

## **Regulatory Committee**

Meeting to be held on 17<sup>th</sup> November 2021

### **Part I**

Electoral Division affected:  
Lancaster Rural North

## **Wildlife and Countryside Act 1981**

### **Definitive Map Modification Order Investigation**

#### **Upgrade of Footpath Nether Kellet 11 (Green Hill Lane) to Bridleway**

(Annex 'A' refers)

Contact for further information, quoting File Ref. 804-624:

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#### **Brief Summary**

Application for the upgrading of Footpath Nether Kellet 11 known as Green Hill Lane to be upgraded to Bridleway.

#### **Recommendation**

That the application for the upgrading of Footpath Nether Kellet 11 (Green Hill Lane) to Bridleway be not accepted.

## **Details**

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the upgrading of Footpath Nether Kellet 11 (Green Hill Lane) to Bridleway on the Definitive Map and Statement of Public Rights of Way.

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

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

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

An order for 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.

### Nether Kellet Parish Council

Nether Kellet Parish strongly object to the application.

They refer to the fact that a similar request was made some years ago and was refused. They comment that the footpath currently gets very muddy and in places is very narrow and boggy and that by allowing horses to use it would cause issues for walkers and horses.

The council also noted that many years ago the footpath was used by motorised vehicles but since then the ground conditions have deteriorated and it is currently only fit for use by walkers.

### Applicant/Landowners/Supporters/Objectors

The evidence comments submitted by the applicant/landowners/supporters/objectors and observations on those 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	5221 6753	Junction with Dunald Mill Lane
B	5283 6819	Junction with Addington Road

### Description of Route

n.b. Reference to public rights of way shown on the Definitive Map and Statement are generally given in the form '01-22-011-FP' or 'Footpath Nether Kellet 11' but can be referenced following that in the abbreviated form 'Footpath 11' for brevity.

A site inspection was carried out in June 2020.

The Application route is approximately 930 metres long and approximately 6 metres wide throughout. It is largely walled on both sides, with field gates allowing access to pastures on both sides.

It commences at a junction with Dunald Mill Lane (point A on the Committee plan) where there is a fence across the entrance to the route into which a 1.52m pedestrian gate – authorised by the county council in 2010 – has been inserted.

The route is signed as a public footpath and although overgrown in places is passable throughout the full length on foot. There is no recent site evidence to suggest that the route is being used on horseback although bicycle tracks were evident.


Beneath the undergrowth, there appears to be a stone base to parts of the route, which is particularly apparent where vehicles seem have been accessing it from point B to gain entrance to adjacent fields.

At the junction with Addington Road (point B), there is a field gate with a stile to the left side (not legally authorised) and the route is again signposted as a Footpath.

### Map and Documentary Evidence

The application is based on map and documentary evidence. Together with the maps and documents provided by the applicant a variety of maps, plans and other documents were examined to discover when the route came into being, and to try to determine what its status may be.

Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their

		customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also constrained the routes that could be shown.
 <p>The map shows the Bolton area with various towns and moors. A red rectangle highlights a specific area labeled 'Halton Moor'. Other labels include Bolton, Kellet, Nether, Over Kellet, Carnforth, and Halton Moor. The map is oriented with North at the top.</p>		
Observations		The application route is not shown and crosses land denoted as 'Halton Moor' on the map.
Investigating Officer's Comments		The application route, if it did exist, was not considered by Yates to be a significant public vehicular route at that time. It may have existed as a private access or public footpath or bridleway but such routes were not normally shown due to the scale and purpose for which the maps were published.
<b>Nether Kellet Inclosure Award</b>	1815	Between 1545 and 1880 the old system of farming scattered arable strips and grazing animals on common pasture was gradually replaced as landowners sought to improve the productivity of the land. The process of Inclosure began by agreement but by the early 18th century a process developed by which a Private Act of parliament could be promoted to authorise inclosure where the consent of all those with an interest was not forthcoming. The process was further refined in the nineteenth century with the passing of 2 main general acts, bringing together the most commonly used clauses and applying these to each local act unless otherwise stated.

		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.
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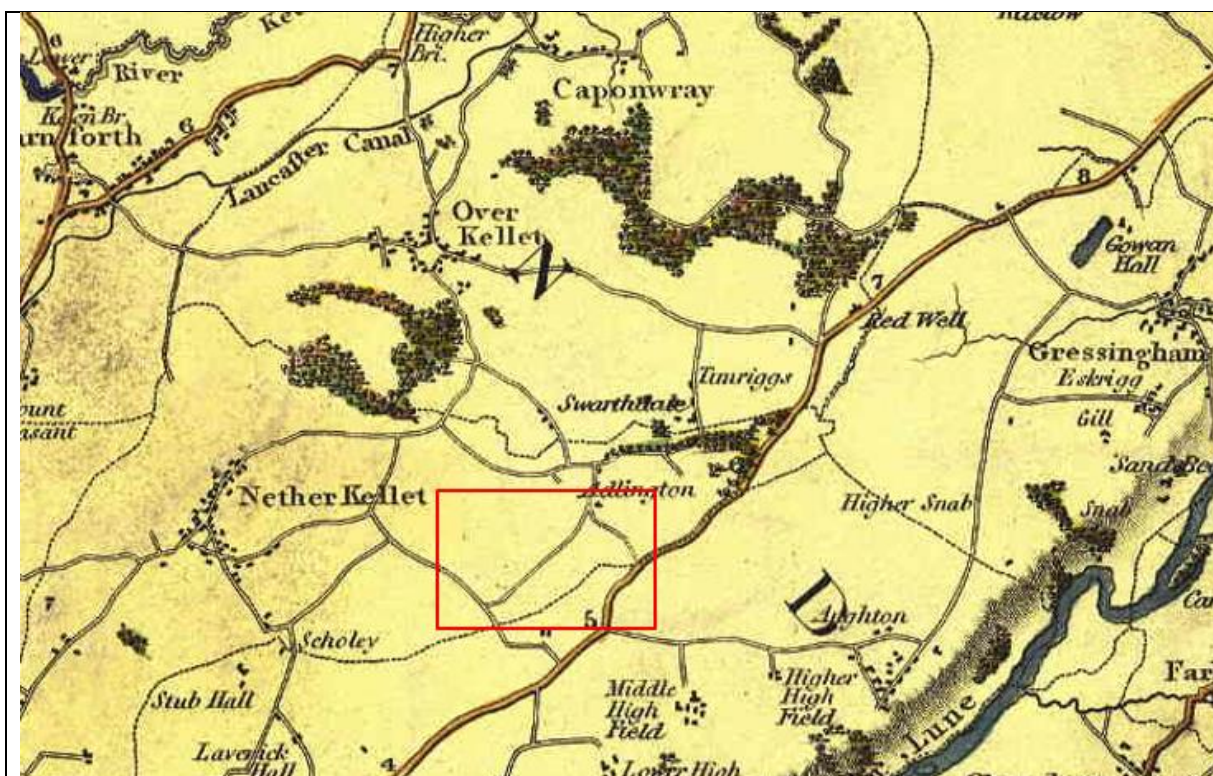
11  
 This Plan was signed by Edmund Jackson and William Miller the  
 commissioners this nineteenth day of August one thousand  
 eight hundred and fifteen in the presence of us  
 Rich<sup>d</sup>. Jackson  
 John Fisher

Observations

The land crossed by the application route was  
 inclosed under a local Act of Parliament dated  
 1810 although a copy of the Act has not been  
 found. The subsequent Inclosure Award and Map

		<p>are available to view in the County Records Office (CRO Ref: AE/5/8) and are dated 1815.</p> <p>The Inclosure Map clearly shows the full length of the application route as a bounded route named Green Hill Lane. One gate is shown across the route approximately 220 metres from point B.</p> <p>The Inclosure Award details the public and private roads to be laid out as part of the inclosure process. Within the Award the Commissioners specifically set out a route described as a 'private or occupation road' to be known as Green Hill Road which corresponds to the application route. The Commissioners state that the route shall 'hereafter be used' by the owners and proprietors of the lands adjoining it for the occupation of those lands 'and no other persons'. The Award also specifies that the route is to be privately maintained by the owners (or their heirs) of adjacent numbered plots.</p>
Investigating Officer's Comments		<p>Evidence from the Inclosure Map and Award therefore suggests that the application route was originally created as a private access route as part of the inclosure of Nether Kellet Moor. Since its creation, it may have been capable of being used by the public on horseback but there is no evidence to suggest that it was specifically dedicated as a bridleway (or footpath) when originally constructed.</p>
<b>Greenwood's Map of Lancashire</b>	1818	<p>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.</p>





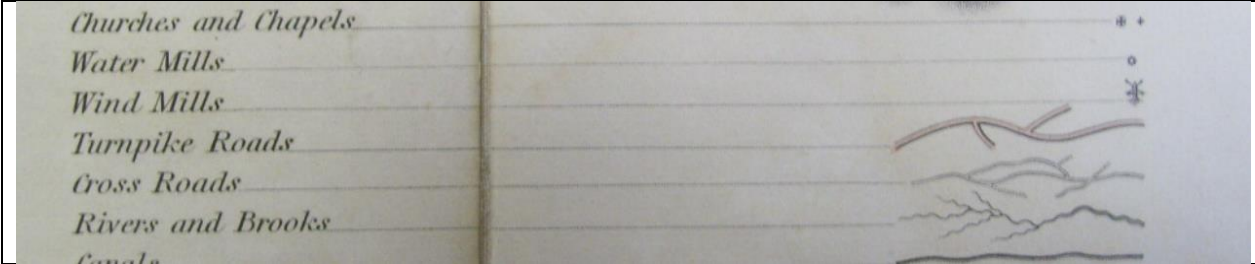
Turnpike Roads \_\_\_\_\_  
 Cross Roads \_\_\_\_\_  
 Towns & other Places \_\_\_\_\_  
 that send Members to Parliament } \_\_\_\_\_  
 Boundaries of Counties \_\_\_\_\_  
 Boundaries of Hundreds & Manors \_\_\_\_\_  
 Boundaries of Townships & Parishes \_\_\_\_\_

Observations		The application route is shown as a through route on Greenwood's Map connecting to public vehicular highways and is shown as a cross road.
Investigating Officer's Comments		The application physically existed in 1818 having seemingly being constructed as part of the inclosure of Halton Moor. The inclusion of the route on a small scale map commercially produced map of this kind is generally taken as being suggestive of the fact that the route is likely to have had the appearance of a carriageway and it is unlikely that a map of this scale would have shown footpaths. It is not known what Greenwood meant by the term 'cross road' but he only categorised roads as 'cross

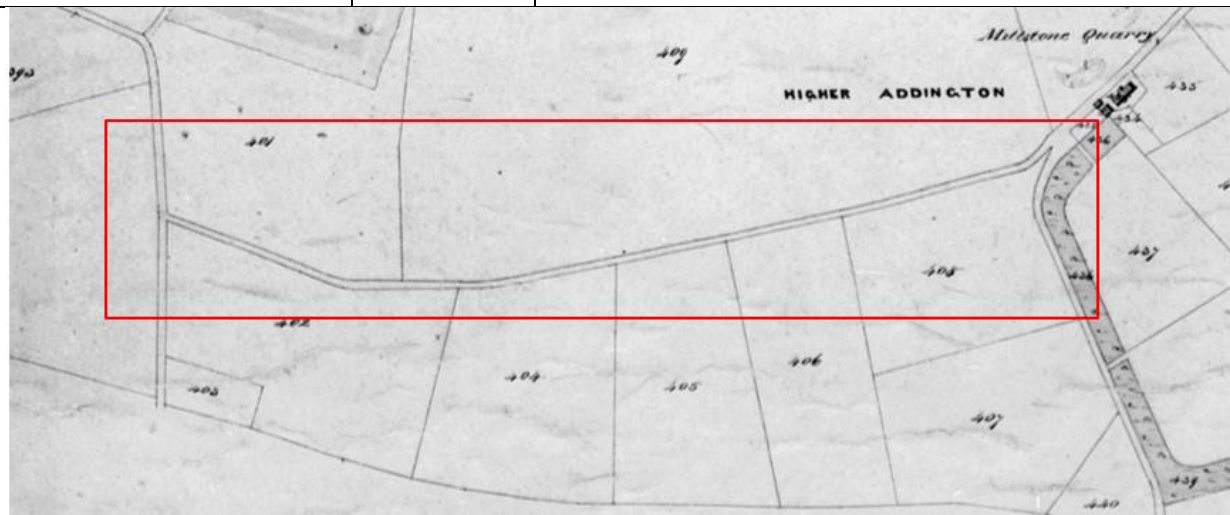


		<p>roads' and 'turnpike roads' according to the key in the map.</p> <p>As the route was constructed as part of the inclosure process as a private or occupation road its inclusion on this map suggests that following on from its construction it was a significant route capable of being used on horseback and vehicles in 1818 and even though documented as private in practice it may have been accessible to the public since being constructed. The scale of the map means that if a gate did exist across the route (as shown on the Inclosure plan) it would not be shown.</p>
Hennet's Map of Lancashire	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 7½ 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>

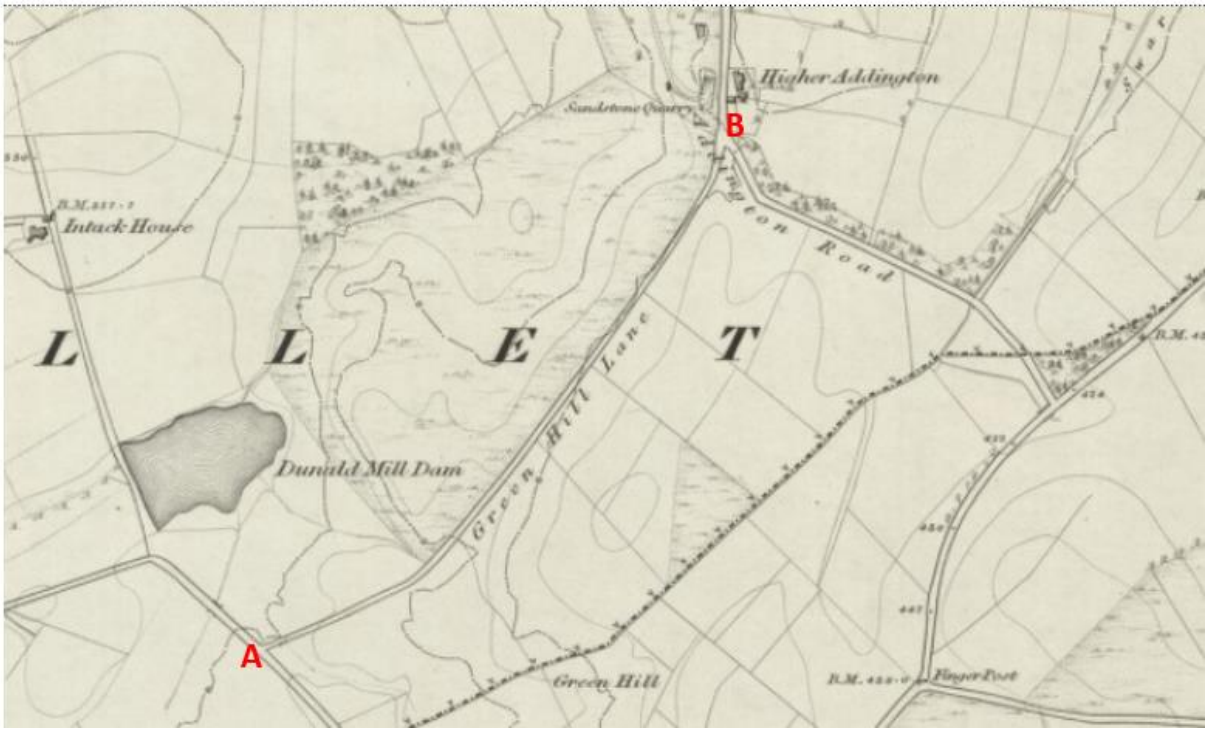


		
Observations		The whole of the application route is shown as a through-route connecting vehicular public highways and is depicted on the map as a cross road.
Investigating Officer's Comments		<p>The application route existed in 1830 and is shown as a 'cross road'. It is not fully known what is meant by the term 'cross road'. 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 a right to use it.'</i></p> <p>It is unlikely that a map of this scale would show footpaths. The map was drawn 15 years after the route first came into existence as a private occupation road. It is considered likely that Hennet's map shows routes depicted as through routes that were generally available to the travelling public in carts or on horseback and therefore suggests that by inclusion on the map the application route may by 1830 have been considered to be a publicly available bridleway or carriageway even if public rights did not exist.</p>
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 were no canals or railways built – or proposed to be built – over the land crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>	1841	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.

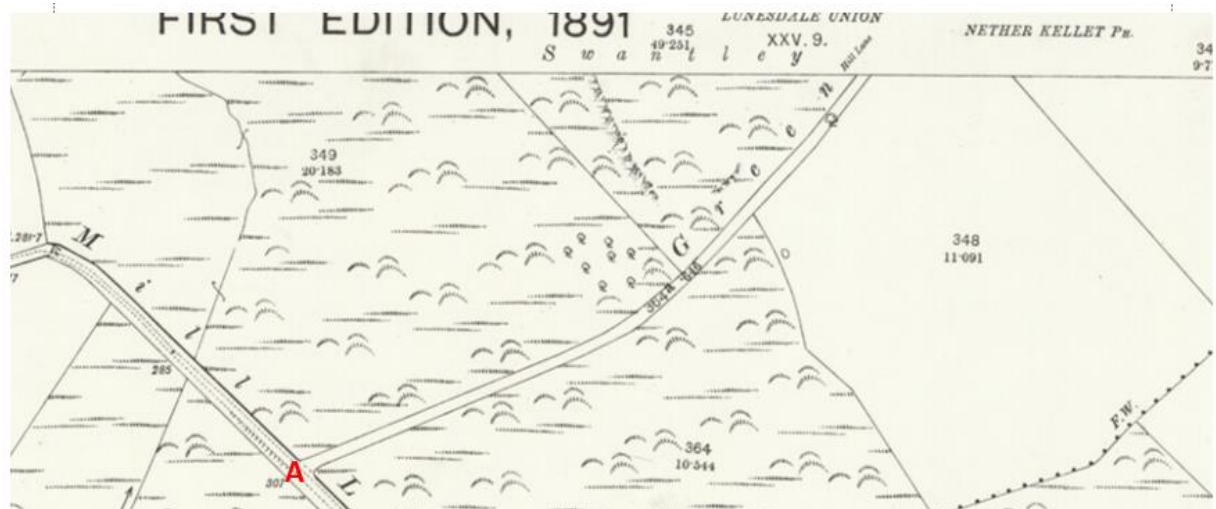
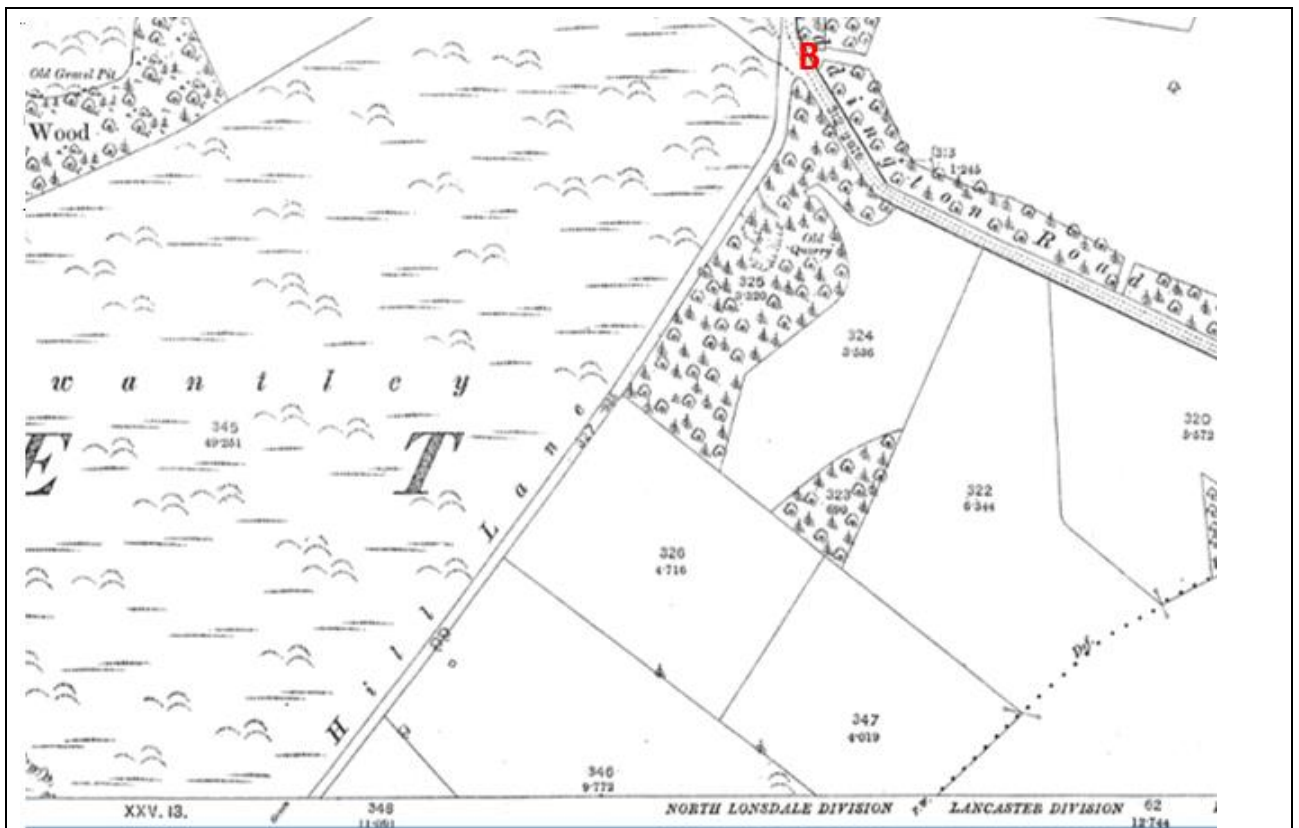


Observations		<p>The application route is shown on the Tithe Map as a substantial bounded through route connecting to roads now recorded as public vehicular highways. No lines are shown across the route at either end or at any point along it.</p> <p>The application route is not numbered but neither are the public roads to which it connects.</p> <p>The Tithe Award provides no numbered list of routes considered to be public roads.</p>
Investigating Officer's Comments		<p>The application route existed in 1841 and appeared to be capable of being used on horseback and possibly with vehicles at that time.</p> <p>The Tithe Award did not list public roads but both private and public roads were shown and were not numbered which is consistent with how the application route is shown.</p> <p>No inference can be made.</p>

<b>6 Inch Ordnance Survey (OS) Map Sheet 25</b>	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1847. <sup>1</sup>
		
Observations		<p>The application route is clearly shown as a bounded through route. No lines are shown across the route suggesting that it was ungated and access unrestricted.</p> <p>The fact that the route is bounded on both sides by solid lines indicates that it was physically separated from the adjacent farm land. It appears to be of a substantial width consistent with how other routes now recorded as public vehicular highways are shown.</p> <p>The route is clearly named on the map as Green Hill Lane.</p>
Investigating Officer's Comments		The full length of the application route existed and appeared capable of being used in 1844-45.
<b>25 Inch OS Map Sheets 25.9 and 25.13</b>	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1891.

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





#### Observations

The application route is clearly shown as a bounded through route named 'Green Hill Lane'. No lines are shown across the route which would have indicated the existence of gates or barriers which may have prevented or restricted access. Unlike the public two vehicular routes which the application runs between (Dunald Mill Lane and Addington Lane) the application route is not shown with a thickened line down the down the south and east side of the route. A separate parcel number is allocated to the route and a possible change in surface is indicated at either end (point A and point



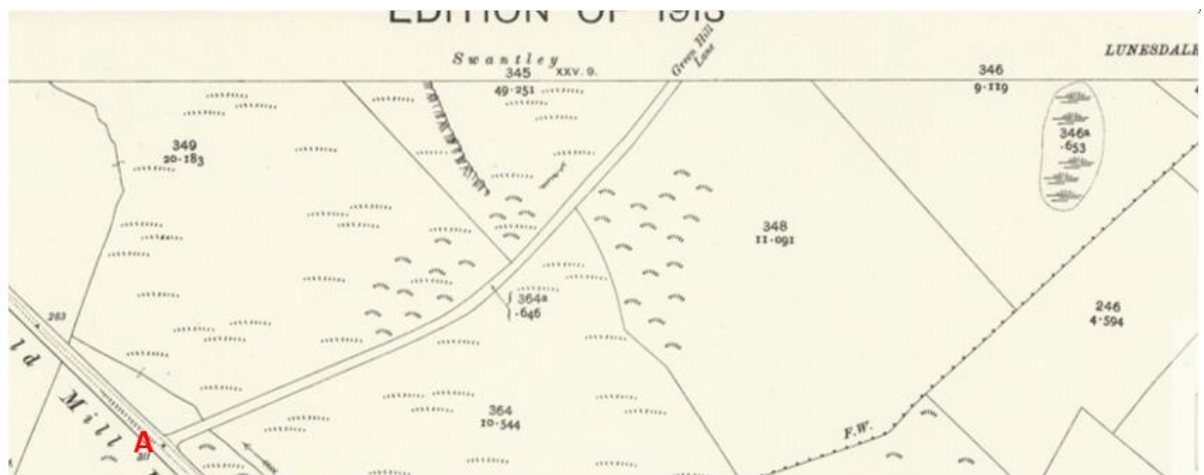
		B) where the application route meets Dunald Mill Lane and Addington Lane.
Investigating Officer's Comments		<p>The application route existed in 1890 and appeared to be capable of being used at least on horseback.</p> <p>Shading and colouring were often used to show the administrative status of roads 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 side of the road. 'Good repair' meant that it should be possible to drive carriages and light carts over them at a trot. The fact that the route is not shown in this way suggests that it was not considered to be a primary route used by horse drawn vehicles at that time but is not inconsistent with use of the route as a bridleway.</p> <p>The Planning Inspectorate Consistency Guidelines state "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 so the fact that the route is shown with a separate parcel number is not necessarily relevant to the public status of the route.</p> <p>The fact that the route was named as Green Hill Lane on the map is evidence that after being named as such in the Inclosure Award of 1815 it was still known locally by that name and is consistent with knowledge and use of the route by the public at least on horseback at that time.</p>
<b>1 inch OS Map Sheet 59 Lancaster</b>	1898	Small scale 1 inch OS map surveyed 1842-48, revised 1896 and published 1898.



<i>Metalled Roads; First Class</i>	5 (Mile distance) (Altitude) 211	Unfenced	Ch
" " <i>Second Class</i>			Wa
" " <i>Third Class</i>			Li
<i>Unmetalled Roads</i>			Li
<i>Footpaths</i>			Be
<i>Railways, Single Line</i>		Level Crossing	Le
" <i>Two or more Lines</i>		Cutting Embankment Bridge Over Bridge Under	Co Be

Observations		The full length of the application route is shown – but it and the nearby roads are not named. It is shown as a bounded route consistent with how an unmetalled road is shown - it appears to the Investigating Officer to be shown as being narrower than the depiction used for a metalled third class road. A line is shown across the route at point A and another at the first field boundary on the south side.
Investigating Officer's Comments		The small scale one inch OS map was predominantly published with the main market being the travelling public so the inclusion of the application 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. A solid line across a route normally indicates the existence of a gate or some other form of restriction so there were 2 gates shown across the lane. However, no other maps before or after this show

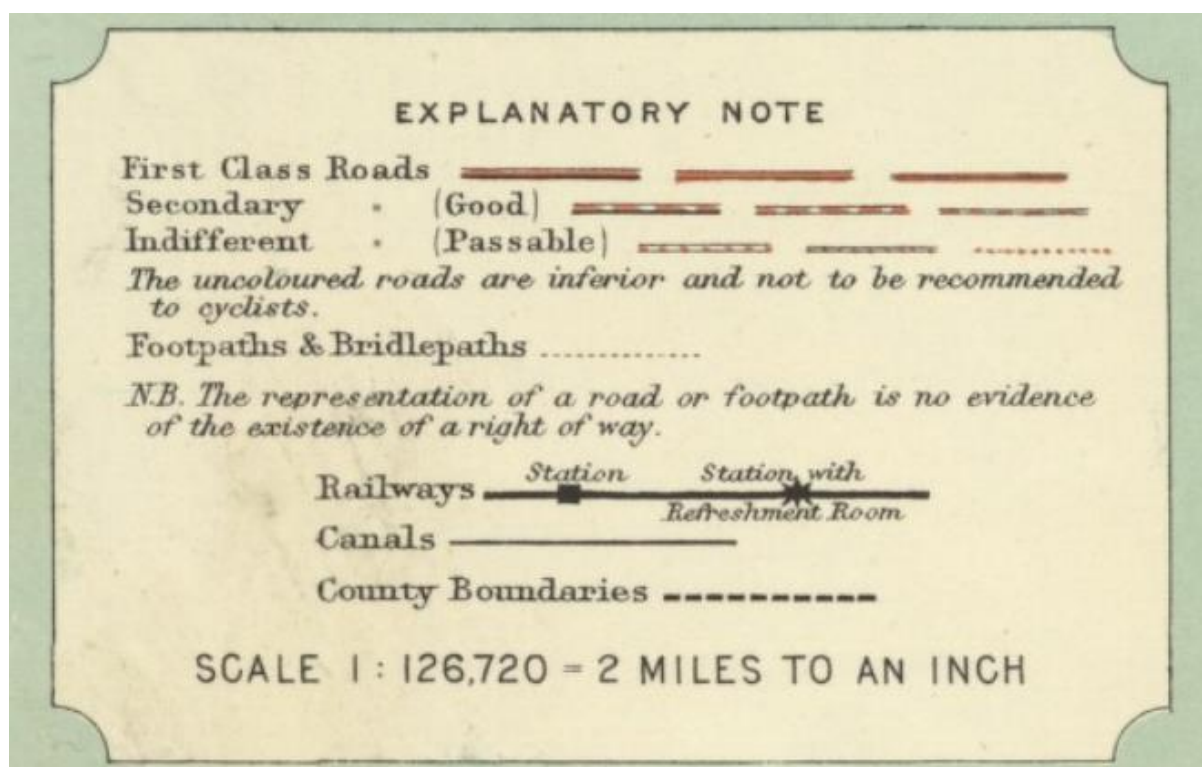
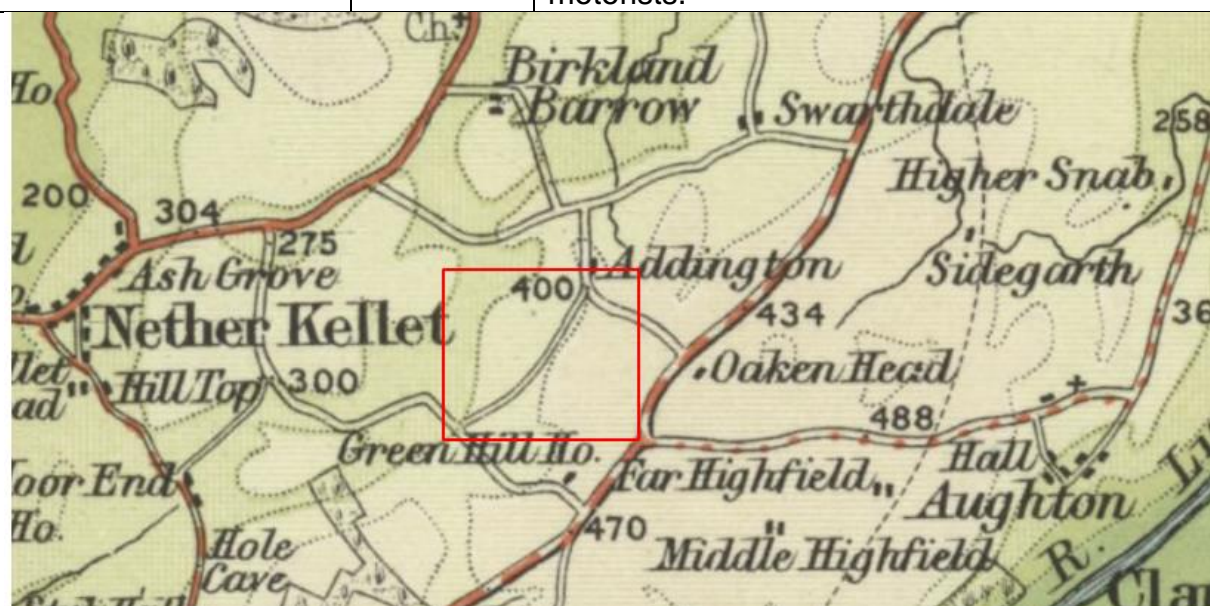
		lines across the route at these points, although if a gate did exist it does not necessarily mean that it was in a closed position or prevented the route from being accessed by the public.
<b>25 inch OS Map</b>	1913	Further edition of the 25 inch map surveyed in 1890, revised in 1911 and published in 1913.



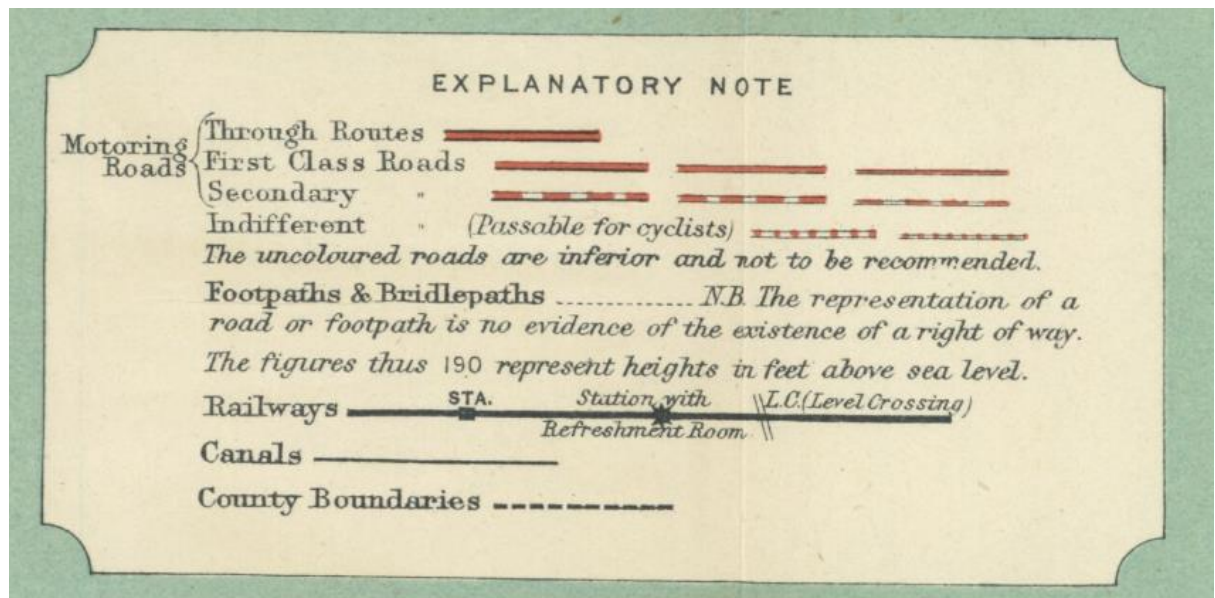
<b>Observations</b>		The application route is shown in the same way as it is shown on the 1 <sup>st</sup> edition 25 inch map.
<b>Investigating Officer's Comments</b>		The application route existed in 1911 and appeared to be capable of being used at least on horseback.
<b>Bartholomew half inch Mapping</b>	1905-1941	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.

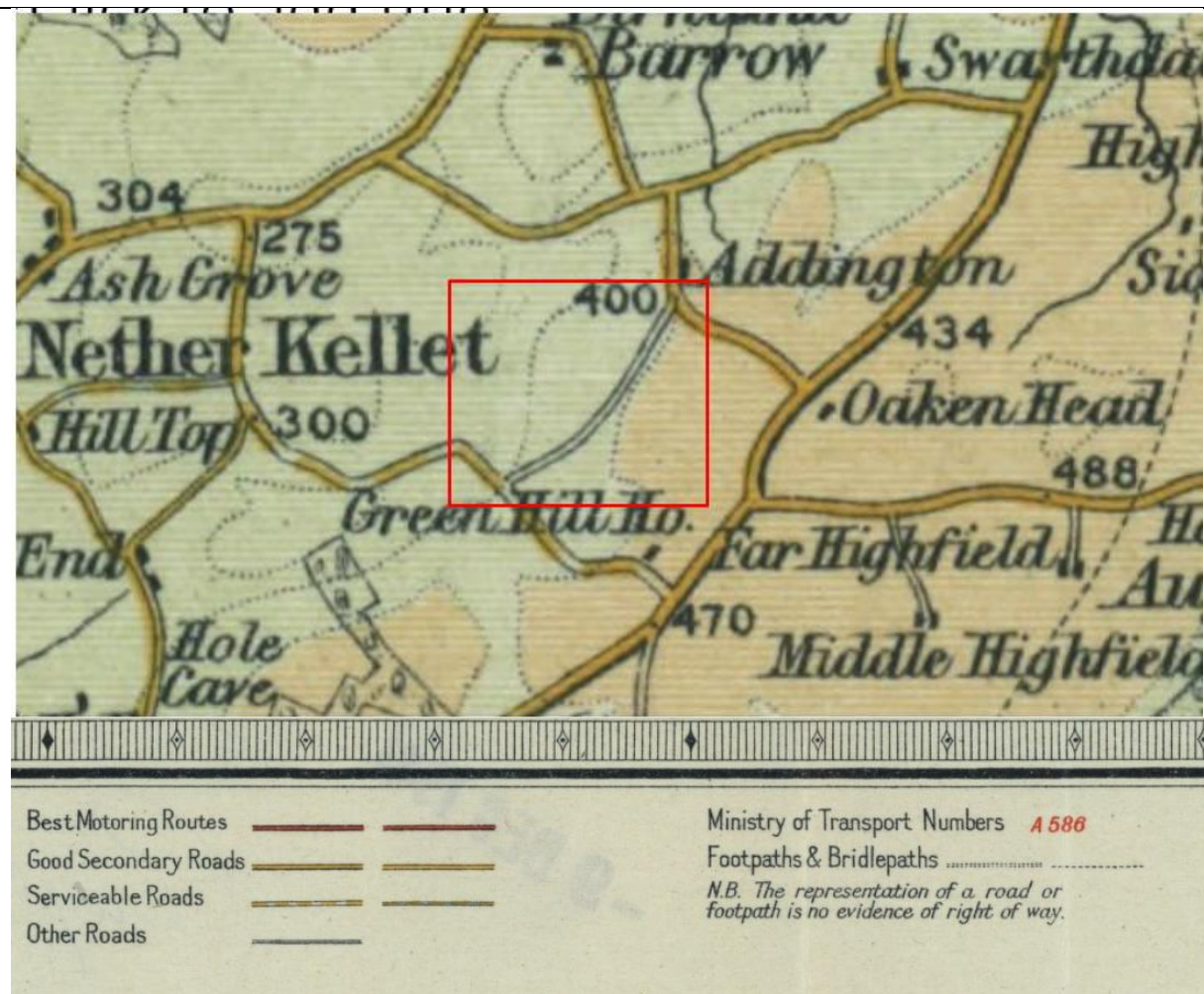


Sheet 5 – North Lancashire and the Isle of Man 1905



Sheet 5 – North Lancashire and Isle of Man 1920

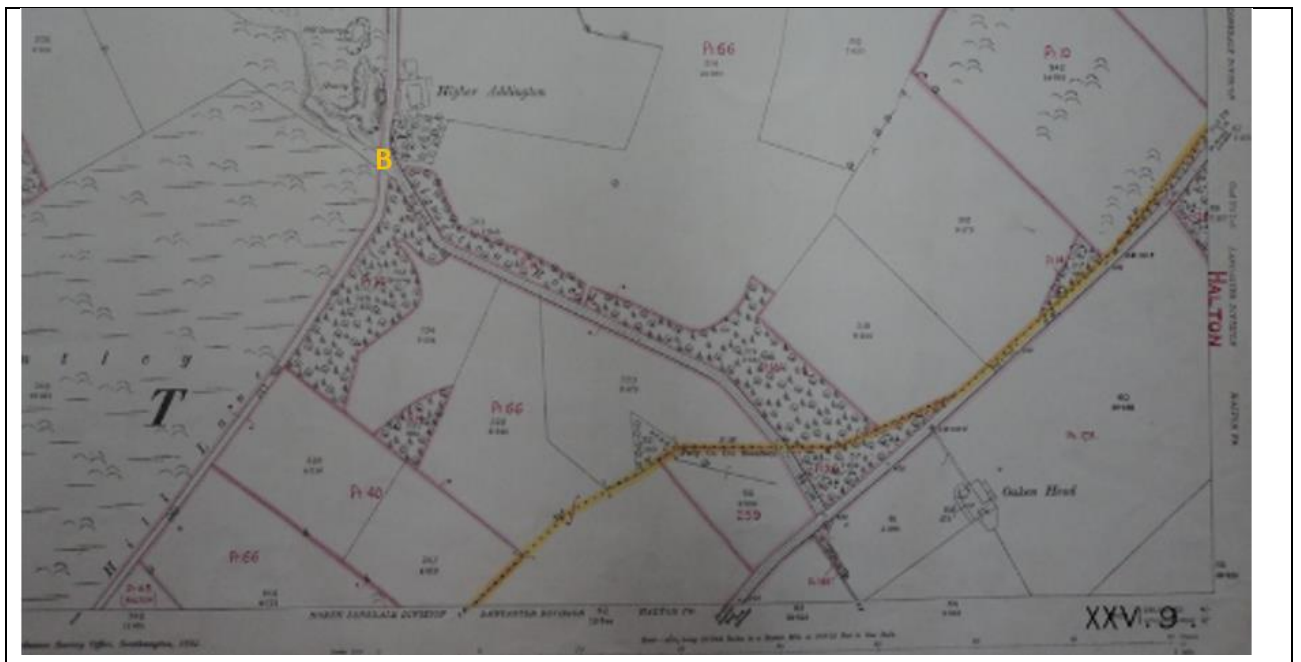


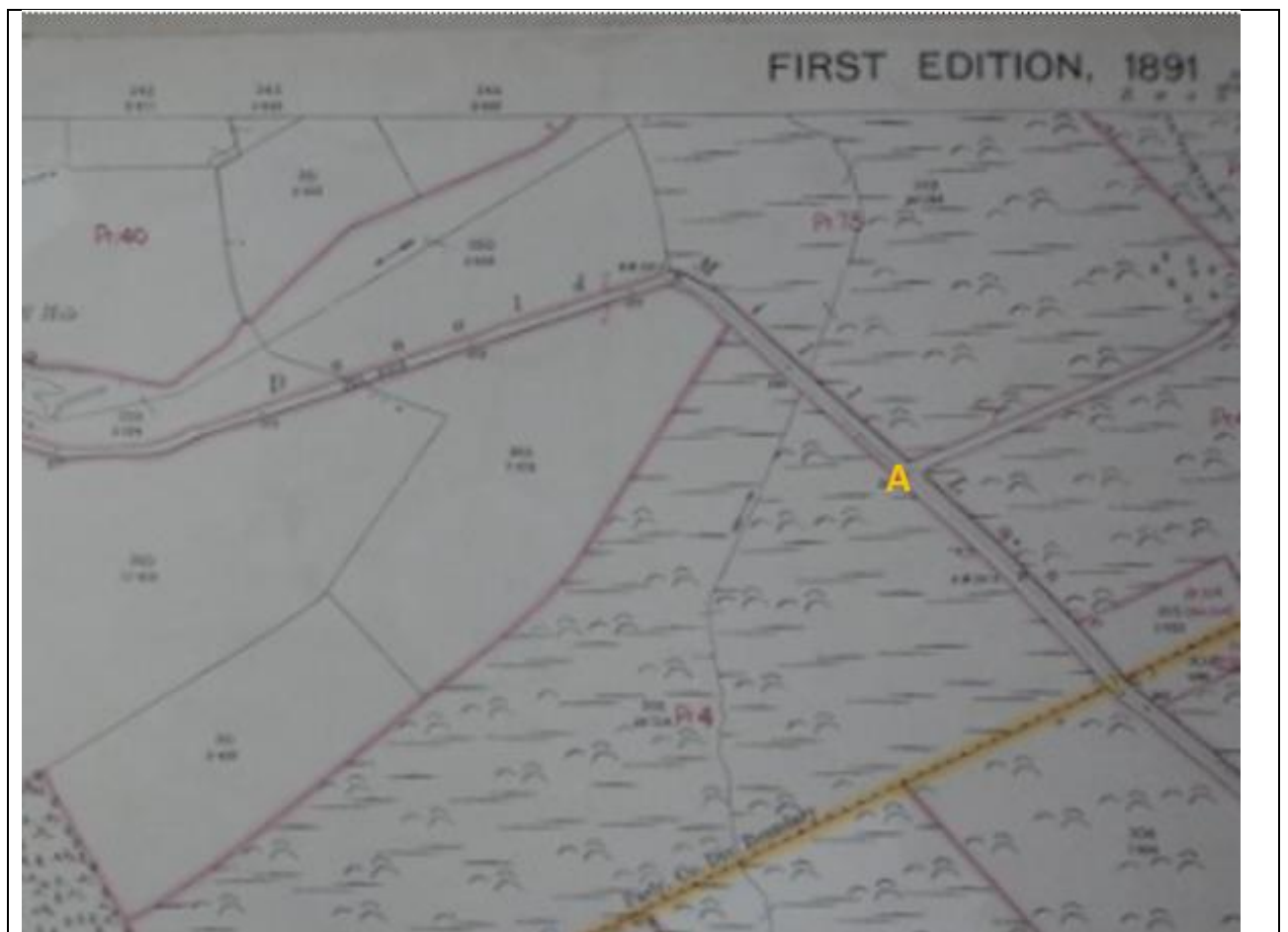


Sheet 31 – North Lancashire – published 1941

Observations		The application route is shown as a substantial bounded through route on all three editions of Bartholomew's Map. It is shown as an uncoloured road on the map sheets published in 1905 and 1920 with a note in the key panels explaining that uncoloured roads were inferior and not to be recommended to cyclists. The ½ inch map published in 1941 shows the route as 'other road' as opposed to a footpath or bridleway.
Investigating Officer's Comments		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>Whilst the key to the maps states that the representation of a road, bridleway or footpath is no evidence of a right of way the fact that the route is clearly shown as a through route on all three maps suggests that it was capable of being used – at least on horseback – through the first half of the twentieth century.</p>
<b>Finance Act 1910 Map</b>	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private 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 full length of the application route is shown as being exempt from the numbered hereditaments.
Investigating Officer's Comments		<p>The map prepared under the provisions of the 1910 Finance Act obtained from the National archives shows the whole of the application route excluded from adjacent land in private ownership.</p> <p>The instructions given to the surveyors (Instruction No. 560) stated that the numbered parcels of land should 'continue to be exclusive of the site of the external roadways'. Roadways for this purpose 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. In this instance the full length of the application route is excluded from the assessable parcels of land for which taxes may have been payable, indicating that the route's status was probably considered to be public at that time and suggesting that if this was so that the</p>



		<p>route would have carried at least public bridleway rights.</p> <p>However, there may be other reasons to explain its exclusion. It has been noted, for example, that there are some cases of a private road set out in an inclosure award for the use of a number of people but without its ownership being assigned to any individual, being shown excluded from hereditaments; but this has not been a consistent approach and needs to be looked at carefully in context with all other available evidence particularly where a route, which was originally created as part of the inclosure process, then appears to have been open and available for public use thereafter.</p>
<b>1932 Rights of Way Map</b>		<p>The Rights of Way Act 1932 set out the mechanism by which public rights of way could be established by user and under which landowners could deposit maps to show highways already in existence and to indicate that they didn't intend to dedicate further rights of way. The Commons, Open Spaces and Footpath Preservation Society (which became the Open Spaces Society) who were the prime instigators of this Act and the later 1949 Act, called for local authorities to draw up maps of the public rights of way in existence (a quasi pre-cursor of the Definitive Map). This is set out in 'The Rights of Way Act, 1932. Its History and meaning' by Sir Lawrence Chubb [M]. The process for consultation and scrutiny followed in Lancashire is not recorded but some of the maps exist including maps for the following areas are available for inspection at County Hall: Lunesdale Rural District (RD), Lancaster RD, Burnley RD, Garstang RD and West Lancashire RD.</p>

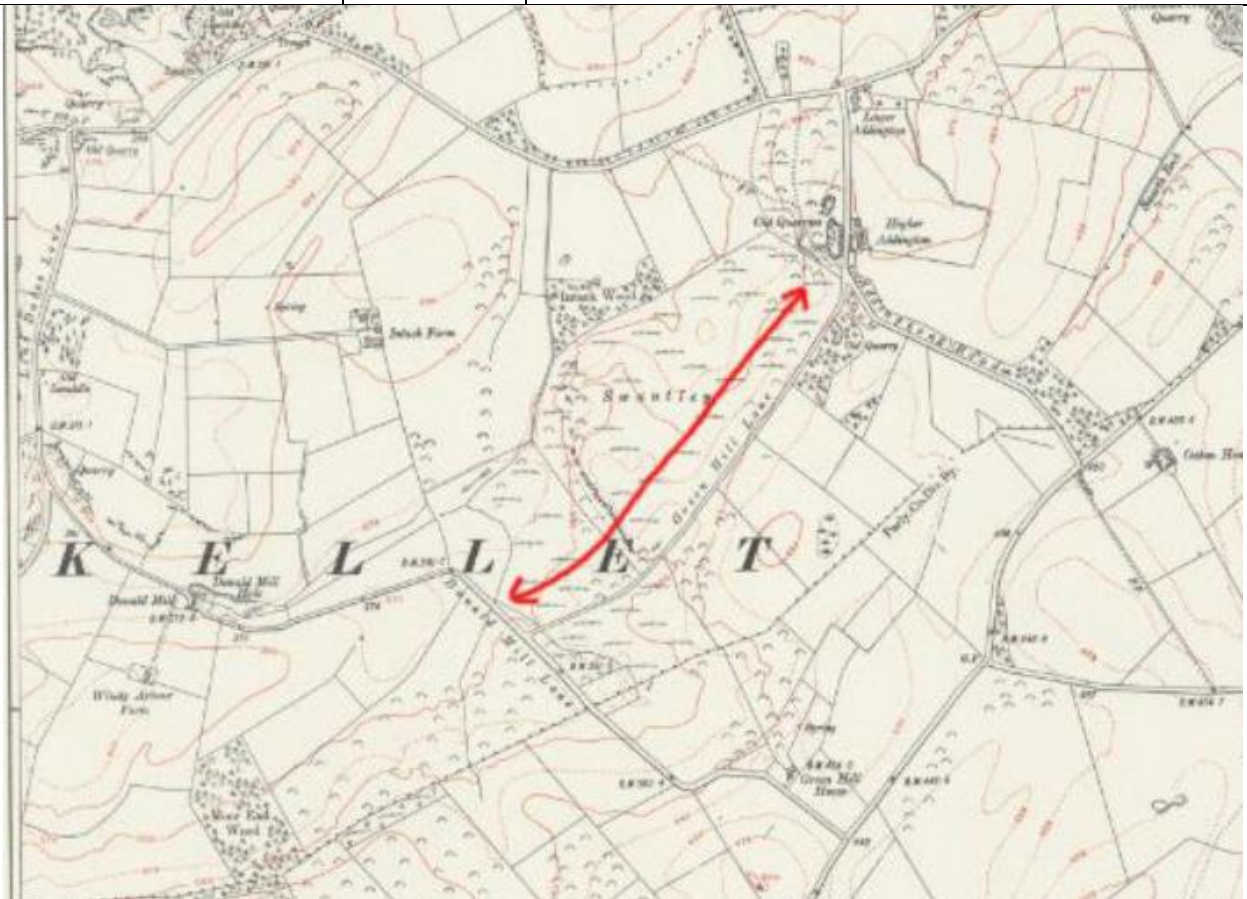


Lunesdale Rural District Council.  
Public Footpaths.  
Nether Kellet Parish.

1. Withbatts Lane to Over Kellet.
2. End of Whorleys Lane across fields to Thwaite
3. Hallfield Lane.
4. Lawson's Farm to Lancaster Road.
5. Lawson's Farm to Beaumont Cote.
6. Back Lane to Thwaite House Farm.

Observations		The typed list accompanying the map specifically refers to public footpaths. The application route was not recorded as a public footpath on the maps prepared for Nether Kellet parish by Lunesdale Rural District Council.
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Investigating Officer's Comments		The application route was not considered to be a public footpath in the 1930s but this does not necessarily mean that it was not considered to be a bridleway or public carriageway at that time.
<b>Aerial Photograph<sup>2</sup></b>	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
Observations		No photograph of the area crossed by the application route is available.
Investigating Officer's Comments		No inference can be drawn.
<b>6 inch OS Map</b>	1943	6 inch OS map extract provided (and annotated) by the applicant. OS Sheet Lancashire XXV.SW surveyed 1845, revised 1910 and published circa 1943.



Observations		The application route is shown as a substantial named bounded through route which remained
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<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.



		unaltered from earlier editions of OS mapping. No gates are shown across the route.
Investigating Officer's Comments		The application route was still known as Green Hill Lane and appeared capable of being used by horses and possibly vehicles in 1910 (date of revision of the map).
1 inch OS Map Sheet 89 Kendal and Lancaster		Small scale 1 inch OS map revised 1920 with later smaller revisions, published 1947.



Ministry of Transport Roads	<b>A.6</b>	<b>B.6254</b>
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	

Observations		The full length of the application route is shown as a Minor Road. Bridle and Footpaths are shown on the map denoted by a single dashed line.
Investigating Officer's Comments		The application route was capable of being used by horses and possibly vehicles in the first half of the 1900s. Its inclusion on the map as a minor road not a bridle or footpath is suggestive of a route considered to be at least a public bridleway and probably a public vehicular route at that time.
<b>1 inch OS Map Sheet 89 – Lancaster and Kendal</b>	1955	Further 1 inch OS map revised fully 1950 and published 1955.

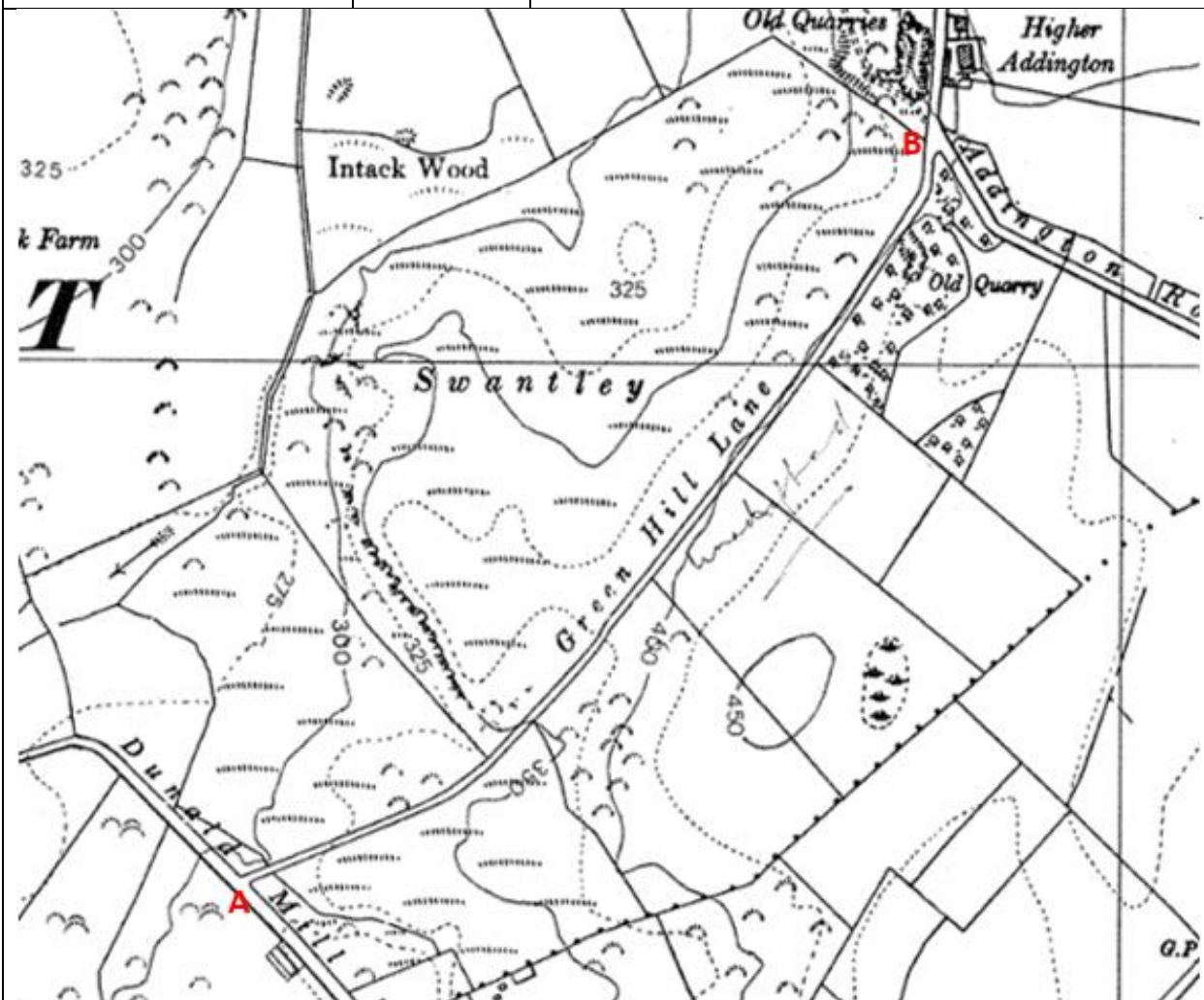


Roads	Ministry of Transport, Trunk	A 6 (T)
	" " " Class 1	A 590
	" " " " 2	B 6254
	14 ft of Metalling & over (not included above)	
	Under 14ft of Metalling. Tarred " "	TOLL
	" " " " Untarred " "	Gate
	Minor Roads in towns, Drives and Unmetalled Roads (Unfenced Roads are shown by pecked lines)	
Steep Gradients 1 in 5 or steeper		
Footpaths and Tracks		

Observations		The application route is shown as an unmetalled road.
Investigating Officer's Comments		The inclusion of the route on this map as an unmetalled road is again highly suggestive of a



		route which would have been capable of being used on horseback and possibly vehicles in the mid 1950s. This concurs with the evidence provided by Mr Robert Moser detailed later in this report regarding the view of the parish council that the route was used by vehicles in the 1950s when the Parish Survey map was prepared.
<b>6 Inch OS Map Sheet 56NW</b>	1956	The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.

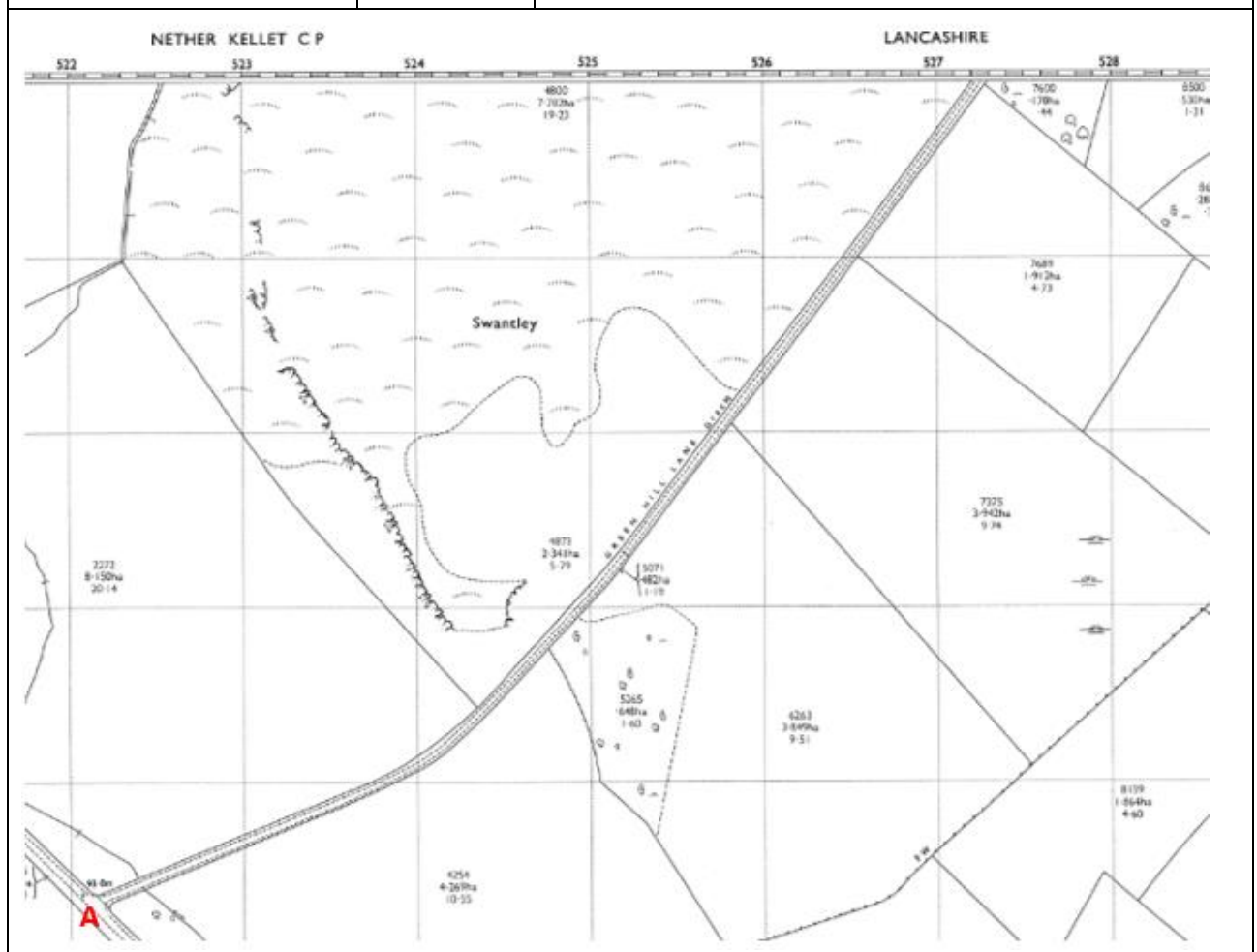


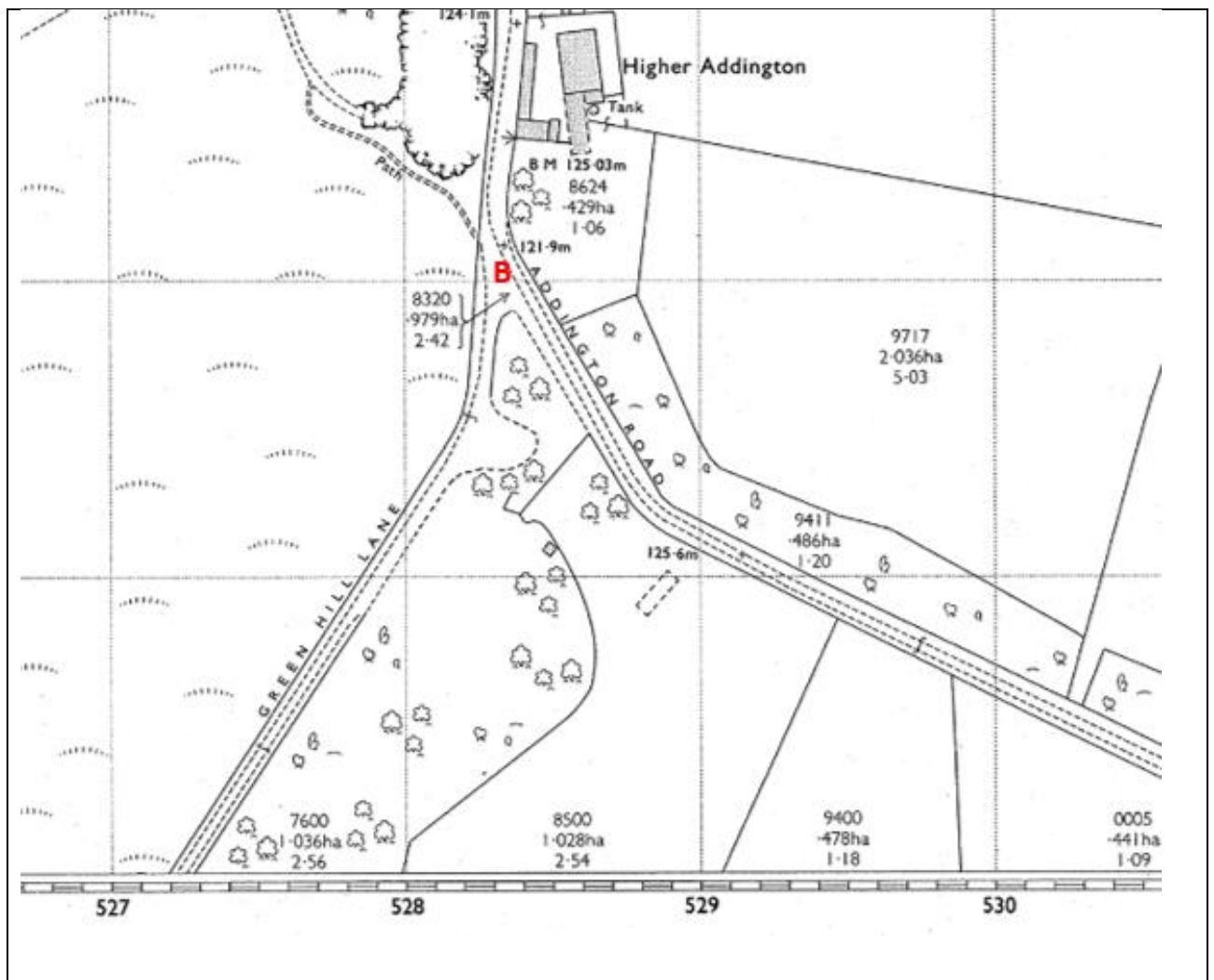
Observations		The application route is shown as a substantial named bounded through route which remained unaltered from earlier editions of OS mapping. No gates are shown across the route.
Investigating Officer's Comments		The application route was capable of being used by horses and possibly vehicles in the 1930s.

**1:2500 OS Map  
SD 5267-5367 and SD  
5268-5368**

1970

Further edition of 25 inch map reconstituted from former county series and revised in 1969 and published 1970 as national grid series.





Observations		The application route is still shown as a substantial named bounded through route unaltered from earlier editions of OS mapping.
Investigating Officer's Comments		The application route was capable of being used by horses and possibly vehicles in the late 1960s.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		The application route is visible along most of its length – although partially obscured by trees on the approach to point B. The track appeared more open and less overgrown than it is at present although it is not known what time of year the photograph was taken.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights but the aerial photograph supports the existence of the application route in the 1960s and the fact that it appeared to be capable of being used.
<b>Definitive Map Records</b>		<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>
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an

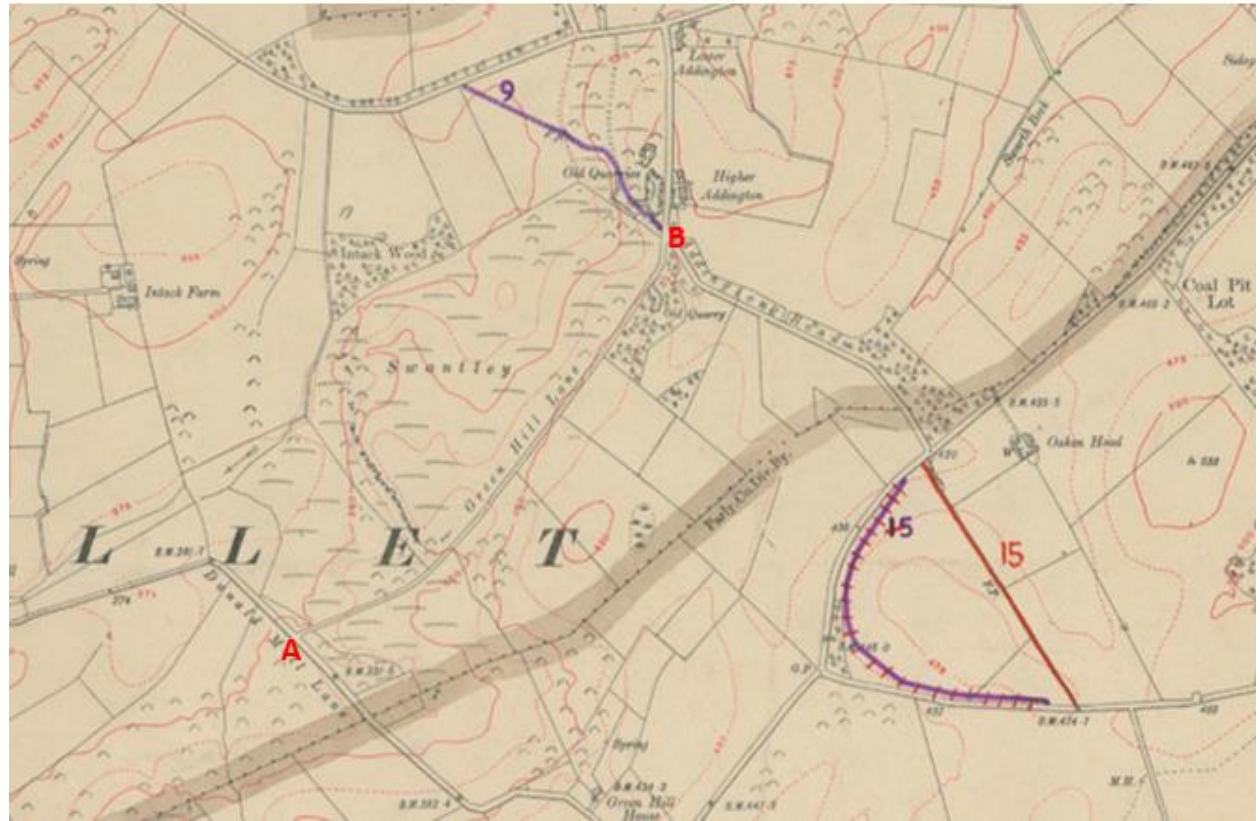


		<p>urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map 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>
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Observations		<p>The application route is not shown on the parish survey map.</p>
Draft Map		<p>The parish survey map and cards for Nether Kellet were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings</p>

		were held into these objections, and recommendations made to accept or reject them on the evidence presented.
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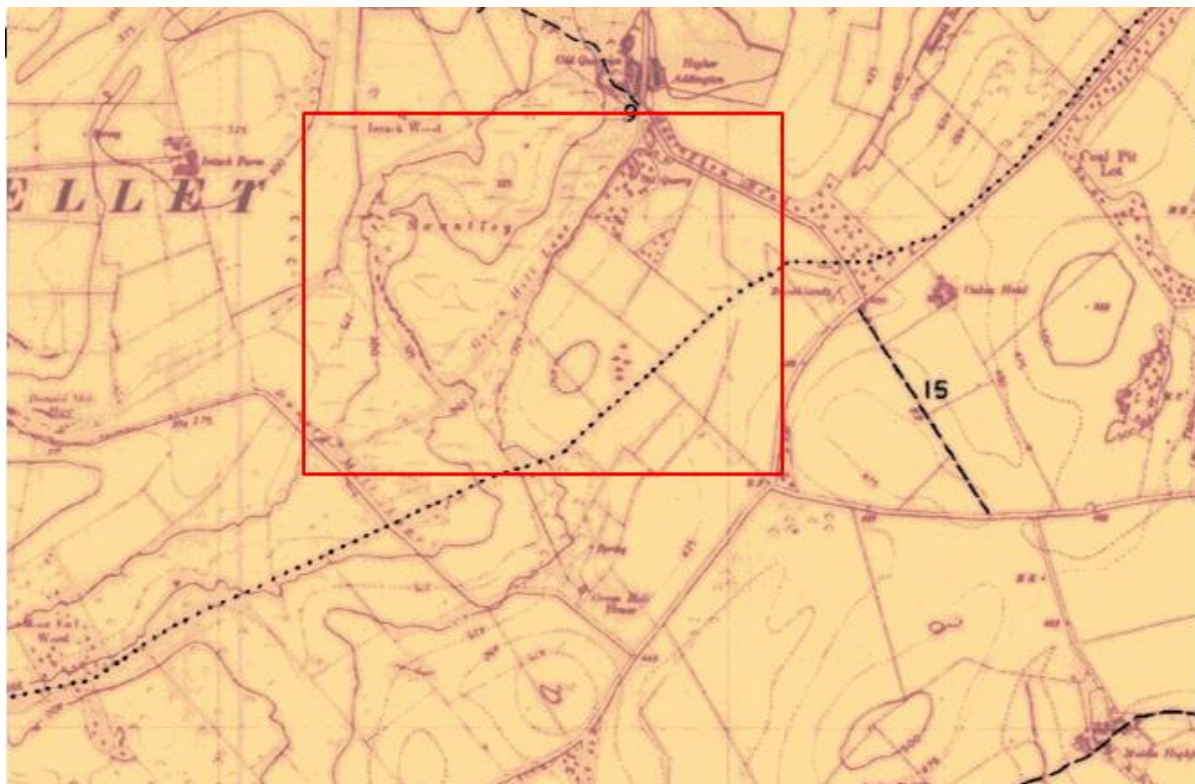


Observations		The application route was not shown on the Draft Map of Public Rights of Way and no representations or objections were made relating to it.
<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The application route was not shown on the Provisional Map of Public Rights of Way and no representations or objections were made relating to it.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was not shown on the First Definitive Map 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<sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1<sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.



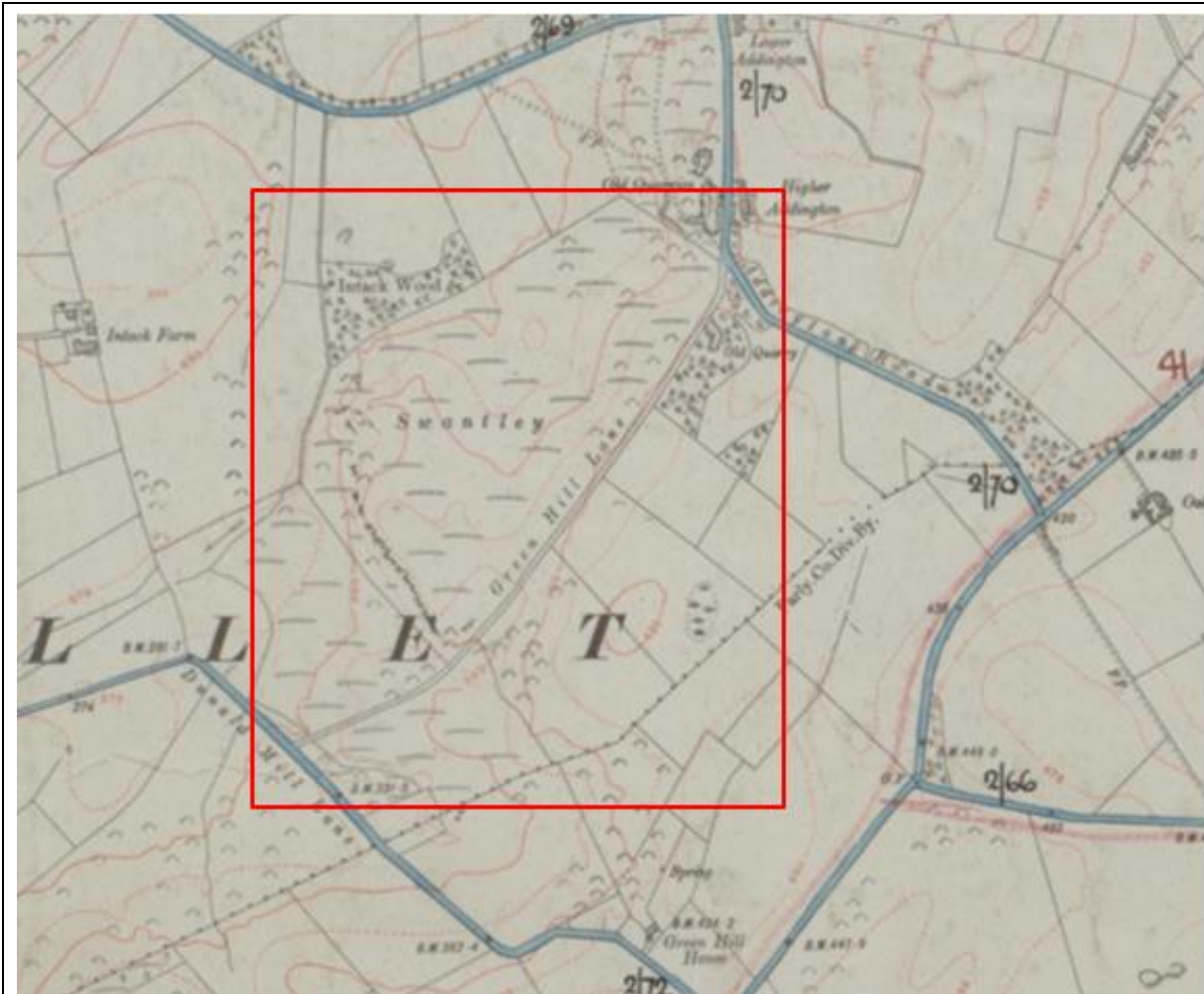
**Observations**

The application route is not shown on the Definitive Map of Public Rights of Way (First Review) and from 1953 through to 1975 there is no indication that the application route was considered to be a public footpath 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. However, in 1985 an application (referenced 804-129) was made by Nether Kellet Parish Council to record the route as a public footpath based on modern user evidence. Whilst some of the maps and documents now under consideration were considered - namely the Inclosure Award and Map,

		<p>Yates', Greenwood's and Hennessey's commercial maps and the first edition 6 inch and 25 inch OS maps - the application was based primarily on modern user evidence of the route on foot. The matter was considered by the County Council's Public Rights of Way Sub Committee in July 1990 and the application accepted. A Definitive Map Modification Order subsequently made in 1991. Objections were received to the Order but it was confirmed by the Secretary of State following a public inquiry in 1994. The Inspector based his decision on user evidence concluding that the route had been dedicated as a public footpath by at least the early 1970s prior to an effective challenge to that use made in 1976 by the locking of a gate.</p> <p>In 1997 a further application was made by The North Lancashire Bridleways Association to upgrade the route to public bridleway (application 804-328). A further report was presented to the County Council's Public Rights of Way Sub Committee whereby the same map and documentary evidence was considered together with user evidence submitted by the applicant and reference to user evidence submitted in support of the original Order. Having considered the matter – and in particular the user evidence – the Sub Committee rejected the application. This decision was appealed by the applicant but was upheld by the Government Office for the North West.</p>
Investigating Officer's Comments		<p>The application route was not recorded as a public right of way as part of the process of compiling the Definitive Map and Statement. The route was however subsequently recorded as a public footpath following on from one of the earliest applications made to the county council following the implementation of the provisions of 'continuous review' set out in the Wildlife and Countryside Act 1981.</p> <p>The decision to record the route as a public footpath was made on the basis of 'modern' user evidence predating 1976 but did not fully consider the history of the route since its creation as a private occupation road in 1815. Many of the maps and documents now under consideration as part of this third application had not been previously considered or, whilst initially considered, are now being looked at again in light of more recent public</p>



		inquiry decisions and guidance when researching historical public rights.
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>



Observations		The application route is not recorded as a publicly maintainable highway on the county council's List of Streets and was not shown as a publicly maintainable highway in records believed to be derived from the 1929 Handover Map. Although now recorded on the Definitive Map and Statement as a public footpath, the Order made to record it as such was made on the basis of modern use of the route and so the route is not currently regarded as a publicly maintainable footpath.
Investigating Officer's Comments		The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of access.
<b>Highway Stopping Up Orders</b>	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No records relating to the stopping up, diverting or creation of public rights along the route were found

		(other than the Definitive Map Modification Order detailed above).
Investigating Officer's Comments		If any unrecorded public rights exist along the route they do not appear to have been stopped up or diverted.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		<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 application route runs.
Investigating Officer's Comments		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.
<b>Written statement of Mr Robert Moser</b>	1994	Written Statement provided by the applicant with attention drawn to the fact that Mr Moser states that he was a member of Nether Kellet Parish Council in the 1950s when the Parish survey Map was drawn.

COPY

Mr Robert Moser, 37 Main Road, Nether Kellett. I am a member of Nether Kellett Parish Council.

I have lived in Nether Kellett since 1938. I worked on Moor End Farm which was part of the Butler-Cole Estate and then in the 1940's I worked for the estate itself. I have a copy of the sale plan of the estate and Green Hill Lane is clearly excluded from the estate.

I have seen a copy of the plan and can confirm that I was familiar with the Lane. I used it with vehicles and for driving livestock and for walking. I have walked it with my wife and children many times.

I worked for the estate until 1957. I continued to use the Lane afterwards for pleasure walking.

The Lane was always open at both ends and could be used by the public with or without vehicles. It is sometimes called an 'occupation road' but that is not its true status. It is a public road. It was at one time used to get access to the Sandstone Quarry near Higher Addington and also the Mill stone quarry.

There were never any gates on the Lane until 1976. When the gas main was being laid tipping started in the old quarry near Higher Addington. Mr Gatt put a gate at the east end of the Lane to stop the fly tipping. I was a member of the Parish Council at the time. We made enquiries of the County Surveyor's Department and were told there would be no objection to a gate provided it was left unlocked. There were never any signs except one which I think was put up by the Lancaster City Council saying 'no tipping'.

When I worked for the estate people used to use the Lane and I was never aware of anyone asking permission to use it or of anyone being stopped from using it. As far as I am concerned it has always been a public road and I fully support the Council's application to have the Lane put on the definitive map as a public footpath. I was a member of the Parish Council in the 1950's when the definitive map was first publicised. We did not at that time think to have the path put on the map since we were only concerned with paths that could be used on foot, and this was a lane that could be used with vehicles as well.

Signed R Moser

Dated 26th March 1990

## Observations

The written statement is said to have been obtained from papers relating to the previous application to add the route to the Definitive Map.

A check of the County Council's records confirms that Mr Moser was one of the County Council's witnesses who gave evidence at the public inquiry held in 1994 to determine the Order to be made to record the route as a public footpath. This statement appears to have been prepared in relation to that.

Mr Moser refers to the fact that he had lived in Nether Kellett since 1938 and worked on the land crossed by the application route from the 1940s until 1957. He refers to a sale plan for the Butler-Cole Estate which showed the application route



		<p>excluded from the land to be sold and that during the time he worked on the land he drove vehicles and livestock along the route.</p> <p>Of significance – is the fact that he explained that he was on the Parish Council when the parish survey map was compiled and that the understanding at that time by the Parish Council was that the routes to be shown on the map were those believed to be footpaths. He states that the Parish Council at that time did not think that the application route needed to be recorded because they were only concerned with paths used on foot and that the application route was used by vehicles.</p>
Investigating Officer's Comments		<p>The Estate plan referred to by Mr Moser has not been seen and a copy could not be found in the county council's records. The fact that the application route is said to be excluded from the land to be sold is however consistent with the current land registry records which show the route unregistered and the earlier Tithe and Finance Act records which both exclude the route from numbered plots for which landownership details are recorded. Exclusion of the route from the sale of adjacent land – particularly if the sale related to land on either side of the route is good evidence however of the fact that the route was considered to be more than a public footpath and that since its original creation it possibly now carried public vehicular rights.</p> <p>The information supplied by Mr Moser also appears to confirm that the route could physically have been used by vehicles – and by inference (although he does not specifically refer to it) – by horses in the mid 20<sup>th</sup> Century.</p> <p>Inspection of the Parish Survey Map prepared by Nether Kellet Parish Council in the 1950s confirms Mr Moser's explanation that the Parish Council only recorded routes considered to be footpaths indicating that if the Parish Council believed the route to be used by vehicles they were not recorded. There was a lack of clarity (nationally) surrounding the survey for the 1949 Act and the last minute introduction of the term RUPP (road used as a public path) in place of CRF/CRB (cart road mainly used as footpath/bridleway) without a clear definition led some parishes to record them as footpath/bridleway and some simply not to record them; this makes any inference difficult</p>

		without supporting evidence which is sparse in this case.
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The affected land/specified parts of the land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land.

## **Landownership**

The entire length of the application route crosses land which is unregistered. The adjacent farmland, Intack Farm, is in private ownership under title numbers LA754058, LAN87332, LA827444 and LAN79806.

## **Summary**

A significant amount of additional map and documentary evidence has been considered as part of this application compared to the previous two applications. In addition, map and documentary evidence previously available has been reconsidered in light of more recent guidance relating to its significance in relation to the interpretation of public rights.

The application route did not exist until 1815 when it was created as a private/occupation road as part of the inclosure process.

By 1818 the full length of the route existed (as evidenced by the fact that it was clearly shown on Greenwoods Map) and it appears to have remained unaltered since that time.

Although a gate was shown on the Inclosure plan approximately 220 metres south west of point B) there is no map or documentary evidence post-dating the preparation of the Inclosure plan to suggest that a gate actually existed at this point.

Evidence presented at the public inquiry in 1994 and further to the appeal to the Government Office North West in 2000 confirm the existence of gates in the mid to late 20<sup>th</sup> Century (and locking of a gate in 1976). However on all OS maps inspected no gates are shown and the application route is shown as an unrestricted through route which appears to have been wide enough to have been used by horses and vehicles since its construction. A gate at point A has now been authorised by the county council for stock control purposes.

The application route is clearly shown on early small scale commercial maps and on the Tithe Map produced in 1841. However, this particular Tithe Map shows what appear to be private access roads (culs de sac to buildings) in the same manner as the public roads.

The route is consistently shown on all OS maps examined – including the small scale 1 inch maps – and also on Bartholomew's maps where it is consistently shown as an uncoloured road suggesting that it was capable of being used – at least on horseback – through the first half of the twentieth century.

Finance Act records (not previously available when the matter was first considered) from the early 1900s suggest the good possibility that it was considered to be public carriageway at that time. However, it is also possible in this case that it was excluding a private joint occupation road not in any particular ownership.

The records relating to the preparation of the Definitive Map and Statement submitted from a former parish councillor involved in the preparation of the parish survey map, suggest that the route was not initially recorded because of a belief that it was more than a public footpath – and was used by vehicles.

Land ownership records do not confirm ownership of the route although the Inclosure Award details private liability for the maintenance of the route. The fact that ownership is unregistered and owners not identified in legal documents such as the Tithe Award and Finance Act Maps again are consistent with the route being considered to be more than a public footpath. Reference was also made to an Estate plan documenting the sale of the estate through which the application route runs. The county council have not had sight of this plan as part of the current investigation but again, it is mentioned that the sale of the land excluded the application route which is consistent with the current landownership details available through the land registry.

To conclude, the map and aerial photographs examined all suggest that the route may have been available to be used since 1815 and that whilst originally created as a private occupation road that in reality it was more likely to have been used – at least until more recent times on horseback and possibly with vehicles. However, the availability to the public without evidence of any actual use is insufficient to infer such quality and quantity of public use that could evidence dedication of public rights and with the exception of Mr Moser's statement, which does not mention bridleway rights, there is no evidence which does not have an alternative explanation consistent with private occupation road created by the Inclosure Award.

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

### **Information from the Applicant**

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

Greenwood's Map of Lancashire published 1818  
Hennet's Map of Lancashire published 1830  
6 inch Ordnance Survey map published 1847  
6 inch Ordnance Survey Map published 1943  
25 inch OS map published 1891

One-inch OS map published 1898  
One inch OS map published in 1947  
One inch OS map published 1955  
Bartholomew's Half Inch to the Mile Maps  
Tithe Records 1841  
Inland Revenue Valuation Records - Finance (1908-10) Act 1910  
Lancashire County Council List of Streets

Land Registry documents

Parish Councillor Statement of Mr Moser dated 26th March 1990

All maps and documents provided by the applicant have been considered and details are included earlier in this report.

Information from Others

Virgin Media Services responded to our consultation stating that their plant should not be affected by the application.

Information from the Landowner

The adjoining landowners of Intack Farm sent a reply to our consultation via their solicitor, [Oglethorpe Sturton & Gillibrand LLP](#).

It was clarified that since 1947 the owners of Intack Farm have at all times believed that the lane was within their ownership and in the alternative consider that they have acquired ownership over many years by adverse possession or by estoppel since 1947.

It was advised that the owners of Intack Farm have now been maintaining and repairing the lane, including the repair and maintenance of the gates and all of the fencing and other structures at their own cost for a period of in excess of 70 years.

The owners of Intack Farm contested the idea that the lane had been used as a 'busy thoroughfare' from 1947 to date, or that members of the public had ridden horses (or otherwise) on Greenhill Lane, for at least a period of 30 years (counting back from the British Horse Society's notice). They also deny that the lane has ever been used by vehicles or carriages since at least 1947 and they aver that such a contention is impractical and unrealistic.

The idea that Greenhill Lane had been used for vehicles for the quarry was also questioned, the owners stating that the entrance to the quarry was on the Baxter's lane opposite Greenhill Lane.

The owners of Intack Farm also raised safety concerns should bridleway rights be recorded along Greenhill Lane along with concern regarding fly tipping, use by scramblers or motorcycles, particularly in relation to the wellbeing of livestock in the adjoining fields. They also highlighted the changes necessary to facilitate access on horseback, such as gate fastenings, boulders in the lane, they expressed a need for the council and/or the British Horse Society to complete the works necessary for their farming business to continue as before, should bridleway rights be recorded along the lane.

## **Assessment of the Evidence**

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

In support of making an Order



### Against making an order

- 1815 Inclosure Map and Award
- Written statement of Mr Robert Moser – in relation to the drawing up of parish survey map

### Conclusion

The route under consideration is currently recorded as a public footpath. The application is to upgrade the section of footpath from points A-B to a bridleway, as it is suggested the public footpath carries higher public rights.

Committee will note that previously the application route was recorded as a public footpath, as a result of an application and subsequently determined at a public inquiry in 1994. Thereafter, a further application was made to record the same route as a bridleway, this application was determined by the Government Office for the North West (GONE) on 27 February 2001 and was not accepted.

Committee should note that we are required to consider the current application due to the additional documentary map evidence presented.

Turning now to consider the current application, Committee should note that as the route already appears on the definitive map as a public footpath, it is not sufficient to satisfy the lesser test of reasonably alleging the existence of bridleway rights, neither is it necessary for there to be conclusive evidence of the existence of a higher public right than a public footpath, instead the standard of proof required is the balance of probability.

As there is no express dedication and no user evidence forms have been provided in support of this application, it is not possible to satisfy the criteria under s.31 Highways Act 1980 and instead Committee will need to consider on balance whether dedication may be inferred at Common Law.

Committee is therefore advised to consider whether evidence from the Old County maps and other documentary evidence coupled with the evidence on site does on balance indicate how the route should be recorded.

Evidence from the 1815 - Inclosure Map and Award suggests the application route was originally created as a private access route, there is no evidence to suggest bridleway use at this time. Some three years later, The Greenwood's Map of 1818 shows the full length of the route existed and it appears to have remained unaltered since that time.

The application route appeared on the early small scale commercial maps. The application route is depicted as a through route connecting to vehicular public highways and as a cross road on the 1830 -Hennet's Map of Lancashire. The Hennet's Map was produced 15 years after the Inclosure Map and the map depicted through routes that were generally available to the public in carts or on horseback therefore;

the inclusion of the application route on the map in 1830 suggests it may be possible to infer route was accessible to the public even if public rights did not exist.

The route appears consistently on the OS maps and supports the fact there were no gates on the application route hindering access and it was a through route which is likely to have been wide enough to have possibly been used by horses and vehicles.

The application route is unregistered and owners were not identified in legal documents such as the Tithe Award and Finance Act Maps. The Finance Act 1910 records from the early 1900s show the application route was excluded, this is again good evidence on balance that the route was considered to be public carriageway at that time. However, it is also possible in this case that it was excluding a private joint occupation road not in any particular ownership. The Tithe Map produced in 1841 does not add any further weight and nothing can be inferred about public status from this map.

A statement submitted by Robert Moser a former parish councillor who was involved in the preparation of the parish survey map, purports to support the application however the wording of the statement is not corroborative evidence in support the application for a bridleway, as Mr Moser states he believes the route to be a public road therefore it should be recorded as a public footpath and he explains the route 'could' be used by vehicles so there is no evidence that the application route 'was' used by the public hence this adds no further weight in support of the application. There is no further evidence presented to support the actual use of the application route as a bridleway.

Taking all the evidence into account and noting how the route was recorded on the old County maps, it is suggested to Committee that there is insufficient evidence to infer dedication that the route ought to be shown as a highway of a different description and the claim should be rejected.

## **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: 804-624		Simon Moore, 01772 531280, Legal and Democratic Services

Reason for inclusion in Part II, if appropriate

N/A