

Regulatory Committee

Meeting to be held on Wednesday, 14 September 2022

Part I

Electoral Division affected:
Rossendale South

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Investigation into public rights on a section of Holme Lane and Holme Bridge,
Rawtenstall
(Annex 'A' refers)

Contact for further information quoting file reference 804-744:

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Brief Summary

Investigation into the existence of public rights on a section of Holme Lane and Holme Bridge, Rawtenstall (shown on the Committee plan between points annotated as points A-B-C) following a request by the County Council's Highway Asset Team for consideration to be given as to whether the route should be recorded on the Definitive Map and Statement of Public Rights of Way.

Recommendation

That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) the Wildlife and Countryside Act 1981 to record bridleway on that part of Holme Lane shown on the Committee plan between points A-B-C.

Detail

At the request of the County Council Asset Management Service an investigation was carried out by the Principal Lawyer in Legal and Democratic Services into the highway status of part of the route known as Holme Lane including the bridge over the River Irwell (as shown on the Committee plan by a bold dashed line between points A-B-C).

Considering all the evidence, the recommendation made by the Principal Solicitor to the Highway Asset Service was not to include the section of Holme Lane or the

bridge on the List of Streets but to notify the Public Rights of Way Manager in Planning and Environment to ask for consideration to be given to recording the route (and surface of the bridge) as a bridleway on the Definitive Map and Statement of Public Rights of Way.

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

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

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

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

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

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

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

Consultations

Rossendale Borough Council

Rossendale Borough Council provided no response to consultation.

Landowners/Supporters/Objectors



The evidence submitted by the 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	8006 2199	Junction of route under investigation with 14-4-BW311 and 14-4-FP315
B	8010 2195	Western end of Holme Bridge
C	8011 2195	Eastern end of Holme Bridge

Description of Route

The route investigated is approximately 70 metres long and a site inspection was carried out in March 2022.

It commences at the junction of 14-4-FP315 and 14-4-BW311 south of Langbrook View (point A on the Committee plan).

From the junction at point A, to the west 14-4-BW311 gives access to Holme Manor (a residential care home), Holme Villa and Holme Terrace which comprises 10 residential terraced houses and then continues to cross the A682 which cuts across the route.

From the junction at point A, to the north east public footpath 14-4-FP315 passes between Holme View and properties collectively known as The Holme and follows the bank of the River Irwell to New Hall Hey and is included as part of the route of Irwell Vale Sculpture trail.

The route under investigation runs in a south easterly direction from the junction with the footpath and bridleway (point A) along a street-lit tarmac road which is also included as part of the Irwell sculpture trail. It provided access to further property and to stables before crossing the river Irwell via a stone bridge known as Holme Bridge (points B-C on the Committee plan).

When the route was inspected in March 2022 there was evident damage to the north eastern parapet of the bridge (which was still in use) with temporary barriers running along the length of it.

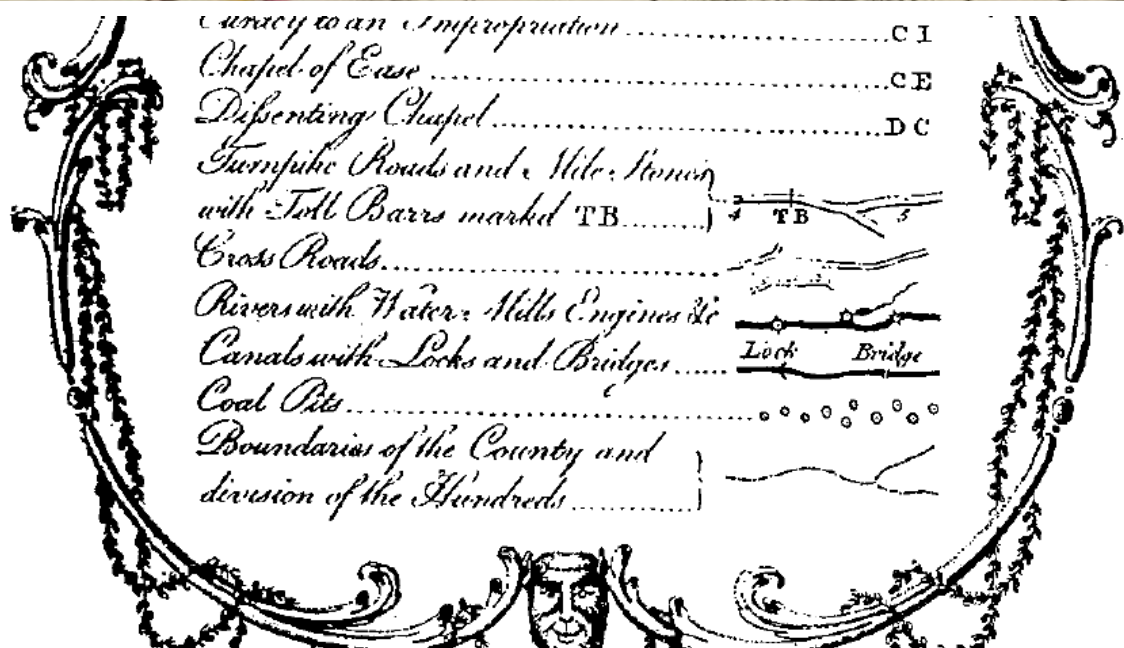
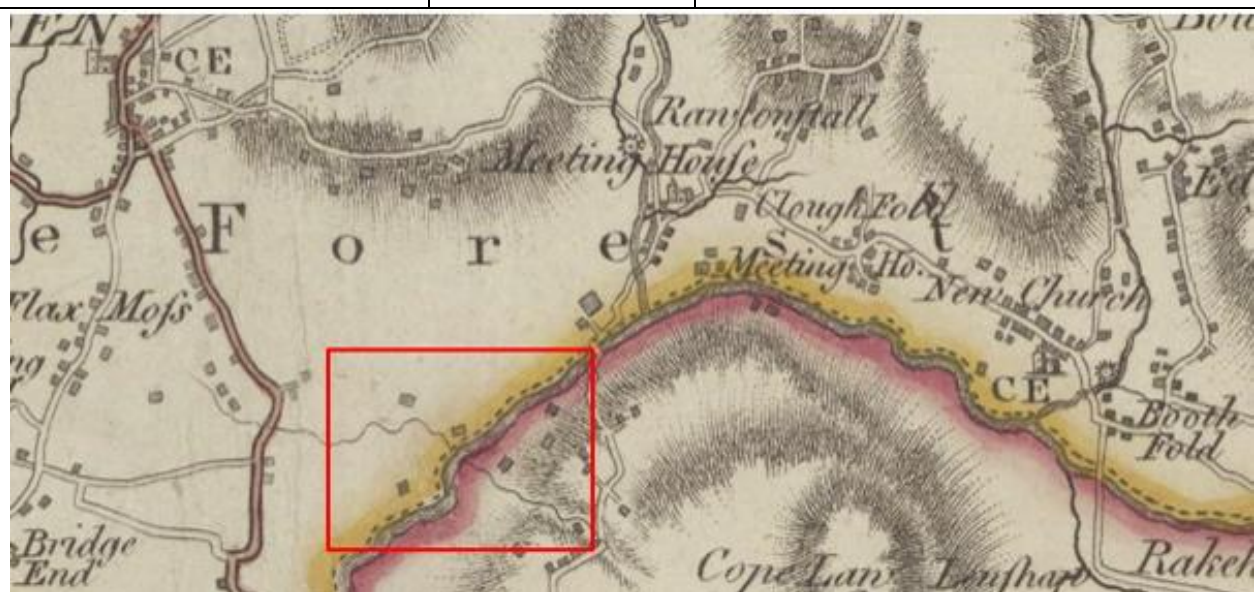
Map and Documentary Evidence

Various 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. The route is



not recorded on any county council highway records and investigating it required investigation into the full route.

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



Observations		The route under investigation is not shown although a number of large (un-
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		named) buildings are shown on either side of the River Irwell and close to the watercourse known as Langwood Brook which runs parallel to the route under investigation between point A and point B. No access to the buildings or across the river is shown.
Investigating Officer's Comments		The route was not considered by Yates to form part of a substantial public vehicular route at that time. It may have existed – at least in part – to provide access to the large buildings shown on the map.
Honour of Clitheroe Map	1804-1810	A privately produced map of land owned by the Honour of Clitheroe – Henry Duke of Buccleuth and Elizabeth Duchess of Buccleuth. It specifically shows the boundaries of coal leases granted by them. 'Roads' were identified in the key but there was no apparent distinction between those which may have been considered to be public or private.



Note: The map was not drawn with north at the top like most maps reproduced in this report

EXPLANATION


Market Towns with the Distance from London

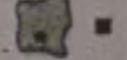
in Measured Miles as **BLACKBURN**


209 ¹/₂

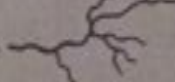
Churches and Chapels +

Turnpike Roads 

Cross Roads 

Parks & Gentlemens Houses 

Navigable Canals 

Rivers 

NB. The figures on the Turnpike Roads express the Distance in measur'd Miles between one Market Town and another

Observations		Townsend Fold is shown and buildings labelled as Holme Mill are shown on the opposite side (east) of the River Irwell to the route under investigation. A bridge across the river is not shown.
Investigating Officer's Comments		The route under investigation probably did not exist in 1804-1810 particularly as no mill is shown on the west side of the river.
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.

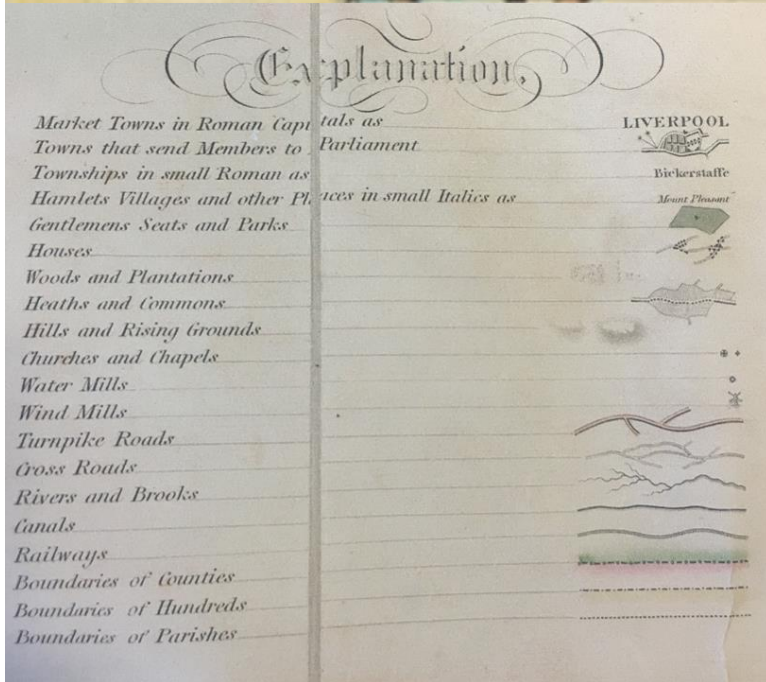




		<p>Turnpike Roads _____</p> <p>Cross Roads _____</p> <p>Towns & other Places that send Members to Parliaments } _____</p> <p>Boundaries of Counties _____</p>
Observations		Townsend Fold exists just off the main road (Bury Road) which was shown as a Turnpike Road. The watercourse (Langwood Brook) and a number of buildings are shown between Bury Road and the River Irwell but the bridge is not shown and the route under investigation on the west side of the bridge (A-B) is not shown.
Investigating Officer's Comments		The route under investigation probably did not exist in 1818 and if it did exist did not appear to have been considered to be a significant public route by Greenwood.
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

Investigating Officer's

Townsend Fold is not shown and no properties are shown west of Bury Road (on the east side of the River Irwell). West of the river is 'Holme' with a cul de sac road nearly reaching it from the main road (Manchester Road) to the west. The route under investigation – including the bridge – is not shown.

Investigating Officer's

The route under investigation probably did

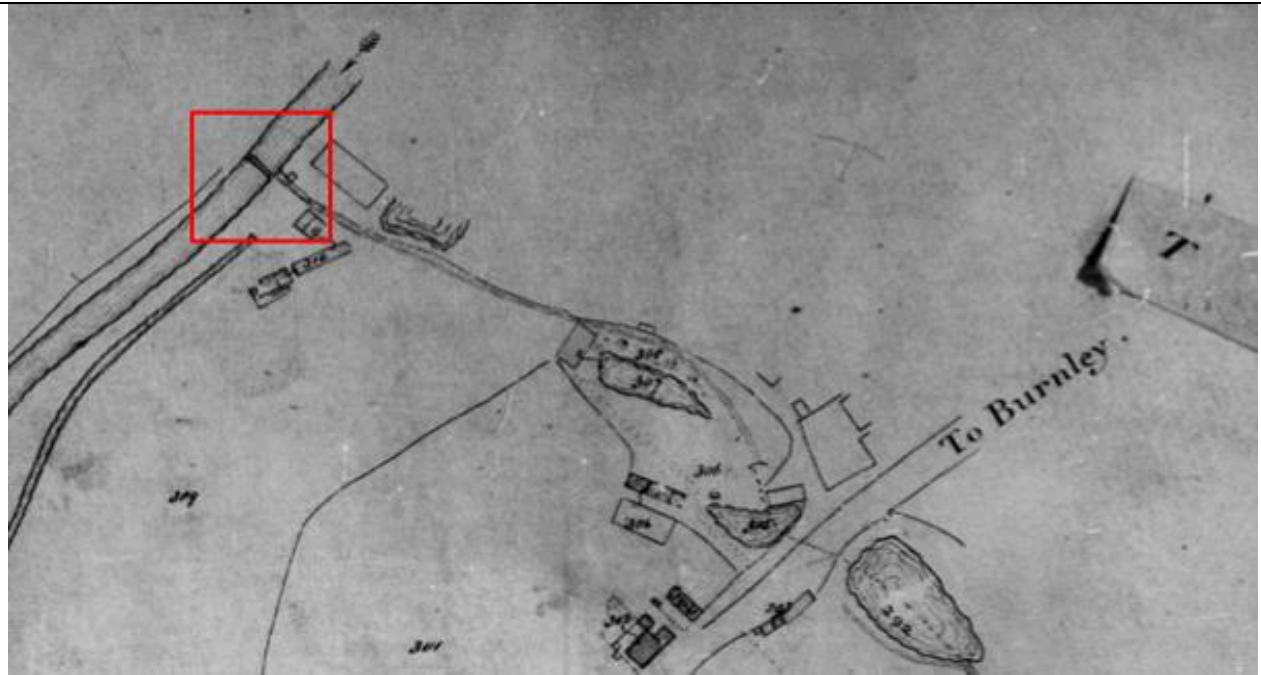


Comments		not exist in 1830 or if it did exist was not considered to be a significant public route by Hennet.
Information about Holme Bridge and ownership of The Holme from the Holme Manor website		The property known as 'The Holme' and located around point A includes a former farmhouse now used as a residential care home. The website for the care home provides an interesting section on the history of the property. http://holmemanor.co.uk/history
Observations		<p>The information below in italics is taken from the web site:</p> <p><i>The Townsend family lived in Townsend Fold from the 1600's onwards and they owned property and cotton mills, land in Waterfoot (Townsend ST) is named after them. Their main residence was The Holme, which was a mansion demolished in the early 1960's but up to the 1950's the Townsend family still lived there.</i></p> <p><i>There are photos of The Holme, which had a beautiful fountain outside, there are photos of Townsend Fold all taken around a hundred years ago, possibly 120 years ago. There are photos looking toward the Manor and you can see the remains of a huge gate which was a toll gate across Holme Lane, the Townsends collected a toll.</i></p> <p><i>The two Townsend brothers who built the newer part of Holme Manor, which was Holme Farm, were Jonathan and Richard Townsend. There are two date stones at the Manor which bear their initials and the date of 1828.</i></p> <p><i>Jonathan Townsend was a church warden at St James 1817 - 1820, 1822 - 1825 (there is a memorial to the family within the church itself). He donated the 4th bell in 1830, along with his brother Richard he owned Townsend Fold Mill.</i></p> <p><i>The Holme Bridge which brings traffic over the Irwell has a datestone of 1830 with Jonathan and Richard's initials on it.</i></p> <p><i>In a deed traced for Joshua Townsend</i></p>



		<i>(died 1828), of the Holme and for Joshua Townsend (his son and heir) in 1805 there is mention of cottages, 2 barns, a fulling mill, carding engine and outhouses.</i>
Investigating Officer's Comments		<p>The information detailed on the website refers to land and property on both sides of the River Irwell being owned by the Townsend Family with Holme Mill and Townsend Fold Mill on the eastern side and The Holme – described as the family home being located west of the river. Holme Bridge is dated 1830 and is marked with the initials of the owners of The Holme strongly suggesting that the bridge was a private bridge for access to The Holme.</p> <p>No further information has been found with regards to the reference to a toll gate from where the Townsends collected tolls for use of Holme Lane although it was not uncommon in the late 1700s and early 1800s for landowners to set up private toll roads for which they allowed access for payment of a toll. However it does suggest that the lane did not have public rights.</p>
Tithe Map and Tithe Award or Apportionment	1838	<p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large-scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p>





Observations		<p>There is no Tithe Map for the area crossed by the route under investigation (A-B). However, the Tithe Map for Tottington Higher End is the earliest map examined that shows a bridge across the River Irwell consistent with the one under investigation (Holme Bridge).</p> <p>No route is shown continuing west from the bridge and no route is shown from Bury Road through Townsend Fold to the bridge – with just the watercourse known as Langwood Brook shown. The numbered plots between Bury Road and the River Irwell – including the land over which Holme Lane is now located – is all listed as being in the ownership of John and Richard Townsend.</p>
Investigating Officer's Comments		A bridge existed across the river in 1838 but there is no indication from the Tithe Map and Award that it carried a public right of way.
Inclosure Act Award and Maps		<p><u>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.</u></p>
Observations		No inclosure map or award was found for

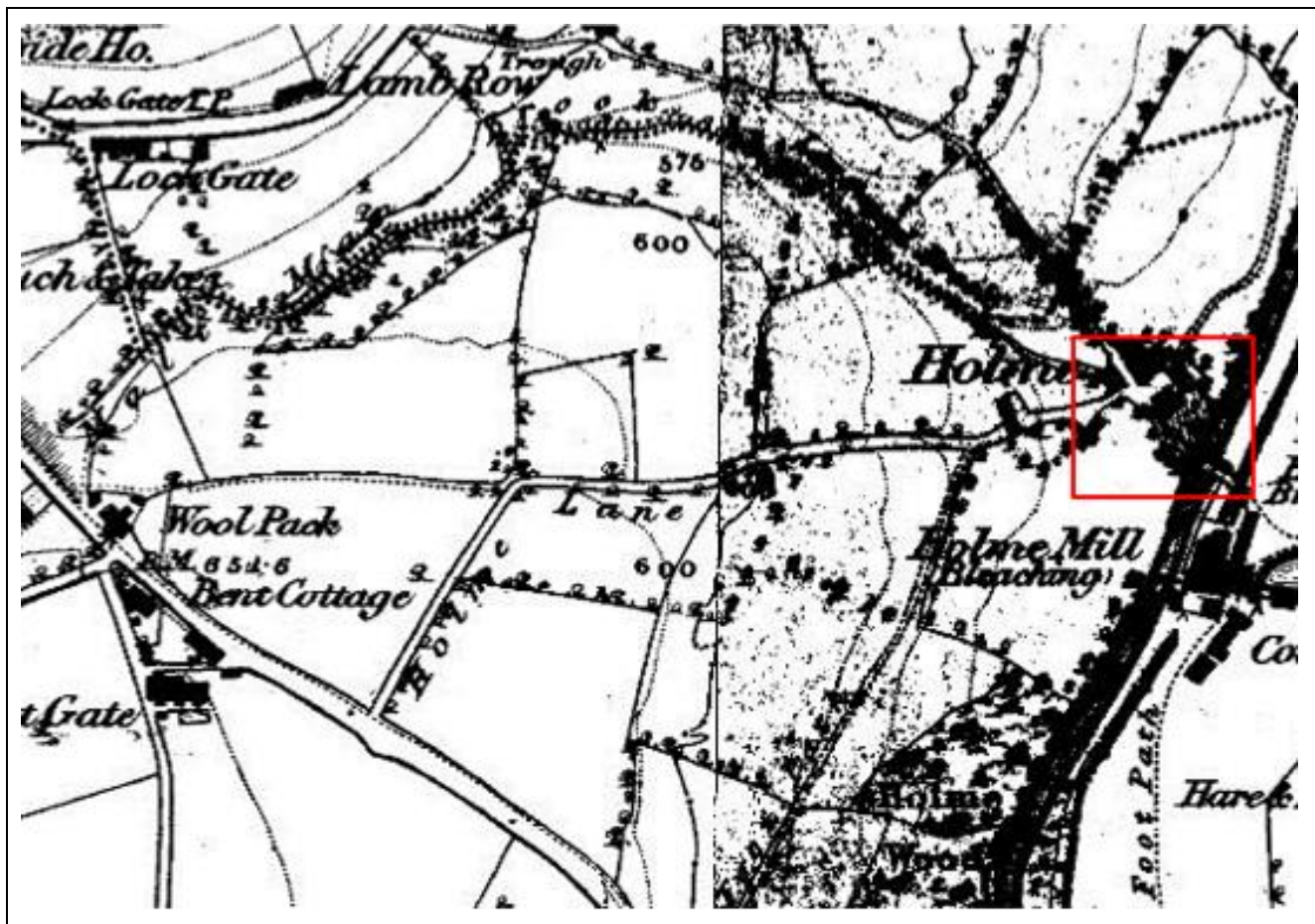


		the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
Canal and Railway Acts	1844	Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built 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		<p>Holme Lane to the east of the River Irwell is crossed by the London and Yorkshire Railway (Bacup Branch) adjacent to Townsend Fold Siding. At this point the railway crosses Holme Lane on a level crossing.</p> <p>A search of the railway records deposited in the County Records Office has not been made because although a plan of the proposed railway is known to have been deposited in the County Records Office there is no book of reference available to provide any information about the plots shown on the plans.</p>
Investigating Officer's Comments		The railway crosses part of Holme Lane since adopted as a publicly maintainable highway; the records have not been searched because the plan on its own will not assist in this matter.
6 Inch Ordnance Survey (OS) Map Sheet 72	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-1847 and published in 1849. ¹

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






















<p>Observations</p>		<p>A route is shown passing through Townsend Fold and across the railway. It then continues as an unfenced route passing Holme Mill and crossing Holme Bridge (points B-C). Beyond the bridge the route continues – although the exact alignment appears to be 'tangled' with what appears to be a culverted section of Langwood Brook – to point A where a number of buildings are shown titled 'Holme'. Continuing west from point A a bounded route continues past further buildings and is named on the map as Holme Lane continuing through to a junction with Manchester Road near Bent Gate.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation existed as a substantial route in 1844 and appeared to form part of a longer route providing access to a cotton mill and bleach mill and also a number of smaller properties. It also appeared to form part of a through route from Bury Road to Manchester Road – which were both shown as Turnpike Roads at that time and</p>



		appeared to be capable of being used on horseback and vehicles at that time.
Cassini Map Old Series Blackburn & Burnley Sheet 103	1842-1859	The Cassini publishing company produced maps based on Ordnance Survey mapping. These maps have been enlarged and reproduced to match the modern day 1:50,000 OS Landranger maps and are readily available to purchase.



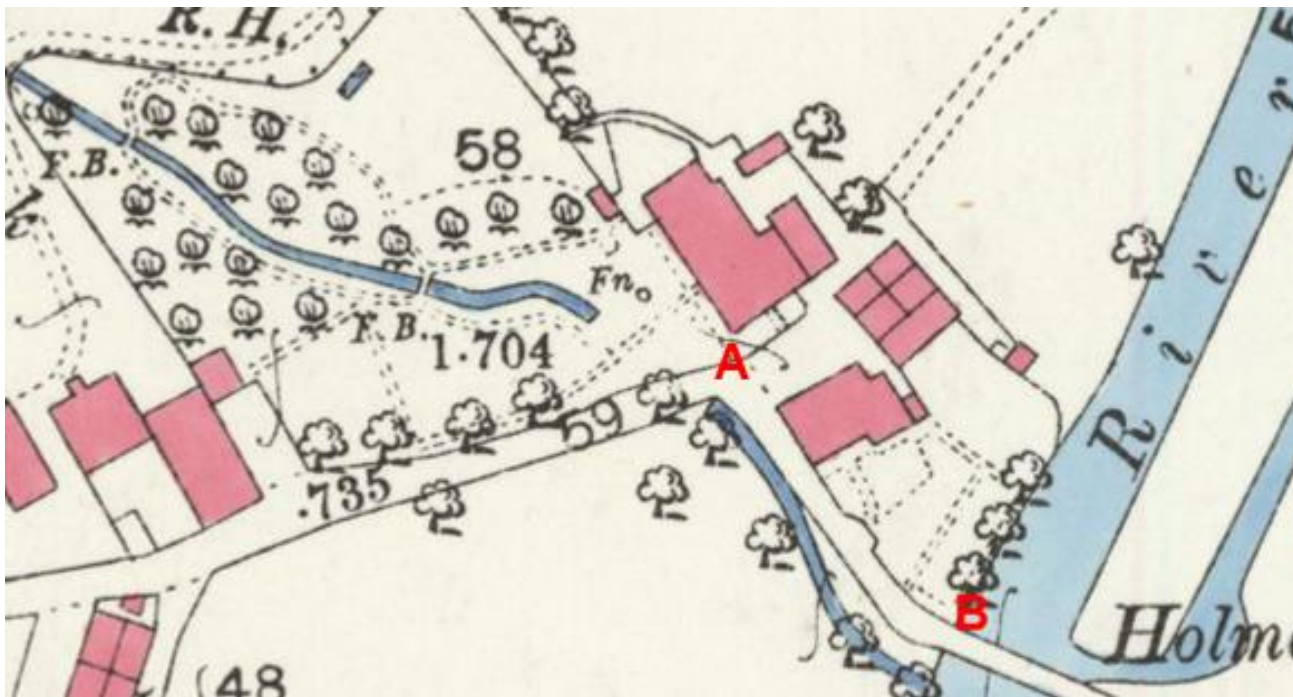
Turnpike or main roads 	Railways 
Other roads 	Cuttings 
Unfenced roads 	Embankments 
Mileages; turnpike gates; toll gates S T.P. T.G.	Tramways and freight-only railways 
County boundaries 	Woodland 
Parish or township boundaries (on some sheets only) 	Parkland 
Church 	Foreshore: sand; boulders; rocks 
Windmill 	
Lighthouse 	

Legend source - <http://www.cassinimaps.co.uk/shop/pagelegend.asp>

Observations		No route is shown from Bury Road across the railway through to Holme Bridge (B-C). West of the river buildings are shown but not named and a route consistent with Holme Lane (as shown on the first edition 6 inch OS map above) is shown through to Bent Gate.
Investigating Officer's Comments		The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown had public rights for those travellers. In this instance the route under investigation from point A-B can be seen but it is shown in the context of a route which extends to Holme (not named on the map) from Bent Gate. It is not shown as part of a longer through route and although the bridge – and route from Bury Road across the railway to point C are known to have existed at this time they are not shown suggesting that this route may not have been considered to be a



		public vehicular through route in the mid-1800s.
25 Inch OS Map Sheet LXXII.13	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891 and published in 1893.



Observations		The route under investigation is clearly shown. It is shown as part of a bounded through route providing access to a number of properties and continuing as a significant route west from point A (now recorded as 14-4-BW 311) past Holme Terrace and other unnamed buildings to continue through to Manchester Road at Bent Gate as a bounded route named on
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		<p>the map as Holme Lane.</p> <p>The bridge (B-C) is clearly shown and is named as Holme Bridge and no lines are shown across the route – or across the route continuing west from point A as 'Holme Lane'. The route now recorded as 14-4-FP315 is shown on the map as a footpath (F.P.).</p> <p>No part of the route under investigation – or the longer route extending from Bury Road across the railway through to Manchester Road at Bent Gate is shown as being shaded or denoted by a thickened line on the east/south side.</p> <p>The property immediately north of point A is not named but is understood to have been the family home of the Townsends who owned the mills and the surrounding land and was known as 'The Holme'. The OS map shows the formal gardens and a fountain understood to have been located at the front of the property.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation existed in 1891 and appeared to be capable of being used on horseback and with horse drawn vehicles at that time. It provided access to a number of properties along the route but also linked two significant public vehicular routes (Bury Road and Manchester Road).</p> <p>The fact that it was named as part of a road on the map is evidence that it was known locally by that name and is consistent with use of the route by the public at least on horseback at that time.</p> <p>No lines were shown across the route – or the continuation of the route (apart from at the railway level crossing) suggesting that access was not restricted at that time.</p> <p>The route is not shown coloured or shaded suggesting that it was not considered to be a public vehicular route kept in good repair by the Highway Authority at that time. 'Good repair' meant that it should be possible to drive carriages and light carts over them at a trot so the fact that the route is not shown in this way suggests at the very least that it was not maintained to the same good</p>



		standard as the public roads to which it connected or that it was maintained privately.
1 inch OS Map Sheet 76 Rochdale	1896	Small scale OS map published in 1896.



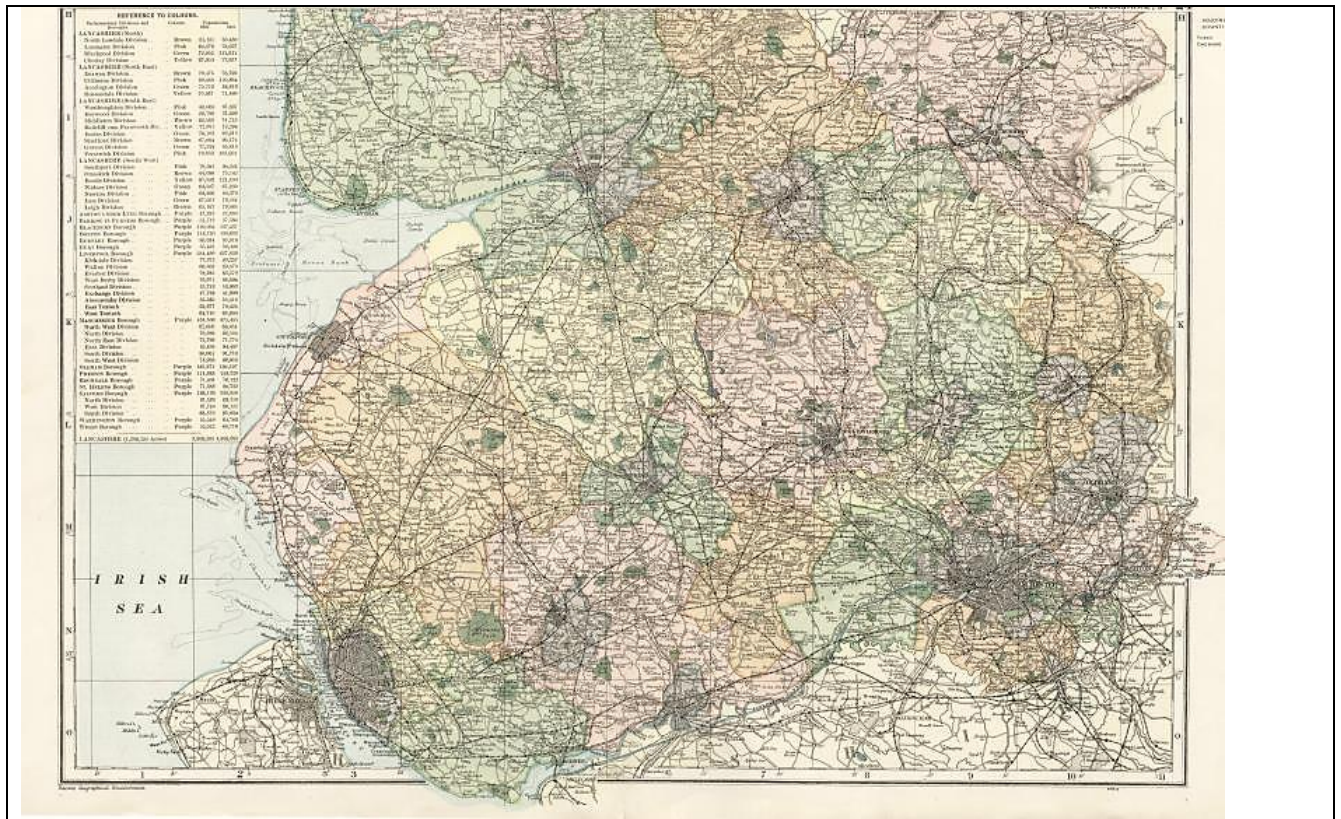
<i>Metalled Roads; First Class</i>	5 (Mile distance) (Altitude) 211	Unfenced	.....	Chuo
" " <i>Second Class</i>.....			.....	"
" " <i>Third Class</i>.....			.....	"
<i>Unmetalled Roads</i>.....			.....	Wine
<i>Footpaths</i>.....			.....	Ligh
<i>Railways, Single Line</i>.....			.....	Beac
			.....	Let
			.....	Cont

Observations		The route under investigation is shown as part of a longer route depicted as a third class road and providing a link from Bury Road to Manchester Road across the railway and River Irwell (via Holme Bridge).
Investigating Comments	Officer's	The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s



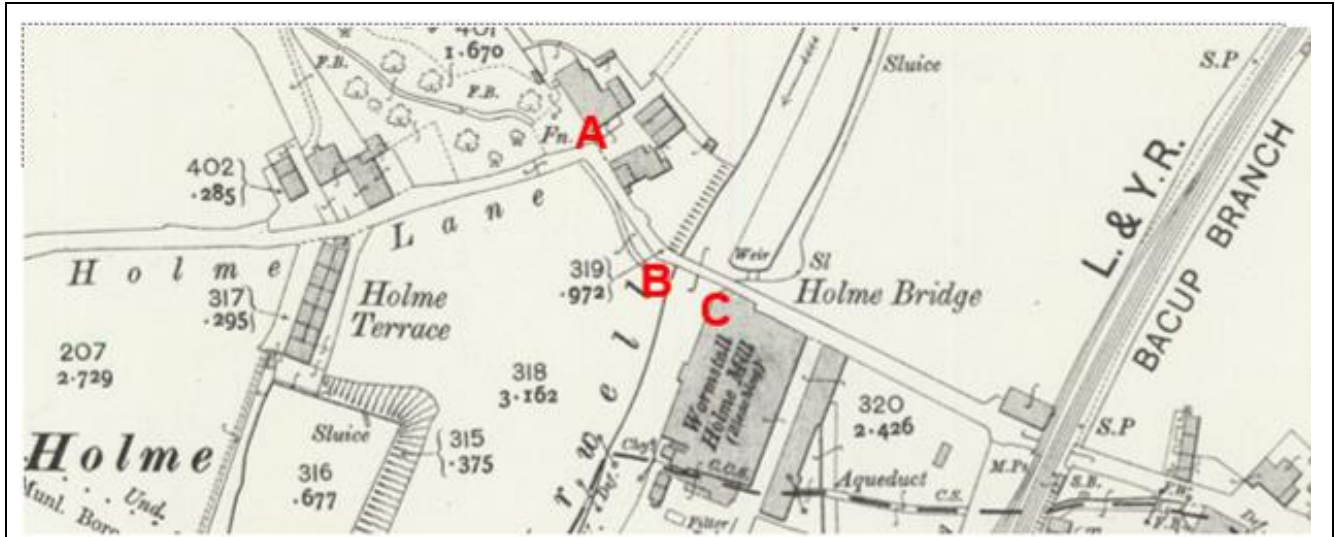
		would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown – and in this case the route under investigation - had public rights for those travellers.
Bacon's Map of Lancashire		G W Bacon was a publisher of maps and in 1890 his 'Commercial and Library Map of Lancashire from the Ordnance Surveys' was published, and later reprinted. As the title states, the maps he published were derived from Ordnance Survey maps.





<p>Observations</p>		<p>The route under investigation is not shown and neither is the rest of the route from Bury Road through to Manchester Road. The mill buildings and houses are not shown either.</p> <p>The second map extract inserted above is an extract of the map published illustrating how only the most significant routes could be included.</p>
<p>Investigating Officer's Comments</p>		<p>Bacon's maps of the British Isles were at a small scale and as such only the more significant routes are generally shown. Commercial maps of this nature were expensive to produce and to purchase and the routes shown were often considered to be public through routes. The route under investigation is not shown suggesting that it was not considered to be a significant public through route to be included on such a small-scale map. Maps pre and post dating this atlas do however confirm the existence of the route at that time.</p>
<p>25 inch OS Map Sheet LXXIII.13</p>	<p>1911</p>	<p>Further edition of the 25 inch map surveyed in 1891, revised in 1908 and published in 1911.</p>








Observations		<p>The route under investigation is again shown as part of a longer through route known as Holme Lane. No restriction on access is shown along the section under investigation but it is noted that a gate is now shown across Holme Lane west of point A (on the section now recorded as 14-4-BW311).</p>
Investigating Officer's Comments		<p>The route under investigation existed in 1908 and appeared to be capable of being used.</p> <p>The existence of gates along a public route would not have been considered unusual in the early 1900s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p>
Bartholomew half inch Mapping	1902-1906	<p>The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS</p>




small scale map was inferior to Bartholomew at that time for the use of motorists.

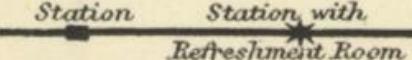




EXPLANATORY NOTE

First Class Roads 
Secondary " (Good) 
Indifferent " (Passable) 
The uncoloured roads are inferior and not to be recommended to cyclists.

Footpaths & Bridlepaths 

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

Railways 
Canals 

County Boundaries 

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

1904





EXPLANATORY NOTE

- Motoring Roads {
 - Through Routes
 - First Class Roads
 - Secondary "
 - Indifferent " *(Passable for cyclists)*

Motor Ferries

The uncoloured roads are inferior and not to be recommended.
 Footpaths & Bridlepaths *N.B. The representation of a road or footpath is no evidence of the existence of a right of way.*
 The figures thus 190 represent heights in feet above sea level.

Railways Station Station with Refreshment Room L.C. (Level Crossing)

Canals

County Boundaries

1920





Best Motoring Routes		Ministry of Transport Numbers	A 586
Good Secondary Roads		Footpaths & Bridlepaths	
Serviceable Roads		<i>N.B. The representation of a road or footpath is no evidence of right of way.</i>	
Other Roads			

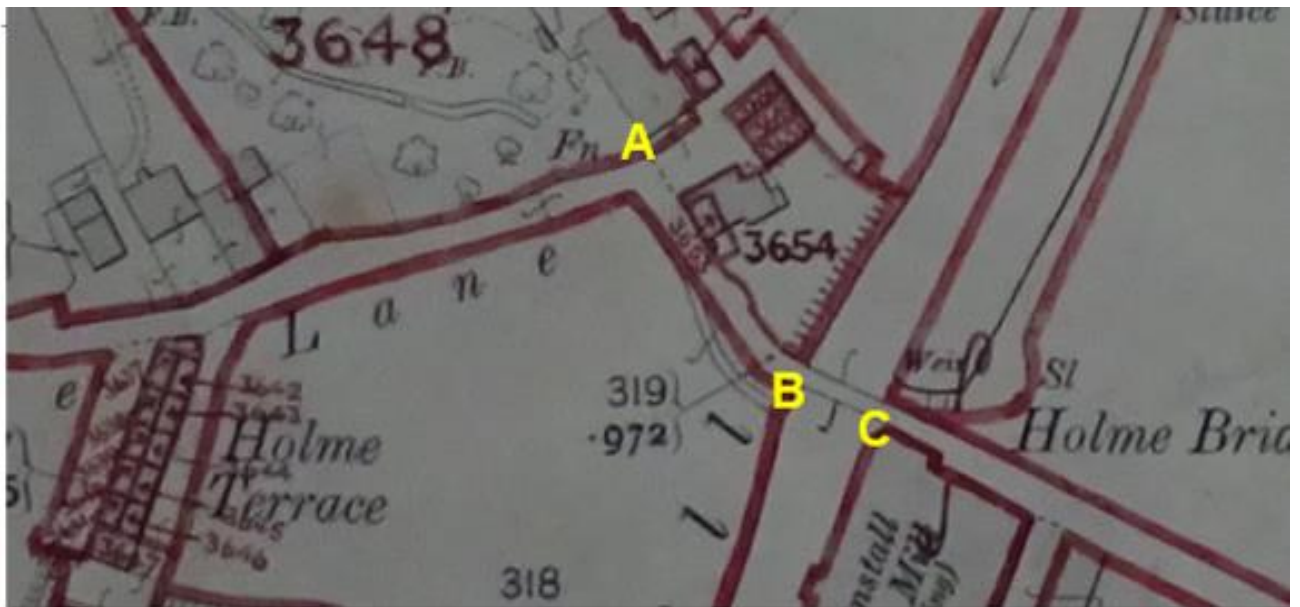
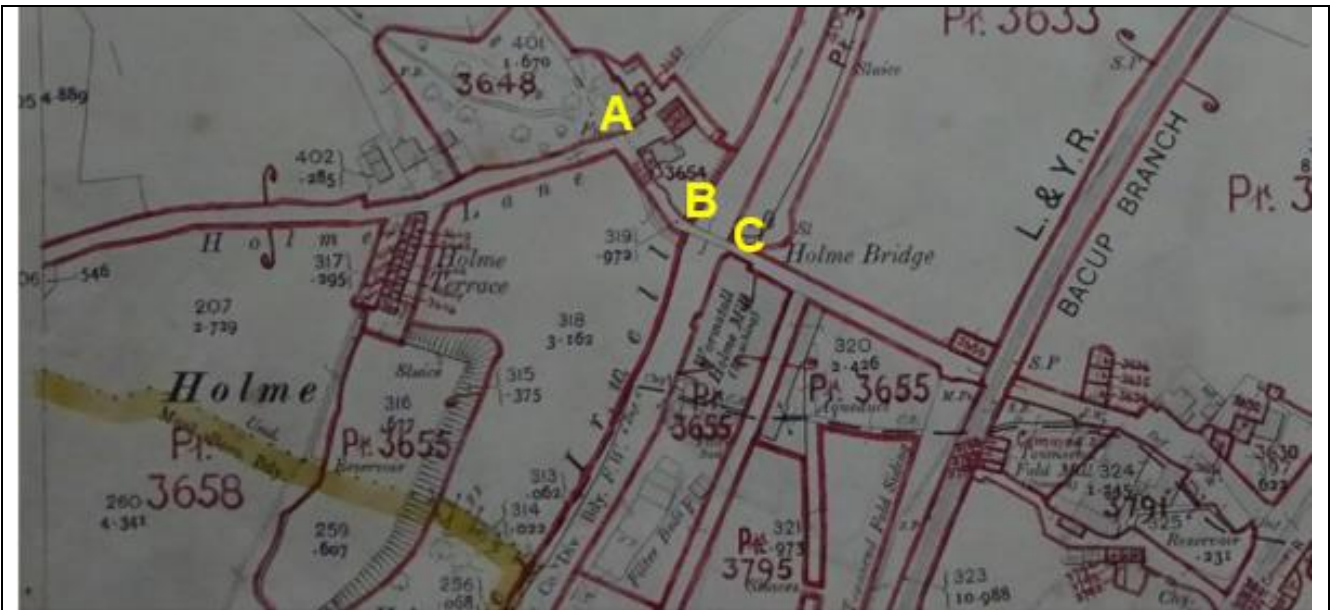
1941

Observations		<p>All three maps published show the route under investigation as part of a longer through route.</p> <p>The map published in 1904 shows the route as an uncoloured road which is defined as being inferior and not to be recommended to cyclists. By 1920 it is shown as being 'indifferent' but defined as a route passable for cyclists and in 1941 it is defined as a serviceable road.</p>
Investigating Officer's Comments		<p>Whilst the key to the map states that the representation of a road or footpath is no evidence of a right of way the fact that the route is clearly shown as an uncoloured /indifferent/serviceable road on all three maps suggests that it existed as a through route and was considered to be more than a footpath or bridleway in the early 1900s. It does however suggest that its surface – as a through route - may not have been suitable for more modern</p>



		<p>motorised vehicles. Reference to the route being passable by cyclists does imply some acceptance of public vehicular use as cyclists did not have a public right of access along routes considered to be footpaths or bridleways at that time.</p>
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was 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). Some land could be excluded.</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>



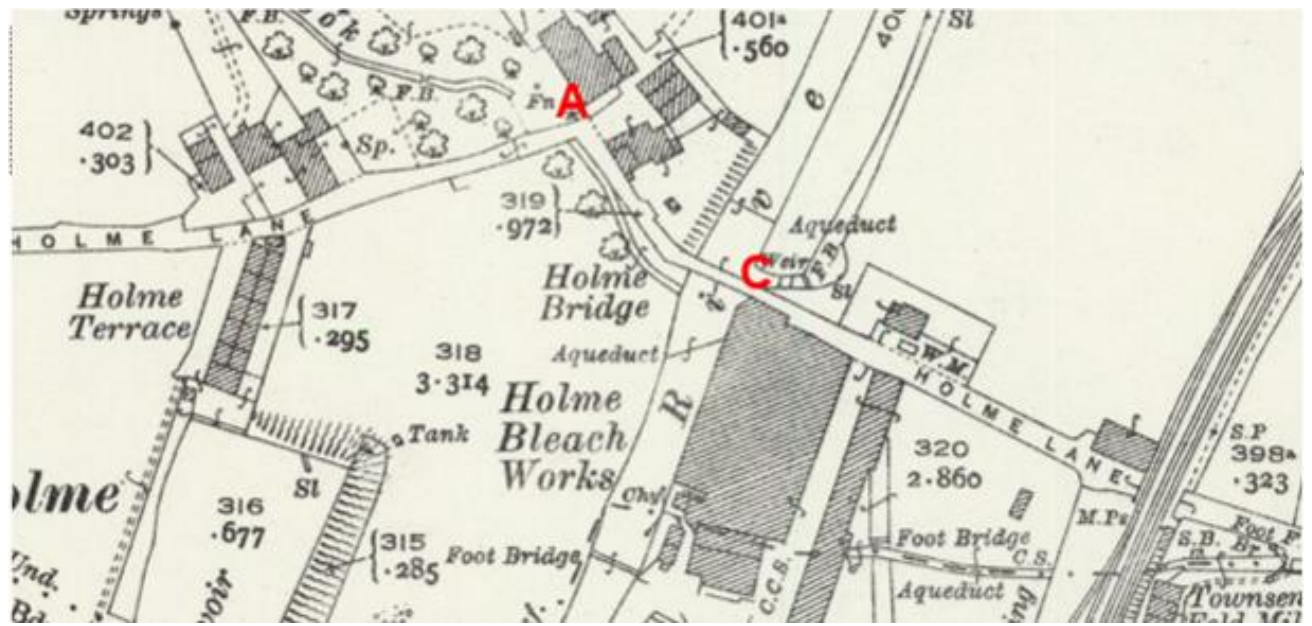


<p>Observations</p>		<p>The route under investigation is not included in a taxable hereditament plot and is shown consistent with how the rest of Holme Lane from Bury Road through to Manchester Road is shown but also how back alleys, occupation roads and the river are all one excluded area on this sheet.</p> <p>Between point B and point C the bridge itself is contiguous with both the lane and the river.</p>
<p>Investigating Officer's Comments</p>		<p>Exclusion of the route is consistent with it carrying public rights.</p> <p>Guidance given to surveyors stated that parcels 'should continue to be exclusive</p>



		of the site of external roadways.' In this instance although all the route known as Holme Lane – from Bury Road through to Manchester Road including the bridge B-C) is shown excluded it has to be considered in the context of other excluded areas on this sheet many of which could not be highway. Numbered plots split by the route west of point A would ordinarily suggest that the route was considered to have public vehicular rights as public footpaths and bridleways were normally included in numbered plots but this has to be taken with some caution given how many non-highways were also excluded on this sheet.
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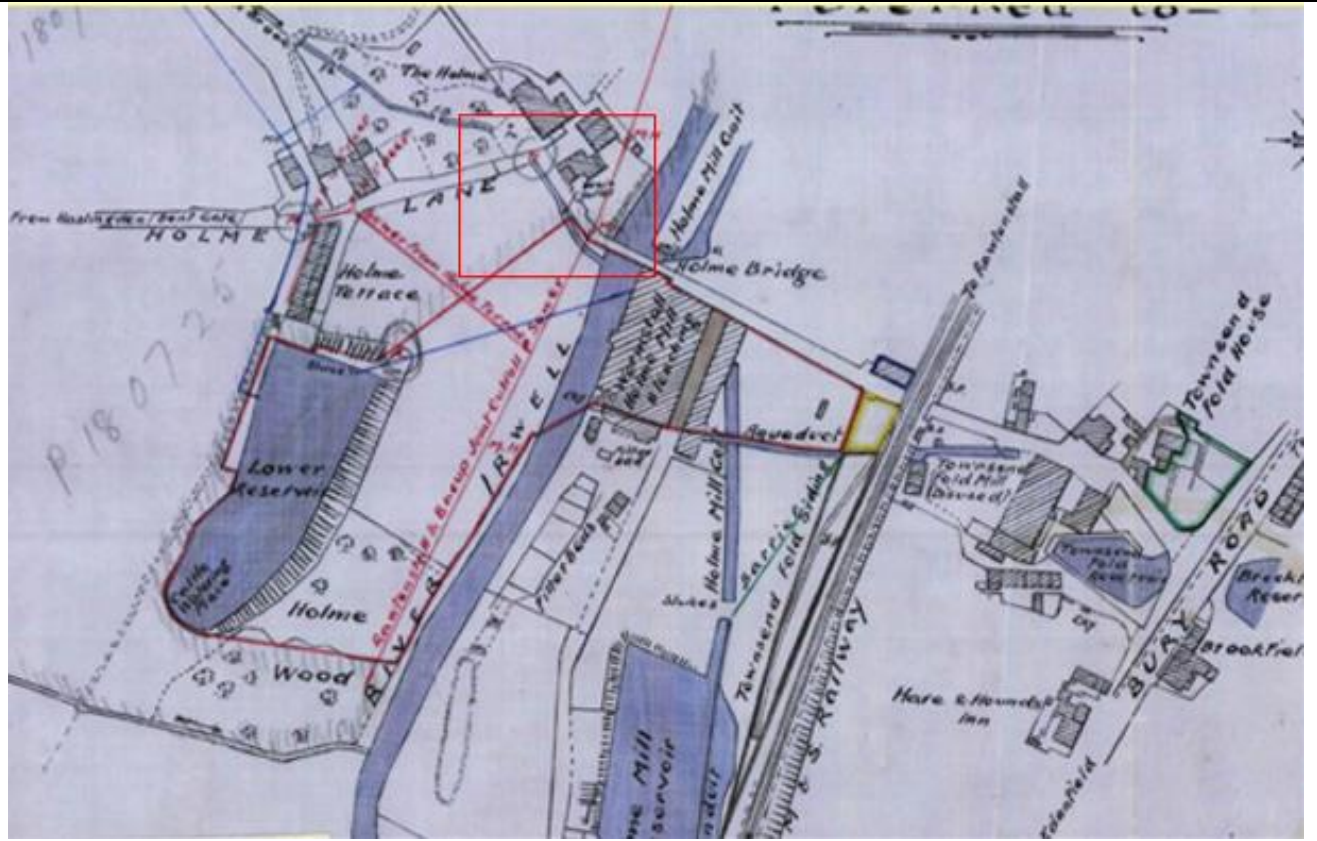
25 Inch OS Map Sheet LXXII.13	1930	Further edition of 25 inch map (surveyed in 1891, revised in 1928 and published in 1930.
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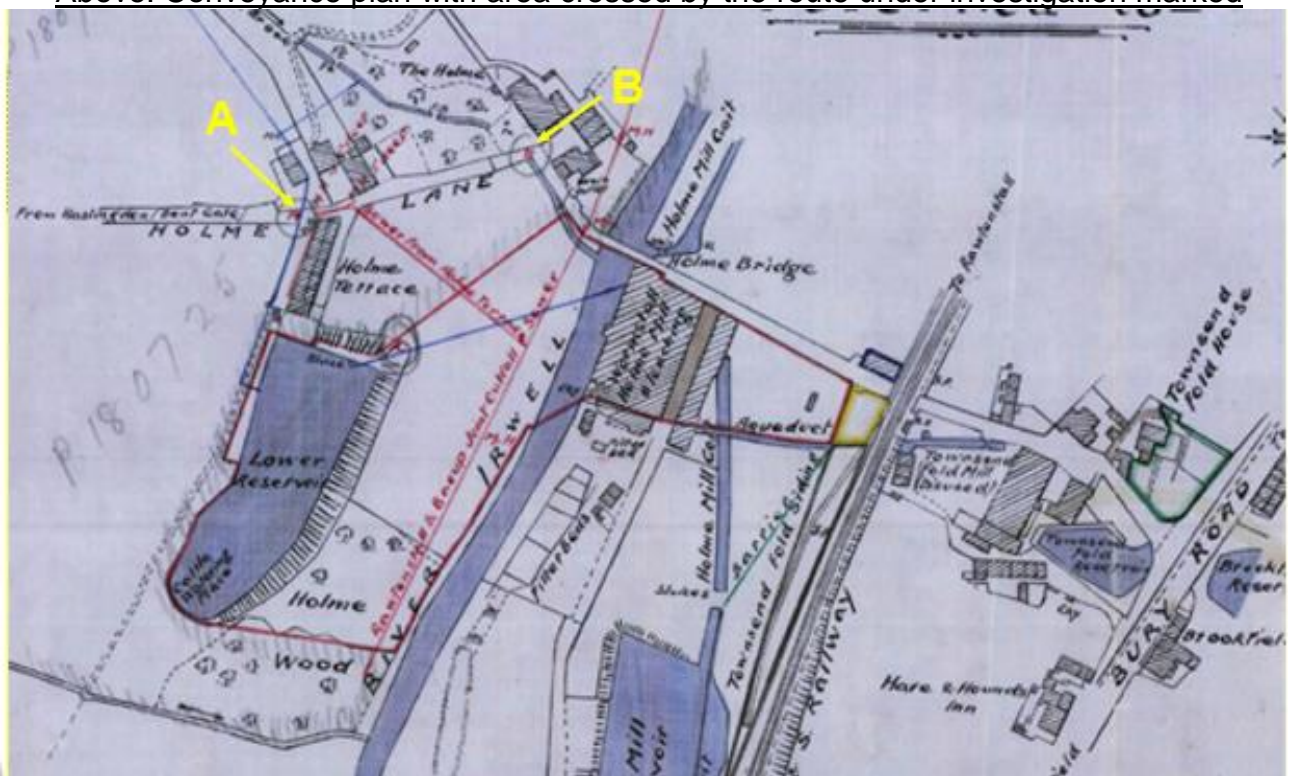
Observations		The route under investigation is again shown as part of a longer through route which is named as Holme Lane west of point A and also east south east of point C. A gate is still shown across the route west of point A.
Investigating Officer's Comments		The route under investigation existed as part of a longer substantial through route in 1928 and appeared to be capable of being used at least on horseback and probably by vehicles at that time.
Conveyance	1931	Conveyance of land on both sides of the river sold by the owners of The Holme to



the Bleachers Association.



Above: Conveyance plan with area crossed by the route under investigation marked



Above: Conveyance plan with points A and B as referred to in the conveyance document

Observations

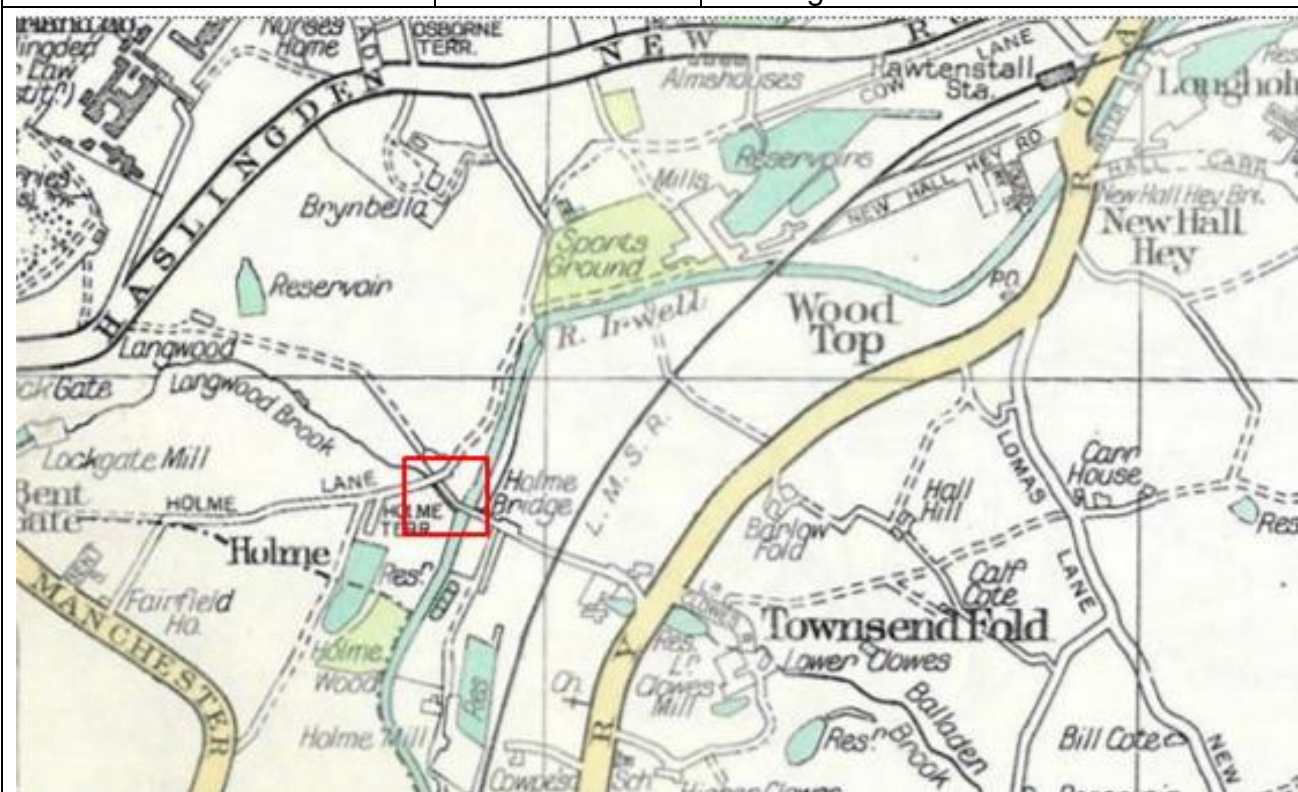
The conveyance in 1931 wherein GH Townsend and HA Townsend of The Holme sold land and gave rights to the Bleachers Association which were buying



		<p>in effect the old mill on both sides of the river.</p> <p>This included a right of way at all times and for all purposes on foot and with vehicles across the vendors' land onto a particular section of Holme Lane (the section between The Holme and Holme Terrace, i.e. between A and B on the conveyance plan which is west of point A on the Committee Plan).</p>
Investigating Officer's Comments		<p>The conveyance did not include any provisions relating to access along the route under investigation – including use of Holme Bridge and linking to the section of Holme Street recorded on the List of Streets (east south east of point C) nor elsewhere on Holme Lane itself.</p> <p>However the lack of right of way given by the conveyance for access onto a section of Holme Lane implies that there was a belief that vehicular rights, public or private, already existed on that section of Holme Lane. The purchasers did not already own property adjacent or accessed from it but it is not known what private rights the Bleaching Works already had.</p> <p>If there were public rights on that section (between Holme Terrace and The Holme) there must have been public rights leading to that section but we do not know whether this was from Bury Road or from Manchester Road or as a through route.</p> <p>The plan included as part of the conveyance does confirm the physical existence of the route under investigation at that time and does indicate that it formed part of a longer route known as Holme Lane.</p>
Authentic Map Directory of South Lancashire by Geographia	Circa1934	<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.</p> <p>The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and</p>




		<p>district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.</p>
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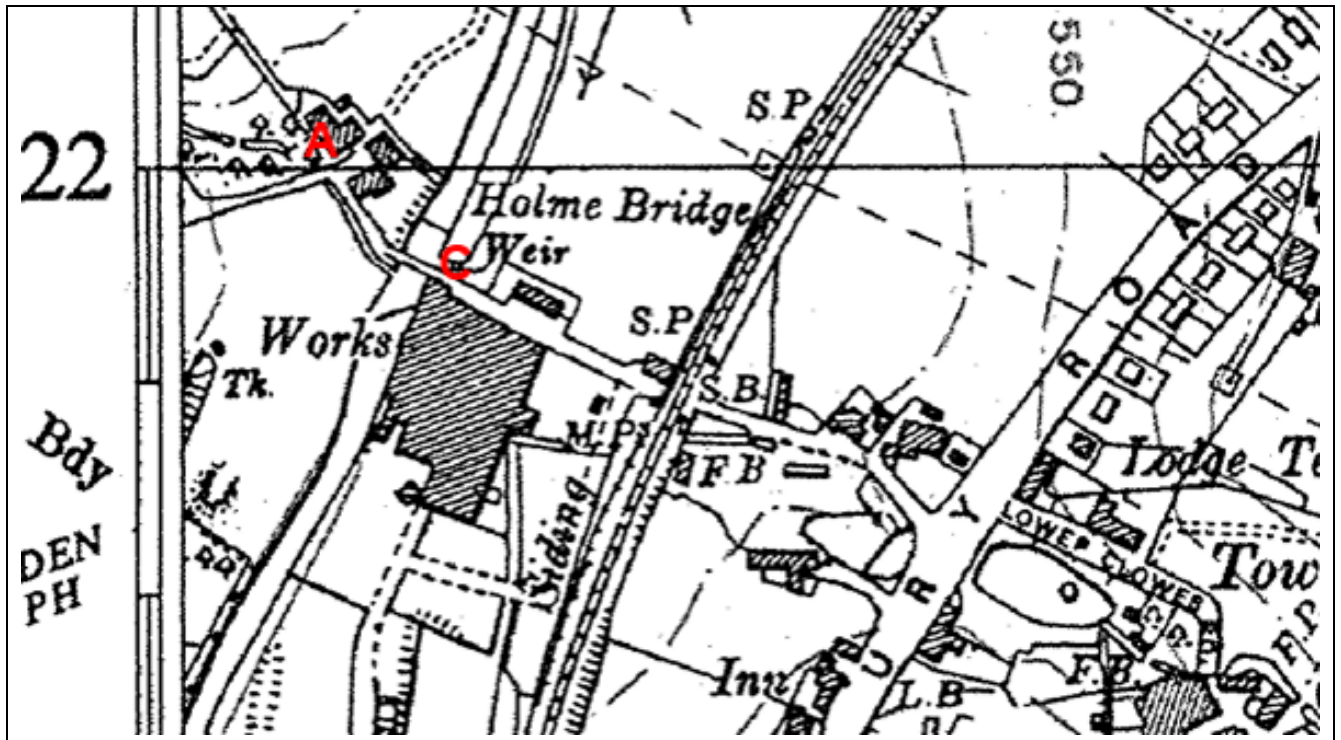


<p>Observations</p>		<p>The route under investigation is shown as part of a longer route with Holme Bridge named on the map and the route from The Holme to Manchester Road named as Holme Lane. A line is shown across the route at point A but this is not consistent with how this junction is shown on any other map examined and there is no key to this atlas explaining what this means, although convention at the time suggests it indicates a gate or other barrier.</p>
<p>Investigating Officer's Comments</p>		<p>The route is shown in an atlas consistent with how other routes carrying public vehicular rights are shown but also consistent with how some other routes not carrying vehicular rights are shown.</p>
<p>Aerial Photograph²</p>	<p>1945-1952</p>	<p>The earliest set of aerial photographs</p>

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

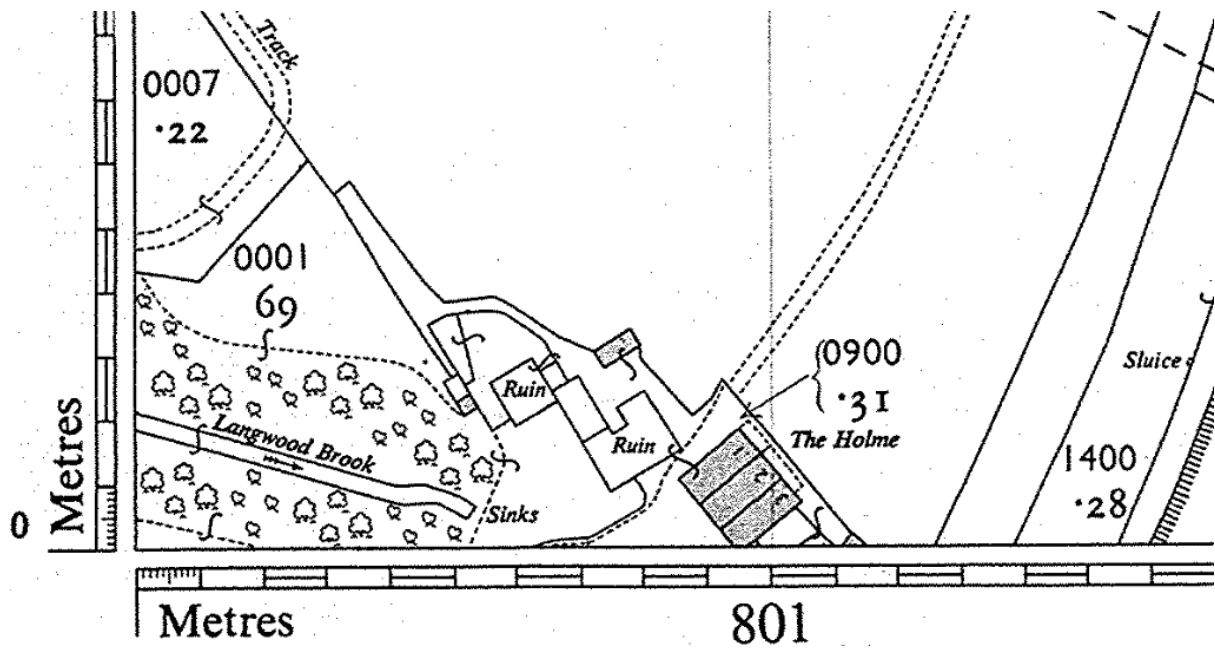
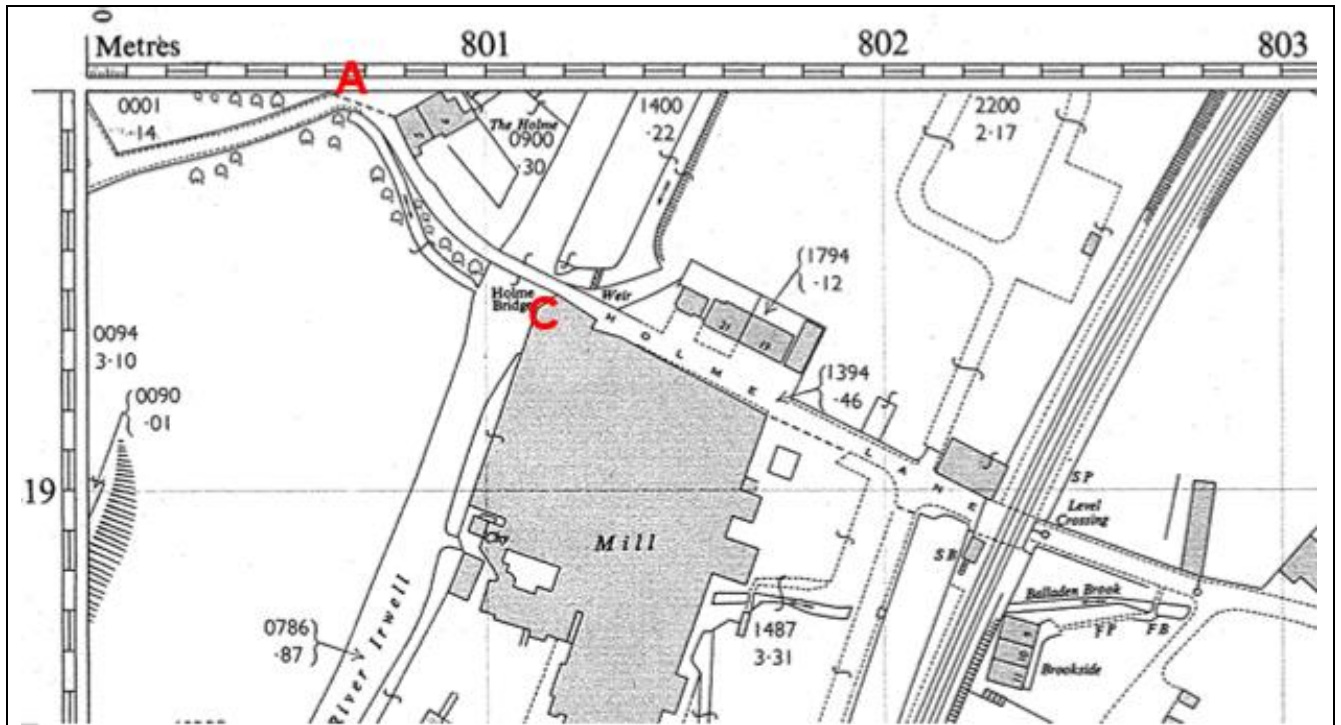


		available was taken just after the Second World War and photographs taken between June 1945 and September 1952. They can be viewed on GIS. The clarity is generally very variable.
		
Observations		The quality of the aerial photograph is very poor. A route leading from Bury Road across the railway to Holme Bridge can be seen and the route extending east from Manchester Road towards point A can be seen but the route under investigation cannot be seen on the photograph.
Investigating Officer's Comments		Use of the route under investigation, as part of a through route from Bury Road to Manchester Road, may have declined by the 1940s.
6 Inch OS Map Map Sheet 82SW	1956	The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



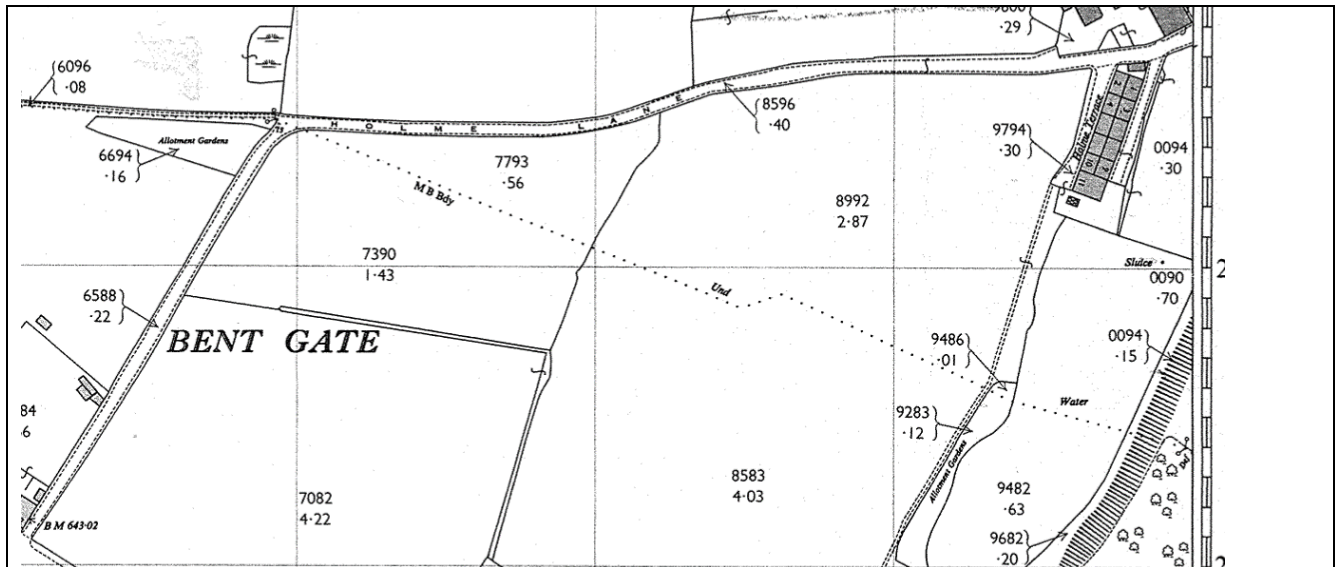
Observations		The route under investigation is shown as part of a substantial longer through route on the map.
Investigating Officer's Comments		The route appeared accessible at least on horseback and probably by vehicles in the 1930s.
1:2500 OS Map Map Sheet SD 8021 & 8121	1963	Edition of 25 inch map reconstituted from former County Series, revised in 1960-61 and published in 1963 as National Grid Series.





Extract from SD 8022 published 1962 showing 'Ruin'





Extract of Sheet SD 7921 published 1963 showing Holme Lane west of point A

<p>Observations</p>		<p>The route under investigation is still shown as part of a substantial through route and is named as Holme Lane west of point A and again east of Point C. No lines (gates) are shown across the route.</p> <p>North of point A the buildings believed to be the former home of the mill owners are shown as ruins.</p>
<p>Investigating Officer's Comments</p>		<p>The route existed as part of a longer through route in the 1960s and appeared to be capable of being used on horseback and with vehicles at that time.</p>
<p>Aerial photograph</p>	<p>1960s</p>	<p>The black and white aerial photograph taken in the 1960s and available to view on GIS. The coverage is a mosaic of various flight runs on the following dates: 12-13th May 1961, 1st Jun 1963, 3-4th June 1963, 11th June 1963, 13th June 1963, 30th July 1963, 13th June 1968. The majority of images are from 1963, with the 1961 images mainly covering West Lancashire district, and the 1968 images mainly covering Ribble Valley district.</p>





<p>Observations</p>		<p>The photograph clearly shows the bridge across the river (B-C) but the route through to point A is obscured by trees. The house shown in ruins north of point A on the OS map detailed above appears to have been demolished and the site cleared. The route of Holme Lane continuing either way towards Bury Road and Manchester Road can be clearly seen. The section from the bridge to Bury Road has the large industrial property where the bleaching works once was but otherwise few properties along it and the sewage works had not yet been constructed.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation existed in the 1960s and appeared to be capable of being used – as part of a longer route – at least on horseback and possibly by vehicles.</p>
<p>The Manchester – Burnley Trunk Road (Edenfield – Rawtenstall Level crossing by-pass) Side Road Order 1964</p>	<p>1964</p>	<p>Order made by the Minister of Transport to provide for the construction of the A56.</p>





RAWTENSTALL LEVEL CROSSING BY-PASS
(SIDE ROADS) ORDER 1963.

On Lane Order of Rawtenstall M.C. 1963

THESE SITE PLANS SHOW THE SITES OF IMPROVEMENT, THE STOPPING UP AND THE ROUTES OF THE NEW HIGHWAYS BUT NOT THE WIDTHS OR CONSTRUCTIONAL DETAILS

KEY PLAN SCALE: SIX INCHES TO ONE MILE
 SITE PLANS NOS 1-9 SCALE 1/2500

MINISTRY OF TRANSPORT
 PLANS SECTION
 - 1 AUG 1963
 Plan No. HA. 0/1-339

trunk road to be provided in pursuance of The Manchester-Burnley Trunk Road (Easenfield-Rawtenstall Level Crossing By-Pass) Order 1963 _____

ing highway to become a trunk road in pursuance of that Order _____

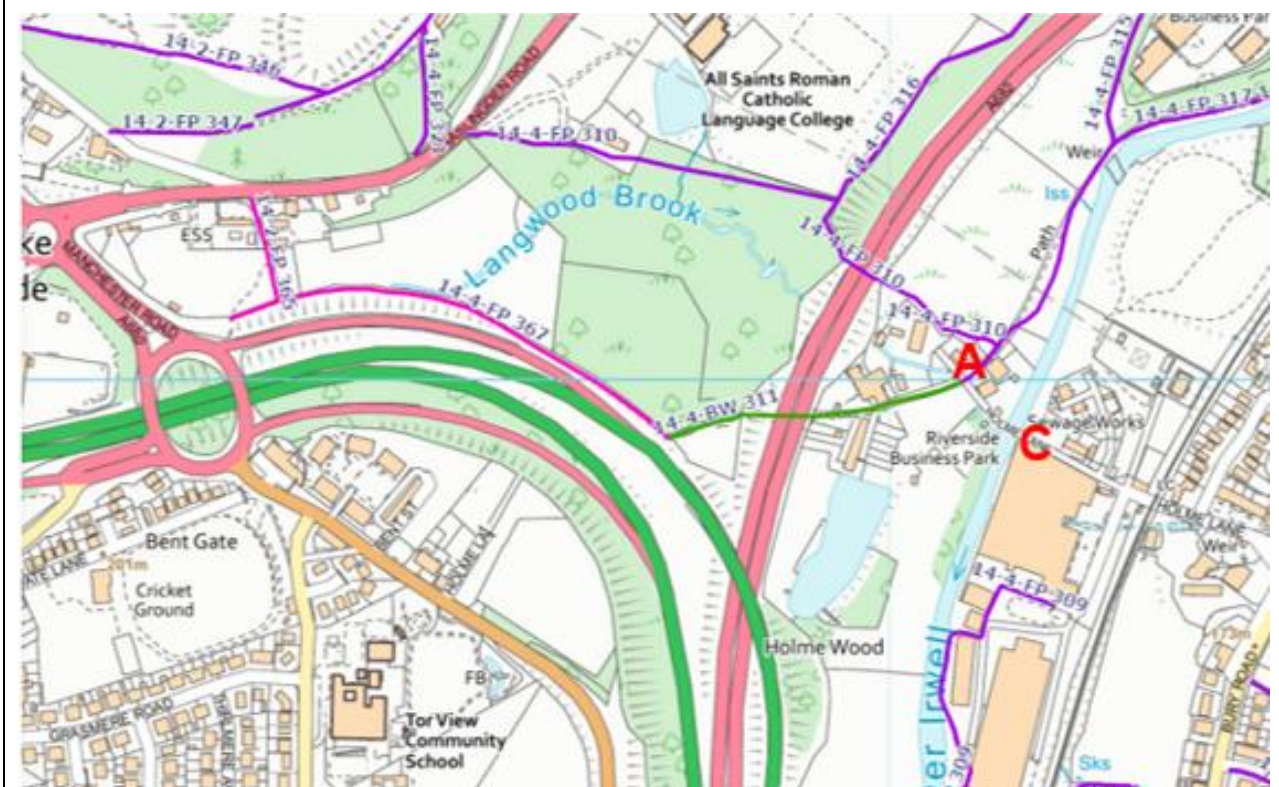
of the new highways _____

to be stopped up _____

to be improved _____



		... of Rawtenstall and Haslingden and extending eastwards for 54 yards	
7	Bent Gate	A length of Holme Lane starting at its junction with Manchester Road (A.680) and extending north-eastwards for 137 yards	R) S)
7	Bent Gate	A length of Holme Lane starting at a point 207 yards north-east of its junction with Manchester Road (A.680) and extending north-eastwards for 40 yards	R) S)
7	Holme	That part of Holme Lane which lies 294 yards north-east of its junction with Manchester Road (A.680)	R) S)
8	Holme	A length of Public Footpath No. 310 starting at a point 90 yards north-west of its junction with Holme Lane and	T



Observations		The Order made by the Minister of
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		<p>Transport to allow for the construction of the A56 did not directly affect the route under investigation.</p> <p>It is relevant however in that the proposed new road crossed Holme Lane to the west of the route under investigation effectively cutting off access from Bury Road through to Manchester Road along the route detailed in this report.</p> <p>The Order extinguishes public rights along Holme Lane from Manchester Road (with the exception of the points at which it was to be subsumed into the A56) but refers to it as 'Holme Lane' in the Order schedule and not as Bridleway 367 and Bridleway 311 and it lists the new highways to be created in its place as being those shown on the plan labelled R and S which are the routes now recorded as 14-2-FP365 (part) and 14-4-FP367. The schedule clearly states that new highways created are to be footpaths unless otherwise stated.</p>
Investigating Officer's Comments		<p>The Order made by the Minister of Transport does not appear to acknowledge the existence of any public vehicular or bridleway rights which may have existed at that time. It legally extinguishes public rights along that part of Holme Lane north east from Manchester Road without specifying what those rights were and creates only public footpaths to connect to the remaining section of Holme Lane which was recorded as a public bridleway at that time. This could suggest that use of the route by the public was predominantly on foot at that time.</p> <p>The Secretary of State has stated that such Orders stand as the time for challenging any errors has passed and it is not known whether any challenges were in fact made at that time.</p>
Highways and Transport Committee Minute	January 1972	



Observations

Improvement of Holme Lane (827).

The Borough Surveyor reported that the Development Committee had agreed to proceed with the improvement of Holme Lane from Bury Road to the railway level crossing as soon as possible, and had, therefore, requested this Committee to consider going out to Tender for the above work and he asked the Committee for authority to go out to tender and for the Chairman and Vice-Chairman to accept a tender which is received.

Resolved—That the Borough Surveyor be given authority to invite tenders for the improvement of Holme Lane and that the Chairman and Vice-Chairman be authorised to accept a tender.

Signed at a meeting of the Committee held on the
 12th day of January 1972 (being the next

Investigating Officer's Comments

The minute does not specify whether this section of the lane (east of the route under investigation) was publicly maintainable highway. The note refers to the Development Committee decision being reported to the Highways and Transport Committee which could imply that the lane was not adopted at the time (otherwise it would simply be a maintenance decision for the latter Committee).

Decision to Adopt Part of Holme Lane

November 1972

Adoption of Holme Lane from Bury Road to the river bridge (immediately east of the route A-C)

STREET NAME	DISTRICT	O.S. NO: SD	MAP REF.	LENGTH (Metres)	WIDTH (average metres)	SITUATION AND REMARKS	DATE OF ADOPTION
Holme Lane	H	SD7921 NE	79612182	148	5	From Manchester Road to by-pass slip road.	-
Holme Lane	R	SD8021 NW	80352183	340	5	From Bury Road to Bridge over River Irwell.	Nov. 1972 Min. 70A
Holme Street	B	SD8521 NE	85802178	120	9	Stacksteads - From Farholme Lane to	14th Jan 1972

Observations

An extract from Rossendale Borough Council's Street Register (undated) lists Holme Lane from Bury Road to the Bridge over the River Irwell (point C) as a highway adopted in 1972. It also includes an entry for Holme Lane from Manchester Road to the by-pass slip road although no adoption date is listed for this section. The route under investigation is not included in

		the Register.
Investigating Comments	Officer's	<p>The adoption of the route from Bury Road to the Bridge (point C) implies it was not previously publicly maintainable and by extension nor was the route A-C which was not adopted at that time. There were only a few procedures under the Highways Act 1959 whereby a route could become maintainable at public expense (adopted).</p> <p>The reference to an actual date of adoption east of the bridge in the 1970s would indicate that it was probably adopted following private street works. So the implication is not just that it was not maintainable, but also that it was not a vehicular public highway before then. Even if it were a bridleway or footpath technically maintainable at public expense it could still be classed as a "private street" for private street works (Schedule 24 of the 1959 Act)</p>
Lancashire Council Transport Report	County Highways and Committee	1986
		A report was taken to the March 1986 meeting of the Highways and Transport Committee concerning the liability for the repair of the collapsed northern parapet of Holme Bridge and in connection with that the status of Holme Road.
<p><u>RECOMMENDATION</u></p> <ol style="list-style-type: none"> 1. That, in order to obviate the immediate dangers to highway users, the necessary works be carried out to Holme Bridge to restore it to its condition prior to the recent impact damage, the cost thereof to be included in the Bridge Maintenance Estimates for 1986/87. Done with 2 May 86 2. That a further report be presented to a future meeting of the Committee on the structural and other works necessary to the bridge and the central section of Holme Road to bring them up to a satisfactory standard with a view to them being adopted as highway maintainable at public expense. Mueshan? 3. That the County Surveyor in conjunction with the Chief Executive Clerk be authorised to continue his investigations into the status of the route and his endeavours to ascertain the ownership of the bridge and the person(s) responsible for the recent impact damage. 4. That in view of their responsibility arising from the closure of the alternative access to Holme during the construction of the Rawtenstall/Edenfield By Pass the Department of Transport be approached on the question of costs involved in both the immediate and the ultimate works to the bridge. 		
Observations		The status of the route under current investigation A-C was described as the



		<p>middle of 3 sections, with east of point C being adopted in 1972 and west of point A being formerly bridleway (with a short section of unclassified road in Haslingden) but closed by the Side Roads Order in the late 1960s.</p> <p>The bridge was said to be inscribed 'J & R T 1830'.</p> <p>The report puts forward that in order to assert and protect the public rights the highway authority would need to step in where no owner of a bridge could be found and that temporary works should be carried out on a 'without prejudice' basis. It suggests that Rossendale Borough Council and residents should have ensured that the bridge access was taken into account when the bypass was built.</p> <p>The recommendation was that temporary works be carried out, a report be prepared on works necessary to bring the bridge up to adoptable standards, that the status be investigated and the DoT approached since their bypass has removed the alternative access.</p>
Investigating Officer's Comments		<p>The inscription suggests the bridge was private, many highway bridges are similarly inscribed with LCC or WR (West Riding). The report did not reach any conclusions concerning the status.</p> <p>As the recommendation is for works on the route A-C to the appropriate standard with a view to it being adopted this clearly implies that it was not previously publicly maintainable. It does not mention dedication or creation of public rights which suggests either they already existed (and since it was not recorded on the Definitive Map and Statement the implication is that they might have been vehicular rights) or that the rights would be created/dedicated along with the adoption.</p>
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p>



		Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		Rawtenstall is a former municipal borough for which no parish survey map was prepared.
Draft Map		A Draft Map was prepared by Rawtenstall Municipal Borough Council and passed to Lancashire County Council. The Draft Maps were given a "relevant date" (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.

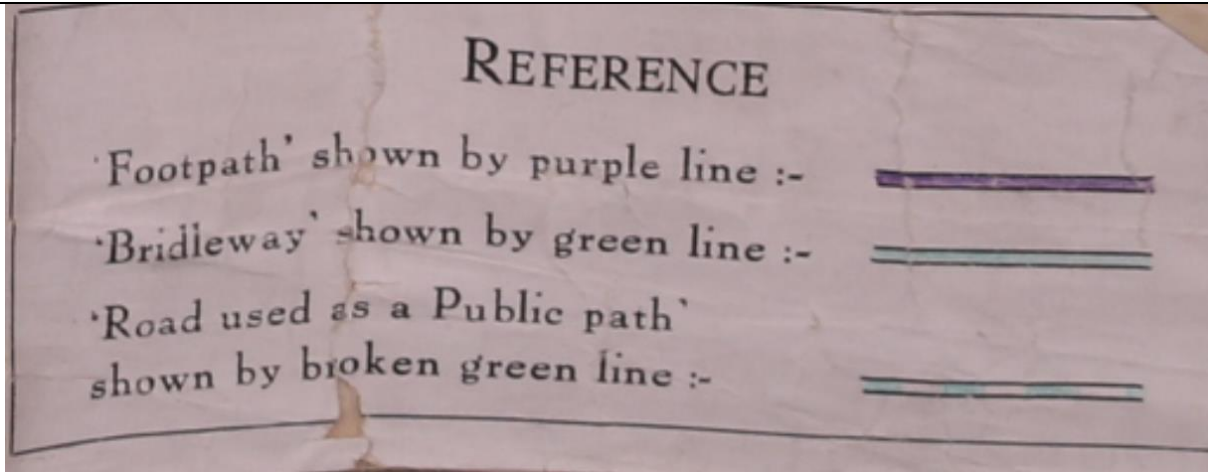




1. No. of path.	2. Kind of path.	3. Position.	4. Length in miles to 2 place decimals.	5. Other particulars (if any) (Limitations or conditions affect- ing the public right-of-way).
309. ✓	Footpath	From Holme Lane along river bank via. Warth to Swood Bridge.	✓ 0.56	none known
310. ✓	Footpath	From Holme Lane W. of river bank in N.W. direction via. Langwood to Haslingden see above.	✓ 0.33	none known
311. ✓	Bridleway	From Bury Road along Holme Lane from W. of river in westerly direction to F.P. No. 312.	✓ 0.46	none known
312. ✓	Footpath	Continuation of B.R. No. 311 along Boro' Boundary to Bent Gate.	✓ 0.13	none known
313. ✓	Footpath	From Haslingden New Road near Old Row S. via. Single Holme to Mill.	✓ 0.15	none known
314. ✓	Footpath	From E. of Alms houses to river.	0.21	none known
315. ✓	Footpath	From E. end of Cow Lane via. Single Holme along N.W. side of river to Holme Lane.	0.25 0.45	none known
316. ✓	Footpath	From Haslingden New Road W. of Brynabella to junction with F.P. No. 315.	✓ 0.11	none known
317. ✓	Footpath	From junction with F.P. No. 315 E. along river bank to Mill.	✓ 0.15	none known
318. ✓	Footpath	From Bury Road to river across via. stepping stones (now in bad condition) to junction with F.P. No. 317.	✓ 0.18	none known
319. ✓	Footpath	From Bury Road N. of Cowpe's Farm W. to junction with F.P. No. 309 at Holme Mill.	✓ 0.15	none known
320. ✓	Footpath	From Bury Road at Jelly Hall S. to Haslingden Old Road.	✓ 0.09	none known
321. ✓	Footpath	From Union Road near Union Farm S.W. via. Lower Pike Law to Haslingden New Road at	✓ 0.46	none known

Draft Map and Statement for Rawtenstall





NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949.
Particulars required for the Statement to be annexed to the Draft Rights of Way Map.
Section 27(4).
HASLINGDEN MUNICIPAL BOROUGH.

"A"

1. No. of Path.	2. Kind of Path.	3. Position.	4. Length in miles to 2 places of Decimals.	5. Other particulars (if any). (Limitations or conditions affecting the public right of way).
361	Footpath.	From junction of paths 358, 345 & 359, at "The Fields" to junction of paths 362 & 363.	.12 ✓	
362	Footpath.	From Broadway to junction of paths 361 & 363.	.22 ✓	
363	Footpath.	From Broadway, near Pilkington Terrace, to junction of paths 361 & 362.	.14 ✓	
364	Footpath.	From Lodge Street, near Syke Hill to Broadway.	.18 ✓	
365	Footpath.	From Manchester Road, near Bentgate to Borough Boundary.	.06 ✓	
366	Footpath.	From Manchester Road, near Bentgate to Borough Boundary.	.03 ✓	
367	Footpath. Bridleway.	From Manchester Road, near Fairfield House to Borough Boundary.	.02 .10 ✓	
368	Footpath.	From Holcombe Road, near Higher Mill to Helmsford Road, near Pixmoor House.	.47 ✓	

Draft Map and Statement for Haslingden

<p>Observations</p>	<p>The Draft Map for Rawtenstall showed a bridleway recorded along part of Holme Lane. The bridleway was drawn on the map starting at point A on the Committee plan and extending in a westerly direction past Holme Terrace through to the Borough boundary. The Draft Statement however described the route as being "From Bury Road along Holme Lane from W. of river in westerly direction to F.P. No. 312". The bridleway was said to be 0.46 miles long but the green line drawn on the map is only 0.23 miles long.</p> <p>If measured from Bury Road crossing the</p>
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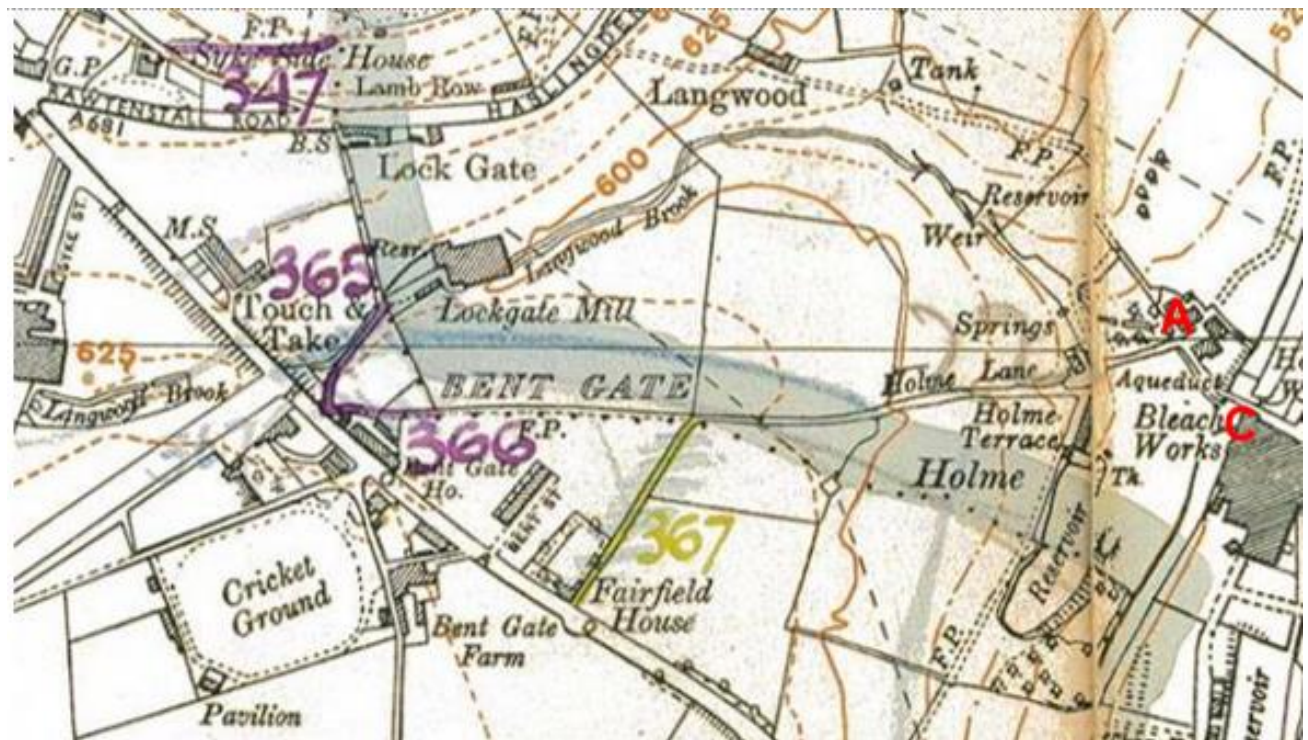


		<p>railway and continuing over the river to point A on the Committee plan and then west to the junction with Footpath 14-4-312 it is a distance of approximately 0.43 miles which still differs from the measurement on the Draft Statement (0.46 miles) but is closer to the route being from Bury Road along Holme Lane and it is possible that the full length of the route from Bury Road to the borough boundary was considered to be a bridleway at that time.</p> <p>The Draft Map for Haslingden recorded the length of Holme Lane from Manchester Road to the Borough boundary as public bridleway, connecting to the bridleway along the Rawtenstall section of Holme Lane, suggesting that at the time the Draft Maps were prepared either the through route or from Manchester Road to The Holme was considered to be a public bridleway and not a public vehicular route.</p>
<p>Provisional Map</p>		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960 and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>





Provisional Map – Rawtenstall



Provisional Map - Haslingden

Observations

The Provisional Map sheets show the same as the Draft, i.e. bridleway in Haslingden from Manchester Road to the boundary and in Rawtenstall from the boundary to the Holme. The Statement accompanying the Map remained



		unaltered. Blue pencil lines can be seen on the map suggesting some possible changes to be made where the bypass cut across the network west of point A but these annotations were presumably added much later (the bypass was opened in 1978, nearly 20 years later).
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.



Observations		The First Definitive Map does not record the route under investigation (A-B-C) as a public right of way. The bridleway along Holme Lane as far as point A is shown in the same way as it is shown on the Draft and Provisional Maps but is still recorded in the Definitive Statement as starting on Bury Road and being 0.46 miles long.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First

		<p>Review. On 25th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p>
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<p>Observations</p>		<p>The route under investigation is not shown on the Revised Definitive Map (First Review). The Definitive Statement remained unaltered and still described the bridleway starting on Bury Road and running along Holme Lane.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>Inconsistencies between what was shown on the maps and what was recorded in the accompanying statements make it difficult to infer any particular status for the route under investigation.</p>
<p>Highway Records</p>	<p>Adoption 1929 to present day</p>	<p>In 1929 the responsibility for district highways passed from rural district</p>



councils, and later from urban district and borough councils, to the County Council. The maps showing those roads formed the basis of subsequent highway maintenance maps although the originals no longer exist. In some cases, including Rossendale, maintenance was subsequently carried out by the district (Rossendale Borough Council) under an agency agreement so the maps were held by them.

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, these maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.

The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up-to-date List of Streets showing which 'streets' are maintained at public expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.





<p>Observations</p>		<p>The route under investigation is not recorded as a publicly maintainable highway on the List of Streets.</p> <p>Holme Lane from Bury Road up to the eastern end of the bridge (point C) is recorded in the List of Streets ledger as being adopted in 1972 and is likely to have been adopted following private street works.</p> <p>The coloured mapping received from Rossendale Borough Council – who previously maintained public highways throughout the District under an agency agreement - did have colouring on the bridge but this was not the length recorded in the ledger and so has been corrected by the County Council Highways team and today's List of Streets does not have the bridge or remainder of the route under investigation identified as a route maintainable at the public expense.</p>
<p>Investigating Officer's Comments</p>		<p>The fact that the route is not recorded as a publicly maintainable highway on the List of Streets does not mean that it does not carry public rights of access so no inference can be drawn.</p>
<p>Highway Stopping Up Orders</p>	<p>1835 - 2014</p>	<p>Details of diversion and stopping up orders made by the Justices of the Peace</p>



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



Comments		under this provision of non- intention to dedicate public rights of way over this land.
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The affected land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land.

The Natural Environment and Rural Communities Act 2006

This Act effected a blanket extinguishment of unrecorded public rights for mechanically propelled vehicles (MPVs) with certain exceptions. Prior to this carriageway rights did not discriminate between vehicles which were mechanically propelled, such as cars and motorbikes, and those which were not, such as bicycles, wheelbarrows, horse-drawn carriages, donkey carts, etc.. If Committee concludes that the evidence shows that, on the balance of probability, public carriageway rights exist on the route under investigation it is then necessary to consider whether the Natural Environment and Rural Communities Act 2006 has extinguished public rights for MPVs. The route under investigation was, at the time of the Act not recorded as a public footpath or bridleway and was not on the List of Streets (maintained at public expense) and it does not appear to have been used mainly by the public in MPVs. There is no claim that any other of the other exemptions apply. Therefore, in the event that public carriageway rights are shown to exist and the appropriate status for the route under investigation (A-B-C) and to be recorded on the Definitive Map and Statement would be restricted byway, with public rights with non-mechanically propelled vehicles, horses or on foot. The route extending west from point A was recorded as a public bridleway at the time of the Act but does not appear to have been used mainly by the public in MPVs and therefore, in the event that public carriageway rights are shown to exist and the appropriate status for the route would be restricted byway.

Summary

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

In conclusion, the evidence available suggests that on balance there appears to have been a significant through route which was originally created as private access to and from Holme Mill, the mill owners' property and mill workers' houses – all of which were located along it but which also provided a through route linking two significant public vehicular routes which may have been subsequently used by the public.

This public use may on balance have been bridleway use rather than vehicular.

Consideration of the long route from Bury Road to Manchester Road would indicate on balance it did not carry public vehicular rights. The through route is shown excluded from the Finance Act mapping. Even given the difficulties in trusting the accuracy of some of the mapping it is inescapable that the full route was excluded



from taxable plots indicating some public use but this may have been bridleway. The possible reference to it being bridleway is there when the Definitive Map and Statement were being created.

The section affected by the Bypass being considered less than a vehicular highway. The section from Bury Road to the bridge only becoming adopted vehicular highway in the 1970s.

Head of Service – Legal and Democratic Services Observations

Landownership

The majority of the route under investigation crosses land in private ownership, a short section from a point half way between point B and point C and point C crosses land which is unregistered.

Information from Others

Information discovered through the council's investigation is detailed above.

Information from the Landowner

No further information has been provided by the landowners.

Assessment of the Evidence

The Law - See Annex 'A'

Conclusion

Here there is no express dedication or user evidence so Committee is asked to consider whether there is sufficient evidence from maps and documents on balance that a dedication and acceptance can be inferred at Common Law to have already happened.

In this matter Committee is referred to the evidence and summary and appraisal of historical maps and documents set out above.

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

There has been no legal stopping up of those rights and so it is advised that the legal maxim "once a highway always a highway " will apply.

It is suggested in the assessment of the evidence that whilst there is some evidence of possible public rights these rights may be bridleway rights.

Committee may consider it appropriate an Order be made for the route marked A-C to be added to the Definitive Map and Statement as a bridleway and that the evidence is sufficiently strong to decide that the Order be promoted to confirmation.



If Committee is persuaded that there is sufficient evidence of an old vehicular highway between point A-C Committee is reminded the Natural Environment and Rural Communities Act 2006 will have extinguished modern mechanically propelled rights leaving the route to be appropriately recorded on the Definitive Map as a Restricted Byway.

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: 804-744		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

