

Regulatory Committee

Meeting to be held on 5th February 2014

Electoral Division affected: Morecambe North

Wildlife and Countryside Act 1981

Claimed Public Footpath from Public Bridleway 5 (Rakes Head Lane) to Public Bridleway 6 (Townfield Lane) Slyne with Hest, Lancaster City

Claim No. 804/534

(Annex 'A' refers)

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Jayne Elliott, 07917 836626, Environment Directorate, Jayne.elliott@lancashire.gov.uk;

Executive Summary

The claim for a public footpath from Public Bridleway 5 (Rakes Head Lane) to Public Bridleway 6 (Townfield Lane) Slyne with Hest, Lancaster City to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/534.

Recommendation

1. That the claim for a public footpath from Public Bridleway 5 (Rakes Head Lane) to Public Bridleway 6 (Townfield Lane) Slyne with Hest, Lancaster City to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/534 be accepted.
2. 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 Right of Way a Public Footpath from Public Bridleway 5 (Rakes Head Lane) (Grid reference SD 4687 6567) to Public Bridleway 6 (Townfield Lane) (SD 4678 6522) for a distance of approximately 480 metres and shown between Points A-B-C-D on the Committee plan.
3. 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

A claim has been received for a footpath extending from a point on Public Bridleway 5 Slyne with Hest a to point on Public Bridleway 6 Slyne with Hest, a distance of approximately 480 metres, and shown between points A-B-C-D ("Claimed Route")

on the attached plan, to be added to the Definitive Map and Statement of Public Rights of Way.

The County Council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 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 to add a public right of way 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 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 (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 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 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. The decision may also be that the routes to be added or deleted vary in length or location from those that were originally claimed.

Consultations

Lancaster City Council has been consulted and no response has been received.

Slyne with Hest Parish Council has been consulted and although they appreciate the concerns of the landowner and farmer they support the application.

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 Solicitors Observations’.

Executive Director for the Environments Observations

Description of the routes

Points annotated on the attached Committee plan.

Point	Grid Ref	Description
A	SD 4687 6567	Junction with Public Bridleway 5 Slyne with Hest
B	SD 4689 6558	Gateway in field boundary
C	SD 4688 6544	Gateway in field boundary
D	SD 4678 6522	Gateway at junction with Public Bridleway 6 Slyne with Hest

Description of Route:

The Claimed Route was inspected in September and December 2013.

The Claimed Route commences at point A on the Committee plan which is a point on Public Bridleway 5 Slyne with Hest east of Rakes Head Bridge.

From point A the Claimed Route passes through a field boundary hedge. There is no gate or stile at this point and the hedge is quite thick. In September it was not possible to squeeze through the hedge but in December, when some of the growth had died back it was possible to get through. At point A it is just possible to see that some large stone boulders have been placed in the hedge and that a sign has been erected which states 'NO PUBLIC ACCESS Private Land'. Barbed wire was also present across the hedge at point A.

Beyond point A the Claimed Route continues in a south south easterly direction along the eastern side of a field boundary (hedge). In September this part of the Claimed Route was inaccessible due to crops being present but in December the crop had been removed and it was possible to walk between point A and point B.

The Claimed Route continues along the field boundary for approximately 85 metres from point A until it reaches a 3.5 metre wide metal field gate in the boundary hedge at point B. The gate is padlocked shut and it was only possible to continue along the route by climbing over the gate.

From point B the Claimed Route then continues in a generally southerly direction near the edge of a field that was being grazed by sheep for approximately 150 metres to point C where it passes through a further gateway. Gateposts were situated in the gateway but the 3.5 metre wide metal field gate was lying in the hedge adjacent to the gateway. A yellow bucket lid was attached to the gate and although no longer legible it appeared to have had something written on it.

From point C the Claimed Route continues across an undulating field in a generally south westerly direction to a gateway that provides access onto Public Bridleway 6 Slyne with Hest at point D.

The 3.5 metre metal gate was padlocked shut but had come off its bottom hinge. To the east of the gate, adjacent to the hanging post there appeared to be a small gap

in the hedge that been fenced with wooden posts and barbed wire. A broken sign like the one found at point A was attached to the wooden posts and said, 'NO PUBLIC ACCESS, Private Land'.

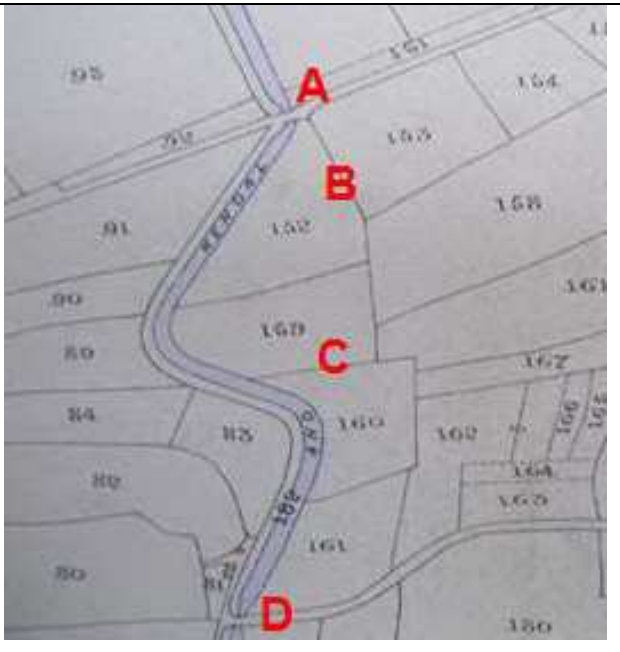
In summary, there was no worn track visible along any part of the Claimed Route that would indicate that it was currently being used. Access along the Claimed Route was prevented by an overgrown and blocked up hedge at point A and by padlocked gates at points B, C and D. Signs indicated that there was no public access at point A and point D.

All compass directions and distances given are approximate.

Map and Documentary evidence relating to the claimed addition

Various maps, plans and other documents were examined with reference to the Claimed Route.

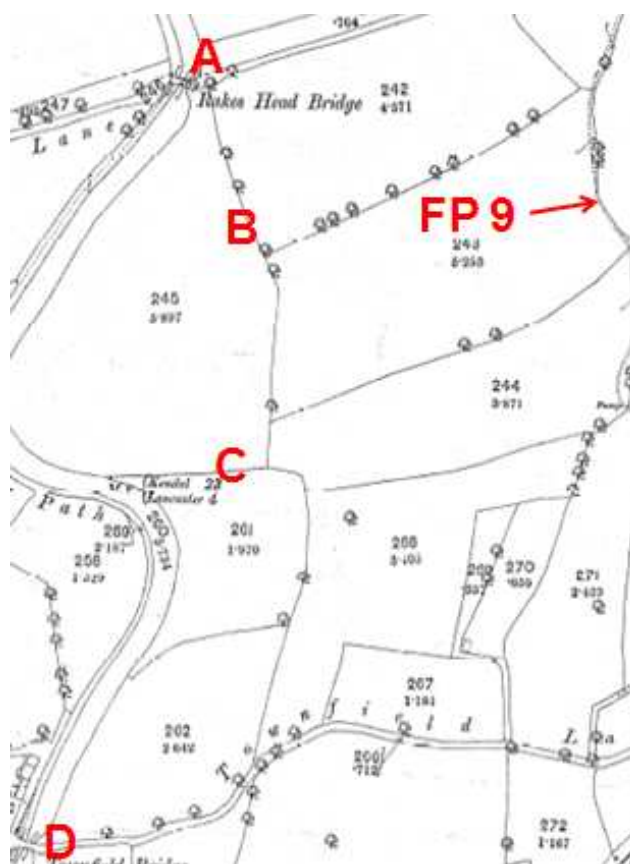
Document Title	Date	Brief description of document & nature of evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The Claimed Route is not shown on Yates' Map.
Investigating Officer's Comments		It is unlikely that a claimed public footpath across open agricultural land would have been shown on the map. The Claimed Route did not exist as a major route at the time but it may have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
Greenwood's Map of Lancashire	1818	Small scale commercial map.
Observations		The Claimed Route is not shown on Greenwoods' Map.
Investigating Officer's Comments		The Claimed 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 on the map so no inference can be drawn in this respect.
Hennet's Map of Lancashire	1830	Small scale commercial map.
Observations		The Claimed Route is not shown on Hennet's Map.
Investigating Officer's Comments		The Claimed 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 on the map so no inference can be drawn in this respect.

Tithe Map and Tithe Award or Apportionment	1845	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. The Tithe Map for Slyne with Hest was produced in 1845.
		
Observations		The Claimed Route is not shown on the Tithe Map. It is crossed by field boundaries at points A,B,C and D with two additional field boundaries, the first located partway between point B and point C and the second midway between point C and point D and passes through field numbers 153, 152, 159,160 and 161. There is no reference to the Claimed Route in the Tithe Award.
Investigating Officer's Comments		The Claimed Route probably did not exist in 1845.
Finance Act 1910 Map	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence.
Observations		The Claimed Route is not shown on the Ordnance Survey base map used to produce the Finance Act map

		<p>held in the County Records Office and is not shown as being excluded from any of the hereditaments that it crosses.</p> <p>The Claimed Route between point A-B-C crosses part of hereditament 43. A £15 reduction is listed in the schedule for 'Public Rights of Way or user' but the location of the 'public right of way' is not specified and the hereditament includes part of the recorded length of Public Footpath 9 Slyne with Hest.</p> <p>Between point C and midway between point C and point D the Claimed Route crosses hereditament 3 and no reduction is listed in the schedule for a public right of way.</p> <p>The remaining section of the Claimed Route through to point D crosses part of hereditament 47 for which a £20 reduction for 'Public Rights of Way or User' has been listed. The location of the 'right of way' is not specified but the hereditament includes another part of Public Footpath 9 Slyne with Hest.</p>
Investigating Officer's Comments		<p>The Claimed Route was probably not considered to be a public right of way when the valuation was carried out circa 1910.</p> <p>The Claimed Route is not excluded from the hereditaments which would have provided strong evidence that it was being used as a public right of way in 1910. It crosses three hereditaments. No reduction is claimed in respect of the 'middle' hereditament which suggests that that part of the Claimed Route was not considered to be a public right of way.</p> <p>The other two hereditaments crossed by the Claimed Route both cover large areas over which there is an accepted (and legally recorded public right of way). It is more likely that the reduction relates to the existence of Public Footpath 9 not the Claimed Route.</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>There is no Inclosure Award for Slyne with Hest.</p>
Investigating Officer's comments		<p>No inference can be drawn.</p>

<p>Ordnance Survey Maps</p>		<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>
<p>6 Inch OS Map</p>	<p>1848</p>	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1848.</p>
<p>Observations</p>		<p>The Claimed Route is not shown.</p> <p>Public Bridleway 5 is clearly shown and named as Rakes Head Lane and Public Bridleway 6 is shown and named as Townfield Lane. The canal is also shown to the west of the Claimed Route.</p> <p>The Claimed Route is crossed by field boundaries at points A,B,C and D with two additional field boundaries, the first located partway between point B and point C and the second midway between point C and point D.</p> <p>The route of Public Footpath 9 to the east of the</p>

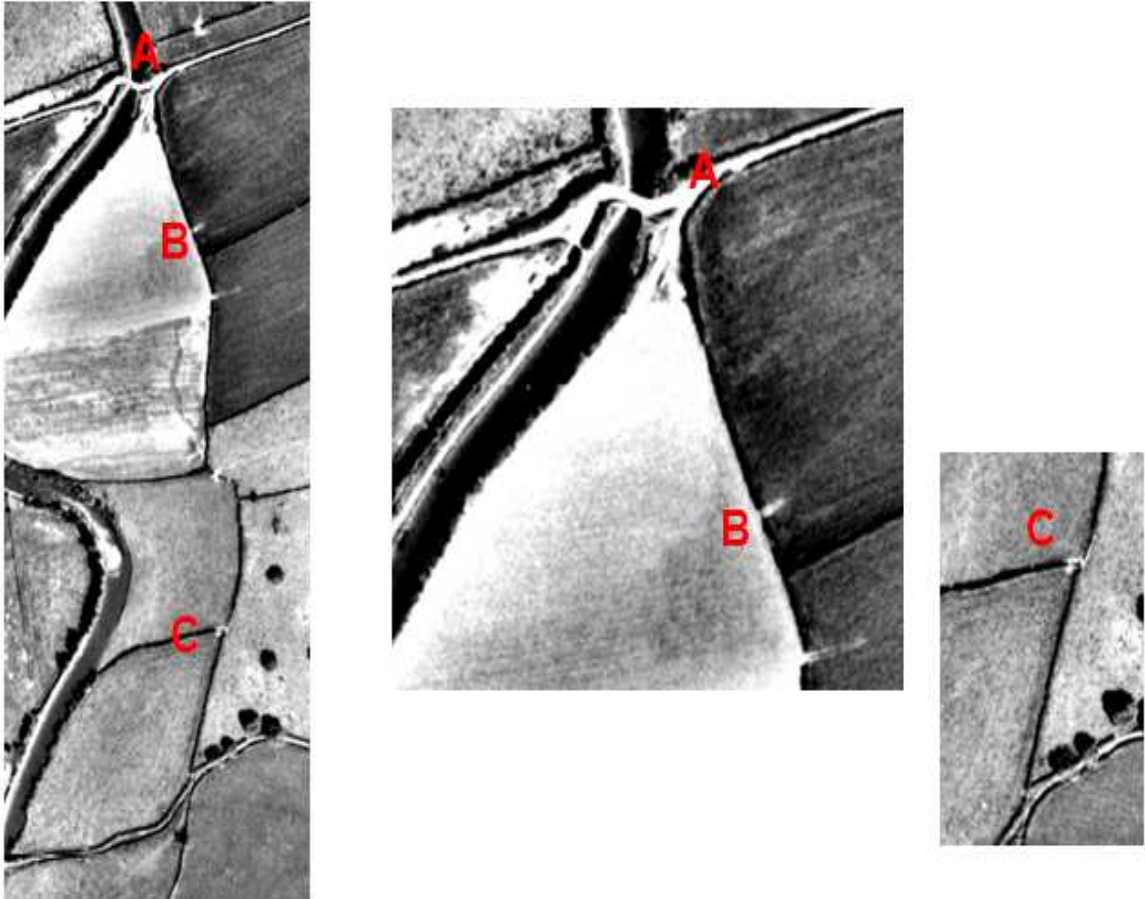
		<p>Claimed Route is not shown on the map.</p> <p>The existence of a milestone is marked close to point B which is confirmed as being located on the canal and not the Claimed Route by the First Edition 25 inch map described below.</p>
Investigating Officer's Comments		<p>The Claimed Route is not shown on the map suggesting that it did not physically exist as a worn track on the ground at the time that the Ordnance Survey carried out their survey between 1844 - 1845. If access had been available it would have been necessary to pass through 6 field boundaries.</p>
25 Inch OS Map	1891	<p>The earliest Ordnance Survey map at a scale of 25 inch to the mile. Surveyed 1889.</p>




Observations		<p>The Claimed Route is not shown.</p> <p>Public Bridleway 5 is clearly shown and named as Rakes Head Lane and Public Bridleway 6 is shown and named as Townfield Lane. The canal is also shown to the west of the Claimed Route and a more precise location of the milestone marked on the 1848 6 inch map is shown to be on the canal bank.</p> <p>The Claimed Route is crossed by field boundaries at points A,B,C and D with the additional field boundary</p>
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		<p>shown on the 1848 six inch map partway between point B and point C no longer shown. However, the field boundary midway between point C and point D still existed.</p> <p>The route of Public Footpath 9 to the east of the Claimed Route is shown on the map as a double pecked line and marked as a footpath 'F.P.'.</p>
Investigating Officer's Comments		<p>The Claimed Route is not shown on the map suggesting that it did not physically exist as a worn track on the ground at the time that the Ordnance Survey carried out their survey in 1889. If access had been available it would have been necessary to pass through 5 field boundaries and any use of the route on the ground would have been insufficient to have created a worn track on the ground.</p> <p>Public Footpath 9 appears to have existed as a physical track on the ground and was therefore shown by the surveyor. Its appearance led the surveyor to label it as a footpath although such labelling was not conclusive of public rights and referred more to the physical characteristics to the route found to exist on the ground.</p>
25 inch OS Map	1913	Further edition of the 25 inch map, surveyed in 1889 and revised in 1910.
Observations		<p>The Claimed Route is not shown.</p> <p>The land over which the route crosses appears unaltered from the 25 inch map published in 1891.</p>
Investigating Officer's Comments		The Claimed Route is not shown on the map suggesting that it did not physically exist as a worn track on the ground at the time that the Ordnance Survey revised the map in 1910.
25 Inch OS Map	1932	Further edition of 25 inch map (surveyed 1889 and revised 1930-31).
Observations		<p>The Claimed Route is not shown.</p> <p>The land over which the Claimed Route crosses appears unaltered from the 25 inch maps published in 1891 and 1913.</p>
Investigating Officer's Comments		The Claimed Route is not shown on the map suggesting that it did not physically exist as a worn track on the ground at the time that the Ordnance Survey revised the map in 1930-31.
25 Inch OS Map	1938	Further edition of the 25 inch map surveyed in 1889, revised in 1938.

Observations		The Claimed Route is not shown. The land over which the Claimed Route crosses appears unaltered from the 25 inch maps published in 189, 1913 and 1932.
Investigating Officer's Comments		The Claimed Route did not exist as a worn track on the ground in 1938.
6 Inch OS Map	1955	The Ordnance Survey base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile. It is believed to have been based on the same survey as the 1931 25 inch map and the date of revision is given as 1930-45.
Observations		The Claimed Route is not shown. Although at a smaller scale there are no alterations to the map from earlier editions of the 25 inch maps.
Investigating Officer's Comments		The Claimed Route did not exist on the ground as a worn track between 1930-45.
6 inch OS map	1963	Ordnance Survey sheet SD 46NE was reprinted with the addition of new major roads in 1963. This map is probably based on the same survey as the 1931 25-inch map and the date of revision is given as 1930-45.
Observations		The Claimed Route is not shown. Although at a smaller scale there are no alterations to the map from earlier editions of the 25 inch maps.
Investigating Officer's Comments		The Claimed Route did not exist on the ground as a worn track between 1930-45.
25 Inch OS Map	1968	Further edition of 25 inch map revised 1968.
Observations		The Claimed Route is not shown. The land over which the Claimed Route crosses appears unaltered from earlier editions of the map. Field boundaries are still present at points A,B,C and D.
Investigating Officer's Comments		The Claimed Route did not exist on the ground as a worn track on the ground in 1968.
6 inch OS Map	1972	Further edition of the 6 inch map revised 1967-1970.
Observations		The Claimed Route is not shown. The land over which the Claimed Route crosses appears unaltered from earlier editions of the 6 inch and 25 inch maps.
Investigating Officer's Comments		The Claimed Route did not exist on the ground as a worn track in 1967-1970, crossed by field boundaries at points A,B,C and D.

Aerial Photographs		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	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.
		
Observations		The Claimed Route is not shown. Access points are clearly visible just east of point A, at point B and point C.
Investigating Officer's Comments		The Claimed Route did not exist as a worn track on the ground in 1960. Access points (probably gated) can be seen to have existed close to point A, point B and point C which may have allowed access along the route.
Aerial Photograph	1988	Aerial photograph available to view in the County Records Office

		
Observations		<p>The Claimed Route is not visible as a worn track on the ground except possibly between B and C although this is consistent with agricultural access between the gates. Access points at point B and point C are visible but it is not possible to see whether access existed at point A or the gateway at point D.</p>
Investigating Officer's Comments		<p>The Claimed Route did not exist as a worn track on the ground in 1988. Access points can be seen to have existed at point B and point C which may have allowed access along the route. The quality and scale of the photograph means that it is not possible to see whether access existed at point A or point D.</p>
Aerial Photograph	2000	Colour aerial photographs viewed on GIS



Observations		The Claimed Route is not visible as a worn track on the ground. It is not possible to see whether access was available through the hedge at point A. Gateways are visible at point B, C and D
Investigating Officer's Comments		The Claimed Route did not exist as a worn track on the ground in 2000. Gateways can be seen at point B,C and D which may have allowed access along the Claimed Route but it is not possible to confirm access at point A.
Aerial Photograph	2006	Colour aerial photograph viewed on GIS



Observations		Access through the hedge at point A is clearly visible. A faint worn track can be seen between point A and point B and the gateway at point B is clearly visible. A worn route can be seen between point B and point C. The gateway at point C is also clearly visible and a worn track can be seen along the Claimed Route to point D.
Investigating Officer's Comments		The Claimed Route existed as a worn track in 2006. Access was available through the boundary hedges at point A, B, C and D.
Aerial Photograph	2010	Colour aerial photograph taken in 2010 and viewed on GIS.



Observations		It is not possible to see from the photograph whether access was still available through the hedge at point A. Gateways are visible at points B, C and D and a worn track can be seen across the field between point C and point D.
Investigating Officer's Comments		The worn line on the ground between D and C but not beyond is consistent with agricultural access to the northerly field and therefore provides little or no evidence for the Claimed Route.
Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way. Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein

		was reproduced by the County Council on maps covering the whole of a rural district council area.
Observations		The parish survey map and cards were drawn up by Slyne with Hest parish council. The Claimed Route is not shown on the parish survey map or documented in the parish survey cards.
Draft Map		<p>The parish survey map and cards for Slyne with Hest were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		The Claimed Route is not shown on the Draft Map of Public Rights of Way and there were no objections to the omission of the path.
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 Claimed Route is not shown on the Provisional Map and there were no objections to the omission of the path.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The Claimed Route is not shown on the first Definitive Map.
Investigating Officer's comments		The Claimed Route was not considered to be a public right of way in the 1950s.
Revised Definitive Map		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders,

<p>of Public Rights of Way (First Review)</p>		<p>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. 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>
<p>Observations</p>		<p>The Claimed Route is not shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).</p>
<p>Investigating Officer's Comments</p>		<p>The Claimed Route was not considered to have changed status by the 1960s.</p>
<p>Statutory deposit and declaration made under section 31(6) Highways Act 1980</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 is one Highways Act 1980 Section 31(6) deposit lodged with the County Council for the area over which that part of the Claimed Route runs between points B-C-D. The deposit was submitted by JR Hoggarth and J Hoggarth of Belmont Farm, Slyne, Lancaster on 26 July 2012. Within the details of the deposit there is no</p>

		<p>acknowledgement or acceptance that the Claimed Route is a public right of way. There have been no earlier deposits relating to this land.</p> <p>There are no statutory deposits covering the land over which the Claimed Route passes between points A-B.</p>
Investigating Officer's Comments		<p>There is a clear indication from the owners of the land over which the Claimed Route runs between points B-C-D that they do not acknowledge the existence or intend to dedicate a public right of way from 22 June 2012 onwards.</p>

The land crossed by the Claimed Route is not recorded as access land under the provisions of the Countryside and Rights of Way Act 2000. It is not recorded as a Site of Special Scientific interest or a biological heritage site.

To summarise, there is no evidence of the physical existence of a worn track on any of the Ordnance Survey maps produced from 1848 to the current day. For a rural footpath crossing agricultural land this is not necessarily uncommon and the aerial photographs inspected appear to suggest access would have been available between points A, B, C and D in the 1940's, 1960's, 1988, 2000 and 2010. The 1960's aerial that appears to show access into the field close to point A, but the 1988, 2000 and 2010 aerial photographs do not show what access may have existed through the hedge at point A.

The 2006 aerial photograph gives the strongest indication that the whole of the Claimed Route was being used at that time. The access point at point A is clearly shown and a worn track is visible along the whole length from A-B-C-D.

The 2010 aerial photograph doesn't show access at point A but the gateways are visible at points B, C and D and between points C and D as a worn track is visible on the ground.

No other documentary evidence examined supports the view that the Claimed Route was considered to be a public footpath. The Section 31(6) deposit submitted to the County Council only protects the landowner from the public claiming the footpath based on user evidence from 22 June 2012 onwards.

Description of the new path for inclusion in the Definitive Statement if Order is to be made (and subsequently confirmed)

The following should be added to the Definitive Statement for Slyne with Hest, Lancaster District;

Proposed Schedule to Order

SCHEDULE

PART 1

MODIFICATION OF THE DEFINITIVE MAP

DESCRIPTION OF WAY TO BE ADDED

Public Footpath from a junction with Public Bridleway 5 (Rakes Head Lane) (point A) running in a generally south south easterly direction along field edge for approximately 85 metres to pass through a gate in field boundary (point B). Continuing in a generally southerly direction near field edge for approximately 150 metres to pass through a second field gate (point C) before continuing in a more south westerly direction across field for approximately 245 metres to pass through a gate to junction with Public Bridleway 6 (Townfield Lane) (point D).

PART II

MODIFICATION OF DEFINITIVE STATEMENT

Add to the Definitive Statement for Slyne with Hest the following:

" Public Footpath from a junction with Public Bridleway 5 (Rakes Head Lane) at SD 4687 6567 through field boundary and running in a generally south south easterly direction along east side of boundary hedge to pass through a field gate at SD 4689 6558 and continuing in a generally southerly direction on west side of boundary hedge to pass through field gate at SD 4688 6544 then in a more south westerly direction across a field to gate at SD 4678 6522 to meet Public Bridleway 6 (Townfield Lane)."

Width:

SD 4687 6567 to SD 4678 6522 - 1.5 metres

Limitations and Conditions:

1 metre wide gap in hedge at SD4687 6567

3.5 metre wide field gate at SD 4689 6558

3.5 metre wide field gate at SD 4688 6544

3.5 metre wide field at SD 4678 6522

Length: 480 metres

All lengths and compass directions given are approximate.

County Secretary and Solicitor's Observations

Information from the Applicant

In support of the Claimed Route, the Applicant has provided 29 user forms. Three user evidence forms have been discounted (one does not refer to the Claimed Route, one confirms he 'rarely' used the route providing no dates and that his preferred route was not the Claimed Route and another confirms he asked for permission). There was 1 user in 1975, 2 in 1980, 3 in 1981, 4 in 1987, 5 in 1989, 8 in 1991, 9 in 1992, 11 in 1993, 13 in 1994, 15 in 1996, 20 in 2002, 21 in 2006, 23 in 2008, 26 in 2009 and 23 in 2011.

All 26 users have used the way on foot. The main reasons for using the route are for leisure / pleasure, walking, walking with children or walking the dogs and for exercise, one recording use for the purpose of photography. Recorded use varies from occasionally, daily, twice a day, weekly, 2/3 and 4 times per week, monthly, and then with varies yearly from 20 to 500 times.

22 users state the way has always run over the same line, 1 user states it hasn't and 2 do not give an answer.

The Applicant confirms that there was open access between two posts in the hedge at point A, a gate that was usually open at point B, a gate that was usually open at point C and a gate that was usually open at point D also with an opening on the right between two posts for people to access. In the main, the supporting user evidence forms support this position and attach the same plan marked A, B, C and D. There is reference to a gate at point C being closed/wired when sheep/cattle were in the field occasionally and reference being made to it being closed in 2010 that did not prevent users walking the Claimed Route. One user saw a sign so turned back and another user stated they 'chose to go back as the farmer was busy doing stuff in the fields'.

The Applicant refers to notices being erected April 2011, a photo of a notice at point D has been provided reading 'NO PUBLIC ACCESS Private Land' and the same sign is shown in a second photo at point A. 9 further users acknowledge these notices being erected 2011. One user refers to notices alerting to cattle or sheep in the field and another user refers to "during lambing signs would be put on the gates asking people not to enter".

Users claim they have never been stopped or turned back, with 3 users saying yes they have heard others being stopped or turned back, one stating by "several other dog walkers". 25 users confirm that they have never been told by any owner or tenant of the land crossed by the way, or by anyone in their employment that the way was not a public right of way on foot.

Information from the Owner

Owner of section B-C-D – Mr Richard Hoggarth

An objection with photographs of private / no public access signs and direction signs, photographs of locked field gates, a photo of the Ordnance Survey map dated 1890 and a letter from Farmgate Vets has been received from Richard Hoggarth. Mr Hoggarth confirms that land A to B is owned by the Fish Estate and the Hoggarth family hold the tenancy for this land which has been farmed by the Hoggarth Family for over sixty years. Land B-C-D is owned by the Hoggarth family.

Mr Hoggarth confirms whilst farming the land for more than 60 years he states that there has never been any official public footpaths apart from Public Footpath 9. Mr Hoggarth submits an Ordnance Survey map dated 1890 which does not show the Claimed Route. Mr Hoggarth states his land is private property, there is no public access and he uses his land to graze livestock and also to grow crops and he is concerned that such trespassing will cause damage to his business.

Mr Hoggarth confirms that no permission has been given for any member of the public to use any route across the land other than the official Public Footpath 9.

Mr Hoggarth confirms they are extremely busy farming approx 350 acres of land and therefore they do not have the time to monitor every field for dog walkers however, since receiving the Applicant, Mrs Hargest's letter 23 July 2012, they have been paying greater attention and at times in areas other than the official footpath route have informed them they are on private land and that there is no public access. Mr Hoggarth then confirms over recent years he has seen people walking with dogs and has pointed out to them that the area is not an official footpath and that dogs must be kept on their leads at all times.

Mr Hoggarth explains that if the Applicant's assertion that dog walkers regularly walk the Claimed Route is correct, he has great concern of the potential risk of further dog muck being left on the land. Mr Hoggarth submits a letter from Veterinarian George W. Robin in respect of risks associated with contamination of grazing and forage pastures with dog faeces. Mr Hoggarth is concerned with the serious link between dog muck and abortion rates in cattle and confirms the cost of a single abortion is in the region of £600 and can cause abortion storms that could cause enormous damage to a business.

Mr Hoggarth, acknowledges the official footpaths in the area and struggles to understand the need for further footpaths across private property which is essential and valuable to his family's business.

Mr Hoggarth confirms he has registered the land between Sunningdale Crescent and Raikes Head Lane with the County Council under section 31(6) Highways Act 1980 in respect of non-dedication of footpaths on 22 June 2012.

Owner of section A-B (Fish Estate)

An objection has been received from Mr J E Fish on behalf of Mrs C L Fish and her tenant Mr Richard Hoggarth, who is also landowner of B-C-D and together vehemently object to the proposal on seven grounds.

The first is in respect of s31(6) deposit outlined above and it should be noted that it does not relate to the Claimed Route and in any event, if it did it would only have effect from the date it was lodged which was on 22 June 2012 onwards.

The second is that the Claimed Route crosses two of Mr Hoggarth's fields that are utilised for the conservation of grass for Winter forage confirming at his recent inspection 2013 there are no signs of trampling of grass crop.

The third is in respect of dog faeces, outlined above.

The fourth is that at point D (which joins Public Bridleway 6) there is a gateway which is locked with both a bolt provided by the standard gate and a chain and padlock. Photograph 6 taken in September 2013 is referred to as being the sign affixed to the fence stating 'private property and no public access' however, photo 6 does not refer

to this sign and instead reads "Please keep to the Public Footpath Dogs to be kept on a lead at all times".

The fifth is in respect of photographs taken in September 2013 of the northerly end of the Claimed Route at point A leading from Public Bridleway 5 which crosses through a substantial hawthorn and mixed broad leaf hedgerow and confirms that this is impassable by foot and photographs confirm that the access has not been used throughout the summer months.

The sixth ground refers to the cropping of the northerly element of the Claimed Route is that of maize, cropped within 1 metre of the centre of the hedgerow and referring to a photo and submitting it is clearly evidence that this has not been disturbed by walker or dog.

The seventh point advocates that public footpath 9 is clearly used whereas the Claimed Route shows little signs of wear. Mr J E Fish submits that approximately 5-6 years ago there had been some issue with walkers veering from Rakes Head Lane and Mr Hoggarth took the decision to securely lock and padlock all gates and erect signs and he would politely ask walkers to cease this and revert only to the chosen footpath.

Assessment of the Evidence

The Law - See Annex 'A'

Reference to "Owner" includes Mr J E Fish on behalf of Mrs C L Fish and the Fish Estate and Mr Richard Hoggarth and family in their capacity as landowner and tenant.

In Support of the Claim

- User Evidence
- Aerial Photograph
- Weak test to be satisfied of "reasonably alleged to subsist"

Against Accepting the Claim

- Owners actions
- No corroborating map evidence
- Submission that use not "as of right"

Conclusion

The claim is that the route A – B – C – D is an existing public footpath and should be added to the Definitive Map and Statement of Public Rights of Way.

There is no express dedication and therefore it is advised that the Committee should consider, on balance, whether there is sufficient evidence from which to have its dedication inferred at common law from all the circumstances or for the criteria in Section 31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years "as of right" use to have taken place ending with this use being called into question.

Considering initially the criteria for a deemed dedication under Section 31 of the Highways Act, that use needs to be "as of right" and also sufficient for the 20 year period. Whilst the Owner refers to securely locking with padlock all gates and erecting signs it is not clear when this action took place, Owners photos dated 2013 and against 23 user evidence forms recording use to at least 2011, on balance it is considered the Claimed Route was called into question in 2011 by the locking of gates etc and erecting of notices and the period of use from which dedication can be deemed would be 1991 to 2011.

Twenty six user evidence forms have been considered. The 8 users in 1991, allege to have used the route for 20 years plus and all 8 users confirm that they saw others using the way including "*I met friends on the route regularly*", "*each time I used it*", "*all the years I have been walking the route*", "*ever since I started using the route*". Users refer to the Claimed Route being a well worn trodden path until maize was planted in the northern section of the field in 2011. The Ordnance Survey maps do not support this, although it has been noted for a rural footpath crossing agricultural land this is not necessarily uncommon. The 2006 aerial photograph clearly shows a worn track along the Claimed Route A to D.

The Owner submits that in his opinion the Claimed Route has rarely been used, if ever referring to photos dated September 2013 and also makes the point that dog faeces, whilst a current problem on Public Footpath 9, would be a future concern if the Claimed Route is confirmed. It is submitted, limited weight can be placed on these photos being two years after the date the route was called into question. Whilst the Owner's submission regarding the risks associated with contamination of grazing and forage pastures with dog faeces is appreciated, it is not part of the criteria for deemed dedication.

Taking all the evidence into account, on balance, use can be said to have been by a sufficient number of people to show that it was use by 'the public'.

The Applicant's evidence submits photographs of signs reading 'NO PUBLIC ACCESS Private Land' at points A and D in April 2011, with 9 further users corroborating this and other users either stating there were no notices or not stating either way. Lambing notices have been reported to have been erected but their intention does not appear to be that of interrupting use and may actually indicate the Owner's knowledge that the Claimed Route was in use by the public.

The Owner's evidence of locking gates with padlocks, erecting notices and politely asking walkers to cease use and revert only to the chosen footpath suggests contentious use and use by force and therefore use not "as of right". However, the Owner's statement appears inconsistent with Mr Hoggarth confirming in 2012 he informed users they were on private land and that there was no public access but in another objection letter confirms this action occurred 2007/2008. Also, reference to photograph 6 is ambiguous as does not refer to the sign the Owner is referring to and the photo being said to have been taken in September 2013 does not provide evidence they were in situ during the relevant 20 year period.

It is suggested, looking at how “as of right” use can be considered, and how actions by landowners have to be effective, that the Committee may on balance find that the elements of Section 31 for use 1991 - 2011 of A-D could on balance be satisfied such as to enable the test for making an Order to be satisfied – that is the Claimed Route can reasonably be alleged to subsist. Without further investigation into matters of the use it is suggested that the higher test of confirming the Order could not yet be satisfied and it is therefore recommended that a further report be presented in this matter at a later date.

The Committee is advised to also consider whether there is sufficient use or other such circumstances from which dedication as a public footpath can be inferred at Common Law. With regards to inference at Common Law it is advised that there is no requirement for a calling into question but there is a need to prove on balance that the owner intended to dedicate. Proving that the Owner actually intended dedicating the Claimed Route is problematic. The Owner clearly advocates that they never had any intention to dedicate, that they had taken some steps and not acquiesced generally in user and clearly in now objecting to the application it would be difficult to infer that the intention of a landowner had so altered.

Taking all the evidence into account it may be considered that there is on balance, sufficient evidence to reasonably allege that a dedication could be deemed under S31 and that an Order be made and a consideration of the higher test as to the stance to take on confirming any such order be deferred and the Committee seek a further report at a later date. The Committee may therefore consider that the claim be accepted in respect A-B-C-D but no decision made yet on whether to promote said order to confirmation.

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/Tel
All documents on Claim File Ref: 804/534		Megan Brindle, 07112 535604, County Secretary and Solicitor's Group
Reason for inclusion in Part II, if appropriate		
N/A		