

Regulatory Committee

Meeting to be held on Wednesday, 14 September 2022

Part I

Electoral Division affected:
Ribble Valley North East

**Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Byway to the Queen Mary's Military Hospital Cemetery, Whalley
(Annex 'A' refers)**

Contact for further information quoting file reference 804-733:
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Brief Summary

Addition to the Definitive Map and Statement of Public Rights of Way of a byway from Mitton Road through Calderstones Cemetery to the Queen Mary's Military Hospital Cemetery, Whalley.

Recommendation

That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a byway open to all traffic from Mitton Road through Calderstones Cemetery to the Queen Mary's Military Hospital Cemetery, Whalley be not accepted.

Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition on the Definitive Map and Statement of Public Rights of Way of a byway open to all traffic (BOAT) from Mitton Road to the Queen Mary's Military Hospital Cemetery, Calderstones, Whalley.

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



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

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

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

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

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

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

Consultations

Ribble Valley Borough Council

Ribble Valley Borough Council provided no response to consultation.

Whalley Parish Council

Whalley Parish Council provided no response to consultation.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.



Point	Grid Reference (SD)	Description
A	7267 3758	Gated entrance to cemetery grounds at junction with Mitton Road
B	7276 3759	Route passes through the Lych Gate
C	7290 3758	Gated entrance to Queen Mary's Military Hospital Cemetery

Description of Route

A site inspection was carried out in June 2022.

The total length of the application route is 225 metres and it passes through Calderstones Cemetery to provide access to the Queen Mary's Military Hospital Cemetery.

The route starts at a junction with Mitton Road (point A on the Committee plan) immediately north of a dismantled railway.

Vehicular access to the cemetery is via the driveway into the site across which large metal gates are located which were locked on the day that the route was inspected. Adjacent to the larger gates is a pedestrian gate – which was also locked and on which a weathered printed notice had been attached.

The information on the notice contained details of the current arrangements relating to how to access the War Graves Cemetery by calling at the reception at Calderstones Hospital to collect a key to the pedestrian gate.

Once through the gate (which was unlocked for the Investigating Officer by a contractor who was cutting the grass in the Queen Mary's Military Hospital Cemetery) the route continues along a gravelled roadway approximately 4 metres wide passing through an area of woodland. The surfaced driveway was becoming overgrown and encroached with grass and plants from the sides with no evidence of any frequent recent vehicular use (except that of the contractor accessing the Remembrance Park for maintenance purposes).

After approximately 80 metres the overgrown gravelled roadway diverged to pass either side of two small buildings (formerly Church of England and Roman Catholic chapels) between which was located the lych gate (point B). The area immediately approaching the lych gate was overgrown with long grass although it was possible to continue up to and through the lych gate which was not actually 'gated'.





Beyond the lych gate the the application route continues in a straight line in a generally easterly direction along a compacted stone surfaced track to the gated entrance to the Queen Mary's Military Hospital Cemetery (point C).

Between point B and point C the area to the north and south of the track is rough unmaintained grassland with no remaining evidence of any of the graves which are located there. The track itself is becoming overgrown with no evidence of any recent maintenance of the cemetery grounds.



The wooden gates providing entry to the Queen Mary's Military Hospital Cemetery were open the day that the route was inspected, and a contractor was cutting the grass. The contractor explained that he visited the site on a weekly basis to carry out maintenance work.



A sign on the gateway leading into the Military Hospital Cemetery referred to the fact that there were Commonwealth War Graves within the site and the stone cross memorial was located centrally within the site.



The only access to the Military Hospital site was via the application route.

Map and Documentary Evidence

An examination of the First Edition 6 inch and 25 inch Ordnance Survey (OS) maps reveals that the cemetery did not exist in the 1800s and there is no evidence that a route existed prior to its construction. Many of the early commercial maps and documents normally included in this type of report are therefore not included as they are not relevant to determining when the route came into being or in determining what its status may be.

A detailed account of the history of the land crossed by the application route is available on a website set up by the applicants (The Friends of Calderstones Cemetery - <https://www.calderstones-cemetery.co.uk/>)

Of particular significance on the website is the information regarding the origins of the cemetery.

It documents that when Calderstones Hospital was built in 1915 it had its own private 3-acre cemetery, one third of which was to become the Queen Mary's Military Hospital Cemetery in which 33 service personnel are buried. The remaining two thirds of the site is the Calderstones Hospital Cemetery, in which at least 1172



former patients and staff members are believed to be buried or have had their ashes interred and it is that part of the cemetery through which the application route runs.

The adjoining Queen Mary's Military Hospital Cemetery – which is accessed solely via the application route - is separate and managed by the Commonwealth War Graves Commission. It is well maintained and cared for (as witnessed by the Investigating Officer in June 2022) in contrast to the Calderstones Hospital Cemetery.

When passing between points A-B-C the Investigating Officer found no evidence that the site was a cemetery other than the existence of the overgrown lych gate and former chapel buildings at point B. The overgrown field through which the application route passes between points B and C is described, on the website as the burial ground containing 1172 bodies of the hospital patients who had been buried or had their ashes interred in the cemetery between approximately 1920 and 1989 but no evidence of this could be seen.

Photographs on the website show how this area previously looked:



[above] Undated photograph looking west to the lych gate at point B





[above] Undated photograph showing rows of gravestones to the south of the application route B-C



[above] Photograph taken in 1977/78 showing the route between point A and point B leading up to the lych gate





[above] Photograph taken in 1977/78 showing the application route from the lych gate eastwards (point B towards point C)

Since the sale of the cemetery in 2000 it is documented that all 600 plus gravestones were removed as part of various plans to open a private cemetery and ownership of the site appears to have changed on numerous occasions.

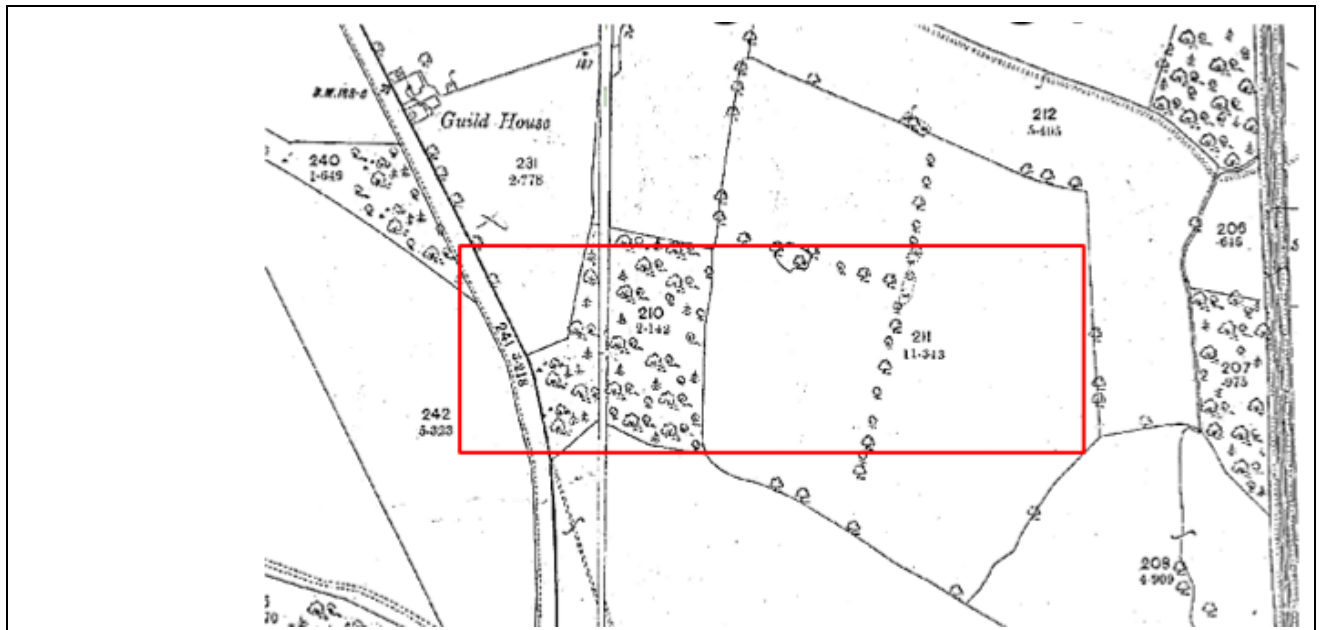
Full planning permission for the construction of a crematorium was given by the Ribble Valley Borough Council and in 2017 preliminary construction work began.

In January 2018, it is documented on the website that it was discovered that the whole cemetery site, including the Queen Mary's Military Hospital section, was consecrated ground, having been consecrated by the Bishop of Burnley in 1916, and that no construction work could proceed without the Bishop of Blackburn, in whose diocese the cemetery is located, agreeing to remove the consecrated status of the cemetery.

Construction work ceased and during 2018-9 applications to request the partial de-consecration of the cemetery were considered, the Bishop of Blackburn made his decision and the consecrated status of the cemetery was retained meaning that construction work no longer recommenced.

Document Title	Date	Brief Description of Document & Nature of Evidence
25 Inch OS Lancashire Sheets LV.5 and LV.6	1894	The earliest Ordnance Survey 25 inch map for this area surveyed in 1892 and published in 1894. ¹

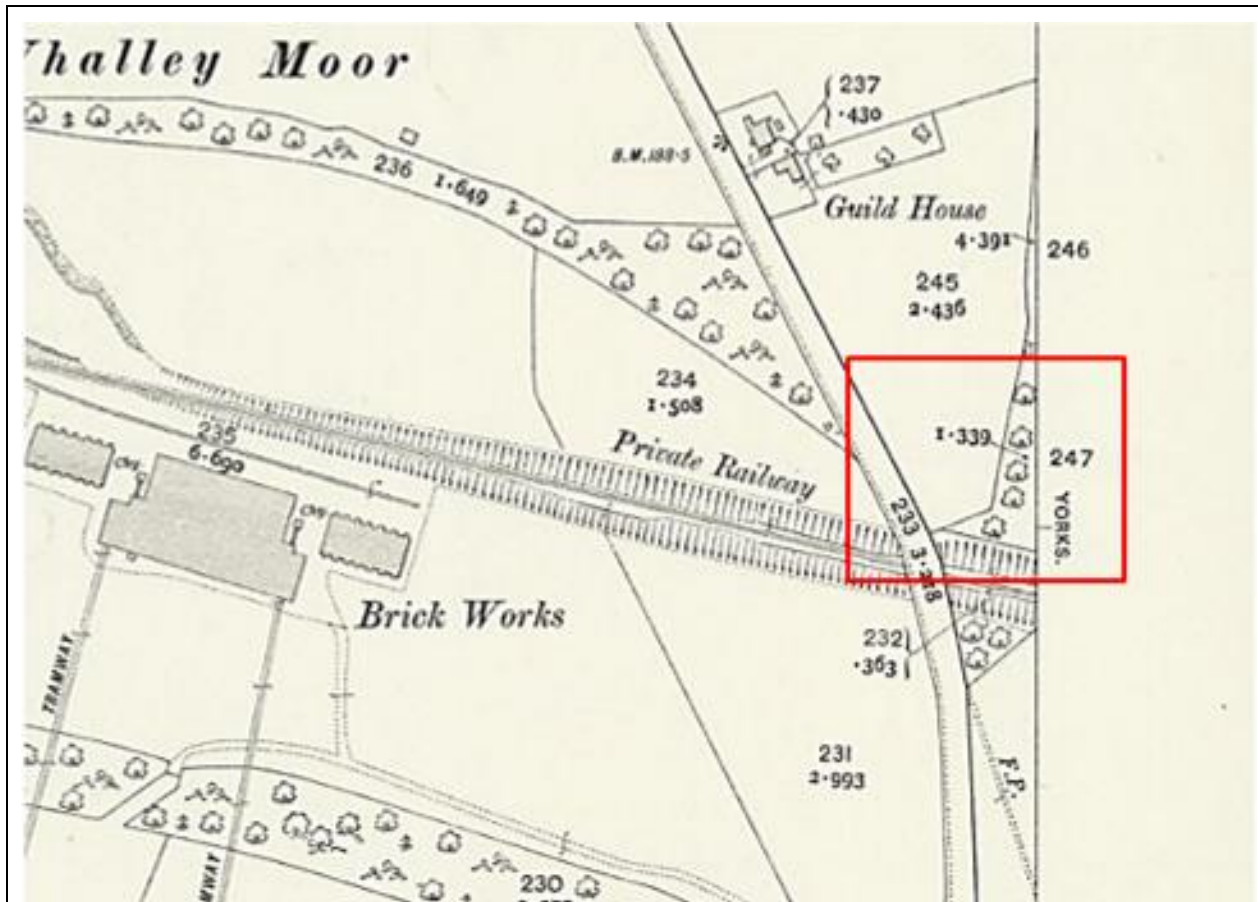
¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in 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



Observations		Neither the cemeteries nor the application route is shown.
Investigating Officer's Comments		The application route did not exist in 1892.
25 inch OS Lancashire Sheets LV.5 and LV.6	1912	Further edition of the 25 inch map surveyed in 1892, revised in 1910 and published in 1912.

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.

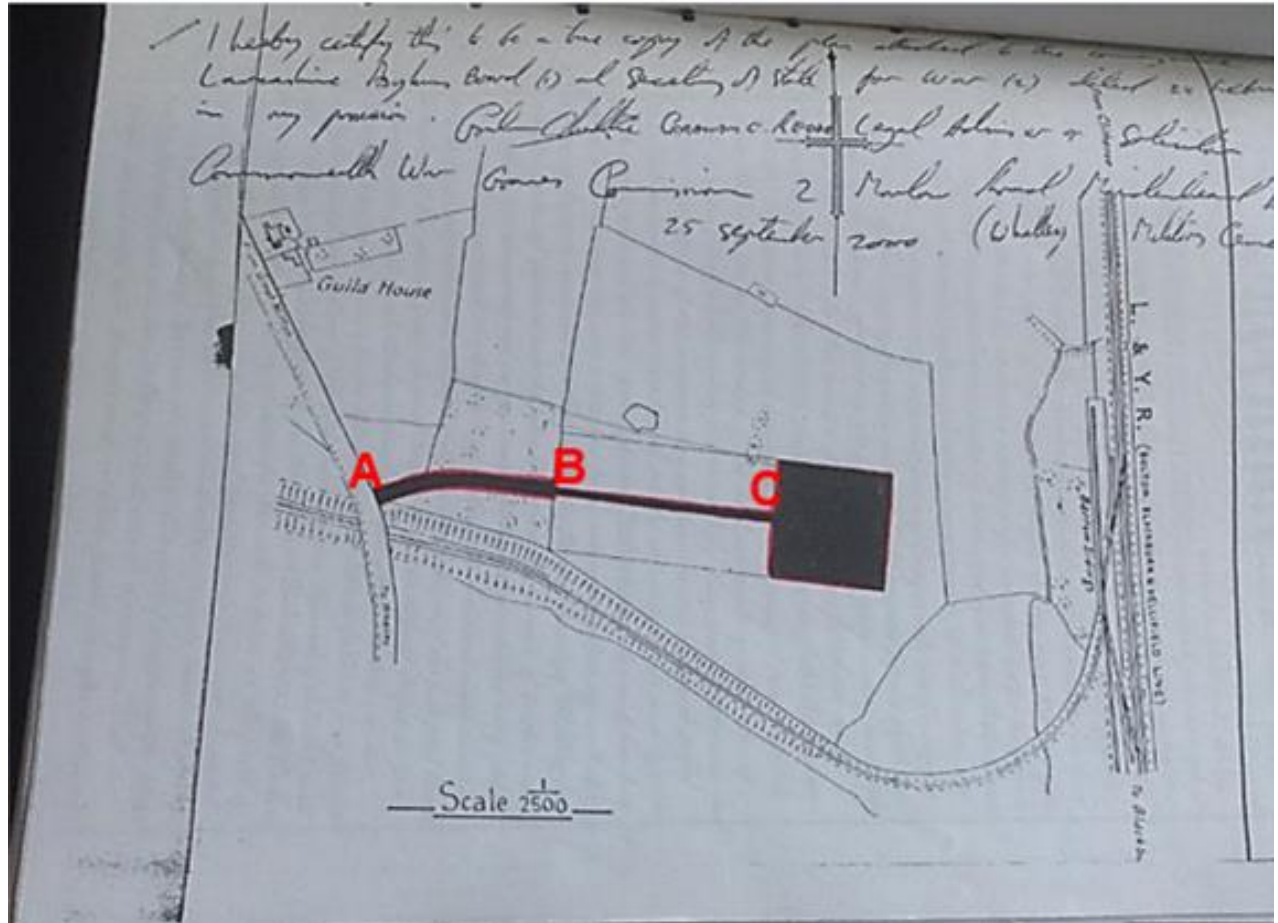




Observations		Neither the cemeteries nor the application route is shown.
Investigating Comments	Officer's	The application route did not exist in 1910.



1916 Indenture	1916	Plan and transcript of an Indenture (written agreement) submitted by applicant in support of their application. Original documents held by the Commonwealth War Graves Commission.
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Photograph of plan included as part of the Indenture

I hereby certify this to be a true copy of the original conveyance in my possession

**Graham C Reddie
 Legal Adviser and Solicitor
 Commonwealth War Graves Commission
 2 Marlow Road
 Maidenhead
 Berks
 25.9.2000**

Applicant submitted transcript of Indenture which was provided by the Commonwealth War Greaves Commission and certified by them.

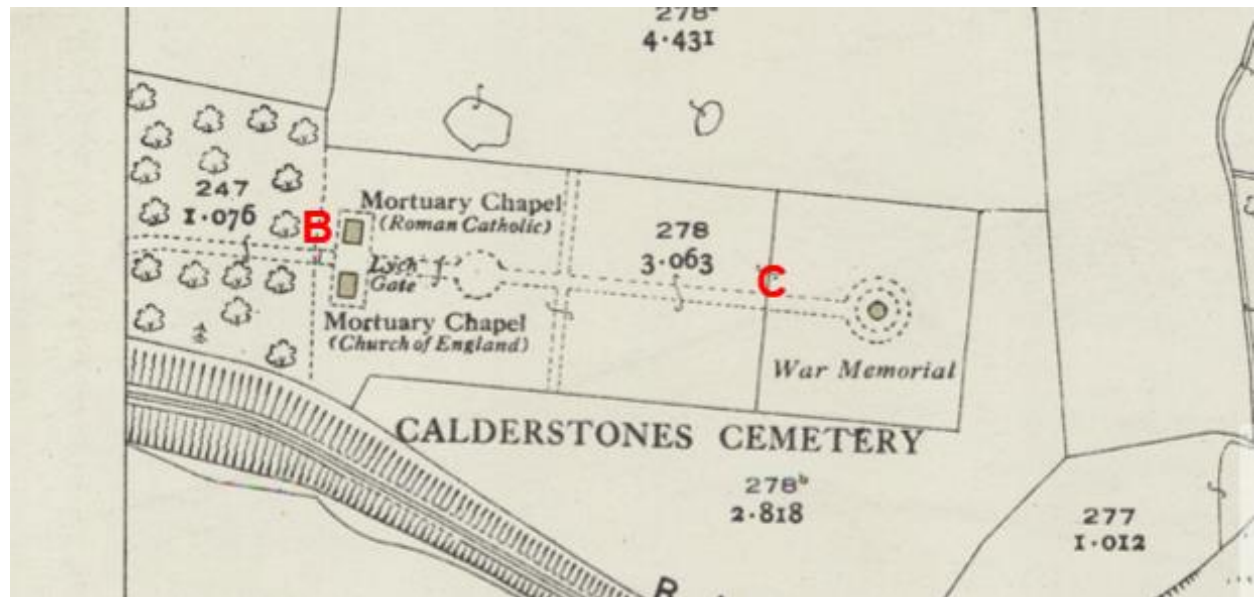
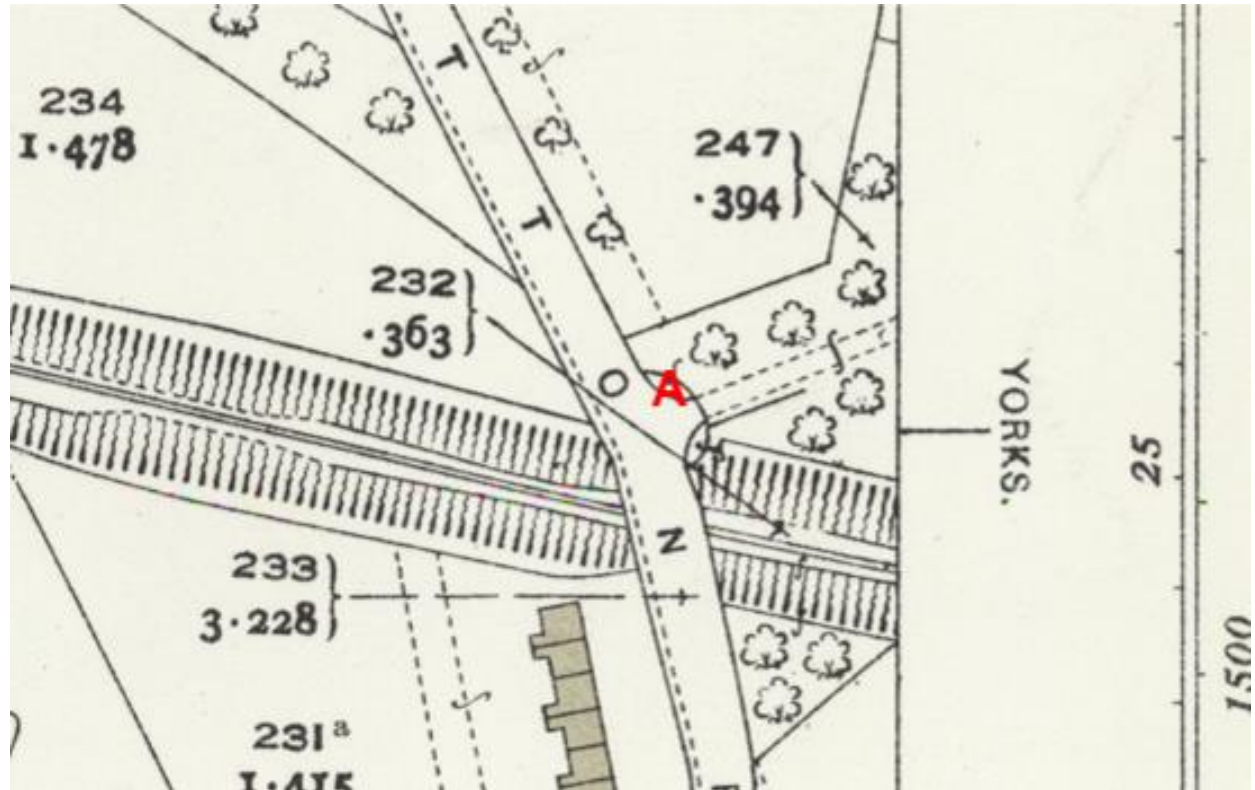
Observations		The transcript of an indenture (agreement) dated 24 th February 1916 between the Lancashire Asylums Board
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		<p>(vendors) and the Secretary of State for the War Department details the transfer to the Secretary of State of the land which subsequently became the Queen Mary's Military Hospital Cemetery.</p> <p>The agreement refers to a 'right of way' along the route coloured red on the plan (the application route) and states that the vendors (the Asylum Board) were required to construct a 'road' over which the said right of way was to be granted and to maintain the road to ensure that it was fit for traffic travelling to and from the burial ground. It did not specify the type of traffic or whether this use was public or private.</p> <p>For a payment of £110 the Vendors were to transfer to the Secretary of State for the War Department the piece of land which is now known as the Queen Mary's Military Hospital Cemetery 'together with a right of way at all times and for all purposes connected with the use and enjoyment of the said piece of land conveyed over the strip of land coloured dark red on the plan' (the application route).</p>
<p>Investigating Officer's Comments</p>		<p>It appears that in 1916 there was effectively a split in the cemetery whereby the land east of point C was 'separated' off from the hospital cemetery to be used specifically as a site for a war memorial and as a cemetery to bury soldiers. From that time onwards it was owned as a separate plot but with access rights created along a roadway to be constructed by the Asylum Board 'at all times and for all purposes connected with the use and enjoyment' of the intended war memorial and cemetery.</p> <p>There is no specific reference to the creation of public rights and it is stated that the right of way was along a roadway which was required to be suitable for use by 'traffic' to and from the burial ground.</p> <p>The 'right of way' was to be open at all times and was for the use and enjoyment of visiting the intended memorial/cemetery but such visitors could perhaps be regarded as private (to</p>



		this particular destination) or as public (because it would be open to everyone).
25 Inch OS Lancashire Sheets LV.5 and LV.6	1932	Further edition of 25 inch map (surveyed 1892, revised in 1929 and published in 1932.



Observations		The application route is shown with lines across the route at point A and point C. A lych gate is shown at point B. The war memorial is shown beyond point C with access via the application route A-C.
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Investigating Comments	Officer's		The application route existed by 1929 and appeared to be capable of being used. Lines across the route at point A and point C suggest the existence of gates – which may – or may not have been accessible. A lych gate was traditionally a roofed gateway to a churchyard, formerly used at burials for sheltering a coffin until the clergyman's arrival.
Aerial Photograph²		1940s	The earliest set of aerial photographs available was taken just after the Second World War between June 1945 and September 1952 and can be viewed on GIS. The clarity is generally very variable.

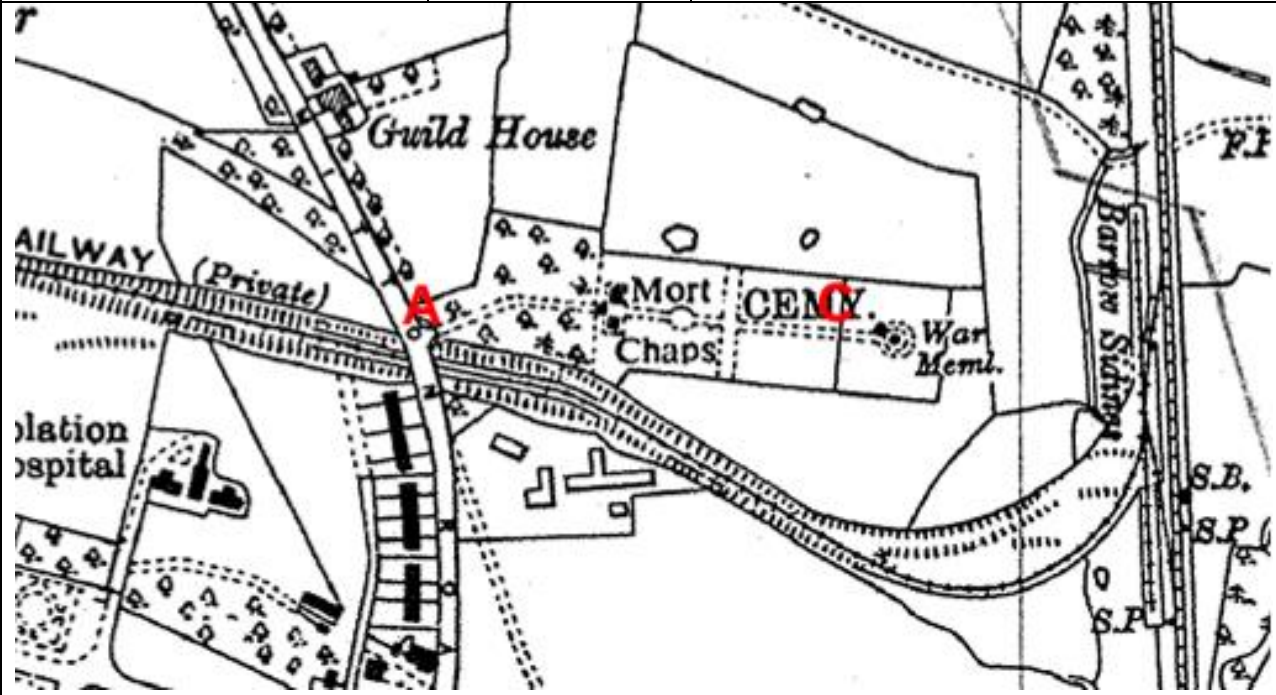


Observations			The application route from point A to point B cannot be clearly seen due to tree coverage. From point B to point C – and continuing to the war memorial – the application route can be clearly seen.
Investigating Comments	Officer's		The application route existed in the 1940s and appeared to be capable of being used although it is not possible to

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.

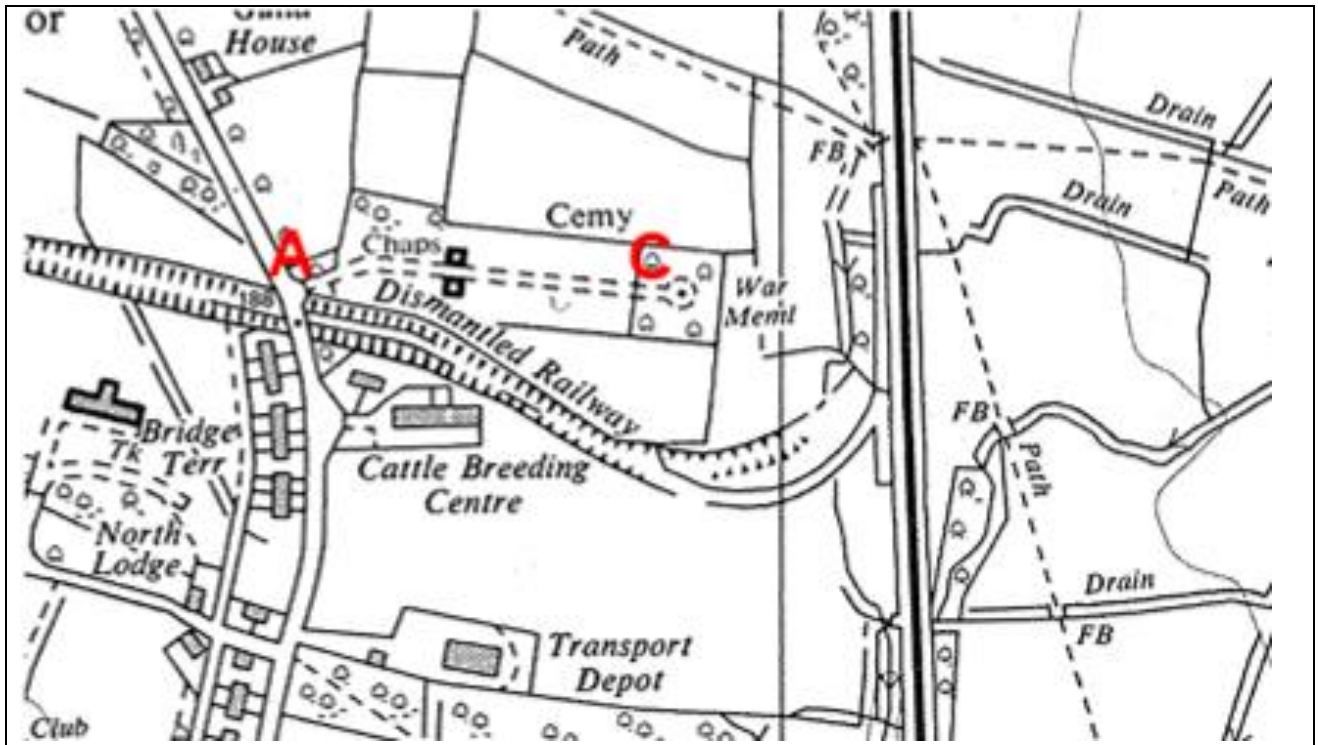


		determine from the photograph whether unrestricted access was available.
6 Inch OS Map Sheet SD 73NW	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.

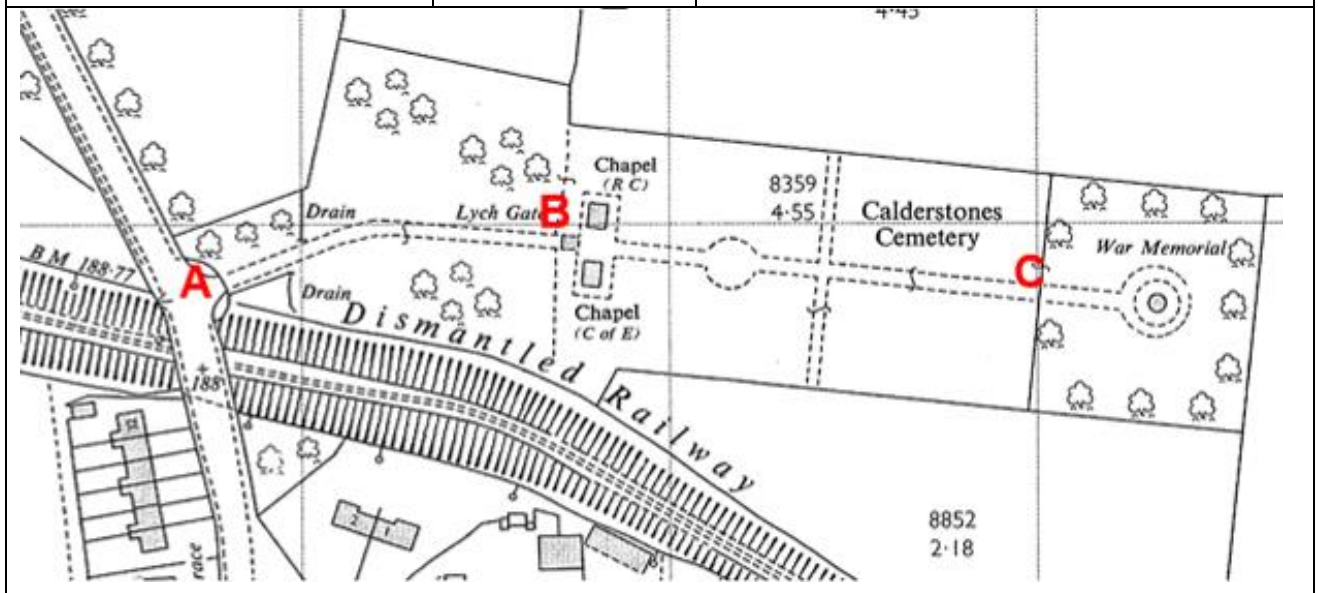


Observations		The application route is shown gated at point A and point C.
Investigating Officer's Comments		The application route existed in the 1930s and appeared to be capable of being used.
6 Inch OS Map Sheet SD 73NW	1970	6 inch OS map revised 1969 and published 1970.





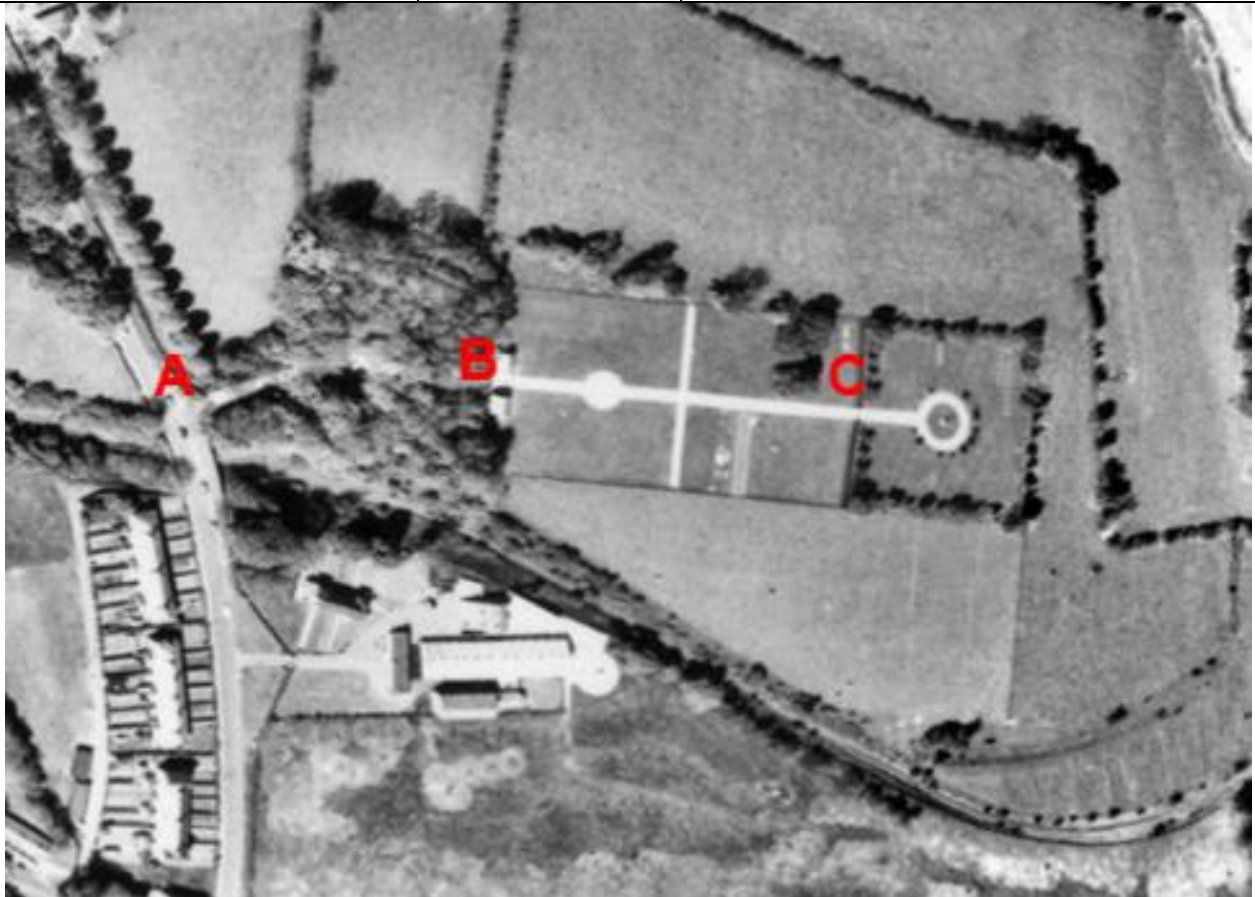
Observations		The application route is shown in the same way that it is shown on earlier editions of OS mapping and provides the only access to the war memorial located east of point C.
Investigating Officer's Comments		The application route existed in 1969 and appeared capable of being used.
1:2500 OS Sheet SD 7237 & SD7337	1968	Further edition of 25 inch map reconstituted from former county series and revised in 1966 and published in 1968 as national grid series.




Observations		The application route is shown in the same way that it is shown on earlier
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		editions of OS mapping and provides the only access to the War Memorial located beyond point C.
Investigating Officer's Comments		The application route existed in 1968 and appeared capable of being used.
Aerial photograph	1960s	Black and white aerial photography available to view on GIS and flown during the 1960s. 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. Most images are from 1963, with the 1961 images mainly covering West Lancashire district, and the 1968 images mainly covering Ribble Valley district.



Observations		The application route can be clearly seen and provides access to the War Memorial east of point C.
Investigating Officer's Comments		The application route existed in the 1960s and appeared to be capable of being used although it is not possible to determine from the photograph whether unrestricted access was available.

Google Earth Pro Aerial Photograph	2000	Image captured in 2000.
 <p style="text-align: center; font-size: small;">Image © 2022 The GeoInformation Group</p>		
Observations		The application route cannot be seen between point A and point B due to tree coverage. From point B to point C the route is clearly visible.
Investigating Officer's Comments		The application route existed in 2000 and may have been capable of being used although it is not possible to determine from the photograph whether unrestricted access was available.
Aerial Photograph	2017-2019	Aerial photography provided by Ordnance Survey's MasterMap Imagery layer. Images flown between 2017-2019.





Observations		The route between point A and B is not visible due to tree coverage. From point B to point C a faint track can be seen but it is clear from looking at the photograph that the area was no longer being maintained. This is in stark contrast to the Queen Mary's Military Hospital Cemetery which can be clearly seen as a well-maintained area.
Investigating Officer's Comments		The application route was still the only access to the Queen Mary's Military Hospital Cemetery although it is not possible to determine from the photograph whether unrestricted access was available.
Cover of the Beachcroft Wansbroughs Sale Pack	2000	Copy document provided by the Applicant.

Disposal of Surplus Property

by the

Secretary of State for Health

Sale Pack relating to
Calderstones Cemetery Whalley

Copyright © Beachcroft Wansbroughs, September 2000

Observations

This single page cover sheet is listed as an item submitted in support of the application. It is dated September 2000



		and appears to be the title page of a document prepared by Beachcroft Wansbroughs Solicitors for the sale by the Secretary of State for Health of Calderstones Cemetery in Whalley. It describes the cemetery as 'surplus property'.
Investigating Officer's Comments		The page submitted tells us that prior to 2000 the land crossed by the application route was owned by the Secretary of State for Health and that it was to be sold as it was no longer required. It does not provide any specific information about the application route although the fact that the land was owned prior to 2000 by the Secretary of State may have been relevant if user evidence had been submitted in support of the application (as the land would have been considered in law to be 'Crown land' to which certain exceptions may have applied). The page submitted does not assist in determining whether any public rights of access exist along the application route.
Further Conditions of Sale – Lot 35 – Calderstones Cemetery	2000	The applicant submitted a 5-page extract from the Beachcroft Wansbroughs Sale Pack which related specifically to the sale of Calderstones Cemetery. The document referred to a plan but this was not included.
Observations		The five-page extract refers to the land to be sold being shown on a plan and edged in red although no plan was submitted by the applicant. It describes this land as having been purchased by the Lancashire Asylums Board in three parts – with two parts purchased in 1906 with reference to 1906 Conveyance 1 and 1906 Conveyance 2 and another in 1915 – referred to as the 1915 Conveyance. It continues by stating that the sale of the land is to be subject to the transfer of any rights which are still capable of being assigned or transferred as listed in 10 deeds and documents listed. This list includes the two 1906 conveyances and the 1915 conveyance in addition to a number of others. It also includes in the list '3.6 A sentence of Consecration



		dated 1916'. Copies of the 10 deeds and documents listed are not included.
Investigating Comments	Officer's	The extract submitted in support of the application makes no specific reference to the application route or to the existence of public rights. It does however refer to the fact that the land was consecrated in 1916 and that any benefits or rights detailed in the 10 listed deeds and documents – which were still capable of being assigned or transferred – were to be transferred on completion of the sale suggesting that if any rights of public access were included in those documents, they would still exist following sale of the land.
Land Registry TR 1 Form	Undated but believed to be circa 2000	The applicant submitted an undated Land Registry TR 1 Form. The TR1 form is a legally binding document that transfers ownership of a property from one party to another. On completion of a sale the information contained on the TR1 form will then be used when the transfer is registered at the Land Registry and is noted on the Official Copy Entries. As part of the conveyancing process a Land Registry TR1 form must be sent on completion to the Land Registry by the seller's conveyancer to help finalise the sale.



- 12.1 The Property is sold subject to but with the benefit of (as the case may be) the agreements declarations rights covenants and obligations contained mentioned or referred to in the deeds and documents listed below, insofar as they are capable of being assigned or transferred still capable of being enforced and affect or relate to the Property:-
- 12.1.1 The 1906 Conveyance
 - 12.1.2 The Second 1906 Conveyance
 - 12.1.3 A Conveyance dated 26 June 1908 made between the Lancashire Asylums Board (1) and the Lancashire and Yorkshire Railway Company (2)
 - 12.1.4 The 1915 Conveyance
 - 12.1.5 A Conveyance dated 24 February 1916 made between the Lancashire Asylums Board (1) and His Majesty's Principal Secretary of State for the War Department (2)
 - 12.1.6 A Sentence of Consecration dated 30 June 1916
 - 12.1.7 A Conveyance dated 14 October 1955 made between the Minister of Health (1) and the Milk Marketing Board (2)
 - 12.1.8 A Conveyance dated 5 December 1966 made between the Minister of Health (1) Charles Dearden (2) and George Brownlow and Minnie Brownlow (3)
 - 12.1.9 A Conveyance dated 14 July 1969 made between the Secretary of State for Social Services (1) and Milk Marketing Board (2)
 - 12.1.10 A Conveyance dated 16 June 1972 made between the Secretary of State for Social Services (1) and George Brownlow and Minnie Brownlow (2)

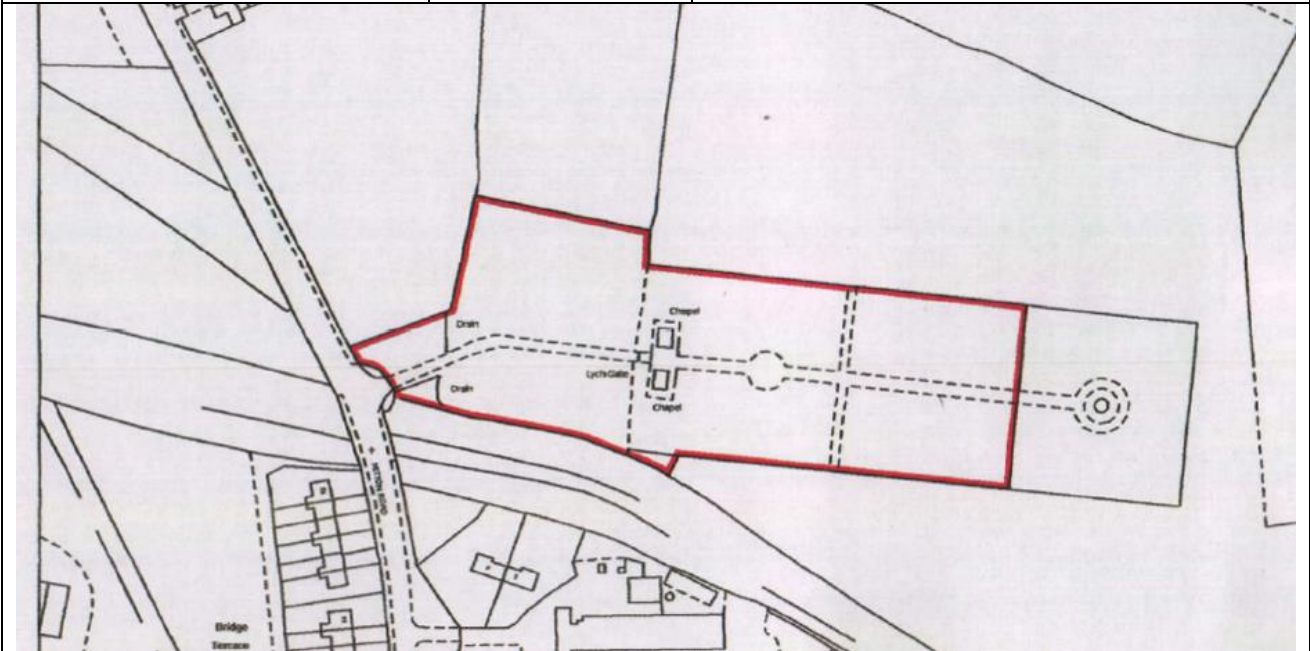
Observations		<p>The form has been partly completed. It lists the seller as The Secretary of State for Health and describes the property to be sold (Calderstones Cemetery) in the same words as it is described in the 2000 Sale document detailed above. It refers to a plan of the property to be sold – which was not included.</p> <p>The form is not signed or dated. No Title number is given and there are no details of the purchaser. Documented on the form is the fact that the land was to be sold subject to various provisions set out in the 10 deeds/documents listed – which are the same as those listed in the Sale document listed above.</p>
Investigating Officer's Comments		<p>The form was submitted in support of the application but makes no specific reference to the application route or to the existence of public rights. No plan is included so it is not clear what was the extent of land to be sold i.e. whether it was inclusive of the Queen Mary's</p>



		<p>Military Hospital Cemetery or not. It does however refer to the fact that the land was consecrated in 1916 and that any benefits or rights detailed in the 10 listed deeds and documents – which were still capable of being assigned or transferred – were to be transferred on completion of the sale. This suggests that if any rights of public access were included in those documents – which were still capable of being transferred - they would still exist following sale of the land.</p> <p>The fact that the seller is listed as being The Secretary of State for Health is compatible with the information considered above in that the cemetery was sold by the Secretary of State in 2000 and before that time was owned and maintained as part of the hospital site.</p>
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Land documentation Title LA585518

Registry



Observations

Since the sale of Calderstones Cemetery by the NHS the Friends of Calderstones Cemetery have recorded 28 changes to the recorded ownership of the site <https://www.calderstones-cemetery.co.uk/copy-of-blank-page-land-registry-records/> - all of which are said to be documented under consecutive title documents registered as LA 58818.

		<p>The Investigating Officer has not had sight of all these changes – although it was noted that title documents taken from the Land Registry in 2016, 2017, 2019 and 2021 have been posted on the website. These documents were inspected, and it was found that none included any reference to a right of access across the site in the Charges Register which is said to contain details of any charges and other matters that affect the land.</p> <p>The Investigating Officer checked on the Land Registry website and the most recent Register of Title for the land crossed by the application route has an edition date of 15 October 2019.</p> <p>It records the fact that the land was first registered with the Land Registry on 21st March 2001 and the site is described as the 'Ribble Valley Remembrance Park, Mitton Road, Whalley, Clitheroe'.</p> <p>The plan showing the boundary of the site shows that all the application route is included and a note in the Title document refers to the fact that the plan showing the boundary of the site was revised in 2006. This revision appears to have been of the Ordnance Survey base map only – and not the boundary of the registered site.</p> <p>The owner (Title Absolute) is registered as being Remembrance Parks Construction Limited who are recorded as having purchased the site on 15th October 2019.</p> <p>When originally registered in 2001 (and over subsequent changes in registration since) only two charges or matters affecting the land to be registered were recorded. The first was in reference to a conveyance made in 1955 between the Minister of Health and the Milk Marketing Board which it is stated was not produced at first registration.</p> <p>The second refers to rights granted in 1972 by the Secretary of State for Social Services to George and Minnie Browlow relating to the drainage of adjacent land.</p> <p>No reference is made to the Indenture made in 1916 relating to a right of way</p>
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		along the roadway 'at all times and for all purposes connected with the use and enjoyment' of the Queen Mary's Military Hospital Cemetery.
Investigating Officer's Comments		The cemetery crossed by the application route has been in private ownership since 2001. The existence of a public right of way would not normally be included in Land Registry documentation. However the Investigating Officer would normally expect documented private rights of access – or in this case – details of a right of access and maintenance responsibilities relating to a road crossing the land to be included in the Land Charges Section.
Definitive Map Records		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. 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		The application route is not recorded on the parish survey map.



Draft Map		<p>The parish survey map and cards for Whalley were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		The application route is not recorded on the Draft Map of public rights of way and there were no objections or representations made in relation to it.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The application route is not recorded on the Provisional Map of public rights of way and there were no objections or representations made in relation to it.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was not recorded on the First Definitive Map of Public Rights of Way.
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 application route is not recorded as a public right of way.</p>
<p>Investigating Officer's Comments</p>		<p>The application route was not considered to be a public right of way which should be recorded on the Definitive Map during the preparation of the First Definitive Map in the 1950s through to the 1960s.</p>
<p>Highway Adoption Records including maps derived from the 1929 Handover Maps</p>	<p>1929 to present day</p>	<p>In 1929 the responsibility for district highways passed from rural district councils (and later from urban district and borough councils) to the County Council. For the purposes of the 1929 transfer, public highway 'handover' maps were drawn up to identify all of the rural district-maintained highways within the</p>



		<p>county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up-to-date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
Observations		The application route is not recorded as a publicly maintainable highway in the County Council records.
Investigating Officer's Comments		The fact that the application route is not recorded as a publicly maintainable highway does not mean that it is not a public right of way.
Highway Stopping Up Orders	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.
Statutory deposit and declaration made under		The owner of land may at any time deposit with the County Council a map



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

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

Summary

The application did not exist until at least 1916 when an agreement was made between the Lancashire Asylum Board and Secretary of State for the War Department for the creation of the war memorial and cemetery which was to be accessed along a roadway to be constructed by the Asylum Board. This right of way



was to be accessible at all times and for all purposes in connection with the use and enjoyment of the Queen Mary's Military Hospital Cemetery.

That same year the land crossed by the application route was consecrated and has remained as such ever since.

No user evidence was submitted as part of the application although it appears that access may have been available along the route since its construction in the early 1900s – if the gates at points A, B and C were not locked. Any such use would have been 'by right' (i.e. the right given in the document described above) not 'as of right' and therefore would not be of a quality from which to infer or presume dedication.

Calderstones Cemetery was in the ownership of the NHS until 2001 when it was sold to a private company. Documentation produced in preparation for that sale listed rights affecting the land – including reference to the 1916 indenture which created a right of way along the application route to access the Queen Mary's Military Hospital Cemetery but Land Registry documentation following registration of the land in 2001 did not include details contained in the 1916 indenture and only referred to two matters affecting the land to be registered.

The Commonwealth War Graves Commission, in correspondence with the Calderstones NHS Trust in 1994, replied to what appears to have been an invitation for them to purchase the Queen Mary's Military Hospital Cemetery from the NHS Trust. They clearly make the point that they already owned it and that should the rest of the cemetery (which did not include war graves) be sold then they wished to be kept informed because of the potential affect on their access. They clearly explain in that letter that they had the benefit of a right of way over the application route and a covenant that stated that the NHS should maintain the roadway and the Queen Mary's Military Hospital Cemetery. Whilst no reference was made to public rights this is not unexpected in this context.

Head of Service – Legal and Democratic Services Observations

Landownership

The land crossed by the application route is owned by Remembrance Parks Construction Limited.

Information from the Applicant

The applicants submitted the following documents in support of their application:

1. A copy of the front page of the Beachcroft Wansboroughs 'Sale Pack relating to Calderstones Cemetery Whalley'.
2. A copy of the 'Further Special Conditions of Sale - Lot 35 Calderstones Cemetery, Mitton Road Whalley'.
3. A copy of the Land Registry TR1, 'Transfer of whole of registered title'
4. A copy of the 1916 Indenture which the applicant claims clearly confirms the establishment and location of the right of way.
5. A photograph of a copy of the location map of the right of way taken from the original Sale Pack.



6. A copy of a letter dated 19 May 1994 from the Commonwealth War Graves Commission to Calderstones NHS Trust explaining that they own the Queen Mary's Military Hospital Cemetery and have a right to access the cemetery along the roadway through Calderstones Cemetery (the application route) and also that the NHS Trust would maintain the roadway and the Queen Mary's Military Hospital Cemetery in a 'decent state'.

The applicant also referred to the fact that there was an 'enormous amount of photographic and documentary evidence available to support the existence and use of the Right of Way' on the website calderstones-cemetery.org.uk.

Information from Others

No information has been provided by others.

Information from the Landowner

An employee acting on behalf of the landowners (Remembrance Parks Construction Limited) emailed the County Council when they were first notified by the applicants of their intention to submit the application to record a public footpath across their land.

They explained that it was their understanding that the right of way was established in 1916, specifically for those wishing to visit Queen Mary's Military Hospital Cemetery (QMMHC) and that at that time the land was owned by the NHS (it was in fact owned by the Lancashire Asylums Board at the time) and the cemetery established for the burial of those patients from the hospital who died. They explained that a third of the cemetery was passed over to the Secretary of State for the burial of soldiers, as the hospital was initially used as a military hospital and that the right of way gave access to those wishing to visit QMMHC.

They understood that the cemetery remained in operation right through to 2000, when it was sold to the public sector and that 'presumably, during the operation of the cemetery access was available to QMMHC, during operational hours of the cemetery only'.

They further commented that construction had started on their site but, due to a number of problems, had stalled at present. They explained that access in the past had resulted in some vandalism of the site, so they had placed gates on the access and provided keys to the War Graves Commission, who maintain QMMHC, and they were happy with the access arrangements. Further to this, they had placed a notice on the gate and made arrangements with the local hospital for any individuals wishing to access QMMHC, by asking them to collect a key from reception at the hospital. This, they stated, had occurred on a very limited number of occasions since 2017 and they had received no complaints.

They stated that they were still hoping to progress the development of the site and that access would continue to be provided to QMMHC. They stated that should the crematorium be built it would be open throughout normal operational hours, including weekends and access to QMMHC would be back to normal, or better.



Whilst the site was being developed, health and safety dictates that they would need to control access through the site but they would continue to provide access to anyone who requested it during the period of development.

As current landowners they did not believe that there was a legal right of way in place, other than a private arrangement consented to in the original sale of the land. They consider that the original sale document is sufficient to ensure that themselves and any subsequent purchasers of the land, maintain the access to QMMHC.

They consider that the applicants wish to disrupt the development of their site but hope that they have explained the background and their commitment to show that access to QMMHC will be continued upon completion of the development, in much the same way it has been provided since 1916 without the need for this application to record a public right of way being needed.

In response to further consultation Remembrance Parks Construction Limited reiterated the information provided above, again noting the covenant in their title documents to maintain access to QMMHC which has been in place since 1916 and reaffirming that they fully intend to continue to comply with this.

Assessment of the Evidence

The Law - See Annex 'A'

Insufficient map and documentary evidence to support the existence of public rights on the route on the balance of probabilities.

Conclusion

There is no express dedication of public rights and no user evidence forms have been provided in support of this application. However, there is evidence of private rights and even if there was user evidence it would be very difficult to satisfy the criteria under s.31 Highways Act 1980 and instead Committee will need to consider on balance whether dedication may be inferred at Common Law.

Committee is advised to consider whether the evidence presented above from the map and other documentary evidence coupled with the evidence on site does on balance indicate that the route should be recorded as a public right of way.

Map and documentary evidence examined by the Public Rights of Way Officer is set out in detail within this report.

The cemetery and war memorial came into existence in 1916 and it would appear that access may have been available along the route from such time (provided that the gates at points A, B and C were not locked) until the cemetery portion of the route was first sold in 2000 into private ownership.

The Commonwealth War Graves Commission appear to have the benefit of a right of way over the application route and a covenant that stated that the NHS (the then owner) should maintain the roadway. Such right of way was to be accessible at all



times and for all purposes in connection with the use and enjoyment of the Queen Mary's Military Hospital Cemetery.

Map and documentary evidence supplied in support of the application is limited with no map or documentary evidence supporting the use of the route applied for as a public right of way in addition gates are referred to at various points along the route with photographic evidence confirming their existence and still in situ today.

Evidence from the current owners, does not indicate that the owners (or previous owners) intended dedicating highway rights. Reference has been made by the owner that the land held no public right of way with access being for the purpose of visiting the war memorial and associated graves. Over the years the owners have stated that a number of signs were erected. Any use for the purpose of visiting the cemetery or memorial would be 'by right' not 'as of right' and there is no other reason to use that cul de sac from Mitton Road. Accordingly, it is advised that no inference of a dedication of highway under common law can be drawn.

In addition, the claimed route is situated on consecrated ground, previously it has argued that it is not be possible to presume the dedication of a public right of way across consecrated ground as consecration sets the land aside for sacred purposes only. Any other use of the land would require the grant of a faculty from the Chancellor of the diocese. In this case there is no evidence of the existence of such a faculty and, although in some circumstances it may be possible to presume the existence of a so-called 'lost faculty' it is not clear whether a faculty could dispose of a permanent interest in the land or simply grant a licence for its use which could be revoked by another faculty at some time.

The Consistory Court of a diocese has the jurisdiction to hear and determine proceedings for obtaining a faculty. In the case of Diocese of Worcester – Parish of Longdon: Church of St Mary dated (04.11.2010) it was confirmed that a right of way may only be dedicated over consecrated land subject to it being authorised by the grant of an appropriate faculty by the Consistory Court. If no faculty has been granted, no dedication over consecrated ground – whether actual or deemed - can have occurred.

In view of the landowner's consultation response above, it would appear that no such faculty has been granted. The Committee is therefore advised that, on the basis of the information available at the time of writing, a byway on the claimed route from point A to C on the plan cannot be deemed to have been dedicated.

In conclusion, and having considered all of the evidence discovered, a dedication of a byway along the application route can neither be deemed under section 31 of the Highways Act 1980 nor inferred at common law. Accordingly, Committee is advised to reject the application and not make an Order adding this way to the Definitive Map and Statement.

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: 804-733		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

