

## Regulatory Committee

Meeting to be held on 28th September 2016

Electoral Division affected:  
Ribble Valley South West

### Wildlife and Countryside Act 1981

#### Definitive Map Modification Order Investigation

#### Addition of a public footpath from two points on Public Footpath 5 Wilpshire to a junction with Longsight Road/A59, Wilpshire, Ribble Valley

File No. 804-567

(Annex 'A' refers)

Contact for further information:

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### Executive Summary

Application for the addition of a public footpath from two points on Public Footpath 5 Wilpshire to a junction with Longsight Road/A59, Wilpshire, Ribble Valley in accordance with File No. 804-567.

### Recommendation

- I. That the application for a public footpath from two points on Public Footpath 5 Wilpshire to a junction with Longsight Road/A59, Wilpshire, Ribble Valley in accordance with File No. 804-567, be rejected.

### Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a public footpath extending from two points on Public Footpath 5 Wilpshire to the junction of Longsight Road/A59, for a distance of approximately 1560 metres and shown between points A to R on the Committee Plan, to be recorded 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 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 the original application. The decision may be that the routes have public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists. The decision may also be that the routes to be added or deleted vary in length or location from those that were originally considered.

## **Consultations**

### Ribble Valley Borough Council

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

### Wilpshire Parish Council

Wilpshire Parish Council has also been consulted and no response has been received, therefore it is assumed they have no comments to make. The applicant has made the application as a councillor for the Parish Council and therefore it appears that the council support it.

### Applicant/Landowners/Supporters/Objectors

The evidence submitted by the applicant/landowners/supporters/objectors and observations on those comments is 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.

<b>Point</b>	<b>Grid Reference (SD)</b>	<b>Description</b>
<b>A</b>	6871 3320	Junction of application route with public footpath 5 Wilpshire near to Vicarage Lane
<b>B</b>	6871 3320	Padlocked gate near to the property of 'The Glen'
<b>C</b>	6875 3332	Newly erected fence line near to the derelict water tower and associated building
<b>D</b>	6876 3332	Junction immediately after the fence line with second application route branch
<b>E</b>	6869 3332	Junction of application route with public footpath 5 Wilpshire
<b>F</b>	6884 3346	Newly erected fence line between two old large trees
<b>G</b>	6888 3352	Remains of old field gate
<b>H</b>	6890 3361	Field Gate in fence line
<b>I</b>	6896 3372	Gap in fence line
<b>J</b>	6896 3372	Stile (since taken out to be a fence line)
<b>K</b>	6897 3378	Boundary fence on entrance to hospital grounds
<b>L</b>	6896 3381	Fencing around buildings of hospital grounds
<b>M</b>	6895 3384	Junction with tarmac road within hospital grounds
<b>N</b>	6908 3390	Junction with private housing fencing boundary of The Dales
<b>O</b>	6914 3393	Unmarked point between the garage and house of 24 The Dales
<b>P</b>	6909 3404	Unmarked point on The Dales which was formerly the start of access track from the Epileptic Colony
<b>Q</b>	6909 3407	Junction of The Dales with Dewhurst Road
<b>R</b>	6906 4343	Kissing gate at A59 Longsight Road

## Description of Route

A site inspection was carried out on 7<sup>th</sup> January 2016 and 5<sup>th</sup> July 2016.

The route begins at a junction with public footpath 5 Wilpshire, Point A, which is located off Vicarage Lane, Wilpshire. The route immediately, at point B, passes through or over a large padlocked field gate which is currently restricting access. The gate has an old rusty chain on it which appears to have been on there for some time, along with a newer chain. Attached to the front of the gate (from Vicarage Lane) there is a Private Property Sign which also states 'No Public Rights of Way'. Next to that is a police warning sign with regards to no toleration to damage and vandalism in the area. Three Lancashire County Council S31 (6) notices were also attached to the gate (please see further in report under Map and Documentary evidence – S31 (6) deposits).

The route continues following the railway line. There appears to be a trodden line, 1 metre in width, in the overgrown grass leading past the water tank and building proceeding for approximately 130 metres to a newly erected wire fence at point C. Attached to the back of the building was a 'Private Property' sign and another stating 'No Public Right of Way'. The new fencing has two strands of barbed wire on the upper section of the fence. On the section between the first and second fence post the barbed wire spikes have been removed and the wire has been twisted. Immediately after the fence line the application route meets the second application route, a branch which heads directly in a westerly direction following the line of the fence line for approximately 70 metres to join public footpath 5 Wilpshire at point E. There was no indication of any trodden lines between points D and E.

From point D the application route continues in a north easterly direction following the boundary of the railway for approximately 160 metres until it meets a newly erected fence line and passes between two large trees at point F. The route then continues approximately 75 metres towards a derelict fence line. At this point on the eastern side close to the railway were the remains of an old wooden gate post and latch. The latch was extremely rusty indicating that it had been there for some time.

The application route then heads in a northerly direction following a well-trodden line approximately 1m wide which curves and negotiates around the woodland and stream in the bank of the field to the east, it continues for approximately 90 metres to pass through a field gate at point H.

The route then continues along the same well-trodden line in a north easterly direction across an open field for approximately 120 metres to reach point I where it passes through a gap in the fence line. Immediately after this on the north western side, point J, there used to be a stile, it has since been removed and barricaded with strips of wooden fencing, along with a second fence.

The route continues over a well maintained grassed area for approximately 45 metres to reach the boundary fence of Kemple View Psychiatric Hospital at point K. There is no trodden line to follow and the route is impassable due to security fencing at point K. The route continues in a north north westerly direction for approximately

45 metres passing over the hospital staff car park and through the extended hospital buildings. The hospital site has been built over and expanded upon over the years, including the housing development to the east, The Dales and The Rydings. The application route is currently impassable at the hospital due to fencing at point L. The route continues along the west side of the building for approximately 30 metres to join the junction of a tarmacked road within the hospital complex at point M.

The route after this point heads east north east along the tarmac track between the buildings of the hospital for approximately 140 metres to reach a wooden fence on the boundary of the hospital complex and the housing estate at point N. At this point, the application route continues over a series of houses and private gardens at The Dales, which was once open and accessible ground within the hospital before the housing estate was built. This continues to point O, where there was formerly a junction of tracks within the hospital. Here the route changes direction and heads north north west, through further houses and gardens of The Dales to reach point P at the junction with the vehicular highway (also known as 'The Dales'.)

The route continues along The Dales for approximately 30 metres to point Q at the junction of Dewhurst Road at the southern corner of the triangular island. The route continues along a wide private tarmacked track for approximately 425 metres, which passes Langho Sports and Social club on the East, The Sanctuary of Healing on the West, curving past The Conkers Nursery on the West and continues to exit through a kissing gate onto the A59 at Longsight Road at point R. The route at this point is temporarily inaccessible due to temporary fencing.

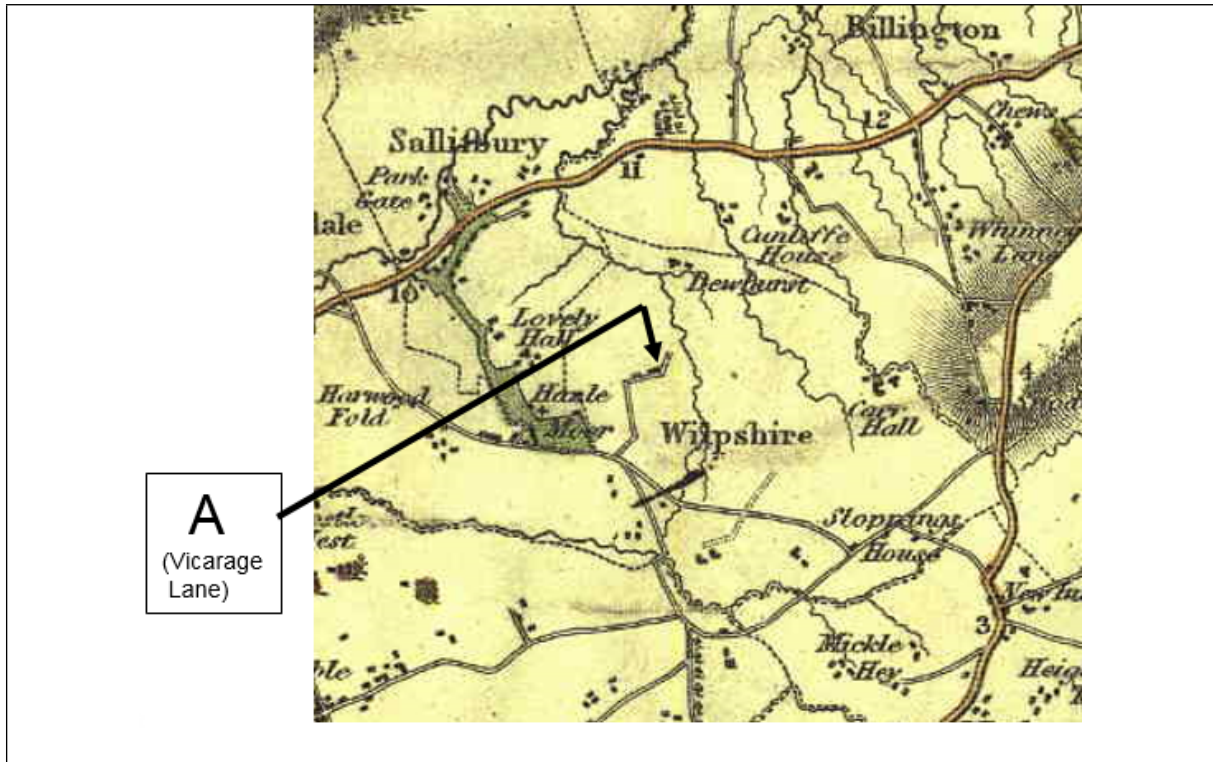
The total length of the application route is approximately 1560 metres.

### Map and Documentary Evidence

Document Title	Date	Brief Description of Document & Nature of Evidence
<b>Yates' Map of Lancashire</b>	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.



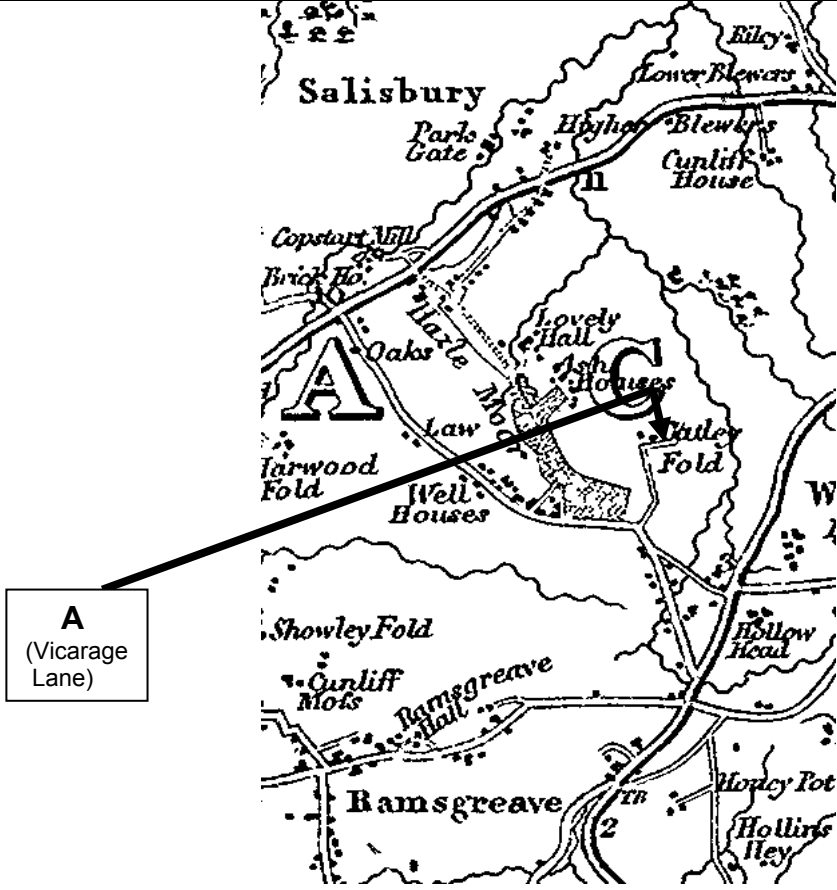
Observations		The application route is not shown. Vicarage Lane and other main roads can be seen on the map in close vicinity. Cunliffe House and Dewhurst are annotated on the map which are located in close proximity to the application route.
Investigating Officer's Comments		A route shown as a public footpath would be unlikely to be shown on the map due to the limitations of scale and the purpose for which it was drawn. No inference can be drawn.
<b>Greenwood's Map of Lancashire</b>	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.



**A**  
(Vicarage Lane)

Observations		The application route is not shown. Vicarage Lane and the A59 are both shown on the map as roads. Cunliffe House and Dewhurst are again both annotated on the map, which the application route is in close proximity to.
Investigating Officer's Comments		The application route did not exist as a major route at this time. It is unlikely that the application route alongside the railway existed as the railway was not built at the time but if it had done it is unlikely to have been shown on this map due to limitations of scale, therefore no inference can be drawn.

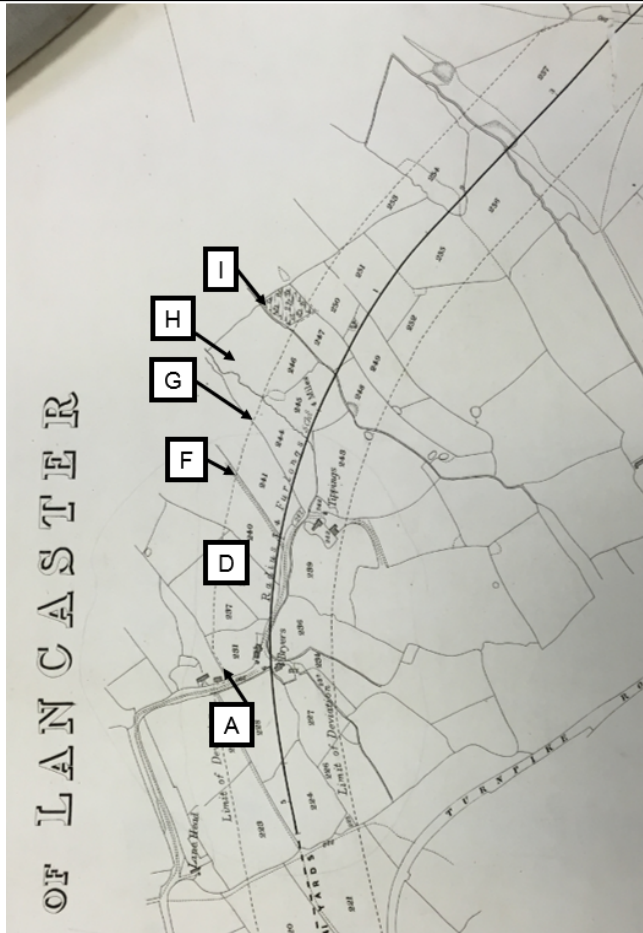
<p><b>Hennet's Map of Lancashire</b></p>	<p>1830</p>	<p>Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's 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.</p>
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<p>Observations</p>		<p>The application route is not shown. Vicarage Lane and the A59 are shown again as roads. Cunliffe House is annotated.</p>
<p>Investigating Officer's Comments</p>		<p>The application route did not exist as a major route at this time. It is again unlikely that the route alongside the railway existed as the railway was not built at the time but due to the limitations of the scale of the map they may have not been recorded, therefore no inference can be drawn.</p>
<p><b>Canal and Railway Acts</b></p>		<p>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</p>



they really were public rights of way. This information is also often available for proposed canals and railways which were never built.



Observations

The Ribble Valley line which runs through Wilpshire is located in close proximity to the application route. Part of the application route runs in parallel to the railway.

The above is taken from a plan of the Blackburn to Clitheroe Railway 1846. It shows the proposal of the railway line, along with annotating nearby roads and tracks. Nothing is shown for the application route, although Vicarage Lane and nearby properties such as Tippings Farm and The Glen (formerly Sharples Farm) are shown.

(Ref: PDR/489 – QDB/1/31)

Investigating Officer's Comments

The plan of the railway does not provide any evidence of the application route being in existence on the ground at the time of when the railway was being constructed. The Bill does not give any mention to any affected public footpaths in the creation of the line.

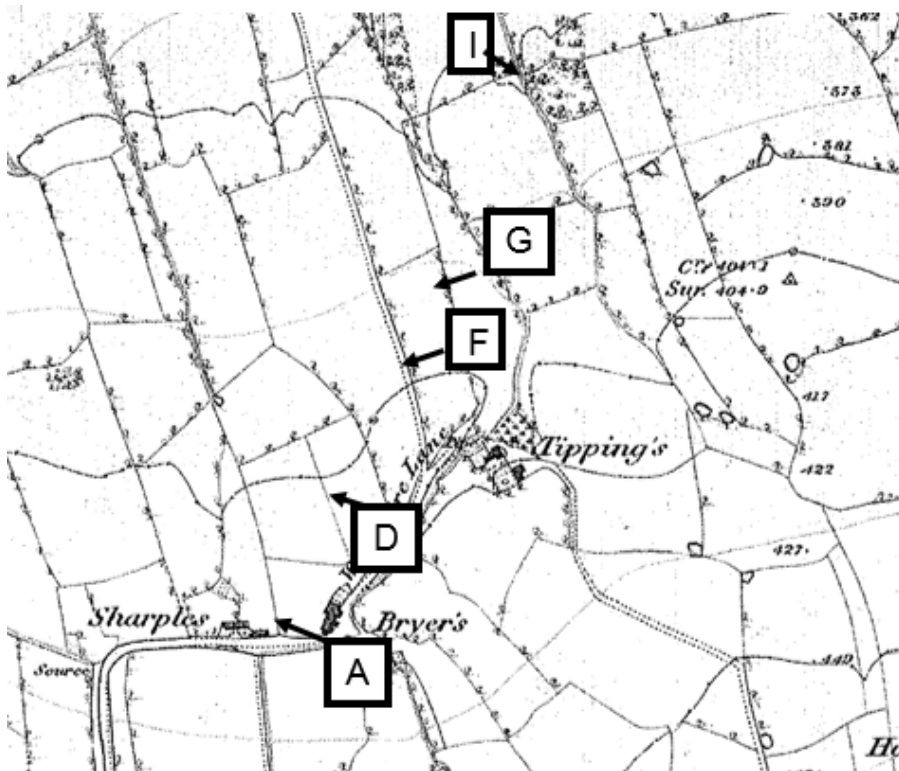
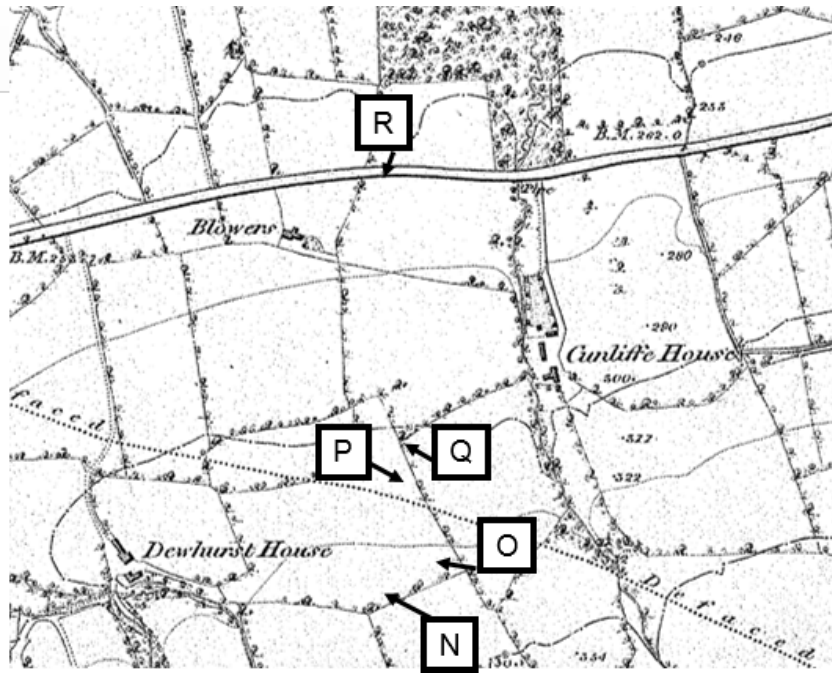
Tithe Map and Tithe Award or

Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of

<b>Apportionment</b>		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		There was no Tithe Map available to view at Lancashire Archives for the townships of Wilpshire, Langho or Billington.
Investigating Officer's Comments		No inference can be made.
<b>Inclosure Act Award and Maps</b>	1835	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 Act Award or Map available to view at Lancashire Archives for the area of Wilpshire, Langho or Billington.
Investigating Officer's Comments		No inference can be made.
<b>6 Inch Ordnance Survey (OS) Map</b>	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-46 and published in 1848. <sup>1</sup>

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



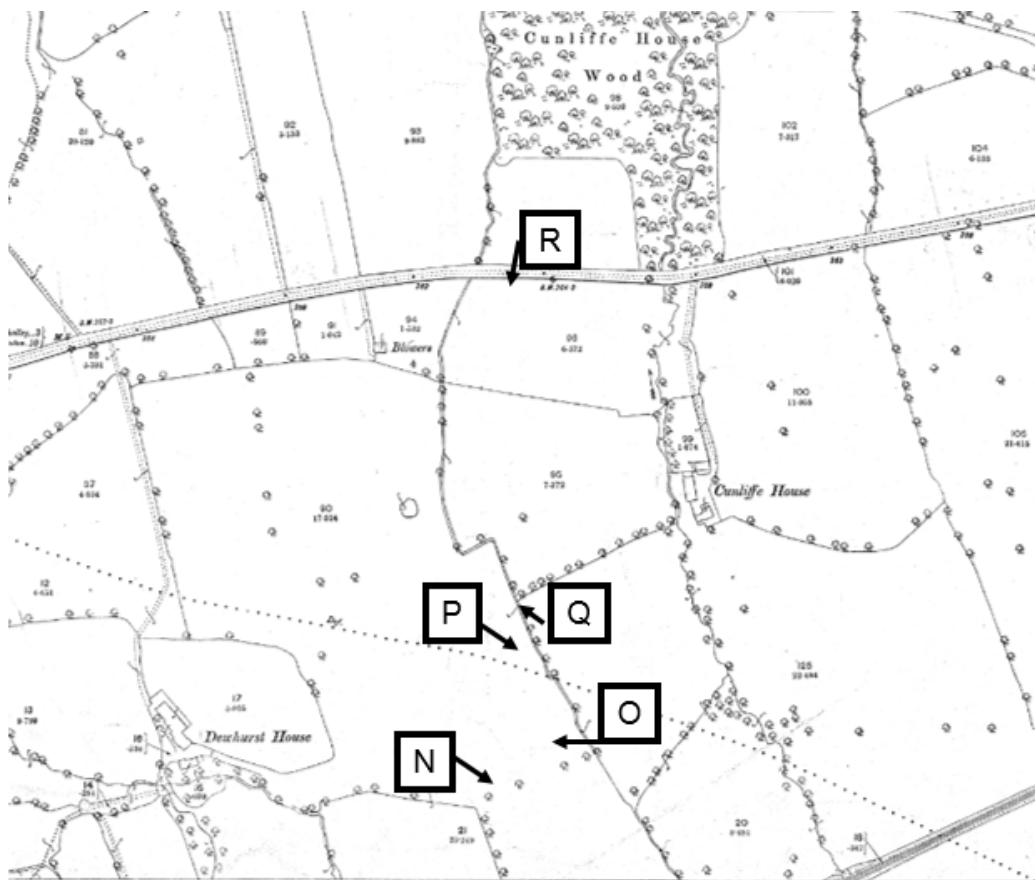
Observations

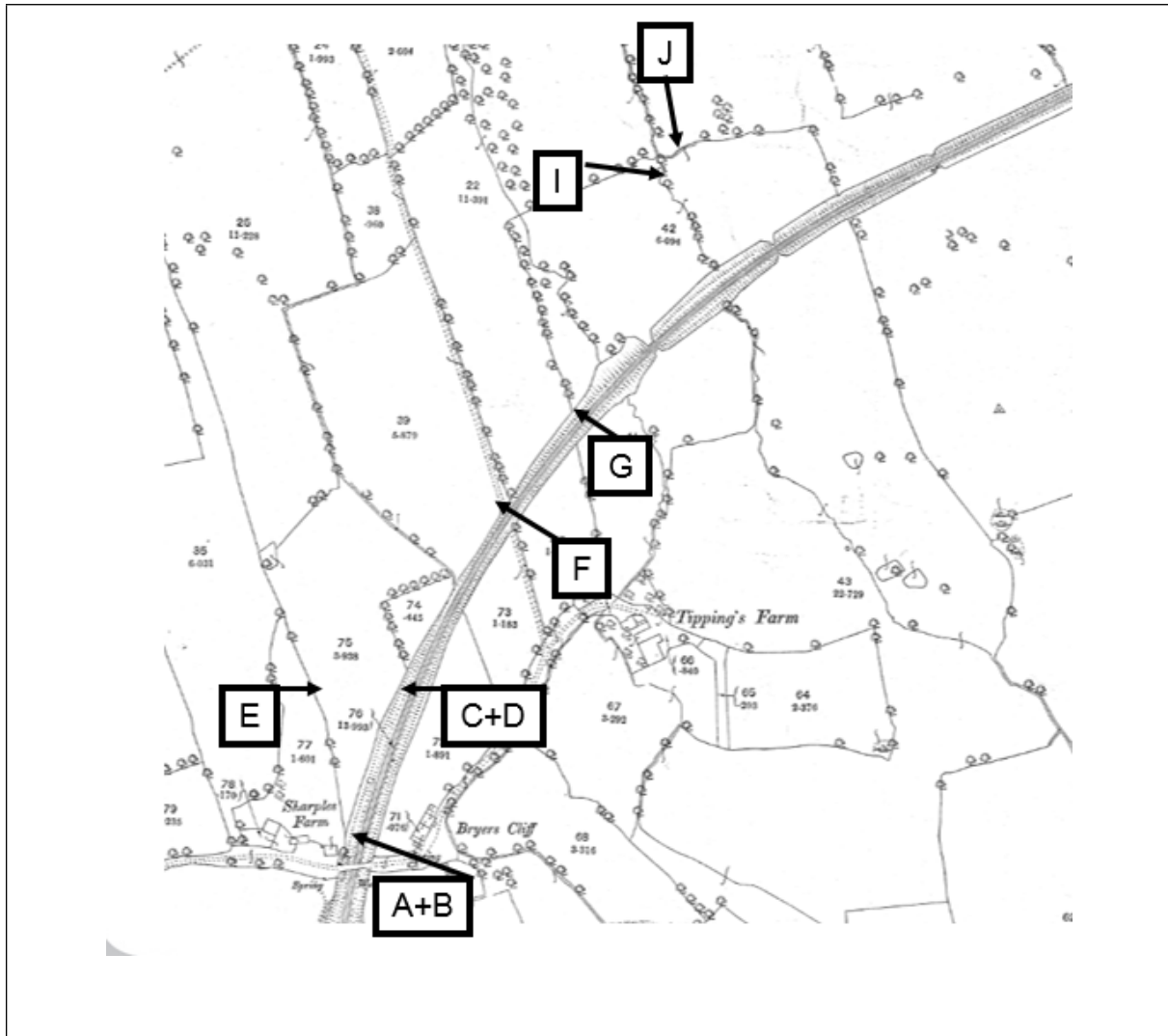
The application route is not shown.

Wilpshire Lane (now Vicarage Lane) has been recorded as an extended route of what was previously shown on the early commercial maps. Sharple's Farm is recorded where 'The Glen' is now situated. The railway line has not been constructed at this time, and there is no indication of a track along the application route.

Little of the land has been developed at this time. There

		<p>is no housing, the hospital has not yet been built and the access road has not yet been constructed. The A59 itself is shown as on the previous commercial maps. (sheet no. 54 &amp; 62)</p>
<p>Investigating Officer's Comments</p>		<p>It appears that the application route did not exist at this time.</p>
<p><b>25 Inch OS Map</b></p>	<p>1893</p>	<p>The earliest OS map at a scale of 25 inch to the mile was surveyed in 1892 and published in 1893. (Sheet no.62-04 &amp; 54-16)</p>





Observations		The application route is not shown on the map. The fields on which the application route runs remain as open fields but the railway line has since been constructed. Sharples Farm (The Glen) is shown. The housing development, the hospital and the access road have not yet been constructed.
Investigating Officer's Comments		The application route is not shown on the 1893 OS Map therefore it is presumed that it did not exist at this time.
<b>Finance Act 1910 Map</b>	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</p>

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).

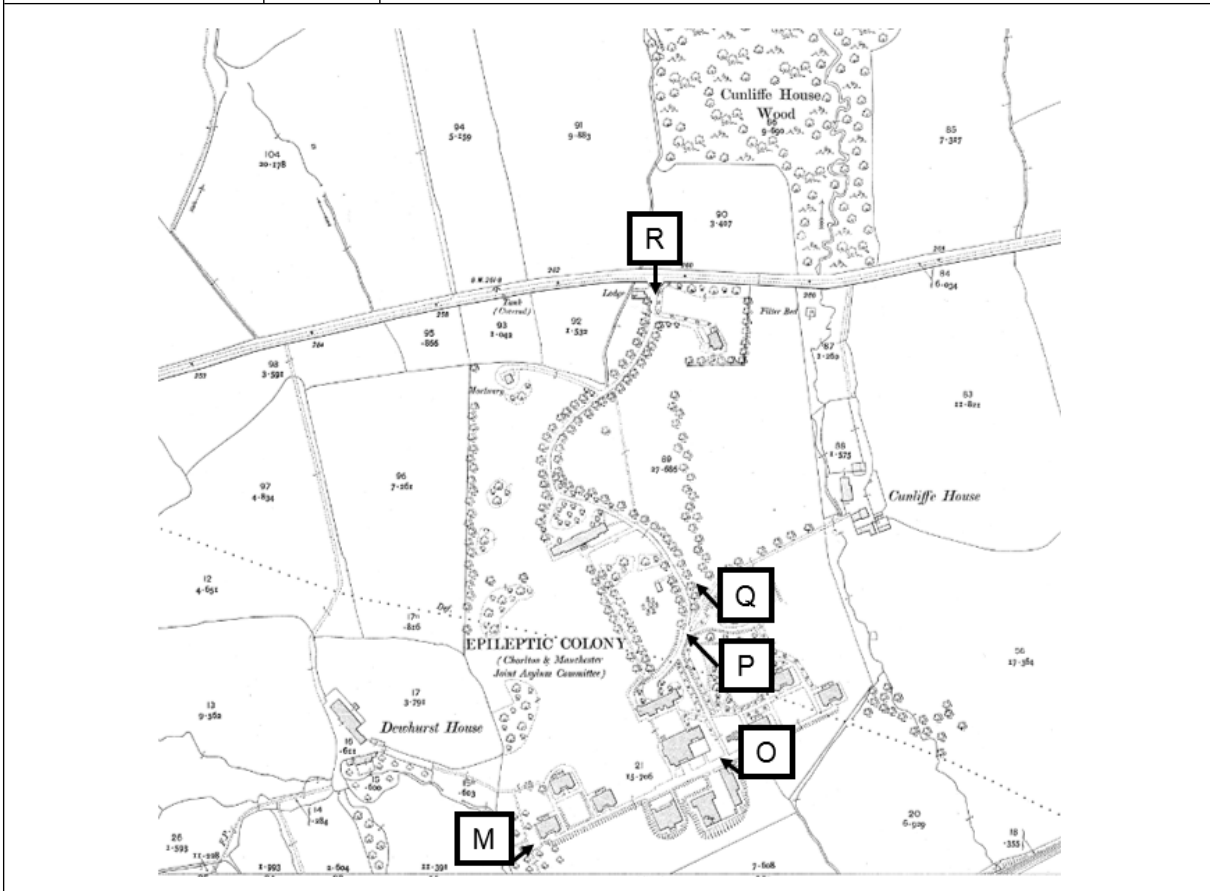
An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey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



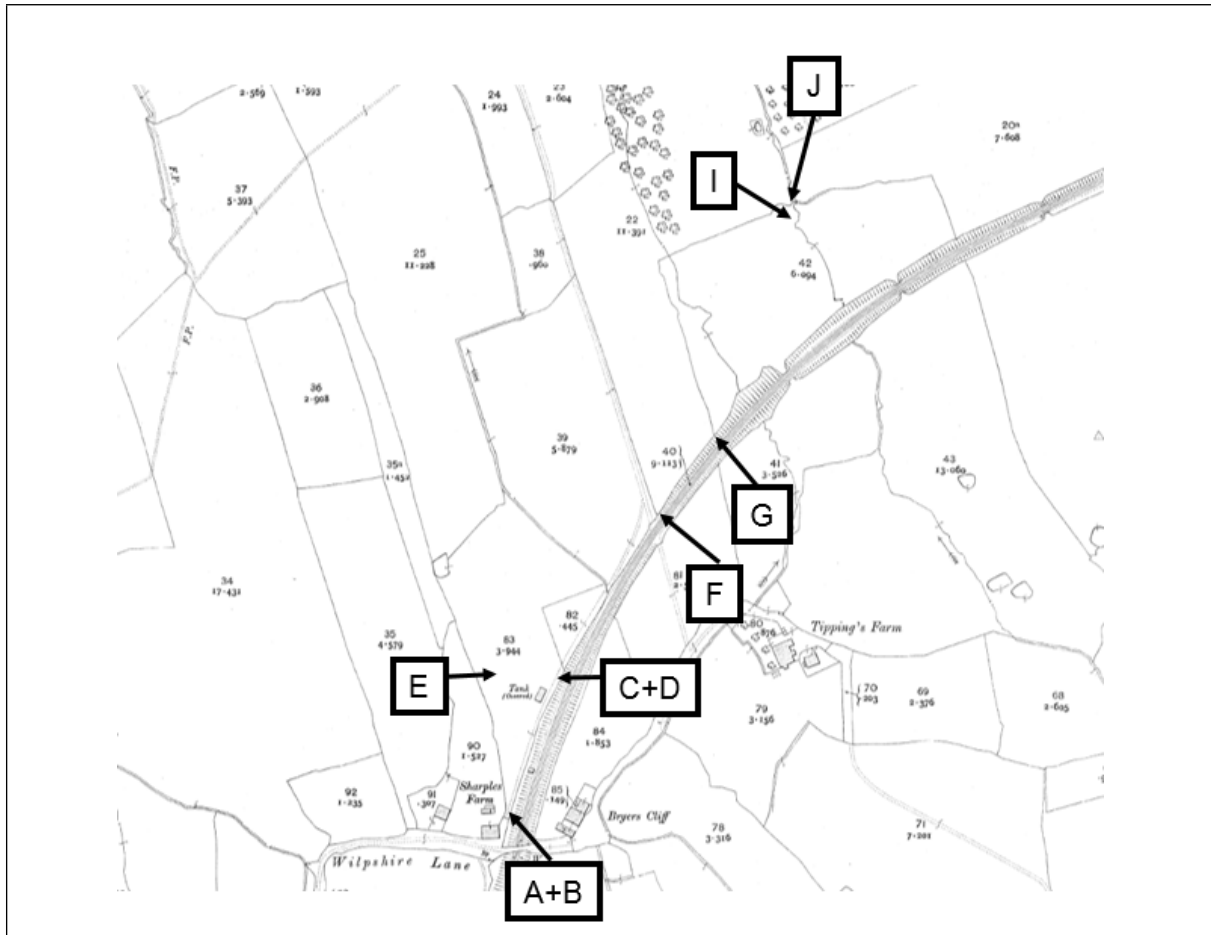


<p>Observations</p>	<p>The Finance Act Map does not record the parcels of land affected by the application on the southern section of the application route. In close proximity, Sharples Farm and northern fields are recorded in 148. The Finance Act Valuation Book has a reduction for a right of way crossing this land, but this is not the land relevant to the application.</p> <p>On the northern part of the application route, the Finance Act Map records the parcel of land which includes the route through the Epileptic Colony between points M and R at the junction with the A59. This land is numbered 207. The Finance Act Valuation Book records this land as owned or occupied by 'Lancashire and Yorkshire Railway' and 'Limes Station'. There was no reduction for a right of way crossing this land.</p> <p>(ref: (DVBK/1/3/6 – Map - DVBK/2/1 (sheet LXII.4) &amp; DVBK/1/3/2 – Map – DVBK/2/1 sheet LIV.16)</p>
<p>Investigating Officer's Comments</p>	<p>The Finance Act 1910 Map and Valuation Book do not support a public right of way on the application route.</p>

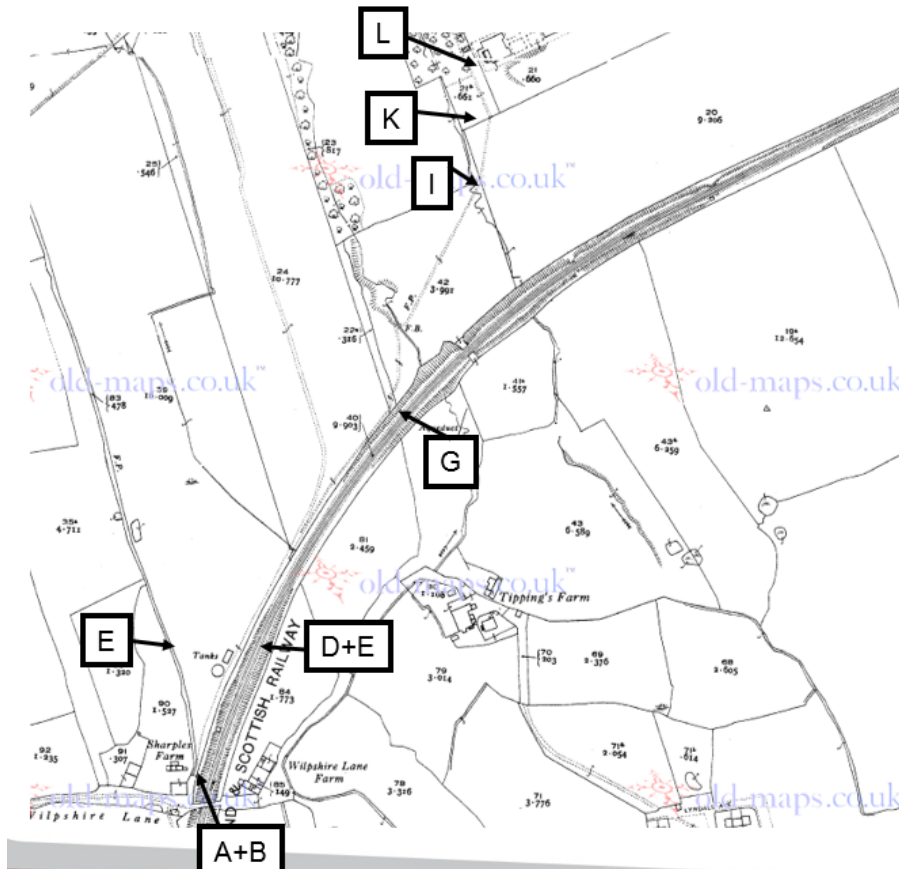
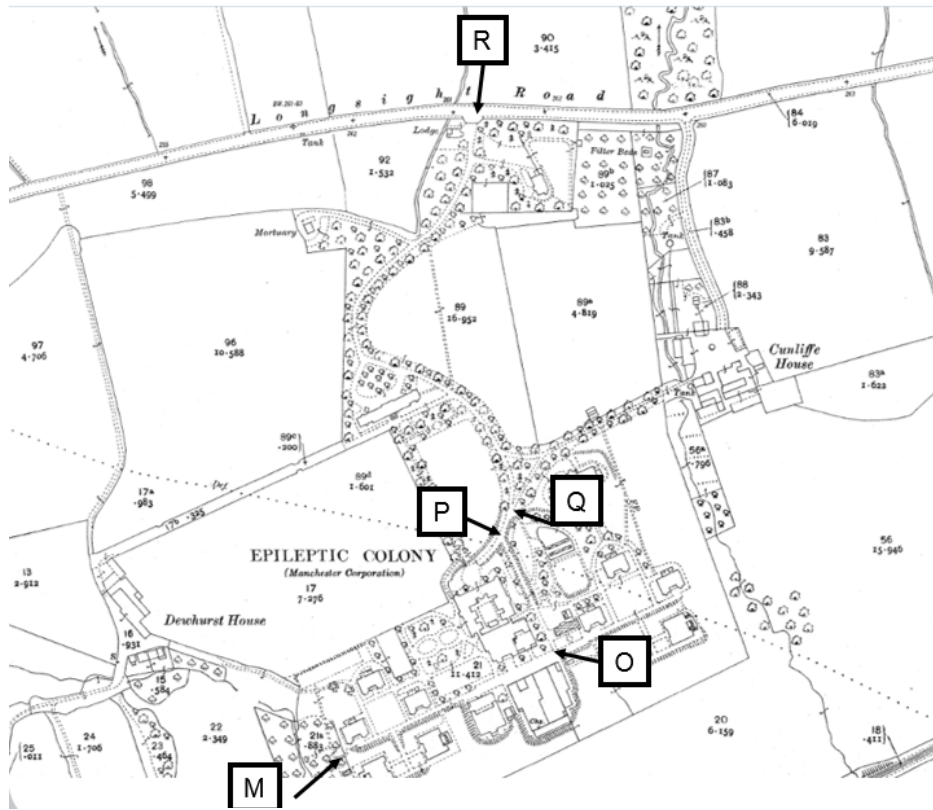
<p><b>25 Inch OS Map</b></p>	<p>1912</p>	<p>Further edition of 25 inch map, re-surveyed 1892, revised in 1910 and published 1912. (sheet no.62-04 &amp; 54-16)</p>
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Observations		A track can be seen (faintly on map) following the application route from point A through to point F. Sharples Farm (The Glen) and the water tower (tank) are shown, with no track shown between point D to E. There is no continuation of the track after point F to point G-H-I-J. The Epileptic Colony has been built since the 1 <sup>st</sup> Edition and access seems to be open between the Colony building, leading to an access track, passing what subsequently became the 'Sanctuary of Healing' and continuing to the A59. It is clear that this road is the main access for the Colony from the A59.
Investigating Officer's Comments		A path coinciding with the part of the application route through the fields did exist in 1912. A track between the buildings of the Epileptic Colony is in existence from point M to P, with the access track providing open access from the Colony to the A59 at point R. Therefore it is suggested that use could have occurred at this time, although the route taken between F and M is speculative.
1:2500 OS Map	1931	Further edition of 25 inch map published in 1931.



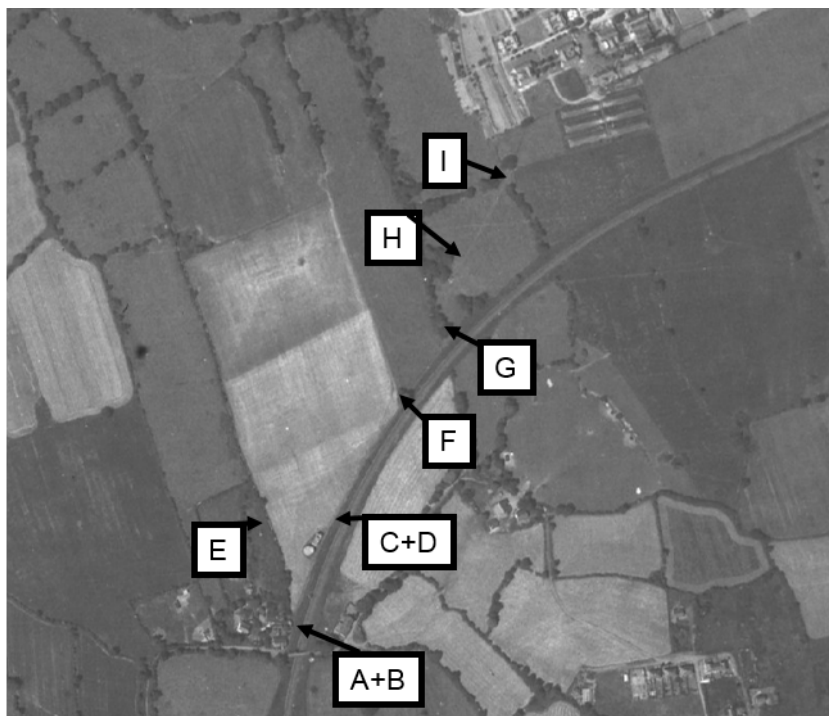
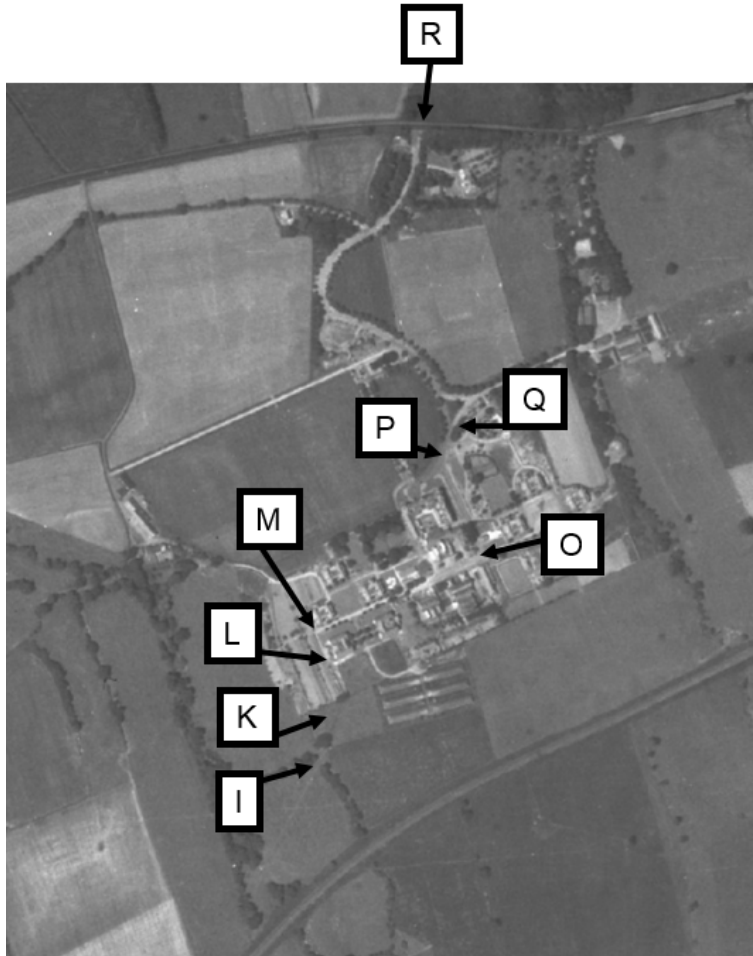
Observations

The application route is shown as a continuous track between points A to L. The route has been annotated

		with 'FP' indicating it was seen as a footpath at the time the map was surveyed. The route leads directly to the Epileptic Colony. Between the buildings of the colony there appears to be a route, as identified previously, which could have been used to navigate through the hospital and lead to the main access track, winding north to meet Longsight Road at Point R. The housing development of The Rydings and The Dales has not been constructed at this point.
Investigating Officer's Comments		The application route between point A-L existed as a footpath at this time leading to the Epileptic Hospital. The access track is in existence leading from the hospital to Longsight Road/A59. Nothing is shown on the map for the application route between points D and E.
<b>Aerial Photograph<sup>2</sup></b>	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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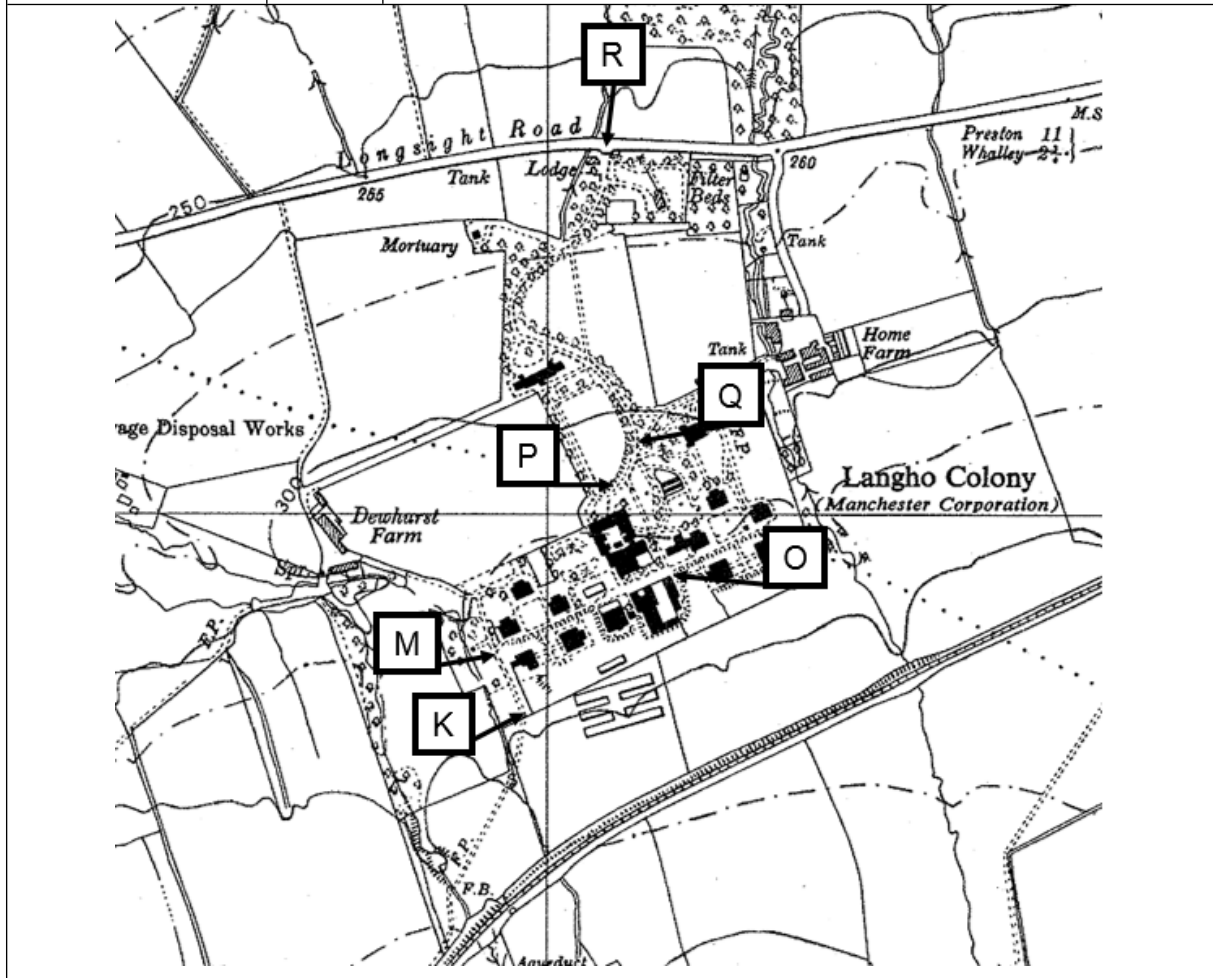
<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.

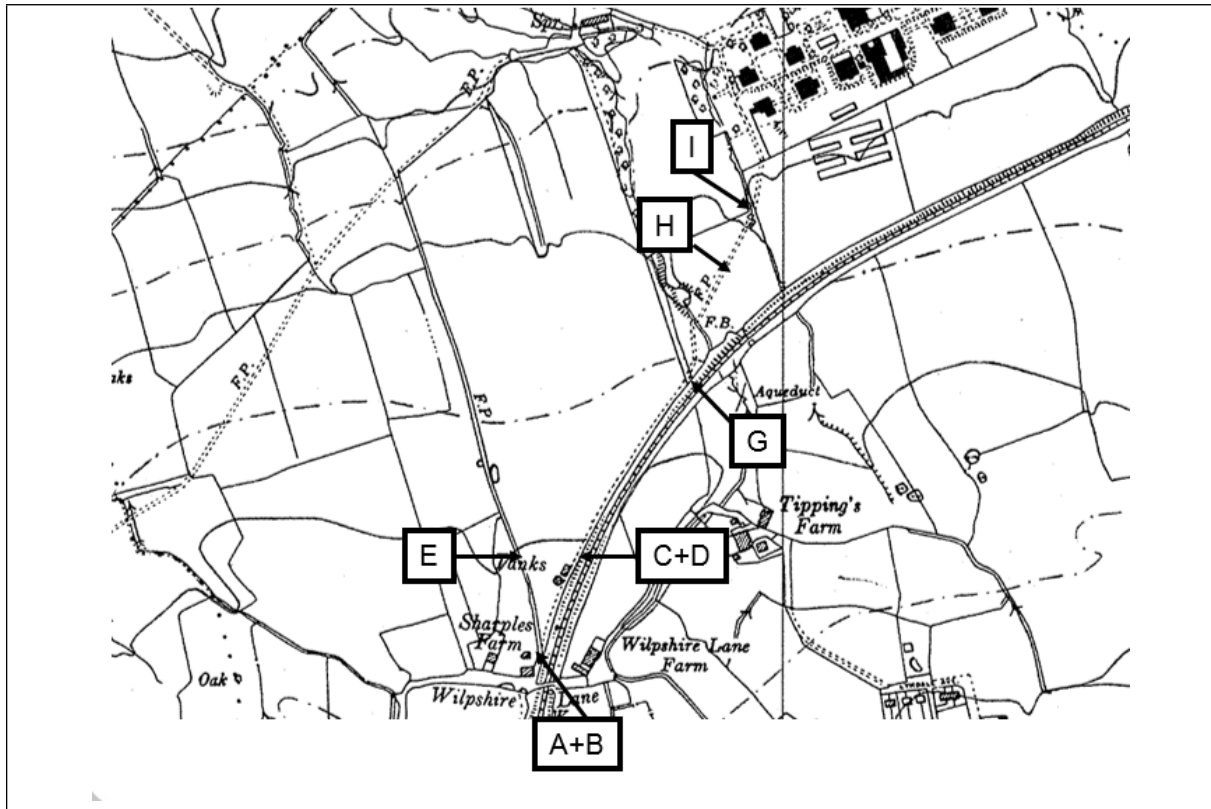


Observations

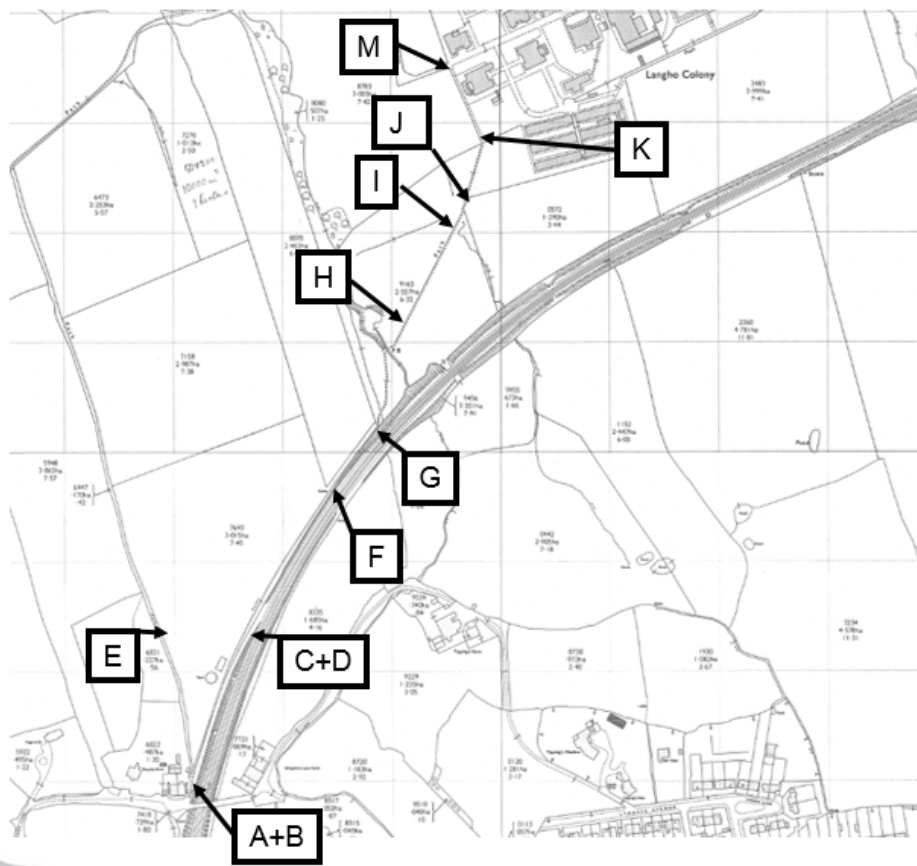
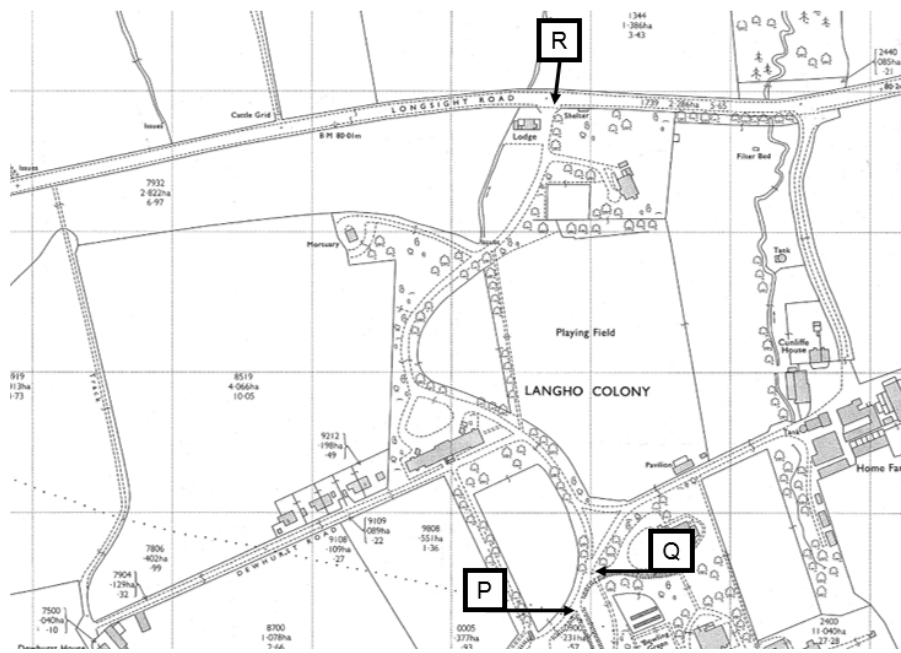
The quality of the 1940 aerial is not great although a slight trodden track can be seen in parts, particularly between parts G to K. There is a visible track through

		the hospital buildings and leading down the access road to Point R.
Investigating Officer's Comments		The 1940 aerial photograph supports the application in that use of part of the route was occurring on the ground at the time. Trodden tracks can be seen between points G to K which is in the middle of the application route, therefore it can be presumed that the whole length of the route from Vicarage Lane was being used also, up to the Hospital. It is clear from the hospital heading north that there was an intended access route, with a defined way through the buildings and a constructed road leading to Longsight Road/A59.
6 Inch OS Map	1956	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 1930-45 and is probably based on the same survey as the 1930s 25-inch map.



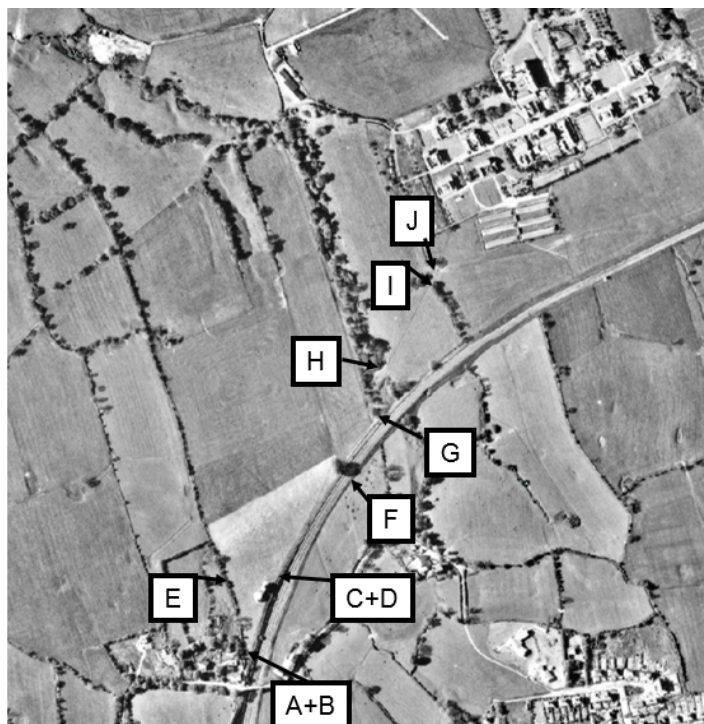
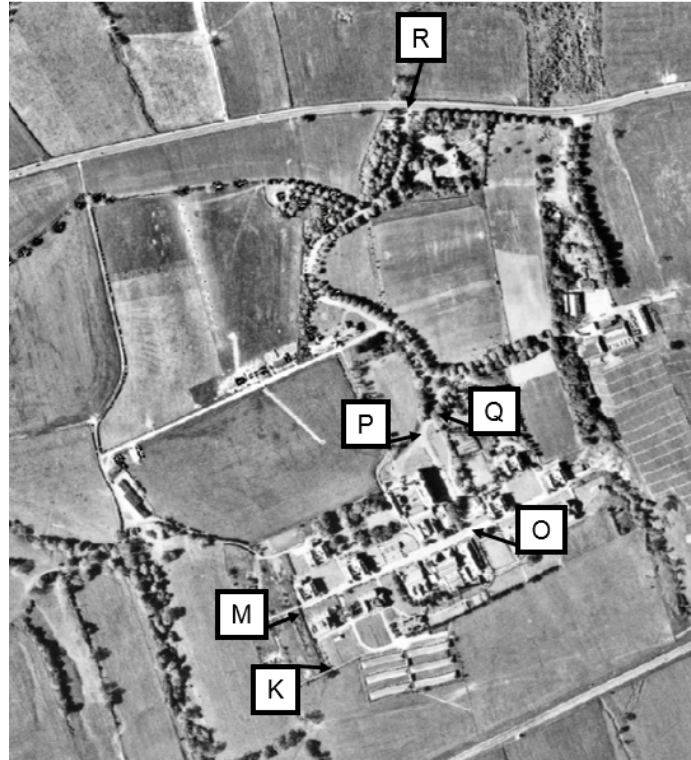


Observations		<p>The application route is clearly shown on the map from point A close to Sharples Farm (The Glen) to point M at Langho Colony. The route has been annotated with 'FP' indicating the route appeared on the ground to be a footpath at the time the map was surveyed. As on previous maps there is a route leading through the hospital buildings leading towards the access track, and following the road down to reach Longsight Road/A59 at Point R.</p> <p>The Rydings and The Dales housing estate does still not exist at this time.</p>
Investigating Officer's Comments		<p>The majority of the application route did exist as a physical footpath and access road at this time. It is presumed that the route did not exist between points D and E which is neither shown nor followed or connected any physical features.</p>
<b>1:2500 OS Map</b>	1973	Further edition of 25 inch map reconstituted from former county series and revised in 1971 and published in 1970 and 1973 as national grid series.



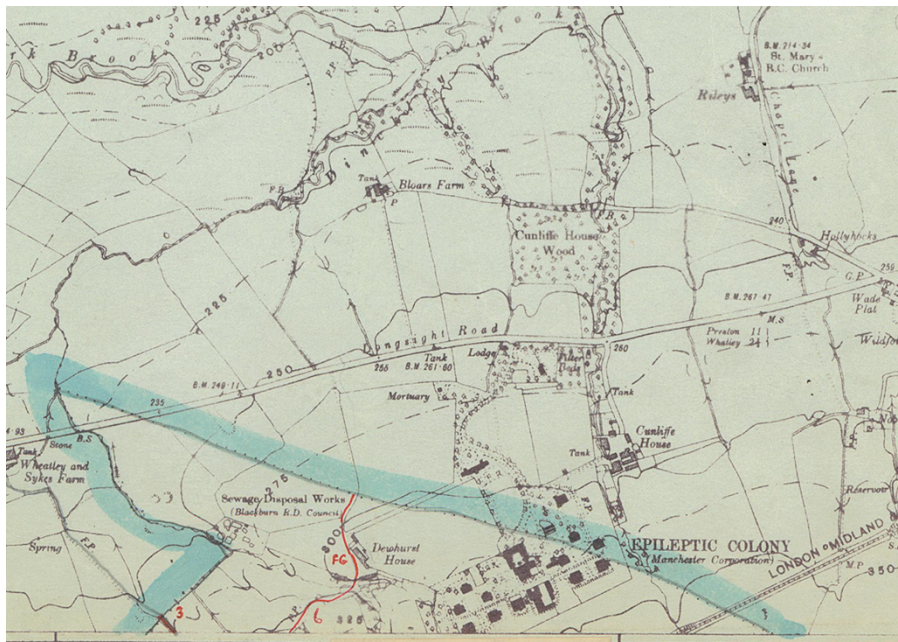
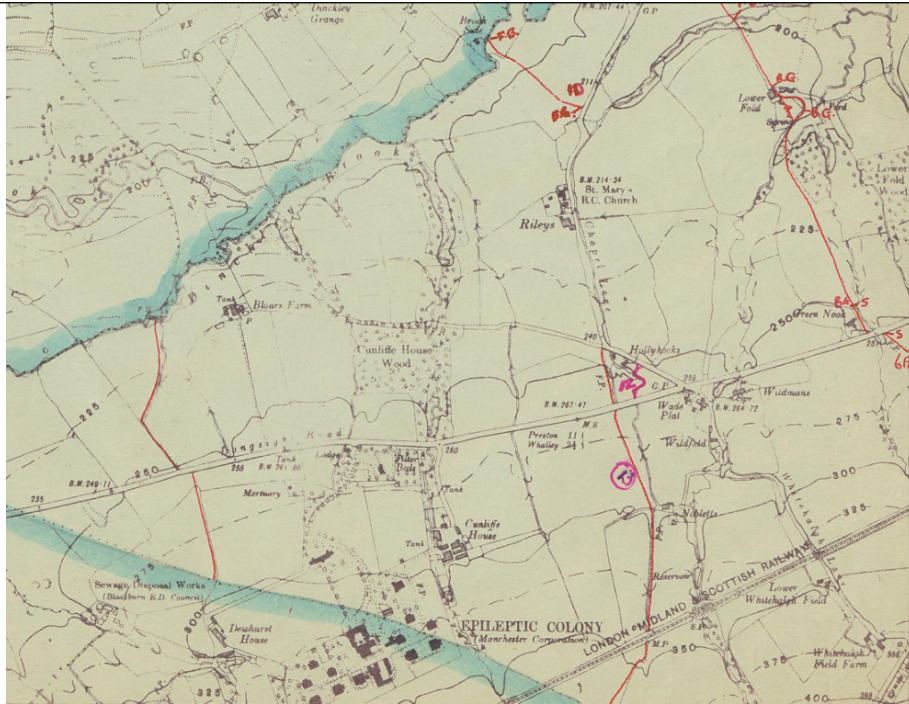
<p>Observations</p>	<p>As on the previous map, a track is shown and is labelled as 'path'. It is shown between points A and point M. The route continues to Langho Colony (previously the Epileptic Hospital). The Rydings and The Dales housing development has still not been built at this time. The route continues as previously through the Colony</p>
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		buildings and along the access road leading to Longsight Road/A59 at Point R. Nothing is shown on the map for the application route between points D and E.
Investigating Officer's Comments		All of the application route A-R existed as a physical path at this time. It is presumed the routes did not exist between points D and E.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph was taken in the 1960s and is available to view on GIS.





Observations		A trodden line can be seen on the 1960s aerial photograph from point A to point K. The Rydings and The Dales housing development has still not been built but a trodden line continues towards the hospital. A route as shown previously can be seen between the hospital buildings, and the access road can be seen leading to Longsight Road/A59 at point R. There is no trodden line shown for the application route between point D to E.
Investigating Officer's Comments		The application route existed on the ground in the 1960s, particularly as a trodden track between points A to K and an access road from the hospital to point R. There is no evidence to show that the route between points D to E was used however.
<b>Definitive Map Records</b>		<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>
<b>Parish Survey Map</b>	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>



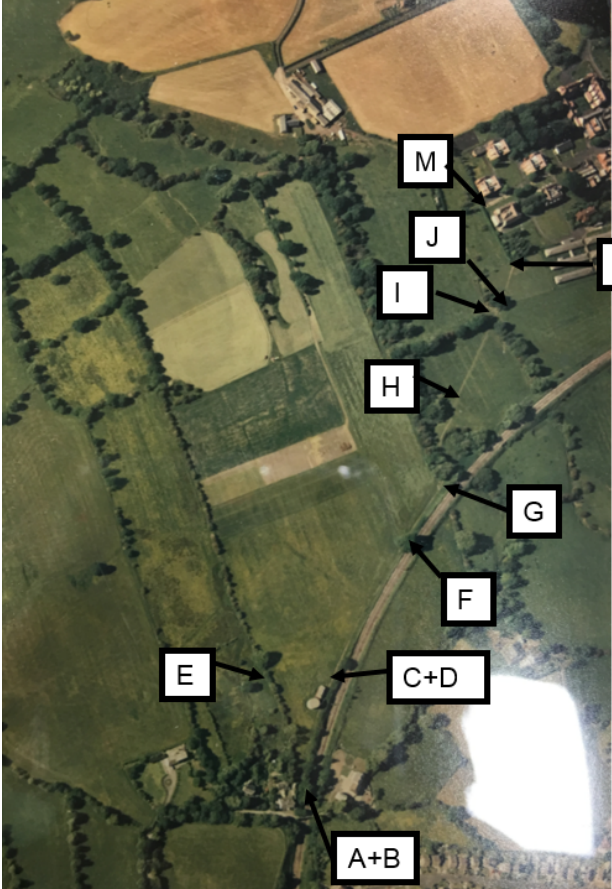


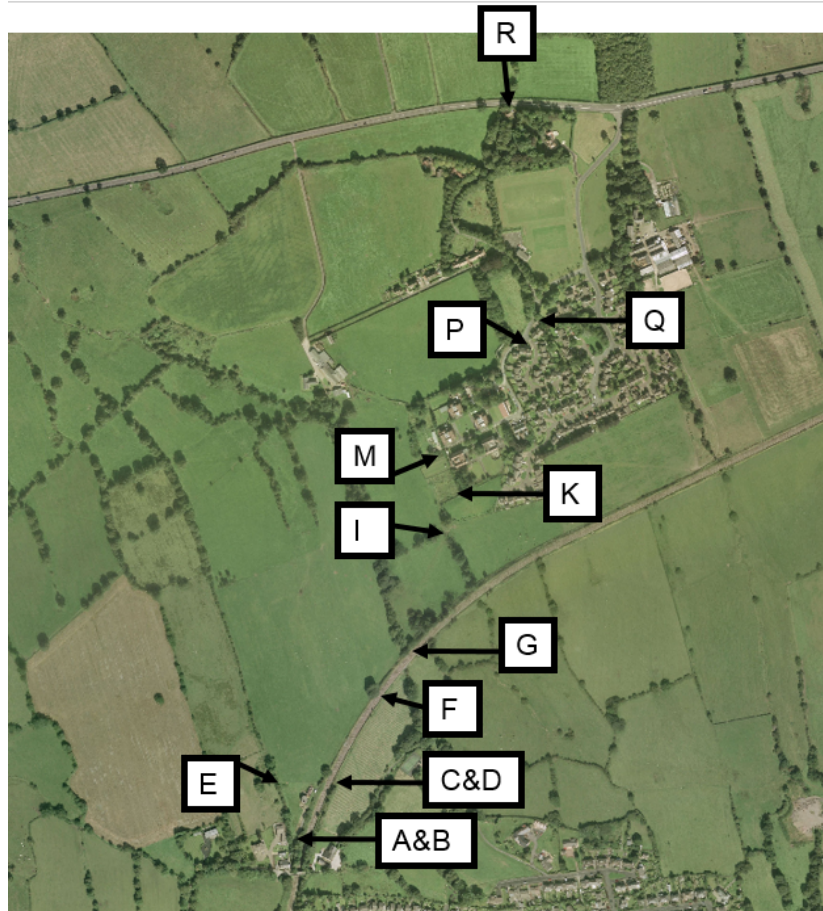
<p><b>Observations</b></p>	<p>The parishes of Wilpshire and Billington were within Blackburn Rural District and produced a Parish Survey Map. The application route is not included on the map as being a public footpath, although it is shown as pecked lines and marked 'FP' on the base map (1956 6 Inch Ordnance Survey Map). Footpath 5 Wilpshire has been recorded on the Parish Survey Map in close proximity to the application route.</p>
<p><b>Draft Map</b></p>	<p>The parish survey map and cards for the rural districts 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” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>



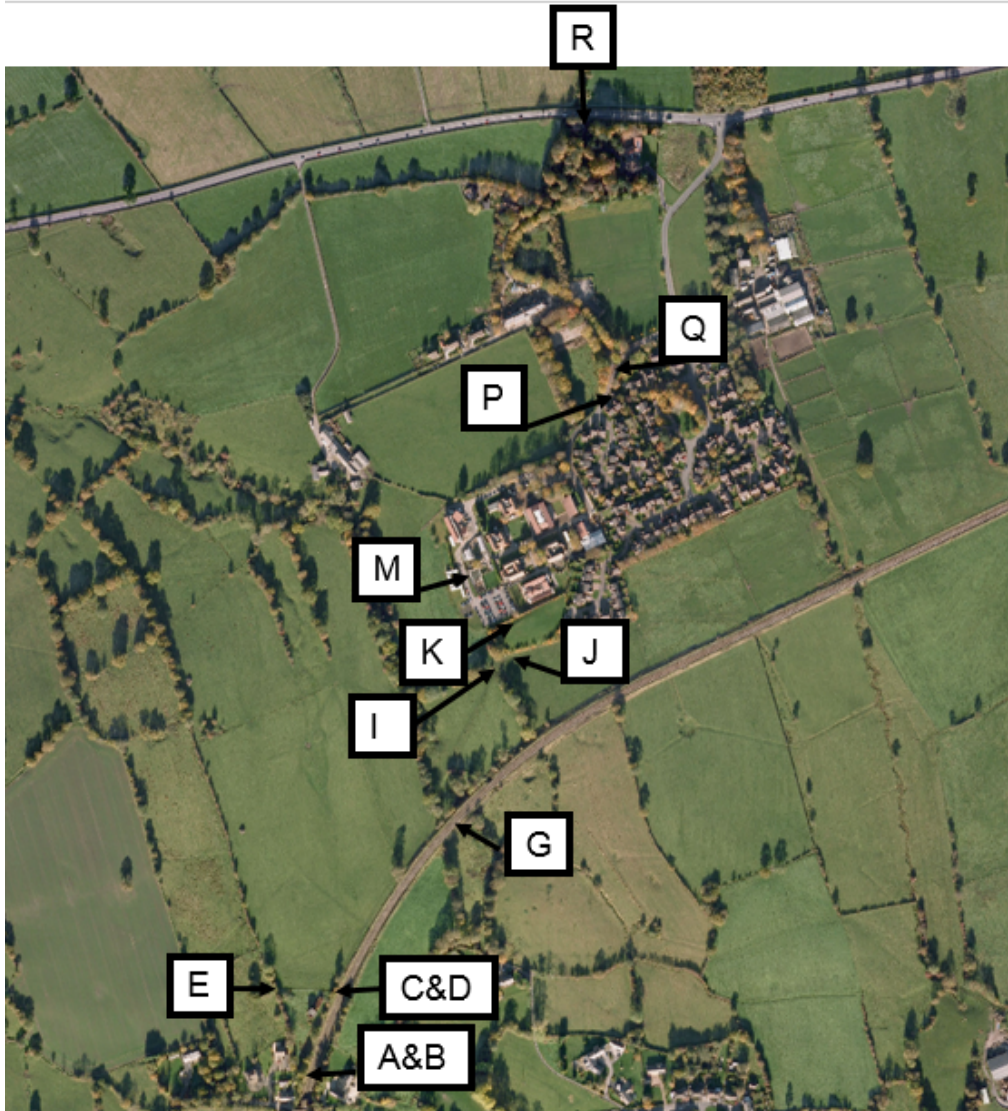
Observations		The application route is not recorded on the Draft Map even though pecked lines are shown on the base map between points A to K and the access track is seen from the Colony to Longsight Road/A59 at point R. Other public footpaths in close proximity have been recorded, in particular Public Footpath 5 Wilshire.
<b>Provisional Map</b>		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 Provisional Map does not differ from the Draft Map, and does not record the application route.

<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route is not recorded on the Definitive Map and Statement. The route is however shown as a pecked line and annotated with 'FP' on the base map between points A to M, and the access road can be seen from the Colony to Longsight Road/A59 at point R.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> 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 application route is not recorded on the Definitive Map. The route is however shown as a pecked line and annotated with 'FP' on the base map between points A to M, and the access road can be seen from the Colony to Longsight Road/A59 at point R.
Investigating Officer's Comments		The application routes are not recorded on any maps preparatory to the Definitive Map and there were no objections to the route not being recorded. They were probably not considered to be public at the time, even though a path and road appear to have existed for access to the hospital.

<b>Aerial Photograph</b>	1980	Colour Aerial photograph taken in 1980
		
Observations		A clearly defined trodden line can be seen leading from point A to point K as shown on the previous Ordnance Survey maps. There is no trodden line shown for the application route between point D to E.
Investigating Officer's Comments		The application route appears to have existed in the 1980s as trodden lines can clearly be seen between points A and point K (from where the hospital access roads could lead to the Longsight Road but any pedestrian use would not show).. There is no evidence of use between points D to E.
<b>Aerial Photograph</b>	2003	Colour aerial photograph taken in 2003 available on the GIS.




Observations		The housing development at The Rydings and The Dales has been built since. A trodden line can be seen on the application route between points C to J, showing that use on the ground was still occurring at this time. There are no trodden lines visible between A to C, D to E - although a fence line has now appeared or J to K. The route through the hospital appears to be tarmacked, and becomes obstructed by the housing development at point N. At point P, the route continues along the former access road to exit at Longsight Road/A59 at point R.
Investigating Officer's Comments		The majority of the application route exists as a trodden or available route at this time, particularly between points C to J. There is no evidence of the route between points A to C, D to E or J to K.
<b>Aerial Photograph</b>	2006	Colour Aerial photograph taken in 2006 available on the GIS



Observations	<p>A trodden line can be seen from point C to J. A car park has since been constructed on the hospital grounds and the route appears to now be impassable to point M. At point M the tarmac track continues to reach the housing estate which is impassable. From point P the route follows the access road to Longsight Road/A59 at point R. A trodden line is not visible between points A-C and D-E.</p>
Investigating Officer's Comments	<p>The land is continuing to be developed with the newly constructed car park. It seems that the route is becoming more impassable due to development, but a trodden line can still be seen for the majority of the route, and the access road leading from the hospital to Longsight Road/A59 appears to remain available.</p>

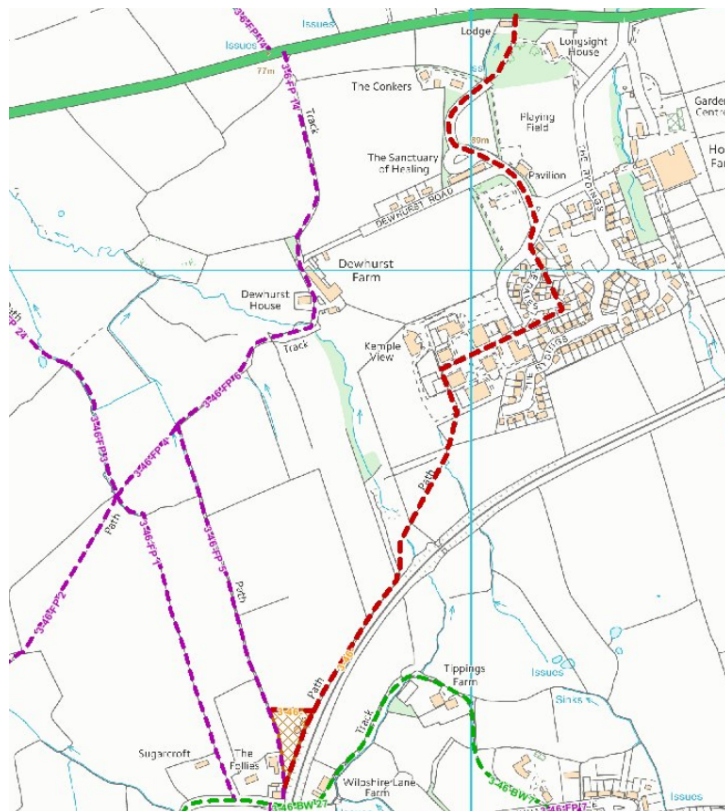


Aerial Photograph	2010	Colour aerial photograph taken in 2010.
		
Observations		<p>Some of the route is difficult to determine because of the blocked view from the trees, particularly between points A-B-C-D and G-H. However traces of the route can be seen between points C to G. A route cannot be seen between points D to E but the triangle of land to the south is shown to be overgrown and full of shrubs. Wheel tracks, presumably from a tractor are apparent around G-I-J. The access road leading from the hospital to Longsight Road/A59 still appears to be a main route.</p>
Investigating Officer's Comments		<p>The 2010 aerial photograph supports some of the route still being used on the ground, particularly between points C to G, P to R and most likely G to J. It is difficult to determine for the rest of the route due to the quality of the photograph and the trees.</p>

**Statutory deposit and declaration made under section 31(6) Highways Act 1980**

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).

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**

A statutory deposit was made by Mr and Mrs Murray in relation to Land north of Vicarage Lane, Wilshire, BB1

		9HY, as shown on the land shaded by orange hashes on the southern section of the application route, to prevent dedication of public rights over their land. The deposit was submitted on 26 <sup>th</sup> March 2014. This does not affect any dedication prior to this date but from this date there is a clear statement that this landowner did not intend to dedicate a public footpath.
Investigating Officer's Comments		There has been an indication by one of the landowners affected by this application under this provision of non-intention to dedicate public rights of way over their land from 26 <sup>th</sup> March 2014.

The application route does not cross a Site of Special Scientific Interest or Biological Heritage, nor does it cross access land under the provisions of the Countryside and Rights of Way Act 2000.

The affected land is not registered common land.

## Summary

Historically part of the application route A-B-C-D-F-G-H-I-J appeared to provide a link from Vicarage Lane to the Epileptic Hospital, then Langho Colony. The site is still currently in use as a Psychiatric Hospital. There is a series of documents consistently supporting the existence of this route as a physical footpath, including 80 years of a track shown on the Ordnance Survey maps from at least 1893 through to 1973, where it has also been annotated with 'FP' and 'path', aerial photographs from 1940 to 2010, and particularly trodden lines on site between points G to I. The route has not been used in parts in recent years due to restrictions made along the route including locked gates and erected fencing.

The application route from point D to E appears to provide a link to Public Footpath 5 Wilpshire which connects to a series of other public footpaths in the Wilpshire Parish. There is no documentary evidence for this branch of route, there was no sign of any trodden lines of use on the aerial photographs inspected, or indeed when on the site visit.

The application route from point J to K provides a link to the hospital grounds. The existence of a stile (now barricaded) at Point J, mentioned in the user evidence, does indicate that at some point in time use could have been possible, although this is not particularly supported by the documentation inspected.

There is no trodden route on site between points J and K. Since the housing estate at The Rydings and The Dales was built, they have created an open access/exit at the cul-de-sac which does not follow the application route, but does provide an alternative exit as the access is denied at point K due to fencing.

The application route from point K-L-M-N-O-P winds through the hospital grounds and is shown as open and accessible on the majority of the Ordnance Survey maps inspected from 1912 to 1973, and on the aerial photographs until the land started to be developed around 1980. It appears to have been a wide track and is presently on a tarmacked surface. Currently the application route is inaccessible at points K and L due to security fencing around the complex, it is also inaccessible at points M, N, O, P due to the housing development of The Rydings and The Dales which built over the site and on the application route. The route currently is restricted by residential fencing, properties and gardens.

The application route from point P-Q-R follows a historical access road which gave private vehicular access to the hospital grounds from 1912 to present day. The road is known as Longsight Road and has no recorded highway status, but appears to have been the main private access road from the A59 to the hospital before The Rydings was constructed. Currently the track is a privately maintained tarmac road with a substantial width leading to a number of properties. There is currently a kissing gate and hedgerow located at point P although access is denied by fencing.

## **Landownership**

The application route affects the following landowners:

- Ribble Valley Borough Council
- Partnerships In Care Property 9 Limited, 2 Imperial Place, Maxwell Road, Borehamwood, Hertfordshire
- Dewhurst Farm, Longsight Road
- The Glen, Vicarage Lane
- 1, 3, 5, 7, 9, 15, 19, 20, 21, 22, 23, 24, 25 The Dales, Langho,
- Fairclough Homes Limited, Meirion House, 18-28 Guildford Street, Woking
- 10 Linkside Avenue, Winwick, Warrington
- 6 Gleneagles Drive, Brockhall Village, Old Langho
- Longsight House, Longsight Road
- The Lodge, Longsight Road
- Highways England
- 1 other private owner

## **Head of Service – Legal and Democratic Services Observations**

### **Information from the Applicant**

The applicant has provided 31 user evidence forms, 19 of these forms provide evidence of use of the route from Footpath 5 through to The Rydings and 12 of the forms provide evidence from Footpath 5 through to the A59, the evidence is set out below:

## Footpath 5 to The Rydings

The years in which the users have known the route is as follows:

1964-2014(1)	1965-2014(1)	1974-2014(1)	1975-2014(1)
1982-2014(1)	1984-2014(3)	1986-2014(2)	1988-2014(1)
summer1990(1)	1995-2014(1)	1997-2015(1)	1999-2014(2)
2002-2014(1)	2004-2014(1)	2012-2014(1)	

All 20 users have used the route on foot, the years in which the users have used the route are as follows:

1949-1954(1)	1956-1962 & 1982-1984(1)	1974-2014(1)	
1975-2014(1)	1982-2014(1)	1984-1999(2)	1984-2002(1)
1986-2010(1)	1987-2014(1)	1988-2009(1)	from 1990(1)
1995-2005(1)	1997-2014(1)	1999-2014(1)	2000-2014(1)
2002-2014(1)	2004-2014(1)	2012-2014(1)	

The main places the users where going to and from include for a walk, from The Dales to Wilpshire, to the A59, the cricket club, Clayton-le-Dale, Salesbury, Somerset Avenue to Langho Colony and Wilpshire to Langho. And the main purposes for using the route are for exercise, pleasure, dog walking, enjoyment, to visit friends, watch cricket, to get to work and for social reasons.

The times per year that the users used the route varies from 120, 5 times per week, daily, several, 3-6, 10-15 and 20-40.

2 users have also used this route on horseback one between the years of 1975-2014 and the other between 1986-1992.

10 users agree that the route has always run along the same line, 4 users mention the water tower being built and that they made slight diversion, one of these users mentioned this water tower was built in around 2002. 1 user mention they took a light diversion via the footpath to the west, another user mentioned the route was blocked in around 1999 and they stopped using it then, another user also mentions the route changed in 1999. 2 users mention a fence was erected, 1 user stopped using the route when the fence went up and the other user would climb the fence, they mentioned the fence was erected around 2001/2002.

6 users mention the erection of a fence across the path, the dates of the fence vary from either 1999, 2001, 2002. 8 users mention there was a gate and some users mention this gate became locked in recent years. 2 users also mention a stile. 2 users mention seeing a stile/gate/fence along the route but did not provide details, and 4 users did not know or could not remember. 8 users mention a gate was locked but only recently in around 2013.

6 users have never been prevented from using the route, 1 user mentions they just climbed over the fence, 2 users mention being prevented in 1999 when the fence was erected, 1 user was prevented by the water tower in 1999, another user couldn't use the route when the fence was erected but could when it was removed, 1 user climbed over a locked gate, 1 user was prevented by a locked gate, 2 users mention

wire on the stile in recent years and another user mentioned in 2014 the stile was removed and barbed wire prevented access.

Most of the users have never worked for a landowner, 1 user however used to cut Mr Turners grass at his bungalow and received a telephone call from Mr Turner in February 2014 telling him not to take his dogs on the field owned by Kemple View. Another user used to work for Langho Colony but received any instructions about the route.

1 user mentions being stopped when using the route around the time the stile was removed near Christmas time, but none of the other users have ever been challenged. 1 user had heard of someone else being stopped when the gate was locked, and another user refers to a time that they had heard from someone else that someone had been challenged.

1 user was told by Mr Turner in Summer 2013 that the route they were using was not a Public Right of Way, another user mentioned that Mr Turner regularly chatted to them and knew they lived on The Rydings and never objected to them using the walkway, none of the other users have ever been told the route they were using was not a Public Right of Way.

14 users have never seen any notices or signs along the route, 3 users saw a sign in 2014 but didn't provide any details, 1 user mentions a sign on the railway fence saying trespassers will be prosecuted in 2014, and another user refers to a 'no footpath' sign on Mr Turner's land and 2 signs were erected by the new landowner at either end of the water tower during 2014, saying 'private property' and 'no public right of way'. None of the users have asked permission to use the route and 2 users stated they thought it was a right of way.

- After completing the user evidence forms, users are asked to provide any additional information they might have, this information is set out below:
- I walked to point I and returned the same way
- It was an important link between Langho and Wilpshire during the time I lived on The Dales between 1995-2005 I used it to visit relatives and friends in Wilpshire
- At the age I was I only walked from Somerset Avenue down to the boundary of the hospital I was too young to go any further
- I walked from Point A -The Rydings and return after the Rydings was built. I do not remember not walking through the colony grounds
- Its always been available to walk, ride or cycle, why he wants to close it is beyond me. Used to ride horses down the path round Langho Colony to Cunliffe Moss Farm Longsight Road - never refused access to any part of the path, didn't walk or right through the colony grounds
- It is over 60 years since I walked this route and I have no recollection of it going through the Colony but of course that's not to say it didn't
- until recently had always thought that it was a public right of way
- walking along this path I would walk to point J and then return. After the estate was built I still walked to point J then returned. There was no particular reason for me to go passed point J.

The applicant has provided a further written statement attached to his user evidence form, the information contained in this statement is set out below.

He states the application is supported by Wilpshire Parish Council, Wilpshire Borough Councillors Stuart Hirst (leader of Ribble Valley Borough Council) and Sue Bibby and many other local residents.

The applicant then mentions the origins of this footpath stem from the founding of Langho Epileptic Colony in 1906 by Manchester Corporation. People would get off the train or tram or bus at Wilpshire (A666) and take this, the direct route to the hospital to visit patients as family members, or to visit friends or workers there. Over time the path was used more by people just enjoying going for a walk for leisure or recreational purposes and now provides a vital and safe pedestrian connection between the Rydings estate and the rest of Wilpshire and vice versa.

The applicant mentions that the reason that this application has been made is because a resident of the Rydings Mr Fred Holland (Clerk to Whalley Parish Council) complained that a gate on the route was found to be chained up in early November 2013 making progress difficult (and then subsequently in December 2013 a substantial stile was removed near to the Rydings. Mr Turner a local landowner and tenant of the land owned by Kemple View Hospital, had locked the gate. He subsequently removed the stile and an originally white / red painted marker post (the paint mostly wore off over time) at the Rydings end and on 5/2/14 (13:39 hours) he called the applicant to discuss the footpath and told him that he 'had put the stile in for walkers to replace a damaged one and that he now decided to remove it' he said that he had put it in so he could take it out as he chose.

The applicant states that Wilpshire Parish Council discussed the path in November 2013 and decided to 'seek to achieve definitive status' for this historic footpath.

On advice from PROW Council County Council (Steve Williams November 2013) the applicant mentions that visits were made to Mr Turner, the first in company (19/11/13), the applicant asked Mr Turner whether he would 'Dedicate' the route under 'Section 30 of The Highways Act' provided that Wilpshire Parish Council or Lancashire County Council provide and maintain any gates required (for disability purposes) along the route. The applicant further states that local people believe they have 'a right to walk along the footpath'. The applicant states that although Mr Turner had concerns regarding dogs he would consider the proposal and states 'I want to be fair but don't want to decide now – I'll think about it first'.

About a week later (27/11/13) the applicant visited Mr Turner again who had decided to turn down the proposal of a 'Dedication' and cited 'dog owners interfering with his sheep', he stated he 'never minded the people its them who let their dogs off their leads – I hate them', and mentions that there is already an unfenced definitive footpath running in a different direction through the main field within which the historic route runs.

The landowner(s) have not at any time sought a declaration under the Highways Act 1980 section 31(6) – stating non acceptance of the historic footpath on their land (i.e. prior to the deposit by Mr & Mrs Murray in 2014).

The applicant then goes on to mention that without this 'historic footpath' the Rydings residents accessing the central part of Wilpshire would have to cross the busy A59 twice to access the definitive path to Dewhurst Farm and Wilpshire. (There is no footpath heading West on the South side of the A59. Also access along the safe route to Dewhurst Farm along Dewhurst Lane is denied to local people by Mr Turner of Dewhurst Farm). Historically recreational walkers could enter or exit the original hospital grounds to the A59 via Dewhurst Lane (on the Eastern side of what is now the 'Sanctuary of Healing'), and in fact people still do use this route now to the A59. The evidence of long use can be seen on the Lancashire County Council 'Maps and related information online' – 'Mario Maps' – on the schematic map as 'Path (un)' and historic 1950's and 1960's aerial photos and other maps – additional 'Google Earth' can be used to see the line of the path.

It is mentioned by the applicant that there are 7 landowners on this historic route of this path, Wilpshire Parish Council would obviously prefer the original historic path for use by the public but if necessary would accept a compromise solution to establish a route that is suitable for landowners and the public, if this was possible and therefore negate the possibility of an expensive public inquiry.

The applicant has also spoken to Kemple View solicitors (represented by Aarti Vadera) in regard to land owned by them through which the path runs and they accepted that the path has been used 'historically for 40 years or more' and (in early 2014) had no objections to it becoming a definitive path.

In regard to the date the fence was constructed across the footpath near to the water tower, the applicant states that no one could exactly remember when and basically people gave their best estimate, the dates varied from 1998-2002. It was only during the latter part of 2014 that the applicant came across photos in his possession with the date on the back of October 2001 that he knew for certain that the fence was erected after that date as the fence across the way is certainly not on the photographs.

As well as the statement, the applicant has supplied 7 photographs of the route and the following information from them has been provided:

Photograph 1 – Footpath viewed from near Vicarage Lane, no fence erected across at this time (photo dated October 2001)

Photograph 2 – Water tower, no fence erected at this time (photo dated October 2001)

Photograph 3 – Taken Spring 2014 from Vicarage Lane end showing an obvious path

Photograph 4 – Taken Spring 2014 looking towards Vicarage Lane showing an obvious path

Photograph 5 – Looking north down the field from the Definitive Footpath 5 (2014)

Photograph 6 – Taken from position 6 on the map looking down the footpath towards Kemple View / Rydings (no date)



Photograph 7 – Stile near to 'The Rydings' / Kemple View. (Now removed December 2013) this stile replaced a previous one that was in the same approximate area, NOTE: The originally white and red painted marker post to indicate the route.

### Footpath 5 to The A59

The years in which the users have known the route is as follows:

1957-2014(1)	1962-2014(1)	1964-2014(1)	1971-2014(2)
1972-2014(1)	1973-2002(1)	1974-2014(1)	1976-2016(1)
1978-2014(1)	1981-2014(1)	1988-2014(1)	

All the users have used the route on foot, and the years in which the users have used the route varies:

1957-1985(1)	1964-2014(1)	1970-2014(1)	1971-2002(1)
1971-2003(1)	1971-2014(2)	1972-2014(1)	1973-2002(1)
1978-2914(1)	1981-2014(1)	1988-1998(1)	

The main places the users were going to and from include fishing at Dinckley, visiting friends, to Langho from Clayton-le-Dale, to Langho Colony or The Rydings, The Rydings to Vicarage Lane, to work or a walk for pleasure.

The main purpose for using the route are for social and pleasure, exercise, dog walking, fishing, enjoyment, to visit friends, shopping, blackberry picking, visiting the nursing centre, for work and recreation.

The amount of use of the route per year varies between:

In earlier years (1970s-1990s) users used the route more frequently, some twice per week and some 'several times', 1 user used it every night as a teenager but now every weekend with children, other users use the route 3-4 times per week, 5-7 times per year and 10-20 times per year.

2 of the users have used this route on bicycle one the users used it on bicycle between the years of 1957-1969 and the other user did not specify any years.

4 users agree the route has always run over the same line, 7 users state they had to make a slight diversion / detour was the water tower was installed, 1 user mentioned the route has always run along the railway line.

7 users refer to seeing gates on the route, some users state these were at the start and finish of the route, other users mention the gate either being a kissing or a swing gate, 5 of these users mention the gate(s) being locked in later years and only mentions they were prevented access. 3 users also refer to a stile being on the route and 2 users mention a fence being erected on the route.

1 user worked for Langho Nursing Centre between the years of 1987-1997 but they were never given any instruction regarding the route. None of the users have ever heard of anyone ever being stopped when using the route nor have they ever been told it was not a Public Right of Way.

3 users have seen notices, 2 users refer to seeing the notices in March 2014 and one 1 user states 2014, no further information regarding the notices was received. None of the users have ever asked permission to use the route.

Additional information has been provided by the users and this information is set out below:

- At the time a double fence was in position the definitive route, I climbed over to access route. Prior to The Rydings being built I walked through various routes in hospital grounds to A59. After The Rydings built, I used the I,J,K route while the hospital was still there I returned via Dewhurst Farm.
- During 1970s and 1980s I would walk with my parents through the Colony from Wilpshire to Dinckley, but I do not remember any details of the route. From 1990s I would occasionally walk the A-K route and the A-E-D to The Rydings to present time.
- The path has always been used with free access to Wilpshire. Walked through the hospital various routes from A59 to Wilpshire - no issues and no permission was required when passing the Colony route and returning. I used to get the bus to Colony Bus stop on the A59, I used the Lodge and main entrance through Langho Colony passing the then cricket field, onwards to Wilpshire, I do not recall route through the colony buildings.
- The path has always been used in both directions before the hospital sold the land for houses (The Rydings) and I have walked it regular ever since. Before The Rydings were built in 1990 I walked from Bryers Croft A-J through Colony to the Lodge entrance many onto paths to Dinckley return from various pathways home at no point do I ever recall being challenged on the journey through the Colony. After coming to live in The Rydings in October 1991 I regularly walk K-J-I route.
- I have not walked on The Rydings end of this path for many years, however during the 1970s - 1980s I used to walk the route through the hospital on a circular walk to Dinckley and never had any problem. I used various ways through the grounds of the hospital and got onto the A59 via the main entrance or the lodge. I can't remember the exact path I took through the hospital grounds it is such a long time ago.
- I have not completed the route into the Rydings for several years, but use the path regularly to view steam trains running between Clitheroe and Blackburn. In the past I have walked the route through Langho Colony onto the A59 and onwards to Dinckley. I took various routes through the centre of the hospital and exited onto the A59 via either the main entrance or the Lodge route. I cannot remember the exact routes through the hospital.
- I have walked occasionally in the past through the Colony to the A59 by various routes via Dewhurst Farm or The Lodge. I was never challenged whilst walking in this area. These walks were whilst walking to Dinckley / Old Langho, I am unable to recall the exact route.
- Over the years I and my family used various routes through Langho Colony onto the A59. We then went on to Hurst Green or back through Dewhurst Farm. Our route changed as the colony became a housing development. At first we would exit onto A59 via the Lodge entrance later we would use the new entrance for the housing. Nobody ever challenged us over 30 years ago this was a very popular path.

- After The Rydings was built I used the I,J,K route, prior to The Rydings being built I used to walk through the hospital grounds and come out on the A59 by the main hospital entrance.

Information from Others - responses received for part of the route (Footpath 5 to The Rydings) (initial application)

A letter of objection from Forbes Solicitors on behalf of the owner of Dewhurst Farm Barn

A letter has been received from Forbes Solicitors on behalf of John Turner (part landowner) who formally objects to the application.

Mr Turner is the owner of Dewhurst Farm Barn and he is also a tenant of the land which was acquired by the local hospital adjoining it which was formally his land.

Forbes Solicitors carried out examination of the title documents that reveal a footpath was in existence between the hospital and near to the bottom of the land upon which the water tower sits. They mention that the line of the path does run approximately the same route as shown on the committee plan, but state that this footpath is not a public footpath and was a private path.

It is mentioned that Mr Turner's title was created following the conveyance by the Council of the City of Manchester of land comprising Dewhurst Farm to Mr and Mrs E Wearden pursuant to a conveyance dated the 15 October 1980. At the time of this conveyance a right was reserved for the benefit of the then sellers. The provision in the conveyance states "the full right and liberty from time to time and at all times hereafter and for all purposes of occupation of the Langho Centre for the vendor its certence and licences to pass and repass with or without animals and vehicles over and along the track or road of 12 feet wide indicated by the broken yellow and black line on the said plan between the points marked "E" and "H". (A copy of the plan was submitted with the response)

Forbes Solicitors state that until recently the footpath should only have been used by the hospital to read meters which were situated at the water tower. They understand that their client Mr Turner has taken steps on numerous occasions to tell users of the footpath who were general members of the public that they did not have authority to do so and that it is was private land. It is noted that in some of the user evidence forms submitted with the application that a number of the parties had indicated that they had been stopped.

In the circumstances, Forbes Solicitors consider that the footpath is a private right of way only and is not open to the members of the public and that those persons that had not been authorised to use the path by the parties having the benefit of it are not entitled to do so and indeed are strictly speaking trespassing.

A letter of objection from Partnerships in Care

Partnerships in Care own part of the land used by this route and object to the application and state they are presently considering their position, which will take into account not only all the available evidence, but also the framework for the healthcare facilities that they operate and their statutory duties, no further response has been received to date.

A letter of objection from a private owner of part of the route where it joins Footpath 5 with supporting documents

The objectors own some of the land in connection with this application.

They have received copies of the application documents submitted by the applicant including the seven photographs and the 28 user evidence forms, it is stated that some forms omit information requested and from reviewing the forms they find substantial discrepancies in the evidence given and known and verifiable interruptions are curiously omitted from many forms. There appears to be confusion between the old private footpath to Langho Colony (which was closed and permanently interrupted from 1984) and the application route.

They do not consider that the application gives evidence of sufficient use of the route. The documentary evidence shows that successive objections to planning applications relating to their property did not refer to use of the route, including an objection from the applicant himself in 1998, which brings into question both the use and knowledge of the application route.

They refer to the date when 'The Rydings' was completed and established, and there appears no evidence that the application route has been used 'as of right for not less than twenty years'.

They also refer to the evidence given on the User Evidence Forms regarding interruptions to the application route, they state in many cases, to be unreliable and often evidence can be shown to conflict with clear documentary evidence of known interruptions. Additionally they mention that expected proof that the use of the application route has been without interruption is confused where users openly admit that they climbed over fences and locked gates to use the route.

They also state that there appears to be insufficient evidence for presuming implied or express dedication by any owner of any part of the application route. However, reliable documentary evidence can be given to support the lack of intention on behalf of landowners on the application route to dedicate the way to the public. They then refer to the CA16 form under Section 31 of the Highways Act that they submitted to Lancashire County Council on 26 March 2014.

The objectors bought the property on 24 March 2014 and in the last 17 months since then, they have seen only one person walking the route on their property and this was Mr Gaffney, the applicant on 25 March 2014.

They have made the following comments on The application, Documentary Evidence in the Application, User evidence of a footpath, User Evidence Form No.25 (the applicants form), User Evidence of a Bridleway and Other Documentary Evidence.

### The Application

Reference is made to the map attached to the application that shows 2 routes from Vicarage Lane, Wilpshire to 'The Rydings', Langho. One of the routes is through their property in Wilpshire along the fence of the railway line and to 'The Rydings', Langho; and the other route is via Wilpshire footpath No.5 until it crosses into land owned by Dewhurst Farm, where it turns eastwards to the railway fence before joining and following the first route until it reaches 'The Rydings' and they cannot find any reason given in the application to explain why the application is for 2 routes.

Reference is made to the Wilpshire Parish Council minutes of its meeting on 21 January 2014 that states "Should the proposal regarding the making of a public footpath from Vicarage (sic) Lane to the Rydings fail then funds could be used for the purchase of a strip of land to provide (sic) a public footpath by walking down FP 5 then turning right following the railway up to The Rydings".

They mention it is not clear for the reason of the application and what the act(s) have constituted the 'bringing into question' of the right to use the 2 routes as a public footpath, and the date of the act(s). It is stated that this is important because under section 31 of the Act the 20 year period is counted back from the date when the right of the public to use the path was brought into question. Reference is then made to the applicant's user form and the extra information he provided and the part that states the reason "is that a resident of the Rydings Mr Fred Holland (clerk to Whalley Parish Council) complained to me that the gate on the route was found to be chained up in early November 2013 making progress difficult (and then subsequently in December 2013 a substantial stile was removed near to the Rydings..." Mr and Mrs Murray comment that Wilpshire Parish Council minutes of its meeting held on 6 March 2013 months before Mr Holland complaints state that "Cllr Gaffney reported that he had been in contact with Anne Taylor (LCC Definitive Map Officer) who had given some options... Cllr Gaffney also spoke with Nick Bass, RVBC, who suggested that nothing be done at present". And it was resolved "to leave it as it is and try to gather evidence of its use over the past 20 years". Mr and Mrs Murray confirm they have spoken with Nick Bass on several occasions when he was with RVBC and have regard for his judgement and for his knowledge on footpaths.

The objectors have had sight of the user evidence forms submitted with the application and submit the following the comments.

It is mentioned that 22 of the UEFs claim use of the route in the period 8 October 1990 and 11 September 1997 (the construction period of The Rydings as stated by NHBC).

Mr and Mrs Wearden sold Dewhurst Farm on 28 April 1992, but retained the Water Tower property. It is most likely that by the date of sale they had erected the fence between the Water Tower and Dewhurst Farm. Before they erected the fence, a gate

or fence would have been required at the start of the route on Vicarage Lane to prevent livestock from straying onto Vicarage Lane and refers to the committee plan and the Conveyance Plan dated 28 April 1992. 19 UEFs that claim use of the application route before 1992 fail to mention a gate or fence at the start of the route on Vicarage Lane.

They mention there is currently a locked steel gate at the start of the route on Vicarage Lane and when the Water Tower property was surveyed in May 2014, the surveyors needed vehicular access to the property. It was very difficult to open the gate, for soil and debris that had built up at the bottom of the gate, and it had clearly not been opened for many years.

A copy of a letter from F Brewer & Son Ltd dated 27 July 2015 has been provided which states "The fence was installed between Dewhurst Farm and the plot of land of the redundant Water Tower at Vicarage Lane, Wilpshire. The new fence was installed between the existing stile on the public footpath and the fence to the railway line and replaced an old fence. I understand that the then owner of the Water Tower, Mr Colin Hooper was in agreement for the existing old fence to be removed and replaced by the fence which I installed."

They make the comment that a stock fence at Dewhurst Farm & the Water Tower was erected in January 2001 shortly after Mr Turner bought Dewhurst Farm and that the letter states his new fence 'replaced an old fence' supporting the estimated date of the original fence as pre-dating 2001 to an extent consistent with the fact that the fence required renewal.

Photographs have been submitted as part of the evidence by the objectors and they state that the photos show little trace of the path and refer to their photograph dated 23 September 2013 which they state gives a fair indication of how the Water Tower property can get overgrown and the second photograph shows no indication of the application route 1 or 2.

Photographs showing signs erected at the property dated 25 March 2014 taken at the south boundary show the sign on the gate, but also allows visual comparison with the well-beaten Wilpshire public footpath No.5 which runs immediately to the West of the gate.

Reference is made to the UEF that was completed by Mr Hill on 15 February 2014 who was the Chair of Wilpshire Parish Council when their letter dated 15 March 1998 was sent objecting to planning application (a copy of this application has been submitted as evidence with this objection.) Mr and Mrs Murray state he is listed as attending the planning appeal held on 12 August 1998 and there is no reason to believe that he was unaware of the letters of objection from Mrs Cunliffe (describing the application route as a "private footpath") and Mr Blundell which enclosed the photographs of the fence at the start of the route on Vicarage Lane. Mr and Mrs Murray refer to Mr Hill's comment of "I always thought it was a right of way" and state that if this was true, it is reasonable to expect the Wilpshire Parish Council letter of 15 March 1998 to object to the planning application because it would obstruct a public footpath, but it doesn't refer to this path.

User Evidence Form No.25 (applicant's form)

They make the following comments regarding the UEF provided by the applicant.

They state that Mr Gaffney claims that the fence at D was not erected until late 2001-2002 contrary to the evidence given in the letter from F Brewer & Son Ltd. They also state that Mr Gaffney claims to have never been told that the route he was using was not a right of way.

The objector had just erected 2 signs on the Water Tower Property in March 2014 when Mr Gaffney apparently climbed over the fence on the north boundary where the sign had just been erected. Mr Murray spoke to Mr Gaffney advising him that the route was not a public right of way. Mr Gaffney complained about the signs and Mr Murray also briefly described the history of Wilpshire Footpath No. 5 and how it had been moved early in the twentieth century.

They refer back to the Wilpshire Parish Council minutes of the meeting that show Mr Gaffney knew he was trespassing by 6 March 2013 and makes it clear that the gates and fences did not stop him continuing to trespass.

They refer to the text in Mr Gaffney's UEF "people would get off the train... at Wilpshire and take this... route to the hospital...", they refer to the chronology they submitted as part of their evidence and state that the closure of Langho and Wilpshire stations in 1965 and 1962 respectively and how LCC re-opened both stations in 1984. Jean Barclay is referred to, the author of Langho Colony / Langho Centre 1906-1984: A contextual Study of Manchester's Public Institute for people with Epilepsy' wrote recently on this:

"... from interviews with former residents that in the early days they used Langho Station and had to walk from there to the Colony... I don't think the path would have been used by the public in the early days as Langho Colony was very much a closed community."

#### Other Documentary Evidence

Comments are then made about other documentary evidence in connection with this application.

Wilpshire Parish Council has written letters of objection to planning applications to convert the Water Tower to a single dwelling. No letter seen refers to a footpath on the application route or objects to a planning application on the basis of the loss of amenity of the path. This reasonably suggests that the path was little used and was not known to the Parish Councillors. Letters written refer to the planning applications have been included as part of the objectors submission.

They state that there is evidence that there was no intention on behalf of landowners on the application route to dedicate the way to the public. Known documentary evidence includes:

The private footpath described by Mrs Cunliffe in her letter dated 10 March 1998 and Jean Barclay may well have been used by staff and the occasionally visitors going to Langho Colony, but its main use was probably a service path. The two buildings on

their property often described otherwise, are a concrete sprinkler tank and a water storage building which supported Braithwaite tanks. The brick water storage building was built at the same time as the first buildings at Langho Colony, but the sprinkler tank was added in 1921. Both buildings would require frequent maintenance inspections, and it is not surprising that soon after the time the sprinkler tank was in operation, the OS map indicated a (private) footpath from the Colony to these buildings.

They then state that because the land around these buildings was used by Dewhurst Farm dairy herd, an enclosure would have been required at Vicarage Lane, to prevent livestock exiting on to Vicarage Lane. Corroboration is given by Mr Blundell's letter dated 11 March 1998 and states that during all the time Mr Blundell lived at 'The Glen' "Langho Colony never used this access for vehicles". Mr Blundell, she stated had lived had lived at 'The Glen' for 43 years.

When Mr and Mrs Wearden sold the most part of Dewhurst Farm, the conveyance dated 28 April 1992 required the Purchasers to erect a fence over the application route, this requirement is clear documentary evidence that there was no intention to dedicate the application route.

They have submitted the following to support their objection:

1. Land Registry title plan that outlines their property
2. A table indicating the application documents received as of 3<sup>rd</sup> September 2015
3. A copy of LCC consultation plan with an added route referred with grid references used by the applicant (GR 692338 & 688333)
4. Chronology timeline table about the route in question
5. A plan of the application route with A, B, C, D, E, F, G, H and I marked on referring to:
  6. A – Gate to Water Tower
  - B – Stile on FP 5
  - C – Double-fence to field 7843 & 7158
  - D – Fence between Dewhurst Farm and Water Tower
  - E – Field fence at 2 trees
  - F – Fence and gate
  - G – Fence to field 0572
  - H – Stock fence and wood fence
  - I – Secure fence & gate to Kemple View
7. An extract of The Rydings new build completion and sales dates
8. A copy of the letter from Wilpshire Parish Council to Ribble Valley Borough Council objecting to the Planning Application 3/90/0773 Land at Vicarage lane.
9. A copy of the letter from Wilpshire Parish Council objecting to residential development of the conversion of the sprinkler tank to and valve house to the Secretary of State Ref APP/L2350/A/91/195145
10. A copy of the letter from Ribble Valley Borough Council informing residents of the application to convert the sprinkler and valve house into a single dwelling
11. A copy of the letter from Margaret Cunliffe objecting to the conversion of the sprinkler and valve house into a single dwelling



12. A copy of the letter and photographs from Leslie Blundell to Ribble Valley Borough Council
13. A copy of the letter from Wilpshire Parish Council to Ribble Valley Parish Council objecting to the planning application for a proposed detached garage and front porch at former Barn adjacent to the hollies
14. Copies of letters from Mr Gaffney (applicant), Wilpshire Parish Council, Mr Ken McNeill, Mrs Margaret Cunliffe, Sugarcroft, Mrs Blundell, 22 Vicarage Lane objecting to the sprinkler tank and valve house conversion
15. A copy of a letter from F Brewer & Son Ltd
16. Photographs of the Water Tower Property
17. Photographs of fences, stiles and gates along the route
18. Plan of Conveyance dated 28 April 1992

Information from Others additional responses received for the Footpath 5 to The A59 (re-consultation)

A letter from the owners of 5 The Dales.

They state they are unable to provide evidence to support a modification to the Definitive Map although they understand from others that the Public Footpath was blocked by the owner of The Lodge after purchase.

A letter of objection from Longsight House

The owner of Longsight House object to the application for the following reasons:

The final part of the proposed footpath is actually down a road that they own and was purchased from the Council by the previous owner of their house a number of years ago. When they purchased the house 2 years ago, owning this road and therefore the rights as to who can use it and have access to it was a large part of the reason the property was purchased.

Security and privacy to their property is another reason for their objection. If a footpath was opened at the back of their house it would totally expose them to having all manner of people legally walking past and looking at their house. They have 3 young children and currently are happy for them to play in the garden knowing that only their neighbours at The Lodge will be using the road. They also own the piece of land on the other side of their road which their children play in and it would therefore be potentially crossing the footpath to get to. This is potentially a worrying situation where their children would not even be allowed to play in their own back garden for the fear of who knows who will be walking down their road and coming into contact with them.

The above concern also applies to the fact that there is a nursery just up the lane where the children play outside for large parts of the day, and this proposed footpath would enable anyone to come into contact with these children. The high security hospital (Kemple View) is also along the proposed route, from looking at the plan it seems to cut right through the hospital, and it amazes them on this fact alone that this proposal hasn't been immediately rejected.

Another reason for their objection is that the road in question has suffered very badly over the last few years with flooding partly due to poor drainage of the football pitches and during the bad weather this past winter the road was like a small river running rapidly. As a result the road from the football pitch onwards has very bad pot holes which would be a huge hazard for people who were not aware of their existence. The road has a large number of trees and leaves regularly cover the uneven road surface making this more hazardous.

The proposed route ends on the A59 which is a very fast road and at that particular junction it doesn't lead to anywhere, which makes them question as to whether there aren't better routes available for the people who have made this application. There is currently an existing footpath which is shown on the map as Fp14 which is a very short distance from the proposed route, and also the main road through the housing estate which also comes onto the A59. They think 3 points of access onto the A59 within a roughly 500 metre stretch is totally unnecessary. The new route could easily go around the other side of the football pitch, on an existing pavement and walkway and therefore totally avoid the back road past the nursery and across their land which is in essence right across their back garden.

#### A letter of objection from 21 The Dales

They have noticed the route cuts directly through their property. Their property was built 25 years ago by Fairclough Homes, it is part of a residential development of small to medium sized detached private residences. They have lived at this address since March 2000 and can confirm that at no time since that date has any group or individual attempted to follow the application route. They have also contacted the previous owner and he has similarly been able to confirm that at no time during his 5 year ownership of the same address did any group or individual attempt to follow the application route. Their initial objection is therefore on the grounds of usage as there has been no user evidence on this part of the route for the past 20 years.

From the consultation plan they have observed an alternative route which connects the 2 points (A59 and footpath 5) which starts on A59 and continues down Fp14 and Fp6 and then reaches Fp5. This route is the recognised and widely used alternative route to connect from the A59 Langho to Wilpshire and note this proposed route runs almost parallel. They have also used the existing public rights of way as they connect to their family in Wilpshire.

They also refer to another alternative route from A59 through The Rydings across the fields and meeting up with Fp5. They mention that this route has been commonly used for many years, much of it follows existing pavements and it does not cross any boundaries of residential dwellings or gardens and much of it is still part of the application route. They as well as their neighbours have used this route for approximately 16 years.

They also mention issues of privacy and security for themselves as well as their neighbours from the proposed route.

#### A letter of objection from the owners of The Lodge

The owners object to the application that runs through their property. They firstly object to the fact there is already a route from the A59 via Fp14 and can't understand why another access has been applied for.

They purchased the property under a year ago and one of the main reasons is the seclusion of the property and its surrounding land / garden, they have 2 young children and like them to play freely, safely and securely around their property, and if there is an open access to the A59 for a footpath then the safety of their children playing out in the garden will be compromised. They also mention flooding issues they have experienced.

They refer to when the Council owned the road they erected the fence on the A59 for safety purposes, the surrounding bushes, overgrown trees, and blind bend compromise driver's vision from seeing any pedestrians, there isn't a footway on their side of the road which is very dangerous and they would not like any accidents taking place outside their property.

They are currently having renovation works on their property and will be for the foreseeable future they wouldn't like anyone to fall on the drainage pipes or have an accident on their land that they would be responsible for, they have also bought electric gates they wish to erect across their land before they knew anything about this application.

They make the following comments regarding some of the user evidence forms:

1 user has not walked to the A59 via The Lodge since The Rydings were built, she would have been refused access after 2007 when it was purchased by the previous owner of The Lodge.

1 user hasn't confirmed that they have walked to the A59 via The Lodge in recent years, only mentions in their statement 'No permission when passing the Colony' again they would have been denied access after 2007.

Another user refers to walking via The Lodge between 1988-1998 but again after 2007 would have been denied access.

1 user doesn't mention walking through The Lodge after 2007 and they used a different route after 1991 – The Rydings.

Another user used access via The Lodge between 1976-1981 but again if used after 2007 he would have been denied access.

Another user can't remember the routes and walked through the Lodge 1971-2003.

1 user used the A59 access via The Lodge, but stopped using it when The Rydings were built.

#### An e-mail of objection from 11 The Dales

They state they would like to object to the proposal as the route passes directly through their garden and will impact their personal and privacy lives.

#### An e-mail of objection from County Councillor Alan Schofield

It is of concern that the proposed route not only goes through dwellings on The Dales but especially goes through Kemple View psychiatric services establishment facilities. Cllr Schofield suggest an alternative part of the route would be to use The Rydings, from the pavilion, southward to the end of The Rydings and thence westward across land south of Kemple View buildings.

#### Comments received from Nigel Evans MP

Mr Evans is writing on behalf of the private owner of part of the route where it joins Footpath 5. He states the land belonging to the owners has always been fenced and gated as such, to walk the route would require climbing over these obstacles. Therefore doubt that this has actually been done. There are claims by local residents that they have used the route for a long time but there is no way to verify this. Mr Evans adds his own objections as it seems that the route is ill-thought out and there are many obstructions and points which have not been taken into account.

#### A letter of objection from Wansbroughs Solicitors on behalf of Partnerships in Care Limited

The route as referred to on the consultation plan is not supported by the evidence provided by the initial application in 2015, no evidence has been provided at all that supports the route indicated on the map.

No request was ever received by the owners or Wansbroughs Solicitors or their client requesting for copies of the updated evidence.

#### An additional letter of objection from a private owner of the part of the route where it joins Footpath 5

They object that LCC have not consulted or provided them with any information on the progress of the application which was for a route from Vicarage Lane to The Rydings since their original objection of 3 September 2015. They received a new consultation letter which shows the amended proposal going through to the A59 at Longsight Road, they state this new route appears to pass through Kemple View Psychiatric Hospital and through houses and garages in The Dales, the letter provided no reason(s) for the change of route or any documentary evidence in support of the new application route.

A request was made for copies of the additional evidence submitted by the applicant, the objector has received copies of these.

A letter containing comments regarding the application received from 7 The Dales

They explain that the route goes straight through the middle of their property, and they make the following additional comments:

1. Until recently about 12-18 months ago they could access the A59 through The Lodge, this was through a public 'access' gate at the end of the lane next to The Lodge.
2. Following the purchase of The Lodge the gate was locked and a fence was erected preventing the right of way – they assume this was temporary whilst building work was in progress but now believe it to be permanent.

3. The route shown on the map that passes through The Dales goes directly through the middle of their property which is just one of a number of houses built in the mid-1990s as part of The Rydings and Dales development by Fairclough Homes – they bought the house new in 1996 and there was no evidence of a path; nor were they notified of a path.
4. Part of the route goes through Kemple View and whilst they have no information as to whether this was ever a path, there is clearly a route through for some or all of this distance

## **Assessment of the Evidence**

### **The Law - See Annex 'A'**

#### In Support of the Claim

- User evidence
- Ordnance Survey Maps
- Aerial Photographs

#### Against Accepting the Claim

- References to locked gates, stiles and erected fencing along the route
- Inaccessibility of sections of the route due to housing development
- Restrictions by residential fencing, properties and gardens
- Signage along the route
- S31(6) Notices
- Absence of trodden lines along sections of the route
- Infrequency of use
- Different recollections by users as to the exact route followed
- Responses/objections received following consultation

#### Conclusion

The claim is that the route A-R is an existing public footpath and should be added to the Definitive Map and Statement of Public Rights of Way.

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

Looking firstly at whether there are circumstances from which dedication could be inferred at common law. The analysis of the map and documentary evidence by the

Head of Service – Planning and Environment provides evaluation of the documentary evidence. There is also the evidence of private rights being granted along the route on the sales of properties and more recently, on 26<sup>th</sup> March 2014 a statutory deposit under section 31(6) Highways Act 1980 was made by Mr and Mrs Murray in relation to land on the southern section of the application route making a clear statement that from this date they, as landowners had no intention to dedicate.

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.

In this matter it appears that the route was called into question in 1990, as this is when users suggest that they were prevented from using the full line of the claimed route following the development of the housing estate at The Rydings. Therefore, on balance it is suggested that it is reasonable to conclude the 20 year period under consideration to be from 1970 – 1990.

Looking at the twenty years 1970-1990. In support of this application 31 user evidence forms were submitted. However, of the users who claim to have used the application route during the years 1970-1990, only 12 of the user's evidence includes use of the section of the route from the Rydings Estate through to the A59 marked J-R on the Committee Plan and therefore the evaluation is based on the same.

The users provide evidence of use of the route on foot, cycling, for blackberry picking and watching steam engines. From the user evidence provided whilst one user claims to have used the route 'every night as a teenager', one 3-4 times per week, one twice a week, one twice monthly and another monthly, there would however appear to be a relatively low frequency of use, with other users claiming to have used the route only 'several times a year', 'occasionally' or 'odd times.' It is advised that this low use in the relevant years may be insufficient to prove use by the public throughout the twenty year period over and above trivial and sporadic use.

Of the 12 users who's use also includes use of the application route J-R only 1 user claims to have used the whole of the application route during the period under consideration. One other user also claims to have used the whole route during the relevant period, however this is not backed up by the route marked on the map attached to the user evidence form. Whilst some other users claim to have used the route for the majority of the relevant period this is not supported by the evidence provided, for example; there is reference to users having used various routes to reach the A59 and some have not indicated use of the route J-R on the map

provided, some not being able to do so due to being unable to recall the exact route taken.

In recent years, there is evidence of obstructions along the route, namely locked gates and fencing at various points along the route together with the signage/notices seen on the buildings between points B and C on the application route from Spring 2014 stating 'No Public Right of Way' and 'Private Property' and most notably the fence that was erected across the route near to the water tower at some point in or around 2002 preventing many users from using the line of the claimed route.

Taking all of the information and evidence into account, it is suggested that the Committee may on balance consider the evidence insufficient from which to satisfy deemed dedication under section 31 Highways Act 1980 or from which to infer dedication at common law of a footpath in this matter and therefore that the application be not accepted.

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/Tel
All documents on Claim File Ref: 804/567	Various	Megan Brindle, Legal and Democratic Services, 01772 (5)35604

Reason for inclusion in Part II, if appropriate

N/A