

## Regulatory Committee

Meeting to be held on 22 October 2014

Electoral Division affected:  
Pendle Central

**Wildlife and Countryside Act 1981**  
**Definitive Map Modification Order Investigation**  
**Claimed Public Footpath from Hagg Street to Short Street, Colne, Pendle Borough**  
**File No. 804/468**  
(Annex 'A' refers)

Contact for further information:

Jayne Elliott, 07917 836626, Environment Directorate

[Jayne.elliott@lancashire.gov.uk](mailto:Jayne.elliott@lancashire.gov.uk)

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

[Megan.brindle@lancashire.gov.uk](mailto:Megan.brindle@lancashire.gov.uk)

### Executive Summary

Application for a Public Footpath from Hagg Street to Short Street, Colne, Pendle Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with file no. 804/468.

### Recommendation

1. That the application for a Public Footpath from Hagg Street to Short Street, Colne, Pendle Borough, to be added to the Definitive Map and Statement of Public Rights of Way in accordance with file no. 804/468, be accepted but with the higher status of restricted byway
2. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to record a Restricted Byway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-C.
3. That being satisfied that the higher test for confirming the said Order can be satisfied, the said Order be promoted to confirmation if necessary by sending it to the Secretary of State

### Background

An application has been received from Mr Tom Partridge on behalf of Pendle Borough Council for a public footpath extending from a point on Hagg Street to a point on Short Street, Colne, Pendle Borough, a distance of approximately 135

metres, and shown between points A-C on the Committee plan, to be recorded 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 of the Wildlife and Countryside Act 1981 sets out the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

An order will only be made to add a public right of way to the Definitive Map and Statement if the evidence shows that:

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

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 (as explained in Planning Inspectorate’s Advice Note No. 7) makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate’s website also gives guidance about the interpretation of evidence. 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 the original application. The decision may be that the routes have public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists. The decision may also be that the routes to be added or deleted vary in length or location from those that were originally considered.

## **Consultations**

Pendle Borough Council

The Borough Council is the applicant and therefore is in support of it.

Parish Council

There is no Parish Council for this area.

Applicant/Landowners/Supporters/Objectors

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	8851 3951	Junction with Hagg Street
B	8855 3953	Point on application route adjacent to the north east end of stone retaining wall
C	8864 3955	Junction with Short Street

### **Description of Route**

A site inspection was carried out on 22 August 2014.

The route commences on Hagg Street (point A on the Committee plan), as a continuation of Atkinson Street.

The application route extends from point A along a 1.2 metre wide tarmac surfaced path with the grass on either side having been recently mown to a width of approximately 1 metre.

South of the application route was a substantial stone retaining wall of the adjacent properties and on the north side the route was unbounded and open to an area of trees. A salt bin and dog waste bin were situated on the land adjacent to (and north of) point A.

The tarmac surface of the route was in good condition and extends from point A descending gently down a slope in an east north easterly direction adjacent to the retaining wall to point B adjacent to the north eastern end of the retaining wall.

From point B the application route continued over the macadam surfaced path in a generally easterly direction bounded to the south by a timber post and sheep netting fence obscured by overgrowth. There was a metal field gate in this fence, approximately 15 metres east of point B, leading into a field. The gate was overgrown with vegetation and did not appear to have been used recently.

On the north side of the tarmac path there was a mown grassed strip between the path and a similar fence, giving an overall width of approximately 4 metres. This fence had a reasonably well-maintained hedge behind it.

The fences enclosing the application route continued on either side to the rear of 14 Short Street at which point the fence on the north side of the route ended. The tarmac path continued with an adjacent stone paved footway immediately adjacent

to the northern end of 14 Short Street to point C where the application route ended at the junction with Short Street.


The whole of the application route was open and available for use and appeared to be in regular use. There were no signs or notices on the route to prohibit access and there was a dog waste bin close to point A. The surface was in a good condition throughout and the grass to the sides was clearly well maintained and mown.

The total length of the route is 135 metres.

## Map and Documentary Evidence

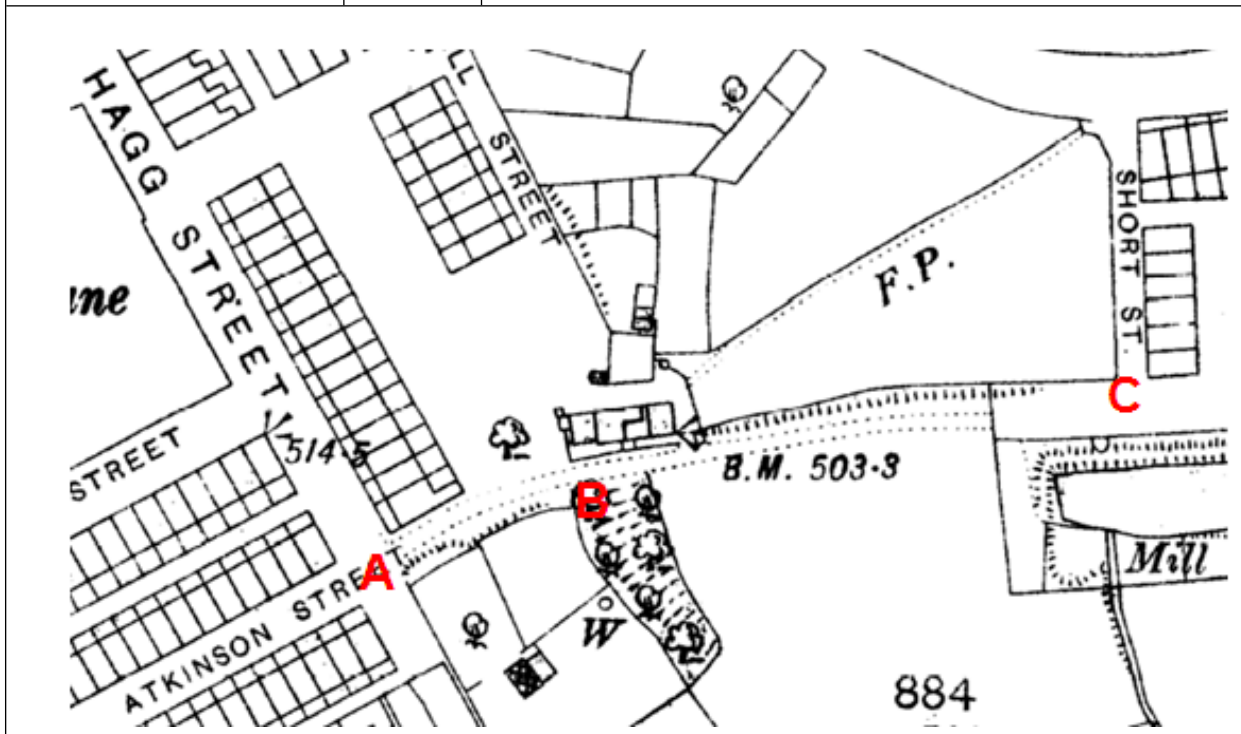
Document Title	Date	Brief Description of Document & Nature of Evidence
<b>Yates' Map of Lancashire</b>	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The application route is not shown.
Investigating Officer's Comments		The route did not exist as a major route at the time although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn in this respect.
<b>Honour of Clitheroe Map</b>	1804	A privately produced map of land owned by the Honour of Clitheroe – Henry Duke of Buccleuth and Elizabeth Duchess of Buccleuth. It specifically showing the boundaries of coal leases granted by them. 'Roads' were identified in the key but there was no apparent distinction between those which may have been considered to be public or private.
Observations		The application route is not shown.
Investigating Officer's Comments		The route did not exist as a major route at the time although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn in this respect.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads.
Observations		The application route is not shown.
Investigating Officer's		The route did not exist as a major route at the time

Comments		although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn in this respect.
<b>Hennet's Map of Lancashire</b>	1830	Small scale commercial map.
Observations		The application route is not shown.
Investigating Officer's Comments		The route did not exist as a major route at the time although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn in this respect.
<b>Canal and Railway Acts</b>		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		No canals or railways are located in the immediate proximity of the application route.
Investigating Officer's Comments		No inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>	1842	<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> <p>The Tithe Map for Colne was published in 1842 (CRO ref DRB1/55)</p>
Observations		The area over which the application route runs is not shown on the map.
Investigating Officer's Comments		No inference can be drawn.

<b>Inclosure Act Award and Maps</b>		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award covering the affected area.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch Ordnance Survey (OS) Map</b>	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1848. <sup>1</sup>
		
Observations		Hagg Street is shown as an unbounded road (double pecked line) but Short Street is not shown. A building is shown to exist north of the application route but the application route itself is not shown.
Investigating Officer's Comments		The application route probably did not exist in 1844
<b>25 Inch OS Map</b>	1893	The earliest OS map at a scale of 25 inch to the

<sup>1</sup> 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.

mile. Surveyed in 1891 and published in 1893.



Observations

The application route is shown to exist. Between the date of the first 6 inch map surveyed in 1844 and 1891 significant development has taken place and terraced housing built along Hag Street up to and adjacent to the application route at point A. Further housing is shown west of point A and Atkinson Street is shown and named on the map extending from the west as far as point A. The application route is shown as a double pecked line through point B where it passes properties located immediately to the north to a point approximately 20 metres west of point C where a solid line is shown across the route which may indicate the existence of a boundary – possibly gated. Beyond this point the application route continues along a bounded section of what appears to be a cul de sac leading to the junction with Short Street. Number 14 Short Street is not shown on the map and the short bounded section is not shown as being coloured or shaded.

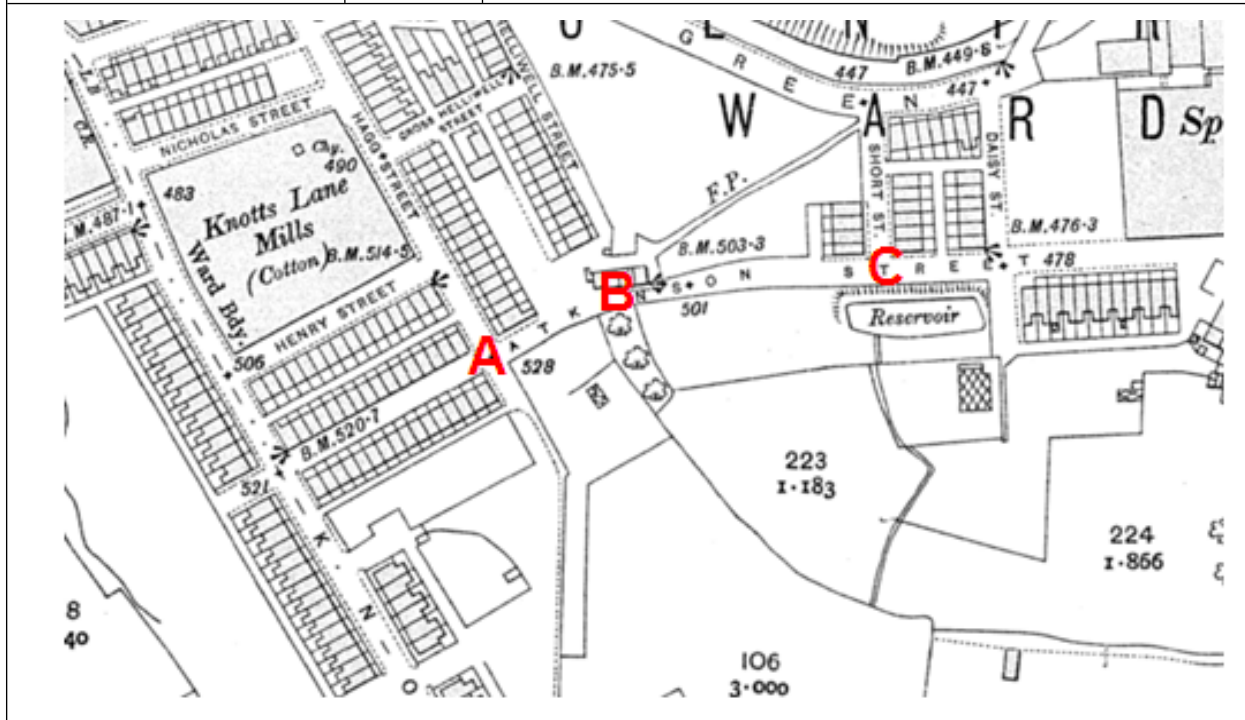
Investigating Officer's Comments

The application route existed in 1891 and appeared to be capable of being used by the public on foot. It appears to have provided access to properties to the north of point B (although alternative pedestrian 'footpath' access is also marked). A line is shown across the route approximately 20 metres west of point C. The application route is shown to extend as an unbounded track as far as this line and it is

reasonable to conclude that a gate would have existed at this point which may have restricted but not necessarily prevented access. 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.

The public status of the route is not indicated by colouring or shading. Shading was often used to show the administrative status of roads on 25 inch maps produced 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 suggesting that it was not considered to be a public vehicular route in 1891.

25 inch OS Map	1912	Further edition of the 25 inch map surveyed in 1891, revised in 1910 and published in 1912.
----------------	------	---



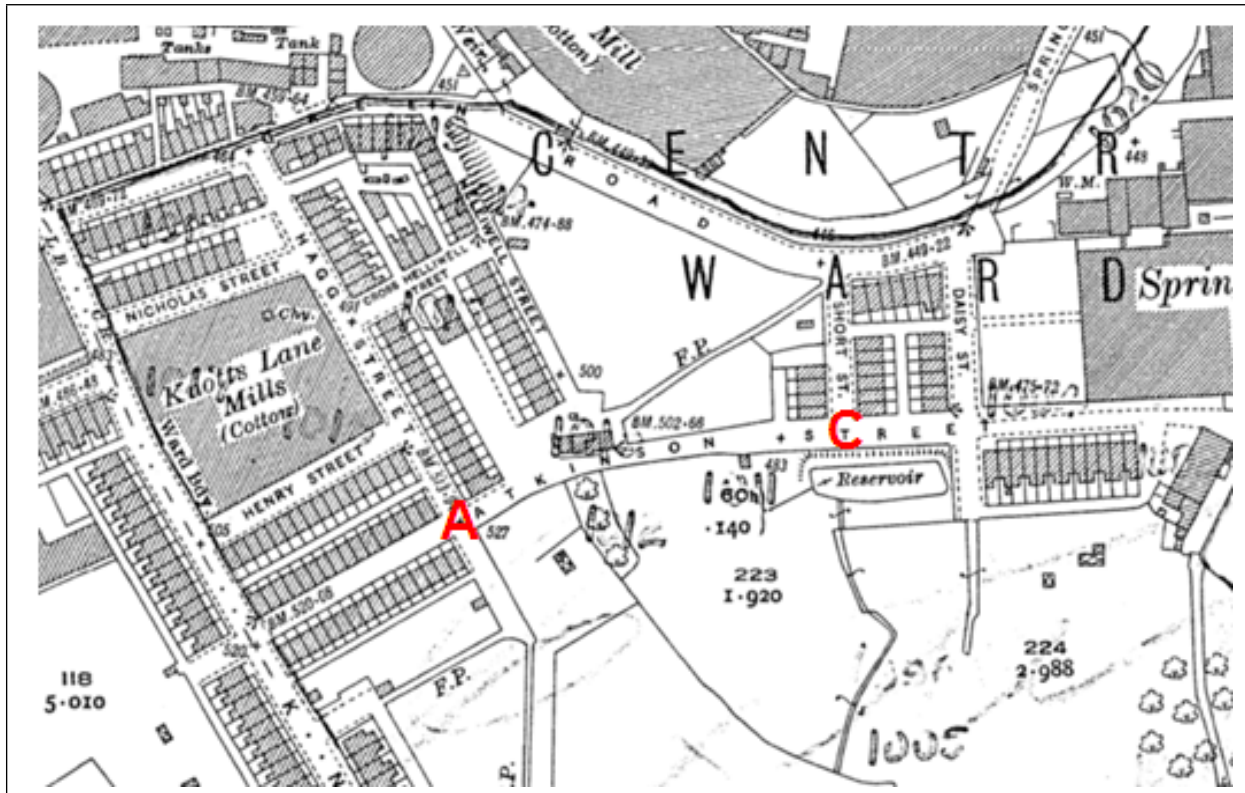
Observations		The full length of the route under investigation is shown and is labelled as forming part of Atkinson Street (which also extended west of point A and east of point C). It is bounded along its southern edge but a section is open and unbounded between point A and point B – possibly providing access to the properties on the north side of the route. No gates or barriers are shown to exist across the route.
--------------	--	---



Investigating Officer's Comments		The application route existed in 1910 and appeared to be capable of being used by the public. It is named on the map as forming part of Atkinson Street suggesting that it may have appeared to the surveyor to form part of the vehicular highway network.
<b>Finance Act 1910 Map</b>	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 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		Finance Act plans from both the County Records Office and National Archives were inspected. Both sets of records show the application route excluded from the numbered hereditaments.
Investigating Officer's Comments		The exclusion of the full length of the application route from the adjacent numbered hereditaments is suggestive of, but not conclusive of, public carriageway rights. The records suggest that the route may have been considered to be a public vehicular highway at that time.
<b>25 Inch OS Map</b>	1932	Further edition of 25 inch map (surveyed 1891, revised in 1929-30 and published 1932.



Observations		The full length of the route under investigation is as it was on the earlier 1912 edition of the map.
Investigating Officer's Comments		The route under investigation existed and appeared capable of being used by the public as part of the vehicular highway network circa 1930.
<b>Authentic Map Directory of South Lancashire by Geographia</b>	Circa 1934	An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map. The publisher claimed to have incorporated new districts, streets and trunk roads in the atlas and acknowledges the assistance of municipal and district surveyors when compiling the book.



Observations		The full length of the route under investigation is shown as part of Atkinson Street.
Investigating Officer's Comments		The route under investigation existed in the 1930s and formed part of Atkinson Street. The primary purpose of the atlas was to show public vehicular routes suggesting that the route may have been considered to be part of the public vehicular highway network at that time.
<b>Aerial Photograph<sup>2</sup></b>	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

---

<sup>2</sup> 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		The full length of the application route can be clearly seen. The route between point A and point B appears to be of a substantial width. Either side of point B less substantial routes can be seen leading to other areas/properties. From point B to point C the route can be seen but does not appear to be as wide or substantial as the first part of the route.
Investigating Officer's Comments		The route under investigation existed in the 1940s and appeared to be capable of being used by the public. The appearance of the route on the aerial photograph suggests that the route would have been capable of being used by vehicles but it does not appear to be made up to the same standard as the connecting routes.
<b>6 Inch OS Map</b>	1955	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.
Observations		The route under investigation is shown and is labelled as Atkinson Street on the map. It is shown in the same way as it is depicted on the 1932 25 inch map.
Investigating Officer's Comments		The route under investigation existed in 1955 and appeared capable of being used by the public.
<b>1:2500 OS Map</b>	1963	Further edition of 25 inch map reconstituted from former county series and revised in 1960 and published 1963 as national grid series.



<p>Observations</p>		<p>The full length of the route under investigation is shown. A substantial and most probably surfaced track appears to have existed between point A and point B with access leading off at two points to routes running along the rear of the terrace houses on Hagg Street and Helliwell Street. The properties that existed immediately north of the route close to point B are no longer shown to exist. Allotment gardens are shown on either side – but fenced off from the route. Between point B and C the double pecked lines indicating a narrower track than the section between point A and point B but within the same wider boundaries. The route is still labelled on the map as Atkinson Street although the labelling is positioned towards the eastern end at point C.</p>
<p>Investigating Officer's Comments</p>		<p>The full length of the application route existed in 1960 and appeared to be capable of being used by the public.</p>
<p><b>Aerial photograph</b></p>	<p>1960s</p>	<p>The black and white aerial photograph taken in the 1960s and available to view on GIS.</p>




Observations		The full length of the route under investigation can be seen (although partially obstructed by trees close to point B). It appeared to be a substantial track although it is not possible to determine from the photograph whether it was surfaced.
Investigating Officer's Comments		The route under investigation existed in the 1960s and appeared to be capable of use by the public.
<b>Aerial Photograph</b>	1990	Colour aerial photograph available to view at LCC Offices (Cuerden).



Observations		The clarity of the aerial photograph when scanned and enlarged is poor. However, it is possible to see that by 1990 the area surrounding the route under
--------------	--	--



		investigation appears to have changed considerably since the 1960s. The houses along Hagg Street and Helliwell Street have been demolished and the area has grassed over leaving no visible trace of their existence. A faint track – becoming clearer as you approach point C – can be seen along the line of the route under investigation.
Investigating Officer's Comments		The route under investigation still appears to have existed in 1990 but use appears to be either less frequent or possibly more consistent with a public footpath than the use of the route in the past.
<b>Aerial Photograph</b>	2000	Aerial photograph available to view on GIS.
		
Observations		The route under investigation can be seen between point A and point B. The worn track appears to continue east from point B but then is less visible as it approaches point C. An area of woodland has become established north of the route between point B and point C. At least one car appears to be parked on the route just west of point C.
Investigating Officer's Comments		The route is clearly visible between point A and point B but it much more faintly visible from that point onwards. The route still appears to have existed and to be capable of being used but that use appears to be either less frequent or possibly more consistent with a public footpath than use in the past.
<b>Definitive Map Records</b>		<p>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.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the</p>



		preparation of the Definitive Map in the early 1950s.
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council in rural district 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		Colne was an Urban District in the early 1950s and so a parish survey map was not compiled.
<b>Draft Map</b>		The Draft Maps were given a “relevant date” (1 <sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. It was placed on deposit for a minimum period of 4 months on 1 <sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The application route was not shown on the Draft Map as a public right of way. No objections or representations were made to the County Council about the fact that the route was not included on the map.
<b>Provisional Map</b>		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 was not shown on the provisional Map and no representations about it were made to the County Council.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was not shown on the First Definitive Map.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights

		of Way (First Review) was published with a relevant date of 1 <sup>st</sup> 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.
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the route under investigation was considered to be a public right of way by the Surveying Authority. There were no objections relating to the fact that the route was not shown when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the route under investigation runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over this land.
<b>Lancashire County Council Highway Records</b>		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 the public highways within the county. These were based on existing Ordnance Survey maps coloured and annotated to mark public highways.

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 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. 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.





<p>Observations</p>		<p>The Applicant submitted a plan obtained from the LCC Highways Office at Linden Road, Colne showing publicly maintained routes coloured red and those that were not maintained coloured green. This plan is consistent with the road classification layer on the LCC Mapzone and MARIO GIS systems which shows the route under investigation as being privately maintained.</p> <p>A search of Lancashire County Council highways records revealed a copy of a document titled 'Borough of Pendle, Borough Engineers Department, Street Register – Including Street Lengths'. The document was not dated. Within the document Atkinson Street is listed under 4 consecutive listings. Only the first of these entries records part of Atkinson Street as being 'adopted' and the measurement given is consistent with the measurement for that section of Atkinson Street which extends in a south westerly direction from point A and which is recorded in the LCC records as being maintainable at public expense. The route under investigation is included within the second listing: 'Atkinson Street – Daisy Street' which is recorded as being unadopted in the register.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation is not considered to be publicly maintainable but may still have been considered part of the highway network.</p>
<p><b>Highway Stopping Up Orders</b></p>	<p>1835 - 2014</p>	<p>Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records</p>

		Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		In considering that Atkinson Street may have historically included the route under investigation a search of the records was made to see whether any orders had been made to stop up or divert it since 1835 to the current day. No reference to the route under investigation being stopped up or diverted could be found.
Investigating Officer's Comments		If the route under investigation is considered to be a public highway no legal order has been made to stop up or divert it in the past.

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.

The affected land is not registered common land.

### **Landownership**

Ownership of the land over which the route crosses is unknown and is not registered with the Land Registry. The applicant has posted notices on the site notifying the Owner/Occupier of the application, but no representations have been received in response.

### **Summary**

The route under investigation is not shown on any maps prior to the 1890s.

The route is first shown on the First Edition 25 inch OS map published in 1893 (survey dated 1891) and between the 1840s and 1890s it is apparent that there was significant development in the area. It appears to have had a gate near point C.

From the second edition 25 inch OS map surveyed 1910 onwards the route is shown ungated and appears to have been part of the general vehicular highway network. On this, and some subsequent maps it is named as Atkinson Street, including the Geographia map directory primarily showing vehicular highways.

The 1910 Finance Act records show the route excluded from the adjacent numbered hereditaments and is suggestive of, but not conclusive of public carriageway rights.

Aerial photographic evidence from 1940s onwards confirms its existence and use, although the nature of use cannot be inferred, and it became increasingly less worn suggesting diminishing use and more likely to be on foot. This is supported by the depiction on the 1963 1:2500 OS map indicating the route appeared to have become narrower and less significant than those to which it connected to at either end.

Highway records recognise this way but not as publicly maintainable.

To conclude, records from the early 1900s are suggestive of the fact that the route formed part of the vehicular highway network but there is no record of it being publicly maintainable. The significance of the route during the second half of the 1900s appears to have reduced – possibly due to the demolition of the terrace housing on Hagg Street and Helliwell Street and the property that had been situated adjacent to the route just north of point B and site, map and photographic evidence from the 1960s onwards is more consistent with footpath use.

If it is accepted that the route has early map and documentary evidence for public carriageway rights it does not appear that those rights have been subsequently legally extinguished by a specific legal order but the effects of the Natural Environment and Rural Communities Act 2006 would be to extinguish any public mechanically propelled vehicle rights.

### **County Secretary and Solicitors Group Observations**

#### Information from the Applicant

The Claimant has submitted 24 evidence of use forms in support of this claim, showing knowledge of the route for over 40 years (1); 30-39 years (2); 20-29 years (9); 10-19 years (7); and less than 10 years (5).

The forms give evidence of use of the route for over 40 years (1); 30-39 years (2); 20-29 years (8); 10-19 years (8); and less than 10 years (5).

Frequency of use had varied from daily to monthly, with several forms mentioning witnessing many other users on a daily basis. The path has been used as access to local amenities such as school, shops, and workplaces, as well as visiting friends. However some forms mention leisure use and the proximity of the path to a children's play area. Two forms mention the fact that the path was upgraded and surfaced a few years ago as part of a community scheme carried out by Groundwork and the local community and now forms a pleasant woodland walk. Four users have ridden the route by bicycle.

None of the users have ever asked or been given permission to use the route. Several say that the local community has always viewed the route as a public right of way, with one mentioning the fact that it clearly shown on an A to Z map and another claiming that it is known as Atkinson Street. No user has ever seen any gate or other obstruction along the route, and none has ever been challenged or turned back, nor seen any prohibitive signs.

Also submitted in support of the Claim are an extract from the First Edition 1:2500 map, a 1940s aerial photograph, and photographs of the route. All of these show the route clearly defined, and the photographs show a tarmac surface.

An extract from the Highway Adoption map shows the route coloured green for unadopted highway.

## **Assessment of the Evidence**

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

#### In Support of the Claim

User evidence  
OS map evidence  
Ariel photographs  
Highways records and 1910 Finance Act records  
No action taken by owners

#### Against Accepting the Claim

Route not shown on maps prior to the 1890's.  
Some map evidence suggests that whilst the route formed part of the vehicular highway network there is no record of it being publicly maintainable.  
Significance of the route during the second half of the 1900's appears to have reduced.

#### Conclusion

The claim is that this route is in law a public footpath and should be recorded on the Definitive Map and Statement as such.

There is no express dedication and so it is advised that Committee consider whether a dedication can be deemed under s31 Highways Act or inferred at common law from all the circumstances.

There are two sets of evidence. The early set, being map and documentary evidence, suggests that Committee should first consider whether dedication under common law and the higher status of restricted byway can be inferred.

It is advised that the Committee has to consider whether evidence from the old map and other documentary evidence 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 the route for use by the public. However, during the period of consideration it may be difficult to indicate an intention by the landowner to dedicate as whilst he did not take any overt action to prevent users for using the route, neither did he encourage this.

If Committee however is not content that the evidence of restricted byway is sufficient on balance then the user evidence should be considered and s31 applied together with the common law.

S31 requires the finding of a calling into question from which to run the twenty years back. This must be an action making it clear to a reasonable number of users that

their use of the route is being challenged. The evidence indicates that access to the route has never been questioned or denied and therefore the "calling into question" would be application itself in 2007 and the period of use required to be evidenced would be 1987-2007.

Looking at the twenty years 1987 – 2007 there are 11 users whose use dates back to 1987. Whilst evidence as to the frequency of use varies from daily to monthly, a number of users also refer to witnessing many other users on a daily basis. 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 1987-2007. There does not appear to be any evidence to demonstrate lack of intention to dedicate over the twenty years prior to 2007. It is therefore suggested to Committee that deemed dedication can be satisfied under S31.

Taking all the evidence both modern and old into account the Committee may consider that a dedication in this matter may be deemed under S31 or inferred under common law and that an Order be made and promoted.

### **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: 804-468	Various	M Brindle, 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A