

Regulatory Committee  
Meeting to be held on 30<sup>th</sup> October 2013

Electoral Division affected: Preston North and Preston Rural
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Wildlife and Countryside Act 1981

Claimed deletion of part of Public Footpath no. 3 Broughton, Preston City Addition of Public Footpath from stile adjacent to Sandyforth Lane, Broughton, to Lightfoot Lane, Fulwood, Preston City

Claim No. 804-511  
(Annex 'A' refers)

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## Executive Summary

The deletion of part of Public Footpath No.3 Broughton, Preston from the Definitive Map and Statement of Public Rights of Way and the addition of a public footpath from a stile at Sandyforth Lane, Broughton to Lightfoot Lane, Fulwood to the Definitive Map and Statement of Public Rights of Way.

## Recommendation

1. That the Claim for part of Public Footpath No. 3 Broughton to be deleted from the Definitive Map and Statement of Public Rights of Way be accepted
2. That an Order be made pursuant to Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to delete from the Definitive Map and Statement of Public Rights of Way part of Public Footpath No. 3 Broughton from the stile adjacent to Sandyforth Lane to the Parish boundary shown between Points A-B-C-D on the Committee plan.
3. That an Order be made pursuant to Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a public footpath from the stile adjacent to Sandyforth Lane to Lightfoot Lane shown between points A-E-F-G on the Committee plan.
4. That being satisfied that the higher test for confirming the said Orders can be satisfied, the said Orders be promoted to confirmation if necessary by submitting them to the Secretary of State.

## Background

Research has indicated that consideration should be given under Section 53 of the Wildlife and Countryside Act 1981 to the making of an Order to amend the Definitive Map and Statement of Public Rights of Way in Lancashire by deleting Public Footpath no. 3 Broughton, from the stile adjacent to Sandyforth Lane to the parish boundary and shown by a solid black line between points A-B-C-D and to make a further Order adding a public footpath from the stile adjacent to Sandyforth Lane to Lightfoot Lane as shown on the Committee Plan by a thick dashed line between points A-E-F-G.

In 2009 a claim (Claim 1) was received for a footpath extending from a point on Public Footpath No. 3 Broughton to a point on Lightfoot Lane, through the grounds of two properties, to be added to the Definitive Map and Statement of Public Rights of Way.

A year later, in 2010, a further claim (Claim 2) was received for part of Public Footpath No. 3 Broughton, as shown on plan appended to this report, to be deleted from the Definitive Map and Statement of Public Rights of Way.

The applications were submitted by different claimants but both related to parts of 'a route' between Lightfoot Lane and Sandyforth Lane.

Research was carried out and evidence discovered of what is thought to be the correct line of footpath Broughton 3 and the Ramblers Association subsequently communicated their support for a proposal to delete the route shown on the Definitive Map as Public Footpath no. 3 Broughton and for the route shown on the Committee Plan between points A-E-F-G to be added to the Definitive Map and Statement. They confirmed that their evidence related to route A-E-F-G

The claim to delete part of Public Footpath no. 3 Broughton (Claim 2) was submitted by the owner of the land over which it was believed that a section of Public Footpath no. 3 Broughton ran.

Public Footpath No. 3 Broughton is actually shown on the Definitive Map as crossing the playing field from Sandyforth Lane, and then clipping the corner of the Claim 2 applicants' field and following the original boundary line to the parish boundary. The Definitive Map shows the route of the public footpath along the boundary hedge and it is impossible to say from the map – without the aid of additional information – on which side of the boundary the public footpath actually ran.

Research carried out by the County Council supports the view that the Definitive Map is incorrect and that historically the correct route of the public footpath was on a route to the east of the original boundary hedge on land currently used as a golf driving range and football pitch, and not on land owned by the applicant. This route is shown on the Committee plan by a thick dashed line between points A-E-F-G.

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

An order will only be made to delete a public right of way if the evidence shows that:

- There is no public right of way over land shown in the map and statement as a highway of any description

An order under S53(3)(c)(i) will only be made to add a public right of way if the evidence shows that:

- A right of way “subsists” or is “reasonably alleged to subsist”

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

## Consultations

### City Council

Preston City Council was originally consulted about both claims and stated that they were in full support of both. They have subsequently been re consulted on the revised proposal and have replied stating that they have no objection to the revised proposal.

In addition City Councillor Lona Smith, has confirmed that she is in agreement with the proposal.

City Councillor David Hammond recalls that this was one of the first Ward issues he had when he first came onto the Council nearly 8 years ago and is pleased to see that the matter is progressing. He refers to having spoken on 19 September 2013 with Mrs. Swift of Lightfoot Lane who owns the land at the rear of houses on Lightfoot Lane and she has confirmed to him that the proposed route of the footpath marked on the map is the correct one. The old path (solid line) was never the original path and he says that he has supplied Lancashire County Council with evidence of this over the years. He can confirm that the new footpath as shown as a dotted line is the correct path and should never have been deleted, moved or tampered with.

### Parish Council

#### Woodplumpton Parish Council

Woodplumpton Parish Council were consulted with regards to the original proposed addition and did not respond. They have subsequently been re consulted and have replied to say they have no objection to the proposed changes.

Broughton in Amounderness Parish Council

Broughton in Amounderness Parish Council have been consulted and no response has been received.

Executive Director for the Environments Observations

Description of the routes

Points annotated on the attached Committee plan.

Point	Grid Reference	Description
Point A	SD 5144 3368	Stile in field boundary at junction with Sandyforth Lane
Point B	SD 5153 3360	Field boundary
Point C	SD 5154 3360	Field boundary (hedge)
Point D	SD 5161 3348	Point in field boundary hedge on parish boundary north of Lightfoot House Cottage
Point E	SD 5154 3361	Field boundary
Point F	SD 5162 3348	Unmarked parish boundary
Point G	SD 5164 3344	Junction with Lightfoot Lane

Description of Route:

Claimed route to be deleted:

The claimed route to be deleted commences on the south side of a wooden stile that provides access from Sandyforth Lane onto the claimed route (point A). It extends in a south easterly direction across a field marked out and maintained as rugby pitches to meet a field boundary (broken hedge and fence) at point B. There is no access (gap, gate or stile) through the field boundary (although the remains of a stile erected by the County Council several years ago exists a few metres west of point B).

From point B the claimed route continues across the north east corner of a field grazed by sheep to the eastern boundary hedge of that field (point C). It then continues along the boundary hedge (unwalkable) in a south easterly direction to the unmarked parish boundary at point D (north of the rear boundary fence of Lightfoot House Cottage); a total distance of 265 metres.

Public footpath to be added:

The route to be added commences on the south side of the stile providing access from Sandyforth Lane (point A). It then crosses the field marked out and maintained as rugby pitches in a south easterly direction to point E where it is crossed by fencing and trees along

the boundary of land in different ownership. Beyond point E it continues in a south easterly direction along the eastern side of a boundary hedge and is partially obstructed by a row of coniferous trees that run parallel to the original boundary hedge to the unmarked parish boundary at point F. It then continues in a south easterly direction passing to the east of 'Lightfoot House Cottage' and 'The Cottage' where the route is partly obstructed by trees and fencing. The route exits onto Lightfoot Lane in the south west corner of land owned by Fulwood Amateur Football club via a small wooden gate inserted into the hedge line as though part of the garden to 'The Cottage' adjacent to its woodshed; a total distance of 325 metres.

There is a public footpath signpost near point A but beyond that point there are no other signs indicating the existence or otherwise of the claimed route.

All compass directions and distances given are approximate.

Map and Documentary evidence relating to the claimed deletion and addition

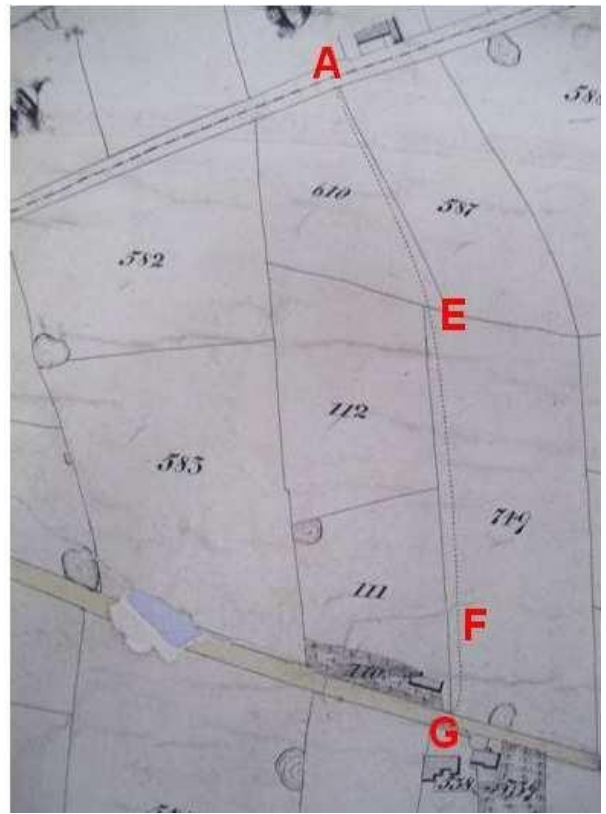
Various maps, plans and other documents were examined with reference to the routes.

References to the claimed route are specific to the actual routes that it is recommended are to be added and deleted and not to the routes originally claimed by the applicants as neither of those routes are shown on any of the documents examined.

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 claimed routes are not shown on Yates' Map.
Investigating Officer's Comments		The claimed routes did not exist as major routes at the time – they may have existed as minor routes but due to the limitations of scale would not have been shown so no inference can be drawn in this respect.
Greenwood's Map of Lancashire	1818	Small scale commercial map.
Observations		The claimed routes are not shown on Greenwoods' Map.

Investigating Officer's Comments		The claimed routes did not exist as major routes at the time – they may have existed as a minor routes but due to the limitations of scale would not have been shown on the map so no inference can be drawn in this respect.
Hennet's Map of Lancashire	1830	Small scale commercial map.

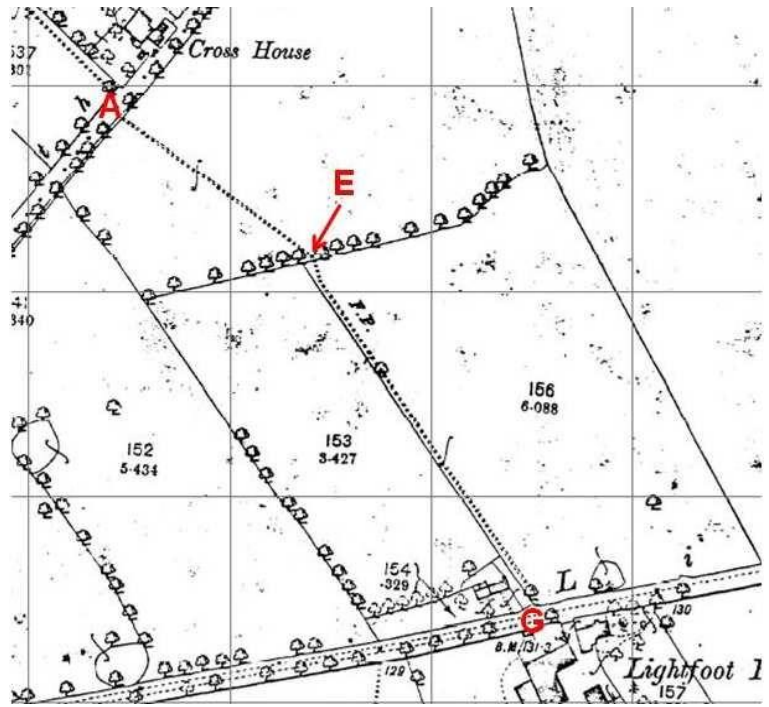
Observations		The claimed routes are not shown on Hennet's Map.
Investigating Officer's Comments		The claimed routes did not exist as major routes at the time – they may have existed as a minor route but due to the limitations of scale would not have been shown on the map so no inference can be drawn in this respect.
Tithe Map and Tithe Award or Apportionment	1840	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 Broughton was produced in 1840.



Observations		<p>The full length of the claimed route to be added is shown on the tithe map between points A-E-F-G as a single pecked line. Between points A to E the claimed route enters the field (plot 610) described as 'hay meadow and pasture' in the corner and then diverges from the field edge to take a straight line to near the corner of the next field. Between points E-F-G the line is shown passing through the corner west of point E and then diverges from the field edge (field labelled as plot 749 'Buiris field meadow' in the Tithe Award) to take a straight line before bending back into the south west corner of the field at point G.</p> <p>The claimed route to be deleted (FP 3) is not shown on the map.</p>
Investigating Officer's Comments		The claimed route to be added existed in 1840. The claimed route to be deleted did not exist in 1840.
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.
Observations		The Finance Act maps and valuation records for the area containing the claimed routes are not held by the County Records Office.
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 are no Inclosure Award records for the area containing the claimed routes deposited at the County Records Office.
Investigating Officer's comments		No inference can be drawn.
Ordnance Survey Maps		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.
6 Inch OS Map	1848	The earliest Ordnance Survey 6 inch map for this area.
Observations		Neither of the claimed routes are shown. Sandyforth Lane and Lightfoot Lane are shown and so are the cottages adjacent to the north end of the route. A field boundary is shown splitting the field roughly on the line between point A and point E. A further field boundary is shown crossing the claimed route to be added at point E. Field paths do not appear to be shown anywhere on this map sheet.
Investigating Officer's Comments		The claimed routes to be added and deleted did not exist as major routes in 1848.
25 Inch OS Map	1893	The First Edition 25 inch map is at the larger scale showing the area in more detail, including footpaths.





Observations		<p>The full length of the claimed route for addition is shown as a double pecked line annotated with the letters 'FP' from point A by Sandyforth Lane through to point G at Lightfoot Lane. The field boundary shown roughly along the route A-E on the 1848 6 inch sheet is no longer shown. The claimed route to be added crosses a field boundary at point E and is shown to exit the field onto Lightfoot Lane in the corner of the field at point G.</p> <p>The claimed route to be deleted is not shown.</p>
Investigating Officer's Comments		<p>The claimed route to be added existed in 1893. The claimed route to be deleted did not exist at that time.</p>
25 inch OS Map	1912	Further edition of the 25 inch map.

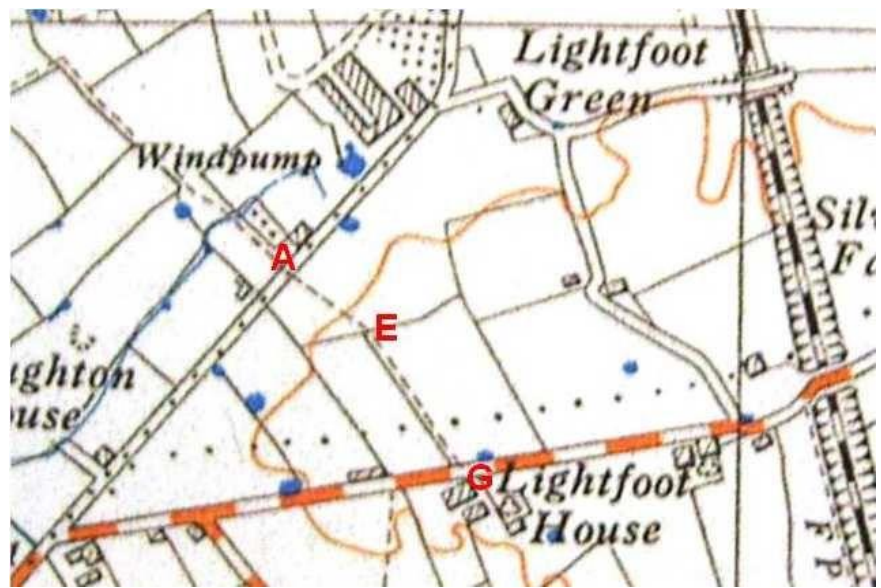


Observations		<p>The whole length of the claimed route to be added is shown on the map and crosses a field boundary at point E. It is marked as a footpath (F.P) between point E and point G. It is shown exiting the field onto Lightfoot Lane in the corner of the field at point G.</p> <p>The claimed route to be deleted is not shown on the map.</p>
Investigating Officer's Comments		<p>The claimed route to be added existed on the ground at the time of the survey prior to 1912. The claimed route to be deleted did not exist.</p>
25 Inch OS Map	1932	<p>Further edition of 25 inch map (surveyed 1891 and revised 1929).</p>

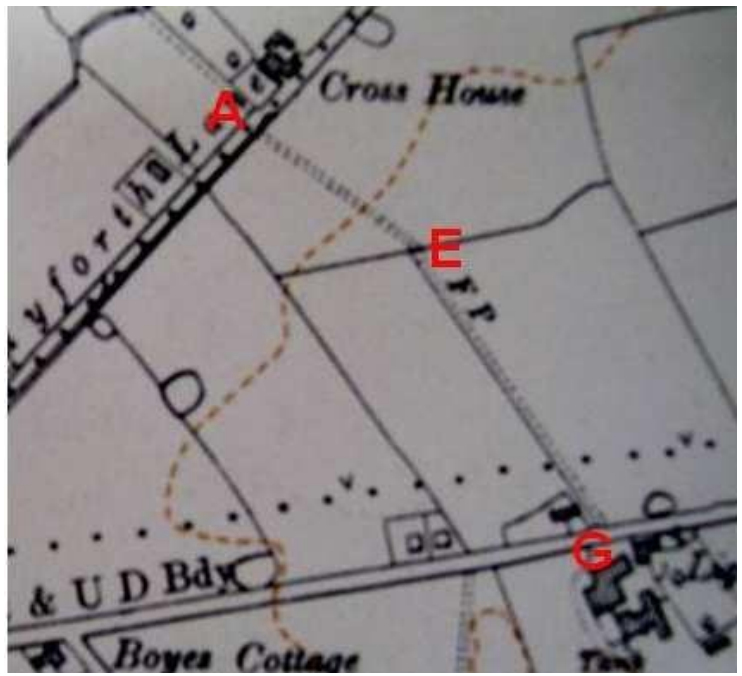


Observations		<p>The whole length of the claimed route to be added is shown on the map crossing a field boundary at point E. It is marked as a footpath (F.P) between</p>
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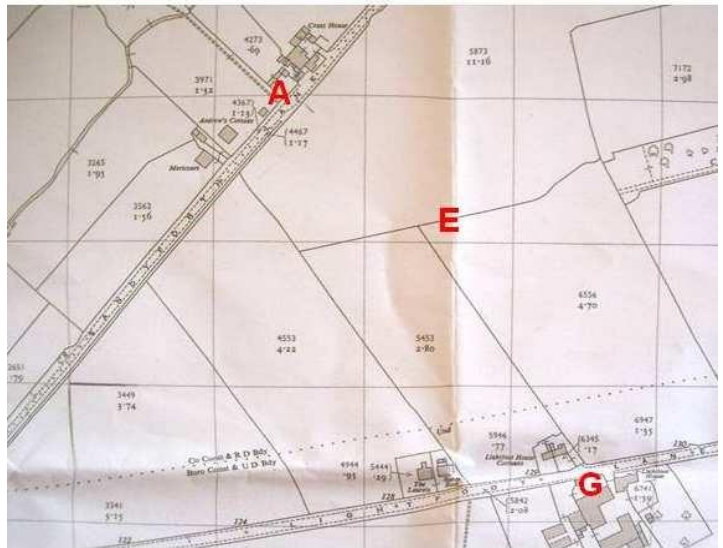
		<p>point E and point G.</p> <p>The claimed route to be deleted is not shown on the map.</p>
Investigating Officer's Comments		<p>The claimed route to be added existed on the ground at the time of the survey prior to 1932. The claimed route to be deleted did not exist.</p>
25 Inch OS Map	1939	<p>Further edition of the 25 inch map, re-surveyed 1892, revised 1938.</p>
Observations		<p>The whole length of the claimed route to be added is shown on the map and crosses a field boundary at point E. It is marked as a footpath (F.P) between point E and point G and exits the corner of the field to meet Lightfoot Lane.</p> <p>The claimed route to be deleted is not shown on the map.</p> <p>Since the date of the survey for the 1932 25 inch map the garden of the property on the west side of the field boundary close to point G ('The cottage') has been extended to include the strip of land immediately to the east of the building.</p>
Investigating Officer's Comments		<p>The claimed route to be added existed on the ground at the time of the survey prior to 1939. The claimed route to be deleted did not exist.</p>
2½ inch OS Map	1955	<p>Compiled from 6 inch sheets last fully revised 191030, partial revision 1937-51</p>



Observations		<p>The whole length of the claimed route to be added is shown on the map crossing a field boundary at point E and continuing along the east side of the field boundary to exit onto Lightfoot Lane. The curve in the claimed route to the corner of the field at point G is not shown nor the offset position of the crossing point at E.</p> <p>The claimed route to be deleted is not shown on the map and neither is 'The Cottage'.</p>
Investigating Officer's Comments		<p>The claimed route to be added existed on the ground at the time of the survey. The scale of the map means that the curves into the corner at point G and at E were unlikely to have been shown. The small scale of the map may also account for the fact that 'The Cottage' is not shown.</p> <p>The claimed route to be deleted did not exist.</p>
6 Inch OS Map	1956	<p>The Ordnance Survey base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile. This map is probably based on the same survey as the 1931 25-inch map.</p>

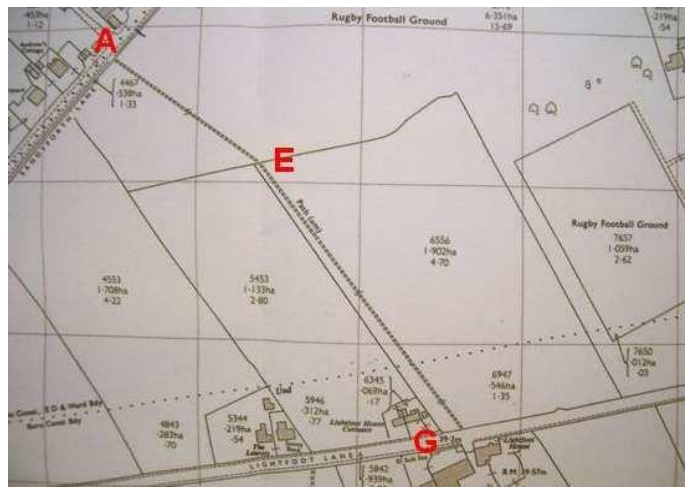


Observations		<p>The Ordnance Survey 1:10560 (6 inches to 1 mile) sheet SD 53 was published in 1955 with the area of the claimed route having been revised before 1930.</p> <p>The full length of the claimed route to be added is shown on the map. The claimed route to be deleted is not shown.</p>
Investigating Officer's Comments		<p>The claimed route to be added existed on the ground at the time of the survey. The claimed route to be deleted did not exist.</p>
25 Inch OS Map	1961	Further edition of 25 inch map revised in 1961.



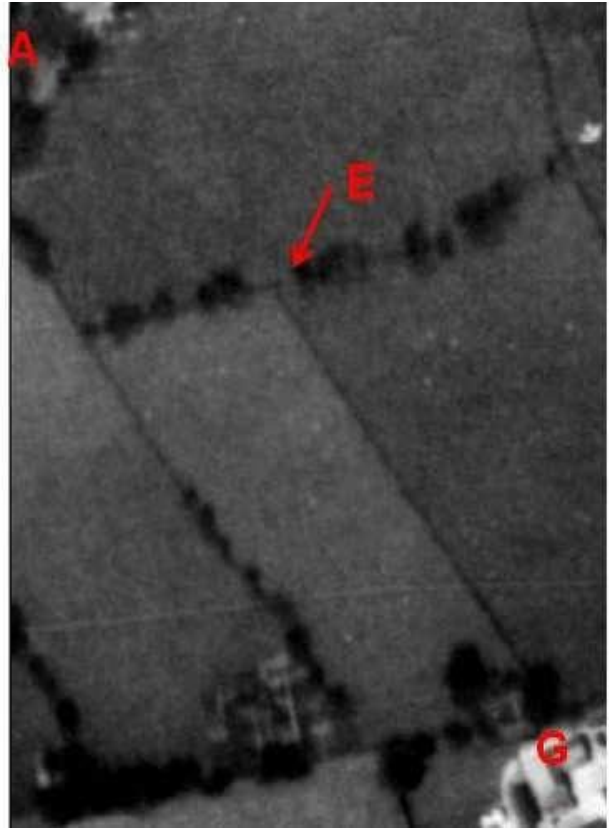
Observations		<p>Neither the claimed route to be added or the claimed route to be deleted are shown on the map.</p>
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Investigating Officer's Comments		Neither route existed as a physical feature on the ground at the time that the map was revised.
2½ inch OS Map	1966	Further edition of the 2½ inch map published in 1955 and reprinted with the addition of new roads in 1966
Observations		No changes from the 1955 2½ inch – only revised to show addition of new major roads. The claimed route to be added to the map is shown as a single dashed line. The claimed route to be deleted is not shown.
Investigating Officer's Comments		The claimed route to be added existed on the ground at the time of the survey. The claimed route to be deleted did not exist.
25 inch OS Map	1978	Further edition of the 25 inch map revised in 1976.



Observations		<p>The claimed route to be added is shown by a double pecked line between point A and point E. At point E it crosses a field boundary slightly to the west of the claimed route and continues down the field edge to point F. Instead of being shown running parallel to the field boundary to exit on to Lightfoot Lane at point G the route marked by the Ordnance Survey takes a direct route from point E to exit onto the Lane immediately opposite the entrance to Lightfoot House Farm approximately 10 metres east of point G. The route is marked as an unmarked path ('Path(um)') and was probably drawn like this to meet a gate which was said by local residents to exist at this point on Lightfoot Lane.</p> <p>The claimed route to be deleted is not shown. An additional building has been built alongside 'The Cottage' between the house and field boundary.</p>
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Investigating Officer's Comments		<p>The claimed route to be added existed between point A and point E. A route shown continuing from point E close to the alignment of the claimed route to exit onto Lightfoot Lane approximately 10 metres east of point G, directly opposite the farm.</p> <p>It is not possible to determine whether access would have been available at point G. The map supports evidence from local residents to their having been a gate in the field boundary opposite the farm entrance.</p> <p>This map appears to have used straight lines between crossing points for the lines of paths, hence the connection to the gate opposite the farm. It is not possible to determine from this whether or not the exit at point G existed at this time. It is possible that the field boundary at point E was in disrepair at the time and walkers could take the shortest line through a gap in the hedge.</p> <p>The claimed route to be deleted did not exist.</p>
Aerial Photographs	1945	<p>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.</p> <p>The earliest set of aerial photographs available was taken just after the Second World War in about 1945 and can be viewed on GIS. The clarity is generally very variable.</p>



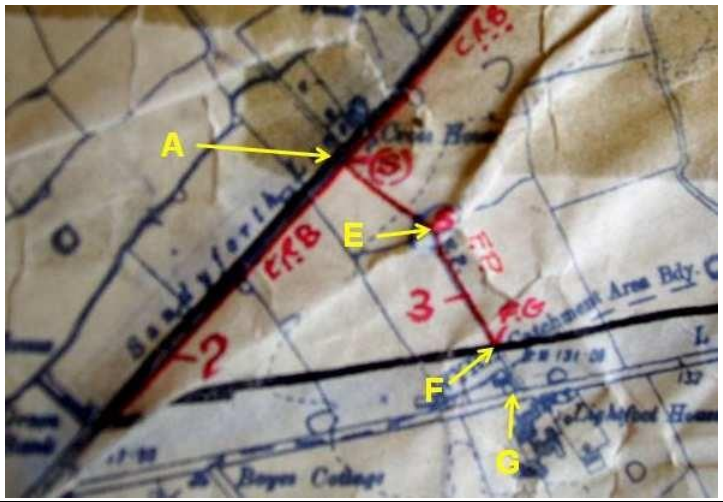
Observations		<p>A faint line can be seen on the ground between point A and point E and access along the claimed route to be added existed through a gap at point E.</p> <p>The claimed route to be deleted cannot be seen on the photograph.</p>
Investigating Officer's Comments		<p>The claimed route to be added appeared to exist between point A and point E.</p> <p>The claimed route to be deleted did not exist.</p>
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.





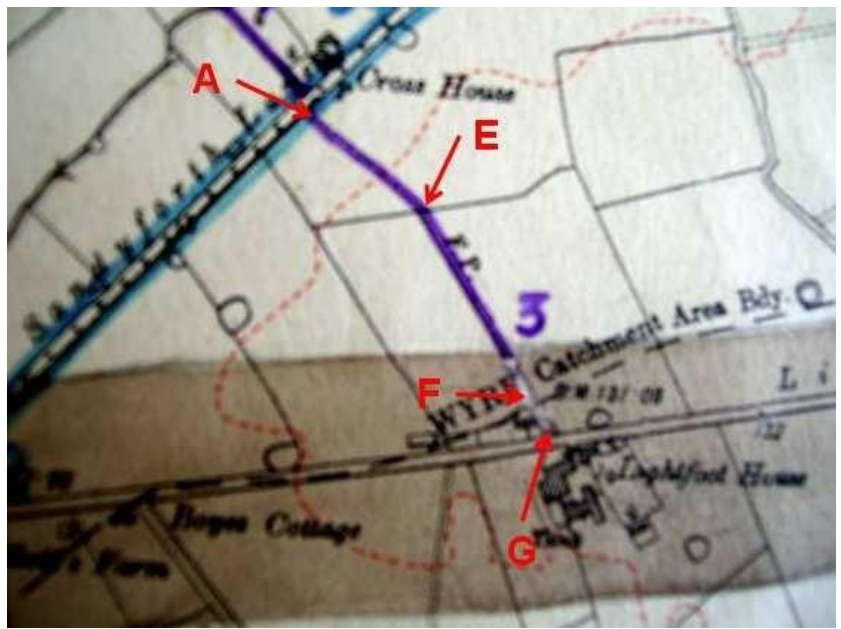
Observations		<p>Both claimed routes crossed agricultural land. The claimed route to be deleted cannot be seen on the photograph.</p> <p>A faint track can be seen corresponding to the claimed route to be added between point A and point E. A gap appears to exist in the field boundary at point E.</p> <p>The claimed route is not visible between point E and point G but it appears that the field extended into the south west corner at point G - land that was subsequently fenced off to form part of the curtilage of the cottage.</p>
Investigating Officer's Comments		<p>The claimed route to be deleted was not visible on the ground in the 1960s. The claimed route to be added looks to have existed as a worn track on the ground between point A and point E. Access onto Lightfoot Lane appears to exist at point G (as suggested by the lighter colouring on the photograph indicating that the vegetation was worn in the corner of the field at point G - indicative of some sort of field access point).</p>
Aerial Photograph	2000	Colour aerial photographs viewed on GIS
Observations		<p>Neither the claimed route to be added or the claimed route to be deleted can be seen as worn paths on the photographs.</p>
Investigating Officer's Comments		<p>Neither the claimed route to be added or the claimed route to be deleted existed as worn tracks in 2000.</p>
Aerial Photograph	2010	Colour aerial photograph taken in 2010 and viewed on GIS.

Observations		Neither the claimed route to be added or the claimed route to be deleted can be seen as worn tracks on the photographs.
Investigating Officer's Comments		Neither the claimed route to be added or the claimed route to be deleted existed as worn tracks in 2010.
Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.  Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area.  The claimed route to be deleted is entirely within Broughton Parish and as such Broughton Parish Council was required to prepare a Survey Map. The majority of the length of the claimed route to be added to the Definitive Map is also within Broughton (Between points A-E-F) but the remaining section (between point F-G) is within Fulwood - a former Urban District Council - for which there was no parish survey.
Broughton Parish Survey Map and Card	1950	



<p>Observations</p>	<p>The Parish Survey map for Broughton shows a route labelled with a number 3 that corresponds to part of the claimed route to be added as a public footpath. It shows the route starting on Sandyforth Lane at point A - at which point it notes the existence of a stile (S). It then continues (along the claimed route to be added) to point E where a further stile (S) is marked. From point E it continues in a south easterly direction along the eastern side of a field boundary on the same alignment as the claimed route to be added as far as the parish boundary at point F where the existence of a field gate (FG) is marked.</p> <p>The claimed route to be added between point F and point G is not shown.</p> <p>The claimed route to be deleted is not shown on the parish survey map.</p> <p>The parish survey card describes the route drawn on the parish survey map. It is dated July 1950 and describes the route (corresponding to the claimed route to be added on the survey map) as starting at field gate opposite Lightfoot house on Lightfoot Lane. It then describes it along east side of hedge to wooden stile (at point E on the Committee plan) and then across next field to a double wooden stile (point A on the Committee plan) onto Sandyforth Lane. A note has been made that the path is little used and closure recommended.</p>
<p>Investigating Officer's Comments</p>	<p>The Parish Council has marked the claimed route to be added as a public footpath between point AE-F. They were not required to show the continuation of this route to Lightfoot Lane beyond the parish boundary as this part of the route would have been expected to have been recorded on the map of the Fulwood Urban District. Although</p>

		<p>reported to be 'little used' the claimed route to be added was acknowledged as a public right of way - even though recommended closure. The field gate (FG) marked on the map at point F was unlikely to be correct as there is no evidence of there ever being a physical boundary at this point on any of the maps examined and it is suggested that it refers instead to the description of the path starting at field gate opposite Lightfoot house i.e. either at point G or the point 10 metres east shown on the 1978 map.</p> <p>The claimed route to be deleted between points AB-C-D is not shown and does not fit the description of the path described on the parish survey card.</p>
Draft Map		<p>The parish survey map and cards for Broughton were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement for Preston Rural District.</p> <p>Within the Urban District of Fulwood the preliminary survey work was carried out by Fulwood Urban District Council who produced a map of routes they believed to be public drawn onto a 6-inch Ordnance Survey map.</p> <p>The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into some of these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Preston RD Draft Map		



Observations

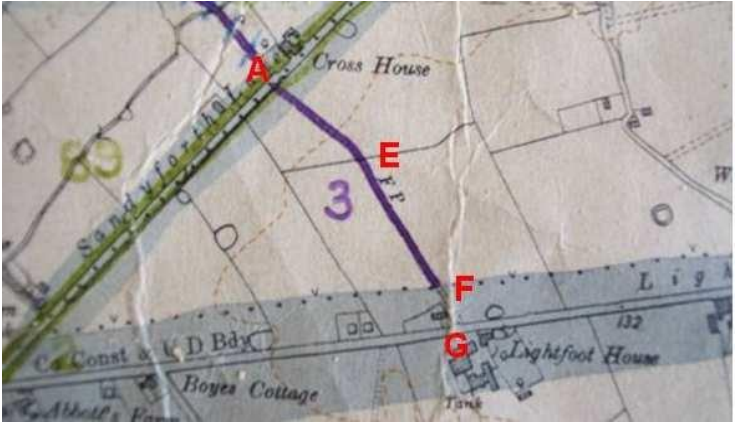
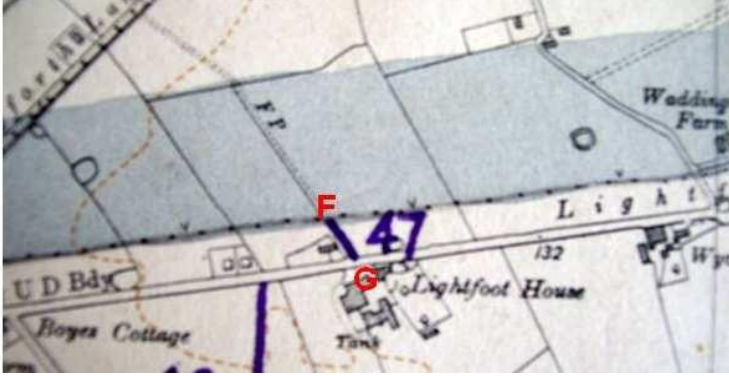
The claimed route to be added is shown on the draft map and labelled as footpath 3 between point A-E. Between point E-F it is shown along the east side of the field boundary but appears to stop short of point F (the parish boundary). An inspection of the original document suggests that the line was intended to extend as far as point F but shading added to the draft map affected how its southern end was shown.


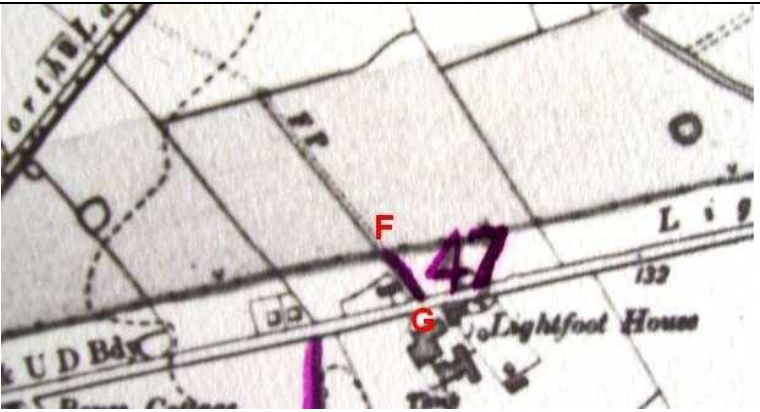
The claimed route to be deleted was not shown on the Preston Rural District Draft map and there were no formal objections or other comments about its omission.

Fulwood Urban District Council Draft Map

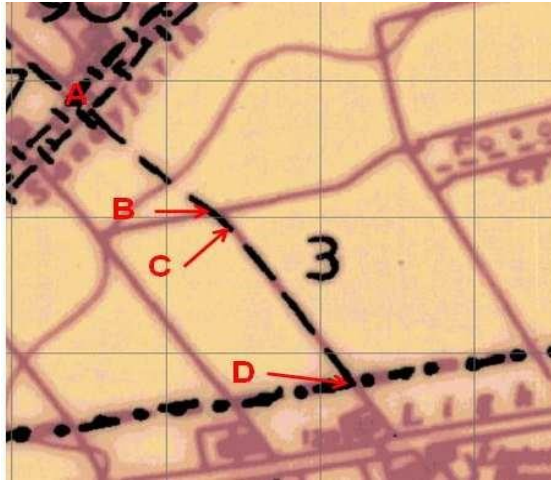


Observations		<p>The map did not cover the area affected by the claimed route to be deleted or that part of the route to be added shown between points A-E-F as these were outside the Urban District.</p> <p>A route, numbered '47' on the map was shown along the route of the claimed footpath to be added. The Statement accompanying this map described the route as a footpath 'to Sandyforth Lane. Starts from a five barred gate opposite Lightfoot Lane (Lightfoot House), leading into the garden of Lightfoot House Cottages, and proceeds over a stile into a field running alongside the hedge side to the U.D. boundary.'</p> <p>The way that this statement is written could be slightly ambiguous as it is not immediately clear whether the route is being described as passing through the five barred gate and into the garden of Lightfoot House Cottage. The Investigating Officer considers that the statement actually describes a route from Lightfoot Lane that starts at a five barred gate but proceeds - not through the gate – but over a stile directly into a field (and not into the garden) and then continues along the hedge side to the parish (UD boundary).</p> <p>If this interpretation is correct it corresponds with the claimed route to be added and that shown and labelled as '47' on the Draft map.</p>
Provisional Map		<p>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.</p>
Preston Rural District Provisional Map		

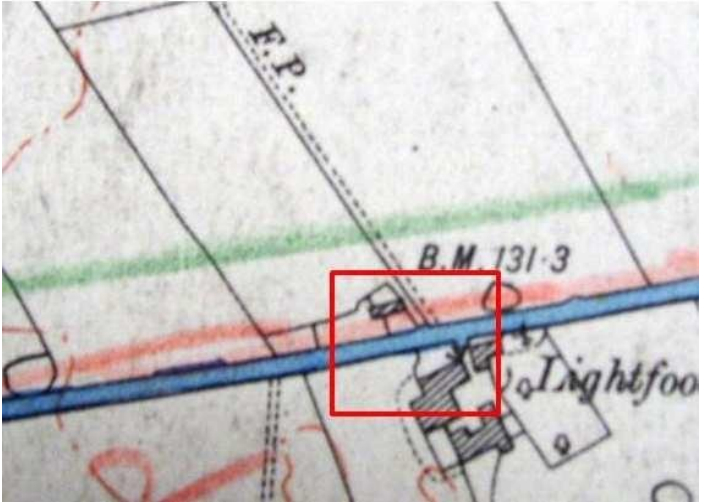
	
Observations	<p>The use of a thick purple pen to draw the line of the path means that it is not easy to see the field boundary between point E and F. However, close examination of the original document confirms that the line drawn corresponds with the claimed route to be added (between points A-E-F).</p> <p>The claimed route to be deleted is not shown and no objections to the omission of the path were made.</p>
Fulwood Urban District Council Provisional Map	
	
Observations	<p>That part of the claimed route to be added between point F and G on the Committee plan is shown on the Provisional Map of Public Rights of Way as footpath 47.</p>
The First Definitive Map and Statement	<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>
Preston Rural District Council First Definitive Map	

	
Observations	The claimed route to be added (between points AE-F) is shown but the claimed route to be deleted is not.
Fulwood Urban District Council First Definitive Map	
	
Observations	That part of the claimed route to be added between point F and G on the Committee plan is shown as footpath 47.
Revised Definitive Map of Public Rights of Way (First Review)	<p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25<sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published (its relevant date is 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.</p>

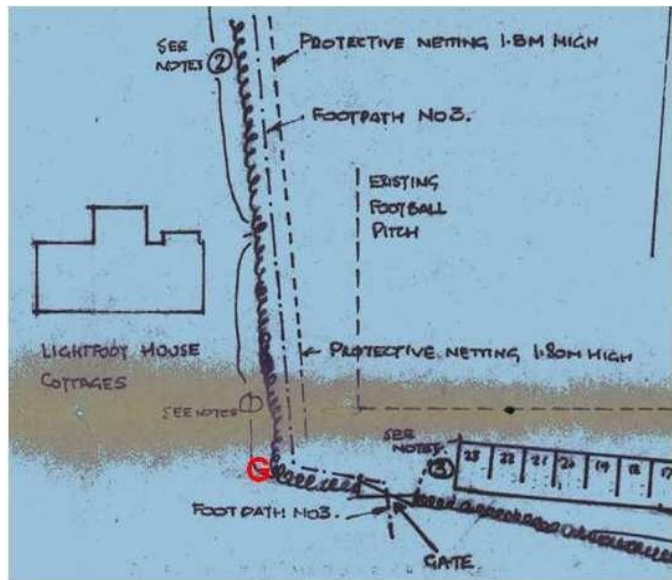




Observations	<p>The map shows the claimed route proposed to be deleted between points A-B-C-D labelled as footpath 3. No part of the claimed route to be added is shown.</p>
Investigating Officer's Comments	<p>No diversion orders, creation or extinguishment orders have been found to exist which would explain why the route consistently shown on the parish survey, draft, provisional and First Definitive map for Preston Rural District as footpath 3 (the claimed route to be added) was not shown on the Definitive Map (First Review). Similarly no legal order or representations could be found to explain why footpath 47 Fulwood was not shown on the revised map.</p> <p>The claimed route proposed to be deleted is shown for the first time on this map but no legal order or representations could be found to support its existence and the fact that it is shown to follow a well established field boundary between point C and point D suggests that a drafting error has occurred in reproducing what was shown on earlier additions. The fact that footpath 47 is not shown also appears to be a drafting error – the route has not been shown on the map but is described in the Definitive Statement (First Review) in exactly the same way as it was previously described in the Draft, Provisional and Original statements.</p>
1929 Road Transfer/Handover Map	<p>Drawn on what appears to be a copy of the 1912 6 inch Ordnance Survey map. The maps were drawn up by Highway Authorities to record adopted highway information. These maps were used to record the adopted highways and the number of each 'road' is shown in black ink. There would have been a corresponding register listing each road by number and detailing when the road became</p>

	publicly maintainable, if known and the length of the highway.
	
Observations	The map shows the full extent of adopted highway (Lightfoot Lane) to include the indentation by the gateway– now part of the access into The Cottage.
Investigating Officer's Comments	This indentation would have allowed access from the road into the corner of the field at point G consistent with the description of there being a gate (to the cottage) but the path passing over a stile into the field.
Statutory deposit and declaration made under section 31(6) Highways Act 1980	<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the</p>

		status of the route into question).
Observations		There are no statutory deposits for the land over which the claimed route to be added to the definitive map is situated or for the land over which the claimed route to be added is situated.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over his land.
Planning Application 06/1989/0457	1989	



Observations		<p>The land over which part of the claimed route to be added (between points E-F-G) is owned by Fulwood Amateur Football Club. In 1989 an application was submitted by the football club to the planning authority for the development of the site as a golf driving range (with retention of the football pitches to be used at weekends). Attached to the request for planning permission was a drawing of the site which included details of planting along the western boundary and which acknowledge the existence of a footpath – labelled on the plan as FP No. 3. The plan shows the proposed provision of protective netting 1.8 metres high which would separate the public footpath from the golf driving range. The footpath is shown along the edge of the field in accordance with the claimed route to be added. The footpath is shown to exit onto Lightfoot Lane through a gate approximately 10 metres east of point G. Notes on plan refer to the species of plants to be planted along the boundary.</p>
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Investigating Officer's Comments	The existence of the claimed route to be added was acknowledged between point E-F-G by the landowners as part of the planning application. By that time, however it appears that access onto Lightfoot Lane was by a field gate approximately 10 metres east of point G and it is not clear whether a gap or stile still existed at point G. Planting was proposed alongside the existing field boundary and it appears that the line of tall (relatively quick growing) coniferous trees that now partially obstruct the claimed route to be added was planted as a consequence of the granting of planning permission. Sections of the netting shown on the plan still exists on site (although this has not been maintained) and it appears that before the row of trees grew tall and wide it may have been possible to walk between the trees and the fencing.
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The land crossed by the route for addition and the claimed route for deletion is not recorded as access land under the provisions of the Countryside and Rights of Way Act 2000. It is not recorded as a Site of Special Scientific interest or a biological heritage site.

To summarise, there appears to be no physical or documentary evidence that the claimed route to be deleted (recorded at present as Public Footpath no. 3 Broughton) ever existed as a public footpath and the definitive map material points towards a drafting error having occurred when the Definitive Map (First Review) was drawn.

The route proposed to be added is first shown on the Tithe Map of 1840 and then consistently shown to exist on Ordnance Survey maps from 1893 onwards (with the exception of the 1961 1:2500 map). The route to be added is also consistently shown in the definitive map material up until the publication of the Definitive Map (First Review) which shows none of the route to be added but instead shows the claimed route to be deleted strongly supporting the view that a drafting error occurred at this stage of the legal process.

#### Claimant/Landowners/Supporters/Objectors

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

Description of the new path for inclusion in the Definitive Map and Statement if Order is to be made (and subsequently confirmed)

The following revision should be made to the Definitive Map and Statement for Broughton and Fulwood, Preston City;

#### Proposed Schedule to Order

#### SCHEDULE

## PART 1

### MODIFICATION OF THE DEFINITIVE MAP

#### DESCRIPTION OF WAY TO BE ADDED

Public footpath no. 3 Broughton from a junction with Sandyforth Lane at SD 5144 3368 running in a generally south easterly direction across rugby pitches to a boundary hedge at SD 5154 3361 and continuing in a generally south south easterly direction along the east side of a boundary hedge through the parish boundary at SD 5162 3348 to continue as no.47 Fulwood in a south south easterly direction east of the boundary with Lightfoot House Cottage and The Cottage to the south west corner of the field turning west to terminate at SD 5164 3344 where it meets Lightfoot Lane.

## PART II

### MODIFICATION OF DEFINITIVE STATEMENT

Modify the Statement for Public Footpath no. 3 Broughton to read as follows:

"Public footpath from a junction with Sandyforth Lane at SD 5144 3368, over stile and continuing in a south easterly direction to SD 5154 3361 through field boundary to continue in a south south easterly direction on the east side of a boundary hedge to parish boundary at SD 5162 3348 from where it continues to Lightfoot Lane as Public Footpath no. 47 Fulwood.

Compass directions given are approximate.

Width: 2 metres

Limitations and Conditions: Stile at SD 5144 3368, Stile at SD 5154 3361

Length: 265 metres"

Modify the Statement for Public Footpath No. 47 Fulwood to read as follows:

"A continuation of Public Footpath no. 3 Broughton from the parish boundary at SD 5162 3348 in a south south easterly direction on the east side of a field boundary to the south west corner of the field turning west over a stile to terminate at SD 5164 3344 where it meets Lightfoot Lane.

Compass directions given are approximate.

Width: 2 metres

Limitations and Conditions: Stile at SD 5164 3344

Length: 55 metres"

### Information from the applicants

A user evidence form was provided from the applicant for the deletion. The authors have known the claimed route to be added for 72 years between years 1938 and 2000. They were going from Lightfoot Lane to Sandyforth Lane and used the route for pleasure several times a week and their father worked at the Duck Farm. They have always used the route on foot and always used the same route and state there is a gate opposite Lightfoot House on Lightfoot Lane into the field, also to the east of the hedge there is a stile in the hedge between the 2 fields and a gate and stile on Sandy Forth Lane. None of the gates were locked and none of them prevented them from using the way on foot. They have never worked for any landowner but their father worked there approximately 50 years ago and they have not been a tenant for any of the land, they received instructions from a landowner stating 'just keep to the path'. They have never been stopped using the path and have never heard of anyone being stopped, they have never seen any notices on the land or asked permission to use the land.

### Information from others

Consultations have been carried out on both proposals with the landowners.

In response to the consultations one of the landowners, Fulwood Amateur Football Club has explained that the club does not have any objections to the footpath being reinstated, however it does feel utmost consideration should be given to the safety aspect of this footpath where it joins Lightfoot Lane. He explains Lightfoot Lane is a very busy road and there is no footpath on that side of the road where the claimed public footpath would join. It is therefore the club's view that the path would be in an extremely dangerous spot for pedestrians, as it leads onto a busy highway. He explains the club was developed during 1979-1980 and he does not believe the footpath has been used since.

Another landowner has stated he is opposed to the proposed route which has not been walked for the last 5 – 7 years. He explains that for the last forty years of his residence at the property, he has not seen more than 40 people using the route. He describes it as the original track of footpathNo3. He is concerned that the path is near the golf driving range and exits onto a major highway and would thus be extremely dangerous for children using the field. He explains, where the claimed route exits there is a wire caged gate and there is no proper exit. He explains previously there was a path which ran in a diagonal direction across the field; this is illustrated as exiting more towards the east but was also not a suitable entry or exit for a public footpath. He explains because the field has been used as a golf course it would make it a dangerous walk.

In support of the claimed deletion County Councillor Thompson has included maps dated from 1893 up to 1980 together with a document signed by the then Broughton Parish Councillors, solicitors and the headmaster at Broughton School. He states the maps and signed documents show the route of the footpath which existed on the land which belongs to the Preston Grasshoppers Rugby Club and from these maps there is no doubt the footpath ran along the land belonging to the club and not that owned by the applicants (for the deletion). He explains the Definitive Map illustrates the route incorrectly and that this is demonstrated by the maps showing the dotted lines not on the applicants' land.

An objection has been received from two residents of Lightfoot Lane. Their objection states that they don't need to set out their thoughts on the path again as we are well aware of them through previous correspondence and meetings. The thought of putting a footpath through a cricket pitch, a rugby pitch and a golf driving range and onto one of Preston's busiest roads is unthinkable.

#### Assessment of the Evidence

The Law - See Annex 'A'

#### In Support of the Proposal to add A-E-F-G

Historical and Documentary evidence

Available route

Recollections by long term residents at the location

#### Against Accepting the Proposal to add A-E-F-G

No particular relevant information received

The concern about the golf and present use of the land and the potential danger from traffic on the main road is not relevant to whether a footpath exists in law historically

#### In Support of the Claim to delete A-B-C-D

Lack of Historical and Documentary evidence of any footpath on this line

Alternative route in existence in 1966

Described in the Definitive Statement (First Review) in exactly the same way as it was previously described in the Draft, Provisional and Original Statements when it was shown on a different line.

#### Against Accepting the Claim to delete A-B-C-D

Initial presumption that it exists

The evidence needed to remove a public right from such an authoritative record will need to be cogent

No objections to it being shown on the Definitive Map (First Review)

#### Conclusion

In this matter it is claimed that the line shown on the Definitive Map should be deleted and another section be added.

It is advised that to remove a route from the Definitive Map it is necessary to show on balance that it was put on the Definitive Map in error. In this matter the route to be deleted (A-B-C-D) was first shown on the Definitive Map (First Revision) dated 1975 but with a relevant date of 1966 and so the error needs to be shown to have been made in 1966.

Case Law (Trevelyan) confirms that cogent evidence is needed before the Definitive Map and Statement are modified to delete a right of way. Lord Phillips MR of the Court of Appeal stated that:

“Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake.”

One such evidence of error could be sufficient evidence of a correct route. In caselaw (Leicestershire case) Collins J held that in these circumstances, “it is not possible to look at s53(3)(c)(i) (adding a route) and s53(3)(c)(iii) (deleting a route) in isolation because there has to be a balance drawn between the existence of the definitive map and the route shown on it which would thus have to be removed” He went on “if (the decision maker) is in doubt and is not persuaded that there is sufficient evidence to show the correct route is other than that shown on the map, then what is shown on the map must stay because it is in the interests of everyone that the map is to be treated as definitive M where you have a situation such as you have here, it seems to me that the issue is really that in reality section 53(3)(c)(iii) will be likely to be the starting point, and it is only if there is sufficient evidence to show that that was wrong – which would normally no doubt be satisfied by a finding that on the balance of probabilities the alternative was right – that a change should take place. The presumption is against change, rather than the other way round”.

It is therefore suggested that the Committee first consider whether the claimed section A-E-F-G is already a footpath at law and should be added to the Definitive Map and then whether this means that it was the correct route of the footpath network in 1966 and therefore the route A-B-C-D was recorded as on the Definitive Map in error in 1966.

No user evidence forms were submitted for the claimed route to be added A-E-F-G instead the Claimant asserts that this route is the correct original route to be used by the public.

The claimed route A-E-F-G is shown on the Tithe Map of 1840, the Ordnance Survey maps dated 1893 onwards. This would seem to suggest a past existence of there being a public right of way. This was the route then recorded in the Definitive Map process.

The route to be added was shown as a right of way on the various forms of the Definitive Map produced between 1953 and 1962 and received no objections which would suggest an acceptance by the landowners and the public of the existence of the right of way along that line.

In contrast the route claimed for deletion A-B-C-D is not shown on any map until the Definitive Map (First Revision) of 1966. In this particular matter there is evidence on balance that errors were made in 1966 with regards to recording the line of Footpath 3 Broughton and not



recording part of Footpath 47 Fulwood (F-G) on the Definitive Map (First Revision). The route A-B-C-D was shown as a cul de sac this would not have brought you out at a public highway as point D ends within a field to the rear of private dwellings, yet the Definitive Statement makes it clear that this was not a cul de sac footpath.

It is suggested that Committee may consider that there is evidence by way of the maps and documentary evidence that the route claimed for deletion A-B-C-D on balance was recorded in error from 1966 onwards and should have continued to be recorded on the line A-E-F-G.

If the line A-E-F-G can be considered to subsist as a footpath this does not necessarily prove that the line nearby A-B-C-D was recorded in error. The Committee should consider whether it is unlikely that two paths existed so close to each other or whether there was only one route through from Sandyforth Lane to Lightfoot Lane which should have continued to have been recorded as A-E-F-G but instead a partial route A-B-C-D was recorded in error.

Taking all the evidence into account it maybe considered that there is sufficient cogent evidence to suggest that the route A-B-C-D was recorded in error and that AB-C-D should be removed from the Definitive Map and the footpath on line A-E-F-G be added to the Definitive Map. It is advised that the evidence is sufficient to not only satisfy the test to make the Orders but also to promote the Orders to confirmation.

#### Risk Management

Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda Papers. Provided any decision is taken strictly in accordance with the above then there is no significant risks associated with the decision making process.

Alternative options to be considered - N/A

#### Local Government (Access to Information) Act 1985

##### List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on Files Ref: 804498 and 804-511		Megan Brindle Office of the Chief Executive 01772 533437

Reason for inclusion in Part II, if appropriate

N/A