

Regulatory Committee

Meeting to be held on 24 January 2024

Part I

Electoral Division affected:
Lancaster Rural East

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Upgrade and addition of Bridleway from Back Lane, Wrayton to Melling Moor

(Annex 'A' refers)

Contact for further information quoting reference number 804-654:

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Brief Summary

Application for the upgrade of a footpath to, and addition of, a bridleway to the Definitive Map and Statement of Public Rights of Way from Back Lane (C514) to Melling Moor (U3638), Melling with Wrayton.

Recommendation

- (i) That the application for a bridleway to be recorded from Back Lane to Melling Moor, Melling with Wrayton, be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3) (c)(i) and (ii) of the Wildlife and Countryside Act 1981 to record a bridleway on the Definitive Map and Statement of Public Rights of Way from Back Lane to Melling Moor as shown on Committee Plan between points A-B-C-D-E-F-G-I.
- (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 the upgrading of a footpath to, and addition of, a bridleway on the



Definitive Map and Statement of Public Rights of Way from Back Lane through to Melling Moor in the parish of Melling with Wrayton.

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 provided no response to our consultation.

Melling with Wrayton Parish Council

Melling and Wrayton Parish Council made the following comments:



- 1) A new bridleway is not needed as the path is already used by pedestrians and the local horse-riding community with the permission of the landowner.
- 2) A bridleway would open up the path to bicycles and motorbikes which would create problems for the landowner and locals and erode the path.
- 3) The route passes through woodland which is home to a wide variety of wildlife which would be disturbed by potential motorbike use.

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	6112 7225	Open junction with Back Lane (C514)
B	6112 7222	Gate across application route
C	6110 7219	Gatepost adjacent to application route but no gate
D	6100 7196	Application route enters woodland
E	6098 7177	Gate across application route
F	6098 7176	Point at which the application route turns south east and leaves the route recorded as 1-20-FP 6
G	6108 7171	Gate across application route
H	6116 7162	Gate across application route
X	6113 7144	Gate across application route
I	6110 7130	Open junction with Melling Moor U3638

Description of Route

A site inspection was carried out in September 2021.

The application route starts in the hamlet of Wrayton on Back Lane (C514). The first section of the route is currently recorded as Footpath 1-20-FP6 and is signposted as a public footpath (point A.)

From Back Lane (point A) the route extends in a southerly direction along a wide well-maintained tarmac roadway and adjacent grassed area providing access to four separate properties.



The route passes through a gateway (point B) which was open on the day that the route was inspected. The wooden gate and gateposts were in good condition and well maintained and the tarmac roadway continues south west directly past two of the properties towards 'The Farmhouse'.

The application route continues beyond the end of the tarmac roadway which leads to 'The Farmhouse' and continues past a gatepost (point C) as a stone surfaced roadway with a grass strip down the centre.

The route continues along a compacted earth and stone surfaced track bounded on either side by hedges. Access to adjacent fields is available from the route via a number of gateways leading off the route into the fields.

The route enters an area of woodland (point D) and continues south south west then south along a substantial track through the woodland which was being used by a tractor at the time the route was inspected.

The application route passes through an old metal gate hung on a stone gatepost and shutting against a second stone gatepost (point E).

Beyond the gate (point E) vehicular use of the route appears to end and the application route continues for a further 10 metres along a less well-defined grass and earth track to a junction of tracks (point F) in front of a gate.

The route recorded as 1-20-FP6 passes straight ahead through a wooden gateway waymarked as a footpath to continue as a narrow trodden path consistent with pedestrian use. The application route does not pass through the gateway but instead turns to continue south east along a wide grassed strip bounded by woodland and a fence to the south and by woodland to the north.

The route continues in a south easterly direction along the open grassed strip ascending gently uphill to pass through another metal gate hung from a stone gatepost (point G).

The route continues south east along a grassed track open on both sides to the adjacent woodland. Whilst there is no evidence of current use its appearance is consistent with a significant track which may have been used by vehicles in the past.

The grass track leads to the south east corner of the woodland and turns south through a gateway (point H). A substantial stone gatepost is evident and across the gateway an assortment of metal gates have been tied together to provide a stock-proof barrier.

Beyond the gateway (point H) the route continues in a south south westerly direction along a strip of rough grassland approximately 10 metres wide which is lined on both sides with trees and hedging. The eastern boundary of the route has been made stock proof by the addition of a wooden post and wire fence but the western side has gaps and cattle grazing the adjacent field are accessing the route and eating the grass making the route easily passable and keeping it relatively clear of vegetation.



After about 150m a field gate and fencing has been erected across the route (point X). The gate is hung from wooden posts and there is no evidence of any old stone gate posts as found at other points along the route.

Beyond the gate (point X) the route continues in a south south westerly direction approximately 10 metres wide and bounded on either side by a stockproof hedge within which larger trees are interspersed with mature trees. The surface of the route is quite overgrown although there is evidence that the occasional farm vehicle had travelled along it particularly on the approach to Melling Moor (point I) where there is evidence of a compacted earth and stone surface.

The application route meets a stone road named Melling Moor (point I) where access to and from the route is unrestricted.

From point I it is possible to continue west along Melling Moor directly to the village of Melling or east to exit onto Spout Lane.

The total length of the route is 1km.

Map and Documentary Evidence

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

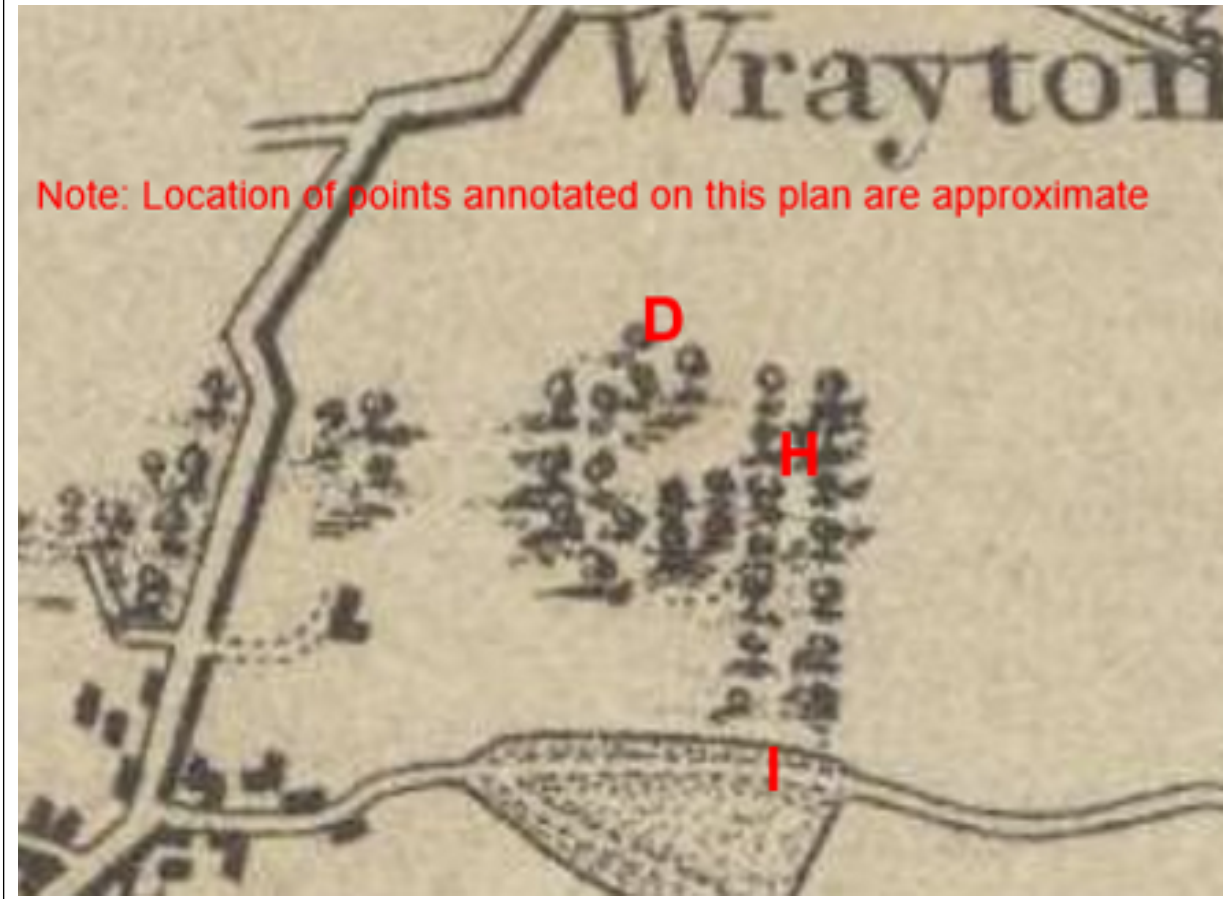
Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced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






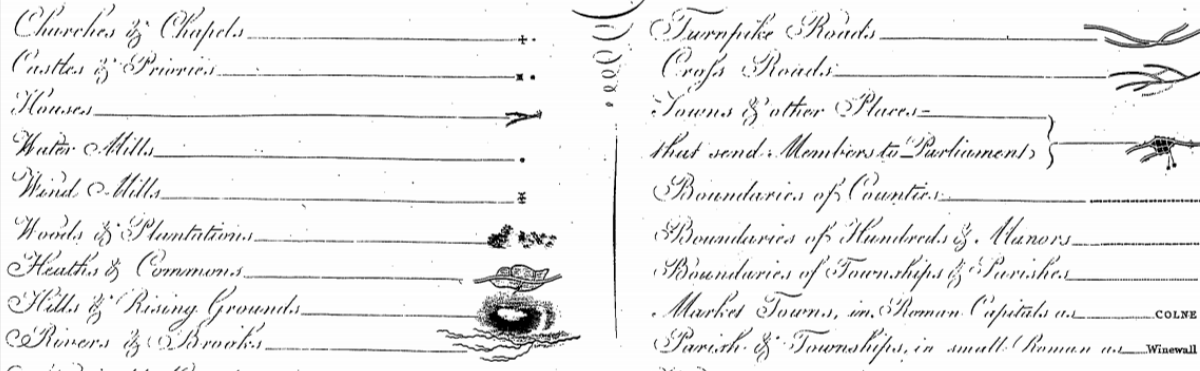
Observations		The application route is not shown.
Investigating Comments	Officer's	The application route probably did not exist at the time or if it did exist, was not considered to be a substantial public vehicular route by Yates. If it did exist it would have been very unlikely for a route considered to be a footpath or bridleway to be shown on such a small-scale map.
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.





Note: Location of points annotated on this plan are approximate



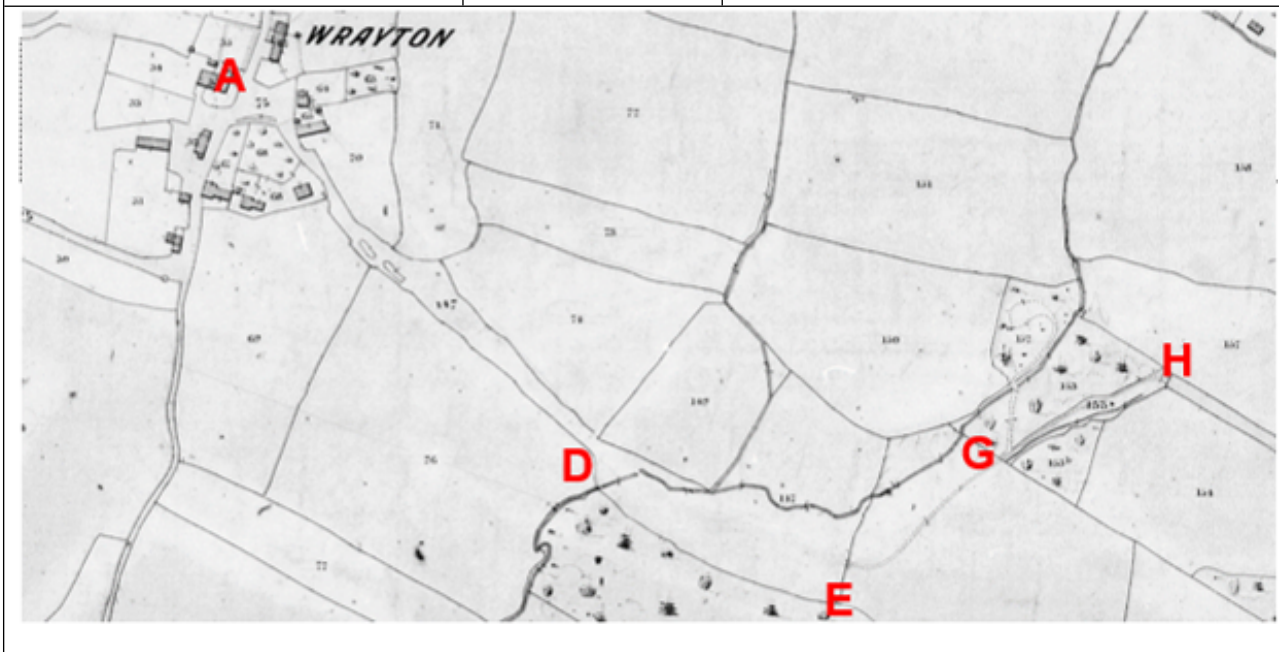
		
		
Observations		The application route is not shown but an area of woodland is shown consistent with the location of the woodland the route passes through between point D and point H on the Committee plan. In addition, the map shows two lines of trees in a north-south direction connecting to Melling Moor (U3638) consistent with the application route between point H and point I.
Investigating Comments	Officer's	The application route probably did not exist as a through route at the time or if it did exist, it was not considered to be a substantial public vehicular route by Greenwood. If it did exist it would have been very unlikely for a route considered to be a footpath or bridleway to be shown on such a small-scale map.
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 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.

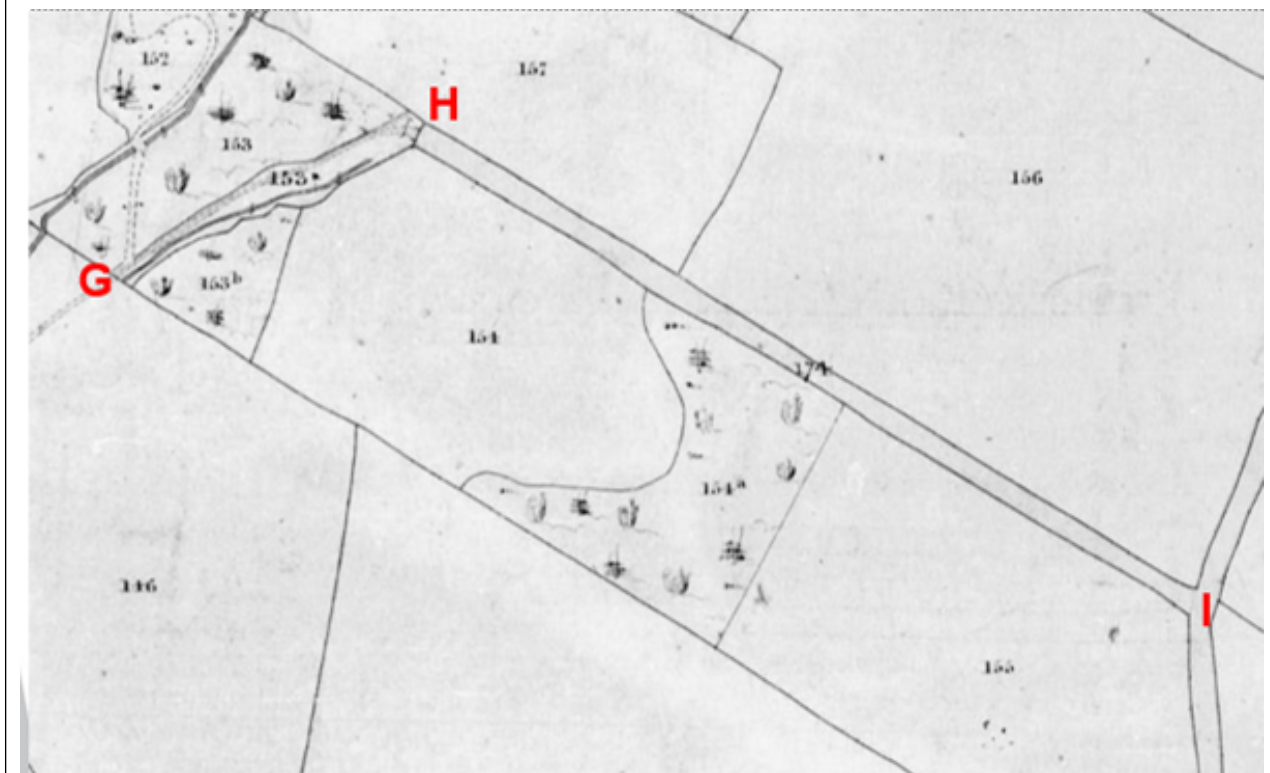




Observations		The start of the application route from point A is shown with a number of buildings shown along it. The woodland is shown but the rest of the application route is not shown.
Investigating Officer's Comments		The application route probably did not exist as a through route at the time or if it did exist, was not considered to be a substantial public vehicular route by Hennet. If it did exist it would have been very unlikely for a route considered to be a footpath or bridleway to be shown on such a small-scale map.
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 is not affected by an existing canal or railway and there are no known proposals to have constructed either in

		the proximity of the route in the past.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights in the past.
Tithe Map and Tithe Award or Apportionment	1848	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.







LANDOWNERS.	OCCUPIERS.	Numbers referring to the Plan.	NAME AND DESCRIPTION OF LANDS AND PREMISES.	STATE OF CULTIVATION
Township of Melling	Themselves	26	Waste	
		75	Road and waste	
		89	Road	
		102a	Road	
		1186	Road	
		147	Waste	
		174	Road	
		196	Melling Moor and Roads	
		261	Road	
		308	Melling Green	
		322	Road	
	John Cook	208	School House Garden &	
		202a	Garden	

C—Lancaster Printed and Published (for the Surveyors) by Messrs A. Kemp, Printer, Lancaster.

LANDOWNERS.	OCCUPIERS.	Numbers referring to the Plan.	NAME AND DESCRIPTION OF LANDS AND PREMISES.	STATE OF CULTIVATION.	QUANTITIES BY STATUTE MEASURE.		PAYABLE TO				REMARKS.			
					A.	R.	POSSIBLE TO	POSSIBLE TO	POSSIBLE TO	POSSIBLE TO				
Bennoch Thomas Esq Survivor of (contd)	Lawrence Lambert (contd)	55	Bank	Brought forward	71	2	10	2	2	8	15	2		
		67	Barn and Garden	Hall garden	11	2	22	4	A	1	6	2	A ✓	
		78	Low Pasture		16	2	27	4	A	1	6	2	A ✓	
		82	Grass Meadow	Pasture	18	2	20	1	5	A	2	14	2	A ✓
		90	Little Low Pasture	Meadow	7	2	22	2	6	A	1	2	2	A ✓
		120	Olives Grove	Orchard	4	1	2	4	A	1	2	2	A ✓	
		128	Grass Meadow	Meadow	2	1	8	2	A	1	2	2	A ✓	
		128	Grass Meadow	Pasture	8	2	10	2	A	1	6	2	A ✓	
		140	House	Stable	15	2	8	6	A	1	6	2	A ✓	
		148	House	Stable	7	2	22	4	A	1	6	2	A ✓	
160	Grass Meadow	Meadow	4	1	10	1	2	1	2	2	A ✓			
160	Grass Meadow	Pasture	10	2	12	2	2	1	2	2	A ✓			
		160	Grass Meadow	Pasture	10	2	12	2	2	1	2	2	A ✓	



Plot No.	Description	Area	Value	Notes
142	Plantation	4 1 15	1	
143	Knights Hill	1 1 37	2	
144	Plantation	2	1	
147	Meadow	4	28	
150	Banks	4 2 23	2	
151	Banks	2 2 23	1	
152	Plantation and Quarry	1	30	
153	Grass Plantation	1 1 12	1	
153a	Road Waste	1 2 4	1	
153b	Plantation	2 1 17	1	
154	Moor	1 2 14	3	
154a	Moor	4 1 30	3	
155	Moor	2 1 17	4	
158	Beckwith	2 3 8	2	
161	Beckwith	1 1 13	1	
162	Plantation	4 2 29	2	
163	Beckwith	6 1 8	2	
164	Beckwith	1	1	
165	Plantation	1 3 32	1	
167	Plantation			

Observations

Between point A and point B the application route is shown crossing an open area numbered as part of Back Lane (hereditament 75). This plot is listed in the Tithe Award as being a 'Road and Waste' owned and occupied by the Township of Melling for which no tithes were payable.

At point B a line is shown across the route – possibly indicating the location of a gate – although gates were not specifically marked on the map.

Beyond point B the route – which is not marked - passes along a bounded strip of land of varying width numbered as plot 147 through to point E. A watercourse is shown crossing the route just north of point D through which there is a gap – suggesting the existence of a culvert or possibly a bridge – across which access could have been available. Hereditament 147 is listed in the Tithe award as 'Waste' again in the ownership of the Township of Melling with no tithes listed as being payable.

A line is shown across the route at point E where a gate may have provided access from/to the waste land along the application route. From point E the route is shown as a track (double pecked lines) passing through plot 146 to point G. Plot 146 is described in the Tithe award as a 'Moor' which was privately owned and occupied and for



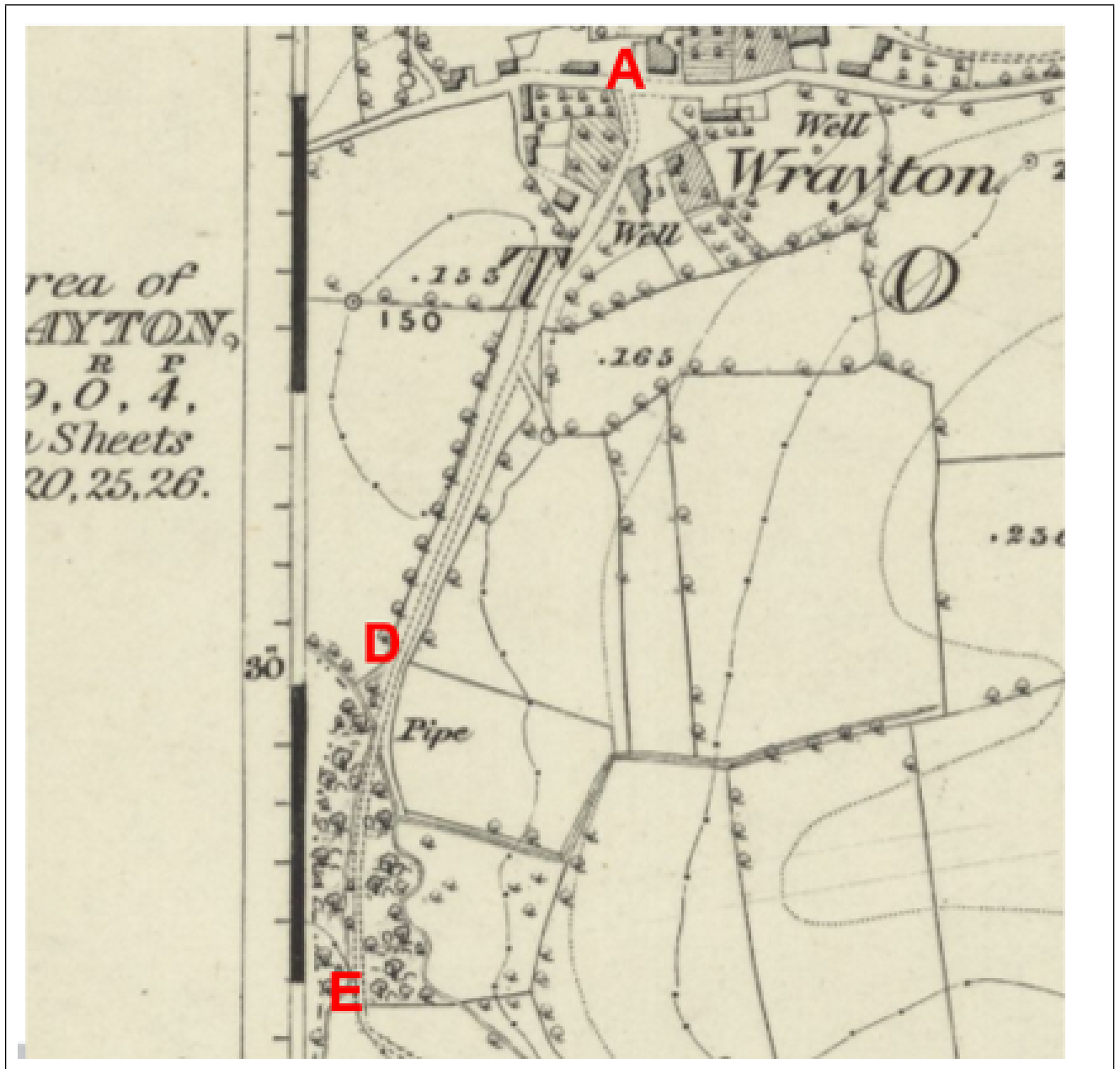
		<p>which tithes were payable.</p> <p>At point G a solid line is shown across the route but the track is shown to continue as a partially bounded track through hereditament 153a to point H where it is crossed by a further solid line. Hereditament 153a is described as a 'Road and Waste' in the Award which is privately owned and occupied although no tithe was payable.</p> <p>From point H the application route is shown as a bounded route numbered as part of hereditament 174. At point I the route meets Melling Moor at an open junction and the numbering is repeated with Melling Moor also numbered as hereditament 174 and listed in the Tithe Award as a road, owned and occupied by the Township of Melling, for which no Tithes were payable.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>A through route may have existed along the application route in 1848 although access may have been restricted – possibly by gates - at points B, E, G and H.</p> <p>Between points A-B and H-I the route appears to have been considered to be part of the road network owned by the township. However, from point B to point E, although owned by the township, the land crossed by the application route is described in the Award as 'waste'.</p> <p>From point E through to point H the route passes through land in the private ownership of two different landowners and whilst it physically exists passing through land described as moorland and road and waste there was no acknowledgement of a through route from point A through to point I which would have been suggestive of a public vehicular through route.</p>
<p>Inclosure Act Award and Maps</p>		<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</p>

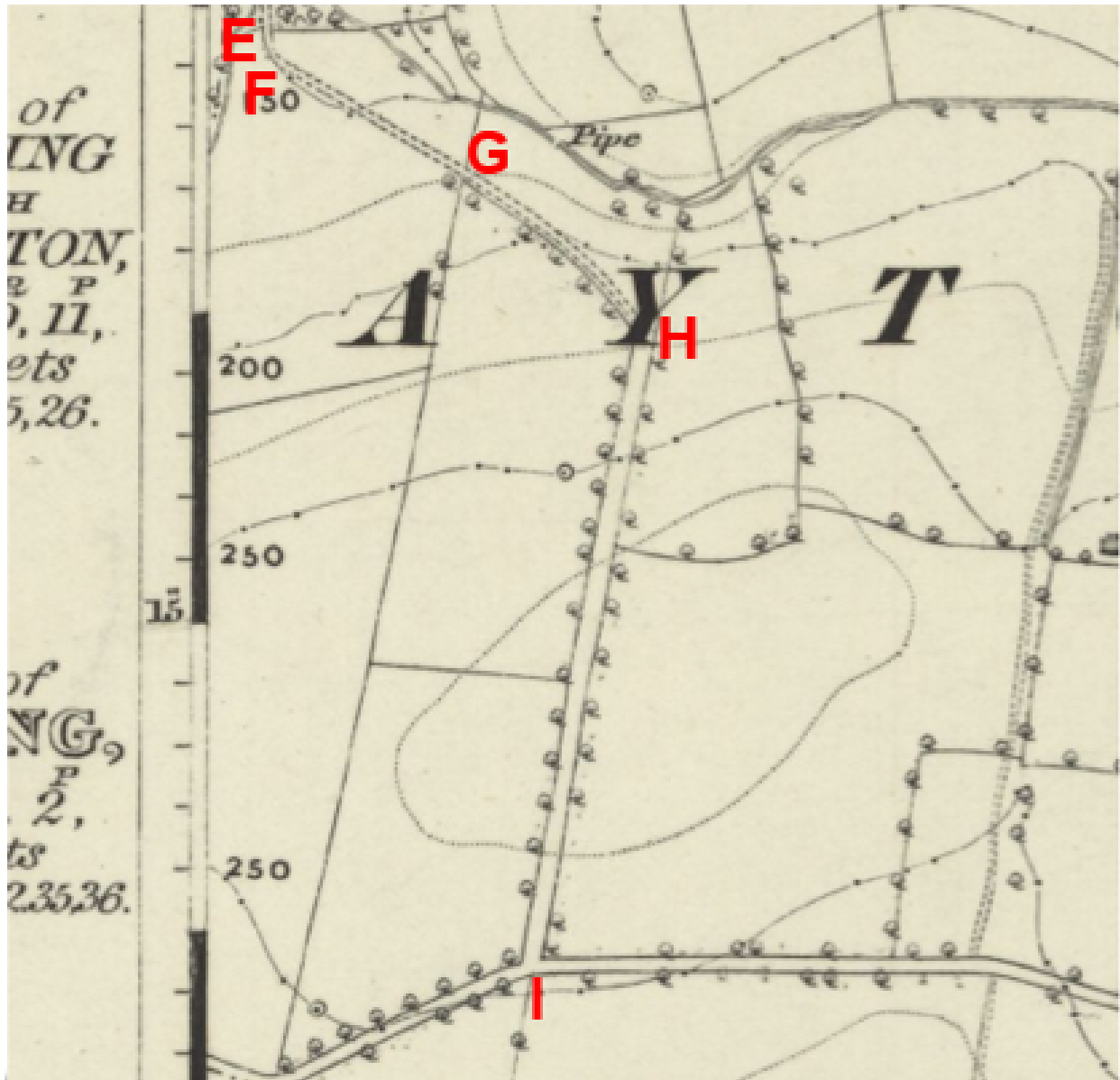


		layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		No Inclosure Award was found for the area crossed by the application route.
Investigating Officer's Comments		No inference can be made with regards to the existence of public rights.
6 Inch Ordnance Survey (OS) Map Sheet 26	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-1845 and published in 1847. ¹

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.







Observations

The full length of the application route is shown predominantly as an unbounded track (double pecked lines) from point A through to point H and as a bounded tree lined route from point H to point I. No lines are shown across the route which could indicate the existence of gates or some form of physical restriction and the word 'pipe' has been written adjacent to the route just south of point D suggesting that the watercourse was piped at this point to allow for access across it. The route now recorded as part of 1-20-FP6 south of point F is not shown.

Investigating
Comments

Officer's

The application route existed in 1845 and appeared to be capable of being



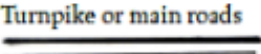

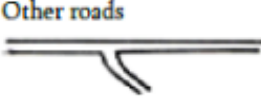



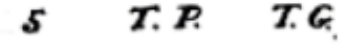









Cassini Map Old Series	1852-1865	used. The Cassini publishing company produced maps based on Ordnance Survey mapping. These maps have been enlarged and reproduced to match the modern day 1:50, 000 OS Landranger Maps and are readily available to purchase.
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One-Inch sheets used to create this map.

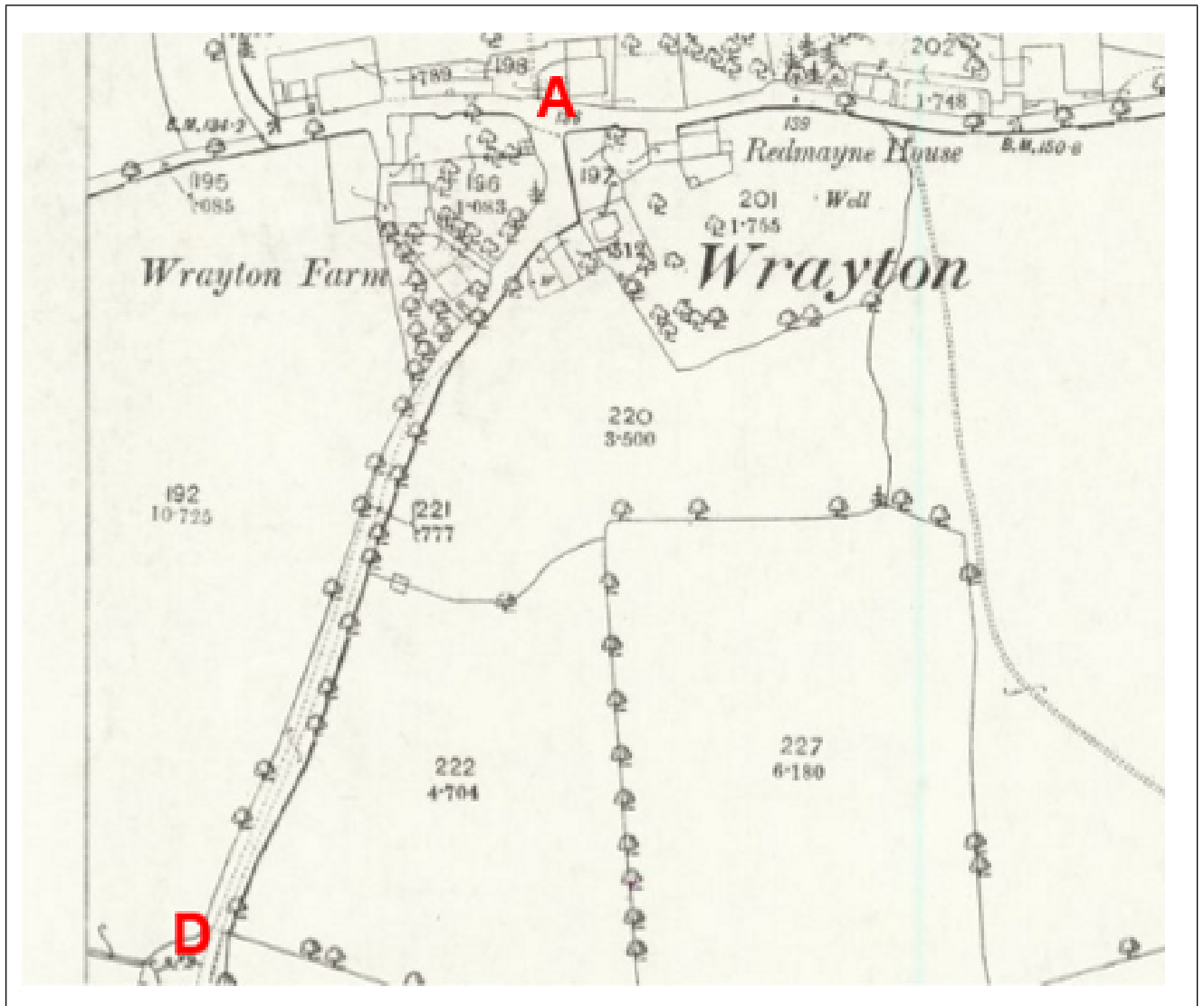
- Sheet 91, N.E. Quarter, pub. 31st December 1852
- Sheet 91, N.W. Quarter, pub. 31st December 1852
- Sheet 98, N.E. Quarter, pub. October 1864
- Sheet 98, N.W. Quarter, pub. April 1865
- Sheet 98, S.E. Quarter, pub. March 1865
- Sheet 98, S.W. Quarter, pub. January 1864

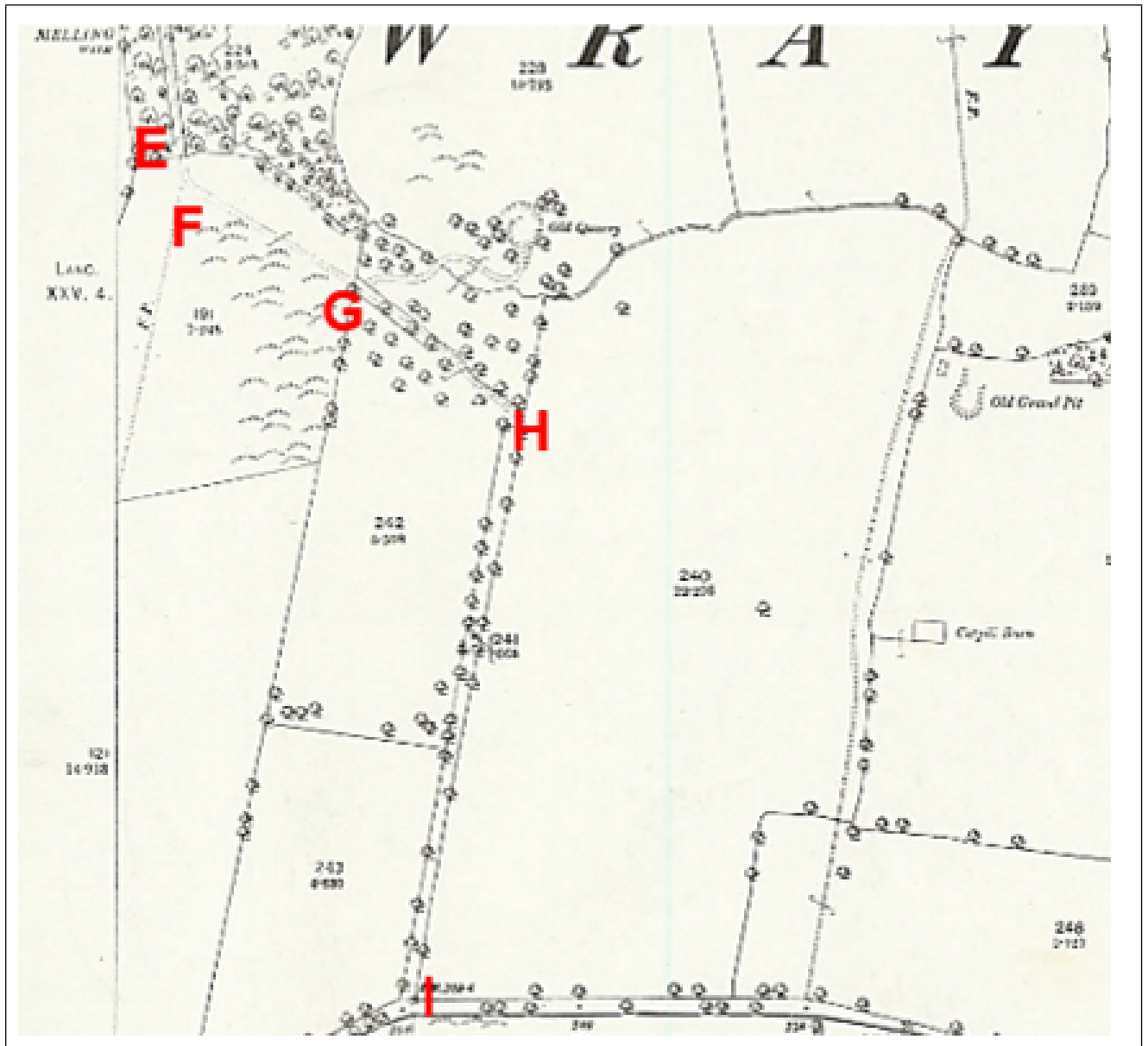


Turnpike or main roads 	Railways 
Other roads 	Cuttings 
Unfenced roads 	Embankments 
Mileages; turnpike gates; toll gates 	Tramways and freight-only railways 
County boundaries 	Woodland 
Parish or township boundaries (on some sheets only) 	Parkland 
Church 	Foreshore: sand; boulders; rocks 
Windmill 	
Lighthouse 	

Legend source - <http://www.cassinimaps.co.uk/shop/pagelegend.asp>

Observations		A cluster of properties can be seen at point A with a faint single line extending towards point F. A route denoted in the map key as 'other road' can be seen from point F through to point I joining Melling Moor.
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 purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown had public rights for those travellers. Only the southern part of the application route is clearly shown on this map and although access may have been possible along the full length a through route from point A to point I does not appear to have been considered to be a significant through route at that time.
25 Inch OS Map Sheet XXVI.1	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1891.







Observations

The full length of the application route is shown.

From point A through to point D the route is shown as a bounded route with a thickened line along the east side. A dashed line is shown across the start of the route at point A – suggesting a change in surface – but no solid lines are shown suggesting that access was unrestricted.

From point D a route shown by double pecked lines is shown passing through an area of woodland to point E where a line is shown across the route.

From point E an unbounded track is shown passing through point F and continuing to point G.

From point F a 'thinner' route – denoted by double pecked lines – is shown continuing in a south south westerly direction and annotated as being a footpath (F.P.).

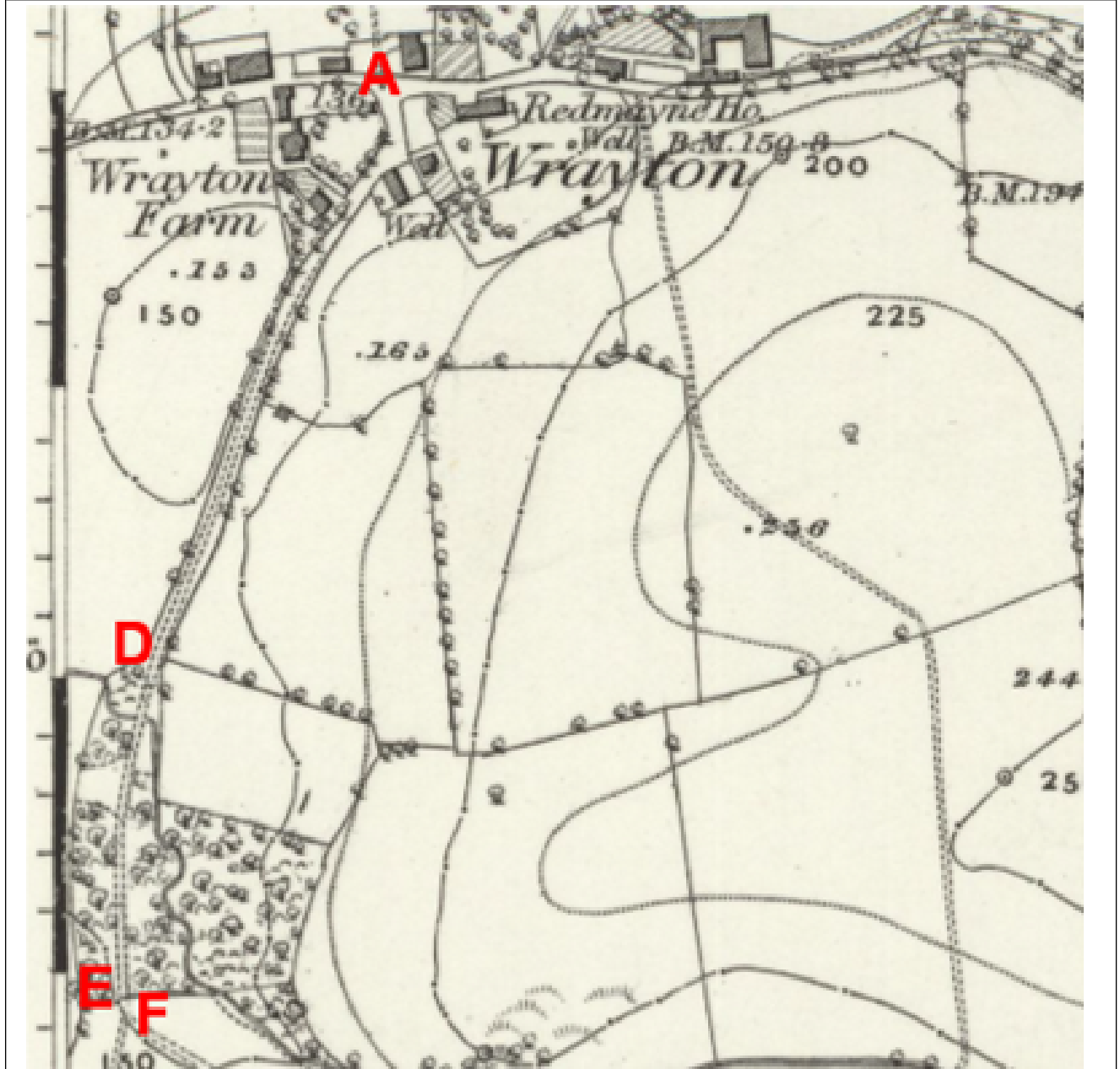
From point G to point H a track is

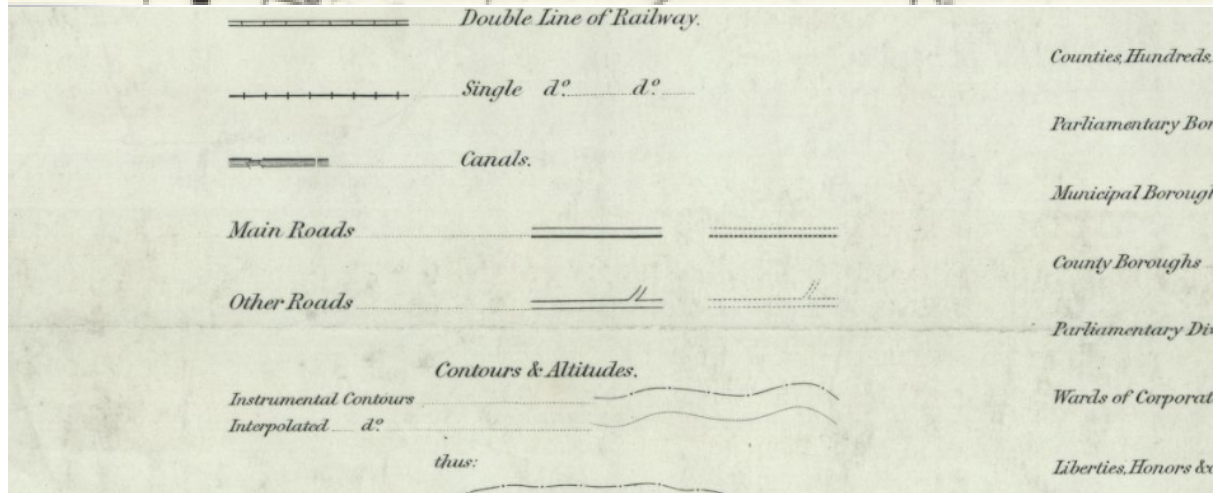
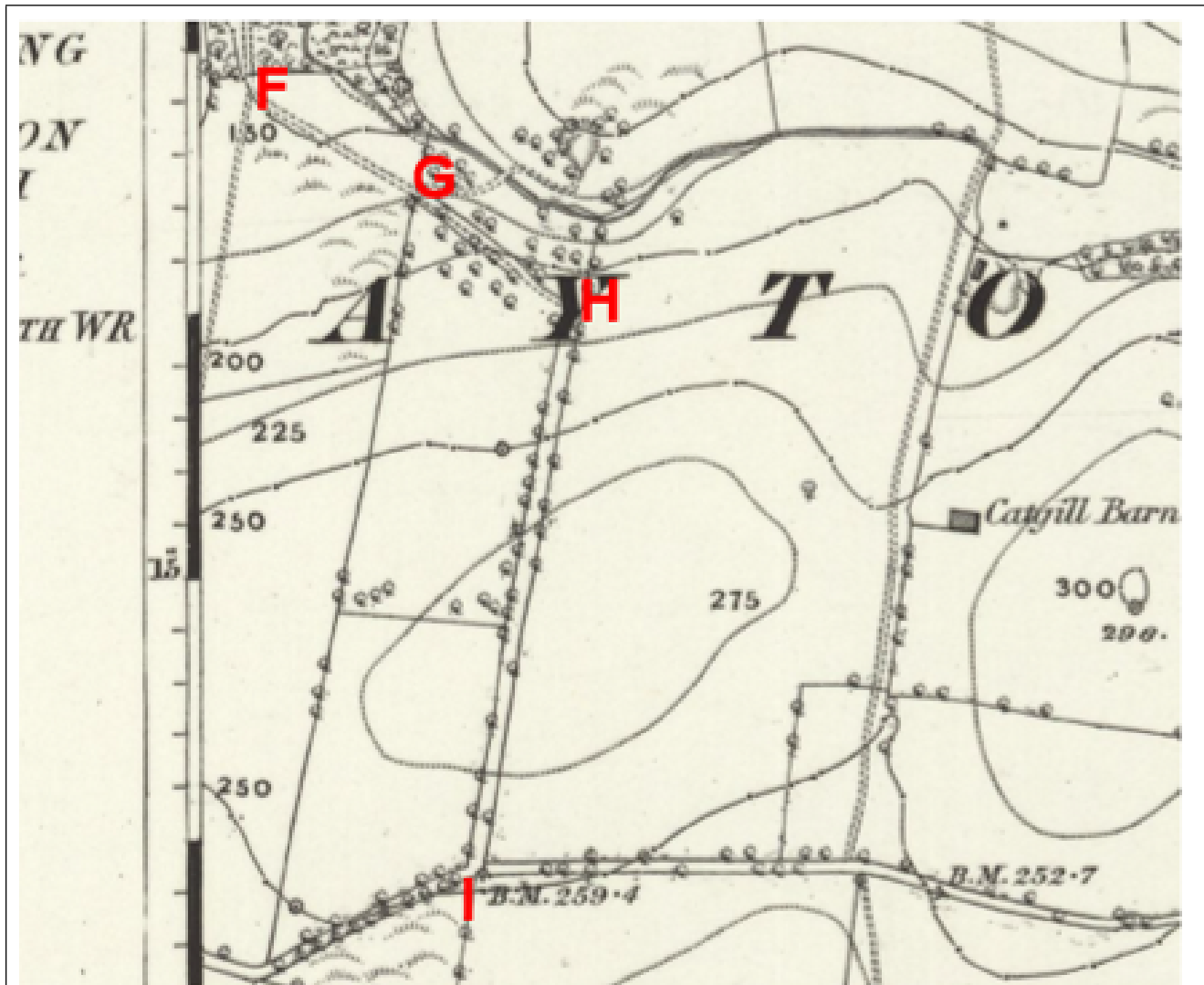


		<p>shown and at point H a further line is shown across the route. South of point H the application route is shown as a bounded treelined route extending through to the open junction with Melling Moor at point I. Melling Moor is shown with a thickened line along the south side but the application route is not shown in such a way.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The application route existed in 1890 and appeared to be capable of being used at least on horseback although it appeared to have been gated at 3 separate locations at that time.</p> <p>The existence of gates along a public route would not have been considered unusual in the 1800s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p> <p>The fact that the route is shown with a thickened line to one side between point A and point D on the black and white edition of the map in the way that Back Lane and Melling Lane are shown suggests that part of the application route was considered to be a publicly maintained vehicular road at that time although this is not consistent with the information provided by the Tithe Award nearly 50 years earlier which described most of this section as waste. Shading and colouring were often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912 when 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. The fact that part of the route was shown in this way suggests that it may now have been</p>



		passable with horse drawn vehicles – particularly as it provided access to an area of woodland registered as common land. The way it is shown on the map is consistent with use of the route by the public at least on horseback.
6 inch OS Map Sheet 26	1895	OS map surveyed 1890 and published 1895.

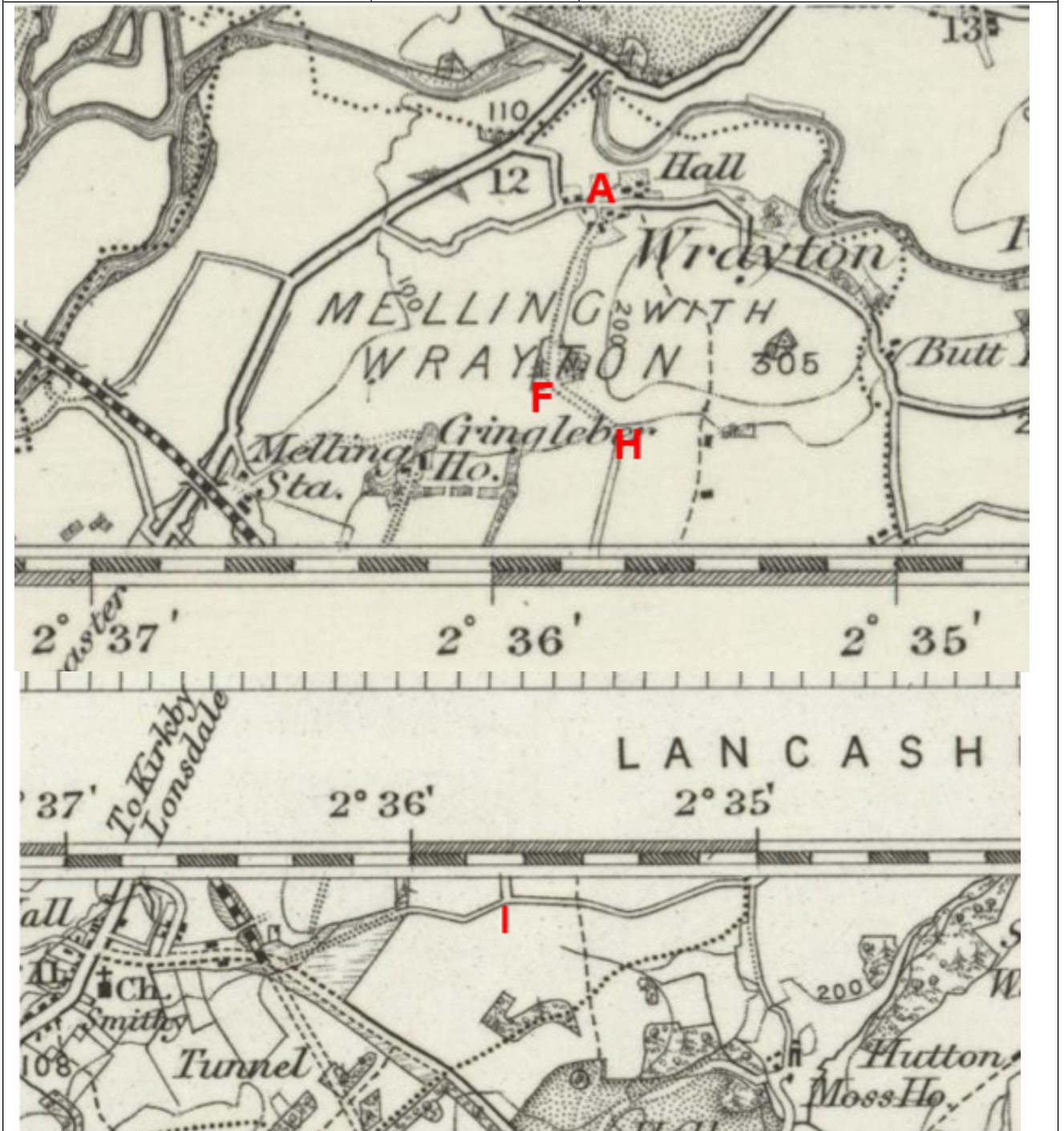


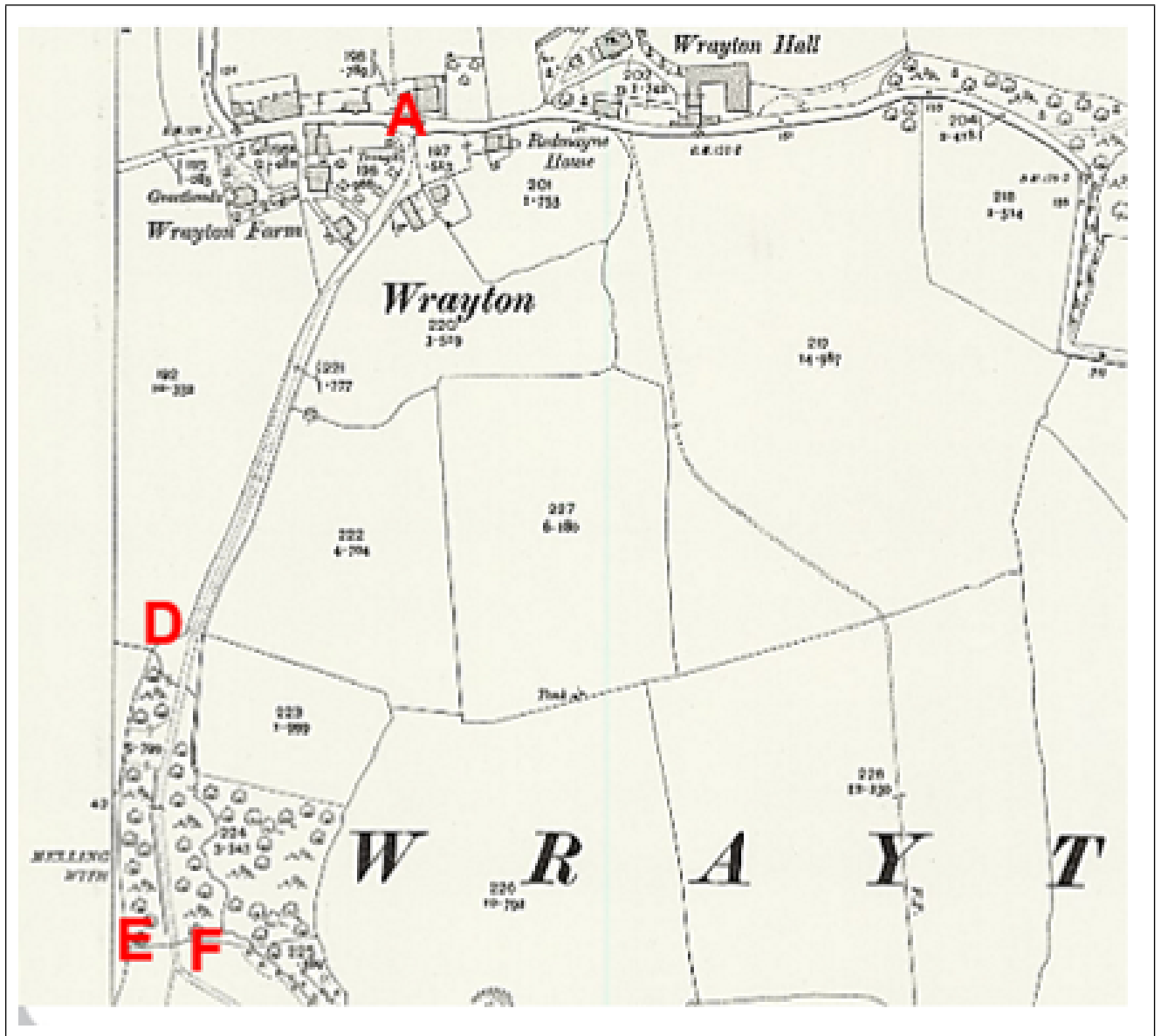


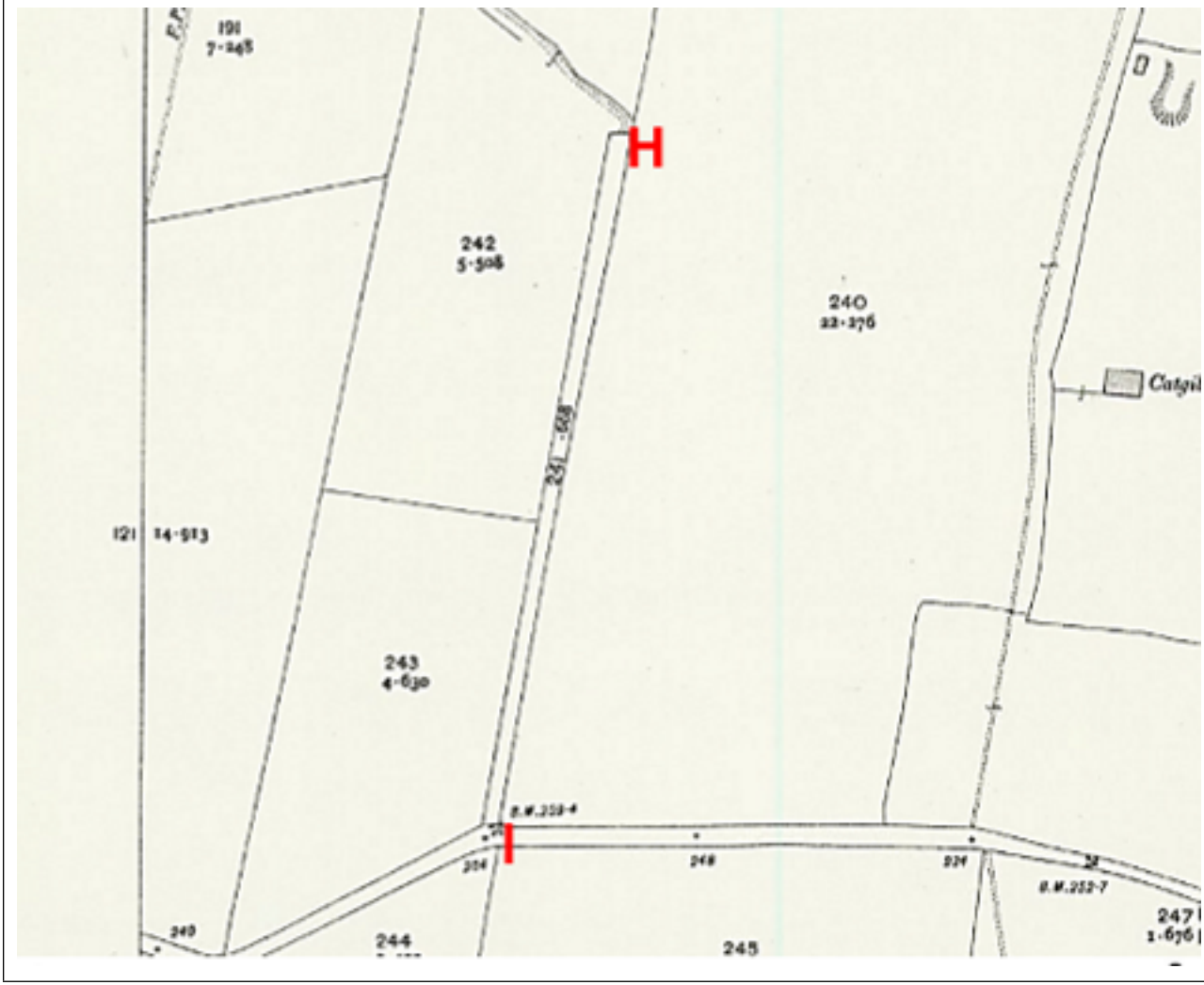
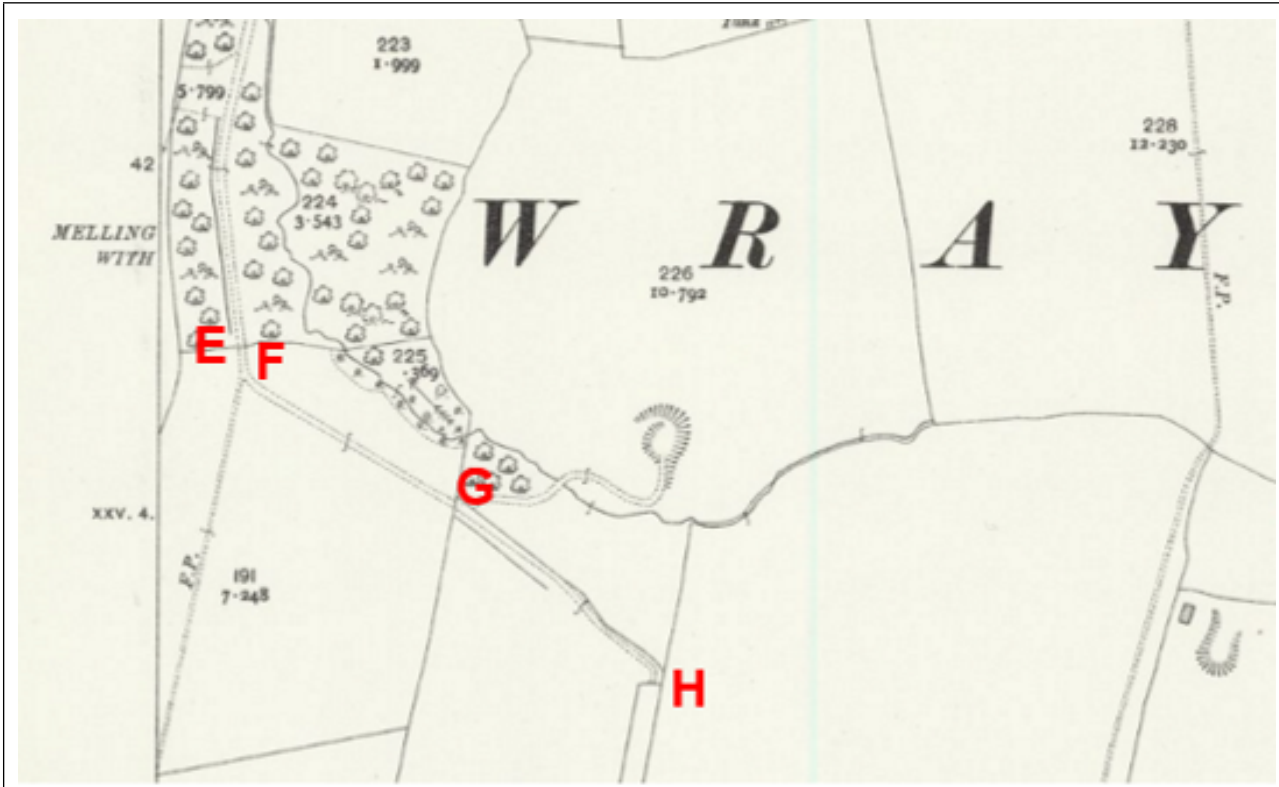
Observations		A substantial through route is shown bounded between points A-D and points H-I with the middle section depicted as being unfenced. The map key indicates that the route was shown as 'other road'.
Investigating Comments	Officer's	The application route existed as a substantial through route which



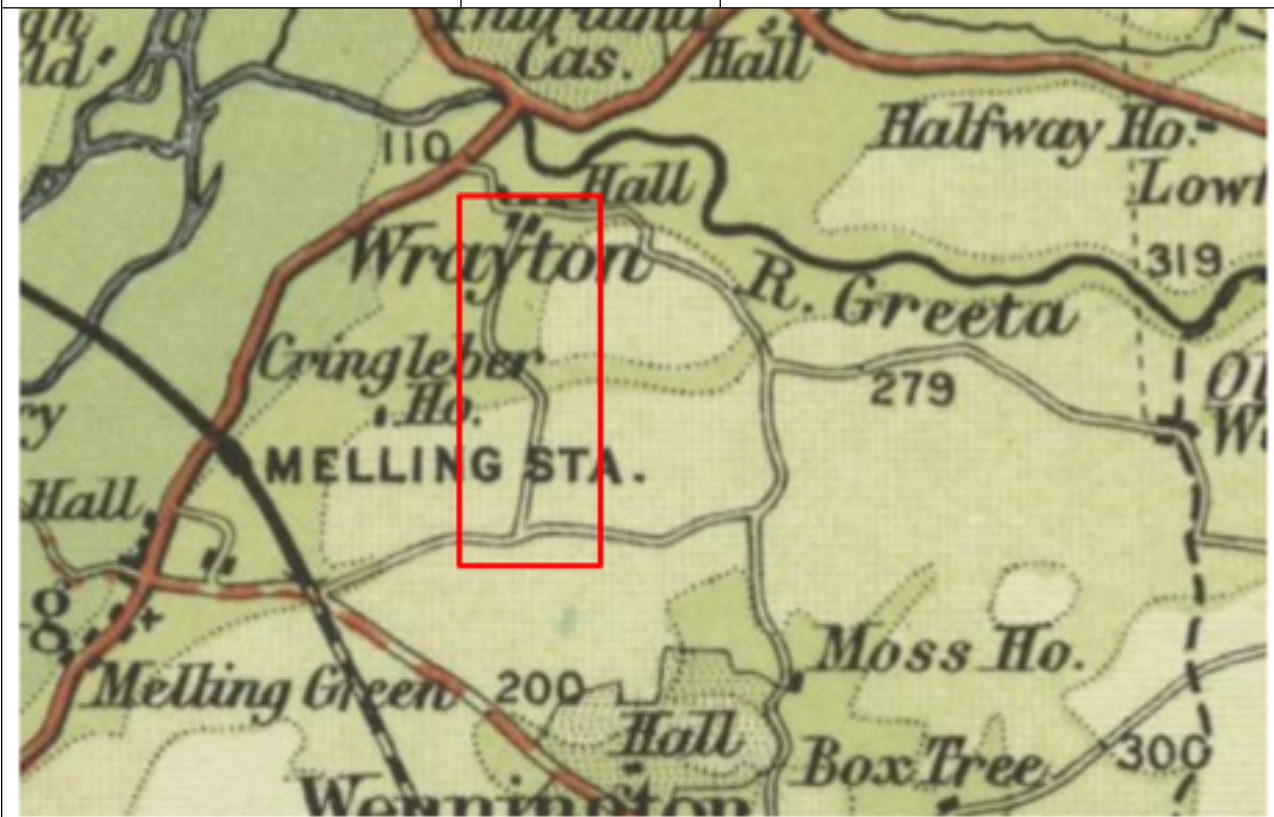
		<p>appeared capable of being used in 1895.</p> <p>It is considered that a substantial route connecting to a network of other public highways is consistent with a way which carried at least a public bridleway and may have carried public vehicular rights.</p>
1 inch OS Map	1898	1 inch OS map 49 – Kirby Lonsdale and Sheet 59 – Lancaster, both published in 1898.

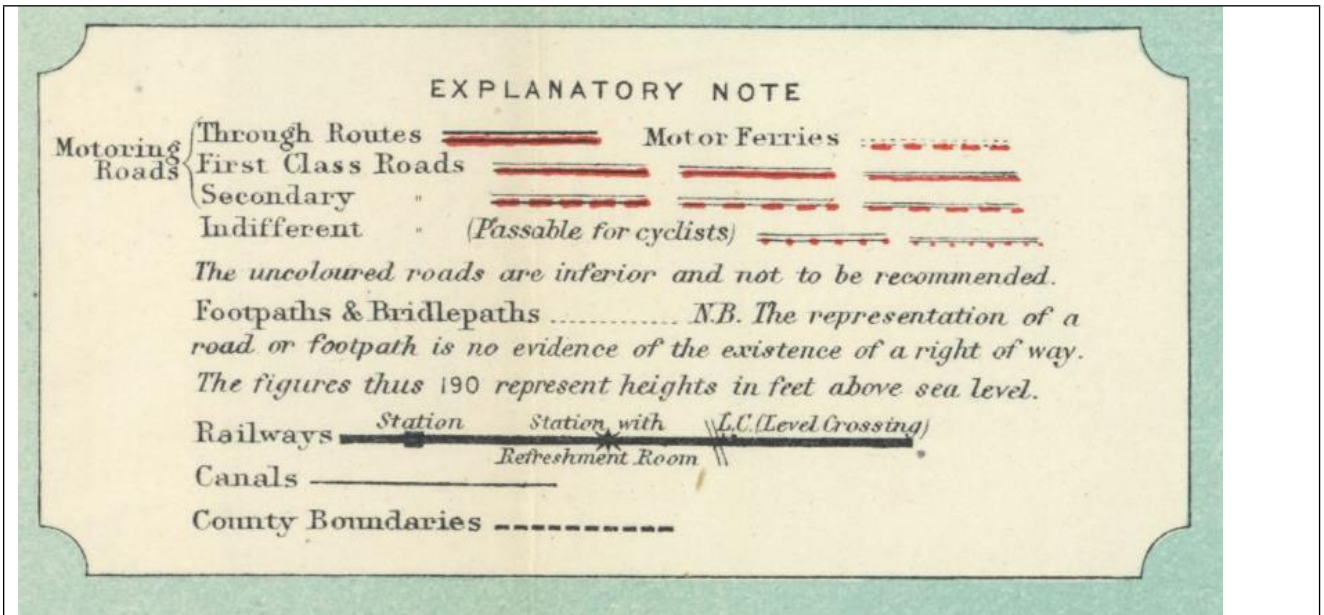




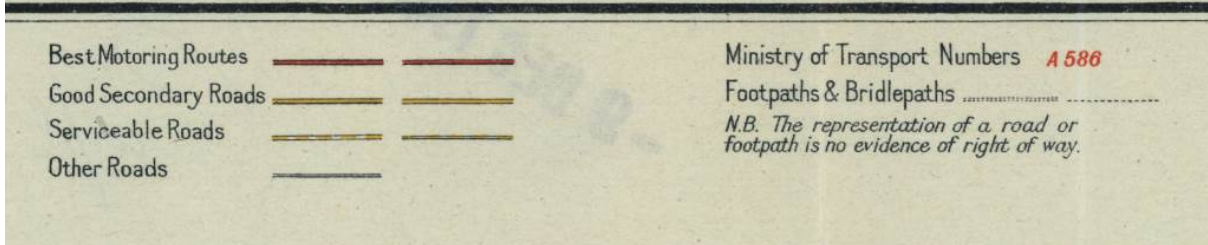


Observations		The application route is shown in the same way as it is shown on the earlier edition of the 25 inch maps with gates at points E, G and H.
Investigating Officer's Comments		The application route existed as a substantial through route which appeared capable of being used in 1910.
Bartholomew half inch Mapping	1902-1906	The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.





1920s



1940s

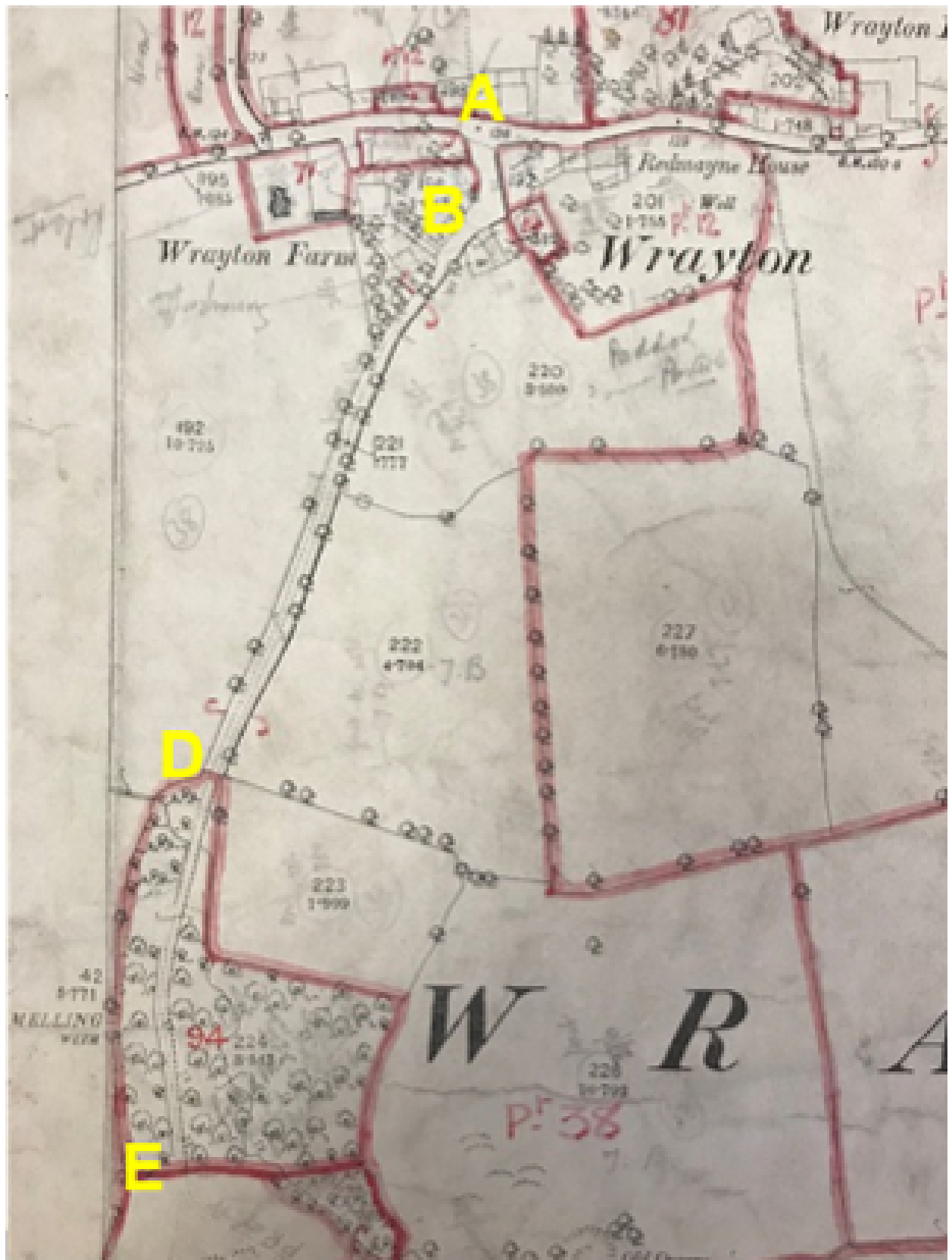
Observations		The application route is shown on all three editions of Bartholomew's Map as an uncoloured or other road.
Investigating Comments	Officer's	The application route is clearly shown on Bartholomew's maps as an uncoloured/other road supporting the

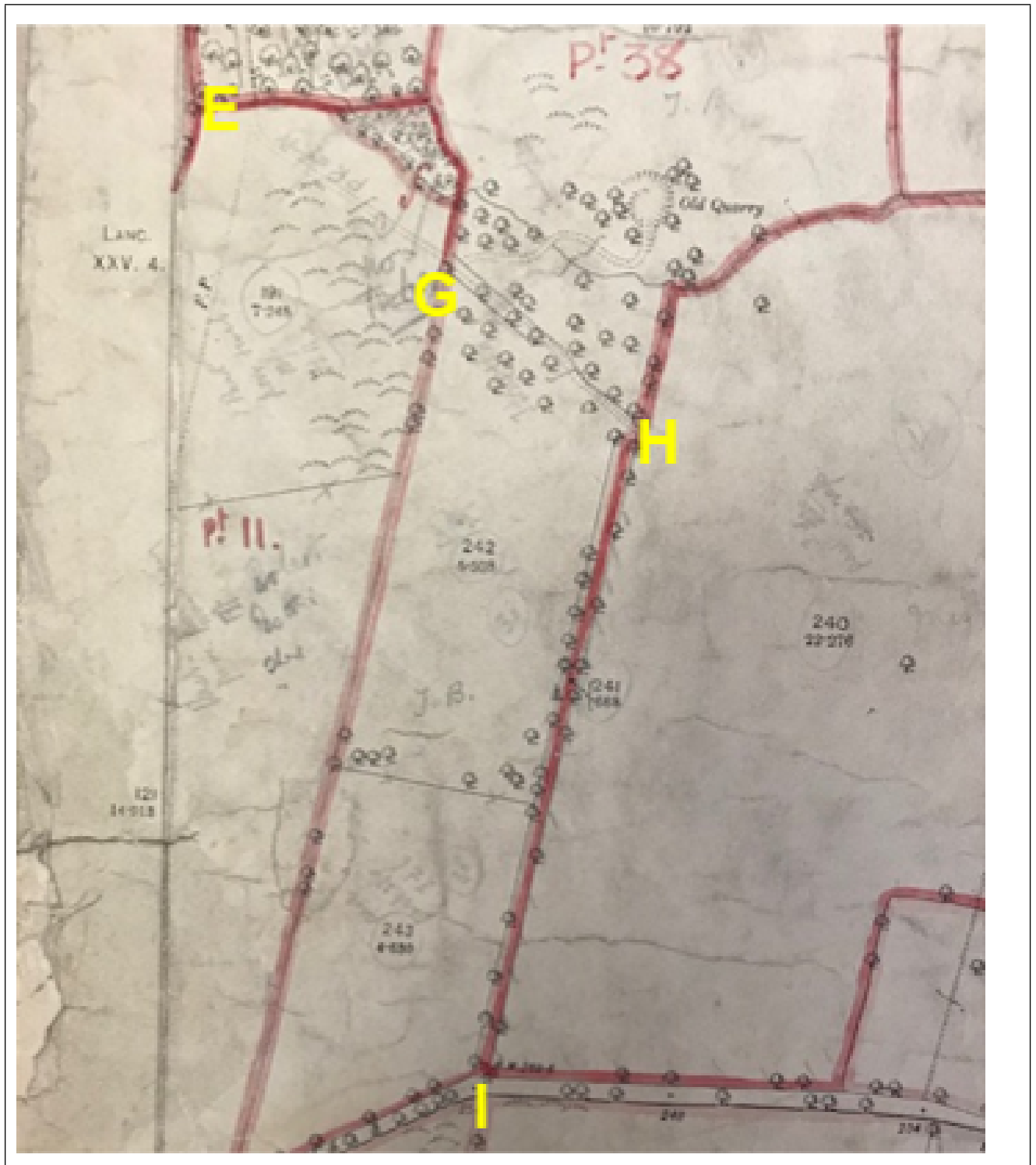


		<p>view that it physically existed in the early-mid 1900s and whilst not considered to be recommended the inclusion of the route on these maps is evidence that the route was still considered to be a significant route capable of being used at least on horseback in the early 1900s.</p>
Finance Act 1910 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>



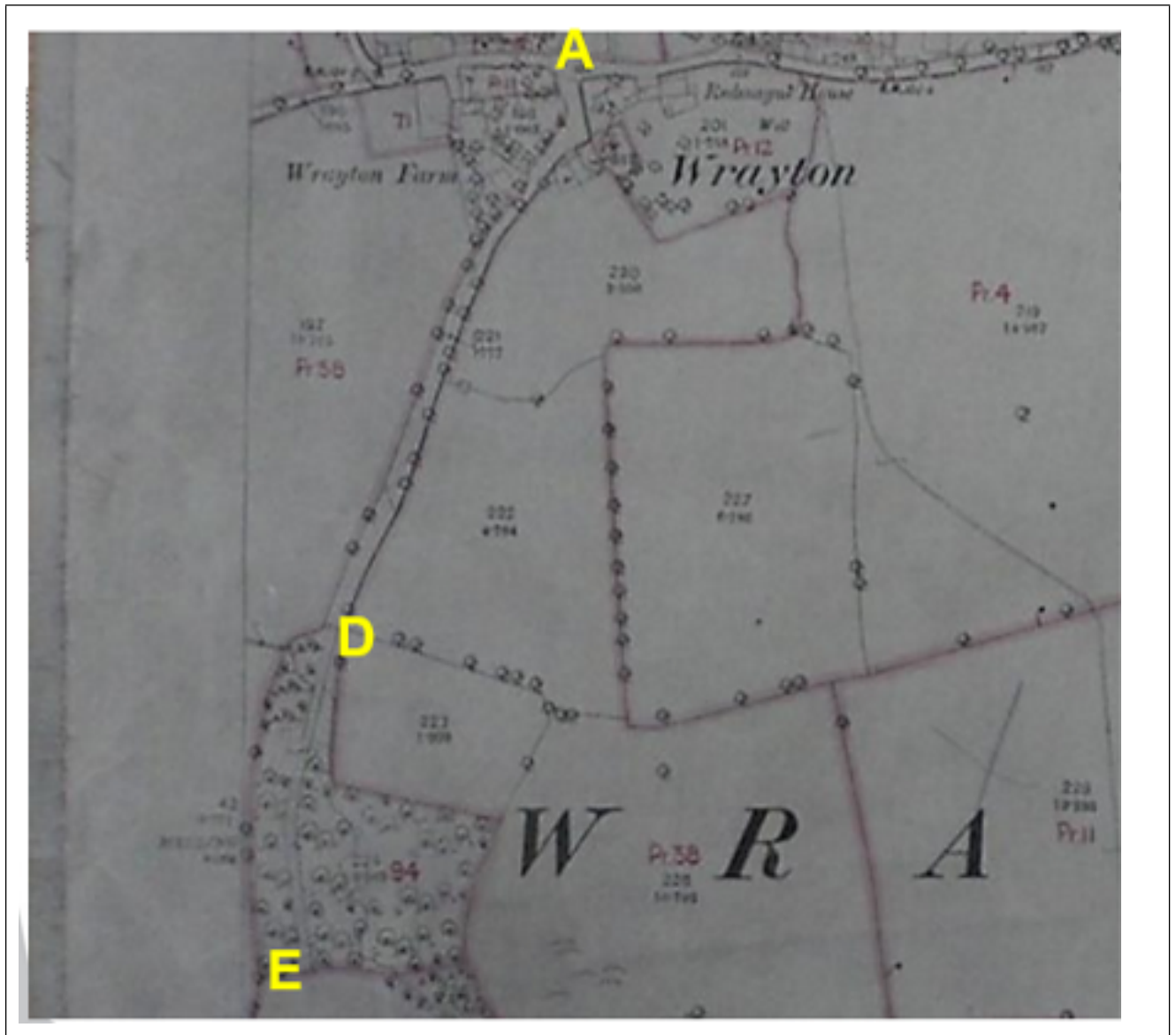
existed.

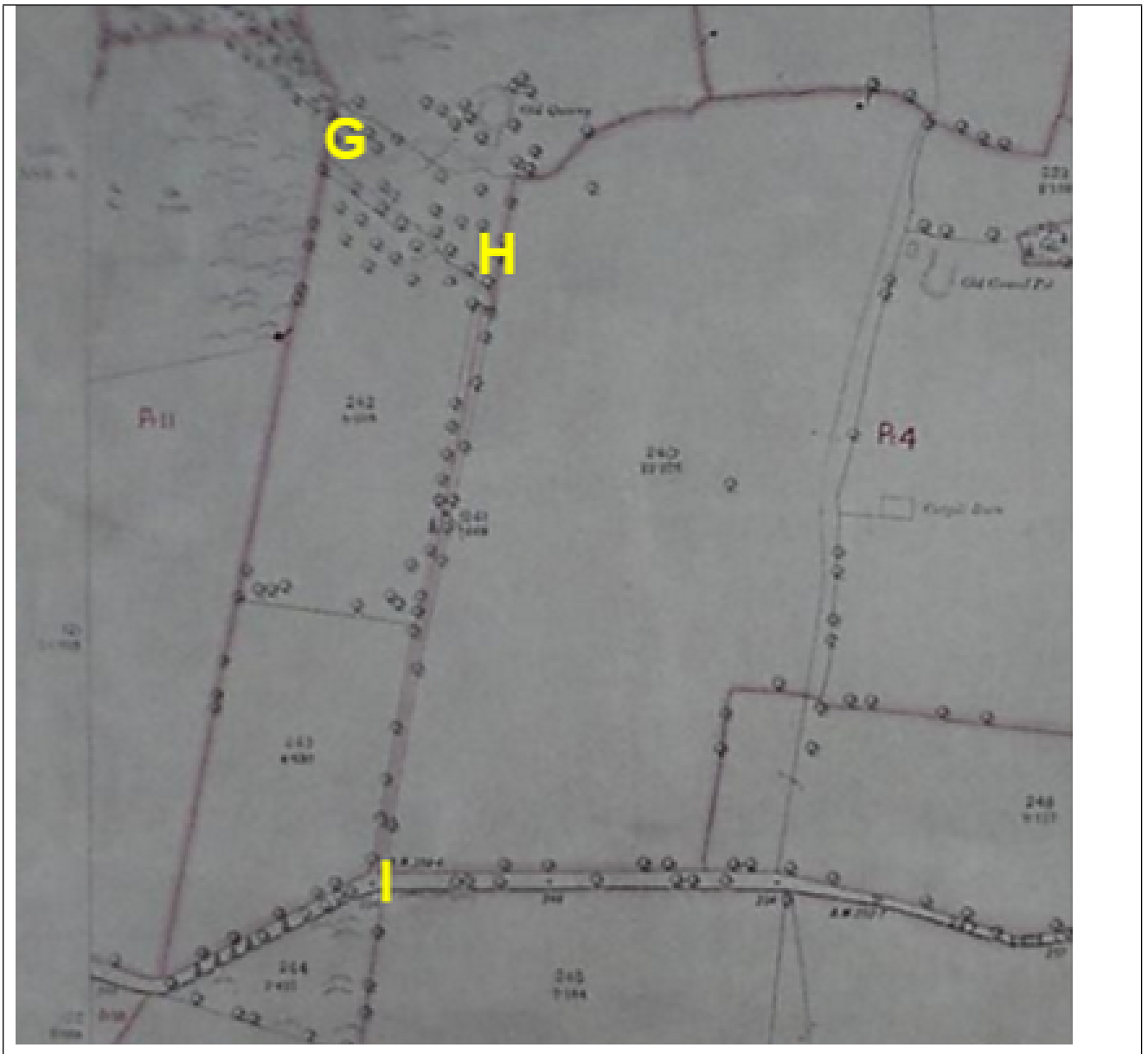






Map deposited in the County Records Office showing section between points E-G







Maps deposited in The National Archives

Observations

Maps deposited in the County Records and National Archives were inspected.

From point A to point B the route is clearly shown excluded from the numbered hereditaments on the map deposited in the County Records Office and also – but less clearly – on the copy of the National Archives map.

From point B through to point D the route on the County Records Office map is not shown excluded but two sets of bracing symbols are shown along the bounded route with discontinuities on

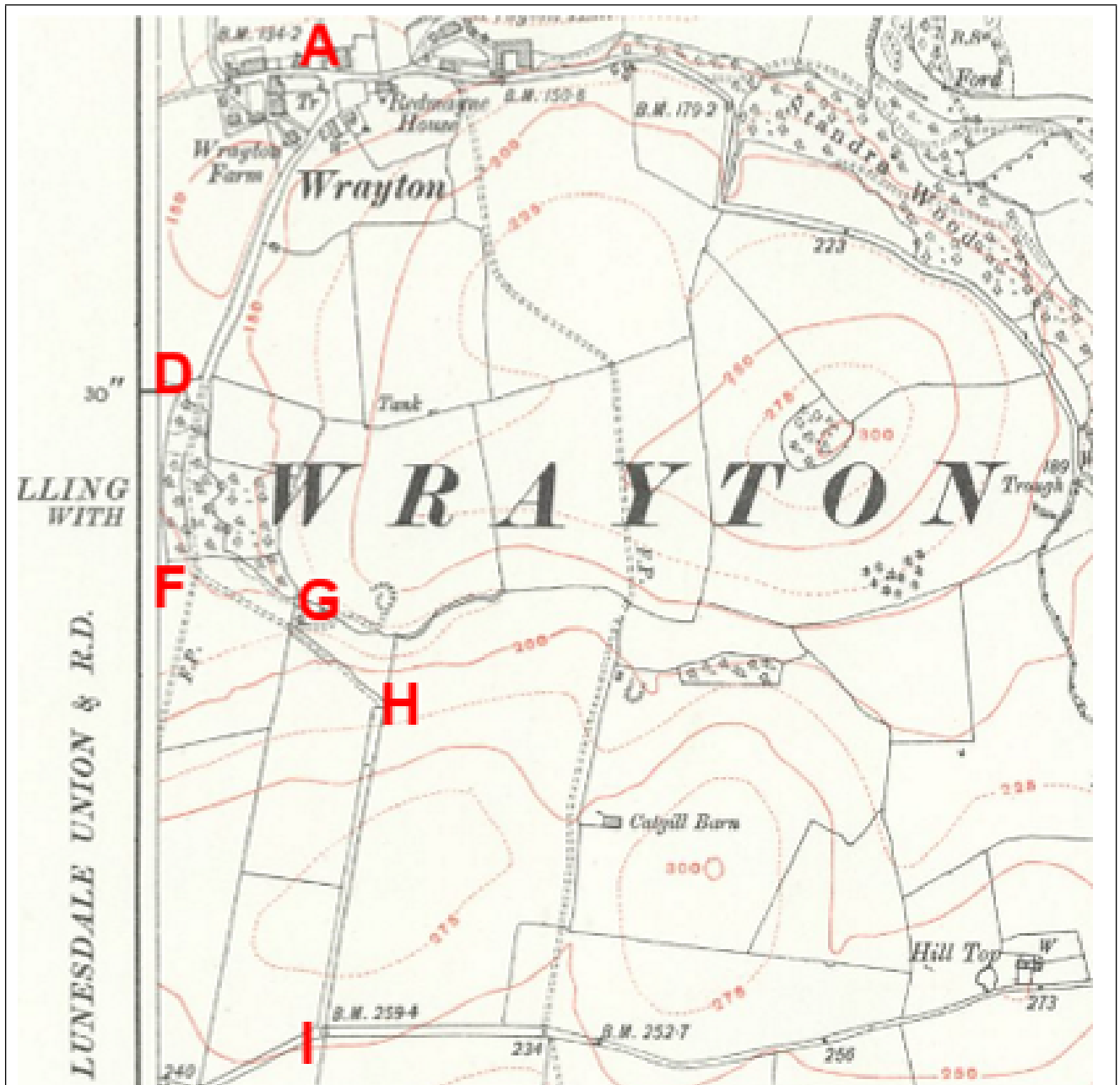


		<p>the road itself which appear to suggest that the route was excluded and that the land on either side was to be braced together in the same numbered hereditament (38). The copy of the National Archives Map inspected is of poor quality but appears to show the route through to point D as excluded.</p> <p>The District Valuation Book deposited in the County Records Office lists hereditament 38 as being owned by Thomas Burrow of Wrayton and occupied by Cuthbert Burrow. A £15 deduction is listed for 'PROW or User' but the location or locations of the public rights of way for which deductions were claimed is not specified and the plot covers a substantial amount of land – including the application route between points G-H-I.</p> <p>Between point D and point E the application route passes through an area of woodland and is included in hereditament 94 which is listed in a separate list at the end of the Valuation Book as being owned by the Parish and as 'unoccupied'. It is described as 'wood in Wrayton' with a £5 deduction for public rights of way or user.</p> <p>Between point E and point G the route is included in hereditament 11 which is listed as being owned by R E Fenwick, Burrow Hall and occupied by John Bell. It is simply described as 'land' but of significance is the fact that there is writing in pencil along the application route on the County Records map saying 'PRofW' and a deduction of £15 listed in the Valuation book.</p> <p>Between points G-H-I the application route is included as part of hereditament 38 as detailed above.</p>
Investigating Comments	Officer's	The fact that part of the application route is shown excluded suggests that the route may have been considered as a public vehicular highway that should be exempted from the valuation



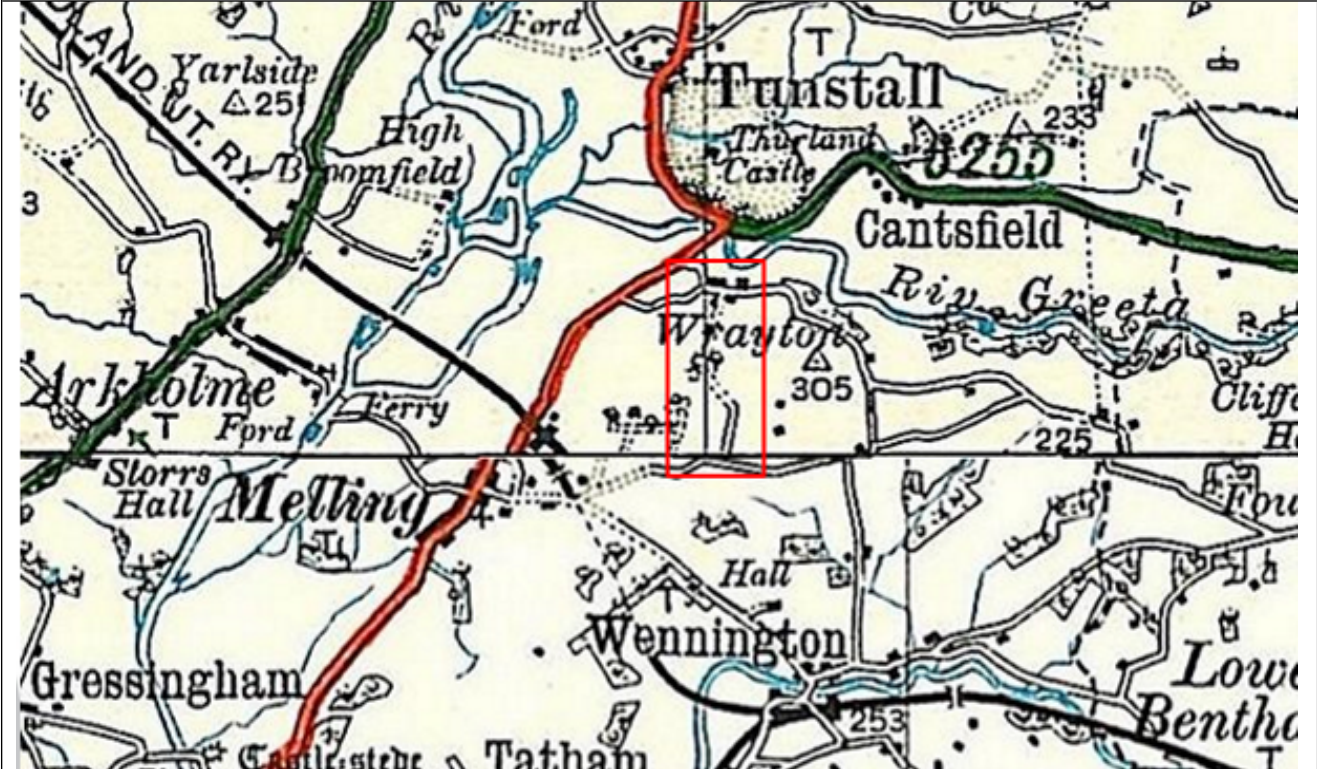
		<p>process but the information provided is not entirely clear.</p> <p>Numbered plots split by the route give weight to the belief that at least part of the route was considered to have public vehicular rights as footpaths and bridleways were normally included within the plots.</p> <p>The remainder of the route is also shown included in numbered plots with several different landowners but all of which list deductions for public rights of way or user. Whilst it is not normally possible to be certain what routes were acknowledged as public rights of way through numbered plots, we do in this case have a handwritten note on the Finance Act map indicating that the application route between points F and point G was considered to be a public right of way. We do not know who wrote this or what their authority was but the writing does indicate that this section – not recorded as part of Footpath 6 – was considered to carry public rights and a substantial deduction of £15 was made.</p> <p>The evidence provided by the Finance Act documentation does suggest that the various landowners at that time recognised the existence of public rights across the land – but not necessarily public vehicular rights along the full length.</p>
<p>6 inch OS Map Sheet XXVI.NW</p>	<p>1916</p>	<p>Further edition of 6 inch map revised 1910 and published in 1916.</p>





Observations		The application route is shown unaltered from earlier editions of the 6 inch OS maps and the bounded sections are consistent in width between points A-D and points H-I with how other routes with public vehicular rights are shown.
Investigating Officer's Comments		The application route existed as a through route in 1910 and appeared to be capable of being used.
Ministry of Transport ½ inch Road Map of Great Britain	1922	Reduced from the OS one inch third edition series, these maps were specifically developed for sale to motorists Britain showing the original road numbering system across Great

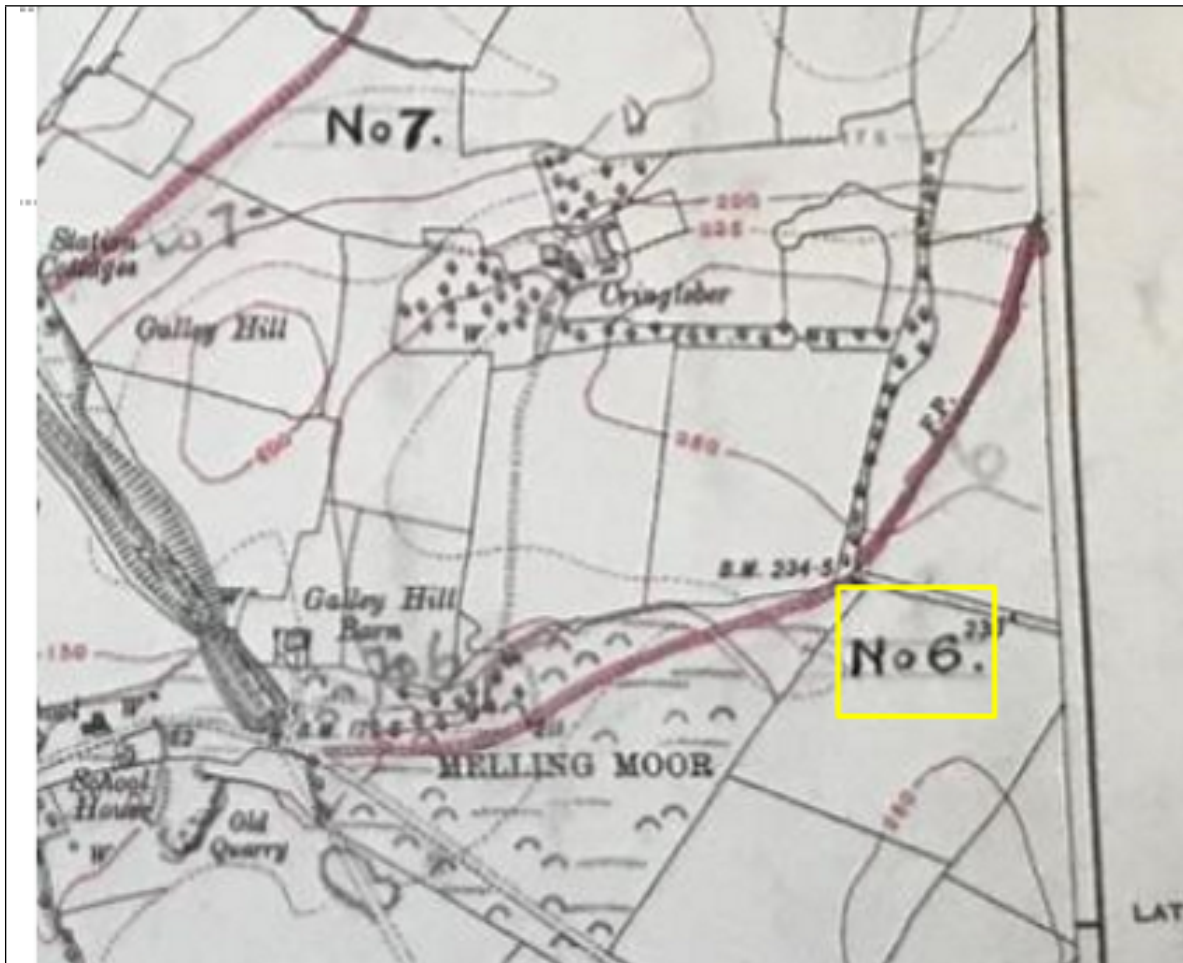


	Britain.	
Observations		The map shows the full length of the application route as a substantial through route unfenced for much of its length but in the same manner as other public vehicular routes. There was no key provided with the map.
Investigating Officer's Comments		Although published by the Ministry of Transport the main significance of these maps was that they showed the early classification of public vehicular routes. The base map used by the Ministry of Transport was surveyed by the Ordnance Survey and shows that the route was not shown as a classified road *(A or B road).
1932 Rights of Way Map		The Rights of Way Act 1932 set out the mechanism by which public rights of way could be established by user and under which landowners could deposit maps to show highways already in existence and to indicate that they didn't intend to dedicate further rights of way. The Commons, Open Spaces and Footpath Preservation Society (which became the Open Spaces Society) who were the prime instigators of this Act and the later 1949 Act, called for local authorities to draw up maps of the public rights of way in existence (a



quasi-pre-cursor of the Definitive Map). This is set out in 'The Rights of Way Act, 1932. Its History and meaning' by Sir Lawrence Chubb [M]. The process for consultation and scrutiny followed in Lancashire is not recorded but some of the maps exist including maps for the following areas are available for inspection at County Hall: Lunesdale Rural District (RD), Lancaster RD, Burnley RD, Garstang RD and West Lancashire RD.





Lunesdale Rural District Council
 List of Public Footpaths in the Parish
 of Melling with Wrayton.

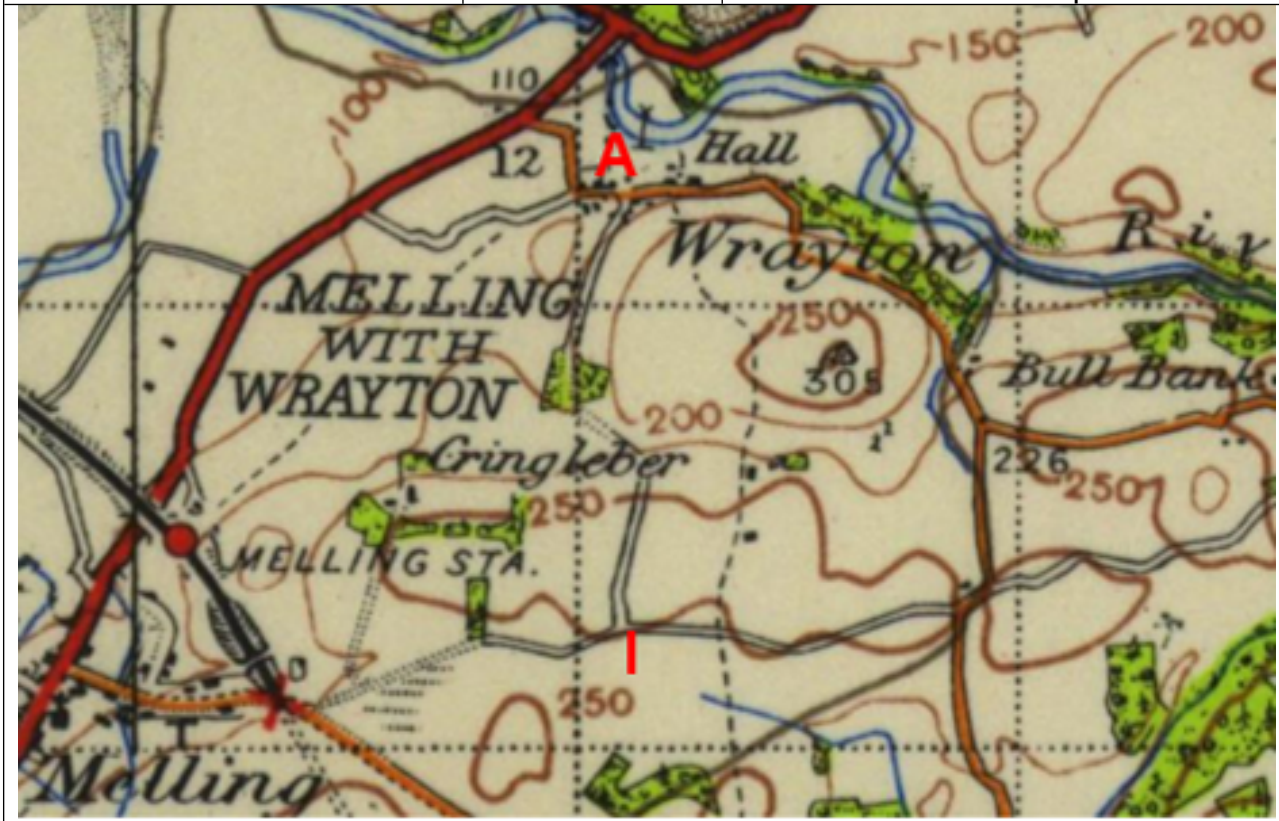
No.1. Corner of Melling Green to Tatham. ✓
 No. 2. Selby Lane to Ferry across Lune to Arkholme.
 No.3. Railway to Arkholme Ford.
 No.4 Arkholme Ford to ~~the~~ Loyne Bridge.
 No.5. Melling Moor to Tatham Rectory, through Lodge Farm.
 No.6. Melling to Wrayton.
 No.7. Railway Cottages to Wrayton.
 No.8. Greta Bridge through Wrayton to Wennington & Melling
 No.9. Sheepfold Hornby Road to Loyne Bridge.
 No.10. Greta Bridge to Vigars Lane.
 No.11. Melling Moor End to Wennington.

Observations

The map does not show any part of the application route marked up as a footpath and the typed up list



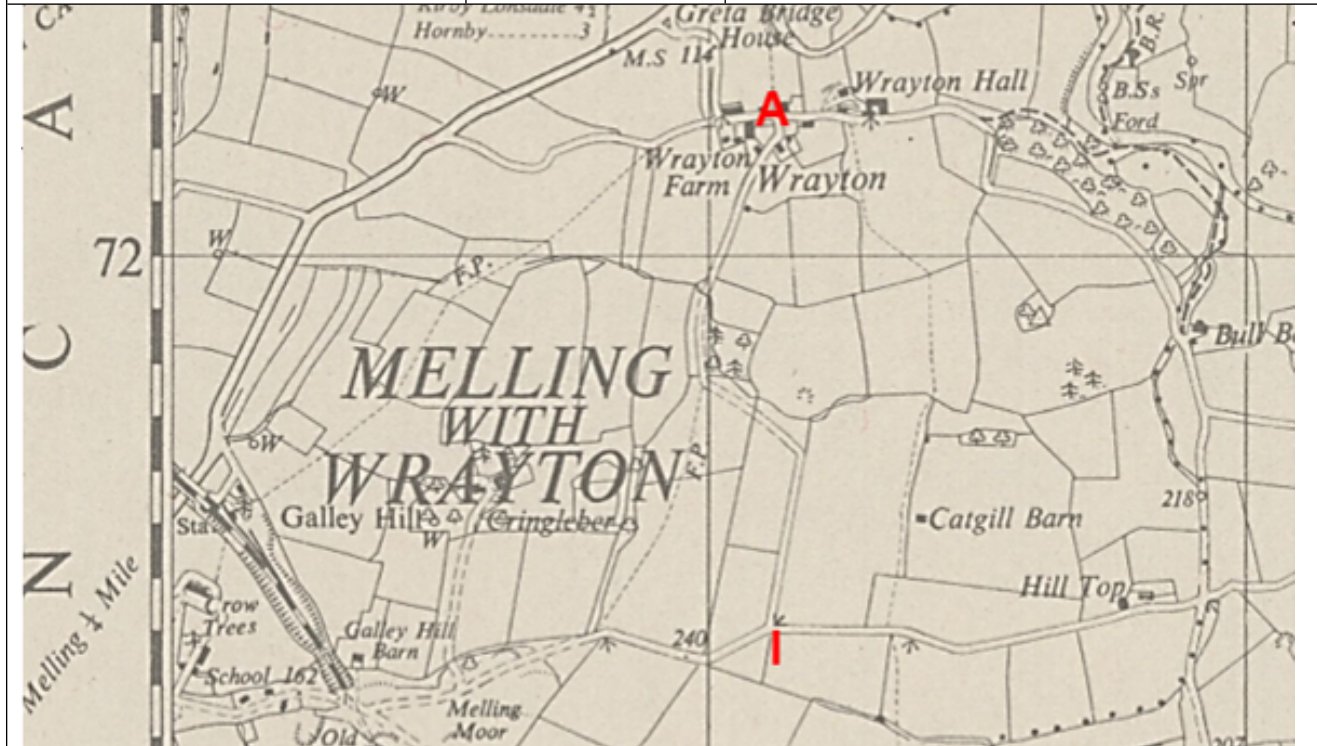
		<p>accompanying the map is specifically titled as being a list of public footpaths in the parish. A route numbered as Footpath 6 is shown on the OS map sheet covering the area immediately west of the application route which is described in the list as being from Melling to Wrayton. The route shown includes the first part of Melling Moor and the southern part of the route now recorded as 1-20-FP 6 up to the eastern edge of the map sheet. The footpath is not shown to continue along the application route through to Wrayton although it is described as doing so.</p>
Investigating Comments	Officer's	<p>The application route was not recorded as a Footpath on the map prepared by Lunesdale Rural District Council in the 1930s suggesting that it was not considered to be a public footpath. This does not preclude it from being considered to be a public route with rights for horse riders or vehicles at that time.</p>
1 inch OS Map	1947	<p>OS 1 inch Popular Series map Sheet 89 – Lancaster and Kendal revised 1920 with later additions and published 1947.</p>



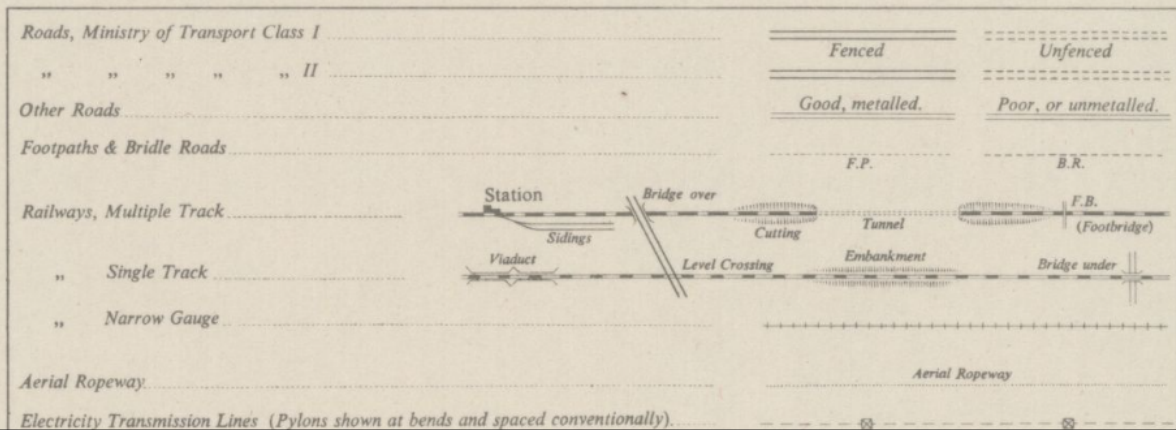
Ministry of Transport Roads.....	<u>A.6</u>	<u>B.6254</u>	Rai
Other Motor Roads.....	<u> </u>	<u> </u>	
" " " narrow.....	<u>Good</u>	<u>Bad</u>	Min
Minor Roads.....	<u> </u>		Ele
Bridle & Footpaths.....	<u> </u>		(with
Unfenced Roads are shewn by dotted lines			Pip
Gradients steeper than 1/4.....	<u> </u>		Wo
Toll Gates.....	<u>TOLL</u>		Or
Road Mileage.....	<u>5</u>		Qu

1014.

Observations		Further small-scale OS map showing the full length of the application route, depicted as a minor road partially unfenced.
Investigating Officer's Comments		The route existed as a substantial through route in 1920 and appeared capable of being used on horseback and by vehicles, not necessarily by the public.
1:25,000 OS maps of Great Britain Sheet 34/67	1948	OS Map published in 1948. Date of revision not known.



34/67

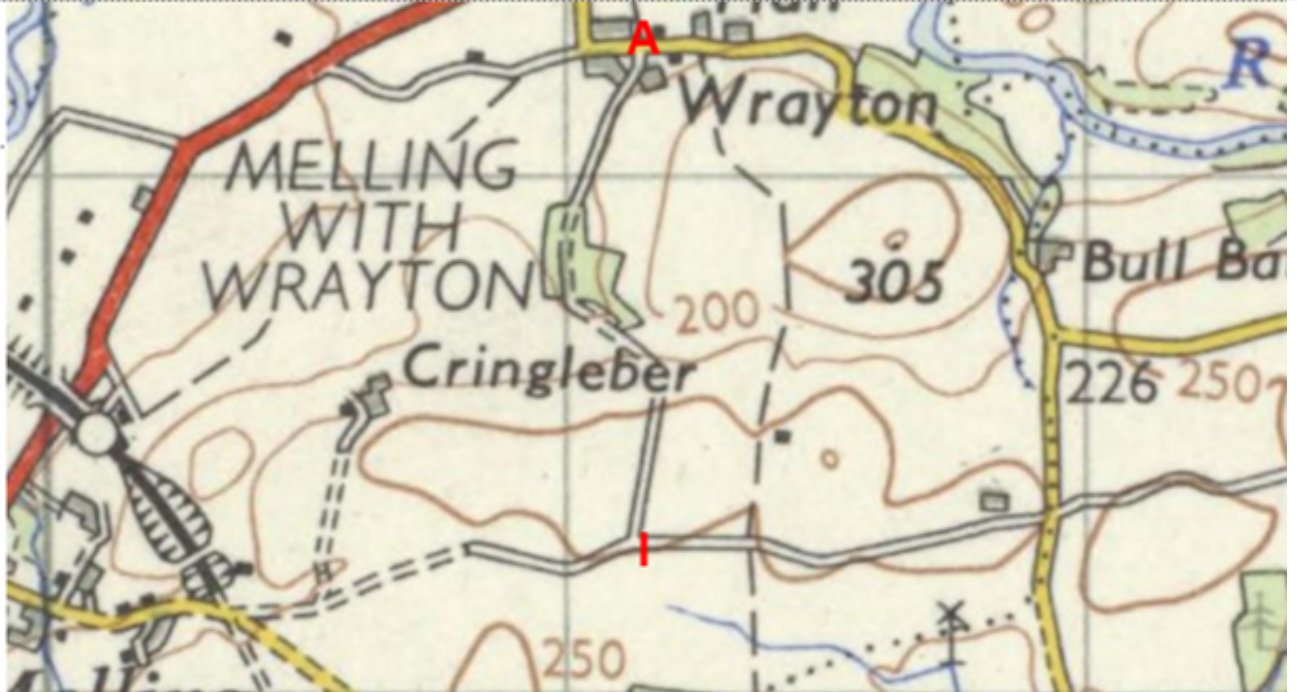


Observations		The full length of the application route is shown depicted as 'other road' and is shown partially unfenced.
Investigating Officer's Comments		The route existed as a substantial through route in 1948 and appeared capable of being used on horseback and by vehicles, not necessarily by the public.
1:25,000 OS Map SD 67 (34/67)	1952	OS map sheet fully revised 1889-1920 and partially revised 1938-1951.



Observations		The route is again shown as a substantial through route – partially unfenced.
Investigating Officer's Comments		The route existed as a substantial through route when the map was

		revised and appeared capable of being used on horseback and by vehicles, not necessarily by the public.
1 inch OS Map	1955	1 inch OS map sheet 89 – Lancaster and Kendal revised 1950-1951 and published 1955

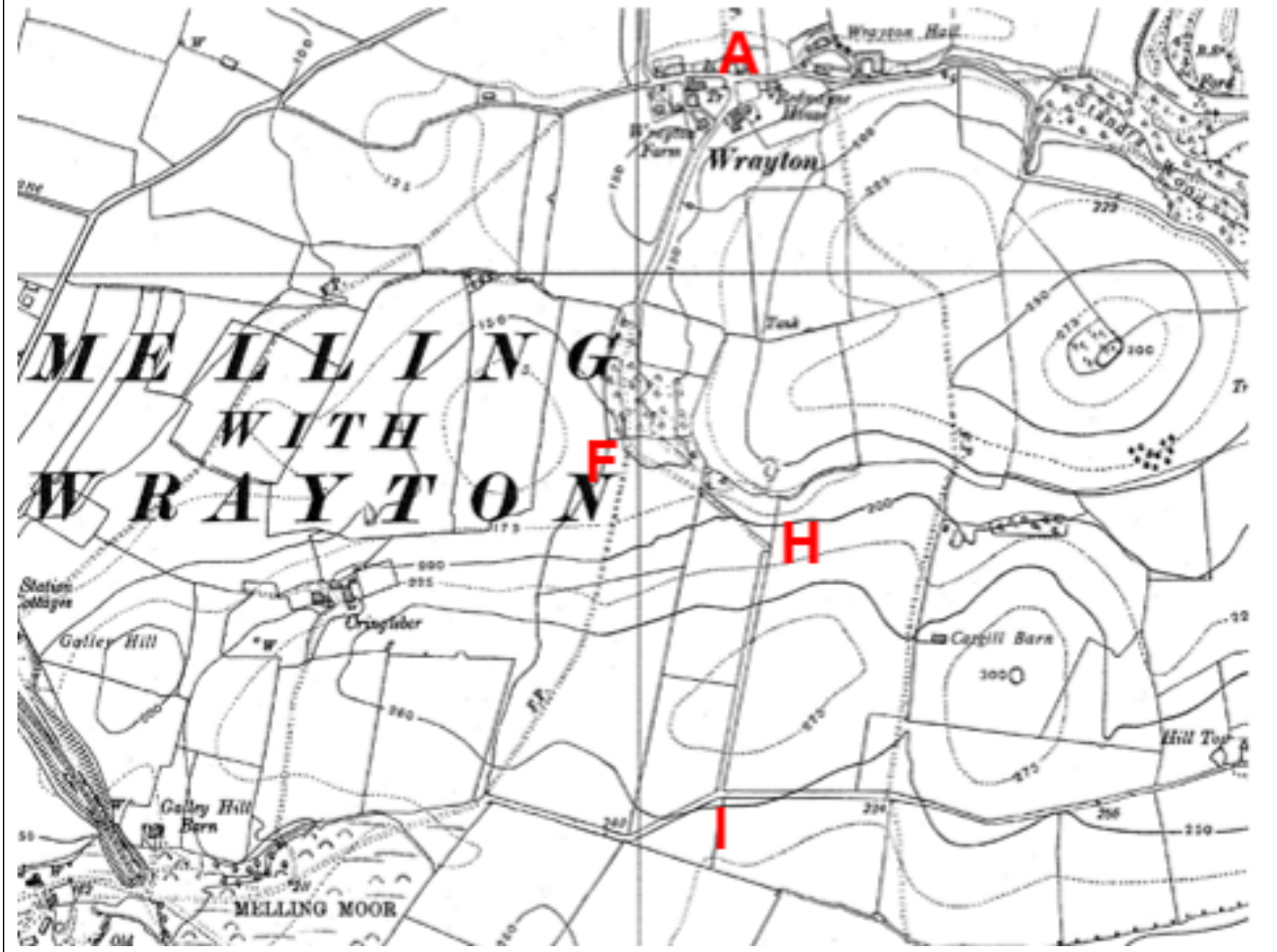


Roads	Ministry of Transport, Trunk		
	" " " Class 1		
	" " " " 2		Rail
	14 ft of Metalling & over (not included above)		
	Under 14ft of Metalling. Tarred " "		Wood
	" " " " Untarred " "		
	Minor Roads in towns, Drives and Unmetalled Roads (Unfenced Roads are shown by pecked lines)		Orch
Steep Gradients 1 in 5 or steeper		Elect	
1 in 7 to under 1 in 5		(with Pipe)	
Footpaths and Tracks			

Observations		The application route is shown as a minor road – partly unfenced.
Investigating Officer's Comments		The route existed as a substantial through route and appeared capable of being used by vehicles but not necessarily public.
6 Inch OS Map Sheet 67SW	1957	The OS base map for the Definitive Map, First Review, was published in 1957 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.



Observations		The application route is shown in the same way as it has been shown on other OS maps published around the same time and detailed above.
Investigating Officer's Comments		The route existed as a substantial through route and appeared capable of being used by vehicles but not necessarily public.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.

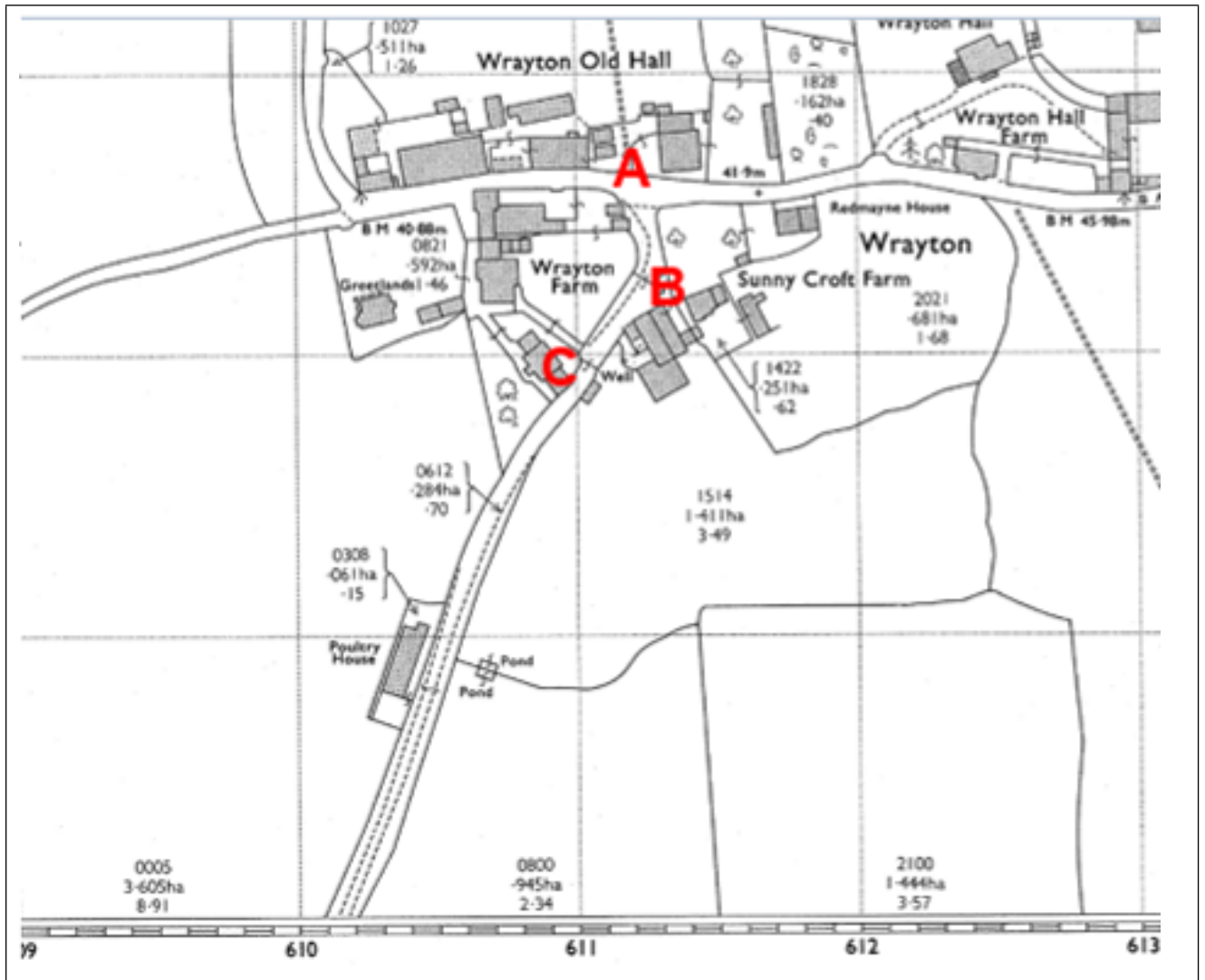


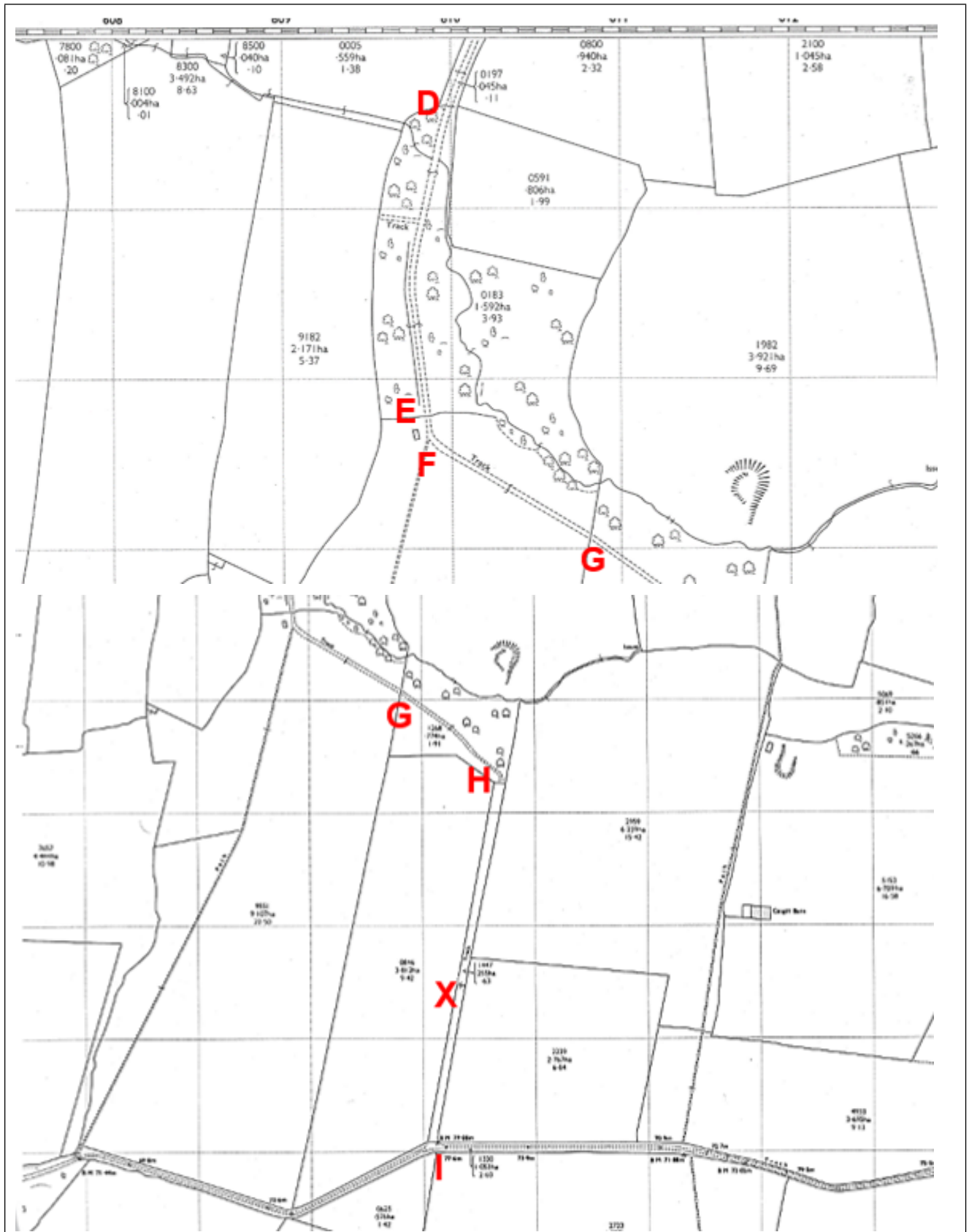




Observations		Parts of the application route – particularly the start of the route at point A and then the sections between points C-D and E-H - can be clearly seen consistent with a route being used by vehicles although it is not possible to see parts of the route as clearly due to tree cover.
Investigating Officer's Comments		The application route existed in the 1960s consistent with vehicular use – possibly providing access to fields – but also as a through route.
1:2500 OS Map SD 6072-6172 and SD 6071-6171	1972	Further edition of 25 inch map reconstituted from former county series and revised in 1971 and published in 1972 as national grid series.







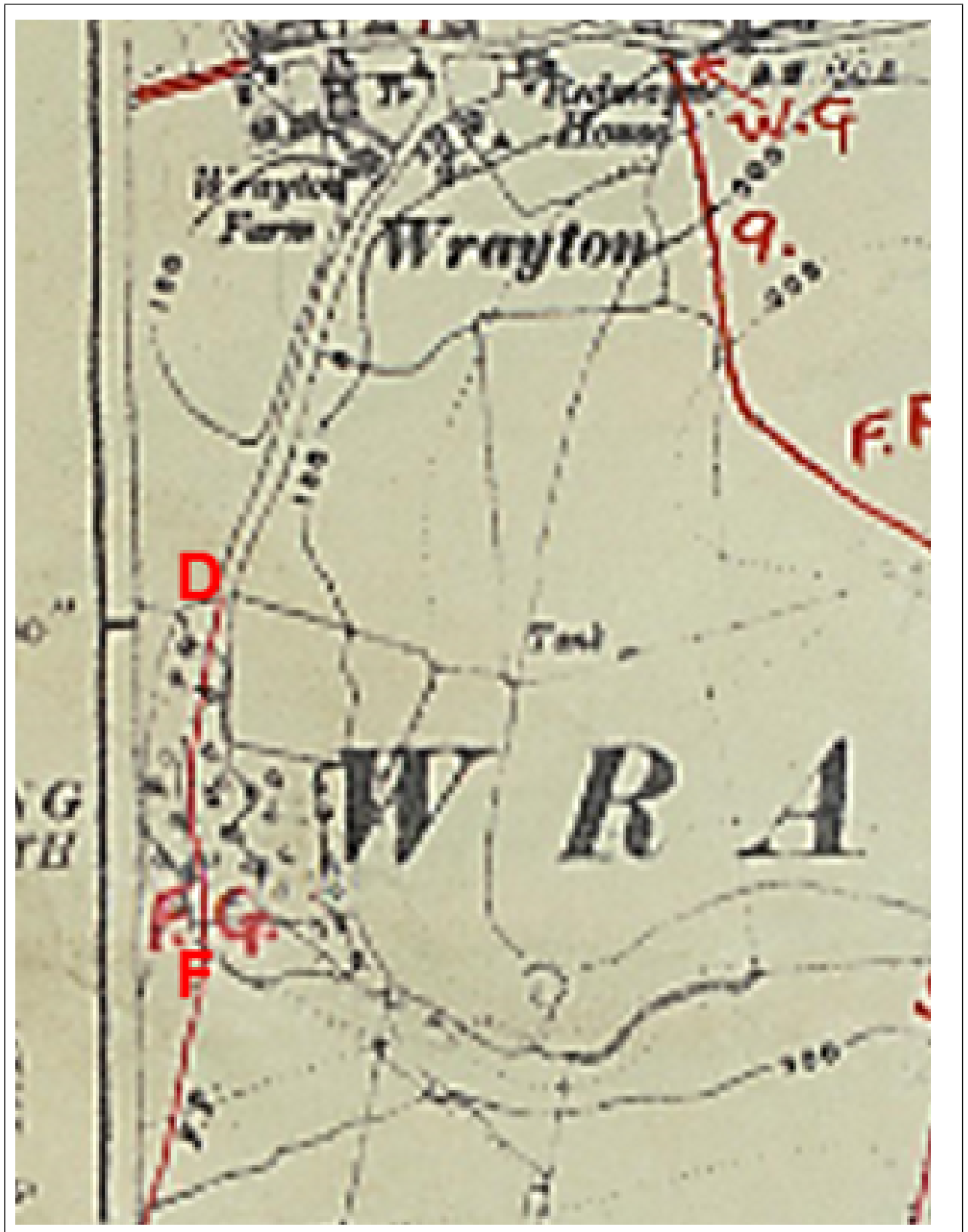
Observations		The full length of the application route is shown but additional gates are also now shown at points B, C and X.
Investigating	Officer's	The application route still existed as a

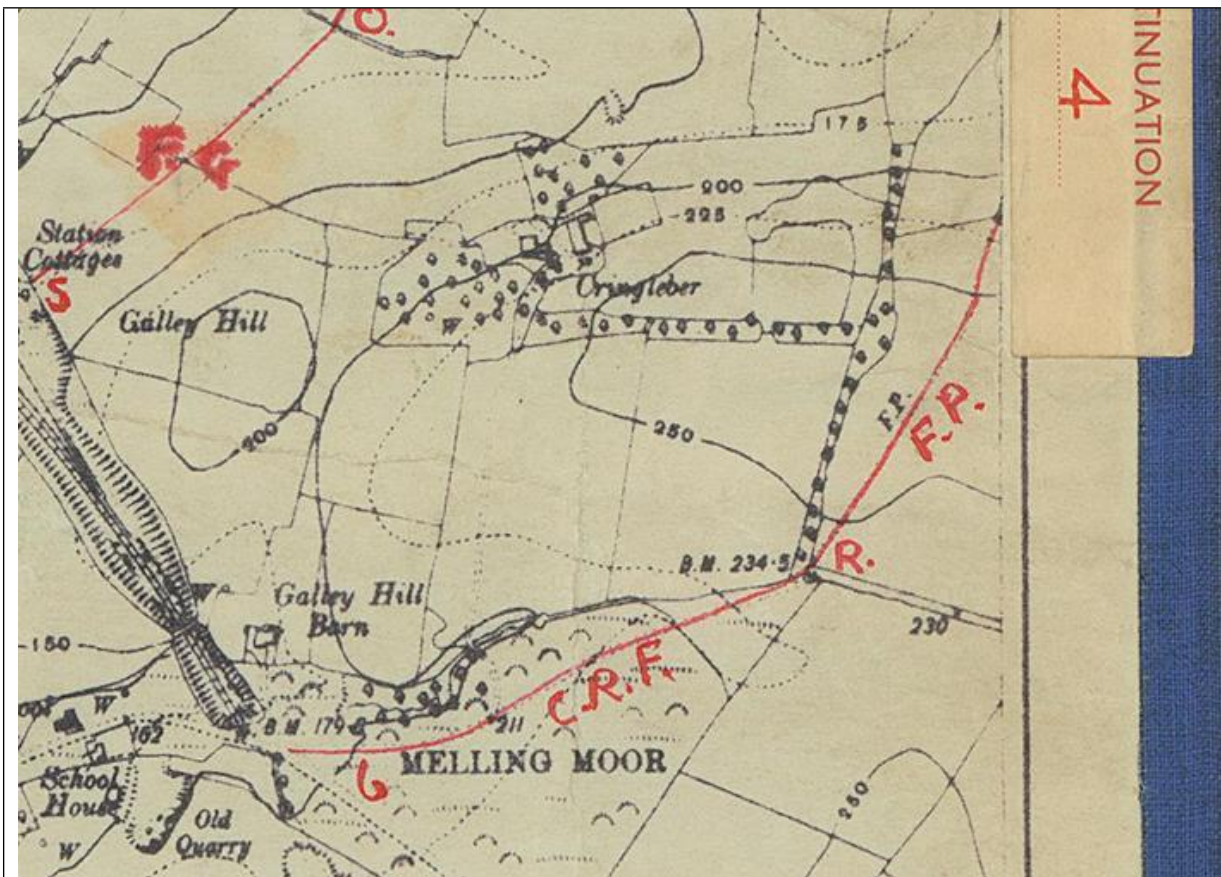


Comments		substantial route in the 1970s although access appeared to be further restricted by the addition of a number of additional gates.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<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 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.</p>









DISTRICT LUNESDALE R.D.C. PARISH MELLING - W - WRAYTON No. 6

MAP SHEET Nos 3 + 4.

LENGTH .63 miles
(to two decimal places)

BRIEF DESCRIPTION (Field F.P. or otherwise)

C.R.F changing to Field F.P.

DETAILED DESCRIPTION (giving starting point, means of passage and general condition).

The cart road starts at Melling Kunnel & crosses Melling Moor over a beck to the Moor Gate. The field footpath is entered over rails to the left, proceeds across the field to a field gate which opens into another cart road through a wood at the end of which the path finishes. Condition satisfactory.

Section from Melling Moor in Ward of No 2/53

SURVEYED BY :-

Name

Parish Council

Address

Date 31 March 1951

50000/F39/4/50

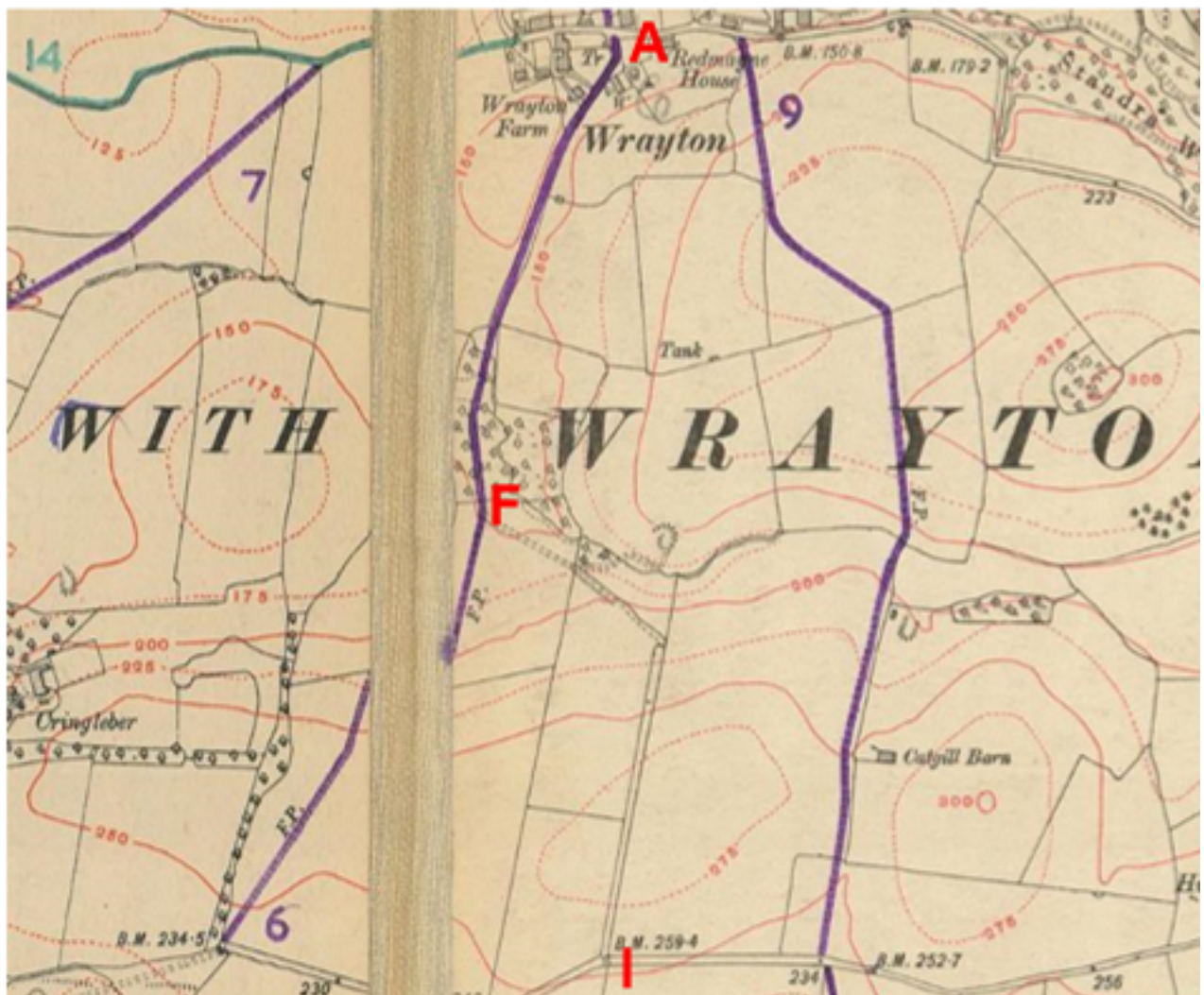
Observations

The application route was not recorded as a public right of way on the parish survey with the exception of the section through the woodland between point F and point D.

The parish survey card describes this section as a cart road through the wood



<p>Draft Map</p>		<p>and the path terminating at point D.</p> <p>The parish survey map and cards for Melling with Wrayton were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
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<p>Observations</p>		<p>The route originally shown on the</p>
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		<p>Parish Survey map had been altered to start on Melling Moor to extend north east to point F where it then joined the application route and continued north north east along the application route to point A.</p> <p>The application route from point F to point I was not recorded as a public right of way on the map.</p>
<p>Provisional Map</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 amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>





Observations		The application route from point A to point F was recorded as part of 1-20-FP 6. The application route between point F and point I was not recorded.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route from point A to point F was recorded as part of 1-20-FP 6. The application route between point F and point I was not recorded.
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 25th 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 1st 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.



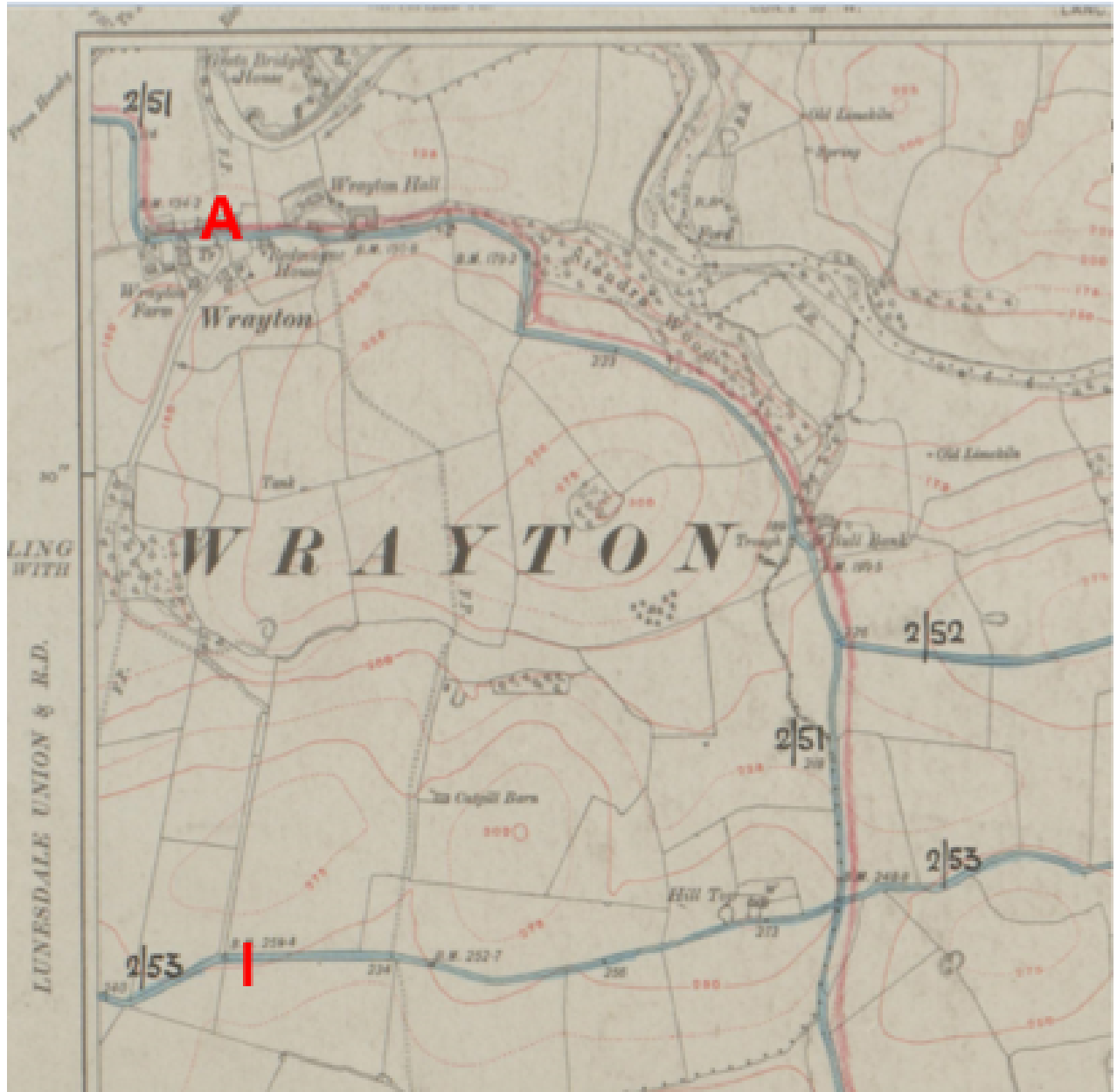
1	Footpath	From Hornby-Tunstall Road Class III, 213, at Melling Green to Parish Boundary east of Willie Gill.	0.32
3	"	<u>In two lengths</u> - From Vicar Lane, Unclassified 2/37 at Railway Bridge west to Parish Boundary.	0.16
3A	"	Continuation of footpath 3 from re-entry into Parish, to Parish Boundary at River Wenning.	0.06
4	"	From Melling-Wennington Road (Class III Road No. 213) about 300 yards from Parish Boundary to junction with footpath 11.	0.18
5	"	Continuation of footpath 4 to Parish Boundary thence to Lodge Hall.	0.14
6	"	From Unclassified County Road No. 2/53 at Melling Moor to Class III Road No. 225 by Wrayton Farm.	0.63
7	"	From junction with bridleway No. 14 to Class I Road, A.683, at Melling Station.	0.69
8	"	From Class III Road No. 225 near Wrayton Farm to Parish Boundary, thence to Greta Bridge.	0.19
9	"	From Class III Road No. 225 at Wrayton Hall	

Observations		The application route from point A to point F is recorded as part of 1-20-FP 6. The application route between point F and point I was not recorded.
Investigating Comments	Officer's	From 1953 through to 1975 there is no indication that the application route was considered to be anything other than a public footpath between point A and point F. There were no objections or representations made with regard to what was shown when the maps were placed on deposit for inspection or at any stage of the preparation of the Definitive Map.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded. A right of way marked on the map is



		<p>good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
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1929 Handover Map

<p>Observations</p>		<p>The application route is not recorded as a publicly maintainable highway on the County Council's List of Streets and was not shown as a publicly maintainable highway in the records believed to be, or be derived from, the 1929 Handover Map.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of access so no inference can be drawn.</p>



Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No records relating to the stopping up, diverting or creating of public rights along the route were found.
Investigating Officer's Comments		If any unrecorded public rights exist along the route they do not appear to have been stopped up or diverted.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>



Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the county council for the area over which the application route runs.
Investigating Officer's Comments		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.

The route passes through an area of woodland registered as Access Land under the Countryside and Rights of Way Act 2000 by virtue of being registered as common land under the provisions of the Commons Registration Act 1965. The route between point D and point E passes through plot CL148 which was registered as a result of an application made in 1968. The land is described in the register as adjoining 'Wrayton Old Lane' and gave the rights to persons named within the register to graze a total of 5 cows on it. This is not urban common (which would have had public rights to open air exercise created in 1925 under the Law and Property Act 1925) so public access rights would only have been created by the Countryside and Rights of Way Act 2000. Since the mapping evidence all predates 2000 this would all relate to a period during which use by the public was not 'by right' other than highway rights.

Summary

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

No modern or historical public user evidence has been submitted so in these circumstances a presumption of dedication of a public right of way under section 31 cannot be relied upon. It is therefore necessary to consider whether the map and/or documentary evidence is sufficient to support the dedication of a public right of way under common law.

The cumulative evidence suggests that historically a way existed over the full length of the application route connecting to two public vehicular highways and of particular significance providing a link between the village of Melling and the hamlet of Wrayton.

The key issue is whether it carried any public rights – other than public rights of access on foot from point A to point F - and, if so, the nature of those rights.

The early commercial maps examined do not show the full length of the route as part of the road network at that time although Greenwood's Map published in 1818 does show a tree lined avenue consistent with the application route between points H-I suggesting that the route – or at least part of it existed at that time.

Hennet's Map (1830) shows the start of the route at point A suggesting that a route extending south from point A may have existed at that time but possibly that it was not considered to be a significant route available for use by the travelling public.



Only the southern part of the application route is clearly shown on the Cassini Map which was derived from the first edition 1 inch OS maps published in the 1840s and although access may have been possible along the full length a through route from point A to point I it does not appear to have been considered to be a significant through route at that time.

The earliest map to show the full length of the route was the first edition 6 inch OS map surveyed 1844-45 and published in 1847 suggesting that the route was capable of being used at that time at least on horseback.

The Tithe Map and Award (1848) shows the route existed and between points A-B and H-I the route appears to have been considered to be part of the road network and owned by the township. However, from point B to point E, although owned by the township, the land crossed by the application route is described in the Award as 'waste' and from point E through to point H the route past through land in the private ownership of two different landowners described as moorland and road and waste with no acknowledgement of a through route from point A to point I. This suggests it was probably not considered to be a public vehicular through route.

The first 25 inch OS Map (surveyed in 1891) shows the full length of the application as a through route connecting two recognised vehicular highways which appeared to have been gated in three locations. The possible presence of gates then shown across the route by the OS is not inconsistent with a public route in a rural area and the route is depicted in such a way that it appears to have been capable of being used on horseback. The fact that the route is shown with a thickened line to one side between point A and point D on the black and white edition of the map in the way that Back Lane and Melling Lane are shown suggests that part of the application route was considered to be a publicly maintained vehicular road at that time although this is not consistent with the information provided by the Tithe Award nearly 50 years earlier which described most of this section as waste.

The route is then consistently shown largely unaltered on all OS maps inspected and is shown on Bartholomew's maps as an uncoloured or other road during the first half of the 1900s.

The Finance Act records are inconsistent but do appear supportive of the route's public status by 1910 suggesting that the various landowners at that time recognised the existence of public rights across the land – but not necessarily public vehicular rights along the full length. The section between point A and point D looks like it may have been excluded from the numbered plots but the maps are not entirely clear.

In conclusion, there is a large body of evidence which supports the physical existence of the route and of it being capable of being used on foot, horseback and possibly by vehicle. Although the Tithe and Finance Act records could be suggestive of public vehicular rights over parts of the route, the majority of the documentary evidence inspected from before and since provides little support for the existence of public vehicular rights of way along the entire route. The investigating officer is of the opinion that the evidence is however supportive of public bridleway rights.



Head of Service – Legal and Democratic Services Observations

Landownership

The Land Registry documents submitted by the applicant show no registered ownership for the majority of the application route. The only exception being the section from point E to point G.

Information from the Applicant

The application is based on historical map and documentary evidence with no modern (or historical user evidence submitted). The following maps and documents were submitted in support of the application all of which have been considered in detail earlier in this report.

Tithe Map and Award 1847

Inland Revenue Valuation Records – Finance (1908-10) Act 1910

Land ownership records obtained from the Land Registry

Land ownership records

Parish Council survey Records

London Gazette search for stopping up orders

'Recent' photographs of the application route

6 inch OS maps published 1847, 1895 and 1916

25 inch OS published 1891 and 1913

1 inch OS published 1898, 1947 and 1955

1:25,000 OS maps published 1948 and 1952

1:10,560 OS map published 1957

Bartholomew's half inch to the mile maps published 1905, 1920 and 1941

Ministry of Transport ½ inch Road Map of Great Britain 1922-23

Information from Others

County Councillor Matthew Maxwell-Scott acknowledged receipt of the consultation letter and went on to state he had no comments at this stage.

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

Cadent Gas responded to the consultation stating that they have no objection to the application.

One adjacent landowner responded to the consultation by colouring in the section of the consultation map to confirm their ownership, and further stated:

- 1) Their boundary opens directly onto the existing public footpath to which they have no gates.
- 2) The path is currently being used by children to play and therefore allowing horse riders to use it as a bridleway would compromise its current use.
- 3) There would be the health and safety issue of horse droppings directly outside their drive.



One adjacent landowner responded to the consultation by colouring in the section of the consultation map to confirm their ownership.

A further response has been received from the owner of a nearby property to note that the route looks like a diversion of the existing path through the ponds just below F on the Committee Plan.

Information from the Landowner

No landowner provided a response to our consultation.

Assessment of the Evidence

The Law - See Annex 'A'

In this matter there is an application for the upgrade of a footpath to, and addition of, a bridleway to the Definitive Map and Statement of Public Rights of Way from Back Lane (C514) to Melling Moor (U3638), Melling with Wrayton.

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

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

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

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

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

(ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description

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

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

Section 53 of the Wildlife and Countryside Act 1981 makes it clear that considerations such as suitability, the effect on wildlife or wishes of adjacent landowners cannot be taken into consideration. It is worthy of note also that mechanically propelled vehicles are not allowed on a bridleway.



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

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

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

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

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

The evidence has been summarised and evaluated earlier within the report. To arrive at a conclusion Committee must consider the position balancing what the documentary evidence shows. The claimed route is shown since circa 1845 on numerous maps and connects to a network of other public highways. The evidence presented in the maps is consistent with a way that carries at least a public bridleway. However, there is less convincing evidence on balance as to whether public vehicular rights exist.

Given the nature and amount of the evidence it is advised that the evidence of the application route having become a public bridleway is sufficient. Committee may conclude applying the relevant tests that it can be concluded that a bridleway "subsists".

Therefore, the recommendation is that an Order be made based on the evidence available.

In relation to the test required to confirm the Order, both section 53(3)(c)(i) and section 53(3)(c)(ii) the relevant test is for the subsistence of the right of way in question on the balance of probabilities. Accordingly, Committee may well feel they can confirm the same in the circumstances.

Implications

This item has the following implications, as indicated:



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: 804-654		Ansar Sadiq, 01772 532435, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

