

Regulatory Committee

Meeting to be held on 13 January 2016

Electoral Division affected: Lytham
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Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of a public footpath from Maplewood Close to South Park, Lytham St Anne's

File No. 804-568

(Annex 'A' refers)

Contact for further information:

Megan Brindle, 01772 535604, Paralegal Officer, Legal and Democratic Services,
megan.brindle@lancashire.gov.uk

Jayne Elliott, 07917 836626, Planning & Environment Group, Public Rights of Way
Jayne.elliott@lancashire.gov.uk

Executive Summary

Application for the addition of a public footpath to the Definitive Map and Statement from Maplewood Close to South Park, Lytham St Anne's, Fylde Borough, in accordance with file no. 804-568.

Recommendation

1. That the application for a public footpath from Maplewood Close to South Park, Lytham St Anne's, Fylde Borough:
 - a) A -B to be not accepted; and
 - b) B-C-D-E-F-G-H-I to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with file no. 804-568, be accepted.
2. That an Order be made pursuant to Section 53(2)(b) and Section 53(3)(b) and Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add a public footpath from Maplewood Close to South Park, Lytham St Anne's to the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points B-C-D-E-F-G-H-I.
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for a public footpath extending from Maplewood Close to South Park, Lytham St Anne's, Fylde Borough a distance of 200 metres and shown on the

Committee plan by a thick dashed line between points A-B-C-D-E-F-G-H-I on the Definitive Map and Statement of Public Rights of Way.

The County Council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

An order will only be made to add a public right of way to the Definitive Map and Statement if the evidence shows that:

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

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

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

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

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

Consultations

Fylde Borough Council have been consulted and no response has been received, it is assumed they have no comments to make.

There is no Parish Council for this area.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	3563 2757	Junction with north eastern end of footway of Maplewood Close adjacent to 6 Maplewood Close immediately south west of metal barrier
B	3563 2757	An unmarked point on the tarmac footway immediately north east of metal barrier
C	3564 2757	Point at which route joins tarmac access road
D	3573 2755	Point at which route leaves tarmac access road
E	3574 2756	Route passes through gap in boundary fence
F	3577 2756	Route exits Millhill Wood and joins tarmac path
G	3578 2756	Junction of tarmac paths
H	3579 2757	Junction of tarmac paths
I	3582 2757	Junction of tarmac path with footway of South Park adjacent to 125 South Park

Description of Route

A site inspection was carried out in July 2015.

The route under investigation ('the route') commences at point A on the Committee plan at the north eastern end of Maplewood Avenue. It passes through a gap between the corner of the garden fence of 6 Maplewood Close and a brick wall across the end of Maplewood Avenue.

The gap is tarmacked with two metal barriers positioned across it which allow pedestrian access but which would prevent or would make access difficult for bicycles, pushchairs or wheel chairs.

Beyond the metal barrier (point B) the route turns in a south easterly direction across a tarmacked area for approximately 8 metres where it joins a tarmac access road bounded by kerb stones (point C). It follows the access road, which varies in width between 4 and 5 metres, in a south easterly and then east north easterly direction to the rear of a number of buildings known collectively as the Hall Park Centre and to the rear of the tarmac car park designated as parking for the Hall Park Centre and Hole in One public house (now closed). The surface of the access road is vegetated with moss in places suggesting recent infrequent use by vehicles. Prominent white arrows painted on the surface of the tarmac suggested that use of the access road was designed to be in one direction only.

After approximately 100 metres the route leaves the tarmac access road (point D) to pass through an area of vegetation along a path surfaced with woodchips. It passes through a gap in a boundary fence (point E) which is partly obscured by ivy that has grown up over it and continues in a generally easterly direction along the compacted earth and wood chip surfaced path through an area of woodland (Millhill Wood).

The route exits the woodland (point F) into South Park play area. It then follows a tarmac path to the junction with another tarmacked path (point G) which provides direct access to a children's play area and then continues in a north easterly direction along a tarmac path to a junction (point H) and then an easterly direction along another tarmac path to exit the play park through a gap in the fence (point I) at a junction with the footway at the end of South Park cul-de-sac, which begins with a concrete step adjacent to 125 South Park.

The total length of the route is 200 metres.

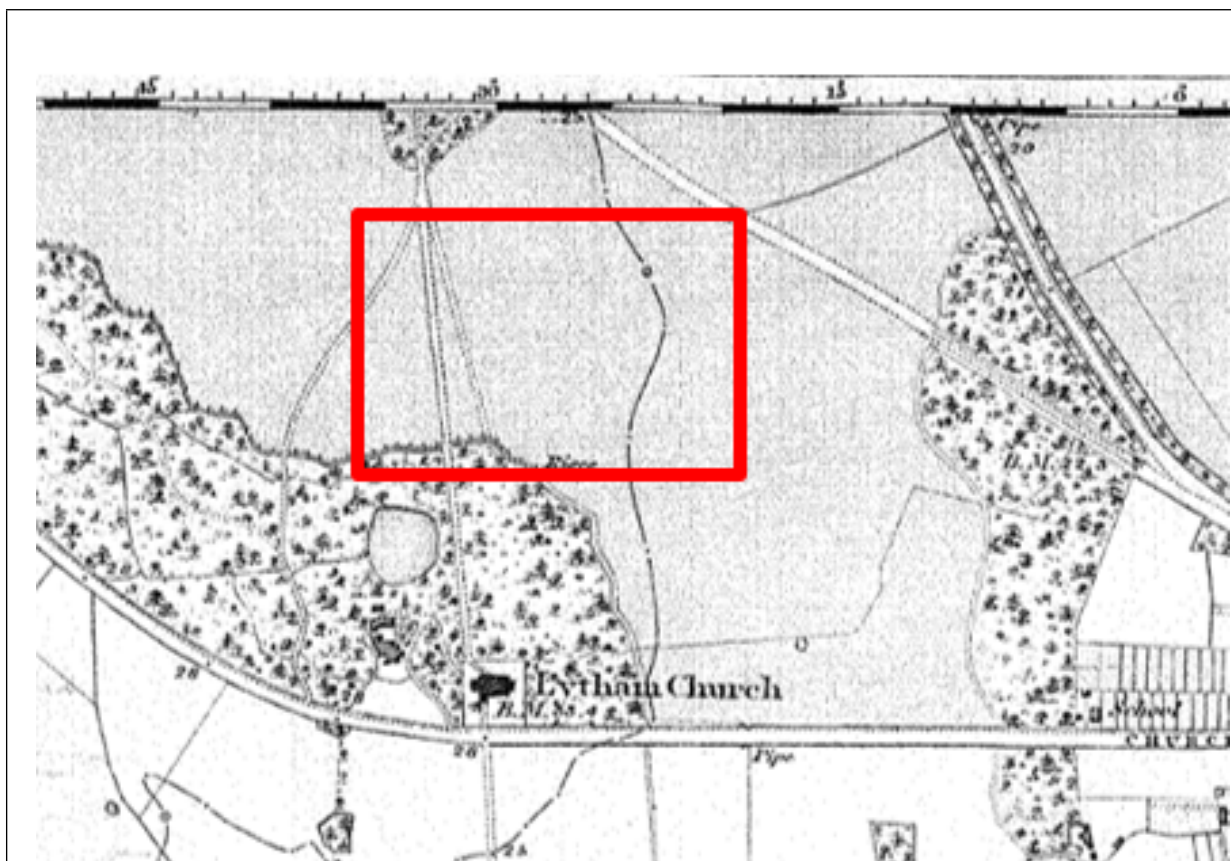
Map and Documentary Evidence

Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The route under investigation is not shown. It is not possible to determine the exact location of the route due to the scale of the map and the land that it crosses appears to be undeveloped agricultural land.
Investigating Officer's Comments		A route claimed as a public footpath would be unlikely to be shown on the map due to the limitations of scale and the purpose for which it was drawn. The area of land crossed by the route appears to be undeveloped. The route under investigation is unlikely to have existed in 1786.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads.
Observations		The route under investigation is not shown.
Investigating Officer's Comments		A route claimed as a public footpath would be unlikely to be shown on the map due to the limitations of scale and the purpose for which it

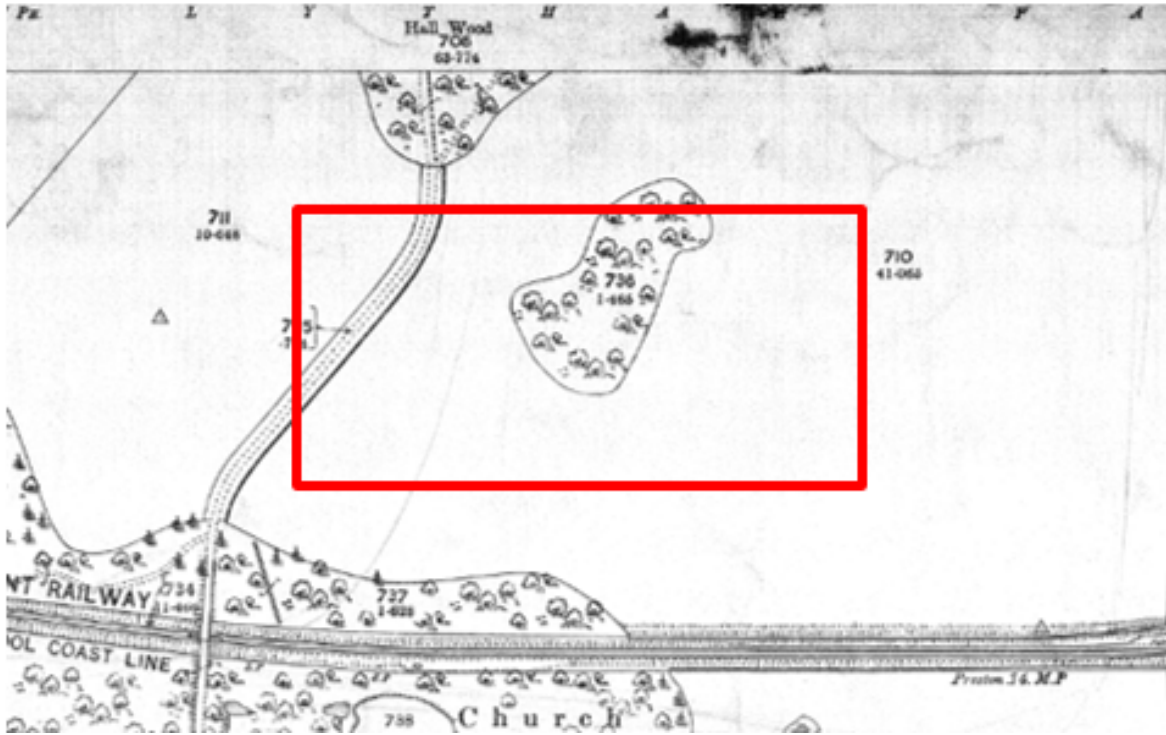
		was drawn. The area of land crossed by the route appears to be undeveloped. The route under investigation is unlikely to have existed in 1818.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.
Observations		The route under investigation is not shown.
Investigating Officer's Comments		A route claimed as a public footpath would be unlikely to be shown on the map due to the limitations of scale and the purpose for which it was drawn. The area of land crossed by the route appears to be undeveloped. The route under investigation is unlikely to have existed in 1830.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		There are no canals or railways crossing the area of land over which the route under investigation runs.
Investigating Officer's Comments		No inference can be drawn.
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.
Observations		The Tithe Map for Lytham was produced in 1840 around the time of the earliest 6 inch Ordnance Survey map. As the Ordnance Survey map and earlier commercial maps show that the land crossed by the route under investigation was undeveloped agricultural land with no indication that the route existed the Tithe Map was not examined.
Investigating Officer's Comments		No inference can be drawn.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award available for the area crossed by the route under investigation.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1846-47 and published in 1848. ¹

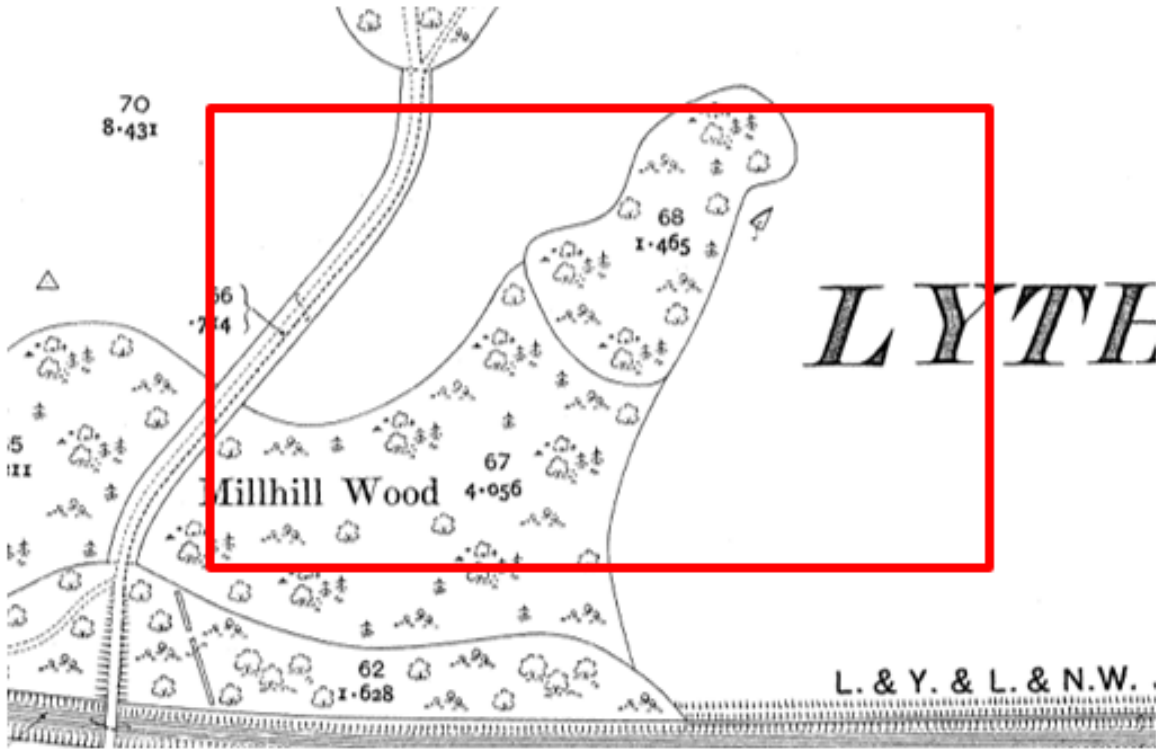
¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.



Observations		The land crossed by the route under investigation is shown as agricultural land and the route is not shown.
Investigating Officer's Comments		It is considered that the route under investigation did not exist in 1848.
25 Inch OS Map	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891 and published in 1893.

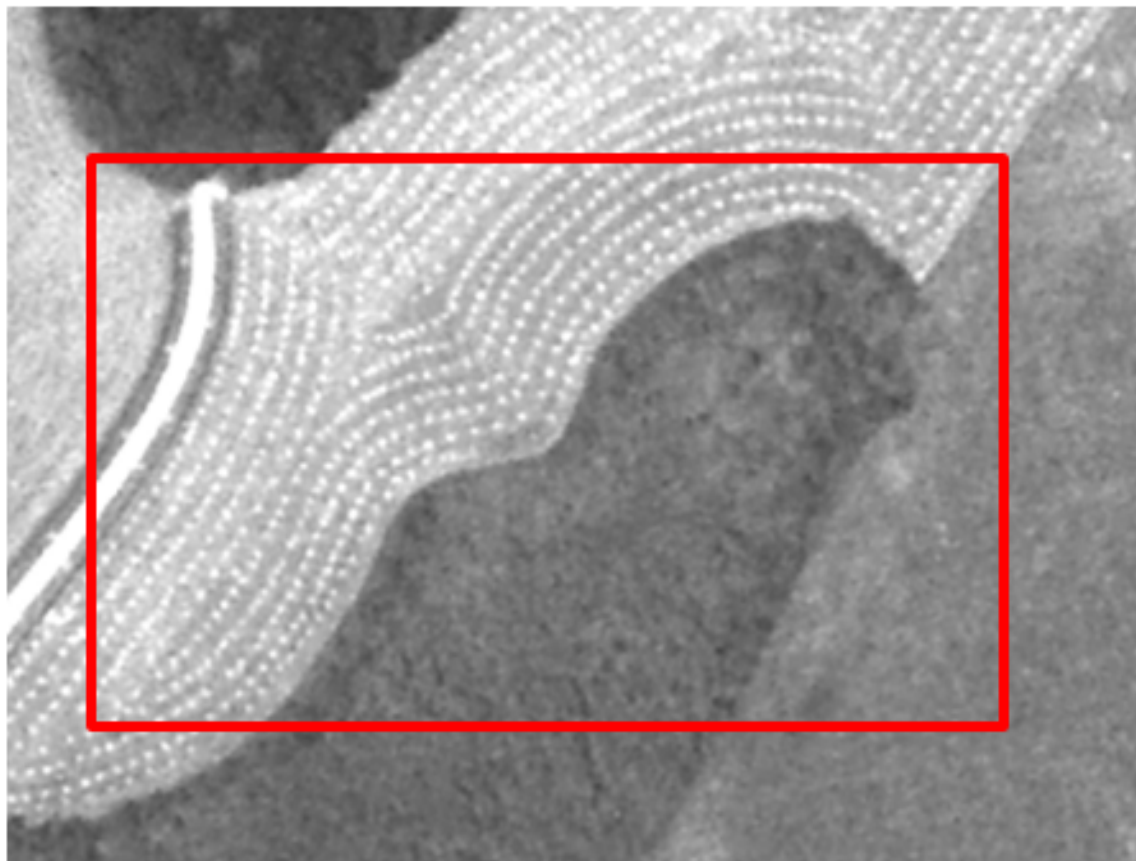


Observations		The route under investigation is not shown. Millhill Wood is shown but the land is still agricultural.
Investigating Officer's Comments		The route under investigation is unlikely to have existed in 1891.

25 inch OS Map	1911	Further edition of the 25 inch map surveyed in 1891, revised in 1908 and published in 1911.
		
Observations		Millhill Wood has extended but the route under investigation is not shown.
Investigating Officer's Comments		The route under investigation is unlikely to have existed in 1908.
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</p>


		<p>land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
Observations		The relevant Finance Act Map sheet is not available to view at the County Records Office.
Investigating Officer's Comments		No inference can be drawn.
25 Inch OS Map	1932	Further edition of 25 inch map (surveyed 1891, revised in 1930 and 1932.
Observations		No changes to the earlier edition of the 25 inch map.
Investigating Officer's Comments		The route under investigation did not exist in 1930.

Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
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Observations		The land crossed by the route under investigation is still undeveloped and the route is not shown.
Investigating Officer's Comments		The route under investigation did not exist in the 1940s.

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.

6 Inch OS Map	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.
		
Observations		The land crossed by the route under investigation is still undeveloped and the route is not shown.
Investigating Officer's Comments		The route under investigation did not exist before the 1930s when the map was revised.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.
Observations		The land crossed by the route under investigation is still undeveloped and the route is not shown.
Investigating Officer's Comments		The route under investigation did not exist when the photograph was taken in the 1960s.
1:2500 OS Map	1966	Further edition of 25 inch map reconstituted from former county series and revised in 1964 and published 1966 as national grid series.
Observations		The land crossed by the route under investigation is still shown as being undeveloped and the route is not shown.
Investigating Officer's Comments		The route under investigation did not exist in 1964.

1:10,000 OS Map	1972	OS 1:10,000 scale map revised 1967-1970 and published 1972.
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Observations		The route under investigation is not shown. Development has commenced in the area and part of South Park and Forest Drive are shown marked out by dashed lines indicating that they were under construction at the time that the map was revised.
Investigating Officer's Comments		The route under investigation did not exist when the map was revised between 1967 and 1970.
Aerial Photograph	1988	Aerial photograph available to view at LCC Cuerden Office.



Observations		Maplewood Close and South Park are both shown to exist. When enlarged the clarity of the aerial photograph is poor and part of the route is obscured by tree cover. It is not possible to see whether the full length of the route under investigation existed or whether access along it was available. The play area between point F and point I is visible and a number of paths are visible – the section of the route under investigation between point F and point G may follow part of one of the visible tracks and the land appears open between point F and point I.
Investigating Officer's Comments		The route under investigation may have been accessible.
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations		Access appears to be available from point A along the tarmac access road towards point C but is partly obscured by tree cover. It is not possible to see whether the route existed through the woodland from point C to point F. Access along the route between points F-G-H-I appears to be available and between point G and point H the route appears to follow a marked out path.
Investigating Officer's Comments		The route under investigation may have existed in 2000.

Aerial Photograph	2010	Aerial photograph available to view on GIS.
		
Observations		Access appears to be available at point A and extending towards point C but the route is then not visible to point F due to tree cover. A marked out route is visible along the route between points F-G-H-I.
Investigating Officer's Comments		The route under investigation probably existed in 2010.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in 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. Survey cards, often containing considerable detail exist for most parishes but

		not for unparished areas.
Observations		Lytham St Anne's was a Municipal Borough in the early 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 application route was not shown on the Draft Map and no representations were made to the County Council.
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 application route was not shown on the Provisional 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 application route was not shown on the First Definitive Map and Statement.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife

		and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the application route was considered to be public right of way by the Surveying Authority. There were no objections or representations made with regards to the fact that the route was not shown on the map when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>

Highway adoption plan from Mapzone



Road classification layer on Mapzone



Notes

Link footpath to Forest Drive shown on original s38 plan(see Fylde s38 folders) [kjm 21/01/2005]

Maplewood Close from Frenchwood Avenue in a north easterly direction adopted 19/04/1982 for 65.1 mtrs. also footway leading from Maplewood Close to Forest Drive.
Excluding fence on south side of footpath

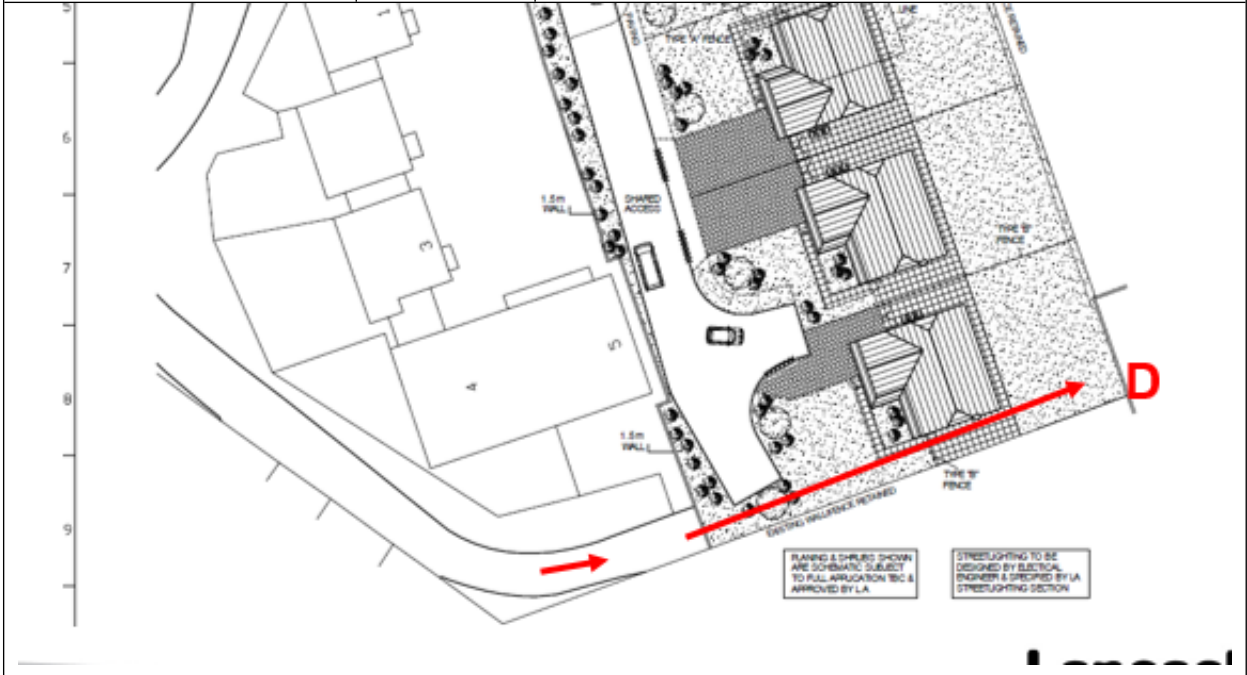
Observations		<p>The highway adoption plan available to view on the LCC internal digital mapping system (MapZone) shows Maplewood Close coloured blue to indicate that it is an adopted highway and also shows a route extending from the end of Maplewood Close (point A on the Committee plan) along the route under investigation to point B and continuing to Forest Drive as a route coloured blue (i.e. an adopted footpath).</p> <p>The Road Classification layer on MapZone does not show the footway from the end of Maplewood Close through to Forest Drive recorded as an adopted highway but an accompanying note refers to the adoption of Maplewood Close in 1982 and also refers to footway from Maplewood Close to Forest Drive.</p>
Investigating Officer's Comments		<p>The route under investigation between point A and point B appears to form part of a footway adopted in 1982. The rest of the route under investigation (from point B through to point I) is not recorded as a publicly maintained highway although this does not mean that it is not highway.</p>
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.</p>

		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).
Observations		There are no Highways Act 1980 Section 31(6) deposits lodged with the County Council for the area of land over which the route under investigation runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.
Google Street View	2009	Photographs captured on Google Street View taken June 2009.





Observations		The photographs show that access onto the route under investigation was open and available at point A and point I.
Investigating Officer's Comments		Access was available at point A and point I in 2009.
Planning Application	2014	Outline application to Fylde Borough Council for the erection of 5 Dwelling houses on the site of the Hole in One, Forest Drive, Lytham



Observations		<p>The application makes no reference to the existence of the route under investigation and the planned development would block off access to the route partway between point B and point C through to point D with no alternative access being provided.</p> <p>Outline planning permission was granted by Fylde Borough Council on 11 September 2015 without reference to the route under investigation.</p>
Investigating Officer's Comments		<p>The existence of the route under investigation was not acknowledged by the developer.</p>

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

Landownership

The following landowners are affected by this application:

1. John George Hardy, Flat 5, Hall Park Centre, Forest Drive, Lytham St. Annes FY8 4QF
2. Hall Park Properties (UK) Limited, 63 Hall Park Drive, Lytham St. Annes FY8 4QZ / Hall Park Properties (UK) Limited, Black Bull House, 353-355 Station Road, Bamber Bridge, Preston, Lancashire, PR5 6EE
3. Fylde Borough Council, Town Hall, St Annes Road West, Lytham St Annes, Lancashire, FY8 1LW

Summary

None of the map or documentary evidence examined was sufficient (even if considered collectively) to conclude that a public right of way existed with the exception of the section between point A and point B which appears to form part of an adopted footway.

The evidence examined appears to show that the route under investigation did not come into existence until the area was developed and Maplewood Close and South Park were constructed. The Ordnance Survey 1:10 000 map surveyed 1967-70 and published 1972 shows that the roads and houses were being constructed at that time suggesting that the route under investigation only came into being at some point after that.

The adoption records for Maplewood Close and footway through to Forest Drive are dated 1982 suggesting that access was available to the route from about that date.

None of the aerial photographs post-dating development clearly show the full length of the route under investigation as being available to use due to the fact that it passes through an area of woodland.

The recent site inspection carried out as part of this investigation confirmed that the full length of the route was available to use in 2015.

Head of Service – Legal and Democratic Services Observations

The applicant has provided the following information about the route:

" In approx 2000 Fylde Borough Council put a tarmac path through the grass part of the south park play area and a bark path through the wooded part, at my request. This was done to facilitate the use of this route through to keep residents and also parents taking their children to and from Lytham Hall Park School. This route has been used for over 30 years by both residents and by parents taking their children to and from Lytham Hall Park School. When Lancashire County Council recently granted planning permission for the school to be extended, one of the conditions was that the School Travel Plan should include targets and measures to reduce car journeys and promote pedestrian road safety and encourage pupils to use sustainable forms of transport. Planning Policy Guidance note 13 recognises that walking is the most important mode of travel at the local level and has the greatest potential to replace car trips for distances up to 2km. As a consequence the school has actively encouraged parents to walk to school as much as possible. This particular route is the safest route possible as it avoids Forest Drive and most of South Park, which are very busy roads at the start and end of the school day. If this route was not available any other route will be longer and less safe than this one and parents will be discouraged from walking with their children to and from school. Lancashire County Council have always encouraged safe route to schools and I have spoken to Glenn Robinson, Senior Engineer, Developer Support to LCC who is happy to support this application."

In support of the application the applicant has submitted 45 user evidence forms, the information provided in these forms is set out below.

The application route has been used on foot by the years for the following years:

1975-2015(1)	1977-2014(1)	1980-2015(1)	1983-2014/15(1)
1985-2015(2)	1984-2015(2)	1986-2015(2)	1990-2014(1)
1996-2014(1)	1999-2007(1)	2001-2015(1)	2002-2015(2)
2003-2015(1)	2004-2015(2)	2005-2015(1)	2007-2014(1)
2007-2015(2)	2008-2015(1)	2009-2015(2)	2010-2015(1)
2011-2015(6)	2012-2015(8)	2013-2015(2)	

1 user used the route between the years of 1982-1989 & 2013-2015 and 1 user did not specify what years they have used the route.

None of the users have ever used the route on horseback or leading a horse, 6 users have used the route on bicycle between the following years:

2002-2015(1)	2007-2014(1)	2008-2015(1)	2011-2015(1)
2012-2015(2)			

None of the users have ever used the route on a motorised vehicle or by other means.

5 of the users who used the route had an interval where they did not use the route:

Years used the route	Interval	Reason for interval
1983-2014/15 (on foot)	1990-2013	Safe access to the primary school was not required
1984-2015 (on foot)	1988-1993	Lived in Freckleton
2002-2015 (on foot & bicycle)	October 2014-May 2015	waste building material had been dumped at the exit point of the children's park which completely blocked access to the pathway behind the hole in one
2004-2015 (on foot)	Not specified	When route was fence off around the hole in one and occasional ill health
2012-2015 (on foot)	2015	When fence blocked it off

All 45 users have seen others using the route on foot, 1 user has seen others using the route on horseback or leading a horse, 25 of the users have seen others using the route on a bicycle or horse-drawn vehicle., 1 user has seen others using the route on a motorised vehicle and all the users have not seen anyone using the route by way of other means.

43 users agree that others were using the same route as them, 1 user did not provide a response to this question and 1 user states "no some people were heading for cars parked in the area".

Below sets out how often the users used the route:

on foot – daily (18) on foot – weekly (14) on foot – weekends (a)
on foot – monthly (3) on foot & bicycle – daily (1)
on foot - daily & bicycle - weekly (1) on foot & bicycle - weekly (2)
on foot - daily & bicycle – monthly (1) on foot & bicycle – monthly (1)
on foot daily now & monthly prior to 2014 (1) on foot 6 times per year (1)
on foot depending on weather (1)

The main purposes for users using the route are for taking children / grand children to and from school / nursery, as a short cut to the church, dog walking, pleasure, access Witch Wood, visit friends / family, access Lytham Hall, visit shops / hair dresser / dentist, taking children to the play area and walking through to Lytham Town Centre.

And the main reasons for using the route are to visit places on the route or to use the route as part of a longer journey.

40 users agree that the route they use has always followed the same line, 1 user did not provide a response to this question and 4 other users provided the following details:

"occasionally I have walked through the hole in one car park to forest drive",

"sometimes we cut across the car park if it was quiet", "we would walk diagonally across the car park sometimes" and "not the same when the hole in one ceased trading".

9 users state they were / an owner of the land affected by the route but no further details are provided and 4 users are family members of an owner who's land is affected by the route.

3 users have met a landowner / tenant / family member of the route and provided the following details:

"pub land lord talking about after school meals at the pub", "yes and said nothing" and " yes you can't come through here it's my granddads land".

When asked if the users have ever been given any permission to use the route, the following responses were received:

"yes part of the route, Fylde Borough Council who own part of the route, the South Park Play area from 2000" and "no but understood that when the houses were built in 1977 rights of way over service road were granted", the other users either stated 'no; to this question or did not provide a response.

The following responses were received when asked if any of the users have ever been turned back from using the route:

"yes said you had no right to be on the route on 24th Feb 2015 when exit was blocked by rubbish and some weeks before that when it was blocked by steel fencing", " yes the right of way has been blocked", "yes recently with the blocking of the route not verbally", "no, the route had been blocked this year (not sure of exact date but for a few weeks)" and "yes approx 8/1/2015 workmen in the car park were putting up metal fencing and advised me that would be unable to access the pathway", 1 user also stated "yes" to this question but provided no further details, the other users either responded with "no" or did not provide an answer to this question.

1 user saw a notice on the steel fencing around hole in one, the sign said car park closed, keep out danger building work (or similar) Feb-April 2015.

When asked if there are any stiles / gates / fences along the route, 33 users responded with "no" or did not provide a response to this question, the other users mention a fence that was erected in 2015 some user's state this was removed soon after and some state it is still there now, there is also mention of a pedestrian gate into Maplewood Close.

Numerous users refer to obstructions along the route in 2014-2015 (various dates provided) including a pile of wood with nails, builders waste, metal fence and other rubbish, some state the obstruction is no longer there but it did prevent access at the time and other users state it is still there now and still prevents access.

At the end of completing a User Evidence Form users are asked to provide any further information they have, this information is set out below:

- It alleviates having to walk young child on a very busy main road
- I understand that the area needed to be fenced off for safety reasons whilst any building / maintenance work was done on the hole in one pub but I do not

understand why a large amount of wood etc was piled up at the entrance to the path after the fencing was removed. I am unsure of the exact dates when this wood blocked the entrance. I do have a photo of the metal fencing on my phone dated 10/1/15 and I am currently using the pathway in June 2015 so it is between that time.

- The route provides a safe means by which parents and children can walk to school away from the main road and heavy traffic.
- This route enables my children and I to cycle to school on quieter and therefore safer roads avoiding busy South Park and Forest Drive. It enables us to park a distance away from school and busy roads and walk to school. It enables access to the playground before and after school during the journey. It is relatively safe, relaxing and healthy route. I have used this route alone, with children and friends.
- The route was a short cut to my destination via an exercise area for the dog.
- Long term well used route by residents and school children to play park and Lytham hall and a vital safe link to other parts of the estate.
- My 3 children used this route to and from church road to catch their school buses every day during school term time. My wife and I use this route 2 or 3 times per week to go shopping in Lytham. The advantage of using this route is that it limits exposure to road traffic.
- The route is heavily used by children and their families attending Lytham hall park primary school. My daughter, son and I always used this route to go to and from school as it was the quickest route and also the safest as it allowed us to walk off-road rather than use south park and forest drive which both are very busy with moving and stationary traffic at school drop off and pick up times.
- This is a route which many families use to their children to school. Bearing in mind the difficulties with parking at the school, I cannot see any reason why this access should be blocked off.
- It has proven to be very useful to my children to encourage a shorter safer route to school so they can walk without obstruction or traffic. It created a good sense of community with passers-by.
- Route has been blocked at the path between the hole in one car park and the south park play area. Walking with children from school to church and return is now much more difficult and dangerous, now walking along and crossing the busy roads instead of along a quiet footpath.
- The path through the wood has been laid with wood chippings (presumably by the council) as an aid to pedestrians.
- The school has always used this route to walk all of the children to and from St Cuthbert's church for all of their services. Also it has been used by many parents walking to and from school.
- As far as I am aware and since I moved into South Park Forest Drive area in 1976, the use of this route has until recently been unobstructed and generally used by all manner of persons for all purposes but mainly for school access and playground access.
- This path is useful for mums picking up children from primary school and maybe collecting a younger child from nursery keeping them away from traffic on South Park / forest drive which is very busy at peak times.
- The route behind the pub from Maplewood Close to children's play area was heavily used at all times of the day by people out and about especially dog walkers and at school times very heavily used by parents and children.

- Due to the increased congestion and parking restrictions round the school, we are being encouraged to walk to school. Closing this footpath is yet another restriction we have to work around.

Responses from others

Mr G Hardy (part landowner) has used the route on foot and by motorised vehicle between the years of 1985-2015 to access his flat and to access his work, he states that a pile of rubbish and wooden fencing blocking the entrance from the wood onto the access road on part of the access road owned by the "hole in one" for a period of 3 months in March 2015.

Mr G Blow (part landowner) has contacted the former owners Thwaites for their records of how often the fence was repaired or replaced when taken down by users. Mr Blow also mentions that Fylde Borough Council have an obligation shown in the deeds to maintain all party fencing between his land and theirs. And states in a recent application for 5 houses on the site to Fylde Borough Council, Lancashire County Council Highways objected to plot 1 (nearest Forest Drive) as it had no turning space therefore having to reverse onto Forest Drive and would not recommend approval therefore this had to be altered. And also states the deeds to this land states that this is a service road for delivery wagons and refuse wagons etc., this also means that there is no need for them to reverse onto a main road, by putting in a public footpath this would have to be the case as commercial vehicles will not be able to pull right round breaking highway rules as previously mentioned and putting Fylde Borough Council in breach of the covenants on the deeds and vulnerable to being sued.

Mr Blow states he has repaired the fence sometimes twice a day since his ownership and has asked Fylde Borough Council to fence this as per their deeds regarding maintaining etc., to no avail.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

- User evidence
- Aerial Photographs
- Google Street View

Against Making an Order(s)

- Adoption records regarding A to B of the Claimed Route – corroborated by section 40 Highways Act 1959 'adoption agreement dated 1977'.
- User evidence with permission/licence

Conclusion

The claim is that the route A-B-C-D-E-F-G-H-I is an existing public footpath and should be added to the Definitive Map and Statement of Public Rights of Way. Adoption records confirm that part of the route A to B is already adopted highway corroborated by a section 40 Highways Act 1959 agreement, dated 1977. A to B cannot be considered twice a public highway and therefore for this reason is not accepted. Therefore, the claimed route considered is B-C-D-E-F-G-H-I.

In respect of B-C-D-E-F-G-H-I it is advised as there is no express dedication that the Committee should consider, on balance, whether there is sufficient evidence from which to have its dedication inferred at common law from all the circumstances or for the criteria in section 31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years "as of right" use to have taken place ending with this use being called into question.

Considering initially the criteria for a deemed dedication under section 31 of the Highways Act, that use needs to be "as of right" and also sufficient for the 20 year period. User evidence indicates that builder waste and material and a fence erected near point E between October 2014 and May 2015 brought the route into question and therefore the period of use from which dedication can be deemed would be August 1994 - October 2014.

45 user forms submitted claim to have used on foot the claimed route "as of right" however, 9 users confirm they were or are an owner of the land affected by the route and that 3 users confirm they are family members of an owner. No further information has been provided from the users in this regard and therefore at this time the 13 user forms are excluded from assessment for reasons that use is with permission and not 'as of right'. The remainder 32 evidence forms will therefore be assessed only. It is also noted that in respect of use of the play park, the issue is whether there has been use of the claimed route B-C-D-E-F-G-H-I, rather than whether there has been use of the play park by the public.

All 32 user evidence forms indicate use of the claimed route B-C-D-E-F-G-H-I for 20 years and more suggesting good user evidence for the sufficient period, although some weight is lost in that some users are from the same address, use by the public at large of the claimed route is still satisfied despite this. Purpose of the route is to access local amenities such as shops, dentist and used as a short cut to and from the Lytham Hall Primary School, Nursery and Lytham town centre. Personal and recreational use are also stated common reasons.

There are three owners of the claimed route.

Part owner of the claimed route Mr G Hardy (from B to a point between C and D) confirms he used part of the route including on foot between the years 1985 – 2015, corroborating user evidence that that part was available during 2014 and 2015.

Part owner of the claimed route Mr G Blow (from a point between C and D to E) whilst there is reference to repairing a fence and blocking access late 2014/early 2015 without further evidence and against the 32 user evidence forms, use on balance is considered without interruption and that there is insufficient evidence that there was no intention during the 20 years period to dedicate.

Fylde Borough Council, owner of land crossed by the claimed route between E-F-G-H-I whilst having not made any comment on consultation, its actions of laying fresh bark in approximately 2012 could be viewed as encouraging to use the woodland part of the claimed route (E to F).

Considering also whether there are circumstances from which dedication could be inferred at common law, the adoption records for Maplewood Close and South Park dated 1982 confirms access was available to the claimed route. Ariel photographs 1988, 2000 and 2010 suggest the route could and indeed may have existed. Google street view 2009 and 2014 confirm the claimed route was accessible at both A and I.

It is suggested that the way this claimed route is recorded on documentary evidence is not itself sufficient circumstances from which dedication could be inferred, however, sufficient as of right use acquiesced in by the owners may also be circumstances from which dedication can be inferred. The use as evidenced corroborated by the documentary evidence outlined above would suggest that on balance there are sufficient circumstances to infer at common law that the owners in 1994 to 2014, in acquiescing in the use and taking no overt actions actually intended dedicating the claimed route as a footpath and it had become a footpath accepted by the public.

Taking all the evidence into account, the Committee on balance may consider that the provisions of section 31 Highways Act can be satisfied and there is also sufficient evidence on balance from which to infer dedication at common law of a footpath in this matter and that the claim be accepted.

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: 804-568		Megan Brindle , 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A