

Regulatory Committee

Meeting to be held on 16 November 2022

Part I

Electoral Division affected:
West Lancashire East

**Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Bridleway from Wanes Blades Road to Deans Lane, Lathom**

(Annex 'A' refers)

Contact for further information quoting reference 804-712:
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Brief Summary

Application for the addition to the Definitive Map and Statement of a Bridleway from Wanes Blades Road to Deans Lane, Lathom.

Recommendation

- (i) That the application for the addition of a Bridleway from Wanes Blades Road to Deans Lane be accepted.
- (ii) That an Order(s) be made pursuant to Section 53 (2)(b) Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a Bridleway between Wanes Blades Lane and Deans Lane as shown on Committee Plan between points A-B-C-D.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition to the Definitive Map and Statement of Public Rights of Way a Bridleway from Wanes Blades Road to Deans Lane, Lathom.



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

West Lancashire Borough Council

West Lancashire Borough Council provided no response to consultation.

Lathom Parish Council

Lathom 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	4726 1195	Open junction with Waness Blades Road
B	4735 1188	Route turns through ninety degrees before reaching bank of River Tawd
C	4725 1177	Route crossed by drainage ditch
D	4726 1169	Open junction with Deans Lane

Description of Route

A site inspection was carried out in July 2021.

The application route commences at an open junction with Waness Blades Road directly opposite the T junction with Wood Lane.

Access onto the route is not restricted and the route runs along a 3-3.5 metre wide track between two fields planted with crops. The route is not separated from the fields by any fencing and there is no evidence of the remains of the old hedge/fence lines seen on the historical maps and photographs detailed below.

On an initial inspection the surface of the route appeared to comprise of compact earth and grass but a closer inspection revealed that the full length between point A and point B was cobbled to a width of approximately 3 metres.

From point A the route extends in a south easterly direction for 100 metres to point B. At point B the route turns to continue in a south westerly direction parallel to a drainage ditch. The first 25-30 metres of the route from point B was grass which had been mowed – as had the surface on the corner at point B and beyond the mown section there was no evidence of a track although it was possible to follow the route along the side of the overgrown drainage ditch along the edge of a field planted with crops to point C.

At point C the route crosses the drainage ditch but there was no culvert or other means of access so it was not possible to continue through to point D.

At point D the exit onto Deans Lane was so overgrown that it was not possible to walk along it back towards point C.

There was no fencing across the route at point C and if the route had not been overgrown it appears that it would have been possible to access point C. Hedges



located at point C were consistent with the start-finish of a bounded route separated from the adjacent fields.

The total length of the route is 340 metres.

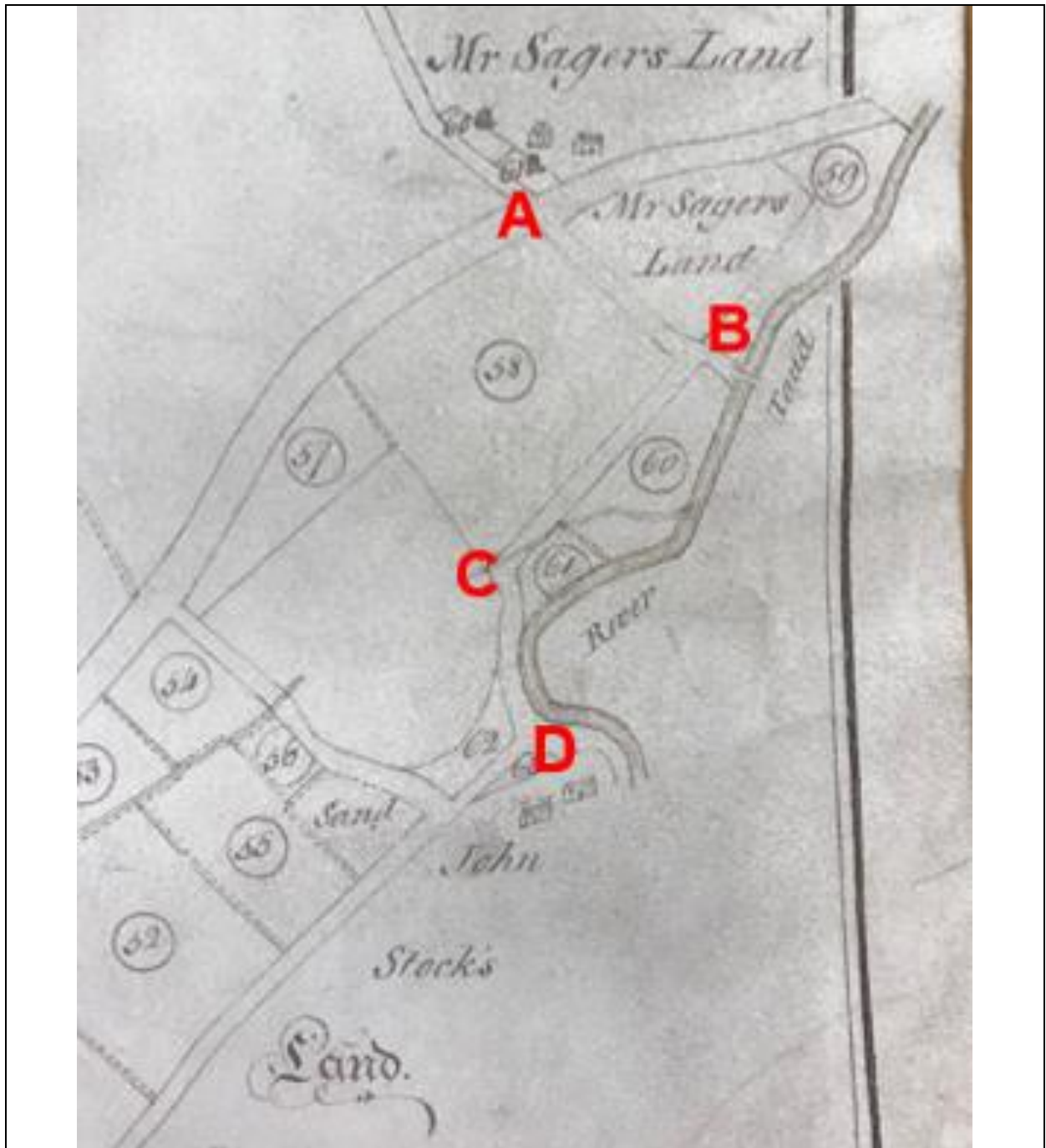
When the route was inspected the Investigating Officer spoke to the farmer who owned land adjacent to the route between points A-B-C. He explained on site that his father had farmed the land prior to him and that the route between A-B was cobbled and had been bounded by trees and hedges until more recent years. He remembered an old wooden bridge across the river south east of point B which fell into disuse many years ago and which provided access to some farm buildings on the other side of the bank. He also recalled that there had been access across the drainage ditch at point C but this was removed quite some time ago when the 'Rivers Authority' used to maintain the ditch.

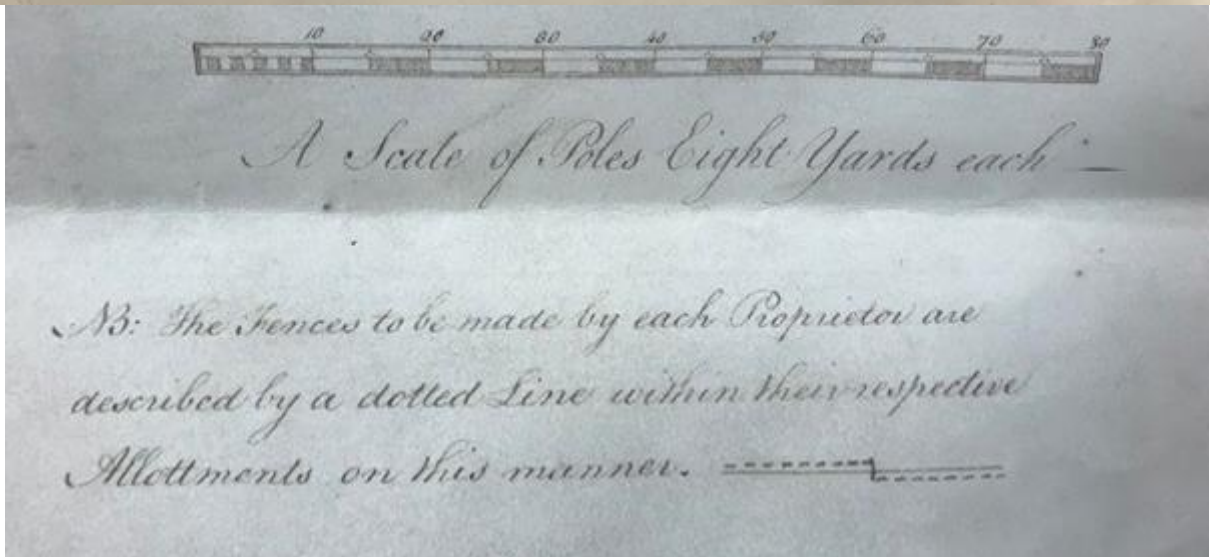
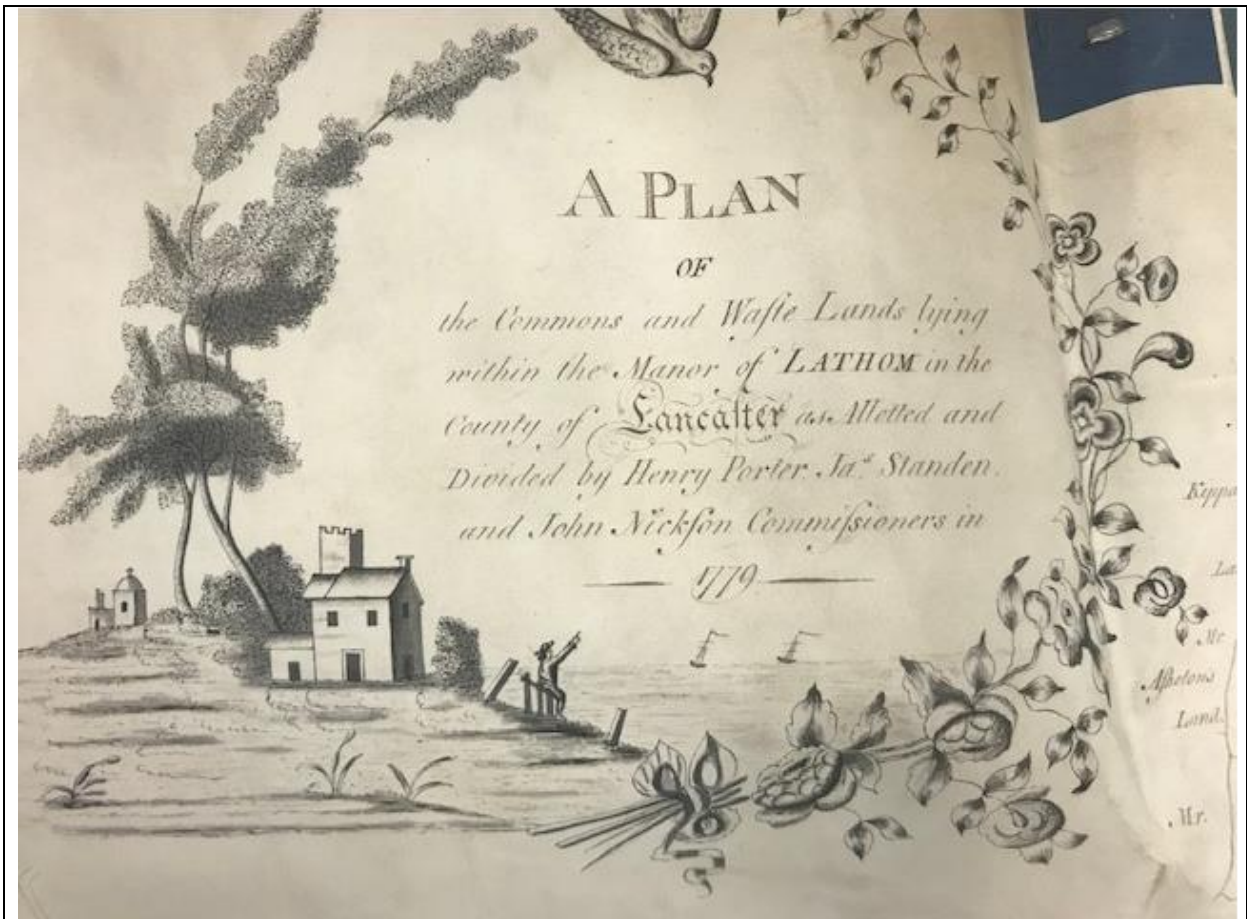
Map and Documentary Evidence

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

Document Title	Date	Brief Description of Document & Nature of Evidence
Inclosure Act, Award and Maps	1778-79	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>A copy of the 'Act for Dividing and Inclosing the Several Commons and Waste Grounds, within the Manors of Lathom and Skelmersdale, in the Parish of Ormskirk, in the County Palatine of Lancaster' dated 1779 was obtained from the Parliamentary Archives.</p> <p>The Act names the three Commissioners to be appointed to</p>
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		<p>undertake the inclosure of the land and sets out the procedure to be followed.</p> <p>The Act specifies that the commissioners had the power and authority to set out both public and private roads, highways and footways, in, over and through the common and waste grounds to be inclosed as they thought necessary and for public roads to be sixty feet (18.2 metres) wide between fences and that they should at all times and thereafter be repaired and kept in repair by such persons and in such a manner as the other public highways in the respective manners. It also specifies that all private and bridle roads and footways would be repaired and kept in repair by such person or persons and in such a manner that the Commissioners order and direct.</p> <p>Commissioners did not have the power to alter any existing turnpike roads but did have the power to alter any other existing public or private routes across the land to be inclosed and to set aside 3 acres of land in the parish of Lathom for the purpose of the collection of sand, gravel and other materials for the repair of roads and public highways.</p> <p>The subsequent Inclosure Map and Award for land described as the commons and waste lands in the Parish of Lathom dated 1779 was also inspected.</p> <p>The plan shows the full length of the application route crossed by a watercourse at point C. The route is shown separate from the numbered fields and is without any lines (which may have indicated gates) across it. From point B a route is shown continuing south east across the River Tawd. Land adjacent to the route is numbered as plots 58, 59, 60, 61 and 62 and</p>
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		<p>the names of the persons allocated each of the numbered plots is given in a table labelled as 'References'.</p> <p>There is no key to the map other than a reference to responsibility for fencing each of the prescribed allotments.</p> <p>The Award provides details of how the land to be enclosed is to be divided and allotted. The descriptions of the locations of plots 58, 59, 60 and 61 in the Award all specifically refer to the application route as an 'intended private way or road' and to Waness Blades Road/Hoscar Moss Road as an 'intended public road or highway'.</p> <p>The Award also describes as a 'public road or highway' the application route itself: 'now staked out containing throughout in breadth thirty six foot beginning at the north east corner [illegible word] an allotment numbered 58 upon the said map or plan and leading from thence along the east end and south side of the said allotment and from thence westwards to the vill of Newburgh.'</p>
Investigating Officer's Comments		<p>It appears that the application route may have been set out in relation to the inclosure of land in Lathom. No maps have been located pre-dating the inclosure award from which it is possible to determine whether the route existed prior to this time but the route is described in the Inclosure Award as 'intended' suggesting that it did not exist before this time. The route is described in the Inclosure Award both as an 'intended private way or road' and as a 'public road or highway' and was set out at 36' rather than the 60' required by the Act for a public road. One possible explanation is that it was intended as a public bridleway and private carriageway rather than public</p>



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



Curse to an Imprestitution C I
Chapel of Ease CE
Disputing Chapel DC
Turnpike Roads and Mils. Houses with Toll Barrs marked TB TB
Cross Roads
Rivers with Water, Mills Engines &c
Canals with Locks and Bridges Lock Bridge
Coal Pits
Boundaries of the County and division of the Hundreds

Observations		Less than 10 years after the land
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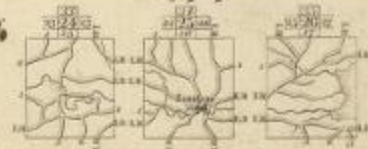
		<p>was enclosed a route consistent with the location of Wanes Blades Road is shown along the edge of an area labelled as Hoscar Moss (Horsecar Moss). Unnamed buildings are shown on Wanes Blades Road approximating to the location of Tyrer's Farm which is near to point A on the Committee plan. From Wanes Blades Road a route denoted in the key panel as a cross road is shown extending south through to Newburgh crossing the (unnamed) River Tawd. Between the junction with Wanes Blades Road and the crossing of the river the route shown may have been the application route – or a route broadly consistent with it.</p>
Investigating Officer's Comments		<p>The application route – or a route approximating to it - is shown as part of a longer substantial route which would have been capable of being used on foot, horseback and with horse drawn vehicles in the 1700s. It is depicted as a cross road although it is not known what is meant by the term 'cross road'. However, the only other category of highway shown on the map is turnpike roads so the inclusion of the route on such a small scale map suggests that it existed as part of a substantial through route forming part of the general road network at that time.</p>
Cary's Map of Lancashire	1787	<p>John Cary was described as 'the most representative, able and prolific of English cartographers'. He was as busy a publisher as he was a cartographer and engraver, and until his death in 1835 published a constant flow of atlases, maps, road maps, canal plans, globes and geological surveys. He set new high standards of engraving and map design and in 1787 he published a 'New and Correct English Atlas' containing 46 maps which was re-</p>



issued ten times until 1831. In 1794 the Postmaster General commissioned Cary to survey the main roads of Great Britain and his information on roads may be viewed with above average confidence.



The middle figure denotes the number of the plate, and the figures at the top and bottom, explain its connection North and South, and those at the sides, East and West.



Turnpike Roads, thro' enclosed countries

D^o thro' unenclosed d^o

Bye Roads are marked by closer lines, as

N^o. The turnpike Roads to and from London, are distinguished by the letters L.R. which will be a sufficient guide for uniting these Roads, and the junctions of all the other turnpike Roads are shown by figures of reference.

Churches and Chavels

Observations

The application route is not shown.

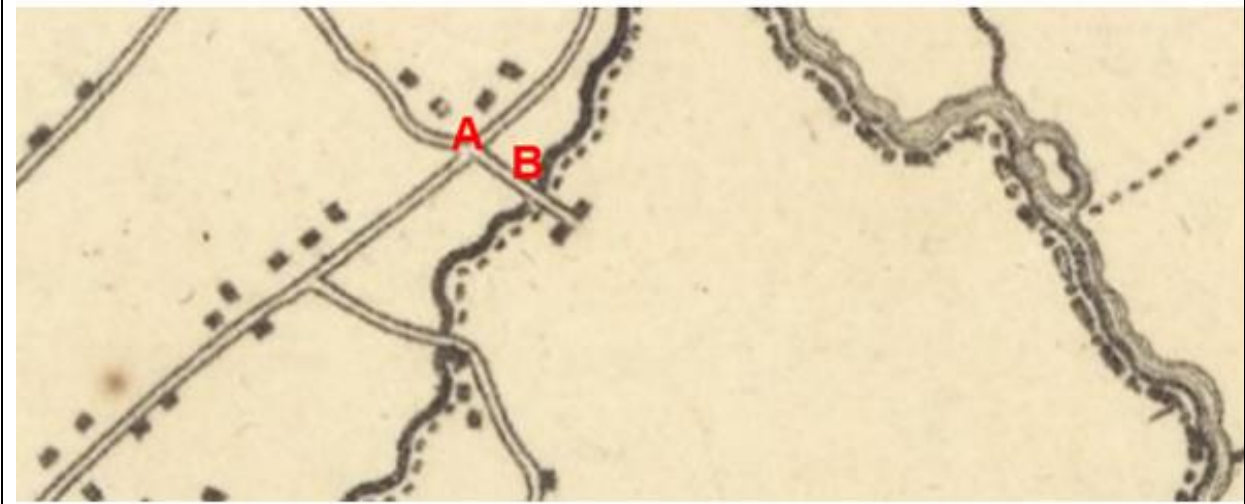
Investigating
Comments

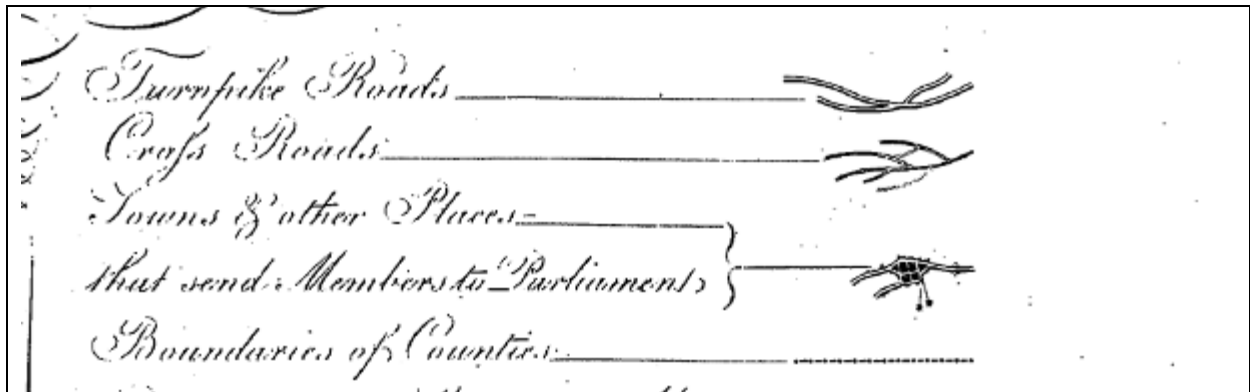
Officer's

It appears likely that the application route existed in 1787 so the fact that it is not shown on this map is possibly because Smith did not consider the route to be a public vehicular route and/or a route of such significance to be included on such a small scale map but possibly because his information



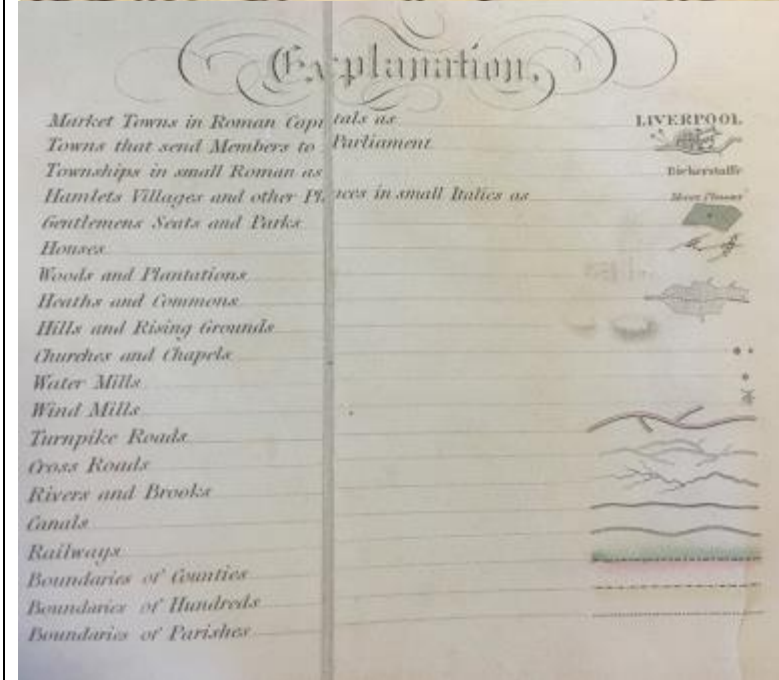
		pre-dated the construction of the roads made following the Inclosure Award less than 8 years earlier.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.





Observations		The application route from point A to point B is shown extending south east from point A at the junction of Wanes Blades Road and Wood Lane to pass through point B and to continue south east to cross the watercourse to provide access to an unnamed property. The application route between point B and point D is not shown.
Investigating Officer's Comments		The application route from point A to point B existed as part of access to an unnamed property but did not appear to form part of a longer through route. Between point A and point B the route was probably capable of being used on horseback and with horse drawn vehicles but despite being shown on Greenwoods Map its use may have been private rather than public at that time.
Hennet's Map of Lancashire	of 1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.





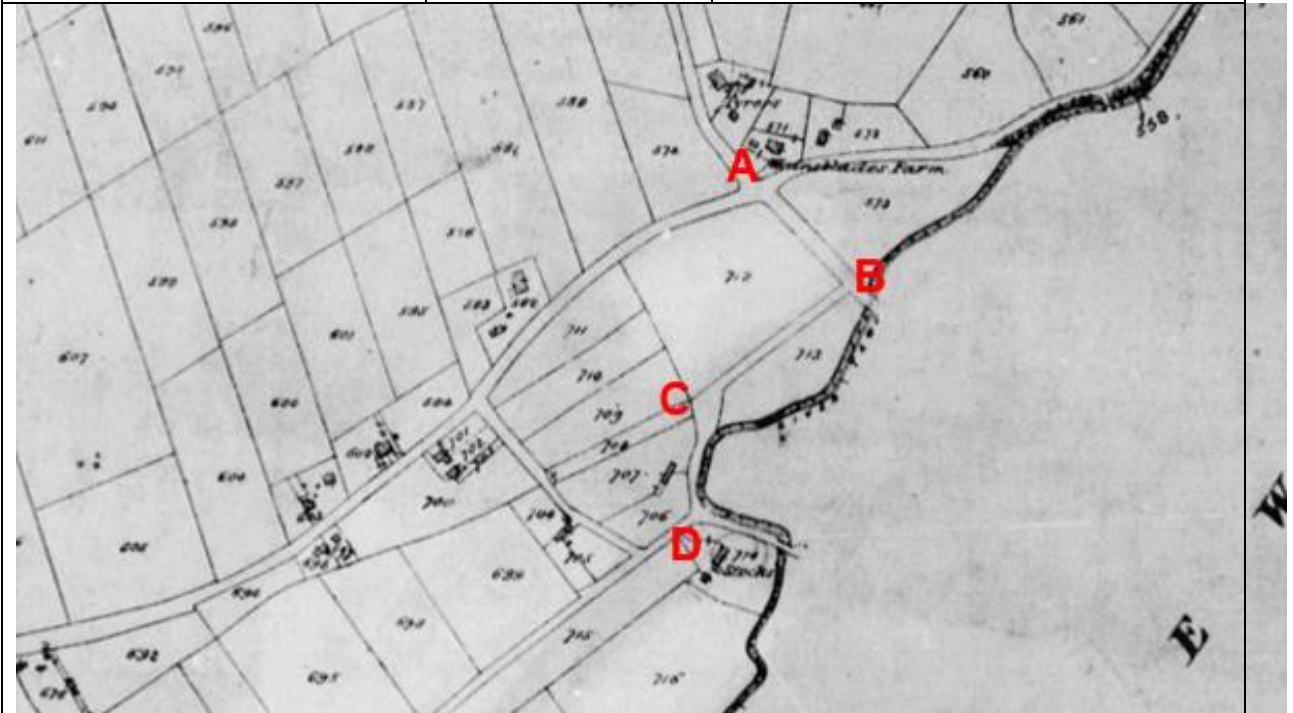
Observations		The application route between point A and point B is shown as part of a longer route crossing the watercourse to provide access to two unnamed properties. The route is denoted as being a crossroad in the map key. The application route from point B through to point D is not shown.
Investigating Officer's Comments		The application route between point A and point B existed as part of a substantial access route in 1818 and was probably capable of



		<p>being used on horseback and with horse drawn vehicles.</p> <p>The application route between point B and point D may have existed but was not considered to be a significant route at that time.</p> <p>It is not fully known what is meant by the term 'cross road'. As the only other category of 'road' shown on the map are turnpike roads, it is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i>).</p> <p><i>Hollins v Oldham Manchester High Court (1995) [C94/0205] Judge Howarth examined various maps from 1777-1830 including Greenwoods, Bryants and Burdetts. Maps of this type, which showed cross roads and turnpikes, were maps for the benefit of wealthy people and were very expensive. There was "no point showing a road to a purchaser if he did not have the right to use it."</i></p> <p>It is unlikely that a map of this scale would show footpaths.</p>
Canal and Railway Acts		<p>Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.</p>
Observations		<p>There are no existing, dismantled or known proposals for canals or railways across the land over which the application route runs.</p>
Investigating Officer's		<p>No inference can be drawn with</p>



Comments		regards to the existence of public rights.
Tithe Map and Tithe Award or Apportionment	1839	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.

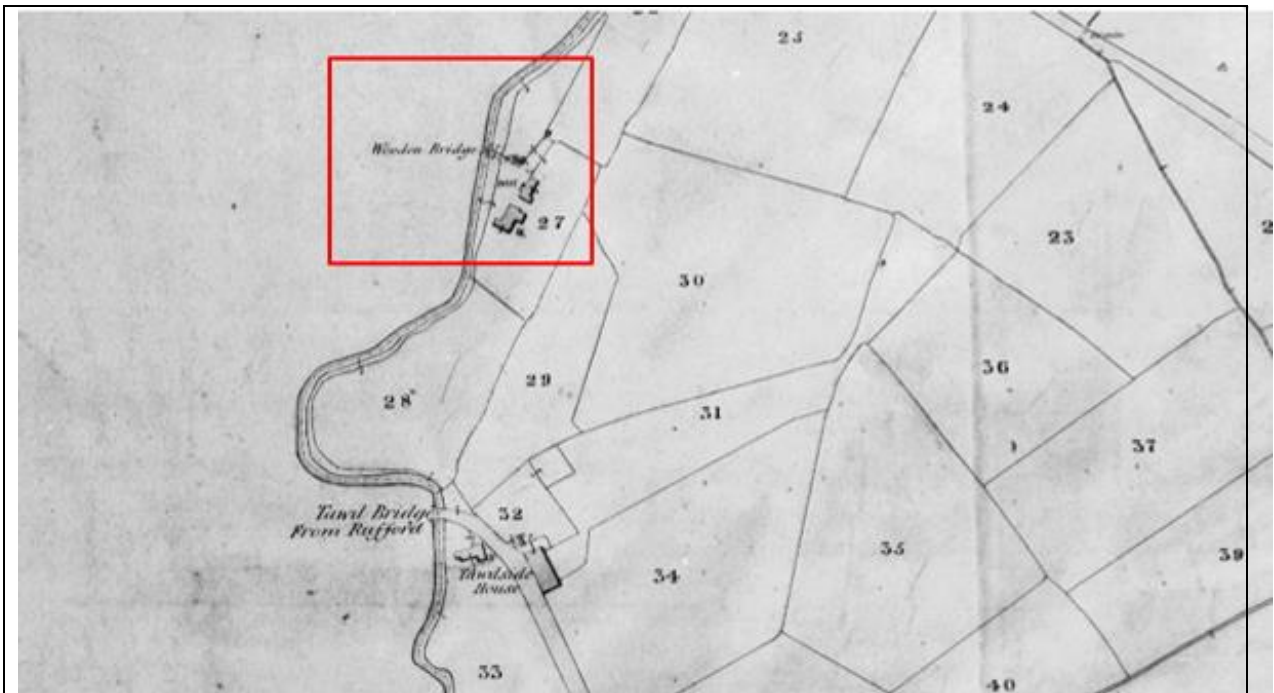


Observations		The Tithe Map for Lathom is dated 1839 and shows the full length of the application route. The route is shown unrestricted at the junction with Wanes Blades Road and Wood Lane at point A and at the junction with Deans Lane at point D. At point B the route which was shown on the early commercial maps is shown continuing south east across the watercourse to the
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		<p>parish boundary. The application route is shown from point B through to point D forming a through route from point A which connects to routes now recorded as public vehicular highways at both ends.</p> <p>The application route is not numbered on the map but passes through land with numbered plots on either side of it. An examination of the Tithe Map for the parish shows that the application route was depicted consistent with how other routes now recorded as public vehicular highways were shown – none of which were numbered on the map or listed in the Tithe Award.</p>
Investigating Officer's Comments		<p>The Tithe Map shows the full length of the application route existed as a through route in 1839 that would probably be wide enough to be used on horseback and with horse drawn carts.</p> <p>There are no lines shown across the route suggesting that it was not gated and that access was freely available along the full length.</p> <p>The route is not numbered – in line with how other public vehicular routes are shown but this does not necessarily mean that it was because the road was public and there are other routes shown on the map in the same way which have no recorded public vehicular rights so the information provided by the Tithe Map and Award must be considered in the context of all other available evidence.</p>
Tithe Map and Award for Newburgh	1845	Tithe Map for the adjacent parish.





		No.	LANDS AND PREMISES.	CULTIVATION
<i>(Derby the Earl of Continued)</i>	<i>Waxendale John</i>	<i>4</i>	<i>Pig-hill Meadow</i>	<i>Cats and One</i>
		<i>5</i>	<i>Part of Pig-hill Meadow</i>	
		<i>20</i>	<i>Pickets</i>	<i>Pasture</i>
		<i>27</i>	<i>House Outbuildings Yard and Orchard</i>	
		<i>30</i>	<i>Big hay and Little hay</i>	<i>Cats</i>
		<i>35</i>	<i>Middle hay</i>	<i>Potatoes</i>
		<i>33</i>	<i>Horse Coe</i>	<i>Meadow</i>
		<i>22</i>	<i>Marked hay</i>	<i>Wheat</i>
	<i>Waxendale John and Stapforth Edward</i>	<i>22</i>	<i>Occupation road</i>	
	<i>Bolton John</i>	<i>102</i>	<i>Collage and Garden</i>	

Observations

The Tithe Map for Newburgh was also examined to see whether it showed a link through to the application route. The map shows the property accessed via the application route A-B. The application route is off the area of this map but marks the location of a bridge across the River Tawd from which the application route could be accessed. The property shown on the early commercial maps as being accessed by the application route between point A and point B is numbered on the Tithe Map as plot 27 and described as house, outbuildings, yard and



		orchard in the Tithe Award. The property is listed as being occupied by John Baxendale and owned by the Earl of Derby.
Investigating Officer's Comments		The Tithe Map and Award for Newburgh confirm that access to the property east of the watercourse was via the application route A-B and wooden bridge – with no other access shown. It also shows and names 'Tawd Bridge' to which the application route connected.
Cassini Old Series Sheet 108, Liverpool	c. 1840	The Cassini publishing company produced maps based on Ordnance Survey mapping. These maps have been enlarged and reproduced to match the modern day 1:50,000 OS Landranger Maps and are readily available to purchase.



Old Series sheets used to create this map:

Sheet 79, N.E. Quarter, first published 7th November 1840

Sheet 80, N.W. Quarter, first published 1st October 1842

Sheet 89, N.W. Quarter, first published 20th December 1842

Sheet 89, S.W. Quarter, first published 1st August 1843

Sheet 90, N.E. Quarter, first published 1st October 1842

Sheet 90, S.E. Quarter, first published 8th April 1842

Observations		The full length of the application route is shown. A route is shown continuing south east from point B across the river to buildings named on the map as Tawd Side and another route is shown continuing south west from point C through to Deans Lane consistent with the line of a drainage ditch in existence today.
Investigating Officer's Comments		The original scale of the map (1 inch to 1 mile) means that only the more significant routes are generally shown. The early (first edition) OS maps on which the Cassini Old Series maps were based were originally produced for military purposes in case they were needed for defence. The inclusion of the route on those maps suggests that a substantial route existed which probably could have been used by all traffic but we do not know if that use was public or private.
6 Inch Ordnance Survey (OS) Map Sheet 84	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1845 – 1846 and published in 1848. ¹

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



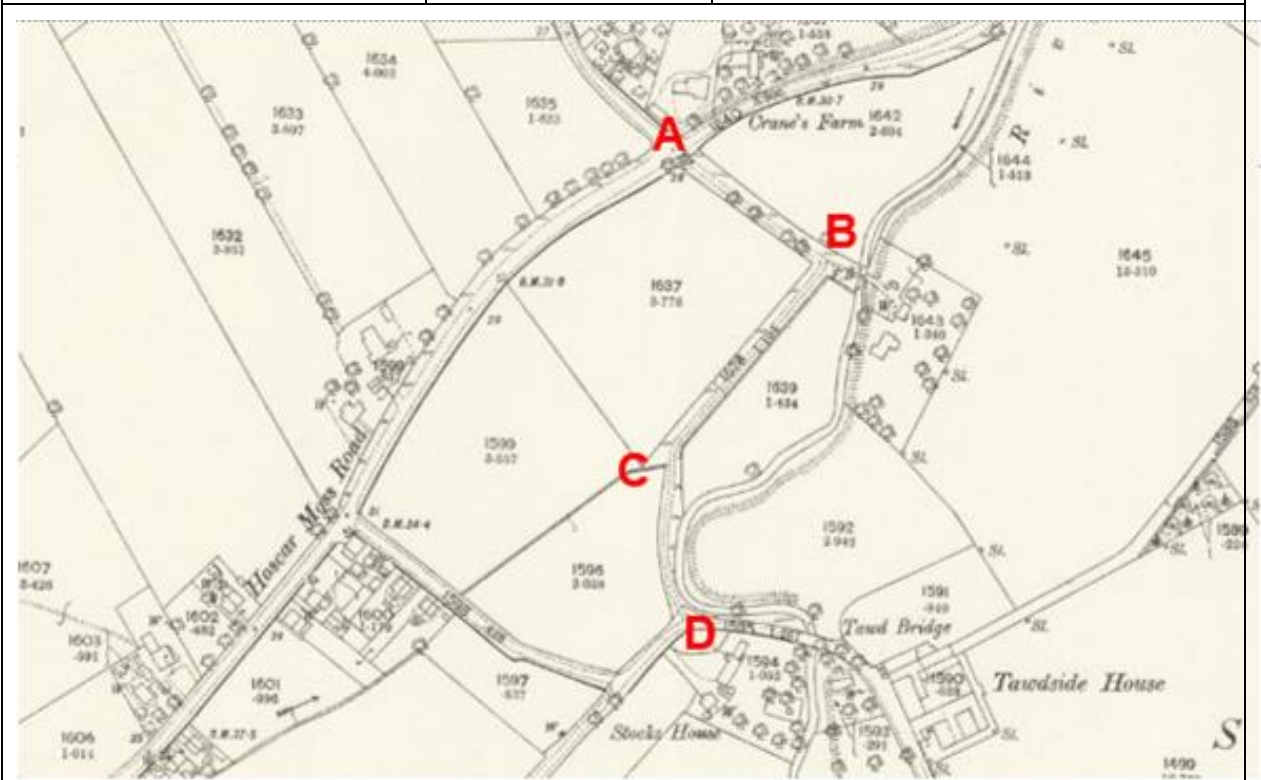


<p>Observations</p>		<p>The full length of the application route is shown from point A through to point D. From point B a route extends south east to a wooden bridge across the River Tawd providing access to some unnamed buildings. Of note was the fact that thickened lines appear to have been drawn along both sides of the route and along both sides of the majority of other bounded routes on the map sheet. A thin strip of fenced off land is shown from point C continuing south west to Deans Lane consistent with the location of a route shown on the Cassini Map detailed above.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed as a bounded through route connecting at either end to public vehicular highways and providing access to a property east of the route via point B. The route appeared capable of being used in 1845-46. It is considered that a substantial bounded route providing access to and past a number of properties and connecting to a network of</p>



		<p>other public highways. It may have been at least a public bridleway and may have carried public vehicular rights but this must be considered in the context of all other available evidence.</p> <p>The thickened lines shown along both sides of the route is not considered to be significant or indicative of public status on this map and no inference can be drawn from it.</p>
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<p>25 Inch OS Map Sheet LXXXIV.7</p>	<p>1893</p>	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1893.</p>
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<p>Observations</p>		<p>The application route is shown as a substantial bounded through route. No solid lines are shown across it suggesting that access was not restricted. Dashed lines are shown across the start of the route at point A suggesting a possible change in surface from Wades Blades Road. Between point A and point B the route is fenced on either side and runs along a strip of land approximately 12 metres wide between fences. At point B the</p>
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		<p>application route turns to continue in a south westerly direction and another route continues straight on from point B for 20 metres to the River Tawd where a bridge marked as a footbridge (F.B) is shown providing the only access to a number of buildings.</p> <p>Continuing from point B the application route runs south west immediately adjacent to a drainage ditch and bounded/fenced on the northern side. The width of the route between the ditch and fence is still substantial – 10 metres – through to point C.</p> <p>At point C the route crosses the drainage ditch by way of a culvert and continues in a generally northerly direction initially fenced on both sides and then on the east side by the River Tawd and fenced on the west side through to the junction with Deans Lane varying in width from between 6 and 12 metres.</p> <p>The route from point A through to point D and including the spur leading to the footbridge from point B has on parcel number allocated to it (1638).</p> <p>Wanes Blades Road and Deans Lane are shown with a thickened line along the south and east sides, but the application route is not shown in this way.</p>
Investigating Officer's Comments		<p>The full length of the application route is shown as a substantial bounded route which appeared capable of being used on horseback and with horse drawn vehicles in 1893.</p> <p>Despite the substantial width of the application route the access bridge across the River Tawd to the east of point A is marked as a footbridge (F.B.) and measures only 1.5 metres wide on the map.. The</p>



		<p>application route has been given a parcel number and acreage suggesting that – as shown by the fact that it was bounded on both sides – it was separated from the adjacent fields. The Planning Inspectorate Consistency Guide states "Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage." However, it goes on to say that this is far from conclusive evidence of highway status.</p> <p>The fact that the route is not shown with a thickened line to one side on the black and white edition of the map in the way that Waner Blades Road and Deans Lane are shown suggests that the application route was not considered to be a well maintained public vehicular road at that time. Shading and colouring were often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. The Ordnance Survey specified that all metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. 'Good repair' meant that it should be possible to drive carriages and light carts over them at a trot. The fact that the route was not shown in this way is not inconsistent with how it was recorded on earlier OS maps and the Tithe Map and is not inconsistent with use of the route by the public at least on horseback.</p>
<p>1 inch OS Map Sheet 84 - Wigan</p>	<p>1896</p>	<p>Small-scale OS map published in 1896.</p>





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

Observations		The full length of the application route is shown as an enclosed through route providing access to the property east of the river from point B. It appears to be depicted on the map as a third-class road or unmetalled road. There are no lines across the route at either end or at any point along it.
Investigating Officer's Comments		This is a map surveyed to show what existed physically. The existence of this substantial road does not in itself show public rights but is consistent with public rights if supported by other evidence. By the late 1800s the small scale 1 inch OS maps had started to gain a significant market being the travelling public so the inclusion of the route on this map is suggestive of a route that was capable of

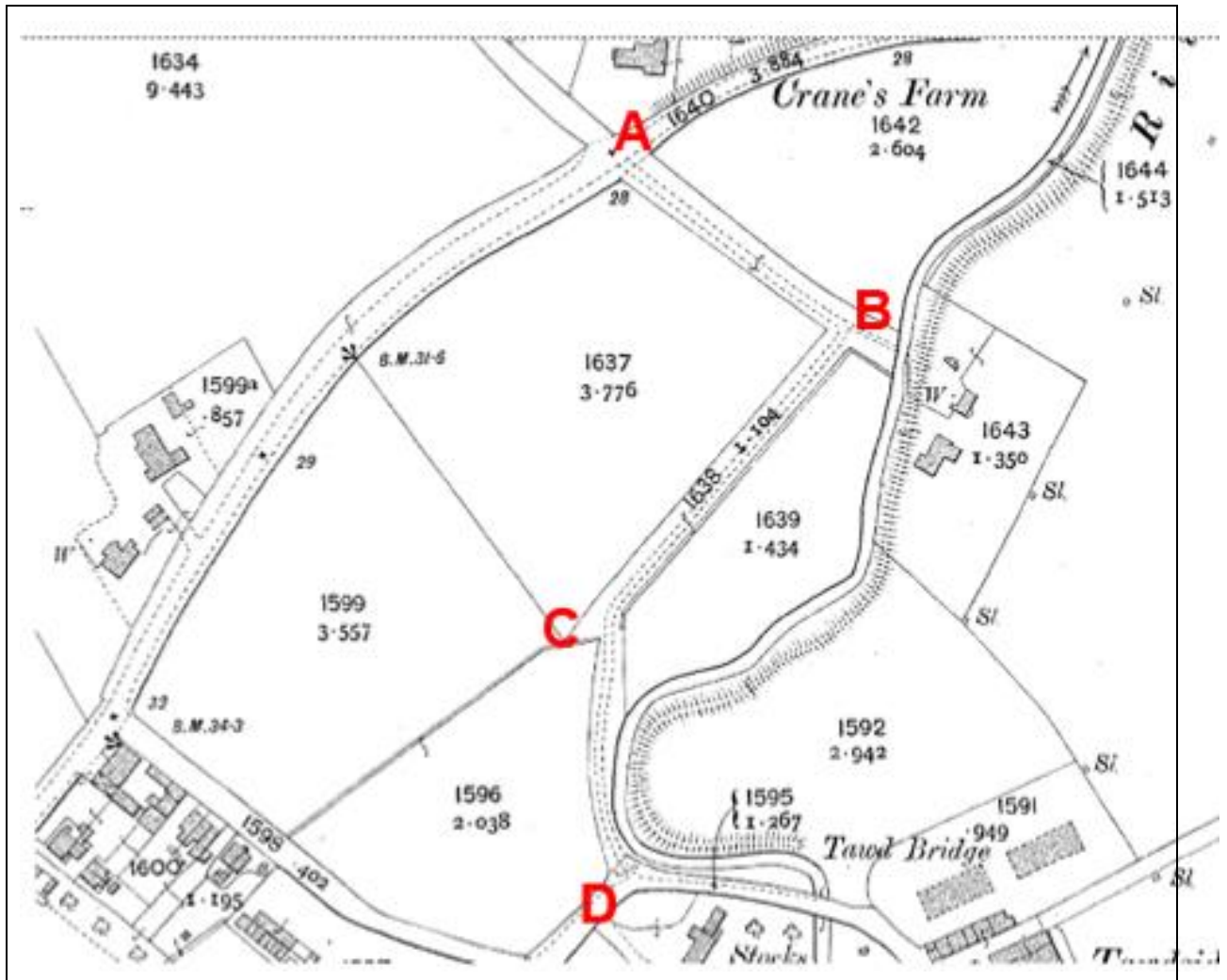


		being used at that time at least on horseback and possibly horse and carts.
Bacons Map of Lancashire	1905	G W Bacon was a publisher of maps and in 1890 his 'Commercial and Library Map of Lancashire from the Ordnance Surveys' was published, and later reprinted. As the title states, the maps he published were derived from Ordnance Survey maps.



Observations		A route consistent with that part of the application route from point A through to point B is shown but the rest of the route through to point D is not shown and Deans Lane – to which the route connects at point D - is not shown.
Investigating Officer's Comments		The original scale of the map means that only the more significant routes are generally shown. No inference can be drawn with regards to public rights.
25 inch OS Map Map Sheet LXXXIV.7	1908	Further edition of the 25-inch map surveyed in 1892, revised in 1907 and published in 1908.



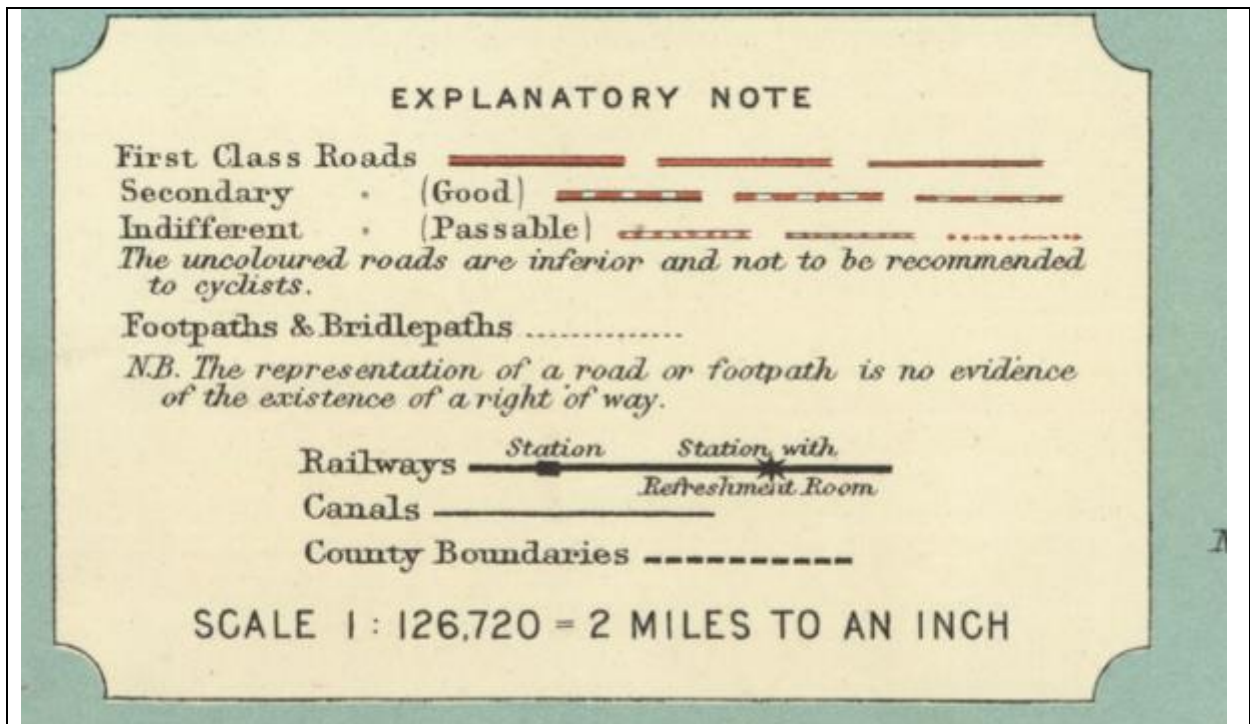


<p>Observations</p>		<p>The full length of the application route is shown in the same way that it is shown on the earlier edition of the OS 25 inch map. The only notable difference is that a footbridge is no longer shown crossing the River Tawd east of point B to provide access to the unnamed property/properties on the east side of the river. No other access is shown to the property from the other side of the river.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed as a substantial bounded through route in 1907 and appeared to be capable of being used – at least on horseback. The route may no longer have been used to access the property to the east of the river (unless it was possible to ford the river) suggesting that use of the application route was not</p>



		exclusively as access to a property but as a through route which would have been available to the public at that time.
Bartholomew half inch Mapping	1904	The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.





Observations		The application route is not shown on any of the three editions of the small-scale Bartholomew maps published between 1904 and 1941.
Investigating Officer's Comments		As Bartholomew's Maps were derived from the Ordnance Survey maps of that time it may be that the route had been purposely omitted by Bartholomew suggesting that if a route did still exist it was not considered to be a significant route at that time and was not considered to be a public vehicular road because footpath users, and to some extent bridleway users, were not the target customers for these maps.
Finance Act 1910 Map	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted. Maps, valuation books and field



		<p>books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
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Finance Act Map obtained from The National Archives (above)





Finance Act map deposited in the County Records Office

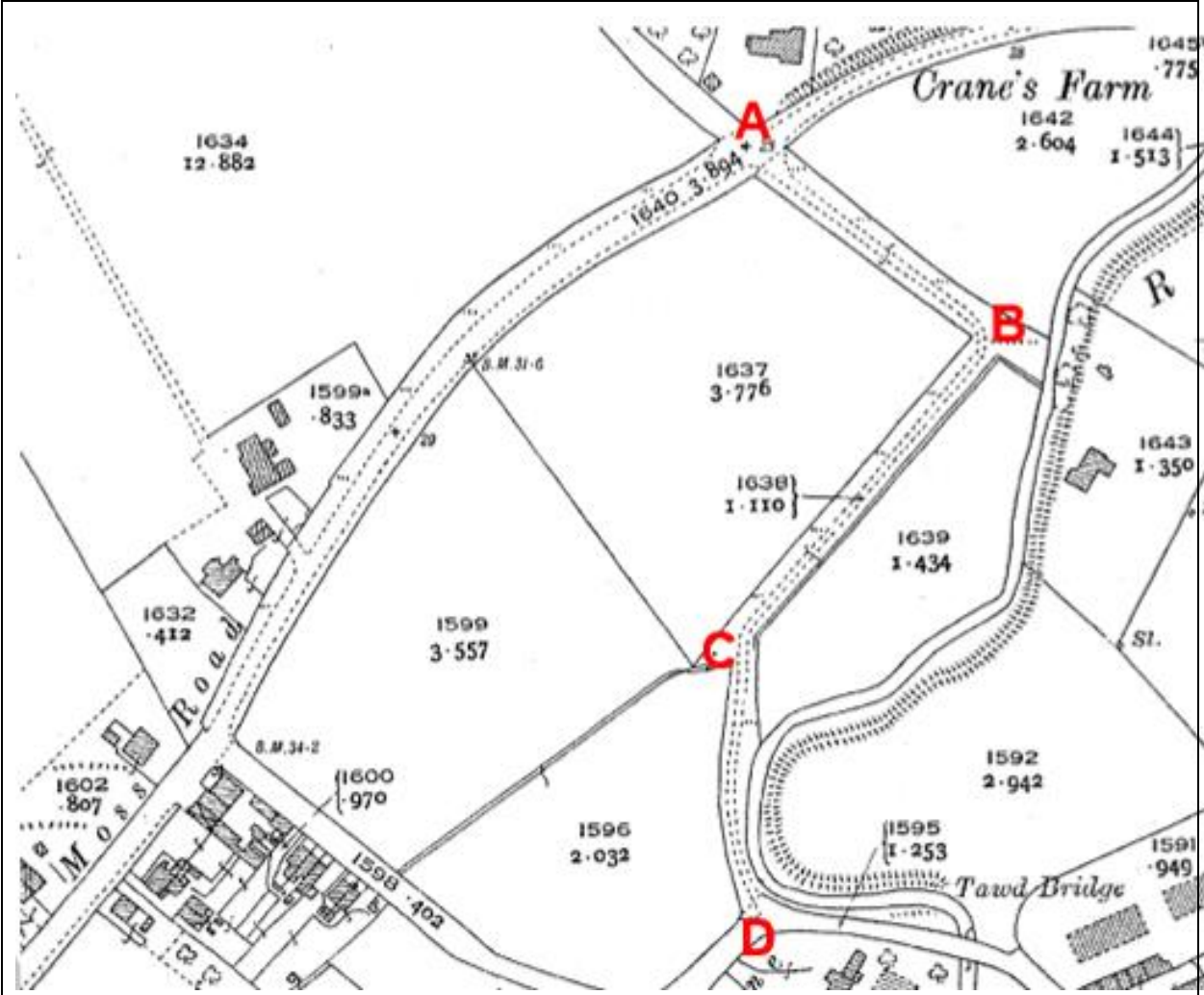
Observations

The applicant submitted an extract of the Finance Act Map obtained from The National Archives but it is of poor quality. The applicant was of the opinion that the map showed the route excluded from the numbered plots between point A and point B but having looked closely at the map extract the Investigating Officer considers that the route looks like it was included in plot 700.

The Map deposited in the County Records Office was also inspected. This map was of better quality but was incomplete. The route was not excluded and appeared to be included with the land numbered as plot 700 on The National Archives map. The plot was not numbered on the County Records Office Map and there is no District Valuation Book for the Parish of Lathom



		available to view.
Investigating Officer's Comments		The Finance Act for the area crossed by the application route is incomplete. The route may have been included in plot 700 but the records are not complete so no clear inference can be drawn.
25 Inch OS Map Map Sheet LXXXIV.7	1928	Further edition of 25-inch map (surveyed 1892, revised in 1927 and published 1928.



Observations		The application route is shown in the same way as it is shown on the earlier editions of the OS 25 inch maps. From point B a track is no longer shown extending south east to the river and there is no footbridge shown across the river. The track (double dashed lines) is shown going round the corner at point B and continuing along the application route suggesting that
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		access was now solely along the application route with no spur off it providing access to the property on the east side of the river.
Investigating Officer's Comments		The application route existed as a substantial bounded route in 1927 which appeared to be capable of being used on horseback and by vehicles – but not necessarily public.
Authentic Map Directory of South Lancashire by Geographia	Circa1934	An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large-scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map. The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.





Observations		The application route can be clearly seen on the map as a through route and is named as part of Tawd Lane.
Investigating Officer's Comments		The application route is shown in the atlas consistent with how other routes proven as carrying public vehicular rights are shown. This is the only map examined suggesting that the route was known as a named route (Tawd Lane).
Aerial Photograph ²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

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.



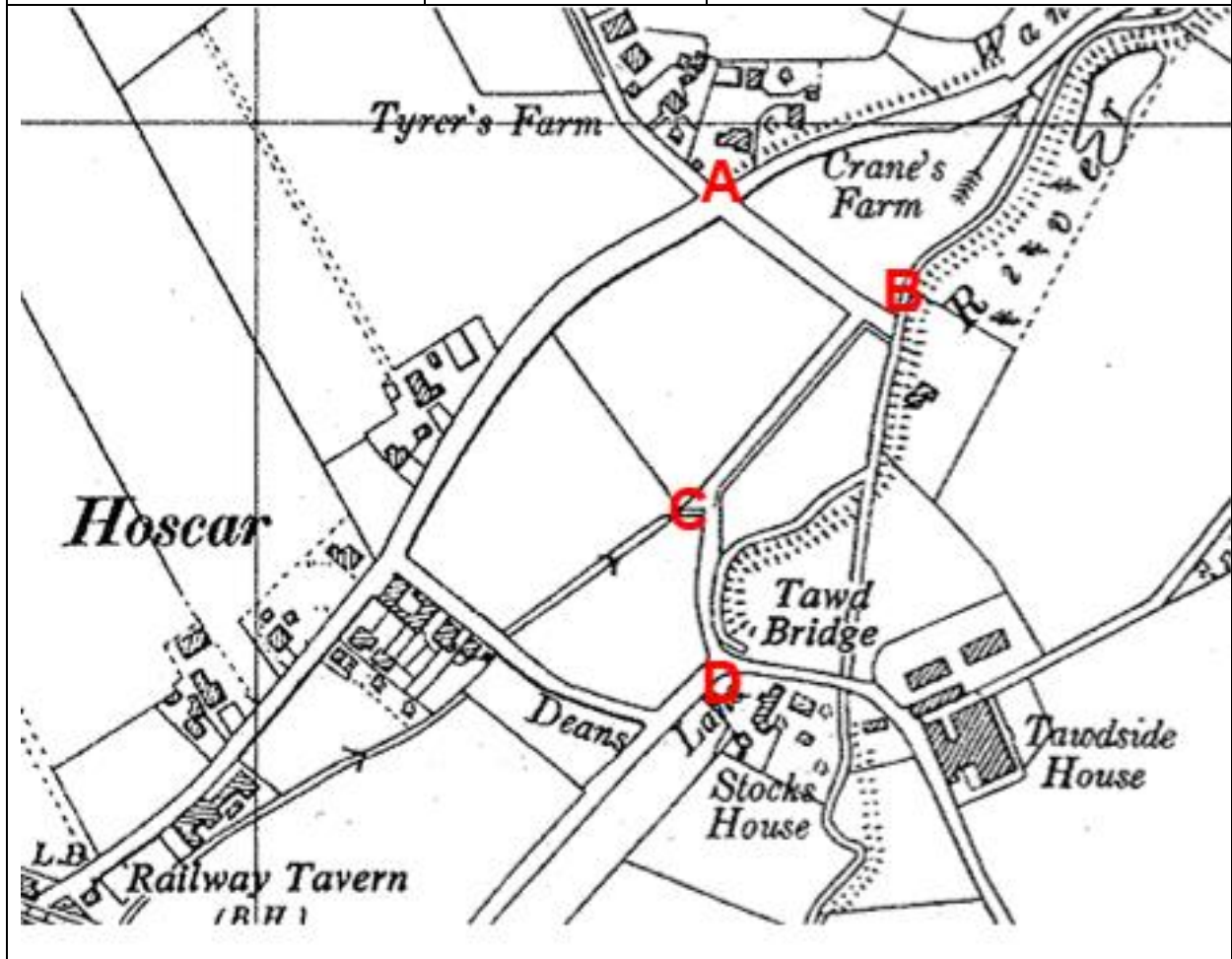


<p>Observations</p>		<p>The application route is visible on the aerial photograph. From point A to point B it is possible to see the boundaries separating it from the adjacent fields but there is little evidence of a worn track. Between point B-C-D the route can be faintly seen but the route does not appear to be separated from the adjacent fields.</p> <p>To the east of the application route it can be seen that work had been carried out to straighten the course of the River Tawd so that it no longer meandered west to run adjacent to the application route between point C and point D.</p>
<p>Investigating</p>	<p>Officer's</p>	<p>The application route no longer</p>



Comments		<p>appeared to be a significant route in the 1940s with no clear evidence of any vehicular use. It may have been possible to pass along the route but the way that it is shown on the photograph is more suggestive of low levels of pedestrian and possibly equestrian use at that time.</p>
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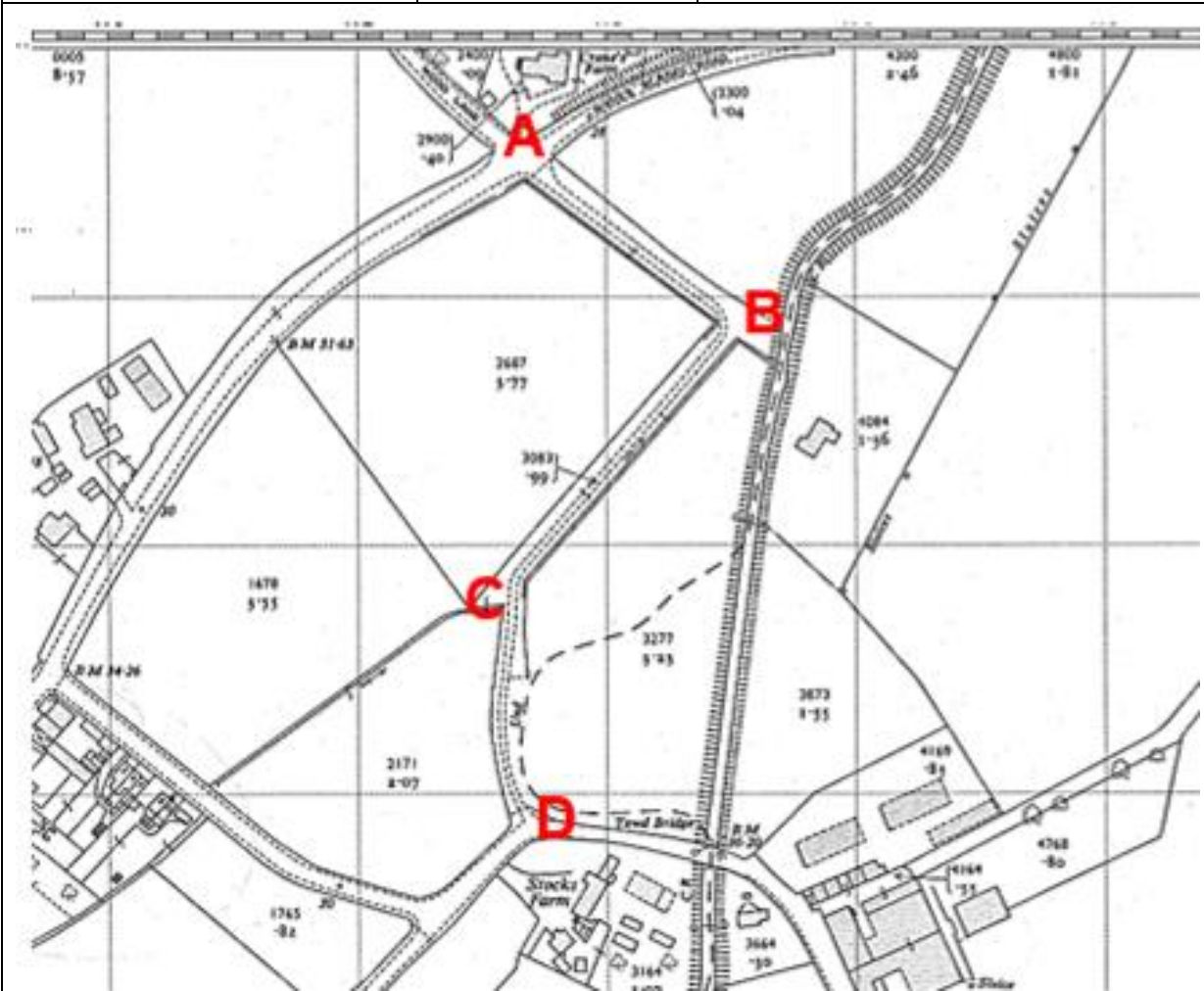
<p>6 Inch OS Map 41SE</p>	<p>1955</p>	<p>The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 with major changes revised in 1948 and is probably based on the same survey as the 1930s 25-inch map.</p>
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Observations		<p>The application route is again shown as a substantial bounded route. The alterations to the River Tawd to the east of the route are shown with the remnants of the old course of the river adjacent to the</p>
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		application route between point C and point D. The map was revised for major changes in 1948 – which is most likely to be when the diversion of the river was identified because the 1930s 25 inch OS map did not show it.
Investigating Comments	Officer's	The application route still existed as a substantial bounded route in the 1930s when the map was revised and appeared to be capable of being used at least on horseback at that time.
1:2500 OS Map SD 47 11	1960	Further edition of 25 inch map reconstituted from former county series and revised in 1957 and published 1960 as national grid series.



Observations		The application route is again shown as a largely bounded track unaltered from earlier editions of
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		the OS mapping. The old route of the River Tawd adjacent to the route between point C and point D is no longer shown – the dashed line along the original watercourse marking the parish boundary which originally ran along it.
Investigating Officer's Comments		The application route existed in 1957 as a substantial route which appeared to be capable of being used.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		<p>The detail and quality of the aerial photograph taken in the 1960s far exceeds that of the one taken in the 1940s.</p> <p>The application route can be clearly seen as a bounded route between points A and B and</p>
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		between C and D. Between point B and point C the route can be seen although it is not clear whether it is bounded on either side. Both the old and new course of the river can be seen although the old course is marked by a line of trees.
Investigating Officer's Comments		The aerial photograph supports the existence of the application route in the 1960s although evidence of use any by vehicles appears to be more likely to be farm machinery/vehicles.
Aerial Photograph	2000	Aerial photograph available to view on Google Earth Pro.



Observations		Whilst the line of the application route can be identified by reference to field boundaries and the drainage ditch between point B and point C the route itself is no longer visible as a bounded route and there is no trodden track visible
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		along it. No bridge/culvert is visible at point C across the drainage ditch. The route appears to have been ploughed between B and D
Investigating Officer's Comments		The application route may have been accessible but no longer existed as a bounded route by 2000 and there is no evidence that it was in frequent use – even on foot.
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 was within an area designated as being part of Ormskirk in the 1950's. Ormskirk was an Urban District Council at that time and no parish survey was



<p>Draft Map</p>		<p>carried out.</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>
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<p>Observations</p>		<p>The application route was not recorded on the Draft Map of Public Rights of Way for Ormskirk and no representations or objections were made relating to it.</p>
<p>Provisional Map</p>		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map</p>



		<p>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>
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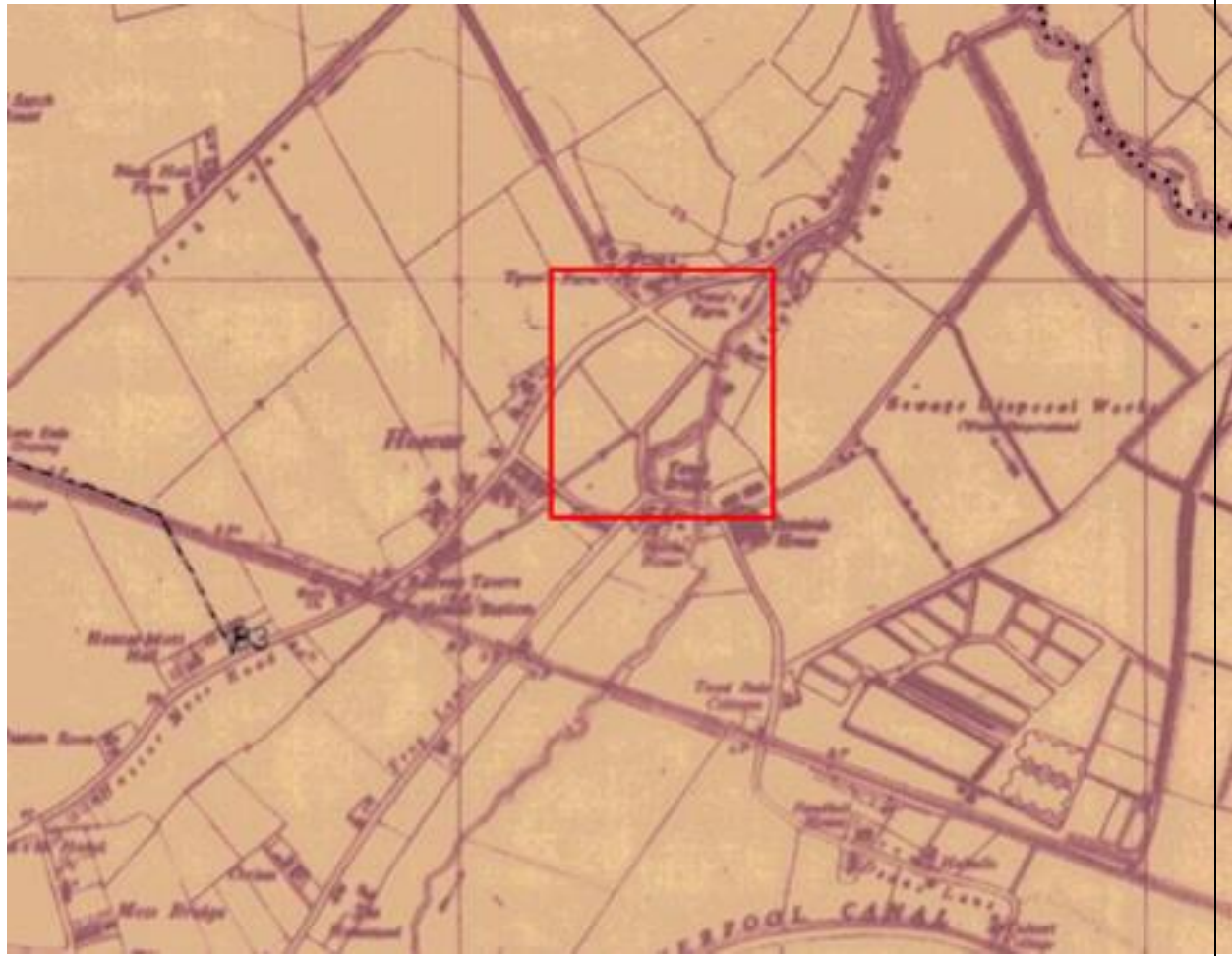
<p>Observations</p>		<p>The application route was not shown on the Provisional Map of Public Rights of Way and no representations or objections were made relating to it.</p>
<p>The First Definitive Map and Statement</p>		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>





Observations		The route was not shown on the First Definitive Map of Public Rights of Way.
Revised Definitive Map of Public Rights of Way (First Review)		<p>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 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>





Observations		The application route is not recorded on the Revised Definitive Map (First Review).
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the application route was considered to carry a public right of way by the Surveying Authority. There were no objections or representations made regarding the route from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	In 1929 the responsibility for rural district highways passed from district councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes



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

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

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



Observations

The application route was within the former Ormskirk Urban District

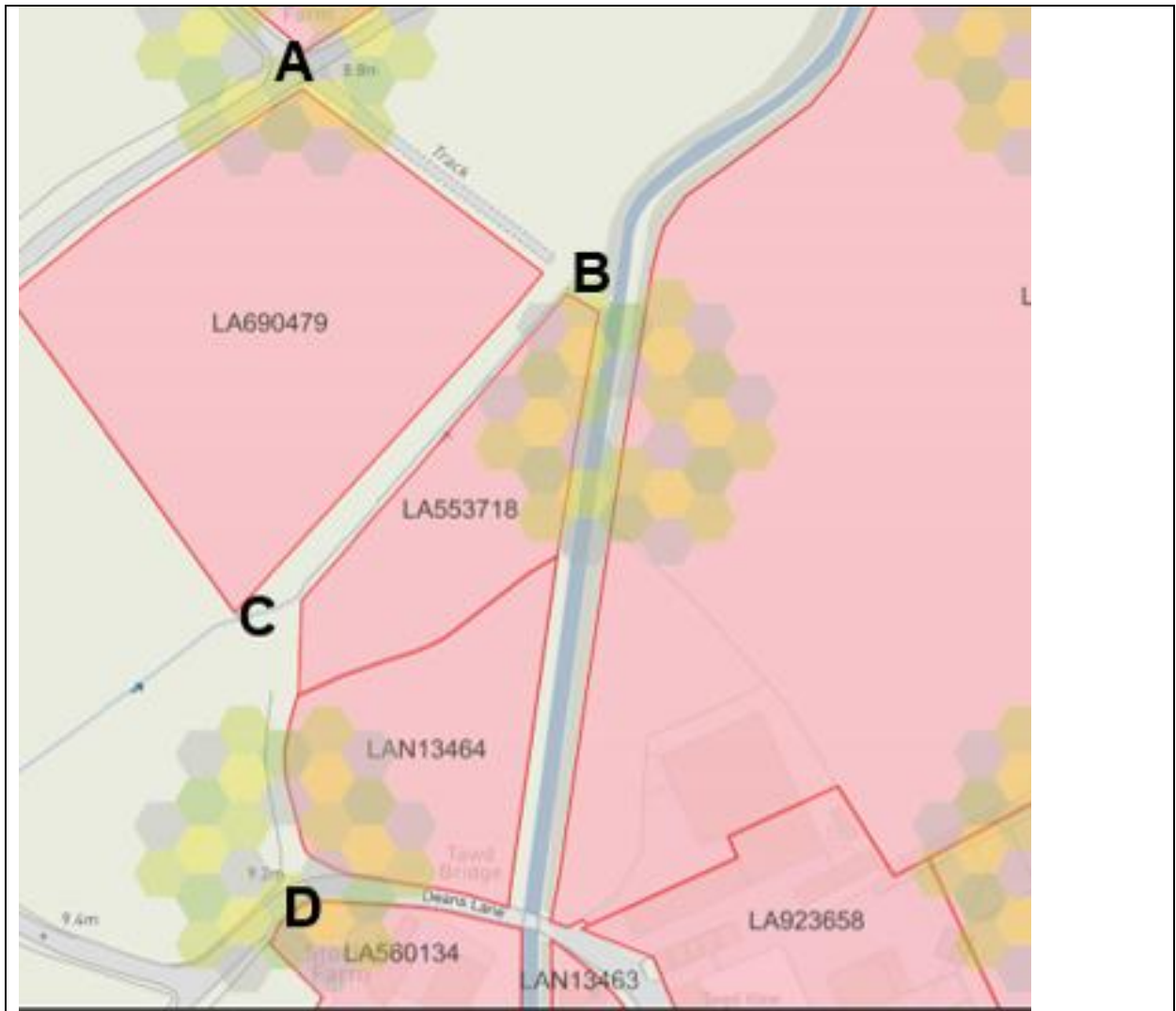


		so no handover map is available. The application route is not shown on the working sheets nor recorded as a publicly maintainable highway on the county council's List of Streets.
Investigating Officer's Comments		The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of access so no inference can be drawn.
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 creating 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 section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and</p>



		<p>declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		<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>
Investigating Officer's Comments		<p>There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.</p>
Land Ownership		<p>Land ownership information obtained from the Land Registry and additional information provided by an adjacent landowner.</p>





Extract of Mapsearch taken from Land Registry website





Extract from Title Plan LA553718

Observations

Ownership of the land crossed by the application route is not registered. The adjacent landowners have been consulted and the owners of Sandyways Farm, located on Hoscar Moss Road close to the application route, has stated that the land has been within their family 'in one way or another since the early 1700s'. They explain that their understanding is that up until 1921 the land was owned by Lord Skelmersdale, and their descendants, the Hankins, were tenants for centuries. They refer to a brief period from the end of 1939 to 1943 when the land was in ownership outside of the family but that it was then purchased by a different connected family member in 1943 and has remained to this day in that ownership. They explained that they held the deeds for the property and state that at no



		<p>time has there been a right of way over the land.</p> <p>The owners of Sandyways farm submitted the title plan for a field in their ownership which is located immediately adjacent to the application route between points B-C (Title LA553718) and state that no (public) right of way is present as it never existed. The Land Registry Title document provides details that this land was registered in 1994 but does not give any further information regarding the land or access to it.</p> <p>The owners of Sandways Farm also provided an extract of an Ordnance Survey map on which a number of plots of land had been marked – not including any land adjoining or forming part of the application route – which the landowner explained contained handwritten notes written by a solicitor stating that there was no evidence of a right of way along the application route They thought this had been completed in the 1980s when they inherited the farm. The copy of the map provided to the County Council was poor and it was not possible to read the handwritten note pertaining to the application route. Neither was it known whether the note referred to public or private right of way.</p> <p>The owners of Sandyways Farm also submitted extracts from two documents understood to be parts of the deeds relating to land now in their ownership.</p> <p>The first was a handwritten extract from what appears to be a conveyance for the sale of Sandyways Farm and approximately 40 acres of land which it refers to as being shown edged red on a plan. The date of the document is not known and the</p>
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		<p>plan referred to has not been submitted. The landowner explained that it was an extract from an agreement between Lord Lathom and Jane Hankin (a descendant of the current landowner) relating to Sandyways Farm and that the document made no mention of right of way.</p> <p>The second extract provided related to the sale of Cranes Farm – which is located on the opposite side of the road to the application route close to point A. The parties to the sale are not detailed and the agreement is not dated. There is again reference to a plan showing the extent of the property but refers to a plan prepared in 1920. The landowner again draws attention to the fact that no right of way was mentioned.</p> <p>The Land registry title documents relating to a plot of land detailed as being under the title LAN13464 (adjacent to the application route between points C-D) makes specific reference to a private right of way along an 'access road' consistent with the location of the application route.</p>
Investigating Officer's Comments		<p>In relation to the fact that no part of the application route being in registered landownership this can sometimes be an indication that the route was a public vehicular route. However, if land has been held in ownership of one family for a significant length of time this can also account for the fact that it is not registered with the Land Registry.</p> <p>The information provided by the owner of Sandways Farm about ownership of the farm itself is consistent with the Tithe Award records which list the owners of the farm as being the Hankin Family – although they did not own or</p>



		<p>occupy any of the land adjacent to the application route at that time.</p> <p>It is very often the case that conveyance documents contain details of private access rights along a route where the existence of public rights are being investigated. The fact that private rights are detailed in a conveyance is quite normal – even if public rights of way also exist or subsequently come into being so the fact that private rights are detailed in a conveyance is not necessarily indicative of the fact that public rights do not – or could not exist.</p> <p>Where a route came into being as a private occupation route or created as a private route in an inclosure award details of those private rights will often be found in conveyances.</p> <p>The fact that the existence of public rights of way are not included in conveyances is not unusual either – as the purchaser is generally more concerned with protecting private rights of access. In addition, public rights may have come into existence since the sale of the land so no inference can be drawn in this respect.</p>
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The affected land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land.

Summary

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

No modern or historical user evidence has been submitted in support of the application so it is necessary to consider whether the map and documentary evidence available is sufficient to support the dedication of a public right of way and the site evidence suggests that use of the route as a through route has not been possible for some time.



It appears likely that the route as first set out as a consequence of the inclosure of waste and common ground in the Parish of Lathom in the late 1770s. It is shown on the Inclosure Plan and is referred to in the Inclosure Award both as an 'intended private way or road' and a 'public road or highway'.

The route between point A and point B is shown on a number of small-scale early commercial maps consistent with access to an unnamed property east of the River Tawd and shown to be accessed by a 'Wooden bridge' on the first edition 6 inch map published in 1848 and a 'footbridge' on the first edition 25 inch OS map published in 1893.

The full length of the application route is shown on the Tithe Map dated 1839 as a bounded through route that would probably be wide enough to be used on horseback and with horse drawn carts. It was not numbered, in line with how other public vehicular routes were shown but this does not necessarily mean that it was because the road was public so the information provided by the Tithe Map and Award must be considered in the context of all other available evidence.

Further OS maps examined consistently show that the route existed as a substantial bounded track through to at least the 1960s after which it appears from the aerial photographs examined and recent site evidence, that the use of the route appears to have significantly declined.

The Finance Act records are incomplete although they do suggest that the route may not have been excluded from taxation in the early 1900s.

The cumulative evidence suggests that historically a way existed over the full length applied for which was originally created by the Inclosure Award either as a private occupation road or a highway of some description but which may have been capable of being used by the public on foot or horseback.

On balance the Investigating Officer considered that there was sufficient evidence that public bridleway rights could be shown to exist along the route.

Head of Service – Legal and Democratic Services Observations

Landownership

Ownership of the land crossed by the application route is not registered.

Information from the Applicant

The applicant submitted a number of maps and historical documents in support of their application – all of which have been considered above.

Extract from MARIO (LCC online maps) showing road classification layer

6 inch OS map published 1848

25 inch OS map published 1893

1 inch OS map published 1896

1910 Finance Act Map obtained from The National Archives



Tithe Map of Lathom 1839

Information from Others

Atkins Global responded to consultation to state that they had no objection.

Information from Adjacent Landowners

Registered owners of the adjoining registered land were consulted and one of these owners provided a detailed response.

They noted that the applicant had already contacted them in relation to this application and that they strongly disputed the case put forward.

They noted that the land in their ownership had been within their family since the early 1700s, they hold the deeds for the property and at no time has there been a right of way over this land.

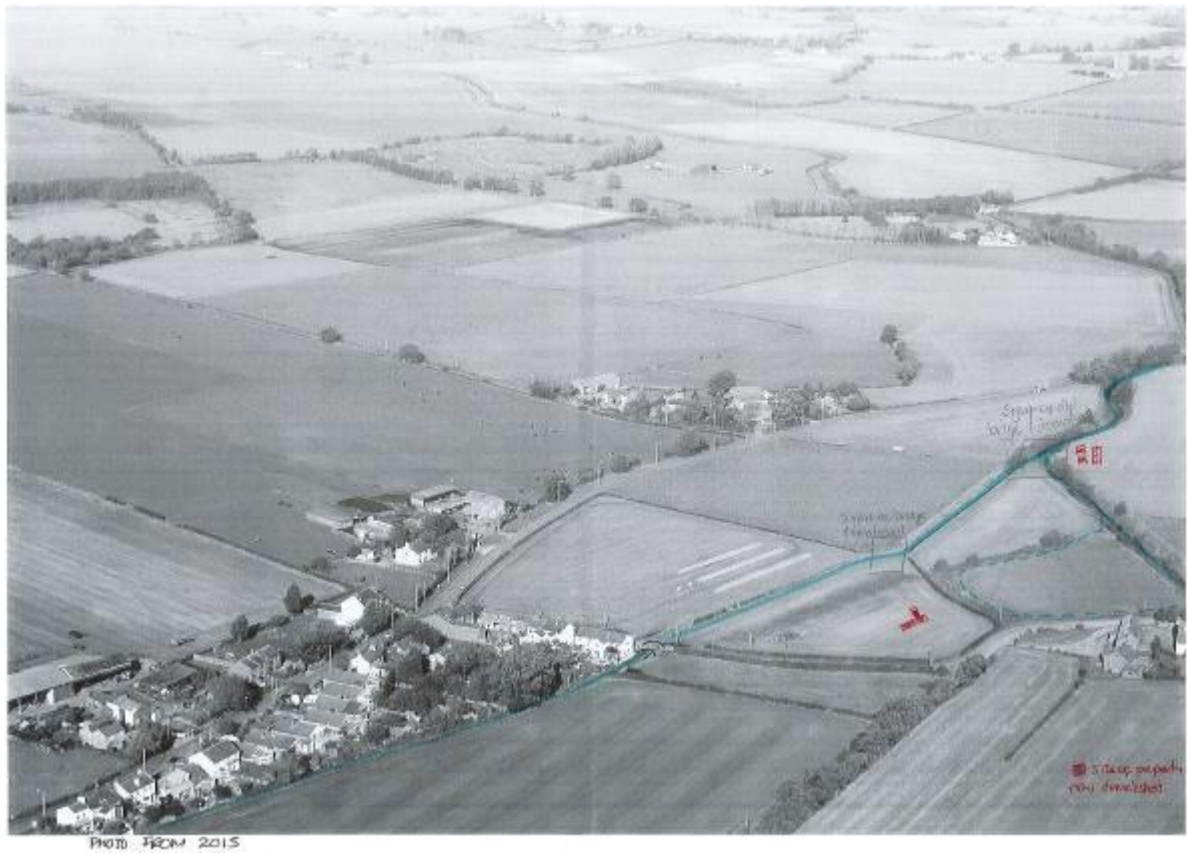
The landowner disputed the applicant's interpretation of the Tithe Map noting that there are dwellings detailed on the maps and asserting that these 'occupational roads' are access tracks to the property in the fields off Deans Lane and likewise for the property that was built after the Tithe Map was produced on the other side of the River Tawd, accessed by a wooden bridge at the end of the track from Waness Blades Road. They note that over time the properties were demolished and the tracks, no longer needed due to changing farming practices, incorporated into fields.

The landowner also noted that the application seems to take no account of a ditch part way along the route, they highlighted that on some maps it is marked and some not. They note this ditch as being very deep and quite wide that directly joins the River Tawd and they asserted that this has been there for many centuries. They opine that the track along the ditch would no doubt have been used for access to field, domestic dwellings and to maintain the waterway.

They note that the application route then appears to follow the course of the old riverbed from this point, the river having been redirected in the late 1960s, straightened out to help prevent erosion. The landowner noted that during these works the responsible authority removed the bridge from the ditch as it was no longer needed.

The landowner included annotated photographs and a copy of the Tithe Map which are reproduced below.





Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

Conclusion

In this matter there is an application that the route be recorded as an addition to the Definitive Map and Statement of a bridleway from Waness Blades Road to Deans Lane, Lathom.

There is no express dedication in this case.

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

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

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

'User evidence' was not submitted as part of the application and the Committee is advised to instead consider if an inference of dedication is possible on balance of the all the evidence at common law.

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

The evidence has been summarised and evaluated earlier within the report. To arrive at a conclusion Committee must consider the position balancing what the documentary evidence shows. It is of note that in 1778-1779 the route is referred to in the Inclosure Award as an 'intended private way or road' and 'public road or highway'. The subsequent maps are consistent with either public or private status but

On balance and given the nature of the evidence it is advised that the evidence is sufficient on balance to show that the application route has public bridleway rights.

The recommendation is that an Order be made based on the evidence available.

Risk management

Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely



on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda Papers. Provided any decision is taken strictly in accordance with the above then there is no significant risks associated with the decision making process.

Local Government (Access to Information) Act 1985
List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-712		Simon Moore, 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

