

Regulatory Committee

Meeting to be held on 22 October 2014

Electoral Division affected:
Rossendale East

Wildlife and Countryside Act 1981
Definitive Map Modification Order Application
Upgrading to Bridleway of Public Footpaths from Hardman Drive to Rakehead Lane, Bacup, Rossendale Borough
Application No. 804-539
(Annex 'A' refers)

Contact for further information:

Megan Brindle, 01772 535604, County Secretary and Solicitors Group

Megan.brindle@lancashire.gov.uk

Hannah Baron, 01772 533478, Environment Directorate

Hannah.baron@lancashire.gov.uk

Executive Summary

Application for an upgrade to Bridleway of Public Footpath nos. 638 (part), 636, 627 and 626 Bacup, Rossendale Borough, on the Definitive Map and Statement of Public Rights of Way, in accordance with file no. 804-539.

Recommendation

1. That the application for an upgrade to Bridleway of Public Footpath nos 638 (part), 636, 627 and 626 Bacup, Rossendale on the Definitive Map and Statement of Public Rights of Way, in accordance with file no. 804-549 be accepted
2. That an Order be made pursuant to Section 53(2)(b) and Section 53(3)(b) and Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to upgrade to Bridleway Public Footpaths nos 638(part), 636, 627 and 626 Bacup, Rossendale Borough on the Definitive Map and Statement of Public Rights of Way as shown on the Committee Plan between points A-B-C-D-E-F-G-H.
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation if necessary by sending it to the Secretary of State.

Background

An application duly made under Schedule 14 of the Wildlife and Countryside Act 1981 has been received from The Forest of Rossendale Bridleways Association to upgrade Public Footpath nos 638 (part), 636, 627 and 636 Bacup, Rossendale

Borough to bridleway. If confirmed, a footpath of approximately 880 metres, and shown between points A-B-C-D-E-F-G-H on the attached committee plan, is to be upgraded to bridleway on the Definitive Map and Statement of Public Rights of Way.

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

An order for upgrading or downgrading 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"

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 for a particular class of users 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 the applicant, landowners, consultees and other interested parties produced to the County Council before the date of the decision. Each piece of evidence will be tested and the evidence overall weighed on the balance of probabilities. It is possible that the Council's decision may be different from the status given in any original application. The decision may be that the routes have public rights such as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists. The decision may also be that the routes to be added or deleted vary in length or location from those that were originally considered.

Consultations

Rossendale Borough Council

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

Parish Council

There is no Parish Council for the area affected.

Applicant/Landowners/Supporters/Objectors

Landowners have supplied plans outlining the land they own, no objections have been received.

The evidence submitted by the applicant/landowners/supporters/objectors and observations on those comments are included in Advice – County Secretary and Solicitor's Group ' Observations.

Advice

Executive Director for the Environment's Observations

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	8370 2132	The end of road U7773, Hardman Drive, opposite the sub-station
B	8372 2129	Gate after Tenterheads on entrance to field
C	8377 2126	Junction of Bacup Footpaths 638, 635, 634 and 636
D	8395 2133	Gate immediately before junction of Bacup Footpaths 636,637,628 and 627 (Royds Road)
E	8396 2133	Junction of Bacup Footpaths 636, 637, 628 and 627 (Royds Road)
F	8431 2143	Gate shown on Ordnance Survey maps (no longer in situ)
G	8442 2143	Junction of Bacup Footpaths 627 and 626 (Royds Road) and 625
H	8453 2144	Junction of Bacup Footpath 626 (Royds Road) with Rakehead Lane (C708)

Description of Route

A site inspection was carried out on 3rd April 2014.

Bacup Footpath 638 (A-B)

This route commences at a point on Hardman Drive (point A), opposite the electricity sub-station. The route at this point is situated on a tarmac road leading uphill towards a track in front of the houses at Tenterheads, leading to a gate on entrance to a field (point B). The total length of this section of the route is approximately 30 metres with an approximate width of 3 metres.

Bacup Footpath 638 (B-C)

The route passes through this gate (point B) and continues in a south easterly direction across a field, following the north east side of a vertical flagstone wall towards the opposite field boundary wall at the junction with footpaths 636, 634 and 635 (point C). The surface is a grass/marsh field, which was severely boggy in parts on the day of inspection. The total length of this section of the claimed route is approximately 60 metres with an approximate width of 3 metres.

Bacup Footpath 636 (C-D)

The route from point C then heads east north east along the north side of the wall on a marshy grass surface to a gate (point D). The length of this section is approximately 200 metres with an approximate width of 3 metres.

Bacup Footpath 636 (D-E)

Immediately after the gate is a junction with footpaths 637, 627 and 628 (point E). The length of this section is approximately 4 metres with an approximate width of 3 metres.

Bacup Footpath 627 (E-F)

The route from point E continues along a stone track between boundary walls 4m apart in an east north easterly direction for approximately 370 metres.

Bacup Footpath 627 (F-G)

From the historical location of the gate, no longer in situ, (point F) to the junction with Bacup Footpath 625 (point G), this part of the route is recorded on the County's List of Streets as X789 known as Royds Road which provides access from Rakehead Lane to a number of properties. The approximate length of this route is 110 metres with a width varying between 4 to 6 metres.

Bacup Footpath 626 (G-H)

The route then continues east for approximately 110 metres along this tarmac road to meet Rakehead Lane (point H). The width at this point varies between 4 to 6 metres.

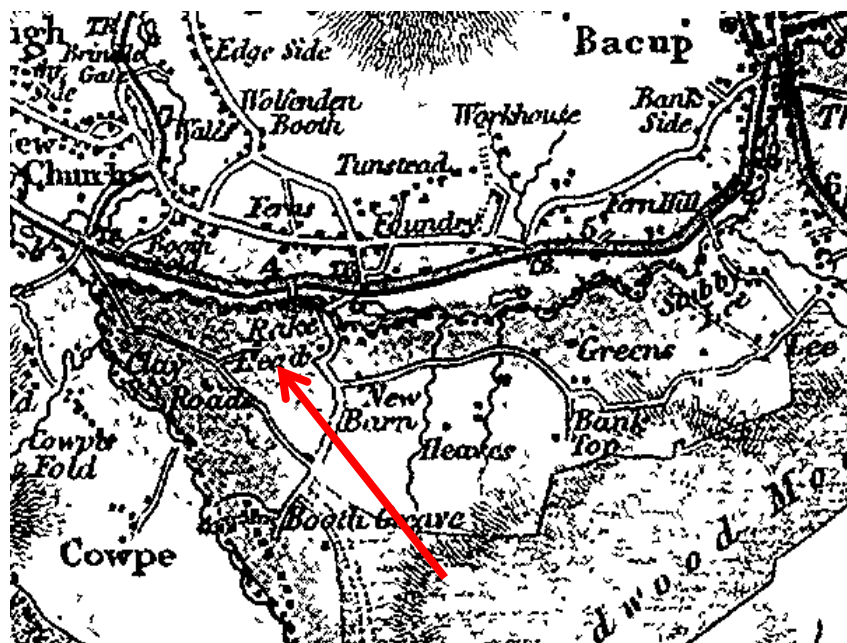
The total length of the application route is approximately 880 metres.

Access is available to pedestrians, horse riders and cyclists from either end of the application route, from Hardman Drive or Rakehead Lane. Use is not prevented at any point. The gates in situ at points B and D are easily negotiable, wide enough to accommodate both horse riders and a group of walkers or cyclists.

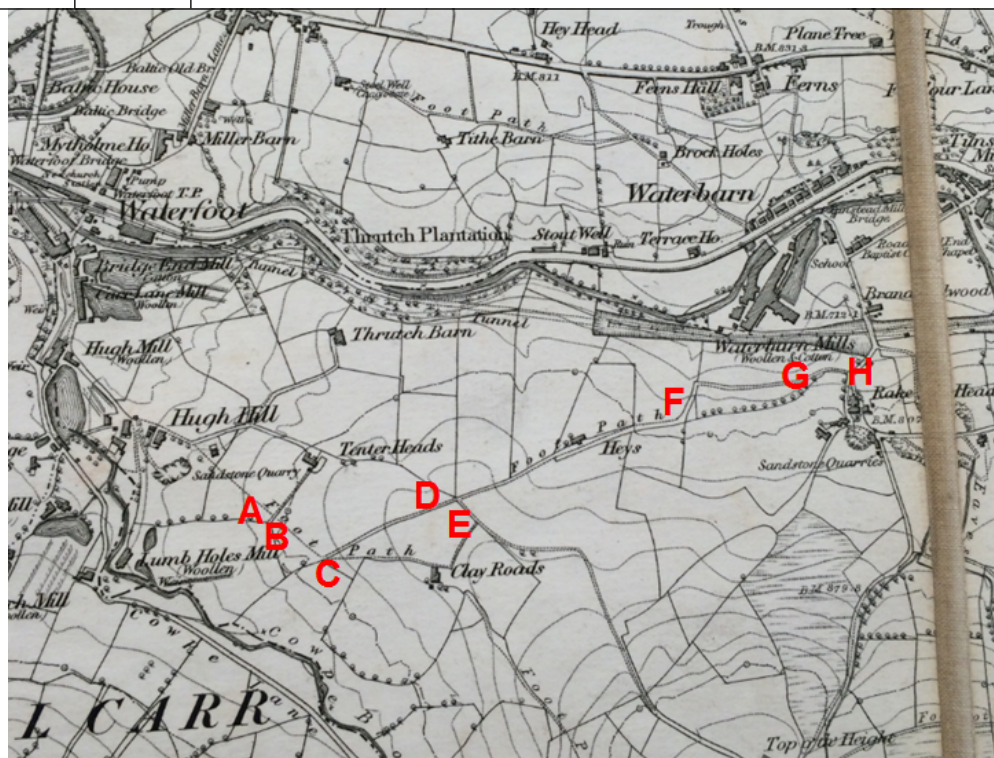
The route is partially on a stone road, and partially over fields. It was clear on site that there are a few large pot holes which had collected a large amount of water during the recent bad spell of weather; however the surface was usable on foot, horse or bicycle.

Map and Documentary Evidence

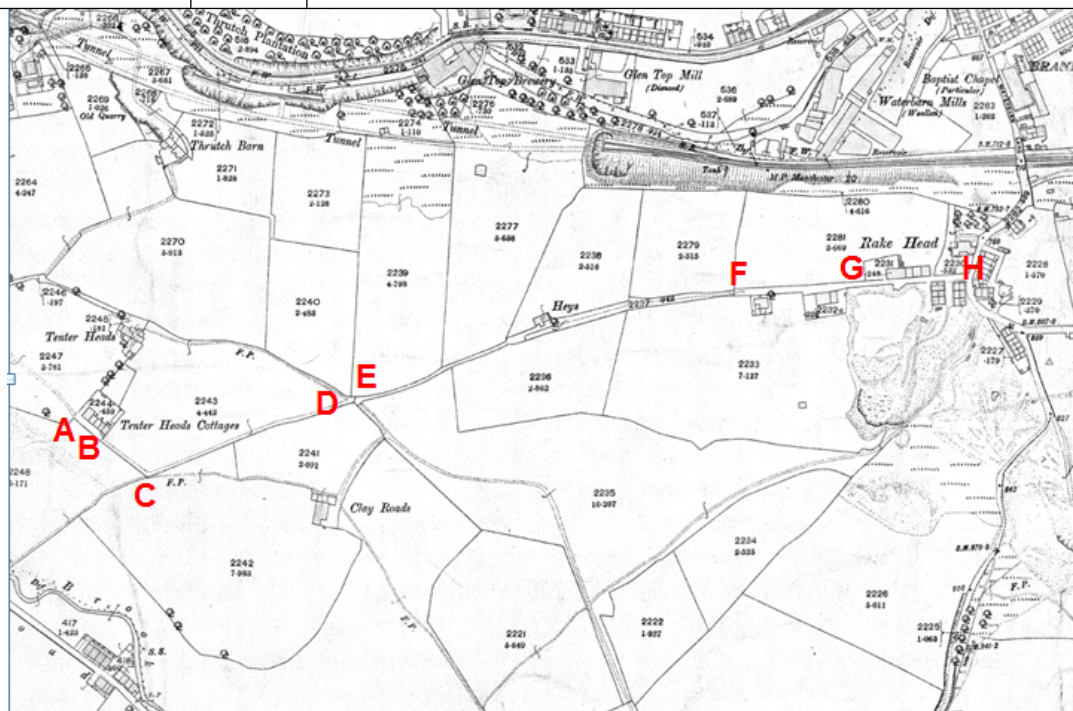
Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The route is not shown.
Investigating Officer's Comments		The route did not exist as a major route at that time. It may have existed as a minor route but due to the limitations of scale, this would not have been shown. Therefore no inference can be drawn.
Greenwood's Map of Lancashire	1818	Greenwood's map of 1818 is a small scale commercial map.
Observations		The route is not shown.
Investigating Officer's Comments		The route did not exist as a major route at that time. It may have existed as a minor route but due to the limitations of scale, a footpath/bridleway may not have been drawn.
Hennet's Map of Lancashire	1830	Small scale commercial map.




Observations		There is a route shown heading towards Rakehead Lane from Clay Roads which seems to correspond to E-F. The full length of the route is hard to determine if it is in place due to the lettering on the map covering the specific area in which we are interested in.
Investigating Officer's Comments		A road appears to have been recorded leading from Clay Roads to Rake Head and to be shown at this scale suggests a relatively substantial road. However due to the scale and lettering on the map it is hard to be certain, and therefore limited inference can be drawn.
Tithe Map and Tithe Award or Apportionment	1843	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.
Observations		The tithe map for Bacup is not held within Lancashire Archives. Therefore we have not been able to view the tithe map for this particular area.
Investigating Officer's Comments		No inference can be made as to whether a Bridleway existed at this time.
6 Inch Ordnance Survey (OS) Map	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-47 and published in 1849. ¹



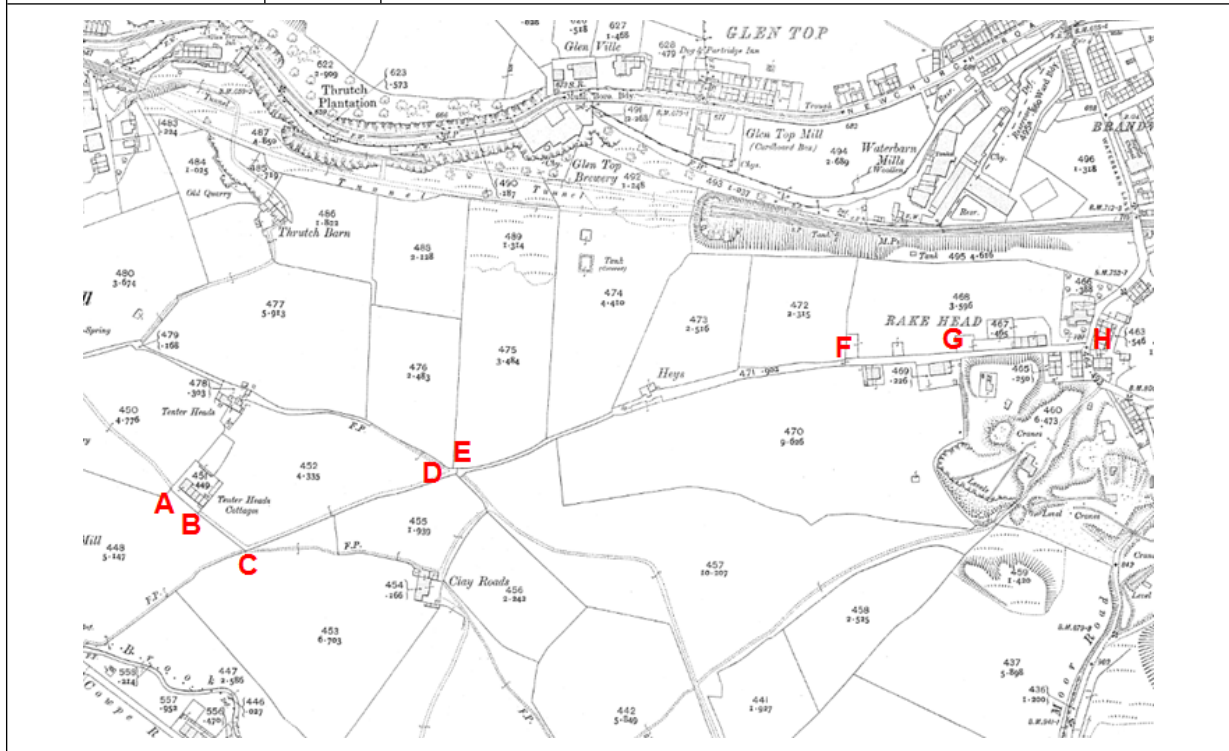
Observations		The application route is shown as a footpath from Hugh Hill to Rake Head. The line of the route differs to the later Ordnance Survey Maps, particularly on exit to Rake Head near points G and H.
Investigating Officer's Comments		There is no indication that Royds Road was in place at this point in time, the routes are shown as footpaths – therefore we can infer that at this time, use must have only or mainly been on foot.
25 Inch Ordnance Survey (OS) Map	1893	This is the earliest Ordnance Survey 25 inch map for this area. Surveyed in 1891 and published in 1893.



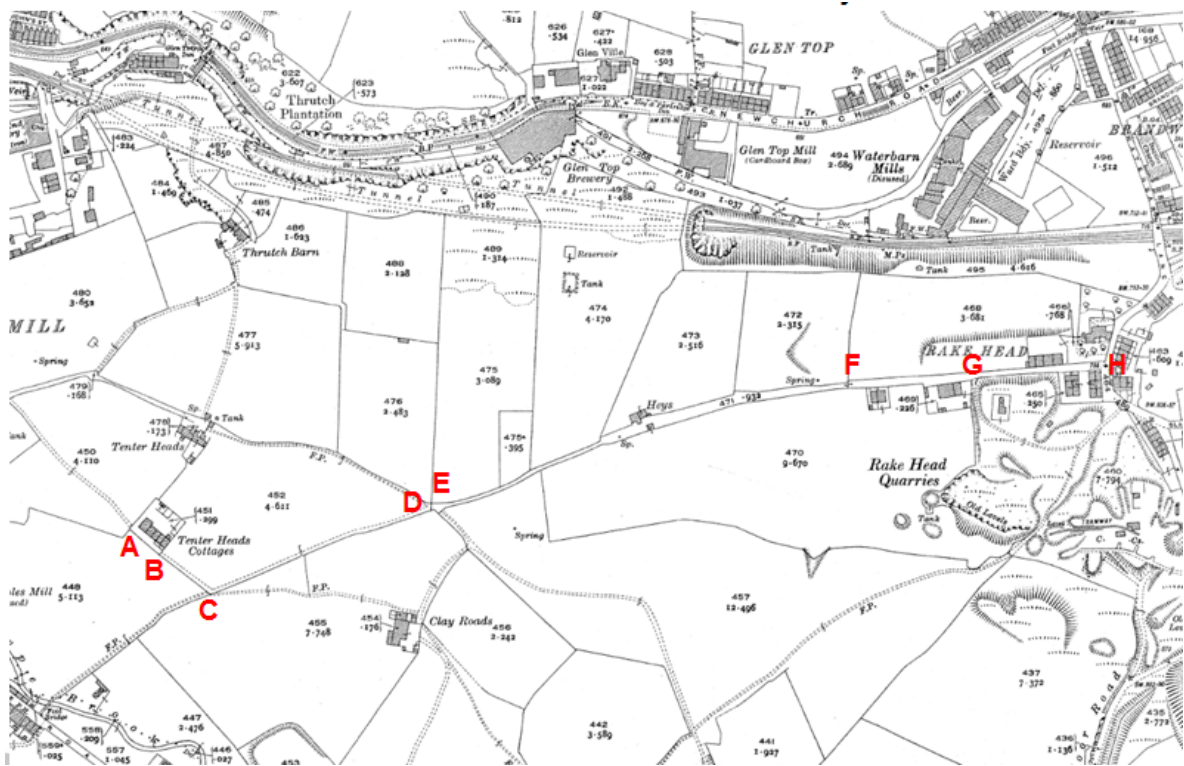
¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in 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.

Observations		<p>The full length of the route is shown providing access to the properties located along the lane, but it is no longer labelled as a footpath.</p> <p>There are gates shown at points B, D and F as indicated by solid lines on the OS Maps.</p>
Investigating Officer's Comments		<p>The application route existed as a route in 1891, and is shown contiguous with the general road network at this time from the gate at point F, and potentially from D. This road appears to be the sole access for vehicles to a number of properties and farms along the route. Gates are recorded at points B, D and F.</p>
1 inch Ordnance Survey (OS) Map	1896	This 1 inch to the mile map was published in 1896. (sheet no.76)
		
Observations		<p>The route is shown from C to H as a through route from the main roads. There is nothing shown from points A-C. There were also no gates recorded on this map.</p>
Investigating Officer's Comments		<p>The application route existed as a route from points C to H. No inference can be made regarding gates.</p>
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. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</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</p>

		<p>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>
<p>Observations</p>		<p>The Finance Act Map was not available to inspect in the record office.</p> <p>The Finance Act Valuation Book was of little help without the Finance Map.</p>
<p>Investigating Officer's Comments</p>		<p>No inference can be made.</p>
<p>25 Inch OS Map</p>	<p>1911</p>	<p>The second edition of the OS map at a scale of 25 inch to the mile. Resurveyed in 1891 and revised in 1908 and published in 1911.</p>

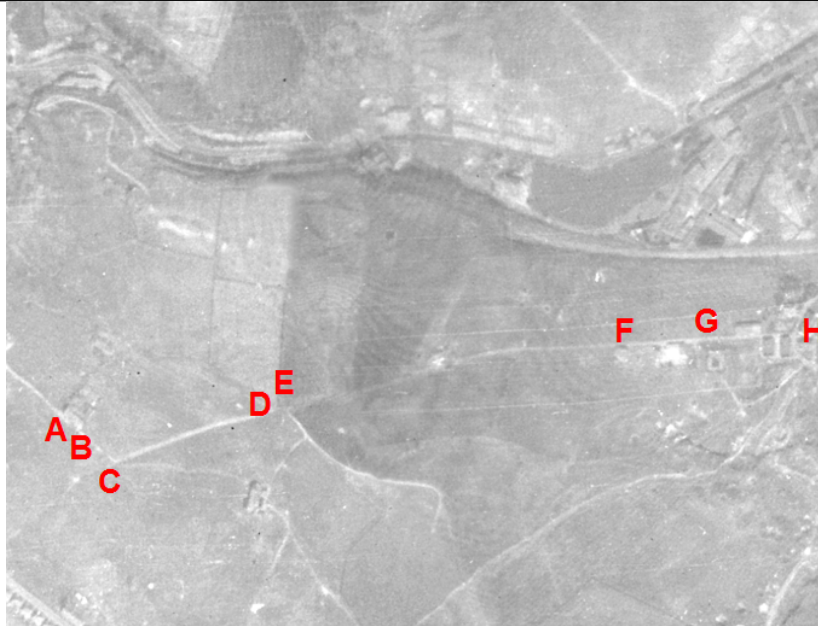


Observations		The full length is shown as a through route from Tenter Heads Cottages to Rake Head. The solid lines across the route at points B, D & F most likely indicate gates. Although shown this does not necessarily mean that the gates were closed and preventing access at the time of the map being surveyed.
Investigating Officer's Comments		The application route existed on the ground in 1911. Gates are located along the route at points B, D and F.
25 inch OS Map	1930	Further edition of the 25 inch map surveyed in 1892, revised in 1928 and published in 1930.

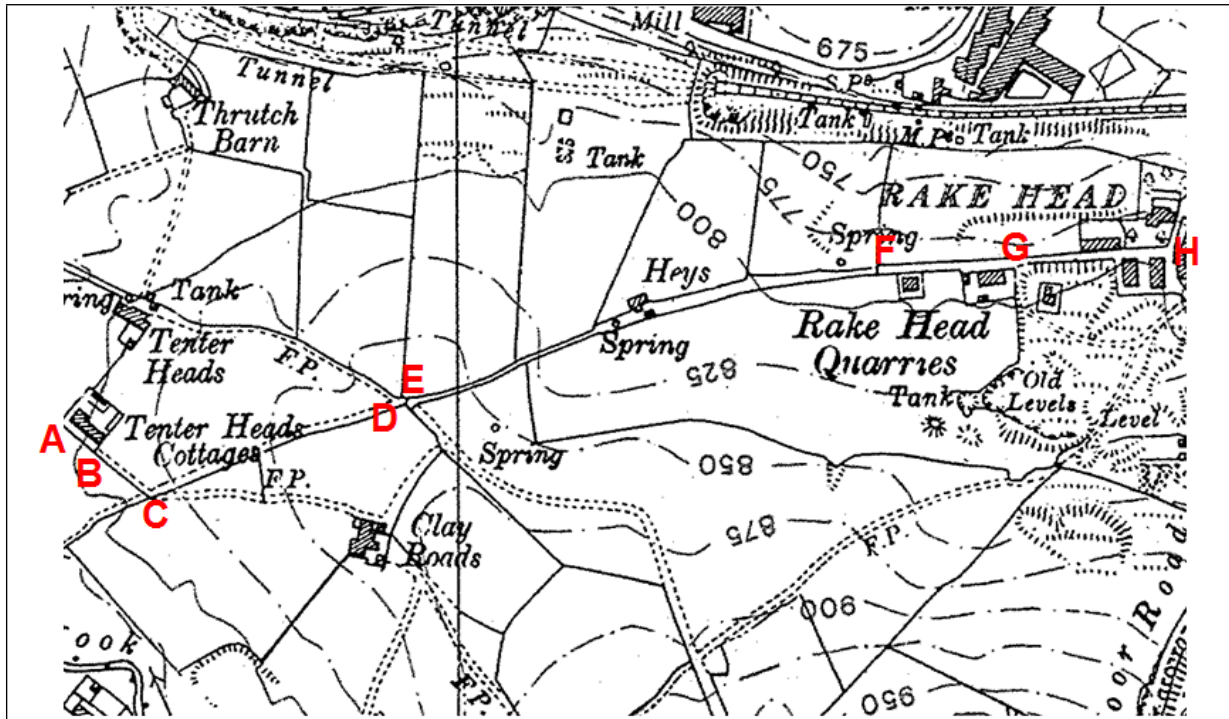


Observations		The application route is shown on the 1930 map as a through route with gates at points B, D and F.
Investigating Officer's Comments		The application route existed in the 1930s as a through route with gates at points B, D and F.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s. The clarity is generally very variable.

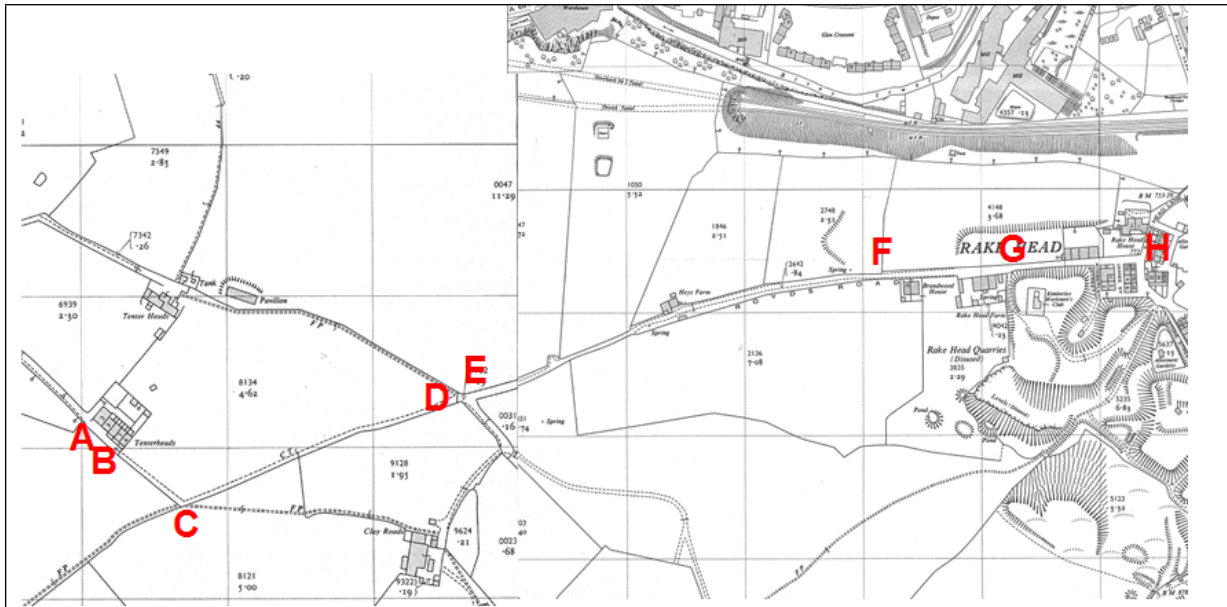
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.



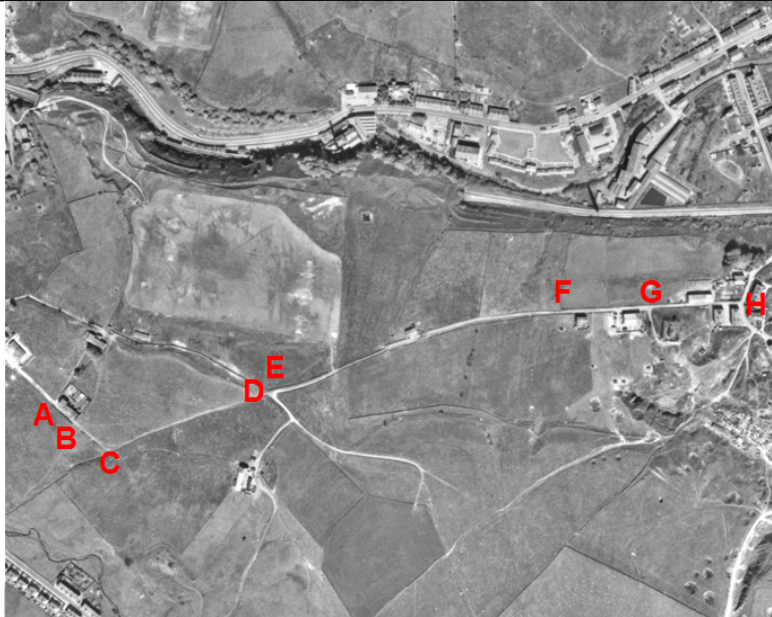
Observations		Although the photograph is not of the best quality, the application route is visible on the 1940s aerial.
Investigating Officer's Comments		The application route appears to have existed in the 1940s. It is not very clear but the white lines as shown on the photograph indicate usage, although it is not clear as to whether this usage was on foot, horseback or vehicular.
6 Inch OS Map	1956	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



<p>Observations</p>		<p>The route is shown as a through route. However the route under investigation is not labelled as a footpath (F.P.), unlike others in close proximity. There is a spring apparently situated in the route close to the property of Heys.</p> <p>Gates are also shown at points B, D and F.</p>
<p>Investigating Officer's Comments</p>		<p>The route existed and appeared capable of use by the public in 1956.</p> <p>Other connecting routes are labelled as footpaths suggesting that the route under investigation, absent from a label of footpath, could be more than just footpath.</p>
<p>1:2500 OS Map</p>	<p>1963</p>	<p>Further edition of 25 inch map reconstituted from former county series and revised in 1960/1961 and published 1963 as national grid series.</p>



Observations		The application route between points B-D is labelled on the map as a Cart Track (C.T.). The rest of the route between points D-H is recorded as Royds Road. Gates are located at B and D but is no longer recorded at point F.
Investigating Officer's Comments		<p>The significance of the route being shown as a cart track between points B-D indicates that use of the route at the time the map was surveyed could have been by more types of user than just on foot.</p> <p>As the application route is recorded as a cart track rather than footpath, this implies a more substantial feature, possibly an agricultural track with a hard soil or stone surface, which could have been used by walkers, cyclists and horse-riders although not indicative of public rights. Points D-F is recorded as Royds Road. This is significant because it suggests that this part of the route is known locally as a road and could imply higher rights than footpath.</p>
Aerial photograph	1960s	Black and white aerial photograph taken in the early 1960s.
Empty space for additional notes or images		



Observations		The application route is clearly visible on the 1960s aerial photograph. The white lines along the application route can be an indication of heavy use, which implies that the route is particularly popular and could be used by more than one type of user.
Investigating Officer's Comments		The application route appears to have existed in the 1960s. The application route could be capable of being used by the public on horseback, due to the visible lines on the ground indicating heavy use. The route is clearly defined as a through route from point A to H.
Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way. Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as

		the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		There is no map available. Bacup was a Municipal Borough which means that a Survey Map was not produced.
Draft Map	1955	<p>Lancashire County Council prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		The application route is recorded on the Draft Map as Public Footpaths 638, 636, 627 and 626. There were no objections received to the route being recorded as footpath.
Provisional Map	1960	Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown

		Court.
Observations		The application route is still recorded as public footpath on the Provisional Map. There were no objections to the route being recorded as footpath.
The First Definitive Map and Statement	1962	The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The Definitive Map and Statement recorded all of the application route as Public Footpaths.
Revised Definitive Map of Public Rights of Way (First Review)	1966	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 of 1 st September 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 application route is recorded as public footpath on the Revised Definitive Map.
Aerial Photograph	2000	Colour aerial photograph taken in 2000.



Observations		The application route is visible on the 2000 aerial photograph from point D to H (Royds Road).
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		It is visible D-H as a well-used vehicle-width route but it is visible A-D if you zoom in and look carefully, not as a route in use at the time but as a physical land form or vegetation change. It's not easy to see but C-D could be grass without the darker rushes elsewhere in the field because it had a hard base under the grass so was drier and more compact. A-B appears to exist as a road and B-C as a traceable line on the grass again indicating either a different base or some amount of current use.
Investigating Officer's Comments		The application route existed as a minor access road in 2000 between points D-H. No trodden route is visible between points A-D but traces of it can be seen in the vegetation pattern. Routes A to D do not appear to be used as vehicular routes; however Points D-H do appear to be more well used, and with properties located along this section of route it is most likely to include vehicular use.
Aerial Photograph	2010	Colour aerial photograph taken in 2010.



Observations		The application route can be seen on the 2010 aerial photograph.
Investigating Officer's Comments		The application route existed the same as the 2000 aerial photograph. There is no physical evidence showing use on the ground between points A-D but we can see Royds Road between points D-F.
Statutory deposit and declaration made under section 31(6)		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

<p>Highways Act 1980</p>		<p>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 claimed route runs.</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 their land.</p>
<p>Adoption Plan</p>		<p>The adoption plan is the county record of all roads recorded in Lancashire. The roads which have been highlighted are maintainable at public expense.</p>



<p>Observations</p>		<p>The scanned maps that form the County Council 'highway adoption records' were viewed on mapzone. Publicly</p>
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		maintainable roads were highlighted in red on the adoption plans. Royds Road was not highlighted as publicly maintainable.
Investigating Officer's Comments		Royds Road was not recorded on the Adoption Plan, therefore is not considered to be a publicly maintainable road when it was compiled or subsequently amended.

The route 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.

Landownership

The route from A-D as shown on the Committee plans is owned by:

Richard Ernest Hardman, Tulls, Standford, Headley, Hampshire, GU35 8RD.

Edward John Poole Hardman, 92 Gould Road, Twickenham, Middlesex, TW2 2RW.

Peter Reginald Hardman, 11 Kingston Crescent, Helmshore, Rossendale, Lancashire, BB4 4LH.

Judith Anne Cooke, Old Farm House, Stubbs Walden, Doncaster, North Yorkshire, DN6 9BU.

A small section between E-F is partly owned by David and Karen Ashworth, Heys Farm, Royds Road, Bacup, Lancashire, OL13 0PG.

The rest of the route is unregistered.

Summary

There is little documentary evidence showing that public rights existed on the application route but enough to show that it was a reasonably substantial physical track since at least 1830, and is consistently shown on the Ordnance Survey maps from 1849 to present day.

Royds Road, recorded from points D to H on the committee plan, is shown as a well-used track on all of the Ordnance Survey Maps, and strongly supported by the aerial photographs where evidence of high use is shown on the track. There are several properties located along Royds Road, and therefore this is likely to be a vehicular route too as far as point D, although not necessarily public.

Gates have been recorded consistently at several points along the route on the Ordnance Survey Maps. The gates, located at points B, D and F would not have necessarily prevented access along the route for horse riders, and the existence of gates on a route crossing farmland (particularly at points B and D) is not uncommon.

The route probably has been able to be used as a bridleway to provide access from Rakehead Lane to Hardman Drive since the 19th Century.

County Secretary and Solicitors Group Observations

Information from the Applicant

In support of the claim the applicant has provided 31 user evidence forms.

The users have knowledge of the route as follows:

11-20(6) 21-30(11) 31-40(7) 41-50(4) 51-60(2) 61-70(1)

26 users claim that they have used the route on horseback, 4 users state they have used the route on a bicycle. The main purposes for using the route are for riding, pleasure, training the horse, hacking and for using the route as a circular route. Use of the route per year varies from 3-4, 5-6, 12 times, monthly, 40 times, 50 times, weekly, 70 times more than 80 times, 100 times and between 10 and 200 times.

25 users state that the route has always run over the same line, 1 user states they can't remember and another users states 'unknown' to this question. 1 user mentions that a person tries to move the bridleway by blocking it with a car, this still frequently happens and causes riders to squeeze through past the car and the iron railings. Another user states that a small gate used to take you onto the field and one user states a route behind the houses has not been accessible for a number of years because of a locked gate.

When asked if there are any stiles/gates/fences along the route 25 users state there are gates, most users claim there are 2 gates along this route, 3 users state there are no stiles/gates/fences along the route and 1 user states 'unknown' to this question.

When asked if any of the stiles/gates/fences were locked, 28 users stated no, 2 users stated yes and 1 user stated 'unknown'. 29 users stated that these stiles/gates/fences didn't prevent them from using the way with a horse / bicycle, 1 user stated 'unknown' to this question.

When asked if they have ever been stopped when using the way all 31 users stated no. When asked if they had ever heard of anyone being stopped from using the way all 31 users stated no. 31 users also said they have never been told by anyone that the way was not a Public Right of Way and 31 users all agree that they have never seen any signs/notices across the way.

Information from Others

A letter has been received from Andrew Hayhurst who lives adjacent to the claimed route and states he is happy to support the upgrading to bridleway.

A letter has been received from Gill Hardman, Tulls Standford, Headley, Hampshire, GU35 8RD who own title No LAN74318. It is their general policy in relation to any matter affecting their land to assist in any improvement to facilities for public use in the area and on that basis would not object to the proposals. However it was stated

that time was needed to bear in mind the interests of the tenant farmer who may not be very enthusiastic about horses crossing land which he using for grazing sheep cattle and, in consequence, we consider his views on the matter of upgrading to bridleway status to take precedence over their own in relation to this particular proposal.

Information from the Landowner
none

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

User evidence
Ordnance Survey Maps
Ariel Photographs

Against Making an Order(s)

Gates along the route

Conclusion

Committee will note that the route under consideration is currently recorded as a public footpath. The Application is to upgrade Public Footpath nos. 638 (part), 636, 627 and 626 Bacup, Rossendale Borough as it is claimed that these public footpaths carry higher public rights, namely the status of a Bridleway.

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

Considering first of all whether deemed dedication under S.31 Highways Act 1980 can be satisfied. Committee will be aware that in order to satisfy the criteria of S.31, there must be sufficient evidence of use of the claimed route by the public, as of right and without interruption, over the twenty year period immediately prior to its status being brought into question, in order to raise a presumption of dedication. This presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way.

The user evidence provided in respect of the route indicates that access to the route has never been verbally questioned or denied and there is no evidence of any signs or notices having been erected along the route informing users that it was not a

public right of way. Whilst there is reference in the user evidence to gates being present along the route, one user mentioning a person trying to move the bridleway by blocking it with a car on frequent occasions which causes riders to squeeze through past the car and the iron railings, another user refers to a small gate which used to take them onto the field and one other claiming that a route behind the houses had not been accessible for a number of years as the result of a locked gate this does not appear to have prevented users accessing the route with relative ease and frequency. The user evidence does not provide specific dates as to when these events took place and therefore it is suggested on balance that the "calling into question" would be application itself in 2012 and the 20 year period under consideration would be 1992-2012.

Looking at the twenty years 1992 – 2012 there are 25 users whose use dates back to 1992 with evidence of use being sufficiently frequent. Claimed use is predominantly for riding, pleasure, training horses, hacking and for using the route as a circular route. Whilst the user evidence is generally indicative of a right of way being available as claimed, it is not considered, in and of itself, to be sufficient to prove that the right of way exists. It is suggested that committee may consider that the user evidence in this matter is sufficient and use has been exercised as of right and without interruption for the whole route during 1992-2012. There does not appear to be any strong evidence to demonstrate lack of intention to dedicate over the period under consideration. It is therefore suggested to Committee that deemed dedication can be satisfied.

Looking secondly as whether dedication can be inferred on balance at common law it is advised that the Committee has to consider whether evidence from the 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 would appear to suggest that whilst there is little documentary evidence showing that public rights did exist on the claimed route that there is sufficient evidence to show that it was a reasonably substantial track since at least 1830 being consistently shown on the Ordnance Survey maps from 1849 until the present day. The claimed route from points D to H on the committee plan, is identified on all of the Ordnance Survey Maps as a well used track and this is strongly supported by the ariel photographs. It is suggested that as there are several properties located along Royds Road that this is likely to also be a vehicular route as far as point D on the plan, although not necessarily to the public. It is suggested that the route has most likely been capable of being a bridleway to provide access from Rakehead Lane to Hardman Drive since the 19th Century. On balance, it is suggested that the historical map evidence is not sufficient to demonstrate inferred dedication, as the only primary map evidence is the OS maps which are good evidence to suggest the route was in existence but cannot determine the status of the route.

It is suggested to Committee that, taking all the relevant evidence into account, on balance dedication as a bridleway under S.31 can be deemed and the route, recorded as a footpath at present, be recorded as having bridleway status. In conclusion Committee may consider that a dedication in this matter may be deemed under s.31.

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 File Ref: 804-539	Various	Megan Brindle , 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A