

**Part I**

Electoral Division affected:  
Lancaster Rural East

**Wildlife and Countryside Act 1981**  
**Definitive Map Modification Order Investigation**  
**Application to record Bridleway along Green Lane between A65 and Todgill Farm, Ireby**  
(Annex 'A' refers)

Contact for further information quoting reference number 804-630:  
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**Brief Summary**

Application for the upgrade of part of Footpath FP0119005 and addition of a Bridleway on the Definitive Map and Statement along Green Lane between A65 (Long Level) at Long Streets and Church Lane at Todgill Farm, Ireby.

**Recommendation**

- (i) That the application for the upgrade of part of Footpath FP0119005 and addition of a Bridleway along Green Lane between A65 (Long Level) at Long Streets and Church Lane at Todgill Farm, Ireby be accepted in part and subject to a status of restricted byway not bridleway.
- (ii) That an Order(s) be made pursuant to Section 53 (3)(c)(i) and (ii) of the Wildlife and Countryside Act 1981 to upgrade part of Footpath FP00119005 and add a restricted byway along Green Lane between the A65 (Long Level) at Long Streets and Church Lane at Todgill Farm, Ireby on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points B-C-D.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

## Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for a Definitive Map Modification Order to upgrade part of Footpath FP0119005 and add a bridleway along Green Lane between the A65 (Long Level) at Long Streets to Church Lane at Todgill Farm in the Parish of Leck on the Definitive Map and Statement of Public Rights of Way. (*n.b. Todgill Farm is on the edge of the village of Ireby but the parish boundary runs between the farm and village centre and the whole of the route under investigation is in the adjacent Parish of Leck*).

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 upgrading or downgrading a way shown on the Definitive Map and Statement will only be made if the evidence shows that:

- "it ought to be there shown as a highway of a different description"

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 noted an error in the title of the consultation plan, clarifying the number of the main road at the western end of the route. They provided no further comment.

## Leck Parish Council

Leck Parish Council responded to consultation to note that the application refers only to a section of the "Green Lane" which runs from Todgill across the face of the Fell to the Fell road and noted their concern that 'therefore a significant part of the Bridleway has been left out'.

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

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	6449 7561	Junction of application route with A65 carriageway at Long Streets
B	6446 7565	Bend in the route at the junction of historical route of Green Lane with the original route of the Kirkby Lonsdale-Settle Road
C	6465 7575	Point at which Footpath FP0119005 leaves the route via a stile
D	6510 7586	Junction with Church Lane at Todgill Farm

### **Description of Route**

A site inspection was carried out in September 2021.

The applicant applied for the route shown on the Committee plan between points A-B-C-D to be recorded as a bridleway. No user evidence was submitted in support of the application and the investigation relies on historical map and documentary evidence.

During the course of our investigations it became clear that the junction of the historical route known as Green Lane with the Kirkby Lonsdale-Settle road was different to the modern-day junction. The Committee plan therefore shows the modern access to Long Streets (the application route) between points A-B and the historical access from point B. From point B through to point D the alignment of the route has not been altered at any point from at least the mid-1800s.

Alterations to the western end of the application route where it connects to the A65 have been carried out, but only limited information found.



It appears that the route of the A65 at this point was realigned, levelled and widened in the 1980s which resulted in the A65 being slightly south of the original route.

Overlays of the existing road layout on the 1<sup>st</sup> edition 25 inch map surveyed in 1889-1890 show that the original exit/entrance of the route under investigation was at point B:



This was further confirmed by an aerial photograph taken in the 1960s which provides a much later view of the route but shows point B on the highway boundary:





The application route between point A and point B follows a tarmac access road constructed as part of the widening of the A65 which was completed by at least 1992 (see OS 1:2500 map included later in this report).

Access onto the route is not restricted and the grass verges either side of the tarmac road are well maintained.

From point A the route rises gradually uphill in a north westerly direction along the tarmac road parallel to the A65 to reach the top of an embankment at a higher level than the modern alignment of the A65.

As it reaches point B the route curves round to continue in a north easterly direction along the historical route known as Green Lane.

From point B the route continues as a tarmac roadway bounded by stone walls to pass a house named as Long Streets and continues as a disintegrating tarmac surfaced track – still bounded by stone walls to some farm buildings located immediately to the south east of the route. The route continues past the buildings where a concrete surface has been provided to the track. Just after the buildings the route is crossed by a metal field gate which was open on the day that the route was inspected.

Beyond the field gate the route continues, bounded by stone walls on either side and still wide enough to accommodate vehicles (approximately 3-3.5 metres wide) but the surface is grass which appears to have been grazed to keep it short.



At point C the route is crossed by a wooden field gate onto which a yellow waymark arrow has been attached pointing to a stile providing access to the continuation of Footpath FP0119005 which leaves the route under investigation just east of the gate.

From point C the route under investigation continues bounded by a stone wall to the south and overgrown hedge to the north consistent in width with the rest of the route. There is no evidence that this part of the route is in regular use and it got progressively more overgrown with long grass and nettles as it continued east north east towards Todgill Farm. Before reaching the farm the route became impossible to traverse due to the nettles.

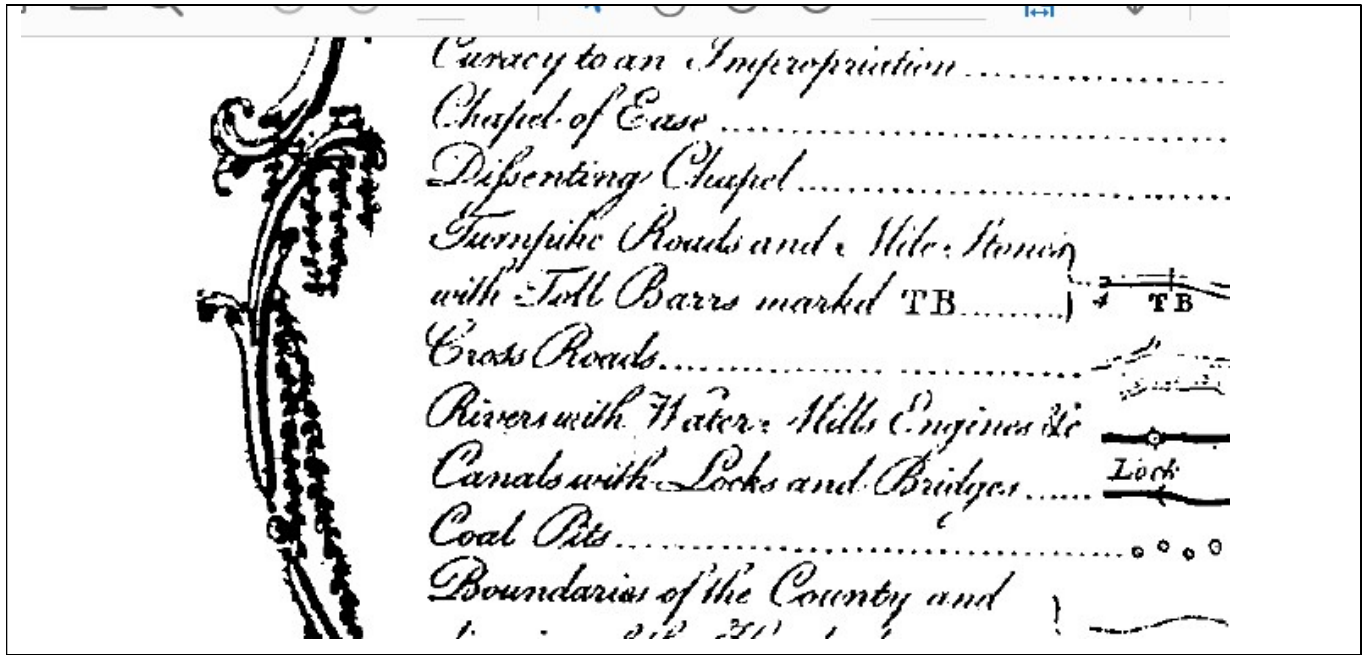
Beyond the overgrown section the bounded track became stone surfaced providing access from Church Lane to buildings at the rear of the Todgill Farm and the track continued alongside the farm to an open junction with Church Lane.

### 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.

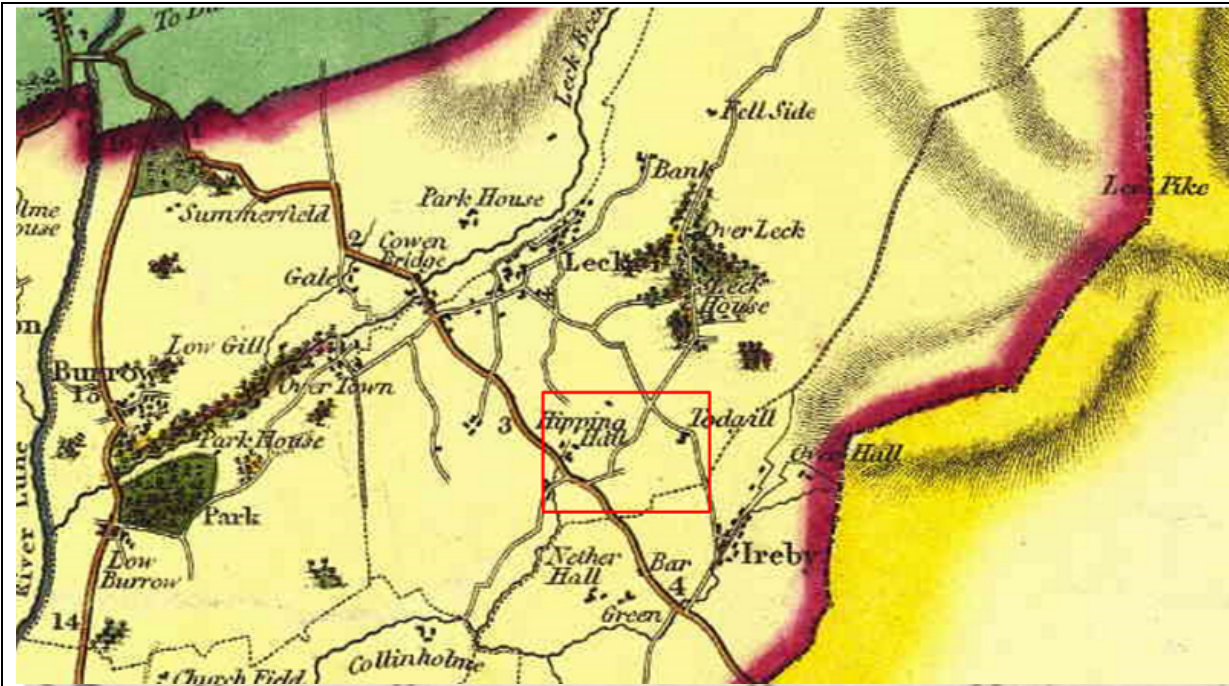
Document Title	Date	Brief Description of Document & Nature of Evidence
<b>Yates' Map of Lancashire</b>	1786	Small-scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately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





Observations		A route is shown which is consistent with the alignment of the first part of the application route (up to point C) but which then continues in a north easterly direction to a junction with three other routes on an alignment probably more consistent with the full length of the route recorded as FP0119005. The route is shown as a cross road.
Investigating Comments	Officer's	The route, or at least the part recorded as FP0119005, existed in 1786 and was shown on the map as a cross road. 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. The inclusion of the route on a small-scale commercially produced map of this kind is suggestive of the fact that the route shown is likely to have been considered to have been a public carriageway or at least a bridleway at that time. It is unlikely that a map of this scale would show footpaths.
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.



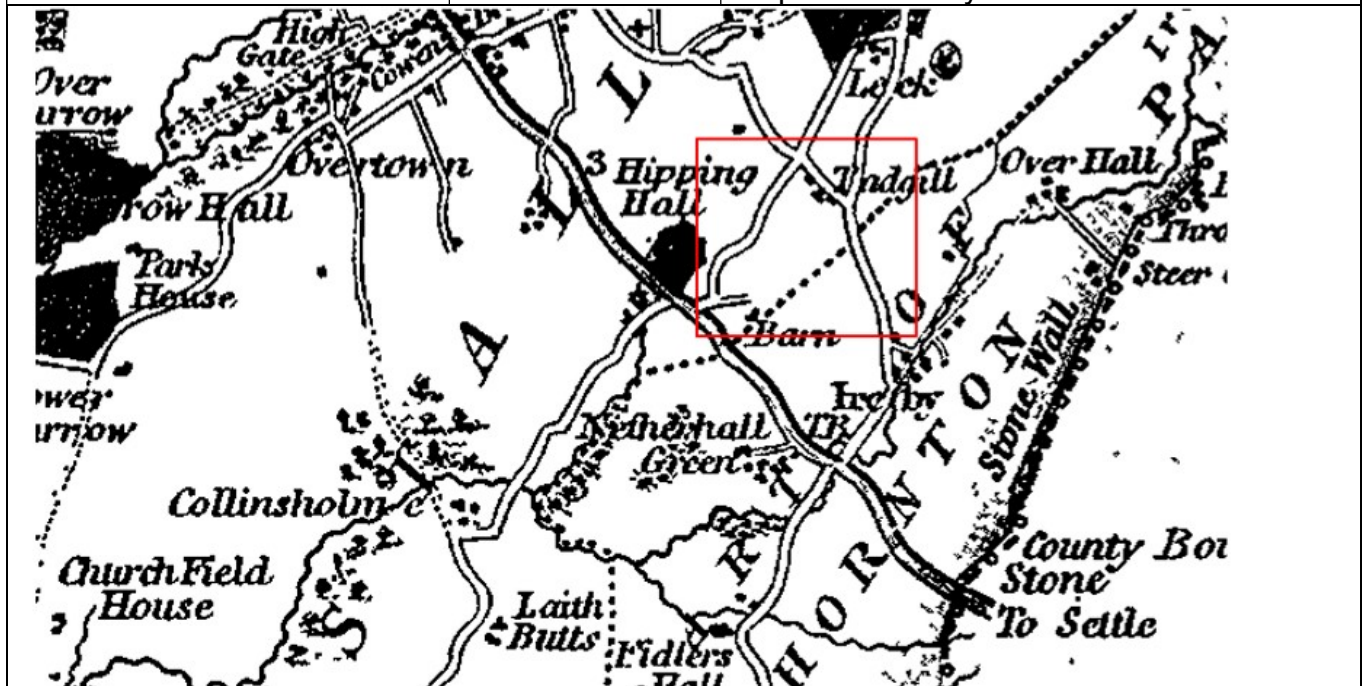


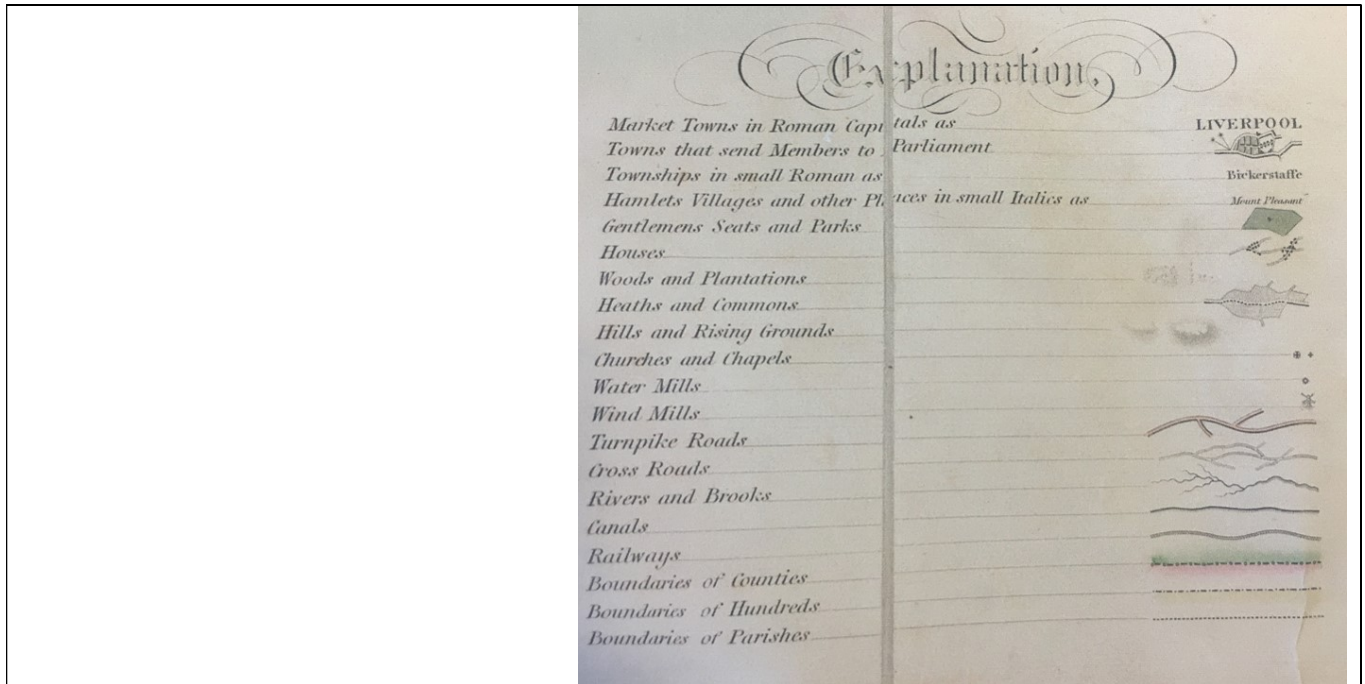
Turnpike Roads \_\_\_\_\_  
 Cross Roads \_\_\_\_\_  
 Towns & other Places \_\_\_\_\_  
 that send Members to Parliaments } \_\_\_\_\_  
 Boundaries of Counties \_\_\_\_\_





Observations		The route under investigation is shown between point B and point C and although not shown beyond point C it appears to continue towards Todgill. From point C a through route continuous with the route B-C is shown along the route recorded as FP0119005 through to a junction with Church Lane. The route is shown as a cross road on the map.
Investigating Officer's Comments		The application route between point B and point C existed and formed part of a longer through route shown consistent with how other routes carrying public vehicular rights are shown. The route east of point C through to Todgill may have existed but was not shown indicating that it may have not been the more significant or accessible through route at that time.
Hennet's Map of Lancashire	1830	Small-scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.

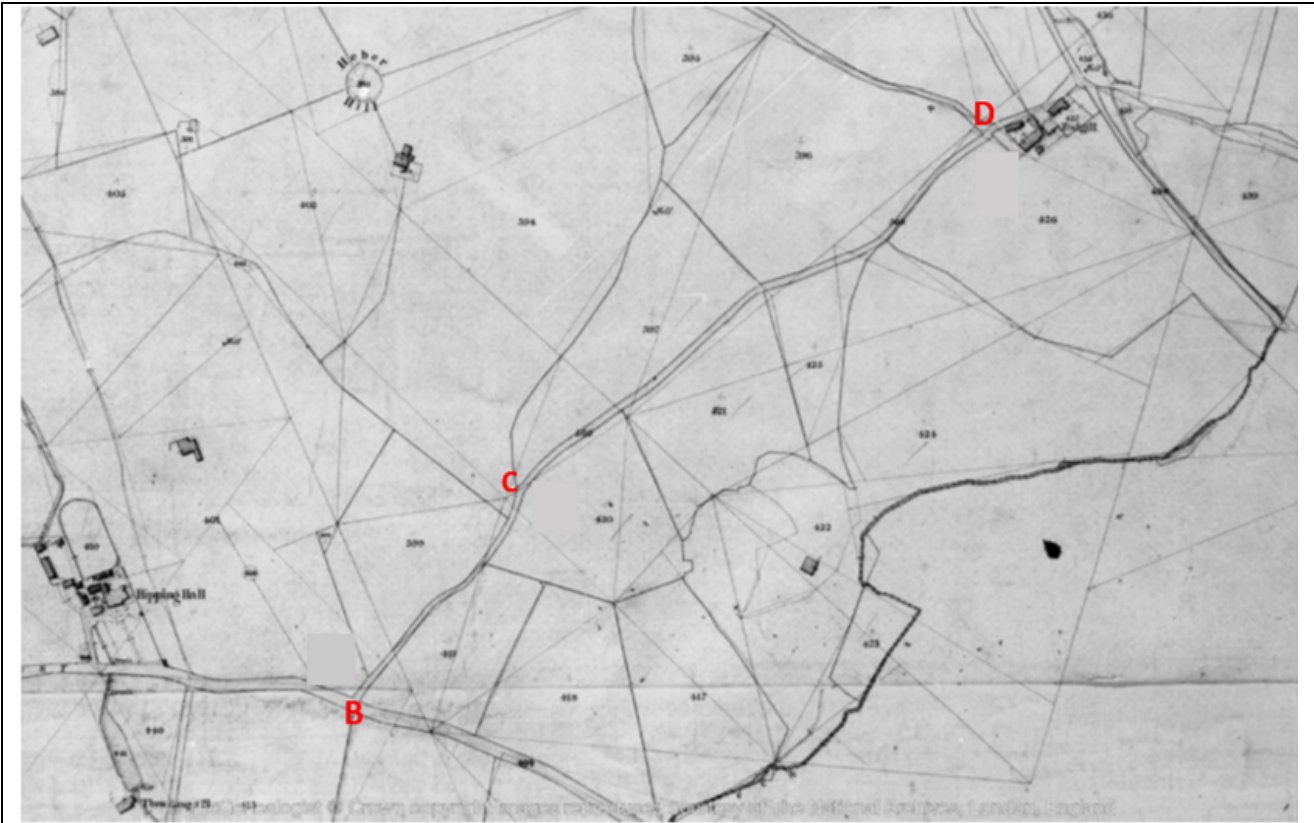




Observations		<p>A route representative of the route under investigation between point B and point C is shown as a cross road. The route beyond point C through to Todgill is not shown but a route is again shown continuing from point C consistent with the route recorded as FP0119005 through to Church Lane.</p>
Investigating Officer's Comments		<p>The route under investigation between point B and point C existed as part of a substantial through route in 1830. It may also have existed between point C and point D but does not appear to have been considered to be of such significance as to have been included on Hennet's Map at that time.</p> <p>It is not fully known what is meant by the term cross road but as the only other category of 'road' shown on the map are turnpike roads, it is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i>).</p> <p><i>Hollins v Oldham Manchester High Court (1995) [C94/0205] Judge Howarth examined various maps from 1777-1830 including Greenwoods, Bryants and Burdetts. Maps of this type, which showed cross roads and turnpikes, were maps for the benefit of wealthy people and were very expensive. There was "no point</i></p>

		<p><i>showing a road to a purchaser if he did not have the right to use it.”</i></p> <p>It is unlikely that a map of this scale would show footpaths suggesting that the route recorded as FP0119005, including the route under investigation between point B and point C was considered to be at least a public bridleway at that time.</p>
<b>Canal and Railway Acts</b>		<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 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.</p>
Observations		<p>There are no existing, dismantled or proposed canals or railways crossing the land affected by the application.</p>
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights.</p>
<b>Tithe Map and Tithe Award or Apportionment</b>	1845	<p>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.</p>



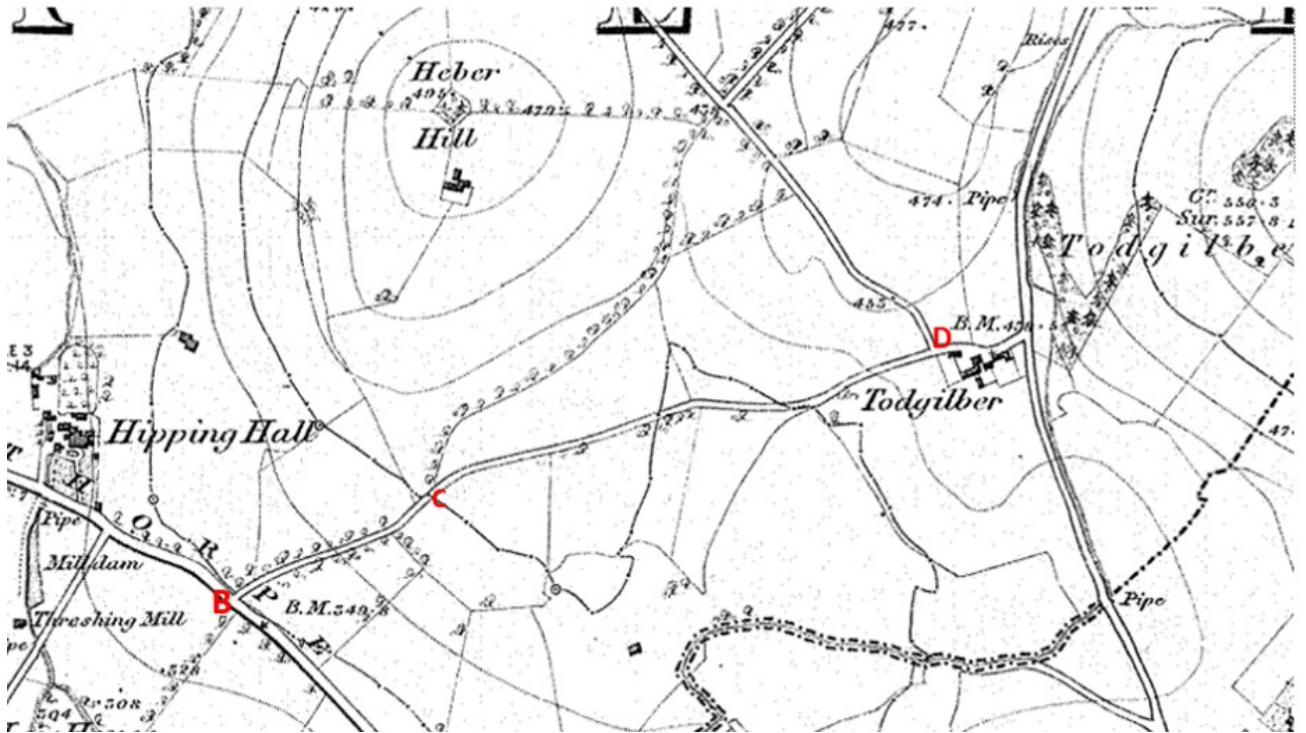


<i>Public Roads &amp;c</i>					
490	<i>Road</i>		6	39	
491	<i>Road Waste Ground &amp; Stream</i>		4	27	
492	<i>Road</i>			24	
493	<i>Road</i>			6	
494	<i>Road &amp; Waste Ground</i>		1	13	
495	<i>Road</i>		2	3	7
496	<i>Road</i>		2	1	36
497	<i>Road &amp; School</i>				37
498	<i>Road</i>			2	19
499	<i>Hirkby Lonsdale &amp; Mubthorpe Street</i>		11		2
500	<i>Road</i>		1		9
501	<i>Road</i>		1		14
502	<i>Road &amp; Waste Ground</i>		1		37
503	<i>Road &amp; Stream</i>		2		7
			27		37

<p>Observations</p>		<p>Fifteen years after Hennet's Map was published the Tithe Map was produced.</p> <p>The full length of the route under investigation from point B through to point D is shown as a substantial bounded route and is numbered as plot 500. No lines are shown across the route which would have indicated the existence of gates. Plot 500 is listed in the Tithe Schedule as one of a number of roads titled collectively and grouped together as 'Public Roads &amp;c'. The route of FP0119005 extending north east from point C through to Church Lane is not shown despite being clearly shown as a bounded route on all three early commercial maps detailed above.</p> <p>The application route from point A to point B is not shown.</p>
<p>Investigating Officer's Comments</p>		<p>By 1845 the full length of the route under investigation existed as a substantial route from point B through to point D and was considered to be part of the public vehicular highway network at that time. The route of FP0119005 from point C through to Church Lane was not shown suggesting that it no longer existed and that the through route shown on the earlier commercial maps had altered by the mid-1800s to being that of the route under investigation.</p>
<p><b>Inclosure Act Award and</b></p>		<p>Inclosure Awards are legal documents</p>



Maps		made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award for the land crossed by the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
6 Inch Ordnance Survey (OS) Map Sheet 20	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1847. <sup>1</sup>



Observations		<p>The route under investigation is shown on the map as a substantial bounded through route from point B to point D with no lines across it which could have indicated the existence of gates.</p> <p>The line of Footpath FP0119005 follows a</p>
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<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.



		tree lined field boundary from point C but there is no route shown.
Investigating Comments	Officer's	The route under investigation existed in 1844-45 and was shown in the same way as other routes carrying public vehicular rights. The route of FP0119005 from point C to Church Lane is not shown suggesting that it no longer existed on the ground.
<b>Cassini Historical Map Old Series Kendal &amp; Morecambe Sheet 97</b>	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.



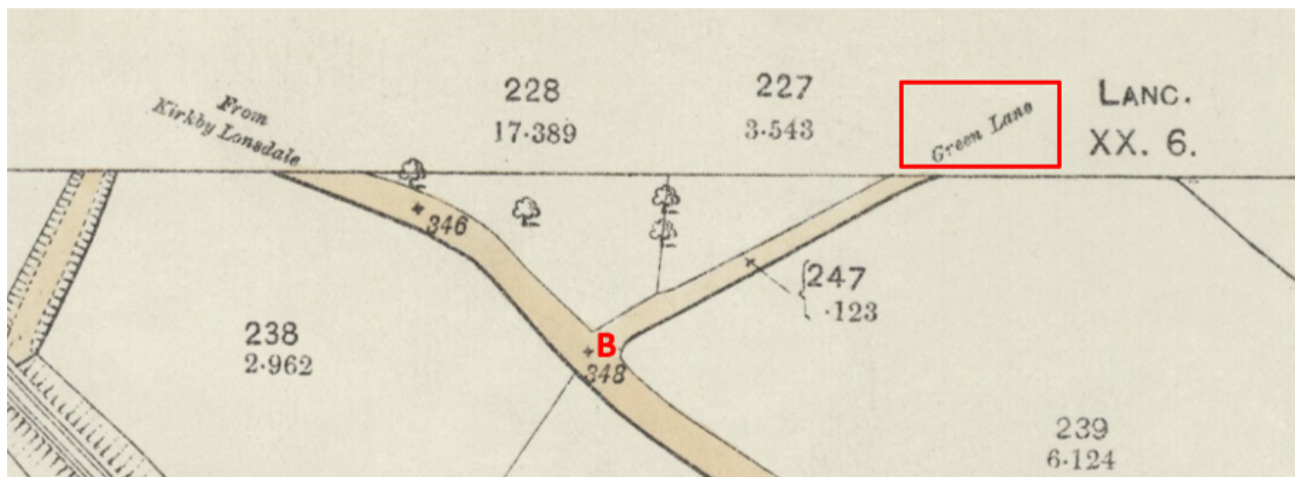
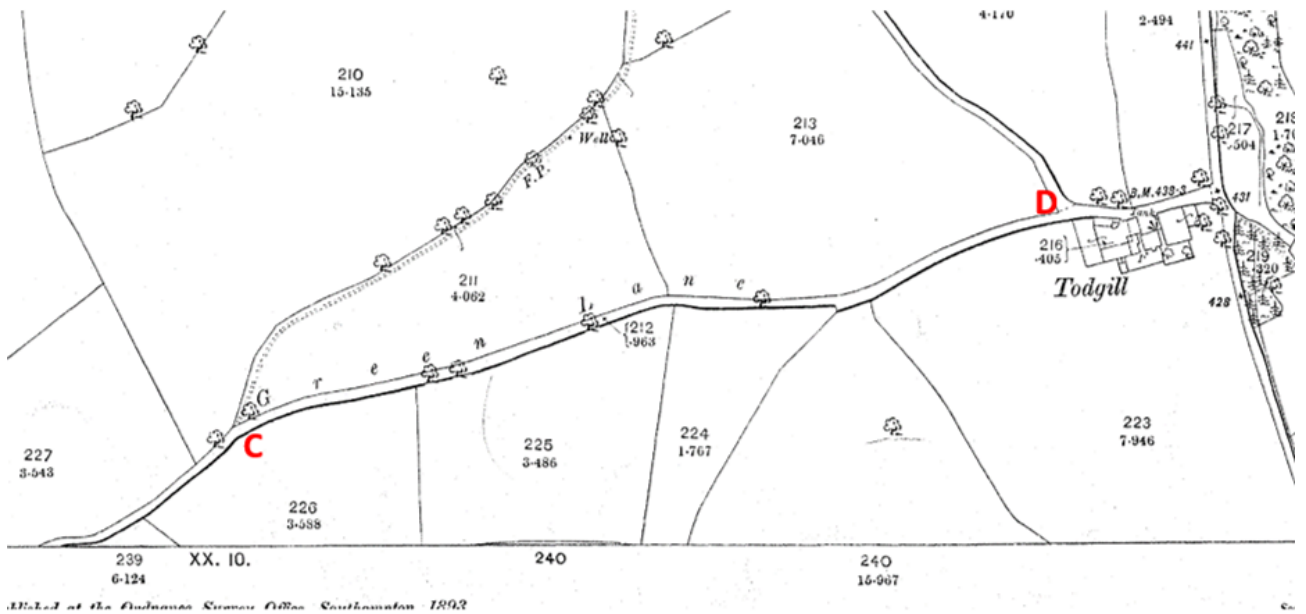
Observations		The full length of the route under investigation (B-D) is shown as a bounded through route.
Investigating Comments	Officer's	The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The early (first edition) OS maps on which the Cassini Old Series maps were based were originally produced for military purposes. The inclusion of the route on those maps suggests that a substantial route existed which probably could have been used by all traffic but we do not know if that use was public, private or military.



**25 Inch OS Map**  
**Sheets XX.6 and XX.10**

1893-1895

The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1889 to 1890 and published in 1895.



Observations

The whole of the route under investigation (B-D) is shown on the map. It is shown shaded to one side on the black and white edition of the map and on the coloured copy of the map is shown coloured as was consistent with the way that routes considered to be public roads at that time where shown.

There are no gates or other barriers across the route on this map. There are pecked lines across the western end of the route (point B) where it joins the Kirkby Lonsdale-Settle road, which may indicate that there was a change in the surface when turning into the route and at the





		<p>eastern end the surface appears to be the same as that of Church Lane continuing east past Todgill.</p> <p>The route is shown as parcel number 247 with an acreage of .123 on Map sheet XXX.10 and plot 212 with an acreage of .963 on sheet XXX.6 with adjacent fields numbered separately.</p> <p>On both map sheets the route is named as Green Lane.</p> <p>The application route between point A and point B is not shown <i>per se</i>, only as coincident with the Kirkby Lonsdale-Settle road prior to the modern day alignment of the road being altered.</p>
<p>Investigating Officer's Comments</p>		<p>The full length of the application route existed in 1893-95 as a through route and was known as Green Lane. The fact that it was named as a road on the map is evidence that it was known locally by that name and is again consistent with use of the route by the public at least on horseback at that time.</p> <p>The full length of the route is shown with a thickened line down one side. Shading and colouring were often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. The Ordnance Survey specified that all metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. 'Good repair' meant that it should be possible to drive carriages and light carts over them at a trot so the fact that the route is shown in this way is consistent with it being recorded on the Tithe Map and Award as a public road and indicated that the route was probably capable of being used by the public at least on horseback at that time.</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.</p>



		The application route A-B was within the main road.
<b>6 inch OS Map Sheet XX</b>	1895	Further 6 inch OS map revised 1889 to 1890 and published 1895.
Observations		The route under investigation is shown as a substantial bounded through route consistent with how other public vehicular highways are shown and is named as Green Lane on the map. The route now recorded as FP0119005 from point C through to Church Lane is shown and annotated 'F.P.' (footpath). The application route from point A to point B is part of the main road.
Investigating Officer's Comments		The route under investigation (B-D) existed in 1890 as a substantial named through route. It appeared to be capable of being used on horseback and with vehicles in the late 1800s. The application route A-B was part of the main road at that time.
<b>1 inch OS Sheet 49 Kirkby Lonsdale</b>	1898	Small-scale 1 inch OS map published 1898.

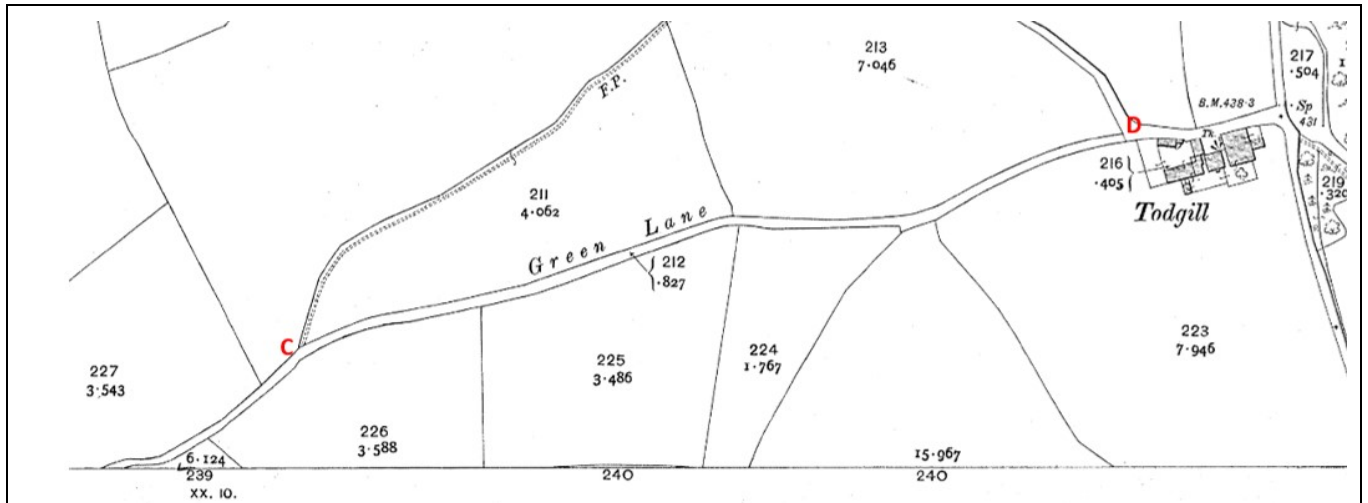




<i>Metalled Roads; First Class</i> .....	<i>5 (Mile distance)</i> <i>(Altitude) 211</i>	<i>Infused</i>	.....	<i>Church</i>
"    " <i>Second Class</i> .....			.....	"
"    " <i>Third Class</i> .....			.....	"
<i>Unmetalled Roads</i> .....			.....	<i>Windmills</i>
<i>Footpaths</i> .....			.....	<i>Light</i>
<i>Railways, Single Line</i> .....			.....	<i>Lights</i>
			<i>Level Crossing</i>	<i>Beacons</i>
				<i>Letter</i>

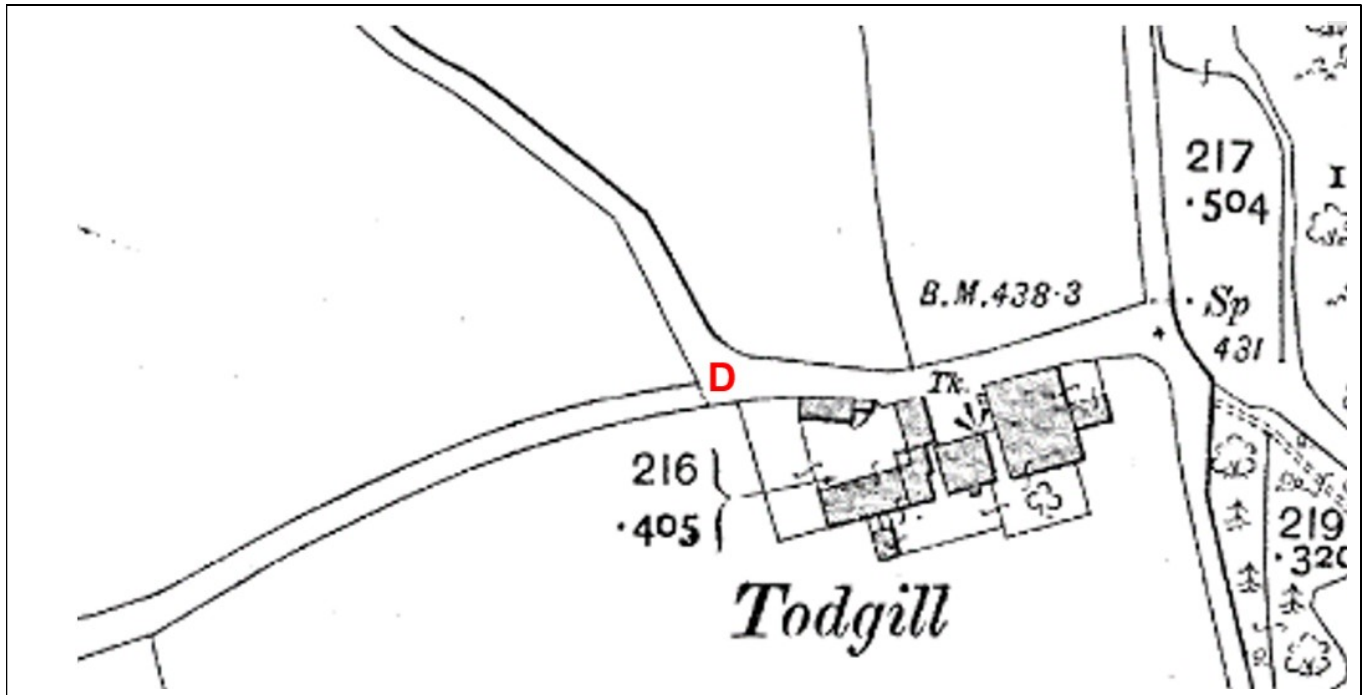
Observations		The application route is shown as a bounded third class road.
Investigating Officer's Comments		The small-scale one inch OS map was predominantly published with the main market being the travelling public so the inclusion of the application route on this map is suggestive of a route that was capable of being used at least on horseback and possibly by horse and carts.
<b>25 inch OS Map Sheets 20.6 and 20.10</b>	1913-1914	Further edition of the 25 inch map surveyed in 1892, revised in 1910 and published in 1913-1914.



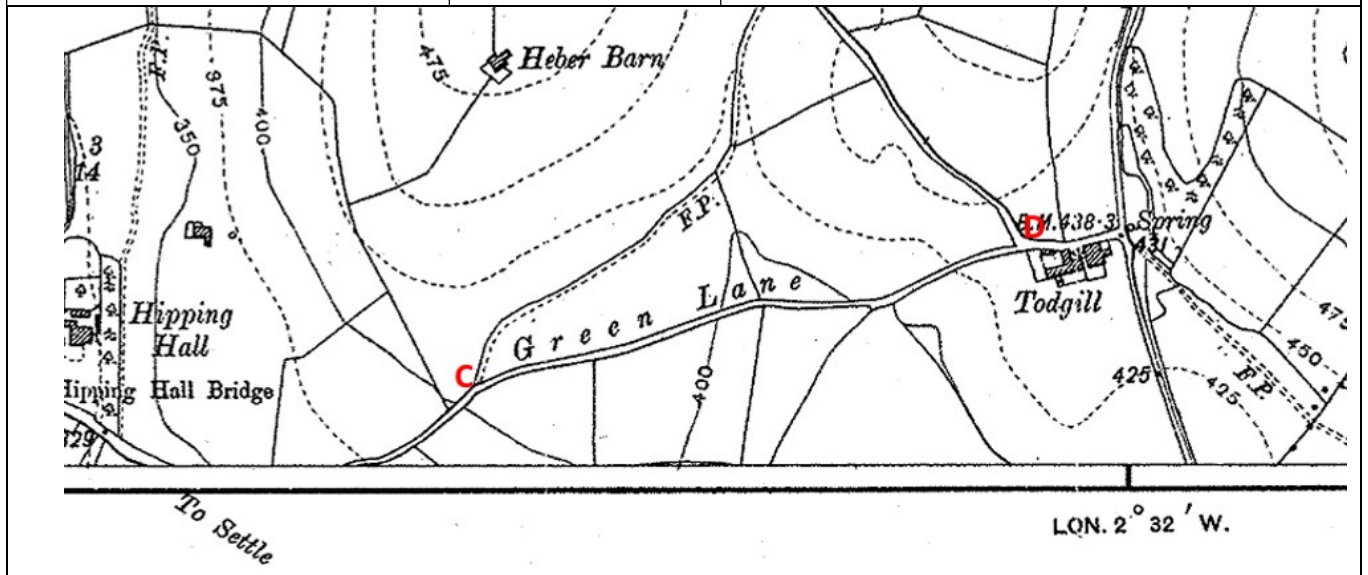


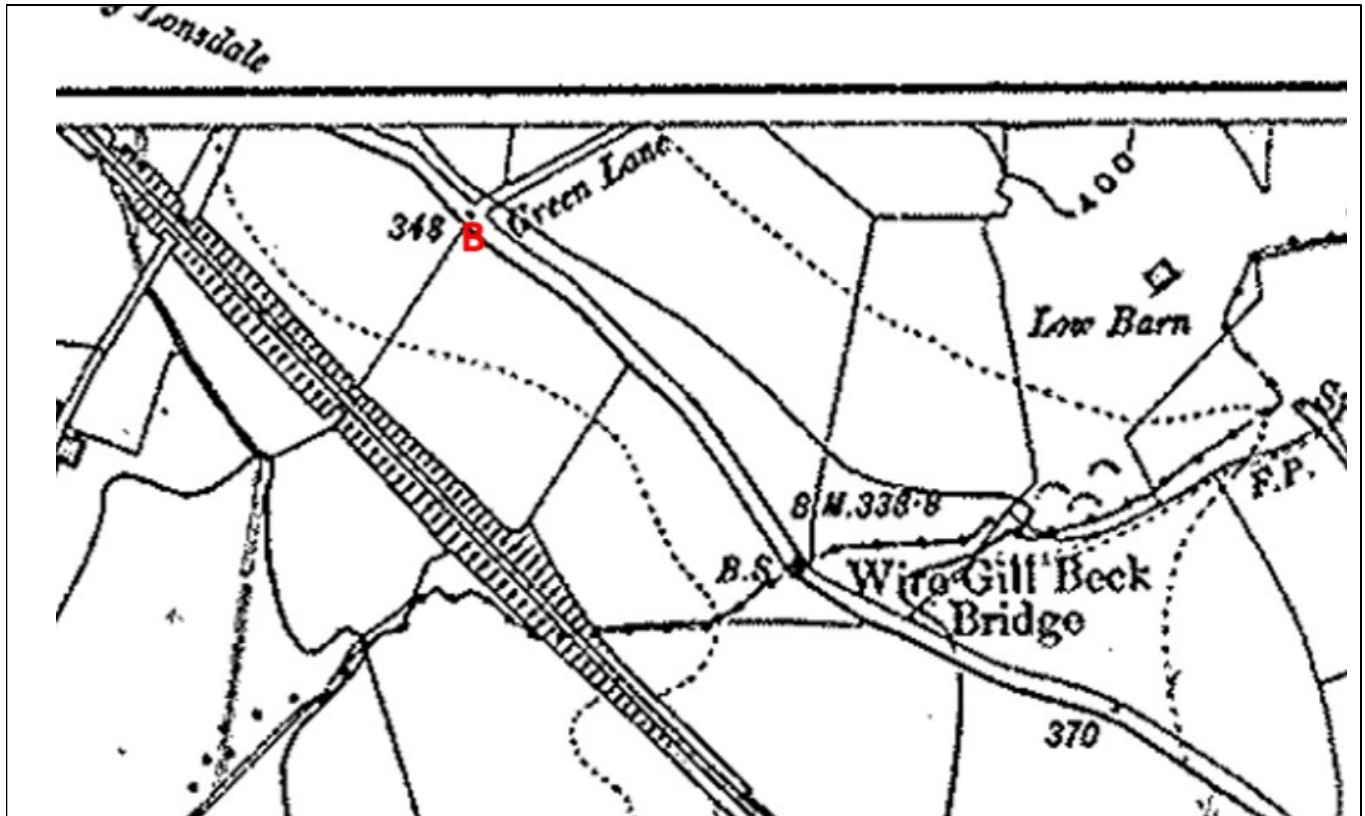
(SHIRE From Kirby Lonsdale **LANCASTER DIVISION**





Observations		<p>The route under investigation B-D is shown as a bounded through route and named as Green Lane. Dashed lines are shown across the route at points B and D indicating a change of surface.</p> <p>A-B is shown as part of the Kirkby Lonsdale-Settle road.</p>
Investigating Officer's Comments		<p>The route under investigation (B-D) existed in 1910 and appeared to be capable of being used on horseback and possibly by vehicles.</p> <p>A-B was a public vehicular road.</p>
6 inch OS Sheet 20NW	1915-1919	Further edition of OS 6 inch mapping









Observations		<p>The route under investigation (B-D) is shown as a bounded through route and named as Green Lane.</p> <p>The route A-B is part of the Kirkby Lonsdale-Settle road.</p>
Investigating Officer's Comments		<p>The route under investigation existed in 1915-19 and appeared to be capable of being used on horseback and vehicles.</p> <p>The route between point A and point B was a public vehicular road.</p>
<b>Bartholomew half inch Mapping</b>	1902-1906	<p>The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small-scale map was inferior to Bartholomew at that time for the use of motorists.</p>



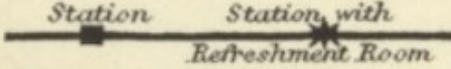
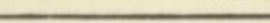


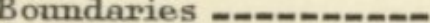
#### EXPLANATORY NOTE

First Class Roads   
 Secondary (Good)   
 Indifferent (Passable)   
*The uncoloured roads are inferior and not to be recommended to cyclists.*

Footpaths & Bridlepaths 

*N.B. The representation of a road or footpath is no evidence of the existence of a right of way.*

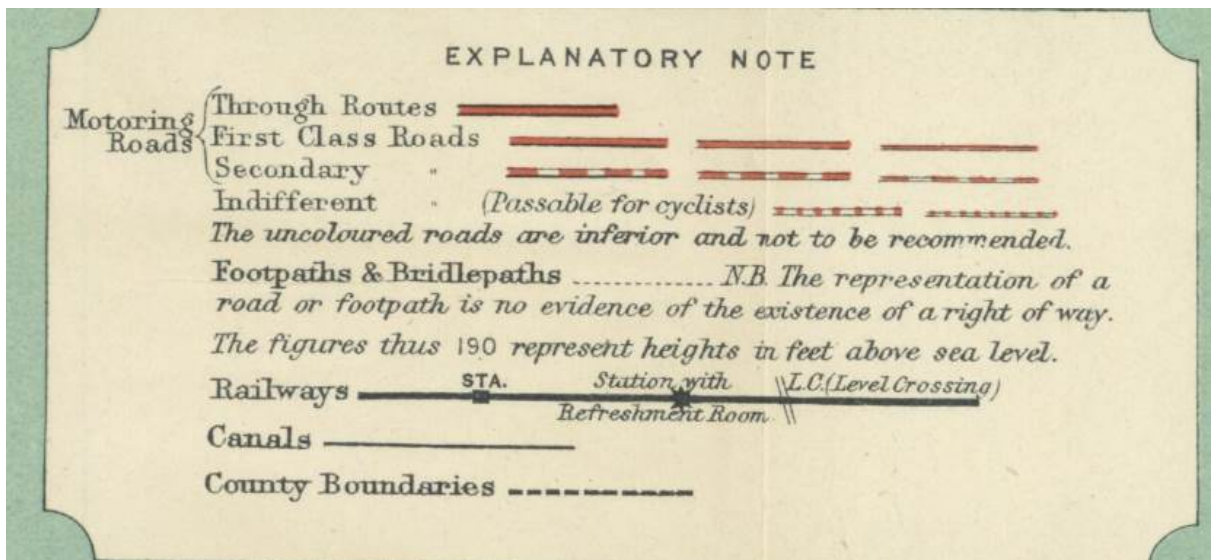
Railways   
 Canals 

County Boundaries 

SCALE 1 : 126,720 = 2 MILES TO AN INCH

Sheet 5 – North Lancashire and Isle of Man published 1905

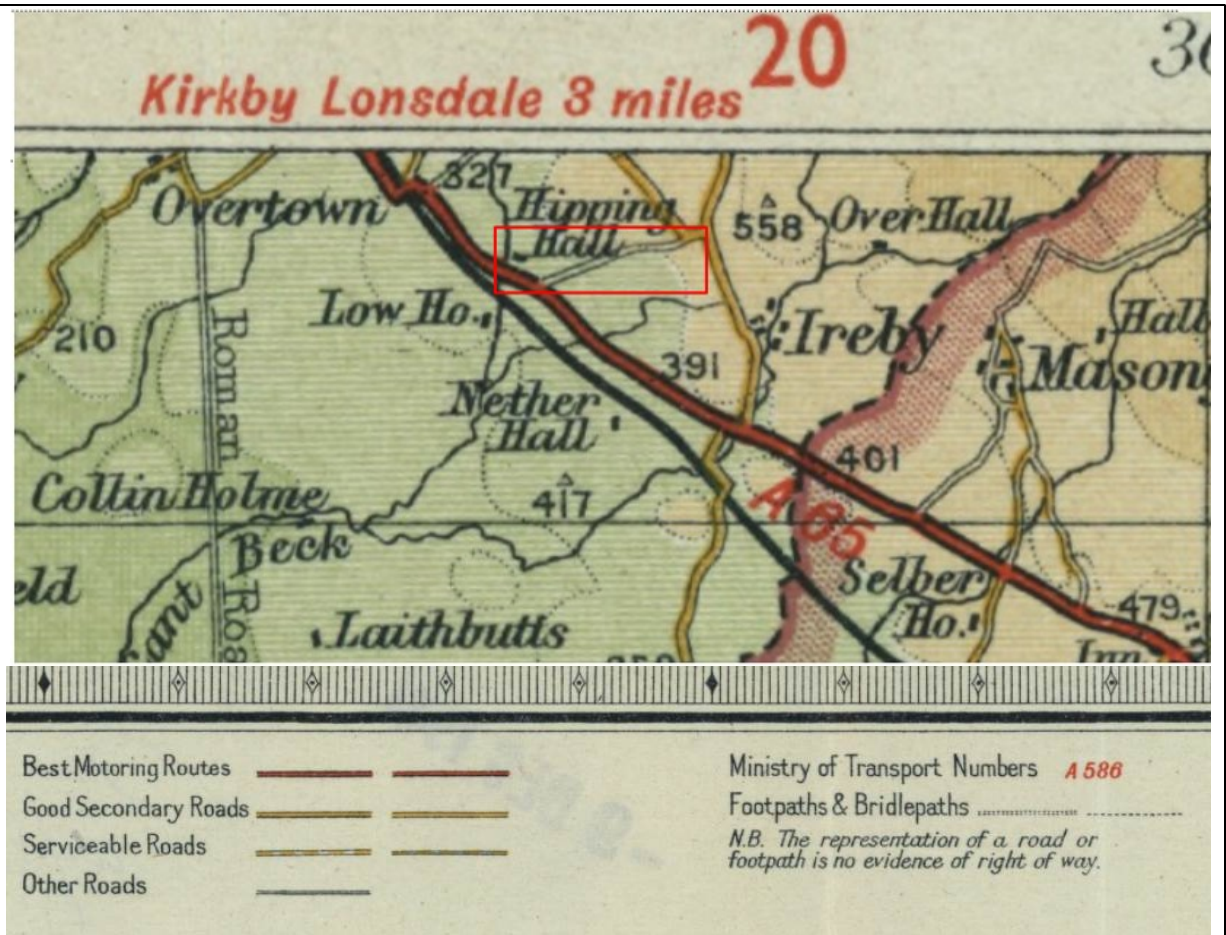




Sheet 5 – North Lancashire and Isle of Man published 1920







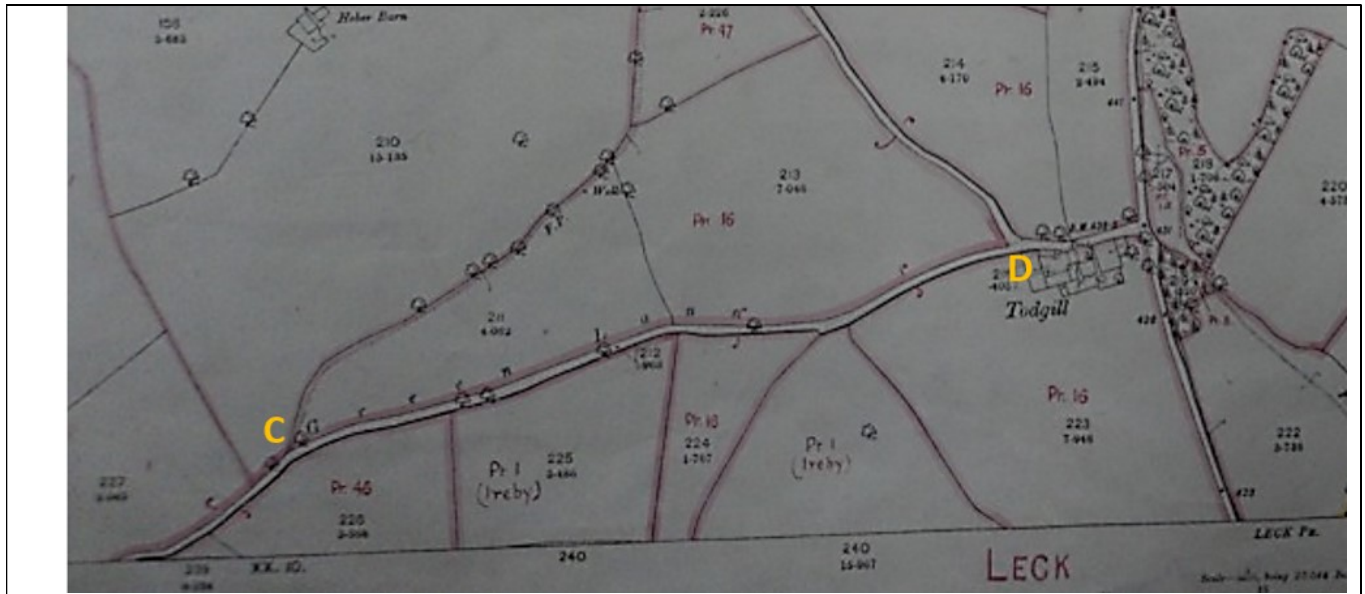
Sheet 31 – North Lancashire published 1941

Observations		The route under investigation is clearly shown depicted as an uncoloured or other road on all three editions of Bartholomew's maps.
Investigating Officer's Comments		Whilst the key to the map states that the representation of a road or footpath is no evidence of a right of way the fact that the route is clearly shown as an uncoloured or other road on all three maps suggests that it existed as a through route and may still have been considered to be more than a footpath or bridleway in the early 1900s. It does however suggest that it's surface may not have been suitable for more modern motorised vehicles and that use as a public vehicular route had probably declined by that time.
Finance Act 1910 Map	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be



		<p>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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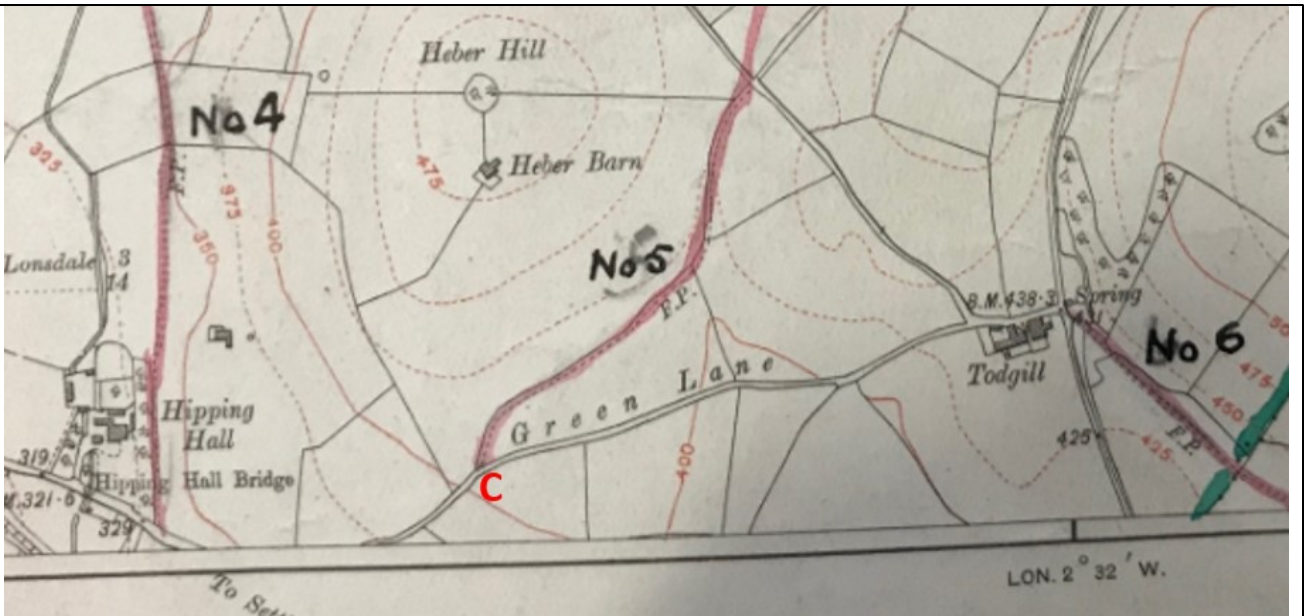


Observations		Only one of the 25 inch OS Finance Act sheets covering the route was available to view. However, the sheet available covers most of the route and shows it all excluded from the numbered plots. Plots 46 and 16 are both shown split by the route.
Investigating Officer's Comments		The map prepared under the provisions of 1910 Finance Act obtained from The National Archives shows nearly the whole of the route excluded from adjacent land in private ownership. 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 the accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable). The Instruction No. 560 to the surveyors said that the parcels 'should continue to be exclusive of the site of the external roadways'. It is advised that roadways were said to be routes 'subject to the rights of the public' and therefore exclusion of a route often indicates that public use was known but not necessarily vehicular status. In this instance all of the route on the OS map sheet available is shown outside privately owned land, indicating that the route's status was probably regarded as public.



		<p>The exclusion of the routes from the taxable hereditaments is good evidence of, but not conclusive of, public carriageway rights as there were some exceptions. Numbered plots split by the route give further weight to the belief that the route was considered to have public vehicular rights (as public footpaths and public bridleways were normally included within the numbered plots).</p>
<p><b>1932 Rights of Way Map</b></p>		<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 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>





Lunesdale Rural District Council.

List of Public Footpaths in the Parish of  
Leck.

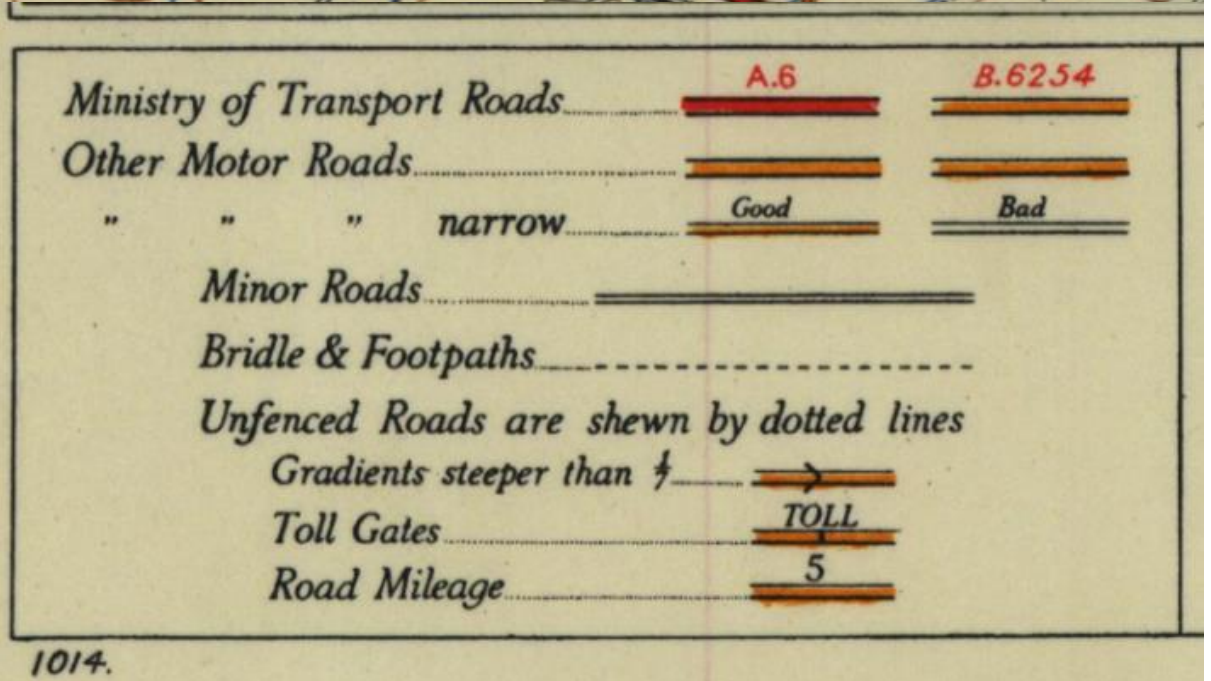
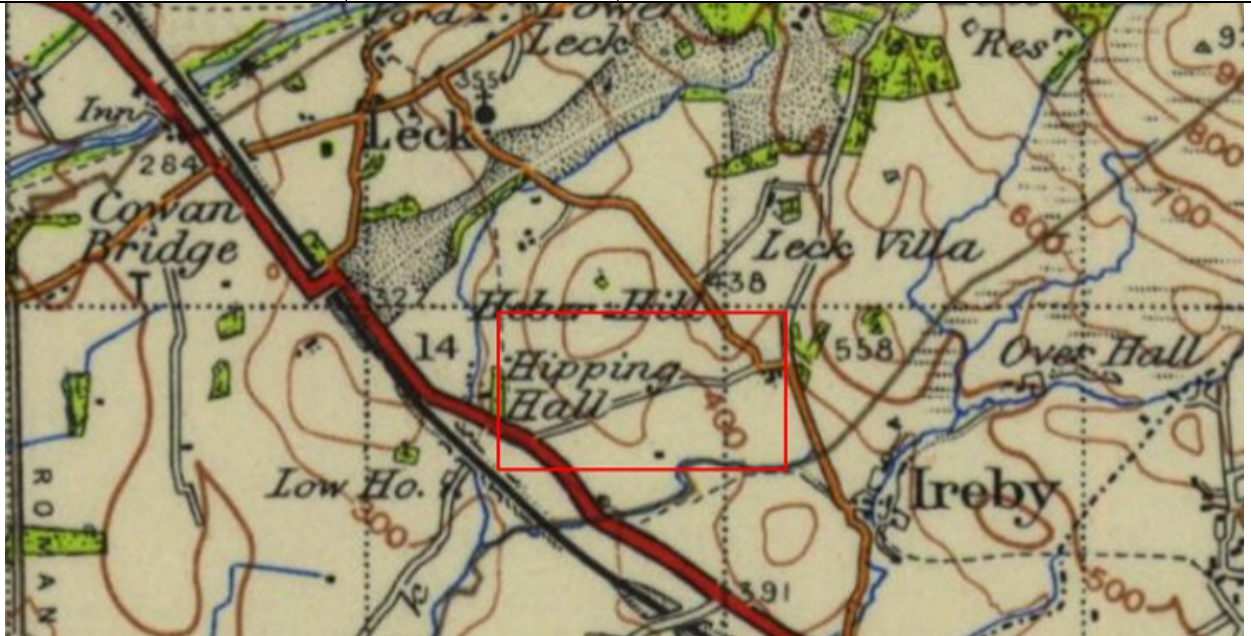
- No.1. From Leck Church to Leck Hill. ✓
- No.2. Leck Fell Road to Stang. ✓
- No.3. Leck Hill House to Leck Viāllāx Drive Gate. ✓
- No.4. From Church Lane to Hipping into Main Road. ✓
- No.5. From Green Lane to Ireby joining No 3. ✓
- No.6. From Tddgill to Ireby. ✓

<p>Observations</p>		<p>The route under investigation is not shown on the map marked up as a list of Public Footpaths in the Parish of Leck. A footpath numbered as Footpath 5 is shown starting on Green Lane (the application route) at point C and extending north east along the route now recorded as part of Footpath FP0119005 on the Definitive Map and Statement.</p>
<p>Investigating Officer's Comments</p>		<p>The Map and List prepared by Lunesdale Rural District Council records routes described as public footpaths. The application route is not recorded as a public footpath but is referred to as Green Lane and Footpath 5 is shown connecting to it at point C suggesting that the route under investigation was considered to be</p>



		at least a public bridleway and more possibly a public vehicular route at that time.
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1 inch OS Sheet 89	1947	Further small-scale OS map.
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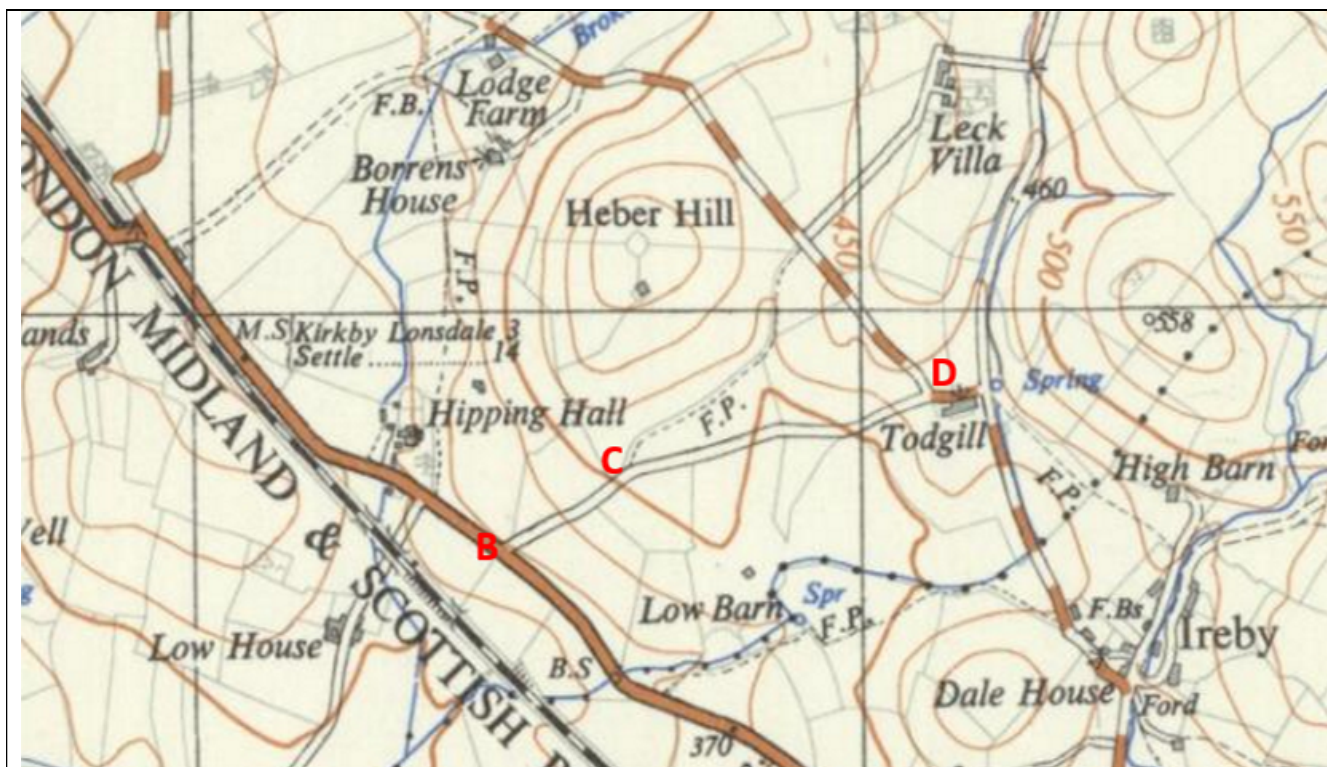
Observations		The full length of the route under investigation (B-D) is shown as a through route denoted in the map key as a 'minor road'. The map key also includes a symbol (thin dashed line) to indicate a route considered to be a footpath or bridleway. A-B is part of the A65.
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Investigating Comments	Officer's	The route B-D existed as a substantial through route in the 1940s and appeared
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		to be capable of being used at least on horseback. Its inclusion on such a small-scale map as a 'minor road' suggests that it would be capable of being used with vehicles. A-B was within the A65.
<b>1:25,000 OS map</b>	1948	Further small-scale OS map.
Observations		The route under investigation is shown as a through route denoted in the map key as 'Other Road'. The Footpath now referenced FP0119005 is shown meeting the route at point C and marked 'F.P.' (footpath).
Investigating Officer's Comments		The route under investigation (B-D) existed as a substantial through route and appeared to be capable of being used at least on horseback. Its inclusion on such a small-scale map as 'other road' suggests that it would be capable of being used with vehicles. A-B was part of the main road.
<b>1:25,000 OS Map</b>	1952	Small-scale OS map.





Observations		The route under investigation (B-D) is shown as a through route denoted in the map key as 'Other Road'. FP0119005 is shown meeting the route at point C and marked 'F.P.' (footpath).
Investigating Officer's Comments		The route B-D existed as a substantial through route and appeared to be capable of being used at least on horseback. Its inclusion on such a small-scale map as 'other road' suggests that it would be capable of being used with vehicles. A-B is part of the main road.
1 inch OS Sheet 89	1955	Further small-scale OS map.



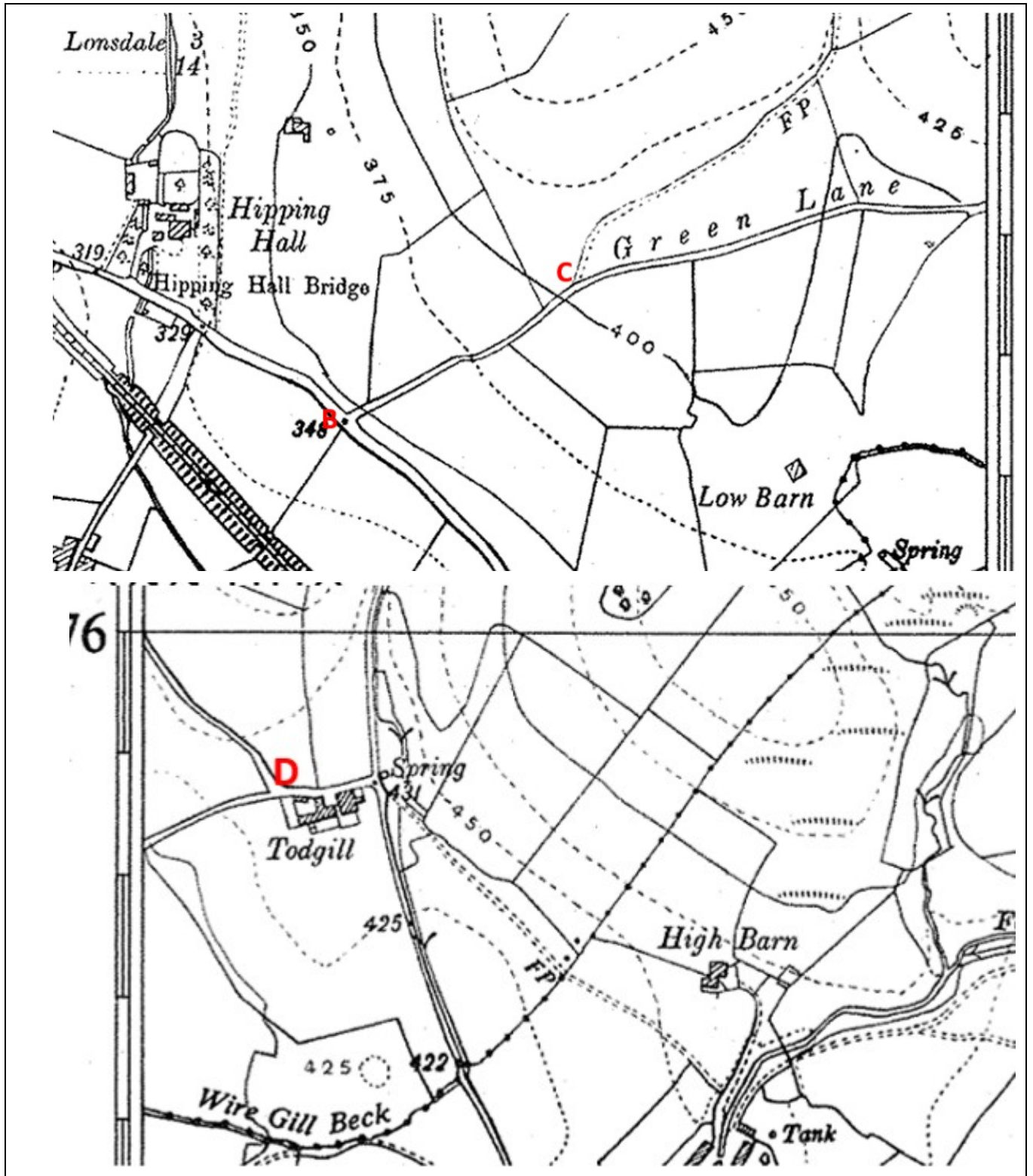


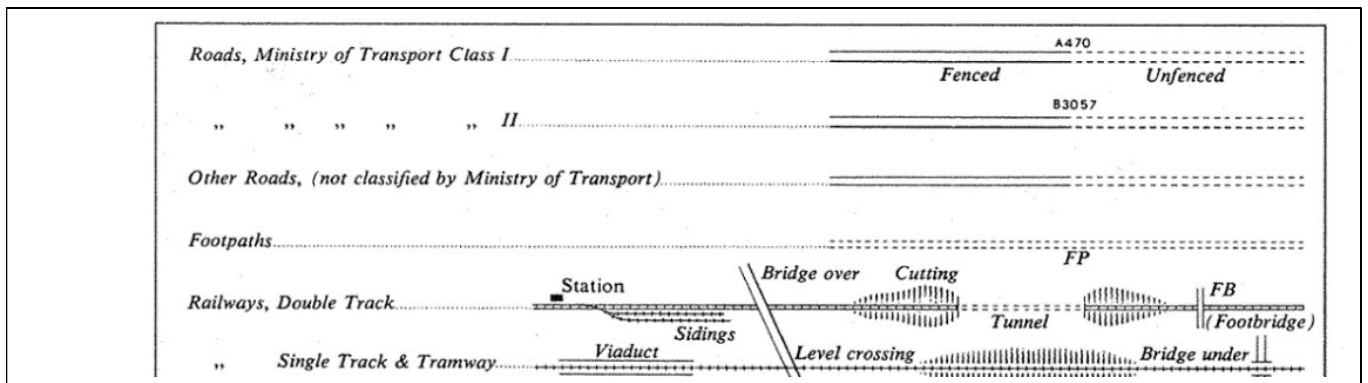


Roads	Ministry of Transport, Trunk	A 6(T)	
	" " " Class 1	A 590	
	" " " " 2	B 6254	R
	14 ft of Metalling & over (not included above)		
	Under 14ft of Metalling. Tarred " "	TOLL	W
	" " " " Untarred " "	Gate	
Minor Roads in towns, Drives and Unmetalled Roads			O
(Unfenced Roads are shown by pecked lines)			
Steep Gradients 1 in 5 or steeper		1 in 7 to under 1 in 5	E
Footpaths and Tracks			P

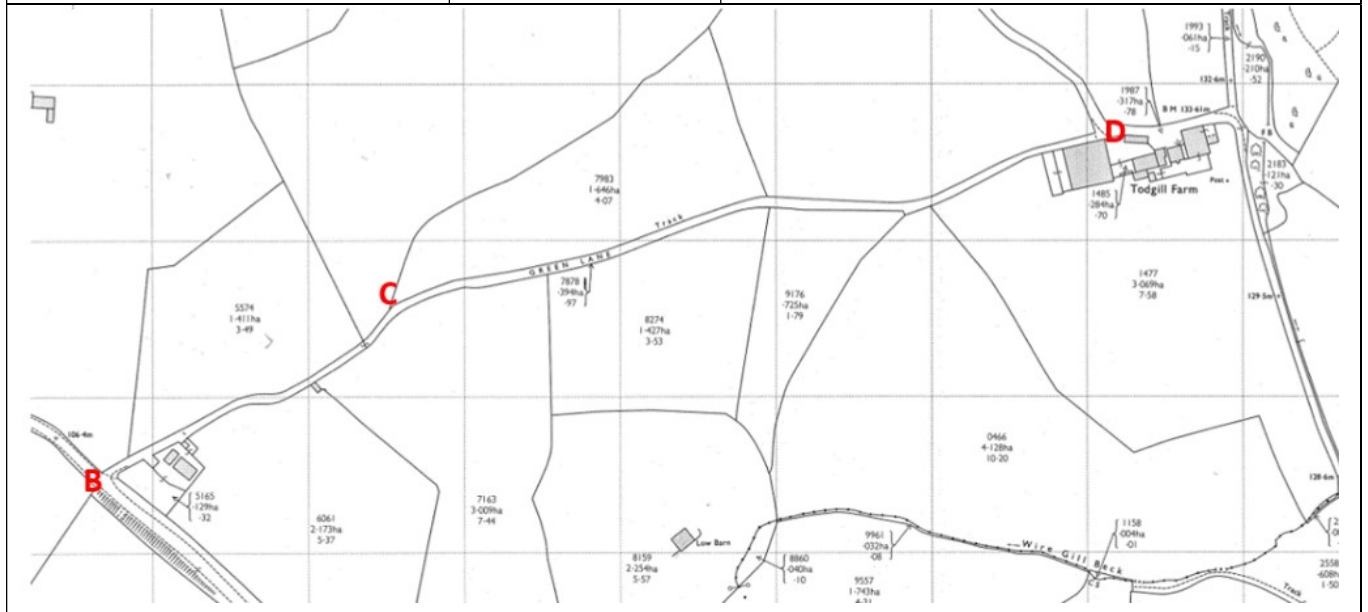
Observations		The route under investigation (B-D) is shown as an untarred road. A-B is part of the A65.
Investigating Officer's Comments		The route B-D appeared capable of being used at least on horseback and wide enough for vehicles. The fact that it was recorded on the map as an untarred road may suggest that use of the route by vehicles had started to decline by the mid 1900s.
6 Inch OS Map SD 67NW and 67 NE	1956	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 between 1930 and 1945.








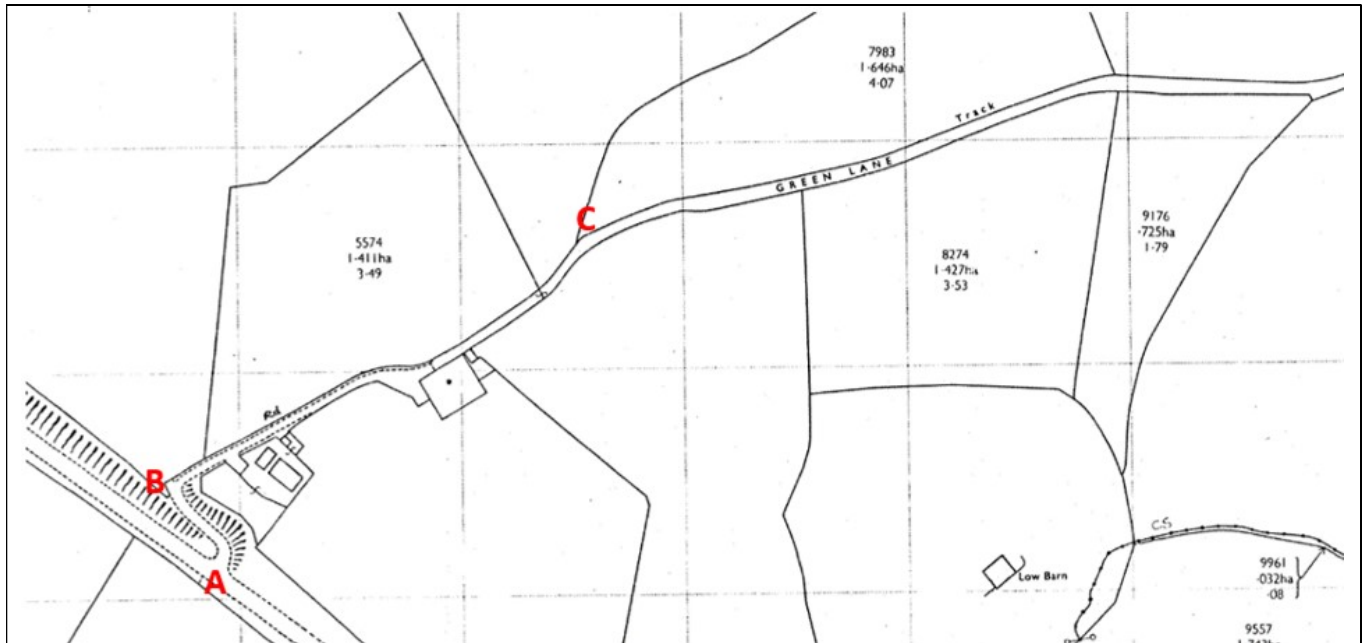
Observations		The full length of the route under investigation (B-D) is shown as a named and bounded route. It is not clear whether it was shown as a Class 2 or 'other road' but it is not shown as a footpath (F.P.). A-B is shown as a Class I road.
Investigating Officer's Comments		The route B-D existed and appeared to be capable of being used, at least on horseback. A-B was part of the A65.
1:2500 OS Map SD 64 75 and 64 75	1978	Further edition of 25 inch map reconstituted from former county series and revised in 1977 and published on 1978 as national grid series.



Observations		The route under investigation (B-D) is again shown as a bounded through route and named on the map. Buildings are shown adjacent to the route close to point B which are accessed from the route. FP0119005 continuing north east from point C is not shown.
Investigating Officer's		The route B-D under investigation still



Comments		existed in the 1970s and appeared to be capable of being used. A-B was part of the A65.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.
		
Observations		The route under investigation (B-D) is visible but shows up less distinctly between just east of point C and just west of Todgill Farm suggesting its use was primarily agricultural access to fields adjacent to the route. Buildings can be seen accessed from point B adjacent to the route.  A-B is along the main road.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights on B-D but the photograph supports the view that the route still existed in the 1960s but that use by vehicles had significantly declined.
<b>OS 1:2500 Map SD 64 47</b>	1993	OS Map revised 1992 and published 1993.



2015 Google Street View of A65 showing steepness of banking

Observations

The map shows most of the route under investigation but not the exit onto Church Lane at Todgill Farm. The route is still labelled Green Lane but of significance is the fact that the junction of the route with the A65 has been altered with the original access at point B now separated from the A65 carriageway by a steep grass bank as a result of the widening of the A65 and the route shown in the application between points A-B is now shown along a newly constructed access ramp onto the route under investigation from the A65. An additional building is shown between point B and point C and two lines are shown across the route – one adjacent to the new building, the other closer to point C.



Investigating Comments	Officer's	<p>The application route between point A and point B existed by 1992 providing a link from the realigned A65 to the access to Long Streets and therefore to the route under investigation.</p> <p>Two gates appear to have been erected across the route between point B and point C although access along the route may still have been available.</p>
Google Earth Pro	2003	Aerial photographs available to view on Google Earth Pro.

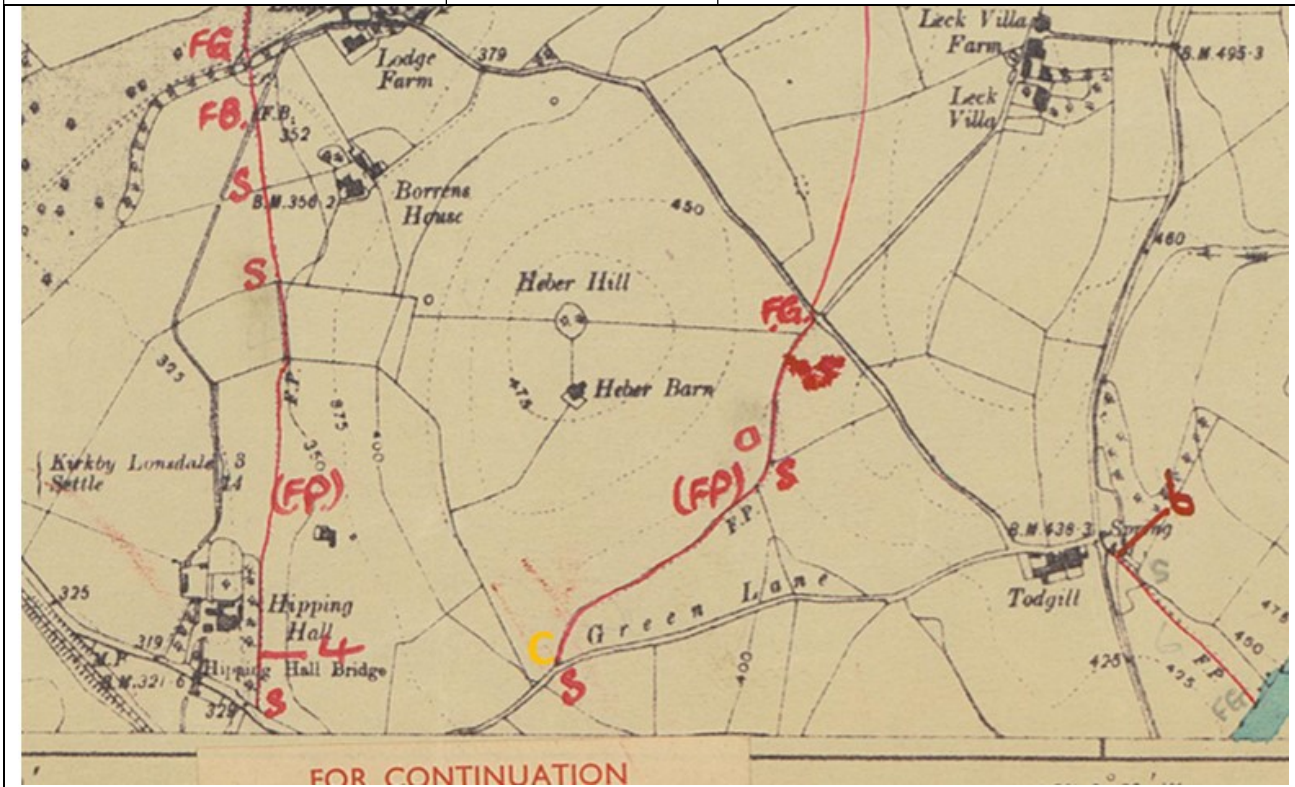




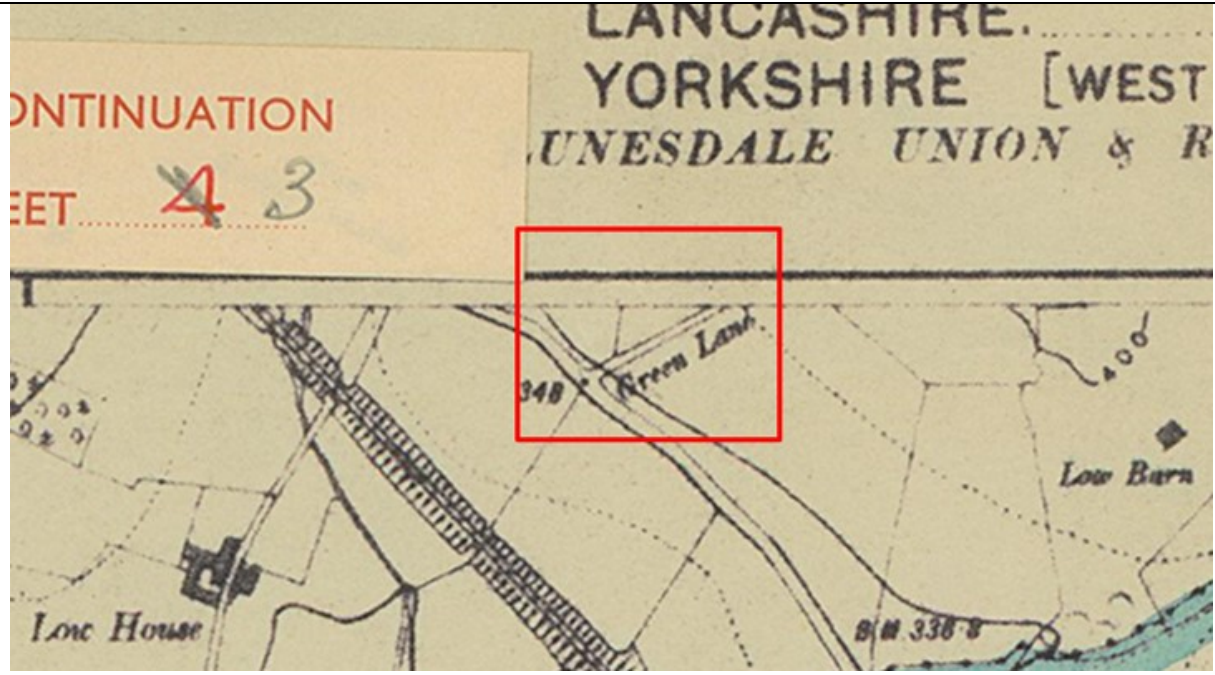
<p>Observations</p>		<p>The aerial photograph clearly shows the alterations to the A65 and the newly constructed road between point A and point B and all evidence of the historical access onto the A65 has gone.</p> <p>The route to the house and farm buildings situated to the south can be clearly seen suggesting significant vehicular use to access both. Beyond the buildings the route can be seen and appears to be passable and not significantly overgrown. It does not appear to receive any significant levels of vehicular use apart from the most easterly part adjacent to the farm which appears to be in frequent use – presumably by farm vehicles.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed in 2003 with access from the A65 via the route A-B.</p>
<p><b>Definitive Map Records</b></p>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<p><b>Parish Survey Map</b></p>	<p>1950-1952</p>	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and</p>



schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.







DISTRICT	LONSDALE	PARISH	HECK.
MAP SHEET No.	3.	LENGTH	(to tv)
BRIEF DESCRIPTION (Field F.P. or otherwise)			
Field F.P.			
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).			
<p>Enter by Fieldgate from Ireby road opp entrance to Heck Villa drive. The path is but appears to follow the north westerly way through hayfields to Green lane. There is a broken &amp; partially obstructed stile at the corner of the an ash tree. There is a stile in good condition Green lane.</p>			

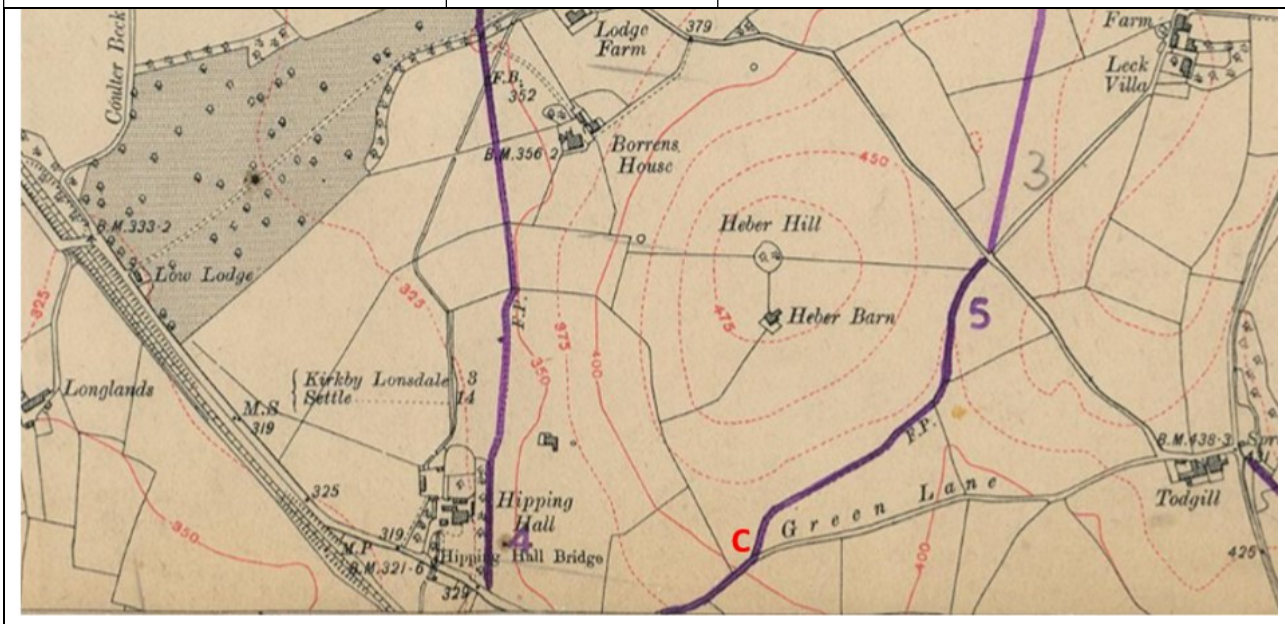
Observations

The route under investigation was not recorded as a public right of way on the Parish Survey Map. Of significance is the fact that the route recorded on the Parish Survey Map as Footpath 5 was described as a field footpath between Ireby Road and Green Lane (the route under investigation) suggesting that in 1952 the person completing the parish survey card (Mr J E Chapman of Leck Hall House, Ireby) considered Green Lane to be a public highway that did not need to be recorded on the Definitive Map and Statement.

## Draft Map

The Parish Survey Map and cards for Leck were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.

The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.





		(Trunk Road A.65) at Hipping Hall, to Class III Road 212 (Ireby Road) near Infant School.	.47. ✓
5.	"	From Class III Road 212 (Ireby Road) opposite entrance to Leck Villa Drive, via Green Lane to Kirkby Lonsdale - Settle Road A.65.	.40 ✓
6.	"	From Class III Road No. 212. (Ireby	

<p><b>Observations</b></p>		<p>When the Draft Map was prepared the route under investigation between point B and point C was included on the map as part of Footpath 5 (FP0119005) and the Draft Statement described the route as 'via Green Lane to Kirkby Lonsdale - Settle Road A.65.' No representations relating to the inclusion of the route have been found and it is not known why the route was shown extending along Green Lane to the A65. It is possible that as Green Lane did not appear to have been recorded as a public highway in the county council records (discussed below) that this is why the route of Footpath 5 was extended to include part of the route under investigation.</p> <p>A-B was part of the main road.</p>
<p><b>Provisional Map</b></p>		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for</p>



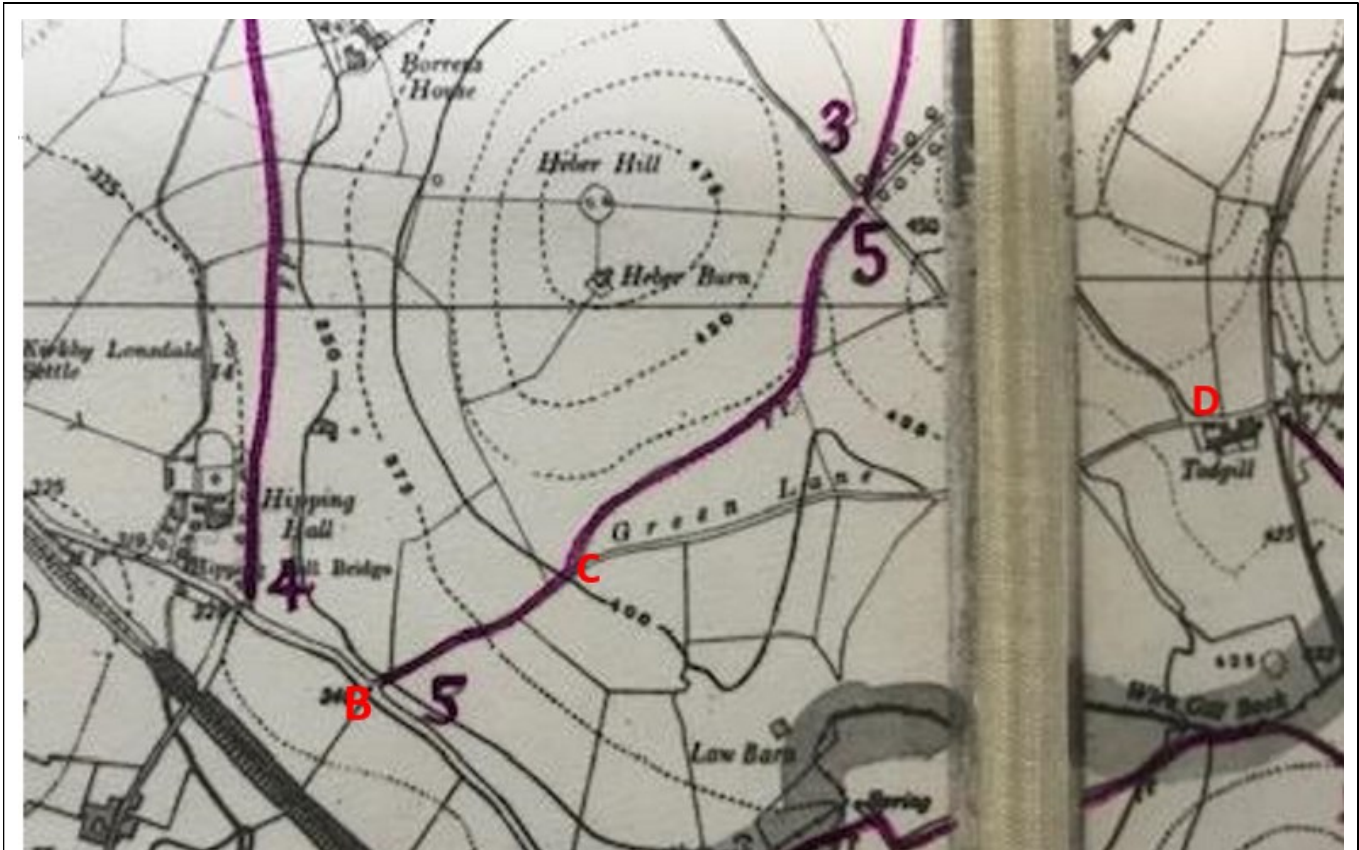
		amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
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Observations		<p>The route under investigation between point B and point C was recorded as part of Footpath 5 (FP0119005). The application route between point C and point D was not shown and no representations were made to the County Council.</p> <p>A-B was not shown as it was part of the main road.</p>
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<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
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<p>Observations</p>		<p>The route under investigation was shown as part of Footpath 5 (FP0119005) between point B and point C. The application route between point C and point D was not shown on the First Definitive Map nor was A-B which was part of the vehicular road.</p>
<p><b>Revised Definitive Map of Public Rights of Way (First Review)</b></p>		<p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25<sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1<sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p>



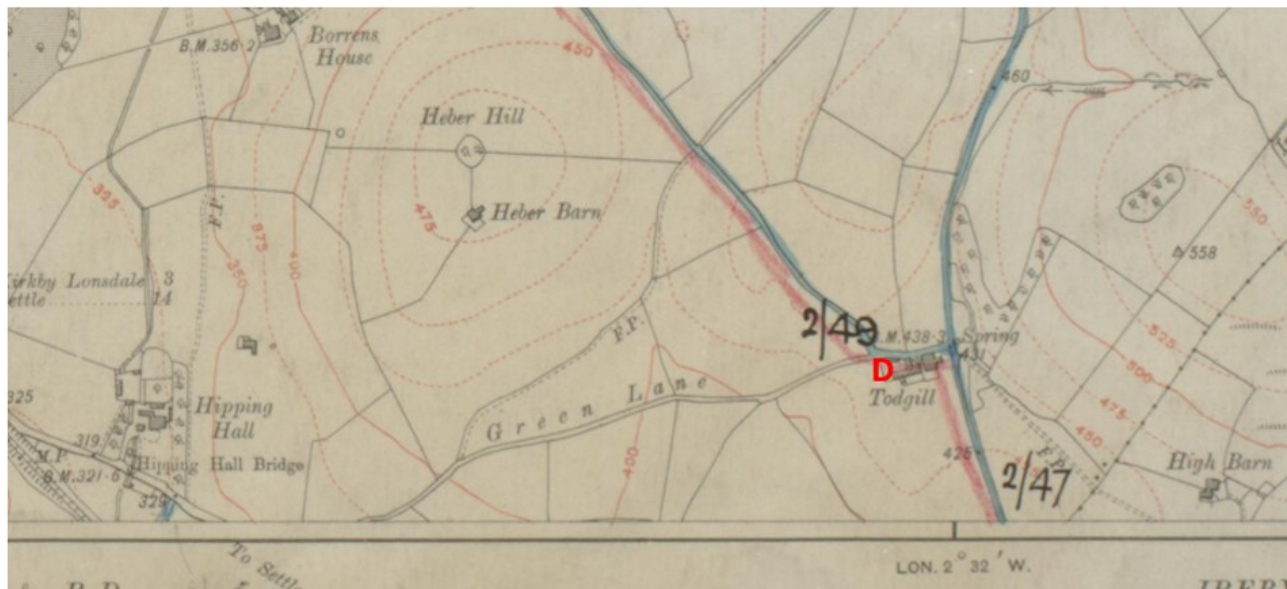
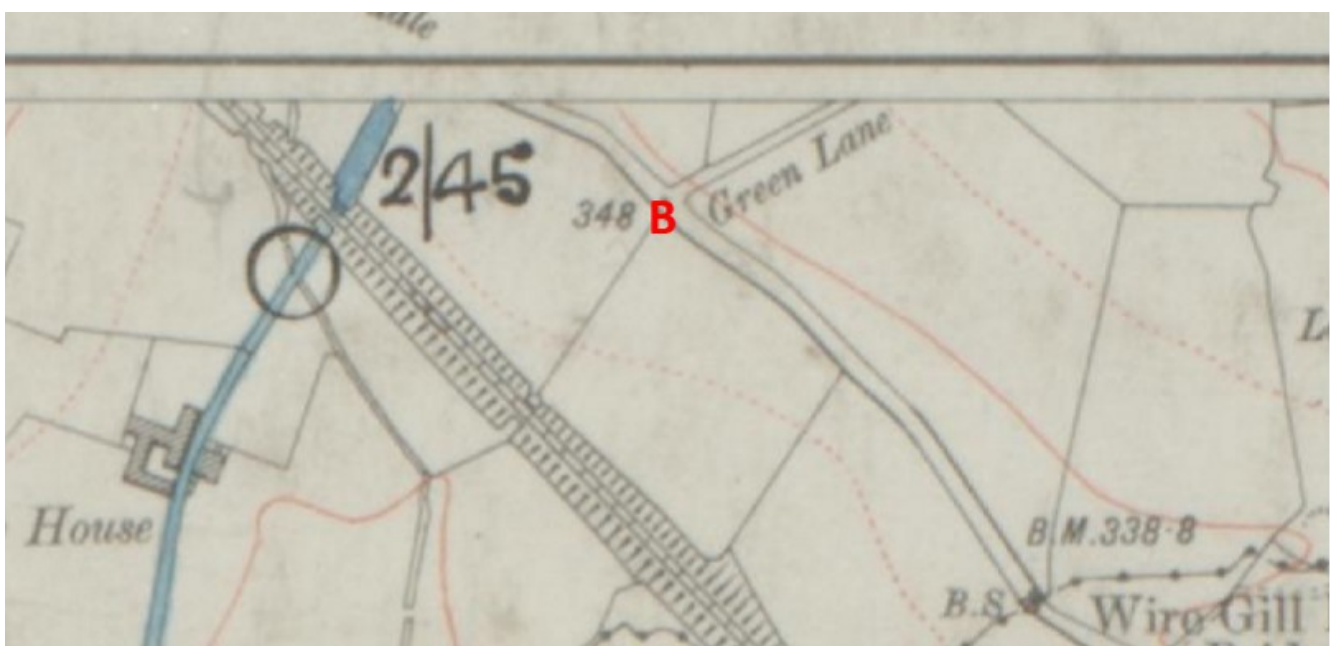


5	"	From Class III Road 212 (Ireby Road) opposite entrance to Leck Villa Drive, via Green Lane to Kirkby-Lonsdale-Settle Road A.65.	0.40
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Observations		<p>The route under investigation between point B and point C is shown on the Revised Definitive Map First Review. The route between point C and point D is not shown. A-B is not shown as it coincides with the main road.</p> <p>No definitive map modification orders or public path diversion or extinguishment orders have been made to amend what is shown on the map since that time.</p>
Investigating Officer's Comments	Officer's	<p>Although not originally recorded as a public right of way on the Parish Survey Map the route under investigation has been recorded as a footpath from point B to point C since that time. From 1953 through to 1973 there is no indication that the route under investigation was considered to be a right of way that should be recorded on the Definitive Map by the Surveying Authority between point C and point D or that the route between point B and point C should have been recorded as a route carrying higher public rights. There were no objections or representations to the fact that part of the route was recorded as footpath and part not recorded at all</p>

		when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map and no explanation was found as to why part of the route was recorded as a footpath when the Draft Map was prepared.
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	1929 to present day	<p>In 1929 the responsibility for district highways passed from rural district 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 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>





Observations		The application route is not recorded as a publicly maintainable highway.
Investigating Officer's Comments		<p>The fact that the route B-D is not recorded as a publicly maintainable highway (other than as a footpath between points B-C) does not mean that it does not carry public rights of way or higher rights than footpath rights and it is possible that its early history was not known when records were compiled.</p> <p>A-B is part of what became the A65 which is not shown coloured blue because it was maintainable by the county not by the district so was not 'handed over' in 1929.</p>





<b>Highway Stopping Up Orders</b>	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		<p>No records relating to the stopping up, diverting or creation of public rights along the route were found.</p> <p>It is apparent that the A65 was straightened and widened sometime in the 1980s which altered the junction of the application route with the A65 from point B to point A. Information about the work carried out has been sought from the Highways England but because the A65 is no longer classed as a Trunk Road responsibility (and records) has been passed back to Lancashire County Council.</p>
Investigating Officer's Comments		<p>A search has been made for a Side Road Order for the area affected but none has been found. An Order for a stretch of the A65 nearby which was also altered was located dated 1983 and it is thought that the work carried out in the proximity of the route under investigation may have been done at a similar time. If so, and an Order was made, it is likely that the old route of the A65 was stopped up and the new route legally created together with the access from point A and point B. It has not been possible to confirm whether this has been done and whether the access provided from point A and point B was done so as public or private access and whether public footpath rights were provided to gain access to the footpath or whether the highway boundary extended to the top of the embankment at point B, which seems likely.</p> <p>If any unrecorded public rights exist along the route B-C exist they do not appear to have been stopped up or diverted.</p>
<b>Statutory deposit and</b>		The owner of land may at any time deposit



<p><b>declaration made under section 31(6) Highways Act 1980</b></p>		<p>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>
<p>Observations</p>		<p>No Highways Act 1980 Section 31(6) deposits have been lodged with the county council for the area over which the application route runs.</p>
<p>Investigating Officer's Comments</p>		<p>There is no indication by the landowners of non-intention to dedicate public rights of way over this land.</p>
<p><b>Landownership</b></p>		<p>Information about ownership of the land crossed by the route under investigation and abutting the route was obtained from the Land Registry.</p>
<p>Observations</p>		<p>The land crossed by the route under investigation between points B-D is not registered and there are no known landowners which is consistent with the information provided in the Tithe Award and Finance Act District Valuation process.</p>



		Between point A and point B also appears to be unregistered and is within the boundaries of the original route of the A65 at this point.
Investigating Officer's Comments		When ownership of a route is not known and not registered, in contrast to land either side, it can provide supporting evidence of public status – particularly historical vehicular routes. The Investigating Officer is therefore of the opinion that the landownership details support the view that the route was a historical public vehicular route.

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

### **The Natural Environment and Rural Communities Act 2006**

This Act effected a blanket extinguishment of unrecorded public rights for mechanically propelled vehicles (MPVs) with certain exceptions. Prior to this carriageway rights did not discriminate between vehicles which were mechanically propelled, such as cars and motorbikes, and those which were not, such as bicycles, wheelbarrows, horse-drawn carriages, donkey carts, etc. If Committee concludes that the evidence shows that, on the balance of probability, public carriageway rights exist on the application route it is then necessary to consider whether the Natural Environment and Rural Communities Act 2006 has extinguished public rights for MPVs. The application route was, at the time of the Act recorded as a public footpath between point B and point C and not recorded as a public right of way on the Definitive Map and Statement between point C and point D. B-D was not on the List of Streets (maintained at public expense) and it does not appear to have been used mainly by the public in MPVs. There is no claim that any other of the other exemptions apply. Therefore, in the event that public carriageway rights are shown to exist and the appropriate status for the application route B-D to be recorded on the Definitive Map and Statement would be Restricted Byway, with public rights with non-mechanically propelled vehicles, horses or on foot.

A-B is on the List of Streets so would not be subject to the extinguishment of MPV rights under the Natural Environment and Rural Communities Act 2006.

### **Summary**

This investigation has been carried out based entirely on historical map and documentary evidence.

As with most cases investigated, there is no single piece of map or documentary evidence which stands alone to confirm the public legal status of the route.



However, in this case there appears to be strong and consistent evidence from the mid-1700s onwards suggesting that a route from the A65 to Church Lane existed and was believed to be and was capable of being used as a public vehicular route at that time.

The original route depicted on the early commercial maps was that now recorded as FP0119005 but despite being shown as a cross road on all three commercially produced small-scale maps this through route appears to have fallen out of use as a vehicular route by 1845 in favour of the route C-D.

Of particular significance is the fact that the route from point B through to point D is shown on the Tithe Map produced in 1845 and listed in the Tithe Award as a public road.

The route from point B through to point D is then consistently shown as a substantial through route linking to other public vehicular routes on all OS maps examined. It is consistently named as Green Lane and shown consistent with how other public vehicular routes were shown. On the 1<sup>st</sup> edition 25 inch OS map it is shown with a thickened line down the east side to denote a metalled public road for wheeled traffic, kept in proper repair by the local highway authority.

It is also shown on Bartholomew's small-scale maps in the first half of the 20<sup>th</sup> Century as a road – although use of the route may have declined by that time as a consequence of the surface being noted as being inferior. Bartholomew's maps were produced to a significant degree for cyclists (who were only allowed on carriageways) and had a system of revision from user information. The depiction of Green Lane on these maps supports it being public carriageway.

B-D is also clearly shown excluded from the numbered hereditaments/plots on the Finance Act Map prepared in the early 1900s consistent with the view that it was a public highway – most probably vehicular.

In the 1950s Leck Parish Council recorded a footpath meeting the route under investigation at point C describing the route under investigation as 'Green Lane' but not considering that it was required to be recorded on the Definitive Map and Statement which, by inference, suggests that they considered the route to be a public vehicular highway.

The county council, when preparing the Draft Maps, included the route B-C as part of FP0119005 – possibly because they did not have knowledge of the history of the route.

Since the mid-1950s the maps and aerial photographs examined indicate that use of the route declined, particularly with vehicles and recent site evidence now suggests that it is some time since the route has been used as a vehicular through route with only the short section from the A65 to Long Streets and the farm buildings and a short section from point D used by farm vehicles adjacent to Todgill Farm being accessible to vehicles. However, any decline in use would not remove any public rights already existing.



For most of its history A-B has been within the Kirkby Lonsdale-Settle vehicular road. Changes to the junction of the route with the A65 have occurred in the 1980s. Since that time access to the route has been via the tarmac roadway between points A-B but it has not been possible to locate the Side Road Order which should have been made to accommodate this change. Whilst we have no documentary evidence of the highway boundary it is likely from the embankment, registered land ownership and the position of the walls that all of A-B is part of the A65.

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

### **Landownership**

The majority of the application route is unregistered save for a small section between points A and B where Highways England own some of the land crossed by the application route.

### **Information from the Applicant**

The route was not believed to be used by the public other than the section which is recorded as footpath. It was being used by farm vehicles when the applicant inspected the route in 2019.

The applicant based their application on a body of map and documentary evidence spanning over 200 years which they considered sufficient to infer that the route was a public bridleway and that it should be recorded as such on the Definitive Map and Statement.

The Map and Documentary evidence submitted in support of the application is listed below and has been considered in detail earlier in this report.

Greenwood's Map of Lancashire published 1818  
Hennet's Map of Lancashire published 1829  
6 inch OS maps published 1847, 1895 and 1919  
25 inch OS maps published 1893-1895, 1913-1914.  
1 inch OS maps published 1898, 1947 and 1955  
1:25,000 maps of Great Britain published 1948 and 1952  
Bartholomew's Half inch to the mile maps published 1905, 1920 and 1941  
Tithe Records 1845  
Inland Revenue Valuation Records – Finance (1908-10) Act 1910  
Land ownership records  
Lancashire County Council highway records  
Photographs and maps to illustrate modern day route

### **Information from the Landowner**

Highways England were consulted as registered landowners of a section of land affected by the application route. In response they clarified that the affected land was acquired for the construction of the A65 when the road was a part of the trunk road network.



They advised that this road has now been de-trunked so is no longer part of the trunk road network.

They went on to clarify that by virtue of Section 265 of the Highways Act 1980, the de-trunking order has transferred ownership of the highway and the subsoil of the A65 and that this means that ownership vests in the Local Highway Authority even though Highways England remains the registered owner. The transfer of registered proprietorship is just an administrative exercise that has not yet been undertaken. Due to this they assert that ownership, maintenance, and responsibility for the operation of this road transferred to the LHA when the road was de-trunked.

### **Information from Others**

The land agents of an adjoining landowner replied to consultation to confirm the land in their client's ownership, They also sought clarification of the current status of the route and who had applied for the DMMO. This information was provided.

Cadent Gas responded to consultation to state they have no apparatus within the vicinity of the route.

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

### **Assessment of the Evidence**

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

The application is for the upgrade of footpath to bridleway and the addition of bridleway on the Definitive Map and Statement of Public Rights of Way along Green Lane.

Committee is advised that point A-B forms part of the publicly maintained highway, the A65. Point B-C is currently recorded as footpath FP0119005 on the Definitive Map and Statement. Point C-D is not currently recorded on the Definitive Map and Statement.

There is no express dedication or modern public user evidence. Committee is asked to consider whether there is sufficient evidence, on balance, that a dedication and acceptance can be inferred at Common Law to have happened many centuries ago. The evidence to be deliberated 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 highway open to the public. Part of the application route is already recorded, and Committee must consider whether this part of the route carries higher rights than the footpath it is presently recorded as.

The evidence has been summarised and evaluated fully earlier within the report and Committee is referred to this.

From the information above in the report it is suggested that Committee has sufficient evidence, on balance, that the route was a historical public route available



as a vehicular highway which at present is recorded as footpath in respect of B-C and unrecorded in respect of points C-D on the Definitive Map and Statement.

The fact that part of the application route is not presently recorded does not mean that it does not carry public rights of way. Disuse of a route does not take away the public rights. There has been no legal stopping up of those rights and so it is advised that the legal maxim "once a highway always a highway" will apply.

If Committee is content that there is sufficient evidence of an old vehicular highway between point B-D the Natural Environment and Rural Communities Act 2006 will have extinguished mechanically propelled vehicular rights leaving the route to be appropriately recorded as a restricted byway.

It is therefore recommended to make an Order as set out in the Recommendation at the beginning of the report and that it be promoted to 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 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: 804-630		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate



N/A

