

## Regulatory Committee

Meeting to be held on 26<sup>th</sup> January 2022

### Part I

Electoral Division affected:  
Lancaster Rural North

**Wildlife and Countryside Act 1981**  
**Definitive Map Modification Order Investigation**  
**Public Right of Way from Snape Lane, in the Parish of Warton to its**  
**Continuation as Bridleway Yealand Conyers 17**  
**File No. 804-633**  
(Annex 'A' refers)

Contact for further information:

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### Brief Summary

Determination of an application for the addition of a Bridleway from Snape Lane, in the parish of Warton to the parish boundary from where it continues as Bridleway Yealand Conyers 17.

### Recommendation

- (i) That the above application be accepted with additional rights and additional length included.
- (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 from Snape Lane, Warton to the parish boundary and to upgrade its continuation from Bridleway to Restricted Byway Yealand Conyers 17 as shown on Committee Plan between points A-B-C-D.
- (iii) That being satisfied that the tests for confirmation can be met the Order be promoted to confirmation.

### Detail

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 from Snape Lane to the parish boundary from where it continues as

Bridleway Yealand Conyers 17. However the investigation has discovered evidence that both the application route and the continuation bridleway should be recorded as restricted byway.

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 will only be made to upgrade a highway shown on the Definitive Map and Statement if the evidence shows that it:

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

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

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

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

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

## **Consultations**

### Lancaster City Council

Lancaster City Council provided no response to consultation.

### Warton Parish Council

Warton Parish Council provided no response to consultation.

### Applicant/Landowners/Supporters/Objectors

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

### **Advice**

#### **Head of Service – Planning and Environment**

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	5096 7401	Open junction of track with Snape Lane, Warton
B	5096 7414	Unmarked point where parish boundary crosses the track and where Bridleway Yealand Conyers 17 starts
C	5090 7464	Wooden field gate across route
D	5090 7465	Open junction with Dykes Lane

### **Description of Route**


The application route commences at an open junction of a track with Snape Lane (point A on the Committee plan). From Snape Lane the route runs along a clearly defined track in a northerly direction for approximately 125 metres. The track is just in the parish of Warton with the boundary with Yealand Conyers running along the western side. There is a compacted stone base to the track throughout, which is 2.5 to 3 metres wide, partially grassed over and running between hedges which are 6 to 8 apart (measured between the bases of the hedges). The hedges separate it from the adjacent fields, with a row of mature trees along the western boundary and field gates allowing access to pasture fields on both sides.

At the junction with Snape Lane there is a wooden bridleway sign pointing along the route. After 125 metres (point B) the parish boundary (not discernible) turns eastwards across the track beyond which there is already a bridleway recorded along the track but there is no discernible distinction between Bridleway Yealand Conyers 17 and the application route. This bridleway continues north in the same manner as the application route all the way through to Dykes Lane with site evidence (with hoof prints and footprints visible) that it is used as a through route from Snape Lane to Dykes Lane. About 10 metres before Dykes Lane is a field gate (open at the time of inspection and also open when the Google Streetview image was captured in June 2009). A bridleway fingerpost is adjacent to this gate pointing along the track towards Snape Lane.

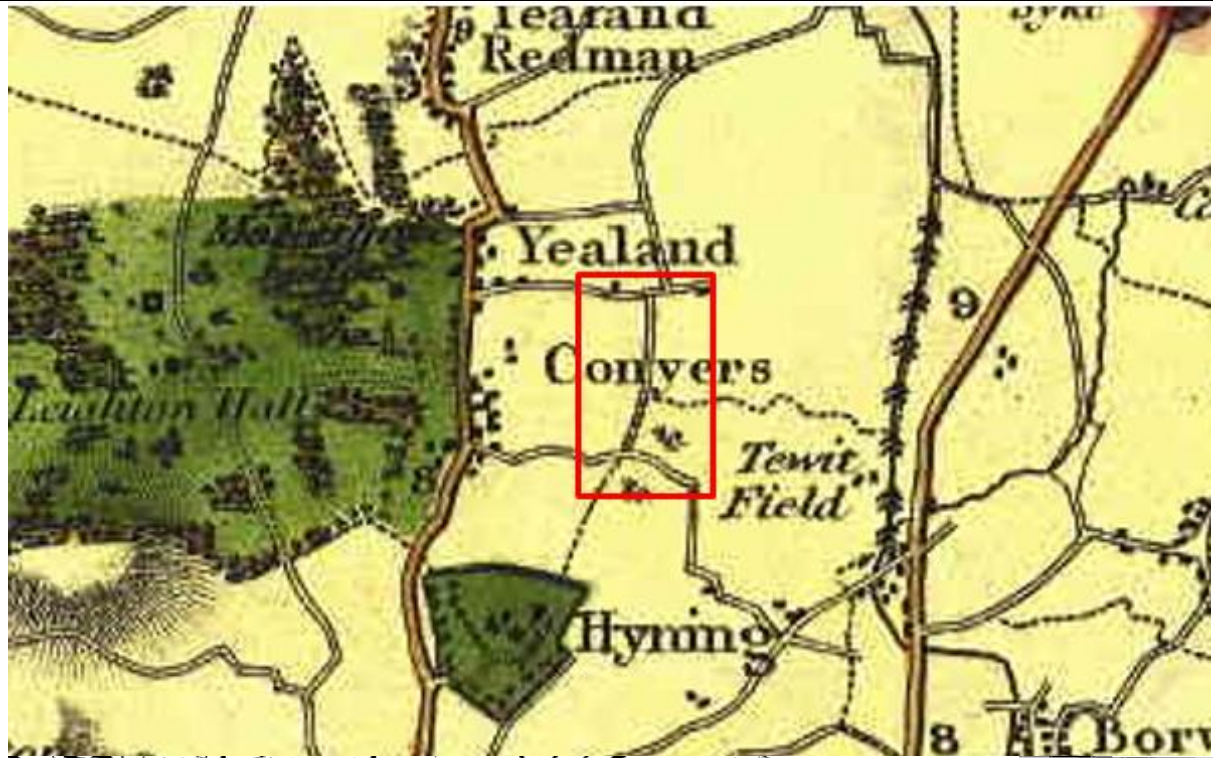
Both the route shown on the application A-B and the continuation as bridleway Yealand Conyers 17 which was investigated as a consequence, are considered below.

### 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
<b>Yates' Map of Lancashire</b>	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.
		
Observations		The application route nor B-D is not shown and neither is Snape Lane. Part of Dykes Lane is shown – but not the full length.
Investigating Officer's Comments		The application route may not have existed in 1786 or it may have been that Yates did not consider the route to be a public highway or that it was not surveyed, as surveys were expensive.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as

public roads and the two were not differentiated between within the key panel.



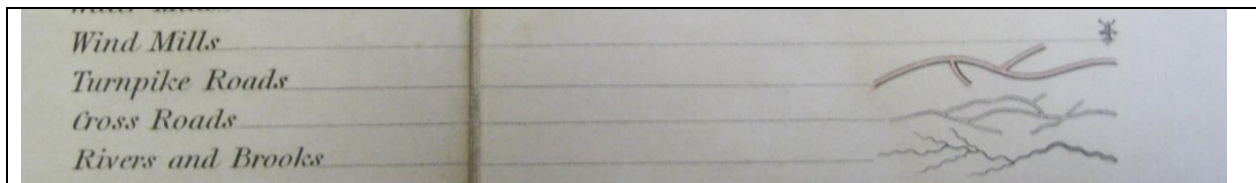
## Explanation

	Turnpike Roads	
	Cross Roads	
	Towns & other Places	
	that send Members to Parliament	
	Boundaries of Counties	
	Boundaries of Hundreds & Manors	

Observations		The application route is shown as part of a through-route from Snape Lane through to Dykes Lane. The parish boundary is shown running along the application route between point A and point B (approximately where it still does today). The full through route A-D is shown as a 'cross road' on the map in the same way that most of the connecting vehicular road network is shown.
Investigating Officer's Comments		It is not known what Greenwood meant by the term 'cross road' but the only other category of highway shown on the map is turnpike roads.

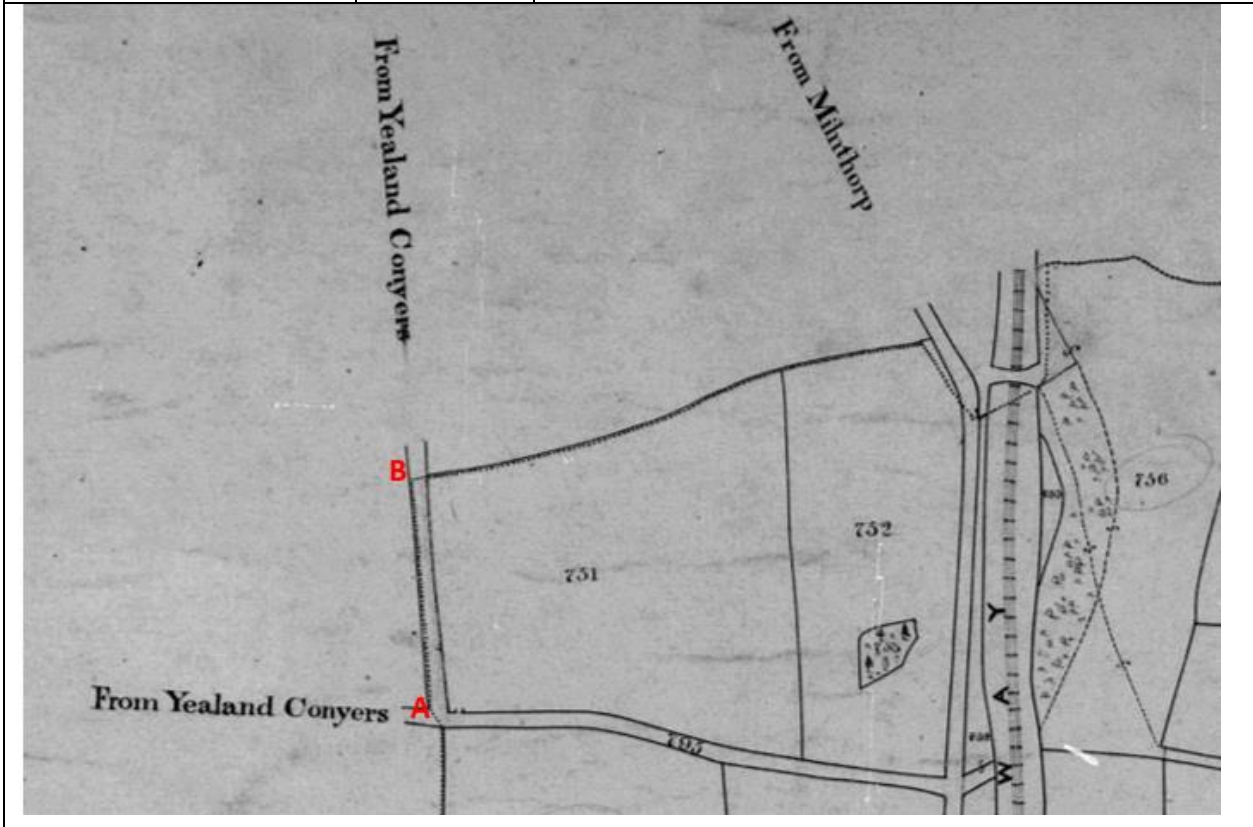
		<p>The fact that the route is shown as part of a longer through route is evidence that it existed in 1786 and that it was of a substantial nature capable of being used at that time. The inclusion of the route on a small scale commercially produced map of this kind is suggestive of the fact that the route is likely to have been considered to have been a public carriageway or at least a bridleway. It is unlikely that a map of this scale would show footpaths. The route as shown is indistinguishable from the vehicular road network of the area.</p>
<p><b>Hennet's Map of Lancashire</b></p>	<p>1830</p>	<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		The application route is again shown as part of a through-route from Snape Lane to Dykes Lane. The route A-D is shown as a 'cross road' on the map in the same way that most of the connecting vehicular road network is shown.
Investigating Officer's Comments		<p>The application route existed in 1830 as part of a longer through route. 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 the right to use it."</i></p> <p>It is unlikely that a map of this scale would show footpaths. It is considered likely that Hennessey'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 its inclusion on the map the application route was considered to be a public bridleway or carriageway in 1830. The route as shown is indistinguishable from the vehicular road network of the area.</p>
<b>Canal and Railway Acts</b>		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The land crossed by the application route was not affected by the construction of a railway or

		canal and no proposed canals or railways have been identified.
Investigating Officer's Comments		No inference can be drawn.
<b>Warton with Lindeth Tithe Map and Tithe Award or Apportionment</b>  <b>CRO Ref: DRB1/195 (map dated 1846)</b>	1845	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.

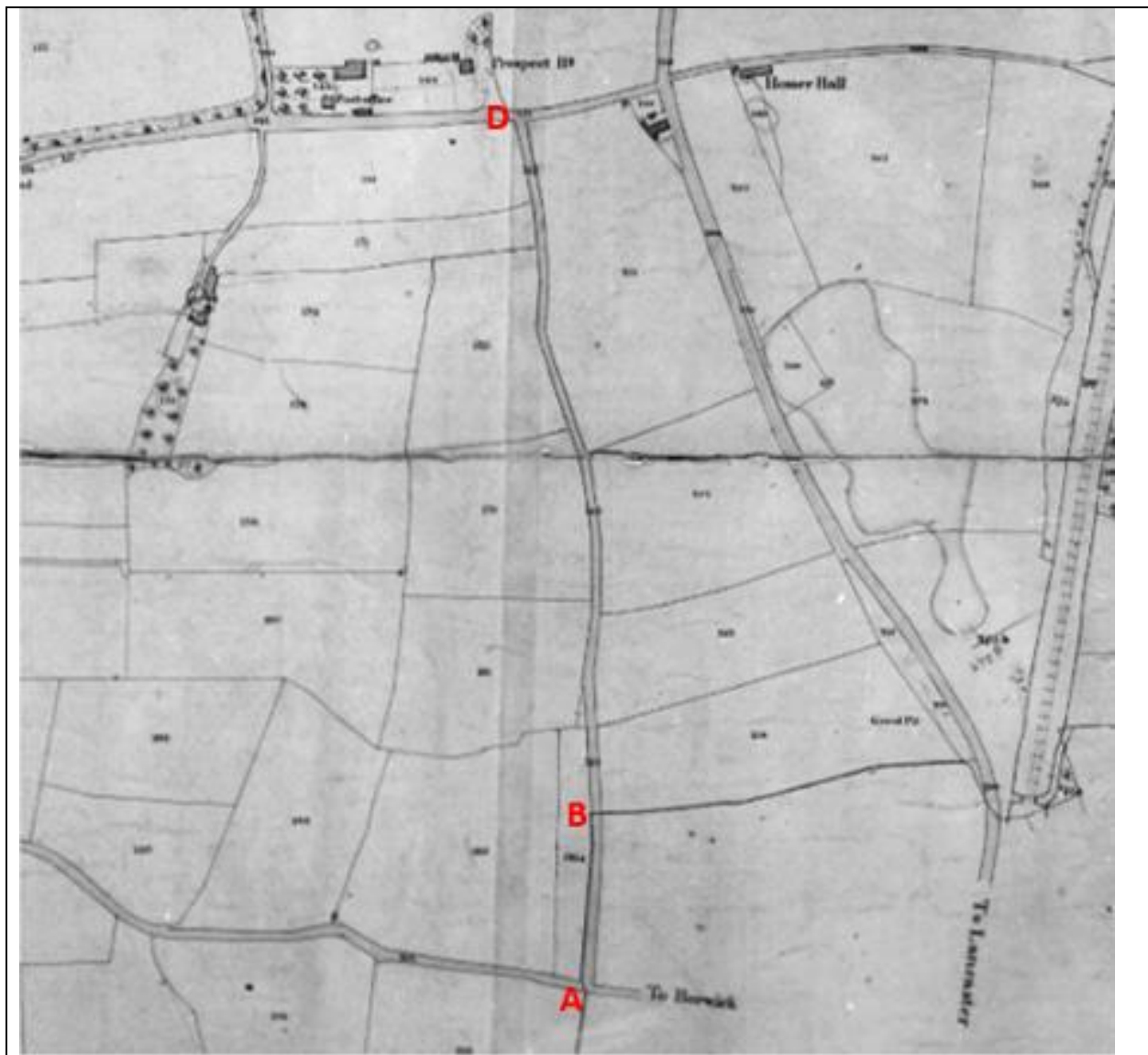


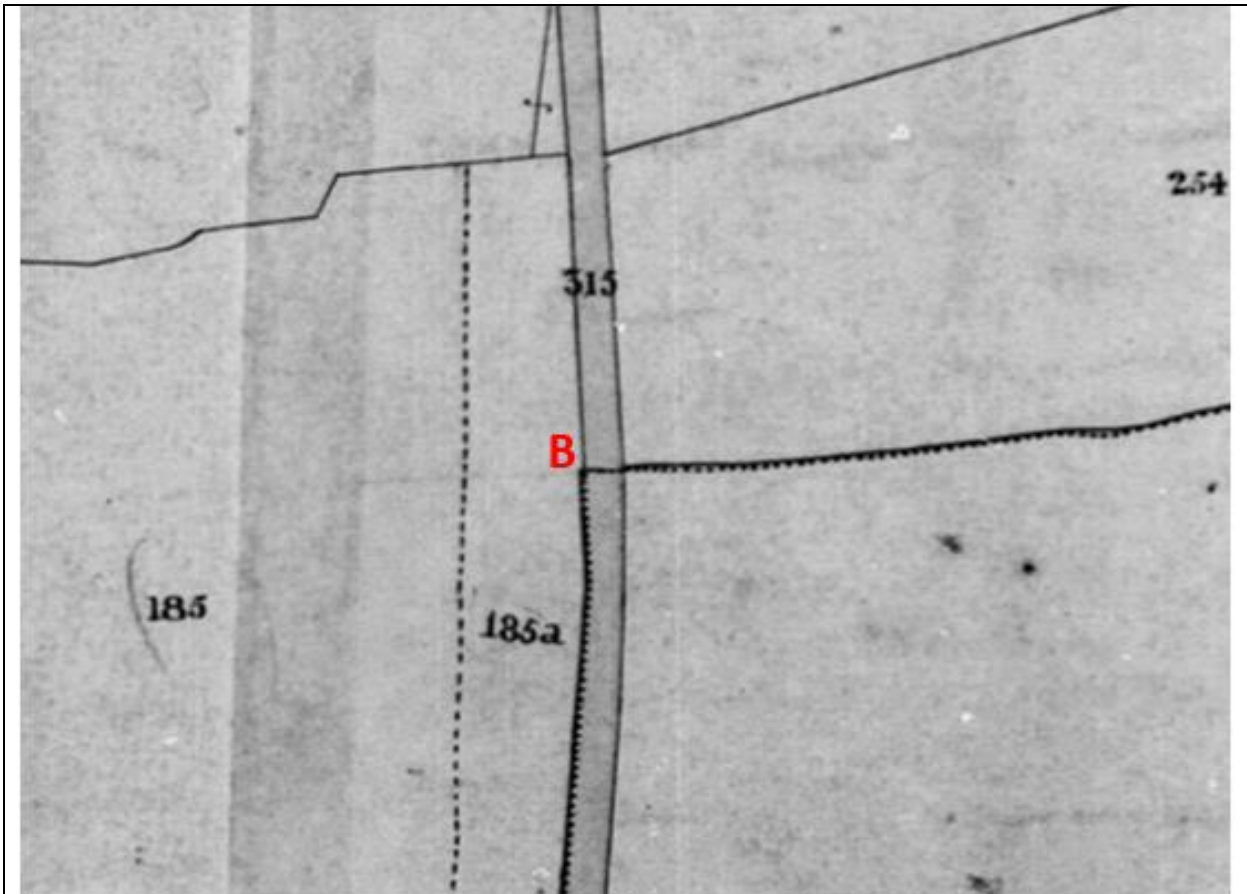


	<i>Robert Higginson</i>	415	<i>Cottage &amp; Garden</i>				1	28	
<i>Roads Rivers and Waste Grounds</i>		127	<i>Wood Hill Watering Place</i>				1	15	
		164a	<i>Watering Place</i>					30	
		204	<i>Watering Place</i>					10	
		248	<i>Shore</i>				1	25	
		282a	<i>Quarry Grounds</i>				1	15	
		338	<i>Quarry</i>				1	3	
		449	<i>Public Watering Place</i>					2	20
		458	<i>Public Watering Place</i>					1	6
		1177	<i>Point of River Steer and</i>	}			10	5	
		"	<i>Waste adjoining</i>						
		795	<i>Roads Rivers and Waste</i>	}			50	16	
			<i>Ground</i>						
							70	3	28

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<p>Observations</p>		<p>The application route A-B is shown between unbroken lines which may have indicated a bounded route. It is shown as commencing at an open junction with Snape Lane through to point B on the parish boundary (marked by a dotted line). Beyond point B the route is shown to continue into the adjoining parish and is labelled 'From Yealand Conyers' indicating that the route continues to (and from) Yealand Conyers. The continuation of other routes – now acknowledged as vehicular roads – are also labelled in the same way indicating where the routes are coming from.</p> <p>The application route A-B appears to be part of the road network parcel numbered 795 and detailed in the Tithe Award as a 'Road' with no landowner listed and no Tithe payable.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed in 1854 as part of a route to/from Yealand Conyers. It appears to have been considered as part of the public road network at that time.</p>
<p><b>Yealand Conyers Tithe Map and Tithe Award or Apportionment</b> CRO Ref: DRB 1/219</p>	<p>1846</p>	<p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p>





<i>Public Roads and Wash Ground</i>		157	<i>Waste and Pound</i>				
		213	<i>Roads</i>		2	1	18
		269	<i>Watkinson Place</i>			2	5
		270	<i>Lane to Honors</i>				12
		310	<i>Public Road</i>				6
		313	<i>Public Road</i>		1	1	37
		315	<i>Public Road</i>			3	19
		317	<i>Lane and Pool</i>			1	3
		318	<i>Public Road</i>		1		24
		320	<i>Public Road</i>				28
		321	<i>Public Road</i>		1	1	17
		325	<i>Public Road</i>			1	
		326	<i>Public Road</i>				
					2		a
					11	3	a

Observations		The Tithe Map for the adjoining parish (Yealand Conyers) shows the route B-D numbered as 315 linking with the section A-B in the other parish. The Tithe Award lists it as a public road which is consistent with the Tithe Award for Warton considered above.
Investigating Officer's Comments		The route B-D existed as a public road in 1846 and this linked to application route A-B.
<b>Inclosure Act Award and Maps</b> Inclosure by agreement Warton with Lindeth 1740 (PR	1740	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

2768/2).		provide conclusive evidence of status.
Observations		The Inclosure Award does not relate to the land crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch Ordnance Survey (OS) Map</b>	1845	The earliest Ordnance Survey 6 inch map for this area, surveyed in 1845 and published in 1848. <sup>1</sup>

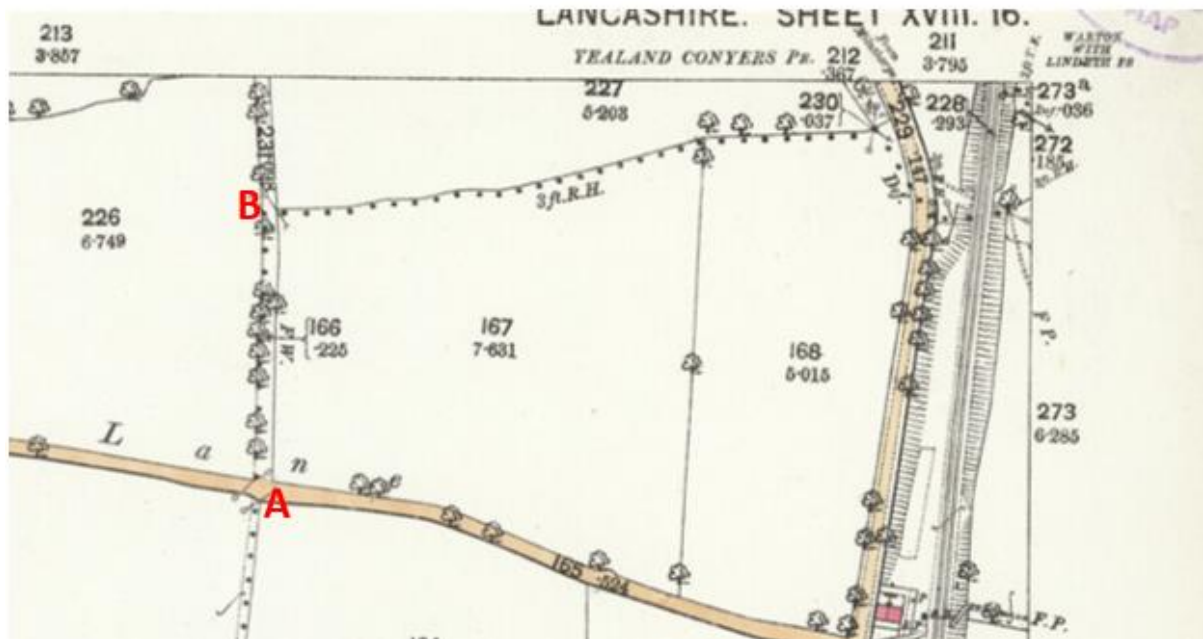


<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published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

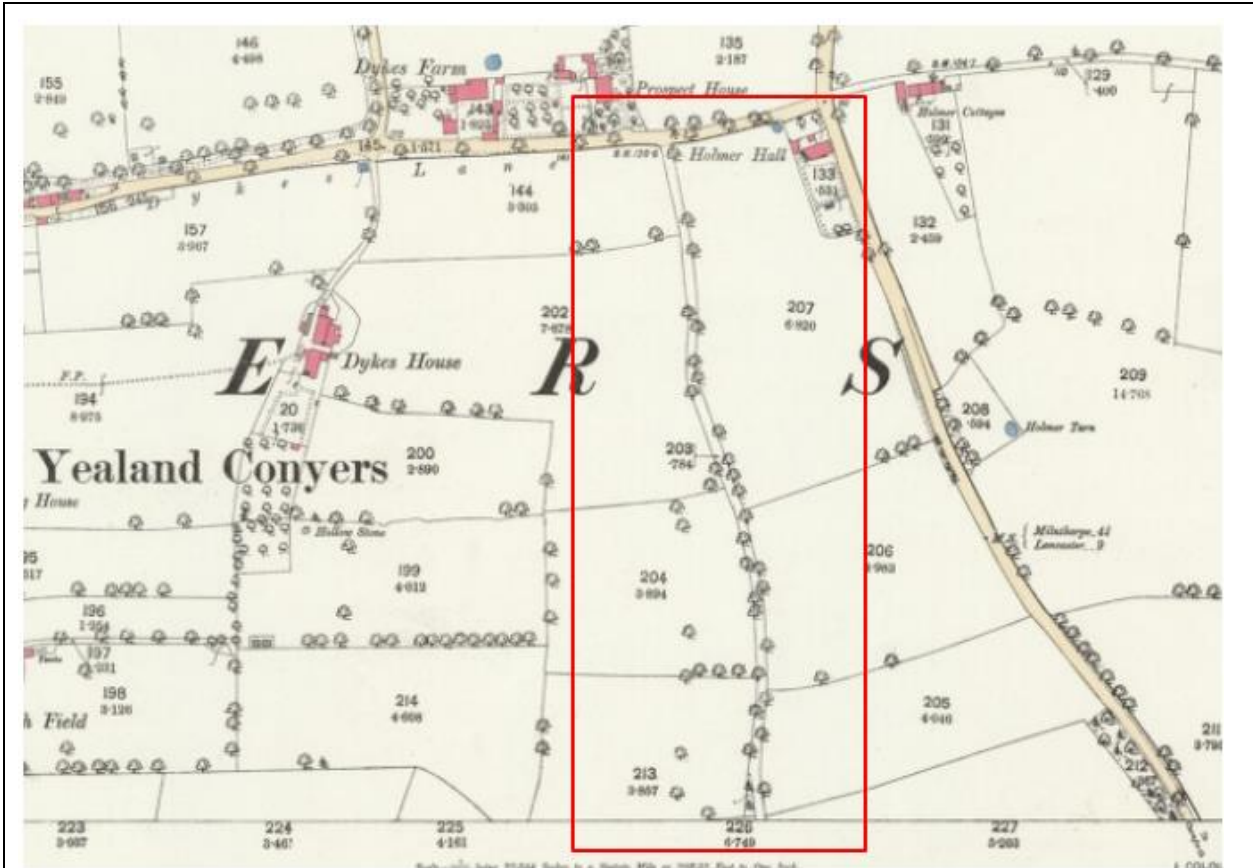


<p>Observations</p>	<p>The application route forming a through route with B-D is shown from Snape Lane through to Dykes Lane. Snape Lane and Dykes Lane are named on the map but the application route is not although the application route is shown to be a similar width to Snape Lane and Dyke Lane. Most but not all vehicular roads, and indeed most bridleways, on this sheet are named.</p> <p>No lines are shown across the route which suggests that it was ungated and available for use.</p> <p>Running parallel to the route but further east is the route now recorded as the A6 which at that time was a turnpike road.</p>
<p>Investigating Officer's Comments</p>	<p>The route A-D existed in 1845 and appeared to be capable of being used by horses and horse drawn vehicles at that time.</p> <p>It is considered that a substantial bounded through route connecting recognised public vehicular roads at both ends would have been at least a public bridleway and may have carried public vehicular right – particularly as it provided an alternative route between Snape Lane and</p>

		Dykes Lane from travelling along the turnpike road. It is not known whether there is any significance to the fact that it isn't named when most carriageways and bridleways on that map sheet are.
<b>25 Inch OS Map Sheet 18.16</b>	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1889 and published in 1891.



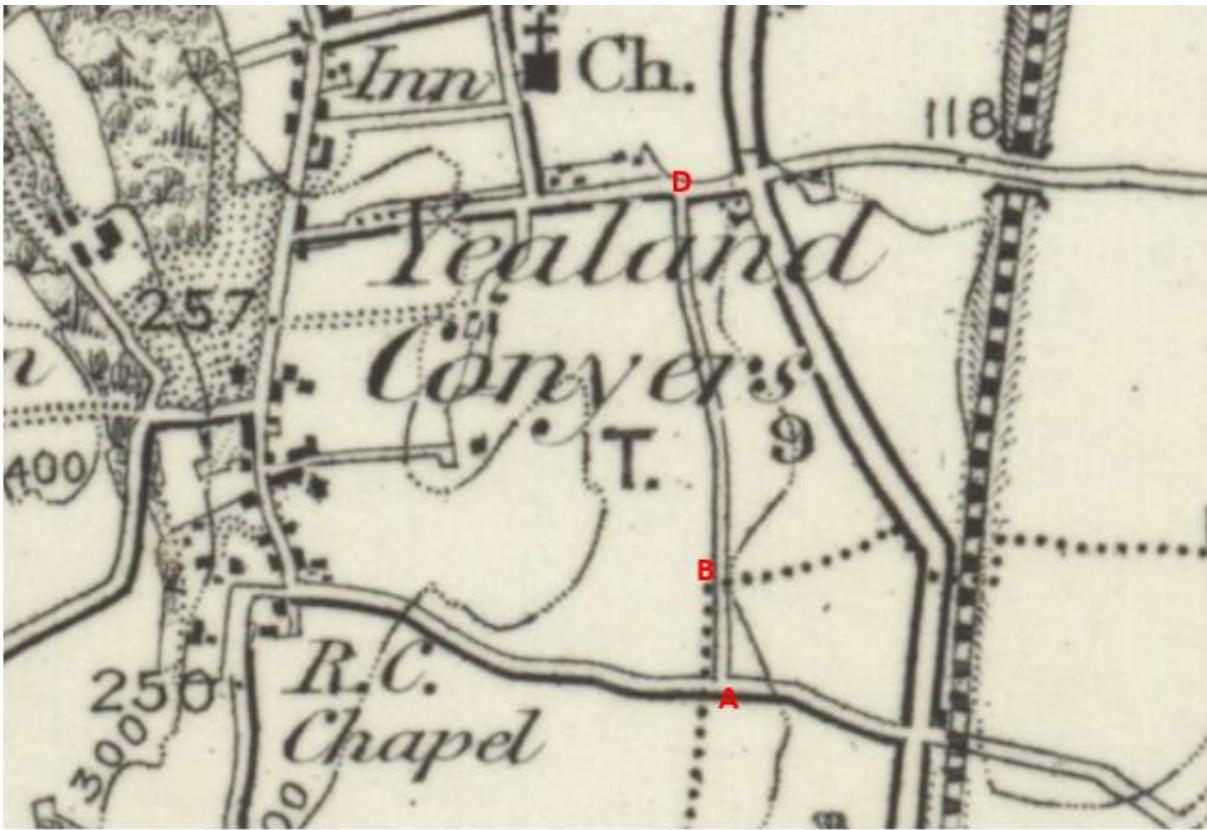
Extract from OS 25 inch sheet XVIII.16



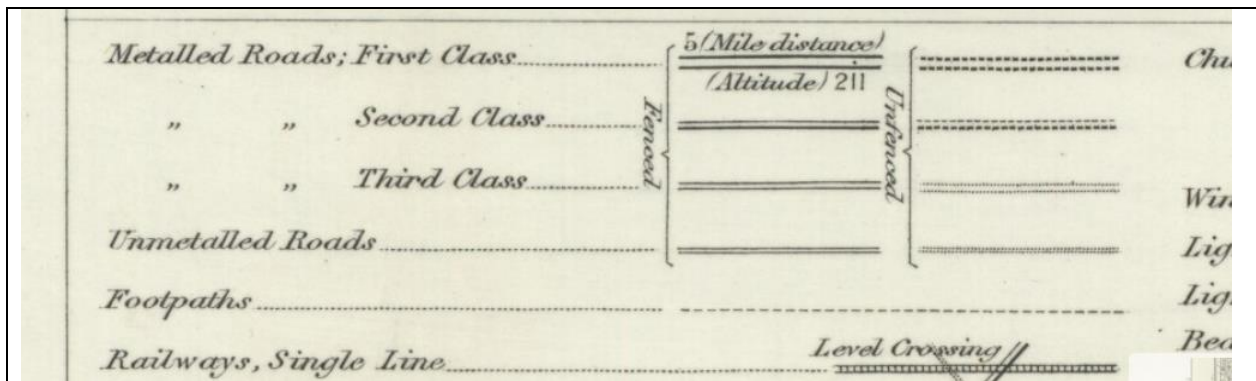
OS 25 inch XVIII.12 surveyed 1889 published 1891 showing application route

<p>Observations</p>		<p>The application route and length B-D together are shown as a bounded through route between Dykes Lane and Snape Lane. No lines are shown across the application route or the rest of the route which would indicate the existence of gates. The route is not named on the map unlike most carriageways and bridleways on these 2 sheets, particularly the southern one.</p> <p>The application route A-B has been labelled with the parcel number 166 and B-D has two further separate parcel numbers (231 and 203) due to the fact that the route is split across two separate map sheets.</p> <p>Snape Lane and Dykes Lane are both shown on the map(s) with a thickened line along the south side and are both coloured. The application route is not shown coloured or with a thickened line along the east side.</p>
<p>Investigating Officer's Comments</p>		<p>The route A-D existed in 1889 as a bounded through route which appeared capable of being used on horseback and probably by vehicles. Unlike Snape Lane and Dykes Lane it was not</p>

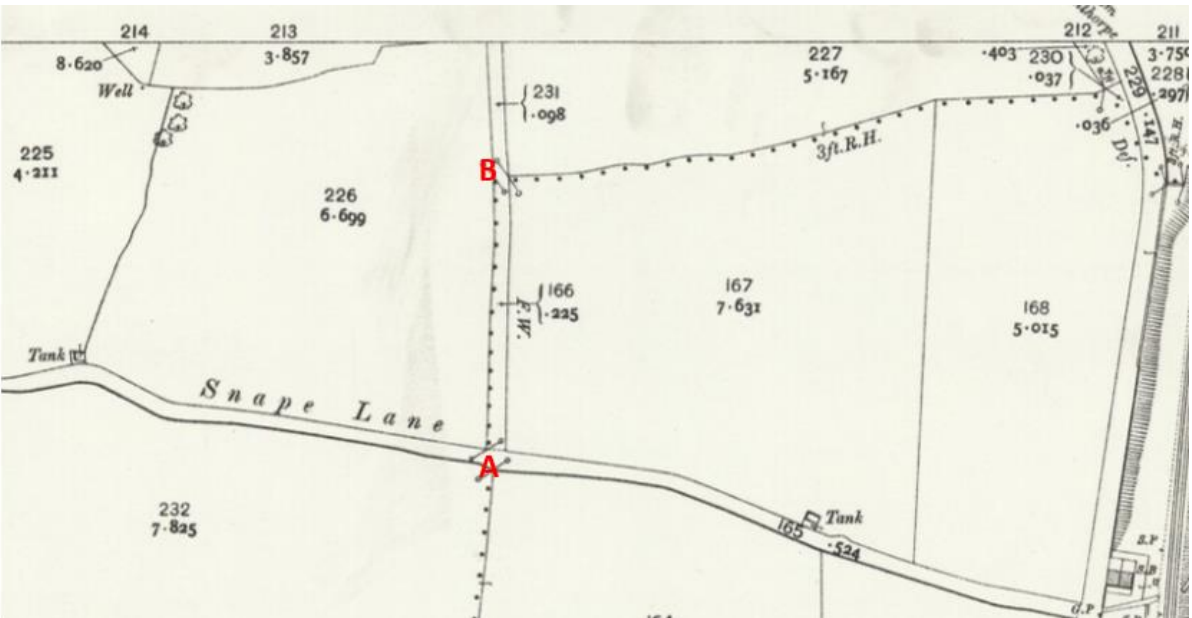
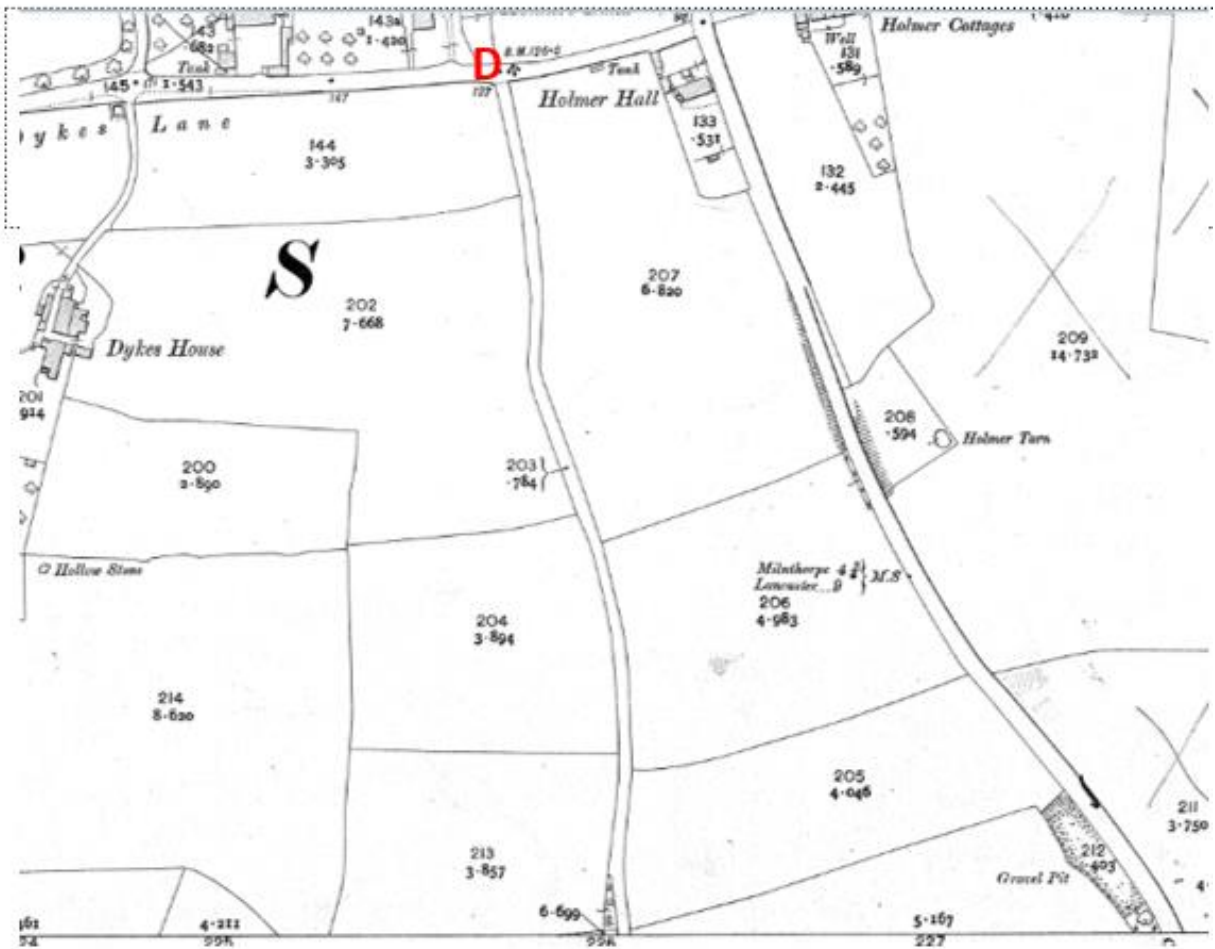
		<p>shown shaded or coloured on the map. Shading and colouring were often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. The Ordnance Survey specified that all metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with a thickened line on the south and east sides of the road. 'Good repair' meant that it should be possible to drive carriages and light carts over them at a trot so the fact that the route was not shown in this way suggests that either it was possibly not as well maintained or surfaced, or that it was not maintained by the Highway Authority.</p> <p>With regards to the inclusion of parcel numbers the Planning Inspectorate Consistency Guide states "Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage." However, it goes on to say that this is far from conclusive evidence of highway status.</p>
<p><b>OS 1 inch Map Sheet 49 – Kirby Lonsdale</b></p>	<p>1898</p>	<p>OS 1 inch map surveyed 1845-7, revised 1899 and published 1898.</p>







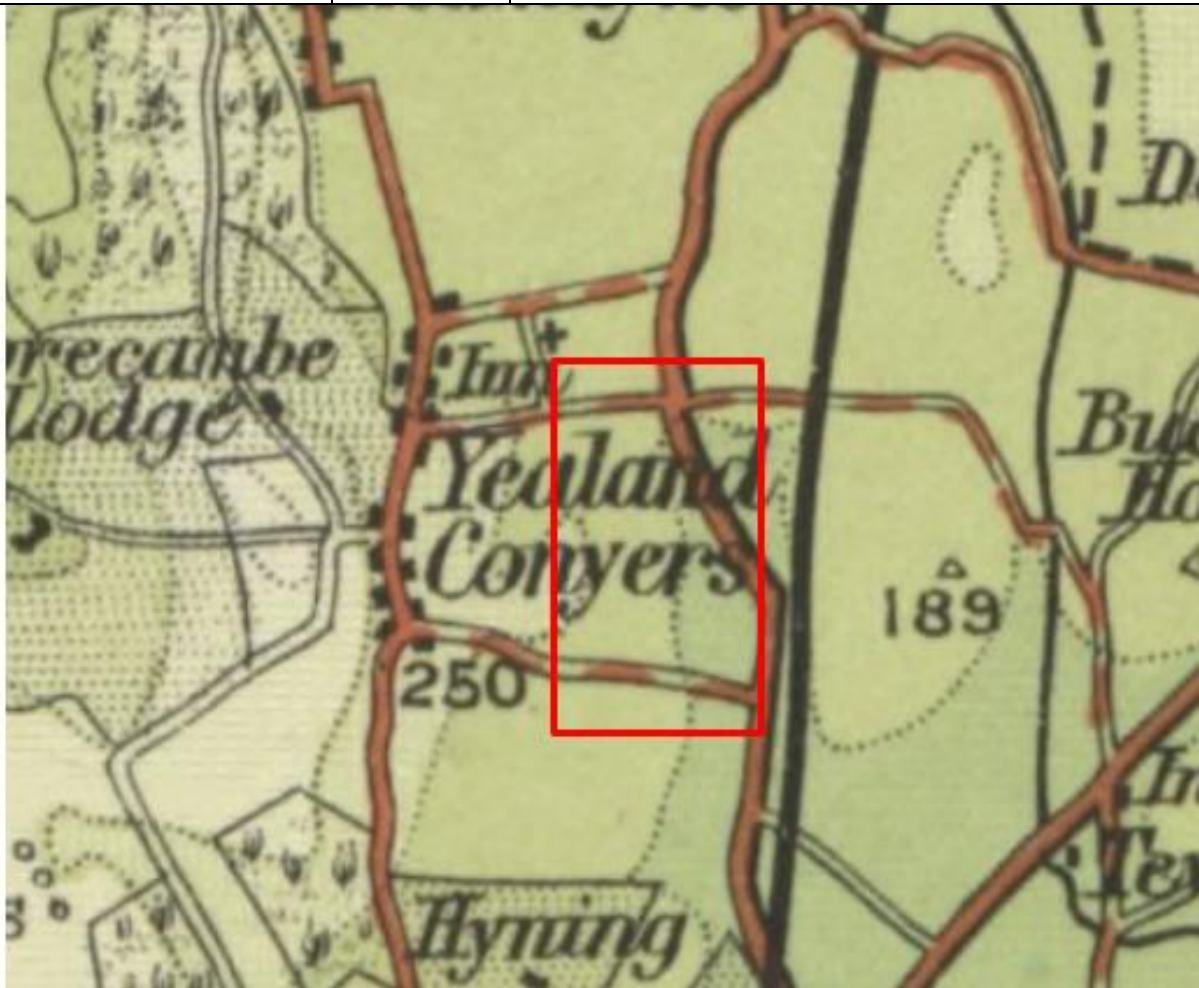
Observations		The application route is shown as part of a through route A-D. It is shown as being open and unrestricted and in the map key is denoted as being a third class road.
Investigating Officer's Comments		The small scale one inch OS map was predominantly published with the main market being the travelling public so the inclusion of the route A-D on this map is suggestive of a route that was capable of being used at least on horseback and possibly by horse and carts.
<b>25 inch OS Map</b>	1913	Further edition of the 25 inch map surveyed in 1889, revised in 1910 and published in 1913.



Observations

The route A-D is shown in a similar way to the earlier edition of the OS 25 inch map. However, there are broken lines across each end indicating a change of surface between Snape

		Lane / Dykes Lane and the route under investigation which is consistent with the latter being unmetalled.
Investigating Officer's Comments		The application route existed as part of a longer through route in 1910 and appeared to be capable of being used on horseback or with carts.
<b>Bartholomew half inch Mapping Sheet 5 – North Lancashire</b>	1905	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.

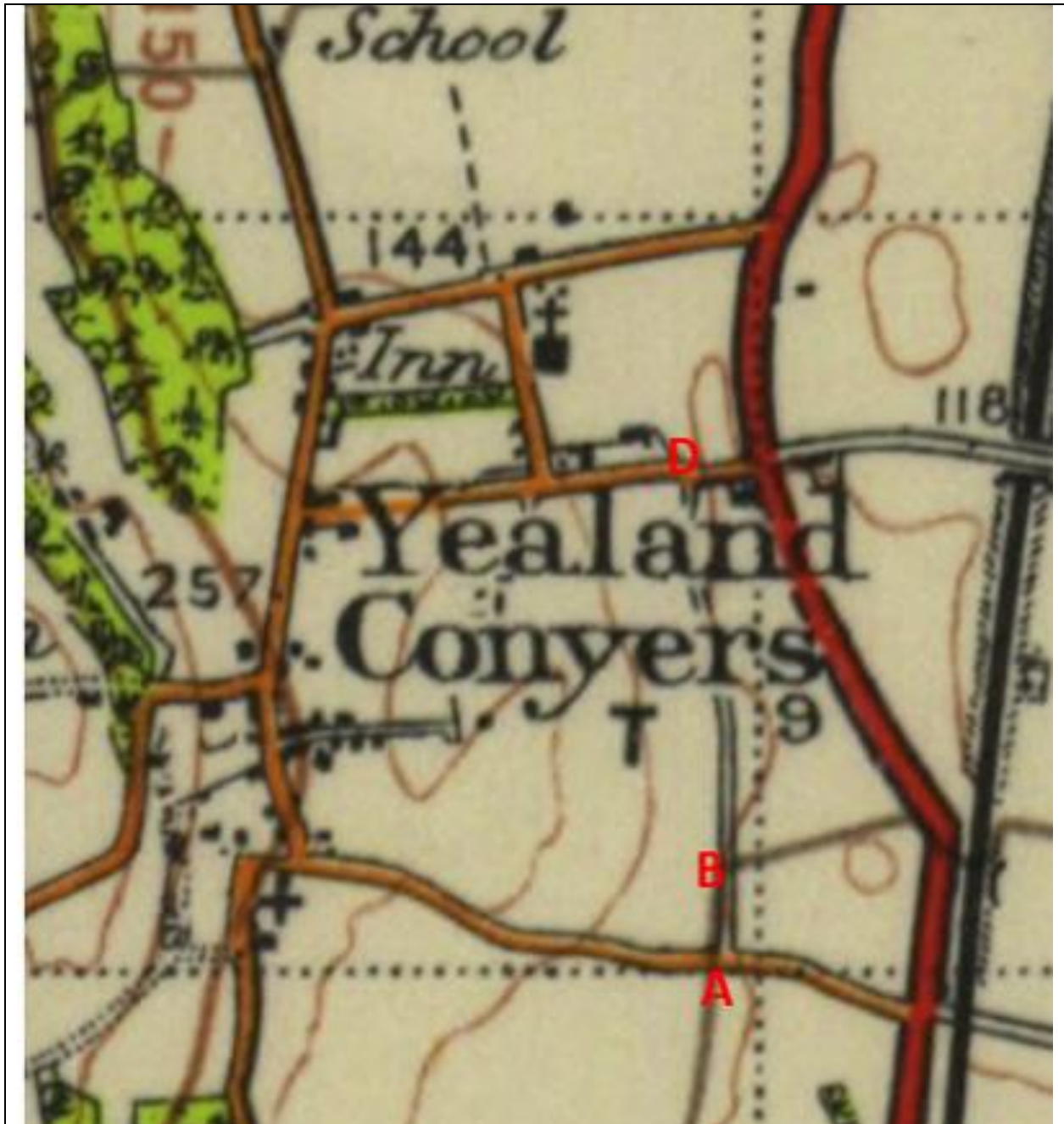


Observations		The application route is not shown.
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Investigating Officer's Comments		<p>The application route is not shown but its physical existence at that time is confirmed by the fact that it is clearly shown on OS maps revised and published both before and after the date of Bartholomew's map. The fact that the route is not shown on this small scale map – produced primarily for the purpose of motoring and cycling suggests that the route was not considered to be suitable for vehicular traffic at that time.</p>
<p><b>Finance Act 1910 Map</b></p>	<p>1910</p>	<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 quality of photographs of the Finance Act Map plans is poor but it appears that the route under investigation is excluded from the adjacent hereditaments along the full length and that the most northerly section is excluded from a plot (21) which it bisects.
Investigating Officer's Comments		The exclusion of the route from the taxable hereditaments is good evidence of, but not conclusive of, public vehicular rights. Numbered plots split by the continuation of the route give further weight to the belief that the full length of the route was considered to have public vehicular rights (as public footpaths and bridleways were normally included within the numbered plots).
<b>1 inch OS map Sheet 89 Lancaster &amp; Kendal</b>	1947	Further edition of 1 inch OS map revised 1920 and published 1947.



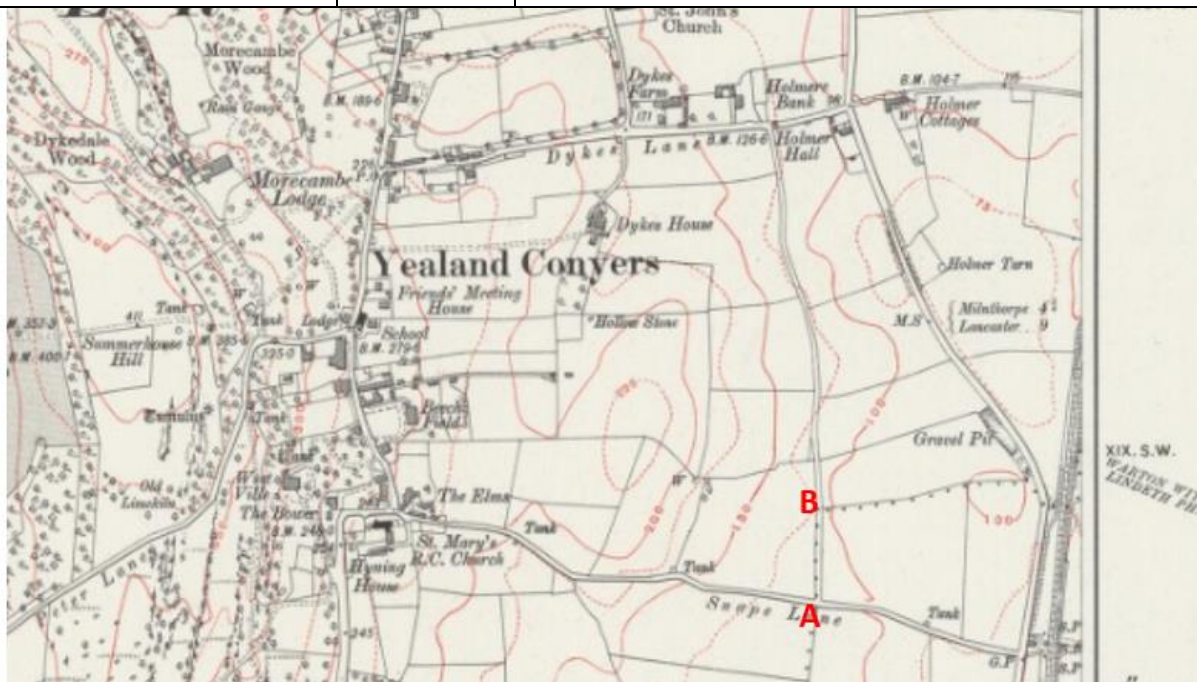
Ministry of Transport Roads			Railways, Double L
Other Motor Roads			" Single Li
" " " narrow			Mineral Lines & T
Minor Roads			Electricity Transm (with pylons spaced con
Bridle & Footpaths			Pipe Lines (water)
Unfenced Roads are shewn by dotted lines			Wood
Gradients steeper than 1/4			Orchard
Toll Gates			Quarry
Road Mileage			

1014.

Observations

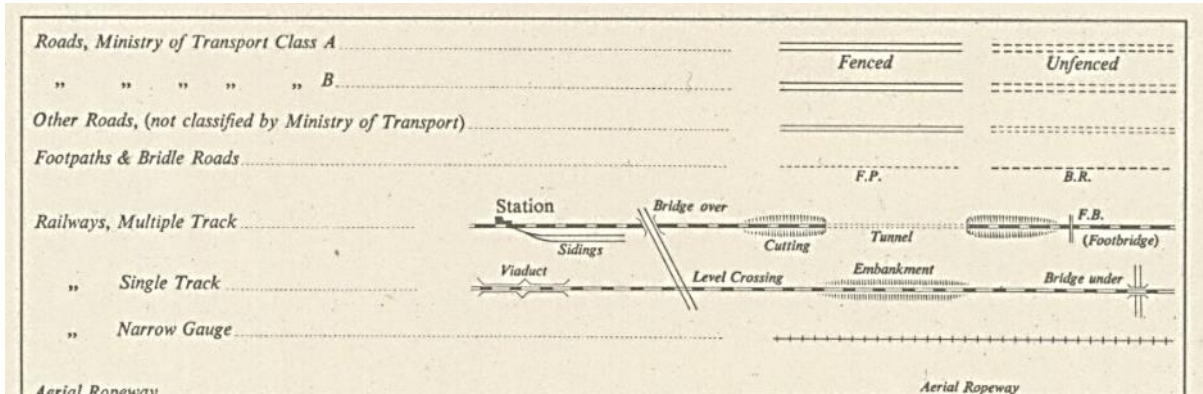
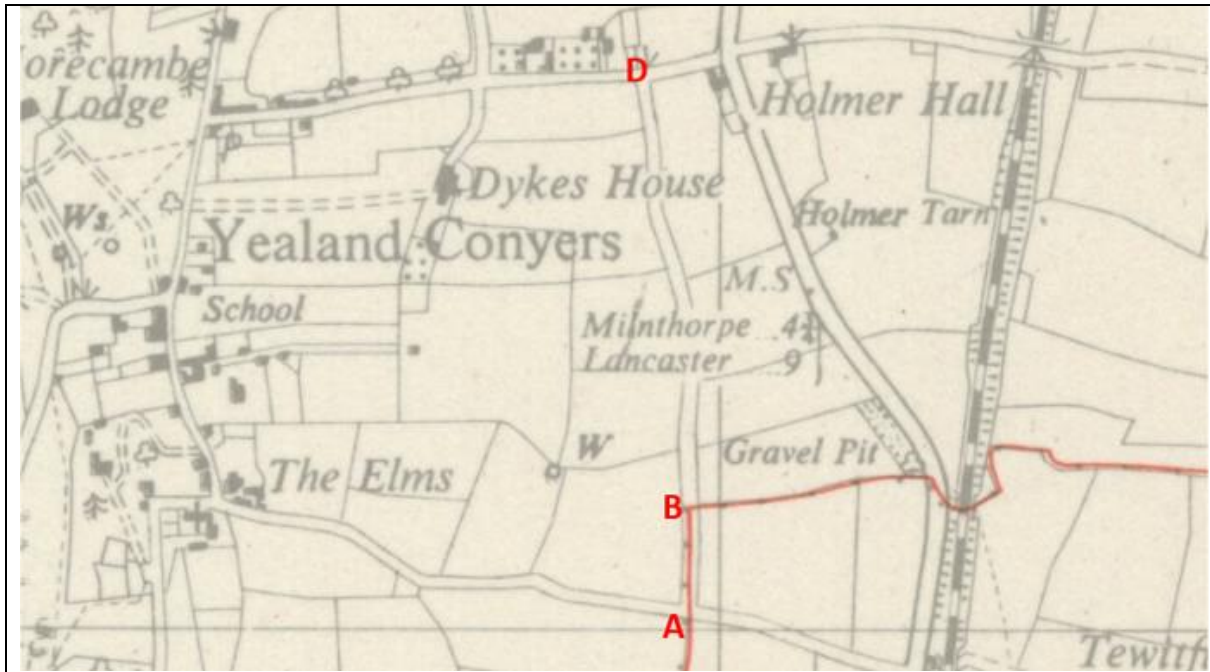
The application route is shown as part of a

		through route A-D described in the map key as a 'minor road' as opposed to 'Bridle & Footpaths'.
Investigating Officer's Comments		The route existed in 1920 and appeared to be capable of being used. The depiction of the route on the map as a 'Other Motor Roads narrow Bad' suggests use by vehicles at that time.
<b>6 Inch OS Map</b>	1945	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 1910-11 and published 1945.

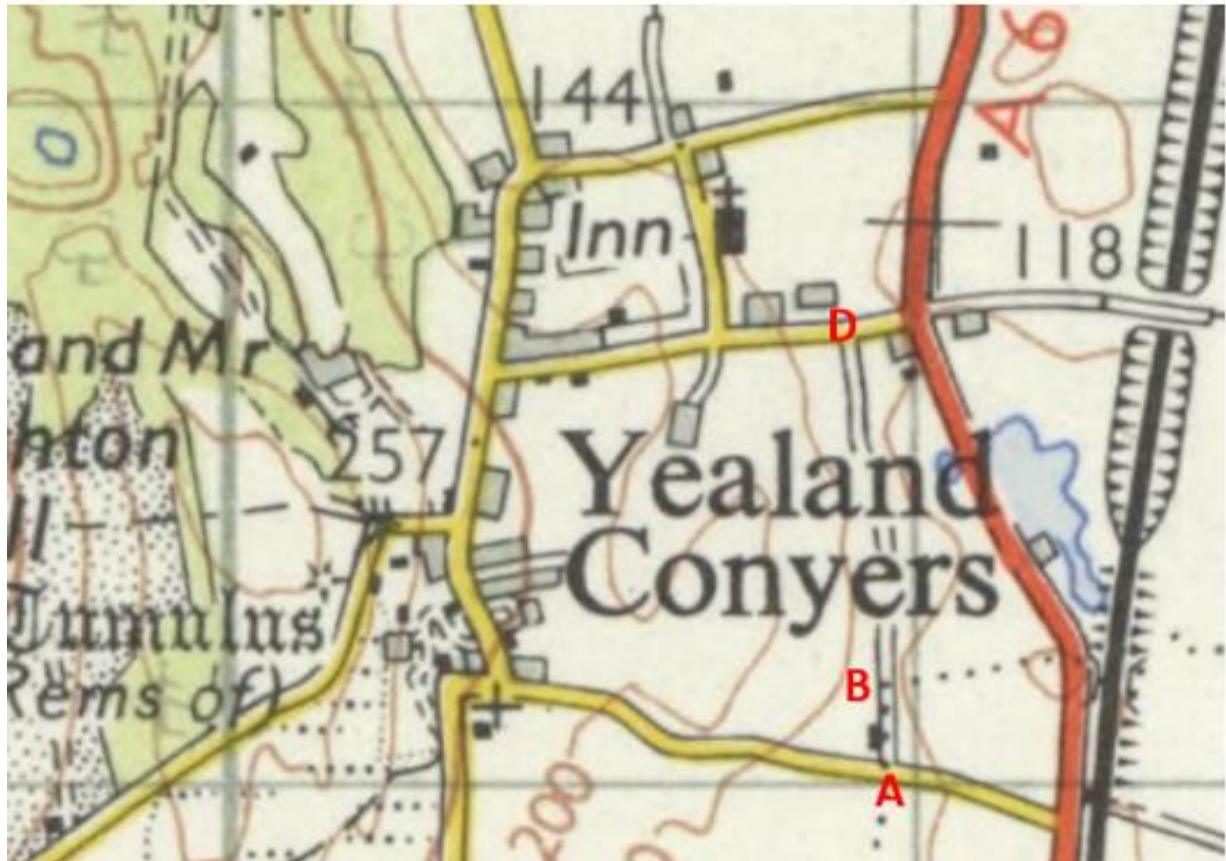


Observations		The route A-D is shown in the same way as it is shown on earlier maps as a through route between Snape Lane and Dykes Lane.
Investigating Officer's Comments		The route existed in 1910-11 (when the map was surveyed) and appeared to be capable of being used by horses or vehicles.
<b>1:25,000 OS Map Sheet 34/57</b>	1947	1:25,000 map published 1947, date of survey not known.



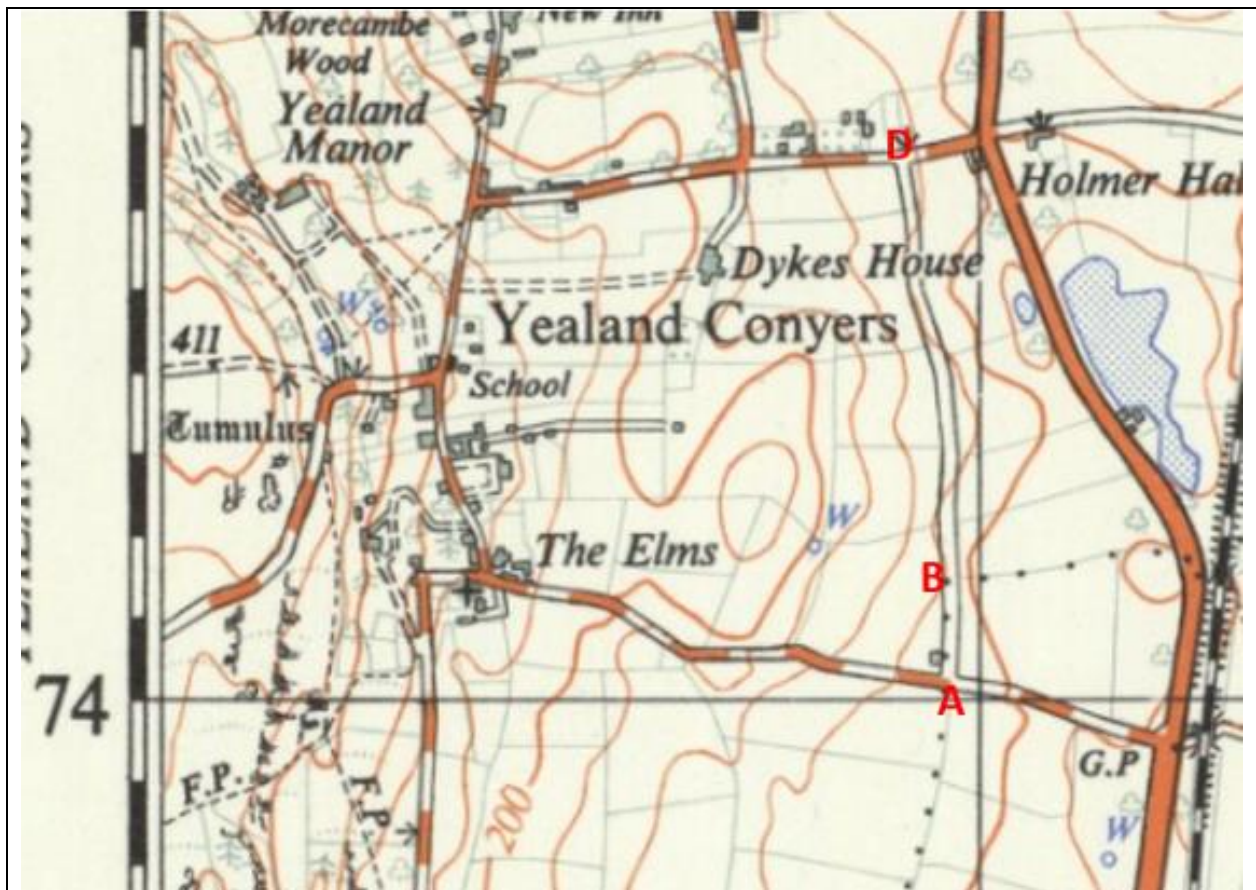


Observations		The application route together with route B-D are shown as a bounded through route depicted in the map key as a road (as opposed to a footpath or bridleway).
Investigating Officer's Comments		The route A-D existed and appeared to be capable of being used on horseback or with vehicles.
1 inch OS map Sheet 89 Lancaster & Kendal	1955	1 inch OS map revised 1950-51, published 1955.

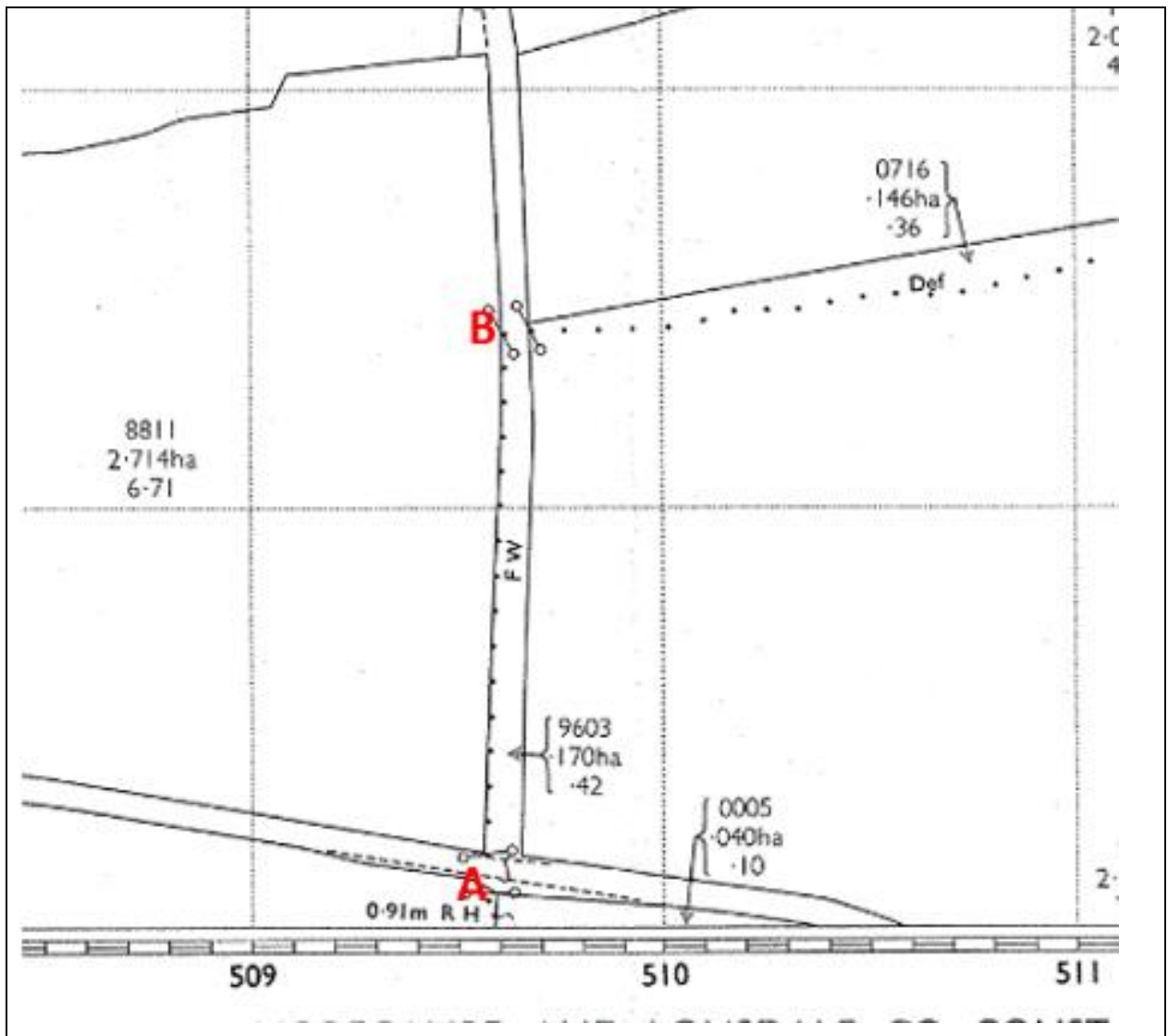


Roads	Ministry of Transport, Trunk	A 6 (T)	Railways	Multiple Tra
	" " " Class 1	A 590		Single "
	" " " " 2	B 6254		Narrow Gau
	14 ft of Metalling & over (not included above)	TOLL		Wood
	Under 14ft of Metalling. Tarred " "	Gate		Orchard
" " " " Untarred " "		Electricity Transmission L		
Minor Roads in towns, Drives and Unmetalled Roads		(with pylons spaced conventi		
(Unfenced Roads are shown by pecked lines)		Pine Lines (water)		
Steep Gradients 1 in 5 or steeper	1 in 7 to under 1 in 5			
Footpaths and Tracks				

Observations		This small scale map again shows the route A-D as a bounded through route and shown as 'untarred' or 'unmetalled'.
Investigating Officer's Comments		The route A-D existed as an untarred or unmetalled through route which appeared to be capable of being used by vehicles (it is depicted as a road not a footpath or track) and the inclusion of the route on such a small scale OS map as a road suggests that it was recognised as a route used by the public.
1:25,000 OS Map SD 57	1961	OS 1:25,000 map revised 1938 and published 1961.



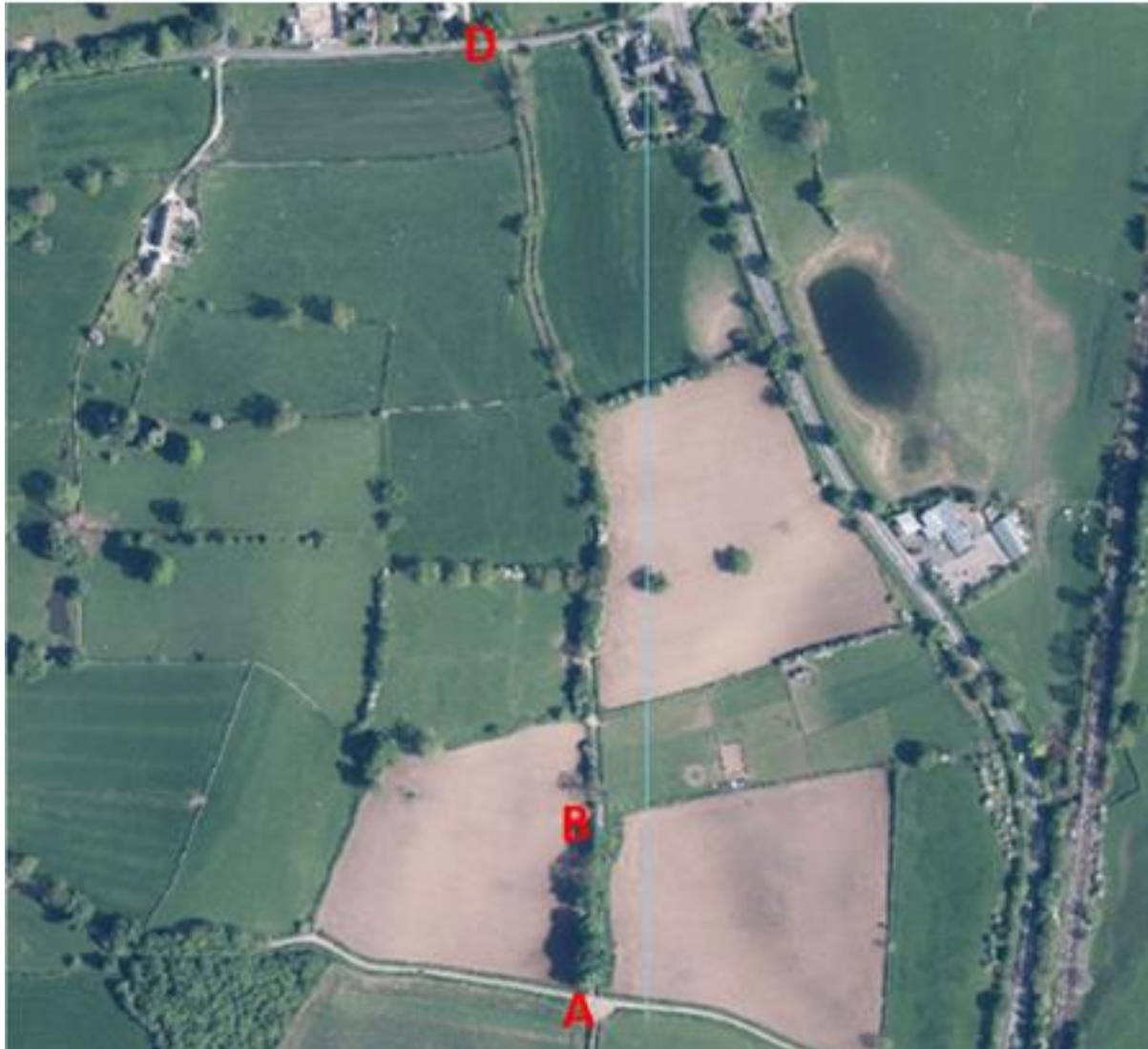
Observations		The application route and B-D is again shown as a through route on the map.
Investigating Officer's Comments		The route A-D existed and appeared to be capable of being used.
<b>1:2500 OS Map SD5074-5174</b>	1972	Further edition of 25 inch map reconstituted from former county series and revised in 1971 and published 1972 as national grid series.







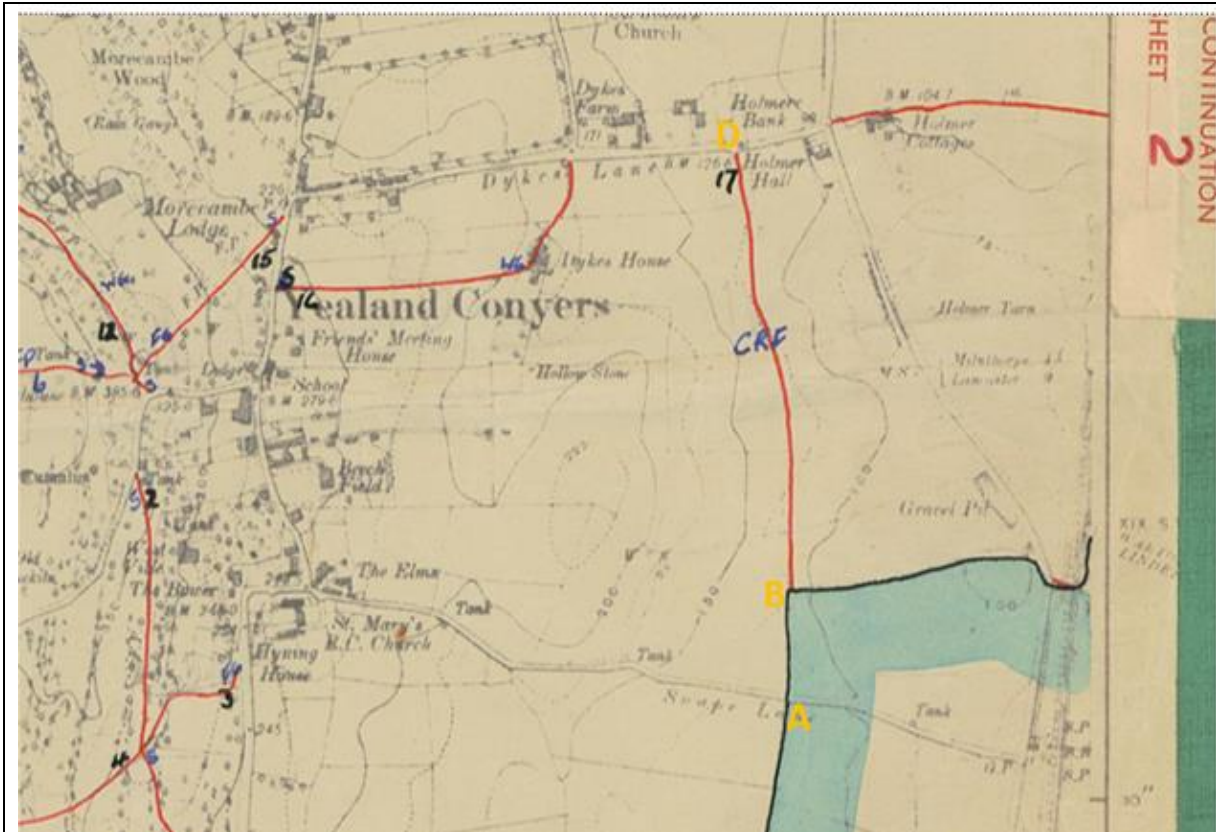
Observations		The line of the route A-D can be seen marked by trees. The route is visible but does not appear to be receiving significant levels of use, particularly from vehicles, which would show up much more clearly.
Investigating Officer's Comments		The application route still existed in the 1960s as part of a longer through route A-D and its appearance was consistent with a route used on horseback.
<b>Aerial Photograph</b>	2016	Aerial photograph available to view on GIS.



Observations		The application route is partially obscured by trees but a track can be seen intermittently. It is not possible to see from the photograph whether any gates or barriers may have existed across the route.
Investigating Officer's Comments		The application route still existed in 2016 as part of a fairly wide through route A-D.
<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



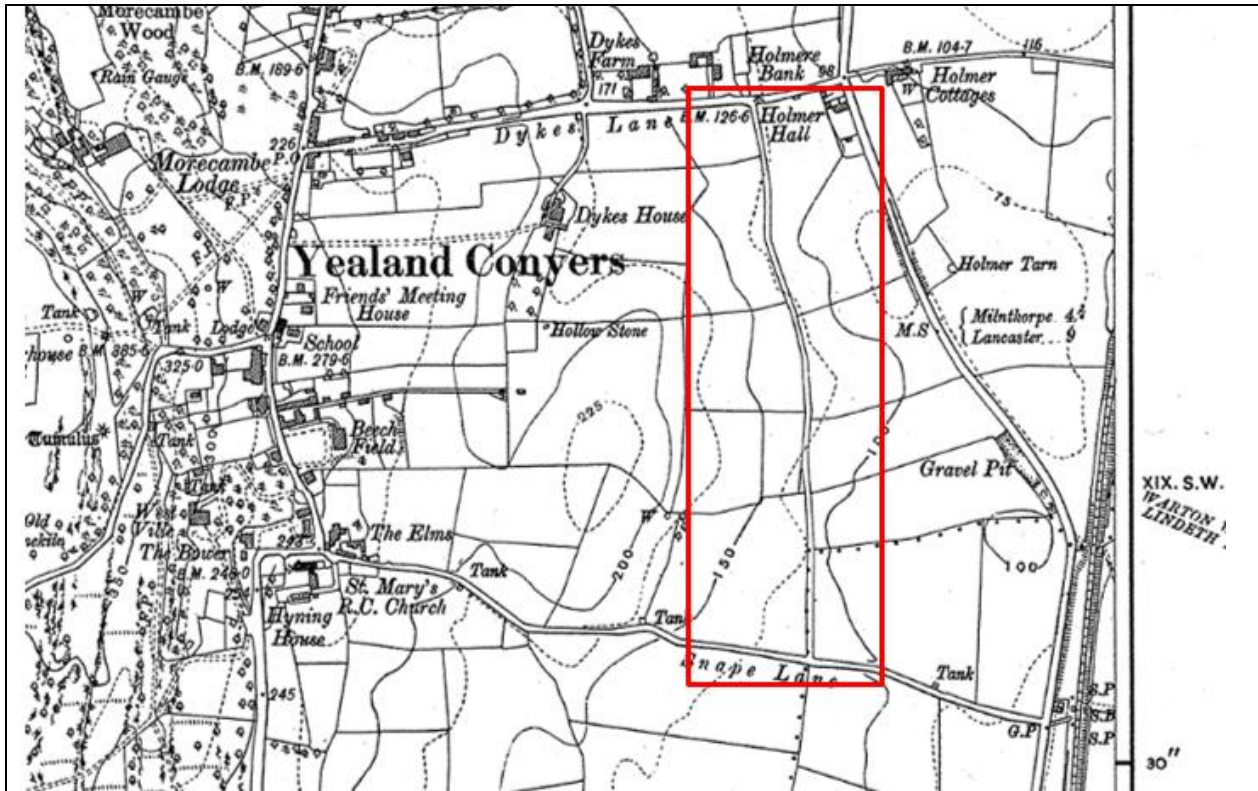




Yealand Conyers Parish Survey Map

DISTRICT	<i>Lancaster Rural</i>	PARISH	<i>Yealand Conyers</i>	No. <i>17</i>
MAP SHEET No.	<i>1</i>	LENGTH	<i>0.33</i> miles (to two decimal places)	
BRIEF DESCRIPTION (Field F.P. or otherwise)	<i>O.B.F.</i>			
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).				
<i>From Dykes Lane. East of Holmer Bank continues along Green Lane to Parish Boundary with Horbar.</i>				
SURVEYED BY :-	Name	<i>J. Procter</i>		
	Address	<i>18, The Meadows Yealand Redmayne Barnforth</i>		
Date	<i>June 1957.</i>			

Parish Survey card for 17 Yealand Conyers



OS 6 inch Quarter Sheet 18SE revised 1910-11 published 1911 used as base map for Parish Survey Maps

Observations

The application route A-B is not shown on the Parish Survey Map completed by Warton Parish Council. The quality of the copy of the 6 inch OS map used for the survey is quite poor and in particular quite faded. Whilst it is acknowledged that this map is over 70 years old it is not actually possible to see the route leading south from Dykes Lane south to Snape Lane – over which the application route runs. In addition to this a thick line has been drawn denoting the boundary of the parish and this is also heavily shaded – further obscuring sight of the application route A-B. OS maps dated before and after the 1950s (when the parish survey was completed) confirm the existence of the route on the ground at that time and a different copy of the same 6 inch map used to compile the parish survey map confirms that the route was actually drawn on the map.

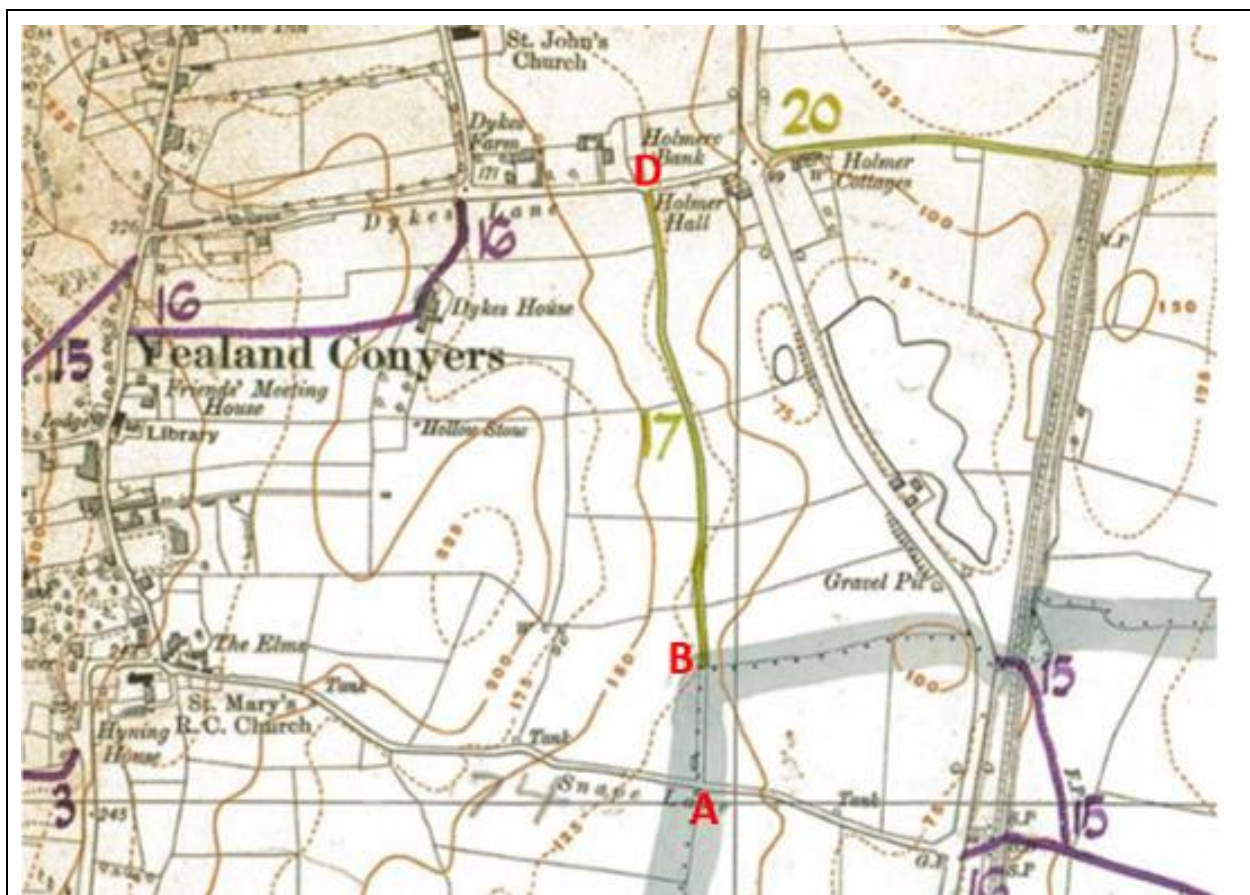
In addition, the route B-D is clearly marked on the Parish Survey Map completed by Yealand Conyers Parish Council with the route described as running from Dykes Lane to the parish boundary.

Whilst the Yealand Conyers survey card does not include a note to say that the route continues

		<p>from the parish boundary to Snape Lane it does not suggest that the route terminated at the parish boundary either.</p> <p>Given that the map and documentary evidence examined prior to the 1950s all (with the exception of a few large scale commercial maps) confirmed the existence of the route it appears that the omission of the application route A-B on the Warton Parish Survey map could have been an error due to the fact that the route was not clearly visible on the base map and was obscured by the marking used to denote the parish boundary or it could have been that Warton considered it to be vehicular and therefore not to be recorded. Yealand Conyers recorded B-D as CRF (cart road mainly used on foot) – a term which was always uncertain in respect of public vehicular rights and was abandoned officially in 1949 in favour of the equally ambiguous RUPP (road used as public path).</p>
<b>Draft Map</b>		<p>The parish survey map and cards for Warton parish (and Yealand Conyers) 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 were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>



<p>Observations</p>		<p>The application route A-B was not shown on the Draft Map and no objections were received to the fact that it was not shown.</p> <p>The route B-D in Yealand Conyers was shown on the Map as a public bridleway (having been recorded initially on the parish survey map as a 'Cart Road Footpath' or CRF) and was described as going to 'the parish boundary'.</p>
<p><b>Provisional Map</b></p>		<p>Once all representations relating to the publication of the Draft Map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>



Observations		Only B-D was recorded on the Provisional Map and there were no objections to the omission of A-B.
<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 A-B was not recorded on the First Definitive Map but the route to the north B-D was.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.



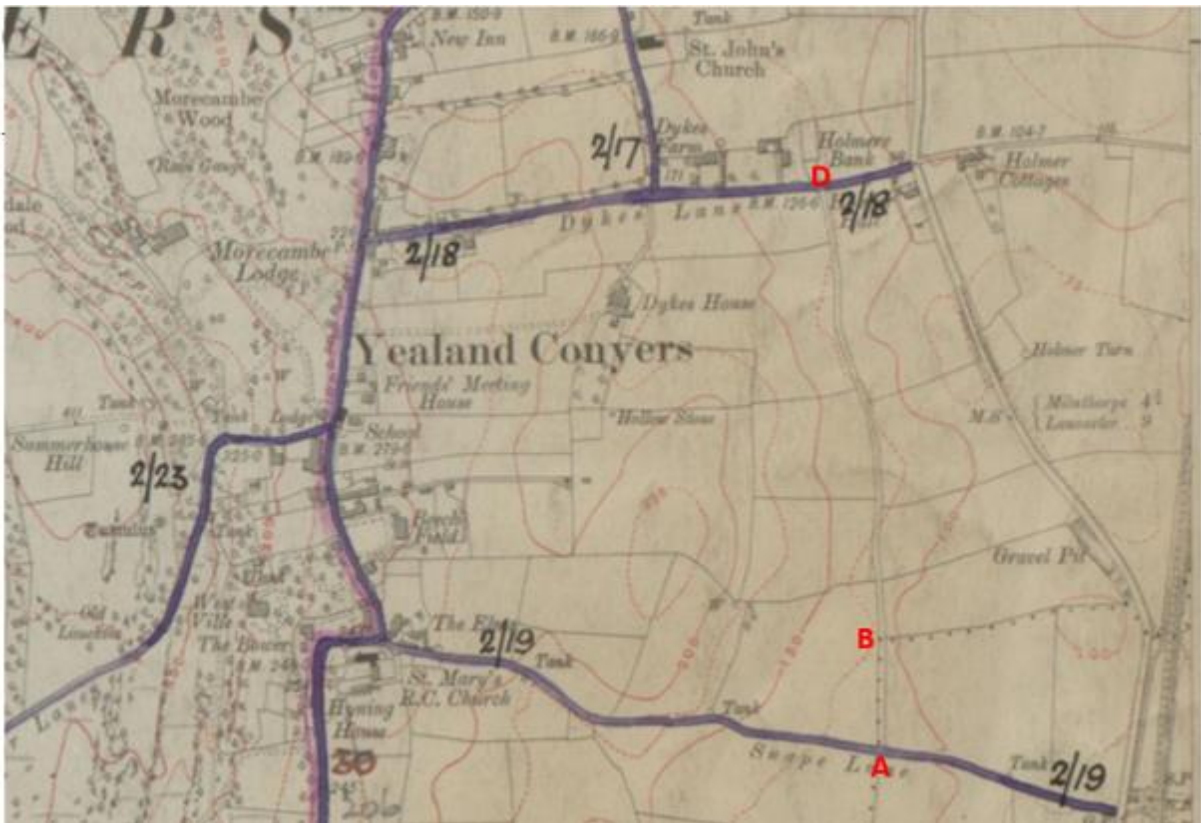
RURAL DISTRICT OF LANCASTER.  
PARISH OF YEALAND CONYERS.

1. No. of Path	2. Kind of Path	3. Position	4. Length in miles to 2 places decimals	5. Other particulars (if any)
13	Footpath	Junction with path Nos.12 and 14 to Parish Boundary near Flat Wood.	0.10	
14	"	Junction with path Nos.12 and 13 to Parish Boundary towards Round Top.	0.17	
15	"	Yealand Conyers opposite Dykes Lane to junction with path No.6 and 12.	0.17	
16	"	Yealand Conyers near "Greenways" to Dykes Lane.	0.30	
17	Bridleway	Dykes Lane near Holmer Bank to Parish Boundary.	0.33	
18	Footpath	Rose Acre Lane near Blencratha to Parish Boundary.	0.25	
19	"	Rose Acre Lane to A.6 near Parish Boundary.	0.27	
20	Bridleway	A .6 near Holmer Cottages via Bridge over proposed motorway and canal bridge to link up with Bridleway 14. (Priest Hutton.)	0.90	
22	Footpath	Leighton Road to Parish Boundary at Crag Foot.	1.17	
23	"	Junction with Path No.12 near Sheepfold to junction with path No.10 via Deepdale Pond.	0.30	

Observations

The application route A-B is not recorded on the Revised Definitive Map First Review although B-D from the parish boundary through to Dykes

		Lane is recorded as a public bridleway.
Investigating Officer's Comments		The application route A-B was not considered to be a public path which should be recorded on the Definitive Map from the 1950s through to the 1960s or was omitted through oversight.
<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 highway was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many 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 public expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>



Handover Map

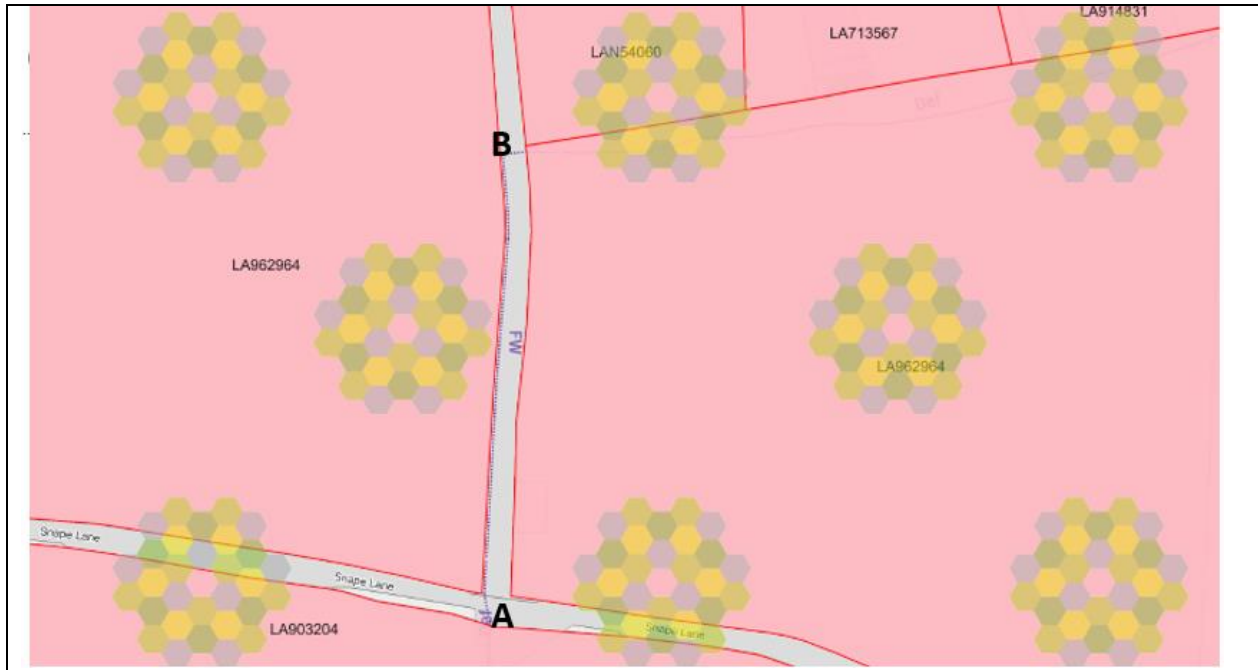




Highway adoption plan

Observations		The application route nor length B-D 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.
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 application route 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.
<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>Landownership</b>		Information about ownership of the land crossed and abutting the route was obtained from the Land Registry.



Observations		Ownership of the land crossed by the application route and of length B-D is not registered but it is noted that land on either side of part of the application route is in the same ownership and is registered under the same title deed (LA 962964).
Investigating Officer's Comments		<p>The fact that ownership of the land crossed by the route A-D is not registered is consistent with the information provided in the Warton Tithe Award whereby the route was numbered separately to adjacent land and listed in the Tithe award as a Road. It is also consistent with the information provided in the District Valuation Records (Finance Act records) whereby the application route was excluded from the valuation process.</p> <p>The fact that ownership of the route is not registered – or otherwise known – is consistent with the view that the route carried public bridleway or carriageway rights.</p>

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

### Landownership

Ownership of the land crossed by the application route A-B and the length further north B-D is unregistered.

### The Natural Environment and Rural Communities Act 2006

This Act effected a blanket extinguishment of unrecorded public rights for mechanically propelled vehicles (MPVs) with certain exceptions. Prior to this carriageway rights did not discriminate between vehicles which were mechanically propelled, such as cars and motorbikes, and those which were not, such as bicycles, wheelbarrows, horse-drawn carriages, donkey carts, etc.. if Committee concludes that the evidence shows that, on the balance of probability, public carriageway rights exist on the application route between point A-B and points B-D it is then necessary to consider whether the Natural Environment and Rural Communities Act 2006 has extinguished public rights for MPVs. The application route between point A and point B was, at the time of the act not recorded as a public right of way and was not on the List of Streets (maintained at public expenses) and it does not appear to have been used mainly by the public in MPVs. There is no claim that any other of the other exemptions apply. Therefore, in the event that public carriageway rights are shown to exist and the appropriate status for the route 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.

This is also the case for the application route from point B to point D - which at the time of the act was recorded on the Definitive Map and Statement as a public bridleway but was not on the List of Streets (maintained at public expenses). It does not appear to have been used mainly by the public in MPVs and there is no claim that any other of the other exemptions apply. Therefore, in the event that public carriageway rights are shown to exist and the appropriate status for the route 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**

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

In this particular case no user evidence was submitted, and it is necessary to look solely at the map and documentary evidence available.

Of particular significance in explaining why part of the route (A-B) was never recorded as a public right of way on the Definitive Map appears to be the fact that it runs alongside the parish boundary between Warton with Lindeth and Yealand Conyers before turning to continue east along a field boundary.

In conclusion it appears that the application route has consistently shown as part of a route A-D which existed as a through route from at least 1818 and was shown on two early small scale commercial maps (Greenwoods map 1818 and Hennets Map 1830) as a cross road providing an early indication that the route was considered to be part of the public vehicular network at that time.

Further confirmation of this view is given by the depiction of the route in the relevant Tithe Maps and Awards. It is shown as a substantial bounded route on the Warton

Tithe Map of 1845 and appears to have been considered to be part of the road network. Further confirmation of this view is given by the Tithe Map and Award for Yealand Conyers 1846 which shows the route through to Dykes Lane which is clearly listed in the Tithe Award as a public road.

Since that time the route is consistently shown as a substantial bounded through route on all OS maps inspected.

The Finance Act Maps provide further evidence that the route was considered to be a public through route – probably vehicular - in the early 1900s.

The Handover Maps and county council highway records do not record the route as a publicly maintainable highway – possibly suggesting that by the 1900s use of the route by vehicles had diminished in favour of the two surfaced lanes (Dykes Lane and Snape Lane) providing access to the A6.

In light of all the available map and documentary evidence and from experience of dealing with other similar cases on and along parish boundaries, the omission of the application route from the Definitive Map appears to be an error. It is considered the length A-D was a through route and A-B was the same status as B-D. It makes no sense that a public bridleway was recorded to exist from Dykes Lane to the parish boundary (point B) but did not continue through to Snape Lane (point A). The parish boundary runs along part of the application route which could explain why it was originally omitted – as Warton Parish Council may have thought it an extension of Bridleway Yealand Conyers 17 – and believed that it would be recorded as part of that route.

The evidence considered in this matter would indicate that on balance the route A-D carried vehicles and the correct recording of the full route A-D should be as restricted byway.

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

### Information from the Applicant

The applicant provided photographs and a number of extracts from maps and documents in support of the application all of which have been considered earlier in this report.

The maps and documents submitted comprised:

- Greenwoods Map of Lancashire 1818
- Hennets Map of Lancashire 1830
- 6 inch OS maps published in 1848, 1919, 1945
- 25 inch OS maps published in 1895 and 1913
- 1 inch OS maps published in 1898, 1947, 1955
- 1:25, 000 OS maps published in 1947 and 1961
- Warton Tithe Map and Award 1845
- Finance Act Map Sheet

## Information from Others

The Ramblers Association responded to our consultation to state that they have no objections. It was noted that members of the association had walked this bridleway several times and the track continues from the end of the currently recorded section to the road with no marked changes. They consider the fact that it currently stops at the parish boundary (Warton) to be an admin error (or anomaly) from the past.

One of the adjoining landowners responded to consultation, providing a copy of the consultation plan shaded to confirm the land in their ownership.

## Information from the Landowner

The entire length of the application route crosses unregistered land. Landowner of actual route is unknown.

## **Assessment of the Evidence**

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

#### In Support of Making an Order(s) on A-B

- Map and other documentary evidence
- Absence of signs and notices along the route in relation to the restriction of public use
- Absence of action taken by landowners

#### Against Making an Order re A-B

- No points to make

#### In Support of Making an Order on B-D to upgrade to restricted byway

- Map and Documentary Evidence

#### Against making an Order on B-D to upgrade to restricted byway

- Potentially Evidence of one gate at point C but in recent years

## Conclusion

Highways require dedication by an owner and acceptance by the public. Here there is no specific dedication document and no user evidence.

The investigation has involved not only the unrecorded section A-B and what rights it may carry but also whether B-D is correctly recorded as bridleway. It is strongly advised that A-B will be the same status as B-D.

So Committee is asked to consider whether there is sufficient evidence from which to infer that a dedication must have happened many many decades ago for the route A-D to be shown on various documents in the way that it was and consider what status the highway was .

Common Law inference is drawn from all the circumstances including documentary evidence as in this matter.

From the above information contained in the report, the above evidence suggests that public rights exist over the full length of the route, from A to D, connecting two public vehicular highways. It is therefore suggested that A-B carries public rights being part of the route A-D.

The fact that the application route is not presently recorded does not mean that it does not carry public rights of way.

There is no evidence that a legal stopping up of any part of the route has ever taken place.

The gate at point C on the recorded bridleway section does not appear to have existed historically and would not indicate a lack of intention to dedicate many years ago and in any event seems to be unlocked and open.

If Committee is content that A-B is part of a bridleway through route an Order could be made just to record that. However if Committee is content that there is sufficient evidence of an old vehicular highway between points A-D, the introduction of section 67 of Natural Environment and Rural Communities Act 2006 will have extinguished mechanically propelled rights leaving the route A-D to be appropriately recorded as a restricted byway. Taking all of the evidence into account and noting how the route was recorded on the old county maps and other documents and the investigations of the officers in the Planning and Environment service, it is suggested to Committee that on a balance of probabilities there is sufficient evidence that the whole route (including the sections B-D which are already recorded as a Bridleway) ought to be shown as a restricted byway. Committee may therefore feel it appropriate to accept the recommendation, decide that an Order be made and 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 are no significant risks associated with the decision making process.

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

Paper	Date	Contact/Directorate/Tel
All relevant documents on File Ref: 804-633		Simon Moore, 01772 531280, Legal and Democratic Services

Reason for inclusion in Part II, if appropriate

N/A