

## Regulatory Committee

Meeting to be held on 10<sup>th</sup> August 2022

### Part I

Electoral Division affected:  
Clayton with Whittle

### **Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Footpath at Cuerden Hall (Annex 'A' refers)**

Contact for further information quoting File Reference 804-697:

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#### **Brief Summary**

Addition to the Definitive Map and Statement of Public Rights of Way of a Footpath at Cuerden Hall from Shady Lane to Berkley Drive, Cuerden.

#### **Recommendation**

That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a Footpath from Shady Lane to Berkley Drive, Cuerden, be not accepted.

#### **Detail**

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition to the Definitive Map and Statement of Public Rights of Way of a footpath from Shady Lane to Berkley Drive, Cuerden passing through the grounds of Cuerden Hall.

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 upgrading or downgrading a way shown on the Definitive Map and Statement will only be made if the evidence shows that:

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

An order for 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"

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

- That there is no public right of way over land shown in the map and statement as a highway as any description

An order for modifying the particulars contained within the Definitive Statement as to the position, width, limitations or conditions will be made if the evidence shows that:

- The particulars contained in the Definitive Map and Statement require modification

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**

### Chorley Borough Council

Chorley Borough Council provided no response to consultation.

### Cuerden Parish Council

Cuerden parish Council provided no response to consultation.

## Applicant/Landowners/Supporters/Objectors

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

### **Advice**

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

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	5601 2402	Open junction with Shady Lane
B	5614 2402	The 'Cinder Path' crosses underneath the application route
C	5622 2400	Junction of the application route with Cuerden Close
D	5634 2398	Route turns south towards Berkeley Drive
E	5632 2388	Approximate position of temporary security fence across the route on the boundary of land owned by Cuerden Valley Trust
F	5630 2379	Open junction with Berkeley Drive

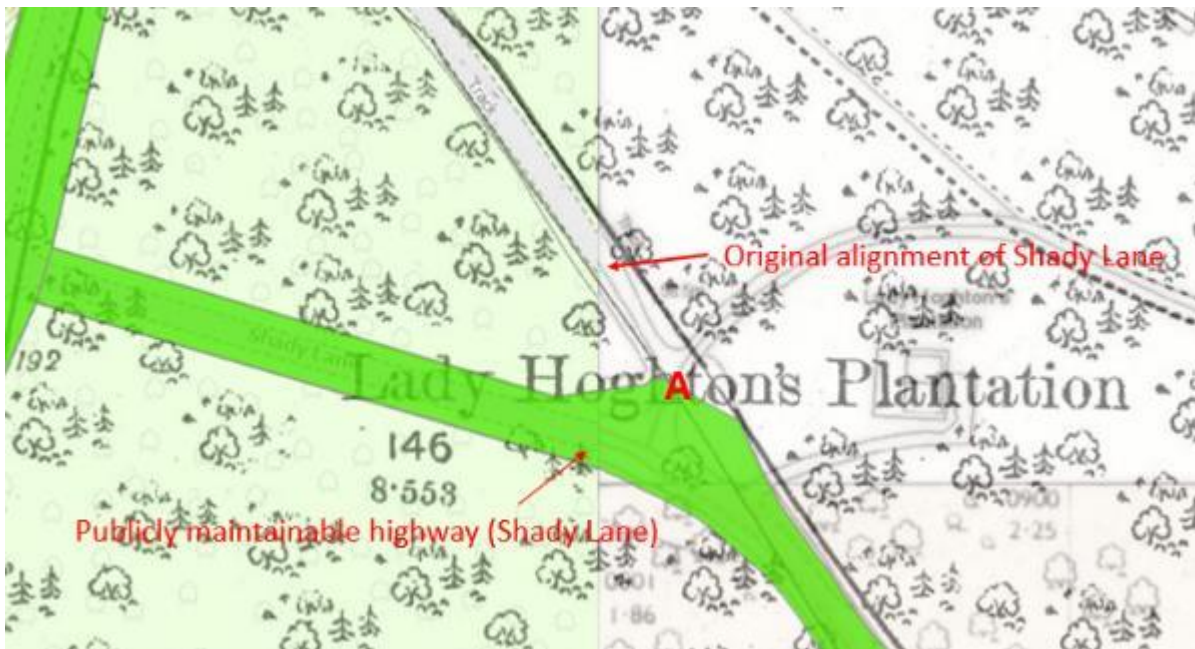
#### **Description of Route**

Site inspections were carried out in March 2020 and again in November 2021.

Access to part of the route is no longer possible due to the erection of security fencing but permission was granted to the Investigating Officer to inspect the full length.

The application route commences at a point on Shady Lane (point A on the Committee plan).

The historical alignment of Shady Lane was legally altered in the 1960s as detailed later in this report and shown below:



As a result of these alterations county council highway records record what appears on the ground to be the first 10 metres of the tarmac access road leading to Cuerden Hall as part of the publicly maintainable highway known as Shady Lane.

Immediately north west of point A the remains of the historical route of Shady Lane can be seen extending towards the A49 with access restricted by fencing and a padlocked gate.

From point A the route applied for follows a tarmac roadway passing between stone gateposts and leading to Cuerden Hall. A notice secured onto one of the stone gateposts states that the grounds of the Hall are private and that whilst Sue Ryder allowed members of the public to enjoy them whilst they were the proprietor certain conditions (for example dogs being kept on leads) should be met.

Once through the gateway the application route continues in a north easterly direction along a 4-metre-wide tarmac roadway. A speed limit sign is located in the grass verge just beyond point A with the number 20 written on it and there is a broken white line faintly visible along the centre of the roadway indicating that the road was wide enough for two vehicles to pass. Streetlights are positioned at intervals along the side of the route and a further advisory sign warned of speed humps.

The route curves to continue in a more east south easterly direction and approximately 150 metres from point A there is a slight 'hump' in the roadway as it passes over the top of a tunnel carrying a historical route known as the cinder path at point B. The tunnel itself is fenced off and access through it is no longer possible.

Immediately prior to point B a surfaced path exists leading from the application route leading directly to the continuation of the cinder path extending north from the tunnel and application route. A dog waste bin is located on the short section of path which links the application route to the cinder path.

From point B the application route continues along the tarmac roadway to point C where it is joined from the south by another tarmac roadway known as Cuerden Close. Access to and from Cuerden Close at this point is unrestricted. Signage warns the drivers of vehicles turning off the application route onto Cuerden Close that children may be playing there and a further sign states 'Private Land Residents Only'.

From point C the application route continues towards Cuerden Hall and security fencing erected across the route prevents access. A sign stating 'Footpath now closed' is attached to the security fencing.

Beyond the security fencing the application route continues along the tarmac roadway towards Cuerden Hall and adjacent (former) stables. The Hall and adjacent buildings are no longer occupied – having previously been owned and occupied by Sue Ryder as a neurological care home - and security staff currently patrol the site 24 hours a day.

As the route reaches the end of the tarmac driveway it is crossed by a further security fence at point D and then turns south south east towards the front of the former stable block (within which the café and book shop run by Sue Ryder had been located) and follows a tarmac roadway curving south west then south passing to the west of the former stables to where the route is crossed by further security fencing (point E) located on the approximate (unmarked) boundary between land owned by Cuerden Valley Trust and land formerly owned by Sue Ryder.

Beyond point E the application route continues in a generally south westerly direction past buildings used by the Cuerden Valley Park Rangers along a tarmac roadway varying in width from 3-5.5 metres wide to an open junction with Berkeley Drive (point F on the Committee plan) west of the Cuerden Valley Trust Visitor Centre and Offices.

The total length of the route is approximately 540 metres.

## **Map and Documentary Evidence**

The application made to the county council was based on the submission of modern user evidence. However, to properly consider the matter it is necessary to understand about the history of the land crossed by the application of the route and to examine a variety of maps, plans and other documents to discover when the route came into being, and to try to determine what its status may be.

The application route passes through the grounds of a property known as Cuerden Hall. A building is believed to have been first built on the site in 1199 with the present hall built in stages from 1717 through to the early 1900s. From that time the land and hall were owned by the Banastre and Parker families who developed the Cuerden estate with nurseries, orchards, various plantations, meadows, fields and gardens.

When Thomas Townley-Parker (the last descendant of the Banastre-Parker family) died in 1906, the estate was left to his nephew, Reginald Tatton and during World War One the Tatton family set up a hospital at Cuerden Hall.

During the Second World War, the estate was requisitioned by the Army as an education centre and then became headquarters of No. 4 Anti-Aircraft Command. In

1958 the Hall was purchased from the Tatton family and became the Headquarters for the Army's North West District and in the early 1960s the newly built M6 motorway cut across the northern parkland necessitating alterations to the access road leading to the hall and destroying Wigan Lodge in the process.

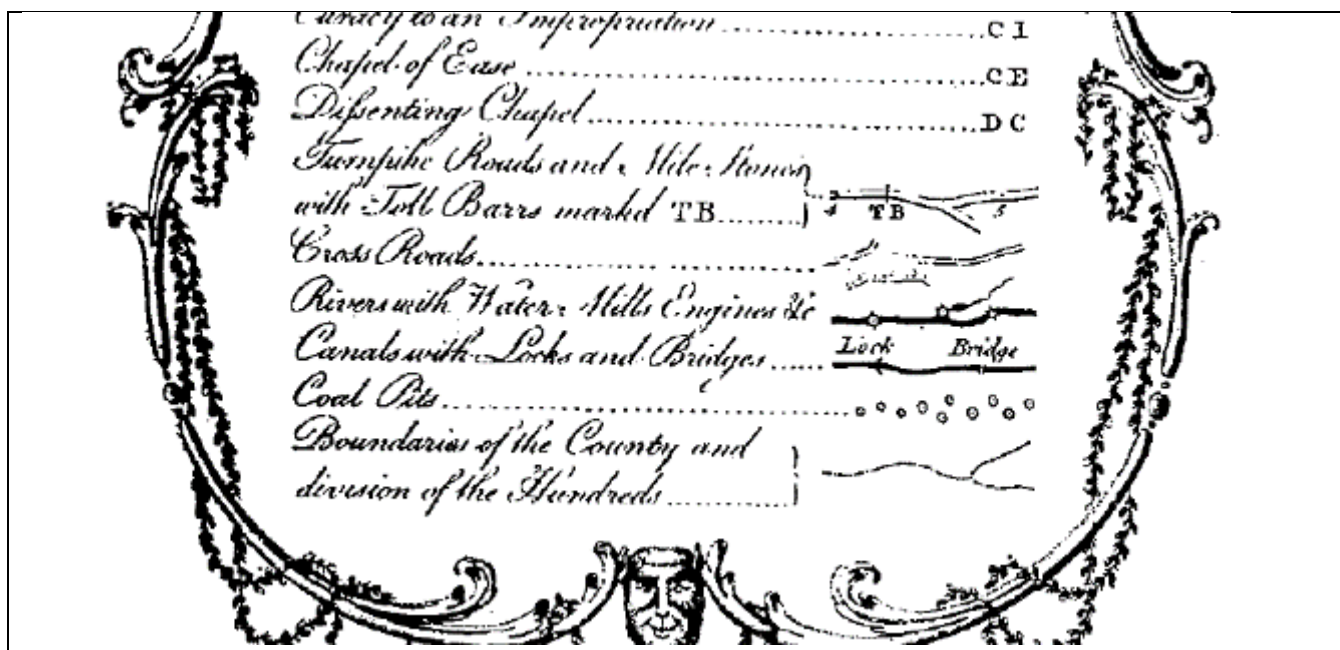
By 1977 the Hall had become the Headquarters of the Central Lancashire Development Corporation, with new offices and car parks being established in the formal garden areas. In 1978 the parkland and wider estate – which did not include land crossed by the application route - was developed by the Central Lancashire Development Corporation into Cuerden Valley Park the management of which was transferred to the Cuerden Valley Trust in 1986. The park was initially managed by Lancashire Wildlife Trust before reverting back to being managed by The Cuerden Valley Trust in the approximately 2003.

In 1986 Cuerden Hall was sold by Commission for New Towns to Sue Ryder who developed the hall itself into a Sue Ryder Home until it was sold by them in 2021.

Note: Map extracts provided below are not reproduced to scale.

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		Cuerden Hall is shown on the Map together with details of ownership ('Ban. Parker Esq.'). A road is shown leading directly to the Hall from the turnpike road (now known as the A49 – Wigan Road) consistent with part of the application route from partway between point A and B through to point D. It is described in the map legend as a cross road.
Investigating Officer's Comments		Part of the application route existed in 1786 as access to Cuerden Hall. It is not known what is meant by the term 'cross road' but the only other category of highway shown on the map is turnpike roads. In this instance the road shown leads directly to Cuerden Hall and was not shown as a through route continuing onwards. It therefore appears that in 1786 the section of the application route forming part of the access to Cuerden Hall, although shown as a cross road, was most likely to be private access to Cuerden Hall itself. It is not known whether the rest of the application route existed at this time but if it did it did not appear to be considered to be a significant public route.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



Turnpike Roads \_\_\_\_\_  
 Cross Roads \_\_\_\_\_  
 Towns & other Places-  
 that send Members to Parliaments } \_\_\_\_\_  
 Boundaries of Counties \_\_\_\_\_

<p>Observations</p>		<p>The Map shows Cuerden Hall and part of the access road shown on Yates's Map above leading from the turnpike road (A49 - Wigan Road) towards the application route but does not show the application route between point A and point D.</p> <p>The Map shows Shady Lane and Berkley Drive and shows a route leading off Berkley Drive towards Cuerden Hall broadly consistent with the application route between points D-E-F.</p>
<p>Investigating Officer's Comments</p>		<p>Part of the application route existed providing access to Cuerden Hall but the full length of the application route does not appear to have existed and there is no suggestion, from looking at the map, that a public through route existed.</p>
<p><b>Hennet's Map of Lancashire</b></p>	<p>of 1830</p>	<p>Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire</p>



surveyed in 1828-1829 at a scale of 71/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.



### Explanation

<i>Market Towns in Roman Capitals</i>	<i>as</i>	
<i>Towns that send Members to Parliament</i>	<i>as</i>	
<i>Townships in small Roman Capitals</i>	<i>as</i>	
<i>Hamlets Villages and other Places in small Italics as</i>	<i>as</i>	
<i>Gentlemen's Seats and Parks</i>	<i>as</i>	
<i>Houses</i>	<i>as</i>	
<i>Woods and Plantations</i>	<i>as</i>	
<i>Heaths and Commons</i>	<i>as</i>	
<i>Hills and Rising Grounds</i>	<i>as</i>	
<i>Churches and Chapels</i>	<i>as</i>	
<i>Water Mills</i>	<i>as</i>	
<i>Wind Mills</i>	<i>as</i>	
<i>Turnpike Roads</i>	<i>as</i>	
<i>Cross Roads</i>	<i>as</i>	
<i>Rivers and Brooke</i>	<i>as</i>	
<i>Canals</i>	<i>as</i>	
<i>Railways</i>	<i>as</i>	
<i>Boundaries of Counties</i>	<i>as</i>	
<i>Boundaries of Hundreds</i>	<i>as</i>	
<i>Boundaries of Parishes</i>	<i>as</i>	

**LIVERPOOL**  
  
 Birkenshaw  
  
 Moss Blaine

Observations		Cuerden Hall is again shown and named. Three routes are shown providing access to the Hall. The more southerly of the two routes from the turnpike road (Wigan Road) is consistent with part of the application route from partway between point A and point B through to point D and the route from point D through to the junction with Berkley Drive is shown but the whole area crossed by the route is coloured green and described in the map legend as 'Gentlemens Seats and Parks'.
Investigating Officer's Comments		Part of the application route existed in 1840 providing access to Cuerden Hall. The way that it is depicted on the map suggests that it was more likely to have been shown on the map because it provided private access to Cuerden Hall rather than being suggestive of the existence of public rights.
<b>Canal and Railway Acts</b>		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The land crossed by the application route is not affected by an existing canal or railway and there are no known proposals to have constructed either in the proximity of the route in the past.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
<b>Tithe Map and Tithe Award or Apportionment</b>	1838	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 title award) and additional information from which the status of ways may be inferred.
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Observations		<p>Access to Cuerden Hall is shown from the A49 – Wigan Road and from Shady Lane onto Berkley Drive passing through point F and continuing to the Hall along a route to the east of the application route.</p> <p>Access to the application route at point A is not shown and only part of the application route from part way between point A and point B to point D is shown. No route is shown between point D and point F. The land crossed by the application route was listed as being owned and occupied by Robert Townley Parker with no separate listing for the access road along which part of the application route ran.</p> <p>Shady Lane and Wigan Road were numbered 281 and both described in the Tithe Award as public roads but Berkley Drive was not coloured on the map (unlike public roads) and was not numbered and was included in the land owned by Robert Townley Parker.</p>
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Investigating Officer's Comments		The application route did not exist as a through route from Shady Lane to Berkley Drive in 1838 and there is no indication that
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		it was capable of being used on foot. The access roads leading directly to Cuerden Hall from Wigan Road and Shady Lane were not considered to be public roads.
<b>Inclosure Act Award and Maps</b>		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		No Inclosure Award was found for the land crossed by the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
<b>6 Inch Ordnance Survey (OS) Map</b> <b>Sheet 69</b>	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-1846 and published in 1848. <sup>1</sup>



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



Observations

Parts of the application route existed across land forming part of the Cuerden Hall Estate but there was no access to the route at point A and between point D and point F the route claimed to have been walked was not apparent to the surveyor. Those parts of the application route which existed crossed through land which was planted and named as Lady Hoghton's Plantation and Mr Wilbraham's Wood with much of the land surrounding the hall shaded and labelled as being part of Cuerden Hall Demesne.

A long straight bounded route passing north to south through the Cuerden Hall Estate from Wigan Road to Shady Lane crosses under the application route at point C (tunnel) is labelled (further north than the extract shown above) as 'Cinder Path' (and passing through 'Cinder Path Wood').

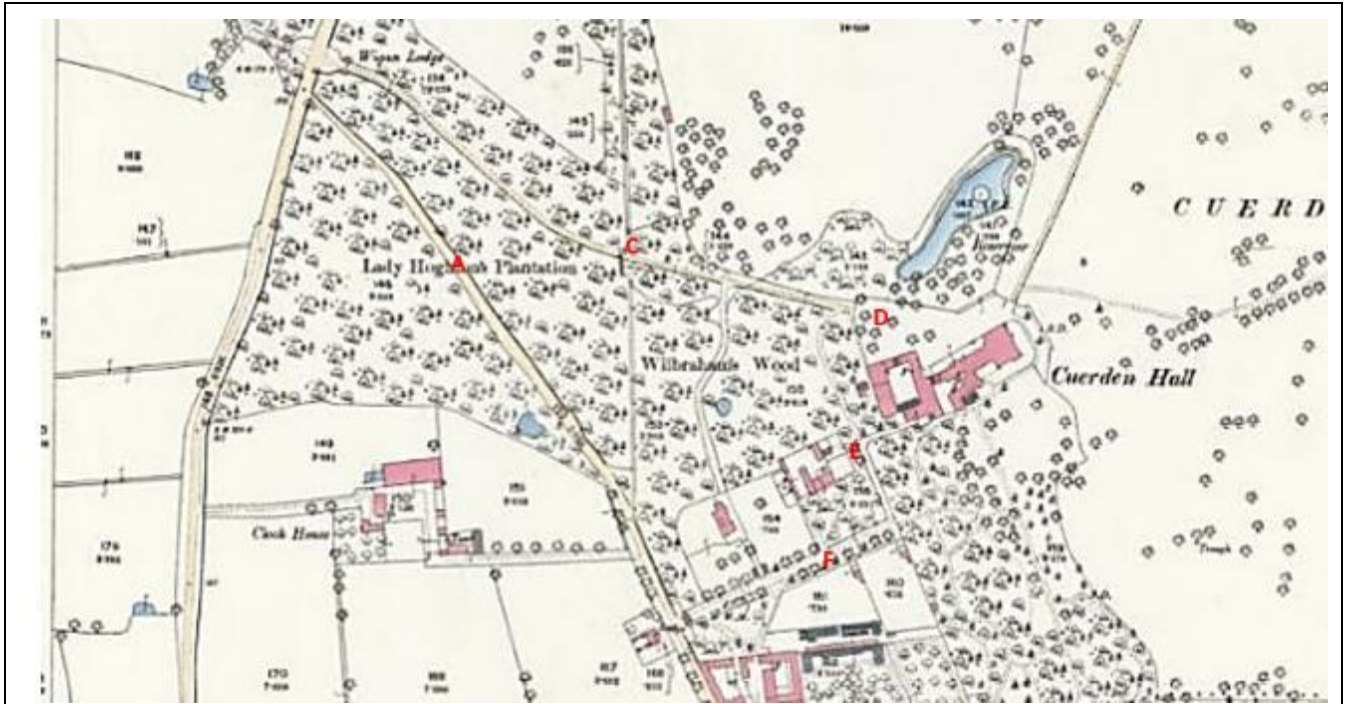
Investigating Officer's  
Comments

The application route did not exist in 1848 as a through route capable of being used. The land crossed by the route all appeared to be part of the Cuerden Hall Estate.

**25 Inch OS Map  
Map Sheet LXIX.11**

1894

The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1893 and published in 1894.



Observations

There was no access onto the application route at point A. Access to Cuerden Hall is shown from Wigan Road passing through gates at Wigan Lodge and continuing south east to Cuerden Hall along a driveway which part of the application route runs (from midway between points A-B continuing through to point D). The application route between point D and point E is not shown. Between point E and point F a path is shown passing through an area of woodland. Berkley Drive is shown with a lodge at the western end where it joins Shady Lane. Shady Lane and Wigan Road are shown coloured with a thickened line down the south and eastern sides but the access road to the hall – whilst coloured – is not shown with a thickened line down one side, and Berkley Drive is not shown coloured or with a thickened line.

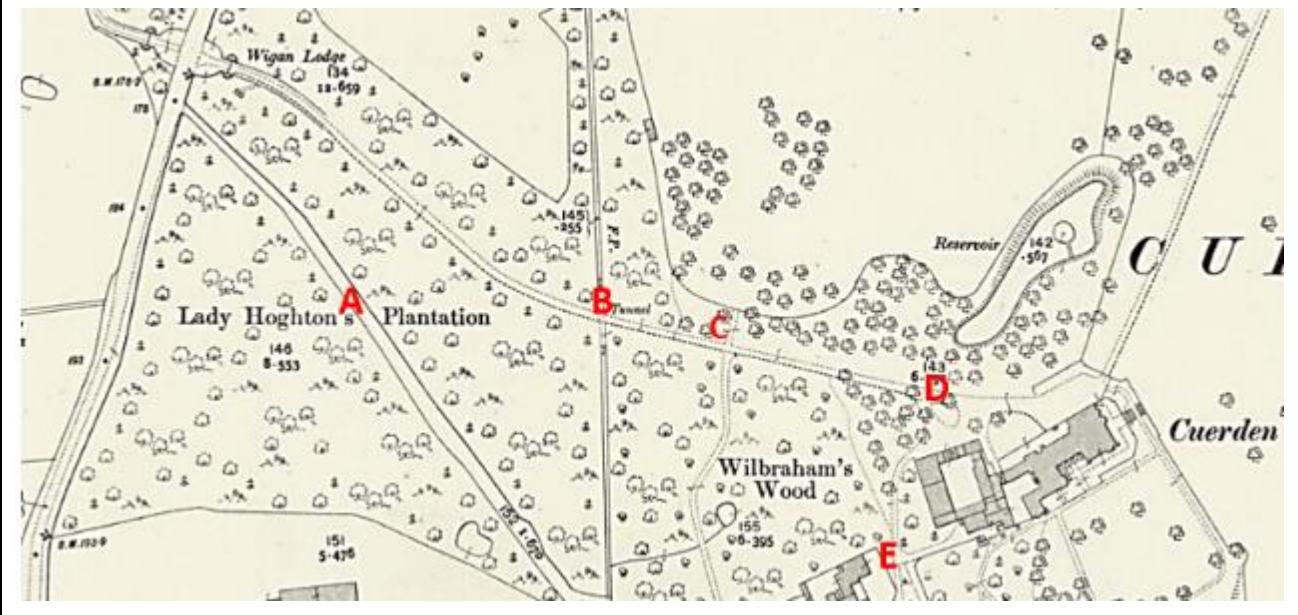
The route known as the Cinder Path is shown crossing under the application route at point C and is annotated as a footpath (F.P.). It is shown bounded on both sides for its full length and there is no suggestion from the map that access to the application route from the Cinder path would have been available.

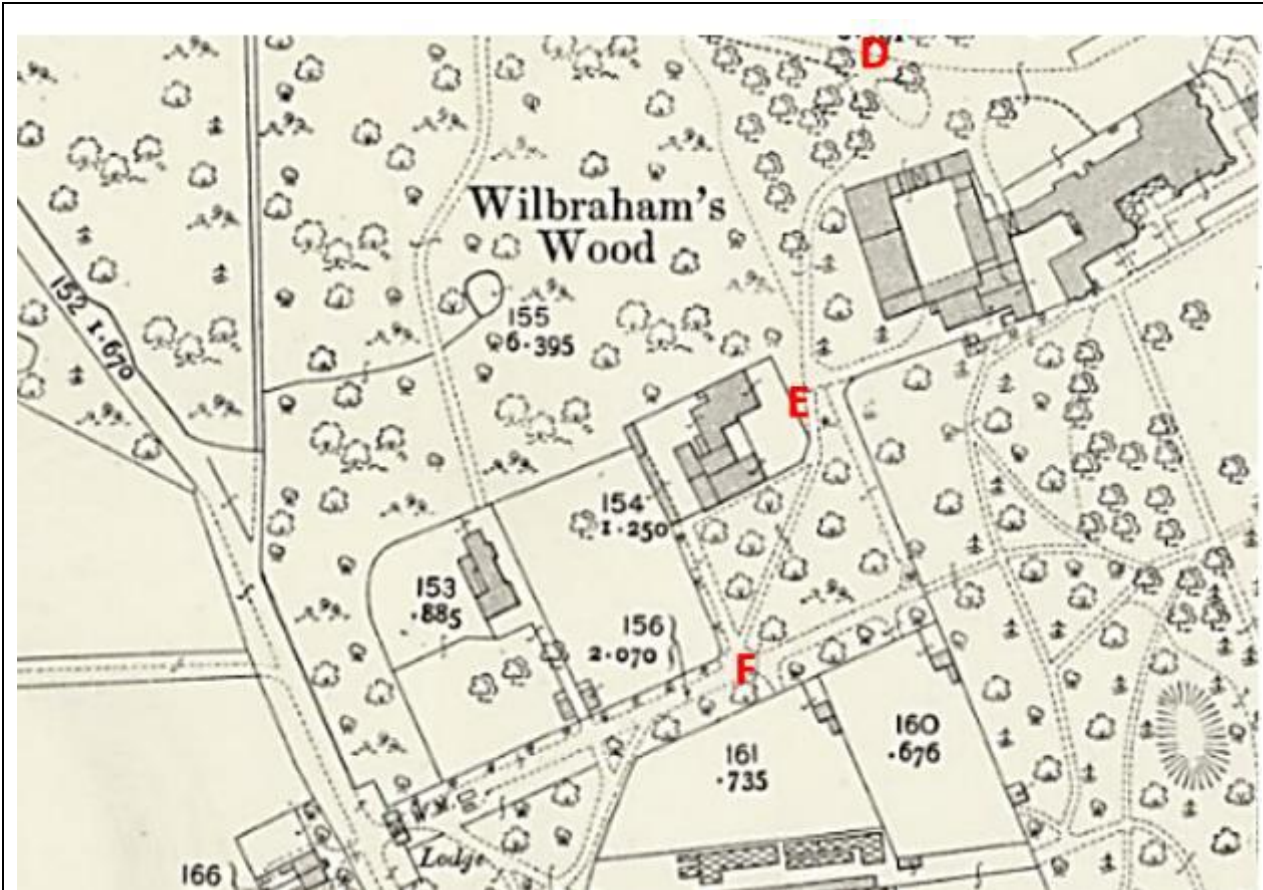
Investigating  
Comments

Officer's

The application route did not exist in 1893 as a through route capable of being used.

		<p>The access road from Wigan Lodge to Cuerden Hall and the road now known as Berkley Drive were not considered to be a public vehicular highway in good repair at that time. The presence of lodges at the junctions with Wigan Road (Wigan Lodge) and Shady Lane suggested that both routes were driveways leading through a private estate.</p>
<p><b>25 inch OS Map</b> <b>Map Sheet LXIX.11</b></p>	<p>1911</p>	<p>Further edition of the 25 inch map surveyed in 1893, revised in 1909 and published in 1911.</p>





Observations		No access is shown onto the application route at point A. From midway between point A and point B the application route is shown following the access road from Wigan Lodge to Cuerden Hall. From point D to point E and continuing through to point F a route consistent with the application route is shown. The Cinder Path – denoted as a footpath (F.P.) passed under the application route at point C but appeared to be completely enclosed.
Investigating Officer's Comments		The application route did not exist as a through route capable of being used in 1911. Whilst much of the route physically existed it appeared to be within the grounds of a private hall.
<b>Finance Act 1910 Map</b> <b>TNA's Ref: 133/5/92</b>	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial



		<p>incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
Observations		The Finance Act Map Sheet covering the area crossed by the application route is incomplete and none of the area crossed by the route has been annotated.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
<b>25 Inch OS Map Sheet LXIX.11</b>	1931	Further edition of 25 inch map (surveyed 1893, revised in 1928 and published in 1931.
Observations		There were no changes to how the application route was shown since the revision and publication of the 1911 edition of the 25 inch map detailed above.
Investigating Officer's Comments		The application route did not exist as a through route capable of being used in 1928. Whilst much of the route physically

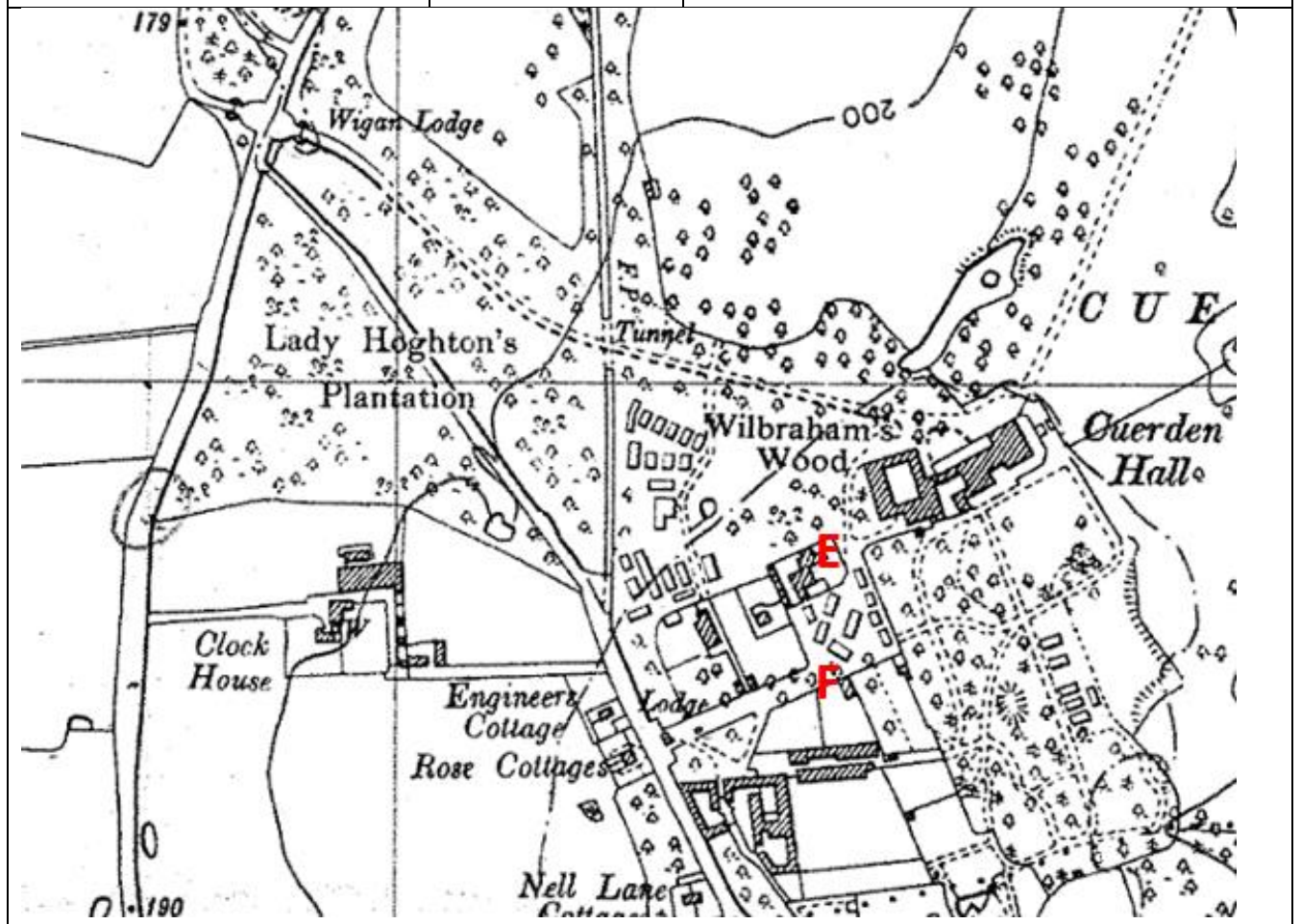
		<p>existed it appeared to be within the grounds of a private hall.</p>
<p><b>Authentic Map Directory of South Lancashire by Geographia</b></p>	<p>Circa 1934</p>	<p>An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street 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' 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>





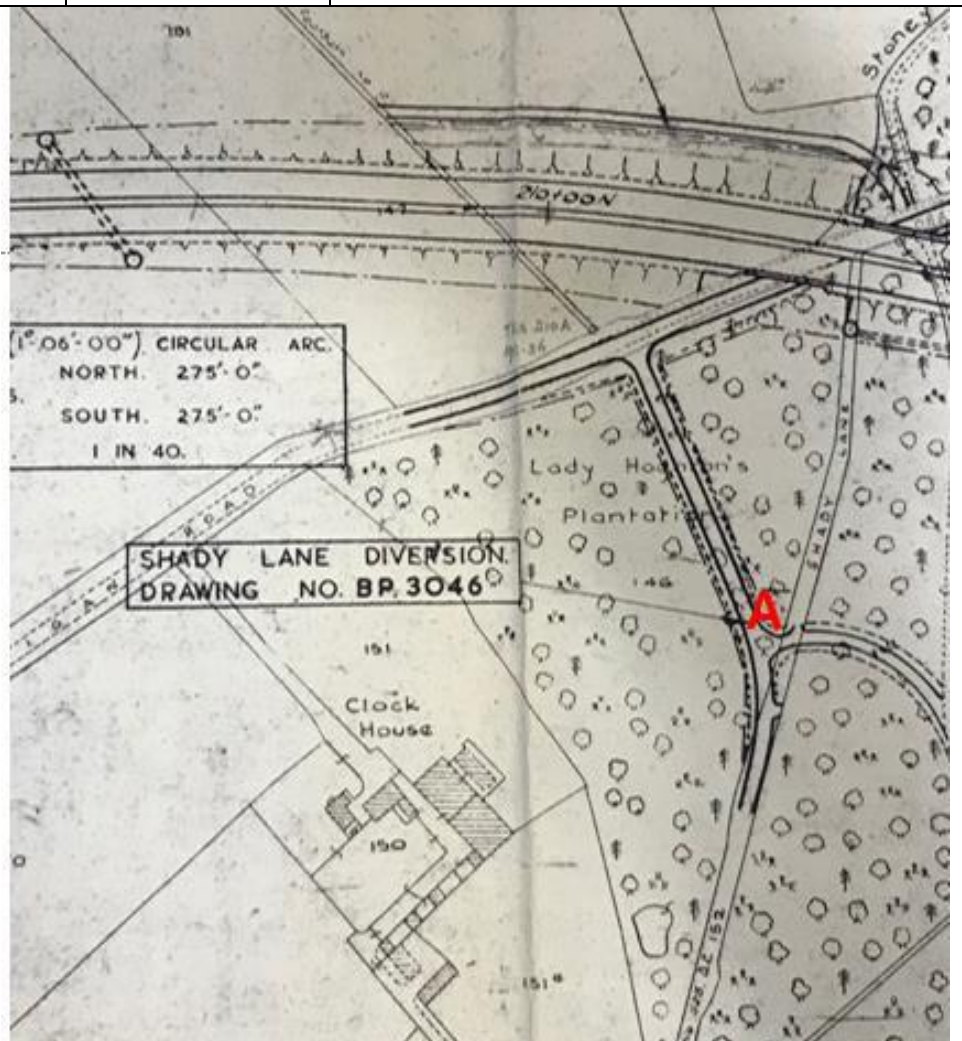
<p>Observations</p>		<p>The application route is shown with the exception of the access point from Shady Lane at point A which connects through to the original access road leading from Wigan Road. The whole of the area crossed by the application route is shaded green and included in a larger area titled as Cuerden Hall Park. The Cinder Path is shown crossing the route at point C.</p>
<p>Investigating Officer's Comments</p>		<p>The application route did not exist as a through route from point A in the 1930s. Much of the route did exist as a substantial route providing access to and from Cuerden Hall. Its inclusion on this map within an area described as Cuerden Hall Park does not necessarily mean that access was available to the public as there are examples of both public and private 'parks' being coloured green within the atlas.</p>

<b>Aerial Photograph<sup>2</sup></b>	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
Observations		Much of the land crossed by the application route is obscured by tree cover and it is not possible to see the application route in any detail.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
<b>6 Inch OS Map Map Sheet 52SE</b>	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised between 1930 and 1945 with further major changes revised in 1951.



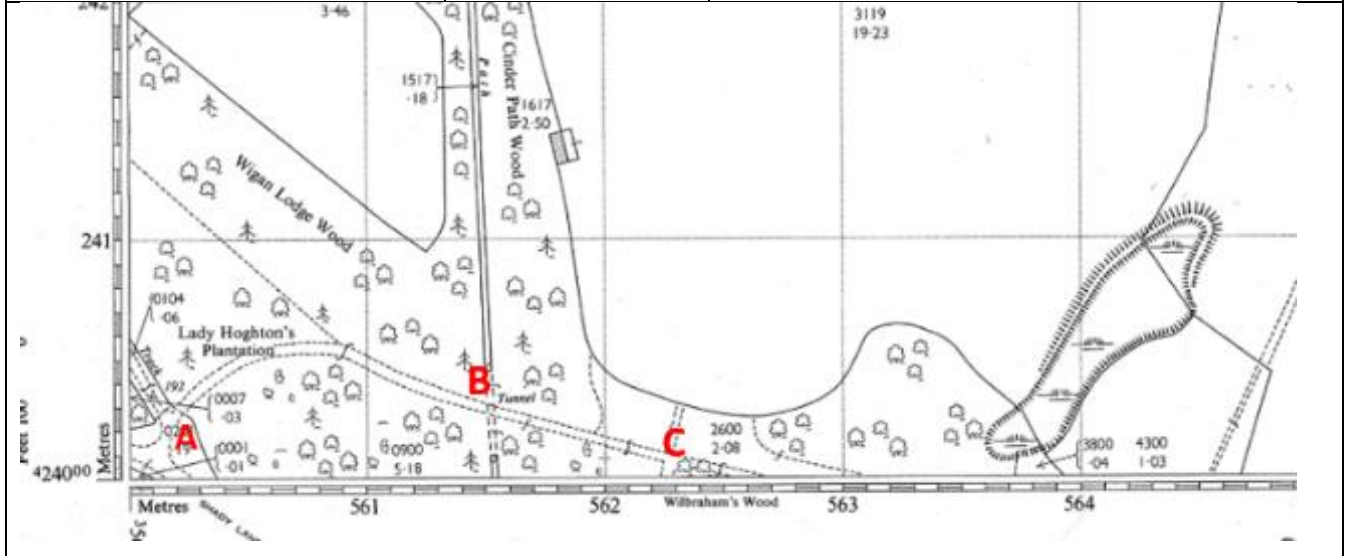
<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring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

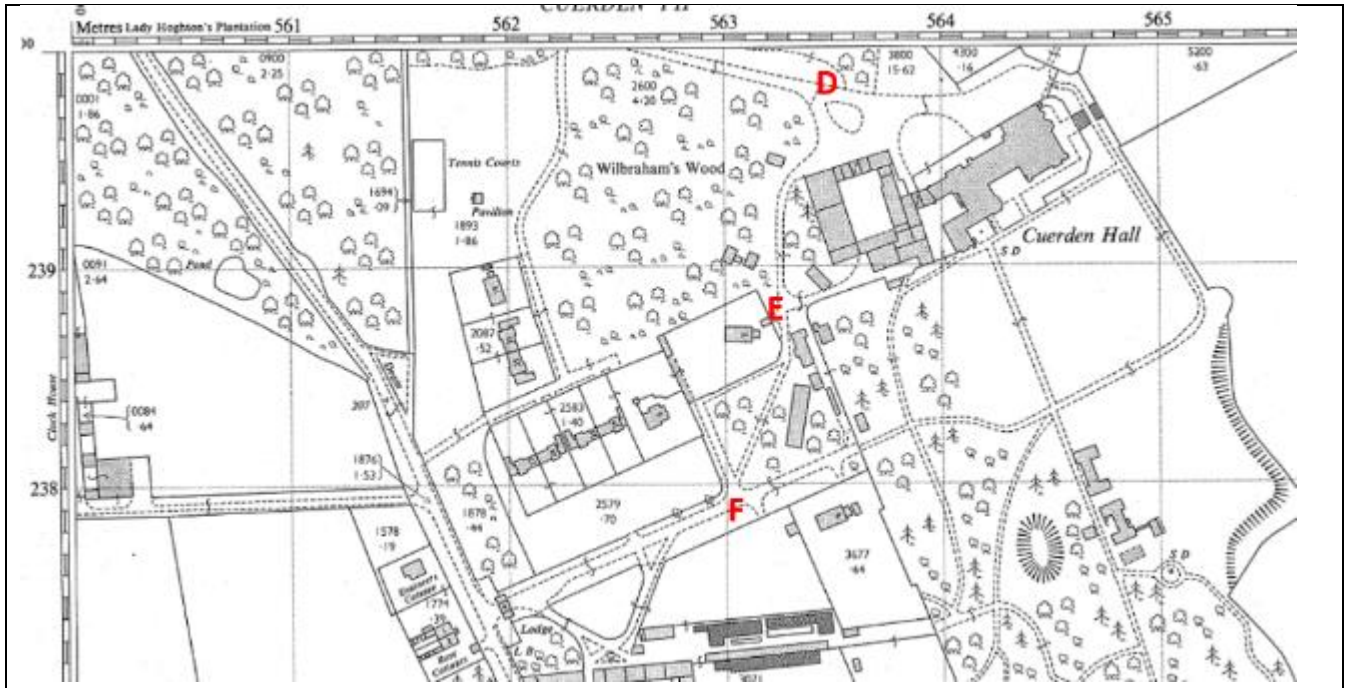
Observations		<p>There is still no access to the application route from point A.</p> <p>Between point E and point F the woodland has been cleared and a number of small buildings erected through which it would have been necessary to pass between. The Cinder Path is shown to pass under the application route at point C.</p>
Investigating Officer's Comments		<p>The application route did not exist as a through route at the time the map was revised (unknown date between 1930 and 1945). Whilst parts of the route existed it would not have been possible to walk the full length of the route applied for.</p>
Construction of M6 Motorway	1960s	<p>Plan of proposed alignment of the M6 motorway contained within LCC Public Rights of Way records.</p>



Observations		<p>The construction of the M6 motorway in the 1960s required the diversion of the junction</p>
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		<p>of Shady Lane with the A49 (Wigan Road) and alterations to the access road leading to Cuerden Hall from Wigan Lodge.</p> <p>A set of plans detailing the alignment of the proposed motorway has been retained by the County Council's Public Rights of Way Team and shows the amendment to the road layout that was subsequently implemented. Reference is made on the plan to the fact that Shady Lane was to be diverted. The new access road leading to Cuerden Hall is shown but there is no labelling to suggest that a legal diversion would be required relating to it.</p>
<p>Investigating Officer's Comments</p>		<p>The application route from point A was constructed in the early 1960s to accommodate the construction of the M6 motorway and may have been available to use on foot following its construction.</p> <p>There is no suggestion from the plan that the access road from Wigan Lodge through to Cuerden Hall required any public rights that were required to be legally diverted as part of the process.</p> <p>No further records relating to the construction of the M6 at this location were found.</p>
<p>1:2500 OS Map</p>	<p>1965</p>	<p>Further edition of 25-inch map reconstituted from former county series and revised in 1963 and published in 1965 as national grid series.</p>





<p>Observations</p>		<p>The application route from point A is shown and the full length of the application route from point A to point F appeared to be accessible. A lodge is shown at the entrance onto Berkeley Lane from Shady Lane with houses built to the north of Berkeley Lane accessed from a different point off Shady Lane from which it was possible to access the application route at point C. The Cinder Path is still shown crossing under the application route at point B.</p>
<p>Investigating Officer's Comments</p>		<p>The full length of the application route existed by 1963 and appeared to be capable of being used.</p>
<p><b>Aerial photograph</b></p>	<p>1960s</p>	<p>The black and white aerial photograph taken in the 1960s and available to view on GIS.</p>



Observations		The application route can be seen from point A leading to Cuerden Hall through point D. Tree cover means that most of the route from point D through to point F is not clearly visible.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights, but the aerial



		<p>photograph shows that the work to divert Shady Lane and provide a new access onto the roadway leading to Cuerden Hall had been completed by the 1960s.</p>
<p><b>Cuerden Valley Park Leaflet</b> CRO Ref: NTC12/3/16</p>	<p>Undated</p>	<p>Cuerden Valley Park leaflet published by the Central Lancashire Development Corporation</p>





The park was opened by Central Lancashire Development Corporation in 1980. Most of the land is still active farmland, and it is vital to the well-being of the park that the farmers are able to continue their normal activities.

**Footpaths**

Outside the free access areas, the footpaths cross farmland used for raising sheep and cattle. Sheep and lambs are easily frightened and every year in Britain several thousand are killed by dogs, so please keep your dog on a lead where you see the green signs on stiles asking you to do so.

The main junctions on the footpath system are numbered on the map and on the posts in the park to help you to check your position. The routes of paths which have not been surfaced are indicated by yellow markers on posts. Horse riders are asked to keep to the signposted bridleway.

**Fishing**

The lake has been stocked with a variety of fish and now contains pike, bream, carp, tench, and roach. Day permits for fishing must be obtained in advance; reduced rates are available for children, registered handicapped and unemployed people. For details see the notices at the park entrances or telephone the number at the end of this leaflet.

**Handicapped People**

The path from Town Brow car park to the lake is easily accessible to wheelchairs. For vehicular access to the lake for fishing, please telephone the number at the end of this leaflet.

**Conservation and Wildlife**

The variety of habitats within the area of the park supports many forms of wildlife. The woods provide a home for squirrels as well as food and nesting sites for many birds. Some of the birds that might be seen include sparrowhawks, woodpeckers and treecreepers, long tailed tits, goldcrests and several kinds of warbler together with other common woodland birds. About 85,000 trees and shrubs, mostly native species have been planted in the park, which will, in time, extend the areas of woodland.

The lake was created in the nineteenth century to provide water for Cuerden Hall. Trees which were planted round it have now matured and a variety of aquatic plants grow around the lake edges. Many birds visit the lake and the surrounding trees: coot, mallard and heron are frequent visitors. Around the lake and in other wet and marshy areas dragonflies, frogs and newts are common.

Part of the lake and the surrounding area have been fenced off to provide sanctuary for wildlife, so please leave them in peace.

If you are interested in helping to survey the wildlife, please contact the Park Ranger.



If you have any comments on the park, require any information, or want to arrange an organised group visit, please contact the Park Ranger, Preston 37273.

Central Lancashire Development Corporation,  
Caerden Hall, Barsher Bridge, Preston, PR5 6AX

**Cuerden valley park**

Welcome to Cuerden Valley Park.  
Whilst you are here, please care for the park:

- Guard against all risk of fire.
- Do not leave litter.
- Protect wildlife, plants and trees.
- Respect private property.
- No motorcycling.
- and, except in free access areas shown on the map,
- Keep to the footpaths and bridleways and
- Keep your dog on a lead.

Enjoy your visit and come again.

WTC 12/2/16

Observations

A leaflet published by the Central Lancashire Development Corporation was found in the County Records Office. Whilst undated it explains that Cuerden Valley Park was opened in 1980 and includes a map of the park showing the park boundary and private property. The application route is not shown on the map and Cuerden Hall is shown as being private property. A number of routes described as footpaths and bridleways are shown within the park together with free access areas but no part of the application route is shown.

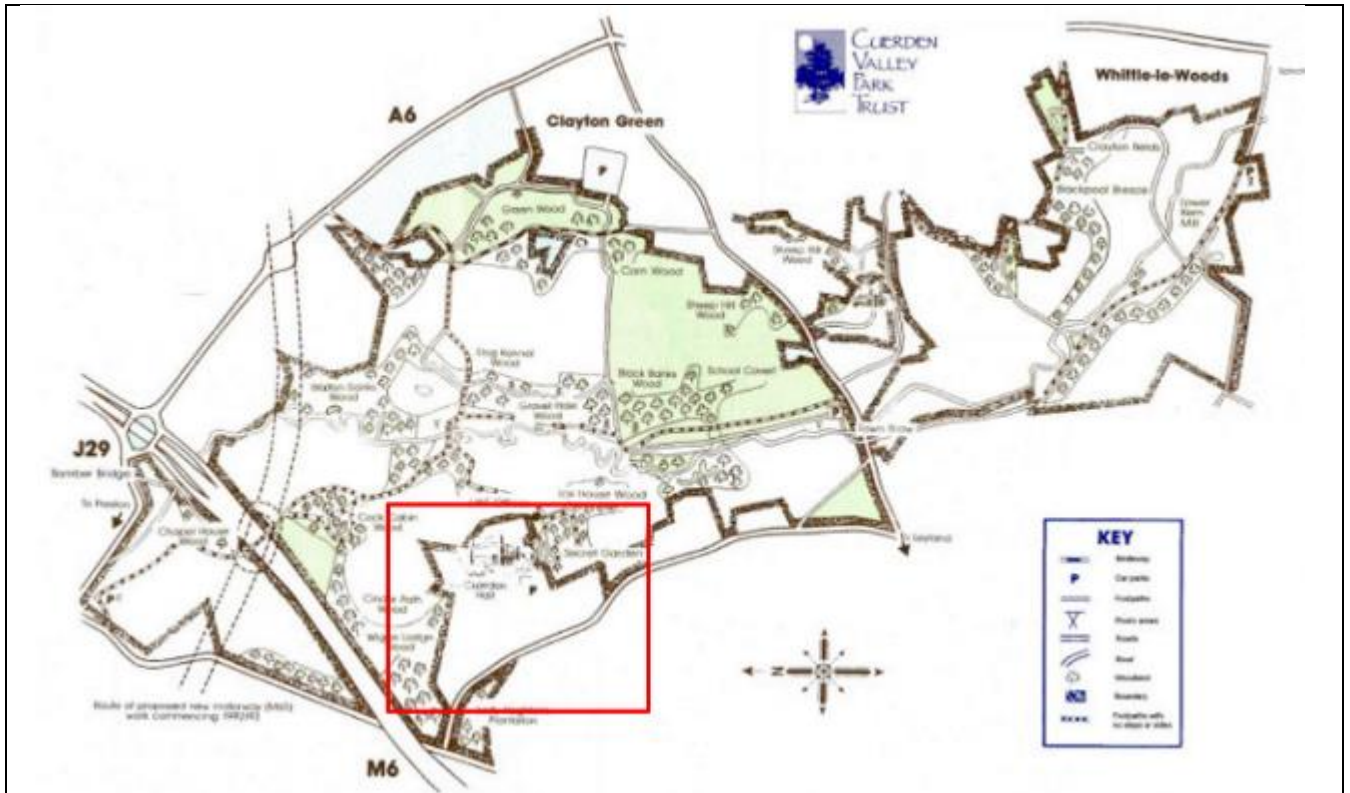
Investigating  
Comments

Officer's

The creation of Cuerden Valley Park did not include the land crossed by the application route in the late 1970s-early 1980s and access to or past Cuerden Hall and along the application route was not promoted as being available as part of Cuerden Valley Park at that time.

Cuerden Valley Part Trust  
Site Plans

Two site plans showing the boundary of Cuerden Valley Park were located on the internet.



1992 Site plan



**The Wildlife Trust for Lancashire, Manchester and North Merseyside**

Head Office: The Barn, Berkeley Drive, Bamber Bridge, Preston PR5 6BY  
 tel: (01772) 324129 fax: (01772) 628849 email: info@lancswt.org.uk website: www.lancswt.org.uk

**cuerden valley park map**

**Location**  
 South of Preston and north of Chorley. Easy access from junctions 28 and 29 on the M6 and junctions 8 and 9 on M61. Car parking as shown on the map. Regular bus service from Chorley and Preston along the A6. Nearest railway stations at Bamber Bridge and Leyland.

**Access**  
 Open at all times with car parks and network of paths. Access for the disabled: because of the topography, some paths are stepped but all the kissing gates are large enough for wheelchairs. The track from Town Brow to the picnic area for the lake is along level ground. An electric scooter is available for use within the Park Monday to Friday. Information can be obtained from the Barn, Trust headquarters and visitor centre. Vehicle access to the lake for disabled anglers (and others) can be arranged.



Undated site plan



Enlarged extract of undated site plan

Observations

The site plans both show the land crossed by the application route as being excluded from Cuerden Valley Park although the second (undated) plan appears to show that the land crossed by the application route between point E and point F was part of the park.

The undated plan was published by Lancashire Wildlife Trust and appears to have been published during the time that the Wildlife Trust managed the site (sometime before 2003).

Investigating Comments	Officer's	Both plans indicate that the land crossed by the application route, with the exception of the route between point E and point D, was not part of Cuerden Valley Park and that the provision of access to the country park did not include use of the application route between points A-E.
<b>Google Street View Images</b>	2009-2018	Google Street View Images of Point A.



2009



2015



2018



Sign in place 2020 – Investigating Officer's Photograph

<p>Observations</p>		<p>A series of photographs taken in 2009, 2015, 2018 and 2020 are reproduced above to show access from Shady Lane onto the application route at point A. The three photographs taken prior to the application being submitted all show that access onto the route was available but that signage was clearly present on the stone gatepost at point A. The wording on</p>
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		<p>the white sign is not visible but the blue sign on the photograph taken in 2018 could be read and states 'Private Road Access to Cuerden Hall and coffee shop only'. The photograph taken in 2020 looked to be a recently erected sign stating that the grounds owned by Sue Ryder was private and that access was permissive only.</p>
<p>Investigating Officer's Comments</p>		<p>The photographs show that access to the application route was available between 2009 and 2018 supporting the user evidence submitted as part of the application. Signage is evident on the gateposts close to point A and although the wording cannot be seen this also supports the evidence submitted by Sue Ryder regarding the nature of access.</p>
<p>Cuerden Valley Park walking trail – Secrets in the Landscape</p>	<p>Circa 2009</p>	<p>Copy of a leaflet submitted by the applicant and also referred to in a number of the user evidence forms submitted.</p>



The trail starts at the large flight of steps in front of the Hall looking north east over the park...

1 Standing on the impressive flight of steps it is still possible to imagine the full extent of Robert Townley Parker's achievements back in the 19th century. The old maps show the original parkland stretching as far as St Saviour's Church on the A6. The motorways have since cut the park in two - although large parkland trees still survive as a reminder of former times.

2 From the front terrace turn left and follow the Hall driveway (old Wigan Drive) down to the Cinder Path. Look for a small path on the right of the driveway about two thirds of the way down.

3 There is a local tradition that Robert Townley Parker lined this ancient right of way with stone walls to prevent the locals peering into his grounds or being seen by his guests. Behind you is the tunnel that took the path under the old Wigan Drive to Shady Lane. It became known as the 'cinder path' probably because cinders from local boilers were used to make the surface.



5 You can still trace the main drive from Stag Lodge as it curves its way up to the Hall through the grass sward. Young oak trees have been planted, identified by the traditional bar-rail tree guards, to continue the tradition of parkland trees.



St Saviour's

Continue along the track past the younger pine and larch plantation, down to the bridge over the River Lostock. Continue to the picnic area and up the steps to the

the picnic area and up the steps to the

6 Built sometime between 1850 and 1860, the reservoir provided water for the park.












<p>Observations</p>		<p>A leaflet produced by Cuerden Valley Trust in approximately 2009 was submitted by the applicant and referred to by a number of people who completed user evidence forms.</p> <p>The leaflet describes a walk around Cuerden Valley Park starting at the Hall itself and going west along the driveway passing through point D to continue to point B where it then leaves the application route to join the Cinder Path.</p> <p>There is no key to the map and no indication in the leaflet regarding whether access along the application route – or any of the other routes included in the walk – was by right or with permission of the relevant landowners.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The leaflet gives no indication regarding the status of the routes included and whether access was considered to be as of</p>

		<p>right or permissive but none of the paths used are recorded as public rights of way. The fact that part of the application route was included in this leaflet – and other similar walking leaflets and guides referred to by the applicant - supports the information provided by the users regarding the fact that access to the hall and along the application route was available and promoted prior to the route being blocked off in 2020. It does not however indicate that the routes were necessarily public rights of way nor that use of them would necessarily imply the dedication of public rights particularly in the context of the Trust land itself which was set up to promote and encourage public use of the Cuerden Valley Park.</p> <p>With regards to access to Cuerden Hall and the application route then the information provided by the landowners at the time that the leaflets were produced (Sue Ryder) must also be considered.</p>
<p><b>Cuerden Valley Park visitor information</b></p>	<p>2021</p>	<p>Information available on the Cuerden Valley Park website with specific reference to a downloadable map of the park.  <a href="https://cuerdenvalleypark.org/about-the-park/">https://cuerdenvalleypark.org/about-the-park/</a></p>





**CUERDEN VALLEY PARK KEY:**

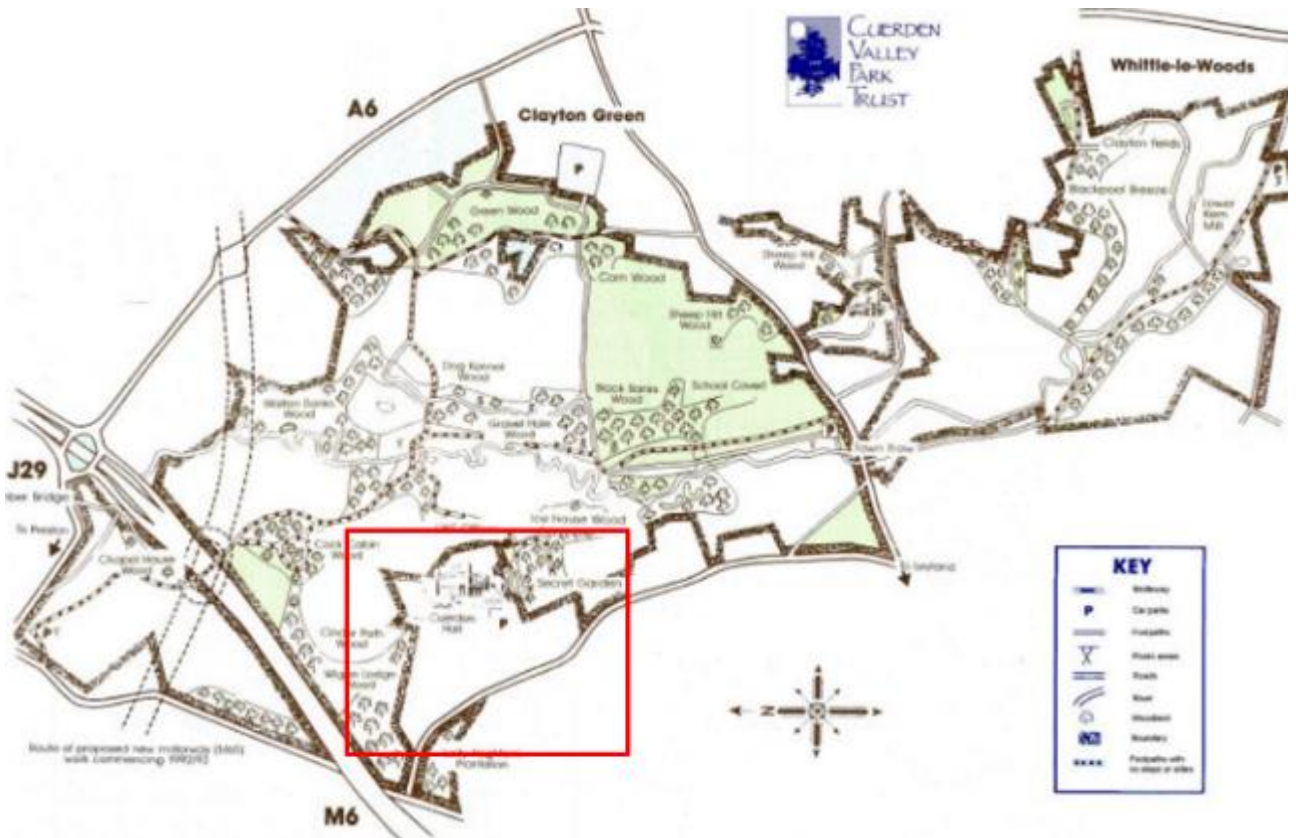
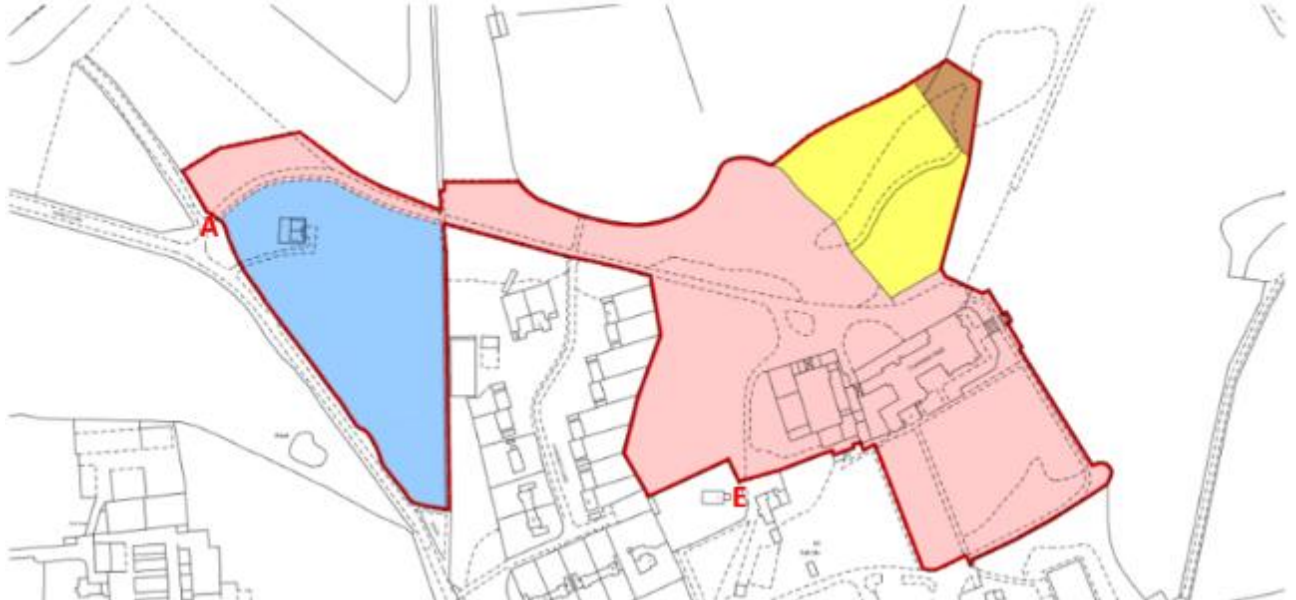
-  Footpath
-  Road
-  Water
-  Grassland
-  Woodland
-  Bridle path
-  National Cycle Way Route 55

Cuerden Valley Park Trust - Registered Charity No. 1002888

Observations

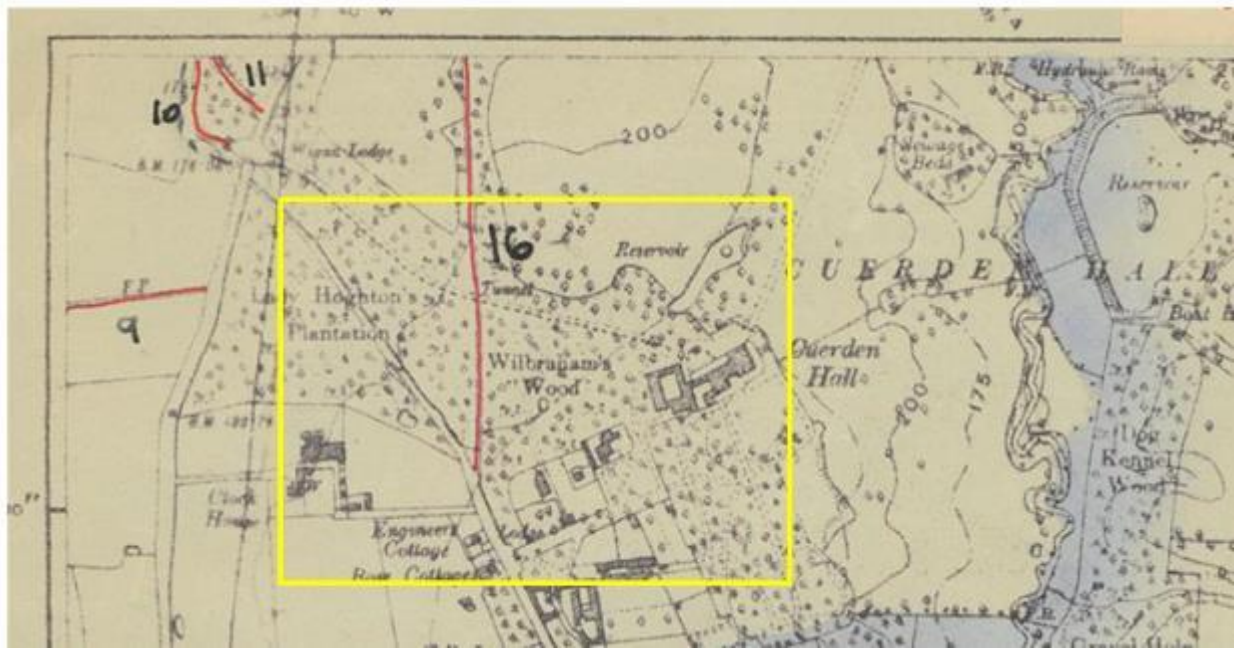
Information taken from the Cuerden Valley Trust website in November 2021 makes it clear that Cuerden Hall is private and not included within Cuerden Valley Park. However, the visitor map available to download shows part of the application route (from point A extending through to just past point C) as a 'footpath' linking to the 'Cinder Path' and also to Cuerden Close which are also shown as footpaths.

Investigating Comments	Officer's	The map does not specify that there are public rights of way along the footpaths marked but it does suggest that access is available to visitors of the park along the routes shown.
Landownership – General Comments		Registered title LA931917 provided by Sue Ryder prior to completion of the sale to the current landowner.



Observations		Ownership of the land crossed by the application route will be covered in more
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		<p>detail by the comments made under Head of Service – Legal and Democratic Services. However, the Land Registry Plan above and the plan showing the boundary of Cuerden Valley park are included as being illustrative of the fact that following the formation of the Cuerden Valley Park in the 1970s there appears to have been a clear split between the use and ownership of Cuerden Hall itself and the grounds that surrounded it.</p>
Investigating Officer's Comments		<p>Limited information has been found about the formation of Cuerden Valley Park Trust but the various maps and plans found, together with the land ownership information are all consistent in showing that the land crossed by the application route – with the exception of the application route E-F – was owned and managed separately to Cuerden Valley Park since the formation of the park in the late 1970s.</p>
<b>Definitive Map Records</b>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<b>Parish Survey Map</b>	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>



DISTRICT *Chorley* PARISH *Cuerden* No. *16*  
 MAP SHEET No. *4* *880 yds* LENGTH *0.53* miles  
 BRIEF DESCRIPTION (Field F.P. or otherwise) *F.P. no 16* (to two decimal places)  
*F.P.*

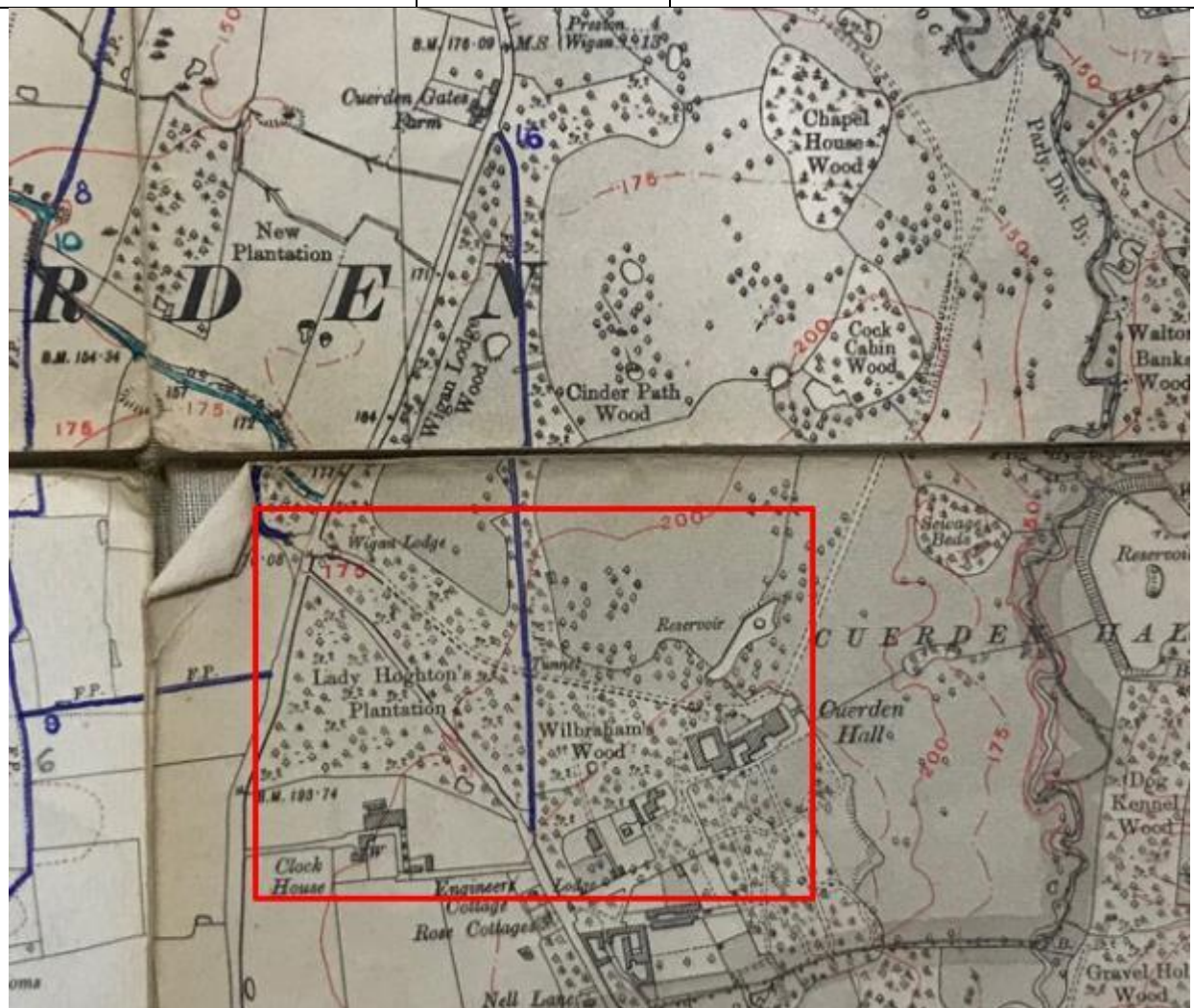
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).  
*From Wigan Road Through a Tunnel under The  
 The road from Wigan Lodge to Cuerden Hall and then  
 on to Cuerden Lane  
 The road under the Tunnel is not fit for use  
 It is wet and dirty also stones and rubbish.*

SURVEYED BY:— Name *R.D. Killington*  
 Address *Cuerden Green.*  
 Date

<p>Observations</p>		<p>The application route was not recorded as a public right of way on the parish survey map. The Cinder Path, which passes under the application route at point B, was recorded as a footpath and the parish survey card describes it as passing through a tunnel under 'the road' from Wigan Lodge to Cuerden Hall. There is no reference to this road being public or private.</p>
<p>Draft Map</p>		<p>The parish survey map and cards for Cuerden were handed to Lancashire County Council who then considered the</p>

information and prepared the draft map and statement.

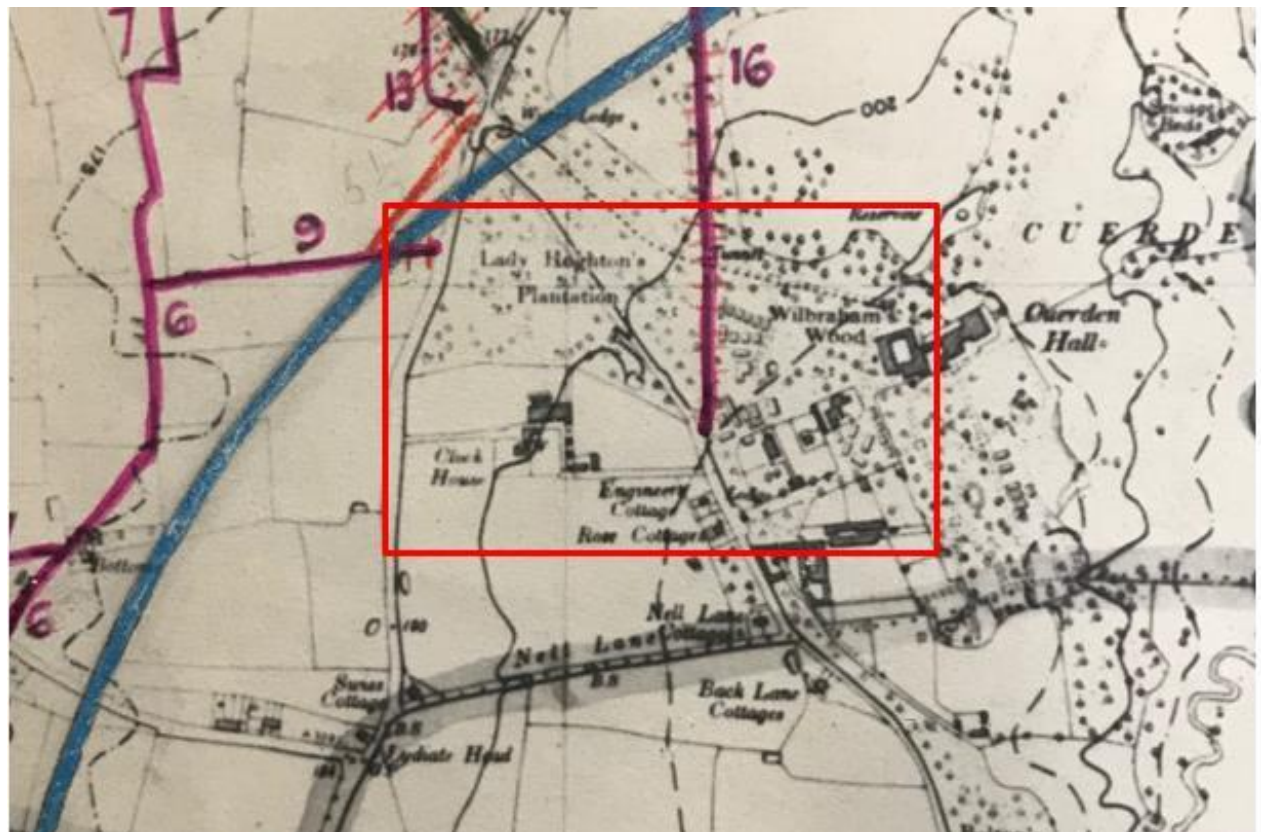
The draft maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.



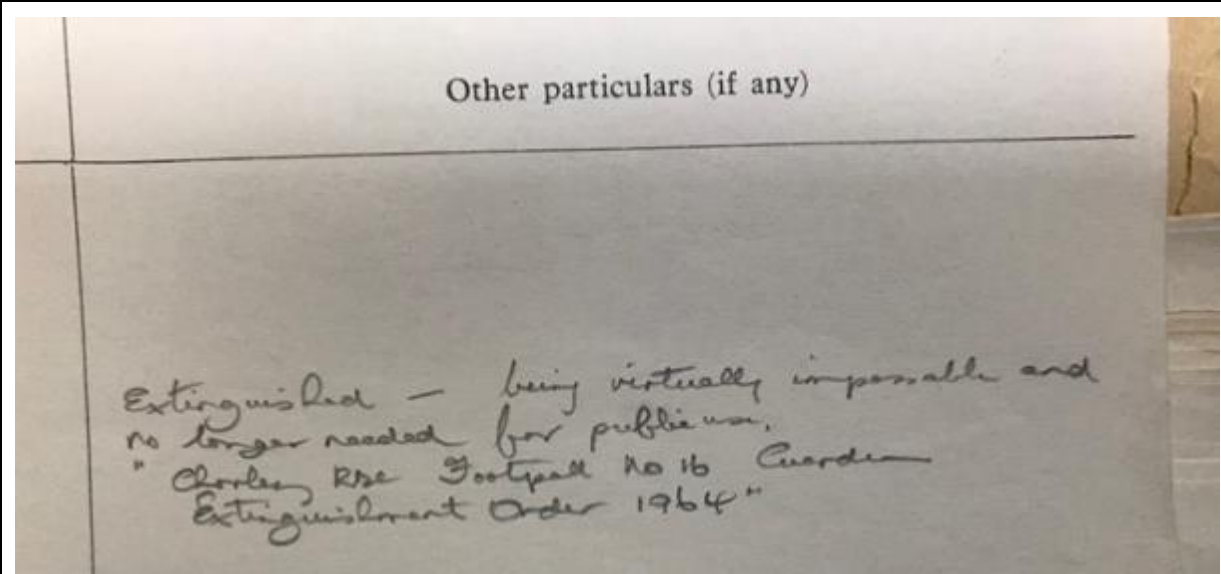
Observations

The application route is not shown on the Draft Map of Public Rights of Way. The Cinder Path, which passed under the application route at point B, was shown as Footpath 16.

<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended draft map became the provisional map which was published in 1960 and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The provisional map could not be found in the county councils records.
<b>The First Definitive Map and Statement</b>		The provisional map, as amended, was published as the Definitive Map in 1962.







<p>Observations</p>		<p>The application route is not shown on the First Definitive Map. Footpath 16 – which passed under the application route at point B – was shown on the First Definitive Map but was subsequently legally extinguished as indicated by the fact that it is shown crossed out on the Map and a handwritten note had been added to the Definitive Statement.</p>
<p><b>Revised Definitive Map of Public Rights of Way (First Review)</b></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 25<sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1<sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p>



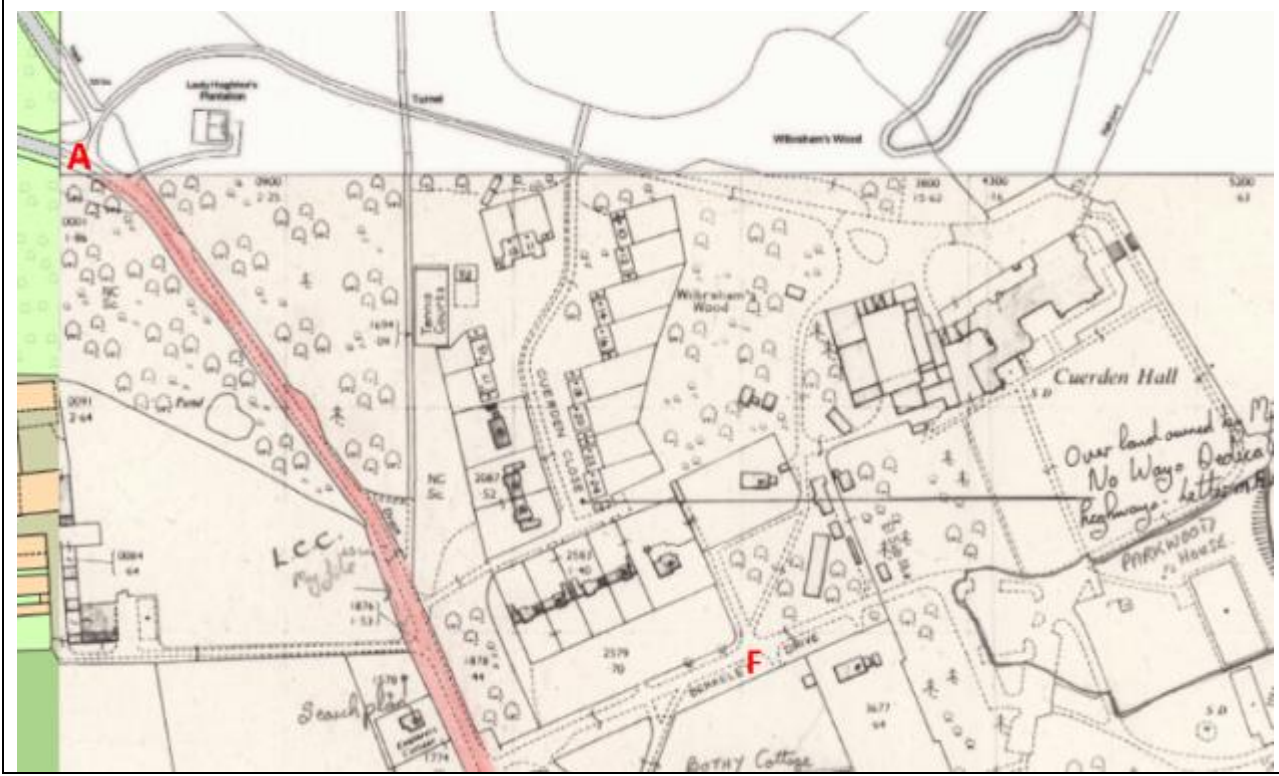
PARISH DISTRICT GERMISTON  
 Administrative County of the County Palatine of Lancaster  
 National Parks and Access to the Countryside Act, 1949  
 Review of Definitive Rights of Way Map  
 Parish of Garsdale  
 Date of Review 1st September 1966

1.	2.	3.	4.	5.
No. of path	Kind of path	Position	Length in miles to 2 places decimal	Other particulars (if any)
1	Footpath	A.500) near Woodcock Hall to Parish Boundary.	0.12	
2	"	A.500) opposite Stony Lane to Parish Boundary at Shewley's Cottages.	0.10	
3	"	A.500) past Woodcock and Blackburne Farm to Stony Lane.	0.07	
4	"	A.500) at Ighite Lane near Brinkburn to Parish Boundary.	0.02	
5	"	A.500) at Ighite Lane near Brinkburn to Parish Boundary.	0.10	Not recorded in original Definitive Map. Deleted by Order 1962.
6	"	A.500) at Ighite Lane through Bottoms to join Footpaths Nos. 7 and 7.	0.25	
7	"	From Footpaths Nos. 7 and 6 to Stony Lane.	0.41	
8	"	Stony Lane to Road near Brinkburn to East.	0.33	
9	"	Footpaths Nos. 6 and 7 along west side of Motorway to A.67 opposite Sign Lodge.	0.25	
10	Bridleway	From Footpath No. 8 to A.67.	0.27	Revised Definitive Map 1957. Deleted by Order 1962.
11	"	Stony Lane House along Stony Lane to join Footpath No. 8.	0.22	
12	Footpath	East Lane past East Farm to road near Garsdale Garden.	0.42	
13	"	From Bridleway No. 10-45 A.67.	0.23	Revised Definitive Map 1957. Deleted by Order 1962.
14	"	End of Moorfoot Row to Parish Boundary near Bewlack Terrace.	0.33	
15	"	End of Moorfoot Row to Parish Boundary	0.31	
16	"	Deleted.		
17	"	From A.67 at Ighite Lane to Footpath No. 6 at Bottoms.	0.20	

Observations

The application route is not recorded as a public right of way on the Revised Definitive Map First Review. The Cinder Path, previously recorded as Footpath 16, which passed under the application route at point B, had been extinguished and is no longer shown on the Map.

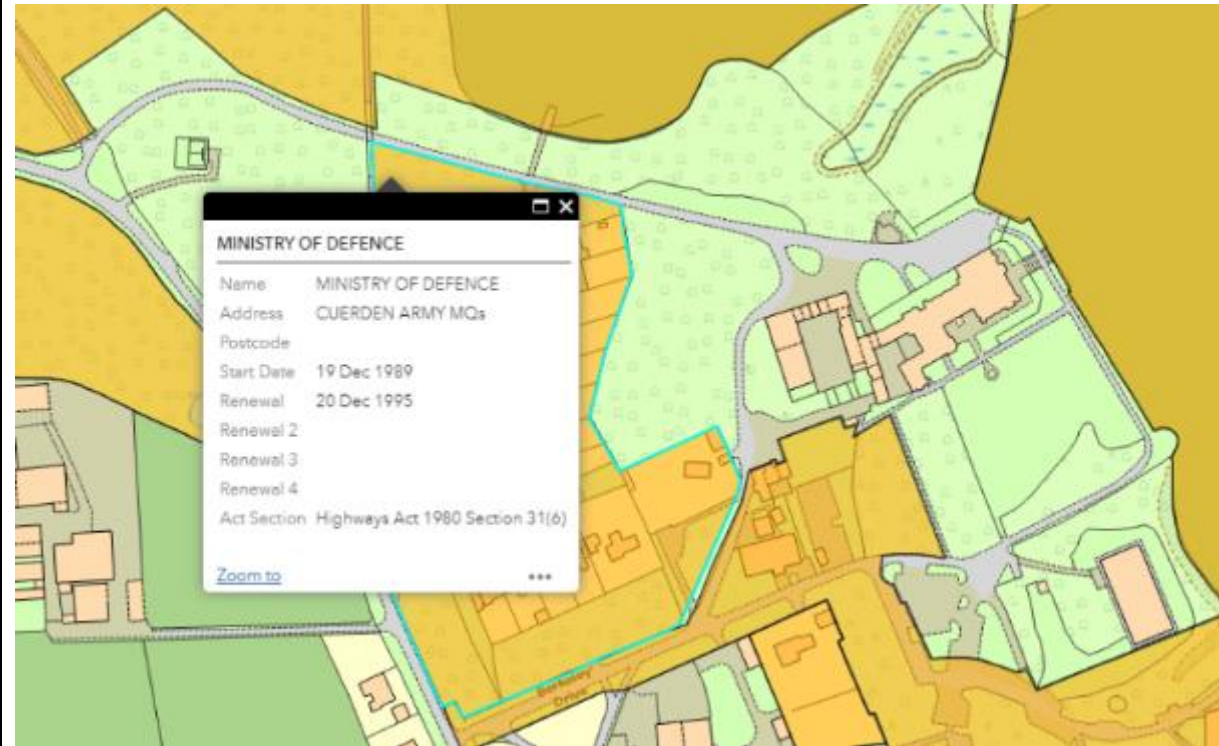
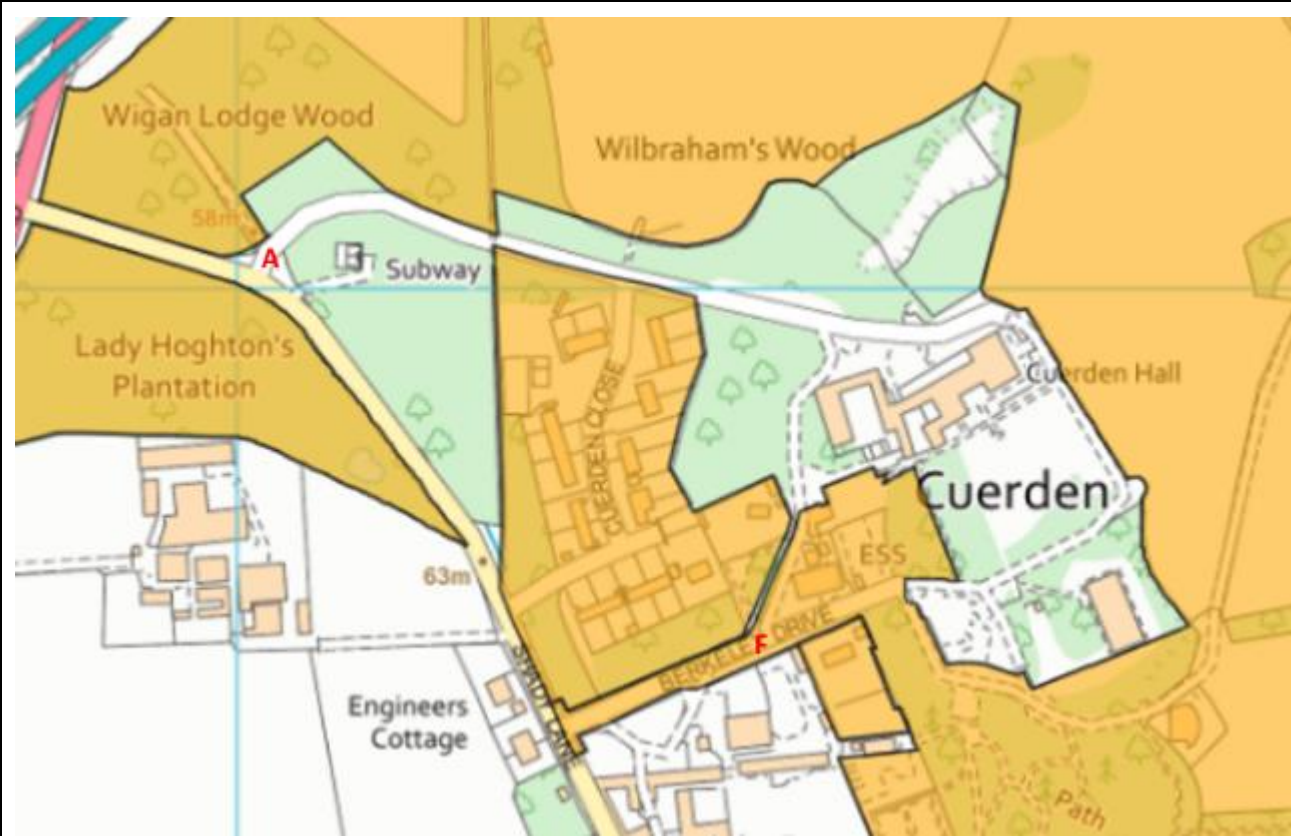
<p>Investigating Officer's Comments</p>		<p>From 1953 through to 1975 there is no indication that the application route was considered to be a public right of way. There were no objections or representations made with regard to what was shown when the maps were placed on deposit for inspection or at any stage of the preparation of the Definitive Map.</p>
<p><b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b></p>	<p>1929 to present day</p>	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>

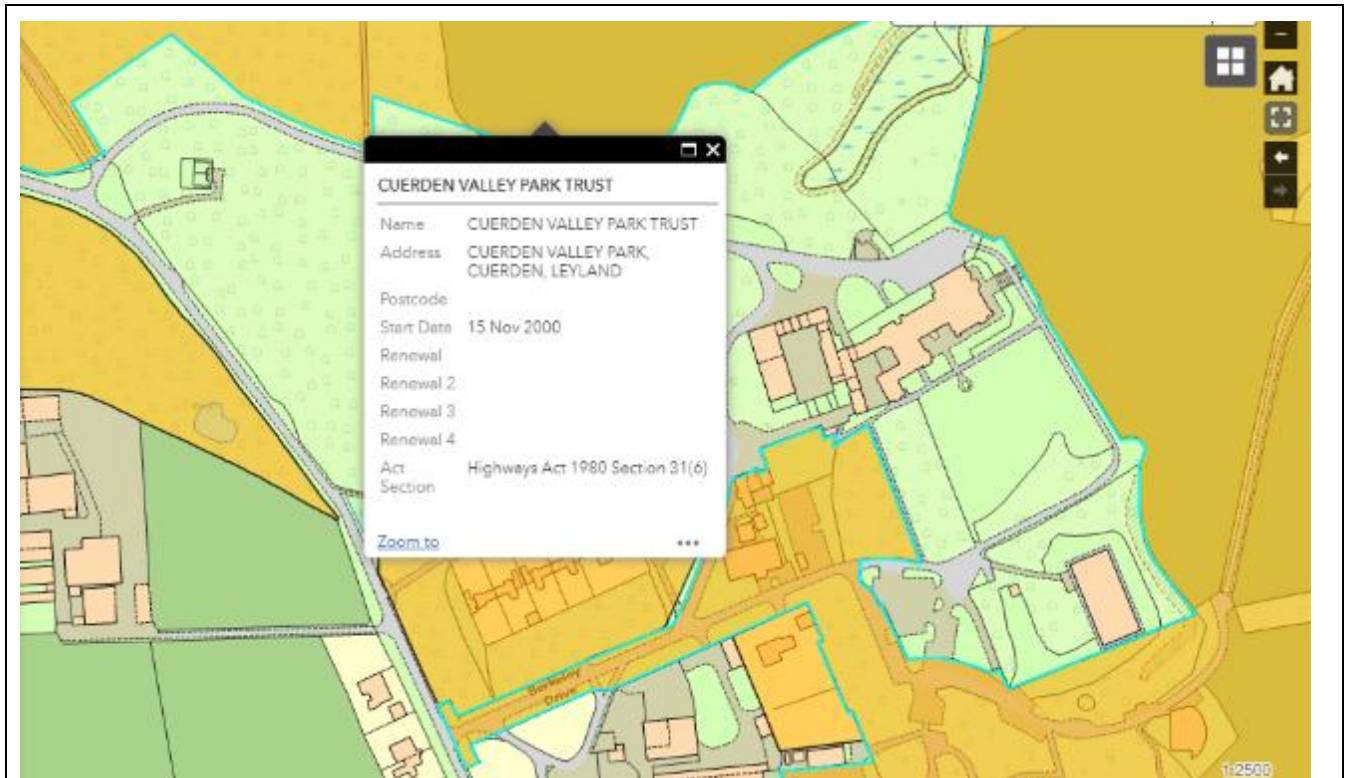




Observations		The application route is not recorded as a publicly maintainable highway on the county council's highway records. It was also noted that Berkeley Drive – on which the application route starts/finishes at point F – is not recorded as a public highway.
Investigating Officer's Comments		<p>The 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.</p> <p>The application route is shown to end on Berkeley Drive (point F) requires further consideration with particular reference to the analysis of the user evidence and ownership of the land held by Cuerden Valley Trust. Should the application be accepted on the face of it the route appears to be a dead end – with no recorded public access to or from point F. However, Berkeley Drive is owned by Cuerden Valley Trust and provides direct access from Shady Lane to Cuerden Valley Park and in particular the visitor centre, car park and café. Consideration as to whether Berkeley Drive can be construed as being 'a place of public resort' can be found in the Legal and Democratic Services section of this report.</p>
<b>Highway Stopping Up Orders</b>	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through

		to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No legal orders relating to the creation, diversion or extinguishment of public rights along the application route have been found.
Investigating Officer's Comments		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.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>





<p>Observations</p>		<p>Between point A and point E no Highways Act 1980 Section 31(6) deposits have been lodged with the county council for the area over which the application route runs.</p> <p>Between point E and point F records indicate that the land crossed by the application route is owned by Cuerden Valley Trust. The Trust submitted a plan and made a statutory declaration dated 15 November 2000 for land comprising of Cuerden Valley Park – including the land crossed by the application route between point E and point F. They did not acknowledge the existence of a public right of way along the application route.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>From point A to point E there is no indication by the current or previous landowners under this provision of non-intention to dedicate public rights of way over this land.</p> <p>Between point E and point F there is a clear indication from the owners of the land that they did not acknowledge the existence or intend to dedicate the application route between point E and point F as public rights of way from 15 November 2000 onwards.</p>



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

## **Summary**

There is insufficient historical map and documentary evidence from which public rights can be inferred.

The map and documentary evidence does support the user evidence submitted with regards to the fact that a route physically existed and appeared to be capable of being used possibly from the early 1960s onwards.

Whilst it is understood that the Hall was used by the Central New Town Development Corporation as offices from 1977 through to 1986 before being sold to Sue Ryder it appears clear that the Hall and land crossed by the application route between point A and point E was held separately to the land which was transferred to the Cuerden Valley Trust to become Cuerden Valley Park and that the provisions relating to public access through the park did not extend to the immediate grounds around the hall and land sold to Sue Ryder in 1986.

It appears that the route was probably accessible during the period of time during which the user evidence detailed below relates to and was included in a number of leaflets detailing walks around Cuerden Valley Park but no specific references were found detailing the route to be considered to be a public right of way and the land crossed by the route was in fact marked up as being private and outside the boundary of the park on a number of maps examined.

The Section 31(6) deposit submitted by Cuerden Valley Park Trust in 2000 covered that part of the route between point E and point F indicating that the owners of the land had no intention to dedicate a public right of way across this land since at least 2000.

At point E the application route ends on Berkeley Drive which it was noted is not recorded as a public right of way or publicly maintainable highway. Berkeley Drive provides access to Cuerden Valley Park and is owned by Cuerden Valley Trust.

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

### **Landownership**

From point C to point E the application route crosses land which was in the ownership of Sue Ryder, this has now been sold to the Shenton Group. From point E to point F the application route crosses land owned by Cuerden Valley Park Trust.

### **Information from the Applicant**

In addition to the documentary evidence already discussed a total of 19 users submitted user evidence forms in support of the application. Not all followed a consistent route which may account for some of the inconsistencies.

## Duration of Use

The user evidence forms collectively provide evidence of use going back as far as 1969 and up to 2019 when the application to record the right of way was made.

The Landowner Statement regarding the section of the application route marked E-F was lodged in 2000 affecting the ability to evidence an intention to dedicate, this is detailed in the Conclusion section of the report.

This pushes the 20 year period during which public rights can be established through use as of right back to 1980 to 2000. Looking at those users who record using the route prior to or beginning in 1980 one user recorded use beginning circa 1980. Two users noted use beginning in the 1970s and another recorded that their use began in 1969. There is therefore evidence of use by only four members of the public in 1980. All four of these users record use of the route through until 2020.

## Method of Use

All users recorded use on foot, two recorded additional use on pedal cycle, two recorded additional use on pedal cycle and by car. One user only recorded additional use by car, one recorded additional use on horseback, one recorded additional use in a horse drawn vehicle.

## Frequency of Use

The table below shows the frequency of use recorded on foot.

Daily	Weekly	Monthly	Every few months
7	6	3	3

Frequency of use varied for those using the route by other methods in addition to use on foot. Two users recorded use every few months by pedal cycle, another two recorded use by pedal cycle every few months. Of those users recording use by car one recorded daily use, one recorded weekly use, the third recorded use every few months. The user recording use on horseback noted daily use and the user recorded use by horse drawn vehicle recorded weekly use.

## Reasons for Use

Reasons for use were generally leisure and walking for pleasure. Dog walking was mentioned by four users. One user noted leading health walks, another noted access to Cuerden Valley Park. A third user noted nature photography as a reason for use.

## Other Users of the Route

All but one user recorded seeing use by others. This user did not specify.

Method of use by other users:			
Foot	Foot, pedal cycle/horse drawn vehicle & motorised vehicle	Foot, horseback, pedal cycle/horse drawn vehicle & motorised vehicle	Foot, horseback, pedal cycle/horse drawn vehicle, motorised vehicle & prams and/or wheelchairs
6	5	4	3

One of those users recording use by motorised vehicles specified that these were Cuerden Park maintenance vehicles and/or farm machinery. One of those users specifying use by wheelchairs noted that the users were residents of Sue Ryder.

#### Consistency of the Route

The majority of the nineteen users stated that the route had always followed the same route, of those two users stating that the route had not always followed the same course one noted that it was altered at some point to make way for a car park. Another noted that the length of the route has been affected by the M65 extension.

Has the Application Route Always Followed Same Course?		
Yes	No	Don't know
16	2	1

#### Unobstructed Use of the Route

Five of the nineteen users recorded having been prevented from using the route, this related to the fencing recently erected by the new landowner.

Five users noted signs, those who specified details recalled signs erected by Sue Ryder allowing use of the grounds.

Two users recorded gates along the route giving access to the gardens, they also noted gates at the carpark which were never locked. One user noted gates to the courtyard of the hall which were always locked due to vandalism. Another user noted a gate 180 yards from the drive. Another user noted a 'pedestrian gate' which was always unlocked.

Three users noted having permission to use the route though this stemmed from signs erected by Sue Ryder. One user did not note official permission but noted that they were a volunteer for Cuerden Valley Park.

#### Information from Others

County Councillor Mark Clifford responded to consultation to state that he is "in favour of the addition of the footpath from Shady Lane to Berkeley Drive, Cuerden." Councillor Clifford also noted the support of local residents.

#### Information from the Landowner

Cuerden Valley Park Trust (CVPT) responded to consultation to confirm the land in their ownership. And went on to note; "It is clear that the Trust has always been aware

that the access to its land to the north of the driveway to Cuerden Hall has been across the land owned by Sue Ryder, as identified in the application and in more recent years it has been signed as a permissive access. The trust has used the route on that basis and access has never been requested by CVPT or denied by Sue Ryder, nor were there any formal arrangements for access in place with Sue Ryder.

As we discussed, you are aware that the route has been used during major events for the movement of vehicles and pedestrians from the trust land to the north of the driveway to Cuerden Hall, which is used for event parking, to the Park. In order to ensure the privacy of Cuerden Hall and the safety of the public, this has always been marshalled by CVPT."

Sue Ryder responded to consultation to clarify that the land previously in their ownership has now been sold. They clarified that "as well as allowing members of the public to use the aforementioned footpath to gain access to the shop and the café, Sue Ryder also permitted local residents and dog walkers to walk in the grounds of the property for recreational purposes but Sue Ryder put up posters in various locations (an employee at the premises recalls that approximately 15 were erected in total) advising that the grounds were private but that members of the public could enjoy the grounds subject to keeping dogs on a lead etc. Unfortunately, some local residents / dog walkers felt the need to remove these signs thus necessitating Sue Ryder in having to go to the trouble and expense of replacing them periodically."

Sue Ryder clarified that it had come to their attention that some members of the public were abusing the permissive right to use the property, as a result, a further sign was erected stipulating:

'These grounds are private. Sue Ryder allows members of the public to enjoy the grounds whilst we are the proprietor of the building provided that:

- (1) Dogs are kept on a lead;
- (2) Dog mess is cleared up;
- (3) No litter is dropped;
- (4) Consideration is shown to the residents and staff at Cuerden Hall;
- (5) Cars are parked on the pay per go car park owned by Cuerden Valley Park and not on the grounds of Sue Ryder.

The grounds are entered entirely at your own risk and Sue Ryder is not liable for any injury, damage or loss incurred to you or your property whilst accessing the grounds.'

Photographs of these signs were provided.





Shenton Group advised that there "are no existing PROWs, simply a previous permissive path which was closed in 2019." They went on to clarify the current situation on the ground with works progressing on Cuerden Hall and state strong opposition to the application.

## Conclusion

The application is that this route is already a footpath in law and should be recorded as such on the Definitive Map and Statement.

There is no actual dedication document and so Committee is advised to consider whether there is sufficient evidence from all the circumstances to infer at common law that owners of this route intended dedicating or whether there is evidence of twenty years use by sufficient users without sufficient evidence of a lack of intention to dedicate from which dedication could be deemed under S31 Highways Act 1980.

Looking firstly at common law – it is noted that the filing of a Landowner statement by the Cuerden Valley Trust in 2000 would indicate their lack of intention to dedicate (section E-F). This is in effect stated again in their response to this claim detailed above. Without section E-F it is the case that this route would not be a route from highway to point of public resort and it is advised that to be able to infer an intention to dedicate by such a landowner of E-F at common law would be difficult. The Trust has owned E-F since 1997 having been transferred by Commission for New Towns.

Turning to S31 the filing of the landowner statement is indeed sufficient to demonstrate a lack of intention to dedicate on an important section of this route and calls it into question. S31(6) says that such a declarations "*are, in the absence of proof of a contrary intention, sufficient evidence to negative the intention of the owner or his*

*successors in title to dedicate any such additional way as a highway.*" The user to be relied on would therefore have to be sufficient for the full twenty years before the declaration – that is throughout 1980-2000. In 1980 there is evidence from four users and numbers are still not large by 2000. Public use would have to be sufficient to be more than trivial and sporadic. It is suggested that the use here is not sufficient in particular in the early part of that period when the hall was headquarters for the New Town Development Corporation and there is therefore not sufficient use from which to deem a dedication under the strict provisions of S31.

The availability of the route after 2000 is not relevant. The landowner statement had protected the land from public use developing into highway.

The difficulties in finding dedication by the Trust of E-F would affect the whole application route. A-E has had some use and it would appear that signage indicating lack of intention on that section are relatively recent but without E-F the route is not able to be recorded as a highway.

It is therefore advised that Committee not accept the application and no Order be 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: 804-697		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A