

## Regulatory Committee

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

Electoral Division affected: Morecambe North
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### Wildlife and Countryside Act 1981

**Claimed Public Footpath from Sunningdale Crescent to Bridleway No.5 (Rakes Head Lane), Slyne-with-Hest, Lancaster City**

**Claim No. 804-533**

(Annex 'A' refers)

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#### Executive Summary

The claim for a public footpath from Sunningdale Crescent to Bridleway No.5 (Rakes Head Lane), Slyne-with-Hest, Lancaster City is not to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804-533.

#### Recommendation

That the claim for a public footpath from Sunningdale Crescent to Bridleway No.5 (Rakes Head 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. 804-533 be not accepted

#### Background

A claim has been received for a footpath extending from a point on Sunningdale Crescent to a point on Public Bridleway 5 Slyne-with-Hest, a distance of approximately 475 metres, and shown between points A-B-C-D-E and B-G-D 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 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**

Lancaster City Council

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

Slyne-with-Hest Parish Council

Slyne-with-Hest Parish Council have been consulted and although they appreciate the concerns of the landowner and farmer they do 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 solicitor’s Observations

### **Advice**

#### **Executive Director of Environment’s Observations**

Points annotated on the attached Committee plan

Point	Grid Reference	Description
A	SD 4689 6595	Junction with Sunningdale Crescent
B	SD 4692 6576	Undefined point in field adjacent to rear boundary fences

		between 25 and 23 Sea View Drive
C	SD 4693 6571	Gap in boundary hedge
D	SD 4693 6571	Junction of claimed routes on south side of gap in the boundary hedge
E	SD 4704 6573	4.8 metre wide metal field gate across claimed route
F	SD 4704 6573	Junction with Public Bridleway 5 Slyne-with-Hest
G	SD 4689 6570	4 metre wide gap in boundary hedge

## Description of the Route

A site inspection was carried out in December 2013.

The total length of the claimed route is 475 metres with the section A-B-C-D-E-F being approximately 360 metres long and the length B-G-D being 115 metres long.

The claimed route commences at the southern end of Sunningdale Crescent (point A on the Committee plan). At point A there is a 2.8 metre wide metal gate which has been padlocked shut. On the gate is a green and white sign stating, 'NO PUBLIC ACCESS Private Land'.

Immediately on the other side of the gate access is further prevented by a large amount of cut wood, tree trunks, fencing and other deposited material. Access onto the claimed route from point A was not possible.

Beyond point A the claimed route follows the edge of a field following the boundary between the field and residential properties along Sea View Close and Sea View Drive. The claimed route continues along the edge of the field in a south south easterly direction for approximately 195 metres to point B which is an unmarked point in the field adjacent to the rear boundary fences between 25 and 23 Sea View Drive.

At point B the claimed route splits with one part of the claimed route continuing for approximately 50 metres in a south south easterly direction along the field boundary to the corner of the field at point C. Part of the claimed route between point B and point C is quite soft and muddy underfoot. At point C the claimed route passes through the boundary hedge. When the route was inspected the gap in the hedge was visible but had been blocked off by a wooden crate. The claimed route continues to point D near the edge of the next field.

From point D the route continues in an east north easterly direction along the field edge for approximately 110 metres before it curves in a south easterly direction at the eastern end of the field and passes through a 4.8 metre wide metal field gate at point E. The field gate at point E is padlocked shut and there is a green and white sign identical to the one found at point A stating 'NO PUBLIC ACCESS Private Land'

The route then continues a short distance to terminate at point F on the Committee plan which is a junction with Public Bridleway 5 Slyne-with-Hest (approximately 120 metres west of the bridleway's junction with The Knoll).

The other section of the claimed route from point B crosses the open field in a south westerly direction for approximately 70 metres to pass through a 4 metre wide gap in the boundary hedge at point G. Wooden pallets formed a temporary but broken down barrier across the gap.

From point G the claimed route enters a long narrow field and continues in an east north easterly direction along the south side of the boundary hedge for approximately 45 metres to point D where it is possible to pass back through a gap in the hedge at point C to go back towards Sunningdale Crescent or to continue along the field-edge and across the narrow field to the bridleway.

In summary, there was no visible worn track on the ground along any part of the claimed route when it was inspected in December 2013. Access onto the claimed route was physically prevented by locked gates at point A and point E, and signs stating that the land is private with no public access were also located at these points. Wooden pallets had also been placed across the gaps at points C and G although these appeared to be for the purpose of stock control between the two fields.

### **Map and Documentary Evidence relating to the claimed addition**

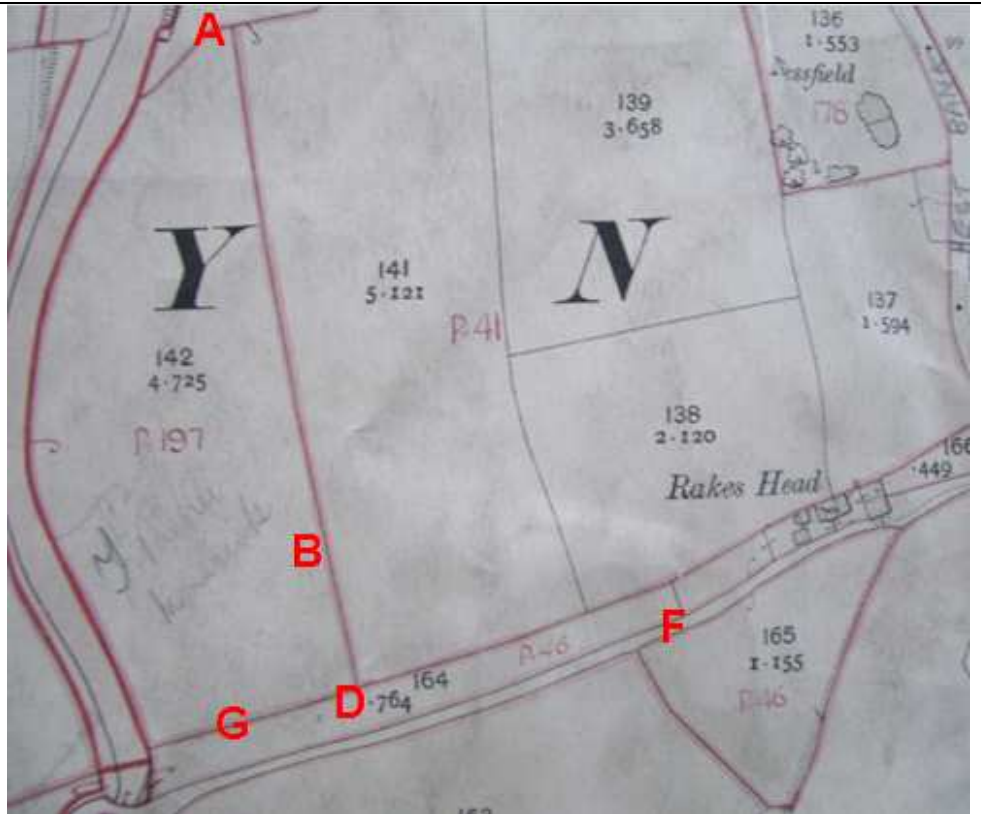
Various maps, plans and other documents were examined with reference to the claimed route.

<b>DOCUMENT TITLE</b>	<b>DATE</b>	<b>BRIEF DESCRIPTION OF DOCUMENT &amp; NATURE OF EVIDENCE</b>
<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		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 although 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.
<b>Greenwood's Map of Lancashire</b>	1818	Greenwood's map of 1818 is a small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that his map showed private as well as public roads.
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 that 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.

<b>Hennet's Map of Lancashire</b>	1830	Small scale commercial map surveyed by George Hennet in 1828 – 1829 and published by Henry Teesdale in 1830. The map was on sale to the public and hence to be of use to their customers it is considered that that the routes would be available for the public to use. However, the map was privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The 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 so no inference can be drawn in this respect.
<b>Tithe Map and Tithe Award or Apportionment</b>	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 crosses the fields numbered 150 and 151. 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.
<b>Inclosure Act Award 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		There is no Inclosure Award for Slyne-with-Hest.
Investigating Officer's Comments		No inference can be drawn.
<b>Finance Act 1910 Map</b>		<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation and not recording public rights of way. However the maps can often provide very good evidence.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>



Observations

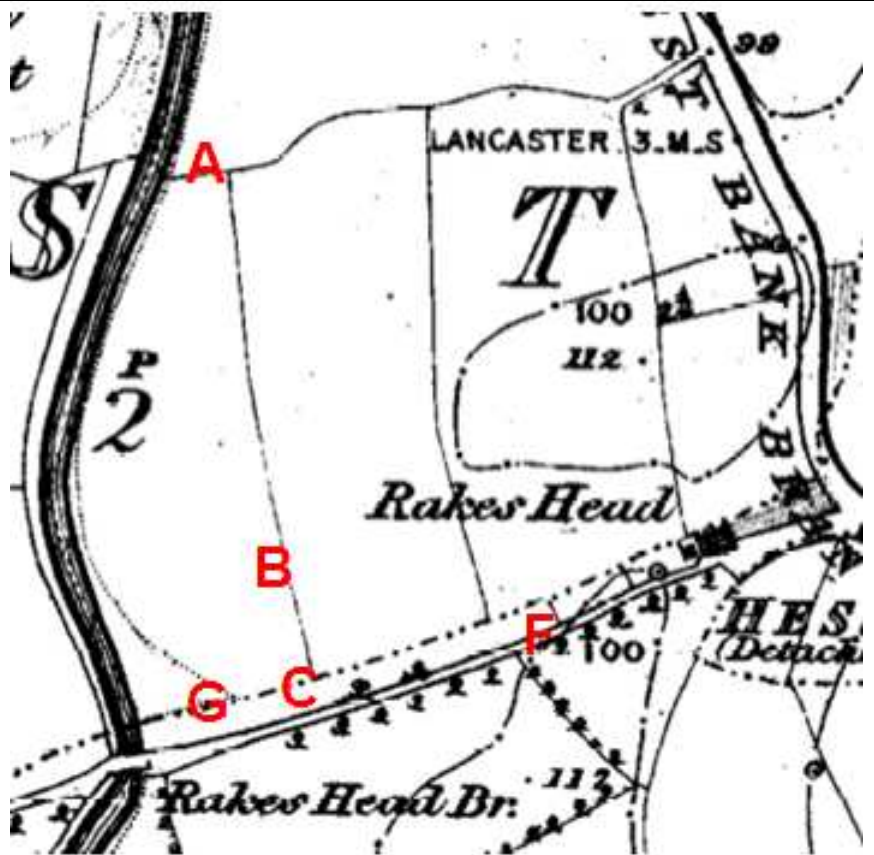
The claimed route is not shown on the Ordnance Survey 1:2500 base map used to produce the Finance Act map that is held in the County Records Office.

The claimed route is not shown as being excluded from any of the hereditaments that it crosses.

The claimed route between points A-B-C and B-G crosses hereditament 197 for which there is no deduction for the existence of a public right of way listed in the accompanying schedule.

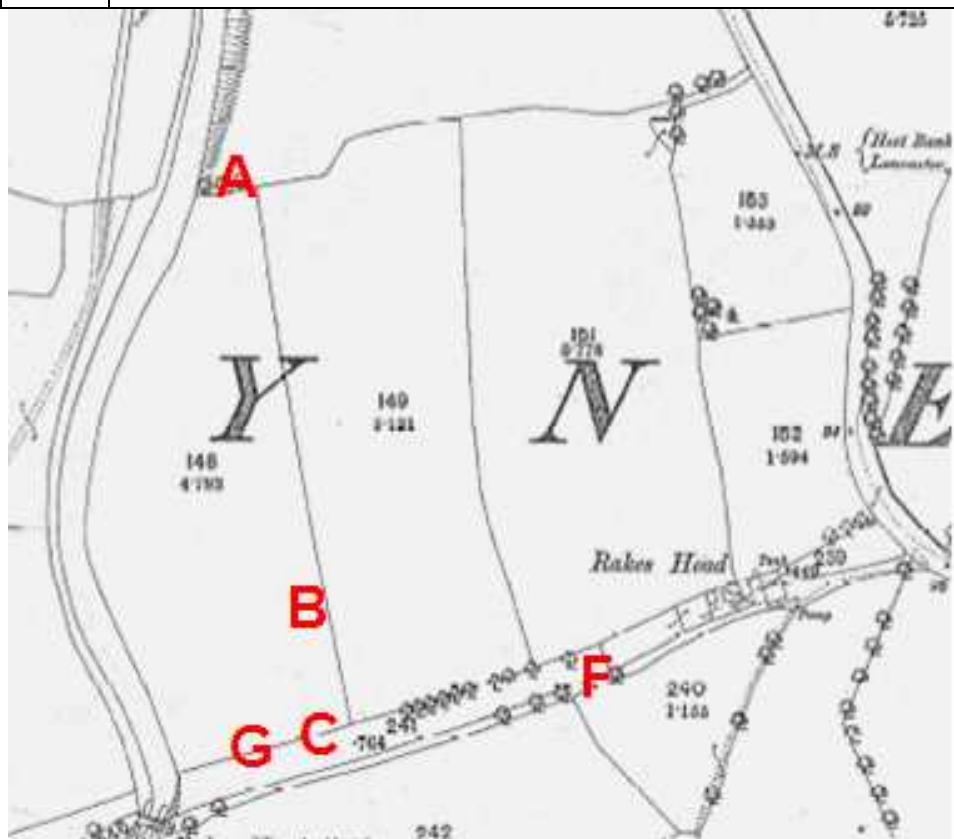
Between points G-D-E-F the claimed route crosses hereditament 46 for which a £5 reduction is listed for Public Rights of Way or User. The location of the 'right of way' for which the deduction has been claimed has not been specified in the schedule. Hereditament 46 is split by Rakes Head Lane (Public Bridleway 5) with the other part of the hereditament being the triangular shaped field to the south of point E which includes part of Public Footpath 9 Slyne-with-Hest.

Investigating Officer's Comments		<p>The section of the claimed route (A-B-C and B-G) crossing hereditament 197 was probably not considered to be a public right of way circa 1910 (or not considered to be worth claiming).</p> <p>It cannot be assumed that the £5 reduction was due to the section of the claimed route between points G-D-E-F across hereditament 46 because it is more likely that the reduction relates to the footpath recorded as Slyne-with-Hest Footpath 9 and not the claimed route.</p>
Ordnance Survey Maps		<p>The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.</p>
6 inch OS map	1848	The earliest OS map examined was published in 1848 and surveyed 1844-45.



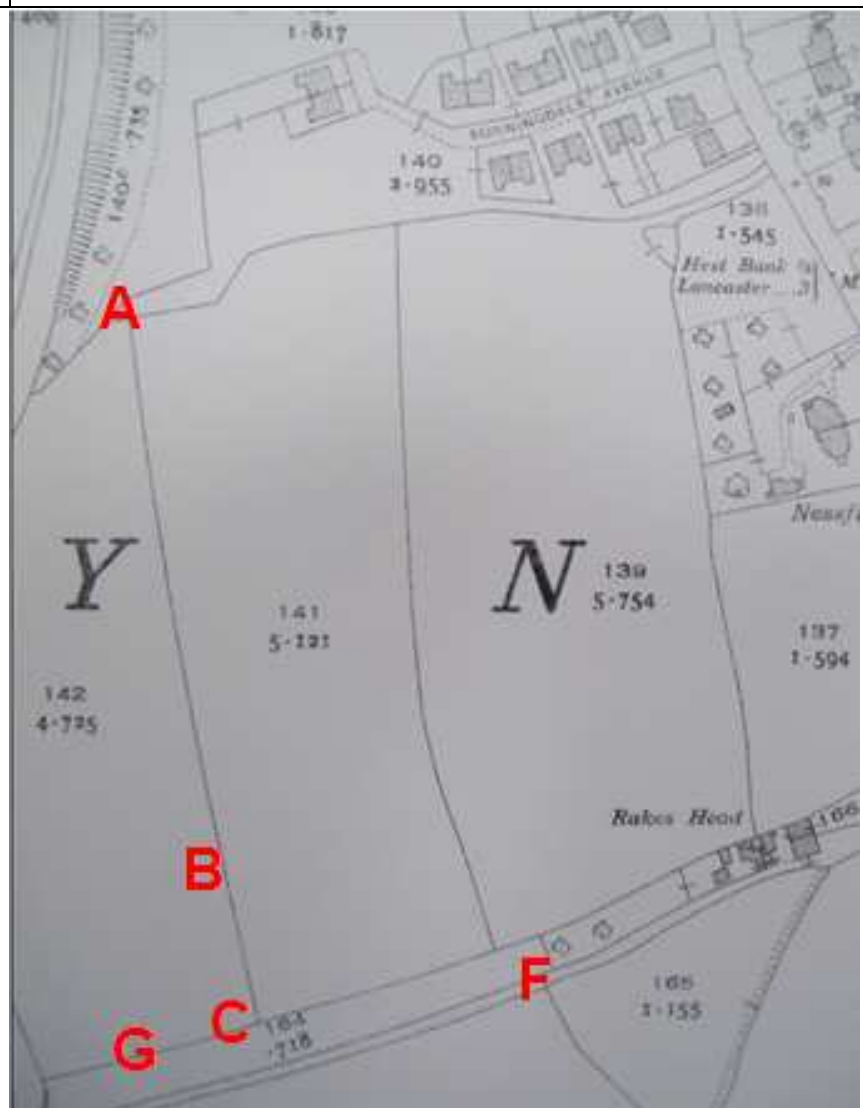


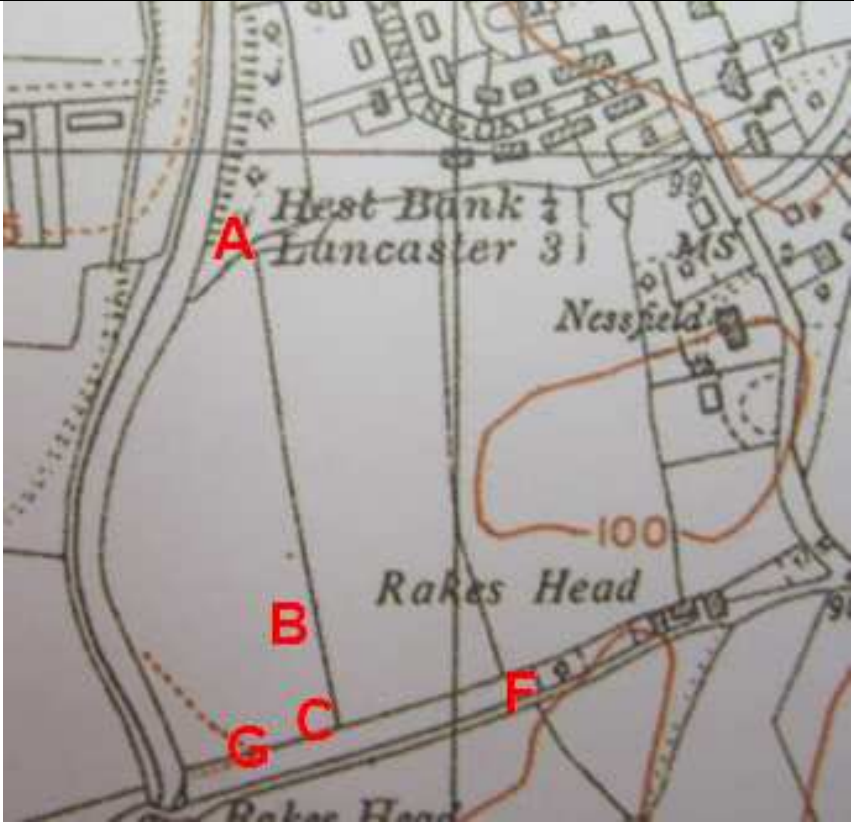
Observations		The claimed route is not shown. Public Bridleway 5 is clearly shown and named as Rakes Head Lane (off the left side of the above extract) but Sunnydale Crescent does not exist. The canal is shown to the west of the claimed route. Point A is shown on the field boundary. Points G and C are shown through a broken dashed line which represents the parish boundary.
Investigating Officer's Comments		The claimed route probably did not exist at the time that the Ordnance Survey carried out their survey.
<b>25 inch OS map</b>	1891	The earliest edition examined which was published at the larger scale showing the area in more detail was surveyed in 1889 and published in 1891.

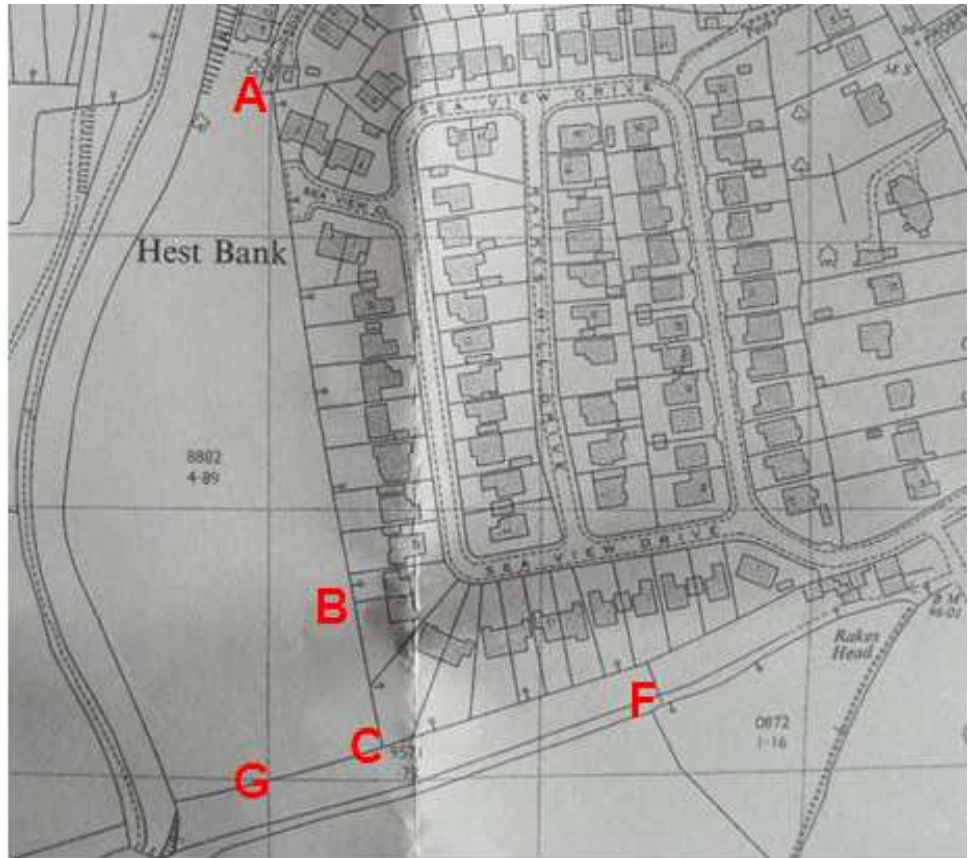


Observations		The claimed route is not shown on the map. Sunningdale Crescent did not exist and point A is shown as being located on a field boundary. The claimed route is crossed by further field boundaries at points C, F and G.
Investigating Officer's Comments		The claimed route did not exist at the time that the Ordnance Survey carried out their survey in 1889.
<b>25 Inch OS map</b>	1913	Further edition of 25 inch map, surveyed 1889, revised in 1910.

Observations		The claimed route is not shown. There have been no changes to the land crossed by the claimed route since the 1891 edition of the 1:2500 map.
Investigating Officer's Comments		The claimed route did not exist at the time that the Ordnance Survey revised the map in 1910.
<b>25 Inch OS Map</b>	1932	Further edition of 25 inch map surveyed in 1889, revised in 1930-31.
Observations		The claimed route is not shown. There have been no changes to the land crossed by the claimed route since the 1891 edition of the 1:2500 map.
Investigating Officer's Comments		The claimed route did not exist at the time that the Ordnance Survey revised the map in 1930-31.
<b>25 Inch OS map</b>	1938	Further edition of 25 inch map surveyed in 1889, revised in 1938.



Observations		The claimed route is not shown. There have been no changes to the land crossed by the claimed route since the 1891 edition of the 1:2500 map. North east of point A development has taken place and houses built along Sunningdale Avenue. Sunningdale Crescent had not been constructed at that time.
Investigating Officer's Comments		The claimed route did not exist at the time that the Ordnance Survey revised the map in 1938.
<b>6 Inch OS Map</b>	1956	Further edition of 6 inch map revised 1930-45 with major changes revised in 1951. This map was used as the base map for the Definitive Map, First Review.
		
Observations		The claimed route is not shown. It crosses field boundaries at point A,C,F and G.
Investigating Officer's Comments		The claimed route probably did not exist at the time that the Ordnance Survey revised the map in 1930-45.
<b>1:2500 OS Map</b>	1968	Further edition of the 1:2500 map revised 1968.



Observations		The claimed route is not shown. Sunningdale Crescent has been constructed and point A is situated at its most southerly point. Boundaries are shown across the claimed route at points A,C,F and G.
Investigating Officer's Comments		Public access was available to point A and point E. However, the claimed route did not exist at the time that the Ordnance Survey revised the map in 1968.
1:10,000 OS Map	1972	An edition of the 1:10,000 map revised 1968-70



Observations		The claimed route is not shown. Boundaries are shown across the claimed route at points A,C,F and G.
Investigating Officer's Comments		The claimed route probably did not exist at the time that the Ordnance Survey revised the map in 1968-1970.
<b>Aerial Photographs</b>		Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.
<b>Aerial Photograph</b>	1963	The earliest set of aerial photographs readily available for this area.




Observations

Access onto and along the claimed route appears to be available at point A, point F and point G. No worn track is visible on the ground along the length of the claimed route and it is not possible to see whether access would have been available through the hedge at point C. The houses on Sea View Drive that back onto the claimed route between points A-B-C-D-E have not been built although Sea View Drive appears to be under construction when the photograph was taken.

Investigating Officer's Comments


The claimed route did not exist as a worn track on the ground in 1963. A well defined access point can be seen to have existed at point A, although this may have been related to the building works taking place. Access also appears to be available at point G and point F although these are likely to be points of agricultural access and therefore it is not unexpected that they would be worn. There is no visible access through the hedge at point C.

<b>Aerial Photograph</b>	1988	Aerial photograph available to view at County Records Office
		
Observations		The claimed route cannot be seen as a worn track on the ground. Access points can be seen at point F and point G but it is not possible to determine whether access was available at point A or point C.
Investigating Officer's Comments		There appears to be no significant amount of use of the claimed route in 1988.
<b>Aerial Photograph</b>	2000	Aerial photograph available on GIS




<p>Observations</p>	<p>It is not possible to determine whether access was available onto the claimed route at point A due to tree cover. No trodden track is visible between point A-B but there appears to be a faint line from midway between point B and point C to point C where access appears to be available through the hedge. There is no worn track visible between points B-G or G-D-F and tree cover and shadows make it difficult to determine whether access was available at point F.</p>
<p>Investigating Officer's Comments</p>	<p>The claimed route did not exist as a worn track on the ground in 2000 suggesting that there was no significant amount of use at that time. It is not possible to see from the photograph whether access was available at point A or point F but it does appear that access was available through the boundary hedge at point G and possibly at point C and a faint route appears to lead to point C from midway between point B-C.</p>



<b>Aerial Photograph</b>	2001	Aerial photograph available on GIS
		
Observations		<p>It is not possible to determine whether access is available at point A due to tree cover. The claimed route is not visible on the ground although it is apparent that both fields had been recently cut.</p> <p>Access is available through the hedge at point G but there is no visible access at point C. Access is available onto the claimed route at point F.</p>
Investigating Officer's Comments		<p>The claimed route did not appear to exist as a worn track on the ground in 2001 although the recent cutting means any worn path would be less likely to be visible. It is not possible to see from the photograph whether access was available at point A or point C but it does appear that access was available through the boundary hedge at point G and at point F.</p>
<b>Aerial Photograph</b>	2006	Aerial photograph available on GIS



Observations		<p>Almost the whole of the claimed route is visible as a worn route on the ground.</p> <p>Point A is obscured by trees but a clearly defined track can be seen leading from near point A to point B. Gaps in the hedges are visible at point F and point G. It is not possible to see what access existed through the hedge at point C but a worn track can be seen from point B to point C suggesting access would have been possible through the hedge to point D.</p>
Investigating Officer's Comments		<p>The claimed route existed and was being used in 2006.</p>

<b>Aerial Photograph</b>	2010	Further aerial photograph available on GIS.
		
<b>Observations</b>		<p>Access at point A cannot be seen due to tree cover but there is a clear worn track leading from near point A along the claimed route to point B. From point B both parts of the claimed route between points B-C and B-G can be seen as worn routes on the ground. Access through the hedge at point G can be clearly seen and the claimed route between points G-D-F can be seen as a worn route on the ground. It is not possible to see whether there was a gap in the hedge at point C but a worn track can be seen leading to and from the hedge at point C suggesting that access was available.</p>
<b>Investigating Officer's Comments</b>		<p>The claimed route existed and was being used in 2010.</p>

<b>Definitive Map Records</b>		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.
<b>Survey Map</b>	1950	The initial survey of public rights of way was carried out by parish councils in rural districts in the early 1950s and the maps and schedules were submitted to the County Council. In the case of urban districts and municipal boroughs the map and schedule produced, was used, without alteration, as the Draft Map and Statement. County Boroughs were not surveyed until later. In this instance the initial survey for Slyne-with-Hest was carried out by Slyne-with-Hest Parish Council.
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.
<b>Draft Map</b>		Lancashire County Council took all the parish survey maps and cards for the rural district areas and drew the routes the parishes believed to be public onto a 6-inch Ordnance Survey map. It 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 these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The claimed route is not shown on the Draft Map of Public Rights of Way and there were no objections to the omission of the path.
<b>Provisional Map</b>		Once all of the representations were resolved, the amended Draft Map became the Provisional Map and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Quarter Sessions.
Observations		The claimed route was not shown on the Provisional Map and there were no formal objections or other comments about its omission.
<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.
<b>Revised Definitive Map of Public Rights of Way (First Review)</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 Review. On the 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		From 1953 through to 1966 there is no indication that the claimed route was considered to be public by the Surveying Authority, Parish Council and public at large due to the extensive consultation process that lasted until 1975 when the Definitive Map of Public Rights of Way (First Review) was actually published.
<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		A statutory deposit for the land crossed by the claimed routes between points A-B-C and C-G was deposited with the County Council by JR Hoggarth and J Hoggarth of Belmont Farm, Slyne, Lancaster on 22 June 2012. There are no statutory declarations lodged with the County Council for the land crossed by the claimed route between points G-D-E-F.
Investigating Officer's Comments		There is clear intention not to dedicate the routes as public footpaths between points A-B-C and G-D-E-F from 22 June 2012.

The claimed route is not a biological heritage site or site of special scientific interest. It is not recorded as Access Land under the provisions of the Countryside and Rights of Way Act 2000.

To summarise, there is no evidence of the claimed route 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.

The 1968 Ordnance Survey 1:2500 map is the first of the Ordnance Survey maps to show access being available to the start of the claimed route at point A (i.e. following the construction of Sunningdale Crescent) and it appears likely that use of the claimed route would most likely post date the construction of Sunningdale Crescent.

The aerial photograph taken in 2000 looks to show access was available through the hedge at point C but it is the 2006 aerial photograph that gives the strongest indication that the whole of the claimed route was being used at that time by sufficient numbers of people for a worn track to have been created.

The 2010 aerial photograph also shows the claimed route as a worn track is visible on the ground indicating a significant level of use.

No other documentary evidence examined supports the view that the 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 across the section A-B-C and B-G based on user evidence from 22 June 2012 onwards.

**Description of the New Path for Inclusion in the Definitive Map & Statement if the Order is to be made (and subsequently confirmed)**

The following should be added to the Definitive Statement for Slyne-with-Hest, Lancaster City:

**Proposed Schedule to Order**

## **SCHEDULE**

### **PART 1**

#### **MODIFICATION OF THE DEFINITIVE MAP**

##### **DESCRIPTION OF WAY TO BE ADDED**

Public Footpath from a junction with Sunningdale Crescent (point A) running in a generally south south easterly direction along field edge for approximately 195 metres to an unmarked junction of paths (point B) with one part continuing in a south south easterly direction along the field boundary for a further 50 metres to pass through a gap in the boundary hedge (point C) and then continuing into the field (to point D) and then turning to continue along the field edge in an east north easterly direction for a further 100 metres before turning in a south easterly direction to pass through a field gate (point E) and onwards to the junction with Public Bridleway 5 (Rakes Head Lane) (point F).

From the unmarked junction of paths at point B the other section of Public Footpath crosses the field in a south westerly direction for 70 metres to pass through a gap in the field boundary (point G) and then continues in an east north easterly direction along the field edge for 45 metres to join the public footpath at point D.

All length and compass directions given are approximate.

### **PART II**

#### **MODIFICATION OF DEFINITIVE STATEMENT**

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

" Public Footpath from a junction with Sunningdale Crescent at SD 4689 6595 running in a generally south south easterly direction along field edge for approximately 195 metres to an unmarked junction of paths at SD 4692 6576 with one part continuing in a south south easterly direction continuing along the field boundary for a further 50 metres to pass through a gap in boundary hedge at SD 4693 and then continuing into the field to SD 46938 65711 and then turning to continue along field edge in an east north easterly direction for a further 110 metres before turning in a south easterly direction to pass through a field gate at SD 47041 65734 and onwards to terminate at the junction with Public Bridleway 5 (Rakes Head Lane) at SD 47044 65731.

From the unmarked junction of paths at SD 4692 6576 the other section of Public Footpath crosses the field in a south westerly direction for 70 metres to pass through a gap in the field boundary at SD 4689 6570 and then continues in an east north easterly direction along the field edge for 45 metres to join the other part of the public footpath at SD 46938 65711.

Length - 475 metres.

Width - 1.5 metres.

Limitations and Conditions:

2.8 metre wide field Gate at SD 4689 6595

1 metre wide gap at SD 4693 6571

All lengths and compass directions given are approximate."

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

### Information from the Applicant

The Applicant has provided 24 user evidence forms in support of the claim. 2 of these forms have been omitted as they were incomplete and another 2 had a page missing so have also been omitted. Therefore only 20 user forms have been considered.

The users who stated acknowledge the route in years as follows:

(0-10) 9      (11-20) 5      (21-30) 5      (31-40) 1

20 users have used the way on foot stating the main purpose for using the route was for dog walking, walking with children and for recreational use. The frequency of use per year varies from, once a month, once a week, 2-3 times a week, once a day, twice a day, and over 200 times per year.

None of the users claim to have used the way on a horse or by motorcycle / vehicle however 2 users claim they have seen someone using the route on horseback, 1 user has also seen someone using the route on a bicycle, 18 users have seen other people walking this route.

16 users agree that the way has always run over the same route, 1 user isn't sure of this, another says N/A and one user says it has until April 2011.

8 users state there are either stiles / gates / fences along the route, 3 users claim there are none, 9 users state there are gates along the route. 3 agree that the gates were locked, 8 users say they were not locked, 2 users say the gates were locked but were still accessible, 3 users agree the gate / gates only became locked in April 2011, 1 user says the gate / gates became shut 5 years ago, another user says the gate / gates became locked in 2005 and 1 user says the gate / gates were roped.

12 users agree that the gate / gates never prevented them from using the way, 4 users have been prevented since April 2011, 3 users talk about large boulders, barbed wire and an extra gate being put up in April 2011 and one user said the farmer was attending to the fields and he / she vacated 'post haste' on at least one occasion.

19 users state that they have never worked for a landowner over which the route passes and 19 users have never been a tenant on any of the land over which the route passes.



20 users have never been stopped or turned back when using the route, however 1 user has been stopped but continues over the gate, this was when the farmer was sealing the gate and states 'it was a scary experience'. 20 users have never heard of anyone else having been stopped or turned back when using the route on foot.

21 users 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.

13 users have never seen any signs / notices along the route, 7 users have seen signs / notices since April 2011 and one user isn't sure of seeing any signs / notices. All 21 users have never asked permission to use the way.

The applicant has also provided photos from Google Earth showing the claimed route is visible after being cut or harvested and another showing the gate which provides field access. Photos of the route have also been provided.

## **Information from Landowners**

### **An Objection from Mr Richard Hoggarth - Landowner**

Mr Hoggarth received a letter from the applicant in July 2012 notifying him that she was applying to Lancashire County Council as 'a possibility to have the paths that were blocked in April 2011 re-opened to the dog walkers who accessed them on a regular basis and who miss using them'.

Mr Hoggarth was surprised and confused by the letter as her proposed route has never been used as an official footpath and runs across land clearly marked as private property. Therefore any suggestion that the paths have been blocked is completely inaccurate. His family have farmed the land for more than 60 years and certainly during that time there were no official public footpaths on the land other than the official footpath (FP9). Mr Hoggarth has an Ordnance Survey map dated 1980 which shows no such official footpath running along the claimed route.

On receiving the letter from the applicant he was alarmed to read the claim that dog walkers accessed unofficial routes across private fields on a regular basis as this brought to his attention the fact that people may have been continuously trespassing on this private property. Mr Hoggarth states there are very clear signs at the entry points of the fields concerned, stating that this is private land and that there is no public access. The land in question is used to graze livestock and also to grow crops and he is concerned that such trespassing could cause damage to his business.

He is certain that at no time has permission been given for any member of the public to use any route across the land in question other than the official footpath FP9. Mr Hoggarth is a tenant of Mr James Fish and it is his duty to ensure no persons trespass on his private property.

Mr Hoggarth and his son are extremely busy farming approximately 350 acres of land and therefore does not have the time to monitor every field for dog walkers. However since received Mrs Hargrest's letter they have been paying greater attention to this when possible. Whilst working on the land they have seen people walking dogs on the fields in areas other than the official footpath route and they have been informed they are on private land and that there is no public access. However over recent years they have also seen people walking with dogs that are not on leads and they have pointed out that the area is not an official footpath and that dogs are to be kept on leads at all times.

In 2012 his solicitor registered the land between Sunningdale Crescent and Rakes Head Lane with Lancashire County Council under Section 31(6) Highways Act 1980 statutory declarations and statement regarding non-dedication of footpaths, he can supply a copy of this.

He is concerned that if Mrs Hargest's assertions of dog walkers using the private land are correct there is a potential risk of further dog muck being left on the land.

A veterinarian from Lancaster has informed Mr Hoggarth of serious links between dog muck and abortion rates in cattle. Mr Hoggarth has provided a copy of the letter from the veterinarian explaining the seriousness in full as part of his objection.

Mr Hoggarth then goes on to say that if the application for a new public footpath is granted it would take away further land used for grazing livestock and growing crops. This would result in a loss of business along with increasing the risk of health threats to the animals.

He feels strongly that it must also be noted that there are many public footpaths in the area and he struggles to understand the need for further public footpaths across private property which is essential and valuable to his business.

Mr Hoggarth points out that his family have lived and farmed in Slyne for over 130 years and have always retained very good relationships with the village residents, they have continued to respect the public's access to the land on the official footpath FP9 and make sure the area is kept clear for their use at all times.

### **An objection from Mr James Fish - Landowner**

Mr Fish has met with his client Mrs Fish and the other landowner Mr Richard Hoggarth. They wish to vehemently object to the request for a modification of the definitive map; he provides appendices, photographs and a plan to support his objection.

Mr Hoggarth through his solicitor has lodged an order with Lancashire County Council to prohibit the creation of any further footpaths over his land. Mr Fish understands from him and with liaison with his solicitor that this Order was created approximately 12 months ago and will stop in place for a further 9 years.

The access way terminating at Sunningdale Crescent comprises a blocked and locked 5 barred gate and a large amount of firewood and tree trunks and also has a large amount of vegetation around and through it, which is clearly evident from the photographs taken. Another photograph has been taken and shows that on the gate it clearly states that the land private and there is no public access across such. The claimed route of the footpath crossing Mr Hoggarth's land is utilised for silage and making operations and the production of Winter forage for his herd of dairy cows and at the time of inspection was approximately 10 days of harvest, showing little signs of trampling down or use by walkers as a thoroughfare, photos are again provided.

The most easterly access, marked on the plan which Mr Fish has provided comprises a mature hedgerow with a sizeable amount of vegetation growing through it, showing little signs of regular use (another photograph is provided). The secondary access to the west comprises an existing farm gateway, and again, shows little signs of foot traffic running through it (photograph provided). The remainder of the claimed footpath which runs to Rakes Head Farm then forms land owned by Mrs C L Fish, tenanted by Mr Richard Hoggarth, on a secure agricultural tenancy.

Mr Hoggarth has health and safety concerns over allowing this new footpath, currently Rakes Head Lane is used by dog walkers and has a huge amount of abandoned dog faeces on it by irresponsible dog owners. If the footpath was opened, the faeces would be deposited in the grass crop which can have massive health and safety implications for children, but more in terms of the fertility of Mr Hoggarth's cows. Previous correspondence sent to Mrs Hargest and a note from Mr Hoggarth has been provided in support of the objection.

Mr Fish confirms that the access way marked on the plan he has provided to the south comprises a mature hawthorn hedgerow with various other mature species with various annual weeds growing through such, which shows no signs whatsoever of being utilised as an access road. (More photographs provided)

Another access way marked on the plan comprises a metal 5 barred gate which is locked via a padlock, and also to the left of such, there is a plastic sign which clearly states that the land is 'private' and that there is no public access. The sign has been up for in excess of 3 years and again the supposed routed footpath shows minimal signs of usage. (Further photographs provided)

The field within the ownership of Mrs Fish is rented by Mr Hoggarth on a secure agricultural tenancy and used for the conservation of forage for his dairy cows. The field at the date of inspection has a sizeable amount of grass growth on it however shows no signs of public access. (Photos provided).

Mr Hoggarth states that approximately 5 or 6 years ago there had been an issue with walkers veering from the footpaths running from Rakes Head Lane, and due to this, he took the decision to securely lock and padlock all gates and erect signs. If Mr Hoggarth has ever seen any persons utilising the route, he has politely asked them to cease this.

In conclusion Mr Fish sees no reason why the modification order should be granted when Mr Hoggarth has in place upon the land which he owns, an order protecting the creation of footpaths, all gates accessing the land are securely locked with the bolt provided with the existing gate, padlocks and chains, and with signs clearly stating that the land is 'private' with no public access. The access ways supposedly created through the hedgerows are not visible and show a stock proof fence and the grass cover crop shows no trampling or signs of usage.

## **Assessment of the Evidence**

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

In support of the Claim

User evidence

Aerial photographs

Against accepting the Claim

Map evidence

Land Owner's action

The claim is that routes A-B-C-D-E-F and B-G-D are existing public footpaths 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 1980, the date the right of the public to use the claimed footpath was brought into question needs to be considered; whether the claimed footpath was used by the public as of right and without interruption for a period of not less 20 years ending on the date on which their right to do so was brought into question; and whether there is sufficient evidence that there was during this 20 year period no intention on the part of the landowner to dedicate the claimed footpath.

The landowner, Mr Hogarth states that about 5 or 6 years ago there had been an issue with the walkers veering onto his land and he had therefore taken a decision to securely lock and padlock all gates and erect signs and in 2012 a statement was deposited with the Authority under Section 31(6) Highways Act 1980 with regards to part of the route.

The user evidence forms are not consistent with regards to what date the gate was locked. A user of 4 years stipulates the gate on Sunningdale Crescent was usually locked, another user states the gate to Sunningdale Crescent was locked for 'some' years, a third user states the gates had been locked 'usually' on Sunningdale Crescent but you could still access the field around the side of the gate, a fourth user states the gates were occasionally locked on Sunningdale Avenue but this didn't block access, a fifth user states there were gates at the entrance of Bob's lane which

were 'usually' open, which brings into question whether he is stating the gates had on occasion been locked, a sixth user states the gate had been shut but not locked around 5 years ago. 3 users agree the gates became locked in April 2011 and prevented them from using the route.

It is suggested that it is reasonable to assume the calling into question of the route was prior to the event in April 2011 when the gates became locked. On a balance of probability, it seems that it is reasonable to suggest the calling into question of the route occurred say 4 years prior to 2012, this date being the date the user forms were dated. Therefore, the 20 year period to consider would be 1988-2008.

Considering next, whether the route was used by the public as of right and without interruption, it seems from the user evidence that there were gates along the route and these were on occasion locked as detailed above. The users are inconsistent, as to whether these gates were locked and when they began to be locked. The land owners also submit there were clearly marked notices stating 'private property' however; we are not told the date these notices were erected and user evidence suggests these were erected in 2011. On a balance of probabilities, it is reasonable to assume that use was not always as of right and without interruption.

Another point to consider is the sufficiency of the user throughout the whole of the twenty year period. Evidence of use is provided in 24 user evidence forms, only 20 user evidence forms have been considered as the others are incomplete and/or have pages missing. Of these 20 user evidence forms, there are only 4 users using the route as early as 1988 from 1988 until 1990, and only 6 users used the route by 1991.

From the user evidence, it can be evidenced that until 2001 there was 9 users using the route, from 2006 onwards the remainder of the users began using the route. Frequency of use differs from daily, weekly to monthly use. It is suggested that for use to be sufficient it would need to be more than the appearance of being sporadic and sufficient to show use by the public as a whole. From the number of users on a balance of probability, it seems that it appears, the route has not been used sufficiently frequently by the public as a whole but rather a small cluster of individuals had been using the route until at least 2006. This correlates with the environment directorate's comments that access was available in 2000 at Point C but it is the 2006 aerial photo that gives the strongest possible indication that the whole route was being used at that time by a sufficient number of people for a worn track to have been created.

Taking all the evidence into account and looking at all the circumstances it is difficult to establish deemed dedication under S.31.

The Committee is also advised to 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 the Owner actually intended to dedicate is problematic. The owner Mr Hoggarth, clearly advocates that he never had any intention to dedicate, he suggests he had taken action in the form of erecting gates

and notices at the point he noticed people using the route which he claims was 5-6 years ago, some user evidence confirms gates were locked which demonstrates the land owner did not intend to dedicate. There is also the further issue with regards to there not being a sufficient amount of the public using the route from 1988 until 2001 to alert the owner the route was being used.

Taking all the evidence into account and looking at all the circumstances the Committee may consider that the dedication of the claimed route as a public footpath cannot on balance be inferred under common Law nor deemed under S.31 Highways Act 1980.

### **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 report 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: 804/533		Megan Brindle, County Secretary and Solicitors Group, 01772 535604
Reason for inclusion in Part II, if appropriate N/A		