

Regulatory Committee

Meeting to be held on 16 November 2016

Electoral Division affected: Ribble Valley North East
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Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Public Bridleway from Clerk Hill Road to Moor Lane, Wiswell,
Ribble Valley
File No. 804-565
(Annex 'A' refers)

Contact for further information:

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Executive Summary

Application for addition of a public bridleway and upgrading of parts of Public Footpaths 8 & 23 Wiswell, Ribble Valley from Clerk Hill Road to Moor Road, Wiswell, in accordance with File No. 804-565.

Recommendation

1. That the application for the addition and upgrade to public bridleway, in accordance with File No. 804-565, be accepted as a restricted byway as opposed to a bridleway.
2. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (c)(i) and (ii) of the Wildlife and Countryside Act 1981 to add a restricted byway and upgrade parts of Public Footpaths 8 & 23 Wiswell, Ribble Valley to restricted byway from Clerk Hill Road to Moor Road, Wiswell on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D-E-F-G-H-I-J-K.
3. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a public bridleway and upgrading of parts of Public Footpaths 8 & 23 Wiswell, Ribble Valley to bridleway from Clerk Hill Road to Moor Road, Wiswell 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 upgrading or downgrading a way shown on the Definitive Map and Statement will only be made if the evidence shows that:

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

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

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

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

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

Consultations

Ribble Valley Borough Council

No reply has been received from Ribble Valley Borough Council.

Wiswell Parish Council

Wiswell Parish Council has responded by stating that they welcome the addition of the public bridleway and upgrades to the condition of the existing public footpaths in the area and that they are pleased that the status of these paths can be clarified.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	7538 3677	Open junction with Clerk Hill Road/Bridleway 21 Sabden
B	7537 3677	Gate across route
C	7531 3685	Open junction with south east end of Footpath 23 Wiswell on bend of track
D	7528 3688	Junction with Footpath 23 Wiswell on bend of track
E	7528 3698	Junction with Footpath 11 Wiswell
F	7520 3698	Junction with north west end of Footpath 23 Wiswell and Footpath 9 Wiswell at field gate
G	7496 3687	Field gate across route
H	7484 3682	Open corner of route adjacent to Deer Park and Manor Wood
I	7471 3706	Junction with Footpath 8 Wiswell
J	7471 3710	Field gate across route
K	7471 3712	Unmarked point on Moor Lane (U22866)

Description of Route

A site inspection was carried out in July 2015.

The route commences at a point on the parish boundary on Clerk Hill Lane (also recorded as Bridleway 21 Sabden) and annotated as point A on the Committee plan. It crosses a tarmac area heading in a north westerly direction to a wooden gate at point B.

It then continues in a north westerly direction along a stone surfaced track bounded to the west by a stone wall and fenced from the adjacent field to the east. At point C the route turns to follow the stone surfaced track in a more north easterly direction whilst the route of Footpath 23 Wiswell continues steeply uphill remaining adjacent to the stone wall. The route under investigation follows the clearly defined track uphill through the quarry site (now dormant) through a series of bends and passing

through point D (where it crosses the route of Footpath 23) and continuing uphill to point E where it is joined by Footpath 11.

From point E it continues along a well-defined track in a generally westerly direction to a gate at point F where it is joined by Footpath 23 east of the gateway and Footpath 9 west of the gateway.

From point F the route continues in a generally west south westerly direction in a straight line to the north of a stone wall behind which there is a substantial area of woodland. The surface of the route has grassed over but is quite firm and there appears to be a hard surface underneath. The route is fenced off from the rough pasture north of it to a width of between 4 and 5 metres until close to point G when the fencing on the north side of the route ends and at point G the route is crossed by a wooden field gate.

Beyond the gate at point G the route continues in a straight line, following the stone wall. The surface of the route is grass and although there appears to be a trodden track there is no evidence of recent equestrian or vehicular use.

At point H the route turns to continue in a generally north westerly direction still following a substantial stone wall along the western side and largely open to pasture on the eastern side. It passes between the remains of an old quarry and the wall and gradually descends downhill towards point I. The route follows the wall with small trees and bushes growing alongside which are overgrown making access difficult in places.

At point I the route is joined by Footpath 8 which follows the route under investigation to pass through a metal gate at point J. Beyond point J the route is roughly tarmacked as it continues a short distance to the unmarked junction with Moor Lane at point K.

The total length of the route is 1.14 kilometres.

Map and Documentary Evidence

Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.



Observations		The route under investigation is not shown. A road which looks to be the first part of Clerk Hill Road is shown extending as far as the dark shading indicating a hill and the land crossed by the route is indicated as being part of the area shaded as upland. The hamlet of Wiswell is shown and a road which may be Moor Road extending from the village of Wiswell towards point K is shown.
Investigating Officer's Comments		No inference can be made except that the route under investigation was not a major route in the 1780s.
Private Inclosure Act	1789	Between 1545 and 1880 the old system of farming scattered arable strips and grazing animals on common pasture was gradually replaced as landowners sought to improve the productivity of the land. The process of Inclosure began by agreement but by the early 18 th century a process developed by which a Private Act of parliament could be promoted to authorise inclosure where the consent of all those with an interest was not forthcoming. The process was further refined in the nineteenth century with the passing of 2 main general acts, bringing together the most commonly used

		clauses and applying these to each local act unless otherwise stated.
Observations		<p>The land crossed by the route under investigation was inclosed by a private Act of Parliament made in 1789. The Act is titled, 'An Act for dividing and inclosing a certain Common called Wiswell Moor, in the Township of Wiswell and Parish of Whalley, in the County Palatine of Lancaster' and a copy was obtained from the Parliamentary Archives.</p> <p>The Act specifies the powers given to the Commissioners appointed to administer the inclosure of Wiswell Moor in relation to the setting out, making and alterations which could be made to public and private roads and ways as they considered necessary, convenient or proper.</p> <p>The Act specifies that all public highways and roads to be set out should be forty feet wide (exclusive of ditches) but that private roads or ways should be of such a width as the Commissioners should order. It also specified that any public carriage roads should be fenced out on both sides and that it would not be lawful for any person to erect a gate across a public carriage road.</p> <p>The Act also required the Commissioners to appoint a surveyor of such roads who would be required to ensure that they had been properly formed and completed and that the surveyor must certify that the public carriage roads were fit for the passage of travellers and carriages, in writing and delivered to the Clerk of the Peace at the Quarter Sessions within two years after the execution of the Award and that following certification in the prescribed manner the roads would then be kept in repair in the same manner as the other public roads within the township of Wiswell. It also specified that private roads or ways were to be made and repaired at the expense of such persons as prescribed by the Commissioners.</p>
Investigating Officer's		The Act prescribed the powers available

Comments		to the appointed Commissioners to set out both public and private routes across the land to be inclosed and is quite specific with regards to the widths required to be set out for public highways and roads. However there is no definition section clarifying what was meant by 'public highways and roads' or 'carriage road' but there is a clear distinction between public and private.
Inclosure Award	1780	<p>Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.</p> <p>There are two copies of the Inclosure Award for Wiswell Moor deposited in the County Records Office. As part of the research carried out into this application a transcript of the Award has been made with reference to both copies deposited.</p>

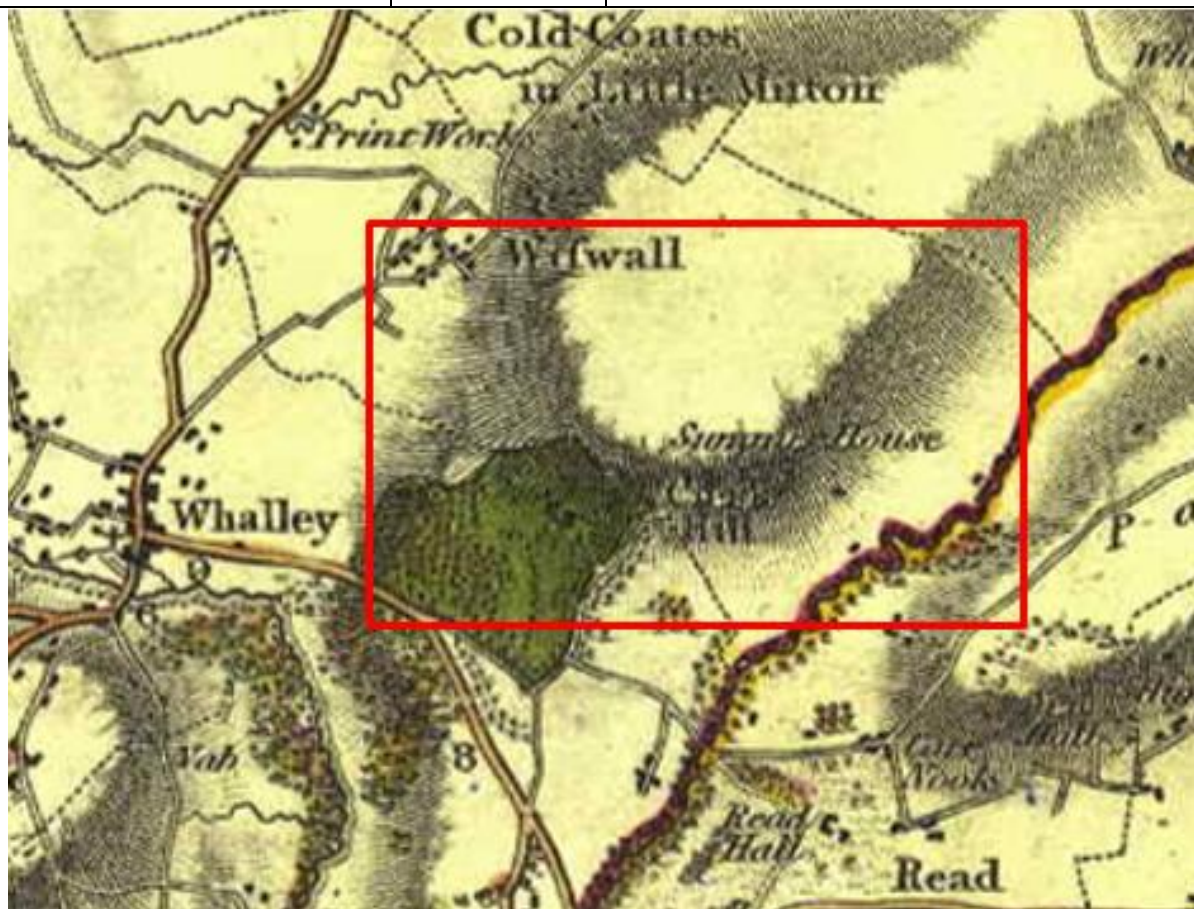
ALLOTMENTS.		2,500 p. Moor A. R. P.
N ^o 1. T. Thomas Weld Esq ^r (for his twentieth part)		18. 2. 36
2 James Whalley Esq ^r		31. 1. 2
3 Thomas Weld Esq ^r		163. 0. 15
4 D ^r (for Margaretta Langford)		4. 3. 24
5 James Whalley Esq ^r		24. 1. 21
6 Stone Quarry		0. 3. 22
7 Thomas Weld Esq ^r		18. 2. 23
8 James Clegg		0. 3. 32
9 Robinson Shuttleworth Esq ^r		20. 1. 33
10 Paul Greenwood		2. 1. 17
11 William Hartley jun ^r		3. 2. 7
12 Thomas Weld Esq ^r (for Adenda Langford)		4. 1. 23
13 D ^r		26. 3. 10
14 James Whalley Esq ^r (in right of exchange with D ^r Clegg)		10. 2. 2
15 D ^r		32. 3. 21
Total		<u>377. 3. 5</u>

* B. The Terms between the Allotments, are to be made and kept in repair by the owners of the Allotments in which the dotted lines are marked adjoining to the Terms —

Observations	<p>The Inclosure Award is the written record of the appointed Commissioners' decisions and actions in implementing the Inclosure Act.</p> <p>The Inclosure Award for Wiswell Moor is dated 1780. The Award names the three Commissioners appointed to implement the 1789 Inclosure Act and lists the owners and proprietors of the moor. It states that a survey map should be completed by one of the three appointed Commissioners (Matthew Oddie) and both copies of the Award deposited in the County Records Office contain identical Inclosure maps.</p> <p>The Award provides written details of the</p>
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		<p>various roads and ways to be set out across the land to be inclosed. It describes a total of four routes described as 'Private carriage roads'. The first, which is consistent with the description of Clerk Hill Road and Bridleways 21 and 8 Sabden through Wilken Heys is described as a private carriage road 25 feet wide (exclusive of the ditches) and was for the use of persons specified within the Award. It is stated that the route, as well as being a private carriage road should also be a 'Public Bridle Road'.</p> <p>The second route described as a 'Private Carriage Road' is also described as being 25 feet wide (excluding ditches) and is described as being for the use of the respective occupiers leading from the village of Wiswell by the west side of the allotments numbered 6 and 7 to the west corner of allotment 5 and then eastwards by the south east side of allotment 7 as far as the north fence of allotment 5 and from there southwards to 'the last mentioned road' and shown on the Inclosure plan by a dotted line. The description is consistent with the route under investigation from point J through to point A.</p> <p>Two further 'Private Carriage Roads' are detailed in the award in a similar way with only the first of the three routes being described as being a Private Carriage Way and public bridleway. The Award also describes the routes of several 'footpaths' which are not consistent with the route under investigation.</p>
Investigating Officer's Comments		<p>The route under investigation is shown on the Inclosure Award plan (differing slightly to the route under investigation between points C-D-E) and it appears that the route came into existence as part of the Inclosure of Wiswell Moor. The route is described as a private carriage road.</p> <p>It therefore appears that when the route was originally created it was not created as a public carriage road as it was not</p>

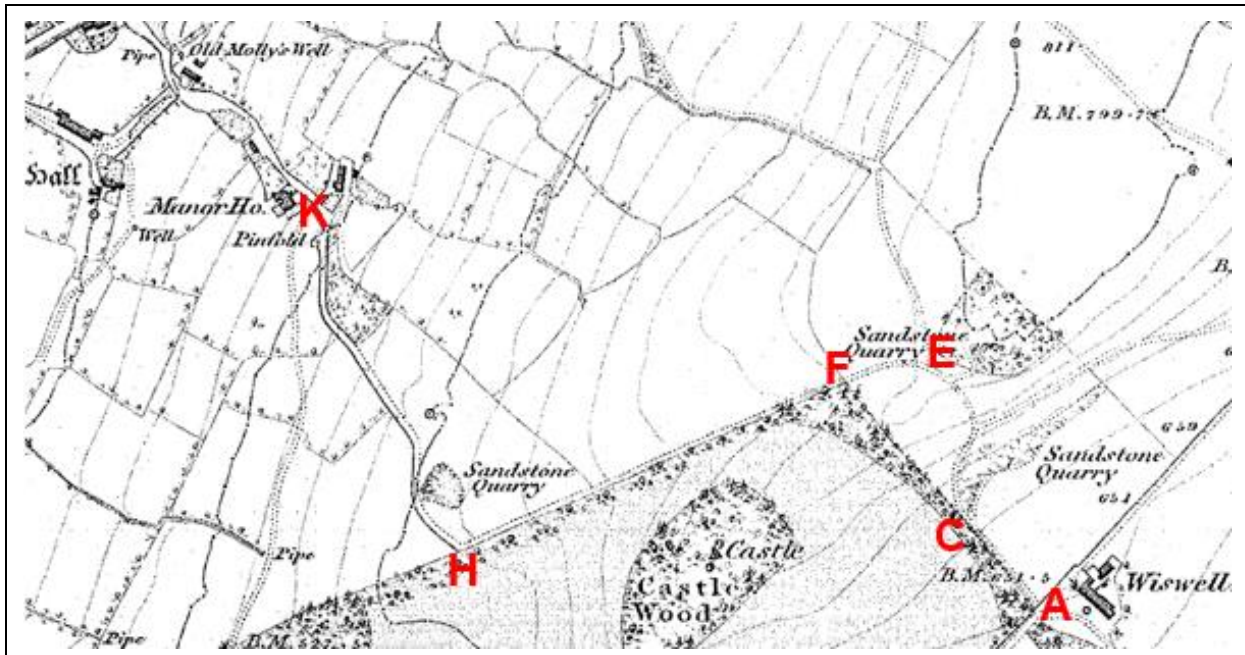
		<p>described as such within the schedule and was not stated to be constructed to a width of 40 feet as was specified as a requirement for public highways within the 1789 Act.</p> <p>Evidence from the Inclosure Award therefore suggests that the route under investigation was created as a private carriage route as part of the inclosure of Wiswell Moor. It may have been capable of being used by the public on horseback from that time but there is no evidence to suggest that it was specifically dedicated as one when originally constructed.</p> <p>The route between point J and point K did not form part of the land covered by the Inclosure Award so no inference can be drawn in that respect.</p>
<p>Greenwood's Map of Lancashire</p>	<p>1818</p>	<p>Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads.</p>



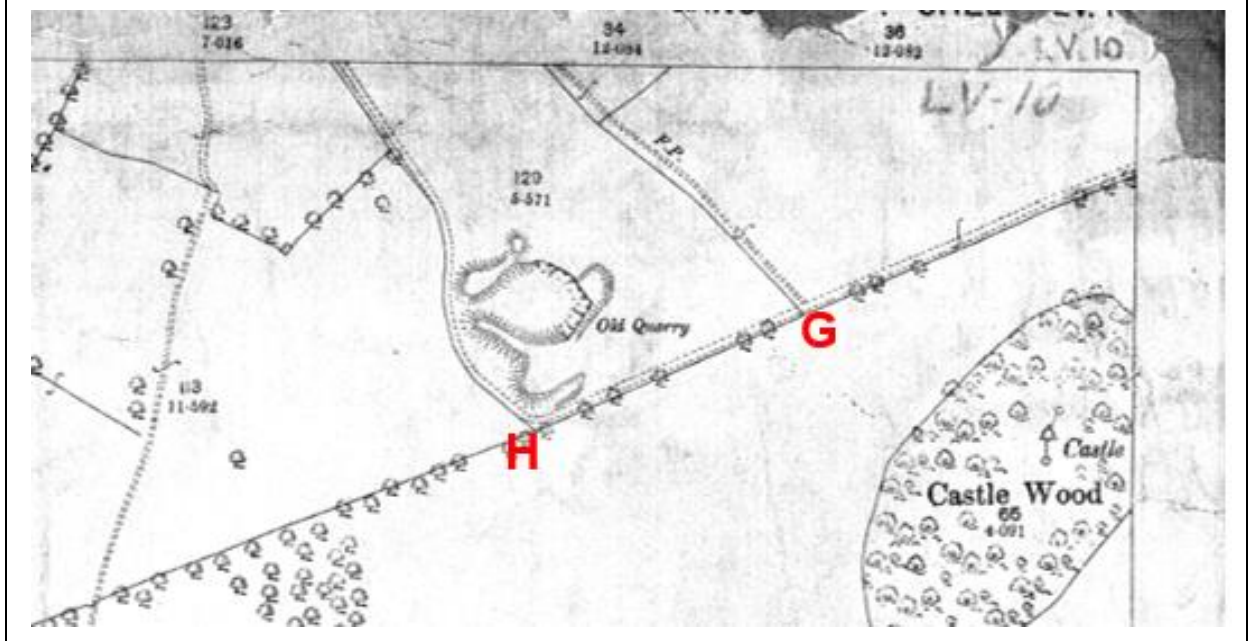
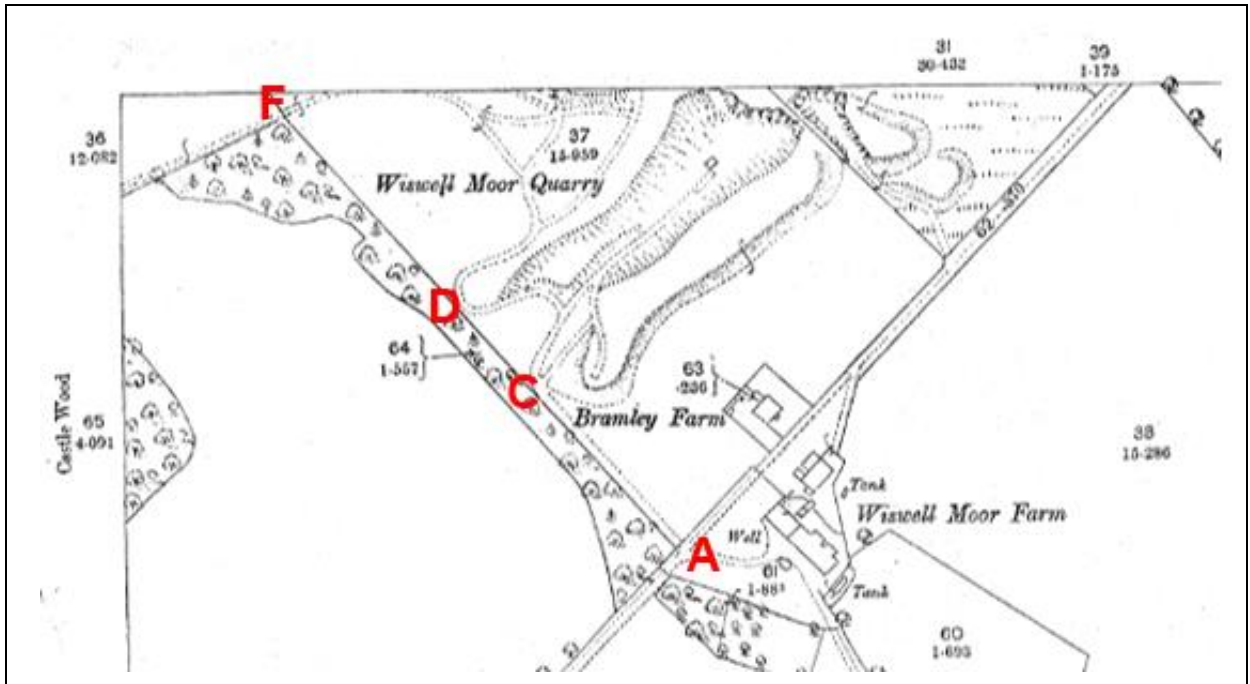
<p>Observations</p>		<p>The route is not shown and the area</p>
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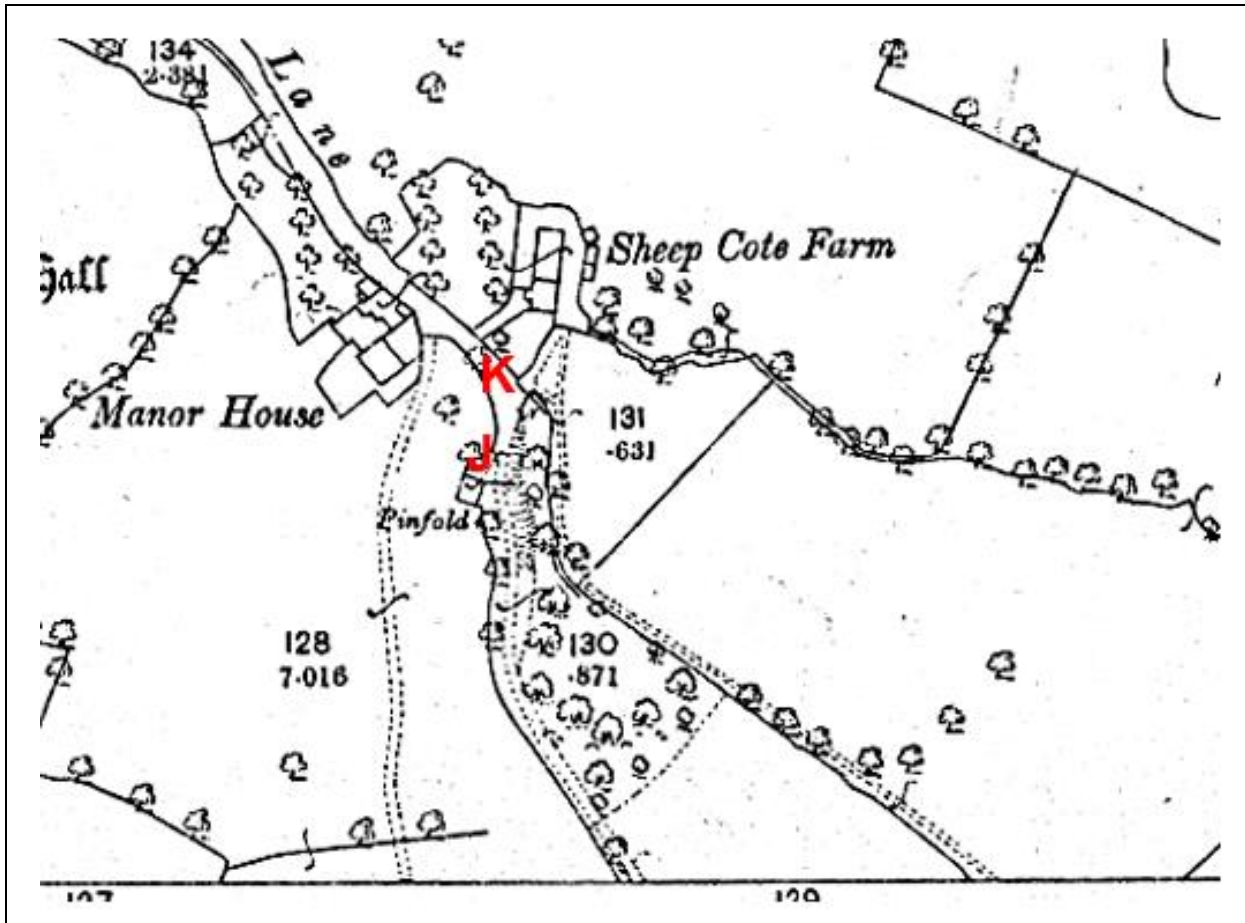
		infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The route does not cross land affected by the construction (or proposed construction) of a railway or canal.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment		Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		There is no Tithe Map for the parish of Wiswell.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-46 and published in 1848. ¹

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



<p>Observations</p>		<p>The route under investigation is shown from point A to point C. From point C a track is shown to point E which differs from the route under investigation as it does not curve back round to point D. From point E through to point J and K the route is shown on the same alignment as it is today.</p>
<p>Investigating Officer's Comments</p>		<p>Most of the route existed in 1848 although the alignment of the route through the quarry from point C to point E varied from the modern day alignment.</p>
<p>25 Inch OS Map</p>	<p>1892-93</p>	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891-92 and published in 1892-93.</p>

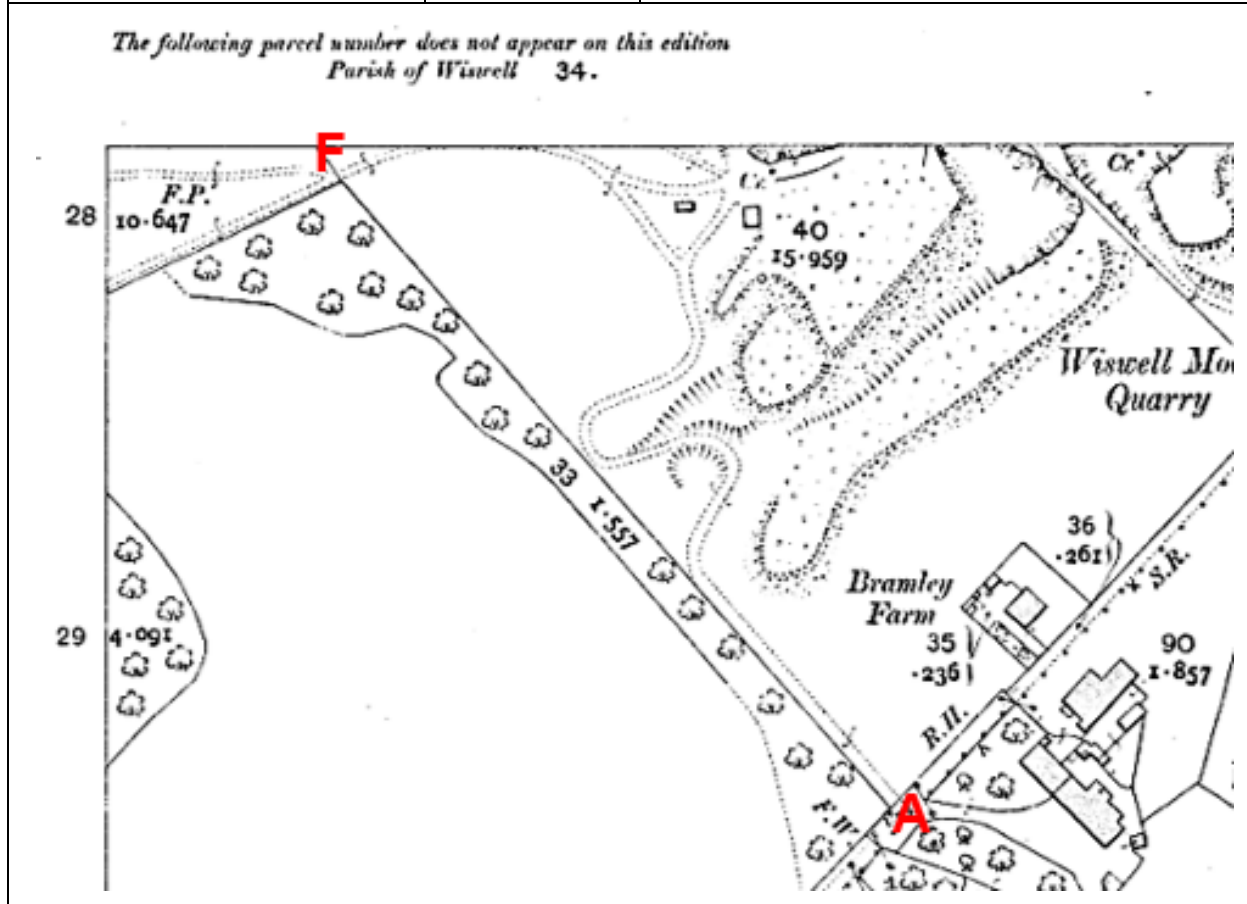


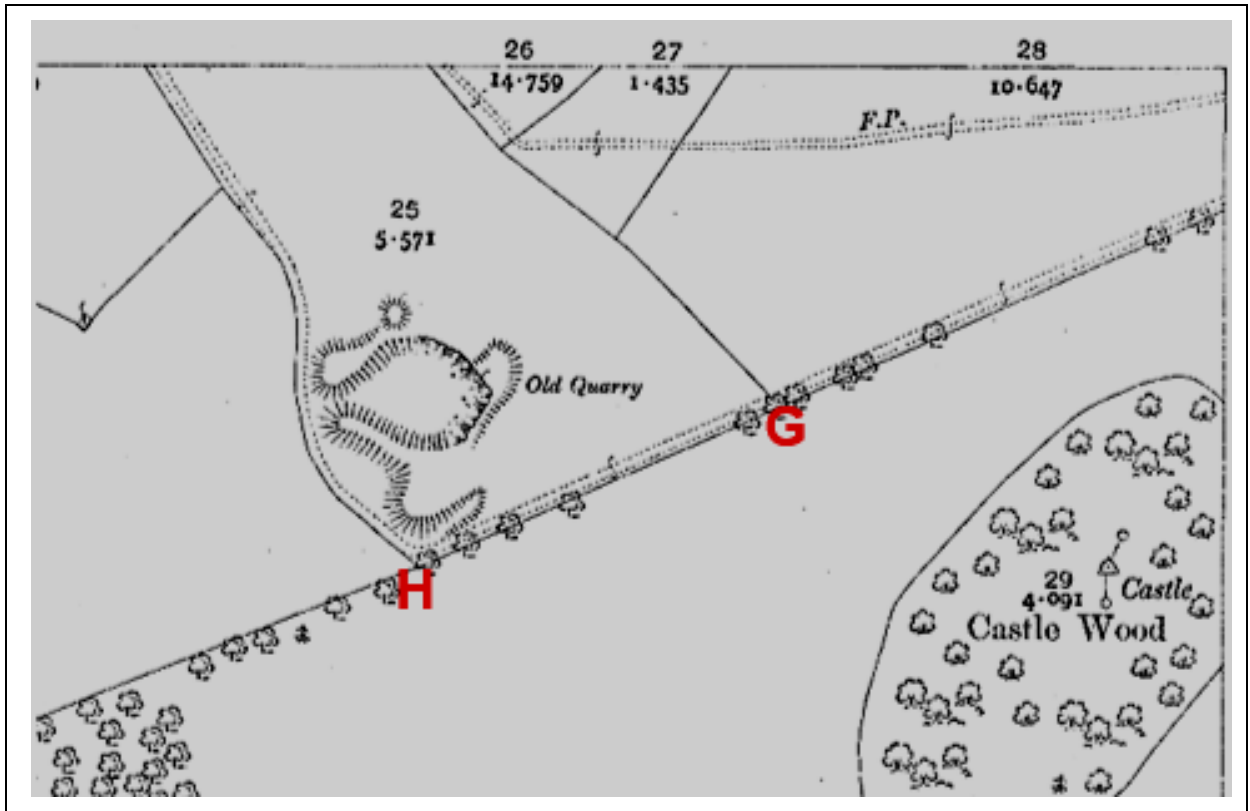


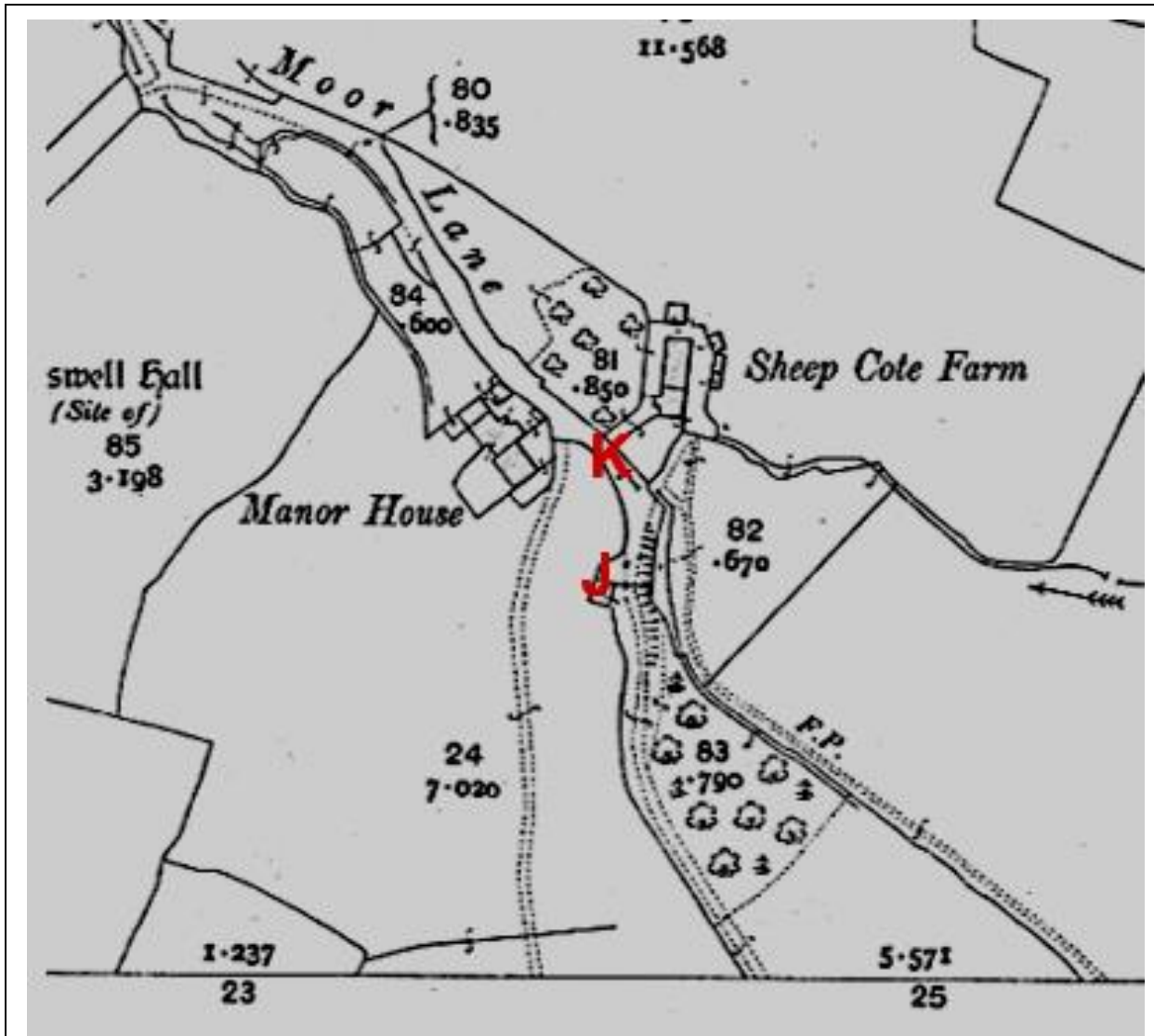
<p>Observations</p>		<p>The first part of the route from point A to point F passed through a quarry and is shown as an unenclosed track (double pecked lines). The extra bend in the route from point C to point D and then to point E is now shown to exist. The route may have been gated at points A, F, G and J as lines are shown across it at these points but is shown as being unenclosed from point A through to point J. The fact that gates existed along the route does not necessarily mean that they would have been locked or that the route was private. Gates were (and still are) a common feature along public rights of way across rural areas.</p> <p>The route between point J and point K is shown as part of Moor Lane.</p>
<p>Investigating Officer's Comments</p>		<p>The route existed on the ground and appeared to be capable of being used by horses. The map post-dates the inclosure of the moor by nearly 100 years. Gates are shown across the route which are not inconsistent with use of</p>

		<p>the route as a bridleway but which would have been unlawful if the route had been created as a public carriage road by the Inclosure Act of 1789.</p> <p>The route between point J and point K appeared to form part of Moot Lane.</p>
25 inch OS Map	1912	Further edition of the 25 inch map surveyed in 1891-92, revised in 1910 and published in 1912.

*The following parcel number does not appear on this edition
Parish of Wiswell 34.*

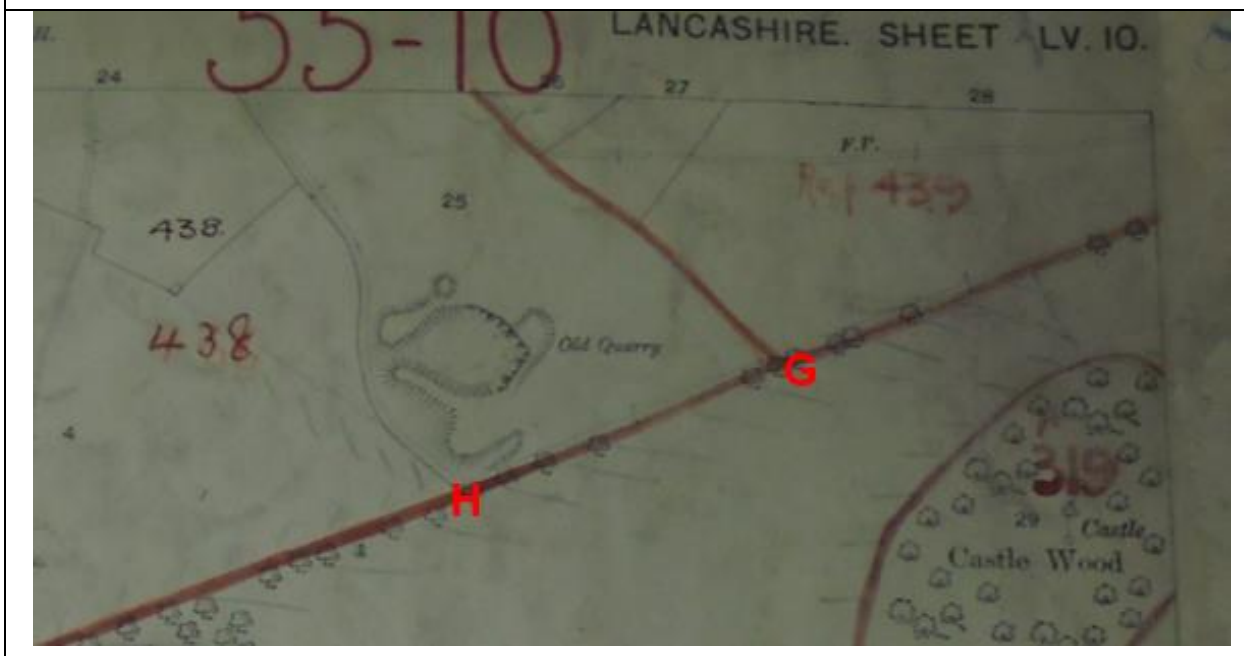
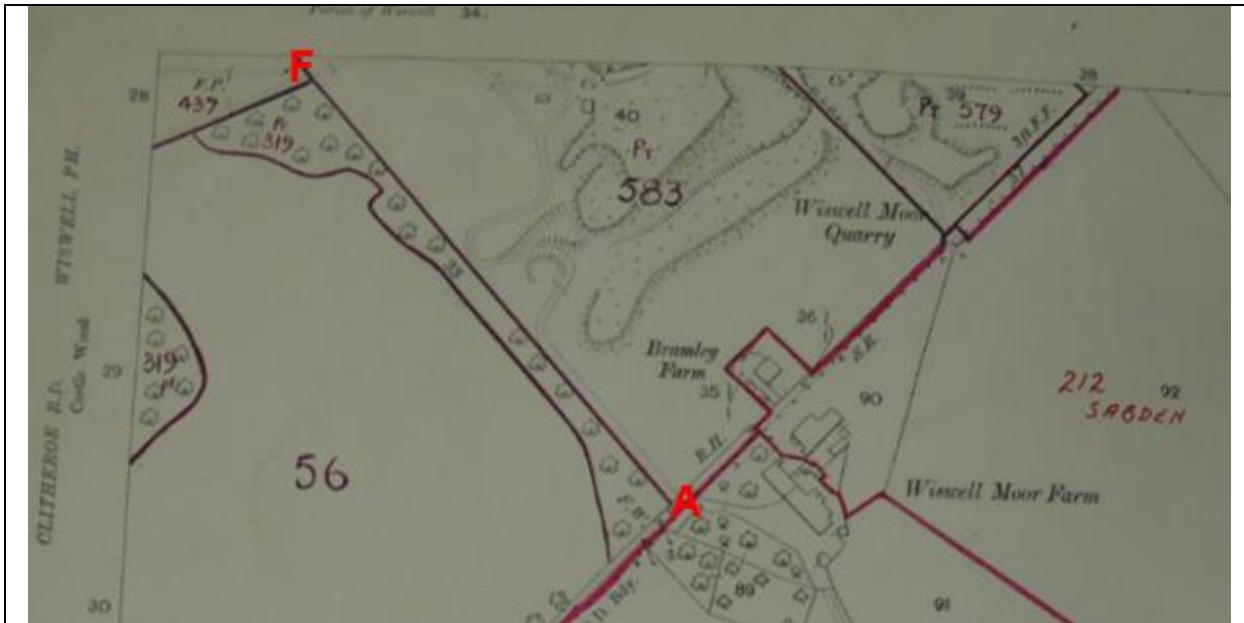






<p>Observations</p>		<p>The full length of the route is shown as it was on the earlier edition of the 25 inch map. It is shown as an unenclosed track (double pecked lines) possibly gated at point A, F, G and J. It is not shown as a named route on the map although Moor Lane is named north of point K and the route between point J and point K appears to form part of Moor Lane. The route now recorded as Footpath 9 Wiswell is annotated as a footpath 'F.P.' on the map.</p>
<p>Investigating Officer's Comments</p>		<p>The route existed in 1912 and it appears capable of being used. The fact that it is shown as a track (double pecked lines) and not marked as a footpath (F.P.) suggests that it may have been of a more substantial nature suitable for use by horses and possibly horse drawn</p>

		vehicles (as suggested by its original definition in the Inclosure Award as a private carriage road).
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of 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

Finance Act records from The National Archives were obtained.

The route between point A and point F is included in the plot of land numbered 583. The Field Book entry for that plot of land describes the plot as a stone quarry with rough grazing. There are no details listed regarding ownership or tenancy of the land. A £10 deduction is listed with regards to public rights of way or user.

From point F to point G the route is included within plot number 439 which is described as Sheep Coates Farm and buildings. The land is listed as being owned by JR Reddich – Trustee of S Longworth deceased. Under the entry 'Charges, Easements and Restrictions affecting fee simple' it is written that Moore Lane is repaired by the local authority. A deduction of £15 is listed for footpaths and a deduction of £10 is suggested for the highway through pasture which is said to be repaired by the local authority. The total deduction for public rights of way or user for the plot is recorded as being £25.

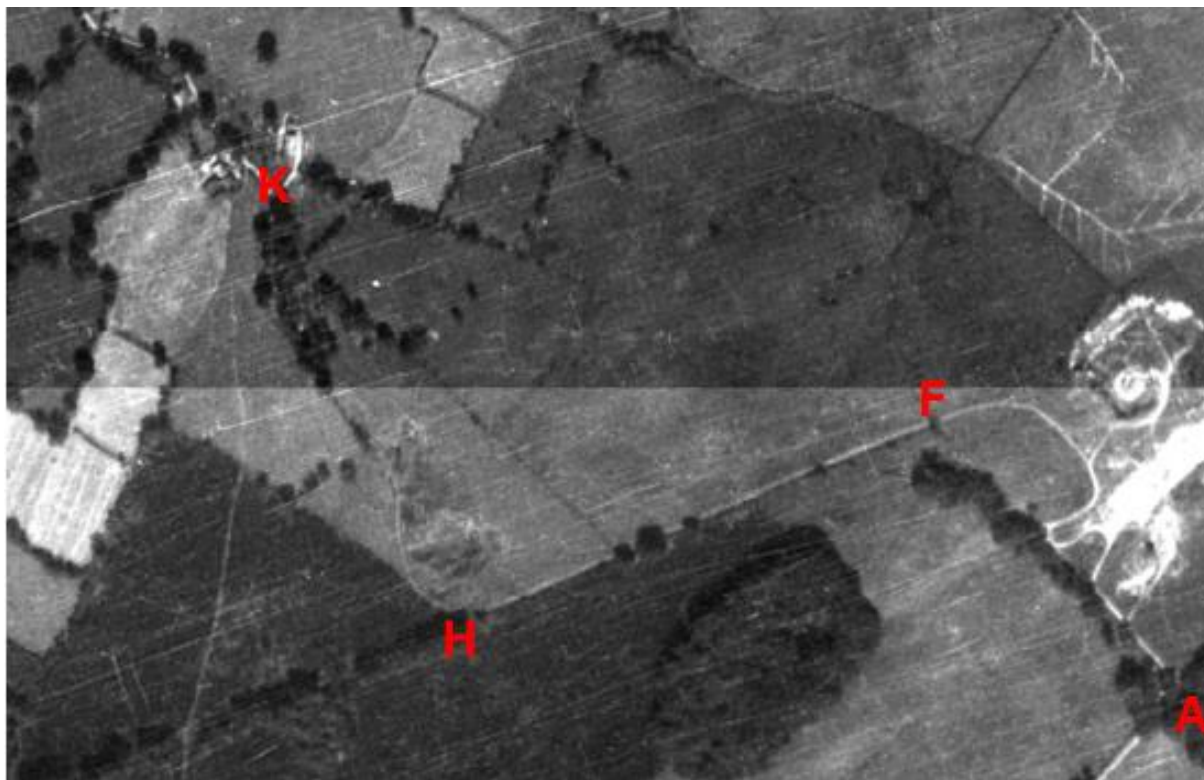
Reference is also made to plot number 583 (through which the route between point A and point B runs). This too is

	<p>said to be owned by JR Reddich but is let to the quarry and it is explained that it is therefore not included in this valuation.</p> <p>From point H to point J the route is included in plot 438 described as 'Manor House' – 'buildings and land'. It is owned by JR Reddich, Trustee of S Longworth and occupied by Roger Knowles. Under the section titled 'Charges, easements and restrictions affecting market value' it is stated that there is a wide footpath through the meadow, one through the pasture and a highway – which is not fenced off – passes through the far pasture on the east and is repairable by the local authority. A £30 deduction is listed for public rights of way or user.</p> <p>Between point J and point K the route is excluded from the numbered plots and appears to be considered to be part of Moor Lane.</p>
Investigating Officer's Comments	<p>The land crossed by the route between point A and point J is all in the same ownership but is tenanted by three separate people/companies and for this reason appears to have been split into three different plots.</p> <p>The route between point A and point J is not excluded from the numbered plots but is contained within them.</p> <p>It is often the case that a route considered to carry public vehicular rights was excluded from the numbered plots.</p> <p>In this particular case the only part of the route to be excluded is the section from point J – K which appears to be considered to form part of Moor Lane.</p> <p>The route between point A and point F is included in a numbered plot (583) for which a deduction was claimed in relation to 'public footpaths'. It appears that the valuation details for this plot were not completed by the landowner but that the valuation was undertaken with information provided by the quarry that tenanted the land. The route does not appear to have been fenced off in</p>

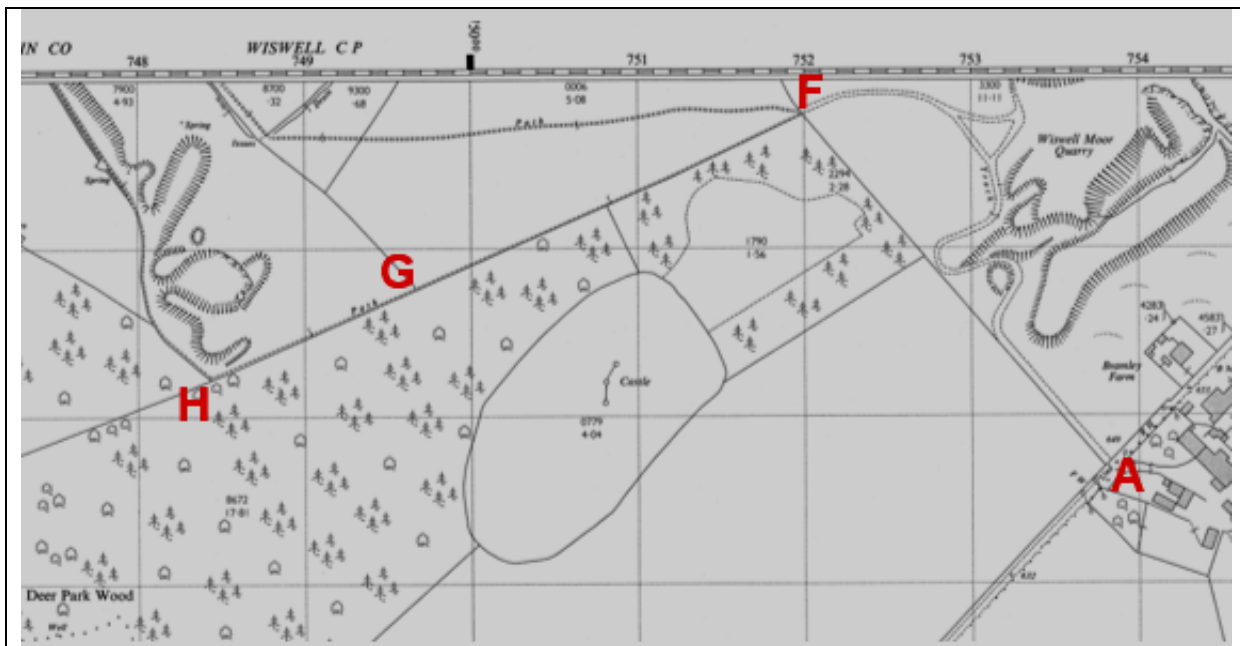
		<p>1910 so if it was considered to carry public vehicular rights this may not have been immediately apparent to the valuation officer completing the plan; in addition, because the route was not fenced, and was being grazed it could be that it was considered to be land that should be taxed. There is no indication which routes were considered to be public footpaths for which the deduction was claimed across this plot and if it did include a deduction in relation to the route under investigation it appeared to be considered to be a footpath.</p> <p>Beyond point F to point G the route is within a plot for which two separate deductions were claimed. Again, the route under investigation is not excluded from the numbered plot but it does not appear that the route was fenced off from the pasture land in 1910 and may therefore have been grazed (and considered part of the land subject to taxation), The plot is crossed by the route now recorded as Footpath 9 – which is indicated on the OS base map used as part of the valuation process as well as the track over which the route under investigation runs. A distinction is made in the valuation between 'footpaths' and a route described as a 'highway through pasture' although it is not possible to be certain that the route under investigation is the 'highway' referred to. The fact that the highway referred to is said to be repaired by the local authority does not necessarily imply public vehicular or bridleway rights but the fact that the route is described as a highway – not a footpath or bridleway and that it was publicly maintainable is good evidence that it may have been considered to be a public vehicular highway at that time.</p> <p>The route between point H and point J is also contained within a large numbered plot for which deductions have been claimed. The OS base map used for the valuation shows the route under investigation as an unfenced track</p>
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		(adjacent to wall on western side). The description in the Field book of the unfenced highway through the far pasture on the east is consistent with the location of the rout under investigation and is described as being maintained by the local authority. Again, a distinction is made between routes considered to be footpaths and that considered to be a 'highway' suggesting that the route was considered to be of a higher public status than a footpath by the landowner at the time of the valuation.
25 Inch OS Map	1931-32	Further edition of 25 inch map (surveyed 1891-92, revised in 1929 and published in 1931-32.
Observations		The route is shown in the same way as it is shown on the earlier two editions of the 25 inch map.
Investigating Officer's Comments		The route existed when the map was revised in 1929 and may have been capable of being used. The fact that it is shown as a track (double pecked lines) and not marked as a footpath (F.P.) suggests that it may have been of a more substantial nature suitable for use by horses and possibly horse drawn vehicles.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

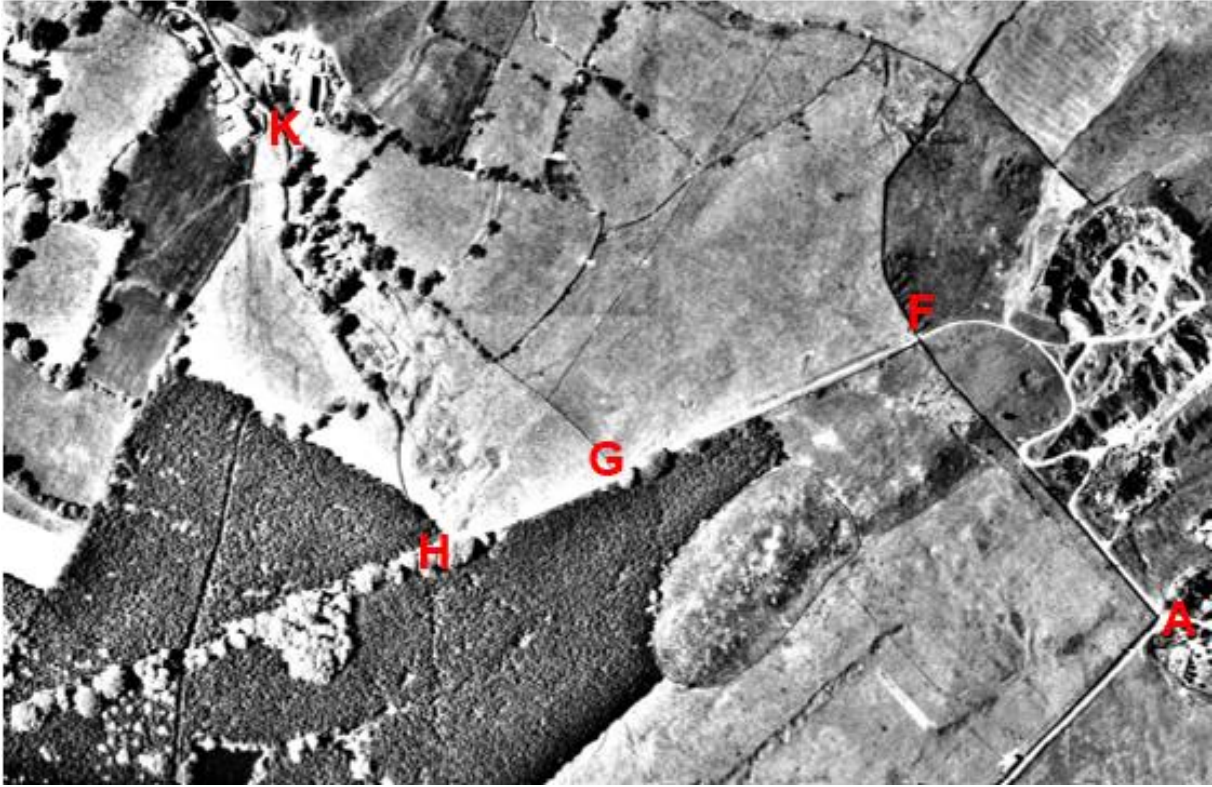
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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



Observations		The route can be clearly seen between point A and point H but is less clear from point H to point K.
Investigating Officer's Comments		The route existed in the 1940s and appeared to be receiving a significant level of use – particularly between point A and point H - consistent with bridleway or possibly vehicular use.
6 Inch OS Map	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.
Observations		The full length of the route is shown on the 6 inch OS map.
Investigating Officer's Comments		The route existed in the 1930s and may have been capable of being used on foot, horseback and possibly with vehicles.
1:2500 OS Map	1969	Further edition of 25 inch map reconstituted from former county series and revised in 1967 and published 1969 as national grid series.



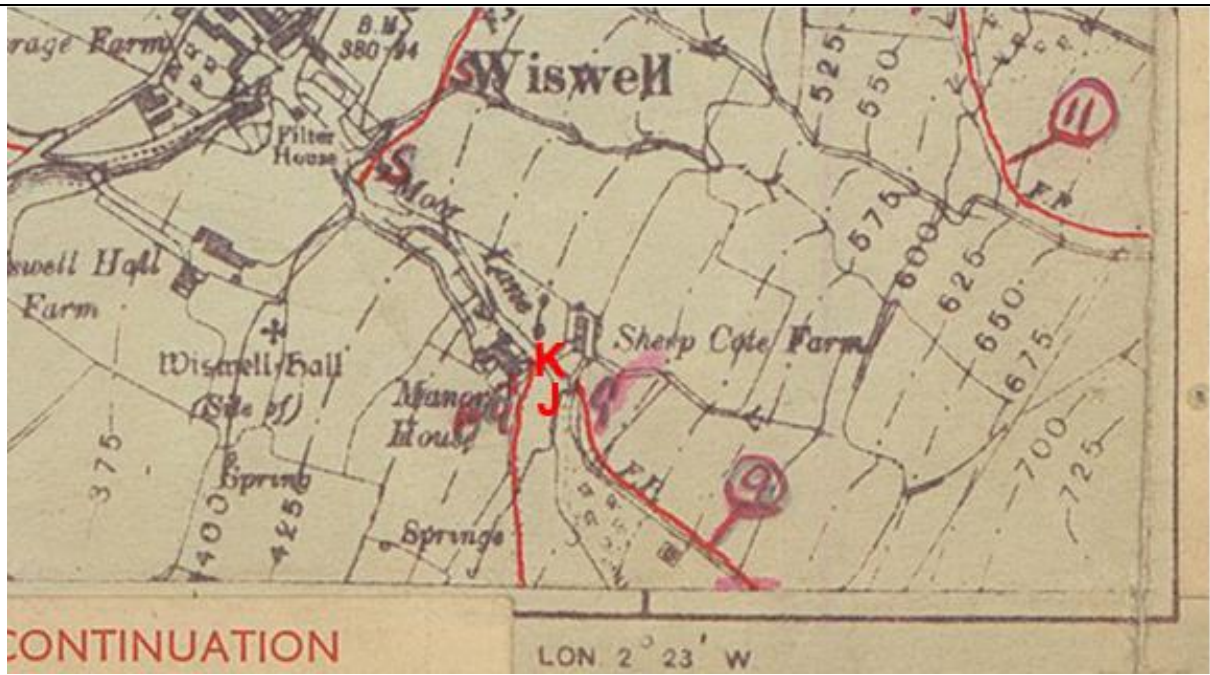
<p>Observations</p>		<p>The route is shown on the map in the same way as on the earlier editions of the 25 inch maps. Between point A and point F it is described on the map as a 'track' and between point F and point J it is described as 'path'. Between point J and point K it appears to form part of Moor Lane.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation existed and appeared capable of being used. The fact that it is described as a 'track'</p>

		through the quarry but as a 'path' between point F and point J may indicate that its physical appearance – possibly due to the use it was receiving at that time – was more akin to use of a footpath or bridleway beyond point F.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.
		
Observations		The route can be seen as a significant physical feature between point A and point F and between point F and point H. The route between point H and point K is not as easy to identify on the photograph.
Investigating Officer's Comments		The route existed and use of it appeared to be a significant feature suggesting vehicles could use the route to at least point H. Beyond point H the route may not be as visible because of tree cover and the proximity to a large stone wall.
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations		The route between point A and point G is visible but beyond point G it is not possible to see the route.
Investigating Officer's Comments		The fact that the route is not as clearly visible may be because use of the route by vehicles had decreased.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and

Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.



Observations

The parish survey was carried out in 1951. The area showing the land

		<p>crossed by the route is covered on four separate map sheets.</p> <p>The route under investigation was not shown on the parish survey map.</p> <p>Footpaths 8 and 9 Wiswell are shown to start from the route close to points J and K and the parish survey cards describes them as starting at Manor Farm (Footpath 8) on Pearson Lane, and across from Sheep Cote Farm (Footpath 9) from Pearson Lane. The route under investigation is not referred to in either survey card or in the survey card for Footpath 11.</p>
<p>Draft Map</p>		<p>The parish survey map and cards for Wiswell were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the 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

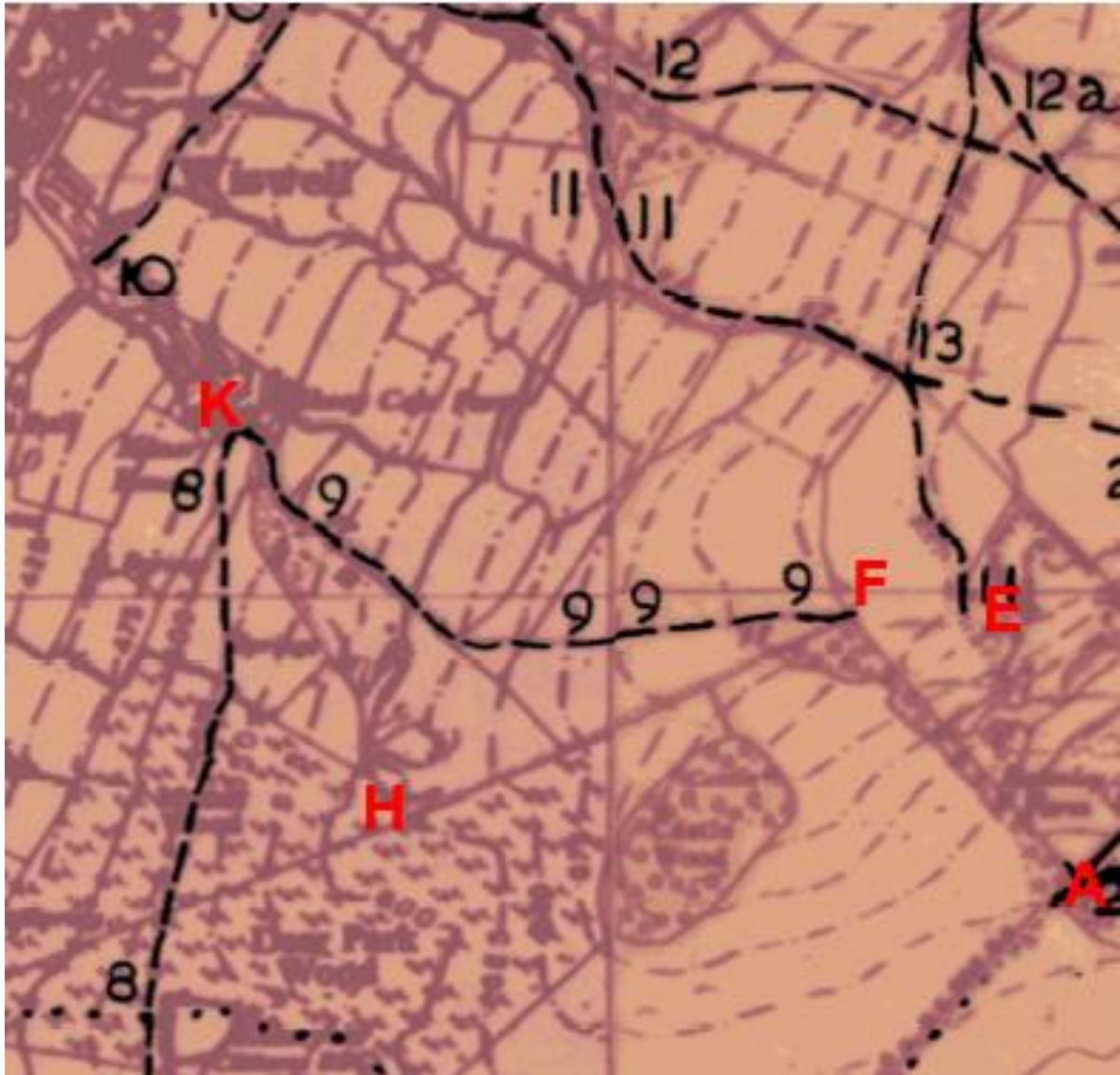
The route under investigation is not shown on the Draft map but a representation was made to the County Council over its omission.

The objection was referenced number 92 and was lodged on the basis that the route had been omitted from the Draft Map and that a public right of way existed along it 'namely on foot, or with animals, or vehicles.' It was noted in the objection that a gate 'in the corner' was now kept locked'.

The objection was lodged by Mr James Leeming, who, as a child (from 1911 to 1917), had lived at the farm adjacent to point A and stated that he still lived in Wiswell in 1953. He explained that he had used the route for many years, had driven cattle over it, and had always known it as a public right of way. He stated that Rural District workmen used to keep the route in repair.

		<p>On receipt of the objection observations were sought from the District and Parish Councils who both agreed that the route be included. A note from the County Surveyor states that the route was unclassified county road no. 4/84 and that the landowners/occupiers (not named) agreed.</p> <p>The investigations concluded by confirming that the route was in fact an unclassified county road and that this was to be communicated to the objector and that the route did not need to be added.</p> <p>The status of the route as an unclassified county road is acknowledged in the Draft statement for Footpath 8 which is described as starting at the side of Manor House Farm with no reference to 'Pearson Lane' and Footpath 9 which is described as starting at the junction with Unclassified County Road 4/84 at Sheep Cote Farm to Unclassified County Road 4/84 north of Castle Wood (point F on the Committee plan). Footpath 11 is described as terminating at the junction of Unclassified County Road 4/84 north of Castle Wood (point E on the Committee plan).</p>
Investigating Officer's Comments		<p>The route under investigation is not shown on the map because it was considered to be a public all purpose road and public paths are described (and shown) as starting/finishing on it and it is described as an unclassified county road to which other public footpaths connect.</p>
Provisional Map		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown</p>

		Court.
Observations		The route under investigation is not shown and no representations were made to the County Council.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route under investigation is not shown and was not considered to be a public right of way required to be recorded on the First Definitive Map and Statement.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.



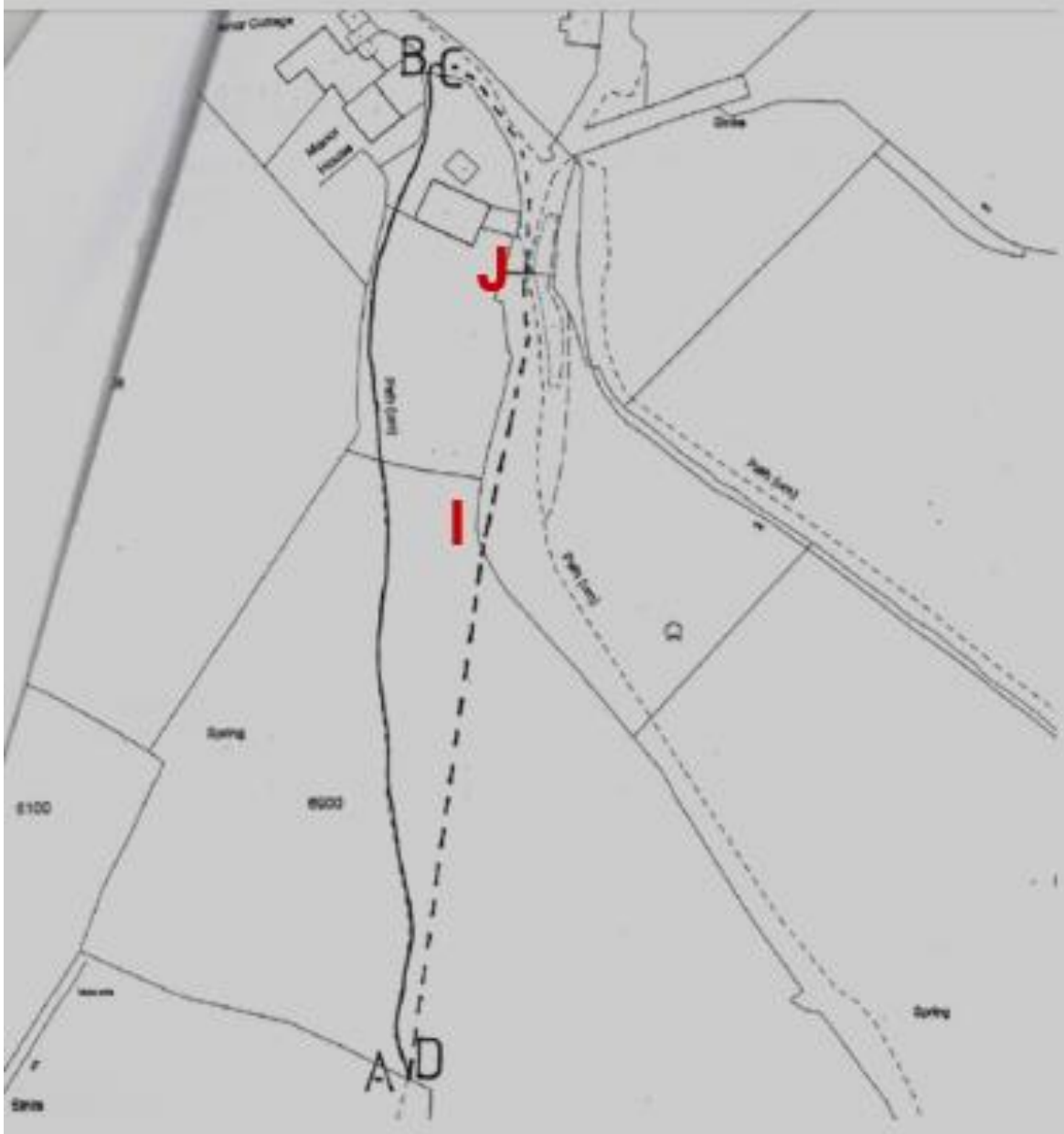
Observations		When the Map and Statement were reviewed the route was not shown on the Revised Definitive Map (First Review).
Investigating Officer's Comments		From 1953 through to 1973 it appears that the route was considered to be an unclassified county road and that it was not considered appropriate to include it on the Definitive Map and Statement. Whilst the fact that the route was recorded by the County Council to be an unclassified county road maintainable at public expense implies that the public had a right of access along it is not conclusive that

		vehicular rights existed. However, in this particular case, the fact that the inclusion of the route had been considered, and rejected implied that there was a belief that the public rights that existed along the route included vehicular rights. If it had only bridleway rights it would have been included on the Definitive Map and Statement as bridleway.
Wildlife and Countryside Act 1981 application to add a public bridleway to the Definitive Map	1987	Following publication of the Revised Definitive Map (First Review) legislation was enacted which meant that the map and statement was then under a process of continuous review and applications could be made to the County Council to amend the Definitive Map were it was considered necessary.
Observations		<p>Two applications were submitted in 1985 and considered by the County Council in 1987 (Appendix A refers). The first application was to add the route currently under investigation to the Definitive Map as a public bridleway. The report submitted to the Public Rights of Way Sub Committee detailing the application was brief and a description of the route included in the report noted that it was open and accessible but churned up and muddy in places (between points H and J on the 2016 Committee plan). It was also noted that there was evidence that the route was well used by both pedestrians and equestrians, although here was no evidence of vehicular use.</p> <p>The report noted that an un-named landowner had been told by the Highways Department that the route now under investigation was a highway maintained at public expense and as a result the landowner could see no reason for the application as it was already used regularly by horse riders.</p> <p>Observations within the report from the Chief Executive/Clerk's</p>

		<p>Department stated that initial investigations into the claim revealed that it was already an unclassified road no. 4/84 and the recommendation was for the claim not to be accepted on the grounds that the route was already recorded as a highway of higher status, i.e. an unclassified county road.</p> <p>A second claim, submitted at the same time, was for the addition of a public footpath at Wiswell Moor Quarry between two points on the route now under investigation, described in the report as being unclassified county road no 4/84. The claim was based on the submission of user evidence dating back to the 1950s. It was accepted and the route is now recorded as Public Footpath 23 Wiswell and is shown on the Committee plan between point D and point F, i.e. it connected 2 points on the route under investigation..</p> <p>An inspection of the file containing the original applications has been made.</p> <p>The application for a bridleway was supported by a statement made by the applicant who states that he had not observed horses using the route prior to 1984 but since that time had seen 'much evidence of horses using the path'. Ordnance survey maps dating back to 1844 were provided with the application and a statement of use form detailing pedestrian use by 5 individuals. The research carried out by the County Council at that time refers to the fact that the route was already recorded as an unclassified county road.</p> <p>The file contains a letter received by the County Council on 15 August 1985 from Mr D Lees, Manor House, Wiswell who was believed to own part of the land crossed by the route.</p>
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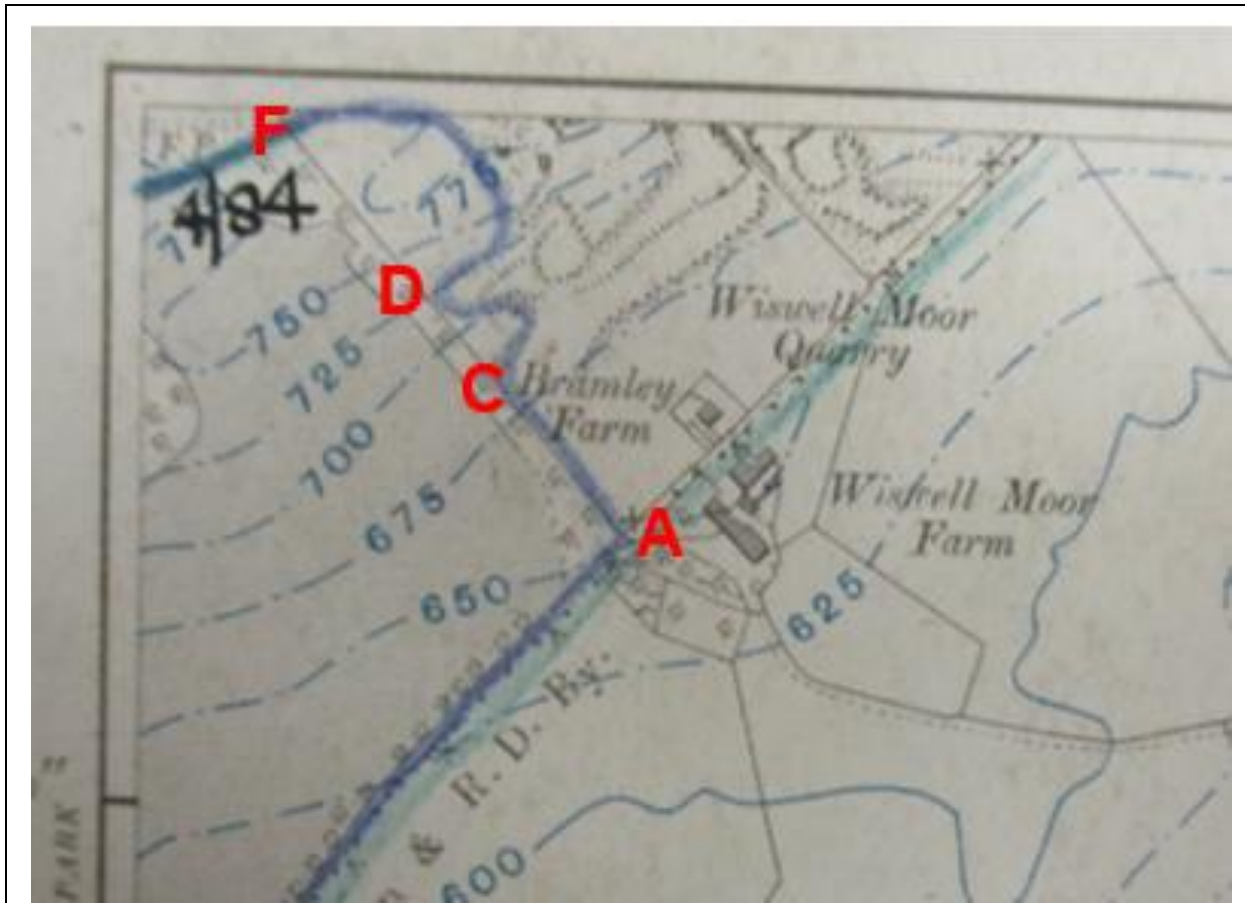
		<p>He states that he had already gone to a lot of trouble to establish that the route was a highway for which the County Council were responsible and that the Highways Department in Whalley had confirmed that they were responsible to maintain it.</p> <p>A letter from Mr H Shaw, Clerk to Wiswell Parish Council dated 2nd April 1986 describes the route under investigation as a footpath which, to the best of his knowledge had never been considered as a public bridleway. He refers to the existence in the past of locked gates and stiles providing pedestrian access but that these had fallen into disrepair and that horses were using the route and churning the surface up.</p> <p>Ribble Borough Council, when consulted about the application wrote to confirm that when the matter was discussed by the Council's Planning and Transportation Committee they were supportive and provided evidence as to their recent useage as both public footpaths and bridleways.</p>
Investigating Officer's Comments		<p>The recorded status of the route under investigation as an unclassified county road does not appear to have been challenged in 1987. The application to record the route as a public bridleway was rejected as it was still considered, at that time, that a route recorded as an unclassified county road was a highway of a higher public status. Current guidance says that where a route was recorded as an unclassified county road in the highway records (List of Streets) this provided evidence that the route was publicly maintainable but although these were mainly vehicular roads it did not conclusively mean that it was a route over which public vehicular rights existed although it does imply that at</p>

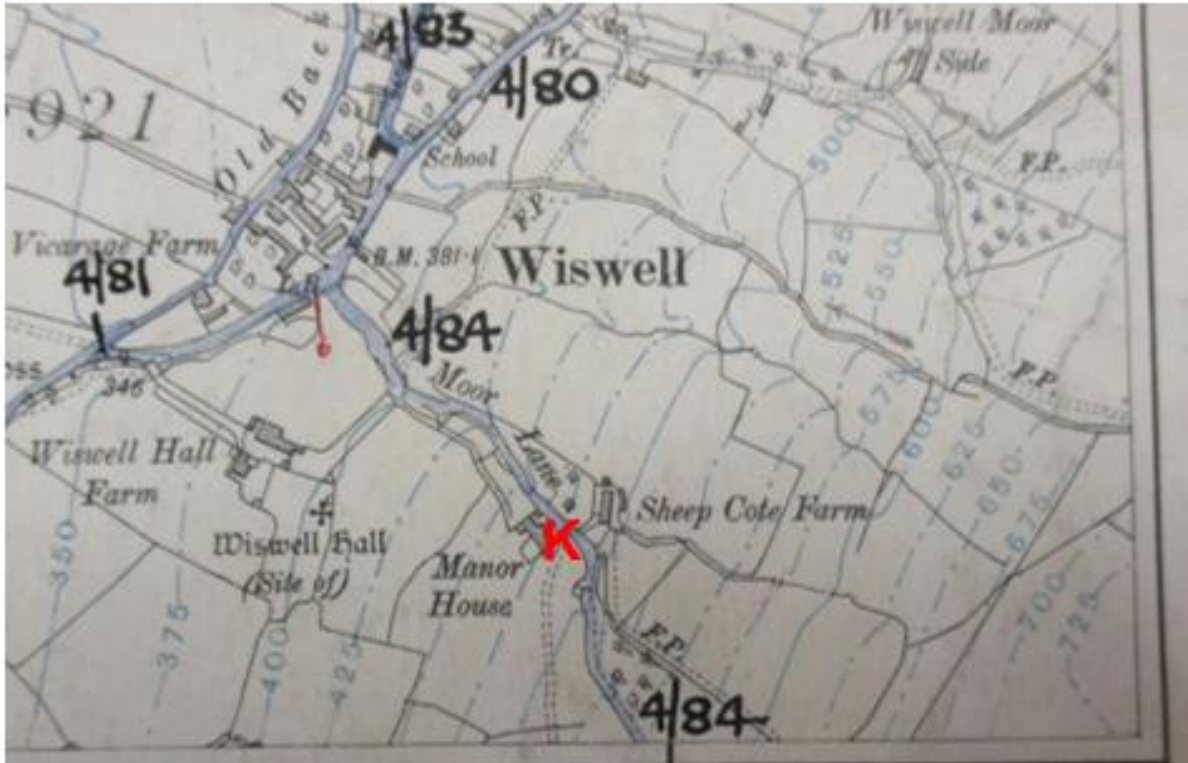
		least a public right of access on foot existed. However, it is clear from the context that it was considered to be vehicular by those dealing with it at the time.
Diversion of part of Footpath 8 Wiswell under the Highways Act 1980	2000	An Order was made on 7 November 2000 by Ribble Valley Borough Council under the Highways Act 1980 to divert part of Footpath 8 onto the route under investigation (between points I-J-K). The Order was confirmed on 14 th December 2000.



Observations		The County Council do not have any
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		records relating to the diversion of the footpath but it appears that it was unopposed. The Order diverted part of Footpath 8 onto the route under investigation but as we are unable to find any records relating to the application we do not know whether the issue that either it was unrecorded or that it was recorded on the List of Streets as part of an unclassified county road between points I to J was considered at the time or not.
Investigating Officer's Comments		No inference can be drawn.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
<u>1929 Handover Map held by County Records Office</u>		





Highway card index system

ADOPTED UNCLASSIFIED COUNTY ROAD

Name HOOR LANE Parish WISWELL-WHARFE L.A. RIBBLE VALE

Road Ref. No.	Description of Adopted Length	Date Adopted	Total Yards	Total Miles	Grid Ref.	Identifying Plan		
						SD	OS	MP
<u>4/24</u>	<u>from 4/20 - III 552 440 near Postfield</u>	<u>1929</u>	<u>444</u> <u>343</u> <u>926</u>	<u>1.66</u>	<u>45.36</u> <u>445/373</u> <u>151/365</u>			
			<u>20384</u>					

LCC 'Adoption' records available on GIS



Road Classification

Road Information	
Road Number	U22866
Road Name	Moor Lane : Pendleton Road To Dead End
Responsibility for Maintaining Road	Area East - Ribble Valley
Maintenance Agency	Ribble Valley, Non-Trunk
Maintenance Category	Local Access Road
Road Type	Urban, Cul-de-sac
Footway Type	Local Access Footway
Number of Lanes	2
Speed Limit	30 mph
Length	Measured Length 309 metres
Section Number	00002
Link Code	228660
Start Node	132917
End Node	132966
Safety Inspection Frequency	Once a year
Last Safety Inspection	05-Apr-2016
PEM Road ID	4003228660/00002

Road Classification

Road Information	
Road Number	U22873
Road Name	Clerk Hill Road : Sabden Road To Clerk Hill Road Cul-De-Sac
Responsibility for Maintaining Road	Area East - Ribble Valley
Maintenance Agency	Ribble Valley, Non-Trunk
Maintenance Category	Local Access Road
Road Type	Rural, Cul-de-sac
Footway Type	Local Access Footway
Number of Lanes	2
Speed Limit	60 mph
Length	Measured Length 1311 metres
Section Number	00002
Link Code	228730
Start Node	132034
End Node	133076
Safety Inspection Frequency	Once a year
Last Safety Inspection	30-Nov-2015
PEM Road ID	4003228730/00002

Notes

Original record states
 Clerk Hill Road from C552 to Wiswell parish boundary adopted 1929 for 772 metres

Observations

The route under investigation is recorded on the Handover Map from 1929 (or one derived from that) as being publicly maintainable and given the reference 4/84 which is consistent with the information contained within the Definitive Map from the 1950s.

In 2006 a member of the County's Public Rights of Way team queried the status of the route because despite its inclusion on the 1929 records it was not shown on the County Council GIS Highway Information system as a publicly maintainable route.

Records were searched and it was discovered that the (undated) card index system used by the County's Highway Department to record details of publicly maintainable routes included a card for 'Moor Lane 4/84' and the route was described as being from 4/80 (Pendleton

	<p>Road, Wiswell) to Class III road no. 440 (now C552) near Portfield, a total distance of 1.66 miles. This description was consistent with the 1929 map which showed Moor Lane, the route under investigation and the road now known as Clerk Hill Lane as far as Portfield as being numbered 4/84. It was noted on the index card that the adoption date was 1929 and a subsequent date of March 1964 was also included. Two grid references are given; the first (SD 745 373) is approximately at the start of Moor Lane at the junction with Pendleton Road in Wiswell. The second grid reference (SD 751 363) is close to the Wiswell parish boundary on Clerk Hill Road suggesting that the route described extended from the route currently recorded as Moor Lane to point K, continuing along the application route to point A and then along Clerk Hill Road to the parish boundary.</p> <p>The current highway records held by the County Council now record Moor Lane as measuring 309 metres and describe it as a cul de sac. The line digitised on the GIS records shows the publicly maintainable section of Moor Lane ending at point K.</p> <p>The application route from point K through to point A is not shown as being publicly maintainable on the digitised records.</p> <p>At point A the application route is shown to meet Clerk Hill Road – which was originally shown as part of Moor Lane on the 1929 map but which is now recorded as Clerk Hill Road and described as a cul de sac. The digitised notes accompanying the map suggest that Clerk Hill Road was originally recorded only as far as the Wiswell Parish boundary (in 1929) although this is inconsistent with the Handover Map which refers to the whole of Clerk Hill Lane (from the junction at point A) to Sabden Road as being part of the route recorded as 4/84.</p>
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Investigating Officer's
Comments

It is not known why or when the route under investigation was removed from the County Council records of routes that are maintainable at public expense.

Inquiries have been made with the Highways Section and searches made of records deposited at the County Records Office and London Gazette but no information found.

It is thought that the apparent removal of the application route from the List of Streets post-dated the application to record the route as a bridleway in 1987 otherwise the Public Rights of Way Committee would not have rejected the application to record the route as a bridleway on the grounds that it was an unclassified county road but even though the alterations to the records appear to have been made fairly recently no record of when or why can be found.

Other than the 1929 Handover Map no paper copy of a map produced as part of the List of Streets detailing the lengths of routes which are publicly maintainable has been found. It is now accepted that being recorded on the list of publicly maintainable streets is not conclusive of vehicular status *per se* but this was recorded as a class 4 road not a footpath/footway and an inference can be drawn, together with other factors, of vehicular status.

One suggestion as to why the application route was removed from the List of Streets is that it is not a tarmacked route. Whilst it is not correct to remove it on this basis there are examples of other routes in the County having been removed for the same reason.

The section of the application route between points J-K passes through a gate at point J and descends along what appears to be part of a tarmac carriageway to an unmarked point at

	<p>point K. This section is currently recorded as part of public footpath 8 Wiswell following confirmation of a Diversion Order made by Ribble Valley Borough Council and is not shown as being part of the publicly maintained section of Moor Lane on the digitised highway records.</p> <p>Moor Lane is now described in the Highway records as measuring 309 metres to a dead end. The accuracy of the measurements and digitised line has been queried with colleagues responsible for the Highway records who responded by stating that the digitised line was only an indication and approximation of extent and that highway measurements were taken from the centre of the highway. The line has not however been altered to extend from point K as far as point J so the inclusion of this part of the route as a proposed upgrade is included.</p>
<p>Statutory deposit and declaration made under section 31(6) Highways Act 1980</p>	<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already</p>

		been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the Route runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.

The affected land is designated as open access land under the Countryside and Rights of Way Act 2000 between points A and F.

The route was recorded as an unclassified county road from 1929 until some time after 1987 but before 2006. The effect of the Natural Environment and Rural Communities Act 2006 is to extinguish public rights for mechanically propelled vehicles (MPV) from carriageways which were not recorded on the List of Streets (subject to other conditions which are not relevant here). The fact that it apparently should have been so recorded and the fact that we can find no legal authority for its removal does not exempt the way from the extinguishment of these rights and hence the correct status is restricted byway and not BOAT (byway open to all traffic). Part of the route is recorded as footpath, again this would appear to have been in error but nonetheless that also would result in the extinguishment of public MPV rights by the Natural Environment and Rural Communities Act 2006. Private carriageway rights are not affected.

Landownership

Properties affected by this application are:

- Bramley Farm House, Clerk Hill Road, Wiswell
- The Old Barn, Wiswell,
- Manor House Farm, Moor Lane, Wiswell,

Landownership of that part of the application route shown between Point J- Point K is unregistered.

Summary

The route under investigation did not exist until 1780 when a way consistent with the route under investigation (with the exception of the section C-D-E through the quarry) was created as a private carriageway as part of the inclosure process.

By the 1890s the full length of the route existed on the alignment now claimed and appears to have remained unaltered since that time.

Although gated in a number of places the route appears to have been wide enough to at that time to be used by horses and vehicles since its construction in the late 1700s and on the modern day alignment since at least the late 1800s.

Finance Act records from the early 1900s suggest that it was considered to be public carriageway at that time.

The 1929 handover records show it as part of a longer route linking (and including) Moor Lane and Clerk Hill Lane for which the County Council were responsible for the maintenance. Its status as an unclassified county road was questioned but confirmed as part of the preparation of the Definitive Map in the 1950s and again in the late 1980s when an application was first made to record it as a public bridleway suggesting that whilst not originally created in the 1780s as a public route that the public had acquired rights along it since that time. The status of unclassified road is not conclusive of vehicular rights but taken in this context is suggestive of carriageway status.

The map and aerial photograph examined all suggests that the route may have been available to be used since the 1800s.

The section of the route between point J and point K is tarmac and appears to form part of Moor Lane but is not recorded as such on the current Highways records and forms part of the route included as the alternative route for Footpath 8 Wiswell in a Diversion Order dated 2000.

The effects of the Natural Environment and Rural Communities Act 2006 and the omission of the route from the List of Streets around the relevant date in 2006 are such that public MPV rights have been extinguished and restricted byway is the correct status.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The applicant submitted 21 user evidence statements in support of the application. The evidence of use on horseback dated back to 1965 through to 2014 when the application was submitted.

One user explained that she owned land over which the route crossed and details of her evidence is contained in the section titled 'evidence from landowners' below.

With regards to the other 20 users use on horseback was for in excess of 30 years (3 users), 20 – 30 years (4 users), 10-20 years (6 users), 5-10 years (3 users) and 1-

5 years (2 users). One user stated that they had used the route for 44 years on foot and within that time had used it on a bicycle over a 17 year period (1990-2007) and another user had used it on foot for three years. Both commented that they had seen horses use the route.

All users confirmed use of the application route as marked on a plan attached to their user forms and stated that route has not changed during the time that they had used it. Most users refer to the fact that they saw others using the route on foot and on horseback.

All users refer to existence of four gates along the route at points B, F, G and H on the Committee plans and state that the gates were never locked but that one gate in particular (at point F) was now so difficult to use on horseback that they had to dismount to open it.

Users also made reference to the deteriorating condition of the surface of the route and the fact that it was partially obstructed by overgrown gorse bushes meant that it was no longer easy to use.

None of the users had been given permission to use the route or had been stopped or challenged when using the route. The only break in use reported was the closure of all routes during the foot and mouth outbreak in 2001. One user reported the existence of signs requesting that gates were closed due to lambing in around 1987.

Use was consistently reported as being for pleasure and to avoid riding on busy roads. One user used it from 1962 – 1977 to visit friends and to lead guided rides from the riding school where she was employed.

In addition to the user evidence statements the applicant submitted a list of names and signatures of people who had used the route 'for many years' and who stabled their horses at New Hall Farm stables in Read. The applicant explained that the route provided a popular link from Read to the villages of Wiswell, Pendleton, Mearly and part of a circular route over Pendle Hill. The list of signatories is described as being people who generally no longer rode the route, primarily because of the poor condition of the track and difficulties associated with opening the gates (described as dangerous) which restricted access but stated that they would all support the application to record the route as a public bridleway as their understanding was that this would make it 'eligible for maintenance'. The list contains 24 signatures.

Information from Others

The owners of a property close to point K off Moor Lane have stated that they would prefer the route to remain as a footpath for the safety aspect of cyclists riding recklessly down the tarmac section of Moor Lane. Whilst this is a genuine concern for the residents it is not a relevant consideration to the status under the legislation.

Information from the Landowners

One of the user evidence forms submitted by the applicant has been completed by the current owner (since 1996) of part of the land (including Manor House Farm).

She explains in the form that she is the owner of the 'first field' from the top of Moor Lane through which the route runs (between points G-H-I-J) as confirmed by land registry title documents for LA787416. She states that the route is an unadopted highway and that it is well used regularly by horse owners, runners and walkers and that they use it themselves for vehicular access. She also refers to drainage being maintained by Lancashire County Council.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

User evidence

Map and documentary evidence

Against Making an Order(s)

Map evidence

Conclusion

The application is to add a bridleway and to upgrade sections C-F and I-J-K which are currently recorded as public footpaths to a bridleway. The route claimed is shown between points A-B-C-D-E-F-G-H-I-J-K on the Committee Plan.

There is no express dedication however; evidence of use is provided in 21 user evidence forms claiming the route has been used as a bridleway, therefore S.31 Highways Act 1981 will be considered for this section as well as common law inference of dedication.

Committee will be aware that in order to satisfy the criteria under S.31 Highways Act 1980 for deemed dedication there must be sufficient evidence of use of the claimed route by the public, as of right, without interruption, for a full period of 20 years immediately prior to its status being brought into question, without there being sufficient evidence of a lack of intention to dedicate on the part of the landowner. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question. The claim itself was made in May 2015 and this is the event bringing the route into question. The period under consideration would therefore be 1995-2015.

Of the 21 user evidence forms provided, one user evidence form has been discounted, as this has been provided by a landowner. The user evidence forms suggest the route has been used as of right on horseback and foot since 1962 by a sufficient number of people, varying in frequency, use has been without interruption, force, secrecy or permission. The user evidence suggests the gates along the route have never been locked and have not presented a problem for users although it is reported that one of the gates along the route has fallen into disrepair making it a little difficult to use. The break in use whilst the route was closed during the foot and

mouth outbreak in 2001 would not constitute an interruption, the Planning Inspectorate Advice Note 15 suggests the temporary cessation of use of ways solely because of the implementation of measures under the Foot and Mouth Disease Order 1983 could not be classified as an "interruption" under section 31(1) therefore it is suggested that on balance deemed dedication under s.31 can be satisfied.

Part of the route is first depicted on the Inclosure Award in 1780 as a private carriageway. The route does not appear on the small scale commercial suggesting the route was not a major route at this time. Most of the route existed by 1848 although the alignment of the route varied at point C-E. By the 1890's the full length of the route following the modern day alignment is shown on the OS map published in 1892-93 and appears to be capable of being used by horses. The gates showing on this map suggest it would have been unlawful had this route been created as a public carriage road by the Inclosure Act 1789. However, the 1912 OS map shows the full length of the route as a track as opposed to a footpath which supports the fact that this route was of a substantial nature and on balance would have been capable of being used on horseback and possibly horse drawn vehicles at that time and is consistent with the Inclosure Award definition of part of this route being a private carriage road. The Finance Act Map 1910 although not conclusive adds weight that the route under consideration may on balance have had public carriageway rights. The 1929 revised OS map mirrors the previous OS map describing the route as a tack. The 1969 OS Map describes the route from point A-F as a track and Point F to Point J as a path, Point J-K forms part of Moor Lane, suggesting use from Point F at this time had declined and was more akin to being used as a footpath or bridleway. The aerial photograph of the 1960's does not show the route beyond point H, the aerial photograph of 2000 does not show the route beyond Point G which may be due to a decline in the use of the route by vehicles at this time.

The query raised at the time the Draft Map was prepared whether to include the route on the Draft Map was rejected and supported by the then landowners suggesting the route was an unclassified county road and the public had rights along the route which may have also included vehicular rights. The route was not included on the Definitive Map and Statement adding further weight on balance the claimed route had a higher public status than a bridleway. The claimed route was considered to be an unclassified road in 1980 when an application to record the route as a public bridleway was made suggesting; in the context that on balance the route had public vehicular rights. The route was also recorded as an unclassified county road on the 1929 Handover Map linking Moor Lane and Clerk Hill Lane which makes it reasonable to assert a public right of way in vehicles may have subsist over the claimed route.

Although the route has evidence of public carriageway rights, it is no longer possible to record the route as a byway open to all traffic due to the introduction of section 67 Natural Environment Rural Communities Act 2006 (NERC Act). The implication of this section means that the highest status that can be achieved by this route is that of a restricted byway.

Taking all the evidence into account and noting how the route was recorded on the old County maps and the investigations of the Executive Director for Environment, it

is suggested to Committee that on a balance of probabilities there is sufficient evidence that the route ought to be shown as a highway of a different description and the claim should be accepted as a restricted byway, as opposed to only a bridleway, as the evidence suggests on balance the route has higher public status.

Risk Management

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

Alternative options to be considered - N/A

Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-565		County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A