

**Regulatory Committee**

Meeting to be held on 24 January 2024

**Part I**

Electoral Division affected:  
Preston South West

**Wildlife and Countryside Act 1981  
Definitive Map Modification Order Investigation  
Addition of Footpath from Blackpool Road to the Preston Guild Wheel Cycle  
Route with a link to/from North Syke Avenue  
(Annex A refers)**

Contact for further information quoting file reference 804-766:

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**Brief Summary**

Addition to the Definitive Map and Statement of Public Rights of Way of a Footpath from Blackpool Road to the Preston Guild Wheel Cycle Route with a link to/from North Syke Avenue.

**Recommendation**

- (i) That the application for the addition to the Definitive Map and Statement of Public Rights of Way of a Footpath from Blackpool Road to the Preston Guild Wheel Cycle Route with a link to/from North Syke Avenue be accepted.
- (ii) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add:
  - a) a Bridleway from Blackpool Road to the Preston Guild Wheel Cycle Route on the Definitive Map and Statement of Public Rights of Way, as shown on the Committee Plan between points A-X-B-C-D and;
  - b) a Footpath for the link to/from North Syke Avenue to the Definitive Map and Statement of Public Right of Way, as shown on the Committee Plan between points B-E.



(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 addition of a footpath on the Definitive Map and Statement of Public Rights of Way.

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

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

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

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

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

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

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

## Consultations

### Preston City Council

Preston City Council provided no response to our consultation.



## Lea and Cottam Parish Council

Lea and Cottam Parish Council provided no response to our consultation.

### **Advice**

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

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	4903 3003	Open junction with Blackpool Road (A5085) between electricity sub station and safety fencing adjacent to Riversway
X	4902 3007	Boundary of land owned by Lancashire County Council at open junction with field
B	4899 3036	Junction of application routes west of North Syke Avenue
C	4897 3049	Wooden stile in fence line
D	4896 3051	Junction of application route with the tarmac cycle track forming part of the Guild Wheel Cycle Route on the south side of Savick Brook
E	4900 3036	Junction with North Syke Avenue 2.5 metres east of wooden stile on application route

### **Description of Route**

A site inspection was carried out in April 2023.

The total length of the route A-B-C-D is 485 metres with the spur from C-E being 20 metres long.

From Blackpool Road (A5085) the application route leaves the tarmac footway to pass along a rough 4 metre wide strip of land bounded on the east (right) by an electricity sub station and to the west (left) by metal fencing beyond which there is an embankment down to Riversway (A583). This section (A-X) is recorded as part of the adopted width of Riversway.

The application route runs along the fenced off strip for approximately 35 metres. Whilst the strip is 4 metres wide fanning out to 6-8 metres between Riversway and the electric sub station much of the width is overgrown beyond the substation building with a narrow trod through brambles.

After 35 metres the route emerges into the south east corner of a field (point X) which appeared to have been previously ploughed, planted with an arable crop which had then been harvested prior to the route being inspected.



A trodden track consistent with regular pedestrian use was clearly visible and could be walked along the edge of the field running north. Immediately east of the trodden path was a strip of land which was not fenced off from the field but was overgrown with trees, bushes and long grass directly to the west of the boundary fences of properties on the adjacent housing estate. The strip of land was approximately 15 - 20 metres wide in places.

West of North Syke Avenue (point B) a trodden track leaves the main south – north route to run east across the overgrown strip of land for approximately 15 metres to a wooden stile in a fence/hedge line to provide access to and from North Syke Avenue (point E).

Continuing north from the main south-north route (point B) the trodden path continues along the edge of the field running closer to the boundary fence to the east beyond which is Springfields Sports ground. The trodden path continues to near the north east corner of the arable field where it crossed the fence line via a wooden stile (point C). The area around the stile was well trodden suggesting significant levels of use and there was evidence that the land in this corner became quite wet and muddy in the winter months as wooden fence panels had been laid down on the ground over which it would have been possible to walk (and avoid the mud).

From the stile (point C) the application route continues for a further 20 metres through an area of trees and bushes to exit onto a tarmac cycle path forming part of the Preston Guild Wheel Cycle Route (point D).

In summary, the application route existed as a trodden route consistent with significant levels of pedestrian use. No signs were visible indicating whether the route was public or private and stiles provided access to the route from North Syke Avenue (between point B and point E) and south of the Guild Wheel (point C).

For much of the route between point A and point B the walked line (application route) ran parallel to an overgrown strip of land which ran along the western boundary of the housing estate.

### **Map and Documentary Evidence**

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

<b>Document Title</b>	<b>Date</b>	<b>Brief Description of Document &amp; Nature of Evidence</b>
<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.





*Curacy to an Impropriation* .....  
*Chapel of Ease* .....  
*Disputing Chapel* .....  
*Turnpike Roads and Mile Stones*  
*with Toll Bars marked TB* ..... **TB**  
*Cross Roads* .....  
*Rivers with Water Mills Engines &c* .....  
*Canals with Locks and Bridges* ..... **Lock**  
*Coal Pits* .....  
*Boundaries of the County and* .....

<p>Observations</p>		<p>A route consistent with the application route is shown from Blackpool Road (shown as a Turnpike Road) and extending in a north north westerly direction to cross the watercourse (Savick Brook) and continuing to a junction with Darkinson Lane. The full length of the route shown (which includes the application route A-B-C-D) is shown as a cross road.</p> <p>The application route linking to North Syke Road (B-E) is not shown.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The application route (A-B-C-D) existed as part of a longer route connecting to two vehicular routes and is depicted as a cross road suggesting that it was capable of</p>



		being used by vehicles at that time. 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 spur B-E probably did not exist.
<b>Greenwood's Map of Lancashire</b>	1818	Small-scale commercial map. In contrast to other map makers of the era Greenwood showed private as well as public roads and the two were not differentiated between within the key panel.

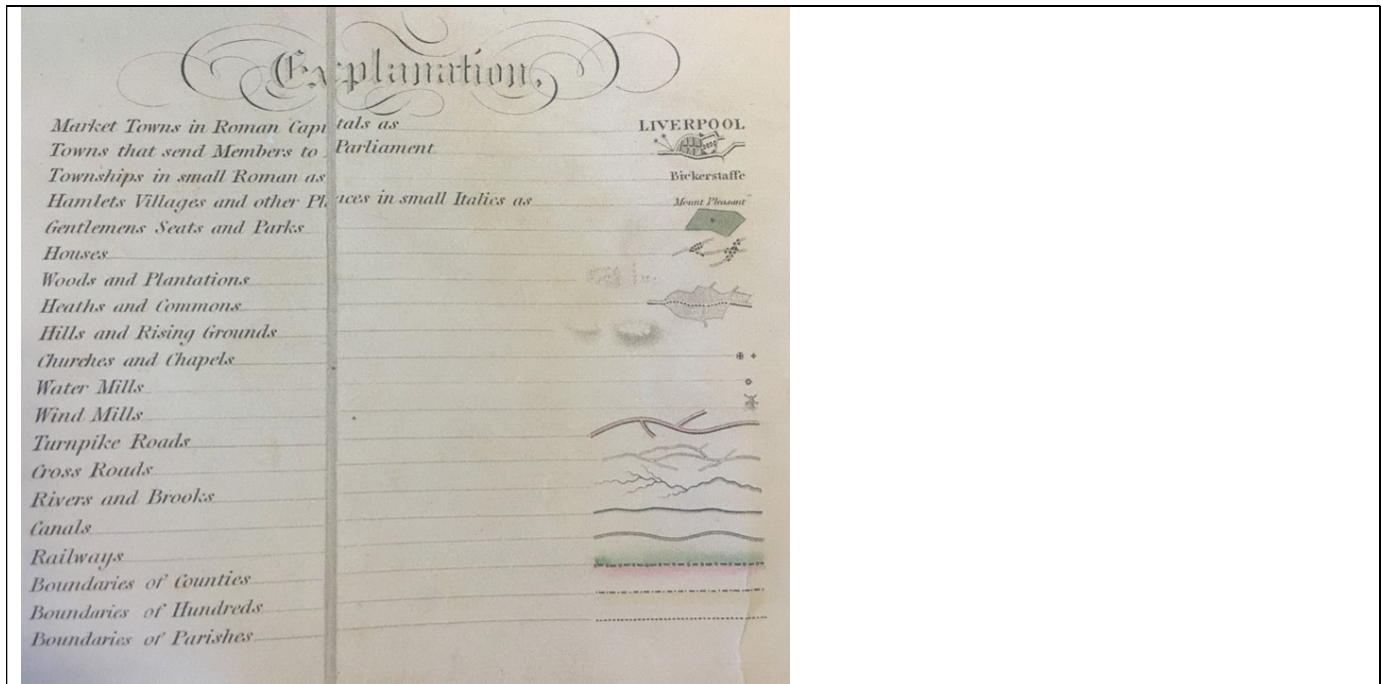


Observations		The application route A-D is again shown as part of a longer through route between Blackpool Road (turnpike road) and Darkinson Lane. It is shown on the map as a cross road. The spur B-E is not shown.
Investigating Officer's Comments		The application route A-D existed as part of a substantial route in 1818 and appeared to be capable of being used by vehicles.



		Greenwood was known to show both private as well as public roads and the two were not differentiated between within the key panel so the inclusion of the route on this map must also be considered in conjunction with other available evidence. The spur B-E probably did not exist at the time.
<b>Hennet's Map of Lancashire</b>	1830	Small-scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 10 miles. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.





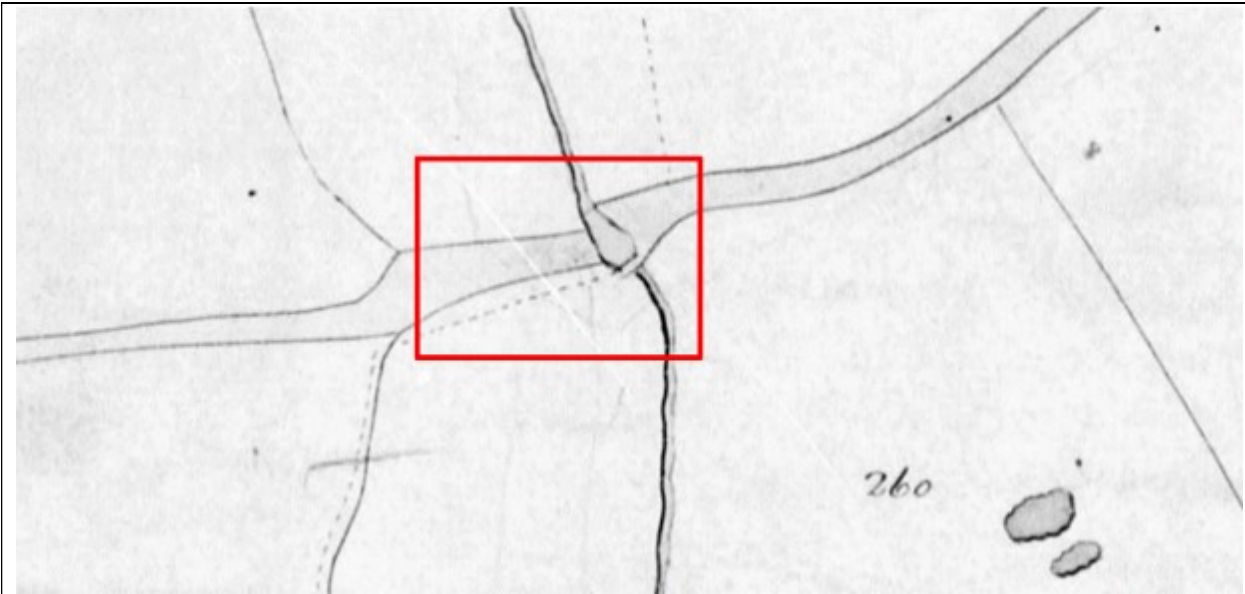
Observations		The application route A-D is again shown as part of a longer cross road connecting Blackpool Road to Darkinson Lane and crossing Savick Brook. The spur B-E is not shown.
Investigating Officer's Comments		The application route A-D existed in 1830 and appeared to be capable of being used by vehicles. It is not fully known what is meant by this 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> ). <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 showing a road to a purchaser if he did not have the right to use it."</i> It is unlikely that a map of this scale would show footpaths. The spur B-E probably didn't exist.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to





		be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The land crossed by the application route was not affected by the construction – or proposed construction – of any canals or railways.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of any public rights.
<b>Tithe Map and Tithe Award or Apportionment</b>	1838	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.





Observations

A route consistent with the application route A-D is shown on the Tithe Map for the Parish of Preston titled the Hamlet of Lea dated 1838.

The application route is shown as a bounded route and it is shaded on the map in the same way that routes now known to carry public vehicular rights are shown.

Access onto the route at point A is shown to be unrestricted (i.e. there is no line across it which may have suggested the existence of a gate).

The route is not numbered and it is noted that roads now known to carry public vehicular rights in the parish are not numbered on the map or listed in the Tithe Award.

North of the approximate position of point D the route shown can be seen crossing Savick Brook via a ford and footbridge and continuing north through to Darkinson Lane. Savick Brook has been canalised in recent times but it is clear from this map that it was of very different character then and fordable. Lines are shown across that route and it is numbered as plot 264 which was listed as being owned by Richard Harrison, occupied by Joseph Bryning and described as Darkinson Croft and as pasture land for which tithes were payable.



		The spur B-E is not shown.
Investigating Comments	Officer's	<p>A route consistent with the application route A-D existed in 1838 as part of a longer route. The route appeared to be capable of being used on foot but also on horseback and with vehicles – particularly as a ford is shown across the brook.</p> <p>Whilst the route consistent with the application route is not numbered and is shown in the same way as other vehicular roads are shown, the continuation of the route north of Savick Brook is numbered and listed in private ownership which is not consistent with how a public vehicular route would generally be shown. The route may however have been accessible and used at least on foot or horseback – particularly as a footbridge and ford are shown across the brook. Croft is defined as small enclosed area of land or (less likely) in Lancashire dialect wasteland sometimes used for drying bleached cloth (Collins English Dictionary).</p> <p>The spur B-E did not exist.</p>
<b>Inclosure Act Award and Maps</b>		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		No Inclosure Award or Map was found for the area crossed by the application route.
Investigating Comments	Officer's	No inference can be drawn with regards to the existence of public rights.
<b>6 Inch Ordnance Survey (OS) Map</b> <b>Sheet LX</b>	1848	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-1845 and published in 1848.<sup>1</sup></p> <p>However it has recently become apparent that in many instances there was more than one 'print run' for OS first edition 6 inch maps. Up until c.1867 the 6-inch maps</p>

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



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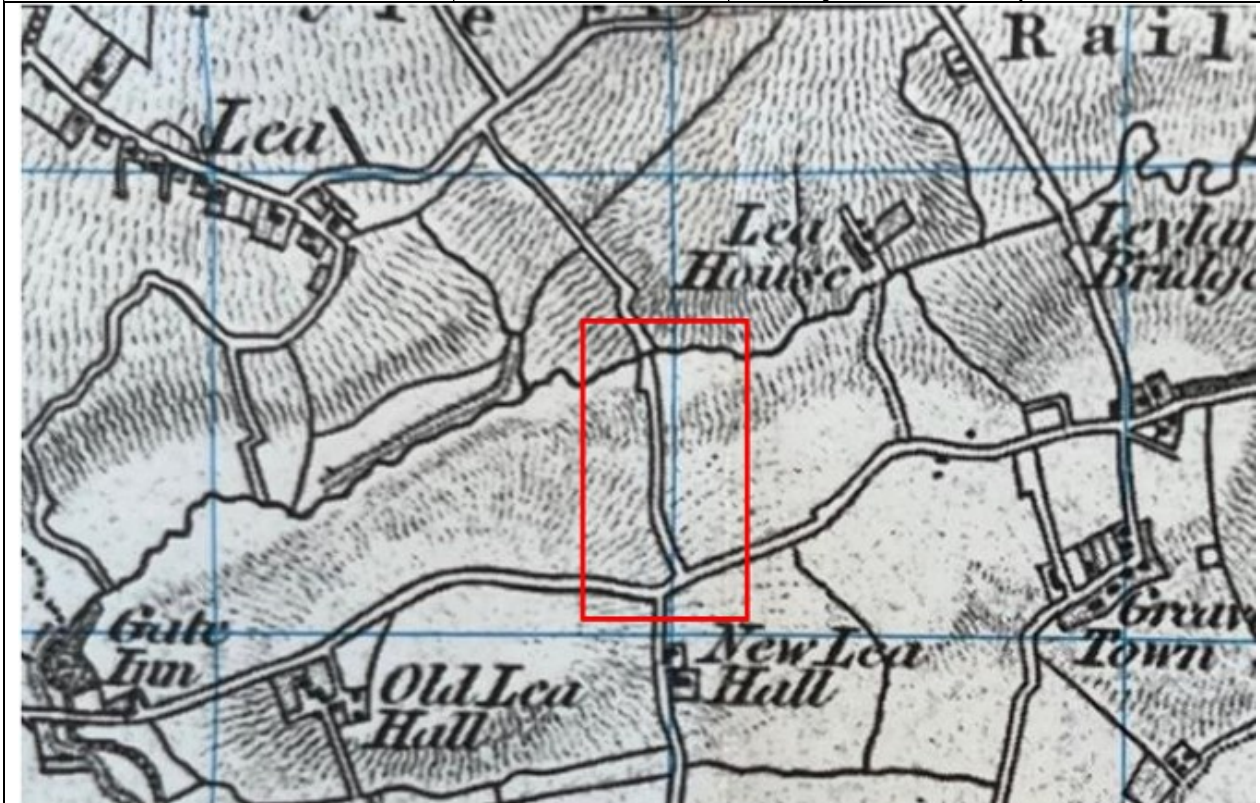


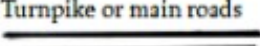














Map extract from National Library of Scotland collection

<p>Observations</p>	<p>The application route is shown as part of a longer bounded through route – in the same way as it is shown on earlier commercial maps and the Tithe Map. Access onto the route at point A is shown as unrestricted (i.e. no line across it which may have suggested the presence of a gate). The continuation west or east from point A was via the private road which was part of the road network, albeit by paying a toll rather than with public rights, and potentially better maintained.</p> <p>North of point D the route the route is shown crossing Savick Brook via a ford with a pedestrian footbridge alongside named as 'Wade Bridge (foot)' and a route marked as a footpath is shown from the</p>
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		<p>west joining the bounded route north of Savick Brook continuing to Lea Road (now known as Darkinson Lane).</p> <p>The spur B-E is not shown and North Syke Avenue and the houses to the east of the route are not shown.</p>
Investigating Officer's Comments		<p>The application route existed and appeared capable of being used on horseback and with vehicles. The existence of a footbridge in addition to the ford north of point D and the footpath shown connecting to the bounded through route north of Savick Brook suggests that pedestrians may also have been using the route.</p> <p>The spur B-E did not exist.</p>
<b>Cassini Map Old Series</b>	1843-1852	<p>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.</p>



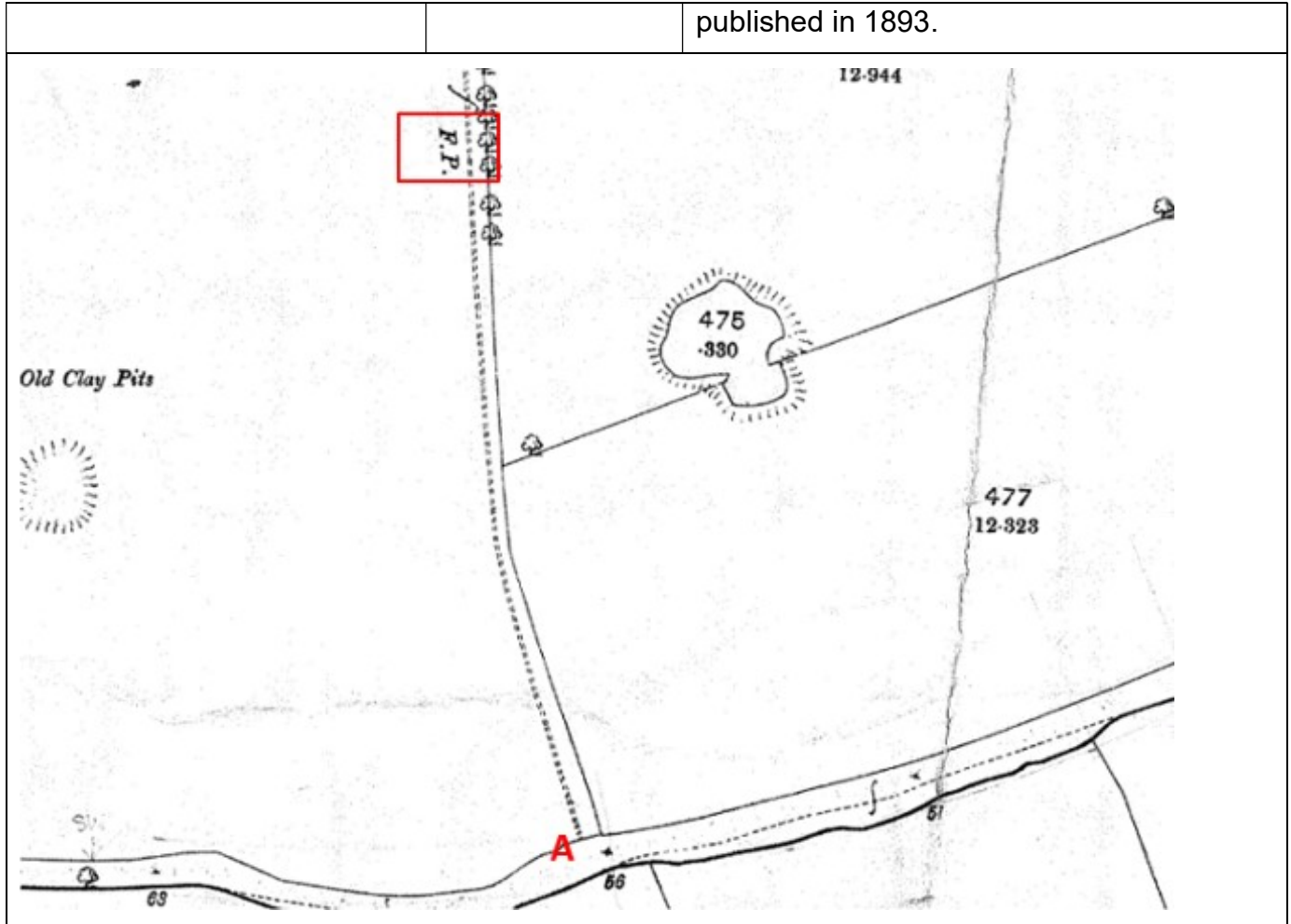
Turnpike or main roads 	Railways 
Other roads 	Cuttings 
Unfenced roads 	Embankments 
Mileages; turnpike gates; toll gates <i>S T.P T.G.</i>	Tramways and freight-only railways 
County boundaries 	Woodland 
Parish or township boundaries (on some sheets only) 	Parkland 
Church 	Foreshore: sand; boulders;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

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

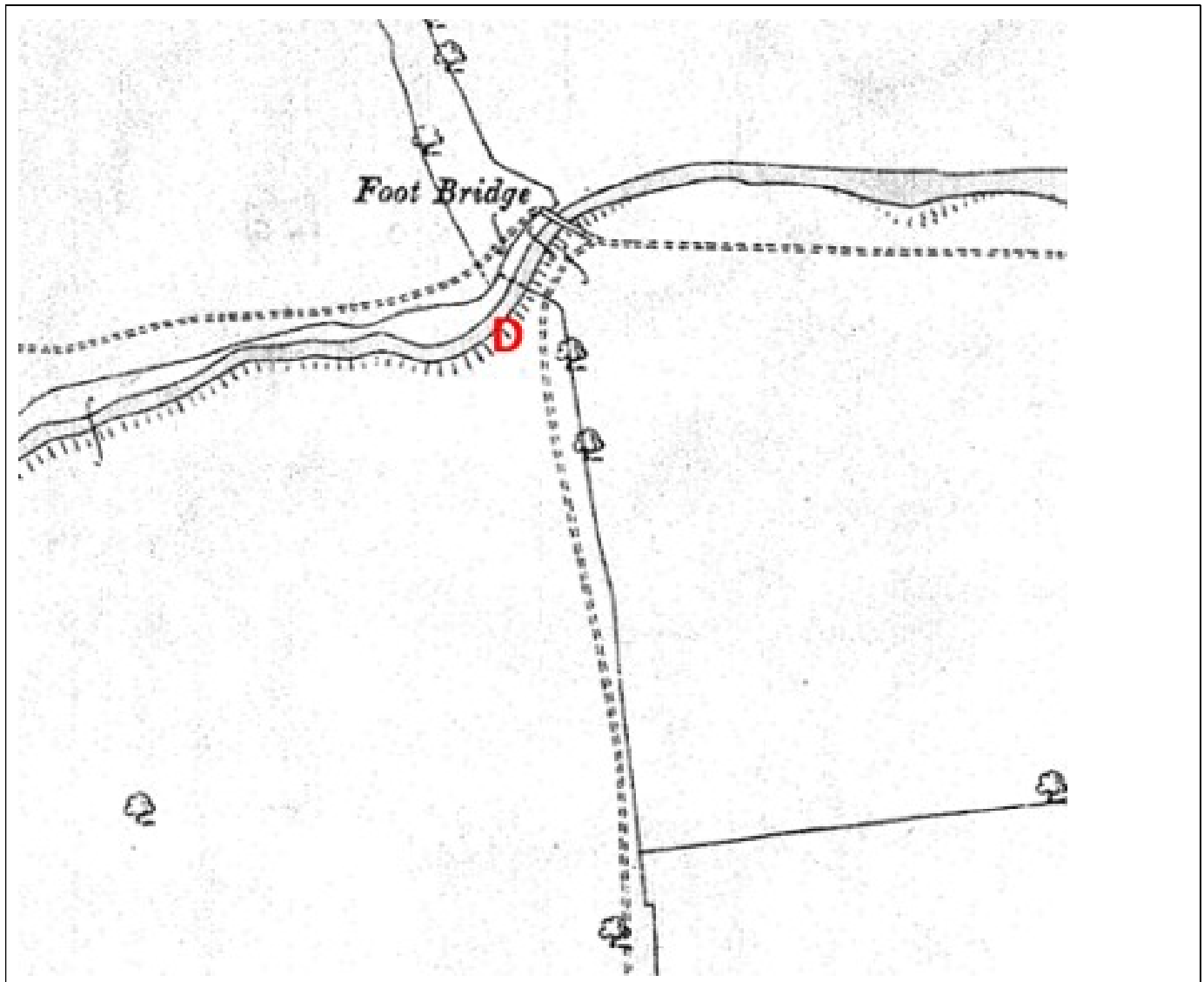
Observations		The application route (except for the link to North Syke Avenue B-E) is shown as part of a substantial longer through route and described in the key as 'Other roads'. It is shown consistent with how other routes with public vehicular rights are shown.
Investigating Officer's Comments		This map has been compiled from the first edition 1 inch OS maps published between 1843 and 1852. It is noted that it does not show the east-west road through point A as turnpike or main road, in contrast to the 1940s Ordnance Survey 6" sheet. The original scale of the map 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 were accessible for those travellers. The application route A-D is shown as part of a through route 'other road' which would be expected to carry vehicular or at least bridleway rights.
<b>25 Inch OS Map Sheet LX.12</b>	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890-1892 and



published in 1893.







Observations

The earliest large scale 25 inch OS map was surveyed and published over 40 years after the 6 inch map detailed above.

It shows a route broadly consistent with the application route A-D running along the field edge. The route is not enclosed as it had been on earlier maps but ran along the edge of the field numbered 474 and was shown on the map as a footpath (F.P).

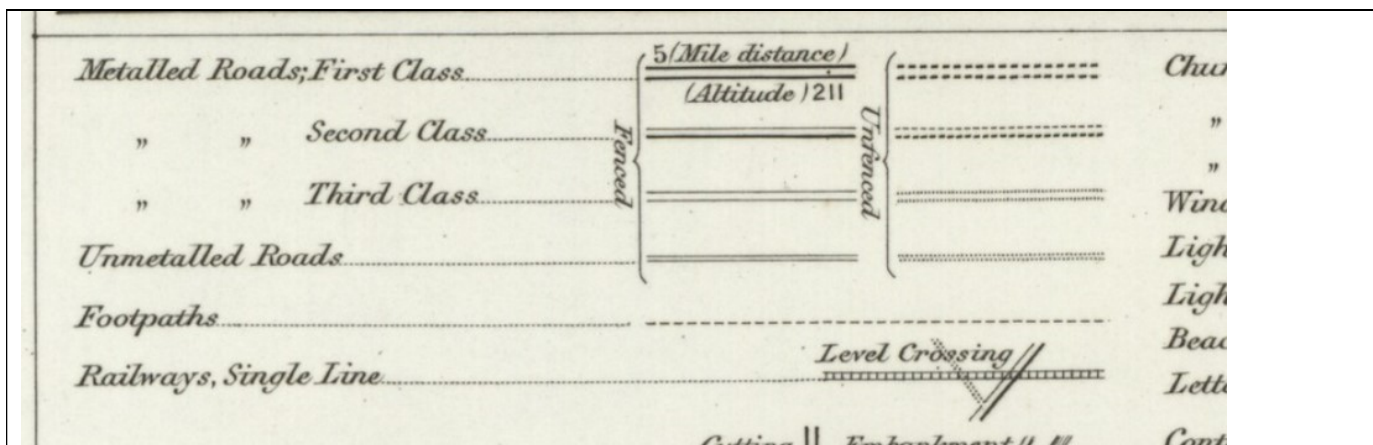
The route shown went to the footbridge over Savick Brook. Unlike on the earlier 6 inch OS map the footbridge is not named and there is no ford crossing shown.

North of Savick Brook the continuation of the historical route through to Darkinson Lane is still shown as a bounded route and other routes annotated as footpaths (now recorded on the Definitive Map) are shown



		<p>connecting to the application route.</p> <p>There are now lines across the route at either end (points A and D). The spur B-E is not shown.</p>
Investigating Officer's Comments		<p>A route consistent with the application route A-D existed in 1890-92 as part of a longer route linking to other routes recorded as footpaths.</p> <p>The fact that the route is no longer shown separate from the adjacent fields, has a structure across at either end and has been recorded on the map as a footpath suggests that when the land was surveyed by the OS in 1890-92 the route visible on the ground at that time was suggestive of use on foot and not of a route used by horses or vehicles. A ford crossing is no longer shown and it appears that any historical use of the route with vehicles or on horseback had declined significantly – or possibly ceased.</p> <p>The spur B-E did not exist.</p>
<b>1 inch OS Map Sheet 75 - Preston</b>	1896	Small scale OS map surveyed 1888-1893 and published 1896.

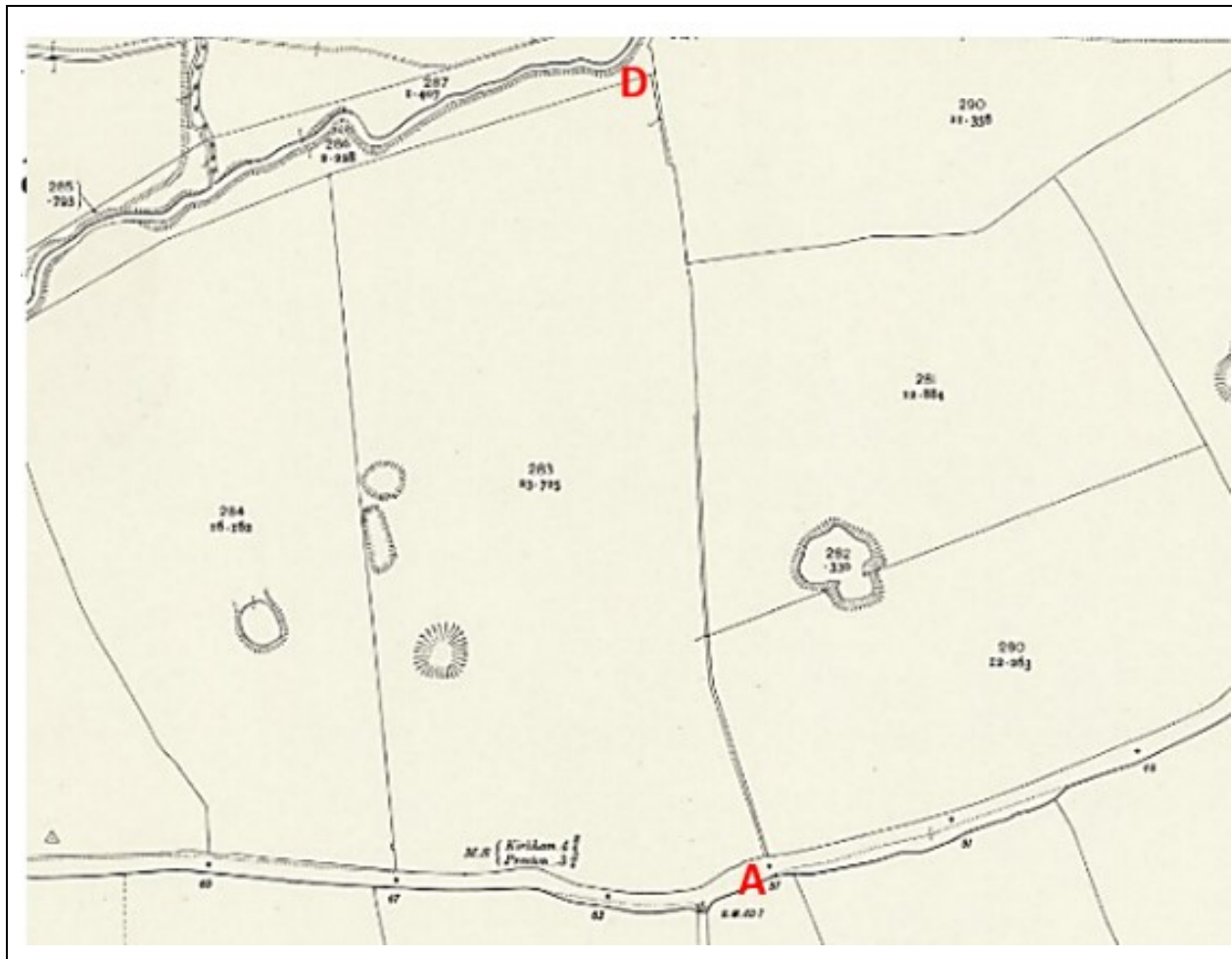


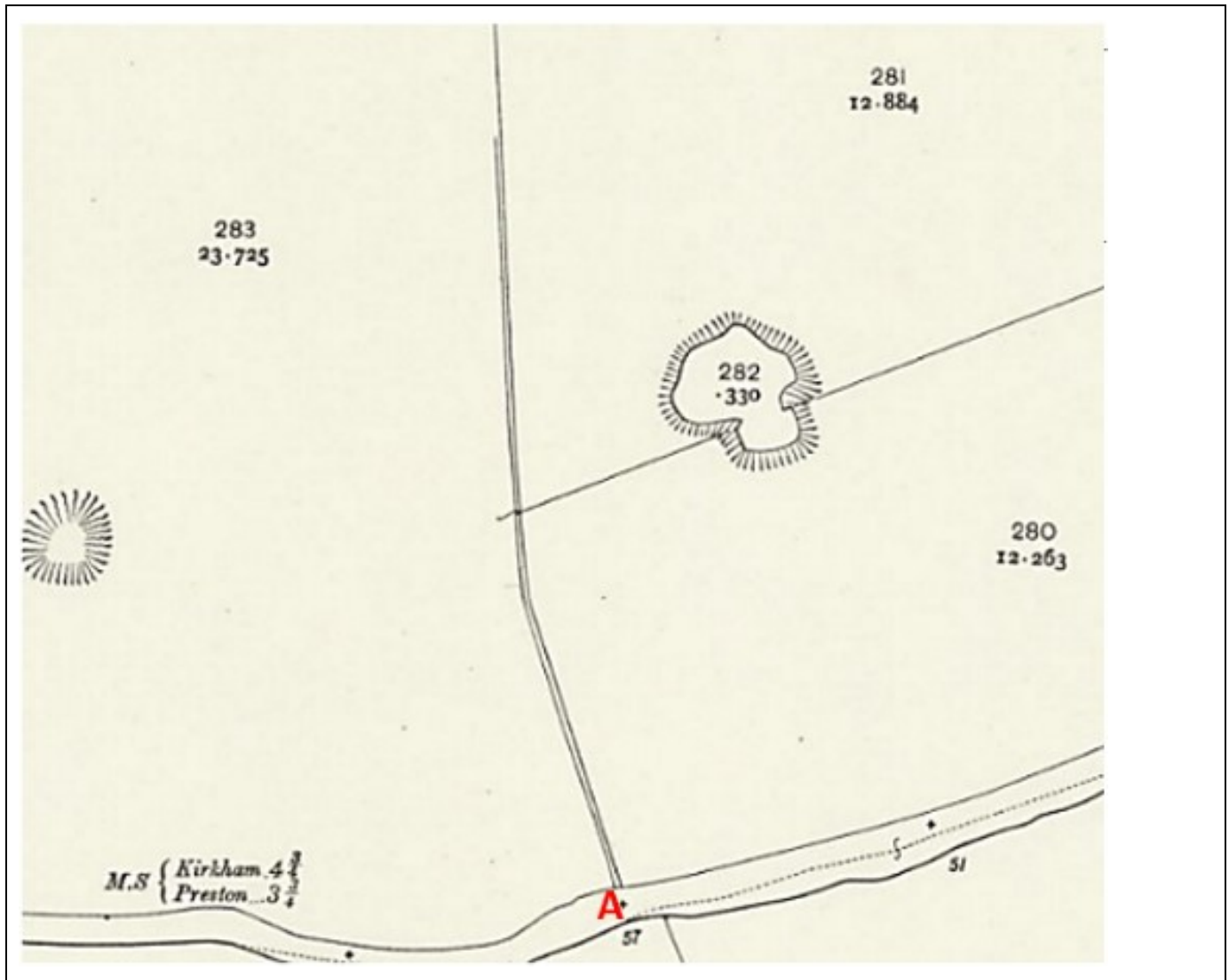


*N.B. The representation on this map of a Road, Track, or Footpath, is no evidence of the existence of a right of way.*

Observations		<p>A route consistent with the application route is shown from point A passing through point D and continuing to Savick Brook from where it appears possible to continue north along a bounded route to Darkinson Lane.</p> <p>The application route A-D is shown on the map as a footpath.</p> <p>The spur B-E is not shown.</p>
Investigating Officer's Comments		<p>The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the routes shown had public rights for those travellers.</p> <p>In this case the application route A-D is shown specifically as a footpath. The OS disclaimer present on the map makes it clear that the representation on the map of a Road, Track or Footpath is not evidence of the existence of a right of way. However, it is good evidence that the route A-D physically existed as a walked route which was sufficiently visible to merit inclusion on a small scale OS map.</p> <p>The spur B-E did not exist.</p>
<b>25 inch OS Map Sheet LX.12</b>	1911	Further edition of the 25 inch map surveyed in 1892, revised in 1909 and published in 1911.





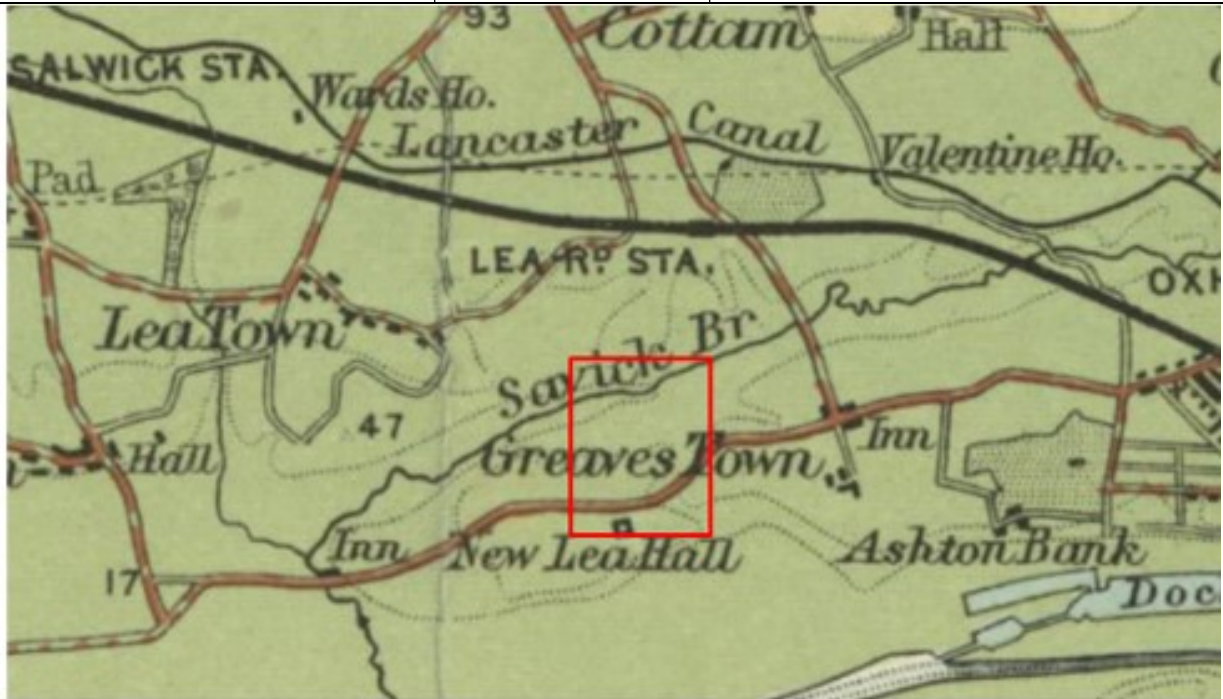




Observations		When the map was revised in 1909 the application route A-D was no longer shown and an additional line was shown across the route at point C. The spur B-E was not shown either.
Investigating Officer's Comments		Use of the application route had further declined to the point that it was no longer shown on the OS map. The map provides no evidence that the application route A-D or B-E were in use in 1909.
<b>Bartholomew half inch Mapping</b>	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.



**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

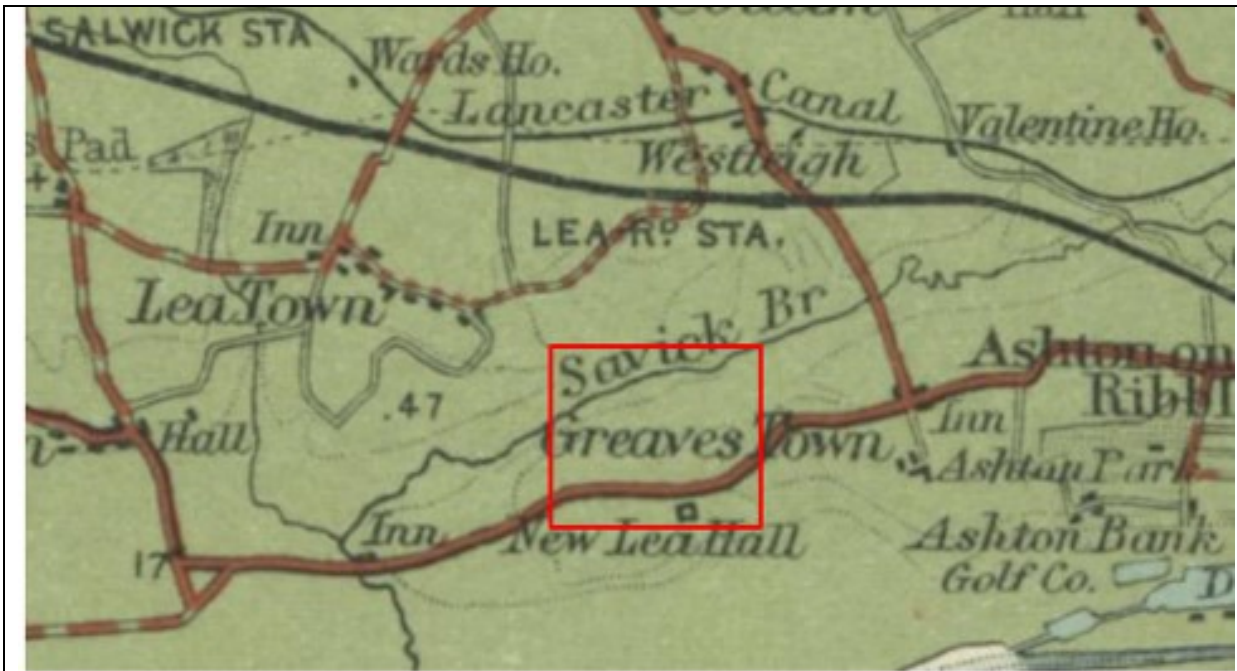
Canals

County Boundaries

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

1905 [Above]





EXPLANATORY NOTE

Motoring Roads	{	Through Routes		Motor Ferries	
		First Class Roads			
		Secondary			
		Indifferent		(Passable for cyclists)	

*The uncoloured roads are inferior and not to be recommended.*

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

*The figures thus 190 represent heights in feet above sea level.*

Railways		Station		Station with		L.C. (Level Crossing)
Canals			Refreshment Room			

County Boundaries - - - - -

1920 [Above]







Best Motoring Routes		Ministry of Transport Numbers	<b>A 586</b>
Good Secondary Roads		Footpaths & Bridlepaths	
Serviceable Roads		<i>N.B. The representation of a road or footpath is no evidence of right of way.</i>	
Other Roads			

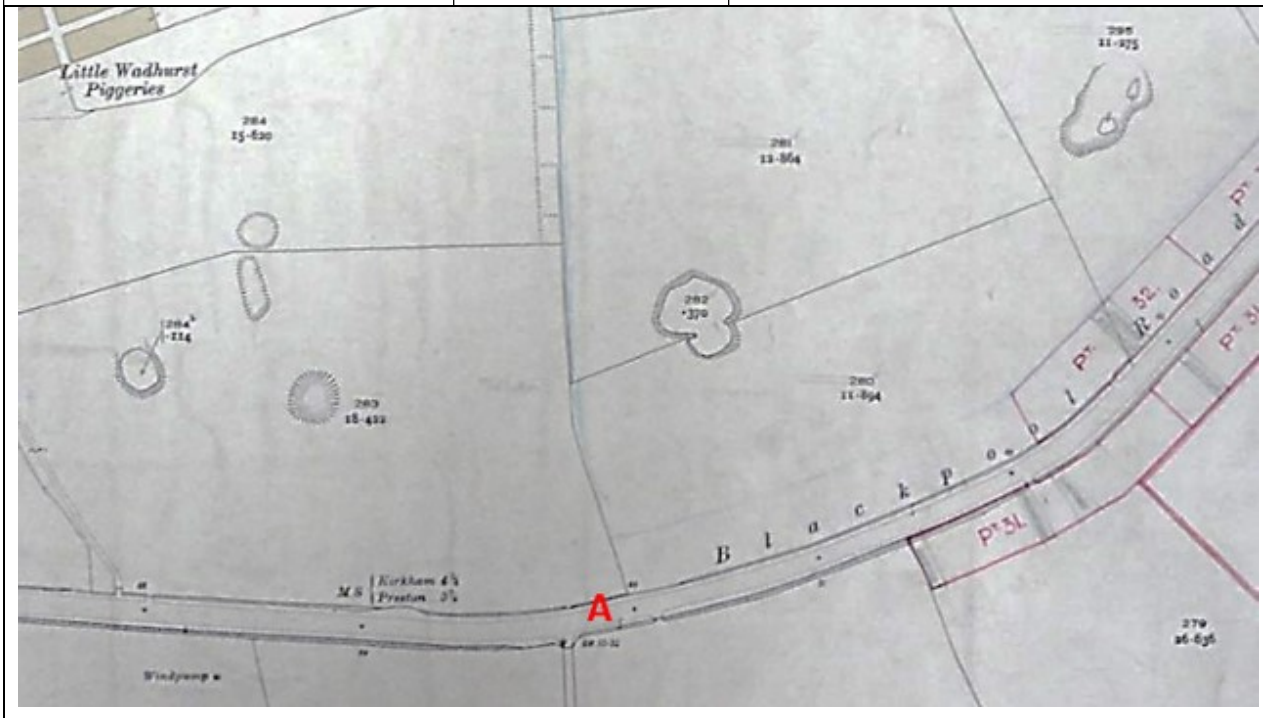
1941 [Above]

Observations		The application route is not shown on any of the Bartholomew Maps published in the first half of the 20 <sup>th</sup> century.
Investigating Officer's Comments		The application route – if it did exist - was not considered to be a public vehicular through route between 1904 and 1941.
<b>Finance Act 1910 Map THA Ref:IR133/5/38</b>	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the</p>



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).

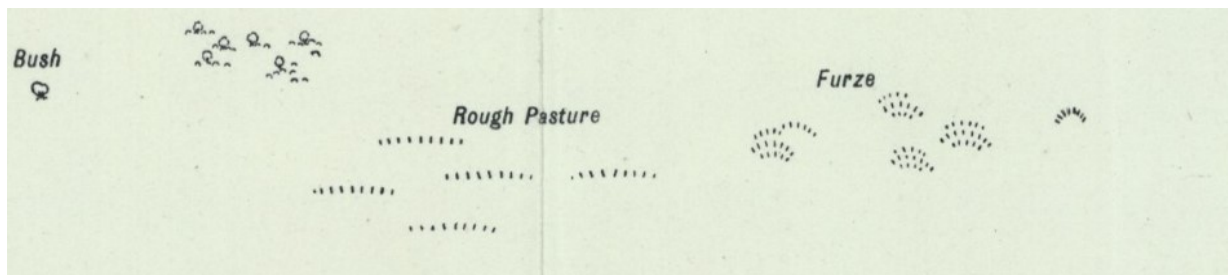
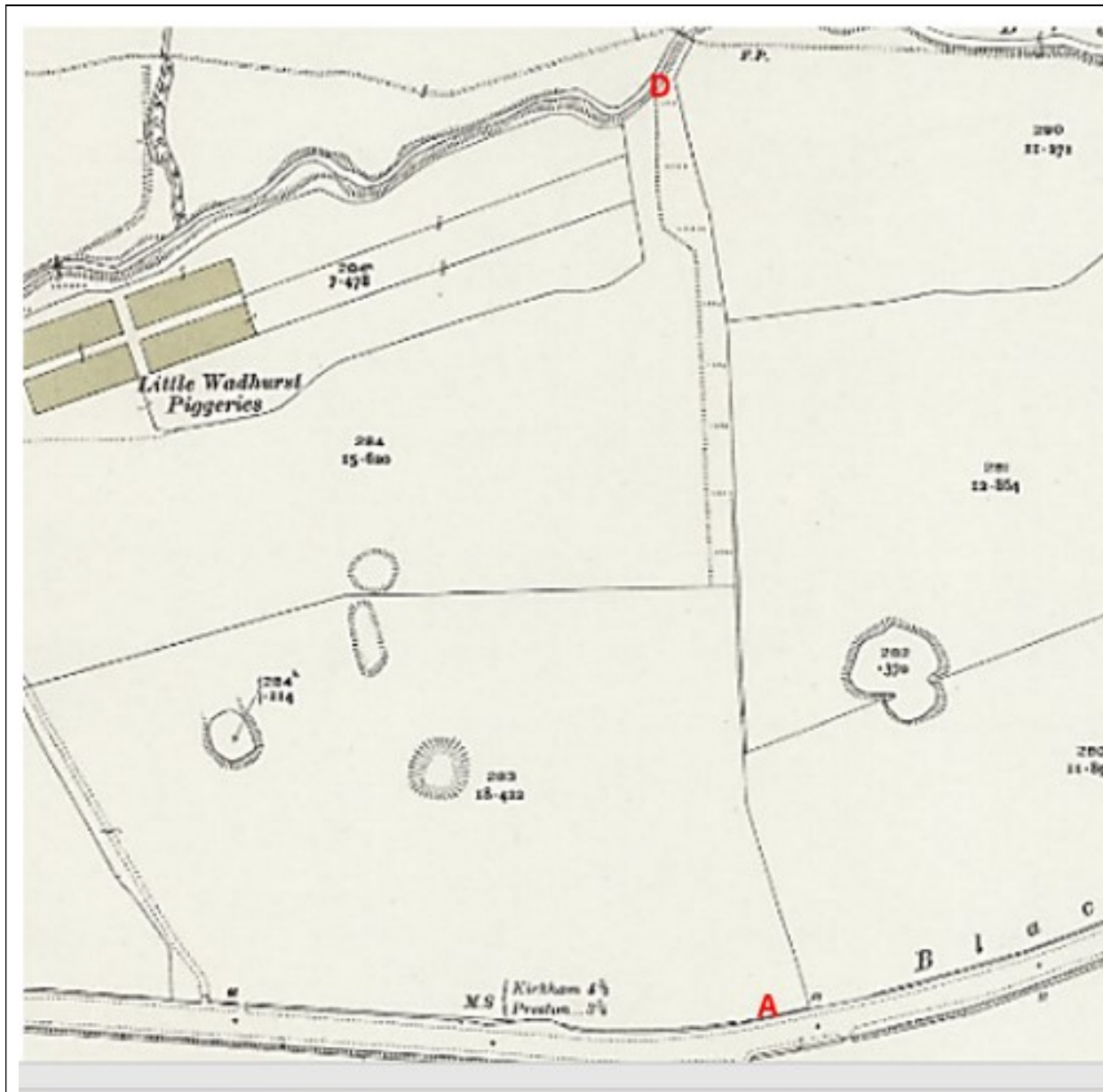
An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey 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.





Observations		<p>No District Valuation Records are held for the Parish of Lea in the County Records Office.</p> <p>The District Valuation Maps deposited in The National Archives are incomplete and do not show the land crossed by the application route marked up.</p>
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
<b>25 Inch OS Map LX.12</b>	1932	Further edition of 25 inch map (surveyed 1890-92, revised in 1929 and published in 1932.





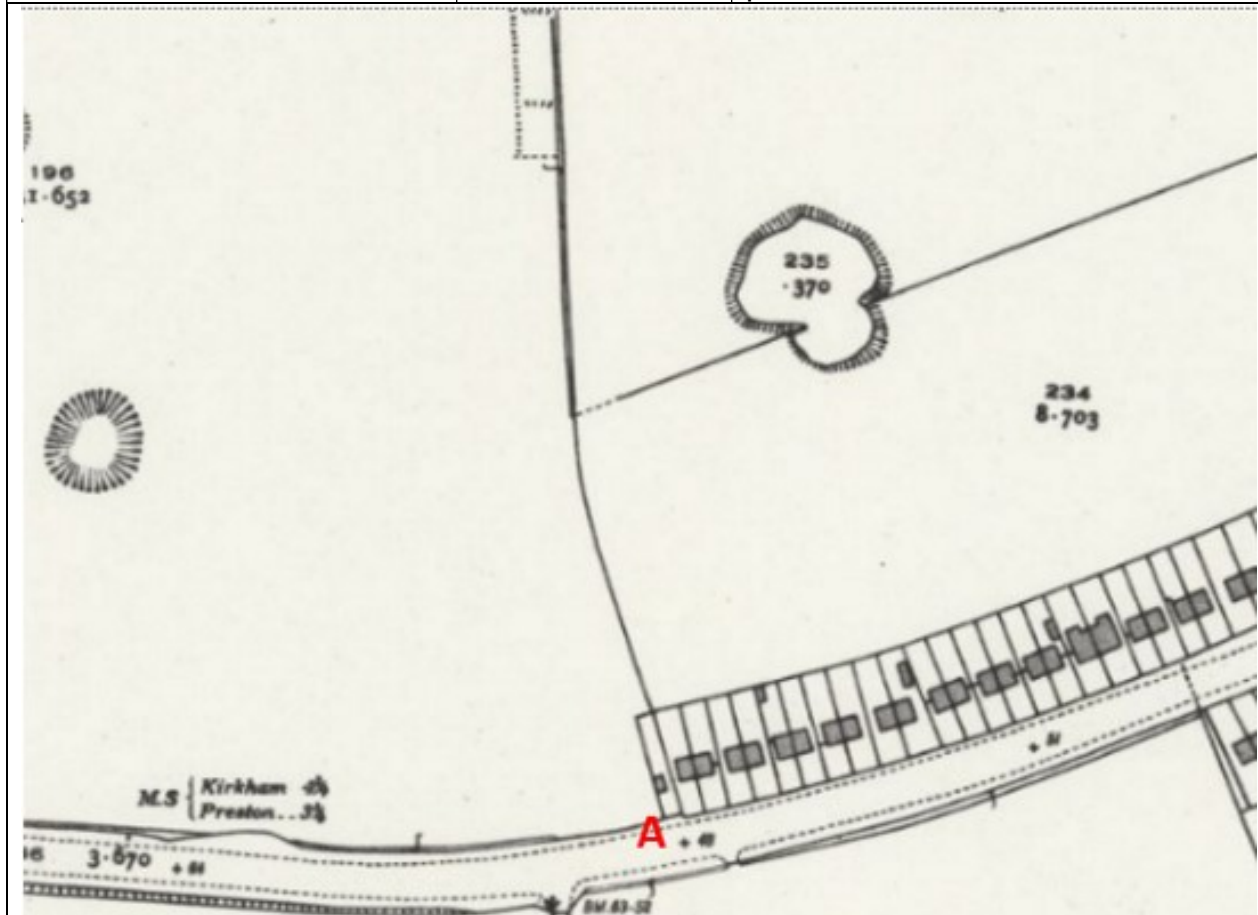
Observations

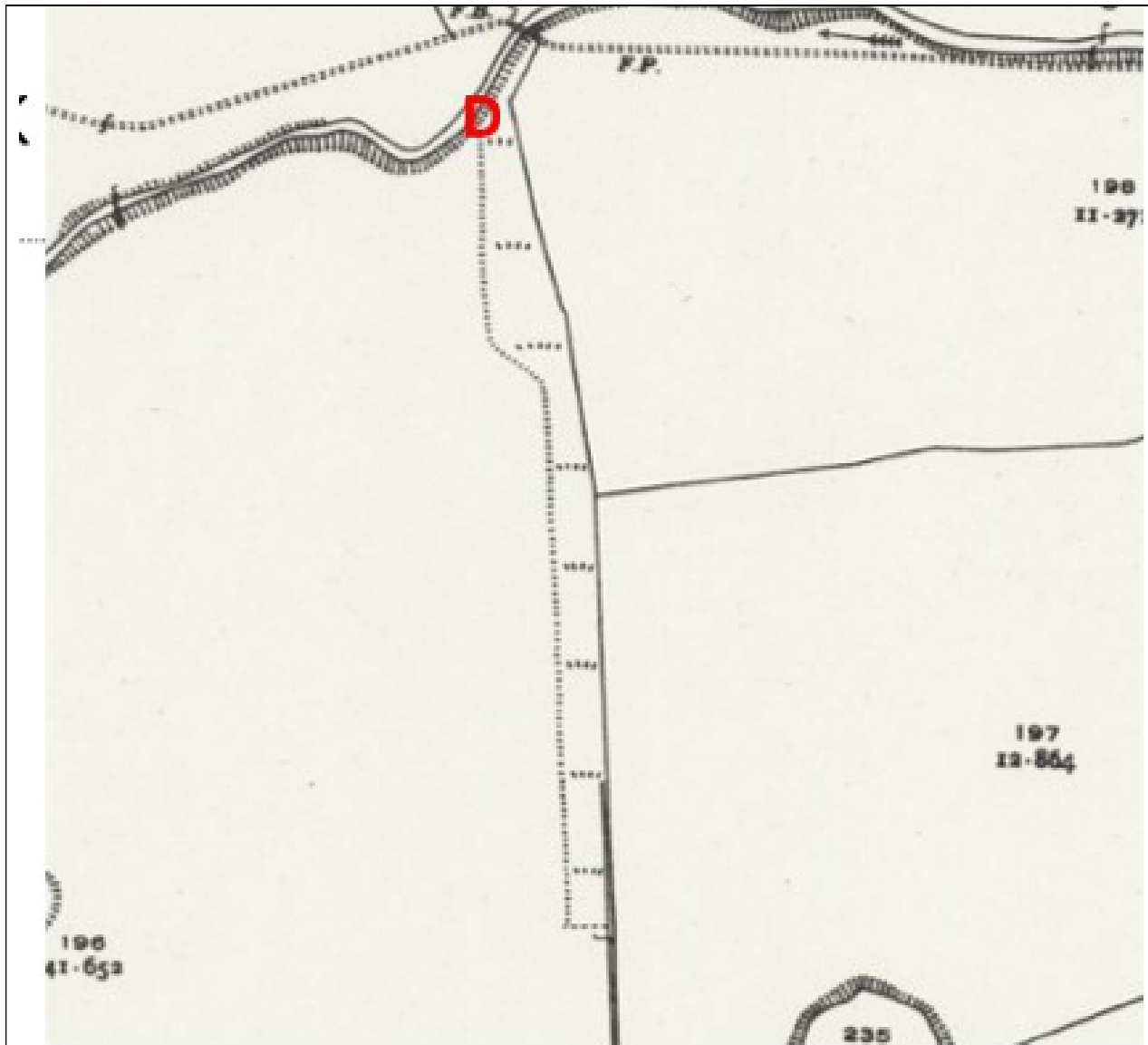
The application route A-D is not shown. A fence is shown across the application route splitting the field previously numbered 474 into two separately numbered fields (283 and 284). North of the fence through to point D the land crossed by the application route is shown as rough pasture.

The spur B-E is not shown.



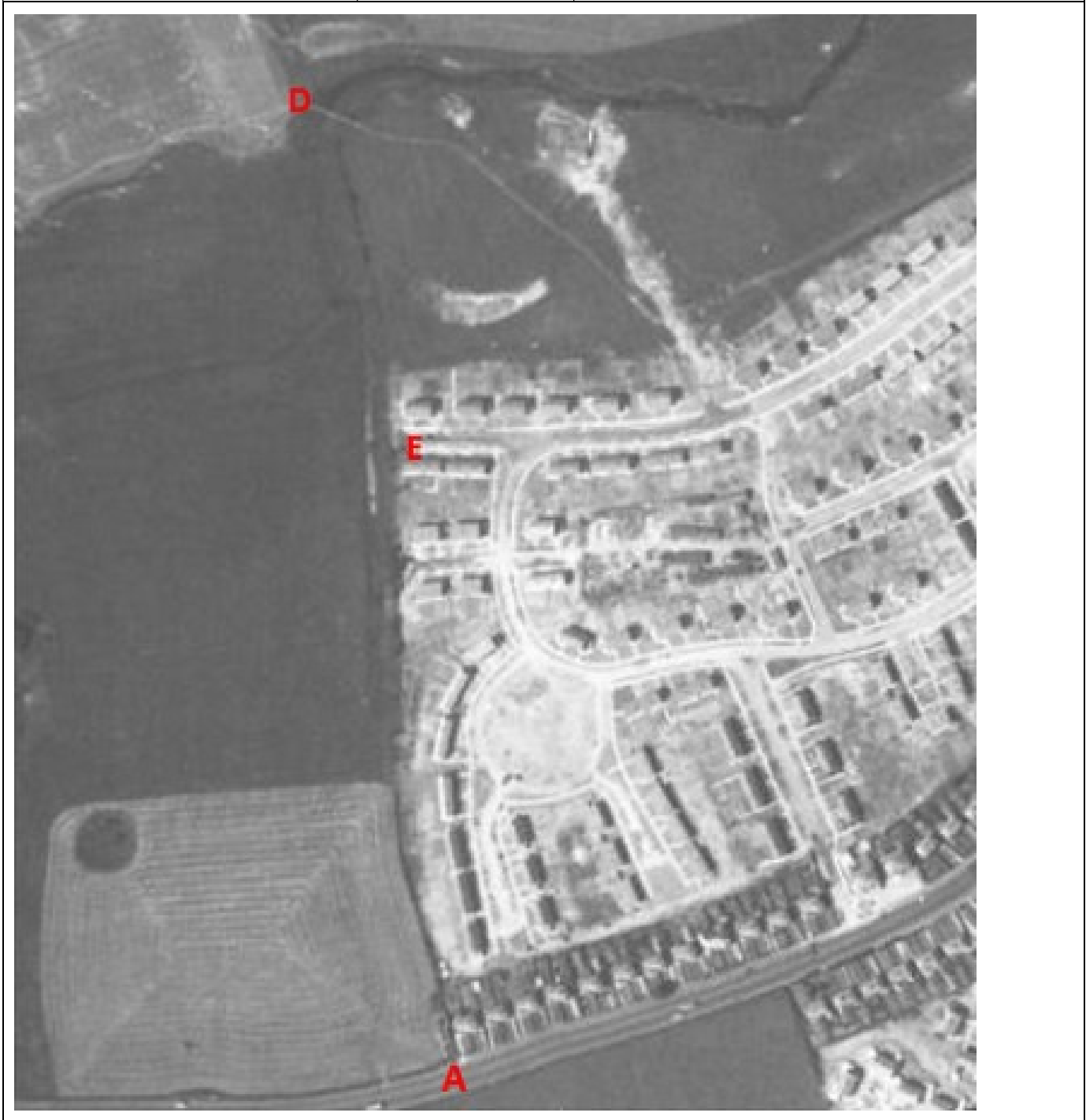
Investigating Comments	Officer's		The application route probably did not exist as a walked route in 1929.
<b>25 Inch OS Sheet LX.12</b>		1941	Further 25 inch OS map revised 1938 and published 1941.





<p>Observations</p>		<p>A building is shown as having been built across part of the historical width of the original route shown on the 1<sup>st</sup> edition 6 inch and 25 inch OS maps at point A although the route under investigation, as applied for passes to the west of this building (the electricity substation). The application route A-D and B-E are not shown.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The application route probably did not exist as a walked route in 1938. The unnamed building shown at point A has been built across part of the original width of the historical route which no longer physically existed prior to its construction.</p>

<b>Aerial Photograph<sup>2</sup></b>	1945-1952	The earliest set of aerial photographs available was taken just after the Second World War between June 1945 and September 1952 and can be viewed on GIS. The clarity is generally very variable.
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<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.

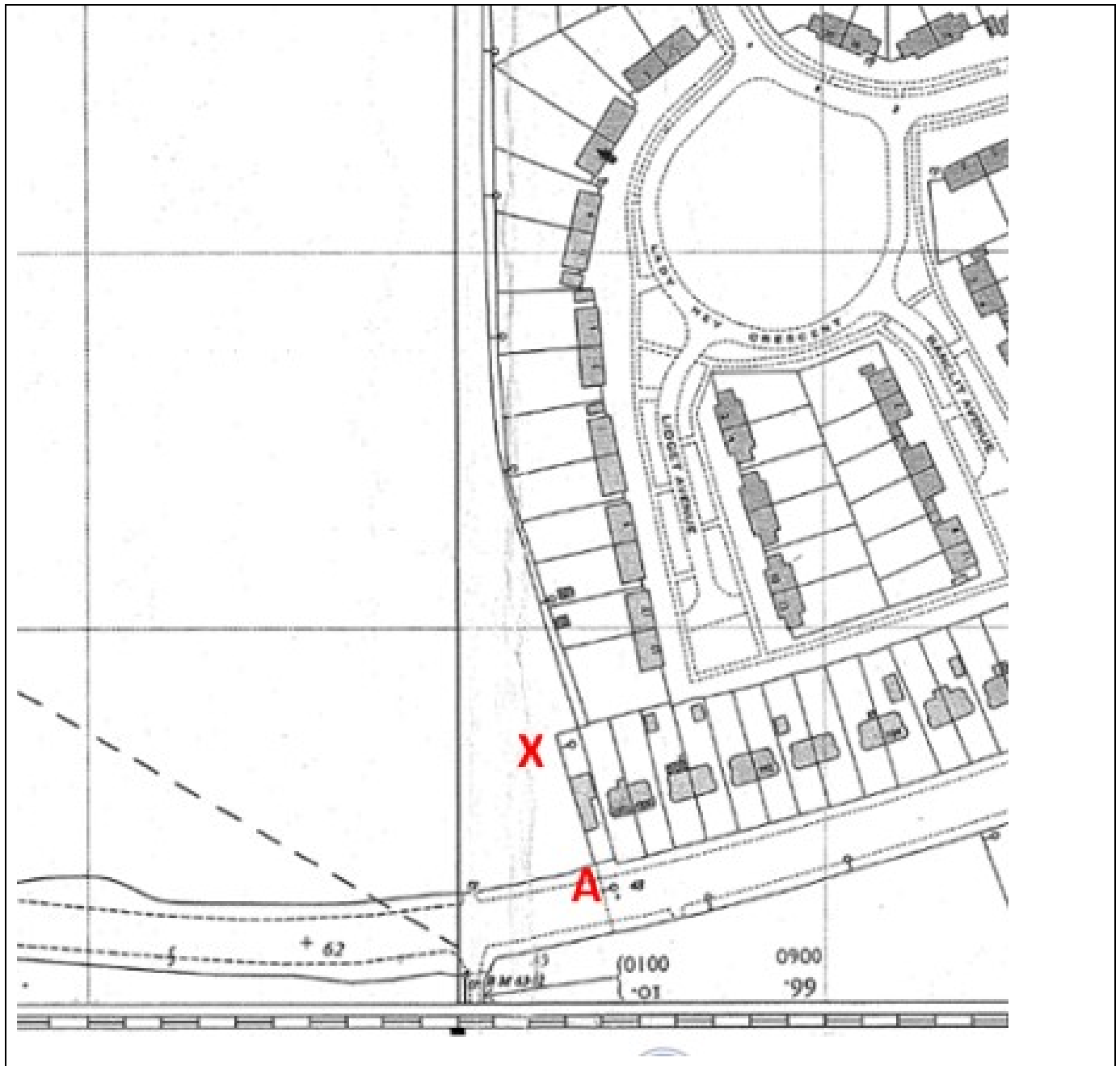


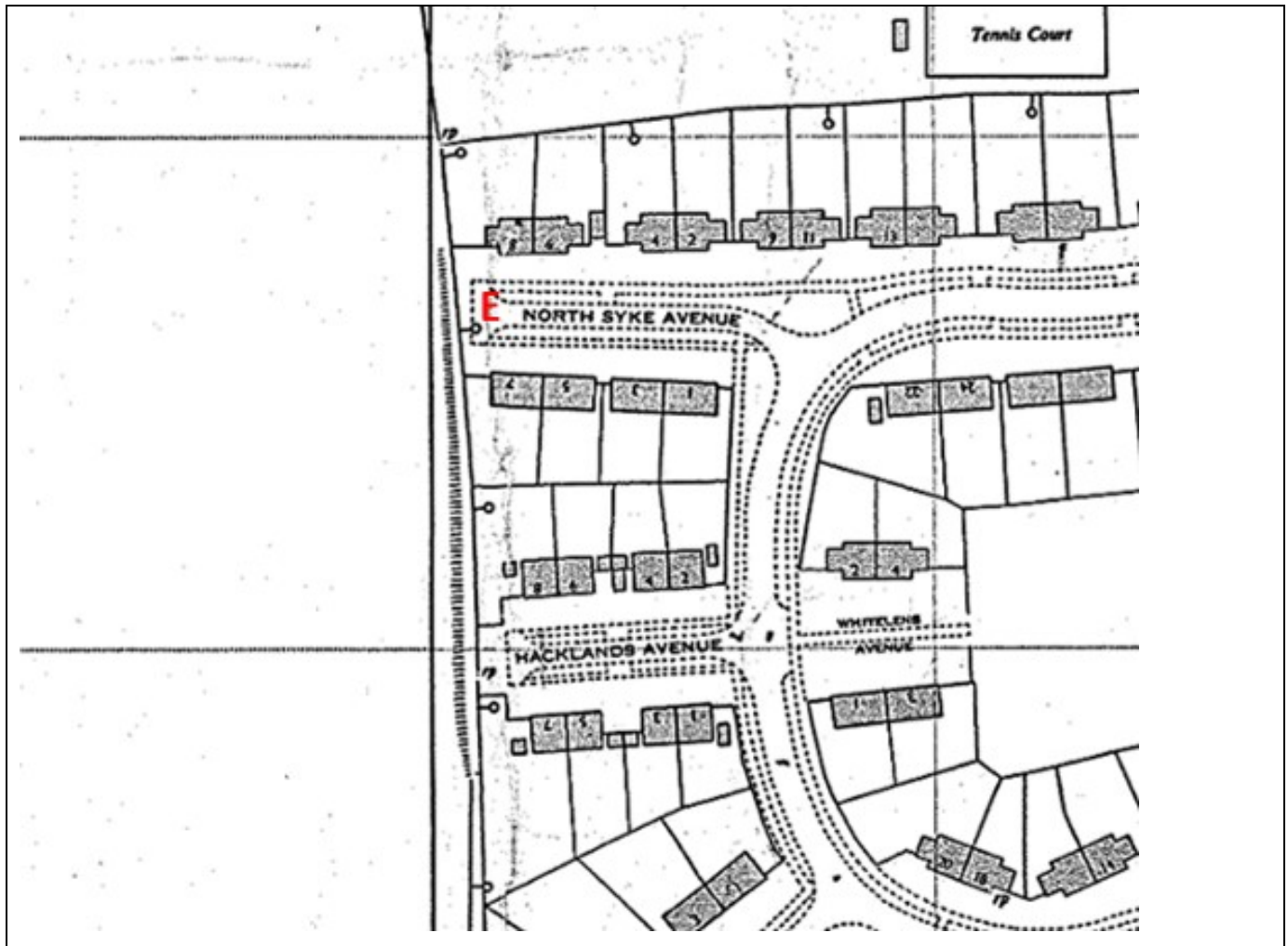
Observations		The aerial photograph shows a building (the electric substation) at point A which was shown on the 1941 edition of the OS 25 inch map detailed above. There is no
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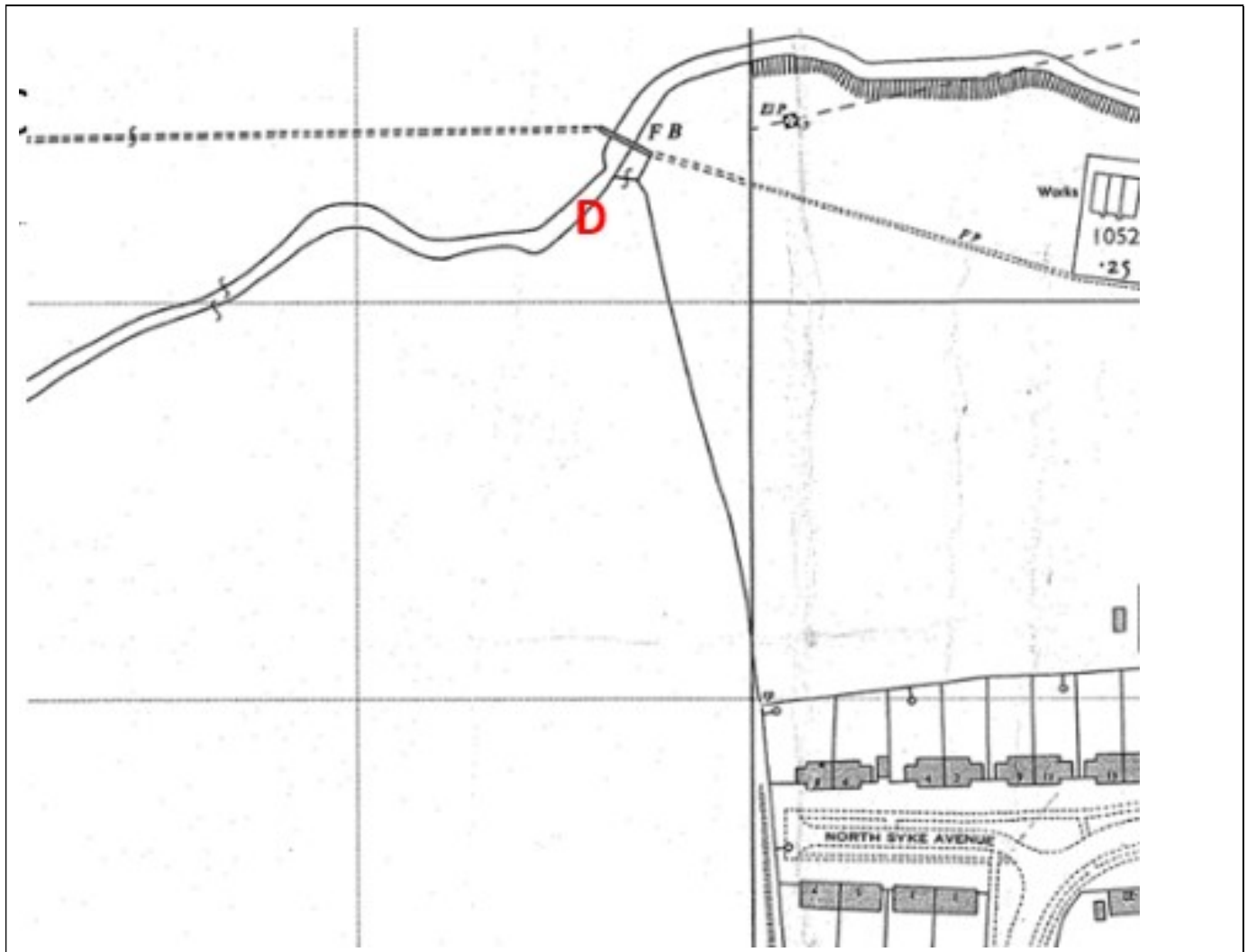


		<p>obvious access onto the application route at point A with no trod visible and access into the field appeared to be further west along Blackpool Road.</p> <p>The housing estate to the east of the application route is shown set out and appears to be partially constructed.</p> <p>North Syke Avenue is shown but there is no clearly visible trod consistent with the application route.</p> <p>West of point E a lighter coloured line can be seen which looks to be the remains of part of the bounded historical route A-D.</p>
Investigating Comments	Officer's	<p>Many of the aerial photographs taken in the 1940s were of relatively poor quality providing limited definition and clarity compared to 1960s aerial photograph detailed later in the report.</p> <p>However, the photograph shows that from mid to late 1940s onwards North Syke Avenue existed and it may have been possible to access the application route from point E.</p> <p>The photograph does not however provide any supporting evidence of a trodden route existing at that time and access from point A onto the route no longer appeared to be available – or used and the historical bounded route that had previously existed between Blackpool Road and Savick Brook no longer existed.</p>
<b>1:2500 OS Map SD 4830-4930</b>	1963	Further edition of 25 inch map part resurveyed 1953 and partly revised in 1961. Published in 1963 as National Grid Series.









Observations		The application route is not shown and there is nothing to suggest that access existed onto the application route from North Syke Avenue. The historical route is no longer shown.
Investigating Officer's Comments		The application route did not exist as a well-trodden route in 1961.
<b>Construction of Riversway (A583)</b>	1963-1972	Between 1963 and 1972 the A583 – known as Riversway was constructed adjacent to the start of the application route at point A on Blackpool Road.

purchased and any building or works constructed or to be constructed thereon.

(4) This Order may be cited as the Lancashire County Council (Ashton By Pass - Watery Lane Diversion) Compulsory Purchase Order, 1963.

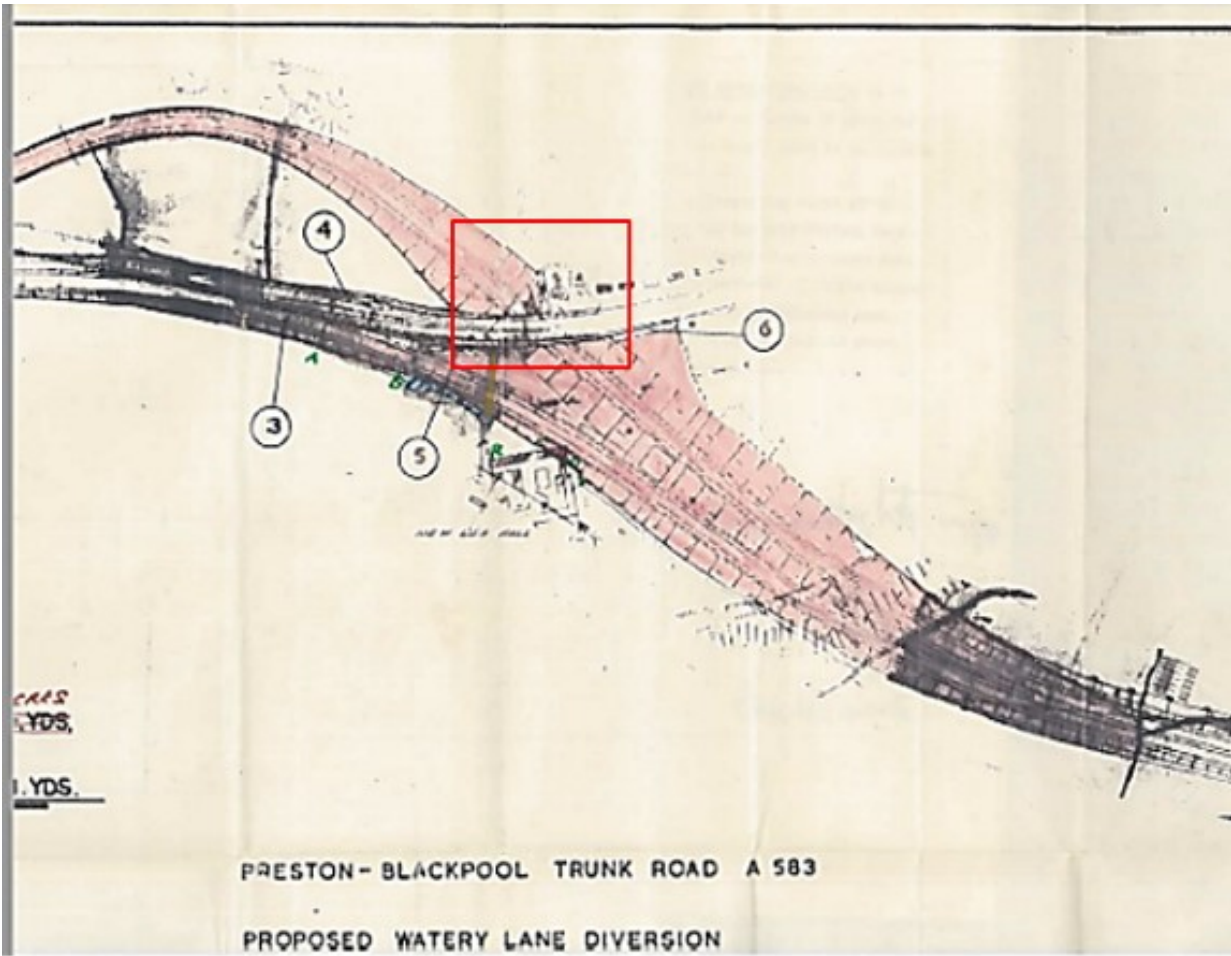
Extract from the Compulsory Purchase Order made in relation to the construction of Riversway



[Above]

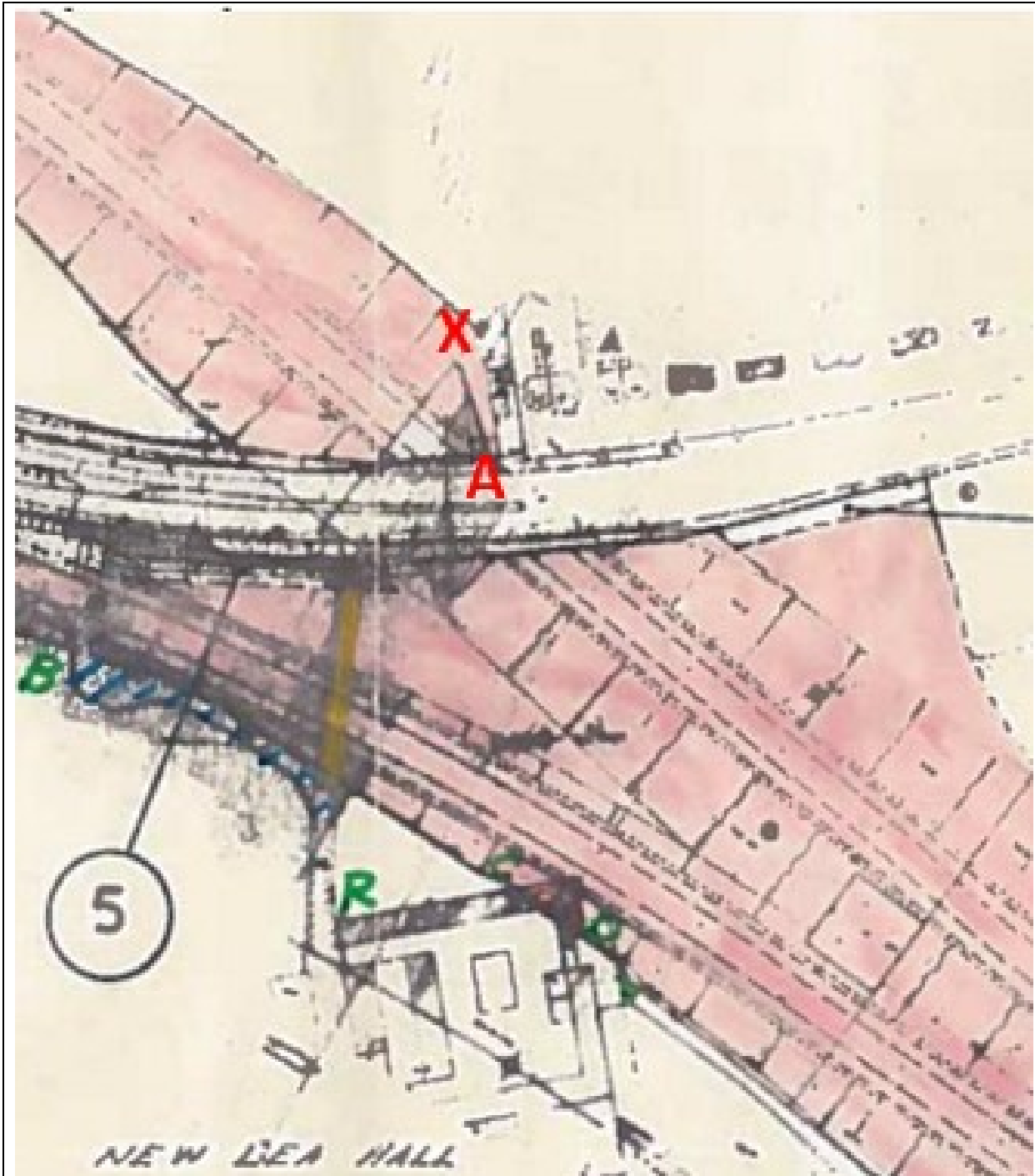
2	17,048 square yards. Part of a pasture field on the northerly side of Blackpool Road and forming part of New Lea Hall Farm, Lea. Part of parcel numbered 8226 on O.S. Plan SD 4830. 1963 Edition.	Henry Philip Anthony Mary De Hoghton (Tenant for Life) Worden Estate Office, Leyland, Lancashire.	Joseph Kenneth Clark, New Lea Hall, Lea.
7	56 107 square yards. Part	Henry Philip	Joseph

Extract from the Schedule forming part of the 1963 Compulsory Purchase Order [Above]



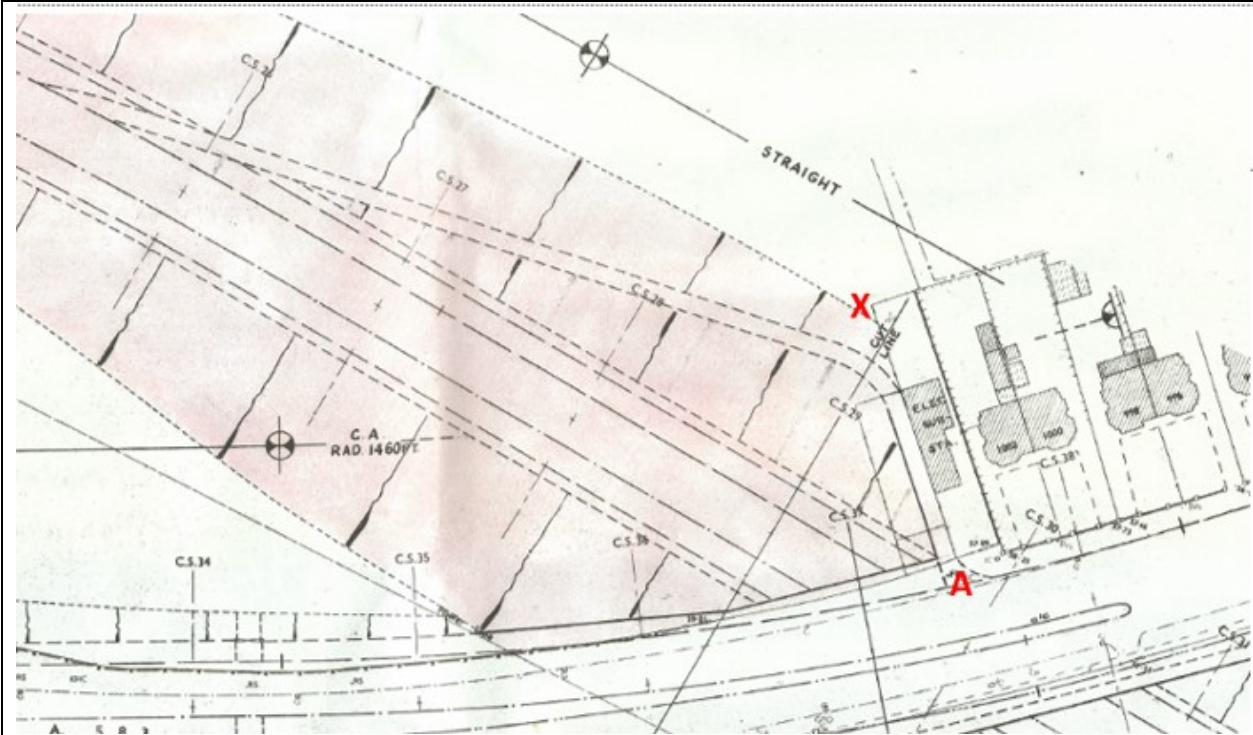
Extract of plan deposited with the 1972 Conveyance [Above]



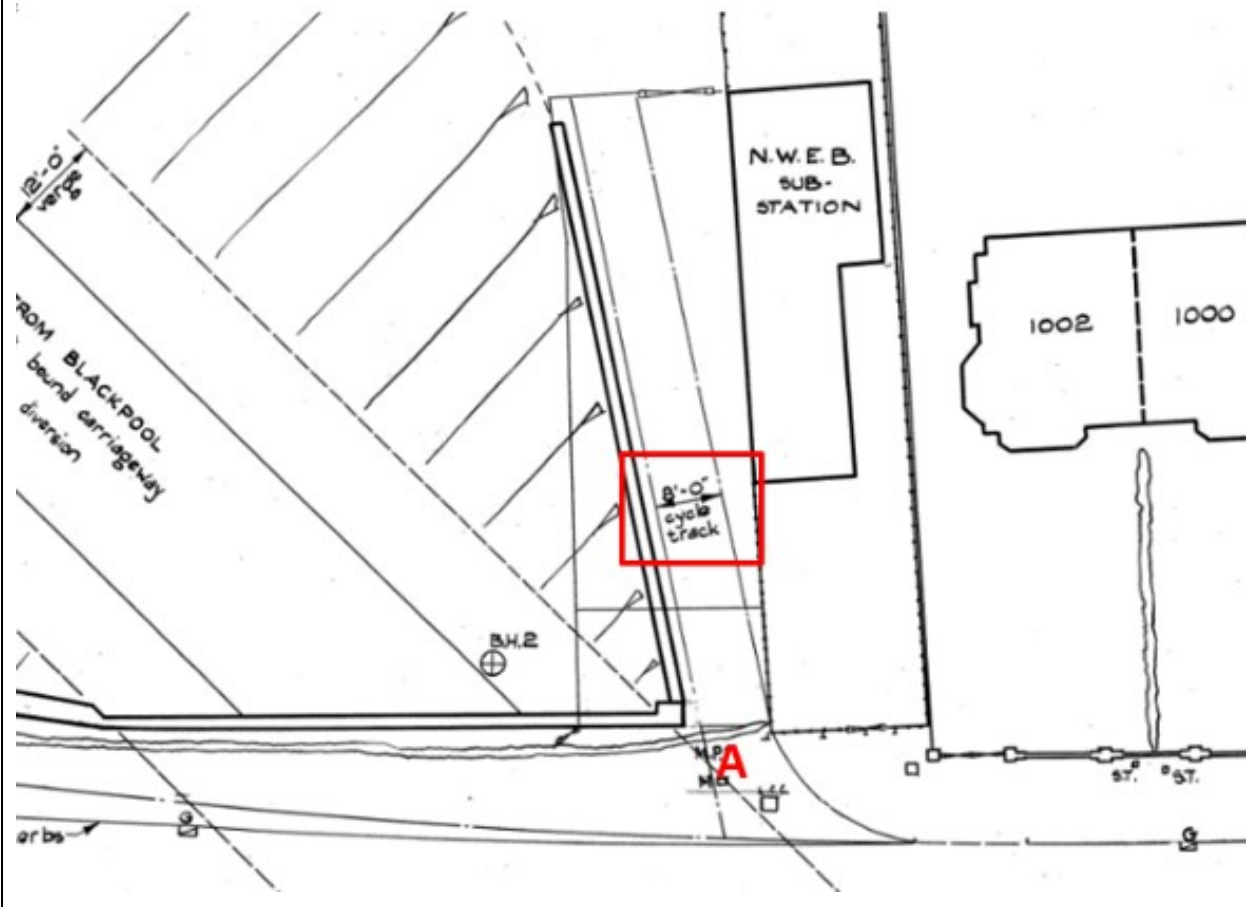


Enlarged extract of plan deposited with the 1972 Conveyance [Above]





Drawing dated 1963 of proposed road included in Compulsive Purchase Order made in the same year [Above]



<b>JAMES DRAKE, C.B.E.,</b> <b>B.Sc., M.I.C.E., M.I.Mun.E., P.P.Inst. H.E.,</b> <b>COUNTY SURVEYOR &amp; BRIDGEMASTER,</b> <b>COUNTY HALL, PRESTON.</b>  <b>DATE :-...November...1963.....</b>	<b>SHEET NO.</b>
	<b>DRAWING NO.</b> <b>653/4 01</b>

Plan obtained from LCC Bridges Team dated 1963 [Above]



Google Street View 2009 [above]

<p>Observations</p>		<p>In 1963 an Order was made to allow Lancashire County Council to acquire by compulsory purchase land required for the construction of the A583 (Riversway) referred to at that time as the Ashton By Pass Watery Lane Diversion. Part of the field across which the application route runs was included in the Compulsory Purchase Order and plans of the proposed road show that the land purchased from Sir Henry De Hoghton at that time to allow for the proposed road to be built included the strip of land adjacent to the electric substation at point A.</p> <p>One plan included with the Order shows the proposed road layout with what appeared to be a walkway starting at point A running adjacent to the electricity substation (along the application route) and then turning to descend in a west north westerly direction across the cutting to</p>
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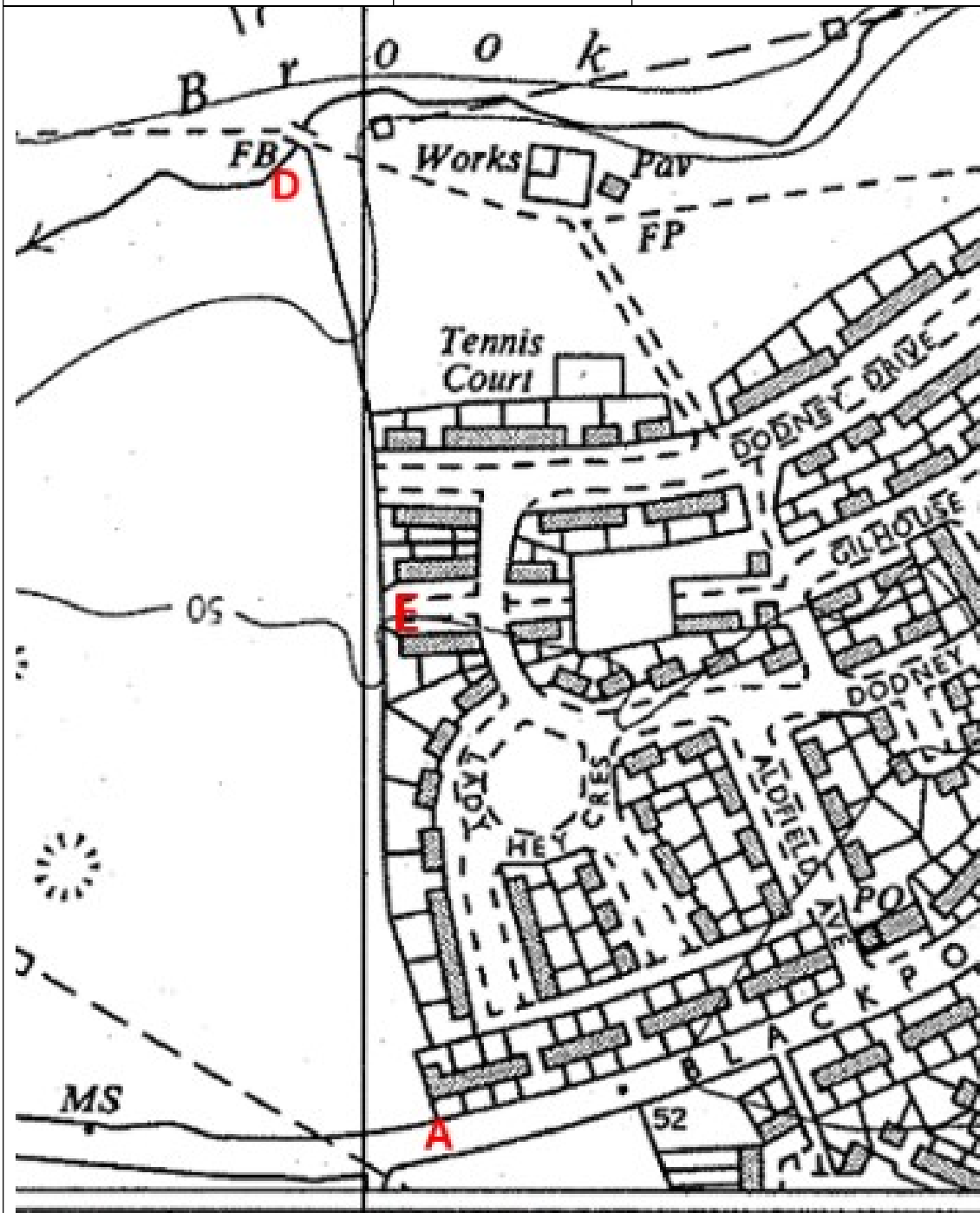




		<p>meet the proposed road at ground level.</p> <p>A further plan dated 1963 obtained from LCC Bridges team shows that the walkway was in fact a proposed cycle track.</p> <p>A conveyance dated 1<sup>st</sup> September 1972 and deposited in the county council deed room details the sale of the land by Sir Henry De Hoghton to Lancashire County Council including the narrow access strip crossed by the application route at point A.</p> <p>Neither the Compulsory Purchase Order nor the Conveyance referred to the existence of any existing public rights along the application route.</p> <p>When the road was finally built the ramped cycle track which started at point A was not constructed but a strip of land was left open and accessible providing access along the application route from point A between the fencing surrounding the electricity sub station and the metal safety barrier located along the edge of the bridge (see 2009 photograph above).</p>
Investigating Comments	Officer's	<p>When land affected by the construction of the new road and associated bridge was purchased there was no indication that construction would affect or interfere with access to or along a historical public right of way and no reference to any use being made of the route via point A at that time.</p> <p>Plans drawn up for the construction of the road in 1963 included the construction of a cycle track commencing at point A which would have provided access along a ramped access to Riversway. This was never built and the narrow strip of land between the bridge structure and electricity sub station appears to have been left open at point A allowing access to the field along which the application route runs. Farm access to that field however appears to be via Riversway and Old Lea Hall occupation bridge which is located further west off Riversway.</p>
<b>6 Inch OS Map Sheet 43SE</b>	1965	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This



map was revised 1960-1961 and published 1965.



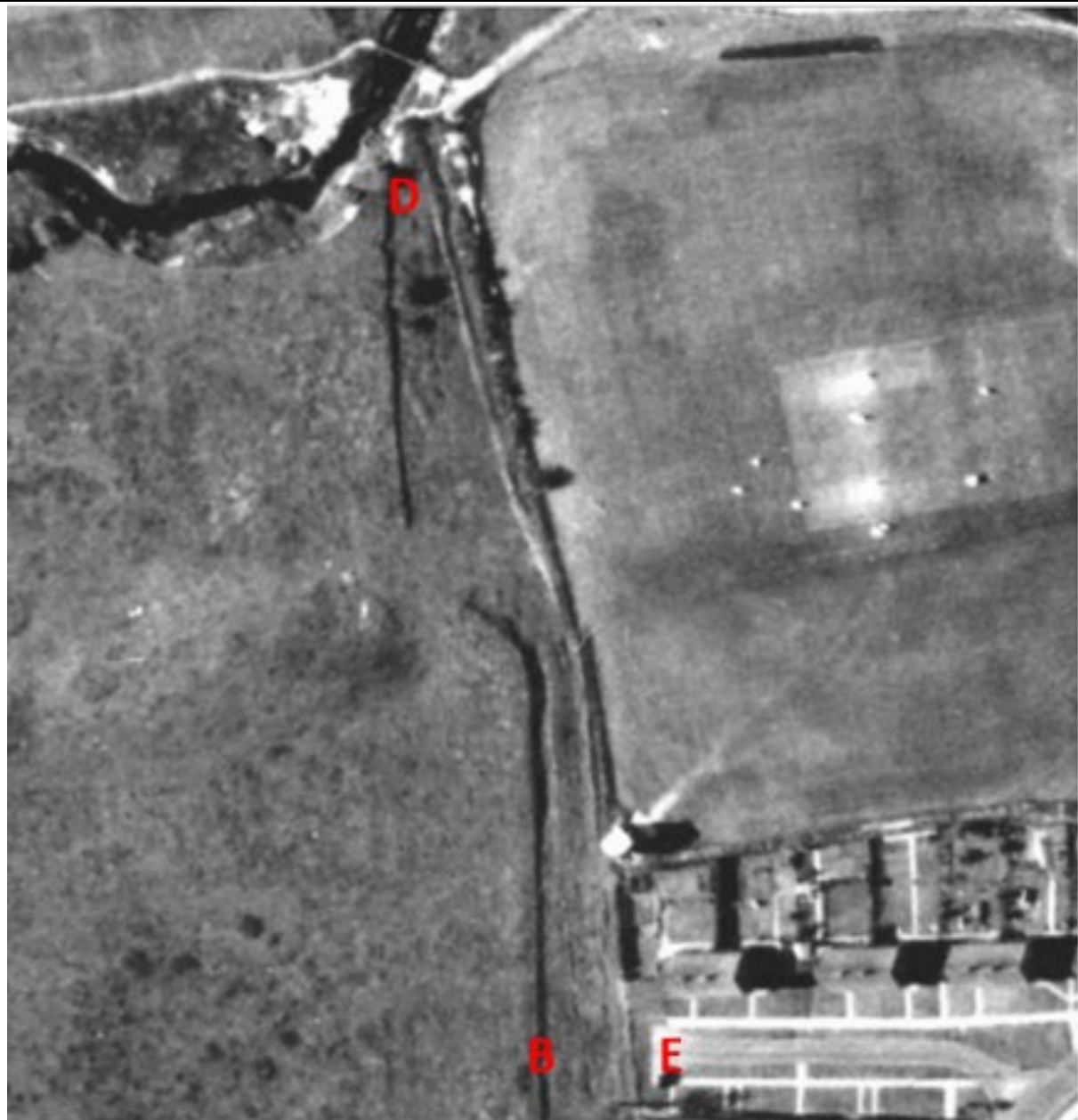
Observations		The map predated the construction of Riversway. Neither the historical route nor the application route are shown.
Investigating Officer's Comments		The application route did not exist in 1960-1961 and there is no indication that the historical route still existed either.
Aerial photograph	1960s	Black and white aerial photography



available to view on GIS and flown during the 1960s. The coverage is a mosaic of various flight runs on the following dates: 12-13th May 1961, 1st Jun 1963, 3-4th June 1963, 11th June 1963, 13th June 1963, 30th July 1963, 13th June 1968. The majority of images are from 1963, with the 1961 images mainly covering West Lancashire district, and the 1968 images mainly covering Ribble Valley district.







Observations

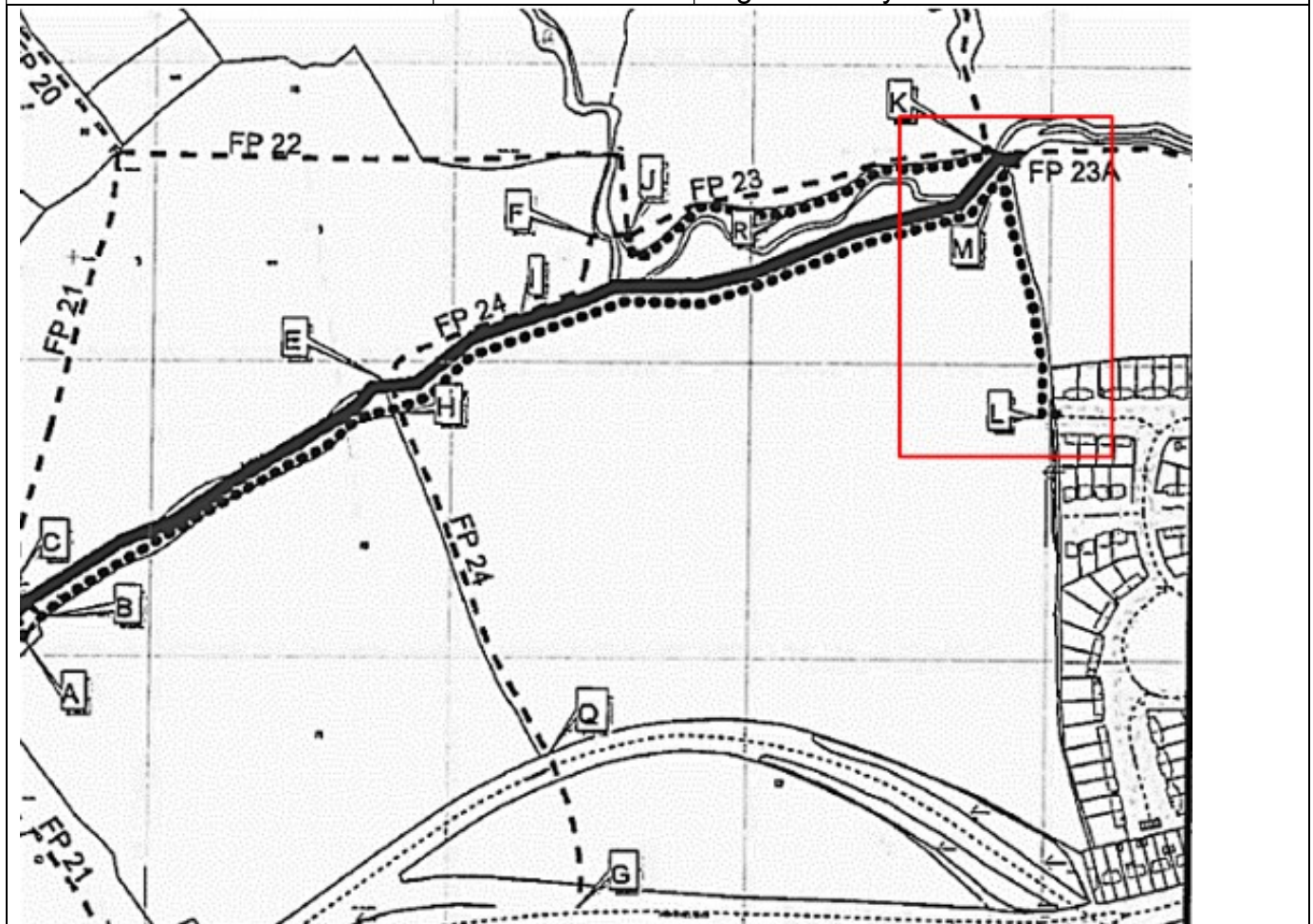
The aerial photograph taken in the 1960s is of much better clarity than that taken in the 1940s.

There is no visible access into field at point A adjacent to the electric substation and access to the fields is much further west along Blackpool Road (not shown on aerial photograph extracts above).

Of interest is the fact that dark lines can be seen that mirror the western boundary of the historical route for a significant length between point A and point D and the application route under consideration roughly follows the remains of this boundary along most of the length from



		<p>north of the electricity substation at point A to point B and then runs within the boundaries of the old route between point B and point D.</p> <p>A possible route is shown from North Syke Avenue accessing the field north of point E and continuing through point D and a route may also have existed along the back of the houses for a short section going south from point E.</p>
<p>Investigating Officer's Comments</p>		<p>The remains of the historical route can be seen along a substantial stretch of the route between point A and point D. several narrow sections of trod are visible along parts of the application route which may indicate that there was some renewed use of the route. Such trods may however have been created by livestock or by private use so little inference can be drawn with regards to the existence of public rights.</p>
<p><b>Millennium Ribble Link</b></p>	<p>2003</p>	<p>Correspondence found on LCC Public Rights of Way File for Lea.</p>



Reference Points	FP Number	Issue	Possible Solution	Suggested organisation/persons responsible for modification and any additional works that may be required
L - M	-	It is evident that this path is well used and could be considered to be a useful addition to the definitive map. This may assist with the justification of the extinguishment of PF 24, as it provides a link from the south of Savick Brook to highway network that links with Blackpool Road.	HA80 S 25 Creation of a Public Footpath by agreement of the landowner.	Owner of the field
O - N	FP 21	The line of the footpath marked on definitive map terminates some 20 metres to the south	HA80 S 119 diversion of a section from O – N to	Land owner

#### Observations

A scheme to connect the Lancaster Canal to the rest of the inland waterway network was devised to canalise the Savick Brook at the southern end of the waterway. Work started in December 2000 and the Link opened to navigation in July 2002. The section of Savick Brook affected was that close to the application route and several recorded public footpaths in that area were affected.

Following the opening of the Link a letter was found on the LCC Lea Parish File addressed to British Waterways sent by the county council's public rights of way public path order officer.

The letter contains details of a site visit that had been carried out by the officer to consider the current pedestrian access along and across Savick Brook and suggests possible options for British Waterways to consider with regards to reinstating, diverting or extinguishing public footpaths that had been affected by the work.

A plan showed route under consideration linked to a table that provided issues, comments and possible solutions.

The application route from North Syke Road through to the route now carrying the Guild Cycle Wheel (E- B-C-D) was shown on the plan and referred to in the table.

The LCC Officer that had been on site commented that in 2003 it was evident that the application route (E-B-C-D) was well used and could be a useful addition to the public rights of way network. It was suggested that agreement to create the route as a public footpath could be pursued with the landowner.

No further information suggesting that this particular suggestion was pursued by



Investigating Officer's Comments		British Waterways was found on the file. The information supports the user evidence submitted as part of this application in that it was clearly evident that there was use of the application route E-B-C-D in 2003. No reference is made to the application route A-B although so no inference can be drawn in this respect.
<b>Aerial Photograph</b>	2000 - 2020	Aerial photograph available to view on Google Earth Pro.



2000 [Above]







2000 [Above]





2000 [Above]



2000 [Above]



2000 [Above]





2002 [Above]





2002 [Above]





2002 [Above]





2002 [Above]





2009 [Above]







2009 [Above]





2009 [Above]





2017 [Above]





2017 [Above]





2017 [Above]





2020 [Above]



2020 [Above]

Observations

The first set of aerial photographs were taken in 2000 – three years before the 20-year user evidence period under consideration below. The photographs show access onto the application route at point A. There is no obvious walked route but the strip of land between the highway fencing and electric substation appears to be accessible. A faint light line suggestive of a trodden path can be seen along the edge of the field down which the application route runs, and the line becomes much more visible part way between point A and point B continuing through to the approximate position of point C in the corner of the field where the visible pathway curved west to continue along the south side of Savick Brook consistent with the route of the Guild Wheel Cycleway. A faint route can be seen between point C and point D leading towards the bridge over Savick Brook and a trod can be seen from point E passing through what appears to be a gap in the hedge where the current stile is situated and then going north to meet the

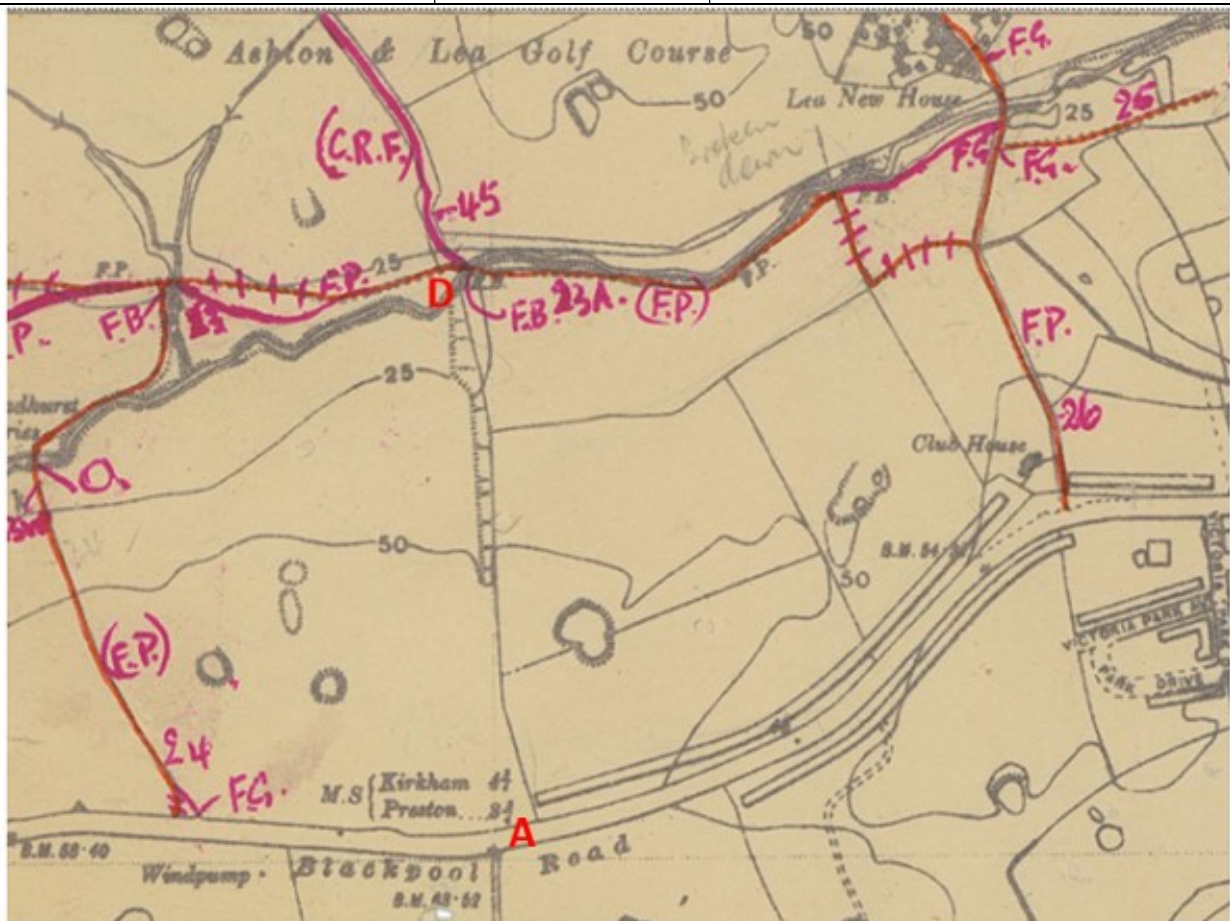


		<p>application route further north than point B. Another trod can be seen from close to point A following along the edge of the field running parallel to Riversway.</p> <p>In 2002 the full length of the application route appeared to be capable of being used and there was what appeared to be a well worn track consistent with the application route for over half the length leading to point D. Access from North Syke Avenue appeared to be available and work had taken place along Savick Brood west of point D with a clearly visible track of a width and character to suggest recent vehicular use existing to point D.</p> <p>In 2009 the application route is much more visible along the full length and the cycle route that links to the application route at point D is clearly visible.</p> <p>By 2017 the cycle route – which opened as part of the Guild Wheel in 2012 – was clearly visible and appeared to have a tarmac surface. The application route could still be seen running along the edge of fields that appeared to have been ploughed and planted.</p> <p>In 2020 the application route was still visible as a trodden line.</p>
<p>Investigating Officer's Comments</p>		<p>In 2000 it appears that there were several routes along the edges of the field through which the application route runs. Whilst the route visible varies slightly from the application route the photograph does provide evidence of use of a route from A-D and a link from North Syke Avenue.</p> <p>In 2002 there is evidence that work had been carried out along Savick Brook and the application route was more clearly visible linking to the track at point D.</p> <p>The route was consistently visible in 2009, 2017 and 2020 supporting the user evidence submitted with the application.</p> <p>Inspection of the photographs in sequence suggests that use of the route increased from 2000 through to 2020 possibly as a result of the improvements made along Savick Brook and provision of the Guild Wheel Cycle route.</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</p>





		<p>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 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>

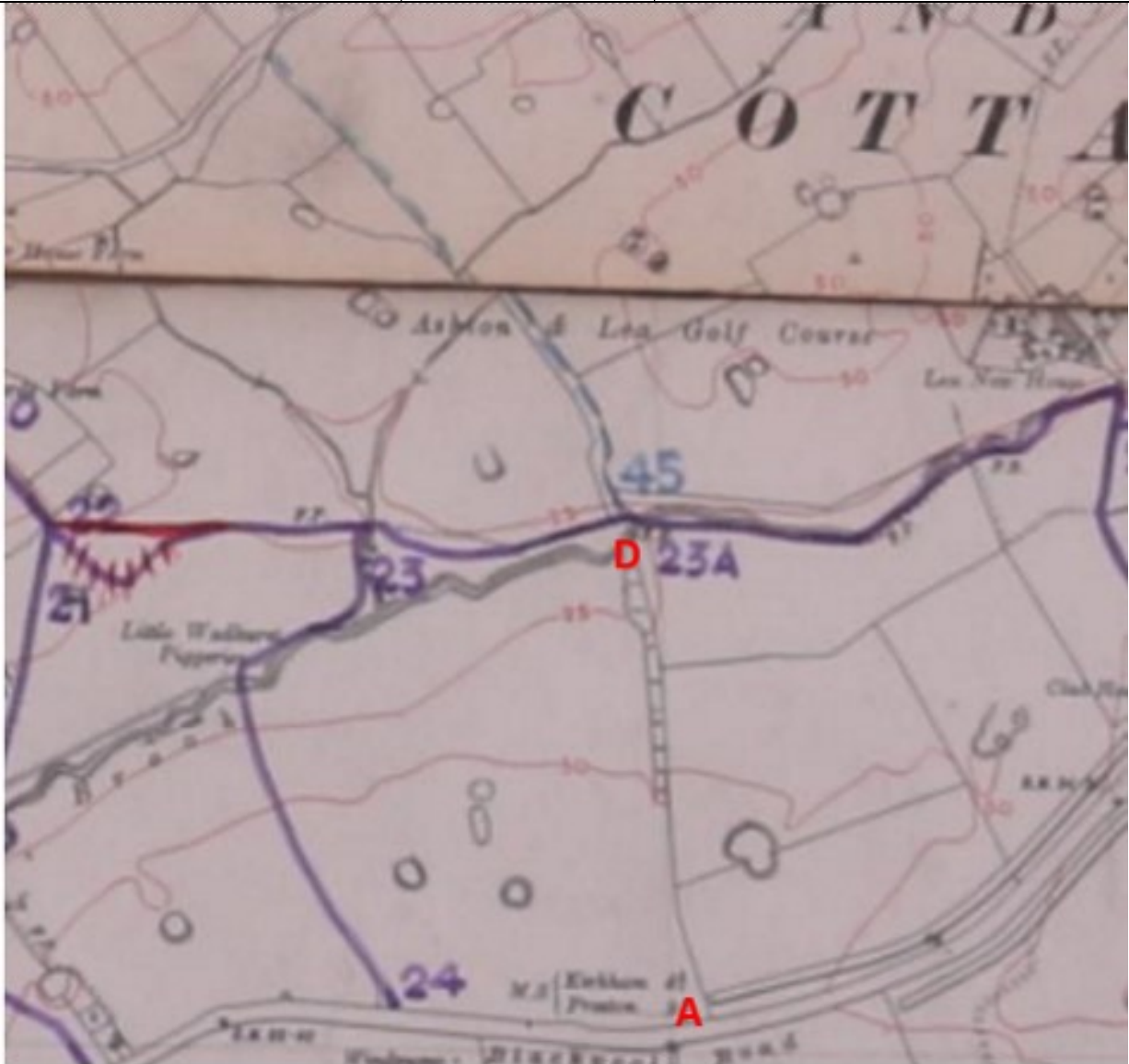


DISTRICT	<i>Preston Rural</i>	PARISH	<i>Lea</i>	No.	<i>45</i>
MAP SHEET No.s	<i>3 + 1.</i>	LENGTH	miles (to two decimal places)		
BRIEF DESCRIPTION (Field F.P. or otherwise)					
<i>C.R.B. Green Lane or cart road. (known locally as "Roman Road")</i> <i>(crosses part of Ashlin &amp; Lea Golf links)</i>					
SHEET 3 DETAILED DESCRIPTION (giving starting point, means of passage and general condition).					
<p><i>Starts at junction with F.P. No. 23<sup>23A</sup> at tubular steel bridge over Savick Brook. Path runs in north to north-westerly direction, level for a few yards, then uphill between banks with intermittent thorn bushes &amp; trees. Path keeps to left hand bank part of way up hill as middle of grass road very overgrown. On crest of hill grass mown short and path crossed by path made by golf club. Continues downhill to rough grass near boundary of golf course beyond which path obstructed by thorn bushes &amp; small trees overgrowing ditch which has stone slabs across it (SHEET 1). Stone gate posts here are evidence of passage over ditch at some time. From obstruction path continues in same general direction with continuous thorn fence on left and intermittent thorn hedge on right - giving access to path for cattle in pasture on right. Path was boggy <del>and</del> rutted in patches and nearly overgrown at one point by brambles. Rising over another slight ridge then dropping gradually path ends at Darginson lane where access to road obstructed by barbed wire fence. There is evidence that this green lane was used as a cart road by farmers going to &amp; from Preston. Repeated requests have been made to the Parks Council to have this path made passable.</i></p>					
SURVEYED BY: <i>R. HALL.</i>					
Date <i>June 1951</i>					
50000 F39 450					

<p><b>Observations</b></p>		<p>The application route was not recorded on the Parish Survey Map for Lea. The continuation of the route north of Savick Brook was recorded on the card as a Cart Road Bridleway (C.R.B) and described as a green lane or cart road which was known locally as 'Roman Road' but on the map shown as Cart Road Footpath (CRF). The route is described in detail as being overgrown and obstructed. It was also noted 'There is evidence that this green lane was used as a cart road by farmers going to and from Preston.' Although there is no specific reference to the application route there is no other route shown which appeared to have formed part of the cart road described as providing vehicular access to and from Preston unless via the route numbered as Footpath 23A.</p>
<p><b>Draft Map</b></p>		<p>The Parish Survey Map and Cards for Lea 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</p>



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.



44	Footpath	Lea road (near station) to Darginson Lane	0.27
45	Road used as public path	Jct. with footpaths 23 and 23A to Darginson Lane	0.36
46	Footpath	Jct. with footpath 28 at Thorntrees Avenue to a point 227 yards southward	0.15

Observations

The application route was not recorded on the Draft Map and there were no representations made regarding the fact that it had not been included. The route numbered 45 on the Parish Survey Map was recorded as a Road used as public



		path.
<b>Provisional Map</b>		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The application route was not shown on the Provisional Map of Public Rights of Way and there were no representations made to the fact that it was not shown.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was not recorded on the First Definitive Map.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		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.





Observations		The application route is not recorded on the Revised Definitive Map (First Review).
Investigating Comments	Officer's	The application route was not considered to be a public right of way that should be recorded on the Definitive Map from the early 1950s through to the 1960s.
<b>Reclassification of Road Used as Public Path 45 Lea</b>	1992-1995	Order made under the Wildlife and Countryside Act 1981.
Observations		<p>The continuation of the historical through route north of Savick Brook was originally recorded as a RUPP (Road Used as a Public Path) on the First Definitive Map. Surveying Authorities were required to reclassify all routes designated as RUPPs under provisions set out in the Wildlife and Countryside Act 1981 because the original classification of these routes was found to be confusing. The County Council made an Order in 1992 to reclassify the route as a public bridleway.</p> <p>Objections were received to the Order and following a public inquiry in 1995 the Order was confirmed but modified by the Planning Inspector to record the route as a footpath.</p>



<p>Investigating Comments</p> <p>Officer's</p>		<p>It is not known why only the section of the historical route from Blackpool Road to Darkinson Lane was recorded on the Definitive Map in the 1950s but it is possible that this was a reflection of the fact that the route south of Savick Brook had fallen into disuse and was no longer shown on the OS mapping.</p> <p>Details of the investigations carried out leading to the reclassification of the route north of Savick Brook could not be found so no inference can be drawn with regards to the historical status of the longer through route (the application route).</p>
<p><b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b></p>	<p>1929 to present day</p>	<p>In 1929 the responsibility for district highways passed from rural district councils (and later from urban district and borough councils) to the County Council. For the purposes of the 1929 transfer, public highway 'handover' maps were drawn up to identify all of the rural district-maintained highways within the county. These were based on existing Ordnance Survey maps and coloured to mark those routes that were publicly maintainable by the rural district council. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 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>





<p>Observations</p>		<p>From point A to point X the application route is shown on the adoption plan as being adopted. This corresponds to the land in the ownership of the County Council.</p> <p>The remaining length of the application route is not recorded as being adopted.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>The fact that the application route – with the exception of point A to point X, is not recorded as being publicly maintainable does not mean that public rights do not exist so no inference can be drawn in this respect.</p> <p>The fact that A-X is recorded as adopted may reflect the fact that it was originally proposed to create a cycle track along this section and is on land purchased by the county council as part of the construction of Riversway.</p> <p>It is not certain whether this section A-X</p>



		could still be considered highway land – the cycle track scheme has long been abandoned. We are taking the view that it is Lancashire County Council land but not highway for the purposes of this report.
<b>Highway Stopping Up Orders</b>	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No legal orders stopping up, creating or diverting legal rights along the application route have been found.
Investigating Officer's Comments		If public rights do exist along the application route they do not appear to have been stopped up.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		<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</p>





		effectively brought the status of the route into question).
Observations		No Section 31(6) deposits have been lodged for the land crossed by the application route.
Investigating Comments	Officer's	There is no indication by a landowner of non-intention to dedicate a public right of way over the application 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.

## Summary

The application submitted was based on modern user evidence and no historical maps or documents were submitted.

Although based on the submission of modern user evidence, as part of the county council's investigations we still examine a range of historical maps and documents to try to determine when a route may have first come into being and what its status may be.

In this instance it appears that a route existed consistent with the application route A-X-B-C-D in 1786. The route – which formed part of a longer through route between Blackpool Road and Darkinson Lane – was shown as a cross road on Yate's Map of 1786, Greenwood's Map of 1818 and Hennet's Map of 1830 suggesting that it was considered to be a substantial through route capable of being used by the public at least on horseback and quite possibly with vehicles at that time.

Following on from this the route was clearly shown on the Tithe Map in 1838 where it was not numbered. It appeared capable of being used – at least on horseback – but there was no specific information provided on the Map or in the Tithe Award confirming the view that it was considered to be a public vehicular route at that time.

It was again shown on the First Edition 6 inch OS map surveyed 1844-45 as a substantial bounded through route and was also shown as a road on the first edition 1 inch OS Map used to compile the Cassini historical map included in the report.

In the later half of the nineteenth century however it appears that use of the route probably declined and by 1890-1891 (as shown on the First Edition 25 inch OS map) the route between points A-D is no longer shown as a route fenced on either side (bounded) but as a footpath (F.P.) which ran along the eastern boundary of a field and which continued across Savick Brook via a footbridge with no evidence of a ford which had previously existed.

Later maps examined show no trace of the route and in 1941 the electric substation is shown across part of the width of the historical route at point A.



The housing estate to the east of the route was built in the 1940s – including North Syke Avenue. Aerial photographs taken in the 1940s and 1960s show the remains of the width of the historical route along the field edge but neither the photographs nor maps published between the 1940s and 1970s provide evidence of a trodden route.

When land was purchased by Lancashire County Council following the making of a Compulsive Purchase Order in 1963 there was no reference to any existing public rights along the application route. Plans drawn up in respect of the road and bridge to be constructed showed that it had originally been intended to construct a cycle track starting at point A which would have provided ramped access down onto Riversway. This was never built but a strip of land from point A remained providing access to the field and along the application route.

Photographic evidence from 2000 onwards supports the user evidence in that it appears that use of the application route A-D and also of the link from North Syke Avenue E-B was being used again by that time – and that use was likely to have increased over time particularly when work was carried out to develop the Millennium Ribble Link between 2000-2002 and an Officer from the County Council made specific reference to the application route E-B-C-D being apparent on the ground in 2003.

The path alongside the Millennium Ribble Link (Savick Brook) was further improved and became part of the Guild Wheel Cycleway which opened in August 2012 – and further appeared to increase the use of the application route as access to and from the cycleway – which is also heavily used by walkers.

In conclusion it appears that there is evidence that a historical public route existed on A-D by at least 1786 and that it remained as a route which appeared to be capable of being used on foot, horseback and with vehicles until at least the mid-1800s. The consistency of the mapping evidence suggests it was available and used by the public at least on foot and horse up until 1890s as a through route connecting to the Blackpool Road (which was a toll road) and from this dedication can be inferred. However the Tithe Map north of the brook is not supportive of public vehicular status and we have no other later evidence, such as from Bartholomews or Finance Act 1910, which might support vehicular status.

As such, it appears that the user evidence presented with this application could be considered to be modern use of an old route that already existed which then fell out of use and started to be used again many years later. If that is the case, it appears that the full width of the bounded route shown on the first edition 6 inch map should be recorded as bridleway.

The more modern link B-E physically exists on the ground with evidence of modern user on foot (provision of a stile and a trodden route consistent with pedestrian use) suggesting that this route came into being since the construction of North Syke Avenue in the 1940s.

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

### **Landownership**



All of the land crossed by the application route is in private ownership.

### **Information from the Applicant**

Map of the application route accompanied by photos of the access points

Enlarged map of the application route

Letters from members of the public

A petition list of those who know the application route

A letter from the Parish Council acknowledging the application route

### **Information from Others**

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

Atkins Global responded to the consultation stating they do have apparatus within the vicinity of the application route.

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

A petition list was provided by users of the route, however the information given was the names, addresses and the date they signed the petition. There was no other information provided apart from several comments in support of the application route:

- Too many houses are going up where people walk.
- Footpath has been in use since 1978, and is a well used right of way.
- Green spaces are in need of protection.
- One user stated they have used the path for over 50 years.

Further support of the application was provided in the form of a table showing the name, address and how many years these people have used the application route. The years range from as much as 62 years to as little as 5 years. However no information was provided on what part of the application was used, how frequently it was used and other information normally available in a user evidence form.

### **Information from the Landowners**

Consultation responses/information from the landowner(s)

One landowner responded to the consultation and stated they had no objection.

Another landowner's agent responded to the consultation stating almost the entirety of the application falls within their ownership and provided a plan to reflect the same. The landowner's agent went on to provide the following comments on the application and the evidence submitted in support of it.

1. An attached copy of the planning decision notice granting approval of reserved matters on the same site which was issued on 11 July 2023. A copy of the approved planning layout was provided.



2. The proposed alignment of the application route conflicts with the landowner's approved layout as currently indicated on the public right of way mapping.
3. The landowner will enable access from Blackpool Road to the Guild Wheel in numerous locations throughout the scheme, which includes a footpath connection to North Syke Avenue similar to that of the application route. These routes will be adopted and lit including that of the existing Public Right of Way to the east which will be improved and resurfaced as part of the development.
4. An Approval of Reserved Matters correspondence from Preston City Council.

The landowner's agent believes the modification order would not be required given the development will provide an alternative route along with additional accesses throughout the development.

### **Assessment of the Evidence**

The application is to record the route which has already become a footpath in law and should be recorded on the Definitive Map and Statement.

There is no express dedication and so Committee is asked to consider the evidence for deemed dedication under s.31 Highways Act 1980 or inferred dedication at Common Law.

Considering first of all the inference of dedication at Common Law. Committee is advised to consider whether evidence from the old county maps and other documentary evidence coupled with the evidence on site and all circumstances together with user evidence indicate whether the route should be recorded as having public rights in law.

Committee will note that the application route bar B-E has existed since 1786 and was considered to be a substantial through route capable of being used by the public at least on horseback and quite possibly with vehicles at that time.

Although the application route A-D is no longer shown on the OS map of 1909 and thereafter not shown on subsequent maps up until around 2000 it suggests the route may have declined in use or have become dis-used. From 2000-2002 it is suggested that use of the historical route seems to increase again and the application route can be seen on the aerial photographs although the historical width is restricted at Point A due to the electricity substation having been built in 1941.

On balance, it is suggested that the historical map and documentary evidence is considered to be sufficient from which public rights could be inferred for the route A-D and that the evidence suggests the existence of a historical route used at least on horseback.

Committee will also note that following the Compulsory Purchase Order by Lancashire County Council for the construction of the A583 between 1963-1972 known as Riversway, a small strip of land at Point A had been left which had initially



been planned for a cycletrack. Committee will note no action had been taken by Lancashire County Council to date to prevent access onto the land from Point A.

The letters in support provided by the applicant provide details of a historical landowner James Goodyear who was the farmer who had allowed access into his field from North Syke Avenue and provided stiles along the route. The present land owners for the majority of the route have owned the land since 2012 and on balance the evidence suggests they had also taken no overt action to stop use along the route or put notices up prohibiting use by the public.

The section of the route B-E is not shown on the historical maps considered by the officer and instead seems to have come into existence to provide access to and from North Syke Avenue once the houses were built on North Syke Avenue in 1940. It may have been possible to access the application route from Point E at this time. It is suggested to committee that it appears there was no clear actions taken by any land owner and use by the public continued over several years which is evidenced from the information from the applicant. Committee will note that limited weight should be placed on this information as the users are not asked about whether they used the route with permission, force or secrecy however; on balance there may be sufficient evidence due to the land owner facilitating access by providing a stile and taking no overt action from which to infer dedication at common law for section B-E.

Should Committee consider that there is insufficient evidence from which to infer common law dedication of the route, Committee is next advised to consider whether deemed dedication under S.31 Highways Act 1980 can be satisfied. Committee will be aware that in order to satisfy the criteria of S.31, there must be sufficient evidence of use of the application route by the public, as of right and without interruption, over the twenty-year period immediately prior to its status being brought into question, in order to raise a presumption of dedication. This presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way.

The application route was called into question in 2023, this being the date of the application, the twenty years period therefore under consideration would be 2003-2023.

The evidence in support of the application has not been provided on the standard user evidence forms. Instead, a petition has been provided, this includes the names, addresses and dates of signatures of 61 individuals. Additionally, a further table has been provided with the names, addresses and the number of years the route has been used for 27 individuals and three letters in support of the application have been included. The information provided does not specify during which years the route had been used, the frequency of use, whether the whole route or only part of the route was used or whether the use was as of right. The information does however highlight that the route has been used for a considerable length of time with years ranging from anywhere from 5 to 50 years. Therefore, although it is a significant number of individuals, on balance only limited weight can be attached to this information.

In conclusion, although use is evident from the maps considered and there is evidence of physical use we are not provided with detailed enough user evidence



forms to properly understand the use and under what conditions this took place and the exact years of use therefore deemed dedication under s.31 cannot be satisfied on the balance of probabilities but that it may be considered that the number of witnesses of modern user constitutes a reasonable allegation that public footpath rights subsist.

In conclusion, it is recommended that Committee accept the application as on balance, inferred dedication of public bridleway rights under Common Law can be satisfied for section A-D and public footpath rights under Common Law can be satisfied for section B-E.

### **Implications:**

This item has the following implications, as indicated:

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

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

### **Risk management**

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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-766		Ansar Sadiq, 01772 532435, Paralegal Officer, County Secretary and Solicitors Group, <a href="mailto:ansar.sadiq@lancashire.gov.uk">ansar.sadiq@lancashire.gov.uk</a>
Reason for inclusion in Part II, if appropriate N/A		

