

## Regulatory Committee

Meeting to be held on 5<sup>th</sup> February 2014

Electoral Division affected: Clitheroe
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### Wildlife and Countryside Act 1981

#### Claimed Public Footpath from Chatburn Road in two Branches to Clitheroe

#### Footpath 5, Ribble Valley Borough

#### Claim No. 804-517

(Annex 'A' refers)

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### Executive Summary

The application for a public footpath from Chatburn Road in two branches to Clitheroe Footpath 5 to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804-517.

### Recommendation

- i. That the proposal for a public footpath from Chatburn Road in two branches to Clitheroe Footpath 5 to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804-517, be accepted.
- ii. That an Order be made pursuant to Section 53(2)(b) and Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a public footpath from Chatburn Road in two branches for a total distance of approximately 1050 metres to the junction with Clitheroe Footpath 5, shown between points A-B-C-D-E-F and G-H-I-C on the Committee plan.
- iii. That, not being satisfied that the higher test for confirming the said Order can be satisfied, the matter be returned to Regulatory Committee to decide what stance to take regarding confirmation of the Order

### Background

Following an application duly made under Schedule 14 to the Wildlife and Countryside Act 1981 (the 1981 Act) research has indicated that consideration should be given under section 53(3) of the Act to the making of an Order to amend the Definitive Map and Statement of Public Rights of Way in Lancashire by adding a public footpath extending from two points on Chatburn Road to a junction with

Clitheroe Footpath 5, a distance of approximately 1050 metres, and shown between points A-B-C-D-E-F and G-H-I-C on the attached plan.

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 1981 Act sets 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 if the evidence shows that:

- A right of way "subsists" or is "reasonably alleged to subsist"
- Or
- "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"

When considering evidence, if it is shown that a highway once 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 1981 Act (as explained in Planning Inspectorate's Advice Note No. 7) 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 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 on the balance of probabilities. It is possible that the Council's decision may be different from the status given in the 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.

## **Consultations**

### Ribble Valley Borough Council:

Ribble Valley Borough Council has been consulted as both the Borough Council for the area and a land owner of part of the claimed route. They have provided confirmation of their land ownership in the area but have not made comment in relation to the claimed route.

### Clitheroe Town Council:

Clitheroe Town Council has been consulted and has not responded, it is thus assumed they have no comments to make.

Claimant/Landowners/Supporters/Objectors:

The evidence submitted by the claimant/landowners/supporters/objectors and observations on those comments is included in 'Advice – County Secretary and Solicitor's Observations'.

## Advice

Executive Director for Environment's Observations

## Description of the Route

Points annotated on the attached plan

Point	Grid Ref (SD)	Description
A	7519 4287	Field gate on south east side of Chatburn Road
B	7529 4297	Field boundary between first and second field, gap between a large tree and the fencing of the residential properties to the south
C	7536 4267	South east edge of grass at the western edge of Salthill Quarry Local Nature Reserve
D	7525 4257	Gap in fence where Quarry trail becomes stone path
E	7520 4253	Junction of paths in the Local Nature Reserve
F	7511 4243	Junction of trail with Clitheroe Footpath 5.
G	7529 4297	Field gate on south east side of Chatburn Road
H	7544 4283	Open gap in field boundary
I	7545 4281	Open gap in field boundary

A site inspection was carried out on 9<sup>th</sup> October 2013.

The claimed route commences at two points on Chatburn Road. Both points are on entrances to fields which are currently blocked by padlocked field gates. Walkers have negotiated a way around the gates via a broken down wall and a gap around the gates. There is trodden evidence on the ground around each gate which shows that the route is used at both points. The two branches then extend in a south easterly direction from point A to point B then C and from point G to point H then I and C.

Between points A and B the route runs along a mown grass track parallel on the south side to garden fences approximately 6 metres away from the claimed route, and on the north side bounded by rough grass. The claimed route at this point is 2 metres wide. There is no indication of a trodden route on this section, but the route is indicated by a mown strip. After approximately 210 metres the claimed route heads south east through a gap (point B) between the fence line of one of the residential properties and a large tree and overgrowth. The claimed route then continues across

the field on a grass surface without any worn path until it meets a private property sign and broken down fence (Point C). Between points G and H the route crosses an unmown field with rough grass. There is evidence of a slight trodden route, however the tracks may not necessarily have been made by walkers. The route then crosses the field boundary at point H and continues towards the second field boundary at point I. The route then continues along an open, mown field to where it meets point C at the west of the Local Nature Reserve.

From point C the route then skirts around the outside of the school field following the boundary on a grass surface without any worn path to the end of the field (point D). At this point the surface of the route changes to a stoned path as it meets the Quarry Trail. The route continues through a gap in the fence separating the school field from the quarry site and nature reserve. The route continues along this trail until it meets with another nature reserve trail, and then continues until it meets with Clitheroe Footpath 5.

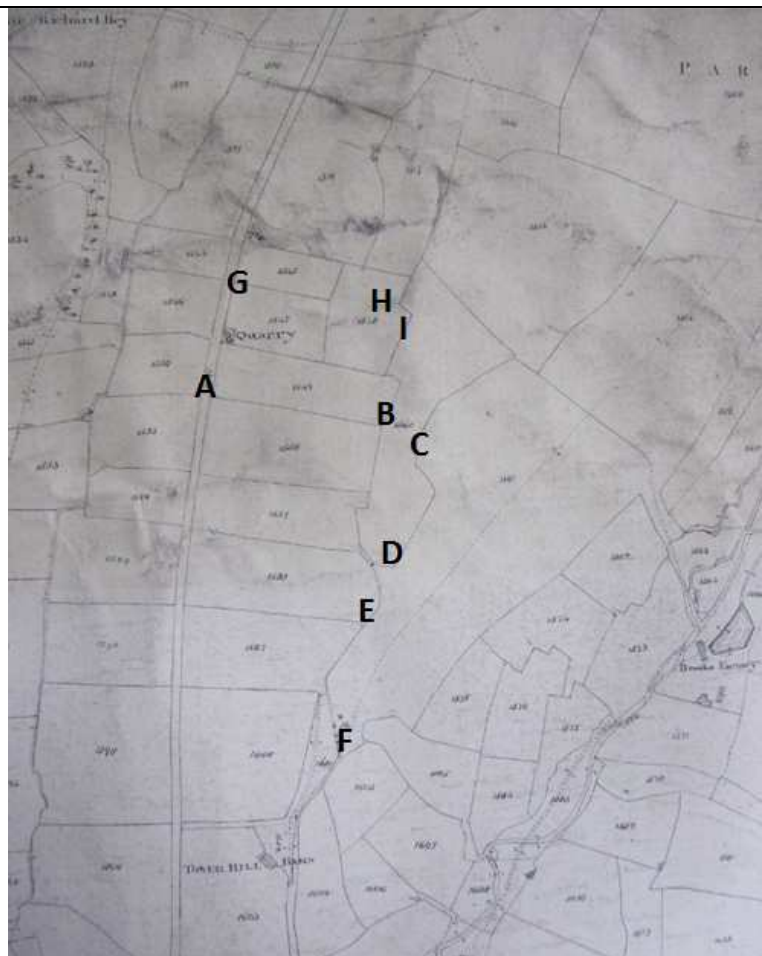
There are various signs located along the claimed routes suggesting that the land is private property and that anyone crossing the land is trespassing. There are newly erected field gates located across the claimed route but there is also evidence on site of old gate posts.

### Map and Documentary Evidence

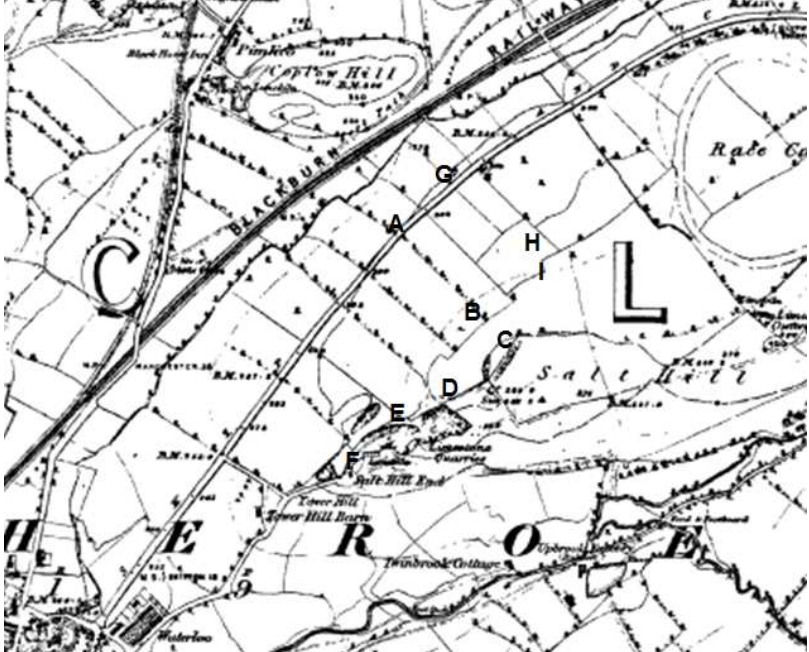
Various maps, plans and other documents were examined with reference to the claimed route.

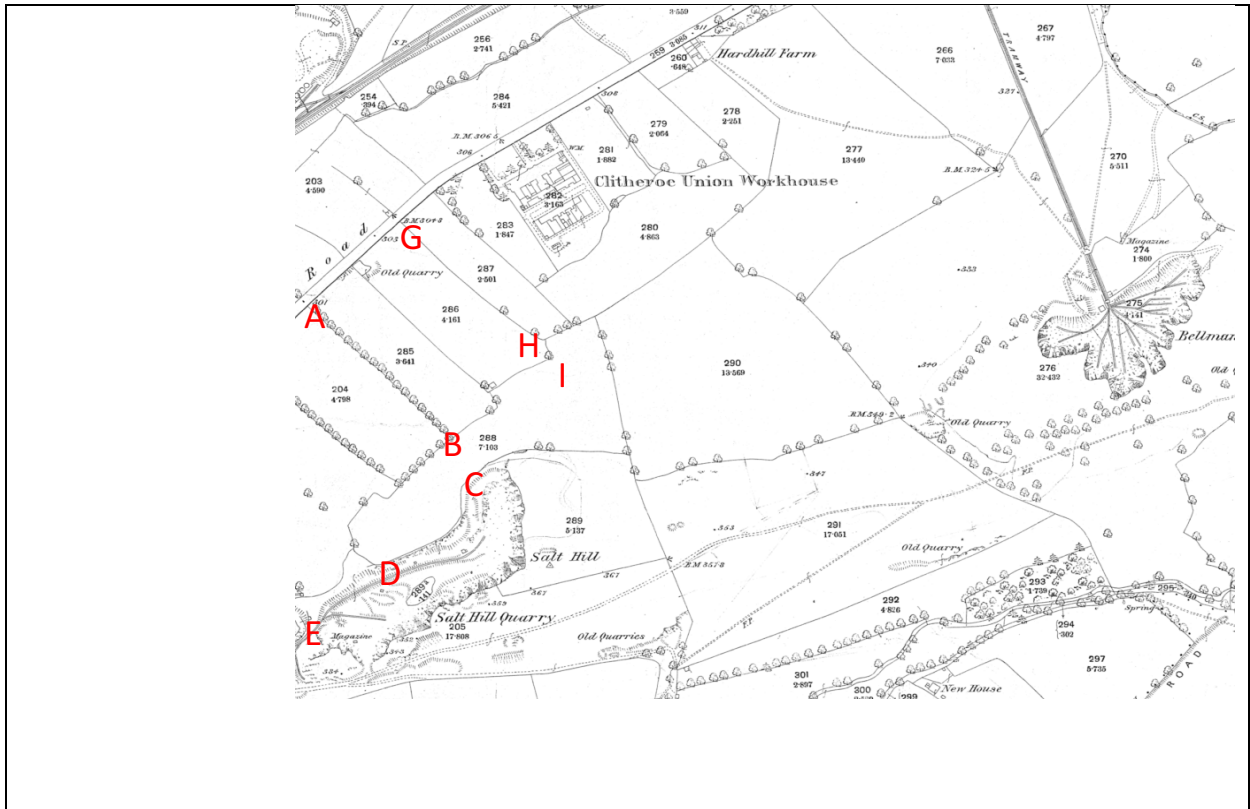
DOCUMENT TITLE	DATE	BRIEF DESCRIPTION OF DOCUMENT & NATURE OF EVIDENCE
<b>Yates' Map of Lancashire</b>	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The route is not shown.
Investigating Officer's Comments		The route did not exist as a major route at the time – it may have existed as a minor route but due to the limitations of scale would not have been shown so no inference can be drawn in this respect.
<b>Greenwood's Map of Lancashire</b>	1818	Greenwood's map of 1818 is a small scale commercial map.
Observations		The route is not shown.
Investigating Officer's Comments		The route did not exist as a major route at the time – it may have existed as a minor route but due to the limitations of scale would not have been shown so no inference can be drawn in this respect.

<b>Hennet's Map of Lancashire</b>	1830	Small scale commercial map surveyed by George Hennet in 1828 – 1829 and published by Henry Teesdale in 1830. The map was on sale to the public and hence to be of use to their customers it is considered that that the routes would be available for the public to use. However, the map was privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The Route is not shown.
Investigating Officer's Comments		The claimed route did not exist as a major route in 1830. It may have existed as a minor route but due to the limitations of scale would not have been shown so no inference can be drawn in this respect.
<b>Tithe Map and Tithe Award or Apportionment</b>	1843	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.



Observations		The tithe map for Clitheroe shows a lane or track leading from the southern end of a field from Tower Hill Barn. The track corresponds to the southern section of the claimed public footpath. The track is numbered 1601/1602 on the tithe map but this number is not listed in the written schedule that accompanies the map.
Investigating Officer's Comments		Part of the claimed route appears to be part of a longer route, some of which is now recorded on the Definitive Map as a public footpath. In 1843 the lane appears not to be shown as a through route at its western end so the route may have been only an access track to the adjacent fields.
<b>Finance Act 1910 Map</b>		<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation and not recording public rights of way. However the maps can often provide very good evidence.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
Observations		The copy of the Finance Act map and books held in the Lancashire Archives only records the ownership of a few plots of land on Chatburn Road.
Investigating Officer's Comments		No public rights of way were recorded in the Finance Act, but no inference can be drawn.

<b>Ordnance Survey Maps</b>		<p>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>
6 inch OS map	1847	The earliest OS map examined was published around 1847.
		
Observations		The claimed route is not shown on the 1847 map.
Investigating Officer's Comments		The claimed footpath did not exist as a major route in 1847. Access to the quarry was via Tower Hill and Salt Hill Road.
25 inch OS map	1886	First Edition of the 25 inch map was revised in 1884 and published in 1886



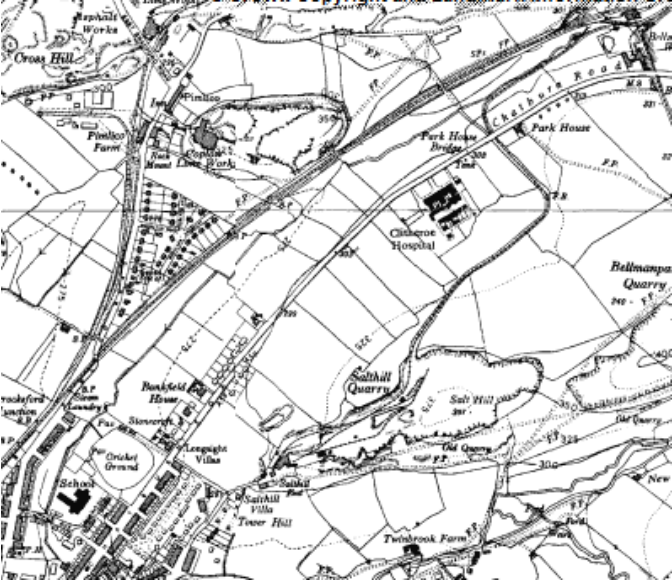
Observations		The physical boundaries of the fields do not allow access along the claimed route unless a structure of some kind was in place. However a route is not shown as in existence on the 1886 map.
Investigating Officer's Comments		The claimed route probably did not exist in 1886.
25 Inch OS map	1912	Further edition of 25 inch map revised in 1910 and published in 1912.



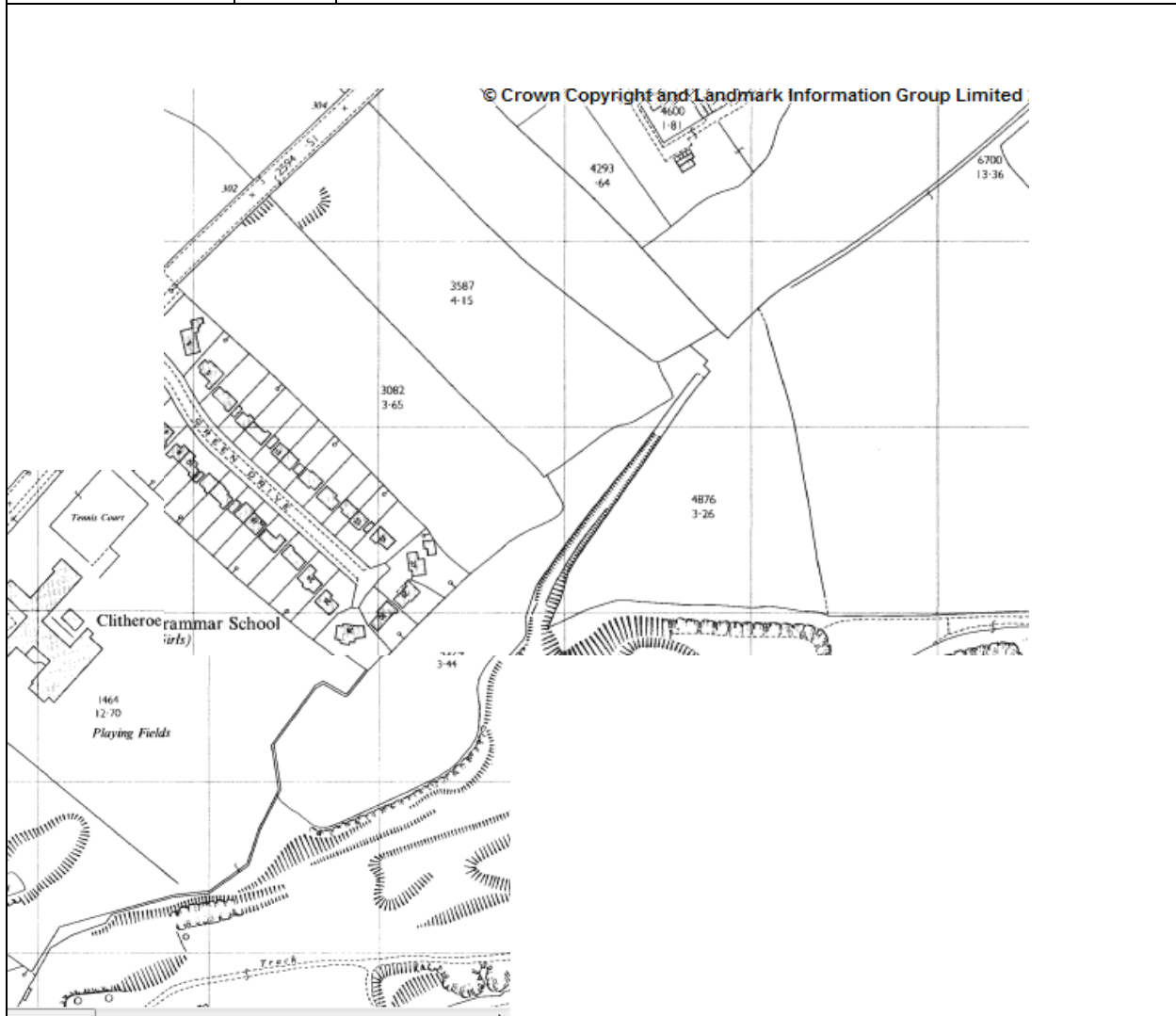


Observations		The claimed route is not shown on this map. The mineral railway has since been built for access to the quarry.
Investigating Officer's Comments		The claimed route did not exist in 1912. As this was a working quarry, workers may have used the fields and the claimed route as access to and from the quarry but the map provides no evidence for this and hence no inference can be drawn.
25 Inch OS Map	1932	Further edition of 25 inch map revised in 1930 and published in 1932.



Observations		The claimed route is not shown on the 1932 map.
Investigating Officer's Comments		The claimed route probably did not exist in the early 1930s.
6 Inch OS map	1955	This map was used as the base map for the Definitive Map, First Review, and was published in 1955 (Revised 1951).
Observations		<p>The claimed route is shown in the same way as the 1931 25 inch map.</p> <p>On the 1955 map the row of houses and Clitheroe Royal Grammar School had not been built.</p> 

Investigating Officer's Comments		The claimed route probably did not exist in 1955.
25 Inch OS Map	1964	Further edition of the 25 inch map published in 1964



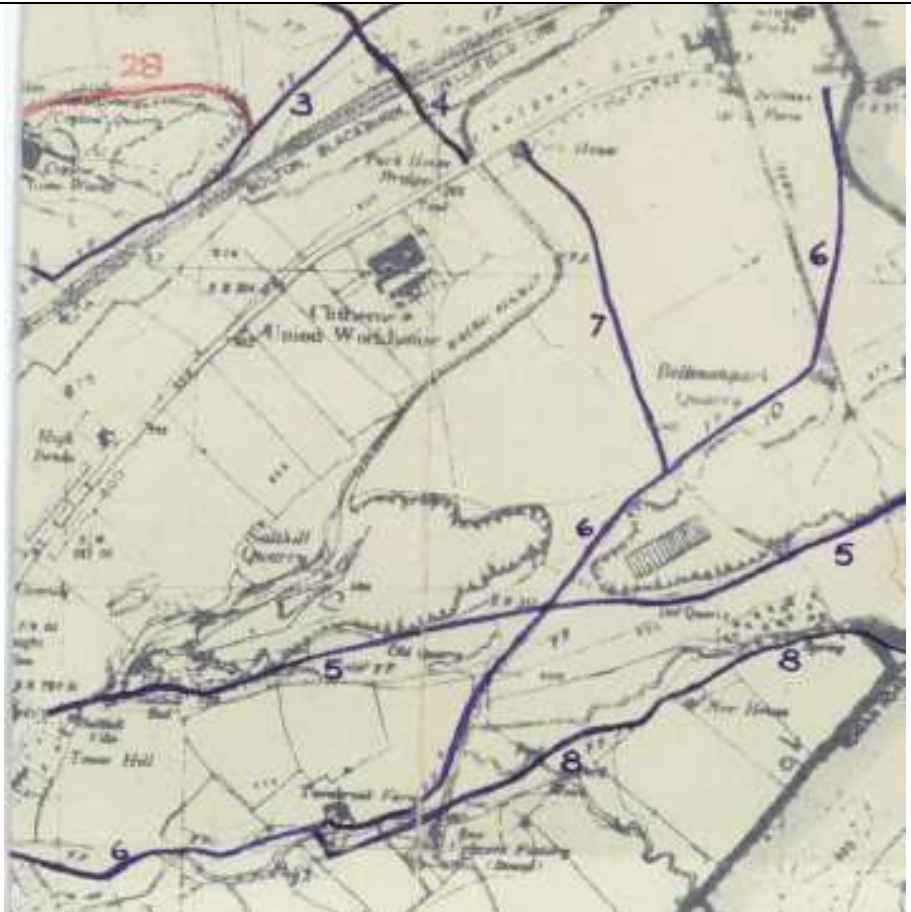
Observations		Since 1955 the row of houses next to Clitheroe Royal Grammar School has since been built. The claimed route is still not shown on the Ordnance Survey Maps as existing at this time.
Investigating Officer's Comments		The claimed route probably did not exist in 1955
<b>Aerial Photographs</b>		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.
Aerial Photograph	C1940	Black and white aerial photograph taken around 1940.



Observations		The claimed route is not visible on the 1940 aerial photograph.
Investigating Officer's Comments		The claimed route does not appear to have existed in the 1940s.
Aerial Photograph	C1960	<p>Black and white aerial photograph taken in the early 1960s.</p>
Observations		The claimed route is not visible on the 1960 aerial photograph.
Investigating Officer's Comments		The claimed route does not appear to have existed in the 1960s.
Aerial Photograph	2009	Aerial photograph taken in March 2009.



Observations		The claimed route is difficult to see on the aerial photograph from 2009 as the majority of the route is overlooked by large trees. There is no trodden route visible.
Investigating Officer's Comments		No inference can be drawn.
<b>Definitive Map Records</b>		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.
Survey map	1976	The initial survey of public rights of way was carried out by parish councils in rural districts in the early 1950s and the maps and schedules were submitted to the County Council. In the case of urban districts and municipal boroughs the map and schedule produced, was used, without alteration, as the Draft Map and Statement. County Boroughs were not surveyed until later. In this instance the initial survey for this part of Clitheroe County Borough was carried out in 1976 by Lancashire County Council officers with assistance from the Ramblers Association.
Draft Map	1979	The Draft Map was given the 'relevant date' of 1 February 1979 and notice was published that the Draft Map had been prepared. The Draft Map was placed on deposit for a minimum period of 4 months on 24 <sup>th</sup> April 1979 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into some of these objections, and recommendations made to accept or reject them on the evidence presented.



Observations		The claimed route is not shown on the Draft Map. However, other public footpaths in the vicinity have been recorded, in particular footpath no. 5 which joins onto the claimed route.
Objections to the Draft Map	1979	There were no objections to the omission of the claimed route on the Draft Map.
Modified Draft Map	1982	A modified Draft Map was published and placed on deposit in September 1982. The map still does not show the claimed route and the modified Draft Statement remained unchanged.
Provisional Map		Once all of the representations were resolved, the amended Draft Map became the Provisional Map 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		There is still no evidence of the claimed route existing at this time.
Definitive Map and Statement	1983	The Provisional Map, as amended, was published as the Definitive Map and Statement in 1983 and is the current legal record.
Observations		The Definitive Map does not show the claimed route. The Map and the wording of the Statement do not include the claimed route as part of the footpath.

<p><b>Statutory Deposit and Declaration made under Section 31(6) Highways Act 1980</b></p>		<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>
<p>Observations</p>		<p>There are no Highways Act 1980 Section 31(6) deposits lodged with the County Council for the area over which the claimed route runs.</p>
<p>Investigating Officer's Comments</p>		<p>There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over this land.</p>
<p><b>Wildlife Nature Trust Map</b></p>		

Observations		The stylised map above, which is on the Wildlife Nature Trust website, shows that some of the trail is along the claimed route from near point C to points D-E-F as they follow the well - established footpath trails through the local nature reserve before meeting with Clitheroe Footpath 5.
Investigating Officer's Comments		The nature reserve was established by Ribble Valley Borough Council and leased to the Wildlife Nature Trust. It was designated as a local nature reserve in 1989. This indicates that the paths are well-established and appear to be well-used even though they may not have had a known status as they are not all recorded on the Definitive Map and Statement.

### Ownership information

The claimed route runs on land in two ownerships.

Sections G-C, A-C and C-D run on land in the ownership of Clitheroe Royal Grammar School. The School land used to be held by the County Council but was passed to the school in 1992 and no copies of Deeds retained. The County Council had originally purchased the site for the main school building in 1955 then added the field crossed by the sections of claimed path D-C, C-B and C-I in 1976. It is not known when the fields crossed by sections A-B and G-I were acquired. On purchasing the field in 1976 the County Council agreed that it would erect and maintain a fence along the boundary with the quarry and agreed to use the land for agricultural educational or uses in connection with the school. These covenants would have passed to the school.

The rest of the claimed route F-D is on land owned by Ribble Valley Borough Council and leased in 1990 to The Lancashire Wildlife Trust. It has in the past been a quarry.

### Documents submitted by the Applicant

The Executive Director for Environment has considered these and comments will be following reference to the documents in the Section of the Report headed County Secretary and Solicitor's Observations

### Summary

There is little documentary evidence showing the claimed route on any of the evidence which has been inspected. The claimed route is not shown on any of the early commercial maps, Ordnance Survey maps or any of the definitive map records which have been inspected.

The history of the land over which the claimed route passes consists of a limestone quarry, and in recent years school fields and a local nature reserve.

The quarry was worked for over 200 years up until 1959. Access to the quarry from the old maps appears to have been via Tower Hill near Tower Hill Barn, but alternatively could have been by Chatburn Road which was a well established road on the old maps. Located next to the two padlocked gates on the claimed route are



two old concrete gate posts which the new gates have had been erected behind. This indicates evidence of historical use and access onto the fields at points A and G.

Clitheroe Footpath 5 was recorded on all of the definitive map records however the claimed route was not. There were never any objections to any of the maps with the claimed route not being shown.

## **County Secretary and Solicitor's Observations**

### **Information from the applicant**

In support of the application, the applicant has provided 35 user evidence forms..

The forms indicate use of sections of the route for 50 years, 41-50 years (5), 31-40 years (7), 21-30 years (4) and 11-20 years (9), 1 – 10 (5). Some individuals indicated use over different periods of time over the last 50 years, one stated that they used the path between 1974 and 1984 and then from 2004 to 2011, another from 1949 to 1952 and then 1994 to 2011, a third indicated use of the route between 1985 and 1990 and another from 1970 to 1980. One person simply said they had used the route for many years.

The route has mainly been used for leisure, exercise and dog walking with reference to the route being used as access for town, to school and a third as access to the nature reserve.

The amount of use of the route varied between the users; some indicated that they used the route on a daily basis, others between 2 and 5 times a week or weekly. Two people indicated that they used the route 2 / 3 times each day. Many users provide a number and say 25, 30, 50, 60, 80 and 150 times per year. Others were less specific stating frequently, many times, that their use varied or they did not keep count. Two users specifically refer to not seeing the fields used for school sports for a number of years or never having seen children using the route for school activities. One user used the route from point A and the other from point G.

All the users agree the route has been used on foot with some also using it on a cycle. The users all agree that the route had never been blocked. A couple of users refer to hearing of challenges on the route or signs on the route without giving a date but many indicate that the signs had only been put in place in 2011 and some state they have been challenged by a security guard or know of others, again reference to the challenges show they were in 2011. Some users state that there are stiles along the route and a gate in place but the gate was open. Some believe the stiles were put in to assist use of the route.

The user forms have maps attached or describe the route in all but 2 cases. Not all users use the full route claimed. This indicates that the user evidence needs to be considered separately for different sections of this claimed route as follows -.

Section F-C has been used by 23 users along its whole length and for part of its length by a further 4. At point C the users used C-A or C-I or turned south east down the steps into the Nature Reserve. 8 of these used it as early as 1991

Section A-C has been used by 10 users along its whole length and another user used part of its length. 7 used it as early as 1991.

Section G-C has been used by 9 users along its whole length and for part of its length by a further 3. 7 used it as early as 1991.

The applicant has also submitted photographs of the route and also a copy of a map of Pendle showing part of the route marked as 'other path well used and stiled but not necessarily a right of way'. Two Wildlife Trust documents have also been provided, a map highlighting part of the claimed route and a Salthill Quarry Geology Trail leaflet.

Comments on the above three documents by the Executive Director for Environment are as follows-

The map of Pendle – Due to the scale of the map on this item the claimed route cannot be seen and therefore no inference can be drawn from it.

The map – This is the same map considered above. The section C-D of the claimed route has been highlighted by the applicant. Due to it being circulated on leaflets it suggests local knowledge that these routes were used, or at least known to be used, by the public.

The trail leaflet – This shows a similar map to that above and again shows section D-C as part of footpaths at the Salthill Quarry site. Sections E-D and E-F and Footpath 5 Clitheroe are also shown within the site as footpaths.

### **Objection from the Clitheroe Royal Grammar School**

An objection has been received from Cobbetts Solicitors in Manchester on behalf of Clitheroe Royal Grammar School.

Their clients object to the application for the four footpath routes to be added to the Definitive Map on the basis that there can be no deemed right of way owing to uninterrupted use being afforded to members of the public for a period of 20 years. Their client considers that the requirements under section 31 Highways Act 1980 for dedication by a landowner of a public right of way across his land and acceptance of that public right of way have not been fulfilled. Their client believes that under section 31 (3) of the Highways Act 1980 the landowner can demonstrate that it lacked the intention to dedicate the land as a highway by erecting and maintaining a suitable, visible notice that it is inconsistent with the dedication of a highway. They believe that there is not a dedication of a public right of way because:

- There is no evidence on the ground of footpaths along the claimed routes, routes A-C and G-I traverse the School playing fields.

- Members of the school have challenged people using the proposed routes during school hours on a regular basis for trespassing. There is evidence of members of staff having no recollection of public footpaths and evidence of a member of staff challenging a member of the public for trespassing.
- Signs have been installed at the ends and along the proposed routes advising that access is excluded and clearly stating that the land is strictly private and that trespassers will be prosecuted. The signs have been installed a number of times over the 20 year period. The current signs have been in that position for the last 12 months.
- Evidence there was signage, both on the locked gate of the playing fields and between Green Drive and the hospital and below the school by the post box on Chatburn Road, the signs stated that the land was private property and unauthorised persons were not allowed on School grounds.

Cobbetts then go on to say that Secured by Design (SBD) a police initiative owned by the Association of Chief Police Officers (ACPO) offers a guidance document aiming to reduce crime in their built environment, the guidance states "unless local circumstances dictate otherwise, there should be no public footpaths through the school grounds". This initiative also refers to paragraphs 8 and 12 in schedule 6 of the Countryside and Rights of Way Act 2000 which make provision to extinguish or divert public rights of way through school grounds that create opportunity for crime. This highlights risks in allowing public rights of way across school grounds in particular the safety risks. Under the schools safeguarding agenda the School has a signing in procedure for all visitors to the site. All visitors are required to wear a visitor badge and visitors who have not had a recent CRB check must be supervised by a member of staff. The addition of the proposed footpaths to the Definitive Map on the School playing fields would also have to compromise with this procedure.

Their client objects on the grounds that allowing members of the public to walk across the school land will create a major security risk for the children at the school. Fields are currently marked up and are used for sports and they are used every day. The addition of the footpaths would incur charges of construction for fences off the routes to segregate the proposed paths from the land used by the school in the interests and safety of the children. Furthermore their client considers that this necessary safety measure will result in the client losing a substantial parcel of land.

Letters have been provided by staff and Head and Deputy Head teachers of the school throughout the period of 1964 to the present day that there have never been any public footpaths anywhere on the school grounds. This evidence is provided in the letters.

A teacher at the school 1985-2008 was not aware of any footpaths across any school fields

The headmistress 1964-85 says that to her knowledge there were no public footpaths across the playing fields

Head teacher 1991-2004 says that to his knowledge there were no public footpaths across the Chatburn Road playing fields

The present headteacher since 2004 confirms that to her knowledge there has never been a public footpath across the Chatburn Road playing fields. On several occasions she says she has had to ask members of the public to leave the school site and is aware that other members of staff have had to do the same.

The Deputy Head 1989-2002 says that to his knowledge there were no public footpaths and there was signage, both on the locked gate of the playing fields between Green Drive and the hospital and below the school by the post box on Chatburn Road, the signs stated that the land was private property and unauthorised persons were not allowed on School grounds. These signs were replaced. He recalls occasionally speaking with dog walkers reminding them it was private property and that they were not allowed. Apart from some dog walking there was no physical evidence of footpath usage across the school grounds.

The Head of the school during 1985 when the Boys' and Girls' school amalgamated has stated during this process new facilities were constructed and at no point during this process was he ever made aware by former Head teachers, Governors, LCC or Lancashire Education Authority that a right of way has been claimed across the land.

Cobbetts are instructed that there is no evidence of members of the public using a defined way along the routes claimed.

#### D-C

This is not a permitted routes as it has never been intended for us as a public right of way, the route crosses a playing field used by the school for athletic purposes and to access other playing fields, trespassers have been repeatedly challenged when using the route during school times and signage has been installed on a regular basis at the start and end of the route.

They say that evidence given by the applicant does not support their application and in fact supports their clients position that the right of way should not be added to the Definitive Map. The evidence from one particular user form indicates on least 3 occasions employees from the School have challenged people using the route. Their evidence also supports their clients position that signs have been installed, this is further supported by another user who was also challenged for using the proposed route. Other users also state they have seen signs such as "action will be taken against" and "Trespassers will be Prosecuted".

#### C-I

This route was never intended to be a permitted route and forms part of the private property owned by the School, on numerous occasions members of staff have challenged people walking on this route. Signage was installed along the proposed route for a number of periods of time and in particular a former Deputy Head expresses the view that signage was installed.

Evidence from the applicant is not supportive of the application as a number of witnesses provide evidence that they saw signs on the land indicating it was private

property. A number of witnesses provided evidence that people have been challenged by members of staff when using the land. Furthermore only 8 people have used this footpath for a period of 20 years all other users have only used the proposed path during recent years. This evidence supports their clients position that the footpath should not be added to the Definitive Map. They are also instructed that the claimed route does not lead to anywhere but terminates at the boundary of the privately owned industrial estate.

#### A-C

The route was never intended to be a public right of way and is private property owned by the School. It is currently used as a playing field and as a result members of staff have challenged anyone using the land and have installed signs to warn trespassers that the land is private property. There does not appear to be sufficient evidence from the witnesses to show that members of the public use this route. Only 5 of the witnesses have used this path for a period of 20 years and it is their clients position that this is not a significant number of people using the path for it to be added to the Definitive Map.

#### G-I

Members of staff have repeatedly challenged persons caught using this route during school hours and have installed signs over the years to show that the land is not intended to be used as a public right of way but rather that it is private property to be used by the school as a playing field. Only 5 of the witnesses have used this path for a period of 20 years and it is their clients position that this is not a significant number of people using the path for it to be added to the Definitive Map.

Their client considers that they have a strong case to object to the application to add the four proposed footpaths to the Definitive Map based on the fact that the applicant cannot claim 20 years of uninterrupted use due to the fact that the school has repeatedly challenged trespassers and have installed signs over the years to state that the land is private land and is not intended for public use. The School never had any intention of dedicating the land as a footpath and has made this clear by taking the above mentioned actions.

The point is made that evidence submitted by the Applicant is generalised and does not refer to specific routes and these generalised statements undermine the application

### **Assessment of the Evidence**

#### **The Law - See Annex 'A'**

#### In Support of the Claim

- User evidence
- Promoted route by the Nature Reserve
- Site evidence – access points

## Against Accepting the Claim

- Information from the school
- Signage
- Challenges

## Conclusion

The claim is that this route has become a footpath in law and should be recorded on the Definitive Map.

It is advised that there is no express dedication and so the Committee needs to consider whether a dedication can be inferred at common law or whether the provisions of S31 Highways Act can be satisfied whereby a footpath can be deemed to have been dedicated.

Considering first of all common law dedication it is advised that maps and documents do not provide sufficient evidence from which dedication can be inferred and so the public use would have to be the circumstances from which the owners' intention to dedicate could be inferred. By letting use happen and doing nothing can be evidence that an owner intended there being a public footpath. Committee will be aware that intention to dedicate has *to be able to be found on balance*. The owner since 1992 of the main sections of the route is the school and given the nature of a school and information being provided it may be considered that it would be difficult to infer that a school intended dedicating a public footpath evidenced by the public use. User by the public is no more than evidence and any presumption raised is likely to be able to be rebutted in this particular matter.

S31 Highways Act works differently. The presumption of dedication stems from twenty years use being evidenced up to a point where users should realise that their use was being brought into question. It is then for the school to provide evidence of overt actions taken during twenty years demonstrating sufficient evidence of a lack of intention.

Considering the user evidence it is always difficult to analyse user evidence where a route splits and descriptions and maps of routes sometimes lack clarity. This is the case here. Taking all the usual shortcomings of user forms completed by members of the public and the fact that the users are not cartographers into account it is advised that there seems to have been open use of all the sections of this route up to the signs and challenges in 2011. It is suggested that for the purposes of S31 the route has been called into question in 2011 and the twenty years of open use would have to be 1991-2011.

Considering the elements necessary to satisfy s31 it is necessary to evaluate the user evidence and be satisfied as to its duration and sufficiency. Use of a way by different persons each for periods of less than 20 years will suffice if, taken together, they total a continuous period of 20 years or more. It is not necessary for all users to have used the route since 1991. There is no statutory minimum of users. The issue is how they are using it and how it would appear to a reasonable landowner. The actual landowner does not have to see the use. It is how the use would have appeared to a reasonable landowner who was on site. Use should be sufficient to

alert a reasonable landowner that a right of way is being asserted. Use has to be by the public representative of the community as a whole. Credible evidence of users knowing of others using the route can also be taken into account.

In this matter the owner seeks to demonstrate how unaware the school was of use of its land. Several former and present Heads refer to the Chatburn Road playing fields rather than the area crossed by all the claimed route including in the field area next to the quarry. This raises issues about the credibility of the user evidence and that it was possibly only trivial and sporadic and unable to be sufficient to raise the presumption of use by the public. The evidence of use at the access points and use as a regular dog walking route has to be weighed against this and some of the references made by users as to the lack of use of the land by the school.

The S31 provision still allows a landowner to show that he took action to show that he did not intend to dedicate a footpath. It provides for certain methods to show this to reasonable users. One such method is to erect a notice/notices inconsistent with public use. The landowner of section F-D has not submitted any information. The Owner of section D-A and D-G refers to signage before the signs of 2011 but does not specifically say what the signs said and whether they were on the claimed route. There is reference to the current positioning of signs but not to the older ones. The reference to sign on a gate between green drive and the hospital may or may not have been at points A or G or elsewhere, it is not clear. The owner also refers to challenges but again does not explain exactly where and the circumstances of these. The school refers to not being aware of public use yet refers to challenges. It may be more likely that the challenges were on the site nearer the school building.

To make an Order the Committee would need to be satisfied that it is reasonable, on balance, to allege that the footpath subsists. The meaning of 'reasonably alleged to subsist' in cases based on user evidence was clarified in the case of *R v Secretary of State for Wales, ex parte Emery* [1998].

In his judgment Lord Justice Roch stated: Where the applicant for a modification order produces credible evidence of actual enjoyment of a way as a public right of way over a full period of 20 years, and there is a conflict of apparently credible evidence in relation to one of the other issues which arises under Section 31, then the allegation that the right of way subsists is reasonable, unless there is documentary evidence which must inevitably defeat the claim for example by establishing incontrovertibly that the landowner had no intention to dedicate.

It is suggested that there is a conflict of evidence here, but no incontrovertible evidence of a lack of intention to dedicate, and the Committee may consider that on the basis of the statutory test, it is reasonable to allege the subsistence of a public right of way on foot on the claimed route and resolve that an Order be made.

It is suggested that the Committee also consider whether the higher test to promote the Order to confirmation is satisfied being satisfied that on balance there is evidence that the footpath subsists. It is suggested that Committee may wish to wait to consider this higher test, to give officers the opportunity to interview the users and clarify some of the less clear details on plans and the information given in the user

evidence and for owners to submit further information and for the Order to be published to see if there is a desire to object to same.

Taking all the information into account, Committee on balance may consider making an Order but receiving a further report at a later date in respect of whether the Authority wishes to promote the Order to confirmation or take a different stance.

### **Risk Management**

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

**Alternative options to be considered - N/A**

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

Paper	Date	Contact/Directorate/Ext
All documents on Claim File Ref: 5.43131 (804/517)	Various	M Brindle, County Secretary & Solicitor's Group, Ext: 33427

Reason for inclusion in Part II, if appropriate

N/A