

Regulatory Committee

Meeting to be held on 21 June 2023

Part I

Electoral Division affected:
Lancaster Rural North

**Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath at Starrick's Woods, Priest Hutton**
(Annex 'A' refers)

Contact for further information quoting file reference 804-759:
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Brief Summary

Addition to the Definitive Map and Statement of Public Rights of Way of a Footpath from Back Lane, Priest Hutton to Footpath 1-26-FP12 through Starrick's Woods.

Recommendation

- (i) That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a Footpath from Back Lane, Priest Hutton to the junction with Footpath 1-26-FP12 through Starrick's Woods, be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to record a footpath from Back Lane, Priest Hutton to the junction with Footpath 1-26-FP12 through Starrick's Woods on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D.
- (iii) That being satisfied that the higher test for confirmation can be met with the information available, the Order be confirmed if no objections are received and not withdrawn, otherwise the matter be referred back to Committee for a decision on the stance to be taken when referring the Order to the Planning Inspectorate, in the light of the further information received.

Detail



An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a footpath 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”

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

- That there is no public right of way over land shown in the map and statement as a highway as any description

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

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

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

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

Consultations



Lancaster City Council

Lancaster City Council provided no response to consultation.

Priest Hutton Parish Council

Priest Hutton Parish Council provided no response to consultation.

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	5390 7375	Open junction with Back Lane
B	5391 7376	Junction of tracks
X	5435 7383	Pecked line across route on Tithe Map (nothing visible on the ground now)
C	5456 7398	Line across route on Tithe Map (nothing visible on the ground now)
D	5475 7410	Junction with 1-26-FP12

Description of Route

A site inspection was carried out in November 2022.

The application route leaves Back Lane, which runs between Priest Hutton and the east end of the village of Borwick, just west of the sharp bend (point A on the Committee plan).

From the open junction with Back Lane the application route runs along a wide compacted stone surfaced track for approximately 10 metres to where the track splits (point B). One route continues in a generally north easterly direction through a field gate to continue as a bounded track providing access to fields to the north of the application route. The other route, the application route, runs in an easterly direction crossing Hall Beck via a concrete slab and then more north easterly direction ascending the hillside as a substantial bounded route all the way through to the junction with 1-26-FP12 (point D).

The full length of the route B-D is 3-4 metres wide and bounded on either side by a mixture of mature hedges and dry-stone walls. Gateways provide access through the hedges/walls into adjacent fields. The surface of the route was firm underfoot with compacted stone and a central grass strip. On the day that the route was inspected there was recent evidence of use by farm vehicles (tractor tyres) along the route and through several gateways into adjacent fields.



At the north eastern end of the application route the bounded track ends at a gateway leading into a field. Just before reaching the gateway there is a wooden stile crossing a stone wall to provide access into a different field on the south east side of the application route. A public footpath signpost, currently askew and not pointing along the recorded line of the footpath, is located adjacent to the stile. From the application route at point D access onto and along 1-26-FP12 was available although there was no trodden track visible.

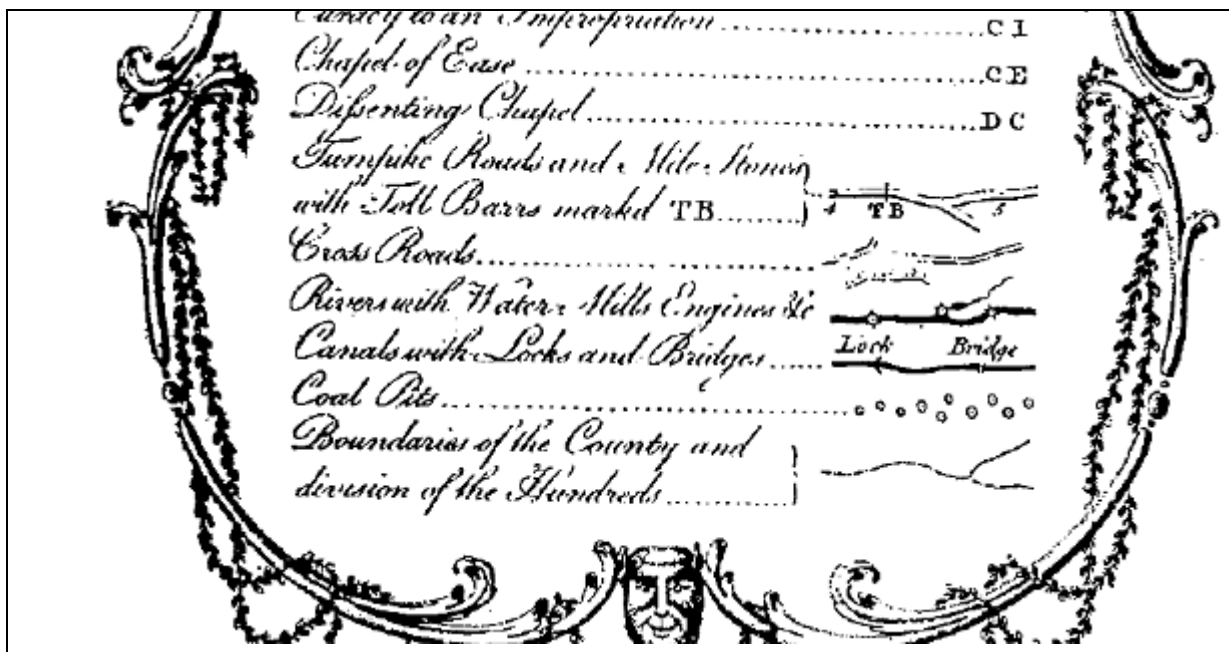
The total length of the application route is 930 metres.

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.

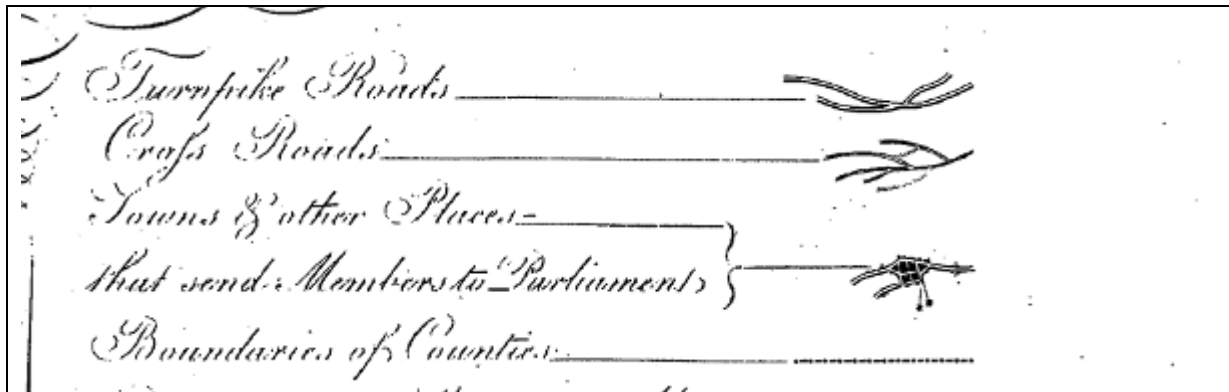
Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small-scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced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



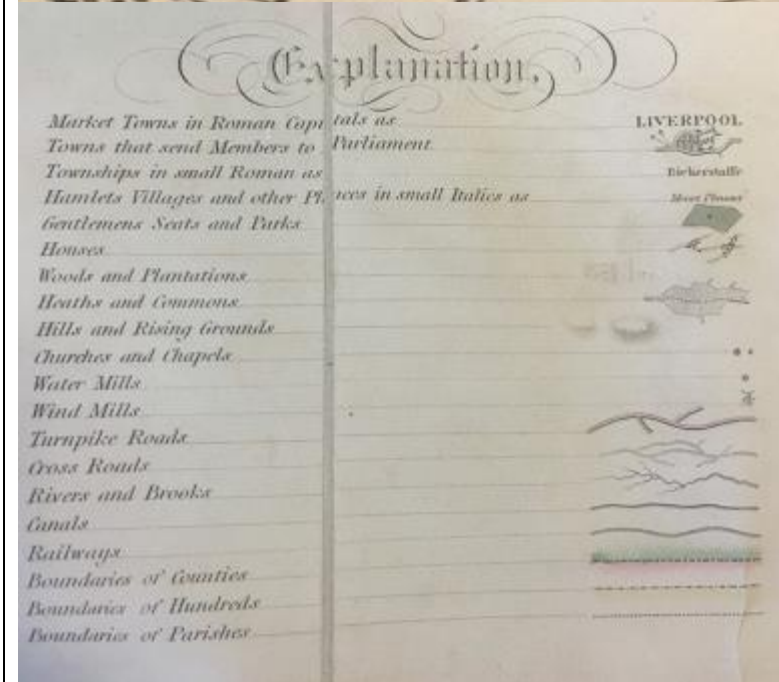


Observations		The application route is not shown.
Investigating Comments	Officer's	The application route did not exist in 1786 or if it did exist was not considered to be a substantial public route.
Greenwood's Map of Lancashire	Map of 1818	Small-scale commercial map. In contrast to other map makers 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.





<p>Observations</p>		<p>The application route is shown together with the other route which leaves Back Lane at the same point but which then runs roughly parallel further north. Both routes appear to end on open ground with no buildings shown along or at the end of them. The application route is shown as a cross road, in the same way that Back Lane and the route to the north of it are shown.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed in 1818. It is shown as a cross road with the inference that it would have been capable of being used at least on horseback at that time.</p>
<p>Hennet's Map of Lancashire</p>	<p>1830</p>	<p>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 7 ½ inches to 10 miles. 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.</p>

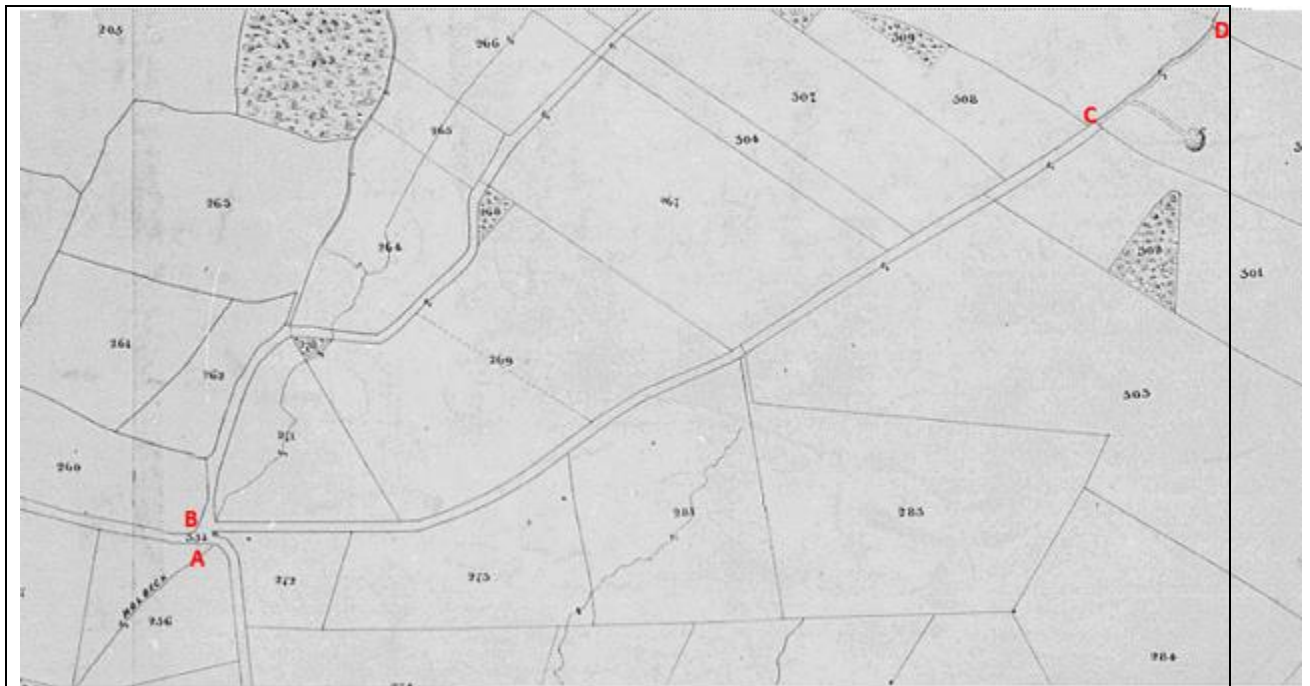


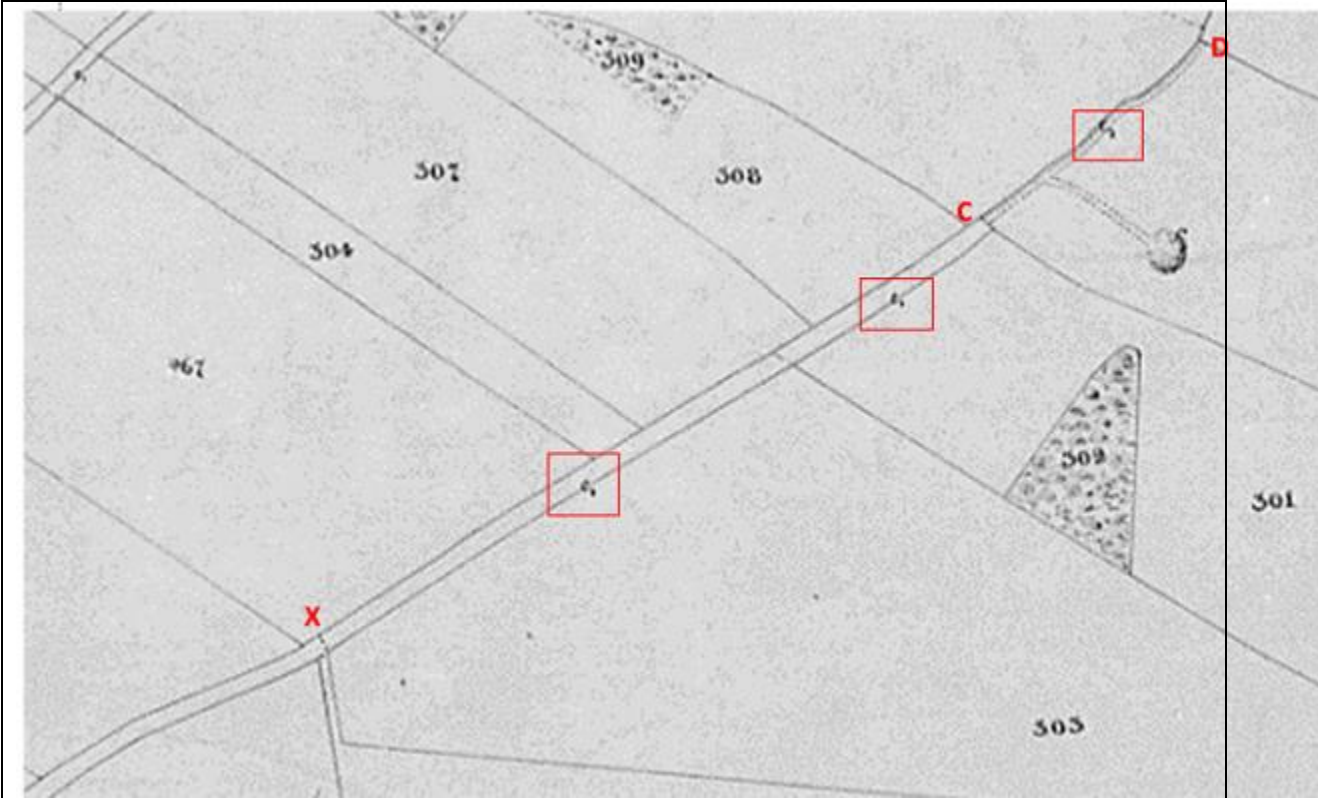
<p>Observations</p>		<p>The application route is not shown – other than the first few metres which form part of the other route shown on Greenwoods Map above which also started at the same point on Back Lane but ran in a more north westerly direction to the north of the application route.</p>
<p>Investigating Officer's Comments</p>		<p>Maps predating and post-dating Hennet's Map show the application route so it is likely that it did exist in 1830 but that</p>



		Hennet did not show it on this small-scale map because he did not consider it to be a significant public vehicular route.
Canal and Railway Acts		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.
Observations		There are no existing, dismantled or known proposals for canals or railways across the land over which the application route runs.
Investigating Officer's Comments		No inference can be made with regards to the existence of public rights
Tithe Map and Tithe Award or Apportionment	1846	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.







Thomas Anman	101	Tithe Barn
Public Roads & Waste Ground	1	Road
	69	Whitbents Grass
	121	Gardens, (cellars & c)
	156	Pierfeld
	351	Public Roads



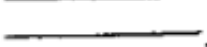


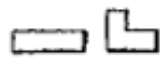

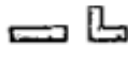


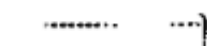

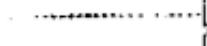





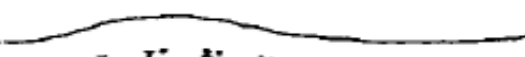

	171	Middle	Stanton	1	1
	172	Water Bank	Stanton	3	1
				3	3
James John Trustees of James Norby	361	Heath and Lane	Pasture	6	2
	372	Plantation		2	2
				7	1



<i>Thomasen John</i> <i>Trustees of</i>	<i>William Richardson</i>	293	<i>Briggs Hill</i>
		294	<i>Raven Hill</i>
		295	<i>Raven Gate Wood</i>
		303	<i>Hwaite Lane</i>

PAPER 1837 XLI 405.

... IN THE PLANS made under the ACT
 ... IN ENGLAND & WALES.

	Turnpike Roads		Churches
	Hyve or Cross Roads		Chapels
	Rail Roads		Dwelling H
	Bridle Roads		Farm Build
	Foot Paths		Smithies
	Open Roads		Stone Wind
			Wooden Win
	Sunk Roads		Water Mills
	Raised Roads		Iron Works
	RIVER		Glass Works

Extract from the British Parliamentary Paper 1837 Key of Symbols

Observations		The full length of the application route is shown as a bounded route from point A through to point C. There is a pecked line across the track (point X); the
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		<p>key does not include this but conventionally it indicates a change in surface or other permeable (to traffic) feature. At point C a line is shown across the route beyond which a track consistent with the application route is shown running to the south east of a boundary. Partway between point C and point D a track is shown branching off the application route to lead directly to a small quarry.</p> <p>The application route ends at point D and no route is shown continuing beyond that point. The route recorded as 1-26-FP12 is not shown.</p> <p>Back Lane is numbered as plot '351' where the application route starts at point A. Back Lane is also numbered as plot '351' further west towards the village of Priest Hutton and also further south from the junction with the application route. Plot 351 appears to extend up the application route (and the other route) as far as the pecked lines across the tracks.</p> <p>On inspecting the Tithe Map for Priest Hutton it was noted that roads considered at that time to be public roads were numbered '351' and were listed as such in the Tithe Award.</p> <p>The fields adjacent to the route are all numbered and of significance is the fact that beyond the pecked line (X) the three fields to the south east of the application route are all shown as being braced with the route itself. Bracing on the map indicates two parts of the same plot of land which are divided by a line on the base map but are connected and generally in the</p>
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		<p>same ownership.</p> <p>Plot 303 was listed as being owned by the Trustees of John Harrison and occupied by William Richardson. The description of the land in the Tithe Award was 'Thwaite & Lane'.</p> <p>Plot 301 was listed as being owned by the Trustees of John James and occupied by James Hornby. The land was described in the Tithe Award as 'Thwaite and Lane'.</p> <p>Plot 300 was listed as being owned by Jane Watson and occupied by William Richardson and described as 'Thwaite'</p> <p>The land accessed by the application route beyond point D was listed as plot 319 owned by Lazarus Threlfall and occupied by Robert Muckalt and described as 'Intake'.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The application route existed in 1846 although access may have been restricted, possibly by a gate, at point C. Beyond point D there was no indication that the route continued, and 1-26-FP12 was not shown.</p> <p>The application route does not appear to have been considered to be a public road at that time and three owners are listed of part of the route.</p> <p>The word 'thwaite' traditionally referred to a piece of land that had been cleared from forest or reclaimed from wasteland and 'intake' was a piece of land 'taken in' from a moor and brought under cultivation.</p> <p>The information provided by the Tithe Map and Award therefore substantiates the Investigating Officer's view that the route was most likely to have originally come into being when a large</p>



		<p>area of moorland was inclosed for farming and that the route was set out as a bounded 'dead end' route specifically to provide access to adjacent fields.</p> <p>Whilst access along the route may have been available to the public in 1846 it is the Investigating Officer's view that unless a through-route was in existence (of which there is no evidence) then the route was a private access track (occupation road) at that time.</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>
Observations		<p>No inclosure Map, Award or Agreement could be found relating to the land crossed by the application route although it was noted that both the application route and the route running parallel to it show characteristics associated with routes created for the purpose of accessing land that had been through an enclosure process. Both are substantial bounded routes providing direct access to fields that could not be easily accessed without them (long thin parcels accessed from the ends abutting occupation roads). Both are 'dead end' routes which do not connect to other public or private routes and neither provide access to any buildings or properties.</p>
Investigating Officer's Comments		<p>No record could be found relating to the application route coming into being as a public or private route because of the inclosure of land although there appears to</p>



		<p>be no other reason for the route to have been constructed other than to provide access to adjacent land. Information provided by the Tithe Map and Award as discussed above appear to substantiate this view.</p>
<p>6 Inch Ordnance Survey (OS) Map</p> <p>Lancashire Sheet XIX</p>	<p>1847</p>	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 to 1845 and published in 1847.¹</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.



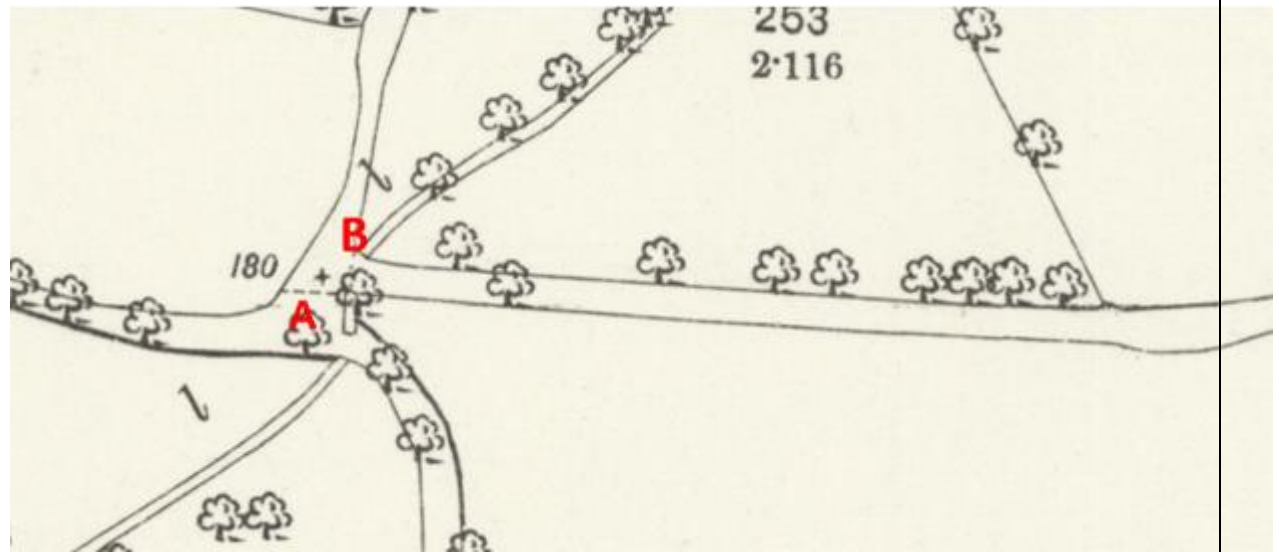
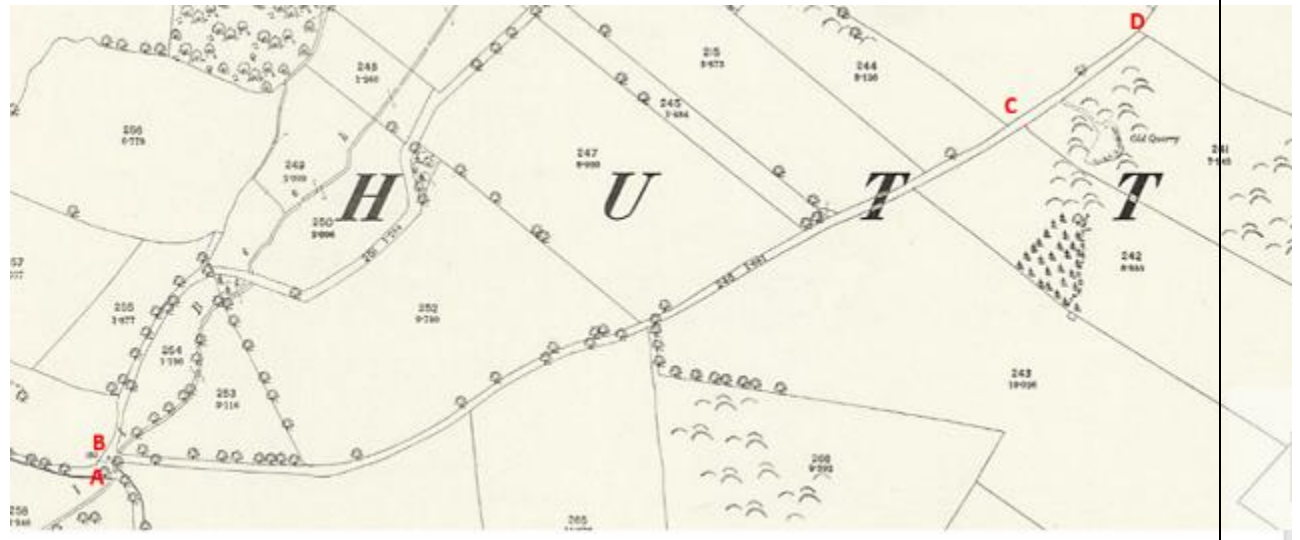


Map extract from National Library of Scotland

<p>Observations</p>		<p>The application route is shown as a substantial bounded route from point A through to point C. Pipes are marked close to point B, across the application route and Back Lane. No lines are shown across the route which may have indicated the existence of gates or other restrictions. No line is shown across the route at points X or C (unlike on the Tithe Map). Between point C and point D the route is shown to run along the northwest edge of the field but is not fenced separately from it. The route 1-26-FP12 is not shown.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The application route existed in 1844-45 and appeared to be capable of being used. The route appeared to terminate at a 'dead end' (point D) with no footpath shown continuing from this point and there is nothing to indicate that the route provided access to a specific point of interest or public resort. Whilst access appears to have been available it</p>



		is submitted that use would have been primarily to access adjacent land and there is no indication of public use.
25 Inch OS Map Sheet XIX.14	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1889 to 1890 and published in 1891.



Observations		<p>The full length of the application route is shown as a bounded route through to where it ends at point D.</p> <p>Back Lane is shown on the map bounded on the south and eastern sides by a thickened line in contract to the application route which is shown by the thinner lines on either side.</p>
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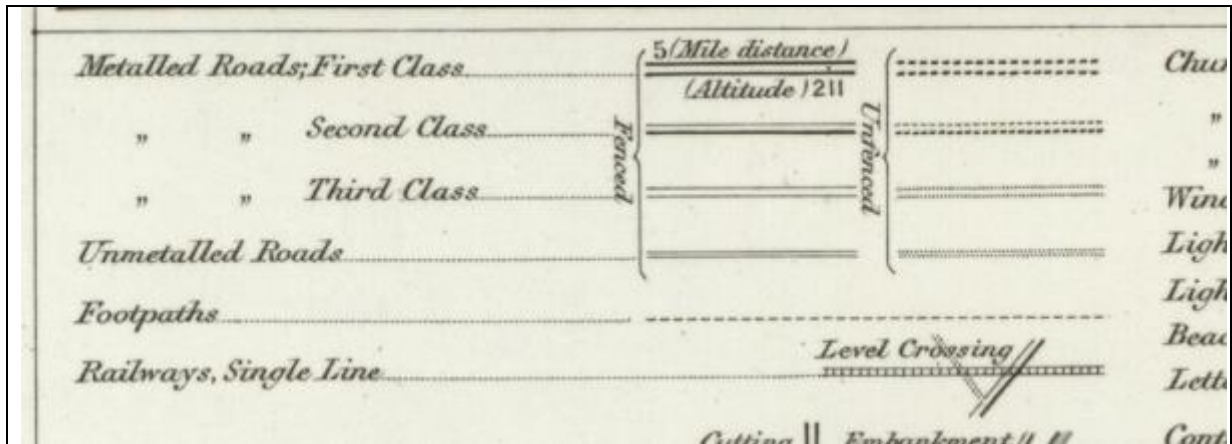


		<p>No solid lines are shown across the application route suggesting that it was not gated and that access was not restricted. Dashed lines are shown across the start of the route at point A and at point B where the application route splits from the route which continues in a more north westerly direction. These dashed lines probably indicate a change in the surface of the route.</p> <p>Between point C and point D a track can be seen leading southeast from the application route to an area marked as 'old quarry'.</p> <p>At the north eastern end of the application route (point D) the bounded route ends and no tracks or paths are marked on the map as continuing from this point. 1-26-FP12 is not shown.</p> <p>The route has a dedicated parcel number and acreage – 246, 1.681.</p>
Investigating Officer's Comments		<p>The application route existed in 1889-1890. The route appeared to terminate at a 'dead end' (point D) with no footpath shown continuing from this point and there is nothing to indicate that the route provided access to a specific point of interest or public resort. Whilst access appears to have been available it is submitted that use would have been to access adjacent land. An 'old quarry' is marked on the map accessed from the application route again suggesting that the route could have been used to access the quarry but this was unlikely to have been public use. The Planning Inspectorate Consistency Guidelines state "Public roads depicted on 1:2500 maps will invariably have a</p>



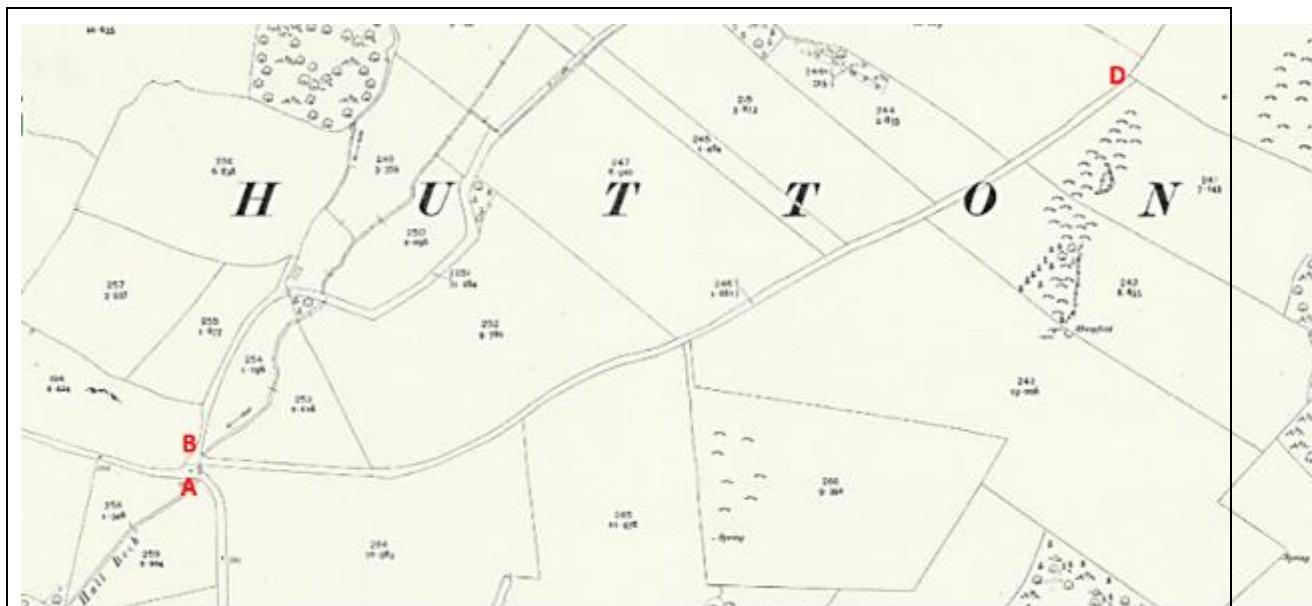
		<p>dedicated parcel number and acreage." However, it goes on to say that this is far from conclusive evidence of highway status.</p> <p>Shading, colouring and the use of thickened lines were often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. The Ordnance 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 in good repair at that time.</p>
<p>1 Inch OS Map Sheet 49 – Kirby Lonsdale (Hills)</p>	<p>1898</p>	<p>1 inch OS map, date of survey not known.</p>





Observations		The application route is shown in the same way as Back Lane and both are shown as third class metalled roads. Again, the application route is shown as a dead end.
Investigating Officer's Comments		The original scale of the map (1 inch to 1 mile) means that only the more significant routes are generally shown. The early (First Edition) OS maps were originally produced for military purposes in case they were needed for defence and although it is noted that this is a Second Edition 1 inch OS map the significance of the early military surveys was still relevant. However the inclusion of the route on this map suggests, as larger scale maps have confirmed, that a substantial route existed which probably could have been used by all traffic but we do not know if that use was public or private.
25 Inch OS Map Sheet XIX.14	1913	Further edition of the 25 inch map surveyed in 1889-1890, revised in 1910 and published in 1913.





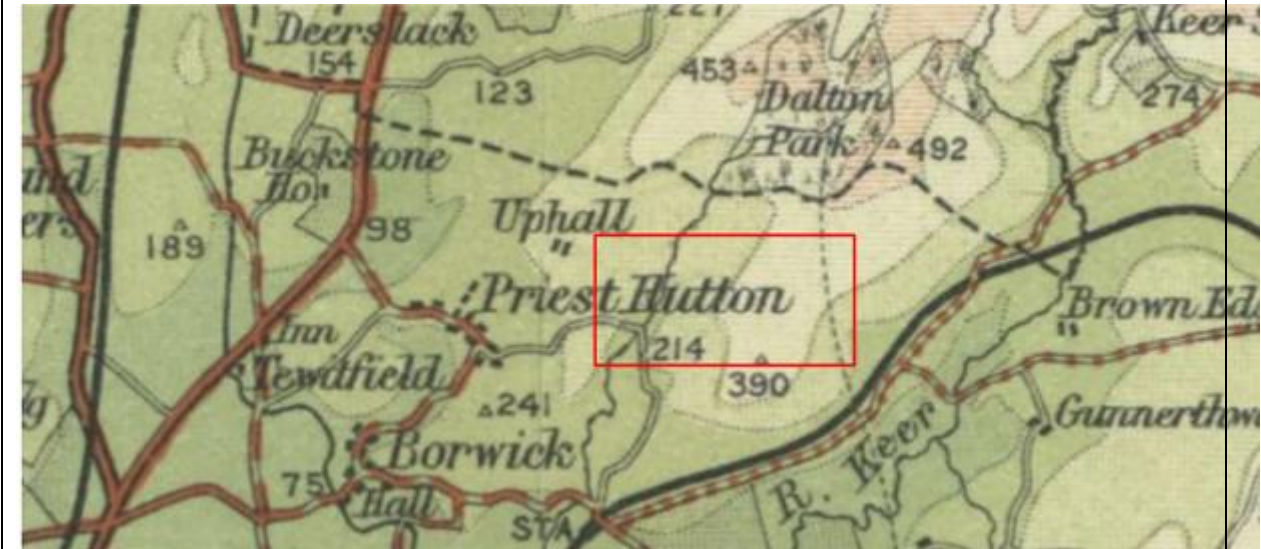
Observations		<p>The application route is shown in the same way that it is shown on earlier OS mapping.</p> <p>No route(s) extending beyond point D are shown.</p>
Investigating Officer's Comments		<p>The application route existed in 1910. The route appeared to terminate at a 'dead end' (point D) with no footpath shown continuing from this point and there is nothing to indicate that the route provided access to a specific point of interest or public resort. Whilst access appears to have been available it is not known whether there was any use except as private access to adjacent land.</p>
Bartholomew half inch Mapping	1902-1906	<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</p>



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.



1905



1920





1941

Observations		The application route is not shown on any of the three maps examined.
Investigating Officer's Comments		OS maps dated before and after the publication of Bartholomew's maps confirm the physical existence of the route over this period. As they were derived from the Ordnance Survey maps which probably showed it, the application route may have been purposely omitted by Bartholomew so the fact that the route is not shown on any of the three maps inspected suggests that it was not considered to be a public vehicular road at that time. Footpaths and Bridleways were not normally shown, so no inference can be drawn in that respect.
Finance Act 1910 Map	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.



		<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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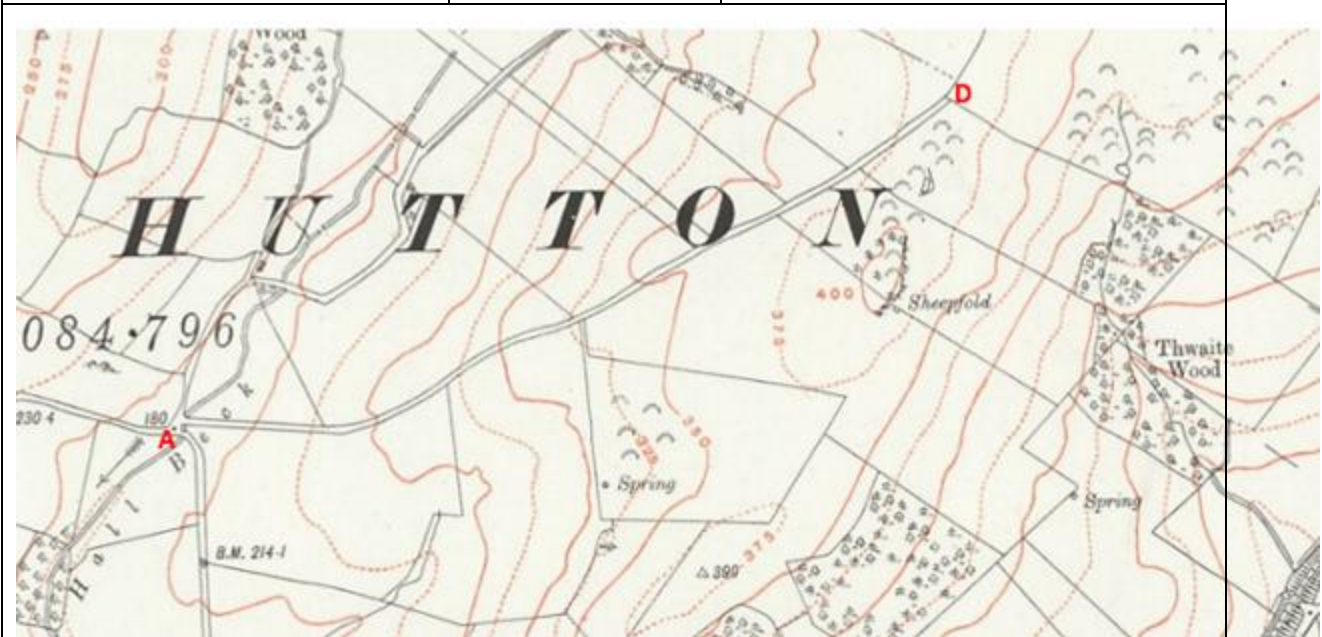


Observations		The full length of the application route was excluded from the numbered plots – as was the route running in a more north easterly direction to the application route from point A.
Investigating Officer's Comments		<p>In this instance the route between point A and point D is shown excluded from the adjacent hereditaments which is often considered to provide good evidence – but not conclusive evidence - of public carriageway rights.</p> <p>The information provided needs to be evaluated in the context of all other available evidence. As detailed later in this report ownership of the land crossed by the application route is not registered and ownership unknown. If ownership of the route had been unknown in the early 1900s then it may have been excluded for that reason.</p> <p>There may be other reasons to explain its exclusion to. It has been noted, for example, that there are some cases of a private</p>



		<p>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 this is not a consistent approach there are examples in other parishes local to this route where this appears to have happened. Whilst no Inclosure Award or agreement has been found in relation to the land crossed by this route there is the suggestion that this may have been why the route came about.</p> <p>Taking into account other available evidence, the exclusion of the route in this instance is more likely not to be evidence of public vehicular rights in this case This does not necessarily mean that a footpath or 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>
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<p>6 Inch OS Map Sheet XIX.SW</p>	<p>1919</p>	<p>Further edition of 6 inch map, revised 1910-1911 and published in 1919.</p>
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<p>Observations</p>		<p>The application route is shown in the same way that it has been</p>
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		shown on earlier OS maps. No route is shown continuing from point D.
Investigating Comments	Officer's	The application route existed in 1910-1911. The route appeared to terminate at a 'dead end' (point D) with no footpath shown continuing from this point and there is nothing to indicate that the route provided access to a specific point of interest or public resort. Whilst access appears to have been available it is not known whether this use would have been public or private although the route only appears to provide access to adjacent land.
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.

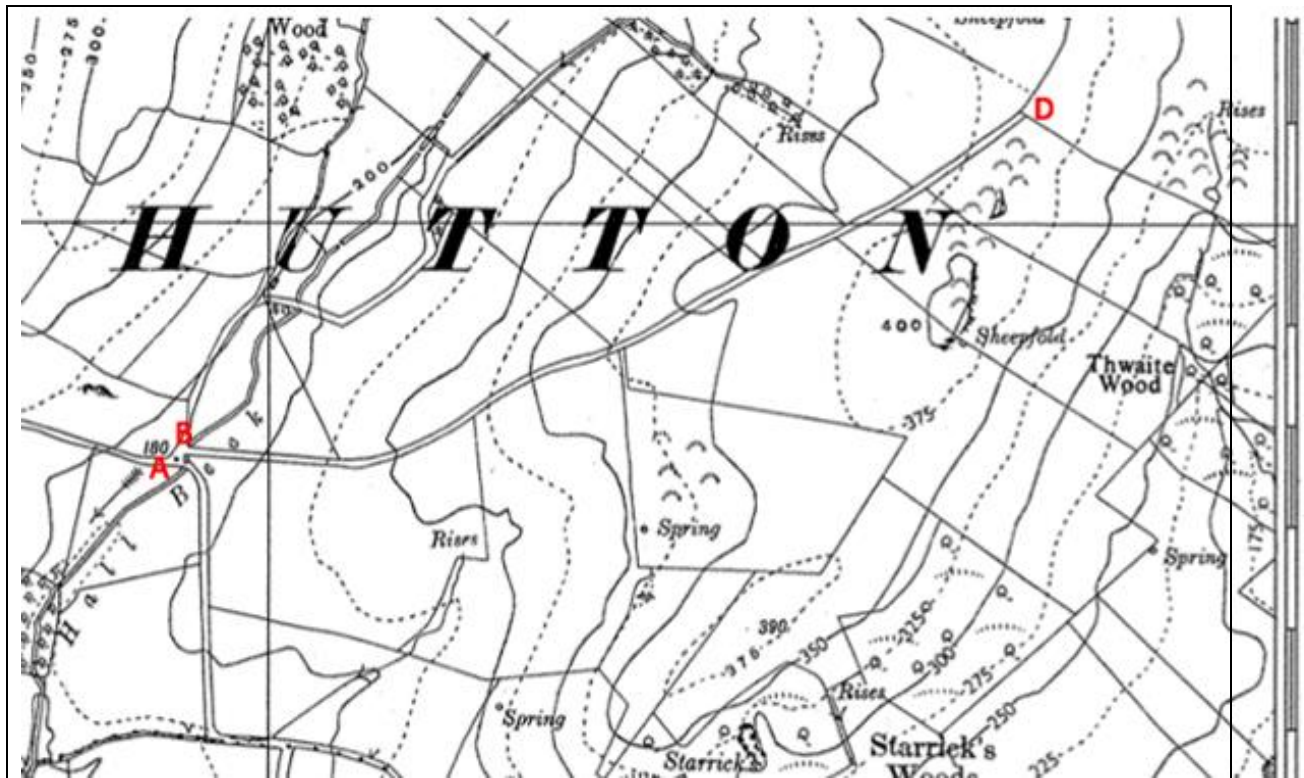




Observations		Neither the application route nor route now recorded as 1-26-FP12 are shown.
Investigating Officer's Comments		Neither the application route nor 1-26-FP12 were considered to be public footpaths in 1932.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War between June 1945 and September 1952 and can be viewed on GIS. The clarity is generally very variable.
Observations		No aerial photograph from the 1940s was available to view for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
6 Inch OS Map SD57SW	1956	OS map revised before 1930, published in 1956 and reprinted in 1964 with new major roads.

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.





Observations		The application route is shown in the same way that it has been shown on earlier OS maps. No route is shown continuing from point D.
Investigating Officer's Comments		The application route existed before 1930. The route appeared to terminate at a 'dead end' (point D) with no footpath shown continuing from this point and there is nothing to indicate that the route provided access to a specific point of interest or public resort. Whilst access appears to have been available it is not known whether this use would have been public or private although it is suggested that the primary purpose of using the route would have been to access adjacent land.
Additional 1 inch OS maps supplied by the applicant	1945-1965	Several additional small-scale OS maps were submitted by the applicant in support of their application with a selection of map excerpts included below.





Ministry of Transport Roads.....	A.6	B.6254
Other Motor Roads.....		
" " " narrow.....	<i>Good</i>	<i>Bad</i>
Minor Roads.....		
Bridle & Footpaths.....		
Unfenced Roads are shewn by dotted lines		
Gradients steeper than $\frac{1}{4}$		
Toll Gates.....	TOLL	
Road Mileage.....	5	

1014.

Sheet 89 – Lancaster & Kendal – Revised 1945-47 Published 1947

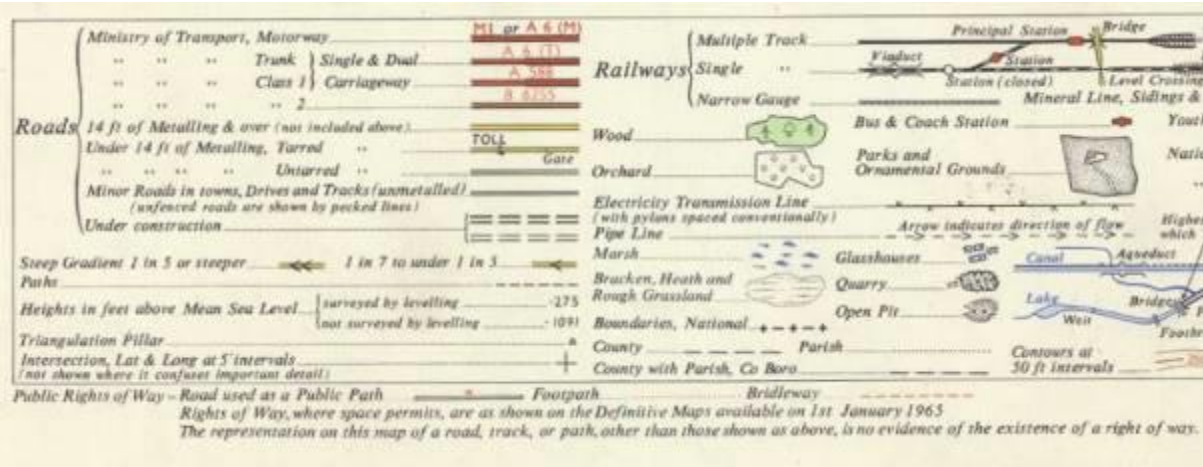
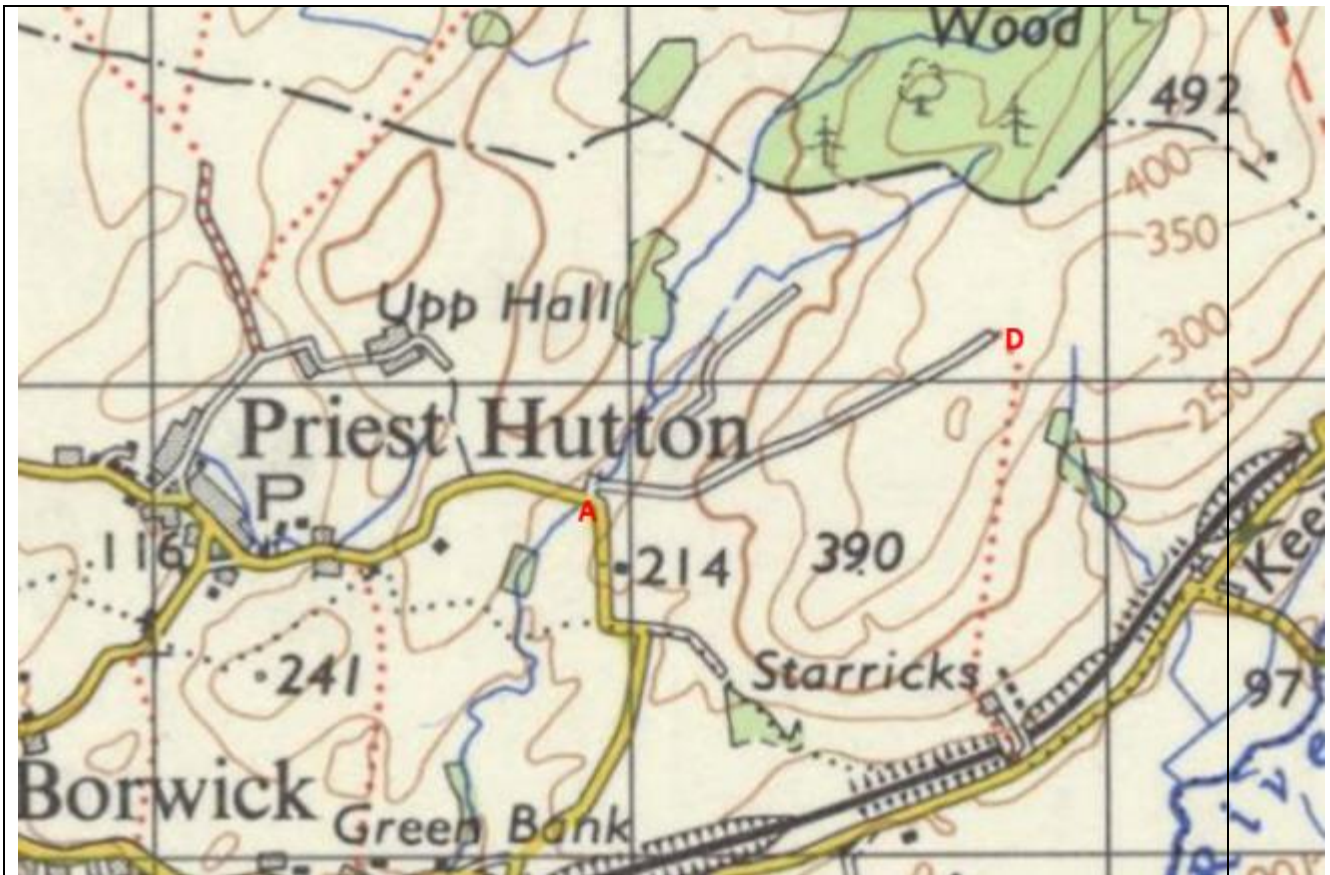




Roads	Ministry of Transport, Motorway	or	=====		
	" " " Trunk	} Single & Dual	=====	Railway	
	" " " Class 1		=====		
	" " " " 2		=====		
	14 ft of Metalling & over (not included above)		=====	Wood	
	Under 14 ft of Metalling, Tarred		===== TOLL	Gate	
	" " " " Untarred		=====	Orchard	
	Minor Roads in towns, Drives and Tracks (unmetalled) (unfenced roads are shown by pecked lines)		=====	Electricity (with pylon)	
	Under construction		(=====)	Pipe Line	
	Steep Gradient 1 in 5 or steeper	↔↔↔	1 in 7 to under 1 in 5	↔↔↔	Marsh
Paths		-----	Bracken, E		
Heights in feet above Mean Sea Level	{	surveyed by levelling	·275	Rough Gra
		not surveyed by levelling	·1091	Boundarie

Sheet 89 – Lancaster & Kendal 7th Series 1 inch OS map published 1952-1961





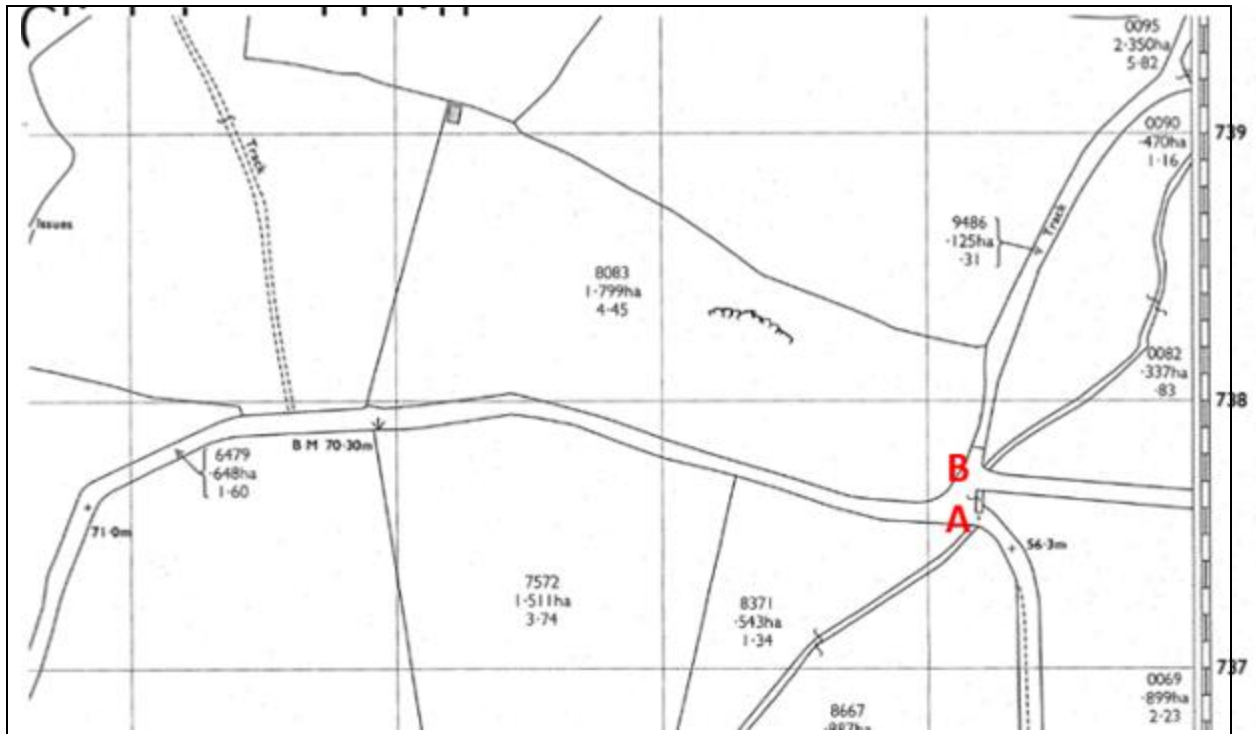
Sheet 89 - 1 inch OS Map surveyed 1950-1964 and published 1965

<p>Observations</p>		<p>All three maps show the application route as a minor, untarred or other road. The map published in 1965 shows 1-26-FP12 meeting the application route at point D.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The original scale of the map (1 inch to 1 mile) means that only the more significant routes are generally shown. The inclusion of the route on all three maps</p>

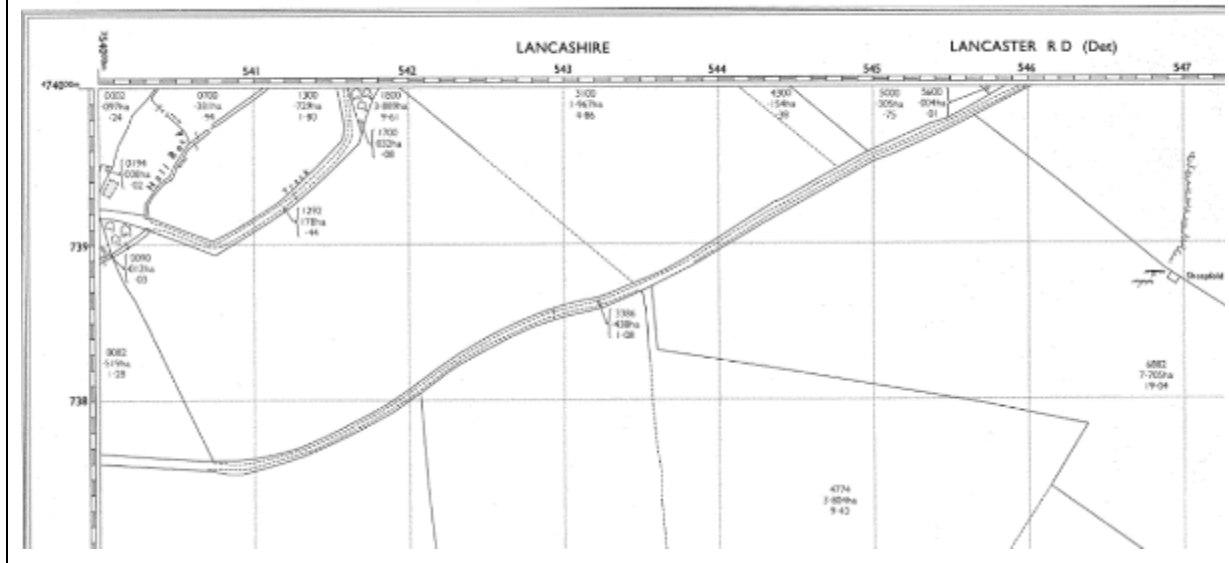


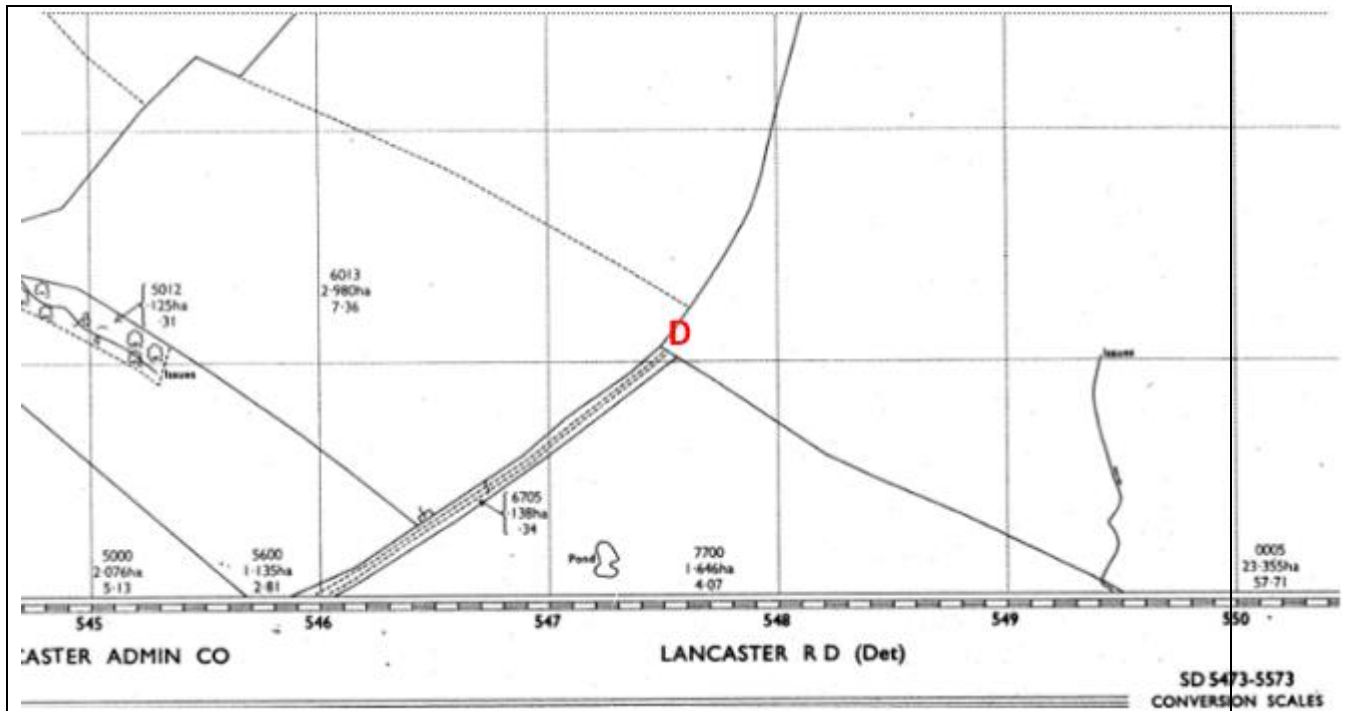
		<p>suggests, as larger scale maps have confirmed, that a substantial route existed which probably could have been used at least on horseback but we do not know if that use was public or private.</p> <p>The fact that the route of 1-26-FP12 was shown connecting to the route at point D in 1965 is a consequence of the fact that the Definitive Map had been published by that date and information regarding the public rights recorded on that map provided to the Ordnance Survey to be included on those maps. By inference, from that time onwards it could be suggested that anyone using this map may have then used the public footpath through to point D may then have walked the application route to exit onto Back Lane at point A. However, such use cannot be inferred from the map itself.</p>
<p>1:2500 OS Map Map Sheets: SD 5473-5573 SD 5273-5373 SD 5474-5574</p>	1970	<p>Further edition of 25 inch maps reconstituted from former County Series and revised in 1969 and published in 1970 as National Grid Series.</p>





NATIONAL GRID PLANS Scale 1:2500





Observations		The application route is shown in the same way that it is shown on earlier OS maps examined. 1-26-FP12 is not shown as a route that existed as a physical track/path on the ground.
Investigating Officer's Comments		The application route existed and appeared capable of being used in 1969/1970. As detailed below 1-26-FP12 was recorded on the Definitive map by this time although as a cross field footpath it does not appear to have physically existed as a discernible trodden path on the ground and as such was not mapped by the OS.
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.



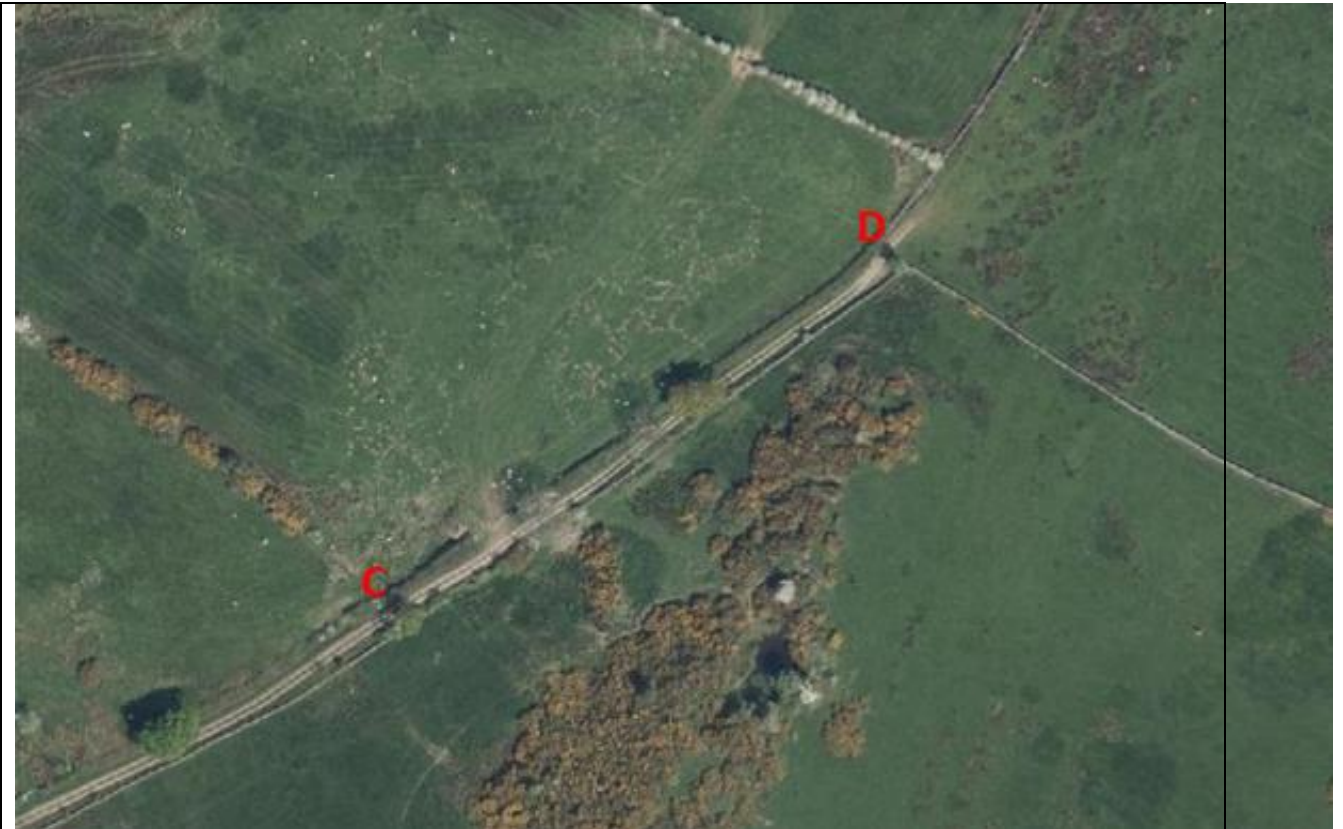
Observations

The application route can be



		<p>seen as a substantial track and looks to have been receiving a significant level of use by farm vehicles accessing fields from the route at that time.</p> <p>That part of the route between point C and point D beyond the track leading to the old quarry site no longer appeared to be separated from the field by a fence or wall and no trodden track comparable with the route recorded as 1-26-FP12 can be seen.</p>
Investigating Officer's Comments		<p>The application route existed in the 1960s and appeared to be well used by farm vehicles accessing the adjacent fields. It appears that it would have been capable of being used on foot at that time.</p>
Aerial Photograph	2017-19	<p>Aerial photograph available to view on Lancashire County Council website.</p>





Observations		The application route can be clearly seen as a substantial track that was being used by vehicles to access adjacent fields. The route is again clearly shown as being bounded on both sides through to point D. 1-26-FP12 is not visible across the fields.
Investigating Officer's Comments		The application route existed and appeared to be capable of being used.
Definitive Map Records		<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>
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	<i>Lancaster Rural</i>	PARISH	<i>Priest Hutton</i>	No.	12
MAP SHEET No.	1	LENGTH	miles		
BRIEF DESCRIPTION (Field F.P. or otherwise)		(to two decimal places)			
<i>F.P.</i>					
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).					
<i>Starts at a point north of Thwaite Wood and proceeds in a southerly direction to Eastern extremity of Starucks Woods over pasture fields to Starucks. Crosses over the railway bridge to Parish Boundary near road from Borwick Station</i>					
SURVEYED BY :-		Name			
		Address			
Date					
9000/738/4/50					

<p>Observations</p>		<p>The application route is not shown as a public right of way on the Parish Survey Map. A route numbered '12' is shown connecting to the north eastern end of the application route at point D. It is described in the Parish Survey card as a footpath starting at a point north of Thwaite Wood but there is no specific reference to the application route. In contrast to other routes shown on the Parish Survey Map the route numbered '12' is coloured blue and the Parish Survey card is written with a different pen to the cards for the routes numbered 1 to 11. One further Parish Survey card was prepared for a route numbered as footpath 13 although this route was not shown on the parish survey map (and did not describe the application route) suggesting that details of routes 12 and 13 were added after initial survey map was marked up.</p>
<p>Draft Map</p>		<p>The parish survey map and cards for Priest Hutton were handed to</p>



		<p>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>
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<p>Observations</p>		<p>The application route was not shown on the Draft Map of Public Rights of Way and there were no representations or objections made to the fact that it was not</p>
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		included. 1-26-FP12 was shown and the Draft Statement records its position as 'North of Thwaite Wood to Starricks Railway Bridge'
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960 and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.



Observations		The application route was not shown on the Provisional Map of Public Rights of Way and there were no representations or objections made to the fact that it was not included.
The First Definitive Map		The Provisional Map, as



and Statement		amended, was published as the Definitive Map in 1962.
Observations		The application route was not recorded on the First Definitive Map of Public Rights of Way.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First 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		The application route is not recorded on the Revised Definitive Map of Public Rights of Way.
Investigating Officer's Comments		<p>From 1953 through to 1975 there is no indication that the application route was considered to be a public right of way by the Surveying Authority. There were no objections or representations made with regard to the fact that the route was not shown on the map when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.</p> <p>1-26-FP12 was recorded as starting/ending at a junction with the application route at point D. It appears strange that the route was described as starting 'North of Thwaite Wood' rather than by some more specific reference to the application route. Either the route was recorded as a dead end footpath, which would appear unlikely as there is nothing remarkable about the end of it (point D) or it appears that access to and from it was most probably from the application route.</p>
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	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



		<p>particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up-to-date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
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<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 records believed to be derived from the 1929 Handover Map.</p>
<p>Investigating Officer's Comments</p>		<p>The fact that the route is not recorded as a publicly</p>



		maintainable highway does not mean that it does not carry public rights of access.
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		A search of the records held by the County Council and the London Gazette has been made and no reference to the application route has been found.
Investigating Officer's Comments		No records relating to the stopping up, diverting or creating of public rights along the route were found. 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		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). 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).
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.

Summary

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

The map and documentary evidence available to view all confirms that the application route existed as a substantial route since at least 1818.

The route did, and still does, provide access (and in some cases the only access) to a number of fields that are situated along either side of it. Whilst no enclosure agreement or award has been found it does appear that given the topography of the area and characteristics of the route it probably came into being as a private access road. This fact appears to be supported by the information provided in the Tithe Award that details at least part of the lane as being privately owned and shows it providing access to land referenced as thwaite land or intake.



As a substantial bounded route it is not surprising that its physical existence was mapped by the OS at a range of different scales – including small-scale 1 inch maps. Of significance however is the fact that it is consistently shown as a dead end route – providing access to farm land but not linking to any other surveyed paths or tracks.

It is not until the 1950s that we have evidence of a footpath that linked to the application route. Although not recorded as a visible route on any OS maps or aerial photographs examined, 1-26-FP12 was recorded as a public footpath in the 1950s and its existence never challenged. The route was described as starting 'North of Thwaite Wood' with no clear explanation of how a person walking the route had got to that point. Map evidence suggests that to get to or from point D (the northern end of 1-26-FP12 would either mean using the footpath to make a journey there and back by retracing your steps along the route or by walking along the application route to or from Back Lane. The map and documentary evidence suggests that this was possible, as does the site evidence, but no evidence has been found to confirm that there was actual public use.

Head of Service – Legal and Democratic Services Observations

Landownership

The land crossed by the application route is unregistered for the full length of the route. Adjacent land is all in registered landownership.

Information from the Applicant

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

- Greenwoods Map of Lancashire 1818
- 6 inch OS maps published 1847 through to 1945
- 25 inch OS maps surveyed 1889 and 1910
- 1 inch OS maps 1896, 1947 and 1965
- 1:25,000 OS maps dated 1961 and described as 2022 online map
- 1:50,000 'current 2022 online map'
- Tithe records 1840
- Inland Revenue Valuation Records 1910
- Lancashire County Council Highway maintenance records
- Search results from London Gazette for Stopping up Orders
- Parish Survey card for FP 12
- 1960 and 2000 aerial photographs
- Land registry information
- Recent (undated) photographs of the application route

No user evidence was submitted.

Information from Others

The local footpath secretary for the Ramblers Association responded to consultation stating support, being the applicant for this application. They noted a response to the notice of application served;



"...We received a Notice in the post yesterday regarding a modification order...you have sent to Lancashire County Council.

We have lived here for over 70 years and this is all a mystery to us.... We own the sporting rights on land at the top of the lane marked A and B and have never had an objection to walkers using the lane.

I am a Nordic walk Leader (not with the Ramblers) and have used this lane for over 25 years; who is saying it is not a footpath or public right of way? You can only access the footpath at the top of the lane at point mark B by going up this lane unless you have a broomstick! JUNCTION WITH BACK LANE, U49108, SD5391 7376."

The footpath secretary advised this correspondence could be forwarded to the council if required.

This adjoining landowner having written to the Ramblers Association also wrote to the council on consultation to state they had no objection and to clarify the land in their ownership.

Several further landowners 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.

BT Open Reach responded to consultation to state that they had no objection to the application.

Cycling UK responded to consultation to state that they had no objection to the application.

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

Information from the Landowner

The entire length of the application route crosses land which is unregistered.

Assessment of the Evidence

The Law - See Annex 'A'

Conclusion

The application is that the route A-B-C-D has already become a footpath in law and should be recorded as such on the Definitive Map and Statement of Public Rights of Way.

The application is based on historic map and documentary evidence. No user evidence has been submitted.



As there is no express dedication in this matter Committee should consider on balance, whether there is sufficient evidence from which to have dedication inferred at common law from all the circumstances or for the criteria in section 31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years "as of right" use to have taken place ending with this use being called into question.

Considering initially whether there are circumstances from which dedication could be inferred at common law, Committee is advised to consider whether evidence from the historical maps and other documents and the physical features of the site does on balance indicate that footpath rights should be recorded.

Map and documentary evidence examined by the Public Rights of Way Officer is set out in detail within this report and confirms that the application route existed as a substantial route for over 200 years.

The Finance Act 1910 excluded the application route A-D which is considered to be good but not conclusive evidence of public carriageway rights.

The application route links with recorded Footpath 1-26-FP12. The application route is the only access to this recorded Footpath at point D.

Committee may consider that it can be reasonably alleged that there is sufficient evidence from which to infer dedication of a public footpath at common law. As there is no user evidence in support of this application, Committee is advised that the criteria in section 31 Highways Act are not met.

The recommendation is that an Order be made and if no objections are received, confirmed. In the event that objections are received and not withdrawn officers recommend that the matter is referred back to Committee for a decision on the stance when submitting the Order to the Planning Inspectorate.

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: 804-759		Simon Moore, 01772 531280, Legal and Democratic Services

Reason for inclusion in Part II, if appropriate

