

Regulatory Committee

Meeting to be held on 25 January 2022

Part I

Electoral Division affected:
Morecambe North

**Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Bridleway from Rakes Head Lane to Hasty Brow Road, Slyne with
Hest**

(Annex A and Appendix A refer)

Contact for further information quoting file reference 804-701:

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Brief Summary

Addition to the Definitive Map and Statement of Public Rights of Way of a bridleway
from Rakes Head Lane to Hasty Brow Road, Slyne with Hest.

Recommendation

That the application for the addition to the Definitive Map and Statement of Public
Rights of Way of a bridleway from Rakes Head Lane to Hast Brow Road, be not
accepted.

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
of Way of a bridleway from Rakes Head Lane to Hasty Brow Road, Slyne with Hest.

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



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

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

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

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

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

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

Consultations

Lancaster City Council

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

Slyne with Hest Parish Council

Slyne with Hest Parish Council fully supports the application. Slyne with Hest Parish Council stated local knowledge suggests that the track has been blocked by a gate under Morecambe South junction for some time. If the bridleway is fully opened up it will make a safer route for horse riders and pedestrians between the village and Hasty Brow Road into Torrisholme. The only observation the Parish Council raised is the safe access onto Hasty Brow Road from the application route and would suggest the appropriate warning signs be placed on the road.

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	4632 6534	Junction of application route with western end of Bridleway 1-31-BW5 (Rakes Head Lane) and eastern end of Footpath 1-31-FP5a
B	4628 6516	Gate across application route
C	4625 6502	Gate across application route
D	4623 6489	Application route passes through tunnel under railway
E	4622 6483	Gate across application route
F	4628 6462	Gate across application route
G	4639 6443	Gate across application route
H	4641 6442	Gate across application route at junction with Hasty Brow Road

Description of Route

A site inspection was carried out in October 2022.

The application route is approximately 1km long and is not recorded as a public right of way on the Definitive Map and Statement.

Access to the start of the application route is along Bridleway 1-31-BW5 known as Rakes Head Lane. The bridleway extends in a generally west south westerly direction from Hest Bank Lane crossing the Leeds Liverpool Canal via a hump bridge and then continuing to a point where it meets the West Coast Main Line railway between Preston and Carlisle. At reaching the boundary of the railway the bridleway turns to run south parallel to the railway for approximately 230 metres before turning west to pass under the railway and continues for a further 30 metres before the bridleway terminates at the junction with Footpath 1-31-FP5a and the application route (point A).

Before reaching point A it was noted that there was a fallen stone gatepost adjacent to the route consistent with the location of a line shown across the bridleway on Ordnance Survey maps dating back to the 1890s as detailed later in the report.

Immediately to the east of the fallen stone post a trodden route passes through the northern boundary of the lane (bridleway) to continue as a narrow enclosed path (Footpath 1-31-FP5a) to cross the Morecambe Branch Line at grade. The alignment of the footpath on the ground from the fallen gate post east of point A through to the railway crossing differs slightly to that recorded on the Definitive Map and Statement which records the bridleway terminating at the point marked A on the Committee plan and the footpath continuing west to the railway crossing from point A.



The application route runs south from the recorded junction of from Bridleway 5 and Footpath 5a (marked at point A on the Committee plan) through dense undergrowth on a narrow trodden path, although the full width of the route – which runs between silted up and overgrown drainage ditches bounded by fences is approximately 4 metres. To the west of the bounded route are some paddocks and stables which are primarily accessed from Rakes Head Lane immediately west of point A.

From point A the narrow-trodden path extends south along the application route to midway between point A and point B on the Committee plan where a trodden track departs from the application route providing pedestrian access into the horse field. A less trodden route continues through the overgrowth along the application route towards point B where the ground becomes very wet and it is necessary to stoop under a tree which has fallen across the route.

At the point marked B on the Committee plan the application route is crossed by a locked wooden gate with an adjacent 'V' shaped wooden stile. The ground around the gate and stile is very wet and waterlogged. There are no markings on the stile indicating whether it is for public or private use.

Beyond the gate and stile the route continues along the eastern edge of a pasture field. There is no trodden track and no indication where people walked after crossing the stile at point B. The ground crossed by the application route was very wet. There was evidence of the remains of ditches running along either side of a central strip of grass down which the application route runs. The ditches appeared to have been filled in and grassed over and land on either side of the route all formed part of one larger field. It was not possible to walk the line of the application route on the day it was inspected without getting very wet feet (even in walking boots) due to how waterlogged the land had become. The ground to the west was drier and it was possible to walk parallel to the route down to the field boundary at point C.

The application route then passed through a field gate on the boundary of two different landowners' fields. The metal gate was partly overgrown and wired up so that it was not possible to open it. South of the gate the route continued along the edge of a field adjacent to the hedge line towards the railway loop line (linking the main line to the branch line). There was no evidence of a track although at one-point bricks were visible in the surface where it looked like they had been deposited in a particularly wet spot – possibly so that a farm vehicle could travel along the edge of the field without getting bogged down.

On approaching the tunnel under the railway (loop line) conditions under foot were again very wet and muddy. The route passes under the railway (point D) and then through a gateway (no gate) to continue along the eastern side of a field running alongside a hedge to a gateway (point E) in that hedge where two metal field gates have been put across the gap and tied in position. It would have been possible to move them to allow for cattle which graze the fields or farm machinery to pass through.

The application route turns south south east through the gateway at point E and continues across a rough pasture field following what appears to be the grassed-over remains of a track. The field on either side of the route was wet and soft



suggesting that farm vehicles wishing to access the land would generally need to travel along the track unless there had been a dry period of weather.

The route passes through a muddy gateway (open on the day of inspection) located in the fence at point F on the Committee plan and then continued as a grass track crossing a further rough pasture field – with both undulating and boggy land on either side – through to a further metal gateway at point G and then an enclosed track for approximately 20 metres to a further metal gateway (locked) to exit onto Hasty Brow Road.

In conclusion there was evidence of pedestrian use of the route from point A to point B but it was not apparent whether this use was public or private or where those people using this part of the route were going or why. Some use may have been made of this section to access the horse fields but there was no evidence that horses or vehicles were using it and it was not the only – or main access to the fields.

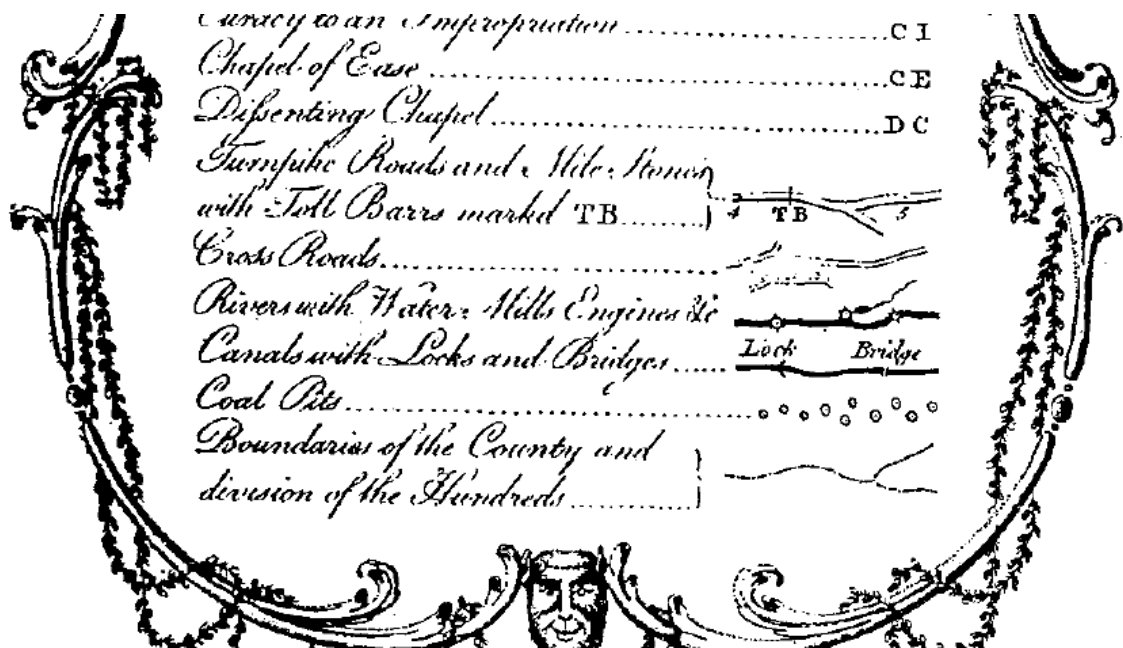
There was no evidence to suggest that the application route from point B through to point H was being used on horseback or on foot. There was evidence – which was confirmed by the owner of the fields crossed by the route from point C through to point H that the track across the field between points E-H had been surfaced in the past to provide access to the fields and also for use by the Railway Company to maintain the rail infrastructure.

Map and Documentary Evidence

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

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

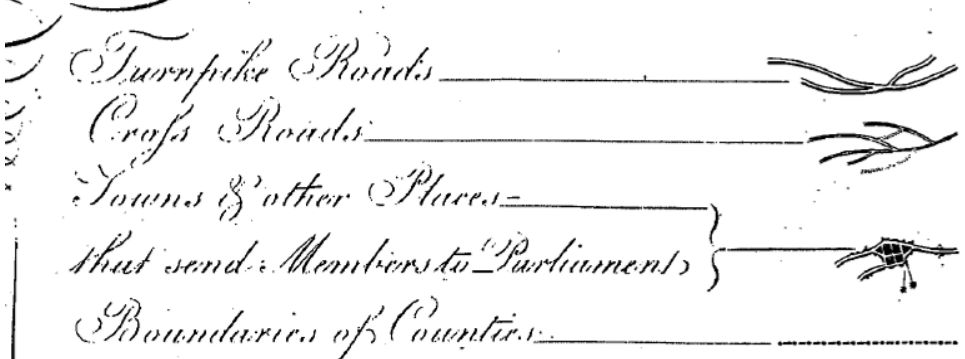




Observations		The application route is not shown. Rakes Head Lane – from which the application route starts - is not shown but Hasty Brow Road – to which the application route connects - is shown as a cross road.
Investigating Officer's Comments		The application route probably did not exist in 1786.
Greenwood's Map of Lancashire	Map of 1818	Small-scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public



roads and the two were not differentiated between within the key panel.

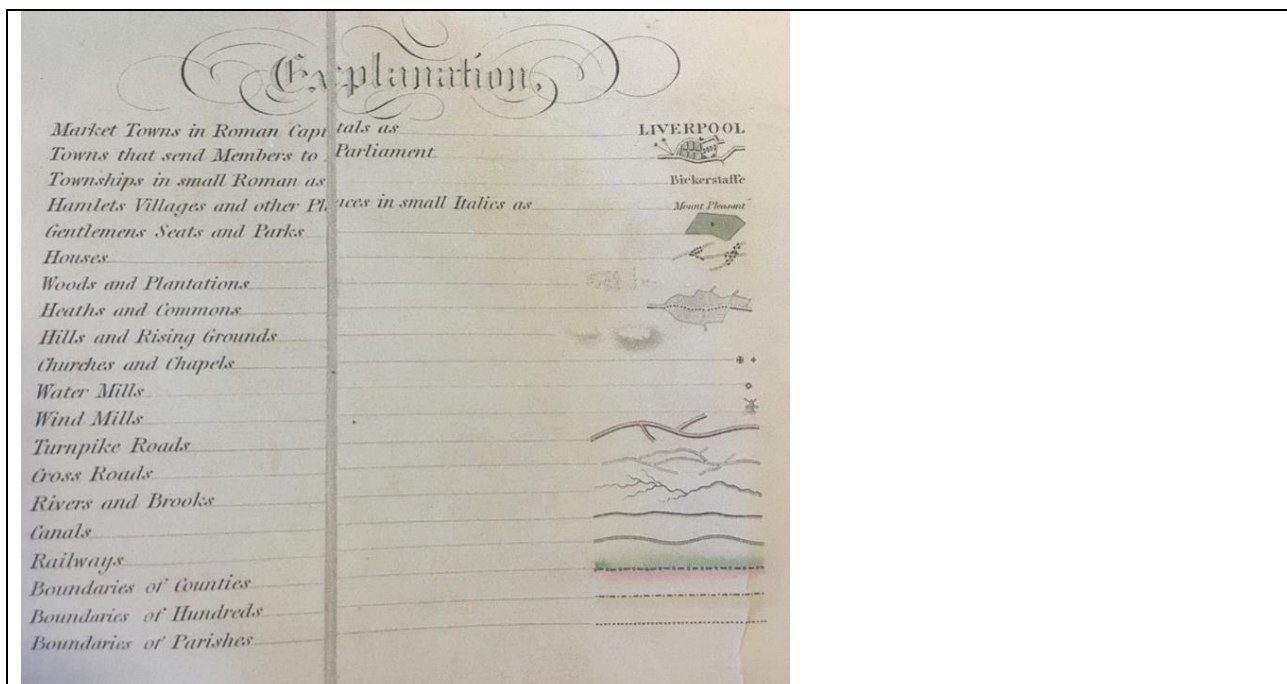


Observations		The application route is not shown. Rakes Head Lane is shown extending west as far as the Lancaster Canal and Townfield Lane is shown going west from Hasty Brow Road across the canal towards the land crossed by the application route but the route itself is not shown.
Investigating Officer's Comments		The application route probably did not exist in 1830.
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 71/2



inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.



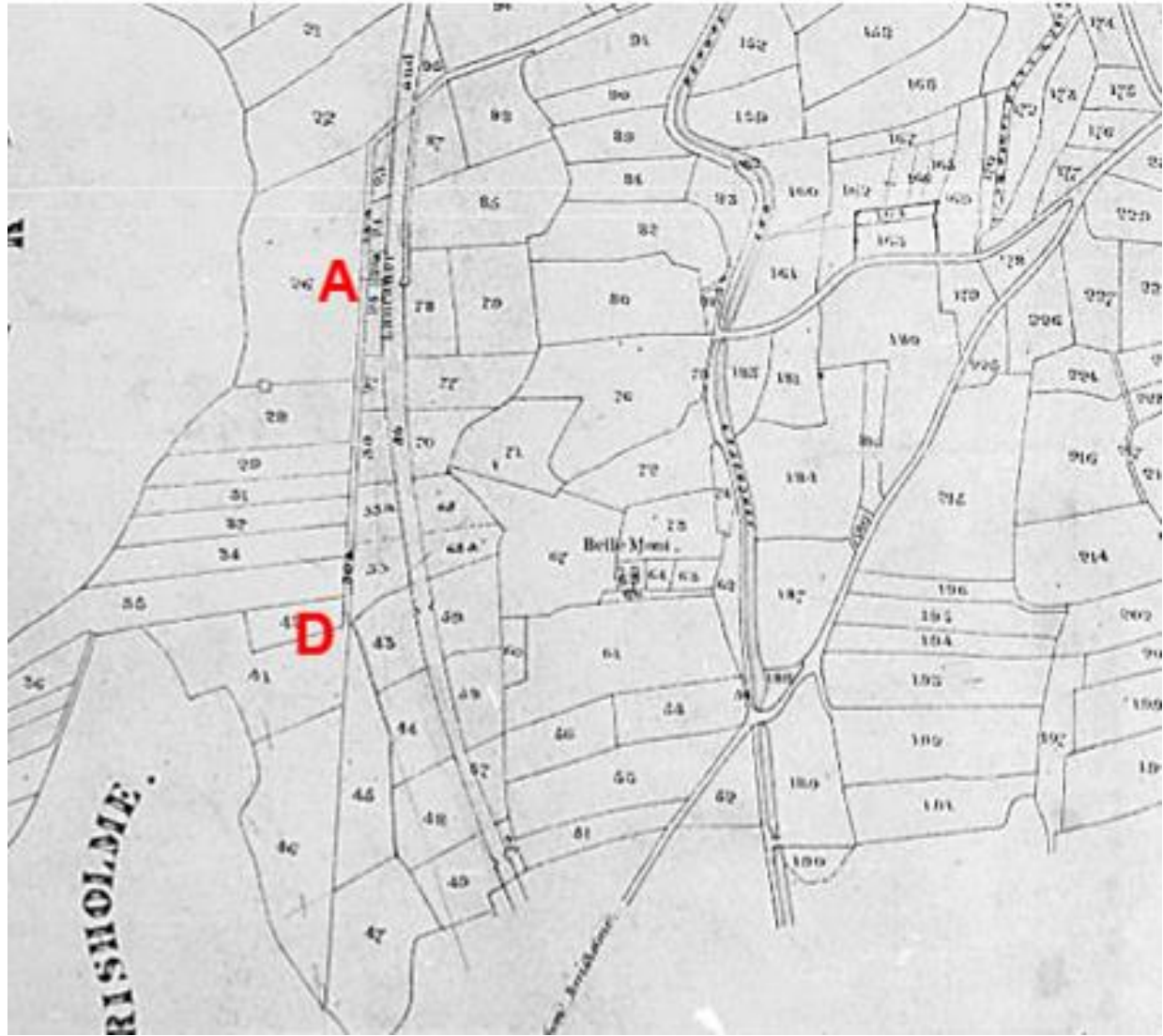


Observations		Rakes Head Lane is shown extending much further west from crossing the Lancaster Canal – possibly as far as the start of the application route at point A but the application route is not shown.
Investigating Officer's Comments		The application route probably didn't exist in 1830.
Tithe Map and Tithe Award Apportionment for Skerton	1841	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.



<p>Observations</p>		<p>The Tithe Map of Skerton includes the land crossed by the most southerly part of the route through to Hasty Brow Road. The application route is not shown on the map and the field through which it runs is numbered as plot 88 which was owned by Thomas Greene Esq. and occupied by Richard Gilcow. There is no reference to the existence of the application route.</p>
<p>Investigating Officer's comments</p>		<p>The southern end of the application route exiting onto Hasty Brow Road did not exist in 1840.</p>
<p>Tithe Map and Tithe Award or Apportionment for Slyne with Hest</p>	<p>1846</p>	<p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p>









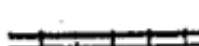
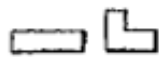




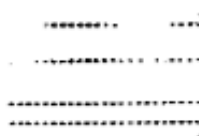



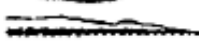




		143	Ditto	arable	6 1 21	0 4 2	2 0 9
		160	Mowbrick	pasture	4 3 12	0 2 9	1 11 1
					74 3 0	2 2 2	19 3 10
Tatham, William	Himself	232	Goodlands Parrock	pasture	1 2 30	0 1 1	0 12 7
Township of Syne-with-Hest	Themselves	30a	Lane		0 3 14		
		240	Tithe Barn		0 0 10		
		243a	Pen Field		0 0 7		
					0 3 31		
	John Shaw	289	House and Garden		0 1 24	0 0 2	
	Henry Cumpety	291	House and garden		0 1 10	0 0 1	
Thomas, James	Stephen Onthwaite	56	Out Field Close	arable	1 3 25	0 1 3	20 14 0

		132	Hest Bank Inn and Garden		0 1 17	0 0 0	0 0 13
		133	Garden		0 3 30	0 0 2	
Greene, Thomas, Esq.	James Gardner	208	Standerlands	meadow	1 2 38	0 0 6	0 0 11
		229	Gallows Close	arable	1 3 30	0 1 2	20 0 10
					1 2 32	0 1 1	40 12 2
	Himself	3	Plantation		3 2 22	0 2 3	0 13 0
		7	Waste adjoining Sea Shore		0 2 37		
		9	Ditto	ditto	4 0 24		
		24a	Old Road		3 2 0		
		114	Plantation		0 0 32		
		171	Bedlam Lane Wood		0 2 7		
		188	Plantation		1 1 21		
		271	Ditto		0 1 15		
		276	Ditto		0 2 34		
		292	Ditto		0 1 7		
		296	Ditto		0 0 34		
		354	Ditto		0 1 26		
		297	Ditto		0 0 10		
					0 0 27		



PAPER 1837 XLI 405.

ADDED IN THE PLANS made under the ACTS
RELATIVE TO TITHE MAPS in ENGLAND & WALES.

	Tollpike Roads		Churches
	High or Great Roads		Chapels
	Rail Roads		Dwelling Houses
	Bridle Roads		Farm Buildings
	Foot Paths		Smithies
	Open Roads		Stone Windmills
	Sunk Roads		Wooden Windmills
	Raised Roads		Water Mills
	RIVERS		Iron Works
			Glass Works

Extract from the British Parliamentary Paper 1837 Key of Symbols

Observations

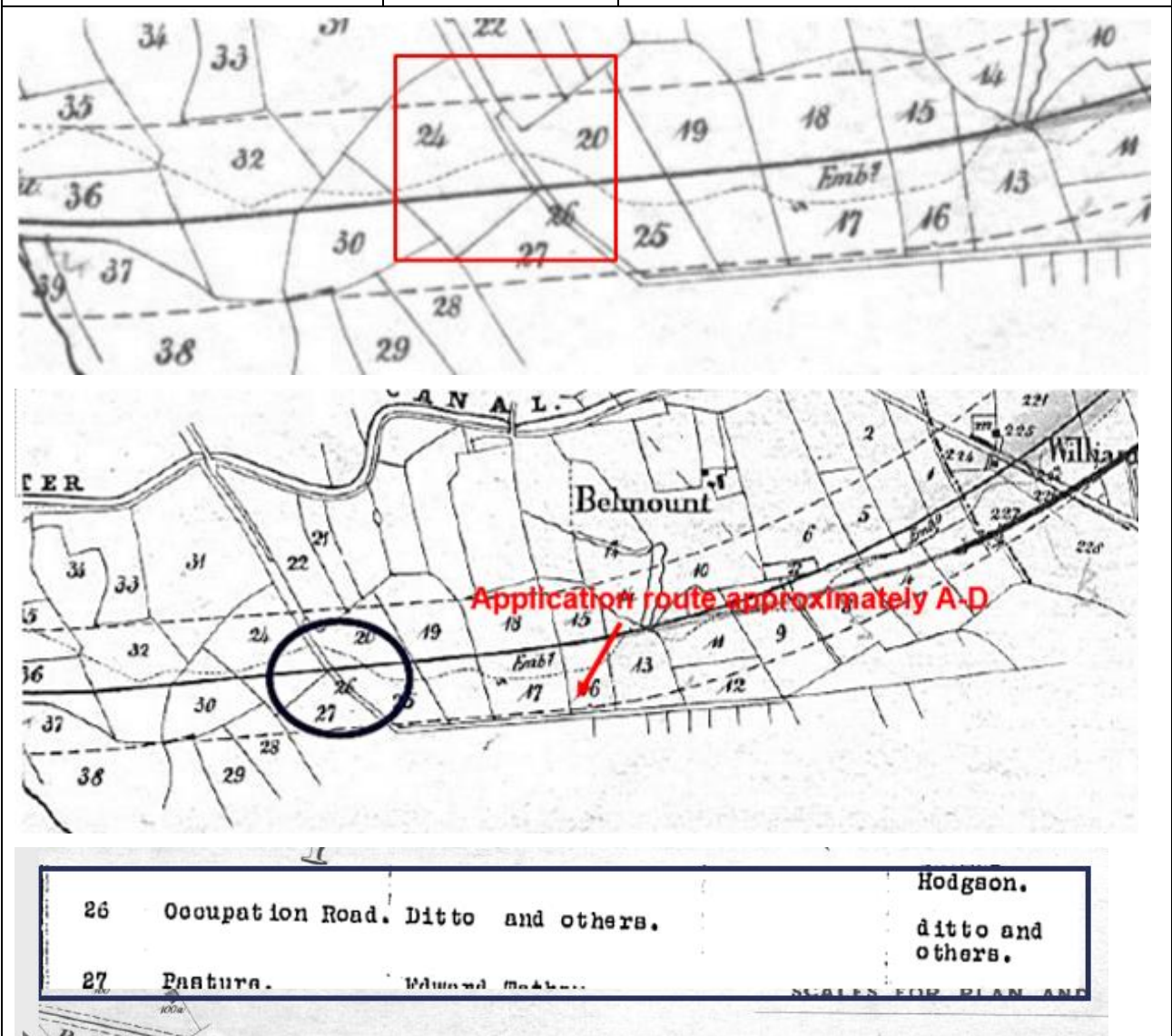
The Tithe Map for Slyne with Hest was prepared five years later than the Map for Skerton and covers most of the land crossed by the application route. The Lancaster to Carlisle railway is clearly shown passing through the parish to the east of the application route. Rakes Head Lane (1-31-BW5) is shown extending west from Hest Bank Lane crossing the canal and continuing as far as the railway. It is then shown running south along the eastern side of the railway to cross under the railway and join another bounded (fenced) route



		<p>running along the side of the railway at point A. Neither Hest Bank Lane nor Rakes Head Lane are numbered on the map and it was noted roads now known to be public roads were not numbered on the map or recorded in the Tithe Award.</p> <p>The fenced route running north along the western side of the railway from point A was numbered as plot 24a. A line was shown across the southern end of the route close to point A and the fenced strip extended north for approximately 220 metres before turning to continue a short distance in a north easterly direction to the boundary of the railway immediately across from the point where Rakes Head Lane turned south. No railway crossing is shown suggesting that the original route of Rakes Head Lane may have been altered by the railway. Plot 24A was described in the Award as being an 'Old Road' owned and occupied by Thomas Green Esq. for which no Tithes were payable.</p> <p>The footpath (1-31-FP5a) is not shown on the Tithe Map but the application route is shown as a continuation of Rakes Head Lane extending in a south south westerly direction as a bounded route through to the approximate position of point D where it provided unrestricted access into a field numbered 41. The application route itself – unlike Rakes Head Lane – was numbered (30A). Plot 30A is described in the Tithe Award as a 'lane' owned and occupied by the Township of Slyne with Hest for which no Tithes were payable. Plot 41 was listed as pasture land owned by Richard Greene and occupied by Richard Gilloe with tithes payable.</p>
Investigating Officer's Comments		<p>The application route between point A and point D existed in 1845 providing direct access to a pasture field. The continuation of the route through to Hasty Brow Road was not shown. The route between point A and point D was described as a lane owned by the township although it is noted that routes now known to be public roads were not</p>

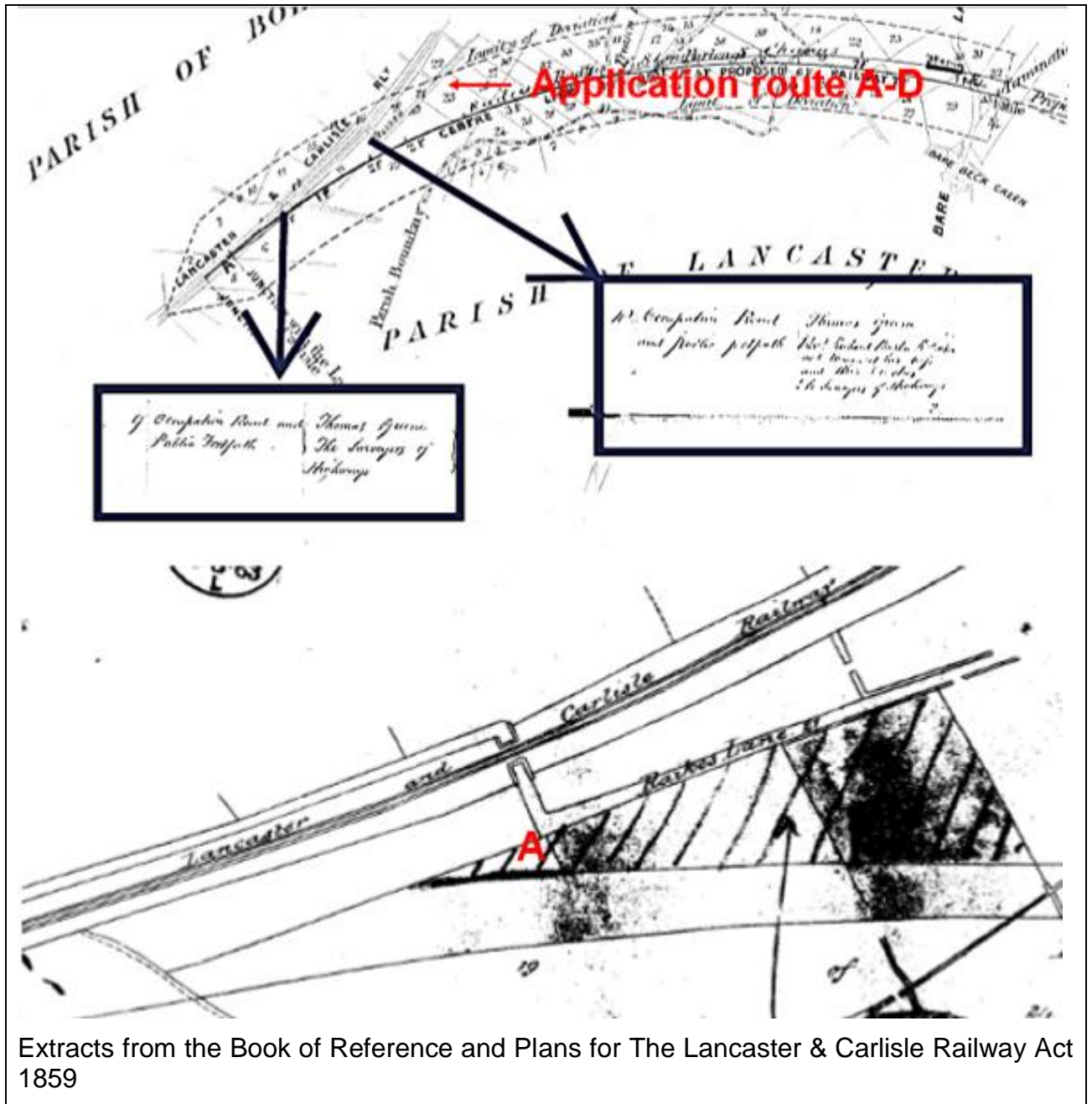


<p>Canal and Railway Acts</p>	<p>1844-1887</p>	<p>numbered or listed in the Tithe Award. Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't 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>
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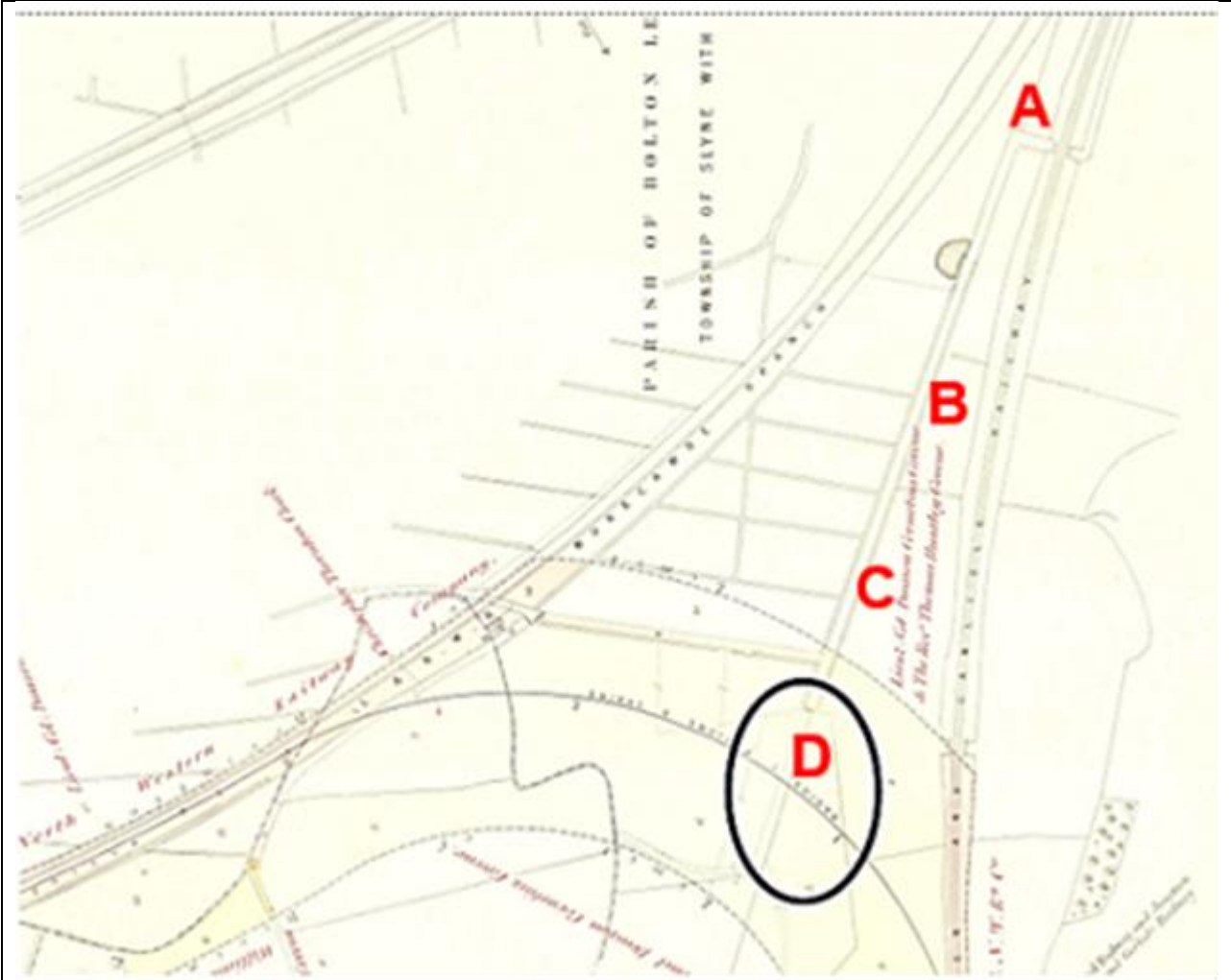
Extracts from Plan and Book of Reference – Lancaster & Carlisle Railway Act 1844





Extracts from the Book of Reference and Plans for The Lancaster & Carlisle Railway Act 1859





Note: Oval shape surrounding point D overlaid on plan by Network Rail to show location of the crossing point.



		Huntley Greene			
5	Field and occupation road	Lieutenant-Colonel Dawson Cornelius Greene	--	--	Edward Ashes
6	Field and ditches	Lieutenant-Colonel Dawson Cornelius Greene	--	--	Edward Ashes
7	Occupation road	Lieutenant-Colonel Dawson Cornelius Greene and The Reverend Thomas Huntley Greene			
8	Occupation road crossing railway on the level	The London and North Western Railway Company			

Extracts from the Deposited Plan and Book of Reference for The London and North Western Railway Act 1887

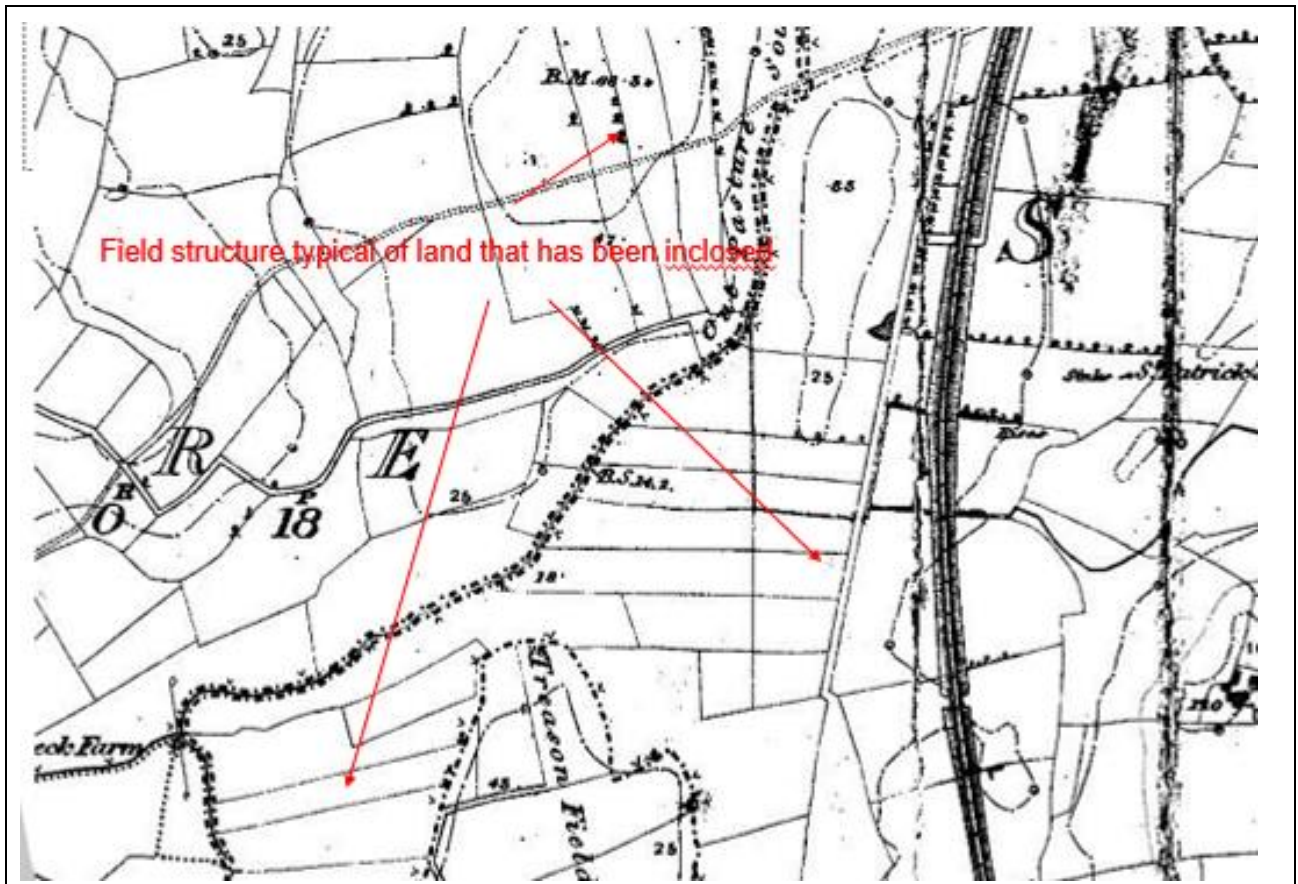
<p>Observations</p>		<p>A significant amount of useful historical information has been obtained from Network Rail.</p> <p>The application route crosses the railway at point D but between point A and point D it can be seen from looking at the Committee plan that it is surrounded by three lines of railway that were constructed between 1844 and 1887.</p> <p>The line constructed under the Lancaster and Carlisle Railway Act 1844, is now referred to by Network Rail with an Engineers Line Reference (ELR) of CGJ7, and bridge 11 is on this line. It is more commonly known as the West Coast Main Line and the route recorded as 1-31-BW5 passes under bridge 11. The line constructed under the later Lancaster and Carlisle Railway Act 1859, is now referred to with an ELR of HBL, and Morecambe Golf Club Course level crossing – over which 1-31-FP5a crosses is on this line.</p> <p>The last section of railway to be built was constructed under the London and North-Western Railway Act 1887 and now has an ELR of MSM. Bridge 1 – under which the application route runs (point D on the Committee plan) is located on this line.</p> <p>The Lancaster & Carlisle Railway Act</p>
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		<p>1844</p> <p>The Deposited Plan and Book of Reference for the implementation of the 1844 Act show Rakes Head Lane crossing land where the railway was proposed to be constructed and describes it as a 'private occupation road' numbered 26 in the ownership of Thomas Greene. The alignment of the route is consistent with that shown on the Tithe Map prepared in 1845 and described in part as 'old road' (Tithe Award plot 24a). The route numbered 26 on the Railway plan – and described as an occupation road – included the application route between point A and point D. The application route beyond point D is not shown.</p> <p>The Lancaster & Carlisle Railway Act 1859</p> <p>Fifteen years later it was legislated to build a second railway which would link to the Lancaster & Carlisle Railway north of the application route.</p> <p>The Deposited Plan and Book of Reference for the 1859 Act shows the '1844' Lancaster & Carlisle Railway and the bridge under which 1-31-BW5 runs (bridge 11). The route is numbered 18 on the plan and is described as 'occupation road and public footpath' and is labelled as Rakes Head Lane south of point A – extending towards point B. The original route of Rakes Head Lane as affected by the construction of the '1844' railway is no longer shown from where it crossed the railway down to point A although Rakes Head Lane leading to the railway from Hest Bank Lane is (numbered 9) is also described as 'occupation road and public footpath' and appears to show the original line of the occupation road (number 26 in the 1844 Act), as crossing the railway by a footpath only at this point.</p> <p>The London and North-Western</p>
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		<p>Railway Act 1887</p> <p>The final section of branch line to be constructed was the length that bisects the application route at point D.</p> <p>The Deposited Plan and Book of Reference again show bridge 11 through which 1-31-BW5 passes although the route itself is not referred to.</p> <p>There are no public rights recorded as affecting this intended line of railway. The application route is shown from point A through to just short of point D and is numbered as plot and described as 'occupation road'.</p>
Investigating Comments	Officer's	<p>When plans were drawn up to show the proposed route of the Lancaster & Carlisle railway in 1844 part of the application route (A-D) existed and was considered to be an occupation road providing access to fields south F point. There was no through route connecting to Hasty Brow Road (point H) shown.</p> <p>The 1859 plans show that Rakes Head Lane appeared to have been diverted when the '1844' railway was constructed so that it ran along the track and under the railway on the route now recorded as 1-31-BW5 and continued through point A and along the application route to point D. There is no depiction of a through route to point H at Hasty Brow and the route was described as an occupation road providing access to fields. There is however reference to public footpath rights which appeared to be acknowledged along at least part of Rakes Head Lane and that must have led to somewhere.</p>
Inclosure Act Award and Maps		<p>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>





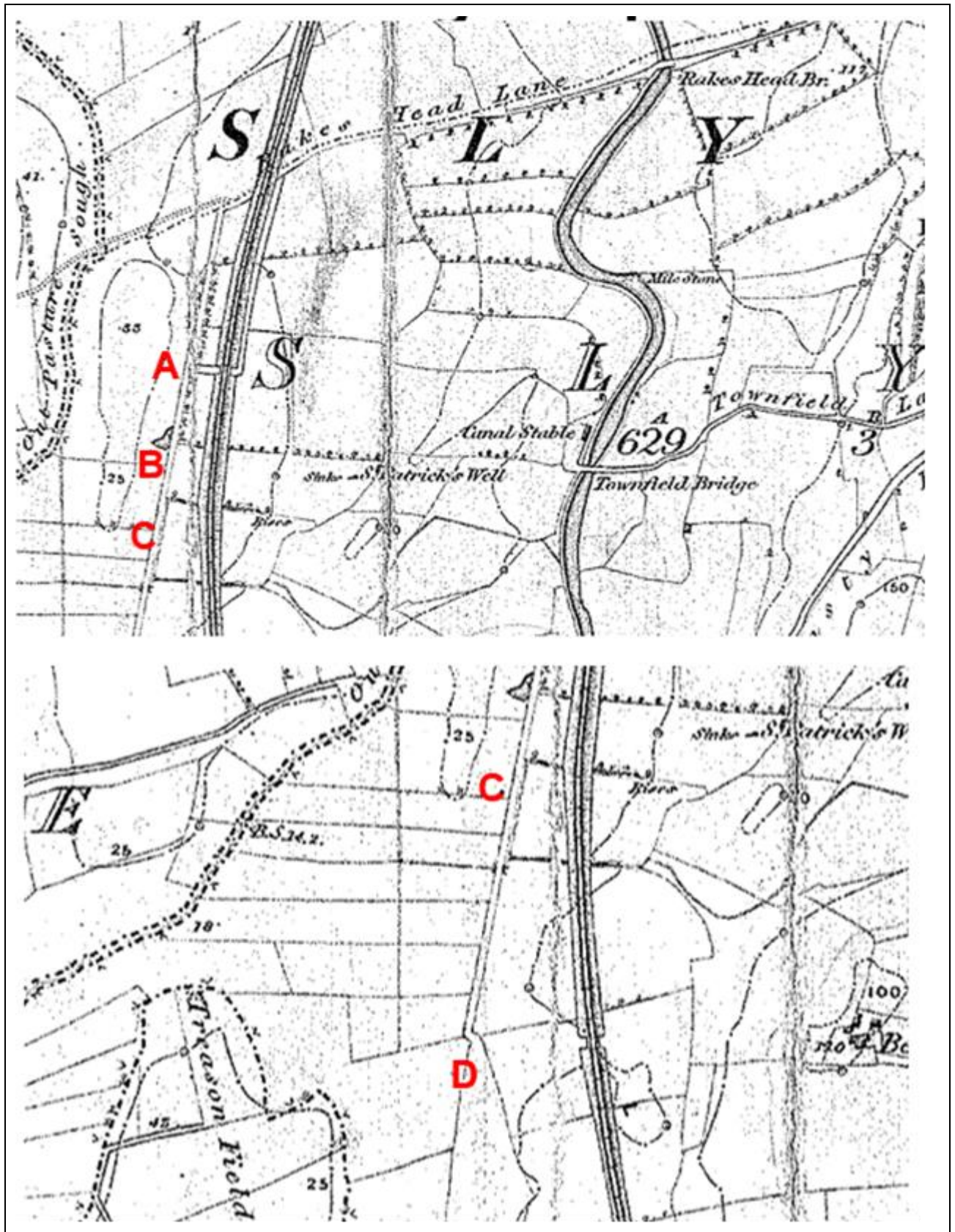
<p>Observations</p>		<p>There are no listed Inclosure Awards or agreements in the County Records Office. However, references were found to the ownership of some inclosure award allotments of land within the parish of Slyne with Hest (Ref. DDQ/2/5) dated 6 April 1843 but there was no plan and nothing to indicate that the land referred to was crossed by the application route.</p> <p>The topography of the landscape in the 1840s – as shown on the Ordnance Survey 6 inch map extract above – does however suggest the probable inclosure of an area of land abutting the application route – most probably predating the construction of the railway. A series of long thin fields can be seen in three areas – one of which abuts the application route between points A-D with the only access to those fields possibly being via the long straight section of application route (A-D).</p>
<p>Investigating Officer's Comments</p>		<p>Although no actual inclosure award, agreement or map could be found it does look possible that the application</p>

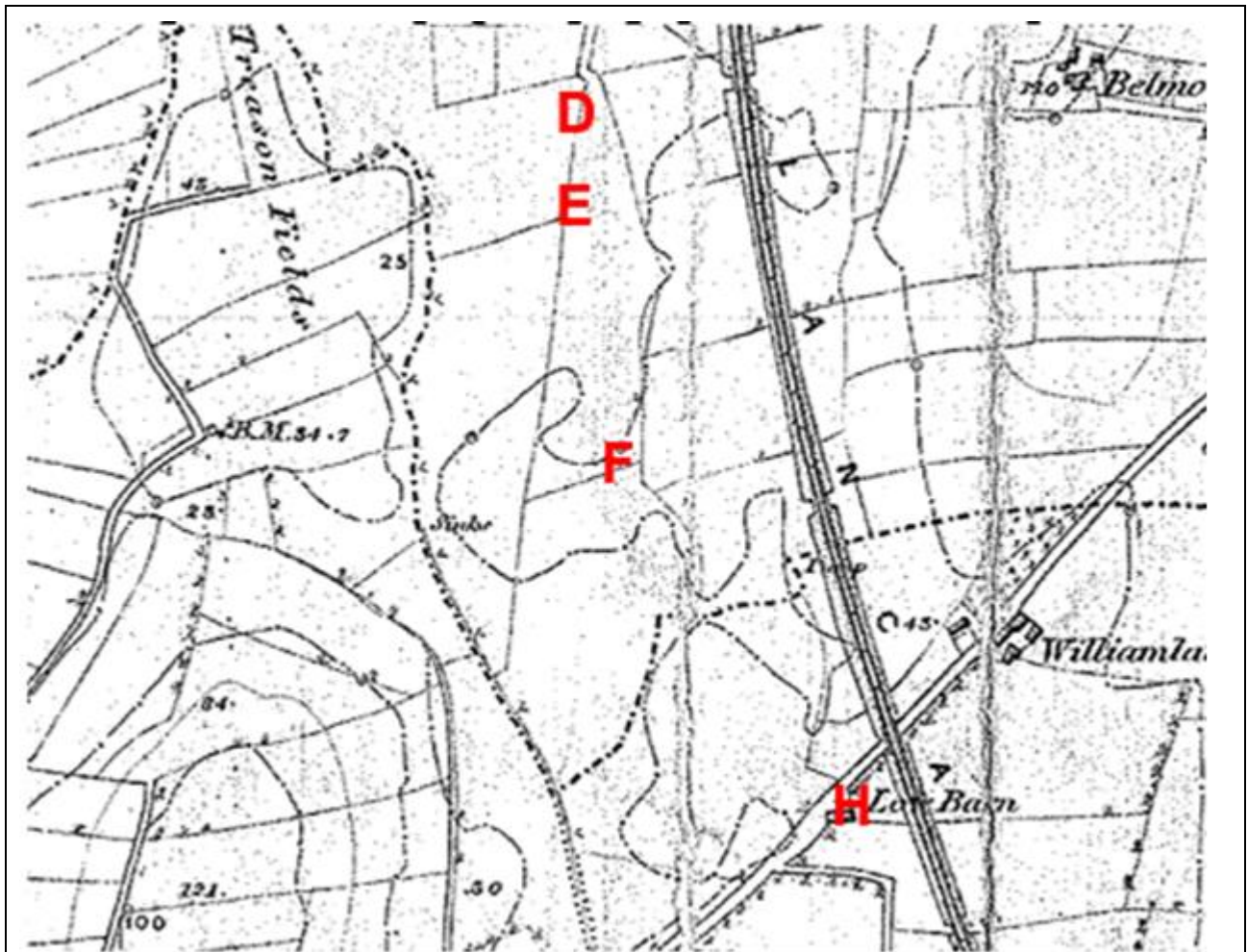


		<p>route A-D may have originally been set out to provide access to land that had been enclosed. Whether it was set out for that purpose, and whether it carried public rights at that time is not known but it is noted that it was not shown as part of a through route at that time connecting at either end to routes known to be public so it is possible that it was originally set out as a private route – sometimes referred to as an occupation road.</p>
<p>6 Inch Ordnance Survey (OS) Map</p> <p>Sheet 30</p>	<p>1848</p>	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1848.¹</p> <p>However it has recently become apparent that in many instances there was more than one print run for OS first edition 6 inch maps. Up until c.1867 the 6-inch maps were updated to show newly constructed railways (of which there were many), which explains why more than one version may be found with apparently the same publication date (with one showing a railway, and one not).</p> <p>As part of the County Council's research the Investigating Officer looks at the OS 6 inch maps located within our own records and also those available on the National Library of Scotland website - https://maps.nls.uk/os/</p> <p>Copies of the maps held by the National Library of Scotland are usually 'final' printings which therefore include railways which in most instances post-dated the survey and first publication of the map.</p> <p>Where appropriate extracts of both copies of the map (if found) will be inserted into the report and clearly labelled.</p>

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.








Map extracts from Lancashire County Council records

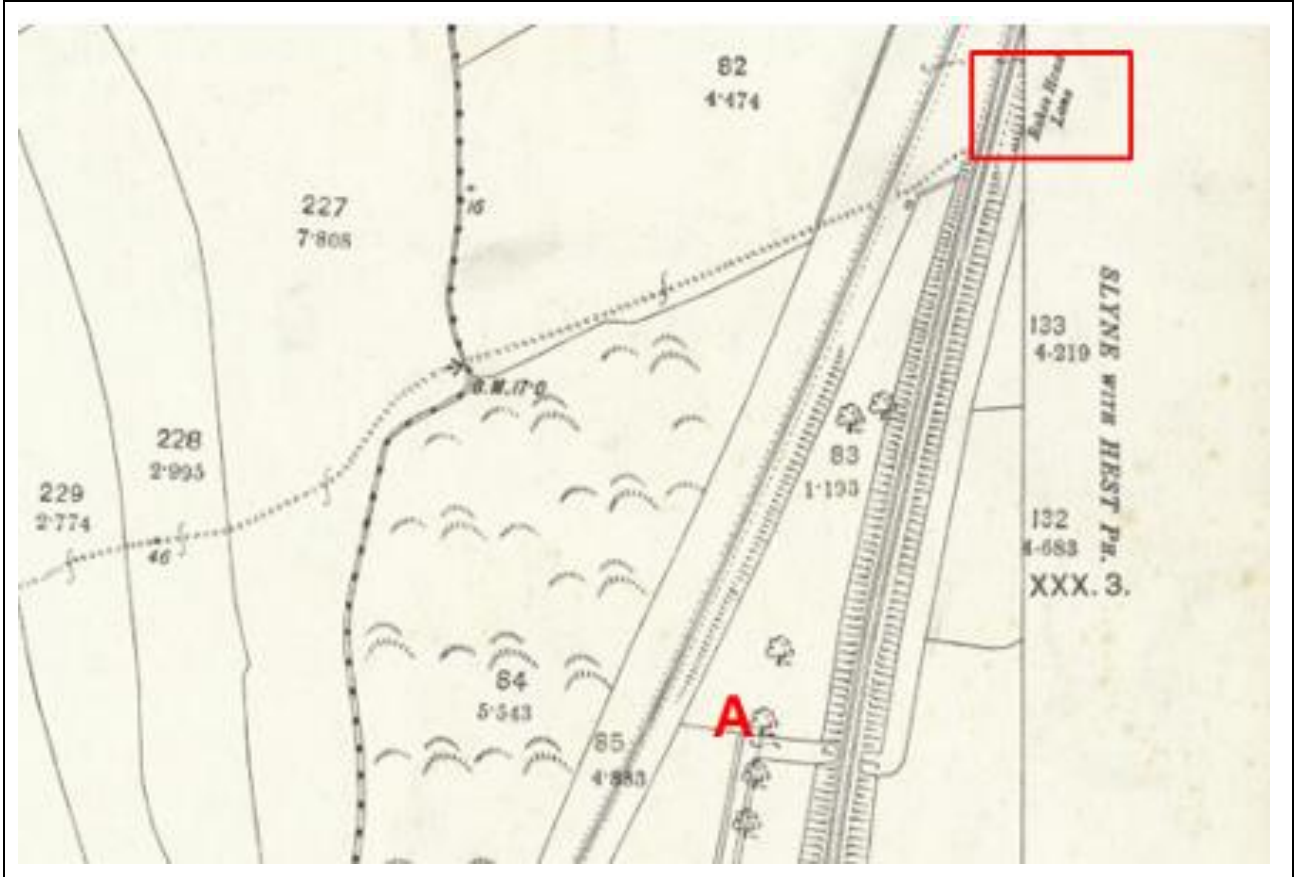
<p>Observations</p>		<p>The map postdates the construction of the '1844' railway. The application route is shown from point A extending in a south south westerly direction towards point D. The rest of the application route is not shown.</p> <p>The route now recorded as 1-31-BW 5 is shown to run along the section of enclosed track constructed as part of the railway works and passes under the railway to point A. What appears to have been the historical route of Rakes Head Lane running north from point A is still shown. An unenclosed track is shown continuing west from the old line of Rakes Head Lane (where it crossed the railway on its original alignment).</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed between point A and point D in 1884-5 as part of a longer route providing access to fields. No through route connecting to Hasty</p>

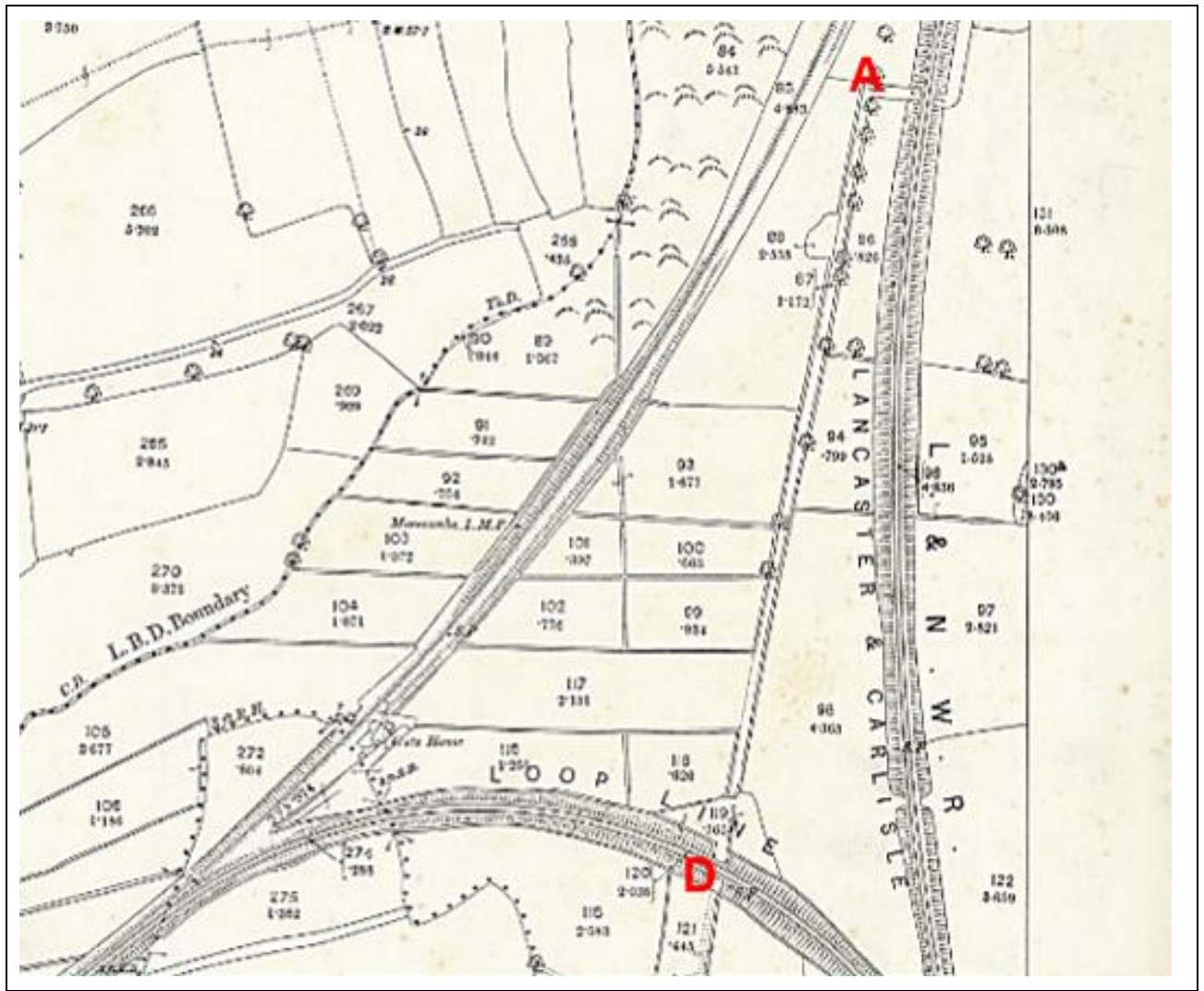


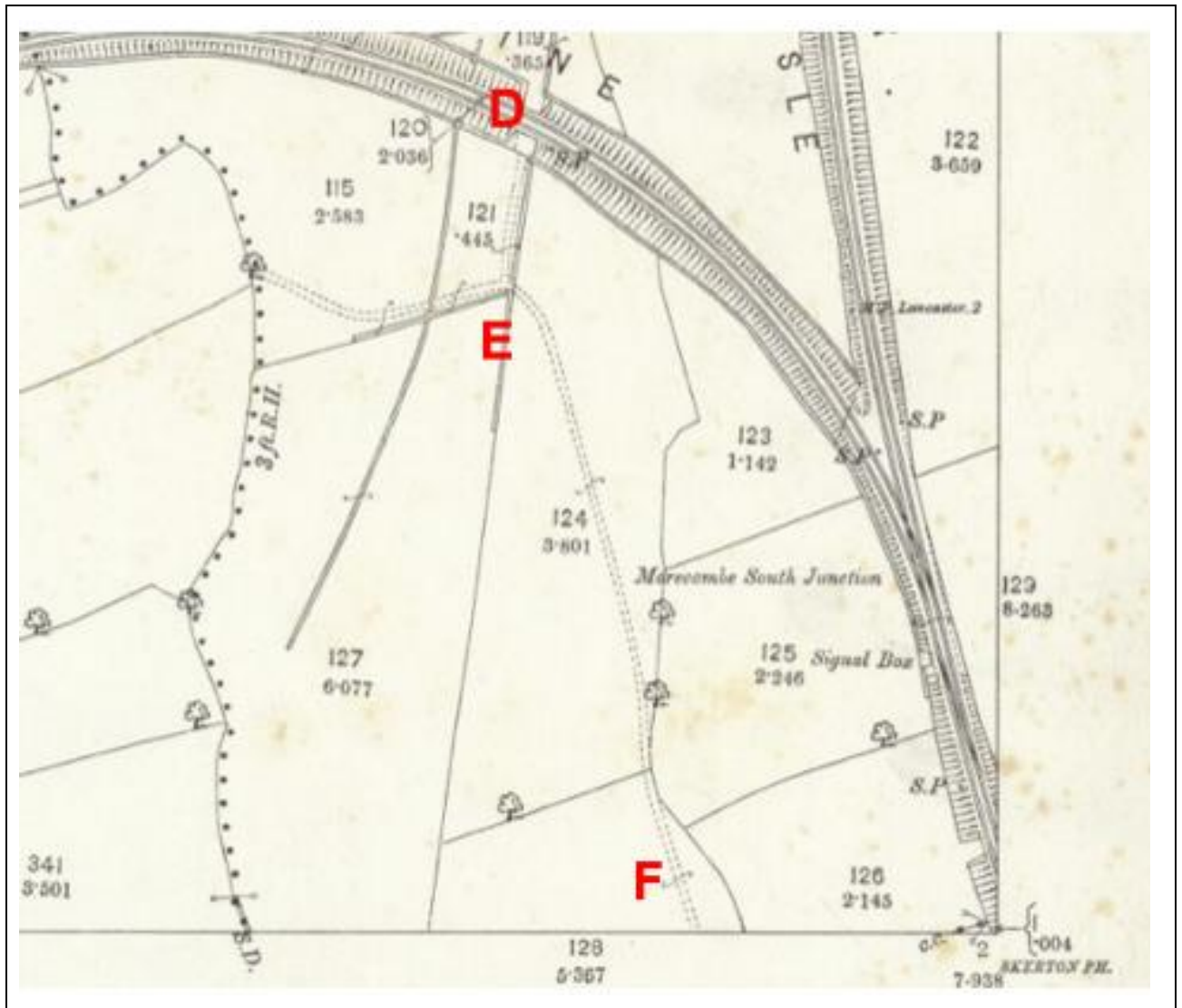
		Brow Lane is shown and it unlikely that a bridleway existed along the full length of the application route at that time.
One inch OS Map	1846-51	David & Charles reprint of the first edition 1 inch OS map sheet 91, surveyed 1842-47 and published between 1846-1851
		
Observations		The application route between point A and point D is shown as part of a longer bounded route but the route from point D to exit onto Hasty Brow Lane is not shown.
Investigating Comments	Officer's	The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle as a through route shown on this map was likely to have been accessible at that time. In this case only part of the application route is shown (A-D) and larger scale maps produced around the same time

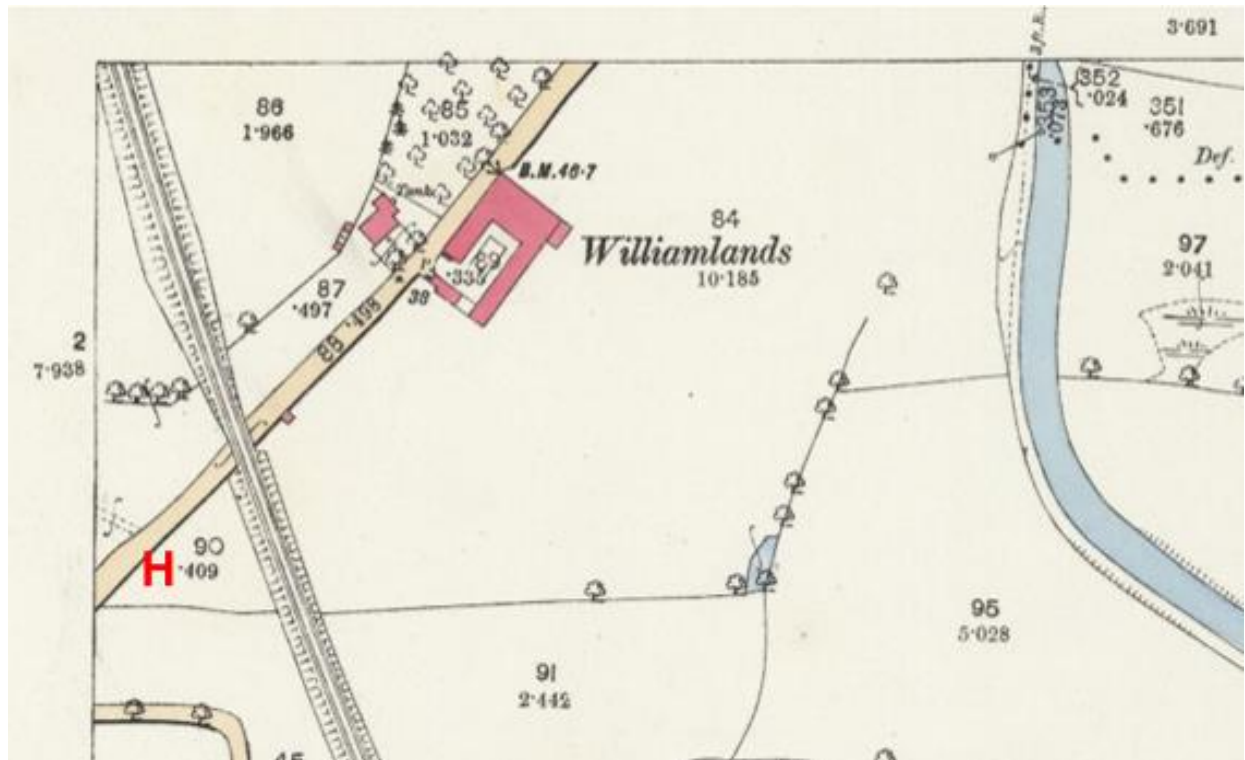
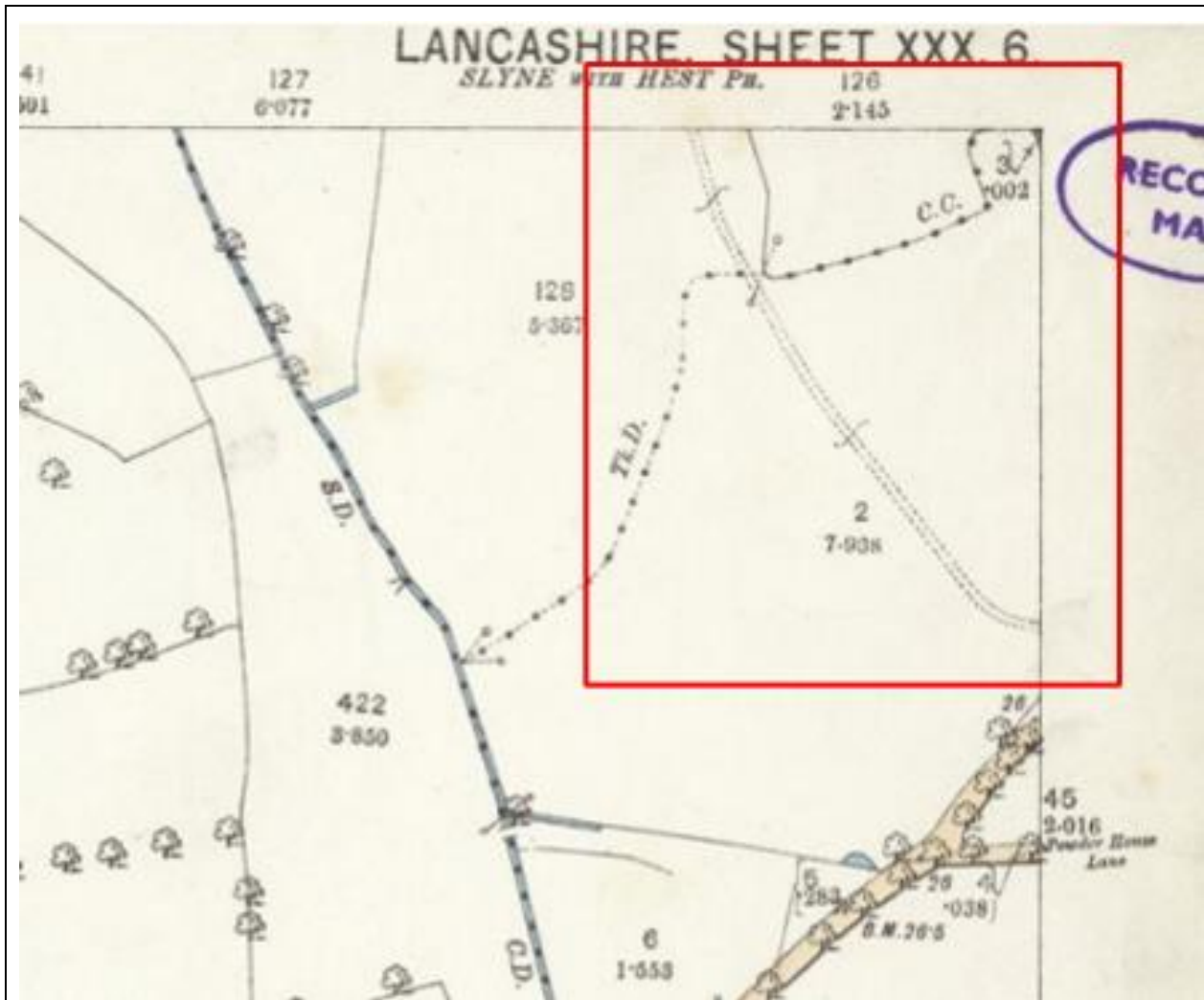


		do not suggest that access was available along the application route through to point H. It is considered unlikely that the application route was used as a through route by the public at that time.
25 Inch OS Map XXX.2 XXX.6 XXX.7	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1889 and published in 1891.









Observations

The full length of the application route is



		<p>shown.</p> <p>The altered length of Rakes Head Lane is shown with what appears to be a pedestrian level crossing across the Lancaster – Carlisle main line railway on the original alignment of the lane. Rakes Head Lane however crosses underneath the railway further south (Bridge 11) and continues a short distance to point A where a line is drawn across the route – most likely indicating the existence of a gate. The application route then continues south south west with drainage ditches along either side towards point D. Just before reaching point D – where it passes under the railway – a further line is shown across the route indicating the likely existence of a further gate.</p> <p>The application route passes under the railway at point D and then through a further gate to continue as an unfenced route along the edge of field 121 to cross a further field boundary at point E and continue as an unbounded track across two fields (crossing one further field boundary) through to Hasty Brow Road at point H where a further gate may have existed.</p> <p>The route recorded as 1-31-FP5a extending west from point A is not shown.</p> <p>No part of the route was shown coloured or shaded with a thickened line down one side.</p>
Investigating Officer's Comments		<p>The full length of the application route existed in 1881 and may have been capable of being used – at least on horseback.</p> <p>The existence of gates along a public route would not have been considered unusual in the 1800s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p>



		<p>Benchmarks were located along a line of levelling, and often followed lines of communication. However, they can also be found on rocks in the middle of private fields and consequently it cannot be assumed that a benchmark is indicative of a public right of way</p> <p>Shading, colouring and the use of thickened lines 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 so the fact that the application route is not shown in this way suggests that it was not considered to be a public vehicular route at that time or not well-maintained by the council.</p> <p>The application route was the only route continuing onwards from point A at that time suggesting that other than providing access to adjacent fields it could have been used as a through route.</p> <p>Of significance perhaps is the construction of the railway and the fact that access would have been required to and from the railway during its construction. Whilst materials could have been transported along the existing lines it is also possible that the track from point H through to point D may have been used for this purpose.</p>
<p>1 inch OS Map Sheet 59 - Lancaster</p>	<p>1898</p>	<p>Further edition of the OS 1 inch map surveyed 1842-1848, revised 1896 and published 1898.</p>

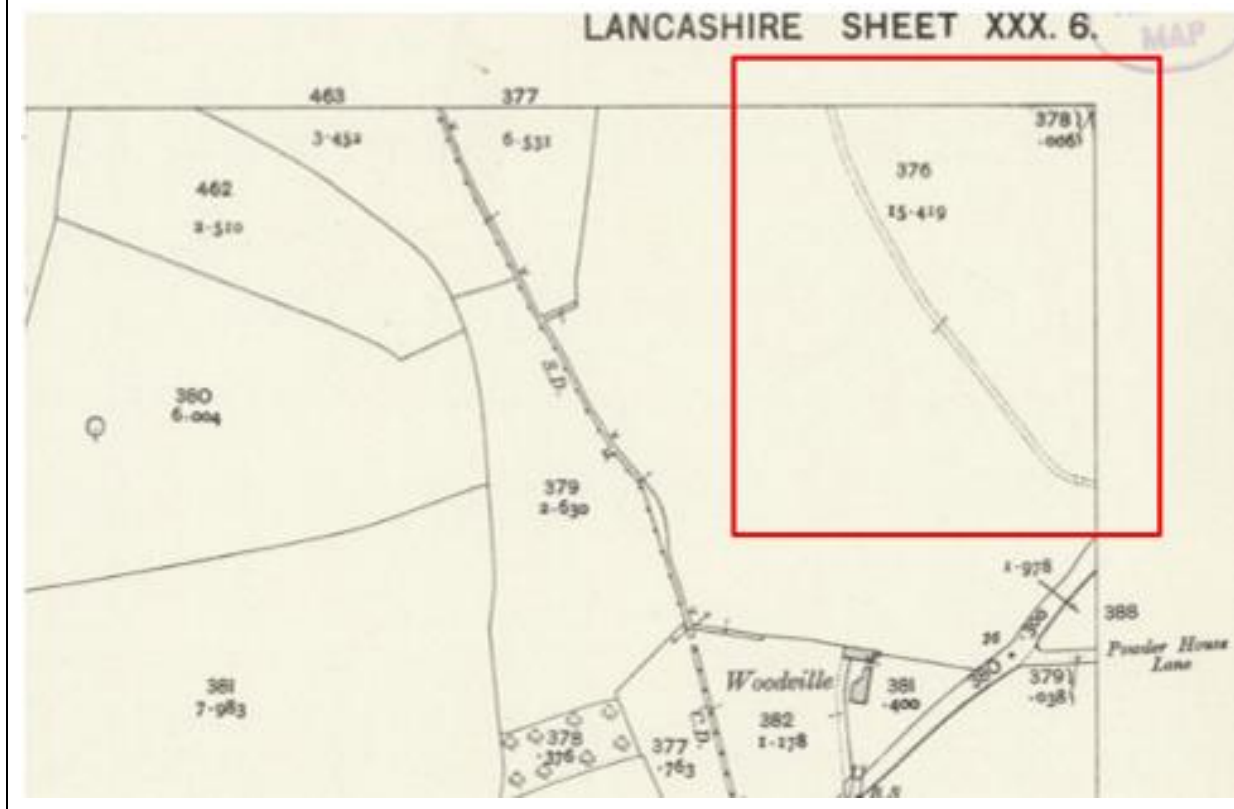
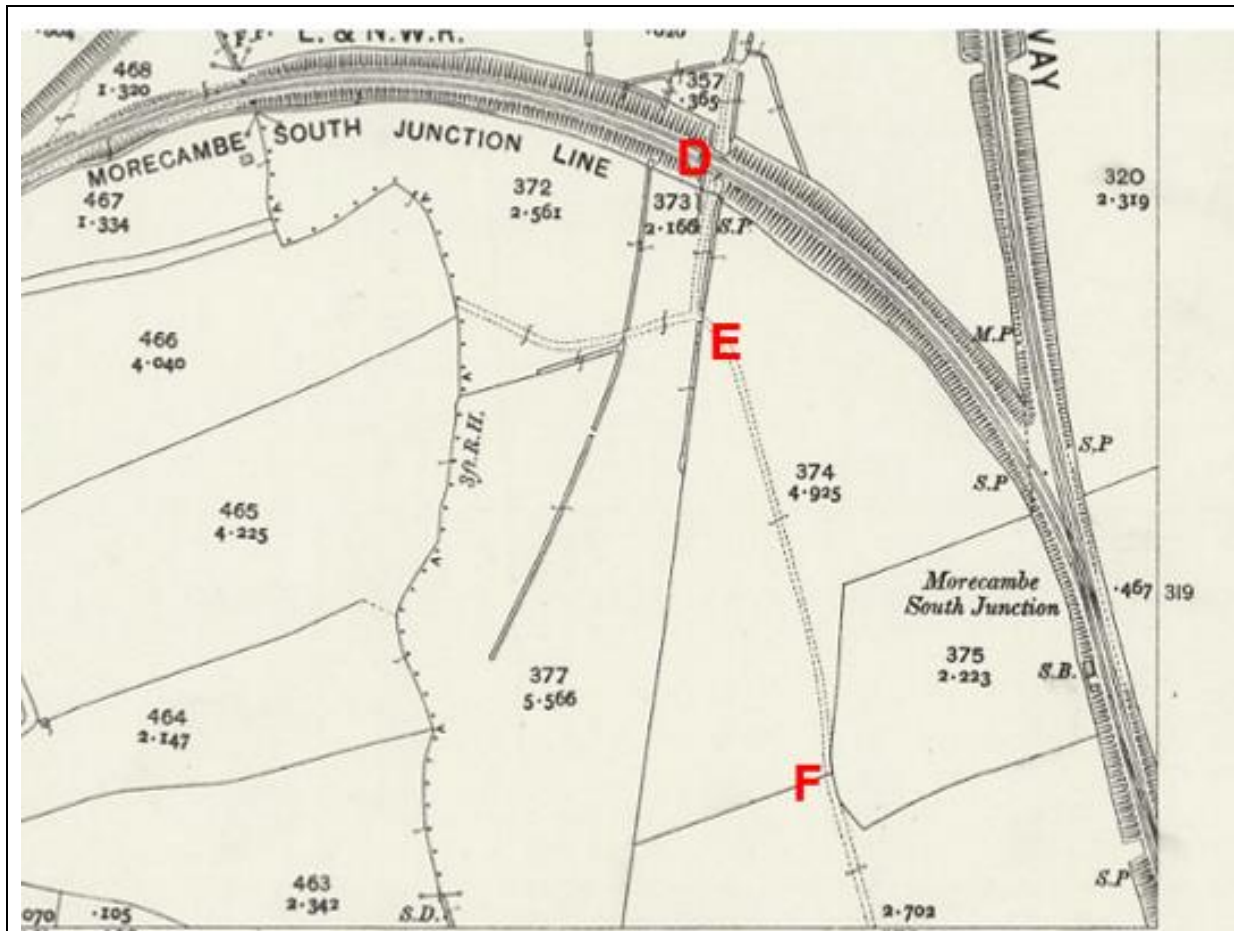


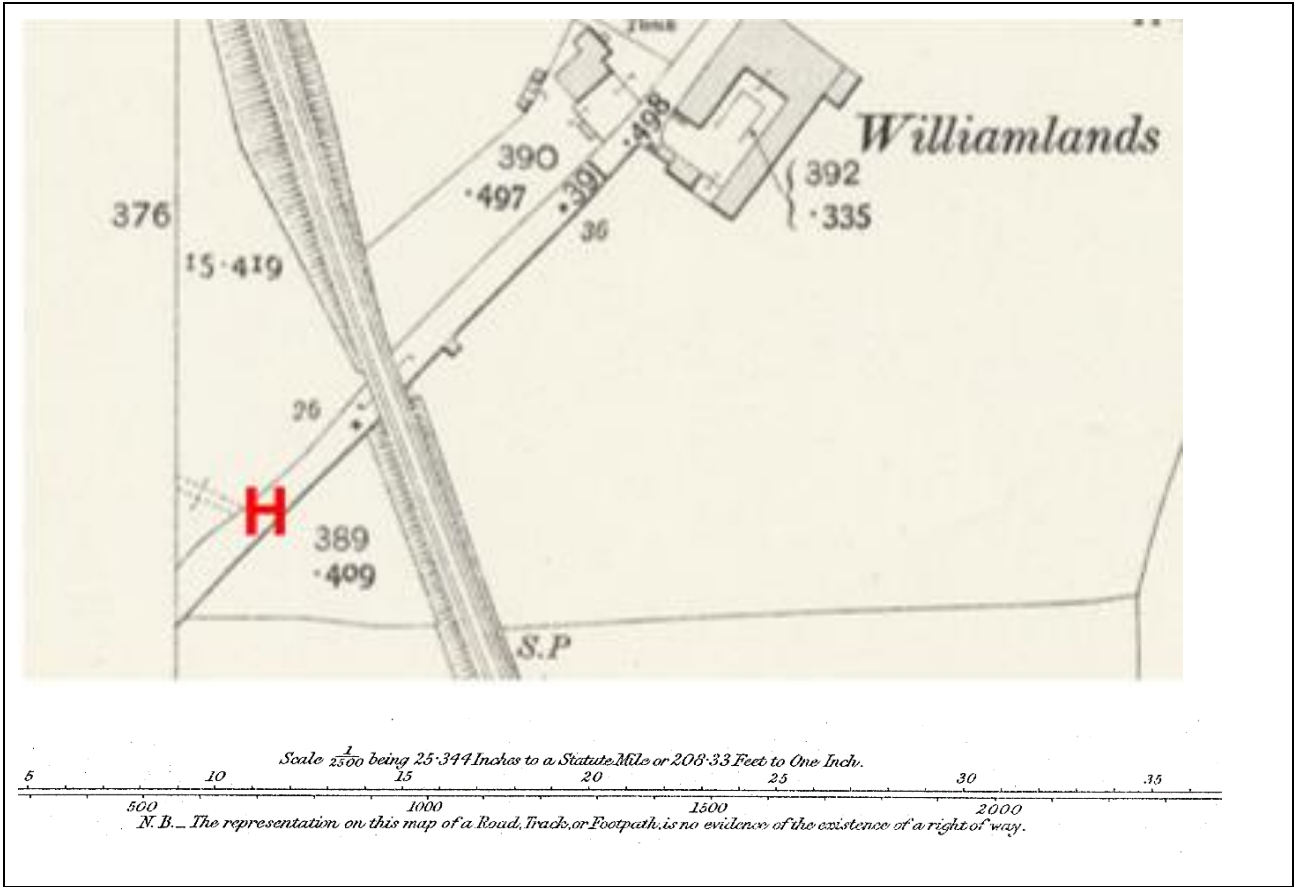


<i>Metalled Roads; First Class</i>	5 (Mile distance) (Altitude) 211	Unfenced	Chuo
" " <i>Second Class</i>			"
" " <i>Third Class</i>			Win
<i>Unmetalled Roads</i>	Fenced	Unfenced	Ligh
<i>Footpaths</i>			Ligh
<i>Railways, Single Line</i>			Bea Lett
		Level Crossing	Cont

Observations		The full length of the application route is shown as part of a substantial longer through route - possibly as an unmetalled road - partly unfenced.
Investigating Officer's Comments		The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown - and in this case the application route - had public rights for those travellers. Such evidence must however be looked at in the context of all other available evidence.
25 inch OS Map XXX.2 XXX.6 XXX.7	1913	Further edition of the 25 inch map surveyed in 1889, revised in 1911 and published in 1913.







94. Grass and mud roads have the words written to them. Grass roads
 These terms include public roads wide enough for wheeled traffic, but unmade. They are generally, but not always, fenced. The dots for cart-tracks, bridle roads, or foot-paths, are not to be shown inside a grass road, whether fenced or unfenced.

95. Bridle roads are shown to scale, and the words (or contraction B.R.) are written to them. Bridle roads.
 They are sometimes the width of the cart-tracks, sometimes only of foot-paths.

96. Except as specified below, all clearly marked and permanent footpaths (*i.e.*, gravelled, paved, or with gates or stiles), whether public or private, should be shown. Foot-paths.

The Ordnance Survey does not concern itself with rights of way, and Survey employes are not to enquire into them.

All gravelled and paved paths in public parks, gardens, and recreation grounds should be shown.

The principal paths in market and allotment gardens, and those only, should be shown.

No footpaths should be shown in private gardens or yards, except the principal ones in very large gardens.

Mere convenience footpaths for the use of a household, cottage, or farm; or for the temporary use of workmen, should not be shown; but paths leading to any well-defined object of use or interest, as to a public well, should be shown.

N.B.—A clearly marked track on the ground is not in itself sufficient to justify showing a path, unless it is in obvious use by the public.

Extensive shooting rides in woods should be shown, but not mere private paths.

Temporary cart tracks should not be shown.

Except in gardens, or where the omission is not likely to mislead, the initials F.P. should be inserted to foot-paths, with the object of avoiding the chance of their being mistaken on the plans for roads traversable by horses or wheeled traffic.

97. When occupation roads or cart-tracks are fenced on one side only, or are within 10 links of a fence, their outer line of dots only is shown; but when foot-paths run close to and parallel to a fence, both lines of dots are shown to distinguish them from roads. Roads or tracks fenced on one side only.

98. When a bridge with a proper name is kept in repair by the county, it is so stated in the name sheet, and (County) is written below the name on the trace. County bridges.

Observations

The full length of the application route is



		<p>shown in the same way that it was shown on the earlier 25 inch OS map.</p> <p>Although all Ordnance Survey Maps carry the disclaimer “The representation on this map of a road, track or path is no evidence of the existence of a right of way”, the applicant drew attention to the fact that in the Ordnance Survey Instructions to Field Examiners of 1905, Colonel Johnston, Director-General of the Ordnance Survey, wrote on page 19: “NB. A clearly marked track on the ground is not in itself sufficient to justify showing a path, unless it is in obvious use by the public.” However, this should be considered in the context of the whole 'instruction' as detailed above and further commented on below.</p>
Investigating Officer's Comments		<p>From looking at the map it appears that the application route existed as part of a longer through route in 1911 and appeared to be capable of being used. However, the fact that the route was shown on the OS map as a through route does not necessarily mean that it was a public through route and it is necessary to look at all the available evidence from that time.</p> <p>The applicant puts forward the argument that a clearly marked path on the ground is not sufficient reason to be included on an OS map unless it is clearly being used by the public.</p> <p>However, in that same guidance surveyors were instructed that the ‘OS does not concern itself with rights of way, and survey employees are not to inquire into them.’ The 1905 instructions appear therefore to be somewhat ambiguous; and subsequent instructions to surveyors contain equally ambiguous instructions as surveyors were given directions as to the nature of paths that should and should not be recorded whilst maintaining that public rights of way were not the concern of OS.</p> <p>In this particular instance, it is considered that the inclusion of the route across unfenced land (point D through to point H) and denoted by a double</p>



		<p>pecked line, suggests that a substantial unbounded track existed at the time of the survey that – depending on the nature of any gates or barriers across it – may have been capable of being used on horseback or by vehicles but that it is not possible to conclude that the inclusion of the route on this map – without other additional evidence – implied the existence of public rights.</p>
<p>Bartholomew half inch Mapping</p>	<p>1902-1906</p>	<p>The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.</p>



1905





1920





1941

Observations		Neither the application route nor Rakes Head Lane were shown on any of the Bartholomew maps published in the first half of the 20 th century.
Investigating Officer's Comments		The application route was not considered to be a public vehicular route in the first half of the 20 th century. Large scale OS maps confirm that it did however exist during this time but use may possibly have been private or by the public on foot or horseback.
Finance Act 1910 Map IR133/3/71 IR133/3/75 IR133/3/76	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.

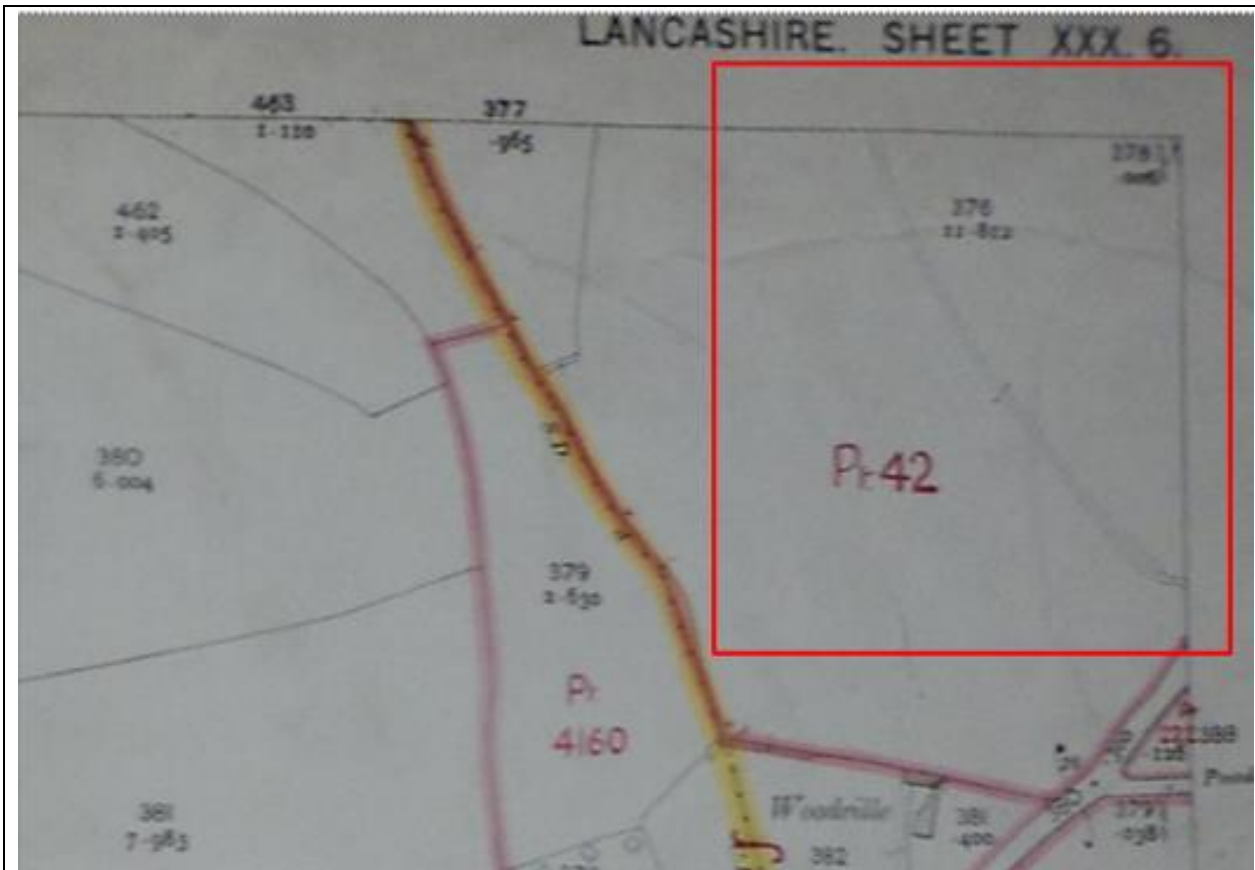


		<p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</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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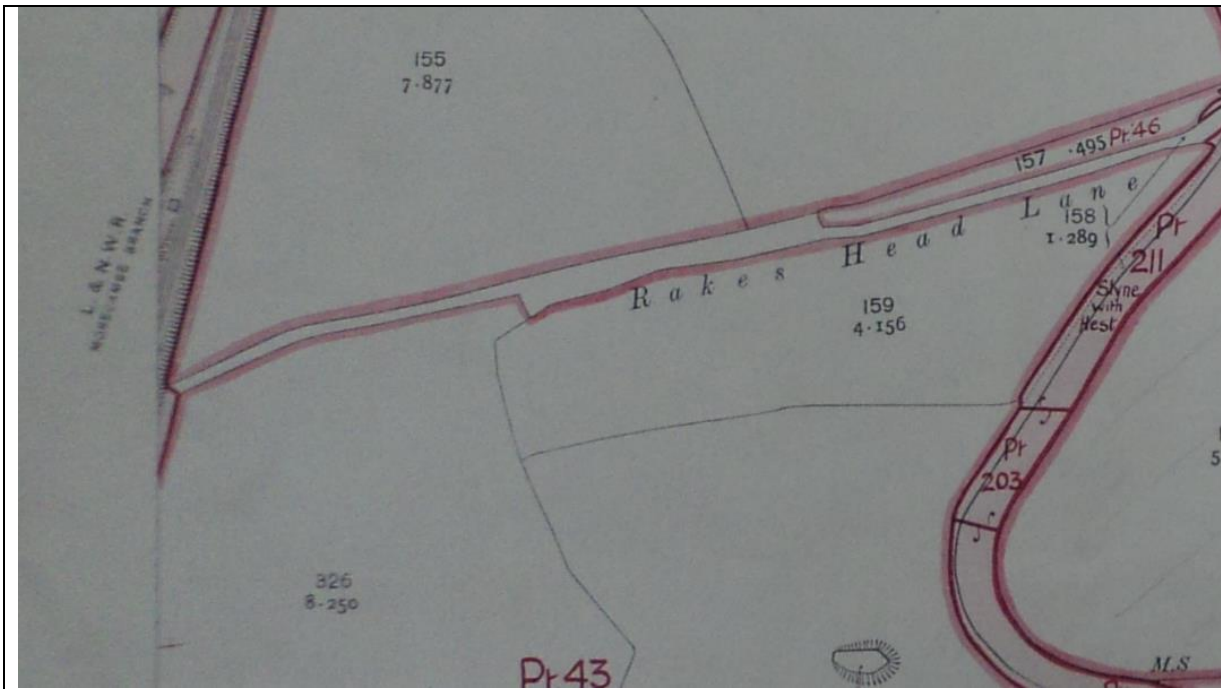






Rakes Head Lane (1-31-BW5) east of Lancaster to Carlisle West Coast railway)



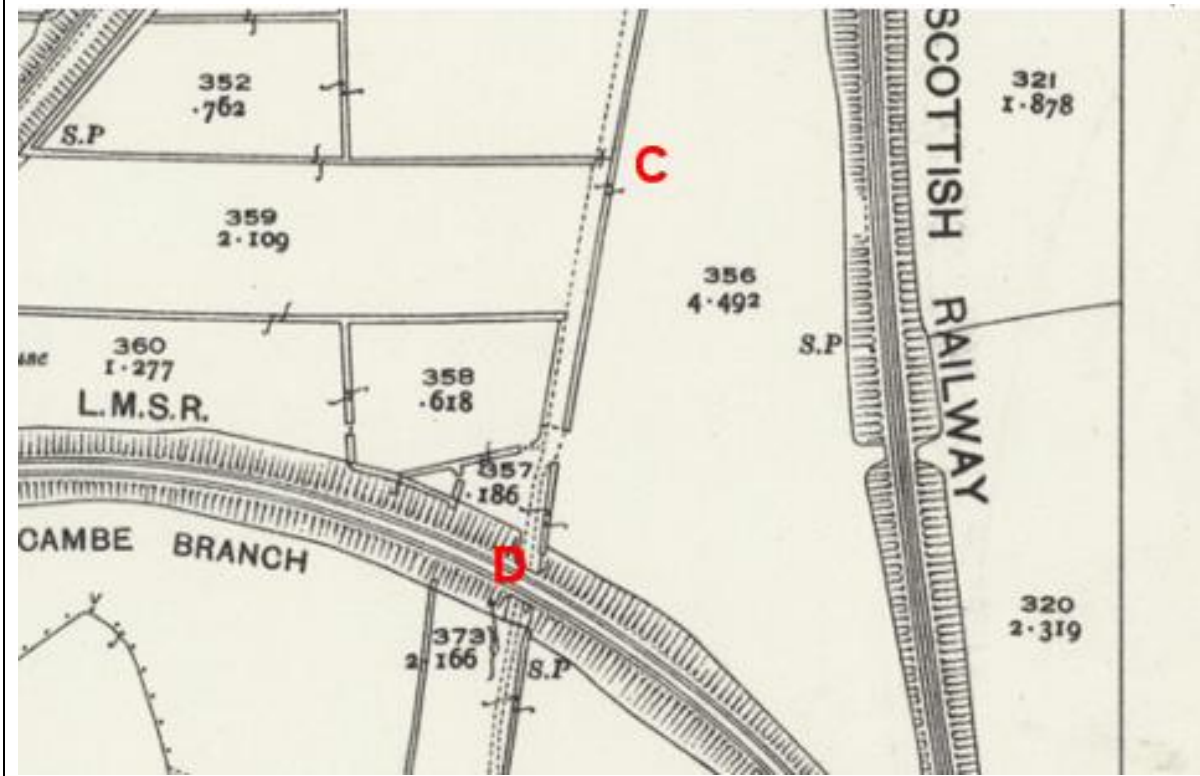


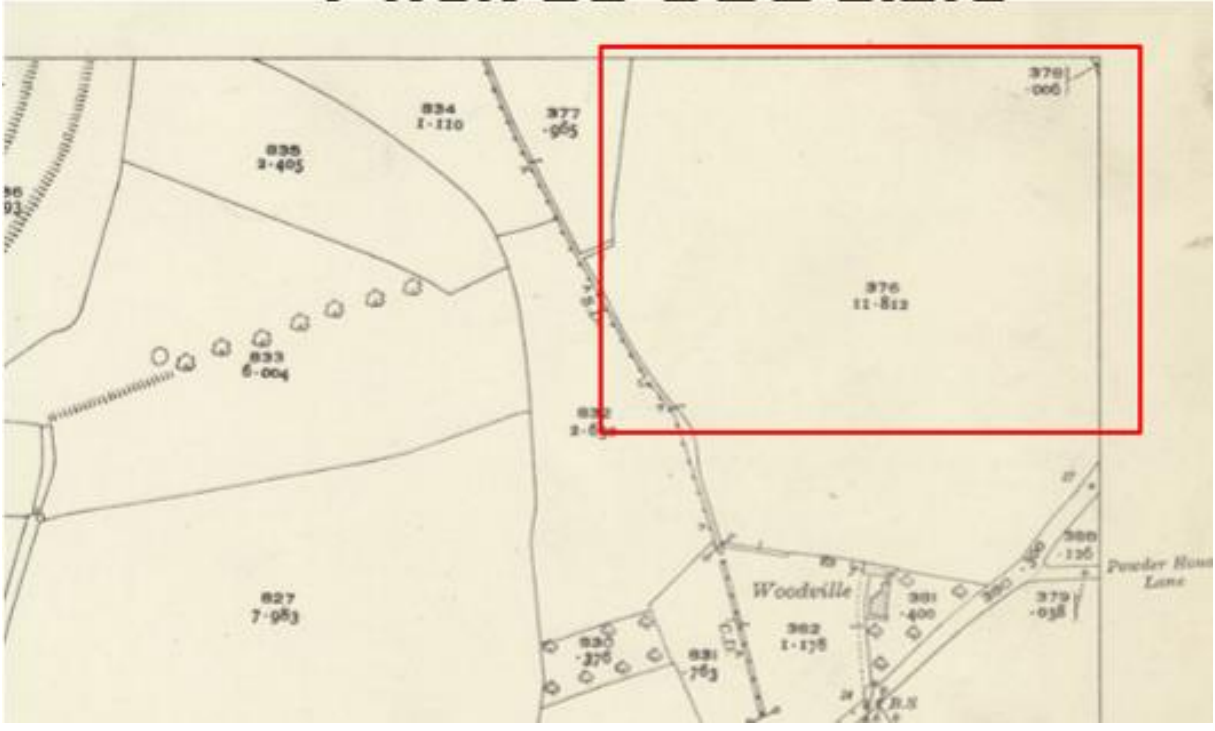
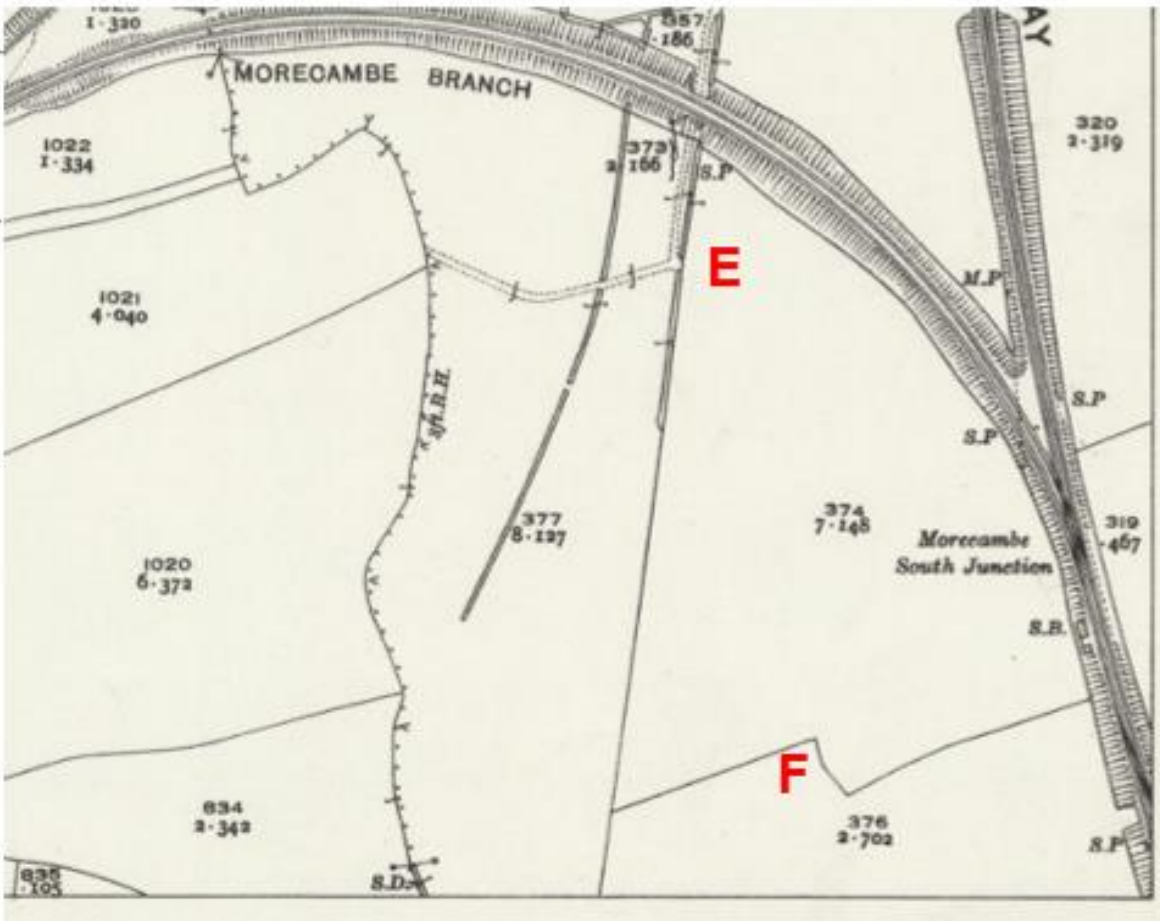
<p>Observations</p>		<p>From point A the application route is shown excluded from the adjacent numbered plots extending the full length of the fenced section of the route to a point just north of the railway (point D). Some land on either side of the route is shown braced as being in the same ownership.</p> <p>The rest of the land crossed by the application route – with the exception of the railway line – is all included in a large plot numbered 42 which is listed as being in private ownership with no deductions listed for public rights of way or user.</p> <p>The railway – which the application route passes under at point D is listed as plot 198 and was owned by the railway company.</p>
<p>Investigating Officer's Comments</p>		<p>The first part of the application route was excluded. This section corresponds to the length of route that is consistently shown on all maps as being fenced with drainage ditches running along either side and it is considered that this section may have been originally created as part of an inclosure process. Although the exclusion of a route from the numbered hereditaments (plots) is often considered to be good evidence of the fact that the</p>

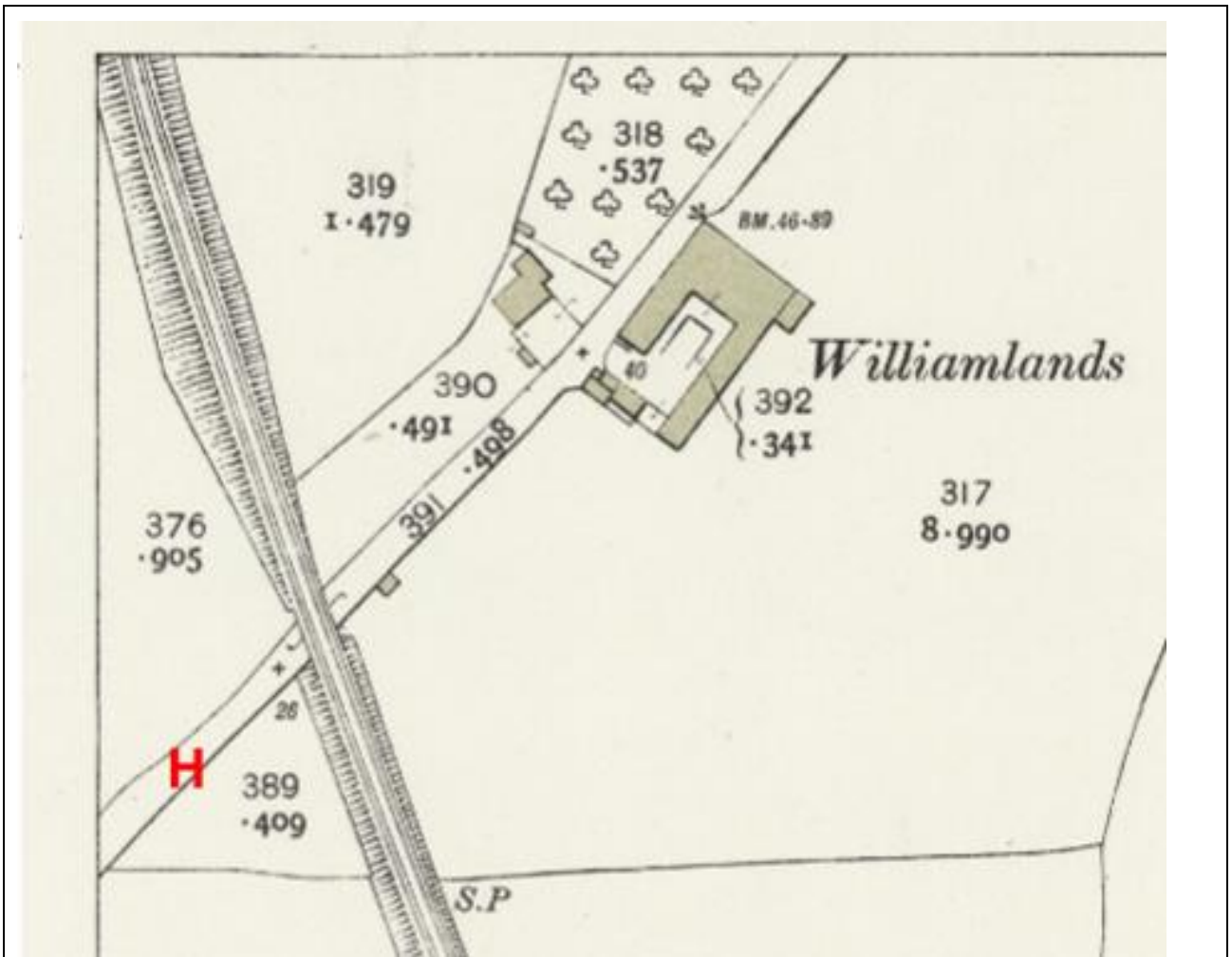


		<p>route was believed to carry public vehicular rights it is noted that the rest of the route is not excluded in this way and that the route leading to point A adjacent to the railway is not excluded from the numbered plots and was not recorded as having any deductions made for public right of way or user.</p> <p>There may be other reasons to explain the exclusion of this section of the route. It has been noted, for example, that there are some cases of a private road set out in an inclosure award for the use of a number of people but without its ownership being assigned to any individual, being shown excluded from hereditaments. Whilst the exclusion of the route may not be evidence of public vehicular rights this does not necessarily mean that a bridleway may not have existed along the route and this needs to be looked at carefully in context with all other available evidence.</p> <p>With that in mind the rest of the application route (with the exception of the railway crossing) was all included in a large plot numbered for which no deductions were listed for public rights of way or user. If the route had been used by the public on horseback in the early 1900s the Investigating Officer would normally expect some sort of deduction to be listed – particularly considering the length of the route and the fact that it was shown on the OS base map as a substantial track. In the alternative, it is suggested that if public rights did exist the landowner did not wish to acknowledge this suggesting that the owner of the land at that time considered any routes that existed through it were private at that time or did not wish to admit public rights.</p>
<p>25 Inch OS Map XXX.2 XXX.6 XXX.7</p>	<p>1932</p>	<p>Further edition of 25 inch map surveyed 1889, revised in 1931 and published in 1932.</p>







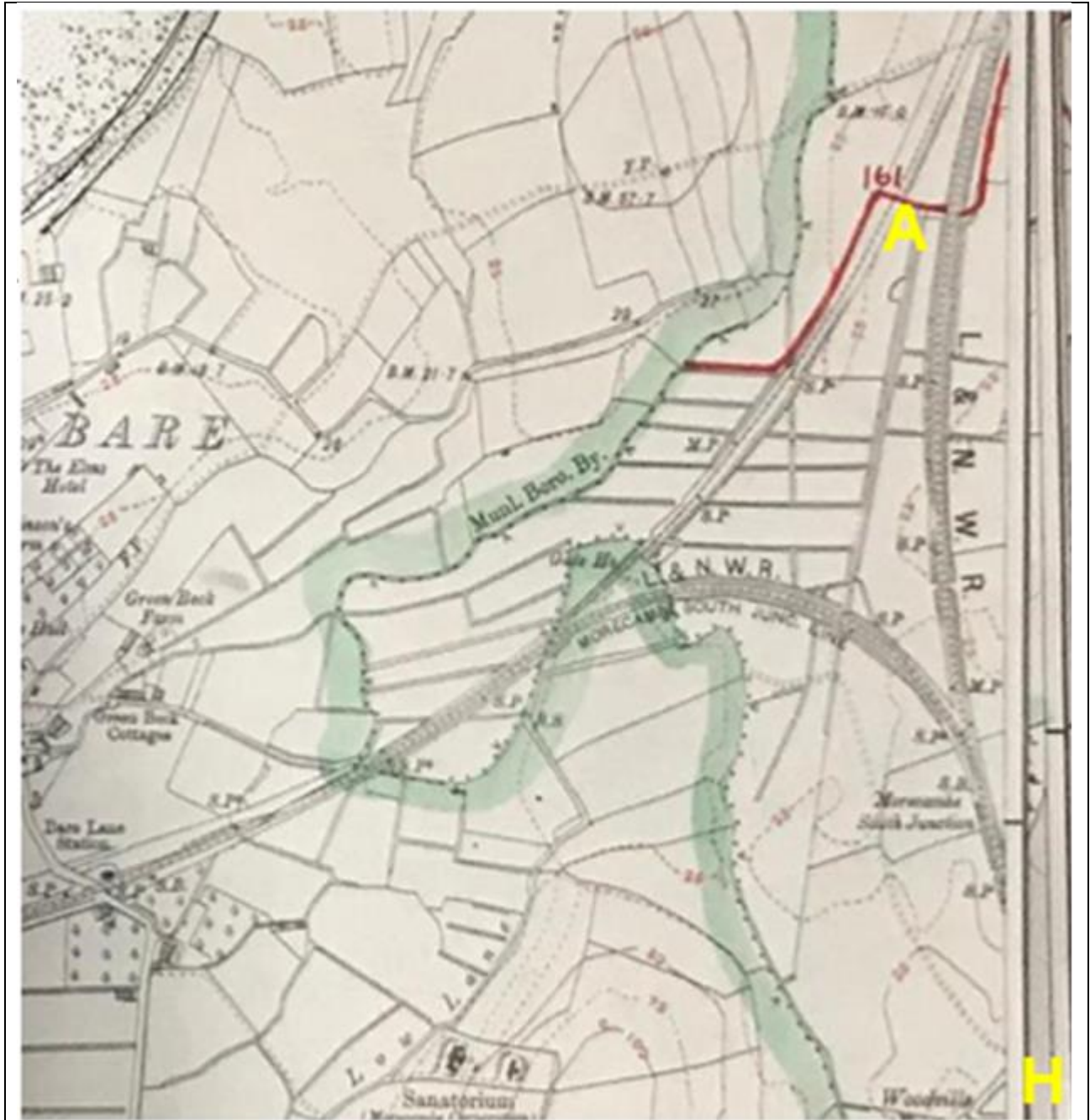


<p>Observations</p>		<p>Access onto the application route at point A is again shown as being restricted by a gate. Just before the gate a series of pecked lines can be seen which extend west to cross the railway and then continue denoted as a footpath (FP) consistent with the route recorded as 1-31-FP31a.</p> <p>The application route is shown from point A through to point C where a line is shown across the route (probable gate). From point C the route continues to pass under the railway (point D) where a further gate restricts access to the field.</p> <p>From point D the track shown on earlier editions of the 25 inch OS map is shown leading to a field boundary at point E suggesting the existence of a further gate at this point.</p> <p>Beyond point E the application route – which is shown on earlier editions of the</p>
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		OS large scale maps - is not shown.
Investigating Officer's Comments		The application route existed as a substantial track between point A and point E in 1931. Beyond point E there was no physical route recorded on the map suggesting that if access was still available – use had declined sufficiently so that no worn track was visible on the ground.
1932 Rights of Way Map		The Rights of Way Act 1932 set out the mechanism by which public rights of way could be established by user and under which landowners could deposit maps to show highways already in existence and to indicate that they didn't intend to dedicate further rights of way. The Commons, Open Spaces and Footpath Preservation Society (which became the Open Spaces Society) who were the prime instigators of this Act and the later 1949 Act, called for local authorities to draw up maps of the public rights of way in existence (a quasi pre-cursor of the Definitive Map). This is set out in 'The Rights of Way Act, 1932. Its History and Meaning' by Sir Lawrence Chubb [M]. The process for consultation and scrutiny followed in Lancashire is not recorded but some of the maps exist including maps for the following areas are available for inspection at County Hall: Lunesdale Rural District (RD), Lancaster RD, Burnley RD, Garstang RD and West Lancashire RD.



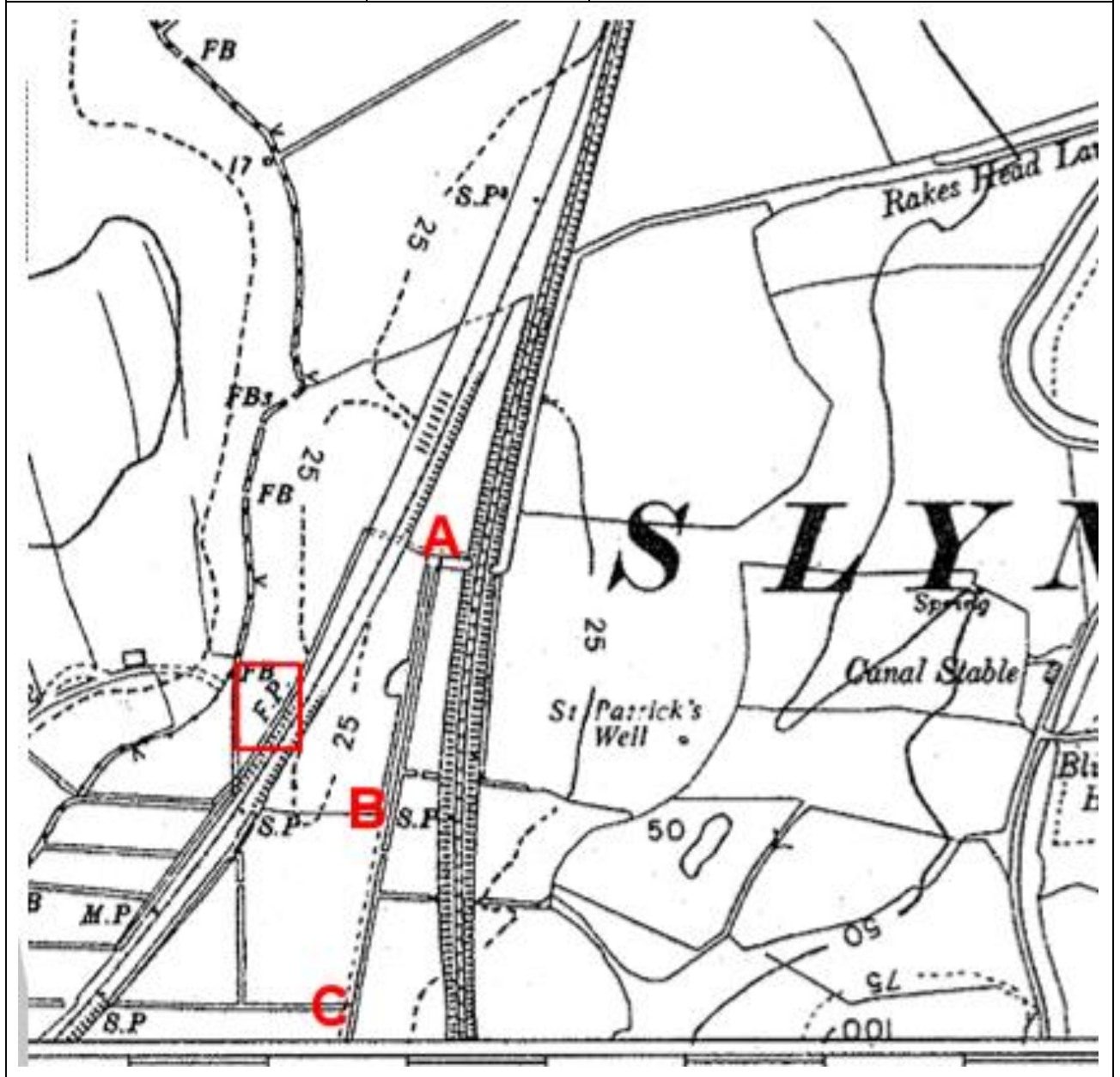


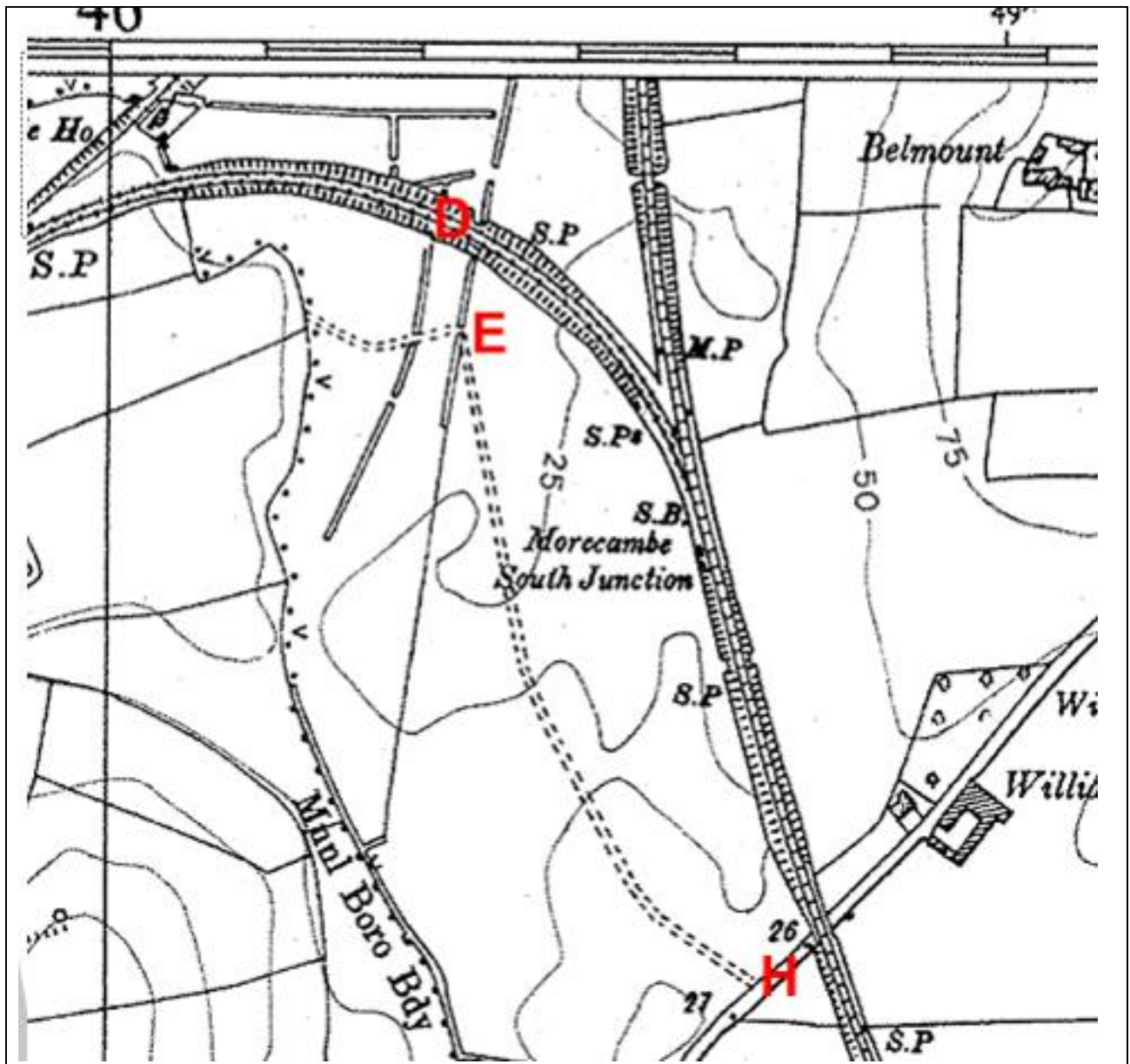
Observations

The maps for Lancaster Rural District are contained within a large folder titled 'Footpath Maps'. No written schedules are included within the file and all routes shown are coloured red and numbered with no indication as to whether they were considered to be anything more than public footpaths. The application route is not shown but a 'footpath' is shown (and numbered 161) along the route now recorded as 1-31-BW5 passing through point A and continuing along the route of 1-31-FP5a to the parish boundary.



Investigating Officer's Comments		The application route was not considered to be any class of public right of way when the map was prepared.
6 Inch OS Map SD46NE and 46SE	1956-57	OS 6 inch map revised before 1930 and partially revised 1938-51 and published 1956-57.





Observations

A gate is shown across the western end of 1-31-BW5 just to the east of point A and west of point A – continuing beyond the railway level crossing the route recorded as 1-31-FP5a is shown as a footpath (F.P.). From point A the application route is shown bounded on either side by drainage ditches as far as point B and then continues along the field edge passing through a (probable) gate at point C. A dashed line is then shown continuing along the application route to the edge of the map sheet.

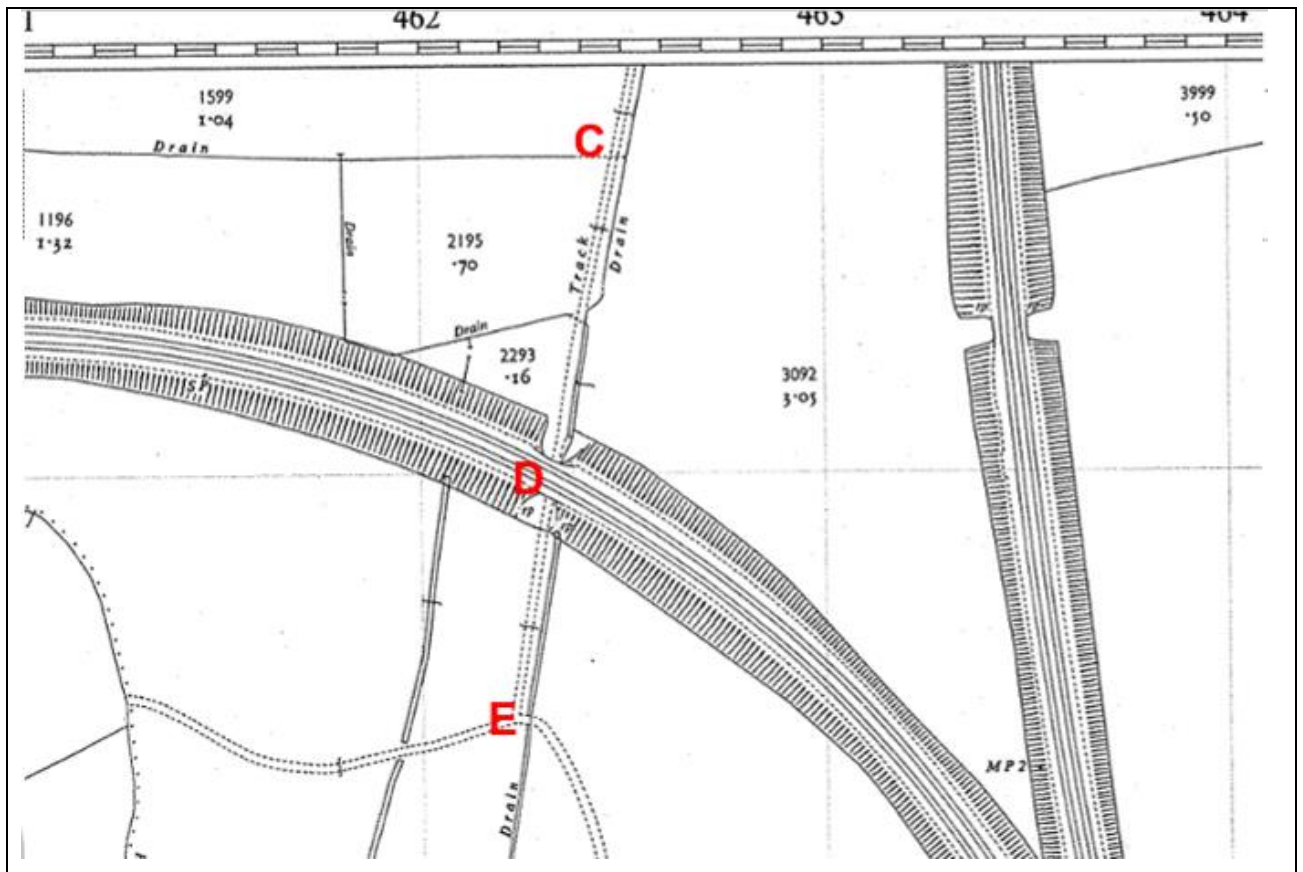
The continuation of the application route on the map sheet covering the area south of the section of route described above does not show the application



		route through to point E (although access may have been available, and the railway is shown in such a way as to suggest the existence of a route underneath it (tunnel). From point E through to point H a substantial track is shown and additionally from point E a double peaked line is shown continuing west to the parish boundary.
Investigating Comments	Officer's	The application route appears to have existed and may have been capable of being used in the 1930s – 1950s. Whilst it may have been possible to travel along the full length of the route A-H it appears that access from point H to point E was shown primarily to access land west of point E.
1:2500 OS Map SD 4665 and SD 4664	1959 - 1968	Further edition of 25 inch map reconstituted from former county series and revised in 1958-1968 and published 1959 and 1968 as national grid series.









Observations		The full length of the application route is shown as a substantial gated 'track'.
Investigating Officer's Comments		The application route appeared to be capable of being used at least on horseback in the 1950s-1960s depending on whether the gates were accessible to use.
Additional OS Maps submitted by the applicant		The applicant supplied a series of OS maps as part of their application seeking to illustrate the fact that the application route was consistently shown on the maps – at various scales and at various different times – suggesting that it was a public route available to use by the public. Whilst a range of these maps are detailed individually in this report the remainder are not considered separately



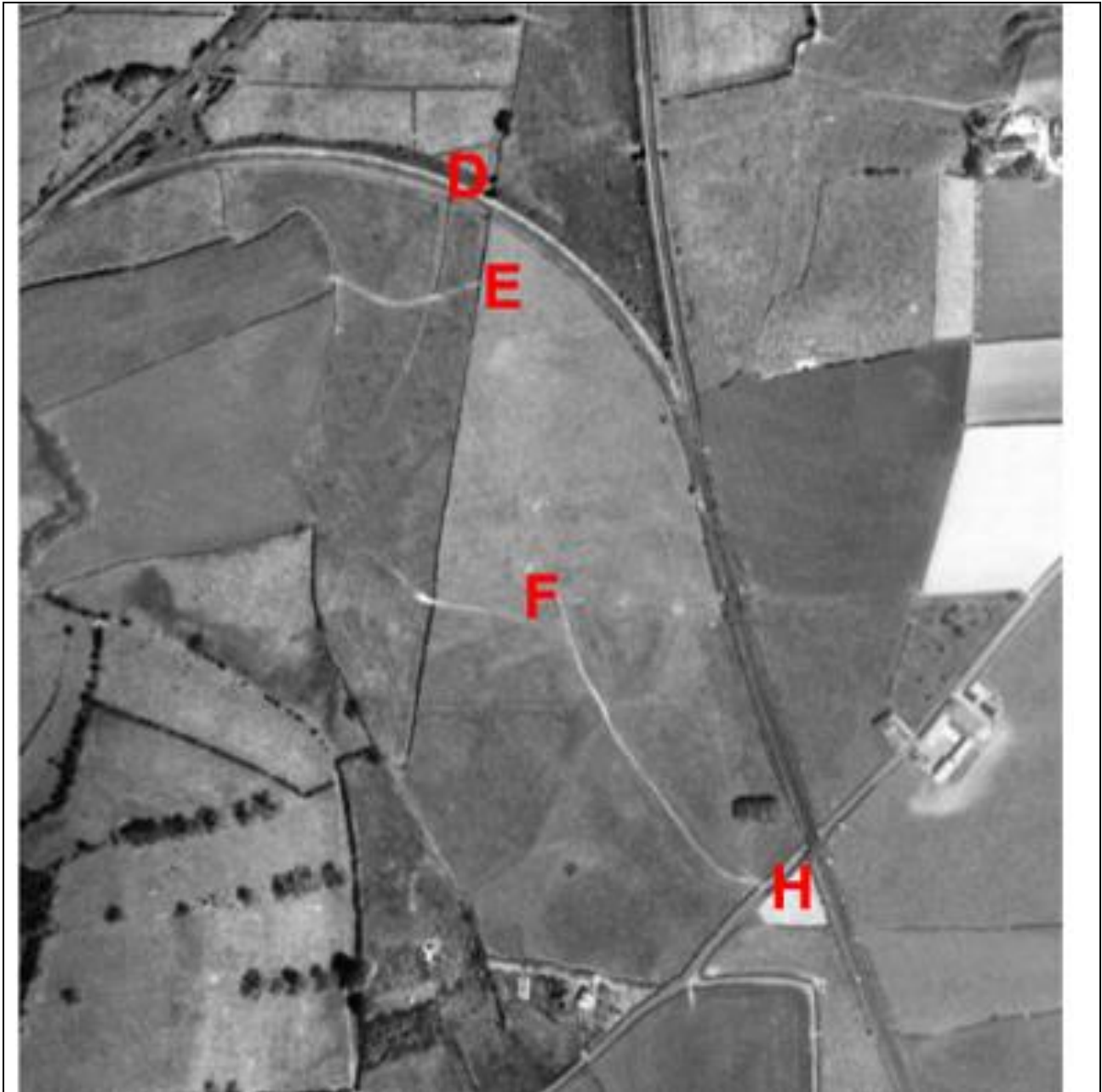
		<p>because it is felt that they do not add anything further to the evidence already considered.</p> <p>The OS maps included in the application but not commented on individually are as follows:</p> <p>6 inch OS map sheet 30 published 1895 6 inch OS map sheet 30NW published 1919, 1931, 1947. 6 inch OS SD46NE published 1963 6 inch OS SD46SE published 1961, 1968 1 inch OS maps published 1918, 1947, 1955 1:25,000 OS maps published 1947, 1952, 1963.</p>
Observations		<p>OS maps published from the 1890s onwards all generally show that a substantial gated route existed providing access to fields and providing access under the railway at point D. The route does not appear to have altered during this time.</p>
Investigating Officer's Comments		<p>It is not disputed that from at least 1890s through to the current day a physical route appears to have existed from point A through to point H and was mapped by the OS. Parts of the route were not shown on several maps at certain times but were then shown again later suggesting possibly that because parts of the route crossed open fields or ran along the field edge it was not always visible on the ground.</p> <p>The argument often put forward that a route consistently shown on OS maps of different scales must have carried public rights of some kind should be treated with caution and considered in the context of all other available evidence.</p> <p>In this particular case the application is for a public bridleway. There maps clearly suggest that gates existed across the route at several locations. This in itself is not evidence that the route could not have been used by the public but the maps do not tell us whether those gates were locked or accessible.</p> <p>The fact that the route was shown is good evidence that it existed and was capable of being used but whether that</p>



		use was public or private – or both – needs to be considered in the context of all the available evidence when considering whether there are sufficient grounds to make a legal order.
Aerial photograph	1960s	Black and white aerial photography available to view on GIS and flown during the 1960s. The coverage is a mosaic of various flight runs on the following dates: 12-13th May 1961, 1st Jun 1963, 3-4th June 1963, 11th June 1963, 13th June 1963, 30th July 1963, 13th June 1968. The majority of images are from 1963, with the 1961 images mainly covering West Lancashire district, and the 1968 images mainly covering Ribble Valley district.





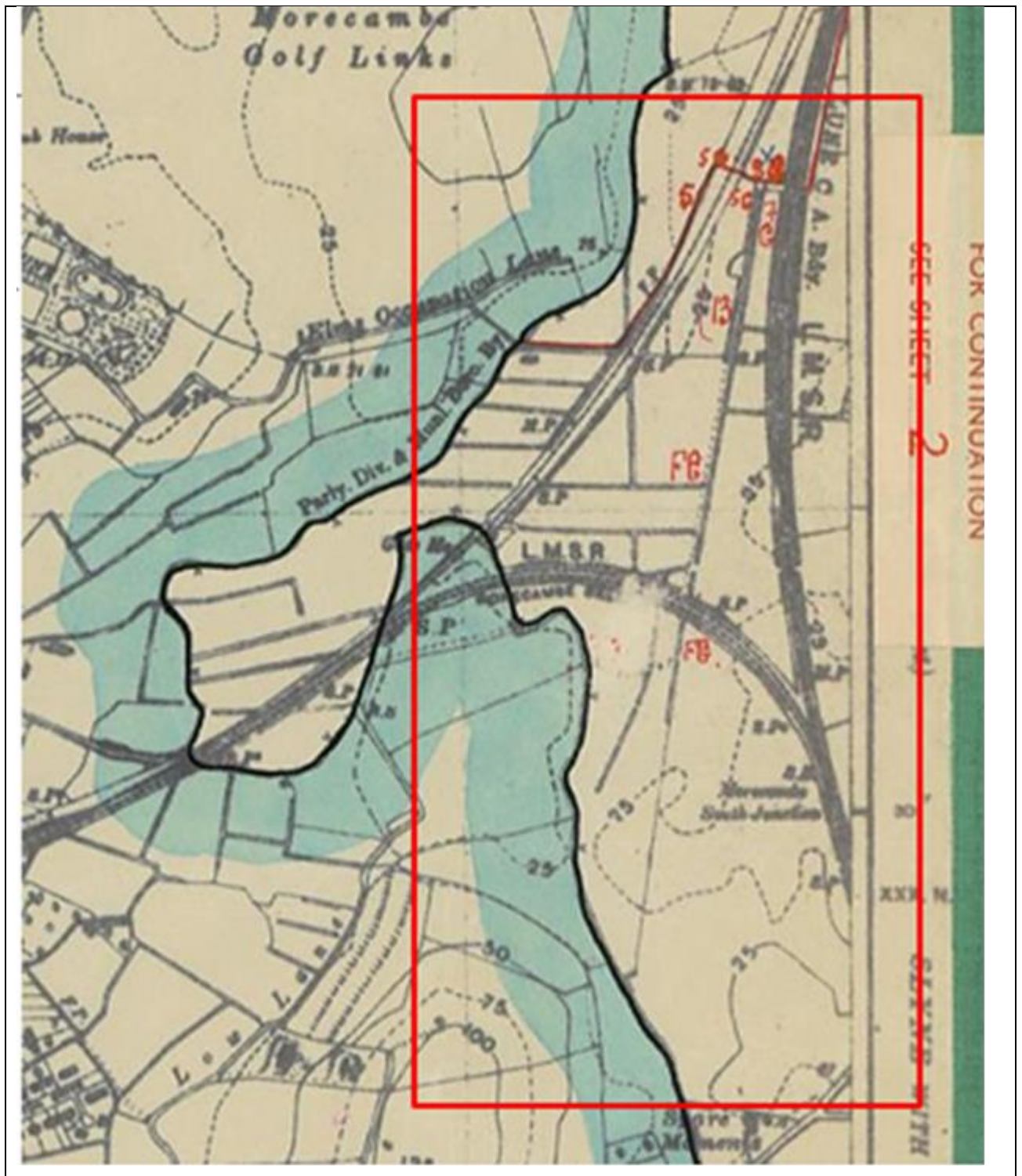


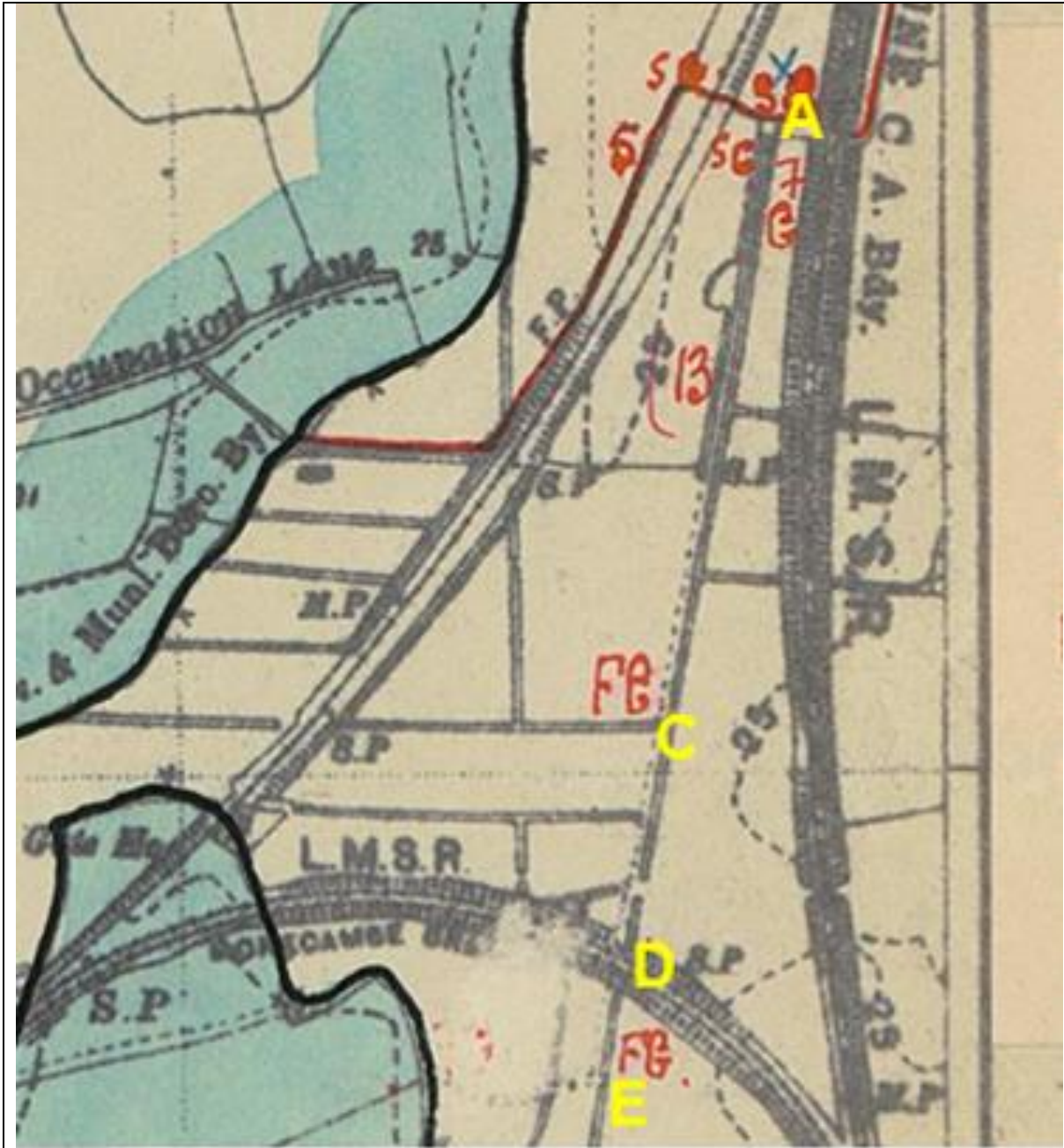
<p>Observations</p>	<p>Between point A and point B it is not possible to clearly see the application route due to the fact there are trees and hedges along it. From point B through to point D the route is not visible on the ground apart from on the immediate approach to point D where it appears that there is a more worn area suggestive of farm machinery or animals passing through the tunnel to access land south of the railway. Beyond the railway the application route is not visible as a track through to point E – where a gap in the fence line can be seen with a track leading to it from the west.</p>
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		Between point E and point F the application route is not visible across the field. From point F through to point H a clearly defined track consistent with use by farm vehicles can be seen - as can a route extending west into an adjacent field.
Investigating Officer's Comments		The aerial photograph taken in the 1960s suggests that there was no significant use of the application route as a through route at that time. The tracks visible on the ground coinciding with parts of the application route are consistent with farm access tracks linking a number of fields south of the railway.
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.







DISTRICT Lancaster Rural PARISH Slyne with Hest No. 13
 MAP SHEET No. 3 LENGTH 0.40 miles
 (to two decimal places)
 BRIEF DESCRIPTION (Field F.P. or otherwise)
Field footpath
 DETAILED DESCRIPTION (giving starting point, means of passage and general condition).
Commences at field gate near the first swing gate on Map 3. footpath 5, down narrow strip of land, hedge on right hand side & ditch on left side, keep near to the ditch through field gate, then under Railway bridge (Lancaster to Morecambe Branch line) through field under bridge up to Morecambe boundary, ~~out to road~~
 SURVEYED BY:— Name H.S. Dixon
 Address 4 Coastal Rise, Hest Bank
 Date June 5/.

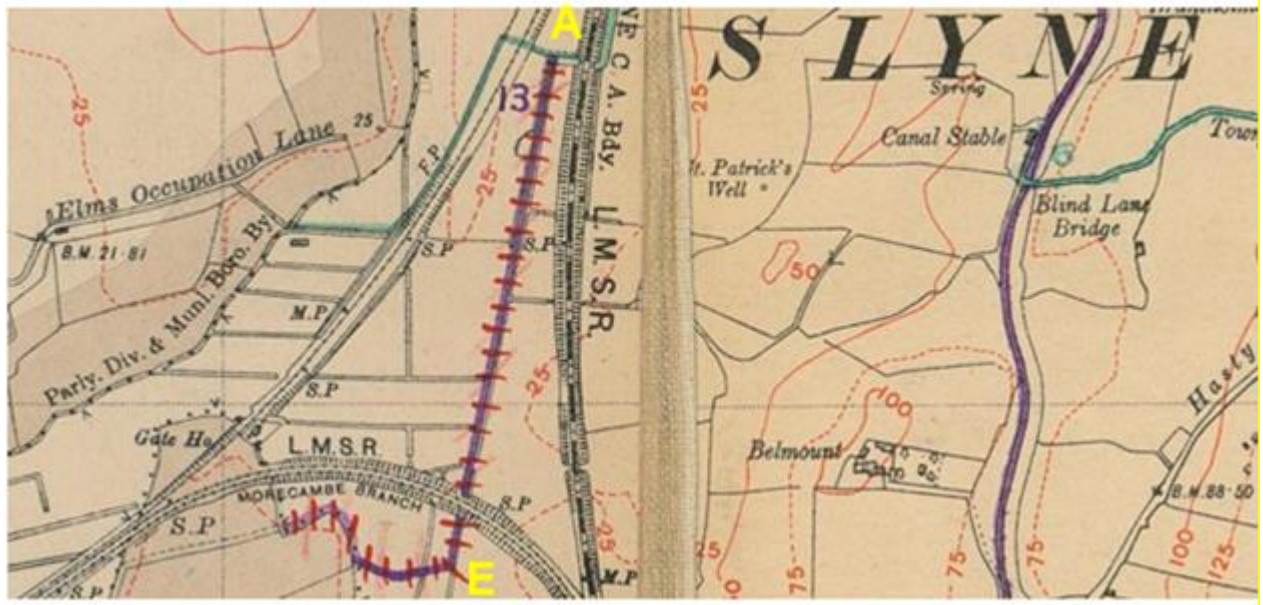
DISTRICT Lancaster Rural PARISH Slyne with Hest No. 5
 MAP SHEET No. 2 T3 LENGTH 0.95 miles
 (to two decimal places)
 BRIEF DESCRIPTION (Field F.P. or otherwise)
Bridle path & footpath (~~bridle path~~)
 DETAILED DESCRIPTION (giving starting point, means of passage and general condition).
Starts at Raikes Head on Hest Bank to Lancaster ^{road} opposite Shady Lane. Through stone stile, farm yard gate, over Canal bridge along Railway side then under Railway bridge through 2 swing wood gates over railway line (Hest Bank to Bard) through swing wood gate down center path between Morecambe Golf Links & Railway to Morecambe Boundary.
Surface Metalled from Raikes Head to Railway Bridge then grass to side of Golf Links afterwards.
 SURVEYED BY:— Name H.S. Dixon all
 Address 4 Coastal Rise, Hest Bank End of path Good.
 Date June 5/. Stiles Good.

Observations	The Parish Survey Map produced by Slyne with Hest Parish Council shows the full length of the routes now recorded as 1-31-BW5 and 1-31-FP5a as one continuous route numbered 5. The Parish Survey Card described it as a Bridleway and Footpath but then the word Footpath had been crossed out. It describes the route as passing through two swing wood gates over the railway which corresponds to the level crossing
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		<p>west of point A.</p> <p>Whilst not drawn on the Parish Survey Map the application route is numbered as path 13 between point A and point C and the location of gates are marked at point C and point E. A Parish Survey card was completed for path 13 which describes the route as a field footpath described as starting at a field gate and running down a narrow strip of land to go through a field gate and under the railway (point D) to go through a field and under a further bridge to the Morecambe boundary. Traces of a route or annotation appear to have been scraped off the Parish Survey Map near point E.</p>
<p>Draft Map</p>		<p>The parish survey map and cards for Slyne with Hest were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>





National Parks and Access to the Countryside Act, 1949
Statement annexed to the Draft Rights of Way Map. Section 27 (4)

Rural District of LANCASTER Relevant Date 1 JAN 1953 Parish of SLYNE-WITH-HEST.

1. No. of path	2. Kind of path	3. Position	4. Length in miles to 2 places decimals	5. Other particulars (if any)
1	Footpath	A. 6 near Cross Keys Hotel to Bottendale	0.23	
2	Footpath	Bolton Bank Lane to Halton-road near Cemetry	0.27	
3	Footpath	Farm near Heat Bank Hotel to Marine Drive	0.28	
4	Footpath	Marine Drive to Parish Boundary at Morecasbe Morecasbe	0.42	
5	Bridleway	Bakes Head to Morecasbe Golf Links	0.95	
6	Bridleway	Blind Lane bridge to Hasty Row	0.14	
7	Footpath	Beaumont Hall - Halton Road Bridge Road to A6 RL.	1.00	
8	Footpath	Heat Bank Lane to Slyne - Morecasbe Road.	0.24	
9	Footpath	Hasty Row to junction with path No. 5 at Bakes Head.	0.33	
10	Footpath	Canal Towpath from Bolton le Sands Parish Boundary to Lancaster Boundary.	2.12	
11	Footpath	Junction of Kellat Lane & Strellas Lane to Beck Lane.	0.46	
12	Footpath	Hasty Lane to Masses Lane	0.17	Now built up with Council Houses.
13	Footpath	Junction with path No. 5 to Morecasbe Boundary	0.40	

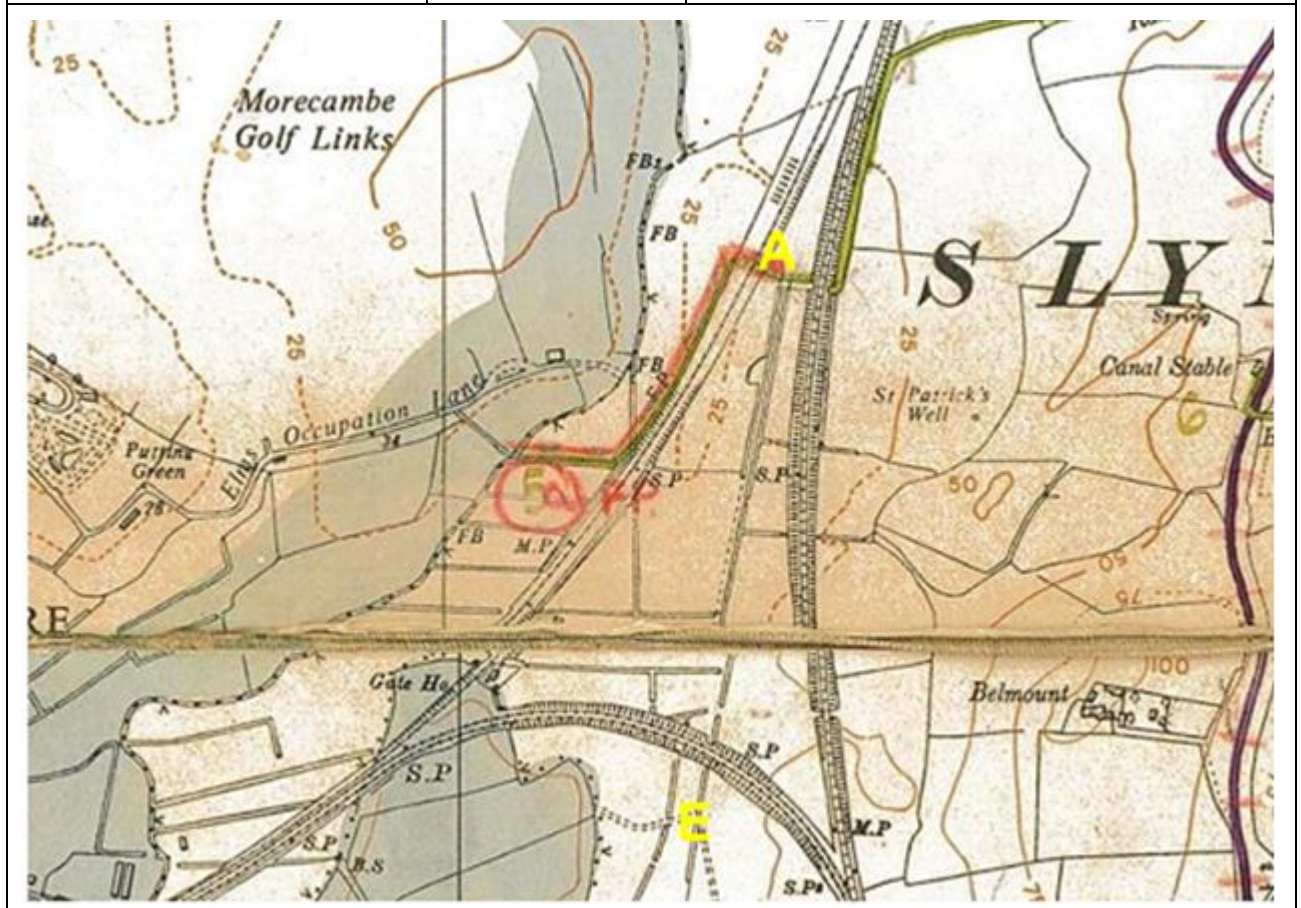
Beaumont Hotel Lane to Hasty Row 0.25

Observations

The Draft Map shows the full length of the route now recorded as 1-31-BW5 and 1-31-FP5a coloured green and recorded as a bridleway. The application route from point A through to point E was shown as part of Footpath 13 but was then crossed out. The rest of the application route (E-H) was not shown.

Objections listed to the Draft Map included an objection to the inclusion of

		<p>Footpath 13. The objection was submitted by The British Transport Commission and a hearing was held on 22nd September 1955 where it was resolved that in the light of all available evidence the route was to be deleted from the Draft Map. A note on the file held by the County Council refers to the fact that the route was not recorded on the 1932 Rights of Way Map and was described as a 'field and occupation road' in the Book of Reference accompanying the Deposited Railway Map dated 1887.</p>
<p>Provisional Map</p>		<p>Once all representations relating to the publication of the Draft Map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>



Statement annexed to the Provisional Rights of Way Map. Section 30 (1)

Rural District of LANCASTER Relevant Date, January 1st, 1953 Parish of ELMS-WITH-HOIST

1. No. of path	2. Kind of path	3. Position	4. Length in miles to 2 places decimals	5. Other particulars
1	F.P.	A.6 near Cross Keys Hotel to Bottondale	0.23	
2	"	Bolton Back Lane to Halton road near Cemetery	0.27	
3	"	Farm near Heat Bank Hotel to Marine Drive	0.26	
4	"	Marine Drive to Parish boundary at Morecambe Promenade	0.42	
5	Bridleway	Rakes Head to Morecambe Golf Links	0.95	
6	"	Blind Lane Bridge to Hasty Brow	0.36	
7	Footpath	Beaumont Hall - Halton Road Bridge Road to A6 Road.	1.00	
8	"	Heat Bank Lane to Slynne - Morecambe Road.	0.24	
9	"	Hasty Brow to junction with path No. 5 at Rakes Head.	0.33	
10	"	Canal-Towpath from Bolton to Burns Parish boundary to Lancaster boundary.	2.12	
11	"	Junction of Kelllet Lane and Strellas Lane to Back Lane.	0.46	
12	"	Shady Lane to Manor Lane.	0.17	
14	"	Kelllet Lane via Strellas Lane to Beaumont Gate thence to parish boundary	0.85	

<p>Observations</p>		<p>The Provisional Map did not show any part of the application route recorded as a public right of way.</p> <p>The route recorded as Bridleway 5 is shown coloured green and described in the Provisional Statement as a bridleway from Rakes Head to Morecambe Golf Links.</p> <p>Drawn over the green line is a red pencil line to the route of Bridleway 5 west of point A with 'FP ' written beside it.</p> <p>No records suggesting that this change to the recorded status of the route was made in 1960 when the Provisional Map was published was found and the First Definitive Map detailed below still records the full length of the route as a bridleway suggesting that the notation was added later.</p>
<p>The First Definitive Map and Statement</p>		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>





Administrative County of the County Palatine of Lancaster
National Parks and Access to the Countryside Act, 1949
Statement annexed to the Definitive Rights of Way Map. Section 32 (1)

Rural District of **LANCASTER**
Rural District of the County Palatine of Lancaster

Relevant Date, 1st. January 1953.

Parish of **SLONG-WITH-HEAT**

1. No. of path	2. Kind of path	3. Position	4. Length in miles to 2 places decimals	5. Other particulars (if any)
1	F.P.	A.6 near Cross Keys Hotel to Bottomdale	0.25	
2	"	Bolton Back Lane to Halton road near Cemetery	0.27	
* 3 ✓	"	Farms near Heat Bank Hotel to Marine Drive	0.28 0.42	Not deleted and absorbed into Estate development and recorded as new road. It is originally part of C.P. No. 3
* 4 ✓	"	Marine Drive to Parish Boundary at Morecambe Promenade	0.13	
5 ✓	Bridleway	Sakes Head to Morecambe Golf Links	0.95 0.75	Footpath route to footpath after representation to Council. Deleted.
6 ✓	Footpath	Blind Lane Bridge to Hasty Brow	0.38	Footpath route to footpath after representation to Council. Deleted.
7	Footpath	Beaumont Hall - Halton Road Bridge Road to A.6 Road	1.00	Deleted by Order and absorbed into estate development and road part omitted
* 8 ✓	"	Heat Bank Lane to Slyne - Morecambe Road	0.24 0.25	
9	"	Hasty Brow to junction with path No. 5 at Halses Head	0.33	
11	"	Junction of Kellet Lane and Strellas Lane to Back Lane	0.46	
12	"	Shady Lane to Manor Lane	0.17	
14	"	Kellet Lane via Strellas Lane to Beaumont Cote thence to parish boundary	0.85	
* 15 ✓	"	From eastern end of Station Road to Cemetery Road.	0.13	New path included on a proviso of a representation to the Parish Council.

Observations

The application route is not recorded on the First Definitive Map and Statement. Bridleway 5 is still recorded as passing through point A and continuing through to Morecambe golf course.

The First Definitive Map was then used as part of the review process for the preparation of the Revised Definitive Map detailed below. As part of that process all the changes to be made to the Definitive Map as part of the process were marked on the map – including in this case the change in status to the bridleway west of point A.

County Council records relating to the review process record that the change was made as a result of representations made by British Rail relating to the fact that the route west of point A had been recorded as a bridleway by mistake; that the existence of 'clap gates' on the route meant it was – and had previously been – incapable of use by horses and that footpath rights had been diverted onto that route in 1922 (although no copy of the diversion order was found).

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 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.



No. of path	Kind of path	Position	Length in miles to 2 places decimals	Other particulars (if any)
1	Footpath	A.6 near Cross Keys Hotel to Bottasdale	0.25	
2	"	Bolton Beck Lane to Halton Road near Cemetery	0.27	
3	"	Farm near Hest Bank Hotel to Highfield Drive	0.02	
3a	"	From Marine Drive to link up with Estate Development.	0.16	
4	"	Marine Drive to Parish Boundary at Morecambe	0.42	
5	Bridleway	Rakes Head to Junction with Footpath 5a	0.70	
5a	Footpath	From Municipal Borough Boundary to Junction with Bridleway 5.	0.25	
6	Bridleway	Blind Lane Bridge to Hasty Brow	0.38	
7	Footpath	Beumont Hall - Halton Road Bridge Road to A.6 Road.	1.00	
8	"	Hasty Brow to link up with Estate Development	0.06	

Observations		<p>The application route is not recorded as a public right of way on the Revised Definitive Map (First Review). The route previously recorded as bridleway 5 is shown altered to terminate at its junction with the newly recorded footpath 5a (at point A on the application route).</p>
Investigating Officer's Comments		<p>The application route between point A and point E was shown as a public footpath on the parish survey and draft map but was removed after a public hearing whereby it was determined that it had been included in error. The rest of the route was not considered to be a public right of way during the preparation of the First Definitive Map in the 1950s through to the 1960s.</p> <p>Rakes Head Lane from Hest Bank Lane through to point A is recorded as a public bridleway which appears not to have been challenged. It was originally recorded as continuing west from point A through to the parish boundary from where the continuation of the route was recorded as a public footpath by Morecambe Municipal Borough. The recorded public status of the section of the bridleway from point A through to the parish boundary was challenged when the First Definitive Map was reviewed and the county council records detail that it was subsequently downgraded to a footpath after representations made by British Rail. This effectively left 1-31-BW5 as a 'dead end' bridleway with no recorded public access for horses</p>



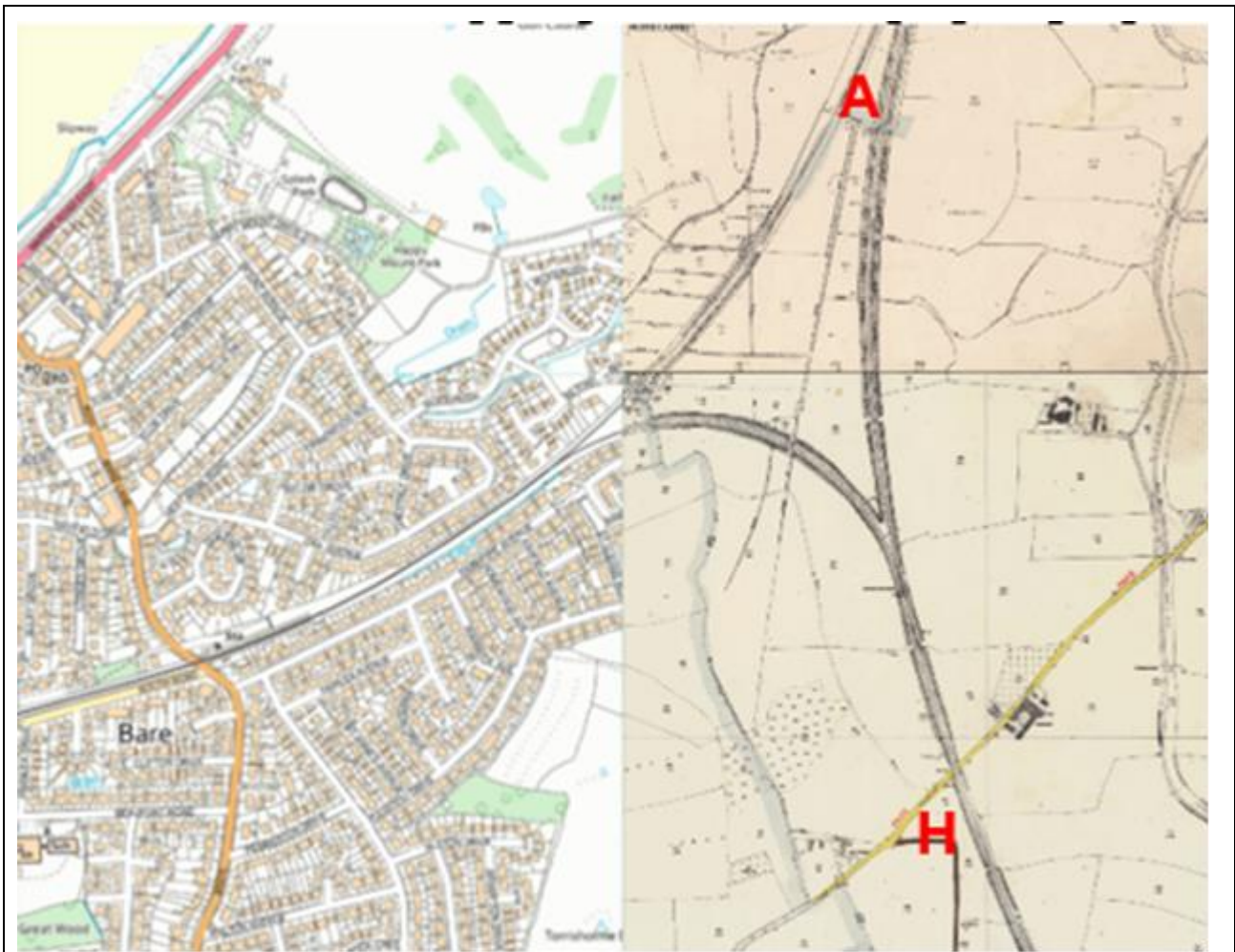
		<p>beyond point A. It is not known from the records whether consideration of this point was made – as point A does not appear to constitute a place of public resort which historically would have explained why a public bridleway existed to this point only.</p> <p>It may be that it was possible to continue from point A along the application route to exit onto Hasty Brow but no reference was found to this in the county council files and there is no reference to the fact that if access was available along the application route then it should have been recorded as a public bridleway as part of the review process.</p>
<p>Highway Adoption Records including maps derived from the '1929 Handover Maps'</p>	<p>1929 to present day</p>	<p>In 1929 the responsibility for district highways passed from rural district councils (and later from urban district and borough councils) to the County Council. For the purposes of the 1929 transfer, public highway 'handover' maps were drawn up to identify all of the rural district-maintained highways within the county. These were based on existing Ordnance Survey maps and coloured to mark those routes that were publicly maintainable by the rural district council. 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>





Handover Map





LCC highway records

<p>Observations</p>		<p>The application route is not recorded as a publicly maintainable highway on the county council's List of Streets and was not shown as a publicly maintainable highway in the records believed to be derived from the 1929 Handover Map.</p> <p>The applicant drew attention to the fact that the application route from point A to just south of point C is listed on the County Council's digitised road classification layer on MARIO as unadopted road X1310.</p>
<p>Investigating Officer's Comments</p>		<p>This provides no evidence for or against the existence of public rights.</p> <p>The inclusion of part of the route as an unadopted road with the reference X1310 is not indicative of more than a physical existence on the ground.</p>
<p>Highway Stopping Up Orders</p>	<p>1835 - 2014</p>	<p>Details of diversion and stopping up orders made by the Justices of the</p>



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



		county council for the area over which the application route runs.
Investigating Officer's Comments		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.

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

A planning application has been submitted to Lancaster City Council for residential housing over land crossed by the application route north of the railway at point D through to the field boundary and gate at point F (Reference 21/01341/OUT).

Summary

No user evidence was submitted as part of this application and the evidence presented to Regulatory Committee on this occasion is entirely map and documentary evidence – which is considered in detail above.

The applicant has submitted that public bridleway rights exist along the route and that those rights should be recorded on the Definitive Map. Because the County Council has not been presented with any evidence of use it is necessary to determine whether there is sufficient map and documentary evidence from which bridleway rights can be inferred.

The applicant submitted many OS maps of various scales to illustrate that the application route existed as a substantial route which was capable of being used on horseback. They argue that the fact that the route was shown on these maps – from at least the 1890s – was good evidence that the public must have had a right of access along them.

If the gates across the route did not prevent access then it is agreed that the route may have been accessible on horseback and could have been used by the public. However, no user evidence was submitted and there are no historical documents, photographs or statements referring to actual historical use of the route by the public.

Other map and documentary evidence examined suggest that the route may not have come into existence or been used by the public. The northern end – from point A through to the approximate location of point D existed in the 1840s and appeared to provide access to several individual fields – possibly enclosed as part of a private inclosure award or agreement although no copy has been found. At that time the rest of the route – through to point H did not exist.

The Tithe Map for Skerton does not record a route through to point H in 1841 and although the Slyne with Hest Tithe Map and Award shows that part of the application route from point A through to just north of point D it was not part of a longer through route and was not considered to be part of the public vehicular network.



The railway plans and books of reference provide useful information about what the status of the route crossed by the railway at point D was considered to be at that time. A substantial bridge allowing access under the railway was provided but the route under it was described as an occupation road with no reference to public rights and again there is no evidence that at the time that the railway was built there was a route existing all the way from point A through to point H.

The Finance Act records show the application route excluded from the numbered plots from point A to just north of point D which is often considered to be good evidence of a route considered to be at least a public bridleway. However, it is not shown excluded for its full length and the excluded length corresponds to the length with no registered landowner and which may possibly have been created in the first instance as part of the inclosure of adjacent land. The rest of the route is listed as part of plot 42 which covers a vast expanse of land for which no deductions were made for the existence of public rights.

The route was not recorded as a public right of way in 1932 and when part (A-E) was included on the Parish Survey Map and Draft Map as a public footpath it was appealed at the earliest stage by the British Transport Commission and removed from the map.

In conclusion, it is the Investigating Officer's opinion that the Ordnance Survey maps alone are insufficient evidence from which to infer public bridleway or footpath rights exist and the lack of other supporting evidence means that even if the route could – or had been used by the public at some point in the past there is not sufficient evidence from which to make an order.

Advice

Head of Service – Legal and Democratic Services Observations

Landownership

Ownership of the application route between point A and point B is unregistered and not known.

From point B to point C it is owned by Manor House Farm (Title LAN 54392)

From point C through to point H the land crossed by the application route is in the registered ownership of Williamlands Farm (Title LA818683) with the exception of the railway tunnel at point D.

The land was registered in the name of the current landowner in 1998. The Title refers to a right of way of British Rail over a field marked 'C' on the conveyance plan. The County Council have not had sight of the conveyance plan but the description appears to relate to land south of the railway through which the application route runs.

A private right of access through an underpass leading from land registered under this title east under the Lancaster – Carlisle West Coast railway is also referred to



but there is no mention of a public or private right of access through the underpass at point D.

The underpass at point D – together with the railway line – is not registered but Network Rail have confirmed ownership of the railway line and bridge which is referred to as bridge 1 on the Morecambe South Junction Railway – Engineers Line Reference MSM 0m 12c.

Information from the Applicant

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

Tithe Map and Award for Slyne with Hest 1846

Finance Act (District Valuation Award) Map 1910

An extract from the County Councils digitised highway records

Land registry plans

Search result for stopping up orders for Rakes Head in The Gazette

Undated photographs of the route and undated aerial photographs obtained from Google Maps

Ordnance Survey Instructions to Field Examiners 1905

OS 6 inch maps published in 1848, 1895, 1913, 1931, 1947, 1956-7, 1961-3, 1968

OS 25 inch maps published in 1891, 1913, 1931

OS 1 inch maps 1898, 1918, 1947, 1955

OS 1:25,000 maps published 1947, 1952, 1963

Information from Others

One adjoining landowner responded to the consultation by simply highlighting the area on the map concerning them and stated the land belongs to a family trust. No further comments were provided with regards to the consultation.

Network Rail object to the application and state there have never been any public rights recorded for this location. Network Rail further state they object to the application, and if an order was made in favour of the application, they would potentially have to maintain a bridge in the future purely to accommodate a public right of way, where private rights have either fallen away or have been relinquished.

Information from the Landowner

The owner of the land crossed by the application route from point C through to point H (with the exception of the railway tunnel at point D) has objected to the application on the following grounds:

He states that the application route is not, and has not during his ownership, been used by the general public or any party who have not been authorised to do so.

He points out that the route is impossible to use due to the fact that there are locked gates across it at points E,F and G (on the Committee plan) which are locked in order to prevent any stock escaping.



The landowner also draws attention to the fact that access from the northern end of the route is not possible due to the existence of a fence across the route on the northern boundary which when the route was inspected on the ground appears to be a reference to the wired-up gateway at point C.

He concludes by stating that he does not believe that the application has any validity.

In relation to this land, Oakmere Homes (Northwest) Limited have obtained an Opinion from Counsel Ruth A. Stockley of Kings Chambers, Manchester dated the 14th December 2022. Oakmere Homes have an option to purchase the land in question. The Opinion is attached at Appendix A. Ms Stockley concludes as follows – "In conclusion, in relation to the claimed route between points B & D, the sole piece of evidence submitted with the Application having any applicability to that section of the route are some OS Maps. As such maps are not evidence of the highway status of any routes shown, there is no evidence whatsoever produced to support the claimed route between points B & D being a bridleway.

In relation to the claimed route to the north of point B, the evidence relied upon is limited to documentary evidence on which the route has been marked as physically existing. However, as such maps are not evidence as to the bridleway status of any routes shown, no evidence has been produced to support its bridleway status.

It follows that the evidence submitted with the Application does not, in my opinion, amount to credible evidence sufficient to demonstrate a reasonable allegation that a bridleway exists along the claimed route. Consequently, it is my view that the Modification Order sought should not be made by the Council."

Network Rail own the railway line and bridge under which the application route runs and have objected to the application. They state that Bridge 1 was constructed to accommodate a private road that pre-existed the authorisation and construction of the railway and that there have never been any public rights recorded for this location.

Conclusion

In this matter there is an application that the route be recorded as an addition to the Definitive Map and Statement of Public Rights of Way of a bridleway from Rakes Head Lane to Hasty Brow Road, Slyne with Hest.

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. Whilst the route is shown on several maps where the public might gain access to the route, there are some inconsistencies between maps with the whole route not shown on subsequent versions and ultimately there is an absence of 'sufficient evidence' as to public rights. This view had been reached on the evidence before the Opinion of Counsel was received. Committee is referred to the Opinion provided by Counsel Ruth A. Stockley dated 14th December 2022 to the prospective landowner which makes entirely plausible conclusions in the circumstances and finds insufficient evidence of bridleway dedication. She refers to case law relevant to the matter.

On balance and given the nature of the evidence it is advised that the evidence of the application route having become a public bridleway is insufficient. Respectfully it cannot be asserted that a bridleway “subsists” or is “reasonably alleged to subsist”.

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

Implications

This item has the following implications, as indicated:

Lancashire County Council as Surveying Authority under the Wildlife and Countryside Act 1981 is required to keep the Definitive Map and Statement of Public Rights of Way up to date by making definitive map modification orders to correct errors and omissions shown, or required to be shown on it. It is required to process duly made applications for definitive map modification orders and also to consider whether to make orders when it discovers relevant evidence.

This decision is part of this process and Committee has a quasi-judicial role in this decision which must be taken considering all available relevant evidence.

Risk management

Consideration has been given to the risk management implications associated with this application. 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: 804-701		Ansar Sadiq, 01772 532435, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

