

## Regulatory Committee

Meeting to be held on 26<sup>th</sup> March 2014

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

**Claimed Public Footpath from Wardley's Lane to the Salt Marsh, Stalmine-with-Staynall, Wyre Borough.**

**Claim No. 804/522**

(Annex 'A' refers)

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### Executive Summary

The claim for a public footpath from Wardley's Lane to the salt marsh, Stalmine-with-Staynall, Wyre Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/522.

### Recommendation

1. That the claim for a public footpath from Wardley's Lane to the salt marsh, Stalmine-with-Staynall, Wyre Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/522, be accepted.
2. That an Order be made pursuant to Section 53 (3)(b) and/or 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a public footpath from Wardley's Lane (grid reference SD 3655 4290) to the edge of the salt marsh (SD 3649 4294) for a distance of approximately 70 metres and shown between points A-B on the attached plan.
3. That, not being satisfied that the higher test for confirming the said Order can be satisfied, the matter be returned to the Regulatory Committee to decide what stance to take regarding confirmation of the Order

### Background

A claim has been received for a public footpath extending from a point on Wardley's Lane, Stalmine-with-Staynall to the salt marsh, a distance of approximately 70 metres, shown between points A-B 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 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 the 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 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. 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**

Wyre Borough Council has been consulted and has not responded to the consultation it is thus assumed they have no comments to make.

Stalmine-with-Staynall Parish Council have responded and stated that the application was considered at one of the Council meetings. They do not support the claim and provided a copy of the 1965 1:2500 Ordnance Survey map which they claim shows that the only path to exist was from Wardley's Lane to the disused landing stage to the north of the claimed route running between Wardley's Hotel and the adjacent caravan site.

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

### Environment Director's Observations

Points annotated on the attached Committee plan.

Position on the Committee Plan	Grid Reference	Description
Point A	SD 3655 4290	Junction with Wardley's Lane
Point B	SD 3649 4294	Eastern edge of salt marsh

### Description of the Route

The claimed route was inspected on 9<sup>th</sup> January 2014. It commences at a point on Wardley's Lane immediately north of the boundary with The Moorings (point A on the Committee plan).

From point A the claimed route is said to extend in a north westerly direction for a distance of 70 metres through the north western corner of the site to the edge of the salt marsh at point B.

Wardley's Hotel that had previously existed on the land crossed by the claimed route has been demolished and a new building erected that appears to be close to completion. It was not possible to walk the claimed route between point A and point B on the day of inspection because access onto the claimed route at point A was prevented by temporary security fencing and at point B by a recently constructed stone wall along the former boundary between the salt marsh and the Hotel garden.

Between point A and point B a new building appears to partially obstruct the claimed route.

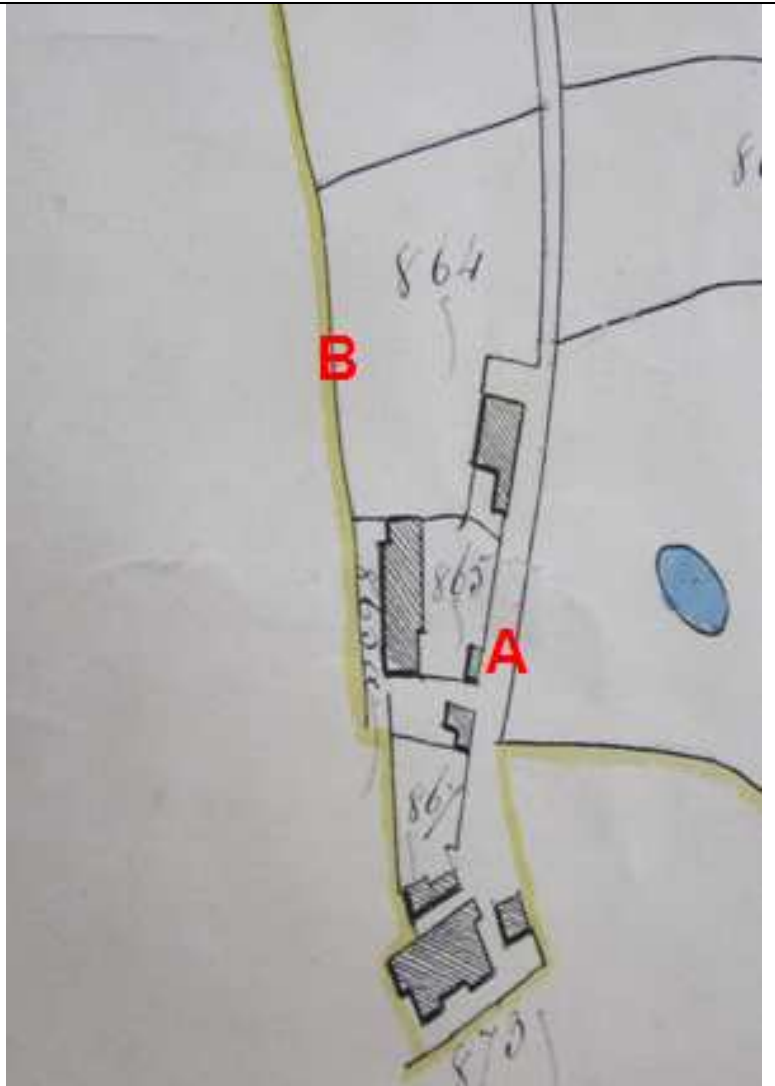
The site is now completely different to what it would have been during the period of claimed use and there is no evidence of the claimed route on the ground.

### Map and Documentary Evidence

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 claimed route is not shown on Yates' Map.

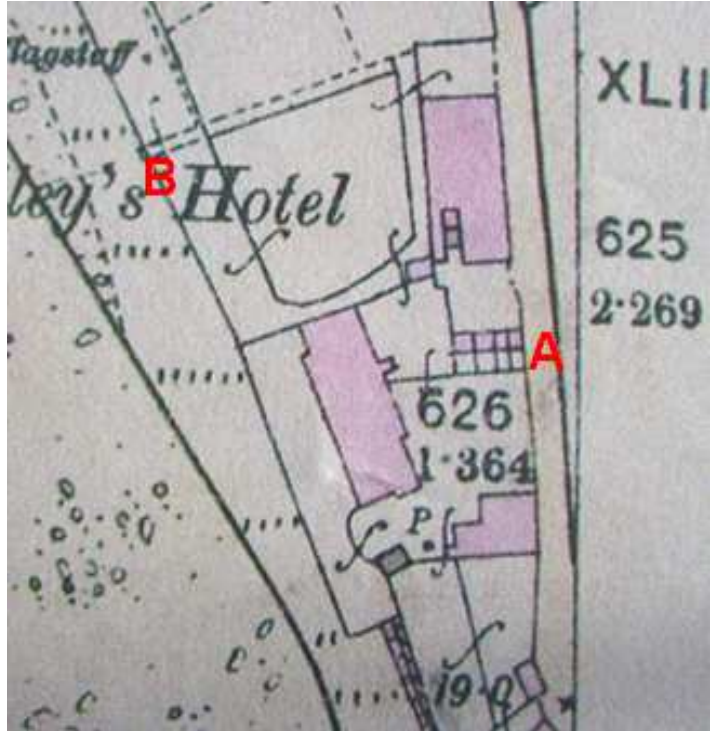
Investigating Officer's Comments		The claimed route did not exist as a major route at that time. It is possible that it may have existed as a minor route but would not have been shown due to the limitations of scale and because of the purpose for which the map had been produced. No inference can be drawn in this respect.
<b>Greenwood's Map of Lancashire</b>	1818	Greenwood's map of 1818 is a small scale commercial map.
Observations		The claimed route is not shown on Greenwood's Map.
Investigating Officer's Comments		The claimed route did not exist as a major route at that time. It may have existed as a minor route which would not have been shown due to the limitations of scale and because of the purpose for which the map had been produced so no inference can be drawn in this respect.
<b>Stockdale's Map</b>	1818	Stockdale's Map of 1818 is another small scale commercial map.
Observations		The claimed route is not shown on Stockdale's Map.
Investigating Officer's Comments		The claimed route did not exist as a major route at that time. It may have existed as a minor route but this would not have been shown due to the limitations of scale and because of the purpose for which the map had been produced so no inference can be drawn in this respect.
<b>Hennet's Map of Lancashire</b>	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 that time. It may have existed as a minor route which would not have been shown due to the limitations of scale and because of the purpose for which the map had been produced so no inference can be drawn in this respect.
<b>Tithe Map and Tithe Award or Apportionment</b>	1849	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 Stalmine-with-Staynall was produced in December 1841.



Observations		<p>The claimed route is not shown on the Tithe map and there is no reference to its existence in the written Tithe Award. The Tithe Map shows a small building at point A. The claimed route then crosses plot 865 described in the Schedule as house, building and garden and then passes through the north eastern corner of a large building described in the Tithe Schedule as a warehouse. It then continues across plot 864 which is described as a garden. There is no reference to the claimed route in the Schedule.</p>
Investigating Officer's Comments		<p>The claimed route did not exist in 1849.</p>
<b>Finance Act 1910 Map</b>	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence.</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</p>

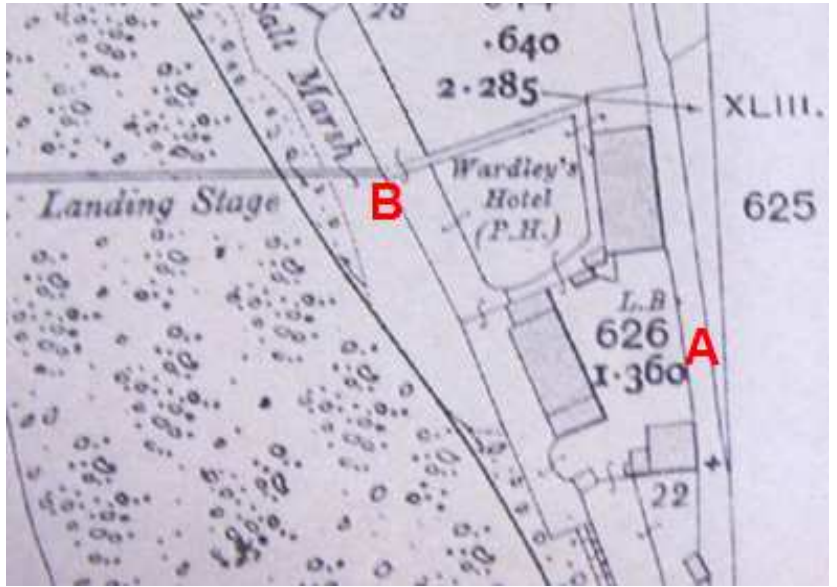
		<p>incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could 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		No Finance Act Map was available to view at the Lancashire Archives Office.
Investigating Officer's Comments		No inference can be drawn.
<b>Inclosure Act Awards and Maps</b>		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.
Observations		No Inclosure Map or Award was available to view at the Lancashire Archives Office.
Investigating Officer's Comments		No inference can be drawn.
<b>Ordnance Survey Maps</b>		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.

<b>6 Inch OS Map</b>	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1848.
		
Observations		The claimed route is not shown. The building referred to as a warehouse in the Tithe Schedule is shown. A boundary line is shown across the claimed route midway between point A and point B and a building is shown to the north of the claimed route open to Wardley's Lane with an open area of land to the rear. A track indicated by a double pecked line is shown extending from Wardley's Lane to a point just north of point B but is not the claimed route.
Investigating Officer's Comments		The claimed route did not exist in 1844.
<b>25 Inch OS Map</b>	1892	The First Edition 25 inch map revised in 1890 and published in 1892 is at the larger scale showing the area in more detail.

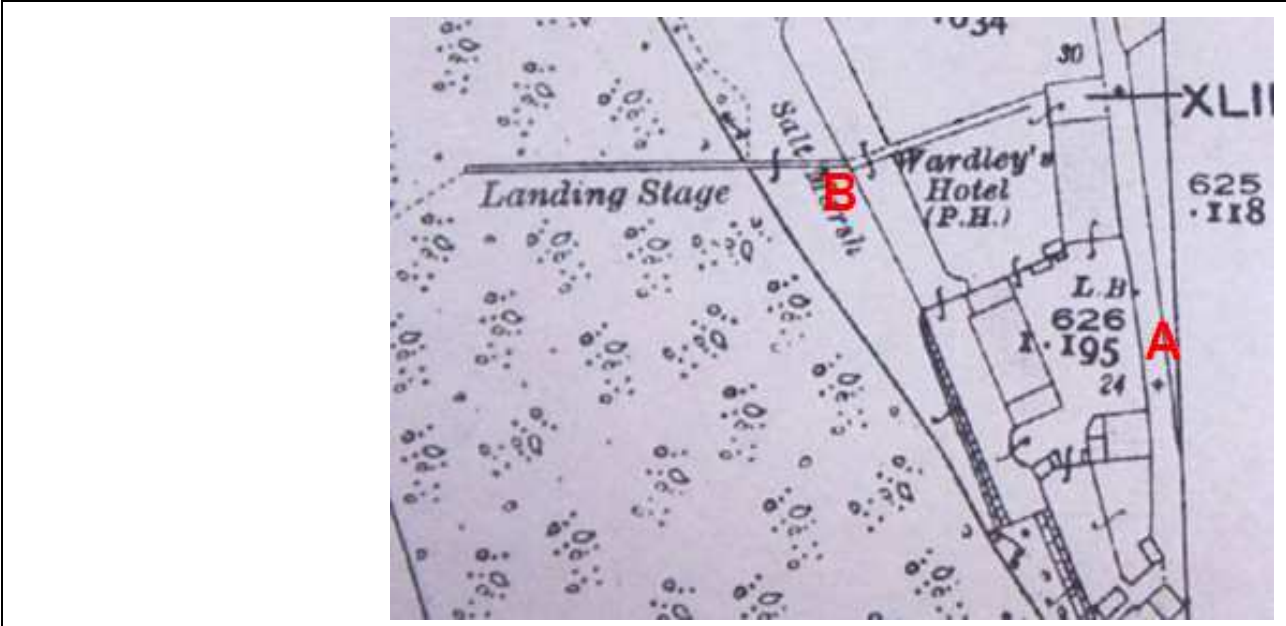


Observations		<p>The claimed route is not shown.</p> <p>Buildings are shown across the line of the claimed route from point A. A boundary line is shown across the claimed route midway between point A and point B and a building labelled as Wardley's Hotel is shown east of the claimed route. To the rear of hotel there appears to be an open area with an area with three further boundaries across the claimed route before it reaches point B.</p>
Investigating Officer's Comments		The claimed route did not exist in 1890 .
<b>25 inch OS Map</b>	1912	Further edition of the 25 inch map revised in 1910 and published in 1912.





<p>Observations</p>		<p>The claimed route is not shown.</p> <p>From Wardley's Lane at point A the claimed route crossed a boundary line and then passed across an open area to a further boundary midway between point A and point B.</p> <p>Wardley's Hotel is shown and a fenced area of land is shown to the rear which intersects the claimed route.</p> <p>The landing stage for the ferry is shown and a route appears to exist from the landing stage north of point B towards Wardley's Lane.</p>
<p>Investigating Officer's Comments</p>		<p>The claimed route did not exist in 1910 but access to the landing stage on the salt marsh just north of point B may have existed from Wardley's Lane on a different route.</p>
<p><b>25 Inch OS Map</b></p>	<p>1932</p>	<p>Further edition of 25 inch map (Re-surveyed 1891 and revised 1929).</p>



Observations		<p>The claimed route is not shown.</p> <p>Solid boundary lines are indicated across the claimed route at points A and B, midway between A and B and at the rear of Wardley's Hotel near B.</p>
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Investigating Officer's Comments		<p>The claimed route did not exist in 1929.</p>
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<b>25 Inch OS Map</b>	1946	<p>Further edition of the 25 inch map revised in 1939 and published in 1946.</p>
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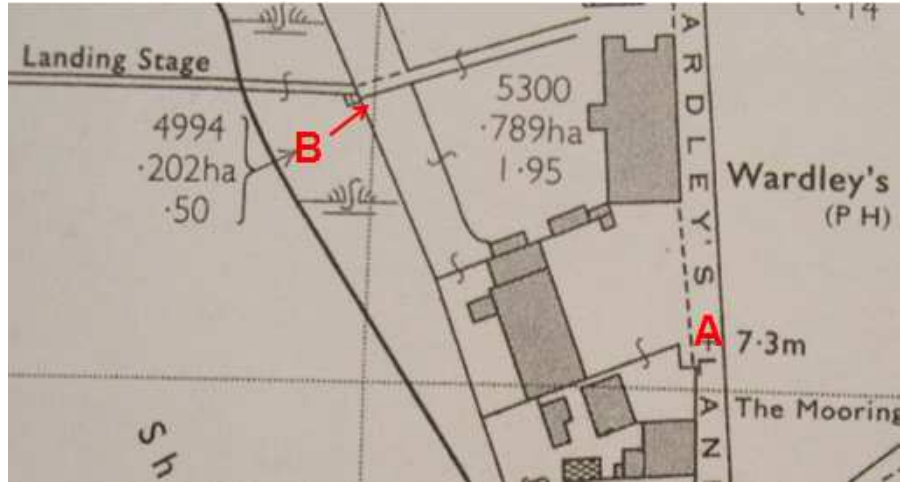


Observations		<p>The claimed route is not shown.</p> <p>A solid boundary line is indicated across the claimed route at point A but just south of point A dashed lines are shown indicating access off Wardley's Lane. A solid boundary line is indicated between the south west corner of Wardley's Hotel and a building to the west of point A (former warehouse) which crosses the claimed route midway between point A and point</p>
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		B. Wardley's Hotel is shown with an open area to the rear but two further boundary lines cross the claimed route before point B.
Investigating Officer's Comments		The claimed route did not exist on the ground in 1939. A route is shown as a footpath ('FP') on the north side of the Hotel's boundary however this is not the route that is being claimed.
<b>6 Inch OS map</b>	1955	The Ordnance Survey base map for the Definitive Map, First Review, was published in 1956 (although the date of revision of the base map was before 1930) at a scale of 6 inches to 1 mile. This map is probably based on the same survey as the 1932 25-inch map.



Observations		The claimed route is not shown. A solid boundary line is indicated partway along the claimed route and further solid boundary lines are indicated at point A and point B.
Investigating Officer's Comments		The claimed route did not exist when the area was surveyed before 1930.
<b>1:2500 OS map</b>	1971	Further edition of the 1:2500 map revised in 1970 and published in 1971.



Observations

The claimed route is not shown.

The Moorings is shown to the south of the claimed route. Access onto the claimed route from Wardley's Lane at point A appears open. The claimed route then crosses an open area to the east of buildings and is crossed by a boundary west of a small building midway between point A and point B. It then continues across an area of land to the rear of Wardley's Hotel crossing a further boundary line before reaching point B.

The landing stage to the ferry is shown north west of point B and a route appears to exist from the end of the landing stage north of point B extending in a north north easterly direction towards Wardley's Lane. Steps are shown leading from the salt marsh adjacent to the landing stage onto the route north of point B, with a boundary structure between the top of the steps and point B and no indicated means of access.

Investigating Officer's Comments

The claimed route did not exist in 1970.

**1:2500 OS Map**

Ordnance Survey map extract submitted by Stalmine-with-Staynall Parish Council, revised 1983 and published 1984. Copy also available in LCC PROW records.



Observations		<p>A copy of this map was submitted by Stalmine-with-Staynall Parish Council who do not support the claim but comment that the only route to exist was the one shown through the caravan park connecting to the landing stage (as shown on this map). The claimed route is not shown.</p> <p>Access to the claimed route is available at point A and the route appears to be available (but not marked) across the car park. Two solid boundary lines are shown across the claimed route between point A and point B and a further boundary is shown just before point B.</p>
Investigating Officer's Comments		The claimed route probably did not exist in 1983 and the route referred to by the Parish Council is not the claimed route.
<b>Aerial Photographs</b>	1945	<p>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 photographs and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.</p> <p>The earliest set of aerial photographs available was taken just after the Second World War in about 1945 and can be viewed on GIS. The clarity is generally very variable.</p>
Observations		The image is not very clear and it is not possible to determine whether the claimed route existed at that time.
Investigating Officer's Comments		No inference can be drawn.
<b>Aerial Photograph</b>	1960	The black and white aerial photograph taken in the 1960s and available to view on GIS.

Observations		The image is not very clear and it is not possible to determine whether the claimed route existed at that time.
Investigating Officer's Comments		No inference can be drawn.
Colour Photograph	1972	Photograph submitted by the landowners as part of their submission against the claim.



Observations		<p>At point A the claimed route is open and accessible from Wardley's Lane. It then crosses the tarmaced car park belonging to Wardley's Hotel and it can be seen that parking areas have been marked out across the line of the claimed route. Midway between point A and point B the claimed route is crossed by a wall into which there appears to be a gate approximately on the claimed route. The claimed route then crosses a grassed area that has been labelled as 'private rear garden' by the landowners. Beyond the mown area it appears to pass through a hedge and rougher vegetated area to point B.</p> <p>The remains of the old jetty can be seen and the landowners who submitted the photograph have marked (red arrow on bottom right of photo) what they describe as 'footpath access' north of Wardley's Hotel along the boundary of the caravan site.</p>
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Investigating Officer's Comments		The claimed route does not appear to exist circa 1972. If the claimed route had been acknowledged across the car park it would have been likely that provision would have been made to cross between the parking areas. The fact that the claimed route is likely to have been impeded by parked cars implies an intention not to dedicate a right of way.
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<b>Aerial Photograph</b>	15 <sup>th</sup> May 1988	Colour aerial photograph taken in the 1980s and available to view at the Lancashire Records Office.
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Observations		The image has lost much of its clarity when enlarged but shows that access onto the car park was available at point A and that the wall and buildings that had previously existed across the claimed route midway between point A and point B (and shown on the photograph submitted by the landowners dated 1972) had been removed. Access appears to have been available between point A and point B although there is no route marked on the ground. A boundary structure existed at point B and it is not possible to determine whether it was possible to pass through it to gain access to the salt marsh.
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Investigating Officer's Comments		The claimed route may have been accessible in 1988 but was not defined on the ground and it is not possible to determine whether access was available through the boundary immediately prior to reaching point B.
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<b>Aerial Photograph</b>	2000	Colour aerial photographs viewed on GIS.
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Observations	<p>Wardley's Hotel and car park are clearly shown. Access from Wardley's Lane to point A is open and unrestricted. The claimed route then crosses the car park and appears accessible although the route is not marked. A hedge line is indicated at the hotel's boundary with the caravan park and along the rear boundary of the hotel with the salt marsh and it is not possible to determine whether there was access onto the salt marsh to point B. There is no worn line on the ground leading to a potential way through the hedge to point B.</p>
Investigating Officer's Comments	<p>The claimed route may have been accessible across the pub car park in 2000 although because it crossed a car park - and was not marked - it is probable that at certain times the claimed route may have been obstructed by parked cars. It is not possible to see whether access was available through the boundary to point B.</p>
Colour Aerial Photograph	<p>2007-2010</p> <p>Colour aerial photograph submitted by the landowner and stated to have been taken during the tenancy 2007 – 2010 showing what they describe as being a children's garden. The two areas circled red by the landowners are said to be the position of access gates installed by the tenant, Ms Hallett.</p>





<p>Observations</p>		<p>The photograph does not show the start of the claimed route at point A but it does show that part of the claimed route at the rear of Wardley's Hotel and shows how it would have crossed the car park to the edge of the grassed play area which appears to have been fenced with access being provided immediately to the rear of the hotel building (circled red) not on the claimed route. From the fence separating the car park and 'children's garden' the claimed route then crossed an area containing play equipment to the corner of the grassed area at point B. Access through the rear boundary to point B on the salt marsh is not visible although its location is circled red by the landowner and is explained as having been created by the tenant of the property.</p>
<p>Investigating Officer's Comments</p>		<p>The claimed route would not have been accessible along the full length that has been claimed and may have been obstructed at various times by parked cars</p>
<p><b>Aerial Photograph</b></p>	<p>23<sup>rd</sup> Jul 2010</p>	<p>Colour aerial photograph taken in 2010 and viewed on GIS.</p>



<p>Observations</p>		<p>Wardley's Hotel and the car park are clearly visible. Access onto the claimed route at point A is open and available. The claimed route is then available (but not marked) across the car park (with the exception of when it was necessary to deviate around parked cars) until it meets the boundary of a grassed area described by the landowners as a children's garden. Access to the garden appears to exist immediately to the rear of the hotel building and also at the south westerly end of the garden but not on the line of the claimed route.</p> <p>It is not possible to see from the photograph whether access existed from point B through the rear boundary of the children's garden onto the salt marsh. A small gap is evident in the wall south south east of point B (and marked on the extract of the photograph above) which appears to provide access to the salt marsh but this is not on the line of the claimed route.</p>
<p>Investigating Officer's Comments</p>		<p>Access across the car park appeared to be available but the fact that no provision for the claimed route was made, and the fact that access along the claimed route may therefore have been impeded by parked cars. Access along the claimed route through the enclosed grassed children's area does not appear to have been available.</p>
<p><b>Other Photographs</b></p>	<p>8<sup>th</sup> Mar 2012</p>	<p>Google Maps photograph. The date the image was captured was 8<sup>th</sup> March 2012.</p>




Observations

The exact date that the images were taken is unknown. The red arrow superimposed on the first image shows the approximate route across the car park between point A and point B. In the distance fencing can be seen and it is not clear whether the fence crosses the claimed route or whether it marks the boundary between the hotel and caravan site. Point A is clearly visible on the second image as being open and accessible.

Investigating Officer's Comments

The date of the photographs is unknown so they are of only limited use. The photographs support the evidence of previous aerial photographs that access onto the car park was available at A and that the claimed route was unmarked from that point.

<b>Other Photographs</b>		Undated photograph posted on the closedpubs.co.uk website.
		
<b>Observations</b>		<p>The photograph is undated but the information given explains that the public house closed in around 2010 and that it was destroyed by fire on 25 April 2011.</p> <p>The photograph shows the back of the hotel. The red line superimposed on the photograph is the approximate line of the claimed route.</p> <p>Although the quality of the photograph is poor it is possible to see that a wooden post and rail fence can be seen that crossed the claimed route.</p>
<b>Investigating Officer's Comments</b>		The claimed route probably did not exist in 2010/2011.
<b>Definitive Map Records</b>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<b>Parish Survey Map</b>	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 Stalmine-with-Staynall Parish Council. The claimed route is not shown on the parish survey map or documented in the parish survey cards.
<b>Draft Map</b>		<p>The parish survey maps and cards for Stalmine-with-Staynall were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Map was given a “relevant date” (1<sup>st</sup> January 1953) 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 1<sup>st</sup> January 1955 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.</p>
Observations		The claimed route was not shown on the Draft Map of Public Rights of Way. In this instance, there were no formal objections or other comments about the omission of the claimed route.
<b>Provisional Map</b>		Once all representations relating to 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 of Public Rights of Way and there were no objections to the omission of the path were made.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The claimed route was not shown on the First Definitive Map and Statement of Public Rights of Way.
Investigating Officer's Comments		The claimed route was not considered to be a public right of way in the 1950s.
<b>Revised Definitive Map of Public</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First

<b>Rights of Way (First Review)</b>		Review. On 25 <sup>th</sup> 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.
Observations		The claimed route is not shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).
Investigating Officer's Comments		The claimed route was not considered to have changed status by the 1960s.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		There are no Highways Act 1980 Section 31(6) deposits lodged with the County Council for the area over which the claimed route runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over this land.

The land crossed by the route claimed for addition to the Definitive Map 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 although Wyre estuary to which the claimed route is claimed to provide access to from point B is designated as a Site of Special Scientific Interest (SSSI).

## **Summary**

There is no documentary evidence to support the existence of the claimed route. The claimed route is not shown on any of the early commercial maps, Ordnance Survey maps or any of the definitive map records that have been inspected.

Wardley's Hotel appears to have existed since at least 1890 although the car park is not evident on the documents inspected earlier than the 1972 aerial photograph.

There is no clear evidence of a gap in the boundary which would have provided access to the salt marsh at point B – with only the photograph submitted by the landowners and dated between 2007 and 2010 appearing to show access (which was said to have been created by the tenant at that time.) Both the Ordnance Survey maps and aerial photographs suggest that numerous permanent and temporary structures have existed across the length of the claimed route at various times.

## **PROPOSED SCHEDULE TO THE ORDER**

### PART I

#### MODIFICATION OF THE DEFINITIVE MAP

##### DESCRIPTION OF WAY TO BE ADDED

A public footpath from a junction with Wardley's Lane (point A), running in a generally north westerly direction for approximately 70 metres on a 1.5 metre wide undefined route across the former site of Wardley's Hotel (now demolished) to pass through the boundary wall to the edge of the salt marsh (point B).

### PART II

#### MODIFICATION OF DEFINITIVE STATEMENT

Add to the Definitive Statement for Stalmine-with-Staynall the following:

"Public Footpath from a junction with Wardley's Lane at SD 3655 4290 in a generally north westerly direction across the former site of Wardley's Hotel (demolished) on an unmarked route to pass through the boundary wall to the edge of the salt marsh at SD 3649 4294".

Width: 1.5 metres

Limitations and conditions: Boundary wall at SD 3649 4294

Length: 70 metres"

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

### **User Evidence Forms**

In support of the claim, the applicant, the Wardleys Marine Yacht Club has submitted twelve user evidence forms.

The forms indicate use of route for:

0-10 years (3)  
11-20 years (1)  
21-30 years (2)  
31-40 years (2)  
41-50 years (4)

All users indicate that their usage was for access to the shore the majority to gain access to their boats, with one user using it in their position as coastguard to conduct river searches.

All users indicated that the route has only been used on foot.

None of the users say that the route was ever blocked by gates or fences however one user did say that there was a gate at the access point to the shore which was never locked.

The user evidence forms indicate the route has mainly been used for the purposes of gaining access to the shore line.

The frequency of use ranges from being used occasionally to 4 people stating that they used it 20/25 times a year, 2 users stated 30/40 times a year 1 user states 10/12 and 1 user states as much as a hundred times a year.

None of the users claim to have asked for permission to use the route.

### **Further Information from the Applicant**

The Applicant states that the route has been walked unchallenged for over twenty years. 12 witness statements have been submitted and a map (undated) showing a short road said to be known as Silk Alley which was a road leading down to some warehouses which used to be in the car park land. She states the route runs from the South East corner of the entrance to Wardley's Hotel car park on Wardley's Lane in a straight diagonal line, in a north westerly direction across the car park at the rear of Wardley's Hotel to the far corner of the car park to steps which allow access to the shore. The applicant would say that if users had to walk round parked cars this would be a slight deviation.

A letter from one of the users of the route points out that the old way to a warehouse was known as Silk Alley but this has now become a route across the car park leading to steps down to the river and the old ferry jetty. There has been no signs or notices.



## **Information from landowners**

The landowners of the claimed route have submitted an objection to the claim and submitted several documents. They state that they purchased the public house in 2002.

They provide information about another route north of the claimed route north of the Hotel building to old steps and how this would seem to have been a public footpath. Some user evidence and recollections are provided about this other route. This is presently blocked by buildings on the Caravan park.

In respect of this claimed route the owners confirm that tenants of the public house finished in 2007. For a period of 5 months in 2007, the premises and car park were secured when the property stood empty.

A new tenant opened in 2007 and during their time at the Public House, a children's play area was created and a new gate at the corner of the plot to access the steps to the marsh. They go on to state that in 2010 the site was again secured using HERRIS fencing and has remained secured since that time. The landowners state that during this time there have been signs on site with their contact details, but they have never been contacted about access.

Further the landowners state that the steps to access the salt marsh are not in the corner of their car park and are in fact located within the caravan park. They also state that the users could not have always followed the same path because the area behind their premises had for a time been a fenced off children's garden with access from the car park being directly behind the pub, meaning that the users would have to have deviated from their claimed route.

They have spoken to previous owners of the public house who recall the land behind the building in the early days (they owned 1960s, 1970s and into the 1980s) being a private garden and a path to the steps not running across this garden but being bounded by hedges north of the site. They sold the caravan site off in 1985 and the only path was on the land sold. They say there was no footpath from the public house to the shore.

Various photographs were provided.

Letters sent in following their recent planning application are also submitted including the one from the applicant requesting provision for a way on foot to be made as the yacht club members had used the route across the car park for over thirty years

## **Assessment of the Evidence**

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

In Support of the Claim

User evidence

Possible access until 2007

No actions taken by owner or tenant before 2007

Against Accepting the Claim

Disputed physical access to steps at point B  
Inconsistencies in the early user evidence – gate not referred to yet shown on photograph of 1972

Conclusion

The claim is that this diagonal route to steps to the foreshore is in law a public footpath and should be recorded on the Definitive Map and Statement.

There is no express dedication and so the Committee are advised to consider whether use has been such that the provisions of S31 have been satisfied and a dedication can be deemed to have happened or secondly whether dedication can be inferred on balance at common law from all the circumstances.

The first point to consider is whether those providing the user evidence can be considered as "the public" as they are all accessing their boats and may well be members of the applicant sailing club. Use has to be by the public for both S31 and at common law.

It is advised that use should be by a number of people who taken together may be taken to represent the community in general. Use wholly by local people may still be use by the public as their use can still be taken to represent the local people as a whole. Where the use evidence stems from those going to various boats, it is suggested that they could arguably still be regarded as the public. They are not going to a place of work or are members of the same family, but accessing the foreshore.

The second point needs to be to consider whether the route is capable of being a highway connecting a recorded highway to either another highway or a place of public resort. Point B here accesses the salt marsh which is privately owned and not access land nor a footpath nor common land (although the foreshore is common land further south). The foreshore has historically been a place to which the public would access especially at this location to reach the landing stage and ferry in the past. It is not as clear that the more modern salt marsh is a place of public resort but in the absence of evidence to the contrary it is suggested that it could be so regarded in this matter. It is a finely balance point and further information may be valuable.

A third point to consider would be whether a footpath can develop across an area such as a car park or say a farm yard where the usual line of use could be obstructed by parked vehicles. It is suggested that in law a footpath could grow up across a car park and the parking be temporary obstructions able to be bypassed by a deviation. The setting out of car parking areas by an owner would be an action which could be indicative of having little intention to dedicate a route for the public to use on foot and this may be a difficulty in proving actual intention in common law but whether it would be sufficient to rebut the presumption raised by the use under S31

is debatable. It is suggested that marking out a car park would not be sufficient action to be the sufficient evidence of a lack of intention to dedicate under S31.

Considering the inference of dedication at common law it is suggested that to prove actual intention to dedicate a footpath on the claimed line may be difficult as the car park marked out as discussed above and the information from present owners and previous owners. The owners in the 1960s 170s and 1980s state that there was no footpath from the public house to the shore.

Considering S31 it is suggested that the calling into question of the route whereby the users would have appreciated that their use of the old line was challenged would be 2007 when the car park was closed or possibly a little later when the children's play area and new fence were constructed. This would mean that the user to consider would be that of 1987-2007.

In this matter there are 10 users evidencing use during that period. The aerial photograph of 1988 assists in indicating that access was now more clear across the land although the limitations of this photograph have to be taken into account. There do not appear to have been any actions taken by the owners to challenge this use but there are some inconsistencies and credibility issues in the user evidence such as recollections of earlier use and accessing point B and it may be that further information from the users would be valuable to be sure that the higher test for confirmation could be met in this matter. It is however suggested that the lower test can be satisfied such that a deemed dedication of a footpath on balance is reasonably alleged by the use in this matter. The Committee may consider that an Order should be made in this matter but it is suggested that a further report be presented once the user evidence has been clarified as to the stance to be taken by the authority in connection with 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 within Annex 'A' included in an earlier item on the Agenda. Provided 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: 804/522		Megan Brindle/Office of Chief Executive/ 01772 535604

Reason for inclusion in Part II, if appropriate  
N/A