

Regulatory Committee

Meeting to be held on 28th September 2016

Electoral Division affected: Padiham and Burnley West

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of a public footpath from Clitheroe Street to Guy Street, Padiham, Burnley
File No. 804-579
(Annex 'A' refers)

Contact for further information:

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Executive Summary

Application for the addition of a public footpath from Clitheroe Street to Guy Street, Padiham, Burnley, in accordance with File No. 804-559.

Recommendation

1. That the application for the addition of a public footpath from Clitheroe Street to Guy Street, in accordance with File No. 804-559, be accepted
2. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add a public footpath from Clitheroe Street to Guy Street, Padiham on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C.
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a public footpath from Clitheroe Street to Guy Street, Padiham, as shown between point A and point C on the Committee plan on the Definitive Map and Statement of Public Rights of Way.

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

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

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

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

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

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

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

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

Consultations

Burnley Borough Council

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

Padiham Town Council

The Town Council are the applicants for the application.

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	7947 3408	Route crossed by locked gate on junction with the northern end of Clitheroe Street.
B	7947 3409	Route crossed by locked gate on landownership boundary
C	7947 3409	Open junction with Guy Street

Description of Route

A site inspection was carried out on 16 May 2016.

The route commences at the northern end of Clitheroe Street, Padiham adjacent to the Kingdom Hall.

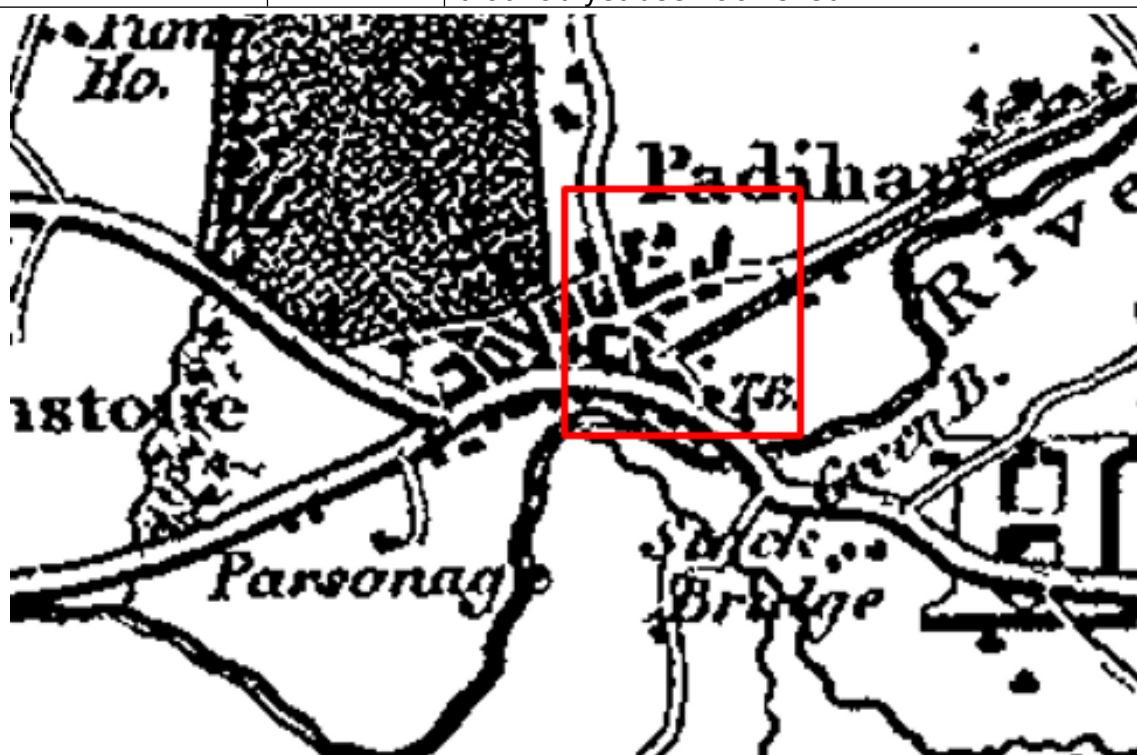
From the start of the route at point A on the Committee plan access along the route is prevented by a locked pedestrian gate. Beyond the gate the route extends in a northerly direction ascending five stone steps and then crossing an area over which bins are being stored along the eastern side of a private car park. The bins are located over and along the route but it is possible to see that a stone flagged pathway exists along the length of the route to point B marking it out separate to the tarmac car park immediately to the west and bin storage area to the east. At point B the route ascends a further 5 stone steps contained within a substantial wall. At the top of the steps, in line with the wall there is a further locked metal gate preventing access along the route. From point B the route continues across a flagged pathway to the tarmac footway adjacent to Guy Street at point C.

The total length of the route is 13 metres.

Map and Documentary Evidence


Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The route under investigation is not shown and

		the area where Clitheroe Street now lies appears to be undeveloped.
Investigating Officer's Comments		The route probably did not exist.
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 and the two were not differentiated between within the key panel.
Observations		The route under investigation is not shown and the area where Clitheroe Street now lies appears undeveloped.
Investigating Officer's Comments		The route probably did not exist.
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 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.



Observations		The area crossed by the route under investigation is undeveloped and Clitheroe Street not shown. The route is not shown.
Investigating Officer's Comments		The route was very unlikely to have existed in 1830.

Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The route is not located in close proximity to any canals or railways.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment	1839	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		The Tithe Map for Padiham was produced in 1839 and has not been examined as the route is not shown on the early commercial maps or the OS First Edition 6 inch map (see below) and is not believed to have existed at that time.
Investigating Officer's Comments		No inference can be drawn.
Inclosure Act Award and Maps	1839	Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award for the area crossed by the route under investigation.
Investigating Officer's Comments		No inference can be drawn.

6 Inch Ordnance Survey (OS) Map	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-46 and published in 1848. ¹
		
Observations		The route is not shown. Buildings are shown along the southern side of Guy Street and an overlay of the alignment of the route on the 1848 6 inch OS shows that it would have passed through the buildings to right of gap within the red box imposed on the map extract. Ightenhill Street is shown on the map but Clitheroe Street is not.
Investigating Officer's Comments		The route did not exist when the OS survey was carried out in 1844-46.

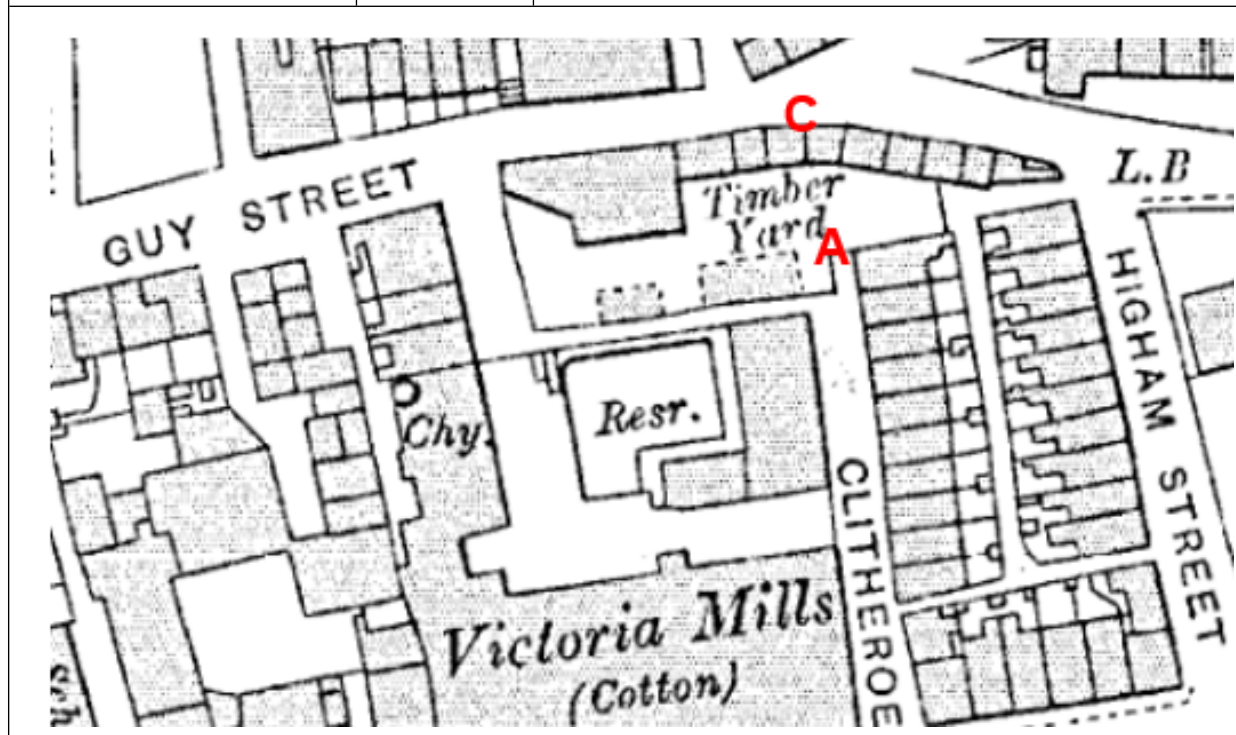
¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in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

25 Inch OS Map	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890-91 and published in 1893.
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Observations		<p>The route is not shown. Significant development has taken place since the 1840s in the area between Ightenhill Street and Guy Street. Clitheroe Street is shown to exist as far as the start of the route at point A with Victoria Mills to the east and terraced housing to the west.</p> <p>Clitheroe Street is shown terminating at point A with access available to Guy Street west of point A.</p> <p>The route under investigation is not shown and there appears to be no access to the route from point A. Buildings are shown to exist on the land crossed by the route between point B and point C.</p> <p>Access from Clitheroe Street to Guy Street appears to exist to the west of point A along the north side of Victoria Mills.</p>
Investigating Officer's Comments		The route did not exist in 1890-91.

25 inch OS Map	1912	Further edition of the 25 inch map surveyed in 1890-91, revised in 1909-10 and published in 1912.
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Observations		The route is not shown. Access along the route does not appear possible as it passed through buildings between point B and point C and the area from point A to point B is labelled as being a timber yard. The only open access from Clitheroe Street to Guy Street appears to be west of point A.
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Investigating Officer's Comments		The route did not exist in 1909-10.
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Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently</p>
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sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).

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

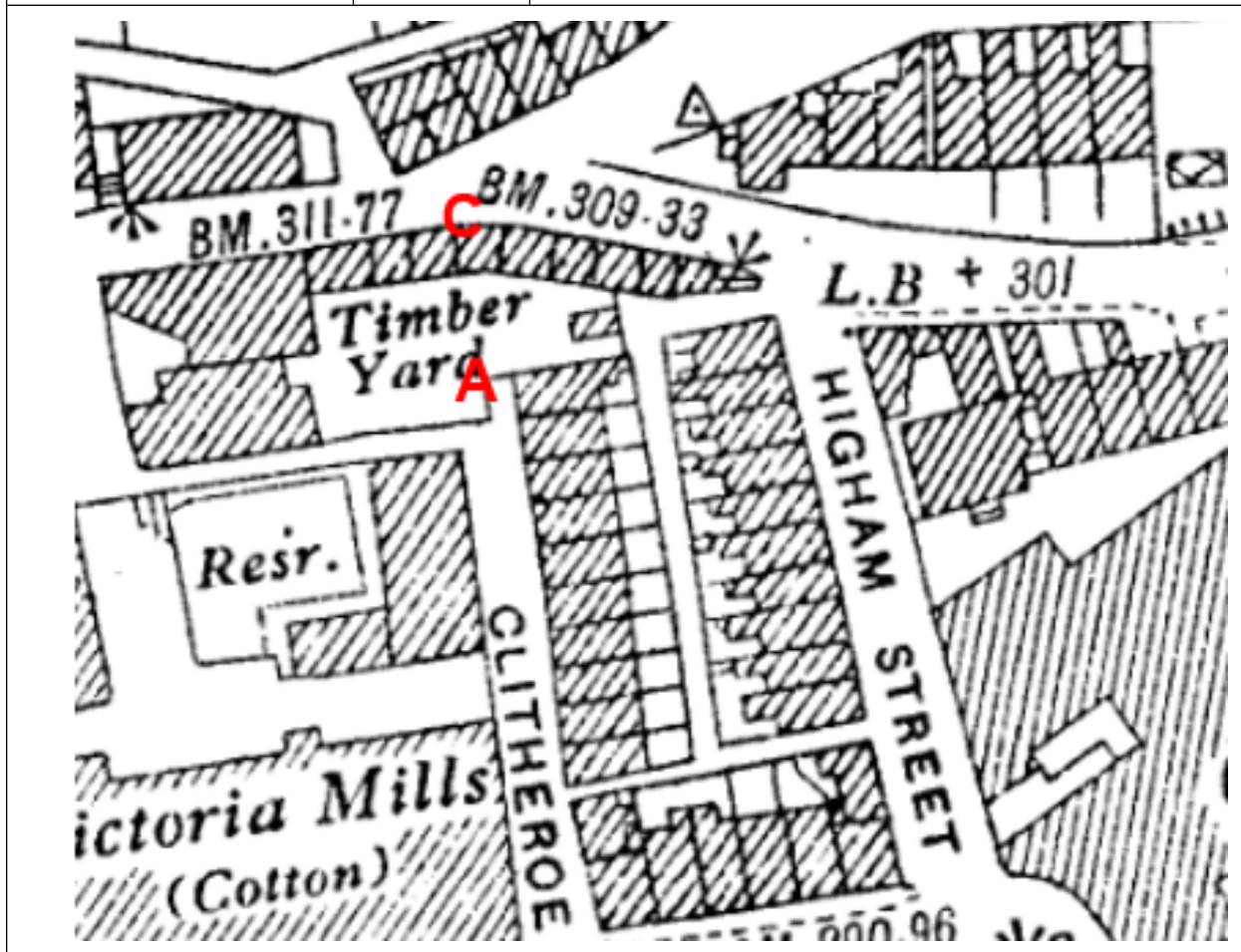


Observations

Finance Act Records were inspected in the County Records Office.

The route is not shown excluded from the numbered plots and between point A and point B is included within plot 3372. This plot is listed

		as being owned by Lord Shuttleworth, Gawthorpe, Burnley and occupied by Elijah Waddington. It is described as a 'workshop' on Guy Street and no deduction is claimed for public right of way or user. The land between point B and point C was not numbered. It was included within an area coloured red and green and what appears to be a letter 'S' is written in green. No reference could be found in the Valuation Book to what this meant but a number of other plots were coloured in a similar way – some of which referred to a road improvement scheme.
Investigating Officer's Comments		It is considered that the Finance Act information does not support the existence of a public footpath in 1910.
25 Inch OS Map	1931	Further edition of 25 inch map (surveyed 1890-91, revised in 1929 and published in 1931.




Observations		The route is not shown. The area appears to be unchanged from the earlier edition of the 25 inch OS map.
Investigating Officer's Comments		The route did not exist when the map was revised in 1929.

<p>Authentic Map Directory of South Lancashire by Geographia</p>	<p>Circa 1934</p>	<p>An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.</p> <p>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>
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<p>Observations</p>		<p>The route is not shown and the mills and houses within the area between Ightenhill Road and Guy Street are not shown either.</p>
<p>Investigating Officer's Comments</p>		<p>The route probably did not exist in the 1930s. The route, if it did exist, is unlikely to have been shown on the map due to its scale and the purpose for which it was produced.</p>

OS 1 inch Map	1947	Revised 1938 and published 1947.
		
Observations		The route is not shown. The land crossed by the route from point A is shown as being open with no buildings between point B and point C suggesting that there may have been some alterations including the demolition of buildings since the 1929 survey.
Investigating Officer's Comments		The route may have been accessible in 1938.

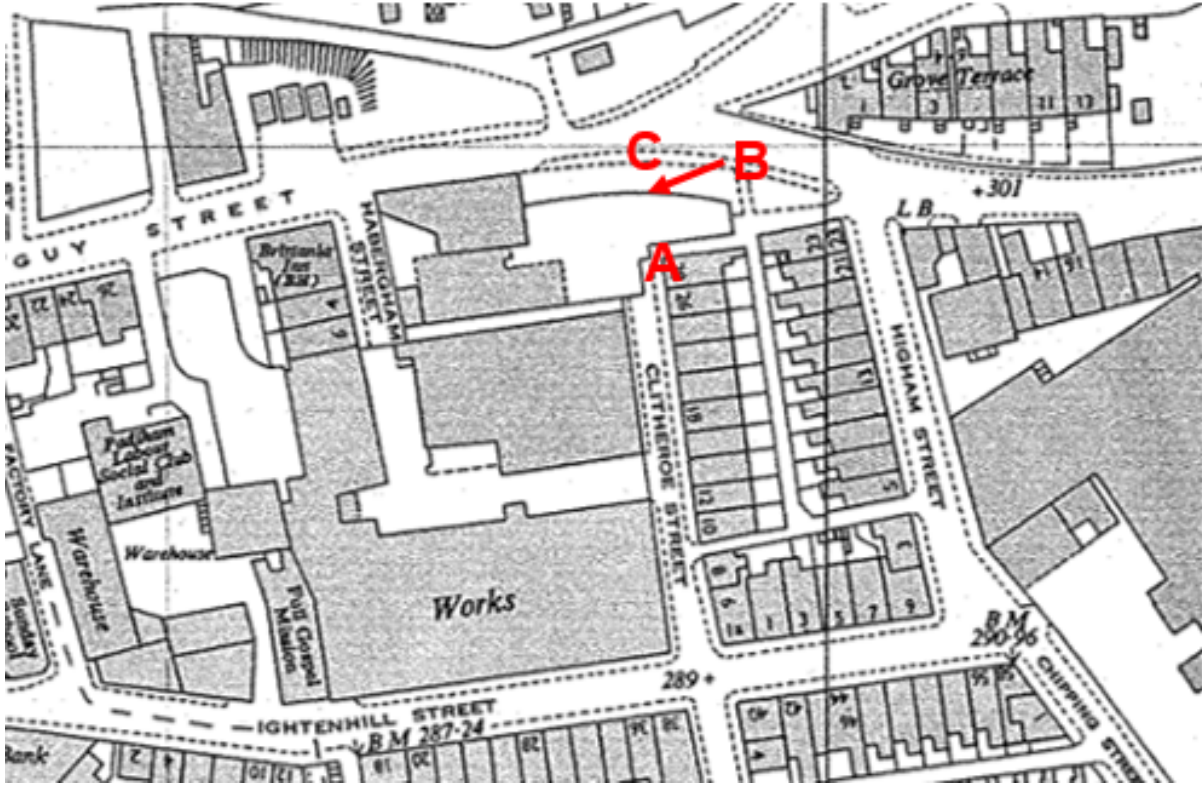
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
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Observations		Clitheroe Street can be seen terminating at point A. It is not possible to see whether there was access to the route at point A but beyond point A to point B the area crossed by the route appears open. At point B there appears to be a line across the route which may indicate the existence of a wall or a fence. The buildings
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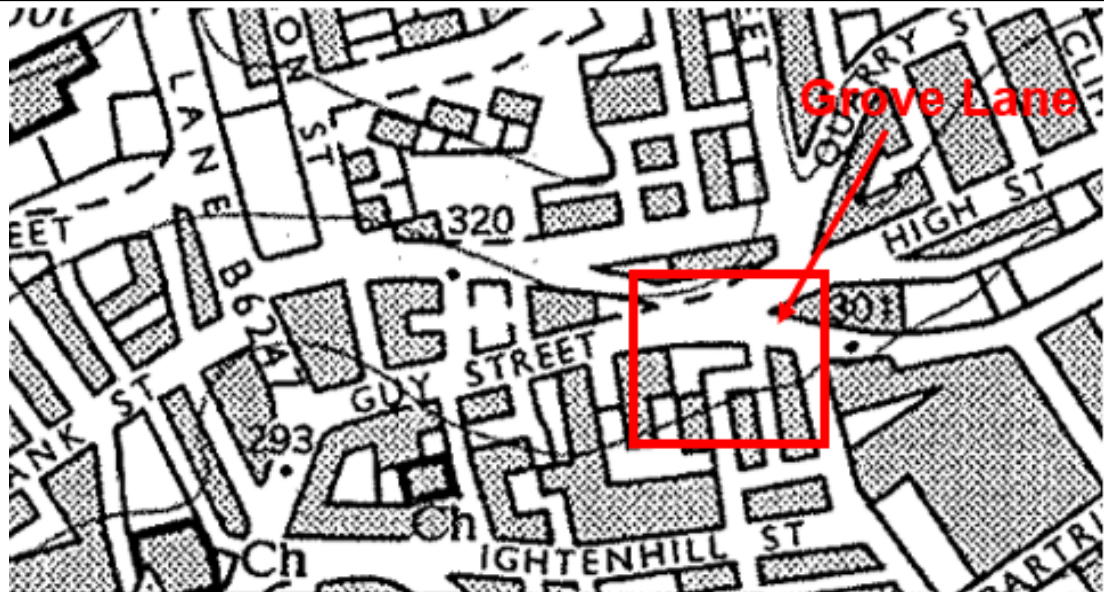
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.

		shown on the earlier OS maps between point B and point C no longer appear to exist.
Investigating Officer's Comments		No inference can be drawn.
25 inch OS Map	1960	OS map part revised 1957 and published 1960.

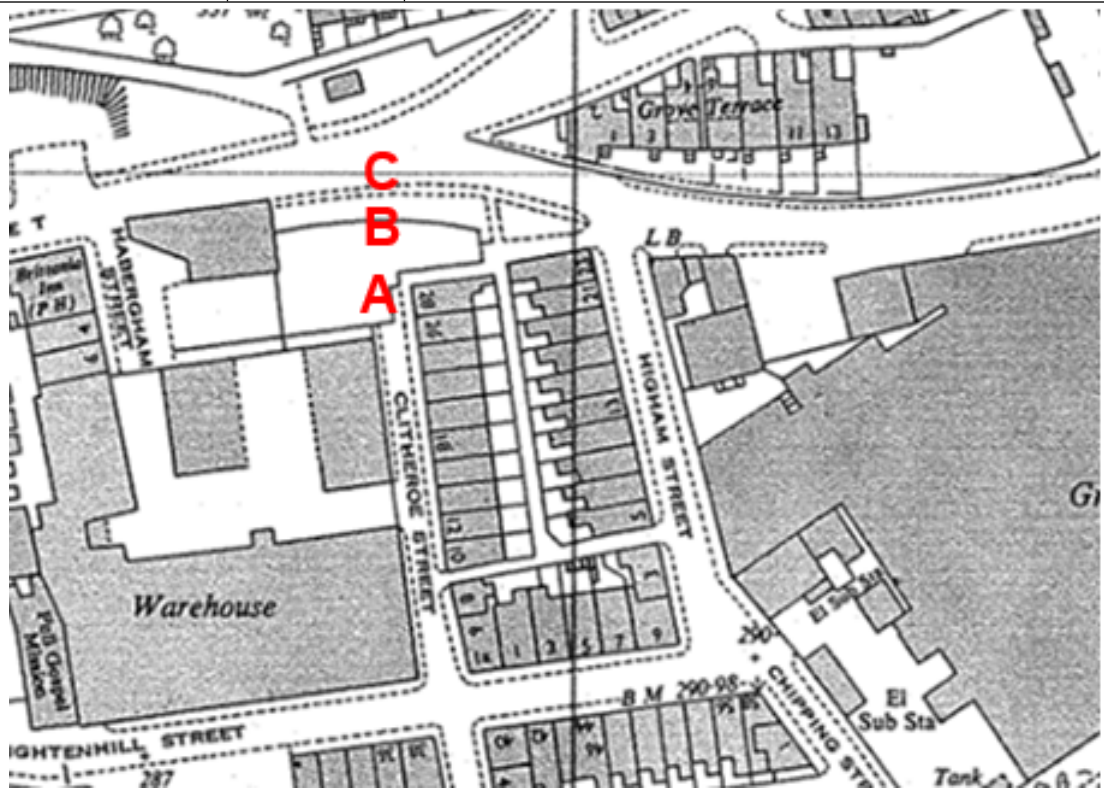


Observations		The route is not shown. Lines are shown across the route at point A and point B. Access to Guy Street still appears to exist west of point A via Habergham Street although two lines are shown across the end of Clitheroe Street and one at the junction with Habergham Street. Access through to Guy Street is also shown east from point A via Higham Street.
Investigating Officer's Comments		The route probably did not exist in 1957.

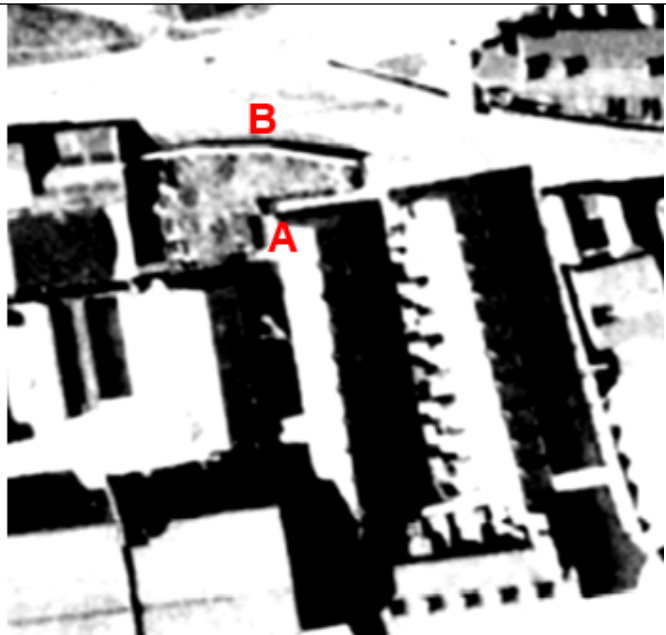
6 Inch OS Map	1965	Ordnance Survey 6 inch to 1 mile (1:10,560) map revised 1957 and published 1965.
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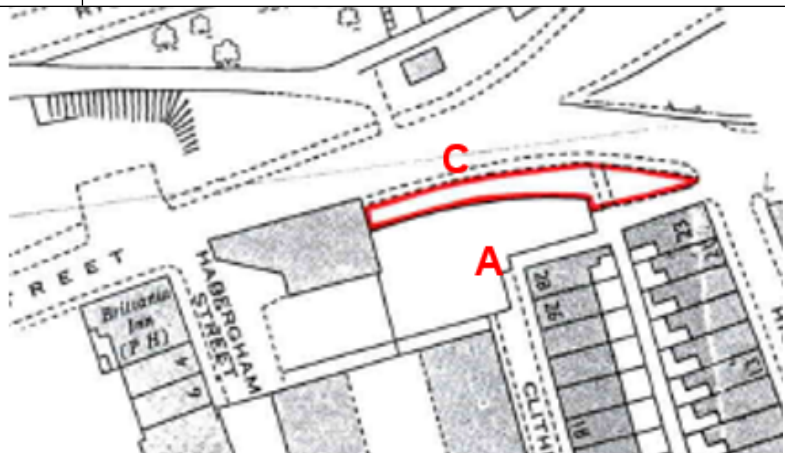
Observations		The route is not shown. Access appears to exist from point A east to exist onto Grove Lane.
Investigating Officer's Comments		The route probably did not exist when the map was revised in 1957.
1:2500 OS Map	1968	Further edition of 25 inch map reconstituted from former county series and revised in 1967 and published 1968 as national grid series.



Observations		The route is not shown. Access along the route may have been prevented or restricted at point A and point B. A route leading through to the junction of Grove Lane and Higham Street is shown to exist east of point A.
Investigating Officer's Comments		The route did not exist when the map was revised in 1967.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



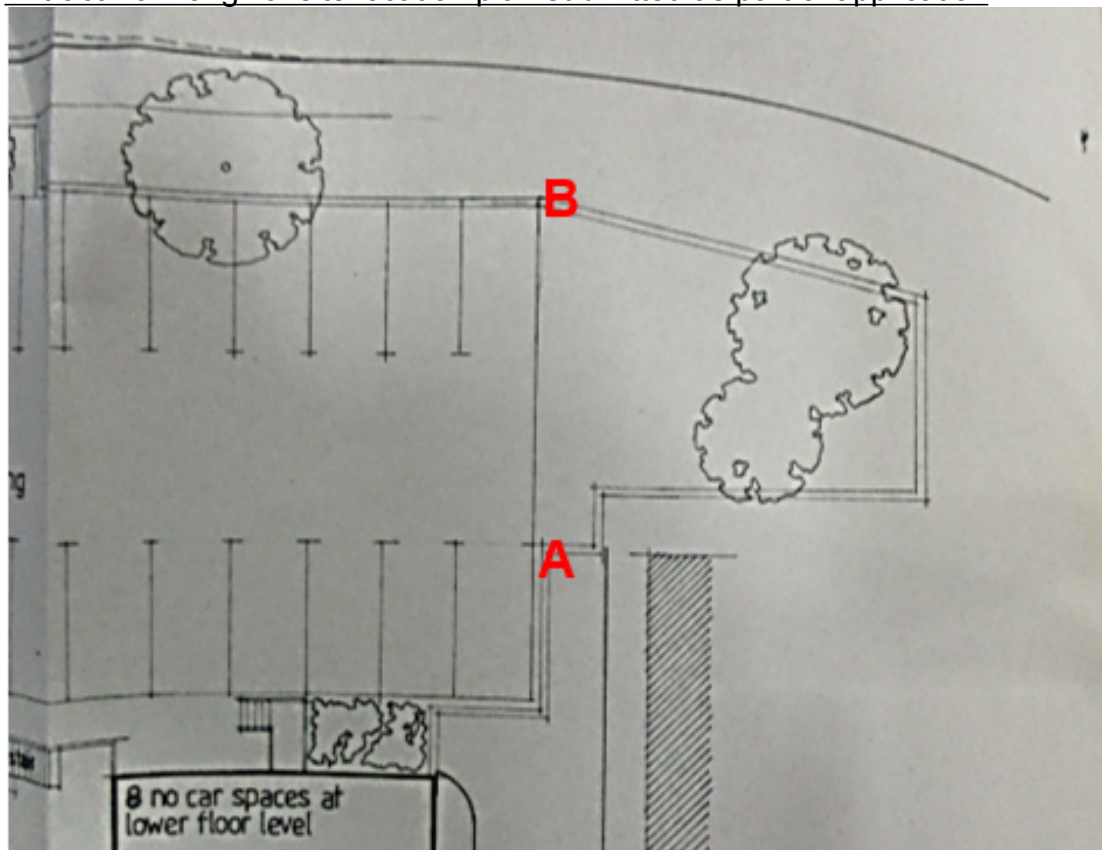
Observations		The aerial photograph taken in the 1960s was enlarged to see whether it was possible to see the route. No worn track is visible and it is not possible to see whether access was available through point A or point B.
Investigating Officer's Comments		No inference can be drawn.
OS 1:1250 Map	1983	OS Map at a scale of 1:1250 published 1983 taken from land registry plan. Date of revision unknown.



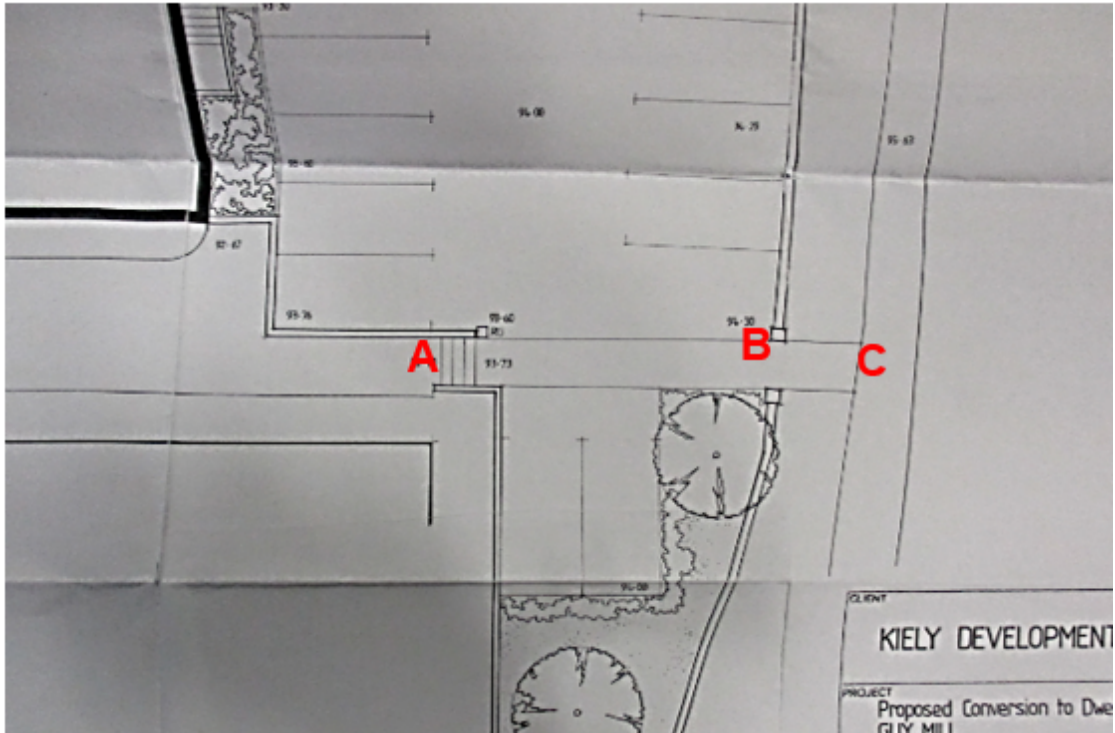
Observations		The route under investigation is not shown and the land crossed by the route appears unaltered from when the OS published earlier editions of the 1:2500 OS in 1960s. An open route appears to exist from point A east to the junction of Grove Lane and Higham Street. The red line shown on the OS plan has been added to the plan by the land registry and is not relevant with regards to its inclusion in this section of the report.
Investigating Officer's Comments		The route probably did not exist in 1983.
Religious Meeting Hall – Planning Application 12/91/0393 and associated correspondence submitted by the applicant	1991-1992	Two letters received by Councillor Ingham from Burnley Borough Council Planning Department were submitted as part of the application and referred to a planning application for the construction of the Religious Meeting Hall located adjacent to point A. The Planning Application was referenced 12/91/0393.
Observations		<p>The letter submitted as part of the DMMO application was addressed to Councillor Ingham from Burnley Borough Council and dated 23rd March 1992. It referred to the fact that prior to the commencement of building works a path had existed across the site. The location of the path was not specified but was said to have been provided as part of an environmental scheme and was not recorded as a public footpath but was to be blocked off as part of the development. Reference was also made to the fact that the planning application had included a 6 foot wide strip to provide an alternative pedestrian route across the land from Grove Lane into Clitheroe Street.</p> <p>It appears that no alternative path was provided by the developer and that the unrecorded route that had existed east of point A through to the junction of Grove Lane and Higham Street was built over when the Kingdom Hall was constructed.</p> <p>On 11th May 1992 Councillor Ingham received a second letter from Burnley Borough Council explaining that the potential developer of land adjacent to the Kingdom Hall had included a footpath running between Grove Lane and Clitheroe Street in his proposals which would be surfaced, lit and adopted by the Council. No planning application reference number or further details were provided.</p>

Investigating Officer's Comments		It appears that the access which had previously existed from Clitheroe Street, adjacent to point A and extending east out onto Grove Lane/Higham street was affected by the construction of the Kingdom Hall and that even though an alternative route was originally suggested, this was never implemented. The fact that the issue of access from Clitheroe Street to Grove Lane/Higham Street was raised in 1991-92 suggests that the public had been making use of a route from the end of Clitheroe Street and that there was a desire for some form of access to be retained.
Planning application 12/95/0543 Redevelopment of Guy Mill (Victoria Mill) and outbuildings	1995	An application was received by Burnley Borough Council to redevelop Guy Mill (Victoria Mills) into residential housing in 1995. Planning Application reference APP/1995/0543 was submitted by Kiely Developments limited and permission was granted on 30 November 1995.

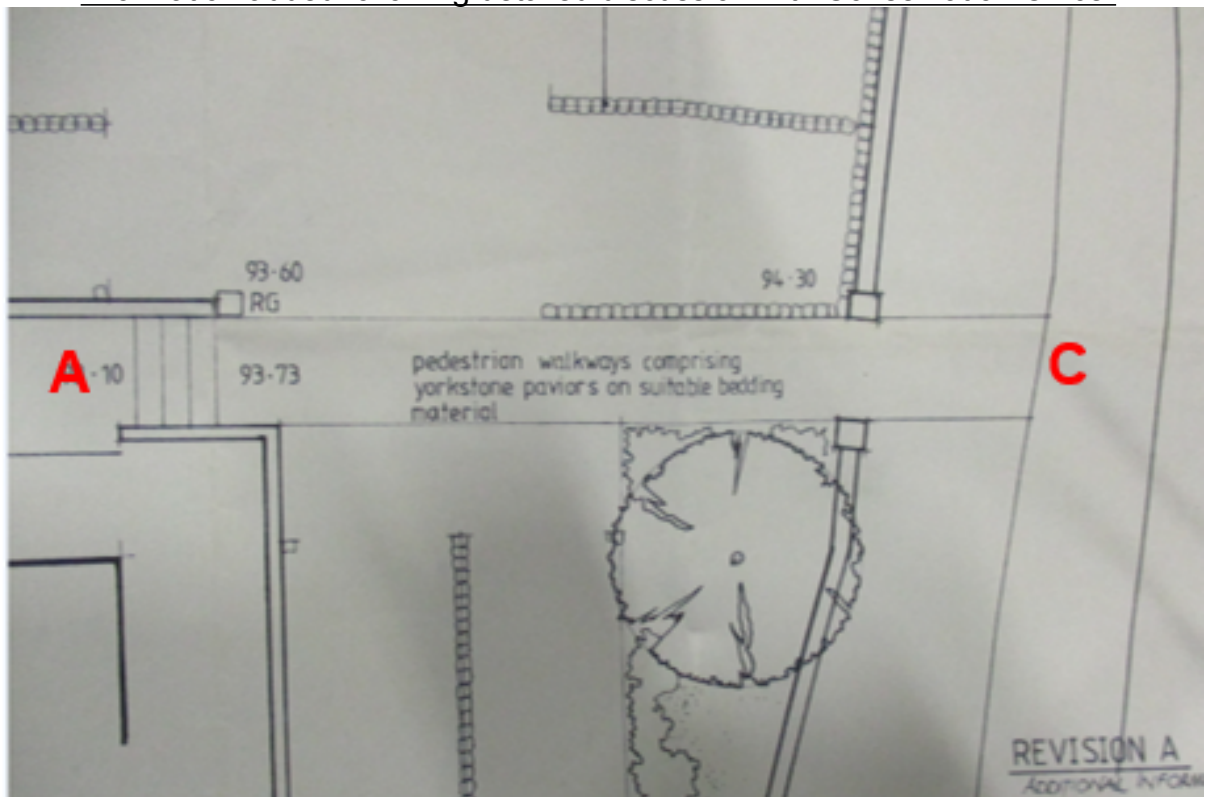
Extract from original site location plan submitted as part of application



Revised plan forming part of application approved by Burnley Borough Council dated November 1995



Further revised plan dated 30 December 1995 and titled Revision A – Additional information added following detailed discussion with Conservation Officer





Observations

The original application submitted stated that there were no public rights of way within the site and did not show the route under investigation.

		<p>As part of the consultations carried out by Burnley Borough Council prior to the granting of planning permission the issue of a pedestrian link from Clitheroe Street to Guy Street was raised. A handwritten internal note on the planning file between two colleagues in the planning department notes concern about the fact that there are only 60 parking spaces included in the application for 50 units and also states that the issue of the provision of a footpath had been raised and accommodated. This is borne out by the fact that although the original plan submitted with the application did not show the route the plan approved as part of the application (dated November 1995) did show it.</p> <p>Prior to planning permission being granted a note from the Borough Surveyor to the Borough Planning Officer refers to the fact that the developer would be required to enter into an agreement for the construction of the 'footway' to the south of Guy Street although it is not clear whether this is a reference to the route under investigation or not.</p> <p>A further letter on the planning file, predating the granting of planning permission, was addressed to Councillor J Greenwood JP from Burnley Borough Council Planning Department. It is dated 23 November 1995 and explains that it was the intention that the route from Clitheroe Street to Guy Street to be provided by the developers as a new pedestrian access with ramped access. It was noted however, that this would require the loss of two parking spaces. The letter explained that a £20,000 grant was to be offered towards the work and that the developers intended to apply for a road closure (Clitheroe Street) and adoption of the footway. Planning permission was granted on 30 November 1995 and in the Notes section at the end of the decision notice it states at point 6 that 'The Council are keen to see a pedestrian link between Guy Street and Clitheroe Street. The link should preferably include a ramp to enable access by prams, wheelchairs and persons with mobility problems. This would entail the formal closure of Clitheroe Street which should be undertaken at an early stage.'</p> <p>Following the granting of planning permission a further plan of the site was prepared dated 30</p>
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	<p>December 1995 and titled Revision A – Additional information added after discussion with Conservation Officer. It shows the route with steps from point A (but no steps at point B) and between point A and point B it has been annotated with the words, 'Pedestrian walkways comprising Yorkshire paviers on suitable bedding material'.</p> <p>No further information was found on file regarding the route or the development until November 2014 when an email was sent to the Borough Council by the owners of the site asking about the status of the route under investigation as they were looking to submit an application to re-site the bin storage area associated with the site and to allow them to do this they would be required to close the path. They were advised to contact Lancashire County Council to check its status.</p>
Investigating Officer's Comments	<p>The route under investigation did not exist prior to 1995. The developers looking to redevelop the mill site which included land between point A and point B agreed to include a pedestrian link and included it on their plans.</p> <p>No specific reference to it being dedicated as a public footpath could be found but it appears that the developers were in agreement with the provision of the route through the site. The Borough Council had asked that the route include the provision of ramped access to enable access by prams, wheelchairs and people with mobility problems and there is reference to the possibility of a grant being available towards the work. The revised plan dated 30 December shows steps at point A but no ramp, and does not show any reduction in car parking spaces.</p> <p>No records regarding an application to close all or part of Clitheroe Street could be found and there are no records concerning the adoption of the route under investigation as a footway.</p>

Aerial Photograph	2000	Aerial photograph available to view on GIS.
		
Observations		This aerial photograph, taken in 2000, clearly shows that the area had been redeveloped by 2000. The houses to the east of Clitheroe Street had been demolished and Kingdom Hall constructed. The route under investigation can be clearly seen as having been constructed between point A and point C.
Investigating Officer's Comments		The route existed and appeared to be capable of being used in 2000.
Google Street View	2009	Google Street Views. Images captured 2009 (Clitheroe Street) and 2009 and 2011 (Guy Street).
		



<p>Observations</p>	<p>The route is clearly shown from both ends as having been constructed and as being available to use. Steps existed at point A and point B with no evidence of ramped access having been provided.</p>
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Investigating Officer's Comments		The route existed and was available to use in 2009 and 2011.
2014 aerial photograph	2010	Photograph available to view on GIS.



Observations		The full length of the route can be clearly seen on the photograph.
Investigating Officers Comments		The route existed and appeared capable of being used in 2010.
Aerial photograph	2014	Aerial photograph available to view on GIS.



Observations		The route is visible from point A extending towards point B but the view is obscured by vegetation through to point C.
Investigating Officer's Comments		The route existed in 2014.
Planning Application submitted to Burnley Borough Council - Ref APP/2015/0189	2015	An application was submitted in 2015 by Victoria Apartments Limited to erect security fencing and gates on the perimeter to the apartment block (former mill) and to re-located the bin storage area associated with the apartments.
Observations		<p>The application included a request to erect gates at point A and point B on the route under investigation and for these gates to remain locked.</p> <p>Comments received by the Borough Council with regards to the application made reference to use of the 'cut through' route from Guy Street to Clitheroe Street but the applicant was said to have regarded it as essential to close the access points for site security and to avoid liability for personal injury due to the difficult nature of the steps, lack of handrails and the need to manoeuvre vehicles in connection with the adjacent bin storage.</p> <p>A petition bearing 57 signatures was received by the Borough Council objecting to the closure of the route now under investigation.</p> <p>Planning permission was granted although, at the request of the highway authority, the applicants were made aware that there could be unrecorded public rights along the route now claimed, and that an application may be made to record those rights.</p> <p>Since planning permission was granted the route has been gated and the gates have been locked.</p>
Investigating Officer's Comments		The application to erect and lock gates on the route under investigation appears to have brought into question the public status of the route.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>

Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		Padiham was an Urban District Council.
Draft Map		The Draft Maps were given a "relevant date" (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The route under investigation was not shown on the Draft Map of Public Rights of Way for Padiham and there no representations made to the County Council in relation to it.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The route under investigation was not shown on the Provisional Map of Public Rights of Way for Padiham and there no representations made to the County Council in relation to it.

The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route under investigation was not shown on the First Definitive Map and Statement.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Observations		The route under investigation is not shown on the Revised Definitive Map of Public Rights of Way (First Review).
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the route under investigation was considered to be a public right of way by the Surveying Authority. There were no objections to the fact that the route was not shown from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded. A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.

	<p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
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<p>Observations</p>	<p>The route is not recorded as being publicly maintainable on the List of Streets.</p>
<p>Investigating Officer's Comments</p>	<p>No inference can be drawn regarding public rights.</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</p>

		of an intention to dedicate a public right of way). 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).
Observations		No Highway Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the Route runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.

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

Landownership

Points A-B as shown on the committee plan is owned by Freehold Managers, 135 Bishopsgate, London, EC2M 3UR

Points B-C as shown on the committee plan is owned by Burnley Borough Council, Town Hall, Manchester Road, Burnley, Lancs, BB11 1JA

Summary

There is no map or documentary evidence supporting the existence of the route prior to 1995.

In 1995 it appears that the developers converting Guy Mill (Victoria Mill) and the associated outbuildings agreed to the request from Burnley Borough Council for a pedestrian link to be provided from Clitheroe Street to Guy Street along the route now under investigation.

There is no reference to this link being private and the fact that there is discussion about it being provided with ramped access, grant funding being available towards its construction and it ultimately being adopted by the council suggests that it was intended to create a public route.

Planning permission was granted at the end of 1995 and work to redevelop the site would not commence until 1996. The exact date that the path was constructed is not known although by 1999/2000 (Google Street View) the path was in existence and appeared to have been in existence for several years.

Site and photographic evidence confirms that a route was constructed – by at least 2000 and that it appeared to be capable of being used until it was blocked by locked gates in 2015.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

In support of the application the applicant has submitted the following documentation:

1. A copy of the planning application report approved for the erection of security fencing and gates for the Victoria Apartments, Guy Street, Padiham, Burnley Borough
A consultation response was received from a neighbouring resident who objected on the grounds that the route across the site from Guy Street to Clitheroe Street would be closed.
A petition was received holding 57 signatures making objections to the blocking of the passage from Guy Street to Clitheroe Street.
A Councillor made the comment that the present route from Guy Street to Clitheroe Street was agreed in 1992 to replace a slightly different path which was closed due to the building of the Kingdom Hall on Higham Street.
Another Councillor made comment that the new fence would block off a cut through which has been used for generations.
2. A letter from a Planning Officer to a Borough Councillor dated 23 March 1993. The letter states "Prior to commencement of building works, a path existed crossing the site, which I understand had been provided as part of an environmental scheme. The planning application included a 6" wide strip to provide an alternative pedestrian route across the land from Grove Lane into Clitheroe Street. The applicants have made enquiries regarding the status of the footpath in order to follow the correct procedures for diversion. The pathway is not, however, a definitive footpath and no right of way seems to exist."
3. A letter from a Planning Officer to a Borough Councillor dated 11 May 1992 which states "I can advise you that the potential developer of the site immediately adjoining the Kingdom Hall site has included a footpath running between Grove Lane and Clitheroe Street, which would be surfaced, lit and adopted by the Council. It would provide a more attractive and safer route than that originally proposed to run through the Kingdom Hall site."
4. Email dated 13 August 2015 from a Borough Councillor to Padiham Town Council explaining that although the path was built the adoption didn't take place.
5. A petition including 57 signatures who "object to the planning permission for railing and gates at Victoria Apartments, Guy Street, Padiham. They have

already been installed and have blocked a passway from Guy Street to Clitheroe Street which has been open for over 15 years."

6. An extract of the OS Map First Edition 1:2500 circa 1890 showing the previous route from Guy Street / Grove Lane to Clitheroe Street.
7. An extract of the OS Map 6" 1947 showing the previous route from Guy Street / Grove Lane to Clitheroe Street.
8. Photograph of access to route from Guy Street / Grove Lane before fencing was constructed.
9. Photograph of access to route from Clitheroe Street before fencing was constructed.

Information from Others and Landowners

After carrying out the necessary consultations no responses have been received.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

References by owners to their intentions
Construction of the route
Acceptance through use

Against Making an Order(s)

Difficulties in proving intention of owner rather than having deemed dedication to consider

Conclusion

This is a claim that this route is already a public footpath in law. There is no express dedication and so Committee is asked to consider

It would seem that twenty years sufficient use going back the full twenty years before the route was blocked in 2015 is difficult to evidence. Sufficient user would need to be sufficiently clearly evidenced 1995-2015 It is suggested that the provisions of S31 would be difficult to satisfy in this matter as the planning permission leading to this route being constructed was very late 1995 with construction likely to have been 1996. The route was on balance not available at the start of the twenty year period the law requires under this statutory provision.

It is therefore suggested that Committee consider whether there is enough evidence of the owner's intention to dedicate and there being acceptance by the public such at dedication can on balance be inferred at common law. In a claim for dedication at common law, the burden of proving the owner's intentions lies with the claimant. It is advised that this is a heavy burden and, in practice, even quite a formidable body of evidence may not suffice.

A highway stems from dedication by an owner and acceptance of the route by the public. Here there is no evidence of this route on this line until probably 1996 when constructed by the company Kiely Developments Ltd. This company owned the site. This Company is no longer in existence. Information about what this pathway was intended to be is on balance shown in their planning application plans and their discussions with the Borough Council. The plan approved as part of the planning permission shows the path as a pedestrian walkway and the documents indicate that it was intended as a public pedestrian link. The documents themselves would arguably not be sufficient but in this case the route was constructed on site by the owner. It has then been used by the public. It is suggested that dedication and acceptance may be inferred on balance and the Committee may consider that an Order should be made.

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: 804-579	Various	Megan Brindle, 01772 535604, Legal and Democratic Services

Reason for inclusion in Part II, if appropriate

N/A