

**Regulatory Committee**

Meeting to be held on 21 June 2023

**Part I**

Electoral Division affected:  
West Lancashire North

**Wildlife and Countryside Act 1981**

**Definitive Map Modification Order Investigation**

**Alignment of the Public Footpath along the Western Bank of the River Douglas and through/past Douglas Boatyard, Hesketh with Becconsall**

(Annex 'A' refers)

Contact for further information quoting file reference 804-760:

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**Brief Summary**

Investigation into the correct alignment of footpaths FP0810046 and FP0816005 along the western bank of the River Douglas and the route through Douglas Boatyard, Hesketh with Becconsall.

**Recommendation**

- (i) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(iii) of the Wildlife and Countryside Act 1981 to delete from the Definitive Map and Statement of Public Rights of Way part of Footpath FP0816005 as shown on the Committee Plan 2 by a thick solid black line between points A-B and part of FP0810046 shown by a thick solid black line between points B-C-D-E.
- (ii) That being satisfied that the test for confirmation can be met the Order be promoted to confirmation.
- (iii) 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 add a footpath on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan 2 by a thick dashed line between points A-X-E.
- (iv) That being satisfied that the higher test for confirmation can be met the Order

be promoted to confirmation.

## Detail

Over a number of years, the alignment of the footpath recorded on the Definitive Map and Statement through Douglas Boatyard at Hesketh with Beconsall has been queried because it differs significantly from the walked line and is not consistent on successive maps.

The registered ownership of the boatyard changed hands in 2021 coinciding with confirmation of the route designated as part of the King Charles III England Coast Path (ECP) which is recorded as passing through the boatyard on the route currently used by the public, but on a different route to that recorded as the public footpath on the Definitive Map and Statement.

The route designated as the ECP was approved in August 2022 and since 10<sup>th</sup> May 2023 has now provided rights to the public to pass through the boatyard on foot along the route shown with a solid red line on the Committee plan.

These rights differ from those that exist along a route recorded as a public right of way (part of FP0816005 and FP0810046) which is shown as a black dashed line between points A-F on the Committee plan.

The route of the ECP through the boatyard was not opposed by the previous landowner of the boatyard and reflects the route currently, and for some years, used by the public. It appears that it was agreed with the previous landowner to record this route as the ECP because the route recorded as FP0810046 through the boatyard was obstructed and had been for a considerable amount of time.

It is understood that the previous owner of the boatyard originally made a start in removing some of the obstructions on the line of the route recorded as FP0810046 with a view to the ECP being approved as running along that route but it soon became apparent that significant lengths of the route between points A-B-C-D-E on the Committee plan were obstructed or unwalkable.

During that time investigations were carried out by the county council's Public Rights of Way Team which led them to conclude that the public footpath between points A-B-C-D-E had been incorrectly recorded on the Revised Definitive Map. No further action to open the route of FP0810046 was taken at that time.

The current landowner is now concerned about the public passing right through the boatyard along the ECP route and about the public attempting to use the public footpath. Although the public are currently using the ECP route he has stated that he is opposed to the ECP running through a working yard. Whilst a significant amount of work has now been carried out leading to and beyond the section of the ECP route passing through the boatyard the relatively minor work on the route crossing that land has not yet (at the date of writing) been carried out.

Alerted to the fact that there appeared to be an error in how FP0810046 was recorded on the Revised Definitive Map and the fact that the ECP route through the



boatyard was already very well used, it was agreed that a proper investigation needed to be carried out.

The existing situation is now causing a significant amount of concern and uncertainty for all parties involved. There appears to be no argument that a public footpath does exist, but the issue is where exactly it runs. It was agreed that it was now necessary to look in detail at the situation and to consider whether the route recorded on the current (1966) Definitive Map and Statement as a public footpath between points A-B-C-D-E should be deleted on the basis that it was incorrectly recorded and to look at where the public actually walked and where the footpath ran prior to any more recent alterations to the site.

As it has come to the attention of the county council that there appears to be an error on the Definitive Map the county council are required by law to investigate the evidence and make a decision based on that evidence as to whether the public footpath has been correctly recorded and whether, if an error has occurred, the route recorded as a public footpath should be deleted from the Definitive Map or shown differently. 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 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. The decision may be that the routes have public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists. The decision may also be that the routes to be added or deleted vary in length or location from those that were originally considered.

## **Consultations**

### West Lancashire District Council

West Lancashire District Council did not respond to consultation.

### Hesketh with Becconsall Parish Council

Hesketh with Becconsall Parish Council responded to consultation to state that no member of the Council is aware of the designated path to the rear of the Douglas Marine Boatyard ever being used and indeed on inspection they believe it to be impassable. The Clerk to the Council confirmed from personal knowledge that the path always went under the former West Lancashire Railway bridge which was closed in 1964.

The Parish Council did not have any knowledge to offer regarding Douglas bank Farm.

The Parish Council included a plan showing the line of the path they considered to have been used by the public, but which actually related to a section of the route further south than the footpath currently under investigation.

### Tarleton Parish Council

Tarleton Parish Council did not respond to consultation.

## **Advice**

### **Head of Service – Planning and Environment**

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	4502 2264	Unmarked point on FP0816005 immediately west of the recently surfaced path.
B	4501 2269	Unmarked point at which the footpath under investigation crosses the parish boundary between Tarleton and Hesketh with Becconsall, adjacent to pond.



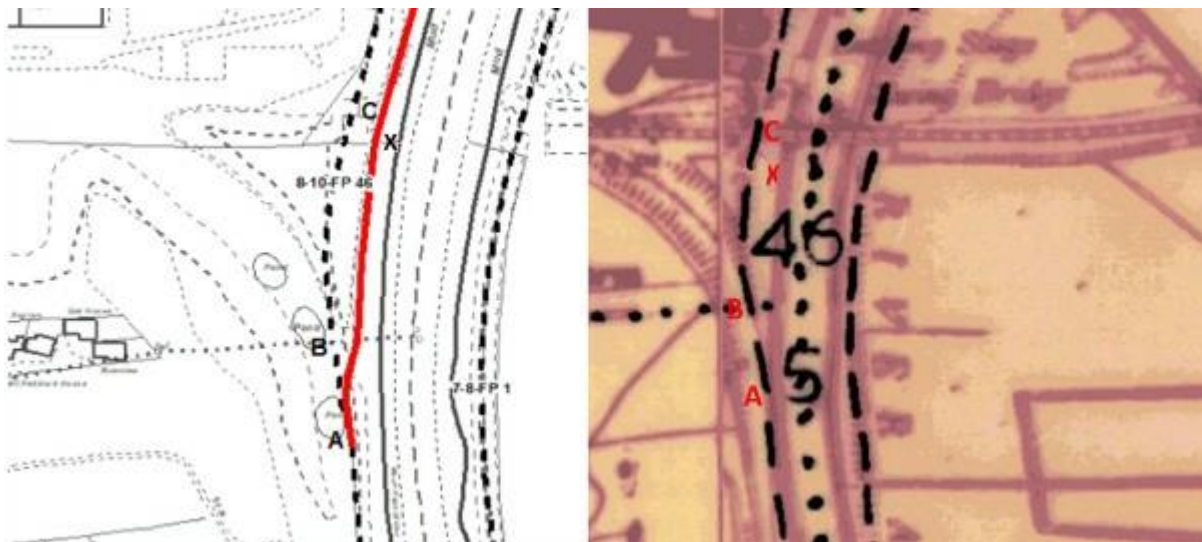
C	4502 2280	Point at which the route recorded as FP0810046 crosses over the top of the remains of the railway swing bridge support.
D	4514 2305	Point at which FP0810046 is recorded as crossing a field boundary fence.
E	4520 2313	Point at which FP0810046 crosses the access road leading directly to Douglas Boatyard.
F	4524 2317	Unmarked junction of FP0810046 and FP0810047.
X	4503 2278	Remains of fence and stile

Note: Throughout this report unless otherwise stated references to the route recorded on the 'Definitive Map' refer to the route shown on the Revised Definitive Map (First Review) with 'Relevant Date' 1966.

### Description of Routes

A site inspection was carried out in September 2022.

### The route between Point A and Point C



Extracts not to scale

### The Definitive Map Route A-C

The route recorded as FP0816005 runs along the line of a dismantled railway which has recently been surfaced with compacted stone. At the point marked point A on the Committee plan the Definitive Map route leaves the surfaced path to continue through a wet area comprised of long grass and vegetation immediately adjacent to a pond. The unmarked route continues through the vegetation crossing the unmarked parish boundary between Tarleton and Hesketh with Beconsall to continue as FP0810046 to pass to the east of a second pond. It then crosses an unrecorded trodden path which leads towards Station Road and a new housing development. It then ascends an overgrown grassy embankment to continue through trees and bushes growing on the embankment to cross the remains of the brickwork that supported the railway swing bridge that previously crossed the river at this point



(point C). The line on the Definitive Map is shown in such a way that it is difficult to locate the line precisely but at some point it does reach the top of the embankment.

### The ECP (walked route) A-X

From point A the walked route (more recently designated as the ECP route) follows a stone surfaced path past the first of three small ponds and then drops down onto the marsh through a gap in the embankment. In the past few months this route has been surfaced as part of the ECP implementation works but photographs taken prior to that work being carried out show an unsurfaced but well trodden path along the same route.

The trodden line continues along the marsh to point X where the remains of fencing and a wooden stile existed. When the route was inspected in September it was confirmed that the fencing no longer reached across the marsh at this point and the stile had fallen out of use with the trodden line of the path passing between the stile and river bank.

Just beyond point X the ECP (walked route) passed along the bottom of the remains of the swing bridge, effectively underneath where the bridge would have crossed the river.

### **The route between point C and point F**



Extracts not to the same scale

### The Definitive Map Route C-E

It is difficult to get to or from point C, particularly during the summer months, and there is no evidence of a walked line. There is however evidence of 'dens' in and around the remains of the railway bridge consistent with what appear to be areas



used by children/teenagers. Access to the top of the embankment appears to be from the marsh and the ECP (used route) rather than along the Definitive Map route.

From the top of the brickwork comprising the remains of part of the railway bridge the Definitive Map route is recorded as continuing along the top of the embankment tight up against a metal railing fence separating the embankment from the site of the former brick and tile works which has now been cleared and is being redeveloped as housing. Whilst it was possible to push through the trees and walk bits of this route there is no evidence to suggest that it is being used as a footpath or that it could have been used as one in recent years. As the Definitive Map route continues along the boundary of Douglas Boatyard it is increasingly difficult to walk along the line recorded as the footpath. The embankment to the rear of some caravans appears to have been cut away in places so that it barely exists and is steep with no evidence of a path that may have previously existed.

Between point D and point E the boundaries/fencelines that historically existed have altered but the Definitive Map line runs just within the northern boundary of the boatyard (partly obstructed by boats and vehicles) before veering north across a fenceline into a thin strip of trees between the private driveway into the housing estate known as Bullens Wood and the boundary of the boatyard.

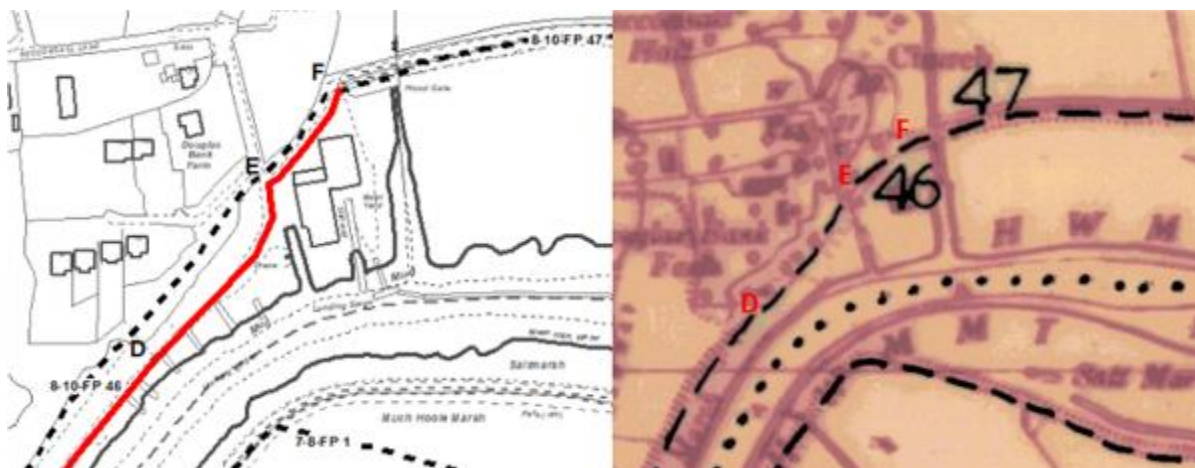
At point E the Definitive Map route crosses the entrance into the boatyard situated at the far end of Becconsall Lane.

The Definitive Map route between point C and point E is not walkable.

#### The ECP (walked route) X-E

A trodden route along the marsh exists, continuing from point X and passing into and through the boatyard along a way that provides access to a number of residential caravans and boats and to other boats being stored on the land, through to the entrance to the boatyard at point E. The route designated as the ECP is not shown to link to Becconsall Lane (which is only recorded as a publicly maintained road as far as the entrance to Becconsall Church but may have unrecorded public rights linking to the Definitive Map line).

#### **The route between point E-F**



Extracts not to the same scale

### The Definitive Map Route E-F

The Definitive Map route is shown to run along the inside of the boundary of Douglas Boatyard but has been obstructed by boats stored along the boundary. There is nothing to suggest on site that this part of the route has been incorrectly recorded on the Definitive Map – only that it has been obstructed.

### The ECP (walked route) E-F

The ECP (walked route) passes through the boatyard running parallel to the Definitive Map route but avoiding the obstructed section to re-join the Definitive Map route at point F.

### Comments on Site Evidence

Looking at the site evidence alone it is apparent that the route recorded on the Definitive Map is not useable today but we need to consider whether it might have been feasible in the past. The steepness of the terrain, the fact that it crosses over the top of the remains of a railway swing bridge and runs along the top of an embankment and crosses old fence lines with no apparent reason to do so suggests that this would never have been an obvious line to have been walked. Notwithstanding that there is evidence of earthworks altering the embankment separating the marshland from the higher ground and recent (1960s onwards) development of the site crossed by the route it does suggest that the line shown on the Definitive Map does not accurately reflect what could or would more reasonably have been used.

The ECP (walked route) appears to be well established and heavily used – it follows a logical and useable route from point A and continues through the boatyard on an obvious route but is not in accord with the historically recorded line. Whilst the route may not be what was originally used or intended to have been recorded, having altered and evolved as the boatyard expanded, it does suggest that people would naturally have been more likely to follow the lower ground than climb to the level of the swing bridge and go along or across a live railway.

### **Map and Documentary Evidence**

It is not disputed that a public footpath exists along the river bank and so the purpose of this investigation is not to determine whether public rights exist but to try to establish exactly where those rights exist and whether the route shown on the Revised Definitive Map is correct.

Various maps, plans and other documents have been examined to discover when the route came into being, whether it was mapped as a physical feature that was visible on the ground and to see whether there were any factors that resulted in the alignment of the route altering over time.

Maps and plans reproduced below are not to scale (unless specified as being so).





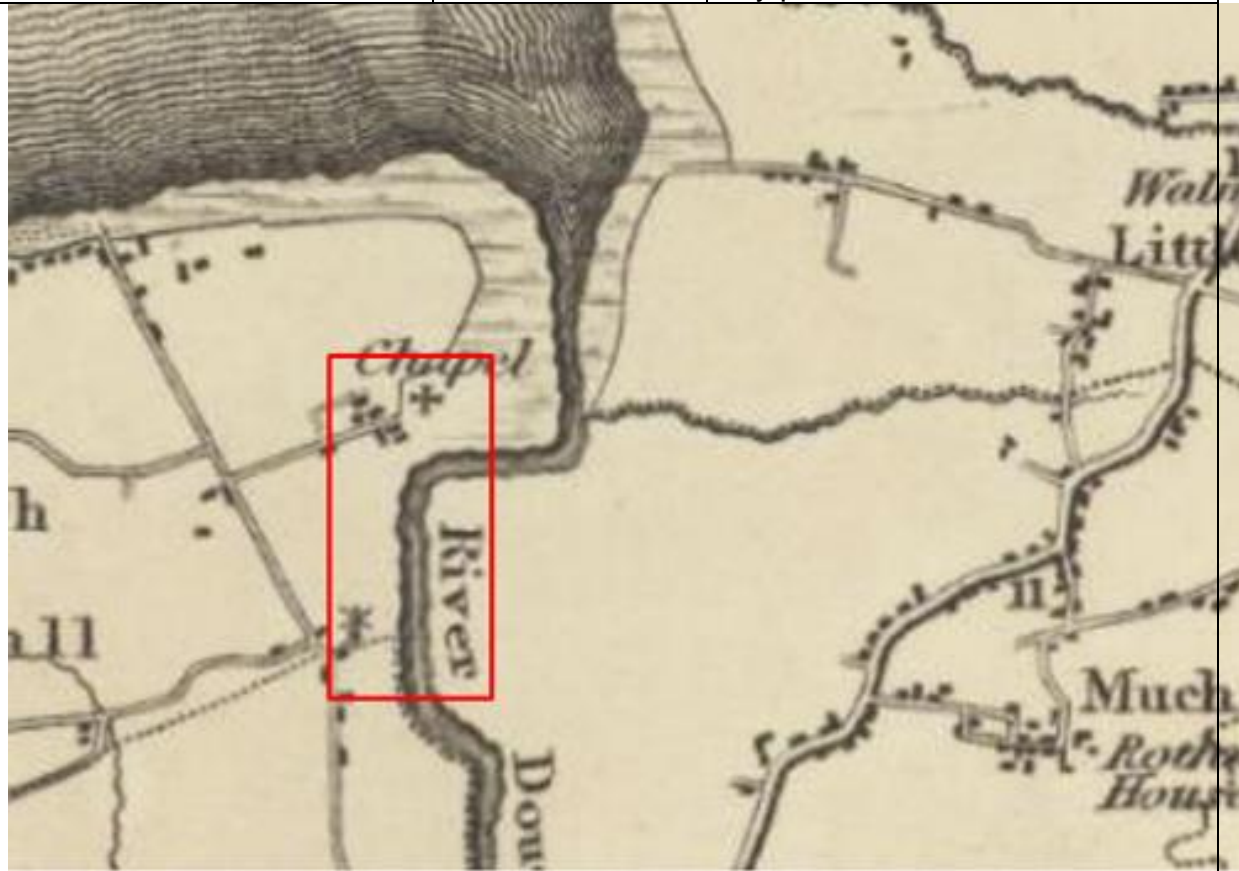
Document Title	Date	Brief Description of Document & Nature of Evidence
<b>Yates' Map of Lancashire</b>	1786	Small-scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately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



Observations		Becconsall Lane leading to Becconsall Church is shown but the route under investigation is not shown.
Investigating Officer's Comments		Public footpaths were not normally shown on such small-scale maps so no inference can be drawn.
<b>Greenwood's Map of Lancashire</b>	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.
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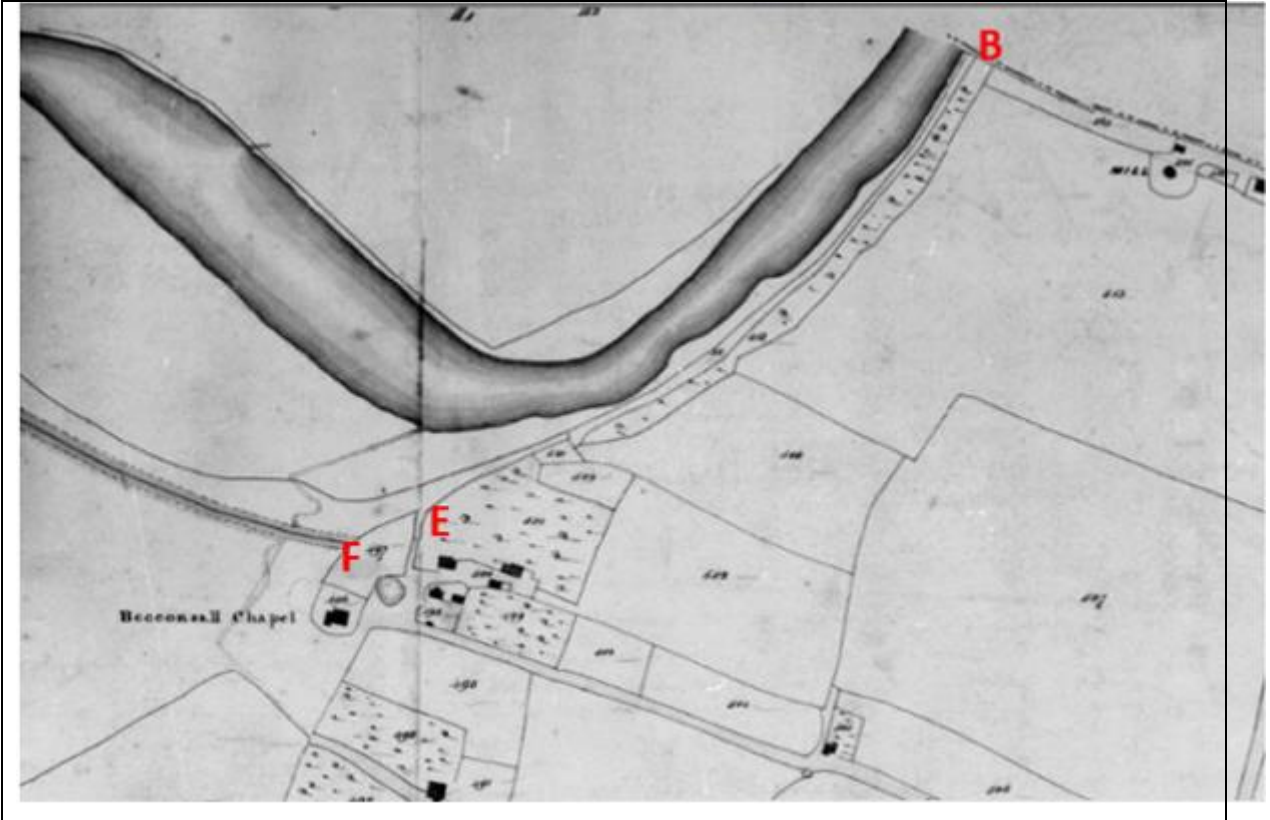
Observations		The route under investigation is not shown.
Investigating Officer's Comments		Public footpaths were not normally shown on such small-scale maps so no inference can be drawn.
<b>Hennet's Map of Lancashire</b>	1830	Small-scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.

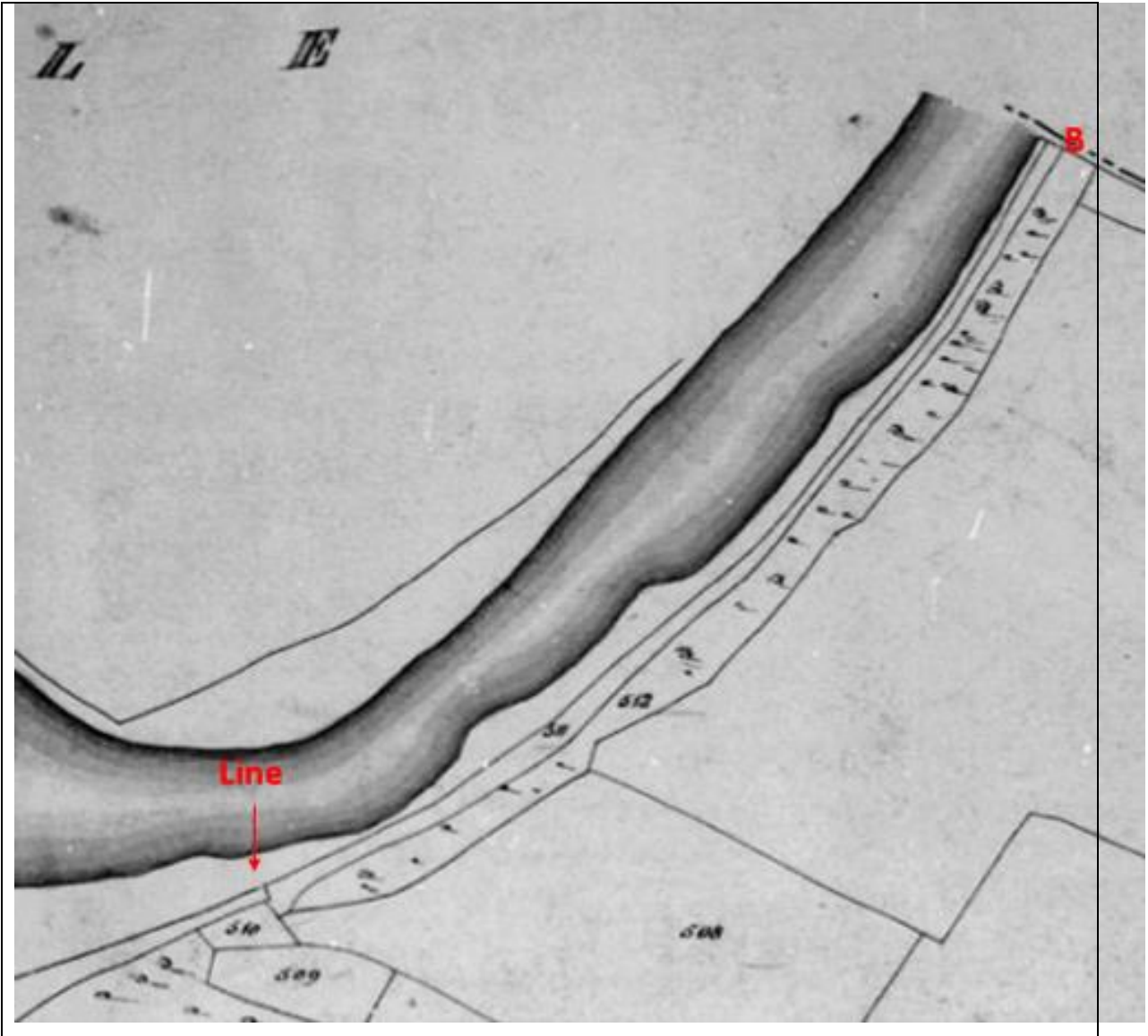


Observations		The route under investigation is not shown.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights although it should be noted that it would be unusual for a route considered to be a public footpath to be shown on such a small-scale map even if it did exist at that time.
<b>Tithe Map and Tithe Award or Apportionment Hesketh with Beconsall</b>	1839	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways



may be inferred.







[above] Extracts from the Tithe Map

No. 4.—Lancashire, sold by Auction by Messrs. G. & J. W. G. & Co., 15, Spital Square, London, E.C. 4.

LADLOWERS.	OCCUPIERS.	Ranks referring to the Plan.	NAME AND DESCRIPTION of LANDS AND PREMISES.	STATE of CULTIVATION.	QUANTITIES in STATUTE MEASURES.				REMARKS.		
					A.	R.	P.	PERCHES.			
Sir Thomas Dalrymple Hesketh, Baronet. (continued)	Joseph Fowler (continued)	480	Brought Forward	Pasture	92	2	22	11	19		
		481	Beckels Hey	Pasture	3	1	5	-	5	10	
		482	Lippie	Wood	1	1	1	-	-	-	R. 40183.
		483	Under Marsh	Pasture	-	2	7	-	7	-	A 0450
		484	Green Hey	Pasture	1	2	30	1	11	-	A 0451
		485	Yards	Meadow	1	1	35	-	7	-	A 0452
		486	Stack Yard	Pasture	-	1	9	-	2	-	A 0453
		487	Orchard &c.	Orchard	-	2	35	-	5	-	A 0454
		488	Buildings, Fold &c.	Orchard	-	2	16	-	16	-	A 0455
		489	Orchard and Garden	Orchard	-	3	16	-	3	-	A 0456
		490	Three Wharves	Meadow	9	2	26	1	14	7	A 0457
		491	Marsh	Stable	6	3	27	1	14	-	A 0458
		492	Marsh	Stable	10	2	17	1	16	5	A 0459
493	Cliff	Meadow	1	2	12	-	14	4	A 0460		

[above] Extract from the Tithe Award – Plot 511

Township Roads	519				11	2		
1	Hesketh Mags including half of the Boundary Lines.				296	2		
520	Hesketh Marsh including Road from Hesketh Brow to the Hundred End.				490	2		
521	Inclosed Marsh.				51	-		
					938	2		



[above] Extract from the Tithe Award – Plot 480 and Plot 519

<p>Observations</p>		<p>Beconsall Lane is shown providing access through to point E. Beconsall Lane is numbered on the map as a township Road (519) although it is not possible to deduce from the map whether the lane was thought to extend as far as point E, or further.</p> <p>Beyond point E a narrow strip of land is shown which may have been fenced either side, as indicated by solid lines, and which was either numbered as part of Beconsall Lane or as part of the inclosed marsh (480) through to where a line is shown across the approximate location of the route under investigation (as marked on the map extract above).</p> <p>Beyond the line, through to point B, a thin strip of land is shown numbered as plot 511 which is described as under marsh owned by Sir Thomas Dalrymple Hesketh Baronet and occupied by Joseph Fowler. It is detailed as pasture for which a small payment is listed. A strip of woodland owned and occupied by the same people is shown running parallel and is numbered as plot 512.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation is not shown and probably did not exist. Access may have been available from Beconsall Lane onto the marsh and along the thin strip of pasture land through to point B but it is not known whether such access was public or private and the map provides no real assistance in determining the correct alignment of the footpath.</p>
<p><b>Tarleton Tithe Map and Award</b></p>	<p>1845</p>	





Extract from Tithe Map

C.C.—London: Printed and Published (By Authority,) by Shaw and Sons

LANDOWNERS.	OCCUPIERS.	Numbers referred to in the Plan.	NAME AND DESCRIPTION OF LANDS AND PREMISES.	STATE OF CULTIVATION.	QUANTITIES IN STATUTE MEASURE.				REMARKS.
					A.	R.	P.	Acres.	
Hesketh Sir Thomas Dalrymple Hesketh, bart.	James Blundell, cart.	1769	Little meadow	Meadow	2	3	5 1/2	7 1/2	R. 37995.
		1774	Mill hey	Arable	1	2	13 1/2	5 1/2	
		1775	Mill hey	do	1	2	13 1/2	5 1/2	
		1820	Bank-ack	Pasture	2	3	2 1/2	5 1/2	
		1852	Milshaw	Arable	3	1	1 1/2	5 1/2	
		1855	Marsh	Pasture	3	1	1 1/2	5 1/2	
		1855	Marsh	do	1	1	1 1/2	5 1/2	
					1 1/2	2 1/2	1 1/2		
	Robert Buck	1778	Meads Gate	Pasture	1	2	11	11	M. 26099.
	Henry Caunce	254	Barister Ground	Pasture	1	2	0	1 1/2	
		259	Mill hey	Arable	3	2	1 1/2	11 1/2	

Extract from Tithe Award plot 1775

<b>Observations</b>		Between point A and point B the route under investigation is not shown and the land crossed by the route is numbered as plot 1775 which was owned by Sir Thomas Dalrymple Hesketh and occupied by James Blundell. It was described as Mill Hey and as arable land for which Tithes were payable.
<b>Investigating Officer's Comments</b>		The route under investigation between A and B did not exist in 1845.
<b>Inclosure Act Award and Maps</b>		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming





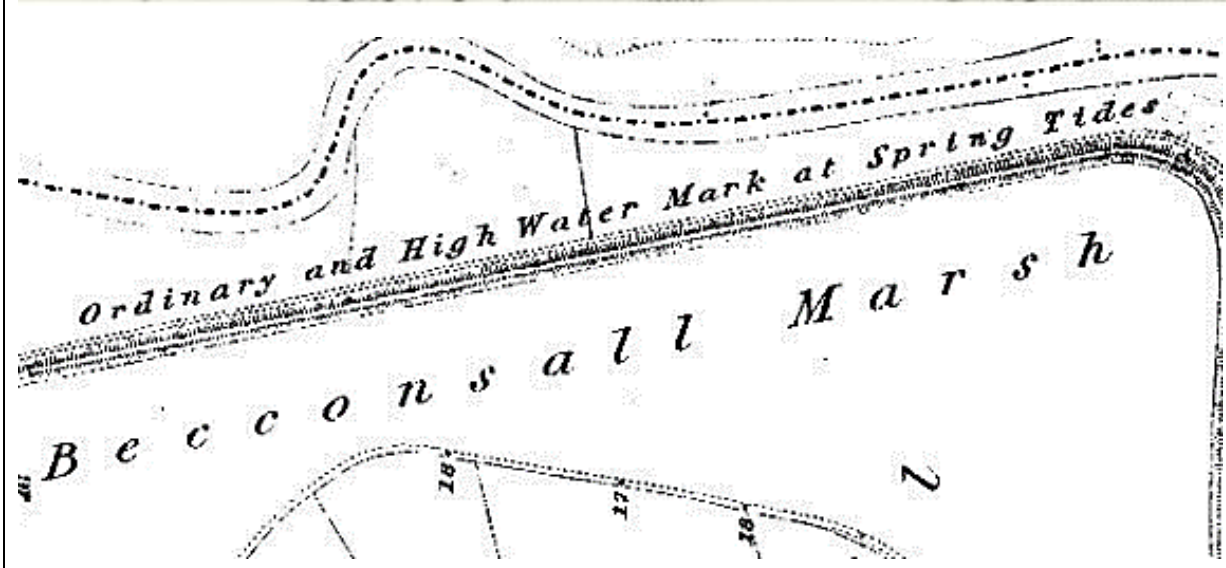
		medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		No Inclosure Award or Agreement for the land crossed by the route under investigation has been found.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch Ordnance Survey (OS) Map Sheet LXVIII (68)</b>	1848	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1848.<sup>1</sup></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 - <a href="https://maps.nls.uk/os/">https://maps.nls.uk/os/</a> Copies of the maps held by the National Library of Scotland are usually 'final' printings which therefore include railways which in some instances post-dated the survey and first publication of the map.</p> <p>Where appropriate extracts of</p>

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



both copies of the map (if found) will be inserted into the report and clearly labelled.

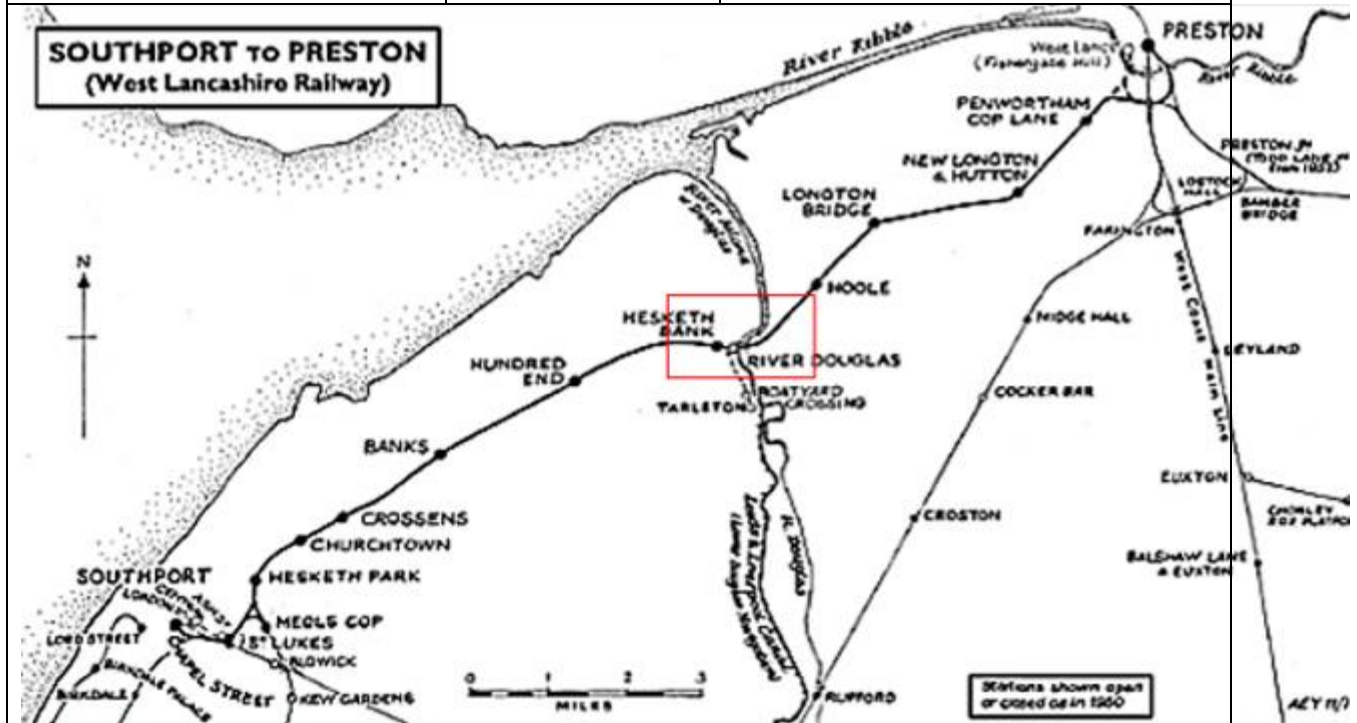




<p>Observations</p>	<p>With the benefit of being able to enlarge the original map to see minute detail more clearly there is a double pecked line, indicating the ordinary and high water mark at spring tides, which is shown in places as a single pecked line where they coincide, extending all the way from Lock House in Tarleton north past Becconsall Lane and continuing out to Becconsall Marsh.</p> <p>Access is shown from Becconsall Lane onto the land now crossed by the route under investigation</p>
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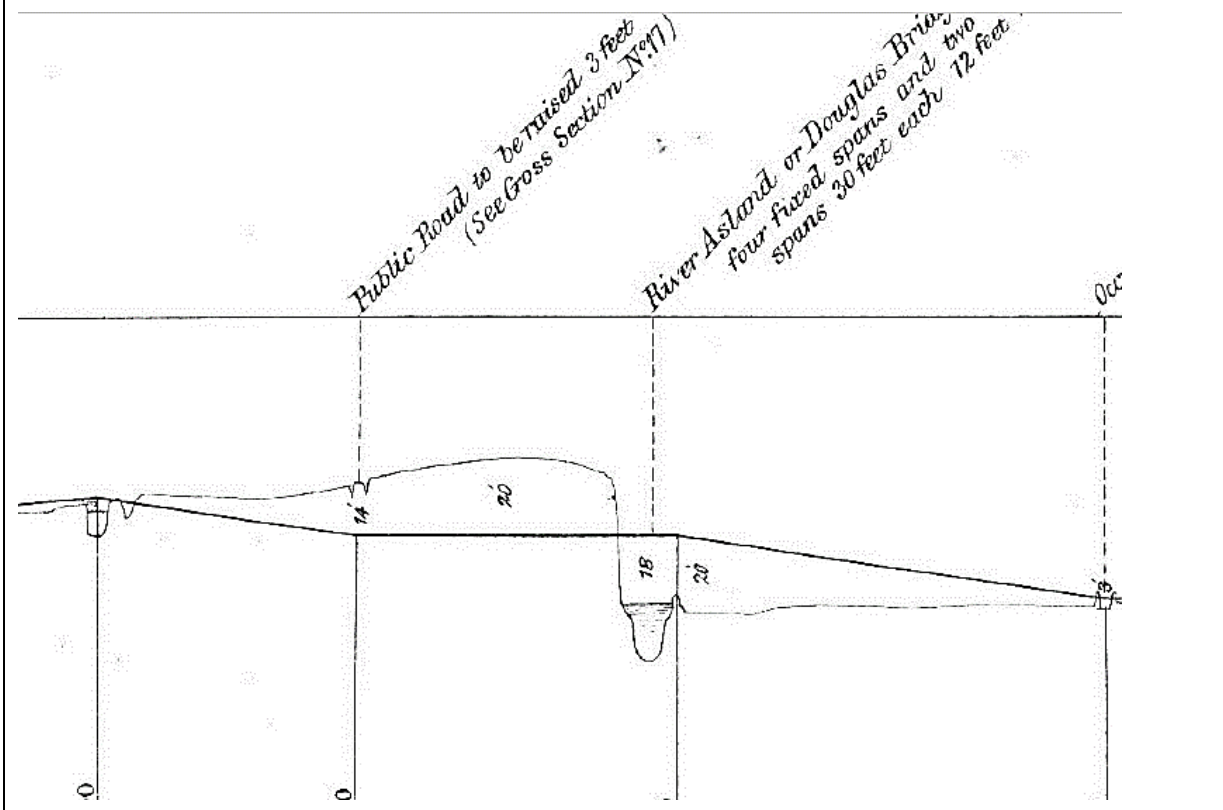
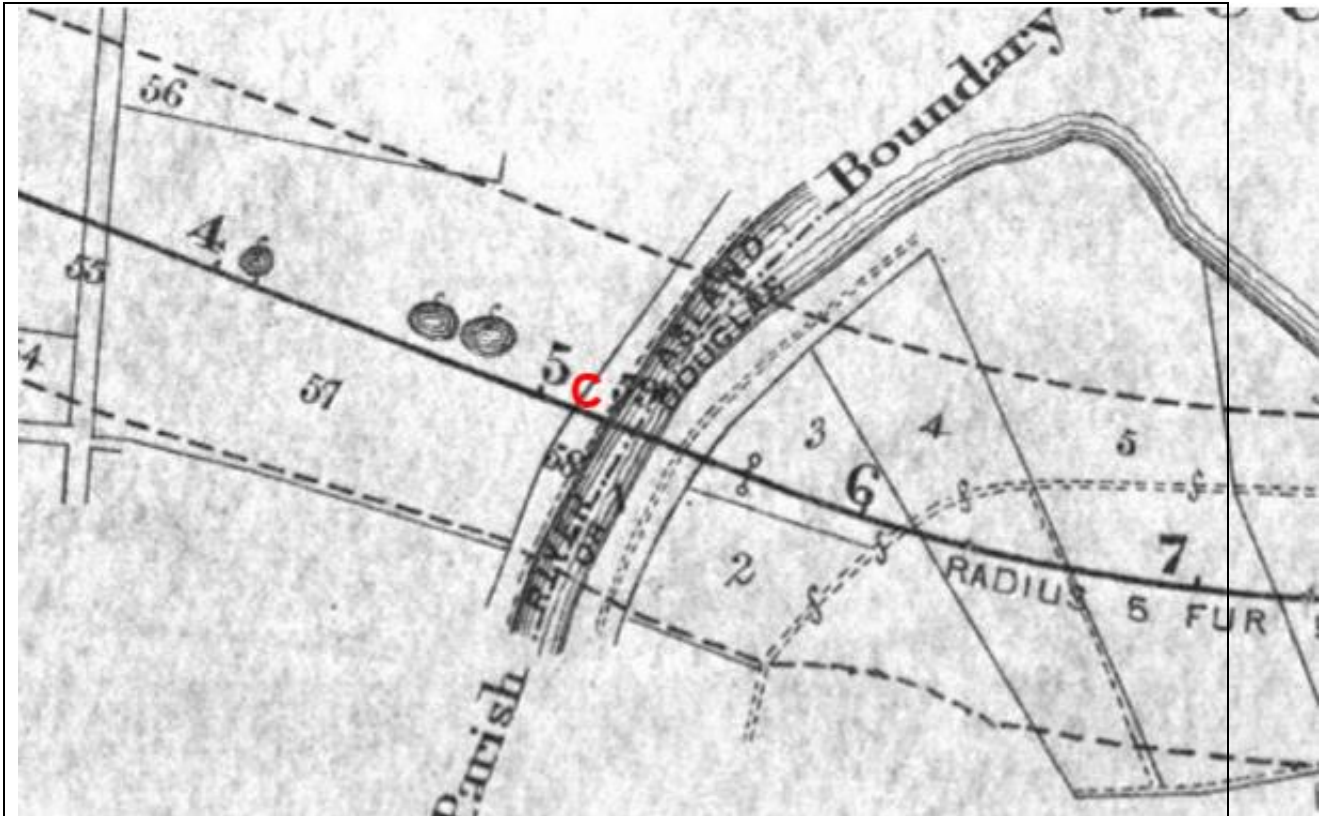


		<p>providing access to Beconsall Ferry.</p> <p>The route under investigation is not shown.</p>
Investigating Officer's Comments		The route under investigation did not appear to have existed in 1844-45.
<b>Canal and Railway Acts</b>	1878-1882	Canals and railways were the vital infrastructure for a modernising 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 in order 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.



[Above] Undated plan of West Lancashire Railway





[Above] Extracts from the West Lancashire Railway Session 1870-71 Plans and Sections





*A picture from the early 20th Century shows the River Douglas Bridge in the open position.*



*The River Douglas bridge looking north in August 1964 as a Preston-bound train crosses over. In the middle of the river the section on which the bridge had swung can be seen. It had however been fixed into position since 1913.*

[http://www.disused-stations.org.uk/features/river\\_douglas\\_bridge/index.shtml](http://www.disused-stations.org.uk/features/river_douglas_bridge/index.shtml)

Observations		The land over which the route under investigation runs was crossed by the West Lancashire Railway's (WLR) Southport &
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		<p>Preston Railway which opened in stages between 1878 and 1882. The route under investigation crosses the line of the railway (which no longer exists) at the point where the railway crossed the River Douglas via a swing bridge which had been constructed as such to continue to allow for boats to travel up and down the river.</p> <p>The swing bridge was fixed into position in September 1913 and continued to carry rail traffic until 6 September 1964 by which time it was part of British Railways London Midland Region.</p> <p>The railway ceased to operate on 7th September 1964 and the bridge was demolished with the only evidence of its existence now being its stone abutments on each bank of the river and the bases of the cylindrical piles on the river bank, near point C on the Committee plan.</p> <p>There are no railway plans deposited in the County Records Office relating to the land crossed by the route under investigation. However, Network Rail provided copies of the plans drawn up to show the proposed route of the railway.</p> <p>The plan shows the point at which the railway was to cross the river (point C). The parish boundary between Hesketh with Beconsall and Much Hoole is shown down the centre of the river. A single dashed line is shown along the banking on the west side of the river but there is no key to the plan to confirm whether or not this indicated the existence on the ground of a path. If the pecked line did indicate the existence of a path it was close to the river bank and</p>
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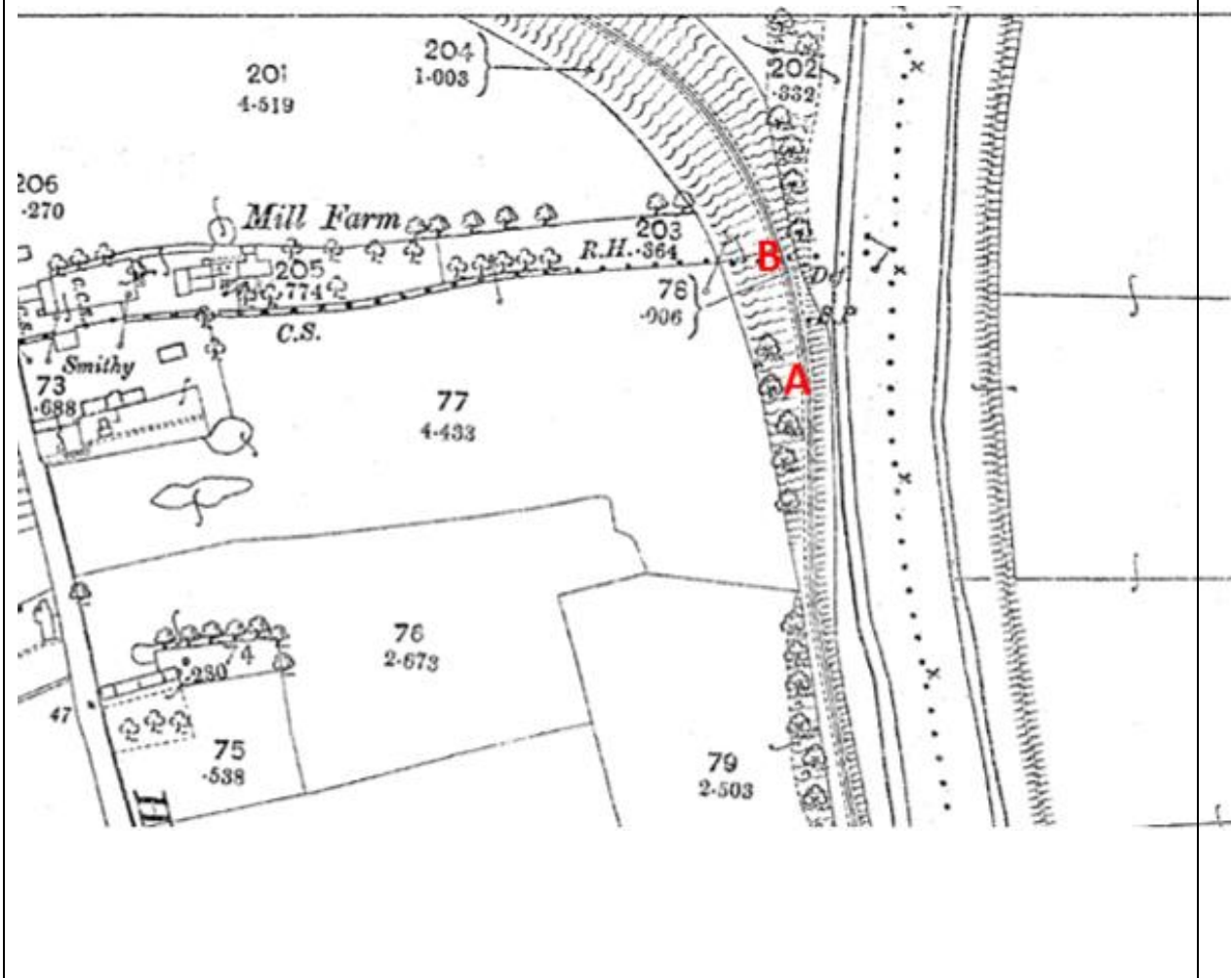
		<p>not on the Definitive Map route. The Book of Reference – which provided further details regarding landownership and details specific to any public highways or private ways crossed by the proposed railway – could not be found.</p>
Investigating Officer's Comments		<p>The West Lancashire Railway (WLR) was built in 1870s-1880s across the land over which the route under investigation runs. There is no indication from maps published before this time that the route under investigation existed and of particular significance is the fact that the continuation of the footpath south to Tarleton Lock runs along the former track of the Tarleton Branch suggesting that the route south of point B only came into existence on that line following closure of the branch line in 1930 and removal of the track in 1932.</p> <p>The Revised Definitive Map shows the route of the footpath running along the top of an embankment effectively crossing the top of the remains of the former railway swing bridge, as opposed to a route running underneath the railway at this point. The railway plans prepared prior to the construction of the railway do not show the Definitive Map route although there is some suggestion that a path may have existed along the river bank.</p> <p>The two photographs detailed above show the swing bridge: the first of the two photographs, presumably pre-1913 as the bridge is open for boats, appears to show a trod consistent with use on foot running along the river bank. The significance of this will be discussed in detail later in this report.</p>
<b>25 Inch OS Map</b>	1893	The earliest OS map at a scale of

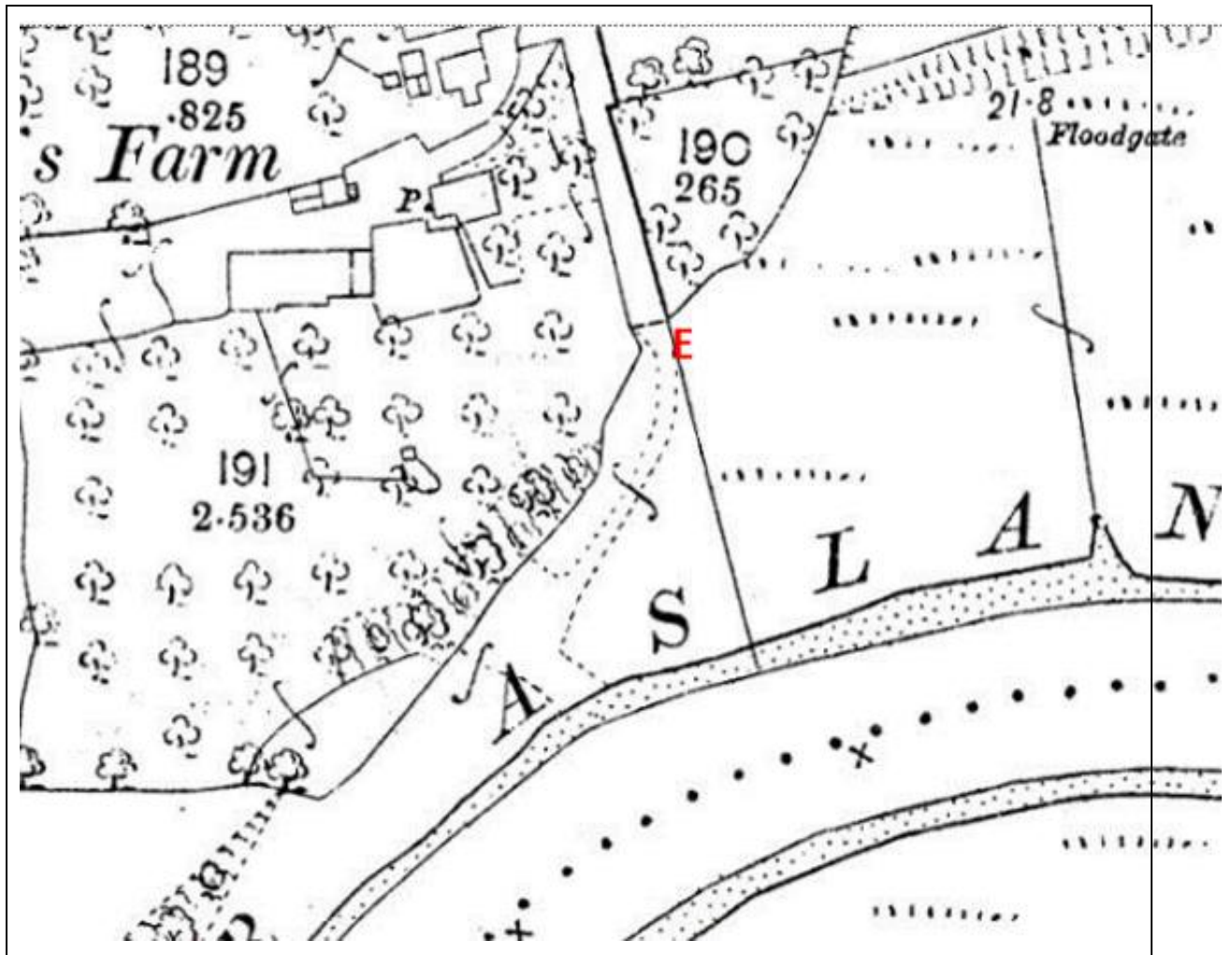


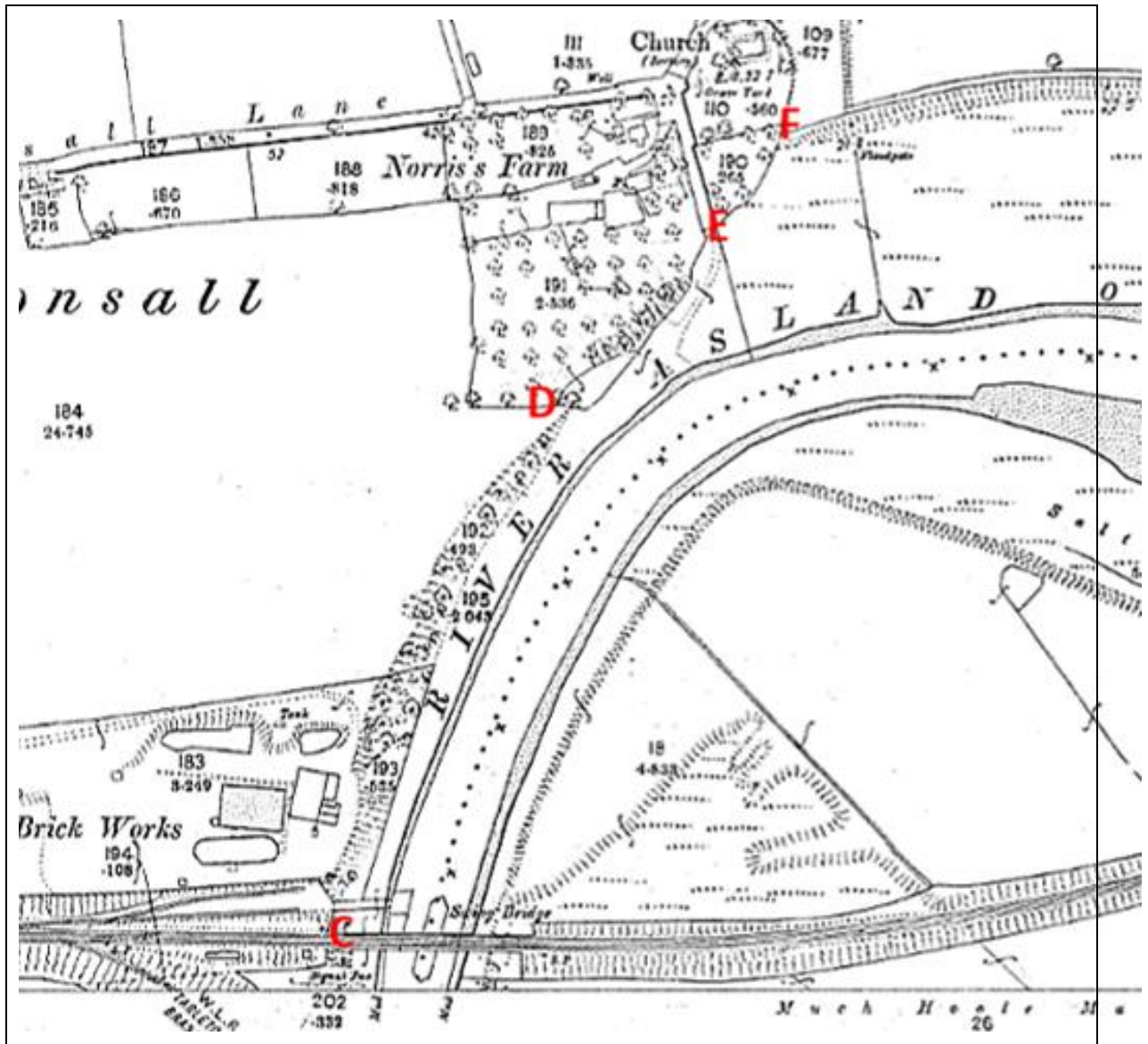


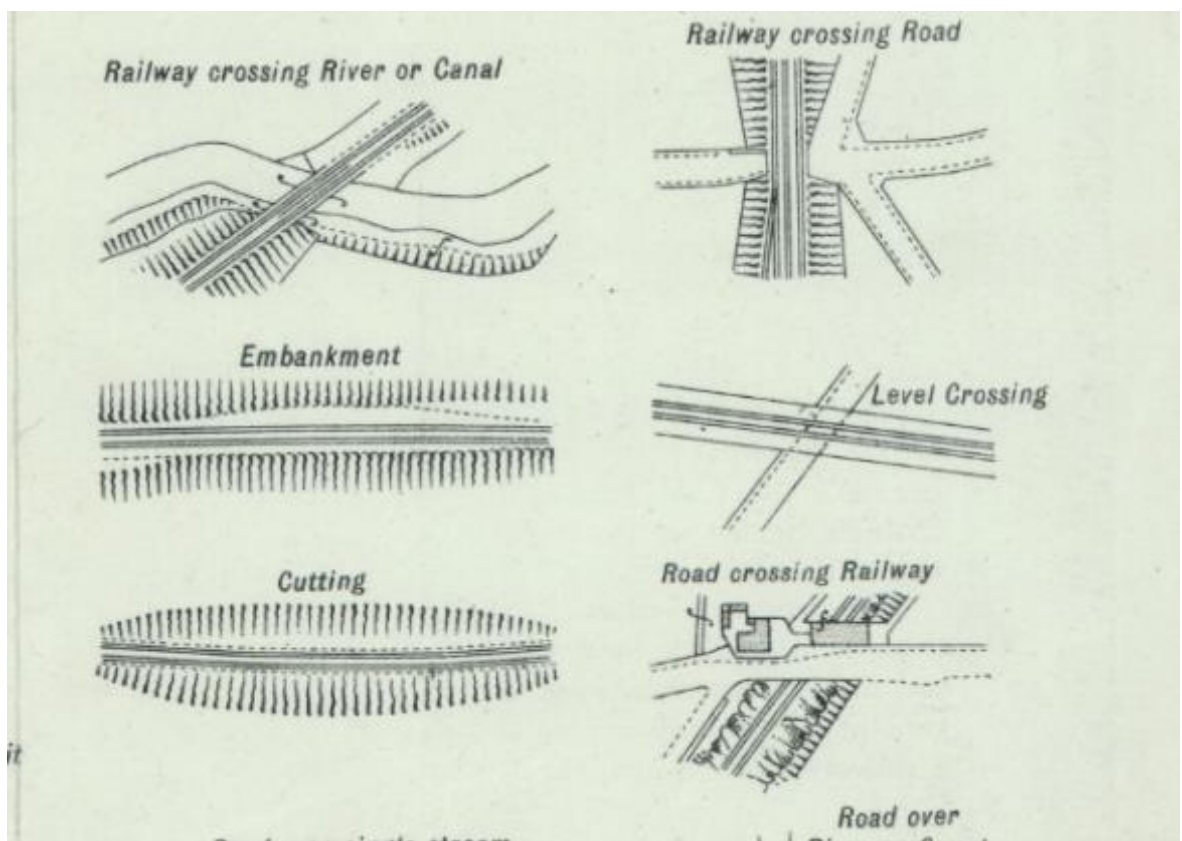
LXVIII.10 & LXVIII.14

25 inch to the mile. Surveyed in 1891-1892 and published in 1893.









<https://maps.nls.uk/view/128076891>

Observations

The first edition 25 inch OS map shows the railway detailed above.

Between point A and point B the railway line is shown where the footpath is now recorded. No footpath is shown adjacent to the railway – or along the river bank.

At point C the bridge across the river is shown with no footpath shown crossing the railway line or going underneath the railway bridge.

The brick works are shown adjacent to the railway with a steep slope indicated between the brickworks down to the river.

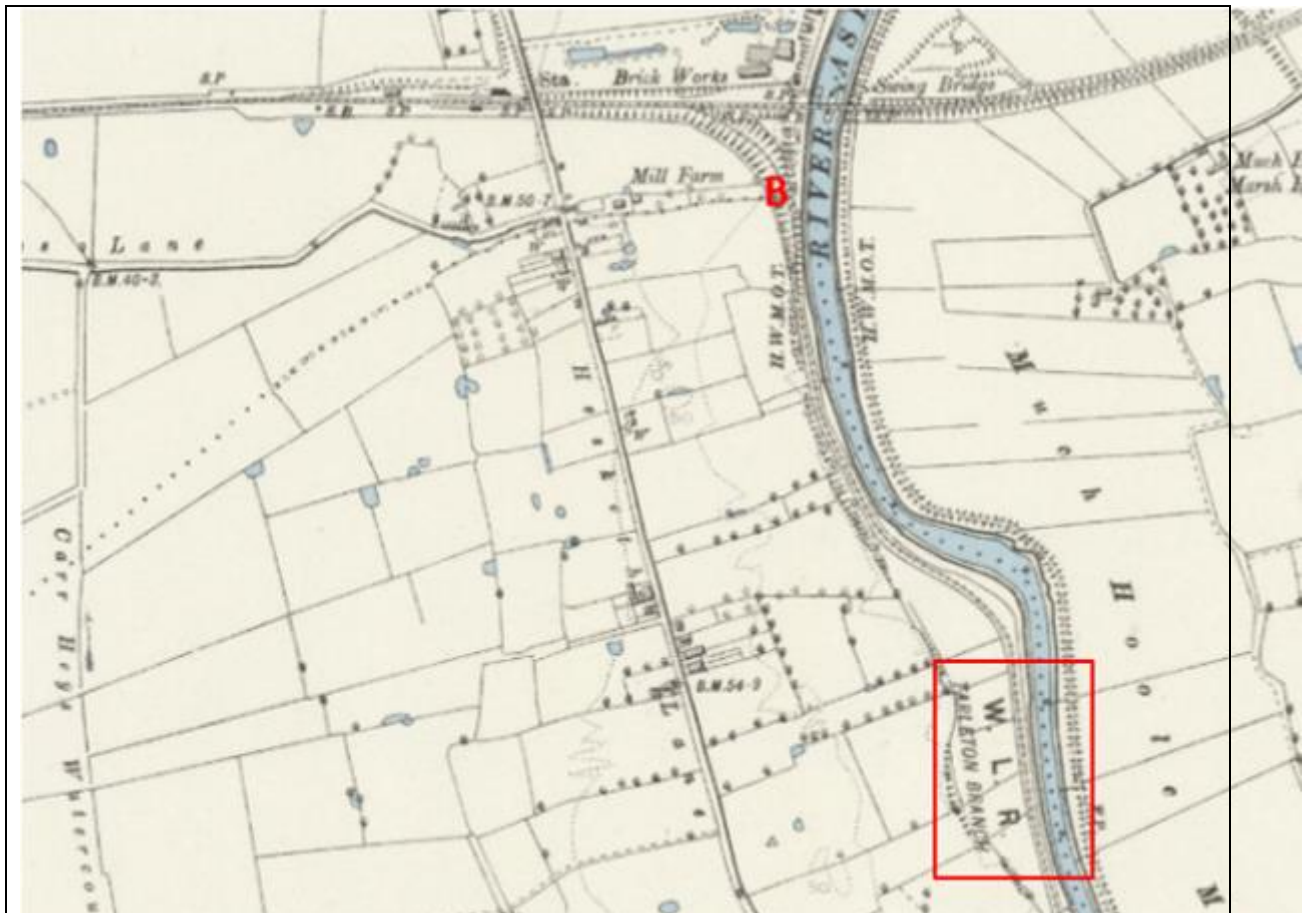
North of the bridge between point C and point E the route under investigation is not shown.

The boatyard is not shown although an area with a different surface, consistent with a boat park, is shown and access to the



		land crossed by the route under investigation is shown via Becconsall Lane.
Investigating Officer's Comments		The route under investigation did not exist in 1891-92.
<b>6 inch OS Map LXVIII.SW</b>	1894	6 inch OS map revised 1891 to 1892 and published 1894.

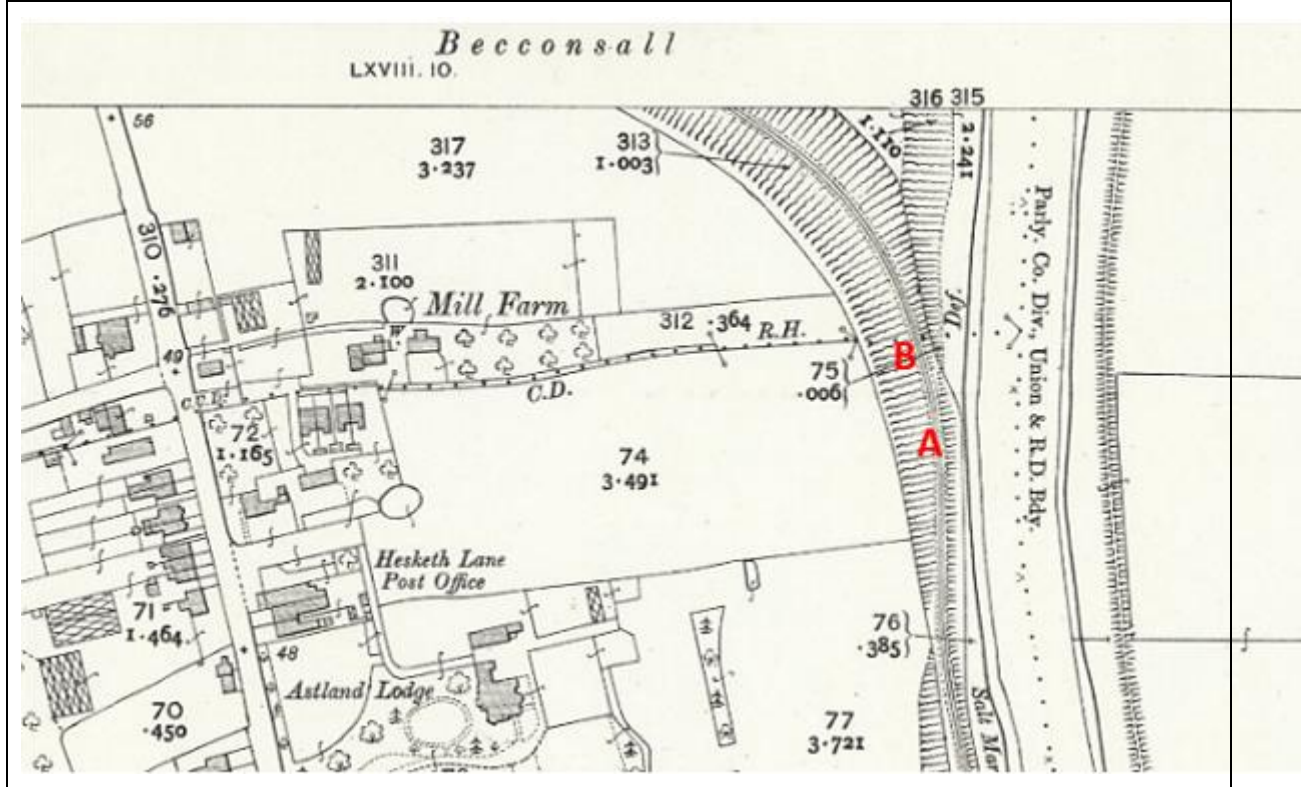


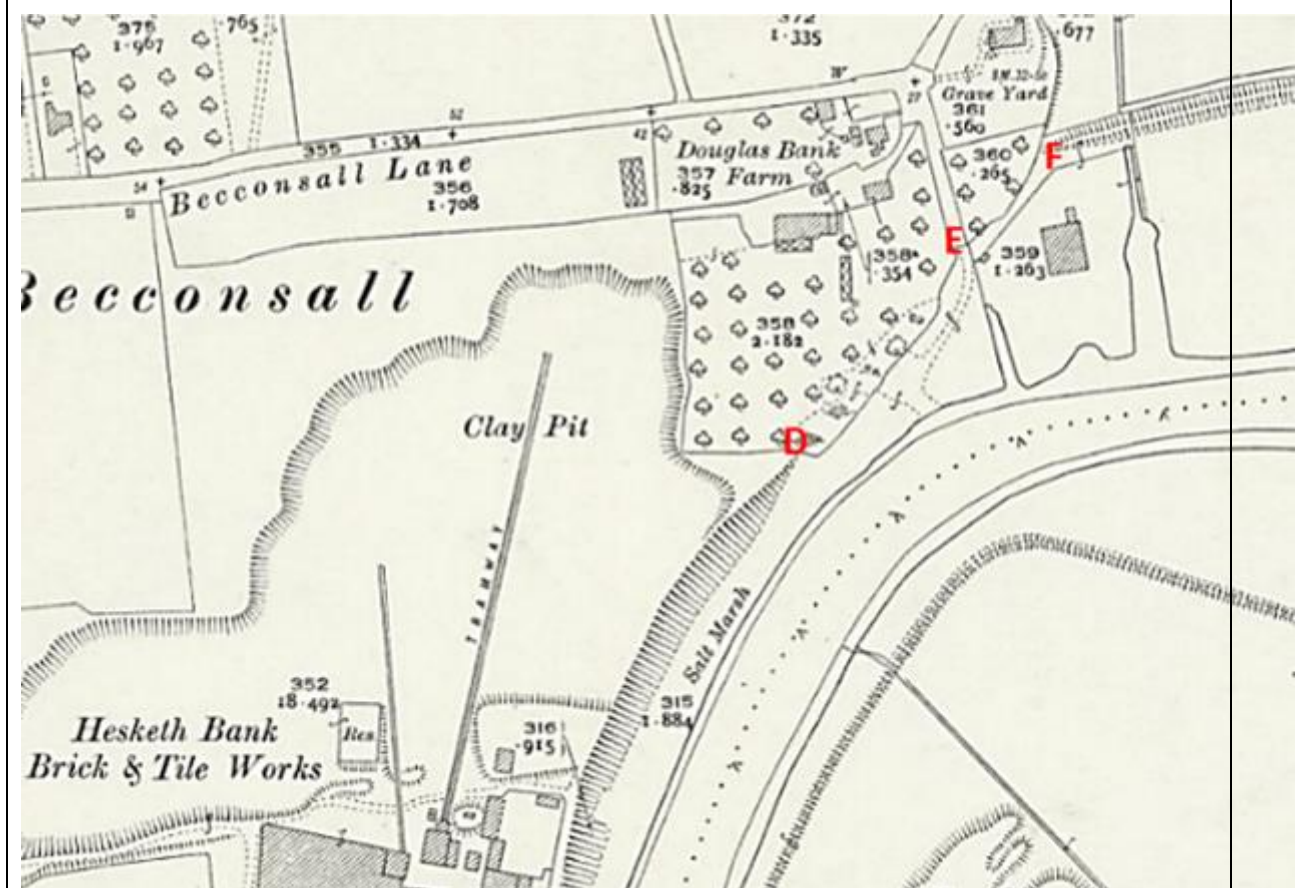
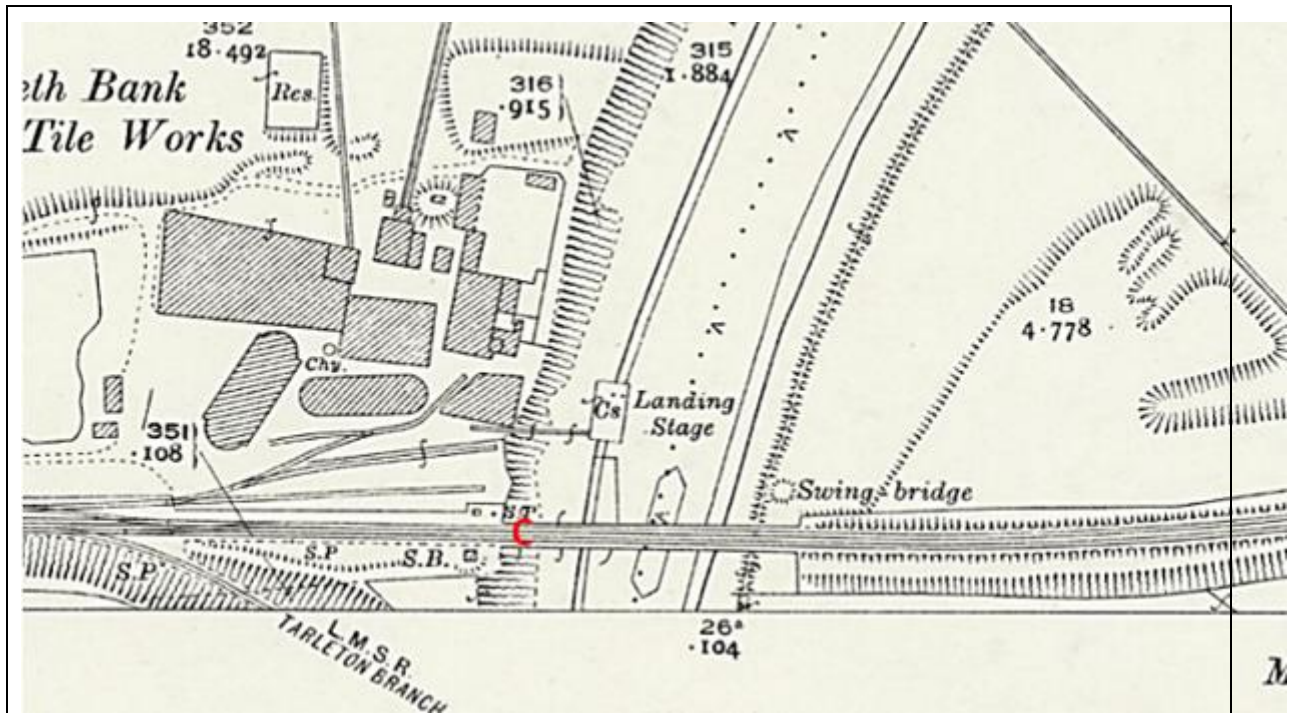


Observations		The route under investigation is not shown.
Investigating Officer's Comments		The route under investigation did not exist in 1891-92.
<b>1 inch OS Map Sheet 75 - Preston</b>	1896	1 inch OS map surveyed 1891-1892 and published 1896.



Observations		Beconsall Lane is shown providing access to the land crossed by the route under investigation at point E. The route under investigation is not shown.
Investigating Officer's Comments		The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown and a map of this scale would not generally assist in an investigation into the existence of footpath rights or the detailed alignment of a route.
25 inch OS Map LXVIII.10 & LXVIII.14	1911	Further edition of the 25 inch map surveyed in 1891-2, revised in 1909 and published in 1911.





Observations

The route under investigation is not shown. Between point A and point B the branch line is shown.

At point C the WLR crosses the river and no route is shown





		<p>across or under the bridge.</p> <p>North of the bridge there is a landing stage with rails shown extending across the land crossed by the route under investigation leading to the Brick and Tile works. The works have grown and extended since the earlier 25 inch OS map was surveyed (i.e. in the 20 years since 1891) with a large clay pit shown separated from the salt marsh and river by banking. Trees were originally shown on the banking in 1891 but are not shown in 1909.</p> <p>Between the banking and the river is a thin strip of land labelled as salt marsh.</p> <p>Access onto the salt marsh was shown from Beconsall Lane passing through point E.</p> <p>An unnamed building is shown on the land east of point E where the current boatyard is situated.</p>
Investigating Officer's Comments		The route under investigation did not exist in 1909.
<b>Bartholomew half inch Mapping</b>	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 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</p>







1920



1941

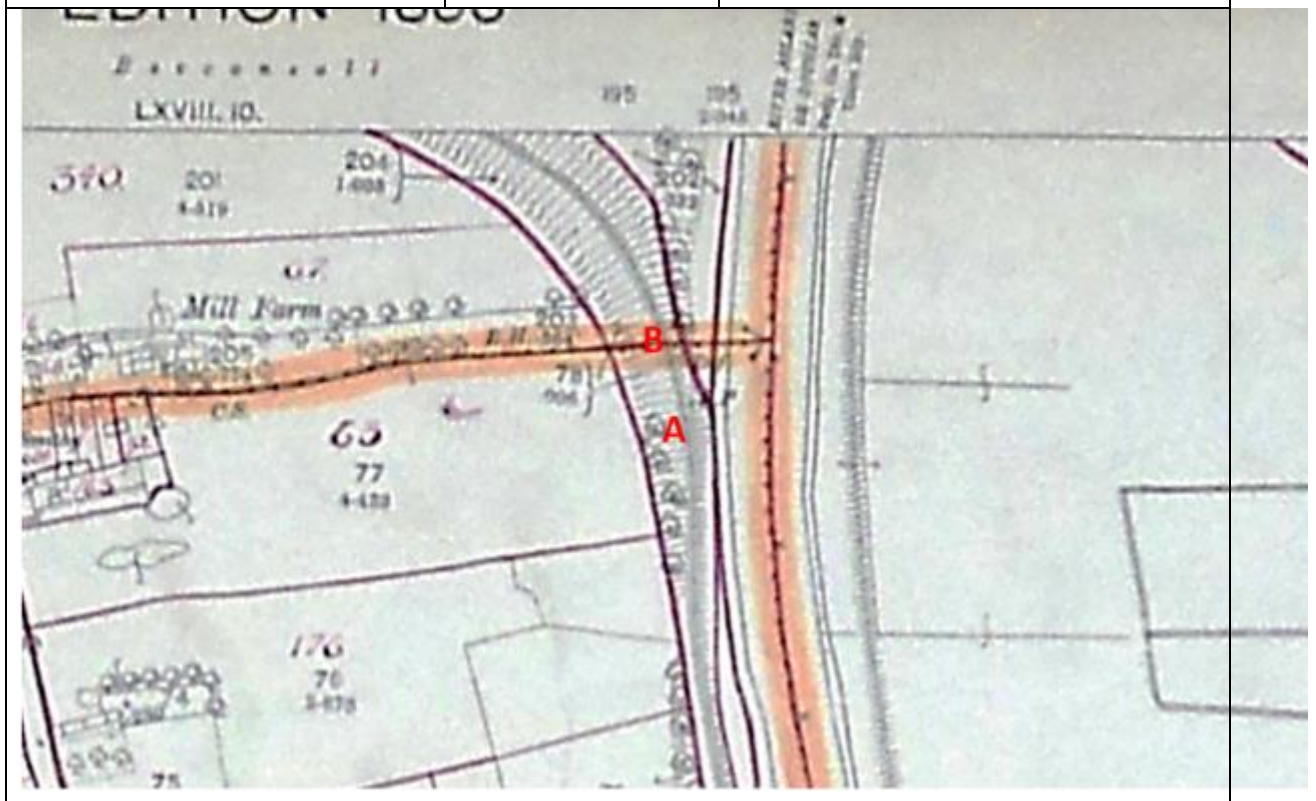
Observations		The route under investigation is
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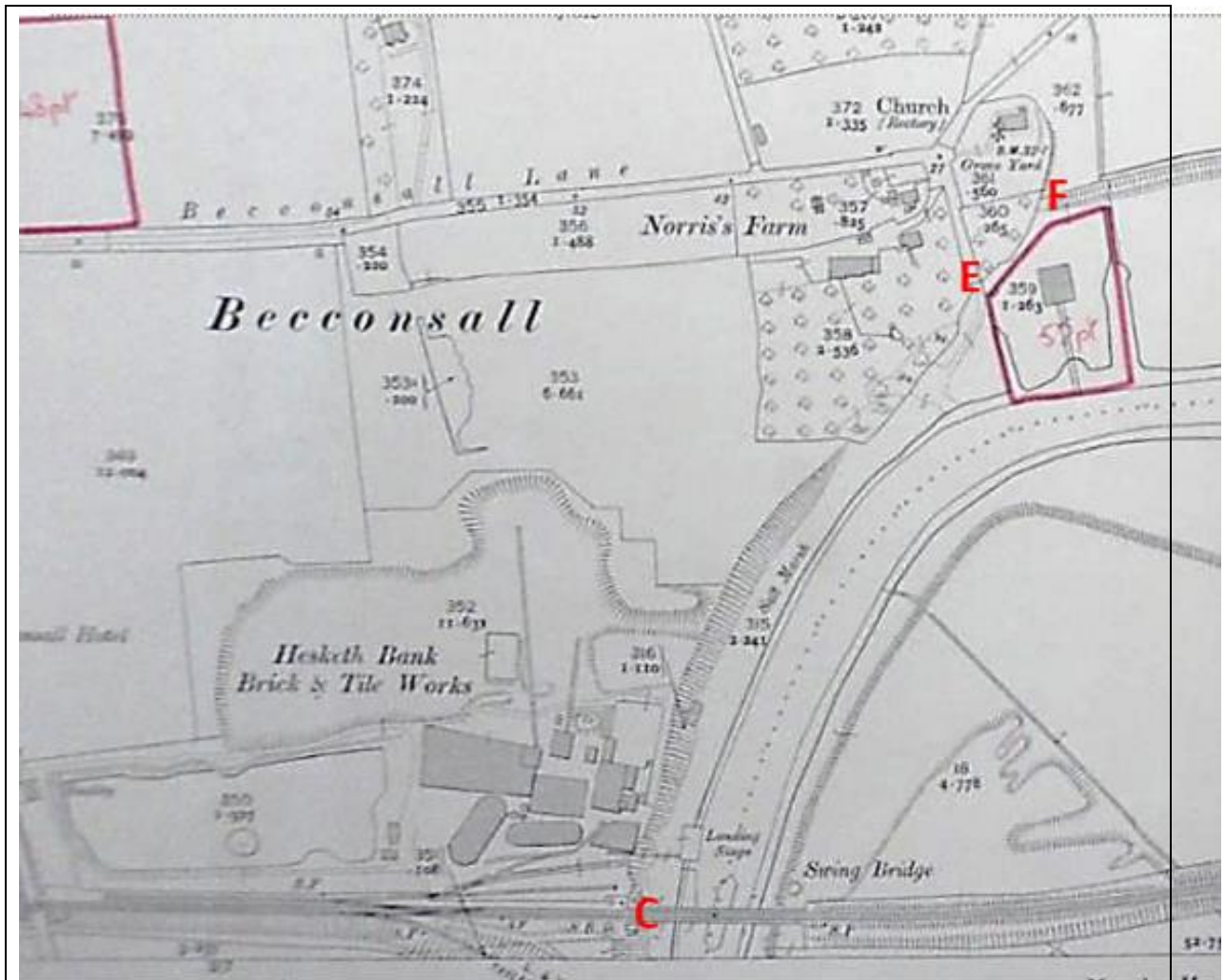


		not shown. The faint dashed lines that can be seen in proximity to the route are believed to be contour lines.
Investigating Officer's Comments		The original scale and purpose of the map (half inch to the mile) means that only the more significant routes are generally shown and a map of this scale would not generally assist in an investigation into the existence of footpath rights or the detailed alignment of a route.
<b>Finance Act 1910 Map Map Sheet LXVIII.10 – TNA Ref 133/5/75</b>  <b>Map Sheet LXVIII.14 – TNA Ref 133/3/79</b>	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</p>



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.



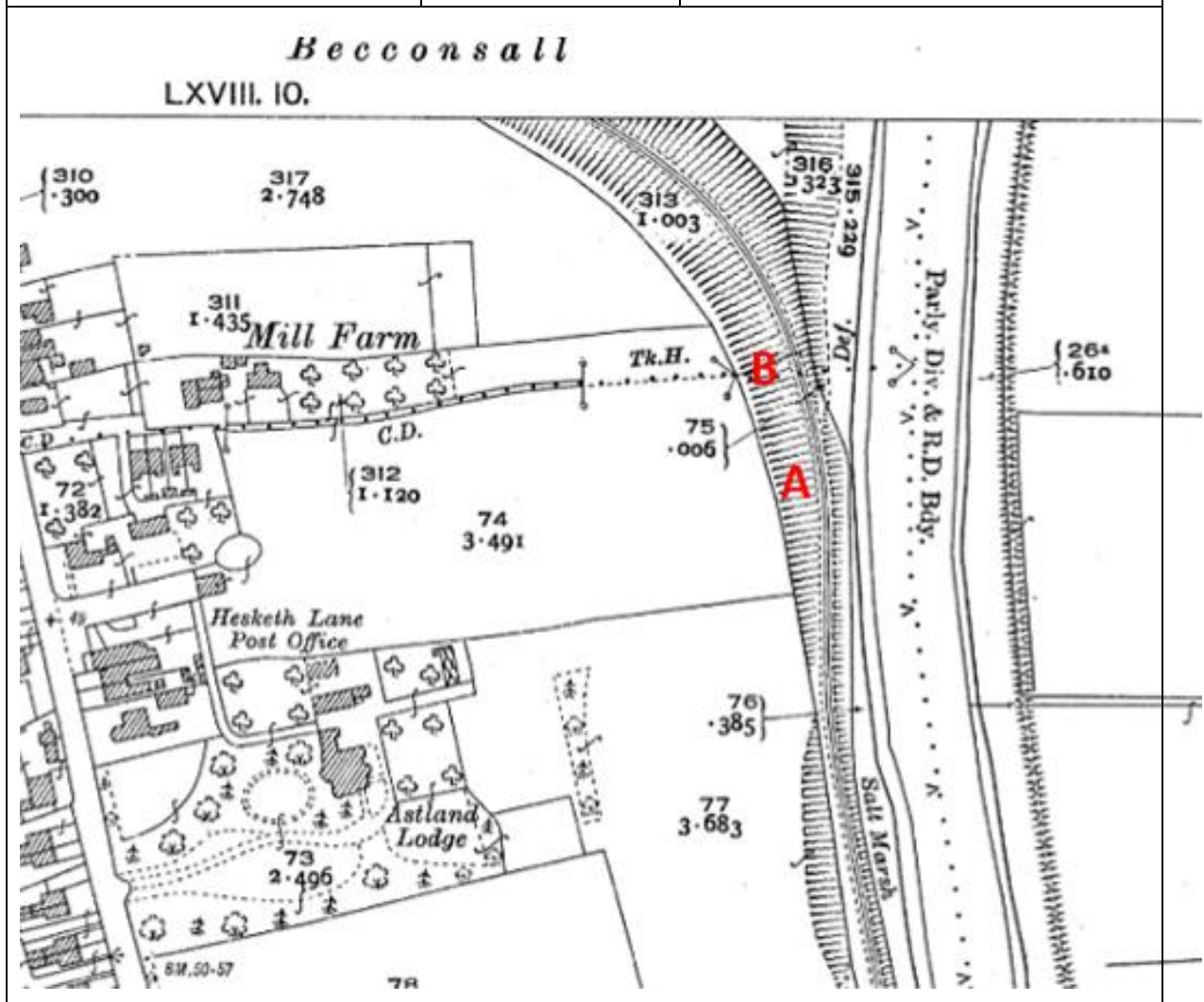


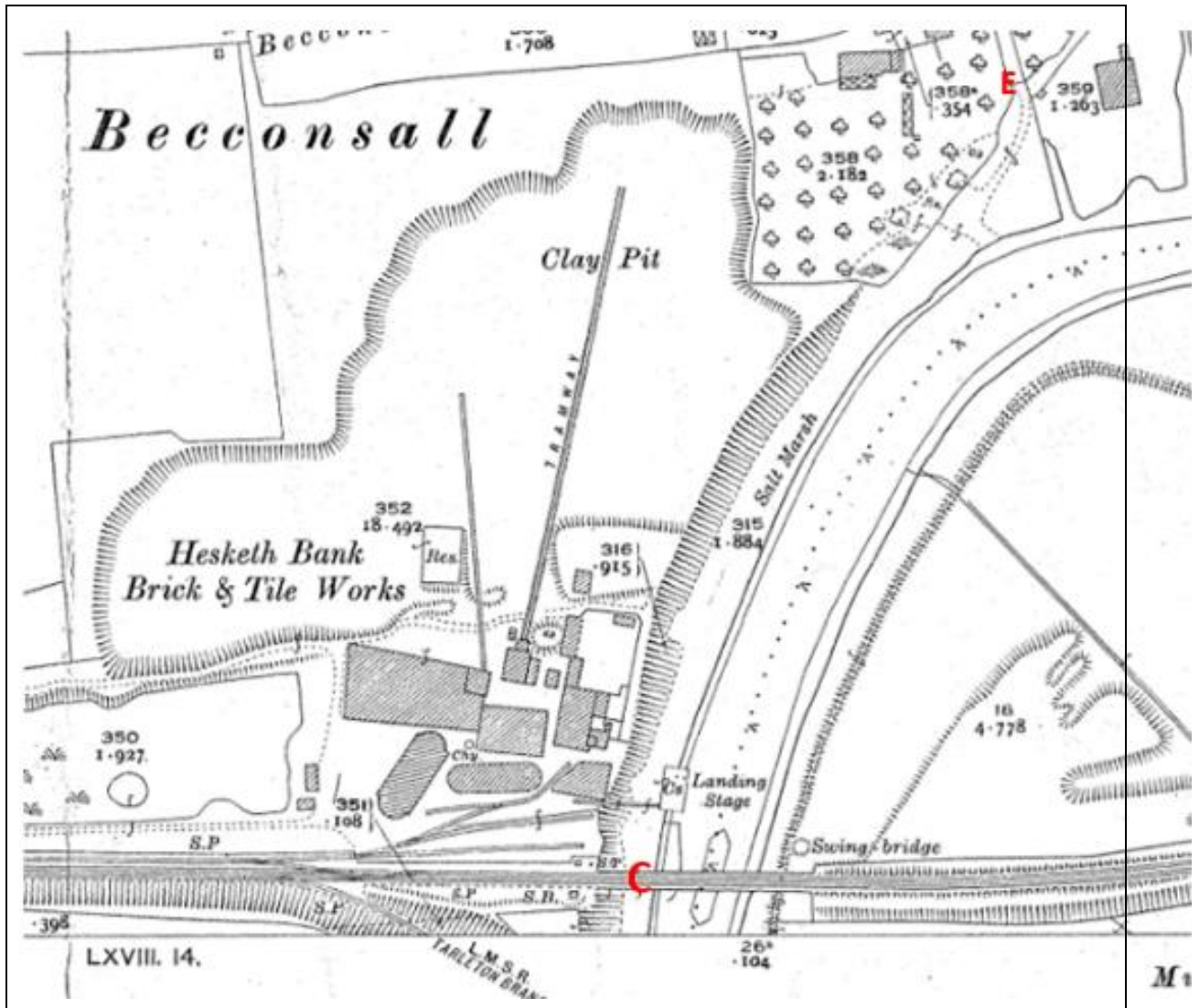
Observations		<p>The Finance Act Maps for the area crossed by the route under investigation are incomplete.</p> <p>Between point A and point B the land crossed by the route under investigation fell within a plot listed as being owned and occupied by the railway company. No deductions were made for public rights of way or user.</p> <p>The rest of the route crosses land which is not numbered.</p>
Investigating Officer's Comments		<p>The route under investigation did not exist along the railway line between point A and point B. No inference can be drawn with regards to the existence or correct alignment of the rest of the public footpath.</p>
25 Inch OS Map	1931	Further edition of 25 inch map



LXVIII.10 & LXVIII.14

(surveyed 1891-2, revised in 1929 and published in 1931.





Observations		The route under investigation is not shown and the land looks to be unaltered from when the earlier 25 inch OS map was published.
Investigating Officer's Comments		The route under investigation did not exist in 1929 since the branch line of the railway was over part of it.
Authentic Map Directory of South Lancashire by Geographia	Circa 1934	An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large-scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.





The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.



Observations		The route under investigation is not shown.
Investigating Officer's Comments		Only the more substantial routes were shown. No further inference about a minor footpath can be drawn.
<b>Aerial Photograph<sup>2</sup></b>	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

<sup>2</sup> 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.

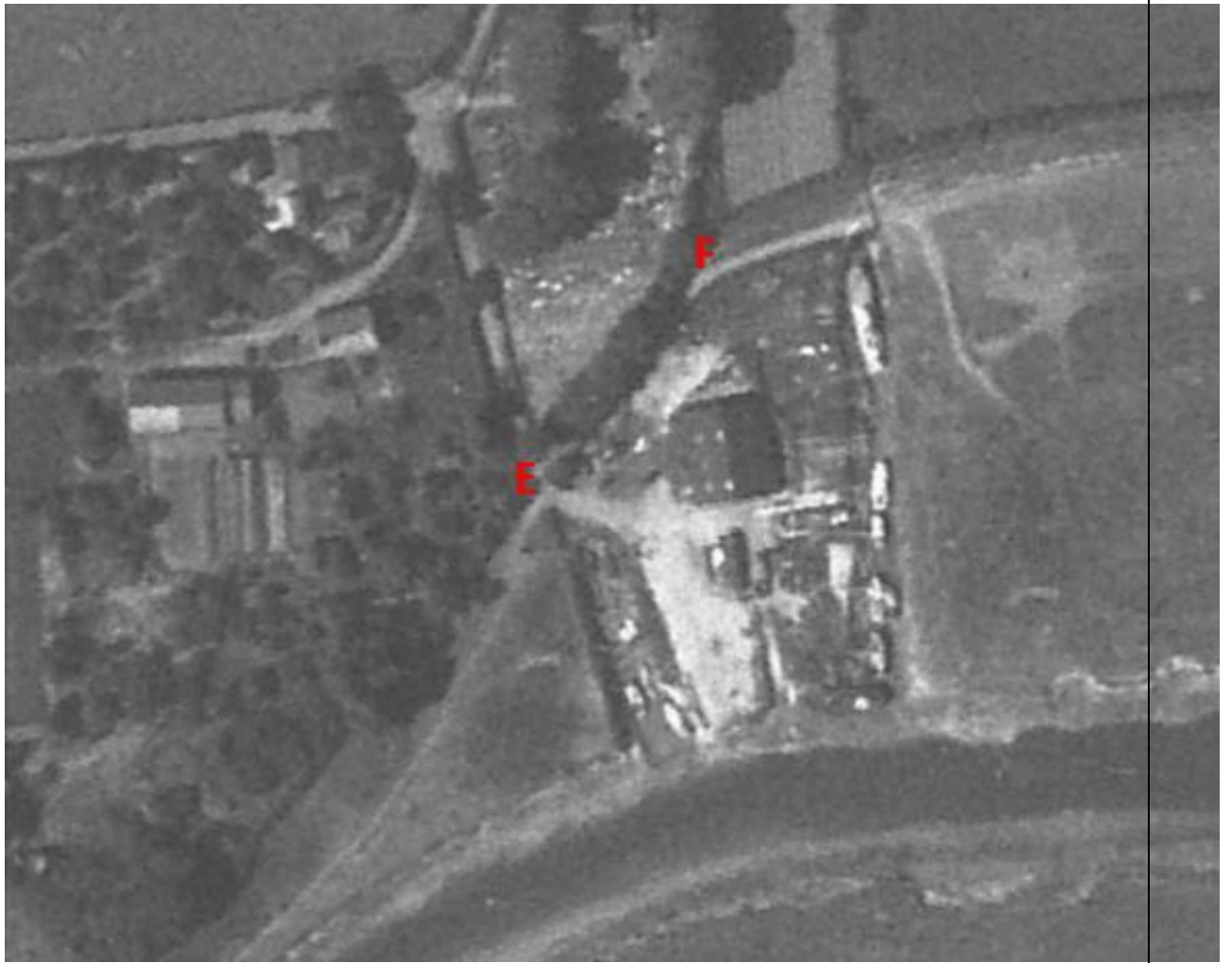


viewed on GIS. The clarity is generally very variable.









Observations

By the 1940s the Tarleton Branch of the railway had ceased to operate, and the aerial photograph taken between 1945 and 1952 shows that the railway lines had been removed.

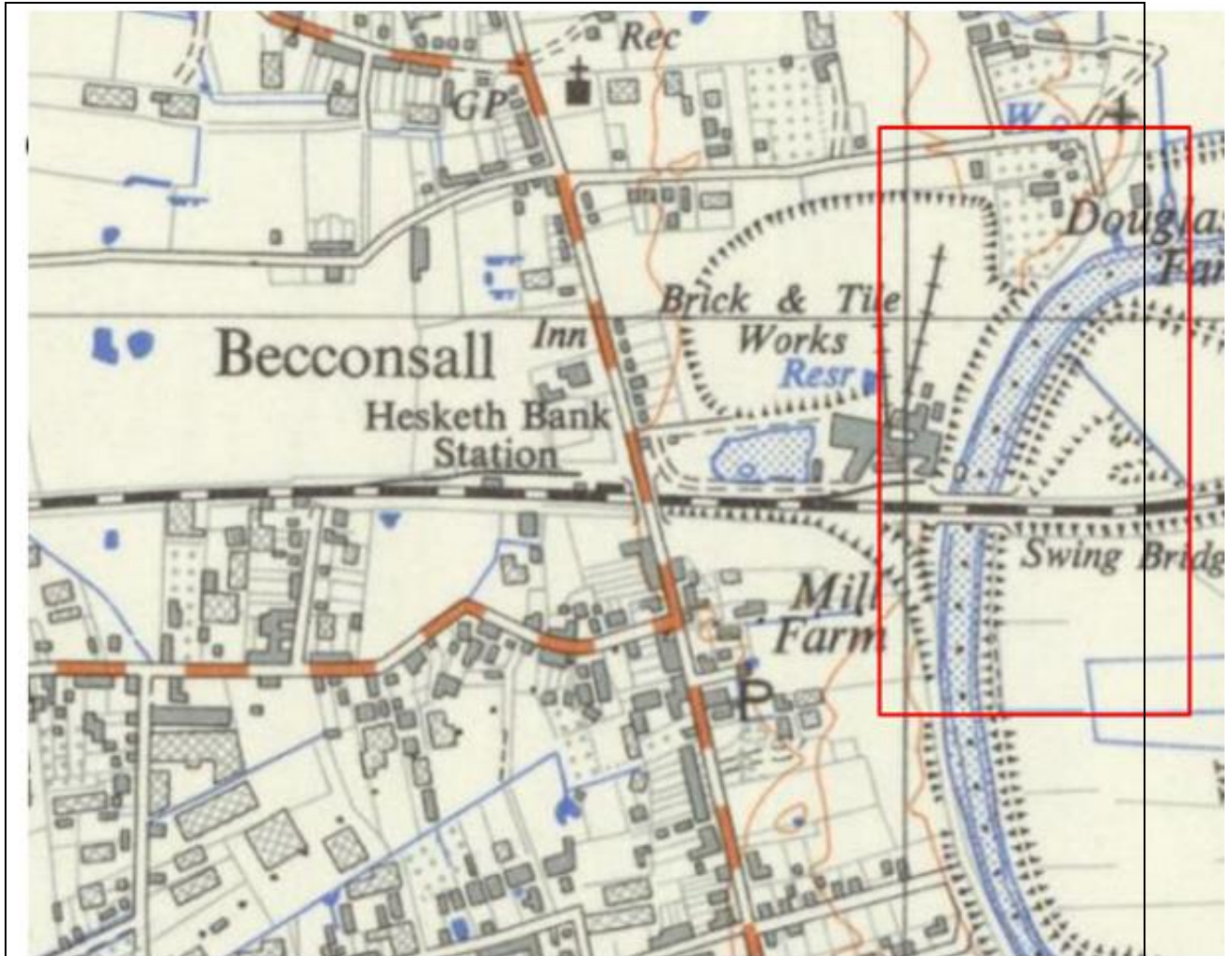
Between point A and point B a lighter area is visible leading towards point B which is consistent with a trodden route. The route under investigation is not visible as a trod between point B and point C. A trodden lines can also be seen curving west to cross the WLR 150 yds from the bridge.

150yds north of point C however a lighter line can be seen along the saltmarsh which extends to point E and runs along a line closer to the river bank than



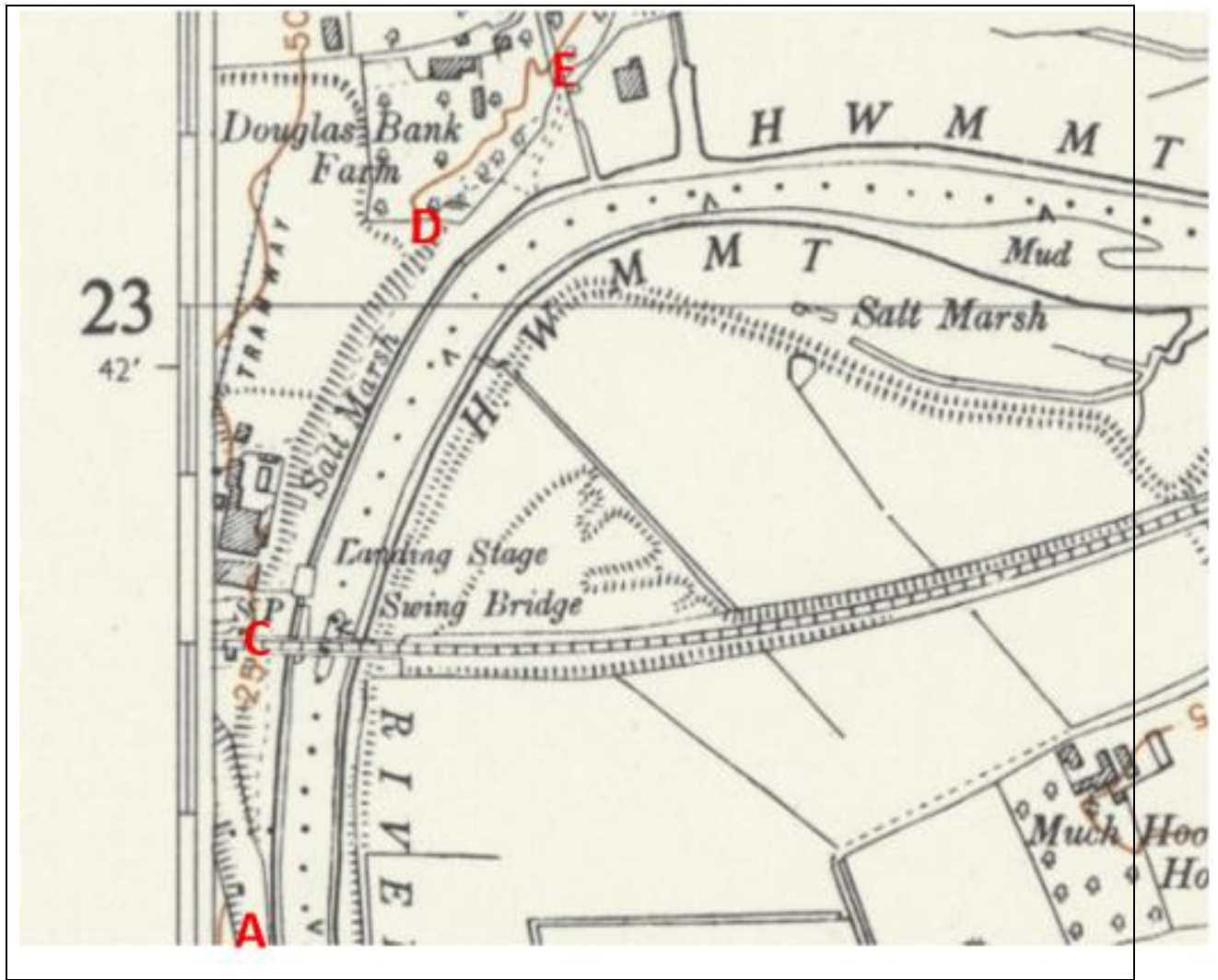
		either the Definitive Map route or the route of the ECP as far as the approximate location of the pontoon marked on the Committee plan.
Investigating Officer's Comments		<p>By the mid-1940s the Tarleton Branch line that had previously existed running parallel to the river between Tarleton and the main Southport-Preston line had been removed and it may have been possible to walk along the former railway track from Tarleton Locks. There is no visible track passing through point A continuing across or under the railway bridge near point C although a lighter area consistent with the existence of a trodden route is visible part way between point A and point B leading through to point B.</p> <p>A trodden route is visible from midway between point C and point D through to point E which may have been accessible to the public on foot. The route differed however from the Definitive Map route or the route now recorded as the ECP.</p> <p>The Definitive Map route is not visible.</p>
<b>6 Inch OS Map SD42</b>	1955	6 inch OS map partially revised 1938-51 and published 1955.



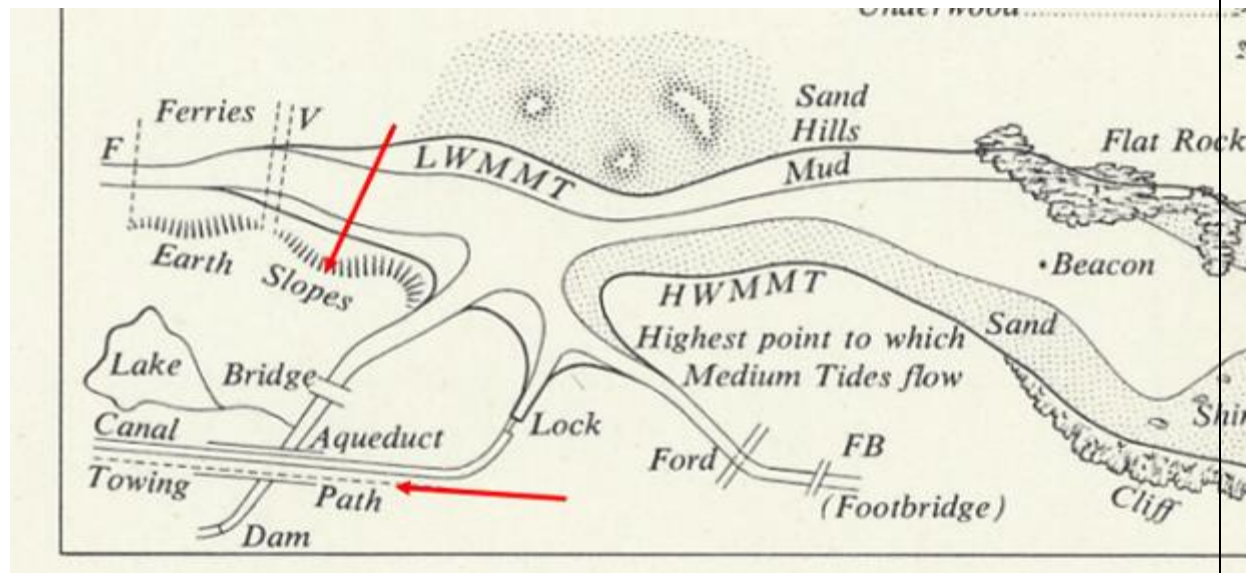
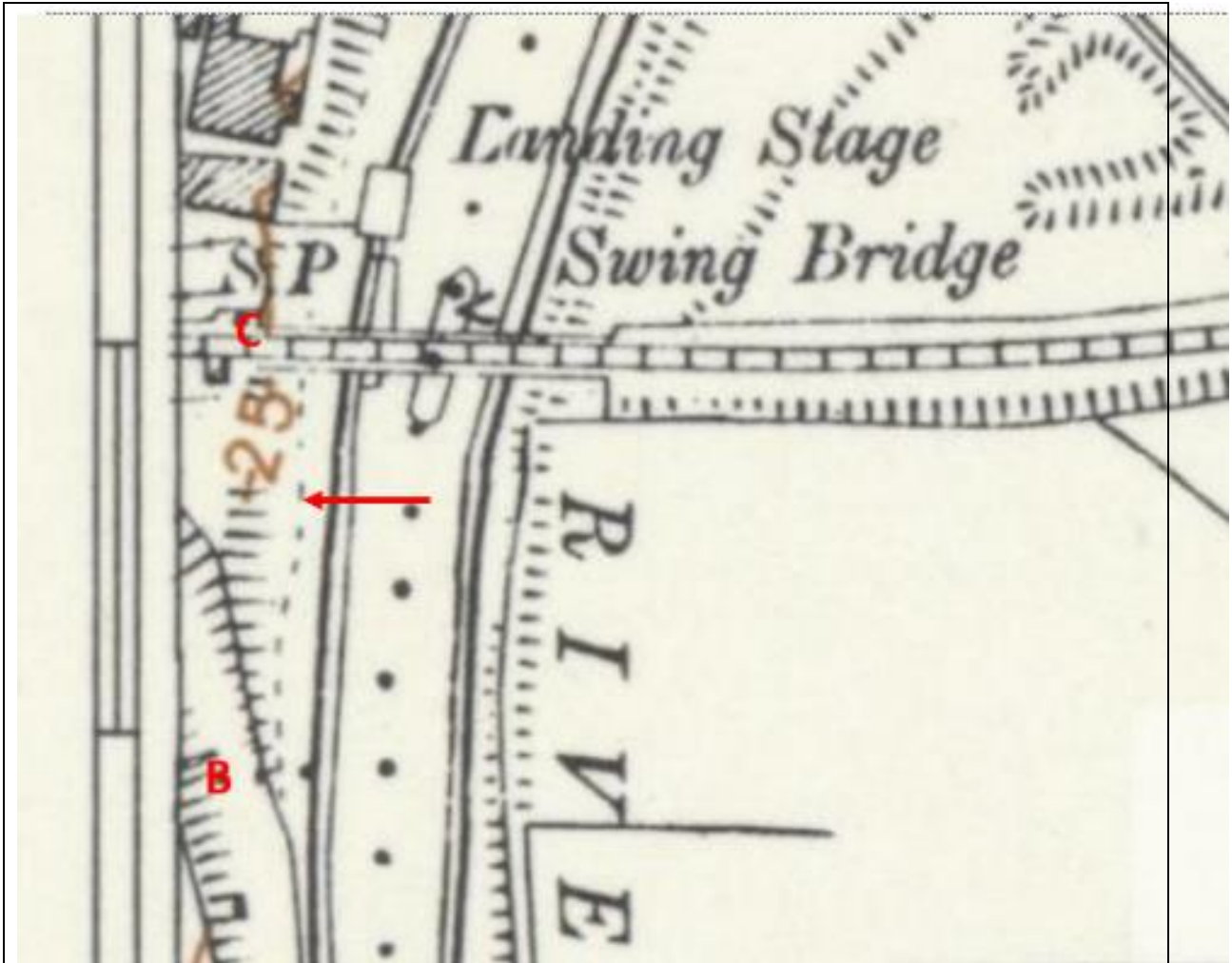


Observations		<p>The map confirms that the railway track had been removed from the Tarleton Branch between Tarleton Lock and the main Southport – Preston line.</p> <p>The route under investigation and the ECP route are not shown.</p>
Investigating Officer's Comments		<p>The scale of the map means that routes across open land and used on foot may not have been shown. By the late 1930s it may have been possible to walk along the river bank but no inference can be made.</p>
6 inch OS Map SD 42 SE	1961	6 inch OS map revised 1930-1958 and published 1961.







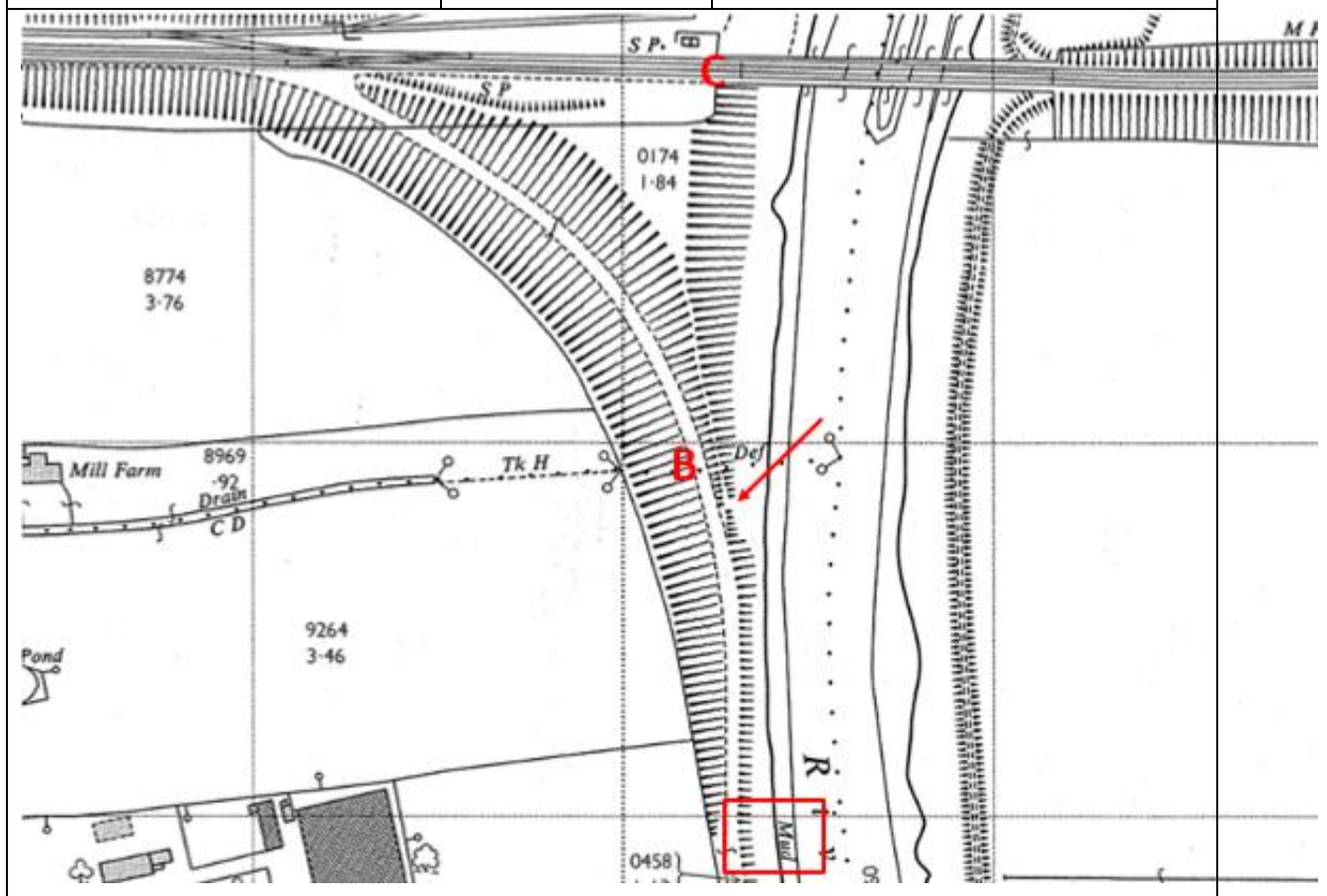


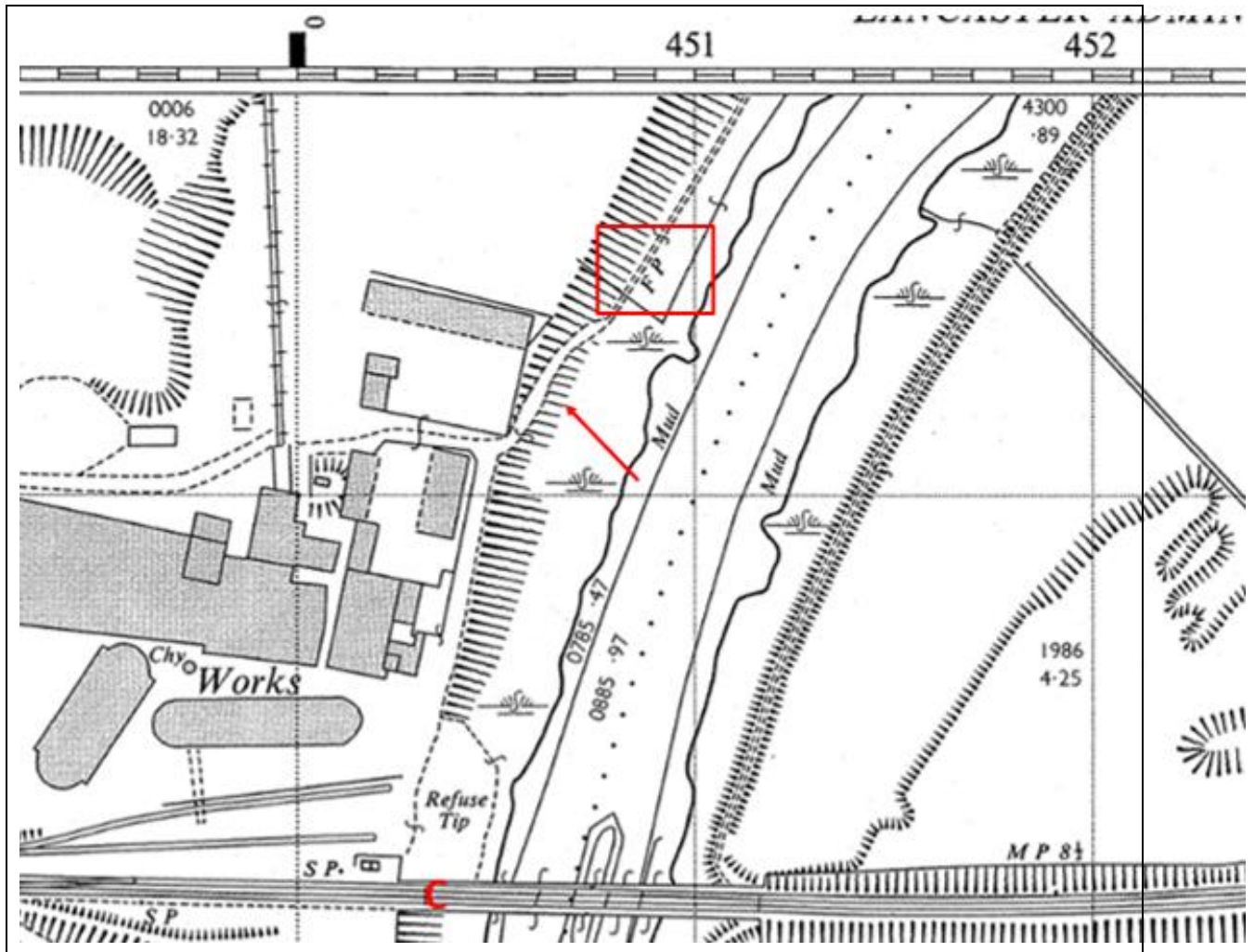
Note: Map and key extracts have not been enlarged to the same scale

<p>Observations</p>		<p>The route under investigation is not shown.</p> <p>There appears to be a broken line shown in the same manner as a Path, or of a change of surface,</p>
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		on the key existed leading from the dismantled branch line to pass under the railway bridge at point C and to continue along the bottom of the banking towards point D.
Investigating Comments	Officer's	A route along the river bank may have been in use in the early 1960s but it differed from the Definitive Map route and to that recorded as the ECP route.
<b>1:2500 OS Map SD 4422-5522</b>	1963	Further edition of 25 inch map reconstituted from former County Series and revised in 1962 and published in 1963 as National Grid Series.





Observations

The 1:2500 OS map sheet above was revised in 1962 prior to the closure of the Southport-Preston railway line and shows the bridge across the river and railway lines still in existence.

A route is not shown along the dismantled branch line which ran to/from Tarleton locks although the tracks had been removed. Just south of point B as indicated by the insertion of a red arrow on the first of the map extracts above a gap is shown in the embankment in the approximate position that the ECP route runs. No route is shown along the river bank, and it was noted that between the river bank and the mean high water mark the land was labelled as 'mud'.

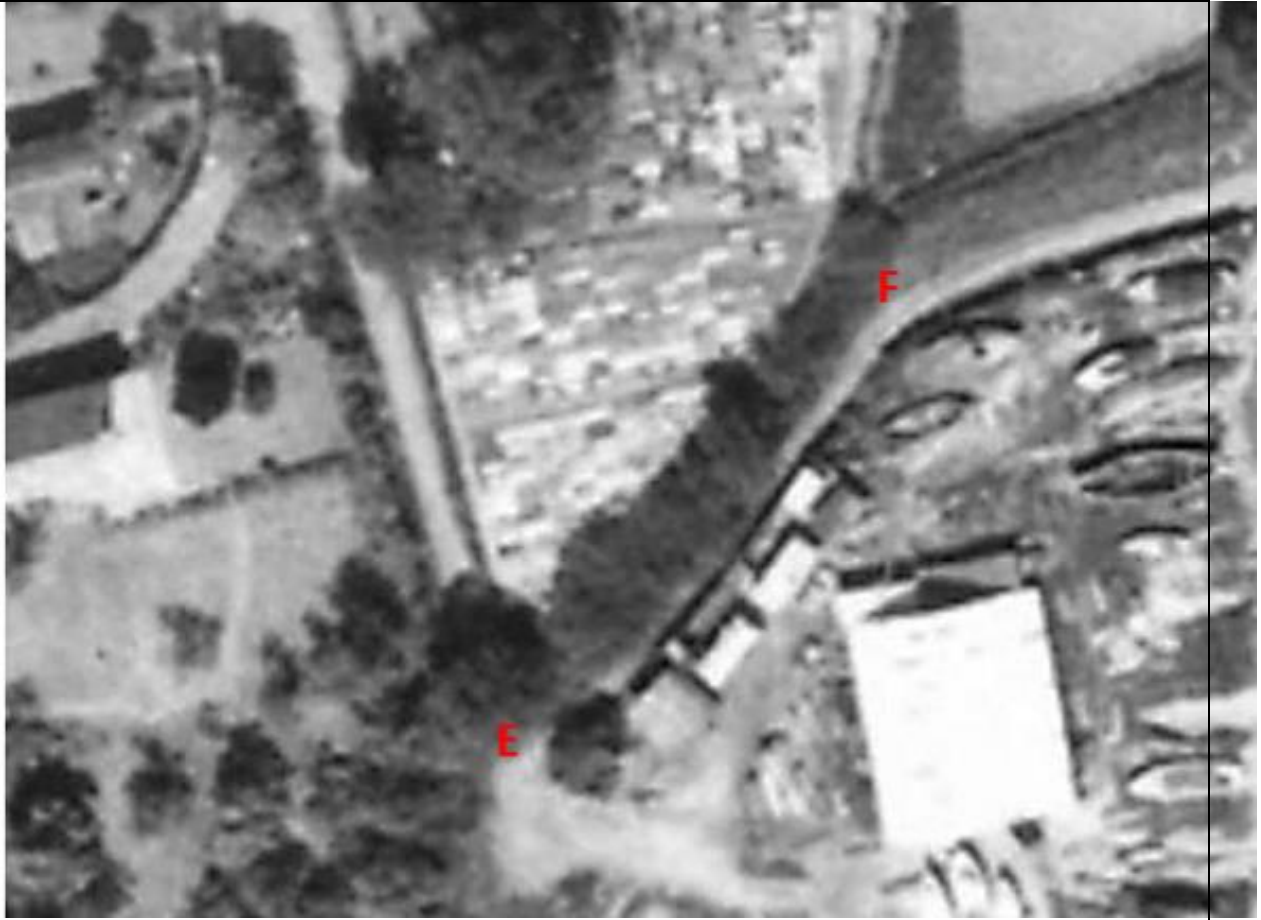
The second map extract shows



		<p>the land north of the swing bridge. A refuse tip is shown and labelled immediately north of the swing bridge and although it may have been possible to walk under the bridge past the refuse tip and above the mean high water mark the land was marked on the map as marsh.</p> <p>A track is shown cutting through the embankment on an angle between the Brick and Tile Works and a footpath shown at the bottom of the embankment. The Landing Stage that had previously existed is not shown but the footpath is shown continuing through a fence line and along the bottom of the embankment labelled as a footpath (F.P.) north in the direction of Beconsall Lane.</p> <p>The OS sheet showing the rest of the land crossed by the route under investigation was not available.</p>
Investigating Officer's Comments		<p>It may have been possible to walk from the dismantled railway down onto the marsh land and under the swing bridge but there is no path shown suggesting that any such use was not being made by a significant number of people so as to be sufficiently evident for the surveyor to note.</p> <p>A route marked as a footpath is shown descending from the Brick and Tile works to run north along the bottom of the embankment but it is not possible to know whether this was in existence just for use to and from the works or was used by the public as part of a longer journey.</p>
<b>Aerial photograph</b>	1961-1963	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

A trod consistent with use on foot can be seen between point A and point B with a route continuing along the original branch line track bed in a north westerly direction towards the Southport – Preston railway line and then west to Station Road. A further trod roughly consistent with the Definitive Map route can be seen continuing north through a band of trees but no further.

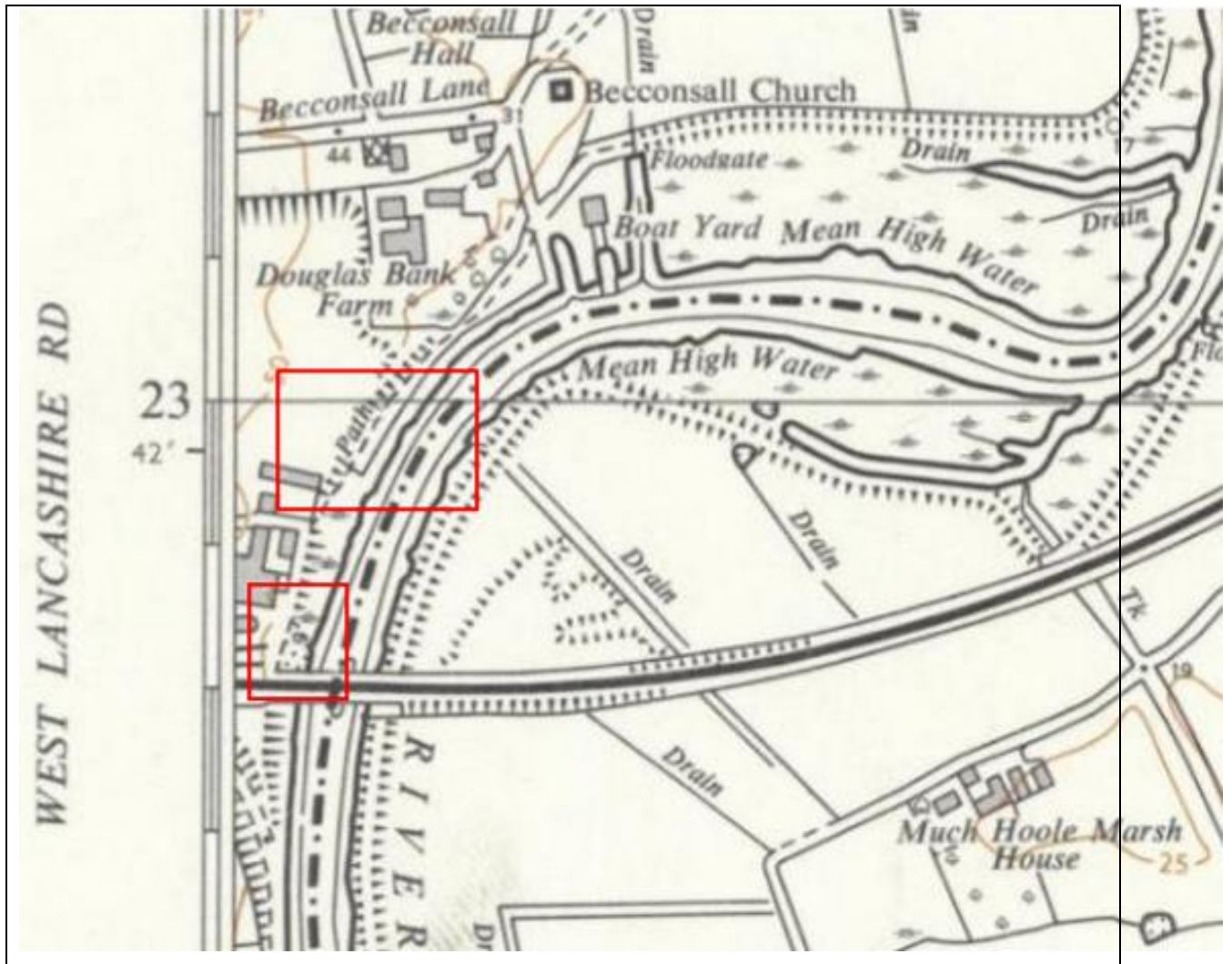
A route consistent with the ECP route can be seen leaving the Definitive Map route between point A and point B to continue along the salt marsh and under the railway swing bridge. North of the swing bridge a route can be seen continuing through to Beconsall Lane (point E) – which splits in places so that two parallel routes are visible – one close to the shoreline (and boats moored along it) and the other roughly consistent with parts of the ECP route. The photograph predates the boatyard, so neither

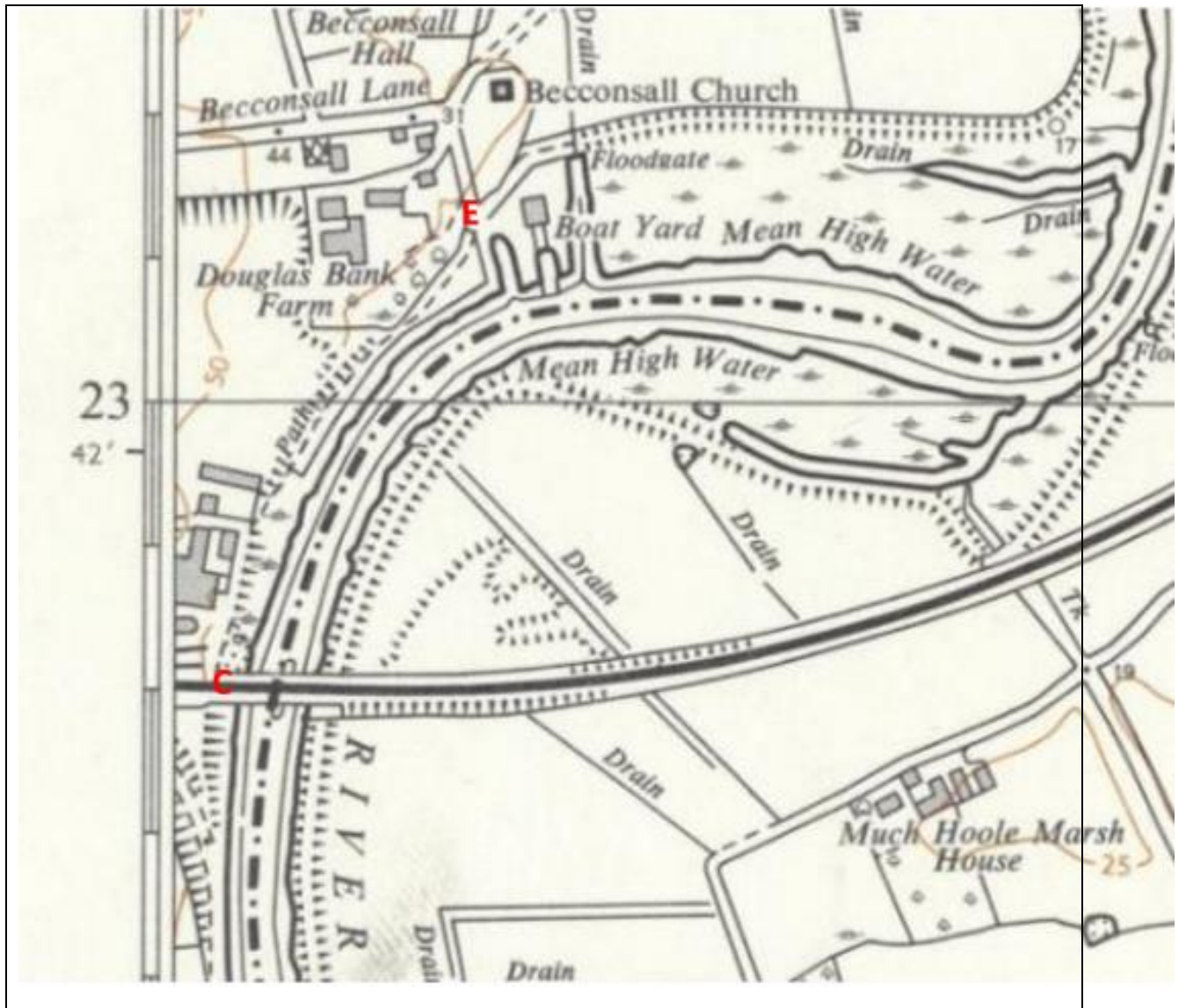


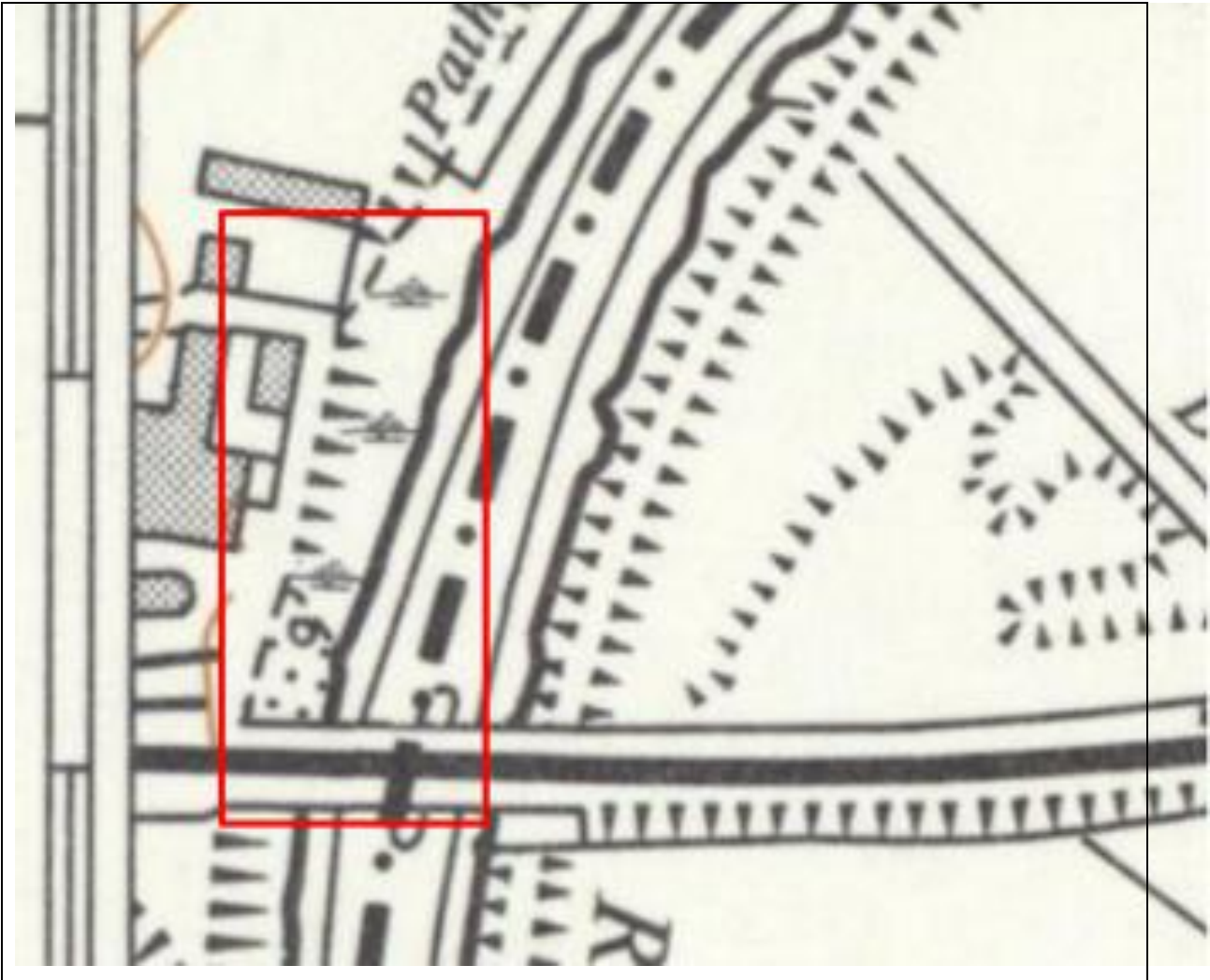


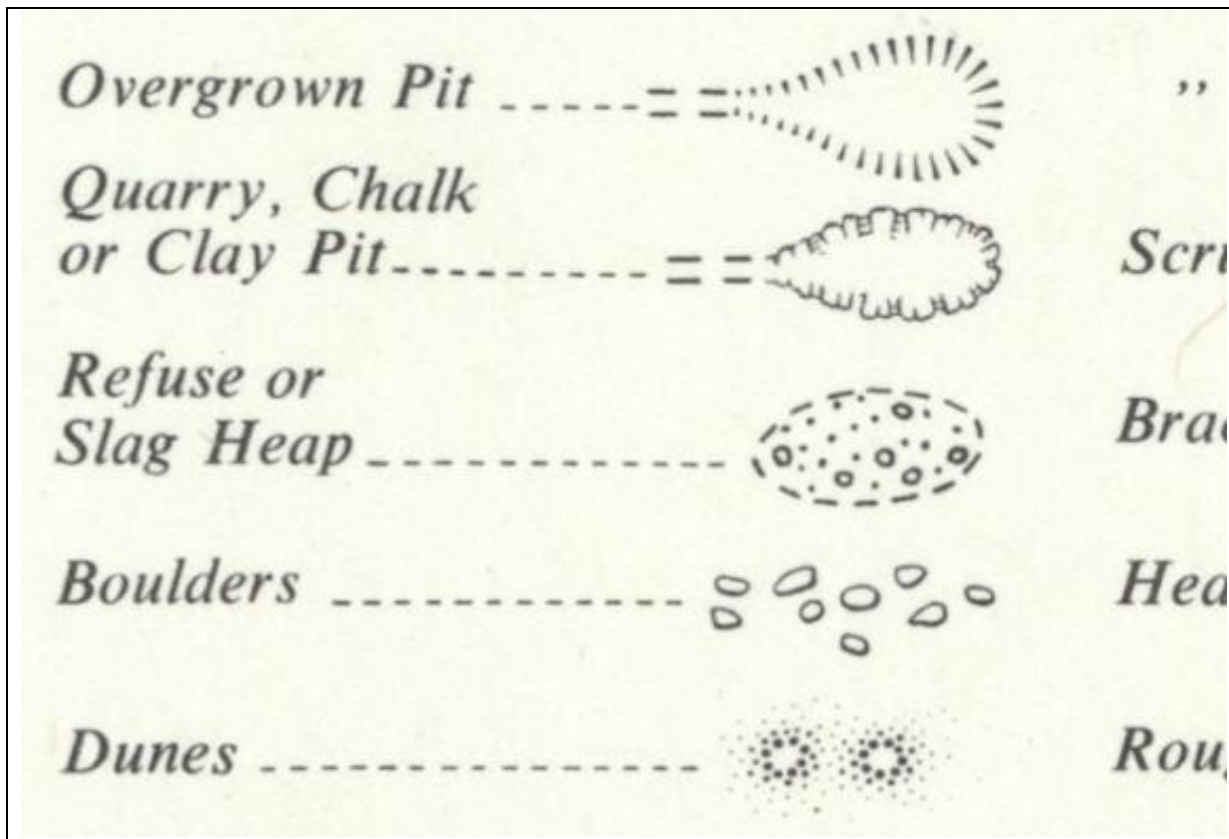
		<p>the caravans and boats stored on the saltmarsh today nor the walked track between them can be seen.</p> <p>The brickworks can be clearly seen but there is no visible crossing of the railway line on the Definitive Map route (point C) and the Definitive Map route is not visible along the top of the embankment from point C through to point E. There does however appear to be a link from the brickyard onto the saltmarsh at the back of the brickworks which would have involved descending the embankment.</p> <p>Between point E and F the Definitive Map route can be clearly seen running between the boundary hedge and some rectangular buildings.</p>
Investigating Officer's Comments		<p>The aerial photograph understood to have been taken between 1960 and 1963 provides a very good indication that a trodden path existed along the saltmarsh passing under the swing bridge and continuing through to the boatyard at point E.</p> <p>The Definitive Map route is not shown as a trod from point A through to point E and at that time it appeared that the route in use ran along the saltmarsh and under the railway.</p>
<b>6 inch OS Map SD 42 SE</b>	1967	6 inch OS Map revised 1961-1965 and published 1967.









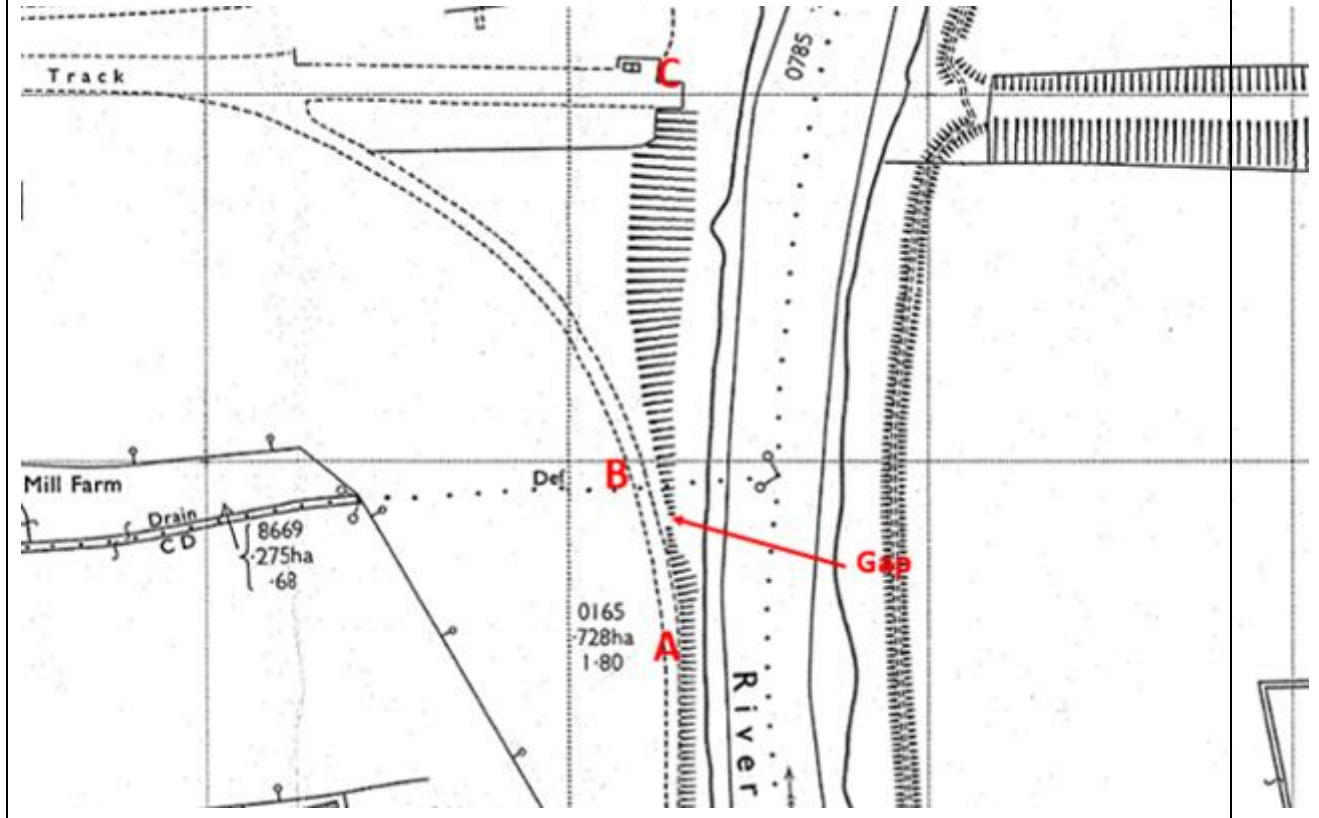
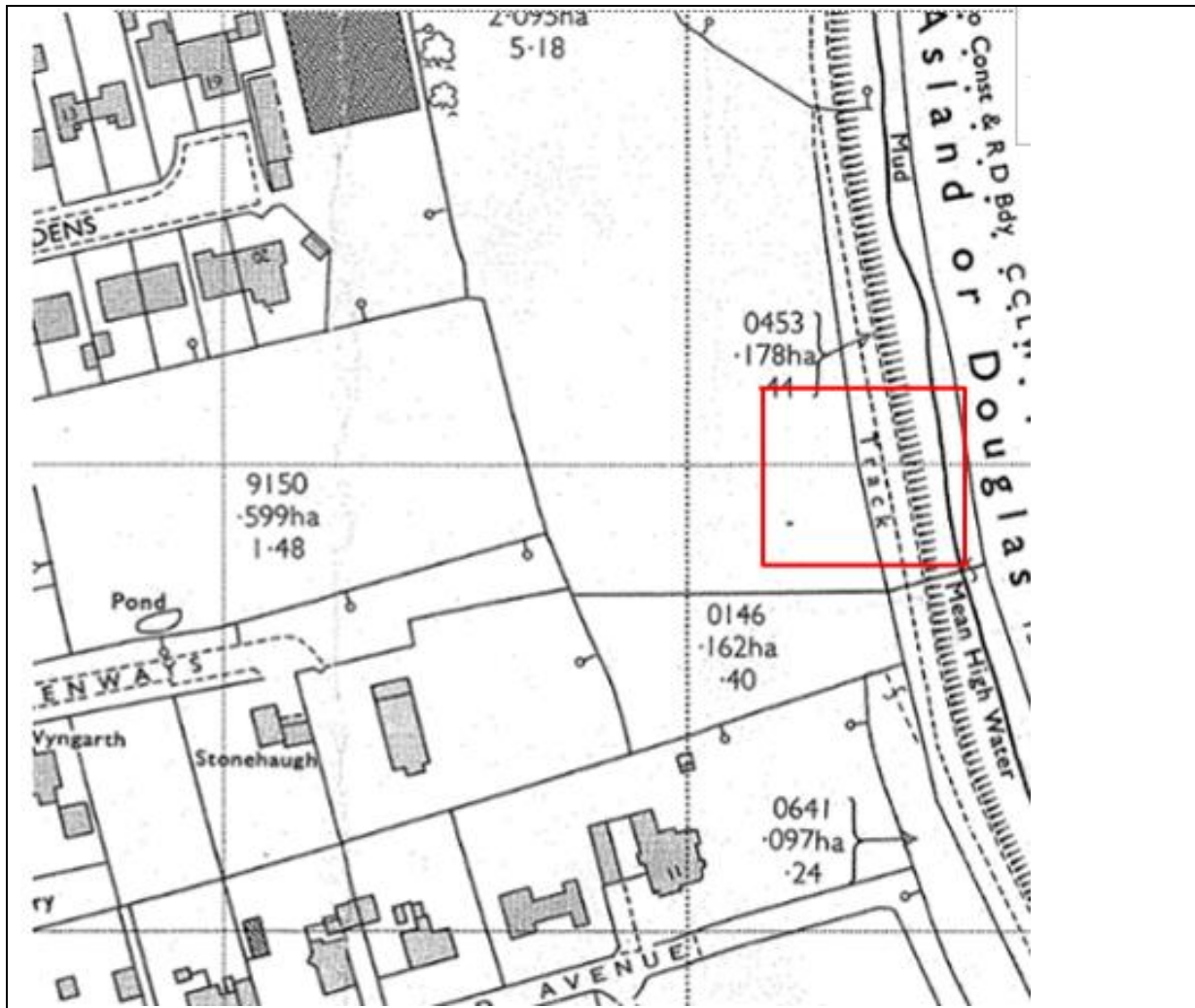


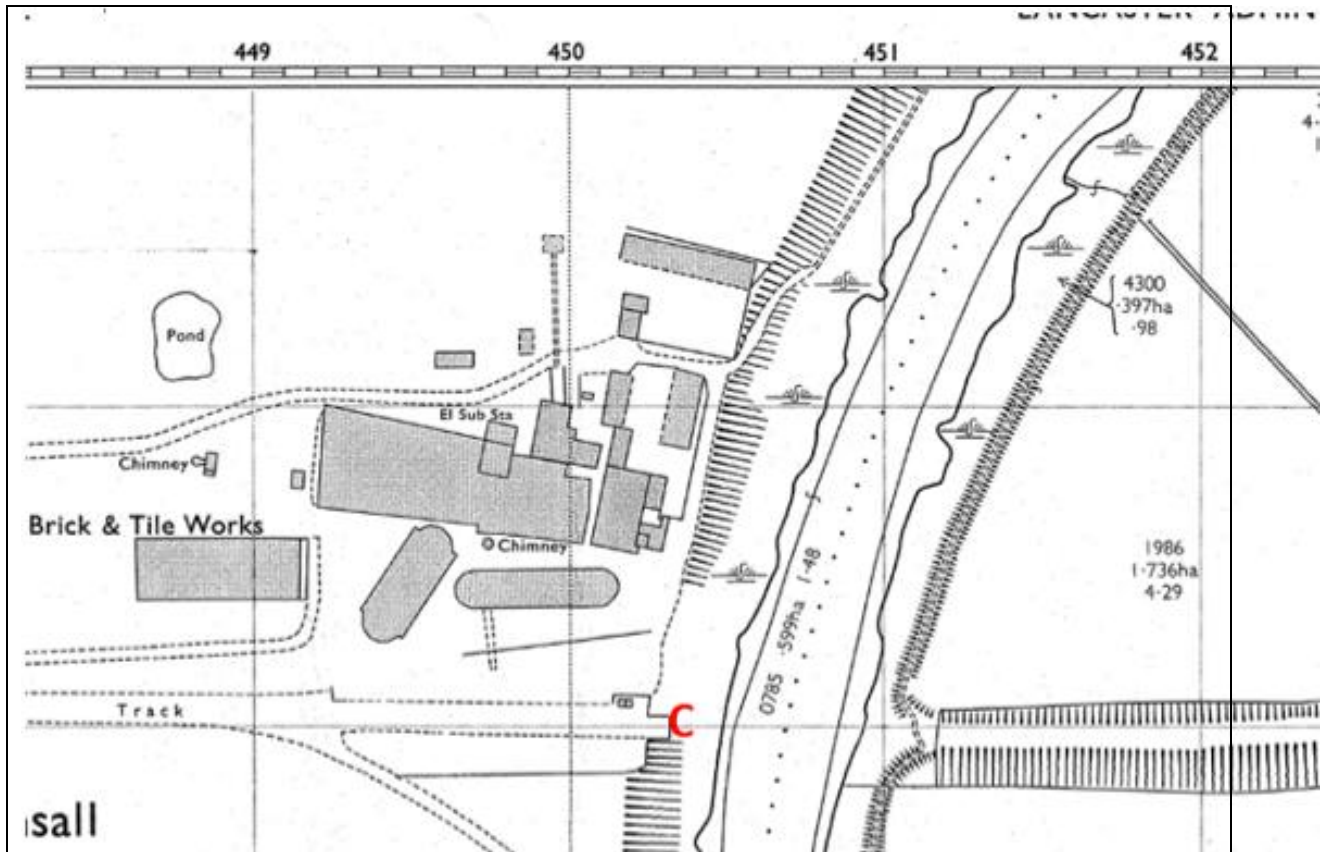
<p>Observations</p>	<p>The Preston-Southport railway line across the River Douglas closed in 1964 but at the time the map was surveyed (1961-1965) it was still in existence.</p> <p>Neither the Definitive Map route nor ECP route is shown south of point C.</p> <p>Immediately above (north) of point C a series of three dashes is shown followed by the notation for an embankment and then a dashed line labelled as 'path' continues through to point E.</p> <p>The dashed line from point C to the top of the embankment delineates an area shown as a refuse or slag heap which meets the top of the embankment at the same level as the Brick and Tile Works. To the west, within the brickworks, there appears to be a clear strip adjacent to the buildings. From the top of the embankment a path is shown sloping down the embankment</p>
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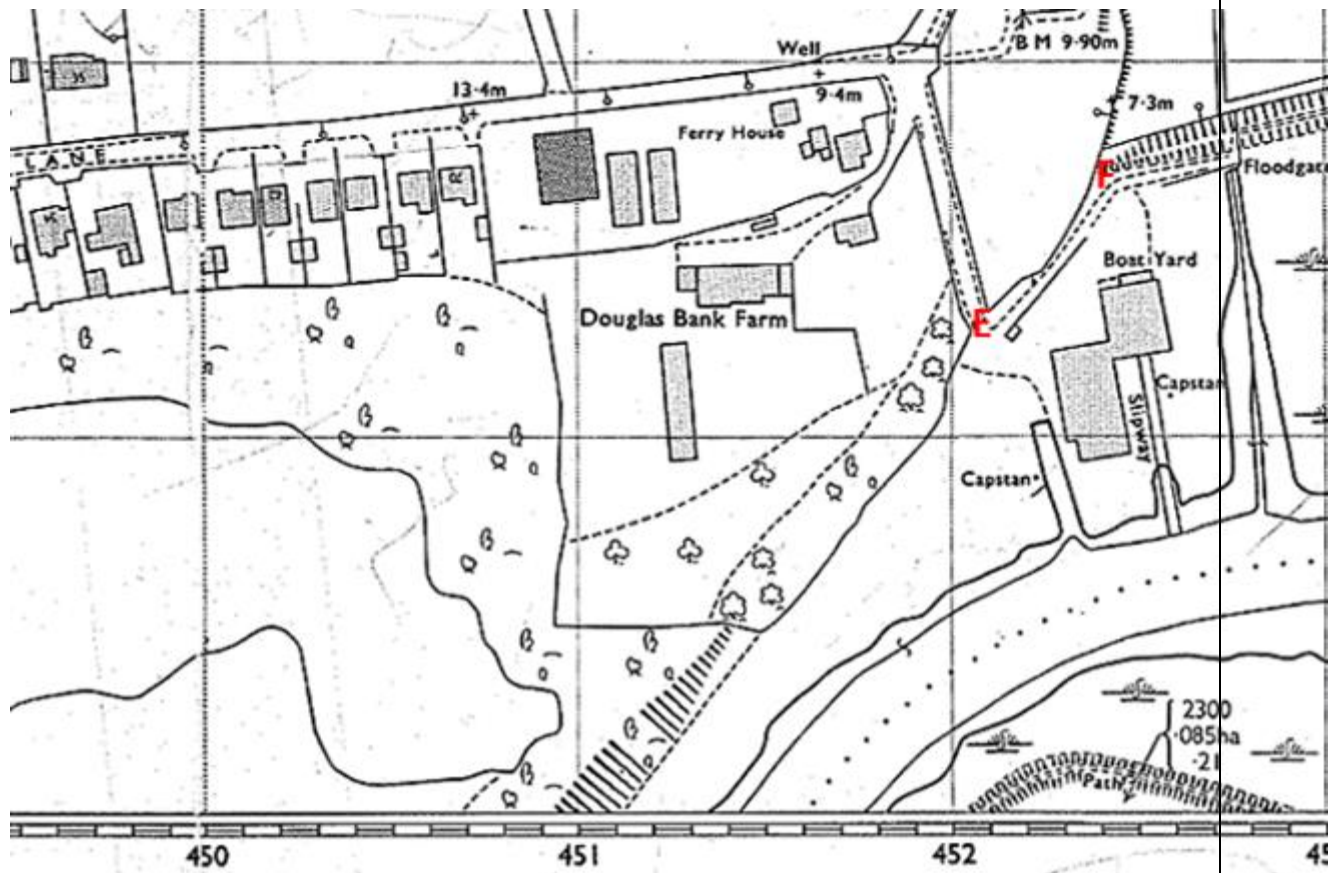
		(following the track shown on the 1963 map) then continuing along the bottom of the embankment and east of the boundary of Douglas Bank Farm and west of another boundary enclosing land between the brickworks and the boatyard, to point E.
Investigating Comments	Officer's	No route is shown from point A to point C. The dashes above the refuse tip are consistent with denoting the extent of the tip (not necessarily a physical structure) but west of that, along the top of the embankment, is a clear strip which may have been passable. From the track by the brickworks through to point E a 'Path' is shown running from the top of the embankment and then dropping down to run along the bottom on the salt marsh. The route differs from both the Definitive Map route and the ECP route.
<b>1:2500 OS Map SD 4422-5522 SD 4423-4523</b>	1971-1973	Further edition of 25 inch map reconstituted from former County Series and revised in 1970-1973 and published in 1971-1973 as National Grid Series.







isall



Observations

The 1:2500 OS map revised in 1970-73 shows that by that time the swing bridge and railway lines





		<p>had been removed and this sheet also post-dates the relevant date, but not publication, of the Revised Definitive Map.</p> <p>The dismantled railway leading north from Tarleton Lock is shown labelled as a track which continues past the junction with the ECP route between points A-B through to Station Road.</p> <p>A gap is shown in the embankment allowing access down to the shoreline along the ECP route although the route itself is not shown.</p> <p>The swing bridge is no longer shown although the support structures still evident today are shown. The Definitive Map route from point A through to point C is not shown.</p> <p>A track is shown leading into the Brick and Tile Works from Station Road continuing through to the embankment where it then descends the embankment and continues north.</p> <p>The OS map sheet covering the land north of the Brick and Tile Works does not show the continuation of the footpath along the bottom of the embankment.</p>
Investigating Officer's Comments		Neither the Definitive Map route nor the ECP route are shown although access may have been available between point A and point E along the river bank.
<b>Aerial Photograph</b>	1988	Aerial photograph available to view in the County Records Office.







<p>Observations</p>	<p>The photograph taken in 1988 shows significant changes. A trod consistent with use on foot can be seen extending north through point A with one route continuing through point B and then north west along the line of the dismantled branch line into the brick works. Another route can be seen passing through the embankment onto the strip of land adjacent to the river and is consistent with the modern day ECP route. This trod continues along the marsh through to the southerly end of the boatyard where it can be seen linking to the access road through the boatyard (that still exists today). What appear to be boats can be seen along either side of the roadway. A little north of point C it looks like there may have been a path leading from the top of the</p>
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		<p>embankment to the bottom and it looks like a further path may have led down the embankment from the brick works directly into the boatyard, but the footpath shown on the Definitive Map is not visible along the line recorded.</p> <p>It is not possible to zoom in with sufficient clarity to see whether the Definitive Map route E-F was available to use at that time.</p>
Investigating Officer's Comments		<p>The photograph provides evidence that by 1988 the route now published as the ECP route could have been in use and that the Definitive Map route was either little used or did not exist on the ground at that time.</p>
<b>Aerial Photograph</b>	2000	Aerial photographs available to view on Google Earth Pro.







Observations		Aerial photographs taken 23 years ago show that at that time the route now recorded as the ECP route was clearly visible but the Definitive Map route could not be seen.
Investigating Officer's Comments		The photograph suggests that the ECP route has been in existence and capable of being used for at least 23 years – and more likely since the mid to late 1980s but that the Definitive Map route was not being used or was hidden by the tree canopy. Whilst lack of use of the Definitive Map route does not mean that it no longer exists in law it may support other evidence that the line was impractical and that would support the proposition that the route was incorrectly recorded and more correctly ran on a different line.
<b>Lancashire County Council Public Rights of Way files</b>	1959 – 2011	Search made of Hesketh with Beconsall Public Rights of Way files for references to the footpath 8-10-FP46.

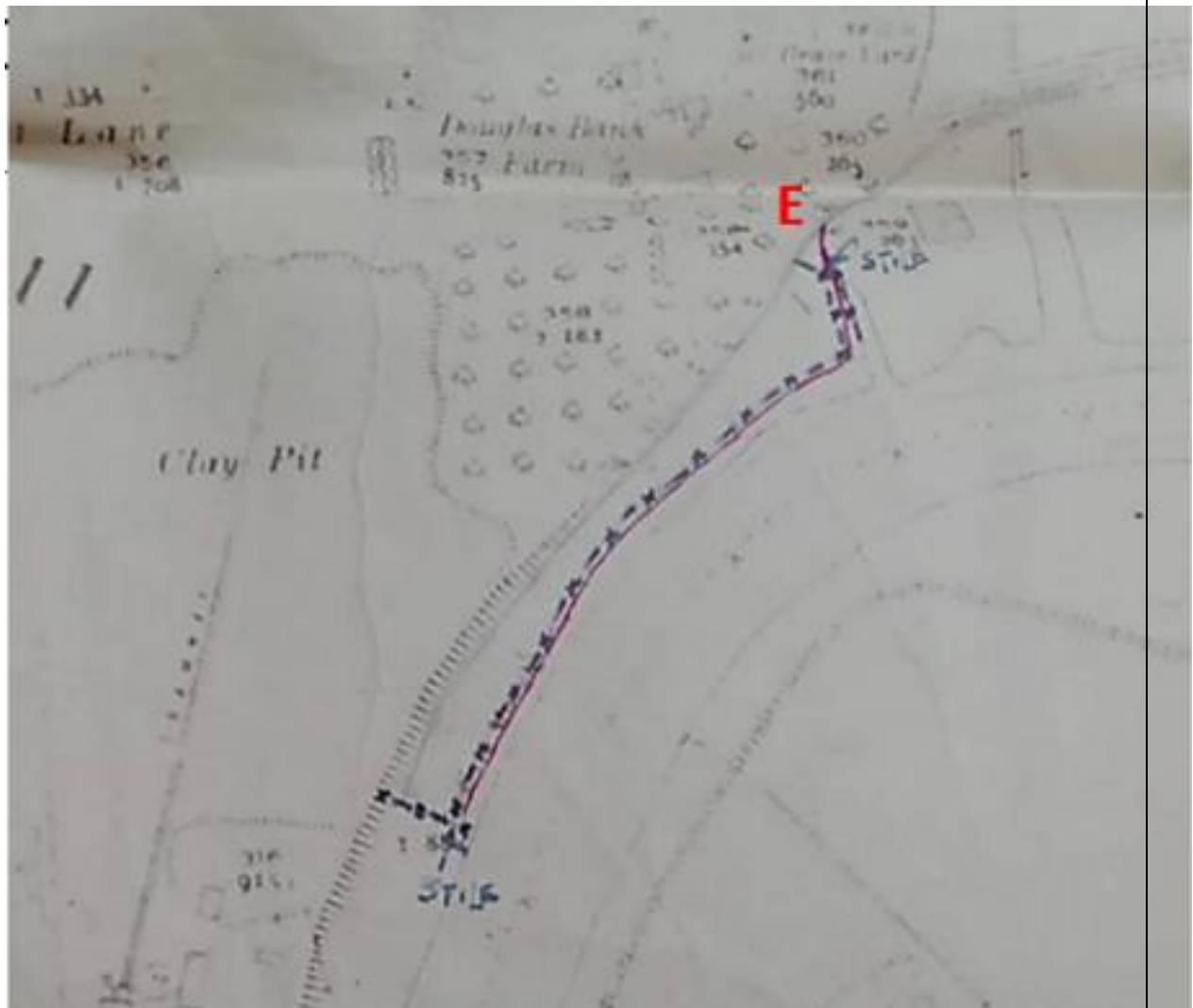


Path No. 46, Parish of Hesketh with Becconsall.

With reference to your memorandum of the 7th February, a meeting was held on the site with Mr. Kelly, Mr. Taylor, the Chairman of the Hesketh with Becconsall Parish Council, and my Assistant.

The following points emerged:

1. Mr. Kelly does not dispute the existence of a right of way across his land, but the exact location of the path seems to be a matter of some doubt as it appears that persons using the way have walked both along the edge of the river bank and along any line in the right general direction, there being no clear definition of any path other than the stiles.



Observations

A search of the public rights of way files was made. The first reference to the route under investigation was in 1959. Correspondence on file related to the line of the footpath as marked on the Draft Map of Public Rights of Way having been blocked by



		<p>the landowner – Mr G Kelly, Douglas Bank Farm, Becconsall Lane. Mr Kelly had prevented use of the line through the enclosed strip of land (shown on the 1967 map, above) between the base of the embankment and the river bank which blocked access to part of the footpath. He had put an alternative route in which took walkers around the edge of the fenced-off plot close to the river bank.</p> <p>Mr Kelly subsequently requested to divert the footpath as shown on the Draft Map to the route shown on the map extract above so that he could develop his poultry business. A faint pencil line was shown along the base of the embankment marking the line of the footpath recorded on the Draft Map. His proposed diversion was rejected by the Parish Council and Lancashire County Council subsequently told Mr Kelly that he must open the route shown on the Draft Map and provide stiles on that line.</p> <p>Within the correspondence relating to the obstruction of the footpath there were several references in the file to the route having already been used by the public for many years and a reference to an objection being made to it being shown on the Draft Map.</p> <p>The next references to the path were 7 years later in 1966 when it was reported that river bank erosion was affecting the footpath in proximity of the railway bridge which was in the process of being dismantled.</p> <p>A letter from the Lancashire River Authority to the County Council referred to the condition of the footpath in the vicinity of the railway bridge and they clearly stated that they had no</p>
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		<p>responsibility to repair the river bank at that point.</p> <p>The following year (1967) the County Council received a letter from Hesketh with Beconsall Parish Council stating that the path was now impassable due to river bank erosion. There followed a written exchange between the County Surveyor and Legal department debating whether the best solution would be to ask the owners of the Hesketh Brick and Tile Company about a possible diversion of the footpath onto their land.</p> <p>In July 1967 the County Council wrote to the Brick and Tile Works to ask if they would be willing to dedicate a footpath along a line shown on a plan. No plan could be found on the file and the proposed route was not described in the letter. The letter did however refer to fact that the original footpath had been eroded by the river and no longer existed.</p> <p>No further correspondence was found until several letters and memorandums dated between 2005-2011 casting doubt as to whether the route recorded on the Definitive Map was correct.</p>
Investigating Officer's Comments		<p>The information from the parish files is very useful in clarifying that a route considered to be a footpath existed prior to the removal of the swing bridge and that it passed under the bridge – not over it as currently shown on the Definitive Map. The fact that the inclusion of the route on the Draft Map was contested will be dealt with later in the report.</p> <p>The obstruction of the route shown on the Draft Map as running along the base of the embankment and the fact that the landowner was required to provide stiles and reopen that</p>



		<p>route suggests that it was accepted at that time that the route ran along the bottom of the embankment.</p> <p>Concern about the condition of the footpath as it passed under the swing bridge was at a time when OS maps showed a refuse tip which would have pushed the route out close to the river bank. Since that time and following removal of the swing bridge it does not appear that any work was done to protect or replace the river bank at that point but there was, and still is, ample width for people to have walked a line consistent with the ECP route.</p> <p>There is no record of the footpath ever having been diverted onto land owned by the Brick and Tile Works and although no plan on the proposed route was provided it appears sensible to deduce that the proposal was to shift the path to the top of the embankment through the grounds of the Brick and Tile works to avoid the river bank in proximity of the old swing bridge.</p>
<p><b>Hesketh with Beconsall Parish Council Minutes</b></p>	<p>1959-1960 and 1981-1992</p>	<p>Parish Council Minutes available to view online <a href="http://heskethbankcouncil.uk/archives/">http://heskethbankcouncil.uk/archives/</a></p>
<p>8. <u>Footpath 46</u> The Clerk was requested to report to the County Council that the first two stiles on this footpath, when walking towards Tarleton from the Boatyard, have disappeared, and to ask the County Council for the names and addresses of the owners of the stiles.</p> <p>9. <u>Bus shelter, Station Road</u></p> <p>[above] Extract from Minutes of Meeting held 14<sup>th</sup> May 1984</p>		
<p>Observations</p>		<p>No reference was found to the route under investigation in the Parish Council Minutes dated 1959-1960. Several references were found to the route referred to as Footpath 46 in the 1980s. No reference to the alignment of the footpath was found although it</p>



		was reported that two stiles had been removed from the footpath leading from the boatyard.
Investigating Officer's Comments		The Parish Council minutes did not assist with regards to providing details relating to the alignment of the path walked although references to two stiles being removed in the 1980s suggests a possible challenge to the public rights.
<b>Planning Permission for siting of residential caravans at Douglas Boat Yard</b>	1990-1993	Planning Application 1990/0624 rejected on 24 May 1991 and Application 1993/0642 – application for a Certificate of Lawfulness – Use of Land for the siting of 4 residential caravans.
Observations		<p>In 1990 a previous owner of Douglas Boatyard sought planning permission for the siting of six residential caravans 'for temporary periods'.</p> <p>West Lancashire District Council provided copies of relevant correspondence including an extract from the Planning Committee Agenda dated 23 May 1991 detailing consideration of the application. It was noted in the report that if planning permission was to be granted a site licence for a permanent residential site would need to be applied for which would require additional works being carried out to provide adequate roads and paths, electricity, water, fire fighting equipment and adequate street lighting.</p> <p>The objection of an adjacent occupier was noted in the report as follows:- <i>'The site is untidy with rubbish lying around the footpaths and the static caravans are spoiling the beauty spot. Also of concern, is the state of the roads and footpaths in the area.'</i></p> <p>Observations of the Director of Development and Amenities suggested that some of the</p>

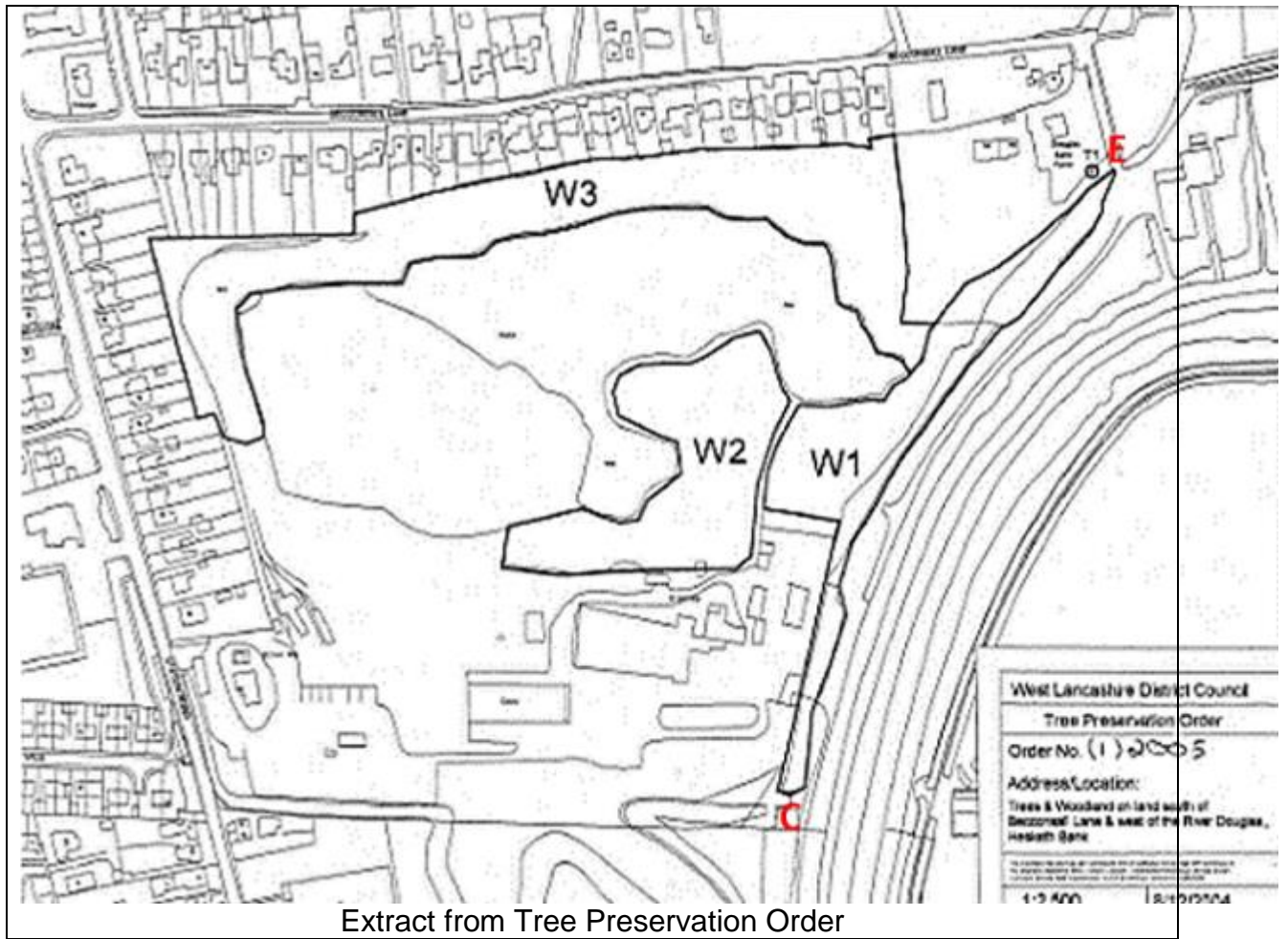


		<p>caravans had already been on site for several years and the applicant had put forward the case that they were therefore exempt from requiring planning permission. The landowner had been asked to supply evidence on three occasions to support this case but had not done so.</p> <p>No specific reference was made to the alignment of the Definitive Map route through the boatyard or how it might have been affected by the caravans. However, there was reference in the report to the Draft Northern Parishes Local Plan within which there was a proposal to establish and maintain a comprehensive network of rural footpaths and bridleways and the fact that one such proposal ran along the River Douglas adjacent to the siting of the mobile homes.</p> <p>A plan showing the siting of the mobile homes (caravans) has not been seen.</p> <p>It was recommended that the application for planning permission be refused as the siting of the mobile homes in this location was considered to be incompatible with the existing use (of the commercial boatyard outside the residential area of the village) and would result in a poor environmental standard for residents and would be detrimental to the appearance and amenities of the area. In addition, it was considered that access to the site was along a road of poor width and alignment which was considered unsuitable to cater for the residential development proposed. The application was rejected.</p> <p>West Lancashire District Council Planning Department have tried to locate a copy of the Certificate of Lawfulness – Use of Land for</p>
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		the siting of 4 residential caravans – which is listed on their planning portal but to date have been unable to locate a copy.
Investigating Officer's Comments		The existence of the Definitive Map route – or how it had been/would be affected by the siting of the caravans did not appear to be considered as part of the reasons to reject the application. The report does however suggest that the caravans – or at least some of them - had been in situ for at least several years suggesting that the ECP route through the boatyard has been in existence for over 30 years. The objection from an adjoining occupier suggests that the boatyard had expanded and that there had been issues with 'rubbish' spoiling the footpaths.
<b>Tree Preservation Order</b>	2005-2014	A tree preservation order (TPO) is an order made by the council for trees and woodlands to stop the cutting down, uprooting, topping, lopping, wilful damage or wilful destruction of protected trees or woodlands. It is possible to apply to the relevant Planning Authority, in this case West Lancashire District Council, for permission to carry out work on protected trees (including pruning, thinning or felling). The authority's consent is not required for carrying out work on trees and woodlands subject to an Order if that work is in compliance with any obligation imposed by or under an Act of Parliament.





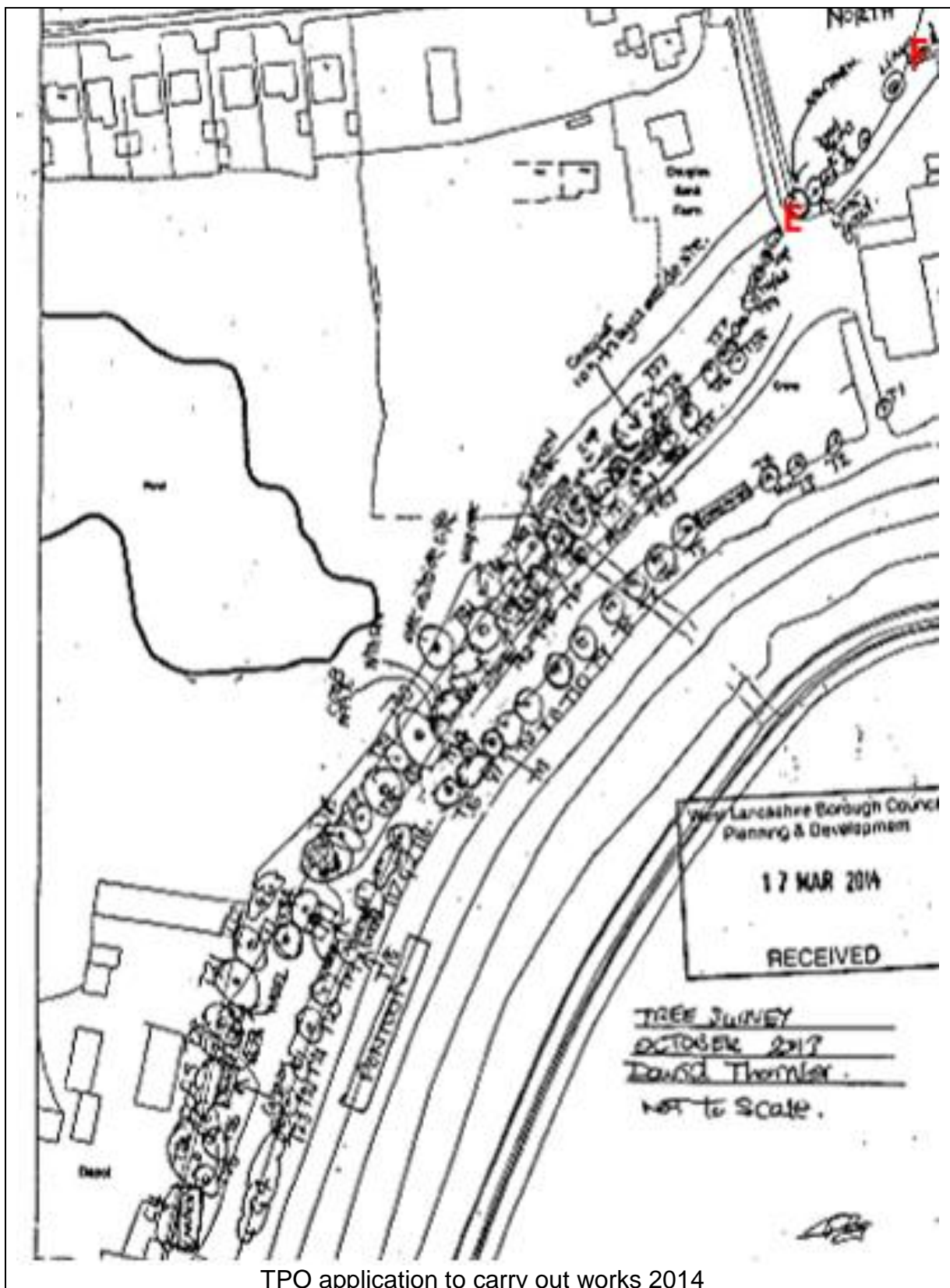
Extract from Tree Preservation Order





Digitised record of Tree Preservation Orders on LCC digital mapping





TPO application to carry out works 2014

<p>Observations</p>		<p>An Order protecting the trees located along the embankment and part of the boatyard was made in 2005 (The West Lancashire District Council Tree Preservation Order No. (1) 2005</p>
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		<p>– Trees and Woodland on land south of Becconsall Lane and west of the River Douglas, Hesketh Bank).</p> <p>A copy of the Order was obtained from West Lancashire District Council but neither the Order nor the Order plan refers to the existence of a public footpath, or the route being used at that time.</p> <p>An application was made on behalf of the previous owner of the boatyard in 2014 to prune and fell a number of trees across the site in the interest of safety or good woodland management. No reference was made to public access.</p>
Investigating Officer's Comments		<p>The TPO affects a significant length of the Definitive Map route (C-E) and has potential implications on managing or opening the route but not directly on determining the rights which exist. If, when the Order was made, the Definitive Map route had been in use, or the fact that it was overgrown and obstructed had been considered, it seems likely that the alignment of the route would have been marked or referred to in the Order.</p>
<b>Definitive Map Records</b>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<b>Parish Survey Map</b>	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas.</p>



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.



Parish Survey Map – Tarleton



DISTRICT WEST LANCASHIRE Rural PARISH Tarleton No. 5

MAP SHEET No. 12.6.4-7 LENGTH 2.36 miles  
(to two decimal places)

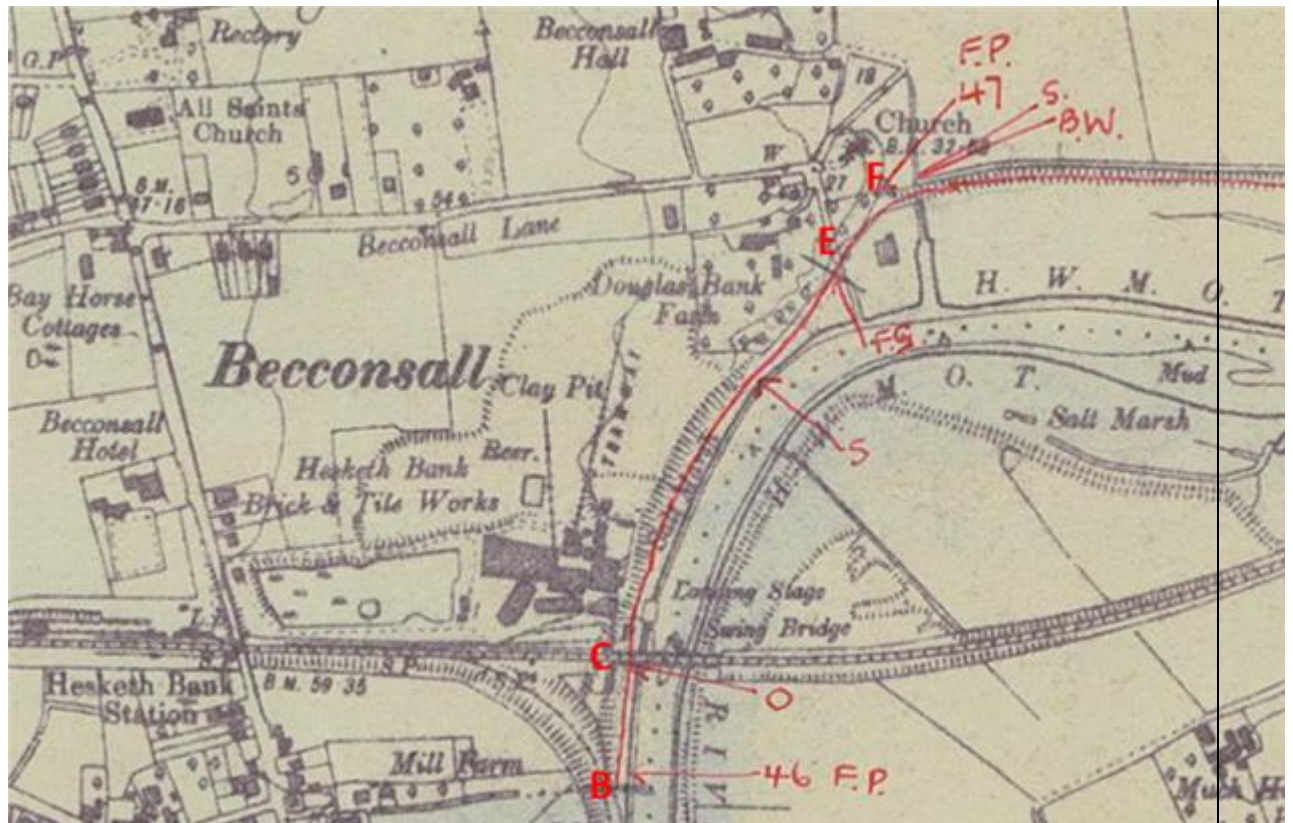
BRIEF DESCRIPTION (Field F.P. or otherwise)  
Towing Path, along Leeds & Liverpool Canal.

DETAILED DESCRIPTION (giving starting point, means of passage and general condition).  
Starting end of Rufford Boundary to Tarleton Lock beyond Boat Yard, continues on west side of River Douglas to Hesketh Bank Boundary.

SURVEYED BY:— Name J Hunter  
Address Post Office Tarleton  
Date 2nd Sept 1950

5000 T 39 450

Parish Survey Card



Parish Survey Map – Hesketh Bank



DISTRICT	West Lancs. Rural.	PARISH	Hesketh-with-Becconsall. No. 46.
MAP SHEET No.	3	LENGTH	.289 miles (to two decimal places)
BRIEF DESCRIPTION (Field F.P. or otherwise)			
Field F.P.			
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).			
Grass track from Parish Boundary south of Railway Bridge along River Douglas to Boat Yard (Becconsall Lane end).			
Sleeper fence obstruction under Railway bridge. stile appx. half-way between Railway and Boat Yard.			
Field Gate at Boat Yard end.			
Used by public more than 20 years.			
SURVEYED BY:—			
Name	C.W. GODDARD.	E. TAYLOR.	
Address	Moss Lane,	Chapel Road,	
Date	20th June, 1950.	Hesketh Bank.	

Parish Survey Card – Hesketh with Becconsall

DISTRICT	West Lancs. Rural.	PARISH	Hesketh-with-Becconsall. No. 47
MAP SHEET No.	3.	LENGTH	.86 miles (to two decimal places)
BRIEF DESCRIPTION (Field F.P. or otherwise)			
Field F.P.			
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).			
Grass track along Douglas bank from Boat Yard (Becconsall Lane end) to junction with 16 (Marsh Lane to Douglas).			
Stile at Boat Yard in bad condition (barbed wire).			
Used by public more than 20 years.			
SURVEYED BY:—			
Name	C.W. GODDARD.	E. TAYLOR,	
Address	Moss Lane	Chapel Road	
Date	20th June, 1950.	Hesketh Bank.	

Parish Survey Card - Hesketh with Becconsall

Observations		The Parish Survey Map for Tarleton shows a route recorded as Footpath 5 which runs all the way from Windgate Lane (A565) to the parish boundary at the approximate location of point B. The route was described as a footpath along the tow path of the
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		<p>Leeds Liverpool Canal with the section south of Tarleton Lock subsequently removed from the map because it was deemed to be a canal towpath but the rest of the route, which ran mainly along the dismantled railway, being retained.</p> <p>From the parish boundary the route recorded as Footpath 46 was shown broadly consistent with what is now the ECP route running adjacent to the river bank to the swing bridge where it was noted that the route was obstructed by a sleeper fence under the railway bridge. The route then continued along the saltmarsh through to point E. No width was recorded and the path was described as a field footpath running along a grass track. The route was shown running between the bottom of the embankment and the mean high water mark. A stile is marked as existing close to point D and field gate at the boat yard (point E). A pencil line across the route at point E appears to represent the point at which the numbering of the route altered from 46 to 47.</p> <p>The parish survey cards for both footpaths 46 and 47 were dated 1950 and both referred to the fact that the paths had been used by the public for more than 20 years.</p>
<p><b>Draft Map</b></p>		<p>The Parish Survey Map and cards for Hesketh with Beconsall and Tarleton were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a 'relevant date' (1<sup>st</sup> January 1953) and notice was published that the Draft Map for Lancashire had been prepared. The Draft Map was placed on deposit for a</p>



minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.

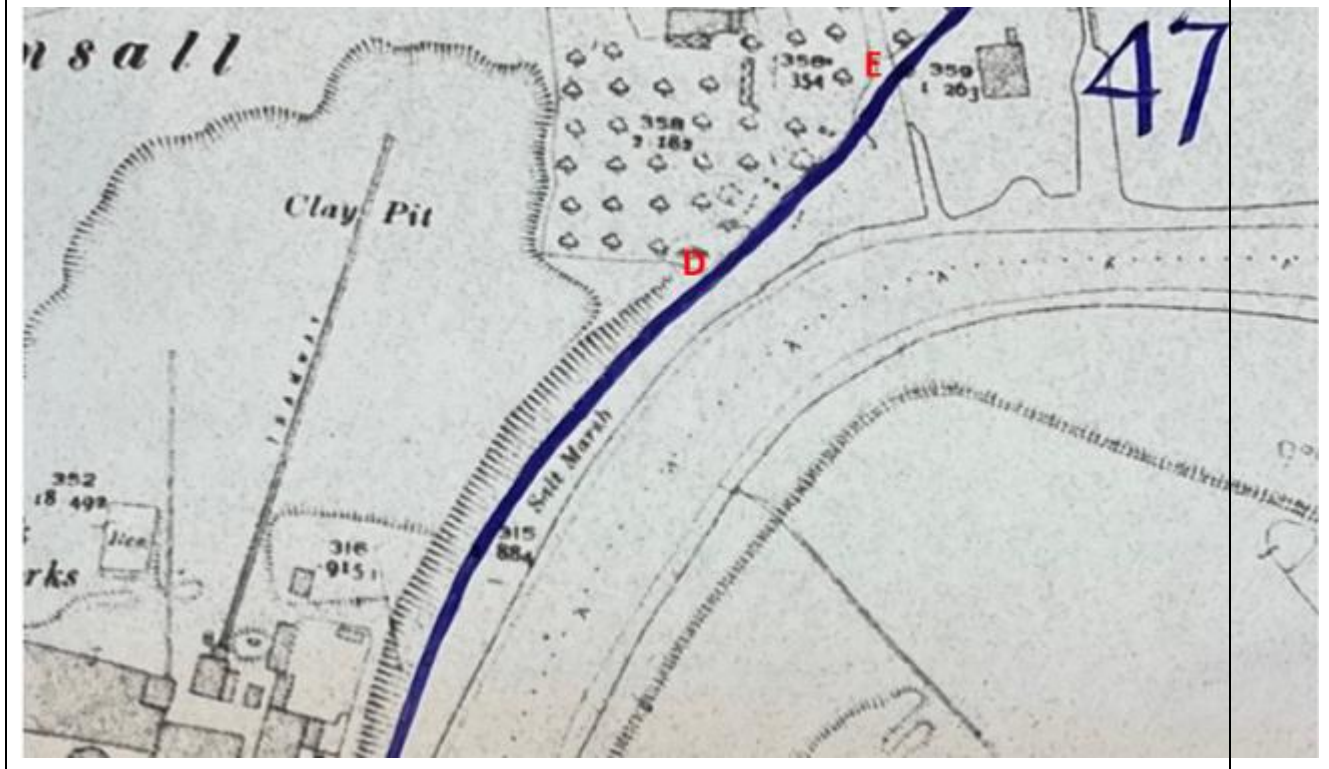
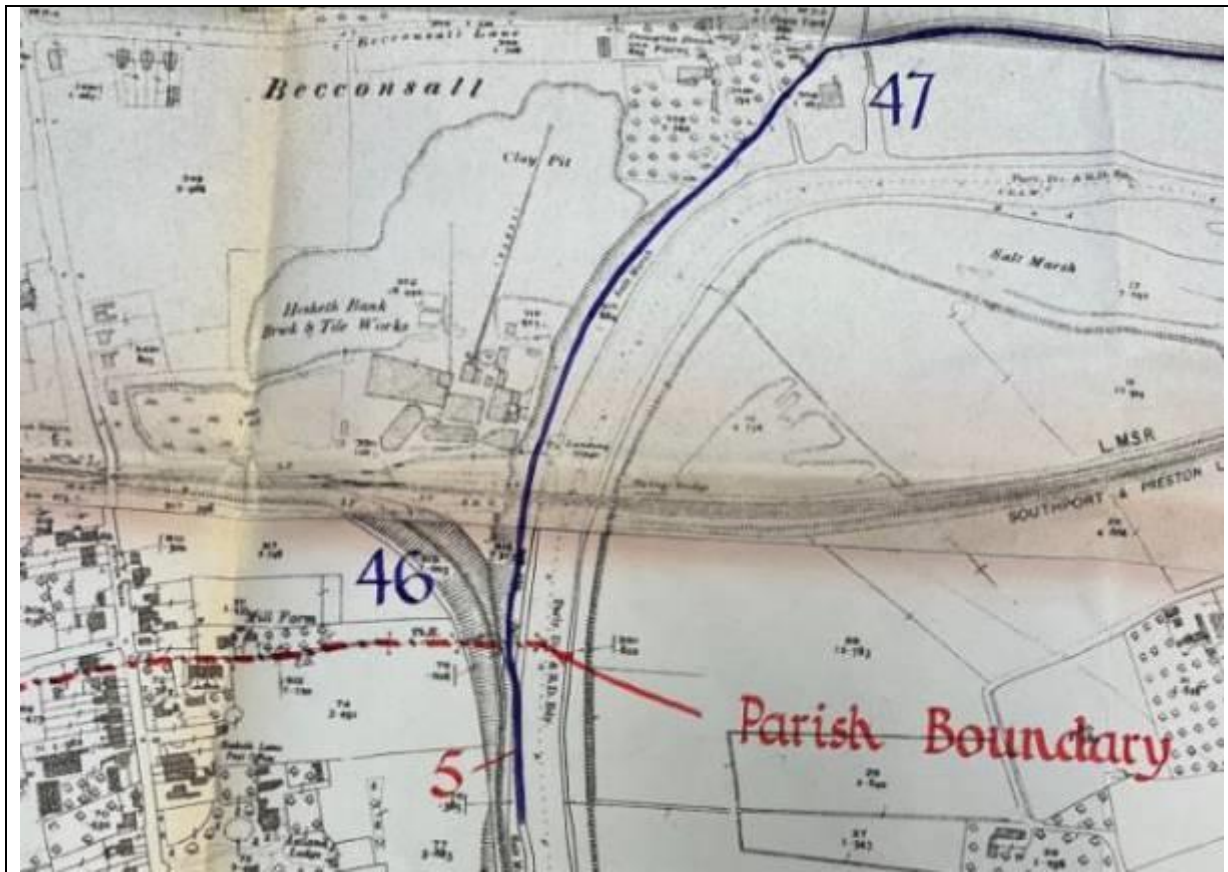


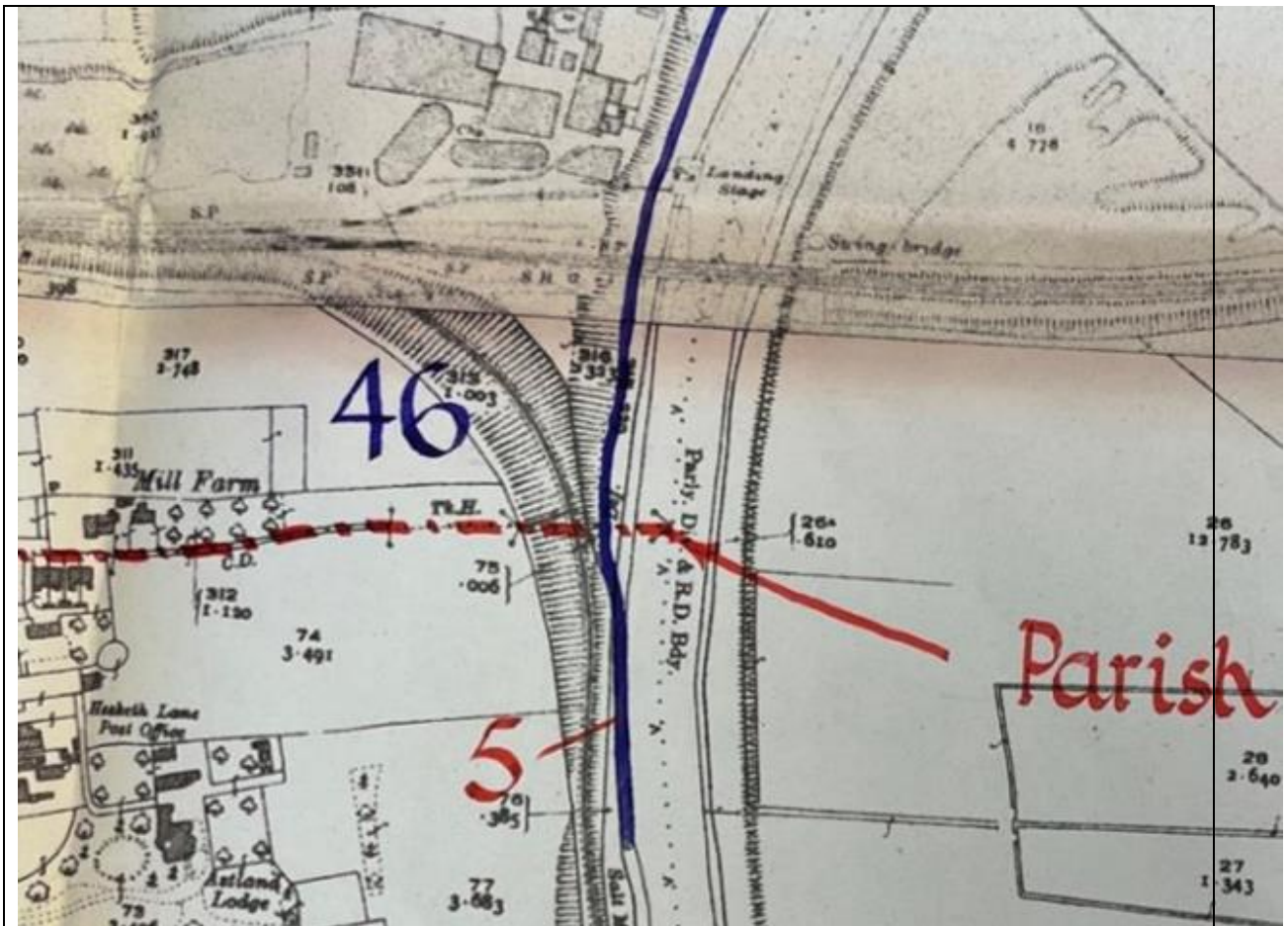
[above] Extract from the Draft Map

46	"	Along River Douglas from Parish Boundary - Boatyard.	0.289
47	"	Along River Douglas from Boatyard to junction with No. 16.	0.86

[above] Extract from Draft statement







[above] Three extracts from the plan prepared for the Hearing held into the objection into the inclusion of Footpath 46 on the Draft Map

Observations

The route under investigation was drawn on the Draft Map using a thick purple pen. The line is shown running north from point A as part of Footpath 5 (Tarleton) through the parish boundary where it changes number to 46 (Hesketh with Beconsall).

The thick pen line showing Footpath 5 has been drawn very close to the river bank only moving away from it slightly between point B and point C. The pen line is shown going straight through the swing bridge and continues along the bottom of the embankment to point E.

The Draft Statement described the path as running along River Douglas from the parish boundary to the boat yard and



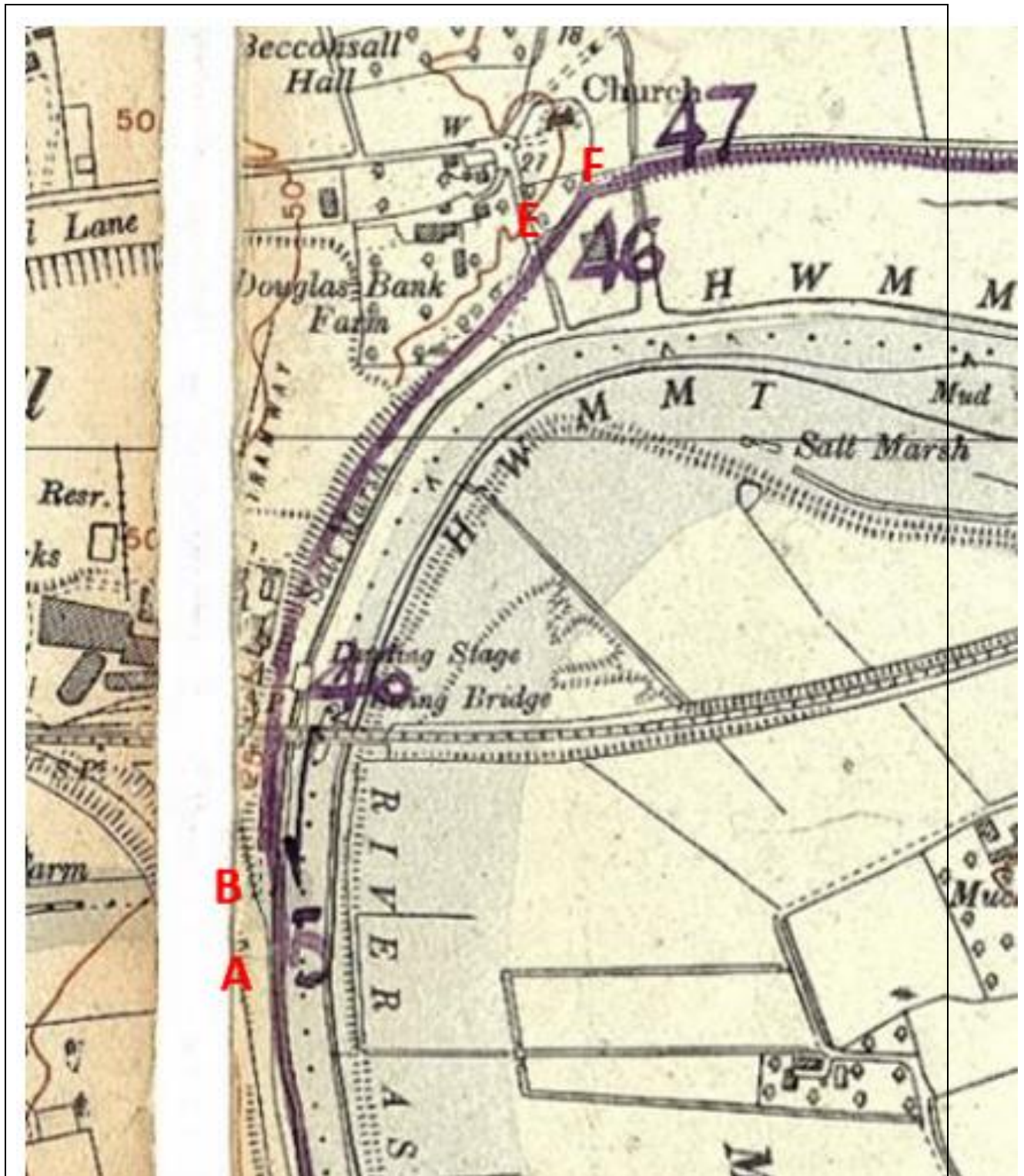


		<p>Footpath 47 is described as running along the river from the boatyard road suggesting that the change in numbering occurred at point E.</p> <p>An objection was made to the inclusion of Footpaths 46 and 47 on the Draft Map by the British Transport Commission who stated that their reason for objecting was that they were not public rights of way.</p> <p>The objections were logged as objection numbers 826 and 827 and a hearing was held in Ormskirk on 25<sup>th</sup> February 1955.</p> <p>Documentation on file details that the Hearing was attended by representatives from the County Council, British Transport Commission, Deputy Clerk, Chair and Vice Chair from West Lancashire District Council and representatives of the Parish Council. Little further detail could be found other than references to the fact that the route was claimed to have been in use for 40 years. A note on the file refers to the objection being withdrawn.</p> <p>A 1:2500 OS map sheet was found in the file showing the disputed route. Details in the file refer to the fact that the plan was prepared so that it could be used at the Hearing to show the route recorded on the Draft Map.</p> <p>The plan showed the very northern end of Footpath 5 (Tarleton) leading to the parish boundary as being between the river bank and mean high water line then kinking away from the river at the parish boundary to continue (as Footpath 46) clearly shown along the bottom of the embankment from point B to point D and then immediately east of</p>
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		<p>the field boundary on the salt marsh between point D and point E.</p> <p>The route recorded on the Draft Map differed from the ECP route.</p>
<b>Provisional Map</b>		<p>Once all representations relating to the publication of the Draft Map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>





Observations

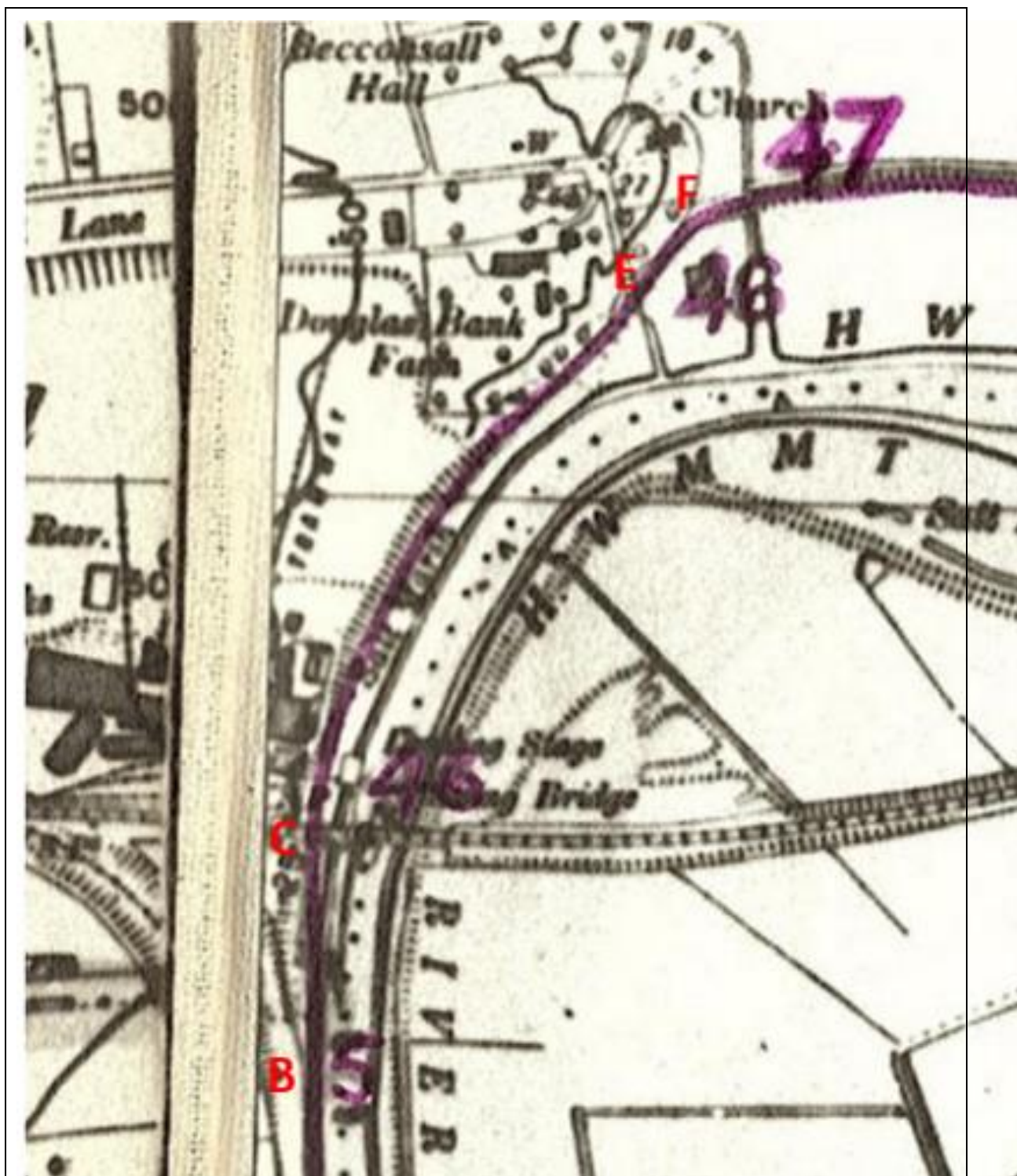
The Provisional Map was prepared on a small scale 6 inch OS base map (as was the Parish Survey and Draft Map) with the routes drawn on by hand.

Footpath 5 Tarleton is again shown drawn between the line



		<p>marking the edge of the river and the mean high water line but kinks away from the river adjacent to point B. Footpath 46 is then shown along the salt marsh but running along the bottom of the embankment to point D and then adjacent to the fence line to point E. The numbering of Footpath 46 is ambiguous, possibly suggesting it finishes further north than point E although the Provisional Statement remained unaltered – describing Footpath 47 as starting at the boatyard road. The numbers were not always at the ends of the path they applied to; for example the 5 near point B is not at the parish boundary where that footpath ends.</p> <p>The route recorded on the Provisional Map differed from the ECP route but was essentially the same (given the difficulties in copying the route from one map to another at a small scale) as the Draft Map.</p>
<p><b>The First Definitive Map and Statement</b></p>		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>





Observations

For the fourth time in the process the maps recording public rights of access were redrawn by hand – again on OS base maps at a scale of 6 inches to the mile. A relatively thick purple pen was used to show the routes recorded as public footpaths, which it is acknowledged on a number of occasions across the county as



		<p>having caused issues in interpreting the intended route to be shown.</p> <p>The route shown on the map from point B through to point E does appear consistent with what was shown on the earlier Draft and Provisional Maps in that it appears to show a route running along the bottom of an embankment and to the east of the fence line along the saltmarsh through to point E. No break is shown in the route where it crosses the junction with the roadway leading into the boatyard at point E and the numbering is again suggesting that Footpath 46 continued north of point E although the position of the numbers is vague.</p> <p>The route recorded on the First Definitive Map differed from the ECP route.</p>
<p><b>Revised Definitive Map of Public Rights of Way (First Review)</b></p>		<p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25<sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1<sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p>





Revised Definitive Map at 1:10,560 scale





Enlarged extract of Revised Definitive Map

<p>Observations</p>		<p>The Revised Definitive Map is the latest legal record of public rights of way. When disputes arise regarding the status or alignment of public rights of way then it is this map, and accompanying</p>
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		<p>statement, that are used as a basis of settling those disputes.</p> <p>The map has been scanned and can be reproduced with a degree of accuracy to scale. For illustrative purposes the first map extract above is the Revised Definitive Map reproduced as close as possible to its actual scale (1:10,560 or 6 inches to 1 mile) when these pages are printed at A4.</p> <p>The Map was prepared at this scale with the routes of the public rights of way drawn onto the OS base maps by hand. This work was done without the benefit of computers or the ability to enlarge the maps to check the alignment of the routes were correct. The task of preparing the maps was essentially an office-based job – with most of the routes recorded being copied from earlier maps.</p> <p>The second map extract is an enlarged (not to scale) extract of the Revised Definitive Map made possible by enlarging the original map on a printer or on a screen. Interpreting what is shown on these maps can be incredibly difficult and often needs to be done with reference to earlier maps prepared as part of the Definitive Map procedure and to other OS maps, aerial photographs, and site evidence.</p> <p>Over the past few years, as a result of significant changes occurring in how the salt marsh was being used, there have been a number of attempts made to determine where the Definitive Map route is recorded.</p> <p>Looking first at the map itself, it is difficult to see whether the dashed line was drawn along the base of the embankment and along the east side of the fence line as it is on earlier maps.</p>
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		<p>Without the benefit of enlarging maps and overlaying them with other maps it could be argued, particularly as the Definitive Statement refers to the route running along the river, that the Revised Definitive Map shows, within the tolerance of allowing for a hand drawn line, the thickness of lines and scale of map, the same route as it was intended to show on the Draft, Provisional and First Definitive Map.</p> <p>Over the past 20 years the County Council have developed a digital map on which all public rights of way recorded on the Revised Definitive Map are shown. This digital map is often referred to as the working copy of the Definitive Map as it shows legal changes made to the public rights of way network since 1966. It also uses a modern OS base map which shows all the changes to the landscape and substantial development that has taken place in the past 50 or more years since the Revised Definitive Maps were published.</p> <p>Routes recorded on the Definitive Map have been digitised by overlaying the Definitive Map with a modern OS base map.</p> <p>In doing so the centre line digitised by this process, which was not necessarily the line the thick pen-stroke was intended to represent, put the line of the footpath along a significantly different route which effectively climbed up the old railway embankment from point B and then ran along the top of the embankment and across the top of the remains of the swing bridge footings at point C continuing tight along the fence at the top of the embankment to point D and then through a previously wooded</p>
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		<p>area to point E.</p> <p>A great deal of time and effort has been spent in recent years in trying to mark out the route of the Definitive Map footpath on the ground which led officers to agree that the map appeared to be incorrect and that whilst in places it may have been possible to implement a route along that line in other places it was clearly not.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The recording of the Definitive Map route predated the development of the boatyard southwest of point E. The embankment clearly shown on OS maps up until the 1970s has been altered and the railway swing bridge removed.</p> <p>Whilst the route shown on the Revised Definitive Map loosely reflects the route that existed on the ground when the map is enlarged and each dash drawn is studied in minute detail it puts the route west of where it should have been recorded and along or on an embankment that has now been partially removed.</p> <p>The Draft Map received objections and the existence of the route as a public right of way was challenged under a legal process. Of significance is the fact that a larger scale plan was drawn to be used at the proceedings – which showed the route in more detail along the base of the embankment and on the salt marsh side of the fence line and this line is consistent with other records examined.</p> <p>There appears to be no evidence that between point A and point C the Definitive Map line is correct and all the evidence examined indicates that it is the route shown on the Draft Map that most accurately and precisely reflects</p>



		<p>the route of the public footpath along the river bank and passing through the boatyard, particularly as it has the benefit of having being scrutinised formally in 1955.</p> <p>Committee plan 2 shows the proposed deletion of part of Footpath 8-16-Ordnance Survey5 and part of Footpath 8-10-Ordnance Survey46 and addition of a public footpath.</p>
<p><b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b></p>	<p>1929 to present day</p>	<p>In 1929 the responsibility for district highways passed from rural district councils (and later from urban district and borough councils) to the County Council. For the purposes of the 1929 transfer, public highway 'handover' maps were drawn up to identify all of the rural district-maintained highways within the county. These were based on existing Ordnance Survey maps and coloured to mark those routes that were publicly maintainable by the rural district council. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 36 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</p>



		not does not determine whether it is a highway or not.
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Observations		The route is not recorded as a publicly maintainable highway on the county council's List of Streets and was not shown as a publicly maintainable highway in the records believed to be derived from the 1929 Handover Map.
Investigating Officer's Comments		The fact that neither route is recorded as a publicly maintainable route in the County Council's Highway records does not mean that public rights do not exist. No inference can be made.
<b>Highway Stopping Up Orders</b>	1835 – 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No legal orders relating to the creation, diversion or extinguishment of public rights



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



Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the county council for the area over which the route under investigation runs.
Investigating Officer's Comments		There is no indication by the landowners under this provision of non-intention to dedicate any other 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 appears that a footpath along the river bank and passing through the boatyard came into being possibly in excess of 20 years prior to the parish survey map being compiled in the 1950s and possibly before the removal of the railway track from Tarleton to Hesketh Bank. Railway plans prepared before the construction of the railway suggest that there may have been a trodden path along the river bank in the 1800s leading to and from the Becconsall Ferry which was shown on the First Edition 6 inch Ordnance Survey map.

Map and documentary evidence examined from the late 1800s through to the 1940s did not show the route under investigation, or any trodden route, and does not assist in determining what route – if any – was being used by the public at that time.

Once the Tarleton Branch had been removed in the early 1930s use of the 'river bank' path from Tarleton locks through to Hesketh Bank increased as evidenced by the aerial photographs, OS maps and references to a footpath along the marsh when the Definitive Map was being prepared.

Aerial photographs taken in the 1940s show traces of a trod along the river bank although this is neither along the Definitive Map Route or ECP route.

Maps and aerial photographs between the 1940s and the 1960s – when the swing bridge was removed – provide evidence that a route did exist – but that it was along the edge of the salt marsh and 'under' where the former railway swing bridge was located and not the Definitive Map route.

Whilst the route shown on the Revised Definitive Map loosely reflects the route what existed on the ground the Investigating Officer considers that when the map was drawn it put the route further west of where it should have been recorded and along or on an embankment that has now been partially removed.

When looking at the legal process that was followed to prepare the Definitive Map it is the Investigating Officer's opinion that the Draft Map is of enormous relevance. The Draft Map received objections and the existence of the route as a public right of way was challenged under a legal process. Of significance is the fact that a larger



scale plan was drawn to be used at the proceedings – which showed the route in more detail along the base of the embankment and on the salt marsh side of the fence line and most importantly this line is consistent with other records examined.

There appears to be no evidence that the current Definitive Map line A-B-C-D-E is correct and all the evidence examined indicates that it is the route shown on the Draft Map that most accurately reflects the route of the public footpath along the river bank and passing through the boatyard.

### **Deletion of Footpath A-B-C-D-E as recorded on the Definitive Map and Addition of Footpath A-X-E as recorded on the Draft Map (as shown on Committee Plan 2)**

The Investigating Officer considered that there was no map or documentary evidence supporting the fact that the Definitive Route correctly recorded the route of the public footpath acknowledged to exist between these two points and all the evidence examined indicates that it is the route shown on the Draft Map that most accurately reflects the route of the public footpath along the river bank and passing through the boatyard.

For a way to be deleted from the Definitive Map and Statement there has to be sufficient evidence that the Definitive Map and Statement is incorrect, not merely lack of evidence that it is correct. In this case once it is established that evidence supports the addition of the path described above this sheds doubt that there would be 2 footpaths so close together serving the same purpose and A-B-C-D-E would be far less likely to be used, given the need to climb up to the level of the swing bridge and descend again, to cross a live railway which would be fenced against such use, and walk part way up a steep side-slope for significant parts of its length.

The decision to make a legal order(s) to rectify this error must be guided by the evidence even if in practical terms the route recommended to be added is no longer useable. In this case the route in existence prior to the extension of the boatyard, removal of the railway bridge and more recent redevelopment of the brick works is, in part, no longer accessible, due to the development of the boatyard. From a practical point of view, there is nothing that would stop this route being opened, albeit it is noted that there are trees which would need to be felled or trimmed and several boats and caravans currently obstruct the route.

However, acceptance of this error and an agreement to divert any part of the 'Draft Map' route necessary may be the most viable option. Alternatively, further investigations may be merited to establish whether the ECP route through the boatyard is already a public footpath in law (in addition to the Access Land rights conferred by ECP status), in which case it should be added to the Definitive Map and if the order was confirmed would potentially result in there being (at least) two public footpaths through the site unless or until such a time that an order was made and confirmed to extinguish one.

## **Head of Service – Legal and Democratic Services Observations**

### **Landownership**







South of the dismantled railway bridge the routes under investigation cross land which has been in the registered landownership of Persimmon Homes Ltd. since 2018.

Persimmon Homes Ltd are the registered owners of the land abutting two sides of the land over which the former railway swing bridge was constructed at point C but the land crossed by both the Definitive Map route and the ECP route at this point is not registered.

North of the unregistered plot of land at point C the land crossed by the ECP, Draft Map and Definitive Map routes has been in the registered ownership of Coxon Property Limited since April 2021.

Of great concern to the current owner of the boatyard is his liability to the public passing through the boatyard on the ECP route – or in attempting to use the Definitive Map route. Whilst this is not normally addressed in a definitive map modification order report a landowner's liabilities to the public are summarised below.

If a route has been designated as part of the ECP but there are no existing public rights already along it, then landowners benefit from a low level of occupier liability. Essentially, landowners/occupiers are not responsible for any damage or injury caused by any physical features of the land, whether natural or man-made. However, liability is not excluded if a landowner does something reckless or deliberate that would endanger someone.

With regards to an existing public right of way the responsibilities of the County Council and landowners are no different from any other public right of way. A landowner is not legally required to have public liability insurance but many would choose to do so to protect themselves against claims. If a landowner employs anyone, in this case at the boat yard, they will need employers' liability insurance



covering them or their clients or a member of the public who claims they have been injured, or their property damaged, because of business activities.

We have seen no evidence that having a public right of way or route designated as part of the ECP will prevent a landowner getting public or occupier liability insurance.

### **Information from the Landowners**

Persimmon Homes responded to consultation to clarify the land in their ownership and to further clarify the boundaries being laid out on the ground as part of recent development.

The owner of Douglas Bank Boatyard provided a detailed response to our consultation, noting that complexities of this case have made it difficult to provide detailed information.

The owner asserted that irrespective of the line that may have been walked in the 1950s the Definitive Map line recorded in the 1960s accurately reflects the route that was walked by the public at that time.

The owner recalled their father having a boat at Douglas Boatyard in the late 1960s and early 1970s and at that time he wrote that the walked line of the footpath ran along the back of the boatyard, up the embankment and along the boundary of the adjoining brick works. It then passed over what used to be the railway bridge. The owner further recalled that historically there was a well-worn but private footpath along the river bank which passed under the railway bridge and that this was used by Alty's Brick Works for loading cargo onto boats.

The owner further recorded that in the 1950s Alty's leased the land to a local farmer. The farmer kept cattle on the land so a fence and stile was put in place along the river bank where the private footpath ran however there was no public access to the private footpath along the river bank and under the bridge in the 1950s or indeed the 1960s.

The owner says that there are a substantial number of local residents that can testify to the fact that in the 1960s when the Definitive Map was recorded, the walked line was the Definitive Map line and that there was no public access to the footpath running under the railway bridge at that time.

The owner objects to any change to the recorded line of FP0810046. He is unhappy about the current ECP following the walked line through the centre of the boatyard and along the river bank citing concerns regarding users being trapped by the tides, noting previous issues of this nature. He also raised further issues and concerns regarding safety of walkers passing through the boat yard, insurance provisions for the boat yard and potential costs arising from the investigation. The owner stated that Natural England were amenable to varying the line of the ECP to address these concerns.



## **Information from Others**

The local Ramblers Association footpath secretary responded to consultation to state that their records do not go back to the 1960s but noted that in recent years the only line they had walked is through the boatyard. They noted comments made to the association to the effect that previously the parish council instigated signage which was confusing, but could not comment further on this.

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

A local resident recalled that when the railway was in operation, where the railway bridge spanned the river, there were paling fences maintained to prevent people from going under the bridge, which had limited success in doing so. As a result, he recalled a well-trodden path that people used. [This is in accord with the British Railways Board objection being withdrawn on the basis that the path under the bridge had been used by the public]

To clarify the route referred to in the letter the Investigating Officer met the resident on site. The resident explained that as well as the path under the railway bridge, following the closure of the railway in the 1960s, an alternative route partially created by cattle started to be used to access the higher triangular shaped area of land between the two former railway lines and then across the dismantled railway along the edge of Alty's yard before descending back down the embankment. He further explained that the dismantled railway was subsequently fenced off preventing access along this route but could not recall when this was done.

The resident explained that it was always understood that the whole question of public rights of way around this area was one of some local controversy but it was his understanding that the footpath shown on the LCC Definitive Map was along the top of the crest of the prominence which separates the Heritage Park and the Persimmon development from the Douglas Boatyard and river bank leading to it.

The Investigating Officer sought further clarification on this last point and the local resident explained that he understood that the route was recorded on the Revised Definitive Map (First Review) along the top of the embankment but that he never recalled the walked route being on or along the top of the embankment through Douglas boatyard – only that the former ramp up to Alty's brick works was used to avoid the boggy ground along the marsh until the dismantled railway was fenced off.

## **Officer's Comments on Information from Landowner and Others**

The legal line which we seek to clarify is that recorded following the 1949 Act and preparation of the First Definitive Map. Our consultation requested information about the 1950s but it is acknowledged that anyone who would have been old enough to be aware of the position of public rights and to distinguish private from public or trespass, say 10 years old, at the time of the parish survey would be at least 80 years old now which limits the scope for potential witnesses. Those who are in their 70s now would only have known the path in the 1960s or later rather than at the time of the parish survey and original definitive map process. It is possible that other walked lines from the 1960s or 1970s have acquired public rights on additional lines



but that is not the focus of this report and we do not have clear enough first-hand user evidence to pursue those possibilities. It is not unusual that the lines walked, surface, structures and other elements have changed over the decade and we try to understand the story rather than a static picture in order to establish the situation at the time the footpath was originally recorded. No amount of use of a line over the railway bridge in the 1960s or 70s would remove any earlier public rights from under the bridge nor effect a diversion. A diversion from under to over the bridge was proposed but no Order has been discovered.

The reference to a fence erected by the tenant farmer is in accord with the documentary evidence although the assertion that the stile was only for a private footpath to load cargo is at odds with the evidence of the parish survey references to stiles and the complaint about obstruction of the public path.

The reference to many other people who could be witnesses to support the view that the footpath ran over the bridge is of no assistance unless such people do present evidence themselves.

Whilst we note that matters of safety, costs or effects on the owners are important they are strictly matters for the management of any public paths not whether or not such public rights do or don't exist. Similarly important matters relating to the ECP are for discussion with Natural England and have no relevance to the consideration of where the public footpath runs.

## **Assessment of the Evidence**

### **The Law - See Annex 'A'**

## **Conclusion**

A very detailed investigation has been carried out to determine whether these parts of footpaths FP0816005 and FP0810046 have been correctly recorded on the Revised Definitive Map (First Review) or if it has been incorrectly recorded and should have been recorded along a different route.

The map and documentary evidence in relation to this matter is documented above together with the conclusions drawn by the Head of Service – Planning and Environment.

The Investigating Officer considered that there was no map or documentary evidence supporting the Definitive Map route A-B-C-D-E as being the route of the public footpath acknowledged to exist between these two points and all the evidence examined indicates that it is the route shown on the Draft Map shown as a thick dashed line A-X-E on Committee Plan 2 that most accurately reflects the historical route of the public footpath along the river bank and passing through the boatyard.

It is advised that to remove a route from the Definitive Map it is necessary to show on balance that it was put on the Definitive Map in error.



In this matter the route to be deleted (A-B-C-D-E) was first shown on the Definitive Map (First Revision) dated 1975 but with a relevant date of 1<sup>st</sup> September 1966 and so the error needs to be shown to have been made in 1966.

The case of *Trevelyan v Secretary of State for the Environment, Transport and the Regions* [2001] confirms that cogent evidence is needed before the Definitive Map and Statement are modified to delete a right of way. Lord Phillips M.R. of the Court of Appeal stated at paragraph 30 of his judgement that:

*“Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake.”*

One such evidence of error could be sufficient evidence of a correct route.

In *R (on application of Leicestershire CC) v Secretary of State for the Environment Food and Rural Affairs* [2003] Collins J held that in these circumstances:-

*“it is not possible to look at s53(3)(c)(i) (adding a route) and s53(3)(c)(iii) (deleting a route) in isolation because there has to be a balance drawn between the existence of the definitive map and the route shown on it which would thus have to be removed.”* He went on, *“if (the decision maker) is in doubt and is not persuaded that there is sufficient evidence to show the correct route is other than that shown on the map, then what is shown on the map must stay because it is in the interests of everyone that the map is to be treated as definitive ... where you have a situation such as you have here, it seems to me that the issue is really that in reality section 53(3)(c)(iii) will be likely to be the starting point, and it is only if there is sufficient evidence to show that that was wrong – which would normally no doubt be satisfied by a finding that on the balance of probabilities the alternative was right – that a change should take place. The presumption is against change, rather than the other way round”.*

It is therefore suggested that the Committee first consider whether the route originally recorded on the Parish Survey and Draft Map in the 1950s (A-X-E on Committee plan 2) is already a footpath at law and should be added to the Definitive Map and then whether this means that it was still the correct route of the footpath network in 1966 and that the route A-B-C-D-E was recorded on the Definitive Map in error in 1966.



This is an investigation carried out into the historical alignment of the public footpath and no user evidence forms were submitted for the route A-X-E.

Consultations were carried out with the current landowners and relevant parish councils specifically seeking information about the route in the 1950s or earlier but limited information going back this far was received. The current owner of the boatyard referred to knowledge of the route in the 1960s and 1970s and described it as running along the back of the boatyard and up the embankment along the boundary of the brickworks to cross the former railway. However, Ordnance Survey mapping shows the boatyard as it exists today did not exist until at least 1973 – when the land crossed by the 'Draft Map route' was still shown as open land and it is not until sometime after that (but before 1988) that the boatyard was extended.

The information provided by the current owner of the boatyard is not inconsistent with the investigations carried out by the County Council but does not provide evidence that the route recorded on the 1966 Definitive Map was the correct legal line. There is evidence that in the 1960s the public were using a route up the ramped access to Alty's boatyard and across the former railway line but when the possibility of legally diverting the footpath onto this line was investigated no agreement was reached and the information on the County Council files confirms that the original legal route of the footpath was under the railway and along the bottom of the embankment.

The current landowner also refers to a private footpath that existed in the 1950s along the river bank and the erection of private stiles. Again, it is clear from the County Council records that Hesketh Bank Parish Council recorded the public footpath running under the railway and along the river bank in the early 1950s and despite this being challenged under a formal process the route was subsequently recorded as a public footpath with any reports of obstructing fences being dealt with and stiles being made available along the route.

The route A-X-E is shown on the Parish Survey Map, Draft Map and essentially is the same on the Provisional and First Definitive Map. The route recorded on the Draft Map importantly was subject to an objection with a hearing set in Ormskirk for the 25<sup>th</sup> February 1955. Thereafter the objection was withdrawn but the detailed plans prepared for the legal process aligned with the Draft Map.

The route to be added was shown as a footpath on the various stages of the Definitive Map produced between 1953 and 1962 and following the withdrawal of the objection at the Draft Map stage it received no further objections which would suggest an acceptance by the landowners and the public of the existence of the right of way along that line.

In contrast the route recommended to be deleted A-B-C-D-E is not shown on any map until being hand-drawn onto the Definitive Map during the First Revision, with relevant date in 1966. No legal orders or other documents have been found to explain the change from the route shown on the First Definitive Map onto the line A-B-C-D-E and the change appears to have had no legal basis. Error is the most likely reason.



No map or documentary evidence has been found supporting the existence of this route A-B-C-D-E and it would entail climbing up to the level of a swing bridge to cross a railway that only ceased to operate in 1964 and to traverse a steep side-slope for significant parts of its length. It is difficult to envisage that a public right of way would exist as such in preference to the relatively level lower route unless that was impassable or unavailable. Although there is evidence within files held by the county council, and from the recollections of a local resident, of later use of a route crossing over the dismantled railway and along the boundary of Alty's brick yard to descend back down the ramped access shown on the 1970s OS map this is neither the original route nor the same route recorded on the Revised Definitive Map (First Review) and there is evidence that when a diversion of the original route of the footpath was discussed this was rejected by the owners of the brickyard.

It is suggested that Committee may consider that there is evidence by way of the maps and documentary evidence that the route for deletion A-B-C-D-E on balance was recorded in error and should have continued to be recorded on the line A-X-E. The fact that part of the route A-X-E is today obstructed is of no relevance to this process and the issue in hand is ensuring the accuracy of the current Definitive Map and Statement.

If the line A-X-E can be considered to subsist as a footpath this does not necessarily or automatically prove that the nearby line A-B-C-D-E was recorded in error. The Committee should consider whether it is unlikely that two paths existed so close to each other or whether there was only one route through along the western bank of the River Douglas and through or past Douglas Boatyard which should have continued to have been recorded as A-X-E but instead route A-B-C-D-E was recorded in error.

Taking all the evidence into account it may be considered that there is sufficient cogent evidence to suggest that the route A-B-C-D-E was recorded in error and should be removed from the Definitive Map and the footpath on line A-X-E be added to the Definitive Map. It is advised that the evidence is sufficient to not only satisfy the test to make the Orders but also to promote the Orders to confirmation.

#### Applicant/Landowners/Supporters/Objectors

The evidence submitted by the applicant, landowners, supporters and 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 application. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, guidance contained both in the report and within Annex 'A' included in the Agenda Papers, officers' presentation and discussion. Provided any decision is taken strictly in accordance with the above then there is no significant risk associated with the decision-making process.

### **Local Government (Access to Information) Act 1985**

#### **List of Background Papers**

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-760		Simon Moore, 01772 531280, Legal and Democratic Services

Reason for inclusion in Part II, if appropriate

