

**Regulatory Committee**

Meeting to be held on 16 November 2022

**Part I**

Electoral Division affected:  
Preston East

**Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Addition of footpaths around Glencourse Drive, Fulwood**  
(Annex 'A' refers)

Contact for further information quoting file reference 804-699:  
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**Brief Summary**

Application and investigation into the addition on the Definitive Map and Statement of Public Rights of Way of footpaths linking Watling Street Road, Eastway and Glencourse Drive and into the vicinity of Sandy Brook to the east of Eastway, Fulwood.

**Recommendation**

- (i) That the application for a footpath to be recorded on the Definitive Map and Statement of Public Rights of Way from Watling Street Road to the bridge over Sandy Brook, Fulwood, be accepted. That the evidence following investigation into other routes be accepted
- (ii) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add a number of footpaths to the Definitive Map and Statement of Public Rights of Way in the vicinity of Watling Street Road, Glencourse Drive and Eastway, Fulwood as shown on Committee Plan between points A-B-C, D-N-E-F-G, N-I, H-E-I-J and M-L-J-K.
- (iii) That the Order(s) be confirmed if no objections are received but if objections are received the matter be returned to Committee for a decision regarding confirmation, once the statutory period for objections and representations to the Order has passed and further appropriate work done by officers.

## Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a footpath from Watling Street Road to the bridge over Sandy Brook.

When investigating the application, it became apparent that routes connecting to the application route – and which users of the application routes describe as using in their evidence – were not recorded as public footpaths and required investigation. (Without investigating these sections, the application route would not link to other recorded public rights.) The routes to be investigated, including the application, are marked between points A-B-C, D-N-E-F-G, H-E-I-J, N-I and K-J-L-M on the Committee plan.

The applicant explained that the original application for three lengths only consisted of the sections which had been blocked off by the landowner and that the applicant had not realised that the other routes being considered were not recorded as public footpaths and that access along them had not been challenged or prevented at the time the application was made.

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”

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

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

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



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

## Consultations

### Preston City Council

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

### County Councillor

County Councillor Anne Hindle responded to the consultation, and stated she was made aware by both the constituents and City Councillor John Browne, and she supports the application for the proposed route to be added to the Definitive Maps Modification Order register, as does Councillor John Browne.

### 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	5552 3184	Gap adjacent to timber pedestrian gate on north side of Watling Street Road immediately west of 250 Watling Street Road
B	5551 3187	Gap in fenceline
C	5550 3200	Open junction of trodden route with Glencourse Drive, opposite 1 and 3 Glencourse Drive
D	5546 3203	Junction of trodden route with north-east side of Glencourse Drive
N	5546 3203	Gap adjacent to padlocked pedestrian gate approx. 5 metres north of Glencourse Drive
E	5541 3212	Crossroads of paths (visible as trodden lines on the



		grass within the clearing)
F	5539 3216	Footbridge over Sandy Brook
G	5539 3217	'T' junction of trodden paths (route under investigation with 6-1-FP 58) north of Sandy Brook
H	5537 3210	Low timber stile at east side of Eastway
I	5543 3214	'T' junction of trodden paths
J	5570 3214	Junction of trodden path with section of tarmac path running north-south
K	5570 3212	Unmarked point on path at north end of the recorded footpath 6-2-FP 31
L	5568 3216	Footbridge over Sandy Brook with motorcycle barrier at south end
M	5567 3216	Oblique crossroads of paths (route under investigation meets recorded footpath 6-1-FP 58)

### Description of Route

The route consists of several paths making up the application routes and those investigated at the same time although not part of the original application.

A site inspection was carried out in November 2021.

Footpath from Watling Street Road to Glencourse Drive – shown between points A-B-C on the Committee plan.

The route commences on Watling Street Road opposite the junction with Carleton Avenue and immediately west of 250 Watling Street Road (point A on the Committee plan).

A trodden path leaves Watling Street Road through a gap in the hedge line immediately west of a padlocked wooden gate which is overgrown and does not appear to have been opened for some time.

A clearly visible trodden path can be followed in a north north westerly direction to the west of the boundary of a plot of land covered by trees. The trodden track passes through a gap in a broken fence line (point B) and continues across an open area of rough grassland which appears not to be maintained. A trodden track consistent with pedestrian use is visible along the line of the route continuing through to Glencourse Drive (point C) where the route exits onto the road through an area planted with trees. The path through the trees to point C is well trodden and edging boards have been laid in the past and surfacing work carried out over the short section (approximately 10 metres) through the trees to Glencourse Drive.

The length of this section is 175 metres.

Footpath from Glencourse Drive to Sandy Brook and Footpath 6-1-58 – shown between points D-E-F-G on the Committee plan.

From the north side of Glencourse Drive (point D) the route is evident as a well-defined trod for a few metres then passes through or adjacent to a wooden



pedestrian gate (point N) which was blocked off and padlocked when the route was inspected in 2021. Adjacent to the gateway was a gap in the wooden fencing where a well-trodden path could be seen which continued in a generally north north westerly direction across an area of rough grassland descending down a grassy slope to cross an unrecorded footpath running east-west to the south of Sandy Brook (point E).

The route is visible as a trodden track and crosses Sandy Brook by means of a substantial wooden footbridge (point F) spanning approximately 10 metres. At the north end of the bridge a bollard has been erected which restricts access onto the bridge but which doesn't prevent pedestrian use. On the north side of Sandy Brook the footpath continues for a few metres to an open junction with recorded footpath 6-1-FP58 (point G).

The length of this section is 150 metres.

Footpath from the pedestrian gate and gap just north of Glencourse Drive to unrecorded footpath running east from Eastway – shown between points N-I on the Committee plan.

From the gap in the fencing and the adjacent pedestrian gate (point N) continuing in a northerly direction across the rough grassland running parallel to the west of the boundary of properties on Glencourse Drive along a trodden track to descend a grassy slope to meet the unrecorded footpath running east-west to the south of Sandy Brook (point I)

The length of this section is 110 metres.

Footpath to the south of Sandy Brook – shown between points H-E-I-J on the Committee plan.

The route starts on Eastway (point H) where it is signed as a public footpath with an old metal public footpath signpost and from where the tarmac footway leads directly to a wooden stile providing access to the start of the route.

From the stile the route continues in a north easterly direction along a compacted earth trodden track, crosses the routes described above at point E and I then in a more easterly direction along the south side of the valley through to a tarmac path at point J.

The length of this section is 350 metres.

Footpath continuing from the north end of Footpath 6-2-FP31 over Sandy Brook to 6-1-FP58 – shown between K-J-L-M on the Committee plan.

The recorded length of 6-2-FP 31 (which is a tarmac footpath which runs north from Moorland Crescent and Watling Street Road) ends at an unmarked point 13 metres south south east of point J at the point marked point K on the Committee plan although on the ground there is no discernible difference between the recorded and unrecorded sections of this path. The route follows this tarmac path to the junction with the earthen path described above (point J) then as a compacted stone surfaced



footpath continues in a generally north westerly direction to cross Sandy Brook via a metal footbridge (point L) approximately 8 metres long with a restrictive barrier at the south end which does not prevent pedestrian access but would prevent or make it difficult for horses, bicycles or motorbikes to cross. From the footbridge the footpath continues a few metres to join 6-1-FP 58 (point M.)

The length of this section is 55 metres.

### **Map and Documentary Evidence**

A variety of maps, plans and other documents are examined to discover when the application route came into being, and to try to determine what its status may be.

In this particular case the land crossed by the application route was not developed until the 1990s and there is no suggestion that the application route or other routes under investigation existed prior to that time.

For this reason, much of the historical map and documentary evidence normally considered as part of the Committee report is not included below. Several historical maps submitted by the applicant in support of their application are however included.

Note: For the purpose of the research below the routes shown on the Committee plan are all referred to as 'the application route' rather than part application and part route under investigation.

Maps inserted into the report are not to scale.

<b>Document Title</b>	<b>Date</b>	<b>Brief Description of Document &amp; Nature of Evidence</b>
<b>Inclosure Act Award and Maps</b>	1815	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.





<p>Observations</p>		<p>The applicant submitted an extract from an Inclosure Map showing land crossed by the application route. The map source was not provided but it is noted that the Inclosure Map and Award for Fulwood Moor and Cadley Moor dated 1817 are listed as being available to view at the County Records Office (Ref: AE/1/4) and that the Inclosure Award was made under the provisions of a local Act of Parliament dated 1811.</p> <p>The applicant noted that as part of the Inclosure process most of the land crossed by the application route was allotted to the Estate of William Clayton. Because there is no indication from looking at the map provided that any public or private rights of access were set out across the land affected under the enclosure process and nothing to indicate that this happened on later maps examined the Investigating Officer has not examined the Inclosure Map, award or Local Act of Parliament relating to the</p>
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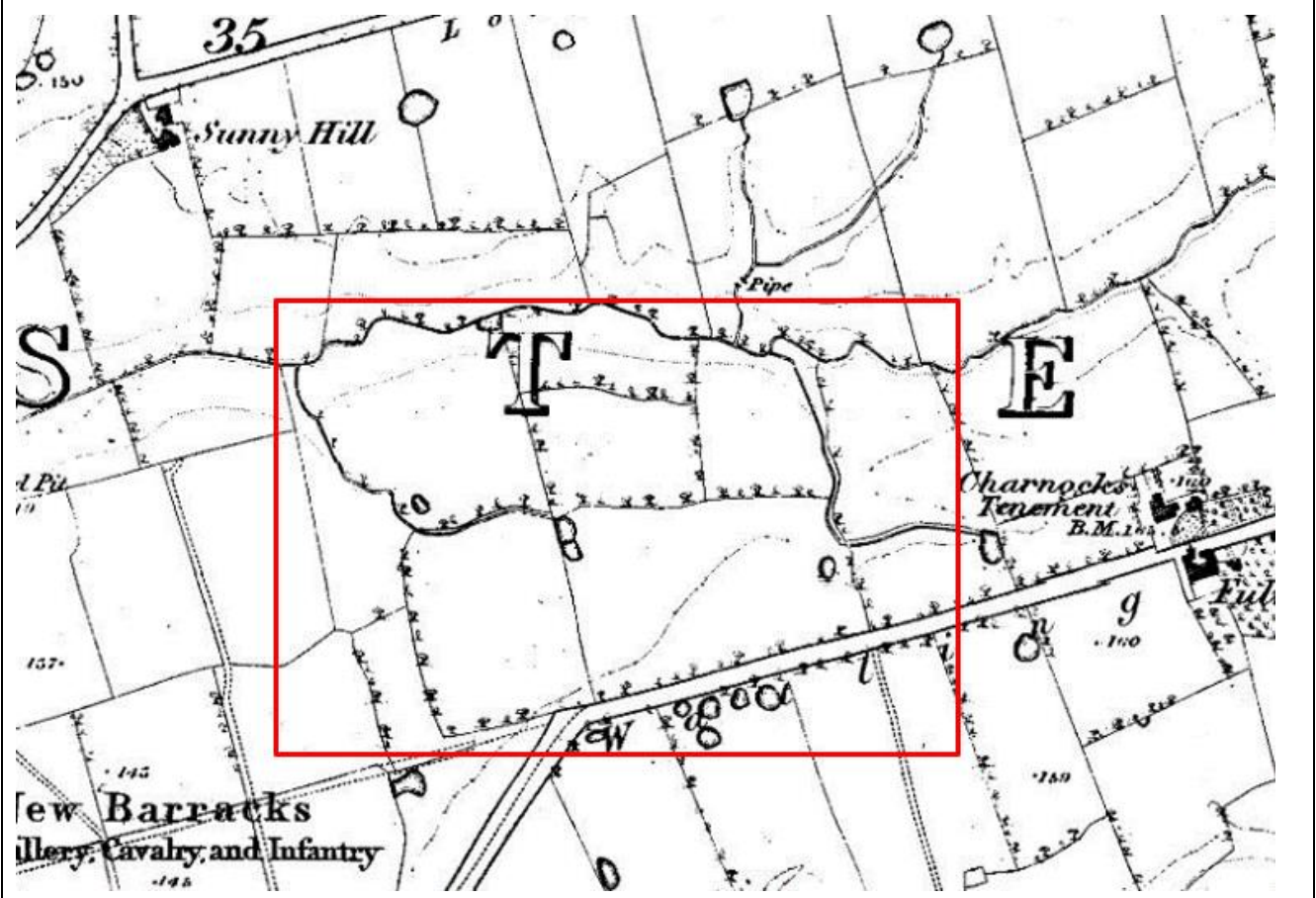


		enclosure.
Investigating Officer's Comments		The application routes did not exist in 1817 and there is no suggestion that they were created as part of the Inclosure process.
<b>Tithe Map and Tithe Award or Apportionment</b>	1847	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.





Observations		The applicant also submitted an extract of the Fulwood Tithe Map prepared in 1847 drawing attention to ownership of the land at that time and the fact that the land was described as being used for pasture.  The application routes are not shown on the map.
Investigating Officer's Comments		The application routes did not exist in 1847.
<b>6 Inch Ordnance Survey (OS) Map Sheet LXI</b>	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-47 and published in 1849. <sup>1</sup>

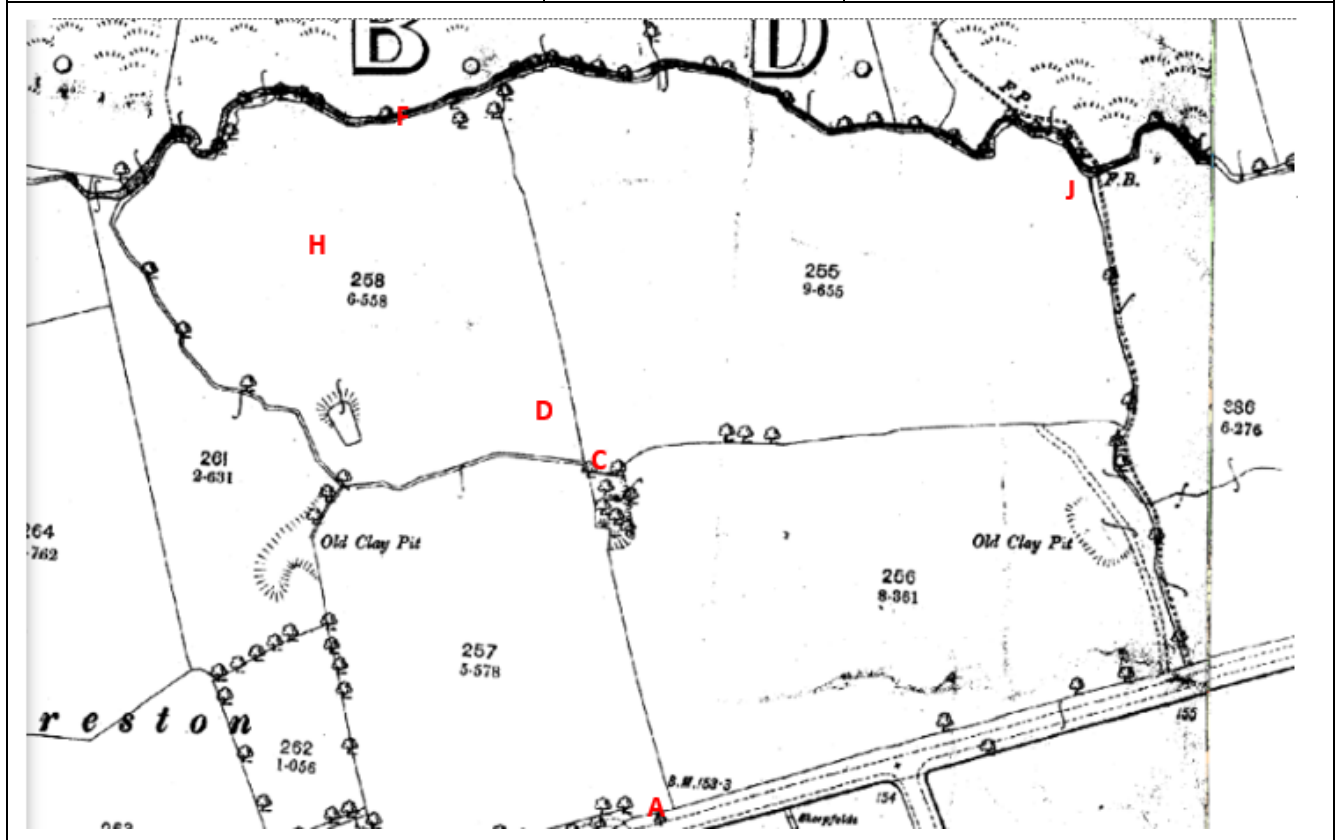


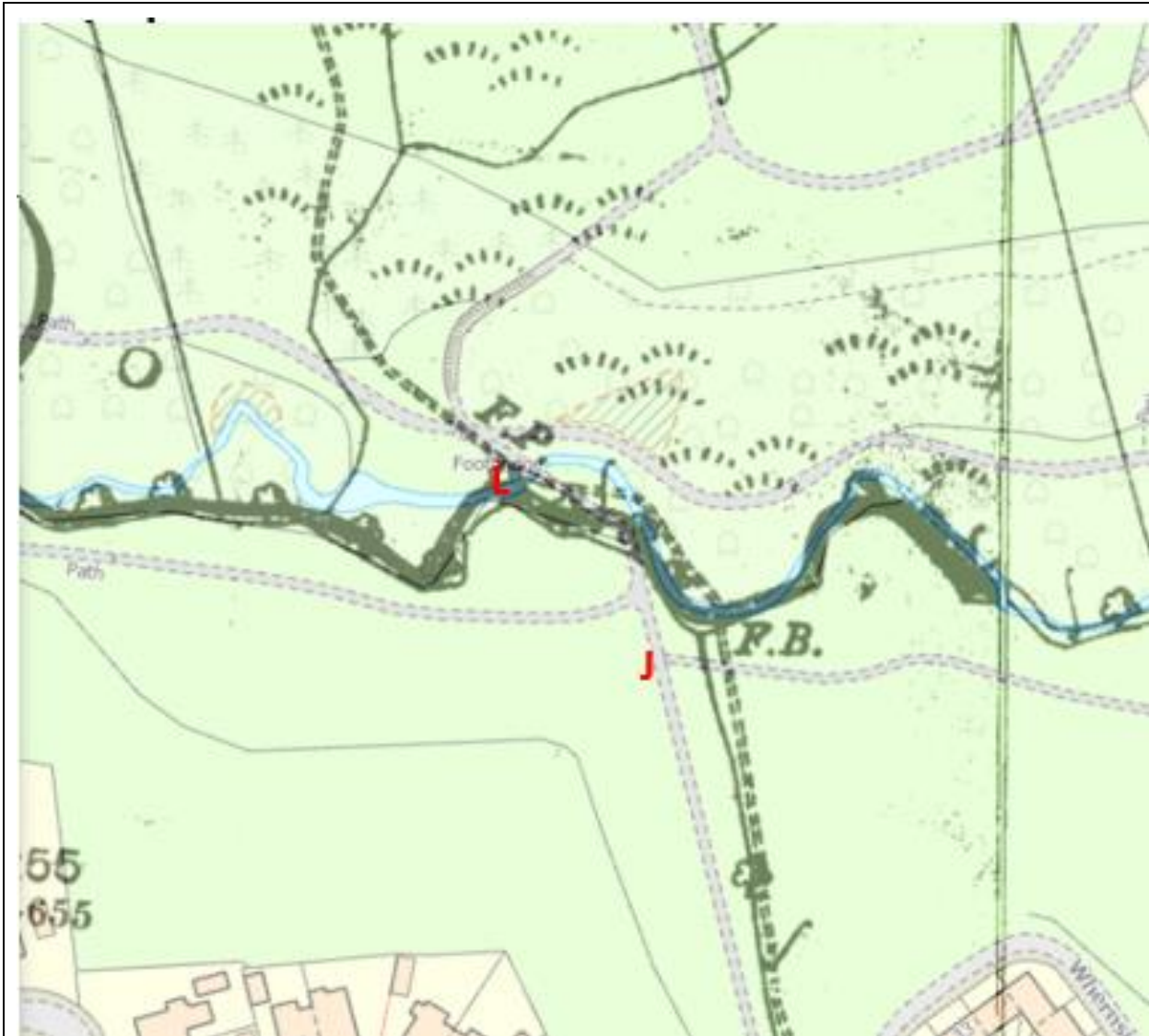
Observations		The land crossed by the application routes is
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<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25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



		undeveloped farmland and the application routes are not shown.
Investigating Officer's Comments		The application routes did not exist in 1844-47.
<b>25 Inch OS Map Sheet LXI.6</b>	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890-91 and published in 1893.





Map overlay showing how Sandy Brook has altered its course since 1890-91

Observations

The application route is not shown although a route described as a footpath (F.P.) is shown consistent with the route recorded as 6-2-FP31 although the exact location of the crossing of Sandy Brook, the bends in the watercourse and the alignment of the route recorded as 6-1-FP18 are slightly different.

The applicant submitted a copy of this map in their evidence drawing attention to the fact that the land crossed by much of the route was within the fields numbered as plots 258 and 257.



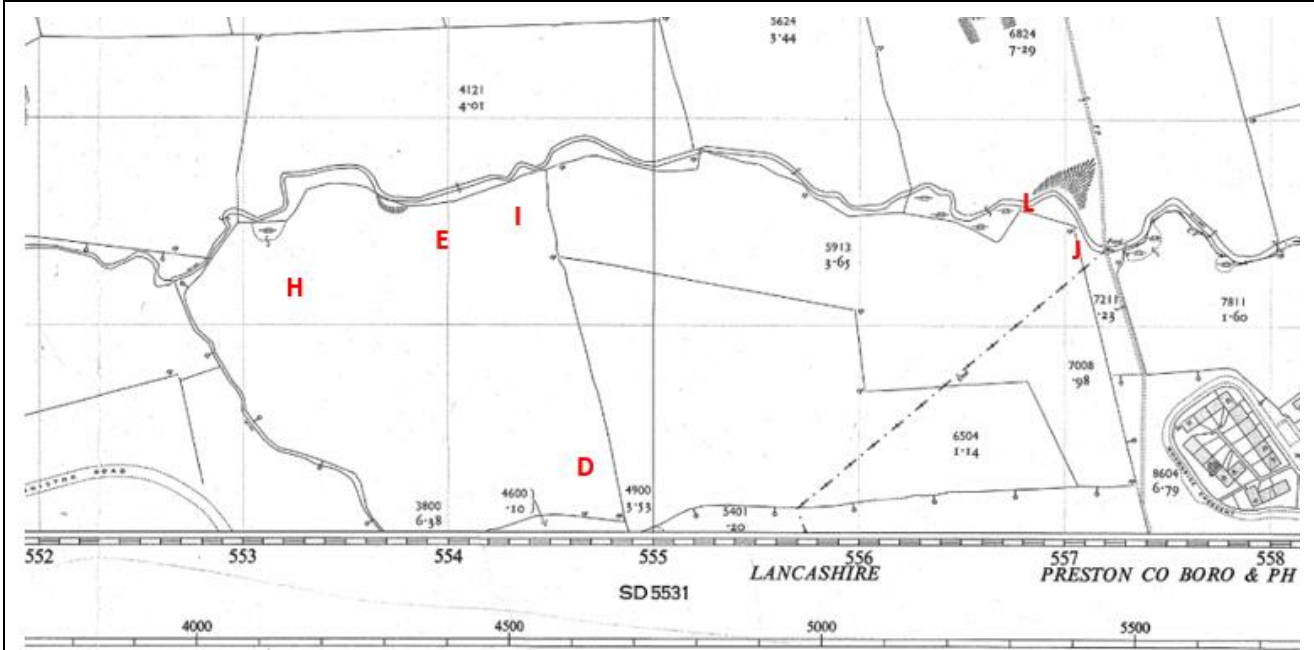
		The applicant explained that information about this land was detailed in an indenture of 4 June 1919 which was included as part of the evidence for the application. Subsequent investigations established that the indenture referred to was not relevant to the application and this was confirmed with the applicant.
Investigating Officer's Comments		The application route did not exist in 1890-91 although a route across Sandy Brook between the routes now recorded as 6-2-FP31 and 6-1-FP18 did exist and was marked on the map as a footpath. That route differed from the one now under investigation – and from that recorded as 6-2-FP31 and was located slightly further east.
<b>25 inch OS Map LXI.6</b>	1932	25 inch OS map revised 1929 and published 1932.
Observations		The application route is not shown and the land is undeveloped farm land although a route did exist across Sandy Brook just east of the existing footbridge (point L).
Investigating Officer's Comments		The application route did not exist in 1929.
<b>25 inch OS Map Sheet LXI.6</b>	1945	25 inch OS map revised 1938 and published 1945.






Observations		The application route is not shown on the map. A route slightly to the east of 6-2-FP31 is shown continuing across Sandy Brook .
Investigating Officer's Comments		The application route did not exist in 1938 although a route did exist across Sandy Brook just east of the existing footbridge (point L).
<b>1:2500 OS Maps</b> Sheets SD 5431-5531 and SD 5432-5532	1958-1969	SD 5431-5531 revised 1958-1968 with further information added 1969 published 1970 and SD 5432-5532 published 1961 part surveyed 1958 and revised

1960.



Observations		The application route is not shown. A route across Sandy Brook is still shown east of the existing footbridge at point L.
Investigating Officer's Comments		The application route did not exist between 1958-1969.
<b>OS Pathfinder 679 (SD43/53)</b>	1991	1:25,000 OS map, compiled



<b>Preston (North) &amp; Kirkham (Lancs)</b>		from larger scale surveys dated between 1956 and 1986. Revised for selected changes 1990 and published 1991.
		
<b>Observations</b>		Eastway (B6241) is shown but Glencourse Drive is not shown. Most of the application route is not shown but a series of thick green dashes to mark the location of a public footpath is shown passing through points K & J then turning north east across Sandy Brook further east of the footbridge (point L) although they don't correspond exactly to what is recorded on the Definitive Map or what appears to have been available on the ground.
<b>Investigating Officer's Comments</b>		The application route probably did not exist in the early 1990s.
<b>Development of housing</b>	1991-1999	Land Registry information including the 1991 Transfer from Commission for New Towns to Fairclough Homes



This is a plan of the title of the site also entered from HM Land Registry showing the extent of the site plan on 01 May 2022 at 11:28:25. The site plan shows the site boundaries and the extent of the site plan. It does not show the extent of the site plan. It does not show the extent of the site plan. It does not show the extent of the site plan.

**Observations**

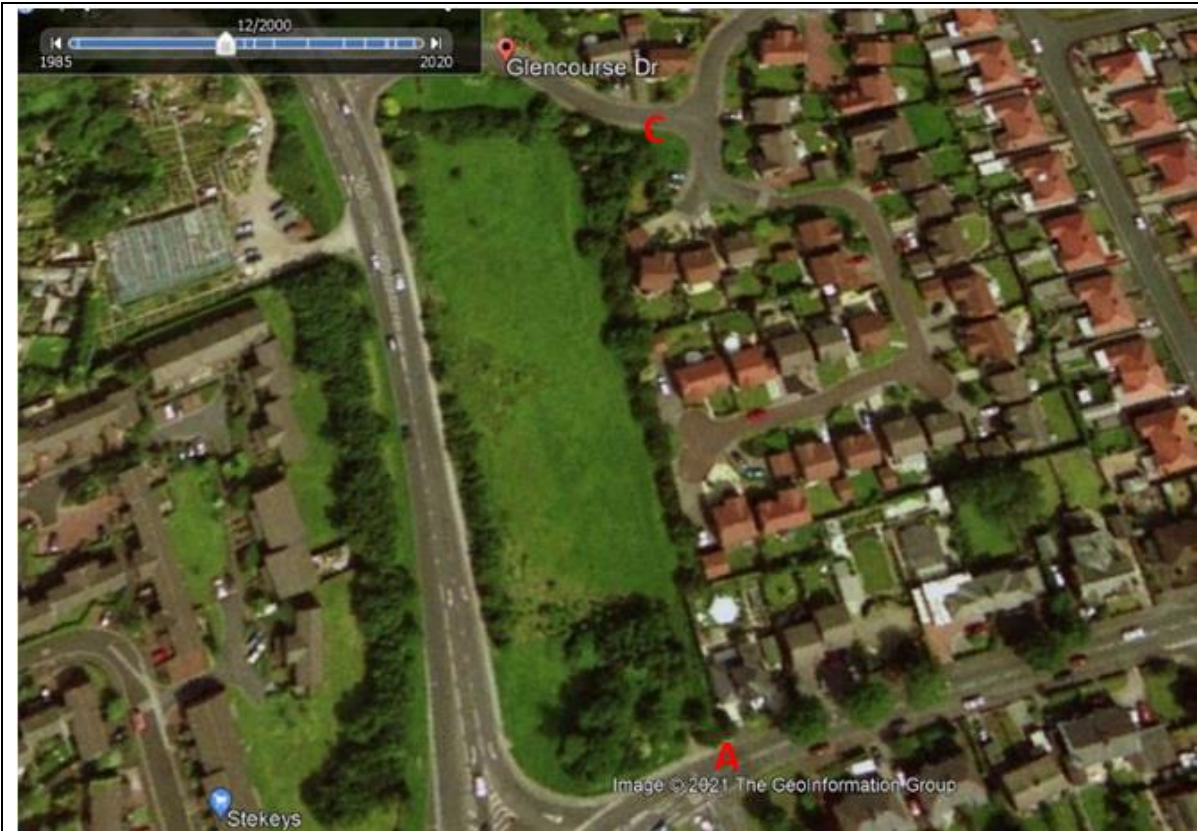
The houses off Glencourse Drive were constructed in the early 1990s and sold between 1992 and 1996. They were built by Fairclough Homes Limited. The plan showing the land initially developed shows access to the new properties via Moorland Avenue and does not show the access through to Eastway (Glencourse Drive). Adoption records however confirm that Glencourse Drive through to Eastway was built and adopted on 18 January





		<p>1999.</p> <p>The 1991 Conveyance refers to covenants to ensure that the open space areas to the west and north were to remain unbuilt upon and a covenant to them being brought up to a standard and passed to the City Council and a footpath to be made (near to HEF)</p>
Investigating Officer's Comments		<p>At some point between 1991 and 1999 it appears that Glencourse Drive was constructed and access to the application routes from points C and D could have become available. The area where the routes run are on areas transferred as public open space by the Commission for New Towns . The Open Space areas have not been transferred to the City Council and so are not held under statutory provisions for open space giving the public a statutory permission but instead remain held by successors in title to Fairclough Homes bound by the covenants to keep the area unbuilt upon.</p>
<b>Aerial Photographs captured on Google Earth Pro</b>	2000-2020	Aerial photograph available to view on Google Earth Pro.





2000



2000





2002



2002





2009

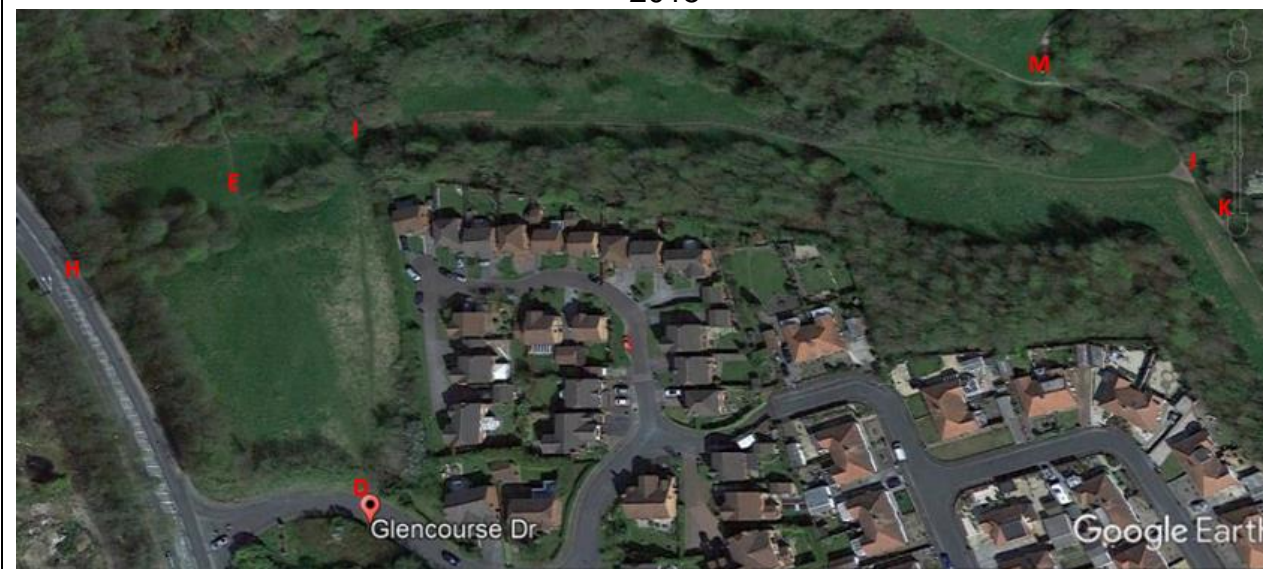


2009





2015



2015





2017



2017





2020



2020

Observations

The aerial photographs show the land crossed by the application route over a twenty-year period prior to the



		application being made. Despite tree cover – which became more extensive over the years – the application route can be clearly seen at least in part as substantial trodden tracks. The earliest photographs very clearly show the path to the south of the watercourse from point H to point J and also clearly show the routes across the watercourse connecting to the public footpaths on the other side.
Investigating Officer's Comments		The photographs all support the evidence of use submitted in relation to this application and regarding use of the additional routes investigated.
<b>Photographs on LCC Public Rights of Way files</b>	2005	Unlabelled photographs saved on LCC Public Rights of Way File



Observations		In 1986 the Ramblers Association submitted an application to record a route as a public footpath running along the north side of Sandy Brook. The route was subsequently recorded as 6-1-FP58 and a set of photographs saved on the
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		<p>Public Rights of Way electronic files shows the route.</p> <p>The photographs were saved onto the file in September 2005 but do not appear to have been taken at that time as they show the trees without leaves and appear to have been originally taken during the winter. It is more than likely that they were taken before a report was presented to the County Council Public Rights of Way Sub Committee who will have decided whether to accept the application and make the order. If that is correct, then it appears that they were taken between 1986 and 1991.</p> <p>The photograph included in this report shows a bridge providing access across Sandy Brook in the same position that a newer bridge now exists on the application route between points M-L-J. A well-trodden route can be seen leaving 6-1-FP58 to cross Sandy Brook and continue towards point J.</p>
Investigating Officer's Comments		The application route between points M-L-J existed by at least 2005 as a well-trodden route.
<b>Google Street View</b>	2009-2018	Various images captured and available to view on Google Street View.



Point A – 2009





Point A - 2012



Point C - 2009





Point C - 2012



Point D – 2009





Point D – 2012



Point H - 2009





Point H - 2012



Point H - 2018

Observations

Further photographs taken during the 20 year period prior to the application being made all show that access onto the application routes was available at points A, C, D and H during that time.

The earliest photograph was

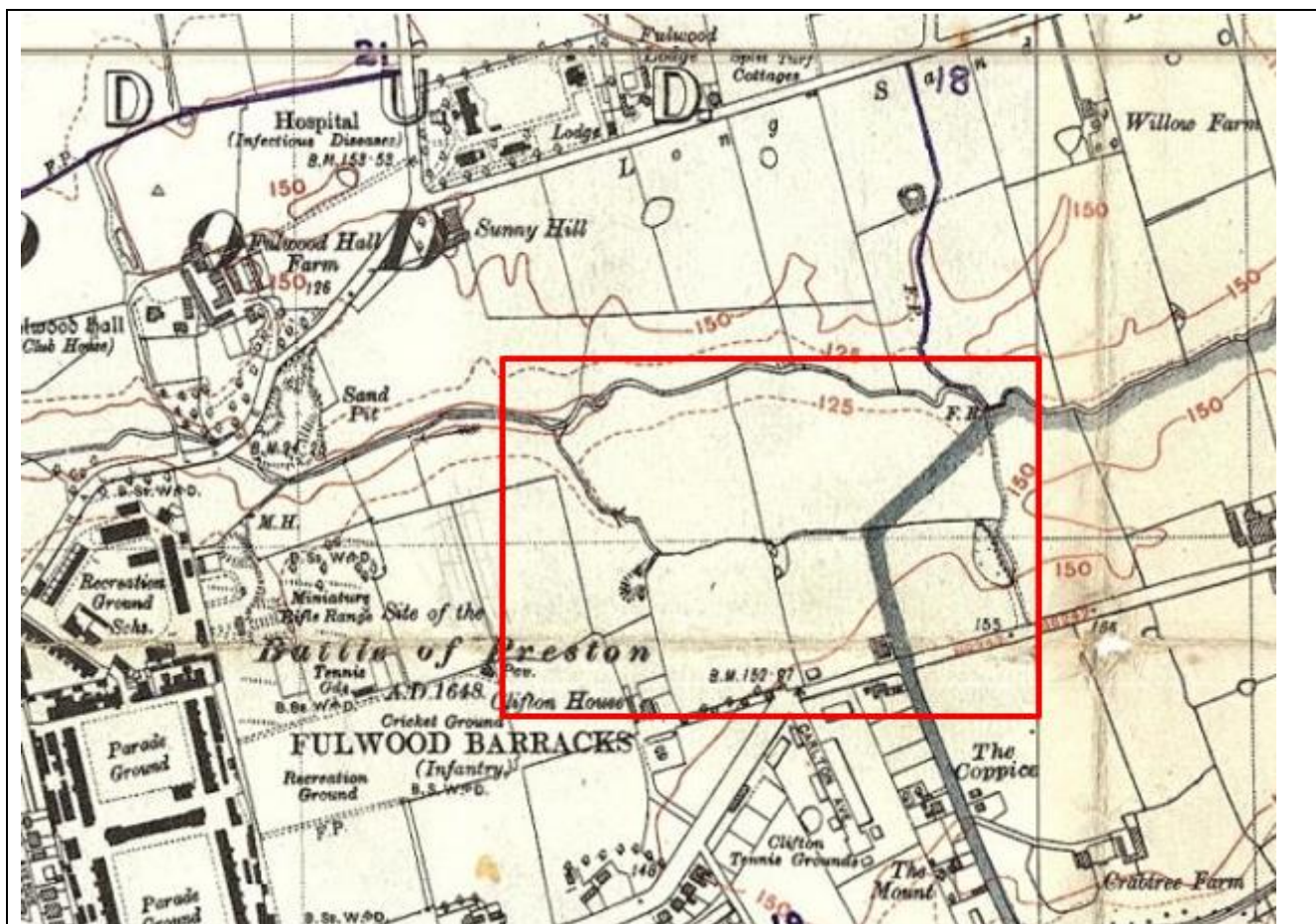


		<p>taken in 2009 and shows that at least since that time the route from Eastway (point H) was signed as a public footpath.</p> <p>Photos of the stile at Eastway (point H) show that it was dilapidated in earlier years but repaired by later shots.</p>
Investigating Officer's Comments		<p>The photographs all support the evidence of use submitted in relation to this application and regarding use of the additional routes investigated. They also indicate that the stile has been maintained in recent years.</p>
<b>Definitive Map Records</b>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<b>Parish Survey Map</b>	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or (some) 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, 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</p>



		containing considerable detail exist for most parishes but not for unparished areas.
Observations		Fulwood was an Urban District Council for which no parish survey was carried out.
<b>Draft Map of Fulwood</b>		<p>Within the Urban District of Fulwood the preliminary survey work was carried out by Fulwood Urban District Council who produced a map of routes they believed to be public drawn onto a 6-inch Ordnance Survey map.</p> <p>The Draft Maps were given a "relevant date" (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>

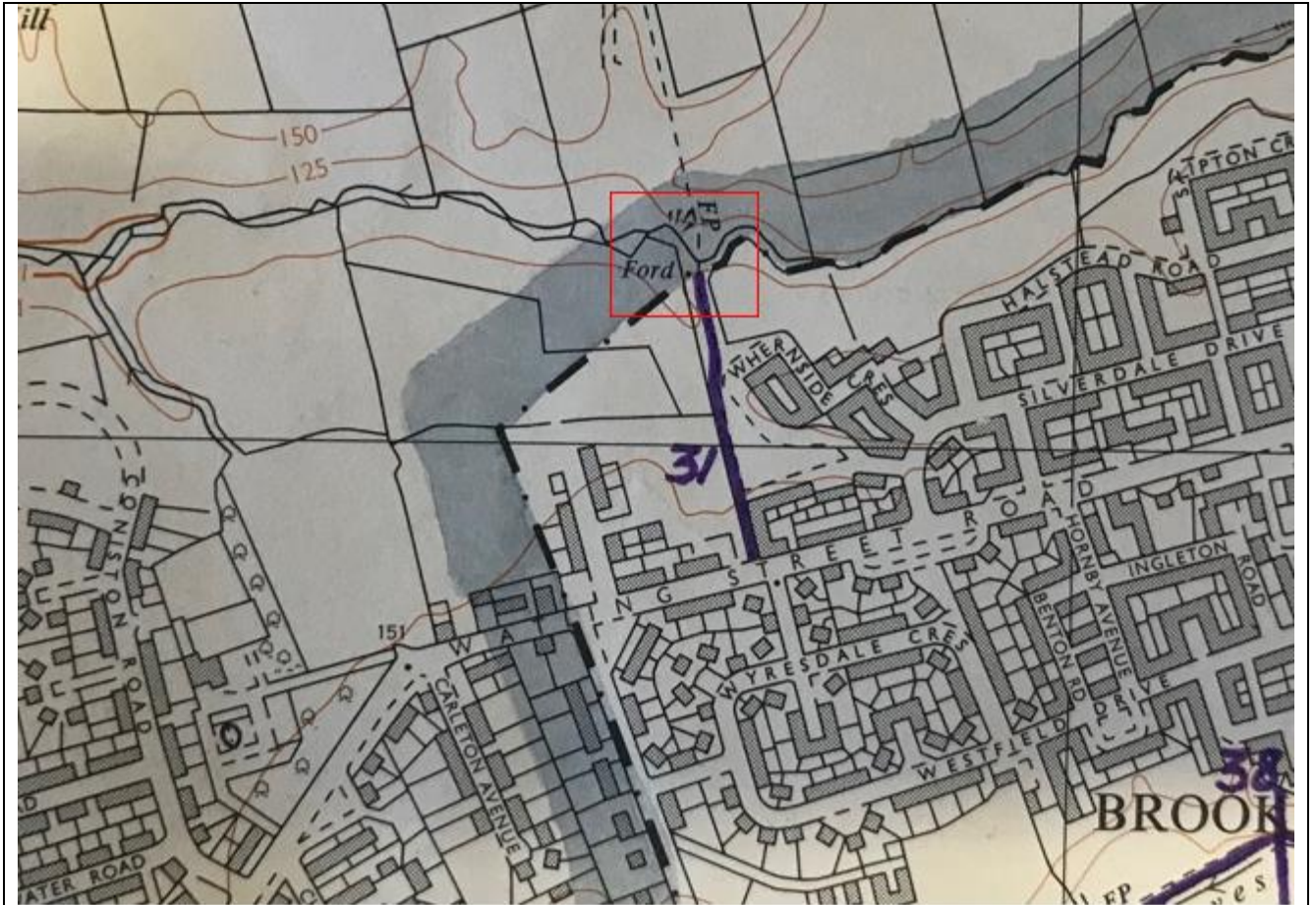




Observations		The application route was not shown and there were no representations made to the county council in relation to it.
<b>Draft Map for County Borough of Preston</b>	1979-1983	A Definitive Map of the area covered by County Borough of Preston prior to 1972 was not prepared until much later. The Draft Map was placed on deposit from 24 <sup>th</sup> April 1979 with a relevant date of 1 <sup>st</sup> February 1979.







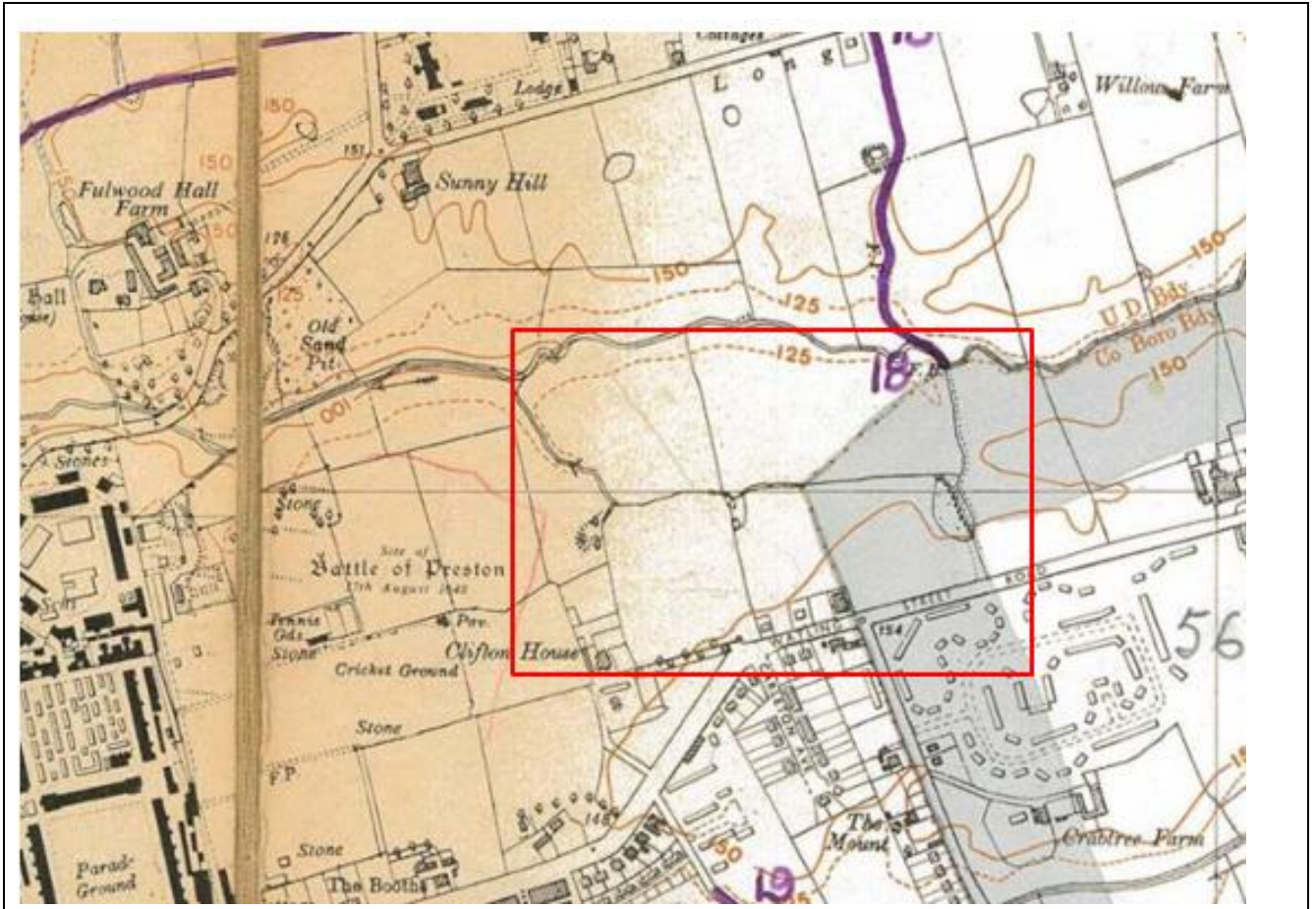
Draft Map





		<p>footpath recorded as 6-2-FP31 had altered on the ground from the route shown on some of the earlier historical maps and which was reflected on the OS base map used to prepare the map. As a result it appears that although the route recorded as 6-1-FP18 historically crossed the watercourse to continue into Preston (as 6-2-FP31) the two routes do not connect on the Definitive Map because the route recorded as 6-1-FP18 followed the route shown on the OS base map surveyed in the 1930s. In addition, the tarmac route now in use by the public is further west than the recorded route of 6-2-FP31.</p>
<p><b>Fulwood Provisional Map</b></p>		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>





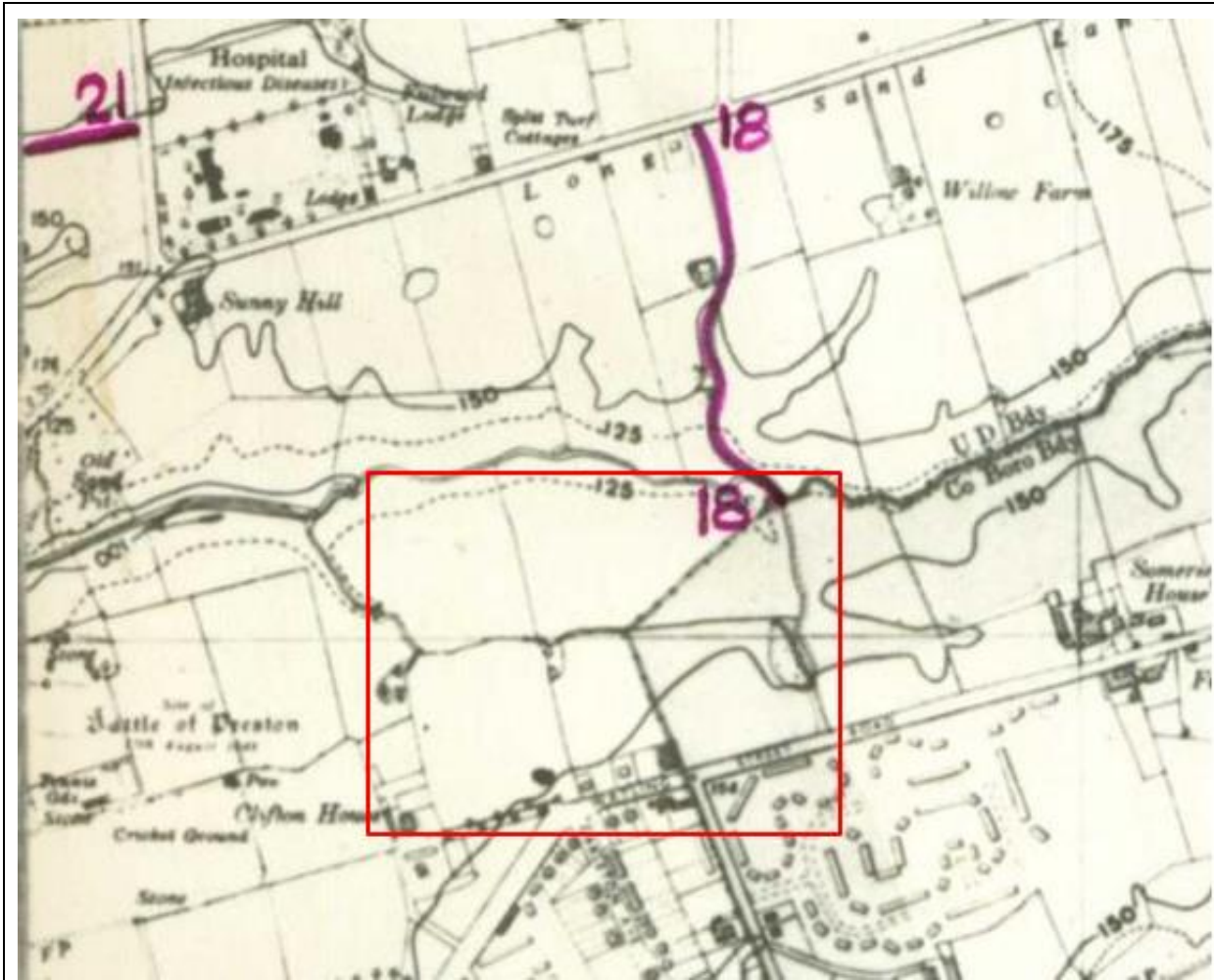
<p>Observations</p>		<p>The application routes are not shown and there were no representation or objections made relating to them.</p>
<p><b>Preston Provisional Map</b></p>		<p>The Provisional Map for the area covered by the former Preston County Borough was advertised on 3<sup>rd</sup> September 1982.</p>





<p>Observations</p>		<p>6-2-FP31 is shown again but it is noted that the route recorded on the Preston Provisional Map does not connect to the route in Fulwood (6-1-FP18) and the route used by the public through points J-K is further west than the recorded route.</p>
<p><b>The First Definitive Map (excluding Preston County Borough)</b></p>		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>





Observations		The application routes were not recorded on the First Definitive Map and Statement.
<b>The Definitive Map for Preston Borough</b>		The Definitive Map for the former Preston County Borough was published on 1 <sup>st</sup> August 1983 with a relevant date of 1 <sup>st</sup> February 1979.





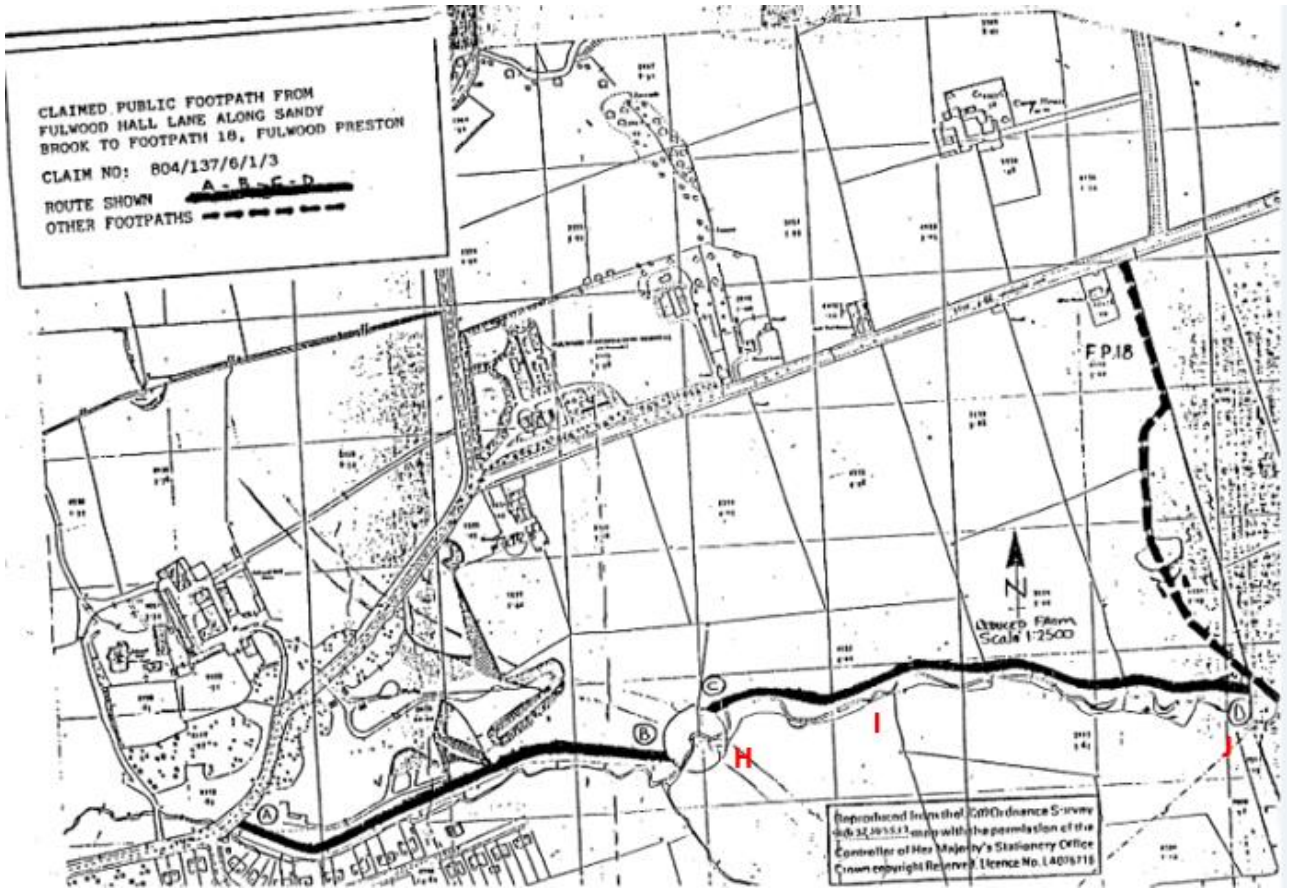
Observations

The application route is not recorded on the Definitive Map for Preston Borough.

**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 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 shown on the Definitive Map and Statement First Review



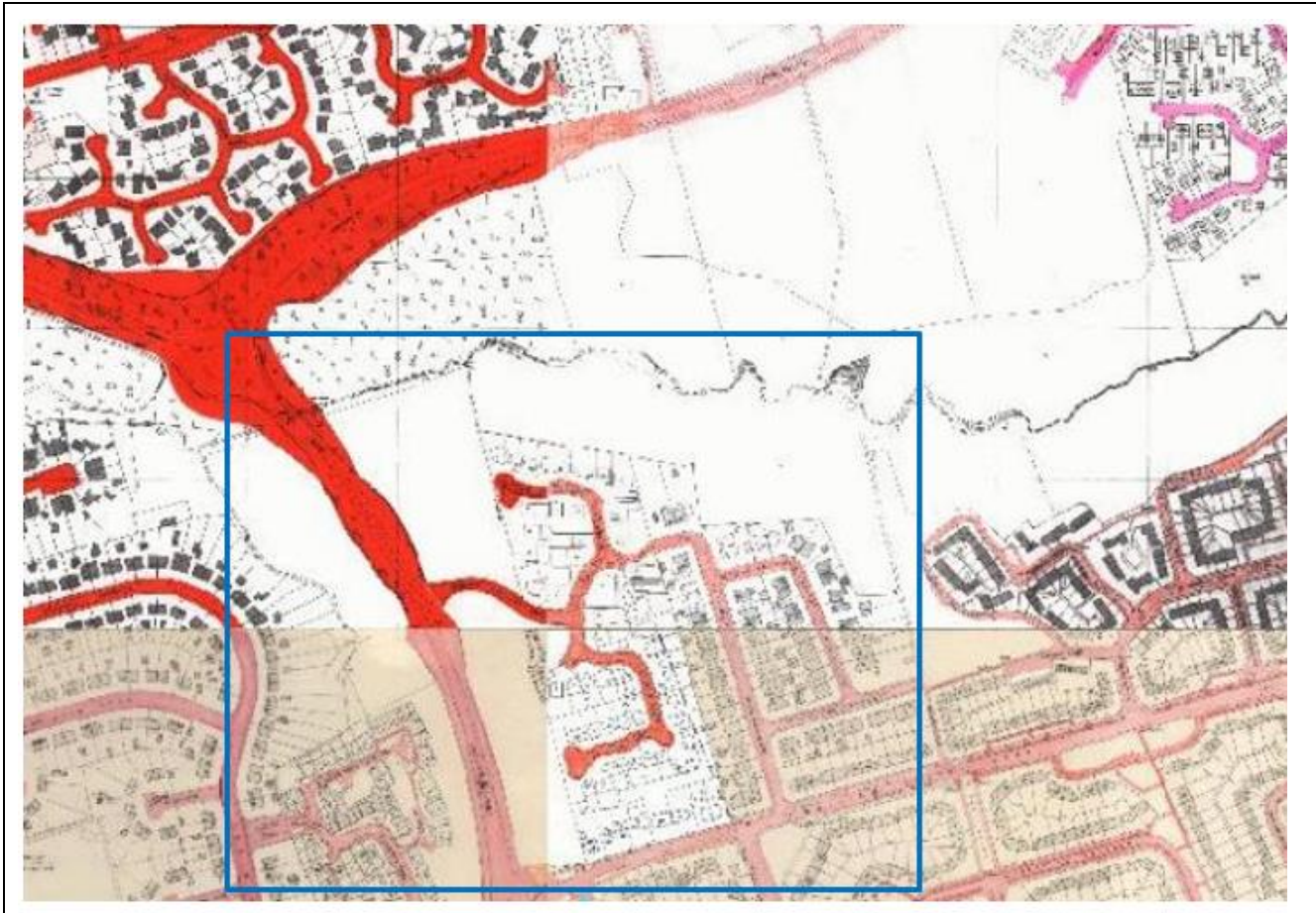


		<p>Map.</p> <p>Footpath Fulwood 58 (6-1-FP58) was added to Definitive Map as a result of a DMMO application 804-13 which was made by the Ramblers Association on 16<sup>th</sup> May 1986. An Order was made and confirmed in 1991 recording the route along the north side of Sandy Brook to which the application route connects to at points G and M.</p> <p>The route was described as crossing Eastway at the roundabout north of the application route. The Order Map did not show Eastway but it appears that an inserted map should have been included to show the route crossing the road which had been constructed following publication of the OS map used. By the time the Order was made in 1991 it appears that Eastway had been built.</p> <p>The Definitive Map (First Review) extract inserted above shows 6-2-FP 31 but as the Revised Definitive Map had a relevant date of 1<sup>st</sup> Sept 1966 and was published 25<sup>th</sup> Apr 1975 and the Preston MB map had a relevant date of 1<sup>st</sup> Feb 1979 and was published later there was no overlap. The fact that the route is shown on the map insert is believed to have been a later addition to the map foil and did not technically form part of the Revised Definitive Map (First Review).</p>
Investigating Officer's Comments		The route has not been shown on a Definitive Map and Statement
<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 district and borough councils to the County Council. For the



		<p>purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up-to-date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
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Observations		The application route is not recorded as a publicly maintainable highway on the county council's List of Streets.
Investigating Officer's Comments		The fact that the application route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of access so no inference can be drawn regarding public rights.
<b>Highway Stopping Up Orders</b>	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No legal orders relating to the



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



		into question).
Observations		No Highways Section 31(6) deposits have been lodged with the county council for the area over which the routes run.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.

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

## Summary

The map and documentary evidence examined does not support the existence of the routes under investigation until the 1990s. Since the construction of Eastway access may have been available from point H and a 1986 application successfully recorded a route running on the north side of Sandy Brook from Eastway; this showed connections to the application route at points G and M although these were not included in that application as they appear to have been available whereas that application route itself had been blocked.

There are items of path furniture (path edging, stiles, gates and footbridges) which suggest a path had been provided for pedestrians, not merely tolerated. The route is also signposted as a public footpath at point H and photographs show that this has been the case since at least 2009.

At some point between 1991 and 1999 it appears that Glencourse Drive was constructed and access to the application routes from points C and D could have become available.

Google Earth photographs taken between 2000 and 2020 all support the user evidence submitted with this application.

## Head of Service – Legal and Democratic Services Observations

### Landownership

From A and C the application route runs on land in private ownership. From D and G the application route runs on land in private ownership. From H to part way along the application route section I - J is in private ownership. The remainder of the route to J, and J to K is under City Council ownership. From L to M the application route runs on unregistered private land.



## Information from the Applicant

The applicant submitted the following maps and documentary evidence in support of their application:

Statement in support of application dated 2 November 2020 with reference to the following maps and documents:

- An application for Definitive Map Modification Order to record footpaths North of Watling Street Road, Fulwood.
- Inclosure Map of Fulwood Moor and Cadley Moor 1817.
- Fulwood Tithe Map 1847.
- Ordnance Survey 25 inch map dated 1893.
- Details of a covenant of 25 October 1909 between Thomas Croft and Thomas Croft Younger together with plan and additional information about a Court of appeal decision of 4 July 1912 relating to a road to be called Browning Road.
- Planning documentation relating to the development of the Fairways Estate and reference to the areas of public open space.
- 32 User Evidence Forms.
- Photographs.
- Maps(s) extract marking 'paths'.
- A Map showing the route of the 'proposed' DMMO.

An assessment of the maps and documents provided in relation to the application has been carried out earlier in the report. It should be noted that the documentation and plans relating to the construction of Browning Road were examined and found to relate to land elsewhere in Fulwood and were not relevant to the application. This was communicated to the applicant who agreed with the Investigating Officer's findings.

The 32 user forms have been considered and the information set out below.

### Duration of Use

The user evidence forms collectively provided some evidence of use of all sections of the routes for different periods of time up to 2020 when part of the route was made inaccessible, and the application to record the right of way was subsequently made, and the investigation into the other routes commenced.

20+ years to 2020)	1 – 19 years	Not specified
23	8	1

### Frequency of Use

The use of the 32 users vary, with 13 using the routes daily, 15 using the routes weekly, and 4 stating they have used the routes either daily, weekly, monthly, every few months and yearly.



Daily	Weekly	Monthly	Every few months	Once a year	Not specified	Daily, weekly, monthly, few months, yearly
13	15	0	0	0	0	4

### Reasons for Use

Of those who specified their reason for using the routes, the most common answer was pleasure. Six users used the routes for dog walking, and two users for family walks.

Walks (pleasure, exercise, recreational)	Dog walking	Family walks	Other uses
24	6	2	0

### Other uses of the Routes

23 users recorded having seen others on foot, 4 recorded having seen others on foot and bicycle. 4 users having seen others on foot, bicycle and horse. 1 user having seen others on foot and horseback.

### Consistency of the Routes

The majority of the 32 users stated that the routes had always followed the same routes, and one did not provide an answer.

Yes	No	Don't Know	Not Specified
31	0	0	1

### Route Used

In the Committee Plan, the application routes are marked out at different points from A to N highlighting the routes, 20 users provided either a map/drawing/aerial photograph of their own within the users forms, the lines they drew on the maps/drawing/aerial photographs were similar to the routes sections of the routes marked out in the Committee Plan.

Analysis of the routes used indicates good user evidence for A-C, D-G and N-I. Fewer users gave good evidence of using the whole of H-J but some had used sections and only a few indicated use of K-M. All routes have evidence of trodden routes. Evidence of use of K-M is less clear on the ground due to being surfaced.

### Unobstructed use of the Routes

1 user was prevented from using part of the routes in October 2020, 1 user did not provide a response. The majority of users stated that route remained accessible.

24 of the 32 users stated they saw no signs or notices restricting or prohibiting access to the route, 1 stated they saw a sign or notice and did not specify what the



sign stated, and 7 stated they saw a sign or notice restricting or prohibiting access to the route from October 2020.

11 users stated they were aware of stiles along the route, or leading to the route from Glencourse Drive, some of those further specified that stiles were along the route in past but were removed in approximately 2015. 18 users stated there were no stiles along the application route, and 3 users did not specify.

22 users stated there are gates along the route, of which 2 users specified the gates were on Watling Street. 8 users stated there was no gates along the application route, 1 user did not specific, and 1 user simply referred to an entry/exit gate.

23 users stated there are no barriers along the application route, 4 stated from October 2020 there were barriers in place, and 5 users did not specify.

All 32 users stated no permission was given or sought to use the route. All 32 users provided individual comments in support of the application, the majority stated they have used the application route for many years for leisure, pleasure and dog walking.

Three users stated Faircloughs' involvement on the land on which part of the application routes run referring to setting money aside for the upkeep of the land and further stating it is a Public Open Space.

One user has used the application route since 1956, for pleasure, shopping and visiting the Anderton Arms Pub.

One user has used the application route to avoid the busy Eastway.

Information from the Landowner

No landowner provided an official response to the consultation.

## **Conclusion**

In this matter there is an application and investigation seeking that these routes be recorded as footpaths on the Definitive Map and Statements because they have already come into existence in law.

There are no express dedications.

Committee is asked to consider dedication through user inferred at common law and or deemed dedication under S31 Highways Act 1980.

Looking firstly at whether dedication can be inferred from all the circumstances. The circumstances supporting the owners' intention to dedicate in this matter does not come from old historical maps but instead from the history of the land being acquired by the New Town and sold to a developer and successors in title but a clear intention that the area be left undeveloped and its use by the public forming the trodden routes on the ground today. The New Town may have intended the route K-M as shown on the maps but no documents have yet been located. The lack of action





taken by owners before 2020 and the public use as of right being sufficient may be the circumstances from which a dedication by owners can be inferred at common law. The inferring of dedication at common law may be particularly appropriate in respect of the sections of route which have arguably not been challenged.

Looking at deemed dedication under S31 Highways Act and the criteria requiring twenty years as of right use prior to a calling into question. It may be considered that the use by the public has been as of right and for sufficient years and there is no evidence of lack of intention to dedicate in the years before 2020 such that a footpath may reasonably be alleged to exist on the sections of route.

In conclusion, taking all of the evidence into account, Committee on balance may consider that there may be sufficient evidence of footpaths being able to be reasonably alleged to make an Order and should no objections be received it would be appropriate to consider the higher test as able to be satisfied and the Order be able to be confirmed. If there are any objections the need to clarify the user evidence by taking more full statements may be appropriate and it is suggested that Committee may consider the matter should be returned to Committee for a decision regarding confirmation once the statutory period for objections and representations to the Order has passed and more full statements from users are taken.

### **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 risk 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: 804-699		Ansar Sadiq, 01772 532435 County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

