

Regulatory Committee

Meeting to be held on 15th September 2021

Part I

Electoral Division affected:
Lancaster Central

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of Bridleway on Snuff Mill Lane, Stodday, Lancaster

(Annex 'A' refers)

Contact for further information quoting the reference number 804-652:

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Executive Summary

Application for the addition of a bridleway along Snuff Mill Lane from the end of the section recorded as U11870 to the Lune Estuary Path, Stodday near Lancaster.

Recommendation

- (i) That the application for the addition of a bridleway along the unrecorded section of Snuff Mill Lane to the Lune Estuary Path, be accepted subject to the recording of restricted byway rights and inclusion of the section of the historical route crossing the former railway (Lune Estuary Path) to provide access to the salt marsh.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a restricted byway along Snuff Mill Lane from the section recorded as U11870 to the salt marsh as shown on Committee Plan between points A-B-X-C-D.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition to the Definitive Map and Statement of Public Rights of Way of a bridleway along the unrecorded section of Snuff Mill Lane to the Lune Estuary Path at Stodday near Lancaster.

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

Lancaster City Council

Lancaster City Council provided no response to consultation.

Aldcliffe with Stodday Parish Council

Aldcliffe with Stodday Parish Council noted a keen interest in the use and future of this route. It is understood that the Parish Council has recently improved the surface of the route.

The Parish Council's consultation response first expressed that the council was cautiously positive about this application believing that public bridleway status is unlikely to have a significant impact on existing levels of use of the path, particularly by riders.

However the response went on to clarify that on balance the Parish Councillor feel that footpath status is more appropriate due concerns over damage to the surface were horse traffic to increase.

Concern was also expressed that the drainage ditch, which runs adjacent to almost the full length of the path, could present a hazard to users, especially horses, and feel that this needs to be considered in assessing its suitability as a bridleway. Councillors suggested that some form of fencing to delineate the edge of the path would be helpful.

The Parish Council stated that they would welcome the County Council's adoption of the path as a PRow.

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	4625 5873	The end of the length of Snuff Mill Lane recorded as U11870, at the entrance to the Water Treatment Works.
B	4618 5871	Padlocked metal barrier restricting access to 1.5 metres width.
X	4590 5868	Point at which a gate historically existed across the route following the construction of the railway and which now marks the boundary of land owned by Lancashire County Council.
C	4585 5864	Junction of Snuff Mill Lane with the Lune Estuary Path (disused railway) where a metal padlocked gate with adjacent small gap restricts access.
D	4584 5859	Point on the edge of the salt marsh at the southern end of former ramped access (no longer exists)

Description of Route

A site inspection was carried out in October 2020.

The application route is approximately 425 metres long and was described by the applicant as terminating at the junction with the Lune Estuary Path. However, when investigating the application it became apparent that the historical route of Snuff Mill Lane extended as far as the salt marsh and did not stop at the railway (now the Lune Estuary Path). The route under investigation is therefore that shown on the Committee Plan between points A-B-X-C-D and is about 475 metres long.

The route under investigation starts at the western end of the section of Snuff Mill Lane which is recorded as a publicly maintainable vehicular road (U11870) and which is tarmacked up to point A. At point A there is access leading from Snuff Mill Lane to the water treatment works situated north of the route.

The route under investigation itself extends in a westerly direction from point A along a stone surfaced track approximately 4 metres wide and bounded by hedges. It continues for approximately 75 metres with evidence that the route is regularly used by farm vehicles accessing a field to the south of the route via a field gate immediately east of point B.

At point B a padlocked metal barrier across the route restricts access to approximately 1.5 metres. The gap to the side of the barrier is wide enough to allow walkers, cyclists, horse riders and motorbikes to pass through and a worn track past the barrier suggested that this was in regular use.

Beyond point B the route under investigation continues west as a route bounded by hedges – mostly overgrown. Whilst the width between the boundary hedges remains consistently at approximately 4 metres the useable track is much narrower – averaging 1.5 – 2 metres wide and overgrown along either side. There is a solid stone surface to the route which runs adjacent to an unnamed watercourse for approximately 130 metres to a point at which the watercourse is culverted. In places the surface of the route was muddy with some standing water and particularly where the watercourse was overgrown and required clearing.

At the time of inspection the culvert appeared to be blocked and water was running down the route under investigation like a stream. The water was approximately 20-30cm deep extending across the full width of the route for approximately 125 metres before running off the route to the north and back into the culvert.

Beyond the flooded section the route under investigation continued as a compact stone surfaced track in a south westerly direction towards the dismantled railway.

In the trees on the north side of the route under investigation, just before reaching a gate at point C, are two metal signs – barely visible in the overgrowth. They are standard red bordered triangular signs, as described in the Highway Code and Traffic Sign Regulations, warning anyone heading west along the route under investigation about the presence of horse riders and humps on the route for 1½ miles. The position of the signs and reference to 1½ miles suggests that the warning

signs refer to hazards to be encountered when joining/continuing along the Lune Estuary Path which runs north and south from point C.

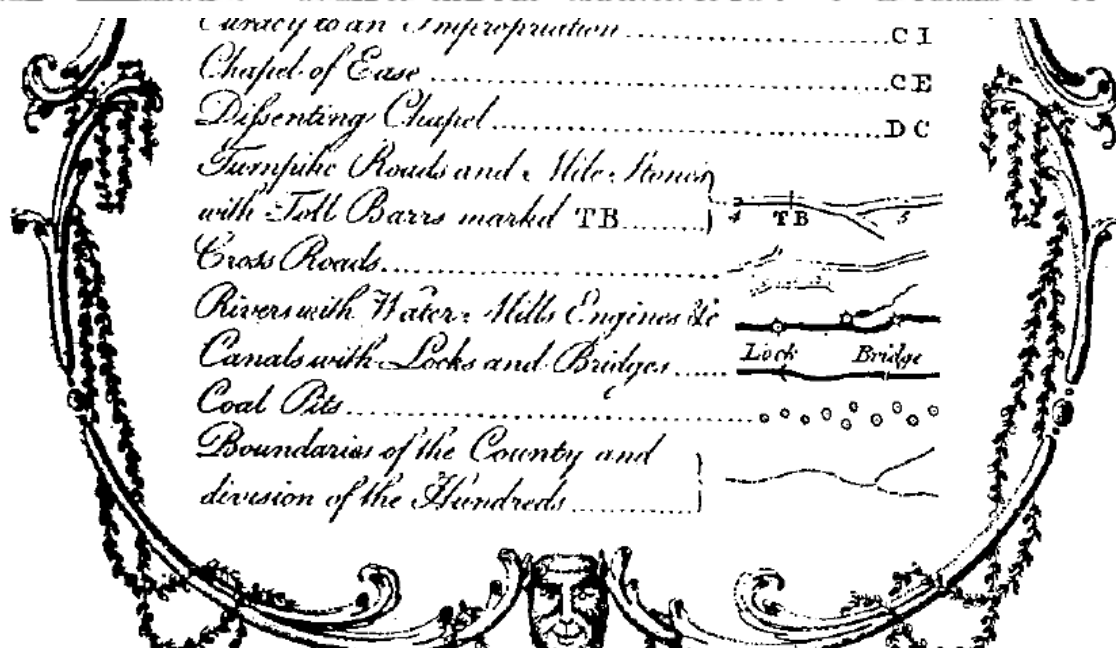
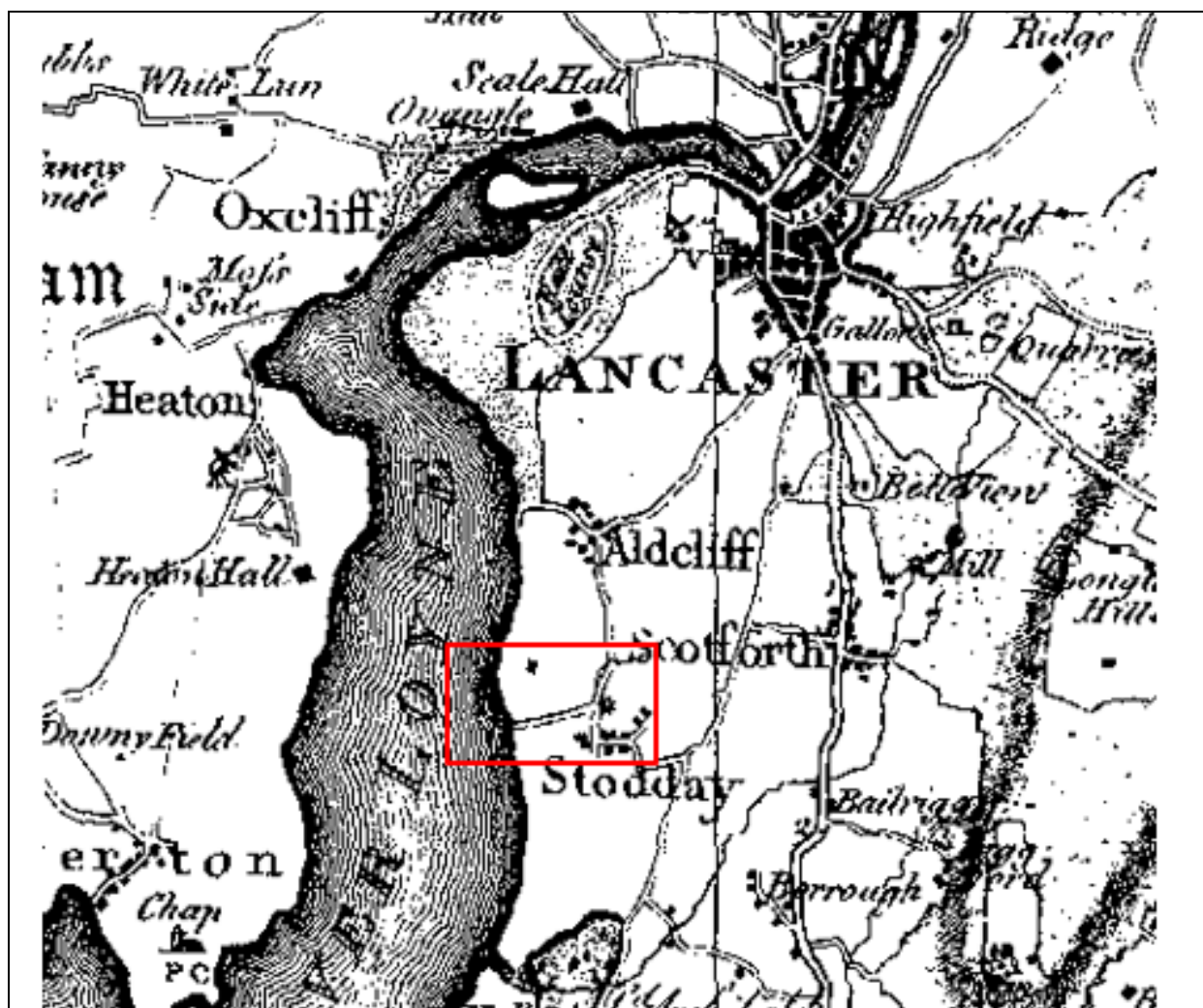
Immediately before reaching the Lune Estuary Path a padlocked metal field gate is located across the route (point C) with a well-worn track passing through a smaller gap to the side. The route under investigation meets the multi-user path and a blue and white sign points back along the route towards point A with the word 'Stodday'.

The application route was described as ending at the junction with the Lune Estuary Path but the route under investigation crosses the path (dismantled railway) and continues west into a circular area raised above the salt marsh where picnic benches and tables have been placed. There is no physical evidence of the former railway crossing at point C and no evidence of the buildings which are shown to have existed following the construction of the railway, either close to point C or to the route which provided access from point C into the picnic area. The shape of the ramp remains although its shape is softened and the masonry is no longer visible and it is now overgrown and impassable.

Map and Documentary Evidence

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

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



Observations

The route under investigation is shown as part of a longer route depicted as a 'cross road' on the map. It is shown providing access out to the estuary.

		The railway (along which the Lune Estuary Path now runs) is not shown.
Investigating Officer's Comments		The route under investigation existed in 1786 and is shown as a cross road. 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 fact that the route is shown on the map suggests that it was of a substantial nature capable of being used at that time by horses and horse drawn vehicles.
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.

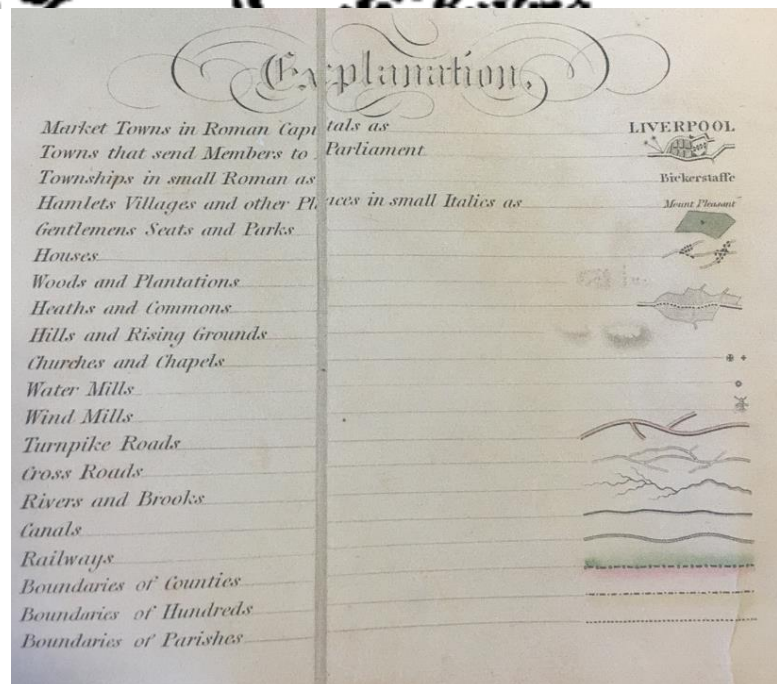


- Turnpike Roads _____
 Cross Roads _____
 Towns & other Places _____
 that send Members to Parliament } _____
 Boundaries of Counties _____

Observations

The route under investigation is shown on this small-scale commercial map as part of a longer route extending west from Stodday to the estuary. It is shown by Greenwood as a 'cross road'.

Investigating Comments	Officer's		<p>The route under investigation existed in 1818 providing access from the hamlet of Stodday direct to the estuary. 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.</p> <p>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.</p>
Hennet's Lancashire	Map of	1830	<p>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.</p>



Observations		Only the first part of the route under investigation is shown (as a cross road) extending west from Stodday towards the estuary.
Investigating Officer's Comments		It is not known why only part of the route extending west from Stodday is shown. However, the fact that part of the route is shown suggests that it did

		<p>exist in 1830, at least in part and without an obvious reason to stop, and was of a substantial nature capable of being used at that time.</p> <p>That part of the route shown is considered by Hennessey to be a cross road. It is not fully known what is meant by this term. As the only other category of 'road' shown on the map are turnpike roads, it is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i>).</p> <p><i>Hollins v Oldham Manchester High Court (1995) [C94/0205] Judge Howarth examined various maps from 1777-1830 including Greenwoods, Bryants and Burdetts. Maps of this type, which showed cross roads and turnpikes, were maps for the benefit of wealthy people and were very expensive. There was "no point showing a road to a purchaser if he did not have the right to use it."</i></p>
Tithe Map and Tithe Award or Apportionment for Ashton with Stodday	1842	<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>



Observations

A copy of the Tithe Map obtained from The National Archives for Ashton with Stodday was included with the application and was annotated by the applicant. The route under investigation is shown as part of a longer route linking to Stodday village and then extending west to an area of land marked as the marsh and providing access to the 'sand' and River Lune (the estuary). The route is shown as a bounded route and is shown in the same way as other roads known to carry public vehicular rights in the parish. The roads shown on the Tithe Map are not numbered and are not listed in the apportionment.

Investigating
Comments

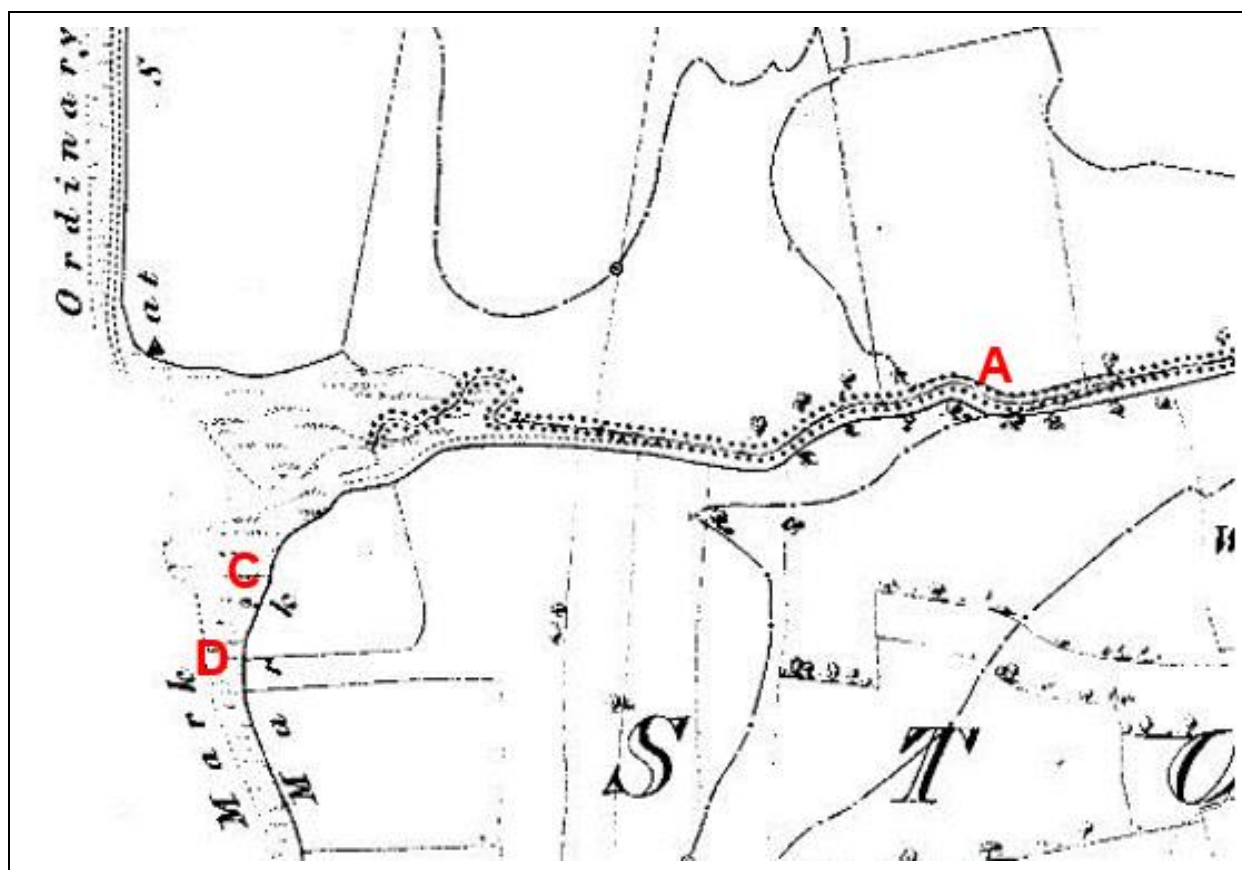
Officer's

The route under investigation existed as part of a longer route providing access from Stodday village to the salt marsh in 1842 and appeared to be capable of being used. The fact that it was not numbered and included in the Award is consistent with how other routes with known public vehicular

		rights are shown suggesting that the route was considered to be a public road at that time.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		No Inclosure Award or Map was found for the area crossed by the route under investigation.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map Sheet 34	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 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		The route under investigation is shown as part of a longer route providing access from Stodday to the salt marsh. A watercourse is shown forming the northern boundary of part of the route. No gates (lines) are shown across the route.
Investigating Officer's Comments		The route under investigation existed in 1844-45 and appeared to be capable of being used on horseback and most probably with horse drawn vehicles. It provided access to the salt marsh – from which it would have been possible to fish, scavenge or to graze animals – and appears to have been a substantial route at that time.
London and North Western Railway – Glasson Dock Branch PR32/14/32 – London and North Western Railway plans and book of reference.	1878	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

		<p>they really were public rights of way.</p> <p>Preparation of the Books of Reference involved a high level of public consultation required by the standing orders. The plans and books of reference had to be deposited with Parliament prior to the bill receiving its first reading. Notice of the application for a bill had to be published once in the London Gazette newspaper and for three successive weeks in the county newspaper. The railway company's solicitors had to write to everyone who owned land within the line of deviation (including the Surveyor of Highways). Copies of the plans, sections and books of reference in duplicate had to be sent to the clerk of the peace for each county so they could be made available for public inspection. Relevant extracts also had to be sent to the office of the Parish Clerk and office of the Board of Trade. Any alterations to the original plans required a repeat of the original advertising and consultation process. This high level of public consultation and advertisement means that railway plans were highly accurate and the statutory process required for the authorisation of railway schemes was exacting and the book of reference and deposited plans made in the course of the process needed to be of a high standard.</p> <p>The process followed was at least as thorough as any other system to record public rights at the time. Although, in themselves, railway plans are not conclusive proof of the existence of rights of way, the inclusion of the route on the plans and reference to it being a public road is very good evidence, when considered alongside all other available evidence, that the route was a public road by at least the 1870s.</p> <p>The railway opened in 1883 to transport goods and people from Glasson Dock to Lancaster. The</p>
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		railway closed to passengers in 1930 but remained in operation carrying goods until 1964. The line was subsequently sold and was purchased by Lancashire County Council who redeveloped it as a multiuser trail in the early 1970s.
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London & North Western Railway
(RAILWAYS AND WIDENINGS.)

BOOK OF REFERENCE

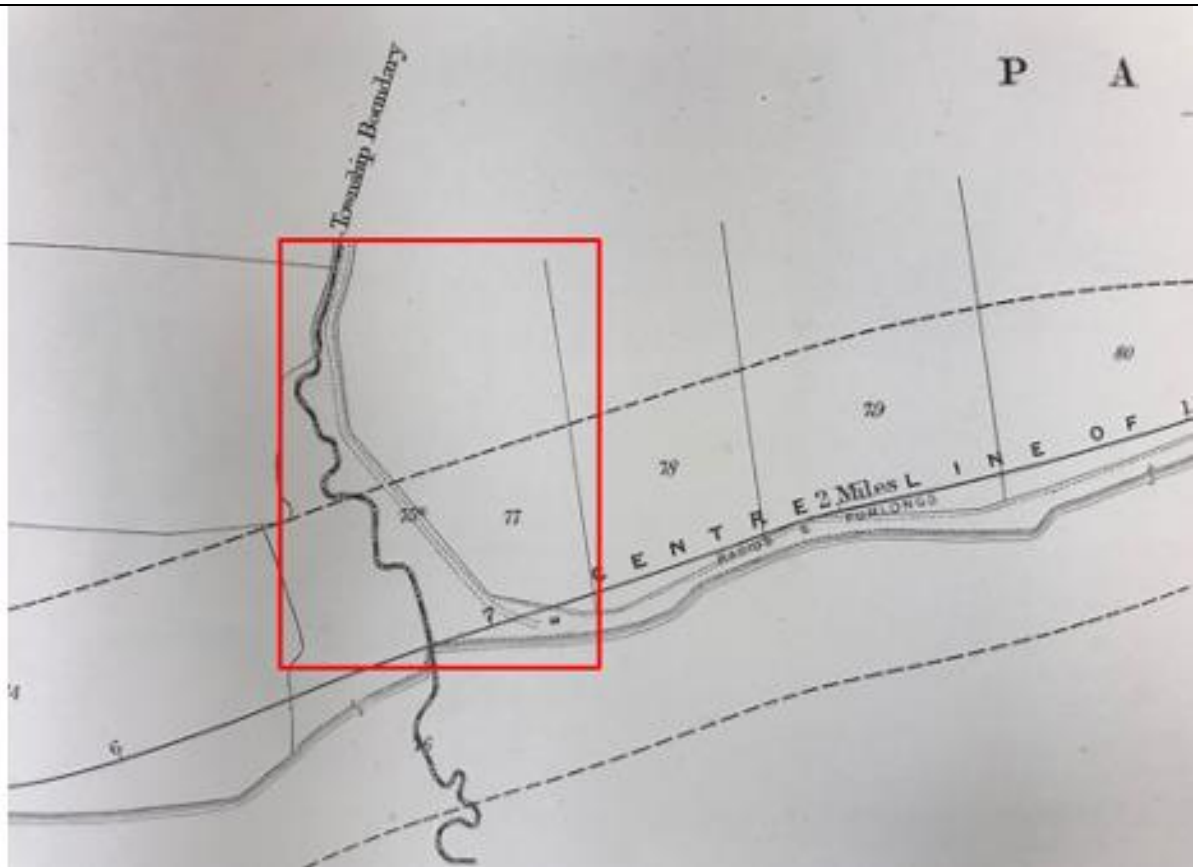
TO

*Plans and Sections of the Glasson Dock
Railways.*

SESSION 1878.

R. F. ROBERTS,
EUSTON STATION,
LONDON.

*P. Sk.
At one block November 29th 1877
P. Sk.*



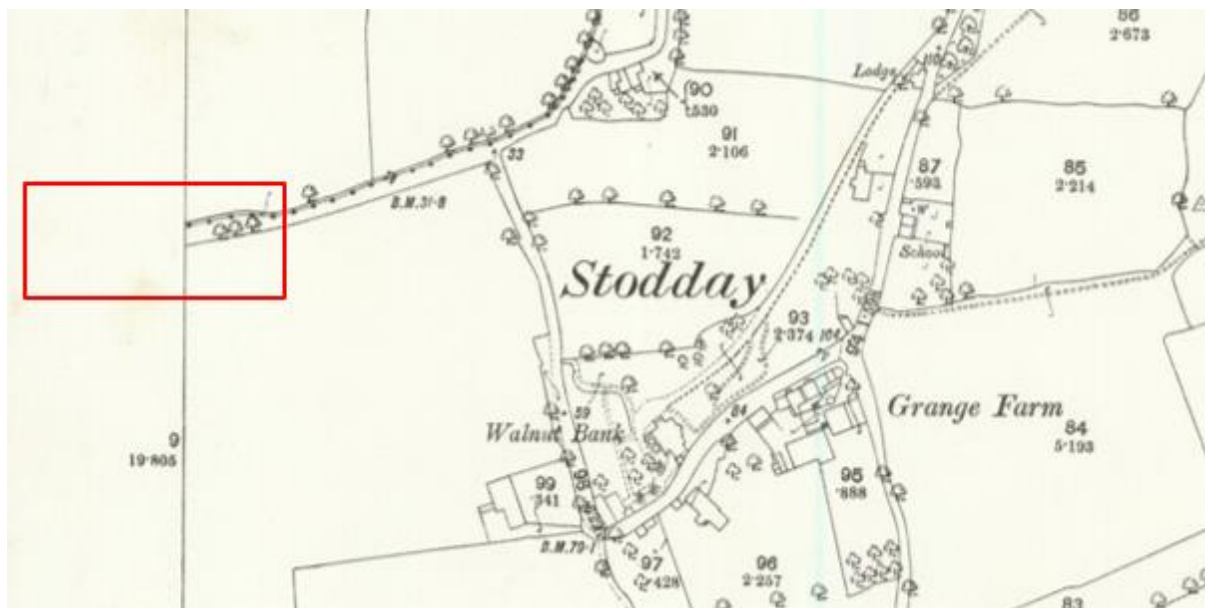
75A	Public road	The Surveyor of Highways for the Township of Ashton-with-Stodday, viz., Thomas Spekeman
Observations		<p>The route under investigation crosses a former railway track which is now part of the Lune Estuary Path.</p> <p>This multiuser path was constructed along what was originally the London and North Western Railway – Glasson Dock Branch.</p> <p>Railway Acts and Plans are held at the House of Lords library in London. A search of the House of Lords records has not been made but Lancashire Records Office hold a number of records relating to this particular railway, including maps and plans and a book of reference prepared prior to the construction of the railway dating from 1887 and these documents have been examined.</p> <p>The strip plans show the route of the proposed railway from Lancaster through to Glasson Dock. They show in detail the land affected by the proposed railway and each field or parcel of land crossed is numbered – including any roads.</p> <p>A route is shown on the plan passing through the area marked as being affected by the construction of the railway and extending out onto the salt marsh. It is numbered 75a on the plan.</p> <p>The book of reference accompanying the map provides a brief written description of each of the numbered plots (e.g. arable field), details of the owner, lessee and tenants (if applicable). Plot 75a – the route under</p>

		investigation – is listed as 'Public Road' in the ownership of the Surveyor of Highways.
Investigating Officer's Comments		The route under investigation was clearly identified as being affected by the construction of the railway. It was listed as a public road in the book of reference providing strong evidence of its historical public status.
25 Inch OS Map Sheet 34.2	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1891.





Extracts from Sheet 34.2

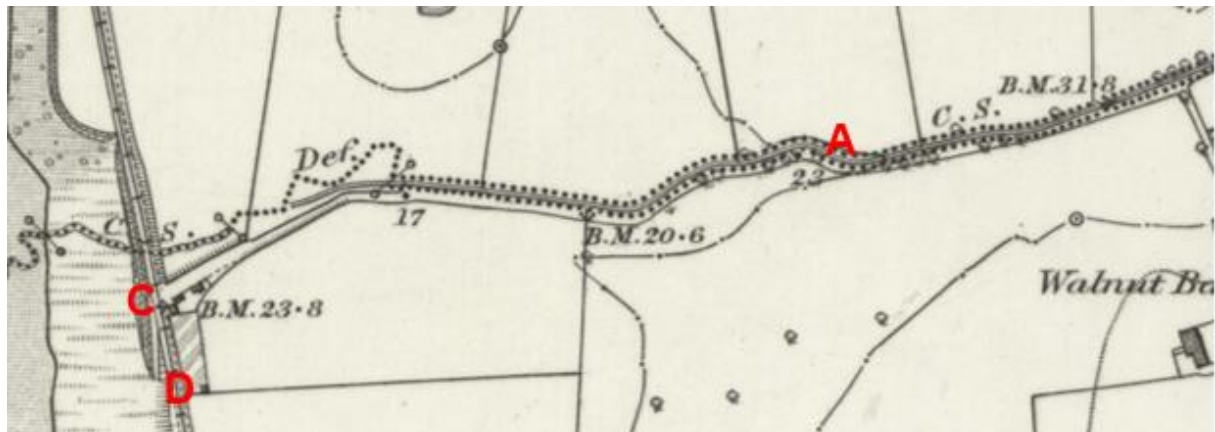


Extract from Sheet 34.3

Observations		The route under investigation is again shown as part of a longer bounded
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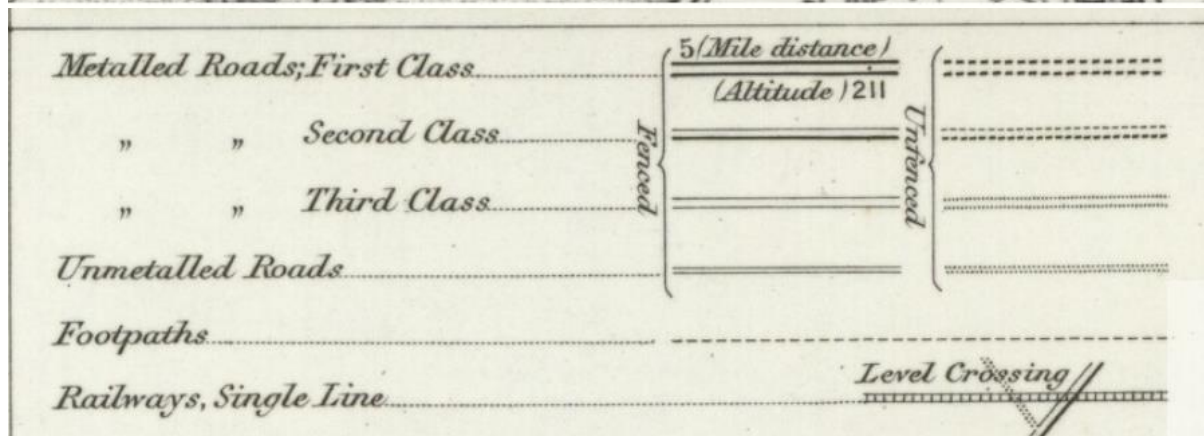
		<p>route providing access from the village of Stodday to the estuary. No physical change to the route – known as Snuff Mill Lane - is indicated at point A (the point to which the route of Snuff Mill Lane is now recorded as an unclassified county road) and west of point A the route extends as a bounded lane unchanged from how it has been previously shown, through to point X.</p> <p>Beyond point X significant changes are shown to the western end of the route following the construction of the railway from Lancaster to Glasson Dock.</p> <p>At point X a line is shown across the route under investigation suggesting the existence of a gate. Beyond point X the route follows an enclosed section of road which appears to have been raised to run along the top of a man-made embankment from which there is direct access to some buildings immediately south of the route.</p> <p>The route continues past the building to the railway line (point C).</p> <p>The route under investigation then crosses the railway line from where a ramped access turns south parallel to the railway to provide access to the salt marsh at point D.</p> <p>Bench marks can be seen located midway along the route between point A and point C and one is also marked close to point C.</p>
Investigating Comments	Officer's	<p>By the time that the survey was carried out for the First Edition 25 inch map the railway had been constructed separating the western end of the route which was shown on earlier maps as providing access from Stodday to the salt marsh/estuary.</p> <p>The fact that a substantially constructed route is shown crossing the railway to provide access to the salt marsh suggests that the railway company had been required to</p>

		<p>maintain this access along a route identified by them as a public. Such a crossing point is unlikely to have been created just for pedestrian use and is indicative of continuing use by horses and horse drawn vehicles at that time.</p> <p>A gate appears to have been erected across the route at point X – on the modern-day boundary of land now owned by Lancashire County Council. The existence of gates along a public route (even a public road) would not have been considered unusual in the 1800s particularly in the proximity of railways. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p> <p>Bench marks were located along a line of levelling, and often followed lines of communication. However, they can also be found on rocks in the middle of private fields and consequently it cannot be assumed that a bench mark is indicative of a public right of way</p>
6 inch OS Map	1895	Further edition of the 6 inch map, surveyed 1844-5, revised 1890 and published 1895.



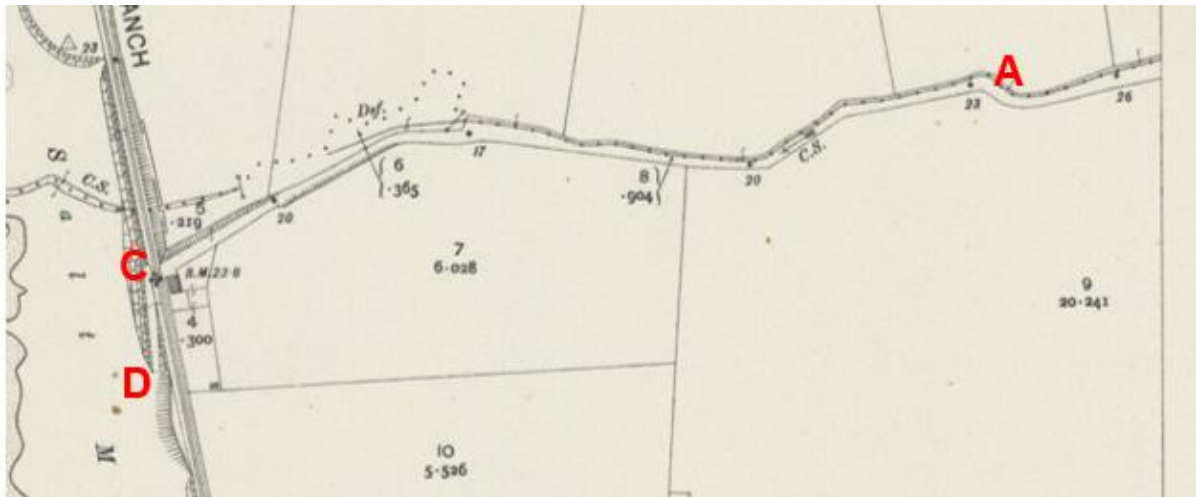
Observations		<p>The route under investigation is shown as part of a longer substantial bounded route. There was no indication that the characteristics of the route altered at point A from the rest of the route leading to/from Stodday. The ramps up to the railway and down onto the salt</p>
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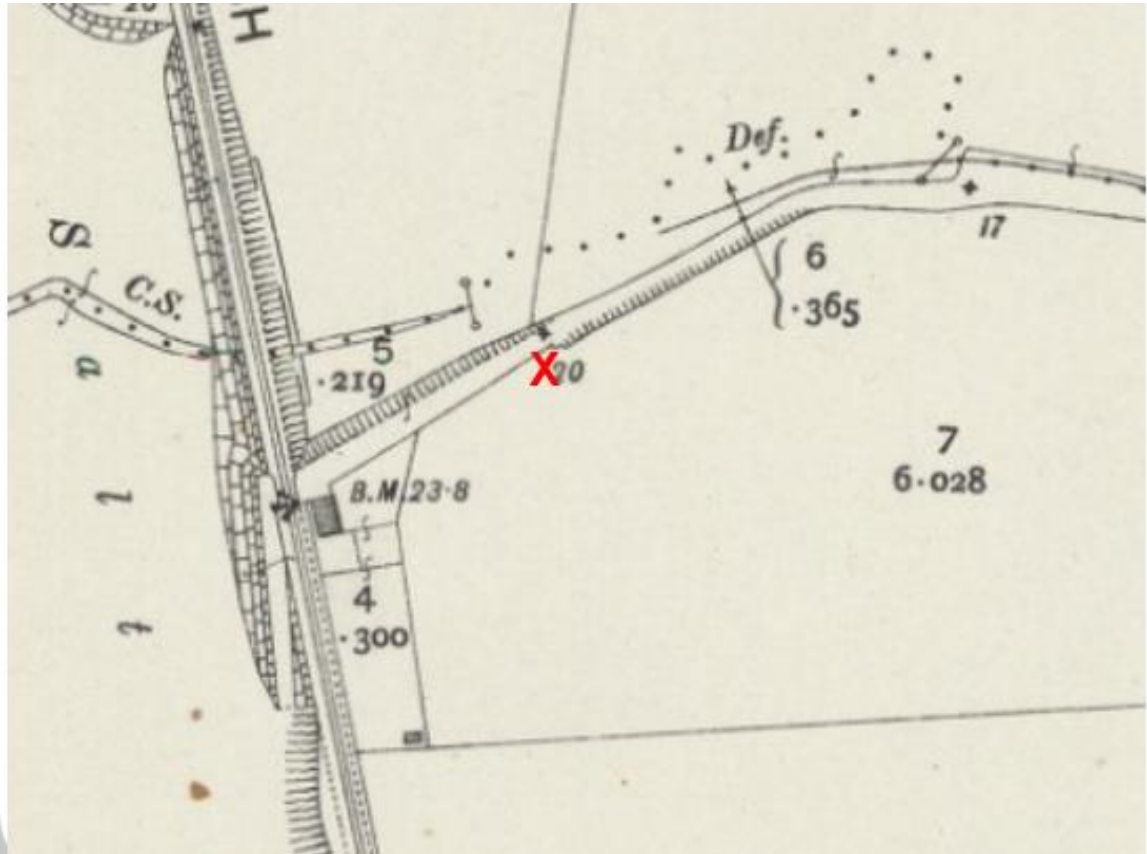
		marsh/estuary can be seen from point C to point D.
Investigating Officer's Comments		The route under investigation existed in 1890 as part of a longer route providing access to the salt marsh/estuary.
1 inch OS Sheet 59 - Lancaster	1898	1 inch OS map surveyed 1842-48, revised 1896 and published 1898.



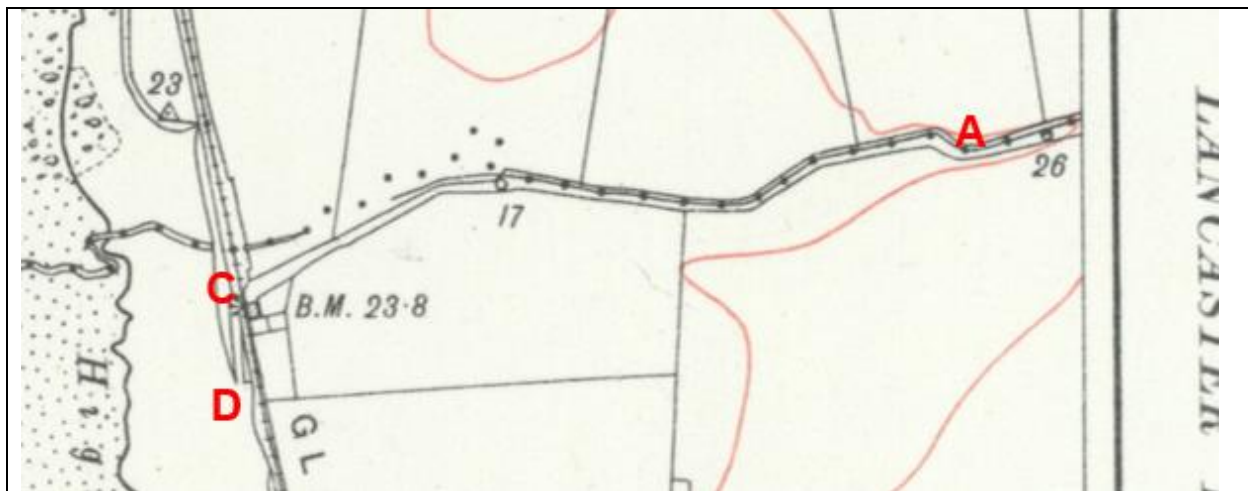
Observations		The route under investigation is clearly shown as a fenced third-class road or unmetalled road – although it does appear to be thinner than routes through Stodday. The route is shown terminating at the railway (point C) and neither the level crossing nor access to the salt marsh/estuary is shown.
Investigating Officer's Comments		The small-scale one inch OS map was predominantly published with the main

		<p>market being the travelling public so the inclusion of the route on this map is suggestive of a route that was capable of being used at least on horseback and possibly by horse and carts.</p> <p>The fact that the crossing of the railway at point C is not shown is most likely due to the small scale of the map – particularly as it is shown in detail on large scale maps of that era.</p>
<p>25 inch OS Map Sheet 34.2</p>	1913	<p>Further edition of the 25 inch map surveyed in 1890, revised in 1910 and published in 1913.</p>

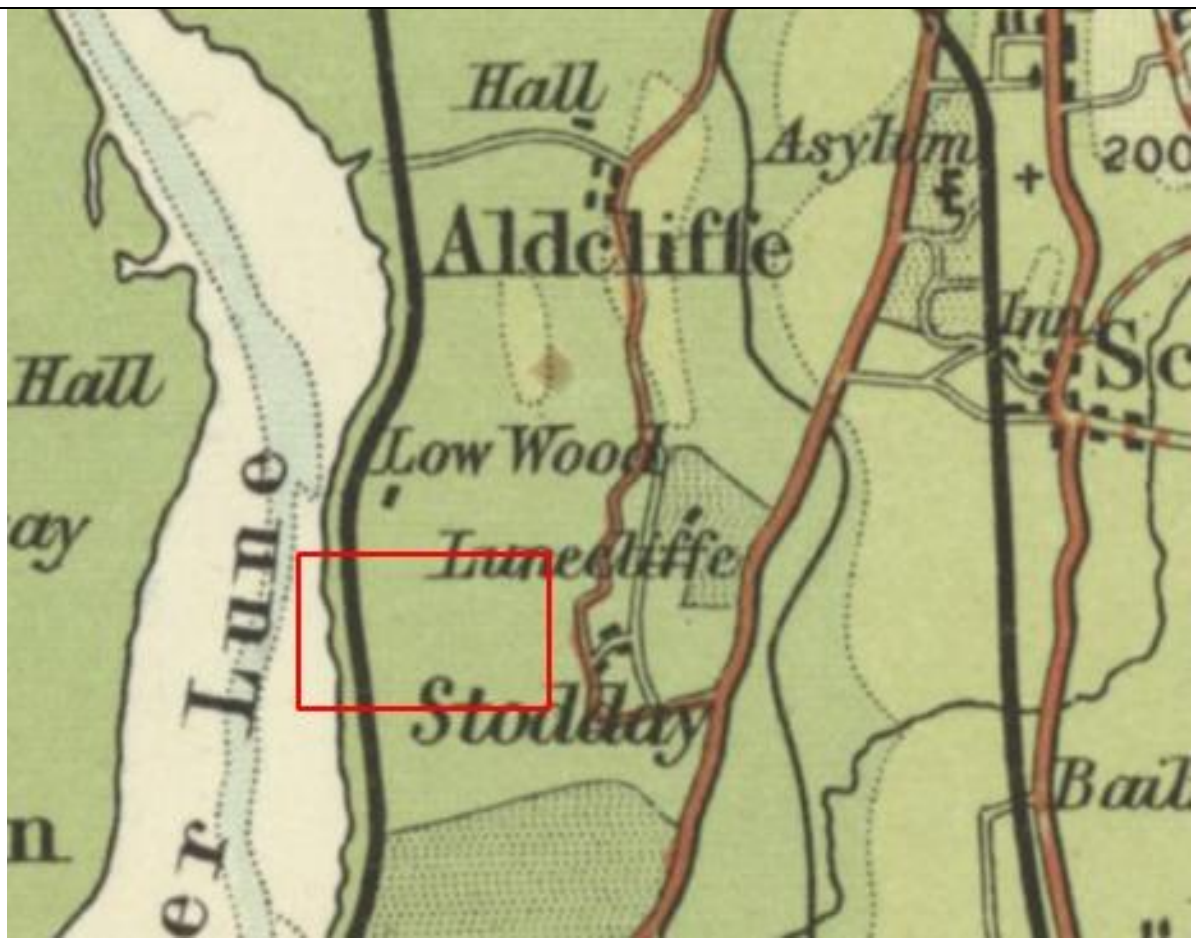




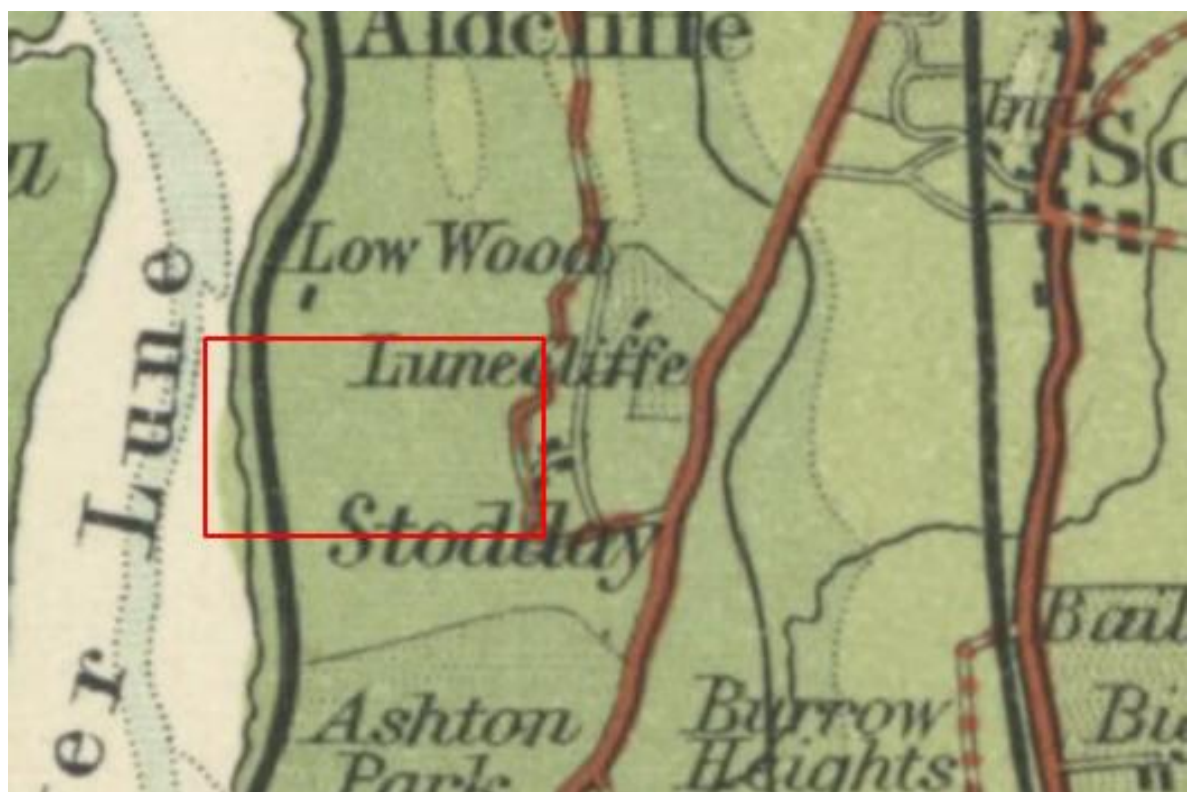
Observations		The route under investigation is shown in the same way as it is shown on the earlier edition of the 25 inch OS map with the exception that the gate shown on the earlier edition of the map at point X is no longer shown.
Investigating Officer's Comments		The route under investigation existed in 1910 as part of a longer route providing access across the railway from point C to the salt marsh at point D and appeared to be capable of being used at least on horseback and probably by vehicles.
6 inch OS Map 34 NW	1916	6 inch OS map surveyed 1845, revised 1910 and published 1916.



Observations		The route under investigation is again shown as part of a longer bounded route continuing through to the salt marsh via the ramped access between point C and point D.
Investigating Officer's Comments		The route under investigation existed in 1910 as part of a longer route and appeared to be capable of being used at least on horseback – and probably 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 & Isle of Man published 1905



Sheet 5 – North Lancashire & Isle of Man published 1920



Sheet 31 – North Lancashire published 1941

Observations		Neither the route under investigation nor the public road east of point A known as Snuff Mill Lane are shown on the 1/2 inch maps inspected.
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights.</p> <p>The fact that the route is not shown on any of the three map editions inspected is not surprising given the small scale of the maps and the purpose for which they were published. The route did not provide a through route for motor vehicles or access to a site of particular interest and predated the closure of the railway and construction of the Lune Estuary Path so would not have been of particular interest to motorists or to cyclists at that time.</p>
Finance Act 1910 Map	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not

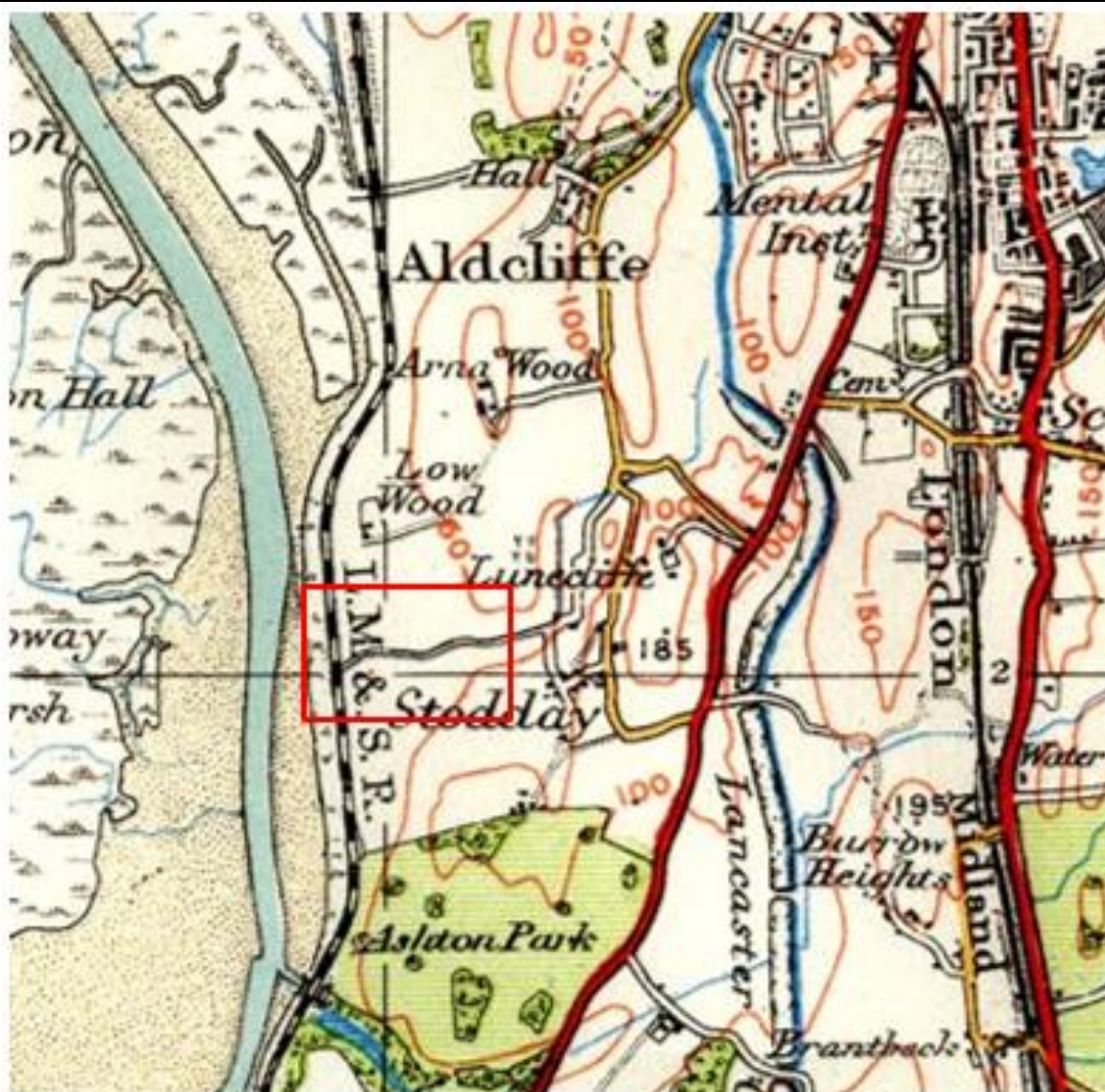
		<p>have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where 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>



Observations

The route under investigation is not excluded from the numbered hereditaments. Between point A and point X it is included as part of plot 9

		<p>which is listed in the Valuation Book as being owned by Lord Ashton and occupied by Mr Mackereth. It is described as 'land' and was at 'Waterside' (a nearby farm to the south-east) with a £4 deduction listed for public rights of way or user.</p> <p>Between point X and point D the route is within plot 52 again listed under the ownership of Lord Ashton and occupied by Mr Mackereth. It is described as being a 'cottage', also at 'Waterside' with a note that all details regarding any deductions are included in the valuation for plot 9.</p> <p>East of point A Snuff Mill Lane is also included as part of plot 9.</p>
Investigating Officer's Comments		<p>In 1910 it does not appear that the route was considered by the valuation officer and/or landowner to be a public vehicular route which should be excluded from the taxation process. It does appear however that public rights were acknowledged to exist across the land crossed by the route under investigation as a deduction of £4 was made. No details regarding which route or routes the deduction applied to are provided so no inference can be drawn.</p>
1 inch OS Map	1918	<p>Further 1 inch OS map submitted by applicant. Date of survey and revision not known.</p>



Observations		The route under investigation is shown as part of a bounded route although shown to be narrower than the acknowledged public roads through Stodday. It is shown extending as far as (but not across) the railway.
Investigating Officer's Comments		The route under investigation existed and appeared capable of being used. The fact that the route is not shown to cross the railway and provide access to the salt marsh is due to the scale of the map – as it is shown to continue onto the marsh on larger scale maps produced at this time.
1 inch OS Map	1947	Further edition of the 1 inch map revised 1920 with later corrections, published 1947.



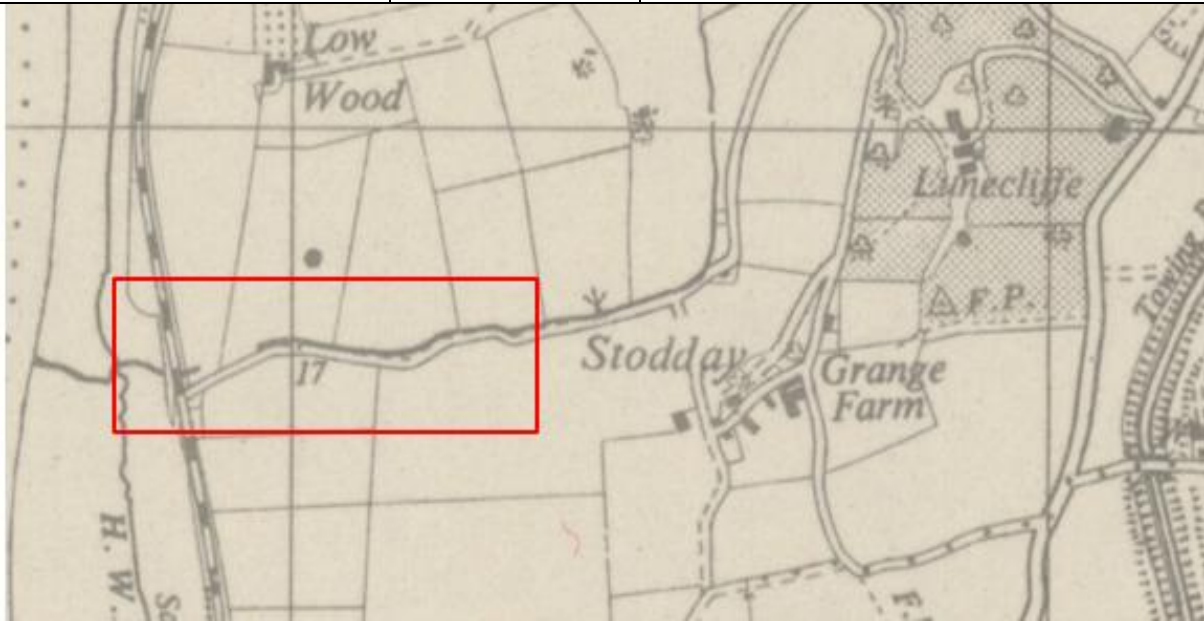
Ministry of Transport Roads	A.6	B.5253
Other Motor Roads		
" " " narrow	Good	Bad
Minor Roads		
Bridle & Footpaths		
Unfenced Roads are shewn by dotted lines		
Gradients steeper than $\frac{1}{4}$		
Toll Gates	TOLL	
Road Mileage	5	

1019

Observations

The route under investigation is shown to exist as part of a longer route and appears, from the map key, to have

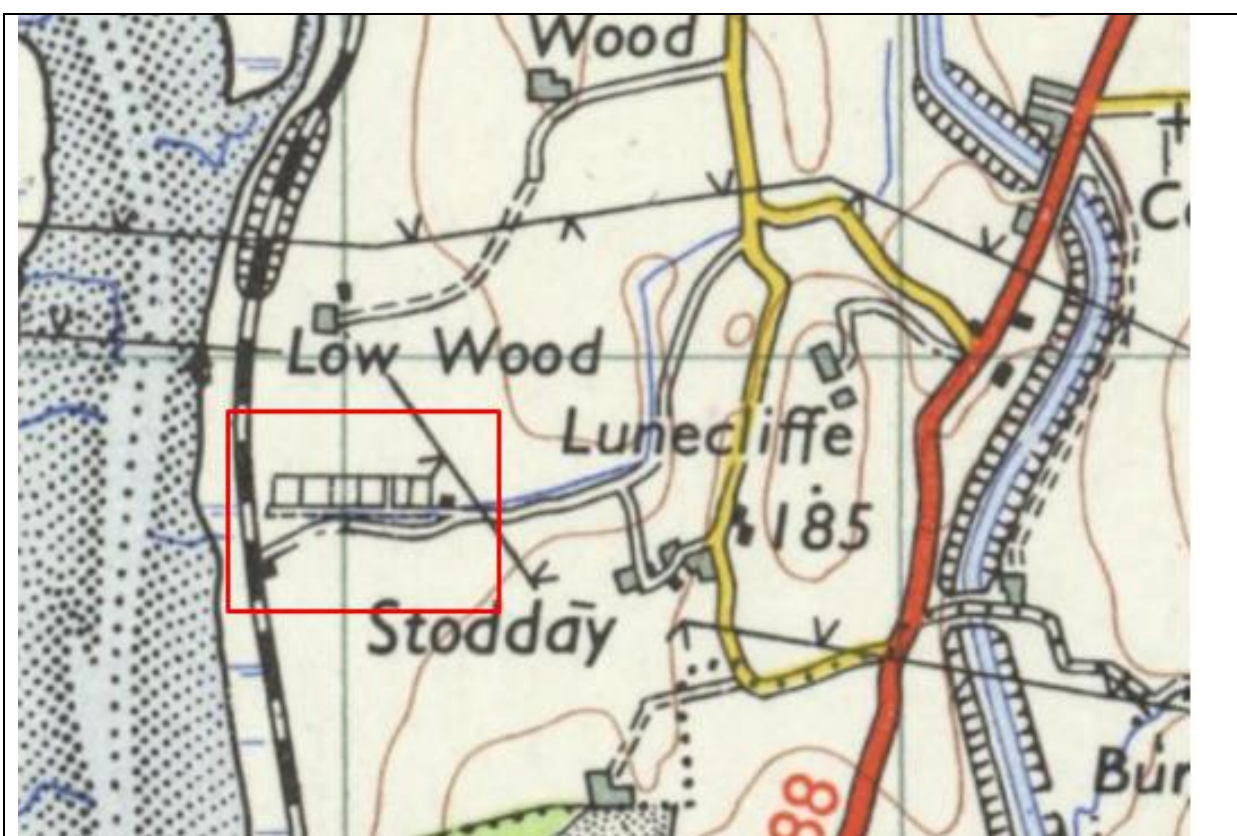
		been shown as a 'Minor Road'.
Investigating Officer's Comments		The route under investigation existed and appeared to be capable of being used by horses and motor vehicles at that time.
1:25 000 OS Map Sheet 34/45	1947	OS map submitted by applicant. Date of survey and revision not known but likely to be 1930s. Published 1947.



Observations		Further small-scale OS map showing the full length of the route under investigation existing as part of a longer route providing access to the salt marsh. The buildings shown on earlier maps immediately south east of point C are no longer shown.
Investigating Officer's Comments		The route under investigation existed and appeared to be capable of being used by horses and motor vehicles at that time.
6 Inch OS Map	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.



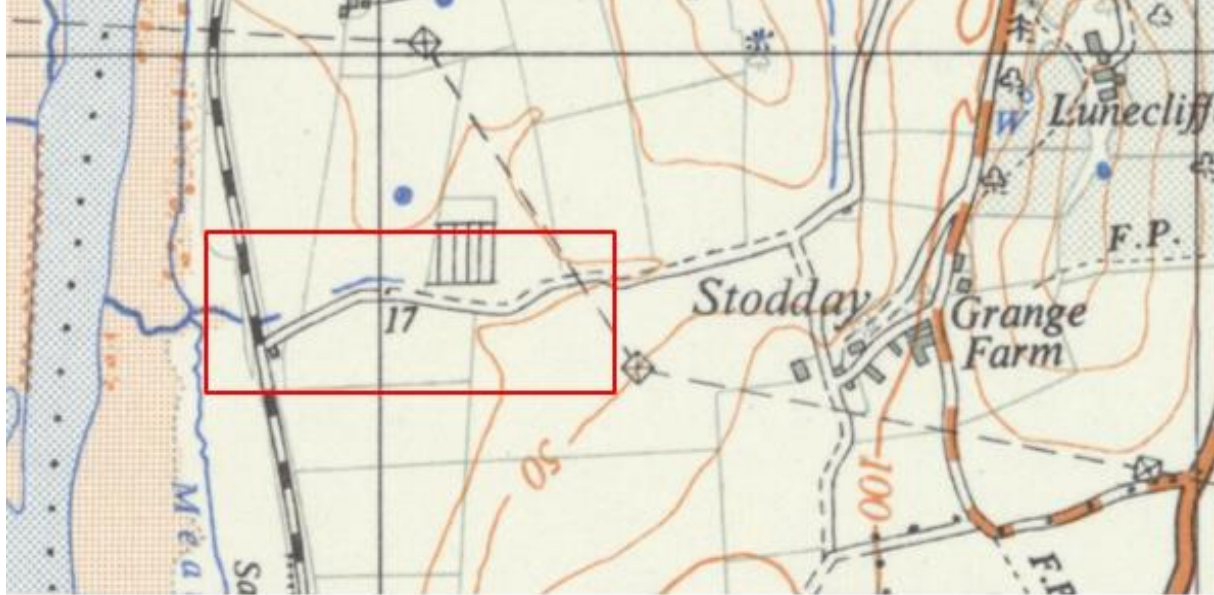
Observations		The full length of the route under investigation is shown existing as part of a longer route which provided access to the salt marsh. The buildings shown on earlier maps immediately south east of point C are not shown.
Investigating Officer's Comments		The route under investigation existed and appeared to be capable of being used by horses and vehicles at that time.
1 inch OS Map Sheet 94 - Preston	1961	1 inch map revised 1958 and published 1961.

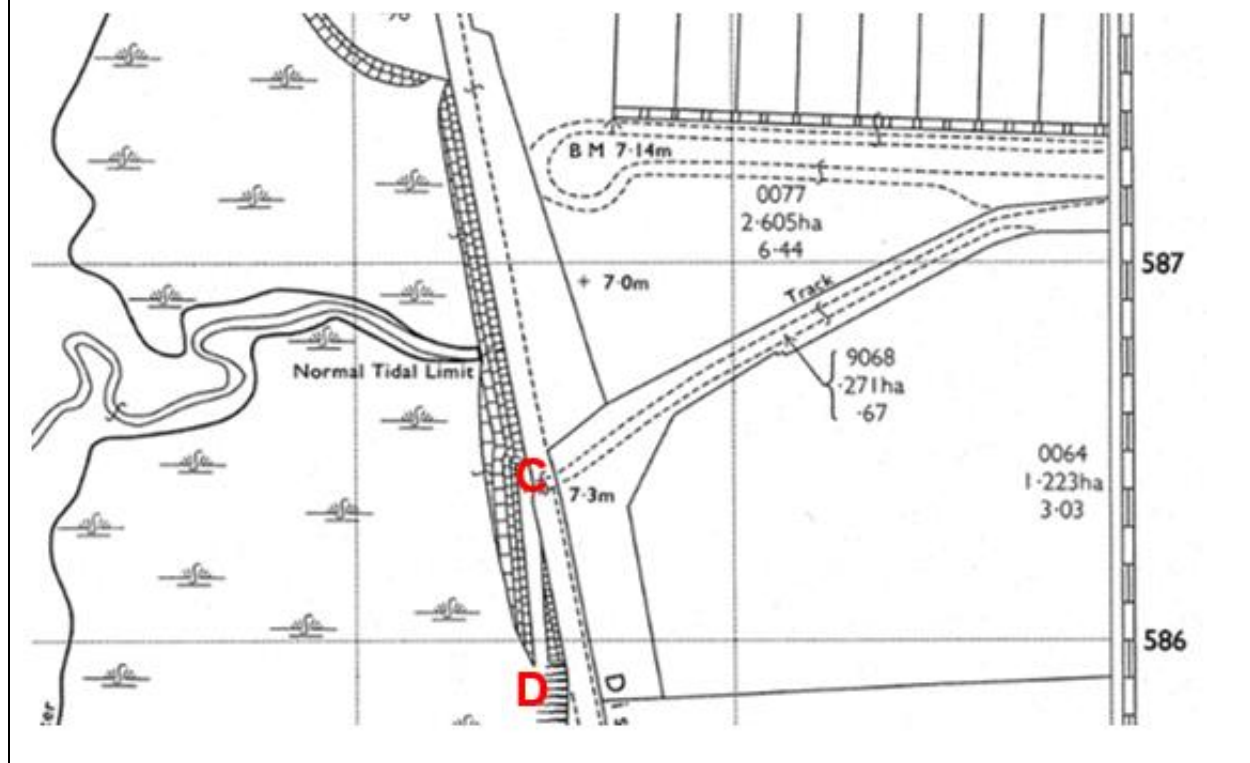
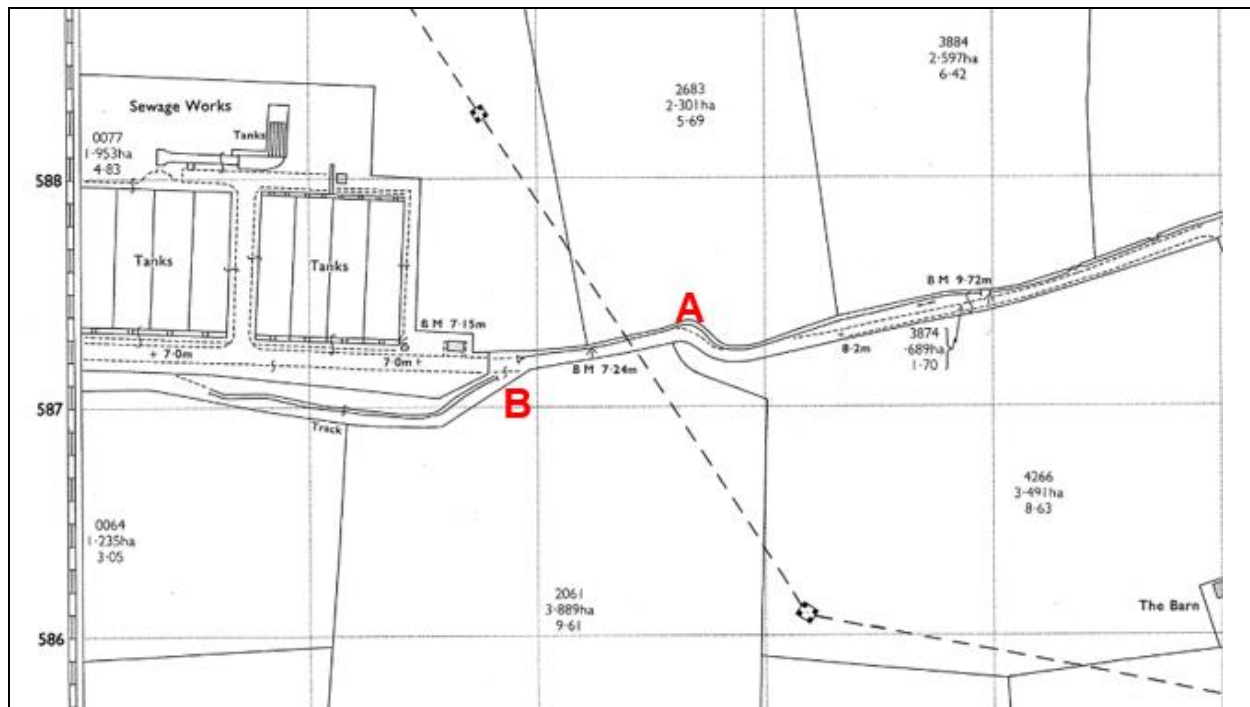


Ministry of Transport, Motorway		M 1 or A 6 (M)	
" " " Trunk		A 6 (T)	
" " " Class 1		A 584	Railw
" " " " 2		B 5269	
Roads	14 ft of Metalling & over (not included above)		Wood
	Under 14ft of Metalling, Tarred	TOLL	
	" " " " Untarred	Gate	Orchard
	Minor Roads in towns, Drives and Unmetalled Roads (Unfenced Roads are shown by pecked lines)		Electric (with pylons)
	Under construction		Pipe L
Steep Gradient 1 in 5 or steeper		1 in 7 to under 1 in 5	Marsh
Footpaths and Tracks			
Heights in feet above Mean Sea Level		surveyed by levelling	275 Rough

Observations

The route under investigation is again shown as part of a longer route. The sewage works immediately north of the route are shown with access to them via the route. The route is shown as a minor untarred road in the map key. However C-D is not shown, possibly due to the limitations of scale but the map is quite detailed and perhaps the ramp had fallen into disrepair (it would

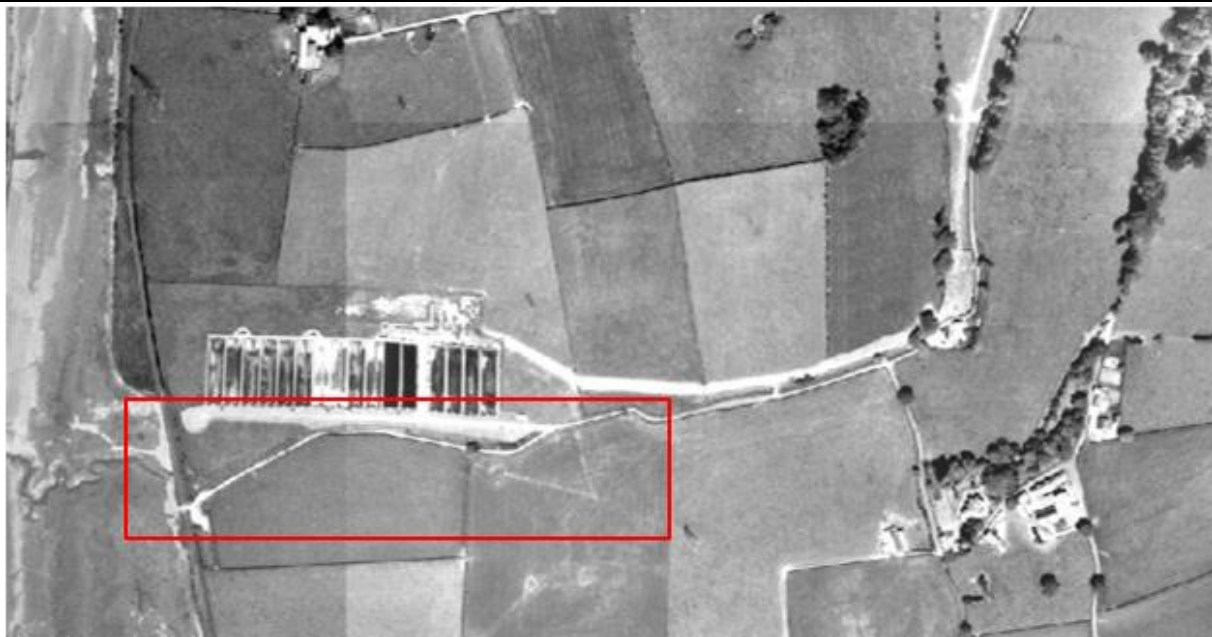
		be subject to tidal erosion at times.)
Investigating Officer's Comments		The route under investigation existed as far as the railway (point C) and appeared to be capable of being used in 1958.
1:25 000 OS map SD 45 NE	1966	OS 1:25 000 map revised 1910-1965, published 1954 and reprinted 1966.
		
Observations		The route under investigation is again shown as part of a longer route and appears to have been revised since first being printed in 1954. The sewage works are shown north of the route – although they appear to have been under construction at the time. Much of Snuff Mill Lane, except the western end, is shown unfenced on the north side. The access to the salt marsh C-D is not shown.
Investigating Officer's Comments		The route under investigation existed and appeared to be capable of being used in 1966.
1:2500 OS Map SD 4658-4758 and SD 4458-4558	1970-1971	1:2500 OS map reconstituted from former county series and revised in 1970 and published in 1970-71 as National Grid Series.



Observations

The route under investigation is again shown but is labelled as a 'track'. Access to the sewage works can be seen from the route at point B. The railway is no longer shown and the track appears to have been removed. A line is shown across the end of the route at point C although a series of dashed lines passing through the solid

		line at point C suggests that there may have been a gate through which it was possible to access the former railway line and from which it was possible to cross to continue between point C and point D along the ramped access onto the estuary.
Investigating Officer's Comments		The route under investigation existed and appeared to be capable of being used in 1970.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



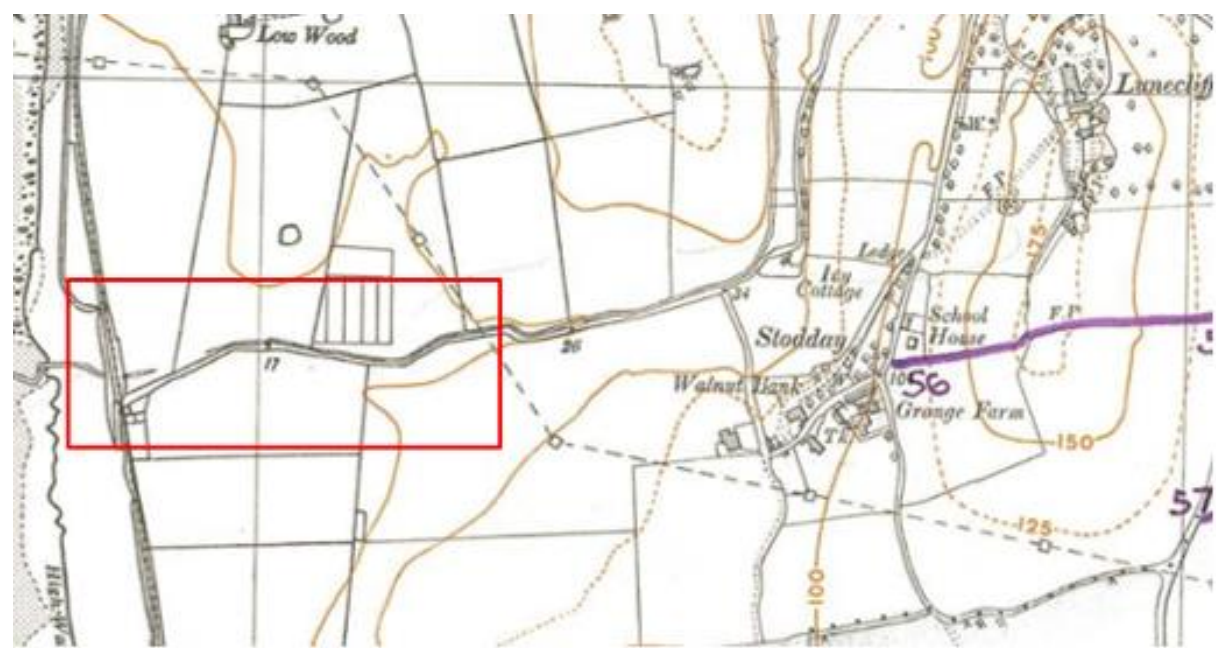


Observations		<p>The length of the route under investigation from A to C can be clearly seen consistent with a route being used by vehicles.</p> <p>The railway ceased to operate in 1964 and from enlarging the aerial photograph it appears it was taken some time after then as the sleepers and rails look to have been removed. Use does not appear to have been along the old railway but looks to cross it to continue out onto the salt marsh. The ramp between points C and D, originally constructed when the railway was built, is not evident and presumably had disintegrated or been removed.</p>
Investigating Officer's Comments		The route under investigation existed in the 1960s and it appeared to be being used by vehicles at that time.
Aerial Photograph	2016	Aerial photograph available to view on

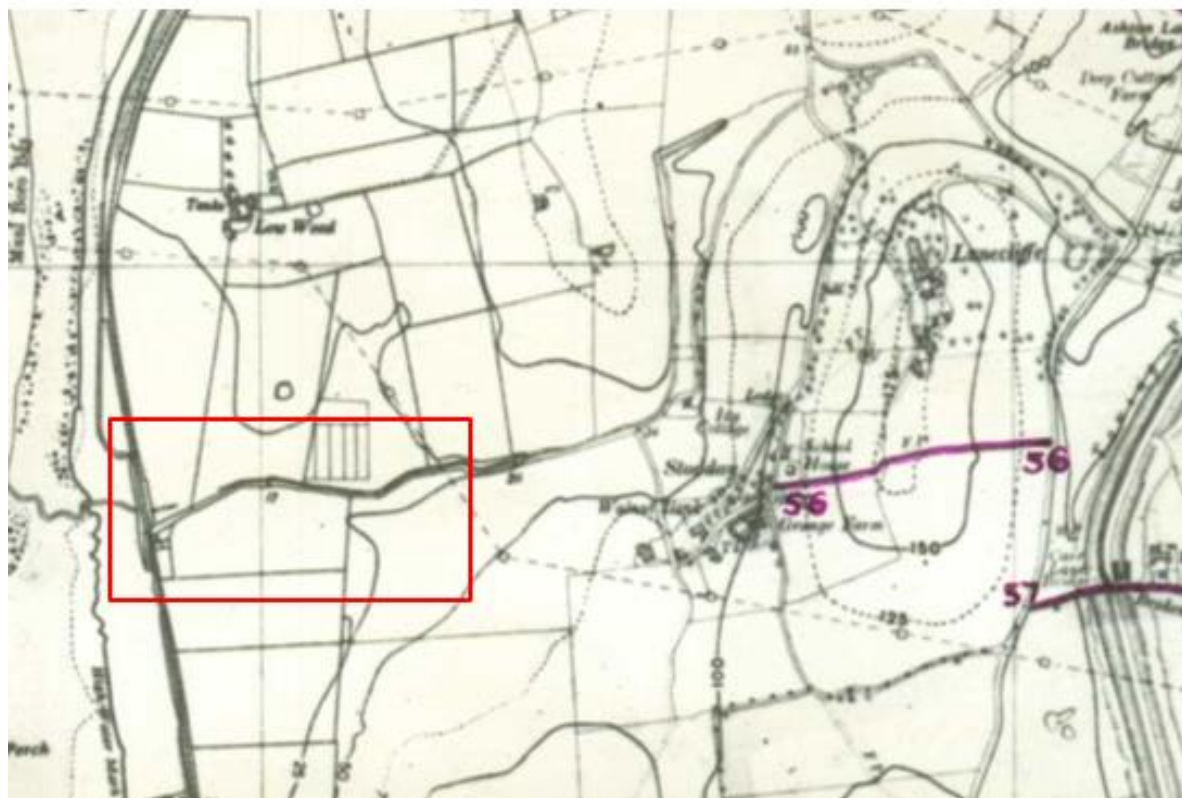
		GIS.
		
Observations		Most of the route under investigation is still visible but only looks to be being used by vehicles between point A and point B. The route onto the salt marsh is no longer visible but the picnic area west of point C can be seen.
Investigating Officer's		Use of the route under investigation by

Comments		vehicles had significantly decreased by 2016 and C-D had ceased to exist on the ground.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<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>The area crossed by the route under investigation (Aldcliffe) was within Lancaster Municipal Borough for which no parish survey map was drawn.</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</p>

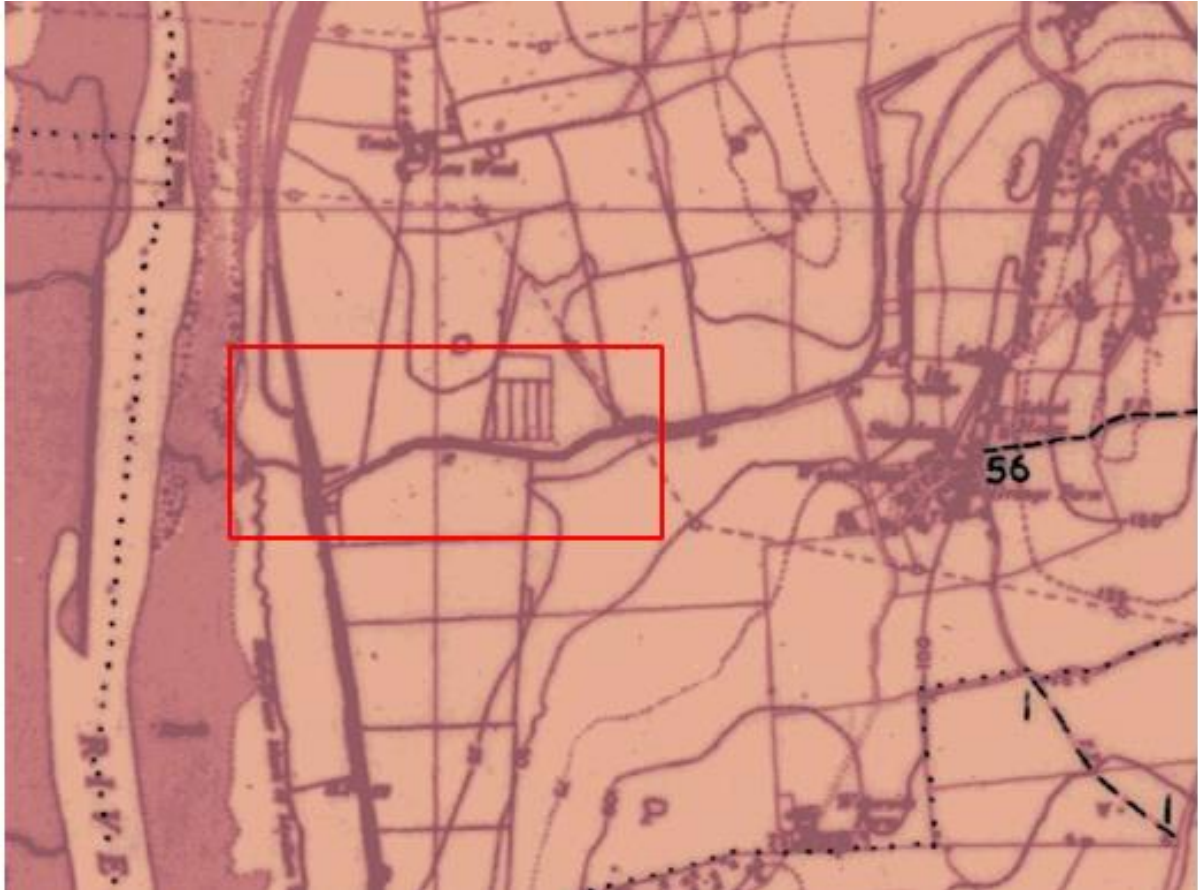
		made to accept or reject them on the evidence presented.
Observations		The route under investigation was not shown on the Draft Map of Public Rights of Way and there were no representations made in relation to it.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.



Observations		The route under investigation was not recorded on the Provisional Map of Public Rights of Way and no representations were made in relation to it.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.



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



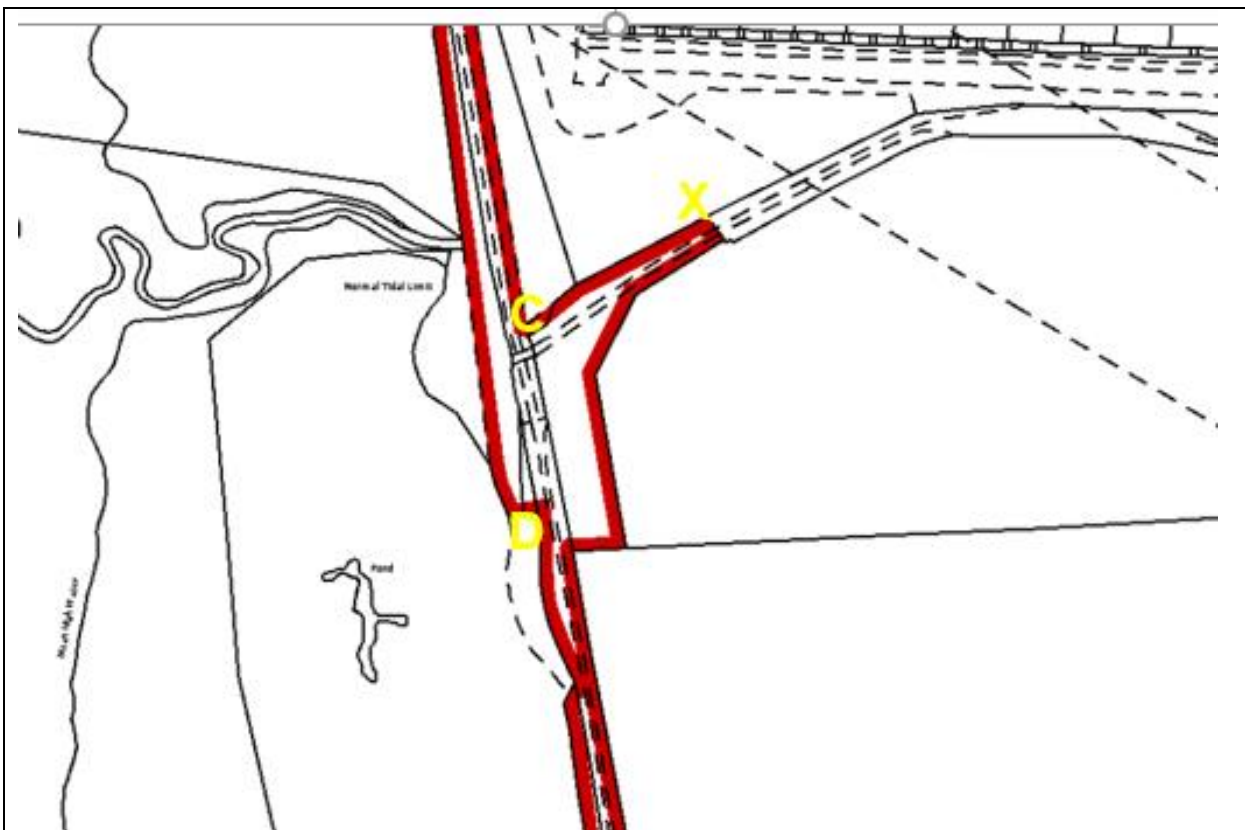
Observations		The route under investigation is not recorded as a public right of way on the Revised Definitive Map.
Investigating Officer's Comments		The route under investigation was not recorded as a public right of way as part of the process of compiling the Definitive Map and Statement.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from rural district councils, and later from the urban and metropolitan boroughs, to the county council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of these highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that had been maintainable by the districts. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public</p>

		<p>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 in the county council's highway records.
Investigating Officer's Comments		The route under investigation is not recorded as a publicly maintainable highway in the county council's highway records.
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 under investigation were found.
Investigating Officer's Comments		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>



Extract from Land Registry plan for title LAN 87191

Observations		Ownership of the route under investigation between point A and point X is not registered and is not known. Between point X and point D the land crossed by the route is owned by Lancashire County Council who purchased it from the former railway company.
Investigating Officer's Comments		When ownership of a route is not known and not registered, in contrast to land either side, it can provide supporting evidence of public status – particularly historical vehicular routes. In this case landowners were listed in the Finance Act documentation in 1910 but not in the 1842 Tithe Award where it appeared to be considered to be part of the general road network. The route between point X and point D was originally listed in the railway records from 1878 as being a public road under the ownership of the Surveyor of Highways but due to the fact that the railway was laid across the road and a ramped crossing point constructed

		<p>then future ownership of that land by the rail company would be expected.</p> <p>The Investigating Officer is therefore of the opinion that the landownership details support the application for recording the route as a public right of way.</p>
Lune Estuary Path		<p>The dismantled railway was acquired from British Railways by Lancashire County Council in 1971 and included purchase of the route under investigation between point X and point C and the ramped access onto the salt marsh between point C and point D.</p>



Sign located at point C (2018) indicating that the route under investigation provided access to Stodday



Photographs taken in 2018 showing flooding across the route under investigation

<p>Observations</p>		<p>The county council's records indicate that following closure of the railway in 1964 the line had been used as a footpath by the public and that the county council subsequently purchased the railway line to ensure future use for recreational purposes. Work to surface the route and to provide a car park, picnic site and toilet block was carried out between 1971 and 1975. During that time use of the dismantled railway was restricted to pedestrians with barriers prohibiting use by cyclists and horse riders.</p> <p>User evidence has not been submitted as part of this application but it appears that since the closure of the railway – and particularly since the construction of the Lune Estuary Path – the route</p>
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		<p>under investigation could have been used by walkers, cyclists and horse riders to gain access to the multiuser path at point C. Reports were submitted to the county council in 2018 regarding the fact that the route was flooded due to a lack of maintenance of the adjacent stream. Photographs submitted with the report show the flooded section and also show that the route had been signed at point C in such a way as to infer that the route was also a designated cycle track.</p> <p>The county council Public Rights of Way team responded to the report explaining that the route was not recorded as a public right of way and that we had no record of it being a designated cycle track.</p>
Investigating Officer's Comments		<p>There appears to have been use of the route in more recent times by people on foot, horseback and bicycle to link Stodday with the designated Lune Estuary Path. No specific user evidence has been submitted and it is considered that modern day use made of the route is use of a route which was historically dedicated as a public right of way.</p>

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

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 or it is reasonably alleged that they subsist, along the route under investigation it is then necessary to consider whether the Natural Environment and Rural Communities Act 2006 has extinguished public rights for MPVs. The route was, at the time of the Act not recorded as a public footpath/bridleway and was not on the List of Streets (maintained at public expenses) and we have no evidence that any of the other exemption to the blanket extinguishment of MPV rights applies. Therefore, in the event that public carriageway rights are shown to exist and the appropriate

status for the route under investigation 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

The application has been made 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 1800s suggesting that the route was believed to be and was capable of being used as a public vehicular route at that time.

It is shown in its entirety as a cross road on two key small-scale commercial maps – Yates' Map published in 1788 and Greenwood's Map of 1818 and partially shown on Hennet's Map of Lancashire published in 1830.

It is consistently shown as part of Snuff Mill Lane continuing west from the adopted section of Snuff Mill Lane with no discernible difference in how it is shown east or west of point A.

Most significantly it is depicted as a road on the Tithe Map of 1842 and in the Railway plans and sections and book of reference compiled in 1878 it is clearly recorded as a public road. When the railway was subsequently built a substantial ramped access was constructed to provide access across the railway from the route under investigation to the estuary consistent with the requirement to provide a substantial crossing point for the 'public road'.

Maps and photographs post-dating the construction of the railway consistently show that the route existed and appeared capable of being used. Since the construction of the sewage works north of the route in the mid-1950s and the removal of the railway lines in the 1960s use of the route by vehicles appears to have diminished from point B through to point C although site evidence suggests that it is still frequently used by walkers, cyclists and horse riders accessing the Lune Estuary Path.

Head of Service – Legal and Democratic Services Observations

Landownership

From A to X the application route crosses land which is unregistered. From X to D the route crosses land in the ownership of Lancashire County Council.

Information from the Applicant

The applicant has submitted the following map and documentary evidence in support of the application:

Yates' Map of Lancashire 1788

Greenwood's Map of Lancashire 1818
Hennet's Map of Lancashire 1830
Ordnance Survey 6 inch maps published in 1848, 1895, 1916 and 1966
Ordnance Survey 25 inch maps published in 1891 and 1913
Ordnance Survey 1 inch maps published in 1898, 1918, 1947 and 1961
Ordnance Survey 1:25 000 maps published in 1947 and 1966
Tithe Map and Award for Ashton with Stoddy 1842
Lancashire County Council Road status map (MARIO)
Land Registry ownership records
'Recent' photographs of the route under investigation

Information from Others

County Councillor Gina Dowding noted her support for the position taken by the Aldcliffe with Stodday Parish Council.

The Ramblers Association noted that before the parish council improved the track it used to flood quite frequently but it is now much improved and suitable for use as a bridleway. The Association made no objections and would support an Order being made.

The local Right to Ride representative noted that the route is currently used a lot by walkers and cyclists and had always thought the route to be a public right of way.

United Utilities responded to consultation to state that the route did not affect any of their assets and that they had no objection.

Information from the Landowner

Lancashire County Council Estates were consulted as landowners of part of the route. It was acknowledged that LCC, as Highway Authority, will have responsibility to maintain the route in the future if an Order is made and confirmed; no objection was put forward against the application.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

Historical documentary evidence.

Against Making an Order(s)

No particular evidence against.

Conclusion

Highways are created following a dedication by an owner and acceptance by the public. Here there is no express dedication or modern user but Committee is asked

to consider whether there is sufficient evidence on balance that a dedication and acceptance can be inferred at Common Law to have happened many many decades ago and lead to how the route was recorded on the various documents.

It is suggested that the evidence of a historical vehicular route is sufficiently strong in this case. This route historically went to the estuary which would have been a place of public resort and it is advised that this is acceptable in legal terms as a termination point for a highway.

The application was for a bridleway but it is advised that the evidence would indicate that the route was a vehicular public highway. The Natural Environment and Rural Communities Act 2006 will have extinguished any mechanically propelled vehicular rights and it is advised that the appropriate status to be recorded would be restricted byway.

During the investigation it became clear that the evidence was for a route onto the saltmarsh rather than only to the railway line. The application was initially for that part of the route A-C. Officers invite committee to consider that an Order be made taking the route onto the saltmarsh A-D. This extension of the route under investigation is invited because of the evidence discovered and as the duty is to, by order make such modifications to the map and statement as appear to them to be requisite, it is appropriate that the evidenced length of the historical route be recorded on the Definitive Map and Statement.

Issues about overgrowth and flooding can be addressed once it is established whether public rights exist and its physical state today or in recent times is not relevant as to whether this route is a highway from the 18th century or earlier.

It is therefore recommended to make an Order as set out in the Recommendation at the beginning of the report and that it be promoted to confirmation.

Risk management

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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-652		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A