

**Regulatory Committee**

Meeting to be held on Wednesday, 14 September 2022

**Part I**

Electoral Division affected:  
Lancaster Rural North

**Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Addition of Bridleway from Nether Kellet Road to Kirkby Lonsdale Road, Over  
Kellet via Kirk House Farm  
(Annex 'A' refers)**

Contact for further information quoting file reference number 804-657:  
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**Brief Summary**

Application for the addition to the Definitive Map and Statement of Public Rights of Way of a bridleway from Nether Kellet Road to Kirkby Lonsdale Road, Over Kellet via Kirk House Farm.

**Recommendation**

That the application for the addition on the Definitive Map and Statement of a bridleway from Nether Kellet Road to Kirkby Lonsdale Road, Over Kellet be not accepted.

**Detail**

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a bridleway on the Definitive Map and Statement of Public Rights of Way from Kirkby Lonsdale Road to Nether Kellet Road in the parish of Over Kellet.

The county council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out



the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

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

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

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

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

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

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

## **Consultations**

### Lancaster City Council

Lancaster City Council did not provide an official response to the consultation.

### Over Kellet Parish council

Over Kellett Parish Council stated they do not have any further evidence to provide regarding the historical status of the proposed route. However the route should be supported in principle but expressed concerns over safety particularly for horse riders, as both ends of the proposed route join the highway. Councillors further stated they feel the route would be better suited to use as a Footpath rather than a Bridleway.

### 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	5233 6949	Wall at side of Nether Kellet Road just north of farm entrance
B	5240 6953	Concrete track meets tarmac yard
C	5245 6951	Fence between yard and field
D	5253 6951	Edge of field adjacent to stile for Footpath 1-24-FP13
E	5263 6956	Field gate into enclosed lane
F	5279 6962	Stile in northern boundary and gate in southern boundary where track is crossed by 1-24-FP 10
G	5287 6966	45° bend in track
H	5292 6983	Open junction of Sands Lane with Kirkby Lonsdale Road

### Description of Route

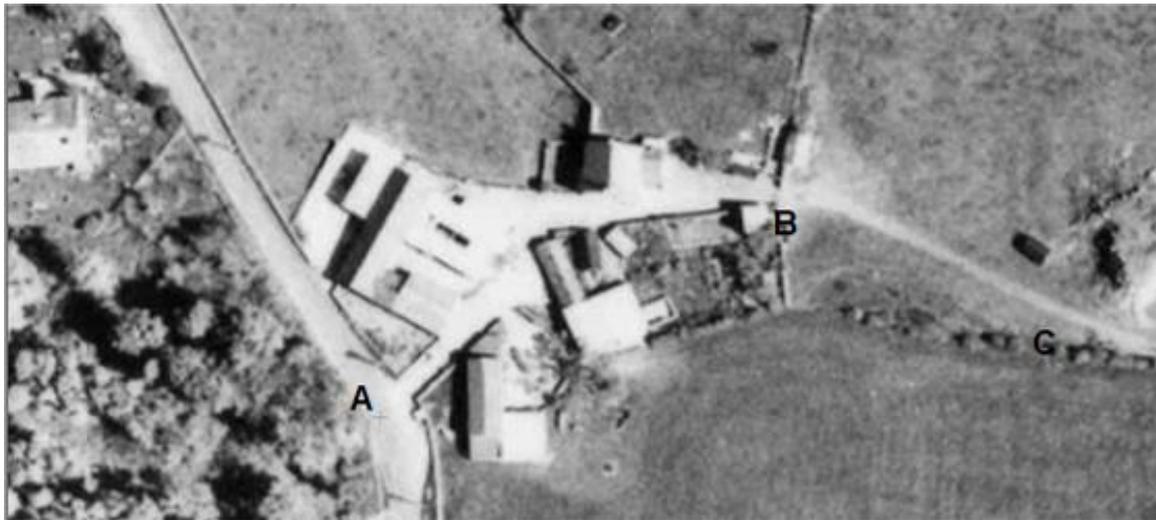
A site inspection was carried out in January 2022.

The application is based on historical map and documentary evidence and as such the route under investigation differs slightly from what now exists on the ground.

The application route leaves Nether Kellet Road few metres north of the bend in the road where the current entrance to Kirk House is located.

The two photographs inserted below show the start of the application route as it on the earliest Ordnance Survey maps published (in the 1840s) and how it appeared to remain through to the 1960s and in the year 2000:





1960s (above)



2000 (above)

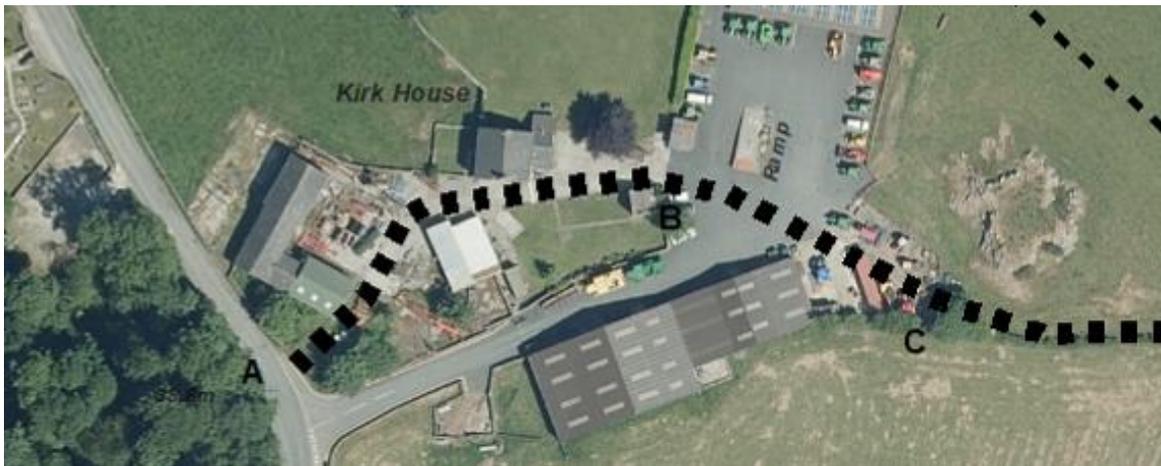
The photographs show the original entrance to Kirk House from point A and show that a route through the farmyard and past Kirk House appeared to be accessible.

At some point since the year 2000 the farm has been substantially redeveloped. The property is now the location of a business selling agricultural farm machinery with additional barns and offices constructed and further plans to convert some of the old farm buildings to houses about to be implemented.

The physical entrance to the property is now situated south of the application route along a tarmac access road which is gated for security purposes.

The 'new' route can be clearly seen on the aerial photographs taken between 2017-2019 running to the south of the application route:





The application route at the roadside is now blocked by a stone wall (point A) and is no longer accessible. Beyond the stone wall is an open tarmac area which formed part of the original access road to the farm.

The route extends in a north easterly direction past the gable end of some farm buildings soon to be renovated and redeveloped as part of some residential dwellings. It continues across an open concrete surfaced area towards Kirk House curving to continue in a more easterly direction to pass between buildings used as garages and past the house and then along a concrete driveway to pass alongside a stone building on the south and enter a tarmac yard (point B).

The route now continues across a tarmac area which previously formed part of a field (see 1960s aerial photograph above). The route crosses the tarmac to pass directly through a large farm building which has only very recently been erected and is not shown on the Ordnance Survey map used to produce the Committee plan. There is no access through the building and to the rear the building is fenced off from the field by a post and rail fence (point C).

From the entrance to the tarmac yard (point B) alternative access is available to the field (and point C) via a large field gate north of the application route although this gate is kept locked by the landowners.



From point C the application route continues east along the edge of the field. The surface of the route is grass with no evidence of recent use by farm vehicles and no trodden track or evidence of hoof prints (or bicycle or other vehicular use) although it is slightly sunken, in the manner of tracks once subject to significant use.

At point D the application route is crossed by 1-24-FP 13 which crosses the field boundary south of the application route via a waymarked ladder stile.

Beyond point D the application route continues in a north easterly direction following the edge of the field to a wooden field gate hung on stone posts and tied shut with bailing string (point E).

Beyond the gate the application route is approximately 5 metres wide, bounded on either side, initially by old stone walls covered in moss, and is overgrown with very little evidence of any recent use. After approximately 30 metres the bounded route turns ninety degrees south east and then another 90 degrees to continue north east (where a metal field gate provides access to an adjacent field.)

From this dogleg the route continues north east approximately 5 metres wide and bounded by hedges on either side – with evidence of use by farm vehicles accessing the field via the gate on the dog leg - to where it is crossed by 1-24-FP 10 (point F). Here stiles provide access through the hedges for the footpath to cross the application route and a metal field gate alongside the stile on the south side provides access to the field.

From point F the bounded route continues for a further 85 metres to a 45° bend (point G) from where access to two further fields is provided via metal gateways in the boundary hedge. The route continues in a north north easterly direction for a further 170 metres to an open junction with Kirkby Lonsdale Road (point H). Between point G and point H the route has been surfaced with compacted stone and there is evidence of recent vehicular use to access the adjacent fields.

The total length of the route is 780 metres.

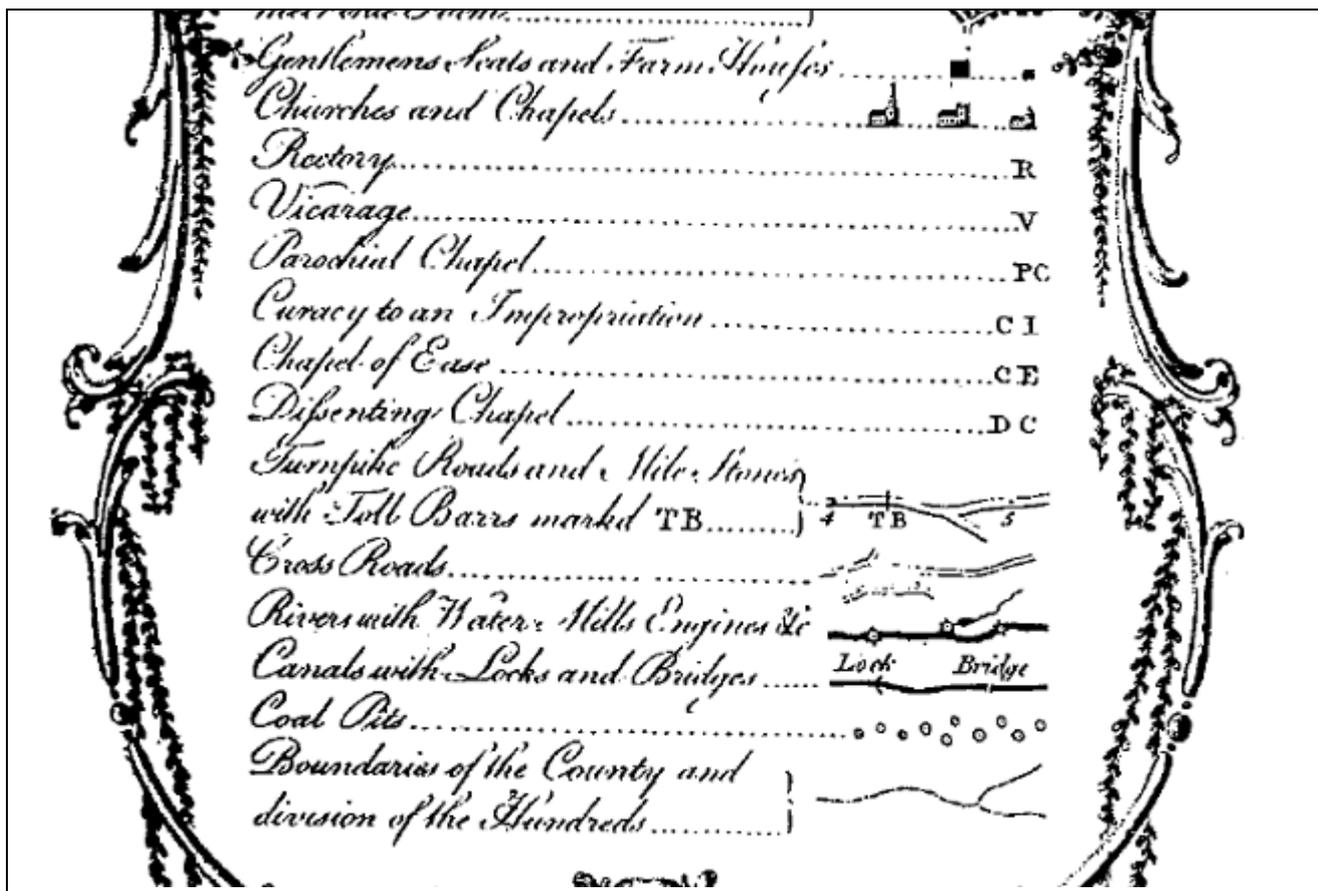
### **Map and Documentary Evidence**

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.

<b>Document Title</b>	<b>Date</b>	<b>Brief Description of Document &amp; Nature of Evidence</b>
<b>Yates' Map of Lancashire</b>	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.







<p>Observations</p>		<p>A route broadly consistent with the western end of the application route is shown extending east from Nether Kellet Road to provide access to an unnamed building and church (labelled 'PC', defined as 'Parochial Chapel' in the legend). The parish church on Nether Kellet Road (St. Cuthbert's Church) is not shown on the map although church records indicate that the church existed on the existing site (west of Nether Kellet Road) since at least the 11<sup>th</sup> century. The application route is not shown as a through route extending through to Kirkby Lonsdale Road.</p>
<p>Investigating Officer's Comments</p>		<p>The exact location of the church as shown on this small-scale map is likely to be incorrect. The unnamed building shown could be Kirk House ('kirk' meaning 'church') with the start of the application route – providing access to the building – existing in 1786. The full length of the application route probably did not exist – or if it did, was not considered to be a significant public highway at that time.</p>

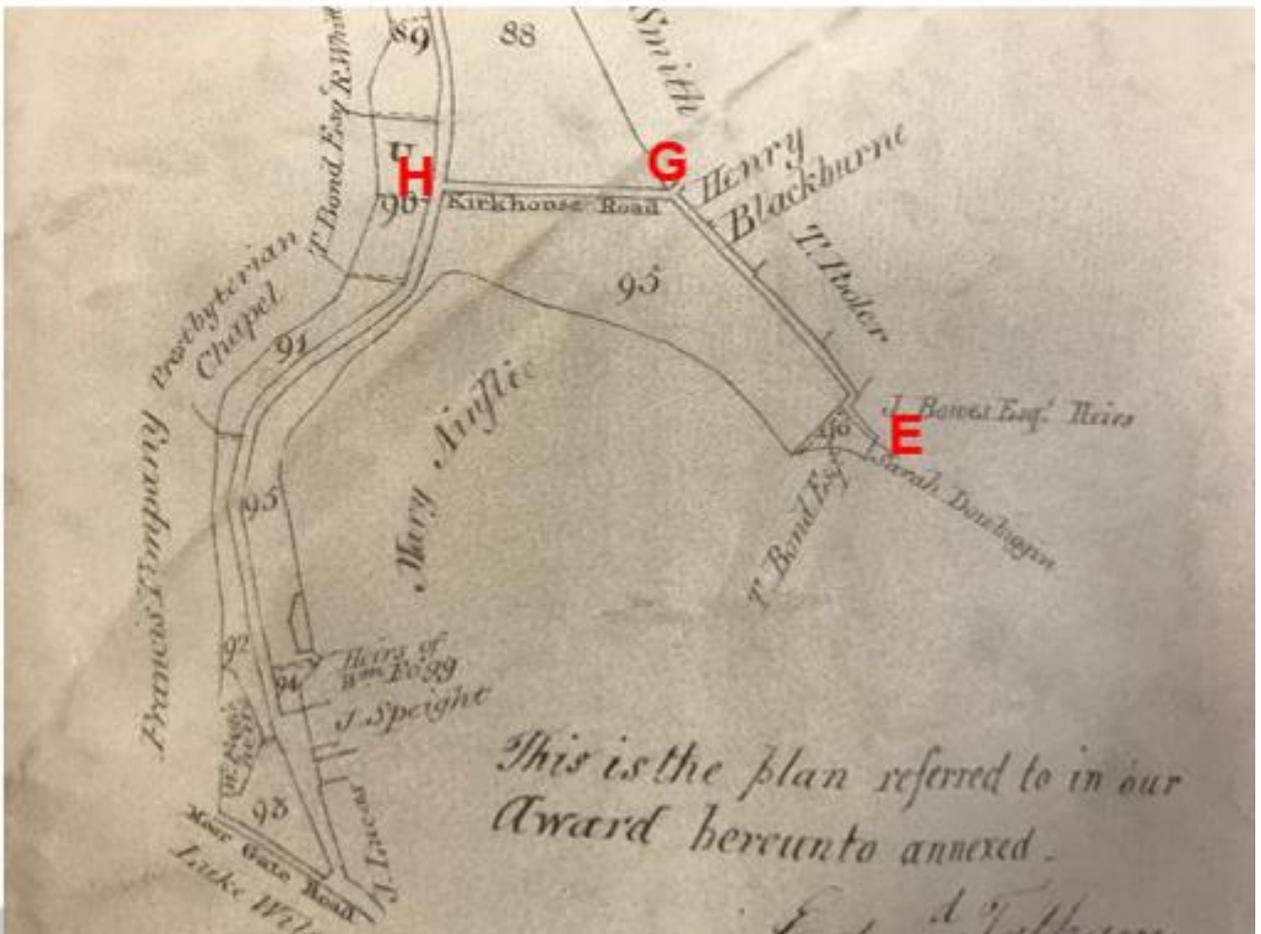


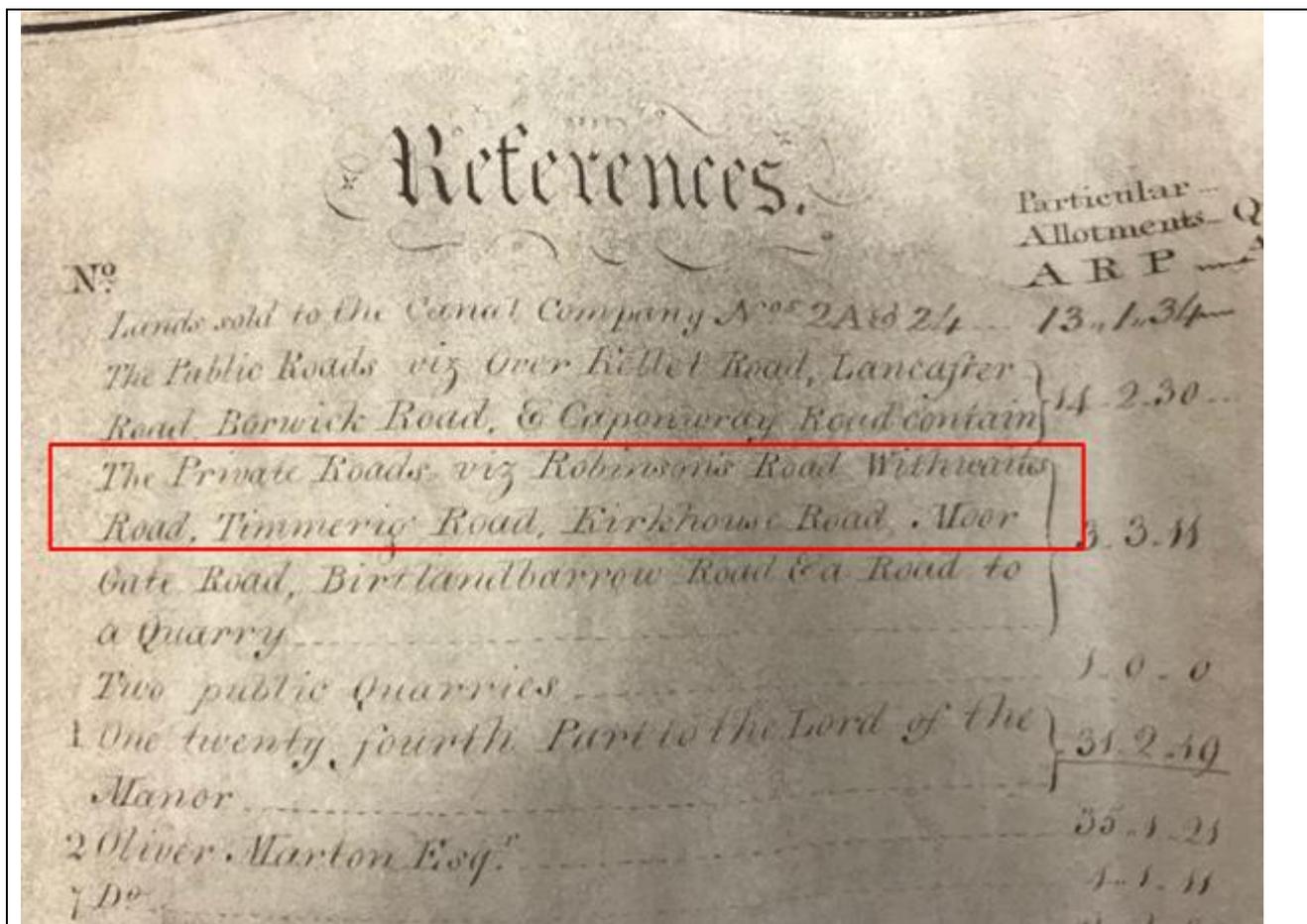
**Inclosure Map and Award**

1805

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.

Over Kellet Moor was enclosed by a private Act of Parliament dated 1779 (volume 2). The Inclosure Award is available to view at the CRO (Ref: AE/5/9) and is dated 1805.

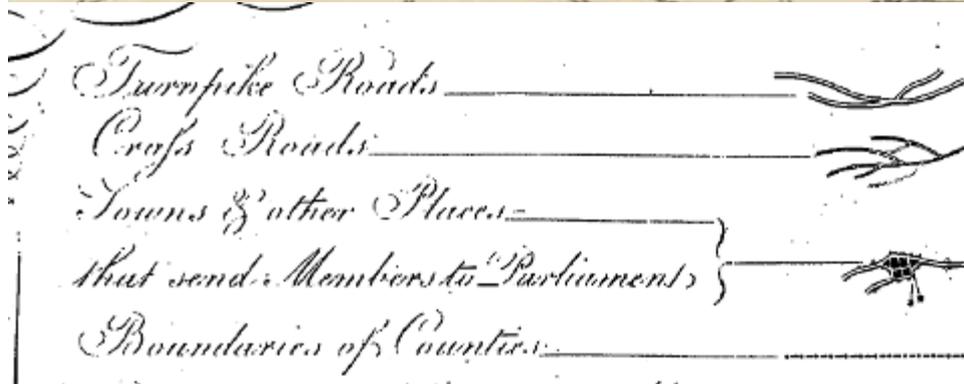




Observations		<p>The Inclosure Award map covers the area over which the application route runs between point E and point H. The rest of the land crossed by the application route is not shown.</p> <p>The route is shown leading from Kirkby Lonsdale Road at point H as a bounded route named as Kirkhouse Road providing access to land at point G and point E with the names of landowners written on the map.</p> <p>Kirkhouse Road is stated to be a private road in the key to the map. The rest of the application route (E-A) is not shown although the fact that the route is named as Kirkhouse Road is suggestive of a route leading through to land forming part of Kirk House.</p>
Investigating Officer's Comments		<p>The application route from point H through to point E appears to have been created as part of the inclosure process to provide access to various plots of land in different ownerships. It is named on the map and specified as being a private road. The rest of the application route is</p>



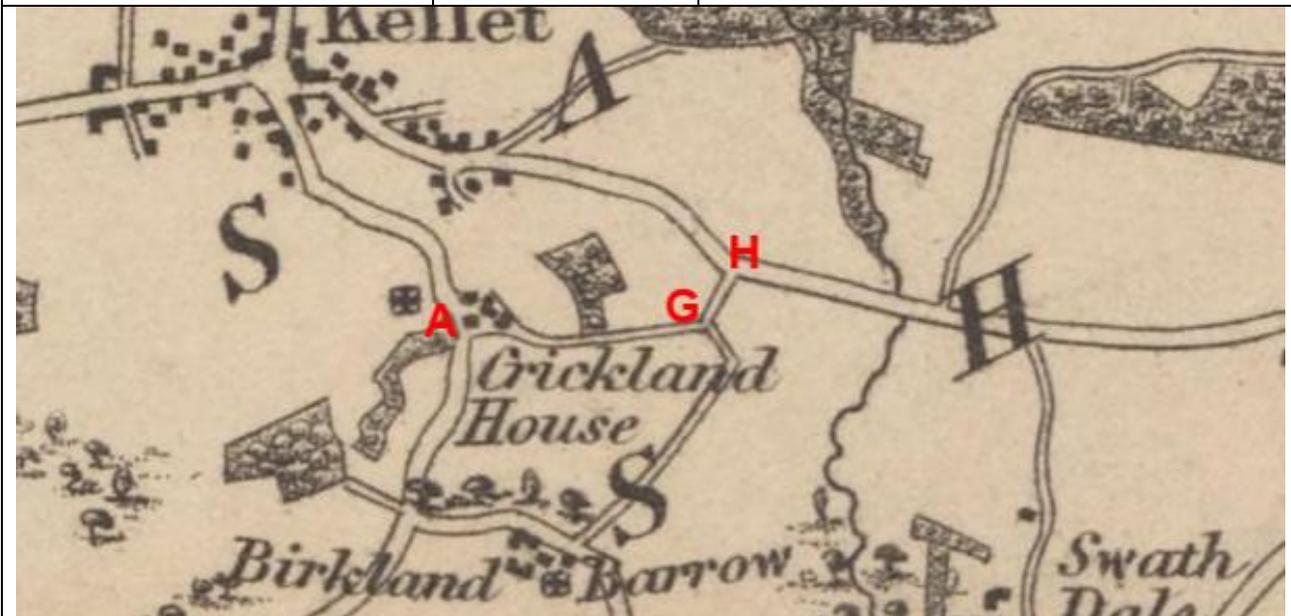
		not shown and the land crossed by it does not appear to have been included in the inclosure. The name of the private road 'Kirkhouse Road' suggests that it may have provided a link through to Kirk House but does not indicate that a public through route existed at that time.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.

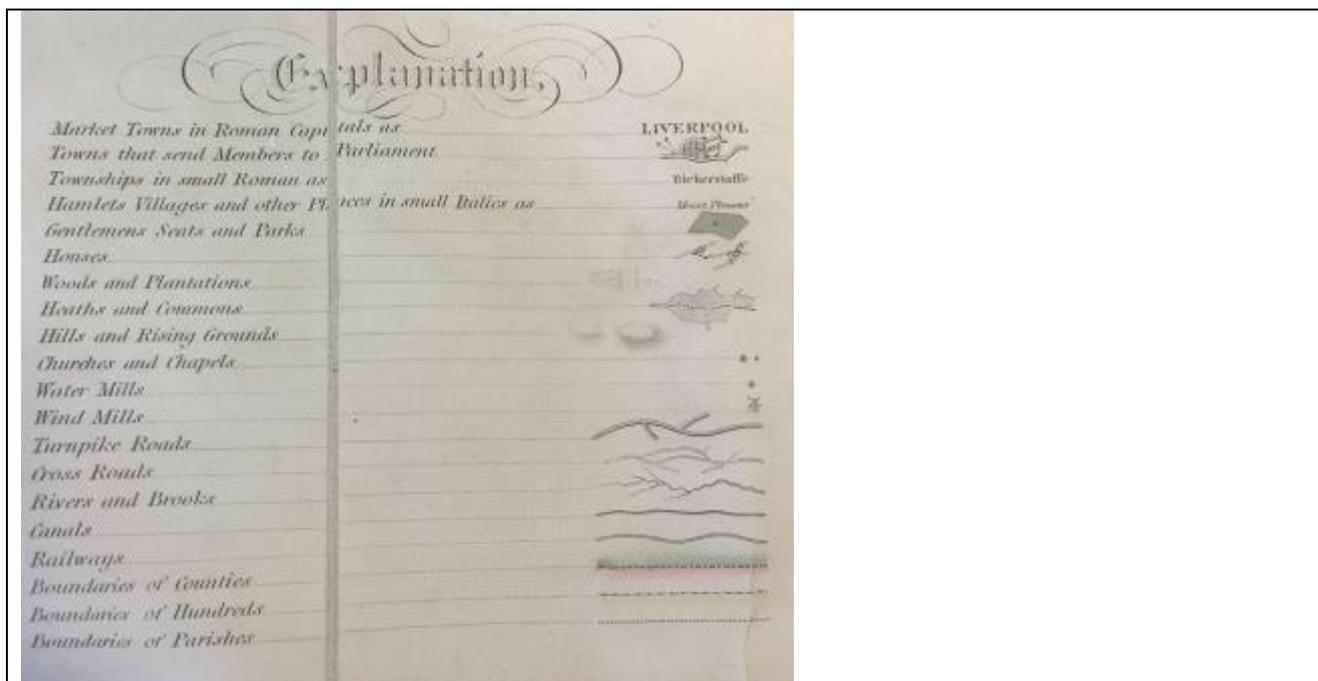


Observations		The application route is not shown. A cluster of three buildings are shown approximating to the position of Kirk House but no access route is shown.
Investigating Officer's Comments		The application route – or parts of it – may have existed in 1818 but was not



		considered by Greenwood to be a route of sufficient significance to be included on his map. However, the fact that the route is not shown on such a small-scale map is not inconsistent with the existence of public bridleway rights at that time.
<b>Hennet's Map of Lancashire</b>	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 71/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.



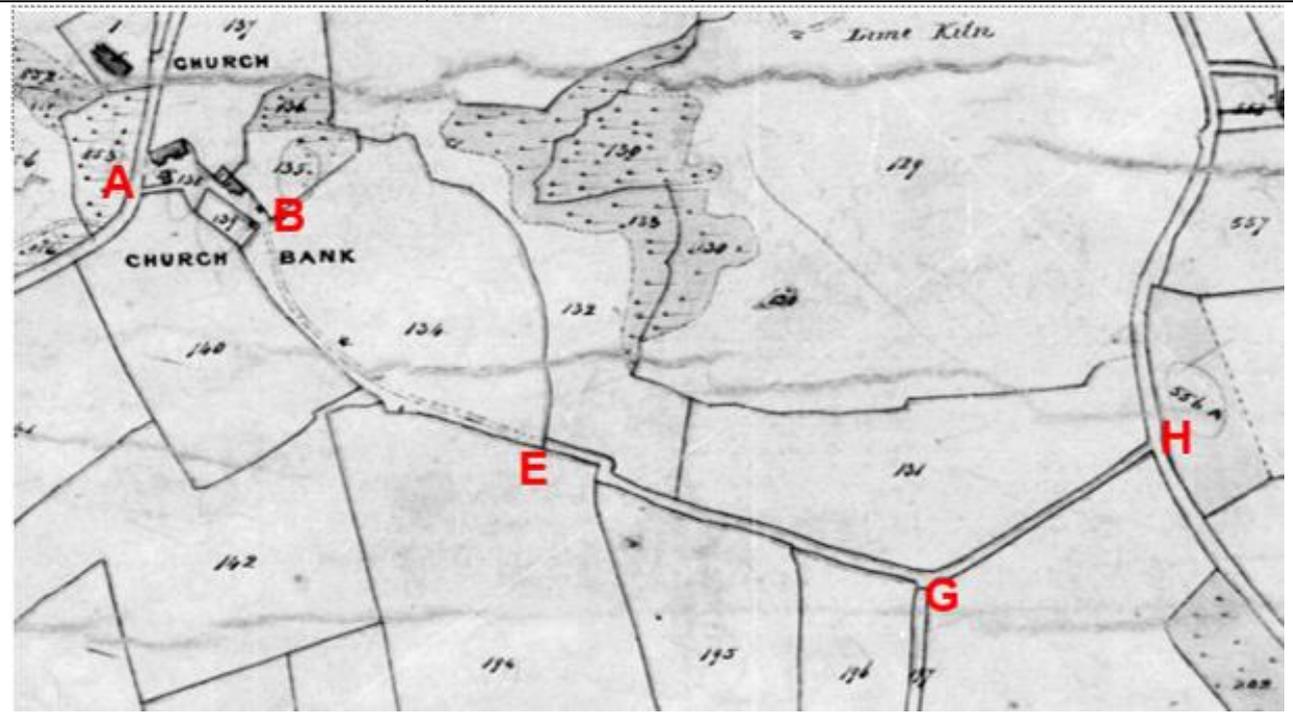


<p>Observations</p>		<p>A route approximating to the application route is shown as a cross road between Nether Kellet Road and Kirkby Lonsdale Road.</p> <p>The location of St Cuthbert's Church is shown as being to the west of Nether Kellet Road and the application route is shown to pass between a cluster of unnamed buildings east of point A. A route – also depicted as a cross road - is shown extending from point G through to Birkland Barrow Road.</p> <p>The application route and the route from point G through to Birkland Barrow Road are shown as being narrower than Nether Kellet Road and Kirkby Lonsdale Road on the map.</p>
<p>Investigating Officer's Comments</p>		<p>The full length of the application route existed in 1818 providing a link between two roads that are now recorded as public roads.</p> <p>The fact that the route is shown as being narrower than Nether Kellet Road and Kirkby Lonsdale Road is unlikely to be a correct representation of width but more likely to indicate the use or possible status of the route. As the route is shown to be narrower on the map this may indicate that although passable on horseback or possibly with horse and cart, the route received less frequent use or was of a lower standard than the</p>

		<p>routes to which it connected. Details regarding width are better sought from the first edition 6 and 25 inch maps detailed below.</p> <p>The route is shown on the map as a cross road. It is not fully known what is meant by this term. As the only other category of 'road' shown on the map are turnpike roads, it is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i>).</p> <p><i>Hollins v Oldham Manchester High Court (1995) [C94/0205] Judge Howarth examined various maps from 1777-1830 including Greenwoods, Bryants and Burdetts. Maps of this type, which showed cross roads and turnpikes, were maps for the benefit of wealthy people and were very expensive. There was "no point showing a road to a purchaser if he did not have the right to use it."</i></p> <p>It is unlikely that a map of this scale would show footpaths suggesting that the application route may have been considered to be a public route in 1830 – or was at least a substantial route at that time.</p>
<b>Canal and Railway Acts</b>		<p>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.</p>
Observations		<p>There were no canals or railways built – or proposed to be built – over the land crossed by the application route.</p>
Investigating Officer's Comments		<p>No inference can be drawn.</p>
<b>Tithe Map and Tithe Award or Apportionment</b>	1847	<p>Maps and other documents were produced under the Tithe Commutation</p>



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>From point E through to point H the application route is shown as a bounded route but is not numbered. A line is shown across the route at point E but no line is shown at the junction with Kirkby Lonsdale Road.</p> <p>The route continuing south from point G is shown and numbered 197 as a dead end rather than continuing through to Birkland Barrow Road as it did on Hennet's Map. This short section of bounded route is described as a lane in private ownership. Another part of the route – no longer providing a connection through to point G is also shown on the map from Birkland Barrow Lane numbered as plot 179 and also described as a lane in private ownership.</p> <p>Kirkby Lonsdale Road is numbered 311 which is listed in the Tithe Award as being a road in the Township of Over Kellett with the inference that it, and several others listed with it, were public roads through the parish. The application route is not numbered although it was noted that not all roads known to carry public vehicular rights were numbered and that some – like Kirkby Lonsdale Road – were long roads passing through the parish with only one number written at some point along them – in this case approximately 700 metres east of point G.</p>
Investigating Comments	Officer's	<p>Access appears to have been possible from point A through to point H in 1847. From point A to point B the application route provided access to properties and was part of a numbered plot which was owned and occupied, and which was described as a yard with no suggestion that a public through route existed across it. From point B an unfenced track is shown through to point E. This part of the application route is not numbered separately and crosses a pasture field which is owned and occupied and for which tithes were payable. It physically existed and may have been accessible to the public but public use cannot be</p>



		<p>inferred from the information available. The remainder of the route from point E to point H is shown as a substantial bounded route consistent with how it is shown on the Inclosure Map. The route is not numbered, and the applicant considered that as it was not gated (shown with a line across it) at point H it was continuous with Kirkby Lonsdale Road which was listed as a public road. The Investigating Officer was of the view that the evidence presented by the Tithe Map and Award was not conclusive and needed to be considered in the context of other available evidence. The fact that it is not numbered may suggest that it was considered to be part of the public vehicular network but may also be because of ownership. Its appearance suggests, that it was probably accessible, at least on horseback, but the information available is insufficient to infer that public bridleway rights existed or that the route between point E and point H was considered to be part of the public vehicular highway network.</p>
<p><b>6 Inch Ordnance Survey (OS) Map</b> <b>Sheet 25</b></p>	1847	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1847.<sup>1</sup></p>

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





Observations		The full length of the application route is shown passing through Kirk House. Between point B and point E the route is not bounded (fenced). From point E through to point H the route is bounded (fenced) and is shown consistent with how it was first shown on the Inclosure Map. The route is not named on the map and no lines (gates) are shown across it.
Investigating Officer's Comments		The full length of the application route existed and appeared capable of being used in 1844-45.
<b>Cassini Map Old Series Sheet 97 Kendal and Morecambe</b>	1852-1865	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



Other roads



Unfenced roads



Mileages; turnpike gates; toll gates

**S T.P. T.G.**

County boundaries



Parish or township boundaries (on some sheets only)



Church



Windmill



Lighthouse



Railways



Cuttings



Embankments



Tramways and freight-only railways



Woodland



Parkland



Foreshore: sand; boulders; rocks



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

Observations

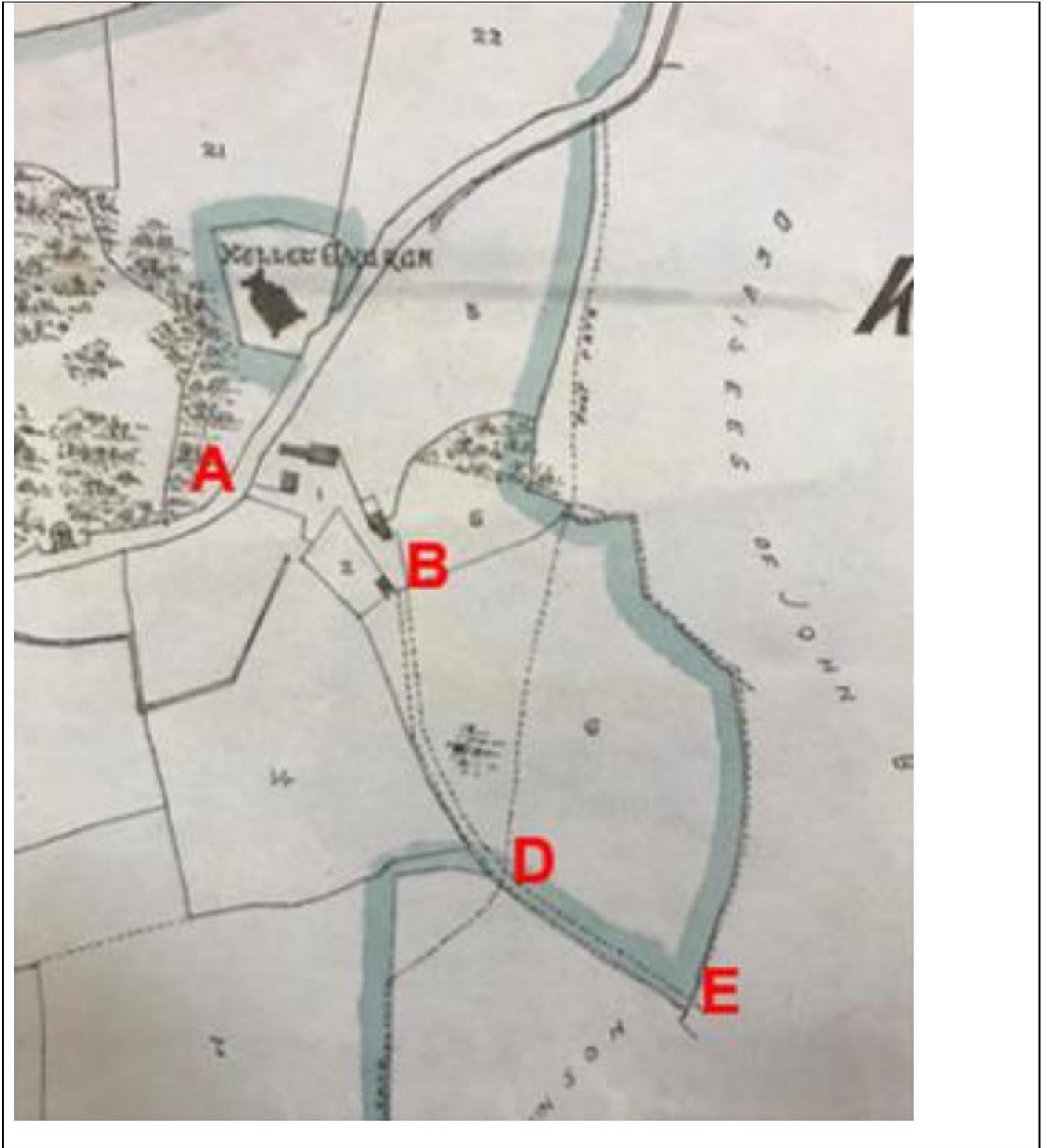
The full length of the application route is shown passing through Kirk House. The route is depicted as a 'road' in the map



		key. Footpaths and bridleways are not shown.
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 had public rights for those travellers. The inclusion of the route on those maps suggests that a substantial route existed which probably could have been used by all traffic but we do not know if that use was public or private and the map key (legend) made no distinction between the two.
<b>Sale Plan</b> <b>CRO Ref: DDHH 1/429</b>	1861	Sale Plan deposited in the County Records Office.







## REFERENCE

No	Names of Fields	Table Measure			Cust 7 gals		
		a	r	n	a	r	n
1	House Barn Stable & Yard	0	1	29	0	1	3
2	Garden	0	0	36	0	0	22
3	Goose Bank	3	0	11	1	2	24
4	Plantation	0	1	28	0	1	2
5	Garden	0	2	33	0	1	30
6	Turn Cragg	5	3	30	3	2	41
7	Acres	4	3	2	2	3	30
8	Little Close	2	2	19	1	2	21
9	Birklandbarrow Close	3	3	6	2	1	14
10	Over Oaks Meadow	3	3	8	2	1	15
11	Birklandbarrow Close	3	2	37	2	1	8
12	Low Acre	5	2	27	3	2	0
13	Acres Brow	2	2	37	1	2	30
14	Meadow Bottoms	4	3	21	3	0	2
15	Great Meadow	4	1	19	2	3	4
16	Pye Croft	7	0	38	4	1	29
17	Three Acres	4	1	18	2	2	31
18	Oaks	1	2	39	1	0	12
19	Cocks Wood	6	2	15			
	Land in it	2	2	12			
20	Church Stacks	2	0	30	1	1	16
21	Field above Church	4	1	28			
	Wood in ditto	0	2	8			
22	Church Bank	3	1	30	2	0	19
24	Grassland allotment	17	0	28	10	2	16
25	ditto ditto	11	1	24	7	0	5
	Total	109	1	8	67	1	36



# TO BE SOLD

BY AUCTION,

BY MR. GEORGE DANSON,

AT THE "BEAR & STAFF INN,"  
LANCASTER,

On Tuesday, the 1st of Oct. next,

AT 3 O'CLOCK IN THE AFTERNOON.

## A FREEHOLD ESTATE CALLED "KIRKHOUSE."

SITUATE IN THE TOWNSHIP OF OVER KELLET, (NEAR THE CHURCH).

Comprising superior Farm House, Farm Buildings, and 100a. 1r. 8p. of Land, Statute Measure, now in the possession of MR. JOHN ROBINSON, as Lessee thereof, for a term of years, of which above 2 years are yet unexpired.

Situated at the entrance of the English Lake Scenery, and partaking very much of its character, this Estate commands extensive views of Morecambe Bay, and of the exquisite scenery around, and presents the choice of many sites for a first-class Residence. Strata of Limestone lie under most parts of the Estate, and the situation is airy and healthy. It is within 2 miles of Carnforth Station, where the Lancaster and Carlisle and Ulverston and Lancaster Railways unite, and is about 7 miles from Lancaster.

Mr. BELL, of Over Kellet (the Owner) will show the Estate, and all further particulars may be obtained from him, or at the Office of Mr. C. T. CLARK, in Lancaster, where a plan of the property may be seen & lithographed plans obtained.

Lancaster, September 12th, 1861.

CLARK, PRINTER, GAZETTE OFFICE, MARKET STREET, LANCASTER.

Observations

Details of the sale of Kirk House in 1861 were located in the County Records Office.

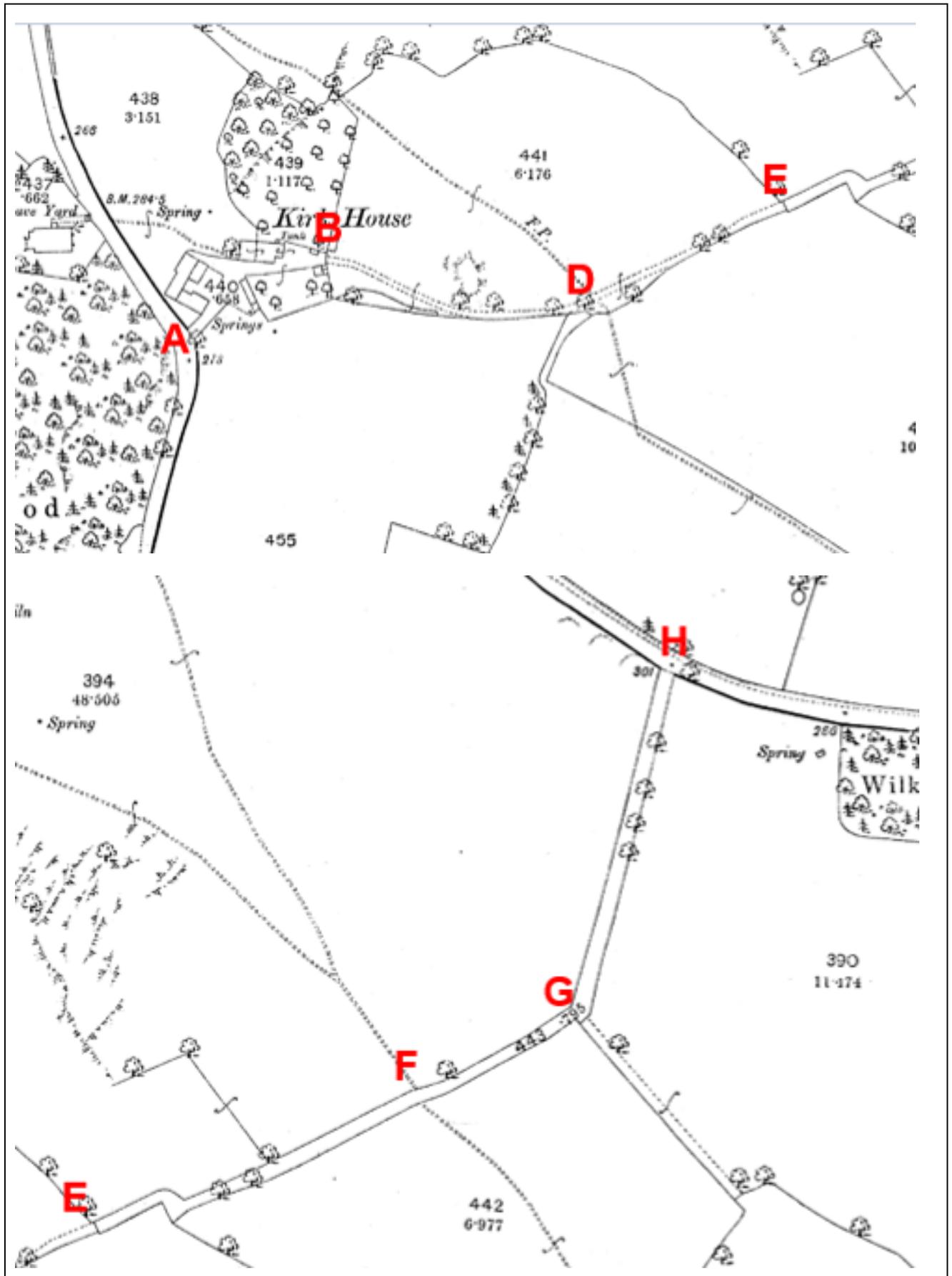
The plan of the land to be included in the sale included the land crossed by the application route between point A and point E.

Between point A and point B the plan shows the buildings located adjacent to the route and shows that the land



		<p>crossed by the application route appeared to be accessible. Lines are shown across the route at point A and point B and the area crossed by the application route is numbered as part of plot 1 which is described as 'House, Barn, Stable &amp; Yard' with no reference to a public right of way.</p> <p>The application route between point B and point E is shown as an unfenced track through to point E but is not labelled. In contrast, the route now recorded as 1-24-FP13, crossing the application route at point D, is shown and labelled as a footpath.</p> <p>The poster advertising the sale of the property makes no reference to any public rights of way across the land to be sold. It lists the current owner of the property as Mr John Bell.</p>
Investigating Officer's Comments		<p>A route from point a through to point E is shown to exist on the sale plan but there is no indication whether this was a public or private route.</p> <p>The fact that the area crossed by the route between point A and point B is described as part of the immediate curtilage of the house does not suggest that a significant public through route existed through the yard at that time.</p> <p>The Tithe Award detailed above lists Mr John Bell as the occupier of the land now to be sold but by 1861 it appears that he owned the land.</p> <p>The route now recorded as 1-24-FP13 is shown and labelled as a footpath passing through the land to be sold suggesting that this may have been recognised as a route which was used by the public in contrast to the application route which, although shown, is not labelled and although it appears that a route may have continued beyond point E no ongoing destination is labelled – again more suggestive of private rather than public use at that time.</p>
<b>25 Inch OS Map Sheet XXV.5</b>	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1891.





Observations

The application route is shown.

From point A to point B the route passes



		<p>through what appears to be a farmyard.</p> <p>Lines are shown across the application route at point A and point B although the route between these two points appears to have been accessible. From point B an unfenced track consistent with the application route existed through to point E and was crossed by a route labelled as footpath at point D (1-24-FP13).</p> <p>A line is shown across the application route at point E and beyond point E the route is shown as a significant fenced route with a parcel number and acreage. A further route labelled as a footpath is shown crossing the application route at point F (1-24-FP 10).</p> <p>At point H the route meets Kirkby Lonsdale Road where a dashed line is shown across the end of the route.</p> <p>Nether Kellet Road and Kirkby Lonsdale Road are both shown with a thickened line along the east/south side of the boundary of the road but the application route is not shown with any thickened lines along it.</p>
Investigating Officer's Comments		<p>The application route existed in 1890 and may have been capable of being used at least on horseback.</p> <p>Gates appear to have existed across the route at points A, B and E which may have restricted access but not necessarily have prevented it. The existence of gates across a public right of way was not (and still is not) uncommon, particularly in rural areas where they were required to control livestock.</p> <p>Footpaths are shown to directly cross the application route at point D and point F suggesting that there was access (possibly public) across but not necessarily along the application route at that time.</p> <p>The Planning Inspectorate Consistency Guide states "Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage." However, it goes on to say that this is far from conclusive evidence of highway</p>

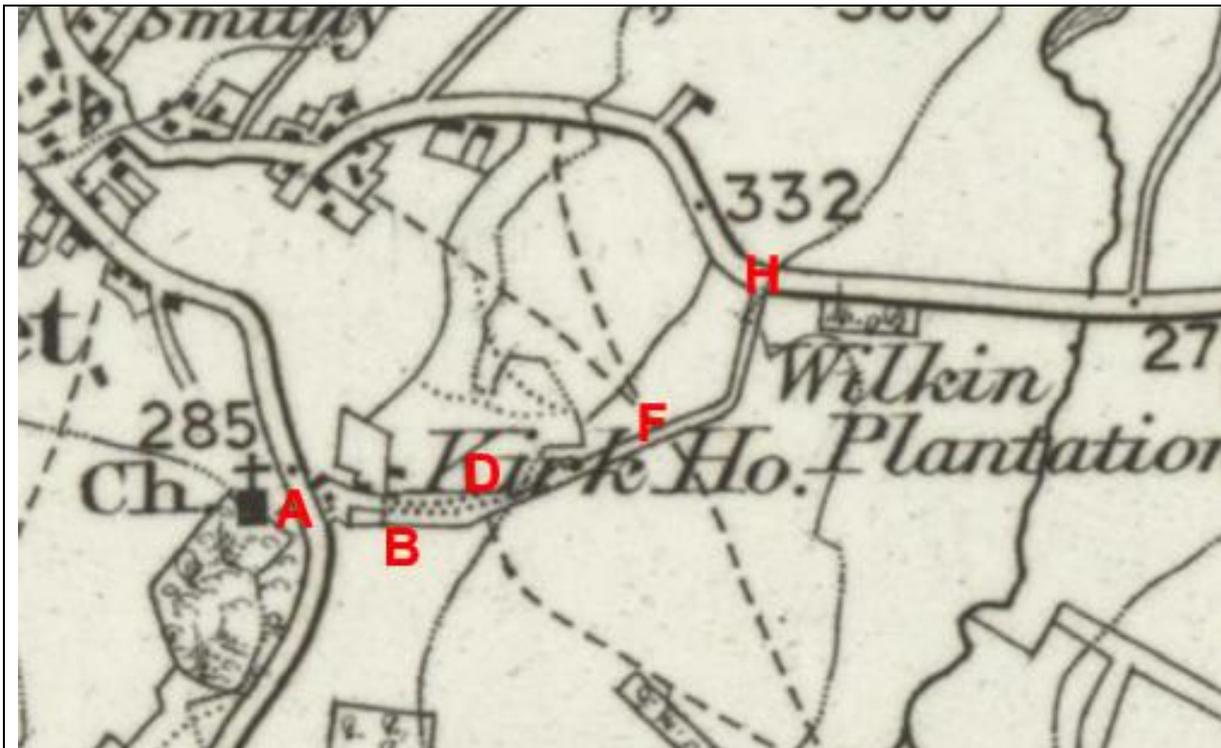


		<p>status so the fact that a dedicated parcel number is shown for the route between point E and point G is not evidence of public – or private status.</p> <p>Shading and colouring were often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. The Ordnance Survey specified that all metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east side of the road. 'Good repair' meant that it should be possible to drive carriages and light carts over them at a trot. The fact that no part of the application route is shown in this way suggests that it was not considered to be a primary route used by horse drawn vehicles at that time and is not inconsistent with the view that the route was not intended to be shown as part of the public vehicular highway network on the Tithe Map detailed above. It is not however inconsistent with use of a route on horseback (or on foot).</p>
<p><b>6 inch OS Map Sheet 25</b></p>	<p>1894</p>	<p>6 inch OS map surveyed 1890 and published 1894.</p>
		
<p>Observations</p>		<p>The application route is shown passing out of the farmyard at point B through to point G. Between point A and point B access through the farmyard appears to have been possible and a further route</p>



		<p>consistent with how footpaths were shown (which was also shown on the 25 inch OS detailed above) is shown leading from Kirk House directly to the church to the north of the application route A-B. Footpaths are shown crossing the application route at point D and point F.</p>
Investigating Officer's Comments		<p>The application route existed in 1890 and appeared to be capable of being used although it is not possible to know from looking at the map whether this use was public or private.</p> <p>Two routes subsequently recorded as public footpaths are shown crossing the application route at point D and point F suggesting that pedestrian access may have been available across – but not necessarily along the application route at that time.</p> <p>A further route is shown from Kirk House leading directly to the church – which is not recorded as a public footpath – and it is not known whether use of this path at that time was public or private although it does appear to be directly from the property suggesting private use.</p> <p>The generic name 'Kirk House' is believed to have referred to a house near a church or associated with the church. In this particular case if the property was linked to the church at that time a direct path to the church would be expected.</p>
<b>1 inch OS Map Sheet 59</b>	1898	1 inch OS map surveyed 1842-48, revised 1896 and published 1898.





<i>Metalled Roads; First Class</i>	5 (Mile distance) (Altitude) 211	Fenced	Unfenced	<i>Chuo</i>
" " <i>Second Class</i>				"
" " <i>Third Class</i>				"
<i>Unmetalled Roads</i>				<i>Wine</i>
<i>Footpaths</i>				<i>Ligh</i>
<i>Railways, Single Line</i>			<i>Level Crossing</i>	<i>Bea</i>
			<i>Cutting    Embankment //</i>	<i>Letta</i>
				<i>Cont</i>

Observations		The application route is shown. The scale of the map means that the detail of how the route is shown between point A and point B has been lost but beyond point B an unfenced 'road' can be seen continuing through to at least point D and then a fenced route beyond through to point H. The bounded section of route is shown to be narrower than the public vehicular routes known as Nether Kellet Road and Kirkby Lonsdale Road.
Investigating Officer's Comments		The application route existed in 1896 and appeared to be capable of being used. The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the



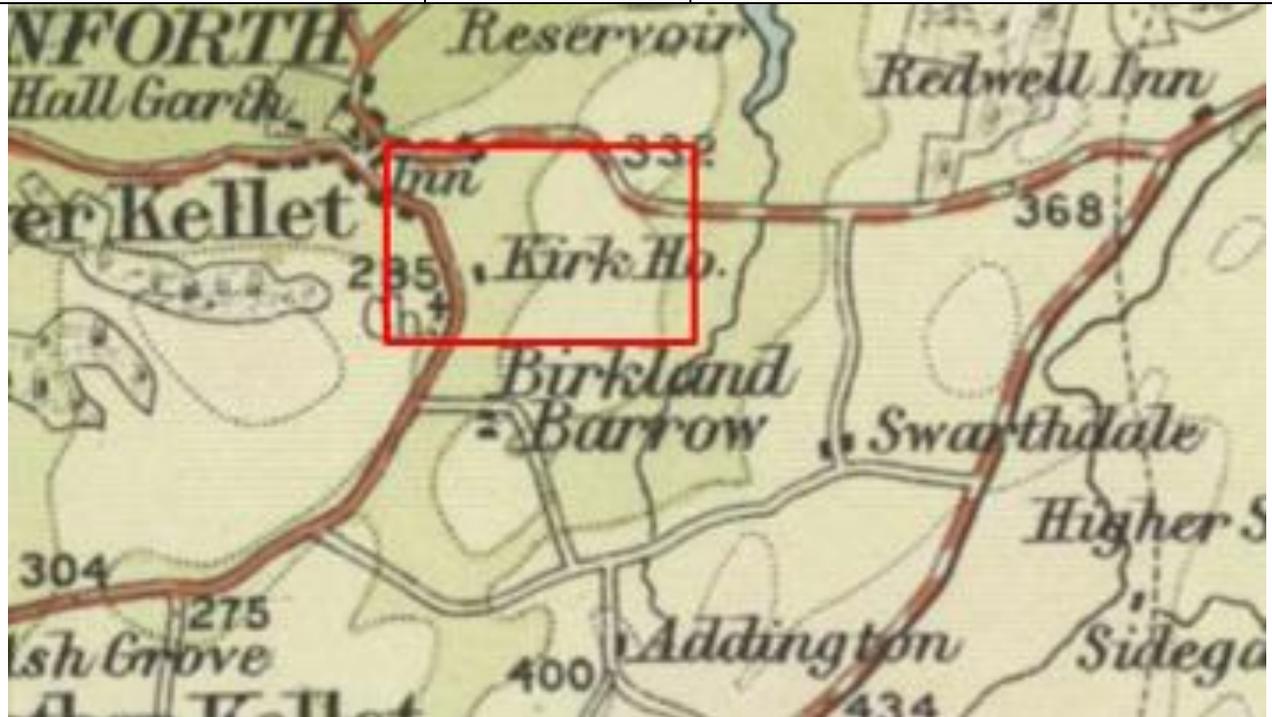
		travelling public on horseback or vehicle suggesting that the through roads shown – and in this case the application route – may have had public rights for those travellers.
<b>25 inch OS Map Sheet XXV.5</b>	1913	Further edition of the 25 inch map surveyed in 1890, revised in 1910 and published in 1913.



Observations		The application route is shown in the same way as it is shown on the 1 <sup>st</sup> edition 25 inch map.
Investigating Officer's Comments		The application route existed in 1910 and appeared to be capable of being used at least on horseback.
<b>Bartholomew half inch Mapping</b>	1902-1906	The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged



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



EXPLANATORY NOTE

- First Class Roads
- Secondary (Good)
- Indifferent (Passable)
- The uncoloured roads are inferior and not to be recommended to cyclists.*
- Footpaths & Bridlepaths
- N.B. The representation of a road or footpath is no evidence of the existence of a right of way.*
- Railways Station      Station with Refreshment Room
- Canals
- County Boundaries

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

1905





EXPLANATORY NOTE

Motoring Roads	}	Through Routes		Motor Ferries	
		First Class Roads			
		Secondary			
		Indifferent		(Passable for cyclists)	

*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 ————  
 Good Secondary Roads ————  
 Serviceable Roads ————  
 Other Roads ————

Ministry of Transport Numbers **A 586**  
 Footpaths & Bridlepaths .....  
*N.B. The representation of a road or footpath is no evidence of right of way.*

1941

Observations		The application route is not shown on any of the three maps published by Bartholomew between 1905 and 1941.
Investigating Officer's Comments		The fact that the application route is not shown on the maps suggests that it was not useable as a public vehicular highway in the early 1900s. the maps do not generally show routes used as footpaths or bridleways at that time so no inference can be drawn in that respect.
<b>Finance Act 1910 Map</b>	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.</p>



		<p>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). Land could be excluded from taxable plots for certain reasons.</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>Between point A and point E the application route is included within part of hereditament 63 which also includes a plot of land immediately to the south of the application route between points E-G (but not the route itself).</p> <p>The District Valuation book lists the owner of hereditament 63 as J Lee Booker and the occupier of the property and land as John Baker. The hereditament is described as 'house and buildings and land' at 'Kirk house' and a deduction of £25 was listed for public rights of way or user.</p> <p>Between point E and point H the application route is excluded from the numbered plots.</p>
<p>Investigating Officer's Comments</p>		<p>The application route between point A and point E was included in a large, numbered plot for which details of a landowner and occupier were given. This suggests that the route was not considered to be a public vehicular route at that time. A deduction was however made for the existence of public rights of way across the plot.</p>

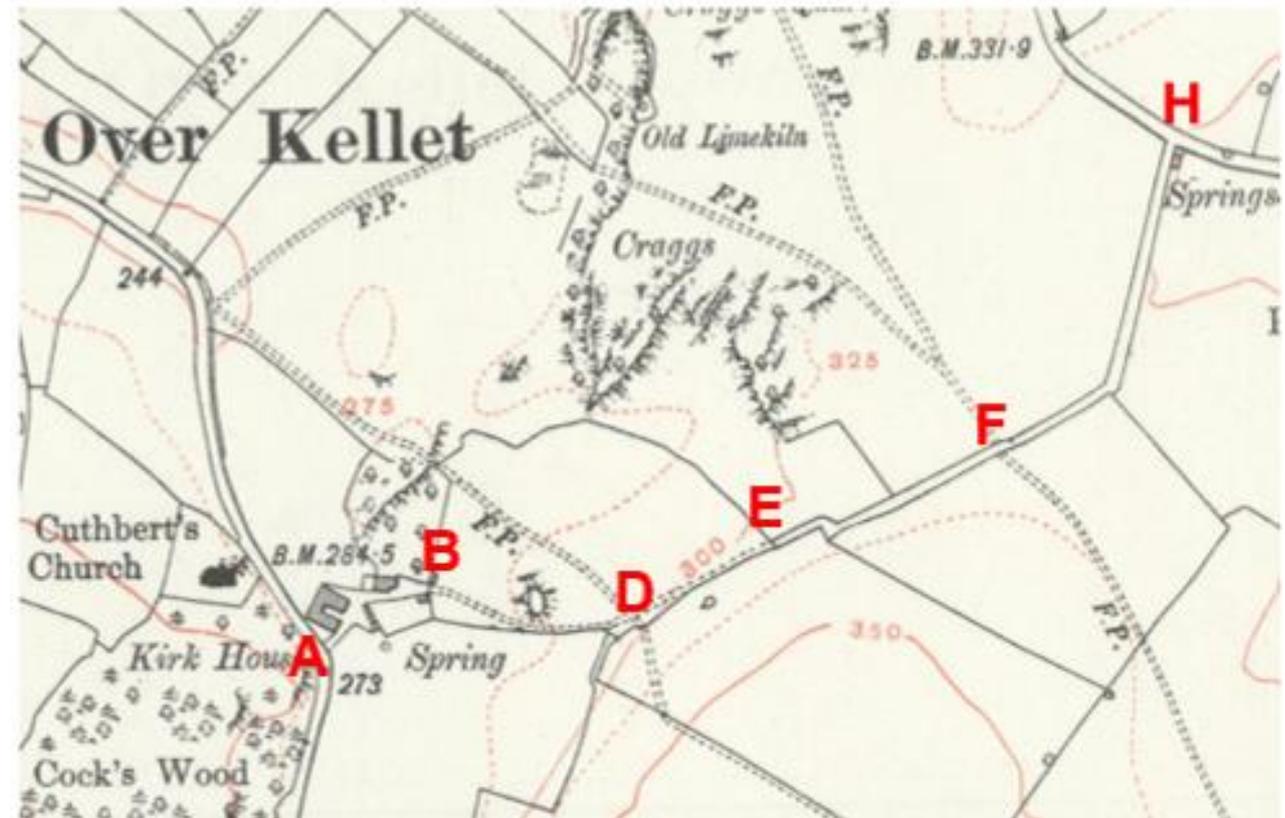


		<p>Whilst this deduction may be relevant it is not possible to determine which route – or routes – the deduction related to. Plot 63 was in two parts and was crossed by two substantial lengths of routes marked on the OS base map as footpaths and which are now recorded as 1-24-FP13 and 1-24-FP10. It is therefore possible that the deduction related to those paths only so beyond confirming that the land crossed by the application route between point A and point E was in private ownership and that the owners acknowledge the existence of unspecified public rights of way across that land it is not possible to know whether they considered that the application route carried public rights or not.</p> <p>The application route between point E and point H was physically separated from the adjacent land at the time of the valuation and is considered to have been originally created as a private occupation road as part of the inclosure process. Although the exclusion of a route from the numbered hereditaments (plots) is often considered to be good evidence of the fact that the route was believed to carry public vehicular rights it is noted that the rest of the route is not excluded in this way.</p> <p>There may be other reasons to explain its exclusion. It has been noted, for example, that there are some cases of a private road set out in an inclosure award for the use of a number of people but without its ownership being assigned to any individual, being shown excluded from hereditaments. Whilst this is not a consistent approach there is another example in the adjoining parish (Green Hill Lane, Nether Kellet) where this appears to have happened. The exclusion of the route may not be evidence of public vehicular rights but this does not necessarily mean that a bridleway may not have existed along the route and this needs to be looked at carefully in context with all other available evidence.</p>
<b>6inch OS</b>	1916	6 inch OS Sheet revised 1910-1911 and



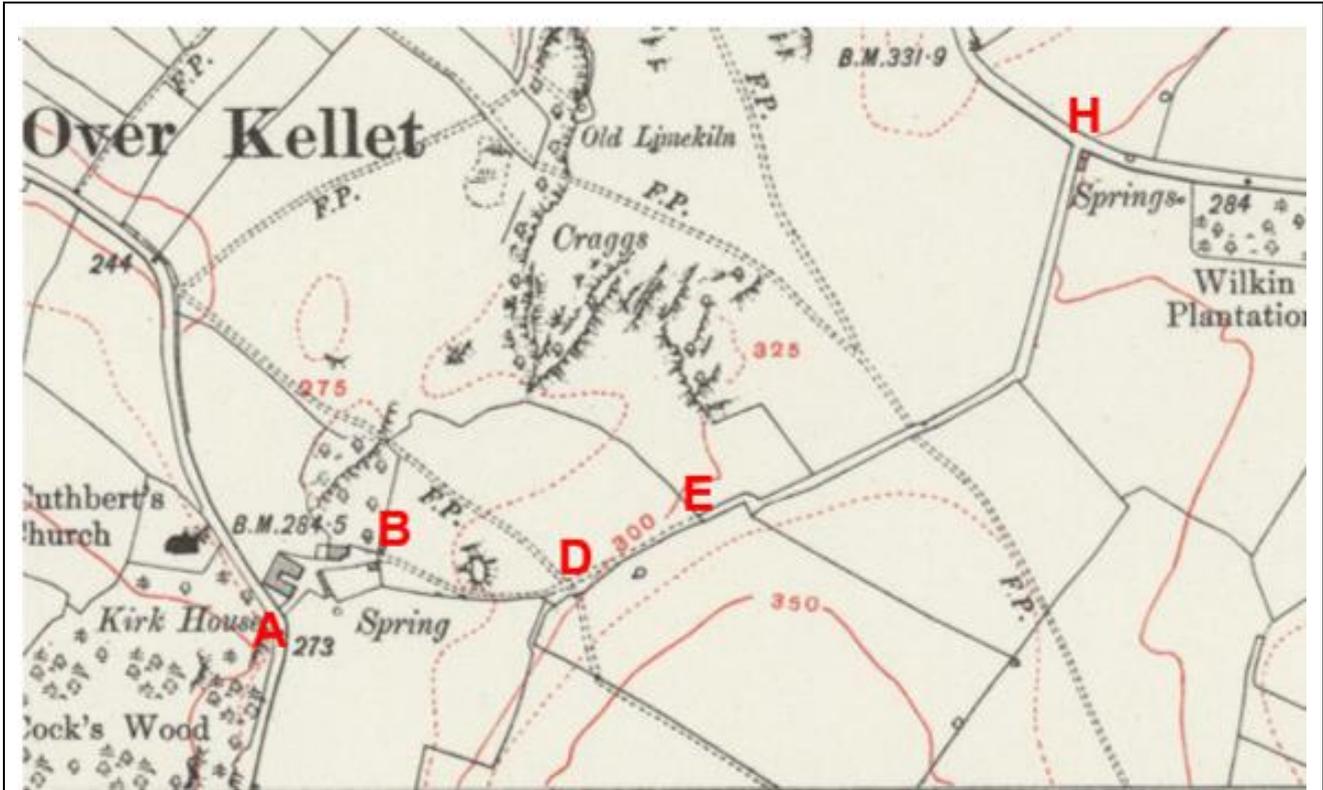
Sheet XXV.NW

published 1916.



Observations		The application route is shown in the same way as it is shown on the earlier editions of the 6-inch map.
Investigating Officer's comments		The application route existed in 1910-1911 and appeared to be capable of being used at least on horseback.
6 Inch OS Map Sheet XXV NW	c.1934	Further edition of 25 inch map revised in 1910-1911 and published circa 1934.





Observations		The application route is shown in the same way as it is shown on the earlier editions of the 6-inch map.
Investigating Officer's Comments		The application route existed in 1910-1911 and appeared to be capable of being used at least on horseback.
<b>1932 Rights of Way Map</b>	1934	The Rights of Way Act 1932 set out the mechanism by which public rights of way could be established by user and under which landowners could deposit maps to show highways already in existence and to indicate that they didn't intend to dedicate further rights of way. The Commons, Open Spaces and Footpath Preservation Society (which became the Open Spaces Society) who were the prime instigators of this Act and the later 1949 Act, called for local authorities to draw up maps of the public rights of way in existence (a quasi pre-cursor of the Definitive Map). This is set out in 'The Rights of Way Act, 1932. Its History and meaning' by Sir Lawrence Chubb [M]. The process for consultation and scrutiny followed in Lancashire is not recorded but some of the maps exist including maps for the following areas are available for inspection at County Hall: Lunesdale



Rural District (RD), Lancaster RD, Burnley RD, Garstang RD and West Lancashire RD.



Lunesdale Rural District Council.  
Public Footpaths. Parish of Over Kellet. Feb. 1924.

1. From Hall Farm, Carnforth Road, to Carnforth. (Opposite Vicarage).
2. From Higher Keer Bridge to Capernwray Old Hall. Along left bank of Keer.
3. From Higher Keer Bridge to Hare Tarn.
4. From Capernwray Road, near Old Lime Kiln to Old Lane, thro Plot 551. Joins here Footpath No. 5. from Capernwray Cottages.
5. From Capernwray Cottages, to plot 300, through plantation and continuing through Plots 301, 364. Joins Old Lane, continues along Lane to Plot 3490 thro Parkers Yard, crosses Kirkby Lonsdale Road-over Green-thro 399-past Craggs-thro 394, 443, and joins Footpath from Church View, continues thro 442 and 461, and branches or branch comes into lane between Swarthdale and Walled Garden, the other turns S.E. comes into Kirkby Lonsdale - Nether Kellet Road, just south of Swarthdale Plantation.
6. From Church View, Kirkby Lonsdale Road to join No. 5 in Plot 364.
7. From Church View to Village Hall.
8. From Village Hall to Swarthdale, joining No. 5 at point where No. 6 joins No. 5.
9. From Wesleyan Chapel to Nether Kellet Road. (at Plot 404a).
10. From School (408) Over Kellet Seeds to Nether Kellet, joining Carnforth Nether Kellet Road near Town End Farm.
11. From Carnforth Road to Lower Kellet Road, below Leaspers Wood.
12. From Kirk House to Birklandbarrow.

<p>Observations</p>	<p>The typed list accompanying the map specifically refers to public footpaths. The application route was not recorded as a public footpath on the maps prepared for Over Kellet parish by Lunesdale Rural District Council. Two footpaths</p>
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		(numbered 5 and 8) were recorded as crossing the application route at point D and point F. Neither description of the routes recorded referred to the application route.
Investigating Comments	Officer's	The application route was not considered to be a public footpath in the 1930s but this does not necessarily mean that it was not considered to be a bridleway or possibly a public carriageway at that time.
<b>6 inch OS Sheet XXV NW</b>	1942	Revised 1910-1911 and published circa 1942.
Observations		The application route is shown in the same way as it is shown on the earlier editions of the 6-inch map.
Investigating Comments	Officer's	The application route existed in 1910-1911 and appeared to be capable of being used at least on horseback.
<b>1 inch OS Sheet 89 – Lancaster and Kendal</b>	1947	Small scale OS map revised 1920 and published 1947.





Ministry of Transport Roads	<u>    A.6    </u>	<u>    B.6254    </u>	Ra
Other Motor Roads	<u>    </u>	<u>    </u>	
" " " narrow	<u>    Good    </u>	<u>    Bad    </u>	Mi
Minor Roads	<u>    </u>	<u>    </u>	El
Bridle & Footpaths	- - - - -	- - - - -	(wit
Unfenced Roads are shewn by dotted lines	- - - - -	- - - - -	Pi
Gradients steeper than $\frac{1}{4}$	<u>    &gt;    </u>	<u>    </u>	We
Toll Gates	<u>    TOLL    </u>	<u>    </u>	Or
Road Mileage	<u>    5    </u>	<u>    </u>	Qu

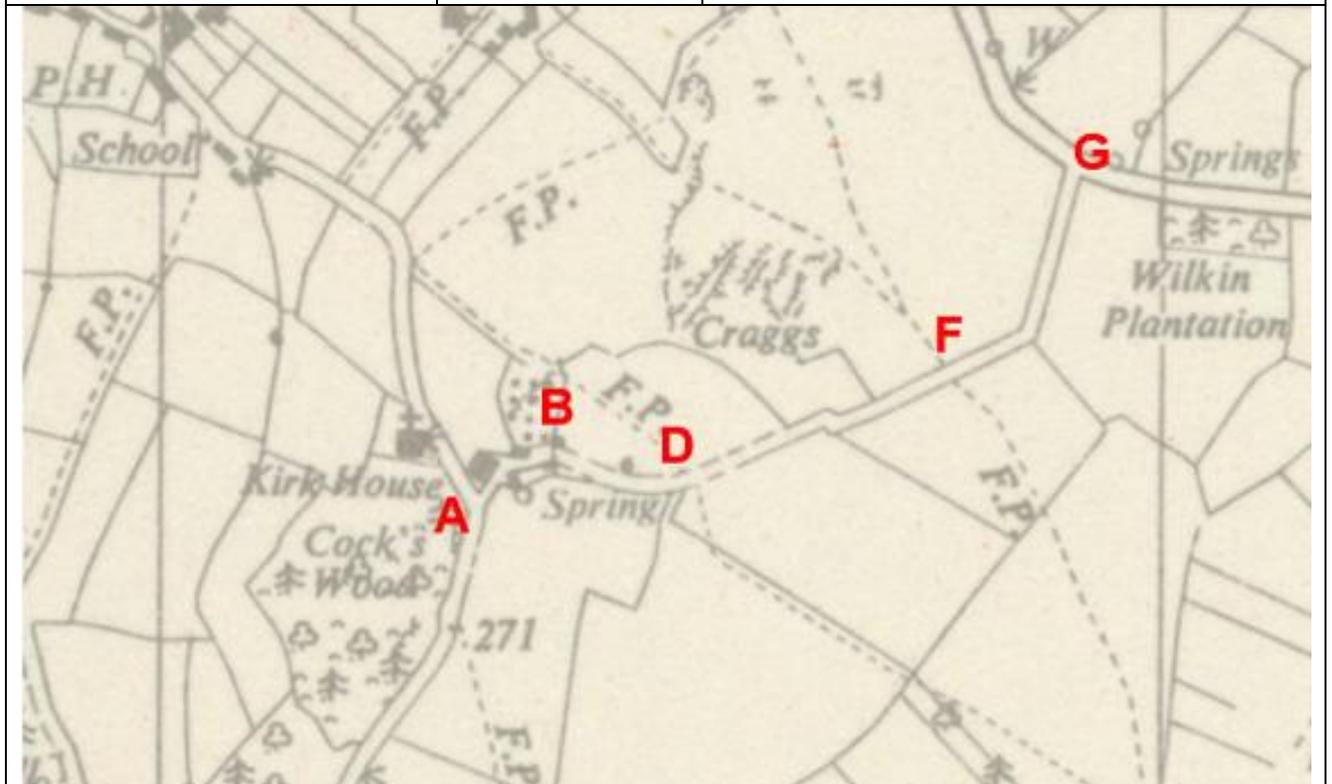
1014.

Observations

Between point A and point B access appears to be available between the buildings and from point B a double pecked line is shown through to point D. Between point D and point F the route is not shown and the words 'Kirk House' have been written. From point F through to point H the route is shown consistent with how minor roads are shown on the map. Routes considered by the OS to be

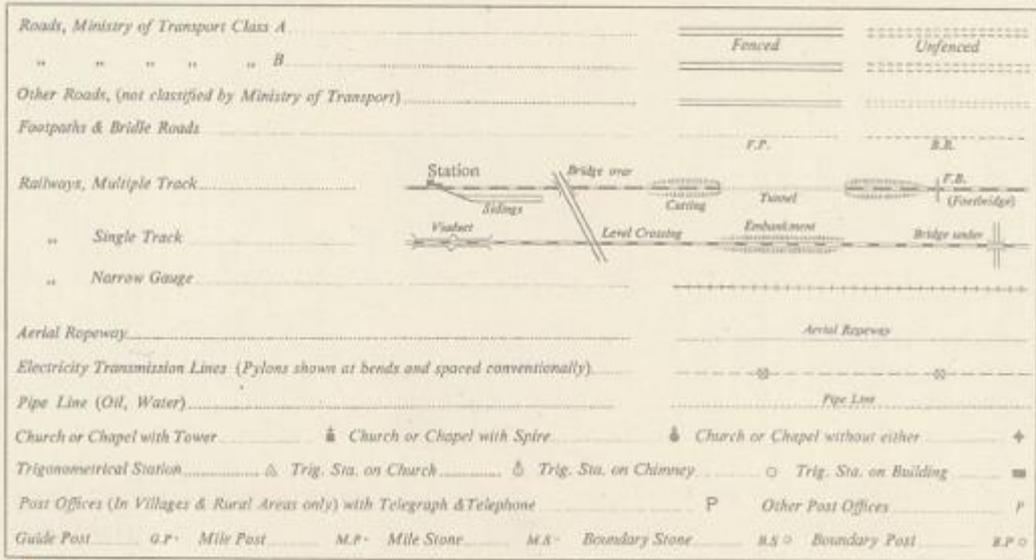


		footpaths and bridleways were shown on the map by a single dashed line and it is noted that no part of the application route was shown in this way.
Investigating Comments	Officer's	The application route existed in 1920 and appeared to be capable of being used at least on horseback. The fact that the middle section of the route (between point D and point F) is not shown is more likely to be because of the scale of the map and the fact that the name of the property 'Kirk House' was written there. OS maps before and after this date do not show a break in the route.
1:25,000 OS map Sheet 34/56	1948	OS sheet published 1948, date of revision not known.



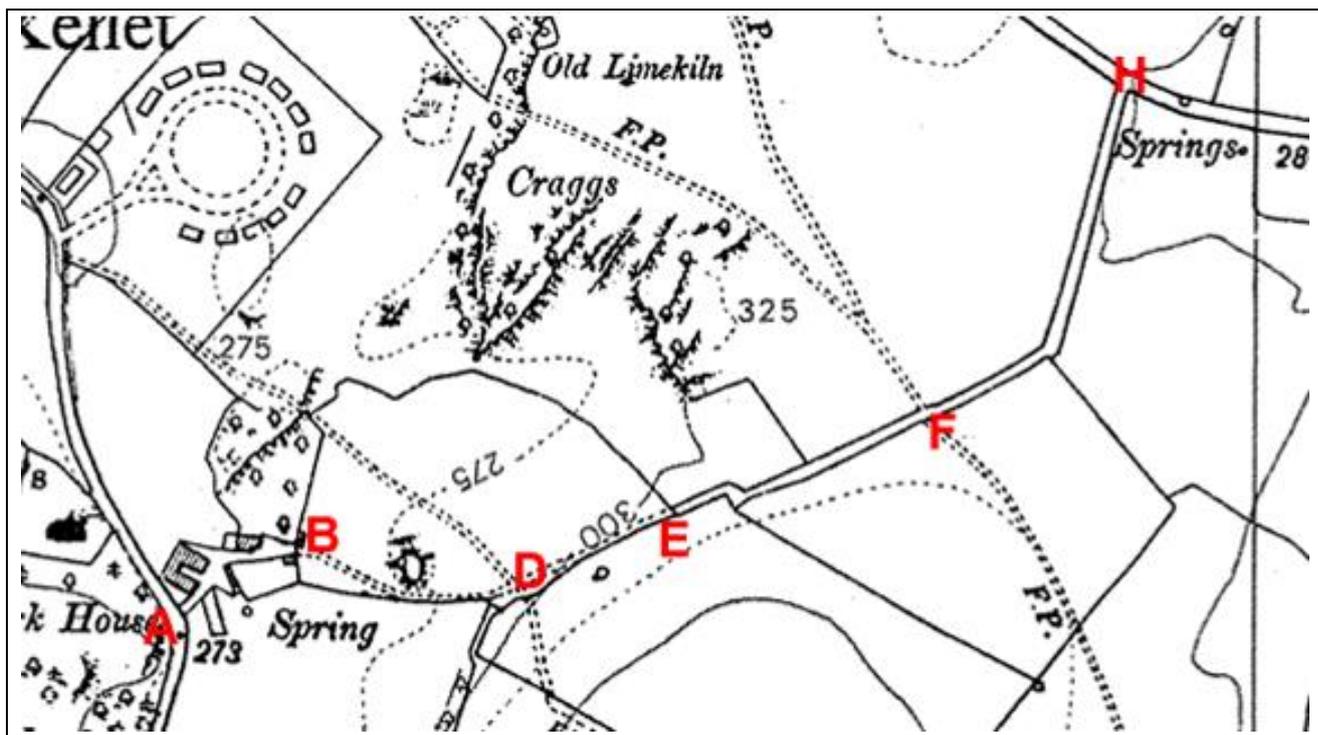
The representation on this map of a Road, Track, or Footpath, is no evidence of the existence of a right of way.

# SHEET 34/56



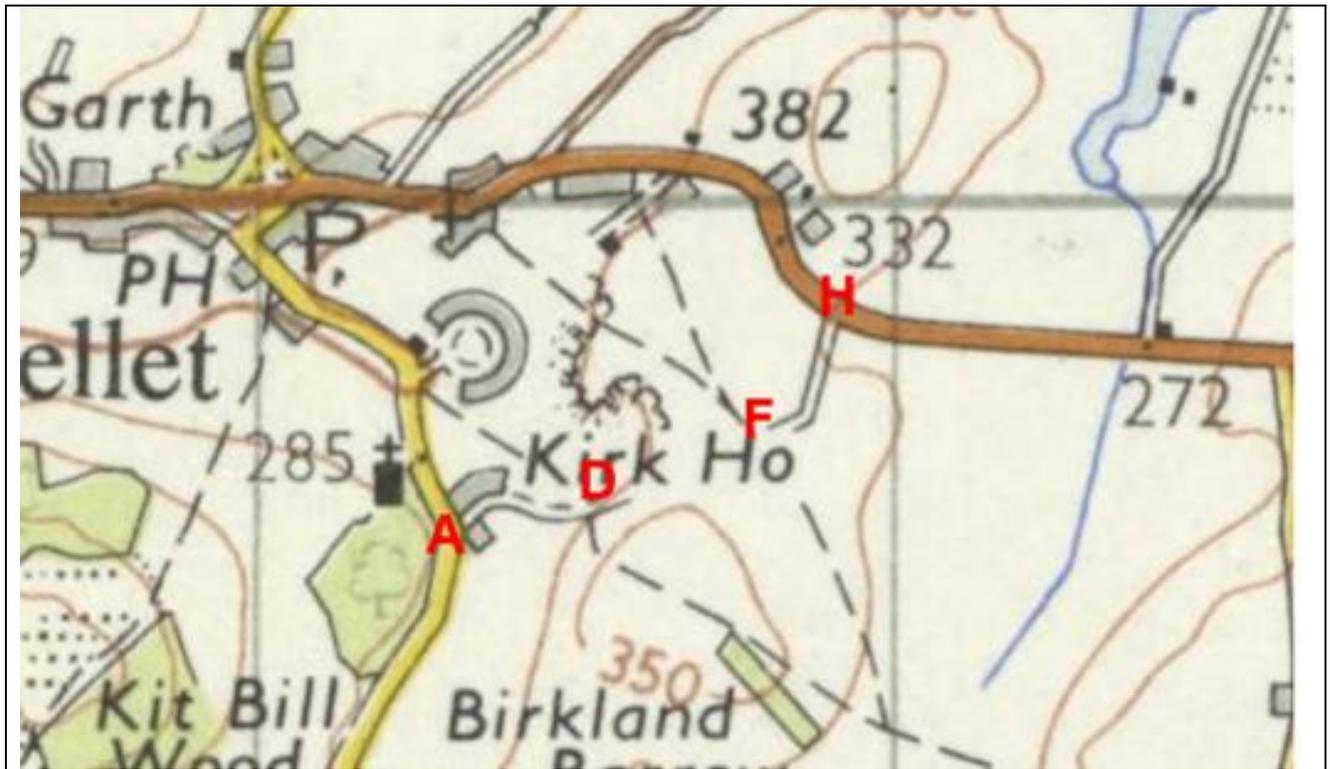
Observations		The application route is shown as a substantial through route gated at point B. It appears to be shown as 'other roads (not classified by The Ministry of Transport)'.
Investigating Officer's Comments		The application route probably existed when the map was published and appeared to be capable of being used at least on horseback.
6 Inch OS Map Sheet 56NW	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.





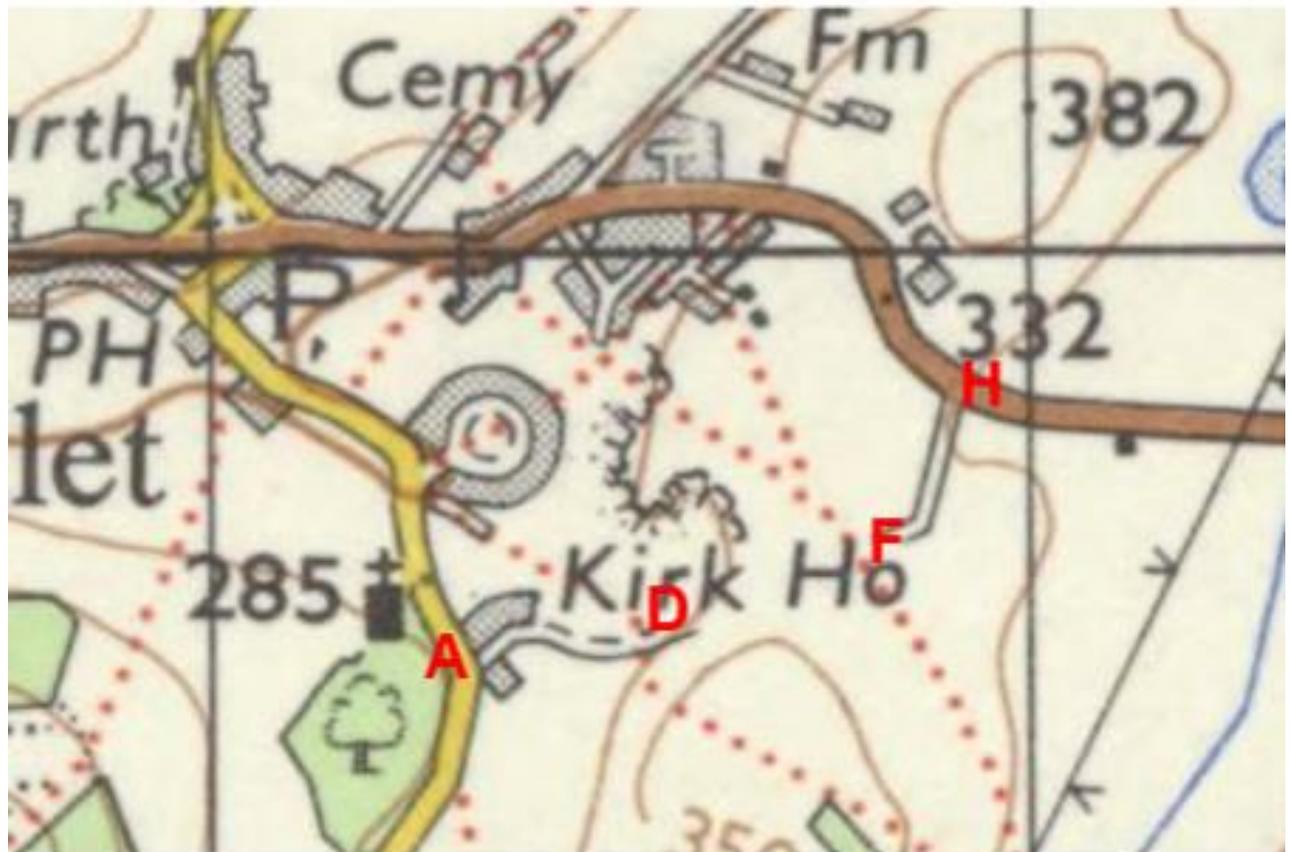
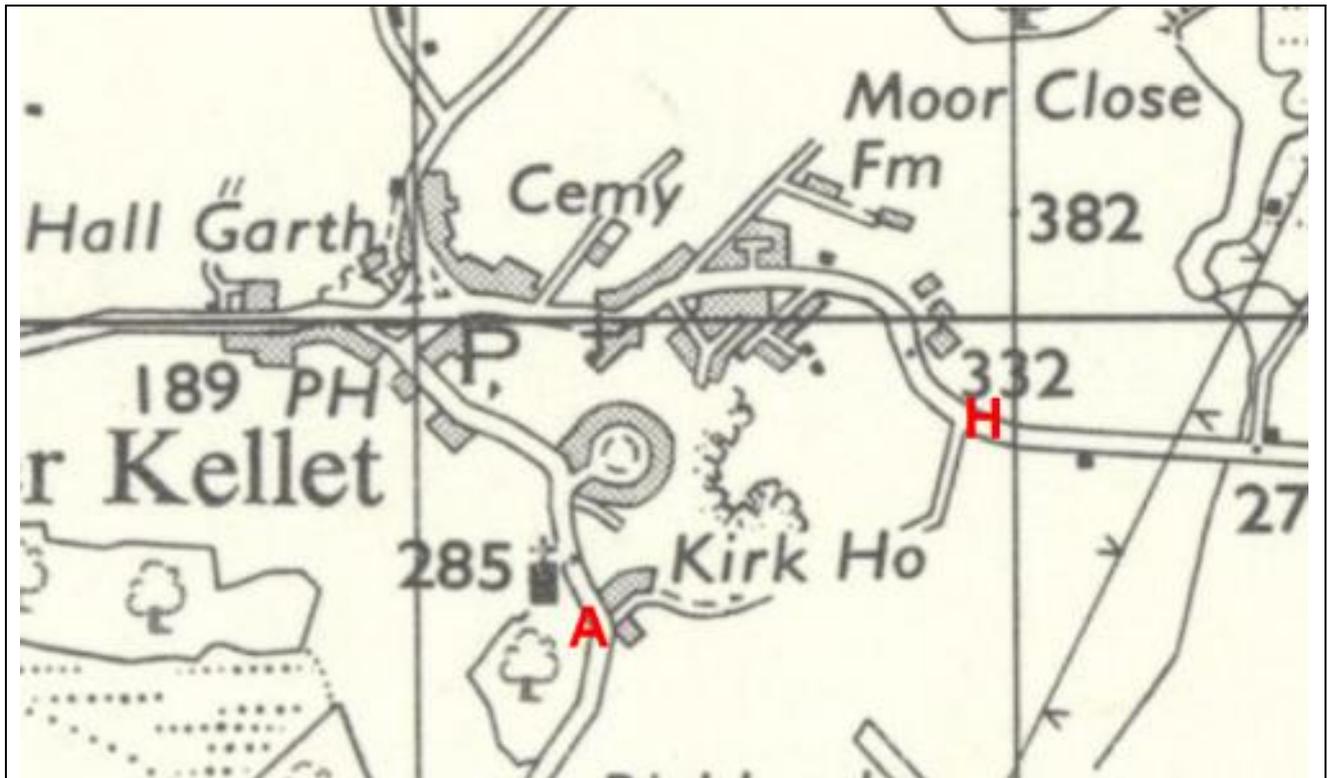
Observations		The application route is shown and was gated at point B and point E. Routes annotated as footpaths (F.P.) crossed the application route at point D and point F but the application route was not annotated.
Investigating Officer's Comments		The application route existed before 1930 and appeared to be capable of being used at least on horseback.
1 inch OS Map Sheet 89 – Lancaster and Kendal	1957	OS map revised 1950-1957 and published 1957.





Observations		The application route is shown as a substantial route with a gap in the middle (between point D and point F) where the words 'Kirk Ho' have been written.
Investigating Officer's Comments		The application route existed in 1950 – 1957. Evidence from maps pre and postdating this small-scale map suggest that there was no actual gap in the route between point D and F but that the style of this particular map meant that detail was often blanked out where labelling was inserted.
<b>1:25,000 OS Maps Sheet 89 – Lancaster and Kendal</b>	1965	OS maps both revised 1950-1964 and published 1965 at 1:25, 000 scale.

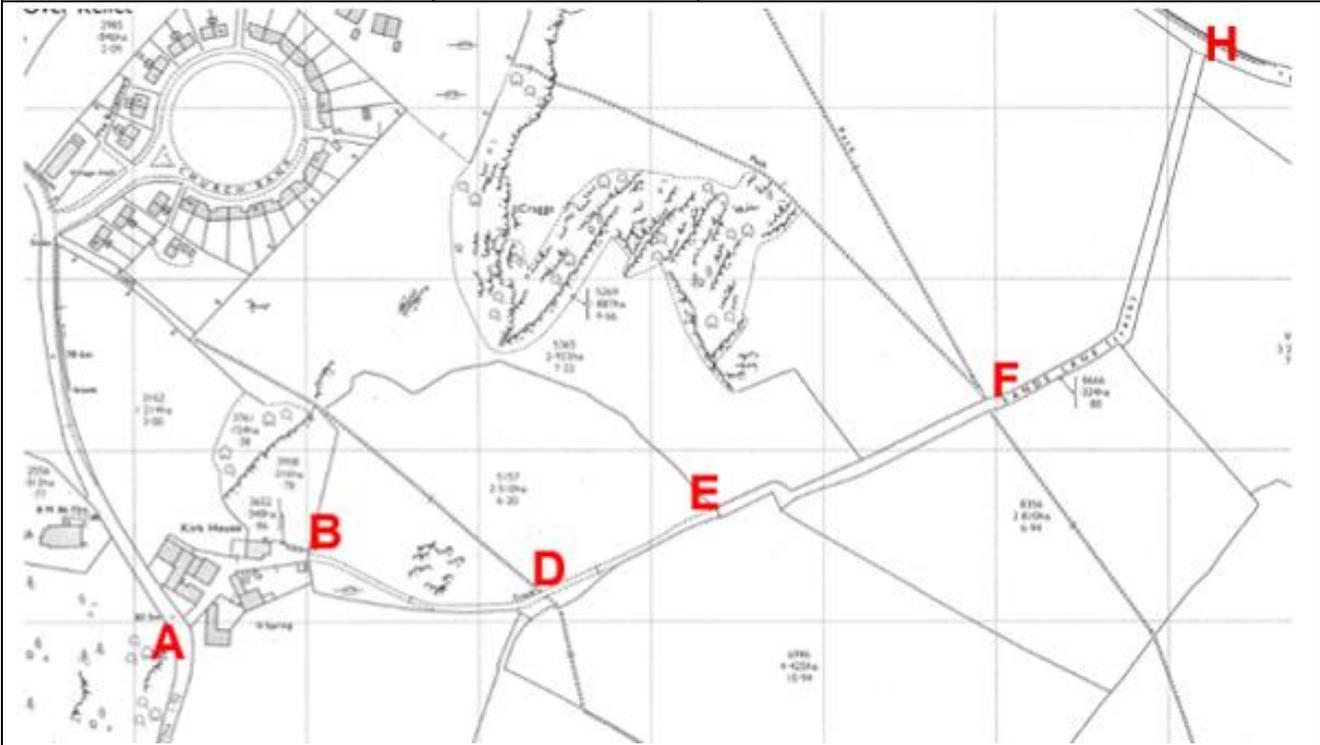




Observations		Further OS maps submitted by the application to show the application route as a substantial route.
Investigating	Officer's	The application route existed in 1950 –



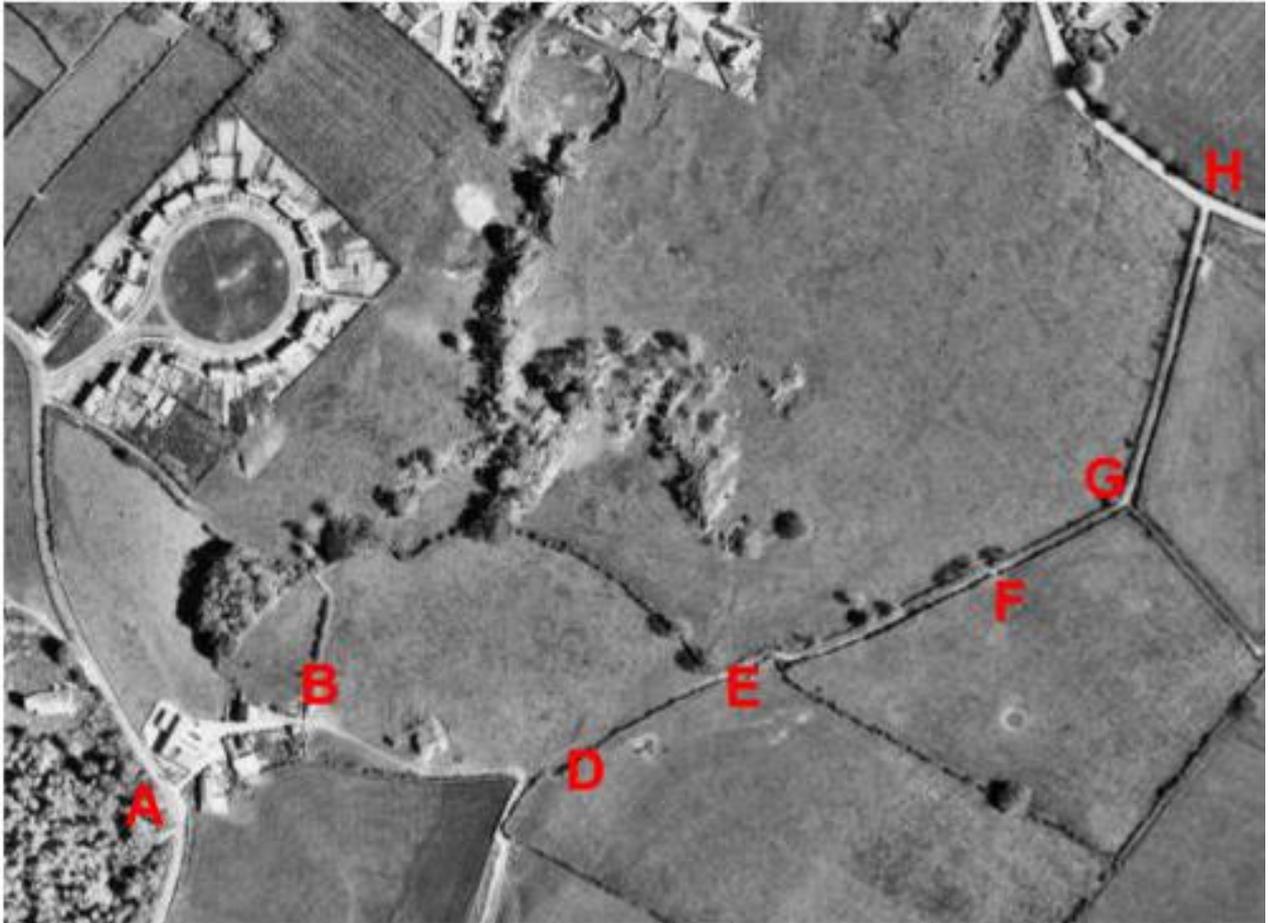
Comments		1964. Evidence from maps pre and postdating these small-scale maps suggest that there was no actual gap in the route between point D and F but that the style of these particular maps meant that detail was often blanked out where labelling was inserted.
1:2500 OS Map OS Sheet	1970	Further edition of OS map reconstituted from former county series and revised in 1969 and published in 1970 as national grid series.



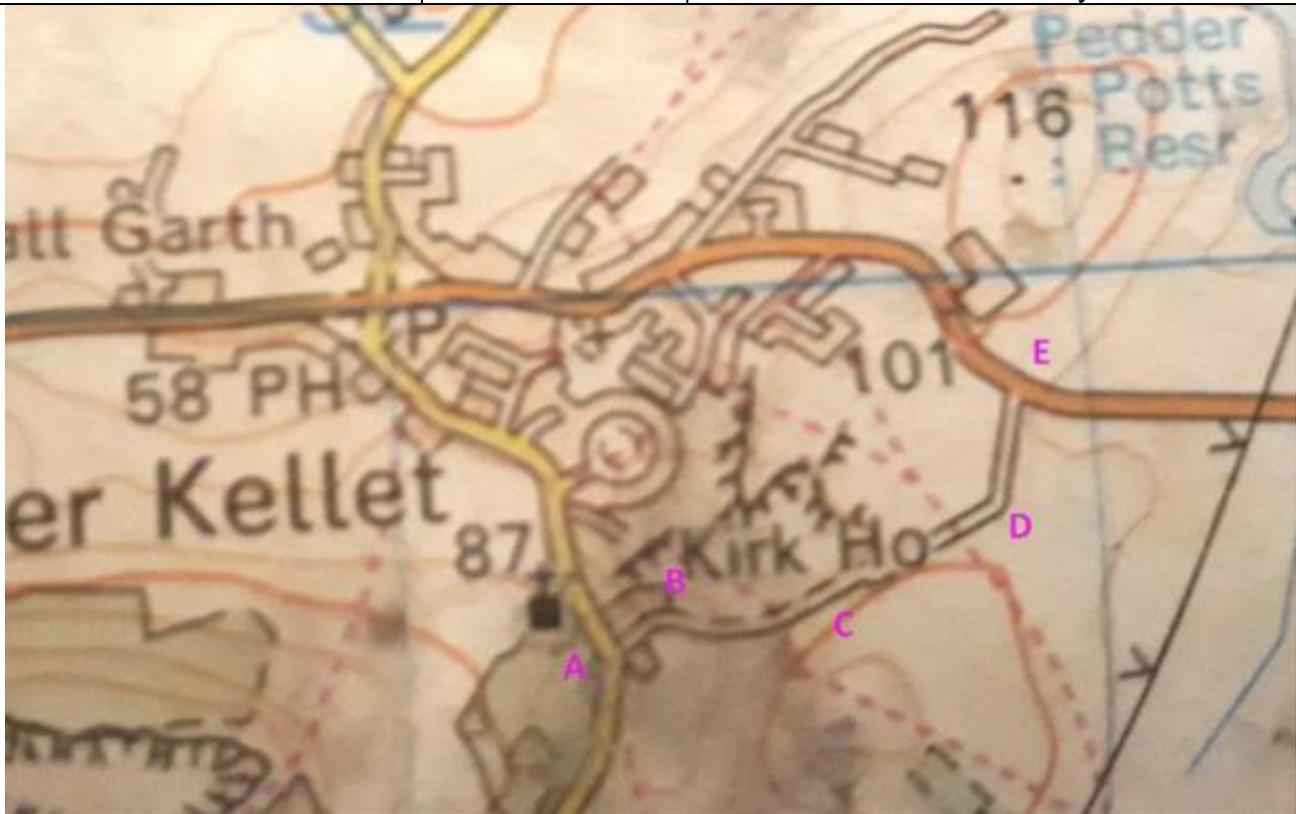
Observations		Further OS map showing the full length of the application route. Lines are shown across the route at point A, point B and point E and the route is labelled as a 'track' close to point D and between point F and point H where it is also named as 'Sands Lane'. The routes recorded as 1-24-FP 13, 1-24-FP 10 and 1-24-FP 11 are all shown crossing the application route and labelled as paths.
Investigating Comments	Officer's	The application route existed in 1969 and had remained unaltered from when it was first shown on the earliest edition of the OS 6inh and 25-inch maps. Between point E and point H it was named on the map as Sands Lane although this is the first reference that the Investigating Officer has found referring to the route as



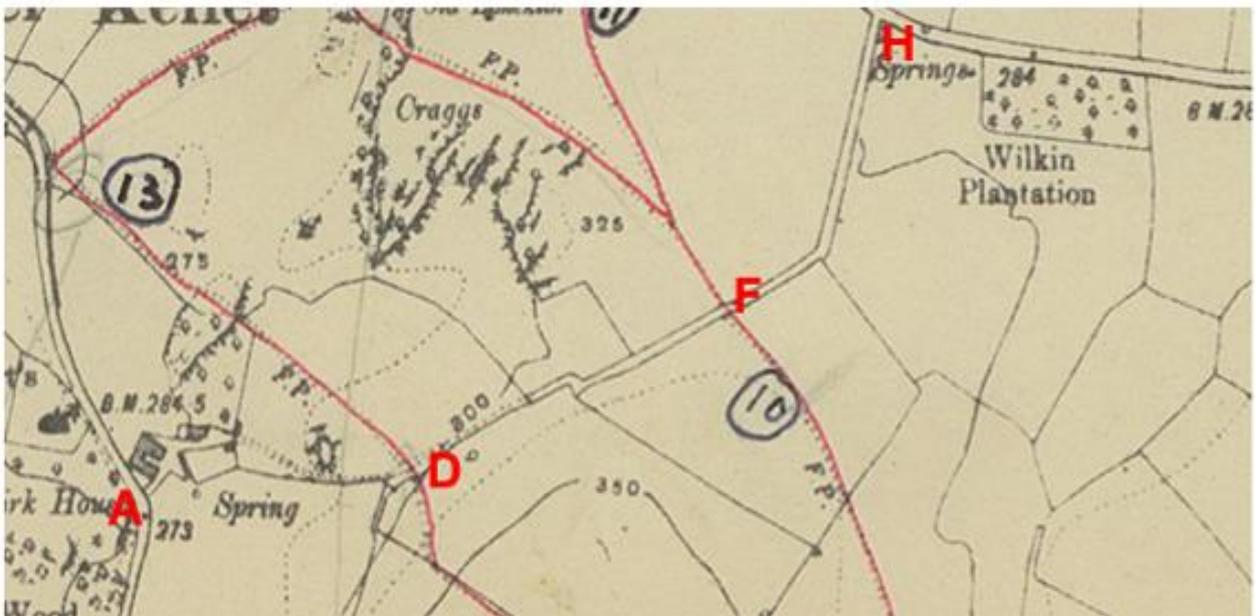
		being known as Sands Lane. The only other reference to it having a name was 'Kirk House Road' as described in the Inclosure Award and Map detailed earlier in this report.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



<b>Observations</b>		The application route is visible along most of its length although the section along the field edge from point D to point E is barely visible as a trodden track. A clearly visible track extends from point B along the line of the application route before turning south through a field boundary just before point D consistent with use by agricultural vehicles accessing fields south of the application route.
<b>Investigating Officer's Comments</b>		No inference can be drawn with regards to the existence of public rights but the aerial photograph supports the existence of the application route in the 1960s and the fact that it appeared capable of being

		used on horseback at that time.
<b>1:50,000 OS map</b>	1982	Date of map revision unknown and the extract below is a copy of the map submitted by the applicant from their own collection and annotated by them.
		
<b>Observations</b>		The application route is shown as a substantial through route.
<b>Investigating Officer's Comments</b>		The application route existed in the early 1980s and appeared to be capable of being used.
<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	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.



DISTRICT	<i>Lunesdale</i>	PARISH	<i>Overkellat.</i>	No.	<i>H.13.</i>
MAP SHEET No:	<i>3, +4</i>	LENGTH	<i>80 7/8</i>	<i>1/4</i> miles (to two decimal places)	
BRIEF DESCRIPTION (Field F.P. or otherwise)	<i>F.P.</i>				
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).					
<i>From Overkellat - Nether Kellat Road at Village Hall, Over Kellat South East<sup>th</sup> direction of Swarhdale Hall, passing close to North side of Kirk House Farm, through styles to corner of plantation (483 on xxv 9) and continuing through Swarhdale bottoms joining other footpaths (FP) 461-481. Continuing to the Swarhdale - Lower Addington road exist beyond parish boundary by gate to road. Good condition.</i>					
SURVEYED BY :-	Name	<i>W.A. Murphy.</i>			
	Address	<i>Church View. Overkellat Nr. Barnforth.</i>			
Date	<i>Aug 1950.</i>				



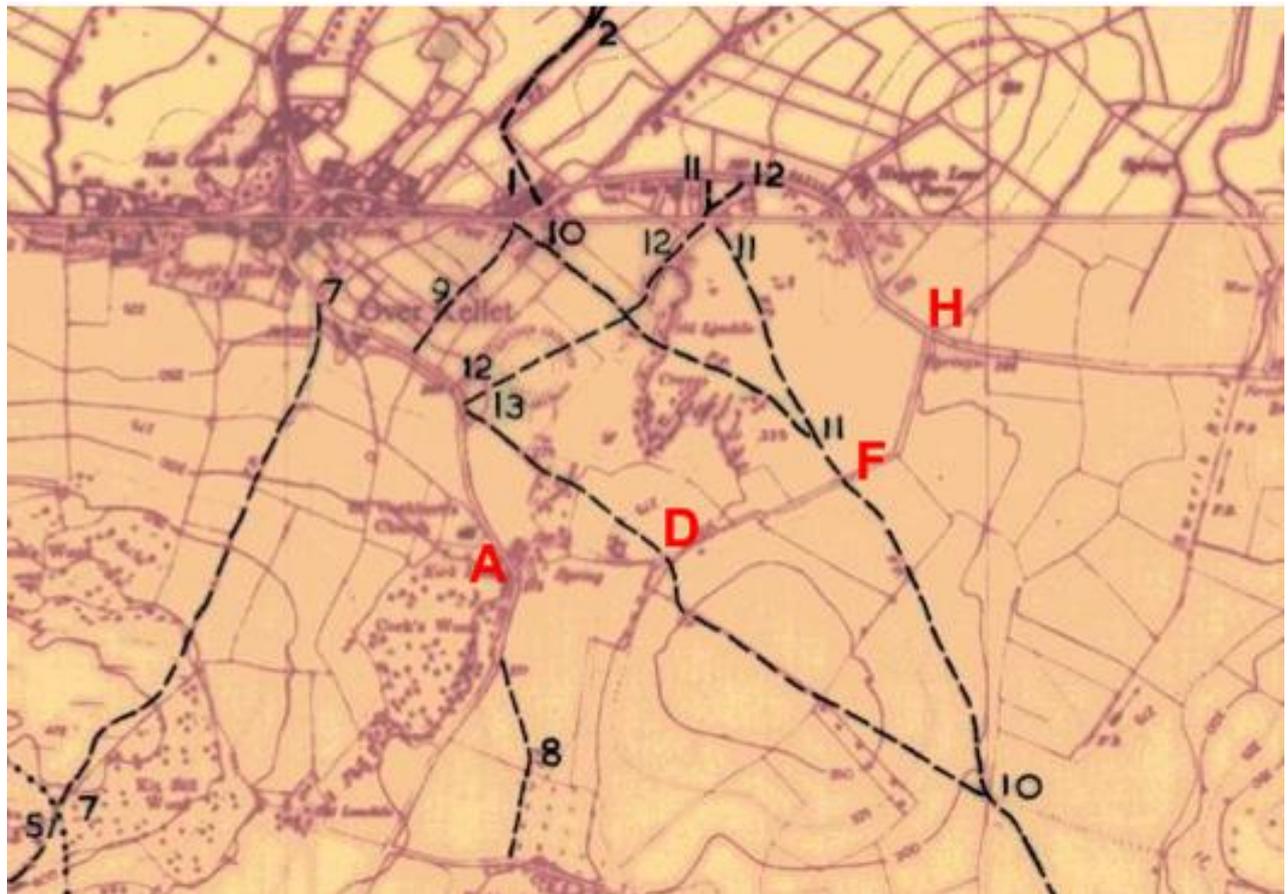
DISTRICT <i>Limesdale</i>	PARISH <i>Over Kellet.</i>	No. <i>10.</i>
MAP SHEET No. <i>3. + 4</i>	LENGTH <i>0.7 1/4</i> miles (to two decimal places)	
BRIEF DESCRIPTION (Field F.P. or otherwise) <b>F.P.</b>		
DETAILED DESCRIPTION (giving starting point, means of passage and general condition). <i>F.P. starting on "Top Green" in Over Kellet village passing N.E. of Cragg House &amp; cottage through stile into "Craggs Field" keeping south of old Lime Kiln - direction then generally South east through Swarthdale land (as on Sheet No. 11.) to join other F.P. to Swarthdale Hall &amp; on to Swarthdale Road by Cottage. - Good condition throughout.</i>		
SURVEYED BY :— Name <i>W. a. Murphy.</i>		
Address <i>Church View - Over Kellet Nr. Barnforth.</i>		
Date <i>August 1950.</i>		
<small>XXXXX F 20 400</small>		

<p><b>Observations</b></p>		<p>The application route was not recorded as a public right of way on the parish survey map. Of significance is the fact that two routes recorded as public footpaths are shown to cross the application route with no indication that they joined it. The numbering of the two routes was not split by the application route – which was often the case if a route met a public vehicular highway. There is no reference to the crossing of the application route in the descriptions of the footpaths written on the parish survey cards and no reference to the footpaths crossing a named route at points D or F.</p>
<p><b>Draft Map</b></p>		<p>The parish survey map and cards for Over Kellet 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</p>



		reject them on the evidence presented.
Observations		The application route was not recorded on the Draft Map and there were no objections to the fact that it was not included.
<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 and there were no objections to the fact that it was not included.
<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 as a public right of way on the First Definitive Map.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.





Observations		The application route is not recorded as a public right of way on the Revised Definitive Map (First Review).
Investigating Officer's Comments		The application route was not considered to be a public right of way during the preparation of the First Definitive Map in the 1950s through to the 1960s. Of note is the fact that public footpaths were recorded crossing the route at point D and point F but there was no public right of way recorded to link the two footpaths between point D and point F or to exit onto Nether Kellet Road via point A or Kirkby Lonsdale at point H.
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	1929 to present day	In 1929 the responsibility for district highways passed from rural district 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 previously maintained by the district council. These were based on existing Ordnance Survey maps and edited to mark those routes that were

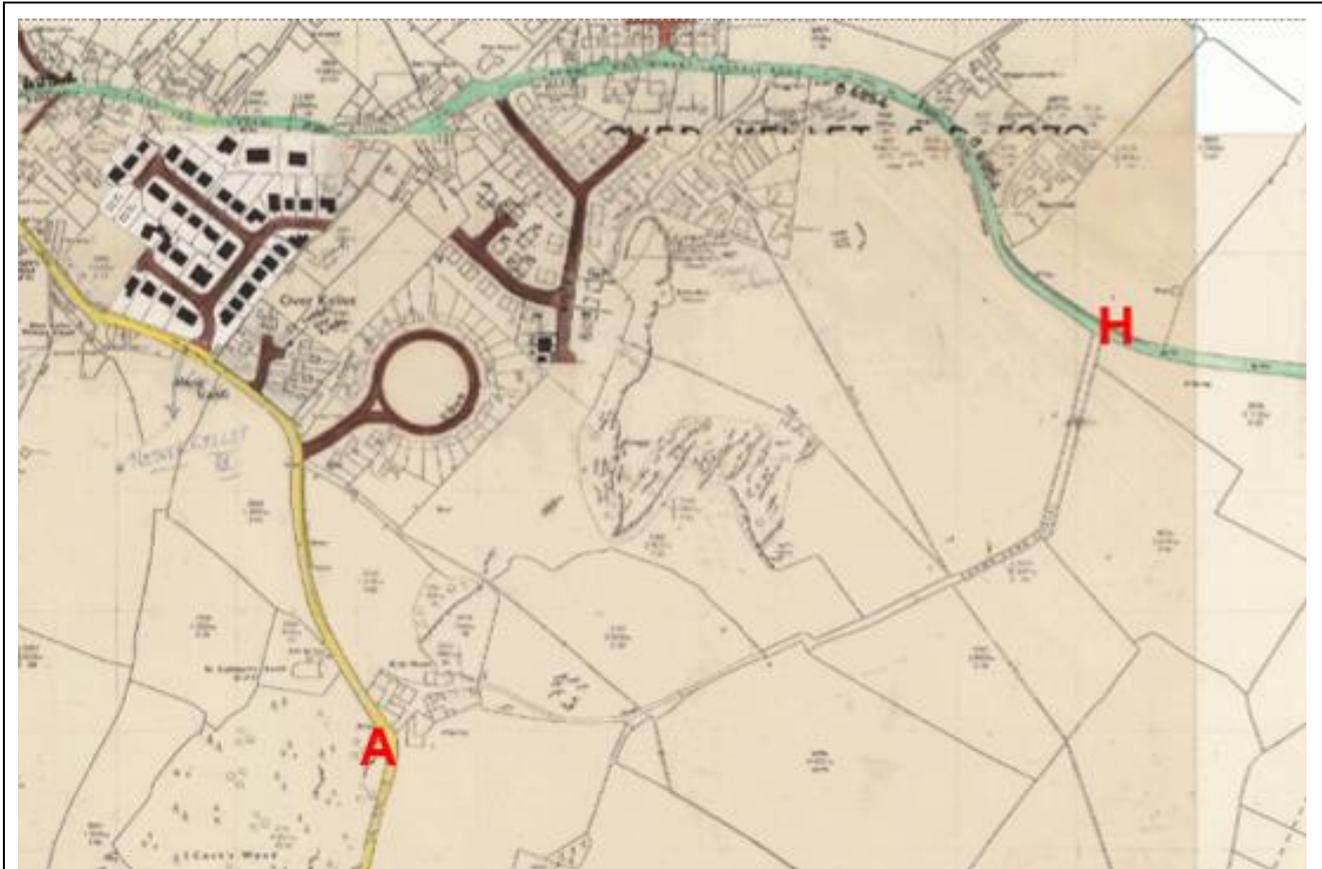


public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.

A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.

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





Observations		The application route is not recorded as a publicly maintainable highway on the county council's List of Streets and was not shown as a publicly maintainable highway in the records believed to be derived from the 1929 Handover Map.
Investigating Officer's Comments		The fact that the route is not recorded as a publicly maintainable highway on the List of Streets does not necessarily mean that it does not carry public rights of access.
<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 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 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 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

No modern user evidence was submitted as part of this application and it is noted that the historical route is no longer accessible between point A and point C. A



consultee detailed below (see Information from others) refers to using the route on foot from 1948 to the late 1960s/early 1970s. The map and documentary evidence supports the fact that the route could have been used during this time but does not tell us whether this use was public or private.

The application is for a public bridleway and as such it would not be necessarily expected that it would be shown on any of the small scale early commercial maps or later small-scale maps such as Bartholomew's.

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, from which public rights can be inferred.

In conclusion, part of the route was shown on Yate's Map of 1786 providing access from point A to a cluster of buildings now known as Kirk House. No through route was shown on that map and it appears that the application route from point E to point H was created as a private road as part of the inclosure process as shown and named as Kirkhouse Road on the Over Kellet Inclosure Map dated 1805.

By 1830 the full length of the route physically existed (as evidenced by the fact that it was clearly shown on Hennessey's Map) and it appeared to have remained unaltered since that time. Changes to the entrance to Kirk House and obstruction of part of the historical application route between point A and point C, detailed at the start of the report, having occurred at some point since 1970.

Whilst the route is consistently shown on all OS maps examined, including the small-scale 1 inch maps, suggesting that it was capable of being used at least on horseback, it is not known whether this use would have been public or private.

Gates were consistently shown across the route at point B and point E with some maps also indicating that access from Nether Kellet Road at point a may also have been gated.

The route is consistently shown to pass through a farm (Kirk House) which was in private ownership with the land crossed by the route A-B described in both the Tithe Award prepared in 1847 and on a sale plan dated 1861 as a yard. Neither document refers to the existence of a public right of way through the farm although the route did appear to have been accessible.

Finance Act records from the early 1900s show that the land crossed by the application route between point A and point E was still in private ownership and the route was not excluded from the land to be taxed. A deduction of £25 for public rights of way was claimed although it is not known which – or how many routes this applied to and two substantial lengths of public footpath crossed the plot so it is not possible to infer that the deduction related to the application route.

The application route between point E and point F was excluded but ownership of this route is not registered, and no historical records have been found to confirm ownership. In addition, this route was created as a private road in 1805 so it is more than probable in this case that it was excluded because it was a private joint occupation road not in any particular ownership. Modern day site evidence is



consistent with this view with access to adjacent fields being via the application route E-H.

The records relating to the preparation of the Definitive Map and Statement do not record the route as a public right of way and there was no objection raised to the fact that the route was not recorded. Of significance was the fact that public footpaths were recorded which crossed the route at point D and point F but there was no suggestion that the application route formed a link between the two.

To conclude, the map and aerial photographs examined all suggest that the route may have been available to be used since the early 1800s and that whilst originally part was created as a private occupation road that in reality it would at least have been used to access Kirkby Lonsdale Road from Kirk House and could possibly have been used as a link from Nether Kellet Road, through Kirk House through to Kirkby Lonsdale Road. However, the availability to the public without evidence of any actual use is insufficient to infer such quality and quantity of public use that could evidence dedication of public rights and there is no evidence which does not have an alternative explanation consistent with private occupation road created by the Inclosure Award.

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

### **Landownership**

From point A to E the application route is in private ownership, from point E to H the application route runs along land which is unregistered. The northern and southern parts of the land that border the unregistered land from point E to H are in private ownership.

### **Information from the Applicant**

The applicant submitted extracts from the following maps and documents in support of their application (all of which have been considered earlier in this report):

Hennet's Map of Lancashire 1830

6 inch Ordnance Survey maps published in 1847, 1894, 1916 and 1942

25 inch Ordnance Survey maps published in 1891 and 1913

1 inch Ordnance Survey maps published in 1898, 1947 and 1955

1:25,000 Ordnance Survey maps published in 1948 and 1965

1:50,000 Ordnance Survey map published in 1982

Tithe Records 1847

Inland Revenue Valuation Records – finance (1908-1910) Act 1910

Lancashire County council Road Status map (MARIO)

Land registry plan

London Gazette search results

### **Information from Others**

One adjacent landowner responded to the consultation by returning the map marking out the area under their ownership, no further comments were provided.



One adjacent landowner who stated they use the lane of which the application route follows to access their 50 acres of land which is farmed regularly, most of it is mown 3 times per year, and the grass will be trailed away down the application route, and a few days later a tanker load of slurry will return. The adjacent landowner further states the lane is very narrow without passing places, if a horse met a tractor then the horse would need to turn around and back track, the adjacent landowner makes reference to the new highway code recommendations are to leave a 2 meter gap when passing a horse.

Another adjacent landowner stated the proposed bridleway does not affect them although part of the boundary does run along part of the lane, they have no objections. However commented that horses exiting the lane onto Kirby Lonsdale Road may present a hazard to traffic.

One person who has stated he is neither landowner or tenant is in favour of the application route being recorded on the Definitive Map and states he used the path himself – and sometimes with his children - from 1948 to the late 1970s -early 1980s, along Sands Lane and also from where it crosses footpath 13, through Kirkhouse Farm yard. He explained that he recalled that opposite the farmhouse back door there were two upright stone pillars through which the path passed up to the church opposite the farm. He further states according to his mother this was used as an access to attend St. Cuthberts church and coffins were also carried for burial there in the late 19<sup>th</sup> and 20<sup>th</sup> century. He referred to a gate at the of end of Sands Lane where the access has been blocked for some time, however he recounted that he used to walk the route and although he was never stopped by the previous owners they were never pleased to see him and kept dogs close to the route to deter people. He also explained that he understood that the route across the fields from Swarthdale – which is partly recorded as Footpath 13 – was used to get to the church and that he had raised the fact that the first part of the route from Swarthdale was not recorded on the Definitive Map with his local Parish Council.

#### Information from the Landowner

One landowner responded through their Solicitor and highlighted part of the land he owns is currently being leased to a tenant, and further stated the application route passes through the landowner's property which is currently a residential farmhouse, through the garden as well as passing alongside a current development site, whereby the use of heavy machinery is operated on a daily basis.

#### **Conclusion**

In this matter there is an application that the route be recorded on the Definitive Map and Statement as a bridleway.

There is no express dedication in this case.

As such committee must examine whether there is an inferred dedication under common law or a deemed dedication by statute under section 31(1) Highways Act 1980.



Committee is therefore is advised to consider whether there is sufficient evidence from all the circumstances to infer at common law that owners of this route intended dedicating or whether there is evidence of twenty years use by sufficient users without sufficient evidence of a lack of intention to dedicate from which dedication could be deemed under S31 Highways Act 1980.

Committee will appreciate the importance of the words 'sufficient evidence' with regard to their findings.

'User evidence' was not submitted as part of the application although a letter was received as part of the consultation process detailing one person's possible use of the route on foot. However, it is considered that one account of use of any route without sufficient detail must be classed as trivial and sporadic and cannot be sufficient to satisfy the criteria under s31 Highways Act 1980 and the Committee is advised to instead consider if an inference of dedication is possible on balance of the all the evidence at common law.

The majority of the evidence to be deliberated therefore is historical documentation and whether there is sufficient evidence from which to infer on balance that the owner of this old route intended the route to be a bridleway or other highway open to the public.

The evidence has been summarised and evaluated earlier within the report. It is sometimes difficult to evaluate whether there is sufficient evidence of it being dedicated as public. There is insufficient user evidence in this case and so the evidence comes from balancing what the documentary evidence shows.

As such, on balance and given the nature of the evidence it is advised that the evidence of it having become a public bridleway is insufficient.

The recommendation is that no Order be made based on the evidence available.

### **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: 804-657		Ansar Sadiq, 01772 532435, County Secretary and Solicitors Group



Reason for inclusion in Part II, if appropriate

N/A

