

Part I

Electoral Division affected:
Lancaster Rural East

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition and Deletion of Bridleway at Junction with Procter Moss Road, Over Wyresdale
(Annex 'A' refers)

Contact for further information quoting file reference 804-629:
Annabel Mayson, 01772 533244, Paralegal Officer, Legal and Democratic Services
annabel.mayson@lancashire.gov.uk
Jayne Elliott, 01772 537663, Public Rights of Way Definitive Map Officer, Planning and Environment Group, jayne.elliott@lancashire.gov.uk

Brief Summary

Application for the addition of a bridleway from Procter Moss Road, Over Wyresdale to a point on Bridleway BW0125011 and investigation into the deletion of part of Bridleway BW0125011.

Recommendation

- (i) That the application for the addition of a bridleway from Procter Moss Road to Bridleway BW0125011 be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Sections 53 (3)(c)(i) and of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a bridleway as shown on Committee Plan between points A-X-B.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.
- (iv) That an Order be made pursuant to Section 53 (2)(b) and Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to delete from the Definitive Map and Statement of Public Rights of Way part of Bridleway BW0125011, shown between points B-C on the Committee plan.
- (v) That being satisfied that the test for confirmation can be met the Order(s) be promoted to confirmation.

Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition to the Definitive Map and Statement of Public Rights of Way of a bridleway from Procter Moss Road, Over Wyresdale to a point on Bridleway BW0125011.

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”

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

- That there is no public right of way over land shown in the map and statement as a highway as any description

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.

Advice

Consultations



Lancaster City Council

Lancaster City Council provided no response to consultation.

Over Wyresdale Parish Council

Over Wyresdale Parish Council provided no response to consultation.

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	5243 5625	Open junction with Procter Moss Road
X	5246 5625	Cattle grid and adjacent field gate
B	5247 5626	Sharp bend in access track
C	5246 5625	Unmarked point on edge of field

Description of Route

A site inspection was carried out in October 2020.

Bridleway to be added (shown between A-X-B on the Committee plan)

The total length of the route to be added is 50 metres.

It commences at the junction with Procter Moss Road on the outside of a 90-degree bend in the road (Point A on the Committee plan). From the road the route extends in an east north easterly direction along a roughly tarmacked and compacted stone surfaced access track approximately 5 metres wide. It is bounded by a stone wall to the north and a wooden post and rail fence to the south and is signed as being access to several properties and as a public bridleway from the road (point A).

The application route continues along the track for approximately 45 metres to cross a cattle grid with a bypass wooden gateway located directly south of the track (point X).

The route then continues for a further 5 metres to a bend in the track where it joins the route recorded on the Definitive Map as Bridleway BW0125011 (point B).

Note: On approaching the cattle grid (point X) a wooden stile is present in the post and rail fencing to the south of the route and signed as a public footpath. This stile provides access to and from the application route to Footpath FP0125019 but the exit point of the footpath onto Procter Moss Road close to point A is not available and is overgrown by hedging and impassable due to fencing.



Bridleway to be deleted (shown between points B-C on the Committee plan)

The short section of bridleway to be deleted runs from the bend on the existing access track where the recorded length of bridleway is shown to diverge from the track (point B). It then runs in a south westerly direction across the east side of the wooden field gate to pass through wooden post and rail fencing into the adjacent field to meet the recorded route of Footpath FP0125019 at an unmarked point on the edge of the field (point C).

The total length of the route to be deleted is 10 metres.

Map and Documentary Evidence

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

Note: map inserts included in this report are not to scale

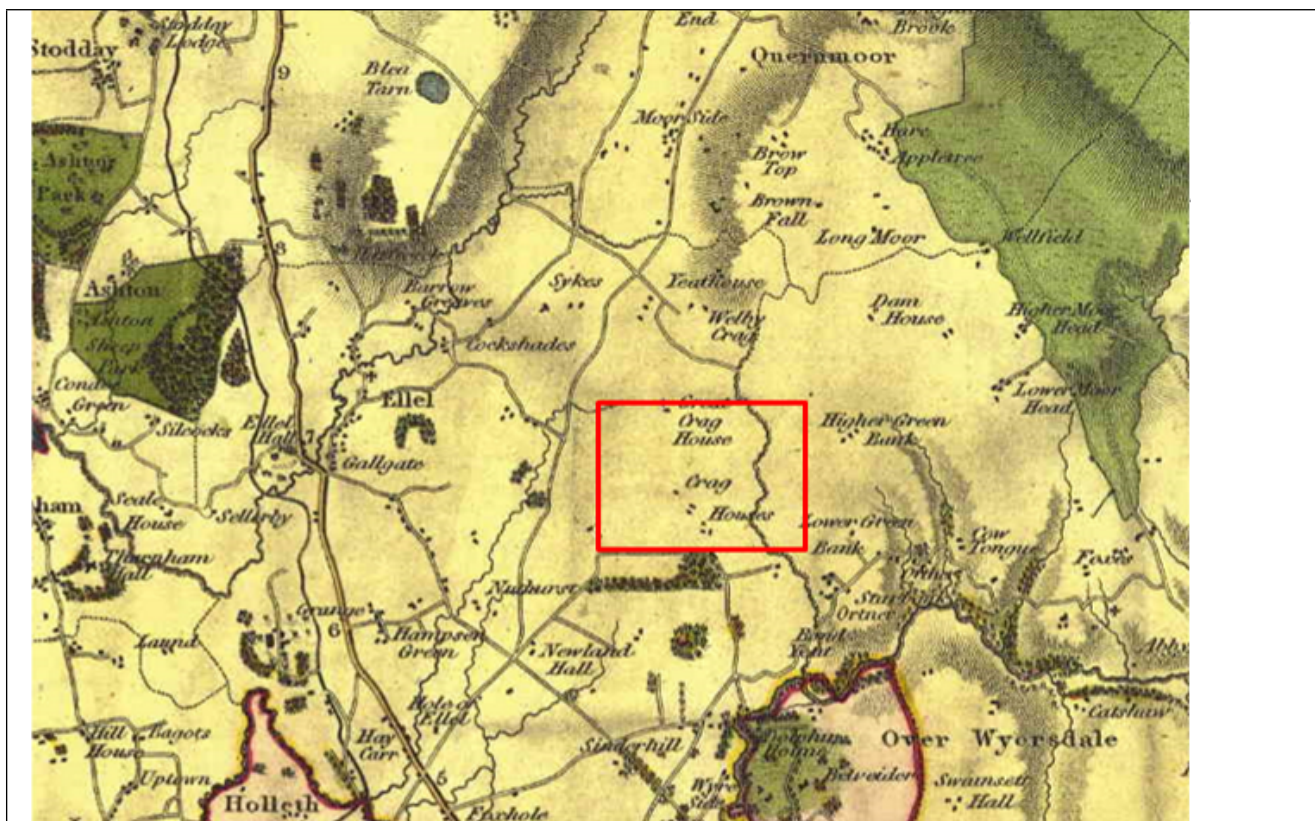
Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced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





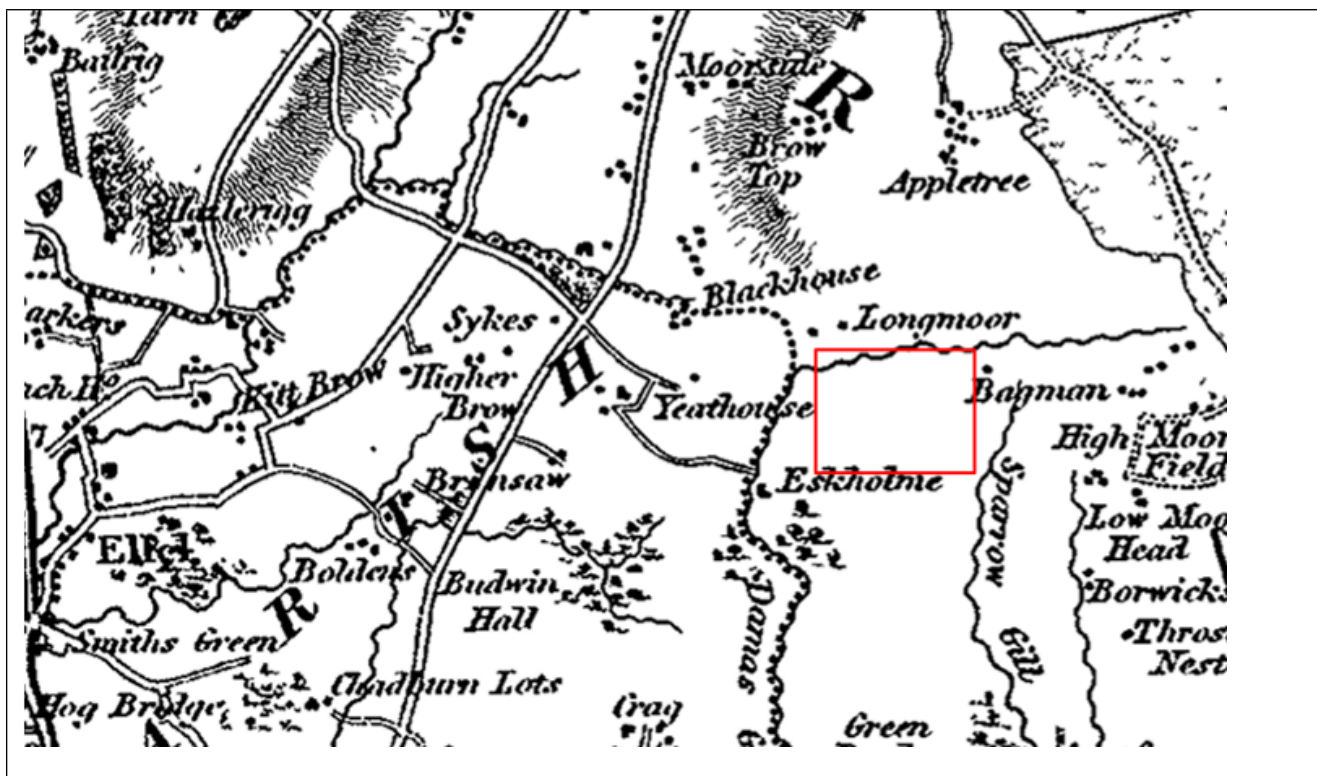
Observations		The application route is not shown and neither is Procter Moss Road (from which the route commences at point A). A number of properties are shown north east of the application route with no access to them.
Investigating Officer's Comments		The route may not have existed in 1786 or it may have been that Yates did not consider the route to be a public highway or that it was unenclosed or that the hedges/fences/walls were in disrepair or possibly that this section was not surveyed, as surveys were expensive.
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 application route (and Procter Moss Road) are not shown. Several properties are shown (and named) in the vicinity of the application route but access to those properties is not shown.
Investigating Officer's Comments		The application route may have existed but was not considered by Greenwood to be a significant public route which would be shown on a small-scale commercial map at that time.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.





Observations		The application route – and Procter Moss Road – are not shown.
Investigating Officer's Comments		The application route – if it did exist – was not considered to be a significant public vehicular highway or a route of sufficient significance to be included on the map.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		There are no known proposed, existing or dismantled railways or canals in the proximity of the application route.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment	1846	Maps and other documents were produced under the Tithe Commutation



		<p>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>
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Extract of the Tithe Map rotated so that the north point is at the top of the map

<p>Observations</p>		<p>The Tithe Map was drawn orientated with north at the bottom of the map – effectively upside down from how the parish would by convention be shown on a map today.</p> <p>The Map shows the 90-degree corner on Procter Moss Road at point A. From point A west the road is shown bounded by continuous lines, probably meaning enclosed both sides, and southwards</p>
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		<p>between one continuous and one broken line, enclosed on one side only – which continues for some distance as an unbounded track through a number of different numbered plots but is not shown as a through route.</p> <p>The application route to be added is shown as a bounded route passing through point A and leading directly into a field numbered 85. The route of Bridleway BW0125011 (beyond point B) is not shown.</p> <p>The road from the west – including the application route – is not numbered although it was noted that no other roads shown on the Tithe Map appear to have been numbered.</p> <p>The route proposed to be deleted is not shown.</p>
Investigating Officer's Comments		<p>The application route existed in 1846 but did not appear to form part of a longer route. It appeared to provide direct access to a field.</p> <p>The route to be deleted did not exist at that time.</p>
Inclosure Act Award and Maps		<p>Inclosure awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.</p>
Observations		<p>No inclosure award was found for the area crossed by the application route.</p>
Investigating Officer's Comments		<p>No inference can be drawn.</p>
6 Inch Ordnance Survey (OS) Map Sheet 35	1847	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1847.¹</p>

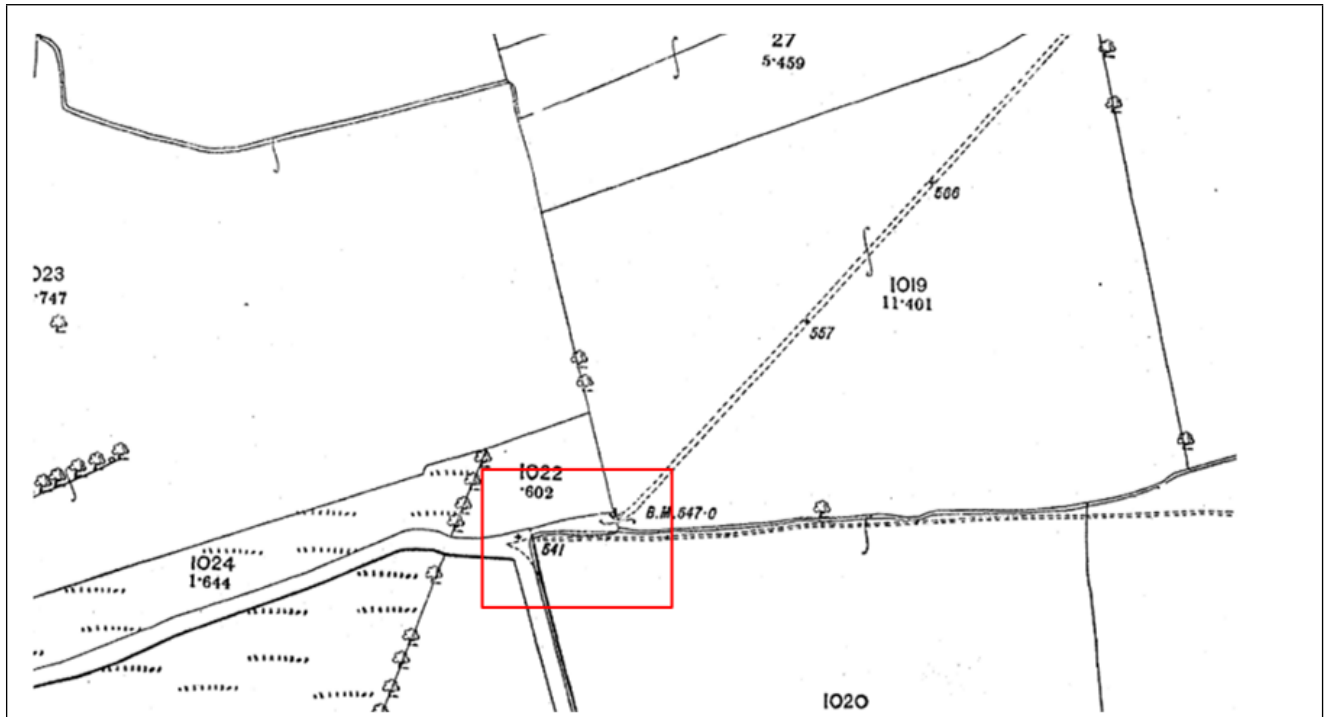
¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in 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.





Observations		<p>The application route is clearly shown leaving Procter Moss Road at an open junction (point A) and continuing through to point B from where it then turns to follow the perimeter of a field as a bounded route to provide access to the property named as Greenfield.</p> <p>The route to be deleted is not shown.</p>
Investigating Officer's Comments		<p>The application route existed in 1844 providing direct access to a property and appeared to be available to use. There was no indication that the route provided access to anywhere else other than Greenfield.</p> <p>The route proposed to be deleted did not exist.</p>
25 Inch OS Map Sheet XXXV.9	1892	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1892.</p>





Observations

The application route between point A and point B is shown as part of the access road leading to the property labelled as Greenfield on the First Edition 6 inch map and as Longmoor on the First Edition 25 inch OS map although the track is now shown to take a more direct route across the field numbered 1019 as an unfenced track consistent with the route now recorded as BW0125011. The route is shown to continue – along the track now recorded as bridleway beyond Longmoor and other routes labelled as footpaths (F.P.s) are shown to connect to it.

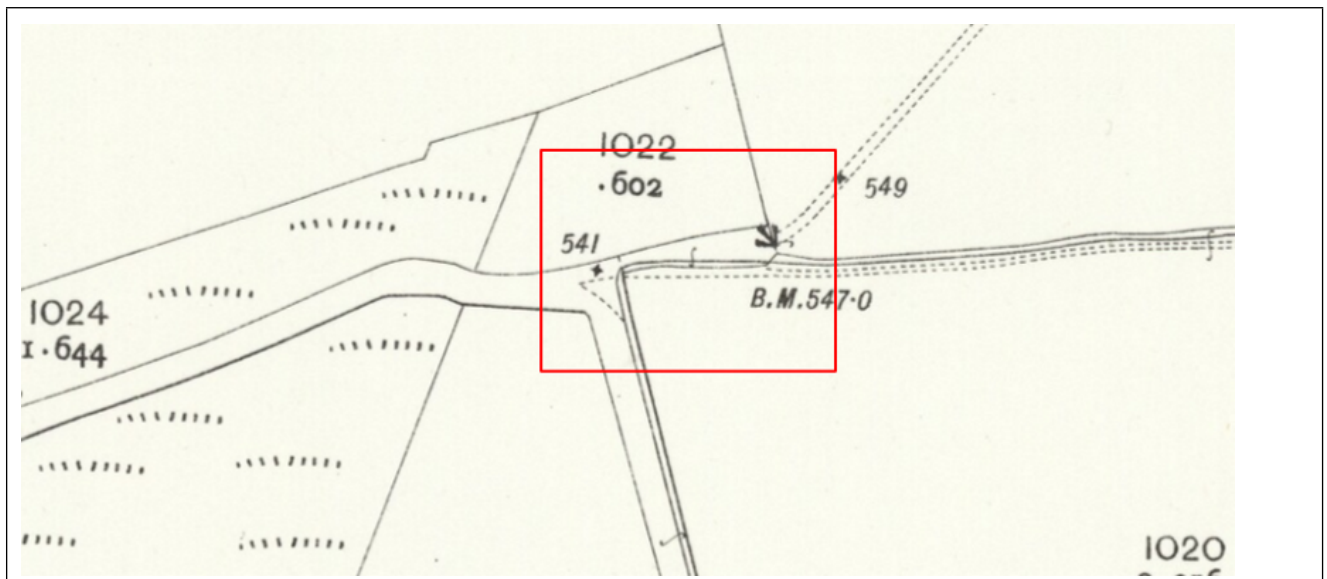
A benchmark is shown at point X and it also appears that there may have been a line across the route at this point. Every other benchmark and spot height on this sheet is shown on a public road. The width at point X is shown sufficiently wide to include the current cattle grid and bypass gate.

A dashed line is shown running adjacent to the application route in the field to the south (numbered 1020 on the map) indicating the edge of a track or path alongside the boundary and running parallel to the application route to Procter



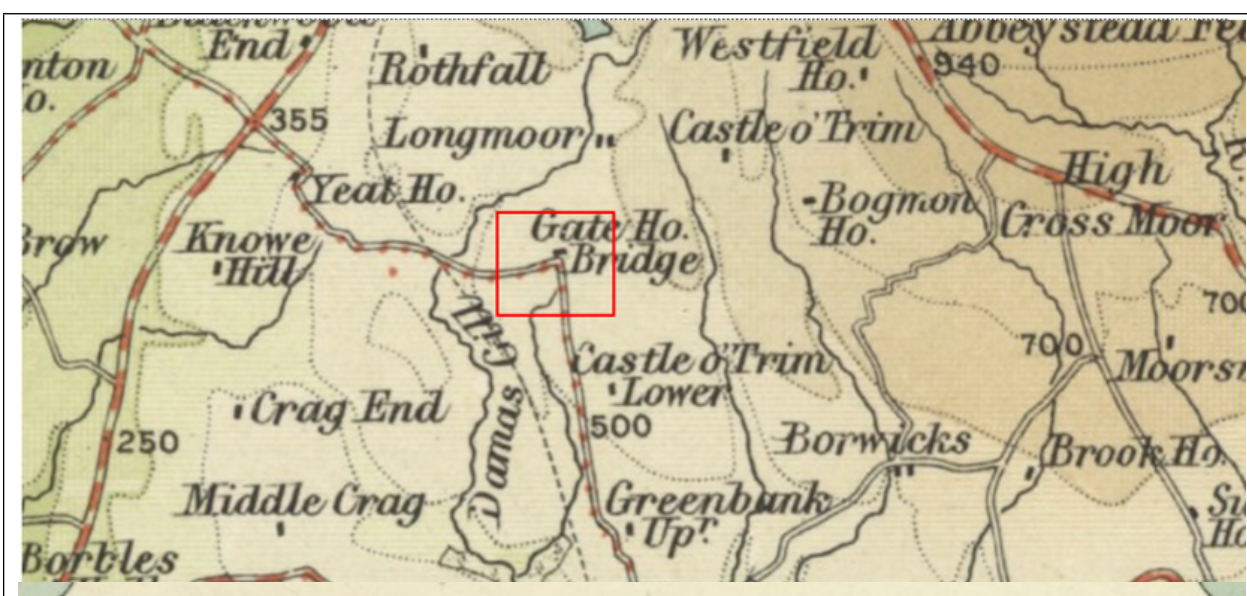
		<p>Moss Road immediately south of point A. This route is consistent with the route now recorded as Footpath FP0125019.</p> <p>The route to be deleted is not shown.</p>
Investigating Officer's Comments		<p>The application route existed in 1890 and appeared to be capable of being used to provide access to properties but also linking to a network of routes now recorded as footpaths and bridleways.</p> <p>A gate is shown at point X although the existence of gates along a public route would not have been considered unusual in the 1800s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p> <p>The fact that a benchmark is located on a route (at point X) is not generally significant. Benchmarks were located along a line of levelling, and often followed lines of communication. In some cases they can also be found on rocks in the middle of private fields or on a structure without public access and consequently it cannot be assumed that a bench mark is indicative of a public right of way. However, as all the benchmarks and spot heights on this particular sheet were on public road the observation that this benchmark is on the application route is consistent with public status.</p> <p>The route to be deleted was not shown and did not appear to have existed in 1890.</p>
25 inch OS Map Sheet XXXV.9	1912	Further edition of the 25 inch map surveyed in 1890, revised in 1910 and published in 1912.




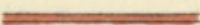



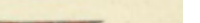



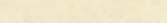


Observations		The application route is shown in the same way as it was shown on the earlier edition of the 25 inch OS map. The route to be deleted is not shown.
Investigating Officer's Comments		The application route existed as direct access from Procter Moss Road to the route recorded as Bridleway BW0125011 at point B in 1910. The route to be deleted did not exist.
Bartholomew half inch Mapping Sheet 5 – North Lancashire and Ise of Man	1905	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. During this period prior to 1968 cyclists were only permitted on carriageways.





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.

Observations		The application route and the route to be deleted are not shown. Bridleway BW0125011 and Footpath FP0125019 are also not shown.
Investigating Officer's Comments		These small-scale half inch maps were predominantly published with the main market being cyclists and motorists so it was not normal for routes considered to be footpaths and bridleways – or many private vehicular access tracks – to be shown.
Finance Act 1910 Map	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted. Maps, valuation books and field books



		<p>produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
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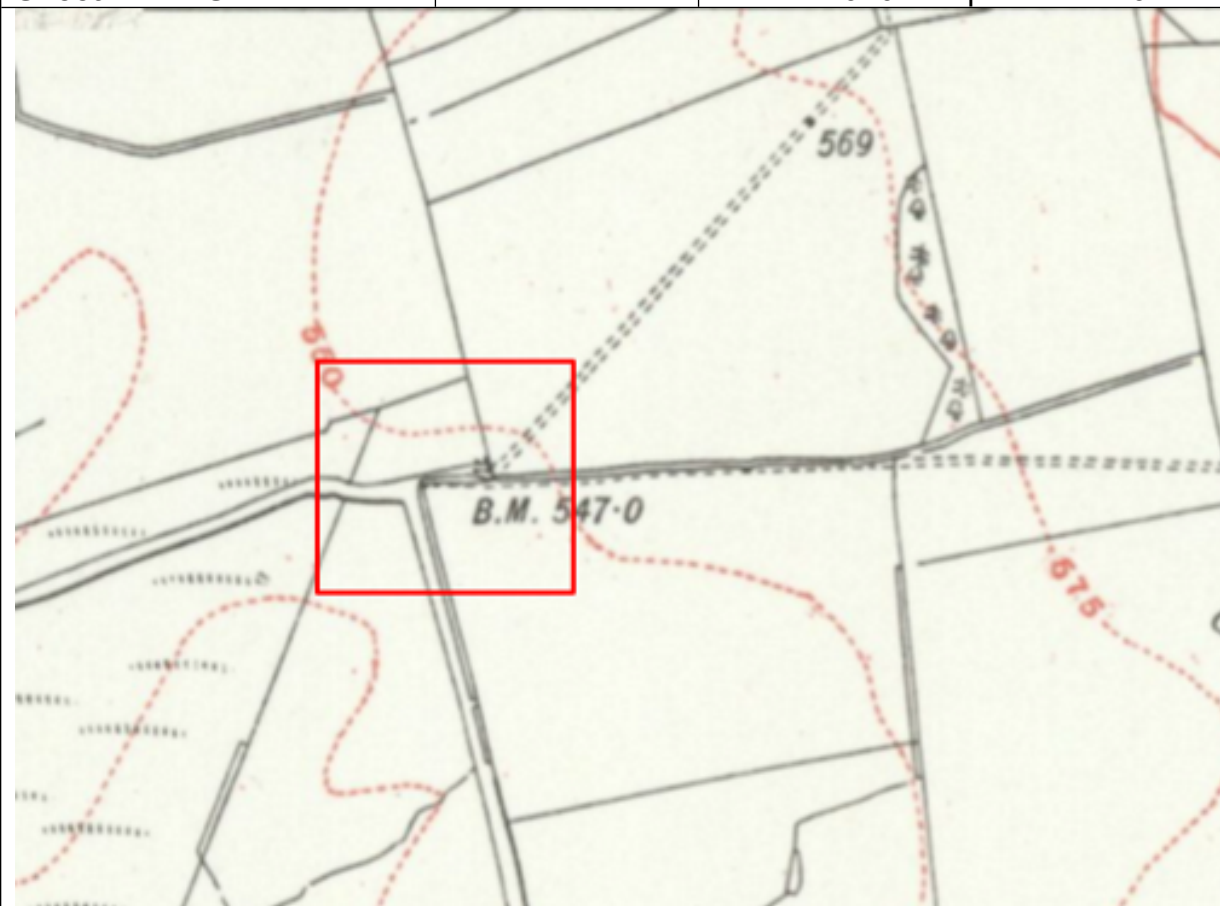




<p>Observations</p>		<p>The application route between point A and point X is excluded from the taxable plots and looks to have been considered to form part of Procter Moss Road. The route to be deleted is not shown and no details are provided in relation to it in the District Valuation Book.</p>
<p>Investigating Officer's Comments</p>		<p>The exclusion of the route from the taxable hereditaments between point A and point X is good evidence, but not conclusive of public carriageway rights. In this particular case the junction of the application route with the public carriageway (Procter Moss Road) at point A is open and not gated. From point A the application route is bounded on either side for the short distance to point X where a gate is shown across it. The way is fairly wide at point X. When the Valuation Map was prepared it appears that the application route may have been considered to be part of Procter Moss Road because of how it was shown on</p>



		the OS map base rather than providing good evidence of public rights. The map provides no information regarding the route to be deleted and the District Valuation book has not been checked because it would not specify the exact position of any route for which a deduction might have been claimed
6 inch OS Map Sheet XXXV SW	1914	OS 6 inch map surveyed 1843-44, revised 1910 and published 1914.



Observations		The application route is shown in the same way as it is shown on all other OS maps examined. The route to be deleted is not shown.
Investigating Officer's Comments		The application route existed as direct access from Procter Moss Road to the route recorded as Bridleway BW0125011 at point B in 1910. The route to be deleted did not exist.
1932 Rights of Way Act Map	1932	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 rural districts (RD) are available for inspection at County Hall: Lunesdale RD, Lancaster RD, Burnley RD, Garstang RD and West Lancashire RD.

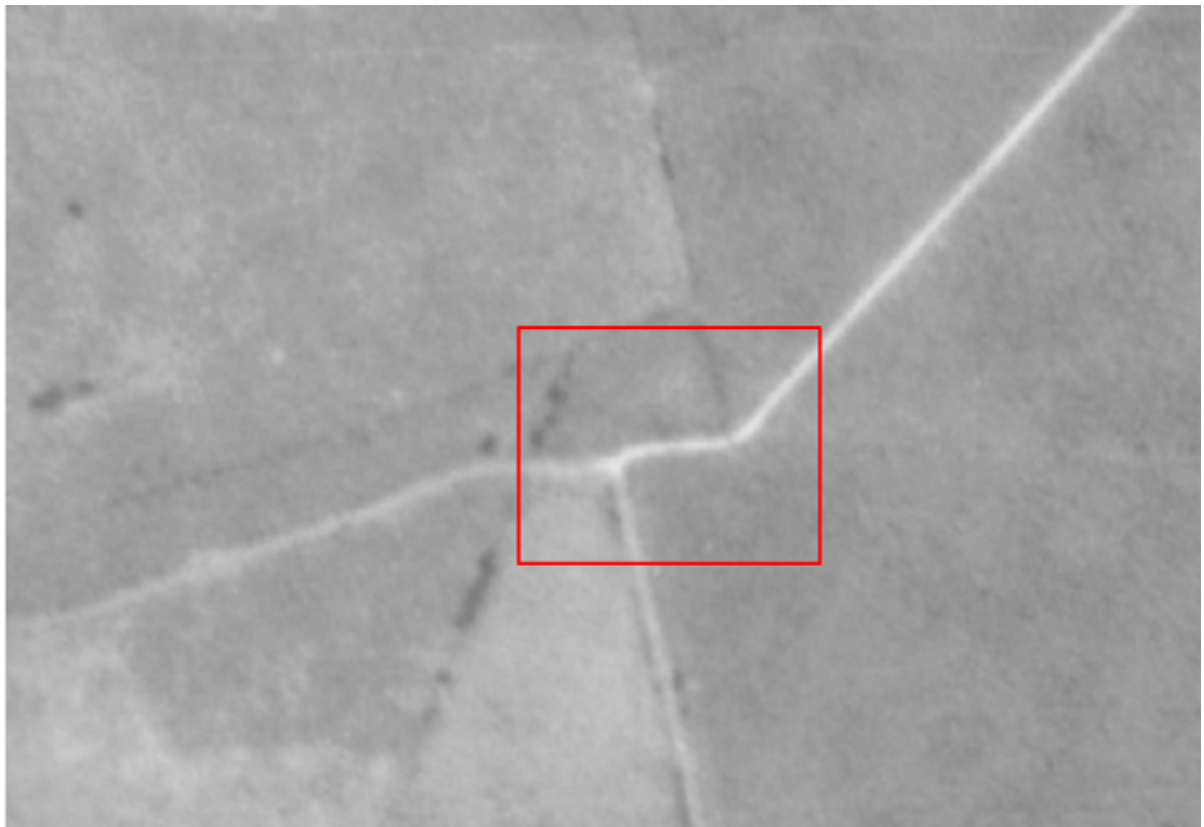


Observations

The Map prepared for Lancaster Rural District does not show the application route. All routes shown are coloured red with no indication whether they were all considered to be footpaths, bridleways or highways of a higher public status. The route now recorded as Bridleway BW0125011 is shown coloured red and numbered 4. It is drawn to include the application route between point B and point X and appears to terminate at the gateway at point X. The route proposed to be deleted between point B and point C is not shown. Footpath 19 is shown on the map as the route numbered 5 and is shown consistent with how the footpath is currently recorded.

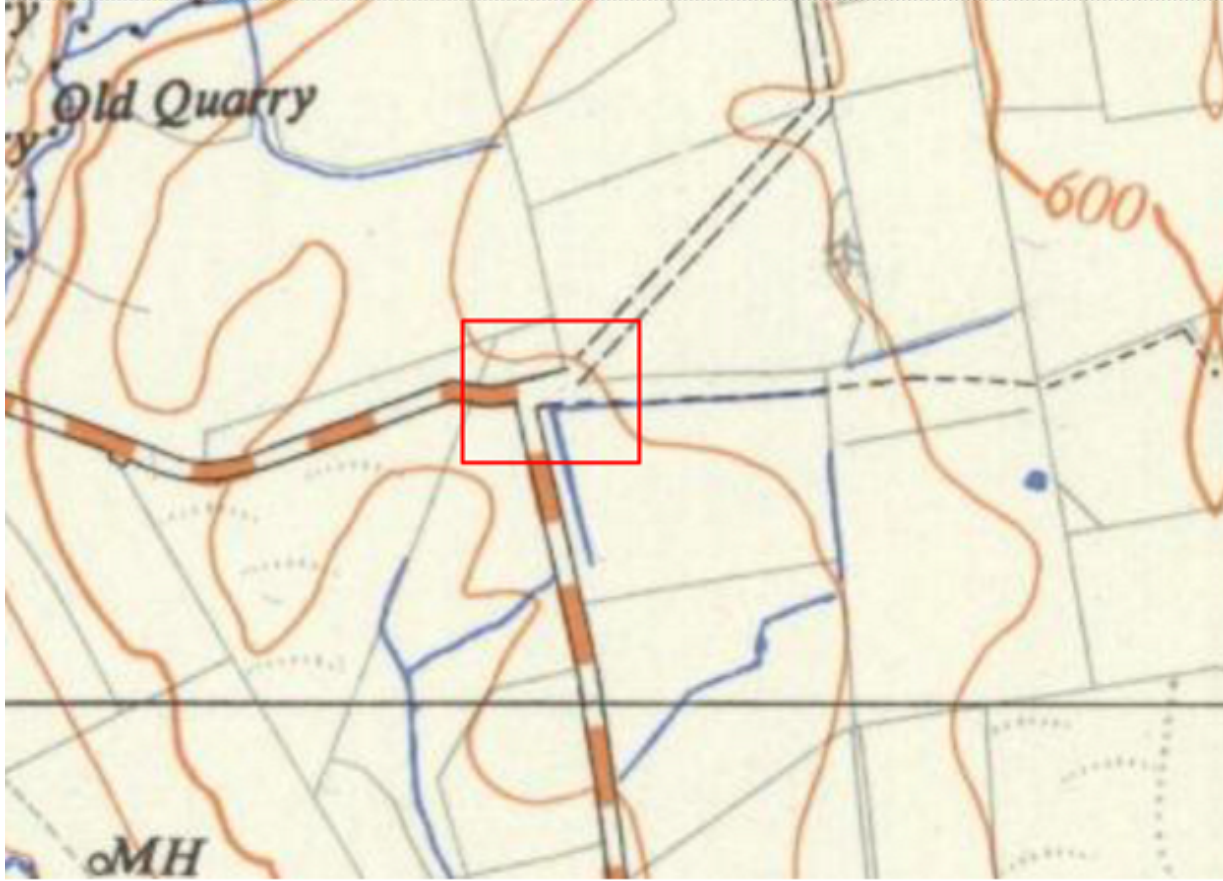


Investigating Comments	Officer's	The routes numbered as 4 and 5 are shown consistently with how they are recorded on the Parish Survey map prepared in the 1950s and detailed later in this report. The way that the route numbered 4 (Bridleway BW0125011) is shown is consistent with the view that the route continued through to Proctor Moss Road via the application route A-X and the view that the route between point B and point C did not exist.
Aerial Photograph²	1945-1952	The earliest set of aerial photographs available was taken just after the Second World War Aerial with photos flown between June 1945 and September 1952. They can be viewed on GIS. The clarity is generally very variable.



Observations		The application route can be clearly seen on the aerial photograph although it is not possible to see whether a gate existed in
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² 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.

		<p>the proximity of point X.</p> <p>The route to be deleted cannot be seen.</p>
Investigating Officer's Comments		<p>The application route existed in the 1940s and appeared to be capable of being used. There appeared to be no reason in 1940s from looking at this photograph why the Bridleway would not have followed the application route between point A and point B.</p> <p>The route proposed to be deleted did not exist.</p>
1:25,000 OS map Sheet SD55	1955	OS map fully revised 1889-1931, partial revision 1938-51 and published 1955.
		
Observations		<p>The application route can be seen providing direct access from Procter Moss Road to Bridleway BW0125011 at point B. No line is shown across the application route at point X. The route to be deleted between point B and point C is not shown.</p>
Investigating officer's Comments		<p>This small-scale OS map provides very little detailed information so it is not surprising that the gate at point X, shown</p>



		to exist on other OS maps, was not shown.
1:2500 OS Map SD 5256-5356	1973	Further edition of 25 inch map reconstituted from former county series and revised in 1972 and published in 1973 as national grid series.
Observations		The application route is shown in a similar way to how it is shown on all other OS maps examined. The route to be deleted is not shown.
Investigating Officer's Comments		The application route existed as direct access from Procter Moss Road to the route recorded as Bridleway BW0125011 at point B in 1972. The route to be deleted did not exist.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.





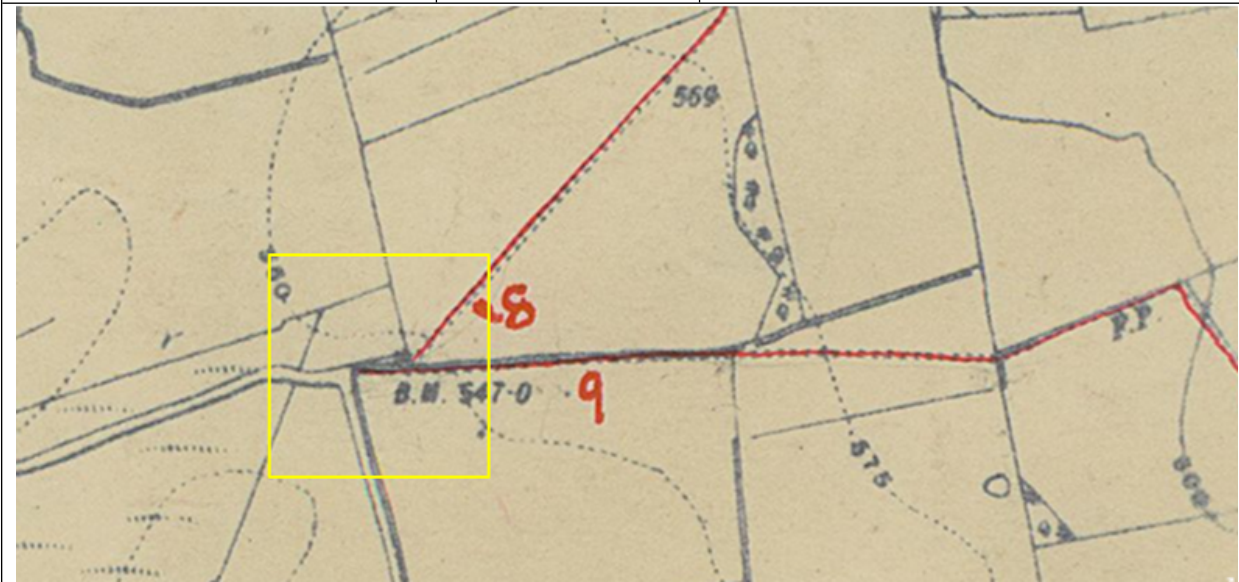
Observations		<p>The application route is again shown as part of a substantial access road between point A and point B – continuing north east from point B.</p> <p>The route to be deleted is not shown.</p>
Investigating Officer's Comments		<p>The application route existed and appeared capable of being used.</p> <p>The route to be deleted did not exist.</p>
Aerial Photograph	2014	Aerial photograph available to view on GIS.



Observations		The application route can be clearly seen as a substantial route. The cattle grid at point X can also be seen with what looks to be a gate or gap directly south of it. The route to be deleted cannot be seen.
Investigating Officer's Comments		The application route existed and appeared capable of being used although the insertion of a cattle grid across the route at point X means that horse riders would be required to use the bypass immediately south of the cattle grid. There is no evidence that the route to be deleted existed.
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

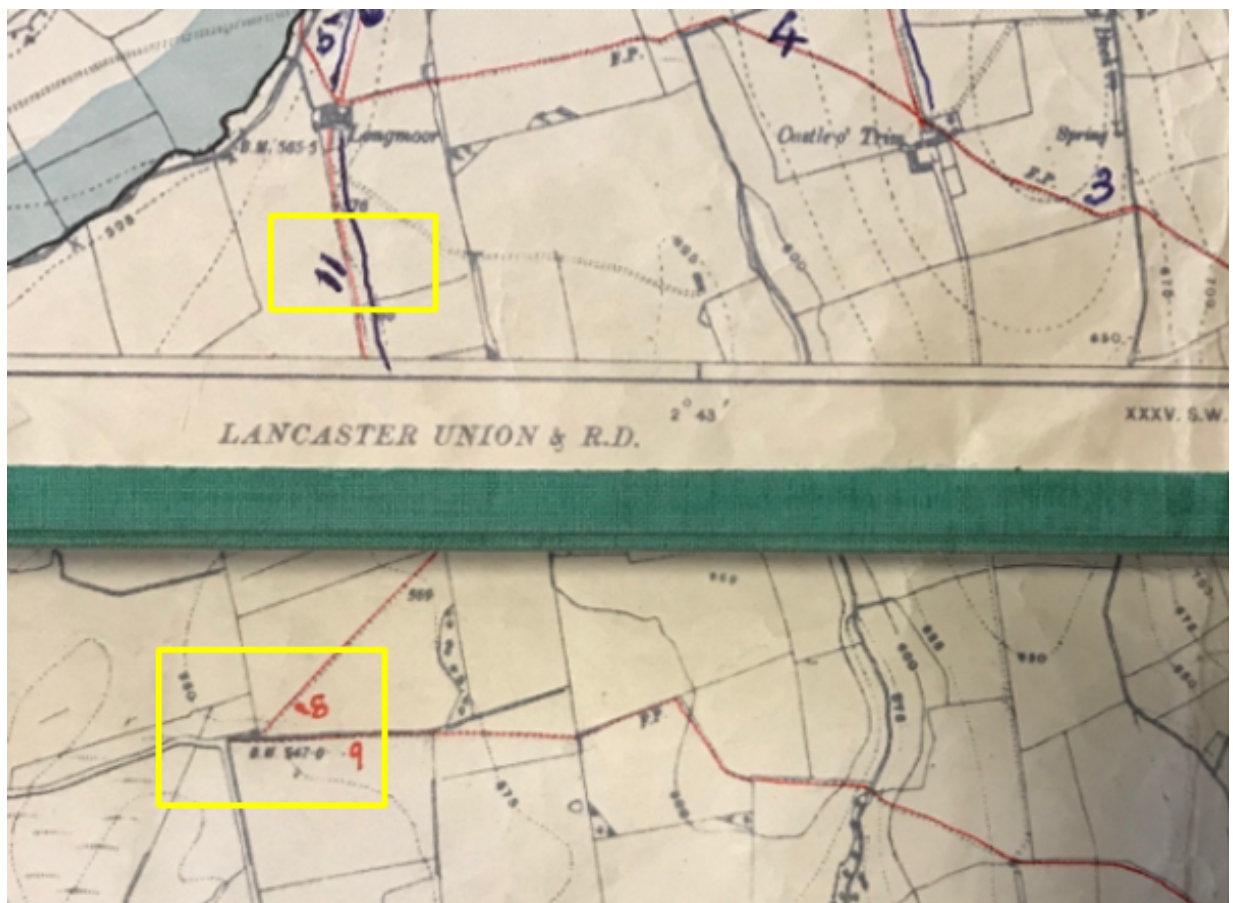


district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. 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.





Map sheet 1



Extracts of Parish Survey Map sheets 1 and 4



11

DISTRICT Lancaster Rural PARISH Over Wyresdale No. 9 F.P.

MAP SHEET No. 4 LENGTH 0.42 miles
(to two decimal places)

BRIEF DESCRIPTION (Field F.P. or otherwise)
Metalled Farm Road

DETAILED DESCRIPTION (giving starting point, means of passage and general condition).
Turn east off Procter Moss Road and follow metalled farm road to far corner of field.

SURVEYED BY :- Name A. V. Harvey
Address Greenbank, Over Wyresdale, Lancaster.

Date 30th May 1951

50000/F39/4/50

Parish Survey Card for Path 11

19

DISTRICT Lancaster Rural. PARISH Over Wyresdale. No. 9 F.P.

MAP SHEET No. 4. LENGTH 1.02 miles
(to two decimal places)

BRIEF DESCRIPTION (Field F.P. or otherwise)
Field F P.

DETAILED DESCRIPTION (giving starting point, means of passage and general condition).
Starts at gate on No 8 FP. Goes E along S side of field and through gate. Path very indistinct. Crosses field diagonally to a dirty crossing over stream. Gateway being blocked by rails. No stile. Follows N side of pasture in E direction to ditch and bank. Follows ditch in SE direction, gradually becoming more Easterly. Follows fence side to Sparrow Gill. Blocked by single-strand barbed-wire. Stile also barbed. No bridge over brook. Crosses pasture to open gateway, which is very dirty and wet. Path now becomes more distinct. Follows N side of two fields and drops down to Smithy Beck. No bridge. Stone stile over wall to pasture. Follows side of stream and through small gate to meadow. Along N side of meadow to No. 10 FP.

SURVEYED BY :- Name A. V. Harvey.
Address Greenbank, Over Wyresdale, Lancaster.

Date 3rd. October, 1951.

50000/F39/4/50

Parish Survey card for FP 19

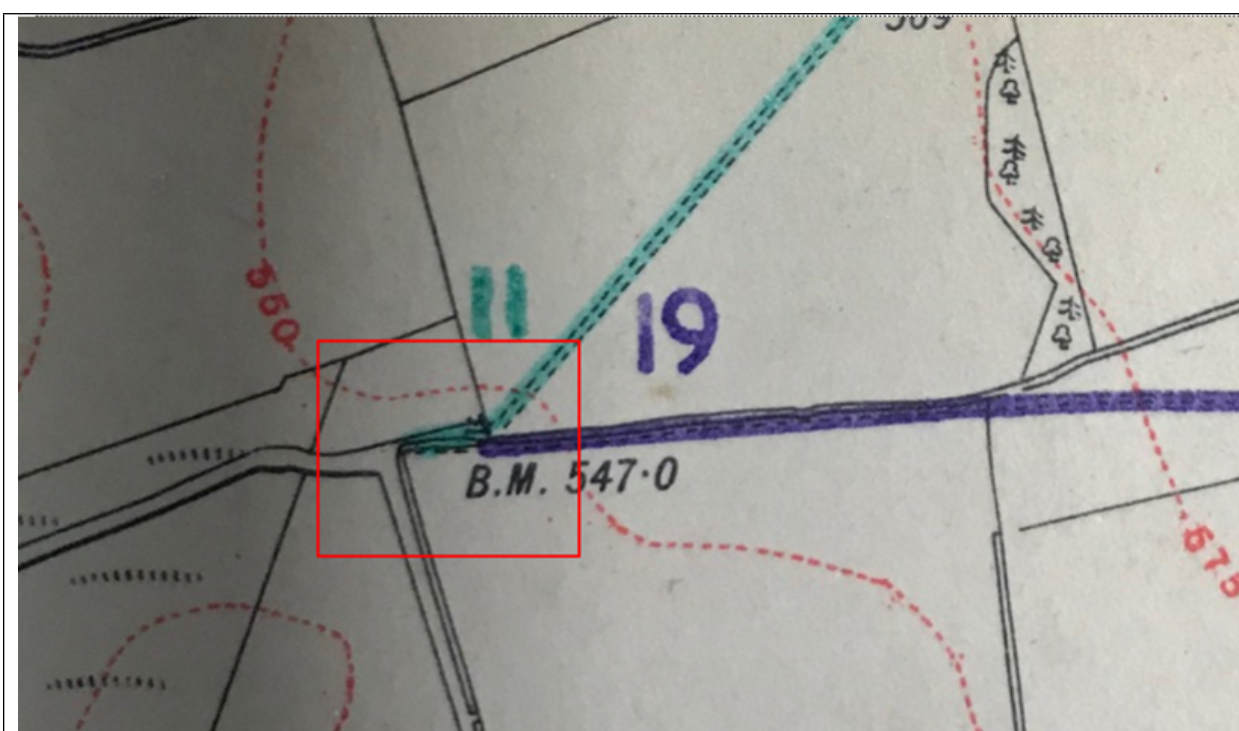
Observations

The Parish Survey maps and cards are initially confusing.
Map Sheet 1 shows Procter Moss Road and a route numbered 8 coloured red and commencing at point X to continue north east to the edge of the sheet along



		<p>the route now recorded as BW0125011. Map Sheet 4 shows this continuing as a route coloured red and numbered 11. The Parish Survey card for the route numbered 8 does not describe the route shown on Map 1. The Parish Survey card for route 11 (Map Sheet 4) does however describe the route now recorded as BW0125011. The map shows the route from point X passing through point B continuing north east. It does not show the application route between point A and point X and does not show the route to be deleted between point B and point C. It describes the route as a metalled farm road which turned east off Procter Moss Road.</p> <p>The description for the route now recorded as FP0125019 is described as starting at gate on Footpath 8 and going east along south side of field.</p>
<p>Draft Map and Statement</p>		<p>The Parish Survey map and cards for Over Wyresdale were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>



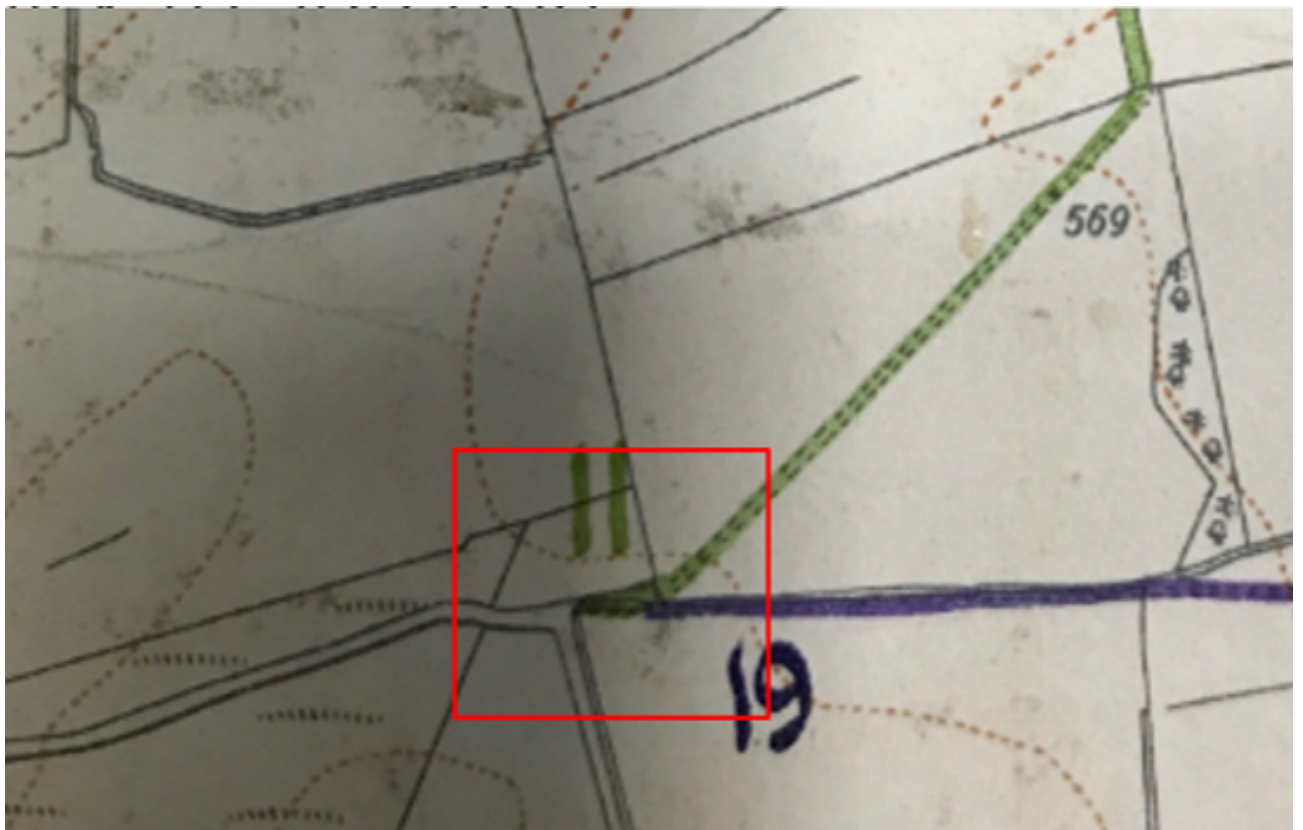


		Nos. 22 & 25.	
11	Bridleway	Longmoor to junction with path No.19 at Proctor Moss Road.	
18	Footpath	Upper Greenbank to junction with path Nos. 16 & 17 at Heversham Syke.	0.47
19	Footpath	Junction with path No.11 at Proctor Moss Road to junction with path Nos. 23 & 20.	1.02
20	Bridleway	Junction with path Nos. 21, 22 & 24 at Low Moor	

Observations		<p>When the Draft Map was drawn the route previously shown on the Parish Survey card and described as a metalled farm road on the parish survey card is now listed as a bridleway and is clearly shown on the map to include the application route between point A-X-B.</p> <p>The route between point B-C is not shown. The Bridleway is described very briefly in the Draft Statement as starting at Longmoor and terminating at the 'junction with path No.19 at Proctor Moss Road'.</p> <p>Footpath 19 is described as starting at the 'junction with path No.11 at Proctor Moss Road' but is shown on the map as starting/ending at a junction with the application route immediately west of</p>
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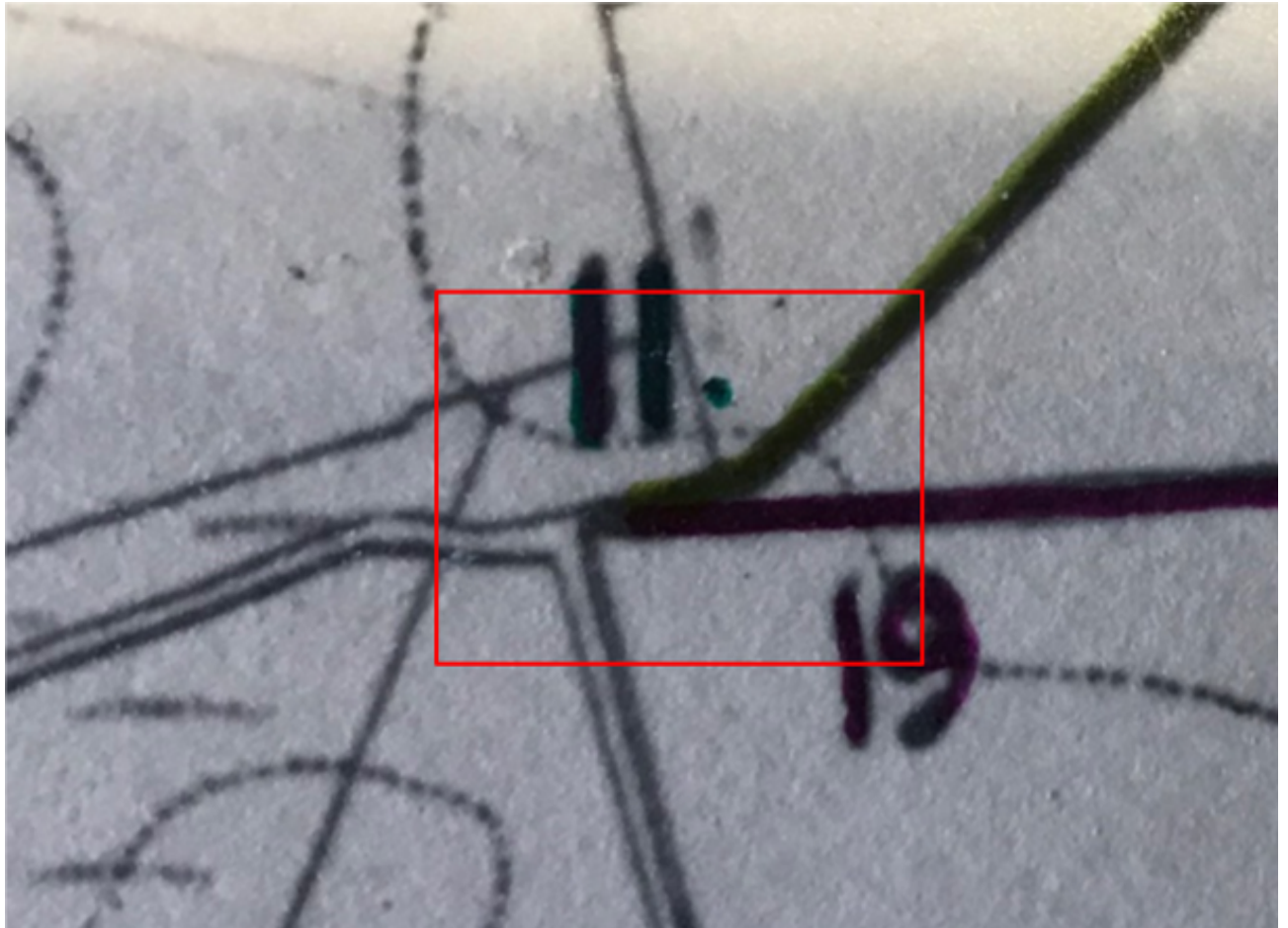
		<p>point X – possibly suggesting some confusion as to whether the application route between point A and point X was a public bridleway or part of Procter Moss Road.</p> <p>No objections or representations were found relating to how either routes were shown or described.</p>
<p>Provisional Map</p>		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960 and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>



<p>Observations</p>		<p>The Provisional Map shows the routes in the same way as they were shown on the Draft Map. The application route between point A-X-B is shown as part of BW0125011. The route to be deleted is</p>
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		not shown and here were no representations or objections relating to it.
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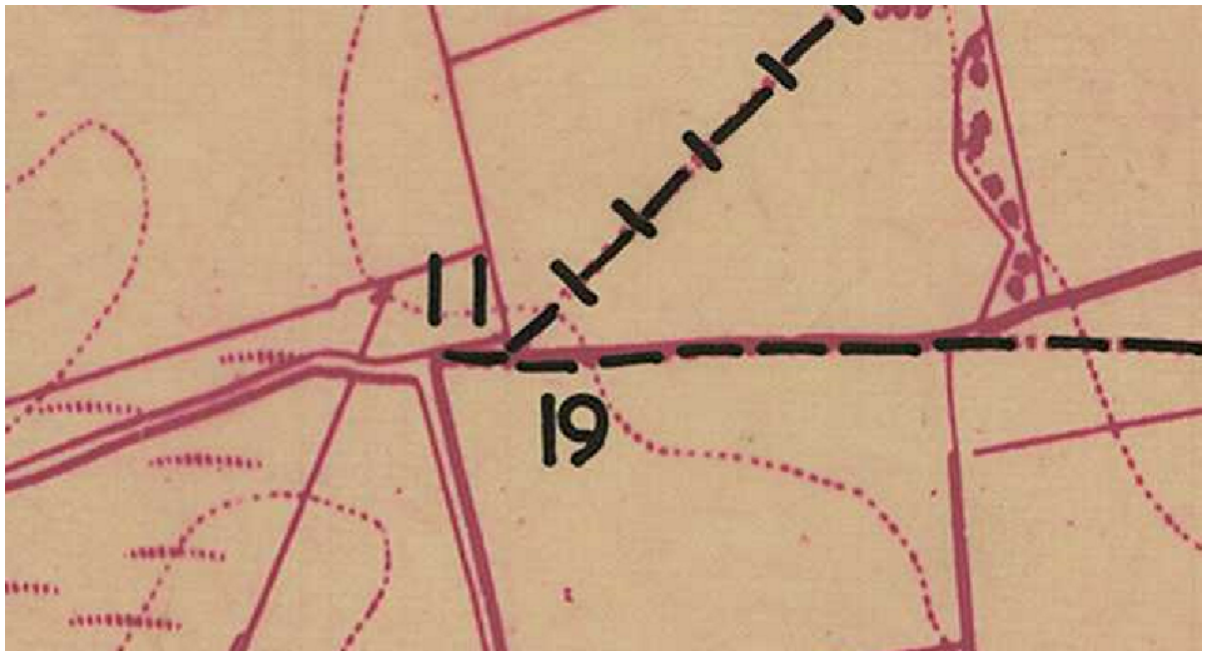
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
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Observations		<p>In this instance it appears that BW0125011 is shown to extend along the application route at least part-way between point A and point X east through point X to point B (and beyond) with FP0125019 shown to meet BW0125011 just east of the junction with Procter Moss Road. Due to the limitations of scale, thick felt pen and purple line drawn over the green line it is not possible to be clear whether the bridleway is shown starting at A or somewhere between A and X.</p> <p>The Definitive Statement remained unchanged from what was written in the Draft Statement.</p>
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Revised Definitive Map of Public Rights of Way (First Review)

Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.



Review of Definitive Rights of Way Map

1. No. of Path	2. Kind of Path	3. Position	4. Length in miles to 2 places decimals	DEFI Other ps
1	Footpath	High Cross Moor Road to Higher Moor Head	0.31	
2	"	Higher Moor Head to Bogman House	0.34	
3	"	Bogman House to Castle O'Trim	0.33	
4	"	Castle O'Trim to Longmoor	0.39	
5	"	Longmoor to Parish Boundary	0.08	
6	Bridleway	Longmoor to Parish Boundary	0.13	
7	Footpath	Castle O'Trim to Parish Boundary	0.23	
8	"	Junction with Path No. 2 to Lee Tenement	0.34	
9	"	Lee Tenement, North to Parish Boundary	0.13	
10	Bridleway	Junction with Path No. 1 to junction with Path No. 22 and 25	0.37	
11	"	Longmoor to Junction with Path No. 19 at Proctor Moss Road	0.42	

LANCASTER RURAL DISTRICT

LANCASTER RURAL DISTRICT

1. No. of Path	2. Kind of Path	3. Position	4. Length in miles to 2 places decimals	Otl
16	Footpath	Lower Green Bank near top of hill to junction with path Nos.17 and 18 near Heversham Syke.	0.61	
17	"	Junction with Path Nos.16 and 18 at Heversham Syke to Parish Boundary at bridge over Damas Gill.	0.07	
18	"	Upper Greenbank to junction with Path Nos.16 and 17 at Heversham Syke.	0.47	
19	"	Junction with Path No.11 at Proctor Moss Road to junction with Path Nos.23 and 20.	1.02	
20	Bridleway	Junction with Path Nos.21,22 and 24 at Low		

Observations

Again, the scale of the First Review Map makes it difficult to interpret exactly what was shown but a search of county council records confirmed that there had been no legal diversion, extinguishment or creation orders altering the extent of public rights across the land affected by the application.

Close examination of the Revised Definitive Map appears to show that a dash was drawn between points A and C over the lines on the base map. This dash meets one on the east representing Bridleway BW0125011 and is close to the one representing Footpath FP0125019.

Investigating
Comments

Officer's

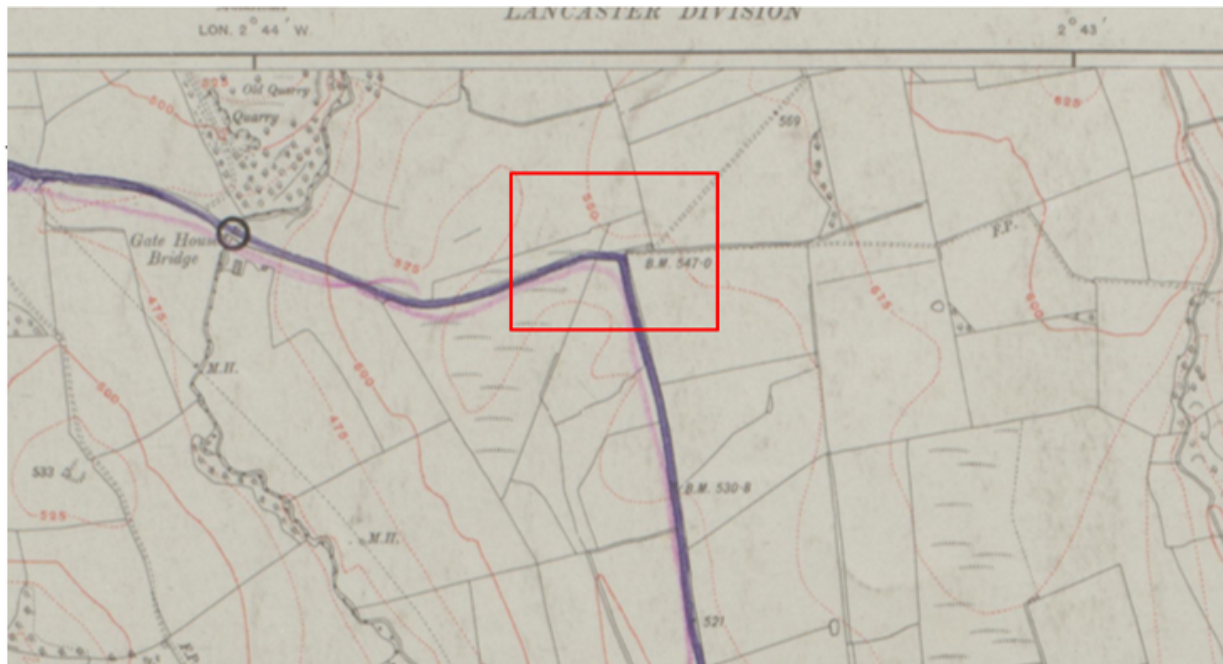
All OS mapping pre-dating and post-dating the preparation of the Definitive Map suggest that the application route A-X-B existed and was capable of being



		<p>used.</p> <p>There is nothing to suggest that the alignment of the Bridleway as shown on the Draft or Provisional Map as being along the route A-X-B was ever challenged but rather it appears that due to the small scale of the map and extremely close proximity of both paths – particularly as the maps were redrawn on at least 5 occasions during the Definitive Map process presumably without any checking on site. The route of the bridleway was not fully recorded as extending through to point A as Procter Moss Road may have been regarded as extending to X (it appears from many of the parish surveys that no reference was made to the highways records). The bridleway was incorrectly shown between points B-C perhaps as part of that uncertainty.</p>
<p>Highway Adoption Records including maps derived from the '1929 Handover Maps'</p>	<p>1929 to present day</p>	<p>In 1929 the responsibility for district highways passed from rural districts to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine</p>



whether it is a highway or not.



Handover Map OS Sheet 35SW

Observations		The application route is not recorded as a publicly maintainable road and was not shown as a publicly maintainable highway in records believed to be derived from the 1929 Handover Map.
Investigating Officer's Comments		The fact that the route is not recorded as a publicly maintainable road does not mean that it does not carry public rights of access.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No records relating to the stopping up, diverting or creation of public rights exist along the route were found.
Investigating Officer's Comments		If any unrecorded public rights exist they do not appear to have been stopped up or diverted.
Statutory deposit and		The owner of land may at any time



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

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

Summary

The Investigating Officer was of the view that all the map and documentary evidence submitted as part of the application, or examined as part of the detailed research carried out by the county council, shows that the route to be deleted had, on a balance of probabilities, never existed and appears to have been included in error. It



also showed that there had consistently been a way available on the route to be added and that its omission was also erroneous.

Taking all available map and documentary evidence into consideration it is considered that the route to be deleted was wrongly recorded and that the route of the bridleway is that shown available on the various Ordnance Survey maps and not the route to be deleted.

No map or documentary evidence examined supported the view that the bridleway connected to the route recorded as Footpath 19 or that it did not connect to Procter Moss Road along the route to be added (A-X-B).

Head of Service – Legal and Democratic Services

Landownership

The section of the route from A to X crosses land which is unregistered. The land crossed by the route from X to B is in private ownership. The land from point B to part way between B and C is in private ownership and the land from part way between point B and C to point C is unregistered land.

Information from the Applicant

The applicant submitted the following map and documentary evidence in support of the application:

- 6 inch OS maps published in 1848 and 1914
- 25 inch OS maps published in 1891 and 1912
- 1:25,000 OS map published in 1955
- Extracts from the Revised Definitive Map and Statement (First Review)
- Tithe Map 1848
- Finance Act map
- Landownership plans
- Photographs showing the route in 2020

Information from the Landowner

A consultation plan was returned, with the owner simply highlighting the land in their ownership.

Information from Others

Cadent Gas and Atkins Global both responded to the consultation to state that they have no objection to the application.

The Ramblers' Association Footpath Secretary for the Lancaster District responded to the consultation to state they support the application and state 'it would appear to correct an anomaly since the bridleway, BW0125011, presently is shown to terminate on a public footpath, FP0125019, and not meet with a permissible onward



route, Proctor Moss Road. The obvious route to allow connection to the road is along the short spur from Proctor Moss Road to the bridleway'.

A Right to Ride representative from Cycling UK responded to the consultation by stating they had no objection to the proposal.

County Councillor Susie Charles, the local county councillor at that time had responded to the consultation by stating she had no objection.

Assessment of the Evidence

The Law - See Annex 'A'

To remove a route from the Definitive Map it is necessary to show on balance that it was on the Definitive Map in error.

The case of *Trevelyan v Secretary of State for the Environment, Transport and the Regions* [2001] confirms that cogent evidence is needed before the Definitive Map and Statement are modified to delete a right of way. Lord Phillips M.R. of the Court of Appeal stated at paragraph 30 of his judgement that:

“Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake.”

One such evidence of error could be sufficient evidence of a correct route.

In *R (on application of Leicestershire CC) v Secretary of State for the Environment Food and Rural Affairs* [2003] Collins J held that in these circumstances:

“it is not possible to look at s53(3)(c)(i) (adding a route) and s53(3)(c)(iii) (deleting a route) in isolation because there has to be a balance drawn between the existence of the definitive map and the route shown on it which would thus have to be removed.” He went on, *“if (the decision maker) is in doubt and is not persuaded that there is sufficient evidence to show the correct route is other than that shown on the map, then what is shown on the map must stay because it is in the interests of everyone that the map is to be treated as definitive ... where you have a situation such as you have here, it seems to me that the issue is really that in reality section 53(3)(c)(iii) will be*



likely to be the starting point, and it is only if there is sufficient evidence to show that that was wrong – which would normally no doubt be satisfied by a finding that on the balance of probabilities the alternative was right – that a change should take place. The presumption is against change, rather than the other way round”.

Committee is therefore advised to firstly consider whether route A-X-B is already a Bridleway in law and should be added to the Definitive Map. Secondly, whether this means that it was the correct route of the network in 1966 and that the route B-C was recorded on the Definitive Map in error, meaning that B-C should now be deleted from the record.

Committee is advised the evidence points strongly towards the conclusion that the Bridleway follows the route A-X-B, noting the Parish Survey Map, Draft Map, Provisional Map and First Definitive Map all consistently showing the route A-X-B with no route shown between B-C. As part of this process there were no objections made which is indicative of acceptance by the landowner and the public of the existence of the right of way shown along the route to be added A-X-B.

Furthermore, on the historical maps, from the OS Maps 1892 onward and the aerial photographs from the 1960s the application route A-X-B is clearly shown and there appears to be no route between B-C.

In contrast, the route proposed for deletion B-C is not shown on any map until the Definitive Map First Review. It is also worth noting the route B-C would have crossed a watercourse and field boundary and it is therefore considered more plausible that the route would have followed A-X-B as the route shown on all Ordnance Survey maps examined.

The investigating officer has found no documentation to explain the change from the route shown on the First Definitive Map to the route B-C. Therefore, the reasonable conclusion from the evidence is that no public right of way existed between B-C and that a simple drafting error due to the small scale of the maps and close proximity of the routes has resulted in the Bridleway being drawn along B-C instead of the correct route A-X-B.

Taking all the evidence into account it may be considered that there is sufficient cogent evidence to suggest the route B-C was recorded in error and should be removed from the Definitive Map and the Bridleway between A-X-B be added to the Definitive Map. It is advised that the evidence is sufficient to not only satisfy the test to make the Orders but also to promote the Orders 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 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 risk 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: 804-629		Annabel Mayson, 01772 533244, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

