

Regulatory Committee

Meeting to be held on 22 October 2014

Electoral Division affected: Rossendale South
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Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Upgrading to Bridleway of Ramsbottom Footpath 207 (Buckhurst Road) from Bury Old Road to Ramsbottom Bridleway 206 (Croston Close Road)

File No. 804-540 (Annex 'A' refers)

Contact for further information:

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Executive Summary

Application for Ramsbottom Footpath 207 (Buckhurst Road) to be upgraded to Bridleway from Bury Old Road to Ramsbottom Bridleway 206 (Croston Close Road) Rossendale in accordance with File No. 804-540.

Recommendation

1. That the application in accordance with File Ref. 804.540 for Ramsbottom Footpath 207 to be upgraded to Bridleway, be accepted as a Restricted Byway.
2. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (c) (ii) of the Wildlife and Countryside Act 1981 to upgrade Ramsbottom Footpath 207 to Restricted Byway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plans between points A1-F2.
3. That being satisfied that the 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 to upgrade Ramsbottom Footpath 207 (known as Buckhurst Road) from the junction with Bury Old Road to the junction with Ramsbottom Bridleway 206 (known as Croston Close Road) and shown between points A1- F2 on the Committee plan on the Definitive Map and Statement of Public Rights of Way.

The County Council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so

its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

An order for upgrading 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 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 is 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
A1	8089 1548	Junction with Bury Old Road
B1	8097 1550	Route passes between gateposts
C1	8098 1550	Junction of route with Ramsbottom Footpath 227
D1	8112 1553	Junction of route with Ramsbottom Footpath 222
E1	8116 1556	Cattle grid across the route
F1	8121 1555	Junction of route with Ramsbottom Footpath 223
G1	8124 1551	Bend in route
H1	8139 1556	Blocked drain resulting in boggy surface
I1	8147 1551	Field gate and stile across route
J1	8147 1551	Junction of route with Ramsbottom Footpath 226
A2	8181 1542	Farm track joins route
B2	8188 1539	Gate across route
C2	8191 1538	Junction of route with Ramsbottom Footpath 208
D2	8192 1538	Gap in stone wall
E2	8195 1538	Gate across route
F2	8207 1538	Junction with Ramsbottom Bridleway 206

Description of Route

A site inspection was carried out on 15th April 2014.

n.b. References to public rights of way shown on the Definitive Map and Statement are generally given in the form '14-3-207' or 'Ramsbottom Footpath 207' but are referenced below in the abbreviated form 'Footpath 207' for brevity since all those referred to are in Ramsbottom in Rossendale Borough.

The route commences at a point on Bury Old Road and although currently recorded as a public footpath it was not signposted at this point. The start of the route provides access to Butcher Acre Farm to the north and also provides access to Ridshaw Farm which is situated along the application route.

From point A1 access from Bury Old Road onto the start of the route was open and not gated. The route extends in an east north easterly direction along a roughly tarmaced track approximately 3 metres wide and bounded on either side by stone walls. After approximately 80 metres (at B1 on the Committee plan) the route passes through concrete gateposts (no gate) which are positioned 3.3 metres apart.

The route continues for a further 15 metres along the track to C1 where a public footpath signpost had been erected on the south side of the track pointing to a stile and south along Footpath 227 which joins/leaves the application route at this point.

From point C1 the application route continues along the track in an east north easterly direction bounded on the north side by a hedge and on the south side by a stone wall. The surface consists of tarmac and broken stone and although varying

slightly is approximately 3 metres wide. At point D1 on the Committee plan Footpath 222 joins the application route at Ridshaw Nook.

The application route continues in a more north easterly direction along a stone surfaced track with well maintained grass verges to the south of Ridshaw Farm buildings to cross a cattle grid at point E1.

The side of the cattle grid is fenced providing a 90cm wide grassed strip between the fence and farm building and a 90cm wide metal gate providing access alongside the cattle grid.

Beyond the cattle grid the application route continues along a tarmac/ stone surfaced track in an east south easterly direction to F1 where the application route leaves the surfaced track which continues to Ridshaw Close Farm.

At point F1 the application is signposted as a public footpath and follows a grass surfaced track in a south easterly direction bounded on the south west side by a stone wall. The route follows a depression in the ground which appears to be the remains of an old sunken track. It continues sloping gradually downhill to point G1 where it curves round – still bounded by the wall on the southern side - to then continue in a north easterly direction bounded on the south side by the wall and with higher land rising up to the north. The surface is compact but there is no evidence of vehicular or equestrian use.

The route continues in a more easterly direction to point H1 (Committee plan 2) close to where a spring emerges from the higher land. It appears that blocked drains in the proximity of the route have resulted in the saturation of the surface making it almost impassable at this point.

Beyond the short boggy section the route continues in a south easterly direction still bounded by a low stone wall on the southern side and open to the north. The surface of the track is firm but grassed and appears to have been a more significant track in past.

At point I1 the route is crossed by a 3 metre wide metal field gate which was padlocked shut with an adjacent double stile providing access both along the application route and also onto Footpath 226. Both the application route and Footpath 226 were waymarked as public footpaths at this point.

Beyond the gate the route continues along a grass surfaced track varying between 3.5 metres and 2.9 metres wide bounded on either side by stone walls, the one on the north side being a retaining wall. Near point A2 the surface of the track had been churned up by horses that were grazing the track and field to the north. The condition of the stone wall on the north side of the track gradually deteriorates towards B2.

At point A2 a farm track converges with the application route which then continues along a more defined compacted earth track in an easterly direction to point B2 where it is crossed by a 3.4 metre wide wooden field gate (which was padlocked).

Pedestrian access was provided to the south of the field gate via a pedestrian kissing gate that had been waymarked as a public footpath.

Beyond B2 the application route continues along a 3 metre wide track towards Buckhurst Farm bounded to the north by a substantial stone wall forming the boundary with the garden and on the south side by a wall/revetment below which is a parking area associated with the farm.

At point C2 the application route is met by Footpath 208 (Sales Lane) which provides vehicular access to Buckhurst Farm from the south. The application route continues in a generally easterly direction towards the farm cottages.

At point D2 the route passes through a 1.6 metres gap in a stone wall at the corner of a farm building to then pass directly in front of Buckhurst Farm Cottage following a tarmac surfaced track bounded by walls and buildings.

To the east of the buildings at point E2 the application route is crossed by a 3 metre wide metal field gate (which was locked) with adjacent wooden pedestrian gate. Signs on the metal field gate stated 'Public Footpath Only No Horse riding' and were reinforced by the presence of yellow public footpath waymark arrows.

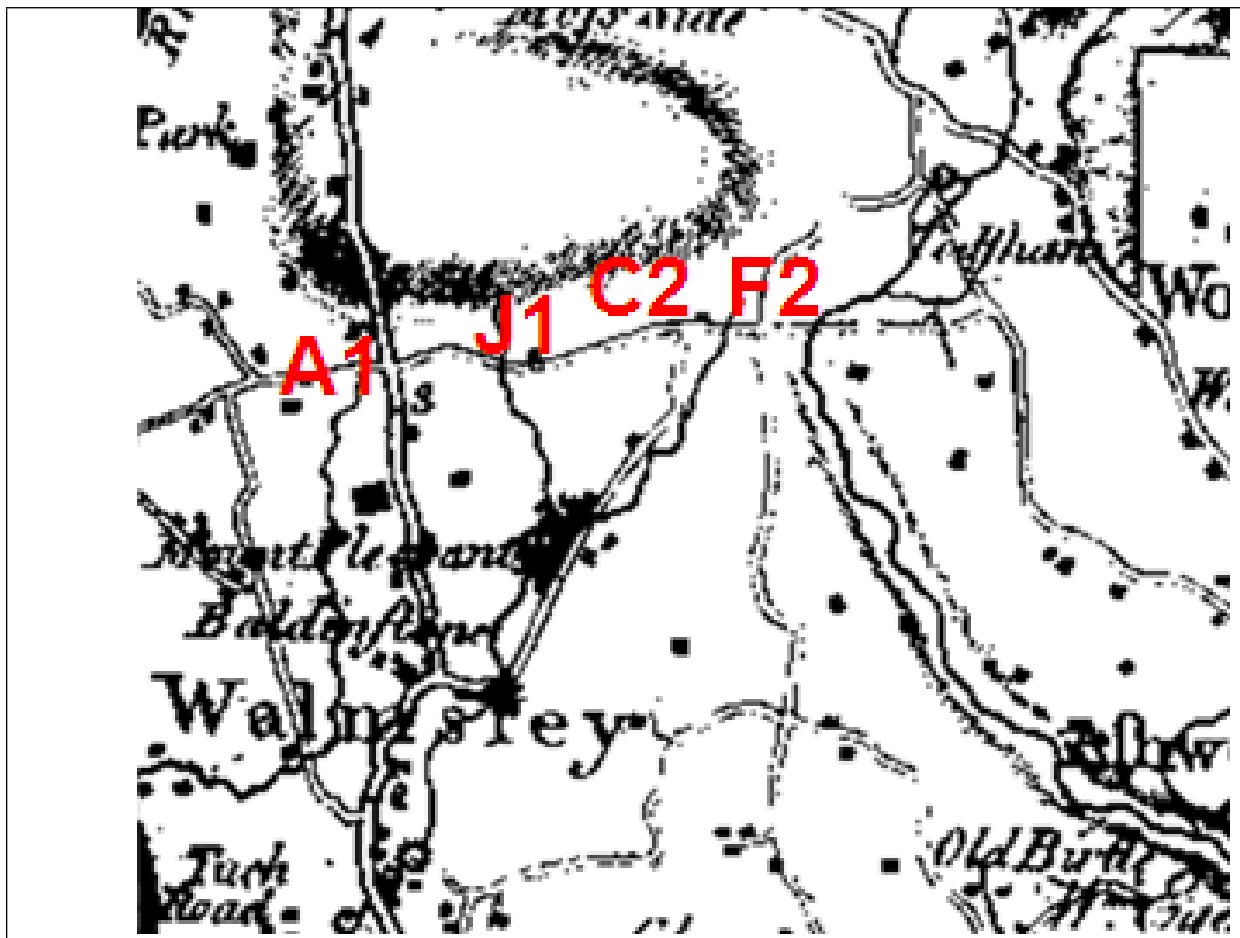
Beyond the gate the application route continues as a stone surfaced track varying between 3 to 5 metres wide and bounded by stone walls on either side. It continues in an easterly direction to pass to the north of Buckhurst Lodge (a former school) to point F2 where it ends at the junction with Bridleway 206 (Croston Close Road). At point F2 access was open and not gated. A public footpath signpost was situated at the junction pointing back up the application route towards Buckhurst Farm.

The total length of the route is 1,280 metres.

When inspected there was no evidence that the route was currently being used by horses and access would be prevented or restricted by the presence of a cattle grid at E1, locked gates and stiles/pedestrian kissing gates at points J1, B2 and E2.

Map and Documentary Evidence

Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.



Observations		The whole length of the route is clearly shown. Properties are marked along the route at points J1 and close to point C2. Sales Lane (recorded as Footpath 208) is shown connecting to the route at point C2 and Croston Close Road (recorded as Bridleway 206) is shown meeting the route under investigation at point F2.
Investigating Officer's Comments		The route existed in 1786 and provided access from Bury Old Road (a public vehicular highway) to at least two properties that are shown to exist along it. More significantly the route under investigation is shown as a through route and at its eastern end connects to Croston Close Road (recorded as a public bridleway). It is likely that in 1786 the route under investigation formed part of a through route available to the travelling public on horseback and possibly in carts. The depiction of the route on this commercially produced small scale map suggests that the route was considered to be at least a bridleway – and more probably a public vehicular route in 1786.
Smith's Map	1801	Charles Smith was a London engraver and map seller. His map of Lancashire appeared as a

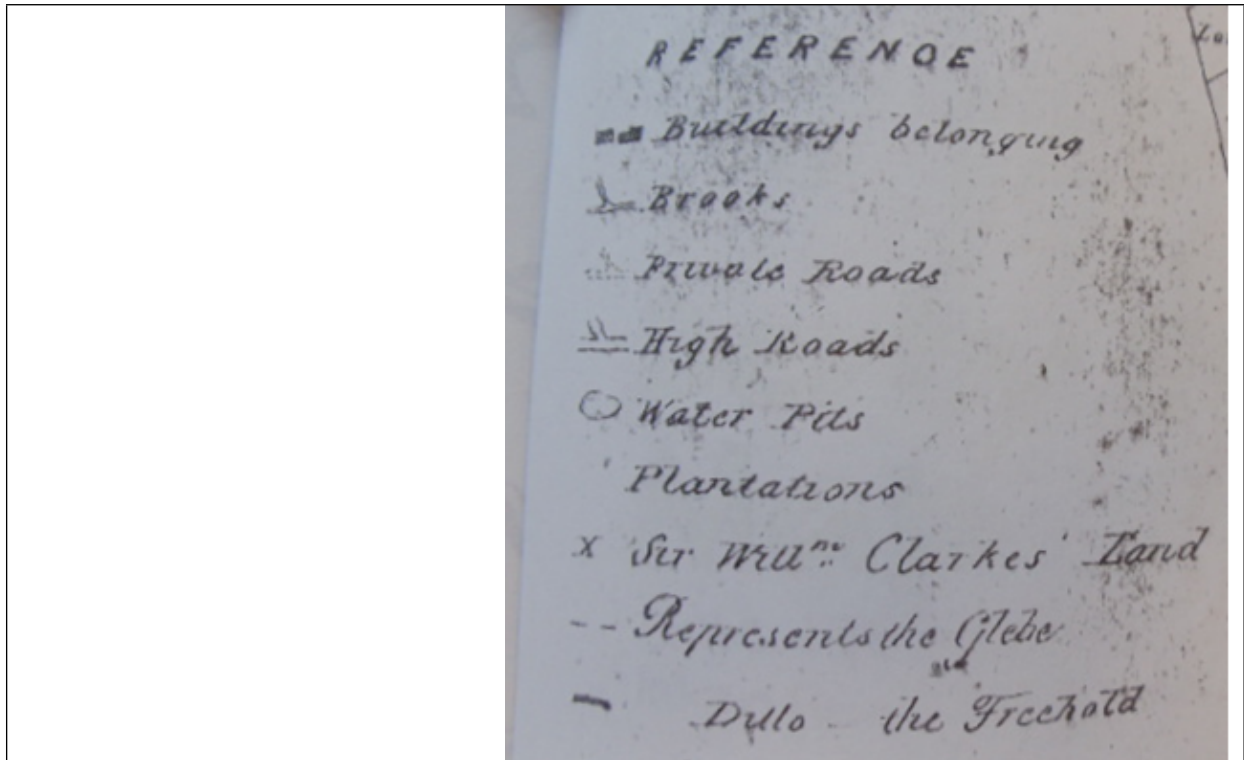
	<p>single sheet in 1801 and then between 1804 and 1846 was published in subsequent editions of his new English Atlas. His map was similar to Cary's Map of Lancashire dated 1789 but is not a direct copy. It is thought that Smith and Cary used common sources, especially Yates survey, and since both were aiming at the same market – the increasing number of private and commercial travellers – it is not considered surprising that they produced similar maps.</p>
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<p>Observations</p>	<p>The whole of the route under investigation is clearly shown with properties marked close to point J1 (Far Buckhurst) and point C2 (Buckhurst Farm) and the watercourse that crosses the route at H1. Bury Old Road is shown as a substantial route and the route under investigation depicted in the same manner as Croston Close Road (Public Bridleway) and Sales Lane (claimed Bridleway) and other public vehicular highways in the area.</p>
<p>Investigating Officer's Comments</p>	<p>The route existed in 1801 and was considered to be of such importance to be shown on a map produced specifically to meet the needs of</p>

		travellers. The inclusion of the route on such a small scale map suggests that it was considered to be more than a public footpath and that it would have been available to the public on horseback and possibly with horse drawn vehicles at that time.
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		Unlike other early commercial maps the route under investigation is not shown.
Investigating Officer's Comments		The route is shown on two earlier commercial maps and later editions of the Ordnance Survey Maps. It is therefore likely that the route existed in 1818 but may not have been considered by Greenwood to be of sufficient significance to be included on the map.
Survey of part of the Derby Estate	1824	A plan was submitted by the Applicant titled 'Survey of part of the Derby Estate'. The copy of the plan originated from records held in the County Records Office (Reference DDK). Writing on the plan states that the original survey was carried out 1785-1788 and that the plan was dated 1824.





<p>Observations</p>		<p>The route under investigation is shown as a 'High Road' between point A1 and point E1 as depicted in the key to the plan. The property now known as Ridshaw Farm is shown but not named. The route between point F1 and partway towards point H1 is not shown but from there the route is shown through point H1 to point J1 and is again depicted as a 'High Road'. The route then crosses an area of land described on the map as 'Mr Whitewall Lancashire's Land' within which buildings now forming part of Buckhurst Farm are shown connecting to Sales Lane. From approximately point C2 to point F2 the route under investigation is shown as being within the Derby Estate and is bounded by a solid line to the south and by a dashed line on the north side.</p>
<p>Investigating Officer's Comments</p>		<p>The purpose for which the plan was drawn is not known. The definition of 'High Road' is not given but it is clearly distinguished in the key from 'Private Roads' suggesting that a route shown as a High Road was likely to carry public rights on horseback – and more probably vehicular rights. The fact that the route under investigation is not shown between points J1 and C2 is more likely to be because the land it crossed was not part of the Derby Estate rather than it not existing as it is clearly shown as a through route on other commercial maps produced around that time. The depiction of the route between point C2 and</p>

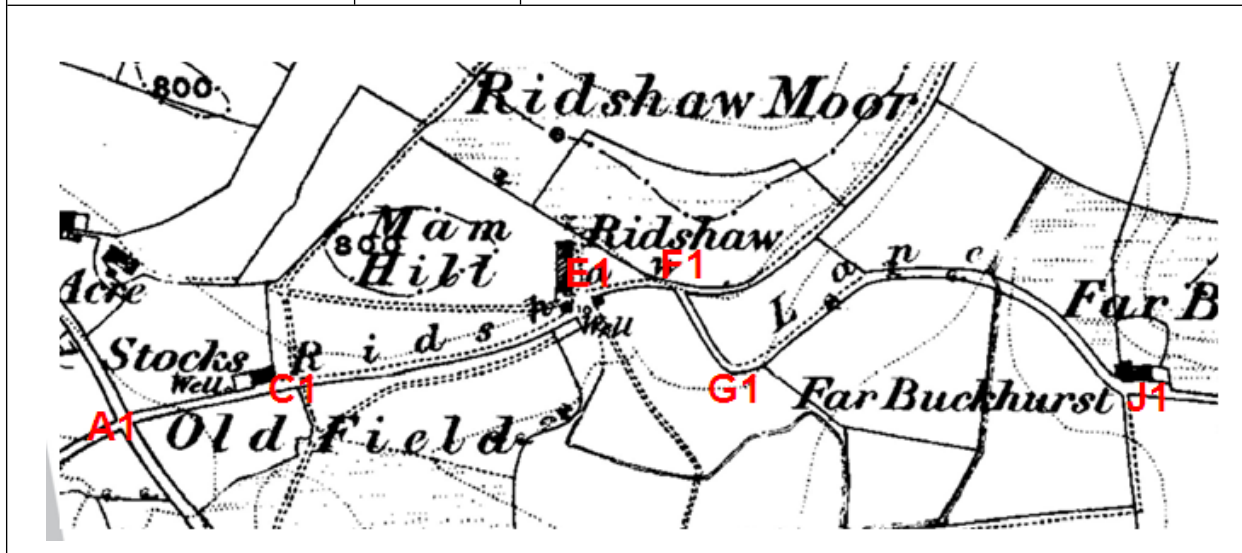
		point F2 with a solid line to the south and dashed line to the north is not consistent with the map key and is therefore inconclusive regarding whether the route was considered to be a High Road, Private Road or some other category of road/track and in practice it may have indicated that the route was physically bounded on one side but open and unenclosed on the other.
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 County's communications network was generally considered to be the clearest and most helpful that had yet been achieved.
Observations		The route is not shown.
Investigating Officer's Comments		The route was not considered sufficiently important – although it is unlikely that it was no longer in existence at the time of the survey (1828-29) since it was shown on earlier map and on later maps and is still visible on the ground today.
Canal and Railway Acts		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		There are no canals or railways crossing in the area investigated.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment	1838	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 title award) and additional information from which the status of ways may be inferred.
Observations		The copy of the title map for Walmersley with Shuttleworth and dated 1838 is held in the County Records Office. It is in a fragile condition and is not available for inspection.
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 for the area affected by the Application.
Investigating Officer's Comments		No inference can be drawn.
Cassini Map, Series 109 – Manchester	1842-4	Extract of Map Sheet 109 originally published 1842-44 and provided by the Applicant. The Cassini publishing company produce maps based on Ordnance Survey one inch maps. These maps have been enlarged and reproduced to match the modern day 1:50,000 OS Landranger Maps and are readily available to purchase.

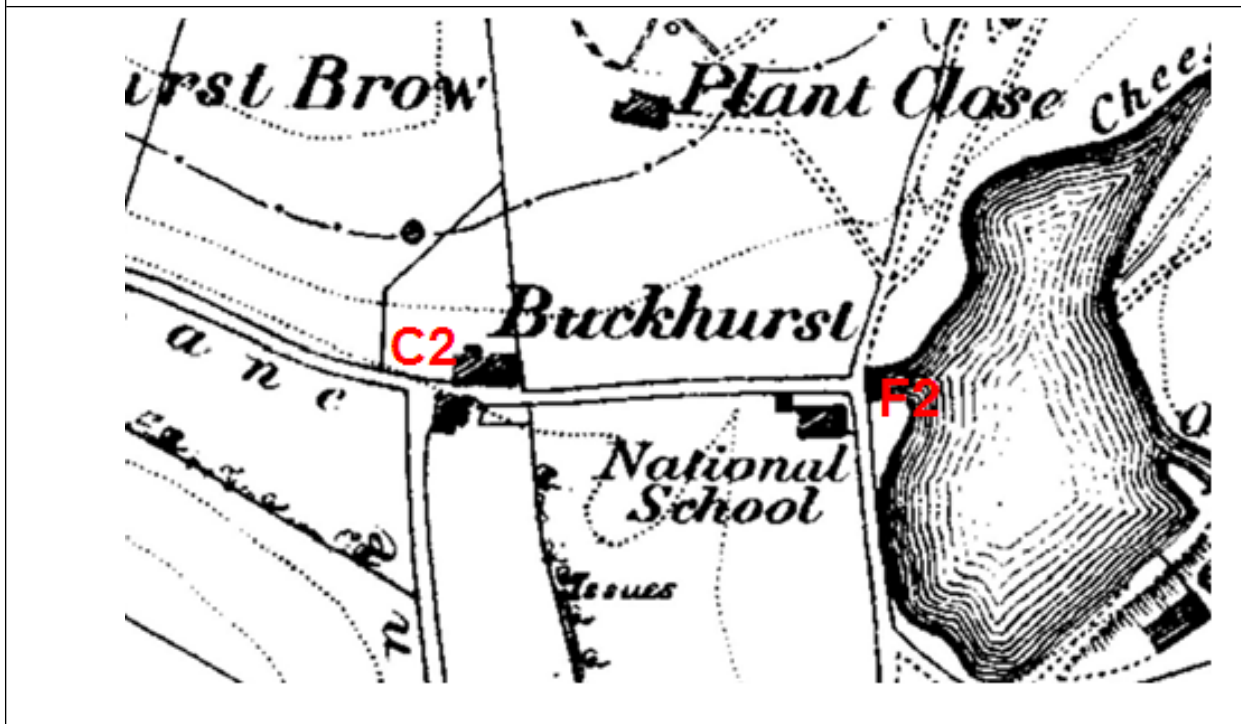


Observations		The route between point A1 and point C2 is
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		clearly shown and the property (Far Buckhurst) adjacent to point J1 shown. The route between point C2 and point F2 appears broken and although a route is shown to extend east from point C2 it does not look to extend as far as point F2. A building adjacent to the route at point F2 is shown but not named.
Investigating Officer's Comments		The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public and the inclusion of (most of) the route on this map is suggestive of at least public bridleway rights and possibly vehicular rights.
6 Inch Ordnance Survey (OS) Map	1851	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-48 and published in 1851. ¹



¹¹ 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.

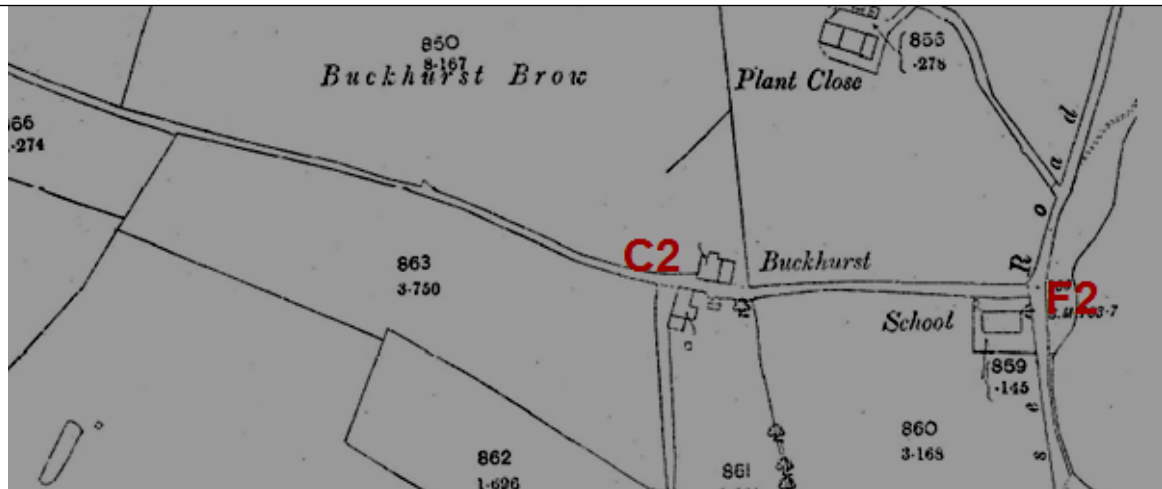
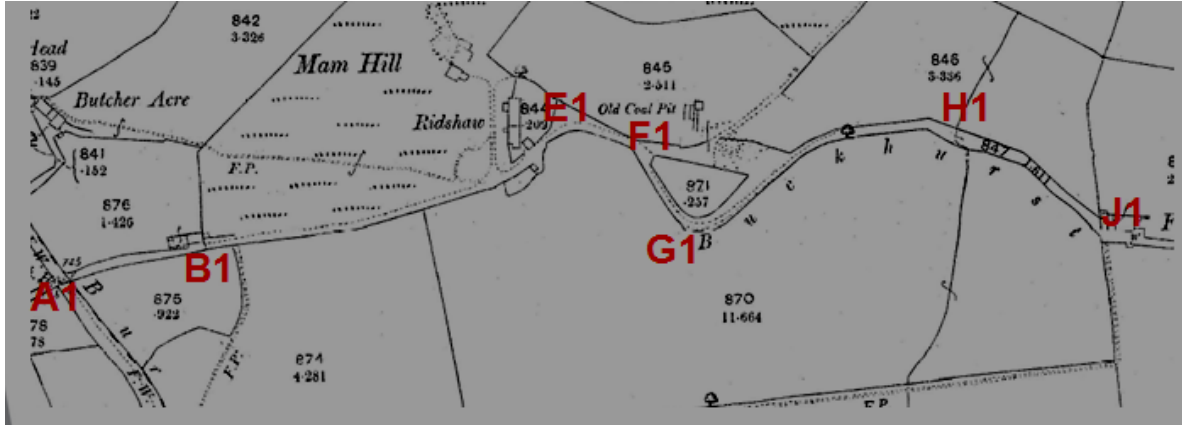


Observations

The full length of the route under investigation is clearly shown.

From point A1 the route provides access to and beyond the property titled Ridshaw Farm which is located adjacent to point E1 on the Committee plan. Between point A1 and point J1 the route is named as Ridshaw Lane. A property named as Far Buckhurst is marked on the map adjacent to point J1 and between point J1 and point C2 the route under investigation is named Buckhurst Lane and is shown connecting to Sales Lane at point C2. Buckhurst Farm is shown and named on the map as Buckhurst and a building marked

		as a 'National School' is situated adjacent to the route at point F2.
Investigating Officer's Comments		<p>The full length of the route under investigation existed and appeared to be capable of being used by the public in 1851.</p> <p>The route provided access to a string of properties and farms and is shown as a substantial through route connecting Bury Old Road and Croston Close Road and intersected by Sales Lane at point C2. Other less significant routes (marked by single or double pecked lines) are shown to connect to or to cross the route under investigation – many of which are now recorded as public footpaths.</p> <p>The route under investigation is named on the map; the first section as Ridshaw Lane, the second as Buckhurst Lane with properties named as 'Ridshaw' and 'Buckhurst' being situated along it. It is considered likely that a named route connecting a number of properties and providing a through route connecting to a network of other public highways would have been at least a public bridleway and may have carried public vehicular rights.</p> <p>Of particular note is that the route provided access from Bury Old Road to a building marked as a school. National schools were schools founded in the 19th century in England and Wales by the National Society for Promoting Religious Education. These schools provided elementary education, in accordance with the teaching of the Church of England, to children of the poor. It is unlikely that a school would have been located on a route limited to a public right of way on foot although vehicular access might have been possible via Croston Close Road.</p>
25 Inch OS Map	1895	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891 and published in 1893 and reprinted in 1895.




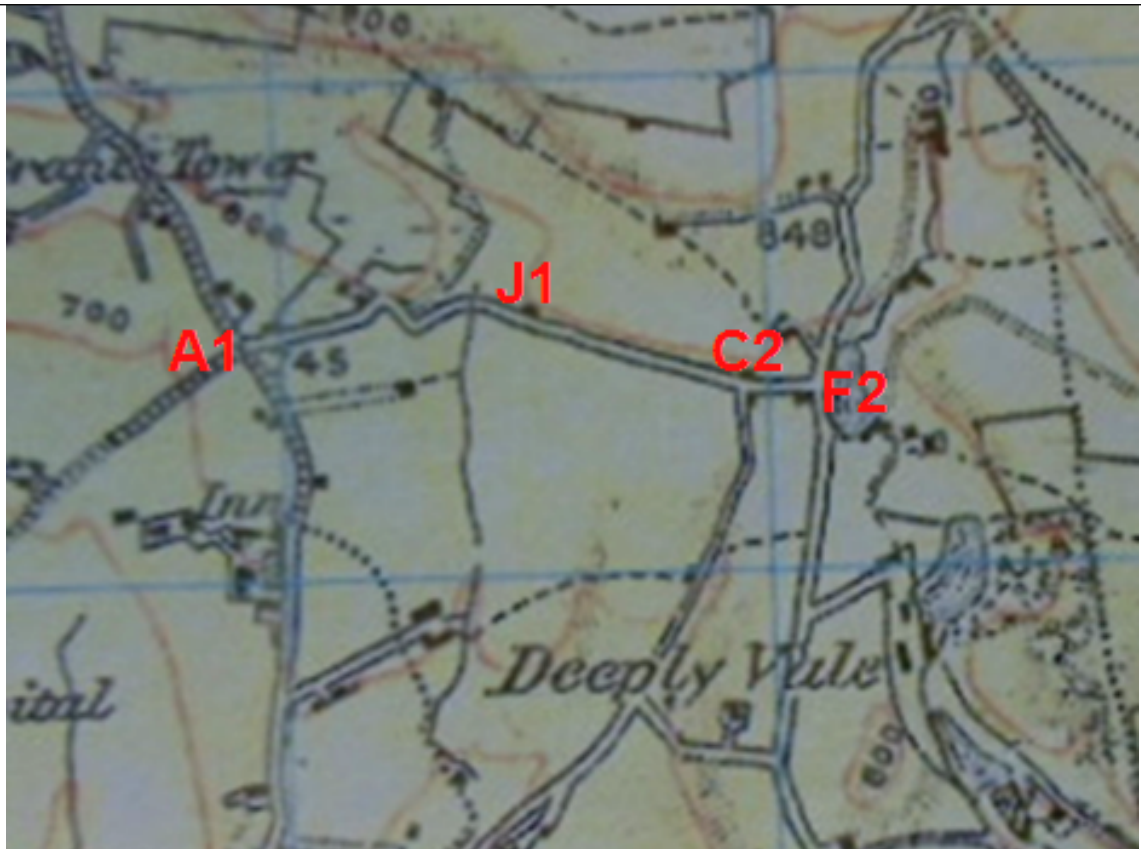
Observations

The First Edition 25 " is at a larger scale than the 6" map showing the area in more detail.

The full length of the route under investigation is shown. A gate is shown to exist across the route at point B1 and a watercourse is shown to cross it at point H1. The route under investigation is not named on this edition of the map as Ridshaw

		<p>Lane although the farm adjacent to point E1 is labelled Ridshaw. The property known as Far Buckhurst is shown adjacent to point J1 and the route is labelled as 'Buckhurst Road' between point G1 and point C2 - as opposed to being referred to as 'Buckhurst Lane' on the earlier 6 inch edition. There is a change of surface indicated at point C2 where Sales Lane joins the route under investigation and also at point F2 where the route under investigation meets Croston Close Road.</p> <p>The route under investigation appears to be bounded on either side for most of its length with the exception of the section from point B1 to point E1 which is open to the rough pasture on the north side of the route.</p> <p>The route is not coloured or shaded to indicate public status but neither are other routes now recorded as public bridleways or vehicular highways.</p>
Investigating Officer's Comments		<p>The route under investigation existed in 1895 and provided access to a number of properties and a school.</p> <p>Shading was often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. All metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. The route under investigation is not shown in such a way but neither are other known public vehicular highways in the area so no inference can be drawn in this respect.</p> <p>The fact that it was named as a road on the map is evidence that it was known locally by that name and is consistent with use of the route by the public at least on horseback at that time. A gate is marked across the route at point B1 which may have restricted but not necessarily prevented access. The existence of gates along a public route would not have been considered unusual in the 1800s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p>

6 inch OS Map	1894	Further edition of the 6 inch map surveyed in 1891 and published in 1894.
		
Observations		The full length of the route under investigation is shown and named on the map as Buckhurst Road. A short section near A1 and the majority of the route F1-F2 is shown as an enclosed road. The other (unenclosed) section is shown bounded on the south side only. It is not labelled "FP" in contrast to all the footpaths shown on this extract.
Investigating Officer's Comments		The route under investigation existed in 1894 and appears to be capable of having been used by the public on horseback or possibly with vehicles.
Cassini reprint of the 1 inch Map of Lancashire	Originally published 1903	Map extract submitted by the applicant. An enlarged reprint of a map first published in 1903 and based on the OS 1 inch mapping.



Observations		The full length of the route under investigation is shown but not named.
Investigating Officer's Comments		The route was considered to be sufficiently important to be included on a commercially produced small scale map sold to the public suggesting not only that it existed and was capable of being used by the public in 1903 but that it was accessible to the public. Public Footpaths were not generally shown on the map suggesting that the inclusion of the route on the map inferred use by the public on horseback and possibly with vehicles.
½ inch OS Map of Preston	1907	Further edition of the OS mapping.



Observations		The route under investigation is clearly shown with a number of properties marked on the map along its length (Ridshaw Farm, Far Buckhurst, Buckhurst Farm and the school). The watercourse crossing the route at point H1 is also shown.
Investigating Officer's Comments		This ½ inch scale map covered a large area and due to its scale could only show main routes. Public footpaths are not generally shown and neither are field boundaries. The inclusion of the route on such a map - which would have been sold primarily to the public travelling on horseback or by vehicle - suggests that it was still in use as a significant route in 1907.
25 inch OS Map	1910	Further edition of the 25 inch map resurveyed in 1891, revised in 1908 and published in 1910.
Observations		The full length of the route under investigation is shown and is labelled as Buckhurst Road. Gates are marked across the route at point B1 and point F1. The property close to point J1 (Far Buckhurst) is no longer shown on the map suggesting that it no longer existed.
Investigating Officer's Comments		The route under investigation existed in 1910 and appeared to be capable of being used by the public on horseback.
Finance Act 1910 Map	1910	The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good

evidence. 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.

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).

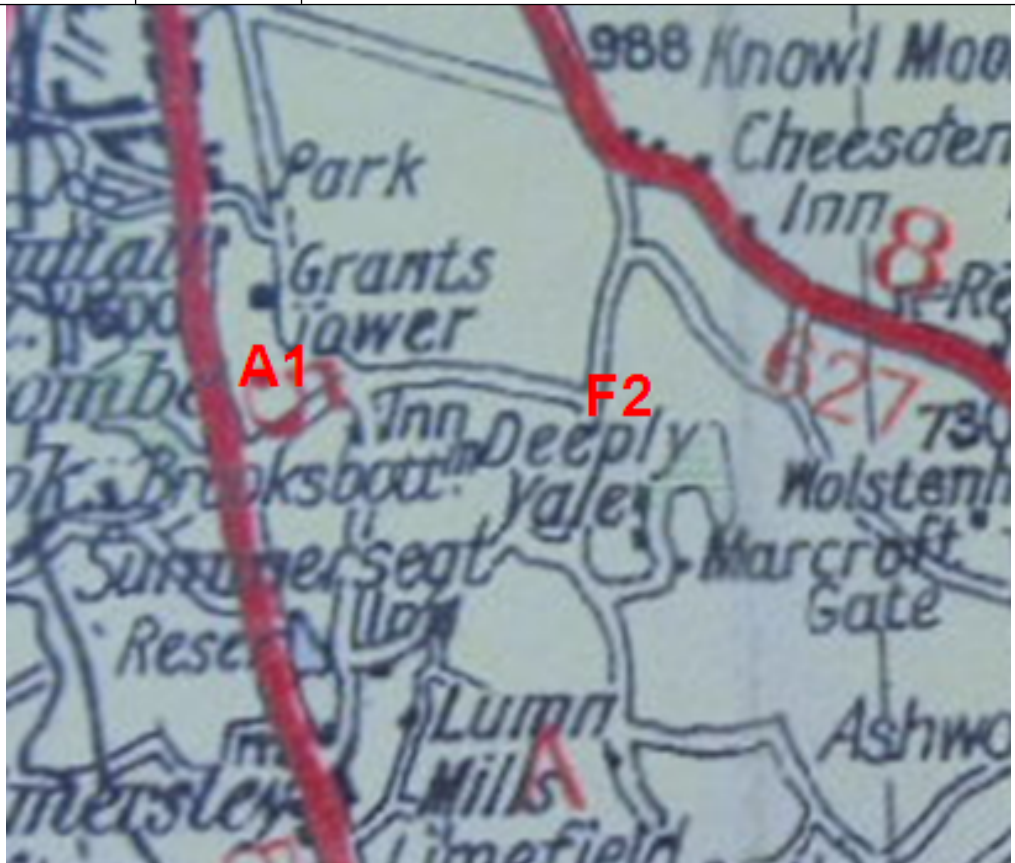
An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey 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.

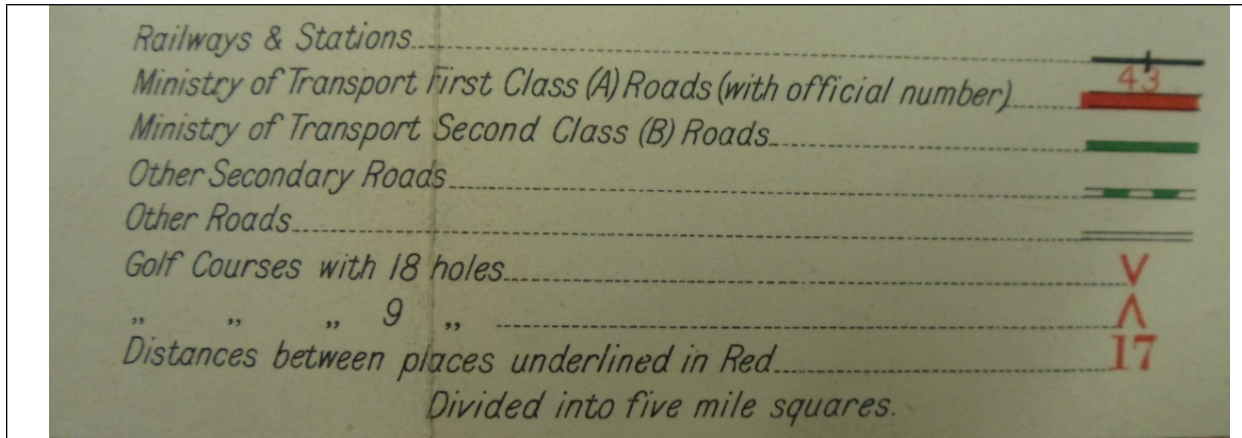




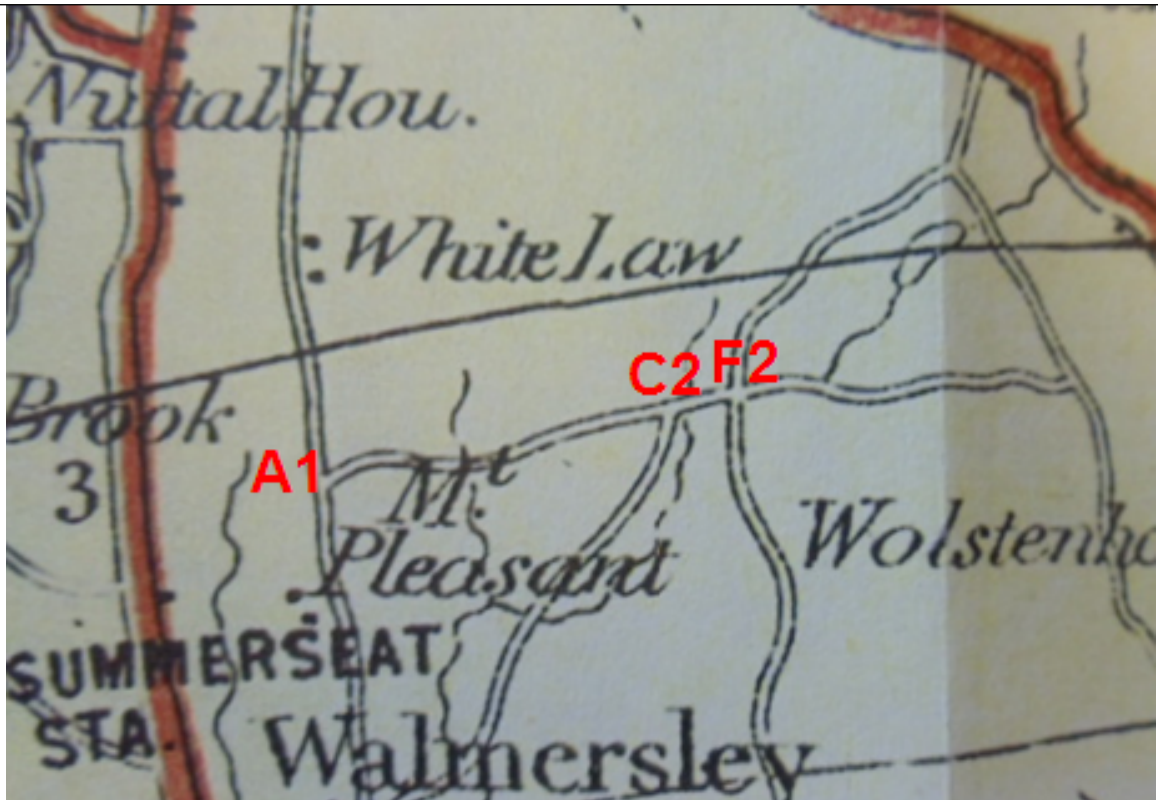
<p>Observations</p>		<p>No Finance Act maps were available in the Lancashire Records Office so the Finance Act Maps were obtained from The National Archives.</p> <p>An examination of the maps shows that the whole of the route under investigation was excluded from the adjacent numbered hereditaments.</p> <p>The Field books for the adjacent hereditaments were obtained. Hereditaments 7, 8 and 19 were all owned by the Earl of Derby and deductions made for unspecified 'public footpaths' contained within them. Plot 58 was also listed as being in the ownership of the Earl of Derby but no deduction was listed for a public right of way within it.</p> <p>Plot 15 was owned and occupied by A Clegg and the property described as being situated on 'Buckhurst Road'. No deductions for public rights of way were recorded.</p>
<p>Investigating Officer's Comments</p>		<p>The exclusion of the whole route from the taxable hereditaments is good evidence of, but not conclusive of, public carriageway rights. Several of the numbered plots are split by the route giving further weight to the belief that the route under investigation was considered to be for public use and that it carried public vehicular rights (as public footpaths and public bridleways</p>

		<p>were normally included within the numbered plots). Much of the land either side of the route was still in the ownership of the Earl of Derby and had been clearly excluded from the taxable hereditaments within three of which deductions had been claimed for public footpaths.</p> <p>Between points I1 and E2 the land either side of the route under investigation was in different ownership but has been excluded from the taxable hereditament that has been split by the route which is described in the field book as 'Buckhurst Road'.</p> <p>The maps showed land in private ownership and, by implication, land not recorded as being privately owned would have been regarded as being in public ownership.</p>
<p>½ inch to the mile Geographia Road Map 30 miles around Manchester</p>	<p>Revised 1921</p>	<p>Extract of map provided by the Applicant.</p>





Observations		The route under investigation is shown and is depicted as 'Other Roads' in the map key. No properties are shown along the route – probably due to the scale of the map.
Investigating Officer's Comments		The scale of the map means that it is likely that only the most significant public routes were shown and were differentiated in the key. The fact that the route under investigation is shown as a route considered to be a 'Road' suggests that it was considered at that time to be at least a public bridleway – and more likely a route carrying public vehicular rights.
Abel Heywood & Sons Cycling & Touring Map 60 miles about Manchester ½ inch to the mile		Extract of the map provided by the Applicant. Undated but thought to be dated circa 1920 by a local historian.

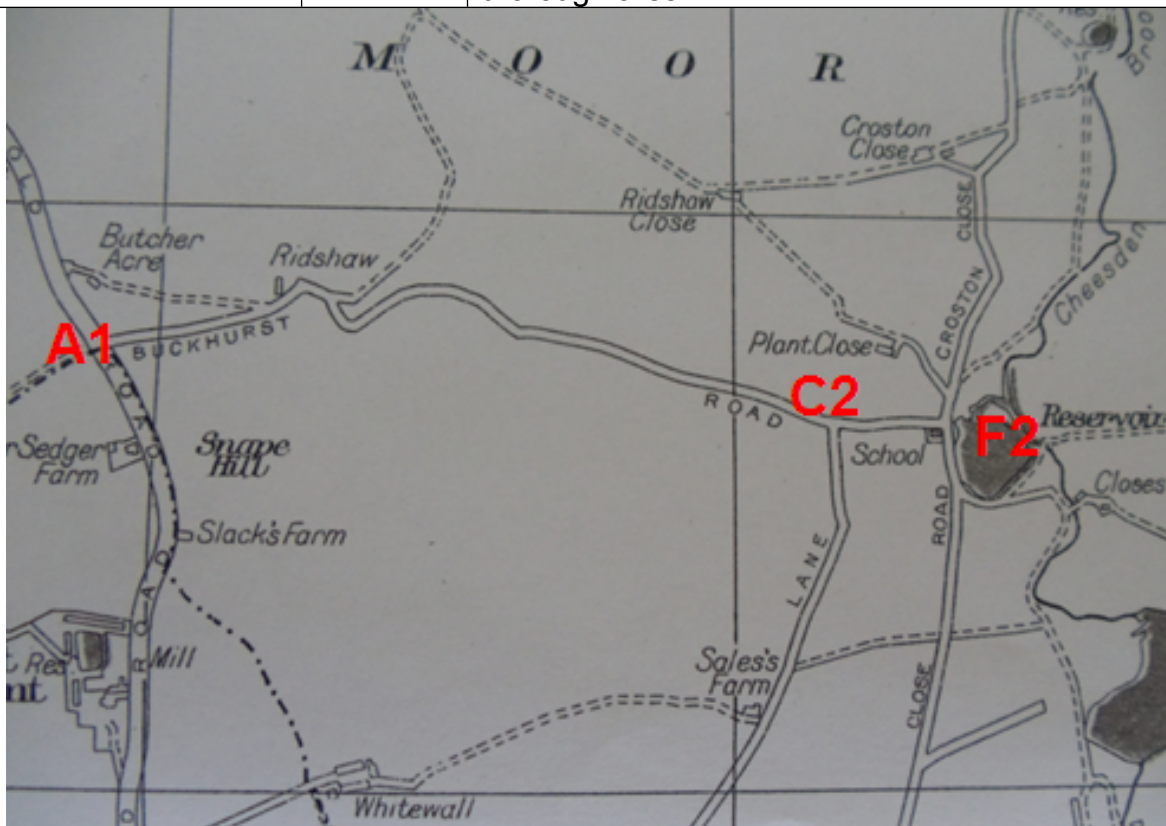


Observations		The full length of the route under investigation is shown.
Investigating Officer's Comments		The fact that the route is clearly shown on a cycling and touring map – the purpose of which was to show routes available to the public to use on a bike and with vehicles - suggests that it was considered to be a public road (cyclists were not allowed to use bridleways prior to 1968).
25 Inch OS Map	1929	Further edition of 25 inch map re-surveyed 1891, revised in 1928 and published 1929.
Observations		The full length of the route under investigation is shown and named as Buckhurst Road. There are no changes to the route from the 1910 edition of the 25 inch map.
Investigating Officer's Comments		The route under investigation still provided access to a number of properties along it but was also a through route connecting to other public routes across the valley.
6 inch OS Map 80SW	1930	A copy of the 6 inch OS map published in 1930 submitted by the applicant and which is stamped with the name 'Pennine Paths Preservation Society'.



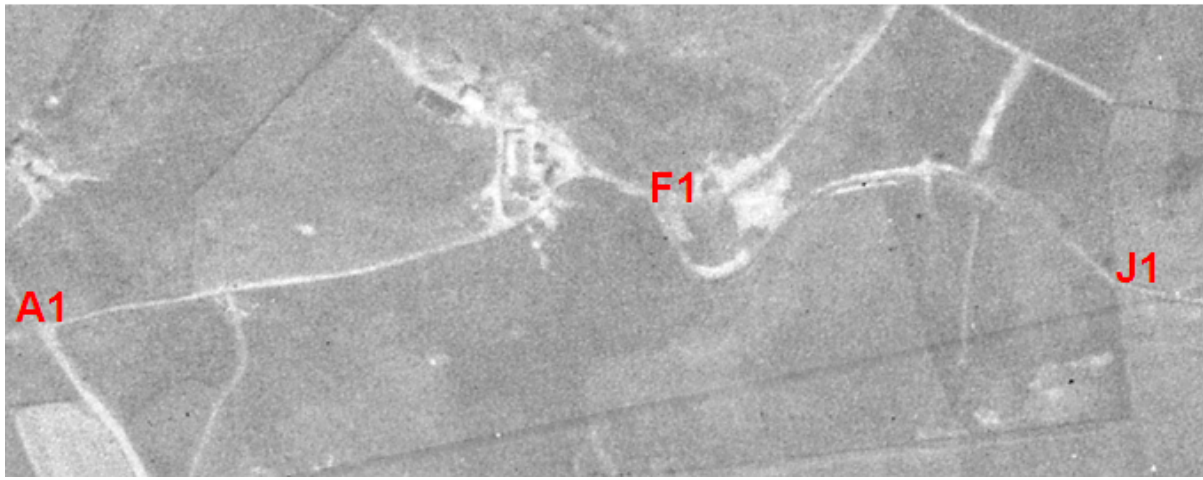

<p>Observations</p>	<p>The map extract has been annotated with a green pen and the routes shown in green correspond to a number of recorded public rights of way. The route under investigation has not been coloured although a number of routes that have been coloured connect to the route under investigation. Sales Lane and Croston Close Road are both shown coloured.</p>
<p>Investigating Officer's Comments</p>	<p>There is no key to the colouring on the plan and it is not dated. It is understood that the map originated from the Pennine Paths Preservation Society and is now in the possession of the Bacup Natural History Society. However the date when it was annotated and the reason for its production are not known.</p> <p>The route under investigation has not been coloured but a number of other routes that are now recorded as public paths have been marked and are shown to connect to it. This may suggest that if the purpose of the annotations was to mark up public paths then the route under investigation was considered to be of a higher public status and that it was therefore not necessary to mark it on the map.</p> <p>Sales Lane (currently recorded as a Public Footpath but subject to a DMMO application to upgrade it to public bridleway) and Croston Close Road (originally recorded as a public footpath but upgraded to public bridleway by a DMMO) are both shown coloured green suggesting that routes considered to be public paths were marked.</p>

<p>The Authentic Map Directory of South Lancashire published by Geographia Ltd</p>	<p>1934</p>	<p>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 the streets which includes every 'thoroughfare' named on the map. The introduction to the atlas states that the publishers gratefully acknowledge the assistance of 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'.</p>
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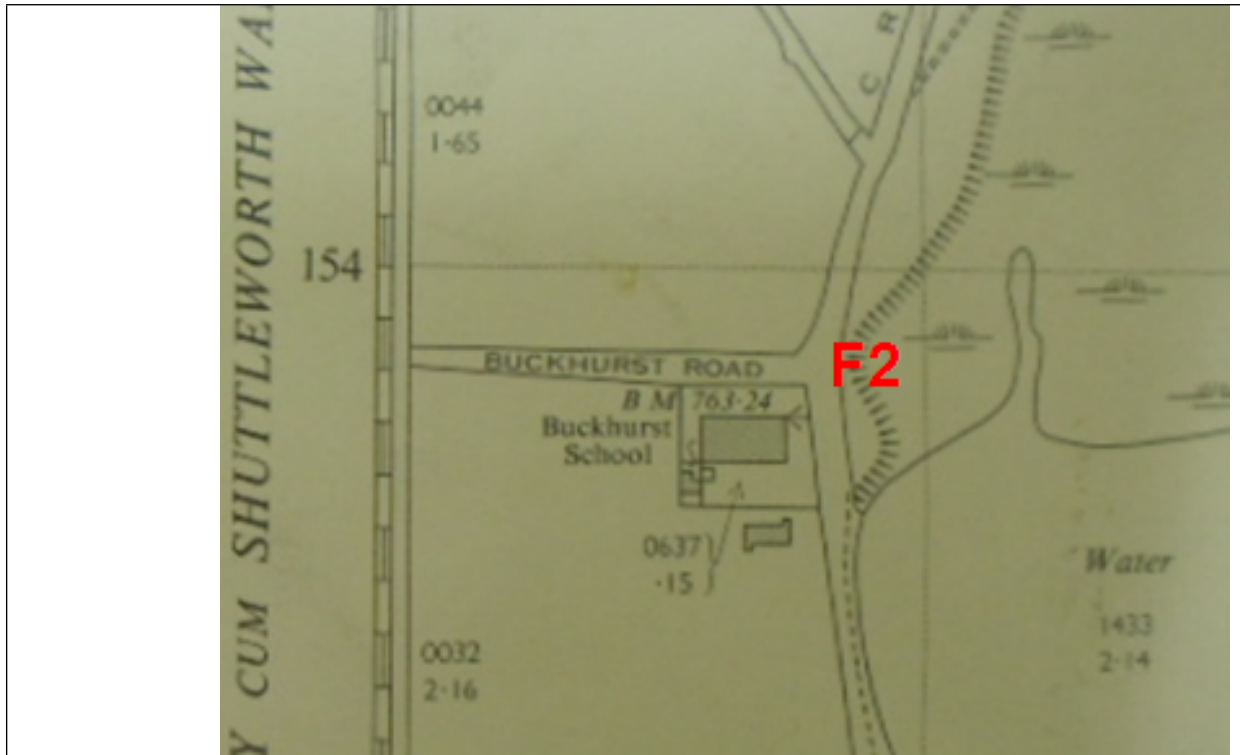
<p>Observations</p>		<p>The full length of the route under investigation is shown and is named as Buckhurst Road.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation is shown in the atlas consistent with other routes carrying public vehicular rights.</p>
<p>Aerial Photograph²</p>	<p>1940s</p>	<p>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</p>

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.

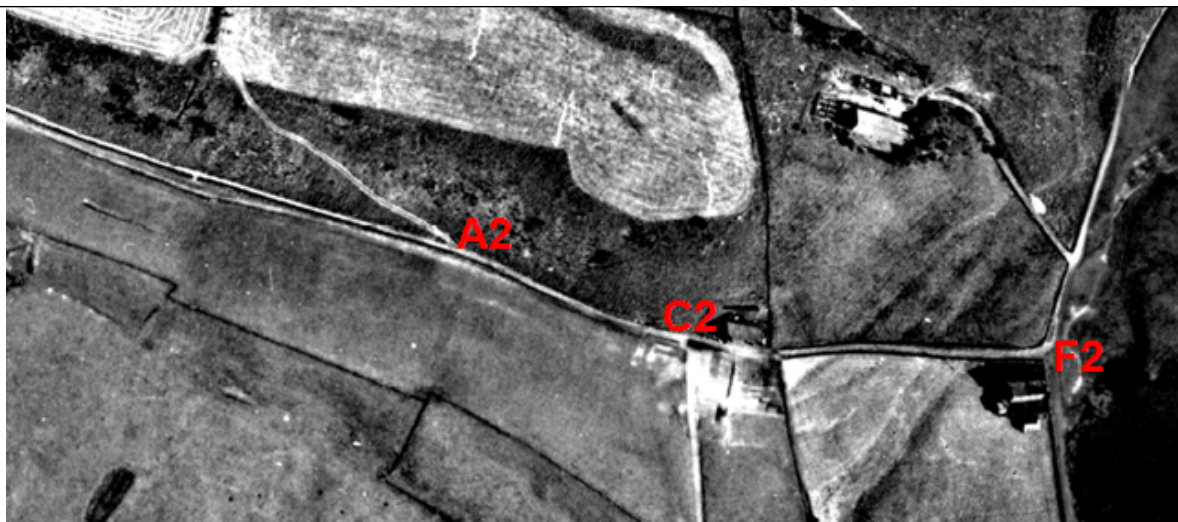
		generally very variable.
		
Observations		The quality of the photographs is poor but the whole length of the route can be seen as a track. Boundary walls, fences, gates etc. cannot be seen on the photographs.
Investigating Officer's Comments		The whole of the route existed as a worn track in the 1940s.
6 Inch OS Map (SD 81NW)	1956	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.
		
Observations		The whole of the route under investigation is shown and is named on the map as Buckhurst Road. Gates are shown across the route at point B1 and point F1. Farms along the route are named and so is the school.
Investigating Officer's Comments		The route under investigation physically existed and appeared capable of being used when the map was revised in the 1930s.
1:2500 OS Map	1963	Further edition of 25 inch map reconstituted from

former county series and revised in 1962 and published 1963 as national grid series.





Observations		<p>The whole of the route under investigation is shown.</p> <p>Butcher Acre Farm has been built to the north of point A1 but access to the farm is off Bury Old Road. A gate is still shown to exist across the route at point B1 and the route is shown to be open and unrestricted as it passes Ridshaw Farm. A gate is shown across the route at point F1 and between point F1 and point I1 the route is now shown to be bounded on the south side but open to the land to the north. A refuse tip is shown north of the route between point G1 and point H1 which may have been accessed from the route under investigation.</p> <p>At point I1 a gate is shown across the route which was not marked on earlier editions of the map. The route crossed map sheets but is named as Buckhurst Road on both map sheets. The school adjacent to point F2 is still labelled as Buckhurst School.</p>
Investigating Officer's Comments		The route under investigation physically existed and appeared capable of being used when the map was revised in 1962.
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 on the aerial photograph.

Butcher Acre Farm can be seen to the north of point A1. Between point A1 and point A2 the route is visible between walls or hedges. From point B1 and past Ridshaw to point F1 the route can be clearly seen suggesting that it was of a substantial construction or was very well used and not just a grass track.

From point F1 to point G1 and continuing towards point H1 the route is well defined as far as an area that was labelled as a refuse tip on the 1963 OS. Beyond that area the route continues to point H1 as a clearly defined route.

At point A2 a track is visible that converges with the route under investigation which is not

		marked on the 1963 OS map.
Investigating Officer's Comments		The route under investigation physically existed and appeared capable of being used in the 1960s.
Aerial Photograph	1990	Aerial photograph available to view at the Lancashire County Council Offices at Cuerden.
		
Observations		The whole of the route under investigation can be seen but between point F1 and C2 the route is far less visible than on the earlier set of photographs.
Investigating Officer's Comments		It appears that the route between point F1 and C2 was no longer used on a regular basis by vehicles and as a consequence was much less visible than those sections that provided access to farms and properties.
Aerial Photograph	2000	Colour aerial photograph taken in 2000 and available to view on GIS.



<p>Observations</p>		<p>The whole of the route under investigation can be seen. The gate at point B1 cannot be seen on the photograph but a line can be seen across the route at point E1 which may be the cattle grid that is now situated across the route at this point. From point A1 through to point F1 the route under investigation follows a clearly visible track. From point F1 the route is much less visible on the ground through to point A2 where a track meets it from the north. The rest of the route from point A2 to point C2 and through Buckhurst Farm to F2 is clearly visible.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation physically existed and appeared capable of being used in 2000. Use of the middle section (between point F1 to point A2) appears to have declined with the track being much less obvious on the ground which</p>

		would be consistent with use by pedestrians and possibly horses as opposed to use by vehicles. The cattle grid at point E1 may have existed across the route in 2000 which may have restricted use of the route by horse riders.
Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way. Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in 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 Ramsbottom 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 route under investigation was shown on the Draft Map as a public footpath and numbered 207. No objections or representations were made to the County Council about the inclusion of the route as a public footpath.
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.
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 and Provisional Maps.
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 in the same way on the Definitive Map of Public Rights of Way (First Review) as it had been previously shown.
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the route under investigation was considered to be of any higher status than public footpath by the Surveying Authority. There were no objections to the depiction of the status of the route from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a

		<p>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		There is no Highways Act 1980 Section 31(6) deposits 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 their land.
Metropolitan Borough of Bury Register of Streets Repairable by the Inhabitants at Large		An extract of a handwritten book titled 'The Metropolitan Borough of Bury Register of Streets Repairable by the Inhabitants at Large' and obtained by the applicant from Bury Council.
Observations		<p>Contact was made with Bury Council who confirmed that they still had the document that was submitted by the applicant. On the title of the document is a label saying 'Ruled and written up by Councillor John Harrison, April 20th 1912' with an additional label stating 'Names of new streets to be notified to the District Fire Officer' and dated February 1957. A further note under the title 'Ramsbottom UDC Public Highways' states that only streets with entries in columns 3-6 are public highways' and appears to be a later addition to the records. The column entries are Street/Ward/Date of Meeting/Minute Book Number and Page/Remarks. The following entries were included for the route under investigation:</p> <p>Street – Buckhurst Road</p> <p>Ward – Walmersley cum Shuttleworth</p>

		<p>Date of Meeting – no entry</p> <p>Minute book (Number) – no entry</p> <p>Minute book (page) – no entry</p> <p>Remarks – Occupation Road 1400 yards. This entry is written in pencil and may possibly be a later addition.</p> <p>Bury Council have also confirmed that the route under investigation is not listed in the List of Publicly Maintainable Streets.</p>
Investigating Officer's Comments		<p>After consideration by the Council it does not appear to have been considered to be publicly maintainable. No inference can be drawn regarding public rights.</p>

The affected land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land.

Landownership

Between point A1 and point I1 the route under investigation is in the freehold ownership of Mr Clifford Stewart Sellers of Ridshaw Nook, Buckhurst Road, Bury BL9 6TA.

The land crossed by the route under investigation between point I1 to point F2 is not registered and none of the landownership details for land either side of the route between points E2 and F2 includes ownership of the route under investigation.

Solicitors acting on behalf of Mr John Walsh and Mrs Marlene Walsh of Buckhurst Farm, Buckhurst Road, Walmersley, BL9 6SZ have provided landownership details in writing to the effect that Mr and Mrs Walsh own the land crossed by the route under investigation between point I1 and point B2. That the land between point B2 and just beyond C2 is owned by Mr John Patrick Walsh and Mrs Andrea Walsh, and from that point to point E2 the land is held in trust for Mr Richard Alan Walsh by Mr John Walsh and Mrs Marlene Walsh.

Summary

The application submitted by the Forest of Rossendale Bridleways Association was for the route under investigation to be recorded as a public bridleway based entirely on map and documentary evidence.

The earliest commercial map examined was Yates' Map of 1786 which clearly shows the full length of the route as a through route and depicted as a 'cross road'. It is subsequently shown on Smiths Map 1801 and the depiction of the route on these small scale commercial maps produced primarily to assist the travelling public on horseback and in carts suggests that the route was considered to be at least a bridleway – and more probably a public vehicular route in the late 1700s and early

1800s. It is not, however shown on Greenwood's Map of 1818 or Hennessey's Map of 1830.

It is submitted that its appearance on early maps would lead to the presumption of the route under investigation being of at least bridleway status and on balance a highway open to the public in all vehicles including carts and carriages having already been dedicated to public use.

The Derby Estate plan dated 1824 does not show the full length of the route but does show the sections between point A1 to point E1 and point H1 and point E1 as 'High Roads'. The purpose for which the plan was drawn is not known and the definition of 'High Road' is not given but it is clearly distinguished from 'Private Roads' suggesting that a route shown as a High Road was likely to carry public rights on horseback – and more probably vehicular rights and the fact that part of the route is not shown is more likely to be because the land it crossed was not part of the Derby Estate rather than it not existing as it is clearly shown as a through route on other commercial maps produced around that time.

The Tithe Map published in 1838 is too fragile to inspect. However the full length of the route is clearly shown on the Cassini map originally published 1842-44 at a scale of 1 inch to a mile and the inclusion of the route on such a small scale map adds further weight to the belief that the route was of significant importance to the travelling public in the 1800s.

The route is named on the first edition of the Ordnance Survey 6 inch map published in 1851 as Ridshaw Lane along the western section and Buckhurst Lane on the eastern section with properties shown along it again suggesting that the route formed an important through route at that time.

By the time that the 1895 25 inch Ordnance Survey map was published the whole length of the route was labelled as Buckhurst Road. A gate appeared to have existed across the route at point B1 which would not be inconsistent with a public bridleway or carriageway through farmland and a National School is shown to exist at the eastern end which could have been accessed from travelling along the route under investigation.

The route is consistently shown from 1851 to the current day on all Ordnance Survey maps suggesting that it physically existed and would have been capable of being used by the public since at least that time. It is generally considered that Ordnance Survey maps show the physical situation at the time of the survey without regard for whether they had public rights, although there was no disclaimer prior to 1888, but there is a growing awareness by academics that by the end of the 19th Century the Ordnance Survey were selling large numbers of maps to members of the public and promoting the advantages in finding ways that they could travel in unfamiliar areas, which does have the implication that those routes depicted were likely to be public to some extent.

The 1910 Finance Act Maps and field books provide good evidence of what the landowners at that time believed the status of the route to be. The exclusion of the whole route from the taxable hereditaments is good evidence of, but not conclusive

of, public carriage rights. Several of the numbered plots are split by the route giving further weight to the belief that the route under investigation was considered to be for public use and that it carried public vehicular rights (as public footpaths and public bridleways were normally included within the numbered plots). Much of the land either side of the route was still in the ownership of the Earl of Derby and had been clearly excluded from the taxable hereditaments within three of which deductions had been claimed for public footpaths. Between points I1 and E2 the land either side of the route under investigation was in different ownership but has been excluded from the taxable hereditament that has been split by the route which is described in the field book as 'Buckhurst Road'.

The Finance Act 1910 map is consistent with public carriageway along the whole length. The maps showed taxable land in private ownership and, by implication, land not recorded as being privately owned would have been regarded as being in public ownership.

A number of other commercial maps published in the early 1900s show the route. The Geographia Road Map published in 1921 shows the route as an 'other road' and it is also clearly shown on a small scale cycle touring map published around the same time and the Authentic Map Directory of 1934 also shows and names the route. The fact that the route is shown as a through route on these maps - which were published primarily for the public wishing to travel by vehicle or bicycle - is again suggestive of the fact that the route was being used by the public in vehicles and by horses and bicycles at that time.

The aerial photographs examined from the 1940s, 1960s, 1990s and 2000 all confirm the existence of the route and show that by the 1990s use of the middle section (between point F1 and point C2) had declined to such an extent that the track was much less visible and the surfaced grassed over. This would suggest that use by that time of the middle section was predominantly pedestrian in accordance with its current designation as a public footpath. A structure is visible on the 2000 aerial photograph at point E1 which may be a gate or the cattle grid that existed when the route was inspected.

The highways records obtained from Bury Council suggest that although the route was listed in a document titled 'Metropolitan Borough of Bury Register of Streets Repairable by the Inhabitants at Large' it appears that the Council considered the route to be an occupation road that was not maintainable at public expense.

Taking into account all of the map and documentary evidence examined it appears that there is evidence to suggest that the route under investigation is of at least bridleway status and on balance that a highway open to the public in all vehicles including carts and carriages has already been dedicated to public use.

However, although the route under investigation has evidence for public carriageway rights the effects of the Natural Environment and Rural Communities Act 2006 would be to extinguish any public mechanically propelled vehicle rights where the route is currently recorded as a public footpath (i.e. along the full length).

County Secretary and Solicitors Group Observations

Information from the applicant

The applicant has provided various documents in support of their application:

6" to 1 mile Ordnance Survey map published 1849
6" to 1 mile Ordnance Survey map published 1930
Extract of Yates 1" map published 1786
1910 Finance Act Map (listed as being dated 1920 by the applicant)
Authentic Map Directory of South Lancashire published 1931-1935
Lord Derby Estate Plan dated 1785 to 1788 redrawn 1824
Smiths Map published 1802
Casini's Map published 1844 at a scale of 1" to the mile
1/2" to the 1 mile Ordnance Survey map dated 1907
Geographia Road Map 30 miles around Manchester revised 1921 at a scale of 1/2" to 1 mile
Abel Heywood and Sons Cycling & Touring Map 60 miles around Manchester 1/2" to 1 mile
Metropolitan Borough of Bury Register of Streets Repairable by the Inhabitants at Large

No user evidence has been provided in support of this application.

Information from the landowners

An objection has been received from P Wilson & Company on behalf of John Walsh, Andrea Walsh & Richard Alan Walsh of Buckhurst Farm, Buckhurst Road, Walmersley and Mrs Marlene Walsh of Buckhurst Cottage, Buckhurst Road, Walmersley.

P Wilson & Company had requested copies of the applicant's submissions that show Footpath 207 (Buckhurst Road) but state that all documents and plans submitted fail to prove its status. They comment on the applicant's documents:

1. 6" to 1 mile OS 1849;
6" to 1 mile OS 1930
Yates 1" 1786
Authentic Map Directory S Lancs 1931 to 1935
Smiths 1802;
Casini 1844 OS 1"
1/2" to 1 mile OS Preston map 1907;
Geographia Road Map 30 miles around Manchester revised 1921 1/2" to 1 mile;
Abel Heywood & Sons Cycling & Touring Map 60 miles around Manchester 1/2" to 1 mile

P Wilson & Company states that these maps are not determinative of the status of Buckhurst Road. There are no keys on the maps which determine the nature of the

roads/lanes being depicted and therefore should not be regarded as evidence of the existence of a public bridleway.

2. Estate Plans Lord Derby 1785 to 1788 redrawn 1824

Comments are made on the land north and south of Buckhurst Road as they do not form part of Lord Derby's Estate and a large part of the road is omitted from the Estate plan, because of this they consider that the evidence is inconclusive on the status of any right of way.

3. Finance Act 1920 Map

The map extract cannot be interpreted as neither the valuation book or field book have been provided, P Wilson & Company state that the map extract alone provides insufficient information to determine the status of any right of way.

4. Metropolitan Borough of Bury Register of Streets Repairable by the Inhabitants at Large

P Wilson & Company state that 'a' Buckhurst Road is mentioned on the sheet submitted by the applicant. But the format of the document is inconsistent with other Registers of Street Repairable by the Inhabitants at Large as it is normal for Surveyors to only note the road, its distance, and the roads it adjoins in the register. They query whether this is the official register of that period for the area. This document does not prove the status of Buckhurst Road. It is necessary to examine the whole book or collection of documents from which this extract is taken.

5. Definitive Map & Statement

P Wilson & Company provide a copy of the Draft map and Statement and the Definitive Map and Statement for Footpath 207, and state there is nothing in their contents to suggest the public right of way is anything but a footpath.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

Strong Historical map evidence

Against Making an Order(s)

Some historical map evidence

Conclusion

The route under consideration is currently recorded as a public footpath. The application is to upgrade the status of this public footpath from Point A1 to F2 on the

basis that this public footpath carries higher public rights and should thus be recorded as a bridleway.

Committee should note that as the route already appears on the definitive map as a footpath, it is not sufficient to satisfy the lesser test of reasonably alleging the existence of bridleway rights, neither is it necessary for there to be conclusive evidence of the existence of a higher public right than a public footpath, instead the standard of proof required is the balance of probability.

There is no express dedication and it is not possible to satisfy the criteria in s.31 Highways Act 1980, as the applicant has produced no user evidence in support of the claim, hence there is no evidence of how the route was used by the public and whether this use was as of right, without interruption and for a full period of twenty years. Committee will therefore need to consider on balance whether dedication can be inferred at Common Law.

The analysis of the map and documentary evidence by the Executive Director for Environment suggests that the early commercial maps which include the Yates Map of 1786 showed the full route as a through route and was depicted as a 'cross road'. As a through route, it is suggested, the evidence points in the direction of this route being a carriageway. The route can also be seen on the Smiths Map 1801, this suggests the route was at the very least used as a bridleway and on balance was a highway open to the public in vehicles including carts and carriageways.

The later commercial maps evaluated, The Geographia Road Map (published 1921) and Authentic Map Directory 1934 also depict the route as a through route, bearing in mind these maps had been primarily published for the public wishing to travel by vehicle or bicycle, on a balance of probability it is highly likely the route was being used by the public on vehicles, horses and bicycles.

The route was excluded from The Finance Act 1910 map and several of the numbered plots were split by the route giving further weight that the route subject to this application was considered to be for public use and that it carried public vehicular rights (as public footpaths and public bridleways were normally included within the numbered plots).

The OS Maps confirm from 1940, the track was visible and in existence although it is suggested that by mid-1990 the section from F1-C2 had declined to such an extent that the track was much less visible and it is suggested that the route was likely to have at this stage been used predominately as a public footpath.

Although the route has evidence of public carriageway rights, it is no longer possible to record the route as a byway open to all traffic due to the introduction of section 67 National Environment Rural Communities Act 2006 (NERC Act). The implication of this section has meant that as this route was originally recorded on the definitive map and statement as a public footpath, any existing public rights of way for mechanically propelled vehicles have been extinguished. This therefore means that the highest status that can be achieved by this route is that of a restricted byway.

Taking all the information into account and noting how the route was recorded on the old County maps, it is suggested to Committee that the evidence is sufficient to show, on the balance of probabilities that the route ought to be shown as a highway of a different description and the claim should be accepted as a restricted byway, as opposed to only a bridleway, as the evidence suggests on balance the route has a higher public status.

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: 804-540		Megan Brindle, 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A