

Regulatory Committee

Meeting to be held on 17 December 2014

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| Electoral Division affected: Rossendale East |
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**Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Upgrading to Bridleway of Bacup Footpaths 12, 13, 14 and 17 (Tunstead Lane)
from Booth Road to Fearn Moss, Rossendale Borough
File No. 804-514 (Annex 'A' refers)**

Contact for further information:

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Executive Summary

Application for the route currently recorded as Bacup Footpaths 12, 13, 14 and 17 and known as Tunstead Lane to be upgraded to public bridleway, in accordance with File no. 804-514.

Recommendation

1. That the application for Bacup Footpaths 12, 13, 14 and 17 (Tunstead Lane) to be upgraded in accordance with File No. 804-514, be accepted.
2. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (c)(ii) of the Wildlife and Countryside Act 1981 to upgrade Bacup Footpaths 12, 13, 14 and 17 to Restricted Byway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-H.
3. That being satisfied that the test for confirmation can be met the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received from the Forest of Bowland Bridleways Association to upgrade on the Definitive Map and Statement of Public Rights of Way Bacup Footpaths 12, 13, 14 and 17 (known as Tunstead Lane) from the junction with Booth Road to the junction with Fearn Moss and shown between points A to H on the Committee plan.

The County Council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out

the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

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

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

And/or if the evidence shows that:

- "the expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path or restricted byway"

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

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

Consultations

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

Applicant/Landowners/Supporters/Objectors

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

Advice

Executive Director for the Environment's Observations

Points annotated on the attached Committee plan.

| Point | Grid Reference (Grid Square SD) | Description |
|-------|------------------------------------|--|
| A | 8476 2194 | Junction with Booth Road (C705) |
| B | 8471 2207 | Junction with Bacup Footpath 19 |
| C | 8469 2210 | Junction with Bacup Footpaths 9 and 18. Field gate and adjacent pedestrian gate across route |
| D | 8458 2218 | Junction with Bacup Footpath 15 |
| E | 8456 2219 | Route passes between gateposts |
| F | 8443 2222 | Field gate and stile across route |
| G | 8432 2225 | Remains of broken stile across route |
| H | 8429 2226 | Junction with Fearn Moss (C707) |

Description of Route

n.b. References to public rights of way shown on the Definitive Map and Statement are generally given in the form '14-1-12' or 'Bacup Footpath 12' but are referenced below in the abbreviated form 'Footpath 12' for brevity since all those referred to are in Bacup in Rossendale Borough with the exception of Rawtenstall Footpath 219 which meets the application route at point H on the Committee plan.

A site inspection was carried out on 11th September 2014.

The route commences at an open junction with Booth Road (C705) opposite Four Lane Ends Road (point A on the Committee plan) between property nos. 99 and 97 Booth Road. The opening between the two properties is approximately 8 metres at the junction with Booth Road tapering to a width of 4 metres at the rear of the properties. A wooden extension has been constructed on the side of 97 Booth Road that extends from the side of the property into the route by approximately 2 metres over a distance of approximately 4 metres.

From point A the route under investigation extends in a north north westerly direction along a compacted stone and tarmac surface road extending the full width between the properties. It provides access to the rear of both properties in addition to 9 other properties to the west of the route that all front onto Booth Street (Ivy Terrace).

Beyond the properties the route rises quite steeply uphill in a north north westerly direction along a compacted stone and tarmac surfaced track, approximately 3 metres wide and bounded on both sides by a combination of fencing, hedging and sections of stone wall. It passes the entrance to Valley View which is situated to the west of the route and continues in a north north westerly direction along a roughly surfaced tarmac road to point B where Footpath 19 joins it from the west.

From point B the route under investigation continues along the tarmac track, bounded on both sides by stone walls and rising uphill to pass between a number of individual properties and farm buildings that are collectively referred to as Higher Tunstead. The surface of the track deteriorates to a mixture of rough tarmac and concrete as the route passes between the buildings to a junction with Footpaths 9 and 18 at point C, immediately north of the buildings.

A metal field gate and adjacent pedestrian gate are located across the route under investigation at point C. Both the field gate and pedestrian gate were open on the day that the route was inspected.

Beyond point C the route continues in a north westerly direction, still gradually rising uphill. The route is approximately 2.5 metres wide and surfaced with rough concrete which appears to have been patched where it has begun to break up. In places the concrete is primarily down the two sides of the track with grass down the centre. The route is bounded by grassy banks on top of which there are wooden post and wire fences that separate the route under investigation from the adjacent land.

The route under investigation is joined at point D by Footpath 15 (known as Pilling Barn Lane) and then continues in a west north westerly direction – still rising gradually uphill - towards point E.

At point E the route under investigation passes between metal gate posts (no gate) and continues along a level section of unsurfaced track consisting of compacted earth with a grass strip down the centre. It continues in a west north westerly direction and just before reaching point F the route flattens out and a track that appears to be used by vehicles branches off to the north. At point F the route is crossed by a 1.8 metre wide metal field gate (padlocked when the route was inspected) and adjacent stile.

Between point A and point F there is evidence of significant use of the route by vehicles but from point F there is no evidence of recent vehicular use of the route and horse riders would be prevented from continuing along the route by a padlocked gate and a stile. Beyond the gate and stile the route under investigation continues in a west north westerly direction sloping gradually downhill along the base of an overgrown track (sunken track) with a rocky outcrop exposed partway along the route on the northern side.

At point G there is evidence of the remains of a wooden stile which has fallen into disrepair and can be easily bypassed. From point G the route continues in a west north westerly direction bounded on either side by a wall on one side and wooden fencing at a width varying between 2-3 metres to a point just east of point H where a substantial wooden fence has been erected across the route. From here an alternative enclosed route has been provided passing in a south westerly direction along a narrow strip (approximately 1 metre) fenced on either side to give access via a series of steps to Fearn's Moss.

Point H is undefined on the ground but is just to the west of the fence erected across the route at the point at which the route under investigation meets the publicly maintainable highway - Fearn's Moss (C707) at the front of 12 Pipers Bank.


In summary, the total length of the route is approximately 615 metres and it is currently recorded as a public footpath. It is accessible on foot throughout its full length (with the short unofficial diversion just before point H) but when inspected was only accessible on horseback (or with vehicles) between point A and point F with significant evidence of current vehicular use between point A and point F.


Map and Documentary Evidence

| Document Title | Date | Brief Description of Document & Nature of Evidence |
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| 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. |
| Investigating Officer's Comments | | The route under investigation may have existed in 1786 but was not considered to be of sufficient significance to be included on the map. |
| Smith's Map | 1801 | Charles Smith was a London engraver and map seller. His map of Lancashire appeared as a single sheet in 1801 and then between 1804 and 1846 was published in subsequent editions of the New English atlas. His Map was similar to Cary's Map of Lancashire dated 1789 but is not a direct copy. It is thought that Smith and Cary used common sources, especially Yates survey, and since both were aiming at the same market – the increasing number of private and commercial travellers – it is not considered surprising that they produced similar maps. |
| Observations | | The route under investigation is not shown. |
| Investigating Officer's Comments | | The route under investigation either did not exist in 1801 or was not considered to be of sufficient significance to be included on the map. |
| Honour of Clitheroe Map | 1804 | A privately produced map of land owned by the Honour of Clitheroe – Henry Duke of Buccleuth and Elizabeth Duchess of Buccleuth. It specifically shows boundaries of coal leases granted by them. 'Roads' were identified in the key but there was no apparent distinction between those which may have been considered to be public or private. |

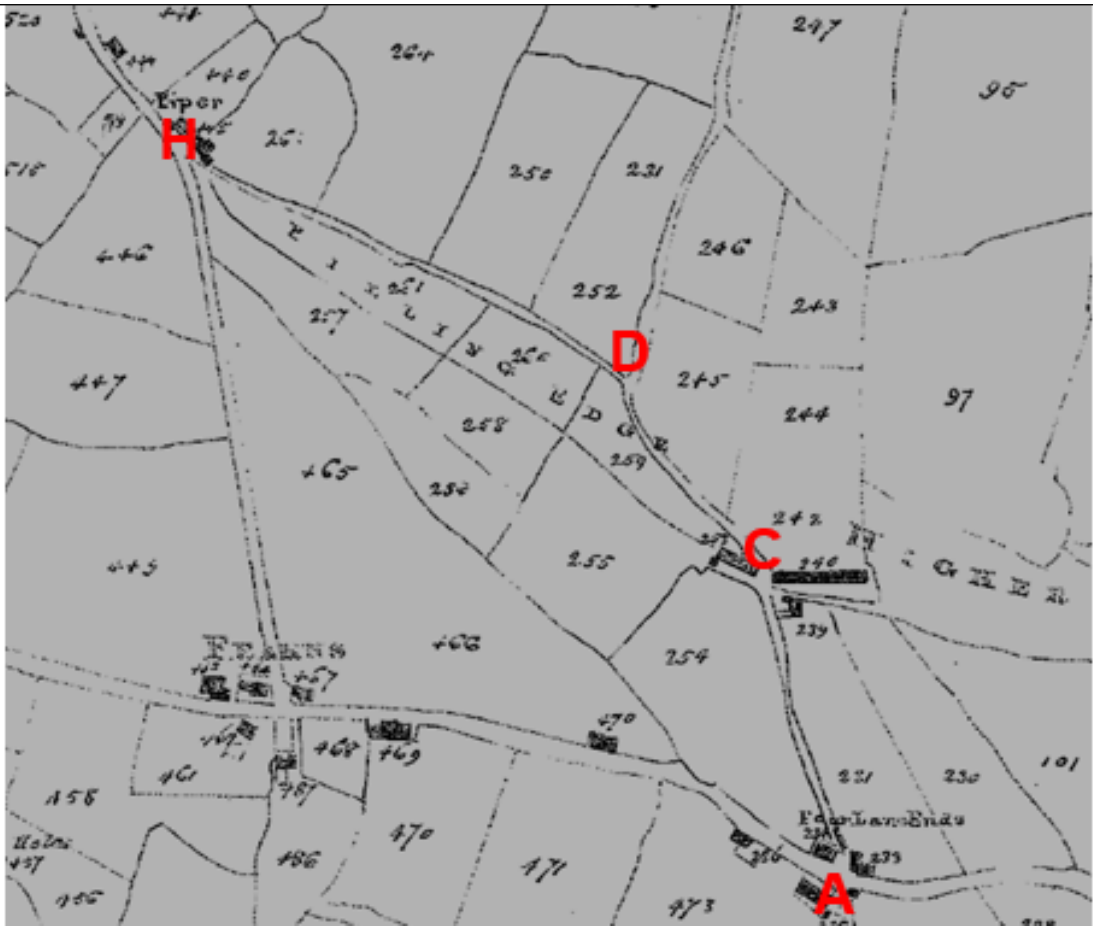


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| <p>Observations</p> | | <p>The whole length of the route under investigation is shown with the word 'Piper' written by the buildings adjacent to point H (the property later known as Piper Bank). Farm buildings on either side of the route at point C are also shown (Higher Tunstead). None of the routes currently recorded as public footpaths that cross or join the route under investigation are shown.</p> |
| <p>Investigating Officer's Comments</p> | | <p>The route under investigation existed in 1804 across land forming part of the Estate owned by the Honour of Clitheroe. The route appeared to provide a through route between point A and point H and passed between properties in the proximity of point C which are not named (now Higher Tunstead). This small scale map only appeared to show the more significant routes and did not show other routes currently recorded as public footpaths that joint the route under investigation. This suggests that the route under investigation was of a substantial nature and would have been capable of being used by people on horseback and possibly with horse drawn vehicles at that time.</p> |
| <p>Greenwood's Map of Lancashire</p> | <p>1818</p> | <p>Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads. The two were not differentiated between within the key</p> |

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| | | panel. |
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| <p>Observations</p> | | <p>The full length of the route under investigation is shown. Booth Road appears to form part of the main route along the valley between Bacup and Rawtenstall in 1818. The former Haslingden and Todmorden Trust Turnpike Road (now recorded as the A681 and A6066) is not shown on this map. The route under investigation is shown passing between the properties adjacent to point C (labelled Tunstead on the map) and is shown connecting to routes that are now recorded as public vehicular highways at either end (Booth Road and Fearn's Moss).</p> |
| <p>Investigating Officer's Comments</p> | | <p>The route existed in 1818 providing access to (and through) a number of properties close to point C. The inclusion of the route on a small scale commercially produced map of this kind is suggestive of the fact that the route is likely to have been considered to have been a public carriageway or at least a bridleway. It is unlikely that a map of this scale would show footpaths.</p> |
| <p>Hennet's Map of Lancashire</p> | <p>1830</p> | <p>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 hatching was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the County's communications</p> |

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| | | <p>network was generally considered to be the clearest and most helpful that had yet been achieved.</p> |
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| <p>Observations</p> | | <p>The full length of the route under investigation is clearly shown as a 'cross road'. The Haslingden and Todmorden Turnpike road along the valley (now recorded as the A681 and A6066) is also shown.</p> |
| <p>Investigating Officer's Comments</p> | | <p>The route under investigation existed in 1830 and is shown as a 'cross road'. It is not fully known what is meant by this term. As the only other category of 'road' shown on the map are 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 but the route under investigation is shown passing between properties and connecting to routes that are now recorded as public vehicular highways. It is considered 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 by inclusion on the map the route under investigation was considered to be a public bridleway or carriageway.</p> |
| <p>Canal and Railway Acts</p> | | <p>Canals and railways were the vital infrastructure for a modernising economy and</p> |

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| | | <p>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.</p> |
| Observations | | <p>There are no canals or railways crossing in the area investigated.</p> |
| Investigating Officer's Comments | | <p>No inference can be drawn.</p> |
| Tithe Map and Tithe Award or Apportionment | 1831 | <p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p> |



Observations

The Applicant listed the Township Map of Tunstead 1831 as one of the documents supporting the claim for the route to be upgraded. However no map was actually submitted with the application. Subsequently a local historian has provided us with a photograph of the map that the Applicant referred to. The map is in Rawtenstall library and is referenced as 'Plan 166 Miscellaneous Plans' 'Plan of Tunstead and Wolfenden in Township of Newchurch and Forest of Rossendale'. It appears to be a copy produced on tracing paper glued onto green card and there is minor coloring on the tracing for woodland and water. It is not dated but the neighboring map of Deadwinclough, in identical format, is dated 1831.

The map shows plots numbered as you would expect them to be shown on a Tithe Map. Tunstead was within the historical Township of Newchurch in Rossendale. There is no Tithe Map for Newchurch in

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| | | Rossendale in the County Records Office or at Lancaster University but the National Archives catalogue indicates that they have the record copy there - IR 106/307 dated 1849 and a researcher has been asked to get a copy of the relevant section and to check to see whether there is also a Tithe Award that may provide any further information. |
| Investigating Officer's Comments | | The undated plan held in Rawtenstall library is of little value without knowing its origin. It shows the route under investigation as a through route passing between properties at Higher Tunstead and exiting onto Fearn Moss at 'Piper'. The route is not numbered as are the adjacent plots of land. The plan confirms the existence of the route as a through route which appeared capable of being used but without further information little inference can be drawn. |
| Inclosure Act Award and Maps | | Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status. |
| Observations | | There is no Inclosure Award for the area over which the route under investigation is found. |
| Investigating Officer's Comments | | No inference can be drawn. |
| Cassini Map, Series 109 - Manchester | 1842-4 | Reproduction extract of Map sheet 109 originally published 1842-44. The Cassini publishing company produce maps based on Ordnance Survey one inch maps. These maps have been enlarged and reproduced to match the modern day 1:50,000 OS Landranger Maps and are readily available to purchase. |
| Observations | | The full length of the route under investigation is shown as a through route from Booth Road to Fearn Moss. |
| Investigating Officer's Comments | | The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public and the fact that the route is shown on the map is suggestive of at least public bridleway rights |

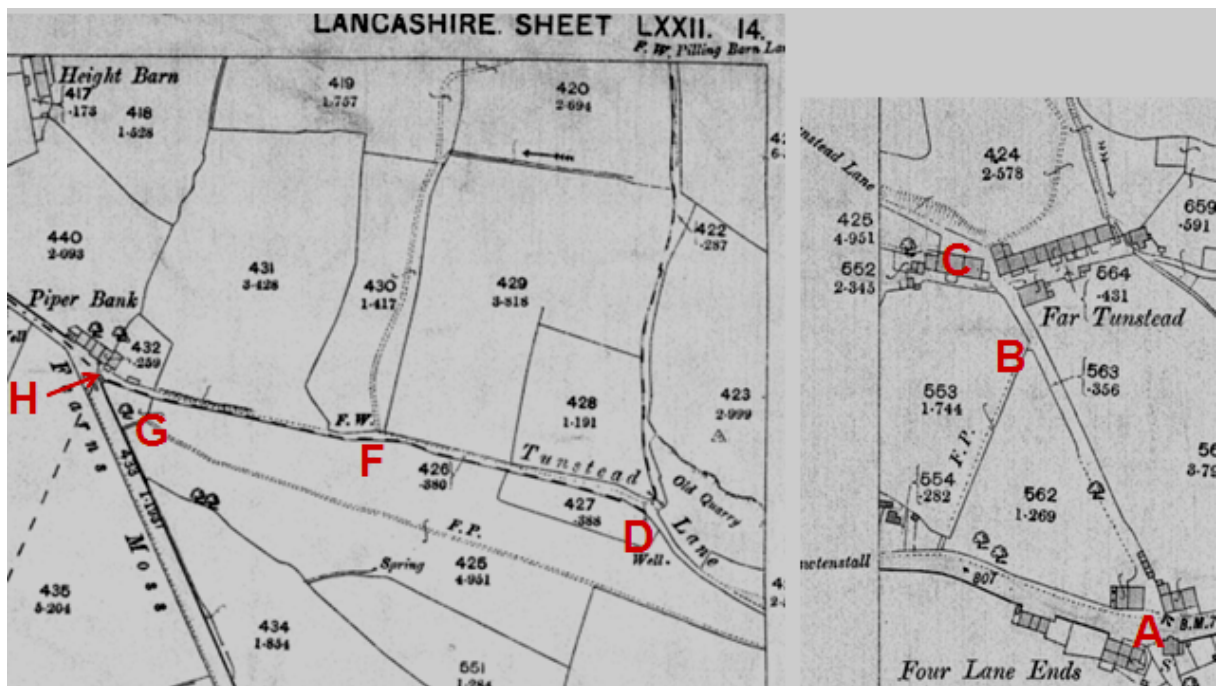
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| | | and possibly vehicular rights. |
| 6 Inch Ordnance Survey (OS) Map Sheet No. 72 | 1849 | The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-47 and published in 1849. ¹ |



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| Observations | <p>The full length of the route under investigation is shown with the route recorded as Footpath 19 shown joining the route at point B. The route under investigation is shown passing between properties labelled as Far Tunstead at point C. Footpath 15 (Pilling Barn Lane) is shown leaving the route under investigation at point D with a solid line across it indicating that access onto it may have been gated. Pilling Barn Lane is not named on the map but between points D and H the route under investigation is clearly named as Tunstead Lane.</p> <p>The route is shown to extend as far as point H – just east of some buildings named Piper Cote Stile on the map and access from point</p> |
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¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.

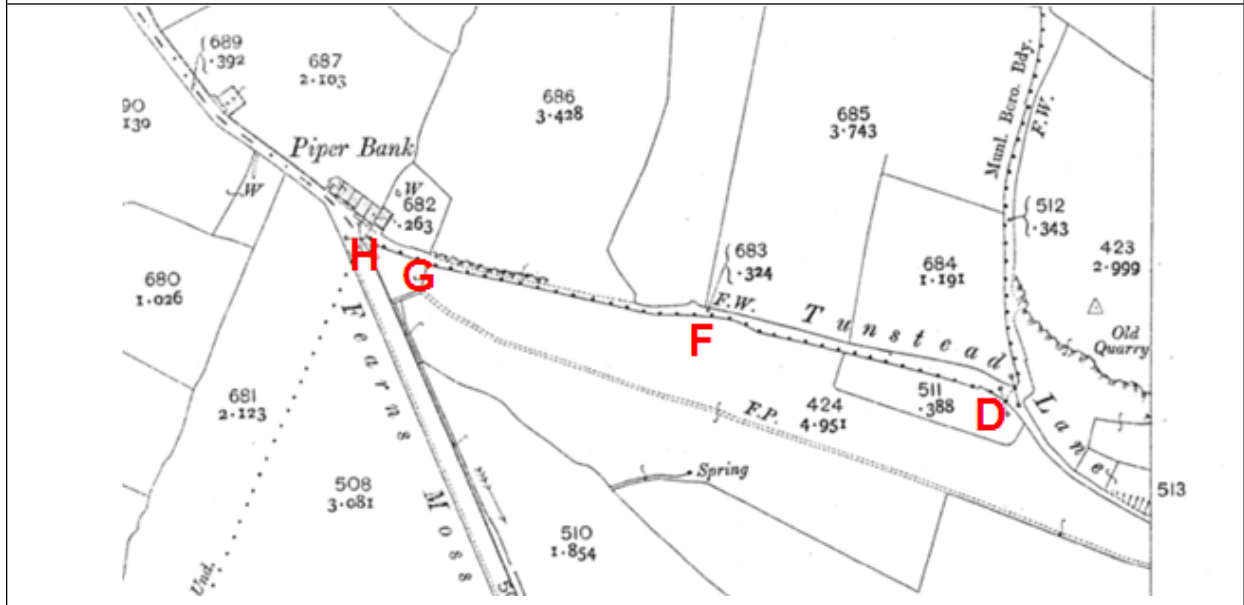
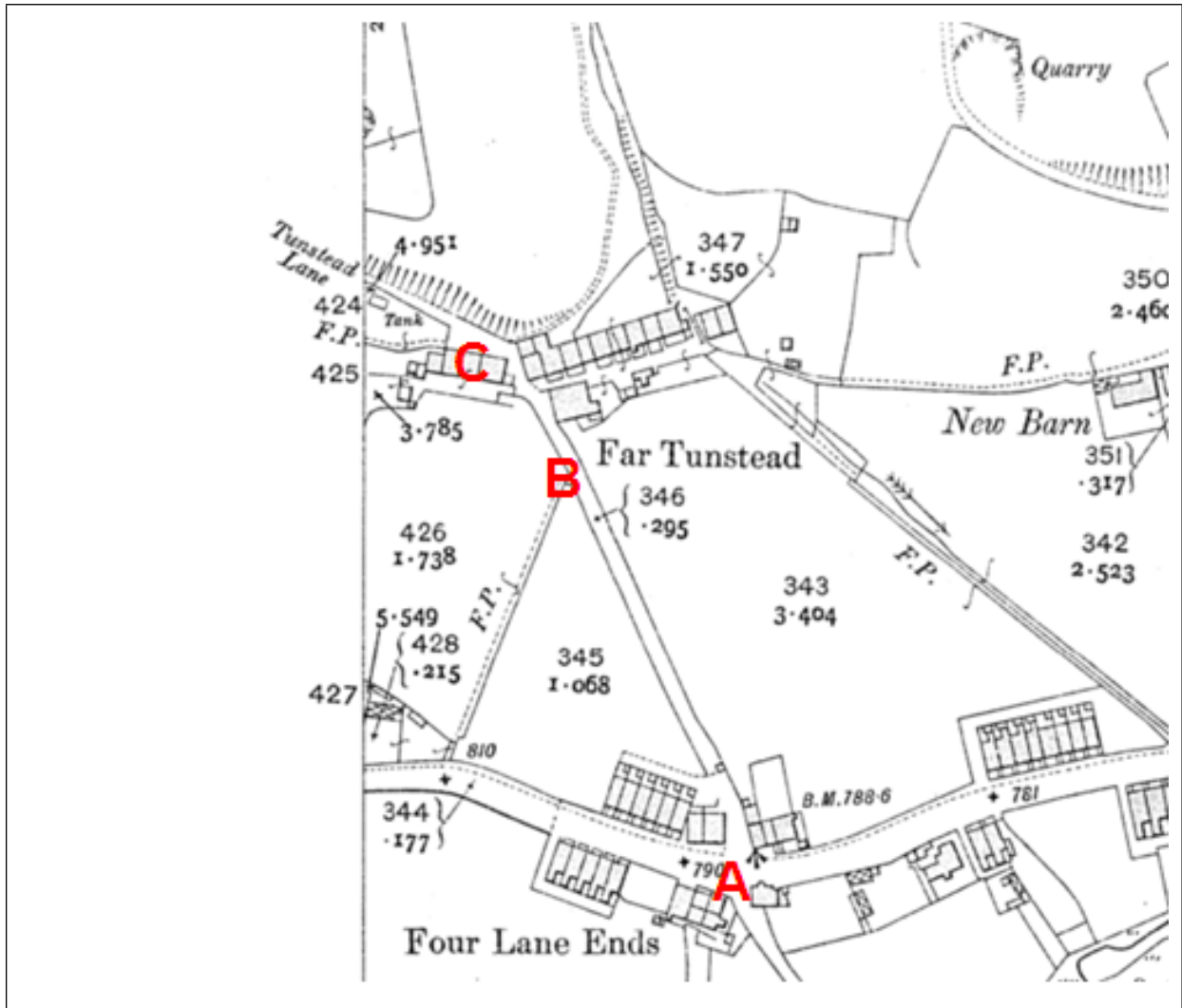
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| | | <p>H onto Fearn Moss appears to be available and unrestricted.</p> <p>The full length of the route under investigation is bounded on either side by solid lines indicating that it was physically separated from the adjacent farm land.</p> |
| Investigating Officer's Comments | | <p>The full length of the route under investigation existed and appeared to be capable of being used in 1849.</p> <p>The route provided access to and through a number of properties (Far Tunstead) and connected Booth Road to Fearn Moss.</p> <p>It is considered that a named route passing through a hamlet and connecting to a network of other public highways would have been at least a public bridleway and may have carried public vehicular rights.</p> |
| 25 Inch OS Map Sheets 72/14 and 72/15 | 1893 | The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891 and published in 1893. |



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| Observations | | <p>The full length of the route under investigation is shown. At point A it is shown to pass between 9 and 13 Booth Road and access onto the route does not appear to be restricted although a change in the surfacing from Booth Road appears is indicated by a dashed line. North of point A, but within the boundaries of the route, there is a small rectangular building split into 5 squares on</p> |
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| | <p>the north east side of the route. The building does not prevent access along the route but appears to restrict the width at this point. Beyond the buildings the route under investigation is shown separated from the adjacent fields by a solid boundary on the east as far up to the properties at Far Tunstead. On the western side the route is open to the field for approximately 60 metres before a boundary is shown. The route recorded as Footpath 19 is shown and marked on the map as a footpath (F.P.) joining the route under investigation at point B.</p> <p>At point C the route passes between buildings named as Far Tunstead consisting of a number of individual and terraced properties.</p> <p>Beyond point C the route continues bounded on either side to point D along which section it is named as Tunstead Lane. Footpath 15 leaves the route under investigation at point D and is named as Pilling Barn Lane.</p> <p>A track (double pecked line) is shown to join the route under investigation at point F. As the application route approaches point G it is shown unbounded on the northern side and is shown running along the bottom of a cutting.</p> <p>At point H the route is shown to exit onto Fearn Moss adjacent to properties named Piper Bank (Piper Cote Stile on the earlier 1849 6 inch OS map).</p> <p>No gates are shown to exist across the route.</p> <p>The route under investigation is not coloured or shaded on the map.</p> |
| <p>Investigating Officer's Comments</p> | <p>The route under investigation existed in 1893 and provided access to a number of properties and a through route connecting Booth Road and Fern Moss.</p> <p>Shading was often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. All metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. The</p> |

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| | | <p>route under investigation is not shown in such a way but neither are Booth Road and Fearn Moss which are now recorded as public vehicular highways.</p> <p>The fact that the route was named on the map is evidence that it was known locally by that name and is consistent with use of the route by the public at least on horseback at that time.</p> <p>The fact that no gates are shown to exist across the route suggests that access was unrestricted.</p> |
| Cassini reprint of the 1 inch Map of Lancashire | Originally published 1903 | An enlarged reprint of a map first published in 1903 and based on the OS 1 inch mapping. |
| Observations | | The full length of the route under investigation is shown as a through route from Booth Road to Ferns Moss. |
| Investigating Officer's Comments | | The original scale of the map (1 inch to 1 mile) means that only the more significant routes are generally shown. The fact that the route continued to be shown by Cassini is suggestive of the fact that it was a substantial route carrying at least bridleway rights and possibly vehicular rights. |
| Bacon's Map | 1904 | G W Bacon was a publisher of maps and in 1890 his 'Commercial and Library Map of Lancashire from the Ordnance Surveys' was published, and later reprinted. As the title states, the maps he published were derived from Ordnance Survey maps. |
| Observations | | The route under investigation is not shown. |
| Investigating Officer's Comments | | <p>The route under investigation existed in 1904 – as evidenced by the OS maps dated before and after the publication of this map - but does not appear to have been considered to be of sufficient significance to be included on this small scale map.</p> <p>The fact that the route is not included is an indication that at this time the importance and use of the route to those travelling by vehicle may have started to decline by that time.</p> |
| 25 inch OS Maps | 1910-1911 | Further editions of the 25 inch map surveyed in 1891/2, revised in 1909 and published in 1911 (Sheet 72/14) and 1910 (Sheet 72/15). |

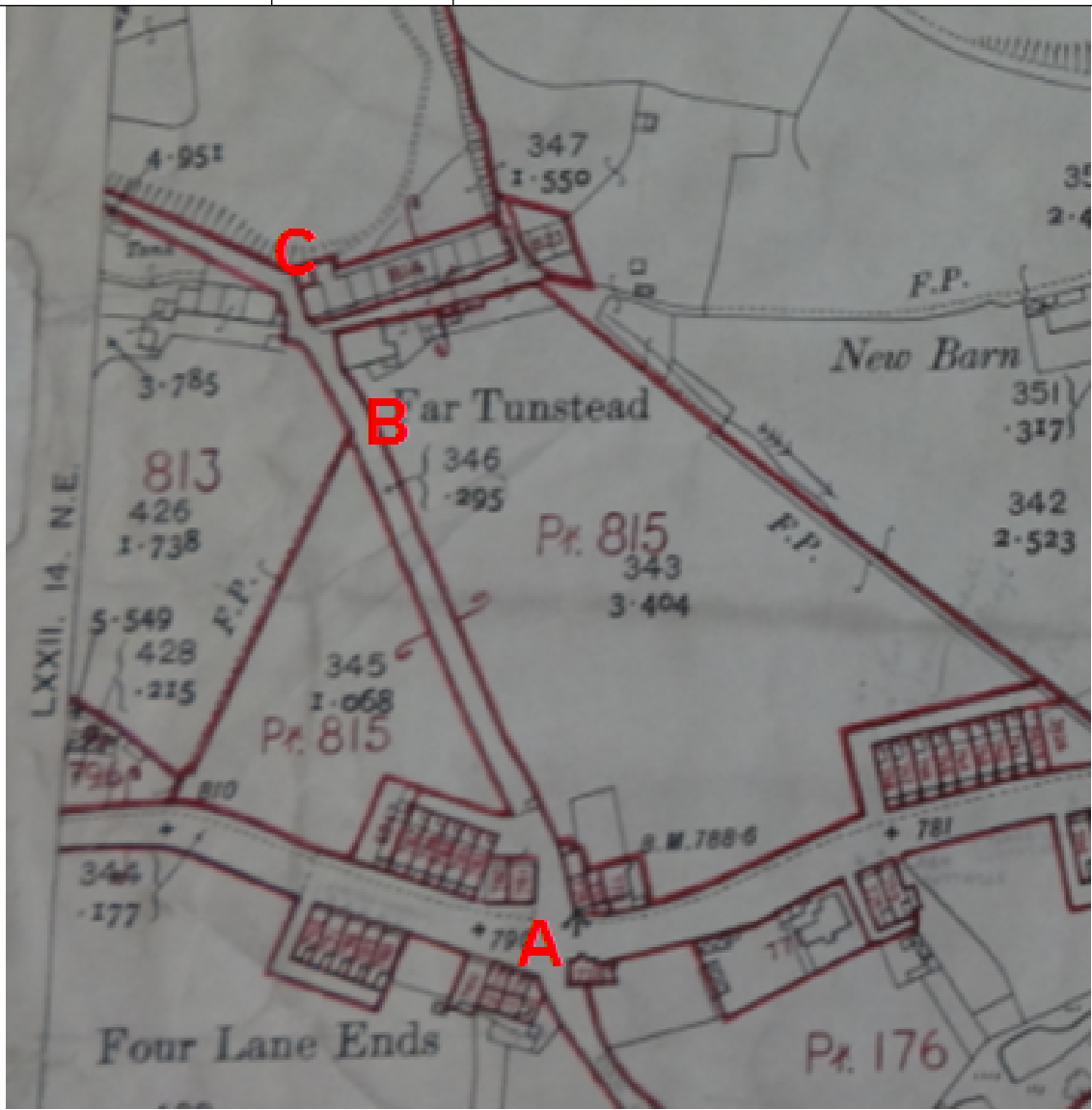


Observations

The full length of the route under investigation is shown and the route is named 'Tunstead Lane'. No gates are shown across the route along the full length.

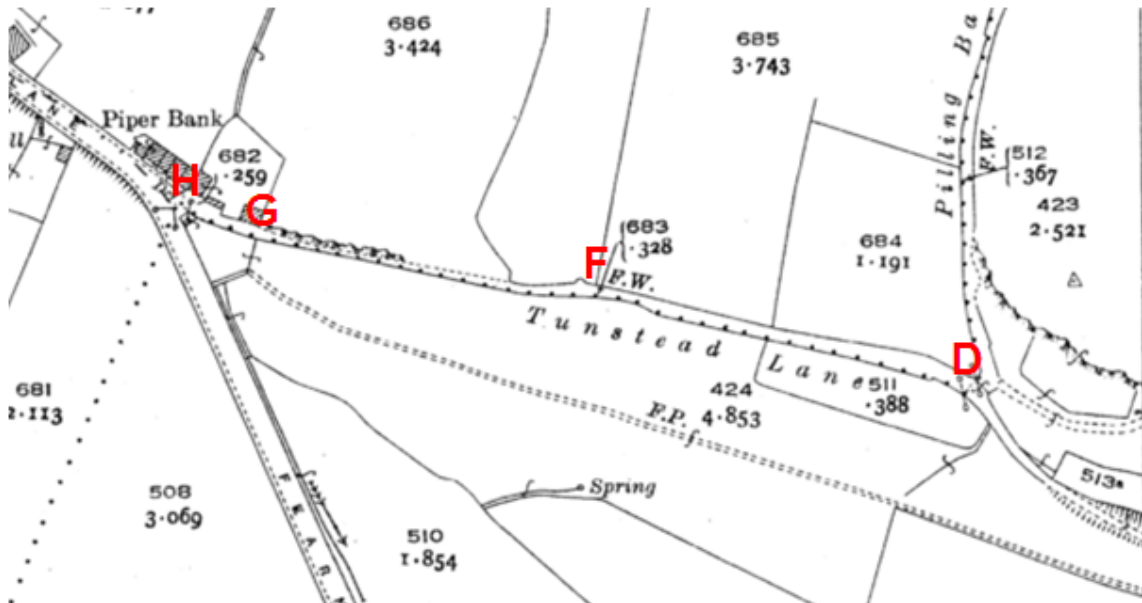
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| | | <p>Almost the full length of the route appears to be bounded from adjacent land – with the exception of a short section between point F and point G which was physically confined to the bottom of a cutting and which appears narrower and less significant than the rest of the route.</p> <p>The building within the boundaries of the route just north of point A is still shown but has decreased significantly in size since it was shown on the 1893 edition of the 25 inch map.</p> |
| Investigating Officer's Comments | | <p>The route under investigation existed in 1910 -1911 and provided the main access to a number of properties at Higher Tunstead and a through route connecting Booth Road and Fearn Moss.</p> <p>As the main access to properties it is likely that the route would have been of substantial construction and would have been used by people on horseback, with horse and cart and by mechanical vehicles.</p> |
| Finance Act 1910 Map | 1910 | <p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of</p> |

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.





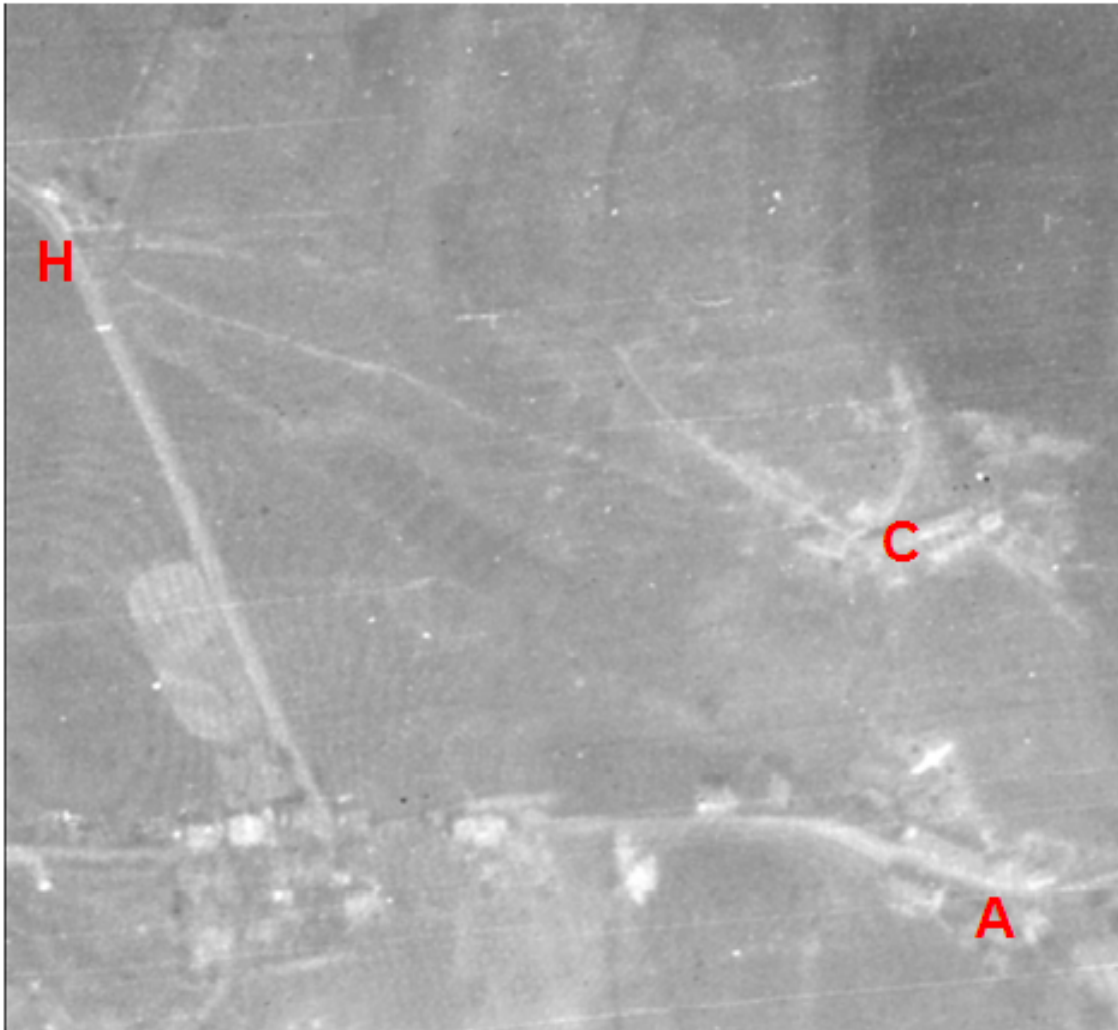
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| Observations | | The route under investigation is clearly shown excluded from the numbered hereditaments some of which are split by the route. |
| Investigating Officer's Comments | | The route is shown excluded from the adjacent numbered hereditaments which is good evidence of, but not conclusive of, public carriageway rights. |
| Abel Heywood & Sons Cycling & Touring Map 60 miles about Manchester ½ inch to the mile | 1920 | Extract of map provided by Applicant in relation to another route but covering the area under investigation. Undated but thought to be dated circa 1920 by a local historian. |
| Observations | | The route under investigation is not shown. |
| Investigating Officer's Comments | | The scale of the map suggests that only the most significant public routes were shown. The fact that the map was produced as a cycling and touring map suggests that those routes shown would carry public vehicular rights and therefore suggests that it may not have been considered to be a public road in the 1920s (cyclists were not allowed to use bridleways prior to 1968) or possibly that due to the scale of the map only the more significant routes were shown. |
| 25 Inch OS Map | 1930 | Further edition of 25 inch map (surveyed 1891, revised in 1928 and 1930. Map sheets 72/14 and 72/15 |




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| <p>Observations</p> | <p>The full length of the route under investigation is shown and the route is named as Tunstead Lane on both map sheets.</p> <p>The small building that had existed within the boundary of the route just north of point A is no longer shown.</p> <p>A dashed line is shown across the route north of point A at the point immediately after</p> |
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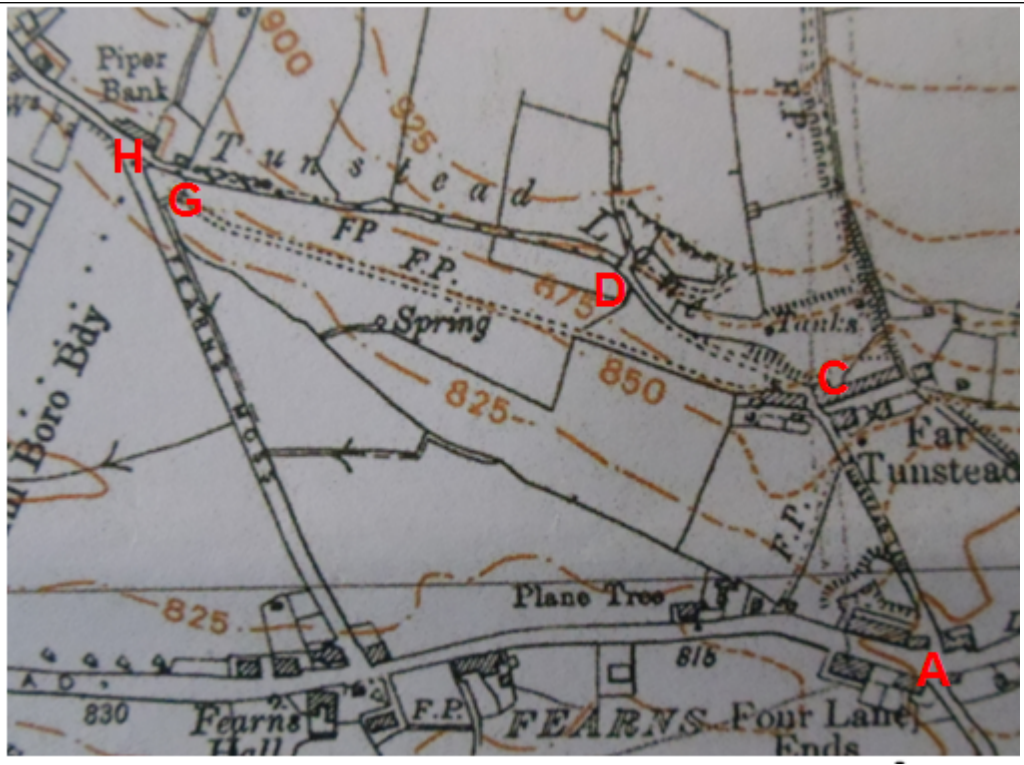
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| | | <p>which access to the rear of the properties on Booth Street curves round to the west. This dashed line is likely to indicate a change in surface condition.</p> <p>Between point F and point G the route appears narrower and less significant than the rest of the route.</p> <p>Access onto Fearn Moss from point H is open and available.</p> <p>No gates are shown across the route.</p> |
| Investigating Officer's Comments | | <p>The route under investigation existed in 1930 and provided the main access to a number of properties. It is shown as an un-gated through route connecting Booth Road and Fearn Moss. The full length of the route appeared to be capable of being used by horses and possibly vehicles at that time.</p> |
| Aerial Photograph² | 1940s | <p>The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.</p> |

² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.



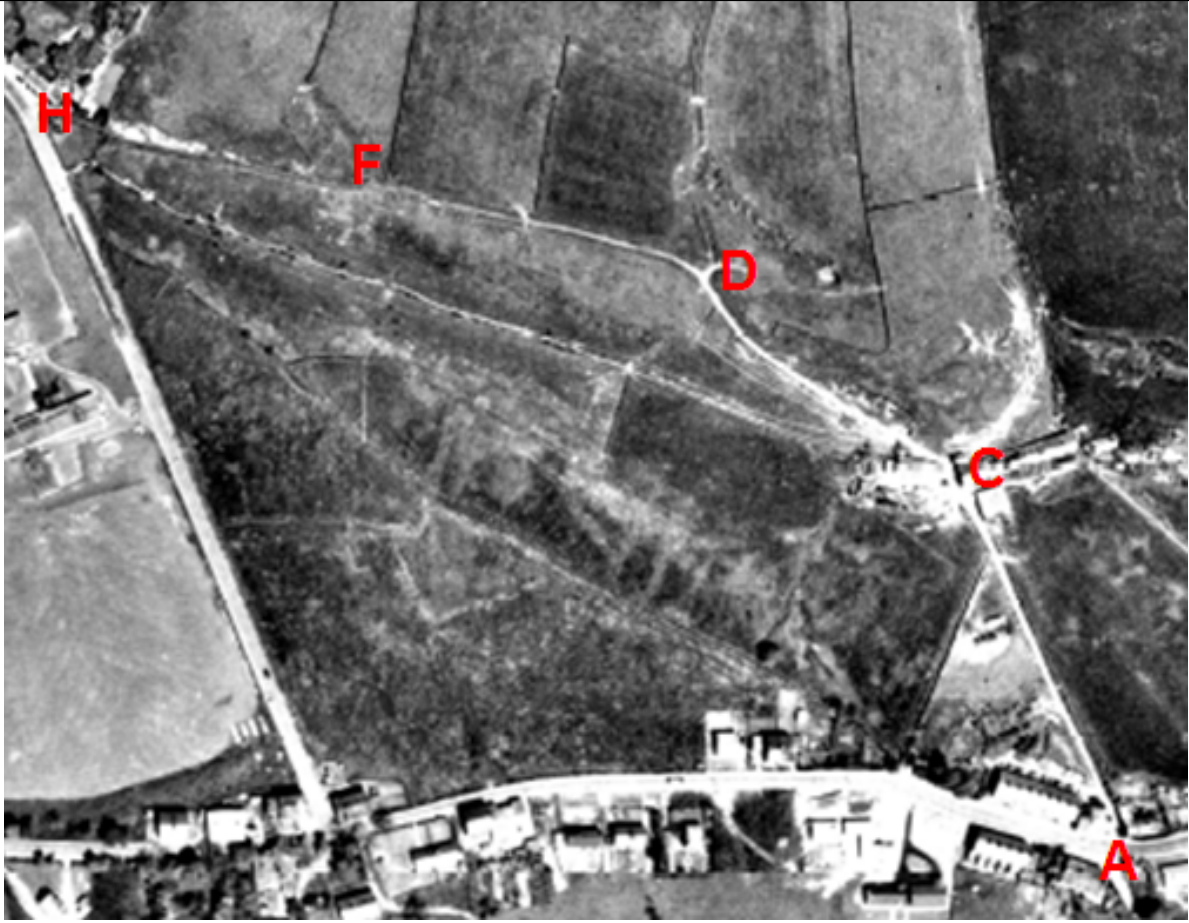
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| Observations | | The quality of the photograph is very poor and it is difficult to see the route under investigation or other more prominent routes in the area. Footpath 18 which runs south of, and roughly parallel to the route under investigation between points C and H is more visible than the route under investigation. |
| Investigating Officer's Comments | | The route under investigation existed in the 1940s – as evidenced by OS maps dated before and after that time but does not show up as a significant route at that time. The fact that the route of Footpath 18 shows up as much, if not more than the route under investigation between point C and point H suggests similar use of the route under investigation to that of the footpath at that time. |
| The Authentic Map Directory of South Lancashire by | Circa 1934 | An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, |

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| <p>Geographia</p> | | <p>detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map. The publisher claimed to have incorporated new districts, streets and trunk roads in the atlas and acknowledges the assistance of municipal and district surveyors when compiling the book.</p> |
|  | | |
| <p>Observations</p> | | <p>The application route is clearly shown and is named as Tunstead Lane.</p> |
| <p>Investigating Officer's Comments</p> | | <p>The route under investigation is shown in an atlas consistent with the way that other routes carrying public vehicular rights are shown and is at least suggestive of public bridleway rights.</p> |
| <p>6 Inch OS Map Sheet SD 82SW</p> | <p>1956</p> | <p>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.</p> |



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| Observations | | The route under investigation is shown and is named on the map as Tunstead Lane between point A and point D and between point C and point G. The section between point D and point G is also marked as a footpath (FP). A line is shown across the route at point D which may indicate the existence of a gate. |
| Investigating Officer's Comments | | The route under investigation existed in the 1950s and still provided the main access to a number of properties. The full length of the route appeared to be capable of being used by horses and possibly vehicles at that time although the annotation FP between point D and point G may suggest that use of this section of the route other than on foot may have declined. The existence of a gate at point D is consistent with a route in a rural location where gates would be required for stock control. |
| 1:2500 OS Map | 1963 | Further edition of 25 inch map reconstituted from former county series and revised in 1960/61 and published 1963 as national grid series. |
| Observations | | The route under investigation is shown in the same way as on the earlier edition of the 25 inch map. |

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| Investigating Officer's Comments | | The route under investigation still existed in 1963 and appeared to be capable of being used. |
| Aerial photograph | 1960s | The black and white aerial photograph taken in the 1960s and available to view on GIS. |





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| Observations | | The full length of the route under investigation can be seen but is much clearer between point A and point D than the rest of the route. Beyond point F to point G the route is only faintly visible. |
| Investigating Officer's Comments | | The route under investigation existed and appeared to be capable of being used. The clarity of the route between point A and point D is indicative of vehicular use which may extend as far as point F but beyond that point the track was much less visible suggesting only pedestrian and possibly equestrian use at that time. |
| Rossendale Official Street Atlas | 1995 | Extract provided by the Applicant and published by Rossendale Borough Council. |



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| <p>Observations</p> | | <p>An extract from a street atlas published by Rossendale Borough Council in 1995 shows the full length of the route under investigation named as Tunstead Lane. The route is shown bounded on either side by dashed lines. Some, but not all public footpaths that connect to the route are shown – mainly by the use of a single dashed line.</p> |
| <p>Investigating Officer's Comments</p> | | <p>No key was submitted with the extract and the origin of the base map is not known. The main purpose of the atlas appears to be to show the vehicular routes ('Streets') in Rossendale. Tunstead Lane is named and shown as a substantial route providing access to and beyond a named property (Higher Tunstead Farm). It appears to have been considered by the map makers as being more than a footpath.</p> |
| <p>Aerial Photograph</p> | <p>2000</p> | <p>Aerial photograph available to view on GIS.</p> |



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| Observations | | The route under investigation can be clearly seen between point A and point F consisting of a substantial track. Between point F and point H the route is barely visible. |
| Investigating Officer's Comments | | The aerial photograph supports the view that substantial vehicular use was being made of the route in 2000 between point A and point F. From point F to point G the route was barely visible suggesting use on foot in line with its current designation as a public footpath. |
| Definitive Map Records | | <p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p> |
| Parish Survey Map | 1950-1952 | The initial survey of public rights of way was carried out by the parish council in rural district council areas and the maps and schedules were submitted to the County Council. In the case of urban districts and municipal boroughs the map and schedule produced was used, without alteration, as the Draft Map and Statement. |
| Observations | | Bacup was a municipal borough in the early |

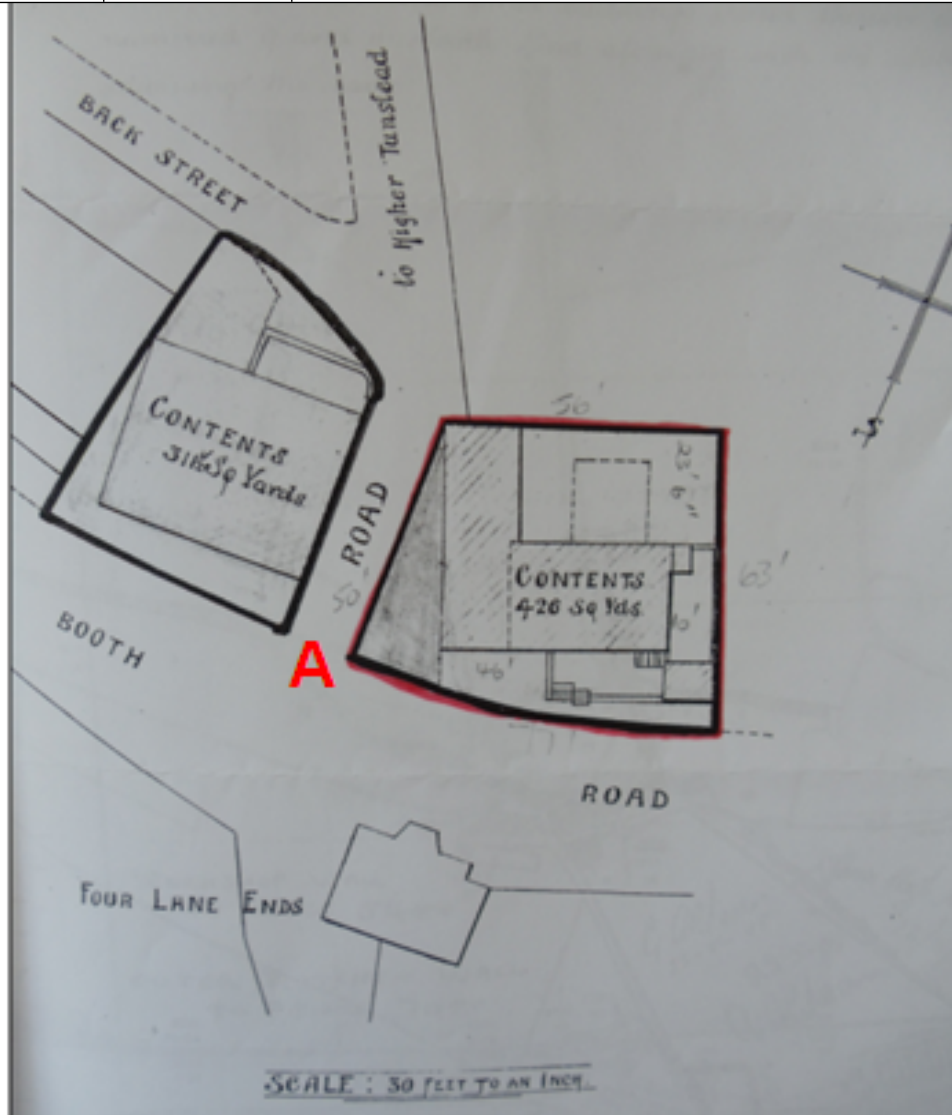
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| | | 1950s and so a parish survey map was not compiled. |
| Draft Map | | The Draft Maps were given a “relevant date” (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented. |
| Observations | | The route under investigation was shown on the Draft Map as a public footpath. |
| Provisional Map | | Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court. |
| Observations | | The route under investigation was shown in the same way on the Provisional Map as on the Draft Map and no representations were made to the County Council. |
| The First Definitive Map and Statement | | The Provisional Map, as amended, was published as the Definitive Map in 1962. |
| Observations | | The route under investigation was shown in the same way on the First Definitive Map as on the Draft and Provisional Maps. |
| Revised Definitive Map of Public Rights of Way (First Review) | | Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside |

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| | | Act 1981, the Definitive Map has been subject to a continuous review process. |
| Investigating Officer's Comments | | From 1953 through to 1975 there is no indication that the route under investigation was considered to be of any higher status than public footpath by the Surveying Authority. There were no objections to the depiction of the status of the route from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map. |
| Statutory deposit and declaration made under section 31(6) Highways Act 1980 | | <p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p> |
| Observations | | No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the route under investigation runs. |
| Investigating Officer's Comments | | There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land. |

Extract from the deeds to 97 Booth Road

Undated

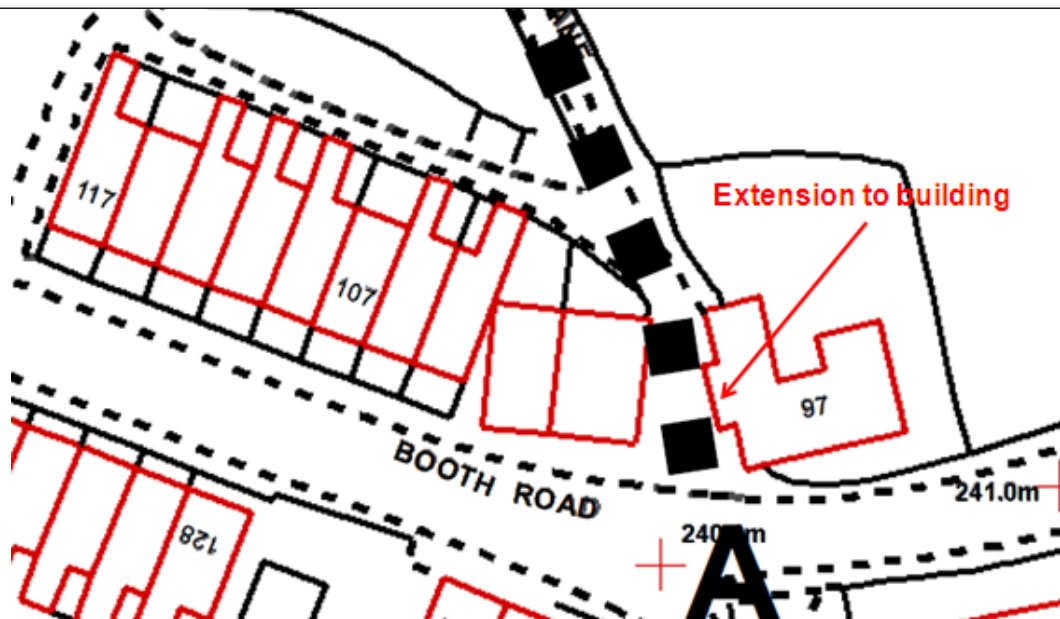
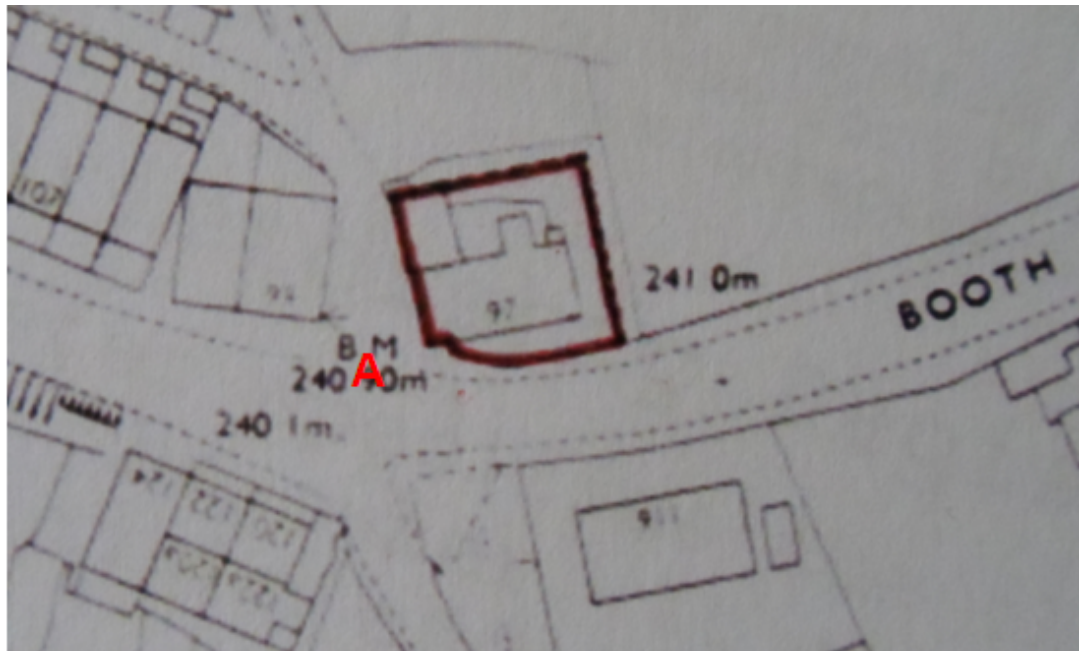
Extract of Deeds provided by the owner of the property to indicate the extent of their landownership.



Observations



The plan is undated but was submitted by the landowner who explained that it formed part of their deeds. It shows the start of the route under investigation from point A labelled as 'Road' and the destination of the road is labelled as 'to Higher Tunstead'. The boundary of the property (97 Booth Road) is shown extending over part of the width currently available to use on the ground and differs from the land ownership boundary indicated on the land registry plan (LA441304) as shown below. In addition, the Committee plan and site photographs show an extension to the side of 97 Booth Street which appears to have been constructed

within the historical width of the route.



Investigating Officer's
Comments

The undated plan attached to deeds of the property suggests that at the time that the plan was drawn the route under investigation was considered by the surveyor to be a 'road' – although there is no indication as to whether this was considered to be public or private and it is simply described as being 'to Higher Tunstead'. The boundary of the property appears to include part of what may have been physically available on the ground (the area shaded on the deeded plan) and the extension of the building is within that

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| | | shaded area. The Land Registry plan shows the boundary along the building edge and not including any part of the route under investigation. |
| <p>Highway Adoption Records including maps derived from the '1929 Handover Maps'</p> | <p>1929 to present day</p> | <p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark public 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. 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> |
| <div style="display: flex; justify-content: space-around;">   </div> | | |
| <p>Observations</p> | | <p>The route under investigation is not recorded on the List of Streets as a publically maintainable highway.</p> <p>The point at which the north western end of</p> |

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| | | the route under investigation meets the public highway (Fearn Moss) at point H can be clearly seen on the County Councils 'adoption' plan. The aerial photograph extract shows the modern day situation on site with fencing blocking access to point H and an unofficial access to and from the route under investigation provided south of point H. |
| Investigating Officer's Comments | | The route under investigation was not considered to be a surfaced way maintained at public expense. |

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.

Landownership

The ownership of Tunstead Lane (the route under investigation) is not registered with the Land Registry and ownership of the route is not known. The land on either side of the route is registered (to a number of different owners) and in one case land is owned by the same landowner on either side of the route and is registered under the same title number but the title plan shows that Tunstead Lane does not form part of the landowner's property.

The Land Registry documentation inspected for land on either side of the route under investigation all makes reference to that land being formerly the copyhold of the Manor of Accrington New Hold.

Summary

The full length of the route connecting to Booth Road and Fearn Moss was shown consistently on various small scale commercial maps (and also the Honour of Clitheroe Map) from 1804 as a significant route depicted in the same way that carriageways were shown.

It is also shown consistently on Ordnance Survey maps, including 1 inch scale, from 1849 onwards, named as Tunstead Lane and mostly enclosed on both sides.

The Finance Act 1910 information suggests – although not conclusively – that it had public carriageway rights.

As the 20th Century progressed the western section of the route became less significant as evidenced by maps and aerial photographs and this is still the situation on the ground today.

If it is accepted that the route has early map and documentary evidence for public carriageway rights it does not appear that those rights have been subsequently

legally extinguished by a specific legal order but the effects of the Natural Environment and Rural Communities Act 2006 would be to extinguish any public mechanically propelled vehicle rights.

County Secretary and Solicitors Group Observations

Information from the Applicant

The applicant states that the following maps show the application route and she believes support the application to upgrade the route to a public bridleway:

- 1831 Township Map of Tunstead
- Extract from the LCC Mario map layer showing adopted highways
- Ordnance Survey 25 inch map published 1893
- Ordnance Survey 25 inch map published 1910
- Ordnance Survey 25 inch map published 1930
- Extract of a map published by Cassini
- Extract from the Authentic Map Directory of South Lancashire
- Rossendale Official Street Atlas 1995
- Ordnance Survey 6 inch map published 1849

Information from Others

A letter has been received from Mrs Cooper, owner of 97 Booth Road, she has concerns that the increased use of the lane will cause more deterioration especially during heavy rainfall when drains get blocked and cause flooding.

A letter was also received from Janet Disley and Stephen Hoyle, the owners of Piper Bank, 412 Edgeside Lane, they provided confirmation of their ownership in relation to the route but did not provide any comments on the application.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

Historical map evidence

Against Making an Order(s)

Conclusion

The route under consideration is currently recorded as a public footpath. The application is to upgrade the sections of footpath from points A-B-C-D-E-F-G-H to a bridleway, as it is suggested the public footpath carries higher public rights.

Committee should note that as the route already appears on the definitive map as a Public footpath, it is not sufficient to satisfy the lesser test of reasonably alleging the existence of bridleway rights, neither is it necessary for there to be conclusive

evidence of the existence of a higher public right than a public footpath, instead the standard of proof required is the balance of probability.

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

Committee is advised to consider whether evidence from the Old County maps and other documentary evidence coupled with the evidence on site does on balance indicate how the route should be recorded.

The route is depicted as a significant route in the same way that carriageways were shown on various small scale commercial maps which include Greenwood's Map of Lancashire 1818 and Hennets Map of Lancashire 1830, this is evidence of the route had a higher status than a footpath. The route appears as a cross road in 1830 on the Hennets Map and appeared to provide a through route between points A and H and passed between properties in the proximity of point C which are not named (now Higher Tunstead), as this small scale map only appeared to show the more significant routes and did not show other routes currently recorded as public footpaths that joined the route under investigation. This suggests the route was of a substantial nature and on balance would have been capable of being used on horseback and possibly horse drawn vehicles at that time.

The Finance Act Map 1910 adds further weight, although not conclusive that the route under consideration had public carriageway rights.

The full length of the route also appeared to be capable of being used and is consistently shown on the ordnance survey maps from 1849 onwards, as a route providing access to and through a number of properties and connected Booth Road to Fearn Moss. It is considered that a named route passing through a hamlet and connecting to a network of other public highways would on balance have been at the very least a public bridleway and may have carried public vehicular rights.

The evidence suggest the section F-H had declined more recently and the track was much less visible and it likely that more recently this section had predominantly been used as a public footpath.

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

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

Risk Management

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

Alternative options to be considered - N/A

Local Government (Access to Information) Act 1985

List of Background Papers

| Paper | Date | Contact/Directorate/Tel |
|---------------------------------------|------|--|
| All documents on File Ref: 804-514 | | <i>Megan Brindle</i> , 01772 535604, County Secretary and Solicitors Group |

Reason for inclusion in Part II, if appropriate

N/A