

Regulatory Committee

Meeting to be held on 21 June 2023

Part I

Electoral Division affected:
Oswaldtwistle

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of Footpath from Blackburn Road to Norman Road, Oswaldtwistle

(Annex 'A' refers)

Contact for further information quoting file reference 804-762:

Annabel Mayson, 01772 533244, Paralegal Officer, Legal and Democratic Services,
annabel.mayson@lancashire.gov.uk

Jayne Elliott, 01772 537663, Public Rights of Way Definitive Map Officer, Planning
and Environment Group, jayne.elliott@lancashire.gov.uk

Brief Summary

Addition to the Definitive Map and Statement of Public Rights of Way of a Footpath from Blackburn Road to Norman Road, Oswaldtwistle.

Recommendation

- (i) That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a Footpath from Blackburn Road to Norman Road, Oswaldtwistle, be accepted.
- (i) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add a Footpath from Blackburn Road to Norman Road on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-C and points X-Y.
- (ii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Detail



An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a Footpath from Blackburn Road to Norman Road, Oswaldtwistle on the Definitive Map and Statement of Public Rights of Way.

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

Hyndburn Borough Council

No response has been received from the Borough Council.

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.



Point	Grid Reference (SD)	Description
A	7314 2828	Open junction of grass-surfaced back alley with Blackburn Road immediately east of West End Methodist Church.
B	7314 2825	Application route blocked by fencing at the rear of 10 Norman Road both in line with their north and south boundaries.
C	7316 2824	Open junction of unkempt back alley with Norman Road immediately south of 12 Norman Road
X	7318 2819	Open junction of stone and grass path with back street laid with setts.
Y	7321 2816	Open junction of stone and grass path with tarmac apron in front of 77B and 77C Aspen Lane

Description of Route

A site inspection was carried out in January 2023.

The application route starts at a point on south side of Blackburn Road immediately to the east of West End Methodist Church, Oswaldtwistle (point A on the Committee plan).

From Blackburn Road the route runs in a generally southerly direction bounded on the west by a hedge and fencing separating it from West End Methodist Church and to the east by a stone wall within which gated rear entrances to 7 properties on the corner of Blackburn Road with Norman Road and Norman Road – which runs parallel to the application route.

The strip of land along which the application route runs is approximately 3 metres wide with a grass surface. The first 10 metres of the route looks to have been mown but beyond there the surface becomes more overgrown and appears less well maintained. Each of the properties; 372 Blackburn Road and 2,4,6,8 and 12 Norman Road have gates which lead directly onto the application route – their other access being directly off Blackburn Road or Norman Road.

It was not possible to see whether 10 Norman Road had a gate between the application route and the property as the application route behind the property had been blocked off by fencing in line with its boundaries with 8 and 12 Norman Road and the land forming part of the application route subsumed into their garden:





Image above: Google Earth Pro April 2020

At point B (the rear of 10 Norman Road) it was not possible to continue along the application route due to fencing that had been erected. Gates had been built into the fencing to allow access to and from the rear of 10 Norman Road (but these were bolted or fixed so it was not possible to pass along this section of the application route):



[above] looking south



[above] looking north-west

From the church grounds it was possible to view two stone gateposts which would have provided access to and from the church grounds from the application route.



The gateway had been blocked off by a panel of wooden fencing consistent with the style and age of the fencing blocking the application route.



South of the area marked 'B' (obstructed section) the application route continues around the west and south of 12 Norman Road to exit onto Norman Road (point C) between a wooden garage forming part of 12 Norman Road and a brick wall. This section of the route is quite overgrown.

The total length of the route is 60 metres.

Although the application route is specifically the section marked A-C on the Committee plan it was apparent while investigating the history of the route that it originated as part of a longer (unrecorded) footpath which started on Blackburn Road and led directly across fields to Aspen Lane (11-5-BW300). Due to its relevance in how the application route evolved into what it is today this route has also been considered as part of this report.

From the junction with Norman Road (point C) it is possible to cross the road and continue along a publicly maintainable back street to the start of an unrecorded section of footpath (point X) which continues directly to a junction with Aspen Lane (11-5-BW 300). The back street running from Norman Road along the back of the terraced houses on Ripon Road is surfaced with setts. From point X the unrecorded footpath extends in a south easterly direction bounded on either side by garden fences. It appears to have been surfaced with compacted stone but is now partially overgrown. The width between the fencing is approximately 3-3.5 metres and the trodden track appears to be well used. The route is approximately 50 metres long exiting onto part of Aspen Lane recorded as 11-5-BW300 (point Y):





Map and Documentary Evidence

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

The application route was not shown on any of the early small-scale commercial maps and there is no Tithe Map for the land crossed by the route. For this reason, some of the earliest maps and documents normally included in this section of the report have not been included below as no inference can be drawn except that it was not considered to be a vehicular highway or significant route in the 18th or early 19th Century. In addition, the land crossed by the application route was not affected by the construction, or proposed construction, of any railways or canals, so references to these types of documents have not been included.

Note: Map inserts provided below are not to scale.



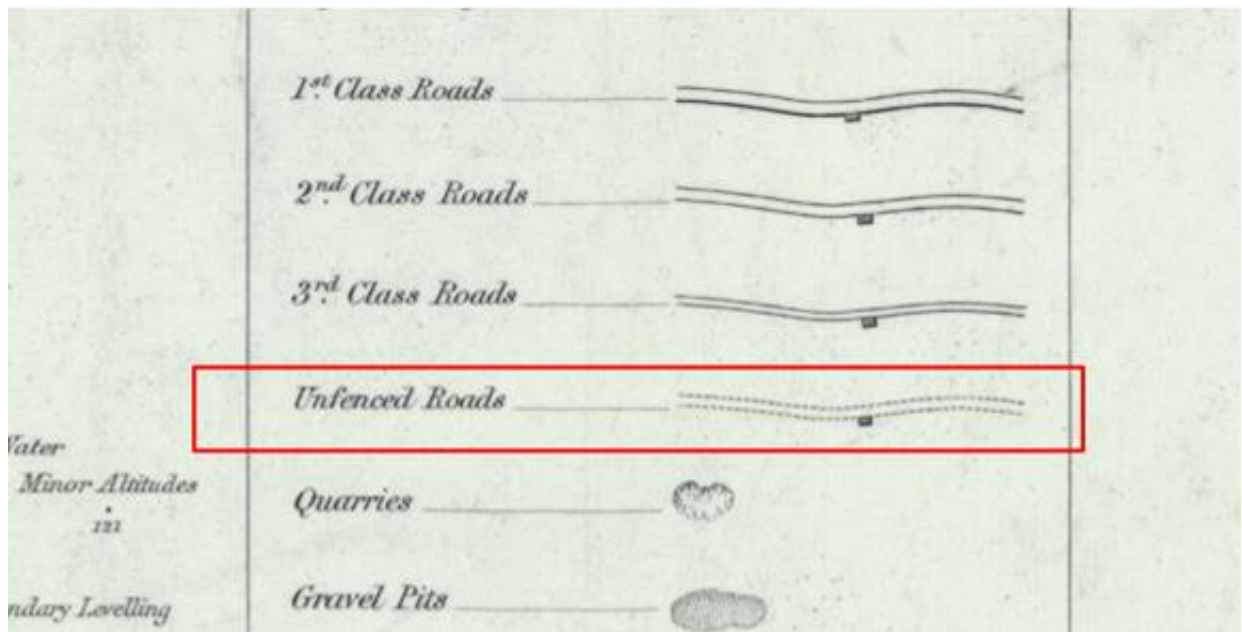
Document Title	Date	Brief Description of Document & Nature of Evidence
<p>6 Inch Ordnance Survey (OS) Map</p> <p>Sheet LXIII</p>	<p>1848</p>	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-46 and published in 1848.¹</p> <p>However it has recently become apparent that in many 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.





6 inch OS Map sourced from National Library of Scotland



Extract from Ordnance Survey Characteristic Sheet for 6 inch OS mapping
<https://maps.nls.uk/view/128076783>





Overlay of 6 inch OS Map sourced from LCC own records on modern base map

<p>Observations</p>		<p>The application route is not shown between point A and point C and the housing developments and roads (including Norman Road) which now exist are not shown.</p> <p>However, a route is shown from Blackburn Road – starting just west of point A and running in a south easterly direction along the edge of a field to pass through point C and then continuing directly across an open field as an 'Unfenced Road' towards Fountains where it meets a road named on the map as Aspen Lane which is now recorded as Bridleway 11-5-BW300 at the point labelled 'Y' on the Committee plan. No lines (probable gates) are shown across this route.</p>
<p>Investigating Officer's Comments</p>		<p>The application route did not exist in 1844-46 although a substantial route did exist across the fields between</p>



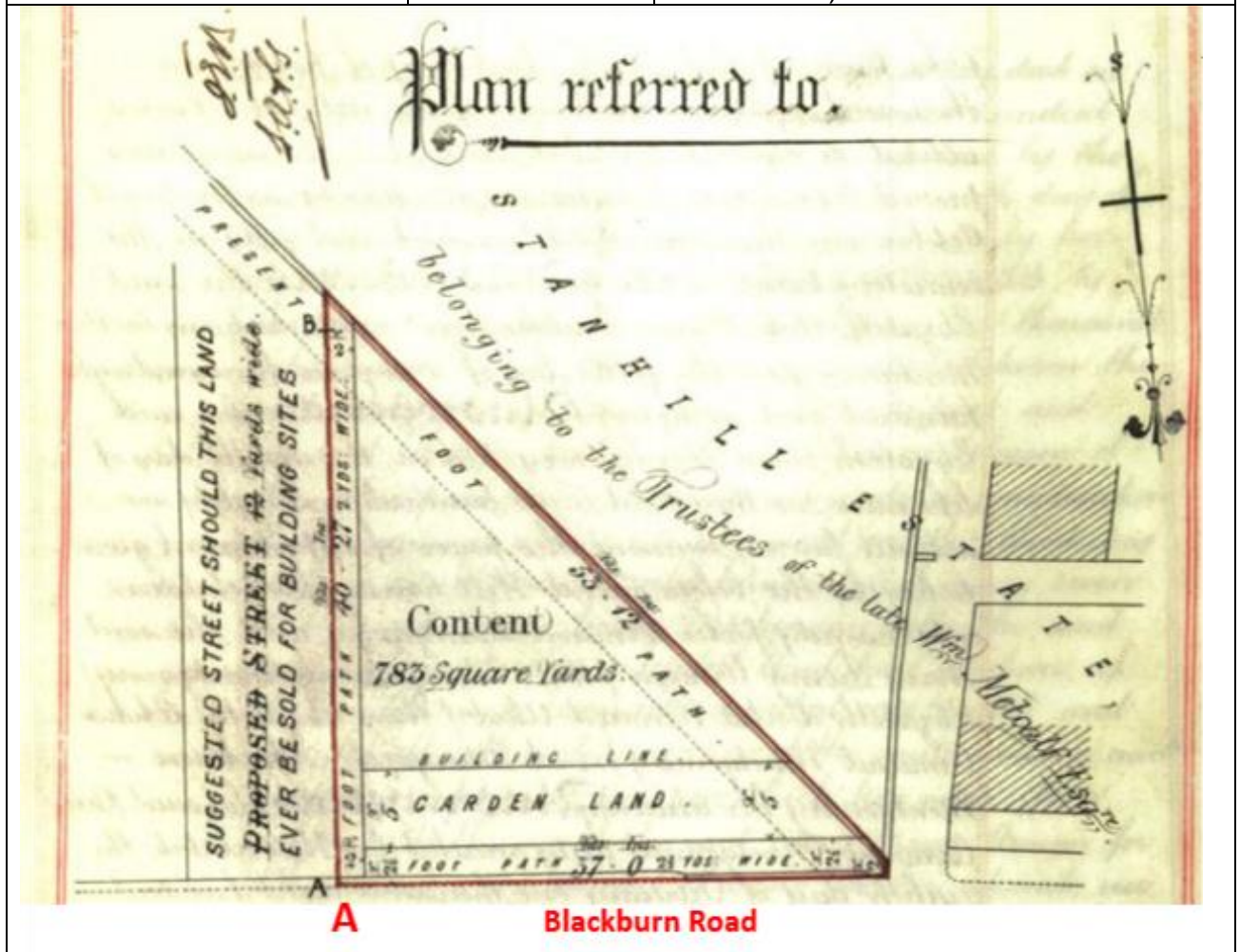
		Blackburn Road and part of Aspen Lane (11-5-BW300). Whilst the OS show this route as an 'unfenced Road' this is not necessarily indicative of any public status. The route was contiguous with the highway network and probably accessible to the public at that time although it is not possible to deduce actual use.
25 Inch OS Map Sheet LXIII.14	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890-1891 and published in 1893.



Observations		<p>The application route is not shown and the land that it crosses is again shown as a single enclosure, presumably farmland.</p> <p>The route shown on the 6 inch OS map detailed above as an Unfenced Road is again shown but is now shown with the notation 'F.P.' (footpath) passing through point C and continuing to point Y.</p> <p>It should also be noted that the 25 inch OS Sheet covering this area which is available to view on the Lancashire County Council MARIO map as the '1890s OS First Edition 2500' map is</p>
--------------	--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



		actually the 1911 edition of the map for this area. The applicant submitted the 1911 OS map as part of their evidence believing it to have been published in the 1890s as a result of this error. The 1911 edition of the OS map is detailed later in this report.
Investigating Officer's Comments		The application route did not exist in 1890-91 but a route depicted on the map as a footpath did exist between Blackburn Road and 11-5-BW300 (Aspen Lane) passing through point C and continuing south east to point Y which appeared to be capable of being used on foot.
West End Wesleyan Methodist Church	1904	Conveyance included in the Land Registry documentation relating to the land now registered as West End Methodist Church (Registered title LAN109297)



Observations		The OS mapping examined as part of this investigation indicated that between 1890-91 and 1909 West End Wesleyan
--------------	--	-----------------------------------------------------------------------------------------------------------------

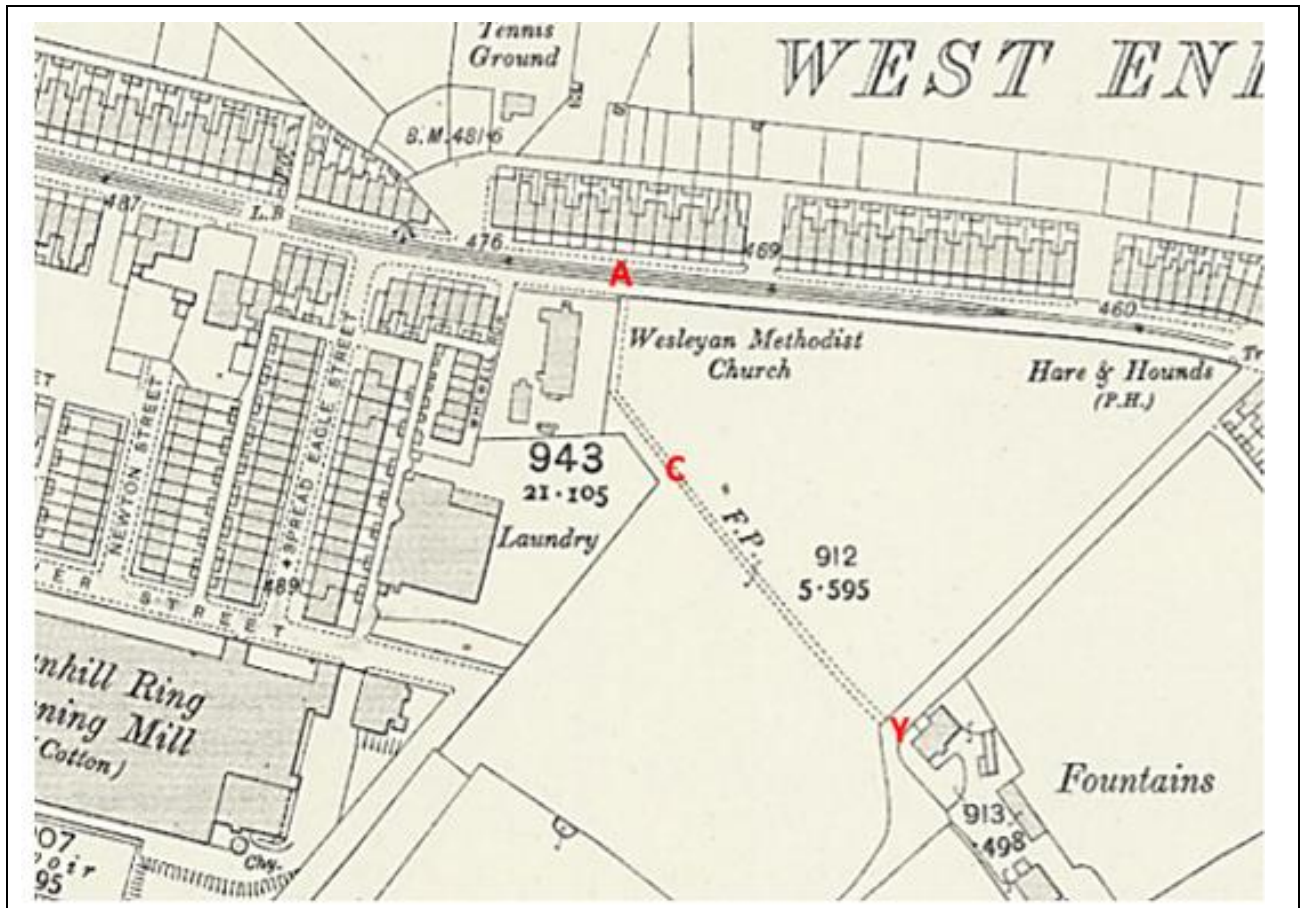


		<p>Church was built. The Church was constructed on the land across which the footpath marked on the First Edition 25 inch OS map was shown.</p> <p>A conveyance dated 10th May 1904 has been deposited at the Land Registry. It relates to the sale of a parcel of land described as being part of the Lower Aspen Estate. The agreement to sell was detailed in the conveyance as being between Mary Irving Ainson and others and Mr John Haworth and Others.</p> <p>The plot of land is described on page 8 of the conveyance with reference to the plan detailed above. The land to be sold was described as being that edged red on the plan and it was to be sold subjected to the retention of rights relating to the mining of stone and minerals within and under the said plot of land.</p> <p>On page 10 of the conveyance there are further details of conditions relating to the sale. It was specified that the purchaser must, within one month of taking possession of the plot of land, erect and maintain a fence no less than 5 feet 6 inches in height between the points marked A and B on the conveyance plan and, in the event of the adjacent land being laid out as a public front street (but not as a back road) for, or in connection with building, will, at the request of the sellers properly construct and maintain a footpath two yards wide on the eastern boundary of the said plot as shown on the conveyance plan.</p> <p>It was also specified that if the purchasers submitted plans for buildings to be erected on the said plot of land for the approval of the local Sanitary Authority and such Authority made it a condition of approving such plans require a back road four yards wider to be laid out on the eastern side of the said plot of land then the sellers would at the cost of the purchasers convey to them an additional plot of land two yards wide on the eastern boundary to allow for a back road measuring 4 yards in width to be provided in lieu of the</p>
--	--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



		<p>footpath shown on the conveyance plan. The conveyance plan clearly showed the route of the footpath that was marked on the 1st edition 25 inch OS map crossing the site and labels it as 'Present Foot Path'. It then shows a strip along the inside of the eastern boundary of the plot to be sold marked 'Foot Path 2 yards wide' between the points marked on the conveyance plan as A and B and on the outside of the boundary shows a 'route' marked as 'suggested street should this land ever be sold for building sites'.</p> <p>Within the plot to be sold there is also a strip of land marked as being 2 ½ yards wide immediately abutting Blackburn Road which is marked as 'Foot Path'.</p> <p>There is no indication within the Conveyance as to what the land was to be used for (i.e. the building of a church) following its sale.</p>
Investigating Officer's Comments		<p>The fact that the conveyance plan clearly showed and identified the footpath across the site which had previously been shown as part of a longer footpath on OS maps suggests that it was considered to be a public footpath at that time. Whilst the conveyance doesn't refer specifically to a 'public' footpath the fact that a footpath was to be provided along the eastern boundary of the site should the land be built upon, and which connected to the existing footpath strongly suggests an intention by the vendors to ensure that the footpath was retained, albeit on a diverted line and an agreement by the purchasers to comply with this requirement should the land purchased be developed.</p> <p>The footway now forming part of Blackburn Road is shown as part of the land being sold.</p>
25 inch OS Map LXIII.14	1911	Further edition of the 25 inch map surveyed in 1890-91, revised in 1909 and published in 1911.





Observations

Five years after the sale of a plot of land as detailed in the 1904 conveyance above, it can be seen that buildings labelled as the Wesleyan Methodist Church had been built and the footpath which ran from Blackburn Road through to 11-5-BW300 diverted to run along the outside of the eastern boundary fence of the church.

The 1904 conveyance plan showed that the plot that was sold measured 37 yards along its northern boundary abutting Blackburn Road although the OS plan shows that the plot fenced off on which the church was constructed measured 33 yards long. The 'Foot Path' (footway) running along the front of the church adjacent to Blackburn Road is shown as part of the width of the road rather than as part of the fenced church grounds.

The footpath (F.P.) which ran from Blackburn Road to 11-5-BW300 is shown as having been diverted so that it now ran along the outside of the

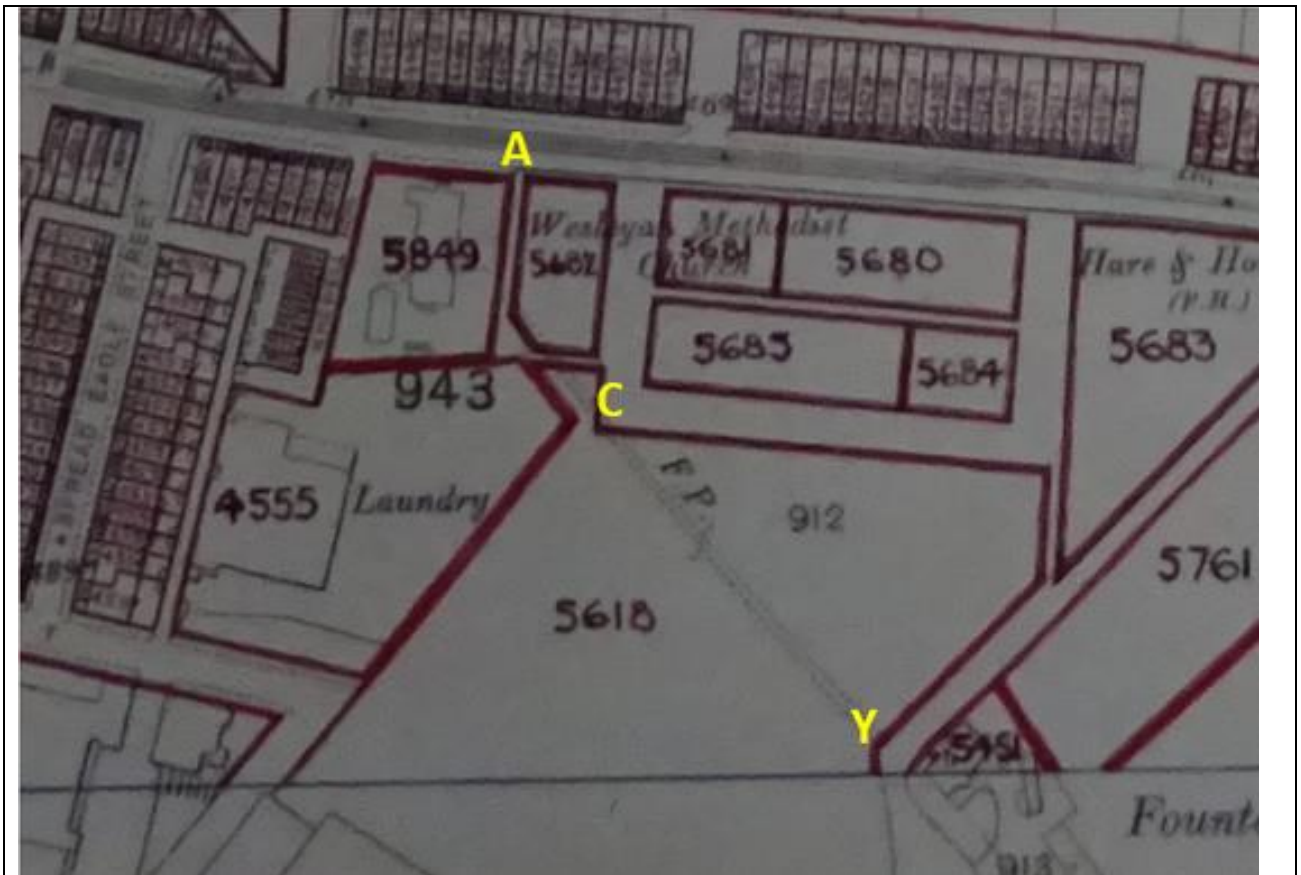


		boundary of the church from point A on the Committee plan for approximately 26 metres consistent with the route of the application route before then turning to continue in a south easterly direction along the line of the original footpath and passing through point C on the committee plan and continuing to point Y (11-5-BW300).
Investigating Comments	Officer's	A footpath existed and appeared to be capable of being used from point A on the Committee plan through to point Y. The route was consistent with the alignment of the application route from point A for approximately 26 metres before taking a slightly different – and direct – route across open fields to point Y. The requirement specified in the 1904 conveyance detailed above in relation to the sale of a plot of land on which the church was built appears to have been complied with in that an alternative footpath has been provided.
6 inch OS Map Sheet LXIII.SW	1912	6 inch OS map revised 1909 and published 1912.
Observations		The 6 inch OS map prepared following completion of the same survey that was undertaken prior to the publication of the larger scale 25 inch OS map detailed above shows the church and footpath running from A through to point Y in the same way as the 25 inch map shows it.



Investigating Officer's Comments		A footpath existed between point A and point Y partly consistent with the application route.
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. 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>





Map deposited at The National Archives

Observations

The Archivist at the County Records Office was unable to find the Finance Act Map listed as having been deposited there.

The Finance Act Map deposited at the National Archives was drawn on the 25 inch OS base map published in 1911 but shows plots marked out suggesting that land had been sold for development and that the terraced houses on Norman Road and Ripon Road and those fronting onto Blackburn Road may have been built or under construction. The number plots (5849 and 5682) exclude a strip of land running between them which is consistent with the application route from point A but then turns towards Norman Road more sharply than the application route with the rest of the route marked on the OS base map as a footpath (including the route X-Y) included as plot 5618. The Field Books deposited at the National Archives have



		<p>not been examined.</p> <p>The District Valuation Book for Oswaldtwistle is available to view at the County records Office. The numbering in the book accords with the numbering on the National Archives plan. Plot 5682 is listed as being owned by George Walsh and Sons and described as land 'fronting Blackburn Road and Between Wesleyan Chapel and Norman Road' with no deductions listed for public rights of way or user. Plot 5618 is also listed as being owned by 'G Walsh' and described as 'Aspen estate' with no deductions listed for public rights of way or user.</p>
Investigating Officer's Comments		<p>A route broadly consistent with the majority of the application route is excluded from the numbered plots. Whilst the boundaries of the plots are hand-drawn it appears that the excluded strip behind the row of terraced houses now in existence is intended to follow the boundary of the plot of land on which they were constructed.</p> <p>The dashes of the base map footpath 'FP' can be seen within plot 5682 and along the edge of plot 5687 but there is no deduction made for the existence of a footpath in either plot.</p> <p>In relation to plot 5687 it could be that no deduction was made because a route had been provided (and excluded) along the boundary of the plot. With regards to plot 5682 no deduction is listed in the Valuation Book suggesting that at that point in the process the existence of a footpath across the plot had not been acknowledged and no deduction claimed.</p>
Land Registry documentation relating to 8 Norman Terrace	1909-1919	Information relating to land held on leasehold agreement.





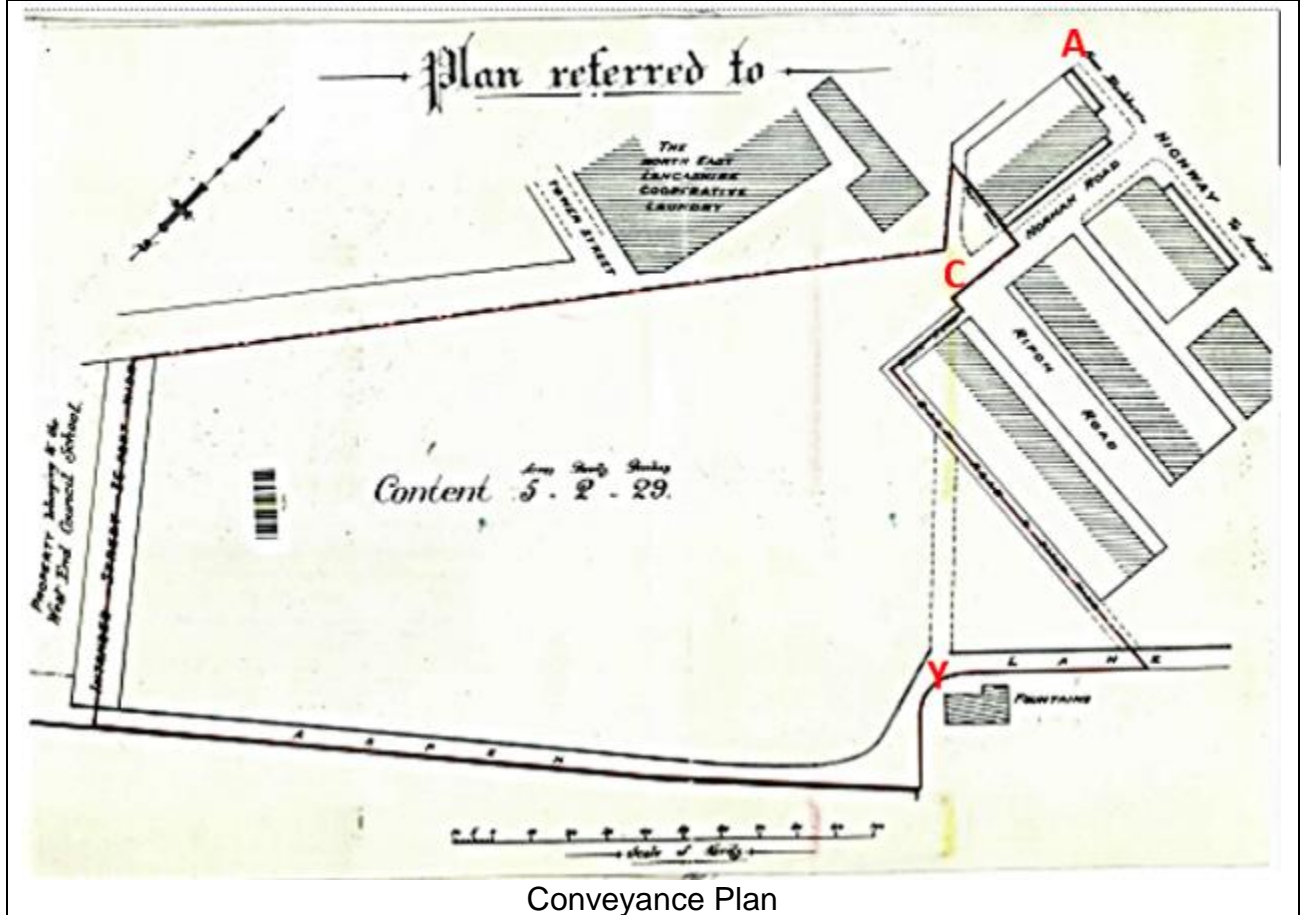
<p>Observations</p>		<p>The Investigating Officer checked the documentation held at the Land Registry for all 7 properties along the back of which the application route runs. All the properties are held under a leasehold rather than a freehold ownership. Electronic copies of those leasehold agreements available were inspected and all consistently document that the properties are held on a leasehold basis with the original owners of the land documented as being George, Robert and Albert Walsh who appear to have been the builders. The earliest agreement inspected was dated 1909 with the agreements for 8 Norman Road dated 1913 and the one for 12 Norman Road dated 1919. All of the leases inspected included a clause stating that the Lessees if required to do so by either the Lessor or the Local Authority were required <i>'at the Lessees expense to make lay pave flag and form (so far as not already done) and afterwards at all times keep in repair until the same shall become repairable</i></p>
---------------------	--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



		<p><i>by the Local Authority the footway and one half the roadway of Norman Road afsd and also one half the back street at the rear of the demised prems in such manner and form and of such materials as the said Local Authority may require so far as the said roadways are coextensive with the demised premises and also at the like request and expense to make such sewers and drains in or under the said roadways and footways as the same Authority may require and to keep the same in repair until the same become repairable by the Local Authority.'</i></p> <p>The land crossed by the application route is not included in any of the land registry titles and ownership is unknown. The applicant owns one of the properties and confirmed that since taking ownership of the property in 2011 they had not been asked to make an annual payment. The property is registered as a 'Good Leasehold'. A good leasehold title usually occurs when the lease appears valid on the face of it but the documents proving the landlord's title, or any superior lessor's title, have not been registered at the Land Registry and in this particular case there is no known owner of the land crossed by the application from point A through to the route at the rear boundary of 12 Norman Road – or land on which the properties were built - hence the fact that the leasehold rents appear to be no longer paid.</p> <p>This excluded strip only partially coincides with the application route (A-B and X-Y).</p>
Investigating Officer's Comments		<p>The leasehold agreements all refer to the application route as a 'back street' with a requirement for it to be made up to an agreed standard to become publicly maintainable at some point in the future.</p> <p>There is clear inference that it was considered to be a public route at that time and appears to have been capable of being used at least on foot. It could be argued that 'back street' implies</p>



		vehicular rights not only pedestrian (otherwise the term 'footpath', 'footway' or 'walkway' could have been used) but it is unclear whether any higher rights would be public or private.
Land Registry documentation relating to land crossed by the application route to the rear and south side of 12 Norman Road	1935	Further information obtained from land ownership records.





Land Registry Plan for Title LAN49643

Observations

Part of the route applied for crosses land in registered ownership (LAN49643). The title is freehold not leasehold. Included in the Land Registry bundle is a conveyance dated 18th February 1935. The Conveyance details the sale of a plot of land shown edged red on the conveyance plan. The Vendors are listed as being Robert Walsh, described in the document as being a retired builder and joiner, and Albert Walsh. The Conveyance also provides details relating to the fact that George Walsh had died and that his share in the land had been transferred to Robert and

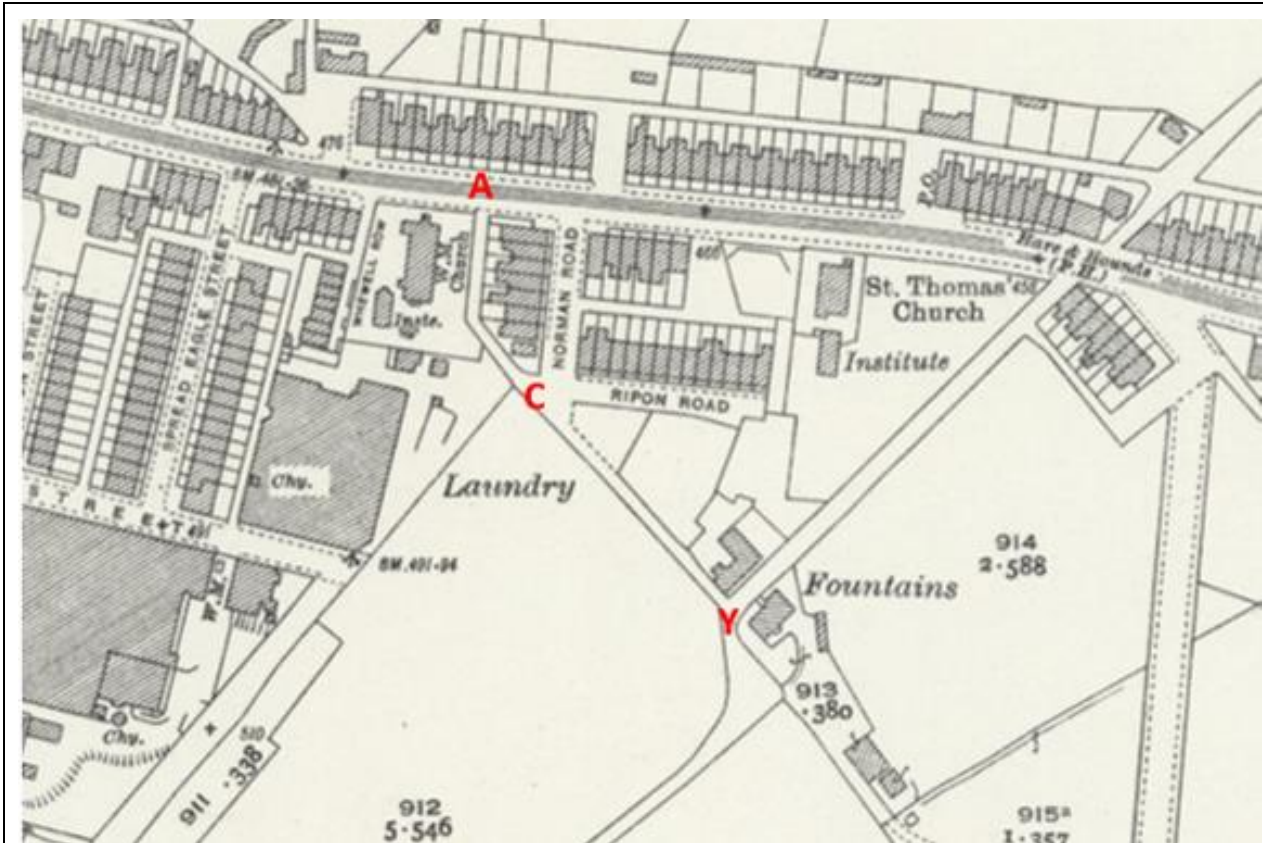


		<p>Albert. The purchasers of the land were detailed as being the North East Lancashire Co-operative Laundries Association Limited.</p> <p>A number of conditions are set out in the conveyance relating to the sale of the land with reference to an earlier conveyance dated 12th November 2008. The second condition states:</p> <p><i>'The Association hereby covenant with the vendors that the Association and its successors in title will at all times hereafter leave open and unbuilt upon such portions of the said plot of land hereby conveyed as form portions of any street or road or intended back street or back road and will when called upon by the Local Authority so to do at its own cost form make pave flag channel sewer and complete such portion thereof as are appropriated for or towards the formation of such street or road or back street or back roads or intended streets or roads or intended back streets or back roads to the satisfaction of the Local Authority for the time being.'</i></p> <p>The conveyance plan shows the boundary of the plot of land to be sold as including part of the application route from a point at the rear corner of 12 Norman Road to point C. The full length of the application route is shown on the plan although it is not named or labelled. The plan also shows the row of terraced houses on Ripon Road and a route extending around the back of the properties to link up to the route of the footpath continuing through to Aspen Lane (11-5-BW300) at point Y. By enlarging the conveyance plan it can be seen that this route around the rear of the terraced houses is labelled as 'Back Road 4 yards wide'.</p>
Investigating Officer's Comments		<p>The Land Registry documentation provides further information as to the history and development of the site consistent with other information considered.</p> <p>It provides further evidence in support of the fact that the land, including the application route, appears to have been</p>



		<p>purchased by George, Robert and Albert Walsh in the early 1900s who then built the houses selling them off as leasehold properties once they were completed.</p> <p>With particular regards to the 1935 Conveyance there are specific conditions relating to the sale of the land which reflect the same conditions that were written into the 1904 conveyance for the land on which the church was built. Both documents appear to concur that the intention was that the footpath originally in existence between Blackburn Road and Aspen Lane was to be retained and that if development took place a route should be provided which would form part of a back road or back street which must be retained. This conveyance also makes it clear that when requested to do so by the relevant Local Authority the landowner should bring the route up to an agreed standard to the satisfaction of the Local Authority and that the application route appeared to be considered to be part of a longer a public through route at that time. It also implies that although it was already open to the public it was not publicly maintainable until adopted.</p>
<p>25 Inch OS Map LXIII.14</p>	<p>1931</p>	<p>Further edition of 25 inch map (surveyed 1890-1891, revised in 1928 and published in 1931.</p>

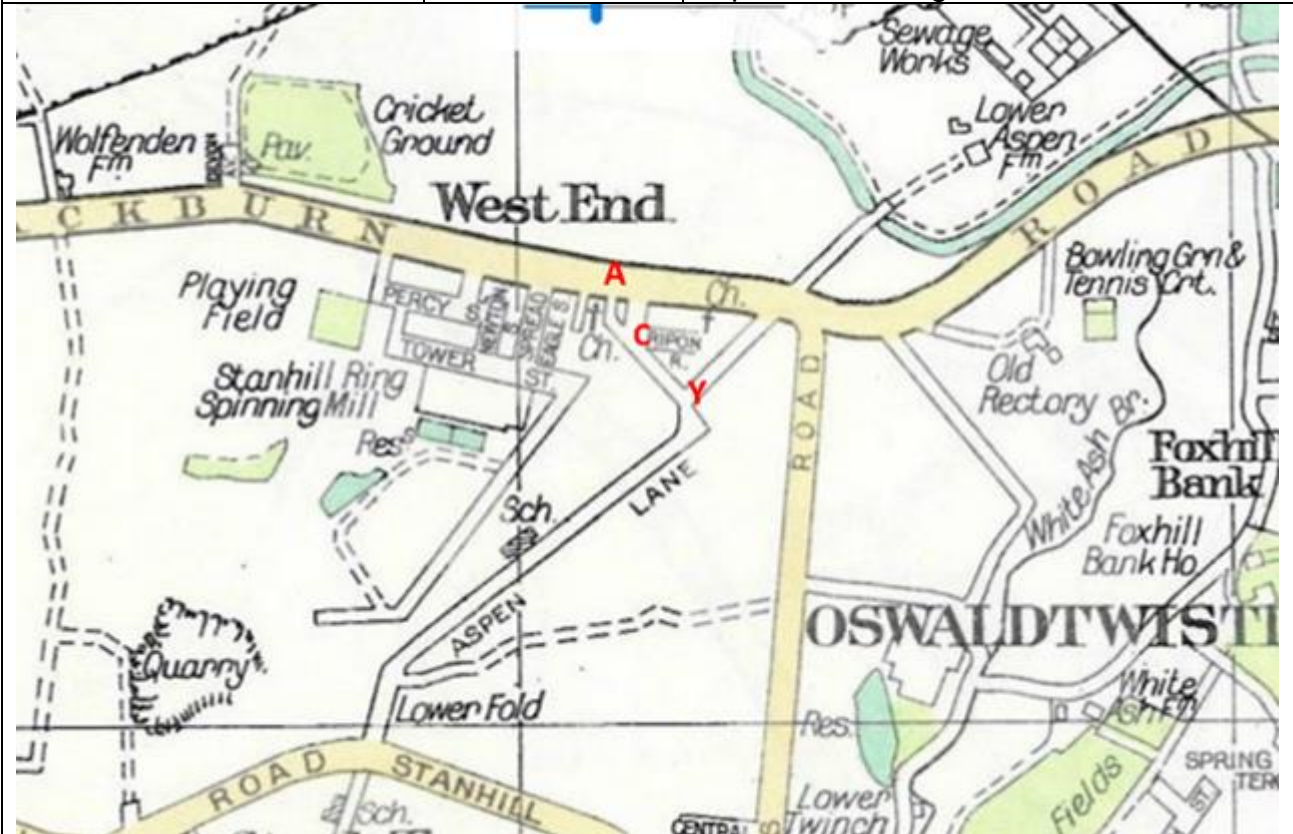




<p>Observations</p>		<p>The third edition 25 inch OS map was revised in 1928 and confirms that by that time the row of houses backing onto the application route, as shown on the 1935 conveyance plan detailed above, had been built. The row of terraced houses on the south side of Ripon Road (and back street linking through to point Y) are not however shown suggesting that they were built between 1928 and 1935.</p> <p>The application route between point A and point C is clearly shown as a bounded route running along the back of the houses at a width of approximately 3 metres and a route continues through point C directly through to Aspen Lane (11-5-BW300) at point Y.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed in 1928 and appeared capable of being used, at least on foot, at that time.</p>
<p>Authentic Map Directory of South Lancashire by Geographia</p>	<p>Circa 1934</p>	<p>An independently produced A-Z Atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large-scale coloured street plan of South Lancashire</p>



and included a complete index to streets which includes every 'thoroughfare' named on the map. The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.



Observations		The application route is shown as part of a longer through route between Blackburn Road and Aspen Lane. The application route A-C is shown narrower than the route C-Y.
Investigating Officer's Comments		The application route existed in the 1930s as a substantial route and is shown on a small-scale map prepared to show routes considered as 'thoroughfares' to which it would be reasonable to consider there was public access. The fact that the application route is shown to be narrower than other routes shown which are known to carry vehicular rights may reflect the fact that it was used primarily on foot or as a 'Back Street' or it might have been in the



		stylistic representation of roads on the map that the width was reduced to fit in the available space between the church and block of houses.
Aerial Photograph²	1945-1952	The earliest set of aerial photographs available was taken just after the Second World War between June 1945 and September 1952 and can be viewed on GIS. The clarity is generally very variable.

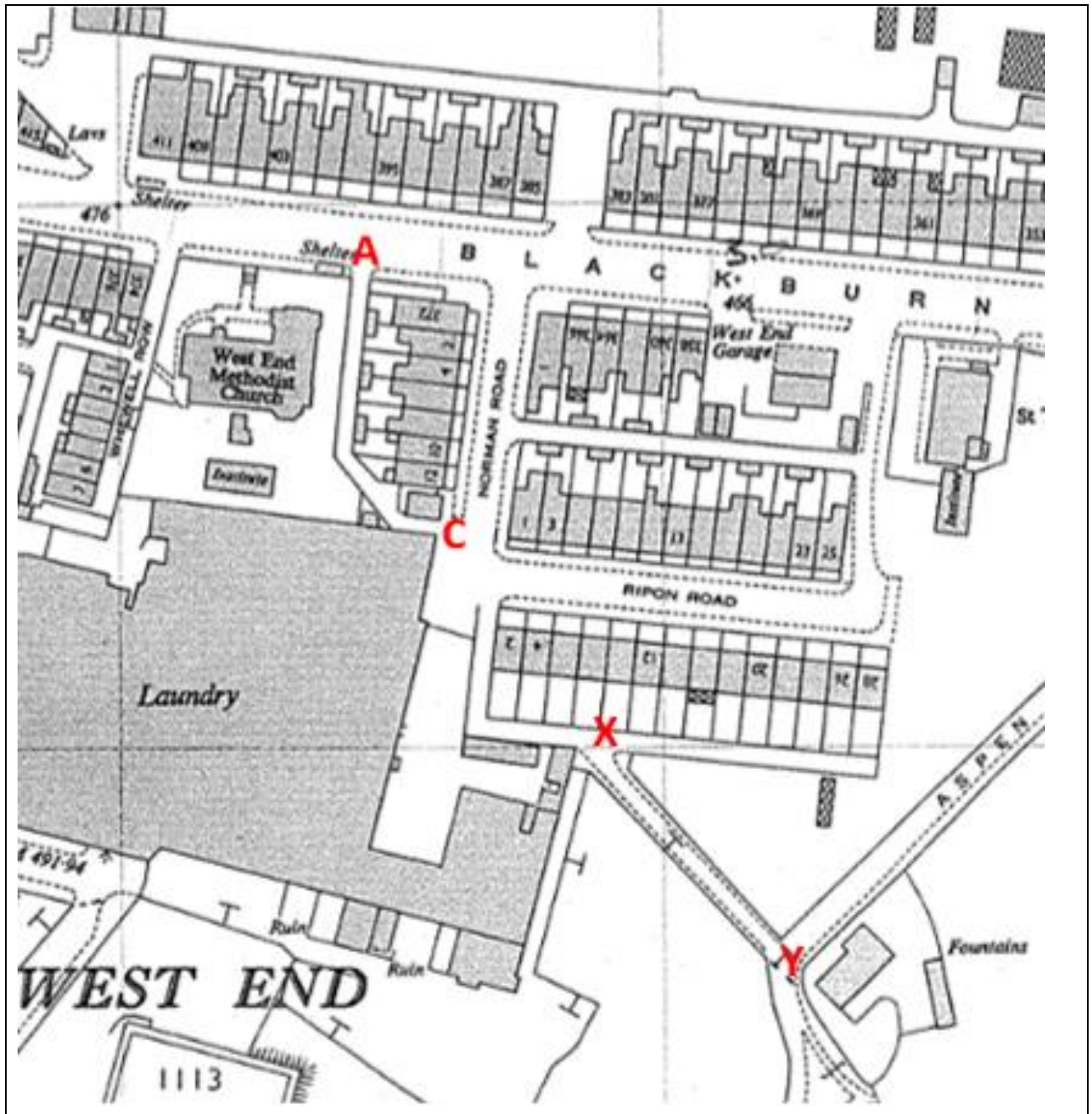


Observations		The application route is visible between the church grounds and along the rear of the terraced houses and a building looks to have been constructed on the land immediately adjacent to 12 Norman Road consistent with the location of the garage that exists today. Norman Road is shown continuing further south than point C providing access to buildings
---------------------	--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.

		and the back street leading from Norman Road around the back of the terrace properties on the south side of Ripon Road can be seen with a route continuing from point X to point Y to link to 11-5-BW300. The Methodist Church on Blackburn Road can be seen to the west of the application route but appears to have been rebuilt or significantly altered in shape.
Investigating Officer's Comments		The application route existed at the time that the photograph was taken. It is not possible to see from the photograph whether the route was accessible at that time. Further development had taken place in the area, but it is noted that the connection from Blackburn Road through to 11-5-BW300 (Aspen Lane) whilst no longer as direct as the original route had been retained.
1:2500 OS Map SD 7323	1958	OS Map revised 1956-1957 and published 1958.



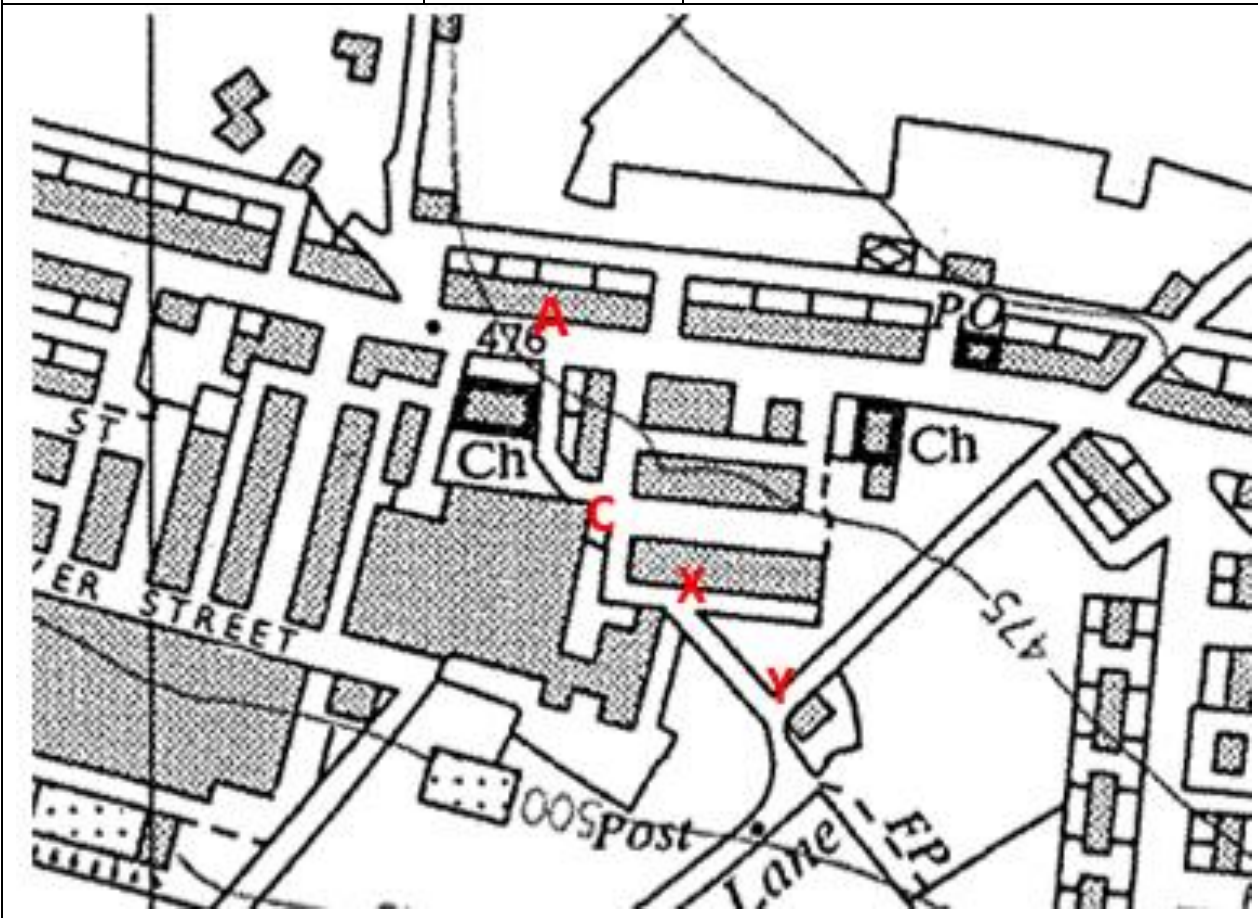


Observations

The application route is shown unaltered from the earlier edition of the 25 inch mapping. The laundry is shown to have expanded significantly across the site purchased by the North East Lancashire Co-Operative Laundries Association Ltd. back in 1935 with an extension of the south end of Norman Road continuing south beyond point C. From point C it appears that it was possible to cross Norman Road and pass along the Back Street running behind the properties on the south side of Ripon Road to continue between point X and point Y to Aspen

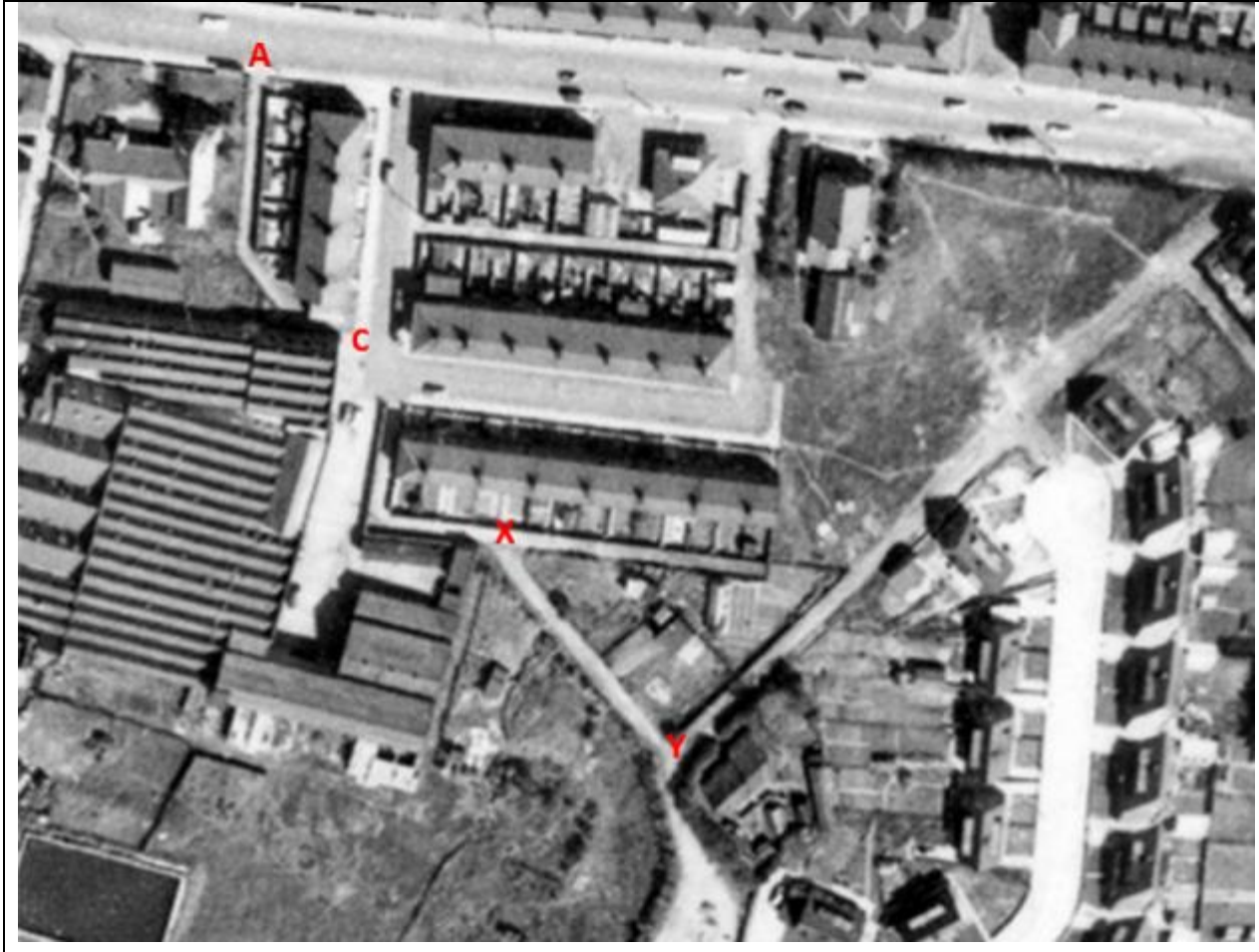


		Lane. West End Methodist Church is shown confirming what was noted on the 1940s aerial photograph, that it had been rebuilt or substantially altered since its original construction in the early 1900s.
Investigating Officer's Comments		The application route existed in 1956-57 and appeared to be capable of being used as part of a longer route from Blackburn Road to Aspen Lane.
6 inch OS Map Sheet 72NW	1965	OS 6 inch map revised between 1955 and 1963 and published 1965.



Observations		The application route is shown as a substantial route with a route clearly visible continuing through to Aspen Lane via points X-Y.
Investigating Officer's Comments		The application route existed and appeared to be capable of being used as part of a longer route from Blackburn Road to Aspen Lane.
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.





Observations		<p>The application route from point A through to point C can be clearly seen. A darkened area close to point C is visible over the route and a faint route can be seen leading from the church grounds onto the application route as indicated by the red arrow on the extract above. The route marked between point X and Y can be clearly seen providing a link through to 11-5-BW300.</p>
Investigating Comments	Officer's	<p>The application route A-C and route X-Y both existed in the 1960s as substantial routes that appeared to be capable of being used at least on foot. The darkened area close to point C is most likely to be shadow of the laundry building and there is no indication from any mapping produced before or after this date that access to the application route was restricted at this point.</p>

		<p>It appears likely that in the 1960s it would have been possible to walk from point A through to point Y via the sections A-C and X-Y. There is also a suggestion that a route existed from/to the church grounds via the application route although there did not appear to be significant levels of use at that time.</p>
<p>Aerial Photographs available to view on Google Earth Pro</p>	<p>2000-2021</p>	<p>Aerial photograph available to view on Google Earth Pro.</p>



2000





2005





2015



2015






2020



2021



Observations		The photographs taken over a 20 year period illustrate that the application route A-C and route X-Y still existed and that further development had taken by 2015 whereby properties 77B and 77C had been built off Aspen Lane adjacent to the route X-Y and that the application route A-C was blocked a point B by April 2020. In 2020 the application route from A-B and B-C can be seen quite clearly whereas in 2021 it can be seen that the route had become less visible and more overgrown.
Investigating Officer's Comments		The application route appeared to be capable of being used up until it being blocked in 2020 and since that time has become more overgrown – most probably due to lack of use as a through route.
Street View Images	2008-2009	
 <p data-bbox="188 1547 264 1579">2009</p>		



2008

<p>Observations</p>		<p>The photographs show that in 2009 a trodden path existed from point A with no visible restrictions to access. The photograph taken the previous year from point C shows the route passing between the garage at the side of 12 Norman Road and the former factory (now demolished).</p>
<p>Investigating Officer's Comments</p>		<p>Access appeared to be possible along the application route in 2008-2009 at least on foot.</p>
<p>Definitive Map Records</p>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<p>Parish Survey Map</p>	<p>1950-1952</p>	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or 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</p>



		boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		The land crossed by the application route was within the Urban District of Oswaldtwistle for which no Parish survey map was compiled.
Draft Map		A Draft Map was prepared by Oswaldtwistle District Council. The Draft Maps were given a "relevant date" (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 st 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.
Observations		Neither the application route nor the footpath from Blackburn Road through to Aspen Lane (11-5-BW300) were shown and there were no representations or objections made relating to them.
Provisional Map		Once all representations relating to the publication of the draft map were resolved the amended Draft Map became the Provisional Map which was published in 1960 and was available for 28 days for inspection. At this stage only landowners, lessees and tenants could apply for amendments to the map but the public could not. Objections at this stage had to be made to the Crown Court.
Observations		Neither the application route or the footpath from Blackburn Road through to Aspen Lane (11-5-BW300) were shown



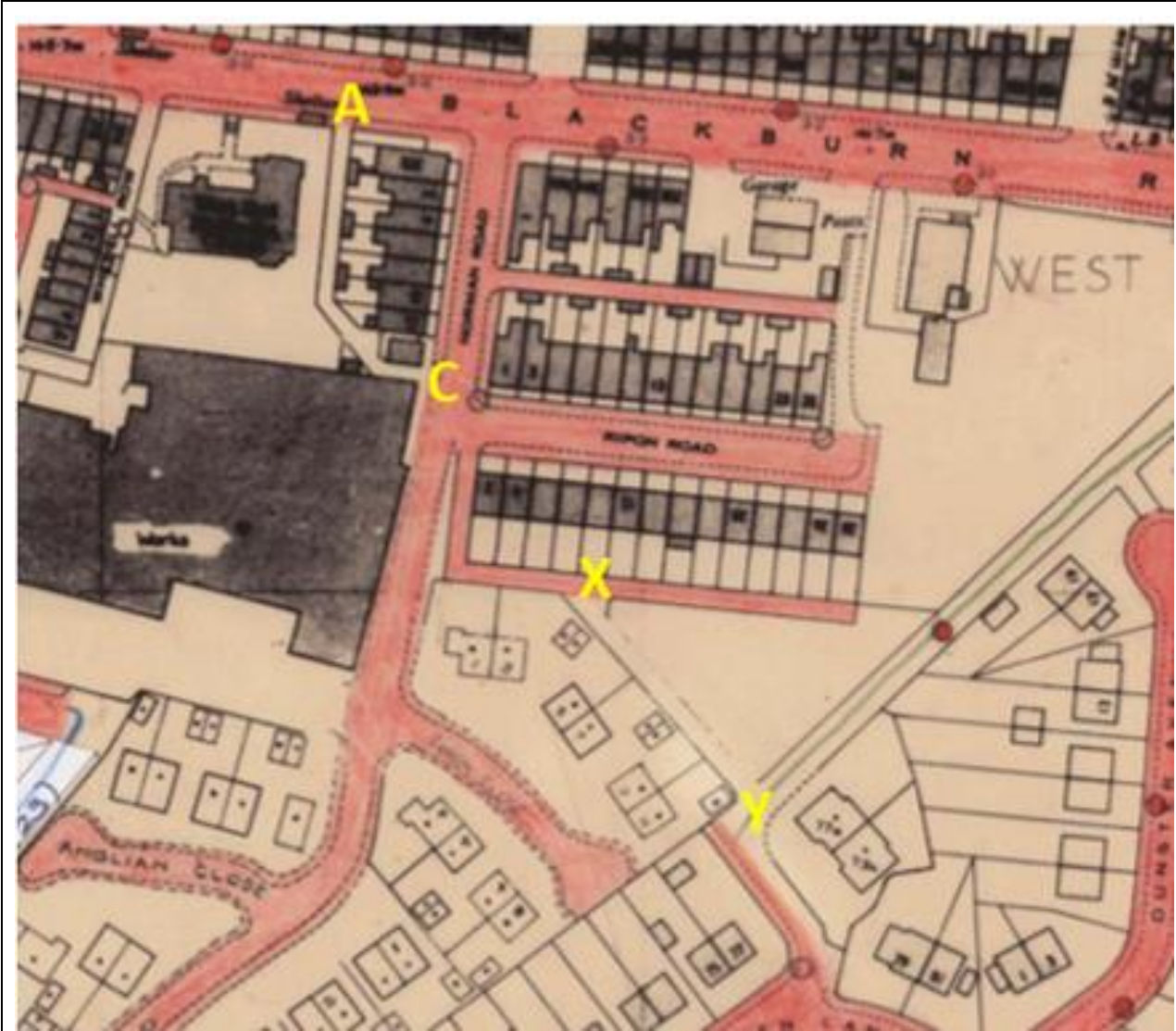
		and there were no representations or objections made relating to them.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		Neither the application route nor the footpath from Blackburn Road through to Aspen Lane (11-5-BW300) were shown.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.



Observations		Neither the application route nor the footpath from Blackburn Road through to Aspen Lane (11-5-BW300) are shown
--------------	--	-----------------------------------------------------------------------------------------------------------------

		on the Revised Definitive Map (First Review).
Investigating Officer's Comments		Neither the application route nor the continuation of the route through to Aspen Lane (11-5-BW300) were considered to be public rights of way that should be recorded on the Definitive Map and Statement during the preparation of the 1 st Definitive Map in the early 1950s through to the 1960s. This could be because they were regarded as streets rather than paths by those involved in the process following the 1949 Act.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<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 36(6) 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>





LCC adoption plan





LCC adoption layer

<p>Observations</p>		<p>The application route is not recorded as a publicly maintainable highway on the county council's records.</p> <p>The route between point X and point Y is not recorded as a publicly maintainable highway on the county council's records.</p> <p>LCC Highways team hold no records regarding when the original length of Norman Road was adopted or when Ripon Road or the back street leading to point Y were adopted.</p> <p>A search was made of the Oswaldtwistle Urban District Council Minutes but no further information was found.</p>
<p>Investigating Officer's</p>		<p>The fact that neither the application</p>



Comments		route nor the route between points X-Y are recorded as publicly maintainable highways does not mean that they do not carry public rights of access. Privately maintainable highways should not be recorded on these records.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No records relating to the creation, stopping up or diversion of public rights along the application route or the route between points X-Y were found.
Investigating Officer's Comments		If any unrecorded public rights exist along the route they do not appear to have been stopped up or diverted.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and 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</p>



		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).
Observations		No Highways 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 a landowner under this provision of non-intention to dedicate public rights of way over their land.
Applicant's Correspondence with Hyndburn Borough Council relating to the obstruction of the application route	2021-2022	Letter from Head of Legal, Democratic Services at Hyndburn Council July 2021 and Letter from Head of Audit and Investigations at Hyndburn Council February 2022 regarding action taken by Hyndburn Borough Council as the relevant planning authority to investigate the erection of fencing and use of part of the application route as a garden.
Observations		When fencing was erected at the rear of 10 Norman Road in line with both their north and boundaries the applicant contacted Hyndburn Borough Council as planning authority to seek the removal of the fencing under planning law. Whilst it is documented that action was taken and notices served requesting the removal of the fencing this was not done and the planning authority concluded that they were ultimately unable to enforce removal of the fencing. The conclusion of the investigation was for applicant was to pursue the removal of the fencing. The applicant was advised that it would be possible to seek a quicker and more effective resolution by pursuing the matter themselves invoking the fact that there was a private right of access along the application route that had been denied. Alternatively they were advised to pursue the matter with Lancashire County Council (as highway authority) who had powers under section 143



		Highways Act 1980 which would enable them to remove structures causing an obstruction to a highway.
Investigating Officer's Comments		<p>When the application route was originally obstructed the applicant was informed that the route was not recorded as a publicly maintained highway in the County Council's Highway records and was not recorded as a public right of way on the Definitive Map and Statement.</p> <p>The County Council had no record of the route being a public highway – whether it was publicly maintainable or not. The applicant was advised that before action to remove any obstructions could be taken it would be necessary to investigate whether public rights existed i.e. whether the route was a public highway.</p> <p>Hyndburn Borough Council have advised the applicant to pursue the matter with the County Council to secure the removal of the fencing on the basis that the route was a public highway – albeit unadopted. The County Council have requested information from Hyndburn Borough Council seeking clarification as to why they have advised the applicant that the route is an unadopted highway and what evidence they have considered when coming to this conclusion. No response has been received.</p>

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

Summary

The application was to record a public footpath along the route marked A-C on the Committee plan.

Whilst looking at the history of the route and of the land crossed by the route it is apparent that the application route evolved from a footpath shown on the first edition 6 inch and 25 inch mapping. This footpath ran from Blackburn Road to Aspen Lane.

In 1904, when land was sold on which West End Methodist Church was later constructed the conveyance plan clearly showed the footpath across the site and



clearly specified that if the land was to be built on a footpath was to be provided along the eastern boundary of the site.

The second edition 25 inch OS map revised in 1909 and published 1911 shows that this requirement was complied with and the footpath was shown to have been moved to start at point A on Blackburn Road – just east of the Wesleyan Church and continued through to 11-5-BW300.

Shortly after the construction of the church further development took place and Norman Road and the row of terraced houses, along the back of which the application route runs, were built.

The leasehold agreements for these properties clearly refer to the application route as a route which was required to be provided which would form part of a street or back street and which must be retained. The conveyances and leases examined also makes it clear that when requested to do so by the relevant Local authority these leaseholders should bring the route up to an agreed standard to the satisfaction of the Local Authority.

Nothing has been found to suggest that the application route was ever brought up to the required standard to be adopted but this does not mean that it was not a public highway. It was consistently shown on maps, photographs and other documentation since its construction in the early 1900s and there is no evidence that access was restricted or prevented until it was blocked in 2020.

Between point C and point X a route remained available, even after development, to link to the original route of the footpath running through points X and Y on the Committee plan to Aspen Lane (11-5-BW 300). The fact that this route, including the length X-Y, has been retained and is still accessible today, links back to the fact that in the late 1800s/early 1900s there appeared to be an acceptance of the existence of a public footpath of which A-C became part when the original route was altered, and of which X-Y still exists today albeit as an unrecorded public route.

Head of Service – Legal and Democratic Services Observations

Landownership

The majority of the land crossed by the application route is unregistered land.

From point A to around halfway between point B and point C, the land is unregistered. From this point to point C the land is registered to LPS Development Group Limited. The land from point X to point Y is unregistered land.

Information from the Applicant

The applicant explained that they had witnessed use of the application route over the last 37 years and had been a regular visitor to the street since 1984 when their friend moved into 12 Norman Road. They explain that they would walk along the application route from Blackburn Road through to Norman Road to go round to the front door of the property.



Since 2010 the applicant has owned 8 Norman Road and renovated it before renting it out to a tenant. During the time taken to renovate the property they regularly saw members of the public who did not live there walk the route or ride bicycles along it. They explain that the route has been in constant use for refuse collection and is vital should emergency services be required.

The applicant explains that until March 2020 when access along the route was blocked by the owners of 10 Norman Road, the back street was available to any member of the public at any time.

The applicant does not recall any signage suggesting it was private, nor any sort of obstruction preventing or restricting access.

The applicant points out that the deeds to the houses along the terrace refer to the 'back street' behind them, but do not grant residents permission to access it and that the wording of the deeds to the properties suggests that the builders expected the back street to be adopted by the local authority.

In addition, the applicant provided:

Letter from Head of Legal, Democratic Services at Hyndburn Council July 2021 and Letter from Head of Audit and Investigations at Hyndburn Council February 2022 regarding action taken by Hyndburn Borough Council as the relevant planning authority to investigate the erection of fencing and use of part of the application route as a garden.

The documents listed above have already been considered in detail earlier in the report.

In addition the applicant submitted two witness statements:

Statement 1

The author explains that they have lived at one of the properties backing onto the application route since 1984 and that ever since moving there they have had full access to Blackburn Road along the application route via a gate from their property which leads straight out onto the application route. They explain that their children used to play out on the 'back street' with their friends because it was considered to be a safe place to play. They recount that many people used to use the 'back street' as a short cut between Blackburn Road and Norman Road as it was more direct than going along Norman Road. They also refer to being able to drive up and down the route and if needed her former husband would use the route with a vehicle to drive to their rear gate to load and unload the car.

They state that there had been full access along the route until it was blocked off by the neighbour.

Statement 2

The author explains that she is 35 (in 2022) and lived at a property backing onto the application route until she was 18. She explains that as she grew up her dad



maintained the alley (application route) for her and her sister to ride their bikes along and that throughout the years the route was used by the public to walk to and from Blackburn Road. When she was 25 she moved into another property adjacent to the application route and the route was still being used by the public on foot although was no longer being maintained by her parents. She explained that West End Methodist Church used the route as access to the church and refers to a gateway from the application route that was historically used for delivering coal to the kitchen.

They explain that in March 2020 the owners of 10 Norman Road erected fencing and locked gates creating a larger garden at the rear of their property by including part of the application route.

Information from Others

It is worth noting that the first two consultation responses detailed below are from the same two people who provided the above witness statements.

An owner of land adjacent to the application route responded to consultation by stating they had lived in their property for the last 38 years and have always had access to the 'alley way'. She stated that her children played in it when they were younger, that people use it as a shortcut and that people walk their dogs there. She explained that there had never been any locked gates to stop access, until recently. She also stated there has never been any signs explaining people cannot use the 'alley'. Likewise, she has never been told she cannot use the route.

An occupier of land adjacent to the application route responded to consultation by explaining that she lived in a property adjacent to the route from 1986 to 2005. She moved to another property which is also adjacent to the application route, in 2011 and has lived there since. She explained that she remembered using the path to ride her bike on when she was younger and used it as a shortcut with friends, as a teenager. She also stated that anybody could walk the whole length of the path, there has never been any gates or signs that it is private, and nobody has ever needed permission to use it.

A landowner of land adjacent to the application route responded by simply highlighting the land in their ownership.

Cadent Gas responded to consultation to state that they had no objection to the application.

Openreach responded to consultation by stating they are affected by the application. Openreach has underground cabling and a distribution pole located within the proposed area at the rear of 2-12 Norman Road Oswaldtwistle Accrington.

Information from the Landowner

LPS Development Group Limited, the only registered landowner of the application route, provided no response to consultation.



Assessment of the Evidence

The Law - See Annex 'A'

Conclusion

The application made is that the route marked A-B-C has already become a footpath in law and should be recorded on the Definitive Map and Statement of Public Rights of Way. It is considered that the section X-Y – although not part of the application - should also be recorded.

It is advised that as there is no express dedication in this matter, Committee should consider, on balance, whether there is sufficient evidence from which to infer dedication at common law from all the circumstances or for the criteria in S31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years "as of right" use.

Considering initially whether there are circumstances from which dedication could be inferred at common law; for there to be inferred dedication, the evidence must show clear intention on the part of the landowner(s) to dedicate the route as a public right of way. It is advised that Committee has to consider whether evidence from the maps and other documentary evidence coupled with the evidence on site and user evidence indicates that it can be reasonably inferred that in the past the landowner(s) intended to dedicate the route as a public right of way.

The analysis of the map and documentary evidence provides evaluation of the documentary evidence. The route is not shown to exist on any of the early small-scale commercial maps and there is no Tithe Map for the land crossed by the route. It would appear from the evidence that the application route evolved from a footpath running from Blackburn Road to Aspen Lane as shown on the first edition 6 inch and 25 inch mapping. The 1904 conveyance relating to the sale of the land on which the Methodist Church was subsequently built acknowledges a footpath across the site and provides that, should the land be built on, a footpath should be provided along the eastern boundary of the land. Committee will note that it is evidenced on the 25 inch OS Map published in 1911 that this requirement was complied with, the footpath having been diverted to run along the outside boundary of the church from point A to point C and onwards to point Y. The leasehold agreements dating from 1909 to 1919 in connection with the row of terraced properties constructed on Norman Road also make reference to the application route being required to form a back street which must be retained. Reference is also made to the requirement for leaseholders to bring the route up to an agreed standard when required to do so by the local authority.

Whilst no evidence has been located to suggest that the route was ever brought up to the necessary standard for adoption, it was clearly and consistently shown on maps, photographs and other documents since having been constructed in the early 1900s and there is no evidence of access of the route having been blocked or prevented until the erection of the fencing in 2020.

Committee will note that post 2020 a route remained and still remains available between points C and X and through to point Y to Aspen Lane.



On balance, the map and other documentary evidence is in itself considered sufficient to conclude that the route was a historical public footpath and it is therefore suggested to Committee that inferred dedication can on balance be satisfied. However, should Committee have any reservations as to the strength of the evidence it may also wish to consider whether deemed dedication under s31 Highways Act 1980 or inference at common law can be satisfied from the user of the route.

Looking secondly at the criteria for a deemed dedication under section 31 of the Highways Act 1980, use of the route needs to be by the public 'as of right' (without force, secrecy or permission) and without interruption over a sufficient 20 year period immediately prior to its status being called into question. The presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a right of way.

In this matter, the evidence indicates that access to the route A-C was obstructed at point B in 2020 by fencing having been constructed at 10 Norman Road in line with the boundaries of 8 and 12 Norman Road (the land forming part of the application route then being subsumed into the garden of 10 Norman Road). Accordingly, it is suggested that the 20 year period under consideration for the purposes of establishing deemed dedication would therefore be 2000 to 2020.

In addition to evidence relating to their own use of the route, the applicant has provided two witness statements in support of the application. Two letters from Hyndburn Council were also provided by the applicant.

The users claim to have used the route on foot, by bicycle and one user, by car (if needed to load or unload the car). Reference is also made to children using the route to play and of the Methodist Church using the route as access to the church. All users provide evidence of use during the period under consideration and all users refer to having regularly witnessed others using the route.

None of the users make reference to having ever been told that the route was not a public right of way, nor does any user refer to having been turned back or having asked for permission to use the route. None of the users refer to having seen signs or notices along the route advising that the route was not public and, until the erection of the fencing and locked gates in 2020, no reference is made to obstructions preventing or restricting access along the route.

Consultation responses have also been received, including those from the same persons providing the witness statements in support of the application

Committee's attention is drawn to the fact that the number of users who have provided support for the application can be viewed as a relatively low number. Guidance from the Planning Inspectorate indicates that use of the route must be by a sufficient number of people who together may sensibly be taken to represent the public at large. Committee may consider that three users of the route A-C are not representative of the public at large and therefore the evidence does not raise a presumption of dedication of a footpath and fails to satisfy the statutory test over the application route A-C and also the route X-Y.



In conclusion, taking all of the evidence into account, Committee may consider that it can reasonably be alleged that there is sufficient evidence from which to infer dedication of a public footpath at common law.

Committee is therefore advised to accept the application, make an Order for the route shown on the Committee plan A-C (the application route) and also the route under investigation X-Y and promote the Order to confirmation.

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.

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 claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda Papers. Provided any decision is taken strictly in accordance with the above then there is no significant risks associated with the decision making process.

Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-762		Annabel Mayson, 01772 533244, Legal and Democratic Services
Reason for inclusion in Part II, if appropriate		

