

Regulatory Committee
Meeting to be held on 13 February 2013

Electoral Division affected: Clitheroe – Ribble Valley North East

Wildlife and Countryside Act 1981
Claimed Public Footpath from St Paul's Terrace to Edisford Road, Clitheroe, Ribble Valley Borough
Claim No. 804/516
(Annex 'A' refers)

Contact for further information:
Miss J Mort, 01772 533427, County Secretary & Solicitors Group
Jennifer.mort@lancashire.gov.uk
Mrs J Elliott, 07917 836626 Environment Directorate
Jayne.elliott@lancashire.gov.uk

Executive Summary

Application for a public footpath from St Paul's Terrace to a point on Edisford Road, Clitheroe, Ribble Valley Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/516.

Recommendation

- i. That the application for a public footpath from St Paul's Terrace to a point on Edisford Road, Clitheroe, Ribble Valley Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/430, be accepted in part. That the section shown between points A-C be accepted and the section between points C-F be not accepted.
- ii. That an Order be made pursuant to Section 53(2)(b) and Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a public footpath from St Paul's Terrace, Clitheroe, Ribble Valley Borough, for a distance of approximately 92 metres to the gap in boundary fence providing access into St Paul's Church grounds (currently blocked) Grid Ref. SD 7318 4154 shown between points A and C on the Committee plan.
- iii. That, being satisfied that the higher test for confirming the said Order can be satisfied, the said Order be promoted to confirmation if necessary by submitting it to the Secretary of State.

Background

An application in accordance with the Wildlife and Countryside Act 1981 Schedule 14 has been received to make an Order under section 53(3) of that Act to amend the Definitive Map and Statement of Public Rights of Way in Lancashire by adding a public footpath extending from the end of St Paul's Terrace to a point on Edisford Road, Clitheroe, Ribble Valley Borough and shown between points A – F on the attached plan.

The claimed public footpath is approximately 120 metres long extending from a point at the south western end of St Paul's Terrace at point A on the plan in a south easterly direction to the rear of Beech Grove Residential Care Home and St Paul's vicarage to exit through the grounds of St Paul's Church onto Edisford Road at point F on the plan.

The County Council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 sets out the tests that need to be met when reaching a decision; also current case law needs to be applied.

An order will only be made 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 once 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 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 clear guidance about the interpretation of evidence.

The County Council's decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by landowners, consultees and other interested parties produced to the County Council before the date of the decision. Each piece of evidence will be tested on the balance of probabilities. It is possible that the Council's decision may be different from the status given in the original application. The decision may be that the routes have public rights as a footpath, bridleway or restricted byway or byway open to all traffic, or that no such right of way exists.

Consultations

Ribble Valley Borough Council

Ribble Valley Borough Council has been consulted and no response has been received. It is assumed in the circumstance it has no comments to make.

Clitheroe Town Council

Clitheroe Town Council has been consulted and one of the Ward Councillors, Valerie Cooper, had comments to make in objection to the Order.

She explained that the path had been 'created' in 1995 by St Paul's Church to allow its members to walk from the parish hall to the church. When the parish hall became derelict the path was no longer needed by the church goers and it was closed.

Councillor Cooper stated that she had also spoken to the manager of the residential home which the path ran behind and that they indicated that when the path was open there had been problems with youths.

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'.

Executive Director for the Environment's Observations

Description of Route

Points annotated on the attached plan.

Point	Grid Reference	Description
A	SD 7310 4159	Junction with St Paul's Terrace
B	SD 7312 4158	Pedestrian gate
C	SD 7318 4154	Gap in boundary fence providing access into church grounds (currently blocked)
D	SD 7319 4154	Junction of tarmac paths within church grounds
E	SD 7320 4153	Junction of tarmac paths within church grounds
F	SD 7320 4153	Church gates at junction with Edisford Road

Description of Route:

A site inspection was carried out on 22nd November 2012.

The claimed route commences at point A on the Committee Plan at its junction with the south western end of St Paul's Terrace and passes through a 3 metre wide wooden 5 barred field gate providing access to the (former) parish hall.

The gate was locked on the day of inspection.

Once through the gate the claimed route continues in a south easterly direction along the northern edge of the parish hall car park to a pedestrian gate at point B. Between point A and point B the claimed route crosses a tarmac surfaced car park, the line is not defined and there is no evidence of recent use.

The 1.1 metre wide metal gate at point B is clearly visible from point A. It appears to be an old gate and it is positioned between a mature tree and the stone wall forming the southern boundary of Beech Grove Residential Care Home. The gate is hung on a metal post positioned at the side of the tree and closes onto the corner of the wall. A relatively new attachment has been fixed to the wall securing the pedestrian gate permanently closed.

Beyond point B the claimed route continues along a tarmac surfaced path enclosed by fencing. The fencing along the north side of the route (and separating the claimed route from the nursing home) consists of an old metal railing fence of the same style as the pedestrian gate at point B. This fencing continues for approximately 40 metres from point B to the rear of the vicarage where a more modern concrete and wooden panel fence has been erected along the rear boundary of the vicarage garden. A small gate provides access from the vicarage garden to the claimed route.

The fencing along the southern side of the claimed route consists of a wooden post and rail fence with sheep netting attached suggesting that it was constructed for the purpose of making the adjacent field stock proof. This fence continues adjacent to the claimed route from point B to point C.

Between point B and point C has a tarmac surface and the width is restricted by the fencing to approximately 1.3 metres wide. Moss has grown on the tarmac suggesting that the claimed route has not been recently used.

A barrier has been constructed across the claimed route at point C and access is only available by climbing over it. A sign has been erected on the eastern side of the barrier so that it can be viewed from the church yard saying 'Private Land No Public Right of Way'. An identical sign was viewed on the boundary fence close to the parish hall.

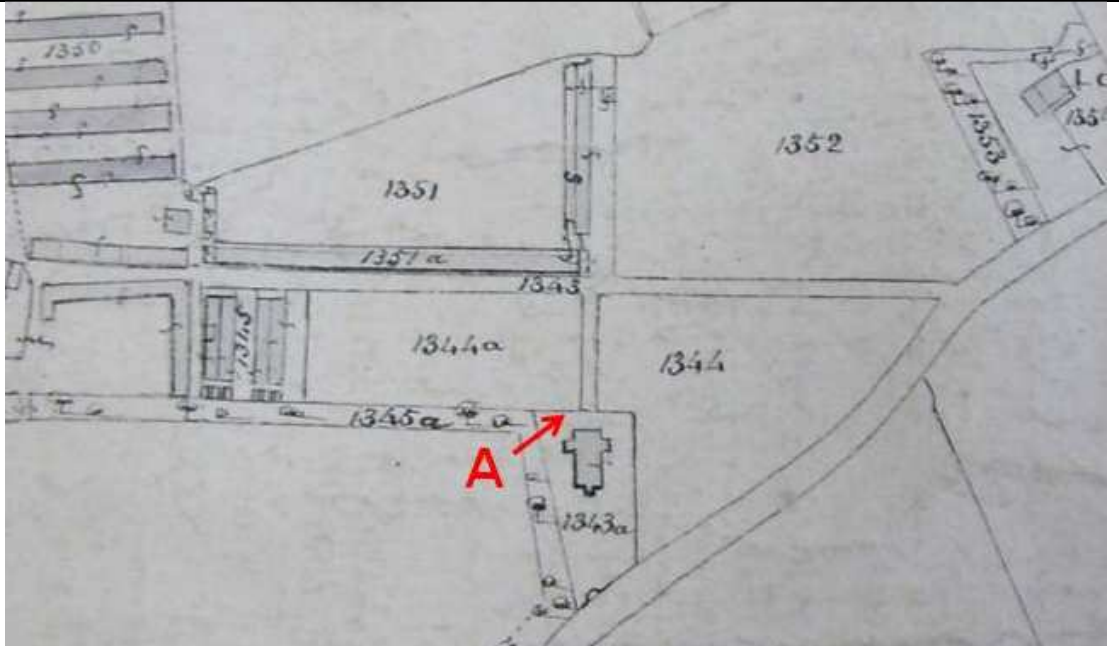
Beyond point C the claimed route continues through the church grounds along a narrow tarmac path just 60cm wide to point D. At point D the tarmac path widens to approximately 80-90cm wide and is clearly used as it forms part of the access route between the two gated access points into the church grounds. The claimed route continues in a south easterly direction to point E where it joins the main access route into the church and then continues the short distance south to point F to pass through the church gates and to exit onto Edisford Road at point F on the plan; a total distance of 120 metres.

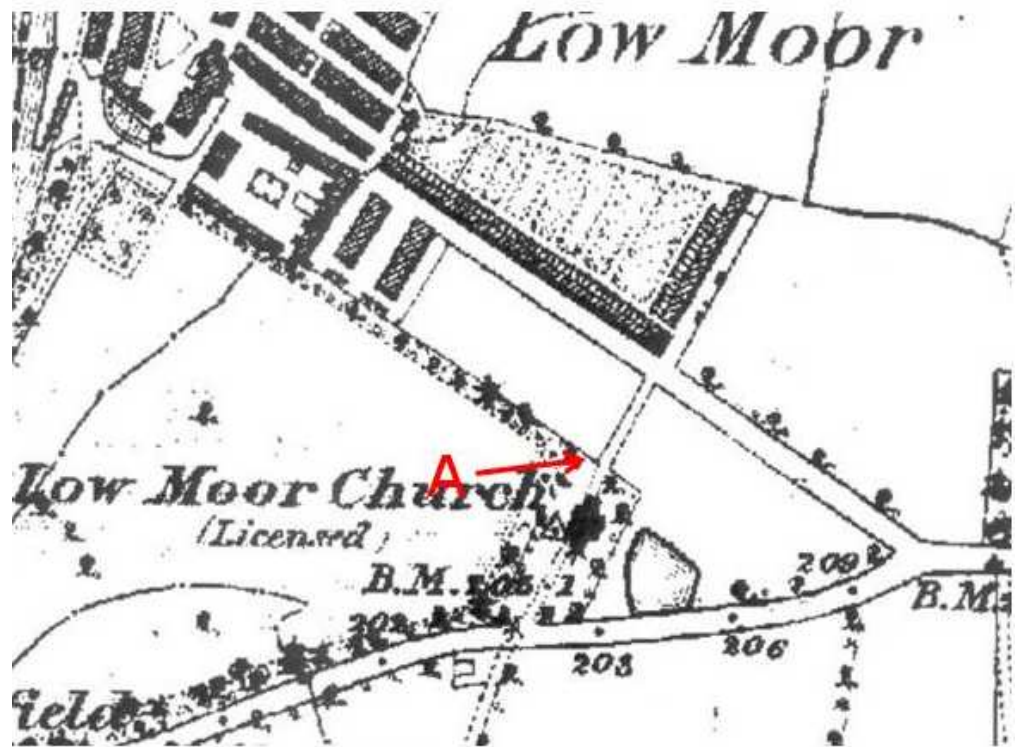
An old sign is attached to the church gate at point F saying 'No cycling, Please close the gate'. An identical sign is located on the other set of identical church gates (not on the claimed route) which provide access to the church from St Paul's Street.

Map and Documentary evidence relating to claimed addition

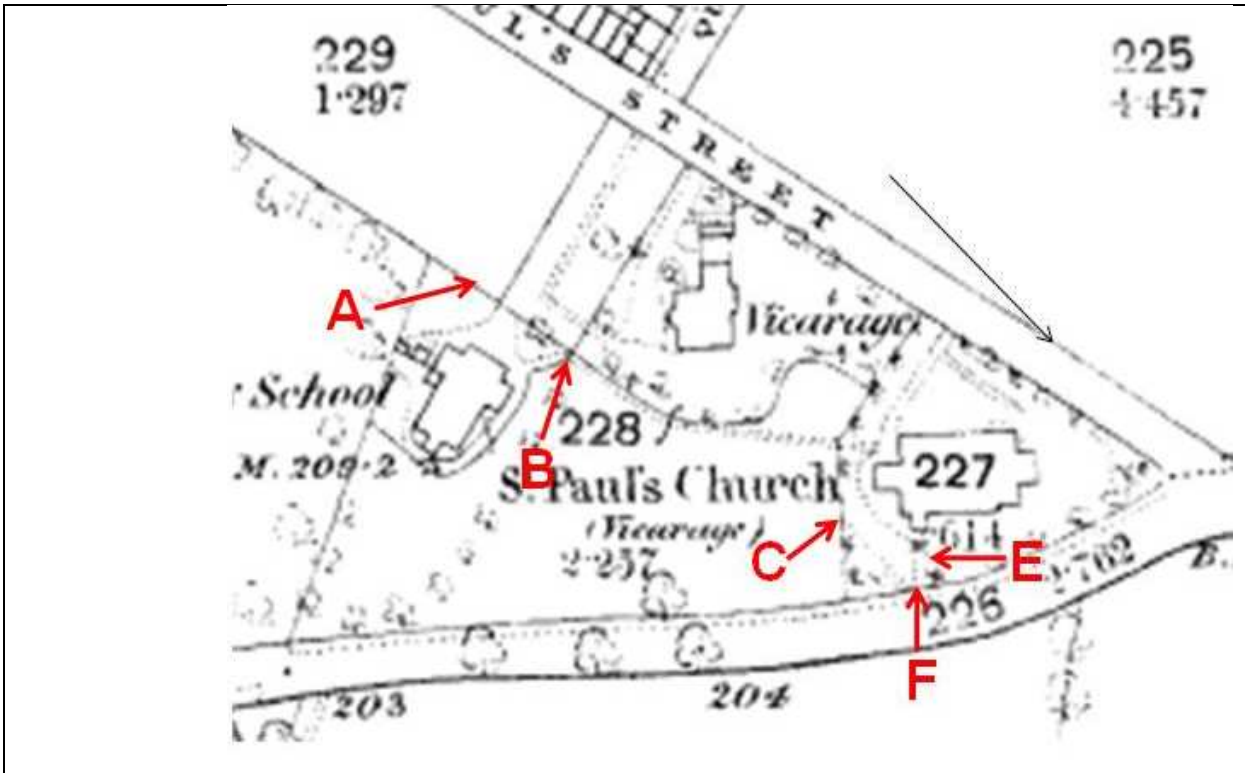
Various maps, plans and other documents were examined with reference to the claimed route.

Document Title	Date	Brief description of document & nature of evidence
Yates' Map of Lancashire	1786	Small scale commercial map.
Observations		Edisford Road is shown but St Paul's Road and the claimed route are not shown.
Investigating Officer's Comments		The route did not exist as a major route at the time – it may have existed as a minor route but due to the limitations of scale would not have been shown so no inference can be drawn in this respect.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that his map showed private as well as public roads.
Observations		St Pauls Road and Edisford Road are shown but the claimed route is not.
Investigating Officer's Comments		The route did not exist as a major route at the time – it may have existed as a minor route but due to the limitations of scale would not have been shown so no inference can be drawn in this respect.
Hennet's Map of Lancashire	1830	Small scale commercial map.
Observations		St Pauls Road and Edisford Road are shown but the claimed route is not.
Investigating Officer's Comments		The route did not exist as a major route at the time – it may have existed as a minor route but due to the limitations of scale would not have been shown so no inference can be drawn in this respect.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801).
Observations		The Inclosure Award for Clitheroe does not include the Low Moor area.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment	1842	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

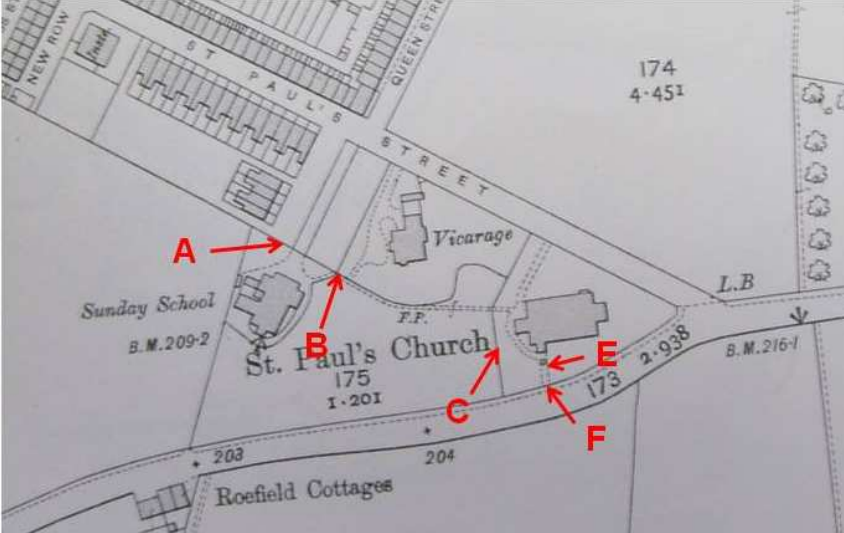
		<p>produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p>
		
<p>Observations</p>		<p>No footpaths are shown in the area of the claimed route. A church is shown where the hall now stands with an access road that approximately corresponds with St Paul's Terrace. No building is shown where the current church now stands.</p>
<p>Investigating Officer's Comments</p>		<p>The claimed route does not appear to have existed in 1842.</p>
<p>Ordnance Survey maps</p>		<p>The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.</p>
<p>6 Inch OS map</p>	<p>1847</p>	<p>The earliest Ordnance Survey 6 inch map for this area.</p>



Observations		The claimed route is not shown. A building called Low Moor Church is shown where the parish hall is now located with an access road to the church shown parallel, but further east than the alignment of the modern St Pauls' Terrace. There is a further access path to the church from the south side from Edisford Road. No other footpaths or tracks are shown in the area.
Investigating Officer's Comments		The claimed route does not appear to have existed in 1847.
25 Inch OS map	1886	The First Edition 25" is at a larger scale than the 6" map showing the area in more detail.



<p>Observations</p>	<p>There have been substantial changes in the area since the 6-inch map was published. A new church (St Paul's) has been built with an adjacent vicarage and the former church building is labelled as 'Sunday School'. St Paul's Terrace does not exist and there appears to be no access to the claimed route at point A.</p> <p>Access to the Sunday School is from St Paul's Street south east of point A. Access along the claimed route between point A and point B may have been available but there is no marked path between these points.</p> <p>A path is marked in the field north of the vicarage garden connecting the Sunday School and the church. Only part of this path between point B and point C, and the length through the church grounds between point E and point F corresponds with the claimed route.</p> <p>The boundary between the vicarage garden and the adjoining field has changed between 1886 and the present day, but the boundary on the west side of the church is the same.</p>
<p>Investigating Officer's Comments</p>	<p>A route appears to exist between point B and point F, parts of which (between point B and partway towards point C and between point E and point F) correspond closely with the claimed route. It may have been possible to follow much of the claimed route but it may not have been possible to pass from the field to the church yard at point C.</p>


25 inch OS map	1912	Further edition of the 25" map.
		
Observations		<p>The church buildings are shown in the same way as on the earlier 25-inch map. St Paul's Terrace has been constructed with a solid line drawn along the end of the terrace making it unclear whether there was any access via a gate or other moveable barrier onto the claimed route at point A. A path corresponding closely with the claimed route for approximately 25 metres is shown from point B extending south east towards point C but then veers away to the north of the claimed route - it is annotated as a footpath (F.P.) on the map. The claimed route is not shown passing through the boundary fence at point C but a footpath enters the church grounds further north. The claimed route between point E and point F is shown</p>
Investigating Officer's Comments		<p>It is not clear from the map whether there was access onto the claimed route at point A but it is apparent that a route did exist between point A and point F in 1912. Part of this route, but not all, followed the claimed route.</p>
25 Inch OS map	1932	Further edition of 25 inch map.
Observations		<p>The church buildings and connecting footpaths are shown in the same way as on the earlier 25-inch map.</p>
Investigating Officer's Comments		<p>It is not clear from the map whether there was access onto the claimed route at point A but it is apparent that a route did exist between point A and point F in 1932 part of which coincided with the claimed route.</p>
6 Inch OS map	1955	<p>The Ordnance Survey base map for the Definitive Map, First Review, was published in 1955 (although the date of revision was before 1930) at a scale of 6 inches to 1 mile. This map is probably based on the same survey as the 1932 25-inch map.</p>
Observations		<p>The church buildings and connecting footpaths are shown in the same way as on the earlier 25-inch map.</p>

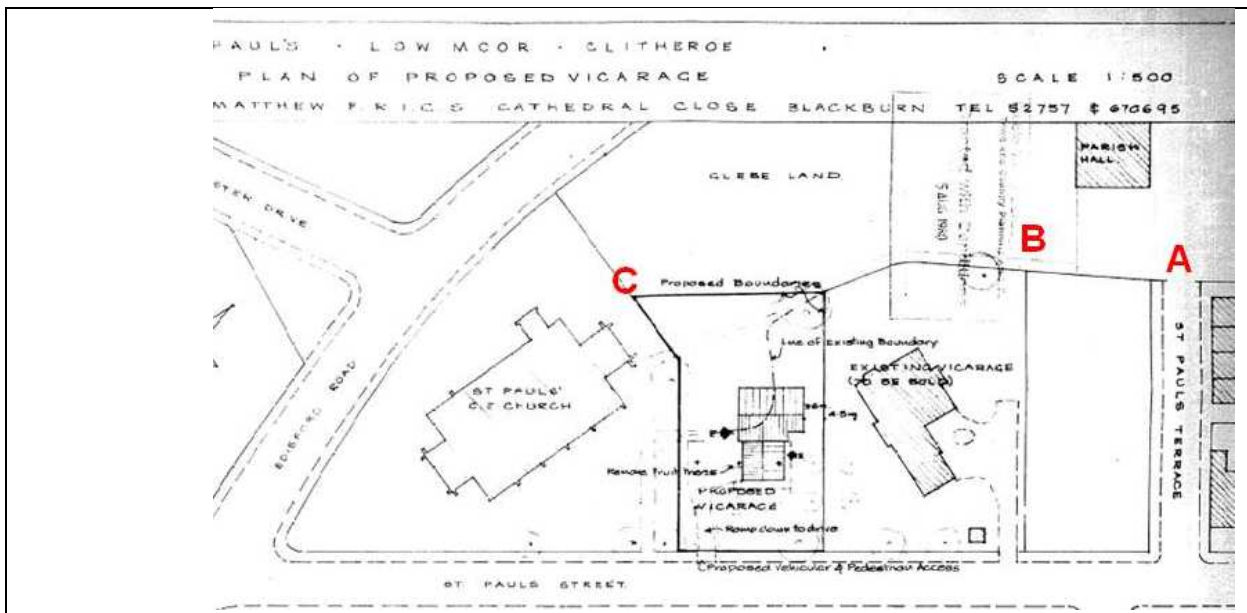
Investigating Officer's Comments		No further information is provided.
25 inch OS map	1964	Further edition of 25 inch map, revised 1964.
Observations		The church buildings and connecting footpaths are shown in the same way as on the earlier 25-inch map.
Investigating Officer's Comments		It is not clear from the map whether there was access onto the claimed route at point A but it is apparent that a route did exist between point A and point F in 1964 part of which coincided with the claimed route. There did not appear to be a way through from the field to the churchyard at point C.
25 inch OS map	1977	Further edition of 25 inch map, revised in 1976.
Observations		The church buildings and connecting footpaths are shown in the same way as on the earlier 25-inch map.
Investigating Officer's Comments		It is not clear whether there was access to the claimed route at point A but it is apparent that a route did exist between point A and point F in 1976 part of which coincided with the claimed route. There did not appear to be a way through from the field to the church yard at point C.
Finance Act 1910 Map	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence.
Observations		The Finance Act maps for this area are not held in the Lancashire Archives.
Investigating Officer's Comments		No inference can be drawn.
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		The aerial photo is poor quality and the line of the claimed route is obscured by trees.
Investigating Officer's Comments		No further information is provided.
Aerial Photograph	1963	The black and white aerial photograph taken on 1 June

		1963.
Observations		Trees obscure most the line of the claimed route.
Investigating Officer's Comments		No information is provided by this photograph.
Aerial photograph	1989	Colour aerial photograph taken on 22 June 1989.
Observations		The photograph is poor quality and partially obscured by trees.
Investigating Officer's Comments		No information is provided by this photograph.
Aerial photograph	2000	Colour aerial photograph taken on 18 June 2000.
Observations		The photograph is of reasonable quality but most of the claimed route is obscured by trees. Only one short section of the claimed route can be seen to the rear of the vicarage garden (near point C).
Investigating Officer's Comments		Part of the claimed route along the field to the rear of the vicarage garden to point C existed as a path in 2000.
Aerial photograph	2009	Colour aerial photograph taken on 31 May 2009.



Observations		The route of claimed footpath is mostly obscured by trees but one section of the claimed route can be clearly seen to the rear of the vicarage garden and passing through a gap in the boundary of the church grounds at point C.
Investigating Officer's Comments		Part of the claimed route existed as a path in 2009.

Photographs taken by Applicant		Six colour photographs taken in February 2004, 2 of which are shown below, and 2 taken on 6 May 2011 were submitted by the applicant.
		
Observations		<p>The 2004 photographs show the claimed route from St Paul's Terrace to the boundary fence of the church. The path is tarmaced and in good condition. The fence between the path and Beech Grove Care Home consists of rusty metal railings, whilst that between the vicarage garden and the path is a wooden larch-lap fence and beech hedge. There is a wooden post and rail fence between the path and adjacent field.</p> <p>The 2011 photographs show the same tarmac path in good condition and boundary fences. A barrier made of horizontal wooden planks has been placed across the path at point C on the attached plan with a notice reading 'Private Land No Public Right of Way'.</p>
Investigating Officer's Comments		The claimed route was in good condition in 2004 and 2011 and until the barrier was erected the path appeared available for the public to use.
Planning Application 3/81/0424/P	1980	Planning application for proposed new vicarage adjacent to St Paul's Church, Low Moor, Clitheroe.



Observations		In 1980 an application was submitted to Ribble Valley Borough Council for the construction of the new vicarage to be situated on land between St Paul's church and the existing vicarage (later to become Beech Grove Residential Care Home). The planning application makes no reference to the claimed route but the plan submitted as part of the application shows the proposed alteration to the boundary fence between the glebe field and proposed vicarage.
Investigating Officer's Comments		It appears that the route on the ground between point B and point C would have been altered following the granting of planning permission in 1981 allowing the new vicarage to be built and boundary fences altered thus allowing for a larger garden to the rear of the vicarage. The effect of these alterations possibly moved the footpath shown on previous maps to the route now claimed between point B and C
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.
Observations		There is no parish map for the area as Clitheroe was a municipal borough.
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 some of these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The claimed route is not shown on the Draft Map and there were no objections to the omission of the path.
Provisional Map		Once all these representations 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. 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 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 with a relevant date in 1966. 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		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). 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).
Observations		There are no Highways Act 1980 Section 31(6) deposits lodged with the County Council for the area over which the claimed route runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate a public right of way over the claimed route.

The claimed public footpath does not cross a Site of Scientific Interest or Biological Heritage, nor does it cross access land under the provisions of the Countryside and Rights of Way Act 2000. Section C-F does cross consecrated ground.

Summary

A church used to stand at the end of St Paul's Terrace but around 1870 a new church was built on vacant land to the east with an adjoining vicarage and the old church used as the Sunday School. Ordnance Survey maps show a path linking the Sunday School, the vicarage and the church from 1886. At some point after 1981 it appears that the old vicarage was converted into Beech Grove Residential Care Home and a new vicarage erected alongside. The property boundary between the new vicarage and the adjacent field changed and the path that had been there for some 90 years was probably moved to its current position. Photographs taken in 2004 show a tarmac path in good condition, fenced on both sides. It is therefore likely that the claimed route has existed on the ground which may have been available for public use from some date after 1981.

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

The following should be added to the Definitive Statement for Clitheroe, Ribble Valley Borough.

Proposed Schedule to Order

SCHEDULE

PART 1

MODIFICATION OF THE DEFINITIVE MAP

DESCRIPTION OF WAY TO BE ADDED

Public footpath from a junction with St Paul's Terrace at SD 7310 4159 running in a generally south easterly direction on the south west side of a boundary wall to SD 7312 4158 and continues in a generally south easterly direction enclosed by fencing to the rear of Beech Grove Residential Care Home and St Paul's vicarage to SD 7318 4154 where it enters the grounds of St Paul's Church.

PART II

MODIFICATION OF DEFINITIVE STATEMENT

Add to the Definitive Statement for Clitheroe No. 31 as follows:

"Public footpath from a junction with St Paul's Terrace at SD 7310 4159, through field gate and turning to run in a generally south easterly direction on the south west side of a boundary wall to SD 7312 4158 where it passes through a pedestrian gate and continues in a generally south easterly direction along a tarmac path enclosed by fencing to the rear of Beech Grove Residential Care Home and St Paul's vicarage to SD 7318 4154 where it enters the grounds of St Paul's Church."

All lengths and distances are approximate.

Width:

SD 7310 4159 to SD 7312 4158 1.5 metres

SD 7312 4158 to SD 7318 4154 1.3 metres

Limitations and Conditions: Field gate at SD 7310 4159, Pedestrian gate at SD 7312 4158.

Length: 92 metres

County Secretary & Solicitor's Observations

Assessment of the Evidence

The Law - See Annex 'A'

Information from the Applicant:

In support of the application, the applicant has provided 15 user evidence forms.

Of those 15, two users indicate that their use was over 30 years ago and thus not within the period 1988 – 2008 at issue.

One user indicates that he used the route to accompany Scouts from the Church to the Parish Hall, which does not represent use of the entire route and may have been private use.

Of the 12 remaining users, three users indicate that they have used the route for between 10 and 15 years. Two of those users indicated that the path had been closed off during work to the church roof; otherwise none have indicated that they were ever prevented from using the route.

The remaining 9 users state that they have used the route for 20 years or more, between twice a week and daily. The forms indicate use of the route for dog walking, visiting relatives and accessing local shops. All of these users agree that the route was used on foot and has run along the same line for the period in question.

The applicant has also enclosed photographs of parts of the route, taken in February 2004. The photographs show a tarmac path in good condition, fenced on both sides, between points B and C.

Information from Others:

A consultation response from the land owner, the Blackburn Diocesan Board of Finance Limited, states that the route from the Church to the Church Hall (point B to point C) was only "constructed" in 1995 and its purpose was to assist the Vicar in reaching official duties held at the Hall. The Board states that it has never been an official footpath to facilitate access from Edisford Road to St Paul's Terrace.

The Board further states that it purchased the Hall in 2009 and at that point, the gate at that end of the path (point B) was locked as it was no longer required for the activities at the Hall.

The Board also states that, as the footpath was only used for Church activities and as general public use was not encouraged, any use would have been with the specific consent of the Church.

A further consultation response was received from Valerie Cooper, Ward Councillor, Clitheroe Town Council, in objection to the application.

Councillor Cooper explained that the path had been 'created' in 1995 by St Paul's Church to allow its members to walk from the parish hall to the church. When the parish hall became derelict, the path was no longer needed by the church goers and it was closed.

Councillor Cooper stated that she had also spoken to the manager of the residential home, behind which the route of the path ran, who indicated that when the path was open there had been "problems with youths".

Summary:

In Support of the Claim

- User evidence (9 users stating use for 20 years or more, between twice a week and daily)

Against Accepting the Claim

- Consultation response of Clitheroe Town Council
- Consultation response of the land owner (Blackburn Diocesan Board of Finance)
- No documentary or map evidence to support the existence of the entirety of the claimed route
- Actions by landowners (although not earlier than 2009);
(locking gate at point B / barrier at point C)
(construction of path)

Part of route on Consecrated ground

Observations

To modify the Definitive Map by an Order the Committee will be aware that the test set out in the Wildlife and Countryside Act needs to be satisfied, namely that evidence is discovered that a right of way not shown on the map subsists or is reasonably alleged to subsist.

There is, therefore, a need to consider evidence that the footpath as claimed can be said to have already been dedicated. There is no express dedication and so deemed dedication under S31 Highways Act and inferred dedication from all the circumstances under common law, need to be considered.

The evidence in this matter is the user evidence, countered by evidence of actions taken by present owners of the land in question.

There is no documentary or map evidence to support the existence of the entirety of the claimed route.

Inferred dedication under common law.

The present land owner, the Blackburn Diocesan Board of Finance Limited, has confirmed in its consultation response that use of the footpath was only intended to be with the specific consent of the Church and that the route was never intended for general public use. Accordingly, it would be difficult to prove inferred dedication under common law. Consideration must therefore be given to deemed dedication under s31 Highways Act 1980.

Deemed dedication under s31 Highways Act 1980

Pursuant to S31 Highways Act 1980, for a dedication to be deemed it must be determined that the route has been actually enjoyed by the public, as of right and without interruption, for a full period of 20 years without there being sufficient evidence of a lack of intention to dedicate by the owners. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by notice or otherwise.

The Diocese land owner purchased part of the land in 2009 and states that the gate at point B was locked at that time. It is therefore advised that the route was called into question in 2009, following the current owner's acquisition of the land and subsequent locking of the gate. It follows that the period of use from which dedication can be deemed is 1989 to 2009.

The Applicant has produced user evidence in support of the claim. This amounts to 15 user evidence forms, evidencing at least 20 years' use of the path during the period 1989 to 2009.

The same line of the claimed route appears to have been open and available for the 20 year period. None of the users seem to have had their use interrupted even when the surface of the path was constructed.

This suggests a reasonable level of user evidence for the required 20 year period 1989 – 2009. Ordinarily, this would be sufficient to deem, on balance, dedication of the entire length of the claimed route as a public footpath in accordance with s31 Highways Act 1980. The Committee's attention is, however, drawn to the issue of consecrated ground as set out below.

Points C to F – Difficulties of showing highway dedication over Consecrated Land

At point C, the claimed route enters the grounds of St Paul's Church and continues through the grounds to the church gate at point F. The part of the claimed route C to F is on consecrated ground.

The most recent authority of the Consistory Court (Diocese of Worcester – Parish of Longdon: Church of St Mary dated 04.11.2010) confirms that a right of way may only be dedicated over consecrated land subject to it being authorised by the grant of an appropriate faculty by the Consistory Court. If no faculty has been granted, no dedication over consecrated ground – whether actual or deemed - can have occurred.

Confirmation as to the granting of such a faculty has been requested from the land owner; however at the time of writing no confirmation has been received. In view of the land owner's consultation response, as referred to under the heading "Inferred dedication under common law" above, it would appear that no such faculty has been granted. The Committee is therefore advised that, on the basis of the information available at the time of writing, a footpath on the claimed route from point C to F on the plan cannot be deemed to have been dedicated.

Points A to C

Accordingly, the Committee is advised that the claimed route as a through route from point A to point F cannot be accepted. However, this does not prevent part of the claimed route, from point A to point C, being accepted. Whilst the claimed route A to C is a cul-de-sac route and therefore more difficult to be found to have been dedicated (cul de sac routes have to be shown to have been used as such), in these circumstances route A to C leads to the church yard, a place able to be considered as a place of public resort and able to explain a cul de sac footpath to reach it..

The Committee will note that a barrier has been installed at point C and this may lead the Committee to conclude that the church yard is no longer a place of public resort. However, at the time the footpath arguably became dedicated as a cul-de-sac route to a place of public resort – that time being at some instant between 1981 and 1989 – the barrier was not in place. It is therefore considered that the route was open and available at that point.

Conclusion

Taking all the evidence into account, it is advised that the dedication of the claimed route as a public footpath from point A to point F should not be accepted. The Committee is advised that part of the claimed route from point A to point C can, on balance, be deemed to have been dedicated as a public footpath in accordance with s31 Highways Act 1980 and that the application be accepted in part.

Risk Management

Consideration has been given to the risk management implications associated with the 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 are 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: 5.41561 (804/516)	Various	J Mort, County Secretary & Solicitor's Group, Ext: 33427

Reason for inclusion in Part II, if appropriate

N/A