

Regulatory Committee

Meeting to be held on 22 October 2014

Electoral Division affected: Rossendale East

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Bridleway and Upgrade of Footpath to Bridleway from Rooley Moor Road to Cowpe Road, Bacup
File No. 804-538
(Annex 'A' refers)

Contact for further information:

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Executive Summary

Application for the addition of a Bridleway and upgrading of Bacup Footpaths 617, 616 (part), 609 and 612 (part) to Bridleway from Rooley Moor Road to Cowpe Road, Bacup. File No. 804-538.

Recommendation

1. That the application for the addition of a bridleway and the upgrading of Bacup Footpaths 617, 616 (part), 609 and 612 (part) to bridleway from Rooley Moor Road to Cowpe Road, Bacup, (File No. 804-538), be accepted in part. Section B-C-D-E-F-G-H-I shown on the committee plan is accepted as a bridleway and section A-B shown on the committee plan is rejected.
2. That an Order be made pursuant to Section 53 (c)(i) and (ii) of the Wildlife and Countryside Act 1981 to add a bridleway and to upgrade Bacup Footpaths 617, 616 (part), 609 and 612 (part) to bridleways on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between B-I.
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received from the Forest of Rossendale Bridleways Association for a public bridleway to be recorded on the Definitive Map and Statement of Public Rights of Way between points A-I on the Committee plan.

The application route extends from point A on Rooley Moor Road to a point I on Cowpe Road following a route currently recorded as Bacup Footpaths 617, 616 (part), 609 and 612 (part). A short section of the route applied for is currently not recorded as a public right of way between point C and point D on the Committee 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 set 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”

An order for upgrading a way shown on the Definitive Map and Statement will only be made if the evidence shows that:

- "it ought to be there shown as a highway of a different description"

An order for adding a way to or upgrading a way shown on the Definitive Map and Statement will be made if the evidence shows that:

- “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 or restricted byway”

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

The County Council’s decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by 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 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 has been consulted and no response has been received.

Applicant/Landowners/Supporters/Objectors

The evidence submitted by the applicant/landowners/supporters/objectors and observations on those comments are included in Advice – Director of Legal Services' Observations.

Advice

Executive Director for the Environment's Observations

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	8444 2071	Open junction with Rooley Moor Road
B	8435 2072	Gate across route
C	8435 2072	Junction of Footpaths 617, 618 and 619 west of gate.
D	8432 2071	Unmarked junction of Footpath 616 with route
E	8429 2066	Unmarked junction of Footpaths 616, 609 and 610 with route
F	8425 2048	Gate across route
G	8424 2047	Junction of Footpaths 608, 609 and 612 at Boarsgrave Farm
H	8420 2052	Gate across route
I	8419 2053	Junction of Footpath 612 and southern end of U7774 Cowpe Road.

Description of Route

n.b. References to public rights of way shown on the Definitive Map and Statement are generally given in the form '14-1-617' or 'Bacup Footpath 617' but are referenced below in the abbreviated form 'Footpath 617' for brevity since all those referred to are in Bacup in Rossendale Borough.

A site inspection was carried out in March 2014.

The route commences at point A on Rooley Moor Road. It extends in a westerly direction following a compacted earth and stone surfaced access track recorded as Footpath 617. The track is approximately 3 metres wide and unenclosed. After approximately 80 metres the route is crossed by a 3 metre wide metal field gate at point B.

The route under investigation passes through the field gate - which was closed but not padlocked on the day that the route was inspected. To the north of the gate, built into the adjacent stone wall is a pedestrian kissing gate.

Immediately west of the gate at point C is the junction of Footpaths 617, 618 and 619. From point C the route continues along the compacted earth and stone surfaced track in a west south westerly direction departing from the routes of the recorded footpaths for approximately 25 metres to point D where it meets Footpath 616 at an unmarked point on the track.

The route under investigation then continues in a south westerly direction gradually descending downhill and following a clearly defined unenclosed track for approximately 55 metres to point E at the unmarked junction of Footpaths 616, 610 and 609. From point E the route continues for a further approximately 180 metres along the track in a generally south south westerly direction downhill towards point F. The track gets quite steep as it approaches point F following the bottom of a cutting.

At point F the route is crossed by a metal 3 metre wide field gate (which was closed but not padlocked) and an adjacent 1 metre wide pedestrian gate. Beyond the gate the route continues a short distance to meet Footpaths 608 and 612 adjacent to a farm building forming part of Higher Boarsgrave Farm at point G.

The route then continues in a north westerly direction along Footpath 612 passing a number of farm buildings currently used to repair vehicles to a 3 metre metal field gate at point H. It passes through the gate (closed but not padlock on the date that the route was inspected) and then continues in a north north westerly direction for approximately 30 metres along a 2.7 metre wide track to pass through a 3 metre wide metal field gate and adjacent 1m wide pedestrian gate at point I where a public footpath signpost is positioned pointing back along the route towards point H. A Lancashire County Council recently produced plastic notice has been attached to the gatepost saying 'Stop: This is a Public Footpath No Cycling!'

The route ends at point I where it meets the most southerly end of the section of Cowpe Road that is recorded on the County Council's List of Streets as a publicly maintainable highway (although it is also recorded on the Definitive Map as a Footpath for a further 140 metres along Cowpe Road).

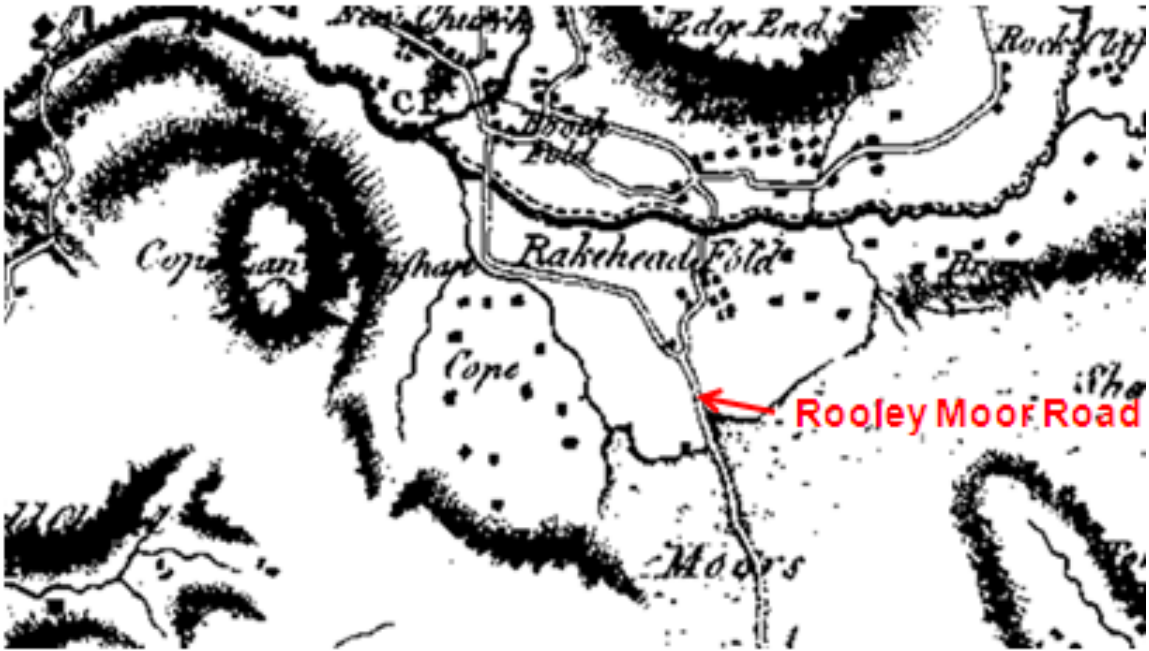
The total length of the route under investigation is 460 metres and it is recorded as public footpath with the exception of a short section between point C and point D on the Committee plan.

When inspected there was no evidence that the route was currently being used by horses but unless the field gates at points I, F,H and G were padlocked access along the route would have been physically possible.

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

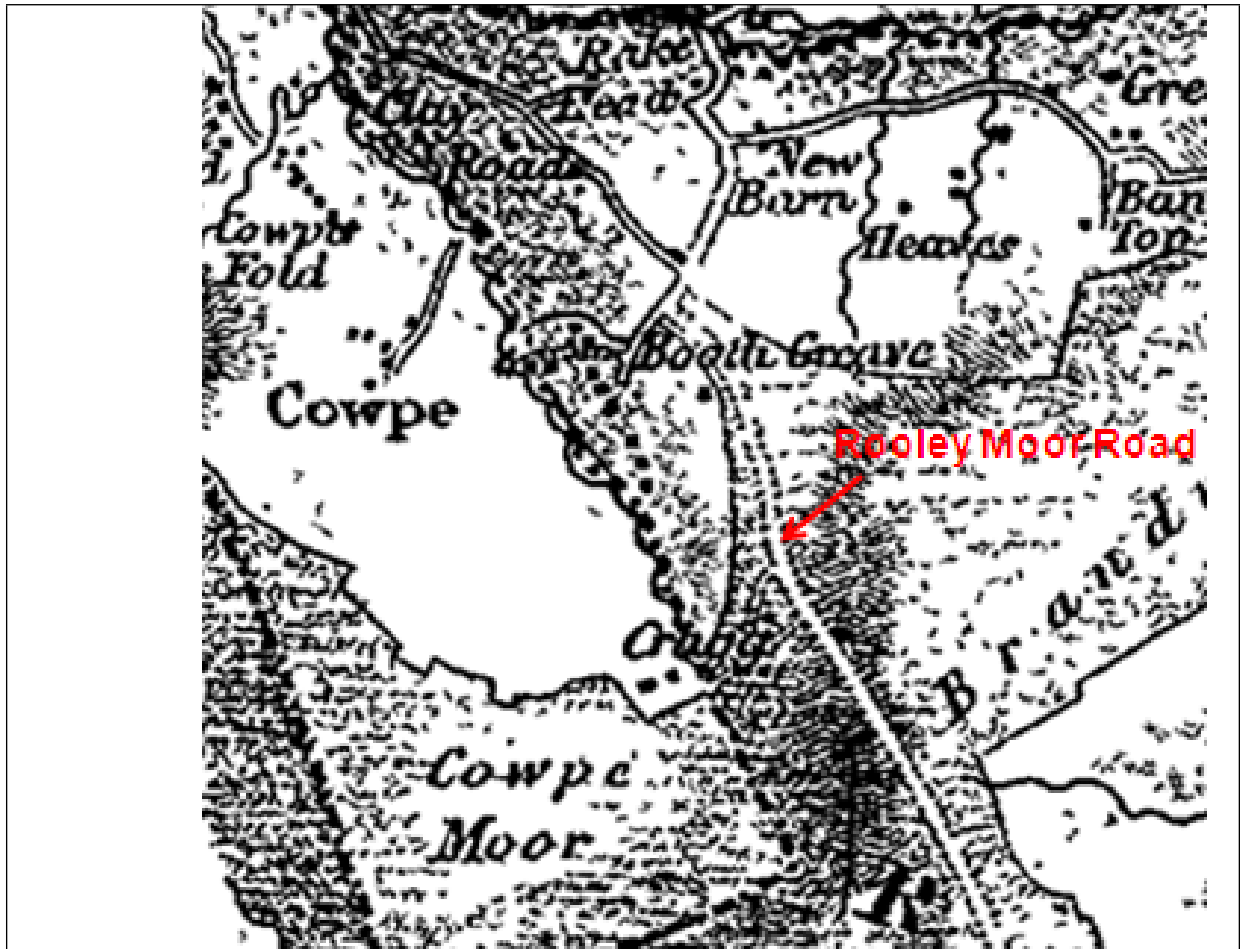
		were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
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Observations		Rooley Moor Road is shown but the route under investigation is not shown. The settlement of Cowpe is shown and labelled 'Cope' but there is no road shown leading to it and no route shown from Cowpe to Rooley Moor Road.
Investigating Officer's Comments		It is likely that the route, if it existed in 1786, was of little significance and was therefore not included on the map.
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 and the two were not differentiated between within the key panel.



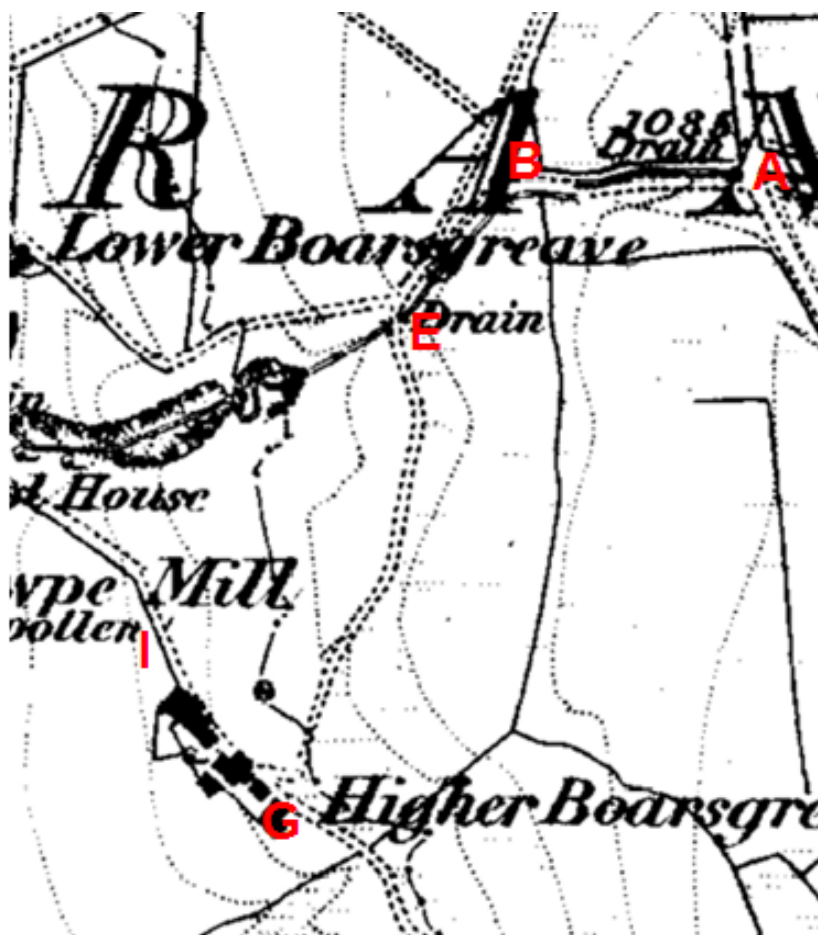
Observations		Rooley Moor Road is shown but the route under investigation is not shown. The settlement of Cowpe is shown and named but there is no road shown leading up to it or connecting to Rooley Moor Road. A track is shown coming off Rooley Moor Road leading to a property south of Boars Crag but this does not extend as far as Cowpe and is shown north of a watercourse and considered unlikely to be the route under investigation.
Investigating Officer's Comments		It appears likely that the route, if it existed in 1818, was of little significance and was therefore not included on the map.
Hennet's Map of Lancashire	1830	A further small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the Country's communications network was generally considered to be the clearest and most helpful that had yet been achieved.



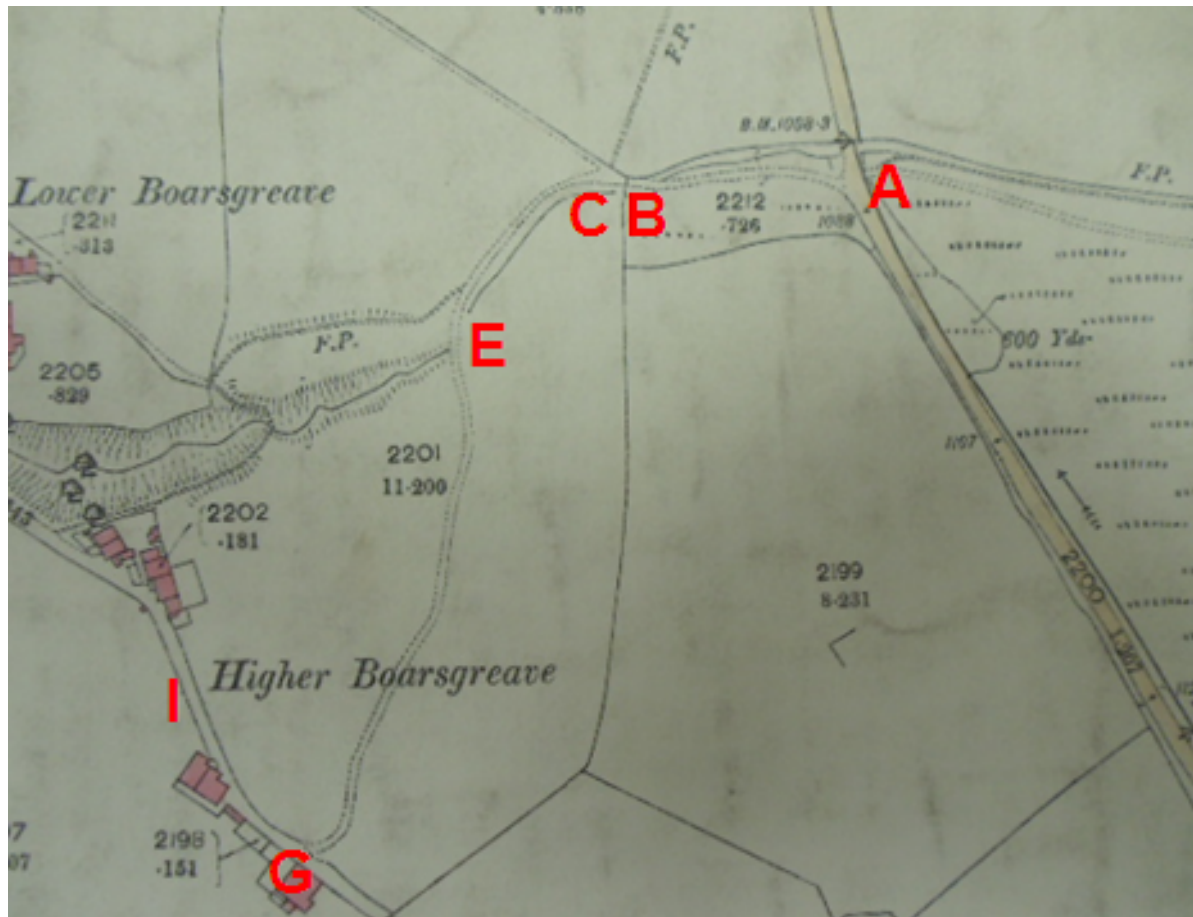
<p>Observations</p>		<p>Rooley Moor Road is shown and the village of Cowpe is shown and named. A property is shown and named Booth Greave which may depict the property on the route under investigation now known as Boarsgreave. A route appears to be shown from Rooley Moor Road to Booth Greave which may depict the route under investigation.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation may have existed in 1830 between Rooley Moor Road and Booth Greave. However this map appears to differ considerably from the 1st Edition Ordnance Survey map produced in the following decade and very little inference can be drawn.</p>
<p>Canal and Railway Acts</p>		<p>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</p>

		for proposed canals and railways which were never built.
Observations		There are no canals or railways in the area of the investigation.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment		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		Several Tithe Maps were inspected at the County Records Office but none covered the area crossed by the route under investigation.
Investigating Officer's Comments		No inference can be drawn.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award or Map for the relevant area.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1847. ¹

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		The full length of the route under investigation can be seen existing as an unenclosed track. The buildings at Higher Boarsgreave appear to cross the track north west of point G but the track is then shown to continue beyond the farm in a north west direction towards Cowpe.
Investigating Officer's Comments		The route existed as a track in 1844-45 which may have been capable of being used by the public. It is not clear from the map whether access was available through Higher Boarsgreave farm due to the small scale and subsequent lack of detail but it is considered more than likely that it did form part of a through route.
25 Inch OS Map	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1893.



Observations

The whole of the route under investigation is shown as a substantial track on the map. Rooley Moor Road is shown coloured and shaded - a practice used by the Ordnance Survey on 25 inch maps from at least 1884 to 1912 to show the administrative status of roads and generally indicated that the route was a public road for wheeled traffic kept in good repair by the highway authority.

The route under investigation is not coloured. A dashed line is shown across the route at point A indicating a change in surface from that found on Rooley Moor Road. A solid line is shown across the route at point B indicating that a gate probably existed at this point. Two routes connecting to the route under investigation (close to point C and point E) are labelled as footpaths ('F.P.') but the route under investigation is not labelled. There appears to be a further change in the surface indicated at point G where the route enters the farmyard and between point G and point I the route is bounded on either side.

Investigating Officer's Comments		The whole of the route under investigation existed in 1892 connecting Rooley Moor Road with Higher Boarsgreave and the hamlet of Cowpe. The routes currently recorded on the Definitive Map as Footpaths 618 and 610 are labelled as footpaths on the map but the route under investigation is not suggesting that it was more substantial in its construction and subsequent use. The fact that the route under investigation connected Rooley Moor Road with Cowpe – passing through, but not terminating at Higher Boarsgreave - suggests that it could have been used by the public on horseback at that time. The fact that a gate is indicated as existing across the route at point B does not mean that it could not have been a route used by the public and gates are not uncommon on rural and moorland routes where the control of livestock would have been (and still is) an issue.
25 inch OS Map	1911	Further edition of the 25 inch map surveyed in 1892, revised in 1908 and published in 1911.



Observations		The full length of the route under investigation is clearly shown. A gate appeared to have existed at point B.
Investigating Officer's		The route under investigation existed in 1911

Comments		and appears to have been capable of being used by the public on horseback at that time.
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 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>

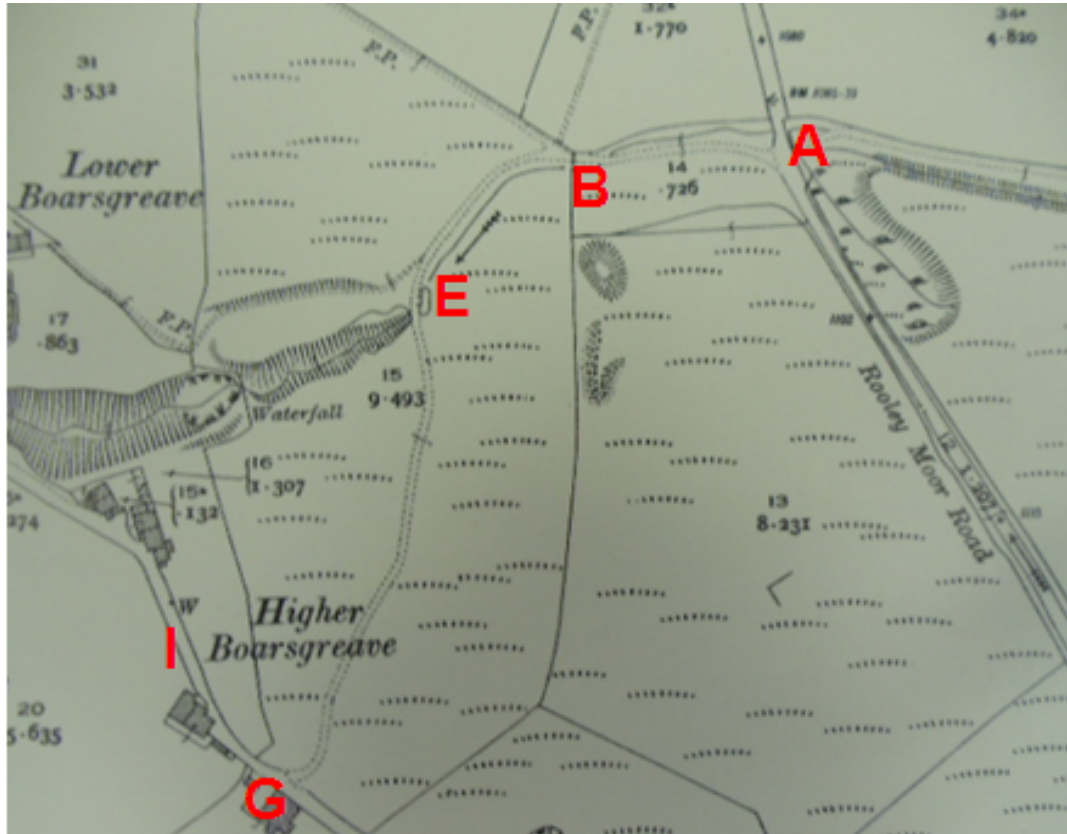


Observations		<p>The Finance Act plan was obtained from the National Archives.</p> <p>The Finance Act map shows the route under investigation included within the numbered hereditament 4302 between point A and point G.</p> <p>Between point G and point I the route under investigation is excluded from the numbered plots.</p>
Investigating Officer's Comments		<p>The fact that the route under investigation was included within a numbered plot between point A and point G suggests that it was not considered to be a public vehicular highway.</p> <p>The exclusion of that part of the application route between points G to I is good evidence of, but not conclusive of, public carriageway rights.</p>
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark public. However, they suffered from several</p>

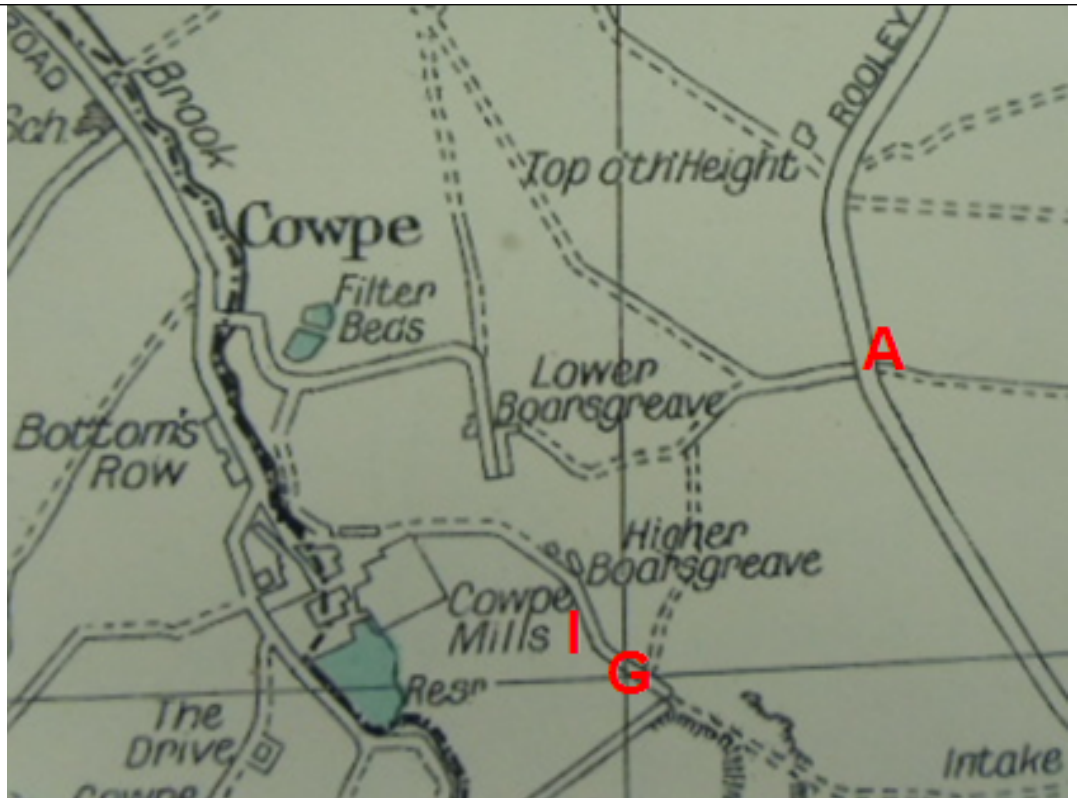
flaws – most particularly, if a right of way was not surfaced it was often not recorded.
 A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public 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 showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.



Observations		No part of the route under investigation is recorded on the List of Streets as a publicly maintainable highway. Cowpe Road is recorded on the current list of Streets as being publicly maintainable up to the start of the route under investigation at point I but not beyond.
Investigating Officer's Comments		The route under investigation was not considered a surfaced way maintained at public expense.
25 Inch OS Map	1929	Further edition of 25 inch map (surveyed 1891, revised in 1927 and published in 1929).

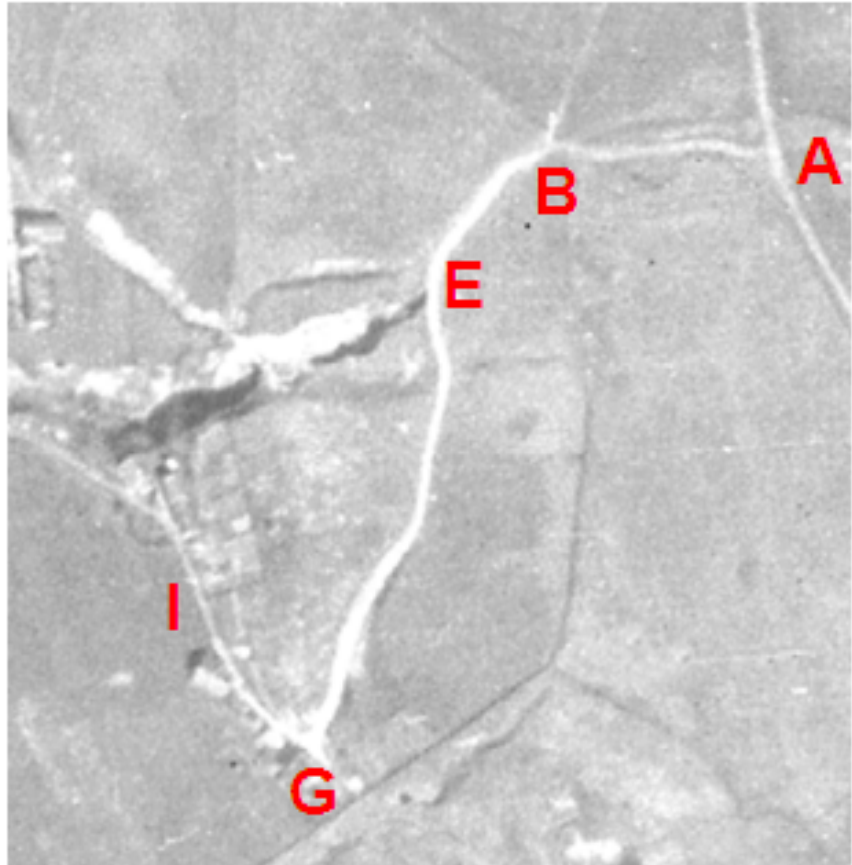


Observations		The route under investigation is clearly shown as it had been on earlier editions of the 25 inch map with a gate across the route at point B. Unlike the paths joining it the route is not marked F.P. suggesting that it was not only usable on foot, and it was open to and contiguous with the general public road network at each end.
Investigating Officer's Comments		The route under investigation existed in 1929 and appeared to be capable of being used by the public not only on foot.
Authentic Map Directory of South Lancashire by Geographia	Circa 1934	An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map. The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.



Observations		The full length of the route under investigation is shown but is shown as an unbounded track between points E-G. It is not named.
Investigating Officer's Comments		The route under investigation existed but being unenclosed and gated would be less convenient as a through route for vehicles and perhaps more consistent with a footpath or bridleway.
Aerial Photograph²	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.

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.



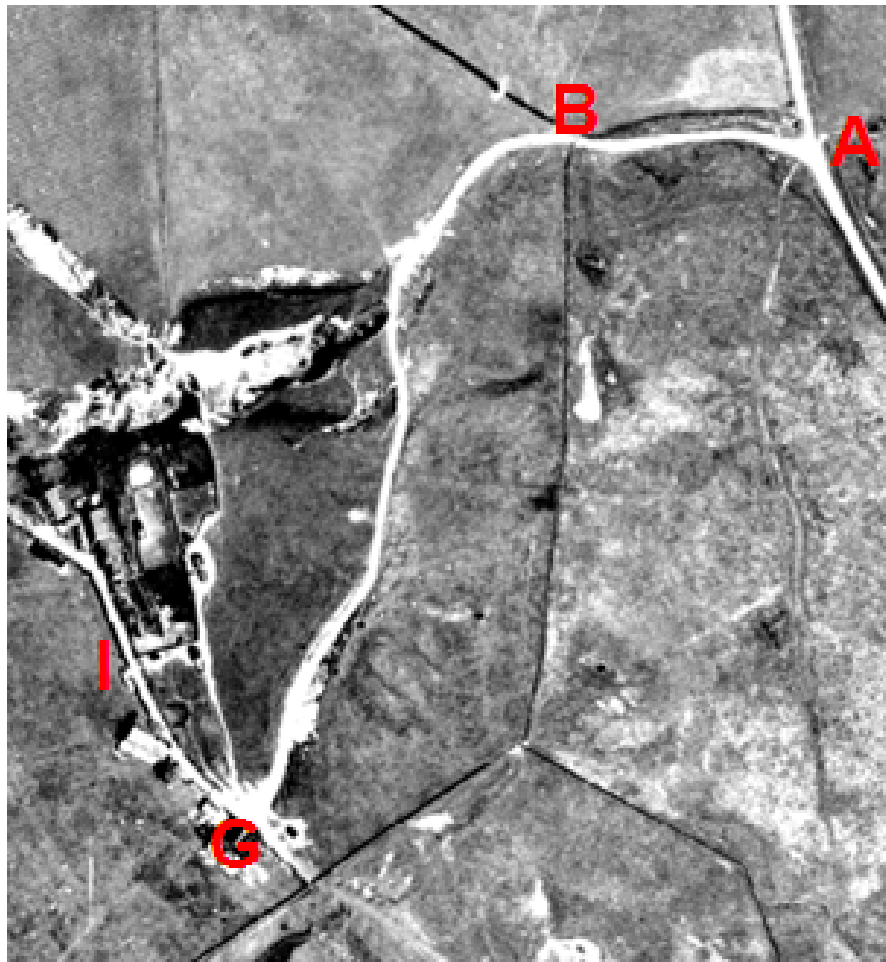
Observations		The whole of the route under investigation can be clearly seen in the photograph but it is not possible to determine whether it was crossed by any gates at that time.
Investigating Officer's Comments		The route shows up so well on the photograph as to suggest that there may have been substantial use, probably including vehicular use, at that time.
6 Inch OS Map	1956	The OS base map for the Definitive Map, First Review, was published in 1956 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.



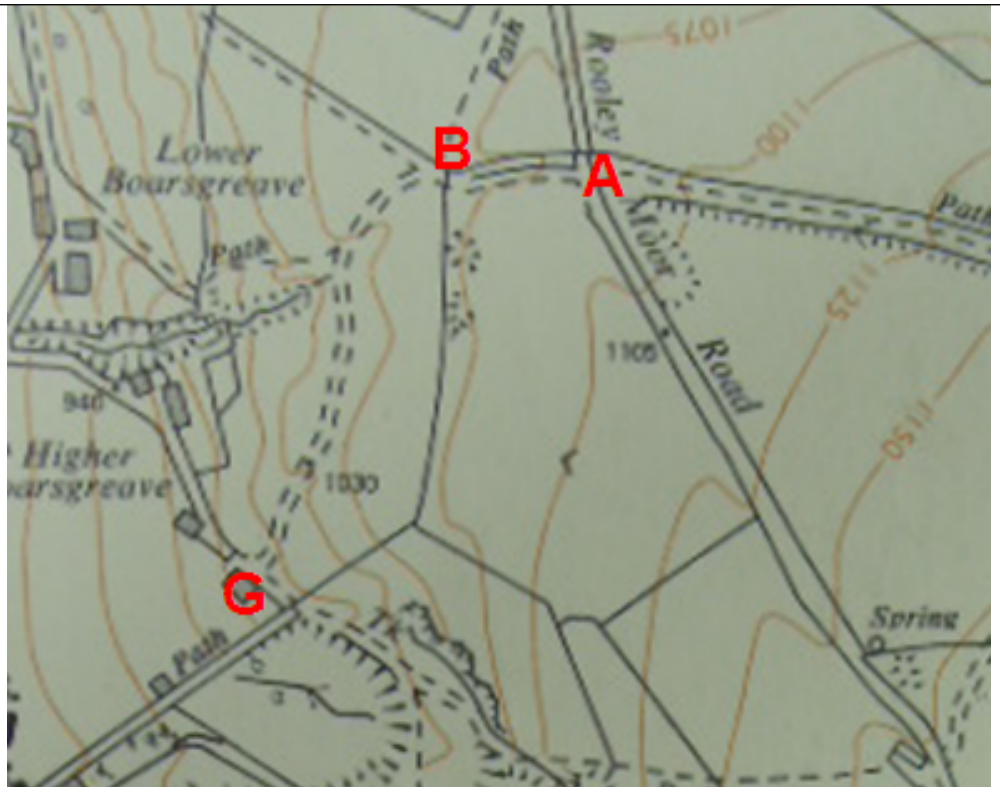
Observations		The full length of the route under investigation is shown and not annotated F.P. A gate appears to exist across the route at point B and also close to point G.
Investigating Officer's Comments		The route under investigation existed in 1956 and appeared to be capable of being used on horseback and/or vehicles.
1:2500 OS Map	1963	Further edition of 25 inch map reconstituted from former county series and revised in 1961 and published 1963 as national grid series.



Observations		The full length of the route under investigation is shown with gates shown across the route at point A and north west of point G. It is not annotated "F.P." and shown wider than the footpaths joining it.
Investigating Officer's Comments		The route under investigation existed in 1963 and appeared to be capable of being used on horseback and/or vehicles.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



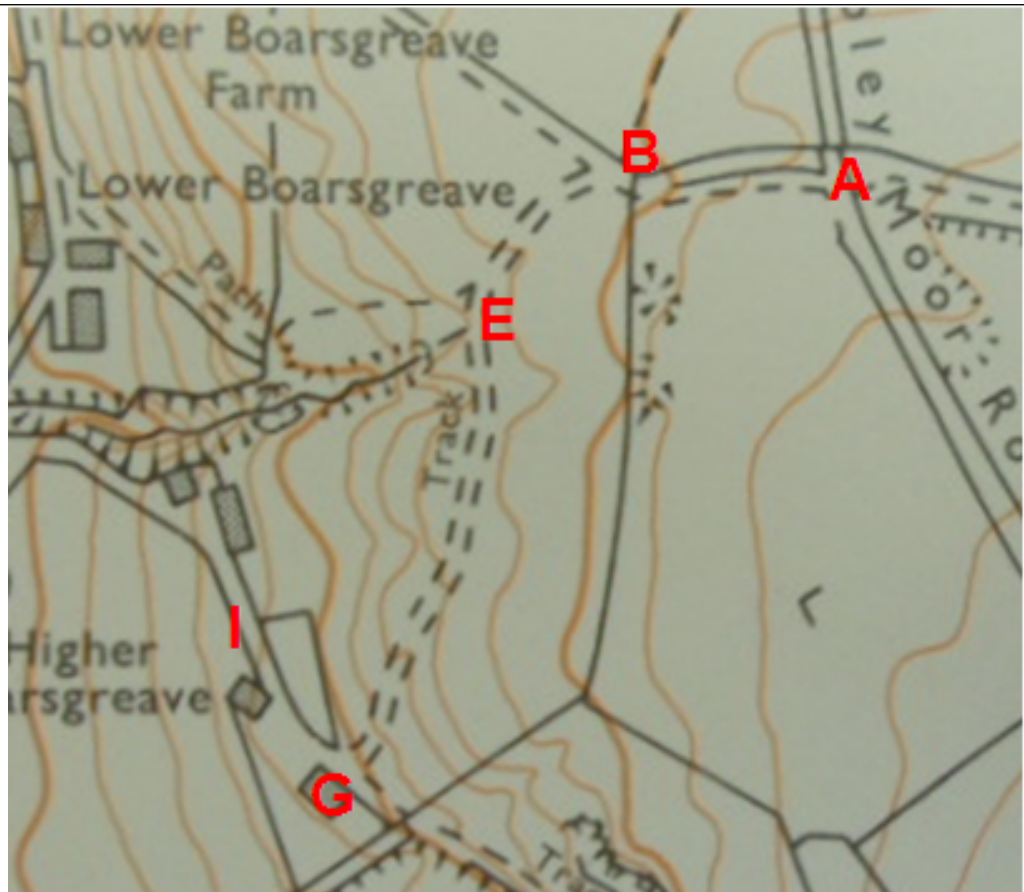
Observations		The whole of the route under investigation can be seen and appears more prominently than it did in the earlier photograph. The gates at point B and just north of point G are visible on the photograph.
Investigating Officer's Comments		The route existed as a well defined route and probably used by vehicles in the 1960s.
1:10,000 OS Map	1968	Further edition of the 1:10,000 map revised 1960-61 and published 1968



Observations		The whole length of the route under investigation is shown with gates indicated as existing at point B and north west of point G. It is not marked as "Path" as some adjacent routes are.
Investigating Officer's Comments		The route existed as a well defined route and appeared to be capable of being used by the public on horseback in the 1968.
1:10,000 OS Map	1981	Revised 1960-75 and published 1981.



Observations		The whole length of the route under investigation is shown with gates indicated as existing at point B and north west of point G. It is not marked as "Path" as some adjacent routes are.
Investigating Officer's Comments		The route existed as a well defined route and appeared to be capable of being used on horseback or with vehicles in 1981.
1:10 000 OS Map	1992	Compiled from larger scale surveys dated 1988 and published 1992.



Observations		The whole length of the route under investigation is shown with a gate indicated at point B. The gate shown on the two earlier 1:10,000 OS maps north west of point G is no longer shown. The route is not labelled as "Path" but "Track"
Investigating Officer's comments		The route existed as a well defined route and appeared to be capable of being used on horseback in 1992.
Aerial Photograph	2000	Aerial photograph available to view at the County Records Office.



Observations		The whole of the route under investigation can be clearly seen to exist on the aerial photograph.
Investigating Officer's Comments		The route existed and appeared to be used as more than only a footpath in 2000.
Aerial Photograph	2003	Colour aerial photographs viewed on GIS.



Observations		The whole of the route under investigation can be clearly seen on the aerial photograph. The gate at point B appears to have existed in 2003.
Investigating Officer's Comments		The route existed and appeared to be used as more than a footpath in 2003.
Aerial Photograph	2006	Colour aerial photograph taken in 2006 and viewed on GIS.

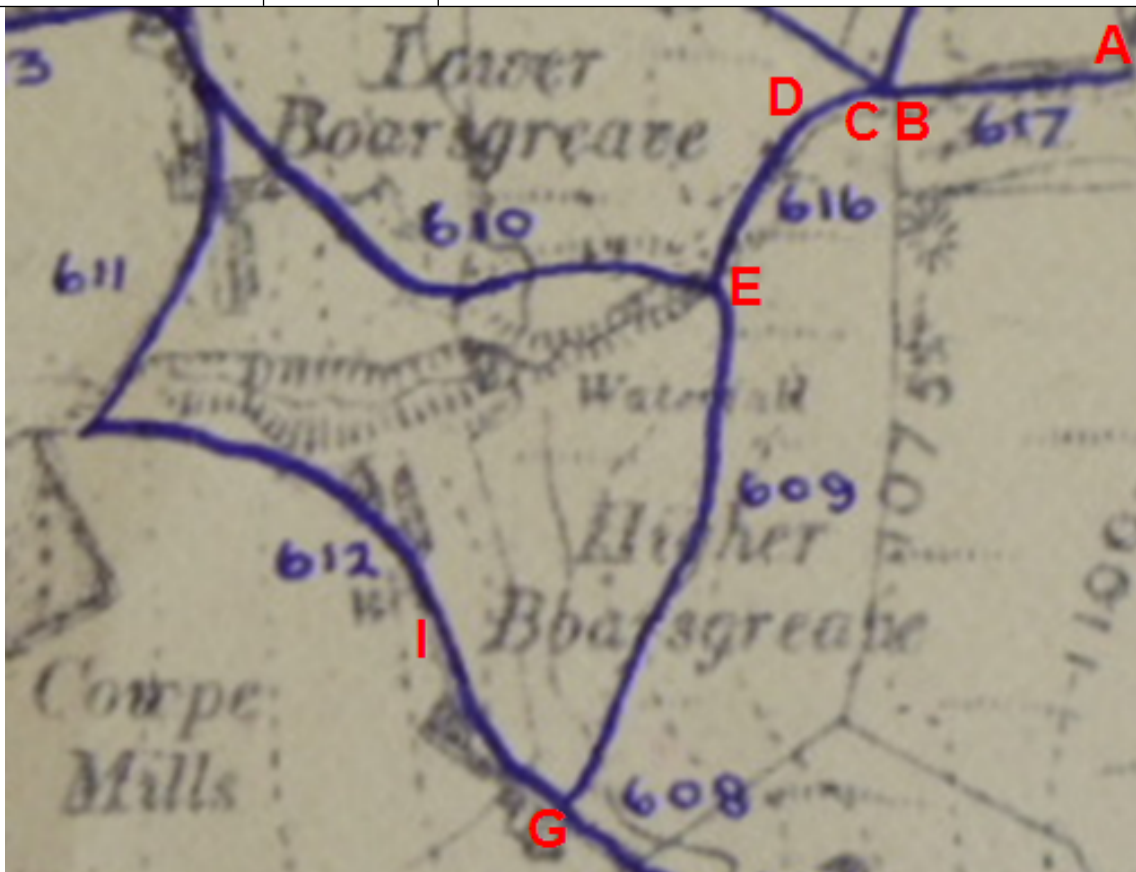


Observations		The whole of the route can be seen to exist but appears less visible than on previous photographs. Gates can be seen across the route at point B and point F.
Investigating Officer's Comments		The route under investigation existed and appeared to be capable of being used on horseback in 2007. Use of the route by vehicles appears to have reduced since 2003.
Aerial photograph	2010	Colour aerial photograph taken in 2010 and available to view on GIS.



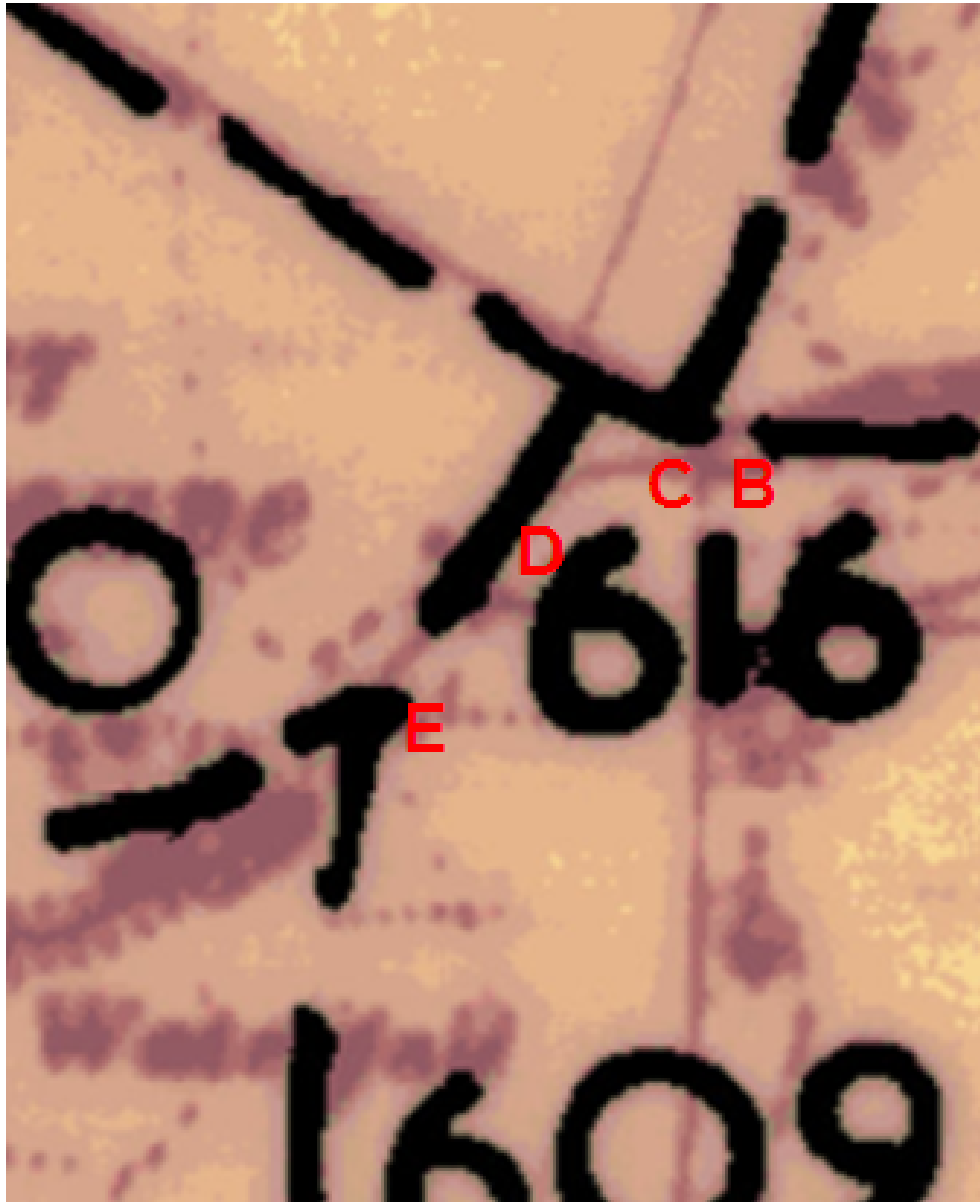
Observations		The whole of the route can be seen to exist. Gates can be seen across the route at point B and point F.
Investigating Officer's Comments		The route under investigation existed and appeared to be capable of being used on horseback in 2010.
Definitive Map Records		<p>The National Parks and 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 preparation of the Definitive Map in the early 1950s.</p>
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		The route under investigation is within Bacup which was a municipal borough in the early 1950s so a parish survey map was not compiled.
Draft Map		The Draft Maps were given a “relevant date” (1 st 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 1 st 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 full length of the route under investigation was shown as public footpath on the Draft Map and no objections or representations were made to the County Council about the inclusion of the route as a public footpath or the alignment of the route.
Provisional Map		Once all representations relating to the

		publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The route under investigation was shown in the same way on the Provisional Map as on the Draft Map and no representations were made to the County Council about the inclusion of the route as a public footpath or the alignment of the route.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route under investigation was shown in the same way on the First Definitive Map as on the Draft Map and Provisional Map.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published 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 route under investigation was shown on the Definitive Map (First Review) as it had been previously shown with the exception of the section of track between point C and point D. On the Draft, Provisional and First Definitive Map Footpath 616 is shown to follow the track between point C and point D along the route under investigation but this section of track is not shown as part of Footpath 616 on the Definitive Map (First Review).
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the route under investigation was considered to be of any higher status than public footpath by the Surveying Authority. There were no objections to the depiction or

		<p>status of the route from the public when the map was placed on deposit for inspection or at any stage of the preparation of the Definitive Map.</p> <p>No legal order diverting Footpath 616 to the alignment shown on the Definitive Map (First Review) has been found suggesting that the different alignment of the route may have resulted from a drafting error – particularly given the scale of the OS map used (1:10,560).</p>
<p>Statutory deposit and declaration made under section 31(6) Highways Act 1980</p>		<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>
<p>Observations</p>		<p>There are no statutory deposits covering the period of time during which it is claimed that the route was being used as a public bridleway.</p>
<p>Investigating Officer's Comments</p>		<p>There was no indication by the landowners under S31 of the Highways Act 1980 that there was no intention that the way be dedicated as a bridleway.</p>

The land crossed by the route between point A and point B is designated as access land under the Countryside and Rights of Way Act 2000 and is also registered common land.

Landownership

All of the land crossed by the application route is in the freehold ownership of United Utilities Water Plc. although land on either side of the route is in different ownership.

Summary

The route under investigation is not shown, or not with certainty, on the early small-scale commercial maps suggesting that it did not exist at that time, or if it did exist was considered to be of little significance.

The full length of the route is clearly shown on the 6 inch Ordnance Survey Map published in 1847 and on all subsequent editions of the Ordnance Survey mapping examined.

The existence of a gate at point B is consistently shown from 1893 onwards and further gates are shown just north west of point G from 1956 until 1981 and a gate at point F is visible on the 2006 aerial photograph.

The OS maps examined support the claim in showing that the route could have physically been used by horses before and during the claimed period of use and the aerial photographs from the 1940s, 1980, 1990s, 2000, 2006 and 2010 all clearly show the route as a substantial track but also suggest that frequent use, particularly by vehicles, had declined by 2006.

The route shown between points G and I as excluded from the numbered hereditaments on the Finance Act map is good evidence of at least bridleway rights.

To conclude, it is considered that the map or documentary evidence examined would be insufficient to come to the conclusion that the whole of the route under investigation was a historical public bridleway. However, it has clearly existed as a substantial track since the mid 1800s and it appears to support the user evidence in that it would have been capable of being used by horse riders.

County Secretary and Solicitors Group Observations

Information from the Applicant

In support of the application the applicant has provided 40 user evidence forms.

The user forms indicate knowledge of the route in years as follows:

0-10(1) 11-20(10) 21-30(10) 31-40(11) 41-50(5) 51-60(1)
61-70(2)

34 users state they have used the route on horseback, 6 users state they have used the route on a bicycle. When asked when they used the route the years vary from

1975-2008, 1976-2011, 1978-1973, 1984-2006, 1990-2002, one user used the route from 1950-2010 except for 1968-1975, other users used the route from 1969-1974, 1970-1985, and another user used the route in 1970-1980 and then again from 1990-1997.

Most users were use the route as part of a circular route, others use it to get from Cowpe to Bacup, and other destinations include Crag Quarry, Waterfront, Stacksteads and Rochdale.

The main purposes for using the route are for hacking, riding, shepherding sheep, pleasure / leisure, exercise for themselves or for horses, walking and cycling.

The use per year varies from 2, 5, once per month, 60+ times, 70, fortnightly, 3 times per week, 210 time, between 200 and 300 times, one user states they use the route 450 times per year.

28 users also claim they have used the route on foot, 5 users claim they have used the route by bicycle / motorcycle or other vehicle. Other ways of using the route include tractors / trailers and hay making machinery.

38 users all agree that the way has always run over the same route, 2 users stated they were not sure and one user didn't answer this question.

When asked if there are any stiles / gates / fences along the route, 5 users stated 'yes' but did not specify what and where, 1 user stated there is a stile and 34 users stated there are gates along the route. 18 of these users state there are 2 gates 1 at the entrance and exit to the field, 10 users state that there are 4 gates along the route and 2 users claim there are 3 gates.

39 users agree that none of the gates / stiles / fences were locked and 38 users agree that they were not prevented from the stiles / gates/ fences when using the way with either a horse or bicycle.

1 user has worked for a landowner over which the route passes, as a young girl she used to bring cows in for Henry Holt and this was the route used, she never received any instructions from the landowner as to the use of the way by the public. Another user has been a tenant over which the land passes, in 1990-1999 and shows the area which was tenanted on his attached plan, again he did not receive any instructions from the landowner as to the use of the way by the public. 38 users have not worked for any landowner over which the route passes and 38 users have never been a tenant over which the route passes.

2 users have been stopped or turned back when using the route, 1 user said that she and 4 others were stopped in 2011 and were told not to use the route again, 1 user said they were stopped in 2011 but didn't turn back. 37 users have never been stopped or turned back when using the route. When asked if they have ever heard of anyone else being stopped when using the route with a horse / bicycle 3 users said yes. 1 user stated her and 4 others were blocked by a 4x4 but the car moved with asking for permission, another user said they had heard of someone being stopped in 2011.

38 users have never been told by any owner or tenant of the land crossed by the way or by anyone in their employment that the way was not public. 1 user was told in April 2011 that the route wasn't for horses.

39 users have never seen any signs or notices along the route, 1 user has recently seen 'no cycling' signs. All 40 users have never asked permission to use the route.

Information from Others

Comments from Sarah and Ash Davies who land adjacent to footpath 612

They state they have concerns regarding the proposed changes to the Definitive Map.

They state that the route currently marked footpath 612 is actually a publically adopted road / carriageway and not a footpath until it reaches the top house of Higher Boarsgreave (no6) at which point it becomes a private road with a footpath.

Their next concern is the road to Higher Boarsgreave, they say this used by trucks, delivery vans and lorries on a regular basis as a result of building projects, the trading on 6 Higher Boarsgreave as a tractor and vehicle repair business etc, this means it is vital that the road is maintained as a public carriageway.

They say that any downgrading of the publicly adopted highway to either footpath or bridleway is untenable.

The proposed route for the bridleway is accessed via a number of very dangerous single carriageway blind bends on steep gradients, directly adjacent to a consented major housing development.

The proposed route for the bridleway passes through the yard and business premises of a tractor and vehicle repair yard. While pedestrians are able to check that the way ahead is clear and be passed by vehicles manoeuvring in and out of the yard, there are no suitable passing places for vehicles to pass horses. The work also results in lots of engine, machinery, banging, hammering and other sudden loud noises which are highly likely to startle horses, causing a danger to existing walkers and other regular users of the footpath. They have directly experienced and witnessed this, where two riders were passing the yard as they were walking on the footpath. Hammering startled the horses and the riders lost control, endangering their 4 year old and themselves as well as the riders and the horses. They were forced to scale a stone wall topped with barbed wire to avoid the dancing hooves of the horse.

They then state that any works to the public footpath to widen, change or increase, access will directly exacerbate the current serious problem of motorcross riders trying to use the footpath to access the moors, and the consequential harm caused to the moors by motorcross riders. It will also provide a route for flytippers.

They also state that adjacent routes currently provide a very important and well used utility for off road pedal cyclists.

Horse riders do not clear their dung from roads. The extremely steep incline in the approach to higher Boarsgreave would be made very hazardous for cyclists, walkers and driver should it become a regular route for horses. The use of central verge strips would be a hazard for three wheeled vehicles and for the numerous parking areas in turning on and off the road.

There are many vulnerable banks on the footpath and the surfaces are unsuited to bridleway use. The conversion of the route to a bridleway would be highly likely to result in subsequent calls for significant civil engineering works to make the route fit for purpose. At a time of significant constraints on the public purse this would seem to be a total waste of money, resulting in additional liabilities for the council during a time of significant financial stress.

They experience regular problems with cars believing that the Rooley Moor Road path can be accessed by car via the footpath, regularly becoming stuck, unable to reverse and blocking the road. This problem would increase exponentially if the route was opened up for the bridleway access, with many vehicles becoming stuck on the moor.

Objection from Mr Stephen Thorpe

Mr S Thorpe refers to Mr E Thorpe's witness statement:

Mr Thorpe in his submission statement provides information relating to his use of "Packhorses" which he states are necessary in order to successfully operate his limited farming operation during inclement weather.

He then states, Mr Thorpe has only begun to use a horse to assist in carrying feed along the footpath in question in the last two months clearly in an attempt to justify his written submission.

Mr S Thorpe then goes on to say that many years ago, the Thorpe family did occasionally use a horse to carry fodder, but the route was along a different path which utilised the embankment of Cowpe Reservoir and did not entail the footpath in question.

He then states that modern farming methods cannot depend in any way whatsoever on the use of horses to carry fodder to livestock and in particular this individual who has made clear within his statement that an alternative route offering vehicular access exists.

And it should be taken into consideration however that Mr E Thorpe has an established right of use along the footpath for his farming activities and as such are not relevant to the above application.

Mr S Thorpe claims there has never been an issue regarding Mr E Thorpe and family's right of use of the footpath for his farming activities but he has been well aware for over 50 years that this route was not a bridleway and it is a remarkable

turn of affairs that Mr E Thorpe now feels justified in submitting a patently false signed and written user statement and submission letter in the light of the above.

He would further like to add that contrary to Mr E Thorpes assertions that he is the longest and most frequent user of the footpath using it in excess of 200 times per year which is in fact incorrect and is no more than 150 times per year mainly by way of tractor.

It is a fact that he has been using this footpath for significantly longer and more frequently than Mr E Thorpe and in fact has been using the footpath without interruption for in excess of 55 years and as such has a far more balanced view of the day to day usage of the footpath particularly having operated his business from Higher Boarsgreave farm for the last 36 years.

Mr S Thorpe then goes onto say that several years ago during the planning of the Mary Towneley Loop Christine Peat and a colleague visited his property by motor vehicle on two separate occasions and asked permission to access the moor via the footpath on horseback.

He then goes on to say that clearly, there was an acceptance at this time that there was no right to traverse the footpath on horseback and on that basis Ms Peat was fully aware of the footpaths status.

And that it should also be noted that Ms Peat has failed to provide a user statement herself which would inevitably create doubt upon the validity of all the other user statements submitted should she omit to mention in a user statement that she had requested permission to traverse the footpath in the past.

He has been the owner of Higher Boarsgreave Farm for the past 36 years with a covenant to maintain a percentage of the footpath that accesses and also grants an entitlement to access his property and in fact have been the only contributor to the maintenance of the footpath for the past 36 years.

As the only contributor to the footpath maintenance he has had a personal and financial interest in controlling the un-authorized users that have attempted to traverse the footpath and have been in a unique position to judge the amount of traffic in the form of pedestrians, cyclists, horse riders and indeed the occasional unauthorised vehicular traffic that has utilised the footpath referred to in this matter.

Mr S Thorpe then clarifies a point raised by Mr E Thorpe in his supporting letter, the police have used the footpath in the past but have always asked permission and in fact acknowledged this by way of a Thank You card at Christmas.

Access has been blocked every night for at least the last thirty six years to everything except pedestrians and this can be confirmed by the police.

It has been a fact contrary to the user evidence forms that all horse riders over the course of the last 36 years that have been seen on the footpath have been challenged by either Mr S Thorpe or by a member of his immediate family and they have been made fully aware that the footpath that they are using is not a bridleway

and is classified as a footpath and indeed on several occasions groups of riders have been turned back.

Clearly, judging by the sheer volumes of alleged use by horse riders this would have amounted to a great many incidents of users being informed of the footpaths true status and as a consequence of the close knit equestrian fraternity this would undoubtedly have been common knowledge amongst riders attempting to traverse the footpath in open defiance of the routes status

Mr S Thorpe also states that it is a fact that had the usage been of the volumes alleged, that he would have struggled to operate my business which has several access points onto the footpath.

He has studied the user evidence forms provided and would categorically state that in many of the forms submitted that there has been a systematic inflation of the figures relating to the frequency of individuals usage of this footpath.

There has been a singular lack of acceptance by the vast majority of the alleged users that they have been challenged and this would further lend weight to the argument that the evidence contained within the user forms is not a full and accurate record of the facts.

On the basis that the user evidence forms were signed and dated to confirm a true and accurate record, it is crucial that documentary evidence be provided to substantiate the claims being made.

The following individuals are personally known to Mr S Thorpe and he draws the attention of the Highways Authority to the conflicting claims being made which are factually inaccurate and should be challenged.

Anne Swift

This person post 1977 had never traversed the footpath on horseback until 2006

In 2006, she walked through leading a horse

In 2007 she rode through having been challenged

In 2008 she rode through once in the year

In 2009 she rode through twice

In 2010 she attempted to ride through twice in one week the second time with a group of riders and at this point following a frank and forthright exchange of views she was sent on her way along with the other riders who were all informed not to return until this matter had been resolved

Anne Swift had been made fully conversant with the routes status following a discussion in her home

Mr S Thorpe states that on the basis of the above, her signed user statement is incorrect

Kay Blackledge

This person has not used the route and her signed user statement is incorrect.

Joan St Ledger

This person has used the footpath no more than twice in the last thirty six years
Her user statement is exaggerated.

Anne White

This person has been along the footpath no more than a handful of times and was informed that it was not a bridleway.

Donna Mather

Donna Mather attempted to traverse the footpath and when she was stopped and informed of the status of the footpath, she threatened violence and verbal abuse of the worst kind and was consequently turned back.

This person has traversed the footpath on three occasions in total and was informed of the footpaths status culminating in the threat of physical violence with a cricket bat as mentioned above.

Donna Mather has not provided a user statement but her husband has and to my knowledge has never ridden or attempted to ride the footpath in question.

Shona Hopkins

This individual has attempted to traverse the footpath with Anne Swift and was made fully aware prior that the route was not a bridleway.

This is a direct contradiction of her signed statement as she was informed of the routes status and indeed was in the presence of another horse rider who was similarly informed.

This person has only traversed the footpath accompanied by Anne Swift on two occasions

On this basis her signed statement is incorrect.

Within the deeds held in respect of his property at Higher Boarsgreave, there is an Entitlement to use the footpath to access my property.

Clearly, on the basis that an entitlement was granted, it would appear that the footpath was not deemed a bridleway by the owners of the land and as such it would be unlikely that the route was incorrectly listed by the authority.

Reclassification of the footpath will inevitably lead to difficulties in operating his business which is already stated has been in existence for the past 36 years.

It is also inevitable that he will incur additional and significant expenditure in order to fulfil his legal responsibility to maintain my proportion of the footpath as the additional horse traffic will inflict damage to the surface and will receive no recompense for said damage caused by horse traffic whatsoever.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

User evidence

Against Making an Order(s)

Historical map evidence

Conclusion

Committee will note the majority of the route under consideration is currently recorded as a public footpath. The section C-D on the committee plan is the only section which is not currently recorded as a public right of way.

In this matter there is no evidence of an express dedication and so the Committee is invited to consider whether a dedication of bridleway rights can be inferred, on balance, from all the circumstances at common law or deemed under s.31 Highways Act 1980.

Looking firstly at whether dedication can be inferred at common law. The Executive Director for Environment has considered the historical map evidence, the evidence suggests the route cannot be seen on the early commercial maps and is suggestive the route was not likely to have been in existence, or had it been in existence it was of little significance.

The Finance Act map shows the route from point A-G included within a numbered plot which suggests this section was not considered a public vehicular highway. However, the section G-I had been excluded from the numbered plots which is considered as good evidence, although not conclusive that this section had public carriageway rights. The Ordnance Survey map suggests the route existed in 1929 and appeared capable of being used by the public not only on foot.

On balance, the map evidence is considered to be insufficient to conclude the route was a historical public bridleway and it is therefore suggested to committee that inferred dedication cannot on balance be satisfied.

Committee is therefore advised to consider 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.

It appears on balance that the route being used on horseback/bicycle was called into question in 2011, as this is when 2 users suggest they were prevented/ from using the route on horseback and 3 user's state they had heard of other being stopped with one stating this was in 2011. One user provides a date of April 2011 therefore, on balance it is reasonable to conclude the 20 year period under consideration would be from 1991-2001.

The user evidence forms provided by the applicant suggest 29 users have used the route on horseback for 20 years or more and the route had been used sufficiently frequently. 34 users have used the route on horseback and 6 users have used the route on bicycle. Although the users agree that there are gates along the route, 39 users confirm the gates were unlocked and; 38 users agree they were not prevented from using the route on horseback because of the gates which suggests the route was not used by force. 38 users have used the route as of right but for 2 of the users had used the route whilst working/tenanting land from the landowner.

The landowner Mr S Thorpe seems to suggest that access had been blocked for the last 6 years to everyone except for pedestrians and states this can be confirmed by the police but no corroborating evidence to this effect has been provided. Although the landowner, Mr S Thorpe suggests that in the last 36 years he or members of his family have told users the route was not a bridleway, this assertion has not been backed up by any of the users in their user evidence forms.

Committee should also note that the section A-B shown on the committee plan is registered as common land under register unit number CL281 and is known as Goose Green, Bacup, Municipal Borough of Rossendale.

S.193 of the Law of Property Act 1925 (LPA 1925) provided a right of access "for air and exercise" to any metropolitan common or common situated wholly or partly in a borough or urban district. This section makes it clear that such rights of access shall not include any right to draw or drive upon the land a carriage, cart, caravan, truck, or other vehicle, or to camp or light any fire thereon.

The High Court decision of 1998, R v Secretary of State for the Environment, Transport and the Regions ex parte Billson resolved that access under s.193 included horse riding, however this did not extend to cycling or vehicles.

All Common Land became Open Access land under the terms of the Countryside and Rights of Way Act 2000 (CROW Act) however; the CROW Act only gave access on foot on Open Access Land. Section 15(1) however states there are certain types of Common Land included under Section 15 CROW Act which is land subject to S.193 Law of Property Act 1925 which include: urban commons,

metropolitan commons and rural commons with a deed of declaration. In conclusion this means that the common land register unit CL281 was a borough which was caught by S.193 LPA 1925 and the right of access for air and exercise included use on horseback in accordance with the Billson case referred to above and these rights have been protected by s.15 CROW Act and therefore use of this section of the route was permissive and cannot satisfy the criteria in S.31 being used as of right and without permission.

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 section C-D be recorded as a bridleway and section B-C and D-E-F-G-H-I , recorded as a footpath at present, should also be recorded as having bridleway status. Committee is advised that section A-B should not be accepted as the use is not, on balance, as of right being use of urban common under Law of Property Act.

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: 804-538		Megan Brindle, 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A