

Regulatory Committee

Meeting to be held on 9th March 2022

Part I

Electoral Division affected:
Preston North

Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Footpath from Garstang Road (A6) to Black Bull Lane through Harris Park

(Annex 'A' refers)

Contact for further information quoting reference 804-659:

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Brief Summary

Application for the addition of a Footpath on the Definitive Map and Statement of Public Rights of Way from Garstang Road to Black Bull Lane through Harris Park.

Recommendation

That the application for the addition on the Definitive Map and Statement of Public Rights of Way of a footpath from Garstang Road to Black Bull Lane, be not accepted.

Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for a footpath from Black Bull Lane to Garstang Road to be added to 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 will only be made to add a public right of way to the Definitive Map and Statement if the evidence shows that:

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

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

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

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

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

Consultations

Preston City Council

Preston City 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	5318 3228	Junction with Garstang Road (A6)
B	5302 3235	North east corner of unnamed building
C	5291 3236	Boundary between Harris Park and Queens Drive County Primary School

D	5282 3237	Junction with Black Bull Lane
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Description of Route

A site inspection was carried in September 2021. The total length of the route is 420 metres.

Application route between point A and point C

Between point A and point C the route crosses land known as 'Harris Park' to which public access is prevented by gates at point A.

Access was allowed into the site by the current landowners so that a site inspection could be carried out to look at what the site looks like at present.

The site is now securely fenced and access controlled via the gates at point A. Notices are located close to point A and at other points within the site explaining that the site is private with no public access and no public right of way.

From point A the application route follows a well-maintained tarmac roadway into the site and curves round in a generally northerly direction to continue past the front of the old school/orphanage building where a monument is located dedicated to the memory of children who were homed at the orphanage and who were subsequently killed in the First and Second World Wars.

The tarmac road goes past the former chapel and then bends west and then north between buildings now comprising of private residential properties before continuing west across a tarmac area to the rear of further private residential properties to an unnamed building (point B).

At point B the original building identified on all Ordnance Survey (OS) maps since the orphanage was built is still in existence but is boarded up and appears unused. A tarmac roadway continues past the building towards point C but ends at a mound of overgrown earth just north of an open area of grassland which was formerly used as a cricket pitch and playing field.

Beyond the end of the tarmac there is little evidence of a worn track and the strip of woodland is overgrown. It is possible to push through the trees and overgrowth to the approximate position of point C but there is no evidence of an old gap or gateway and access through to the County Primary School is prevented by metal fencing erected along the edge of the tarmac carpark.

Signs indicating that there is no public right of way and that the land was private were located in the woodland at the rear of the County Primary School and also behind the houses backing onto the former playing field and cricket pitches where it was apparent that residents had previously accessed the land via gates in their garden fences.

Application route between point C and point D

The western part of the application route crosses land owned by Lancashire County Council and forming part of Queens Drive County Primary School.

Following a request for clarification of the route through the school grounds, the route applied for was marked on a map by the applicant as follows:



The route applied for starts/ends on Black Bull Lane at point D on the Committee plan.


When the route was inspected by the Investigating Officer access from point D was blocked by the presence of a mature hedge on the boundary of the school site. East of the hedge the application route follows the boundary of the school adjacent to the fence separating it from the adjacent residential property (104 Black Bull Lane). No trodden track was visible and the route crossed an area of well-maintained grass to the south of the tarmacked vehicular access into the school car park.

The application route turned due south to continue along the grass where it was further obstructed by fencing which surrounded the school site. Beyond the fence the application route continued around the south side of the school carpark but access to or from the carpark onto the route was prevented by fencing. The application route ran parallel to the car park through a strip of land planted with trees to point C.

Whilst it was possible to gain access to parts of this route from the school carpark and school driveway the route itself was blocked by a hedge at point D and fencing which ran along the edge of the tarmac immediately north of the boundary shown on the OS maps examined (of which there was very little evidence) with no evidence of recent use.

Map and Documentary Evidence

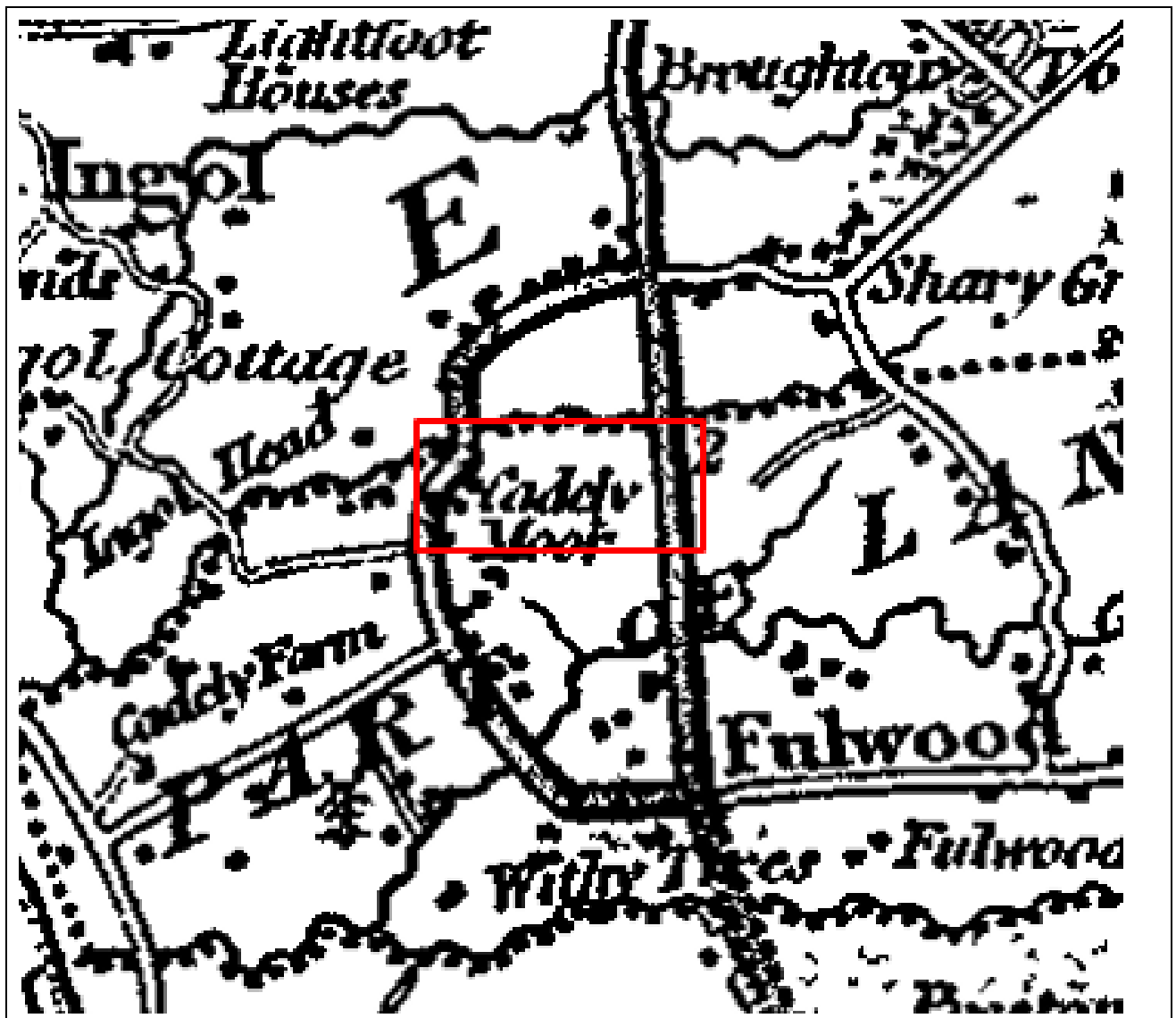
A variety of maps, plans and other documents were examined to discover when the route came into being, and to try to determine what its status may be.

Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
		
Observations		The application route is not shown and

		neither is Garstang Road or Harris Park.
Investigating Comments	Officer's	The application route probably did not exist in 1786.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.

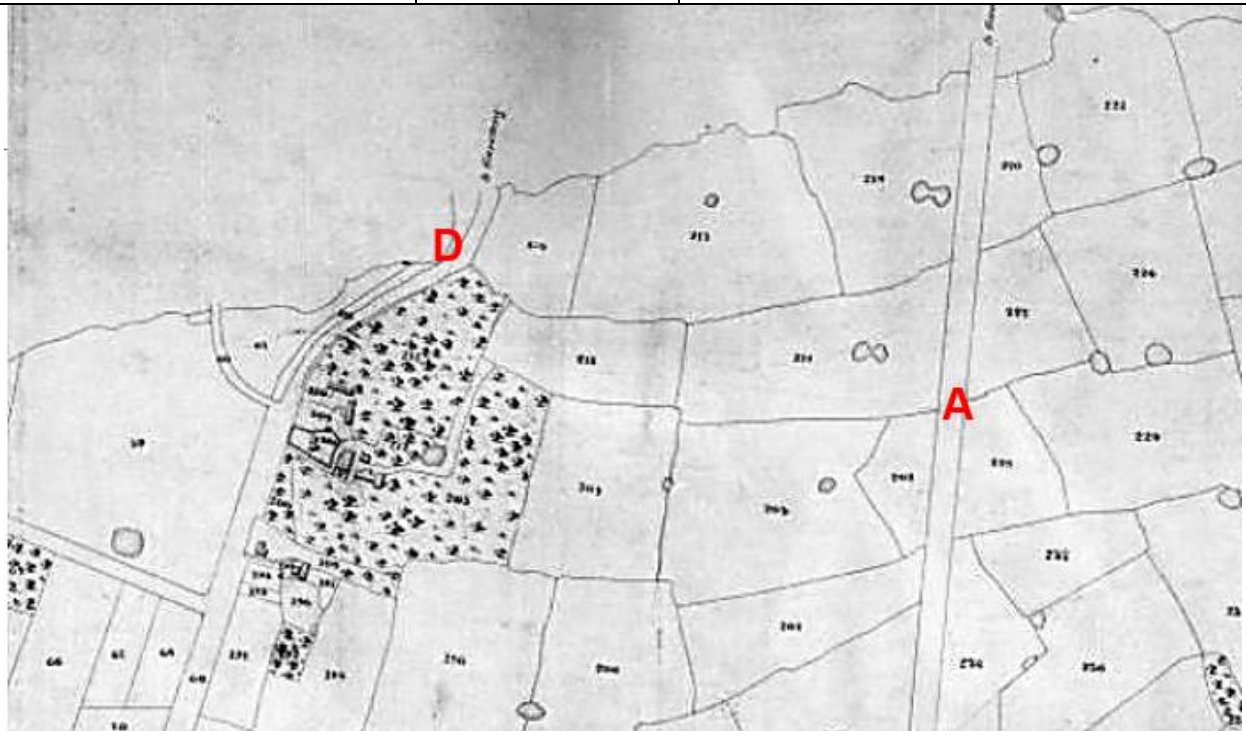


Observations		The application route is not shown and neither is Garstang Road or Harris Park.
Investigating Comments	Officer's	The application route probably did not exist in 1818.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 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.



Observations		The application route is not shown and neither is Harris Park. However, Garstang Road (the A6) is now shown as a turnpike road providing a direct north - south link in favour of the more circuitous route via Black Bull Lane to the west.
Investigating Officer's Comments		The application route probably didn't exist in 1830 although both Black Bull Lane and Garstang Road (to which the route connects) existed by that time.
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

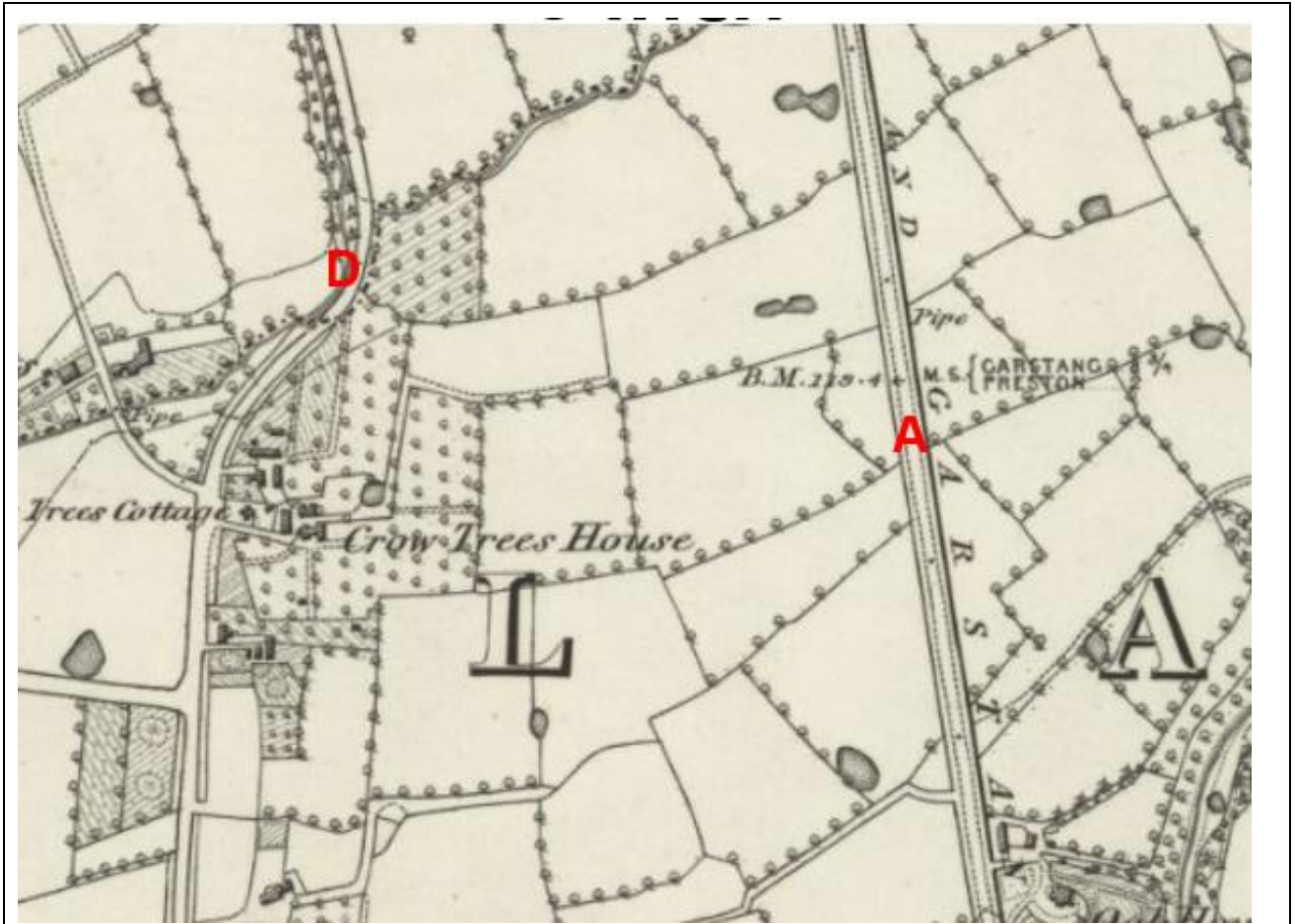
		way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The land crossed by the application route was not affected by any existing or proposed canals or railways.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Tithe Map and Tithe Award or Apportionment	1847	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.



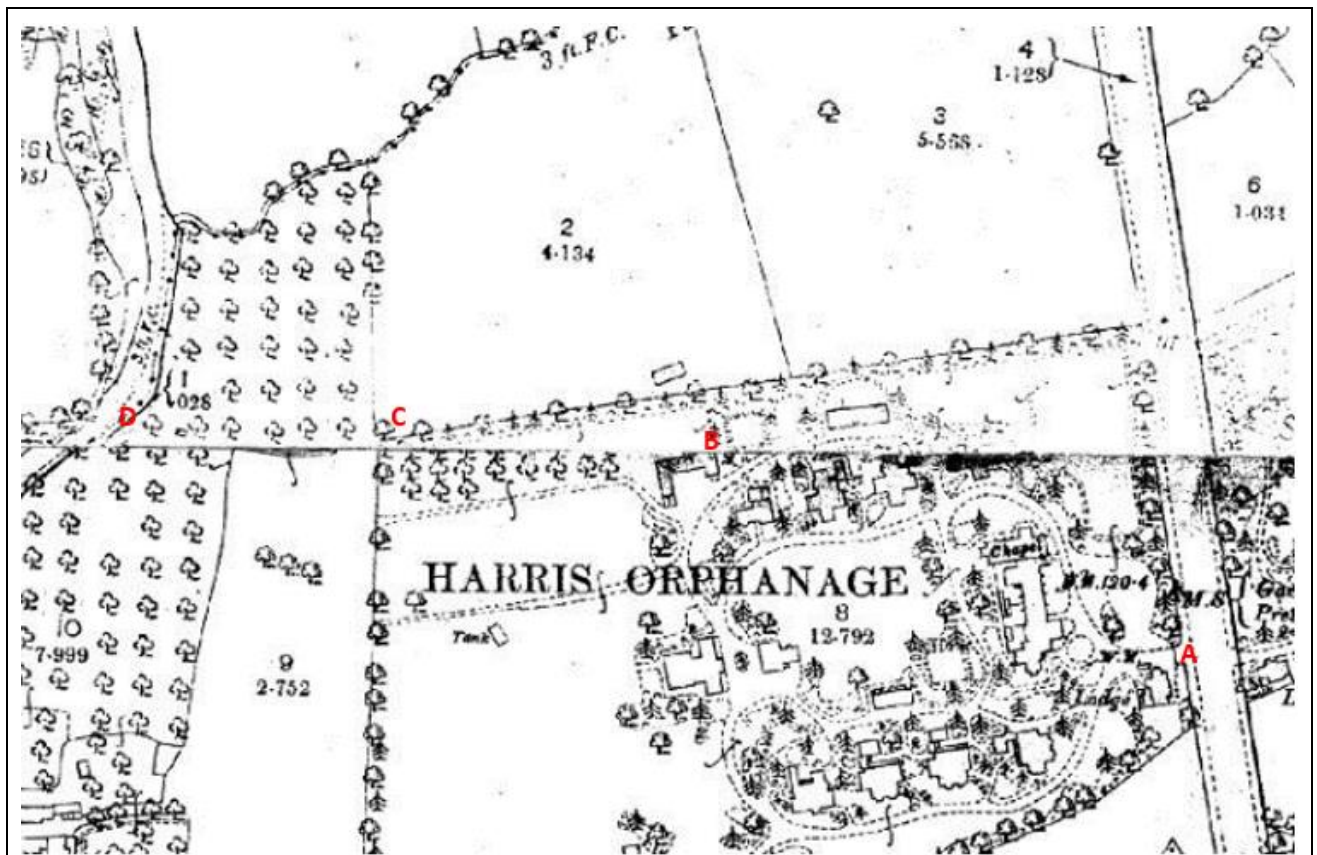
Observations		The application route is not shown. The land crossed by the route is shown as
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		being a network of fields and no reference to the existence of a footpath is included in the Tithe Award.
Investigating Officer's Comments		The application route probably did not exist in 1847.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure award available to view at the County Records Office for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
6 Inch Ordnance Survey (OS) Map Sheet 61	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 to 1847 and published in 1849. ¹

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



Observations		The application route is not shown. The land crossed by the route is shown as being a network of undeveloped fields and woodland.
Investigating Officer's Comments		The application route did not exist in 1844-47.
25 Inch OS Map Sheets LXI-1 and LXI-5	1893-1895	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891-92 and published in 1893 with a reprint in 1895.



Observations

By 1890-91 there had been significant changes to the land crossed by the application route.

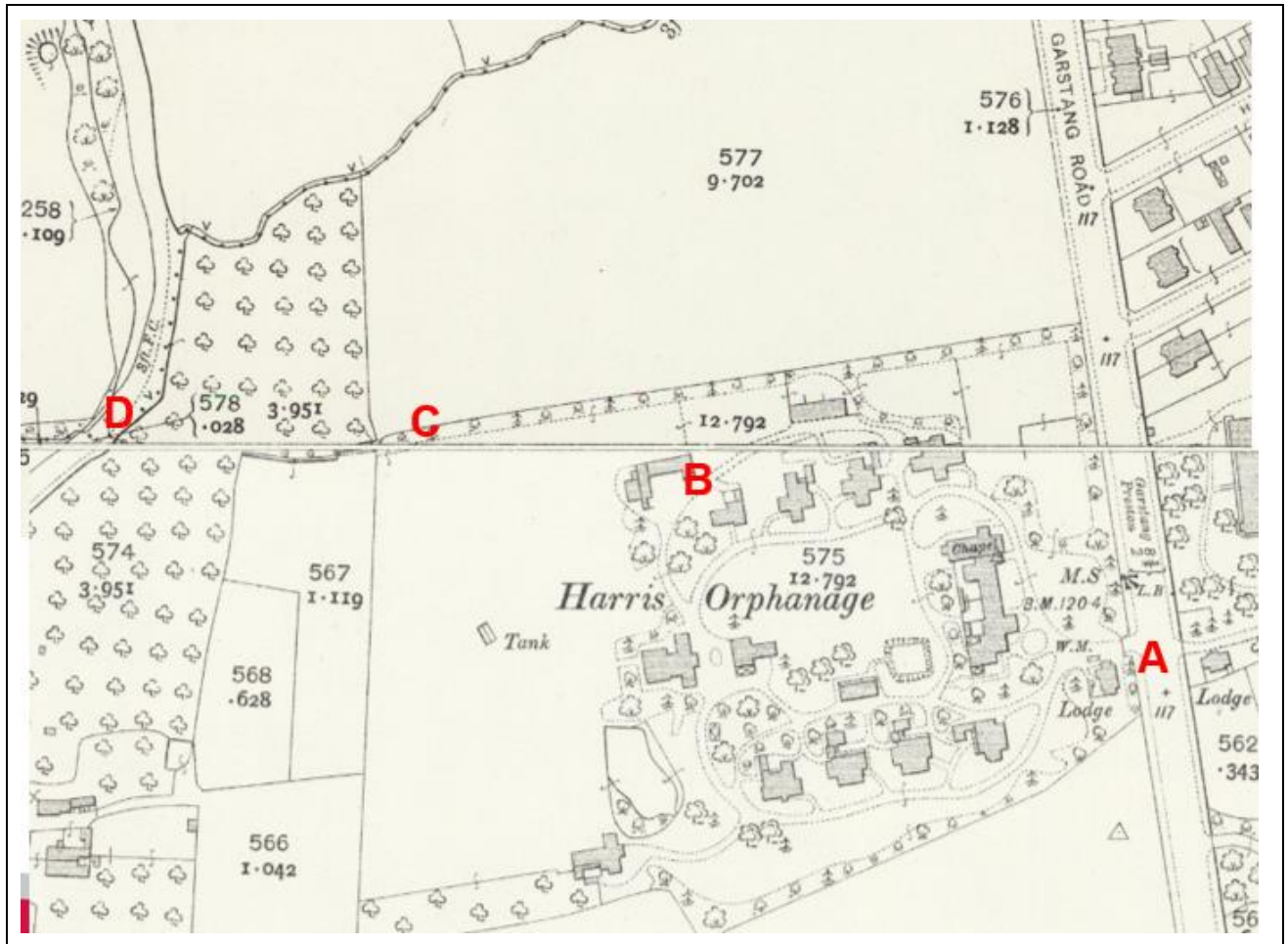
The Harris Orphanage had been built on the site crossed by the application route.

Access to the orphanage site from Preston Road was from point A which was shown as being gated.

Beyond point A the orphanage site, which comprised of a number of buildings, was set out linked by a number of unfenced roads.

The application route follows one of these roads (marked by double pecked lines) past the lodge which was situated just west of point A and then curving to continue in a generally northerly direction to the east of a large building and chapel to continue west along the road and then north along a roadway between two unnamed buildings. The route turns west along the roadway to the south of a long rectangular building towards point B initially along the roadway and then

		<p>leaving the roadway to continue west to pass the north east corner of a building (point B).</p> <p>From point B the application route is not shown on the map and crosses an area of woodland to the northern boundary of the Harris Orphanage site at point C.</p> <p>At point C the application route crosses a fence and then continues west crossing a further fence to pass through an orchard to join Black Bull Lane (point D). There is no evidence of the application route between points B-C-D.</p>
Investigating Comments	Officer's	<p>It may have been possible to walk along the application route between points A-B although the route was gated at point A and passed through the grounds of an orphanage which was unlikely to have been made available for public access.</p> <p>No through route existed to Black Bull Lane and the application route from point B through to point D did not exist in 1890-91.</p>
25 inch OS Map Sheets LXI-1 and LXI-5	1912	Further edition of the 25 inch map surveyed in 1891-1892, revised in 1910 and published in 1912.

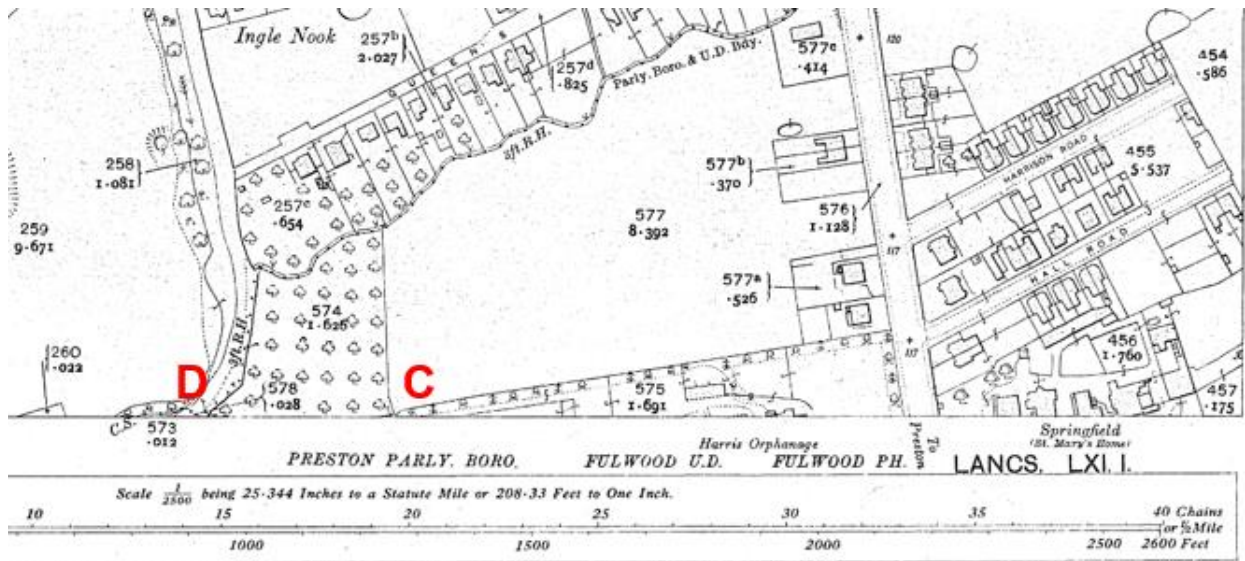


Observations		The land crossed by the application route is shown largely unaltered from when the earlier edition of the 25 inch OS map was drawn.
Investigating Officer's Comments		The application route probably did not exist in 1910.
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for 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</p>

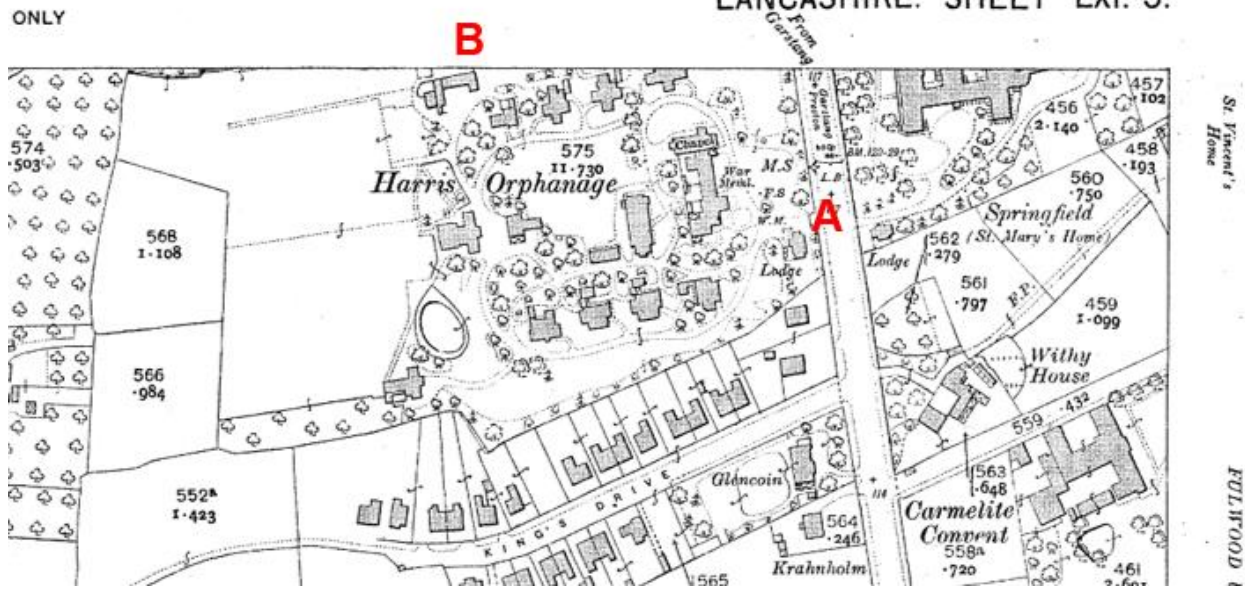


<p>Observations</p>		<p>Only the 25 inch OS sheet LXV.1 was available to view at the National Archives and this map was incomplete with the area crossed by the application route not marked up.</p> <p>The County Records Office only holds the 25 inch OS sheet LXV.5 which is also incomplete.</p> <p>No 1:500 scale maps could be found in either record office for the area crossed by the application route although the fact that this was an urban area and the 25 inch OS sheets are incomplete suggests that they were probably produced at the time.</p> <p>The District Valuation Book for Fulwood appears to have been in two parts with only the book referenced as being 'Book 2' being available. This lists details for numbered plots 965-1489 (stated as being renumbered 579-1195 in the catalogue) but without knowing what numbers were allocated to the land crossed by the route this is of no value.</p>
<p>Investigating Officer's Comments</p>		<p>No inference can be drawn with regards to the existence of public rights.</p>
<p>25 Inch OS Map Sheets LXI-1 and LXI-5</p>	<p>1931</p>	<p>Further edition of 25 inch map (surveyed 1891-1892, revised in 1929 and</p>

published in 1931.



LANCASHIRE. SHEET LXI. 5.



Observations		The land crossed by the application route had not altered since the earlier edition of the 25 inch OS map was published.
Investigating Officer's Comments		The application did not exist in 1929.
Authentic Map Directory of South Lancashire by Geographia	Circa 1934	An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare'

		<p>named on the map. The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.</p>
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<p>Observations</p>		<p>The Harris Orphanage is shown with the road network around the buildings. Access to the orphanage site is from Garstang Road at point A – with a solid line across the entrance. There is no indication that a through route existed from Garstang Road to Black Bull Lane.</p>
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<p>Investigating Officer's Comments</p>		<p>It would be unusual for a footpath to be shown on such a small scale map which was primarily published to show public vehicular routes but the map does not support the view that the application route existed in the 1930s or that there was open access from Garstang Road..</p>
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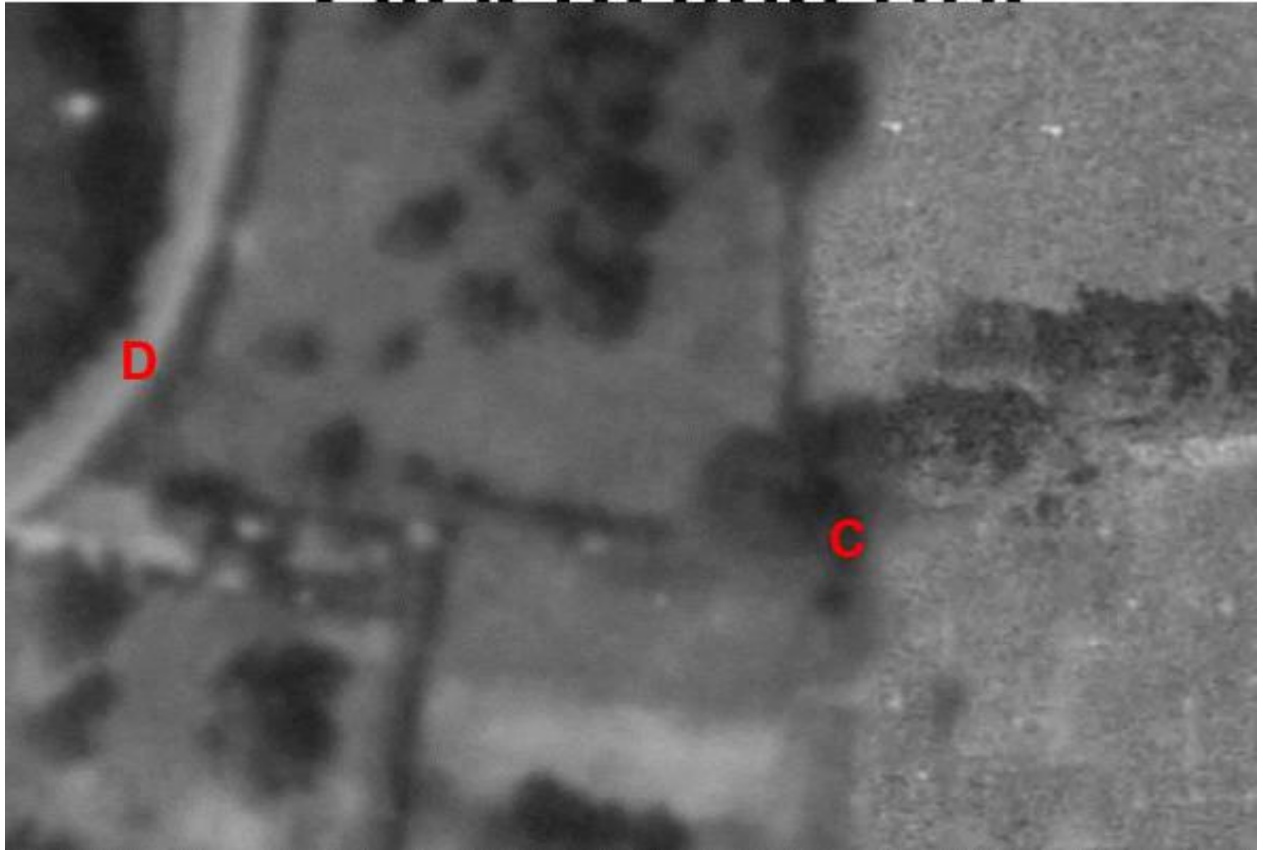
Aerial Photograph²

1940s

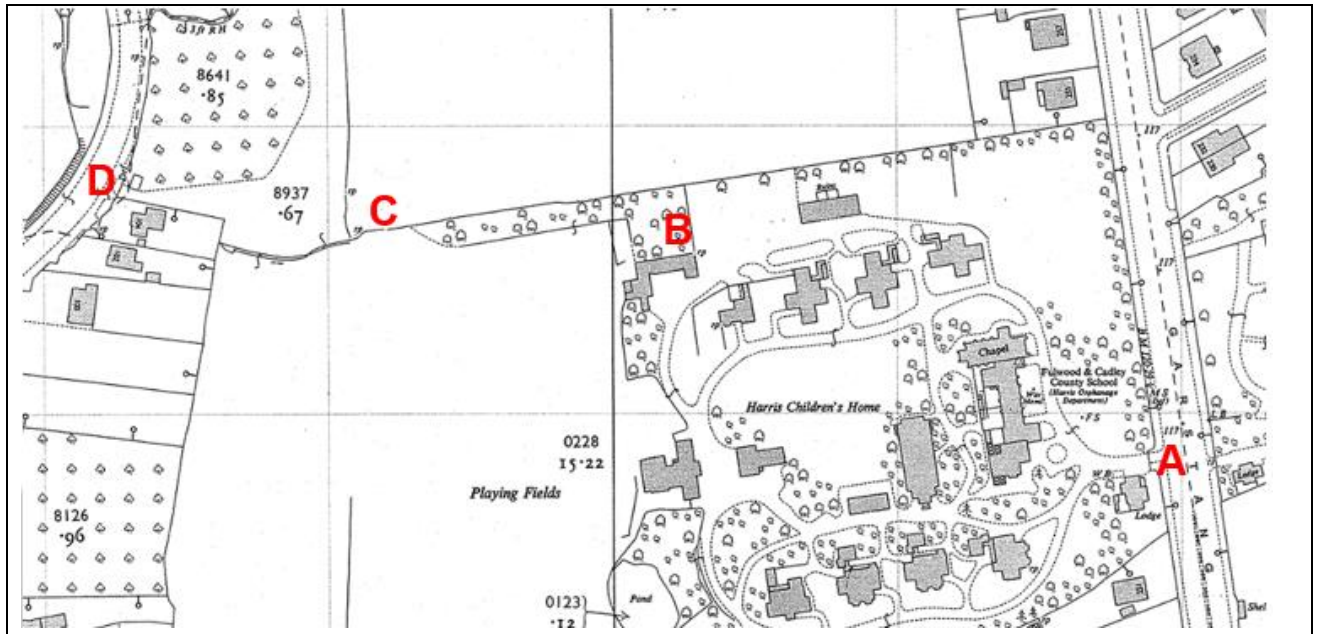
The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.



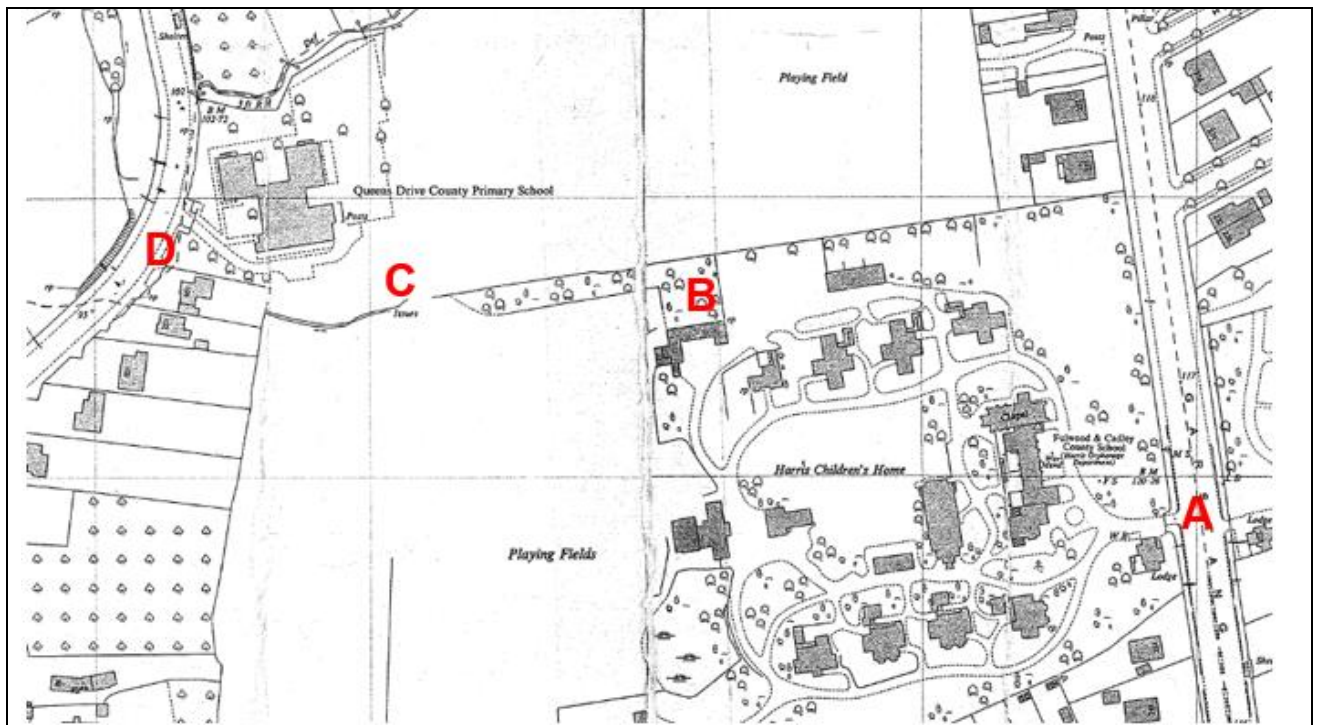
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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



Observations		The orphanage buildings and associated road network can be clearly seen but a link from the constructed roads past point B and then continuing along the application route through to Black Bull Lane at point C cannot be seen.
Investigating Officer's Comments		The application route did not exist in the 1940s.
1:2500 OS Map SD 5232-5332	1961	1:2500 scale OS map reconstituted from former county series and part surveyed 1958 and published 1961 as the national grid series.



<p>Observations</p>		<p>The entrance to the orphanage – now renamed as Fulwood and Cadley County School (Harris Orphanage Department) is still shown gated at point A.</p> <p>Once through the gate access appears to be available along the application route to point B but a line (fence) is shown across the route at point B and beyond point B there is no evidence of the application route with further lines shown across it.</p>
<p>Investigating Officer's Comments</p>		<p>The application route probably did not exist in the late 1950s.</p>
<p>1:2500 OS Map SD 5232-5332</p>	<p>1969</p>	<p>Further 1:2500 OS map revised in 1968 and published 1969 as national grid series.</p>



<p>Observations</p>		<p>The former Harris Orphanage – now renamed as a school and children's home – is shown unaltered with gated access at point A and a line across the application route at point B and a further line across it just west of point B.</p> <p>Significant changes to the land are shown off Black Bull Lane where Queens Drive County Primary School had been built with access to the school along a gated driveway just north of point D.</p> <p>The application route is not shown between point B and point C but a break in the fence-line at point C is shown through which it would be possible to access the playing field to the west of the children's home.</p> <p>The application route between point C and point D is not shown.</p>
<p>Investigating Officer's Comments</p>		<p>The application route did not exist in 1968 but it may now have been possible to access the playing field west of the children's home via the driveway to the school and the gap in the fence-line at point C.</p>
<p>Aerial photograph</p>	<p>1960s</p>	<p>The black and white aerial photograph taken in the 1960s and available to view on GIS.</p>



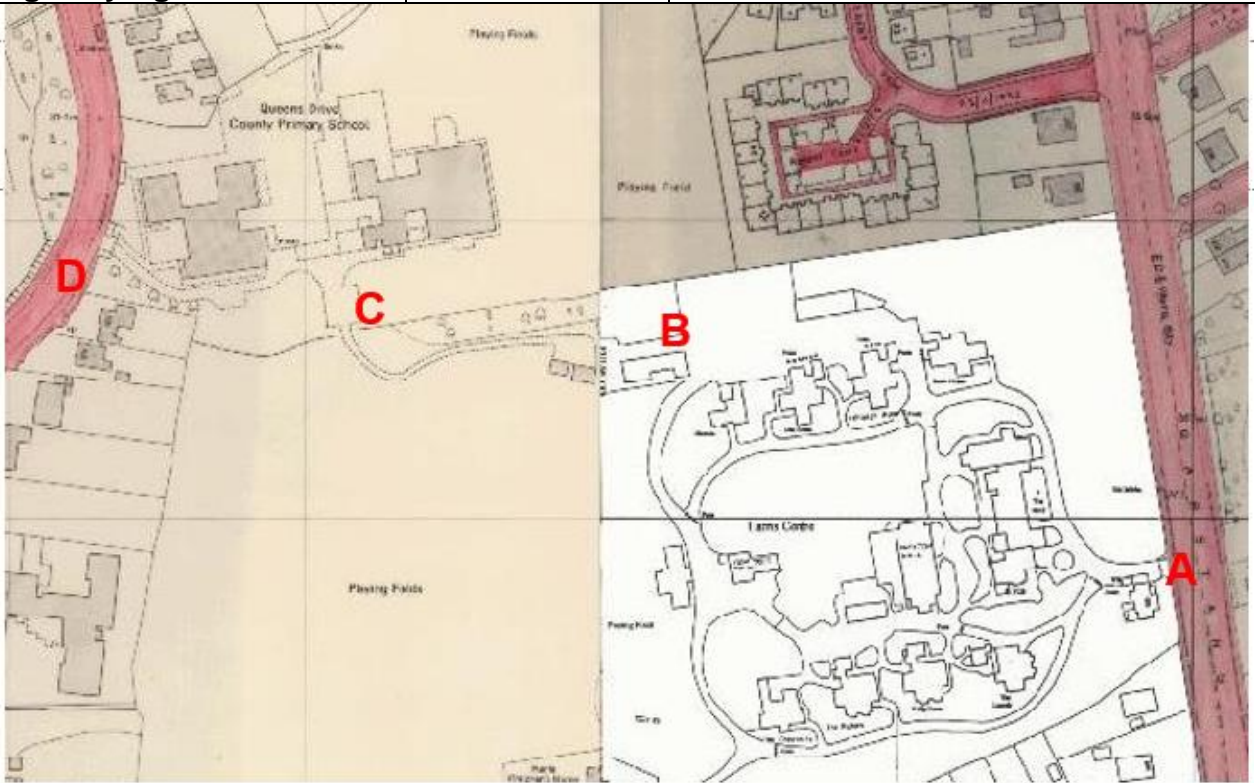
<p>Observations</p>	<p>This photograph taken in the 1960s predates the construction of the school but shows that links may have already started to form between Black Bull Lane and the site of the Harris orphanage/children's home. Access along the application route from point A to point B appears unaltered and</p>
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		<p>no route is shown from point B through to point C.</p> <p>At point C it appears that there may have been a gap in the hedge-line through which it could have been possible to access the playing fields to the west of the children's home.</p> <p>The application route is not shown as a trodden route from point C to point D although access to the field appears open and tracks are shown leading off Black Bull Lane north east of point D – one of which appears to lead towards point C.</p>
Investigating Officer's Comments		The application route did not exist as a through route in the 1960s although it was noted that some access may now have been available from Black Bull Lane passing through point C to the playing fields.
1:25,000 OS Pathfinder 679 – Preston (North) & Kirkham (Lancs)	1991	OS map compiled from larger scale surveys dated between 1956 and 1986 and revised for selected changes 1990 and 1991. Reprinted 1991.




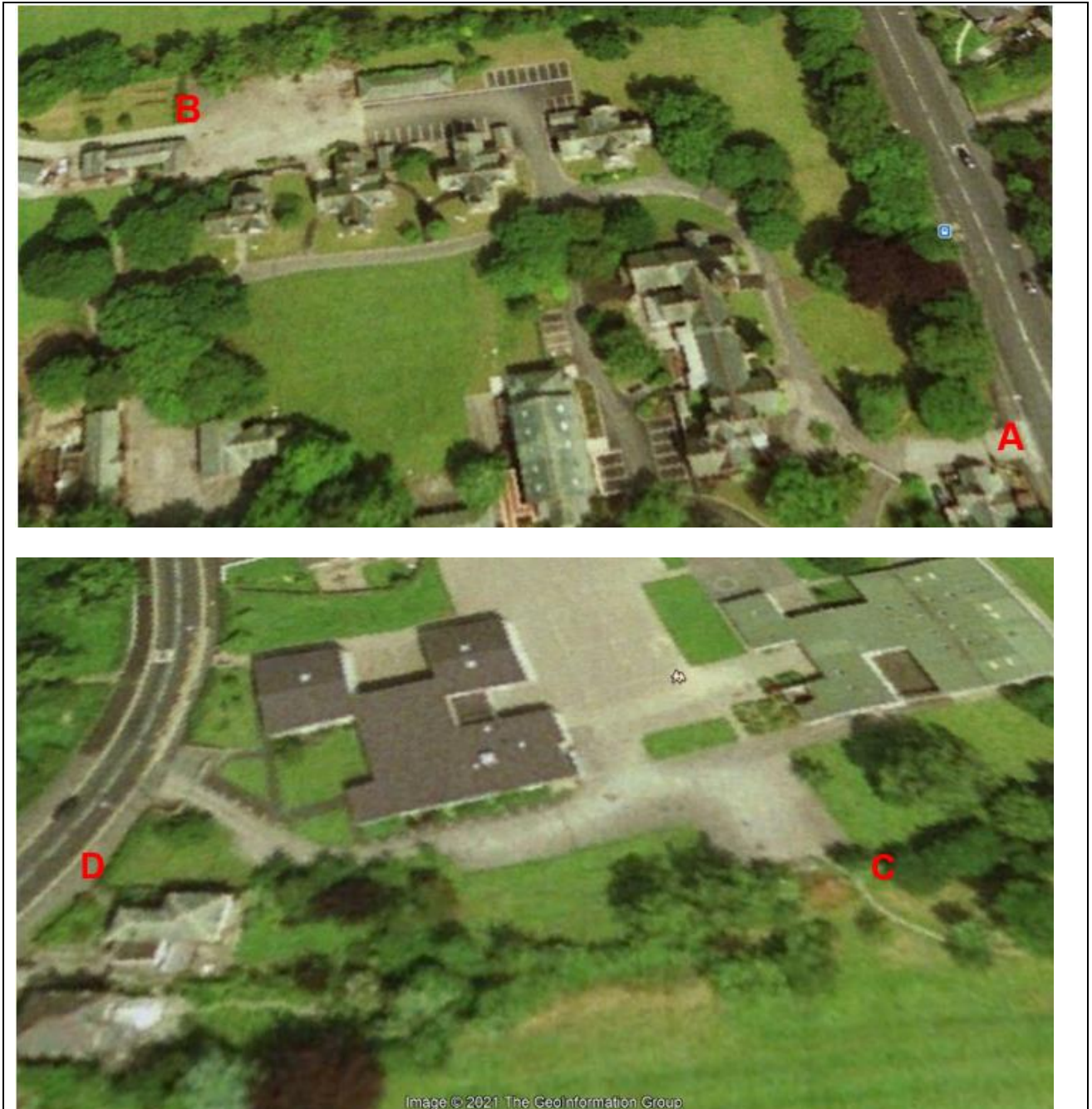
Observations		Whilst difficult to enlarge and retain clarity of the image it is possible to see that in 1991 there appeared to be access at point C between the playing fields
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		west of the children's home and the school. It is not possible to see clearly whether the exact route claimed by the applicant was accessible. There does not appear to be access through the children's home.
Investigating Officer's Comments		The map supports the user evidence submitted in respect of the fact that access appeared to be available between the playing fields and the school but it is not possible to tell exactly what through-route, if any, was available or whether use was public or private.
Computer generated OS base map used by LCC Highways for recording highway rights	Undated	Undated computer generated OS map.




Observations		This computer generated map is undated. It shows the application route gated at point A. From point A it shows a route consistent with the application route through to point B and approximately to point C. At point C there is unrestricted access leading through to the County Primary School from where it appears that it may have been possible to exit onto Black Bull Lane north of point D via school driveway which was shown to be gated.
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Investigating Comments	Officer's	<p>This type of map was commonly printed in the 1990s but this cannot be confirmed. It does however appear to be broadly consistent with what is shown on the aerial photograph taken in 2000 as detailed below.</p> <p>The map supports the application submitted from point A through to point B but is suggestive of a different route being taken through the school grounds than the one applied for and possibly a slightly different line between B and C. The application route from point C to point D is not shown and did not appear to exist.</p>
Google Earth Pro Images	2000	Aerial photograph taken in 2000.
		



<p>Observations</p>	<p>The aerial photograph clearly shows the application route between point A and point B although it was not possible to be certain whether the gate at point A was closed.</p> <p>From point B an access track can be seen approximating to the application route running the length of the building and beyond to pass another smaller building and a car parking area. Beyond the parked cars a worn track consistent with pedestrian use can be seen extending through point C onto a tarmac area (now used as a car park) from</p>
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		<p>where it appeared possible to walk along the driveway of the County Primary School to exit onto Black Bull Lane.</p> <p>The application route between point C and point D was not shown and there did not appear to be any access onto Black Bull Lane at point D.</p>
Investigating Officer's Comments		<p>In 2000 a through route probably existed from point A along the application route to point B, approximated to the application route to point C and then continuing through the school grounds to exit onto Black Bull Lane via the school driveway if the gates were unlocked.</p> <p>The application route between point C and point D did not exist in 2000.</p>
Google Earth Pro images	2002	Aerial photographs taken in 2002.
		



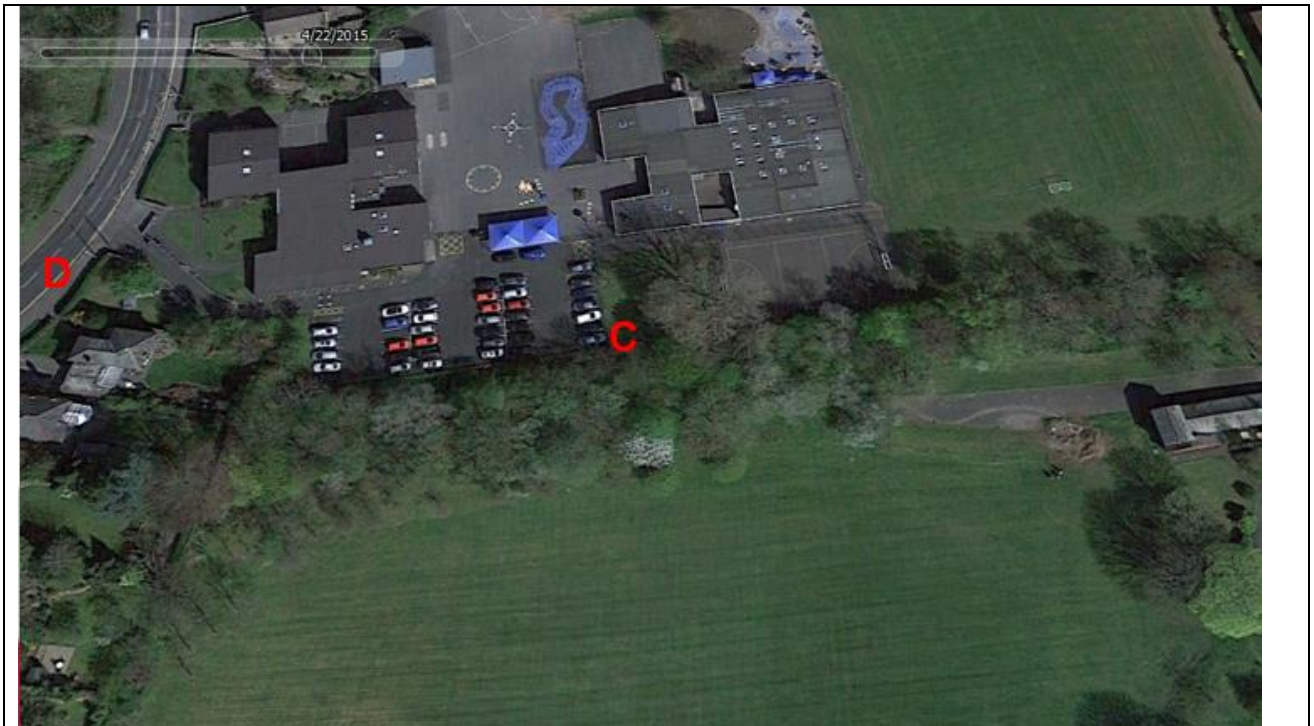
<p>Observations</p>		<p>From point A to point B the application route can be seen and remained unaltered. Access from midway between point B and point C and through point C onto the County Primary School carpark is no longer visible due to the growth of trees and bushes.</p> <p>The application route from point C to point D is not shown to exist as a trodden track on the photograph and no access appears available through the boundary at point D.</p>
<p>Investigating Officer's Comments</p>		<p>Use of a route linking from the Harris buildings to the County Primary School appears to have declined since 2000 and may have been no longer possible.</p> <p>The application route between point C and point D did not exist.</p>
<p>Google Earth Pro image</p>	<p>2009</p>	<p>Aerial photographs taken in 2009</p>



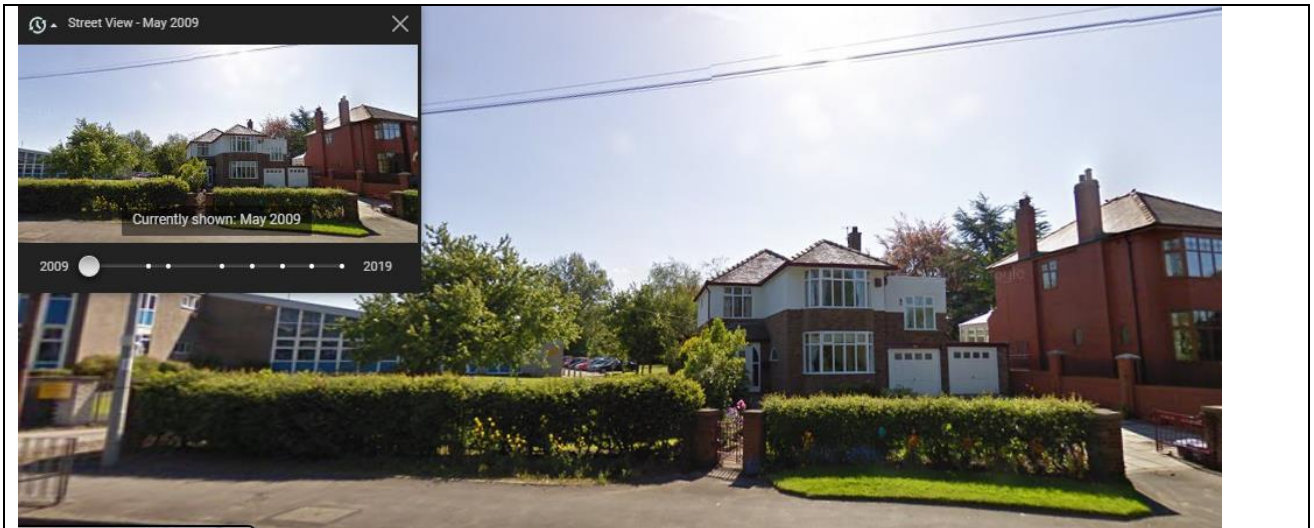
<p>Observations</p>	<p>The gate to the site at point A is open and it appears possible to access the application route through to partway between point B and point C. From here the route through to point C cannot be seen due to the trees so it is not possible to confirm whether a trodden route through to point C and into the County</p>
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		Primary School grounds was available. The application route between point C and point D is not visible although it appears that access would have been available through to Black Bull Lane via the school driveway if the gates were unlocked.
Investigating Officer's Comments		Access to the route appeared available at point A but the photograph does not assist in confirming whether there was access through point C in 2009. The application route between point C and point D did not appear to have existed at that time.
Google Earth Pro Image	2015	Aerial photographs taken in 2015.





Observations		<p>The gate to the site at point A is again photographed as being open and it appears possible to access the application route through to partway between point B and point C. From here the route through to point C cannot be seen due to the trees so it is not possible to confirm whether a trodden route through to point C and into the County Primary School grounds was available. The application route between point C and point D is not visible although it appears that access would have been available through to Black Bull Lane via the school driveway if the gates were unlocked.</p>
Investigating Officer's Comments		<p>Access to the route appeared available at point A but the photograph does not assist in confirming whether there was access through point C in 2015. The application route between point C and point D did not appear to have existed at that time.</p>
Google Street View Images	2009	Google Street View image



<p>Observations</p>		<p>This photograph was taken in 2009 and shows the application route at point D. No access is shown to exist through the hedge at point D with access to the school grounds being via the entrance to the school which was located to the left.</p>
<p>Investigating Officer's Comments</p>		<p>There was no access to or from the application route from point D in 2009.</p>
<p>Definitive Map Records</p>		<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>
<p>Parish Survey Map</p>	<p>1950-1952</p>	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards,</p>

		often containing considerable detail exist for most parishes but not for unparished areas.
Observations		Fulwood was an Urban District Council for which no parish survey was carried out.
Draft Map		The Draft Maps were given a “relevant date” (1 st 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 st 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.
Observations		The application route was not shown and there were no representations made to the county council in relation to it.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960 and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The application route was not shown and there were no representations made to the county council in relation to it.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was not shown.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised

		<p>Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p>
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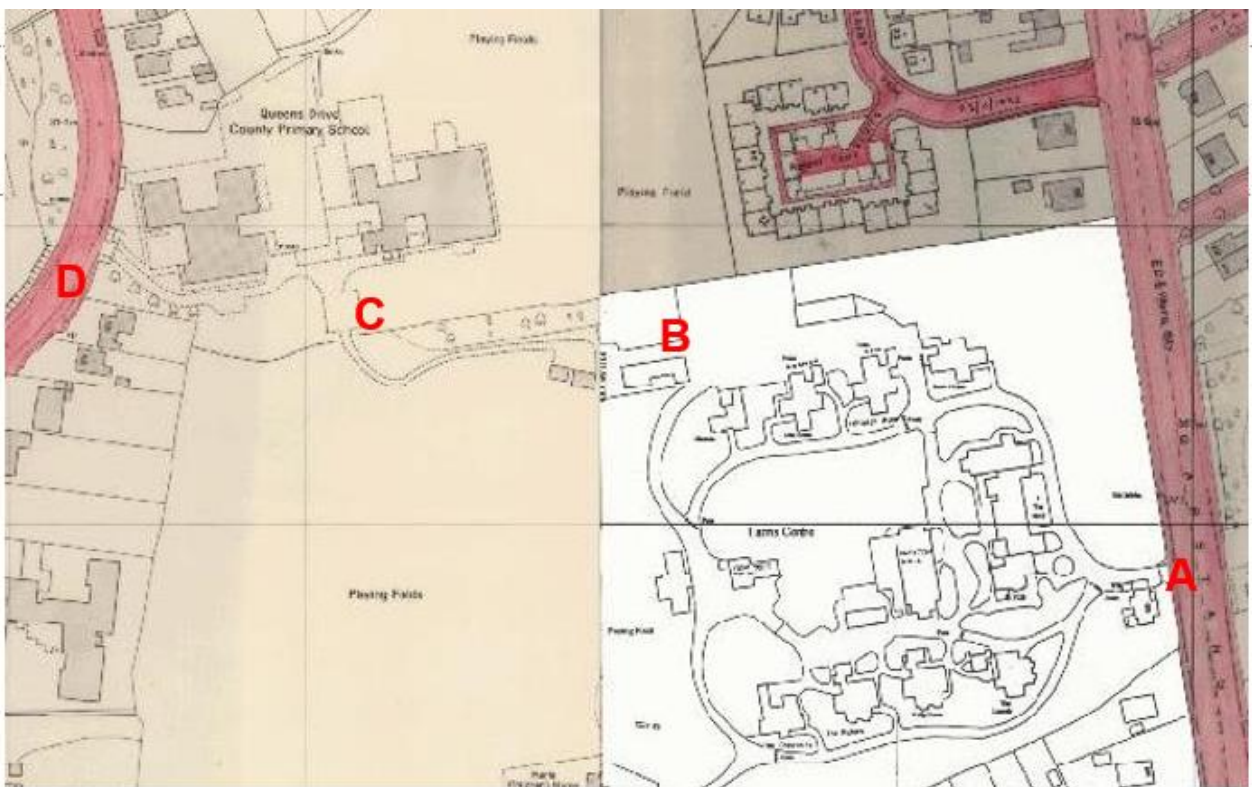
Observations		The application route is not shown.
Investigating Comments	Officer's	<p>From 1953 through to 1975 there is no indication that the route was considered to be a public right of way by the Surveying Authority. There were no objections to the fact that the route was not shown when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.</p>
Highway Adoption Records including maps derived from the '1929	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council.</p>

Handover Maps'

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.

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.

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.



Observations

The application route is not recorded as

		a publicly maintainable highway on the county council's List of Streets.
Investigating Comments	Officer's	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 so no inference can be drawn regarding public rights.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No legal orders relating to the creation, diversion or extinguishment of public rights have been found.
Investigating Comments	Officer's	If public rights are found to exist along the application route they do not appear to have been subsequently diverted or extinguished by a legal order.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on</p>

		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).
Observations		No Highways Section 31(6) deposits have been lodged with the county council for the area over which the routes run.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.

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

Summary

This application was submitted based on the submission of user evidence which will be considered later in this report.

Although the application is based on 'modern user evidence' our investigations also look back at the history of the land crossed by the application route, often spanning a substantial period of time, to determine whether historical public rights can be inferred and whether the available map and documentary evidence supports the user evidence submitted.

In this particular case the application route is not shown on any of the small scale early commercial maps, Tithe Map or early Ordnance Survey maps examined and no part of it appeared to have existed until at least the late 1880s when the Harris Orphanage was built.

There appears to be no suggestion from the applicant – and no evidence from our investigations – that a public through route was in use from Garstang Road (the A6) through the orphanage grounds to exit onto Black Bull Road until at least the mid to late 1960s when Queens Drive County Primary School was built, and a gap was shown on the OS 1:2500 scale map suggesting access may have been available between the school and the playing fields on the west of the children's home at point C.

Map and documentary evidence in support of the application is limited.

The maps consistently show a gate across the route at point A and it is not known whether this was left open or whether access was available.

A route from point A through to point B is consistently shown and remained largely unaltered from the 1890s to the present time but it is not until 2000 that we have any definite evidence of a route consistent with the application route existing on the ground through to point C (Google Earth Pro aerial photograph).

Between point C and point D there was no map or documentary evidence supporting the existence of the application route on the line claimed. From the time that the school was constructed in the late 1960s however, access did appear to have been possible along the school driveway between Black Bull Lane and point C if the school gates were not locked.

Taking all the map and documentary evidence into account there is insufficient evidence from which it is possible to infer that public rights exist and no support that a route between point C and point D on the line applied for could have been used.

There is evidence that a link between the two sites existed at least for a period of time between 1960 and 2000 at point C and that it may have been possible to travel on foot from Preston Road at point A through to Black Bull Lane via the entrance to the primary school but any assertion of the existence of a route used will rely solely on the quality and consistency of the user evidence provided.

Head of Service – Legal and Democratic Services Observations

Landownership

Between point A and point C the application route crosses land on which the Harris Orphanage was built.

The land on which the orphanage was built was acquired in 1881 by the Harris Trustees and what was described as a village homes-type orphanage was built for 120 children with the first child admitted in November 1888.

In 1940 the orphanage school was leased by Lancashire County Council and after the Second World War the orphanage was renamed the Fulwood and Cadley County School (Harris Orphanage Department). It closed in 1982 and was then leased to Preston Polytechnic, in 1985 being bought outright by them and used for student accommodation. The Polytechnic subsequently became the University of Central Lancashire who converted the buildings to office use and owned the properties and grounds until they were sold in 2007 to the current landowner.

Between point C and point D the application route crosses land in the ownership of Lancashire County Council.

Information from the Applicant

In addition to the map evidence already considered the applicant submitted 11 witness statements which detail various routes and access points onto Harris Park including access of residents through back gates in their gardens. These statements relate to varied routes which do not generally or wholly conform to the route as applied for.

In the interest of clarifying the situation the applicant was provided with the councils standard user evidence form with the request that these be completed by those who had submitted witness statements. 6 forms were returned, and they are detailed below, the forms referred back to plans which had been provided with the witness statements which showed various and differing routes into and across the park so it is again not clear that these users are referring exactly to the route as applied for. One user worked at the Conference Centre at Harris Park so potentially had private rights of access across the park.

Duration of Use

The user evidence forms collectively provide evidence of use going back as far as 1967 and up to 2010 with users noting use from 1967 to 2009, 1970 to 1980, early 1990s to late 1990s, 1995 to 1998, 1997 to 2007 and 1998 to 2010 respectively though not all users appear to have used exactly the same route.

Frequency of Use

All of the users recorded use ranging from several times a week to daily use. 3 users recorded use on foot several times a week, 2 recorded use from Monday to Friday each week, 1 recorded daily use.

Reasons for Use

2 users recorded use for pleasure, 2 recorded use for commuting to work, 1 recorded use walking to school and another recorded use taking children to school.

Other Users of the Route

All users recorded having seen others using the route on foot.

Consistency of the Route

1 user stated that the route had always followed the same line, the 5 remaining users stated that they did not know. All 6 users stated that they did not know how wide the route was.

Unobstructed Use of the Route

No users recorded having been stopped, turned back, told the route was not public, nor did they record seeing signs or notices along the route.

No users recalled barriers or stiles but 3 recorded gates. 1 recorded a gate to access the park at the back of Orchard Court which was not always locked, it was noted that residents of Orchard Court had a key for this gate. 1 user noted a gate in their back garden through which they access the park with family. 1 user noted a gate in a friend's back garden accessing the park, stating that this gate was never locked. This reflects the differing routes and points of access recorded by the various users.

Information from Others

An adjoining landowner at the western end of the route responded to consultation. They recalled the changing ownership and use of the land affected by the route, noting that Harris Park was private enclosed property with no through access. They went on to state that the fence along the border with Queens Drive primary school had become dilapidated over the years but that this border was re-established with the current fence 10 years ago. They clarified that the school has always been private property and not an access route to anywhere.

The adjoining landowner also raised privacy and security concerns as the application route runs along the boundary of their land alongside the bedroom and main living room of their house. Safety concerns regarding the exit onto Black Bull Lane were also noted.

The adjoining landowner concluded; "The proposed route has never been a general right of way and never became one as it was never needed or used as such. There has always been more than adequate existing access routes for pedestrians wanting to pass between Garstang Road and Black Bull Lane. Kings Drive providing access, with the additional benefit of the zebra crossing at the Black Bull Lane exit and Queens drive providing access for the Primary School, the Leisure Centre and the Academy."

Councillor Woollam responded to consultation giving his support to the application. He stated that the application seeks to reinstate an unofficial pathway through the site that was used, un-challenged, for a period of approximately 50 years which provided a permanent connection to the heritage of the site for the people of Preston and all year-round access to the War Memorial, of which only two days a year are currently permitted. It also seeks to create safe access for school children to walk to school, away from extremely busy roads.

The war memorial was bought by the friends of the orphans, who attended the Harris orphanage and it would be very disrespectful to move or prevent public access to this important historic site. In the past people were allowed to walk through the beautiful grounds stopping to pay respects at the war memorial dedicated to former residents of the Harris Children's Home who bravely laid down their lives for their country in the great wars. I have discussed this issue with many members of the public who have visited the memorial on many occasions and there is very strong opposition to preventing access.

This historic site has the biggest collection of Grade 2 listed assets in Preston, 12 in all, and are all part of the legacy of Edmund Harris, which is vitally important to the heritage of the people of the City of Preston. In Councillor Woollam's opinion, residents of Preston must always have access to this site and enjoy not only the Grade 2 listed buildings but also the listed park and gardens. There would be a considerable amount of resentment by the people of Preston if access should be denied.

Information from the Landowner

The owners of Harris Park objected to the application on the basis that there is no evidence to suggest that the legal test in Section 31 of the Highways Act 1980 has been satisfied, nor that dedication at common law has occurred, and therefore they contend that there is no legal basis on which an order could be made to add the application route to the Definitive Map.

Their response included a Statutory Declaration from a Partner at Bhailok Fielding Solicitors who acted for Harris Park Limited on the acquisition of the land known as Harris Park in 2007, details of which are summarised below.

The declaration commented on the legal test to establish the existence of public rights and provided a description of the site along with a detailed history and details of the changing use of the land from 1888 to the present day.

Signs reading "Private No Public Right of Way" were noted as being erected by the previous landowner (UCLAN) in October 2001; it was suggested that this should constitute the calling into question of public rights along the route. One sign was situated at the front entrance to the site on Garstang Road and then others facing Queens Drive School presumably where people had attempted to access the site and again another sign on the opposite side of the field facing Kings Drive. In 2014 the owners erected ten new signs around the site.

The declaration also went into great detail regarding access points to the site corresponding to points A and C on the committee plan.

Access at point A

It was noted that there is evidence to support the conclusion that the access into the site from Garstang Road was gated up to at least the time when Harris School closed in June 1984 (and beyond into 1985 at the earliest). This evidence includes:

Orphanage and school use of the site, and the recollections of former pupils and parents. It is argued that public access would have been incompatible with the sites use as a children's home and primary school (1888 to 1984). Garstang Road is, and was, a very busy, heavily trafficked road and it would have been necessary to keep the site secure to ensure the children's safety.

A brochure provided with the consultation response which shows a picture of school children in 1968 crossing Garstang Road from Harris School and this shows white mesh gates across the entrance, which appear to have just been opened to allow the children to leave the site to cross the busy road.



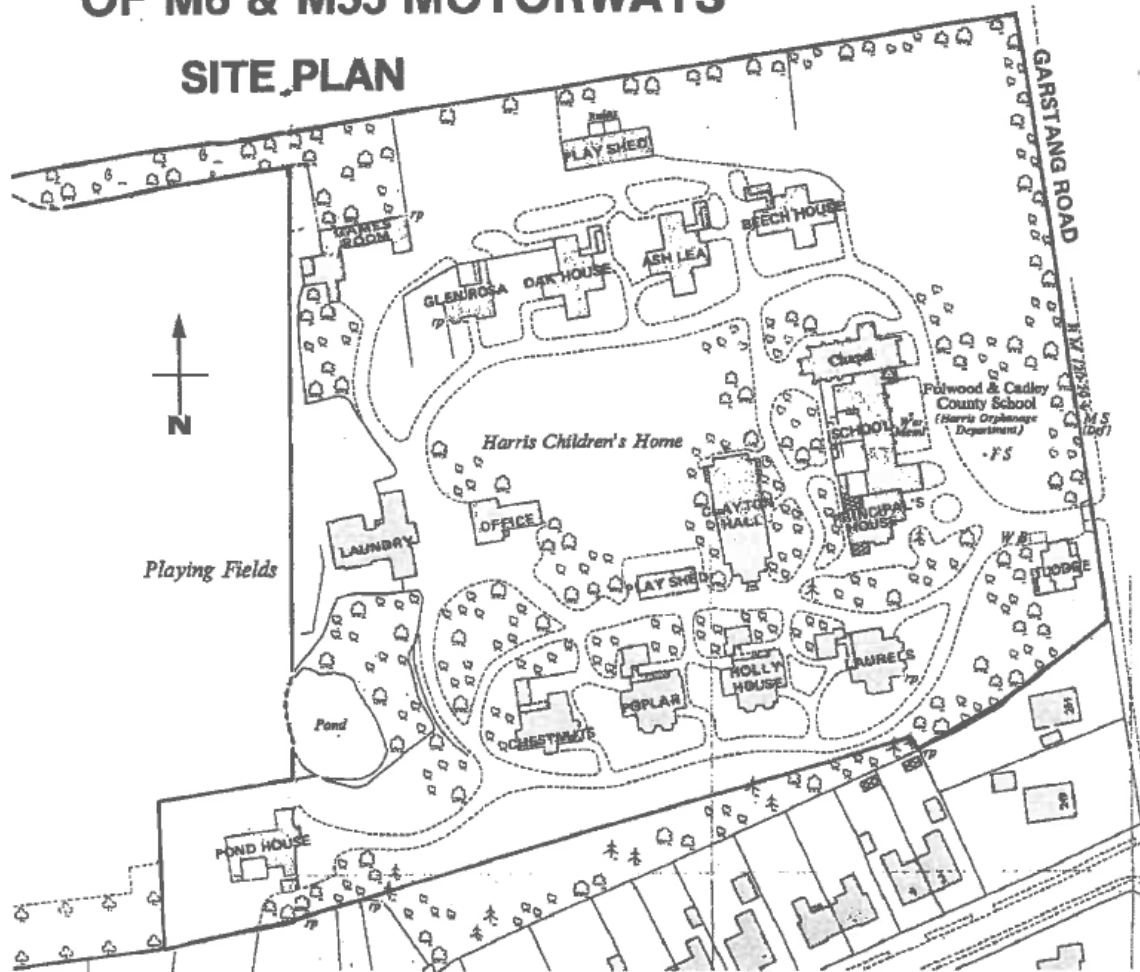
School children crossing the road.

This picture showing a few pupils sporting their new 'Diddy jackets' appeared in the Lancashire Evening Post in 1968.

It is argued that these gates, or their replacements, would need to have been maintained by the Trustees and the Council during the period that the site was used as an orphanage and school, to protect the safety and privacy of the orphans and pupils.

A copy of the sales particulars of the site from November 1984 when the Trustees were trying to sell the buildings at the front of the site which state that "The Club has no access through the grounds of the vendors but it would be the Trustees' wish to retain a vehicular and pedestrian right of access through the site to the playing fields upon a line or road to be agreed". The particulars go on to say that, "In fact 8 of the houses were at that time subject to a tenancy to the Council for accommodation for students at Lancashire Polytechnic but full vacant possession is to be given by September 1985". There is a plan of the site attached to the sales instructions and on it is a thin black line drawn across the entrance to the site from Garstang Road. It is argued that this indicates the existence of a gate across the entrance, and this view is supported by further evidence.

**1½ MILES SOUTH OF JUNCTION 32
OF M6 & M55 MOTORWAYS**



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There is also an aerial photograph on the front of the sales particulars. This is of poor quality, however a copy of the same photograph was found online in the Conservation Area appraisal prepared by Preston Council in November 2007. In the appraisal the photograph is said to have been taken in 1981, then at the back of the appraisal there is a list of figures which describes the photograph as "Aerial view of Harris Park looking north c1982".



This photograph shows a white car turning into the site off Garstang Road and there being a black structure barring its entry which is most likely to be the gates referred to by various ex pupils and parents of the school. This photograph was clearly taken in the early 1980s whilst at least the school, if not the orphanage, was still running and shows that the site was gated.

Finally, on 15 January 1985, a number of buildings on the site including the lodge and gateway were listed as Grade II listed buildings. The general description refers to Harris Park being added as Grade II to the schedule of a list of buildings of special architectural and historic interest in the area. After a description of the property it then goes on to state "The perimeter of the whole of which is enclosed by brick walls, stone copings and entrance pillars to vehicle and pedestrian gateways which have wrought iron gates" It is argued that this implies that both gateways were gated but there is a more detailed description of the lodge and gateway which were separately listed as follows:

"Gate peers – 4 inner making carriage gateway flanked by pedestrian gates and two outer all red brick heavily banded with sandstone square section around 3 meters high with hemispherical tops the innermost bearing ornamental iron lamp holders. Iron spear railing gates".

In addition to this evidence it was noted that on 10th January 1991 planning permission and listed building consent was obtained for change of use from a former chapel and school building to a conference centre which included alteration to the

access to the site. This application included the relocation of the main gate and gatepost to form a wider access. The plans attached to the application indicate that by 1990 the gate had been removed.

Once UCLAN's use of the site ended in August 2010 the owners were able to place a new gate across the access into the site from Garstang Road, which was controlled by a code. A condition was attached to the planning permission for the new gate which required the gate to be opened on Armistice Day/Remembrance Sunday to allow access to the war memorial on the site. It is argued that if the Council had considered that there was a public right of way across the site, then they would have no reason to impose the condition.

Access at point C

The cut through between the site and Queens Drive Primary School was blocked off in 2001. Evidence of this is contained in the letter from a Mr Duckworth to UCLAN dated 11 November 2001 in which he states that UCLAN have "erected a five foot plus concrete fence along the boundary between the Harris and Queens Drive Primary School".

When the partner first visited the site in 2005 they noticed that the fencing between the site and Queens Drive Primary School had been removed. This was discussed with UCLAN's solicitors and they stated that there had been incidents of anti-social and criminal behaviour taking place on the site, and youths trespassing on to the site at night. Discussions had been ongoing with the police to erect further fencing to prevent this.

The Council erected the current fencing between the site and Queens Drive Primary School in 2010 following liaison with the owners and the head teacher of Queens Drive Primary School. The Council applied for planning permission for the fence. The owners contributed the sum of £6,312.25 towards the cost of the fence and on 29 November 2010 the Bursar of Queens Drive Primary School wrote to the owners stating, "The fence does seem to be preventing people from walking between the properties and therefore reducing trespass. Many thanks again for your co-operation over recent months".

The statement prepared by Ms J Webster, the head teacher of Queen's Drive Primary School, in support of the application states that she requested that a gate be placed in the fence to allow access on to the site from Queens Drive Primary School; the Partner is not aware of any such request having been made, and it would seem inconsistent for such a request to have been made, given the purpose for constructing the fence.

In addition this declaration highlighted responses to letters sent by UCLAN to local residents regarding the gates leading from their gardens onto Harris Park. One response clarified that the gates were to allow access to the site to facilitate maintenance of garden hedges, the side facing the park having not been previously maintained by the university or Harris Children's Home. Another respondent did state that they had used the gate to access and stroll around the grounds but no public right was claimed at the time.

UCLAN wrote to the latter resident to outline their plans for the site and to note that it had in recent years noticed an increase in the number of people who had no right of entry to the site but who were attempting to use it in order to gain access to areas outside the university boundaries such as Queens Drive. They pointed out there were no public footpaths for the use of the general public and that was why the university felt it was right to state that these were private grounds and that there was no public right of way for individuals.

This led to a string of letters in which UCLAN maintained that there was no public right of way across the site.

Conclusion

As there is no express dedication, Committee is required to consider whether there is sufficient evidence from which a dedication of the application route can be deemed under section 31 of the Highways Act 1980 and/or inferred at common law.

For both tests, there is a requirement for any public use of the route being considered to be 'as of right', which is interpreted as being use by the public that is not by force, does not take place in secret and is not on the basis of permission of any kind.

Looking first at the criteria for a deemed dedication under section 31 of the Highways Act 1980, use of the route needs to be by the public 'as of right' (without force, secrecy or permission) and without interruption over a sufficient 20 year period immediately prior to the route being called into question. This application is before committee following an application made to the County Council in October 2020, therefore the 20-year period under consideration for the purposes of establishing deemed dedication would be 2000-2020.

As to whether the application route was used by the public as of right and without interruption for the relevant 20 year period, user evidence was originally provided by 11 individuals each stating that they used various routes and access points. The applicant was therefore asked to clarify the position as to the exact route applied for and in response 6 of the LCC user evidence forms were resubmitted by the applicant.

From the user evidence submitted no user has used the route throughout the entire statutory period but user evidence has been submitted dating back to 1967. In addition, none of the users show evidence of use of the route beyond 2010, Committee should note that such date is 10 years short of the 2020 statutory end date. Whilst there is evidence of use covering some of the statutory period, the volume of users providing evidence is extremely low and the variation in the route used is also unclear. In addition, some users appear to have accessed the route via private gardens and one user accessed the site arguably via a private right due to being employed by the owners of the site at the time. In the circumstances, the evidence of use is too low to be considered representative of the public at large and to evidence sufficient use beyond trivial and sporadic from which to deem dedication by the owners.

Guidance from the Planning Inspectorate indicates that use of the route must be by a sufficient number of people who together may sensibly be taken to represent the public at large. In this case, Committee may consider that use of the route is not representative of the public at large and therefore the evidence does not raise a presumption of dedication of a footpath and thus fails satisfy the statutory test.

Consideration must then be given to whether on balance dedication may be inferred at Common Law.

Committee is therefore advised to consider whether evidence from the old maps and other documents together with user evidence and the physical features of the site does on balance indicate that footpath rights should be recorded.

Early map and documentary evidence examined by the Public Rights of Way Officer is set out in detail within this report. The orphanage was constructed in the late 1880's and used as such up until 1982, due to its nature it would have been necessary for the site to be gated and private. The applicant suggests that the route was not used by the public before the late 1960's when the Primary School was constructed. The OS 1:2500 scale map shows access may have been available between the school and the playing fields on the west of the then children's home at point C. However the maps examined consistently show a gate across the route at point A but what is not known is if this gate was ever locked. It is not until 2000 that evidence of a route A to C is shown on a Google aerial photo.

Map and documentary evidence in support of the application is limited with no map or documentary evidence supporting the use of the route applied for between points C to D.

Evidence from the owners, previous owners and adjacent owners does not indicate that the owners or previous owners intended dedicating highway routes. Reference has been made by the owner and former owners that the land always being private with no public access is something which is supported by the adjacent land owner. Over the years a number of signs stating the land is private have been erected on site with two signs in 2001 and a further 10 in 2014, historical sales particulars and old photos have also been provided by the owners in support of their case. Accordingly, it is advised that no inference of a dedication of highway under common law can be drawn.

Committee is therefore advised that none of the circumstances support an inference of a dedication of highway under common law at any point prior to the submission of the application.

In conclusion, and having considered all of the evidence discovered, a dedication of a public footpath along the application route can neither be deemed under section 31 of the Highways Act 1980 nor inferred at common law. Accordingly, Committee is advised to reject the application and not make an Order adding a public footpath to the Definitive Map and Statement.

Risk management

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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-659		Simon Moore, 01772 531280, Legal, Governance and Registrars

Reason for inclusion in Part II, if appropriate

N/A