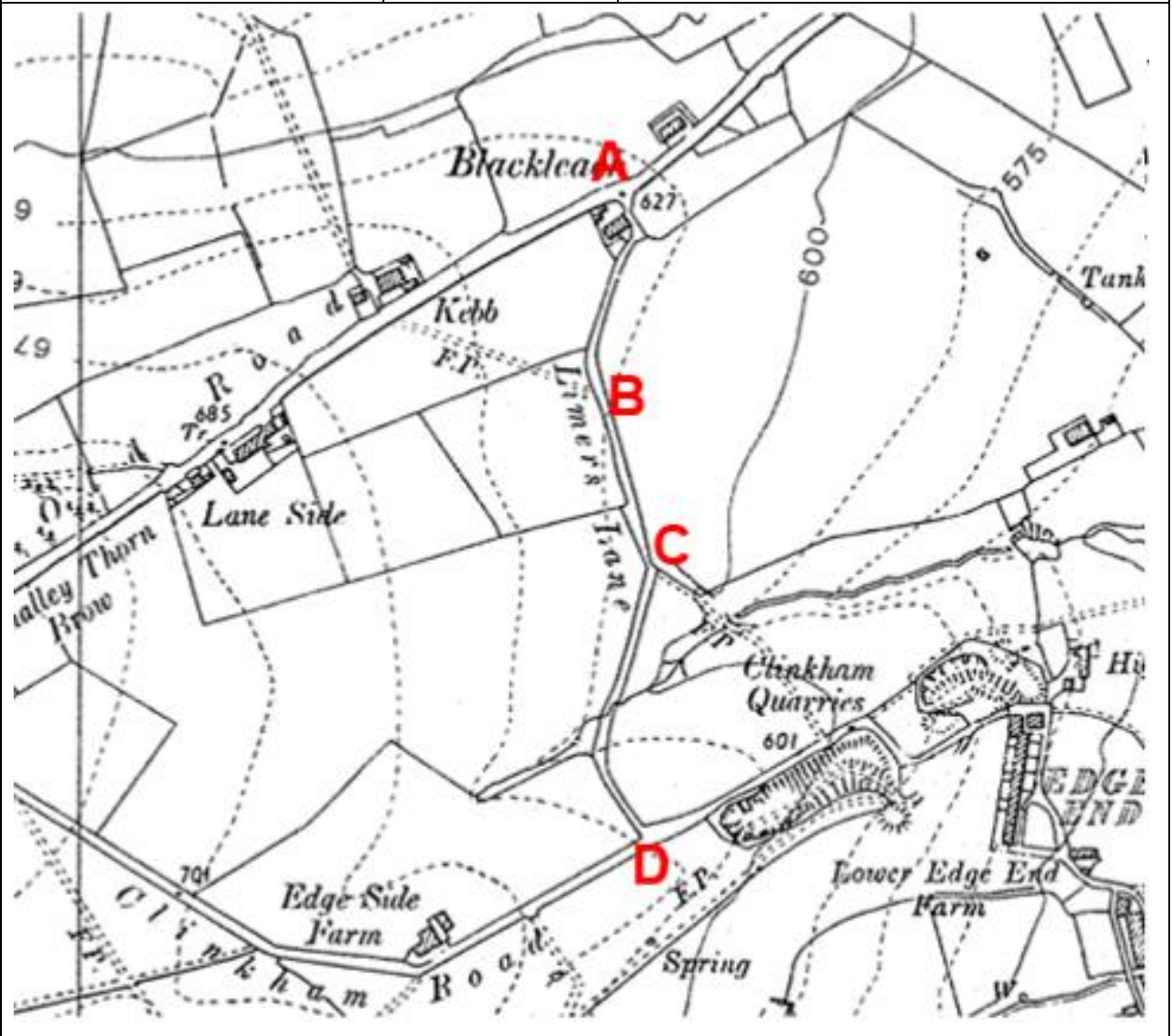


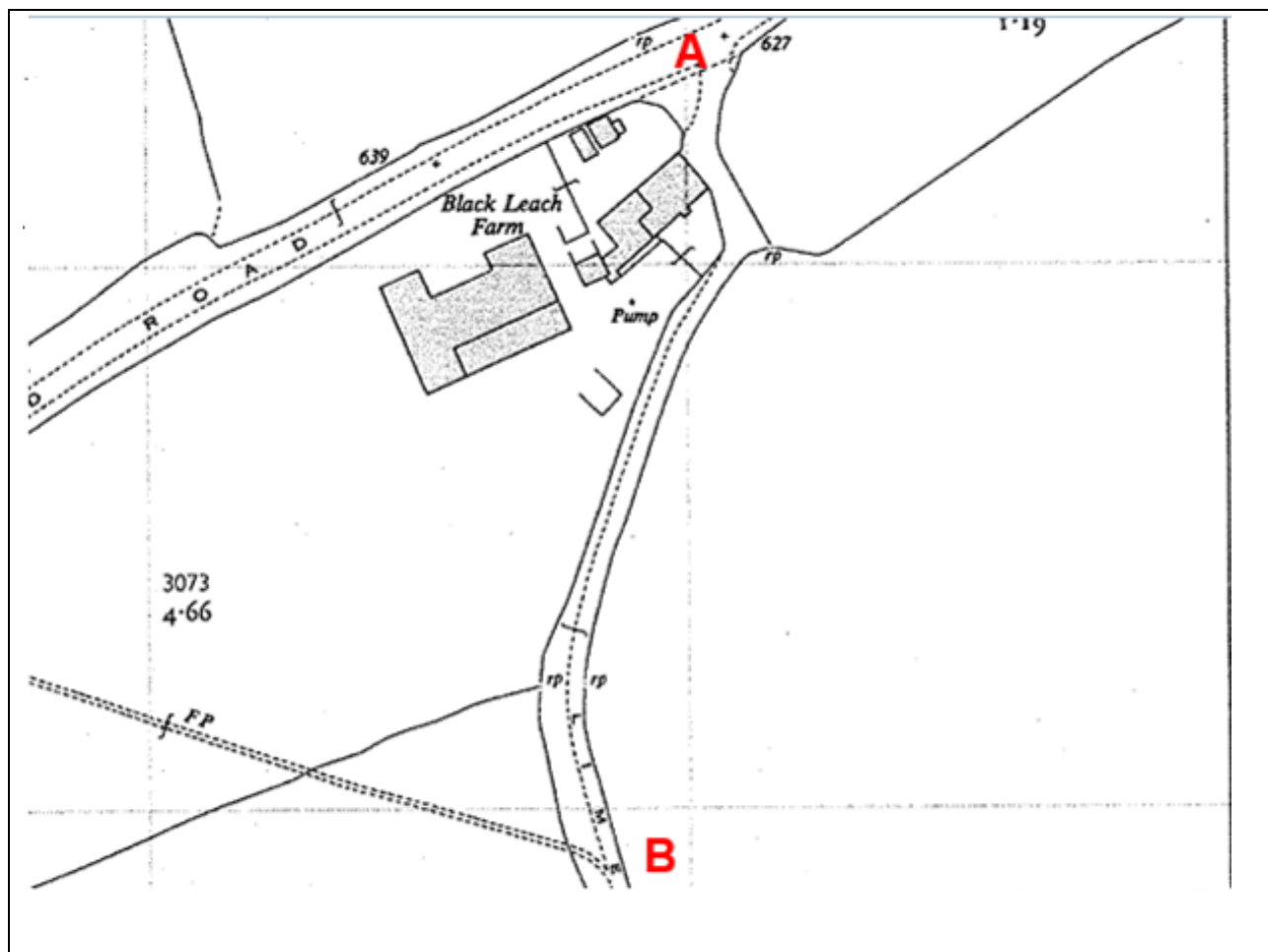
Observations		The full length of the route under investigation is again shown in the same way as it is shown on earlier editions of OS mapping.
Investigating Officer's Comments		The route existed in 1929 and appeared to be capable of being used by horses and vehicles.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

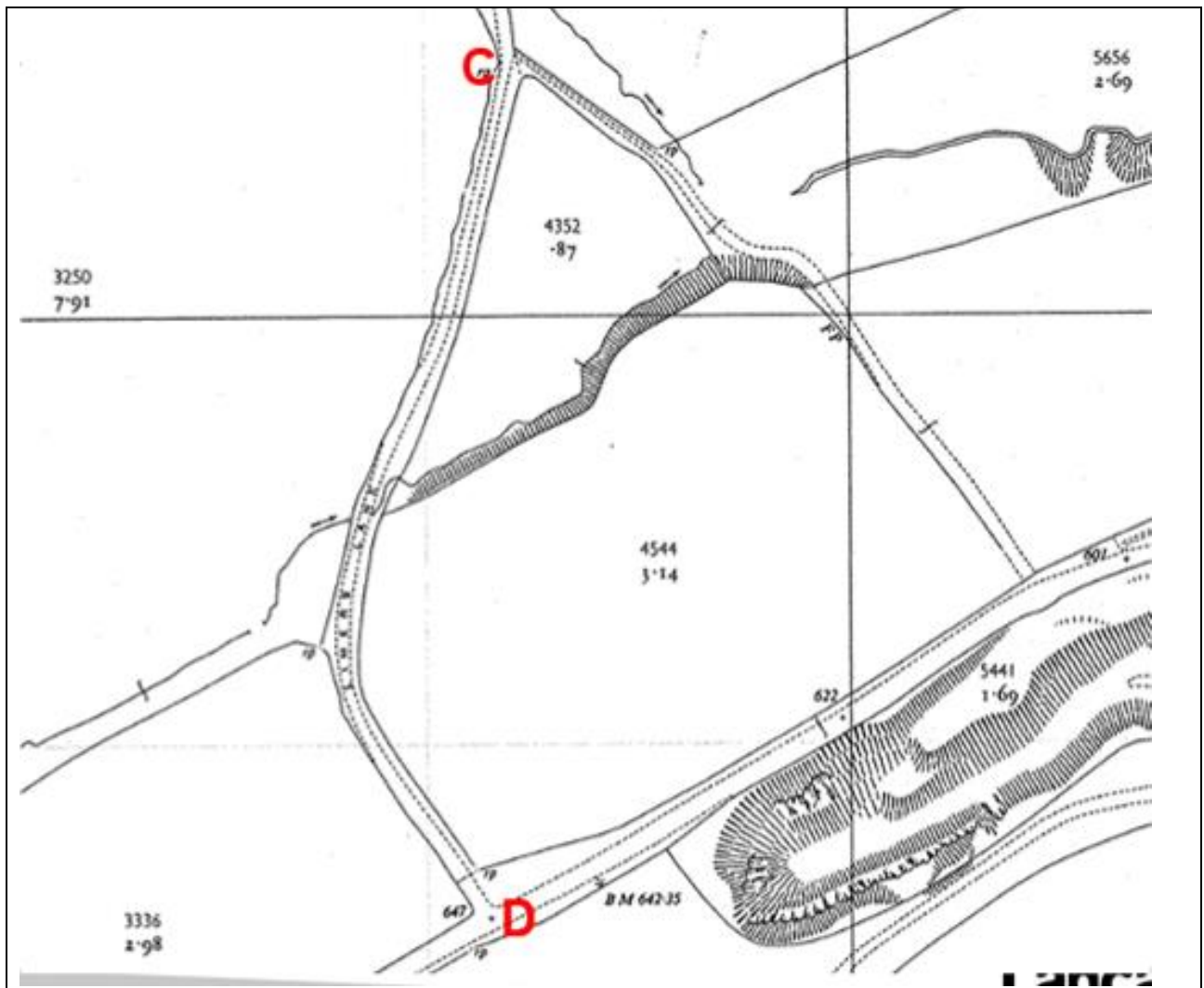
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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



Observations		<p>The route under investigation can be seen on the photograph. It is possible to see that it was a bounded route consistent with how it was shown on the OS maps considered above. From point A access onto the route and into Blackleach Farm is very clearly shown suggesting that this was quite heavily used by vehicles. Beyond the farm however the route does not appear to be heavily used – particularly by vehicles and gives the appearance of a route more likely to have been used at that time on foot and possibly on horseback.</p>
Investigating Officer's Comments		<p>It is not possible to determine from the aerial photograph whether the full length of the route was passable in the 1940s.</p> <p>However, the surface is not clearly visible suggesting that use of much of its use by the 1940s may have been on foot or possibly on horseback but suggesting that use by the public had declined.</p>

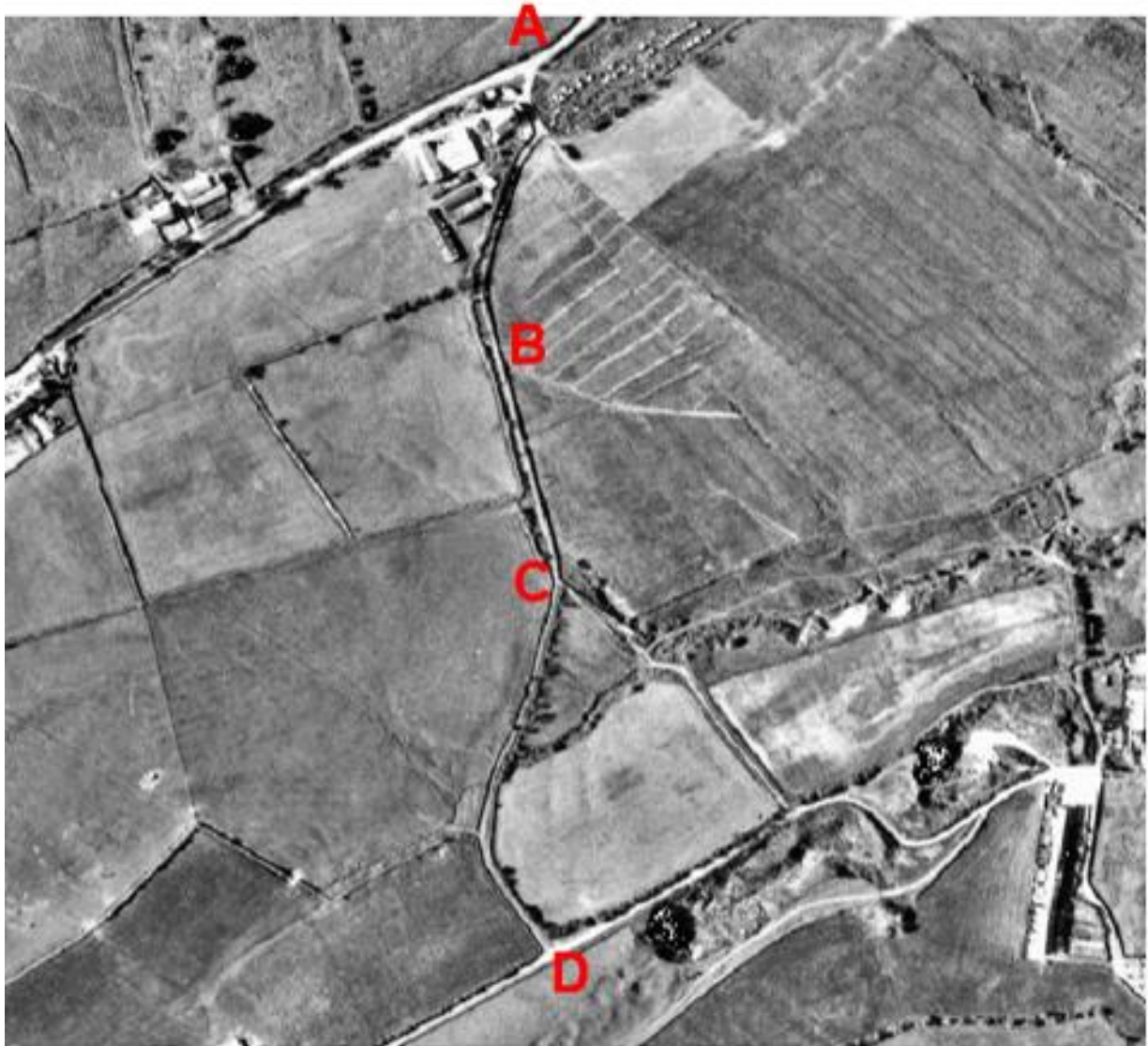
6 Inch OS Map Map Sheet SD 73SW	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.
		
Observations		The route under investigation is again shown as a substantial bounded route and is named on the map.
Investigating Officer's Comments		The route under investigation existed in the 1930s and appeared to be capable of being used.
1:2500 OS Map Sheet SD 72 32	1957	Further edition of 25 inch map reconstituted from former county series and revised in 1956 and published in 1957 as national grid series.





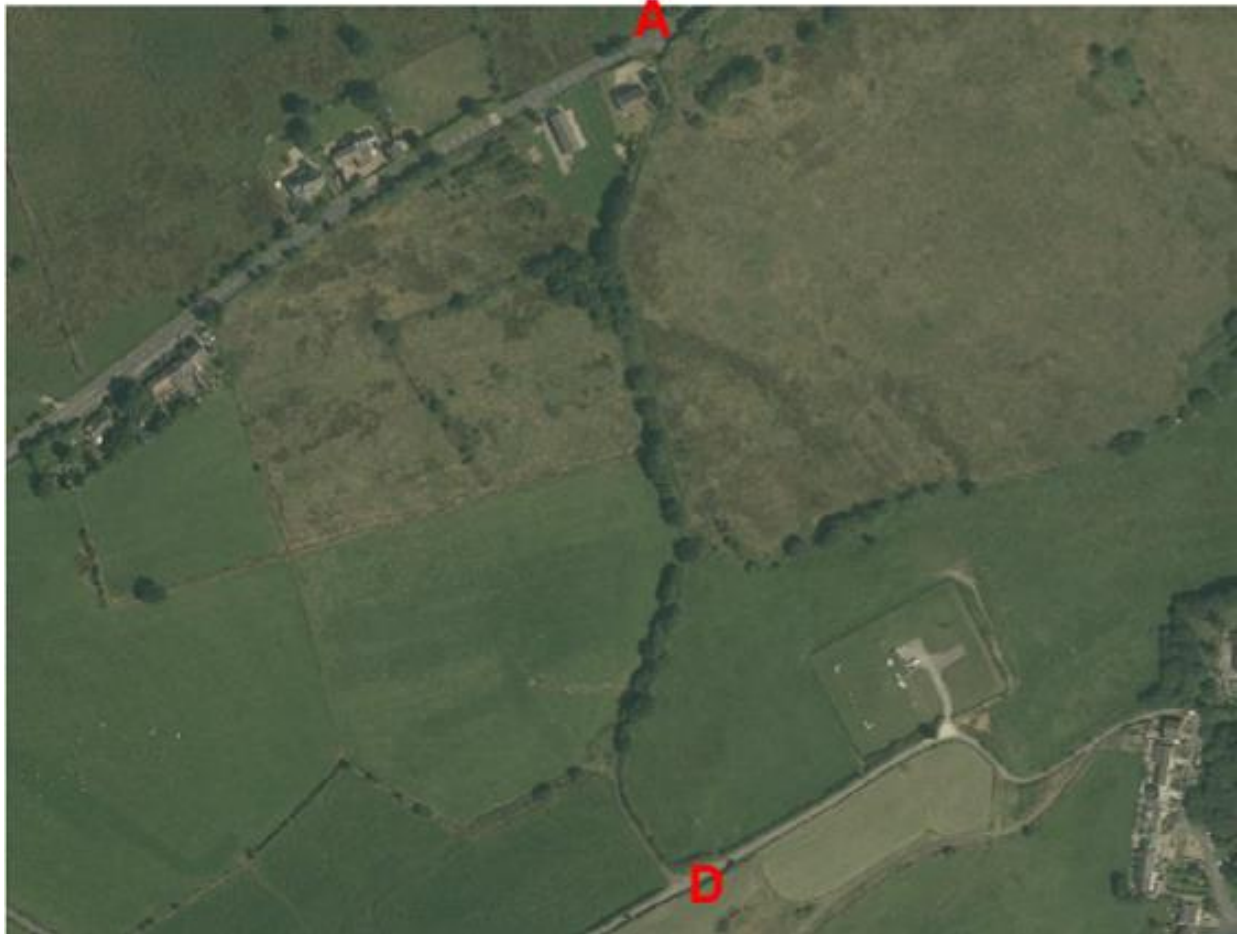
Observations		<p>The full length of the route under investigation is shown as a named route. From point A access onto the route remains unaltered from previous editions of the map and provides access to Black Leach Farm. Beyond the farm however the route – whilst still shown an enclosed lane the boundaries of which are unaltered – is now shown with a broken dashed line along it through to point C and then largely with parallel dashed lines between the solid boundaries of the lane. This suggests that a much narrower trodden width now existed and that possibly a narrow track had now formed with grass/vegetated sides indicative of much lower levels of use.</p>
Investigating Comments	Officer's	<p>The route under investigation existed in 1956 but consistent with how the route</p>

		is shown on the aerial photograph taken in the 1940s, use of the route appears to have declined – particularly by vehicles.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		The route under investigation can be seen on the photograph. It is more visible than it was on the 1940s photograph but not as wide or visible as the public vehicular routes to which it connects.
Investigating Officer's Comments		No inference can be made with regards to the existence of public rights but the aerial photograph supports the existence of the route in the 1960s. The fact that it is more visible than it was in

		the 1940s may be because of an increase in vehicular use again. It appears highly unlikely that the route, having seen a decline in use, had been surfaced to make it suitable for modern day traffic but the way that it appears in the 1960s would be consistent with the increased use of mechanical farm machinery which could then use the route to access the adjoining fields.
Aerial Photograph	2014	Aerial photograph available to view on GIS.



Observations		The line of the route can be seen with access from point A to Blackleach Farm visible and also the section from point D extending north to the ford clearly visible. The remainder of the route cannot be seen with trees obscuring sight of the route.
Investigating Officer's Comments		It is not possible to determine from the aerial photograph whether the full length of the route was passable in 2014.
Definitive Map Records		The National Parks and Access to the

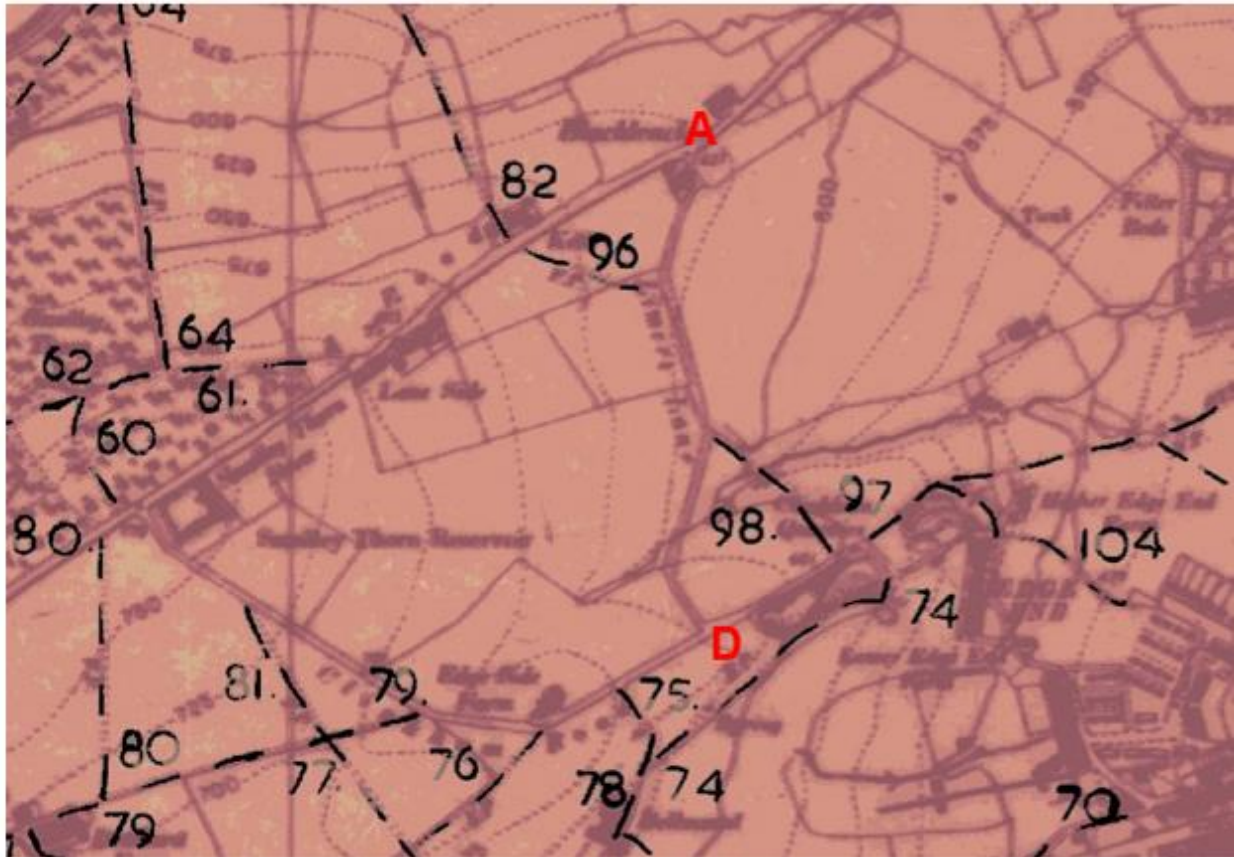
		<p>Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<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 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>Great Harwood was an Urban District Council in the 1950s for which no Parish survey maps or cards were produced.</p>
Draft Map		<p>The Draft Maps were given a “relevant date” (1st 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 1st 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>



No. path	Kind of path.	Position	Length (Miles)	Other part
• 96.	Footpath	Starts at Gap in stone wall on Blackburn Old Road over field through F.G. and K.G. and ends at Gap in wall on Limers Lane.	0.10	
• 97.	Footpath	Branches off Clinkham Road across Higher Edge End Farm and ends in Lowerfold.	0.36	
• 98.	Footpath	Starts at Gap in wall in Limers Lane and ends at F.G. and Gap in Clinkham Road.	0.12	
• 99.	Footpath	Ash path through allotments commencing		

Observations		<p>The route under investigation is not shown on the Draft Map. Of significance however is the fact that two public footpaths are shown to start/finish on the lane.</p> <p>11-4-FP96 is shown to connect to the lane at point B and is described in the Draft Statement as ending at the gap in the wall on Limers Lane. 11-4-FP98 starts at point C on the lane and is described in the Draft Statement as starting at a gap in the wall on Limers Lane. The two footpaths are clearly shown and numbered as being separate routes which both met Limers Lane implying that the lane was considered to be a public vehicular by Great Harwood Urban District Council, i.e. it must have had some public rights yet was not recorded as footpath or bridleway.</p>
Provisional Map		<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 route under investigation is not shown on the Provisional Map and no representations about it were made.</p>
The First Definitive Map and Statement		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>
Observations		<p>The route under investigation is not shown on the First Definitive Map and Statement.</p>
Revised Definitive Map of Public Rights of Way (First Review)		<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 25th April 1975 (except in small areas of the County) the</p>

		Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
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Observations		The route under investigation is not shown on the Definitive Map of Public Rights of Way (First Review).
Investigating Officer's Comments		From 1953 through to 1966 there is no indication that Limers Lane was considered to be a public footpath, bridleway or RUPP (road used as a public path) by the Surveying Authority. There were no objections or representations made regarding the route from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Highway Adoption	1929 to present	In 1929 the responsibility for district

<p>Records including maps derived from the '1929 Handover Maps'</p>	<p>day</p>	<p>highways passed from rural district 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. Urban district councils handed responsibility to the County Council later and the maintenance sheets combined these sources.</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>
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Observations		The route under investigation is not recorded as a publicly maintainable highway on the county council's List of Streets
Investigating Officer's Comments		The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of way. It is possible that its early history was not known
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No records relating to the stopping up, diverting or creation of public rights along the route were found.

Investigating Comments	Officer's		If any unrecorded public rights exist along the route they do not appear to have been stopped up or diverted.
Statutory deposit and declaration made under section 31(6) Highways Act 1980			<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations			No Highways Act 1980 Section 31(6) deposits have been lodged with the county council for the area over which the route under investigation runs.
Investigating Comments	Officer's		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.

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

Landownership

None of the land affected by the investigation is in registered ownership.

The Natural Environment and Rural Communities Act 2006

This Act effected a blanket extinguishment of unrecorded public rights for mechanically propelled vehicles (MPVs) with certain exceptions. Prior to this carriageway rights did not discriminate between vehicles which were mechanically propelled, such as cars and motorbikes, and those which were not, such as bicycles, wheelbarrows, horse-drawn carriages, donkey carts, etc. If Committee concludes that the evidence shows that, on the balance of probability, public carriageway rights exist on Limers Lane, it is then necessary to consider whether the Natural Environment and Rural Communities Act 2006 has extinguished public rights for MPVs. Limers Lane was, at the time of the Act not recorded as a BOAT and was not on the List of Streets (maintained at public expenses) and it does not appear to have been used mainly by the public in MPVs. There is no claim that any other of the other exemptions apply. Therefore, in the event that public carriageway rights are shown to exist the appropriate status for Limers Lane to be recorded on the Definitive Map and Statement would be Restricted Byway, with public rights with non-mechanically propelled vehicles, horses or on foot.

Summary

This investigation has been carried out based entirely on historical map and documentary evidence.

As with most cases investigated, there is no single piece of map or documentary evidence which stands alone to confirm the public legal status of the route.

However, in this case there appears to be strong and consistent evidence from the mid-1700s onwards suggesting that the route was believed to be and was capable of being used as a public vehicular route at that time.

It was first shown to exist on a map accompanying an agreement dated 1762 where it appears to have already existed as a substantial through route consistent with how other public vehicular routes are shown at that time. It is shown in its entirety as a cross road on two key small-scale commercial maps – Yate's Map published in 1788 and Greenwoods Map of 1818 and partially shown on Hennet's Map of Lancashire published in 1830. These maps were produced primarily for travellers and would not have served the purpose unless most of the ways shown were available to the public. The depiction of Limers Lane in the same way as known public carriageways suggests Limers Lane is also public carriageway.

It is then consistently shown as a substantial through route linking to other public vehicular routes on all OS maps examined. It is consistently named as Limers Lane and shown ungated and consistent with how other public vehicular routes were shown. On the 1st edition 25 inch OS map it is shown with a thickened line down the east side to denote a metalled public road for wheeled traffic, kept in proper repair by the local highway authority.

It is also shown on Bartholomew's small-scale maps in the first half of the 1900s as a road – although use of the route may have declined by that time as a consequence of the surface being noted as being inferior. Bartholomew's maps were produced to a significant degree for cyclists (who were only allowed on carriageways) and had a system of revision from user information. The depiction of Limers Lane on these maps supports it being public carriageway.

It is also clearly shown excluded from the numbered hereditaments/plots on the Finance Act Map prepared in the early 1900s consistent with the view that it was a public highway – most probably vehicular.

In the 1950s Great Harwood Urban District Council recorded two public footpaths which terminated on the route suggesting that they did not consider that Limers Lane required to be recorded as a public right of way on the Definitive Map and Statement because public vehicular rights existed along it.

Since the mid-1950s the maps and aerial photographs examined indicate that use of the route declined, particularly with vehicles and recent site evidence now suggests that it is some time since the route has been used as a vehicular though route with only the short section from point A leading directly into Blackleach and a short section from point D used by farm vehicles to access an adjacent field are accessible to vehicles. However, any decline in use would not remove any public rights already existing.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

There is no applicant in this instance as this is a self-started investigation.

Information from Others

The Green Lane Association opined that the route should be recorded as an unclassified country road, based on the available map evidence and that these carriageway rights account for why it is not shown on the Definitive Map, owing to this higher status.

The adjoining landowners were consulted, those who responded confirmed the land in their ownership, some noted private access rights along parts of the route to gain entry to their land and their own regular use of the lane. Some highlighted continued public use of the route as a footpath with one landowner recollecting use by vehicles about 40 years ago until lack of maintenance led to much of the route becoming overgrown.

Cadent Gas responded to our consultation stating that there was no record of apparatus which may be affected.

Atkins Global responded to our consultation to state that they had no objection.

Information from the Landowner

There are no registered landowners.

Assessment of the Evidence

The Law - See Annex 'A'

Conclusion

Both dedication by the owner and user by the public must occur to create a highway otherwise than by statute.

Dedication and user are questions of fact to be determined from the evidence. In this matter there is no modern user from which to deem a dedication under S31 Highways Act and so Committee is invited to consider whether there is sufficient evidence from which to infer dedication at Common Law. In common law the owners' intention has to be proved on balance of probabilities. The evidence in this matter relates to how this route is shown on various maps and documents and whether this indicates that the owner of this route must, on balance, have given this route up for public use.

Committee is referred to the details of and assessment of the documentary evidence concerning this route and the summary prepared by officers in the Public Rights of Way Team.

In this matter there are a lot of consistent documents supporting the existence of a vehicular highway. When taken in totality it is suggested that there is a sufficient body of evidence to support the existence of an old carriageway route along Limers Lane. Use in vehicles as recently as 1980s is referred to but because of the route being a connection between highways for many decades Committee is invited to consider that there was sufficient public use back in the eighteenth century to create the highway.

The documentary evidence is supportive of the route under investigation being a very old vehicular highway and the rights have never been stopped up. By virtue of the Natural Environment and Rural Communities Act 2006 the public rights for mechanically propelled vehicles are extinguished and the appropriate status for the old vehicular route to be recorded is as restricted byway which is reflected in the recommendation

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 are no significant risks associated with the decision making process.

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-689		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A