

Regulatory Committee

Meeting to be held on 22 October 2014

Electoral Division affected:
Chorley Rural West

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Application for the Addition to the Definitive Map and Statement of a Public Bridleway from Back Drinkhouse Lane to Drinkhouse Road, Croston, Chorley

File No. 804-545

(Annex 'A' refers)

Contact for further information:

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Executive Summary

Application for a Public Bridleway to be added to the Definitive Map and Statement of Public Rights of Way from Back Drinkhouse Lane to Drinkhouse Road, Croston, Chorley Borough, in accordance with File No. 804-545

Recommendation

1. That the application to record a Bridleway from Back Drinkhouse Lane to Drinkhouse Road, Croston, Chorley in accordance with File No. 804-545 be accepted.
2. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to record a Public Restricted Byway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D.
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 Mrs J Almond, 31 Grape Lane, Croston, for a Public Bridleway between Back Drinkhouse Lane and Drinkhouse Road, Croston, for a distance of approximately 55 metres and shown between points A-B-C-D on the Committee plan to be recorded on the Definitive Map and Statement of Public Rights of Way.

The County Council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53(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 adding a way to 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

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

Croston Parish Council has been consulted and a letter of support 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 – County Secretary and Solicitor’ Observations.

Advice

Executive Director for the Environment's Observations

Points annotated on the attached Committee plan.

Point	Grid Reference	Description
A	SD 4853 1838	Junction with Back Drinkhouse Lane
B	SD 4854 1838	Bollards positioned within surface
C	SD 4858 1838	Porch of 17 Drinkhouse Road extending across part of the route
D	SD 4859 1838	Junction with Drinkhouse Road

Description of Route

A site inspection was carried out on 23rd July 2014.

The route under investigation starts at the junction with Back Drinkhouse Lane at point A on the Committee plan.

From point A the route extends in an easterly direction and is approximately 3.5 metres wide bounded on the north side by a well maintained hedge and on the south side by a wooden panelled garden fence. The surface of the route is tarmac.

Beyond point A the available width between the hedge and fence reduces over the first 5 metres towards point B to approximately 2.4 metres. After approximately 10 metres from A there are two posts positioned within the surface of the route (point B). A wooden post is situated in the middle of the tarmac section and an iron post is situated on the southern side adjacent to the wooden garden fence of the property named 'Albany'.

Beyond point B the route continues in an easterly direction. The surface is tarmac throughout with signs of services having been laid the full length and the tarmac replaced to a poorer standard. It is bounded by fences or hedges separating the tarmac path from the adjacent properties. Private gates are located in the boundaries on either side which provide access to and from the gardens.

The bins belonging to 17 Drinkhouse Road may be stored within the route, they protrude only about 0.2m into the currently available route with the hedge cut in the way that it was on the date of inspection.

The available width along the tarmac is constrained to 2 metres by a low brick wall on the north side of the route from about half-way along as far as the gate before the porch.

4.3m before reaching the porch at point C the fence line on the south side kinks 1.2m towards 19 Drinkhouse Road, giving an overall width of 3.4m and then continues in a straight line to point D.

At point C a side porch has been constructed to provide access to 17 Drinkhouse Road. The porch protrudes out into the route under investigation reducing the width to 1.9 metres for the 2.5 metre length of the porch. Beyond the porch the width increases to approximately 3.6 metres between the wall of 17 and boundary of 19 Drinkhouse Road for 5m, to the corner of the house wall, then a width of 3.9m to the junction of Drinkhouse Road.

When the route was inspected a car belonging to the owners of 17 Drinkhouse Road was parked on the route between point C and D although it was possible to walk past it.

The route was open at both ends (point A and point D) and there were no signs indicating whether the route was considered to be public or private.

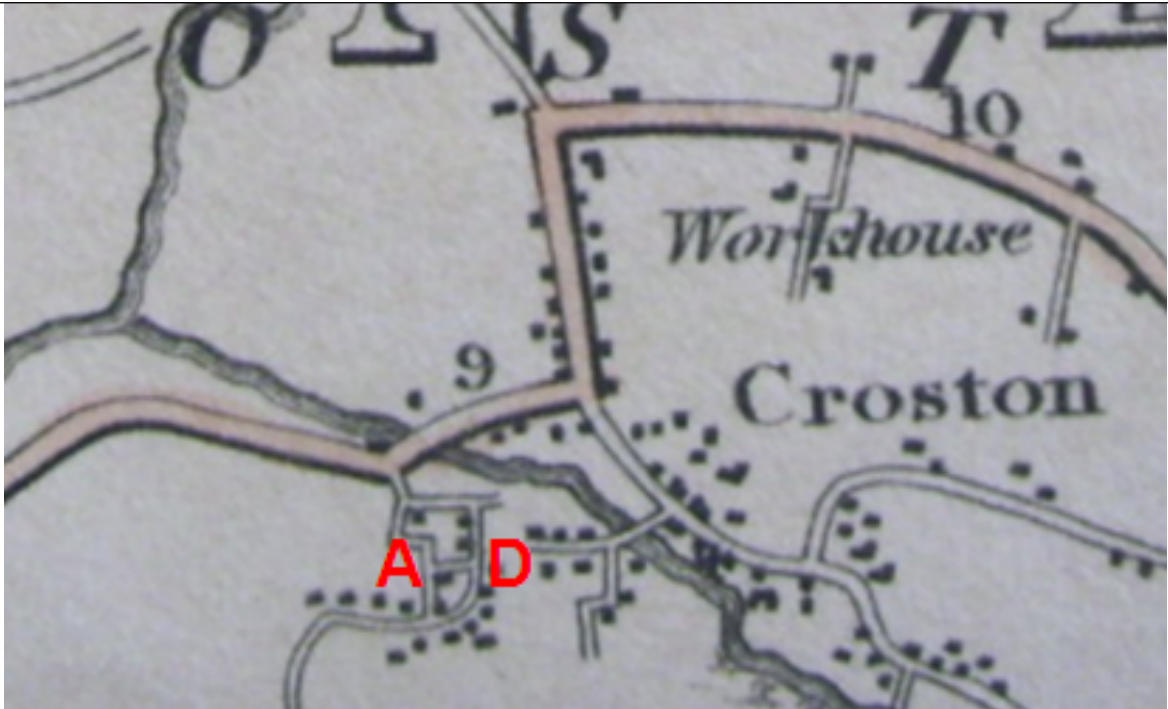
The total length of the route was approximately 55 metres and it was tarmaced along the full length. The width varied and the garden fences on the south side of the route appeared to have been altered to reduce the width of the route between point A and point C. The porch extension at point C protruded out onto the route.

Map and Documentary Evidence

Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The route under investigation is not shown on Yates' Map. A line of properties are shown to the south of the River Yarrow which may indicate that Drinkhouse Lane existed at that time.
Investigating Officer's Comments		The route under investigation did not exist as a major route at that time. It may have existed as a minor route which would not have been shown due to the limitations of scale and because of the purpose for which the map had been produced so no inference can be drawn in this respect.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that his map showed private as well as public roads.

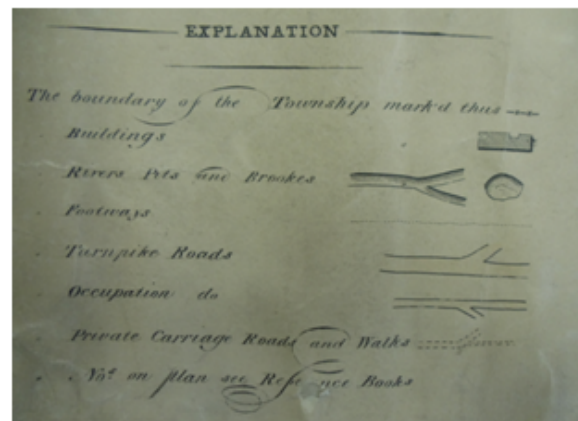


Observations		The route under investigation is not shown on Greenwood's Map although Back Drinkhouse Lane and Drinkhouse Road are both clearly shown.
Investigating Officer's Comments		The route under investigation did not exist as a major route at that time. It may have existed as a minor route which would not have been shown due to the limitations of scale and because of the purpose for which the map had been produced so no inference can be drawn in this respect.
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 under investigation is clearly shown connecting Back Drinkhouse Lane and Drinkhouse Road.
Investigating Officer's Comments		The route under investigation existed in 1830 and appeared to be considered to be part of the general highway network and shown as a 'cross road' by Hennet. As the only other category of 'road' shown on the map are the turnpike roads, it is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in Hollins V Oldham). It is unlikely that a map of this scale would show footpaths. Many properties are shown on this map with no access road or track to them. It is more likely that Hennet's map shows routes depicted as through routes that were generally available to the travelling public in carts or on horseback and therefore suggests that the route under investigation was a public bridleway or carriageway.
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		The route under investigation was not affected by the construction (or proposed construction) of a railway or canal.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment	1837	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. The Tithe map for Croston was produced in 1837.



Observations		The full length of the route under investigation is shown as a fairly wide way and appears to be open and accessible at either end. The route is not numbered with a plot numbered and is not mentioned in the Tithe Schedule. The route is not named on the map or in the schedule and has not been coloured. Drinkhouse Road is coloured and is named on the map as Drinkhouse Lane. Back Drinkhouse Lane is not
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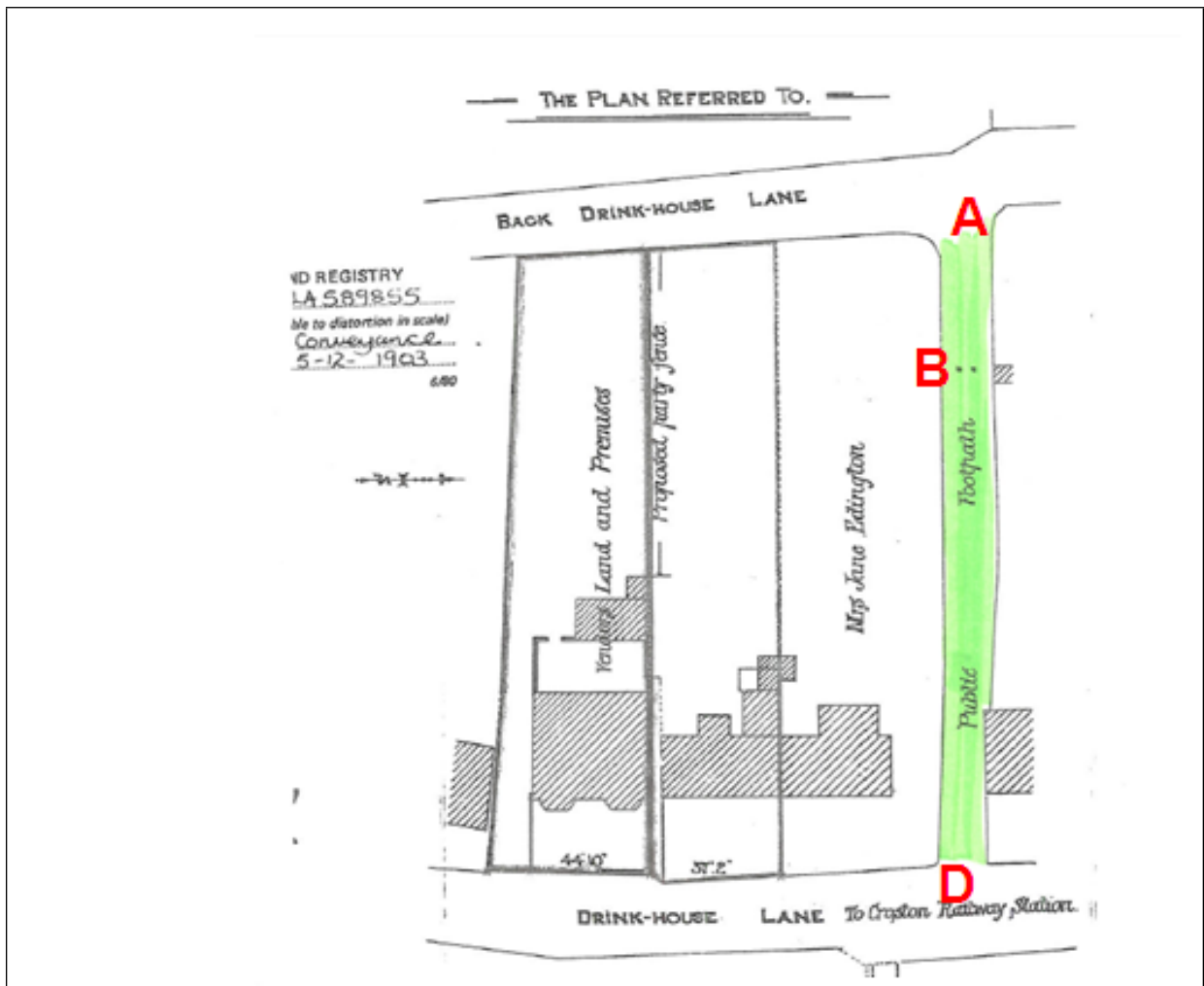
		coloured or named.
Investigating Officer's Comments		The route under investigation existed in 1837 and appeared to be capable of being used by the public. The route is shown bounded by solid lines but is not coloured. The key to the map indicates that a coloured route bounded by solid lines was either a Turnpike Road (wide line) or an occupation road (narrower line) with private carriage roads and walks being shown separately by double pecked lines. Occupation roads in this sense appear to be more minor public highways and not private access roads. The route under investigation has not been coloured – but neither has Back Drinkhouse Lane suggesting that not all routes – particularly the less used or more minor routes were coloured. The fact that the route is not numbered and no tithe charge is shown together with the way that it is shown separated from the adjacent properties but connecting to Back Drinkhouse Lane and Drinkhouse Road suggests that the route was considered to be a public road at the time. It is not possible to scale the width of this map but it does look to be narrower than the roads at either end.
Inclosure Act Award and Maps	1725-1726	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		The Inclosure Award for Croston was inspected but did not show the area over which the application route runs.
Investigating Officer's Comments		No inference could be drawn.
6 Inch Ordnance Survey (OS) Map	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1845-46 and published in 1847.



Observations		The route under investigation is shown and access to it appears to be open and unrestricted at either end. The route appeared to be bounded on either side at a similar width to Back Drinkhouse Lane and its appearance on the map is consistent with other connecting public vehicular highways.
Investigating Officer's Comments		The route under investigation existed in 1845-46 and appeared to be capable of being used by the public. It is shown in the same manner as Back Drinkhouse Lane (and similar width) and Drinkhouse Road suggesting that it was considered to be at least bridleway status and possibly a public vehicular highway.
25 Inch OS Map	1894	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892-93 and published in 1894.



Observations		The full length of the route under investigation is shown as a 4 metre wide bounded route open at either end to the connecting public vehicular highways (Back Drinkhouse Lane and Drinkhouse Road). Only the turnpike roads through Croston appear to have been coloured and shaded.
Investigating Officer's Comments		The route under investigation existed in 1894 and appeared to be capable of being used by the public. The width was about 4 metres.
Plan attached to Land Conveyance	1903	Plan obtained by the Applicant from the Land Registry labelled as a plan from a 1903 conveyance.



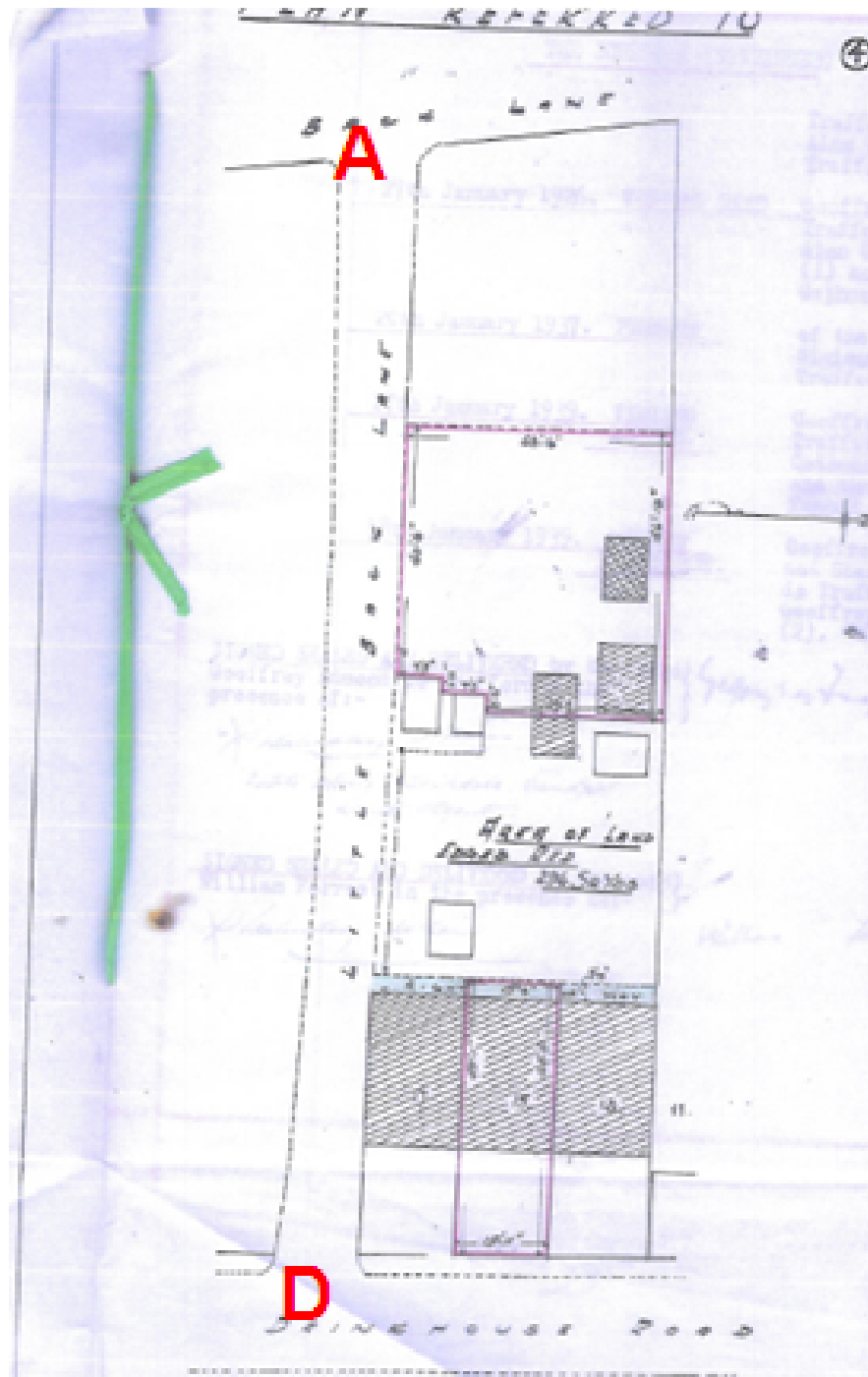
Observations

The plan was submitted by the applicant who obtained it from the Land Registry. There was no scale on the plan so it was not possible to measure the width of the route shown. However, the plan shows the full length of the route under investigation as a bounded route and labelled as a 'Public Footpath'. The existence of two structures within the route – most likely posts or bollards – are marked at point B. The route is shown coloured green although the colouring appears to have been a more recent addition to the map. The property now known as 23 Drinkhouse Road is labelled as 'Vendors Land and Property' suggesting that the plan may have originally been attached to sale documents for that property.

Investigating Officer's Comments

The route under investigation existed in 1903 and access may have been limited by the existence of two posts or bollards at point B. The route was considered to be a 'public footpath' by the person drawing the plan. It may have been a surveyor given the style of plan. It is likely that

		<p>the information that it was footpath status is likely to have come from the vendor or possibly a surveyor might have concluded it simply from the posts It had no public or official scrutiny and described land that was not the subject of the document.</p> <p>In respect of the posts it is suggested that the preparation of the plan was to record that location and on balance it is evidence that the posts were there. However at this location these could have been traffic management on a vehicular highway rather than prohibiting vehicles or a stopping up – this route would only be used by local traffic such as delivery carts so hand carts, wheel barrows, bicycles, pony and trap would probably all fit through but a cart, carriage or lorry wouldn't. There is no record of any complaint or stopping up and the presumption of regularity would suggest that these were placed there by the relevant authority.</p>
Deed Plan	Undated	A further undated deed plan was submitted by the Applicant and is said to have been copied from the Deeds to 13 and 15 Drinkhouse Road.

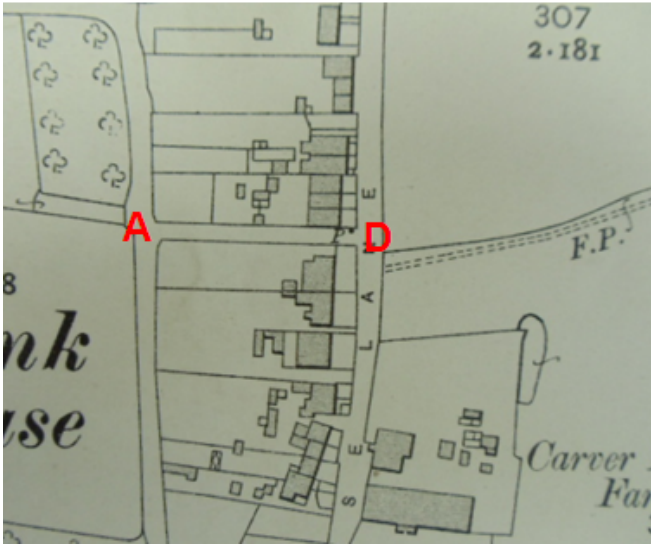


Observations

The plan shows the full length of the route under investigation and shows it as being open at either end. The route is labelled on the plan as 'Little Back Lane' and the property now known as 15 Drinkhouse Road is edged in purple together with a plot of land to the rear which it appears would need to be accessed from the route under investigation.

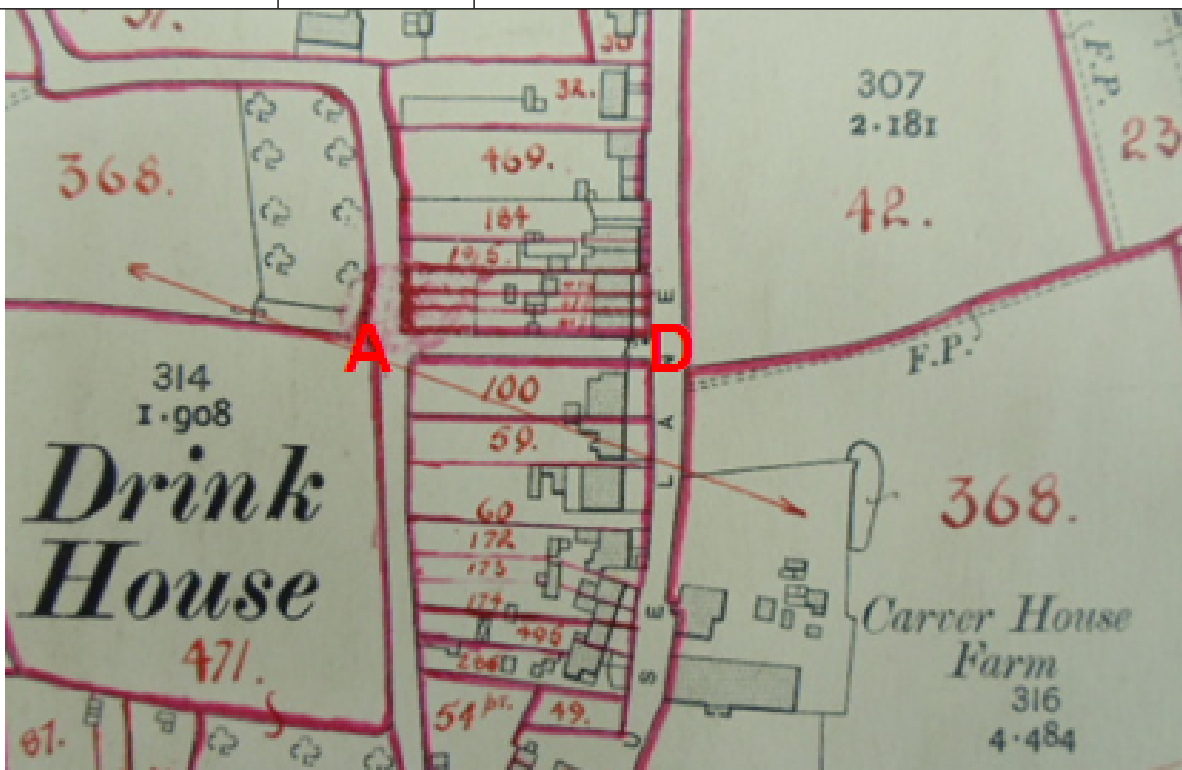
Investigating Officer's Comments

The date of the plan is unknown but it appears that the route under investigation was known by

		a name – Little Back Lane – which is consistent with the other two named routes that it connected to – as being a named route that the public had access along.
25 inch OS Map	1910	Further edition of the 25 inch map surveyed in 1892, revised in 1908 and published in 1910.
		
Observations		The route under investigation is shown bounded on either side as it had been on earlier editions of the map. The letter 'P' is shown on the route just west of point D indicating that there was a pump within the width of the way, close to the eastern end.
Investigating Officer's Comments		The route under investigation existed in 1910 and appeared to be capable of being used by the public. The pump is tight against the side of a 4m wide way close to the end only shown on this map. It is not considered that the pump restricted use of the route
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</p>

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).

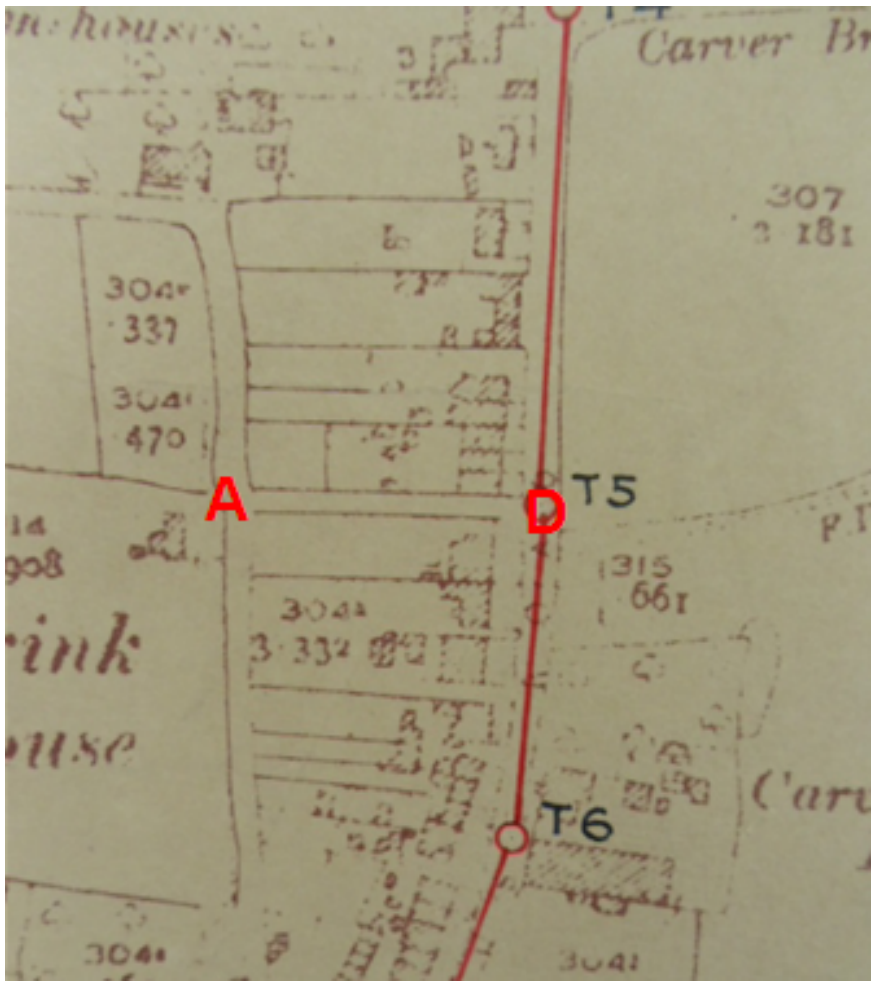
An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey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



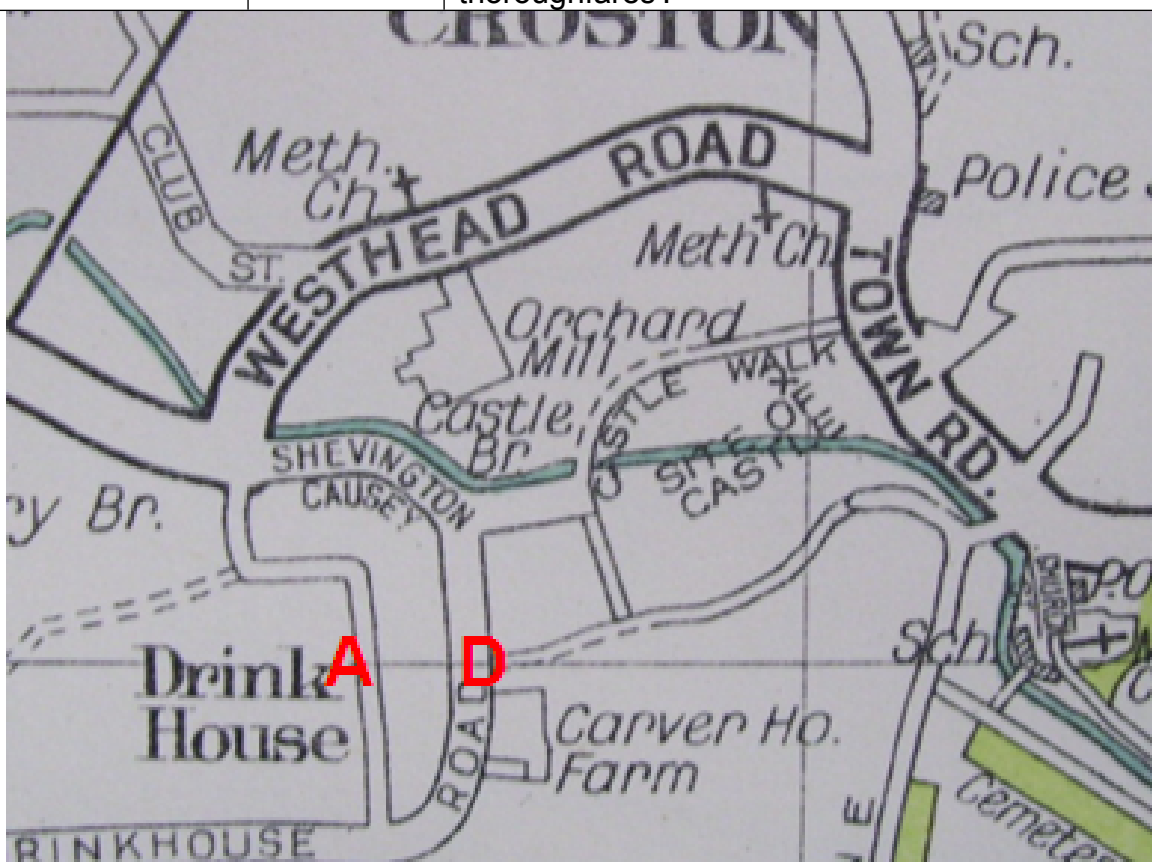
Observations

A copy of the Finance Act plan was inspected in the County Records Office.

The plan shows the full length of the route under investigation excluded from the adjacent numbered hereditaments. The width of the

		excluded route is approximately 4 metres.
Investigating Officer's Comments		The exclusion of the whole route – shown to be approximately 4 meters wide - from the taxable hereditaments is good evidence of, but not conclusive of, public carriage rights but gives 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).
25 Inch OS Map	1928	Further edition of 25 inch map (surveyed 1893 revised in 1927 and 1928).
		
Observations		The map viewed in the County Records Office was a copy that had been annotated. However, it could be seen that the route under investigation was shown on this edition of the map in the same way as on previous editions and appeared to be open from Back Drinkhouse Lane to Drinkhouse Road.
Investigating Officer's Comments		The route under investigation existed and appeared to be capable of use in 1928.

<p>Authentic Map Directory of South Lancashire by Geographia</p>	<p>Circa 1923</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 route under investigation is not shown.</p>
<p>Investigating Officer's Comments</p>		<p>The route is not shown on the map which may be an indication that it was not considered to be a route that the public had access to with vehicles – and thus not shown within an atlas compiled and published for the purpose of showing all but the 'small, less important thoroughfares.' Public footpaths and bridleways would not normally be shown on the map so the fact that the route under investigation is not shown is likely to be due to the fact that it was not considered to be a public vehicular route at that time rather than the fact that it did not</p>

		physically exist and does not mean that the route could not have existed as a footpath or bridleway at that time.
Aerial Photograph¹	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.
Observations		The clarity of the photograph is poor. The route under investigation can be seen although it is not possible to determine whether access was available along it or whether any barriers existed across it.
Investigating Officer's Comments		No inference can be drawn.
6 Inch OS Map	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



Observations		The route under investigation is clearly shown
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¹ 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.

		from Back Drinkhouse Lane to Drinkhouse Road. Access appears to be open and unrestricted along the full length.
Investigating Officer's Comments		The route under investigation physically existed when the area was surveyed in the 1930s suggesting that public access may have been available.
1:2500 OS Map	1973	Further edition of 25 inch map reconstituted from former county series and revised in June 1972 and published 1973 as national grid series.



Observations		The full length of the route under investigation is shown. Pecked lines are shown across the start of the route at point A indicating a change in surface from Back Drinkhouse Lane. Posts are shown across the route at point B and a further change in the surface is indicated at the junction with Drinkhouse Road at point D. In respect of the posts they are in the same location as those shown in 1903 and configuration on those 2 maps suggests that they might have been the same or replacements for ones that were missing or broken.
Investigating Officer's Comments		The route under investigation existed in 1972 and appears to have been capable of being used by the public. The existence of posts at point B suggests that access was restricted to prevent vehicles.
Planning Permission for porch extension	1978	Details of application for planning permission (Application 78/00374/FUL) received by Chorley Borough Council on 11 April 1978 and granted on 2 May 1978.
Observations		Reference was made in the consultation

		<p>following receipt of the application to the porch that has been constructed on the side of 17 Drinkhouse Road and which it is claimed obstructs part of the route under investigation. Files held by Chorley Borough Council were therefore examined.</p> <p>An application was made on 10 April 1978 by Mr W Tuson of 17 Drinkhouse Road for a porch to be constructed on the side of his property. The plans attached to the application showed that the route would be constructed on the south side of the property but there is no mention of the fact that the porch was to be constructed over part of the application route. Planning permission was granted on 2 May 1978.</p> <p>File notes retained on the Borough Council files relate to the inspections carried out by the Borough Council in respect to compliance with the building regulations. When the site was inspected on 29th November 1979 the Borough Council Officer wrote that the extension appeared to have been built on a public right of way but that after checking with the County Council he had been told that the route was not adopted and was not on the Definitive Map.</p>
Investigating Officer's Comments		<p>The route under investigation was narrowed at point C due to the construction of the porch in 1979. The public status of the route was questioned once construction on site had commenced but did not appear to have been questioned when planning permission was granted.</p>
Letter from Croston Parish Council to Chorley Borough Council	1980	<p>Information contained within Chorley Borough Council Planning Application file 78/00374/FUL</p>
Observations		<p>Following completion of the porch Chorley Borough Council received a letter from the Clerk of Croston Parish Council on 2 October 1980 complaining that the porch encroached on a public right of way not shown on the Definitive Map. The letter explained that the parish council had received numerous complaints and made reference to the fact that coal delivery wagons were now prevented from using it to deliver coal. The Parish Council asked for the planning permission to be revoked and included 11 user evidence forms detailing knowledge and use of the application route which they refer to as being called 'Little Back Lane'.</p>

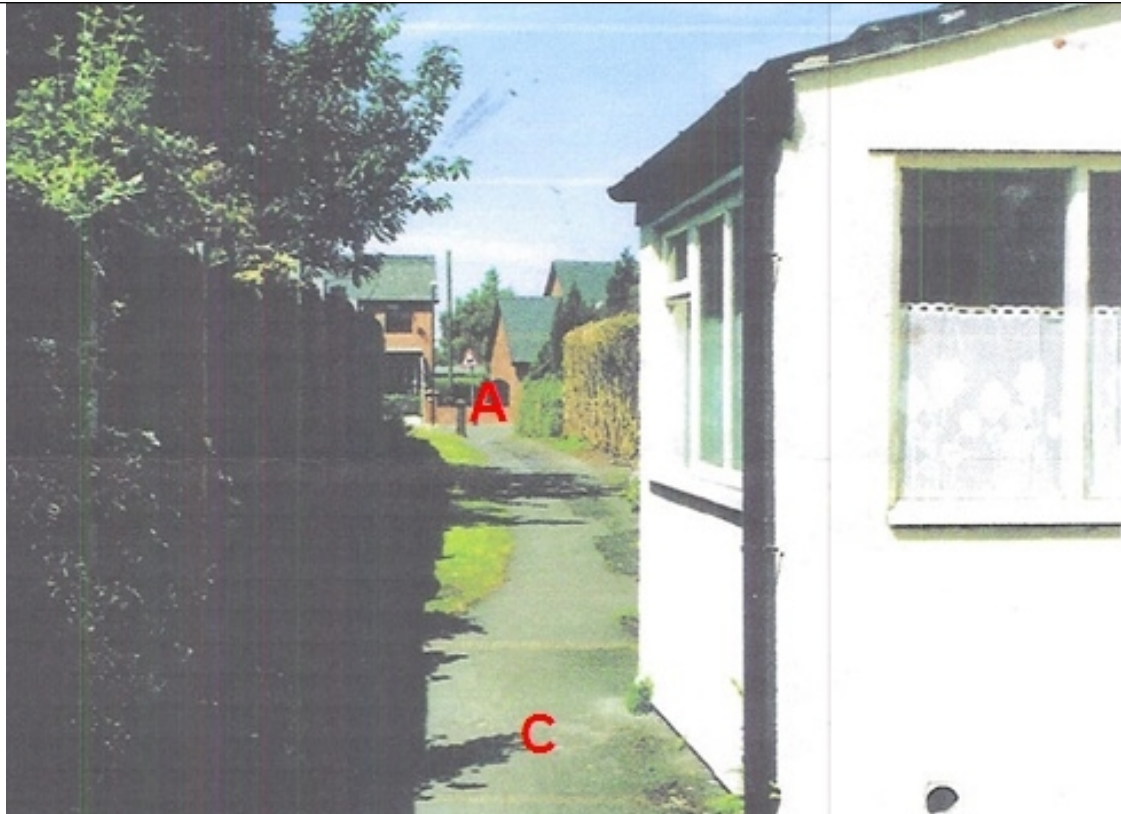
		<p>The user evidence forms were of a standard format issued by the Central Rights of Way Committee and Commons and Open Spaces and Footpaths Preservation Society. They included the names and signatures of the people that completed them and were all dated in September 1980.</p> <p>The form asked whether the route was known to them as a footpath or bridleway. 7 users said that it was both footpath and bridleway, 2 users stated bridleway, 1 stated footpath and 1 left the question unanswered. All 11 stated that they regarded the route as public. The form asked how long they had known and used the route. dates were not given but the answers stated 60 years (2), 58 years (1), 'all her life' (2), 37 years (1), 70 years (1), known all his life and used for generations by his parents and grandparents (1), 53 years (2).</p> <p>The reasons for using the route included going to the shops and school, for pleasure, to get to work and access to the church and church yard. In all 11 cases use was frequent – often daily. 4 users mention the existence of 2 posts and one user refers to stiles.</p> <p>Additional comments include 1 user stating that the path had been tarmaced by 'the council' on at least 2 occasions. A further comment reads 'I think the porch is out of keeping with the district and the planning read as if the porch was going on the front door, as there was no side door at that time and there was no obstruction on the path. The porch is on land belonging to the district and not the cottage'.</p> <p>Further correspondence on the file shows that the user evidence forms were forwarded to the County Council in October 1980 who had retained them with a view to the matter being dealt with under the review procedure of the National Parks and Access to the Countryside Act 1949 but that the County Council were unable to say when the second review of the Definitive Map would commence.</p> <p>The Borough Council had written to the Parish Council to inform them that the matter was to be dealt with by the County Council and that it was not possible to revoke the planning permission.</p>
Investigating Officer's Comments		The construction of the porch across part of the route under investigation appears to have prompted the parish council to take action

		<p>seeking to record the public status of the route and to request the revocation of the planning permission on the basis that the porch obstructed part of a public highway.</p> <p>In 1980 the County Council were still required to periodically carry out reviews of the Definitive Map as whole. In Lancashire one such review was carried out which predated the status of the route under investigation being questioned. No further reviews of the Definitive Map were carried out and since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p> <p>A copy of the correspondence passed to the County Council could not be found on the parish files and it appears that no further action was taken to investigate the 'claim' that the route should be recorded as a public bridleway until the current application was formally submitted in 2013.</p>
Aerial Photograph	21/5/1988	Aerial photograph available to view at the Lancashire Archives Office and on GIS.
Observations		It is difficult to enlarge the photograph without losing much of the clarity. The route under investigation can be seen and the porch that had been constructed on the southern side of 17 Drinkhouse Road at point C is visible. It is not possible to see whether any other gates, posts or barriers existed that may have restricted or prevented access.
Investigating Officer's Comments		The route under investigation existed in 1988 and the width was restricted at point C due to the porch extension.
Aerial photograph	2000	Aerial photograph available to view on GIS.



Observations		The full length of the route under investigation is shown. The route appears to be open and available to use at either end. The bollards at point B are not visible on the photograph.
Investigating Officers Comments		The route under investigation existed in 2000 and appeared to be available to use. Use of part of the width was restricted at point C.
Photographs	2003	Photographs taken by the Applicant in 2003





Observations		The route under investigation can be seen as a tarmac path with well maintained and cut back hedges along the northern side and a maintained grass verge down the southern side. The metal post that is still in existence can be seen at point B but the wooden post does not appear to have existed at that time.
Investigating Officer's Comments		Photographs taken by the applicant and said to be dated 2003 show that the route was wider between point A and point C than it was when inspected by the County Council in 2014 and that fencing has subsequently been erected narrowing the route to the width of the tarmac.
Aerial Photograph	2009	Google Map photograph. The date the image was captured was 2009.



Observations		The undated images show the route under investigation from Back Drinkhouse Lane. The route is in use by a walker and the fence line on the southern boundary that currently exists is shown. The route is also shown from Drinkhouse Road with cars parked and partially blocking the route between point C and point D.
Investigating		The route under investigation existed and was

Officer's Comments		being used when the photographs were taken. Use by horse riders would be particularly difficult if cars were frequently parked between point C and point D.
Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in rural district council areas and the maps and schedules were submitted to the County Council. In the case of urban districts and municipal boroughs the map and schedule produced was used, without alteration, as the Draft Map and Statement.
Observations		The route was not shown on the parish survey map.
Draft Map		<p>The parish survey map and cards for Croston were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a "relevant date" (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		The route was not shown on the Draft Map and there were no objections lodged regarding the fact that it had not been shown.
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 was not shown on the Provisional Map and there were no objections lodged regarding

		the fact that it had not been shown.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route was not shown on the First Definitive Map.
Investigating Officer's Comments		The route under investigation was not considered to be a public right of way that should be recorded on the Definitive Map and Statement in the 1950s.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date 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 is not shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).
Investigating Officer's Comments		<p>The application route was not considered to have changed status by the 1960s when the First review was carried out.</p> <p>It appears that the County Council may have received details of the request from Croston Parish Council in 1980 for the route under investigation to be included on the Definitive Map when it was next reviewed. However a copy of the correspondence could not be found and the matter does not appear to have been investigated. The procedure altered in 1981 and the Definitive Map and Statement are now subject to a continuous review process part of which enables applications such as the one that is the subject of this report to be made.</p>
LCC Highway Adoption Records		In 1929 the responsibility for county highways passed from district and borough councils to the County Council. For the purpose of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the

	<p>county. These were based on existing Ordnance Survey maps and edited to mark public highways – from A roads to footpaths. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>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.</p> <p>The County council are 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 is irrelevant to whether it is a highway or not.</p>
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Observations	<p>The map believed to have derived from the handover maps does not show the route under investigation as a publicly maintainable highway. The route is tarmaced throughout and there are</p>
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		<p>various comments included in the 1980 user evidence forms suggesting that the 'Council' tarmaced the route. The current owner of 17 Drinkhouse Road verbally reported to the Officer from the Environment Directorate that carried out the site inspection that she understood that the 'Council' had previously surfaced or repaired the route when they had been in the area and had surplus tarmac.</p>
<p>Investigating Officer's Comments</p>		<p>The route was not considered to be a publicly maintainable highway in 1929 and has not been recorded as such in the intervening years. However many public rights of way have been found not to have been recorded on these maps because they were unsurfaced and it is not known whether the route under investigation would have been surfaced in the 1920's.</p> <p>It has not been possible to find any record of the County Council tarmacing the route but it is known that it was not uncommon for the Council to tarmac public rights of way in the past (even where they are not recorded as publicly maintainable).</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</p>

		effectively brought the status of the route into question).
Observations		There are no Highways Act 1980 Section 31(6) deposits lodged with the County Council for the area over which the 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.

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

The affected land is not registered common land.

The affected land is not recorded as a site of special scientific interest or a biological heritage site.

Landownership

The land over which the route crosses is not registered.

Summary

The earliest map examined that shows the route was Hennes's Map published in 1830. It is depicted as a cross road suggesting that it existed as a through route at that time and was regarded as being at least a public bridleway and possibly a minor cart road.

7 years later the route is again shown on the Croston Tithe Map (1837) and is shown as being open and accessible and separate from the adjacent properties. The manner in which it is shown again suggests that it was considered to be at least a public bridleway at that time. It appears to have been formed as a route.

The route is shown to exist on all Ordnance Survey maps inspected from the first edition 6 inch map published in 1847 through to the current day. On all maps inspected it is shown to be open and accessible and bounded on either side. The 1894 and 1910 and 1973 25 inch/1:2500 Ordnance Survey maps show the route to be approximately 4 metres wide.

A conveyance plan dated 1903 shows the route, labels it as a 'Public Footpath' and records the existence of bollards at point B. A further undated deed plan submitted by the applicant shows the route and labels it as 'Little Back Lane'.

The 1910 Finance Act records show the whole route excluded from the adjacent numbered hereditaments providing further evidence that the route was considered at that time to be for public use and that it carried public bridleway and possibly public vehicular rights.

However, the route was not shown on the commercially produced Authentic Map Directory of South Lancashire in 1923 which may indicate that it was not considered to be vehicular and does not appear to have been recorded as being publicly maintainable in 1929.

The 1973 edition of the 1:2500 OS Map shows that the bollards at point B existed. These would probably have restricted vehicular access but would not restrict pedestrian or equestrian access.

In 1978 Chorley Borough Council granted planning permission for a porch that was constructed across part of the route under investigation. Planning permission was granted with the status of the route over which it was to be constructed seemingly not questioned.

However, during the construction of the porch in November 1979 the site was inspected by the Building Control Officer from the District Council who queried whether the porch was being built over a public right of way. He noted on the file that the County Council had told him that the route was not adopted and that it was not recorded on the Definitive Map.

The construction of the porch prompted Croston Parish Council to gather user evidence and to submit a request to the Borough Council for the route under investigation – and referred to as Little Back Lane - to be recorded on the Definitive Map. Eleven user evidence forms were submitted claiming that the route was a footpath and bridleway and that it had been used regularly by at least one person in excess of 70 years and by all for a minimum of 37 years.

The Parish Council were informed that the user evidence had been forwarded to the County Council who would consider the matter when the Definitive Map was next reviewed.

Legislation altered so that a second review of the map was never undertaken and the status of the route remained unrecorded and does not appear to have been investigated until the application that is the subject of this report was submitted in 2013.

More recent aerial photographs, photographs submitted by the applicant and captured by google show the route in more recent years (from approximately 2000 onwards) appears to have been encroached along the southern boundary between point A-C and by the porch extension at point C (since 1979). Use of the full width of the route also appears to have been restricted by vehicles parked between point C and point D.

County Secretary and Solicitors Group Observations

Information from the applicant

In support of the application, the applicant has provided 27 user evidence forms. 13 of the users are residents from Drinkhouse Road, 6 users are from Back Drinkhouse Lane, 2 users are from Town Road, 2 users are from Station Road, 2 users live on

Grape Lane, 1 user is a resident at The Hillocks, 1 user is from Mill Row and 1 is from Shevington Causeway. However 3 of these users are from properties which may arguably have a private right over this route and are unlikely to use it "as of right" and it is suggested they should be discounted.

The user forms indicate use of the route as follows (years):

0-10(2)	11-20(3)	21-30(1)	31-40(2)	41-50(1)	51-60(5)
61-70(6)	71-80(3)	1 user states "most"			

The route has been used mainly for walking to the village, going from Drinkhouse Lane to Back Drinkhouse Road, visiting friends or relatives, walking to church, going to the shops, using it as a short cut / way of access, going to school and taking the horse to graze in the field.

The number of times the users have used the route per year varies from, daily, 3-4 times per day, 1-2 a week, weekly to 170 times per year.

All the users agree the route has been used on foot, however 14 have also used the route on bicycle. The years in which the route was used by bicycle is as follows:

1948-1998(1)	1945-2013(1)	1948-2013(1)
1962-2013(1)	1987-2013(1)	1990-2013(1)
2003-2013(1)	2010-2013(1)	

1 user states "when younger" and 5 users did not specify any dates.

2 users have also used the route on horseback, 1 during the years of 1970-1978 and 1 during 1990-2013.

1 user has also used the route on motorcycle during the years of 1957-1970.

All the users agree that the route has run over the same line, however 4 of the users mention a porch being built to the side of one of the houses.

The users all agree that there are no stiles / gates / fences along the way, however 2 users mention there are 2 posts.

None of the users have ever worked for a landowner over which the route passes nor have they been a tenant of any of the land.

All the users have never been stopped or turned back when using the way, and none have ever seen notices such as 'private', 'no road' or 'trespassers will be prosecuted'.

All the users have never asked permission to use the way.

The names on the user evidence forms were checked against those on the forms submitted to the District Council in 1980. None of those that have completed the recently submitted forms make reference to completing a form in 1980 and only one name may refer to either the same person – or possibly a close relative – completing a form in 1980 and a second form in 2013. In 1980 Mrs Mary Bailey completed a form to say that she had known and used the route as a footpath and a bridleway to

access the shops and school. No address or date of birth was given. In 2013 Pamela M Bailey of 37 Drinkhouse Road completed a form. She was born in 1958 and described knowing of the route all her life.

A letter has been submitted by the applicant notifying LCC of the porch that has considerably narrowed the footpath.

Information from others

A letter received from James Rigby of Albany, Back Drinkhouse Lane, Croston. He states many of the members of the public believed that it already came under the jurisdiction of LCC. Mr Rigby states him and his parents and grandparents who were farmers at Carver's Farm and Drinkhouse Farm, the footpath has been known as 'Little Back Lane'. His family can vouch for one hundred years worth of use, and states the width varies from 6 feet to 12 feet.

As a boy he used to drive cattle down this track from the grazing pasture to Carver's Farm for milking and then return to the meadows. Today this footpath is used by several hundreds of people per week and includes children going to and from school, people shopping, going to church and others going out for a walk around the village. He then states our plan is not accurate as 35 years ago a porch was extended to number 19 Drinkhouse Road and the plan does not show this.

Many years ago the path was re-surfaced with a coating of tarmac by LCC, the pathway has gas, electricity and water pipes buried under its surface. These services were to connect Ashfield House to the Drinkhouse Road services. There being no services down Back Drinkhouse Lane in those days and Ashfield House, then was the only property on the lane, this obviously was the easiest way to provide such. A Victorian gas lamp base remains at the side of the track part way down.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order to record some public status

The way the route is recorded on maps and other documentary evidence
User evidence

Against Making an Order

There is no particular evidence against the route carrying some public rights unless the posts were sufficient to challenge all use

Conclusion

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

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

It is suggested that in this matter there are three sets of evidence. The early set, being map and documentary evidence pre 1903, suggests that Committee should first consider whether dedication under common law and the higher status of restricted byway can be inferred. The second set of evidence is documentary evidence post 1903 showing posts on the route and a reference to it being a footpath raising questions over whether a restricted byway would be the status this route had achieved on balance.

It is advised that the Committee has to consider whether evidence from the old map and other documentary evidence does on balance indicate how the route should be recorded. The analysis of the map and documentary evidence by the Executive Director for Environment suggests there is sufficient evidence on balance to indicate that this route was on balance dedicated as a public carriageway and is recorded by the early maps and documents as such and later posts on the route can be explained as not affecting this early status. The route is straight and capable of dedication as a vehicular route. It is therefore suggested that there are circumstances from which to infer an early dedication of the route for use by the public in vehicles. The provisions of the Natural Environment and Rural Communities Act affects this by extinguishing the public rights for mechanically propelled vehicles and it is suggested that the exceptions to extinguish are not engaged and the appropriate status of the route would be as restricted byway.

If Committee however is not content that the evidence of restricted byway is sufficient on balance then the more modern user evidence should be considered and the provisions of s31 applied together with the common law to see if there is evidence of a highway being dedicated in more recent times .

The user evidence in this matter would indicate use on foot and on pedal cycle. The application itself will, it is suggested, be the event calling this route into question and so the relevant 20 years will be 1993-2013

It is suggested that committee may consider that the user evidence in this matter is sufficient and use has been exercised as of right (not including those with possible private rights) and without interruption for the whole route during 1993-2013. There does not appear to be any evidence to demonstrate lack of intention to dedicate over the twenty years prior to 2013. It is therefore suggested to Committee that dedication can be deemed under S31. The use would also be circumstances from which to infer dedication at common law.

A highway which is dedicated just for use on foot and on cycle only is arguably a cycletrack. However Section 31, HA80, as amended by section 68 of NERC06, provides that use of a way by non-mechanically propelled vehicles (such as a pedal cycle) can give rise to a restricted byway. The statutory provision states that the deemed dedication following evidence of use "applies in relation to the dedication of a restricted byway by virtue of use for non-mechanically propelled vehicles as it applies in relation to the dedication of any other description of highway which does not include a public right of way for mechanically propelled vehicles."

Although the application was to record the route as bridleway it is advised that the evidence indicates that the dedication for public use, on balance, is as restricted byway.

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

Alternative options to be considered - N/A

**Local Government (Access to Information) Act 1985
List of Background Papers**

Paper	Date	Contact/Directorate/Tel
File Ref: 804-545	Various	Megan Brindle , 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A