

Regulatory Committee

Meeting to be held on 6 April 2016

Electoral Division affected:
Chorley North and Chorley
Rural West

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Application to upgrade Euxton Footpaths 37, 38 and 39 (Culbeck Lane) to
Restricted Byway
File No. 804-574
(Annex 'A' refers)

Contact for further information:

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Executive Summary

Application to upgrade Euxton Footpaths 37, 38 and 39, otherwise known as Culbeck Lane, to Restricted Byway, in accordance with file no. 804-574.

Recommendation

1. That the application to upgrade Euxton Footpaths 37, 38 and 39, known as Culbeck Lane, to Restricted Byway, in accordance with file no. 804-574 be not accepted.

Background

An application to upgrade Euxton Footpaths 37, 38 and 39, known as Culbeck Lane, to byway open to all traffic was considered by the Public Rights of Way Sub-Committee on 15th November 1995 and rejected. A copy of the report submitted to Committee in 1995 is appended to this report as Appendix 1.

In 2015 a further application, under Schedule 14 of the Wildlife and Countryside Act 1981, but made by different applicants, was received to upgrade the same route to Restricted Byway as shown between points A-B-C-D-E-F on the Committee Plan. The application included additional documentary evidence which was not considered when the first application was made.

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 or downgrading a way shown on the Definitive Map and Statement will only be made if the evidence shows that:

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

An order for 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"

An order for modifying the particulars contained within the Definitive Statement as to the position, width, limitations or conditions will be made if the evidence shows that:

- The particulars contained in the Definitive Map and Statement require modification

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

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

Consultations

Chorley Borough Council has been consulted and no response has been received it is assumed they have no comment to make.

Euxton Parish Council has been consulted and to date 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 – 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	5356 1851	Open junction with Dawbers Lane
B	5363 1876	Culvert over Chapel Brook
C	5362 1883	Junction of Euxton Footpaths 35, 36, 37 and 38 at Culbeck House
D	5352 1904	Junction of Euxton Footpaths 38, 39 and 40
E	5356 1928	Unmarked point on Euxton Footpath 39 shown as boundary of landownership on Tithe Map and Finance Act Plan and location of historical gate.
F	5356 1946	Gated junction with Runshaw Lane

Description of Route under Investigation, Culbeck Lane, as Currently Observed

A site inspection was carried out in January 2016.

Culbeck Lane is currently recorded as a public footpath and is signposted as such at point A and point F. It is available for public use on foot throughout its entire length.

Culbeck Lane also provides the only vehicular access to Culbeck House – a working farm, and three residential properties although vehicular access at present appears to be predominantly from point A.

Culbeck Lane commences at a junction with Dawbers Lane (point A on the Committee plan), and extends in a generally north north easterly direction descending gently downhill along a bounded track. The track has a compacted stone surface, potholed in places, approximately 3-4 metres wide. It continues for a distance of approximately 260 metres from point A to cross Chapel Brook at point B.

At point B the route crosses the brook by means of a culvert and then continues rising more steeply uphill along a bounded stone track north north west to pass Culbeck House to the junction with Euxton Footpaths 35 and 36 at point C. The surface of the route is compact and in good condition although there are some potholes.

From point C the route continues as a bounded track passing the farm buildings situated immediately to the east side and two residential properties (1 and 2

Woodlands). Adjacent to the farm buildings and erected across the route is a field gate (in an open position on the day that the route was inspected).

Beyond the houses the route continues bounded by hedges on either side with gates providing access from the route into adjacent fields. The surface of the route is firm but more potholed and muddy.

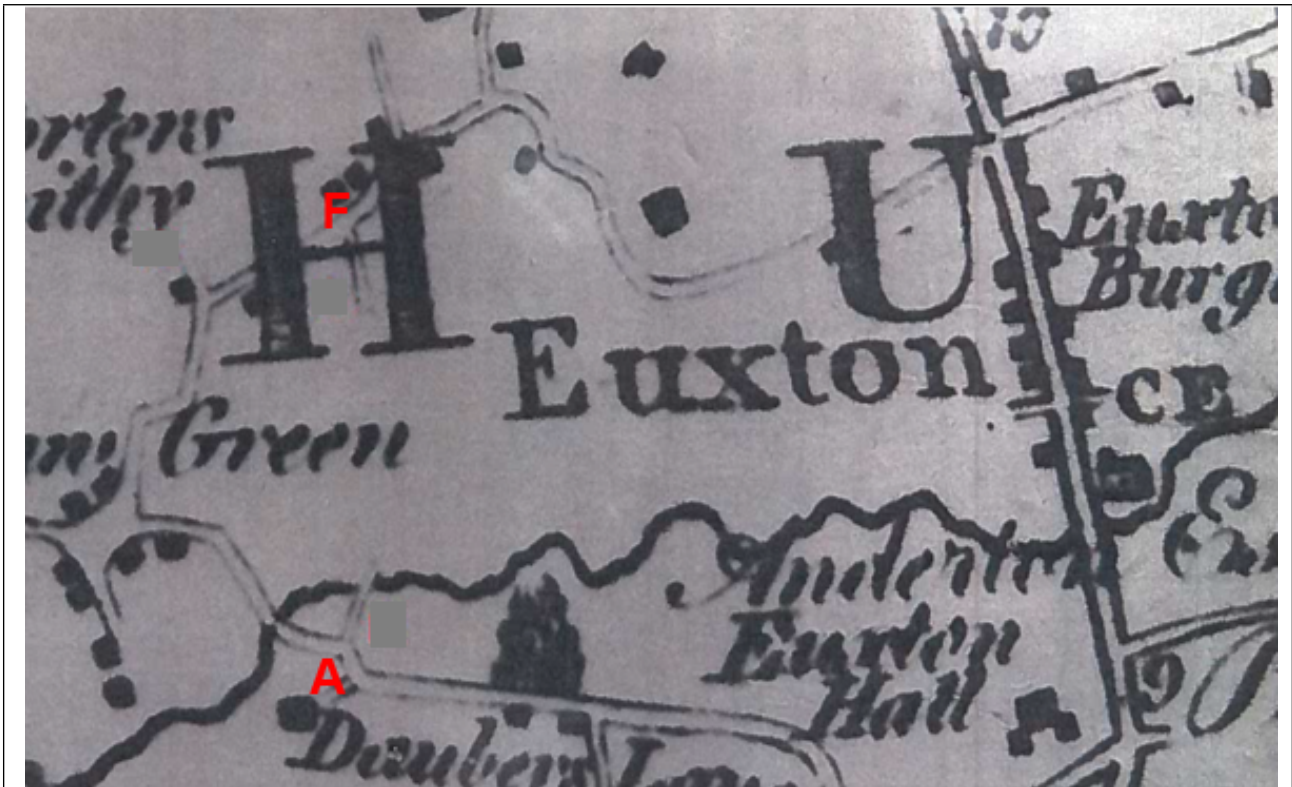
Culbeck Lane continues in a more north westerly direction to point D where it is joined from the west by Euxton Footpath 40. It then turns to continue in a more northerly direction, still bounded from the adjacent fields to pass a more recently constructed bungalow (Lothiorien) and small holding (formerly a nursery) to the east.

Beyond the bungalow there is a further gate across the route and beyond this point there appears to be little use being made of it by vehicles. The surface consists of compacted stone and earth becoming a firm grass surfaced track beyond point E. The route continues in a northerly direction, still bounded on either side by hedges to point F where it exits onto Runshaw Lane. Access onto the lane is gated with a metal field gate secured shut and a pedestrian kissing gate is situated alongside it.

The total length of the route is 1 kilometre long.

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		Culbeck Lane is not shown on Yates' Map, although a junction is shown with Runshaw Lane at the northern end and with 'Daubers' Lane at the southern. The water course (Chapel Brook) is shown but no buildings are shown in the proximity of Culbeck House.
Investigating Officer's Comments		The fact that the two ends of Culbeck Lane are shown suggest that the route – or part of it – may have existed in 1786. It is not known why the rest of the route was not shown on the map. It may have been that Yates did not consider the route to be a public highway or that it was unenclosed or that the hedges/fences/walls were in disrepair or possibly that this section was not surveyed, as surveys were expensive.
Cary's Map of Lancashire	1789	John Cary was described as 'the most representative, able and prolific of English cartographers'. He was as busy a publisher as he was a cartographer and engraver, and until his death in 1835 published a constant flow of atlases, maps, road maps, canal plans, globes and geological surveys. He set new high standards of engraving and map design and in 1787 he published a 'New and Correct English Atlas' containing 46 maps which was re-issued ten times

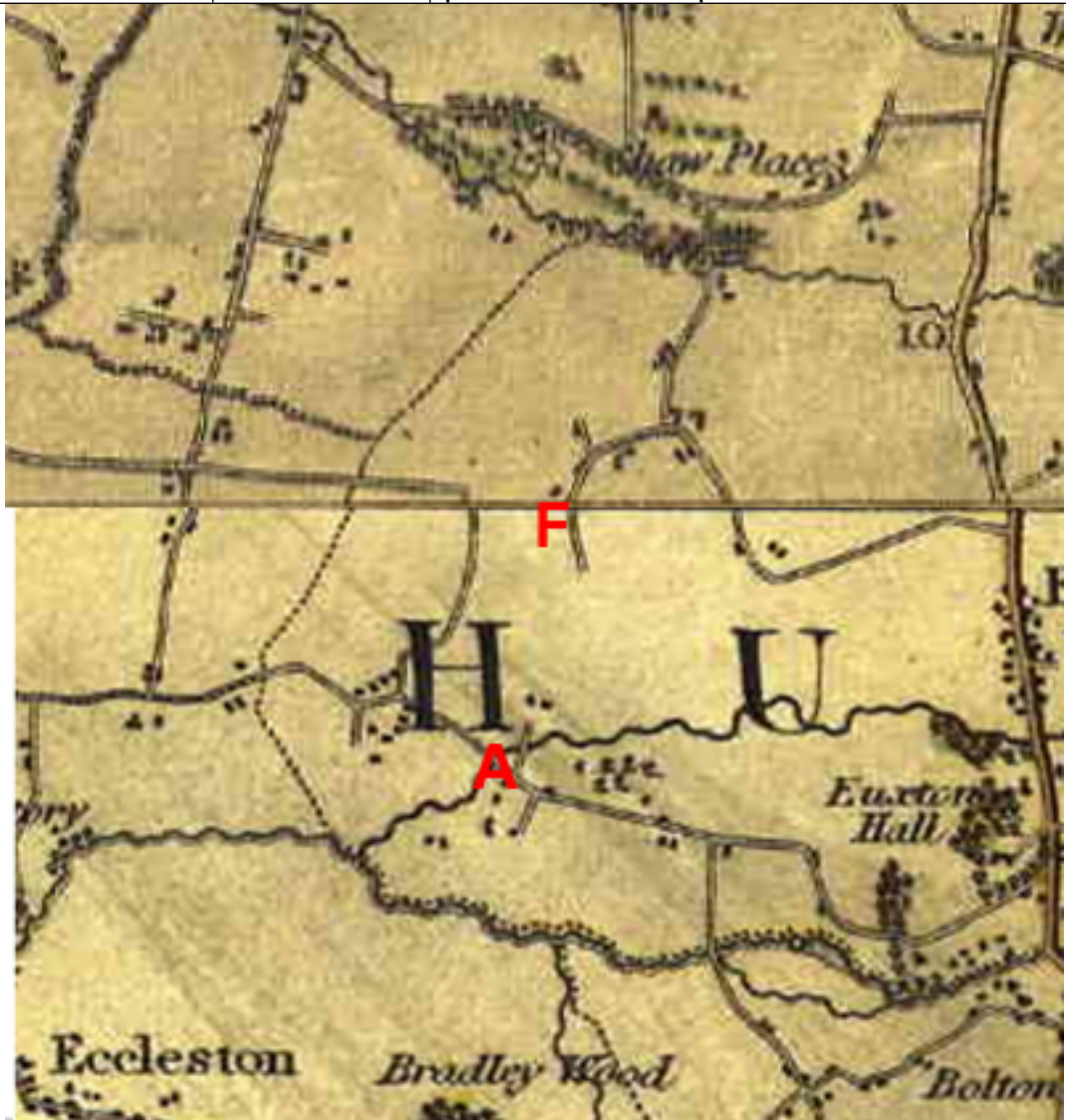
	<p>until 1831. In 1794 the Postmaster General commissioned Cary to survey the main roads of Great Britain and his information on roads may be viewed with above average confidence.</p>
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<p>Observations</p>	<p>This small scale plan clearly shows the modern day routes of the A49 and A59 which are both shaded and run roughly parallel to one another from south to north on the map extract. Within the area surrounded by a red rectangle on the map insert there are two roads marked which are thought to be the routes of Leyland Lane and Runshaw Lane. The route under investigation is not shown.</p>
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<p>Investigating Officer's Comments</p>	<p>Culbeck Lane may not have existed in 1789 or if it did exist it was not considered to be a public vehicular highway or a route of sufficient significance to be included on the map.</p>
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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.
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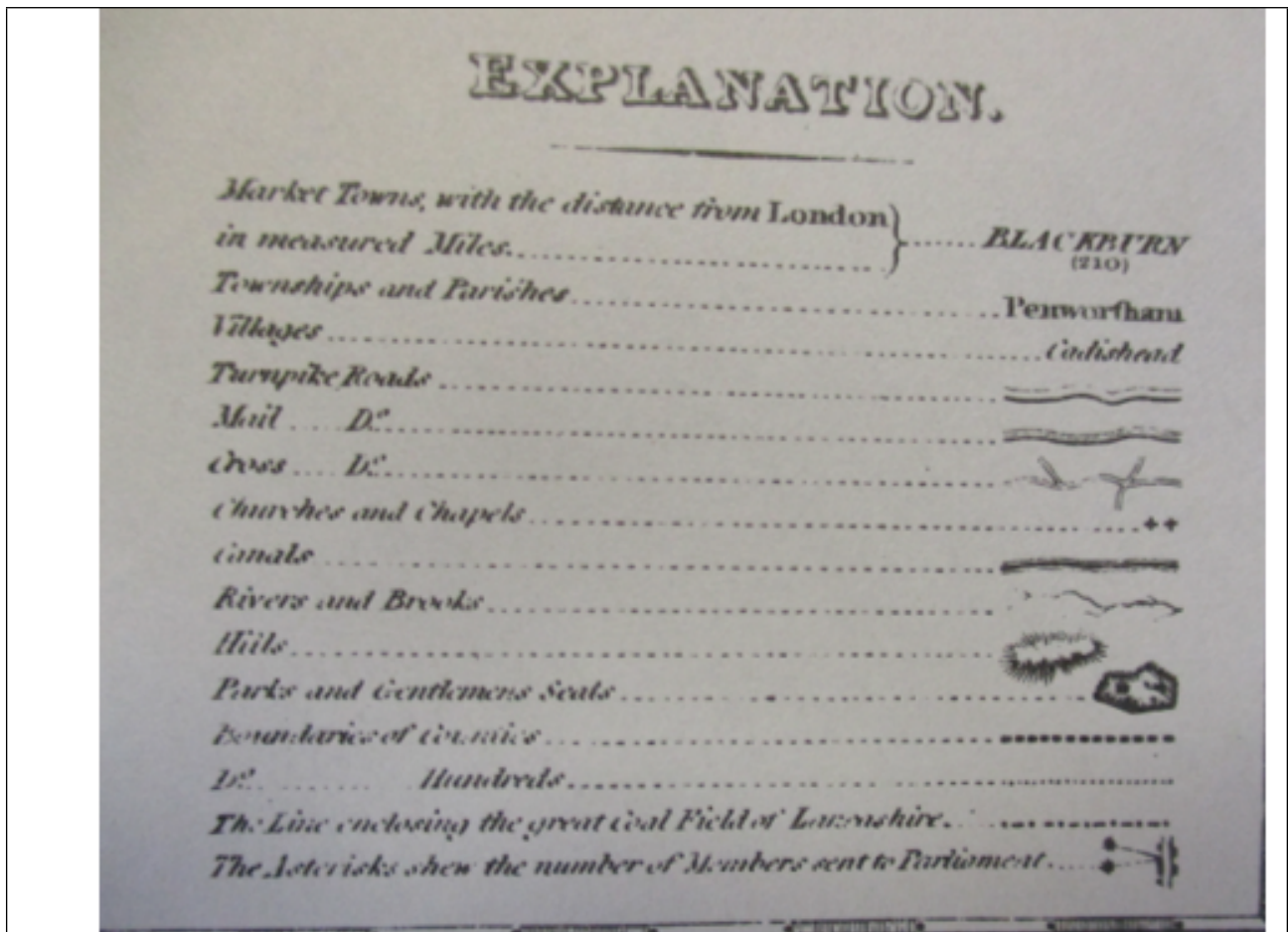


Observations		Greenwood's map does not show a through route, but, like Yates' Map, it does show a junction with both Runshaw Lane and Dawbers Lane. The two ends of the route under investigation are shown extending further than they did on Yates' Map and from point A the route is shown crossing Chapel Brook at point B and then continuing towards some buildings. There is no connection shown along Runshaw Lane from point F west to the junction of Runshaw Lane and Flag Lane which would have run approximately along the sheet boundary.
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Investigating Officer's		At least part of Culbeck Lane appears to
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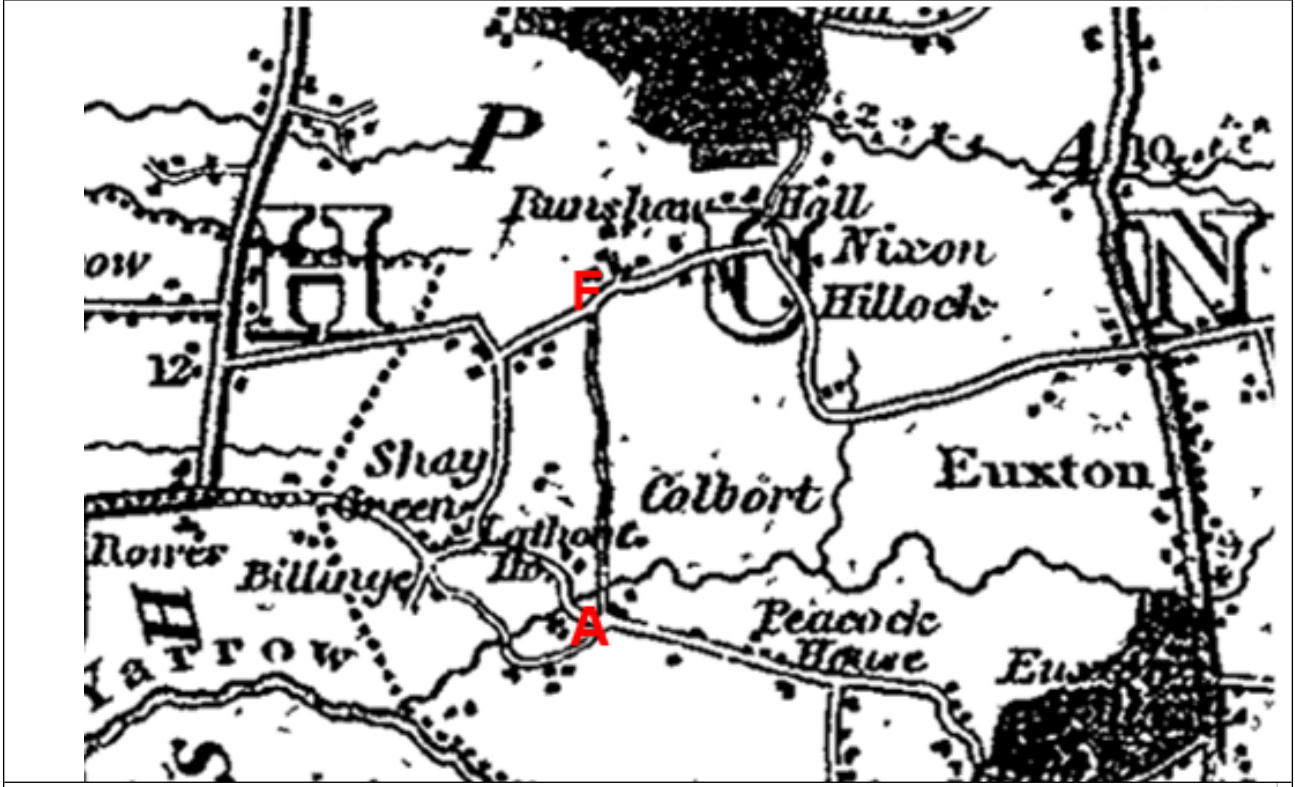
Comments		have existed in 1818 but it was not shown as a through route for reasons that we do not know. Its omission does not necessarily mean that it did not exist since there is a similar gap in Runshaw Lane which did exist at the time and was shown on other maps both earlier and later.
Baines' Map of Lancashire	1824	Small scale commercial map produced primarily for the travelling public.





Observations		Baines' Map of Lancashire is more difficult to interpret as the road network is not as easy to match up with the alignment of the road network as it is known to have existed from at least the 1840s (first edition Ordnance Survey). Shaw Green is shown with a road passing through it which is thought to represent the southern end of Runshaw Lane from its junction with Dawbers Lane. East of Shaw Green is another route, denoted as a cross road, which appears to extend from Dawbers Lane to the A49 and it is possible that part of this route was intended to show Culbeck Lane.
Investigating Officer's Comments		Culbeck Lane may have existed in 1824 and it is possible, but by no means certain, that it may have been shown as a cross road by Baines.
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.



THIS WAS HIS KEY TO HIS MAPS

<i>Churches and Chapels</i>	
<i>Water Mills</i>	
<i>Wind Mills</i>	
<i>Turnpike Roads</i>	
<i>Cross Roads</i>	
<i>Rivers and Brooks</i>	
<i>Canals</i>	

Observations

Hennet's Map shows the whole length of the route, joining Dawbers Lane to Runshaw Lane although the lines used to show the route appear to be drawn closer together than those used to depict some other routes now known to be recorded as public vehicular highways. The Key to Hennet's Map however, shows only two types of highway – 'Turnpike Roads' and 'Cross roads' so despite the difference in style it does appear that Hennet showed

		the full length of the route as a 'cross road'.
Investigating Officer's Comments		Culbeck Lane 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. Culbeck Lane is shown 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 Culbeck Lane was, by the 1830s, considered to be a public bridleway or carriageway. This small scale map only appeared to show the more significant routes and did not show other routes currently recorded as public footpaths that join Culbeck Lane. This suggests that Culbeck Lane was of a substantial nature and would have been wide enough for people on horseback or with horse drawn vehicles.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		There are no canals or railways crossing in the area investigated.
Investigating Officer's Comments		No inference can be drawn.
Estates in Lancashire Map	1842	Map submitted by the applicant at a scale of 1 inch - Mile.



<p>Observations</p>		<p>This map is deposited in the County Records Office (County Record Office) and is labelled to show Estates in Lancashire, Cheshire, Derbyshire and Yorkshire. The Ordnance Survey map used as the base for the information is the 1st edition OS LXXXIX.N.W (Bolton) sheet published in 1842 (no survey date was evident on the sheet).</p> <p>Culbeck Lane is shown as a through route on the Ordnance Survey base map but is not within an area coloured green (to depict the existence of an estate).</p> <p>Culbeck Brook is shown to pass under Culbeck Lane suggesting the existence of a bridge or culvert at this point. In contrast, Culbeck Brook is shown to flow across Dawbers Lane north east of point A.</p>
<p>Investigating Officer's Comments</p>		<p>The significance of the map is not the information regarding the existence of estates across Lancashire but the fact that it is the first edition Ordnance Survey 1 inch map of the area. It is the earliest OS map available to view and at such a small scale only substantial routes were shown. Culbeck Lane is shown to exist as a bounded route connecting to two vehicular highways and not just providing access to the unnamed buildings midway along it (most likely to be Culbeck House). Its inclusion on this small scale map</p>

		<p>suggests that it was a significant route in the 1830s which would have been wide enough to be used by people on horseback or with horse drawn vehicles at that time. The fact that Culbeck Brook was shown to be culverted as opposed to the way that the brook is shown crossing Dawbers Lane may also be significant regarding vehicular use in the 1800s as the point at which the brook crosses Dawbers Lane is in a dip. The brook is now culverted and passes under the road at this point but if, in the 1800s, the brook ran across the lane at this point it is possible that it would have been quite wet and boggy at certain times of the year and that Culbeck Lane and/or the route of Footpath 14 Euxton/Dean Hall Lane would have provided better access for horse drawn vehicles at that time.</p>
<p>Cassini Map, Series 108 - Liverpool</p>	<p>1840-43</p>	<p>Reproduction extract of Map sheet 108 (Liverpool) originally published 1840-43. The Cassini publishing company produced maps based on Ordnance Survey one inch maps. These early maps have more recently been enlarged and reproduced to match the modern day 1:50, 000 OS Landranger Maps and are readily available to purchase.</p>



<p>Observations</p>		<p>This map was based on the 1 inch</p>
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		<p>Ordnance Survey map detailed above. It clearly shows Culbeck Lane as a bounded through route with Culbeck Brook shown to pass under the lane.</p>
<p>Investigating Officer's Comments</p>		<p>The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The reason that these maps were published by independent companies in the late 1800s would probably have been to assist the increasing numbers of travelling public and the fact that the route is shown on the map is suggestive of at least public bridleway rights and possibly vehicular rights.</p>
<p>Cassini map extracts submitted by the Applicant</p>		<p>Two map extracts submitted by the applicant taken from the Cassini map website.</p>

Revised new series - 1896

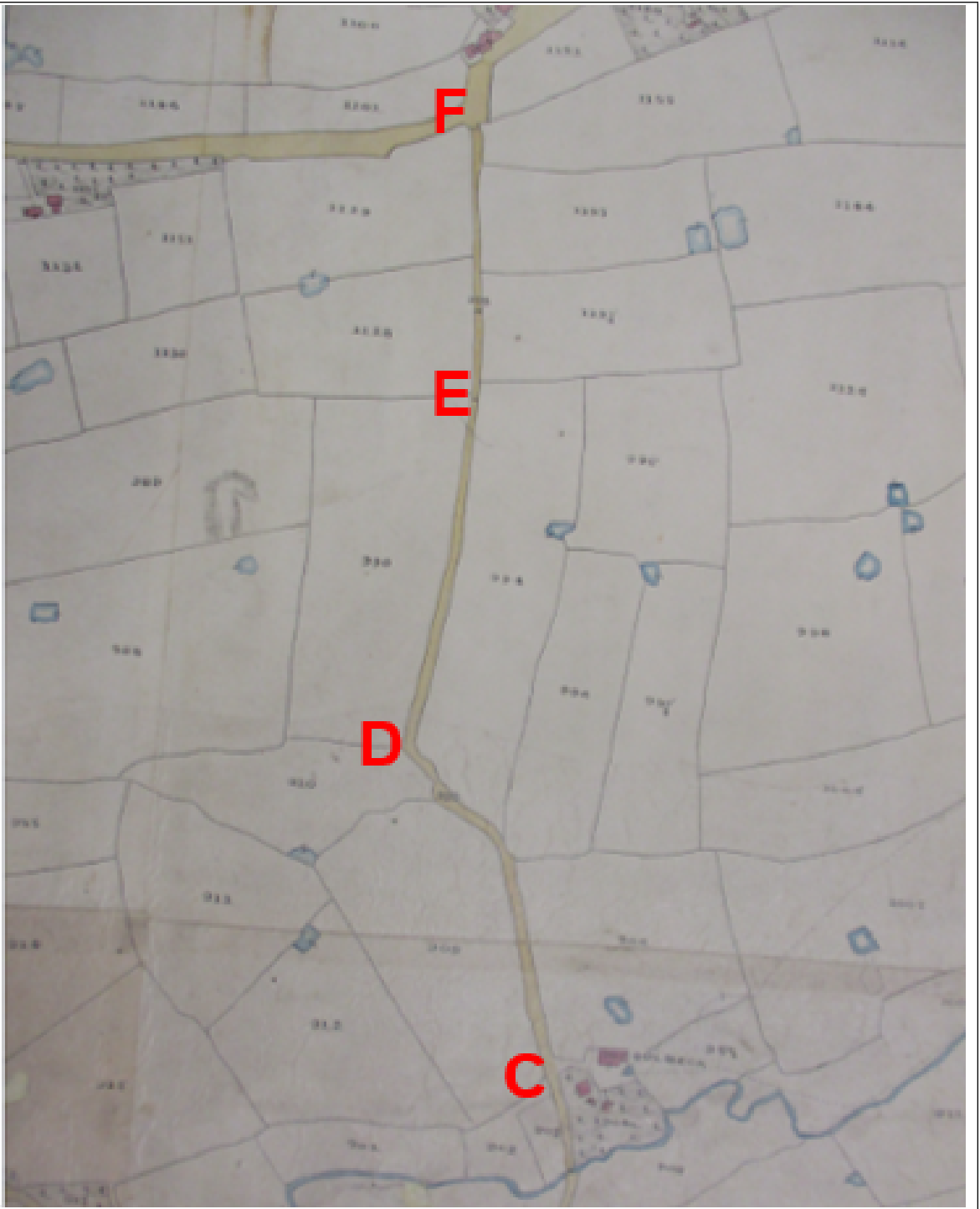


Registration District Map - 1871



<p>Observations</p>		<p>Two map extracts were submitted by the applicant. Both maps show Culbeck Lane as a bounded route wide enough to be used by horses and vehicular traffic at that time.</p> <p>From the start of the route at point A the applicant drew attention to the fact that on both maps there appears to be a line across Dawbers Lane immediately west of the junction with Culbeck Lane and that there is also a line across Runshaw Lane at its junction with Dawbers Lane at Shaw Green. On both map extracts it appears that Culbeck Lane, and the route now recorded as Public Footpath 14 Euxton/Dean Hall Lane appeared to be the more significant through routes with Dawbers Lane shown as possibly being gated. It was also noted that Culbeck Brook was shown to flow across Dawbers Lane whereas it is shown to flow under Culbeck Lane and Dean Hall Lane.</p>
<p>Investigating Officer's Comments</p>		<p>No other maps of this era have been inspected which show Dawbers Lane in this way immediately west of point A although it is shown crossed by a line at its junction with Runshaw Lane at Shaw Green on the 1st edition 1 inch OS from which these maps are believed to have derived.</p>

		<p>Culbeck Lane is shown as a significant ungated route on two small scale maps dating from the late 1800s which is suggestive of at least bridleway and possibly public vehicular rights.</p>
<p>Tithe Map and Tithe Award or Apportionment</p>	<p>1847</p>	<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> <p>Three sets of tithe records would have been compiled for each tithe district; one for the tithe commissioners, now held by The National archives; a copy for the diocese, and a copy for the parish/district. In about 16% of cases the copy for the tithe commissioners is a first class map – sealed and signed and considered to be a legal and accurate record of all matters shown and all other maps are called 'Second class maps'.</p>





Observations

The Tithe Map of Euxton was surveyed by Thomas Addison Junior and dated 1847. The copy held by the County Record Office has been signed by the Commissioners as the map or plan referred to in the apportionments of the rent charges in lieu of tithes in the township of Euxton but was not sealed so is likely to be considered a second class map.

The Tithe Map shows the full length of Culbeck Lane coloured, consistent with the sienna colouring used to show the two public vehicular roads it connects to (Runshaw Lane and Dawbers Lane).

Culbeck Lane is shown with a line across it at point A and is numbered as Parcel 993 through to a further line which is shown across the route just south of point E. Beyond point E the route is numbered as Parcel 993a through to point F where a

		<p>further line is shown across the route.</p> <p>The Tithe Award lists the owner of Parcel 993 as being Mrs Clayton and the occupier as William Sumner. The plot is described as 'road' with no state of cultivation listed and no tithe payable. Plot 993a is listed as being in the ownership of John Parkinson and occupied by Peter Halliwell. It is described as a road with no state of cultivation listed and no tithe payable.</p> <p>Dawbers Lane (Parcel 1186) and Runshaw Lane (Parcel 1185) are listed towards the end of the Tithe Award in and are grouped together with all other roads which are specifically referred to as being either a Turnpike Road or public road. One Turnpike Road is listed (parcel 1187) which is the route of the road now known as the A49 through the parish. A further 11 parcel numbers are listed all of which are recorded as public highways for which there are no landowners or occupiers listed and for which there are no tithes payable. All eleven listed public roads correspond to routes that are still recorded as public vehicular highways within the parish.</p> <p>An examination of all the parcel numbered entries in the Tithe Award showed at least 34 entries - including the two entries for Culbeck Lane - for numbered parcels that were described within the Award as 'road' or 'lane' but which were all listed as being owned and occupied. The majority of these routes were shaded in the same manner as the routes listed specifically as being public roads and on the majority of the routes tithes were not payable. When a more detailed search was made to identify how these routes are now recorded no clear, consistent picture emerged. Some of the routes recorded on the Tithe Map as roads and lanes are now recorded as public footpaths, others had no recorded public status. None were recorded as public bridleways and a number no longer existed due to the development of the land over which they originally ran. One route – described as a road (hereditament 206a) now formed part of the A581 leading into</p>
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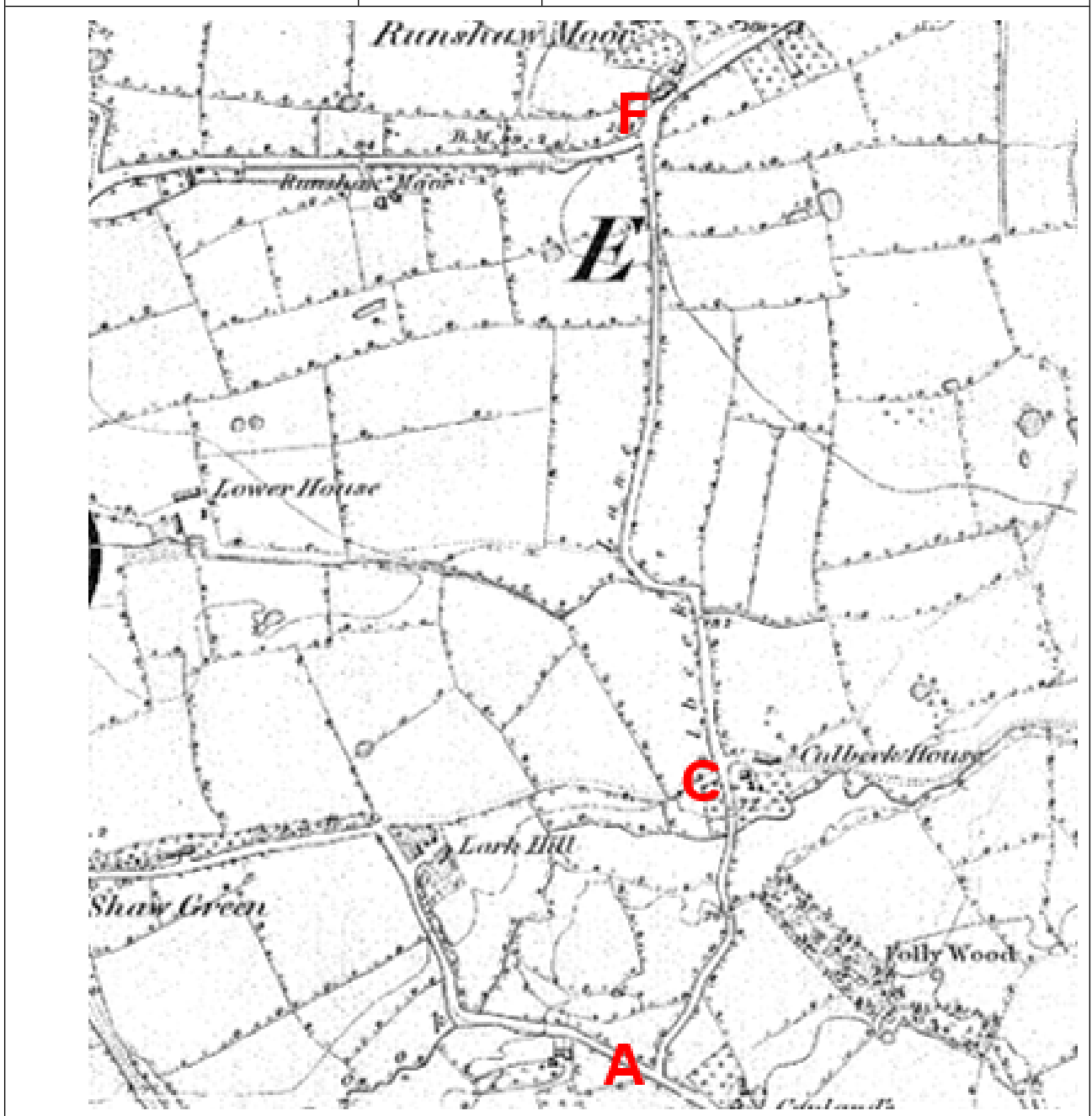
		<p>Chorley and another route described as a road (hereditament 29) now coincided with part of a newly constructed public road through Buckshaw village but these were the only examples identified of routes described as 'road' or 'lane' within the Tithe Award that now carried recorded public vehicular rights with the exception of those routes listed specifically in the Tithe Award as public roads or turnpike roads.</p>
<p>Investigating Officer's Comments</p>		<p>It appears that a substantial gated route existed that would probably be wide enough for vehicles in the 1840s. However, on balance, the information provided by the Tithe Map and Award does not support the view that public vehicular rights were acknowledged to have existed along the route in 1847.</p> <p>There is no common approach or consistency for the listing of public and private roads in Tithe Awards which is not surprising as this was not the primary function of the award.</p> <p>Culbeck Lane is coloured in the same way as the major highways through the township and it is known that guidelines prescribed by Lieutenant Dawson to the Tithe Commissioners indicated that land surveyors should use sienna colouring for public roads and bridleways. However, the guidance was not compulsory and the way that all routes are shown on each individual Tithe Map needs to be considered before concluding that such guidance was adhered to. On this particular Tithe Map it appears that routes detailed in the Tithe Award as public roads and also the majority of other routes described as roads or lanes within the Award were shaded in the same manner so it is not considered possible to infer public vehicular rights from the fact that the route is shaded with a sienna colouring.</p> <p>A clearly defined list of routes considered to be public roads is grouped together and provided in the Tithe Award. Each route is numbered separately but no landowners or occupiers are listed. All the routes listed correspond to routes that are still recorded as public vehicular highways today.</p>

		<p>Culbeck Lane is given two separate numbers – 993 (from point A-E) and 993a (point E-F) and appears to be identifiable by the fact that the route was gated at point A, close to point E and point F. The existence of gates across a route does not necessarily mean that it was not available for public use as gates may have been required for stock control purposes.</p> <p>Both parcels are described as 'roads'. No tithes are payable but this does not necessarily mean that it was because the road was public and in this case the route is neither described as being 'public' or included in the separate list of public roads. Neither parcel is listed as being under any state of cultivation which is consistent with it being a hard surfaced track which was not cultivated or grazed (and therefore not titheable). It is conceivable that if the track had been grazed (i.e. classed as pasture) tithes could have been payable – even though public rights existed - and the gates erected with regards to stock control.</p> <p>In this particular case it is important to consider how the surveyor and Tithe Commissioners considered the road network as a whole. The main routes now recorded as public vehicular highways (with the exception of more recent developments – including housing estates and Buckshaw village) all seem to have been identified as either the Turnpike Road or 'public highways' and listed in the Award as being 'public' and importantly are not listed as being owned and occupied.</p>
<p>Inclosure Act Award and Maps</p>		<p>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.</p>
<p>Observations</p>		<p>There is no Inclosure Award for the area over which the route under investigation is found.</p>
<p>Investigating Officer's Comments</p>		<p>No inference can be drawn.</p>

**6 Inch Ordnance Survey
(OS) Map**

1849

The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-47 and published in 1849.¹



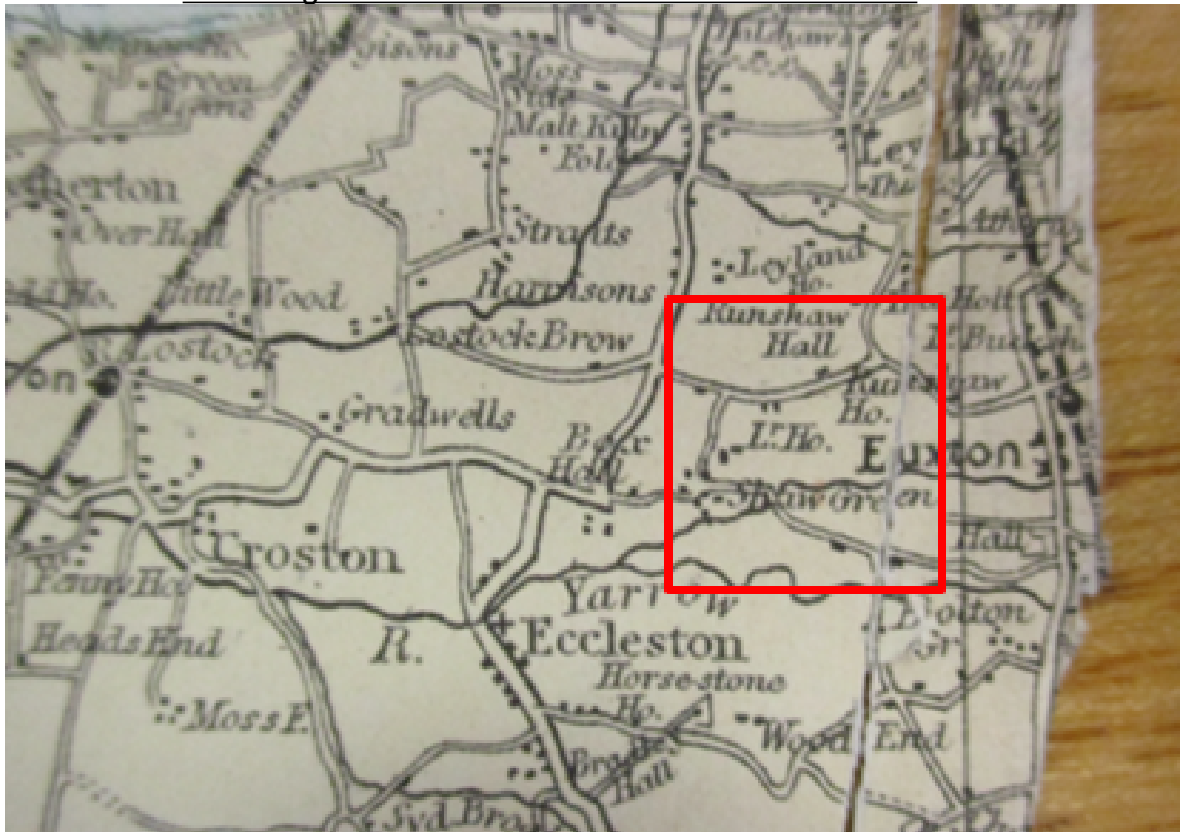
¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in 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.



<p>Observations</p>		<p>The full length of is shown on the Ordnance Survey map. Access onto the route is shown as being open and unrestricted at either end and there are no lines shown across the route at any point which may indicate the existence of gates. The route is shown as a bounded route throughout the full length and provides the main access to Culbeck House which is named on the map and is situated partway along it. Connecting footpaths are shown at point C and point D. The route is named as Culbeck Lane on the map.</p>
<p>Investigating Officer's Comments</p>		<p>The whole length of the route under investigation is shown in the same manner of the general road network and it is reasonable to conclude that it existed as a substantial route in the 1840s which would have been wide enough to be used by vehicles by the public.</p> <p>The route would have provided access to and from Culbeck House and formed part of a longer route passing the property and connecting Dawbers Lane and Runshaw Lane. Its appearance on the map is</p>

		<p>consistent with how other connecting public vehicular highways are shown and the fact that it was named on the map suggests that it was known locally as a name route which is often suggests a route is known and used by the public but is not conclusive of that fact.</p>
<p>GW Bacon – Various Maps of Lancashire</p>	<p>1880-1909</p>	<p>GW Bacon was a publisher of a number of maps and atlases in the late 1800s and early 1900s. His maps were well respected and based on the Ordnance Surveys. A number of different maps and atlases were available to view in the County Record Office – one of which – Bacon's Excelsior Map of Lancashire - was submitted as part of the application.</p>

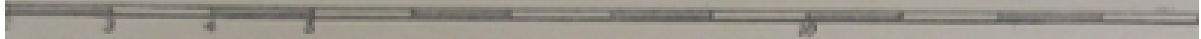
New Large Scale Ordnance Atlas of the British Isles



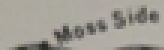
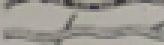
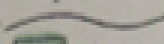

Extract provided by applicant – copied from Bacon's Excelsior Map of Lancashire

REVISED ACCORDING TO THE LATEST ORDNANCE SURVEY.
 DIVIDED INTO FIVE MILE SQUARES.

Scale of Miles.



EXPLANATION.

- Railways and Stations thus* 
- Main and Cross Roads* 
- Canals thus* 
- Parks and Seats thus* 

NOTE.—The official names of Railway Stations are shown in special thick type, thus **Moss Side**; except where they are indicated by the name of the town being in bold letters.

REFERENCE TO COLOURS.

- North Lonsdale Division Brown
- Lancaster Division Pink
- BARROW-IN-FURNESS Borough .. Purple

Observations

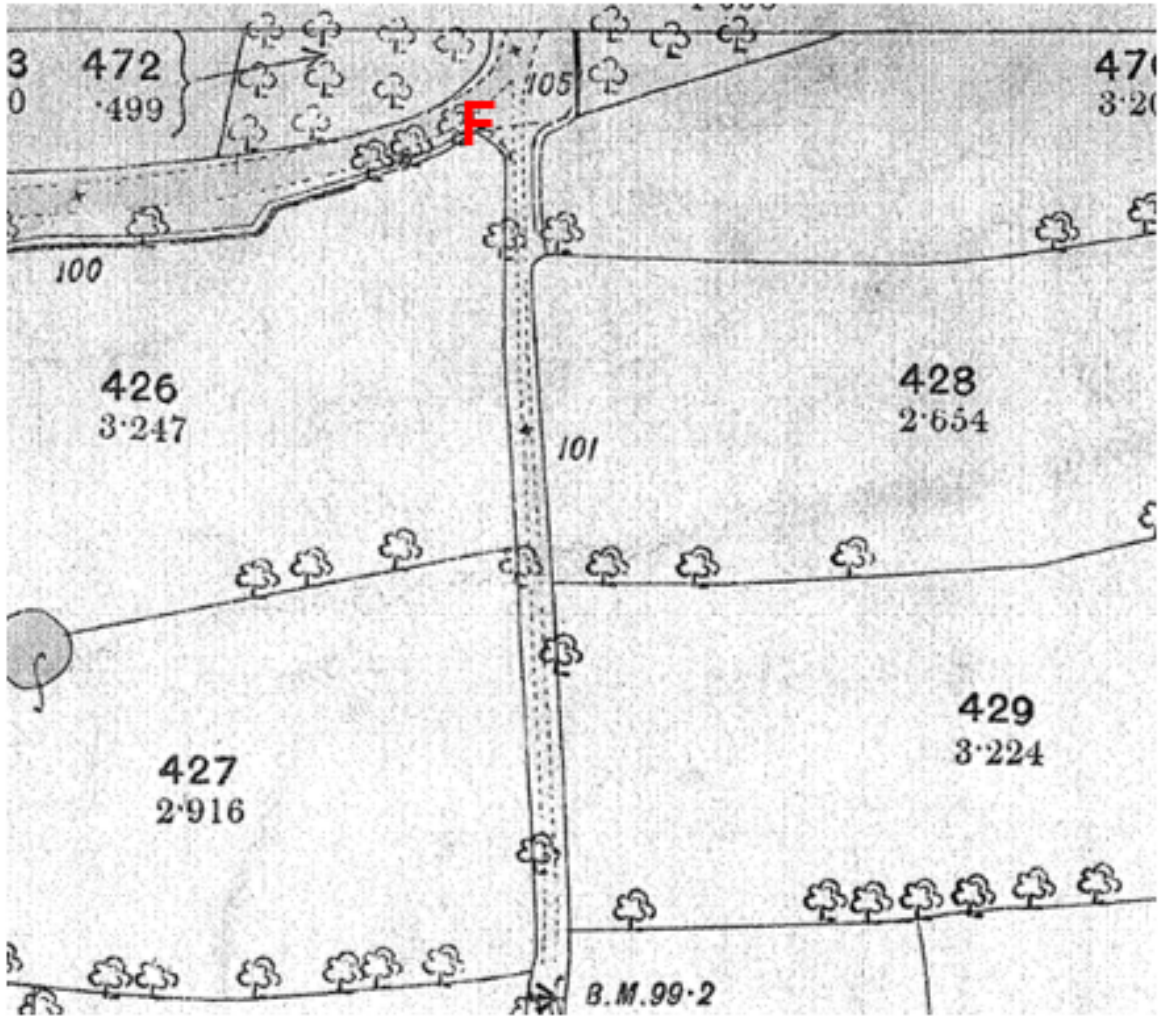
Three maps of Lancashire published by G W Bacon were inspected in the County Record Office. The map contained within the New Large Scale Ordnance Atlas of the British Isles was undated and did not show Culbeck Lane. Online research suggests that it was published in 1880.

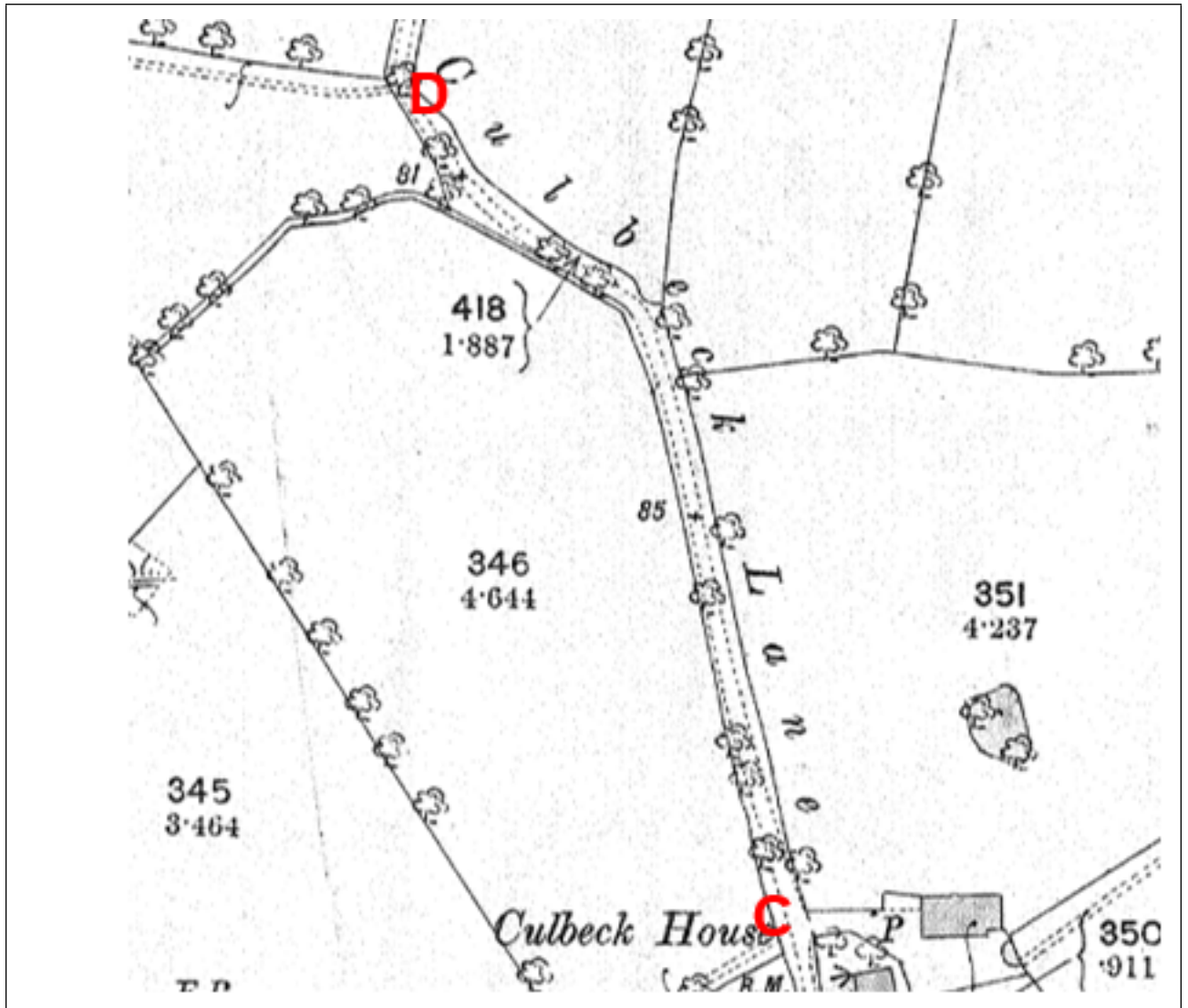
A second map, contained within Bacon's Popular Excelsior Map of Lancashire was submitted by the applicant and shows Culbeck Lane. The applicant claimed that the map was dated 1880 but the copy held by the County Record Office appeared to be undated stating that it was published at a cost of 25 shillings with revisions from the latest Ordnance Survey. There was no key attached to the map but it was noted that the majority of routes now known to be recorded as public vehicle highways (with the exception of Flag Lane and Holker Lane) were coloured yellow on the map. Culbeck Lane is shown – but is not coloured. Online research suggests that the map could date back to either 1880 or 1895.

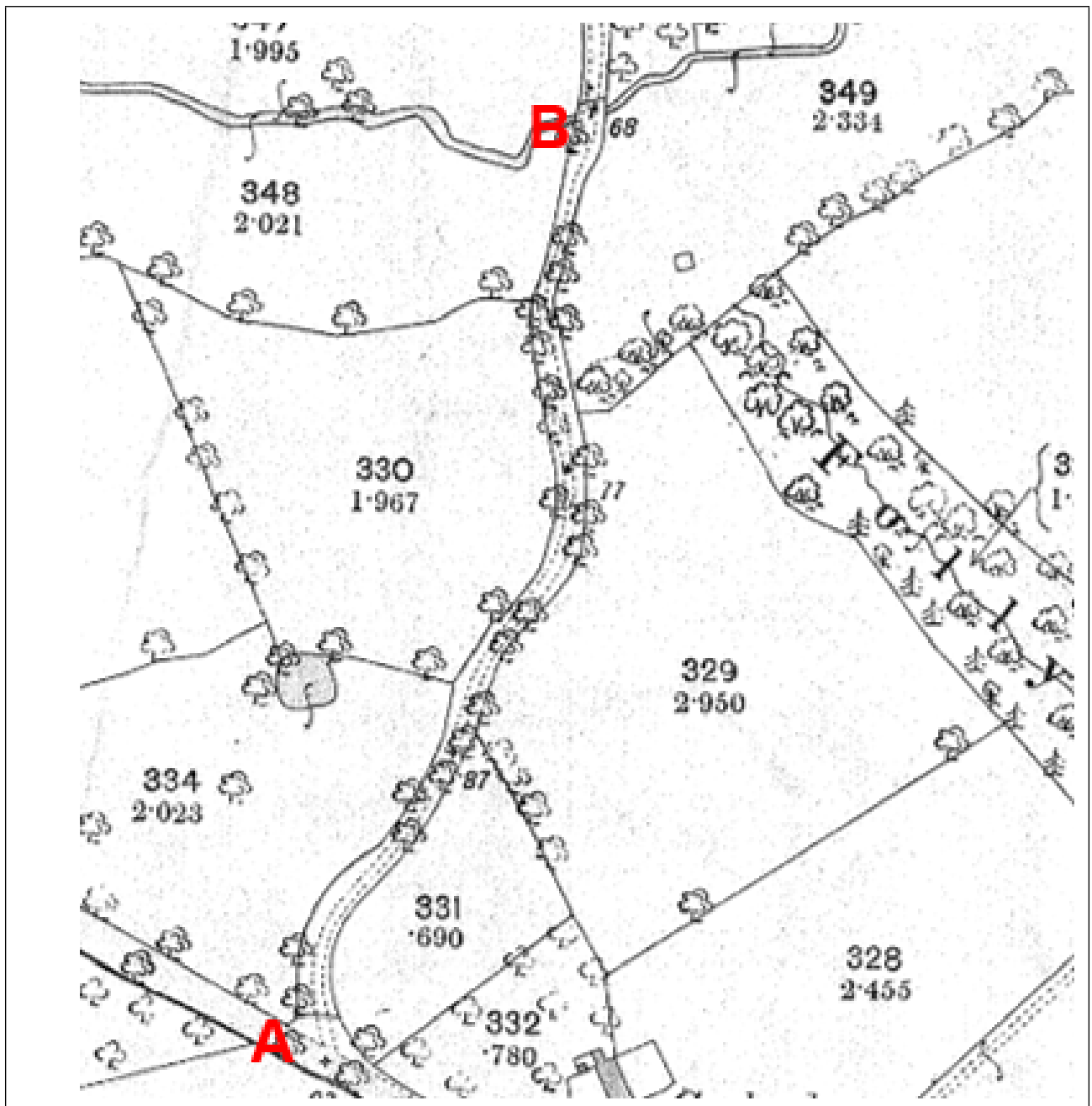
A further map was included within Bacon's

		<p>Popular Atlas of the British Isles dated 1909 and shows the route under investigation. The key to the map suggests that it is denoted as a 'Main or cross road'.</p>
Investigating Officer's Comments		<p>GW Bacon was an American entrepreneur who moved to London and was known to have been involved in numerous business ventures including the publication of world maps. The maps of the British Isles were at a small scale and as such only the more significant routes are generally shown. Commercial maps of this nature were expensive to produce and to purchase and as a result routes shown were often considered to be public through routes. Culbeck Lane is not shown on the first map inspected suggesting that it was not considered to form part of the public vehicular network. It is shown on the map submitted by the applicant but is not coloured in the same way as routes now known to carry public vehicular rights – again suggesting that it was not considered to be part of the public vehicular network at that time. The route is shown on the third map included which was published in 1909 supporting the fact that it existed as a substantial physical route by that time and that it may have been available for use by the public.</p>
Article in the London Gazette, January 23, 1883	1883	<p>Article in the London Gazette from 1830 submitted by the Applicant regarding an outbreak of foot and mouth disease.</p>
Observations		<p>The article relates to the designation of specified areas as Areas infected with foot and mouth disease by virtue of the powers vested under the Contagious Diseases (Animals) Act, 1878. The Schedule lists a number of areas that had been designated under the Act – one of which was defined by reference to the route under investigation. The boundary of the infected area was said to be within the boundaries defined by the Wigan and Preston highway from Pack Saddle Bridge to Chapel brook through Euxton Hall park to Culbeck Lane and then Culbeck Lane and the highway to Flag Lane on the south, and the boundaries of the township of Euxton and the north and west.</p>


Investigating Officer's Comments		Culbeck Lane is mentioned in the schedule as part of the description of an area of land designated as being infected by an outbreak of foot and mouth disease. The schedule describes part of the boundary of the area as being along Culbeck Lane and part of the boundary running along existing public highways but also along Chapel Brook and the parish (township boundary). The description relates to the section of Culbeck Lane from point B (where it crosses Chapel brook) to point F (Runshaw Lane). It confirms the physical existence of the lane as a physical feature in 1883, which was known as Culbeck Lane. Its inclusion as a boundary of a designated area does not in itself infer that the route had public vehicular rights along it, or that it was, under normal circumstances a route that would have been used to transport animals but it does provide some weight to the view that the route was sufficiently well known as 'Culbeck Lane' as to be named as part of a detailed description of the exclusion area.
25 Inch OS Map	1894	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1893 and published in 1894.



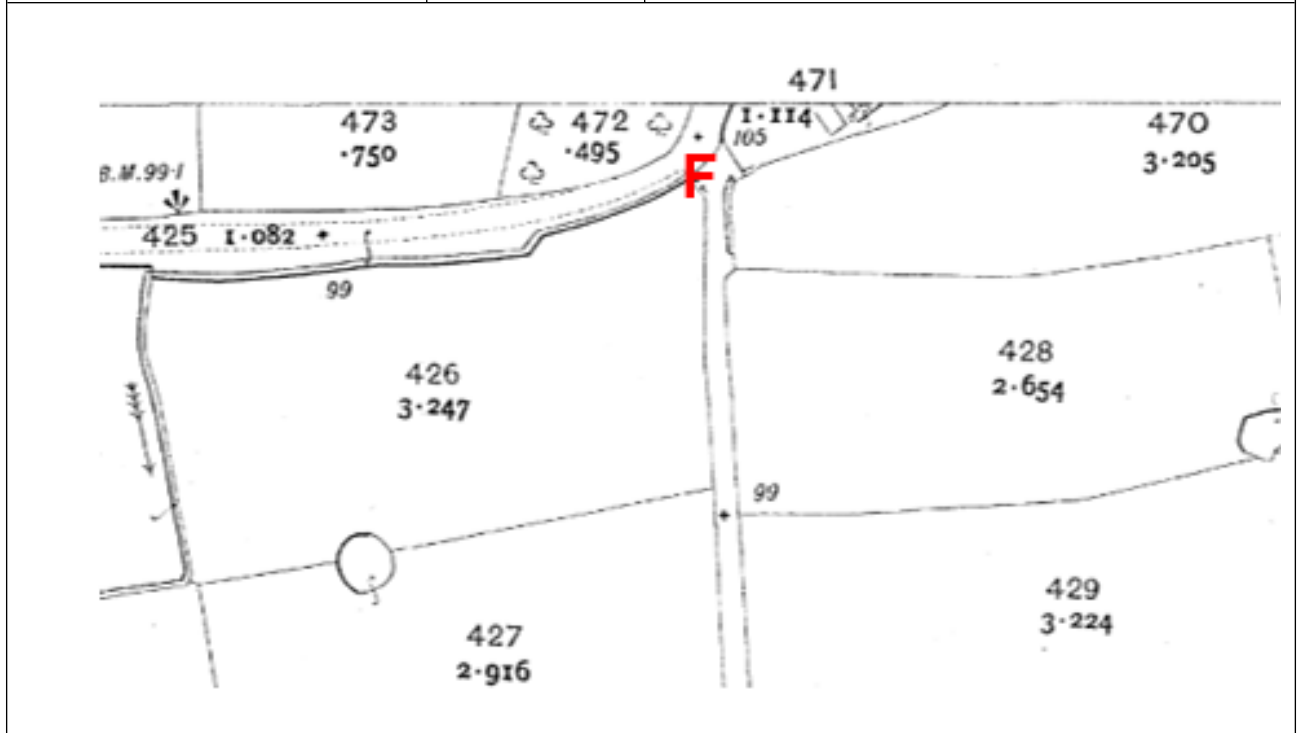




<p>Observations</p>		<p>The full length of Culbeck Lane is shown on the map bounded from the adjacent fields throughout the full length. It appears to be gated at point A, point B and close to point E and is named as Culbeck Lane on the map. Culbeck Lane is given a dedicated OS parcel number 418 and area 1.887 acres.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation existed in 1894 and appeared to be wide enough for vehicular traffic at that time. The Planning Inspectorate Consistency Guide states "Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number</p>

		and acreage." However, it goes on to say that this is far from conclusive evidence of highway status.
Plan dated 1899 from Major Anderton to the Governors of Queen Anne's Bounty	1899	A photocopy of a plan submitted by the applicant.
	 <p>Extract from Plan on Mortgage dated 11th December 1899 from Major Anderton to the Governors of Queen Anne's Bounty</p>	
Observations	<p>A copy of this plan is in the possession of the applicant but the whereabouts of the original plan or the exact details regarding what the plan shows is unknown. It is labelled as a plan relating to a mortgage from Major Anderton to the Queen Anne's Bounty.</p> <p>The hand drawn plan shows Chapel Brook to the south of a red shaded area. Culbeck Lane is shown on the plan from the proximity of point B through to the junction with Runshaw Lane at point F. The plan appears to be hand drawn and the fields numbered consistently with OS field numbers found on the 1st edition 25 inch OS map of the area (published in 1894). The route is named on the plan as Culbeck Lane. The numbered fields on either side of route are colored red but Culbeck Lane itself is not colored. There is no key or</p>	

		additional information on the plan regarding its significance.
Investigating Officer's Comments		The plan provides no strong evidence regarding the status of the lane. If produced in 1899 it appears to support the view that the route was named and formed a substantial through route. If the land coloured red was land that was to be sold/purchased the fact that the lane was not included within the sale/purchase of land on either side of it may be suggestive of the fact that the route was considered to be a public road.
25 inch OS Map	1910	Further edition of the 25 inch map re-surveyed in 1893, revised in 1909 and published in 1910.



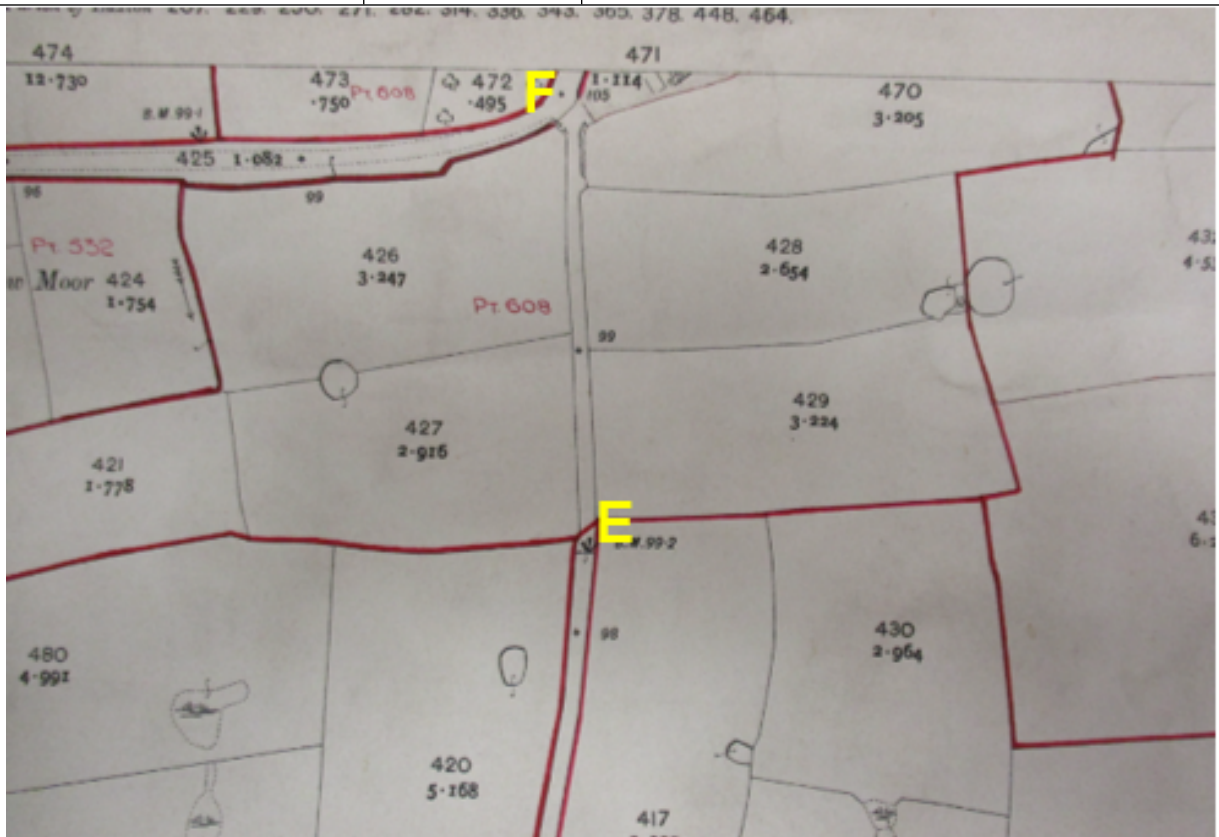


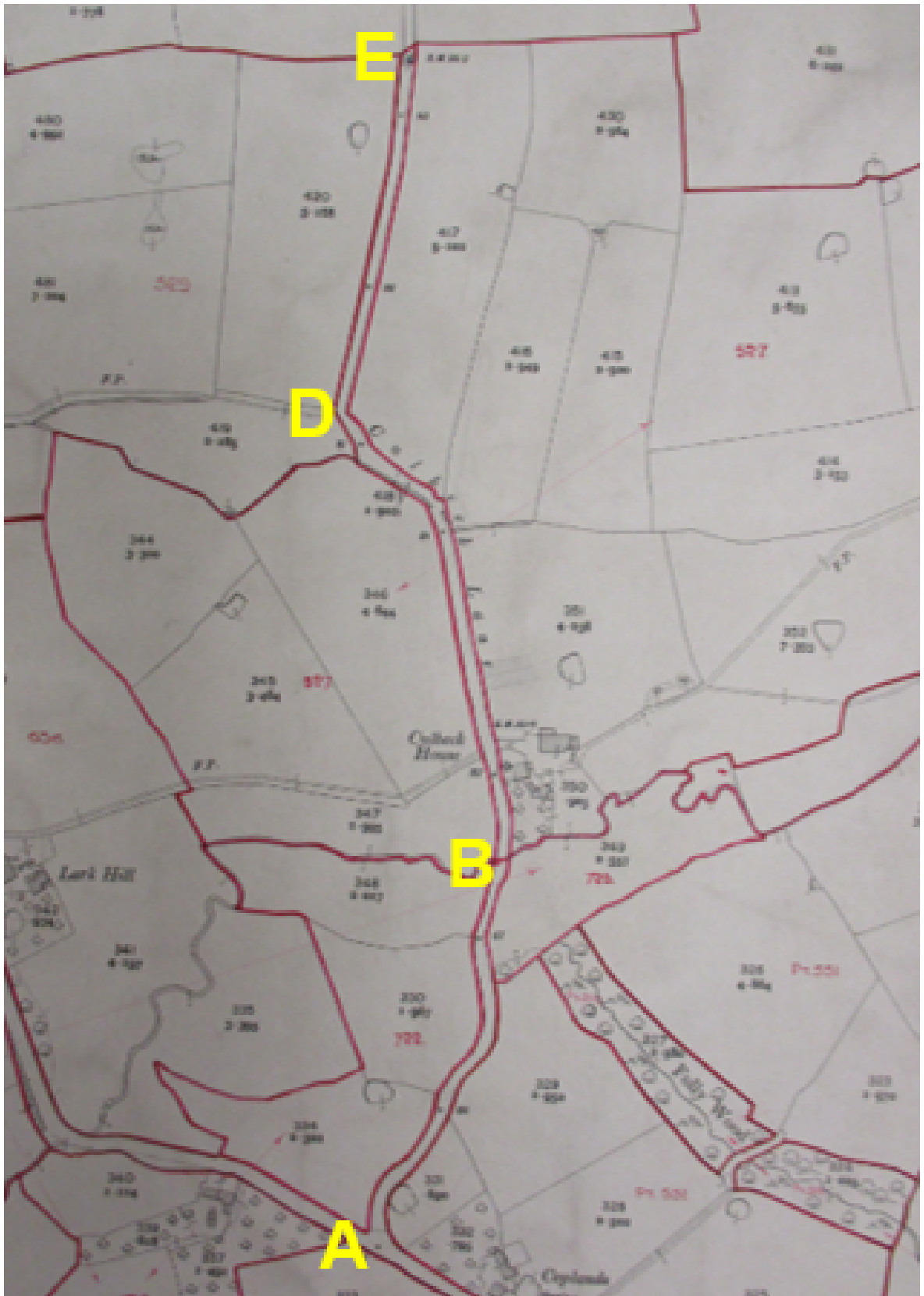
Observations		The full length of the route under investigation is shown in the same way as it was on the earlier edition of the 25 inch OS Map but was only shown to be gated at point A and point F.
Investigating Officer's Comments		The route under investigation existed in 1910 and appeared to be wide enough for vehicular traffic.
Ordnance Survey Object Names Book		When the Ordnance Survey was collecting information to put on its second series of published maps the surveyors recorded the names of anything that was to be shown on the maps. The Ordnance Survey Object Names Book for an area records these names, the description of the item named, and the local person attesting to the name. The descriptions usually state where the road started and finished, and often described them as a road, lane or drove road. The descriptions often drew a distinction between what was believed to be public and private and included information about who owned or maintained

		bridges.
Observations		<p>An inspection of the Object Names Book has been made by a researcher working on behalf of the County Council.</p> <p>Culbeck Lane is listed in the book and the page on which it is entered carries the date 1907. The first column lists the names 'as written on the plan' and under this column the route is listed as 'Culbeck Lane'. The second column is titled 'Various modes of spelling the same Names' and under this column, in a different colour of ink is written the words 'Culbeck Lane' and underneath – in the same handwriting and colour is written in brackets the word private – which has then been crossed out in the same pen. The third column is titled 'Authority for those modes of spelling' and the writing is very faint and it is not possible to decipher the name although it appears to say that the person providing the information was the occupier of Runshaw ... - possibly Runshaw Moor or Farm which are situated on Runshaw Lane east of point F.</p> <p>The final column provides for additional comments to be made and a description of the route has been written as 'A lane extending from 13 chains east of Prescott House and terminating at Dawbers Lane.</p> <p>An entry into the book was also made for Dawber's Lane describing it as a road considered to be in good condition commencing at Euxton Mills hotel and continuing in a westerly direction to the parish boundary at Chorley Road. An entry was also made for Runshaw Lane which was described as a road maintained by Chorley Rural District Council from the junction of roads west of Nixon Hillock to Shaw Green. The authority for the information regarding Runshaw Lane is stated as being Mr W Cotterill, Surveyor, R.D. Council Offices, Chorley.</p>
Investigating Officer's Comments		<p>The OS Names Book provides limited evidence regarding whether the route was considered to be public or private in 1907 – but not the extent of those rights (i.e. whether they were on foot or vehicular).</p> <p>The purpose of the OS names book was to record the names of things to be shown on</p>

		<p>the map and to check their spelling. It was not intended to record the public or private status of a route but can provide useful information regarding how a route may have appeared to the Surveyor and how it was regarded locally. It appears that although the route was initially described as private this had been crossed out. It is not known why it was described as private or why it was subsequently crossed out.</p> <p>The person confirming the spelling of the route does not appear to be the owner of the property on the lane which would have provided stronger evidence regarding the status of the route. There is no reference to its condition or whether it was publicly maintainable.</p> <p>The authority for the information regarding Runshaw Lane is listed as being a Surveyor from Chorley Rural District Council which would have suggested that information regarding publicly maintainable roads was provided by the highway authority at that time except that the same information was not provided for Dawbers Lane.</p>
<p>Finance Act 1910 Map</p>	<p>1910</p>	<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>

An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.





Observations

Records held at both the County Records Office (County Record Office) and The National Archives (TNA) were examined.

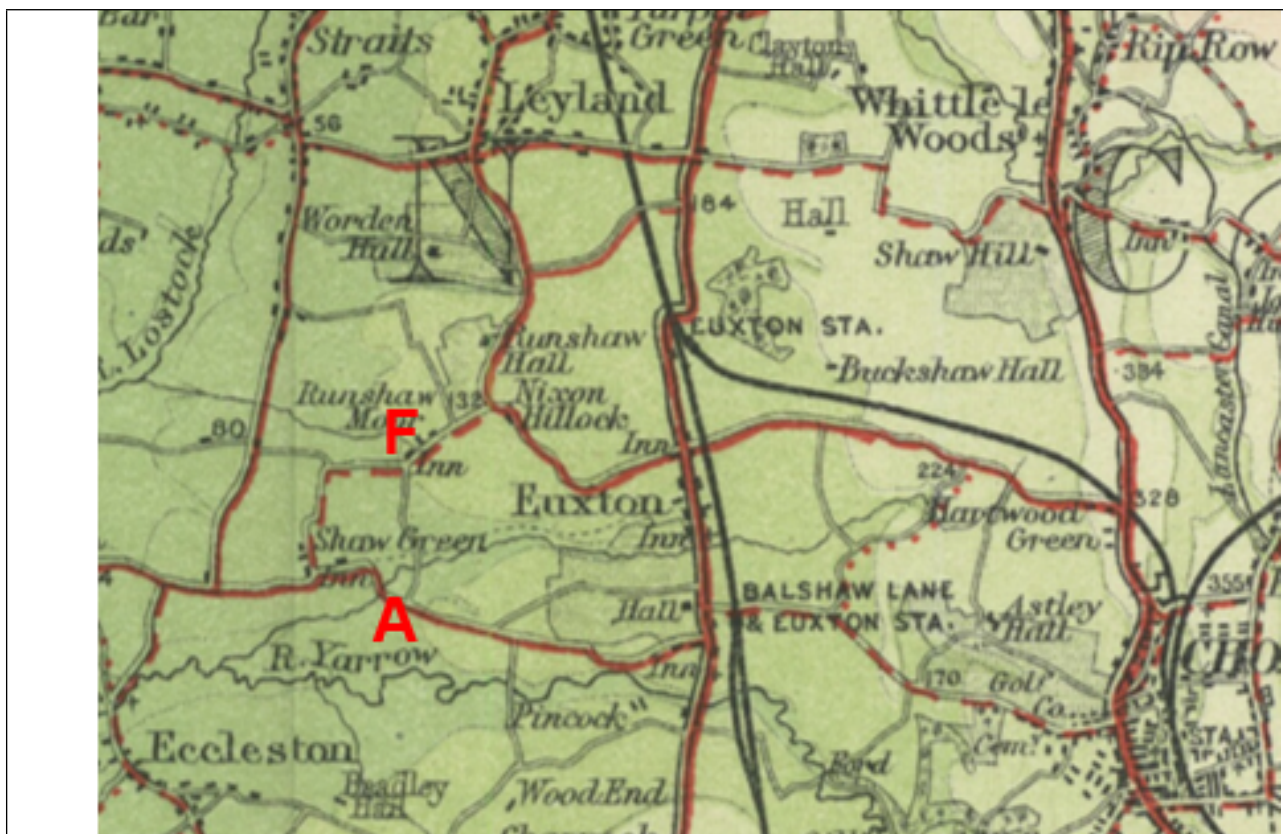
Both the plan deposited in the County

		<p>Record Office and the one at TNA show Culbeck Lane in the same way. From point A through to point E the route is shown excluded from the numbered hereditaments and from point E to point F it is included within hereditament 608.</p> <p>From point A the numbered plot to the east of the route (551) is listed in the ownership of Major W J Anderton and tenanted by Bernard O Hume. It is described as 'House and buildings' with no deductions listed for public rights of way or user.</p> <p>Further north along the route, a plot to the east of (but not including) Culbeck Lane is numbered 723. This again forms part of a larger plot together with another part to the west of Lark Hill. Ownership is listed as being 'Rawcliffe' and the land tenanted by Robert Jackson. A £10 deduction is claimed for public rights of way or user.</p> <p>The land to the west of point A is numbered as part of hereditament 722 and listed in the ownership of Mark Rothwell, tenanted by William Robinson and described as 'House, building and land' with no deductions listed for public rights of way or user.</p> <p>North of point B the land on either side of - but not including - Culbeck Lane is numbered as part of the same hereditament - 527 which also included Culbeck House. The Valuation Book held by the County Record Office lists this land as being owned by Major W J Anderton and occupied by Thomas Wilcock. It is described as Culbeck Farm 'land and buildings' and no deduction are listed for public rights of way or user.</p> <p>The Field Book held by TNA for hereditament 527 lists a £12 deduction for 'footpath' and lists 'two alleged footpaths' under Fixed charges, Easements, Common Rights and Restrictions'. No reference is made to Culbeck Lane.</p> <p>Hereditament 529 is also shown abutting the route. It too is listed as being owned by Major W J Anderton but occupied by James</p>
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		<p>Platt. No deductions are listed for public rights of way or user.</p> <p>No reference is made to Culbeck Lane in any of the entries for these adjacent hereditaments.</p> <p>From point E to point F the route is included within hereditament 608 listed in the ownership of the Reverend Catterall and occupied by Robert Walmsley.</p> <p>Plot 608 includes land and buildings on either side of Runshaw Lane and consists of Woodcock Farm (on the north side of Runshaw Lane) together with fields on either side of Culbeck Lane.</p> <p>The Valuation book held in the County Record Office describes the plot consisting of 'House and Buildings, agricultural land' and does not list any deductions for public rights of way or user.</p> <p>The Field Book entry for hereditament 608 held at TNA describes the hereditament as comprising of Woodcock Farm, Runshaw Moor, Euxton and as being owned by Reverend Catterall, Kikdale, Liverpool and occupied by Robert Walmersley.</p> <p>Under the section 'Fixed charges, Easements, Common Rights and Restrictions' it has been written 'Public highway right through and public footpath – said to be a right of road to adjoining farm.'</p> <p>Under the Particulars, description and notes made on inspection there is a brief summary of the property contained within the hereditament including a description of the buildings on the south side on side of highway which are said to be fairly new.</p> <p>A £5 deduction for public rights of way is listed under Charges, Easements, and Restrictions affecting market value and it also appears that a further £5 is claimed for access and this is listed as £5 deduction for Public Rights of Way or User and a £5 deduction for Easements.</p> <p>Hand written workings-out are headed 1893 edit (edition) – which it is suggested refers to use of a copy of the 1st edition 25 inch</p>
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		<p>OS map surveyed in 1893 and published in 1894. Below the title is a list of OS parcel numbers, the acreage and land use (e.g. pasture, arable, meadow). OS parcel number 418 (part) is listed as 'Road' with the comment public and private/right of way. Culbeck Lane is labelled as parcel 418 on the 1st Edition Ordnance Survey 25 inch map and also on the base map for the Finance Act map.</p>
<p>Investigating Officer's Comments</p>		<p>The fact that most of the route (between point A and point E) is shown excluded from the numbered hereditaments is good evidence that in 1910 the surveyor completing the initial valuation, and the adjoining landowners in completing the appropriate forms as part of the Finance Act process, considered the route to be outside the boundary of their ownership or that it was a public highway that should be exempted from the valuation process. The fact that there are a number of different landowners and tenants owning and occupying the land on either side of the lane who do not appear to have queried ownership of the route or the fact that it had been exempted supports this view. Of particular relevance is the fact that the owner of Culbeck House at that time did not appear to query the fact that hereditament 527 was shown to include land on either side of the route – but did not include it.</p> <p>The section between point E to point F has been included within hereditament 608 and the Field Book records the fact that the route appears to be considered as a public footpath for which a £5 deduction is claimed and also a route over which there is was a right of road to the adjoining farm for which a further £5 is claimed.</p> <p>The information provided by the Finance Act documentation is therefore inconclusive but the exclusion of the route from point A to point E from the taxation process suggests that none of the adjacent landowners considered – or wished to admit – to ownership of the lane or that they all considered it to be a public vehicular route that was exempt from the</p>

		<p>process.</p> <p>It appears that the owner of the route between point E and point F did not consider, or wish to admit, that the route carried any higher public rights than public footpath but there was an acknowledgement of the existence of private rights of access along it.</p> <p>Whilst it is not conclusive, there is no obvious alternative explanation for the exclusion of A-E except that it was considered to be a highway, probably vehicular. It is most unlikely that such a highway would stop short of Runshaw Lane at point E.</p>
<p>Bartholomew ½ inch Map Sheet 8 – Liverpool & Manchester</p>	<p>1920</p>	<p>The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.</p>



EXPLANATORY NOTE

Motoring Roads {	Through Routes		Motor or Ferries	
	First Class Roads			
	Secondary			
	Indifferent (Passable for cyclists)			

The uncoloured roads are inferior and not to be recommended.

Footpaths & Bridlepaths *N.B. The representation of a road or footpath is no evidence of the existence of a right of way.*

The figures thus 190 represent heights in feet above sea level.

Railways Station Station with Refreshment Room (Level Crossing)

Canals

County Boundaries

Observations

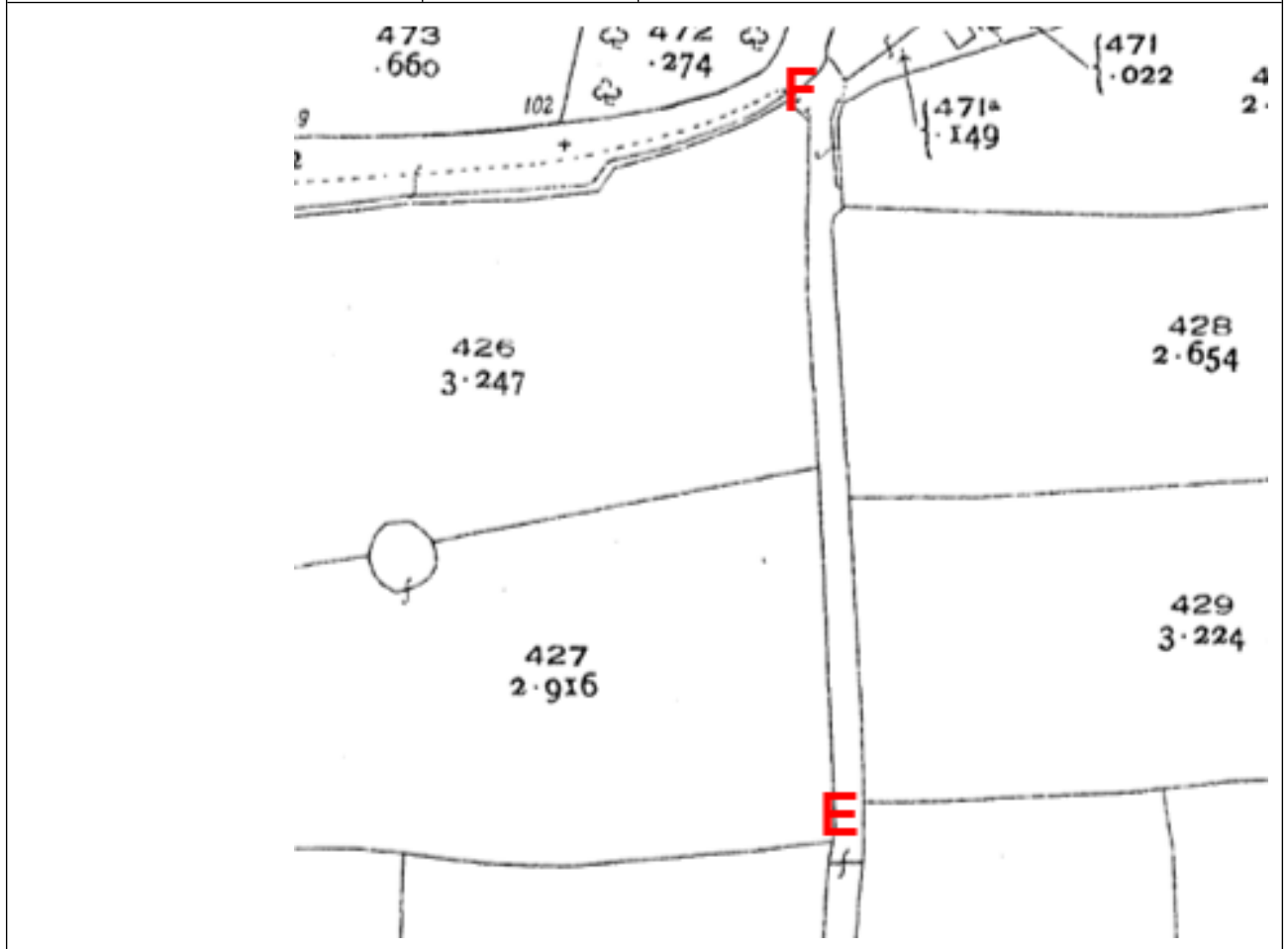
Culbeck Lane is shown on the map uncoloured. Euxton Footpaths 35 and 36 are shown by dashed lines and cross Culbeck Lane.

Investigating Officer's Comments

The early 1900s saw a significant increase in the use of motorised vehicles and the classification of minor roads was constantly being revised by Bartholomew as some were improved to cope with the increasing traffic while others were virtually abandoned and fell into disrepair. Before 1920 few roads other than main roads were

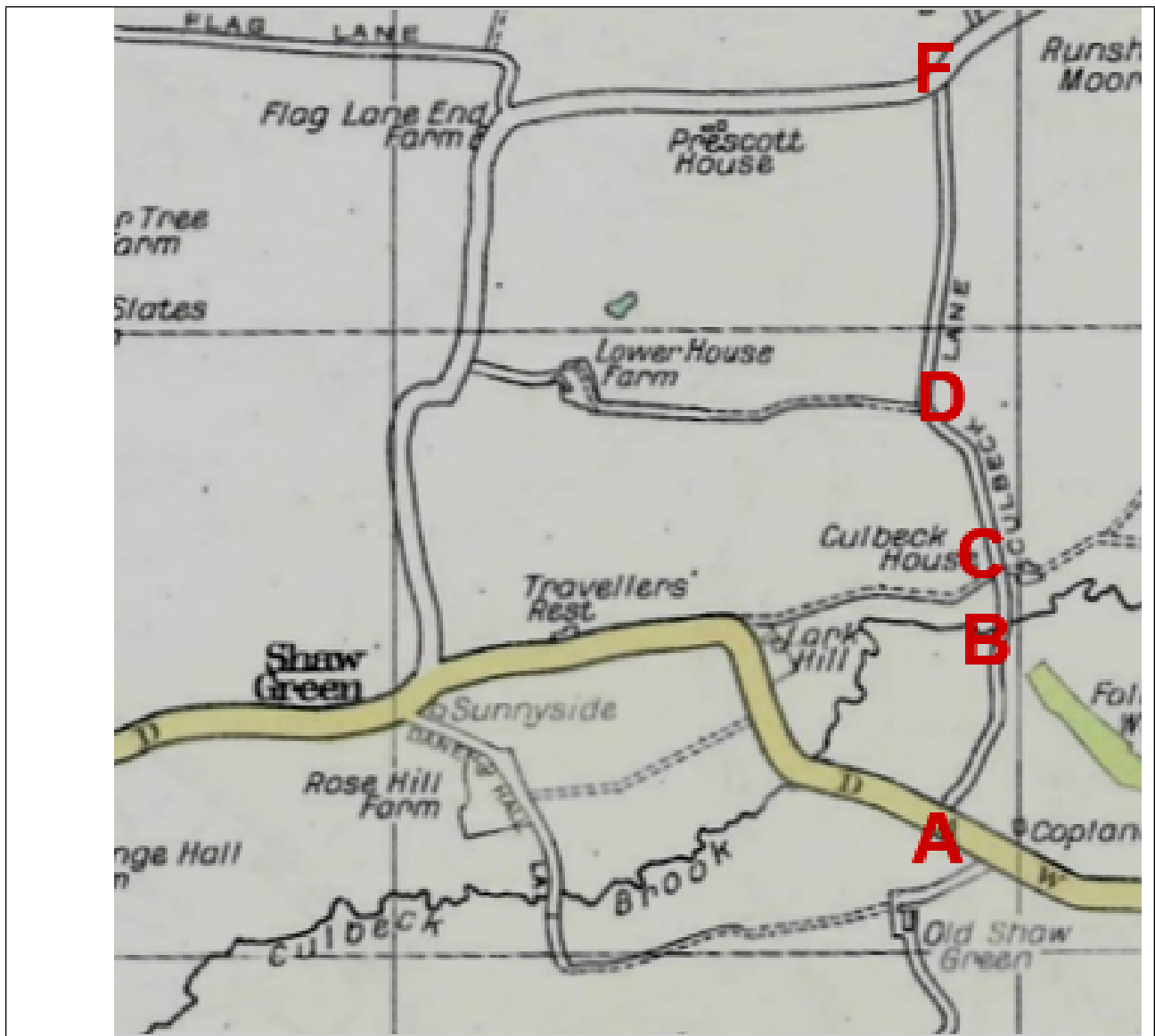
		<p>tarred but the travelling public had lower expectations of surface conditions than today and it would not be uncommon for an unsealed road, at the time considered adequate for horse drawn vehicles, to be shown.</p> <p>Culbeck Lane is shown on the map supporting the view that it physically existed in the 1920s. However, it did not appear to be considered to be a public vehicular highway by or a route passable for cyclists at that time.</p>
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<p>25 Inch OS Map</p>	<p>1928</p>	<p>Further edition of 25 inch map (re-surveyed 1893, revised in 1927 and published in 1928.</p>
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<p>Observations</p>		<p>The full length of Culbeck Lane is shown in the same way as it was shown on earlier editions of the 25 inch map with the exception of the addition of a gate shown across the route at point E which was not shown on earlier editions but which was shown on the Tithe Map.</p>
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Investigating Officer's Comments		The existence of a gate at point E would appear to be on the boundary of two different landownerships as evidenced by the Tithe Award and Finance Act records. It is not known whether the gate would have prevented or restricted access along the route.
Authentic Map Directory of South Lancashire by Geographia	Circa 1934	An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map. The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.



<p>Observations</p>		<p>The full length of Culbeck Lane is shown and the route is named on the plan. Access onto the route at point A and point F is not shown as being 'open' and lines are shown across both junctions.</p>
<p>Investigating Officer's Comments</p>		<p>The Directory was an independently produced and very detailed street map which included an index to 'all thoroughfares' on map. Public footpaths and bridleways are not normally shown unless they comprised of substantial tracks. The fact that the route was shown on the map is further evidence that the route physically existed in 1934 and that it was known as Culbeck Lane and may have been available to use but does not necessarily provide proof of its status as a public vehicular road.</p>

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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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.



Observations

Culbeck Lane can be seen still to exist as a substantial route. The scale of the photograph and proximity of tree cover means that detail of any restrictions on access cannot be seen.

Investigating Officer's Comments		Culbeck Lane existed in the 1940s and appeared to be wide enough to be used by vehicles.
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 full length of Culbeck Lane is shown and is named on the map. Lines are shown across the route at point A, point E and point F. The houses now known as 1 and 2 Woodlands north of Culbeck House are shown.
Investigating Officer's Comments		Culbeck Lane existed in the 1930s and appeared to be wide enough to be used by vehicles.
1:2500 OS Map	1963	Further edition of 25 inch map reconstituted from former county series and revised in 1962 and published 1963 as national grid series.
Observations		The full length of Culbeck Lane is shown and named. There no longer appears to be any gates along the route other than possibly at point F which is shown as part solid line and part dashed line across the junction with Runshaw Lane.
Investigating Officer's		Culbeck Lane existed in 1962 and

Comments		appeared to be wide enough to be used by vehicles.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		An aerial photograph for the first part of the route from point A was not available to
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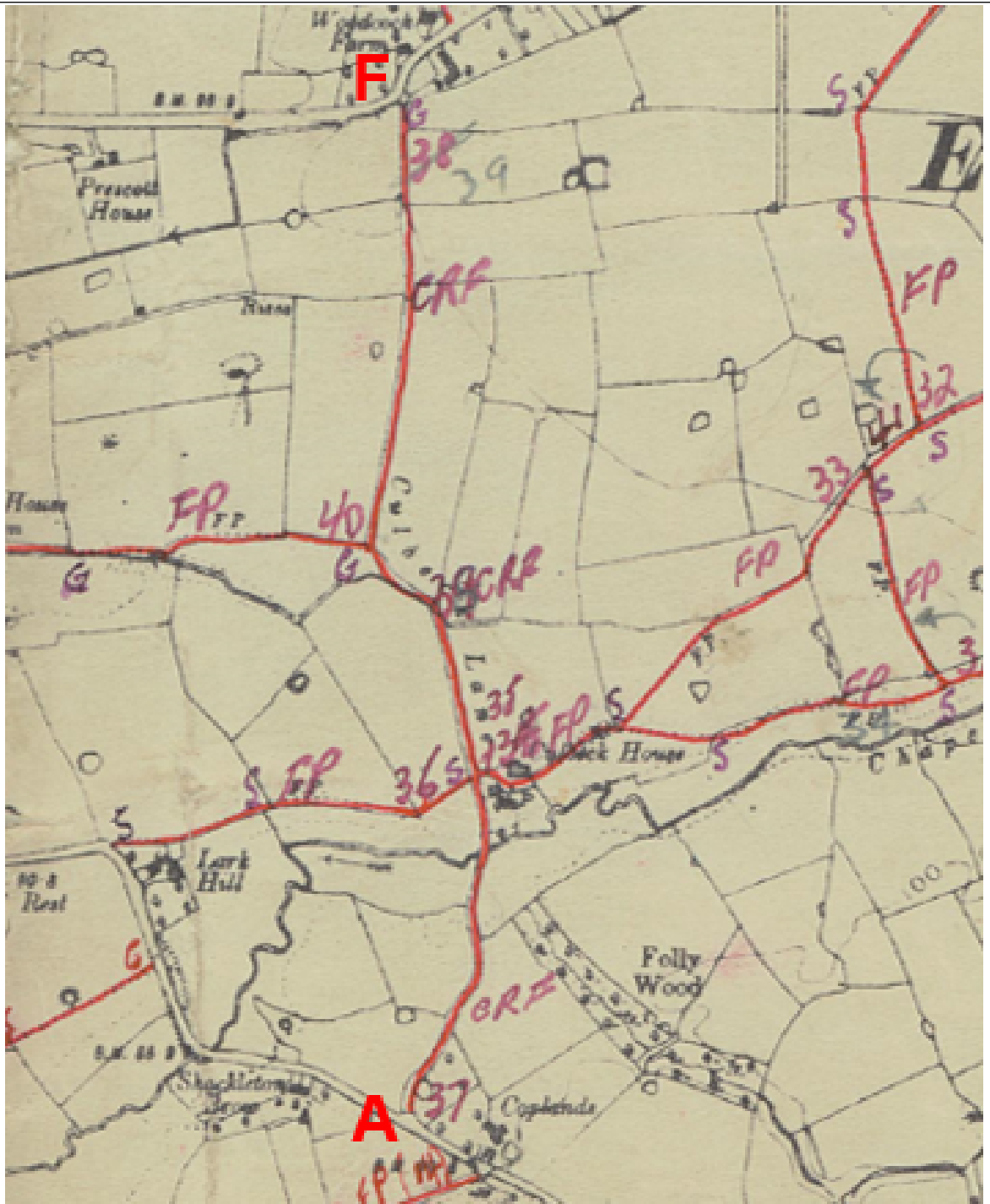
		view. However, the majority of the land crossed by the route has been photographed and the route can be clearly seen providing access to and beyond the farm. As with the earlier aerial photograph, the scale of the photograph and proximity of tree cover means that detail of any restrictions on access cannot be seen.
Investigating Officer's Comments		Culbeck Lane and appeared wide enough to be used by vehicles.
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations

The route can be clearly seen providing access to and beyond the farm. As with the earlier aerial photograph, the scale of the photograph and proximity of tree cover means that detail of any restrictions on

		access cannot be seen.
Investigating Officer's Comments		Culbeck Lane existed and was probably wide enough to be used by vehicles in 2000.
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	<p>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.</p>



Observations

The parish survey cards were completed in 1951. They describe the route under investigation as shown on the parish survey map. The map shows the route as a 'CRF' and notes the existence of a gate at or near point F.

The parish survey cards for the routes numbered 37, 38 and 39 Euxton describe the route under investigation and are all completed by the same person. All three cards describe the route as an

		<p>accommodation road and refer to it as 'Culbeck Lane'. The numbering states 37 CRF, 38 CRF and 39 CRF and Footpaths 35, 36 and 40 - which all join the route - all refer to meeting 'Culbeck Lane'.</p>
Investigating Officer's Comments		<p>Approved guidance prepared to assist in the compilation of parish survey maps was issued in 1950 by the Commons, Open Spaces and Footpaths Preservation Society in conjunction with the Ramblers Association.</p> <p>The original guidance recommended that public paths should be distinguished on the maps with the symbols F.P., B.W., C.R.F, and C.R.B irrespective of what was shown by the Ordnance Survey. A 'CRF' or 'CRB' was defined as a highway which the public were entitled to use with vehicles but which, in practice, were mainly used by them as footpaths or bridleways respectively. These 2 categories had been originally proposed but were removed from the 1949 Act shortly before the final draft. Subsequent guidance removed reference to CRF and CRB and introduced RUPPs but many surveys were well underway or substantially complete by then.</p> <p>The full length of Culbeck Lane was described as being a 'CRF' suggesting that the surveyor considered that although the public were entitled to use it with vehicles they were in practice used on foot. The parish survey cards also noted that the route comprised of an 'accommodation road' – a term which was not defined within the guidance but which is normally taken to refer to a route constructed to allow an owner or occupier access along it and which may or may not carry public rights.</p>
Draft Map		<p>The Parish Survey Map and cards for Euxton were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the</p>

	<p>public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
<p>Observations</p>	<p>The route under investigation was shown on the Draft Map as a public footpath and numbered as Euxton Footpaths 37, 38 and 39.</p> <p>It appears that the County Surveyor, with the assistance of the appropriate Rural District Surveyor completed the maps from the information provided by the parishes on the Parish Survey Maps and cards. They noted that whereas the parishes had been asked to show all paths in the same colour, namely red, and to distinguish the different kinds of path by symbols, for example Footpaths – FP, Bridleways – BW, etc. that to comply with Regulations subsequently issued by the Ministry, the three different kinds of rights of way mentioned in the National Parks and Countryside Act 1949 were now to be shown, not by symbols but by distinctive colours. Note that this also precluded the use of CRF and CRB.</p> <p>The County Council therefore had to take the information provided by the parishes and decide whether the route should be shown as a footpath (purple line), bridleway (green line) or Road used as a public path (broken green line).</p> <p>Internal records relating to the preparation of the Draft Map states that in almost all cases there had been some confusion about the meaning of the term 'Road used as public path' and suggested that only those routes for which there was no query regarding the correct status would be put on the maps in 'fixed' colour whilst others which were to be queried would be put on in pencil or coloured crayon.</p> <p>The route under investigation was added to the draft map in pen (fixed colour) although it was noted that all routes in Euxton were added in fixed colour so this may not be a</p>

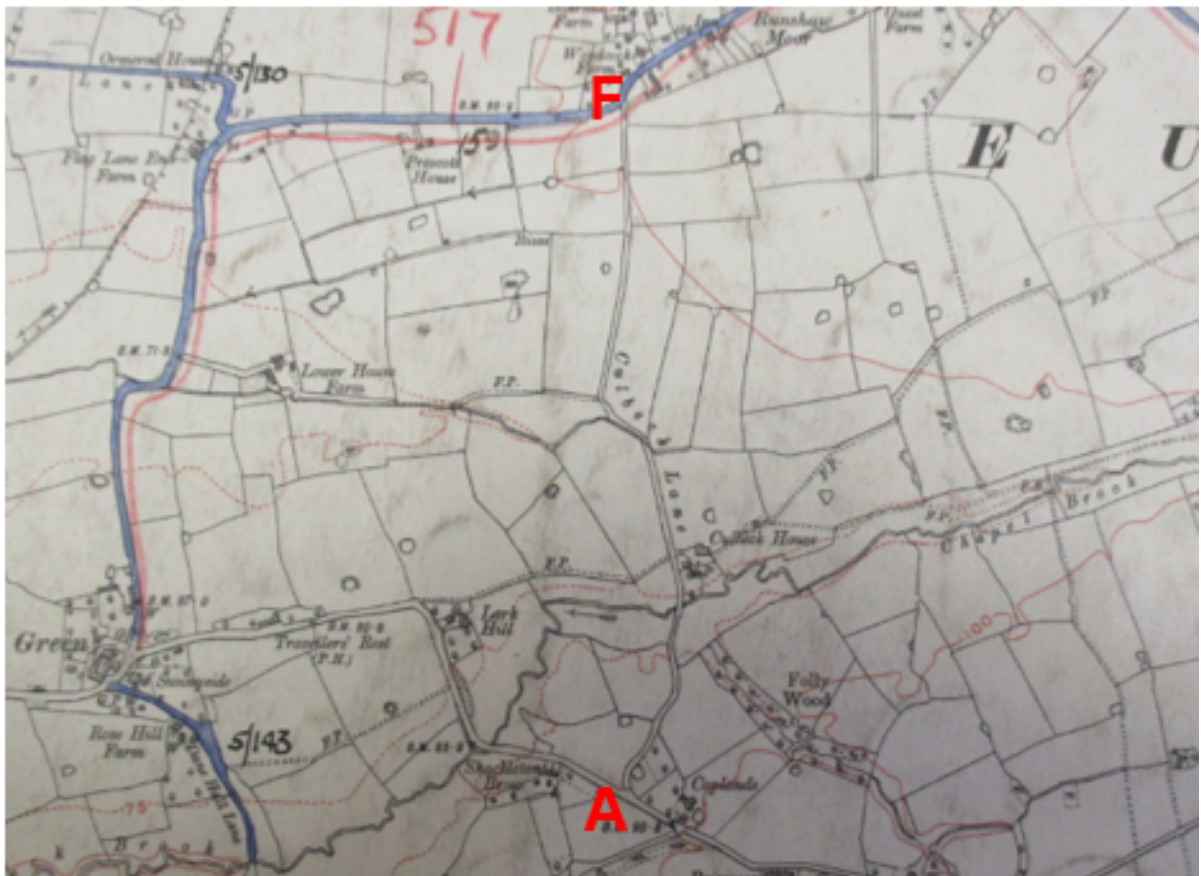
		<p>significant point.</p> <p>Internal records regarding the preparation of the Draft Map identify the definition of 'road used as a public path' as causing a significant amount of confusion, as it did nationally. The kind of path coming within the definition was said to be 'an old public road not now used by vehicular traffic, but still used as a public footpath or public bridleway'.</p> <p>The County Council's interpretation of this appears to have been that routes forming 'private occupation roads, farm roads, private carriage drives and lanes leading only to farm lands over which there happens to be a public right of way do not come within this definition and will be shown ...as 'Footpath' or 'bridleway' according to the nature of the public right.'</p> <p>It was also stated that in Lancashire there would only be 'isolated cases of this rare kind of path' and, most significantly, it is stated:</p> <p>'it is appreciated that if this information had been available to the Parish representatives at the time that they were making the Survey, all the paths which they have shown as "CRF" or "CRB" signifying "Road used as a public path" would have been shown as "public footpath" or "public bridleway", generally the former.</p>
Provisional Map		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>
Observations		<p>Culbeck Lane was shown in the same way on the Provisional Map as on the Draft Map and no representations were made to the County Council.</p>

<p>The First Definitive Map and Statement</p>		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>
<p>Observations</p>		<p>Culbeck Lane was shown in the same way on the First Definitive Map as on the Draft and Provisional Maps.</p>
<p>Revised Definitive Map of Public Rights of Way (First Review)</p>		<p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25th 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 1st 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.</p>
<p>Investigating Officer's Comments</p>		<p>From 1953 through to 1975 there is no indication that Culbeck Lane 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.</p>
<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 roads within the county which had been maintained by the districts. 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</p>

public consultation or scrutiny which may have picked up mistakes or omissions.

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.

Extract from 1929 Handover Map for Chorley Rural District



Undated LCC highway records



<p>Observations</p>		<p>Culbeck Lane is not shown as a publicly maintainable highway on the 1929 Handover Maps available to view in the County Records Office although its recorded public status (post the preparation of the First Definitive Map and Statement) is recorded on highway adoption records now maintained by the County Council.</p>
<p>Investigating Officer's Comments</p>		<p>The route was not recorded as publicly maintained highway on the 1929 handover map although this does not mean that it wasn't one and many public rights of way</p>

		<p>with public vehicular rights have subsequently been found not to have been recorded on these maps.</p> <p>Later highway records maintained by the County Council include the fact that the route under investigation had been recorded as a public footpath and was publicly maintainable as such.</p>
<p>Statutory deposit and declaration made under section 31(6) Highways Act 1980</p>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
<p>Observations</p>		<p>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.</p>
<p>Investigating Officer's Comments</p>		<p>There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.</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

Culbeck Lane from Point A – B as shown on the committee plan is unregistered.
Culbeck Lane from just slightly south of Point D – E as shown on the committee plan is also unregistered

Culbeck Lane junction with Runsahw Lane is also unregistered but holds a caution.
Culbeck Farm, Culbeck Lane, Euxton, Chorley, PR7 6EP owns from Point B – to just slightly south of Point D

Guest House Farm, Runshaw Lane, Euxton, Chorley, PR7 6HD owns from Point E-F
The owners / occupiers below are all adjoining to the route:

3 Lamphey Close, Heaton, Bolton, Greater Manchester, BL1 5AU

Culbeck House Farm, Culbeck Lane, Euxton, Chorley, PR7 6EP

2 Culbeck Lane, Culbeck Lane, Euxton, Chorley, PR7 6EP

1 Culbeck Lane, Culbeck Lane, Euxton, Chorley, PR7 6EP

Coplands Barn, Dawbers Lane, Euxton, Chorley, PR7 6EF

Woodcock Barn, Runshaw Lane, Euxton, Chorley, PR7 6HB

Lark Hill Farm, Dawbers Lane, Euxton, Chorley, PR7 6EG

The Natural Environment and Rural Communities Act 2006

This Act effected a blanket extinguishment of unrecorded public rights for mechanically propelled vehicles (MPVs) with certain exceptions. Prior to this carriageway rights did not discriminate between vehicles which were mechanically propelled, such as cars and motorbikes, and those which were not, such a bicycles, wheelbarrows, horse-drawn carriages, donkey carts, etc.. If Committee concludes that the evidence shows that, on the balance of probability, public carriageway rights exist on Culbeck Lane it is then necessary to consider whether the Natural Environment and Rural Communities Act 2006 has extinguished public rights for MPVs. Culbeck Lane was, at the time of the Act, recorded as public footpath and was not on the List of Streets (maintained at public expense) and it does not appear to have been mainly used by the public in MPVs. There is no claim that any of the other exemptions apply. Therefore, in the event that public carriageway rights are shown to exist the appropriate status for Culbeck Lane to be recorded on the Definitive Map and Statement would be Restricted Byway, with public rights with non-mechanically propelled vehicles, horses or on foot.

Summary

It is rare to find one single piece of map or documentary evidence which is strong enough to conclude that public vehicular rights exist and it is often the case that we need to examine a body of evidence, often spanning a substantial period of time, from which public rights can be inferred.

In this instance it appears that the route existed as a substantial track since at least the 1830s and it is consistently shown as a bounded track, not inconsistent with how routes with recorded public bridleway or vehicular rights are shown, since that time. Gates appear to have existed across the route from at least 1847 (Euxton Tithe Map) when it was shown gated at point A and point F and also where it appeared to change landownership in proximity of point E.

The evidence provided by the early commercial maps is not conclusive as Yates does not show the route as a through route in 1786, Cary fails to show it at all (1789) and Greenwood (1818) shows only the ends of the route.

Possibly from 1824 (Baines) and certainly from 1830 (Hennet) the full length of the route is shown as a through route and its inclusion on these maps is suggestive of public vehicular use.

The fact that the route is consistently shown to exist on small scale OS and privately produced maps from the 1830s onwards and is named on maps published since the late 1800s does not necessarily imply that it has any public status but taken together over a considerable period of time these early maps certainly suggest that a route of substantial character existed which would have been wide enough to be used by the public with vehicles. The route appeared to have provided access between Dawbers Lane and Runshaw Lane crossing over Culbeck Brook rather than possibly requiring travellers to pass through the brook as shown across Dawbers Lane but it is difficult to conclude that public vehicular rights existed at that time when balanced against the information provided by the Tithe Award.

The Tithe Map and Award dated 1847 has been re-examined and it remains the view that the route was considered to be a private vehicular route at that time.

With regards to its inclusion on the Ordnance Survey maps, it has generally been considered that OS maps show the physical situation at the time of the survey without regard for whether they had public rights, although there was no disclaimer prior to 1888. Despite this there is now a growing awareness by academics that by the end of the 19th Century the Ordnance Survey were selling large numbers of maps to members of the public and promoting the advantages in finding ways that they could travel in unfamiliar areas, which does have the implication that those routes depicted were likely to be public to some extent. However, it remains the case that the main inference from these maps is the existence of the route as an enclosed lane providing access to and from at least one property situated along it.

The 1910 Finance Act documentation has been more thoroughly researched than it was possible to do in 1995. A significant part of the route is shown to be excluded from the numbered hereditaments consistent with a belief at that time that the route carried public vehicular rights. However the remaining section from point E to point F is clearly considered from the Field Book entry to be a public footpath with private rights of access along it – acknowledging the existence of public rights, but only on foot.

The OS Names book completed a few years earlier (1907) is inconclusive – with the route originally noted as being private but subsequently being crossed out. The purpose of the information listed was to record the correct spelling of things to be included on the map and not the legal status of route but it certainly appears consistent with the Finance Act documentation in acknowledging some level of public rights along the route.

In conclusion, a much greater range of commercial maps and other documents were examined than in respect of the 1995 application which seem to suggest that the route probably came into existence in the late 1700s or early 1800s but it is not consistently shown in the first half of the 19th century. It is consistently shown to exist on small scale OS maps and the Cassini and Bartholomew maps examined since the mid 1800s which is suggestive of public vehicular use during that time but weighing against this is the fact that it did not appear to be considered to be a public vehicular route when the Tithe Map was produced.

Evidence provided by the Finance Act is inconclusive, but there is no obvious alternative explanation for the exclusion of A-E on the Finance Act plans except that it was considered to be a highway, probably vehicular at that time. If that is the case it is most unlikely that such a highway would stop short of Runshaw Lane at point E but the existence of public vehicular rights appears unsupported by any other evidence made available from this period.

Head of Service – Legal and Democratic Services Observations

Head of Service – Legal and Democratic Services Observations

In support of the application the applicant has provided the following evidence:

In addition to their own statement, 4 statements from 4 different users from 1991 that declare the route is within their certain knowledge that the road known as Culbeck Lane in the Parish of Euxton in the District of Chorley has been used for vehicular access by the general public. 2 of the users mention it has been used by the general public for 7 years, 1 user states 15 years and the other states 30 years.

A statement from the applicants

The applicants state they moved to Culbeck lane in February 2007 and at that time the lane was in good condition and they were able to have postal deliveries and refuse collections. Both driving and walking along the lane was not a problem for friends and relatives visiting.

For the first 2 years they accessed their property from both the North and South ends of the lane, depending on which direction they were travelling. They state that members of the public also often used the lane, usually these were cyclists but quite regularly they were vehicles often following sat navs some of which were looking for Euxton Football Club.

Today they are unable to access their property from the north end of the lane owing to the gate at that end being illegally inoperable. They can barely access their property from the south end due to 7 years of deterioration of the lane. Their friends and relatives are no longer able to visit by vehicle and many are unable to visit on foot owing to a fear of falling.

They state that from talking to local people and past residents it is clear that Culbeck Lane has been used by the general public for many years possibly hundreds of

years, this only became not possible recently when access for both the residents of the lane and the general public was restricted at the north end.

A statement from the Thistlethwaite's

The Thistlethwaite's occupied Culbeck Nursery from April 1984 until February 2007. They state during this period Culbeck Lane was used regularly by people on horseback and on occasion by the local horse and carriage club. It was used from time to time by cyclists and by motor vehicles, including patrons of 'The Plough' on Runshaw Lane and the local Citroen 2CV car club for their rallies.

They state each of these instances involved the traversing of Culbeck Lane along its entire length, entering at one end and exiting at the opposite end. They further state that during this time Culbeck Lane was accessed from either end by residents of the Lane and by visitors to the properties on the Lane both as motorists and as cyclists.

A statement from Philip Dermot Harrington

His knowledge of Culbeck Lane is from 1947 to November 2010. His family owned Shaw Green Nurseries on Dawbers Lane (opposite Culbeck Lane) from 1947 – 1997, he was born in 1953 and recalls his early years with his mother pushing his pram along Culbeck Lane.

From the age of about 6 (1959) he cycled along the entire length of Culbeck Lane exiting on to Runshaw Lane and back the same way. At the age of 17 (late 1969) he used Culbeck Lane driving his car, he used to do an entire loop from his house (Shaw Green Nurseries) down Culbeck Lane, left on to Runshaw Lane and then left again at the end of Runshaw Lane on to Dawbers Lane taking himself back to his house on Dawbers Lane.

To the best of his knowledge Culbeck Lane has always been an open dirt road, and he knows that it is certainly shown on A-Z maps of the area.

A statement from William Horace Moss Jessop

His knowledge of Culbeck Lane starts in 1947, at that time his father bought one of the semidetached properties close to Culbeck Farm on Culbeck Lane. The property No.2 Culbeck Lane was bought as a Market Garden business and came with land and greenhouses situated just beyond the house about 200 yards along Culbeck Lane in a northerly direction and extended to the end of the greenhouses further along Culbeck Lane towards Runshaw Lane.

At that time they had full access to Culbeck Lane from both ends (Dawbers Lane and Runshaw Lane). Their neighbour who owned No.1 Culbeck Lane was a Mr Waring who always used the entrance to Culbeck Lane from Runshaw Lane as he had a Tailors business situated in Hough Lane in Leyland. There was no gate on Culbeck Lane with the junction Runshaw Lane at that period of time.

His understanding is that Culbeck Lane was a Bridleway, the house owners on Culbeck Lane could drive up and down with cars, but the general public could only use it as a footpath or horse drawn vehicle. There were some issues at that time because people who lived in the area did tend to use it as a shortcut through from Dawbers Lane to Runshaw Lane, they never upheld the restrictions on the lane however.

In 1952 or there about his father sold No.2 Culbeck Lane and the land with the greenhouses to Mr Green and they moved a little further down the lane and rented Culbeck Farm from a Mr Lord who lived at the farm at the end of the footpath from Culbeck Lane to Shaw Green at its junction with Dawbers Lane.

When he lived at the Farm on Culbeck Lane they maintained the full length of the lane from Dawbers Lane to Runshaw Lane. They always knew Culbeck Lane as a Bridleway. He lived in the Farm up to about 1965 and when they left Culbeck Farm it was sold to a Mr Hill who also had a farm on Runshaw Lane close to its junction with the A49 Euxton. Mr Hill rented the Culbeck Farm House to his late father for a period and at this time Mr Hill commuted between the 2 farms daily using the Runshaw Lane access point.

He has driven along Runshaw Lane regularly since and often commented to his wife "that there should not be a gate there and it should not be locked as it's a bridleway" he doesn't know who put the gate there and why it's kept shut, its always been an open lane ever since he can remember.

Statement from Donna and Alan Lock

They have lived on Culbeck lane No.2 since 18th July 2005 and during their first year at the house they got on well with all 3 neighbours the Hills who own the Farm, the Thistlethwaites who owned the bungalow and the Kimbers who are the owners of No.1 Culbeck Lane attached to their property.

Unfortunately once the first year was over they have had problems with the Farm (the Hills) who have created a number of issues for them, relatively minor at first, but in recent years the actions of the Hills have extended to closing and locking gates across Culbeck Lane and they recently placed sleepers on the lane so they could only access their house from one direction but these have since been moved, although the top end of the lane is still blocked with a gate wedged shut and made inoperable.

The Hills have made their access to their septic tank difficult which is located behind their house on the Hills' land. They have deliberately spread cow manure all over the land with their machines by pumping slurry from the back of the containers as they drive up the lane; they have dug a ditch right down the front of their property where it fronts on to the lane making one of the gates to their land unusable; (one of the Hills installed this gate and they paid him to install it) and 2 of the other family members have threatened their 11 year old daughter and have been verbally abusive on many occasions to their visitors and parents.

Mr and Mrs Lock currently keep a number of chickens and ducks on their land and the Hills' dogs have on several occasions been sent after birds killing a number each month. They have had lots of problems with flies in the summer because the Hills do not follow the code of conduct as set out by DEFRA for manure spreading and their latest actions have been to pile up lots of old machinery and equipment at the rear of our property on their own field but spoiling their view and making it extremely difficult to access their septic tank.

Until the recent events they were able to access their property from both Runshaw lane and Dawbers Lane and as far as they were aware the lane has always been used by the residents of the lane and a number of other local land owners.

User evidence form from Ken Taberner

Mr Taberner has used the route from 1989 to present day on bicycle and has seen others using the route on bicycle / horse drawn vehicle and they were using the exact same route as him. Mr Taberner used the route on bicycle monthly and for pleasure and as part of a longer route, from Billinge to Billinge which is part of a loop. He states the route has always followed the exact same line and he has never used the route as an owner, tenant, employee or family member and has never met any owners, tenants employees or family members whilst using the route. He has never been given permission to use the route and no one has ever attempted to turn him back from using the route.

User evidence form from Michael Prescott

Mr Prescott has used the route on foot and on a bicycle between the years of 1990 and present day and has seen other people using the route on a motorised vehicle heading south most likely to be residents and has agreed they were using the exact same route he uses. He uses the route on bicycle monthly for pleasure as well as visiting places on the route from his home in a circular journey. He states the route has always followed the exact same line and he has never used the route as an owner, tenant, employee or family members nor did he ever meet a landowner, tenant, employee or family member while he was using the route. He has never been given permission to use the route and no one has ever attempted to turn him back from using the route.

User evidence form from Richard Iddon

Mr Iddon has used the route on foot and bicycle between the years of 1985-1995, but didn't use the route on a mountain bike between the years of 1987- present date. He has seen other people using the route on foot and agrees they were using the exact same route that he uses.

The applicants have also supplied copies of map evidence with comments about each map, these are summarised below:

Yates Map 1786

A section of Culbeck Lane is shown both ends of the lane. This would suggest that the lane existed before the building of Culbeck House and farm which has a date stone of 1805, the house was built on the existing lane not the lane provided as access for the house.

The fact that the lane is shown at all would suggest that Culbeck Lane and Flag Lane were public highways at that time.

Greenwoods Map 1818

Culbeck Lane is shown in exactly the same way as on the Yates Map of 1786.

Hennets / Teesdale Map 1829

Culbeck Lane is clearly shown on this map and appeared to be considered a part of the general highways network and is shown as a 'cross road'. Many properties are

shown on this map with no access road or track to them as they were not public roads.

Hennets Map shows routes depicted as through roads that were generally available to the public in carts or on horseback

1" – Mile Estates in Lancashire Map 1842

Culbeck Lane is shown on this map as a major route from Dawbers Lane through to the market town of Leyland via Runshaw Lane and Runshaw Hall Lane, it is clear on this map that Culbeck Lane was a main thoroughfare and appears from the map to be the major route as a continuation from Dawbers Lane.

OS Map 1844-1847 6"-Mile showing full lane

Culbeck Lane would appear to be a major route on this map. Its appearance on the map is consistent with other connecting public vehicular highways

OS Map 1894 6"-Mile Quarter Map

Again in 1894 the lane is substantial on this map, with a substantial junction at the north end of the lane.

Tithes 1847

Tithes maps usually indicate that a coloured bounded by a solid line was considered to be a part of the highways network and were often included even when not subject to tithes. Private carriage roads and walks were usually shown separately by double pecked lines.

The more major public roads appear to be listed separately at the back of the schedule.

Bacons Commercial and Industrial Maps 1880

Commercial maps of this nature were very expensive items produced for travellers; as a result these maps only show through roads which were accessible to the public. Where routes appear to form part of a road network and provide links between other [public] roads [cross roads], it is suggestive of the likely existence of public rights. [DMMO; consistency guidelines]

Culbeck Lane is clearly shown on this map as a through / cross road in which the public would be able to travel along.

London Gazette 1883

This was an entry in the London Gazette regarding Foot and Mouth Disease outbreak.

Culbeck Lane is mentioned in a schedule as a boundary.

Plan dated 1899 from Major Anderton to the Governors of Queen Anne's Bounty

It should be noted that the lane is not shaded red indicating that it was a public highway and not private access land.

Finance Act 1910 Information from Kew & Nine photos of the Field diaries and map obtained from Kew Archives

Culbeck Lane has one land portion number 418 on the OS map, 418 spans the whole lane.

The majority of Culbeck Lane was definitely exempt from valuation; this is evidence from the field diaries obtained from Kew showing that it was not in private ownership. The surveyor who surveyed the majority of the lane considered the whole lane to be public; however the surveyor who surveyed the short section at the North end wrote all his calculation in pen apart from the lane which he wrote in pencil along with public / private? Right of way. The fact that it is written in pencil and not inked in later by the surveyor raises doubt on its status, it would be very unlikely that the very short section at the North end would be private when the rest of the lane is public.

Authentic Map Directory of South Lancashire by Geographia Circa 1923

This is the latest official evidence of the status of Culbeck Lane contained within this application.

This map is an independently produced detailed street map of the area; it includes a complete index to every thoroughfare on the map. Only public roads / thoroughfares are listed within the index. The scale enables all but the small less important thoroughfares to be shown. Culbeck Lane is shown on the map and named in the index which clearly confirms that the public had access with vehicles.

Summary

This application considers eleven pieces of evidence seven of which contain new details not previously considered in the 1995 application.

This new evidence is compelling for the case of Culbeck Lane being used as a major route [cross road] to the local market town of Leyland. The listing of Culbeck Lane in the private maps (bought and used by wealthy travellers) together with all other roads in the local area is also compelling evidence.

Culbeck Lane has existed for over two centuries and is part of England's heritage, and given its history and the limited methods of transport in years gone by, it is a compelling case that the lane was indeed a public thoroughfare.

As part of the 1991 application the applicant submitted 5 forms, these forms all stated that Culbeck Lane had been used for vehicular access by the general public, the years from the forms varied from 40 years, 30 years, 15 years and 7 years. One of these forms was completed by Mr B Dean which was asked to be withdrawn at a later date in his objection.

Responses from others

Sue Halsall has confirmed ownership of her land which is adjacent to the route but has not provided any additional comments.

After being consulted Donna & Alan Lock have provided information about their ownership and personal use of the route.

Mr & Mrs Catterall after being consulted have also provided information about their ownership and personal use of the route, in addition Mr Catterall provides the following comments:

- He has lived at Woodcock Barn, Runshaw Lane, Euxton, PR7 6HB since 1976 after purchasing the property that year from the Central Lancashire Development Corporation (CLDC) which is now defunct.
- He mentions that the property comprised of a redundant barn building with surrounding land better described as a barn yard with vehicular access to Culbeck Lane, Runshaw Lane and Dawber's Lane. And from the deeds of his property he has provided information of his ownership.
- Access to Culbeck Lane from his property was open without restriction when he first moved in along with the access from Runshaw Lane onto Culbeck Lane and through to Dawbers Lane.
- The Runshaw Lane end was regularly used by him and other vehicles for about the first 2 years as the conversion works of the barn to a dwelling were under way, he carried on using the Culbeck Lane on foot, bicycle and motorised vehicle for about another 8 years but essentially only down to visit a friend who lived at No. 2 Culbeck Lane.
- He mentions his friend would also drive or walk up Culbeck Lane to visit him but he can't put a routine on these visits as they could have been weeks or months apart or sometimes several trips in one day especially if they were collecting logs for fire.
- He estimates he could count on one hand the number of times he has travelled by vehicle all the way down Culbeck Lane onto Dawbers Lane.
- When he bought his property in 1976 he saw vehicles belonging to or on behalf of CLDC using Culbeck Lane to and from Runshaw Lane, he doesn't know how often they used the lane but the surface of the lane looked well used by motor vehicles and he naturally assumed that they were travelling to and from a plant nursery that CLDC owned approximately half way down the lane, he is not sure when the nursery closed down but this was several years later.
- Some years after the nursery closed down someone placed a gate at the junction of Runshaw Lane and Culbeck Lane, the gate was on a latch and he still used the lane for all types of access to his property.
- He thinks around 1990 that the owner of Guest House Farm, Mr Dean purchased farm land from CLDC that Culbeck Lane ran over at the Runshaw Lane end. Shortly after he blocked the access and exit of Culbeck Lane by dumping waste soil against the aforementioned gate. Mr Catterall did complain to the local authority about the obstruction and understood others also had complaints, he doesn't know what procedures took place but the obstruction was removed shortly after.
- He mentions that in around 1995 the owner of Guest House Farm Mr Dean erected a barbed wire fence across Culbeck Lane and dug a ditch alongside connecting two ditches together thus blocking off all types of passage in both direction. This obstruction was part way down the lane from the Runshaw Lane end and it did not interfere with the access of his property and was of no immediate inconvenience as his friend moved house by this time and therefore rarely used the lane so he didn't take action as it was his

understanding that other people such as ramblers and equestrian type groups had taken up the challenge to reopen the lane and the obstruction was removed.

- He estimates that in 2002 the owner of Guest House Farm Mr Dean parked a trailer in Culbeck Lane a little way down from the Runshaw Lane end effectively blocking off the lane from vehicular passage but has witnessed pedestrians, bicycles and horses bypass this obstruction, the trailer was removed shortly after Mr Dean sold Guest House Farm to Mr Kitchen around 2009.
- Within months of Mr Kitchen acquiring Guest House Farm he understands that the Hill family, farmers at Culbeck Farm, became tenants of Mr Kitchen on the land that Culbeck Lane passes over. About a year or so later Mr Morris Hill locked the gate at the junction of Culbeck Lane to Runshaw Lane with a padlock and chain and handed him a key for the lock allowing him to passage through to his property. By around 2010 he became aware that there was an issue of access over Culbeck Lane involving three parties who had interest in the lane and believe that this event has caused the gate to be blocked off permanently thus not allowing him vehicular access to his property.
- To conclude with he still uses the lane occasionally on foot these days but would like the vehicular access to his property reinstated, additionally over the years since CLDC sold the nursery gates and wires have been placed across the lane toward the Runshaw Lane end at various times in various locations restricting free passage; albeit they are often tied with twine or twisted wire and one is sometimes forced to climb over the obstacle.

A response has been received from Pat Hough, Ramblers Association via Euxton Parish Council, the comments they make are outlined below:

- Pat has been part of the Ramblers Association, Chorley group, Footpath checker for Euxton Parish for 14 years
- She was supplied with detailed descriptions and definitive maps (scale 6 to the mile) covering Euxton Parish Footpaths
- Every year since then she has walked the full length of Culbeck lane at least once to check Footpath 37 which runs from A581 northwards along Culbeck Lane to Culbeck House, Footpath 38 northwards from Culbeck House to the junction with Footpaths 39 and 40 (just south of the bungalow) and footpath 39 which runs from the junction with 38 and 40 northwards to Runshaw Moor Lane.
- On one of her first visits to check the paths she drove her car from A581 up Culbeck Lane and parked opposite Culbeck House. When she asked at the house if it was OK to leave her car there the farmer politely pointed out that Culbeck Lane is only a footpath, and that she and other members of the general public have a right to walk on it but not to ride a bicycle or a pony on it, let alone take a car on it.
- For all the years she has been walking Culbeck Lane Footpath 39 has been a grassy track, rutted in some places and not suitable for bicycles
- There has also been one or two gates across Footpath 38 near the bungalow and one where Footpath 39 meets Runshaw Lane, these gates were generally tied up with binder twine but there was always a narrow space at the side for walkers to pass through

- She would like to be assured that if Culbeck Lane is to be upgraded to a restricted byway it will still be safe for walkers

Objection from Simon Mair, P Wilson & Company

Mr Mair supports the objection to the application made by Mr & Mrs Kitchin in his own capacity, he does so by the knowledge of, and familiarity with Culbeck Lane and the adjoining agricultural properties.

Mr Mair refers to the application in 1991 to upgrade the status of Culbeck Lane from a Public Footpath to a BOAT made by the then owner of Culbeck Nursery (now known as 'Lothlorien'), he was instructed by Mr Dean the owner of Guest House Farm at that time and the late Mr M Hill of Culbeck Farm to lodge objections to that claim, Mr Mair has provided copies of those objections.

In 2009 existing clients of Mr Mair's firm, Mr & Mrs Kitchin and Messrs Hill consulted him regarding a dispute with applicants of this application who were alleging interference with a vehicular right of way over Culbeck Lane. When the applicants commenced legal proceedings against Mr Mair's clients he was instructed to undertake research and produce a report in respect of the relevant historic documents relating to the ownership and past use of Culbeck Lane. That report was initially produced for the purposes of that litigation and Mr Mair has now revised that report and provided it along with appendices as part of his objection.

Mr Mair also provides a copy of his sworn Witness Statement dated 19 January 2011 which he made in connection with the litigation, the statement details the history of his involvement with and knowledge of Culbeck Lane from 1978-2011.

Mr Mair has undertaken a review of the research he carried out in 2009 and has taken a look at the County Council's claim file for the previous application made and the evidence submitted by the applicants. Mr Mair finds nothing in the evidence submitted by the applicants which is either new or which would warrant a re-assessment of the evidence presented to the Sub-Committee in 1995. Whilst the current claim is for an upgrade to a Restricted Byway rather than a BOAT he states that the available evidence remains insufficient for the claim to be accepted and that the available evidence is that Culbeck Lane is correctly recorded on the Definitive Map as a Public Footpath only.

Points raised in the objection to the 1991 application on behalf of Mr Brian M Dean (Guest House Farm)

At the time of the application Mr Dean signed a form prepared by the Applicant Mr Thistlethwaite purporting to have knowledge of the use of Culbeck Lane by vehicular traffic over the previous 15 years, however Mr Dean objected to the County Council on the basis of unsuitability of Culbeck Lane as a BOAT rather than history of the usage.

Mr Dean objected most strongly to the application and formally withdrew his earlier signed statement which he misunderstood at the time and provided the following

facts:

- Mr Dean first occupied Guest Farm, Runshaw Lane, Euxton in July 1975 following its acquisition by the Central Lancashire Development Corporation (CLDC), his knowledge of Culbeck Lane started from that date.
- By virtue of a Tenancy Agreement dated 14th May 1980, Mr Dean was granted an agricultural tenancy by CLDC of an additional 16.02 acres, this land included the length of Culbeck Lane and had been previously occupied by Mr Morris Hill of Culbeck House Farm.
- Upon commencement of his occupation of that land Mr Dean undertook various improvement works which included the cutting back of hedges either side of Culbeck Lane which had become neglected and very overgrown to such an extent that vehicular passage along the land was very restricted. In addition, he removed a mound of soil and a fence which had been constructed by the previous occupier across the northern end of Culbeck Lane (at its junction with Runshaw Hall Lane) to prevent trespassers using the Lane and the escape of his cattle.
- Mr Dean's occupier's knowledge of the northern section of Culbeck Lane therefore exceeds 15 years and throughout that time Culbeck Lane has not been used as of right by vehicular traffic, only as a public footpath.

Points raised in the objection to the 1991 application on behalf of Mr Hill (Culbeck House Farm)

- Mr Morris Hill was born in 1933 and has lived in Euxton all his life
- In 1966 his father Mr Norman Hill purchased Culbeck House Farm and for the following two years the family farmed the property in conjunction with their existing holding, being Boarded Barn Farm, Runshaw Lane, Euxton
- During the period 1966-1968 the most convenient access to Culbeck House Farm from Boarded Barn Farm was via Runshaw Lane / Culbeck Lane. However, the then owner of the land on either side of the northern stretch of Culbeck Lane, Mr T Speakman of Woodcock Farm, Runshaw Lane, tried to prevent the Hills from using that route, arguing that the owners / occupiers of Culbeck House Farm were only entitled to use the stretch of Culbeck Lane between the farm and Dawbers Lane. However Mr Speakman was unable to provide any evidence to support his contention.
- In March 1968 Mr M Hill moved to Culbeck House Farm and thereafter farmed the property independently of Boarded Barn Farm as a tenant of his mother.
- Sometime during 1969, Mr Hill began to experience problems with motorcyclists using Culbeck Lane during the late evenings as a short cut between 'The Plough' (Runshaw Lane) and 'The Travellers Rest' (Dawbers Lane) Public Houses. This prompted an enquiry by Mrs Hill of her Solicitors as to the status of Culbeck Lane.
- In 1970 Mr Hill was first granted a licence to occupy land either side of Culbeck Lane owned by Mr Speakman of Woodcock Farm. This included the northern length of Culbeck Lane, and to prevent the further use of Culbeck Lane by trespassers on motorbikes (as well as to deter courting couples who,

from time to time would park their cars at the Runshaw Lane junction) he constructed a mound of soil and a stockfence across the northern end of the lane.

- Mr Hill continued to occupy this land for 10 years until it was taken over by Mr B Dean of Guest Farm, Runshaw Lane, Euxton. Throughout that period it was physically impossible for vehicles to negotiate Culbeck Lane travelling to and from Runshaw Lane.
- Mr Hill's clear understanding of the status of Culbeck Lane is that it is a private accommodation road serving only these properties and landholdings which have direct access to the lane. Third parties wishing to use Culbeck Lane have had to seek permission from one or more of the Culbeck Lane property owners. Our client's understanding is, of course, supported by the Euxton Parish Survey Records of April 1951.
- For example, sometime around 1969/70 Mr Harry Alker of Euxton House Farm, Runshaw Lane, whose land used to run up to Culbeck Lane sought permission from Mr Hill for drainage contractors to use Culbeck Lane from Dawbers Lane to gain access to his land where a field drainage scheme was to be undertaken.
- Mr Hill also recalls being told of two incidents involving members of the Jessop family, who occupied Culbeck House Farm prior to 1966. The first took place sometime in the late 1930s when Mr Banks from Shackleton Brow, Dawbers Lane, was returning on his horse and cart via Runshaw Lane / Culbeck Lane from delivering coal in Leyland. He had been previously warned by the Jessops not to use Culbeck Lane as a short-cut home, and on that evening he was accosted by the Jessops who seized the bridle of the horse and attempted to turn Banks' cart around. In so doing, both of Banks' legs became trapped and broken. The second incident was far less dramatic, in 1963 or thereabouts Mr Bill Cordiner of Primrose Hill Farm, Runshaw Lane arranged to mow for hay some field of grass belonging to Mr J C Brindle of Coplands Farm, Dawbers Lane at the southern end of Culbeck Lane, again it was more convenient to travel via Runshaw Lane / Culbeck Lane to reach this land, but he first had to ask permission from Jessops.
- When the Hills first purchased Culbeck House Farm in 1966 there was a clear sign at the Dawbers Lane end of Culbeck Lane which read 'Private Road to Culbeck Farm and Culbeck Nursery'. This sign remained in existence until the Council erected footpath sign sometime in the early 1970s and without permission removed the same.

Letter from Ellis Sayer & Henderson dated 20th August 1969 to the Hills

- Chorley Rural District Council confirmed that Culbeck Lane is a private accommodation for its entire length with only public footpaths running along it, this means the public have the right to walk along Culbeck Lane but not drive vehicles along it.
- The only persons having a right to drive vehicles are the owners and occupiers of the properties the road serves and person having legitimate

business at such properties by the express or implied invitation of such owners and occupiers.

- This we think anyone else driving along the route would be a trespasser. We suggest it to be desirable to exhibit a notice at each end of Culbeck Lane making it clear that it is a private road for vehicles.

Points raised in the witness statement provided by Mr Mair dated 19 January 2011

- When working for CLDC/CNT his principal duties related to the management and subsequent disposal of CLDC/CNT's landholding which at one time exceeded 4000 hectares and that landholding encompassed land at Euxton and included inter alia Culbeck Nursery (now known as 'Lothlorien')
- Until its sale in 1984, Culbeck Nursery had been operated by CLDC as a landscape nursery, vehicular access to which was gained solely from the section of Culbeck Lane leading from Dawbers Lane to the south.
- Mr Mair was involved in a programme of amalgamation of landholdings which the government had de-designated from the New Town to form viable farm units which were then let on full agricultural tenancies, one of these holdings was Guest House Farm
- An initial tenancy of the house premises and adjoining land was granted to Mr Brian Dean in September 1979 and in May 1980 a further 6.5 hectares was added to Mr Dean's tenancy; that land comprising the section of Culbeck Lane and the fields fronting it on either side, this is now in the ownership of the Kitchin's. For a few years prior to May 1980 that land had been occupied by the late Mr Morris Hill of Culbeck House Farm, being property now in the ownership of the Hills.
- Mr Mair recalls that immediately prior to the commencement of Mr Dean's occupation in 1980 the hedges on either side of Culbeck Lane had become so overgrown as to make the land impassable for most vehicles.
- Some years previous to this Mr Hill formed a mound of soil and erected a length of fence at the northern end of the land close to its junction with Runshaw Lane to deter trespassers, subsequently Mr Dean removed the mound of soil and fence and cut back the overgrown hedges fronting that section of Culbeck Lane.
- In 1988 Mr Mair acted for Mr and Mrs Dean in their purchase of Guest House Farm from CNT
- In 1991 Mr Mair received instructions from the late Mr Morris Hill to lodge an objection on his behalf to an application which had been submitted by Mr Thistlethwaite, the then-owner of Culbeck Nursery for a Definitive Map Modification Order to upgrade the status of the public footpath along Culbeck Lane to a BOAT
- In September 1995 Mr Mair was instructed by Mr Dean and the late Mr Hill to make written objections on their behalfs to the application, which was considered by the Rights of Way Sub Committee and subsequently rejected and the status of the Lane has remained a public footpath ever since.
- In October 2001 Mr Mair received instructions from Mr Dean to act on his behalf in respect of an access and land drainage dispute which had arisen between himself

and Mr Michael Catterall, the owner – occupier of Woodcock Barn, a residential property fronting Runshaw Lane adjacent to its junction with Culbeck Lane, in connection with that dispute he prepared a report for the purposes of Mr Dean's counterclaim against Mr Catterall in the Chorley County Court.

- In view of his knowledge and past experience of Culbeck lane he was contacted by the defendants in early August 2009 to advise them in connection with ongoing disputes with the Bramwells regarding rights of way over Culbeck Lane. Following a meeting and the content of two letters from DAS Legal Expenses Insurance Co Ltd acting for the Bramwells dated 21 July 2009 it came apparent to Mr Mair that there were a number of issues to be addressed between the claimants and the defendants.
- There was concern by the action of the Hills in obstructing the Bramwells access to a section of Culbeck Lane by placing concrete sleepers across the lane close to the entrance to their property. This action was followed by the deposition of hardcore by the Bramwells over a section of Culbeck Lane in the ownership of the Hills. Mr Mair advised the Hills to remove the sleepers without delay which they did.
- On 14 August 2009 Mr Mair wrote to DAS Legal Expenses Insurance Co Ltd on behalf of the Hills and Kitchins to confirm he had been instructed and would be carrying out research and that in the meantime the offending sleepers would be removed as "a gesture of goodwill pending an amicable and early resolution" of the disputes and referred to the Bramwells action and expressed an expectation that they would be advised "to desist from any similar, provocative action whilst the parties are seeking a resolution to the right of way issue"
- Mr Mair received a letter by email on 26 August 2009 from DWP LLP Solicitors acting on behalf of the Bramwells in response to his letters of 14 August 2009, the letter acknowledged the sleepers had been removed but then threatened legal proceedings, in light of the threat Mr Mair advised the Hills and Kitchins to refer the matter to their respective solicitors.
- He then wrote to DWF LLP on 26 August 2009 to make it clear he had no instructions in respect of the latest complaints and therefore no authority to accept the notice of threatened legal proceedings but reiterate that he was still continuing with his research
- Mr Mair envisaged that having completed his researches, he would be well placed to help the claimants and the defendants to reach an agreement which would clarify and formalise rights of way over, and provisions relating to the repair and maintenance of, Culbeck Lane to the advantage of all parties and their successors-in-title. Unfortunately in November 2009 he was advised that legal proceedings had been commenced by the claimants against the defendants.

Report prepared by Simon Mair – Mr Mair has also provided copies of his appendices

1. Introduction

Mr Mair explains that this report has been prepared to support the objections

made by his clients Mr & Mrs Kitchin and Messrs Hill to the applications submitted by Messrs Bramwell (the applicants).

Mr Mair first became aware that his clients and the applicants were in dispute concerning Culbeck Lane in early August 2009 and his advice to his clients was that research needed to be undertaken of title deeds and various public records to establish, if possible, the ownerships and private and public user rights in respect of Culbeck Lane. This report contains the findings of that research, which are relevant to the current application and he has provided appendices.

Mr Mair states that in addition to the documentary sources which have been researched, enquiries have been made to the National Monuments Record in Swindon regarding the availability of historic aerial photographs. Copies of aerial photographs dated 1946, 1955, 1967, 1972, 1983 and 1988 are available.

2. Public Records

Mr Mair has inspected the following public records:

At the Lancashire Records Office:

- Ordnance Survey and other published Maps
- The Euxton Tithe Map and Award 1847
- The Finance Act 1910 Valuation Book & Working Maps for Euxton District
- The Euxton Hall Estate Auction Particulars 1922
- The Euxton Hall Estate Auction Particulars 1927

[NB There is do Enclosure Award for this area]

At Lancashire County Council:

- The Definitive Map Euxton Parish Survey Cards (3) for Culbeck Lane, 1951

Ordnance Survey & Other Published Maps

The first published map which shows a route, connecting Runshaw Lane and Dawbers Lane approximating to Culbeck Lane (although not named as such) is the Teesdale / Hennet Map of 1828/30.

The route appears marked 'Culbeck Lane' on the 1844-48 6" Ordnance Survey Map, the 1894 25" OS Map **[Mr Mair Appendix 1]** and all later editions **[Mr Mair Appendix 2]**. The 1844-48 Map shows a line across the route (to the south of Culbeck House) whilst the 1894 and later maps show 3 lines (albeit not always in the same location). These lines indicate to him the presence of gates or fences.

The Euxton Tithe Map and Award 1847 **[Mr Mair Appendix 3]**

The Tithe Map depicts the route of Culbeck Lane in the same sepia colour as Runshaw lane and Dawbers Lane. However the Schedule to the Award records Culbeck Lane as a 'Road' and in private ownership, whereas Runshaw Lane and Dawbers Lane as described as 'Public Roads'. No tithes were payable in respect of any part of Culbeck Lane.

The northern section of Culbeck Lane together with the fields on either side (now owned by Mr & Mrs Kitchin) are recorded as being on the ownership of John Parkinson and in the occupation of Peter Halliwell. Neither of these persons are

recorded as owning or occupying any other part of Culbeck Lane or any other land fronting the lane.

The central section of Culbeck Lane south to the Chapel Brook crossing [now within the ownership of the Hill family] is recorded as being in the ownership of Mrs Clayton. She also owned the premises and adjoining land at Culbeck House; which included Parcel No 994 ('Culbeck Lane Field'), the southern part of which now comprises Culbeck Nurseries / Lothlorien (owned by the applicants).

The southern section of Culbeck Lane, from the Chapel Brook southwards to Dawbers Lane, is recorded as also being in the ownership of Mrs Clayton.

None of the parcels of land comprising or fronting Culbeck Lane are recorded as being in the ownership or occupation of an Anderton (being the family associated with Euxton Hall).

The Finance Act of 1910 Valuation Book & Working Map for Euxton District **[Mr Mair Appendix 4]**

The northern section of Culbeck Lane and adjoining land [again, coinciding with Mr & Mrs Kitchin's ownership] is included in a single hereditament for the Increment Value Duty. That hereditament [No. 608] is recorded as being in the ownership of Rev J C Catterall (c/o Fearnhead & Tattersall, High Street, Chorley) and in the occupation of Robert Walmsley.

The remainder of Culbeck Lane is excluded from the hereditaments comprising land fronting the lane. Land on either side of Culbeck Lane, as far south as the Chapel Brook crossing, is recorded as being the owner of Coplands Farm (east of Culbeck at its junction with Dawbers Lane). The owner of land fronting the west side of Culbeck Lane (together with a single field on the eastern side) to the south of the Chapel Brook crossing, is recorded as being A W Rawcliffe of Haigh Brewery, Wigan.

The Euxton Hall Estate Auction Particulars 1922 **[Mr Mair Appendix 5]**

The 1922 Auction Particulars and plan described four Lots which either fronted or included sections of Culbeck Lane.

Lot 37, 'Lower House Farm': The south eastern extremity of this Lot comprised 'Field 419' together with a 'Half of Culbeck Lane *coextensive* with the frontage of Field 419'; that short length to be maintainable by the purchaser.

Lot 41, 'Culbeck House': This Lot contained a section of Culbeck Lane (described as a 'private occupation road') as far south as the Chapel Brook crossing. The purchaser was therefore to be responsible for the maintenance of the full width of that section.

Lot 42, 'Field of Accommodation Land in Culbeck Lane': This Lot comprised a single field ('Culbeck Field'), fronting Culbeck Lane to the west, together with a half width of Culbeck Lane to be maintainable by the purchaser.

Lot 43, 'Accommodation Land': This Lot comprised four fields to the east of Culbeck Lane together with a half width of the Lane (again, maintainable by the purchaser). The southern part of Field 417 ('Culbeck Lane Field') comprises Culbeck Nurseries now owned and occupied by the applicants.

The Terms of Auction Sale state that:

"Each lot is sold subject to or including as the case may be all rights of way, air, light, drainage or other right of easement, quasi-easement, or accommodation whatsoever affecting the same, or appertaining or belonging thereto, whether specifically referred to in the Particulars of the Lots or not, and the same shall be expressly reserved in the Conveyance of such Lot for the benefit of the Vendor, and such owners and occupiers of other Lots as the Vendor shall consider entitled thereto, and shall, in the case of a right of way, include a general right of way for horses, animals, carriages, carts, wagons and other vehicles, loaded or unloaded".

The Auction Particulars make no specific references to the existence or grant of rights of way over Culbeck Lane.

The Euxton Hall Estate Auction Particulars 1927 **[Mr Mair Appendix 6]**

The 1927 Auction Particulars and plan described three Lots which either fronted or included sections of Culbeck Lane.

Lot 19, 'Coplands Farm': This property had not been offered for sale in 1922. The Lot included a half width of Culbeck Lane (to its junction with Dawbers Lane) for which the purchaser was to be responsible for maintenance.

Lot 20, 'Culbeck House': This Lot comprised an amalgamation of Lots 41 and 43 from the 1922 Auction (which evidently had not been sold in 1922). The ownership of, and maintenance responsibilities for, Culbeck Lane were as before.

Lot 21, 'Lower House Farm': This Lot was identical to Lot 27 from the 1922 Auction (which, again, had not therefore sold in 1922). The short, half width length of Culbeck Lane was again included, with a maintenance responsibility.

The only Lot from the 1922 Auction, with relevance to Culbeck Lane, which was not included in the 1927 Auction was Lot 42. The completion of the sale evidently took place in January 1923.

The 'general Remarks and Stipulations (forming part of the Conditions of Sale)' state, inter alia, that:

"The various Lots are sold subject to all existing Rights of Way, Water easements, and to all other Rights, Liberties and Privileges affecting the same whether shown on the Plan or mentioned in the particular or not"

The 'Special Conditions of Sale' state, inter alia, that:

"Each Conveyance of a Lot sold subject to any Conditions or Stipulations shall contain a covenant by the Purchaser to observe and perform such Conditions or Stipulations and such covenant shall be framed so as to bind so far as the law permits the owners and occupiers for the time being of such Lot or any part thereof and so as to be for the benefit of the Owner and Occupiers for the time being of every or any part of the property described as the Euxton or Brindle Estate".

The Auction Particulars make no specific references to the existence or grant of rights of way over Culbeck Lane.

The Definitive Map Euxton Parish Survey Cards, 1951 **[Mr Mair Appendix 7]**

Culbeck Lane is recorded on three Survey Cards all dated 25 April 1951. In each case it is described as an "Accommodation Road", with the status of the public

right of way being a footpath.

Legal Title Documents

The Applicants: Mr & Mrs Bramwell

The Applicants are the freehold owners of 'Lothlorien' (previously known as Culbeck Nursery), the registered title of which is LAN48691 **[Mr Mair Appendix 8]**. The title plan excludes any part of Culbeck Lane.

The Applicants' property comprises part of the and conveyed on 21 December 1944 by Sir Frances Robert Ince Anderson & Others to Foster Brothers (Lords Fold Nurseries) Limited **[Mr Mair Appendix 9]**. The land conveyed was that which had comprised Lots 41 & 43 when offered for sale in 1922, which translated to Lot 20 when offered for sale in 1927.

Clause 2 of the 1944 Conveyance states that:

"The Purchasers hereby COVENANT with the Vendor that the Purchasers will maintain and keep in repair such portions of Culbeck Lane as are included in this Conveyance".

The Conveyance contains no reference to any grant or reservation of a right of way in respect of any other part of Culbeck Lane.

By virtue of a Conveyance dated 30 July 1947, Foster Brothers (Lords Fold Nurseries) Limited sold what is now the Applicants' property, together with a semi-detached property (No 2 Culbeck Lane), to William George Jessop. **[Mr Mair Appendix 10]**

These two properties were sold

"TOGETHER with full rights of way for the Purchaser and persons deriving title under him for all purposes over and above such portion of Culbeck Lane as are in the ownership of the Vendors subject nevertheless to the liability of the Purchaser to contribute rateably according to his frontage to the repair and maintenance of one half in width of Culbeck Lane shall be adopted by the appropriate authority and become a highway repairable by the public at large and furthermore TO HOLD unto the Purchaser in fee simple subject to the covenant relating to the repair and maintenance of portion of Culbeck Lane aforesaid contained in a Conveyance dated the 21st day of December 1944 ... so far as the same is still subsisting and capable of taking effect and related to the properties hereby firstly and secondly conveyed".

Clause 3(1) of the July 1947 Conveyance contains a Purchaser's Covenant in respect of the repair and maintenance of Culbeck Lane.

Messrs Hill

The Hill family's freehold ownership comprises two registered titles.

LA834215 **[Mr Mair Appendix 11]** comprises the residue of the land conveyed by Anderton & Others to Foster Brothers in 1944 together with an additional field to the south of the Chapel Brook (which on the 1922 Auction Particulars plan is shown as then being in the ownership of Mr Wm Jackson).

That property was the subject of a Conveyance dated 19 July 1948 between Foster Brothers (Lords Fold Nurseries) Limited and William Alfred Ascroft **[Mr Mair Appendix 12]**. The property is described definitively in the First Schedule and for the purposes of identification on the plan annexed thereto. The Schedule and plan include ownership of the full width of Culbeck Lane north of the Chapel Brook

crossing as far as a point approximately 2/3rds along the southern boundary of the Applicants' property. From that point northwards to the ill family's northern boundary only the eastern half width of Culbeck Lane is included.

The second Schedule of the July 1948 Conveyance lists the rights, easements etc to which the property is subject. The Schedule repeats the liabilities in respect of the repair and maintenance of Culbeck Lane contained in the earlier Conveyances.

The Third Schedule of the July 1948 Conveyance lists the rights, easements, covenants etc which benefit the property. These contain no specific reference to a right of way over Culbeck Lane.

By virtue of a Conveyance dated 25 April 1949, William Alfred Ascroft conveyed the same property to Culbeck Farms Limited **[Mr Mair Appendix 13]**. The conveyance repeats the rights, easements etc referred to in the previous Conveyances.

On the death of Norman Hill, the property passed to his widow Iris Hill. By virtue of a Conveyance dated 28 April 1975, Iris Hill conveyed a parcel of land fronting the east side of Culbeck Lane (to the north of No. 2 Culbeck Lane) to William Kevin Cairns **[Mr Mair Appendix 15]**. That Conveyance contained a Purchaser's Covenant:

"Whenever so requested by the Vendor to pay to the Vendor a proportionate part of the cost of maintenance and upkeep of that part of Culbeck Lane aforesaid which belongs to the Vendor such proportion to be decided in the event of a dispute by the Vendor or her agent whose decision shall be final".

Marjorie Hill is also the registered freehold owner of a parcel of land on the west side of Culbeck Lane: Title No. LA564650 **[Mr Mair Appendix 16]**.

This property includes the field which had comprised Lot 42 in the 1922 Auction which, according to the Charges Register entry, had been conveyed by Anderton & Others to Margaret Alice Jackson on 19 January 1923. The remainder of the property comprises two adjoining fields which had formed part of Lower House Farm (i.e. Lot 37 in 1922 and Lot 21 in 1927).

The register title does not, however, include the western half width of Culbeck Lane.

Mr & Mrs Kitchin

Mr & Mrs Kitchin are the freehold owners of Guest House Farm, Runshaw Lane, Euxton; Registered Title No. LA591763 **[Mr Mair Appendix 17]**. The property had been first registered in 1988 when the previous owner (Mr Dean) had purchased it from the Commission for New Towns (the successors to the Central Lancashire New Town Development Corporation).

Unfortunately the pre-registration deeds to Guest House Farm have been lost.

However the DL Form forwarded to the Land Registry in October 1988 has survived **[Mr Mair Appendix 18]**. The first entry on the DL Form is a Conveyance dated 08 February 1888 between Glover & Others to Catterall, whilst the second entry refers to a Lease in 1938 granted by the Executors of J H Catterall Deceased.

The DL Form contains no mention of Foster Brothers (Lords Fold Nurseries) Limited. The Kitchins' registered title includes the northern section of Culbeck Lane to Runshaw Lane (with the exception of a small area at the junction itself, which is still subject to a Caution registered in 1995 by Mr Dean – Title No. LA755553). The charges Register recites a reservation in a Conveyance dated 22 August 1975 (Speakman – to – Central Lancashire New Town Development Corporation).

"SUBJECT to such rights as adjoining owners or the public at large may have to use the roadway known as Culbeck Lane".

Culbeck Lane: Highway Status

The Definitive Map and Statement of Public Rights of Way record Culbeck Lane as a public footpath. Infact it comprises three separate footpaths: No's 37, 38 and 39, Euxton.

In 1991 the previous owner of the Applicants' property, Mr G H Thistlethwaite, made an application to Lancashire County Council, pursuant to the provision of the Wildlife and Countryside Act 1981, to upgrade the status of Culbeck Lane from a public footpath to a byway open to all traffic (BOAT). I was then instructed by Mr BM Dean of Guest House Farm and the late Mr M Hill of Culbeck Farm to make representations on their respective behalves objecting to Mr Thistlethwaite's application.

The representations on behalf of these clients were set out in the two letters from P Wilson & Company to the County Council, both dated 26 September 1995 **[Mr Mair Appendix 19]**. Mr Hill had occupier's knowledge of Culbeck Lane from 1966 and Mr Dean from 1988.

The County Council concluded that there was insufficient evidence to support the submitted claim for an upgrade to BOAT status, and determined not to make a Modification Order. No appeal against that decision was ever made.

Facts Established from the Evidence

Culbeck Lane is not recorded, on any published map, as a through route connecting Runshaw Lane and Dawbers Lane, before the Teesdale / Hennet Map of 1828 / 30. Culbeck Lane did not form part of any Enclosure Award.

The Euxton Tithe Map & Award of 1847 records Culbeck Lane as being in two private ownerships but not subject to the of tithe **[Mr Mair Appendix 3]**. The boundary between the two ownerships is slightly to the south of the southern boundary of Mr & Mrs Kitchin's registered title.

The Finance Act 1910 Valuation Book and Working Map differentiate between the northern section (corresponding to the Kitchins' ownership) and the remainder of Culbeck Lane **[Mr Mair Appendix 4]**. The northern section is included within a hereditament for levy purposes whereas the remainder is excluded.

The Valuation Book records the owner of the northern section as being the Rev J C Catterall. That is the same name as appears on the 1922 Auction particulars plan. The owner of land either side of the central sections of Culbeck Lane (therefore including the Applicants' property and that of the Hill family) is recorded as being Major W J Anderton. South of the Chapel Brook crossing, the adjoining landowners are recorded as being Major W J Anderton and Mr A W Rawcliffe.

No part of what is now Mr & Mrs Kitchin's property contains no evidence of ownership (of the land comprising and adjoining Culbeck Lane) by the Andertons / Euxton Hall Estates **[Mr Mair Appendix 18]**.

Neither does the 1988 DL Form contain any evidence of ownership by Foster Brothers (Lords Fold Nurseries) Limited.

There is no evidence contained in any of the documentary sources that, at the time of the 1944 Conveyance of Culbeck Farm (which included the properties now owned by the Applicants), the Euxton Hall Estate (i.e. the Vendors, Anderton & Others) were entitled to, or exercised, any right of way over the northern section of Culbeck Lane (now owned by Mr & Mrs Kitchin) **[Mr Mair Appendix 9]**.

The only references in the documentary sources, to the express grant of a right of way in respect of Culbeck Lane, are those contained in the Conveyances of July 1947 (concerning the Claimants' property) and July 1948 (concerning the Hill family's property) **[Mr Mair Appendix 10 & 12]**. In respect of the former, the right of way was

limited to such parts of Culbeck Lane as were in the ownership of Foster Brothers (Lords Fold Nurseries) Limited, namely the section of Culbeck Lane included in the 1944 Conveyance; although it may also have included the section (whether full or half width) coextensive with the front of the single field on the east side of the land immediately to the south of the Chapel Brook crossing, which was included in the July 1948 Conveyance (and shown edged green on the plan).

Assumptions arising from the Evidence

In respect of Title No. LA564650 **[Mr Mair Appendix 16]**

The field shown tinted pink corresponds to Lot 42 from the 1922 Euxton Hall Estate Auction. Given that the Conveyance was dated 19 January 1923, it is reasonable to assume that that Conveyance included a half width of Culbeck Lane coextensive with its frontage, consistent with the Auction Particulars, with the Vendor reserving rights in respect of the same (given that the land opposite remained in estate ownership at the time of that Conveyance).

That half width has not however been included within the LA564650 registration. It is assumed that, upon application, the Land Registry would amend the register to include the same.

The same assumption is made in respect of the (western) half width of Culbeck Lane immediately to the south, which formed part of Lot 21 (Lower House Farm) in the 1927 Auction Particulars **[Mr Mair Appendix 6]** .

In respect of Title No. LA834215 **[Mr Mair Appendix 11]**

The Conveyances dated December 1944 and July 1948 included the (eastern) half width of Culbeck Lane opposite the half widths referred to in Title LA564650.

Furthermore no part of that half width was included in the July 1947 Conveyance (in respect of the Claimants' property).

That half width has not however been included within the LA834215 registration. It is assumed that, upon application, the Land Registry would amend the register to include the same.

In respect of the Euxton Hall Estate's ownership of Culbeck Lane

Given the extent of the Euxton Hall Estate's ownership, as evidenced by the 1922 and 1927 Auction particulars and the Finance Act 1910 documents, it is assumed that both the Claimants' property and the Hill Family's property (including that owned by Marjorie Hill) benefit from an implied right of way along Culbeck Lane, from the Chapel Brook crossing south to the junction with Dawbers Lane **[Mr Mair Appendices 4-6]**

In respect of Title No. LAN48691 **[Mr Mair Appendix 8]**

Whilst not including any part of Culbeck Lane, it is assumed that this property (the Applicants') is entitled to the benefit of a right of way over the full width of Culbeck Lane which is coextensive with its southern and western boundaries.

It is assumed that the liability to contribute to the cost of repair and maintenance of Culbeck Lane, imposed by the July 1947 Conveyance, was intended to apply, and indeed could only have applied, to that part of Culbeck Lane as was in the ownership of Foster Brothers (Lords Fold Nurseries) Limited at that date.

Conclusions

Based on the facts and assumptions set out above Mr Mair concludes as follows: The Applicants are entitled to the benefit of a right of way along Culbeck Lane, from a point coextensive with the north-west corner of their property to Dawbers Lane. The Applicants are not entitled to any right of way (other than on foot by virtue of the public footpath) over that length of Culbeck lane which is in the ownership of Mr & Mrs Kitchin.

There is no evidence which suggests that Culbeck Lane has ever been anything other than a private access road for access purposes for the properties located on the lane. Furthermore, the northern section (owned by Mr & Mrs Kitchin from Runshaw Lane has only ever provided a vehicular access to the fields on either side. There is insufficient evidence to suggest that the status of the public right of way over Culbeck Lane is other than that of a Public Footpath, as correctly recorded on the Definitive Map.

Objection by Mr Simon Mair on behalf of Gerard Joseph Walmsley

Mr Walmsley has resided at Larkhill Farm for the past 57 years and inherited the farm from his father, Joseph Walmsley. In or about 1965, Joseph Walmsley began renting from Mr & Mrs J Harrison three fields which adjoined the (then) boundary of Larkhill Farm and which had frontages to, and two gated entrances from, Culbeck Lane. Subsequently, by a Conveyance dated 23 November 1970, the Harrisons sold these fields (being described as OS nos 5257, 5867 & 5474, totalling 6.34 acres) to Mr J Walmsley. In 1991, at the time of the failed attempt by the current Applicant's predecessor-in-title to upgrade Culbeck Lane to BOAT, his client sought confirmation from his solicitors regarding ownership and/or rights of way over Culbeck Lane. The solicitors examined the Walmsleys' title deeds and confirmed that they did not own any part of the Lane but had rights of way over it. A copy of the solicitors' letter dated 20 May 1991 is as below and they assume the right of way they refer related to the southern portion of the Lane (i.e. Dawbers Lane to Culbeck Brook) only.

A plan is provided and shows the location of Larkhill Farm and the land which was the subject of the 1970 Conveyance. Notwithstanding the absence of any reference to a right of way in Mr Walmsley's deeds, he confirmed that he has used the field gateways off Culbeck Lane to gain vehicular access, for agricultural purposes, to the three fields identified on the plan.

Mr Walmsley has over 50 years' first-hand knowledge and experience of the use of the southern portion of Culbeck Lane, from its junction with Dawbers Lane to the culvert over the Culbeck Brook. It is his firm belief and understanding that Culbeck Lane is a private roadway from Dawbers Lane serving Culbeck Farm, two semi-detached dwellings (Nos 1 & 2 Culbeck Lane), the detached dwelling of the Applicants known as 'Lothlorien' (previously 'Culbeck Nursery') and the adjoining agricultural land. Mr Walmsley is unaware of any attempts by members of the public to make vehicular use of Culbeck Lane from Dawbers Lane to Runshaw Lane. The only public right of way over Culbeck Lane which he has always understood to exist, it a public footpath and therefore object to the application.

Solicitors letter dated 20 May 1991

"I write to confirm that I have now examined your title deeds and I have to say that you do not own the Lane but only the rights of way over it.

I confirm the advice I gave on the telephone that you should reply fully to the letter from Lancashire County Council setting out your observations, comments or objections on the application. I return the papers you left with me and have returned the title deeds to the Bank.

Objection by Mr Simon Mair on behalf of Mr Brian Robert Kitchin and Mrs Susan Ann Kitchin

Mr and Mrs Kitchin are the owner of the land and premises at Guest House Farm, Runshaw Lane, Euxton and their freehold title includes the northern-most section of a track known as 'Culbeck Lane' to a point some 180 metres south of its junction with the public highway known as Runshaw lane. Mr and Mrs Kitchin purchased Guest House Farm in December 2005 from Mr Brian Dean.

Mr Kitchin recalls that at the time of the purchase of Guest House Farm, there was a dilapidated four wheeled farm trailer positioned at the Runshaw Lane / Culbeck Lane junction which effectively prevented vehicles from entering or exiting Culbeck Lane. Some weeks later, probably in January 2006 Mr Kitchin received a visit from a Mr Thistlethwaite, the owner of Culbeck Nursery (now known as 'Lothlorien' and in the ownership of the applicants) who announced that he had a vehicular right of way over Culbeck Nursery to Runshaw Lane which he intended to exercise. At that time Mr Thistlethwaite had his property on the market. Mr Kitchin then consulted with his solicitors and with Mr Dean, both of whom confirmed that Thistlethwaite had no such right and that the only right of way over that stretch of Culbeck Lane was that of a Public Footpath. A dispute then arose between the Kitchins and Thistlethwaite when the latter began spraying herbicide along the stretch of Culbeck Lane in the Kitchin's ownership. This action, and Thistlethwaite's assertion of a private vehicular right of way, resulted in the Kitchin's solicitors writing to Thistlethwaite on 1 February 2006. Thistlethwaite never provided any evidence to support his assertion but frustrated by the ongoing dispute with Thistlethwaite, in July 2006 the Kitchin's decided to put that part of Guest House Farm comprising the stretch of Culbeck Lane and the adjoining field to the west, extending to 8.20 acres on the market. The land was then advertised for sale by the tender with a closing date of 23 August 2006 but unfortunately one of the 13 tenders received were acceptable to the vendors and notably no tender was submitted by Thistlethwaite.

Eventually Thistlethwaite sold his property to the Bramwells, but unfortunately this did not bring an end to the disputes over Culbeck Lane with the Kitchins. Instead in 2009 the Bramwells embarked on legal action against both Mr Walmsley and Mr and Mrs Kitchin and Messrs Hill alleging interference with their vehicular right of way over the entire length of Culbeck Lane. After putting both Mr Walmsley and Mr and Mrs Kitchin and Messrs Hill to not insignificant legal costs, the Bramwells eventually conceded that they had no entitlement to a vehicular right of way over the Kitchin's stretch of Culbeck Lane.

Throughout the 10 years of the Kitchin's ownership of Guest House Farm, the only problems which they have experienced regarding Culbeck Lane have been provoked by Thistlethwaite or the Bramwells, whose actions have been motivated by a desire to secure, by one means or another, a vehicular right of way from Culbeck Lane / Lothlorien to Runshaw Lane. Prior to making an (unsubstantiated) assertion of a

private right of way in 2006, Thistlethwaite had in 1991 submitted a claim for a Definitive Map Modification Order to upgrade the status of Culbeck Lane to a BOAT. That claim was considered by the Public Rights of Way Sub-Committee back in November 1995 and rejected. The Bramwells have adopted a similar strategy, but in reverse. Having failed to secure a private right of way over the Kitchin's stretch of Culbeck Lane, they have now submitted a claim to upgrade Culbeck Lane to the status of Restricted Byway.

Given the limited practical benefit which the applicants would derive from Restricted Byway status Mr & Mrs Kitchin suspect that the claim is actually designed to exert pressure on them to grant the Bramwells a private vehicular right of way to Runshaw Lane, if that suspicion is correct then the claim is mischievous.

Mr & Mrs Kitchin confirm, to the best of the knowledge, that no members of the public (excepting Thistlethwaite and the Bramwells) have attempted, over the past 10 years, to make vehicular use of the northern section of Culbeck Lane in either direction. That stretch of Culbeck Lane has been used by the public solely as a Public Footpath. The only vehicular use has been in connection with agricultural operations on the adjoining Guest House Farm land. Mr & Mrs Kitchin object most strongly to the current claim to upgrade Culbeck Lane to the status of a Restricted Byway.

Letter from Mr & Mrs Kitchins solicitor to Mr Thistlethwaite 1 February 2006

"We understand from our clients that you are currently trespassing on their land along a lane which runs through their land, known as Culbeck Lane. In addition you are carrying out items of work on the said lane which is causing damage thereto. Would you please desist from this action forthwith.

We also understand from our clients that you claim to have vehicular rights over Culbeck Lane, on that part which is within the boundaries of our Clients' ownership. Would you please provide us with documentary evidence in support of your claim so that we can advise our Clients further."

Objection from Morris Hill and family

They have considered the application in detail with their neighbours Mr & Mrs Kitchin and Mr & Mrs Walmsley who have instructed Simon Mair of P Wilson & Co to object to the application. Mr Hill had the benefit of seeing the report prepared by Mr Mair on the historical nature of the Culbeck Lane. The report was based upon an original investigation which occurred as a result of the applicants issuing proceedings against Mr Hill and his family as well as Mr & Mrs Kitchin. This dispute with the applicants over the condition of Culbeck Lane and the extent of the applicants lawful rights of way has been resolved by the Courts in which the applicant agreed to waive their entitlement to travel north of their property towards the land owned by the Kitchins, further the applicants claim for a right of way over the Kitchins land was dismissed.

This application is merely another attempt by the applicants to try and secure a right of way going north of their property to Runshaw Lane by reference to this application

which again is incurring costs themselves and the other objectors. The court proceedings have already incurred costs in excess of £50,000 with the prospect of further costs still to be incurred. By contrast the applicants have had a benefit of legal expense insurance so they have not incurred any costs. Now trying to utilise the local authority to secure a right which they have failed to do so themselves.

The basis upon which this current application is submitted is by way of reference to an earlier application by Mr Thistlethwaite in 1991 for a BOAT which was rejected by LCC. This application makes various assertions that new documentation now exists which was not considered by LCC in 1995 when the BOAT application was refused. The Hills are unable to identify what new material is now enclosed which was not considered by LCC in 1995. The applicants have highlighted a number of documents but on review of the 1991/1995 application all the historical data was considered by LCC when refusing that application.

It is therefore, somewhat misleading by the applicants to suggest otherwise. In addition to which they have placed their own interpretation of the documents and maps which is at variance with the actual documents. The commentary which the applicants have made are self-serving statements to bolster the inadequacies of any supporting documents to support their contention that public rights of way has existed over Culbeck Lane over and above the public footpath which in effect runs the length of Culbeck Lane even though it is a series of footpaths and not one continuous footpath. This fact would by itself demonstrate that Culbeck Lane was and has never been a through route between Runshaw Lane and Dawbers Lane.

Mr Hill refers to the detailed analysis by Mr Mair with the appendices and how they contradict the assertion now being made the applicants, who have only resided on Culbeck Lane for the past 10 years and have therefore very limited knowledge of the Lane, by contrast to the individual who have Statutory Declarations to the contrary. The evidence which he has been able to gather from former residents who have intimate knowledge of Culbeck Lane are consistent in their view that Culbeck Lane has never been an open route between Runshaw Lane and Dawbers Lane.

Mrs Grimshaw who is 95 years old is one of the residents who has provided a declaration of her knowledge of Culbeck Lane and states that the Lane has never been a through route and has always been gated in parts, Mr Hill in his opinion thinks this is very significant.

Mr Hill mentions that the applicants have been unable to produce any evidence of a public right existing and the evidence produced merely reflects the fact that Culbeck Lane is a private road with a public footpath. The statements in support contain no substance save that a couple of users of the Lane say they have used the Lane by bicycle and on foot which is consistent with the actual usage as a private road with a public footpath. A statement provided by Mr Jessop reiterates the point that he used the Lane by exercising his private rights which he believed existed. The simple fact because of the litigation by the applicants has caused the private rights to be determined which has shown that the private right which previous occupier thought existed does not exist.

This application in essence is an attempt by the applicants to reinstate what was

once a private right to a public right knowing they have given up their private rights.

It is interesting to note that when Ashfield Fencing applied for a Goods Vehicle Licence as an operation centre, the applicants as well as the owners of 1 and 2 Culbeck Lane objected. All of whom stated that Culbeck Lane is a private road for use by residents.

Mr Keith Tattersall also provides a letter in which he provides details to confirm that Culbeck Lane is a private farm access track.

Mr Hill provides a copy of the report accessible from LCC which records notable incidents on the Lane since 1990 all of which makes reference to the Lane being gated.

As part of the objection Mr Hill has provided copies of statutory declarations from:

Morris Hill
Bill Cordiner
Sonya Elston
Margaret Foster
Thomas John Gornall
Lilian Grimshaw
Alice Hill
May Hill
Kathleen McHugh
Brian Pass
Susan Smith
John Tattersall
Keith Tattersall
Maurice Green

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

User evidence

Recollections of users
Some elements of the documentary evidence only

Against Making an Order(s)

Inconsistency of documentary evidence

Private rights documented since 1922

Low number of users

Infrequency of use

Locked Gate at the northern end of the route together with other obstructions (further gates, barbed wire fencing, concrete slabs, ditches having been dug along the route and a trailer placed across the route,

Objections from landowners

Conclusion

The route under consideration is currently recorded as public footpath. The application is to upgrade the sections of the footpaths from points A-B-C-D-E-F to a restricted bridleway, as it is suggested the public footpaths carry higher public rights being vehicular rights which would be recorded as rights in non mechanically propelled vehicles.

Committee should note that as the route already appears on the definitive map as public footpath, it is not sufficient to satisfy the lesser test of reasonably alleging the existence of highway 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.

It is advised that as there is no express dedication in this matter 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 S31 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. All evidence would appear to relate to the route A-B-C-D-E-F and therefore the evaluation is on this basis.

Looking firstly at whether dedication can be inferred on balance at common law it is advised that the Committee has to consider whether evidence from the maps and other documentary evidence coupled with the evidence on site does on balance indicate whether the route was dedicated in the past by the owner(s) as a vehicular highway. . The analysis of the map and documentary evidence by the Head of Service – Planning and Environment provides evaluation of the documentary evidence as well as the evaluation done by Mr Mair. There is also the evidence of private rights being granted along the Lane at various sales of properties.

On balance, it is suggested that the map and other documentary evidence provided is not sufficient to be the circumstances from which dedication may be inferred at common law.

Turning to user, Committee will be aware that in order to satisfy the criteria for S31, there must be sufficient evidence of use of the claimed route by the public, as of right and without interruption, over the twenty year period immediately prior to its status being brought into question, in order to raise a presumption of dedication. This presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way.

The first consideration is to determine when the route is called into question regarding use which could raise the presumption of a restricted byway. In this matter there is evidence of obstructions along the said route, namely gates, barbed wire fencing, concrete slabs, ditches having been dug and a trailer having been placed across the route together with the more recent locked gate at the northern end of the route. From consideration of the evidence it would appear that the obstructions along the route, particularly the locked gate at the northern end of the route have prevented access to the route other than on foot and a very occasional cyclist for a number of years. It is suggested that on balance the "calling into question" would be the this blocking of the route at the northern end and that the 20 year period under consideration would therefore be 1950-1970.

Looking at the twenty years 1950-1970. In support of this application, in addition to the statement made by the applicant, only 4 further statements from users declaring that the route is within their certain knowledge that the road known as Culbeck Lane has been used for vehicular access by the general public have been provided. From the statements provided 2 users state that the route has been used by the general public for vehicular access for 7 years, 1 for 15 years and the other for 30 years. In addition to this only 3 user evidence forms have been provided. The Applicants state that from moving to Culbeck Lane in 2007 they accessed their property from both the north and south ends of the route for 2 years only and that they are now unable to access the route from the north due to the locked gate and from the south due to 7 years deterioration of the route. The applicants claim that the route has been used by the general public for 'possibly hundreds of years' but do not appear to have provided any evidence to back this up.

The users provide evidence of use of the route A-F by foot, bicycle, motor vehicle , horseback and horse and carriage. There are however a relatively low number of users giving evidence of their use and, for example 2 of these users refer to using the route to cycle only monthly. . Use must be more than trivial and sporadic to be sufficient user to give rise to a deemed dedication and be without interruption.

Taking all the information and evidence into account it is suggested that the Committee may on balance consider the evidence insufficient from which to find that the criteria of S31 can be satisfied and may therefore be of the view on balance that there is insufficient evidence from which a dedication of a vehicular highway or indeed a bridleway could be deemed or inferred in law and therefore that the application be not accepted.

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: 804-574		Megan Brindle, 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A