

Regulatory Committee

Meeting to be held on 26th March 2014

Electoral Division affected: West Lancashire West
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Wildlife and Countryside Act 1981

**Claimed Public Footpath from Bescar Brow Lane to Public Footpath 14a
Scarisbrick, West Lancashire Borough.**

Claim No. 804/544

(Annex 'A' refers)

Contact for further information:

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Executive Summary

The claim for a Public Footpath from Bescar Brow Lane, Scarisbrick to Public Footpath 14a Scarisbrick, West Lancashire Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/544.

Recommendation

1. That the application for a public footpath from Bescar Brow Lane to Public Footpath 14a Scarisbrick, West Lancashire Borough, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/544, be accepted.
2. That an Order be made pursuant to Section 53 of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a public footpath from Bescar Brow Lane to Public Footpath 14a, Scarisbrick, for a distance of approximately 1365 metres and shown between points A-B-C-D on the attached plans.
3. That, being satisfied that the higher test for confirming the said Order can be satisfied, the said Order be promoted to confirmation if necessary at public inquiry.

Background

A claim has been received for a footpath extending from a point on Bescar Brow Lane, Scarisbrick to a point on Public Footpath 14a Scarisbrick, a distance of approximately 1365 metres, and shown between points A-B-C-D on the attached plans, 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 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 if the evidence shows that:

- A right of way “subsists” or is “reasonably alleged to subsist” or
- “The expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path”

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 (as explained in Planning Inspectorate’s Advice Note No. 7) makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate’s website also gives guidance about the interpretation of evidence.

The County Council’s decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by landowners, consultees and other interested parties produced to the County Council before the date of the decision. Each piece of evidence will be tested on the balance of probabilities. It is possible that the Council’s decision may be different from the status given in the original application. The decision may be that the route has 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 routes to be added or deleted vary in length or location from those that were originally claimed.

Consultations

West Lancashire District Council and Scarisbrick Parish Council have both been consulted and no response has been received from either.

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

Description of the routes

Points annotated on the attached Committee plans.

Point	Grid Reference	Description
A	SD 3840 1323	Junction with Bescar Brow Lane
B	SD 3815 1353	Right angle bend in claimed route
C	SD 3853 1381	Field gate
D	SD 3879 1419	Junction with Footpath 14a Scarisbrick

Description of Route:

The claimed route was inspected on 12th October 2013.

It commences at point A on the Committee plan on Bescar Brow Lane immediately to the south of the point at which Sandy Brook passes under the road.

Access onto the claimed route is blocked from the footway by an iron railing fence painted green and immediately behind it a much higher substantial metal fence.

The green metal railing fence is low and on its own would not provide a stock proof barrier. On close inspection the railings looked worn as though people had been climbing over them. The second fence was much higher and provided a stock proof barrier and it was not possible to climb over or through it to gain access along the claimed route.

A few metres north east of point A on Bescar Brow Lane there is a padlocked metal field gate providing access into the field adjacent to the claimed route.

Beyond point A the claimed route extends in a north westerly direction along the north side of Eas Brook. It continues along a strip of land that has been fenced off from the adjacent field but which has recently been grazed by cattle. The strip of land is approximately 4-5 metres wide between the edge of the brook and the fence.

After following the brook for approximately 425 metres the claimed route turns to continue north east at point C - still following the brook (now referred to as Sandy Brook) along a raised section (embankment) and fenced from the adjacent field for approximately 475 metres point C.

At point C it passes through a 12 foot wide metal field gate which was locked on the day of inspection. The claimed route then continues along the top of a raised section of land (an embankment) between the brook and fenced off from the adjacent field to point D where it meets Public Footpath 14a Scarisbrick.

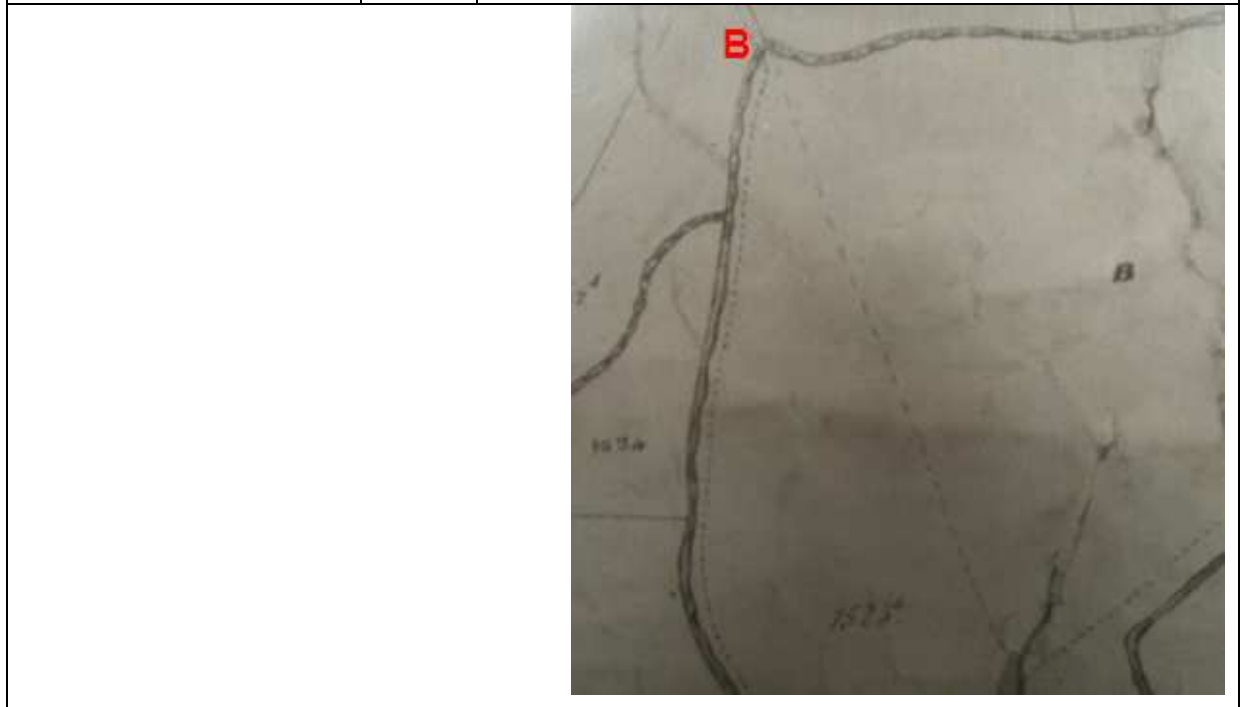
To summarise, the claimed route follows the brook along its full length and is fenced from the adjacent fields. Access onto the claimed route is blocked by fencing at point A and by a padlocked gate at point C. There were no signs indicating whether the route was public or private and although in places a worn track could be seen on the ground it was not possible to determine whether this track had been created by animals, farm machinery, walkers or a combination of all three.

Map and Documentary evidence relating to the claimed addition

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

Document Title	Date	Brief description of document & nature of evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The claimed route is not shown on Yates' Map.
Investigating Officer's Comments		It is unlikely that a claimed public footpath across open agricultural land would have been shown on this map. The claimed route did not exist as major routes at the time but it may have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.
Greenwood's Map of Lancashire	1818	Small scale commercial map.
Observations		The claimed route is not shown on Greenwoods' Map.
Investigating Officer's Comments		The claimed route did not exist as a major route at the time – it may have existed as a minor route but due to the limitations of scale would not have been shown on the map so no inference can be drawn in this respect.
Hennet's Map of Lancashire	1830	Small scale commercial map.
Observations		The claimed route is not shown on Hennet's Map.
Investigating Officer's Comments		The claimed route did not exist as a major route at the time – it may have existed as a minor route but due to the limitations of scale would not have been shown on the map so no inference can be drawn in this respect.
Tithe Map and Tithe Award or Apportionment	1839	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction

with the written title award) and additional information from which the status of ways may be inferred. The Tithe Map for Scarisbrick was produced in 1839.




Observations

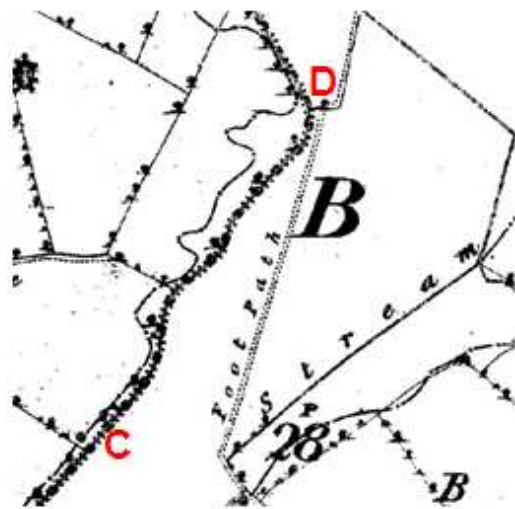
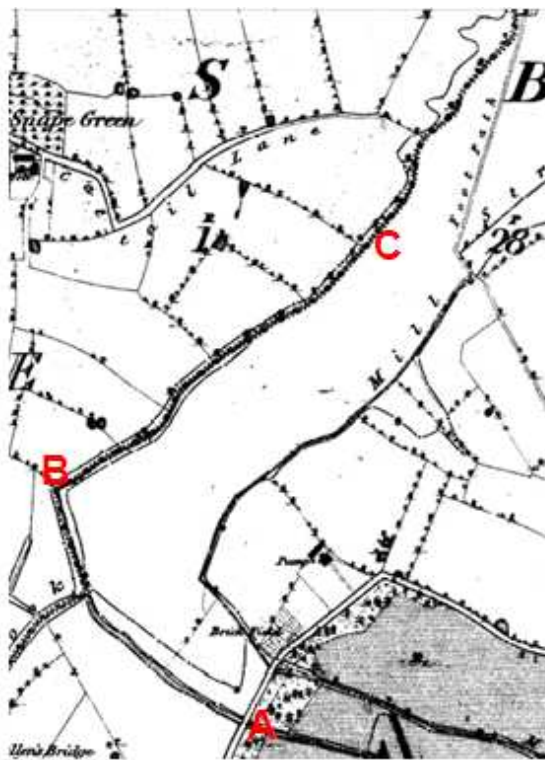
The Tithe Map for Scarisbrick is a large document. The original has been copied in smaller sections and can be viewed protected by a plastic coating in the County Records Office. There was no key to the map.

A single dashed line which appeared to indicate a 'path' was shown on the tithe map along the section of the claimed route from point A to point B. It is then shown crossing the brook at point B and continues in a north westerly direction towards

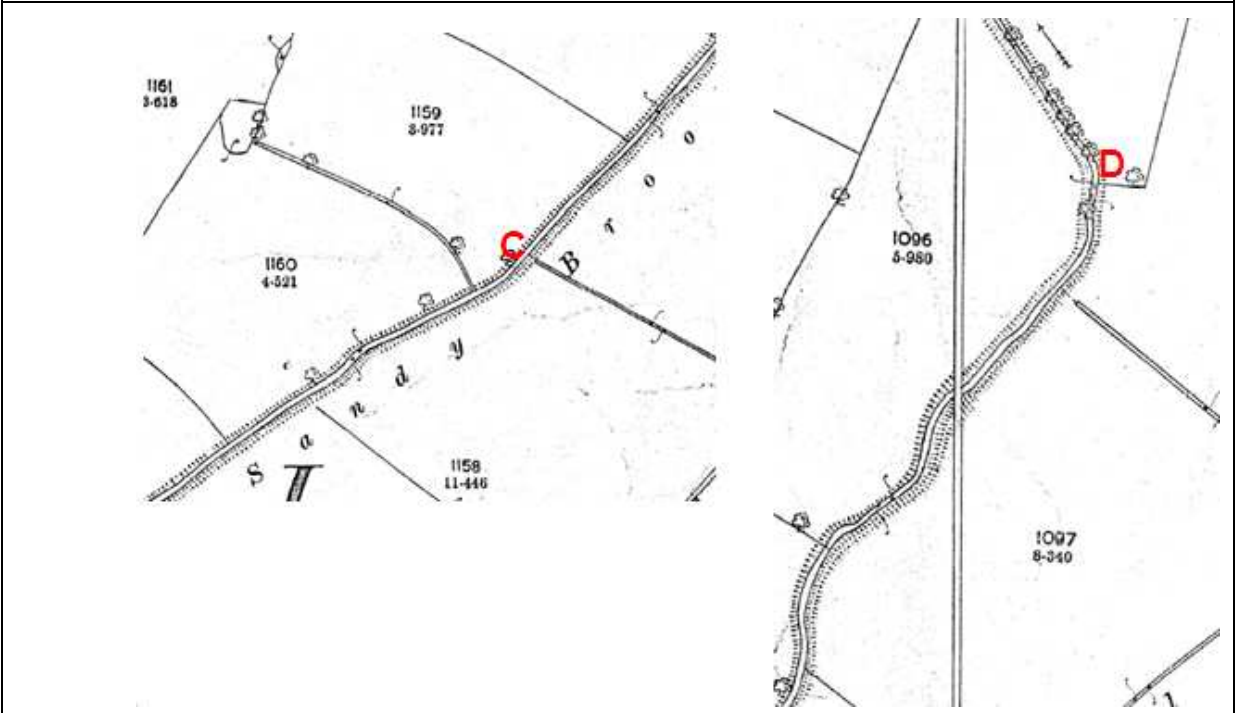
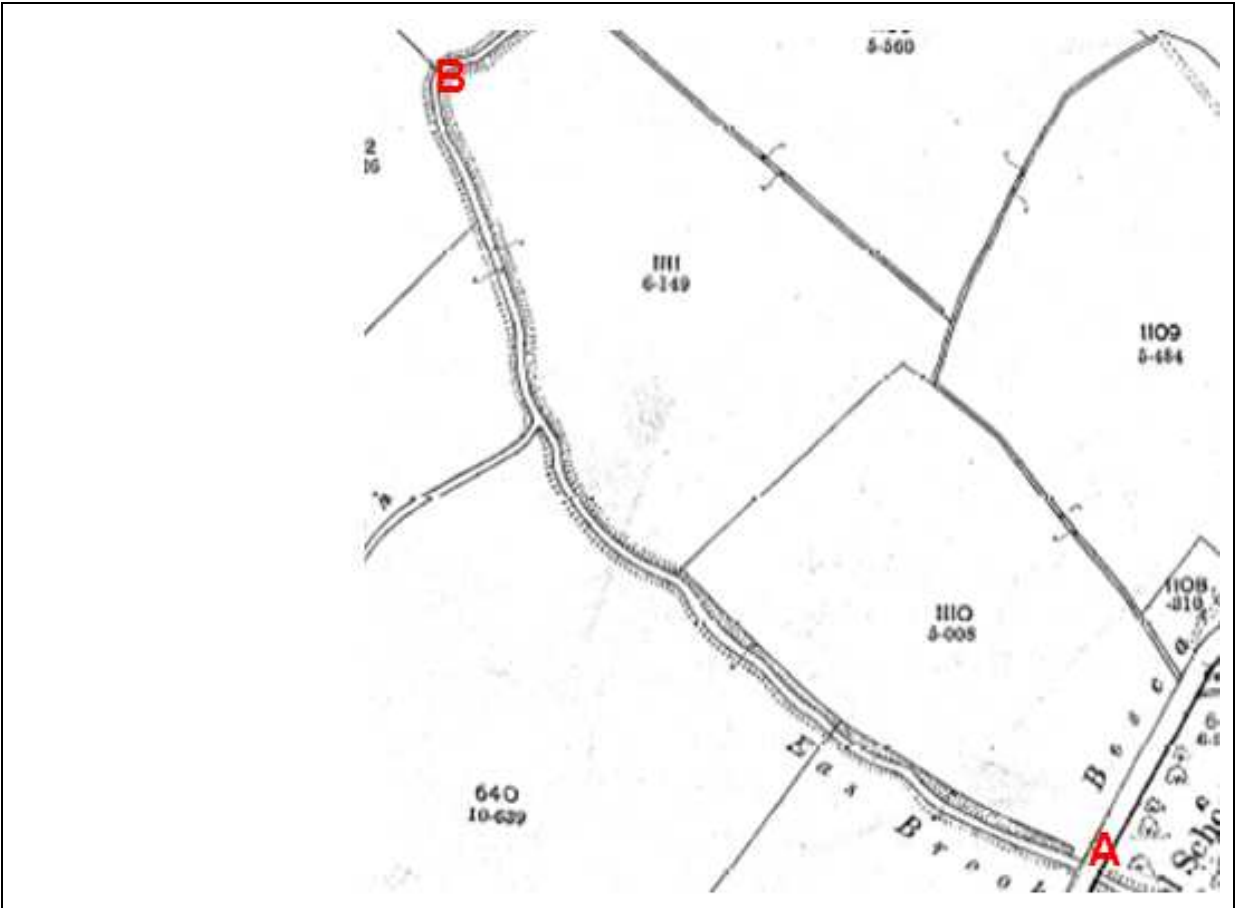
		<p>Snape Green.</p> <p>The claimed route between point B and point C is not shown but a single dashed line is shown coming across the field south of the brook (and claimed route) to join the claimed route approximately 70 metres south west of point D. It then follows the claimed route to point D where it is shown to split – with one route following the recorded route of Public Footpath 14 Scarisbrick and the other following the route of Public Footpath no. 14a Scarisbrick.</p> <p>There is no reference to the claimed route or to any of the paths marked in the Tithe Award. All the land crossed by the claimed route was in the ownership of Charles Scarisbrick and rented out to tenant farmers.</p>
Investigating Officer's Comments		The claimed route existed as a track between point A and point B in 1839 and a further path crossed the field to join the claimed route approximately 70 metres before point D and then continued to point D where both public footpaths connecting to the claimed route are shown to have existed.
Inclosure Act Award and Maps		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 Act Award or Map for Scarisbrick in the County Records Office.
Investigating Officer's Comments		No inference can be drawn.
Finance Act 1910 Map	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence.
Observations		<p>The County Records Office only had a copy of the Finance Act Map for part of the claimed route and did not hold and Finance Act schedules for the area concerned.</p> <p>The Finance Act Plan and relevant Field Book entry were therefore inspected at the National Archives at Kew. The claimed route is not excluded from the numbered hereditaments but is all included within the plot numbered 55. There is no reference to the</p>

		claimed route in the Field Book entry and no deduction in tax has been claimed for a public right of way.
Investigating Officer's Comments		The claimed route was either not considered to be a public right of way in 1910 or not declared as such for other reasons. It was probably not a public right of way circa 1910
Authentic Map Directory of South Lancashire by Geographia	Circa 1934	An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large scale, detailed street map in the area. The atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.
		
Observations		The claimed route is not shown on the map although Bescar Brow Lane and Sandy Brook can be clearly identified. Public Footpaths 14 and 14a Sacrisbrick that connect to the claimed route at point D are not shown on the map either.
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 limitations of scale would not have been shown so no inference can be drawn in this respect.
Ordnance Survey Maps		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.
6 Inch OS Map	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1847.

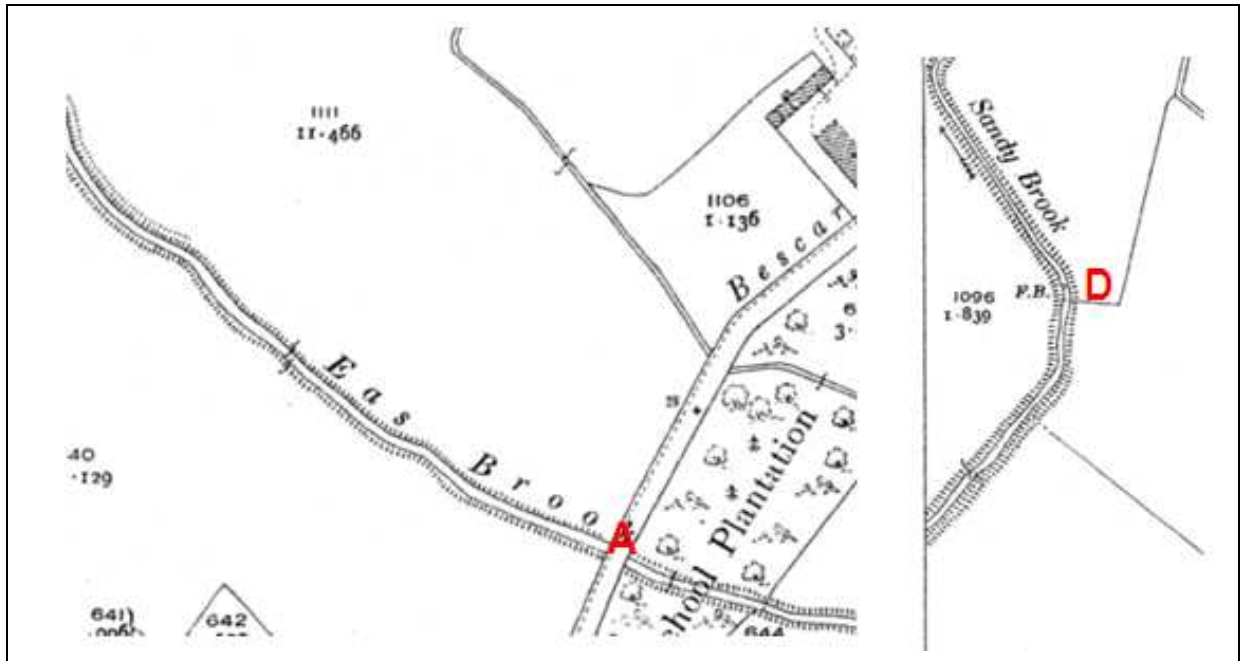


Observations		The claimed route is not shown. Bescar Brow Lane exists and is shown and Sandy Brook is shown but not named. A footpath is shown as a double pecked line crossing the field to the south east of the claimed route and then joining the claimed route just before point D before continuing along the route of Public Footpath 14a Scarisbrick.
Investigating Officer's Comments		The claimed route is not shown other than approximately the last 70 metres to point D. The claimed route probably did not exist as a worn track in 1844-45.
25 Inch OS Map	1893	The earliest Ordnance Survey map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1893.



<p>Observations</p>	<p>The claimed route is not shown.</p> <p>Eas Brook is shown and named on the map. The and embankment is shown along the north eastern side of the brook along the line of the claimed route from just beyond point A to point B. The first stretch</p>
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		of the embankment appears to be bounded from the adjacent field to approximately mid way between point A and point B where the claimed route is crossed by a field boundary. From the field boundary to point B the embankment is unenclosed. From point B continuing along the south side of Sandy Brook the embankment is shown alongside the brook to the end of the claimed route at point D. There is no footpath marked along the top of the embankment. At point C a single line has been drawn across the embankment indicating the existence of a structure at the field boundary, possibly with a gate in it. The claimed route is crossed by a further field boundary at point D and the routes of Public Footpaths 14 and 14a Scarisbrick are unmarked.
Investigating Officer's Comments		The claimed route did not exist as a worn track on the ground in 1892.
25 inch OS Map	1908	Further edition of the 25 inch map surveyed in 1892, revised in 1906 and published in 1908.
Observations		The claimed route is not shown. The embankment is no longer shown to be enclosed from just beyond point A to midway towards point B as it was on the 1893 25 inch map but the claimed route is still shown to cross a field boundary midway between point A and point B and at points C and D. Public Footpaths 14 and 14a Scarisbrick are not shown.
Investigating Officer's Comments		The claimed route did not exist as a worn track on the ground in 1906.
25 Inch OS Map	1928	Further edition of 25 inch map (surveyed 1892, revised in 1926 and published 1928).



Observations		<p>The claimed route is not shown.</p> <p>Eas Brook is shown but the embankment appears no longer to have existed from point A to midway between point A and point B and the field boundary that crossed the claimed route midway between point A and point B is also no longer shown.</p> <p>A line is shown across the top of the embankment at point C and a line (boundary) is also shown across the claimed route at point D. Public Footpaths 14 and 14a are not shown although a footbridge is shown across Sandy Brook close to the junction of the two footpaths.</p>
Investigating Officer's Comments		The claimed route did not exist as a worn track on the ground in 1926.
6 Inch OS Map	1955	The Ordnance Survey base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile. This map was revised before 1930 and is probably based on the same survey as the 1931 25-inch map.
Observations		The claimed route is not shown. The connecting Public Footpaths 14 and 14a Scarisbrick are not shown.
Investigating Officer's Comments		The claimed route did not exist as a worn route on the ground before 1930.
25 Inch OS Map	1970	Further edition of 25 inch map reconstituted from former county series and revised in 1969 and published 1970

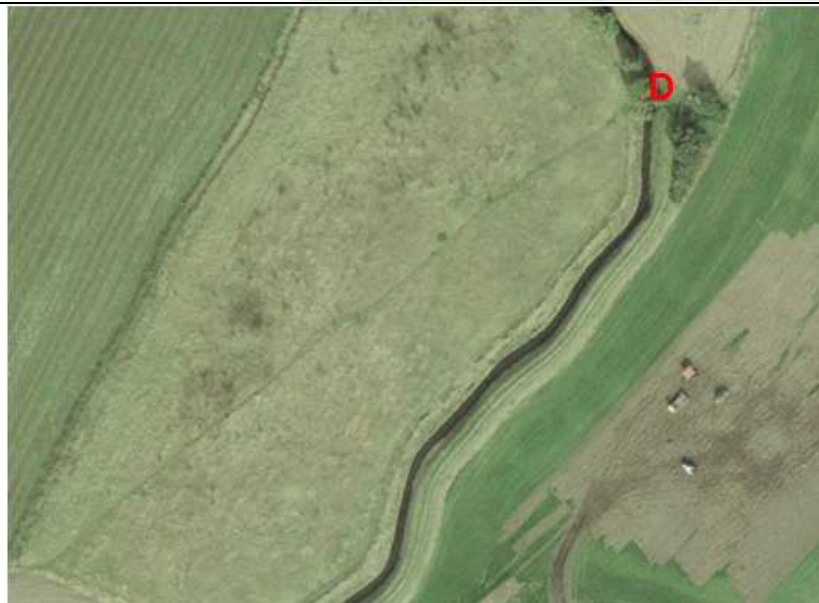
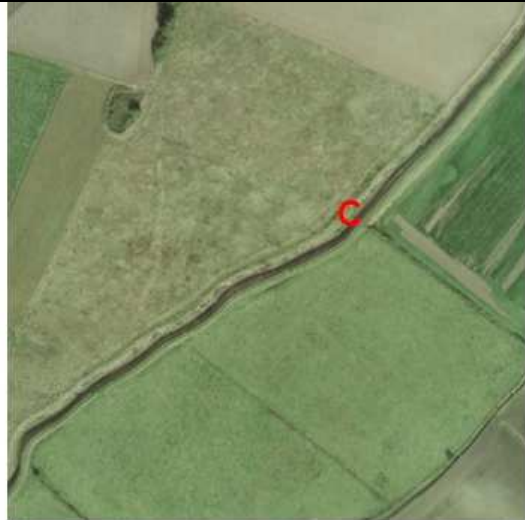
Observations		<p>The claimed route is not shown.</p> <p>The embankment is not shown on the map but this is consistent with other embankments on the map that are not shown either and appears to be a consistent omission on the map as site evidence and aerial photographs show that the embankment is still in existence between point B to point C and most of the way towards point D.</p> <p>A number of drains shown to feed into Sandy Brook across the claimed route between point B and point D (including the one at point C) are shown by dashed lines across the claimed route indicating that they had been culverted.</p> <p>The boundary at point D is no longer shown with a solid line but is shown by a dashed line indicating a change of surface not a physical barrier.</p>
Investigating Officer's Comments		The claimed route did not exist as a worn track on the ground in 1969.
Aerial Photographs	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 photos 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 claimed route is not visible on the aerial photograph.
Investigating Officer's Comments		The claimed route probably did not exist as a worn track in 1945.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		<p>The claimed route is not visible on the aerial photograph.</p> <p>Between point A and point B it appears that the claimed route was fenced off from the adjacent fields. From point B to point D it is not possible to see clearly whether the claim route existed due to shadow.</p>
Investigating Officer's Comments		It appears unlikely that the claimed route existed as a worn track on the ground in 1960.
Aerial Photograph	1988	Aerial photograph available to view at the County Records Office.



Observations		The photograph is difficult to enlarge without losing clarity. It is not possible to see access onto the claimed route at point A due to tree cover. Beyond point A through to point B and on to point C a faint line can be seen which may indicate a faint track. Between point C and point D the field has been ploughed and the claimed route is not visible.
Investigating Officer's Comments		The claimed route may have been accessible but did not exist as a clearly defined worn track on the ground in 1988.
Aerial Photograph	1999	



Observations		It is not possible to see the precise nature of access at point A. However, there appears to be a faint track extending along the claimed route from point A which becomes more clear and continues the full length of the claimed route to point D.
Investigating Officer's Comments		The claimed route existed as a worn track on the ground in 1999.
Aerial Photograph	2000	Colour aerial photographs viewed on GIS.



Observations		<p>The full length of the claimed route is visible as a faint track.</p> <p>Access point A is visible although it is not possible to see what fencing may have existed at the time. No gate is visible at across the route at point C and the claimed route can be clearly seen linking to Public Footpaths 14 and 14a at point D.</p>
Investigating Officer's Comments		The claimed route existed as a worn track in 2000.
Aerial Photograph	2007	Colour aerial photograph taken in 2007 and viewed on GIS.



Observations		The full length of the claimed route is clearly visible. It is not possible to see the exact nature of the access from Bescar Lane onto the claimed route at point A but a worn track extends to the road at point A suggesting that access was available at this point. No gate can be seen to exist at point C and the whole length of the claimed route appears accessible.
Investigating Officer's Comments		The claimed route existed on the ground as a worn track in 2007.
Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way. Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area.
Observations		The parish survey map and cards were drawn up by Scarisbrick parish council. The claimed route is not shown on the parish survey map or documented in the parish survey cards.

Draft Map		<p>The parish survey map and cards for Scarisbrick were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		The claimed route is not shown on the Draft Map of Public Rights of Way and there were no objections to the omission of the path.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The claimed route is not shown on the Provisional Map and there were no objections to the omission of the path.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The claimed route is not shown on the first Definitive Map.
Investigating Officer's Comments		The claimed route was not considered to be a public right of way in the 1950s.
Revised Definitive Map of Public Rights of Way (First Review)		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 25 th 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.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		There are no statutory deposits covering the period of time during which it is claimed that the route was being used as a public right of way.
Investigating Officer's Comments		There was no indication by the landowners under S31 of the Highways Act 1980 that there was no intention that the way be dedicated.

The land crossed by the claimed route is not recorded as access land under the provisions of the Countryside and Rights of Way Act 2000. It is not recorded as a Site of Special Scientific interest or a biological heritage site. Eas Brook and Sandy Brook are both classed as main water ways by the Environment Agency and are regularly cleaned out and maintained by them.

To summarise, the claimed route is not shown on any of the early commercial maps although this is not unexpected when you consider that we are investigating a claim for a rural public footpath across farmland.

The Tithe Map of 1839 shows a path (single dashed line) along the claimed route between point A and point B which then crosses the brook and continues north. However, no reference is made to this path in the Tithe schedule and it does not appear on the first edition Ordnance Survey 6 inch map published 8 years later in 1847.

The 1847 6 inch Ordnance Survey map does, however, show a route that was also shown on the Tithe Map (but not mentioned in the Tithe Schedule) that crosses the fields to the south east of the claimed route and then meets, and follows the claimed route for approximately 70 metres to point D. However, this route is not shown on the first edition 25 inch Ordnance Survey map published in 1893 or on any other map inspected.

None of the Ordnance Survey maps examined show the claimed route suggesting that there was no clearly defined route on the ground at the time of the relevant surveys.

The most recent relevant evidence consists of a series of aerial photographs.

It is not possible to see the claimed route on the aerial photographs taken in the 1940's or 1960's although this may be due partly to shadows.

From the 1988 aerial photograph it appears that the route may have been accessible but it is not visible as a worn track.

The whole of the claimed route can be seen on the 1999 aerial photograph although the precise nature of access at point A is unclear.

A photograph taken in 2000 shows that the whole route was visible as a worn track at that time and no gate or barrier was visible across the route at point C.

A further photograph taken in 2007 clearly shows the whole length of the claimed route and no gate appears visible at point C. The precise nature of access through the field boundary at point A is not visible although the worn track clearly leads to/from that point.

Ownership

The section of the route A-C is on land owned by the estate of Mary Lavelle deceased, gifted to her son and daughter in 1993, presently tenanted since 2006. Solicitors are acting for the family. The section C-D is owned by the Forshaw family.

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

The following should be added to the Definitive Statement for Scarisbrick, West Lancashire District.

Proposed Schedule to Order

SCHEDULE

PART 1

MODIFICATION OF THE DEFINITIVE MAP

DESCRIPTION OF WAY TO BE ADDED

Public Footpath from a junction with Bescar Brow Lane at SD 3840 1323 (point A) running in a generally north westerly and then north north westerly direction to following the north bank of Eas Brook to SD 3815 1353 (point B) and continuing in a generally north easterly direction along the southern bank of Sandy Brook to field gate at SD 3853 1381 (point C) before continuing in a more north north easterly direction along the side of Sandy Brook and crossing a field boundary to terminate at SD 3879 1419 (point D) where it meets Public Footpath 14a Scarisbrick.

PART II

MODIFICATION OF DEFINITIVE STATEMENT

Add to the Definitive Statement for Scarisbrick the following:

" Public Footpath from a junction with Bescar Brow Lane at SD 3840 1323 through field boundary and running in a generally north westerly and then north north westerly direction adjacent to the north bank of Eas Brook to SD 3815 1353 and continuing in a generally north easterly direction along raised embankment adjacent to the south bank of Sandy Brook to field gate at SD 3853 1381 before continuing in a more north north easterly direction along embankment adjacent to Sandy Brook and crossing a field boundary to terminate at SD 3879 1419 where it meets Public Footpath 14a Scarisbrick"

Width:

3 metres

Limitations and Conditions:

Gate or Stile at SD 3840 1323

Field gate at SD 3853 1381

Length: 1365 metres

All lengths and compass directions given are approximate.

County Secretary and Solicitor's Observations

Information from the Applicant

In support of the claim, the applicant has provided 25 user evidence forms. 2 of the forms have been omitted as they were incomplete.

The user forms indicate knowledge of the route as follows:

0-10 (5)	11-20(2)	21-30(6)	31-40(1)	41-50(2)	51-60(3)
61-70(1)	not specified (3)				

The route has been mainly used for leisure, dog walking, exercise, running, recreation and looking at the wildlife.

22 users stated they used the route on foot, one user did not specify how they used the route. The frequency of use varies from daily, twice a week, weekly, once or twice a year, 3-5 times a year, 15 times a year, 20-50 times a year.

One user claims they have seen someone using the route on horseback, 19 users claim they have seen other people walking along the route.

21 users agree that the route has always run over the same line, 1 user claims that the route hasn't always run over the same line but didn't provide any details.

When asked if there are any stiles / gates / fences along the claimed route, 3 users agree there is a stile, 3 users claim there is a gate, 2 state there is a fence, 2 users just answer the questions with 'yes' and 10 users claim there are no stiles / gates / fences along the route. 3 users state that a gate has recently been erected.

18 users claim that the stiles / gates / fences along the route were never locked, 1 user states that the gate that prevents cattle from straying is locked but only since recently. 13 users said that the stiles / gates / fences didn't prevent them from using the way. 1 user says the stile on Bescar Brow is difficult to negotiate as it is a metal gate, another states that the gate / stile / fence did prevent access recently but he / she moved it.

15 users have never worked for any landowner in which the route crosses, 3 users have worked for a landowner that being MA Forshaw, the dates in which the users worked for MA Forshaw are, 1977-2007, 1976-2007 and 1990-2007.

The 3 users that worked for the landowner were never given instructions as to the use the way by the public.

18 users have never been a tenant for the land in which the route crosses.

21 users have never been stopped or turned back when using the route, 1 user has but didn't provide any details, another user states they were was an attempt made but he / she ignored it. 12 users have never heard of anyone else being stopped or having turned back when using the route. 8 users have heard of someone being

stopped or having turned back but only recently, and 2 users provide details having heard of an aggressive landowner stopping someone.

21 users all agree that they have never been told that the route was not a public right of way, 1 user states that a landowner adjoining to the land has told them it was not a public right of way, another user states they have been told by a tenant in the last 6 months.

21 users have never seen any signs or notices along the route, 1 user says a sign was erected recently but was only there for a couple of days another user says a sign / notice was erected during last year.

All 23 users have never asked permission to use the claimed route.

A letter of support from Mr Mark Forshaw

Mr Forshaw states he is happy for people to walk along their track responsibly as it is a beautiful walk.

An objection has been received from Paul Crowley and Co on behalf of Mr Thomas Richard Lavelle

He has provided a copy of a Conveyance dated 12th August 1953 by virtue of which Robert Thomas Lavelle deceased purchased the land crossed by the section of route A-C

Mr Lavell's son stayed at the family home at Mount Farm until he married in 1965, and he continued to help on the family farm for some 18 months until October 1966 when he relocated to a different area

Between 1953 and 1966 Mr Lavelle states there was no use of the alleged path by any member of the public or indeed by any one and there was no defined path merely a bank at the field edge next to the stream Sandy Brook.

The stream was cleaned once a year by the River Crossens Drainage Board (now the Environment Agency) and is some 2-3 feet deep normally an insufficient depth to maintain a fish population and so there was no recreational use of the stream and he did not see anybody on the land whilst he was at the property before he left to live in Lydiat and he was not told by his father or by his mother in succession to him nor by anybody of any use of the path or the land until the end of 2012 as appears later. In 1954 the stream burst its banks and flooded the fields, the River Crossens Drainage Board built the bank up and told his father to put a fence along the field to stop the cattle treading the bank away.

He regularly called to see his mother until she sold the farmhouse in 2000 calling at least once a week and often more and after she sold the farmhouse and relocated he periodically called to inspect the land that was retained by his mother until she

gifted the land to himself and his sisters in November 1993 and it has been successively tenanted.

The current tenant who started in 2006 is Henry Ascroft and Mr Lavelle normally meets his son Ian Ascroft on site when he calls to inspect and he has regular contact with Ian. He was first told by Ian in October 2012 that people were using the field edge path and breaking down fence that he had put up so that his cattle were getting out.

He was told by Ian that he had challenged one man using the path and there had almost been a breach of the peace and he was also told that ladies were using the path presumably the applicants to walk north to Wood Moss Lane and to effect a circular walk back to their houses somewhere in Scarisbrick Village. The gate which is an extra gate near to where the people have been getting through the railings was erected in 2007 by the present tenant. Mr Ascroft owns land on opposite side of the road and the gate makes easy access to his land through the gate opposite.

He has spoken to the adjoining owner to the north Mark Forshaw in relation to the proposed footpath and he appears to have no objection to it but his tenant does for the same reasons that his tenant objects i.e. fences broken down and people walking along boundaries of the land.

The signs that he has put up to indicate that the property is private and not a right of way have been taken down.

Between his father's acquisition 1953 and the autumn of 2012 the land in question has been private and has not been used by anyone to his knowledge and he is unable to explain why local people have started to use it and claim that it is a public footpath when it has clearly been private land for most of his lifetime.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

User Evidence

Aerial photographs

Support from landowner of part

Against Accepting the Claim

Actions by landowner of part

Conclusion

In order for the right of way to become a footpath there would need to have been a dedication by the owner at some point in the past and acceptance by the public. There is therefore a need to consider whether there is evidence that the footpath as

claimed can be reasonably alleged to have already been dedicated in which case the test for making an order would be satisfied and to then consider whether on balance there is evidence that the claimed route has been dedicated and the higher test for confirmation can be satisfied.

As there is no express dedication it is suggested, the Committee consider firstly whether there is sufficient evidence from which to deem dedication from use under S31 Highways Act 1980 and to then secondly consider whether, in all the circumstances there is evidence from which dedication can be inferred at Common Law.

Considering, firstly the provisions of S31 Highways Act and whether the public has enjoyed use of the claimed route for a full period of twenty years. The evidence indicates that access to the route has never been questioned or denied up until October 2012, at which point the tenant made the landowner aware he had challenged a user about his right to use the route. User evidence forms suggest, two users had been stopped at that time and 8 users claim to have recently heard of others being stopped. One user provides a time period of October 2012-December 2012 for the challenge. It is suggested that without any other evidence available, it is likely the "bringing into question" of the route would be October 2012 and the 20 year period of use to consider would be 1992-2012.

Evidence of use is provided in 25 user evidence forms (only 23 have been considered as 2 are incomplete). Of these, 16 claim to have knowledge and use of the route for 20 years or more prior to 2012. The longest period of knowledge of the route is 60 years (2 users). Claimed use is for leisure, dog walking, exercise, running, recreation and wildlife watching and is consistent with use as a public footpath.

The frequency of use from the evidence forms differs; it appears there are 3 users claiming to have used the route on a daily basis, with 10 users claiming to have used the route on a weekly basis with the other users appearing to have used the route less frequently. On balance, it appears, the use has been sufficiently frequent. It is suggested that for use to be sufficient it would need to be more than of the appearance of being sporadic and sufficient to show use by the public as a whole.

Use also has to be as of right. It must be without force, without stealth and without permission.

3 users worked for one of the landowners and therefore their use of the claimed route would not be as of right however it should be noted that their use of the route has been sporadic and these 3 users confirm they were not given instructions by the landowner as to the use of the way by the public.

Use has not been by stealth but issue of use by force must be considered whether barriers across a route exist. 10 users state there was a stile/gate or fence across the route although 10 users do not recall such barriers. 18 of the users claim the structures across the route were never locked. One user states there had been a locked gate recently to his evidence form in 2012 but no date is stipulated. 21 users have never seen any notices/signs along the route and 2 users state a sign was

erected during 2012. At Point A the ED officer noted there was a green metal railing fence which was low and; looked worn as though people had been climbing over or through it. A recent Planning Inspectorate decision considered a low wall which was being climbed over to access a particular claimed route, the inspector found that use was still as of right due to the nature of the wall as it seemed more likely than not that access would have been attractive to residents whether children or adults and people were getting over the wall with relative ease and frequency. In line with this decision it may be considered that the railing at point a was similarly low enough for users to access and the route was being accessed with relative ease and frequency and use capable of being as of right.

A presumption of dedication may be rebutted if there is sufficient evidence on the part of landowners to demonstrate that they had no intention to dedicate a public footpath during the 20 year period under consideration. One of the landowners states people were getting through the railings and through a further gate which was erected in 2007. No reference is made to locking gates or erecting signs/notices, until 2012 or the landowner having purposely blocked the route occasionally. The statutory declaration dated 24 January 2014 made by landowner John Roberts pursuant to Section 31(6) Highway Act 1980 depositing the map and statement of the way with the Authority is only effective the date this is deposited and is therefore not relevant to the 20 year period being considered.

From the evidence presented no user recalls a gate locked against him in 2007 and it is suggested that no sufficient overt action was taken until 2012.

Taking next the inference of dedication at Common Law. This requires evidence of an actual intention to dedicate by the land owner. The landowner of today has owned the land since 1993 and is objecting to the claim and denying any intention to dedicate. His mother and father were owners before him and are now deceased. Without evidence of overt actions taken by them it is possible that their not taking action means that the user taking place could be circumstances from which to infer dedication at common law. The user would not need to be for twenty years.

The presence of a fenced route could also be circumstances from which to infer an intention but the present owner explains that the fence has nothing to do with dedicating a footpath. He states that in 1954 the stream burst its banks and flooded the fields and The River Crossens Drainage Board built the bank up and advised his father to put a fence along the field to stop the cattle treading the bank away. The aerial photograph of the 1960's shows Point A to Point B of the claimed route being fenced off from the adjacent fields, although the claimed route is not visible on the aerial photograph, this date coincides with the landowners date for the fencing being erected. It is confirmed that Eas Brook and Sandy Brook are both regularly cleaned out and maintained by the Environment Agency. This arguably explains the fencing and makes it difficult to use the fencing as indicating that the landowner had intention to dedicate the route.

Taking all the information into account the Committee may consider that the criteria in S31 can be established and possibly dedication inferred from user prior to 1993. The committee may consider that it can be reasonably alleged, on balance, that the footpath subsists in law and that it is appropriate that an Order be made. Also, it is

suggested that the higher confirmation test is also able to be satisfied, as there is sufficient evidence on balance that the right of way on foot for the public already subsists in law.

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/Ext
All documents on Claim File Ref: 5.47931 (804/544)	Various	M Brindle, County Secretary & Solicitor's Group, Ext: 33427

Reason for inclusion in Part II, if appropriate

N/A