

Regulatory Committee

Meeting to be held on 15 November 2023

Part I

Electoral Division affected:
Lancaster Rural East

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Bridleway from Cragg Road to Helks Brow, Wray-with-Botton
(Annex 'A' refers)

Contact for further information quoting ref.804-647:

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Brief Summary

Application for the addition to the Definitive Map and Statement of Public Rights of Way of a bridleway from Cragg Road to Helks Brow, Wray-with-Botton.

Recommendation

That the application for the addition of a bridleway from Cragg Road to Helks Brow, Wray-with-Botton, be not accepted.

Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition to the Definitive Map and Statement of Public Rights of Way of a bridleway from Cragg Road to Helks Brow, Wray-with-Botton.

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

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

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

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



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

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

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

Advice

Consultations

Lancaster City Council

Lancaster City Council provided no response to consultation.

Wray-with-Botton Parish Council

Wray-with-Botton Parish Council provided no response to consultation.

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	6239 6679	Metal field gate at junction with Cragg Lane
B	6243 6661	Metal field gate
C	6241 6644	Metal field gate
D	6236 6627	Metal field gate at junction with Helks Brow
E	6229 6627	Sheep netting and wire fence at junction with Helks Brow



Description of Route

A site inspection was carried out in September 2021.

The Application route is approximately 550 metres long.

The application route leaves Cragg Road on a sharp bend from where Cragg Road continues north to Cragg Hall (and beyond) or north west to Higher Broadwood (and beyond). The application route leaves the metalled road to pass through a metal gate providing access through a stone wall and along the route which runs in a south south easterly direction bounded to the west by a substantial stone wall and separated from the field to the east by a wooden post and rail/sheep netting fence through which access was available via a further metal field gate.

From point A the application route passes along a strip of land between the wall and fence approximately 7-8 metres wide. The surface, whilst grass underfoot, is firm with evidence of stone in places indicating that some surfacing may have been carried out previously.

The route follows the edge of the field and midway between point A and point B the fencing on the east side of the route turns through 90 degrees to continue away from the from the application route whilst the route continues along the edge of an open pasture field. There is no evidence of a walked or ridden route with some minimal evidence of use of the route by vehicles – most likely farm machinery.

Approximately 190 metres from point A the route passes through a metal field gate in a stone wall at point B and continues southwards for a further 175 metres through pasture with a stone wall on the east side to another gate at point C.

From point C the application route continues south south west across a pasture field directly to a metal gate leading onto Helks Brow at point D. Between point C and point D the surface of the route is grass but in places it can be seen that a track had previously existed which has now grassed over.

Identified on the Committee plan is a further route marked by a thick dashed line between point C and point E and labelled as the 'Historical route'. There was no evidence of this route across the pasture field and access from Helks Brow at point E was prevented by a wooden post and sheep netting fence.

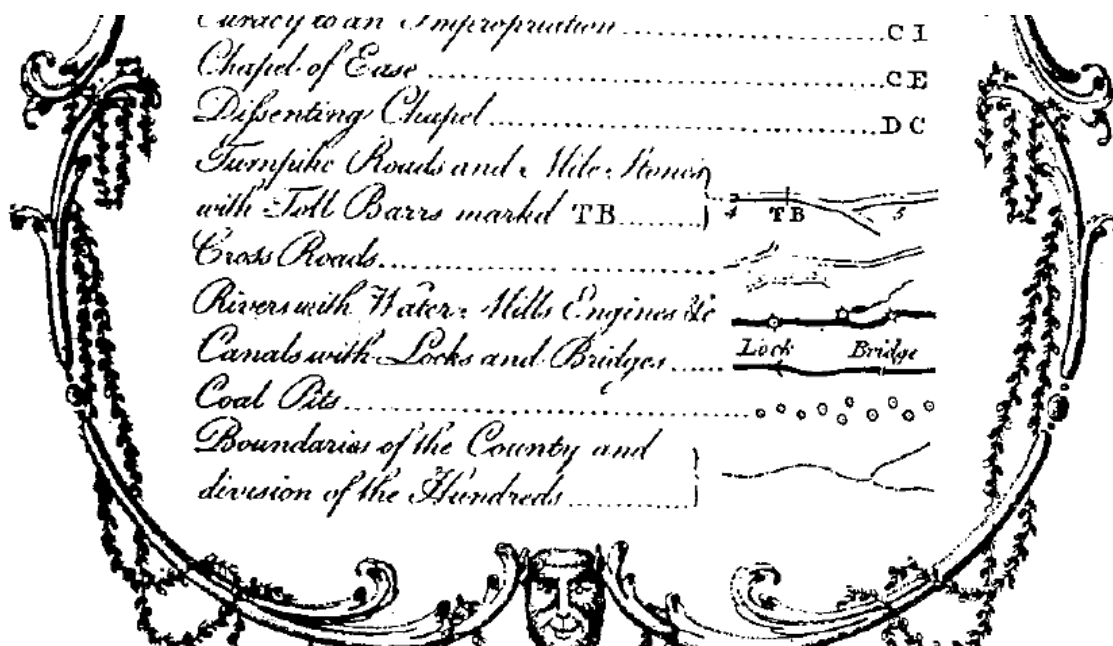
Whilst all the gates along the route were in good repair and could be opened there was no physical evidence suggesting that the route was being used by the public. No signage was located on the route indicating whether it was considered to be public or private.

Map and Documentary Evidence

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



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



Observations		A route is shown broadly consistent with the application route as a continuation of the road from Wray (Cragg Road) through to
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		Helks Brow as a cross road. The present road heading east from point A on the committee plan via Cragg Hall is not shown.
Investigating Comments	Officer's	The application route – or a route from which it derived - appeared to have existed in 1786 as part of the general road network. It is not known what is meant by the term 'cross road' but the only other category of highway shown on the map is turnpike roads so the inclusion of a route on this map suggests that a significant route existed that would probably have been capable of being used on horseback and by horse drawn vehicles at that time.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



Observations		The application route is not shown. Helks Brow is shown looping round past Park House but the road shown in the proximity of the application route in 1786 is not shown on Greenwood's Map.
Investigating Comments	Officer's	The application route may have existed in 1818 but the route did not appear to have been considered to be a substantial public – or private - vehicular route by Greenwood.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George



		<p>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.</p>
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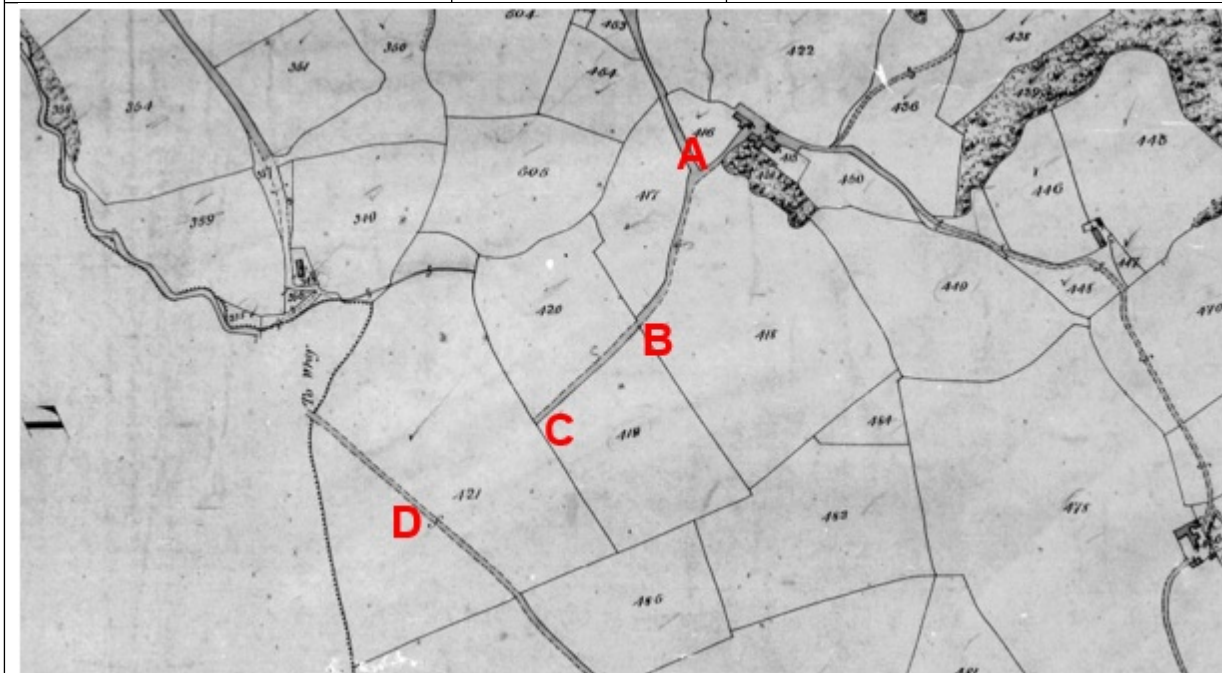
<p>Observations</p>		<p>Cragg Hall is shown with access from the north. Cragg Lane is not shown on the map and neither is the application route. Helks Brow is shown with the start of a route leading off it north – possibly towards Cragg Hall – which may have been the same route that was shown on Yates' Map over 40 years earlier.</p>
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<p>Investigating Officer's Comments</p>		<p>The application route – or a route on a similar alignment - may have existed at that time but was not considered to be a substantial public vehicular route by Hennet.</p>
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<p>Canal and Railway Acts</p>		<p>Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but</p>
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		not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The land crossed by the application route was not affected by any existing or proposed canals or railways.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Tithe Map and Tithe Award or Apportionment	1848	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.





Observations

The application route is shown extending from point A bounded along the western side and open to the field numbered as plot 418 to the east. At point B the route passes through a field boundary but is shown without a line across it to continue along the edge of plot 420 to point C where a line is shown across the end of the route. The application route from point C to point D is not shown.

Only an uncoloured copy of the map deposited at The National Archives was inspected but it could be seen that the application route from point A to point C had been coloured in the same way as all other roads that were shown on the map. Helks Brow – to which the application route connects to at point D – was shown coloured in the same way and shown bounded by pecked lines indicating that the route was probably unfenced.

None of the routes shown coloured on the map were numbered and not all of those



		<p>shown as coloured are now recorded as public vehicular routes or as public rights of way on the Definitive Map.</p> <p>Between point A and B the application route is braced as being part of hereditament 418 and between point B and point C the route is also braced as being part of hereditament 420. Both hereditaments were listed as being owned by John Saunderson and occupied by Thomas Croft and described as arable pasture for which Tithes were payable. Hereditament 421 through which the application route between point C and point D runs was also listed the same.</p> <p>No separate list of routes considered to be public roads was included in the Tithe Award.</p>
Investigating Comments	Officer's	<p>The application route between point A and point C existed as a substantial route in 1848. The Tithe Map and Award gives no indication as to whether it was considered to be a route used by the public and the fact that it was contained within two numbered hereditaments which were owned and occupied and for which tithes were payable suggests that it was not considered to be a public vehicular highway at that time although this would not necessarily preclude the fact that it may have been used on foot or horseback.</p> <p>There is no indication as to whether access was available along the application route from point C to point D which crossed an open field described as arable pasture.</p>
Inclosure Act Award and Maps		<p>Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.</p>
Observations		<p>There is no Inclosure Award available to view at the County Records Office for the area crossed by the application route.</p>
Investigating Comments	Officer's	<p>No inference can be drawn with regards to the existence of public rights.</p>

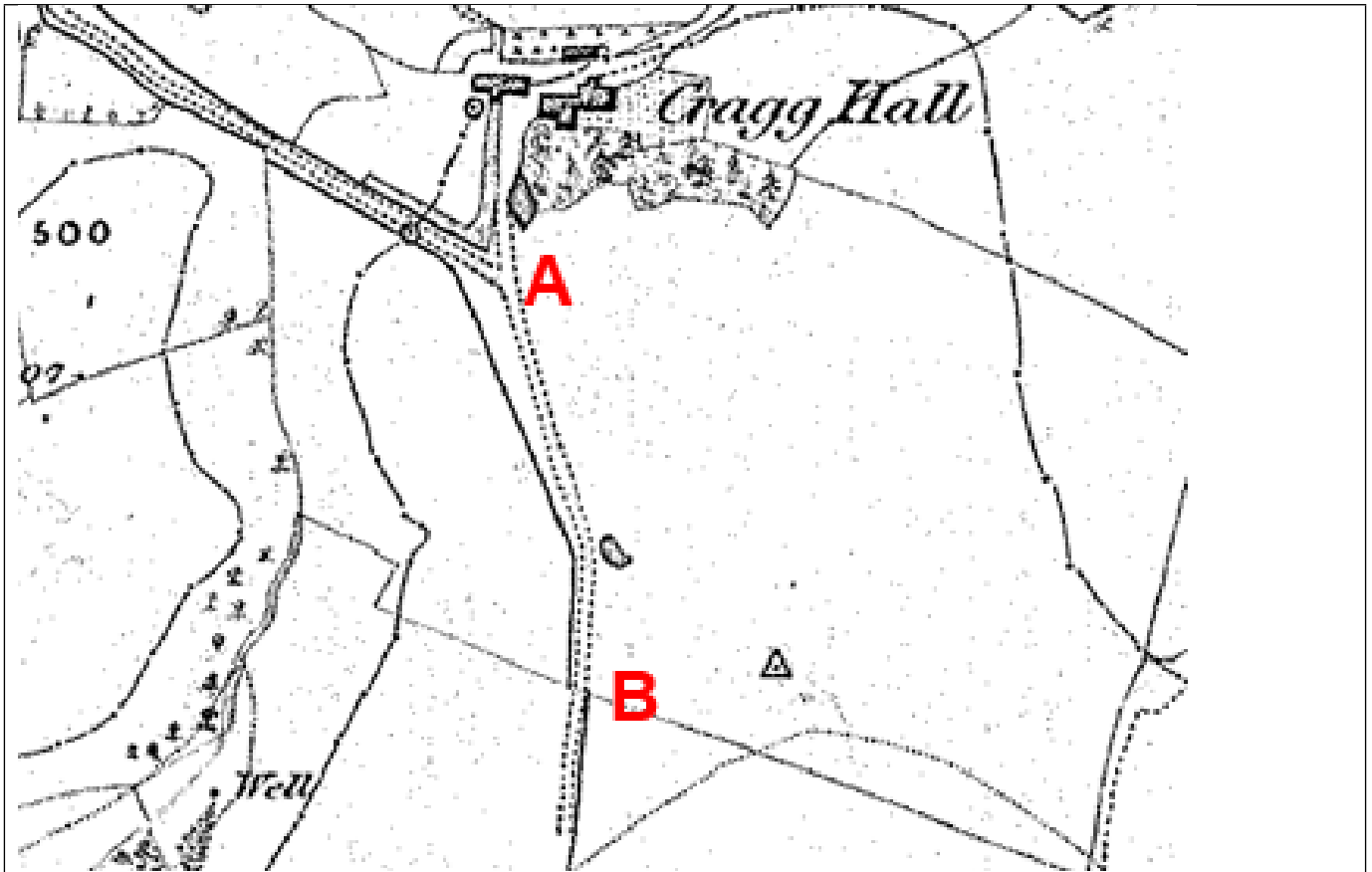


6 Inch Ordnance Survey (OS) Map Sheet 26	1847	The earliest Ordnance Survey 6 inch map for this area surveyed 1844-1845 and published in 1847. ¹
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Map extract obtained from The National Library of Scotland (as submitted by the applicant) - <https://maps.nls.uk/view/102343793>

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



Map extract obtained from the County Records Office

<p>Observations</p>		<p>The application route is shown between point A and point B consistent with how it was shown on the Tithe Map prepared around the same time. A line is shown across the route at point B on the 6 inch map although other copies of the same map – also published on the same date, including the copy held by the County Records Office – do not appear to show the line across the route at point B.</p> <p>A route is shown to extend from point B along the application route towards point C but to stop partway between the two. A line is shown across the route at point C and the application route is not shown between point C and point D.</p> <p>Two small quarries/gravel pits are shown to the east of the route between points A-B and points B-C with the most direct access to both being via the application route A-B.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>Part of the application route existed in 1844-45 but a through route connecting to Helks Brow is not shown.</p>



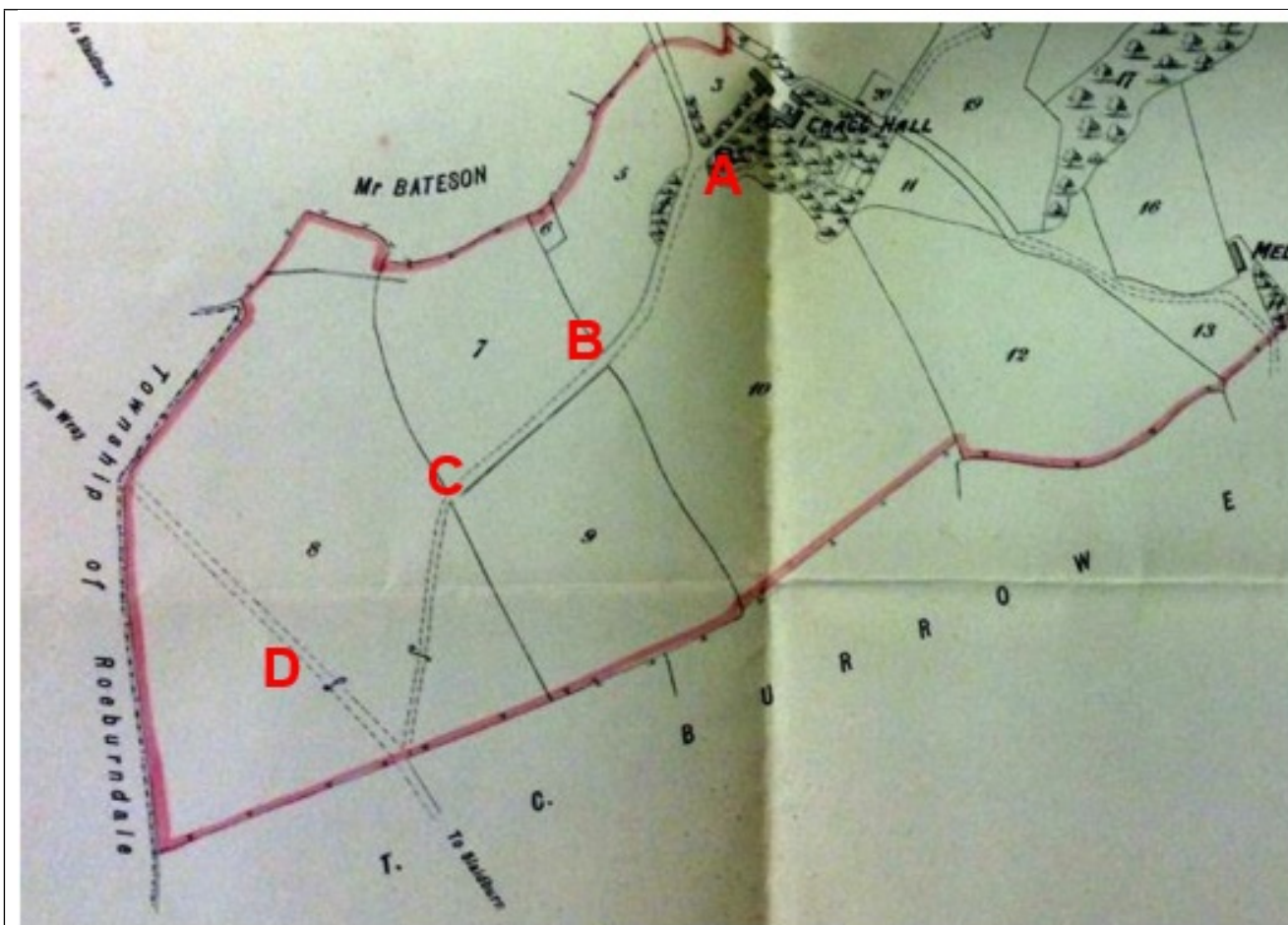
Sale Documents CRO Reference: DDHH 1/592	1856	Documents relating to the sale of Cragg and Broadwood farms and associated land in 1856.
Observations		Papers detailing Notice given of the sale by public auction of land described as Cragg and Broadwood Farms was inspected at the County Records Office. There was no plan or map accompanying the notice and no clear description of the land to be auctioned. The conditions of sale specified that the purchaser was to take the lands specified subject to all rights of way and easements but did not specify what they were. The land was said to be tenanted by James Carr.
Investigating Comments	Officer's	Land crossed by the application route may have been sold in 1856 but the documentation available did not include a map and did not assist in determining what public rights may have existed along the application route at that time. The occupier of the land (James Carr) was not the person listed as tenanting the fields crossed by the application route in the Tithe Award prepared several years earlier although tenancies can change and so this cannot be taken as confirmation that the land to be sold did not include the application route.
Cassini Map Old Series	1852-1865	The Cassini publishing company produced maps based on Ordnance Survey mapping. These maps have been enlarged and reproduced to match the modern day 1:50,000 OS Landranger Maps and are readily available to purchase.





Observations		The northern part of the application route from point A and continuing towards point B can be seen but the rest of the route is not shown.
Investigating Comments	Officer's	<p>The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown had public rights for those travellers.</p> <p>In this instance it appears that at least part of the application route existed in the mid-1800s but the map provides no evidence of the existence of a through route.</p>
Sales documents CRO Ref: DDHH 1/593	1887	Further sales documents relating to land crossed by the application route.





PARTICULARS.

Nos. on Plan.	NAMES OF FIELDS.	Quantity in Stat. Meas.		
		A.	R.	P.
1	Cragg Hall House, Outbuildings, Fold, Gardens, Shrubberies, Plantation, &c.	3	0	28
2	Orchard, formerly part of Meadow below House	0	0	20
3	Copy	1	1	8
4	Plantation, formerly part of Kiln Moor	0	0	34
5	Kiln Moor	4	1	6
6	Garden, formerly part of Stubble Moor	0	0	32
7	Stubble Moor	6	3	38
8	Far Park	26	3	13
9	Green Moor	9	1	4
10	Near Park	16	3	31
11	Part of Parrock	1	1	22
12	Moss Close	9	3	34

Observations

Documents relating to the further sale of Cragg Hall, Broad Wood and Melling House were also inspected. The properties were to



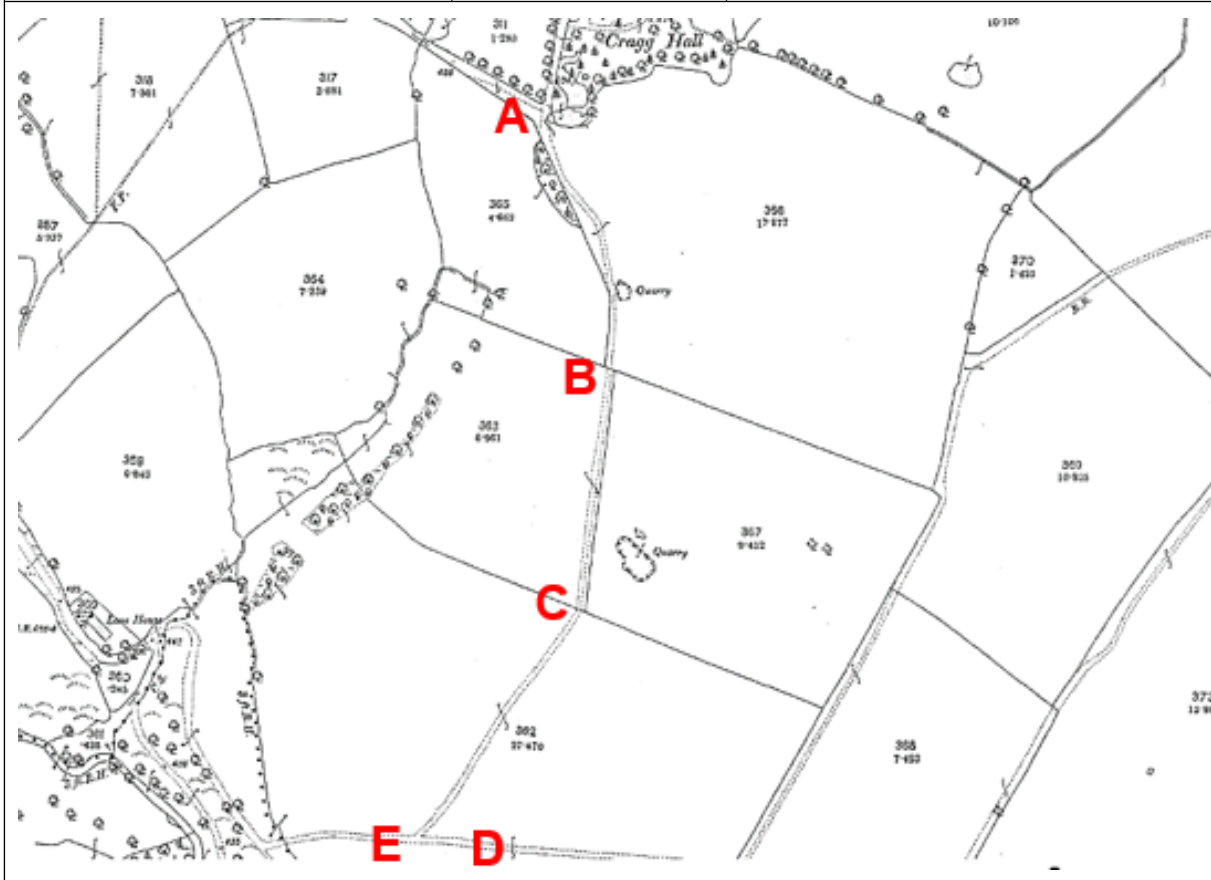
		<p>be sold at public auction in August 1887 and within the deposit was a plan of the estate to be sold. The plan showed that the land crossed by the application route was to be included in the sale. The plan, dated 1887, shows application route between point A and point C as it was shown on the earlier OS maps and Tithe Map. Between point A and point B the route is shown as part of the field numbered as plot 10 and is named as 'Near Park' in the Particulars and between point B and point C the route is within plot 7 named as Stubble Moor.</p> <p>Beyond point C an unfenced route is shown crossing the field numbered as plot 8 and named Far Park. The route – depicted by double pecked lines is shown crossing the field in a south easterly direction to the eastern boundary of the land to be sold where it joins Helks Brow (which is labelled with the ongoing destinations of To Slaidburn and From Wray). The route from point C to Helks Brow is along a different alignment to the route applied for.</p> <p>No details are provided on the Map or within the particulars regarding the public or private status of any of routes shown.</p>
Investigating Comments	Officer's	<p>The application route from point A to point C existed in 1887 and formed part of a longer route connecting to Helks Brow. It is not known whether this route would have been accessible to the public in 1887 and it is included within the boundaries of land to be sold with the inference that the routes shown would have at least provided access to and from the properties included in the sale to access public roads. Helks Brow (now recorded as a public route) is shown with the ongoing destinations of Wray and Slaidburn suggesting that this was a route of some public significance but this does not necessarily mean that the application route – leading directly to Cragg Hall – would also be used by the public at that time and it is to be expected that a plan prepared for the specific purpose of identifying land to be sold would include any routes providing access to the property including those with public and private rights.</p>

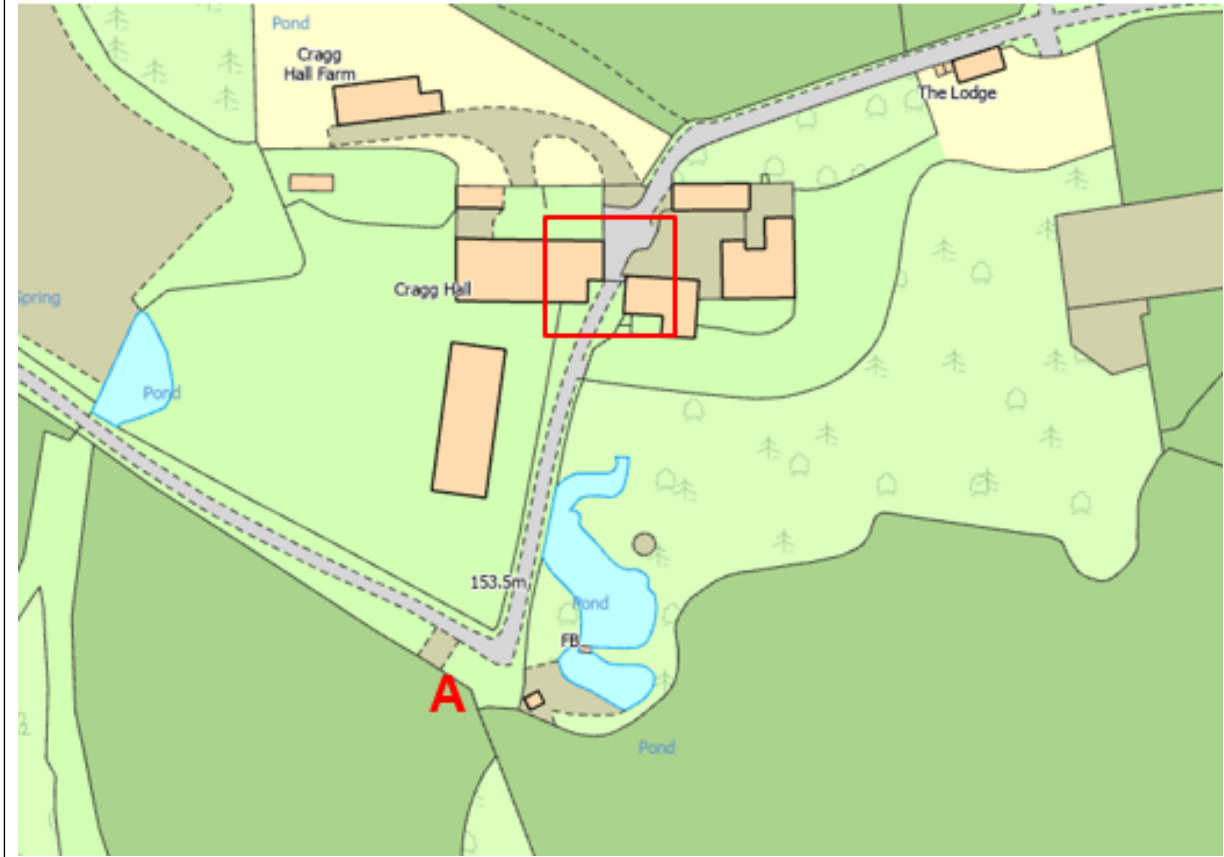
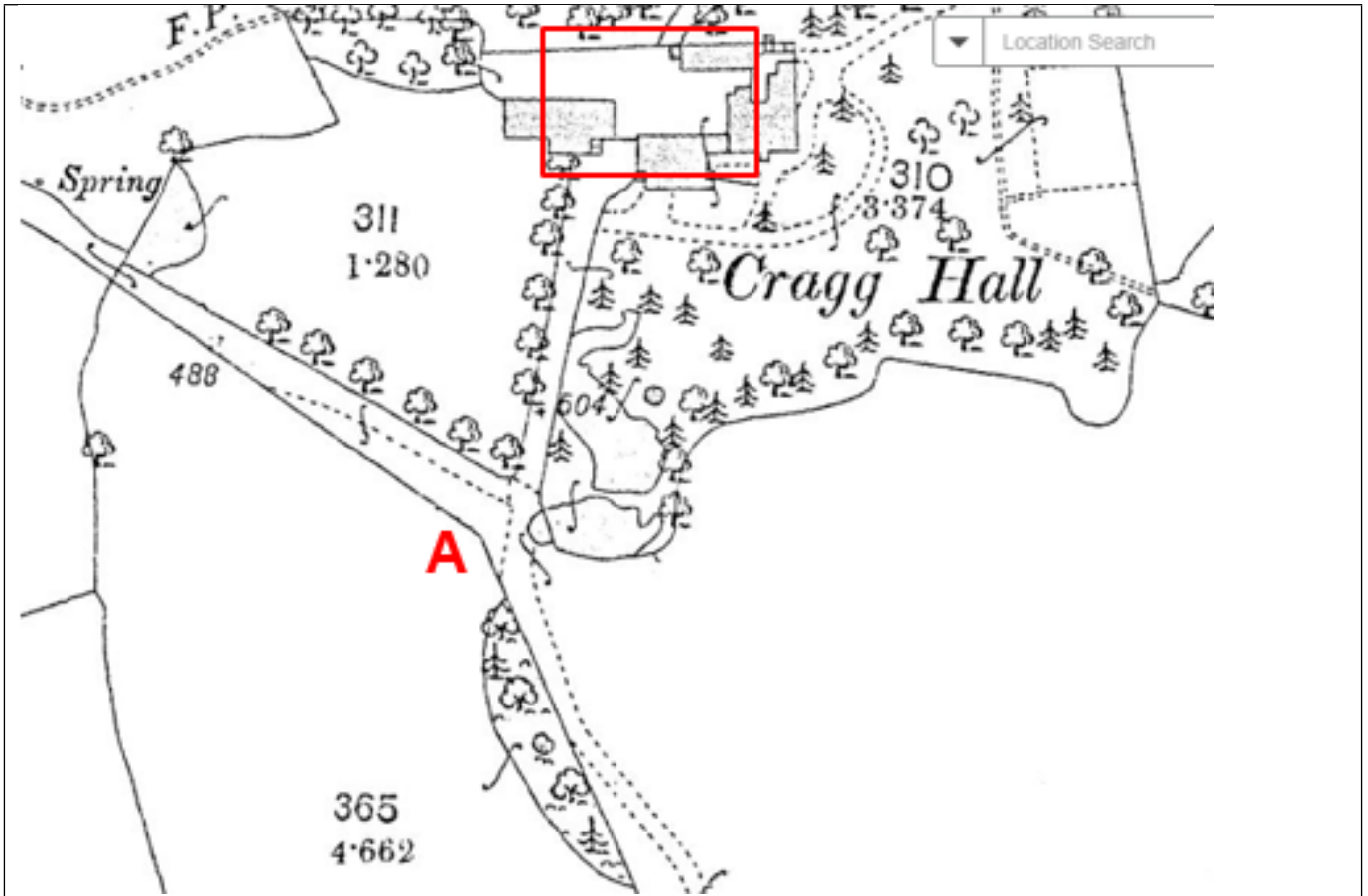


25 Inch OS Map
Sheet XXVI.13

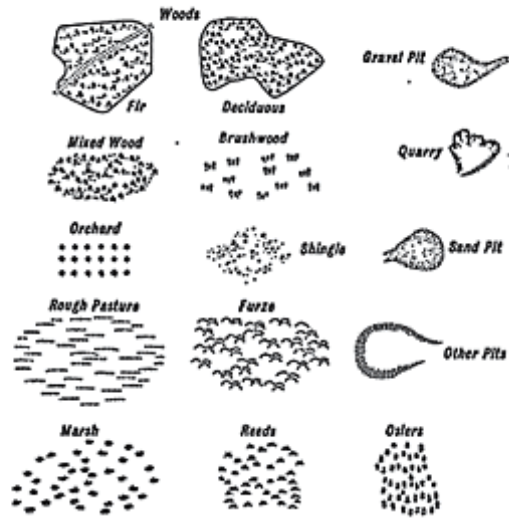
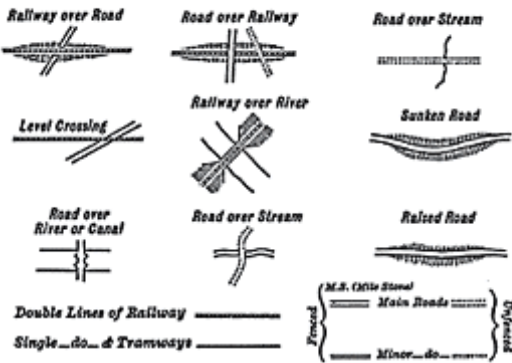
1891

The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1891.





1:2,500 County Series Published 1855-1896



Counties (Geographical).....
County & Civil Ph......
Administrative County & Civil Parish.....
(Part of Geographical County)
County Boroughs (England)..... **Co. Boro. Bdy.**
County Burghs (Scotland)..... **Co. Burgh Bdy.**
Parliamentary County Divisions..... **Parly. Div. Bdy.**
Parliamentary Boroughs..... **Parly. Boro. Bdy.**
Municipal Boroughs..... **Munl. Boro. Bdy.**
Civil Parishes.....

Parliamentary Boroughs..... **P**
Divisions of Parly. Boroughs..... **D**
Municipal Boroughs..... **M**
Urban Districts..... **U**
Police Burghs (Scotland)..... **P**
Civil Parishes..... **P**
Towns (Other than the above)..... **T**
Districts (Close) in Towns & Suburbs..... **D**
Districts (Open) in Towns & Suburbs..... **D**
Antiquities { ROMAN (A.D. 43 to A.D. 420.)
 { Pre & Post Roman (to A.D. 1714.)

Mile Stone..... **M.S.** **Foot Bridge**..... **F.B.**
Pump..... **P** **Foot Path**..... **F.P.**
Signal Post..... **S.P.** **Bridle Road**..... **B.R.**
Guide Post..... **G.P.** **Trigl Station**..... **△**
or Board.....
Letter Box..... **LB**
Bench Mark..... **B.M. 325.9 ↑** **Sluice**..... **Sl.**
Surface Level..... **.285** **Trough**..... **Tr.**
Boundary Stone..... **BS** **Spring**..... **Sp.**
Post..... **BP** **Well**..... **W**
 Mooring Ring..... **M.R**
 Mooring Post..... **M.P**

Source: <http://www.ancestry-maps.com/page-legend.asp>

Observations

The First edition 25 inch OS map is the earliest OS map published at this scale providing much more detail of what the route was like at that time. The land was surveyed in 1890 – three years after the sales plan detailed above had been produced.

At point A access from Cragg Lane is shown unrestricted following a track along the east side of a field boundary and contained within field parcel number 366. It passes a small quarry and continues to point B where a solid line is shown across the route - probably indicating the existence of a gate.

From point B the route continues to the west of a field boundary following the field

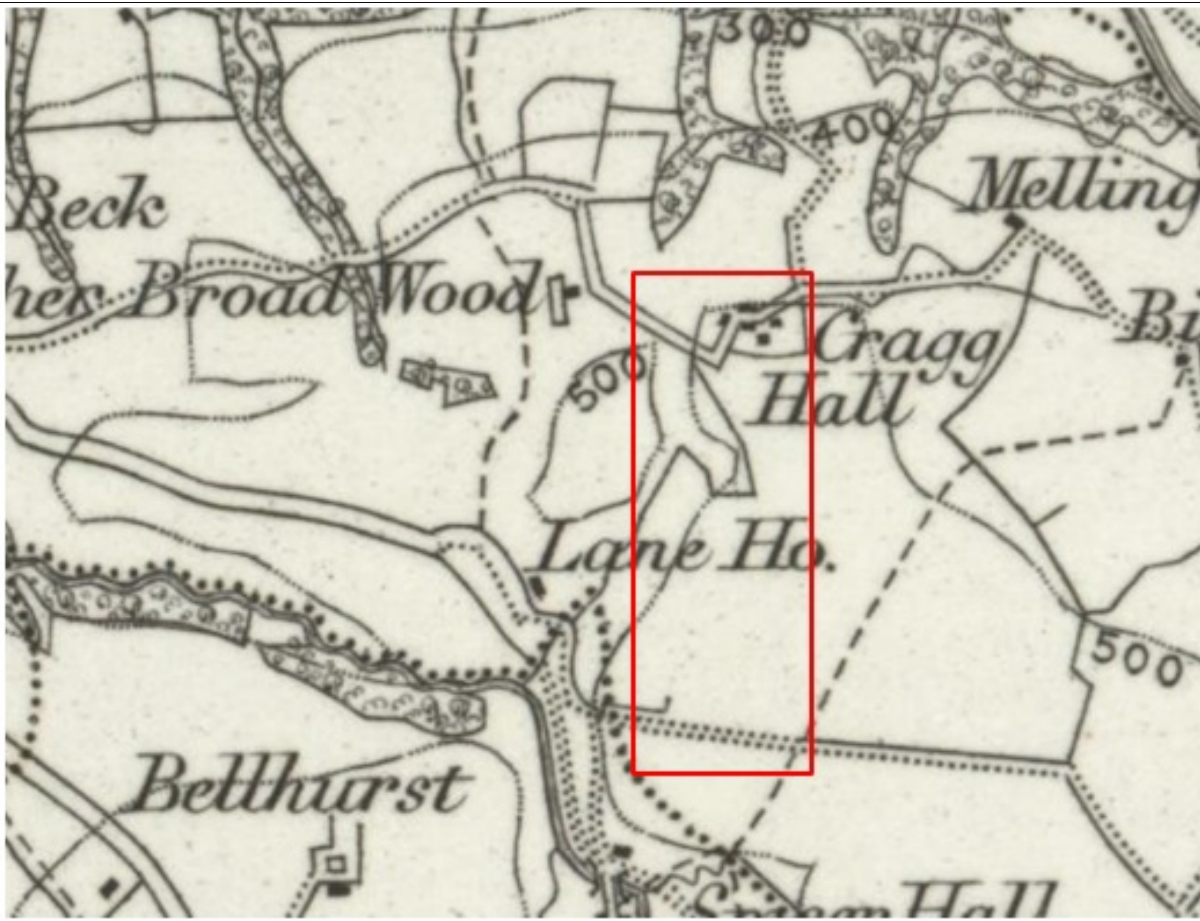


		<p>boundary through field parcel number 363 to point C. At point C the route is crossed by a further solid line – most likely indicating the existence of a further gate.</p> <p>From point C an unfenced track is shown continuing through to Helks Brow. The route is not the same as the one shown on the sales plan three years earlier and is not on the same alignment as the route applied for between point C and point D but is shown on the committee plan as being the route C-E. It passes through field parcel number 362 and is shown consistent with how Helks Brow is shown passing through the same plot.</p> <p>The route is not annotated but appears to have been shown as an unfenced minor road with 1-38-FP 18 to the east annotated partly as footpath (FP) and partly as bridleway (BW).</p> <p>Cragg Lane – which passes through Cragg Hall is also shown gated – as it is still shown today.</p> <p>Neither the application route A-C, Historical Route C-E or Cragg Lane and Helks Lane are shown with a thickened line along the south or eastern boundaries although other routes now recorded as public vehicular highways on the map are generally shown in such a way at least in part.</p>
Investigating Comments	Officer's	<p>The application route existed in 1890 between point A and point C and a route from point C to point E also existed forming a link between Cragg Lane and Helks Brow. The application route between point C and point D did not exist as a visible track on the ground.</p> <p>The Planning Inspectorate Consistency Guide states "Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage." However, it goes on to say that this is far from conclusive evidence of highway status and in this particular case the application route and Historical route C-E are not allocated separate numbers but are included within three separate numbered fields.</p>



		<p>Two gates appeared to have existed across the route at that time. The existence of gates along a public route would not have been considered unusual in the 1800s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p> <p>The route was not annotated as a footpath or bridleway suggesting that at that time it was more substantial with evidence that it could have been used – or was being used by horse drawn vehicles which would be consistent with use of a route providing access to and from Cragg Hall and other nearby properties.</p> <p>The fact that the route is not shown with a thickened line to one side on the black and white edition of the map in the way that some other routes are shown suggests that the route was not considered to be a publicly maintained vehicular road at that time. Shading and colouring were often used to show the administrative status of roads on the 25 inch maps prepared between 1884 and 1912. The Ordnance Survey specified that all metalled roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. 'Good repair' meant that it should be possible to drive carriages and light carts over them at a trot. The fact that the route was not shown in this way does not necessarily mean that it was not passable – particularly as it provided access to properties – but it may not have been considered to be a public road (via C-E) at that time. The way that it is shown on the map – again via C-E – is not, however, inconsistent with use of the route by the public at least on horseback but it is not known whether this use would have been public or private.</p>
1 inch OS Map Sheet 59 - Lancaster	1898	1 inch OS map surveyed 1893 and published 1898.



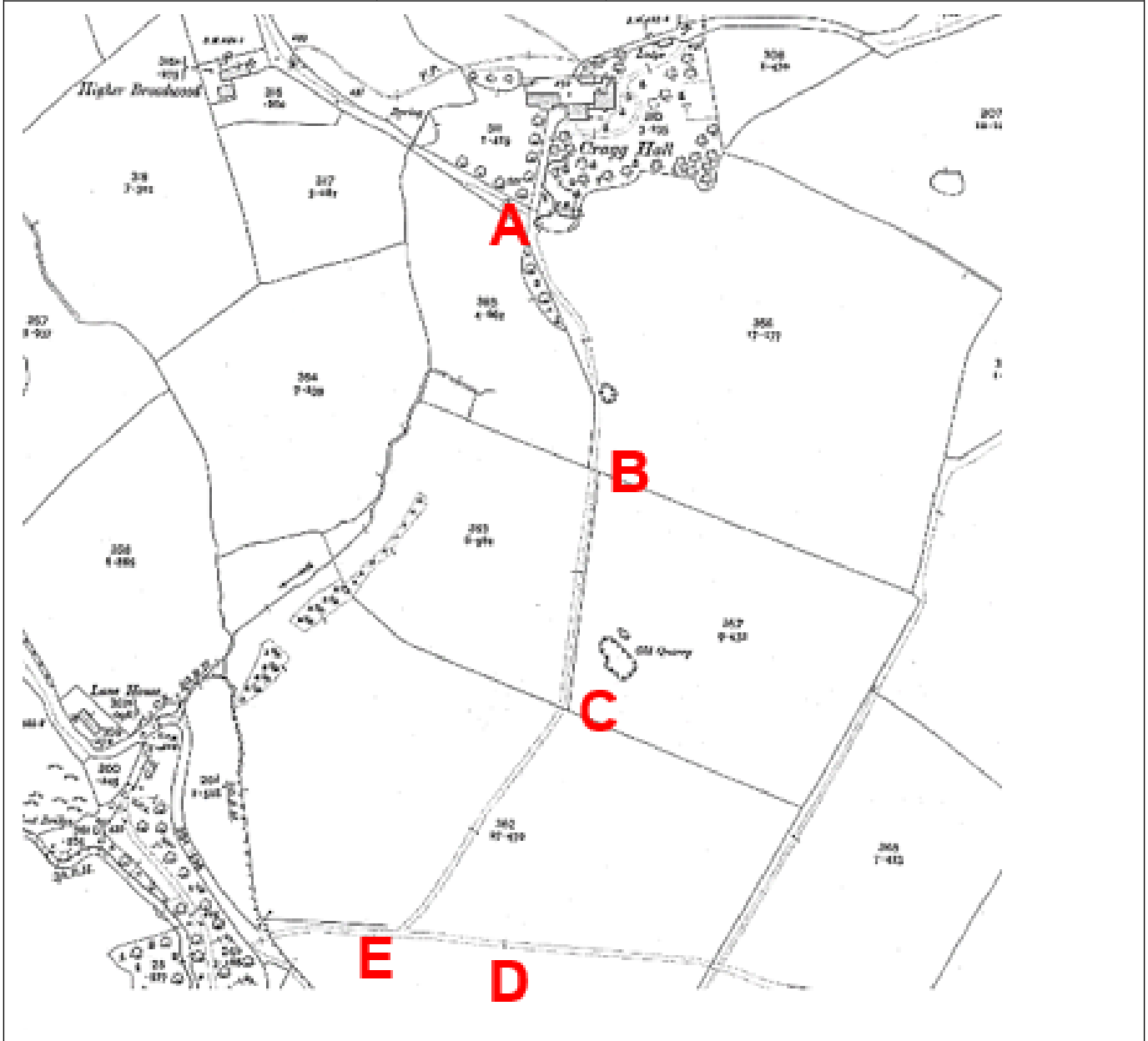


<i>Metalled Roads; First Class</i>	5 (Mile distance) (Altitude) 211	Fenced	Unfenced	.....	Church
" " <i>Second Class</i>				.....	"
" " <i>Third Class</i>				.....	"
<i>Unmetalled Roads</i>				.....	Wind
<i>Footpaths</i>				.....	Ligh
<i>Railways, Single Line</i>				.....	Ligh
				.....	Bea
				.....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

Observations		The application route and Historical route C-E are not shown
Investigating Comments	Officer's	<p>The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the roads shown had public rights for those travellers.</p> <p>The application route (and Historical route) are not shown suggesting that they were not considered to be part of a significant public</p>



		vehicular route but the fact that they are not shown does not preclude them from existing as footpaths or bridleways – or a private vehicular access routes – at that time.
25 inch OS Map Sheet XXVI.13	1913	Further edition of the 25 inch map surveyed in 1890, revised in 1910 and published in 1913.



Observations		The application route between point A and point C is shown in the same way as it is shown on the earlier edition of the 25 inch OS map. The application route between point C and point D is not shown but a route is shown to exist from point C to point E (the Historical route).
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Investigating Comments	Officer's	The application route existed from point A to point C in 1910 and appeared capable of being used as part of a longer route connecting to Helks Brow via points C-E but it is not known whether this use was public or private. The application route between point C and point D did not exist in 1910.
Bartholomew half inch Mapping	1902-1906	The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.

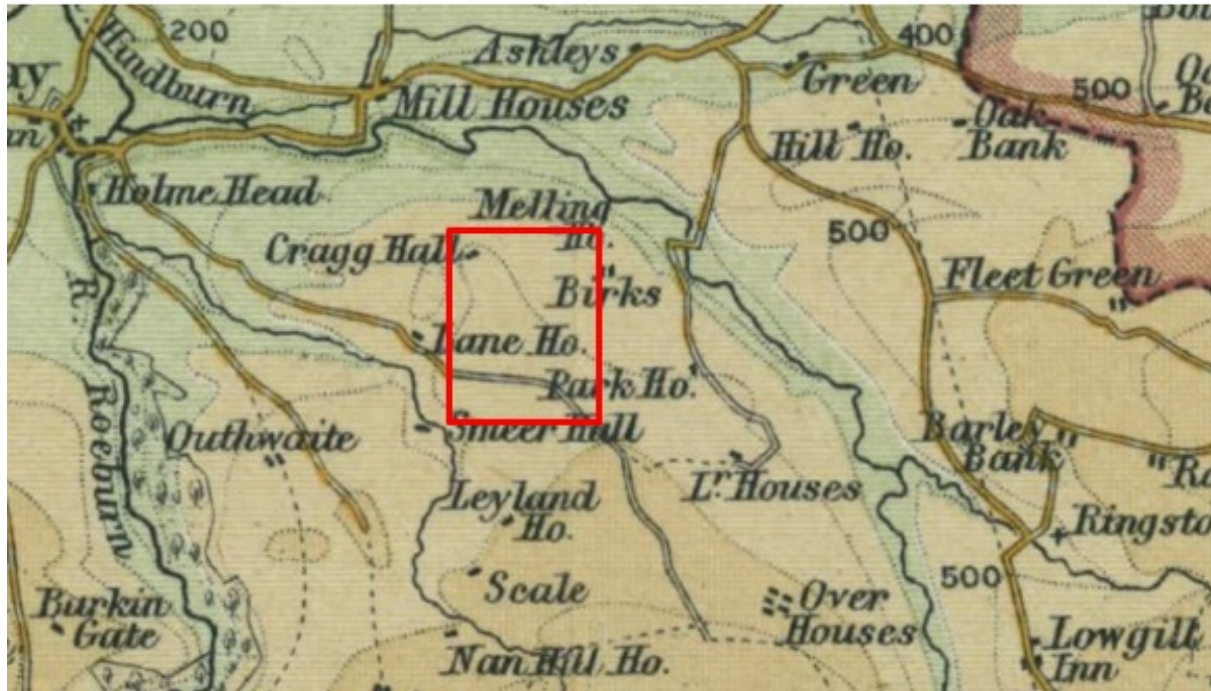


1905





1920



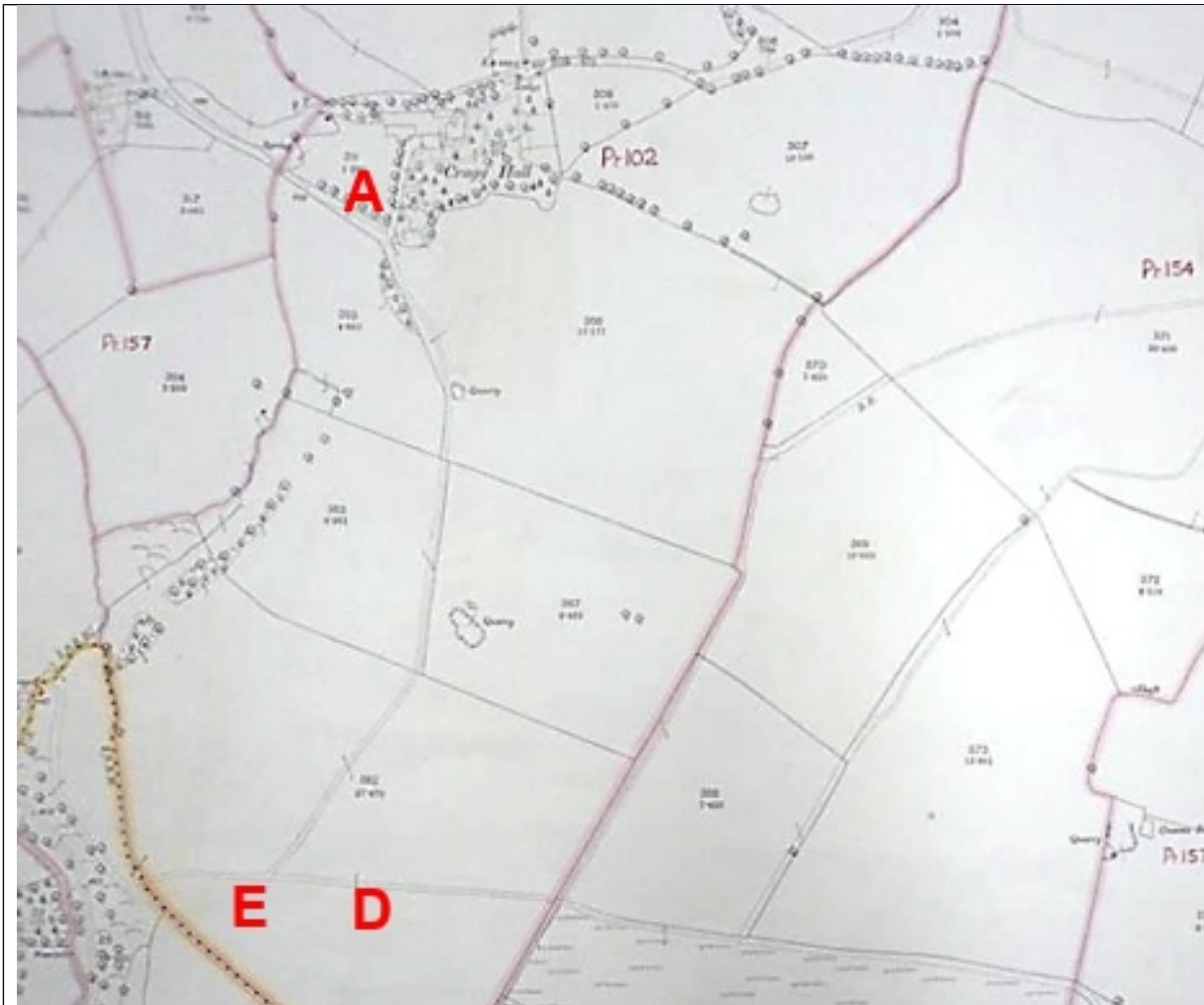
1941

Observations		Cragg Hall, located just north of the application route is shown on all three maps but Cragg Lane which provided access to and beyond the Hall is not shown. Helks Brow is shown – although that too is not shown in its entirety on the 1905 edition of the map and the application route is not shown on any of the three maps published.
Investigating Comments	Officer's	The application route was not considered to be a public through route by Bartholomew.



<p>Finance Act 1910 Map TNA Map Reference IR133/3/65</p>	<p>1910</p>	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
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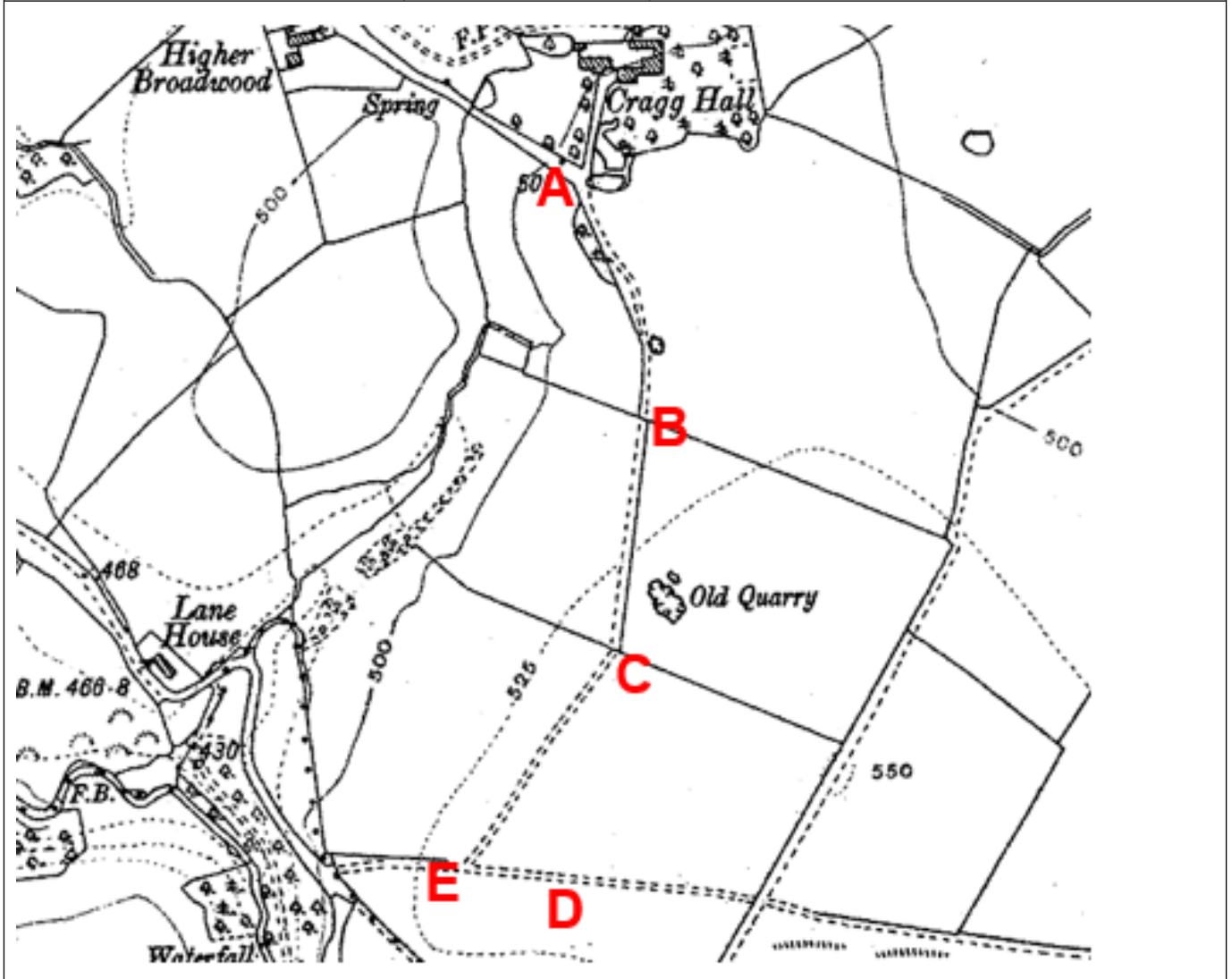


<p>Observations</p>		<p>The application route is included as part of a substantial plot labelled as hereditament 102 listed in the District Valuation book as being over 16 acres in size. The route is not excluded from the hereditament but it was noted that neither Cragg Lane nor Helks Brow are excluded either.</p> <p>The District Valuation book lists hereditament 102 as being owned by the Executors of Rich. Walcock from Bentham and occupied by T Hartley. A £50 deduction was listed for public rights of way or user but there is no indication as to which route or routes the deduction relates to.</p>
<p>Investigating Officer's Comments</p>		<p>It would not normally be expected that a route used by the public on foot or horseback would be excluded from the numbered hereditaments. In this case it is also noted that Cragg Lane is not excluded which ties in with information obtained from the Land Registry showing that the section</p>



		<p>of Cragg Lane included within this plot is still in private ownership.</p> <p>It is not specified in the District Valuation Book what routes the deductions made for public rights of way or user refer to so although a substantial deduction of £50 was made there is no way of knowing whether the application route was one of the routes acknowledged as being a right of way for which a deduction was claimed.</p>
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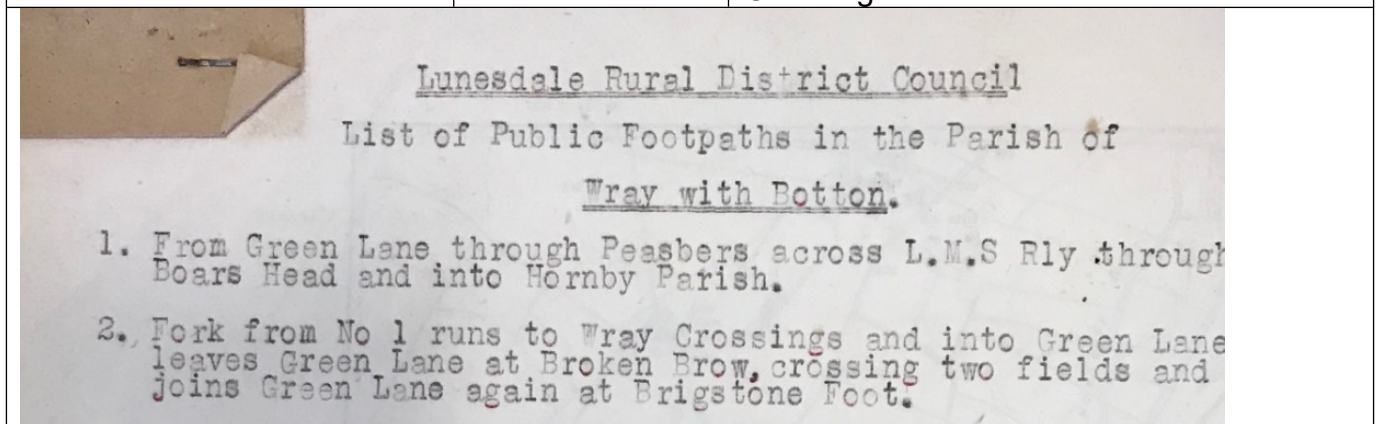
<p>6 Inch OS Map Sheet 26SW</p>	<p>1919</p>	<p>Further edition of 25 inch map (surveyed 1845, revised in 1910 and published 1919.</p>
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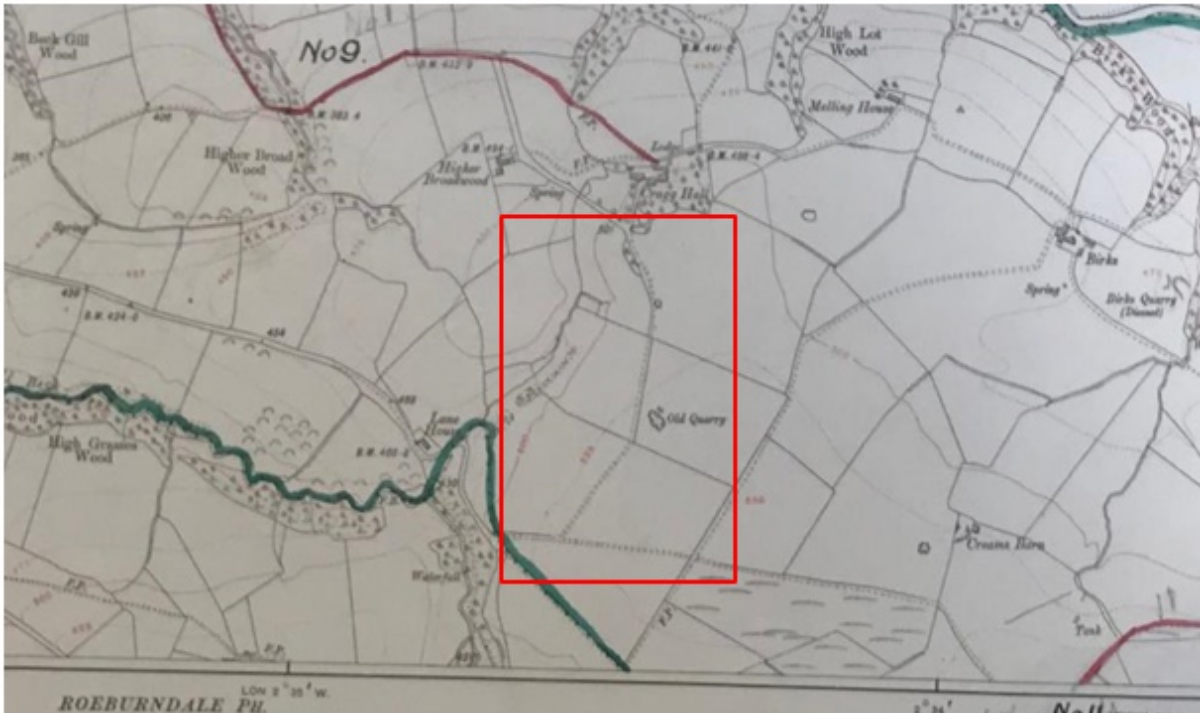


<p>Observations</p>		<p>The application route between point A and point C is shown in the same way as it is shown on the earlier OS maps. The application route between point C and point D is not shown but a route is shown to exist from point C to point E (the Historical route)</p>
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		connecting to Helks Brow which is shown as an unfenced road.
Investigating Comments	Officer's	The application route existed from point A to point C in 1910 and appeared capable of being used as part of a longer route connecting to Helks Brow via points C-E but it is not known whether this use was public or private. The application route between point C and point D did not exist in 1910.
1932 Rights of Way Map		The Rights of Way Act 1932 set out the mechanism by which public rights of way could be established by user and under which landowners could deposit maps to show highways already in existence and to indicate that they didn't intend to dedicate further rights of way. The Commons, Open Spaces and Footpath Preservation Society (which became the Open Spaces Society) who were the prime instigators of this Act and the later 1949 Act, called for local authorities to draw up maps of the public rights of way in existence (a quasi precursor of the Definitive Map). This is set out in 'The Rights of Way Act, 1932. Its History and meaning' by Sir Lawrence Chubb [M]. The process for consultation and scrutiny followed in Lancashire is not recorded but some of the maps exist including maps for the following areas are available for inspection at County Hall: Lunesdale Rural District (RD), Lancaster RD, Burnley RD, Garstang RD and West Lancashire RD.





<p>Observations</p>		<p>The application route is not included on a map and list prepared by the Lunesdale Rural District Council which purported to show the public footpaths within the parish. The list did not refer to routes considered to be public bridleways and it was noted that 19 routes were recorded none of which were referred to as being bridleways. When the Definitive Map was prepared in the 1950s 44 routes were recorded as public rights of way within the parish including two recorded as public bridleways (1-38-BW 37 and 1-38- BW 38). Neither of the routes recorded as public bridleways were recorded on the 1932 map although it was noted that three footpaths connected to one of the bridleways which was referred to by name (Green Lane) at that time.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The application route does not appear to have been considered to be a public footpath in the 1920s but it should be noted that the number of footpaths recorded in the parish more than doubled when the Definitive Map was prepared in the 1950s so although 'new' public rights of way could come into being at any time it is possible that the list was incomplete – as it could still be argued today. The fact that the list did not appear to include routes considered to carry higher public rights – including bridleways –</p>



		also suggests that the fact that the route is not shown does not mean that it was not a public bridleway in the 1920s.
1 inch OS Sheet 89 Lancaster and Kendal	C 1957	Revised 1950 to 1957 and published circa 1957.

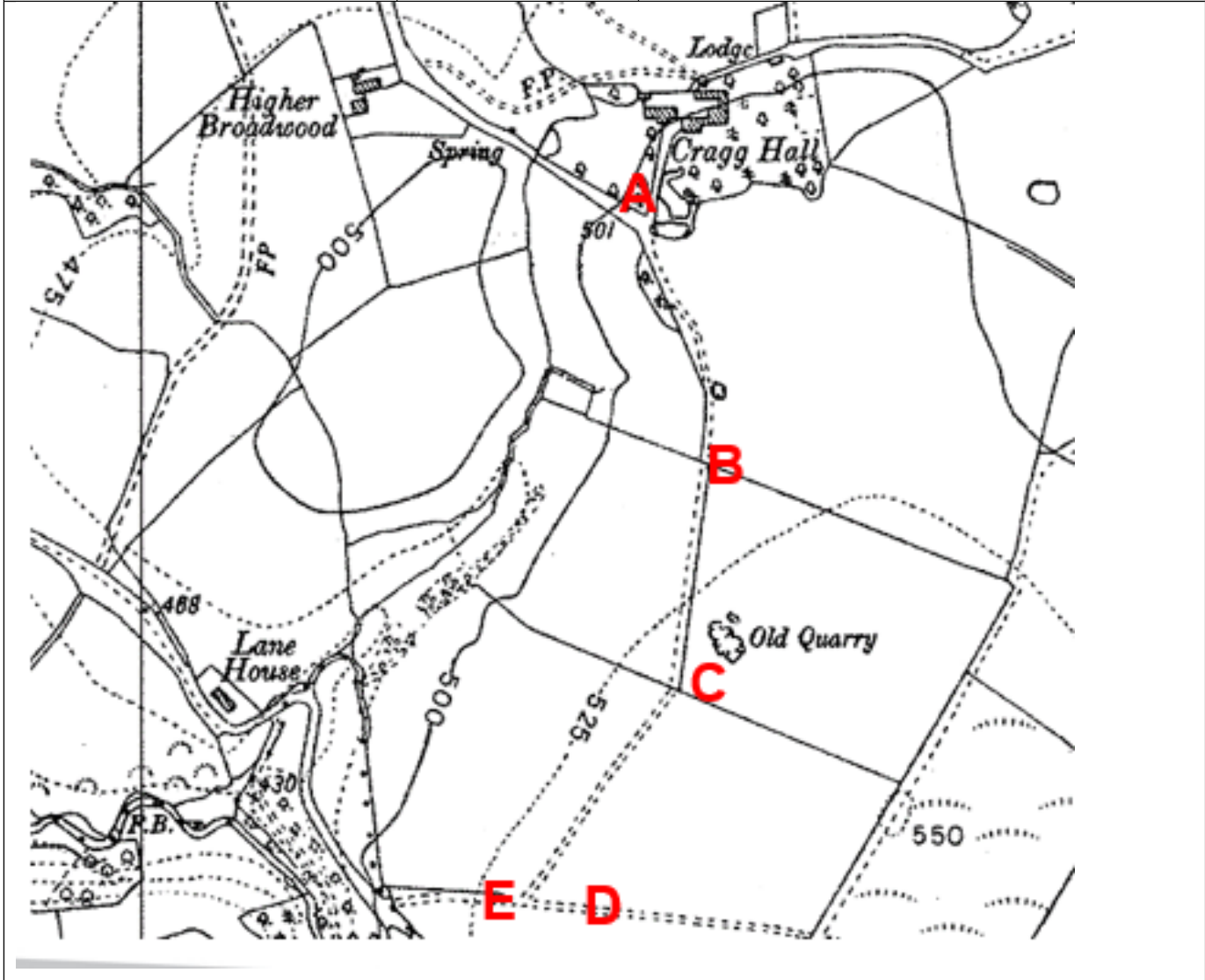


Roads	Ministry of Transport, Trunk		
	" " " Class 1		
	" " " " 2		
	14 ft of Metalling & over (not included above)		
	Under 14ft of Metalling. Tarred " "		
	" " " " Untarred " "		Wood
	Minor Roads in towns, Drives and Unmetalled Roads (Unfenced Roads are shown by pecked lines)		Orcha
Steep Gradients 1 in 5 or steeper		Electr (with Pipe 1	
Footpaths and Tracks			

Observations		The application route is shown as a substantial unfenced and unmetalled road following the route between points C-E rather than between points C-D.
Investigating Comments	Officer's	The application route existed from point A to point C in the 1950s and appeared capable of being used as part of a longer route connecting to Helks Brow via points C-E but



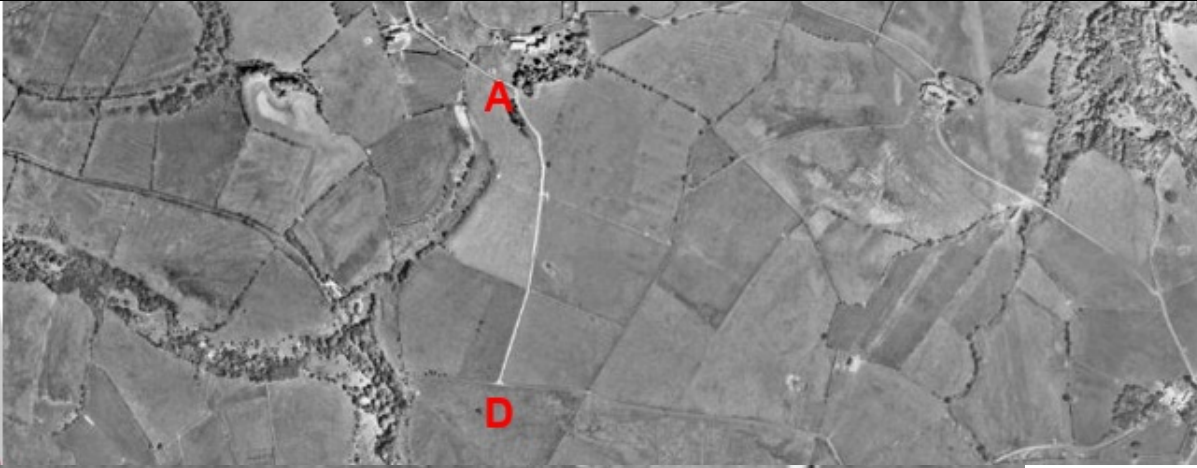
		<p>it is not known whether this use was public or private.</p> <p>The application route between point C and point D probably did not exist in the 1950s.</p>
<p>6 Inch OS Map Sheet 66NW</p>	<p>1956</p>	<p>The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.</p>



<p>Observations</p>		<p>The application route via the Historical route C-E is shown in the same way as it is shown on earlier OS maps.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The application route existed from point A to point C before 1930 and appeared capable of being used as part of a longer route connecting to Helks Brow via points C-E but it is not known whether this use was public or private.</p>



		The application route between point C and point D did not exist.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.

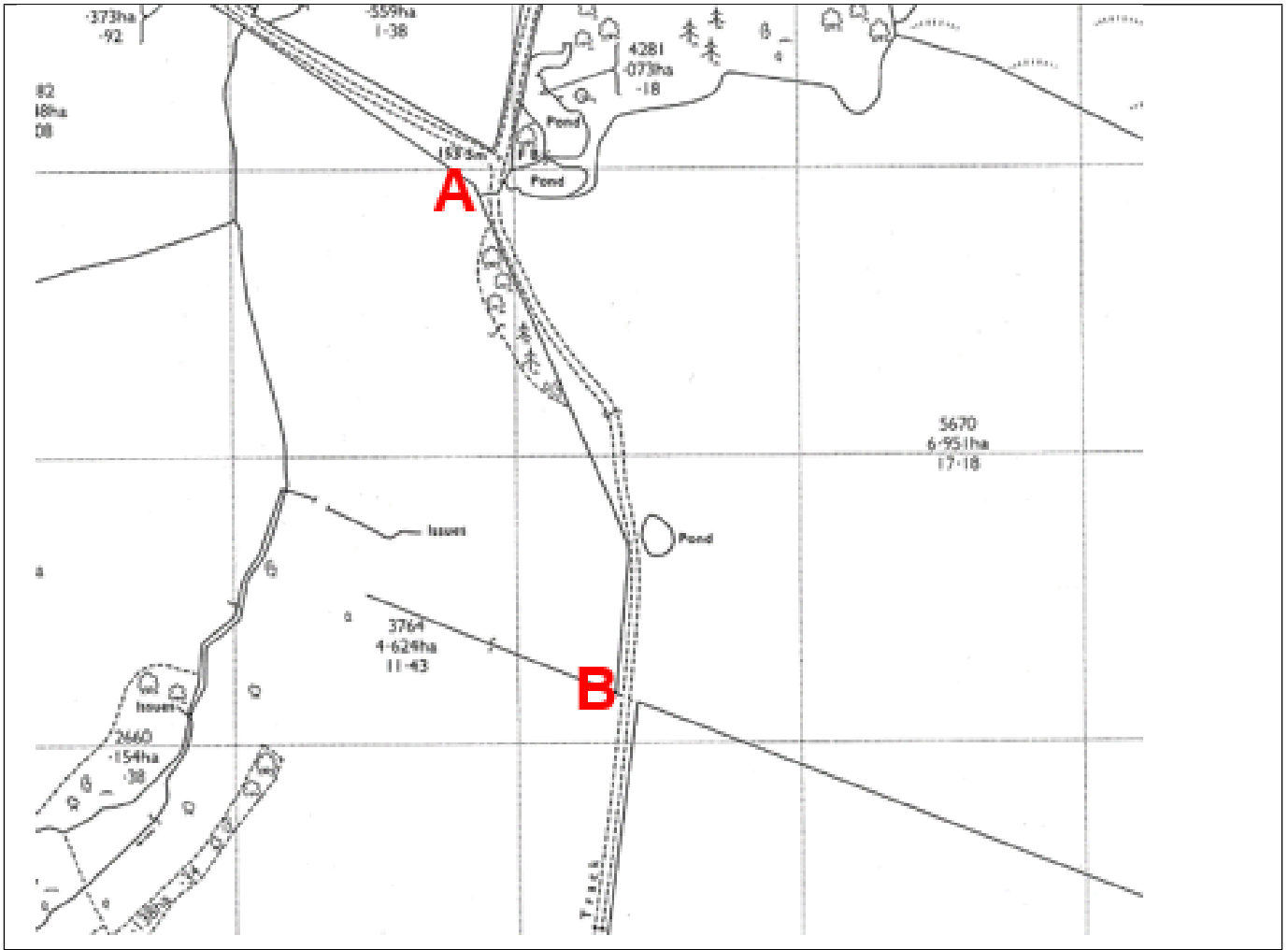


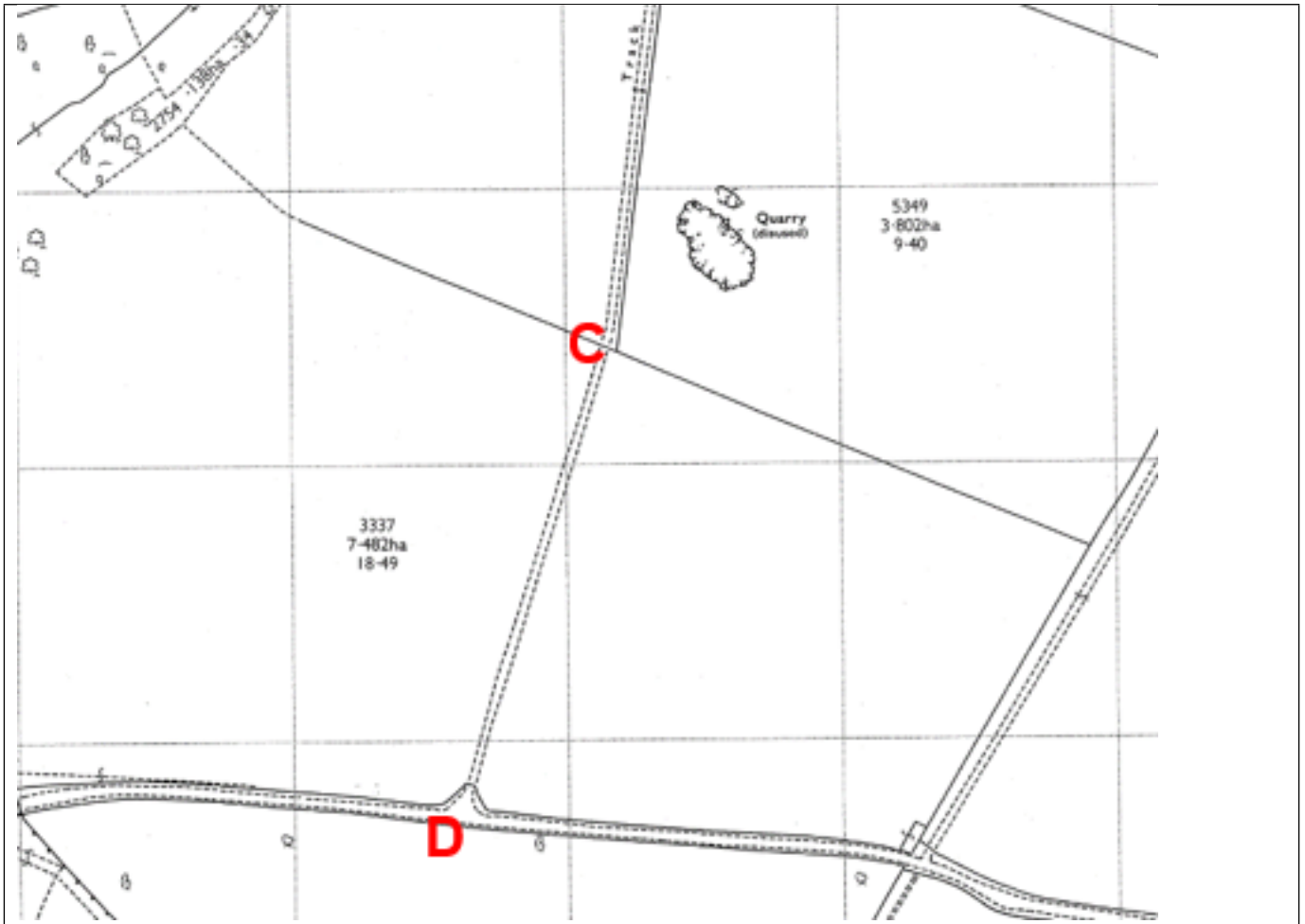
Observations		The earliest aerial photograph found to show the land crossed by the application route is also the first document to show the full length of the application route between points A-B-C-D in existence.
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		The full length of the application route can be clearly seen on the photograph as a substantial track consistent with a route which was being used by vehicles through to Helks Brow at point D. Helks Brow can be seen on the photograph but is much less prominent. The Historical route from point C to point E is not visible on the photograph.
Investigating Comments	Officer's	The application route between points A-B-C-D existed as a substantial through route in 1960 consistent with a route used by vehicles. It is not known whether this use was public and the fact that the route itself appeared to be heavily used but Helks Brow looked far less used suggests that use by vehicles was possibly predominantly farm machinery or for access to and from Cragg Hall and Higher Broadwood rather than as part of a longer public through route. The Historical route from point C to point E no longer appears to have existed.
1:2500 OS Map SD 6266-6366	1973	Further edition of 25 inch map reconstituted from former county series and revised in 1972 and published in 1973 as National Grid Series.







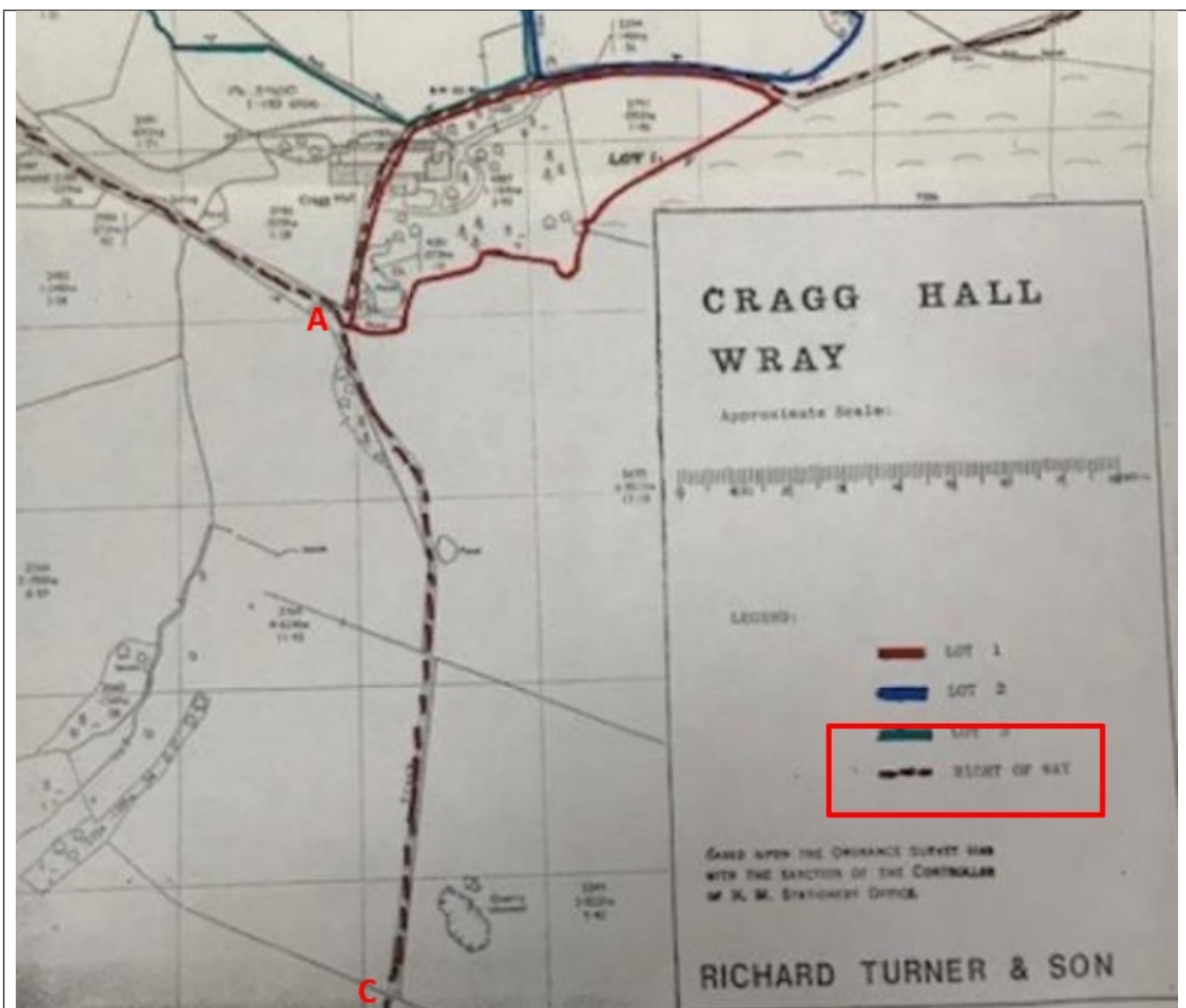
Observations		The application route (A-B-C-D) is shown as a substantial gated track. The Historical route between point C and point E is not shown.
Investigating Officer's Comments		The application route existed from point A to point D existed in 1972 and appeared capable of being used but it is not known whether this use was public or private. The application route between point C and point E did not exist.
Aerial Photograph	2000	Image captured by Google Earth Pro.





Observations		The application route A-B-C-D is no longer visible as a track although access may have been available along it.
Investigating Officer's Comments		The application route does not appear to be receiving any significant levels of use – even on foot – in 2000 and the substantial track which was evident in the 1960s can no longer be seen.
Sale Documents relating to Cragg Hall	1979	Sale document deposited in the County Records Office.





10. RIGHTS OF WAY:

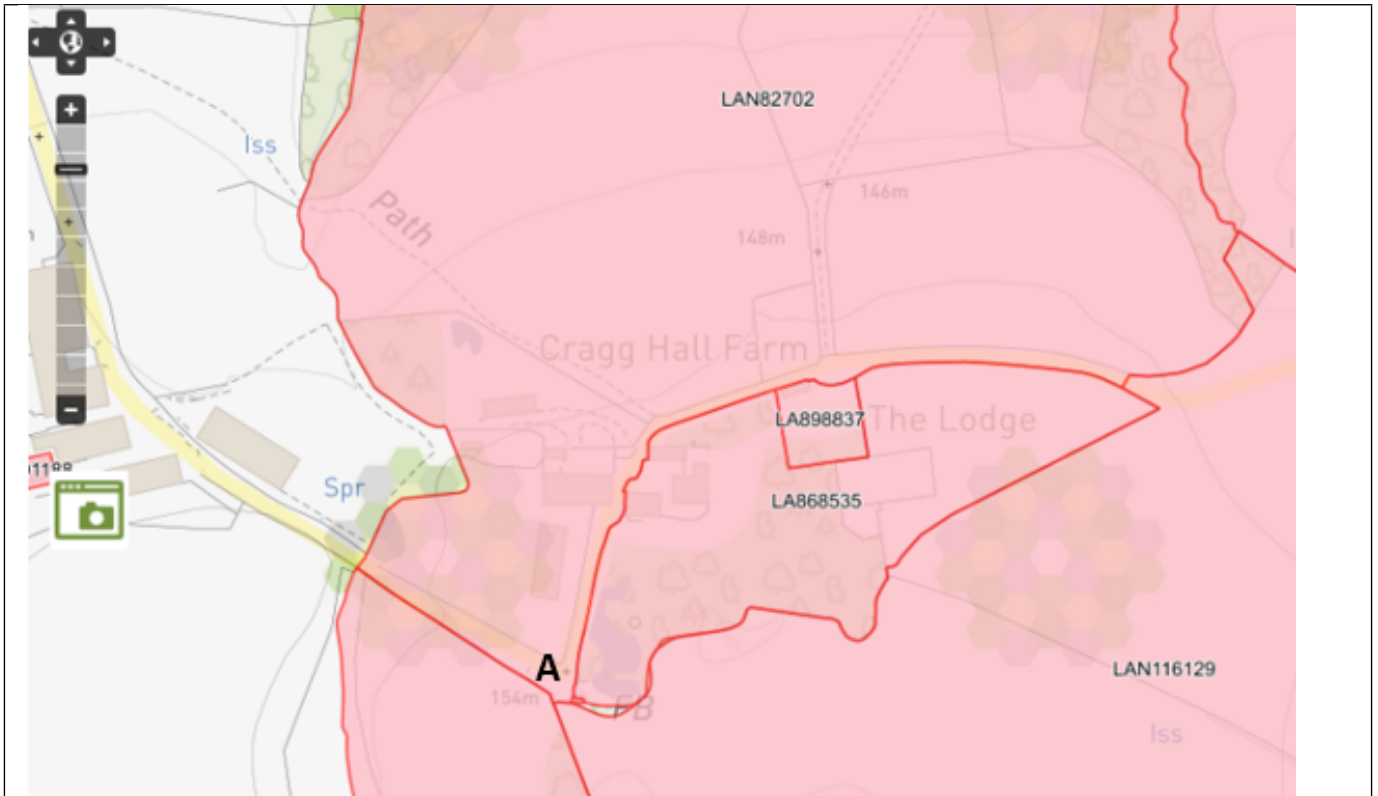
The Purchasers of Lots 1, 2 & 3 shall have the benefit of and shall take subject to all rights of way as at present exist over the roads shown coloured brown on the sale plan.

The Purchaser of Lot 2 shall have the right for agricultural purposes only over the bridge crossing the River Hindburn and the roadway thereto between the points 'B' and 'C' shown on the sale plan.

The Purchaser of Lot 2 shall take subject to the rights of way in favour of neighbouring Farmers and adjoining owners (in so far as such rights now exist) over the track between points 'A' and 'B' shown on the sale plan.

Extracts from Auction Booklet





Land Registry Map search showing land in registered ownership

Observations

The auction papers detail the proposed sale at a public auction of Cragg Hall and 44 acres of land which was to be split into three separate lots. The auction was to take place in May 1979 and within the details provided is a map showing the extent of the land to be sold.

The land crossed by the application route was not included in the sale and only the route between point A and point C is shown on the map extract. The application route has been coloured brown on the plan – together with Cragg Road which is shown in the same way and is marked up on the plan as denoting 'Right of Way'. There is no specific reference to the application route in the document but it is said that the purchasers of all three plots shall 'have the benefit of and shall take subject to all rights of way as at present exist over the roads coloured brown on the sales plan'.

Although recorded as a public vehicular highway Cragg Lane is marked on the sale map as right of way and specifically referred to in the documentation as having a right of access over it in the same way as the application route is shown and referred to. A



		search on the Land Registry website suggests that a substantial length of the land through which Cragg Lane passes is in private ownership or is unregistered corresponding to the sections marked up as having a right of way along it on the sales plan.
Investigating Comments	Officer's	The auction plan and guide were prepared specifically in relation to the sale of land in a remote area. The fact that the application route is marked on the plan as a 'right of way' appears to relate to the existence and retention of private rights of access to be granted to the purchasers of adjacent land and does not indicate the existence of any public rights which may have existed along the way.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.



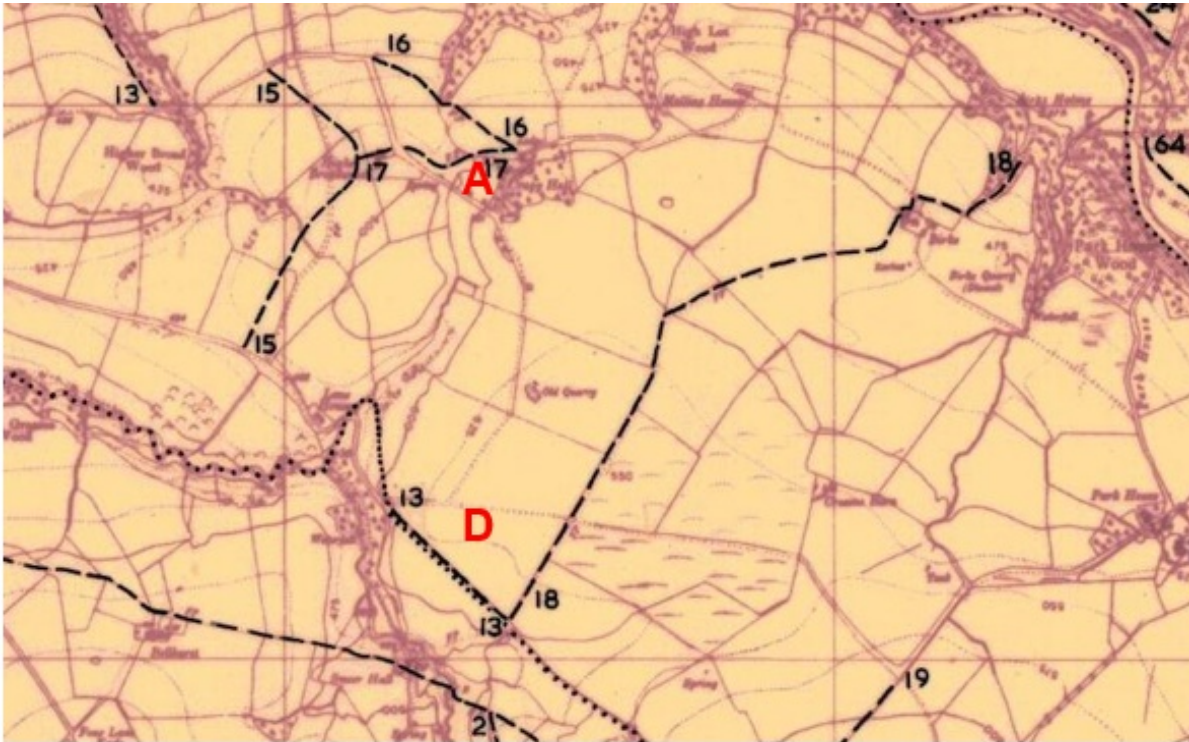


Observations		The application route was not shown on the Parish Survey Map for Wray-with-Botton.
Draft Map		<p>The parish survey map and cards for Wray-with-Botton were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		The application route was not shown on the Draft Map and no representations were made to the County Council.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the



		Provisional Map which was published in 1960 and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The application route was not shown on the Provisional Map and no representations were made to the County Council.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was not shown on the First Definitive Map.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.

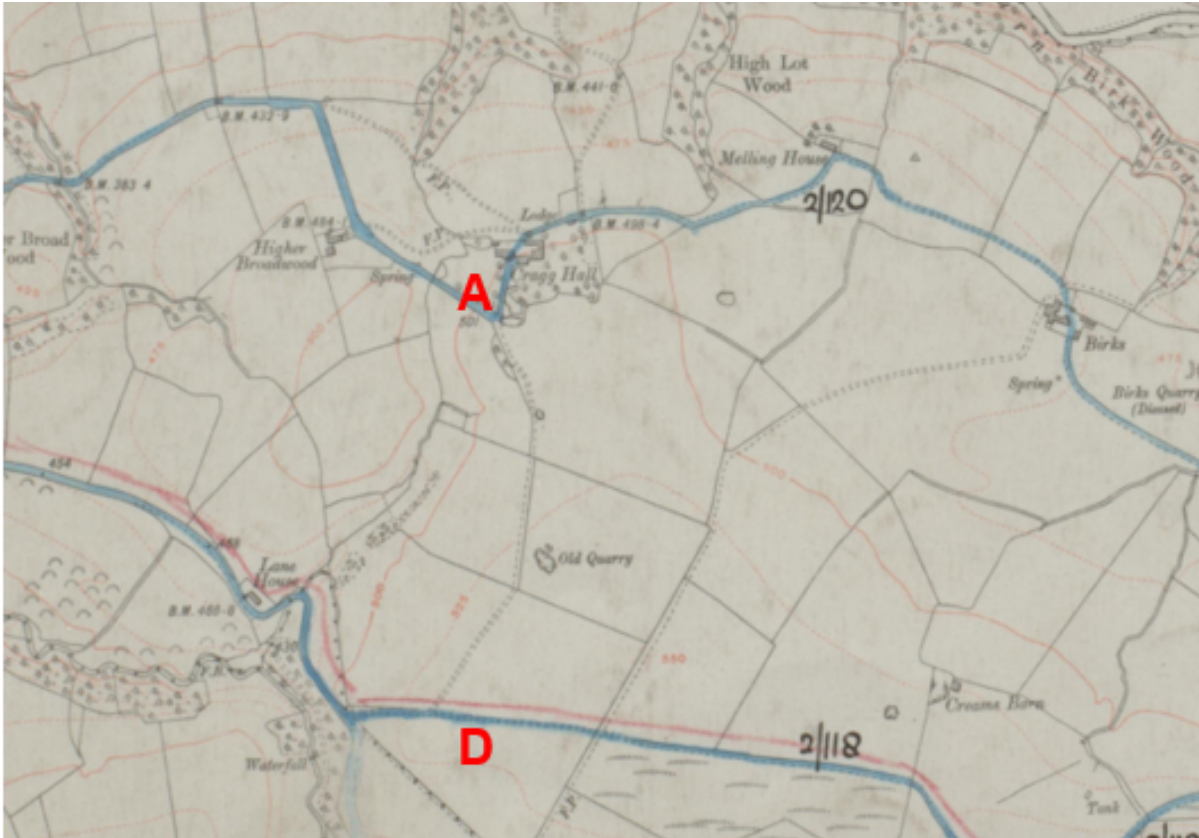




Observations		The application route is not shown on the Revised Definitive Map First Review.
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the application route was considered to be a public right of way that should be recorded on the Definitive Map by the Surveying Authority. There were no objections to the fact that the route was not recorded when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</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</p>



		<p>maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
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Handover Map		
Observations		The application route and historical route C-E are not recorded in the county council's highway records.
Investigating Officer's Comments		The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not necessarily carry public rights of access so no inference can be drawn.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway



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



		this provision of non-intention to dedicate public rights of way over this land.
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The affected land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land.

Summary

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

The application is for public bridleway and as such it would not be necessarily expected that it would be shown on any of the small scale early commercial maps.

However, in this particular case a route is shown on Yates' Map of 1786 which may have been the application route - or a route from which it derived – and is shown as part of the general road network.

The route is not shown on later small scale commercial maps casting some doubt on the significance of what exactly was shown on Yates' Map and whether a through route did exist along the application route at that time.

The earliest map examined to show the route was the 6 inch OS map surveyed in 1844-45 and published in 1848. It showed the route between point A and point B and partway towards point C but did not show a through route connecting to Helks Brow.

Similarly the Tithe Map of 1848 showed the route from point A to point C but no further and although it may have been possible to cross the pasture field to link to Helks Brow the existence of a trodden track was not identified and the Tithe Map and Schedule provided no useful information regarding which routes shown on the map were considered to be public roads or whether they carried any other type of public rights.

The 1887 sales plan was the earliest plan to show a through route although beyond point C the route shown did not correspond to what was shown on any subsequent map. Whilst a through route may have existed at that time its existence was included on a sales plan which related to the sale of Cragg Hall and the land crossed by the route with the inference being that the route at least provided private access to and from the property.

From 1891 onwards the larger scale (6 and 25 inch maps) recorded the existence of a track from point A-B-C which then continued through to Helks Brow via points C-E although the route was not shown on the smaller 1 inch maps or on Bartholomew's half inch maps.

With regards to its inclusion on the Ordnance Survey maps, it has generally been considered that OS maps show the physical situation at the time of the survey without regard for whether they had public rights, although there was no disclaimer prior to 1888. Despite this there is now a growing awareness by academics that by the end of



the 19th Century the Ordnance Survey were selling large numbers of maps to members of the public and promoting the advantages in finding ways that they could travel in unfamiliar areas, which does have the implication that those routes depicted were likely to be public to some extent. However, it remains the case that the main inference from these maps is the existence of the route providing access to and from Cragg Hall and possibly Higher Broadwood but it does appear that a through route existed over a considerable period of time of substantial character which could have been accessible to the public – at least on horseback – since the late 1800s.

This route appears to have altered by the 1960s when an aerial photograph taken at that time clearly showed a substantial route along the line applied for (between points A-B-C-D) and this same route was subsequently mapped by the OS in the 1970s. Use of the route in the 1960s appears to have been significant and possibly predominantly with vehicles accessing the fields and Helks Brow from Cragg Hall and Higher Broadwood.

Since that time use of the route by vehicles greatly declined and the track had grassed over and was no longer visible by 2000.

User evidence was not submitted as part of the application and no evidence of historical use by the public was found as part of this investigation. The route was not recorded as a public right of way as part of the Definitive Map process and whilst linking two public vehicular roads it does not link directly into any other recorded public rights of way or provide an obvious link between two places. Historically the land crossed by the application route was part of a large area of land owned and farmed as one big estate and whilst some of this has now been split and is farmed between several properties it appears to have altered little over the years.

Whilst the site evidence concurs with the fact that the route could have been used by horses there is no modern day evidence suggesting such use in recent times.

In conclusion, a range of OS, commercial maps and other documents were examined which seem to suggest that the route probably came into existence to provide access to and from Cragg Hall and that although it altered from following a route between points A-B-C-E to A-B-C-D in the 1960s it was consistently shown as a gated through route from the late 1800s. It is not shown to exist on small scale OS maps and the Bartholomew maps examined since the mid-1800s which suggest that it was not a significant route and was not excluded as part of the Finance Act valuation in the early 1900s.

Taking all the evidence into consideration it appears that a route probably existed since the late 1800s and that it may have been capable of being used by the public but that there is insufficient evidence available from which to deduce that public bridleway or footpath rights existed.

Head of Service – Legal and Democratic Services Observations

Landownership



The vast majority of the length of the application route crosses land in private ownership with two landowners, except for a very short section at point D.

Information from the Applicant

The application was submitted based on the map and documentary evidence listed below:

Yates' Map of Lancashire

OS 6 inch maps published 1847, 1895 and 1919

25 inch OS maps published 1895 and 1913

1 inch OS published 1957

1:25, 000 OS maps published 1948 and 1961

1:10, 000 OS map published 1956

Tithe Map and Award 1848

Finance Act records

Sales documents obtained from the County Records Office dated 1887 and 1979

1960s aerial photographs

Current photographs of the route

Information from the Landowner

The landowners provided detailed responses to this application prior to consultation.

The first landowner noted issues they had with the application which are listed below.

1. They noted that the applicant had accessed the land without the permission of any of the landowners or rights-holders – which they object to. They suggest that evidence gathered (photographs etc.) from the land should be disregarded on the basis that it was not obtained lawfully.
2. The landowner noted that the applicant recorded that there are bridleway latches fitted on the gates on the route. The landowner noted that they fitted these latches, sometime between 2019 and 2020 for use by them and their family as private rights holders, to access their fields and have since been removed.
3. The landowner noted that the Applicant referred to Yates 1788 map and raised issues with this stating that they disagree with the applicant's interpretation as the maps themselves make no reference to horses, coaches or rights of way and have no key/legend.

They believe that there were two routes to Cragg Hall, for the benefit of Cragg Hall and associated land, one from the north/west from Wray and one from the south/east from the direction of Low Gill. They believe that this route would have been used by the owner of the property and their staff to access the property, but not by the public.

4. The landowners also noted that the applicant has referred to various Ordnance Survey maps from 1895 to date. They acknowledge that in all these maps, a farm track/route is shown, which was and continues to be used by the owners and



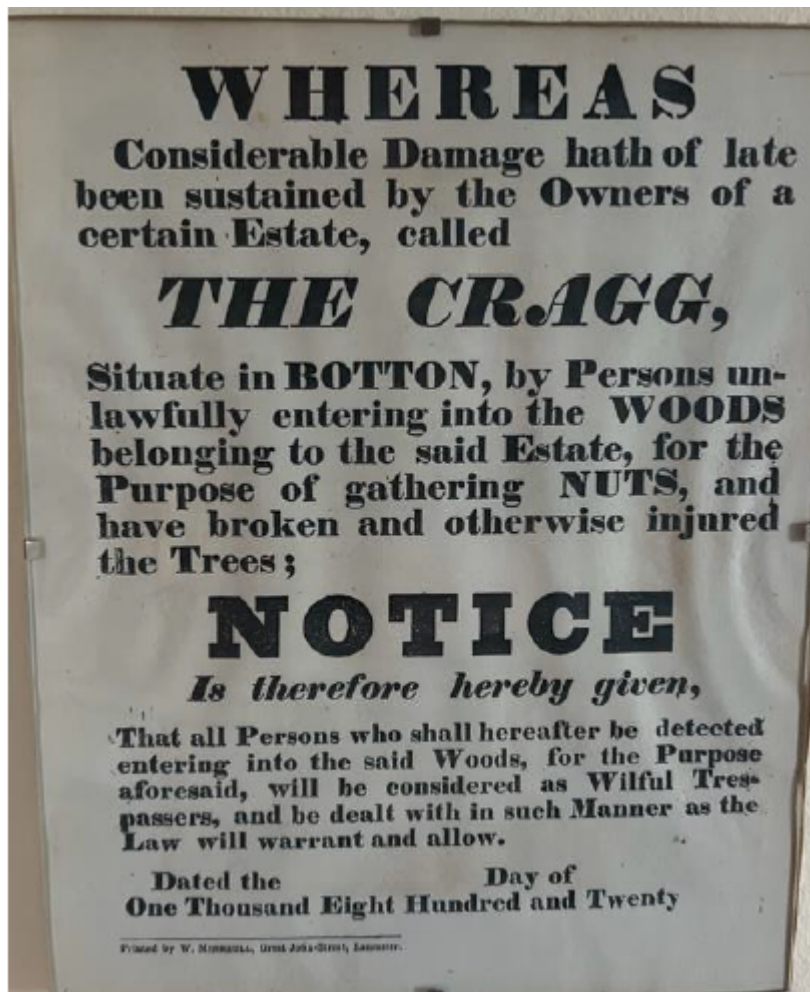
farmers of Cragg Hall, Higher Broadwood Farm and Birks Farm. They assert that the presence of these routes on the map does not convey a right to the public and if it did, every farm track in the country would be registered as a bridleway. They believe the presence of fences or otherwise enclosing the track are irrelevant.

5. Noting that the applicant refers to rights of way included in the sale of Cragg Hall, Broad Wood and Melling House estates, 15 august 1887 and the sale of Cragg Hall in 1979. The landowner asserts that in both cases a private right of way is conveyed to the buyer over route A-B-C with the property that was for sale. They believe that if a public right of access had existed, there would have been no need to convey a private right of access. It is this same private right that they benefit from, across the land they do not own, as owners of Cragg Hall.
6. The landowner notes that the Applicant refers to the 'significance' of the route, being the extent to which it was widened and surfaced. The landowner believes the extent to which a road was 'significant' is irrelevant, as a landowner has always had the right to extend, surface and manage routes across their land as they see fit – within the confines of planning law etc. They assert that the width and surface of a route has no connection with the extent to which the public have a right to use a route.

The landowner also provided evidence to support their position that the route was not public.

1. The owners of the Estate (variously referred to as 'The Cragg', Cragg Hall Farm Estate and Higher Broadwood Farm) sought to restrict public access throughout history. The notice shown below is an example of how trespass was being managed by the owners in 1820 – it seems unlikely therefore that public access would have been welcomed by the owners during this period or since. That the rights of ways to the highway was conveyed in the later sales, suggest that public access was limited to those routes which are the modern-day highways along Cragg Road.





2. The route in question does not go anywhere – The only place that can be accessed by the proposed route ABC, Cragg Road, or a combination of the two is Cragg Hall and associated property. Logic suggests therefore that any routes to it were developed for those who had reason to be there (owners, staff and so on), and thus were doing so over private land at the invitation of the landowner.
3. The landowner believes that they can source statements from former owners, occupiers and neighbours – some of whom are old enough to remember the period before 1 January 1949 – who will confirm that the public have never used the route A-B-C. No such statements have been provided prior to this report being submitted to committee.
4. The landowner noted that the route is largely grassed over now and assert that this supports the argument that the route was little more than an informal track, even if it was surfaced at some point. It is unlikely that the farmers and land managers of the past would plough/seed over a track that was being used by the public, because it would have caused hassle and inconvenience. A more likely explanation is that this route was used by the owners of Cragg Hall and associated property, as a private access route and that once a newer, better route was built (i.e. the road through Birks Farm), they stopped using it.

The landowner also raised practical considerations.



1. The applicant refers the fields as 'pasture' – all the fields are extremely productive meadows producing silage for dairy cows, as well as grazing for sheep and dairy cattle. The granting of this DMMO will result in a reduction of grazable area, an increase in costs associated with stock management (for example, as we would no longer be able to keep dairy bulls in that field, horses, or cows with calves), as well as inevitable management issues relating to dogs, sheep and unwanted trespass when the public stray off the route.
2. We have suffered considerably in recent years with rural crime. We have had lots of items stolen from Higher Broadwood Farm. An increased public presence creates more opportunities for thieves and makes tracking thieves down harder. Hare coursing has also been a recent issue which would not be helped by the presence of more public access.
3. At present, the land in our ownership is enrolled in a countryside stewardship scheme, which requires de-stocking of the land for a period during the winter. This is partly to increase soil health (the land would become very boggy and wet during the winter if stock were to be kept on), and to create a wilder habitat for flora and fauna, specifically bird life. The introduction of bicycles, horses, and pedestrians (with dogs) during this period would completely undermine the work we have done (and which has been funded by HM Government).
4. It is unlikely that cyclists will ride through long grass, which limits the users, if approved, to horse riders and pedestrians (with dogs). There are 4,535 people in the Lower Lune Valley Ward, very few of them own a horse.

The land agents of the second landowner also provided comment on the application prior to consultation which is considered below.

They noted that their clients Grandfather moved to Birks Farm, Wray in 1934 with the Harrison family continuing to farm there to this day. They note that until 1966, the land affected by this application was owned and farmed as part of Cragg Hall and between 1966 and 1981 the land was owned and occupied by Mr R. Dodgson from Ingleton. They noted that from 1981 to the present, the field closest to Cragg Hall (with the exception of 1.7 acres) and the field adjacent to Helks Brow have been owned and occupied by Messrs Harrison. As neighbouring farmers and now owners of the majority of land subject to this application they noted their clients have never known the public use of the route A-B-C on the application. They noted that the only people with a right of access over this land are private individuals residing at Cragg Hall, Cragg Hall Farm, The Lodge and Higher Broadwood Farm.

The landowner's agents went on to provide the following comments on the application and the evidence submitted in support of it.

1. Yates Map 1788 – the lack of scale on the map (extract) and the low level of detail to the same does not allow one to identify the exact location of the route shown. The route marked A-C could show any route in that area and there is no certainty the route shown relates to the route included in the application.



2. Tithe Records 1848 – the route shown between point A and B would appear to lead to parcel 421 on the plan and is marked with dashed lines therefore indicating a more informal route of say a farm track. The agents note there are no markings of any track/route/access between point B and C on this plan and therefore it seems unjust to assume this was the case as the route included in the application is incomplete. The fact the land adjacent to Helks Brow (between point B and C) was numbered “421” suggests it was liable for tithes (The National Archives, 2020) and therefore it seems sensible that the track shown was simply the route used by the respective landowner to access parcel 421. With regards to the Tithe Plans The National Archives Research Guides state “*there is no overall standard or key to conventions which applies to all the maps, and no inference can be made about the inclusion or omission or features or colouring*”. The agents would therefore suggest the details shown on the plan cannot be relied on as fact and that to suggest the track marked ABC is a public right of way making a large assumption.
3. OS Map 1847 – again the route marked is incomplete and stops short (before point B) the agents therefore feel this supports our case that the track shown was simply an agricultural access to the land or possibly the Gravel Pit marked on the plan. The agents cannot understand how the continuation of the access to point C can be justified when no track is marked to complete the route. The way in which the track is marked on the plan, using dashed lines, perhaps indicates a less formal access and the agent cannot understand how this plan demonstrates any public use of the same without making a huge assumption based on the information from later OS maps.
4. Other OS maps – all show a complete track between ABC, however they all mark the track as being open to the land. The agents would like to draw attention to the track north of Cragg Hall which leads to Mill House Farm and note that this track is marked in exactly the same manner as the track in question and yet this is not deemed a public right of way, nor is it subject to any application of the same. The presence of the Gravel Pit (Quarry) on land adjacent to point B would perhaps explain why the route was used regularly and possibly why on later editions of the maps the route heads towards Helks Brow as well as Cragg Hall. However, the regular use of an access by a landowner to land or quarry does not mean the purpose of the track is public in any way. Where the routes in the locality have been formalised into roads and public rights of way the evidence shown throughout history is consistent whereas the markings on the various plans included as evidence are inconsistent in respect of the route included in this application. The agents also note that all OS maps note “*The representation on this map of a Road, Track or Footpath is no evidence of the existence of a right of way*”. The agents note the OS plans today are inaccurate with regards to the presence of a track in this location. The latest OS plans show a track, using the same dashed line, from point C to point B whereas there is no physical track on the land thus demonstrating this point.
5. Richard Turner & Son sale particulars for Cragg Hall 1979 – without the respective blurb contained in the sale particulars the plan alone cannot be relied on as evidence to prove public use of the route in question. It is noted the plan



marks all access routes shown (including the adopted highway, Cragg Road) as rights of way and thus without the descriptive text one cannot draw conclusions as to what the plan is meant to depict. As noted above, the land subject to this application was owned by Mr Dodgson in 1979, coupled with the fact the agents acknowledge Cragg Hall et al. has the benefit of a right of access over the land, the agents feel it is fair to assume the sale particulars would be referencing private rights of way as opposed to public rights of way over the land in question to the land/property included in the sale.

6. Photographs – the agents question how these photos can be included in the application when no permission has been granted for them to be taken in the first instance. The agents do not consent to these photos being used as evidence to support this application.
7. Aerial Photos 1960 – If an aerial photo was taken after a period of prolonged use (at harvest time for example) then most farm tracks would appear to be well-worn. Before 1976, the track would be used daily by Messrs Conder of Higher Broadwood as they used it to take milk churns to a milk stand on Helks Brow (at point C) where remnants of the milk stand can still be seen today. The agents disagree that the track is more significant than the route through Cragg Hall. The route at point A leading through Cragg Hall is obscured from view by trees and associated shadows with this giving the illusion of one route being more significant than the other.
8. Bridleway latches - these were installed recently (March 2020) by Mr Robert Bowyer and only by agreement with our clients. The latches were installed for private use only and have since been removed (September 2020) to avoid confusion. At no point were these latches to signify public access.

The agents are of the opinion the route marked A-B-C on the consultation plan and subject to this application has only ever been a private farm track leading to/from Cragg Hall and used only by those benefitting from a private right to do so. They believe that historically, these rights holders may have used this route more than they do today as there is little visual evidence of significant use recently (if at all). The road from Helks Brow to Park House Lane (Cragg Road) is deemed a minor (unclassified) link road and therefore intended for local traffic only i.e., to access those properties along the route. The agents find it difficult to accept that by simply marking a track over private land on a plan is sufficient evidence of a public right of way. The agents note that sheet 59 of Lancaster (Hills) 1898 and sheet 89 of Lancaster and Kendal 1947 OS One inch plans make no reference to the route marked A-B-C on the consultation plan.

The agents believe there is insufficient evidence of public use of this track and therefore suggest the application should be rejected.

Information from Others

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



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

Assessment of the Evidence

The Law - See Annex 'A'

In this matter there is an application that the route be recorded as an addition to the Definitive Map and Statement of Public Rights of Way of a bridleway from Cragg Road to Helks Brow, Wray-with-Botton.

The application is made under section 53(2) of the Wildlife and Countryside Act 1981. In accordance with the law, the County Council shall make such modifications to the definitive map and statement if any of the events specified in subsection (3) occur as soon as reasonably practicable and keep the map and statement under continuous review.

Subsection (3) notes various events however seemingly relevant in this case are: -

(a)(iii) a new right of way has been created over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path;

(b) the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path;

(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows—

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path...

The test whether the right of way subsists is on the balance of probabilities.

The test whether the right of way is reasonably alleged to subsist is whether a reasonable person, having considered all the relevant evidence available, could reasonably allege the right of way, subject to the application, exists.

Therefore firstly, there is no express dedication in this case.

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

Committee is advised to consider whether there is sufficient evidence from all the circumstances to infer at common law that owners of this route intended dedicating or whether there is evidence of twenty years use by sufficient users without sufficient evidence of a lack of intention to dedicate from which dedication could be deemed under section 31 Highways Act 1980.



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

'User evidence' was not submitted as part of the application therefore dedication by long use at common law is not relevant nor is section 31 Highways Act 1980. Committee is advised to instead consider if an inference of dedication is possible on balance of the all the evidence at common law.

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

The evidence has been summarised and evaluated earlier within the report. To arrive at a conclusion Committee must consider the position balancing what the documentary evidence shows. The claimed route is not shown at all on some of the maps. Whilst a route is shown on other maps where the public might gain access, it is not the claimed route but a different route. There are some inconsistencies between maps with the whole of the claimed route not shown on subsequent versions or a different route shown. Also, there is an absence of 'sufficient evidence' as to public rights.

On balance and given the nature of the evidence it is advised that the evidence of the application route having become a public bridleway is insufficient. Committee may conclude applying the relevant tests that it cannot be asserted that a bridleway "subsists" or is "reasonably alleged to subsist".

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

Implications

This item has the following implications, as indicated:

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

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

Risk management

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



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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-647		Simon Moore, 01772 531280, Legal and Democratic Services

Reason for inclusion in Part II, if appropriate

N/A

