

Regulatory Committee

Meeting to be held on 27 March 2024

Part I

Electoral Division affected:
Lancaster Rural North

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Upgrade of Footpath to Bridleway, Threagill Lane, Warton
(Annex 'A' refers)

Contact for further information quoting file reference 804-651:
Simon Moore, 01772 531280, Paralegal Officer, County Secretary and Solicitors Group, simon.moore@lancashire.gov.uk
Jayne Elliott, 01772 537663, Public Rights of Way Definitive Map Officer, Planning and Environment Group, jayne.elliott@lancashire.gov.uk

Brief Summary

Upgrade of a footpath to bridleway on the Definitive Map and Statement of Public Rights of Way the way known as Threagill Lane, Warton.

Recommendation

- (i) That the application to upgrade part of footpath 1-35-FP8 to a bridleway on the Definitive Map and Statement of Public Rights of Way of Way be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(c) of the Wildlife and Countryside Act 1981 to upgrade part of footpath 1-35-FP8 to a Bridleway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C.
- (iii) That being satisfied that the 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 upgrade to bridleway of part of 1-35-FP8 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 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 consultation.

Warton Parish Council

Warton Parish Council provided no response to consultation.

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.



Point	Grid Reference (SD)	Description
A	5055 7252	Open junction with Borwick Lane between Boon Town Farm and 42 and 42a Borwick Lane
B	5094 7240	West Coast mainline railway passes over the application route via a railway bridge
C	5103 7231	Open junction with A6 Scotland Road directly opposite continuation of 1-35-FP8 which circumnavigates Pine Lake Resort

Description of Route

A site inspection was carried out in September 2020.

The application route leaves Borwick Lane - which runs from the village of Warton to the A6 (Scotland Road) – to pass between Boon Town Farm and two residential properties (42 and 42a Borwick Lane) (point A on the Committee plan).

The application route provides vehicular access to both the farm and residential properties from point A.

The route descends gradually along a tarmac roadway varying between 4-5 metres wide in an easterly direction past the front of the house numbered 42a – opposite which a large open stone surfaced area provides access to the farm buildings and an area on which farm vehicles were parked.

The application route continues past the house on a compacted earth/grass surfaced track bounded on both sides by mature hawthorn hedges with a number of gateways on both sides of the route providing access into the adjacent fields.

The application route continues past the house on a compacted earth/grass surfaced track bounded on both sides by mature hawthorn hedges with several gateways on both sides of the route providing access into the adjacent fields.

The route passes under the railway via a tunnel (point B) and continues along a bounded route – with well maintained hawthorn hedges along both sides - through to an open junction with the A6 (Scotland Road) at point C.

The route was signed as a public footpath at both ends. There was evidence of a low level of use by farm vehicles (tractor tyre marks).

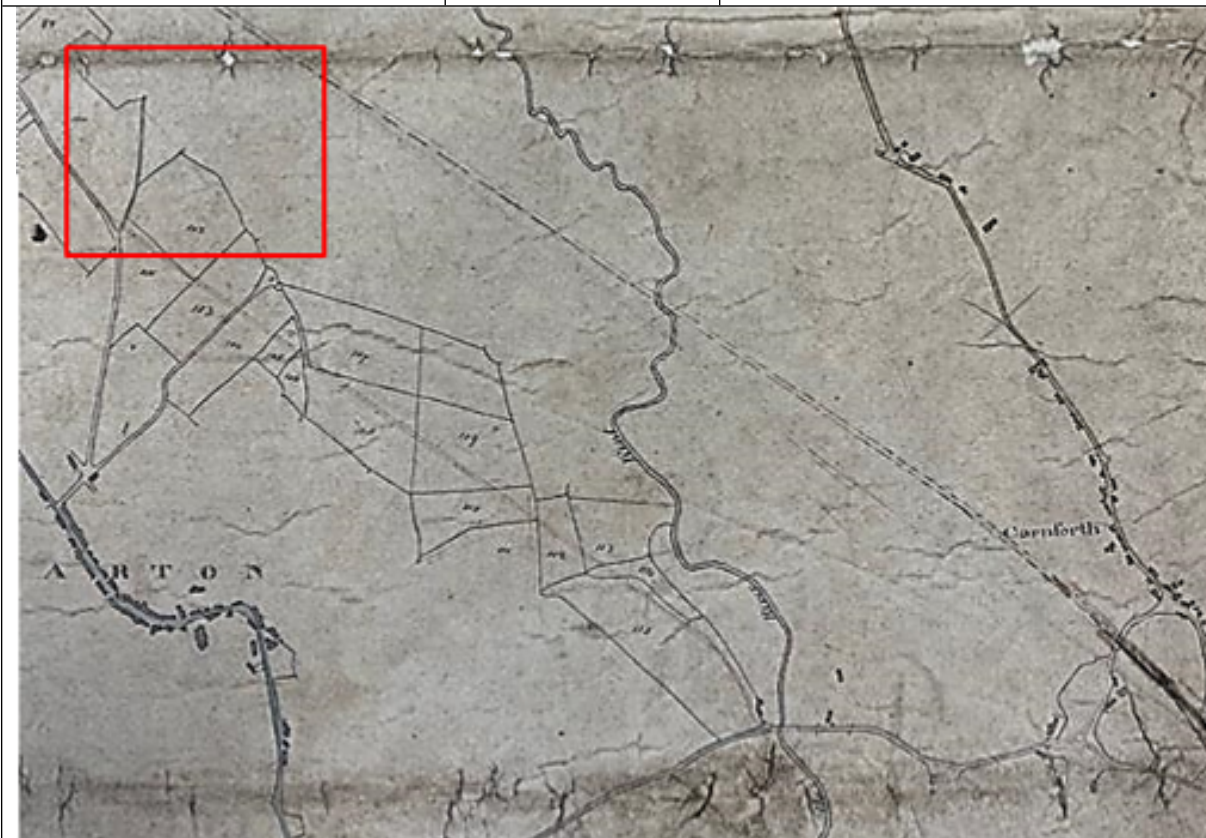
The total length of the route is 550 metres.

Map and Documentary Evidence

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



Document Title	Date	Brief Description of Document & Nature of Evidence
Map of Proposed Turnpike Road from Milnthorpe to Carnforth including alternative through Yealand and Warton CRO Ref: TTK/1	Circa 1817	Found map in Lancashire Records Office of the proposed route of the Turnpike Road from Milnthorpe to Carnforth which was part of the Ulverston and Carnforth Turnpike Trust.





Explanation

*The proposed Turnpike Road from Milnthorpe to
Carnforth Coloured Red*

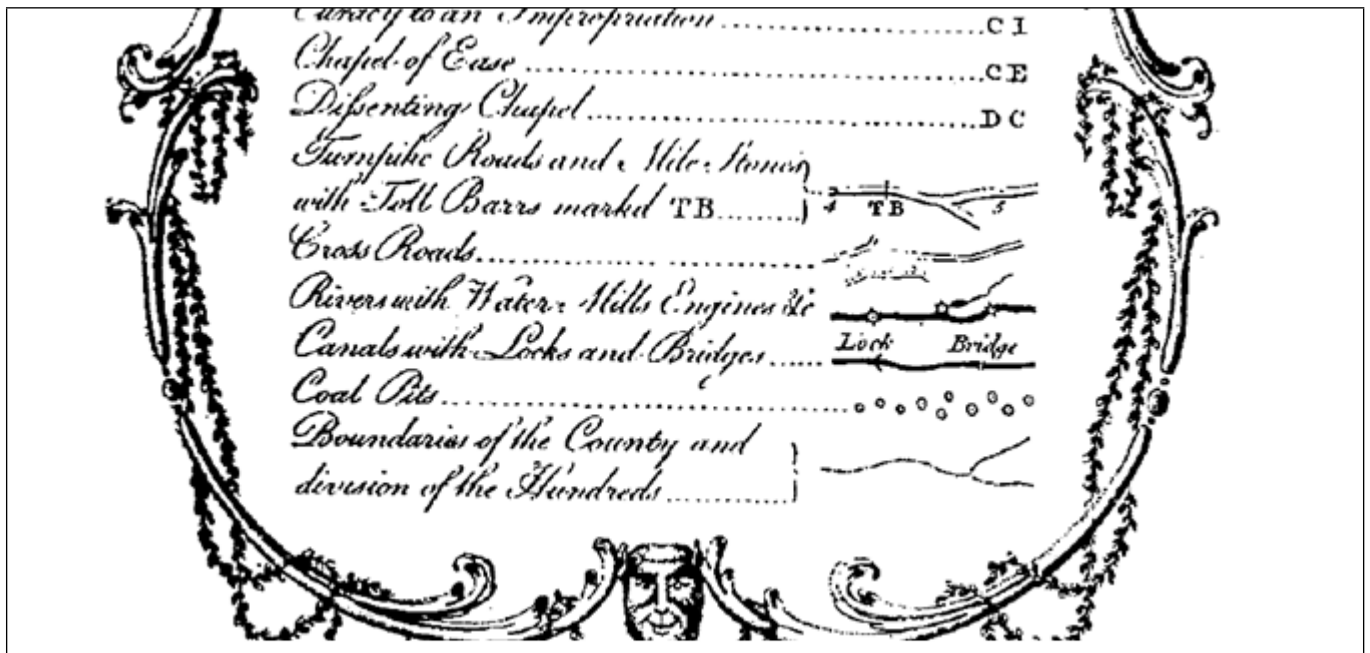
*A Part of the said Road proposed through
Yealand and Warton Coloured Blue*

<p>Observations</p>		<p>The Map was undated but is understood to have been produced in 1817 consistent with the dates of plans and books of reference deposited at Cumbria Records Office (Ref WQ/RDP/109). The plan is quite damaged, and the colouring referred to in the key is difficult to see. The start of the application route is shown on the plan extending from Borwick Lane from point A extending onwards a 'blank' area on the plan.</p>
<p>Investigating Officer's Comments</p>		<p>The Plan provides the earliest evidence found of the existence of the route – at least in part in 1817. The fact that it was</p>

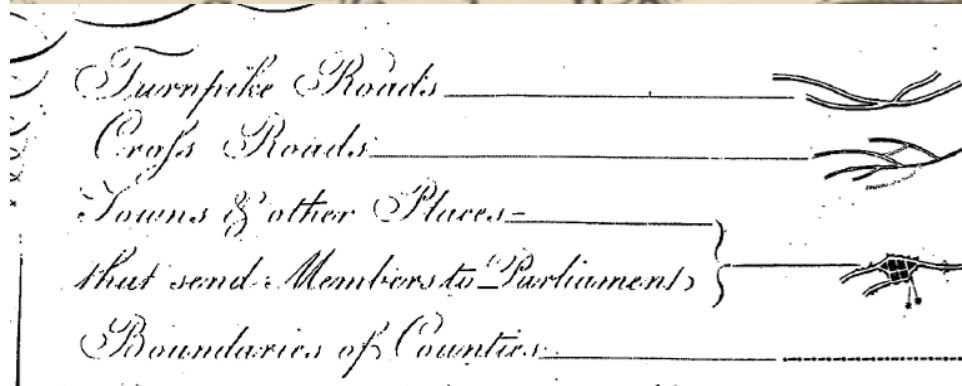


		<p>shown on a map prepared at that time for the purpose of the proposed construction of a vehicular route suggests the existence of a substantial route – possibly used by horse drawn vehicles or on horseback at that time.</p>
<p>Yates' Map of Lancashire</p>	<p>1786</p>	<p>Small-scale commercial map. 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.</p>





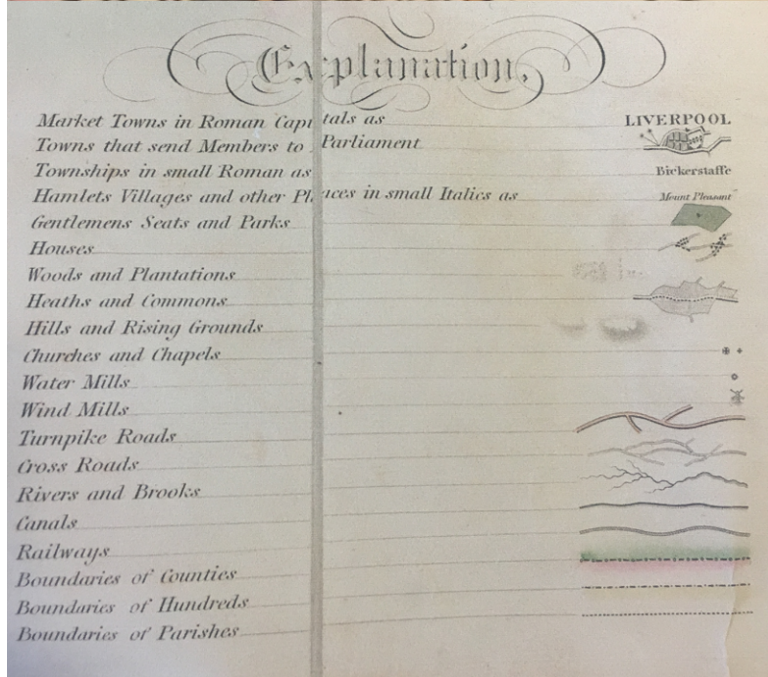
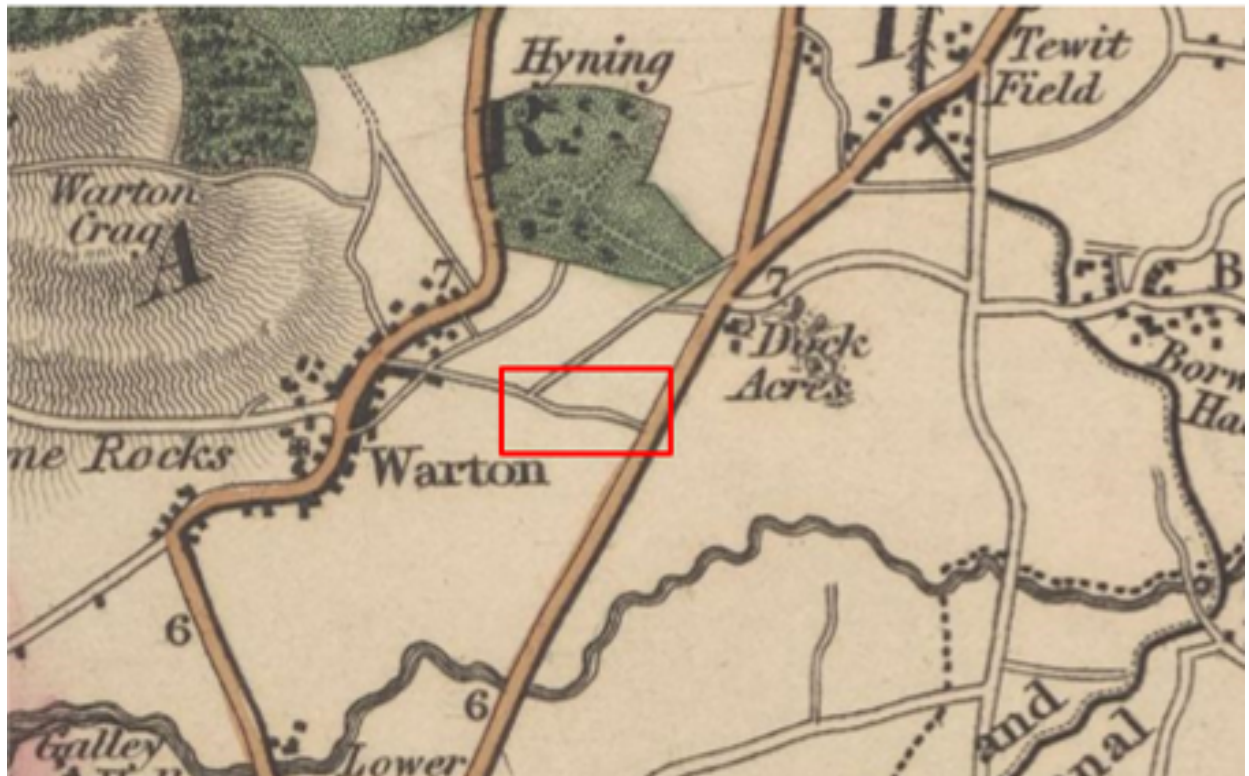
Observations		The application route is not shown. Turnpike Roads are shown running parallel to one another – one extending north from Carnforth through Warton – the other – running north east from Carnforth and then north along what is now recorded as Kellet Lane with Borwick Lane shown connecting the two. The modern day route of the A6 (Scotland Road) is not shown.
Investigating Officer's Comments		The application route (if it existed at that time) was not considered to be a significant vehicular route by Yates.
Greenwood's Map of Lancashire	1818	Small-scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



Observations		The start of the application route is shown extending south east from point A but the rest of the route is not shown. The A6 (Scotland Road) is not shown.
Investigating Officer's Comments		The application route – or part of it - may have existed in 1818 – as indicated by the fact that the start of the route from point A is shown.
Hennet's Map of Lancashire	of 1830	Small-scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 10 miles. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was



generally considered to be the clearest and most helpful that had yet been achieved.

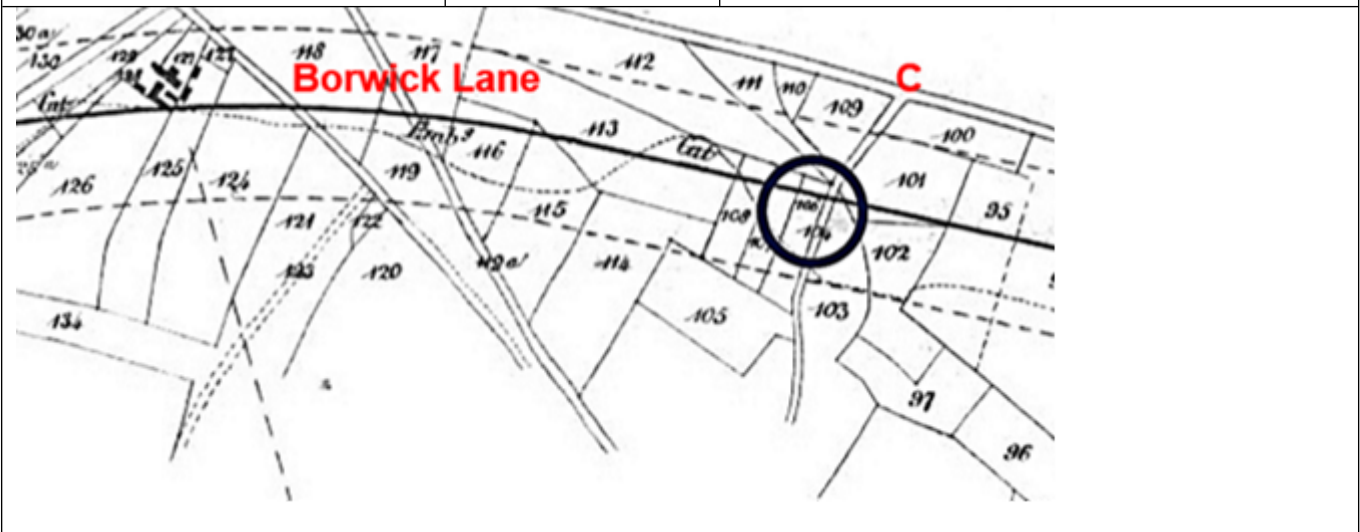


Observations

By 1830 a new section of turnpike road had been built between Carnforth and Tewitfield which was part of the Garstang and Heron Syke Trust Turnpike. The full length of the application route is shown on Hennet's Map between Borwick Lane and the new Turnpike Trust Road. It is shown on the map as a cross road.



<p>Investigating Comments</p>	<p>Officer's</p>	<p>The full length of the application route existed in 1830 providing a link between Borwick Lane and Scotland Road. The route was shown on the map as a cross road and although it is not fully known what is meant by this term the only other category of 'road' shown on the map are turnpike roads. It is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i>).</p> <p><i>Hollins v Oldham Manchester High Court (1995) [C94/0205] Judge Howarth examined various maps from 1777-1830 including Greenwoods, Bryants and Burdetts. Maps of this type, which showed cross roads and turnpikes, were maps for the benefit of wealthy people and were very expensive. There was "no point showing a road to a purchaser if he did not have the right to use it."</i></p> <p>It is unlikely that a map of this scale would show footpaths.</p>
<p>Canal and Railway Acts</p>	<p>1844</p>	<p>Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.</p>



94	ditto.	ditto.	ditto.
94a	Plantation.	ditto.	Edmund Clowes.
95	Arable.	Reverend Robert Gibson as Vicar of Bolton.	Richard Whoraby.
96	Meadow.	ditto.	ditto.
97	ditto.	William Mason.	William Whoraby.
100	Arable.	Reverend Robert Gibson as Vicar of Bolton.	Richard Whoraby.
101	ditto.	William Whoraby.	William Whoraby.
102	Meadow.	ditto.	ditto.
103	Arable.	Edmund Clowes.	William Barrett.
104	Occupation Road.	John Bolden and others.	John Bolden and others.
105	Arable.	James Addison or his Trustees.	William Whoraby.
106	ditto.	Edmund Clowes.	William Barrett.

116	ditto.	Agnes Towson.	John Thompson Thew.
117	ditto.	Reverend William Mason.	ditto.
118	ditto.	ditto.	ditto.
119	ditto.	John Bolden and William Bolden Bolden.	Thomas Askew.
119a	Public Road.	Surveyors of Highway.	
120	Arable.	John Bolden and William Bolden Bolden.	Thomas Askew.
121	ditto.	ditto.	ditto.
122	Plantation.	ditto.	John Bolden.
123	Private road.	ditto.	ditto.
124	Arable.	ditto.	Thomas Askew.
125	ditto.	ditto.	ditto.
126	ditto.	ditto.	ditto.



As to crossing of Turnpike Roads adjoining Stations.

CCLXXIV. And be it enacted, That where the said Railway crosses any Turnpike Road on the Level adjoining to a Station, all Trains on the said Railway shall be made to stop before arriving at such Turnpike Road, and shall not cross the same at any greater Rate of Speed than Four Miles an Hour; and the said Company shall be subject to and conform to and abide by all such Rules and Regulations with regard to such Crossings as may from Time to Time be made by the said Lords of the Committee of Her Majesty's Privy Council for Trade and Foreign Plantations.

Bridges over Roads.

CCLXXV. And be it enacted, That, except as herein provided, every Bridge to be erected for the Purpose of carrying the Railway over any Road shall be built in conformity with the following Regulations; (that is to say,)

The Width of the Arch shall be such as to Leave thereunder a clear Space of not less than Twenty-five Feet if the Arch be over a Turnpike Road, and of Twenty Feet if over a public Carriage Road, and of Twelve Feet if over a private Road :

The clear Height of the Centre of the Arch from the Surface of the Road shall be not less than Sixteen Feet in the Case of Turnpike Roads, and Fourteen Feet in the Case of other public Carriage Roads :

The



Photographs illustrating the difference in width between the bridge constructed at the intersection with Borwick Lane (on the left) and the application route (on the right)

Observations

There were no canals constructed – or proposed to be constructed across land affected by the application route.

Extracts of the deposited plan, book of reference and relevant section of the authorising act which is the Lancaster & Carlisle Railway Act 1844.

The Lancaster and Carlisle Railways Act 1844 provided for the construction of a railway which crossed the application route. This railway is now part of the West Coast Mainline running between Preston and Carlisle. Extracts of the Railway Act, Deposited Plans and Book of Reference were provided to the County Council by Network Rail.

The railway plan shows the application



		<p>route numbered 104. The Book of Reference provides details of who owned and occupied each of the numbered plots of land affected by the proposed railway and a description of the property.</p> <p>Plot 104 was listed as being owned and occupied by John Boldon (and others) and records it as 'occupation road'.</p> <p>The strip plan produced to show the proposed alignment of the railway also shows the proposed railway crossing two further roads to the north (just to the left on the plan). The first of these routes was Borwick Road which was numbered as plot 119a which is detailed in the Book of Reference as a Public Highway.</p> <p>Just to the north of Borwick Lane a further route was shown on the Railway Plan which appeared to be unnumbered. Network Rail assisted the Investigating Officer and provided additional information whereby it was concluded that this route was the one detailed in the Book of Reference as plot 123 which was listed as a Private Road. Further plans provided by Network Rail detail how this route was diverted as part of the construction of the railway so as to avoid the need for a further bridge.</p> <p>The 1844 Railway Act stated that bridges carrying the railway over a turnpike or other public carriage roads should be built to a width of not less than 25 feet and 20 feet respectively, and that occupation routes should be built to a width of not less than 12. Site evidence confirms that in this case the bridge constructed to allow access along the application route was approximately 12 feet wide – as required for an occupation road whereas the bridge built to allow access along Borwick Lane – detailed as being a public road in the Book of Reference – was approximately 20 feet wide as required by the legislation.</p>
Investigating Officer's Comments		<p>The application route existed in 1844 and was identified as being an occupation road in private ownership. This appears to have gone unchallenged at the time and when the railway was constructed the bridge that was constructed provided a passage</p>



		<p>approximately 12 feet wide suggesting that it was built on the basis that it was considered to be an occupation road and not a public road at that time. The railway records provide no information with regards to whether the route was used by the public on foot or horseback at that time. The term 'accommodation road' – is not defined within any relevant legislation but is normally taken to refer to a route constructed to allow an owner or occupier access along it. In this case as public carriage roads were specifically mentioned and accommodate it appears likely that occupation roads were considered to be private vehicular routes although they may or may not have carried lesser public rights (footpaths and bridleway).</p>
<p>Tithe Map and Tithe Award or Apportionment for Warton with Lindeth</p>	<p>1845</p>	<p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p>



<i>Roads Rivers and Waste Ground</i>	127	<i>Wood Mill Watering Place</i>
	164a	<i>Watering Place</i>
	204	<i>Watering Place</i>
	248	<i>Shere</i>
	282a	<i>Quarry Ground</i>
	338	<i>Quarry</i>
	449	<i>Public Watering Place</i>
	458	<i>Public Watering Place</i>
	477	<i>Part of River Shere and</i>
		<i>Waste adjoining</i>
	795	<i>Roads Rivers and Waste</i>
		<i>Ground</i>

<i>Trustees of New Road</i>	<i>William Wilson</i>	257	<i>New Road Toll Bar</i>
			<i>House and Garden</i>
<i>Ulverstone & Carnforth</i>	<i>Themselves</i>	520	<i>Gravel Pit</i>
<i>Turnpike Road (Trustees)</i>		794	<i>Turnpike Road</i>
<i>Madison Richard</i>	<i>Hinsell</i>	454	<i>Burn</i>

Observations

Shortly after the railway plans were drawn up and the enabling Act was passed a Tithe Map and Award was prepared for the parish of Warton in Lindeth.

The railway is shown on the map with no reference to it being the intended line and as such it is presumed that it had been built.

The application route is shown on the Tithe Map as a bounded through route passing under the railway. Between both point A and point B and point B and point C it is numbered 795. Borwick Lane is also numbered as 795 and the A6 (Scotland Road) is numbered 794. On examining the rest of the Tithe Map it was noted that all roads – with the exception of the Turnpike Road - through the parish were numbered 795.

The Tithe Award lists all plots with the number 795 as 'Roads, Rivers and Waste Grounds' with no landowner or occupier listed. The plots numbered 794 were listed as 'Turnpike Road' owned and occupied by the Trustees of Ulverstone and Carnforth



<p>Investigating Officer's Comments</p>		<p>Turnpike Road.</p> <p>The application route existed in 1845 and appeared to be considered to be part of the public road network. It should be noted however that the Tithe Map and Award were produced only one year after the railway records examined above where the route was documented as being an occupation road in private ownership.</p> <p>It is possible that a private ('occupation') route could become a public vehicular route in such a short period of time but it is necessary to consider the evidence available at that time.</p> <p>The purpose of the Tithe Map and Award was to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church and they were not produced specifically to show roads or public rights of way. The application route was a bounded route separate from adjacent fields which would have been capable of being grazed or producing crops. As such, the Surveyors preparing the map and the Commissioners assigned to calculate the tithes to be paid were not necessarily looking in detail at what public rights may have existed. In contrast and bearing in mind it was only a year earlier that the Book of Reference was prepared, the procedures carried out in relation to the purchase of land, construction of a railway across private land and its effect on public and private access routes that crossed it were stringent. The implications of having to build a bridge to accommodate a public or private route affected by the proposed railway were significant and what was recorded in the Book of Reference and Tithe Award at this point in time clearly conflict. In this case it appears necessary to look at how the route evolved from this point onwards and how it was recorded on various other maps and documents as time progresses.</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 layouts in a parish to be made. They can provide</p>



		conclusive evidence of status.
Observations		No Inclosure Map or Award was found for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
6 Inch Ordnance Survey (OS) Map Sheet XXIV	1848	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1845 and published in 1848.¹</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 were updated to show newly constructed railways (of which there were many), which explains why more than one version may be found with apparently the same publication date (with one showing a railway, and one not).</p> <p>As part of the County Council's research the Investigating Officer looks at the OS 6 inch maps located within our own records and also those available on the National Library of Scotland website - https://maps.nls.uk/os/</p> <p>Copies of the maps held by the National Library of Scotland are usually 'final' printings which therefore include railways which in most instances post-dated the survey and first publication of the map.</p> <p>Where appropriate extracts of both copies of the map (if found) will be inserted into the report and clearly labelled.</p>

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





Map extract from National Library of Scotland

<p>Observations</p>		<p>The full length of the application route is shown and is named on the map as Threagill Lane. The route is shown passing under the railway at point B and a line is shown across the route where it meets the Turnpike Trust road at point C. The route is shown fenced throughout the full length and is shown as being much narrower than Borwick Road from point A to point B. From point B to point C the route is shown to be wider – more consistent with the width of other routes shown which are acknowledge public vehicular roads.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed in 1845 and appeared to be capable of being used. A gate may have existed across the route at point C.</p>
<p>Cassini Map Old Series Sheet 97 – Kendal & Morecambe</p>	<p>1852-1864</p>	<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. One inch Sheets used to create the map were originally published between 1852-1864.</p>





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| Turnpike or main roads
 | Railways
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| Other roads
 | Cuttings
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| 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
 | | |

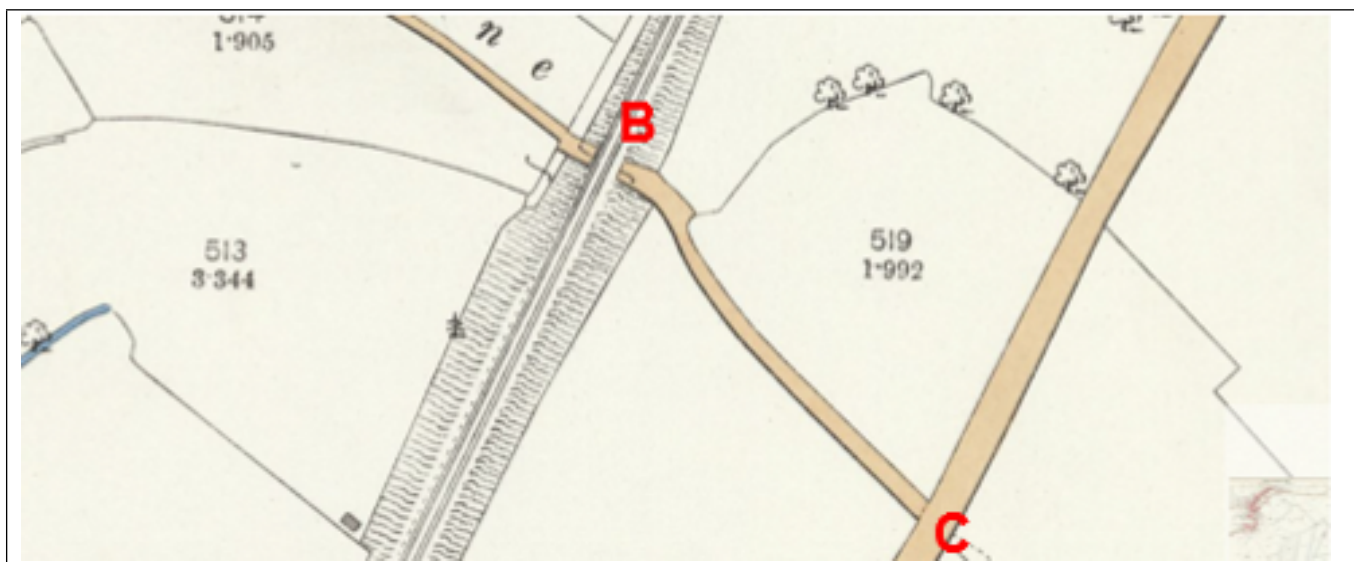
Legend source - <http://www.cassinimaps.co.uk/shop/pagelegend.asp>

Observations		The full length of the application route is shown as a substantial bounded route identified on the map as 'Other roads'.
Investigating Comments	Officer's	The original scale of the map (1 inch to the mile) means that only the more significant



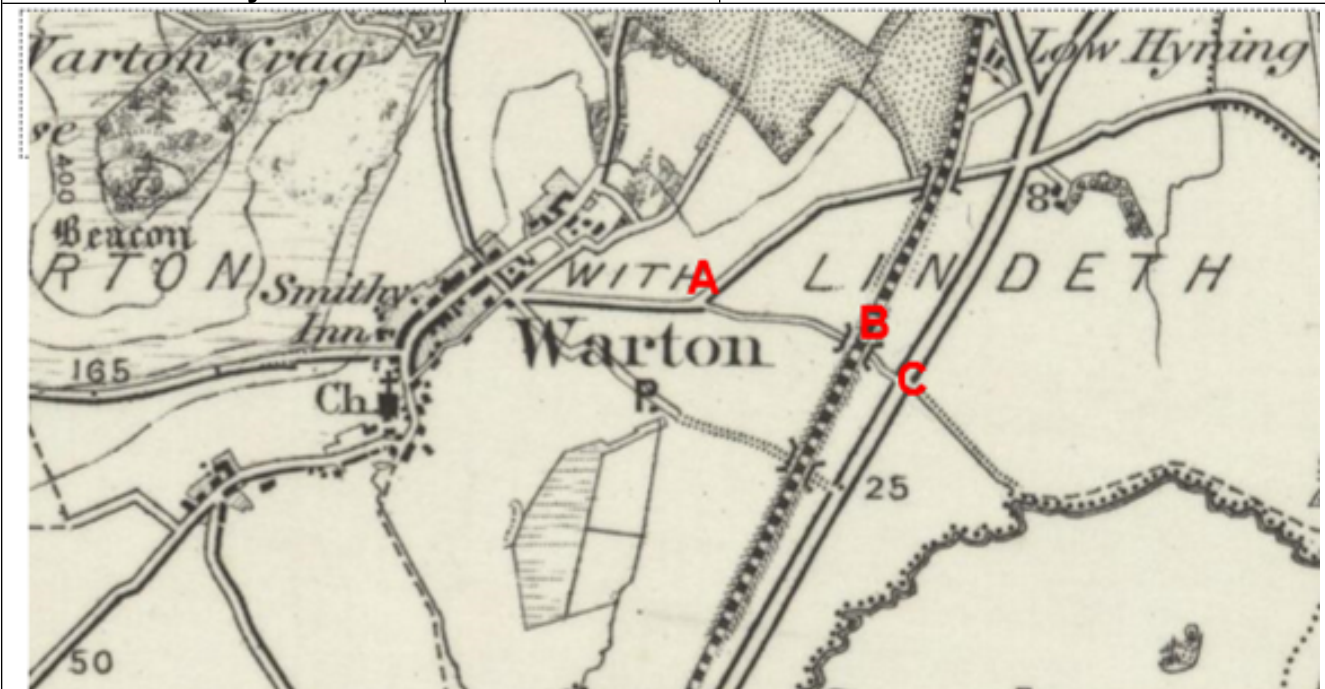
		<p>routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown had public rights for those travellers.</p>
<p>25 Inch OS Map Sheet XXIV.4</p>	<p>1891</p>	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1891.</p>

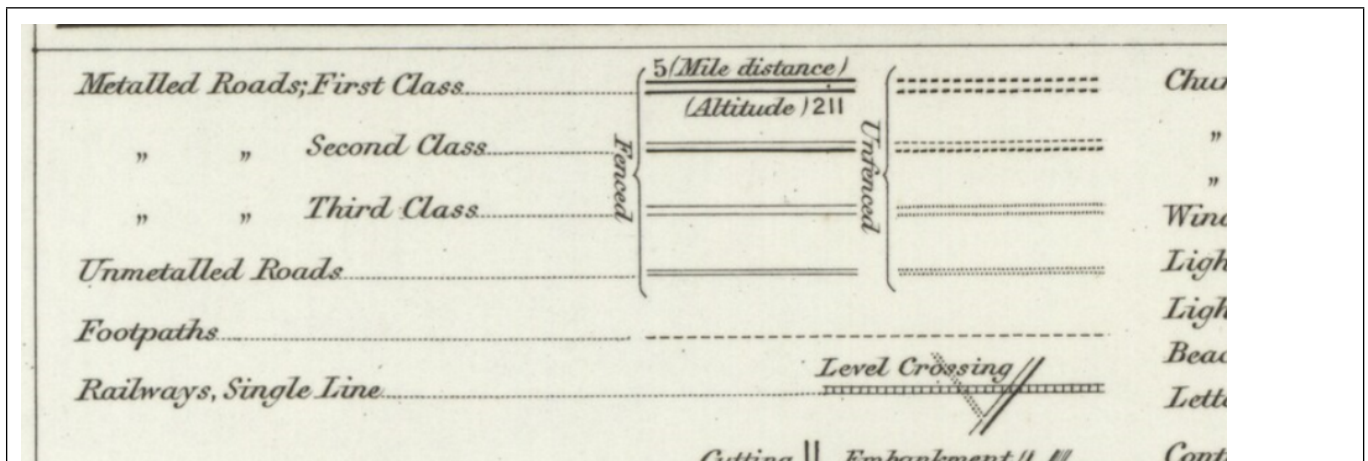




<p>Observations</p>		<p>The full length of the application route is shown as a fenced through route. The route is coloured brown in the same way that the public vehicular roads to which it connects at point A and point C are shown. It is also shown bounded by a thickened line along the south side. It is shown as being narrower in width than either of the public roads to which it connects but there is no significant difference in width between the section A-B and B-C (as was shown on the smaller scale First Edition 6 inch OS map detailed above).</p> <p>The route is named as Threagill Lane and no solid line (probable gates) are shown across it.</p> <p>The route has one parcel number (515).</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed as a substantial through route in 1890 connecting to public vehicular highways at either end.</p> <p>Of particular significance is the fact that the route is shown coloured with a thickened line along one side.</p> <p>Colouring and the use of thickened lines were often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. The Ordnance Survey specified that all metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road.</p>

		<p>'Good repair' meant that it should be possible to drive carriages and light carts over them at a trot so the fact that the application route is shown in this way suggests that it was considered to be a well maintained public vehicular route in 1890.</p> <p>The fact that it was named as Threagill Lane on the map is evidence that it was known locally by that name and is consistent with use of the route by the public at that time.</p> <p>The Planning Inspectorate Consistency Guide states "Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage." However, it goes on to say that this is far from conclusive evidence of highway status so no inference can be made in this respect.</p>
<p>1 inch OS Map Sheet 49 – Kirby Lonsdale</p>	<p>1898</p>	<p><u>1 inch OS map published in 1898.</u></p>





Observations		The full length of the application route is shown consistent with how a third class road (fenced) was shown on this map.
Investigating Officer's Comments		The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The application route is shown as a third class road suggesting that it was capable of being used by vehicles at that time.
25 inch OS Map Sheet XXIV.4	1913	Further edition of the 25 inch map surveyed in 1890, revised in 1910 and published in 1913.



Observations		The full length of the application route is shown as a bounded route and named as Threagill Lane. The map was revised in 1912 and it can be seen that a thickened line has again been applied along the south and east side of Borwick Lane and Scotland Road but the application route is
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		no longer shown with a thickened line along the south side. A well (W) is shown in the field immediately north of the application route part way between point A and point B.
Investigating Comments	Officer's	The application route existed in 1912 and appeared to be capable of being used. The fact that it is no longer shown with a thickened line along one side may suggest that it was no longer considered to be in good repair – or suitable for the everyday vehicular traffic of that time – compared to other available options. It is not known whether the well shown adjacent to the route was accessible to the public.
6 Inch OS Map Sheet XXIV.NE	1919	6 inch OS map revised 1910 and published 1919.

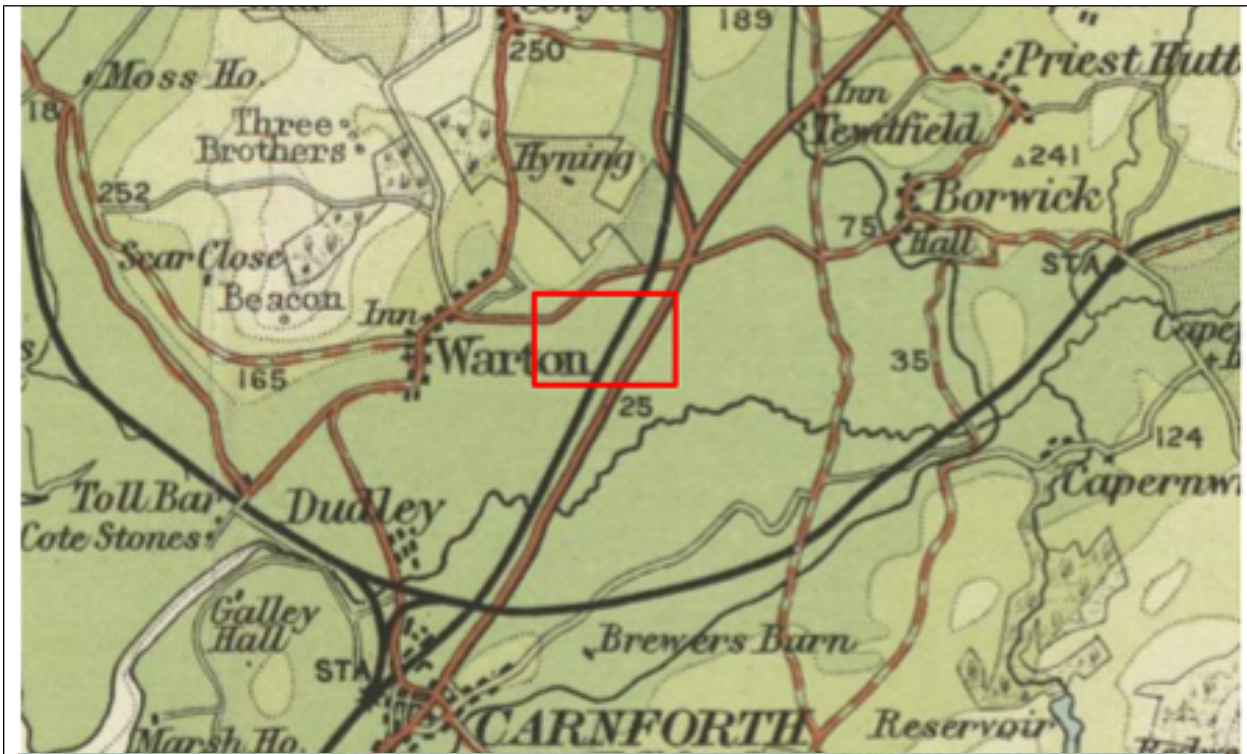


Observations		The full length of the application route is shown as a bounded through route without any gates or barriers across and with no thickened line on the south side.
Investigating Comments	Officer's	The application route existed in 1912 and appeared to be capable of being used. It was not shown as a well-maintained road.
Ordnance Survey Object Names Book		When the Ordnance Survey was collecting information to put on its second series of published maps the surveyors recorded the names of anything that was to be shown on the maps. The Ordnance Survey Object Names Book for an area records these names, the description of the item named, and the local person attesting to

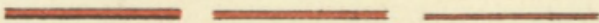





		the name. The descriptions usually state where the road started and finished, and often described them as a road, lane or drove road. The descriptions often drew a distinction between what was believed to be public and private and included information about who owned or maintained bridges.
Observations		The Ordnance Survey Object Names Books are deposited in the National Archives at Kew. These records are not available online. Whilst they can provide supporting evidence as to the believed status of a route the records have not been requested in this case.
Investigating Officer's Comments		No inference can be drawn.
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.



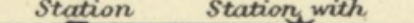
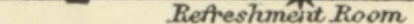



EXPLANATORY NOTE


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  Station  Station with Refreshment Room

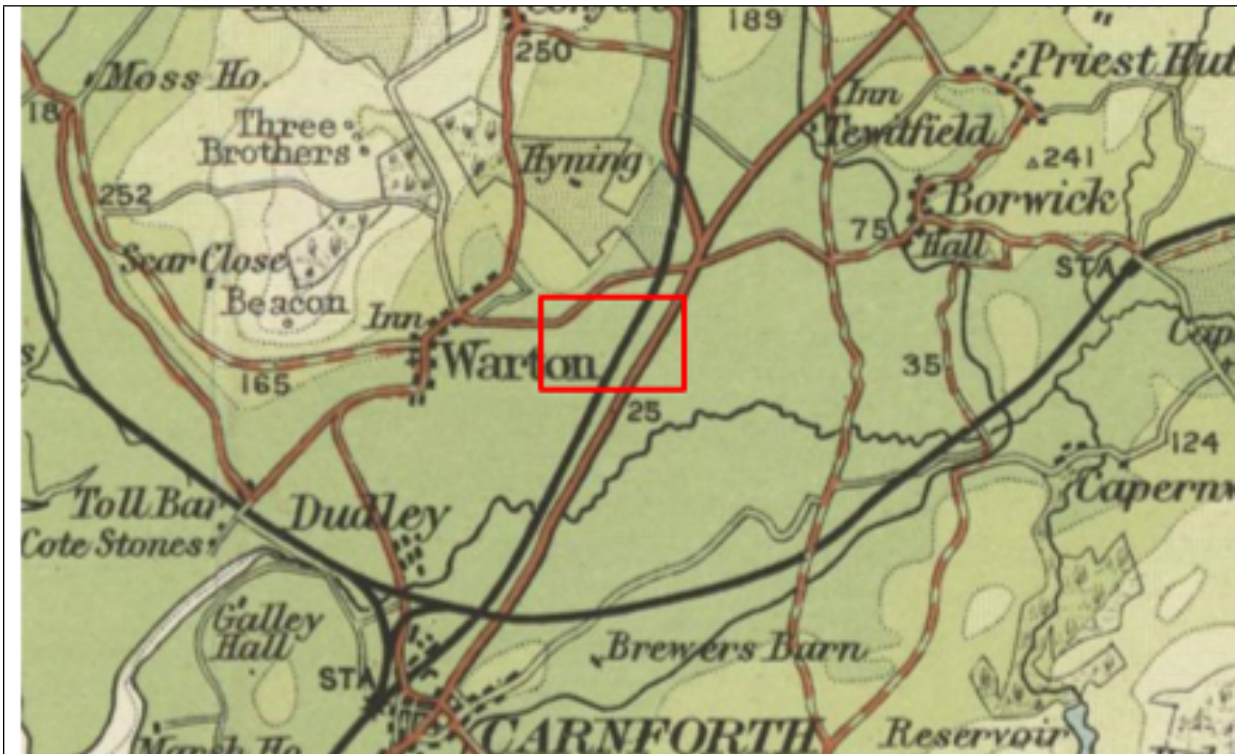
Canals 

County Boundaries 

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

1905





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.

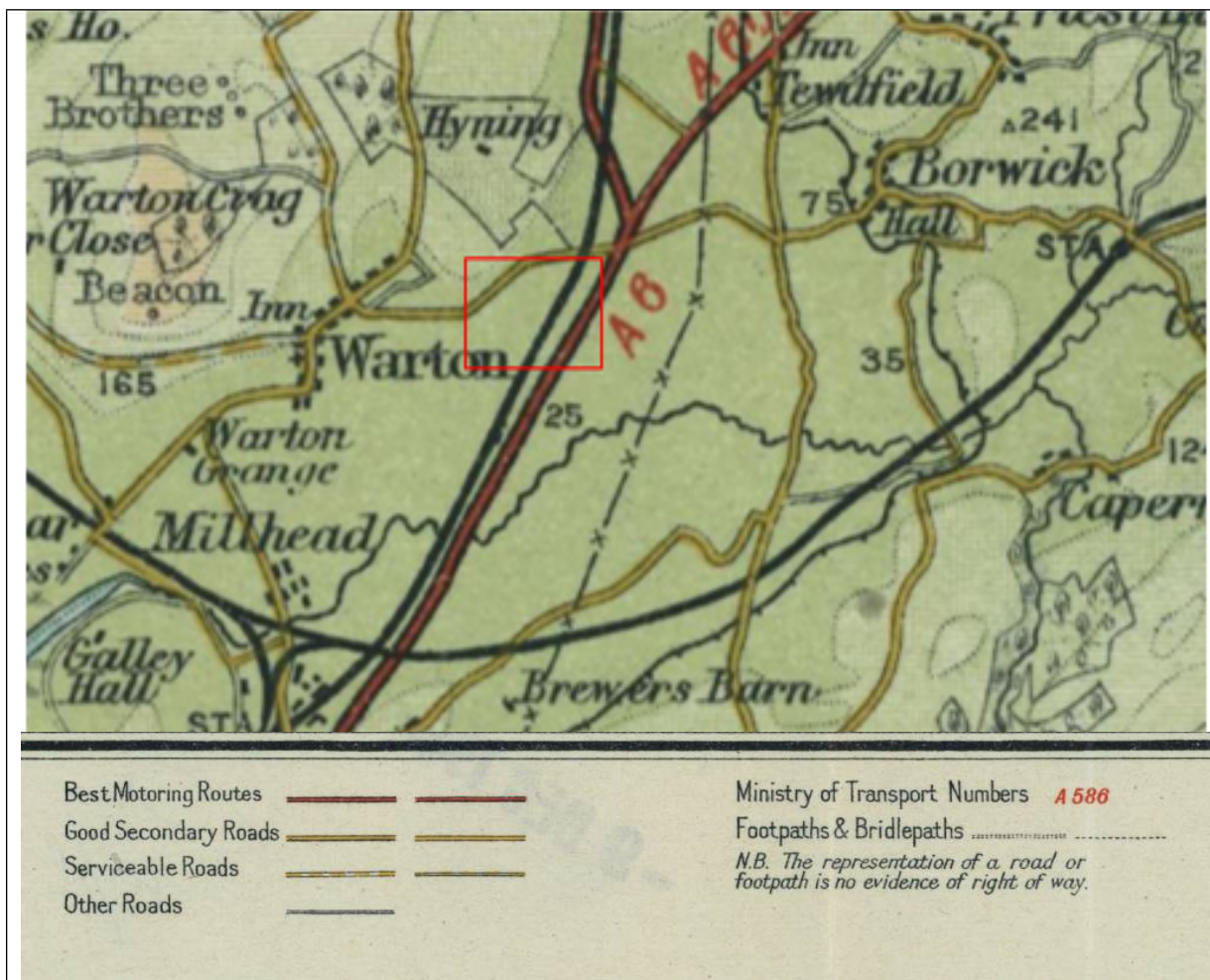
Railways	Station	Station with	L.C. (Level Crossing)
	●	★	
		Refreshment Room	

Canals —————

County Boundaries - - - - -

1920s





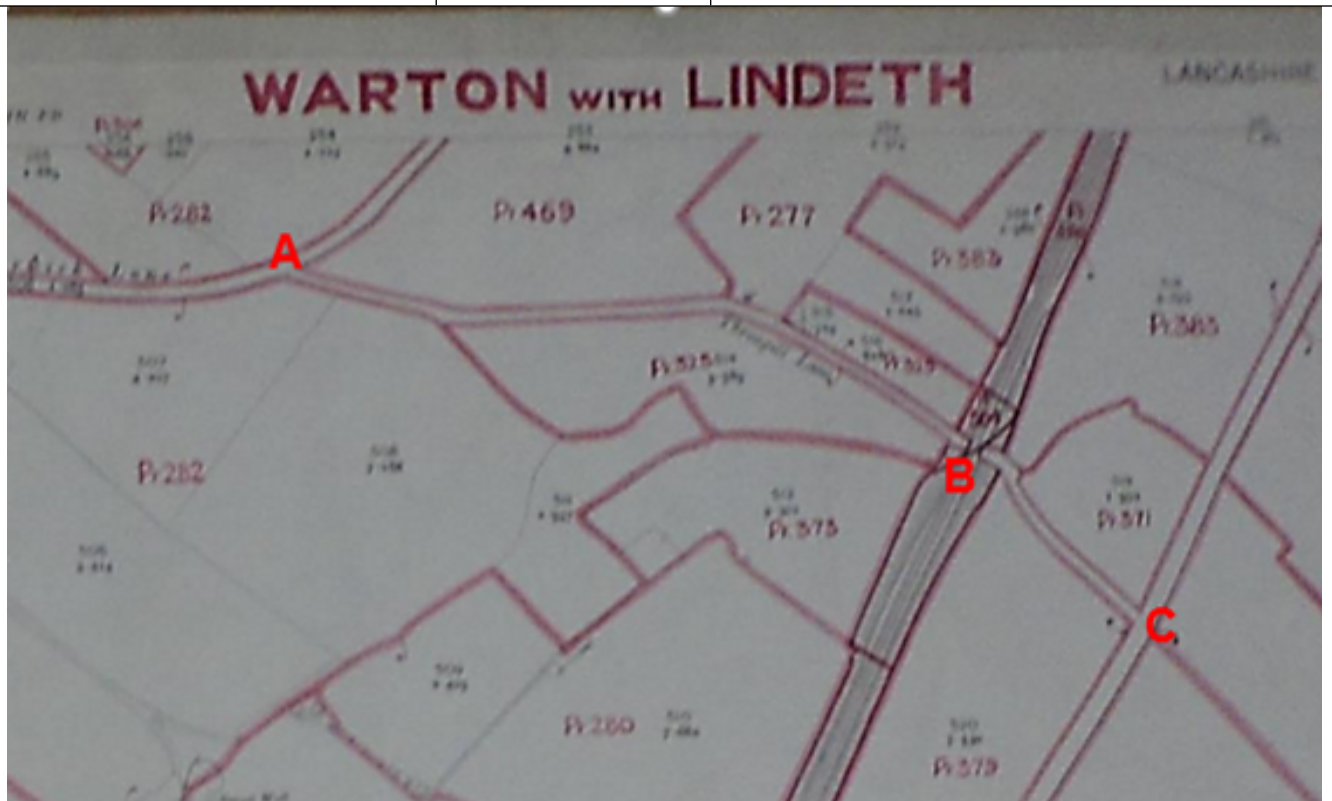
1940s

Observations		The application route was not shown on any of the three small scale maps produced between 1905 and the 1940s.
Investigating Officer's Comments		The fact that the application route is not shown on the maps suggests that it was not useable as a public vehicular highway in the early 1900s. the map does not generally show routes used as footpaths or bridleways at that time.
Finance Act 1910 Map TNAs Ref: 133/3/36	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.</p>



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

The full length of the application route is



		excluded from the numbered hereditaments.
Investigating Officer's Comments		The exclusion of the route from the taxable hereditaments is good evidence of, but not conclusive of, public carriageway rights.
25 Inch OS Map XXIV.4	1940	Further edition of 25 inch map (surveyed 1890, revised in 1938 and published in 1940.

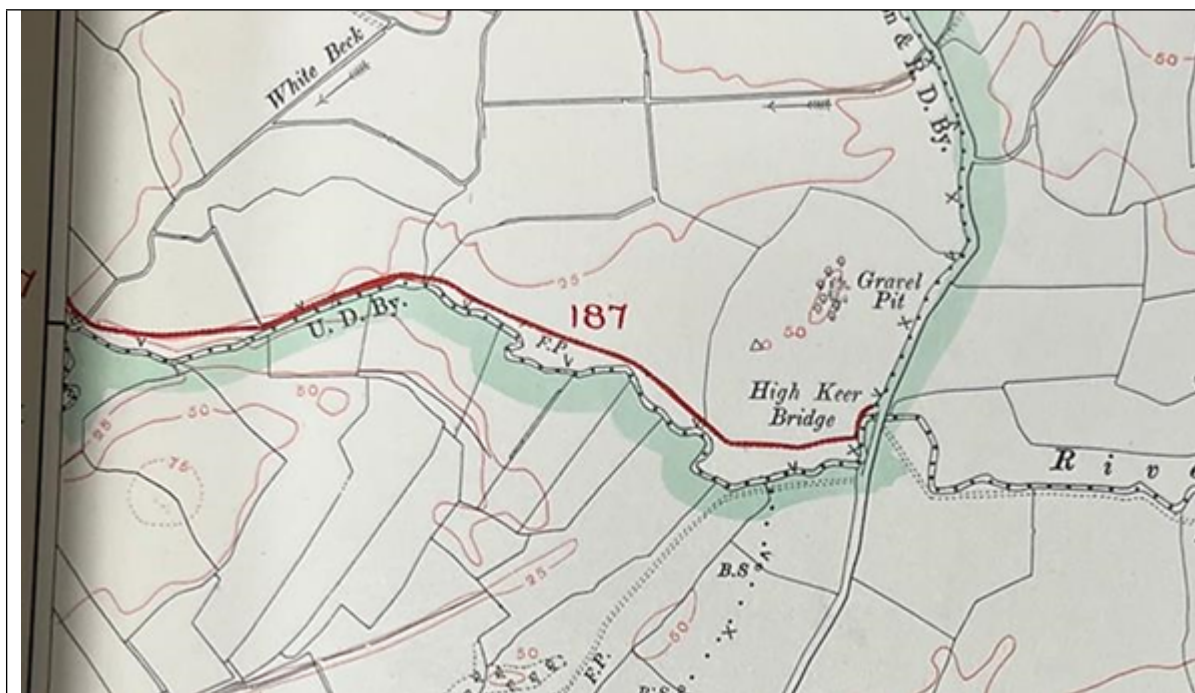


Observations		The application route is shown as a bounded and named through route consistent with how it is shown on all the earlier OS maps examined. A broken/dashed line is shown across the route at point A and point C.
Investigating Officer's Comments		The application route existed and appeared capable of being used. It was not recorded as being gated at either end – or along the route – and the dashed lines at point A and point C indicated a change in surface as you entered Threagill Lane from Borwick Lane and the A6 Scotland Road. This is consistent with it having an inferior surface.
1932 Rights of Way Map		The Rights of Way Act 1932 set out the mechanism by which public rights of way could be established by user and under which landowners could deposit maps to show highways already in existence and to indicate that they didn't intend to dedicate further rights of way. The Commons, Open Spaces and Footpath Preservation Society



(which became the Open Spaces Society) who were the prime instigators of this Act and the later 1949 Act, called for local authorities to draw up maps of the public rights of way in existence (a quasi precursor of the Definitive Map). This is set out in 'The Rights of Way Act, 1932. Its History and meaning' by Sir Lawrence Chubb [M]. The process for consultation and scrutiny followed in Lancashire is not recorded but some of the maps exist including maps for the following areas are available for inspection at County Hall: Lunesdale Rural District (RD), Lancaster RD, Burnley RD, Garstang RD and West Lancashire RD.



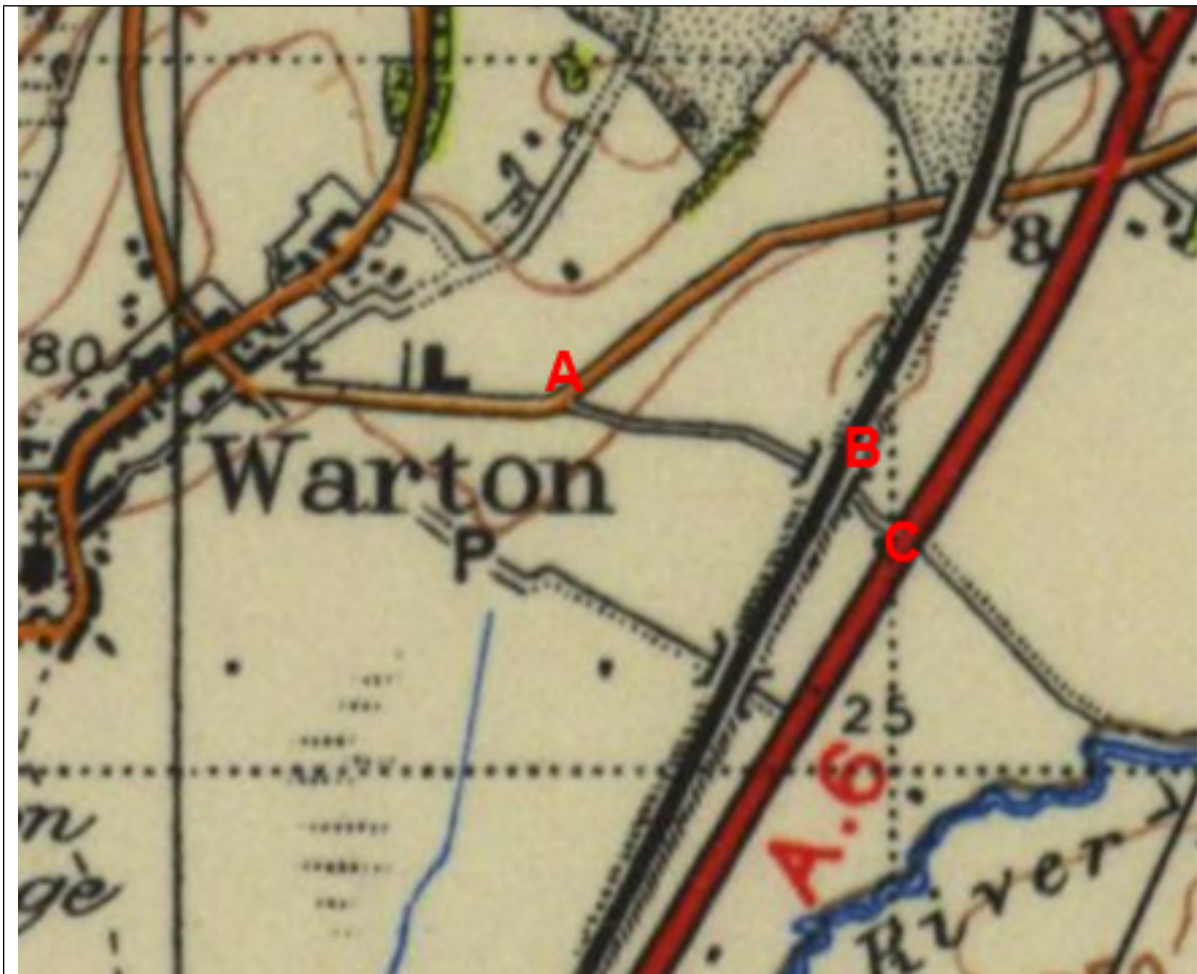


<p>Observations</p>		<p>The maps for Lancaster Rural District are contained within a large folder titled 'Footpath Maps'. No written schedules are included within the file and all routes shown are coloured red and numbered with no indication as to whether they were considered to be anything more than public footpaths.</p> <p>The application route is shown on the map as part of a longer route numbered 187. The route continued from point C crossing the A6 and continuing in a south easterly and then general easterly direction to High Keer Bridge on Kellet Lane.</p>
<p>Investigating Officer's Comments</p>		<p>The application route appeared to be considered to be a public footpath in the 1930s.</p>
<p>1:25,000 OS Map Sheet 34/57</p>	<p>1947</p>	<p>OS map revised and published 1947.</p>





Observations		The application route is shown as a bounded through route but is not named on the map. The route is depicted as being of an equal width throughout – and as being wider than it had been shown on earlier maps examined.
Investigating Officer's Comments		The application route existed in 1947 and appeared to be capable of being used – at least on horseback. The depiction of the route as being wider and of an equal width throughout is more indistinctive of the style of mapping used at that time rather than being a true reflection of the width of the route.
1 Inch OS Map Sheet 89 – Lancaster and Kendal	1947	1 inch OS map published 1947.



Ministry of Transport Roads.....	<u> A.6 </u>	<u> B.6254 </u>
Other Motor Roads.....	<u> </u>	<u> </u>
" " " narrow.....	<u> Good </u>	<u> Bad </u>
Minor Roads.....	<u> </u>	
Bridle & Footpaths.....	<u> </u>	
Unfenced Roads are shewn by dotted lines		
Gradients steeper than $\frac{1}{4}$	<u> > </u>	
Toll Gates.....	<u> TOLL </u>	
Road Mileage.....	<u> 5 </u>	

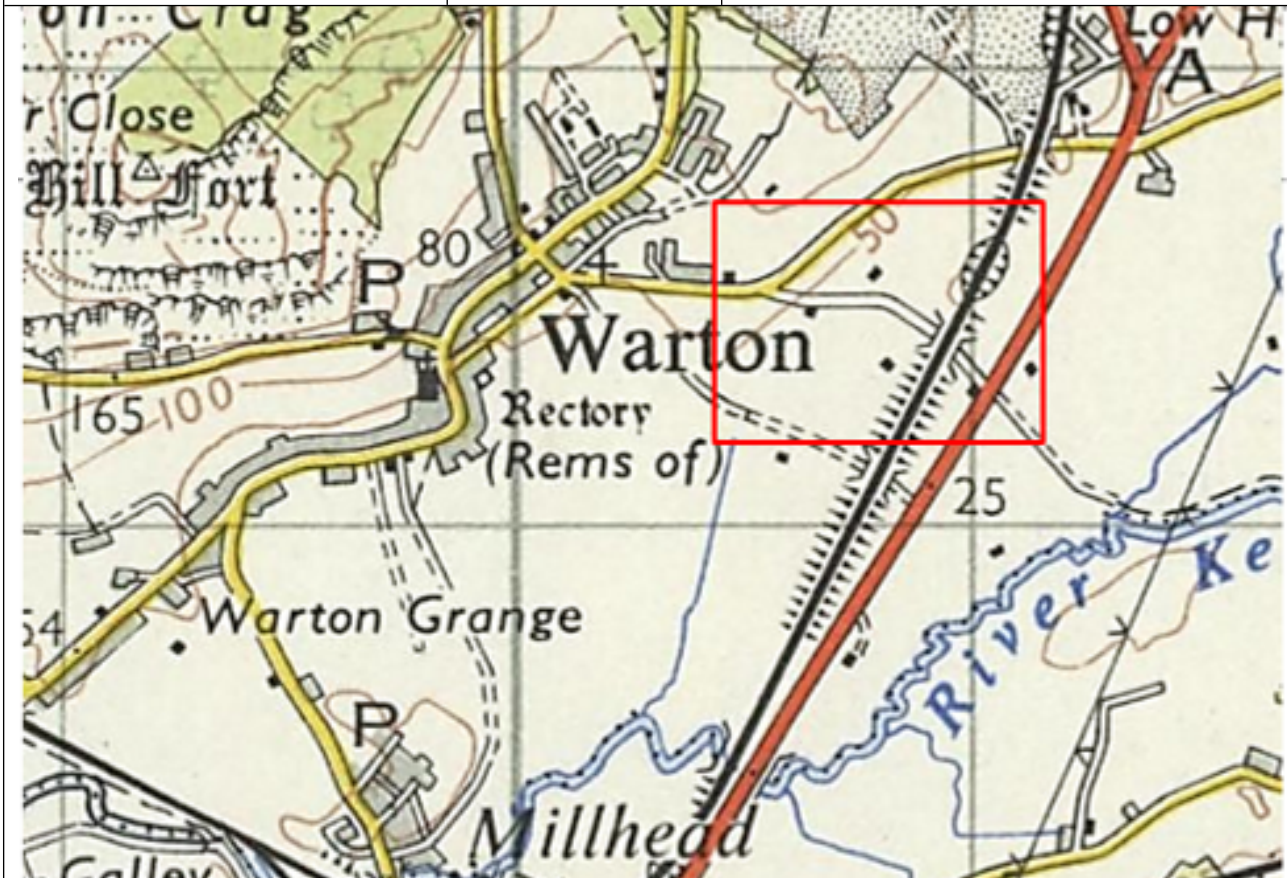
1014.

Observations

Further OS map showing the application route as a through route passing underneath the railway at point B. The route is shown as a Minor Road on the



		map.
Investigating Comments	Officer's	The application route existed in 1947 and was shown on a small-scale OS map as a Minor Road as opposed to a bridleway or footpath. It was not shown as a Ministry of Transport Road (marked red) or Other Motor Roads (marked orange) suggesting use may have been primarily by farm vehicles at that time.
1 Inch OS Map Sheet 89 – Lancaster & Kendal	1957	1 inch OS map revised 1950-57 and published 1957.



Roads	Ministry of Transport, Trunk	A 6 (T)	
	" " " Class 1	A 590	
	" " " " 2	B 6254	
	14 ft of Metalling & over (not included above)		
	Under 14ft of Metalling. Tarred	TOLL	
	" " " " Untarred	Gate	
Minor Roads in towns, Drives and Unmetalled Roads (Unfenced Roads are shown by pecked lines)			
Steep Gradients 1 in 5 or steeper		←←	1 in 7 to under 1 in 5
Footpaths and Tracks		---	
Heights in feet above Mean Sea Level (surveyed by levelling)			275

Observations		Further OS map showing the application as a Minor Road.
Investigating Officer's Comments		The application route existed in the 1950s and appeared to be capable of being used – at least on horseback.
6 Inch OS Map Map Sheet 57SW	1956	The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25 inch map.



Observations		Further map showing the application route unchanged from how it is shown on earlier OS mapping and still bearing the name Threagill Lane.
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Investigating Comments	Officer's		The application route existed and appeared to be capable of being used.
1:25,000 OS Mapping		1947-1961	OS Mapping published in 1947 and 1961.



OS map published 1947 – Sheet 34/57 A



OS map published 1961 – Sheet 57/B*

Observations			Further OS maps showing the application route as a significant bounded through route.
Investigating Comments	Officer's		The application route existed between 1947 and 1961 and appeared to be capable of being used at least on

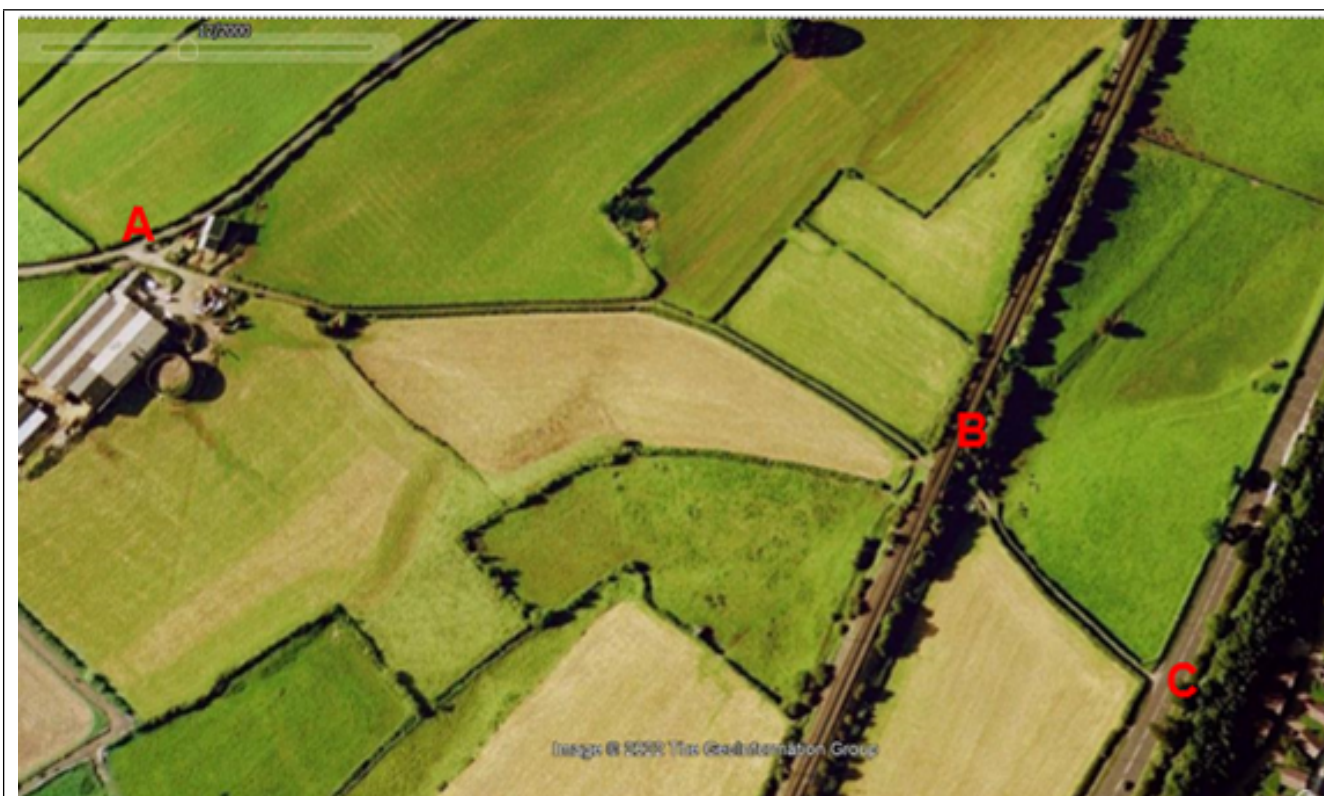


		horseback.
1:2500 OS Map SD 5072-5172	1972	Further edition of 25 inch map reconstituted from former County Series and revised in 1971 and published in 1972 as National Grid Series.
Observations		Further OS large scale map showing the application route as a named through route.
Investigating Comments	Officer's	The application route existed in 1972 and appeared to be capable of being used.
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.





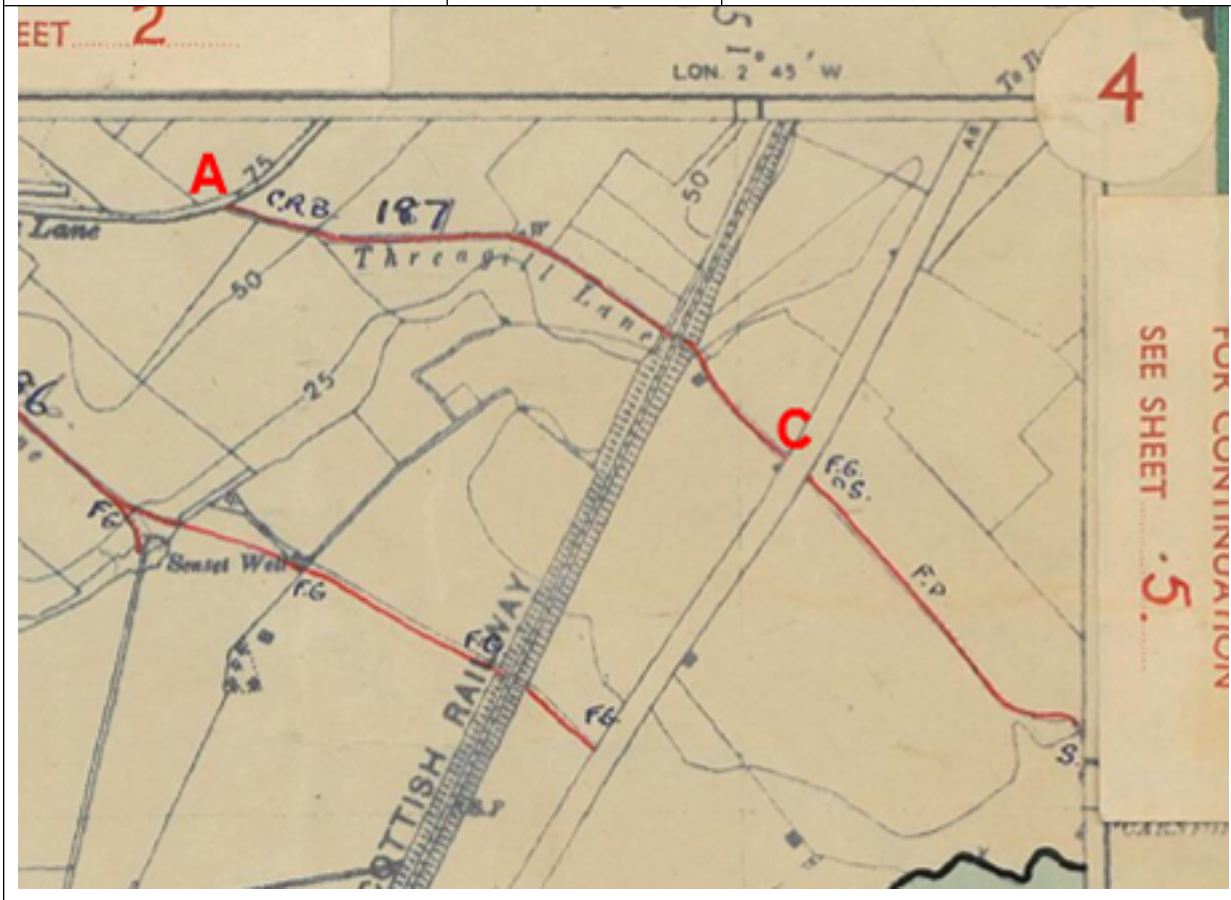
<p>Observations</p>		<p>The application route can be clearly seen with hedges bounding the route on either side between point A and point B. A significant light-coloured area can be seen leading from the application on the north side part way between point A and point B. The full length of the route A-B-C shows up on the photograph consistent with how a track used by farm vehicles would show up although such use appears to be predominantly between A-B and less obvious B-C.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed and appeared to be in use by vehicles in the 1960s. This use appeared consistent with use by vehicles to access adjacent land rather than as a through route.</p>
<p>Aerial Photograph</p>	<p>2000</p>	<p>Image available to view on Google Earth Pro.</p>

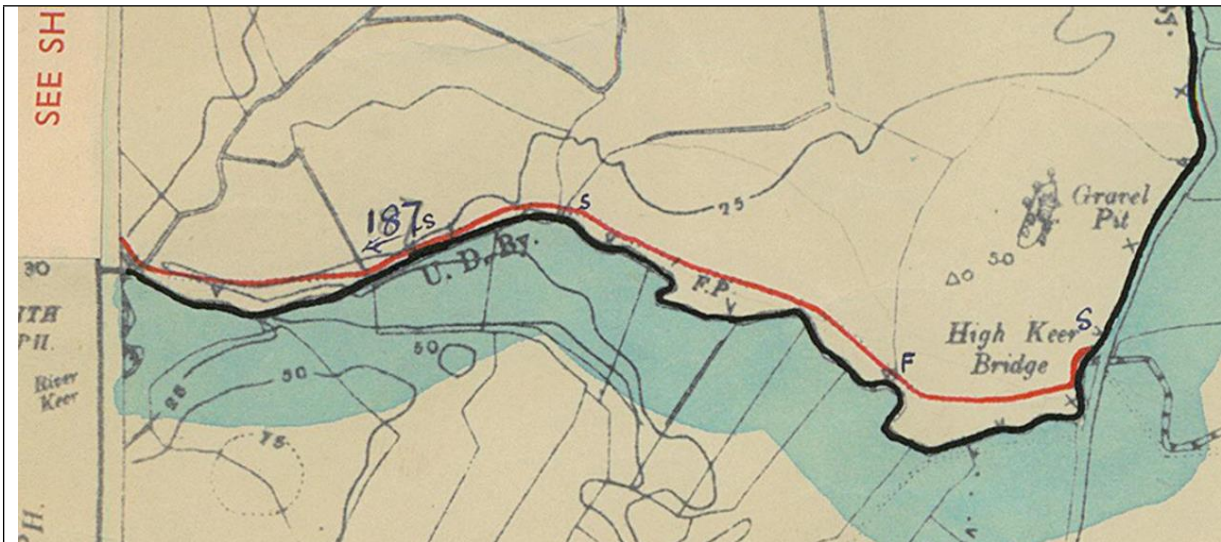


Observations		The full length of the application route can be seen as a bounded route still. At the western end of the route houses and farm buildings can now be seen accessed from the application route at point A. The application route is visible and doesn't appear to have been altered or access restricted buy the development which has taken place on either side of it.
Investigating officer's Comments		The application route existed and the alignment remained unaltered from all earlier maps and documents examined.
Definitive Map Records		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. Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and



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





8

DISTRICT R.D. OF LANCASTER. PARISH WARTON. No. ~~1~~

MAP SHEETS Nos LANCASHIRE. XXIV. N.E. & XXV. N.W. LENGTH 1.18 miles
(to two decimal places)

BRIEF DESCRIPTION (Field F.P. or otherwise)
Cart track & field footpaths. Signs posted.

DETAILED DESCRIPTION (giving starting point, means of passage and general condition).
Starting point middle of Baldick lane goat cart track known as Threagill lane running due east under Railway Bridge to A.6. Road. Continuation on opposite side of road by means of first field gate & wooden stile with steps, clearly defined path following hedge to fence & 2nd wooden stile with step into pasture & field gate leading over stream when clearly defined path follows along bank of river back to wooden stile with step & gate posts (no gate) continuing into field under slope along river bank to fourth wooden stile with step into pasture to *

SURVEYED BY:— Name M. Lindsay,
Address Woodlyn, Annas Bank Halifax

Date * wooden fence (no stile) & clearly marked path along bankside to wooden stile leading to High Keer Bridge, (Hedge very overgrown by this stile) & Parish Boundary

<p>Observations</p>	<p>The application route is shown as part of a longer route numbered 187. From the start of the route at point A the letters 'C.R.B.' have been written alongside the route and there are no annotations suggesting the existence of any gates or stiles. In contrast, the continuation of the route east of the A6 Scotland Road is marked as a footpath (F.P) and a number of stiles (S) and a field gate (F.G.) are marked. The parish survey card describes the route as 'Cart track and field footpaths'. It describes the section of footpath under</p>
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		<p>investigation (the application route) as being a 'good cart track known as Threagill Lane'.</p>
Investigating Comments	Officer's	<p>Approved guidance prepared to assist in the compilation of parish survey maps was issued in 1950 by the Commons, Open Spaces and Footpaths Preservation Society in conjunction with the Ramblers Association.</p> <p>The original guidance recommended that public paths should be distinguished on the maps with the symbols F.P., B.W., C.R.F, and C.R.B irrespective of what was shown by the Ordnance Survey. A 'CRF' or 'CRB' was defined as a highway which the public were entitled to use with vehicles but which, in practice, were mainly used by them as footpaths or bridleways respectively. These 2 categories had been originally proposed but were removed from the 1949 Act shortly before the final draft. Subsequent guidance removed reference to CRF and CRB and introduced RUPPs but many surveys were well underway or substantially complete by then.</p> <p>The application route was annotated on the Parish Survey Map as being a 'CRB' and described in the Parish Survey Card as a cart road. Given the guidance provided to them, this may suggest that the surveyor considered that although the public were entitled to use it with vehicles, they were in practice using it on horseback.</p>
Draft Map		<p>The parish survey map and cards for Warton 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</p>



presented.



Observations

Despite the suggestion on the Parish Survey Map of a cart road used as a bridleway the application route is shown on the Draft Map as a public footpath running from Borwick Lane across the A6 and continuing through to High Keer Bridge. It was recorded on the Map as Footpath 8 and no representations or objections were made with regards to what was shown.

Provisional Map

Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.





Observations

The application route was recorded as part of Footpath 8 on the Provisional Map and Statement. No representations or objections were made with regards to the section of path running from Borwick Lane to the A6 (the application route). It was noted that the footpath from the A6 through to High Keer Bridge would be altered by the construction of the M6 motorway from Lancaster which would cut through it. Work to extend the motorway started in 1967.

The First Definitive Map and Statement

The Provisional Map, as amended, was published as the Definitive Map in 1962.



Observations

The application route is recorded as part of



<p>Revised Definitive Map of Public Rights of Way (First Review)</p>		<p>Footpath 8 on the First Definitive Map.</p> <p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 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.</p>
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<p>Observations</p>		<p>The application route is recorded as part of 1-35-FP8.</p>
<p>Investigating Officer's Comments</p>		<p>There are references on the Parish Survey Map and Card regarding the route being considered to be a cart road used as a bridleway (C.R.B.) but when the Draft Map was prepared the route was recorded as a public footpath only. During the course of the Draft and Provisional stages of the preparation of the Definitive Map the</p>



		status of the route as a public footpath was not challenged.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from 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>

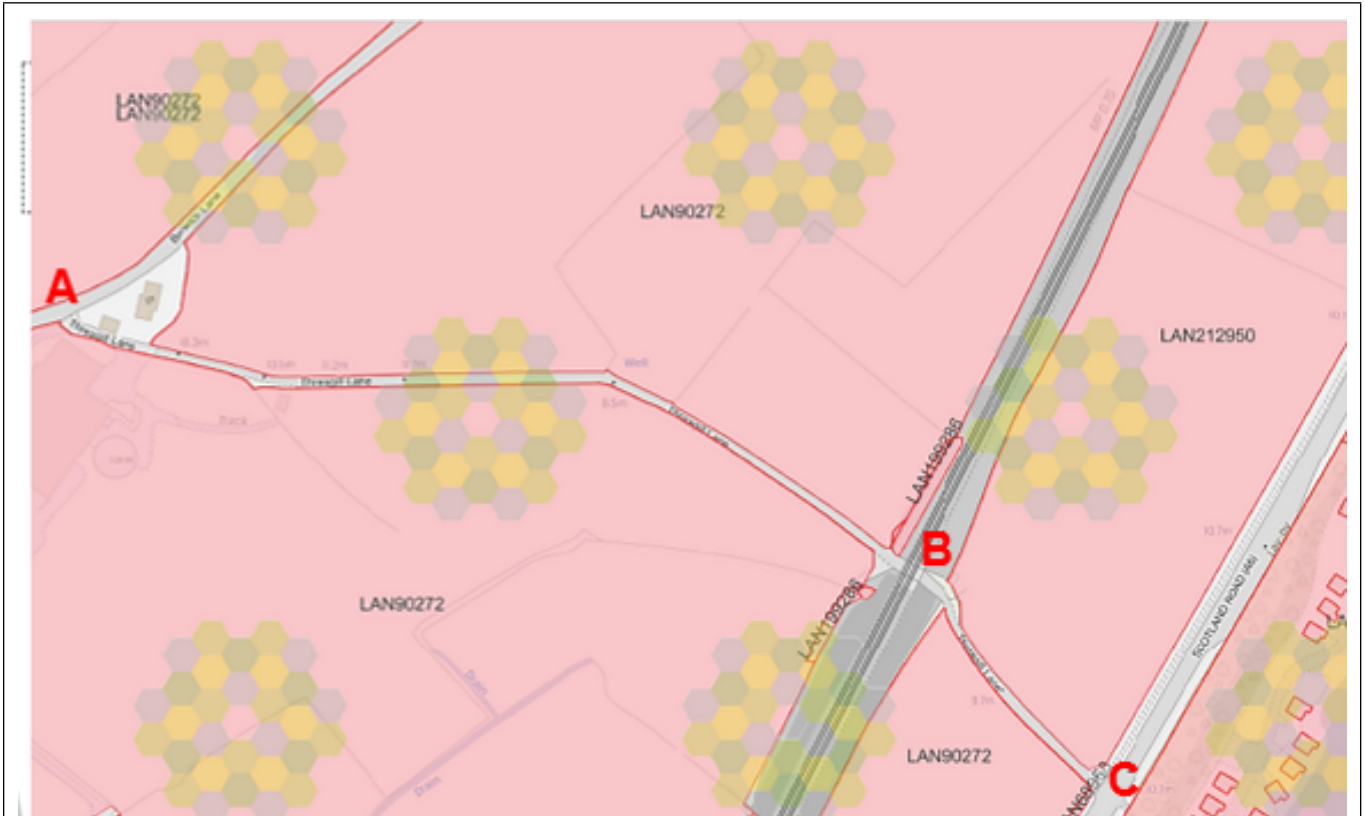




Observations		<p>There is no Handover Map in the County Councils possession for the Parish of Warton.</p> <p>The application route is not recorded as a publicly maintainable highway on the county council's List of Streets.</p>
Investigating Officer's Comments		<p>The fact that the route is not recorded as a publicly maintainable highway does not mean that it does not carry public rights of access so no inference can be drawn regarding public rights.</p>
Highway Stopping Up Orders	1835 - 2014	<p>Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.</p>
Observations		<p>No legal orders relating to the creation, diversion or extinguishment of public rights have been found.</p>
Investigating Officer's		<p>If public rights are found to exist along the</p>

Comments		application route they do not appear to have been subsequently diverted or extinguished buy a legal order.
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 Section 31(6) deposits have been lodged with the county council for the area over which the route runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.
Landownership records		Information obtained from the Land Registry and Network Rail.





<p>Observations</p>		<p>Network Rail have confirmed that the railway line and bridge crossed by the application route are in their ownership but ownership of the application route itself is not recorded with the Land Registry.</p> <p>The only landownership details relating specifically to the application route was the Book of Reference accompanying the Railway plans which listed ownership at that time as being owned and occupied by John Boldon (and others). No address was given although the Tithe Records show that Mr Boldon owned a field immediately north of the application route between point B and point C (Tithe Map plot 595, OS 25 inch map published 1891 parcel number 519).</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>When ownership of a route is not known and not registered, in contrast to land either side, it can provide supporting evidence of public status – particularly historical vehicular routes. In this case landowners were listed in Railway Records – which may have indicated actual ownership but may in the alternative have indicated private rights of access from adjacent land along the application route.</p>



		<p>Landowners were not listed in the Tithe Award of 1845 or the Finance Act documentation in 1910.</p> <p>The Investigating Officer is therefore of the opinion that the landownership details support the application for recording the route as a vehicular public right of way although it is noted that public rights of way – particularly footpaths and bridleways - are generally recorded over private land.</p>
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The affected land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land.

The Natural Environment and Rural Communities Act 2006

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

Summary

The application has been made based entirely on historical map and documentary evidence.

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

The evidence available suggests that whilst part of the application route may have existed prior to the construction of the former turnpike road (A6 – Scotland Road) but that it existed in its entirety by 1830 when Hennet's Map was published showing the application route as a cross road – often considered as providing good evidence of public vehicular rights - between Borwick Lane and the Turnpike Road.

The inclusion of the route in the Railway plans and Book of Reference confirms its existence but it was specifically referred to as an occupation road. When the railway was built a substantial bridge allowing access under the railway was provided at the



width specified in legislation as being the minimum width for an occupation road – and much narrower than the width required for a public carriageway.

If the route was considered to be a private occupation road in 1844 this appears to conflict with the information provided in the Tithe Award where roads throughout the parish were all given the same number and listed under the category 'Roads Rivers and Waste Grounds'.

Without knowing whether the route originally came into being as a public or private route – and with no modern or historical user evidence to assist – it is necessary to look at all other available evidence.

From the mid-1840s it is consistently shown on Ordnance Survey (OS) maps of various scales as a significant bounded through route with only one map examined (First Edition 6 inch) suggesting the existence of a gate across it. It is a named route (Threagill Lane) and on the First edition 25 inch map published in 1891 is shown coloured with a thickened line down one side indicating that it was a metalled public road for wheeled traffic which was kept in good repair by the highway authority.

From the mid-1800s through to the current day the alignment and width of the route remained unaltered and the route appears to have been capable of being used on foot, horseback and with vehicles throughout that time. The width of the route would suggest that vehicles would be unable to pass one another if travelling in opposite directions suggesting perhaps that as time went on and horse drawn vehicles/carts/carriages were replaced by mechanical vehicles any vehicular use by the public may have declined. In addition, with no evidence that the route had been surfaced, any public vehicular use would have declined in favour of Borwick Lane.

Modern site evidence and aerial photographs from 1960 onwards - suggests use of the route by farm vehicles accessing adjacent fields – or Network Rail in association with the maintenance of the railway line and bridge.

The Parish Survey carried out in the 1950s refers to the route being a cart track and use by horses, but it was ultimately recorded as a public footpath only.

Taking all the available evidence into account, the Investigating Officer considers that over time there was sufficient evidence to support the view that the route was probably used by the public at least on horseback – even if initially considered to be an occupation route in the early 1840s.

Head of Service – Legal and Democratic Services Observations

Landownership

The route crosses land which is unregistered, Network Rail clarified that they own the land directly under the bridge at point B which the application route crosses.

Information from the Applicant

The application was based entirely on map and documentary evidence and no modern or historical user evidence was submitted.



The applicant submitted extracts from the following maps and documents in support of their application all of which have been considered in detail earlier in this report:

Tithe Records 1845
Inland Revenue Valuation Records – Finance (1908-1910) Act 1910
Lancashire County Council Highway Records
Parish Survey Cards
Search details from The Gazette
Undated photographs of the application route
Greenwoods Map of Lancashire 1818
Hennet's Map of Lancashire 1830
OS 6 inch maps published 1848, 1919 and 1947
OS 25 inch maps published 1891, 1913 and 1940
1 inch OS maps published 1898, 1947 and 1955
OS 1:25,000 maps published 1847 and 1961
OS 1:10,000 map published 1964

Information from Others

The Ramblers responded to consultation to state that they had no objection to the application.

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

Information from the Landowners

Network rail responded to consultation to clarify the land in their ownership and indicated that they would be unlikely to have any objection to an upgrade from Footpath to Bridleway.

Assessment of the Evidence

The Law - See Annex 'A'

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

Point A-B-C is currently recorded as footpath 1-35-FP8 on the Definitive Map and Statement.

There is no express dedication. User evidence was not submitted as part of the application 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 at common law.



The evidence to be deliberated is historical documentation and whether there is sufficient evidence from which to infer, on balance, that the owner(s) 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 fully earlier within the report and Committee is referred to this. The route is shown since 1830 on numerous maps and connects to a network of other public highways. The evidence presented 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.

It is therefore recommended to make an Order as set out in the Recommendation at the beginning of the report and that it be promoted to confirmation.

Implications:

This item has the following implications, as indicated:

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

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

Risk management

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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-651		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate



N/A

