

## Regulatory Committee

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

### Part I

Electoral Division affected:  
Ribble Valley North East

#### **Wildlife and Countryside Act 1981 Definitive Map Modification Order Investigation Addition of Sections of Footpath from Mitton Road to Calderstones Drive, Whalley**

(Annex 'A' refers)

Contact for further information quoting reference 804-700:

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#### **Brief Summary**

Application for the addition on the Definitive Map and Statement of Public Rights of Way of a footpath from Mitton Road to Calderstones Drive, Whalley.

#### **Recommendation**

- (i) That the application for the addition of footpaths from Mitton Road to Calderstones Drive, Whalley be accepted.
- (ii) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way footpath sections from Mitton Road to Pendle Drive and from Pendle Drive to Calderstones Drive as shown on Committee Plan between points A-B-C, D-E-F and E-H.
- (iii) That following the order making and notice period the matter be returned to Committee to decide what stance to take regarding confirmation.

#### **Detail**

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received to record on the Definitive Map and Statement of Public Rights of Way a footpath from Mitton Road to Calderstones Drive, Whalley.

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**

### Ribble Valley Borough Council

Ribble Valley Borough Council did not provide an official response to the consultation.

### Whalley Parish Council

Whalley Parish Council did not provide an official response to the consultations.

### 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	7266 3755	Junction with Mitton Road
B	7263 3755	Rear (NW corner) of 32 Bridge Terrace
C	7261 3735	Junction with Pendle Drive (north side)
D	7261 3734	Junction with Pendle Drive (south side)
E	7257 3716	Bollards across the route restricting vehicular access
F	7255 3713	Junction with Calderstones Drive footway
G	7255 3713	Junction with Calderstones Drive carriageway
H	7257 3713	Junction with Calderstones Drive footway

### Description of Route

A site inspection was carried out in April 2020.

The application route commences at a point on the west side of Mitton Road between the 32 Bridge Terrace and a dismantled railway which ran east-west passing under Mitton Road immediately north of the application route.

At point A there is a wooden fence which has been erected across the start of the application route with a notice attached to the fence stating that there is 'No access'. Immediately behind the fence is a wooden stile with a further sign attached to it stating 'No dog walking, Private Property'.

From point A – beyond the fence and stile – it is possible to see – despite recent overgrowth – a fenced off strip bounded on the south side by a concrete post and wooden panel fence separating it from 32 Bridge Terrace and bounded on the north side by an old iron railing fence separating it from the disused railway. The strip is approximately 1.5 metres wide from point B widening slightly to approximately 2 metres after 25 metres where a second wooden fence has been erected across the route with a west-facing sign reading 'No access'.

Beyond this second fence the route widens to approximately 6 metres at the rear of 32 Bridge Terrace (point B on the Committee plan) where a temporary metal security fence had been erected preventing access east along the application route at point B and running the full length along the rear of the terraced properties known as Bridge Terrace.

From point B the application route continues in a generally southerly direction along a tarmac roadway approximately 4 metres wide which provided vehicular access to the rear of Bridge Terrace and to some garages located on the west side of the route midway between point B and point C. The properties on Bridge Terrace were all

empty when the route was inspected and had been fenced off prior to being demolished as part of a redevelopment scheme.

Street lights were positioned along the west side of the route at intervals and there was open access from the route onto an area of maintained grassland between the application route and the Calderstones housing estate.

Beyond the garages the route is fenced on the west side and streetlights were at intervals along the eastern side of the route.

On approaching point C the route becomes fenced on the eastern side and near Pendle Drive a 'STOP' traffic sign indicating use of the route between point B and point C by vehicles and further signs located on the route (and visible if travelling from point C towards point B) warn vehicles of the presence of pedestrians and that the speed of vehicles should not exceed 15 miles an hour.

At point C the application route meets the northern side of Pendle Drive between properties forming part of the Calderstones NHS Trust.

From the opposite (south) side of Pendle Drive the application route continues from point D in a generally south south westerly direction running along a 6 metre wide tarmac roadway between a low rail at the rear of further Calderstones NHS Trust buildings and security fencing behind Queen Mary Terrace. There are further warning notices regarding the junction of the route with Pendle Drive and there is street lighting at intervals along the west side of the route. The properties making up Queen Mary Terrace had all been vacated and fenced off.

At point E five bollards had been erected across the route which restricted vehicular access.

Beyond point E the application route split with one route crossing an open tarmacked area which appeared to be used for parking cars, to continue south west along a tarmac roadway approximately 3.5 metres wide to a tarmac footway at point F. Calderstones Drive carriageway is at point G.

The other spur continues in a more southerly direction from point E along the edge of the tarmacked area with security fencing on the east side to pass through a gap in some hedging to meet the tarmac footway running along the north side of Calderstones Drive at point H

The total length of the route is 500 metres.

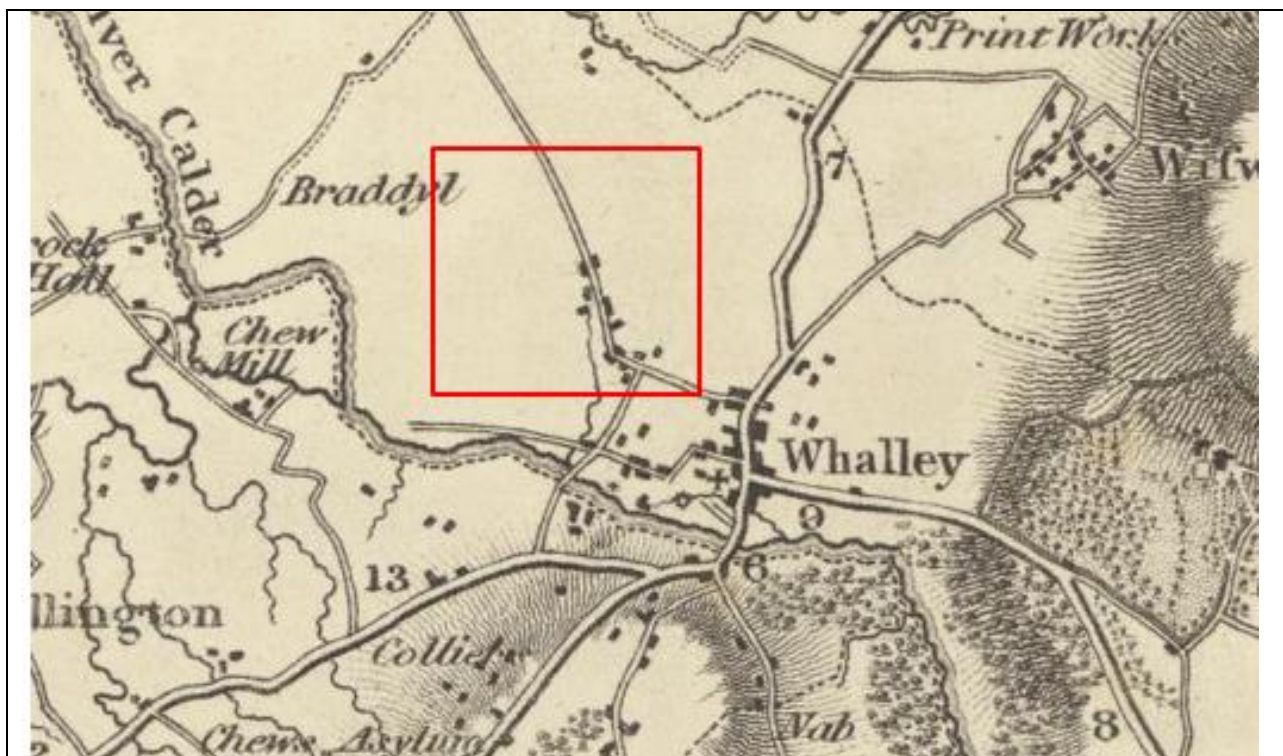
### **Map and Documentary Evidence**

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.

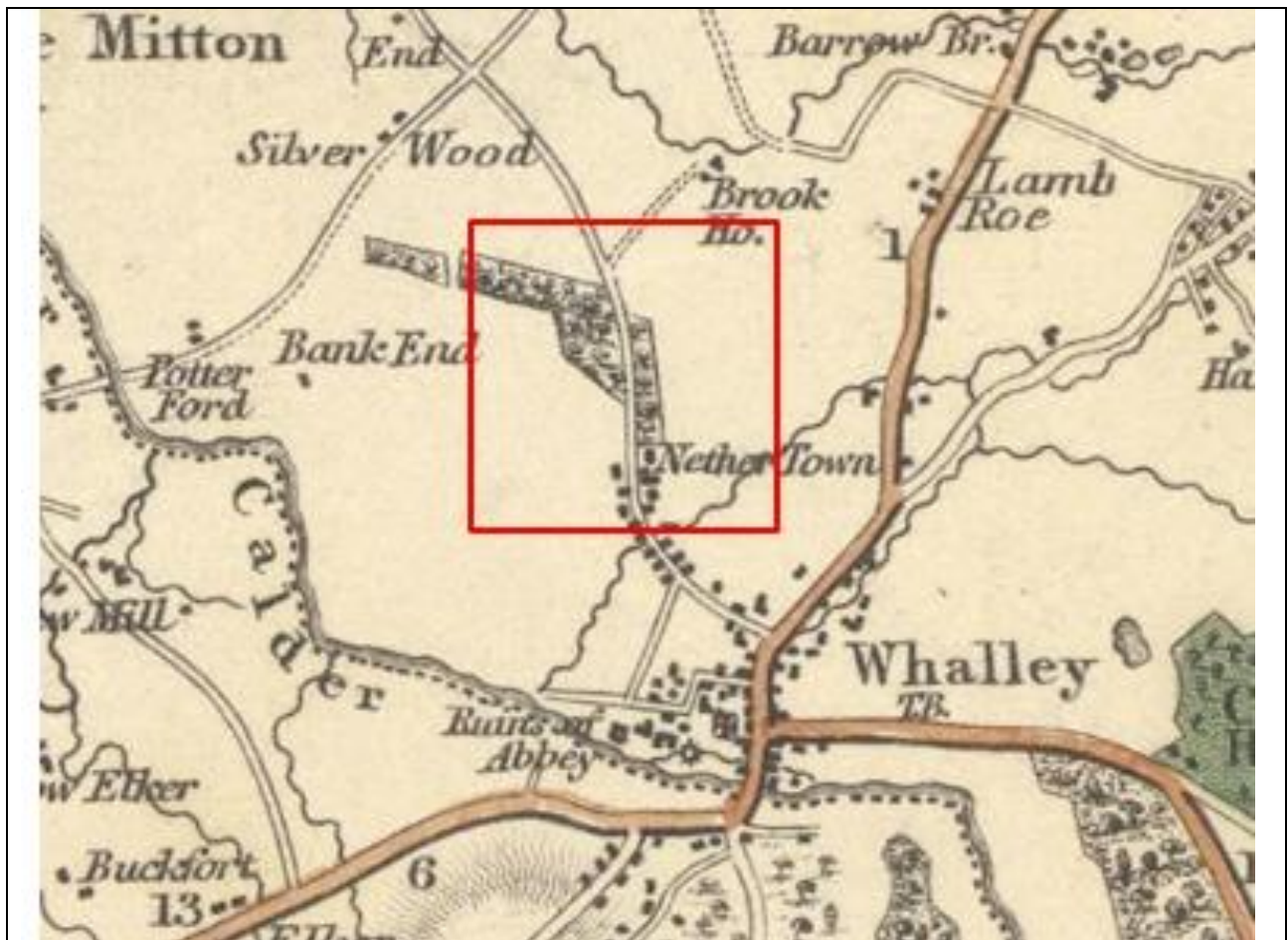
Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.



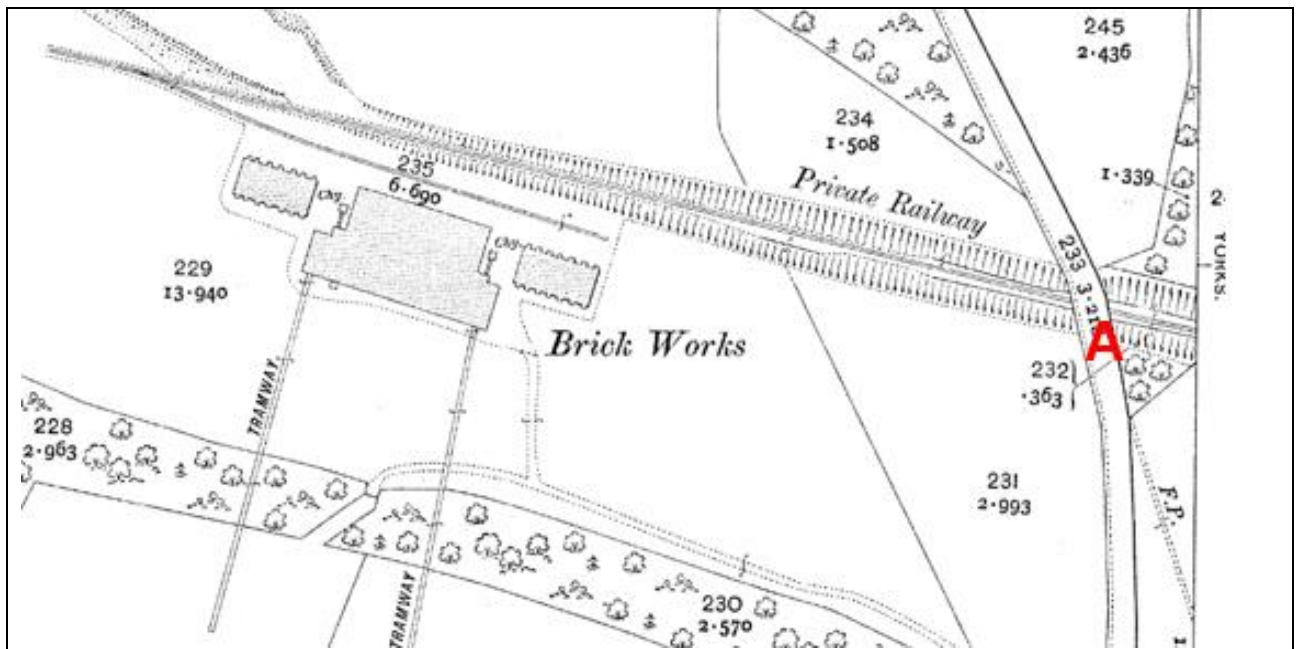
Observations		Mitton Road is shown but the application route is not shown.
Investigating Officer's Comments		The application route probably did not exist at the time or if it did exist, was not considered to be a substantial public vehicular route by Yates. If it did exist it would have been very unlikely for a route considered to be a footpath or bridleway to be shown on such a small-scale map.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



Observations		Mitton Road is shown but the application route is not shown.
Investigating Officer's Comments		The application route probably did not exist in 1818 or if it did exist, was not considered to be a substantial public vehicular route by Greenwood. If it did exist it would have been very unlikely for a route considered to be a footpath or bridleway to be shown on such a small-scale map.
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 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.



Observations		Mitton Road is shown but the application route is not shown.
Investigating Officer's Comments		The application route probably did not exist in 1830 or if it did exist, was not considered to be a substantial public vehicular route by Hennet. If it did exist it would have been very unlikely for a route considered to be a footpath or bridleway to be shown on such a small-scale map.
<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.

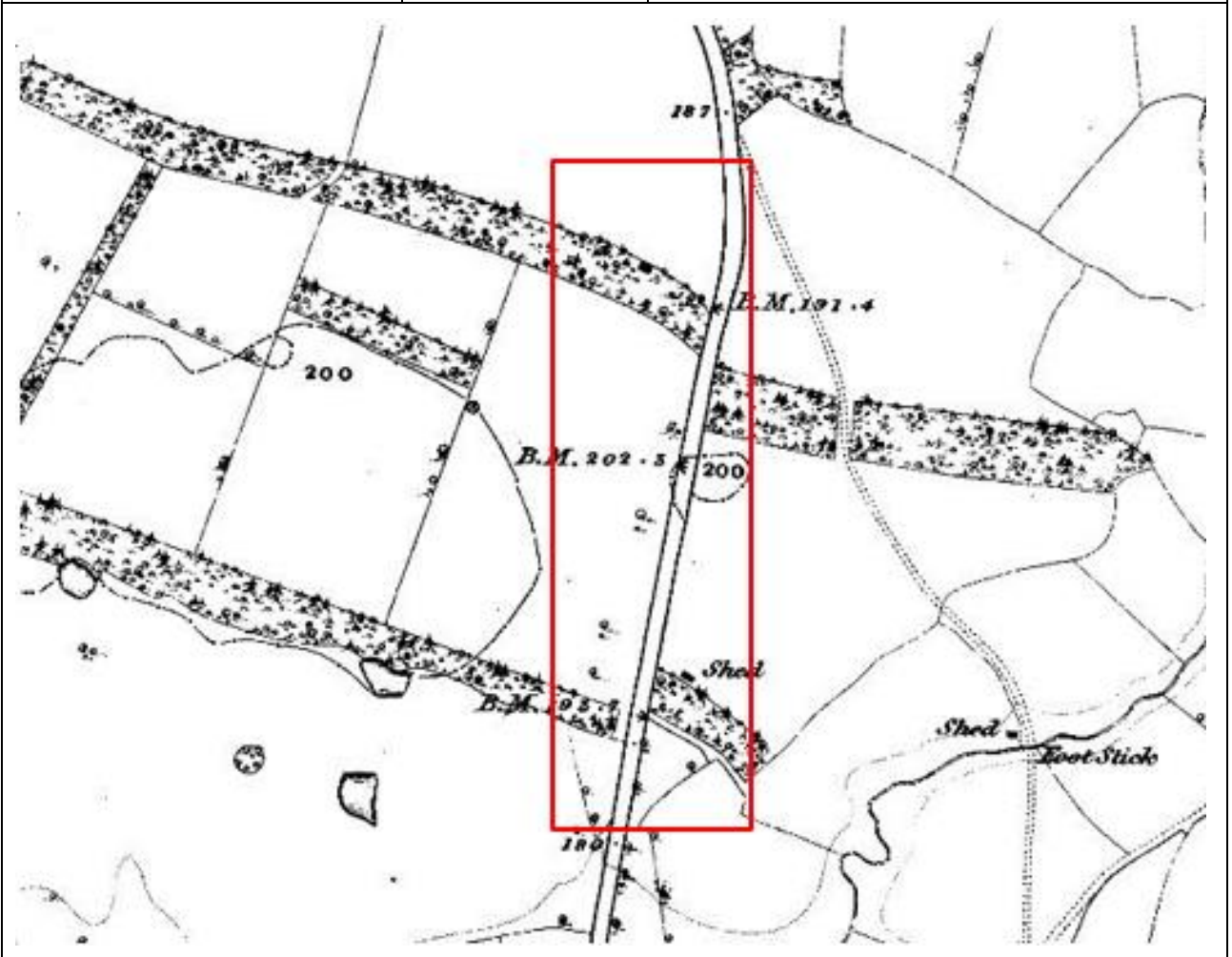


Extract from the 25 inch OS Map LV.5 surveyed 1892, revised 1910 and published 1913.

<p>Observations</p>		<p>Between 1892 and 1910 a private railway line was built immediately north of the application route. The railway provided access to a brick works. No records relating to the construction of the railway were found but Ordnance Survey maps detailed later in this report) from before and after the construction of the railway show no part of the application route in existence around the time of its construction.</p>
<p>Investigating Officer's Comments</p>		<p>The application route did not appear to have existed prior to the construction of the railway and does not appear to have been constructed at the time the railway was built. It is therefore very unlikely that any records relating to the construction of the railway would assist in this particular investigation.</p>
<p><b>Tithe Map and Tithe Award or Apportionment</b></p>		<p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful</p>



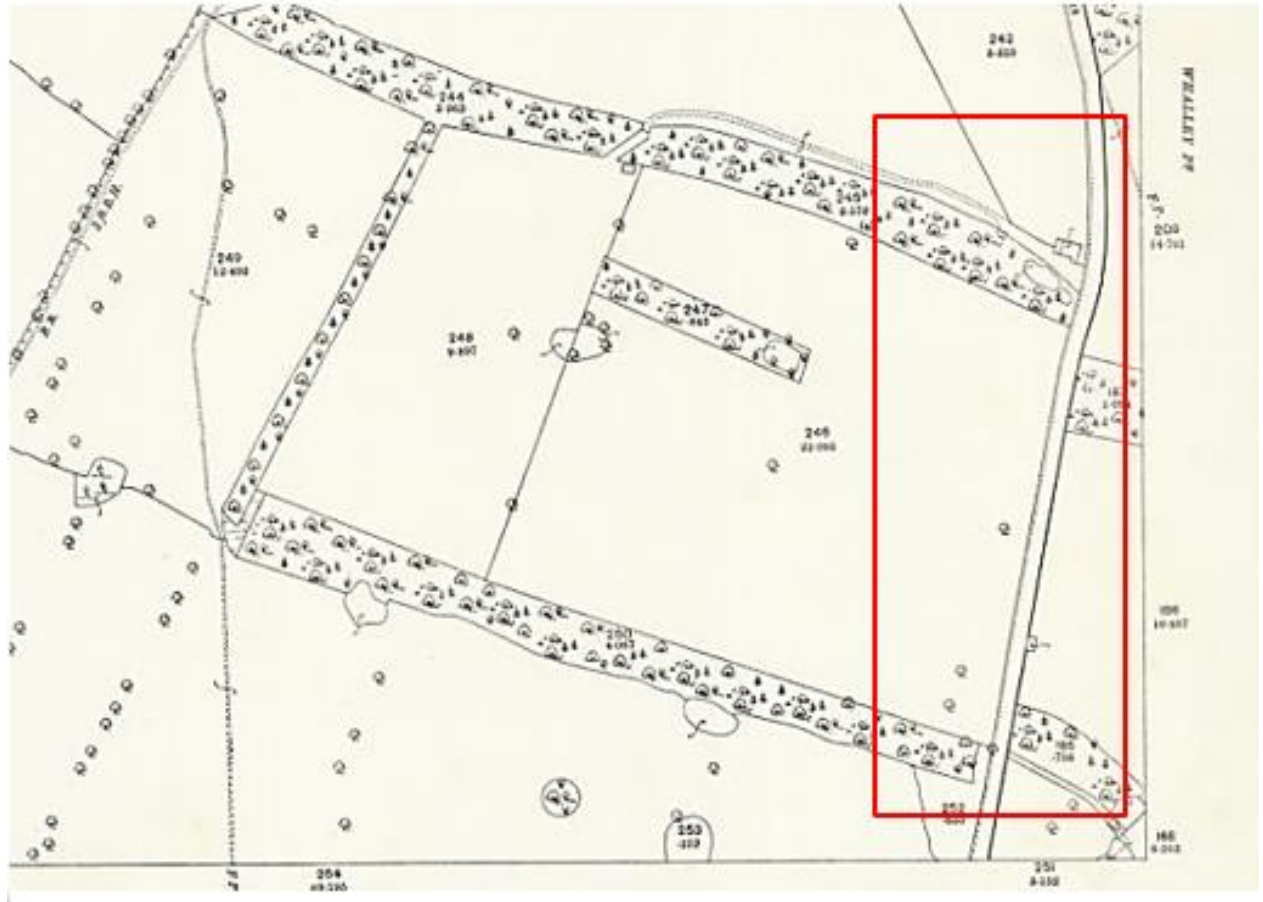
		supporting evidence (in conjunction with the written title award) and additional information from which the status of ways may be inferred.
Observations		There is no Tithe Map and Award listed at the County Records Office or The National Archives for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch Ordnance Survey (OS) Map</b> <b>Sheet LV</b>	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-46 and published in 1848. <sup>1</sup>



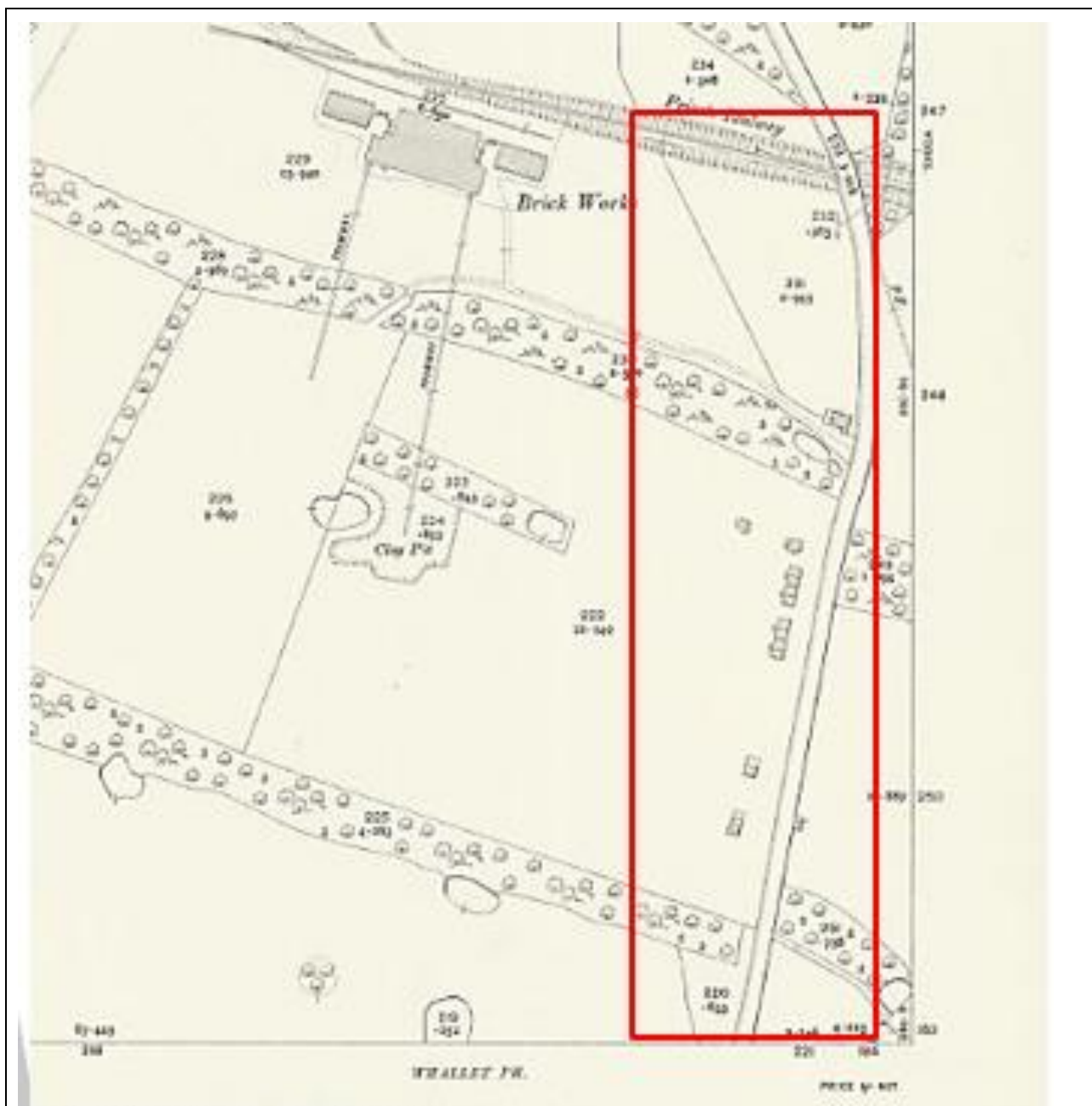
Observations		Mitton Road is shown but the application
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<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches 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.

		route is not shown.
Investigating Comments	Officer's	The application route did not exist in 1844-46.
<b>25 Inch OS Map Sheet LV.5</b>	1894	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1894.



Observations		Mitton Road is shown but the application route is not.
Investigating Comments	Officer's	The application route did not exist in 1892.
<b>25 inch OS Map Sheet LV.5</b>	1912	Further edition of the 25 inch map surveyed in 1892, revised in 1910 and published in 1912.



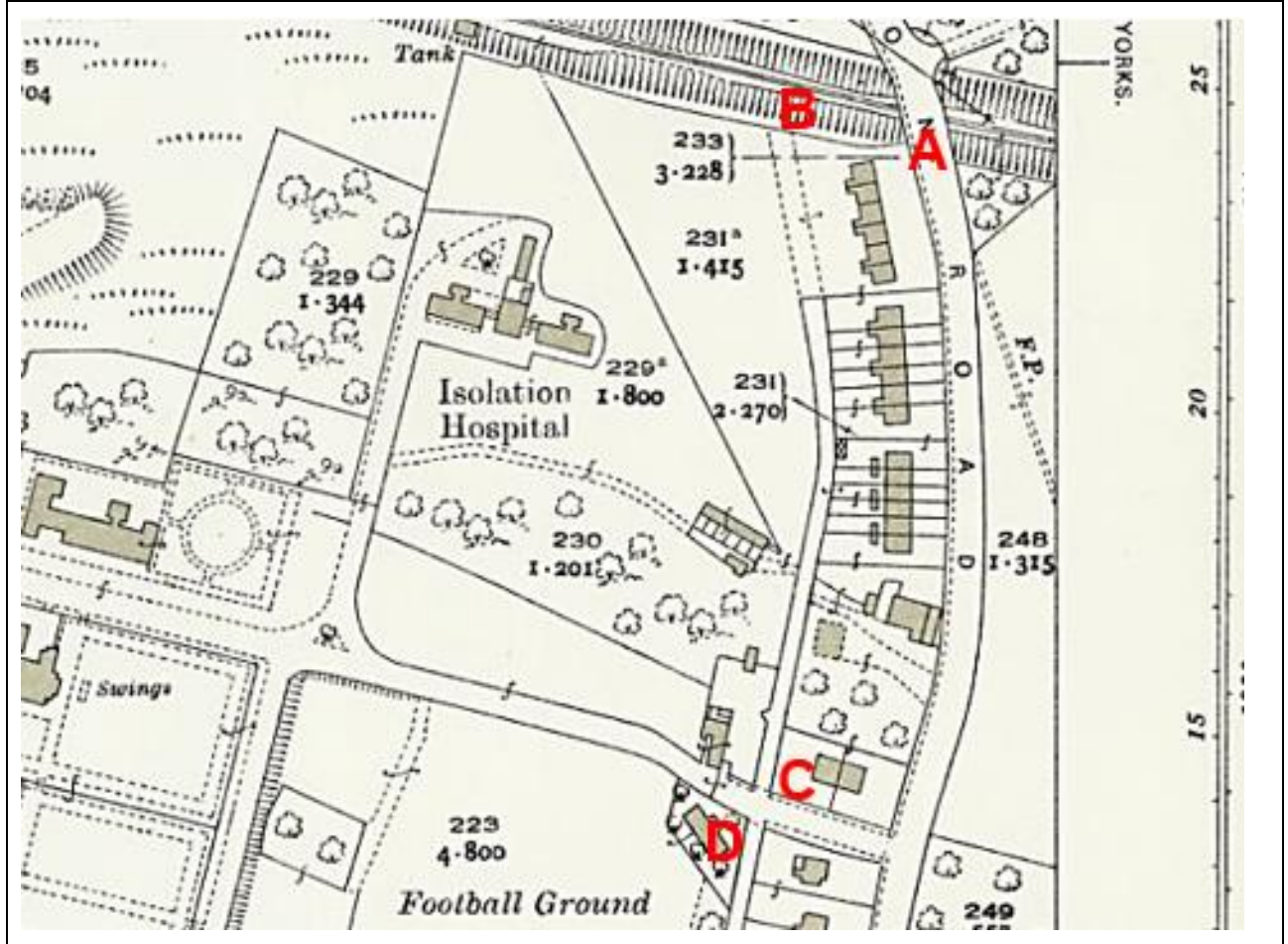
Observations		Milton Road is shown but the application route is not shown. The land crossed by the route has started to see some development. A private railway is shown immediately to the north of the route leading directly to some brick works and some buildings are shown adjacent to Milton Road which appear to have been the first few houses to be built along this stretch of road and which later became known as Bridge Terrace.
Investigating Officer's Comments		The application route did not exist in 1912.
<b>Finance Act 1910 Map</b>	1910	The comprehensive survey carried out

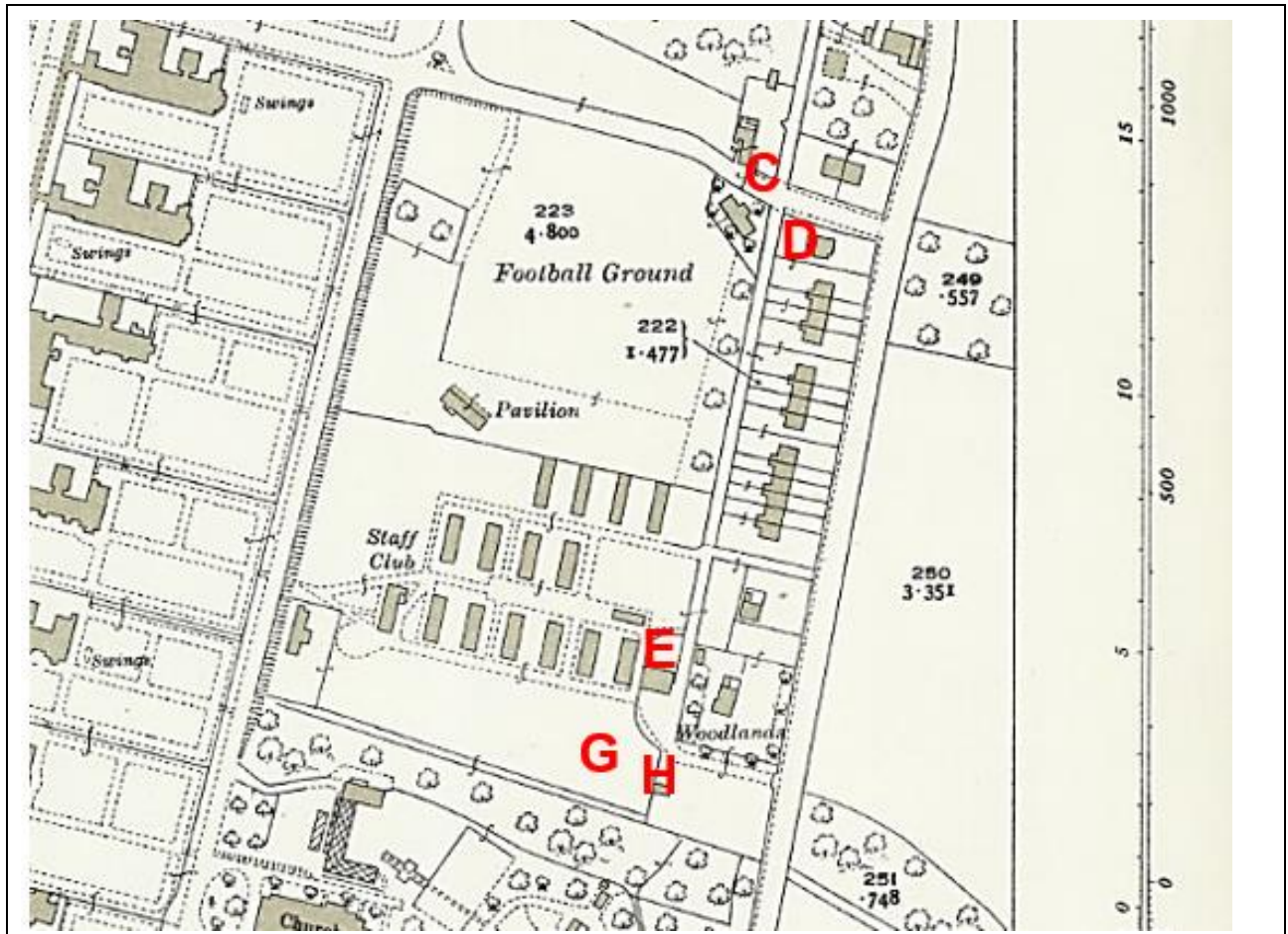
		<p>for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive 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>
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<p>Observations</p>		<p>The application route is not shown to exist on the 25 inch OS base map used for the purpose of completing the valuation.</p> <p>All of the land crossed by the application route is included in a plot numbered 317. The District Valuation Book for Whalley lists the owner and occupier of plot 317 as being Lancashire Asylums Board and describes the land as 'Plantations'. No deductions are listed for public rights of way or user.</p>
<p>Investigating Officer's Comments</p>		<p>In 1910 the land was in the ownership of the Lancashire Asylums Board suggesting that it had been purchased for the construction of the hospital site. No deductions were claimed for public rights of way or user suggesting that no public rights of way existed – or were</p>

		acknowledged to have existed – prior to the construction of the hospital site.
<b>25 Inch OS Map Sheet LV.5</b>	1932	Further edition of 25 inch map (surveyed in 1892, revised in 1929 and published in 1932.





Observations

By 1929 the area crossed by the application route had been developed. A large hospital site is shown which is labelled as being 'Calderstones Institution (Mental Defections)' on the map. The hospital itself appears to be largely to the west of the application route with two access roads leading into the site from Mitton Road – one further south (now known as Chestnut Drive) and the route now known as part of Pendle Drive which crosses the application route between point C and point D.

The terrace houses known as Bridge Terrace is shown. The properties numbered 15-26 Bridge Terrace are all shown fenced off individually indicating the boundaries of each of the properties front and rear gardens. The properties numbered 27-32 are not shown separated by boundary fences and the land immediately north of 32 Bridge Terrace across which the application

		<p>route runs between point A and point C is not shown as being fenced off separately. The application route is shown between point B and point C although the first 50 metres from point B heading south is shown unbounded with a line across the route. (It is possible that the northern section of the terrace was under construction at the time of the survey.) Beyond this line the application route is shown bounded through to point C where it crosses one of the access roads leading into the hospital site.</p> <p>From point D the application route is shown through point E to point H from where it curves to exit onto Mitton Road south of the property known as Woodland. The application route between points E-F-G is not shown and Calderstones Road is not shown.</p>
Investigating Officer's Comments		<p>Substantial parts of the application route existed by 1928 and appear to have been constructed as part of the development of the Calderstones Hospital site.</p> <p>Access may have been available along parts of the route but not all the route applied for.</p>
<b>Aerial Photograph<sup>2</sup></b>	1940s	<p>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.</p>

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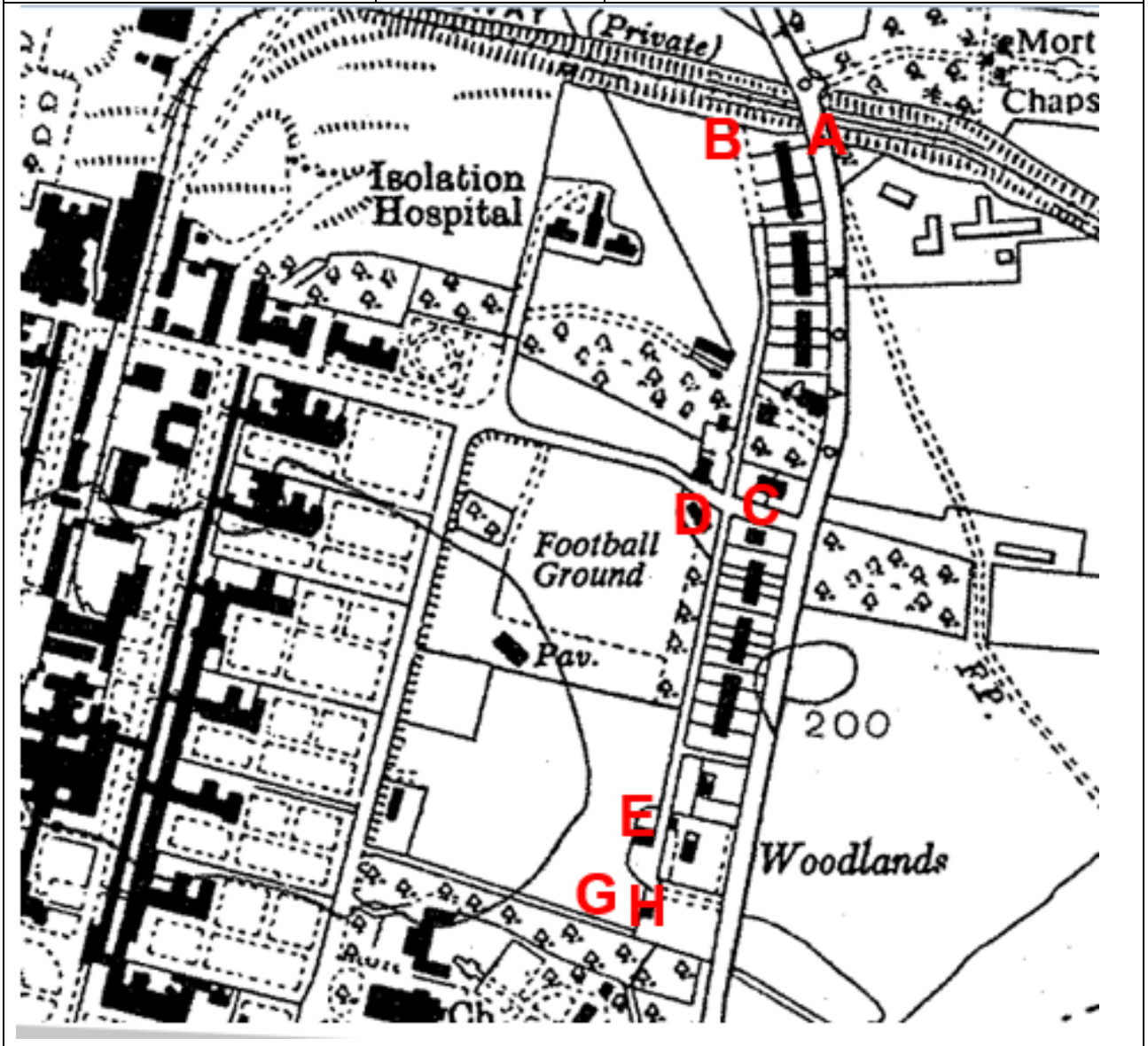
<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring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





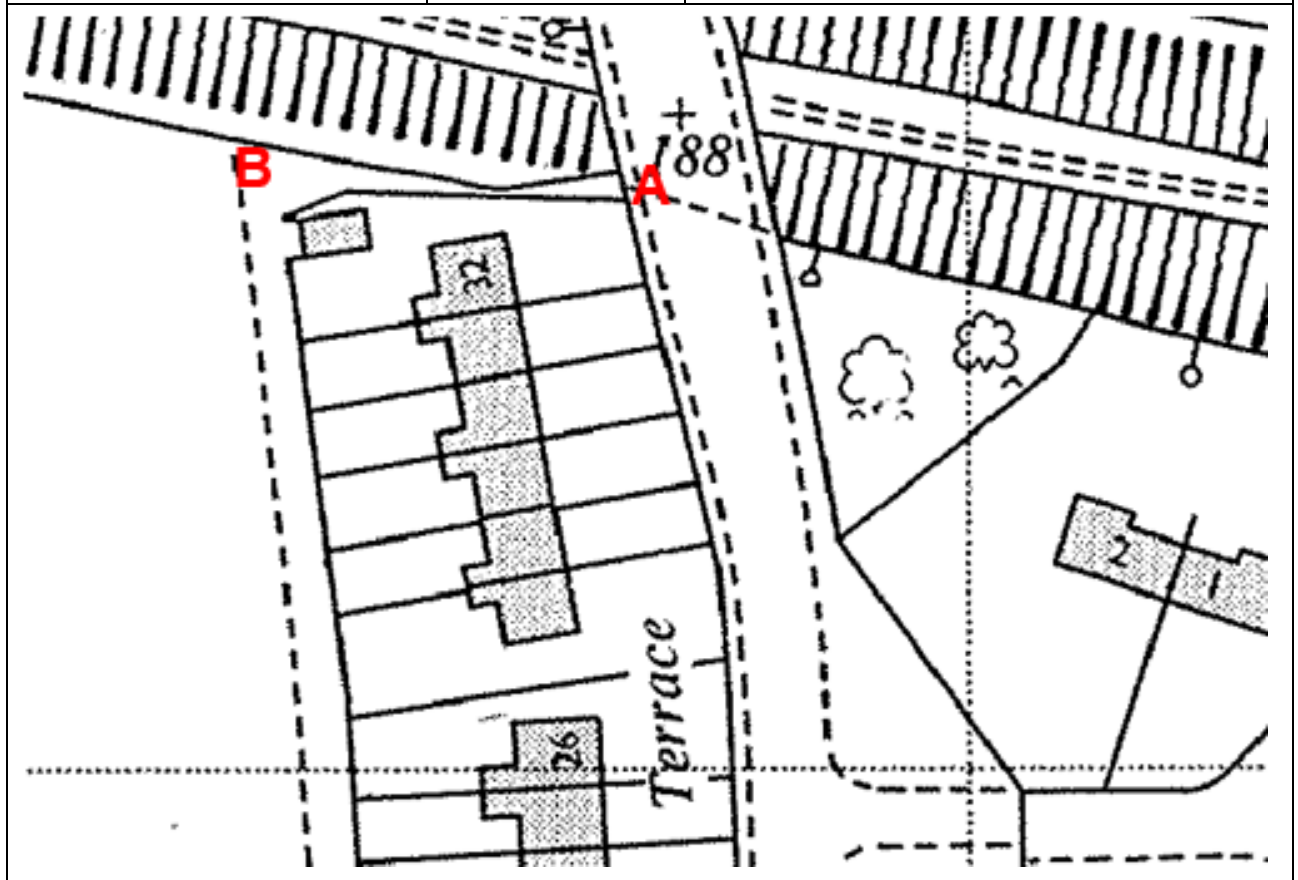
<p>Observations</p>		<p>The aerial photograph taken in the 1940s only shows part of the land crossed by the application route. The application route is not visible between point A and point B but a substantial route can be seen along the back of properties fronting Mitton Road between point B and point C.</p>
<p>Investigating Officer's Comments</p>		<p>Part of the application route existed in the 1940s, but it is not known whether the route was accessible to the public.</p> <p>Much of the land crossed by the application route is not shown on the photograph so no inference can be drawn with regards to the existence of</p>

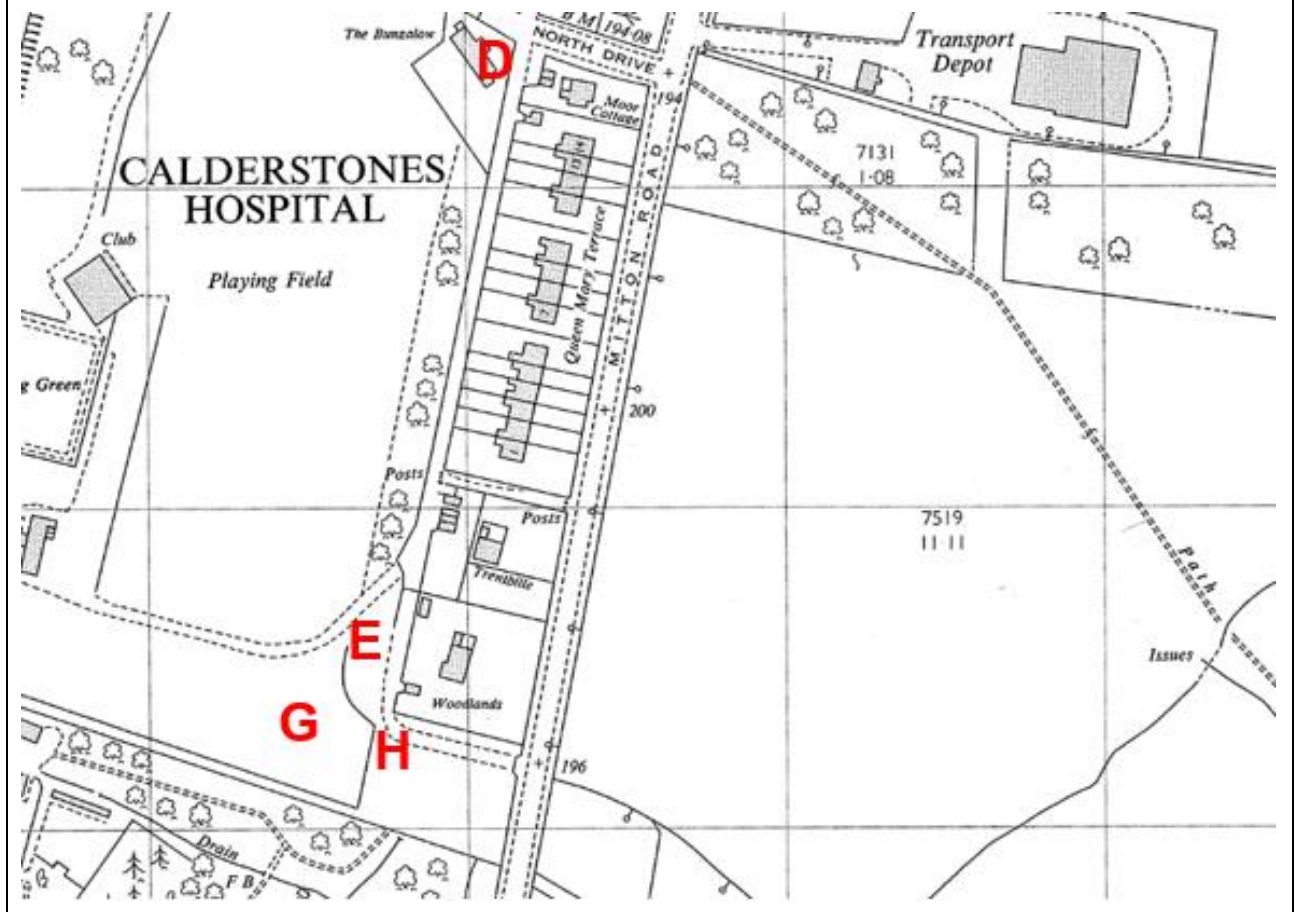
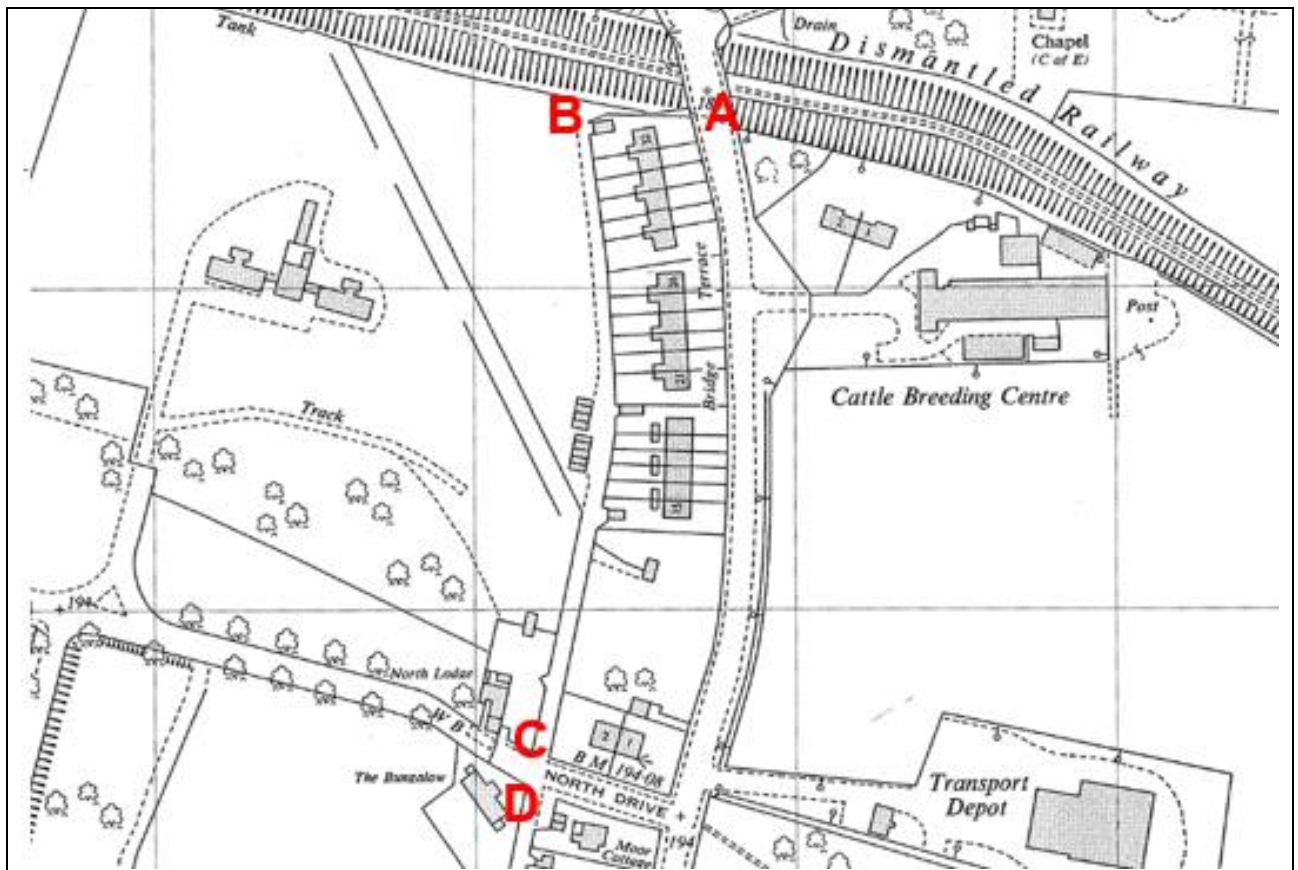
		public rights.
<b>6 Inch OS Map Sheet 73NW</b>	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



Observations		Parts of the application route are shown. The route between point A and point B is not shown. Between point B and point C and point D and point H the application route existed along the back of properties fronting Mitton Road. From point H access to and from Mitton Road was south of the Woodlands and the application route between points E-F-G
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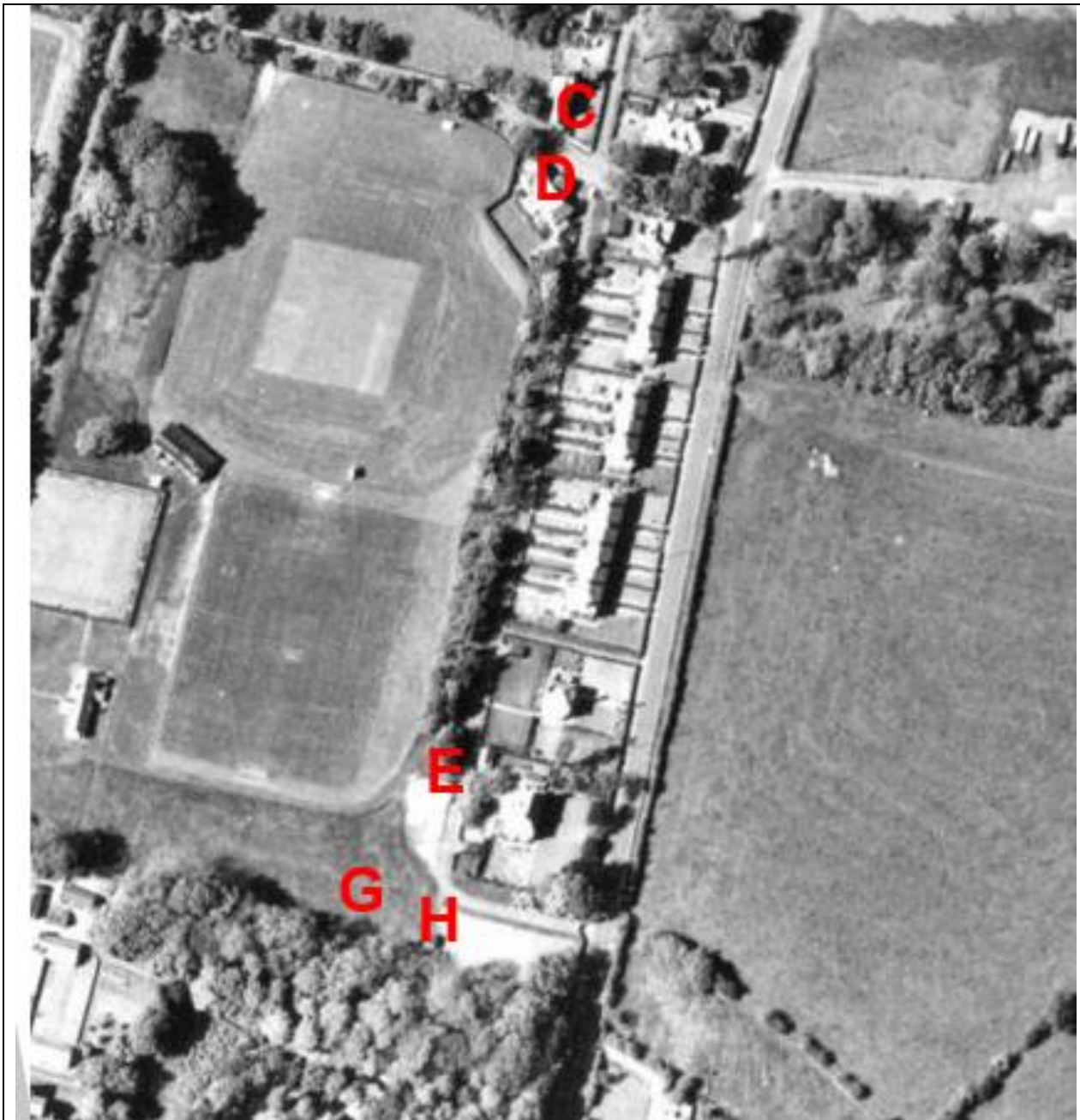
		is not shown.
Investigating Officer's Comments		Parts of the application route existed but appeared to exist to provide access to the rear of properties on Mitton Road.  The full length of the route applied for did not exist at this time.
<b>1:2500 OS Map Sheet SD 7237 7337</b>	1968	Further edition of 25 inch map reconstituted from former county series and revised in 1966 and published in 1968 as national grid series.





Observations		A narrow fenced-off gap is shown between point A and point B and beyond point B the application route is shown through to point C and also between point D and point E. The application route between points E-F-G and E-H is not shown.
Investigating Officer's Comments		Parts of the application route existed in 1966 but the full length of the route applied for did not exist at that time.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.

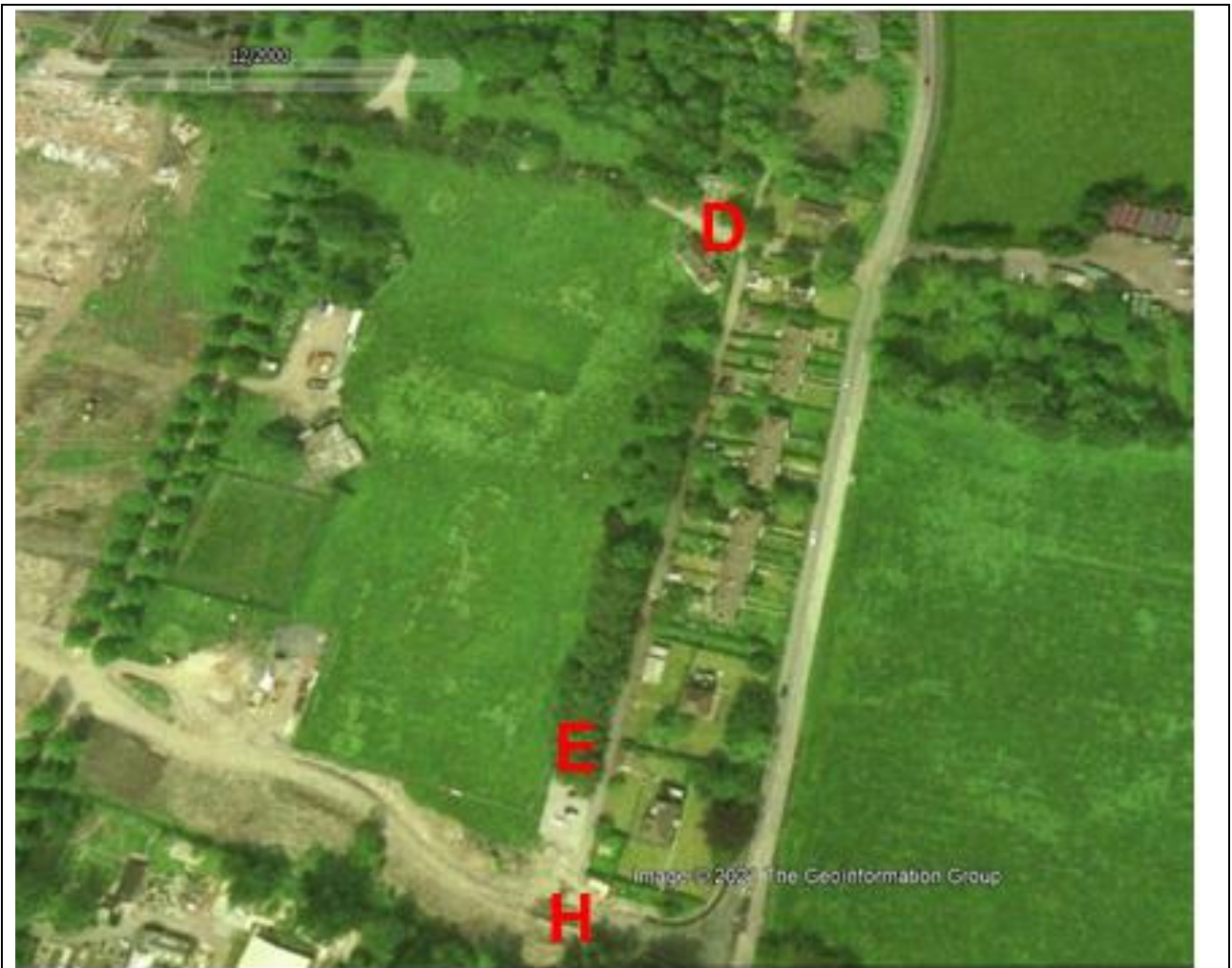




<p>Observations</p>		<p>The application route between point A and point C is shown and appeared to be accessible.</p> <p>The application route between point D and point E is only partly visible due to trees obscuring the view. From point E to point H the application route is clearly visible linking to Mitton Road.</p> <p>The application route from point E through to point G is not shown as a constructed or trodden track although access may have been available long it.</p>
<p>Investigating</p>	<p>Officer's</p>	<p>Access along all of the application route</p>

Comments		may have been available in the 1960s although the route between point E-F-G was probably not used.
<b>Aerial Photograph</b>	2000	Aerial photograph available to view on Google Earth Pro.





<p>Observations</p>		<p>The application route between point A and point B is not visible due to tree cover. Most of the route from point B through to point E can be seen as a significant track/roadway. From point E to point H the route can be seen and of significance is the fact that the photograph shows that much of the old hospital site had been cleared and that a new access road (Calderstones Drive) was under construction. The application route between point E and point G is not shown.</p>
<p>Investigating Officer's Comments</p>		<p>The hospital site was under redevelopment in 2000 and Calderstones Drive under construction. Most, but not all of the application route could be seen to exist but no inference can be drawn with regards to public rights.</p>
<p><b>Aerial Photograph</b></p>	<p>2003</p>	<p>Aerial photograph available to view on Google Earth Pro.</p>





Observations		<p>Tree coverage and shadows mean that it is not possible to see much of the application route between point A and point C.</p> <p>From point D through to point E the application is clearly visible.</p> <p>Calderstones Drive has been completed and the application route from point E to point H and point E to point G was clearly visible.</p>
Investigating Officer's Comments		The full length of the application route probably existed in 2003.
<b>Google Street View Images</b>	2009-2018	Google Street View Images of point A.



2009



2011



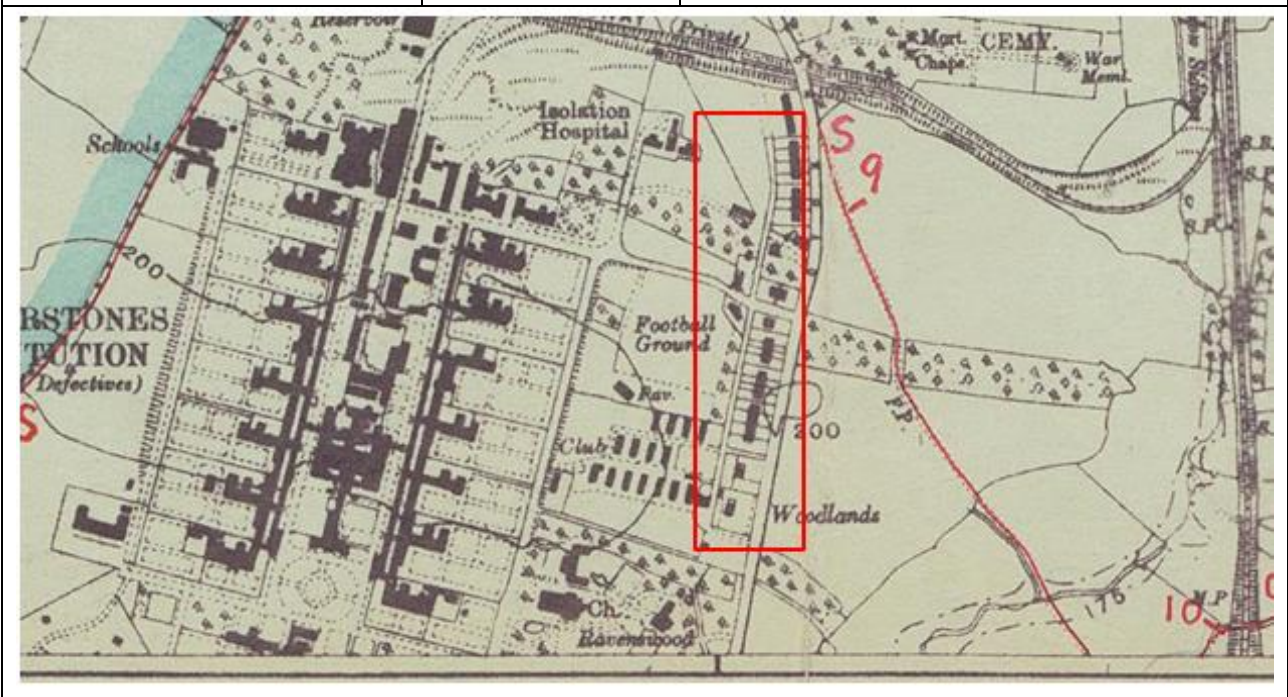
2016



2018

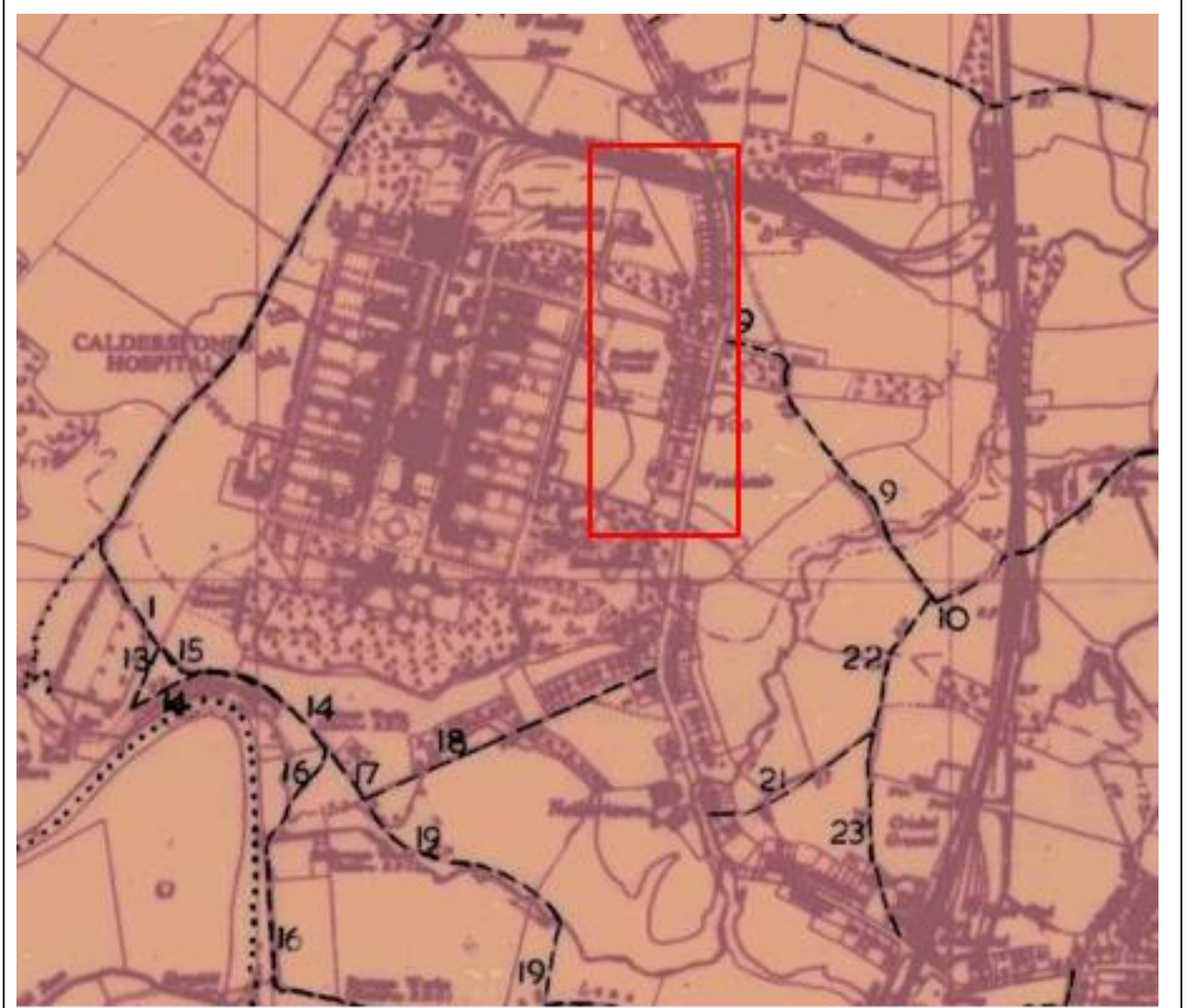
Observations		All four photographs show that access appeared to be available onto the application route at point A via a wooden stile. No signage indicating whether access was considered to be public or private could be seen.
Investigating Officer's Comments		The application route appeared to be accessible at point A between 2009 and 2016 consistent with the evidence of use provided as part of the application.

<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>



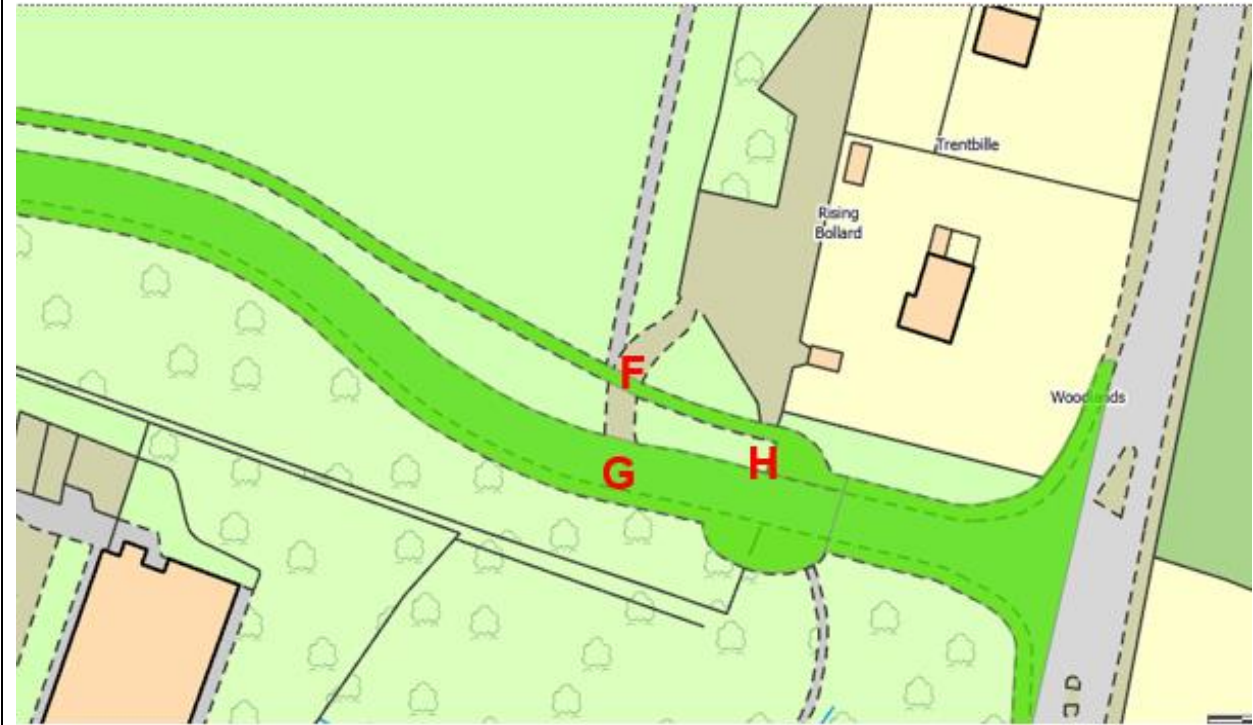
Observations		The application route was not recorded on the Parish Survey Map for Whalley.
<b>Draft Map</b>		<p>The parish survey map and cards for Whalley were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		The application route was not recorded on the Draft Map of Public Rights of Way and there were no representations made in relation to it.
<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The application route was not recorded on the Provisional Map of Public Rights of Way and no representations were made in relation to it.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was not recorded on the First Definitive Map of Public Rights of Way.
<b>Revised Definitive Map of</b>		Legislation required that the Definitive

<b>Public Rights of Way (First Review)</b>		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.
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Observations		The application route is not recorded as a public right of way on the Revised Definitive Map.
Investigating Officer's		The application route was not recorded

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



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

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

## Summary

The application was submitted on the basis of user evidence.

There is no map and documentary evidence from which dedication of the route can clearly be inferred and the route is not shown on any of the early commercial maps or first edition Ordnance Survey Maps.

The Map and Book prepared under the provisions of the 1910 Finance Act lists the land crossed by the application route as being owned by the Lancashire Asylums Board at that time and it is clear that much of the route was subsequently constructed by the late 1920s when Calderstones Hospital was built.

The existence of the route from point B through to point E – crossing one of the access roads into the hospital site between point C and point D - is consistently shown as a substantial roadway from the 1920s onwards and clearly provided access to a number of properties built fronting onto Mitton Road but also provided access to hospital land to the west of the route.

Access to the route between point A and point B may have been available but it is not until the 1960s that it is more clearly seen on both OS maps and aerial photographs prepared at that time that a route through existed – albeit narrower than the access road B-C and D-E and therefore consistent with the application for use on foot but not a route used by vehicles.

From point E it appears that up until approximately 2000 access was available through to Mitton Road along a track/roadway immediately south of woodlands. In approximately 2000 – following the demolition of parts of the former hospital site – a substantial modern housing development was completed, and Calderstones Drive constructed. A footpath was agreed to be dedicated north of the carriageway formally creating a highway at point F and H.

The map and documentary evidence examined therefore supports the user evidence submitted.

## Head of Service – Legal and Democratic Services Observations

### Landownership

From Point A and C and from Point D to near F/H the land was owned at the time of this application by Merseycare NHS Foundation Trust. As of 25/4/22 the sections of the application route owned by Merseycare was sold to Prospect (GB) Limited.

Points C to D and land including F to G are owned by George Wimpey City 2 Limited and this has largely become parts of highways maintainable at the public expense 28/10/2010 having been in a S38 agreement of 2000.

### Information from the Applicant

The applicant states the route has been acknowledged by Calderstones as a public footpath. The applicant further states the route has been well used over a period of 20 years according to his knowledge by locals and visitors alike, the "route was well trodden and they provided stiles access."

The Applicant has provided the following information:

1. An application to modify the Definitive Map and Statement to add a footpath(s) from Mitton Road to Calderstones Drive.
2. Map(s) extract marking existing 'paths'
3. A Map showing the route of the 'proposed' Definitive Map Modification Order.
4. 12 User Evidence Forms

The 12 user forms have been carefully considered and the information set out below.

### Duration of Use

The user evidence forms collectively provided evidence of use going back as far as 1972 and up to 2021 when part of the route was made inaccessible in 2021 by Merseycare as landowners, and the application to record the right of way was subsequently made.

20+ years Including the years (1972 to 2021)	1 – 19 years	Not specified
5	7	0

### Frequency of Use

The majority of the 12 users stated that they used the route daily, with one stating weekly, another one stating monthly, and finally 1 stating occasionally.

Daily	Weekly	Monthly	Occasionally	Not Specified
9	1	1	1	0

### Reasons for Use

Of those who specified their reason for using the route, the most common answer was walking/running for pleasure/exercise. Three users indicated they used the route for cycling on a monthly basis. Many users noted they used the route as it was safer to avoid the narrow footpath and cars on the main road, and one stated dog walking.

Walks (pleasure, exercise, recreational)	Avoiding cars on the main road	Other use (eg dogwalking)
7	2	1

### Other Users of the Route

The majority of the users recorded having seen others on foot whilst using the route, five users recorded having seen others using the route on horseback and five users recorded having seen others using the route on a bicycle. Numerous users refer to it as a well-used route with one indicating it was in constant use.

### Consistency of the Route

The majority of the 12 users stated that the route had always followed the same route, one stated no since the new housing.

Yes	No	Don't Know	Not Specified
11	1	0	0

### Route Used

In the Committee Plan, the proposed footpath was marked out at different points from A to H highlighting the route, however the users provided a map of their own within their user forms, the line they drew on their maps was similar to the points marked out in the Committee Plan.

### Unobstructed use of the Route

9 of the users were prevented from using the route, 2 specified they were stopped from using the route early 2021, whereby one of the two went onto to state they were prevented at Bridge Terrace. The majority of users indicated that the rest of the route remained accessible and they were still using it at the date of application.

8 of the 12 stated they saw no signs nor notices restricting or prohibiting access to the route, whereas 2 stated not until late 2020 when signs were put up by MerseyCare. A further 2 stated they only saw signs stating no dog walking in 2020.

6 were aware of stiles along the route, 2 stated no, 1 stated they didn't know, and 3 did not provide an answer.

4 users stated there are no gates along the route, 1 stated they didn't know, and 7 did not provide a response.

9 users have stated no permission was given/sought to use the route, of which 1 stated not applicable, and 2 did not provide a response.

One user commented the route has been acknowledged by Calderstones as a public footpath, and that the route has been in use for over 20 years by local residents and visitors alike, stiles were provided on the route and it is a well-trodden path.

Another user commented he uses the path frequently as part of his visits to the area when seeing his friends, and also when walking to and from work to avoid the traffic on the Mitton Road. Further stating the route has been in use for over 20 years and is well used by locals and visitors.

Two users commented the route provides a safe running/walking route for local residents, and that it is safe for families to walk along away from the traffic, and further states it is a wildlife haven, they further go on to state there are over 15 species of birds, reliant on the trees and the route is a corridor for food.

Another user stated the area simply needs the houses refurbishing and then selling/renting, and the path is a safe route for walking.

#### Information from Others

A consultation letter was originally sent to Councillor Mirfin on 3rd March 2022, however it was passed on to Councillor David Berryman who is the Borough Councillor for Whalley Netherton, who stated it was passed on to him as he is more familiar with the site.

Councillor Berryman states he is unable to advise as to whether there has been an official right of way path, however acknowledged there has been a path running in the past. Councillor Berryman further states "There was a style/gate at the Mitton Road end but the majority of the route followed the 'backs' of Bridge Terrace and Queen Mary Terrace, which was used for vehicular access to these houses. NHS MerseyCare claim that this was never a public right of way."

#### Information from Landowners

The former Landowner Point A and C and from Point D to near F/H stated the sale of the land was completed on 25 April 2022, and object to the application during the period it was under their ownership and state they have no record of the footpath's existence nor its use, and further state they assume the application was submitted to disrupt the development, and point out the application was made on 3 March 2021, a month after planning permission was granted by Ribble Valley Borough Council, planning reference 3/2021/0076. The landowner states there is no consistency to the

user evidence provided, and further state only 3 users satisfy the test under s31(1) Highways Act 1980 of the route being in use for 20 years or more.

The landowner states in accordance with the Open Space Society advice the evidence provided is not satisfactory as some evidence was provided by members of the same family rather than "6 – 10 unrelated people in a sparsely populated area to 30 people or more in a populous area."

The landowner states until 1990, the property was owned by the Secretary of Health who had Crown immunity. Four private property signs were erected in 2019, and the site has been used for mental health services for the last 30 years therefore no access to the public would be granted.

The current landowner of this land as of 25 April 2022 rejects the application and stated it refers to, repeats and relies upon the context provided by the previous landowner in their response to the application. This landowner further adds the following "In respect of the granted planning permission affecting Property ref 3/2021/0078 the planning officer did make reference to this application and commented in the report that the route could be accommodated via Mitton Road." Further to this the current landowner states they are in the process of agreeing a Section 278 agreement in the upgrade of the existing footway adjacent to Mitton Road, the works include the widening the footway to metres where possible, and done to an adoptable standard with edging kerbs and a new surface of tarmac and states this should be taken into account.

## **Conclusion**

The application made is that these sections of route have already become a footpath in law and should be recorded on the Definitive Map and Statement of Public Rights of Way.

The application route starts from a highway, Mitton Road (A), reaches a highway, Pendle Drive between points C and D, and continues as a further section to a highway Calderstones Drive at points F and H.

In respect of Pendle Drive and Calderstones Drive these are now vehicular highways and not able to be recorded on the Definitive Map. There was a S38 Agreement between Alfred McAlpine Homes North West Limited and Ribble Valley Borough Council dated 15/8/2000. 10 (b) of this agreement provided that on Completion of Part 2 works the road or roads shall become a highway or highways and remain forever open for use by the public at large. We are not in possession of the Part 2 certificate (the final certificate was issued to George Wimpey Northwest Limited 28/10/2010.)

Whilst users of the application route were crossing private land between C-D prior to dedication as a highway the intention to dedicate as highway was there from the S38 Agreement dated 15/8/2000.

F-G on the Committee plan is already footpath. This was dedicated in the 2000 S38 Agreement and is more properly added to the Definitive Map by way of a Legal

Event order rather by a DMMO based on user evidence. This short section is therefore not being considered with the rest of the application route.

Committee is therefore considering two separate application routes A-C and D-F/H both of which are connected to recorded highways at each end.

There is no express dedication in this matter therefore Committee should consider on balance, in respect of each route, whether there is sufficient evidence from which to infer a dedication at common law from all the circumstances or for the criteria in section 31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years "as of right" use.

Firstly, looking at whether dedication could be inferred at common law; for there to be inferred dedication, the evidence must show clear intention on the part of the landowner(s) to dedicate the route as a public right of way. Committee is advised to consider whether the evidence presented within this report from the various maps, and other documentary evidence coupled with the evidence on site and user evidence indicates that it can reasonably be inferred that in the past the landowner(s) intended to dedicate the route as a public right of way. Committee must consider whether there is sufficient evidence of the intention to create the actual route being considered in this report.

Substantial parts of the route as applied for and in existence on the ground today were formed as a result of houses being erected in the 1920s.

From looking at the user evidence it would appear that there has never been any clear action by owners to prevent use by the public (prior to the calling into question that triggered this application) and use by the public has continued for many years such that on balance there may be sufficient evidence from which to infer dedication at common law of this route from all the circumstances but it may be appropriate initially to make the Order and see what further information may be clarified before promoting to confirmation

Secondly looking at whether there is deemed dedication under section 31 Highways Act 1980 – in order to satisfy the criteria for s31 there must be sufficient evidence of use of the application route by the public, as of right (without force, secrecy or permission) and without interruption, over the 20 year period immediately prior to its status being brought into question, in order to raise a presumption of dedication. The presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way.

In this matter, the evidence indicates that the route A-C was obstructed in 2021 by the erection of fencing at point A which called that route into question and prompted the submission of this application in 2021. The route was still accessible other than at point A and most users indicated they were still using it at the time of the application. The date of application 3/3/21 is taken to be the date of calling into question of the unobstructed route D-F/H.

For D-F/H the 20 year period under consideration for the purposes of establishing deemed dedication would be from 4/3/2001 – 3/3/2021. For A-C we do not know the precise date the application route was blocked at point A, users refer to early 2021 and was prior to application 3/3/2021. For A-C we have used a 20 year period 31/1/2001 to 1/2/2021. A more accurate date from additional user evidence may be available.

Whilst some user evidence relates to period prior to 2001 Committee is advised that the provisions of S31 do not apply to the land whilst it was Crown land. The Land ceased to be Crown land when the land transferred from the Secretary of State in 1999 according to the Land Registry.

The applicant has provided evidence from 12 users in support of the application which refer to regular use of the route with the majority of the 12 users stating that they used the route daily on foot. The majority of users state they had seen others using it and many describe it as a well-used route.

All 12 users recorded that the application route has always followed the same course and none of the users refer to having seen signs or notices along the route advising that the route was not public.

Several users reference use from 2011 which would appear to relate to new housing being built in the area.

Committee's attention is drawn to the fact that although 12 users can be viewed as a relatively low number, Guidance from the Planning Inspectorate indicates that use of the route must be by a sufficient number of people who together may sensibly be taken to represent the public at large. Committee may consider that these 12 users of the route are representative of the public at large and therefore the evidence does raise a presumption of dedication of a footpath and does satisfy the statutory test.

The former landowner raises the fact that some of the users are related and/or from same household. Committee is advised that so long as the evidence overall represents the public at large this user evidence can be taken into consideration.

Evidence indicates a no dog walking sign or signs were erected in 2019. One no dog walking sign is visible at point A. This is not considered to be a calling into question as it did not prohibit use, indeed it could be taken as a landowner accepting use for purposes other than dog walking.

Mersey Care NHS Foundation Trust were landowner at the time of the application having acquired the land A-C and D- near E 17/5/2017. They have objected to the application but it is suggested they do not refer to any actions taken which would sufficiently call the route into question until they took action at A and there is a footpath which can be reasonably alleged to subsist.

The current landowner Prospect (GB) Limited only purchased that land 25/4/22 and have confirmed they were made aware of this application as part of planning application prior to their purchase. They have objected to the application but only purchased after the application.



In conclusion, taking all of the evidence into account, Committee on balance may consider that there may be sufficient evidence to make an Order but due to a slightly low number of user evidence Committee may however consider that there is not on balance sufficient evidence such that the higher test for confirmation can be met and may feel that it should not proceed to promote to confirmation at this stage.

If Committee is of the view that it is not satisfied that the higher test for confirmation can be met with the information available the matter should be returned to Committee for a decision regarding confirmation once the statutory period for objections and representations to the Order has passed.

### **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: 804-700		Ansar Sadiq, 01772 532435, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A