

Regulatory Committee

Meeting to be held on 9th March 2022

Part I

Electoral Division affected:
Lancaster Rural North

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of Bridleway West of Buckstone House from Junction with Bridleway Priest Hutton 14 to Cinderbarrow Lane

(Annex 'A' refers)

Contact for further information:

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Brief Summary

Application for the addition of a bridleway west of Buckstone House from junction with Bridleway Priest Hutton 14 to Cinderbarrow Lane.

Recommendation

That the application for the addition of a bridleway west of Buckstone House from the junction with Bridleway Priest Hutton 14 to Cinderbarrow Lane be not accepted.

Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a bridleway on the Definitive Map and Statement of Public Rights of Way west of Buckstone House from the junction with Bridleway Priest Hutton 14 to the junction with Cinderbarrow Lane.

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

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

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

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

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

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

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

Consultations

Lancaster City Council

No consultation response was received from Lancaster City Council.

Priest Hutton Parish Council

No consultation response was received from Priest Hutton Parish Council.

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
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A	5205 7424	Open junction with Bridleway Priest Hutton 14
B	5227 7466	Metal Field gate across the route
C	5235 7486	Metal Field gate across the route
D	5237 7495	Metal field gate across the route at the junction with Cinderbarrow Lane

Description of Route

A site inspection was carried out in September 2020.

Access to the start of the route (point A on the Committee plan) is along the route recorded as Bridleway Priest Hutton 14 which starts on Burton Road at Greenlands Farm.

On approaching point A there is no discernible difference in the nature of the route of Bridleway Priest Hutton 14 ('the bridleway') and that of the application route and both are bounded on either side by hedging providing for a strip approximately 8 metres wide along which a stone surfaced track approximately 3 metres wide can be found.

At point A 'the bridleway' turns to continue west and then continuing as Bridleway Yealand Conyers 20 turns north, crosses the Lancaster Canal and M6 motorway continuing as Bridleway Yealand Conyers 20 to exit onto the A6 opposite the junction with Dykes Lane.

The application route extends from point A continuing north north east along the track for approximately 500 metres rising gently uphill enclosed on both sides, mainly with hedges, although the eastern side has a section of stone wall on the approach to B, and also field gates allowing access to pasture fields on both sides.

There is a field gate across the track at Point B and the top of the feature known as the Buckstone (thought to be a large 'erratic' boulder deposited by a retreating glacier in the last ice age) is just visible over the trees on the western side.

From point B to point C (approximately 200m) the hedge on the western side of the route continues, but it has been largely removed on the eastern side and the route continues along the field edge to point C where it is crossed by a further field gate in the hedge line.

From point C the route continues for approximately 100 metres north east across a pasture field to a gateway in the hedge line at point D and passes through the field gate onto Cinderbarrow Lane.

The total length of the route is 800 metres.

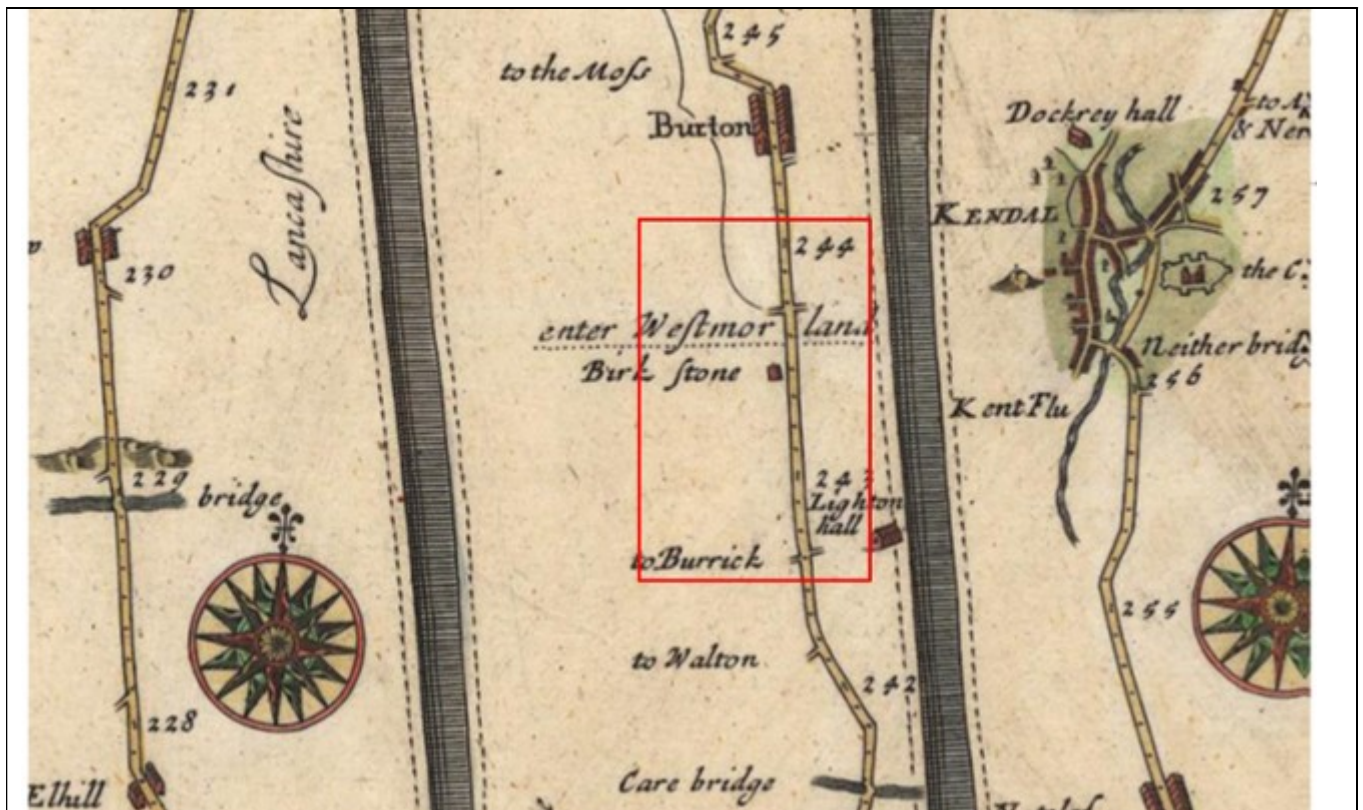
Map and Documentary Evidence

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
Ogilby Map London to Carlisle (1675) Sheet 38 – Garstang to Carlisle.	1675	<p>John Ogilby produced the first helpful road maps of England in 1675. These maps were in strip form for the major roads showing wayside features, river crossings and side road entrances. They were in constant use for over 100 years with little attempt to bring them up to date and were eventually replaced by Cary's maps and some early county maps when turnpiking changed the road network comprehensively.</p> <p>Most of the major roads shown are still in existence today – but the side roads with destinations may be of relevance to rights of way investigators.</p> <p>The road map was first popularised by John Ogilby (1600-1676), Scotsman, dancing master (until his accident), Deputy Master of the Revels, publisher, and cartographer, who published his Britannia in 1675. This showed all the main routes radiating from London, together with a handful of cross-country routes (e.g. York to Lancaster, Carlisle to Tynemouth, Oxford to Cambridge). Like the old Automobile Association personalised route-maps, they are strip maps which concentrate on the roads, orienting the traveller with a compass rose, and showing side roads, landmarks, and the type of terrain, hills to be surmounted and rivers to be crossed. The scale was a standard inch-to-a-mile. The maps are 415mm wide x 329mm high, and the pages they are printed on even larger: it is difficult to imagine anyone other than a well-attended gentleman using them in transit. Ogilby also provides written information about the distances, terrain, 'Backwards turnings to be avoided', the major places of interest, market days, and whether the traveller is likely to find suitable 'entertainment', i.e. hospitality.</p>

Source: Lancaster University - <https://www.lancaster.ac.uk/quakers/maps/roadmaps.html>



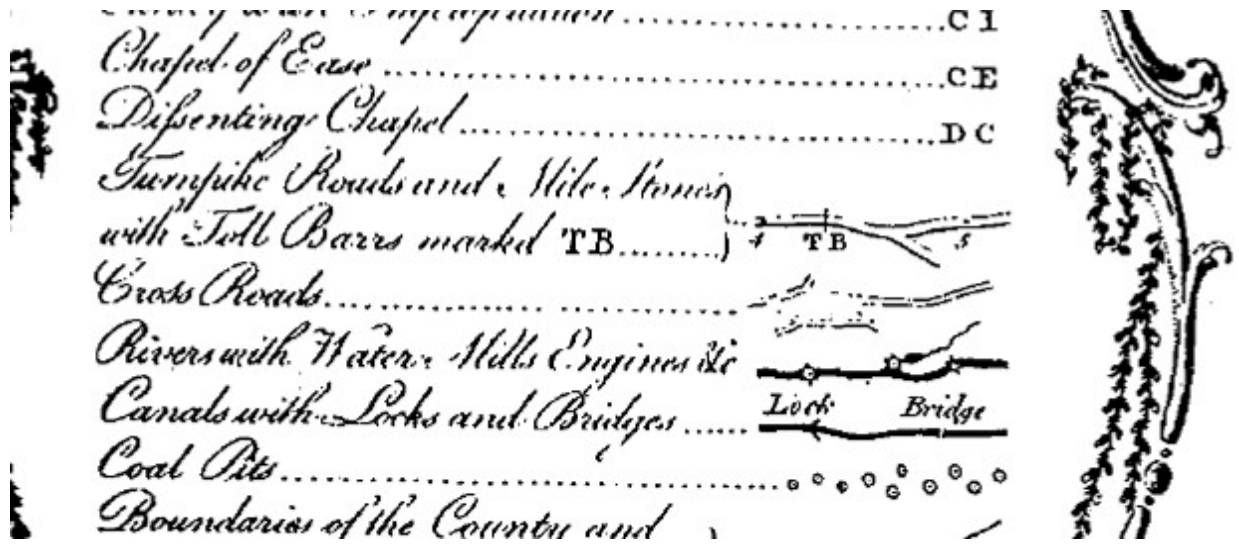


Observations		The map shows the route of the road from London to Carlisle on a series of strips with key features located along the route marked. The section of the road between Borwick and Burton is shown as a straight route crossing the boundary from Lancashire to Westmorland just north of a feature marked as 'Birk Stone'. Further south from 'Birk Stone' it was noted that 'Lighton Hall' was marked on the map – seemingly consistent with the location of Borwick Hall but the words 'Lighton' and 'Burrick' transposed. n.b. 'Walton' = 'Warton' and 'Care' = 'Keer'
Investigating Officer's Comments		This is the earliest map examined. It shows a road passing Birk Stone, believed to be the 'Buck Stone' marked on later Ordnance Survey maps, and is the earliest map suggesting that the application route may have been part of an old public carriageway.
Bowen Map of Westmorland	1762	Small scale commercial map of Westmorland showing market towns, rivers, roads and distances. Such maps were on sale to the public and hence to be of use to their customers the routes shown are likely to have been 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		This small scale map shows a road coming south out of Westmorland into Lancashire to Lancaster. The road passes through the word 'Birkstone' which is believed to be the 'Buck Stone' labelled on modern day Ordnance Survey maps immediately to the west of the application route.
Investigating Officer's Comments		The map shows a road leading out of Westmorland into Lancashire. The fact that the road is shown on a map of this scale, which was published for use by the travelling public at that time, suggests that it was a significant public carriageway in the mid-1700s. The scale of the map makes it impossible to be certain of the exact alignment of the route, or whether it included the application route, but the fact that the map again

		specifically includes reference to Birkstone and taken in conjunction with map evidence documented below it is suggestive that the application route existed as part of the main carriageway leading from Lancashire into Westmorland at that time.
Kitchins Map of Westmorland	1766	Further small scale commercial map of Westmorland.
Observations		A further small scale commercial map of Westmorland showing a road from Westmorland to Lancashire referenced by its proximity to 'Birkstone'.
Investigating Officer's Comments		Taken in conjunction with other map evidence documented in this report it is suggestive that the application route existed as part of the main carriageway leading from Lancashire into Westmorland in 1766.
Yates' Map of Lancashire	1786	Small scale commercial map of Lancashire.



Observations		<p>This is the earliest map examined which was published specifically to cover Lancashire.</p> <p>A route consistent with the alignment of the application route is shown as a major road, more prominent than other roads in the area. Milestones are marked and it is wider than a cross road so it appears to be shown as a turnpike road according to the key. The milestone (9) corresponds to the 9 mile marker on the later diversion plan (q.v.) The map pre-dates the construction of the Lancaster Canal and the Birkstone/Buckstone is not shown.</p>
Investigating Officer's Comments		<p>Taken in conjunction with other map evidence documented in this report it is highly indicative that the application route existed as part of a substantial carriageway in 1786.</p>
John Cary's Map of Lancashire	1787	<p>John Cary was described as 'the most representative, able and prolific of English cartographers'. He was as busy a publisher as he was a cartographer and engraver, and until his death in 1835 published a constant flow of atlases, maps, road maps, canal</p>

plans, globes and geological surveys. He set new high standards of engraving and map design and in 1787 he published a 'New and Correct English Atlas' containing 46 maps which was re-issued ten times until 1831. In 1794 the Postmaster General commissioned Cary to survey the main roads of Great Britain and his information on roads may be viewed with above average confidence.



and those at the sides, East and West.

Turnpike Roads, thro' enclosed countries
 D^o thro' unenclosed d^o
 Bye Roads are marked by closer lines, as

N.B. The turnpike Roads to and from London, are distinguished by the letters L.R. which will be a sufficient guide for uniting those Roads, and the junctions of all the other turnpike Roads are shown by figures of virescence.

Churches and Chapels

Observations

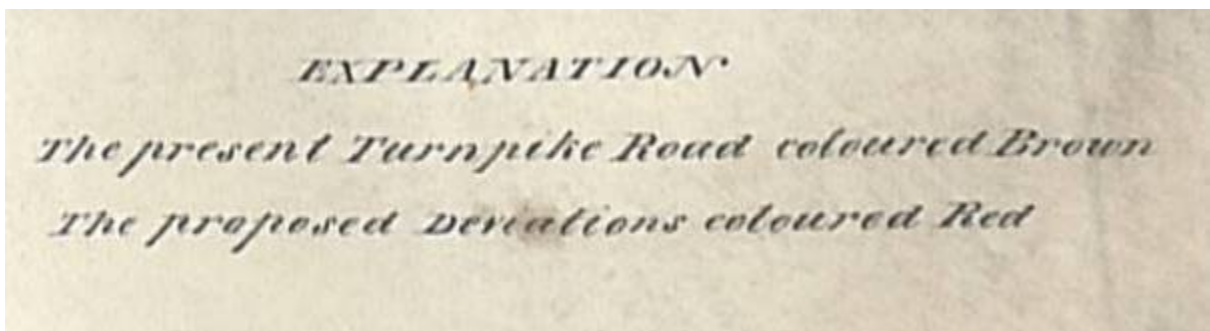
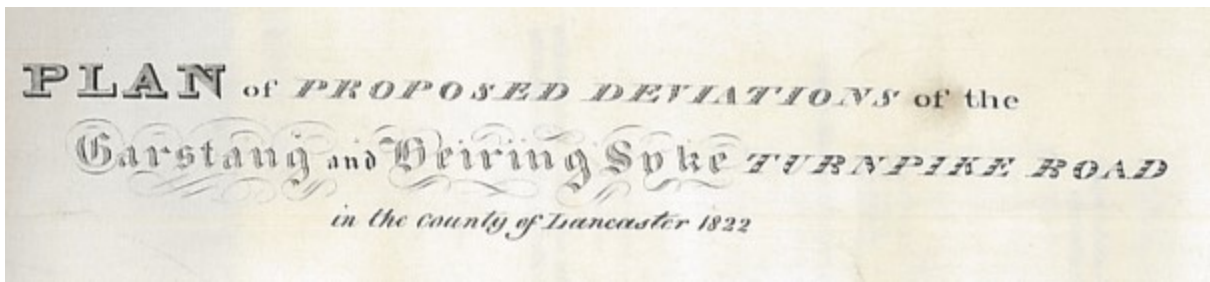
Cary's Map was published at a scale of 8 miles to 1 inch. It shows the main north – south route as a turnpike road and is consistent with the alignment of how it is shown on earlier maps but the scale of the map means that it is difficult to conclude

		from just looking at this map in isolation whether the application route forms part of the road shown.
Investigating Officer's Comments		Taken in conjunction with other map evidence documented in this report it is indicative that the application route existed as part of a substantial carriageway in 1787.
Lodge's Map of Westmorland	1795	Further Small scale commercial map of Westmorland Source: Lakes Guides http://www.lakesguides.co.uk/html/maps/mapsfram.htm
Observations		This small scale map shows a road extending south through Burton and out of Westmorland into Lancashire to/from Lancaster. The word 'Birkstone' which is believed to be the 'Buck stone' labelled on modern day Ordnance Survey maps is written on the map just to the west of the route. The scale of the map means that it is difficult to conclude from just looking at this map in isolation whether the application route forms part of the road shown.
Investigating Officer's Comments		Taken in conjunction with other map evidence documented in this report it is suggestive that the application route existed as part of a substantial carriageway in 1795.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



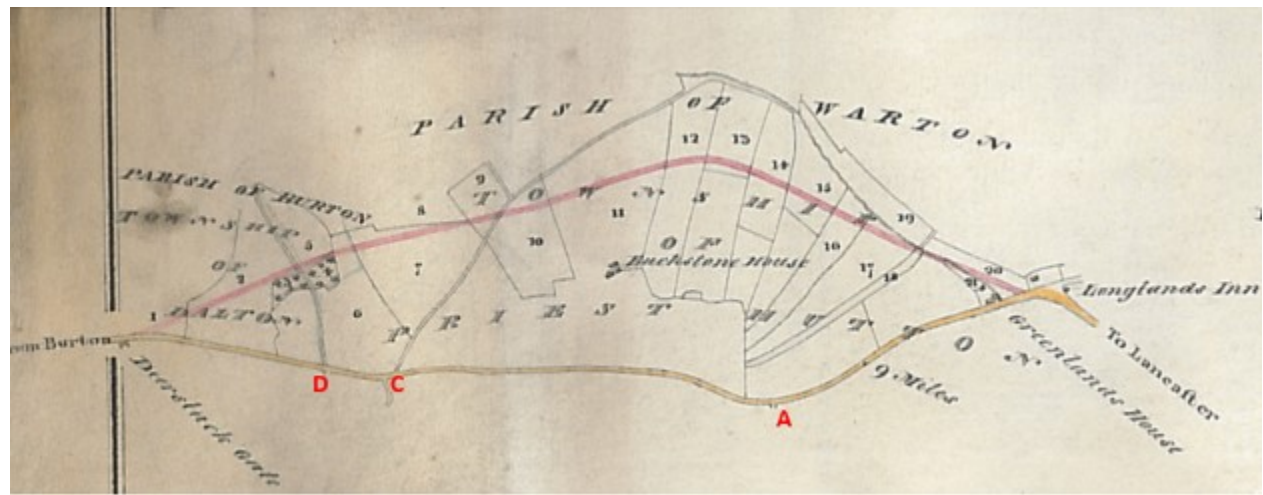
- Turnpike Roads _____
 Cross Roads _____
 Towns & other Places _____
 that send Members to Parliament } _____
 Boundaries of Counties _____
 Boundaries of Hundreds & Manors _____
 Boundaries of Townships & Parishes _____
 Market Towns, in Roman Capitals as _____ COLNE
 Parish & Townships, in small Roman as _____ Winevall
 Villages & other Places, in small Italian as _____

Observations		<p>Although still drawn at a small scale Greenwood's Map provides the more detail than earlier maps from which it is possible to identify the application route as being part of the original road, shown more prominently than other roads in the area as a turnpike road. This map was drawn after the Lancaster Canal was constructed and the canal is shown to the west of the application route with the series of locks north of Tewitfield clearly marked. The convergence of what are now known as Burton Road, Chapel Lane and Bridleway Priest Hutton 14 can be seen south of point A with the toll road extending north along the modern-day route of 'the bridleway' to point A. From point A the road is shown following the alignment of the application route to point C where it is crossed by a route denoted in the map key as a 'cross road' (visible now only as the curved hedge line) and continues to point D where it is crossed by Cinderbarrow Lane – again recorded as a cross road in the map key. The toll road is then shown to continue north past Herring Syke to Burton in Kendal. The modern-day alignment of Burton Road (A6079) which now runs to the east of the application route through to Herring Syke is not shown.</p>
Investigating Officer's Comments		<p>The application route was part of a public vehicular carriageway in 1786. The modern route of the A6079 (Burton Road) did not exist.</p>
Garstang and Heiring Syke Turnpike Road	1750 - 1823	<p>Turnpike Acts to establish, renew and divert the Turnpike and a Plan deposited in the County Records Office Ref – Q/DPD/S/69.</p>



Be it Remembered that in pursuance of and in obedience to the standing Orders of the Honourable the House of Commons made with respect to Turnpike Roads & Edward first Deputy Clerk of the Peace for the County of Lancaster do make this my Memorial upon this plan to denote that the same was lodged in the Office of the Clerk of the Peace kept at Preston in and for the said County this Thirtieth day of September One thousand Eight Hundred and Twenty Two.

J. H. H.

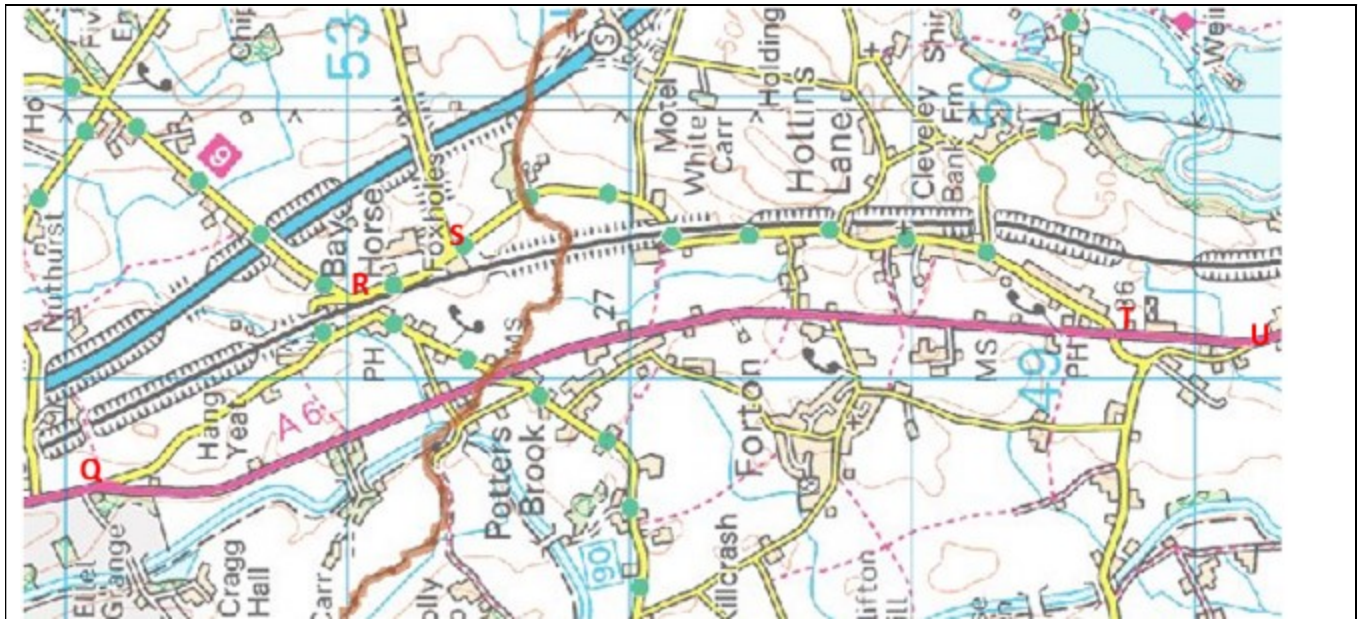


Priest Hutton - Plan showing proposed deviation in red with current toll road coloured brown and modern OS showing current public vehicular roads



Proposed deviation of toll road in Galgate with modern OS map showing new route constructed and the retention of old toll road as a public vehicular route





Proposed deviation of toll road in Ellel with modern OS map showing new route constructed and the retention of the old toll road as a public vehicular route

Observations

From the late 17th century, Parliament increasingly took responsibility for repairing and maintaining roads from parishes who often could not afford it and were becoming no longer the main users. Turnpike Acts authorised a trust to levy tolls on those using the road and to use that income to repair and improve the road. They could also purchase property to widen or divert existing roads. The trusts were not-for-profit and maximum tolls were set. The 'turnpike' was the gate which blocked the road until the toll was paid.

The 1750 Act

The application route is shown on early commercial maps as part of the Garstang and Heiring Syke Turnpike Road. The Turnpike Act authorising the original road is dated 1750 and titled 'An Act for repairing and widening the Road from Preston to Lancaster and from thence to a place called Heiring Syke that divides the Counties of Lancaster and Westmorland' and is deposited in the Parliamentary Archives (catalogue reference HL/PO/PU/1/1750/24G2n33).

A copy of the Act has been obtained from the Parliamentary Archives. This public Act dates from 1750 and provides for the turnpiking of a road described as commencing in Preston City Centre, extending north past Garstang to Lancaster and then continuing through to a place called Heiring Syke on the boundary between Lancashire and Westmorland. The route is not described in detail and there is no reference to the application route itself but the wording of the Act indicates that the route from Preston to Heiring Syke did already exist but that the roads were in very poor condition in places rendering use by

horse drawn vehicles particularly during the winter months dangerous and at times impossible.

The Act dealt with the appointment of trustees and provided for the erection of toll houses and turnpikes on the side of the road and for tolls to be taken from those using the road which would then be used for the ongoing maintenance of the road. The Act provided that the road was to be repaired, widened and amended as necessary and provided for the purchase of land where it was necessary to widen or to divert the route. Where a new section of route was provided, and once work had been completed and the new road brought up to the required standard, the new road became part of the public highway network and the trustees were given the power to sell the land over which the 'old' route ran.

Several further Acts relating to the turnpike road were made between 1750 and 1822 but it appears, as indicated on the early commercial maps detailed above, that the turnpike road came into existence and that the application route appeared to be part of the road that became part of it.

The 1822 Act

In 1822 came a general Act dealing with all sorts of turnpike issues nationally. It repealed the 1750 Act.

Section 88 provided that "...when any turnpike road shall be diverted or turned, and the new road shall be made and completed, such new road shall be in lieu of the old road, and shall be subject to all the provisions and regulations in any Act of Parliament contained, or otherwise, to which the old road was subject, and shall be deemed and taken to be a common highway, and shall be repaired and maintained as such; **and the old road shall be stopped up**, and the land and soil thereof shall be sold by the trustees or commissioners to some person or persons whose land adjoin thereto... but if such old road shall lead to any lands, house, or place, which cannot, in the opinion of the said trustees or commissioners, be conveniently accommodated with a passage from such new road, which they are hereby authorised to order and lay out if they find it necessary, then and in such case the old road shall be sold, but subject to the right of way and passage to such lands, house, or place respectively, according to the ancient usage in that respect..."

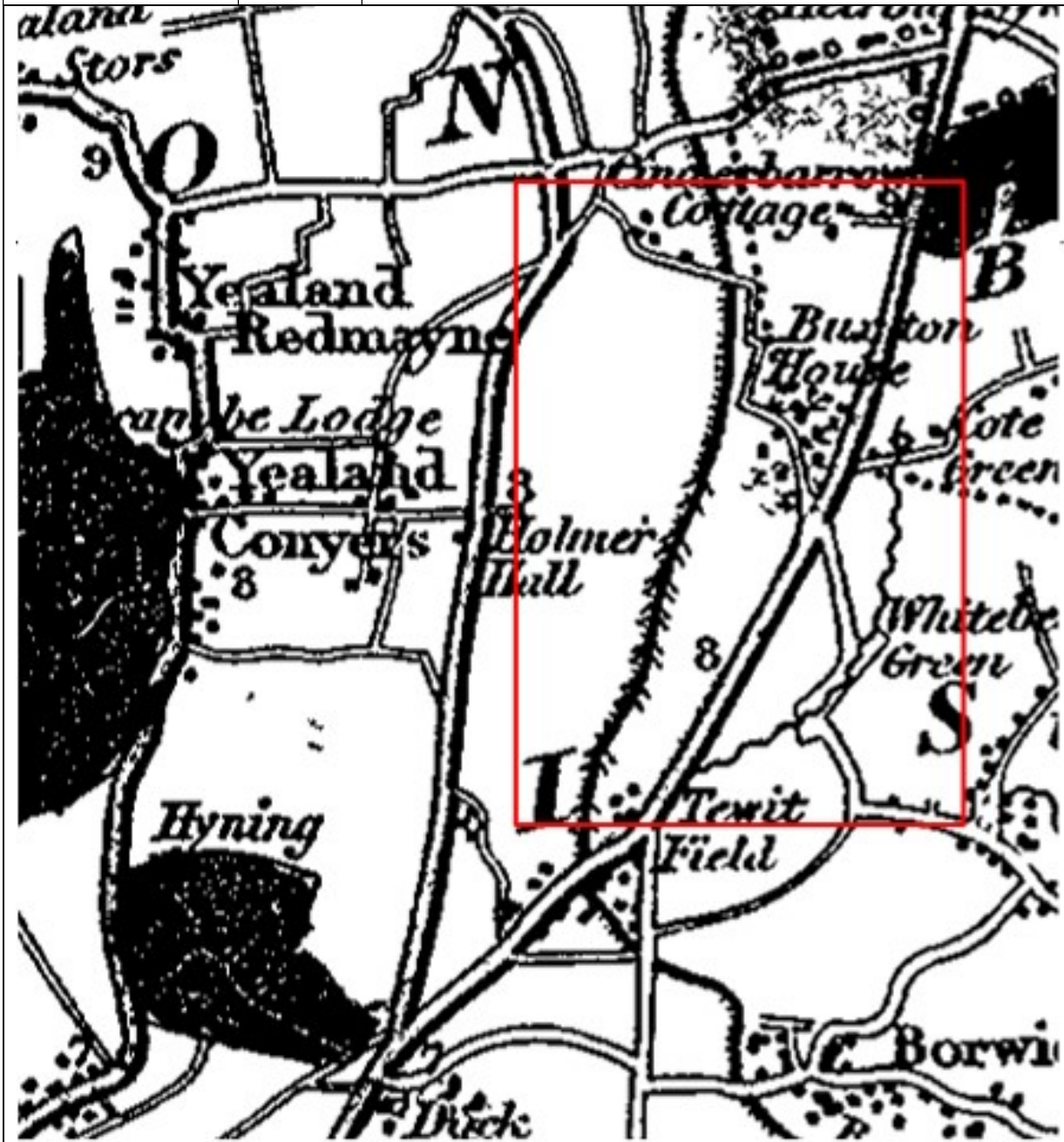
The 1823 Act

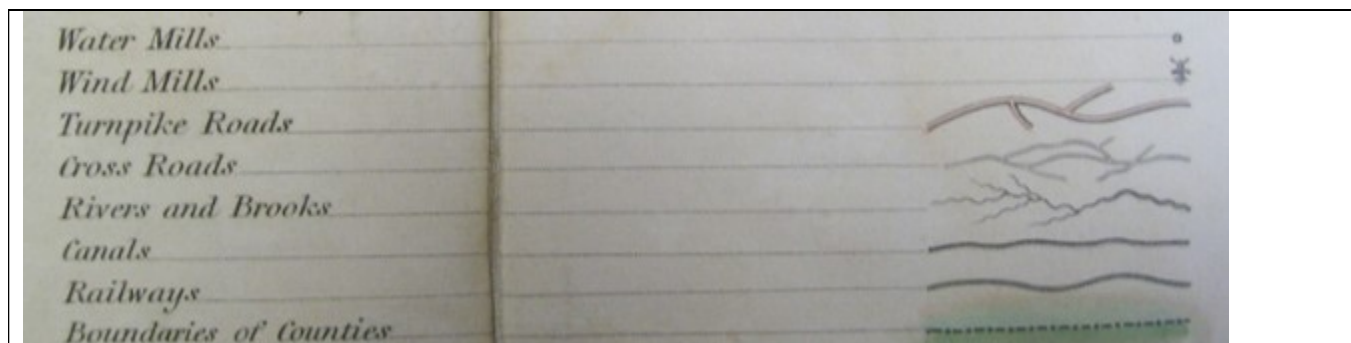
A further Parliamentary Act "...for more effectually repairing and improving the Road from the Town of *Garstang* to the Town of *Lancaster*, and from thence to a Place called *Heiring Syke*, and the Road from the Guide Post in the Township of *Slyne with Hest* to *Hest Bank*, all in the County Palatine of *Lancaster*" dated 12th May 1823 was submitted by the applicant and has

		<p>been considered by the Investigating Officer.</p> <p>The Act refers specifically to the three sections of the turnpike road which were detailed in a plan prepared the previous year and deposited in the County Records Office.</p> <p>Paragraph V of the Act authorises the Trustees to execute deviations, notwithstanding the repeal of former Acts – including the 1750 Act detailed above.</p> <p>One of the deviations listed is described as “one Part or Portion thereof lying in the Townships of Dalton and Priest Hutton, between a certain place called Deerslott Gate, and another certain place called Longlands Inn in order to avoid passing over a hill called Buckstone Hill;” This description fits with the plan of the proposed deviation detailed on the plan above and as such relates to the application route.</p> <p>Paragraph V concludes by discharging the Trustees from further repair work to the sections of road that will be bypassed (i.e. the application route):</p> <p>“...and that from and after such several Diversions shall be completed, the said Trustees shall be and they are hereby discharged from any further Repair, Care or Management of the said Parts or Portions of the said District of Road, which shall by or in consequence of such Diversions be abandoned as Parts or Portions of the Line of the said District of Road.”</p> <p>Plans deposited in the County Records Office titled as being for the proposed deviation of the Garstang to Heiring Syke Turnpike Road are dated 1822. The plans show 3 sections of the route which were planned to be diverted:</p> <ol style="list-style-type: none">1. A section between Deerslack Gate, Dalton & Longlands Inn, Priest Hutton;2. A section between Bailrigg Lane, Scotforth & Horse Block, Ellel;3. A section between Satt Oak, Ellel & Forton Smithy. <p>All three of the proposed deviations have been looked at as part of this investigation.</p> <p>In respect of the application route it can be seen from the plan that it was shown as being part of the turnpike road in 1822 and that it was proposed to construct a new section of turnpike road starting at Longlands and Greenlands. The new road is shown to the east of the application route along a route consistent with the modern-day route of Burton Road to a point north of the junction with Cinderbarrow Road near to Deerslet from which the toll road continued on its original alignment. All of the application route is included in the section of turnpike road from which it was proposed to deviate.</p> <p>A comparison of what is shown on the plan with what exists today shows that from Burton Road at Greenlands Farm the first section of road labelled as being the turnpike road in 1822 is now recorded as part of a public bridleway up to point A.</p>
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		<p>Beyond point A the application route still physically exists as a bounded route to point B and continues across fields to point D where it exits onto Cinderbarrow Lane. From Cinderbarrow Lane through to Heron Syke there is no trace of the old route on the ground although the route can be seen on Google Earth images.</p> <p>This is in contrast to the other two sections of the 1822 turnpike road where the pre-diversion route can both be clearly seen (with some minor deviations due mainly to the construction of the railway) as public vehicular roads that are still in existence today with the route proposed to be built in 1822 now in existence as part of the A6 between Garstang and Lancaster.</p>
<p>Investigating Officer's Comments</p>		<p>The Act dating back to 1750 implies that the road from Preston to Heiring Syke was already in existence as a public carriageway at that time. The early map evidence available is suggestive of the fact that the application route formed part of this pre-turnpike route and the fact that it was subsequently diverted in the 1820s to avoid Buck Stone 'hill' suggests that it probably wasn't a newly created/amended part of the 1750 route but was more likely to have been part of the original historical road.</p> <p>The 1822 Act provided for any sections which were diverted were stopped up as highways although provision was made for access rights to be preserved.</p> <p>The 1823 Act provided for three deviations to the existing toll road and also provided for the fact that the newly created deviations would become part of the turnpike road and would be maintainable by the trustees as such. The "abandoned" sections of former turnpike road, including the application route, are not described as stopped up in that Act but if the 1822 General Act then applied they were stopped up. The other two old turnpike sections, at Galgate Hill between Scotforth and Galgate, south of Lancaster and at Salt Oak Hill and Foxholes Hill between Ellet Grange Gates and Middle Hollins, Forton are still public vehicular roads to this day but we have no information as to why that may be although the most southerly section did link a number of small settlements.</p> <p>The plan confirms that in 1822 the application route formed part of the turnpike road. It shows that it was proposed to construct three sections of new road which would replace the sections of existing turnpike road and all three sections appear to have been subsequently constructed.</p> <p>The 1822 Act made specific provisions for the stopping up of diverted sections.</p> <p>A search of records held by the Lancashire Archives office and</p>

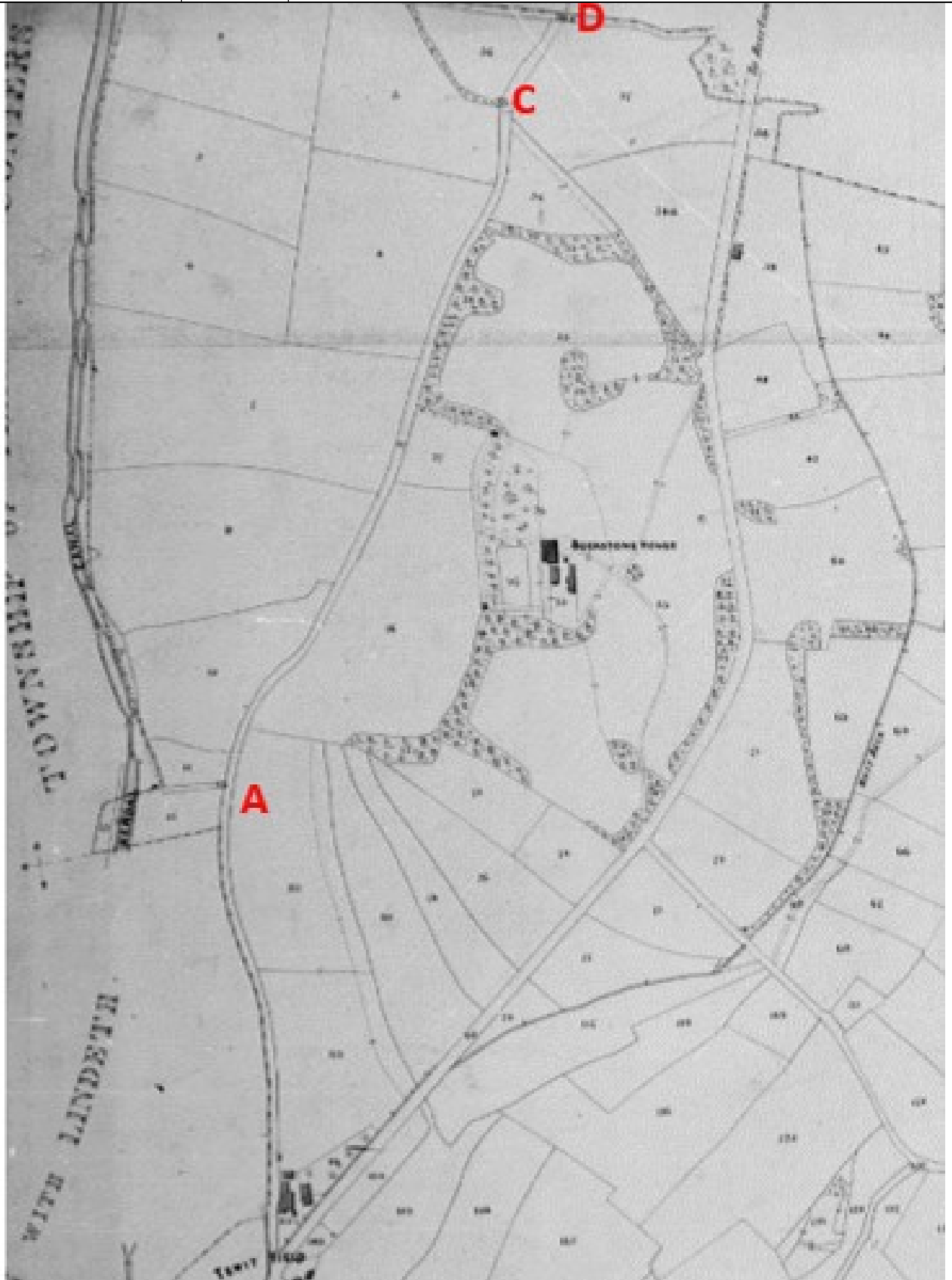
		The National Archives was carried out but no specific records relating to the sale of the land crossed by the application route by the Trustees of the Turnpike Trust were found.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map 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.

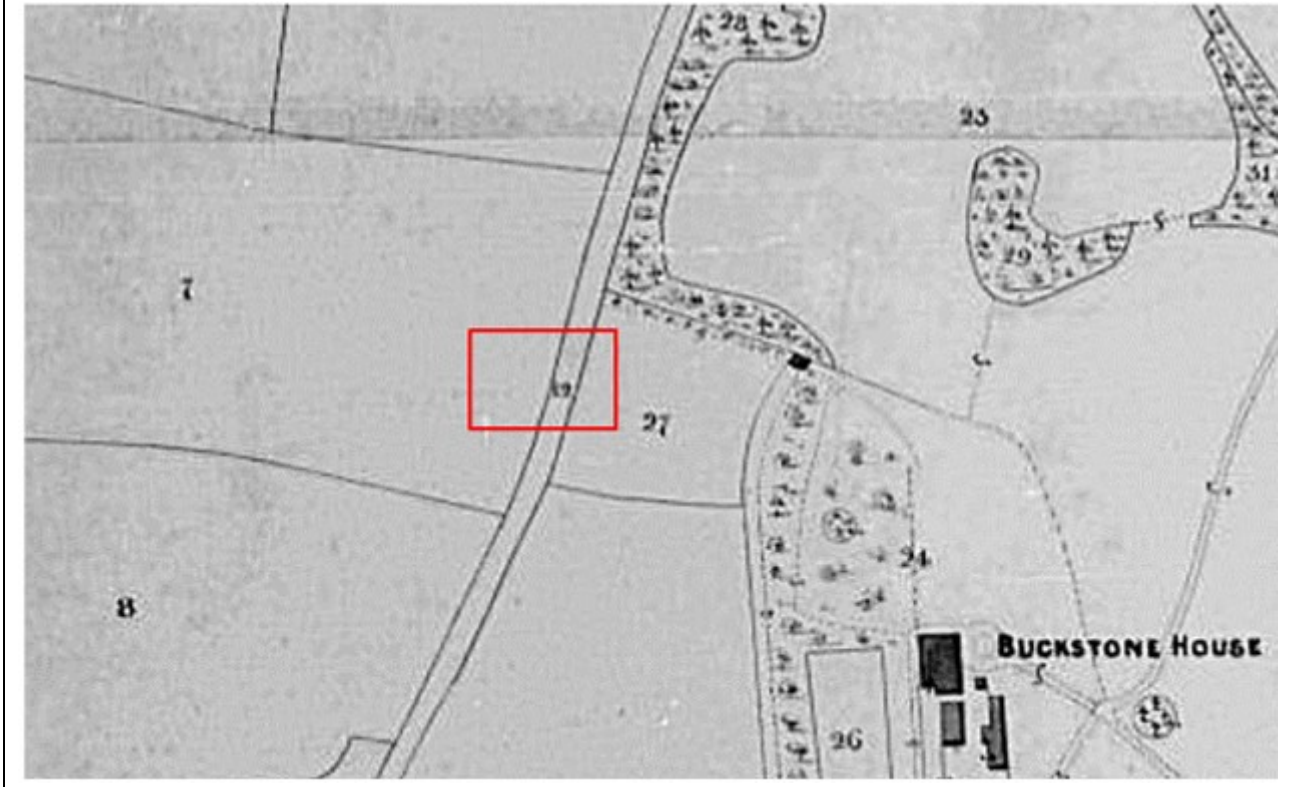
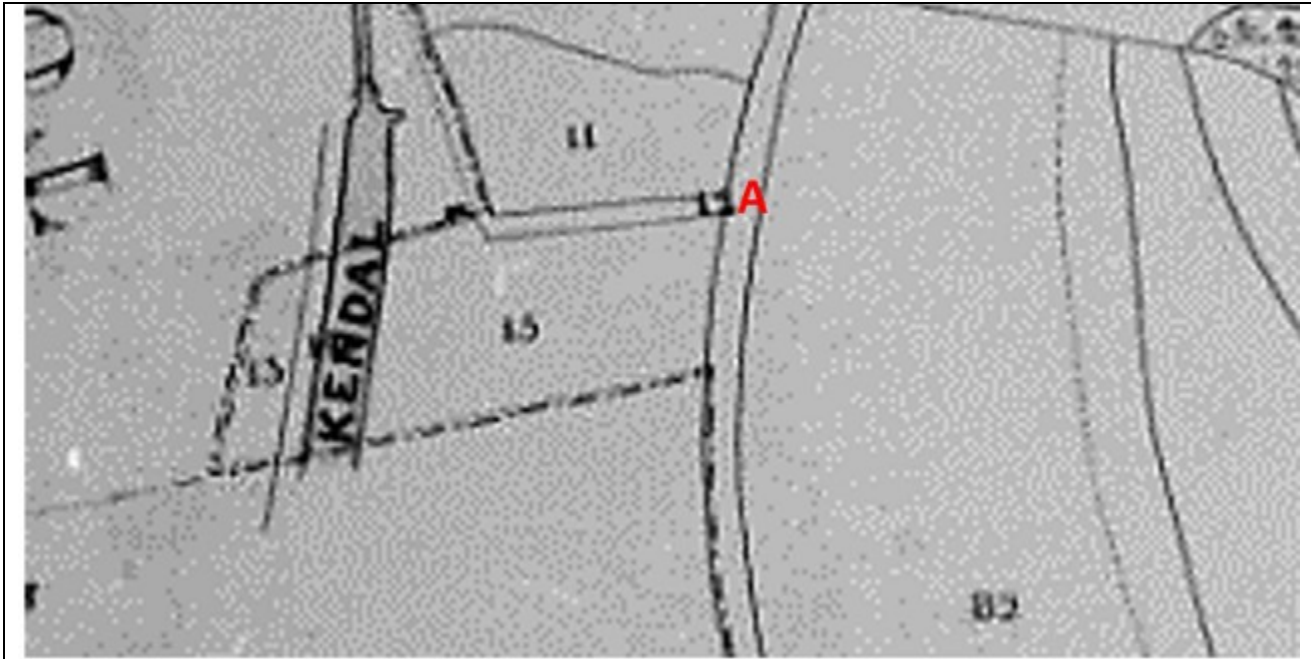


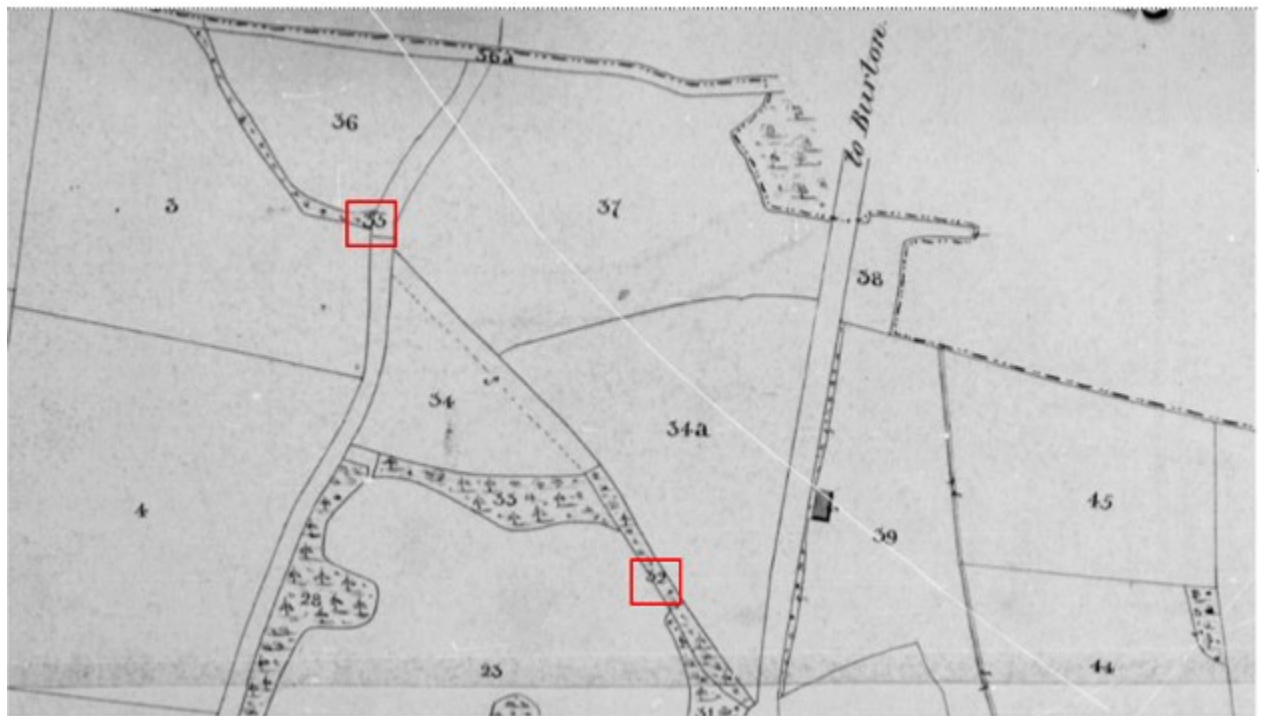


Observations		Seven years after the Act to allow for the deviation Hennet's Map shows the newly diverted section of the Turnpike Road although the road through to Cote Green is shown too far south and out of position and the east west route known as Cinderbarrow Road is also out of position. The Map also shows the Ulverston and Carnforth Turnpike (the current A6) further west which had not previously been shown on any of the maps examined. A property labelled as Buxton House is shown west of the diverted turnpike road. The former route of the turnpike road, i.e. the application route, is not shown.
Investigating Officer's Comments		The property labelled as Buxton House, presumably Buckstone House, is shown. No route broadly consistent with the application route is shown suggesting that the application route no longer formed part of the Turnpike road and may no longer have been in use for the public at the date of the survey for the 1830 map.
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 Lancaster Canal lies to the west of the application route but none of the early plans inspected provided any information about the status of the application route.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment	1846	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.







LANDOWNERS.	OCCUPIERS.	referring to the Plan.	NAME AND NUMBER or LANDS AND PREMISES
<i>Burrow Thomas Christoper (continued)</i>	<i>Richard Baines (continued)</i>	8	<i>Old Field</i>
		11	<i>Old Field</i>
		12	<i>Lane & Old Turnpike</i>
		15	<i>Hagworm Close Top</i>

11	Old Field	Arable	2	214	14	14	5 th
12	Lane & Old Turnpike Road		2	2 8			
15	Hagworm Close Top	Arable	3	15	5	9	

Extracts from the Tithe Award for plot 12 (the application route between point A and point C)

Public Roads & Waste Ground	1	Road					
	69	Whitbeats Green				2	3
	121	Greenlands, (Cotters Dale)				3	2
	155	Pinfold					
	351	Public Roads				14	1
						15	3

Extract from the Tithe Award showing numbering of routes considered to be Public Roads

28	Plantation	1	14				
29	Plantation	1	32				
30	Plantation		30				
31	Plantation	1	16				
32	Plantation (Old Road)	1	14				
33	Plantation	2					
35	Plantation (Old Road)	1	32				
53	Plantation		16				
54	Plantation	1	14				
56	Plantation		18				
61	Plantation		23				
62	Plantation		35				
70	Plantation		36				
		1					
		32	3	1		4	4

Extract from the Tithe Award for the old route of Cinderbarrow Lane

Observations		<p>The Tithe Map is the earliest map examined to show the re-routed turnpike road in detail running to the east of the application route along the current alignment of Burton Road. It is numbered as plot 80 on the Tithe Map and as a Turnpike Road in the Tithe Award.</p> <p>The Tithe Map also shows the route of the old turnpike road from Greenlands on Burton Road through to point A. The word 'FIELD' is written across the start of the route and it is not possible to see whether access onto the route was gated or not. At point A the route of 'the bridleway' is drawn leaving the old turnpike road to continue west towards the canal. The number 12 has been written on the route at point A.</p> <p>Between point A and point B the application route is shown as a bounded route and is numbered 12 to the west of Buckstone House which is accessed from the new turnpike Road (Burton</p>
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		<p>Road) with no access shown from the application route.</p> <p>Plot 12 is listed as "Lane and Old Turnpike" in the Tithe Apportionment, with no Tithe payable and looks to extend from at least point A as far as Point C where a gate is shown across the route. Of significance is the fact that Plot 12 has an owner and an occupier listed in the Tithe Award and the route is not included in the separate list found at the end of the Award titled Public Roads and Waste Grounds. The landowner is listed as being Christopher Thomas Burrow who owned Buckstone House at that time and when a search was made at the County Records Office papers were found which related to the Burrow Estate and in particular the sale of land by the Trustees of the Heiring Skye Turnpike Trust to Mr Burrow of Buckstone House, Priest Hutton in 1838 (CRO Ref: DDX 2743/MS3393 and DDX 2743/MS3394). Neither document related to the sale of this plot of land but the fact that part of the old turnpike road is listed in the Tithe Award as being owned by an adjacent landowner does suggest that following the diversion of the turnpike road the land crossed by the route was subsequently sold.</p> <p>Beyond point C the application route is shown on the Tithe Map to continue – still bounded on either side - to point D where another line is shown across the route at the junction with Cinderbarrow Road. This section of the route is not numbered although the number 35 is written just beyond point C where a narrower bounded strip is shown extending in a generally north westerly direction through to Cinderbarrow Road. Plot 35 is listed as "Plantation (Old Road)" and most probably refers to the Old Cinderbarrow Road which crossed the old turnpike from south east to north west and is shown on the map with trees. The numbering and description of the south eastern section as plot 32 appears to substantiate this view.</p> <p>Cinderbarrow Road is numbered as plot 36a and described as a public road in the Township of Dalton whereas other routes now considered to be public vehicular routes are numbered 351.</p>
Investigating Officer's Comments		<p>The turnpike road was still in existence in 1846 but had been diverted onto the route now forming part of Burton Road as described in the Act of Parliament which provided for the deviation of the route in 1823.</p> <p>The full length of the application route still existed in 1845 but was gated at point C and point D. Land crossed by the route was listed as being owned and occupied and although no tithes were payable the route was not listed as a public road. Instead it was described as 'Lane and Old Turnpike'.</p> <p>The way that the route is depicted on the Tithe Map and in the Tithe Award suggests that it was no longer considered to be a public road. It was however described as a lane and despite being gated it is not shown to be overgrown or as a plantation as were plots 32 and 35.</p>

Inclosure Award Maps	Act and	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 for the land crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map Sheet 18	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1847. 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.



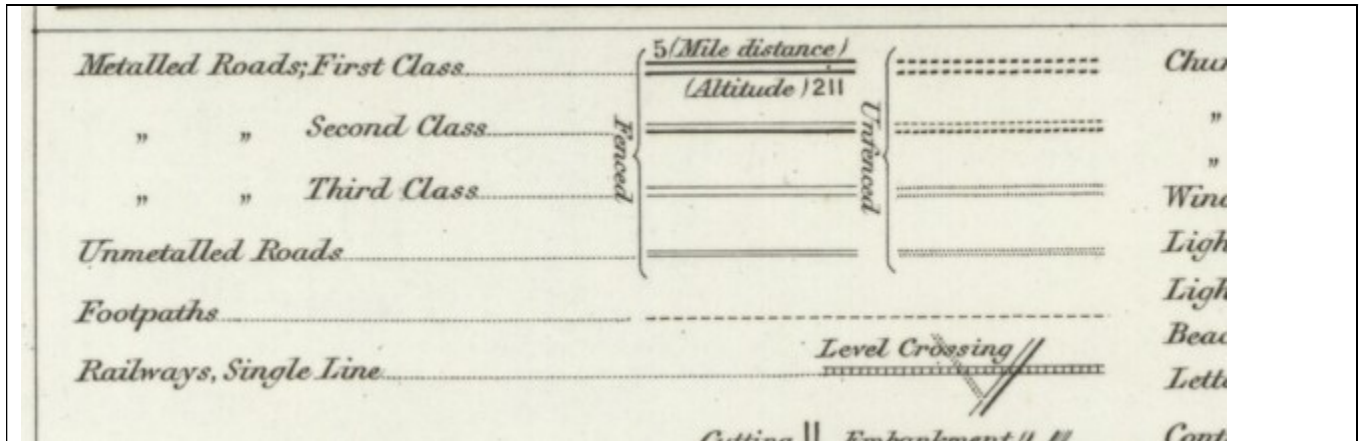
Observations

The full length of the application route is shown as part of a longer route extending from Burton Road at Greenlands through to Cinderbarrow Road at point D. The turnpike trust road is shown on the new alignment running to the east of the application route and is clearly labelled as such and is shown with a thicker line along the south/east side to indicate its status as a turnpike road.

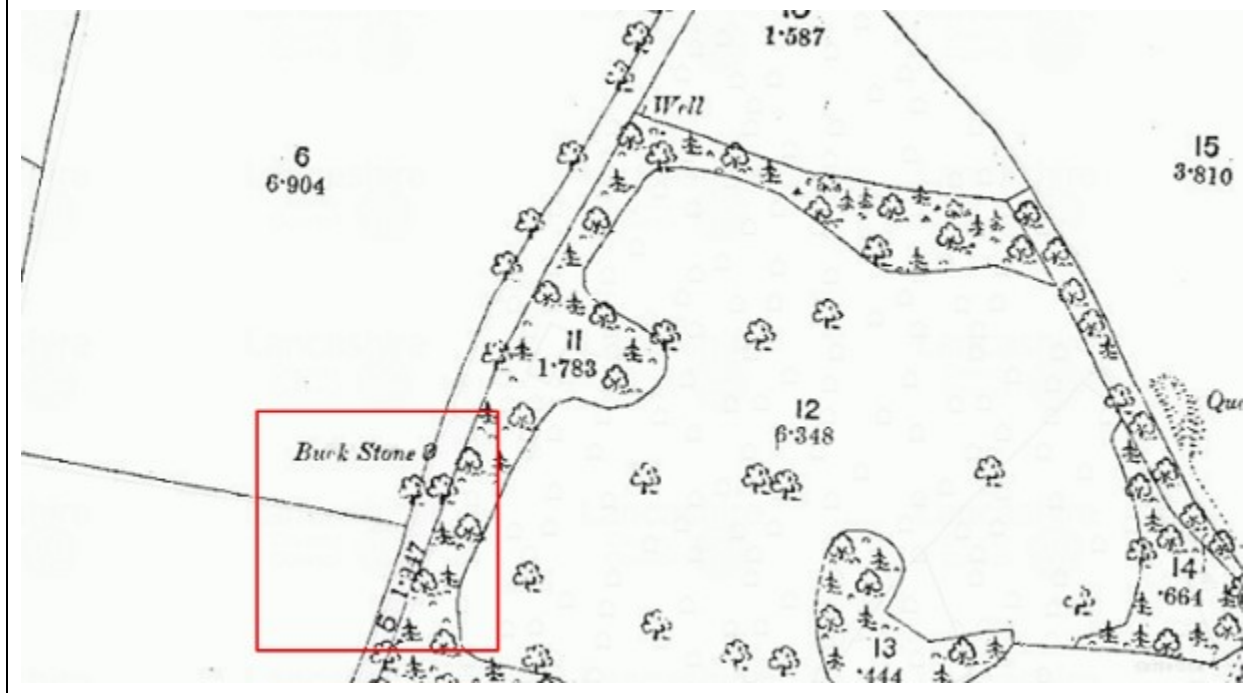
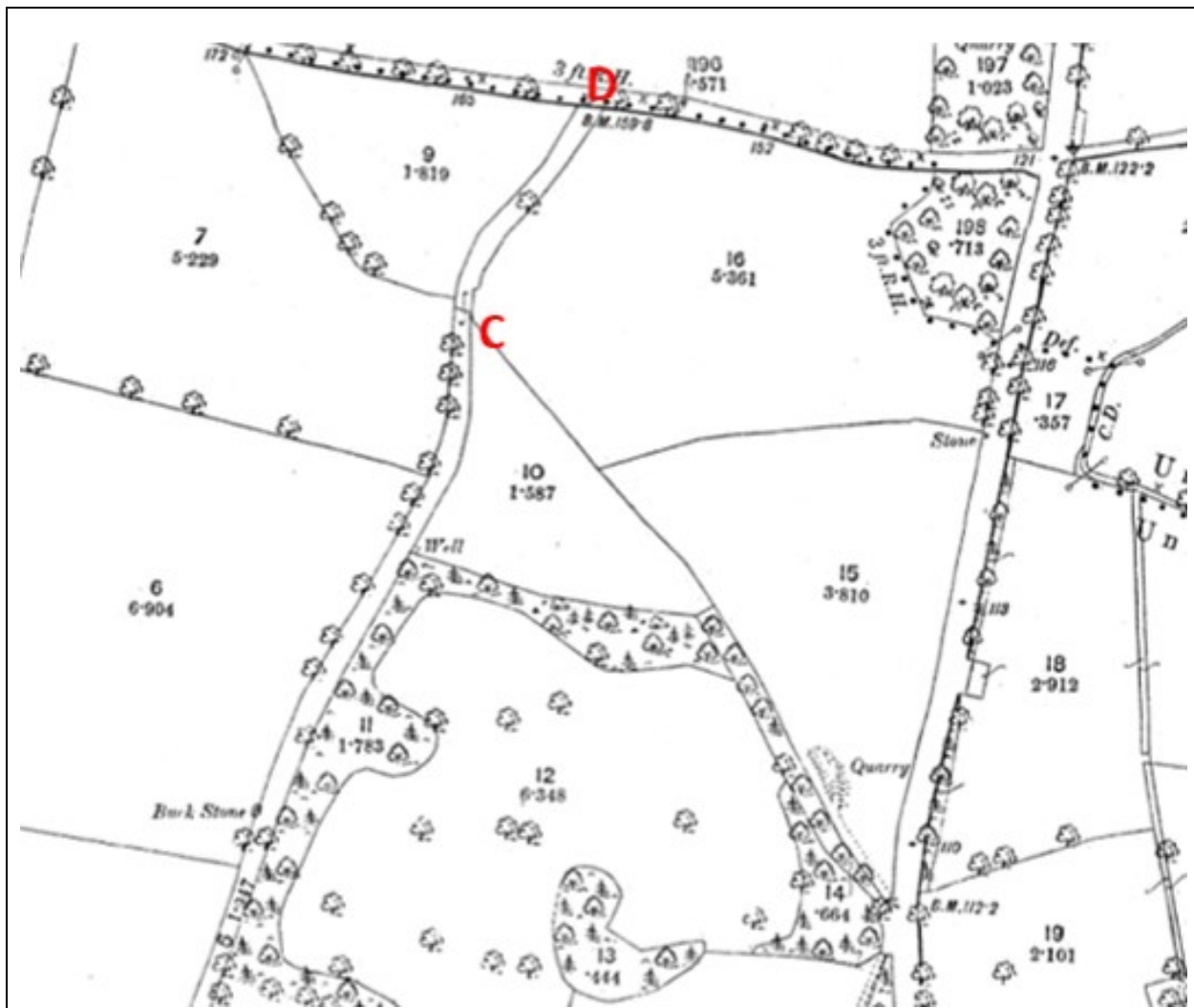
From Greenlands the route of the former turnpike road is shown and access onto it from the new turnpike road appears to be open although the width may have been restricted by a pipe crossing (culvert). The route is shown extending north bounded on the east side but it is not clear whether it was also bounded on the west side as this is shown with a dotted line indicating

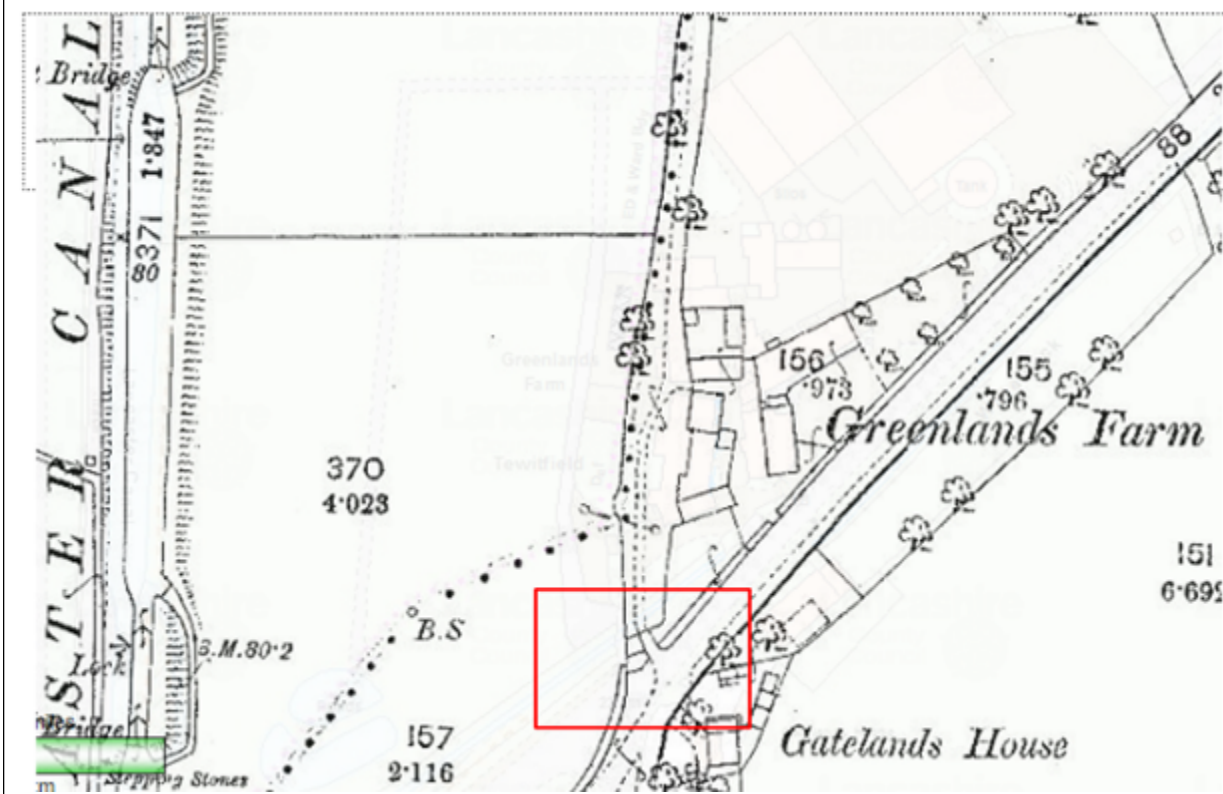
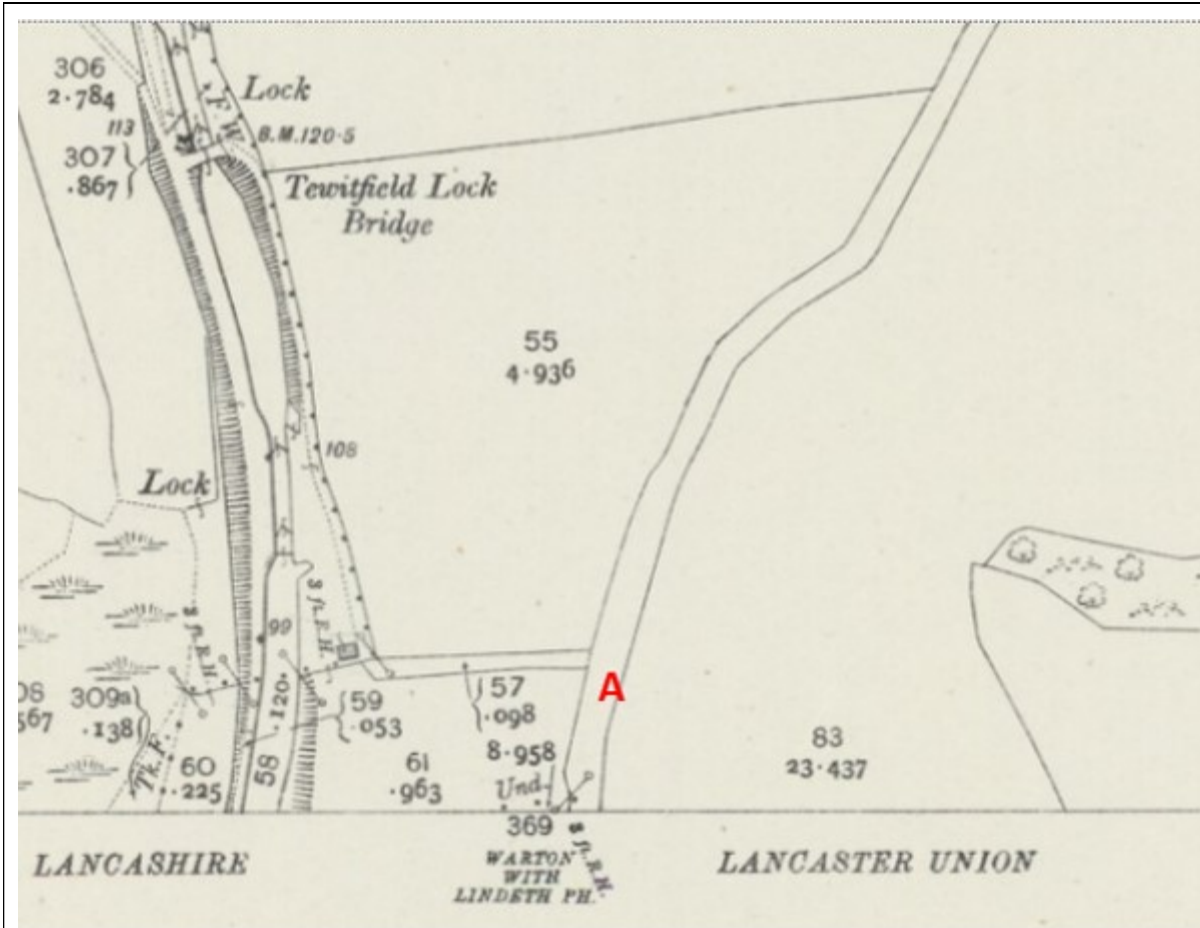
		<p>the parish boundary between Priest Hutton and Warton most of the way up to point A. Cinderbarrow Lane at point D is also shown in a similar way as the county boundary runs along the north side of the lane suggesting that both may have actually been bounded routes but that only the parish and county boundary notations were shown, i.e. given precedence by the cartographer.</p> <p>From point A the route now recorded as Bridleway Priest Hutton 14 continues west towards the canal. The application route is clearly shown extending north east as a bounded route consistent with how other routes with public vehicular access are shown all the way through to point D where an open junction with Cinderbarrow Lane is shown. No lines indicating the existence of gates are shown across the route and the Buckstone is marked as a physical feature part way along the route.</p>
Investigating Officer's Comments		<p>The application route no longer formed part of the Turnpike Road in 1844-45 but still existed as part of a substantial route that appeared capable of being used on horseback and as a carriageway at that time. Whether there was public use is not known, gates may have existed; however it is unlikely that public use continued; the trustees would not have wanted travellers to avoid the tolls, the old route was no longer maintained and the new route would have been better, possibly significantly so, which is why it was diverted.</p>
1 inch OS Map Sheet 39 - Kendal	1898	Small scale 1 inch OS map published in 1898.





Observations		The application route is shown as part of a longer route starting on Burton Road at the Inn at Tewitfield heading north through to Cinderbarrow Lane at point D. It appears to be depicted as a third class road (fenced) consistent with the width of Cinderbarrow Road and Chapel Lane which runs south from the Inn at Tewitfield. The turnpike road is shown running to the east of the application route.
Investigating Officer's Comments		The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown – and in this case the application route - had public rights for those travellers.
25 Inch OS Map Sheet XIX.9	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1889 and published in 1891.



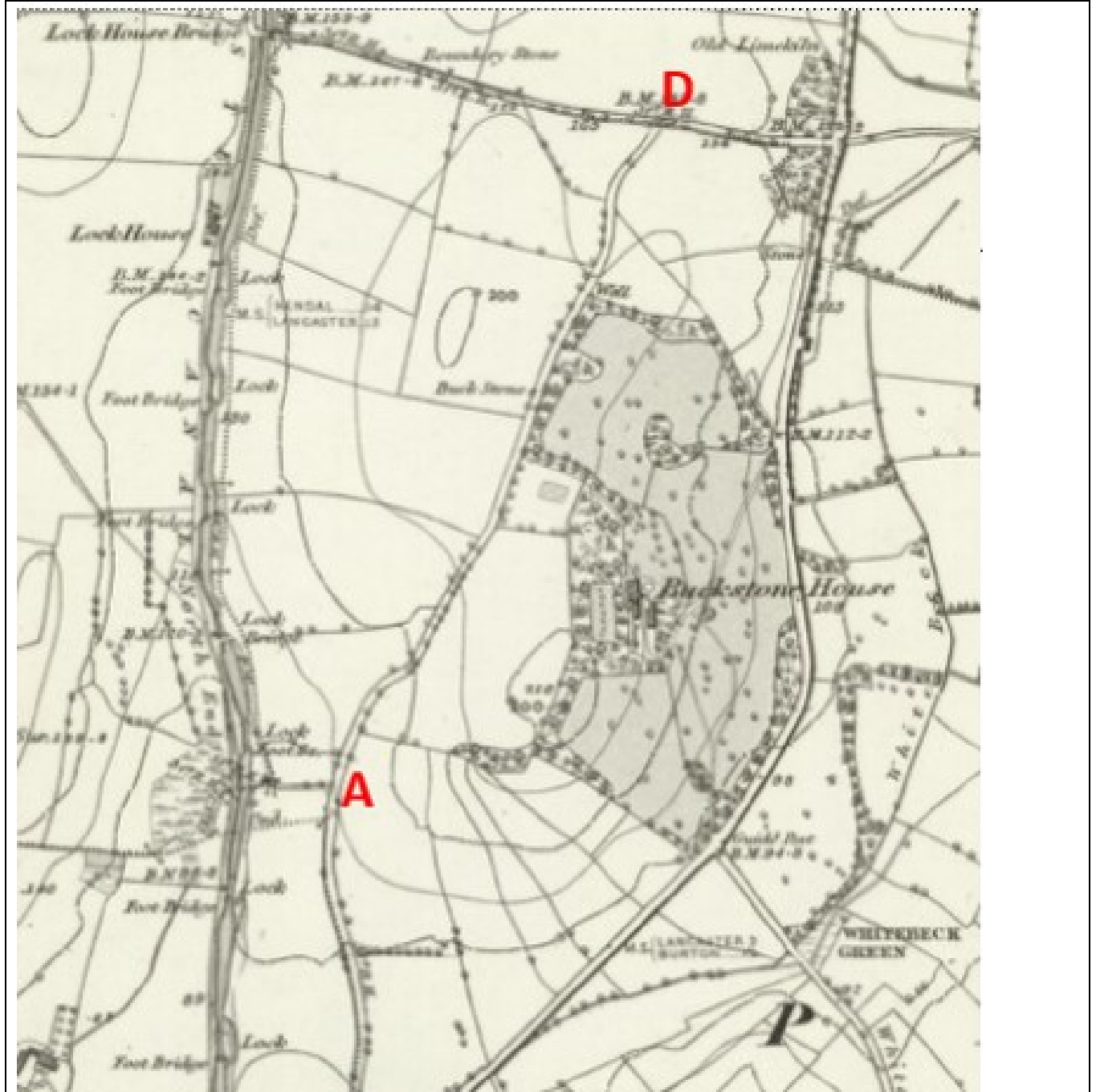


Observations	The application route is shown.
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	<p>From Burton Road adjacent to Greenlands Farm access onto the route of the old turnpike road ('the bridleway') is now gated and is more clearly shown as crossing a culvert which reduces the available width to approximately 3.5 metres.</p> <p>At point A 'the bridleway' turns to continue west through what appears to be a gate (a line across the route) towards the canal. The application route extends in a north north easterly direction from point A as a bounded route passing the Buck Stone to point C where a line is shown across the route suggesting the existence of a gate, and then continues – still as a bounded route – through to point D where it appears to have been gated to exit onto Cinderbarrow Lane. The gate at point C is shown with a braced symbol across it indicating that the field parcel number shown between point A and point C also included the section of bounded route between point C and point D.</p> <p>Burton Road and Cinderbarrow Lane are both shown with thickened lines down the south/east side of the road indicating that they were considered to be publicly maintainable carriageways. The application route is not shown in this way.</p>
<p>Investigating Officer's Comments</p>	<p>The application route still existed as a substantial through route which appeared to be capable of being used on horseback and with vehicles in 1891 although it looks to have been gated at two locations (point C and possibly point D) at that time.</p> <p>The existence of gates along a public route would not have been considered unusual in the 1800s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p> <p>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 and in this particular case two parcel numbers are listed split by a gate part way along the route.</p> <p>The route is not shown with a thickened line to one side on the black and white edition of the map in the way that Burton Road and Cinderbarrow Lane are shown suggesting that the application route was either no longer considered to be a public road at that time and/or that its use had declined and its surface was now inferior to that of the newer section of Turnpike Road (Burton Road) and newly aligned Cinderbarrow Lane. Shading and colouring were often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. The Ordnance Survey specified that all metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. 'Good repair' meant that it should be possible to drive carriages and light carts over them at a trot.</p>

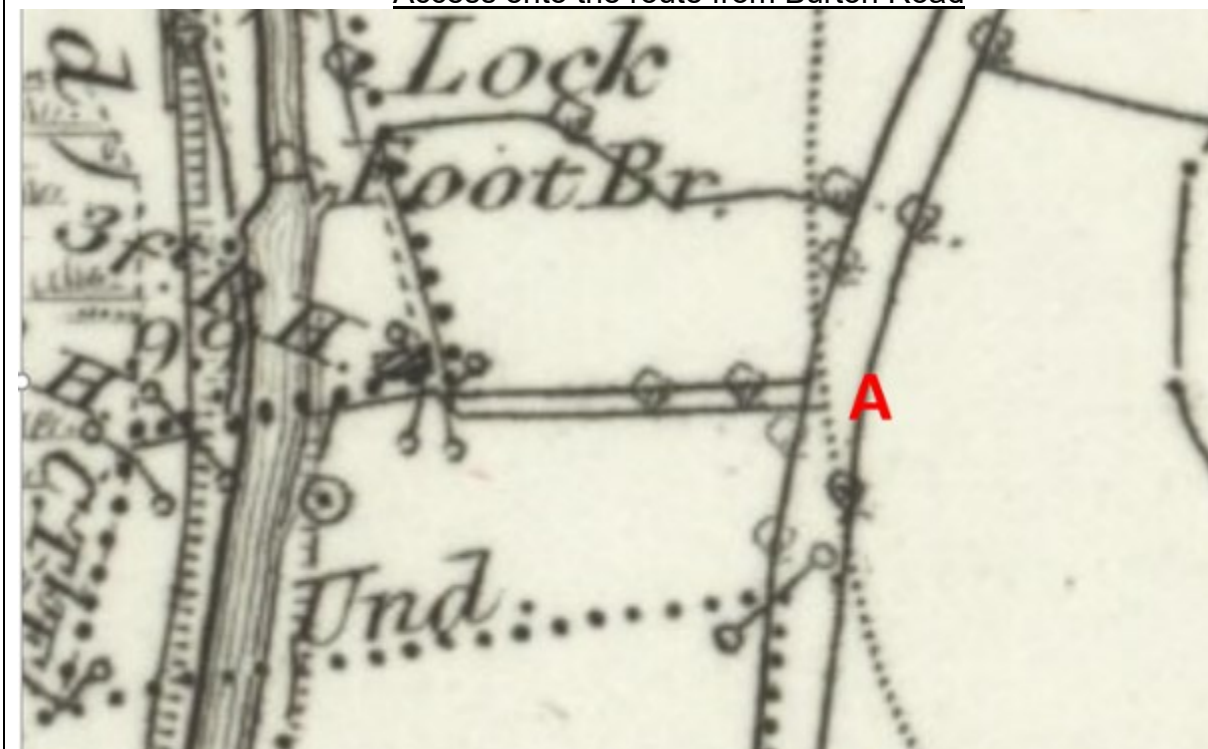
The fact that the route was not shown in this way is consistent with how it appeared to be recorded in the Tithe Award as a 'lane' and 'old turnpike road' and that whilst it was probably passable by horse drawn vehicles – it may not have been considered – or to be used - as a public road at that time. The way it is shown on the map is not, however, inconsistent with use of the route by the public. However the route of the old turnpike does appear to have been constricted where it leaves the new turnpike route near Greenlands Farm. This is an unusual layout for a junction and appears to be consistent with a form of traffic control.

6 inch OS 1894 OS 6 inch map sheet 19 (XIX) surveyed 1844-5, revised 1890 and published 1894.

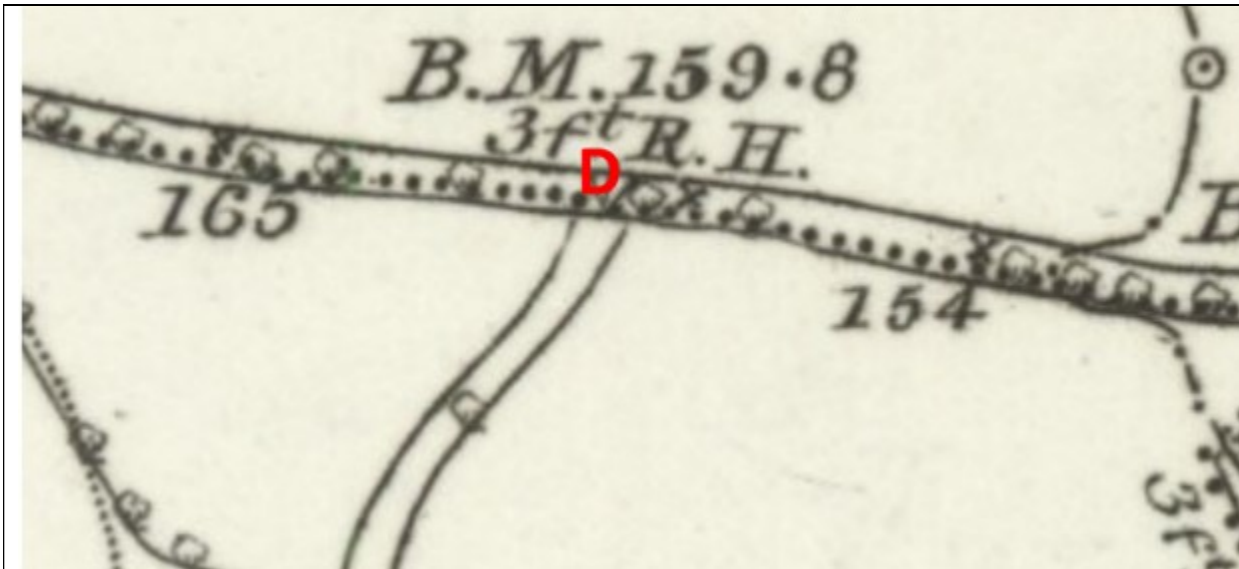




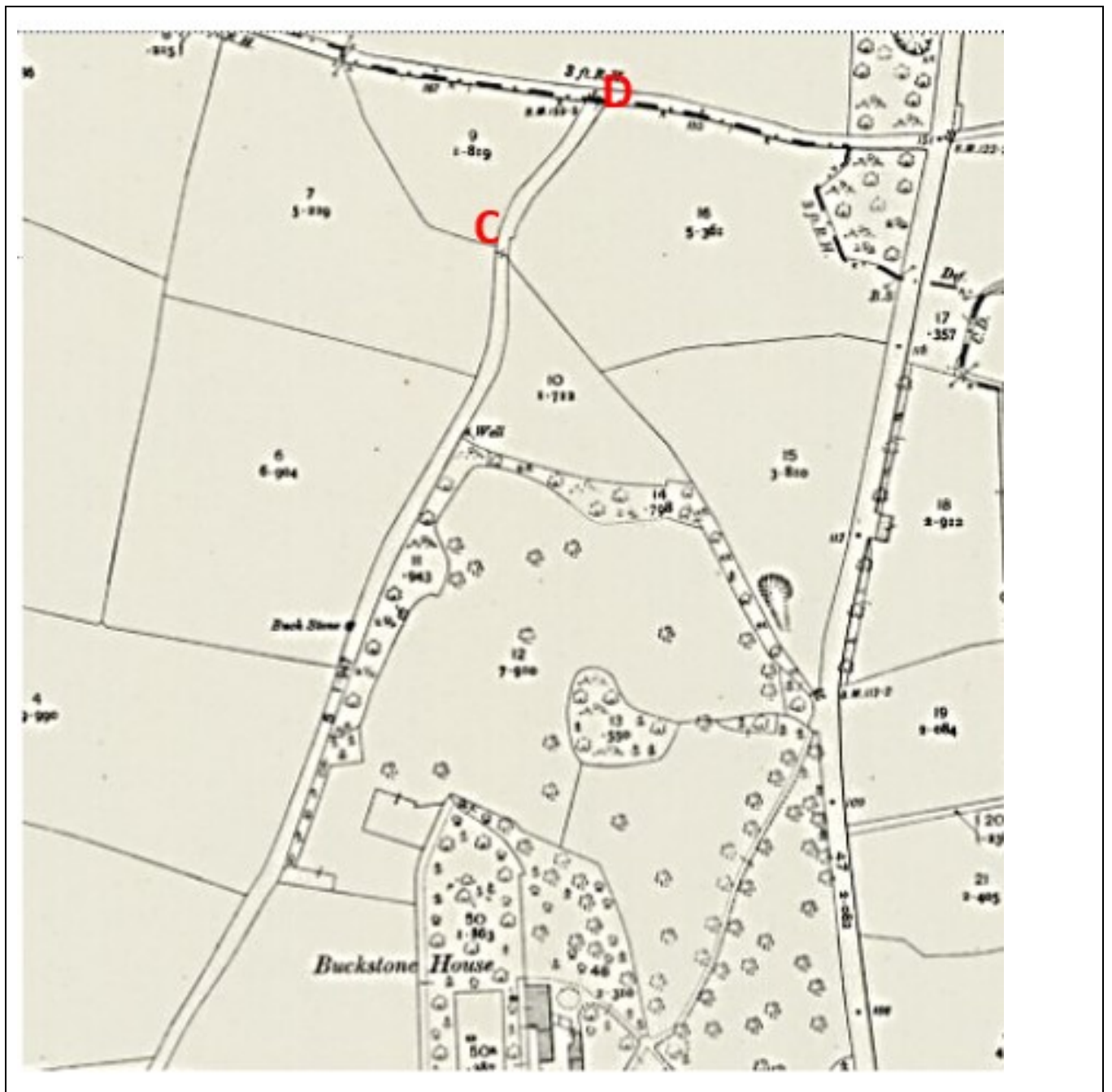
Access onto the route from Burton Road



Point A

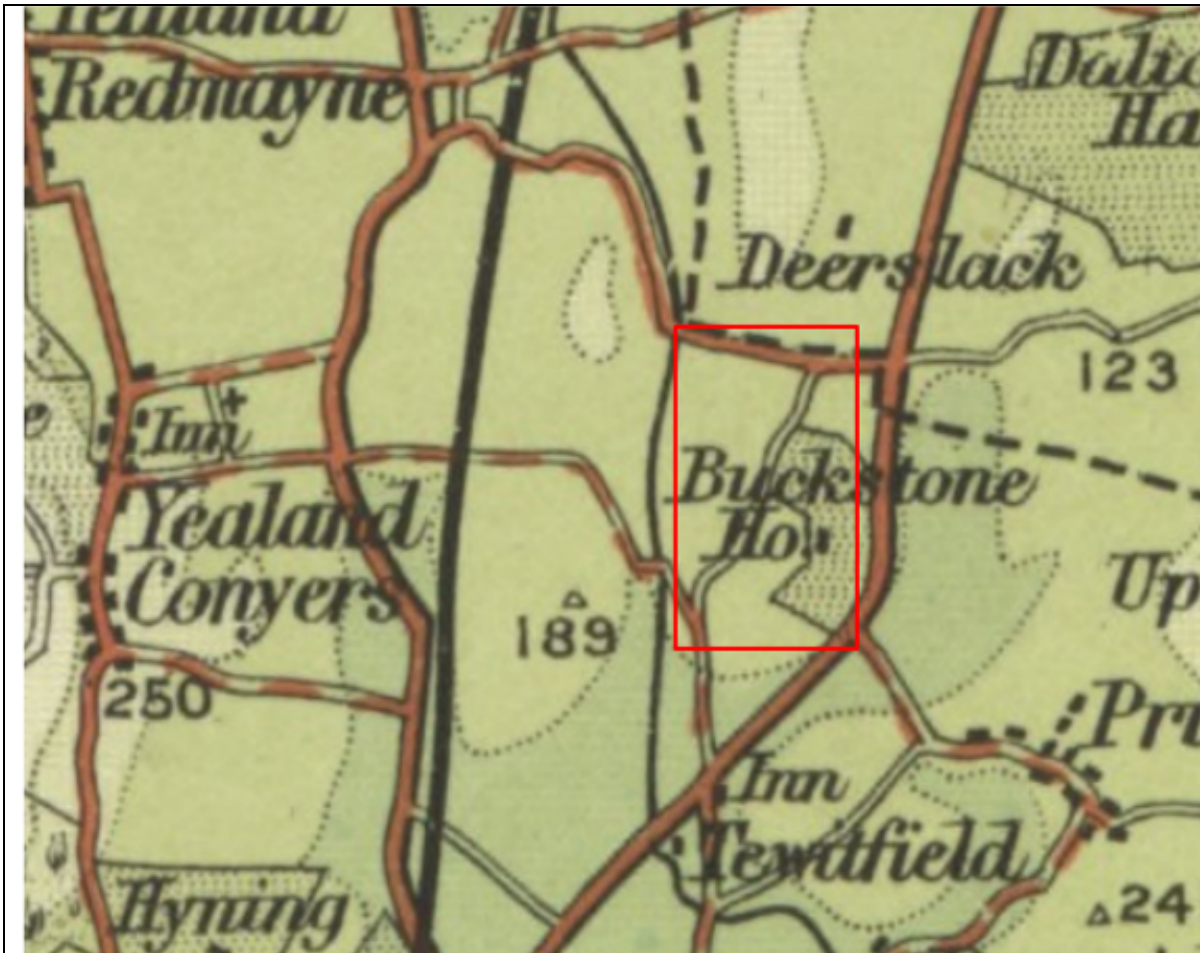


Observations		The application route is shown largely unaltered from how it is shown on the earlier 6 inch map and 25 inch map. Gates are shown across the start of 'the bridleway' at Greenlands farm (where it was significantly constricted) and at point D but no gate is shown at point C.
Investigating Officer's Comments		The application route existed as part of a longer substantial bounded route in 1890 and appeared to be capable of being used at least on horseback but was gated at both ends and at point C showing on the larger scale OS of 1891. However the route of the old turnpike does appear to have been constricted where it leaves the new turnpike route near Greenlands Farm. This is an unusual layout for a junction and appears to be consistent with a form of traffic control.
25 inch OS Map Sheet XIX.9	1911	Further edition of the 25 inch map surveyed in 1892, revised in 1910 and published in 1911.





Observations		The application route is shown as a bounded route gated at point C and point D. The old turnpike is also shown gated and constricted where it left the new turnpike south of the application route.
Investigating Officer's Comments		The application route existed as part of a substantial through route in 1910 and appeared to be capable of being used. Gates were across the route and the route of the old turnpike does appear to have been constricted where it leaves the new turnpike route near Greenlands Farm. This is an unusual layout for a junction and appears to be consistent with a form of traffic control.
Bartholomew half inch Mapping	1905-1941	The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.



EXPLANATORY NOTE

First Class Roads —————
 Secondary • (Good) — — — — —
 Indifferent • (Passable) — · · · · ·
The uncoloured roads are inferior and not to be recommended to cyclists.
 Footpaths & Bridlepaths ·········

N.B. The representation of a road or footpath is no evidence of the existence of a right of way.

Railways Station Station with
 ————— ■ ★
 Refreshment Room

Canals —————
 County Boundaries - - - - -




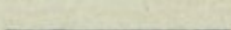
SCALE 1 : 126,720 = 2 MILES TO AN INCH

Sheet 5 – North Lancashire and Isle of Man published 1905



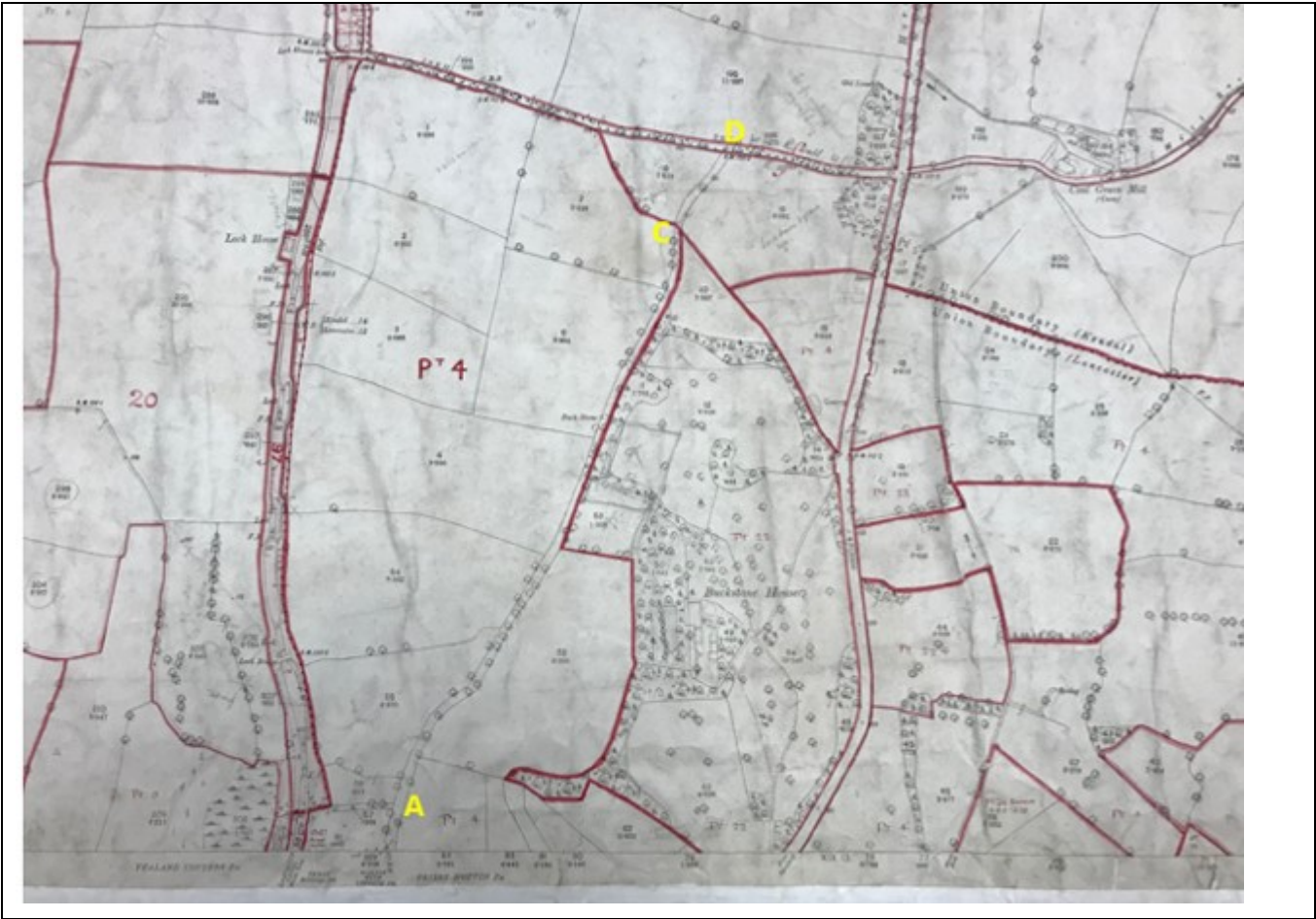
Sheet 5 – North Lancashire and Isle of Man published 1920

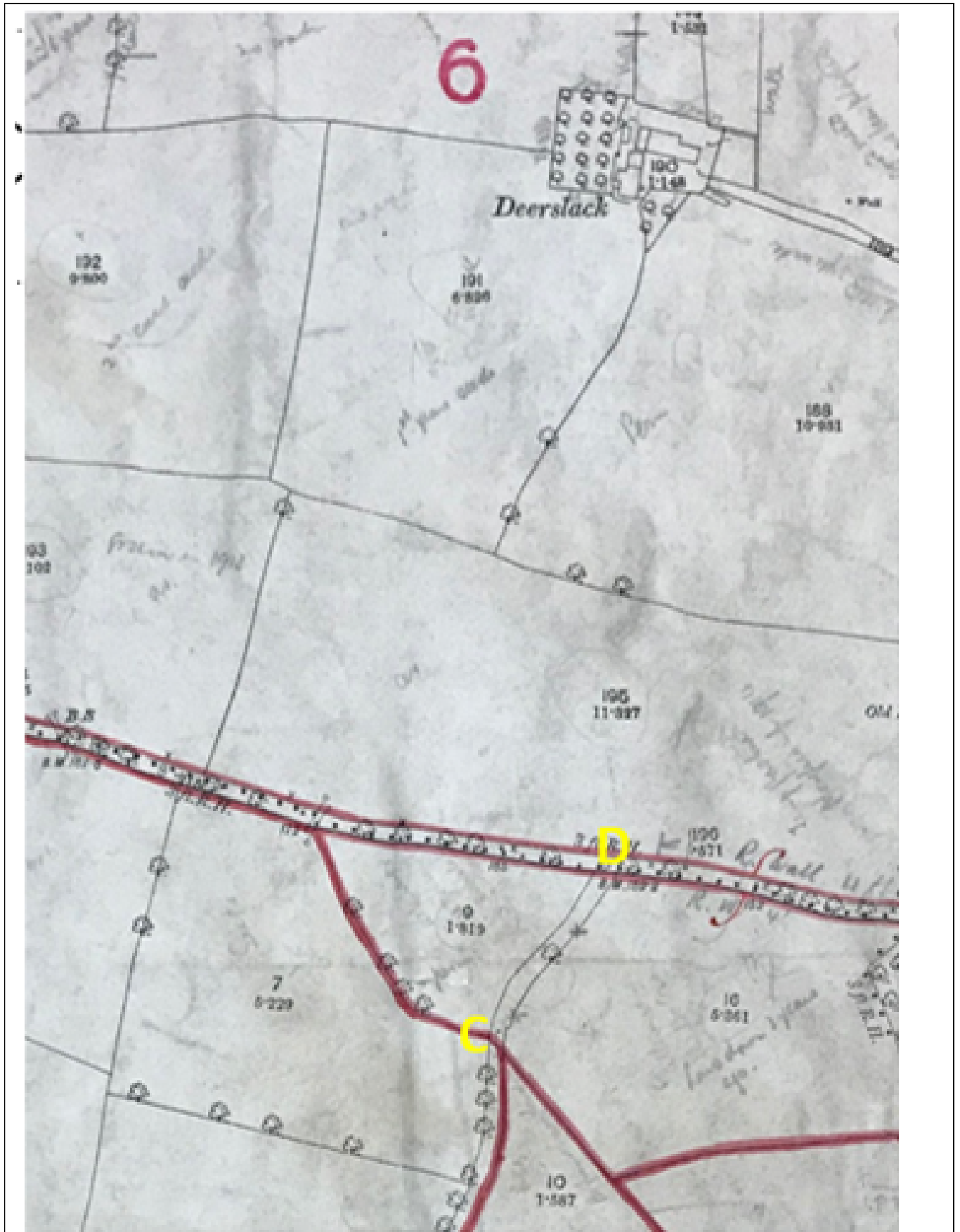


- | | |
|----------------------|--|
| Best Motoring Routes |  |
| Good Secondary Roads |  |
| Serviceable Roads |  |
| Other Roads |  |

Sheet 31 – North Lancashire published 1941

Observations		<p>The application route was shown as a bounded route on all three maps. In 1905 and 1920 it is shown as an uncoloured road described as inferior and not to be recommended for cyclists. Bridleways and footpaths – where shown – were depicted with a single dashed line and in 1940 double unbroken lines are described as 'other roads'. 'The bridleway' leading to point A from Burton Road on all three maps is shown as a road considered to be serviceable or passable.</p>
Investigating Officer's Comments		<p>The application route existed as a substantial bounded route in the early to mid-1900s and appeared to be considered as a road, albeit not well maintained. 'The bridleway' leading to point A appeared to be in better condition and possibly better used.</p>
<p>Finance Act 1910 Map</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>

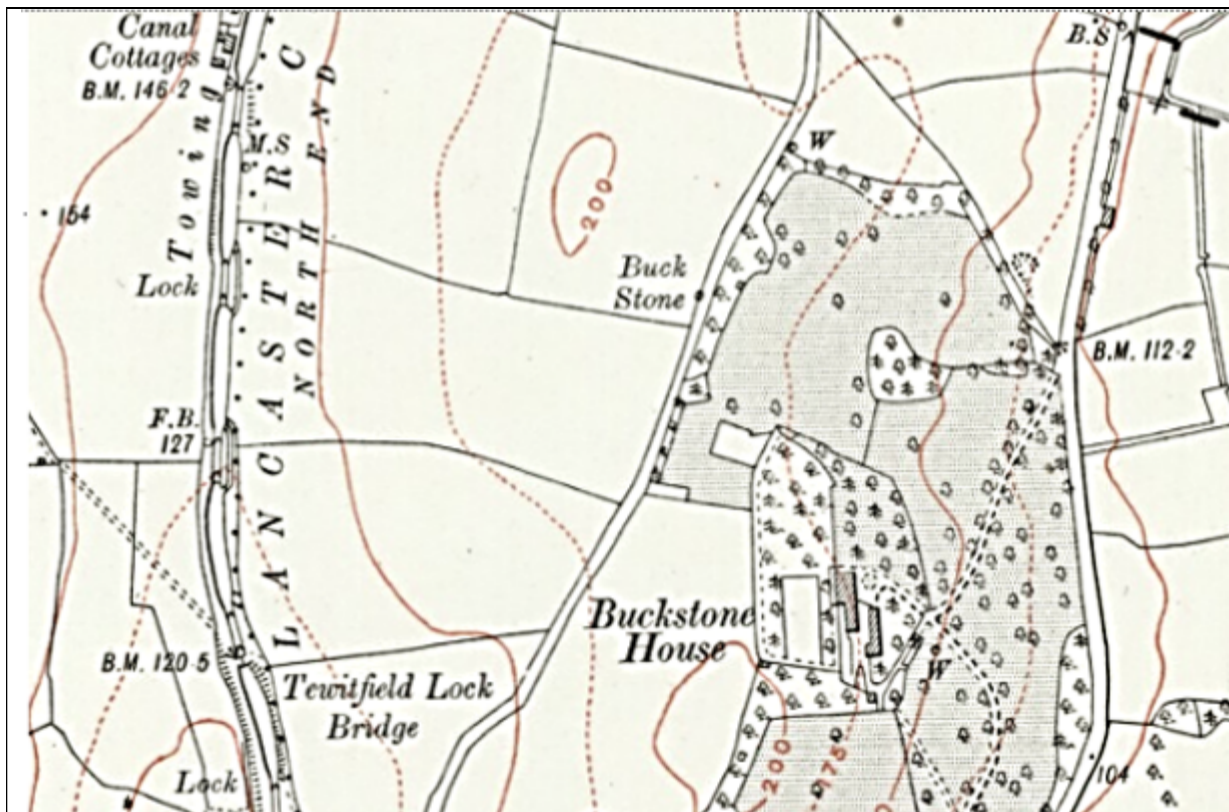




Observations

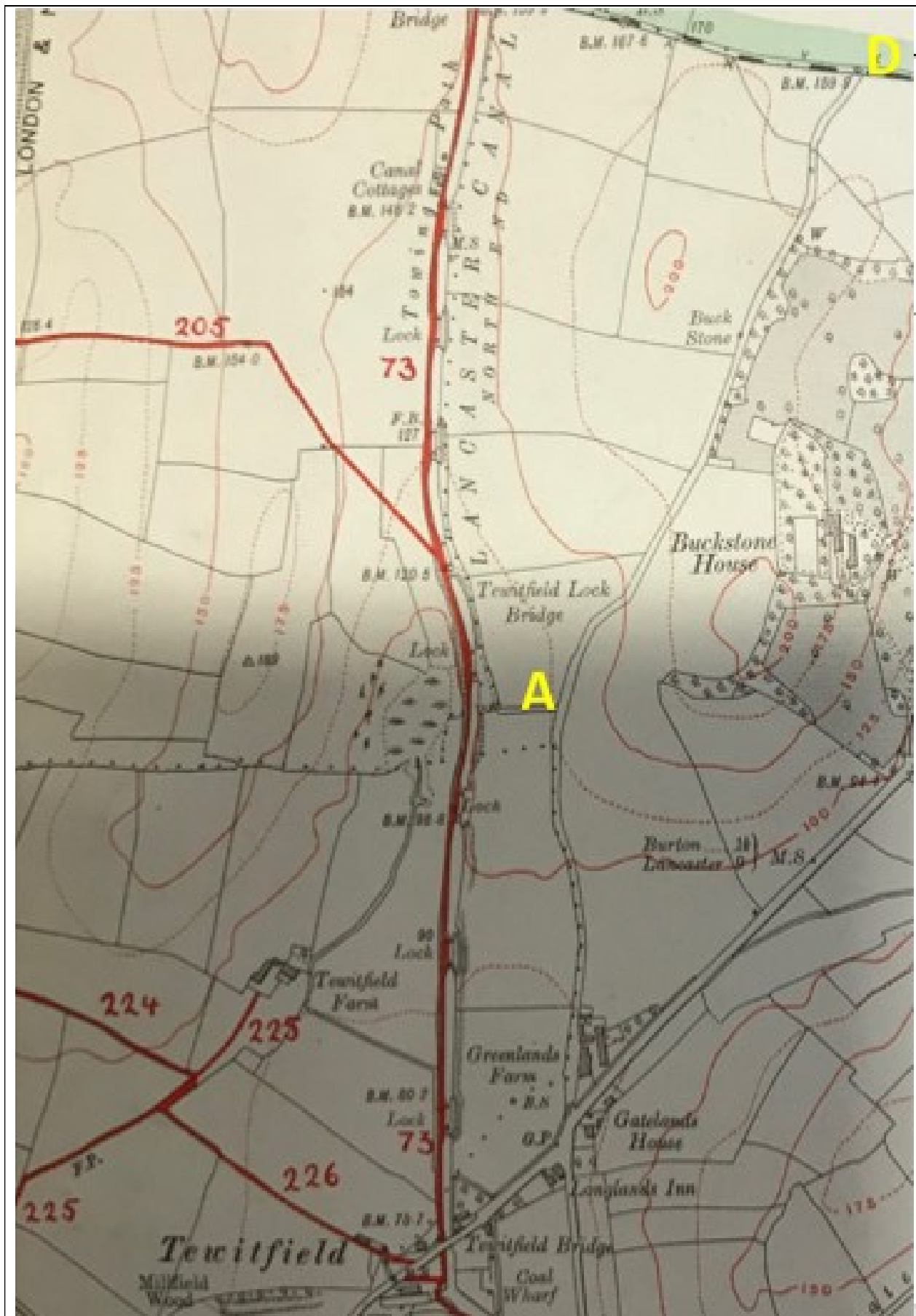
None of the application route is excluded from the numbered plots. Between point A and point C the application route is

		<p>included in a large and disjointed plot numbered as plot 4. The land is recorded in the District Valuation book as being owned and occupied by Stephen B Harris and sons and their address stated as 'Greenbank' at Over Kellet, Carnforth. Buckstone House and the grounds surrounding it are numbered separately indicating that by the early 1900s the land crossed by the application route between point A and point C was no longer in the same ownership as Buckstone House (as it was when the Tithe Map was prepared). Plot 4 is described simply as 'buildings and land' and a £3 deduction is listed for 'public rights of way and user'.</p> <p>The remainder of the route (between point C and point D) is included in plot 6 which continues north of Cinderbarrow Lane. Plot 6 is described in the District Valuation Book as being owned and occupied by Smith and Gore, Commissioners, Chester and no deductions are listed.</p>
Investigating Officer's Comments		<p>No part of the application route is excluded from the numbered plots suggesting that in the early 1900s the route was not considered to be a public vehicular highway which would be excluded from the taxation process. The land crossed by the route is all included in two large plots for which ownership details are provided – consistent with the fact that the land was recorded as being in private ownership in the Tithe Award and also in the current landownership records held by the Land Registry. A small deduction is made for public rights of way for plot 4 but it is noted that this plot is large and there is no way of knowing exactly which route – or routes – the deduction applied to. No deduction is claimed for plot 6 suggesting that there were no public rights of way across the land or that the landowner at that time did not admit to their existence.</p>
6 inch OS	1919	Sheet XIX.SW revised 1910-11 and published 1919



Observations		The application route is shown as a substantial bounded route in the same way as it is shown on earlier editions of OS maps. Gates are shown across the route at point C and point D.
Investigating Officer's Comments		The application route existed as part of a substantial through route in 1910-1911 and appeared to be capable of being used.
1932 Rights of Way Map		The Rights of Way Act 1932 set out the mechanism by which public rights of way could be established by user and under which landowners could deposit maps to show highways

		<p>already in existence and to indicate that they didn't intend to dedicate further rights of way. The Commons, Open Spaces and Footpath Preservation Society (which became the Open Spaces Society) who were the prime instigators of this Act and the later 1949 Act, called for local authorities to draw up maps of the public rights of way in existence (a quasi pre-cursor of the Definitive Map). This is set out in 'The Rights of Way Act, 1932. Its History and meaning' by Sir Lawrence Chubb [M]. The process for consultation and scrutiny followed in Lancashire is not recorded but some of the maps exist including maps for the following areas are available for inspection at County Hall: Lunesdale Rural District (RD), Lancaster RD, Burnley RD, Garstang RD and West Lancashire RD.</p>
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Observations

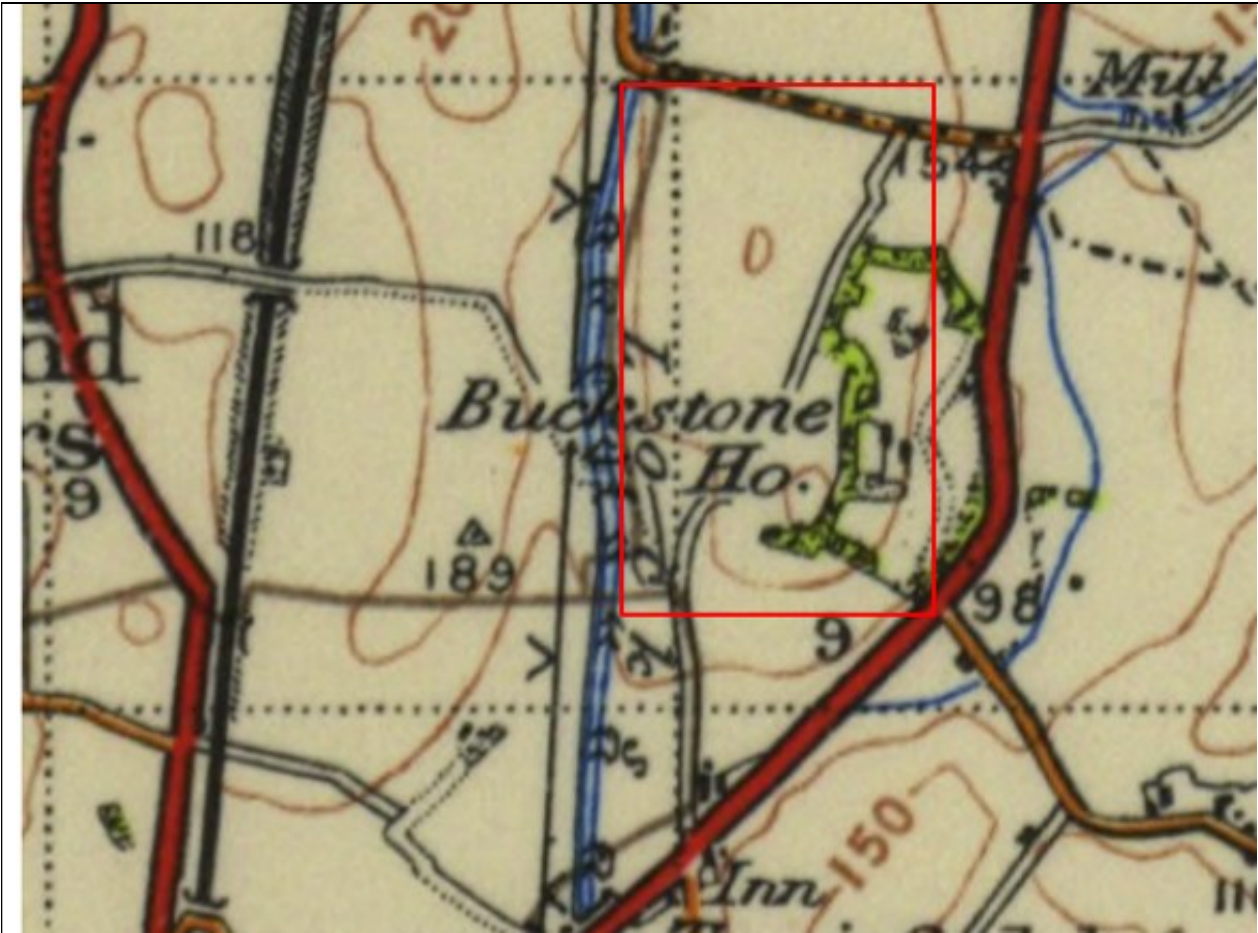
The application route is not shown on the map as a public right

		of way and it is noted that the route of 'the bridleway' is not shown either. The canal towpath however is shown.
Investigating Officer's Comments		The application route was not recorded on the map of public rights of way prepared by or for Lancaster Rural District Council. This may suggest that the route was not in use by the public at that time – or possibly that it was considered to be a public vehicular highway that would not be recorded on a map of this nature. The fact that it is not shown on the 1929 Handover Map detailed below however suggests that the former reason was more likely in this instance.
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.
Observations		No aerial photograph of the area crossed by the application route is available to view in the county council's records.
Investigating Officer's Comments		No inference can be drawn.
6 inch OS	1945	Sheet XIX SW revised 1910-11 published 1945

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 application route is shown as a substantial bounded route in the same way as it is shown on earlier editions of OS maps. Gates are shown across the route at point C and point D.
Investigating Officer's Comments		The application route existed as part of a substantial through route in 1910 and appeared to be capable of being used.
1 inch OS Map Sheet Lancaster & Kendal	1947	1 inch OS map revised 1920 with later corrections and published 1947.

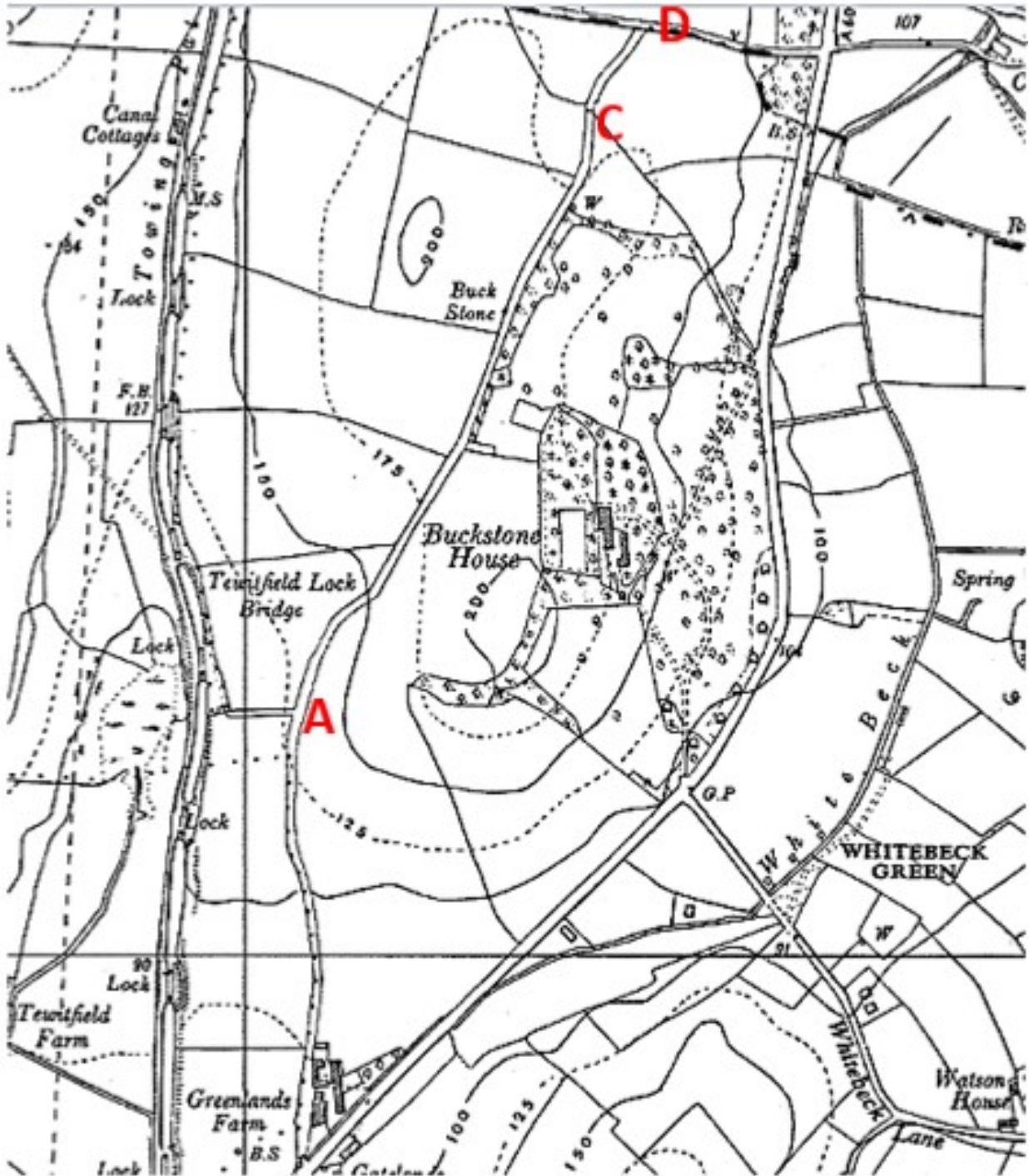


Ministry of Transport Roads	A.6	B.6254
Other Motor Roads		
" " " narrow	Good	Bad
Minor Roads		
Bridle & Footpaths		
Unfenced Roads are shewn by dotted lines		
Gradients steeper than $\frac{1}{4}$		
Toll Gates	TOLL	
Road Mileage	5	

1014.

Observations		The application route is shown as part of a longer route between Burton Road and Cinderbarrow Lane. Its width suggests that it was depicted as 'Other Motor Road' in 'Bad' condition in the key.
Investigating Officer's		The application route existed as part of a substantial through route in the 1920s and appeared to have been considered to be

Comments		a public vehicular route which, even if in poor condition was capable of being used.
6 Inch OS Map 57SW	1956	The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). The part of the map crossed by the application route was revised before 1930 with parts also revised between 1930 and 1945 and revised for major changes in 1951.



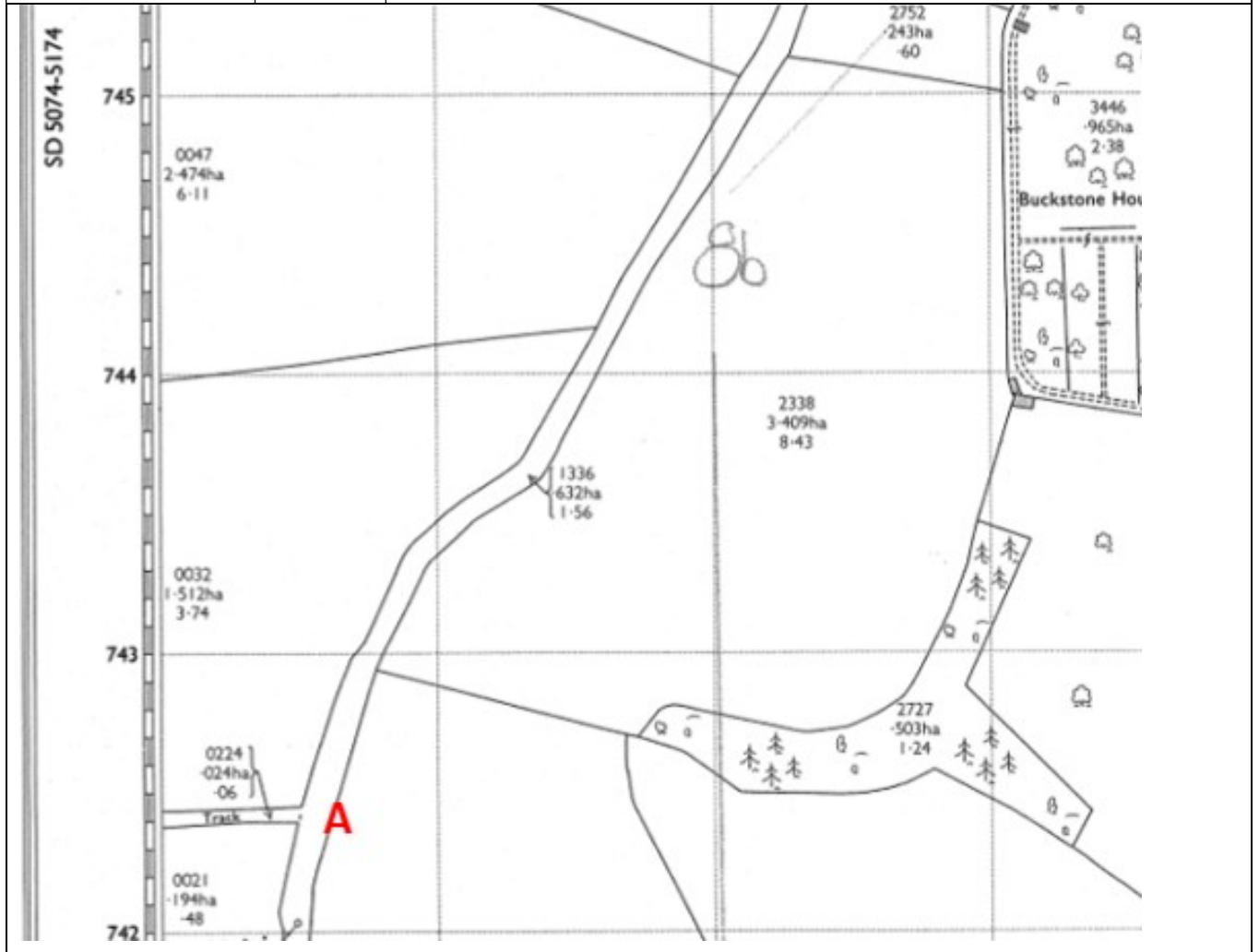
Observations		The application route is shown as a substantial bounded route in the same way as it is shown on earlier editions of OS maps.
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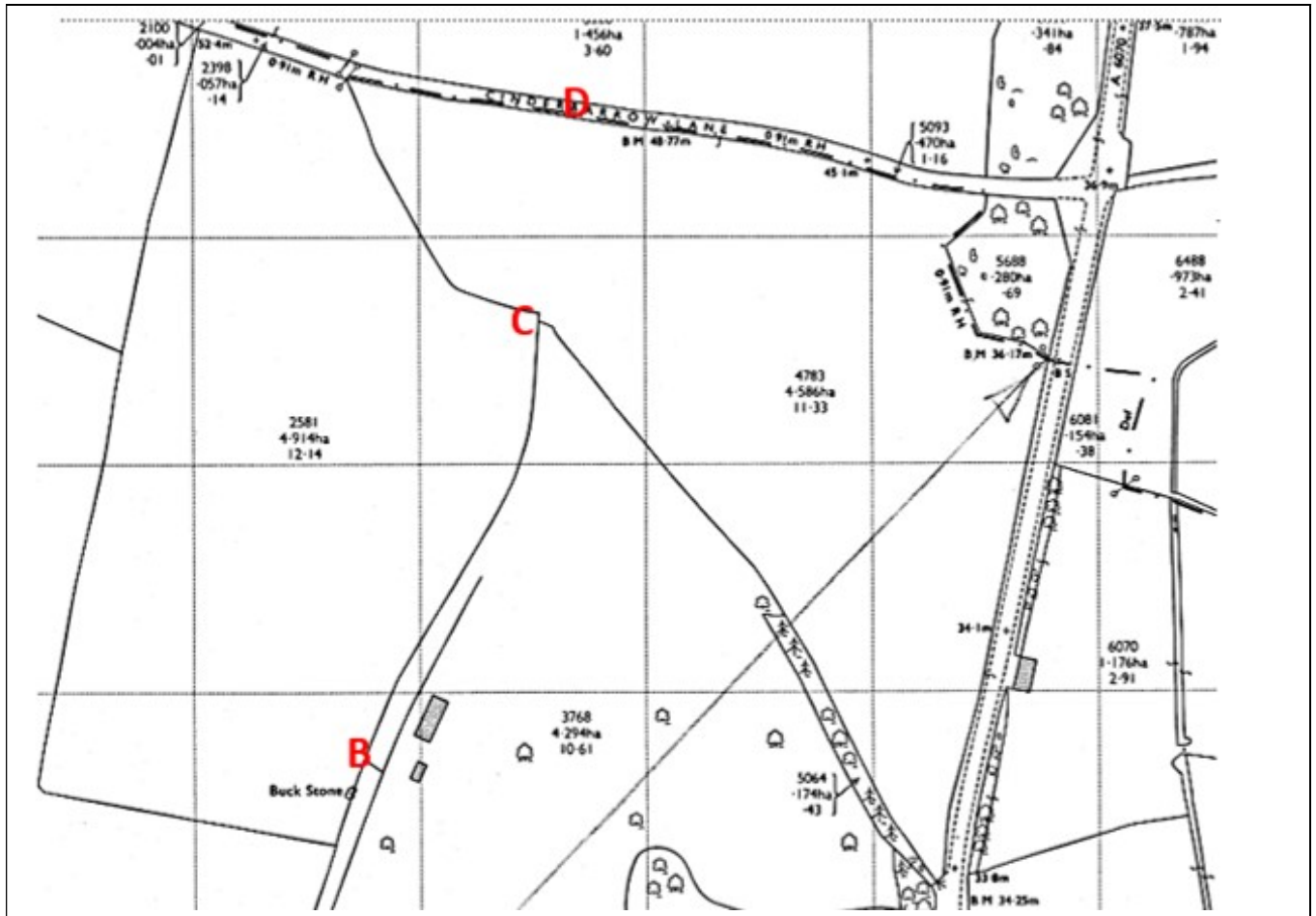
		Gates are shown across the route at point C and point D.
Investigating Officer's Comments		The application route existed as part of a substantial through route before the 1930s and appeared to be capable of being used.
1 inch OS Map	1955	OS 1 inch map sheet 89 – Lancaster and Kendal, fully revised 1950-51 and published 1955



Roads	Ministry of Transport, Trunk	A 6 (T)	
	" " " Class 1	A 590	
	" " " " 2	B 6254	R
	14 ft of Metalling & over (not included above)		
	Under 14ft of Metalling. Tarred " "	TOLL	W
" " " " Untarred " "	Gate		
Minor Roads in towns, Drives and Unmetalled Roads			O
(Unfenced Roads are shown by pecked lines)			
Steep Gradients 1 in 5 or steeper	1 in 7 to under 1 in 5		El
Footpaths and Tracks			Pi
Heights in feet above Mean Sea Level	surveyed by levelling	275	M

Observations		The application route is shown as a substantial bounded route and appears in the map key to be depicted as an unmetalled road.
Investigating Office's Comments		The application route existed as part of a substantial through route in the 1950s and appeared to be capable of being used.
1:2500 OS Map SD 5274-5374	1970	Further edition of 25 inch map reconstituted from former County Series and revised in 1969 and published 1970 as National Grid Series.



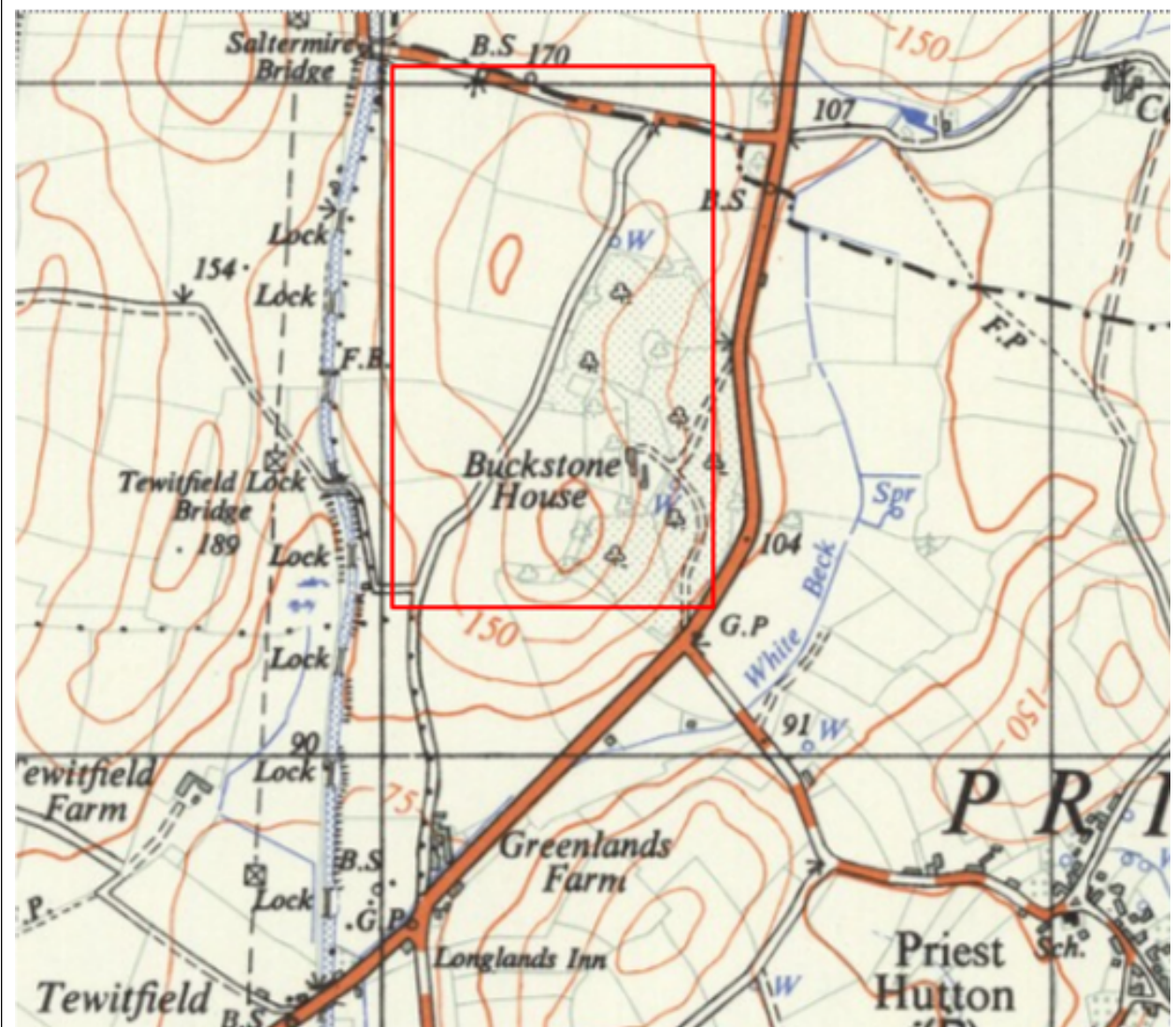


Observations		The application route is still shown as a substantial bounded route between point A and point B. Beyond point B the route is no longer shown as a bounded route for the full length between point B and point C and from point C to point C there is no evidence of the route on the map.
Investigating Officer's Comments		Use of the full length of the application route may have declined – or may no longer have been possible by the late 1960s with no evidence of the existence of the route between point C and point D where it exits onto Cinderbarrow Lane.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.




Observations	The aerial photograph taken in the 1960s shows that there still appeared to be significant use of the route from Burton Road
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		adjacent to Greenlands Farm passing through point A and continuing to point B where there appeared to be a worn access point through to the field to the west where the Buck Stone was situated and also access into the field to the west where a building was located. Beyond point B it was possible to see the line taken by the application route and the fact that field boundary along the east side of the route had been removed. A faint track could be seen between point C and point D.
Investigating Officer's Comments		Access along the full length of the application route may still have been possible in the 1960s although vehicular use appears to have declined significantly – if not completely - beyond point B.
1:25,000 OS map	OS 1961	OS Sheet SD 57 revised 1938-1960 and published 1961.



Observations		The full length of the application route is shown as a substantial bounded route providing access from Burton Road adjacent to Greenlands Farm through to Cinderbarrow Lane.
Investigating Officer's		This map sheet was revised between 1938 and 1960 and appears to show the route prior to the changes shown on the

Comments		<p>1960s aerial photograph and the OS 1:2500 OS map published in 1970 detailed above.</p> <p>At the time that the map was revised the application route existed as part of a substantial through route and appeared to be capable of being used by vehicles.</p>
Aerial Photograph	2000	Aerial photograph captured in 2000 and available to view on Google Earth Pro.
		
Observations		<p>The application route between point A and point B can be clearly seen as a bounded route. The surface of the route is visible and it appears consistent with the fact that vehicular use was still being made of the route through to point B. Beyond point B the route is only faintly visible suggesting that there may still be some use of the route on foot or horseback but that it was no longer being used as a vehicular through route.</p>
Investigating Officer's Comments		<p>The application route still existed in 2000 with some vehicular use from Burton Road through to point B but use of the route from point B onwards had significantly declined and may no longer have been possible.</p>
Aerial Photograph	2016	Aerial photograph available to view on GIS.



Observations		The application route can still be clearly seen as a bounded route between point A and point B although the stone surface track appears less visible. Beyond point B and between point B and point C the route is hardly visible.
Investigating Officer's Comments		The application route no longer appears to be used as a through route from Burton Road to Cinderbarrow Lane.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts

the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.



Observations

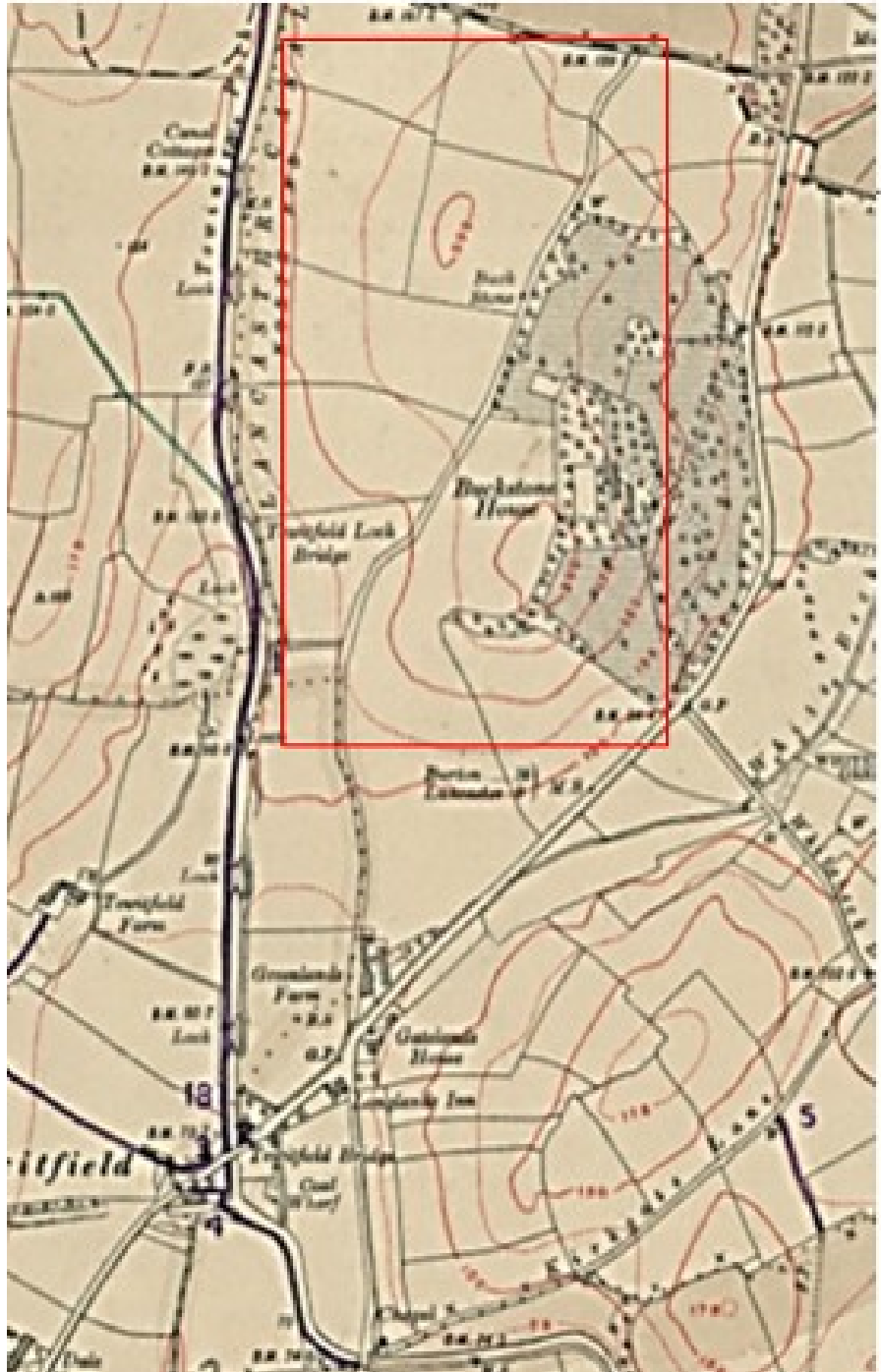
The application route was not recorded as a public right of way by Priest Hutton Parish Council as part of the preparation of the Parish survey Map.

Draft Map

The parish survey map and cards for Priest Hutton were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.

The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions

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



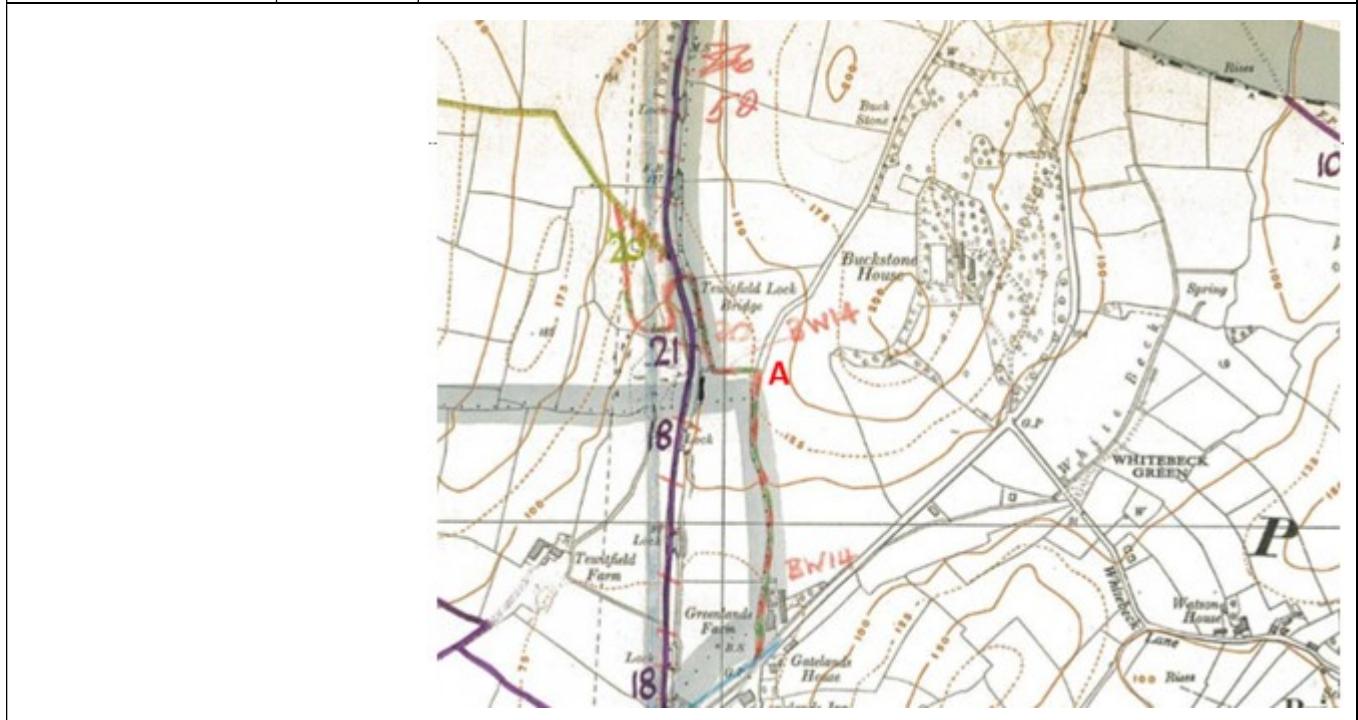
Observations

The application route was not recorded as a public right of way on the Draft Map of Public Rights of Way and no objections or representations were made relating to it.

Provisional Map

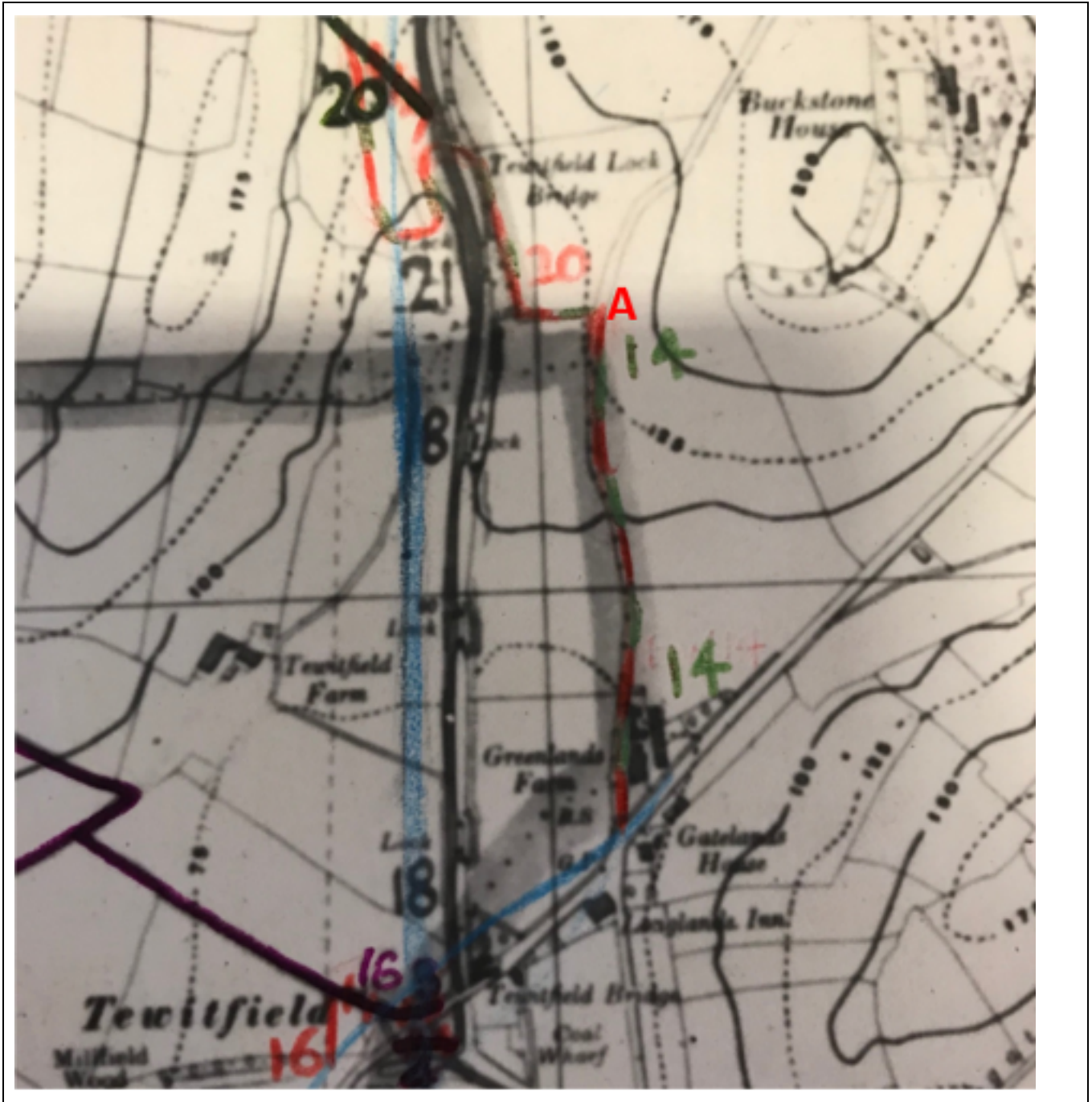
Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only

		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.
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Observations		The application route is not shown on the Provisional Map. A route recorded with the number 14 and annotated as a 'BW' (bridleway) is shown from Burton Road at Greenlands Farm leading to point A and then turning to continue west. This route appears to have been added after the Provisional Map was drawn and is not listed in the Provisional Statement. No representations or objections were found regarding the fact that the application route was not shown or relating to the addition of the route numbered 14.
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The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
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REVISED MAP - AMENDMENTS.

FOOTPATHS.



BRIDLEWAYS.



DELETION OF FOOTPATHS,
AND BRIDLEWAYS.



NEW AND DIVERTED FOOTPATHS.



NEW AND DIVERTED BRIDLEWAYS.



REFERENCE

'Footpath' shown by purple line :—



'Bridleway' shown by green line :—



'Road used as a Public path'
shown by broken green line :—



100.C34.5/1. P5782.127763

14		Bridge		
13	"	From footbridge over River Keer to Parish Boundary near railway	0.07	
* 14	Bridleway	From E.V. 26 (Yardland Congen) through Lowerland Farmyard to Carter/Kiddel land No. 70	0.20	New Bridleway included as a result of a representation by Priest Hutton & Yealand Congen Parish Councils.
			176	

07
30
176

New Bridleway included as a result of a representation by Priest Hutton & Yealand Congen Parish Councils.

Extracts from First Definitive Statement for Priest Hutton

19	"	boundary	0.20	
20	Bridleway	Rose Acre Lane to A.6 near Parish Boundary A.6 near Holmer Cottages to junction with path No. 21 on canal near Teatfield Lodge Bridge	0.27	
22	Footpath	to link Leighton Road to Parish Boundary at Crag Foot	0.65	0.90
23	"	Junction with Path No. 12 near sheepfold	1.17	

Part diverted due to proposed motorway construction - and extended to link up with B.P. 14 (Preston Station)

90 Part diverted due to proposed motorway construction - and extended to link up with B.P. 14 (Preston Station).

Extracts from First Definitive Statement for Yealand Conyers

<p>Observations</p>	<p>The application route is not shown on the First Definitive Map and there is no reference to it in the First Definitive statement. The 1949 Act also required the surveying authority, once its Definitive Map was published, to periodically review it. The intention of the review was to keep the Definitive Map up to date, by adding new public rights of way, or ones omitted from the previous map, and by deleting paths which had been closed under a confirmed statutory order.</p> <p>A similar procedure to that involved in the preparation of the original definitive map was adopted, involving the seeking of information from parish, rural district, urban district and municipal borough councils.</p> <p>The review of the Definitive Map was carried out in three stages, as previously involving the publication of a Revised Draft Map, a revised Provisional Map and a Definitive Map. A new relevant date was set for this revised map establishing the date of the review. In Lancashire the relevant date of the first review Definitive maps is 1st September 1966.</p> <p>As relatively new changes to the original definitive map had occurred in the period from 1st January 1953 to the 1st September 1966 a copy of the original maps, amended to show these changes, was published and the Draft Revised Map (First Review) on 1st June 1967. As before, any person could inspect the revised map and statement and make representations or objections.</p> <p>Following determination of objections or representations made at the first review draft map stage a provisional revised map (first review) was published on 6th April 1973 allowing</p>
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		<p>opportunity for landowners, tenants or lessees to make application to the Crown Court (replacing Quarter Sessions) for declarations concerning routes shown on the map.</p> <p>The First Definitive Map and Statement were used to prepare the Revised Draft Map so the additional routes/amendments drawn on this map and shown in the map key relate to the review of the Map following its publication as the First Definitive Map.</p> <p>In this particular case it can be seen that Bridleway Priest Hutton 14 was not recorded on the First Definitive Map but was shown as a later edition to the Map and described as a 'New and Diverted Bridleway' in the map key. The handwritten note recording the addition of the bridleway in the Definitive Statement questions the fact that BW 14 was included as a result of a representation made by Priest Hutton and Yealand Conyers Parish Councils. The Statement for BW 20 Yealand Conyers refers to the fact that it had been diverted and extended to link to BW 14 Priest Hutton as a result of the motorway construction.</p> <p>No further information could be found regarding the addition of BW 14 along the former turnpike road and no reference was found to the application route itself.</p>
<p>Revised Definitive Map of Public Rights of Way (First Review)</p>		<p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25th April 1975 (except in small areas of the County) the Revised 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>



RURAL DISTRICT OF LANCASTER.

PARISH OF PRIEST HUTTON.

ADMINISTRATIVE COUNTY OF THE COUNTY PALATINE OF LANCASTER:
National Parks and Access to the Countryside Act, 1949
Review of Definitive Rights of Way Map

Date of

~~1950~~

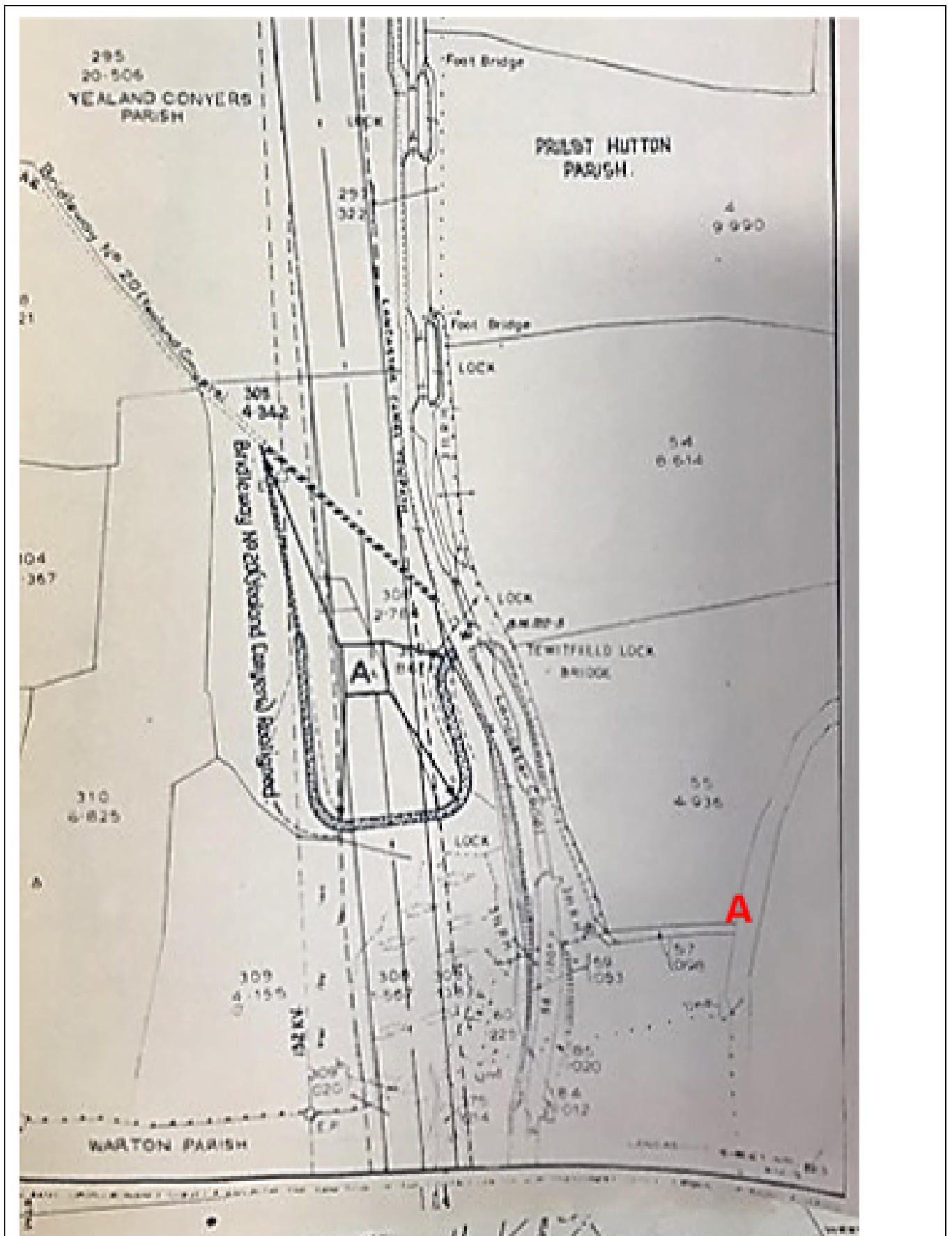
1. No. of Path	2. Kind of Path	3. Position	4. Length in miles to 2 places decimals	DEFIN Other
5	Footpath	Kirkgate Lane to Parish Boundary.	0.10	
6	"	Up Hall Occupation Road to jct. with path Nos. 7 and 8.	0.07	
7	"	Jct. with path Nos. 6 and 8 to jct. with path Nos. 9 and 10.	0.25	
8	"	Jct. with path Nos. 6 and 7 to Parish Boundary.	0.31	
9	"	Jct. with Path Nos. 7 and 10 to Westmorland boundary.	0.68	
10	"	Jct. with Path Nos. 7 and 9 to Coat Green Mill (Westmorland).	0.16	
11	"	Beech House to Parish Boundary.	0.04	
12	"	North of Thwaite Wood to Starricks Railway Bridge.	0.60	
13	"	From footbridge over River Keer to Parish boundary near Railway.	0.07	
14	Bridleway	From D.W.20 (Yeland Conyers) through Greenlands Farnyard to Burton/Kendal Road A.6070.	0.30	

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	Other parti
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 Acra Lane near Blencratha to Parish Boundary.	0.25	
19	"	Rose Acra 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.)	0.60	
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	

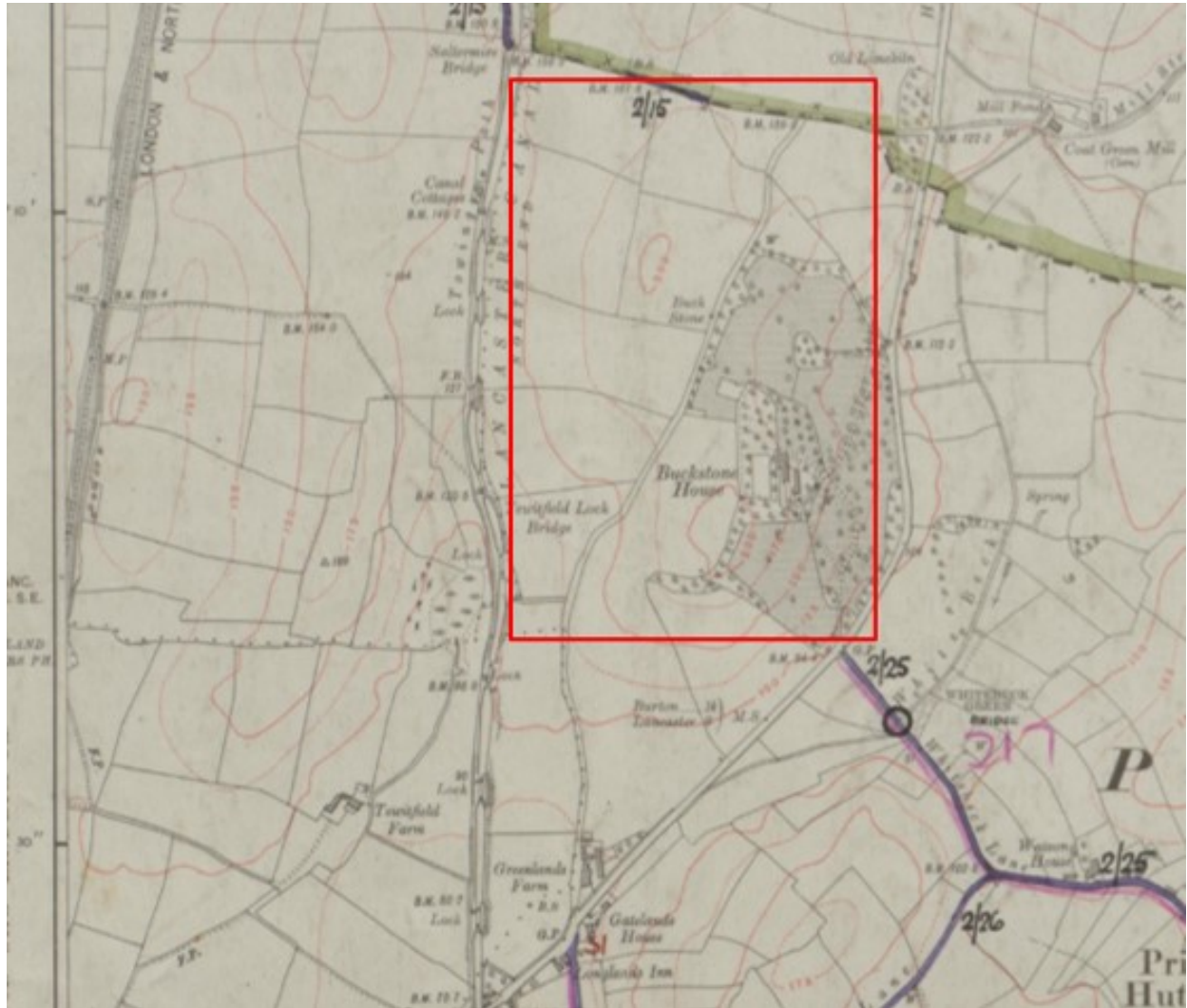
Observations		The application route is not shown on the Revised Definitive Map (First Review). The Bridleway recorded as Priest Hutton 14 is shown on the map and is described in the Definitive Statement with no reference to the application route or origins of the route recorded as a bridleway.
Investigating Officer's Comments		The application route was not considered to be a public right of way which should be recorded on the Definitive Map during the preparation of the First Definitive Map in the 1950s through to the 1960s.
The East of Carnforth – West of Killington Reservoir Special Road (Carnforth – Farleton Side Roads) Order 1967	1967	Side Roads Order made to accommodate the construction of the M6 Motorway through land adjacent to the application route.



Observations

The Side Roads Order does not include reference to the

		<p>application route. It does however divert Bridleway Yealand Conyers 20 to accommodate the construction of the motorway and the timing of this diversion – in 1967 links in with the revision of the First Definitive Map and addition of Bridleway Priest Hutton 14 to the Definitive Map.</p>
Investigating Officer's Comments		<p>The diversion of Bridleway Yealand Conyers 20 may explain why the route of the former turnpike road from Greenlands Farm to point A and then east towards the canal and motorway was recorded as a bridleway in the 1960s. It seems reasonable that the Parish Councils realised that Bridleway Yealand Conyers 20 did not link to another route through Priest Hutton and so this section was added as a bridleway when the map was reviewed</p>
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>



1929 Handover Map

Observations		The application route is not recorded as a publicly maintainable highway on the county council's List of Streets and was not shown as a publicly maintainable highway in records believed to be derived from the 1929 Handover Map.
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.
Highway Stopping Orders	1835 - 2014	Up 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		A search of the records held by the London Gazette has been made and no reference to the application route has been found. Orders deposited in the County Records Office have also been searched and no orders have been found relating to the

		extinguishment of the diversion of the application route.
Investigating Officer's Comments		No records relating to the stopping up, diverting or creating of public rights along the route were found. If any unrecorded public rights exist along the route they do not appear to have been stopped up or diverted.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		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). 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).
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.

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

Landownership

Ownership of the full length of the application route is registered.

The route between point A and point C is in the registered ownership of Greenlands Farm. Between point C and point D the land crossed by the application route is in private ownership.

Summary

From a search of available historical maps and documents it appears that the application route was a road from at least the time of Ogilby's 17th Century map and later formed part of the turnpike road between Lancaster and Kendal from the mid-18th Century until 1823 when an Act of Parliament provided for the creation of a new section of road as a diversion of this section of the turnpike which was subsequently built and was shown as the turnpike road on the Tithe Map prepared in 1846 and the first edition 6 inch OS map surveyed and published around the same time.

It is not certain that Ogilby's map showed only carriageways but as the main, or only, road heading north on the west side of the country the London-Carlisle road must have been carriageway. The turnpiking and de-turnpiking of the application route would return the route to its former status unless declared otherwise in the relevant Acts and in the absence of any stopping up of the rights it would have remained as a public carriageway.

The 1823 Act of Parliament provided for the deviation of the original turnpike road at several sections and stated that once the new section of road had been constructed that the original route would no longer form part of the turnpike road or be required to be maintained by the turnpike trust but this did not make clear whether rights were stopped up. However, an Act to amend the general laws for regulating Turnpike Roads in England had just been passed in 1822 and would apply and stop up the old turnpike highway sections.

This is consistent with the fact that the old turnpike route did not serve anywhere which was not served by the new route with the exception of the canal locks and those could be reached via the bridleway from Tewitfield. This access would possibly have been private access not public as at the time there was no continuation west of the canal shown on the maps.

The route between point A and point C is then described as a lane in private ownership in the Tithe records and is also recorded as being owned as part of a larger plot of land in this way in the Finance Act records from the early 1900s. All of the land crossed by the application route is shown consistently from the date of the Tithe Award to be in private ownership.

Hennet's map of 1830 was the first following the diversion of the Turnpike. This does not show the former route, although from other mapping it is evident that it still would have been visible as a physical feature, suggesting that Hennet did not regard it as being in use as a public vehicular carriageway or bridleway.

Bartholomew maps throughout their existence showed the application route to exist but depicted it as uncoloured and hence not recommended for cyclists, suggesting that it was not in use as a carriageway.

Ordnance Survey since that time continued to show all or most of the application route as an enclosed route which appeared capable of being used until at least the mid-1900s from when onwards the section north of point C in particular appears to have been subsumed into the fields and although falling out of use the remains of

the route are still visible. The route had gated sections and it is not known if access were possible.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant provided map and documentary evidence which has been considered above.

Information from Others

Cadent gas responded to consultation to state they had no objection to the application.

Information from the Landowner

The owner of the land from point C to point D responded to consultation to confirm the land in their ownership but did not provide further comment.

Summary

No modern or historical public user evidence has been submitted so in these circumstances neither a presumption of dedication of a public right of way under section 31 nor inference of dedication from use can be considered.

It is therefore necessary for Committee to consider whether the map and/or documentary evidence is sufficient to support the inference of dedication of a public right of way under common law.

It appears that the application route was part of a public road from at least the time of Ogilby's Map 1675.

That road was turnpiked. Following the Turnpike Act 1750 the route formed part of the turnpike road between Lancaster and Kendal from 1750 until 1823.

The earlier Turnpike Acts relating to this road are stated to have been repealed in favour of the provisions set out in Turnpike Roads Act 1822 which came into force January 1823. The 1822 Act made specific provisions for the stopping up of old lengths should the highway be diverted

In 1823 an Act of Parliament provided for the creation of a new section of turnpike road, a deviation to the existing turnpike road which was subsequently built and was then shown as the turnpike road on the Tithe map prepared in 1846 and the first edition 6 inch OS map surveyed and published around the same date.

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 process stopping up or diverting the rights has been made.

In this case committee is advised to consider whether the public rights on the application route remain on that line or were stopped up when the highway diverted onto a new line by virtue of the Acts of 1822 and 1823. Should the stopping up be evidenced Committee should consider whether the old route became a highway again and that the evidence in documents since 1823 is sufficient for dedication to be inferred.

It is advised that the provision in the 1822 Act is that highway rights were stopped up around 1823 by statutory provision.

It is suggested in considering the evidence presented and the summary of the Investigating officer that Committee may consider that there is insufficient evidence of the route becoming dedicated again as a public highway since 1823 even though the route remained in physical existence for many decades.

Accordingly, the recommendation is that Committee reject the application and that no Order is made.

Risk management

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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-635		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A