

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 Footpath from Main Street to Holme Farm Close, Wray with Botton

(Annex A refers)

Contact for further information quoting file reference 804-763:

Annabel Mayson, 01772 533244, Paralegal Officer, County Secretary and Solicitors Group, Annabel.mayson@lancashire.gov.uk

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

Brief Summary

Application for the addition to the Definitive Map and Statement of Public Rights of Way of a Footpath from Main Street to Holme Farm Close, Wray with Botton.

Recommendation

- (i) That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a Footpath from Main Street to Holme Farm Close, Wray with Botton be accepted.
- (ii) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a Footpath from Main Street to Holme Farm Close as shown on the Committee Plan between points A-B-C-D-E.
- (iii) That not being satisfied that the higher test for confirmation can be met following the order making and notice period and further consideration by officers the matter be returned to Committee to decide what stance to take regarding confirmation.

Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a footpath from Main Street to Holme Farm Close on the Definitive Map and Statement of Public Rights of Way.

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

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

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

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

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

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

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

Consultations

Lancaster City Council

Lancaster City Council provided no response to consultation.

Wray with Botton Parish Council

The Parish Council are the applicants for this matter. They expressed the view that the application route has been a well-used route of presumed dedication for decades



and expressed their view of how the law applied to long user They also stated that it is their understanding that a Public Right of Way of presumed dedication therefore already exists, and that it is illegal to block it or put up misleading signage.

They stated that the new owners of part of the application route have blocked the route in various ways: both verbally and physically in person by obstructing the path with various objects, erecting a sign denying access and placing a bicycle lock on Lancashire County Council's gate to the School Field. They also noted that obstruction to the route causes immense disruption to the everyday use of the village and future community events and it could also harm the economic viability of business along Main Street.

Applicant/Landowners/Supporters/Objectors

The evidence submitted by the applicant/landowners/supporters/objectors and observations on those comments are included in Advice – Head of Service – Legal and Democratic Services Observations.

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	6030 6756	Concrete drainage blocks along Main Street.
B	6031 6756	Western end of passageway under Horreum House
X	6032 6757	Rear boundary of land owned by Horreum House and 71 Main Street across which a wooden fence and gate has been erected (March 2023)
Y	6032 6757	Rear boundary of land forming part of 71 Main Street where a wood shed partially obstructs access
C	6035 6758	Gateway at north eastern end of enclosed strip providing access onto the school field. Gate post exists but gate is propped up at the side of the application route.
D	6039 6769	Field Gate providing access onto school field
E	6040 6769	Open junction of application route with verge area and then Home Farm Close (n.b. concrete edging stones, not the walls, mark the highway boundary)

Description of Route

A site inspection was carried out in March 2023.

The application route commences on Main Street in the village of Wray. It crosses the tarmac area fronting Horreum House to pass through an ungated passageway over which part of the property is built and abutting the gable end of 71 Main Street.



The archway appears part of the original property and further arches indicating original carriage/cart storage or access are along Main Street.

The application route runs through the passageway providing direct access to the rear of Horreum House. On what was previously the unmarked boundary of land owned by Horreum House – at the northern corner of the gable end of 71 Main Street a substantial pair of wooden gates has been erected across the application route preventing access (point X). Between point A and point X the surface of the route is tarmac and the available width – from entering the passageway through to the gate at point X is between 1.4 and 2 metres.

Beyond the locked gates at point X the application route continues across a wider more open area to the rear of 71 Main Street bounded on the north side by the rear of an outbuilding on land forming part of Horreum House. The width of the route increases to 3.5 metres at the point marked Y on the Committee plan but access is partly restricted by a small woodshed which has been erected over part of the route.

Beyond the woodshed the application route continues bounded on either side by substantial stone walls at a width of 3.5 – 3 metres. The surface of the route is compacted stone along a central strip with grass verges. A pedestrian gate is located in the stone wall providing access to the garden at the rear of 72 Main Street.

Approximately 45 metres from the start of the route on Main Street the application route reaches a gateway that provides access onto a playing field. The wooden gate was off its hinges and propped up at the side of the application route in March 2023 but a stone hanging post was positioned at the south side of the gap at point C. A sign was attached to the gate reading 'No Dogs'.

The ground over which the application route runs is worn through the gateway and onto the field suggesting regular and substantial use on foot. A waste bin is also located close to point C.

Beyond point C the application route continues in a generally north easterly direction across the playing field and around the north side of the fenced-off children's play park to the field gate (point D) providing access to the playing field from Home Farm Close. A football pitch was marked out on the playing field which was not in use when the route was inspected but which could necessitate a diversion from the most direct route (the application route) if a match was being played.


The application route passes through the field gate at point D and then crosses the tarmac access road to end at the junction with Home Farm Close (point E) where the highway boundary coincides with the concrete low kerb stones.

The total length of the route is 175 metres.

Map and Documentary Evidence

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

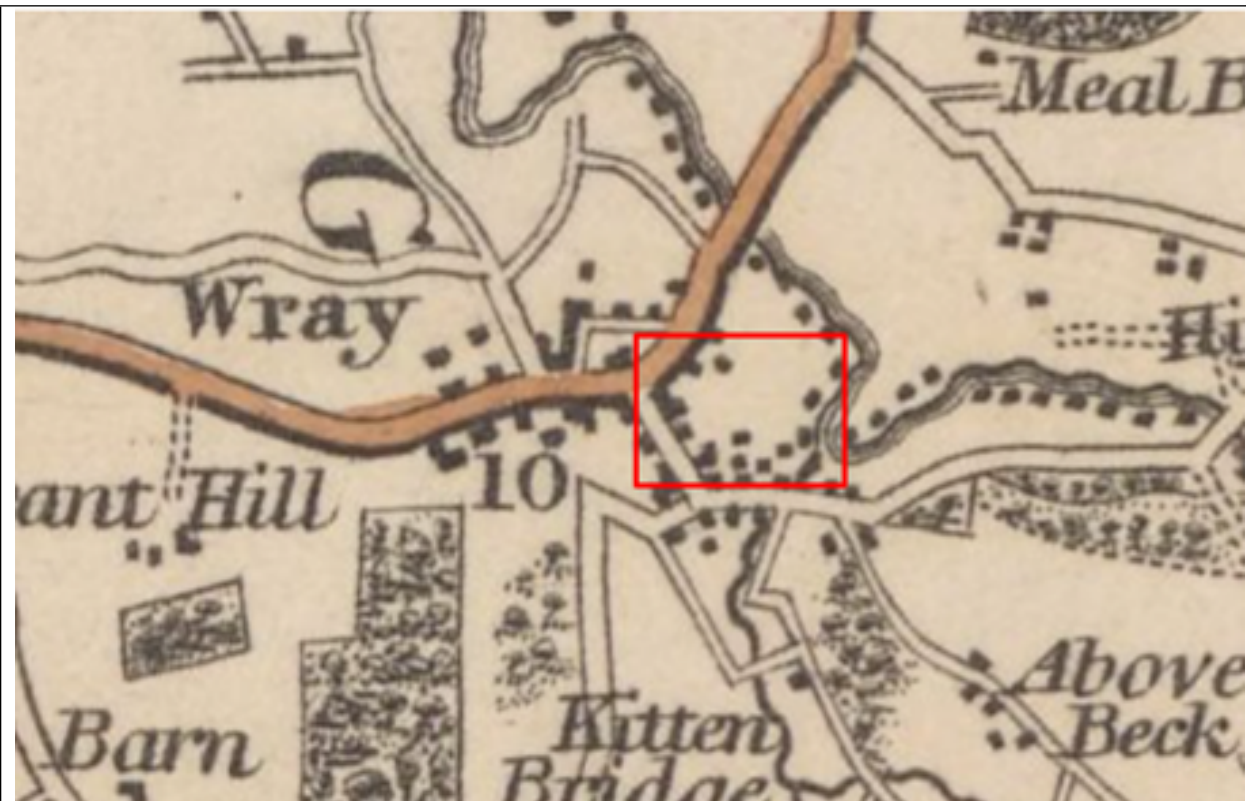


Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small-scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
		
Observations		Buildings are shown along Main Street but the application route is not shown. Home Farm Close is not shown.
Investigating Officer's Comments		The application route did not exist as a through route from Main Street to the location today of Home Farm Close in 1786. It is not possible to know from looking at this map whether a pedestrian route existed through the buildings to the land on the northeast side of Main Street and public footpaths were rarely shown on maps of this scale.
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		Buildings are shown along Main Street but the application route is not shown. Home Farm Close is not shown.
Investigating Comments	Officer's	It is not possible to know from looking at this map whether a pedestrian route existed through the buildings to the land on the northeast side of Main Street and public footpaths were rarely shown on maps of this scale.
Hennet's Lancashire	Map of	1830 Small-scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 10 miles. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.

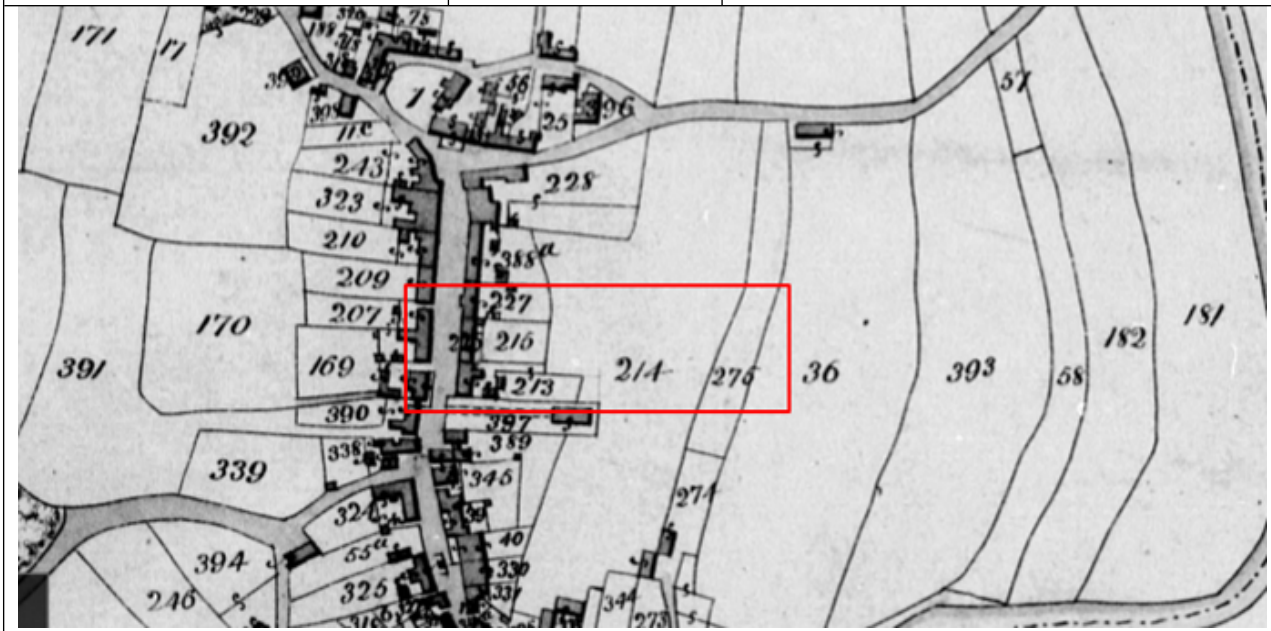


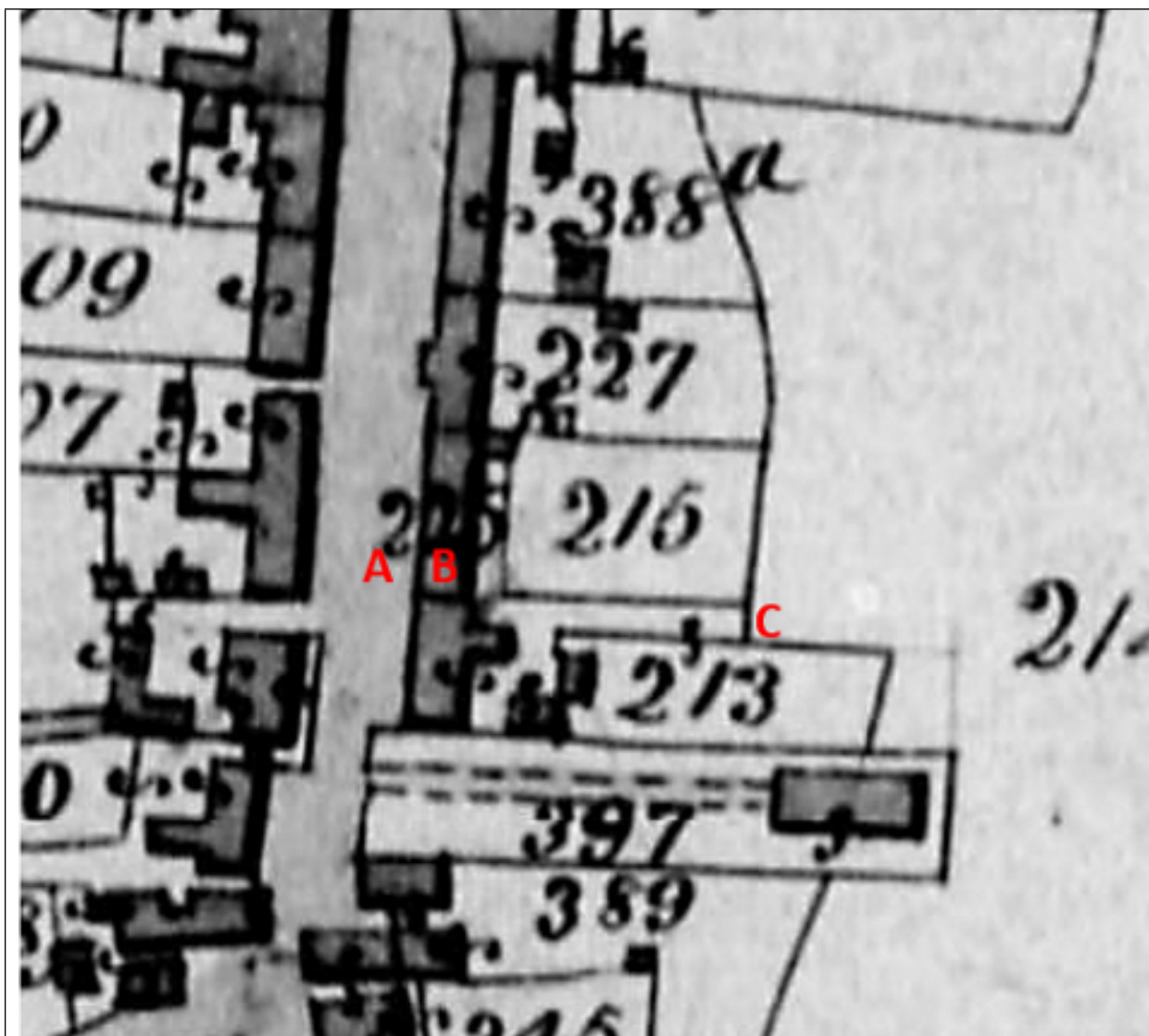
Observations		Buildings are shown along Main Street but the application route is not shown. Home Farm Close is not shown.
Investigating Comments	Officer's	It is not possible to know from looking at this map whether a pedestrian route existed through the buildings to the land on the northeast side of Main Street and public footpaths were rarely shown on maps of this scale.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The land crossed by the application route was not affected by any existing or proposed canals or railways.
Investigating Comments	Officer's	No inference can be drawn regarding the existence of public rights.
Tithe Map and Tithe Award	1848	Maps and other documents were produced



or Apportionment

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

Main Street is shown Home Farm Close isn't shown and the land crossed by the application route between point C and point E is shown as fields.

Main Street is shown shaded to include the application route between point A and point B although Public Roads are not numbered or listed in the Award.

The walkway through the buildings from point B is not shown but Horreum House is numbered as plot 225 which is listed in the Tithe Award as 'Cottages' owned by John Skirrow and occupied by Robert Furness and others.

Between point B and point C a strip of land is shown consistent with the application route. It is braced as being part of plot 213 which is listed in the Tithe Award as being owned and occupied by John Skirrow and

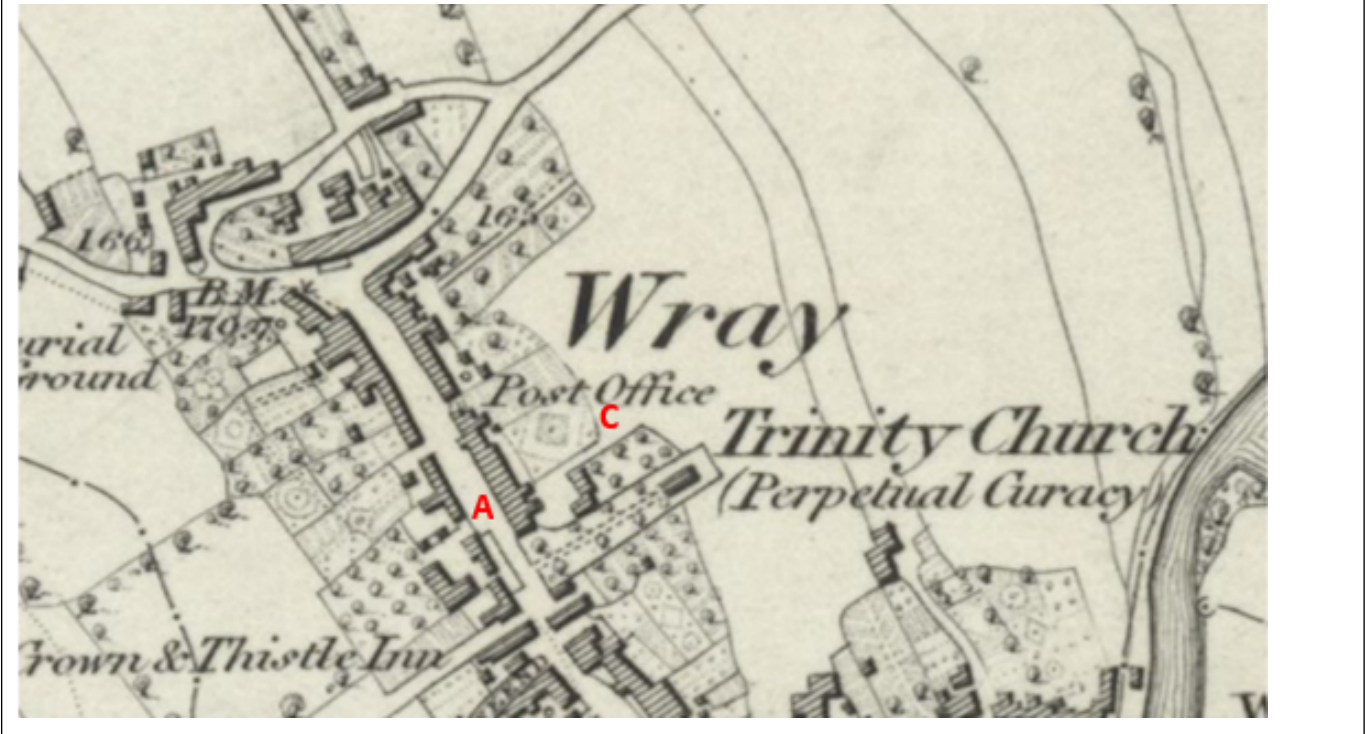


		<p>described as house, garden and yard.</p> <p>Beyond point C is a field numbered as plot 214 which is also owned and occupied by John Skirrow and described as pasture land known as 'Hen Croft'.</p> <p>East of the field is a strip of land listed as plot 275 which is listed as a meadow known as 'Croft' owned by John Marshall and tenanted by Samuel Brown.</p>
Investigating Officer's Comments		<p>Access from the property now known as Horreum House on Main Street to the field at the rear of the houses may have been available to point C through the archway but as ownership of the strip of land B-C and the field to the east was the same this appeared to be a private access route at that time.</p> <p>The application route A-B was shown crossing what appeared to be part of the public highway (Main Street).</p> <p>The grave yard extension is not yet in existence and is part of Mr Skirrow's garden and the field.</p> <p>The field has access to Wennington Road.</p> <p>The mapping is good and correlates well with the OS survey a few years later.</p>
Inclosure Act Award and Maps		<p>Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.</p>
Observations		<p>No Inclosure Award for the land crossed by the application route was found.</p>
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights.</p>
6 Inch Ordnance Survey (OS) Map Sheet XXV	1847	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1847.¹</p> <p>However it has recently become apparent</p>

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



		<p>that in many instances there was more than one 'print run' for OS first edition 6 inch maps. Up until c.1867 the 6-inch maps were updated to show newly constructed railways (of which there were many), which explains why more than one version may be found with apparently the same publication date (with one showing a railway, and one not).</p> <p>As part of the County Council's research the Investigating Officer looks at the OS 6 inch maps located within our own records and also those available on the National Library of Scotland website - https://maps.nls.uk/os/</p> <p>Copies of the maps held by the National Library of Scotland are usually 'final' printings which therefore include railways which in most instances post-dated the survey and first publication of the map.</p> <p>Where appropriate extracts of both copies of the map (if found) will be inserted into the report and clearly labelled.</p>
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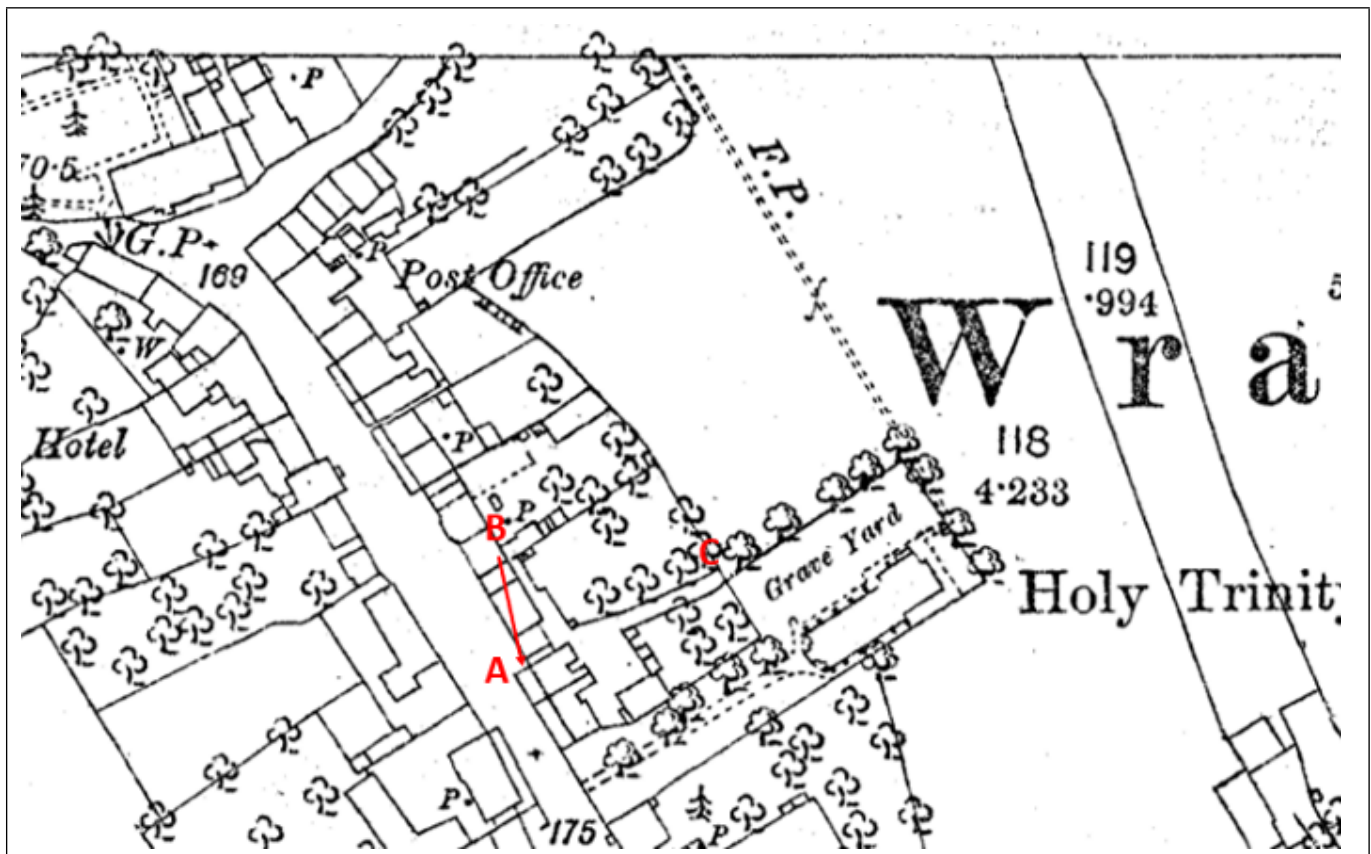


Map extract taken form National Library of Scotland online collection

<p>Observations</p>		<p>The application route is not shown. A thin strip of land consistent with the application route from the rear of the houses on Main Street through to point C is shown providing access to a field but there is no</p>
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		indication of a trodden path along any part of the application route.
Investigating Comments	Officer's	It is likely that there was access from Main Street under the archway. It is not known from this map whether this accessed the strip of land to the field. A further narrow field is beyond that. No public destination is evident.
Abstract of Title	1888	Purchase of Hen Croft by the church
Observations		In 1868 Hen Croft was owned by James Thomson who died in 1885. However, at this time the graveyard area had already been taken out of Hen Croft. The remainder of Hen Croft was auctioned in 1888 and bought by the church
Investigating Comments	Officer's	Between 1848 (when it was in the ownership of Mr Skirrow) and 1868 Hen Croft, excluding the grave yard area, was passed to John Thomson. In 1888 Hen Croft was bought by the church. No public access was recorded in this transfer.
25 Inch OS Map Sheet XXV.16	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1889 and published in 1891.





Observations

From point A to the front of the building now known as Horreum House (B) the application route appears to be part of highway extent on Main Street. The houses now numbered as 71 and 72 Main Street are shown fronted by an enclosed area which extends out into what was previously shown on the Tithe Map and 1st edition 6 inch OS map as being part of Main Street. A narrow strip consistent with the walkway through which the application route passes (from B) is shown and the property now known as Horreum House appears to be split into two.

An enclosed strip of land corresponding to the application route is shown from the rear of the houses to point C. At point C a line is drawn across the route and beyond point C the application route is not shown crossing the field with the parcel number 118. Holme Farm Close is not shown (as it did not exist until much later). Point E is in field 119.

A footpath (F.P.) is marked as running from Wennington Road in a south south easterly direction across field 118 to provide access



		<p>to the church and graveyard but is not consistent with any part of the application route.</p> <p>The Church boundary has extended into the field and is marked "grave yard"</p>
Investigating Officer's Comments		<p>The application route across the field is not shown as a trodden path and did not exist in 1889 although a route may have existed from Main Street to the field numbered as plot 118.</p>
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way</p>



existed.



[above] Map deposited at County Records Office



[above] Map deposited at The National Archives

Observations

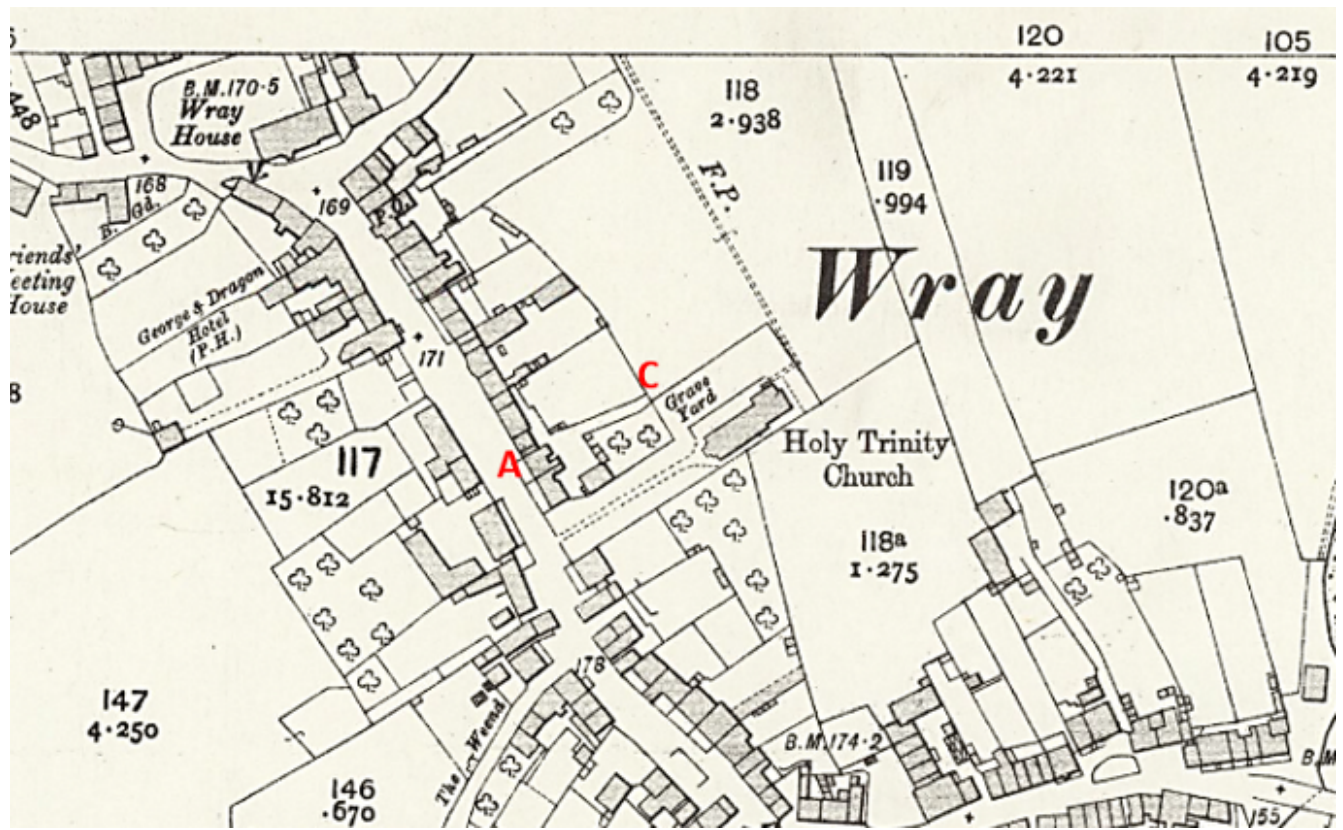
The District Valuation Books excluded that part of the application route from point A to the building (B) and showed it as being



		<p>part of highway extent on Main Street.</p> <p>The walkway through the building appears to have been included as part of the property labelled as part of plot 31. The District Valuation Book deposited at the County Records Office records plot 31 as being owned by WH Foster and occupied by Mr Yates. It was described as land for which no deductions were listed.</p> <p>The application route from the eastern end of the walkway through to point C is not numbered on the maps but is abutted on either side by plot 16 which is owned by WH Foster and the property (described as a cottage) occupied by Samuel Roberts. No deduction was listed for public rights of way or user.</p> <p>The field accessed by the application route B-C is shown numbered as part of plot 126. Plot 126 was described as 'buildings and land' owned by Rev. Reynolds and occupied by Robert Townson with no deductions listed.</p> <p>East of plot 126 the strip of land on which point E (the north east end of the application route) is now located is listed as part of plot 29 which was owned by WH Foster and occupied by Thomas Woodhouse and described as 'House and Buildings' with no deductions listed for public rights of way or user.</p>
Investigating Officer's Comments		<p>The District Valuation Records suggest that the full extent of the public highway known as Main Road extended to the actual building front now known as Horreum House.</p> <p>The application route from the rear of the houses to point C appeared to be unnumbered and excluded from the valuation process. This may suggest that it was considered to carry public rights, however however there was no obvious reason for the public to go to Hen Croft nor was any path across Hen Croft shown from that point.</p> <p>No public rights of way were acknowledged to exist at that time across the fields east of point C nor had the application route</p>



		across Hen Croft been shown on any maps.
25 Inch OS Map Sheet XXV.16	1913	Further edition of 25 inch map (surveyed 1889, revised in 1910 and published in 1913.



Observations		<p>The application route is not shown as a through route from Main Road to Home Farm Close (which was not shown to exist at that time).</p> <p>The application route from point A through the building and continuing to point C is shown. A line is shown across the route at point C and there is no route shown beyond point C.</p>
Investigating Comments	Officer's	<p>The application route did not exist as a through route in 1910. It may have been possible to walk the application route from point A through to point C but there is no suggestion that in doing so the route provided access to a place of public resort or to another public highway.</p>
1932 Rights of Way Map		<p>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</p>



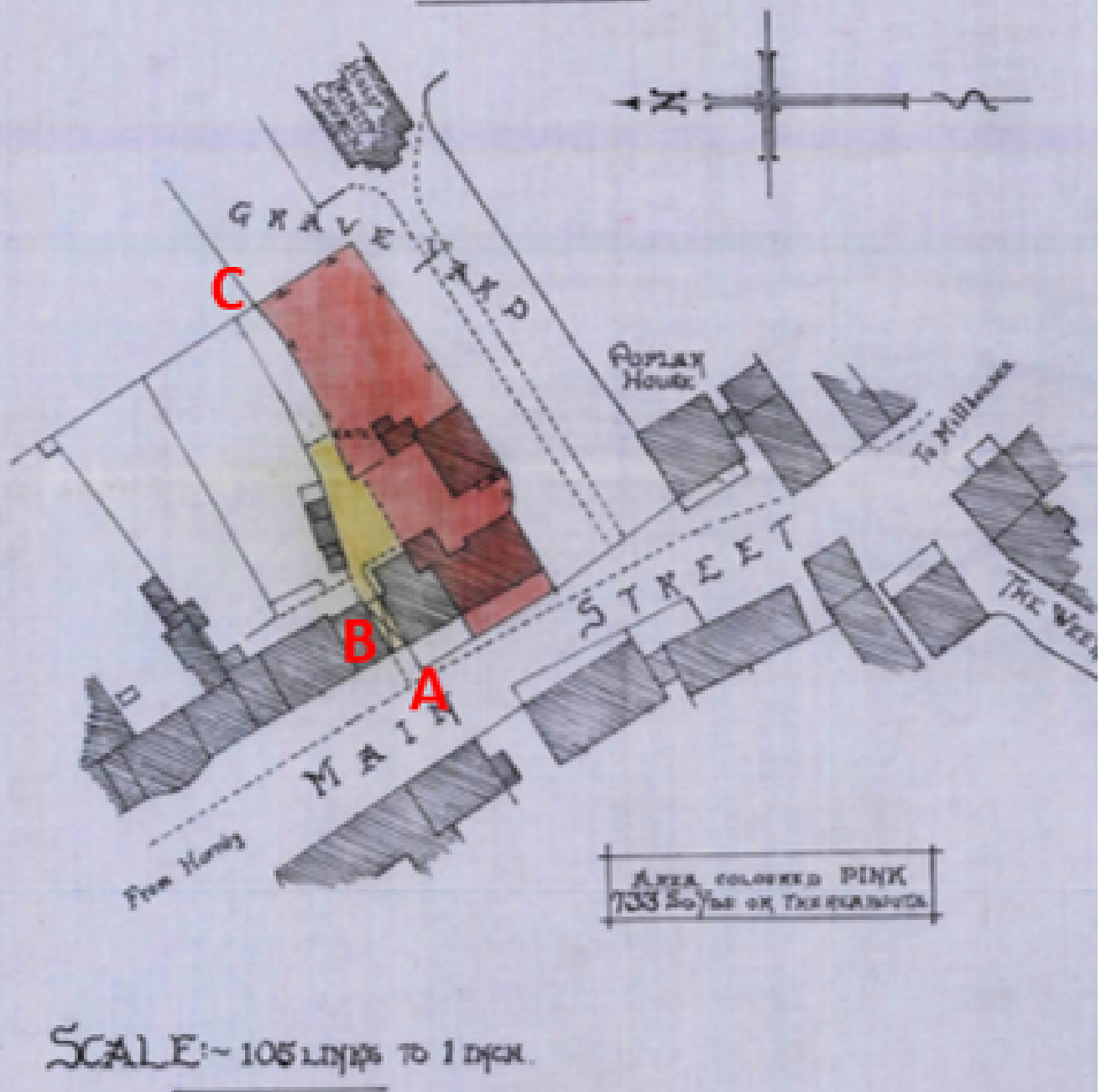
indicate that they didn't intend to dedicate further rights of way. The Commons, Open Spaces and Footpath Preservation Society (which became the Open Spaces Society) who were the prime instigators of this Act and the later 1949 Act, called for local authorities to draw up maps of the public rights of 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.



Observations		The application route is not shown.
Investigating Officer's Comments		The application route was not considered to be any class of public right of way when the map was prepared.
Conveyance deposited with the Land Registry in respect of 72 Main Street (LA927438)	1932	Land Registry documentation available to view online.



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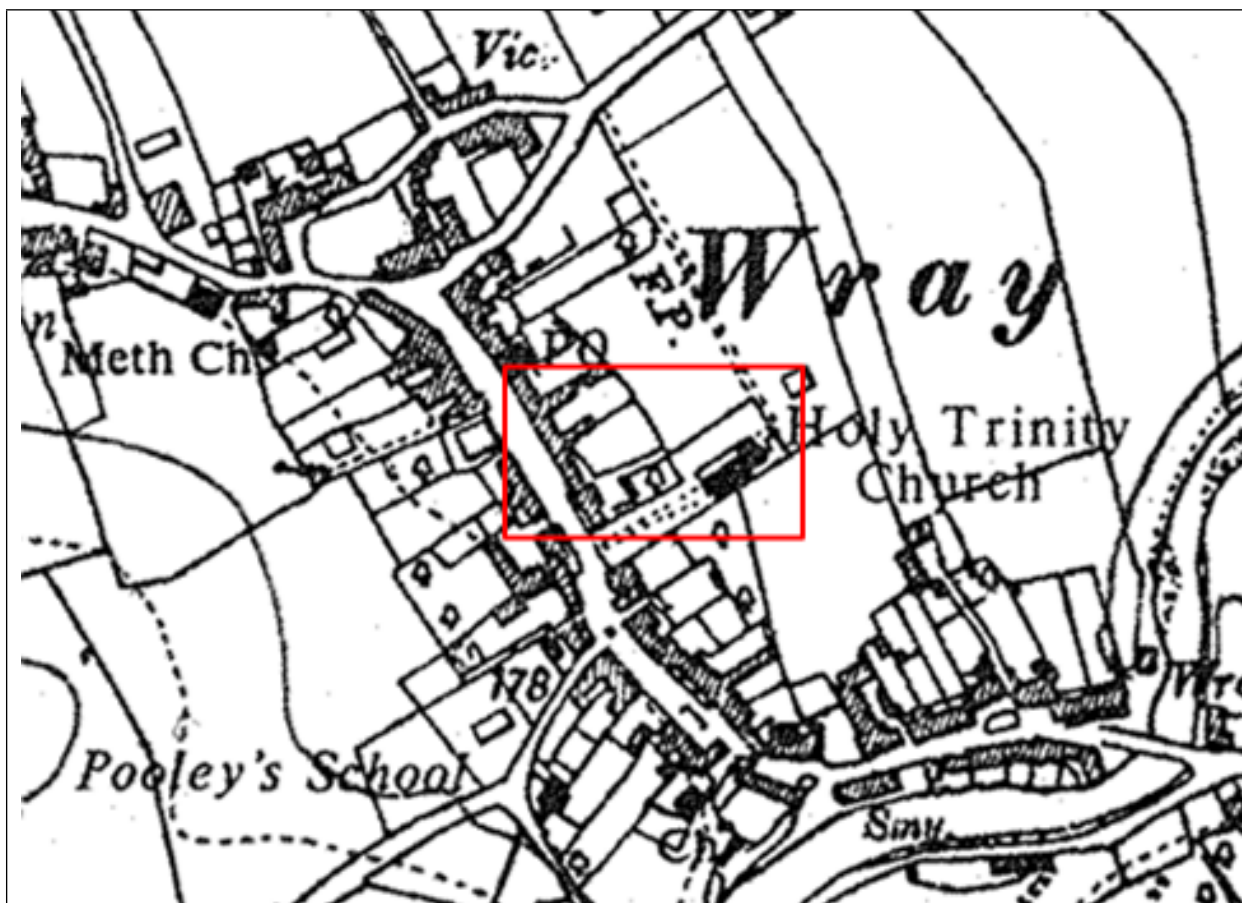


<p>Observations</p>	<p>Land Registry documentation for 72 Main Street (a property next door but one to the application route) included a conveyance made in 1932 for the sale of that property by Henry Foster of Hornby Castle (the Vendor) to Charles Pavelyn (the purchaser). Mr Foster owned the house</p>
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		<p>adjoining and the sale specifically includes the rights of way heretofore enjoyed over and along the passage and yard coloured yellow. The area coloured yellow includes the passageway and approximately half of the application route between the rear of the houses and point C and a route is marked across the tarmac footway/area at the front of the property which is bounded by a dashed line as specifically leading to the passageway.</p> <p>The private right gives access along a short stretch of the application route.</p>
Investigating Comments	Officer's	<p>The inclusion of a private right of access does not necessarily mean that a public right of way did not exist – or may not come into existence – along the route. The private rights already existed it seems and were being passed on.</p> <p>It is however relevant with regards to any future use of the route and consideration as to whether the route was being used under an existing private right. The private right is specified as being for the purchaser of the property or the owner or occupier thereafter but also refers to the fact that the right was enjoyed in common with the vendor and others the vendor had granted a similar right to. It seems that the yard and passageway was in the ownership of No 71.</p>
6 Inch OS Map Sheet 66NW	1956	<p>The OS base map for the Definitive Map, First Review, was published in 1955 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 is not shown as a through route from Main Road to Home Farm Close (which was not shown to exist at that time).</p> <p>The application route from the rear of the building (Horreum House) and continuing to point C is shown. A line is shown across the route at point C and there is no route shown beyond point C.</p>
<p>Investigating Officer's Comments</p>		<p>The application route did not exist as a through route before 1930. It may have been possible to walk the application route from point A through to point C but there is no suggestion that in doing so the route provided access to a place of public resort or to another public highway. The footpath (F.P.) shown leading from Wennington Road through to the church is marked on the map suggesting that it was visible as a trod on the ground. The application route is not shown crossing or connecting to it.</p>
<p>Aerial photograph</p>	<p>1960s</p>	<p>Black and white aerial photography available to view on GIS and flown during the 1960s. The coverage is a mosaic of</p>

various flight runs on the following dates: 12-13th May 1961, 1st Jun 1963, 3-4th June 1963, 11th June 1963, 13th June 1963, 30th July 1963, 13th June 1968. The majority of images are from 1963, with the 1961 images mainly covering West Lancashire district, and the 1968 images mainly covering Ribble Valley district.





Observations		The route leading from the rear of the houses to point C can be clearly seen with a lighter area at point C suggesting that a gateway may have existed at that point. There is no trod visible across the field C-D but a gateway is visible at point D which provided access onto the access road leading from Wennington Road to Home Farm.
Investigating Officer's Comments		The photograph predates the construction of Home Farm Close or the purchase of the playing field by Lancashire County Council. It does however support the user evidence submitted by several members of the public who refer in their evidence to using the route in the mid to late 1960s. The photograph shows that it may have been possible to walk the route and to exit the field at point D and continue to Wennington Road – or Home Farm.
Letter relating to a Service of Thanksgiving	1968	In August 1967 a flash flood caused tremendous devastation to the village of Wray resulting in the destruction of houses, bridges and roads in the area. As part of the consultations carried out by



		<p>the County Council a copy of a letter dated 16th September 1968 was submitted by the Bursar at Wray with Botton Endowed Primary School.</p>
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The letter was titled 'Wray and District Flood Disaster. Service of Thanksgiving and Blessing of the New Homes.'

The letter was passed to the Bursar from a local historian (Mr Kenyon) who explained to her that the letter was part of his file documenting the Wray Flood in 1967.

As you are already aware the Service is to be held in a Marquee to be erected on the Church Field, and will commence at 3.00 p.m. You are asked to take your seats not later than 2.50 p.m. Refreshments will be served in an adjoining marquee at the close of the Service and of course there will be no charge.

Unfortunately we cannot guarantee a fine day, nor even a preceding fine week. You are asked, therefore, to bear in mind that it may be colder than is hoped and possibly the grass may not have dried out.

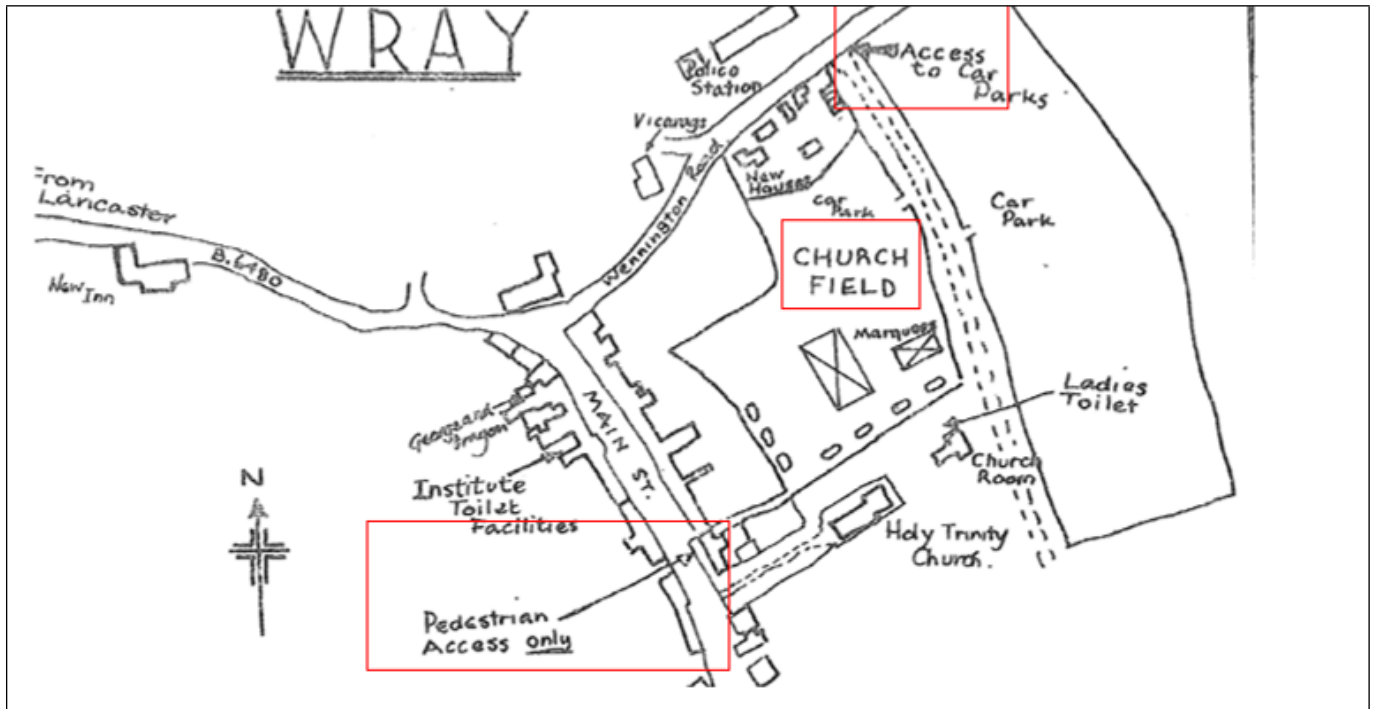
Unless there is considerable rain during the week there should be no difficulty in keeping to our proposals to park cars on the Church Field and an adjoining field, but if this is not practicable the Police will supervise street parking, and you are asked to follow their instructions. If you travel by bus you may find it more convenient to reach the Field by means of the footpath off Main Street through the Archway which will be signposted.

The colour of your ticket will denote the section of the Marquee to which you have been allocated, and may take any seats within that section. Stewards will be available to assist you.

Approximately 400 people will be attending in addition to local residents, and we look forward to your joining us on what should be a memorable occasion.

Yours faithfully,

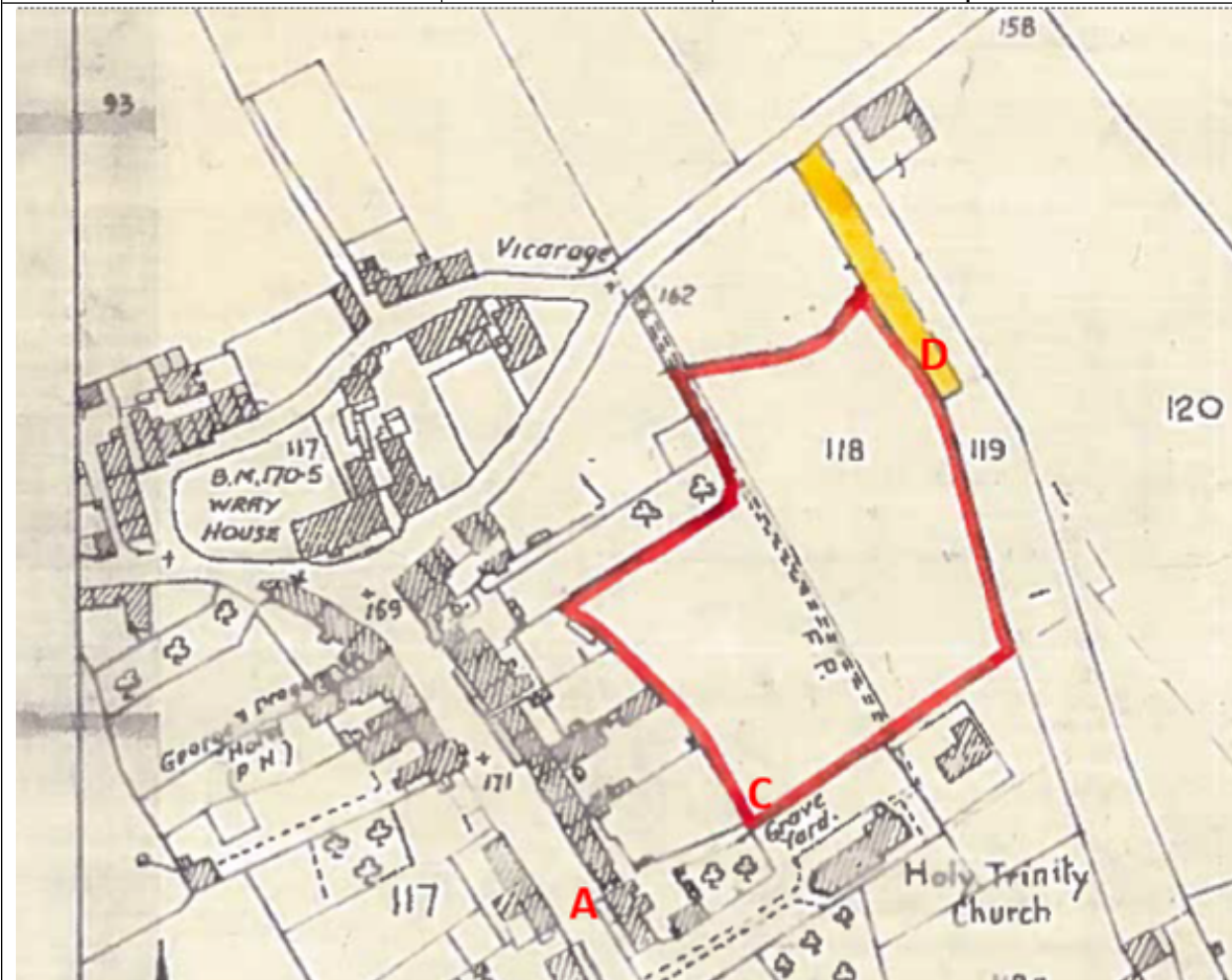




<p>Observations</p>		<p>The letter was addressed to 'Dear Sir/Madam' and Signed by a Mr John Hailsworth 'For the Trustees'.</p> <p>The address on the top of the letter is Council Offices, Hornby and the letter provides detail to the recipient (unnamed but described as an organisation) for the Church Service to be held on Saturday 5th October 1968. The letter explains that the service was to be held on the Church Field and an adjoining field and that with over 400 people in attendance there was to be a marquee on the field. Details relating to car parking on the field were given and it was stated that if travelling by bus it might be more convenient to reach the field by means of the footpath off Main Street through the Archway which would be signposted.</p> <p>A hand drawn map attached to the letter shows that the pedestrian access referred to was the application route from Main Street. It also labels the field now owned by Lancashire County Council as the 'Church Field' on which the marquees were to be situated and shows a gate consistent with the location of the gate at point D which then provided access to a track to/from Wennington Road.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The reference to the application route as being a footpath through to the church field</p>

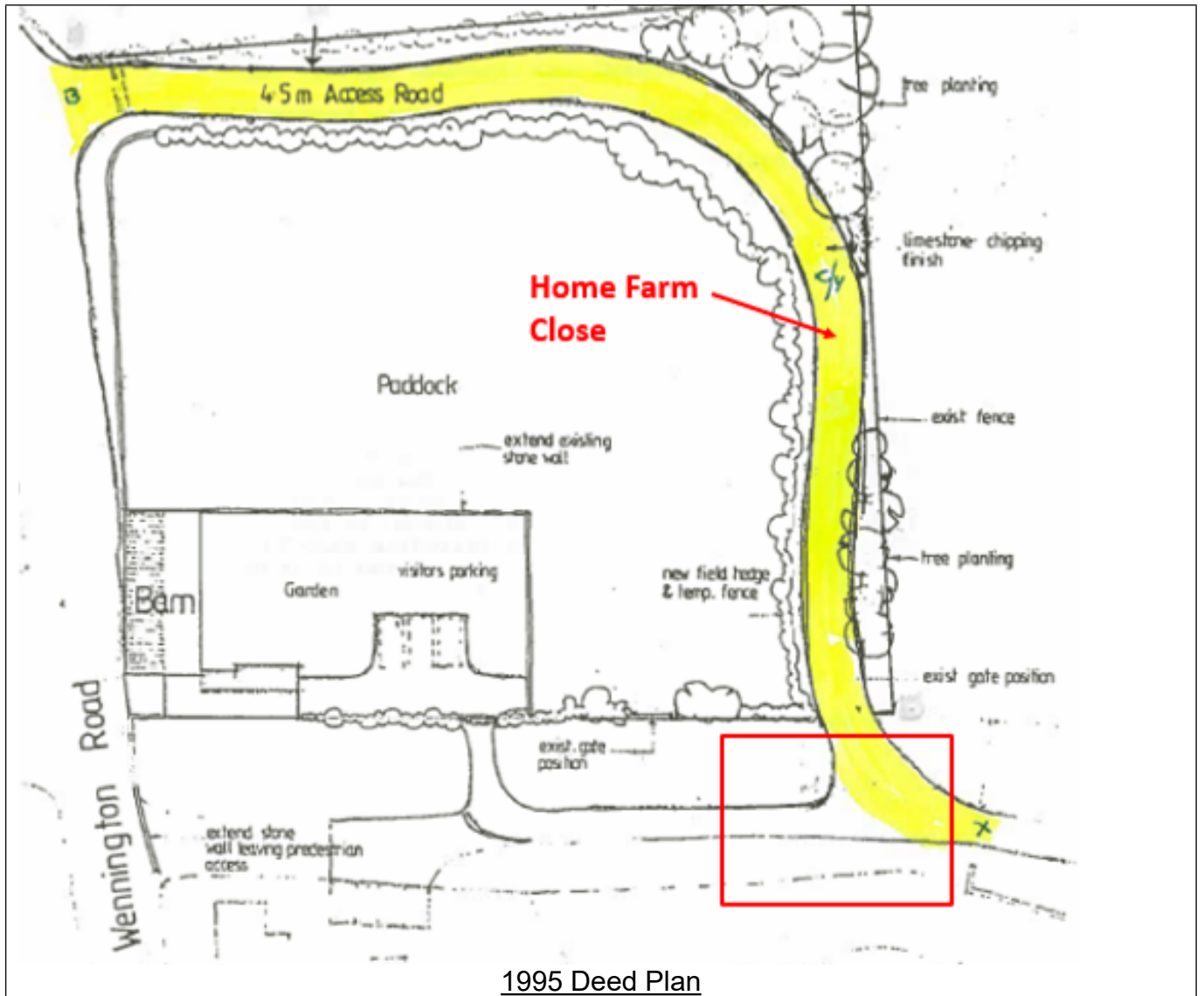


		<p>in 1968 predates the purchase of the field by the County Council and suggests that it was already being used by members of the public to access the field at that time. Alternatively it may have been an access negotiated for the event. The description of the field as the 'Church Field' suggests that it was in use for church events and already that by the 1960s was a place where local people in the village were accessing from the application route and also from the track leading south from Wennington Road.</p>
<p>Land ownership documentation held by Lancashire County Council</p>	<p>1970</p>	<p>Land Registry documentation and Deed of Grant of a right of way deposited in the county council Deed room and dated 2nd April 1970 together with a supplemental Deed dated 6 September 1995</p>



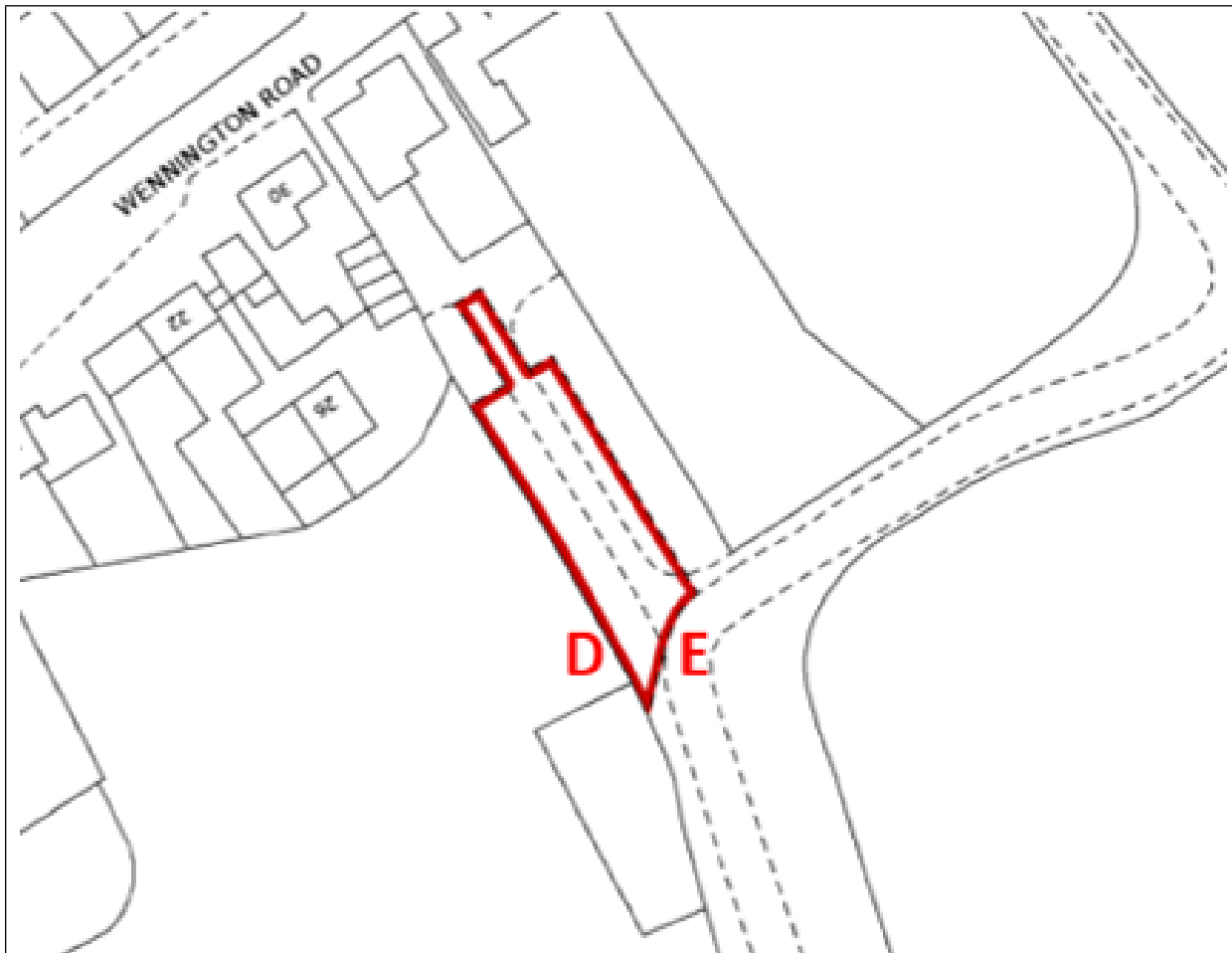
1970 Deed Plan





1995 Deed Plan





Extract from Land Registry plan showing land owned by Wray with Botton Parish Council

C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 (07.05.2009) A Conveyance of the land in this title dated 24 March 1970 made between (1) Reverend Reginald George Bainton Bailey (2) Church Commissioners For England (3) The Right Reverend Father In God Charles

1 of 2

Title number LAN87540

C: Charges Register continued

Robes, Lord Bishop Of Blackburn Ephraim Atkinson and Thomas Hall and (4) The County Council Of The Administrative County Of The County Palatine Of Lancaster contains restrictive covenants.

NOTE: Copy filed.

Extract from Land Registry title deeds for playing field

Observations		Lancashire County Council purchased the field crossed by the application route (bounded by a thick red line on the 1970 Deed Plan inserted above) on 24 th March 1970. Land Registry documentation
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		<p>confirms that it was purchased from 'the church'. There is no reference made to any access to Main Street.</p> <p>The Conveyance had the Council seal affixed pursuant to a decision by the Education Committee on 20th May 1968.</p> <p>Access to the field was provided to LCC and documented in an agreement which related specifically to the granting of a right of way over land coloured yellow on a plan forming part of the agreement. The agreement was made on 2 April 1970 between Mrs P D Holt and Lancashire County Council and contained in it is a provision that Lancashire County Council would construct a road on the land coloured yellow and would thereafter maintain and keep it in good repair. The Deed grants a right to the County Council or other owners or occupiers of the field and others to whom Mrs Holt grants a right to pass with or without horses, carts and vehicles from the land coloured red on the plan along the land coloured yellow (the road to be constructed by the county council). There is no reference to the dedication of public rights but the road to be constructed included the land over which runs the application route between point D and E.</p> <p>The 1995 Deed relates to the original access agreement and explains that the grantor (Mrs Holt) had requested that the county council agree to vary the route of the said right of way to that shown coloured yellow on the 1995 plan) and that the county council had agreed. The right of way remained limited to the County Council as owner and to occupiers of the field and the old line was surrendered. It is unfortunate that it is now realised that the yellow colouring did not touch the County Council owned land. Nevertheless the access into the field has continued to be used by the County Council crossing land owned by Mrs Holt and now owned by the parish council</p> <p>The agreement plan marked on it work to be carried out to build a wall but "leaving</p>
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		<p>pedestrian access" to Wennington Road along the former vehicular access road used by the County Council (for which an order has subsequently been made to record public footpath rights). This is not necessarily a reference to public pedestrian access.</p> <p>The route coloured yellow was subsequently constructed and adopted as a vehicular highway by the County Council under a Section 38 Highways Act agreement in 2004 as Home Farm Close. The land crossed by the application route D-E was sold by Mr and Mrs Holt to Wray Parish Council in 2009.</p>
<p>Investigating Officer's Comments</p>		<p>Lancashire County Council purchased the field now used as a playing field in 1970 and inquiries made to the school (detailed later in the report) suggest that use of the field by the school and as a playing field started very soon after. When the County Council bought the land it appeared to be 'land locked' which necessitated a separate agreement to provide private access rights so that the county council could access the field. The access agreement was for Lancashire County Council as owners of that land not as Highway Authority and to occupiers of the field. That right included vehicular access but did not imply there were no public pedestrian rights either along the route granted or by any other route (e.g., the application route A-C).The County Council constructed a track on their private access route.</p> <p>The 1995 variation of the vehicular access route provided for the construction of a new, initially private access route which subsequently became part of Home Farm Close which was adopted in 2004. The 1995 plan indicates that pedestrian access was to be retained in the wall across the route formerly used by the county council indicating that if access had been possible along the application route A-D then it would have been possible to continue north north west along the access track to Wennington Road since at least 1970.</p> <p>The fact that the County Council bought the land from 'the church' in 1970 explains why it was described as the 'Church Field'</p>



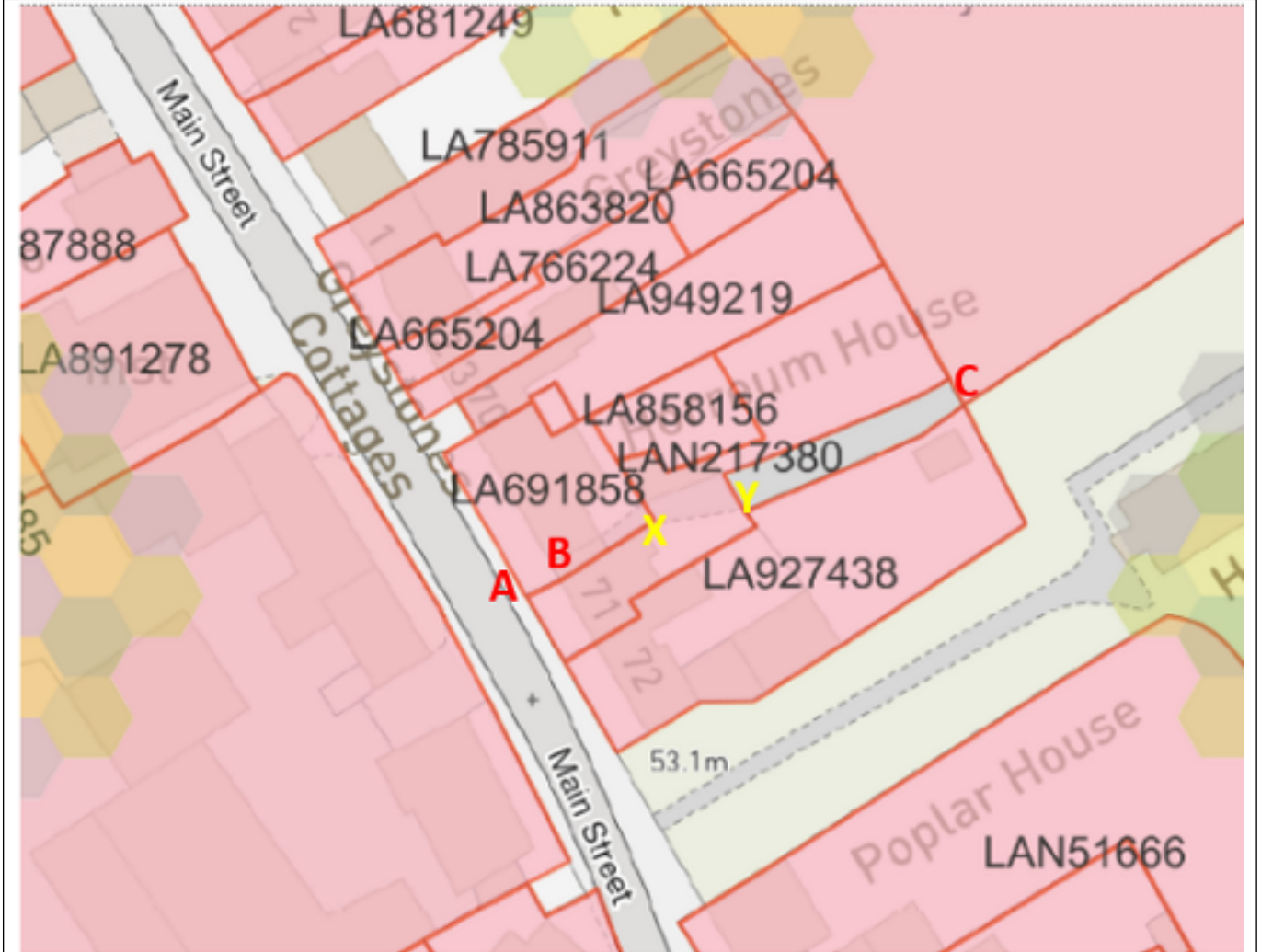
		in a letter dated 1968 and why it was used prior to 1970 for church activities. . The Abstract of title shows the church purchased this field which was then much larger in 1888
1:2500 OS Map Sheet SD6067-6167	1973	Further edition of 25 inch map reconstituted from former county series and revised in 1972 and published 1973 as national grid series.



Observations		The walkway from Main Road is marked in the same way as it is shown on earlier OS mapping. From the walkway a bounded strip is shown along which the application route runs to point C where a line is shown across the route. The application route is not shown between point C and point D. East of point D an access road is shown leading from Wennington Road to Home Farm and a number of other buildings.
Investigating Comments	Officer's	It may have been possible to travel along the application route in 1972 – as suggested by a number of users submitting evidence to be considered later in this report but the map does not provide



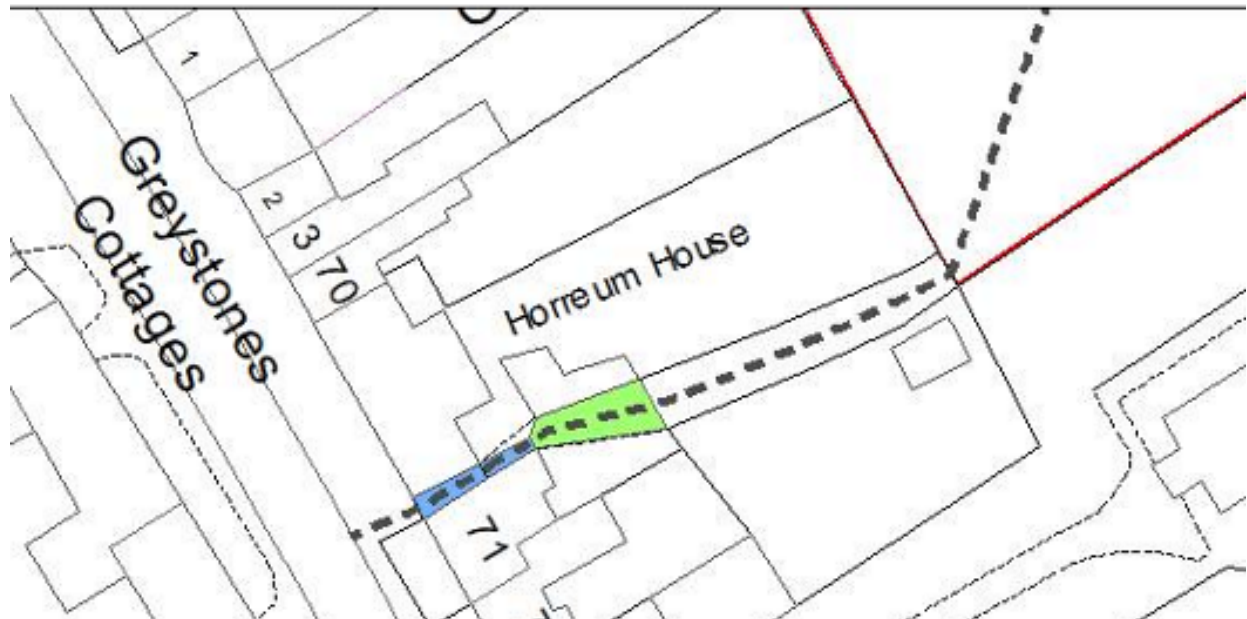
		evidence of a substantial well used route across an open field.
Licences relating to pedestrian access along part of passageway between points A-C	1984-1985	Information provided by LCC Land and Property Services.



Land registry map search showing registered land shaded red



- area shaded blue Annual licence from WH & AS Williams – 1/7/1984
- area shaded green Annual licence from HL Birkett & JM Walker – 29/1/1985



Observations

Details of two licences granting pedestrian access along those parts of the application route marked between B-X and X-Y on the land registry plan above have been examined.

The licence granted to Lancashire County Council relating to the land – including the passageway B-X was documented in a letter dated 18th July 1984. The letter explained that it had been agreed to dispense with a formal agreement and relied on the exchange of correspondence between J W Stavely of 'The Barn', Main Street, Wray (the licensor) and Lancashire County Council. The agreement granted a pedestrian access for Lancashire County Council its servants workmen and persons authorised by it over that part of the application route shaded blue on the plan inserted above and shown B-X on the Land Registry Plan. Access was granted on the basis of a yearly payment of £5 and the agreement could be terminated by either party with 6 months written notice. The Property and Estates Team explained that 'The Barn' is the property now known as Horreum House and that the licence subsequently passed to WH & AS Williams and was then passed to the new owners of



		<p>Horreum House in 2021.</p> <p>The licence relating to the land X-Y was originally granted by H L Birkett and J M Walker of 71 Main Street to Lancashire County Council in consideration of a yearly sum of £5 a year and was dated 29th January 1985. It granted Lancashire County Council, its servants, workmen and persons authorised by it including school pupils, pedestrian use of that part of the passageway owned by HL Birkett and JM Walker. The licence specified that it could be terminated by either party by giving 6 months' notice in writing. Notice to end the licence has been given to Lancashire County Council and agreement to use that part of the route withdrawn in March 2023. The rest of the strip of land Y-C is unregistered and ownership unknown. No licenses exist in relation to that section.</p>
Investigating Comments	Officer's	<p>The licences grant private rights of access along part – but not all the application route A-C that provides access to the playing field. The licences specifically refer to those persons being given permission to use the route under the licence meaning that use from 1984/1985 to 2023 by those persons was under an express agreement and not as of right.</p> <p>The fact that licences were granted to secure access to the playing field for use by the school does not necessarily mean that public rights did not already exist along the route – or that public rights have not subsequently come into being although any use by the public since 1985 will need to be carefully considered to differentiate it from use under licence.</p>
1998 Lease	1998	A lease was granted by LCC to the Parish Council for an area near point D for a playpark . It has its own access
Aerial Photograph	2003-2018	Aerial photographs available to view on Google Earth Pro.





[above] 2003



[above] 2018





[above] 2018

<p>Observations</p>		<p>Two aerial photographs taken in the past 20 years.</p> <p>The photograph taken in 2003 shows that the application route across the playing field was accessible. There is no trod visible across the field but the gateway at point D can be seen with a lighter area suggesting use of the gateway to access the field. The play park is also shown. It is not possible to see the access to the field at point C because of trees.</p> <p>The photograph taken in 2018 clearly shows a well-trodden access onto the field at point C. It also shows that the playing field had been marked out with running tracks and rounders pitches but that it would still have been possible to walk between point C and point D.</p>
<p>Investigating Officer's Comments</p>		<p>The photographs support the user evidence submitted and indicate significant levels of use of the route to access the playing field particularly in 2018. The running and rounders pitches marked out on the field may have necessitated those</p>



		people using the route when games or running 'events' were taking place to deviate from the direct route C-D.
Google Street View photographs	2009-2021	Google Street View images showing the application route.



[above] Main Street 2009



[above] Main Street 2016



[above] Main Street 2021



[above] Home Farm Close 2009

Observations		The photographs show that access was available at Main Street end of the application route in 2009, 2016 and 2021 and show that access was available to the route from Home Farm Close in 2009.
Investigating Officer's Comments		The photographs all support the user evidence submitted in support of this application.
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</p>



		Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.

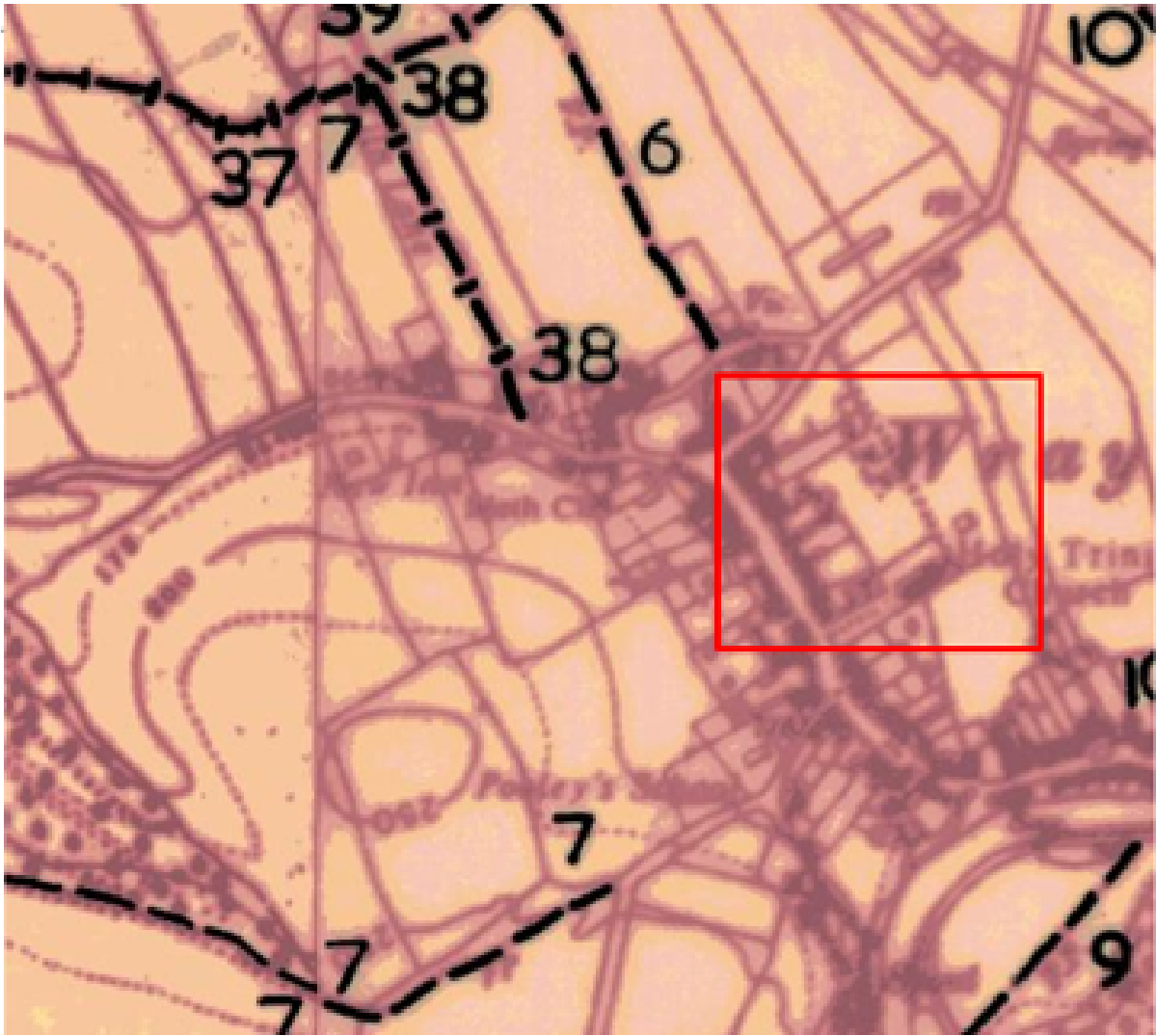


Observations		The application route was not shown.
Draft Map		<p>The parish survey map and cards for Wray with Botton were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 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</p>



		4 months on 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The application route was not shown on the Draft Map and there were no representations made regarding the fact that it was not shown.
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 there were no representations made regarding the fact that it was not shown.
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 and Statement.
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 and Statement of Public Rights of Way (First Review).
Investigating Officer's Comments		The application route was not considered to be a public right of way during the preparation of the First Definitive Map and Statement through to the 1960s.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	In 1929 the responsibility for district highways passed from rural district councils (and later from urban district and borough councils) to the County Council. For the purposes of the 1929 transfer, public highway 'handover' maps were drawn up to identify all of the rural district-maintained highways within the county. These were based on existing Ordnance Survey maps and coloured to mark those routes that were publicly maintainable by the rural district council. However, they suffered from several flaws – most



particularly, if a right of way was not surfaced it was often not recorded.

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.

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.



[above] Extract from Handover Map OS Sheet 25SE





[above] LCC digitised highway adoption layer



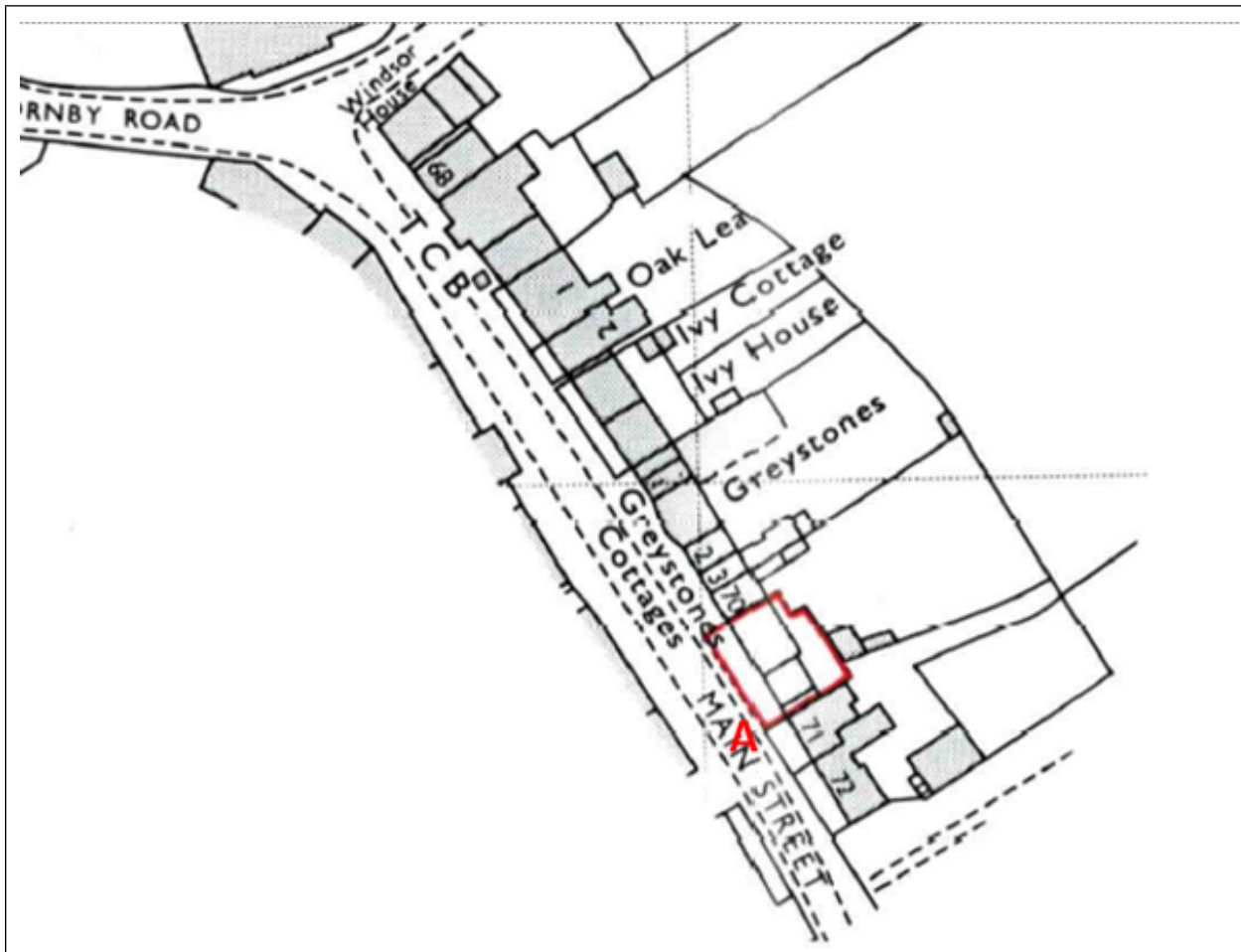


[above] Section of application route from kerb of Main Street to walkway through building indicated by red arrows



[above] Google Street View September 2022 showing section of application route from kerb of Main Street walkway through building





[above] Land Registry Plan for Horreum House showing boundary of land registered

Observations

The Handover Map understood to have been prepared in 1929 shows Main Street as a publicly maintainable highway up to and including the application route crossing the tarmac area at the front of Horreum House (A-B). It does not show any other part of the application route as a publicly maintainable highway and pre-dated the construction of Home Farm Close.

There is no adoption sheet for the area crossed by the application route and the digitised highway records only show the extent of Home Farm Close that is adopted highway.

The tarmac area at the front of Horreum House appears to be used for parking vehicles and whilst there is no permanent restriction to use of this area by the public as part of the width of Main Street (as recorded on the Tithe Map, Finance Act records and 1929 Handover Map). According to Land Registry most of this



		<p>area is recorded as being in private ownership which is not incompatible with his being highway.</p> <p>Officers in the Highways Team were unable to provide further detail with regards to the extent of publicly maintainable highway.</p>
Investigating Officer's Comments		<p>Only A-B is currently recorded as highway (on the Handover Map) so it is suggested. No other part of the application route is recorded.</p>
Highway Stopping Up Orders	1835 - 2014	<p>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.</p>
Observations		<p>No records relating to the stopping up, diverting or creation of public rights along the application route were found.</p>
Investigating Officer's Comments		<p>If any unrecorded public rights exist along the route they do not appear to have been stopped up or diverted.</p>
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</p>



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).



[above] Extract from LCC Register showing S31(6) deposits received by Lancashire County Council referring to deposit made in 2004 and renewed in 2010.

Observations

The County Council is in receipt of a Highways Act 1980 Section 31(6) deposit which was lodged with the county council for the area over which the application route runs (A-X).

The deposit relates to the land in the registered ownership LA691858 (Horreum



		<p>House). The deposit was made on 22nd January 2004 and was subsequently renewed on 21st May 2010.</p> <p>In the 2004 Statutory Declaration it is stated that since taking ownership on 3rd February 1990 the landowners did not intend to dedicate a public right of way across their land.</p>
Investigating Officer's Comments		<p>Between point A and point X there is a clear indication that the owners of the land from 1990 onwards did not acknowledge the existence of a public right of way and did not intend to dedicate a route to the public.</p> <p>From point X to point E there is no indication by the current or previous landowners under this provision of non-intention to dedicate public rights of way over this land.</p>

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

Map evidence suggests that the houses on Main Street pre-dated the Ordnance Survey First Edition 6 inch map and that the passageway leading through the buildings and the enclosed strip through to the gateway onto the field at point C has existed since at least the 1840s. It was all in the same ownership at that time.

Map and documentary evidence inspected suggest that the route from point A to the walkway through the building (B) was part of the public vehicular highway (in particular the Tithe Map, Finance Act and Handover Maps) from the mid-1800s.

Until the field to the rear of the houses on Main Street was sold to Lancashire County Council in 1970 it appeared from the OS maps to have been farmland but was sold to the Church in 1888. A hand drawn map and letter from 1968 refer to the field as being 'The Church Field' and mark pedestrian access to the field via the application route A-C. From at least the 1960s onwards it may have been possible to walk from Main Street along the application route A-C to access the field and to then continue to join the unrecorded footpath marked on the OS maps which ran from Wennington Road to the church prior to that time or to have used a route clearly shown on the 1960s aerial photograph as a substantial access road leading from Wennington Road providing access to Home Farm from which it appeared to have been possible to access the application route at point D.



On purchasing the field in 1970, the County Council entered into an agreement to secure vehicular access to it via Wennington Road but did not enter any agreements relating to pedestrian access from Main Street for another 14 years.

In 1984-85 specific licences were put in place the County Council and for the primary school pupils to use the application route A-C although the licences only related to part of the passageway as the other part was unregistered and landownership is not known.

This application is based on the submission of a substantial amount of user evidence and the map, photographic and documentary evidence from at least the 1960s onwards supports the application so far as confirming that a route appeared to be capable of being used on foot throughout that time. However, the submission of a Statutory dedication under Section 31(6) Highways Act by the owners of Horreum House (A-X) indicates that the owners of the land had no intention to dedicate a public right of way across this land since 2004 and there is also the impact of the Foot and Mouth Orders.

Head of Service – Legal and Democratic Services Observations

Landownership

The section of the application route from A to X crosses land which is in private ownership. Land crossed by the application route from X to Y is also in private ownership. The section of the application route from X to C crosses land, which is unregistered, so the ownership is not known. Land crossed from C to D is registered to Lancashire County Council. The section of the application route from D to E crosses land which is owned by Wray with Botton Parish Council.

Information from the Applicant

The Applicant provided the following supporting information:

1. One hundred and twenty-one user evidence forms (forms provided by Lancashire County Council)
2. Ordnance Survey Maps, showing the application route

Duration of use

The 121 user evidence forms collectively provide evidence of use going back as far as 1951 and up to 2022, when the application to record the right of way was made.

The first table shows the use of all users, regardless of the specific years they used the route.

20+ Years: any years	1-19 Years: any years	Total
86	35	121



To assist committee the user evidence has been evaluated looking at when use was possibly as of right without interruption at different periods (legal advice considered later in the report),

The second table only shows the users who used the application route between 1984-2004 being twenty years before the Statutory Declaration, made in 2004 which acknowledged that no public rights of way crossed part of the application route in 2004, under Section 31 (6) of the Highways Act 1980.

29 of the total 121 users did not use the application route between 1984–2004. Therefore, the use of the remaining 92 users who used the route anytime between 1984-2004 need to be considered.

On reading the information available, five of these users stated they had permission to use the route. Additionally, one other user out of the 92, appeared to satisfy the requirements to be classed as a user with permission. Therefore, the total number of users within the years 1984-2004, who appeared to use the route without permission, was 86.

20+ Years: 1984-2004	1-19 Years: 1984-2004	Total
48	44	92
Of the above, those without permission	Of the above, those without permission	Total
45	41	86

It appears that in law use of the route was affected in 2001 by the Notices issued due to the outbreak of Foot and Mouth Disease, causing public rights of way to close. This is discussed later in the report. If it is an interruption and also a calling into question, the 20 year period to be considered to establish 20 years of uninterrupted use of the route would be between 1981-2001.

The issue of considering common law inference from all the circumstances including use will also be considered later in the report

36 of the total 121 users did not use the route at all between 1981-2001 (85 did). Five of these users stated they had permission to use the route and one other user out of the 85 appeared to satisfy the requirements to be classed as a user with permission. The table below shows the use of the users between these years.

20+ Years: 1981-2001	1-19 Years: 1981-2001	Total
42	43	85
Of the above, those without permission	Of the above, those without permission	Total
39	40	79

Frequency of use

78 of the total 121 users stated that they used the route daily or weekly. 18 users' use of the route varied over time, so they did not provide one specific answer to frequency of use. All users stated they used the route on foot.



Daily	Weekly	Monthly	Every Few Months	Yearly	Varying Frequency	Total
30	48	8	16	1	18	121

The use of the 86 users (without permission) who used the route at any time between 1984-2004 is shown on the table below.

Daily	Weekly	Monthly	Every Few Months	Yearly	Varying Frequency	Total
18	33	7	15	1	12	86

The use of the 79 users (without permission) who used the route at any time between 1981-2001 is shown on the table below.

Daily	Weekly	Monthly	Every Few Months	Yearly	Varying Frequency	Total
14	32	6	15	1	11	79

Reasons for Use

The reasons for use varied between the different users. The most common answers included: pleasure; taking children/grandchildren to school or to play on the field or playground; to access village facilities; to exercise; to visit friends and families in the village and to help out with or attend village events. The village events mentioned by the users included Wray Scarecrow Festival, Village Sports Day, Car Boot Sales and Wray Fair.

Other Users of the Route

All users that answered the question about the use of others, recorded that they had seen other users. Many users gave details about the use of others by saying it was used regularly and frequently by villagers, visitors, parents and children and walkers. Many noted people use the route as an access route to the local Primary School, village events and village facilities. Many also stated this route was a much safer one in comparison to alternative routes available.

Consistency of the Route

The majority of the 121 users stated that the route had always followed the same route. A few users were unsure, and a few users recorded that the route was altered when events were taking place or when the field was in use by the Primary School.

Unobstructed Use of the Route

Of the 121 users, the majority said they were not prevented from using the route. One user said they were prevented from using the route whilst the school used it. Another user recalled they were prevented from using the route as the obstructions on the ginnel 'made down the ginnel like an obstacle course'. A further user stated they were not prevented from using the route, but the obstructions made it 'awkward'.



Many other users, who were not prevented from using the route, recorded that there has been barriers and obstacles on the route for the last twelve months. The items used as barriers included: wheelie/household bins, parked cars, building materials, compost, toys, stones and logs.

The majority of the users stated that there were gates on the route at either end of the school field. Many recalled that these were not locked but could sometimes be closed.

None of the users recalled seeing any signs or notices which suggested the application route was not a public right of way. One user recalled only seeing a sign saying, 'no dogs allowed on the school field'.

Information from Others

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

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

The local footpath secretary responded to consultation for the Ramblers Association to state they have no objections to the DMMO and support it. In addition to this, an alternative route was suggested.

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

BT Openreach responded to consultation to state they are not affected by the application.

Information from the Landowners Lancashire County Council (education)

Lancashire County Council acquired the land crossed by the application route C-D on 24th March 1970.

The Head Teacher at Wray with Botton Endowed Primary School is aware that the field crossed by the application route had been used by residents and visitors to the village for many years.

The School pupils' use of the footpath between points A-C was under a licence which was agreed many years ago with the former resident who owns part of the footpath between the field and Main Street. The new owner of part of the land crossed by the application route served notice terminating the licence and the right to use the footpath as at the end of March 2023.

The Officer dealing with the matter explained that no such agreement was in place for residents and visitors in the village who used the pathway 'as of a right' and that they are not aware that this access has ever been blocked off or use prevented.



The Head Teacher has confirmed that the school supports the application to ensure a long-term solution to provide safe access to the school children to the field.

The Head Teacher advised that she was aware from conversations she has had with villagers in Wray that when the County Council acquired the field in 1970 it was used straight away after that by the School as previously the School had no access to a playing field. She added that it has been reported to her that it was a big event in the village when the School started using the field in 1970 and from speaking to local people who have lived in the village since 1970, they have advised that they have also used the field since 1970 when the field was purchased by the County Council and have used the footpath from the village/Main Street for access to the field.

Further to this, the School provided information, documentary evidence and a map, relating to the matter.

An additional response was received from the Education Authority, as owner of the School Playing field. The officer advised that the Head at Wray Primary School has informed her in conversation of the following:

- That she does and always has, in her time at the school (which is around 14 years) locked the gates at both ends of the playing field at all times when the children are on the school field during school use. The officer has been told that the villagers know that it is a school playing field and is locked when the children are using it during term time and has advised that the locking of the gates is due to safeguarding issues and concerns.
- The school has banned dogs on the playing field and the parents of the pupils have been notified that dogs are not permitted on the school playing field.
- Sometimes permission is granted by the school to parents and villagers to use the school playing field for birthday parties and events etc. A lettings form is used by parents/villagers when they hire the school field.

Current owner of 71 Main Street

The current owners of owners of part of the land crossed by the application route provided copies of a number of letters and documents referring to them as evidence:

Letter dated 19th October 2022 to the owners from Lancashire County Council asking whether they would consider granting a new licence to enable the school to use the application route to access the playing field. The landowner annotated the letter stating that it was proof of licenced access only – which was terminated as per deed agreement.

Further copy letters were submitted dating back to 25th June 1984 providing historical evidence of the licence agreement and the fact that it continued – as a licenced agreement - when landownership changed.



The landowner also provided partial copies of the Section 31(6) Highways Act statutory deposits made by the owners of Horreum House – which have already been considered earlier in this report.

In addition to the above, the owners provided information regarding the termination of the licence. They stated that the licence had been terminated on 13 March 2023, following six months of written notice. It was stated that the owners thought it would be beneficial to set out their reasoning for terminating the licence over their property. They stated that the route of passageway operated via the licence was through a ginnel directly into their back garden. Due to having young children, the owners want a safe and secure space for their family to quietly enjoy. They stated the licence did not allow for this, so the owners terminated the licence.

Other owner

Another landowner of part of the application route, provided no response to consultations.

Wray with Botton PC

Wray with Botton Parish Council are not only the applicants and the Parish Council in this matter, they also own land crossed by the application route. Their response to consultation and comments have already been noted earlier in the report under 'Consultations'.

Assessment of the Evidence

The Law - See Annex 'A'

The applicant is of the view that there is already a public footpath along the application route which should be recorded on the Definitive Map and Statement. There is no express dedication and so Committee are asked to consider whether the test for making an order can be satisfied looking at S31 Highways Act dedication able to be deemed or looking at the inference of dedication under common law.

This matter raises many different issues and the balancing of evidence may prove difficult. Committee is reminded that the test to make an Order is a "low bar" and committee would need to be satisfied that on balance it is reasonable that a footpath can be alleged. It is noted that there is much user evidence submitted and they refer to using the application route line.

Destination –

to be a highway a route starts on a highway (of sufficient status) and is either used specifically as a cul de sac or ought to connect to another highway (of sufficient status) or a place of public resort . Here the route starts on Main Street and goes to or across a field owned by LCC for its education function and today reaches a vehicular highway. Looking at the user evidence it would appear that some accessed the field and some used it as a through route.



In the period 1980s and 90s –users would not have had an adopted vehicular highway just ahead of them. They would have a track to Wennington Road constructed by LCC for its private access. A route approximating to this track has previously been the subject of an application to add it to the Definitive Map as a footpath. An Order has been made but not yet confirmed. Both that route and this application route are shown to reach the public vehicular highway which is there now but may have joined each other. This track potentially carrying a footpath could be a point of destination on a footpath network before the vehicular highway arrived

The field appears from the evidence to be a possible place of public resort for the section of the claimed route A-C but not when the school is using it. It was however purchased as a school playing field and events licensed. The play park for toddlers dates from 1998. Use of the field as a whole would not be use of line C-D as claimed and for which user evidence is submitted.

The issue of there being a true destination for the route being a public highway at D for the relevant period prior to 2004 needs careful consideration but the reasonably alleged footpath at D could be sufficient destination to consider the making of an order in this matter.

Use of a line –

to evidence that a route can be reasonably alleged to have become a highway it must follow a line. The use would need to be of this line and not general use of the field or use of another line deferring to use by the school. At present the user evidence is use of the line apart from a few where their line altered if school was using the field. It is suggested that committee is considering the years pre 2004. The 2003 aerial photograph shows no trodden line yet the user evidence even for many years ago is still strong and all confirm use of the application line.

In this matter there may be sufficient evidence to make the Order but users then be interviewed and their evidence able to be considered in more detail and that is why the recommendation is to have the matter return to committee before a decision is made about stance on confirmation.

S31 and its requirement for a "calling into question" preceded by 20 years uninterrupted use -

The application is in law a "calling into question" but its twenty years period is , it is advised, "spoilt" by the statutory declaration in 2004.

The statutory declaration is itself a calling into question but its 20 year period 84-2004 is affected by the interruption of the Foot and Mouth closure Orders and the Licences granted re the section A-C in 1985 this will need careful consideration. Committee are advised to consider use 1984-2004 when looking at S31 Highways Act

Use has to be as of right –

The use has not to be by force –and there is some reference by some users to their route altering when the field was in use by the school. Local people would know this



was the school playing field . In the main their evidence of use 1984-2004 at present is of the line and apparent as of right use despite school use.

As of right use is also required under common law but there is a difficulty in applying common law inference in this matter. (see below)

Permission –

Use out of which may come highway rights has to be "as of right" – without permission. It is suggested that the Licences given in 1985 may have made some use permissive but on the evidence this would affect only a few users. The other users would not be aware of nor captured by the permissions granted and so the permissions arguably had little effect on the user evidence.

The Committee will note reference in the user evidence to lettings of the field and so use to attend a permitted event would not be as of right.

Foot and Mouth outbreak 2001

In 2001 Lancashire closed its footpaths under powers contained in the Foot and Mouth Disease Order 1983 (as amended). This had the consequence that it prevented access to swathes of the countryside that prevented footpath users from using the routes that are now the subject matter of claims of prescription rights under the 1980 Act and applications under the Wildlife and Countryside Act 1981 for the way to be recorded on the Definitive Map by an DMMO.

The Planning Inspectorate Advice Note on these types of closures was changed this year and would suggest that this closure is not an interruption under S31. Advice sought on this point from Counsel advises that the Advice Note does not reflect the correct interpretation of the legislation.

Counsel is of the view that interruptions of use attributable to restrictions imposed by Foot and Mouth Disease legislation are capable of being a relevant "interruption" under the 1980 Act.

It is essentially a question of fact whether there has been an interruption which is more than de minimis. He feels that the Planning Inspectorate have imported the idea of needing landowner intention behind an interruption but advises that this is not the case. No evidence of intention is required. The fact that access and use has been prevented by a legal mechanism can be an interruption.

Where use of a way was affected by Foot and Mouth restrictions it may well be such as to be incapable of establishing the presumption of dedication under Section 31 of the 1980 Act because any such use was not "without interruption" over the relevant 20 year period.

In this matter use does not appear to have been affected. There were no notices on the field or cattle or other livestock and the users do not appear affected by the restrictions. It is therefore advised that the Orders for closure was not an effective interruption at this location.



Inference at common law – looking at actual intention to dedicate

Dedication by the owner can be inferred from all the circumstances. Here it is the case that there is still use pre 2004 and no evidence of overt actions taken by the County Council as owner able to be noted by the users and that would arguably suggest that actual intention to dedicate can be inferred. Some users did seem to have their use changed by use by the owner as a school playing field. Whilst not conclusive this would amount to some evidence capable of challenging the “as of right” component of the claim.

The use in this matter as presented 1984-2004 seems not to conflict with school use. There is no evidence of the locking of the gates when school was using the field in those years as is the case in the most recent 14 years.

But the landowner here is the education authority who had acquired the field specifically for the purposes of a school playing field only a few years earlier and that is also a circumstance which needs considering. School use of the fields in question would at the time and subsequently be regarded as inconsistent with an enforceable right of way for the public. Use in the 1980s and 1990s “as of right” would need to be such as to displace or interrupt the activities of the school using the pitches or the field crossed by the route for games. It is suggested that Committee would be entitled even in the absence of evidence of use conflicting with the school use to draw an inference that the presumption of dedication was not established.

The advice is that it is difficult on balance to infer that the education authority intended dedication of a public route across the field open to all at all times. Intending access to school premises by anyone at anytime would arguably be contrary to statutory provisions such as the Health and Safety at Work Act imposing the duty on LCC to take reasonable steps to ensure that staff and pupils are not exposed to risks to their health and safety. Safeguarding was perhaps not a term as well used in the 1980s but the concept was embedded in the education authority.

Irrelevant matters -

Committee is to note comments from supporters and objectors may refer to concerns about danger or suitability. The Applicants reference to disruption to the everyday use of the village and future community events and possible economic implications of the route being closed today are not relevant to the decision before the committee and whether it is on balance reasonable to allege that a footpath exists on the application route.

Recommendation

Taking all the information and evidence into account it is suggested that given the use of the route 1984- 2004 without effective interruption and without sufficient evidence of actions taken by the owner there is sufficient evidence from which to reasonably allege that a footpath has come into being and that an Order be made. It is advised that this matter then be returned to Committee to decide on the stance for confirmation.



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 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: 804-763		Annabel Mayson, 01772 533244, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

