

Regulatory Committee

Meeting to be held on 27 March 2024

Part I

Electoral Division affected:
Poulton-le-Fylde

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Investigation into the existence of public rights along Chapel Street Court, Poulton-le-Fylde

(Annex A refers)

Contact for further information quoting file reference 804-767:

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Brief Summary

Investigation into the existence of public rights along Chapel Street Court, Poulton-le-Fylde.

Recommendation

- (i) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add a footpath along Chapel Street Court, Poulton-le-Fylde on the Definitive Map and Statement of Public Rights of Way as shown on the Committee Plan between points A-B-C.
- (ii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Detail

An investigation has been carried out into the existence of public rights along Chapel Street Court, Poulton-le-Fylde following queries received about the legal status of the route and whether it is a publicly maintainable highway.

The county council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out



the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

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

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

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

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

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

The county council’s decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by 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. 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

Wyre Borough Council

Wyre Borough 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	3481 3941	Open junction to covered passageway between 4 and 8 Market Place (on some maps labelled 'Church Street')
B	3481 3941	Eastern end of covered passageway



C	3488 3942	Open junction with Chapel Street between 6 Chapel Street and St Chad's Church
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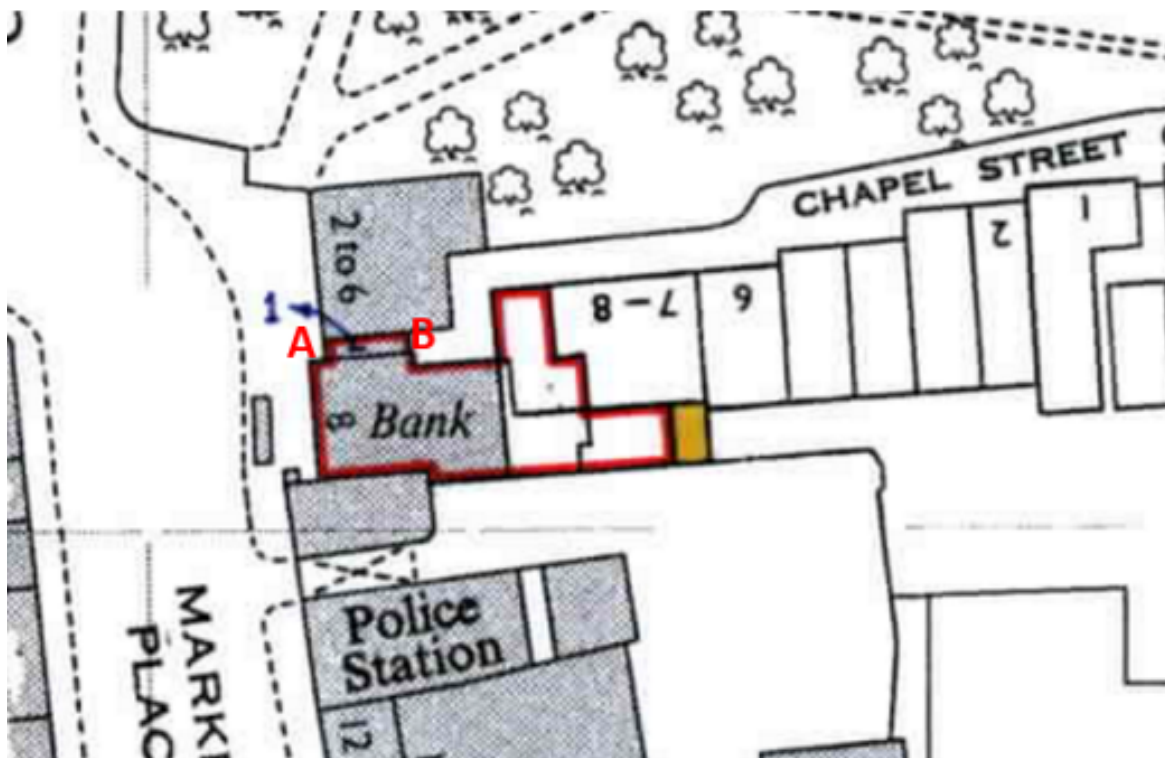
Description of Route

A site inspection was carried out in July 2023.

The route under investigation runs between Market Place, the historical centre of Poulton-le-Fylde, and Chapel Street south of St Chad's Church.

Market Place has been pedestrianised and with various shops, restaurants, a pub police station, banks and other services located in the buildings on either side of the square. Historical features known as the Fish Stone, Whipping Post, Market Cross and a memorial are all located within the pedestrian area and the Market Place, together with the immediate surrounding area (including the land crossed by the route under investigation), has been designated as a conservation area with a number of listed buildings.

The start of the route under investigation is situated on the east side of Market Place (point A on the Committee plan). Entrance onto the route is via a pedestrian passageway which passes at ground level under the building registered as being 8 Market Place (Land Registry reference LA804864) and which is shown on the Land Registry plan below as a 'Bank'.



Extract from Land Registry Plan LA804864 Ordnance Survey Plan dated 1988
[Above]

The passageway is bounded on the north side by the property referred to as 2 to 6 Market Place. 2 Market Place is a listed at Grade II building described as originally consisting of a house and a shop possibly dating from the late 17th or early 18th



Century ([2 Market Place \(IOE01/02702/09\) Archive Item - Images Of England Collection | Historic England](#)). The listing makes no reference to the passageway or adjoining property (4 Market Place) and it is not clear whether it refers to the whole of the property now registered as one (2,4,6 Market Street) but an examination of the 1st edition 25 inch OS map published in the 1892 suggests that these properties were originally split:



25 inch OS Map 1892 [Above]

From an inspection of the front of the properties it is not possible to determine when they were built or whether they were built at the same time although the map and documentary evidence detailed below suggests that they – and the passageway through which the route runs – existed by at least the early 1800s and possibly before that (see Yate's Map of 1786).

The entrance to the passageway is not restricted and there is no evidence that it has ever been gated. The interior walls have been painted white and the passageway has a concrete flagged surface. The passageway is 5.5 metres long and approximately 1 – 1.5 metres wide. Above the entrance to the passageway (point A on the Committee plan) there is a sign stating 'Chapel Street Court Shops' and listing 8 businesses.

Once through the passageway a further sign is visible low down on the wall providing another list of the shops individually accessed from the route and again headed 'Chapel Street Court Shops'. An additional notice board contained some information about the history of the route together with copies of two undated photographs of it:



CHAPEL STREET COURT

THE MEWS

POTT'S ALLEY

THE MEWS WAS ORIGINALLY KNOWN AS POTT'S ALLEY AND WAS RE-NAMED CHAPEL STREET COURT C1900. THIS WAS THE SLUM QUARTER, NOTORIOUS FOR IT'S SQUALOR, CONTAINING SOME OF POULTON'S MOST SQUALID OVERCROWDED PROPERTIES. IN 1848 IT WAS DESCRIBED AS 'NOT A NICE PLACE TO LIVE' AND IN 1852 A PUBLIC HEALTH REPORT CONDEMNED THE WHOLE AREA. THE DOORSTEPS OF THE ORIGINAL HOUSES ON THE CHURCHYARD SIDE CAN STILL BE SEEN BUILT INTO THE WALL.

Information displayed on Notice Board close to point B [above]





Footings of original houses (as referred to in the notice above)



Undated photograph of route under investigation on display on notice board looking back up the route from point C [above]





Further undated photograph of the route under investigation on display on the notice board [above] looking along the route

From the eastern end of the passageway (point B) the route under investigation opens out to run along a flagged accessway east then north and then east again bounded by 8 Market Street and 2-6 Market Street approximately 2-2.5 metres wide. As it turns to continue east again it is bounded on the north side by the wall separating it from the grounds of St Chad's Church and is bounded on the south side by properties primarily used as shops and cafes. The width of the route increases to between 3 and 5 metres. The whole of the bounded area is flagged except an area of block paving at the most easterly end adjacent to 6 Chapel Street.

A local authority rubbish bin is located along the route and in front of two cafés located along the route temporary seating and tables had been put outside obstructing part of the width – but which were positioned to ensure that it was still possible to walk past.

At the junction with Chapel Street (point C) a concrete bollard had been positioned in the surface to restrict vehicular access.


Three streetlights were located along the route.

The total length of the route is 75 metres and it was accessible on foot throughout the full length. It provided access to and past a number of shops and cafes and it was being used by pedestrians on the day that it was inspected.



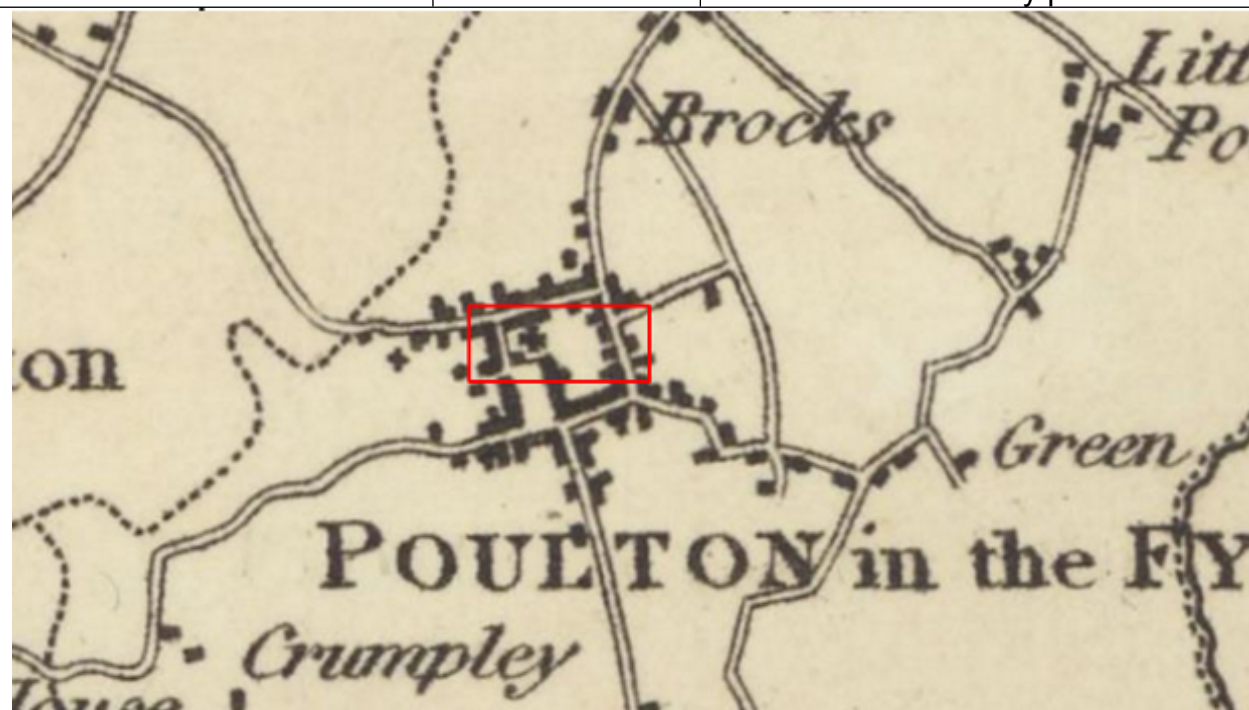
Map and Documentary Evidence

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.

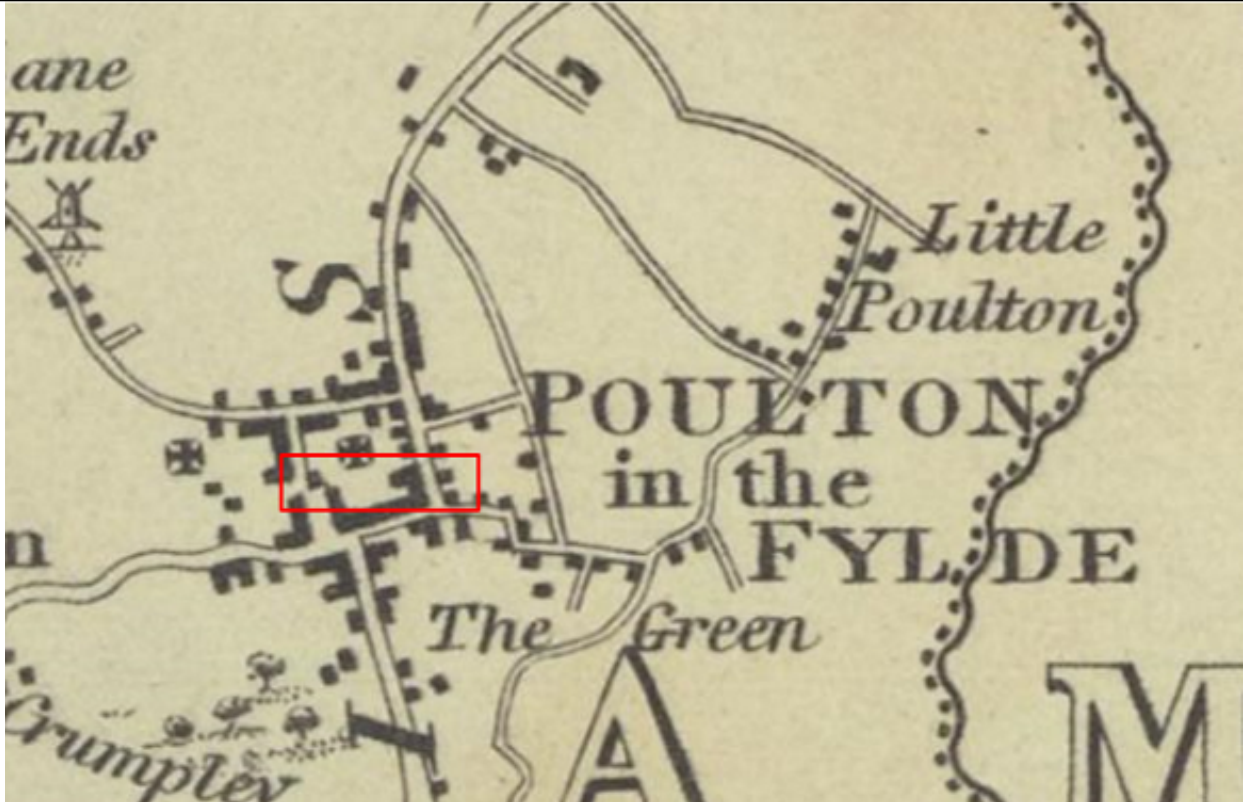
Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small-scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
		
Observations		The route under investigation is not shown. Market Place/Church Street and Chapel Lane are both shown and the area between the two is all coloured indicating the existence of buildings.
Investigating Officer's Comments		No inference can be drawn. The route under investigation may have existed between the buildings shown but the scale of the map and the purpose for which it was drawn means that a passageway



		through and between buildings would be unlikely to be shown. The map showed more significant through routes generally capable of being used by vehicles but would not show footpaths or less significant routes.
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		Market Place/Church Street and Chapel Lane are shown and the church is also marked but the route under investigation is not shown.
Investigating Officer's Comments		The route under investigation may have existed in 1818 but if it did, was not considered to be a substantial vehicular through route. Public footpaths were not normally shown on such small-scale maps so no inference can be drawn.
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 10 miles. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys, but his mapping of the county's communications network was

		generally considered to be the clearest and most helpful that had yet been achieved.
		
Observations		The route under investigation is not shown. Market Place/Church Street and Chapel Lane are both shown, and the church is also marked.
Investigating Officer's Comments		The route under investigation may have existed in 1830 but if it did, was not considered to be a substantial vehicular through route. Public footpaths were not normally shown on such small-scale maps so no inference can be drawn.
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 existing, dismantled or known proposals for canals or railways

		across the land over which the route under investigation runs.
Investigating Officer's Comments		No inference can be made with regards to the existence of public rights.
Tithe Map and Tithe Award or Apportionment	1839	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.





<i>Cookson George</i>	<i>Cookson George</i>	184	<i>Cottage</i>
		185	<i>Delto</i>
		186	<i>Delto</i>
		316	<i>Delto</i>
		317	<i>Delto</i>
		317	<i>Delto</i>
		320	<i>Delto</i>
		318	<i>Delto</i>
		187	<i>Joiners Shop and Yard</i>
<i>Church and</i>		188	



<i>Roads</i>	
<i>Roads from Horse Bridge to Shippool</i>	<i>665</i>
<i>" to Staining</i>	<i>666</i>
<i>" to Blackpool</i>	<i>667</i>
<i>" to Little Poulton</i>	<i>668</i>
<i>" from Breck to Little Poulton</i>	<i>669</i>
<i>" Little Poulton to Staining</i>	<i>670</i>
<i>Vicarage Lane</i>	<i>671</i>
<i>Occupation Road</i>	<i>673</i>
	<i>674</i>
	<i>675</i>
	<i>676</i>
<i>Road from Breck to Little Poulton</i>	<i>677</i>

Observations

The route under investigation is shown on the Tithe Map between point B and point C. The building through which the passageway A-B passes is shown and it appears that lines were drawn which suggest that the passageway existed. The property through which the passageway was shown is numbered as 403 and simply described as a 'house' owned by Frederick Kemp and occupied by William Whiteside.

The route provided access to a number of other properties all individually numbered on the map and many were in the ownership and occupied by the same person (George Cookson) (plots 316, 317, 318, 319, 320, 186, 187) although other properties and gardens in different ownership were also accessed from the route.

The route under investigation is not numbered (the numbering 317 and 319 relating to the adjacent cottages and not the route itself).

A separate list is provided of roads and the route under investigation is not



		included in that.
Investigating Comments	Officer's	<p>The route existed in 1839 and provided access to a number of cottages, a joinery store and yard and gardens. It was not separately numbered and there is no indication it was included in any of the other numbered plots suggesting possibly that ownership was unknown, tithes were not payable and/or that it was part of the general 'road' network to which it was open at the eastern end.</p> <p>However, it was not listed separately as a numbered road – and the fact that it included a narrow passageway A-B, which might or might not have been usable by the public suggests that any use of the route as a thoroughfare would have been most likely to have been on foot.</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 Map, Award or Agreement has been found relating to the land crossed by the route under investigation.</p>
Investigating Comments	Officer's	<p>No record could be found relating to the route under investigation coming into being as a public or private route because of the inclosure of land so no inference can be drawn in this respect.</p>
6 Inch Ordnance Survey (OS) Map Sheet LI	1847	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1847¹</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</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.

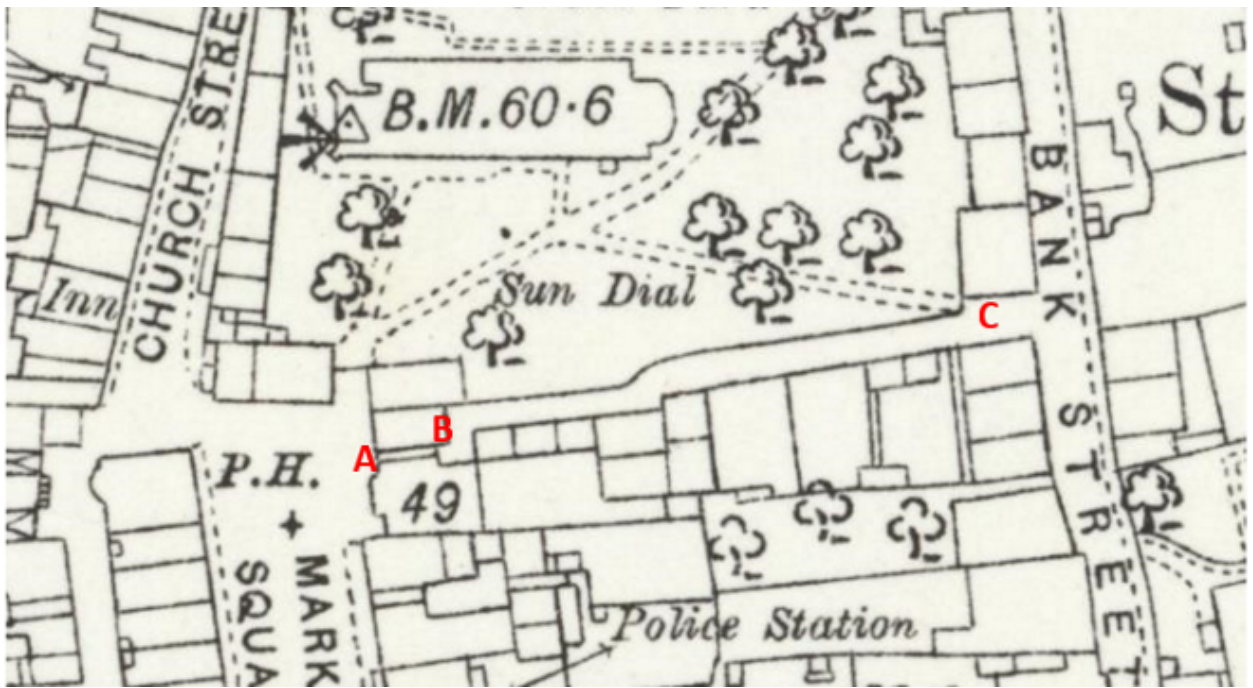


		<p>many), which explains why more than one version may be found with apparently the same publication date (with one showing a railway, and one not).</p> <p>As part of the County Council's research the Investigating Officer looks at the OS 6 inch maps located within our own records and also those available 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>
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<p>Observations</p>		<p>The small scale of the map and density of buildings and gardens means that even when the map is enlarged (as above) it is difficult to see whether the full length of the route under investigation was shown. The buildings running the length of Market Square are shown as a shaded block with no lines separating each individual property and no indication that the</p>
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		<p>passageway existed between point A and point B. From point B the route is shown through to point C with a row of buildings along the north side of the route. The buildings south of point C along the west side of Chapel Street are different to the ones that exist today and Chapel Street is named as Back street on the map.</p>
Investigating Officer's Comments		<p>Section B-C of the route appears to be available but it is not possible to know from this map whether the route existed as a through route capable of being used on foot in 1844.</p>
25 Inch OS Map Sheet LI.2	1892	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1892.</p>



Observations		<p>The earliest large scale OS map examined.</p> <p>The map shows the passageway A-B and the full length of the route under investigation through to point C. The route is not named. Buildings that previously existed along the north side of the route between point B and point C are no longer shown and the route is shown bounded by a wall separating it from the church grounds.</p> <p>Chapel Street was named on the map as Bank Street. A-B is shown in a similar</p>
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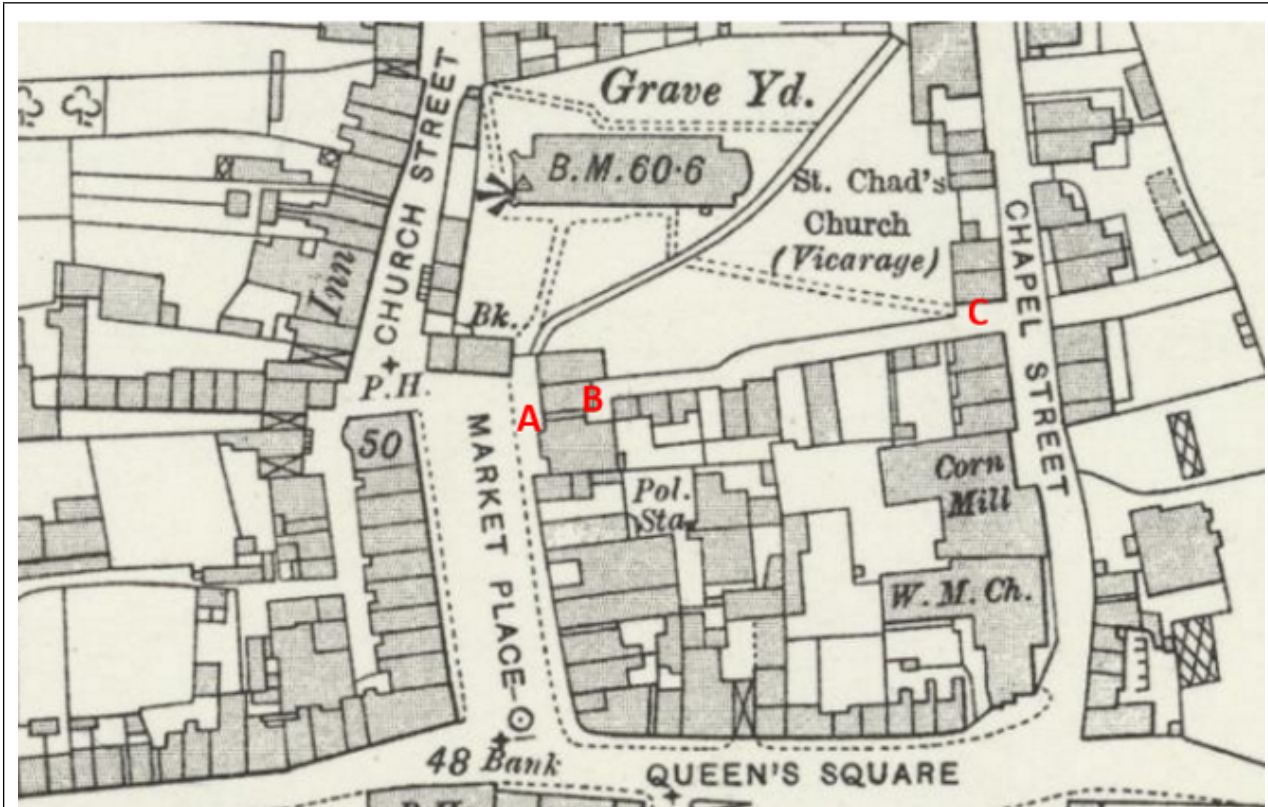
		manner to the passageway 15m further south (by the 'A' of 'MARKET'). It is not possible to tell whether the lines across the route at A and B are at ground floor level or only at first floor level.
Investigating Comments	Officer's	The route under investigation existed which appeared capable of being used at least on foot in 1890. As well as providing access to several properties and plots of land use of the passageway A-B, if unrestricted, would provide a through route from Market Square to Bank Street (Chapel Street).
Bartholomew Mapping	half inch 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.





Observations		The route under investigation is not shown on any of the three Bartholomew Maps examined (1905, 1920 or 1941 editions).
Investigating Comments	Officer's	OS maps dated before and after the publication of Bartholomew's maps confirm the physical existence of the route over this period. As they were derived from the Ordnance Survey maps which probably showed it, the route may have been purposely omitted by Bartholomew so the fact that the route is not shown on any of the three maps inspected suggests that it was not considered to be a public vehicular route at that time. Footpaths and Bridleways were not normally shown, so no inference can be drawn in that respect.
25 inch OS Map Sheet LI.2	1912	Further edition of the 25 inch map surveyed in 1892, revised in 1910 and published in 1912.

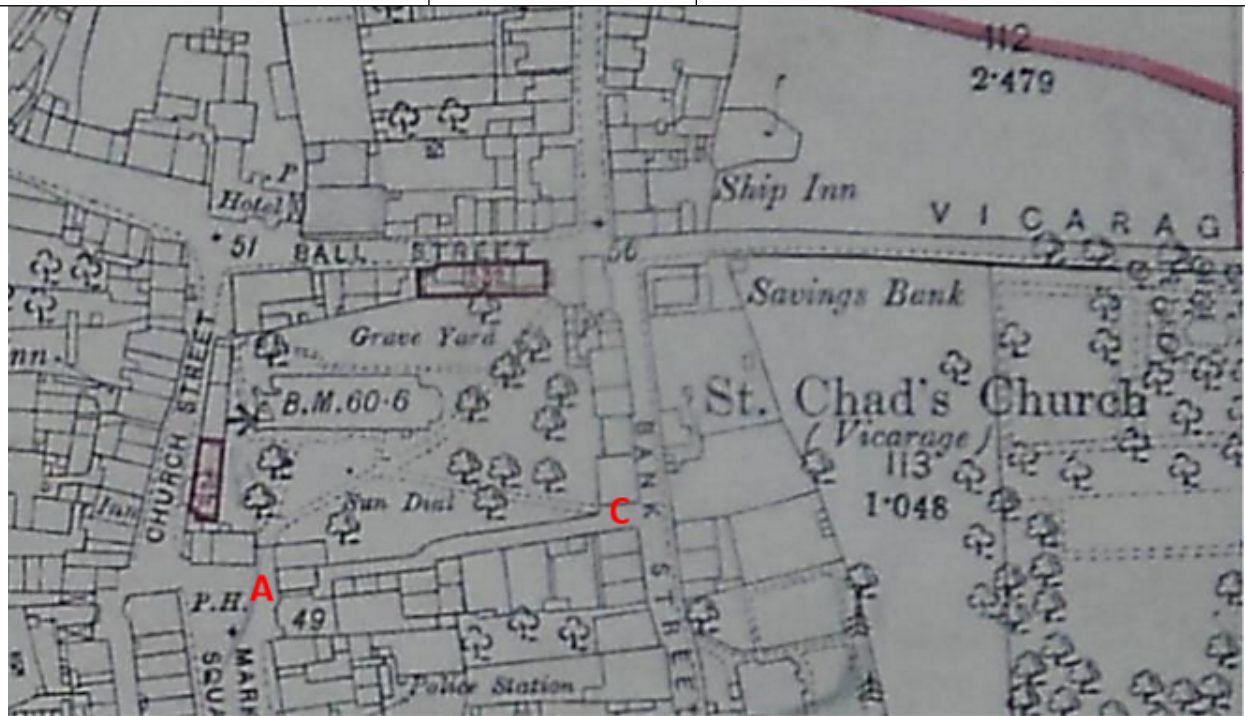




Observations		The route under investigation is shown in the same way that it is shown on the earlier 25 inch OS map examined. Back/Bank Street is now named on the map as Chapel Street.
Investigating Officer's Comments		The route under investigation existed in 1910 and may have been capable of being used as a through route on foot provided that access along the passageway A-B was available.
Finance Act 1910 Map TNAs Ref:IR133/3/216	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was</p>

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.



Map deposited in the National Archives [Above]

Observations

The County Records Office does not hold any Finance Act maps for the land crossed by the route under investigation (although it does hold the Valuation Books). The Finance Act map held by the National Archives Office is not complete



		and does not provide any details with regards to the route under investigation.
Investigating Officer's Comments		No inference can be drawn with regards to the route under investigation.
25 Inch OS Map Sheet LI.2	1932	Further edition of 25 inch map (surveyed 1890, revised in 1930 and published in 1932.



Observations		The passageway is shown between point A and point B and beyond point B the route under investigation is shown and named as Chapel Street Court providing access to a number of buildings located along it. n.b. the passageway just to the south is shown unshaded on this and the 1912 sheets.
Investigating Officer's Comments		The route under investigation existed as a named route in 1930 and if the passageway A-B was accessible appeared to be capable of being used by pedestrians as a through route.
25 Inch OS Map Sheet LI.2	1945	Further edition of 25 inch map (surveyed 1890, revised in 1942 and published in 1945.





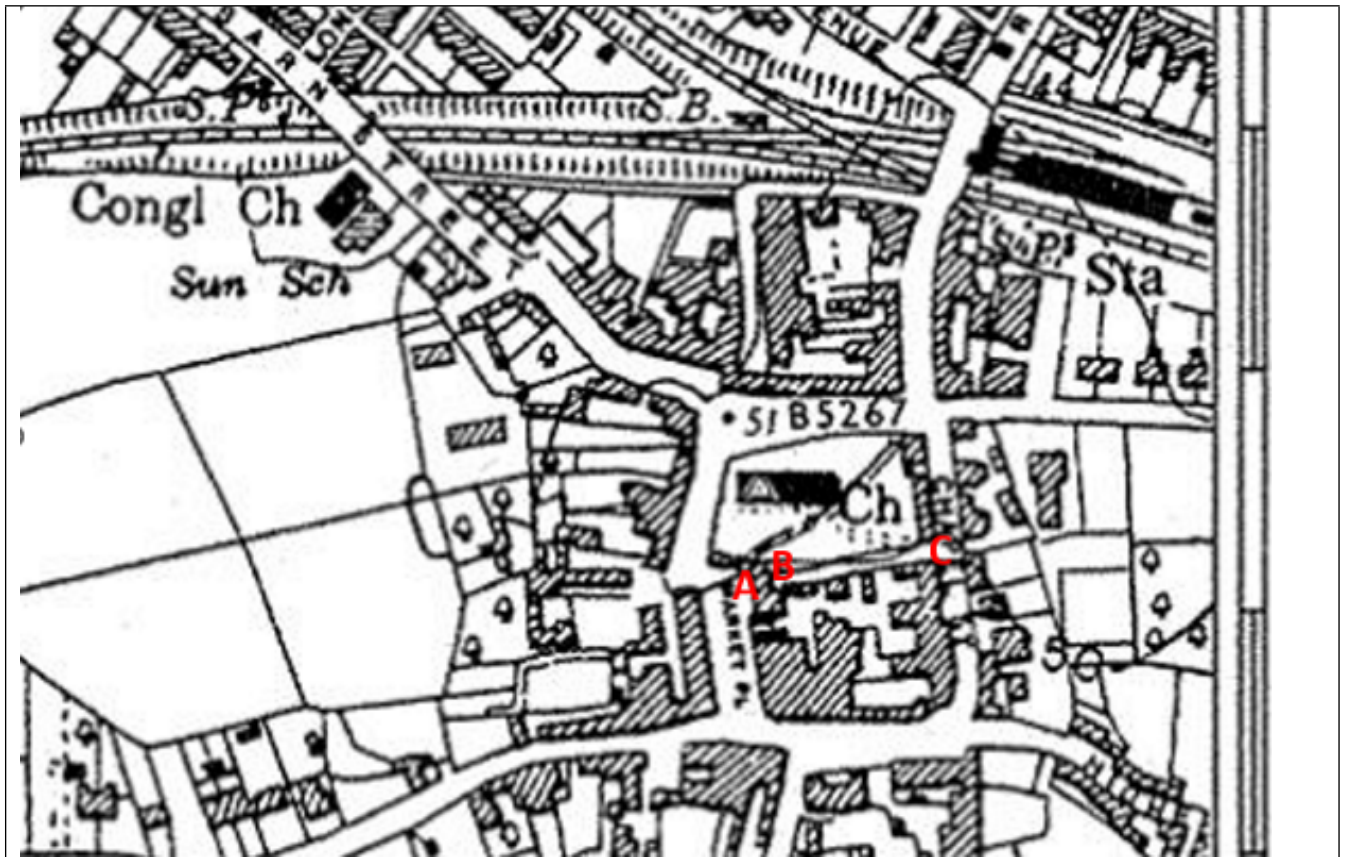
Observations		The passageway is shown between point A and point B and beyond point B the route under investigation is again shown and named as Chapel Street Court.
Investigating Officer's Comments		The route under investigation existed as a named route in 1942 and if the passageway A-B was accessible appeared to be capable of being used as a through route.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War between June 1945 and September 1952 and can be viewed on GIS. The clarity is generally very variable.

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.



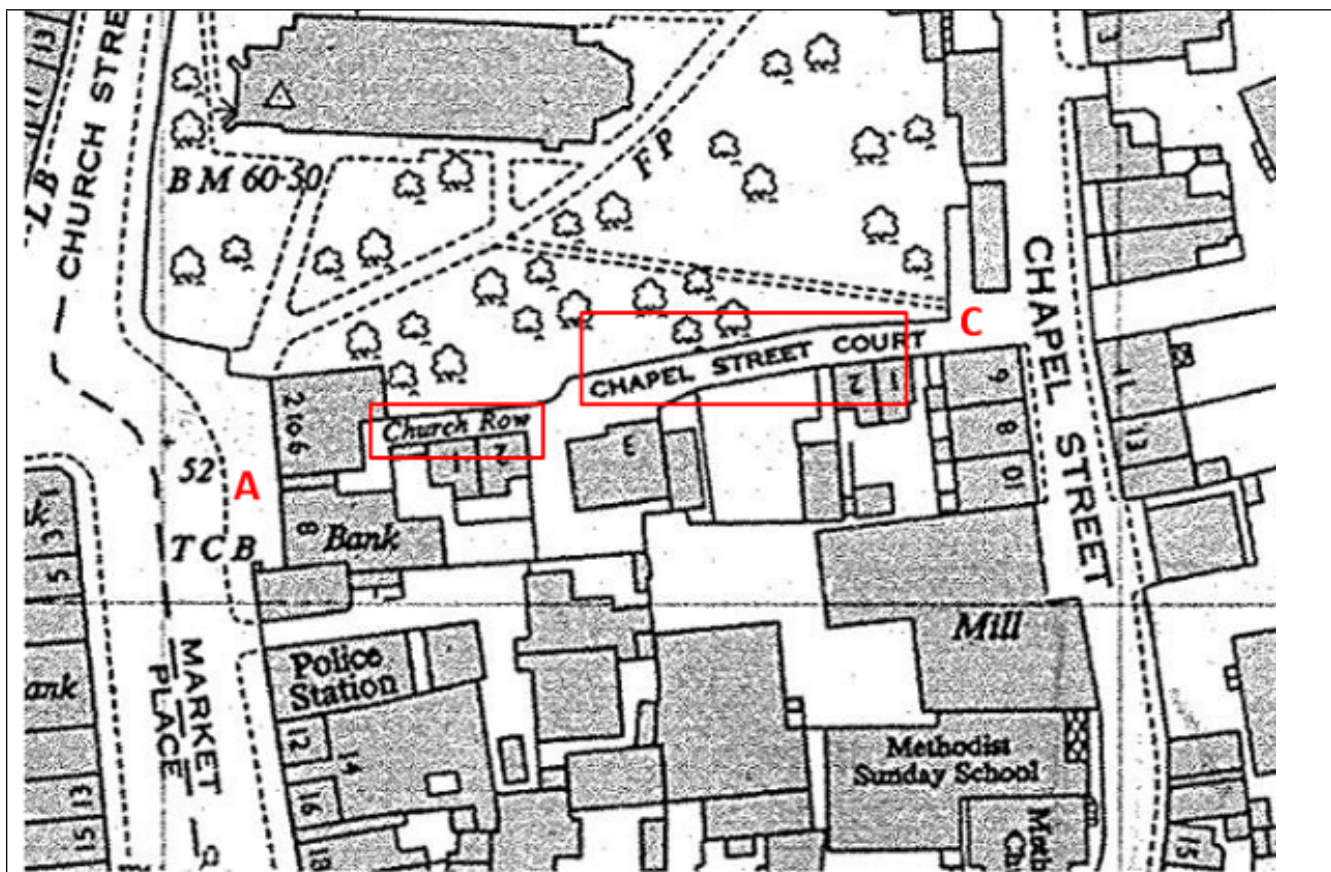


Observations		The photograph is of poor quality and it is not possible to see the route partly because of the lack of clarity/focus and partly due to tree cover and shadows.
Investigating Officer's Comments		No inference can be drawn with regards to the existence or use of the route.
6 Inch OS Map Sheet 33NW	1956	The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised between 1930-1945.



Observations		Between points A-B a building is shown and due to the map scale the passageway is not marked. The route under investigation is shown between points B-C.
Investigating Officer's Comments		The route under investigation existed in the 1930s and if access was available through the passageway provided direct access from Market Place to Chapel Street.
1:2500 OS Map SD3439 & SD3539	1961	Further edition of 25 inch map reconstituted from former county series and revised in 1961 and published 1961 as national grid series.





Observations		The route under investigation is shown in the same way as it has been shown on earlier editions of the OS 25 inch maps. The passageway is marked and beyond it two properties are numbered 1 and 2 'Church Row'. Beyond that the other properties accessed via the route under investigation appear to be numbered as being on Chapel Street Court.
Investigating Officer's Comments		The route under investigation existed and if the passageway A-B was accessible appeared to be capable of being used. It provided access to properties and was known as both Church Row and Chapel Street Court.
Aerial photograph	1963	Black and white aerial photography available to view on GIS and flown during the 1960s. The coverage is a mosaic of various flight runs on the following dates: 12-13th May 1961, 1st Jun 1963, 3-4th June 1963, 11th June 1963, 13th June 1963, 30th July 1963, 13th June 1968. The majority of images are from 1963, with the 1961 images mainly covering West Lancashire district, and the 1968 images mainly covering Ribble Valley

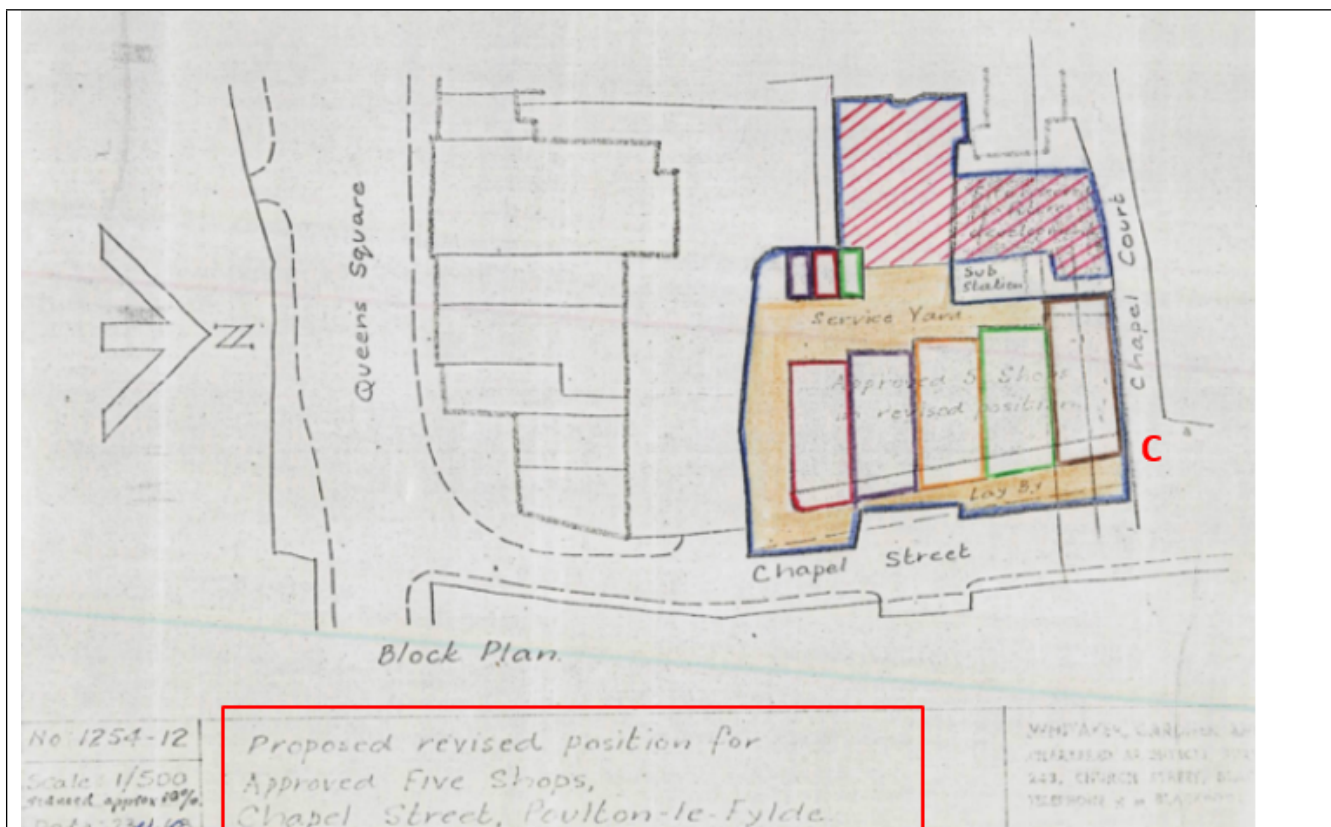


district.



Observations		Parts of the route under investigation can be seen but much of the route is obscured by trees and shadows from the adjacent buildings.
Investigating Officer's Comments		No inference can be drawn with regards to the existence or use of the route.
Plan attached to 1969 conveyance	1969	Plan attached to conveyance deposited at Land Registry with title documents for LA789723 (6 Chapel Street).





Observations

The Conveyance relates to the sale of land situated south of point C which, since the time of the sale has been redeveloped. It relates to the sale of land abutting the route under investigation but not land crossed by the route. The description of the land and properties to be in the sale includes two cottages which are described as being situated in Chapel Court, which it is stated was formerly called Potts Lane.

The conveyance plan shows that part of the route under investigation from point C and the proposed location of the properties to be constructed on Chapel Street. It also refers to work to be carried out at the front of the proposed properties on land shaded orange and annotated as 'Lay By' on the plan and refers to an intention for this to be a private lay by unless it was to be adopted by the Urban District Council.

Investigating
Comments

Officer's

The conveyance refers to Chapel Court having been formerly known as Potts Lane although no other map or documentary evidence had been found with reference to that name. The route is shown on the plan labelled as Chapel



		<p>Court and there is no reference to the need to retain or provide any private access rights along it suggesting that it was considered to be a public route along which it was not considered necessary to record any private right to access the rear or side of the properties and land to be sold .</p> <p>A google search of 'Potts Lane' revealed a further reference to Potts Lane in Poulton le Fylde which appears to confirm that the reference to Potts Lane is a reference to the route under investigation. A local historian researching their family history documents their research online Family History Fun: People & Places (scotsue-familyhistoryfun.blogspot.com). Their research members of the Danson family and document that in 1881 James Danson, his wife Maria and two young sons were living in Potts Alley, Poulton. Potts Lane was described as running alongside the church and just off the Market Square and an inspection of the 1892 25 inch OS map suggests that the route referred to must be the route under investigation and that although it is described as an Alley not Lane it is suggested that they were references to the same route. A further reference to Potts Alley was documented by the same historian who said that thirty years earlier, Potts Alley came in for some condemnation, having been described as "<i>the town's slum quarter</i>" which contained some of Poulton le Fylde's "<i>most squalid overcrowded properties</i>" which had been the subject of severe criticism in a public health report of 1852.</p>
<p>Conveyance deposited with Land Registry deposit LAN8655</p>	<p>1972</p>	<p>Conveyance deposited with the Land Registry for 5 Chapel Street Court.</p>



hereinafter appearing _____

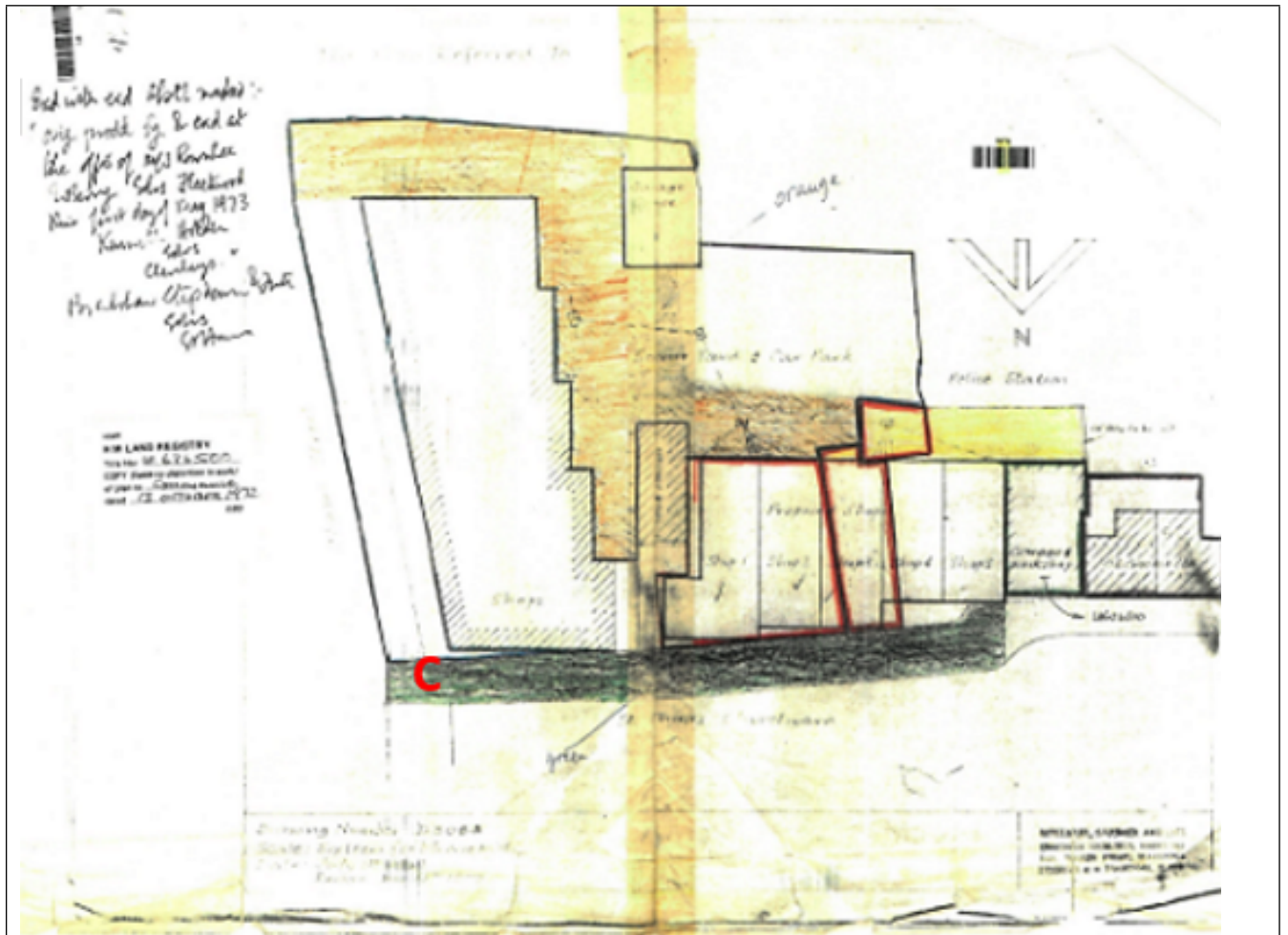
(7) Chapel Street Court is believed to be an old public right of way on foot only but the Vendors the Company and the Grantee or their respective predecessors in title have for some considerable time past used the same for the purpose of gaining vehicular access to their respective properties abutting the same although no other persons or companies are thought to have any right of way other than on foot _____

(8) The Vendors the Company and the Grantee are desirous of closing such portion of Chapel Street Court as is shewn coloured green on the said plan so far as is in their power to all vehicular traffic to the intent that henceforth it shall be used as a pedestrianised court or walk into which vehicular traffic is not allowed _____

NOW THIS DEED WITNESSETH as follows:-

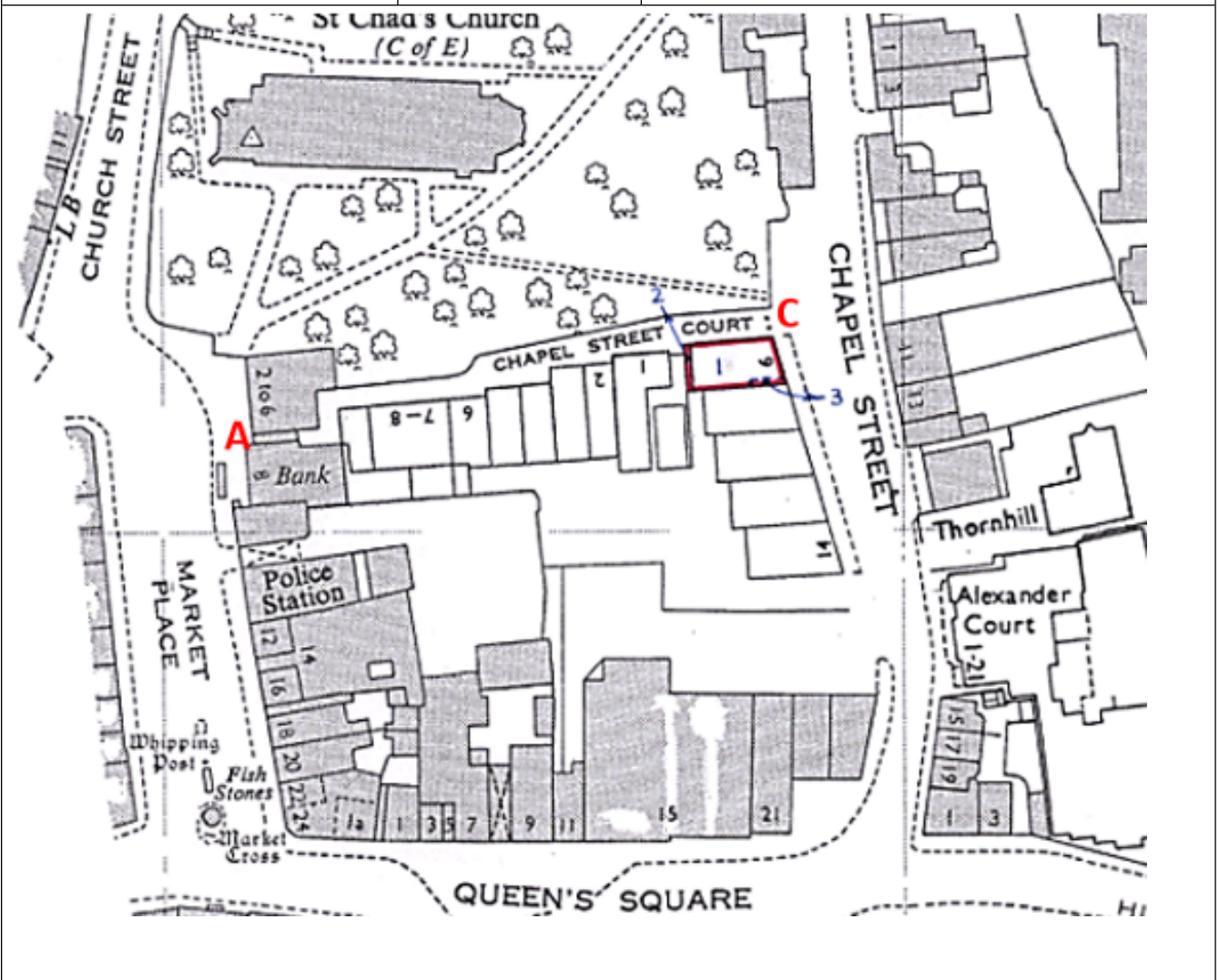
1. The Vendors as Trustees convey unto the Company ALL THE First





<p>Observations</p>		<p>The land registry documentation for 5 Chapel Street Court – which is situated on and accessed from Chapel Street Court – contains a conveyance made in 1972. The conveyance specifically refers to Chapel Street Court explaining that it was believed to be an old public right of way on foot but that for some considerable time persons living or owning property accessed via the route had used it with vehicles for the express purpose of accessing property. It was written that the vendors and other interested parties wished to close that part of Chapel Street Court to all vehicles so far as they were able to and that it should be used only by pedestrians.</p>
<p>Investigating Officer's Comments</p>		<p>Reference to vehicular use of the route must almost exclusively have been from point C due to the restricted width of the passageway from point A and as such would be consistent with use by owners/occupiers or possibly visitors to properties situated along the route.</p>

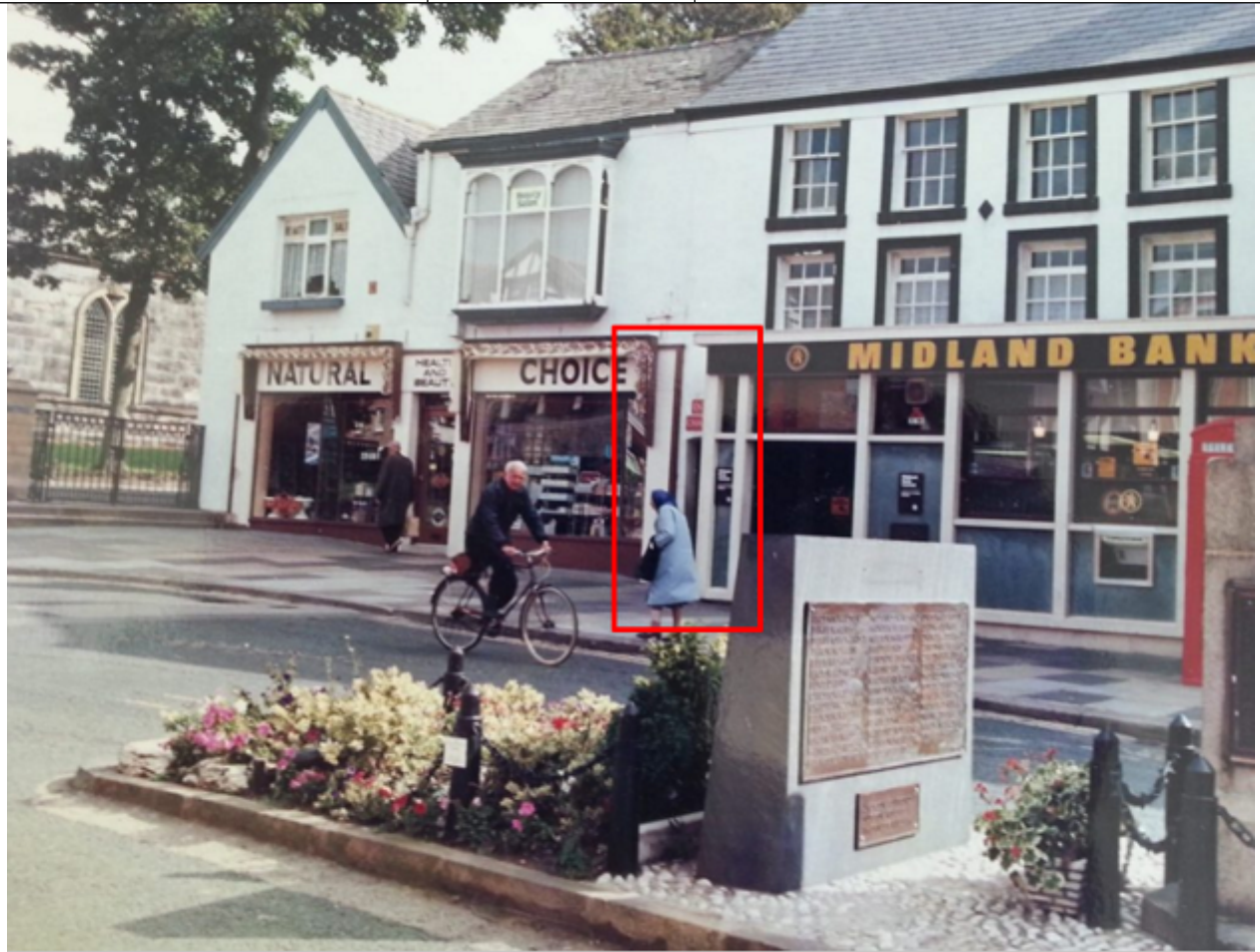
		<p>The Conveyance makes specific reference to a belief that the route was an old public right of way on foot suggesting historical use which is supported by the map evidence.</p> <p>The Conveyance may provide documentary evidence of a 1972 acceptance of previous dedication of the route although there is no reference to who actually owned it and reference to closing the route to vehicles is qualified by stating a desire to close it so far as they were able to.</p>
<p>OS 1:1250 Map SD 3439</p>	<p>1988</p>	<p>Further OS large scale map.</p>



<p>Observations</p>		<p>The route under investigation can be clearly seen and is named as Chapel Street Court. Bollards have been located at point C and it is noted that there is access to the rear of the properties situated along the route via Chapel Street.</p>
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		The property numbered 4 Market Street is shown as a Bank and is shown on a photograph taken at a similar time to when the map was prepared detailed below.
Investigating Comments	Officer's	The route under investigation is shown and appeared to be capable of being used on foot. The fact that bollards have been placed across the route at point C is consistent with the information in the 1972 conveyance pertaining to the dedication of footpath rights and preventing use of the route by vehicles.
Photograph of Market Square	1980s	Photograph found online of Market Street and labelled as having been taken in the 1980s.



[Old Photos of Poulton-le-Fylde - Mid 1900's - Visit Poulton \(visitpoulton-le-fylde.co.uk\)](http://visitpoulton-le-fylde.co.uk)

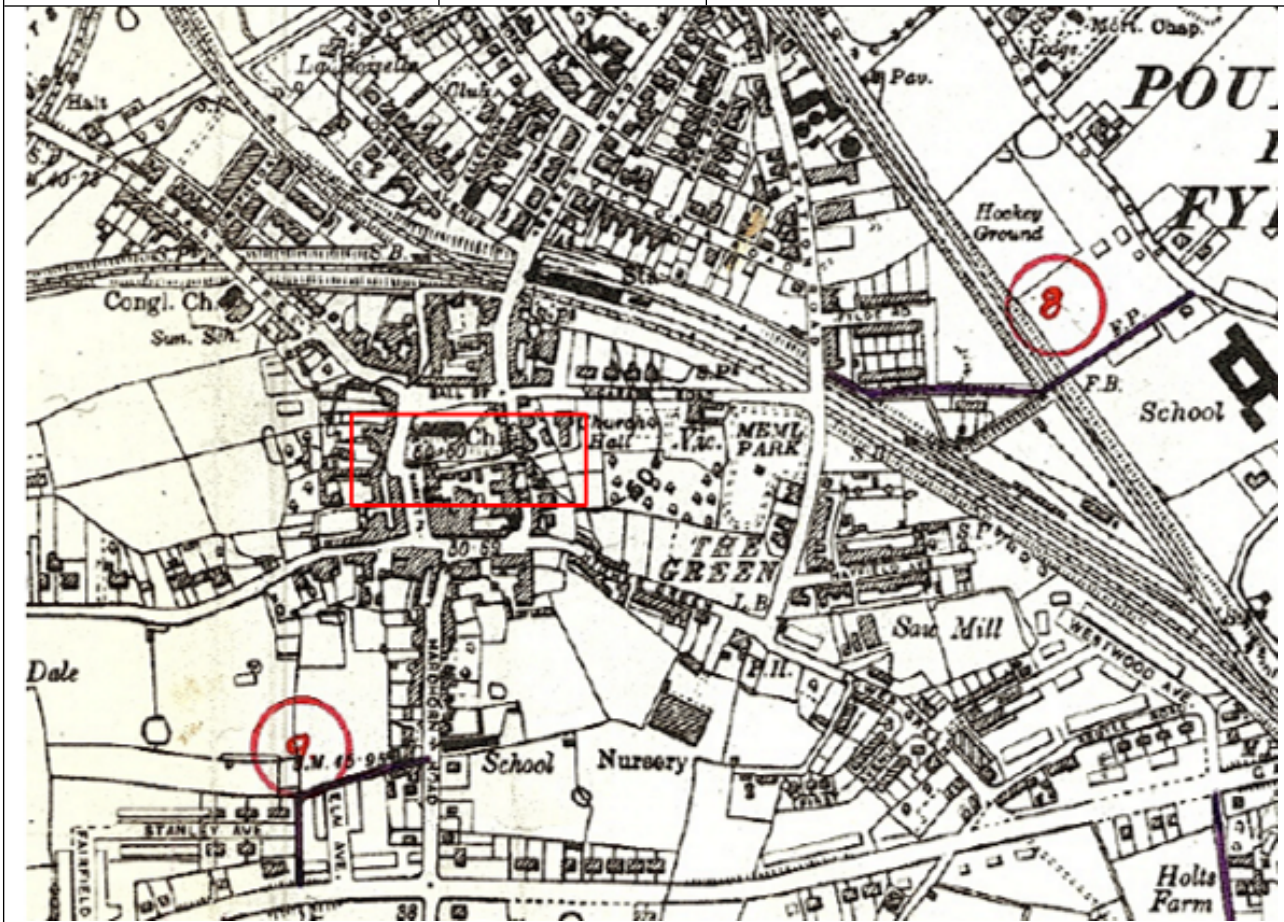
Observations		A photograph found online said to have been taken in the 1980s shows the bank labelled on the OS map detailed above and partially shows the entrance to the passageway – which appears to have a notice coloured red with white lettering above it.
Investigating	Officer's	The photograph provides some further



Comments		context to how Market Place looked in the mid-1980s and the existence of the passageway between the shop and bank.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	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.
Observations		The land crossed by the route under investigation was within Poulton-le-Fylde Urban District in the early 1950s and therefore no parish survey map was prepared.
Draft Map		A Draft Map was prepared for Poulton-le-Fylde Urban District. The Draft Maps were given a "relevant date" (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 st 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.



Observations		The route under investigation is not shown on the Draft Map and there were no representations or objections made to the fact that it was not included.
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 route under investigation was not shown on the Provisional Map and no objections or representations were made in relation to it.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route under investigation was not



<p>Revised Definitive Map of Public Rights of Way (First Review)</p>		<p>recorded 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 route under investigation is not</p>
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		recorded on the Revised Definitive Map of Public Rights of Way.
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the route under investigation was considered to be a public right of way by the Surveying Authority. There were no objections or representations made with regard to the fact that the route was not shown on the map when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<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		There is no Handover Map for the land crossed by the route under investigation. The route is not recorded as a publicly maintainable highway on the county council's List of Streets.
Investigating Officer's Comments		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.
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		A search of the records held by the County Council and the London Gazette has been made and no reference to the route under investigation was found.
Investigating Officer's Comments		No records relating to the stopping up, diverting or creating of public rights along the route were found. If any unrecorded public rights exist along



		the route they do not appear to have been stopped up or diverted.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the route under investigation runs.
Investigating Officer's Comments		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.

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



Summary

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

It would appear that the route was situated in the historical epicentre of Poulton le Fylde running to a large extent adjacent to the church.

Early commercial maps from 1786 to 1830 show buildings consistent with the location of those on Market Square through which the passageway exists and Tithe Map of 1839 and the 25 inch OS map published in 1893 confirm its existence.

All OS maps examined show the route and the fact that it provided access to properties located along it and offered a through route leading to the Market Square. Some early references to it being named as Potts Alley or Potts Lane were found and it is clear from looking at the OS maps that as buildings were altered or demolished and rebuilt adjacent to the route the route itself remained unaltered.

Later maps named it as Chapel Street Court and it is street lit with a largely flagged surface.

Nothing was found suggesting that it was not, or could not be, used by the public and the fact that it was located centrally off a thriving Market Square suggested that it might have been used by the public since the late 1700s or early 1800s.

The 1972 conveyance refers to it already being a public footpath and reference to the public accepting that dedication by using it although with no evidence suggesting anything to the contrary it could be that the route was already a public footpath by that time.

Head of Service – Legal and Democratic Services Observations

Landownership

The land crossed by the investigation route is unregistered. Only the rooms above the passageway from point A-B are included in the title.



Information from Others

None of those utility companies which replied had any comments about the status.

The owner of a property adjacent to the investigation route responded to consultation explaining that the property was built around 1971 and had been in continuous use as a cafe since first opening in 1972. The response also stated that the front of the cafe had been a public right of way before the cafe and adjacent shops were built and it was known as Potts Alley. The owner stated there are photos of it displayed at the entrance of Chapel St Court. The owner also clarified the extent of ownership and confirmed they did not own any land on the investigation route, just land adjacent to it.

The Ramblers' Association assisted with some user evidence from locals who use the route. Eight user evidence forms were received, and an overview of the information is provided below:

Duration of Use

The user evidence forms collectively provide evidence of use going back to 1945. All eight users used the route for a minimum of 34 years.

Frequency of Use

All eight users stated they used the route on foot. The specific use of each user is shown in the table below:

Every Few Months	Varies Between Every Few Months/Monthly	Monthly	Weekly	More than weekly	Total
2	1	1	1	3	8

Reasons for Use

The reasons for use included, to access shops, cafes, restaurants, hairdressers, and other businesses on the route, to get from one part of town to another and for pleasure.

Other Users of the Route

All users recorded having seen others using the route, users stated the route is often quite busy and it is regularly used as it is a major thoroughfare in the centre of town.

Consistency of the Route

Seven of the eight users said the route had always followed the same route and one user said they did not know.



Unobstructed Use of the Route

None of the eight users recalled having been prevented from using the route and none of the users recalled any stiles, gates or barriers on the route and no users recalled seeing any signs or notices restricting or prohibiting access on the route.

Assessment of the Evidence

The Law - See Annex 'A'

The investigation was carried out in order to determine whether public rights already exist in law and whether accordingly the route A-B-C should be recorded as such on the Definitive Map and Statement.

As there is no express dedication in this matter, Committee is invited to consider whether there is sufficient evidence from which dedication of the route can be inferred at common law. Deemed dedication under s31 Highways Act 1980 cannot be considered because there is no evidence of public use of the route having been called into question prior to this investigation.

Committee is advised to consider whether evidence from the maps and other documentary evidence, coupled with the evidence on site and all circumstances together with user evidence, indicates that it can be reasonably inferred that in the past the landowners intended to dedicate the route as a public right of way and the public have accepted it. Use of the route by the public must be 'as of right' and there is no fixed period of use or particular date from which use must be calculated retrospectively.

Committee is referred to the assessment of the documentary evidence concerning this route and the summary prepared by officers in the Public Rights of Way Team.

Committee will note the existence of buildings shown on the early commercial maps, consistent with those located on Market Square through which the passageway A-B runs. In addition, the Tithe Map of 1839 along with the 25 inch OS Map published in 1892 confirm the existence of the route A-B.

The route under investigation can be seen on all 25 inch and 1:2500 OS maps examined and these maps further show that the route offered access to the various properties located along the route and provided a through route leading to the Market Square. It is also clear from the OS maps that, whilst there are early references to the route being known under a different name (Potts Alley and Potts Lane) and despite the alteration and demolition of buildings adjacent to the route, the route itself remained unchanged.

Committee will note that the entrance to the passageway is not restricted and that there is no evidence of it ever having been gated. Also worth noting is the presence of signage along the route, in particular the notice board located close to point B which contains information and photographs regarding the history of the route and reference to its former names. Three streetlights are located along the route and the route has a largely concrete flagged surface.



Specific reference is made in the 1972 conveyance to a belief that the route already existed as an old public right of way on foot. This suggests historical use and is supported by the map evidence. Reference is also made in this conveyance to the public accepting dedication of the route through their use of it. It is suggested that the existence of bollards across the route at point C is consistent with the information provided in the 1972 conveyance with regards to the dedication of footpath rights and prevention of vehicular use.

Sufficient as of right use acquiesced in by the owners may also be circumstances from which dedication can be inferred. From looking at the user evidence it would appear that there has never been any clear action by owners to prevent use by the public and use by the public has continued for many years.

There has been no evidence found to suggest that the route under investigation was not or could not be used by the public at any point and the evidence suggests that public use may have been possible since the late 1700s or early 1800s.

As part of the investigations carried out into the status of the route, Committee will note that eight user evidence forms have been provided detailing use of the route on foot from as early as 1945.

All users refer to having witnessed other users on foot whilst using the route and reference is made to it often being quite busy and regularly used by many users as a thoroughfare into the town centre. One user mentions having witnessed bicycle use. Seven of the eight users state that the route has always followed the same course.

None of the users recall having been prevented from using the route or having seen stiles, gates or other barriers along the route. No users state that they have ever asked permission to use the route or refer to having been turned away and there is no reference to the users having seen signs or notices along the route to suggest that the route was not a public right of way.

Committee will also note the comments from the tenant of a cafe adjacent to the route. These provide that the property was built in 1971 and that it has been used as a café since first opening in 1972 with the front of the café having been a public right of way before the café and adjacent shops were built.

On balance, it is suggested that the map and other documentary evidence is considered to be sufficient from which public rights could be inferred for the route A-B-C and that the evidence suggests the existence of a historical route used at least on foot. Further, user evidence provided collectively confirms use of the route A-B-C by the public as a public footpath going back to 1945.

In conclusion, Committee is therefore advised to accept the recommendation and make an Order for the route marked A-B-C to be added to the Definitive Map and Statement as a public footpath and promote the Order 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 investigation. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, guidance contained both in the report and within Annex 'A' included in the Agenda Papers, officers' presentation and discussion. Provided any decision is taken strictly in accordance with the above then there is no significant risks associated with the decision making process.

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-767		Annabel Mayson, 01772 533244, Legal and Democratic Services
Reason for inclusion in Part II, if appropriate		
N/A		

