

Regulatory Committee

Meeting to be held on 14th May 2014

Electoral Divisions affected: Rossendale East and Whitworth

Wildlife and Countryside Act 1981

Addition of and Upgrade of Footpath to Bridleway/ Restricted Byway/Byway Open to All Traffic on Cutler Lane and Height Barn Lane between Cutler Greens and New Line, Bacup and of Stubblee Lane between Height Barn Lane and Stubblee Park

Claim No. 804-532

(Annex 'A' refers)

Contact for further information:

Jayne Elliott, 07917 836626, Environment Directorate

Jayne.elliott@lancashire.gov.uk

Megan Brindle, 01772 533427, County Secretary and Solicitor's Group

megan.brindle@lancashire.gov.uk

Executive Summary

An investigation to determine the correct status of parts of Cutler Lane, Height Barn Lane and Stubblee Lane (recorded as Bacup Footpaths 522, 507, 506, 505, 504, 503, 493 (part) and 492 (part) and parts not recorded on the Definitive Map and Statement), in accordance with File Reference No. 804-532.

Recommendation

1. That an Order or Orders be made pursuant to Section 53(2)(b) and Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 (the Act) to upgrade on the Definitive Map and Statement Bacup Footpaths 522, 507, 506, 505, 504, 503, 493 (part) and 492 (part) to restricted byway, in accordance with the investigation carried out under Reference 804-532 (shown on the attached plans as A-H, J-W and YY-BB).
2. That an Order or Orders be made pursuant to Section 53(3)(b) and Section 53(3)(c)(i) of the Act to add a bridleway/restricted byway/byway open to all traffic to the Definitive Map and Statement as specified below:
 - a) addition of bridleway between 2 points on Bacup Footpath 522 at Lee Clough (shown on the attached plan as between points HH-J);
 - b) addition of restricted byway between two points on Bacup Footpath 522 at Lee Clough (shown on the attached Plan as points H-HH-I-J);
 - c) addition of byway open to all traffic between 2 points on Bacup Footpath 493 at Height Barn (shown on the attached plan as W-X-XX-Y-YY);
 - d) addition of restricted byway along the southern section of Stubblee Lane

from the end of the road recorded as U7913 to its junction with Height Barn Lane (Bacup Footpaths 503 and 504) (shown on the attached plan as UU-U);

3. That an Order be made pursuant to Section 53(3)(b) and Section 53(3)(c)(iii) of the Act to delete from the Definitive Map and Statement that part of Bacup Footpath 522 between 2 points at Lee Clough (shown on the attached plan as points H-II-J) in accordance with the investigation carried out under Reference 804-532.
4. That the Orders be confirmed if no duly made objections are received or that confirmation of the Orders be sought by submitting them to the Secretary of State if necessary.

Background

An investigation has been carried out into the correct status of the routes commonly known as Height Barn Lane, Cutler Lane and Stubblelee Lane, Bacup, Rossendale Borough, from Cutler Greens at point A on the attached plan along Cutler Lane and Height Barn Lane to the junction with New Line at point BB, a distance of approximately 1600 metres; and part of Stubblelee Lane between points UU and point U, a distance of approximately 140 metres.

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 for adding a way to the Definitive Map and Statement will only be made if the evidence shows that a right of way 'subsists' or is 'reasonably alleged to subsist'

An order for upgrading a way shown on the Definitive Map and Statement will only be made if the evidence shows that 'it ought to be there shown as a highway of a different description'.

An order for deleting a way from the Definitive Map and Statement will only be made if the evidence shows that 'There is no public right of way over land shown in the map and statement as a highway of any description'.

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. A public right of way for mechanically propelled vehicles may have been extinguished by the Natural Environment and Rural Communities Act 2006.

The County Council's decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by an 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. The decision may be that the routes have public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists.

Consultations

Rossendale Borough Council has been consulted and no response has been received.

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 Group Observations'.

Executive Director for the Environments Observations

Site Inspection

Points annotated on the attached plan.

POINT	GRID REF	LOCATION (nos. refer to Bacup Footpaths)
A	SD 8589 2131	Junction of Cutler Lane, 522 & 570
B	SD 8595 2132	Junction of 579 & 522
C	SD 8599 2132	Junction of 522 & 568
D	SD 8607 2131	Change in quality of tarmac surface on 522 east of Prospect Terrace
E	SD 8617 2134	Eastern end of U759 at entrance to 'Fairwall', formerly 'Fair Well'
F	SD 8619 2134	Junction of 522 & 524
G	SD 8622 2134	Two sequential gates across 522
H	SD 8637 2131	Point where definitive and modern user routes diverge
HH	SD 8638 2131	Point where historical and modern user routes diverge
I	SD 8640 2130	Crossing of Lee Clough (historical route)
II	SD 8640 2128	Southern point on loop of 522
J	SD 8640 2132	Point on 522 where historical, definitive and modern use routes converge
K	SD 8640 2134	90 degree bend in track east of Lee Clough
L	SD 8645 2136	1.5 metre wide bridlegate across 522 with motorcycle barrier
M	SD 8646 2136	Point on 522 west south west of junction with access road into Lee Quarry
N	SD 8647 2136	522 passes through gateposts east north east of junction with access road into Lee Quarry
O	SD 8651 2139	Junction of 522, 521, 520 & 507

P	SD 8654 2139	Wooden gate
Q	SD 8658 2140	Junction of 507, 506 & 518
R	SD 8659 2141	Wooden gate
S	SD 8673 2147	Junction of 506, 505 & 512
T	SD 8677 2151	Junction of 505, 504 & 513
U	SD 8692 2162	Junction of 504, 501, 503 & Stubbylee Lane
UU	SD 8682 2173	End of U7913 on Stubbylee Lane
V	SD 8699 2164	Junction of 503, 496 & 493
W	SD 8704 2167	Junction of 493 with F7469 at Height Barn Farm
X	SD 8703 2168	Corner of Height Barn Lane (and F7469) at Height Barn Farm
XX	SD 8705 2169	Point where road numbering of Height Barn Lane changes from F7469 to U7912
Y	SD 8706 2169	Junction of U7912 & 494
YY	SD 8709 2169	Junction of 492 & U7912
Z	SD 8714 2171	Sign stating Footpath not Bridleway
ZZ	SD 8720 2172	Rear of 35/37 New Line
AA	SD 8728 4217	Small industrial unit adjacent to route
BB	SD 8729 2174	Junction of 492 & New Line

Description of Route:

A site inspection was carried out in June 2013.

n.b. References to public rights of way shown on the Definitive Map and Statement are generally given in the form '14-1-522' or 'Bacup Footpath 522' but are referenced below in the abbreviated form '#522' for brevity since all those referred to are in Bacup in Rossendale Borough and currently recorded as public footpaths.

The linear route under investigation and shown on the Committee plans between points A-B-C-D-E-F-G-H-HH-(I)-J-K-L-M-N-O-P-Q-R-S-T-U-V-W-X-XX-Y-YY-Z-ZZ-AA-BB is known historically as Cutler Lane and Height Barn Lane and is currently recorded as #522, #507, #506, #505, #504, #503, #493 (part) and #492 (part), with the exception of the short sections described in the following paragraphs and which are not currently recorded on the Definitive Map and Statement.

Lee Clough – where the definitive line of #522 (H-II-J) differs from the route shown on historical maps and documents (H-HH-I-J) and from the modern day route currently used by the public (H-HH-J).

Height Barn Farm – Where the definitive line of #495 (W-YY) differs from the historical route under consideration and recorded as F7469/U7912 on the List of Maintained Streets (W-X-XX-Y-YY).

The route under investigation commences as Cutler Lane, recorded both as #522 and unclassified road U7859, at its junction with #570 (point A on the Committee plan). It follows a tarmac road with narrow footway in an easterly direction past a number of residential properties known collectively as Cutler Greens. It continues in

an easterly direction past the junctions with #579 at point B and #566 at point C and continues east past the front of Prospect Terrace to point D.

From point D the tarmac surface deteriorates and although the route is still tarmac the surface is more broken and does not appear to be as well maintained.

Partway between point D and point E an old sign is situated in the fence line alongside the route. Part of the sign is missing but it appears to say 'Fairwall Private No entry'.

The route continues along the tarmac track to the entrance to Fairwall at point E. The designation of the road as the U7859 stops at this point.

From point E the route continues as #522 along a stone surfaced track bounded on either side by stone walls varying between 3 to 3.5 metres apart. It is partially overgrown restricting width and joined by #524 at point F.

From point F the route continues in a generally easterly direction to point G where it is crossed by two sequential gates positioned on the boundary of Lee quarry which is owned and maintained by Lancashire County Council as a recreational facility. Both gates are accessible to horses, bicycles and pedestrians and have been fitted with closing mechanisms that can be operated from horseback. Neither gate would be accessible with a vehicle.

The route continues in an east south easterly direction inside the edge of the quarry site and bounded on both sides by a stone wall. The route is surfaced with compacted stone partly covered by grass and there is evidence of recent equestrian and bicycle use (hoof prints, horse droppings and tyre marks).

At point H the definitive route (#522) leaves the surfaced, double bounded track to pass through a stone wall (no access) to cross rough pasture in a south easterly direction to point II then turns back to continue in a northerly direction, crosses the watercourse and continues across rough ground passing back through the wall and fence (no access) to rejoin the existing track at point J. There is no evidence of the route on the ground and it crosses a wall at points H and J and crosses the watercourse between points II and J.

The 'historical' route (shown on maps and documents to be discussed later in the report) leaves the surfaced, double bounded track a little east of point H at point HH to pass through the stone wall (no access), to continue in a south easterly direction across rough pasture, to cross the watercourse at point I and then continue in a north easterly direction to pass through the wall (no access) and rejoin #522 and the surfaced track at point J. There is no evidence of the track on the ground or of a crossing point (bridge) at point I.

Modern day use is available along the stone surfaced, bounded track which provides a direct route between points H and J.

From point J the route continues along the stone surfaced track bounded by stone walls to point K where it turns to continue uphill in an east north easterly direction to pass through a 1.5 metre wide bridleway gate with motorcycle barrier at point L.

The route then continues uphill for a short distance to point M where it is crossed by the main access road (former tramway) into Lee Quarry. The route goes directly across the access road to point N where it passes between two stone gateposts (with adjacent stone stile) and continues in a north easterly direction along a stone surfaced track leading to Lee Farm. At point O, just west of the farm the route is met by #507, #521 and #520 and the route continues as #507 along the stone surfaced track past the farm, through a wooden gate at point P and past the junction with #518 at point Q where it continues as #506.

Once through the farm buildings at point R the route is crossed by a wooden field gate and then continues in an east north easterly and then more north easterly direction along a stone surfaced track bounded by a stone wall to the north but open to the moor on the south side. It continues to point S where it is crossed by a metal field gate close to the entrance to Moss Meadows Cottage, formerly Moss Meadows, and the junction with #512. It then continues as #505 and also recorded as U7912, Height Barn Lane in a north easterly direction along a stone surfaced track, bounded by fencing and is joined by #513 at point T. It then continues as #504 and U7912 along the stone surfaced track to the junction with Stubbylee Lane and #501 at point U.

From point U the route continues as #503 and F7469 in a north easterly direction immediately crossed by a 3.65 metre wide padlocked metal field gate (with adjacent pedestrian stile). A sign attached to the gate post says PUBLIC FOOTPATH NOT A BRIDLEWAY.

Beyond the gate the route continues along a rough track in an east north easterly direction to point V where it is crossed by a 3 metre wide metal field gate and joined by #496. Height Barn Lane continues as #493 and F7469 along the farm access road to Height Barn Farm where it passes between the farm buildings and farm house to point W. Height Barn Lane turns north as F7460, but not #493, to point X then east north east along a tarmac access road to point XX where its road number changes from F7460 to U7912 then continuing to point Y at a junction with #494 and to point YY at a junction with #492.

#493 continues north east from point W to a junction with #495 at point WW then continues as #492 to re-join Height Barn Lane at point YY.

From point YY Height Barn Lane continues as #492 and U7912 in an east north easterly direction to point Z where a second sign stating PUBLIC FOOTPATH NOT BRIDLEWAY is situated. It then continues, crossing a rougher surfaced area past some industrial units to point AA and exits along a tarmac road signed as Height Barn Lane onto New Line at point BB.

Access is available to pedestrians along the full length (with the exception of the definitive route of #522 at Lee Clough (H-II-J) and the 'historical' route at Lee Clough (HH-I-J) but horse riders and cyclists would currently be prevented from passing

through point U due to an unlawfully locked gate, there being no evidence that the limitation to the public right of way includes a locked gate with stile alongside, at point U.

A further section of route investigated which links to Cutler Lane and Height Barn Lane is the unrecorded (either on the Definitive Map and Statement or List of Maintained Streets) section of Stubblelee Lane between point UU and point U.

Point UU marks the southern end of the section of Stubblelee Lane recorded as publicly maintainable, adjacent to the entrance to the public park and children's playground. Highway signs warning of pedestrians and informing motorists that the route is a dead end are located at the start of the unrecorded section of Stubblelee Lane at point UU.

From point UU the route extends in a south easterly direction bounded on either side by substantial stone walls and surfaced with compacted stone. It continues for 143 metres passing the entrance to Moss Meadows Farm, formerly Stubblelee, to the junction with Cutler Lane and Height Barn Lane at point U where a metal gate (open on the day of inspection) has been erected across the route immediately prior to the junction.

Map and Documentary Evidence


Various maps, plans and other documents were examined with reference to the routes under investigation.

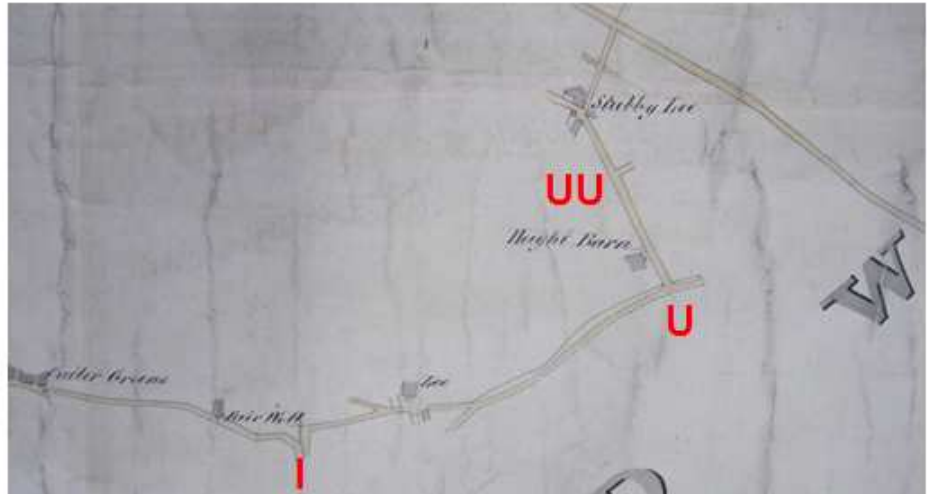
Document Title	Date	Brief description of document & nature of evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown. As well as recording the primary roads in use at that time Yates' Map showed 'Cross Roads'. A cross road is generally accepted as being a secondary road which was neither a principal road nor a turnpike road, often one which ran between two main roads. The term was defined by the influential map-maker Ogilby in the preface to his road itinerary 'Britannia' in 1675. The title of Hennet's map in 1829 included the term 'Cross Roads'.
Observations		No part of the route under investigation is shown.
Investigating Officer's Comments		It is likely that the route, if it existed in 1786, was of little significance and was not included on the map.
Cary's Map	1787	Cary was a cartographer, engraver and publisher who published a series of atlases, maps, canal plans etc. His 1789 map of Lancashire is a close copy of Yates' map.
Observations		No part of the route under investigation is shown.

Investigating Officer's Comments		It is likely that the route, if it existed in 1786, was of little significance and was not included on the map.
Greenwood's Map of Lancashire	1818	Greenwood's map of 1818 is a small scale commercial map. In contrast to other map makers of the era Greenwood stated in his legend that his map showed private as well as public roads.
Observations		No part of the route under investigation is shown.
Investigating Officer's Comments		It is likely that the route, if it existed in 1818, was of little significance and was not included on the map.
Hennet's Map of Lancashire	1830	Small scale commercial map.



Observations		Although it is not easy to determine exact points or features along the route (due partly to the scale of the map) a route is shown as a 'cross road' passing along the side of the valley that corresponds to the route under investigation. Stubblee Lane is easier to identify between point UU and point U meeting Height Barn Lane and Cutler Lane at point U. The Height Barn Lane from Stubblee Lane (point U) to New Line (point BB) is shown but there is a gap between Height Barn Farm (point W) and the vicinity of point Z – a similar gap can be seen on the northern section of Stubblee Lane. It is not known whether this is because it passed through a farm yard, was unenclosed or for some other reason, possibly the watercourse crossing the route, but it is similarly shown on some modern maps such as the Ordnance Survey 1:10k
--------------	--	--

		
<p>Investigating Officer's Comments</p>		<p>The route along the south side of the valley is shown as a 'cross road' on the map. It is not fully known what is meant by this term. As the only other category of 'road' shown on the map are the turnpike roads, it is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in Hollins V Oldham). It is unlikely that a map of this scale would show footpaths. Many properties are shown on this map with no access road or track to them. It is more likely that Hennet's map shows routes depicted as through routes that were generally available to the travelling public in carts or on horseback and therefore suggests that Cutler Lane – Height Barn Lane (with some uncertainty about the gap) and Stubbylee Lane, was public bridleway or carriageway. The turnpike road runs parallel and it is likely that the route would have been used as an alternative to the toll road across the valley and on balance it is considered likely to have carried vehicular public traffic rather than just horses.</p>
<p>Inclosure Act Award and Maps</p>		<p>Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.</p>
<p>Observations</p>		<p>There is no inclosure map or award for Bacup.</p>
<p>Investigating Officer's Comments</p>		<p>No inference can be drawn.</p>
<p>Tithe Map and Tithe Award or Apportionment</p>	<p>1845-1853</p>	<p>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.</p>




Observations

The Tithe Map for Spotland is dated 1845-1853. All of the route under investigation with the exception of the length near U- BB is shown on the map.

A number of properties are shown along the route – Cutler Greens, Fairwall and Lee – all of which still exist today. The current route used by the public between points HH-J at Lee Clough is not shown and the route shown on the map differs from the definitive route of #522 between points H-II-J bearing greater resemblance to the route shown between points HH-I-J and referred to in this report as the 'historical' route. Stubbylee Lane is shown including the section of route between point U – UU and the property marked partway along the route has been labelled Height Barn not Stubbylee or Moss Meadows as it later became known. In comparison the six inch Ordnance Survey map published in 1849 shows this property as Stubbylee and Height Barn as being the property now known as Height Barn Farm.

The route at point U is shown extending from U towards point V but stopping short of there suggesting that some or all may have existed as a track at that time – but possibly that it did not provide a through route, was less well-defined or considered private.

There is no key to the tithe map and the route is not numbered and therefore does not appear in the schedule that accompanies the map. The route is shown coloured the same as the rest of the road network but the lack of a key means that it is not possible to know exactly what the colour

		<p>signifies.</p> <p>The lanes are not named on the map but this is consistent with other roads that are shown on the map (which are coloured but not named).</p>
Investigating Officer's Comments		<p>The route under investigation between points A-U and U-UU physically existed (following the line HH-I-J through Lee Clough) and appears to have been regarded as a public carriageway or bridleway by Spotland Parish in the 1840s – 1850s. However it appears that there was no link to New Line along the route U-BB and so the public would have used Stubblelee Lane to access Cutler Lane.</p> <p>The definitive route of #522 through Lee Clough (H-II-J) and the route currently used by the public (HH-J) probably did not exist at that time.</p>
Bacon's Map	1904	<p>G W Bacon was a publisher of maps and in 1890 his 'Commercial and Library Map of Lancashire from the Ordnance Surveys' was published, and later reprinted. As the title states, the maps were derived from Ordnance Survey maps.</p>
		
Observations		<p>A route which appears to be the route under investigation is shown and forms the only linear route along the south side of the valley running parallel to the former Turnpike road in the valley bottom. Bacon's Map shows the former Turnpike Road (now recorded as the A681 and A6066) and another, more minor route on the south side of the valley partially obscured by the word Tunstead. A route is shown passing through houses labelled as 'Greens' and east of there is shown as a being bounded by dashed lines as it crosses a watercourse that could indicate the crossing of Lee Clough at point I. Stubblelee Lane is not shown.</p>
Investigating Officer's Comments		<p>It is likely that the route shown along the south side of the valley formed part of the route currently under investigation and as it provided access to (and through) a number of properties that it was of such character and construction as</p>

		to be available to the public to use, at least on horseback in 1904. Stubbylee Lane may have been omitted due to a combination of the clutter of the map at that point and limitations of scale rather than it not being evident at the time since both slightly earlier and later maps showed it.
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.

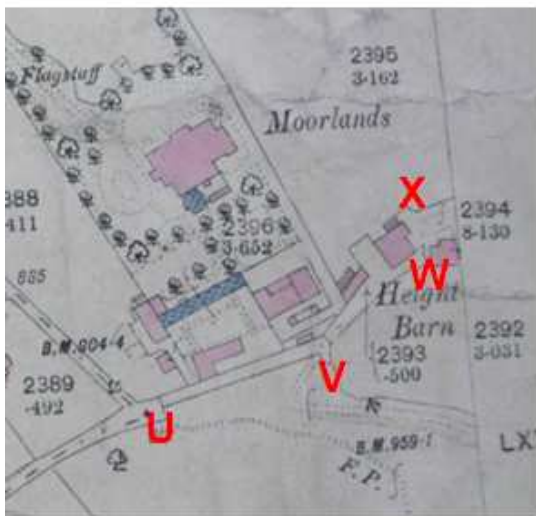
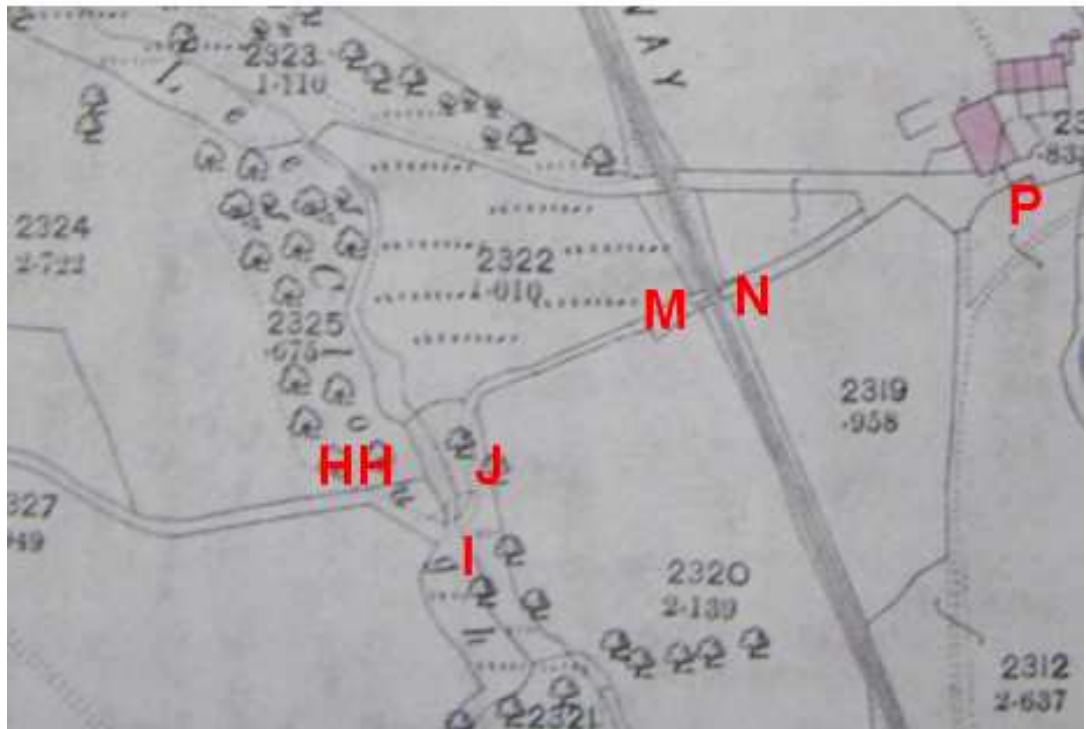
6 Inch OS map	1849	The earliest Ordnance Survey 6 inch map for this area.
----------------------	------	--

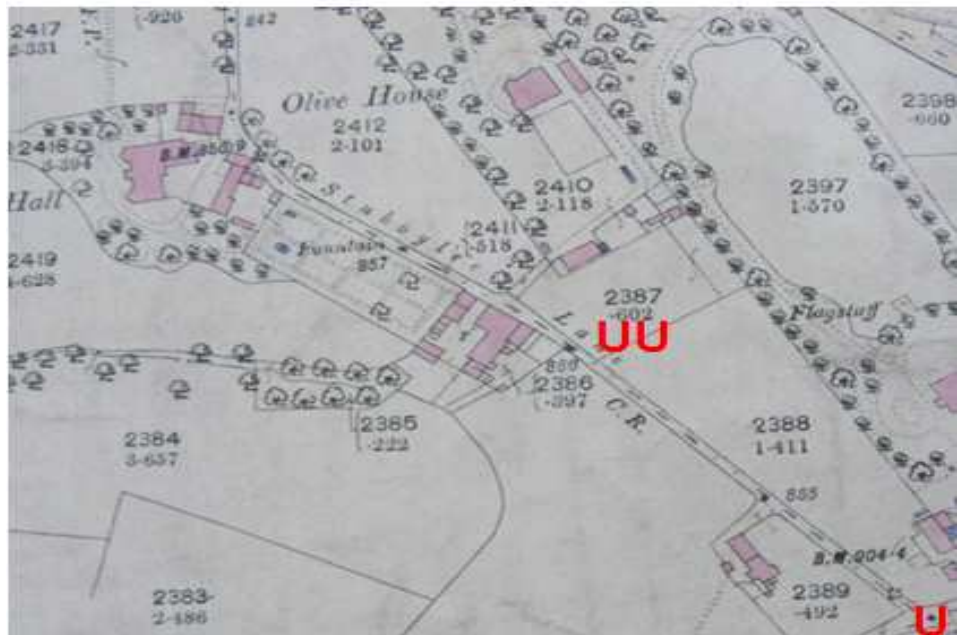


Observations		The whole of the route under investigation is shown
---------------------	--	---

		<p>(following the line HH-I-J through Lee Clough). From point A the route is shown passing Cutler Greens as a bounded track continuing past Fair Well (point E) to point I where it is shown crossing Lee Clough on the route that corresponds to the 'historical' route shown between HH-I-J on the Committee Plan. At point I a footbridge is marked but it is not possible to tell whether this was adjacent to a crossing for horses or carts atop the weir or whether it was the only crossing. The route currently used by the public between points HH-J and the definitive route of #522 between points H-II-J are not shown.</p> <p>From point K the route continues as a bounded track to Lee (point P). From Lee it is shown continuing bounded to the north by a solid line with a broken line along its southern side. It continues to Moss Meadows (point S). Between point S and point U the route appears to be unfenced until the immediate approach to point U. From point U it continues as a bounded track to Height Barn. The route through the buildings (W-X-Y) is not clear at this scale but from point Y it can be seen continuing as a narrower but still enclosed route to point Z and then as an unenclosed track, fenced on its southern side from point Z through to point BB at New Line (labelled on the map as a turnpike trust road known as the Trough Gate and Lee Mill Branch and owned by the Rochdale and Burnley Trust). Stubbylee Lane is shown (but not named) starting at the turnpike road and extending south to Stubbylee and then continuing as a bounded road to point UU and continuing on to point U. Access to Moss Meadow Farm (labelled as Stubbylee on the map) is via the route under investigation.</p>
Investigating Officer's Comments		<p>The whole length of the route under investigation is shown (following the line HH-I-J through Lee Clough) in the same manner of the general road network. The route would have provided access to a string of properties and farms and as it formed part of a longer route passing other farms and properties it may also have provided access along this part of the valley side avoiding use of the toll roads. The crossing of the watercourse at point I is labelled as being via a footbridge on the south side of the lane and a weir which may have provided a ford crossing. No gates are shown across the route.</p>
25 Inch OS Map	1893	The First Edition 25" is at a larger scale than the 6" map

showing the area in more detail.





Observations

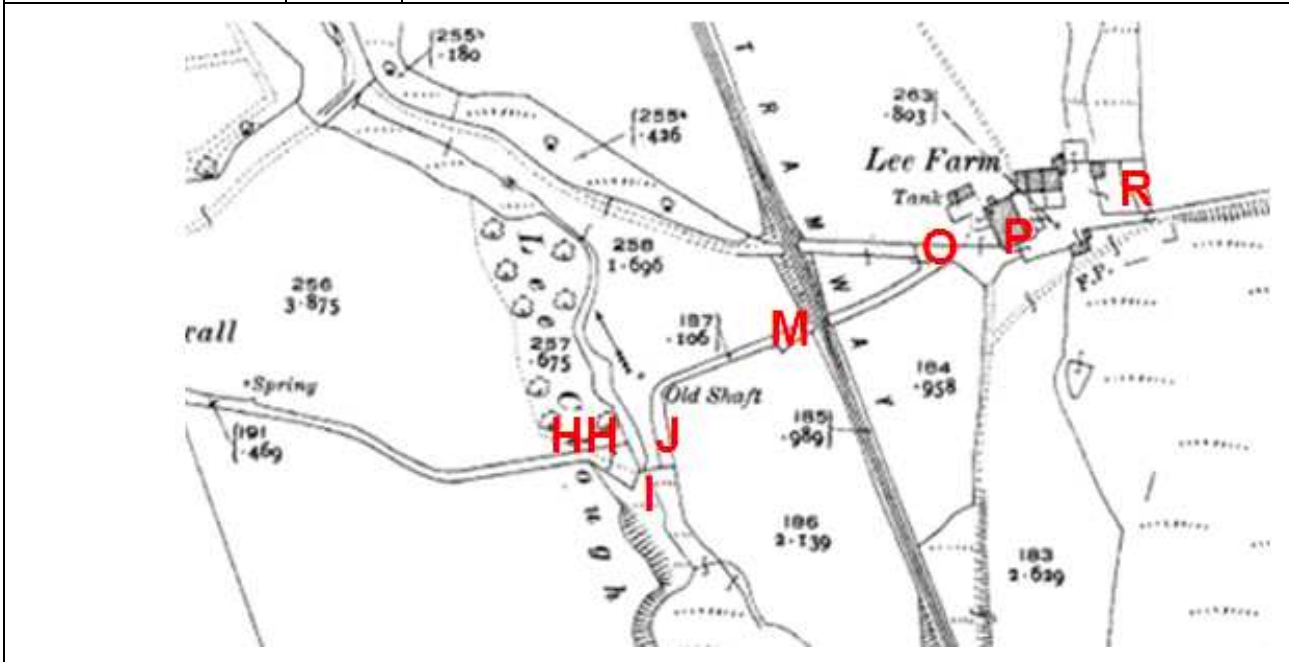
The whole of the route under investigation is shown (following the line HH-I-J through Lee Clough and W-X-XX-Y-YY at Height Barn). From point A it is shown passing Cutler Greens and Prospect Terrace (named as Fair View on the map). It continues past Fairwell to point I where it crosses Lee Clough (following the route HH-I-J) with no indication of the footbridge or weir marked on the earlier 6 inch map despite being at a larger scale. The definitive route of #522 along route H-II-J and the modern day route H-J are not shown on the map. The route then continues to points M-N where it crosses a tramway and on to Lee farm where a gate is shown across the route at point P. The route appears available through the farm and a second gate is shown east of the farm buildings at point R. Beyond the gate the route continues bounded on the northern side but open to the moorland to the south. It continues to Moss Meadows where it is crossed by a further gate at point S. It continues bounded on either side just beyond point T where it is crossed by a further gate and then continues to point U where access onto Stubbylee Lane appears to be open and ungated.

From point U the route continues to Height Barn but is gated just beyond point U and at point V. It continues through Height Barn Farm and then exits the farm at point X to continue as a double pecked line to a gate at AA and then continues between the houses to New Line at point BB. This section of the route is not marked 'F.P.' as is the north-south footpath crossing it near Height Barn, suggesting that it may have existed as a better track.

Neither Cutler Lane or Height Barn Lane are named as such on the map.

		<p>The section of Stubbylee Lane between points U and UU is shown bounded on either side but ungated and forming part of a longer route named on the map as Stubbylee Lane and extending from New Line near Newchurch Road (former toll road) through point UU to point U. Stubbylee Lane is marked with the letters 'C.R.' on the map. This is interpreted as indicating that the boundary was on the centre of road rather than labelling Stubbylee Lane as carriage road.</p>
Investigating Officer's Comments		<p>The route under investigation appears to be the sole access for vehicles to a string of properties and farms. Gates are marked across the route at points P, R, S, T, U, V, AA which may have restricted but not necessarily prevented access. The existence of gates along a public route would not be considered unusual in the 1800's particularly as most are situated in close proximity to farms where gates would be required for the control of livestock. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p> <p>The public status of the route is not indicated by colouring or shading and it appears that only the toll roads through the valley have been coloured and shaded. Shading was often used to show the administrative status of roads on 1:2500 maps prepared between 1884 and 1912. All metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. The route under investigation is not shown in such a way but neither are other known public vehicular highways in the area so no inference can be drawn in this respect.</p>
25 inch OS Map	1910	Further edition of the 25" map.
Observations		<p>The whole of the route under investigation is shown (following the line HH-I-J through Lee Clough). There are very few changes from the 1893 25 inch map. Between point C and point D at the eastern end of Prospect Terrace there is a dashed line across the route indicating a possible change in surface and east of there the route appears to split suggesting that the route continued from D towards point E with a separate access direct to Prospect Terrace. Gates are still shown across the route at points P and R (Lee Farm). The gate at point U may have been removed with a dashed line indicating a change in surface. A gate is shown across the route at point V on the approach to Height Barn Farm. The route from the farm to New Line (between points Y-AA is shown as an unenclosed track across a field with the gate shown on the earlier edition of</p>

		<p>the map at point BB possibly having been removed (a pecked line is visible suggesting a change in surface).</p> <p>Neither Cutler Lane or Height Barn Lane are named on the map.</p> <p>Stubbylee Lane is named and shown in the same way as it is on the previous edition of the 25 inch map.</p>
Investigating Officer's Comments		The route under investigation still appears to be the sole access to most properties and farms along the lane although Lee Farm and Fairwall may now have alternative access.
25 Inch OS Map	1930	Further edition of the 25 inch map.

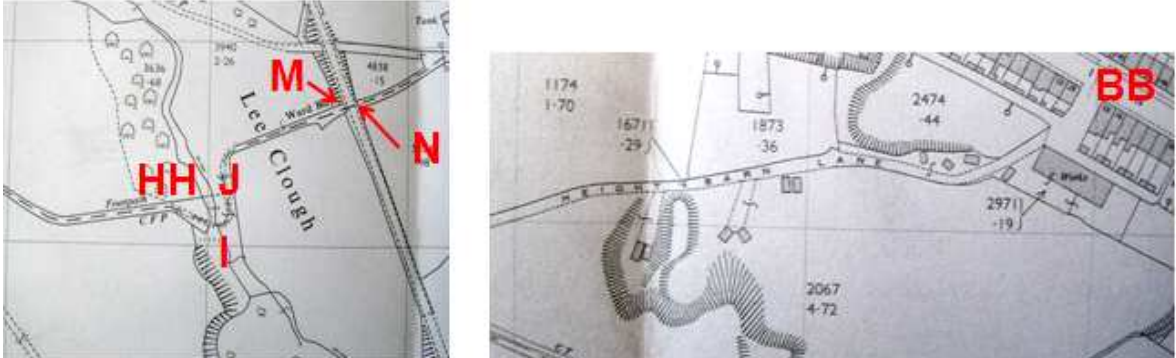




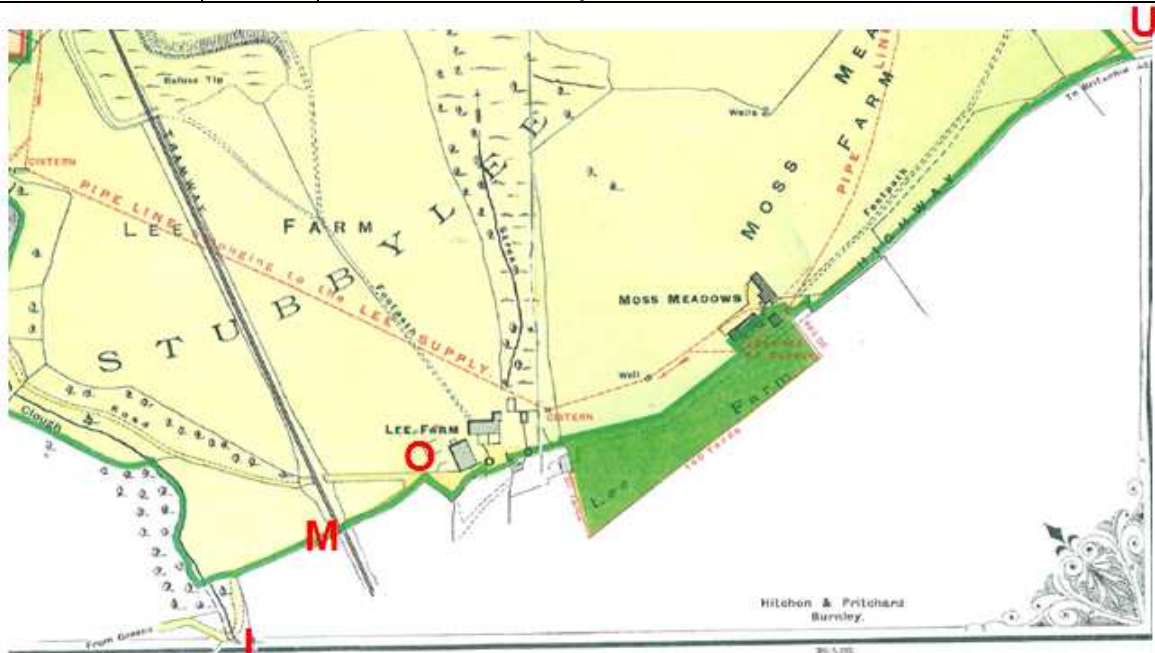
Observations		<p>The whole of the route under investigation is shown. The route is shown unaltered from earlier editions of the map from point A to point HH at Lee Clough. The route through Lee Clough looks like it may have still existed on the line HH-I-J but only if access existed through the boundaries shown on either side of the culverted crossing at point I. Documents examined later in the report (Finance Act and 1927 sale documents) suggest that the land either side of the Clough was in different ownership which may explain the existence of additional fencing at this point. Beyond point J the route under investigation appears to have been gated at points P,R,S, just east of point U (leading to Height Barn Farm) and at point AA. Between point Y and AA a quarried area appears to be accessed from the route under investigation. Stubblelee Lane between points UU and U is shown unaltered from earlier maps.</p>
Investigating Officer's Comments		<p>The route under investigation may by this date have been less suitable for vehicles to use due to the numerous gates along it. Stubblelee Lane continues to be open and un-gated.</p>
6 Inch OS Map	1956	<p>The Ordnance Survey base map for the Definitive Map, First Review, was published in 1956 (although the date of revision of the base map was before 1930) at a scale of 6 inches to 1 mile. This map is probably based on the same survey as the 1930 25-inch map.</p>



<p>Observations</p>		<p>The whole of the route under investigation is shown (via HH-I-J through Lee Clough). Cutler Lane is named west of point A but the route under investigation is not named.</p> <p>The route is open and unrestricted from point A passing Cutler Greens and Prospect Terrace and continuing past Fairwall to cross Lee Clough at point I where it is not explicit what access was available. From point J the route continues to cross the tramway. Gates are shown across the route at point P (Lee Farm), point S (Moss Meadows), point V (west of Height Barn) and point Y (east of Height Barn). The route between point V and point ZZ is open and unenclosed and appears to pass a quarried area. Access onto New Line at point BB is open.</p> <p>There are no gates across Stubbylee Lane which is shown as a continuation of the named part of Stubbylee Lane which starts at the junction with New Line and continues to point U.</p>
<p>Investigating Officer's Comments</p>		<p>The nature and use of the route is likely to be unchanged since the earlier map was published in the 1930s.</p> <p>Access appears to have been available along the full length of the route although it remained gated at a number of points. Access at Lee Clough is not explicit but it can be deduced from the shape of the boundaries on either side of the clough that there was a gate leading southwards out of the enclosed land either side.</p>

1:2500 OS Map	1962-1964	Further edition of 1:2500 mapping revised and published between 1962 and 1964.
		
Observations		<p>The whole of the route under investigation is shown (following the route HH-I-J through Lee Clough). Cutler Lane is named west of point A. The route is shown ungated from point A passing Cutler Greens, Prospect Terrace and Fairwall. The route is bounded by solid lines on either side from point A through to point HH. Near point H the route is annotated with the word 'footpath' immediately prior to the section HH-I-J which is shown crossing the watercourse as a double pecked line to point J from where it continues as a bounded route on both sides. The route appears to be gated at point M immediately prior to crossing a track that was formerly the tramway up into the quarry (now labelled as a refuse tip). A further gate appears to exist across the route at point N and also at point R east of Lee Farm. Moss Meadows has now been renamed as Moss Meadow Cottage but its sole access remains the route under investigation. A gate is shown across the route close to the cottage at point S. No further gates are shown along the route although a pecked line suggests a possible change in surface close to point O and point AA.</p> <p>The route is now labelled as Height Barn Lane on the map between points YY and AA.</p> <p>From point A through to point Y a long dashed line is shown along the centre of the route under investigation and is annotated with the abbreviation CR and ward boundary.</p> <p>Stubbylee Lane is shown and named as a continuous route from New Line to point U passing through point UU. The route is ungated and no change in surface is recorded between the section recorded as publicly maintainable and the section between point UU – U. A change in surface is marked at point U at the junction with the rest of the route under investigation.</p>
Investigating Officer's Comments		The use of the route may have been easier in the 1960s due to the removal of some of the gates along Height Barn Lane and Cutler Lane although the labelling as footpath west of

		Lee Clough suggests that use on horseback or with vehicles had declined by that time.
Stubbylee Estate Plan	1902	The plan has been dated by the draftsman as 26 May 1902 but there is no key.



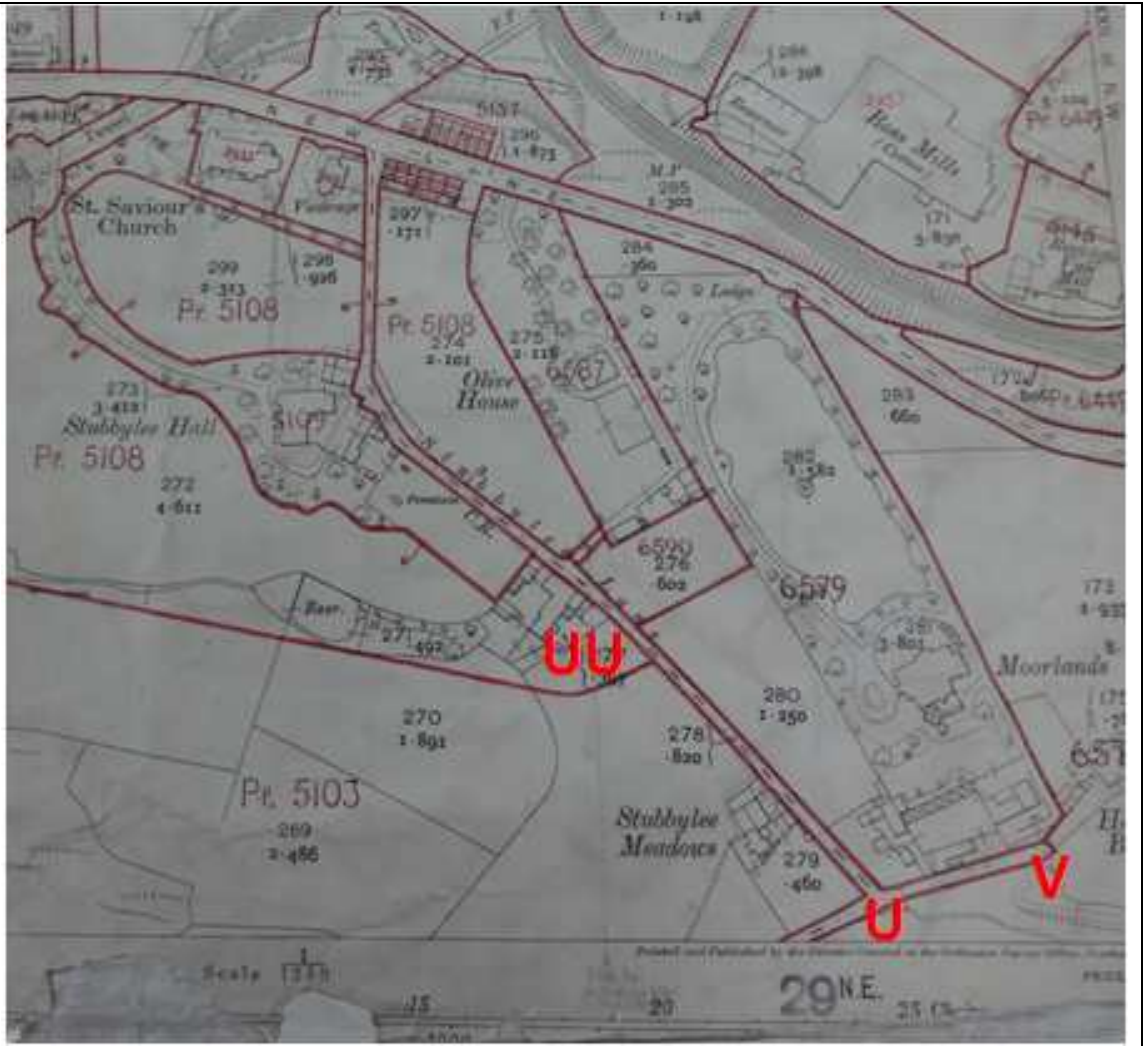
Observations		<p>The Estate plan shows the boundary of the Estate with a thick green line. Stubbylee Lane is named and coloured in the same way as other roads (public and private) shown on the map although none of the section that is being investigated (UU-U) is within the estate boundary.</p> <p>The route being investigated is shown from just west of point H and is annotated 'from Greens' at this point suggesting that it continued west along the route being investigated. The route is shown through Lee Clough on the alignment HH-I-J. From point K the estate boundary is shown to run along the route to point O continuing through to point U. Between point O and point U the route under investigation has been labelled 'Old Highway'. At point U the route can be seen extending towards Height Barn and is labelled 'To Britannia'.</p>
--------------	--	--

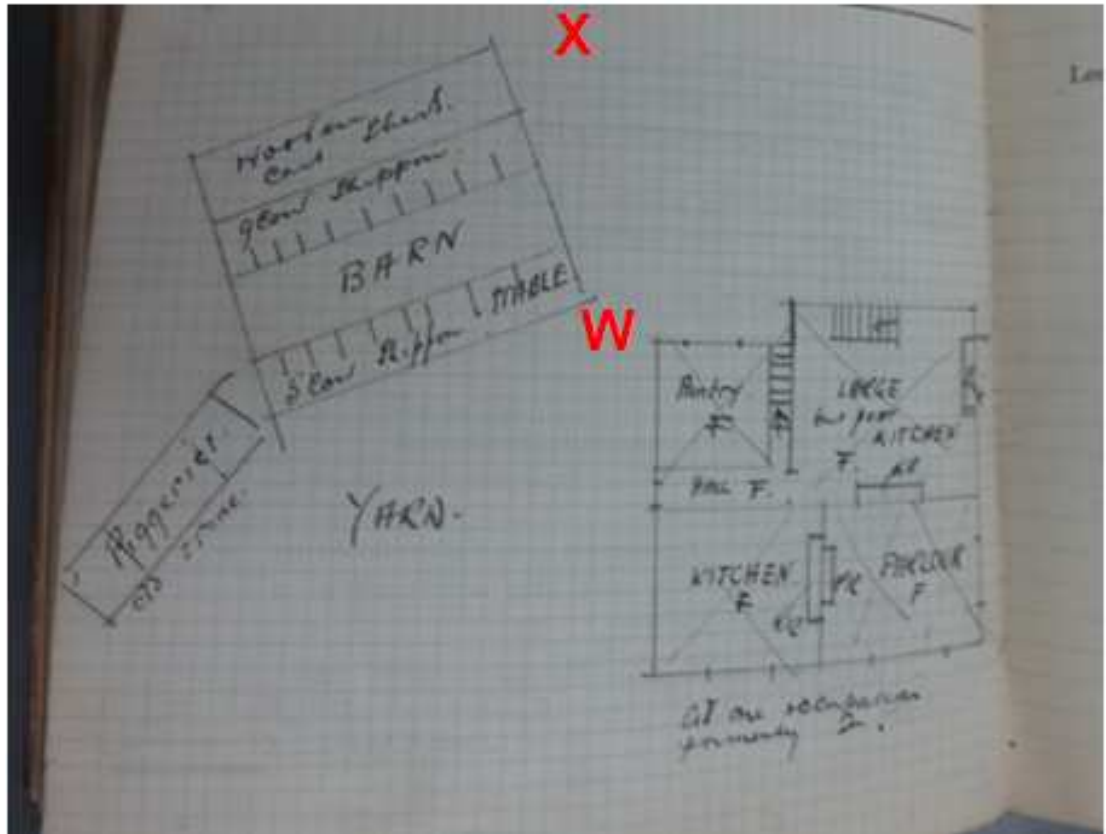
Investigating Officer's Comments		<p>The significance of the shading is unknown but the route appears to have been considered as significant through route with the ongoing destinations labelled at either end (Greens and Britannia) which is suggestive of a public route along the section shown on the map but also on the rest of the route from Cutler Greens and through Height Barn to New Line.</p> <p>The route is referred to on the map as an 'Old Highway' in contrast to others on that plan labelled as footpath, again suggestive of use by the public on horseback and possibly with horse drawn vehicles.</p>
----------------------------------	--	--

		The route in use at that time through Lee Clough appears to have been HH-I-J with neither route HH-J or H-II-J existing.
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>









Observations

No Finance Act maps or Schedules were available in the Lancashire Records Office. The Finance Act Maps (Ordnance Survey sheets 72/15 and 72/16) were therefore obtained from The National Archives together with the relevant Field Book entries.

Between point A and point I the route under investigation was excluded from the numbered hereditaments as was the section just past point S to point V and the section between points BB to AA but the other sections of the route are included as part of hereditament 5099 (point I – Point M and point N – just beyond point S), hereditament 5020 between point M to point N (the railway), and hereditament 5578 from point V to point BB.

Hereditament 5099 (which includes I-M and N-S) is described in the field book as including the property 'Lee House'. The route under investigation is not specifically mentioned but a deduction of £20 has been claimed for public rights of way or use and also £20 for easements. The list of calculations includes the words 'less footpath - £20'.

Hereditament 5020 (point M-N) refers to a large plot described in the field book as the 'tramway'. There is no mention of the route under investigation and no deductions made for public rights of way or user.

	<p>Hereditament 6578 (point V – AA) is described in the field book as Height Barn Farm, Bacup and is owned by James Holt. A £50 deduction for public rights of way or user has been claimed although the route(s) claimed for are not specified. The listings for 'Restrictions' says 'footpaths £50' with the words 'easements £20' crossed out. Also included in the field book entry is a hand drawn diagram of the layout of Height Barn Farm and outbuildings through which the route under investigation passes. The route is not shown or labelled on that plan.</p> <p>The 1:1250 Finance Act plan shows the whole of Stubbylee Lane excluded from the adjacent numbered hereditaments.</p>
<p>Investigating Officer's Comments</p>	<p>The exclusion from several adjacent hereditaments of the route between points A – I is suggestive of, but not conclusive of, public carriageway rights. Several of the plots of land are split by the route giving weight to the belief that the route was considered public and that it carried public vehicular rights (as public footpaths and bridleways were normally included within numbered plots).</p> <p>That part of the route under investigation that formed part of 'Lee Farm' (between points I – M and N- just beyond S) is shown contained within a hereditament suggesting that it was not considered to reduce the productive value of the land. This could have been because it was not frequently used by private or public vehicular traffic at the time, perhaps because the route was intersected by the tramway at that time which may have affected use.</p> <p>A deduction of £20 was claimed for the existence of public rights of way across the land but the route (or routes) for which the deduction was claimed were not specified. A number of recorded rights of way cross the land (including the route under investigation) so it is not possible to be certain which routes were acknowledged as public by the landowner in making the claim.</p> <p>Between points M-N (the tramway) there is no suggestion that the route under investigation was acknowledged as a public right of way at that time.</p> <p>The route between points S – V also appears to have perhaps been considered a vehicular highway and hence excluded from the adjacent hereditaments. Plots 5103 is split by the route giving weight to the belief that it was considered public and vehicular (as public footpaths and bridleways were normally included within numbered plots). From point V to point AA the route under investigation is included within a numbered plot for which a significant deduction of £50 has been claimed for public rights of way</p>

or user. A number of recorded rights of way cross the land (including the route under investigation) so it is not possible to be certain which routes were acknowledged as public by the landowner in making the claim. In addition, the hand drawn plan of the farmyard included within the field book does not show the route under investigation suggesting that if it was in use by the public at that time use was possibly infrequent enough not to have been noted by the valuer. The section AA-BB was excluded from the numbered hereditaments and is shown in the same way as New Line (public vehicular highway) suggesting that it was considered to be at part of the highway network at that time. The whole of Stubblelee Lane – including the route under investigation between points UU-U is shown excluded which suggests that it may have been considered to be a public vehicular highway.

Documents relating to the Sale of Land crossed by the Route under Investigation

1927 Documents relating to the sale of 37 lots that were put up for public auction on the instruction of the Trustees and Executors of the late James Madden Holt, Esq on 15th December 1927.





Observations

Lot 40 consisted of the farm known as Height Barn Farm and the boundary of the lot was shown on a plan included in the sale documents. The lot included that part of the route under investigation from just east of point U passing through Height Barn Farm to point AA and was under a yearly tenancy.

Lot 41 consisted of the farm known as Stubblelee and Moss Meadows Farm and included part of the route under investigation from just north east of point S to point U. It too was under a yearly tenancy.

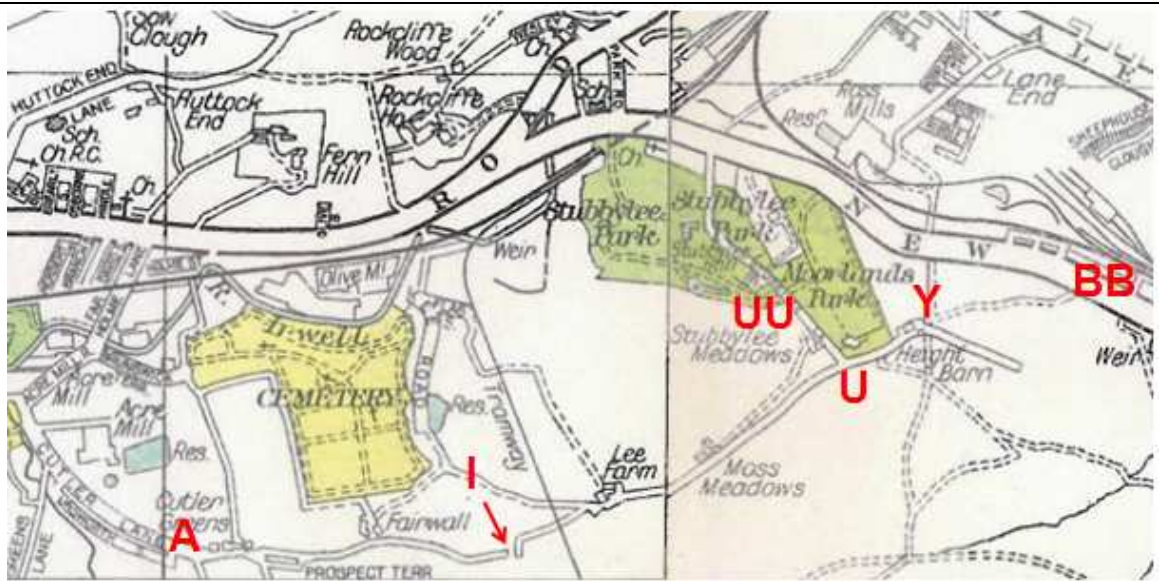
The sale plans are stated to be for the purpose of identification and explanation only, and, although believed to be correct, are not guaranteed.

Plot 41 appeared to include most of Stubblelee Lane from point UU to point U and labelled as Stubblelee Lane on the plan. It also included part of the route currently recorded as #505 and #504 between point S and point U which has been labelled as an 'old driving road' on the plan.

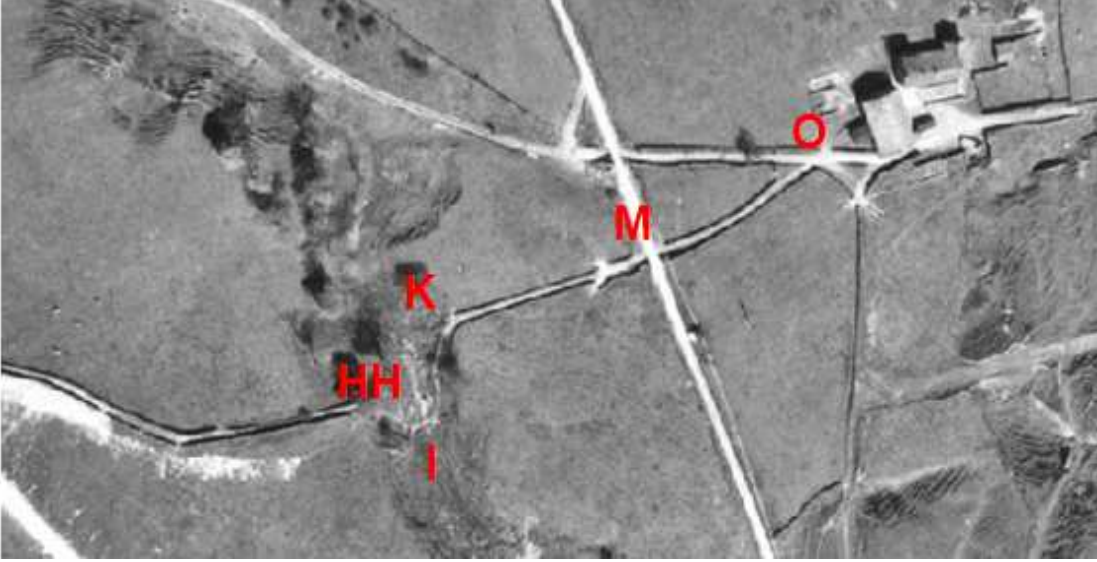
Plot 40 included the route under investigation from just east of point U to point AA. Water pipes are marked along the route and a 'road to the Moor' is shown to leave the route under investigation at point V. 'Right of Road' is written on the road from Stubblelee Lane, zigzagging via Height Barn with the word 'Right' written along the route under investigation between points U and V. However the yellow colouring does not follow the zigzag to Height Barn but runs more directly.

The route coloured yellow, and included in Plot 40 is specifically referred to as an occupation road for the use of persons specified in the sale particulars.

		<p>Lots 40 and 41 are both stated to be sold with and subject to rights of road over so much of the Old Driving Road shown on the Sale plan as crosses each Lot, and the purchaser of each Lot and his successors in title are said to be required to keep in repair so much of the old road as crosses the Lot purchased by him.</p>
<p>Investigating Officer's Comments</p>		<p>The sale documents' description of the route under investigation between point S and U as 'Old Driving Road' contrasts with the yellow coloured route described as an occupation road and spelled out as for the use of these and neighbouring properties, i.e. not the public at large. Both the terminology and the distinction suggest that it was a public road with at least bridleway status ('driving' animals rather than 'driving' a carriage). This would not have simply stopped at the junction with Stubblelee Lane and since the latter and the track up to the moor were specified as occupation roads the implication is that the route continued through Height Barn Farm to New Line and similarly westwards to Cutler Greens. Since these properties had particular rights over each other's land but no mention of private rights beyond that those rights would have been of no purpose had there not been public rights to continue from that point. There is no contradiction between the road carrying private rights and also being a public carriageway or bridleway; in the latter case there could be private vehicular rights coexisting with public bridleway rights (although that leaves the problem of what happens at the further boundary) but in the former case it can be prudent for a property holder to retain private rights to his property over his neighbour's land in the event that the public rights be diverted or stopped up from his neighbour's land which would otherwise leave him unable to reach the highway from his property. There is also no contradiction between the road being privately maintainable and carrying public rights – although nowadays most highways are publicly maintainable that has not been the case historically. A highway can be publicly maintainable, privately maintainable by one or more property holders, or both.</p>
<p>Geographia Map Directory</p>	<p>1934</p>	<p>This road atlas was published around 1934. The publisher claimed to have incorporated new districts, streets and trunk roads in the atlas and acknowledge the assistance of municipal and district surveyors when compiling the book.</p>



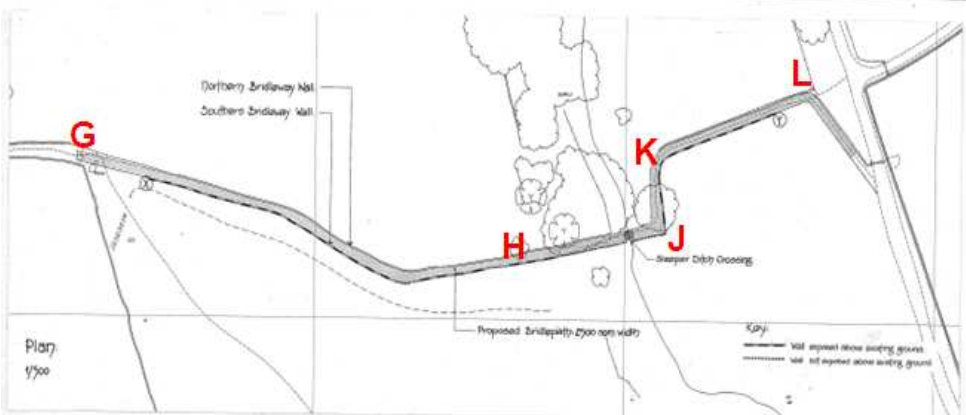
Observations		Height Barn Lane and Cutler Lane are shown, but not named. One short section of the route is missing at point I at Lee Clough and the lane is shown with a break at this point. Stubbylee Lane is shown and named. The route east of Height Barn at point Y is shown through to point BB unbounded (double pecked line).
Investigating Officer's Comments		Although Stubbylee Lane and most of Height Barn Lane and Cutler Lane appear to be useable, it would appear that use of Cutler Lane at Lee Clough may have declined. It may have been possible to use this section on foot or horseback but this is not recorded in the atlas. The section of the route east of Height Barn (Y-YY-Z-ZZ-AA-BB) was mostly unbounded and may have been the lesser route with the more obvious access to Height Barn being along Stubbylee Lane through UU-U-V.
Aerial Photographs	1945	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. The earliest set available was taken just after the Second World War in about 1945. The clarity is generally very variable and in this particular instance the quality of the picture is quite poor.
Observations		Most of the route can be seen on these photographs with the exception of the section either side of Lee Clough which is indistinct. The western end of the route at Cutler Greens and Stubbylee Lane can be more clearly seen.

Investigating Officer's Comments		It is likely that the sections of route that are most visible are those that are used for vehicular access to land and buildings.
Aerial Photograph	1960s	The black and white aerial photograph taken in the 1960's and available to view on Map Zone.
		
Observations		Most of the route can be seen on these photographs including the section either side of Lee Clough which is less well defined.
Investigating Officer's Comments		It is likely that the sections of route that are most visible are those that are used for vehicular access to land and buildings. The whole of the route appears to be in use but it is not possible to infer the status.
Aerial Photograph	1990	Coloured aerial photograph available to view at Lancashire County Council Offices (Cuerden)
Observations		The whole of the route under investigation can be clearly seen on the photograph although the exact route between points HH-J is uncertain.
Investigating Officer's Comments		The route under investigation existed in 1990 and was capable of being used. The exact route between point HH and J is uncertain.
Aerial Photograph	2010	Coloured aerial photograph.



Observations		The whole of the route under investigation can be seen on these photographs with the exception of the 'historical' route through Lee Clough (HH-I-J) which can no longer be traced. A new straight section of track has been constructed across Lee Clough (HH-J) replacing the old route.
Investigating Officer's Comments		No additional information, apart from noting the new section of track across Lee Clough, can be gathered from these photographs.
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.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in rural district council areas 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.
Investigating Officer's Comments		Bacup was a municipal borough in the early 1950s and so a parish survey map was not compiled.
Draft Map		The Draft Map of Public Rights of Way was given a 'relevant date' (1 st January 1953) and notice was published that the Draft Map had been prepared. It was placed on deposit for a minimum period of 4 months on 1 st January 1955 for the public, including landowners, to inspect 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		Cutler Lane (via H-II-J at Lee Clough) and Height Barn Lane (on a route between W-YY through Height Barn Farm) were shown on the Draft Map as public footpaths. Stubblelee Lane was not shown on the Draft Map. No objections or representations were made to the County Council about the inclusion of the route as a public footpath, the alignment of the route through Lee Clough or the fact that Stubblelee Lane was not included on the map.
Provisional Map		Once any representations that had been made had been 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 route under investigation was shown in the same way on the Provisional Map as on the Draft Map and no representations were made to the County Council.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962. Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders and creation orders be incorporated into a Definitive Map First Review.
Observations		The route under investigation was shown in the same way on the First Definitive Map as on the Draft Map.
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
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the route under investigation was considered to be of any higher status than public footpath by the Surveying Authority. There were no objections to the depiction of the status of the route from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Statutory deposit and declaration		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

<p>made under section 31(6) Highways Act 1980</p>		<p>highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
<p>Observations</p>		<p>There are no Highways Act 1980 Section 31(6) deposits lodged with the County Council for the area over which the routes under investigation run.</p>
<p>Investigating Officer's Comments</p>		<p>There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over this land.</p>
<p>Documentation relating to the Restoration of Lee Quarry</p>	<p>1997-2001</p>	<p>Lee quarry is owned and managed by Lancashire County Council. Between 1997 and 2001 the County Council undertook the restoration of the site which included, along its northern boundary, the route under investigation between points G-N.</p>
		



<p>Observations</p>		<p>Photographs and plans were examined that show that as part of the restoration of the site the route between points G-L was surfaced and the walls repaired and in places rebuilt. The plans also show that a sleeper ditch crossing was installed and the route between H-J surfaced and made available at that time.</p> <p>The County Council plans showing the proposed restoration work refer to the route as 'proposed bridleway'.</p>
<p>Investigating Officer's Comments</p>		<p>The route currently used by the public between points H-J at Lee Clough was constructed between 1997 and 2001 and the work carried out by the County Council was done with reference to the route being a bridleway. After speaking to the Engineer involved with the implementation of the scheme the word 'proposed' is believed to relate to the work to be carried out to physically construct the route rather than a proposal to 'create' a bridleway.</p> <p>The route shown between points HH-I-J on older maps and documents appears to have fallen out of use by this time. The route recorded as part of #522 between points H-II-J did not exist in 2001.</p>
<p>Lancashire County Council Highway Records</p>		<p>In 1929 the responsibility for non-county highways passed from district and borough councils to the county councils. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps coloured and annotated to mark public highways.</p> <p>A highway marked on the map is good evidence but many highways that existed both before and after the handover are not marked. In addition, the handover maps did not have</p>

the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions. The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date list of streets maintained at the public's expense.

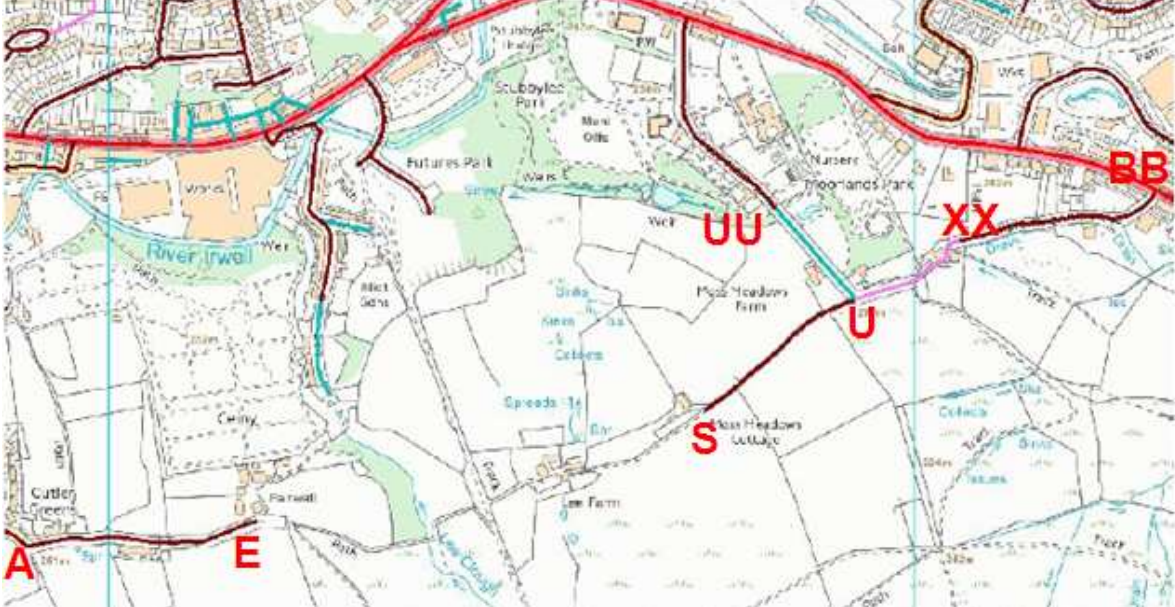


Observations

The scanned maps that form part of the County Council 'highway adoption*' records were viewed on MapZone. It is not known when these maps were compiled. Publicly maintainable roads are shown in red.; all the other red shaded routes on the sheet are accepted as full highways - footpaths and bridleways are not shaded. Just over half of Stubblee Lane is shown coloured red but the length under investigation between point UU to point U is not. However, the whole of Cutler Lane and Height Barn Lane is shown red, from point A through to point BB, including the section at point I into Lee Clough. i.e. the route shown as publicly maintainable road follows the historical line not that of the Definitive Map where these differ.

* although referred to by those who use them as adoption records very few of these highways have actually been formally adopted but are publicly maintainable by custom, reputation or age.

Investigating Officer's Comments	<p>It is not known why only part of Stubblelee Lane is shown as publicly maintainable. The rest of the route under investigation is shown as 'adopted' i.e. maintainable at public expense. Although this map was not made in order to show public rights it was to show maintenance responsibility and in practice that requires knowledge of what traffic it should be maintained for. Whilst these records are not conclusive evidence that the routes shown on them are public vehicular highways the observation that all the other ways shown in the same manner were accepted to be carriageways carries some weight, together with the Planning Inspectorate Consistency Guidelines which state at 2.34 that unclassified county road status carries some inference of public vehicular rights.</p> <p>Highways which are not publicly maintainable are not included hence no inference can be drawn that the section UU-U was not highway, only that it was not considered to be publicly maintainable.</p>
----------------------------------	--



Observations	<p>The adoption layer that can be viewed on MapZone records the first part of the route under investigation (A-E) as part of a public road known as Cutler Lane (U7859). It is described as running from Unsworth Street to Dead End. The route from E-S is not recorded on the adoption layer as being a publicly maintainable highway. From point S to point U the route under investigation is shown as a publicly maintained road known as Height Barn Lane (U7912) and is described as running from Stubblelee Lane to Dead End.</p> <p>The first part of Stubblelee Lane from New Line is also shown as being a publicly maintained road (U7913) to point UU. Between point UU and point U the route under investigation is recorded as Stubblelee Lane (X863) and privately maintained.</p> <p>The section of Height Barn Lane between point U and point</p>
--------------	---

		XX is recorded as Height Barn Lane (F7469) and recorded as publicly maintainable. From point XX to point BB on New Line the remainder of the route is recorded as Height Barn Lane (U7912) - a publicly maintainable unclassified road from New Line to F7469.
Investigating Officer's Comments		These records conflict with the adoption plans which show the whole of the route under investigation (with the exception of Stubblelee Lane) as being publicly maintainable road.

Part of the route under investigation crosses the northern side of a Site of Scientific Interest and Biological Heritage Site, namely the section between points G and N through the Lee Quarry restoration site (owned and managed by Lancashire County Council). The route does not cross access land under the provisions of the Countryside and Rights of Way Act 2000.

Landownership

The section of the route A-G is unregistered land, G-N is owned by Lancashire County Council. N-P is owned by Mr Peter Anthony Cain, the section P-S is owned by Mr John Thorpe and Rebecca Jane Thorpe. S-U-UU is owned by John Robert Bull and Hilary Bull, U-V is unregistered. V-X is caution land and both Legal Aid and The Law Society have been consulted in respect of this land, none have confirmed they own the land. The section around point X-YY is unregistered and the small section around Z is owned by Jack Anthony Coates and Christine Coates, the rest of the route from ZZ-BB is unregistered.

Summary

The length of Cutler Lane through to the junction of Stubblelee Lane and Height Barn Lane (A-U) is shown as a cross road on Hennet's map published in 1830. The implication, though not conclusive, is that it was likely to have been a public carriageway or at least bridleway. The consistent depiction of this route, still visible on the ground today, supports this as does consideration of its possible use as a route along the valley without requiring the payment of the toll on the main road. If this was not a through route it is unlikely to have been a public carriageway but Hennet shows it was possible to continue to New Line via Stubblelee Lane (U-UU). This alignment requires further consideration as 19th Century roads rarely took significant, sharp changes in direction as this does and the natural alignment is straight on along Height Barn Lane: however, it is arguable that whilst such alignments are rare in roads derived from the medieval network this may have come into use, or greater use, much later to avoid the tolls on the main road along Rossendale Valley which had been turnpiked only about 50 years before Hennet's map. Traffic heading into Bacup could take Stubblelee Lane (via U-UU) whilst traffic heading east might have taken the less well defined, and partially unenclosed, route through Height Barn (from U to BB) which although not shown on Hennet as a cross road as a through route may still have existed as a connection at the time but was not as significant. It is suggested that on balance the public rights were likely to be vehicular.

The coloured road on the Tithe Award map only about 20 years later is consistent with this route via Stubblelee Lane (A-U via HH-I-J at Lee Clough and U-UU) being public carriageway or bridleway and the 1st Edition Ordnance Survey 6 Inch Map which was also produced at about the same time depicts it open to and in the same manner as the general road network. It also shows Height Barn Lane through to New Line (U-BB). On the 1st Edition 25 Inch Map the route is shown similarly (A-U via HH-I-J at Lee Clough, U-UU and U-BB).

It has generally been considered that Ordnance Survey maps show the physical situation at the time of the survey without regard for whether they had public rights, although there was no disclaimer prior to 1888, but there is a growing awareness by academics that by the end of the 19th Century the Ordnance Survey were selling large numbers of maps to members of the public and promoting the advantages in finding ways that they could travel in unfamiliar areas, which does have the implication that those routes depicted were likely to be public to some extent. However, the main inference from these is the existence of the enclosed route from Cutler Greens to Height Barn Farm (A-U-W via HH-I-J at Lee Clough) and down Stubblelee Lane (U-UU), the unenclosed route of Height Barn Lane to New Line (X-BB) on the same line as available today and the absence of gates across the whole route although there were 2 pinch points at the yards of Stubblelee Hall (north of the claimed route) and Height Barn Farm (between W-X).

Bacon's map was at a small scale and only reasonably significant ways were shown but it had the pedigree of being based on the Ordnance Survey. This was the earliest map showing the main route being via Height Barn to New Line (U-BB) instead of via Stubblelee Lane (U-UU), which was not shown at all, although it is possible that map clutter influenced this to some extent.

The Estate Plan from 1902 was contemporaneous with Bacon and similarly supports the through route via Height Barn (U-BB) although also shows Stubblelee Lane (U-UU) albeit with no indication of its status. Cutler Lane is labelled as 'old highway' between points O-U.

About a decade later the Finance Act 1910 map is consistent with public carriageway along Cutler Lane (the ends shown excluded (A-I, S-V and AA-BB) and able to be joined via a track not excluded (I-S) and via Stubblelee Lane (U-UU) to New Line but not shown excluded through Height Barn (V-AA). It is not unusual for a highway between settlements to be enclosed at either end but to cross or follow the edge of fields in between but a through route is far more probable than 2 culs de sac. The Planning Inspectorate Consistency Guidelines refer at 2.37 to *Eyre v New Forest Highways Board 1892* where it was held that where a short section of uncertain status exists it can be presumed that its status that of the two highways linked by it.

This apparent preference for the continuation along Stubblelee Lane is reversed in the 1927 sales particulars which show Cutler Lane (A-U) as an old driving road, i.e. at least bridleway, with an implication of it continuing through Height Barn (U-AA) and hence to New Line (AA-BB) but not via Stubblelee Lane (U-UU) which is detailed as an occupation road.

The hand-coloured highway records are of unknown date but should have been derived from the handover maps dating from shortly after the sales particulars and concur that the main route, in terms of their focus on public maintenance, was via Height Barn. The implication of this is that the Cutler Lane (A–U) – Height Barn Lane (U–BB) route was public carriageway but the current electronic highway records, which should not have changed without either a legal change or evidence-based correction, show the ends of Cutler Lane as unclassified 'U' road (A–E and S–U) but not the middle (E–S), in a similar way to the Finance Act map, the ends of Height Barn Lane as unclassified 'U' road (XX–BB) but the middle (U–XX) as an 'F' class, assumed to signify footpath.

With specific reference to the route through Lee Clough it appears that the historical route through Lee Clough followed the line HH-I-J as shown on the maps and aerial photographs examined. No evidence was found to suggest that a route has ever existed along the length H-II-J and it appears that a drafting error occurred during the preparation of the Definitive Map and Statement, perhaps due to the lack of clarity on the base map at that point, which resulted in the route H-II-J being recorded as the line taken by that part of #522.

The route HH-J came into existence as part of the restoration work carried out on the Lee Quarry site by the County Council between 1997 – 2001. Photographs and plans retained by the County Council show the work carried out to construct the route HH-J was done so with the intention of the route being used as a public bridleway. Photographs confirm that the route HH-J existed in 2001 and that the historical route HH-I-J was no longer in existence at that time.

Although much of the route has evidence for public carriageway the effects of the Natural Environment and Rural Communities Act 2006 would be to extinguish any public mechanically propelled vehicle rights from most of the route where it is recorded as public footpath (A-H, J-W & YY-BB) or not recorded on either the Definitive Map and Statement or the List of Streets (H-HH-I-J & U-UU). The exception for ways which have mostly been used by the public in mechanically propelled vehicles over the relevant period could not have applied for most of the route as it was not accessible for vehicles and the remainder were short culs de sac for which we are not aware of evidence or allegations of such use. This means that if it is concluded that these are carriageways they should be recorded as restricted byways. The exception is the section through Height Barn Farm (W-X-Y-YY) which is not recorded on the Definitive Map and Statement but is (and was at the relevant time) recorded on the List of Streets. Hence any mechanically propelled vehicular rights over this short section would not have been extinguished and carriageway rights should be recorded as a byway open to all traffic, albeit a 'Pegasus byway, i.e. isolated by routes without public rights for mechanically propelled vehicles.

County Secretary and Solicitor's Observations

There is no applicant with regards to this investigation although user evidence has been submitted by Mrs Christine Peat on behalf of the Forest of Rossendale Bridleways Association Bridleways Group.

Mrs Peat has submitted 41 user evidence forms in support of part of the route A-U-UU to be a Bridleway.

The users acknowledge the route in years:

0-10(5) 11-20(8) 21-30(14) 31-40(9) 41-50(3) 50+(2)

39 users have used the way on horseback or leading a horse, 2 users have used the way on a bicycle.

The users have used the route between the years of:

1959-2010 & 1988-2010	1962-1966 & 1989-2011	1969-1974	1970-1980 & 1990-1997	1970-2011
1975-2010	1975-2011	1976-2011	1977-2011	1978-2000
1978-1983 & 2001-2011	1978-1996 & 2006-2011	1981-2011	1983-2011	1985-2006
1986-2003	1986-2008	1986-2011 (5 users)	1987-2011	1990-2005
1990-2002	1990-2011 (3 users)	1991-2011	1996-2011	1994-2000
1994-2011	1999-2011 (4 users)	2001-2011 (2 users)	2001-2005 & 2010-2011	2004-2011
2005-2011				

The users were going to and from:

A circular route, home to park and back, Stubblelee to Stacksteads, Bacup to Stacksteads, Cutler Lane to New Line, Stacksteads to Britannia, Stacksteads to Shawforth, Stacksteads to New Line, Waterfront to top of New Line, Rochdale to Stacksteads, Stables at Fairwall, New line to Coupe, to Stubblelee Park, from Cowpe to Lee Quarry.

The main purposes for using the route are as follows:

Pleasure, riding, meeting friends, recreational riding, leisure, cycling, endurance training, mountain biking, hacking and for access.

The use of the route on horseback / leading a horse or on a bicycle per year varies: 2-6 times, 12-20 times, 21-40, 50-60, weekly, 100, twice per week, 150, 300.

28 users have also used the route on foot, none of the users have ever used the way on a motorcycle / vehicle, 3 users have used the way on a bicycle.

34 users agree the route has always run over the same line, 1 user states there has been no change to the route but the surface has changed due to the work on Lee Quarry, 1 user claims they have used 2 routes 'exits by municipal offices and other exits on Height Barn Lane', another user claims the route is only this way since the redevelopment of Lee Quarry, and 2 users accept there is a slight change where the track crosses the access road to Lee Quarry when renovation work was carried out some years ago.

38 users claim there are stiles / gates along route, users mention they are at Lee Farm, Moss Meadow Cottage, Stubblelee Back Lane, Fairwall Farm, Quarry entrance and exit, Moss Meadow Farm, entrance to Farm Yard, some of the users mention just gates, others mention both gates and stile, some users mention 6-7 gates / stiles and others mention 3-4. 3 users claim there are no stiles / gates / fences along the route.

39 users agree that the gates are not locked and do not prevent access, 2 users didn't answer these questions.

None of the users have ever worked for a landowner over which the route runs, 1 user has been a resident at Fairwall Farm from 1996-2005 but did not receive any instructions from the landowner as to the use of the way by the public.

All 41 users have never been stopped or turned back when using the route, 3 users have heard of someone else being stopped or having to turn back when using the route when work was being carried out on the Quarry.

None of the 41 users have ever been told that the route they were using was not a public right of way. None of the users have ever seen any signs / notices across the route such as 'private' or 'no access', and none of the users have ever asked permission to use the way.

Consultations have been undertaken with the landowners and the following responses have been received:

A letter from Moss Meadow Cottage

The landowners state there are many services such as the electricity board, postal services and delivery vans who are frequent users in addition to visitors to these properties, as well as the many walkers and horse riders. They also mention that public footpath 506 is far from being a reasonable walking route or even being car friendly, as it is full of holes and after any substantial rain, a portion of it soon resembles a lake of some 18 inches depth at the centre.

A letter from Mrs A Swift

Mrs Swift has written in to confirm she has used the route from Cutler Lane through to Height Barn Lane from 1974-2010 both on foot and on horseback and has never been challenged or stopped whilst using the route.

Assessment of the Evidence

The Law - See Annex 'A'

In support of the Claim

Significant early map evidence

User evidence forms

Against accepting the Claim

Conclusion

The majority of the route under consideration is currently recorded as a public footpath. The Environment Director has investigated this route considering whether sections of footpath (detailed below) ought to be highways of a different status, carrying higher public rights namely the status of a restricted byway.

In addition to the above, investigation included the addition of a bridleway between sections HH-J, the addition of a restricted byway between points H-HH-I-J, the addition of a restricted byway between sections UU-U and the addition of a byway open to all traffic between points W-X-Y-YY. It is further suggested that section H-II-J is deleted from the Definitive Map and Statement.

There is no express dedication however; 41 user evidence forms have been provided for the claimed section shown on the plan as A-U-UU claiming the route has been used as a bridleway, therefore S.31 Highways Act 1981 will be considered for this section as well as common law inference of dedication.

There is no express dedication or user evidence in relation to the remainder of the route to be recorded as a restricted byway, byway open to all traffic and so the inference, on balance, of its dedication at Common Law is said to stem from how it was recorded on the early maps.

It is suggested that the Committee firstly consider the west to east route A-I - BB and consider the evidence to decide on balance the public rights dedicated thereon and then apply recent changes in the law under the Natural Environment and Rural Communities act 2006

It is advised the Committee has to consider whether evidence from the old County maps and other documentary evidence coupled with the evidence on site does on balance indicate how the route should be recorded.. The analysis of the map and documentary evidence by the Executive Director for Environment suggests there is sufficient evidence on balance to indicate that this route was on balance dedicated as a public carriageway and is recorded by the early mapmakers as such. It is therefore suggested that there are circumstances from which to infer an early dedication of Cutler Lane and Height Barn Lane for use by the public. Being a through route, the evidence points in the direction of this route being a carriageway.

The east-west route should have historically been recorded as a byway open to all traffic however; it is no longer possible to record the majority of this old route as a byway open to all traffic due to the introduction of section 67 Natural Environment Rural Communities Act 2006 (NERC Act). The implication of this section has meant that as this route was originally recorded on the definitive map and statement as a public footpath, any existing public rights of way for mechanically propelled vehicles have been extinguished. This therefore means that the highest status that can be achieved by this section of route except for the short section W-YY is that of a restricted byway.

It is noted that there has been modern use on horseback of the section A-U but should committee be satisfied with the documentary evidence the more modern use would not bring about a dedication , instead it would be modern use of an old route dedicated many decades earlier. If Committee does not consider there to be sufficient documentary evidence from which to infer early dedication, Committee will need to consider the user evidence and it is suggested that this may be sufficient from which to infer dedication of a bridleway in recent times to point U. The second section of this route to point UU is dealt with below.

The Committee will note that the physical evidence of a significant route still exists on site on the same line. The earlier maps show the existence of the enclosed route from Cutler Greens to Height Barn Lane to New Line, on the same line available today.

Taking all the information into account and in particular noting how it was recorded on the old County maps, the Committee may consider that on balance there is sufficient evidence from which to infer that this section has restricted byway status and the claim should be accepted.

In respect of W-X-XX-Y-YY the evidence namely the earlier maps suggests the route was used as a carriageway and as this section of the route was recorded at the relevant time on the List of Streets but not on the Definitive Map and Statement and there is evidence to suggest this route was a public carriageway, in accordance with the Natural Environment Rural Communities Act 2006, the route can be recorded as a byway open to all traffic, unlike the remainder of the route. The route does not connect to any other byway open to all traffic and should the remainder of the claim for the upgrading to a restricted byway be accepted it is unlikely this route will be used by any mechanically propelled vehicles however; the recording of this route as a BOAT is in accordance with the evidence and therefore, it is suggested to Committee that this section of the east west route as a BOAT is accepted.

Turning to the claim for the deletion of section H-II-J, there appears to be no map or documentary evidence to suggest that a route has ever existed along this length; it appears from the map evidence that there is sufficiently cogent evidence to suggest that this length was added to the Definitive Map and Statement in error. The alternative route that has instead been depicted on the earlier maps and documents is the length H-HH-I-J which is the route referred to above. It appears from the Tithe Map that this line was regarded as a public highway by Spotland Parish in 1840s-1850's and used as part of the wider route A-U. The earlier OS maps also corroborate the above route and show this in the same manner as the general road network. On the basis of the evidence, Committee is advised that there is sufficient cogent evidence of an error being made recording the public rights along line H-II-J instead of the correct line of H- HH-I-J.

Considering the evidence for a bridleway along the route HH-J, it is understood this section of the route came into existence between 1997-2001 as part of the restoration work carried out on the Lee Quarry site by Lancashire County Council. The route was constructed by Lancashire County Council with the intention that this was used as a public bridleway. Map evidence illustrates that in 2001 the route HH-I-

J was no longer in existence and instead HH-J came into existence. The 41 user evidence forms suggest use by 39 users on horseback for varying frequencies without interruption and use by the public as of right. An inference of dedication may be shown at common law if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication. The evidence for this section points clearly and unequivocally to an intention on the part of the landowner to dedicate this line as a bridleway only. The route has not been in existence for 20 years and therefore deemed dedication under S.31 Highways Act is not able to be satisfied.

Turning to the spur section U-UU, this route appears on the earlier maps also and; It is suggested that the route may have come into greater use by the travelling public, to avoid the payment of the toll on the main road, along Rosendale Valley. The earlier maps are consistent with this route being public carriageway. The Finance Act 1910 map also depicts this route and therefore it is reasonable to assert a public right of way in vehicles subsists over this section of the claimed route. Again this section is affected by the provisions of the Natural Environment and Rural Communities Act such that recording it as a BOAT cannot be correct and instead restricted byway would be the appropriate status. Committee is therefore advised to agree that this section be recorded as restricted byway. If Committee does not consider there to be sufficient documentary evidence from which to infer early dedication, Committee will need to consider the user evidence and it is suggested that this may be sufficient from which to infer dedication of a bridleway in recent times U to point UU.

Taking all the evidence into account Committee may consider that the investigations of the Executive Director for Environment has shown that this old route should be recorded as carrying higher rights than footpath together with a section of more recent bridleway and evidence of a line recorded in error and that Orders be made to reflect these discoveries.

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 the Agenda Papers. 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: 804/532	Various	Megan Brindle, County Secretary and Solicitor's Group, 01772 535604
Reason for inclusion in Part II, if appropriate		
N/A		