

Regulatory Committee

Meeting to be held on 16 November 2016

Electoral Division affected: Rossendale North
--

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Deletion of part of Public Footpath 4 Rawtenstall at Loveclough and addition of a Public Footpath from Public Footpath No. 94 Rawtenstall to a point on Public Footpath 4 Rawtenstall, Rossendale Borough

File No. 804-576 and 804-577

(Annex 'A' refers)

Contact for further information:

Jayne Elliott, Public Rights of Way, Planning and Environment, 07917 836626

jayne.elliott@lancashire.gov.uk

Executive Summary

The deletion of part of Public Footpath 4 Rawtenstall and addition of a public footpath from Public Footpath 94 Rawtenstall to a point on Public Footpath 4 Rawtenstall, Rossendale Borough in accordance with File Nos. 804-576 and 804-577.

Recommendation

1. That the application to delete part of Public Footpath 4 Rawtenstall from a point at the junction with Public Footpath Nos. 1 and 94 Rawtenstall to a point at the junction with Public Footpath 9 Rawtenstall, in accordance with File No. 804-576, be accepted.
2. That the application to add a public footpath from a point on Public Footpath 94 Rawtenstall to a point on Public Footpath 4 Rawtenstall, Rossendale Borough, in accordance with File No. 804 -577 , be accepted.
3. That an Order be made pursuant to Section 53 (2)(b) and Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 to delete from the Definitive Map and Statement of Public Rights of Way part of Public Footpath No. 4 Rawtenstall from the junction of Public Footpath Nos. 1 and Nos. 94 Rawtenstall to a point on Public Footpath No. 4 Rawtenstall at the junction with Public Footpath No. 9 Rawtenstall, shown between points X-Y on the Committee plan.
4. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a public footpath from a point on Public Footpath No.94 Rawtenstall to a point of Public Footpath 4 Rawtenstall as shown on the Committee Plan between points A-B-C-D.

5. That being satisfied that the relevant tests for confirmation can be met the Orders be promoted to confirmation.

Background

The hamlet of Loveclough in the former Rawtenstall Metropolitan Borough was historically the location of a calico print works which provided work to the majority of local residents. The works were located at the western end of Commercial Street and situated on Limy Water existing on this site from the 1800s until they were demolished in the 1990s and replaced by housing.

Committee Members may already be familiar with the area as an application for a footpath to the north of Limy Water, and passing through the former Loveclough Fold Farm, was originally considered in 2006 and was further considered in 2015. There was also an application to extinguish the recorded footpath within a length of Limy Water west of point X in 2006.

In 2016 two further applications were received under Schedule 14 of the Wildlife and Countryside Act 1981 for:

1. The deletion from the Definitive Map and Statement of Public Rights of Way of part of Public Footpath 4 Rawtenstall from the junction of Public Footpath Nos. 1 and 94 Rawtenstall and running in a general north easterly direction within Limy Water to a point on Public Footpath 4 Rawtenstall at the junction with Public Footpath No. 9 Rawtenstall, and shown on the Committee plan by a thick dashed line between points X-Y.
2. The addition of a public footpath from a point on Public 94 Rawtenstall to a point on Public Footpath 4 Rawtenstall on land to the east of Limy Water, and shown on the Committee plan by a thick dashed line between points A-B-C-D.

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”

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

- That there is no public right of way over land shown in the map and statement as a highway as any description

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

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

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

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

Consultations

Rossendale Borough Council

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

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	8106 2723	Junction with Public Footpath 94 Rawtenstall in the entrance to Riverbank Mews just east of Penny Lodge Lane
B	8111 2726	Garden fence across the line of the route adjacent to the north east corner of 6 Riverbank Mews
C	8111 2727	Garden fence across the line of the route
D	8114 2731	Unmarked junction with Public Footpath 4 Rawtenstall on south east bank of Limy Water
X	8105 2724	Junction of Footpath 4 Rawtenstall with Footpath 1 and Footpath 94 Rawtenstall on vehicular access bridge known as Loveclough Place Bridge (LCC Structure Reference 9850F1)
Y	8114 2731	Unmarked junction of Footpath 4 Rawtenstall with Footpath 9 Rawtenstall in Limy Water

Description of Routes

Committee is asked to note that references to public rights of way shown on the Definitive Map and Statement are generally given in the form '14-04-04' or 'Rawtenstall Footpath 4' but are referenced below in the abbreviated form 'Footpath 4' for brevity since all those referred to are in Rawtenstall in Rossendale Borough.

A site inspection was carried out on 25 April 2016.

Footpath to be deleted

The footpath proposed to be deleted forms part of Footpath 4 and is shown on the Committee Plan between point X and point Y; a distance of approximately 115 metres.

The route commences at the bridge where Loveclough Place crosses Limy Water north of its junction with Penny Lodge Lane; this is the junction of Footpaths 1, 4 and 94 (point X). There is no convenient access from the bridge at point X or from the adjacent banks into Limy Water. From point X the route follows the watercourse upstream along a man-made channel constructed of stone banks but the bed of the watercourse appears natural and silting has occurred which has resulted in clumps of grassy areas forming around which the water is diverting itself. The water was not deep and it would have been possible to paddle through it in wellingtons on the 3 or 4 dates of site inspections (for the 3 applications at this location). There was no evidence that people were walking in the watercourse or that access from point X was, or had previously been available to the watercourse.

From point X, for approximately 35 metres along the northern side of the route a stone ledge exists just above the water level forming part of the stone banking. It is quite narrow, with no access to it, and it did not appear to form any sort of walkway with no evidence that it was used (or had been used) in such a way. A similar, but

higher, ledge exists within the stone banking on the south side of the watercourse extending from point X to the north west corner of 5 Riverbank Mews.

The route runs in a generally north easterly direction along the watercourse, for approximately 115 metres to point Y on the Committee plan which is an unmarked point within the watercourse immediately south of the junction of Limy Water with a tributary stream flowing down from a small reservoir and is the recorded junction of Footpath 9 and Footpath 4. There is no crossing point and no evidence that the public are using or have used this point to cross. A Lancashire County Council footbridge exists just north of this point and further north are the remains of stepping stones.

Footpath to be added

The route to be added commences at point A on the Committee plan which is a point on Footpath 94 approximately 2m into the entrance to Riverbank Mews (the claimed line of the footpath does not coincide with the recently aligned road (now called Penny Lodge Lane).

From point A the route passes through an opening providing access to a new housing development known as Riverbank Mews and crosses an open tarmac area along the front of properties 1-4 Riverbank Mews. It then continues to the south of 5 and 6 Riverbank Mews to point B where it is crossed by a substantial wooden fence with no access through it. The fence surrounds a newly landscaped garden to the east of 6 Riverbank Mews and contains the route between point B and point C.

Beyond the garden fence at point C the route continues in a north north easterly direction along the edge of a field to the east of Limy Water. No visible trodden route could be seen on the ground.

The route meets the recorded section of Footpath 4 at an unmarked point south west of the junction with Footpath 10.

The total length of the route is approximately 130 metres.

Map and Documentary Evidence

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



Observations		The map shows and names the village of 'Love Clough'. It shows Limy Water and a scattering of buildings but does not show the route to be added or the route to be deleted.
Investigating Officer's Comments		The routes did not exist as major routes at that time although they may have existed as minor routes which, due to the limitations of scale and purpose for which the map was drawn meant that they would not have been shown so no inference can be drawn.
Honour of Clitheroe Map	1804-1810	A privately produced map of land owned by the Honour of Clitheroe – Henry Duke of Buccleuch and Elizabeth Duchess of Buccleuch. It specifically shows the boundaries of coal leases granted by them. 'Roads' were identified in the key but there was no apparent distinction between those which may have been considered to be public or private.



Observations		The map shows and names the village of 'Love Clough' but the routes under investigation are not shown.
Investigating Officer's Comments		The routes did not exist as major routes at that time although they may have existed as minor routes which, due to limitations of scale and the purpose for which the map was drawn meant that they would not be shown so no inference can be drawn.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



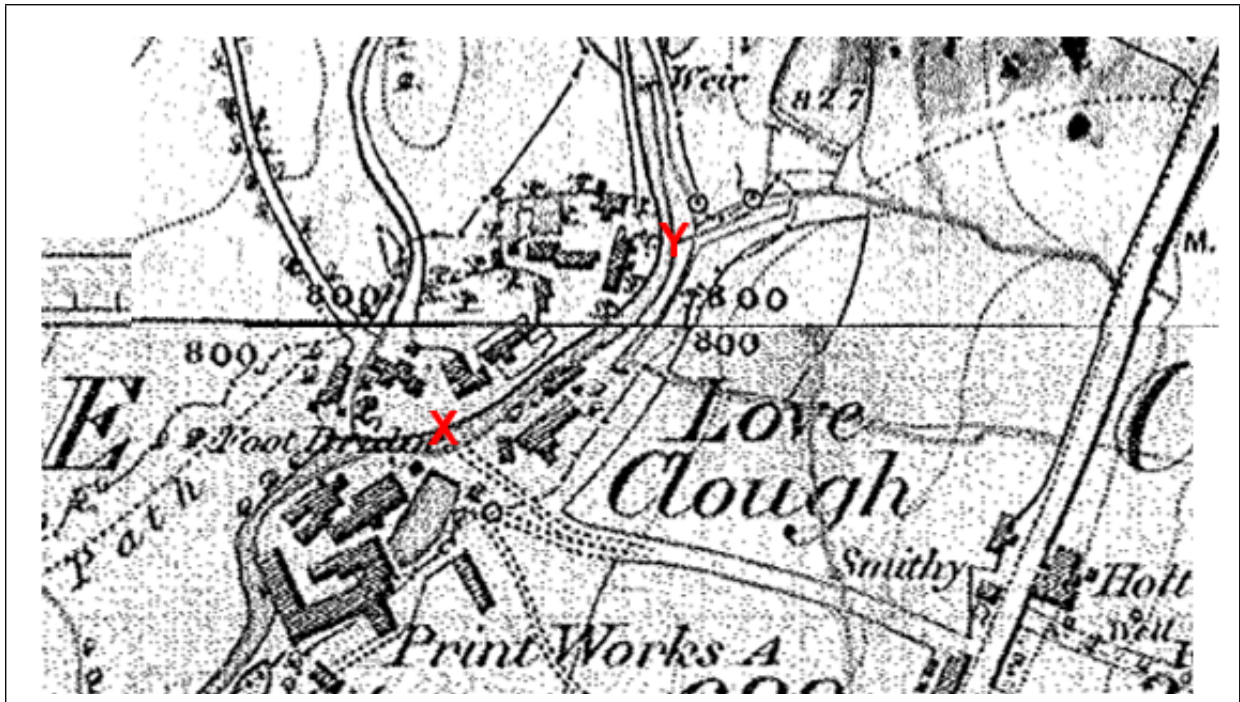
Observations		The map shows Commercial Street crossing Limy Water, and continuing to the north west. It shows a number of buildings and names them 'Low Booth'. The routes under investigation are not shown.
Investigating Officer's Comments		The routes did not exist as major routes in 1818 although they may have existed as minor routes which, due to the limitations of scale and the purpose for which the map was drawn meant that they would not have been shown so no inference can be drawn.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.



Observations		Love Clough is shown and named but the routes under investigation are not shown.
Investigating Officer's Comments		The routes did not exist as major routes in 1830 although they may have existed as minor routes which, due to the limitations of scale and the purpose for which the map was drawn meant that they would not have been shown so no inference can be drawn.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The routes under investigation do not cross land affected by the planned construction of a canal or railway.
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 in the County Records Office for the area under investigation.
Investigating Officer's Comments		No inference can be drawn.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		No Inclosure award was found for the area under investigation.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-7 and published in 1849. ¹

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



Observations

The area crossed by the two routes can be seen and is labelled as Love Clough. Commercial Street can be seen providing access to the mills (print works) south of Limy Water. A track (double pecked lines) is shown extending from Commercial Street to Limy Water at point X but is not shown to continue north of the watercourse. There is no bridge shown across Limy Water at point X although the word 'Foot Bridge' is written to the west of point X. Limy Water is clearly shown to exist between point X and point Y with no indication that the watercourse would have been used as a public footpath.

South of Limy Water buildings are shown to exist in the area now redeveloped as Riverbank Mews. There appears to be access from the track (double pecked lines) which extends from the end of Commercial Street between the buildings and beyond.

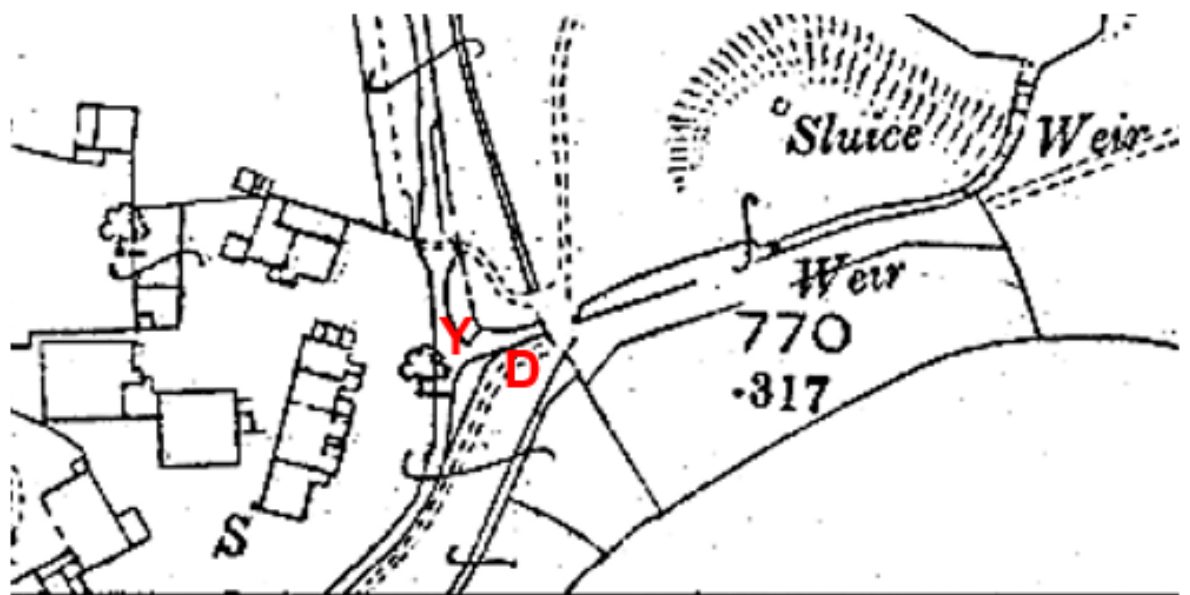
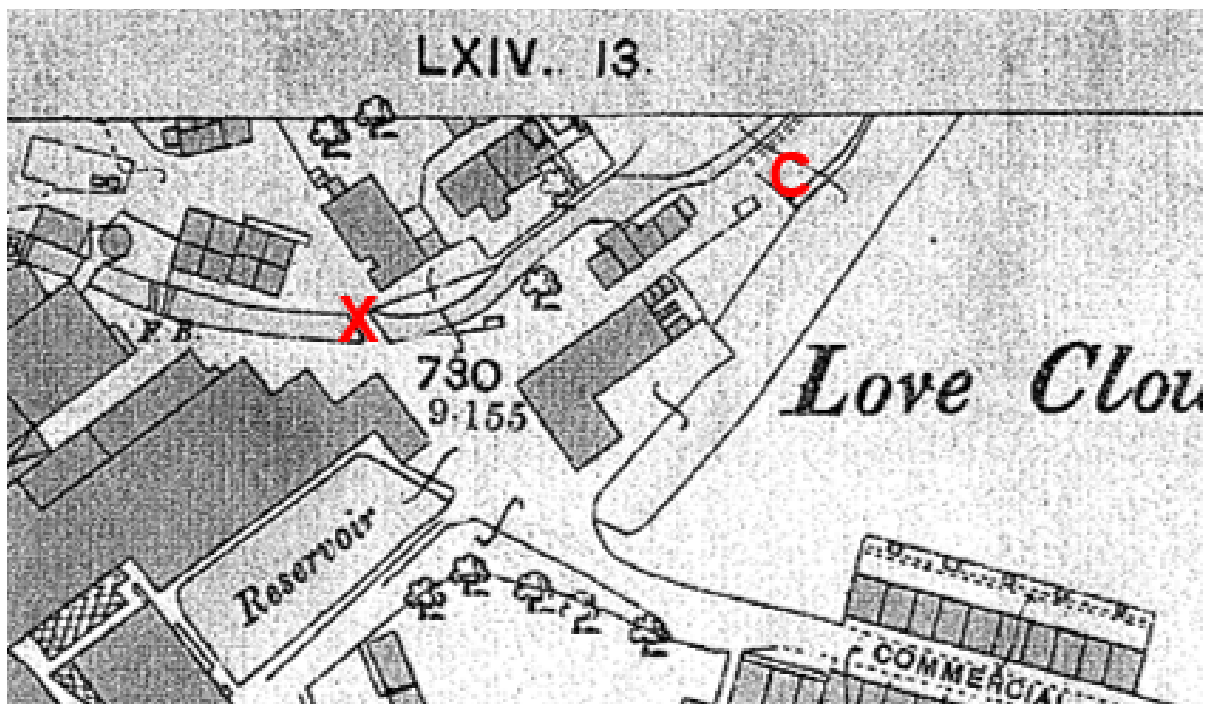
Investigating Officer's Comments

The route to be deleted is entirely within the watercourse which is shown without any indication that it was so used and without any access points indicated. It is therefore unlikely that the public footpath existed in 1844-47. The route to be added may have been accessible in 1844-47 although it is not marked as a path of any sort suggesting that there was no visible track on the ground.

25 Inch OS Map

1893

The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890-92 and published in 1893.



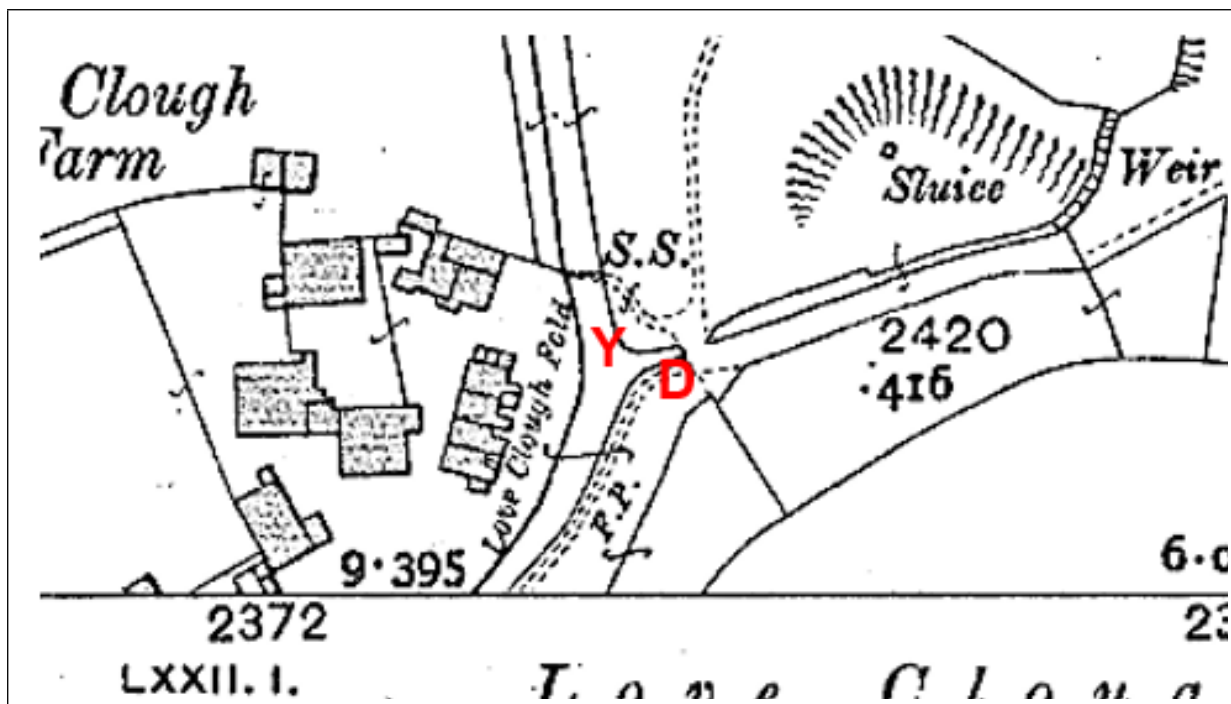
II. I. **MUNL. BORO. (Rawtenstall) 729**

Observations

This first edition large scale OS map shows that a bridge existed at point X and shows the course of Limy Water. The route to be deleted is not shown and there is no indication on the map that the watercourse was used as a public footpath or of access to it.

		The route to be added is not shown between point A and point C but the land crossed by the route is shown as being open and accessible between the buildings and would not normally have been shown if the surface was hard such as a yard. To the north of point C is a wide gap in a boundary and then From near point C (but closer to Limy Water) a track (double peaked lines) is shown through to point D and then continuing onwards from point D.
Investigating Officer's Comments		The route to be deleted did not exist in 1890-92. The route to be added may have existed between point A and point C in 1890-92 and the northern part of the route between a point north west of point C and point D existed as a track on the ground and appeared capable of being used. However, the application route around point C probably did not exist.
25 inch OS Map	1911	Further edition of the 25 inch map surveyed in 1891-92, revised in 1909 and published in 1911.



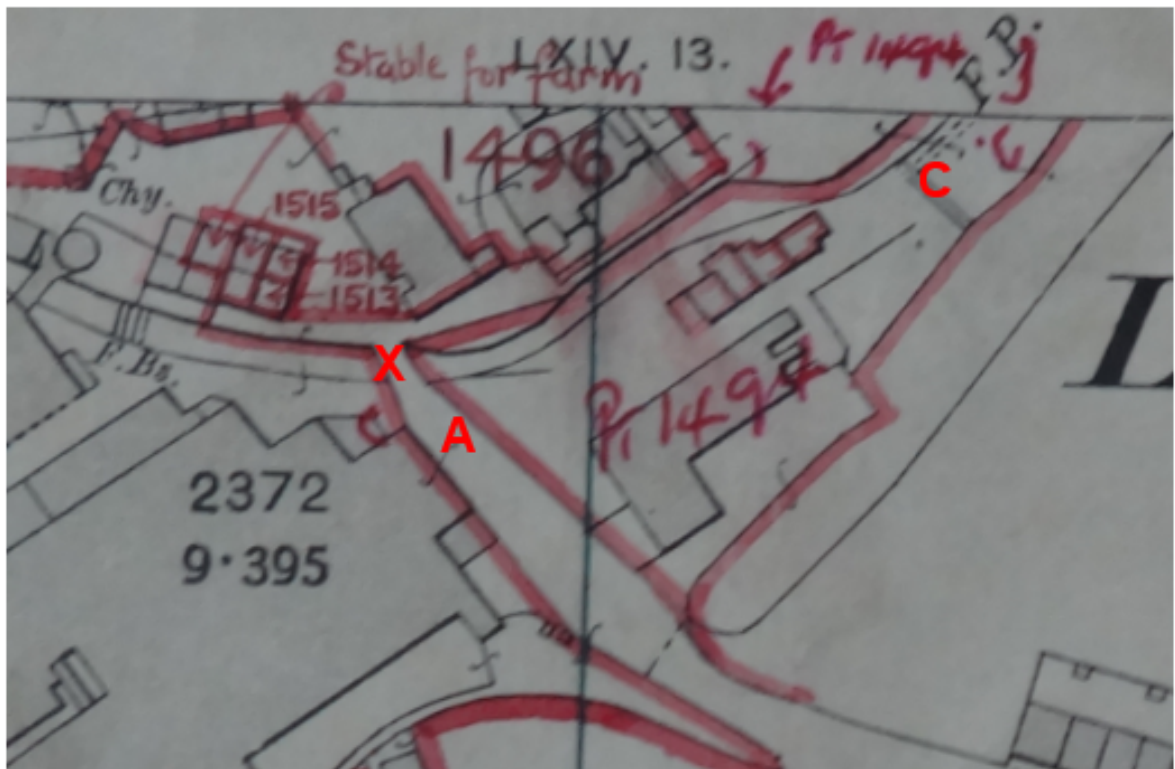


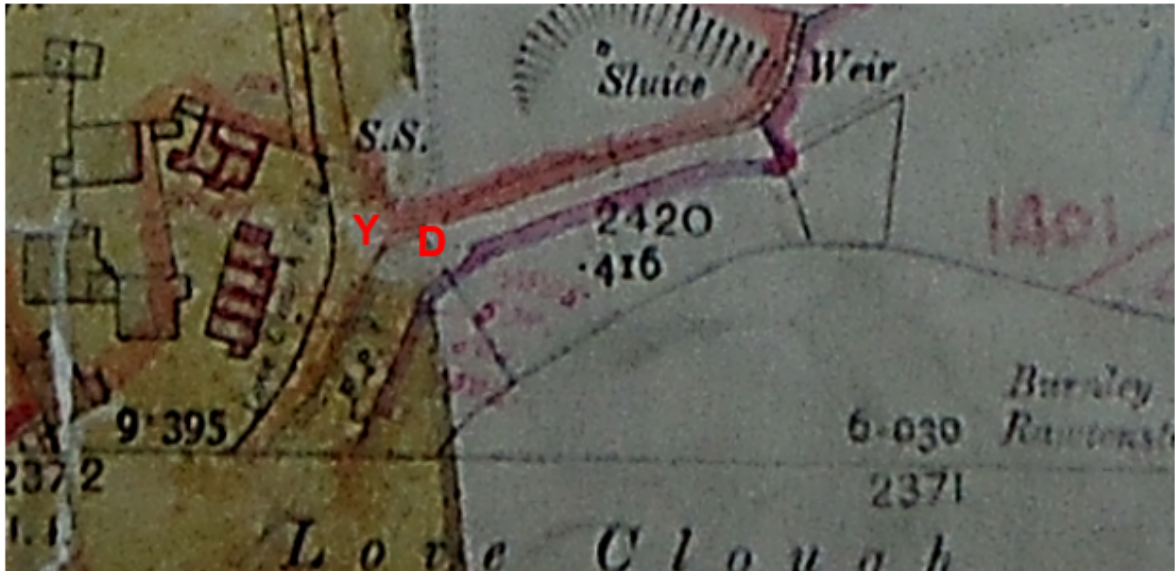
Observations		<p>The route to be deleted is not shown.</p> <p>Access appears to be available from the end of Commercial Street to point A and between the buildings along the route to be added to point C. At point C the route is crossed by a single line south east of which is a double line. This may indicate the existence of some form of boundary and/or ditch. From a point near C but closer to Limy Water a double pecked line is shown along the route to be added and is annotated with the letters 'F.P' (footpath). It extends to point D and then appears to continue across the watercourse to provide access to the route now recorded as Footpath 10.</p>
Investigating Officer's Comments		<p>The route to be deleted did not exist in 1909 when the map was revised.</p> <p>The route to be added existed for most of its length in 1909 and appeared capable of being used for most of its length except for around point C. However, the application route around point C probably did not exist.</p>
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</p>

have to be admitted.

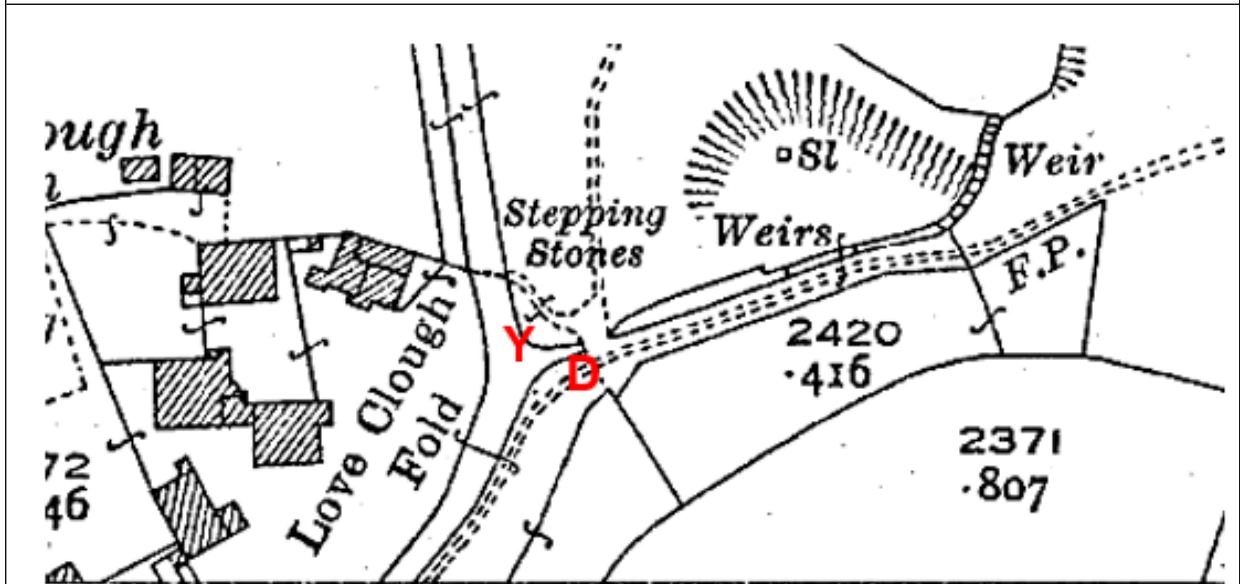
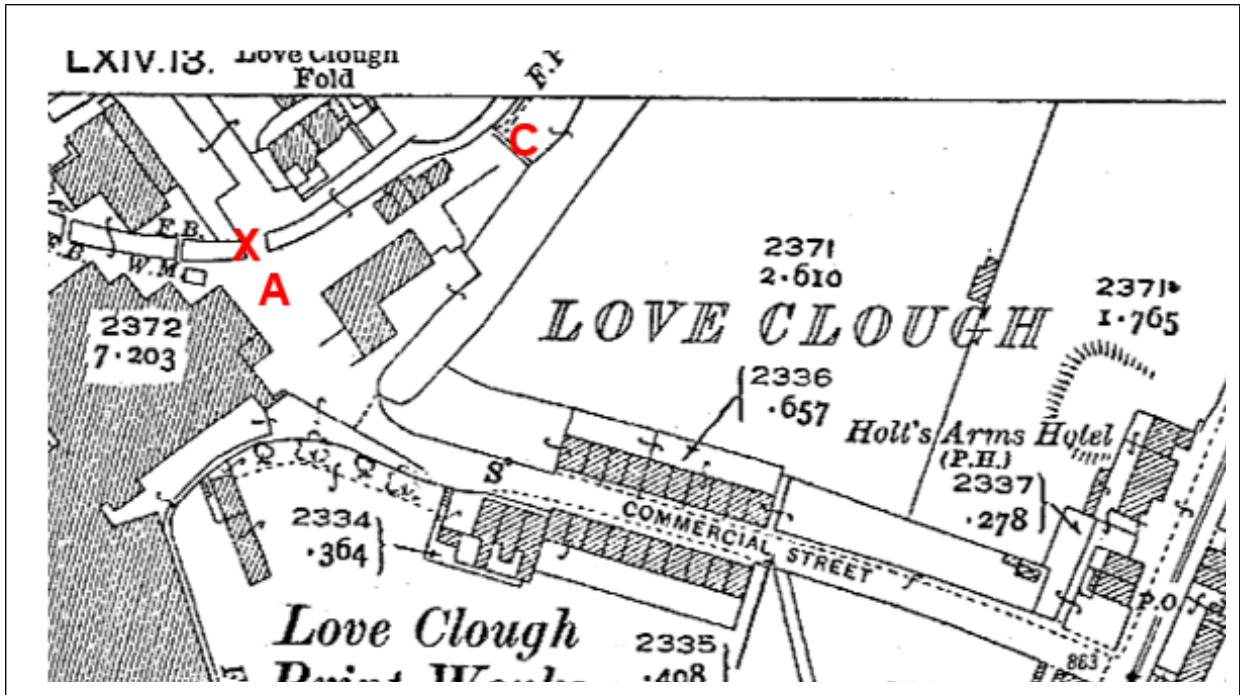
Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land 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).

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.





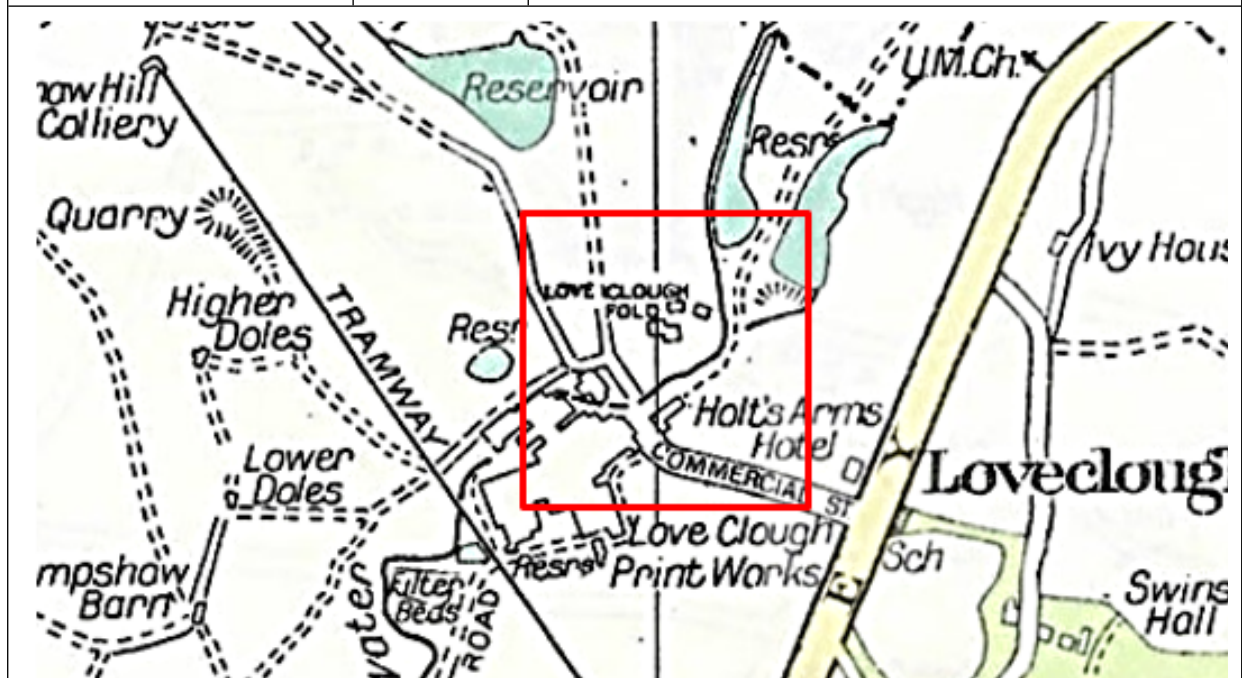
<p>Observations</p>		<p>No Finance Act maps are available in the County Records Office and it has therefore been necessary to request a copy of the map from The National Archives.</p> <p>The routes are shown across two OS 25 inch sheets. The first sheet examined, showing the route to be deleted from point X shows Limy Water as part of a large numbered plot labelled 'pt 1494'. The route to be added from point A to the edge of the map sheet north east of point C is also included in this plot.</p> <p>The quality of the second map sheet is poor and it is difficult to see the lines drawn on it as the map has been damaged. There appears to be a red line drawn along the east bank of Limy Water and the plot number is not evident. The route to be added (from just north of point C to point D is shown within a long narrow plot which included the route. No number can be seen on the map so it is not possible to be certain that this is also part of plot 1494.</p> <p>The Researcher undertaking research at the National Archives was unable to find the relevant field book entry catalogued.</p>
<p>Investigating Officer's Comments</p>		<p>It appears likely that the watercourse and land crossed by the route to be added were included as part of hereditament 1494 but no inference can be drawn with respect to the existence of public rights.</p>
<p>25 Inch OS Map</p>	<p>1930</p>	<p>Further edition of 25 inch map (surveyed 1891-92, revised in 1928 and published 1930.</p>




XXII. I. LOVE CLOUGH

Observations		The route to be deleted is not shown. The route to be added is shown in the same way as it was on the earlier edition of the 25 inch map.
Investigating Officer's Comments		The route to be deleted did not exist in 1928 when the map was revised. The route to be added may have existed between point A and point C in 1928 and appeared capable of being used. The route between point C and point D (and beyond) existed and appeared to be capable of being used except in the vicinity around point C as a line closer to Limy Water appears to have been

		used.
Authentic Map Directory of South Lancashire by Geographia	Circa 1934	<p>An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.</p> <p>The introduction to the Atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.</p>

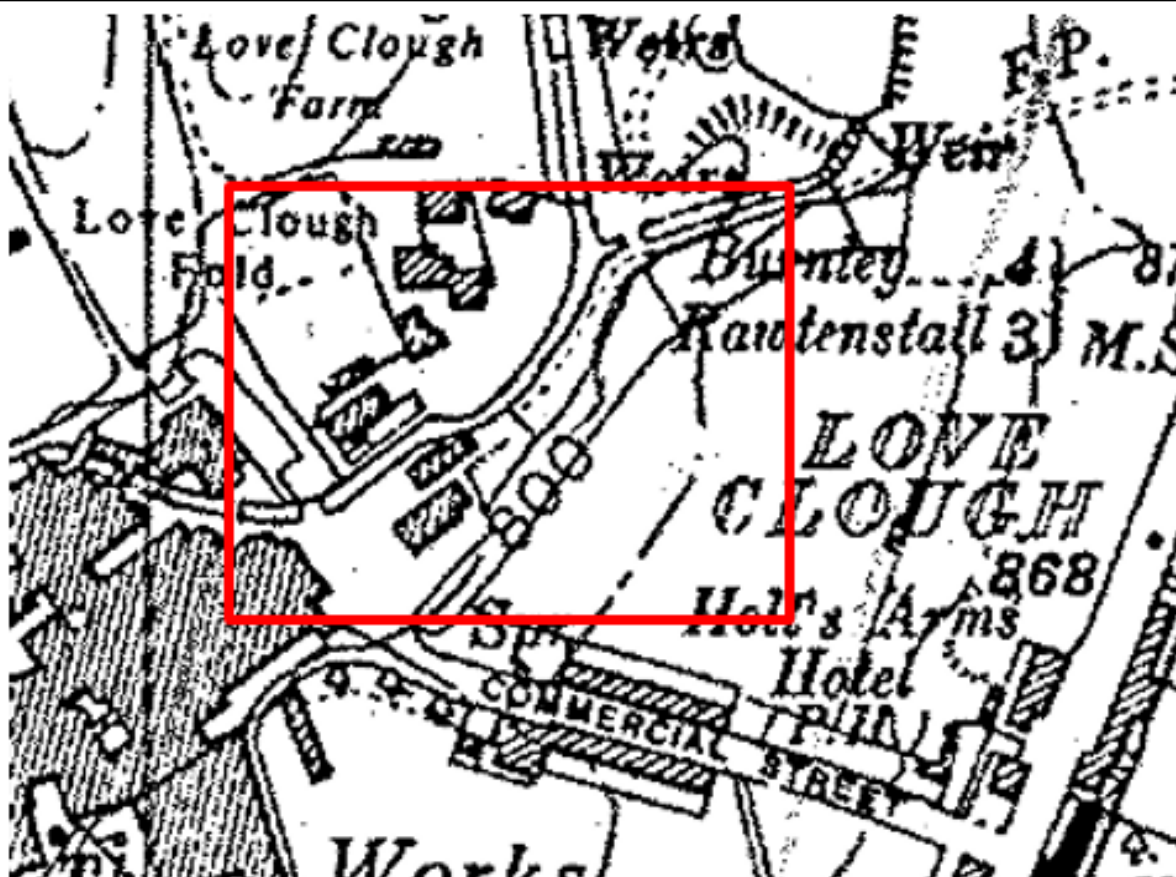


Observations		<p>Limy Water is shown but the route to be deleted is not. A route which is consistent with the route to be added is shown, within the limitations of scale, extending along the south east side of Limy Water to continue as the route now recorded as Footpath 10.</p>
Investigating Officer's Comments		<p>The route to be deleted did not exist in the 1930s.</p> <p>The route to be added existed as a substantial physical route extending from the buildings between point A and point C and is shown on a large scale map published primarily as a street atlas.</p>

Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
		
Observations		<p>The 1940s aerial photographs are of variable quality and often difficult to interpret. In this particular case there appears to be a dark line extending north east from point X which looks to be the line of the watercourse (Limy Water) but there is nothing to indicate it was used as a path.</p> <p>It is not possible to determine the exact location of point A or to see clearly the buildings located between point A and point C but there does appear to be access to point C – indicated by the lighter shading. From point C a track is clearly visible to point D.</p>
Investigating Officer's		The route to be deleted did not exist in the

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.

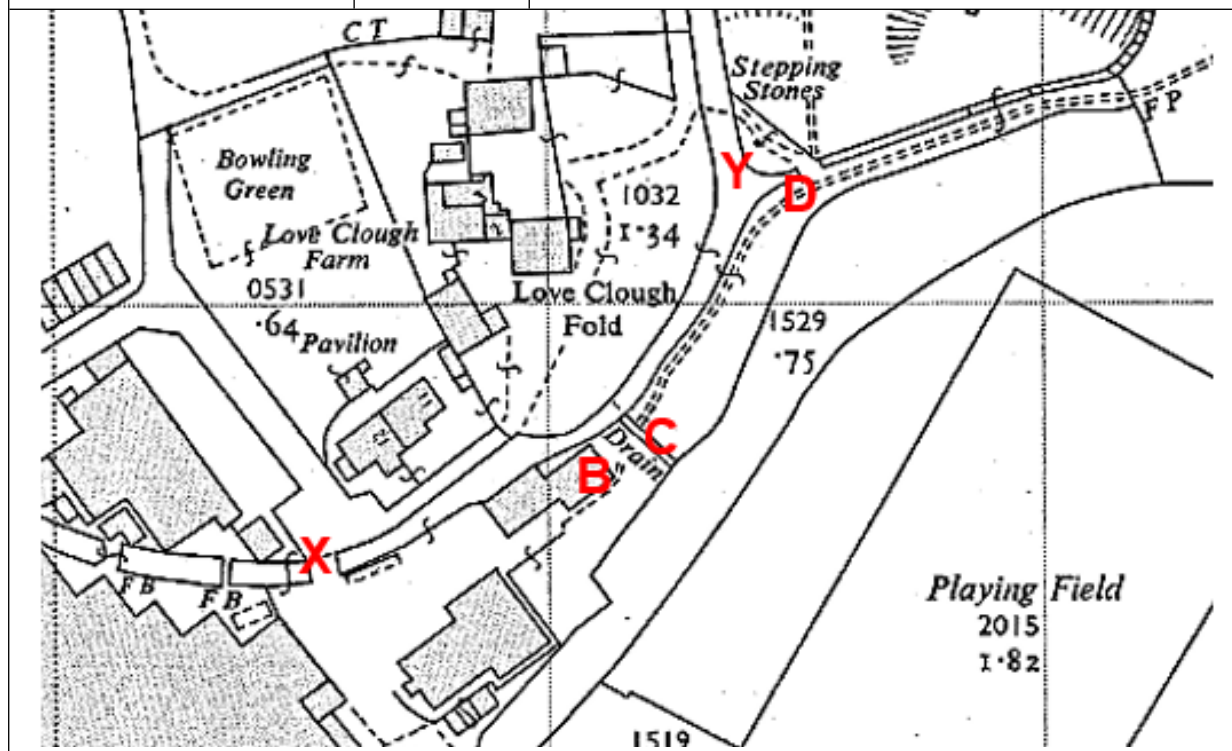
Comments		<p>1940s.</p> <p>The route to be added existed for most of its length and appears to have been in use but whether access was at point C is not clear .</p>
6 Inch OS Map	1956	<p>The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.</p>



Observations		<p>The route to be deleted is not shown. Limy Water is shown and there is no suggestion from the map that it was used by pedestrians.</p> <p>With respect to the route to be added, Point A cannot be identified but is situated within an open area between Mill buildings. Access appears to be available between the buildings to point C where a line is shown across the route. Beyond point C a single dotted line is shown denoting the physical existence of a path along the river bank through to point D (and beyond) but not through point C itself.</p>
Investigating Officer's Comments		<p>The route to be deleted did not exist when the map was revised in the 1930s.</p>

		The route to be added may have been available between point A and point C and is shown to have existed as a path between point C and point D (and beyond) for much of its length except around point C where it took a route closer to Limy Water. However, the application route around point C probably did not exist in the 1930s.
--	--	---

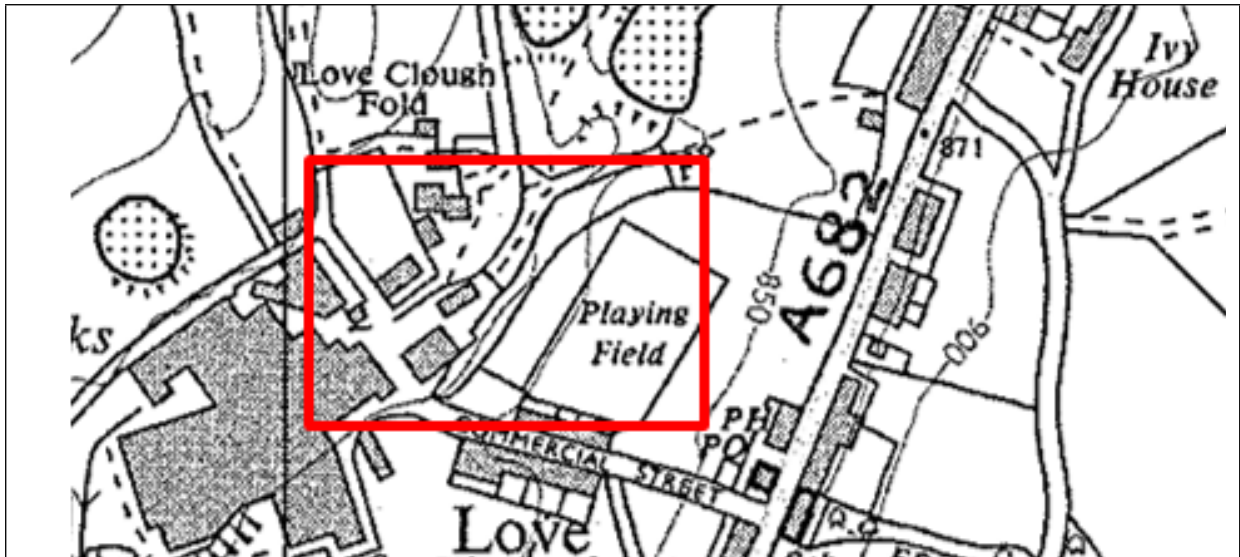
1:2500 OS Map	1962	Further edition of 25 inch map reconstituted from former County Series and revised in 1960 and published 1962 as National Grid Series.
----------------------	------	--



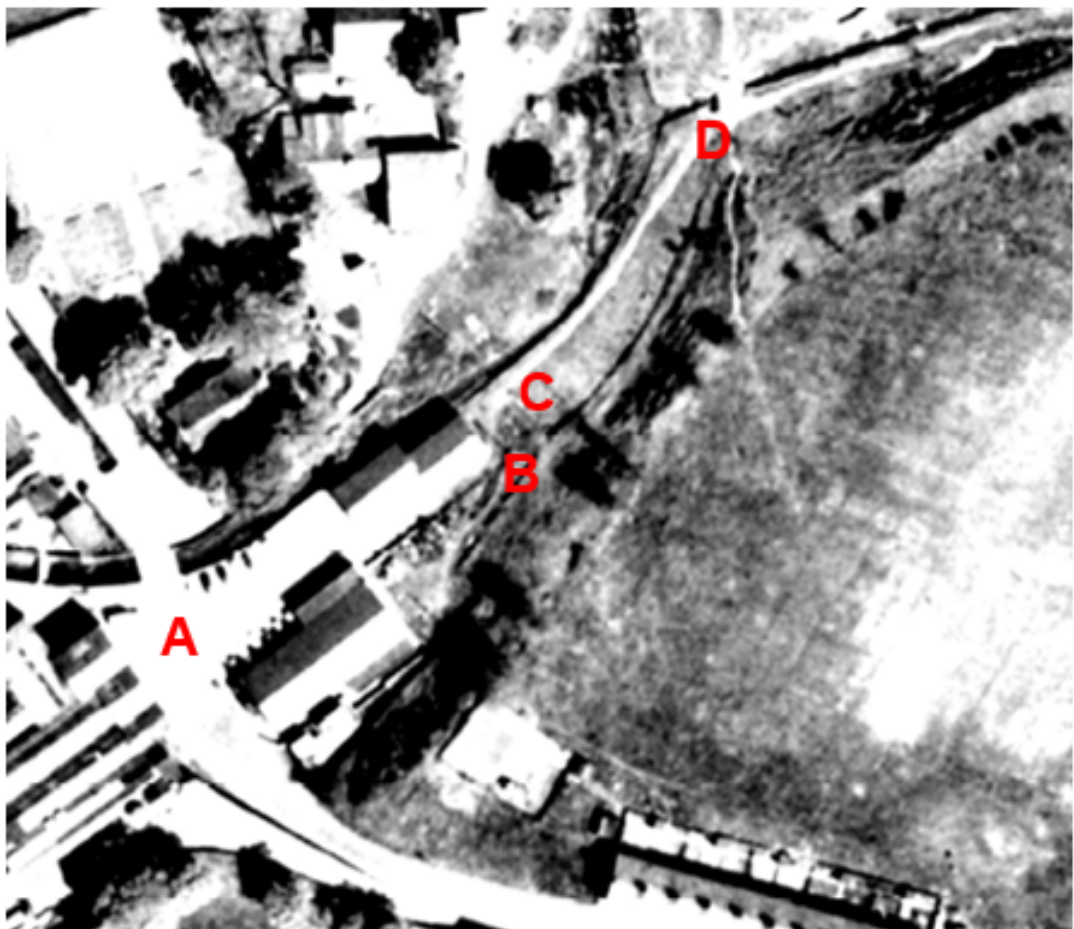
Observations		The route to be deleted is not shown and there is no indication that Limy Water was in any way used by pedestrians between point X and point Y. The route to be added appears to be accessible from point A (unmarked) to point B from where a track is shown to the drain at point C and then from point C to point D (and beyond).
--------------	--	---


Investigating Officer's Comments		The route to be deleted did not exist in 1960. The route to be added may have been accessible between point A and point C and is shown to exist as a track which may have been capable of being used between point B and point D (and beyond).
----------------------------------	--	--

6 inch OS Map	1965	Further edition of OS 6 inch map revised 1959-61 and published 1965.
----------------------	------	--



Observations		The route to be deleted is not shown. The route to be added appears to be available from point A (unmarked) to point C and is shown between point C and point D (and beyond).
Investigating Officer's Comments		The route to be deleted did not exist when the map was revised in 1959-61. The route to be added may have existed at that time.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		<p>The photograph provides no evidence regarding the existence of the Footpath to be deleted.</p> <p>The aerial photograph clearly shows that a track or path existed on the ground between point C and point D (except that around point C the track appears to have been closer to Limy Water than the application route) although it is not possible to see whether a route was available from point A to point B. However, the application route around point C does not appear to have been in use.</p>
Investigating Officer's Comments		<p>The route to be deleted probably did not exist in 1960. The route to be added appears to have existed except around point C where the used route was closer to Limy Water.</p>
Aerial Photograph	2000	Aerial photograph available to view on GIS.
		
Observations		<p>Limy Water can be seen from the bridge at point X through to point Y but the photograph provides no evidence of the existence (or not) of a public footpath along it.</p> <p>There is no visible barrier preventing access from Footpath 94 to the route to be added at point A suggesting that access may have been available onto the route and the route appears</p>

		to be accessible to point B. From point B to point D there is no visible track on the ground although the route may have been accessible along the field.
Investigating Officer's Comments		The route to be deleted probably did not exist in 2000 although a route may have been accessible along the north bank. The route to be added may have been accessible but use along the section between point B and point D was no longer of sufficient quantity to be indicated by a worn track on the ground.
Aerial Photograph	2010	Aerial photograph available to view on GIS.
		
Observations		Limy Water can be seen from point X but the route to be deleted is not apparent. Access onto the route to be added may have been available at point B although it appears that some sort of fencing or gate may have been erected across it. The route between point B and point D may have been available but there is no worn track visible on the ground.

Investigating Officer's Comments		<p>The route to be deleted probably did not exist in 2010.</p> <p>It is not possible to see whether access was available along the route to be added in 2010.</p>
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>
Observations		<p>Rawtenstall was a municipal borough in the early 1950s and a parish survey map was not compiled.</p>
Draft Map		<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 Draft Map for Rawtenstall has been enlarged and included in this report. It shows the route of Footpath 4 as having been drawn within the lines denoting the boundaries of Limy Water between point X and point Y and this is also the case for the continuation of Footpath 4 west of point X.

The Route to be added is not shown.

The Draft Statement which accompanies the Map describes Footpath 4 'From Burnley Road across Commercial Street round N. Side of Print Works, via Lower Doles, Hempshaw Barn, Rough Hill, N.W. to Height and then to junction with FP No. 2 on boundary.' No other particulars or limitations are listed.

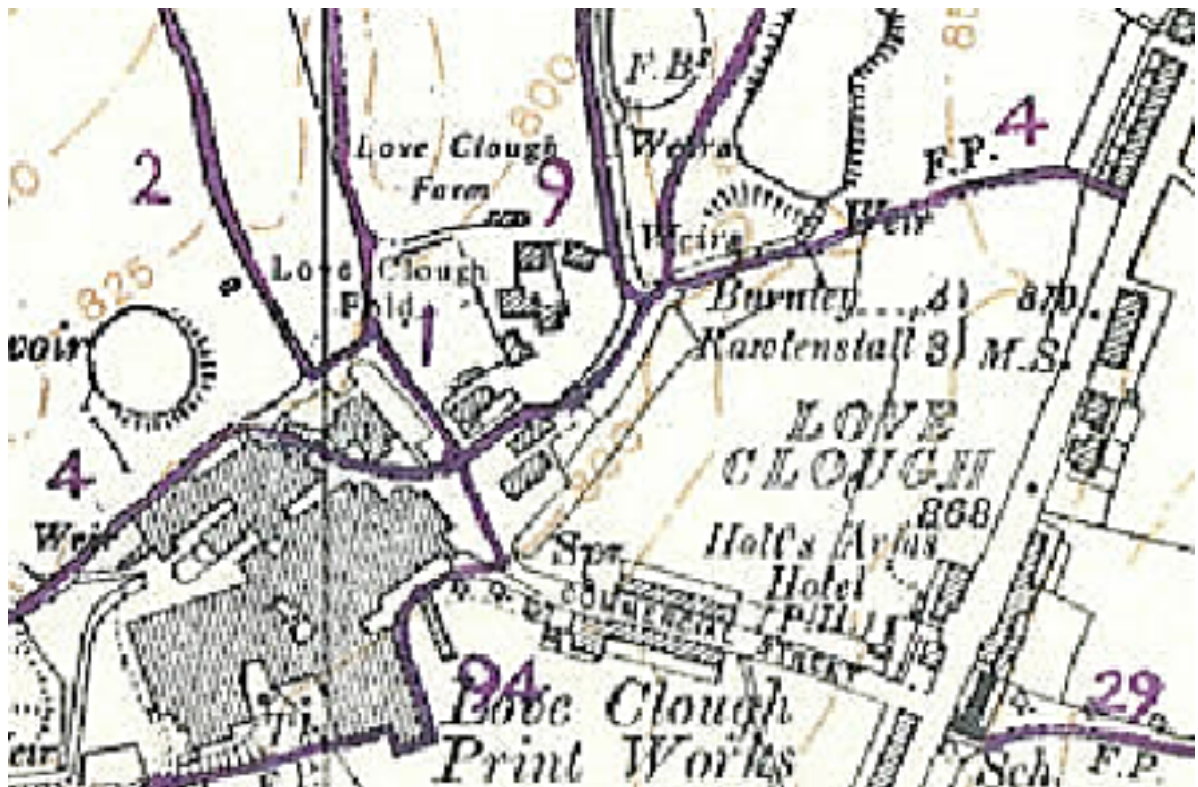
Footpath 1 is described as being from the 'W. end of Commercial Street W. of Loveclough Fold' and the part along Commercial Street is shown crossed out on the Map.

Footpath 9 is described 'From Loveclough Farm up the Limy Water to boundary.' And Footpath 10 as 'From Weir near Loveclough Farm on N.E. side of reservoir to boundary.' Footpath 94 is described as being from 'end of Commercial Street, Loveclough, to south of printworks ...'

No representations were made to the County Council in relation to the depiction of part of Footpath 4 in the watercourse or the fact that

		the route to be added was not shown.
Investigating Officer's Comments		<p>The scale of the OS map used to prepare the Draft Map (6 inch to 1 mile) and thickness of the pen used to draw the lines to denote the routes has resulted in a significant number of drafting errors occurring on maps, particularly in more built up area.</p> <p>The route to be deleted forms part of a long route (FP 4) and the section which includes the part to be deleted is described as being from Burnley Road across Commercial Street round N side of printworks. The map would not necessarily have been drawn by somebody who knew the route, and, even if they knew it, it is suggested that due to the scale of the map and the fact that the watercourse was depicted in the same way that a bounded road or track may be shown (two parallel solid lines) makes it quite likely that a mistake could have been made thinking that the watercourse was in fact a track or road. A route passing through or over such a long stretch of water would be quite uncommon and would, perhaps have been commented on within the draft statement.</p> <p>It is noted that FP 9 is described as 'Up the Limy Water' and although the first part of the route is shown in the watercourse the line is then shown to move to the west side of the watercourse to follow the track and if applying Lancashire use of the phrase it could imply that the route did not go up the actual watercourse but that it followed it upstream on an adjacent bank.</p> <p>The fact that the route to be added is not shown may suggest that it was not considered to be a public right of way or it may, if a drafting error had occurred with respect to the route of Footpath 4 suggest that the route did exist but that it was incorrectly recorded on the map.</p>
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to

be made to the Crown Court.



Observations

The Provisional Map was hand-drawn at the same scale as the earlier Draft Map. The routes were drawn in purple to depict public footpaths. From point X the route of Footpath 4 is shown within the watercourse as it passes the buildings on the south side of the watercourse. At approximately point C the route of Footpath 4 then appears to leave the watercourse to continue along the bank consistent with the route to be added between just north east of point C and point D.

Following publication of the map there were no representations made to the County Council in relation to how Footpath 4 was shown or the fact that the route to be added between point A and north east of point C was not shown.

The First Definitive Map and Statement

The Provisional Map, as amended, was published as the Definitive Map in 1962.

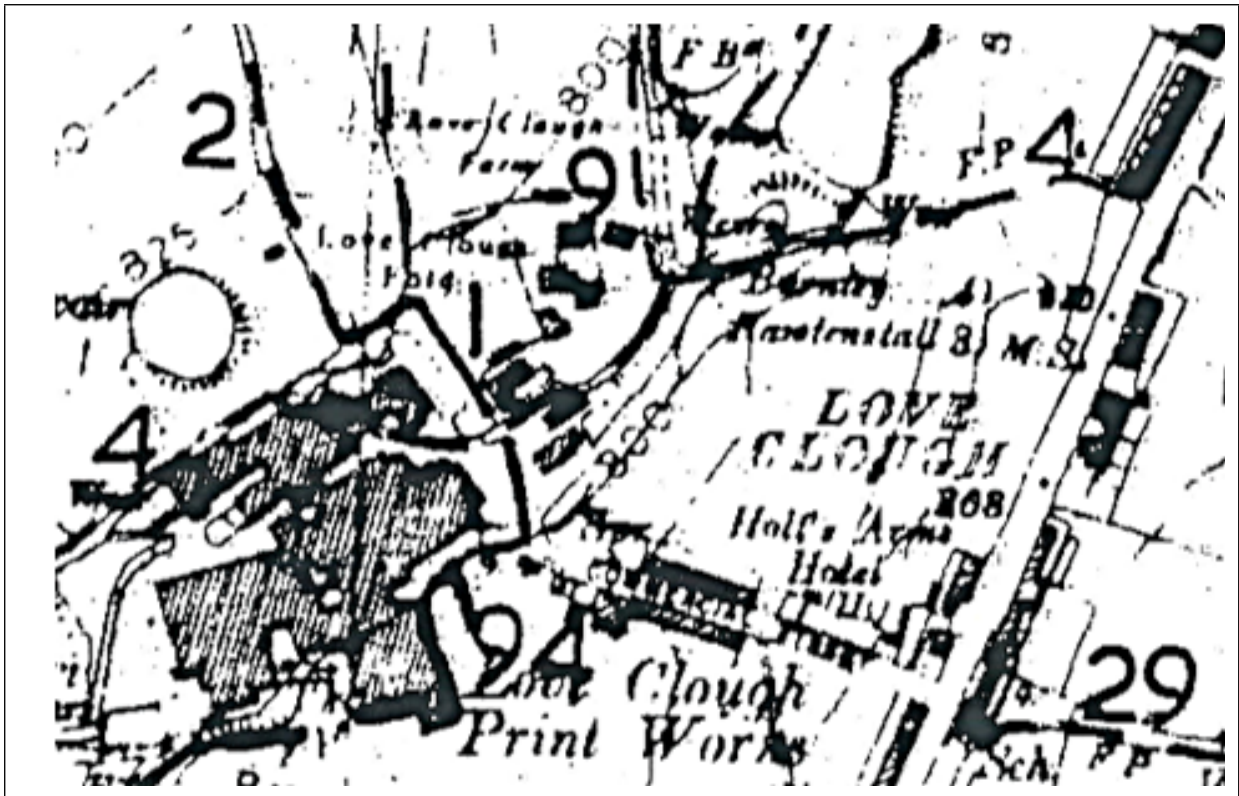


Observations

The First Definitive Map was hand-drawn with information transferred from the Provisional Maps. The OS base maps used were at a scale of 6 inches to the mile. The routes were drawn using a thick pen which often covered up detail of field boundaries and buildings because of the width of the lines drawn. Footpath 4 is shown by a thick line within Limy Water between point X and point Y. The route to be added is not shown.

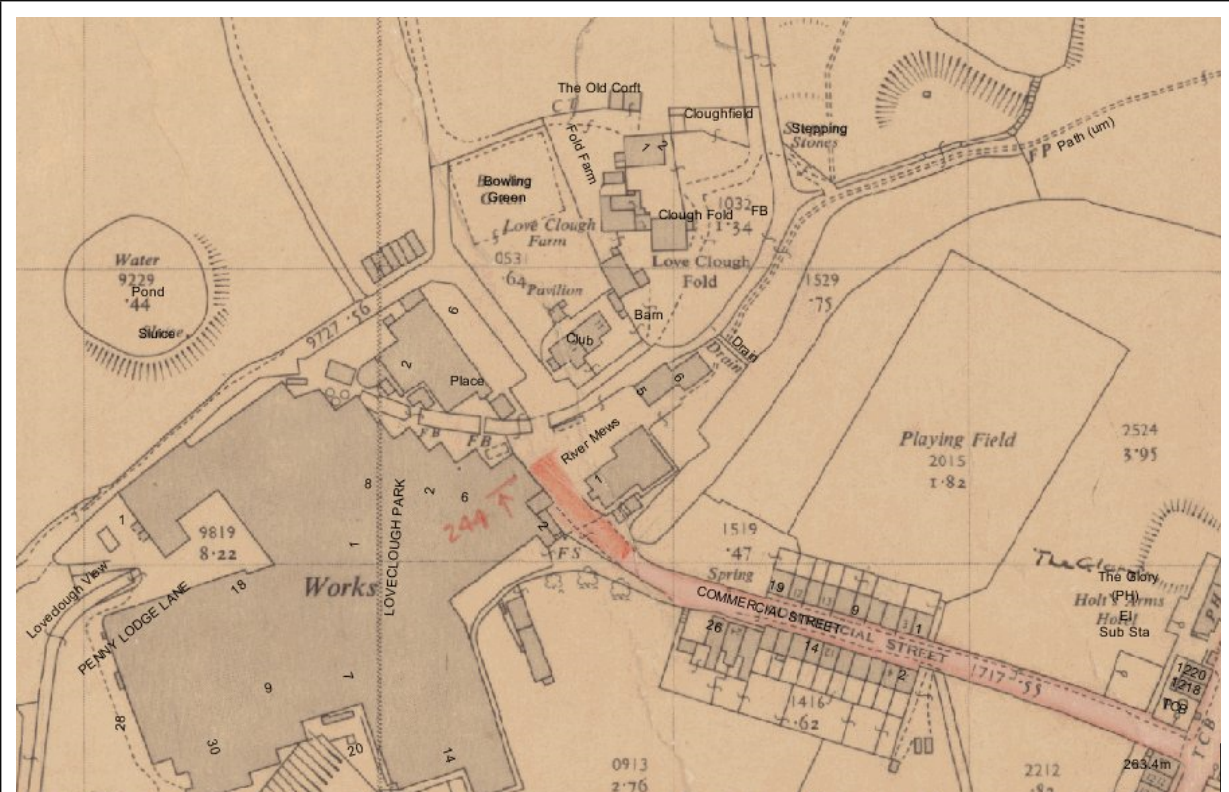
Revised Definitive Map of Public Rights of Way (First Review)

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 25th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.




<p>Observations</p>		<p>The route of Footpath 4 between point X and point Y is shown by a fine dashed line. The maps were hand-drawn and copied from the First Definitive Maps. The route to be added is not shown. The Revised Definitive Statement (First Review) remained unaltered from the Draft Statement with the exception of the correction to the direction which was originally described as being 'N.W to Height' but was corrected here to read 'N.E. to Height'. Since the publication of the Revised Definitive Map (First Review) part of Footpath 4 immediately west of point X has been legally diverted under the Town and Country Planning Act to allow for development.</p>
<p>Investigating Officer's Comments</p>		<p>From 1953 through to 1975 there are some slight inconsistencies with how the route of Footpath 4 was shown but the route, as shown within the watercourse between point X and point Y never appears to have been challenged or questioned during that time.</p> <p>The route to be added was not shown – with the exception of the Provisional Map which showed it between just north east of point C and point D and there were no objections to the fact that the route was not shown from the public when the maps were placed on deposit for inspection at</p>

		any stage of the preparation of the Definitive Map.
<p>Highway Adoption Records including maps derived from the '1929 Handover Maps'</p>	<p>1929 to present day</p>	<p>In 1929 the responsibility for district highways passed from rural 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 rural district. 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 Handover maps formed the basis of further maps of the highway maintained at public expense in the County complementing the ledger books of the List of Streets. These were updated by the District Councils on behalf of the County Council 1974-2006</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, the 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>



Observations		Neither route is shown as being publicly maintainable highway on the adoption maps .
Investigating Officer's Comments		No inference can be drawn with reference to public rights.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. 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</p>

		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 routes under investigation run.
Investigating Officer's Comments		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.
Photograph submitted as part of an objection to the Definitive Map Modification Order made in 2007		Photograph submitted as part of an objection to the Definitive Map Modification Order made in 2007 to add a public footpath through Loveclough Fold Farm (north of Limy Water).
		
Observations		<p>An application was originally made in 2005 for the addition of a public footpath on the north side of Limy Water passing through Love Clough Fold Farm. The application was prompted by the fact that the farm had been redeveloped into residential properties and the route claimed had been blocked. An investigation was carried out and an Order made in 2006.</p> <p>The Order received various objections including some which are relevant to the applications now under consideration. There were several submissions claiming that the Order route was</p>

		<p>not a public footpath and that the correct route of Footpath 4 – and the route used by the public – was the route now under investigation on the south side of the watercourse. One of the objectors submitted this undated photograph onto which he has drawn what he states to be the correct route of the footpath and has circled the location of a stile.</p>
Investigating Officer's Comments		<p>The photograph supports the user evidence submitted referring to the existence of a stile in the fence at point C and OS map evidence showing a worn track from this point.</p> <p>The fact that there are several references to existence of route to be added in 2006 suggests that use of the route was occurring during this time.</p>
Information from LCC Public Rights of Way Parish Files	1950 - 2016	<p>The parish files held by the County Council were examined to see if any reference was made to either route.</p>
Observations		<p>Queries regarding the correct alignment and recording of routes through Loveclough appear to have arisen during the early 1990s when the redevelopment of the site was taking place. At this time Rossendale Borough Council had an agreement with the County Council and they carried out public rights of way maintenance and enforcement work. They were (and still are) the relevant planning authority and would have dealt with any planning issues affecting public rights of way. Paper records held by the County Council for this period are therefore quite limited.</p> <p>There is no information on the files regarding the use of the route to be deleted until 2008 when a letter from LCC to a potential purchaser of the buildings now known as Riverbank Mews stated that we believed that Footpath 4 had been incorrectly recorded in the watercourse and could find no evidence to suggest that the watercourse had previously been covered or was used by the public on foot.</p> <p>In 2004 there is a plan and note on file referring to the route to be added being in poor condition and requiring work and that there was a proposal to redevelop the buildings adjacent to point B on the Committee plan which may require a diversion.</p>

		<p>In 2005 there is a letter to the Rossendale Section of the Pennine Paths Protection Society making reference to a claim which they were looking to submit to record a route on the south side of Limy Water connecting to Footpath 10.</p> <p>In 2008 there is further correspondence regarding the sale of the buildings/land between point A and point C. At that time the land was owned by Hurstwoods who had gone into liquidation and it was being sold for redevelopment. The prospective purchasers were informed by the County Council that there was no recorded public footpath through the site but that we were aware that a claim may be submitted.</p>
Investigating Officer's Comments		<p>During the period between 2004 and 2008 there is correspondence relating to use of the route to be added and the fact that evidence was being compiled to submit a claim to record it as a public footpath.</p> <p>There is nothing on the files to support the view that the route to be deleted was correctly recorded as Footpath 4 or that it was used by the public.</p>
Photographs submitted by the Applicant	February 2010	Photographs submitted by the Applicant.







Observations

Three photographs were submitted by the applicant dated February 2010 and labelled as showing the 'first blockage by Dwell Developments'.

The photographs show a wooden step-over stile in a fence line across the route to be added at point C. A yellow waymark arrow is visible on the stile pointing from point C towards point D. The stile does not appear new and the vegetation growing up around it - and through it - has died back due to the fact that the photograph was taken in February but indicates that the stile had been in existence for some time. Temporary fencing can be seen on the photographs which appears to prevent access along the route between point B and point C.

Investigating Officer's Comments		The photographs indicate that access had been provided at point C prior to 2010 and that the stile had been waymarked as a public footpath. The existence of the stile at this location is consistent with the user evidence provided in support of the application.
----------------------------------	--	--

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

Landownership

Landowners affected by both applications in accordance with File Nos. 804-576 and 804-577 are as follows:

- Foulsyke Farm, Wigton, Cumbria
- Dunnockshaw Farm, Burnley Road, Dunnockshaw
- Clow Farm, Manchester Road, Clowbridge
- Dwell Developments Limited, Apartment 9, 1 Joiner Street, Manchester
- Avonbraid Limited, Moltano House, 302 Regents park Road, London
- Loveclough Fold Farm, Loveclough, Rossendale

Landownership Titles indicate that Tootal Ltd sold the land in 1981. Dwell Developments purchased the land crossed by A-C in 2009. Hurstwood Developments Ltd were involved at the location by 2002 as they sold other land nearby at that time.

Summary

No map or documentary evidence submitted as part of the application, or examined as part of the detailed research carried out by the County Council supports the existence of the route to be deleted.

In addition there is no evidence on site that the route physically existed in the watercourse and it appears most likely that a drafting error occurred when this part of the route numbered as Footpath 4 was recorded (drawn) on the OS base maps used in the preparation of the Definitive Map.

It is considered that the route to be deleted was wrongly recorded and that footpaths on balance existed in 1953 on the southern bank (possibly being the claimed route A-D or more likely a route using another point of access near point C) and also on the north side of limy water (as addressed in a separate application to add a footpath through Clough Fold Farm).

The map and documentary evidence examined as part of this application supports the user evidence for the route to be added between point A-B and C-D and the route through the former printworks appears to have been available from point A to point C since the late 1800s with a path marked on maps along most of the length C-

D (but nearer to Limy Water than point C) from 1893 and the existence of a stile at point C being documented in 2010. The point of time when access from point B to D became actually at point C is difficult to pin point but it would appear on the evidence to be only since 1960s.

Head of Service – Legal and Democratic Services Observations

Evidence submitted by the applicant regarding the deletion of part of Footpath No.4 Rawtenstall

Information supplied by the applicant

A modification Order was made in 2006 on the new residents of the hamlet of Loveclough Fold (file 804421), the applicant states the reason for this was the closure of access which caused a section of the local population to feel aggrieved, believing (wrongly) that they had a full right to walk through the area, although its status as private ground was now implemented by the new owners, and the access previously freely given was now denied, which was the owner's right.

It is stated the history of the footpaths in this area were dominated by the Loveclough Dying and Bleaching Works Circa 1750, these can be seen on maps published from 1849. It can be seen from the maps that the factory and topography of the area has changed over the years, land was acquired when the factory was expanded and this included the land which Loveclough Fold nestles on, this increased water usage and 4 lodges were built and this altered the topography of the area particularly the South East bank of the Limey River. The river bank was built up with a wall some 2 metres high which is still in place today, the original construction was to facilitate the building of the lodges but had the spin-off effect of providing an excellent footpath along the river bank.

The applicant refers to the definitive path line which takes the line up the River Limey from the bridge in Commercial Street to the point marked on the footbridge, but the LCC Mario Map and the 2006 Order Map does not show this.

The applicant has provided copies of maps dated 1849, 1893, 1895, 1913, 1931, 1947 and 1962, these maps have been referred to above in the Planning and Environment Observations.

Reference is made to the drawing of the definitive map, it is stated that the cartographer misunderstood and created a modern path that is at odds with the evidence presented. There can be no doubt that the line of the path placed in the river was not based on any previous line as the situation with the river since the mid-1700s was simply not compatible for anyone to comprehend walking along the river bed.

Obtaining physical evidence that the path in the river existed in the past is simply impossible as there is none.

An extract from an e-mail from the County Council has been provided, the applicant quotes 'There is actually a bridge which, to access the river, would involve an 8 to 10

foot jump from the bridge to get into the river, causing significant injury, even loss of life'. The applicant states it is this evidence along with the fact that during the last 60 years of this path's existence, it has at no time been signposted or any attempt made to create safe access into the river, and warning notices were conspicuous by their absence advising walkers of the risk associated with using the path. That brings this path's validity into question, an extract of the Council's Committee report for the making of the Order of 804/421 has also been provided.

The applicant states that no maintenance has ever taken place by LCC regarding this footpath such as signposting, maintain the surface, maintaining the bridges etc.

The applicant also states it must have been obvious from an early stage that a mistake had been made and yet for over half a century nothing has been done to correct it. And that it is abundantly clear that the placement of the path in the river was an anomaly which clearly should have had attention drawn to it, and action taken to correct the definitive map.

The applicant has supplied copies of the following documents to support his application:

- Selected documentation from LCC Legal Department
- Copies of the relevant Definitive Maps
- Copies of Maps from LCC
- Maps from the years of 1849, 1893, 1895, 1913, 1931, 1947 and 1962
- Photographs of the route

Evidence submitted by the applicant regarding the addition of a Public Footpath from Footpath 10 Rawtenstall to Commercial Street

The applicant states the purpose of this application is to put right a wrong and refers to the Committee report for the 804/421 matter, and states that the evidence extracted from this document must be presumed that, as it originates from LCC's legal department, the facts have been checked and therefore can be taken as accurate and are therefore submitted as evidence.

The 804/421 modification Order was made in 2006 on Loveclough Fold. The reason being the closure of access which caused a section of the local population to feel aggrieved believing (wrongly) that they had a full right to walk through the area, although its status as private ground was now implemented by the new owners, and the access freely given was now denied, which was the owners' right.

Copies of maps from the years of 1893, 1895, 1913, 1931, 1947 and 1962 have been provided with this application, these maps have been referred to above in the Planning and Environment Observations.

Aerial photographs of the years of 1940 and 1960 have also been provided, again these have been referred to above in the Planning and Environment Observations.

The applicant states that the problem with the footpath did not come to prominence until the factory closed in 1980, and the land it occupied was subsequently sold off.

Public access to the North West bank into and through the hamlet had been in use for over 400 years, although strangely no public right of way was ever established. Access would seem to have been on a (very liberal) permissive basis by the main owners (and their predecessors) Tootal Ltd. This came to an end when the factory closed and the whole area was sold to private development. This of course left the path along the South East bank as the only viable path through the area, except for the small matter of its status.

Since the development work started on both banks of the river three attempts have been made to disrupt the customary usage of the footpath. The first by Hurstwood and twice by Dwell Developments, the current owners of the site, of what once was the site of offices and workshops originally belonging to Tootal Ltd, the original owners of the area.

When Hurstwood owned the site, the site manager attempted to close the path by intimidation and blocking the path with an old caravan in such a way as to dissuade people from using it. It did not work as dog walkers and ramblers continued to access the stile from its westerly opening, across the stile – and with it the subterranean drain shown on the OS map – and use the footpath network beyond and vice versa.

The second interruption to the public's right to usage of the path was when Dwell Developments took over the site from Hurstwood. Work began to convert the more northerly set of workshops to semi-detached residential properties. Those buildings have remained in that state since 2011. Also it was during this time that the path was blocked for the second time when ancillary ground work took place to the north east of the building. This resulted in the destruction of the boundary hedgerow and fence, including the stile.

The stile poses a conundrum and is a microcosm of the overall footpath situation in the area. Clearly it did exist and the remains of the stile are in the possession of the LVRA. LCC would not put in a signpost on the path (from Commercial Street) stating "that the footpath was a definitive path". But if the path was not definitive why was it furnished with a stile and footpath markers and not a signpost. The stile gave the impression of the path being the definitive path through the area (which everyone believed).

After removing the screens Dwell Developments later constructed a post and wire fence which was installed in the summer of 2012 and walkers again started to use the path shortly after this time, although the stile had been removed. They just stride over the fence erected by Dwell and the path was put back in regular use. Just prior to completion of this modification order the path was "blocked" by Dwell for the second time (Winter 2015-2016) this time with a substantial wooden fence, Although a "gap" seems to have been left at the end which walkers have taken advantage of and are thus continuing to use the path.

The applicant makes the following points:

- The accompanying modification order clearly shows that the placement of the definitive path Rawtenstall No.4 in the River Limey was a mistake of some magnitude which has been left unattended for far too long. The impact of the

placement of the definitive path in the river has had serious repercussions in the recent past and is still having not only on walkers but also on the lives of the good residents of the hamlet of Loveclough Fold today.

- The section of footpath along the river bank does not stand in isolation. It is part of a group of paths running from Crawshawbooth and the local area to the historic hamlet of Gambleside near Clowbridge and paths to the North, and thus provides vital and historic link along the valley and vice versa. Indeed the path acts as a very important footpath junction connecting (as it always has done) Footpath No.94, 1, 2 and the continuation of Footpath No.4 Rawtenstall to the South at Commercial Street at Loveclough Fold, and Footpaths No. 9, 10 and the continuation of Footpath No.4 Rawtenstall to the north of Loveclough Fold. The path in physical terms may only be short but its importance to the area cannot be emphasised enough.
- For decades walkers have followed the line of the path shown on the OS map of the area which has always shown the path on the South East bank of the river and running through the courtyard of what it is today the property of Dwell Developments. Having this path as the definitive path would marry up with the OS map of the area and bring a settlement to the footpath situation in the area, and finally do away with the situation that has existed for far too long of "definitive path to be or not to be that is the question".
- Indeed the loss of this path would just add to the overall shambles that has prevailed in the area over the footpath situation since 1950, forcing walkers to make a substantive detour via: Footpath No.4 or Commercial Street and along Burnley Road and vice versa, to reach paths to the North or South, causing unnecessary inconvenience, not to mention the loss of an ancient track.
- Having the definitive path running along the bank of the river and through the courtyard of Dwells Development would also help to protect the path's status whatever may happen in future to the area owned currently by Dwell. This path's existence since the 1980s has relied on a wing and a prayer; it is only the dogged determination of local people and walkers that have maintained its use and this should not be the case. As stated in the accompanying modification order the line of the definitive path ultimately belonged to Lancashire County Council who would seem to have been in some neglect of its statutory duties to provide a satisfactory path through the area. This now needs to be addressed.

The extracts i from the committee report of 2006 highlighted by the applicant is said to be evidence for this application:

1. The next map examined was the first edition of the 25-inch map published in 1893 – there is a collection of buildings on the opposite side of the brook (the South East Bank) with a row of double pecked lines signifying a path or track of some sort, leading from the far north-eastern side of the buildings along the side of the brook.
2. Riley Bros. Submit that the Tootal Print Works initially owned the land at Loveclough Fold, along with the dwellings: J and G Bridge rented the farm. In 1983 Rileys purchased the land from Tootal and Mr J Bridge continued to live in the farmhouse until his retirement. In 1988 following Mr Bridge's retirement Rileys decided to sell the farmhouse and surrounding barns for development.

In March 1989 these were sold to K and S Ainsworth and Rileys retained the surrounding land for farming purposes.

3. The Rileys state that Public Footpath No.4 has always been through the factory yard, in-between the two buildings, over a stile along the riverside and turning right up the hillside or between the lodges as per Public Footpath No.10, land owned by Rileys. There are stiles and footpath signs, which were installed by the Council. However these signs are poorly marked from Commercial Street. They are, however clearly marked from the stile to the rear of the buildings, marked as drain on Public Footpath No.4.
4. A map was attached to the gate showing the position of Public Footpath No.4. this too, was thrown into the river, this time by the occupier of the caravan who freely admitted as much. He said "I don't want people walking past my window". He also stated that Hurstwood did not want the footpath through the area where they intended to construct 'expensive houses', as it would reduce the value of the site.
5. On his second visit the Footpath officer confirmed that Loveclough Fold was not a Public footpath, and told the occupier of the caravan to take the fences down as they were blocking Public Footpath No.4. He took the fences down for a short time only, and then re-instated them within a few days.
6. In August 2004 Rossendale Borough Council were contacted regarding the failure to maintain the footpath, even though they were aware that an employee of Hurstwoods had deliberately blocked the access. A representative of Rossendale Borough Council came down to see residents of Loveclough Fold regarding the matter of the footpath access (or lack of it). He viewed the site, returned to the office, checked the relevant maps, and confirmed that the footpath and access is on the opposite side of the river, between the buildings of Hurstwood Developments.
7. It is submitted that around 1997, a sign for the Rossendale Way was put on Public Footpath No.4 on the stile behind the works buildings by Lancashire County Council, though this is not visible from Commercial Street.
8. The search completed by solicitors showed that a footpath existed on the other side of the river (Public Footpath No.4)

The applicant has also provided copies of the following in support of this application:

- An extract from the 804/421 committee report
- A copy of the 804/421 Order plan
- Copies of Aerial Photographs
- Copy of OS First edition
- Copy of OS 6" published 1895
- Copy of OS 6" Published 1913
- Copy of OS 6" Published 1928-1931
- Copy of OS 6" Published 1938-1947
- Copy of OS dated 1962
- Photographs of first blockage by Dwell Developments February 2010
- Various photographs of the route
- Photographs of latest blockage by Dwell Developments 2016

The applicant has also provided 55 user evidence forms in support of the route, 2 of these forms have been discarded as they are incomplete, the information of the other 53 forms is set out below:

The years in which the users have known the route varies:

1.5 years(2) 3 years(19) 5 years(2) 6 years(1) 8.5 years(1) 9 years(1) 14 years(1)
20 years(2) 27 years(2) 30 years(2) 40 years(3) 45 years(1) 48 years(1) 50 years(1)
54 years(1) 55 years(3) 59 years(2) 60 years(4) 63 years(1) 67 years(1) 70 years(1)
80 years(1)

52 users have used this route on foot, 1 user did not provide a response to this question. The years in which the users have used the route varies:

1930-1970(1) 1948-1975(1) 1950s-1960s & 1982-2006(1) 1954-2010(1)
1954-1967 & 1955-2015(1) 1958-1999(1) 1960-1980(1) 1960-1990(1) 1960-2015(1)
1960s-1970s & 2010-2015(1) 1961-2002(1) 1970-1980(1) 1972-1990s(1)
1975-2015(1) 1977-2015(1) 1980s-1990s(1) 1986-2015(1) 1988-2015(2)
1989-2008(1) 1995-2015(1) 2000-2001(1) 2005-2015(1) 2006-2010(1) 2009-2015(2)
2011-2012(1) 2012(19) 2013-2015(2) other users stated 'over many years', 'most years since 1990', 'most of the time', 'up until they cut it off' and one user who didn't provide a response. The 19 who used the route in 2012 appear to have done so just in that year.

The main places to users where going to and from include Commercial Street to the countryside, for a local walk, Clowbridge reservoir from Goodshaw Fold, from Loveclough to A682, Rough Hill to various destinations, home to the forestry, home to Hameldon, around the local lodges, to and from the CPA club, to and from Loveclough print works, to the fisheries and home to the moors.

The main purposes for the users using this route are for recreation and leisure, for pleasure, to access various walks, dog walking, for training runs and to get to work.

The times per year in which the users use the route also vary, from once to 2-3 times, 10-40 times, 50+, twice per week, 100+ and daily.

One user has used part of this route on horseback between the years of 1992-1998 and used it once per week. Another user has used the route on a tractor from the farm and they used it from being a child to a teenager very often in the summer.

49 users have seen other walkers / runners on the route, one user has seen others using the route on a tractor. The years in which the users saw others using the route vary but mainly throughout the time they used the route.

42 users agree the route has always run over the same line, 1 user responded with 'pretty much', 4 users never provided a response to this question, 1 user states 'yes although I as well as others have used an alternative route', another user states 'one time on west side of river then changed to east side, stile over fence at north side of refurbished buildings', 1 user states 'I used to use footpath 4 from the main road and then follow the claimed route, over a stile into the factory yard between the offices and the works garage', another user states 'I assume so, I only know of it because it was pointed out to me as an alternative to the path on the north west side of the river which I had used up to 2008 and preferable to walking in the river which was

indicated on the LCC map pinned on the fence', another user states 'not to my knowledge' but doesn't provide any further details.

When asked if there are any stiles/gates/fences along the route, 30 users state there is a stile, 12 other users state 'yes' but didn't provide any details, 3 users mention a fence, 1 user mentions a gate, 1 user refers to general obstructions, 2 users state 'no' to this question and 3 users did not provide a response to this question.

1 user mentions a gate was erected and was blocked by the developer.

20 users were prevented access by the low fence where the stile should have been, 1 user was not prevented access by the low fence, 1 user states the stile was blocked in August 2012 and in October 2012 it was not accessible, another user was only prevented when the houses were built, 1 user was prevented when Hurstwood blocked the footpath, another user was prevented by the developer but does not say who this developer was, 1 user was prevented in 1980, 3 users climbed over the fence, 17 users were not prevented, 2 users were prevented but did not provide details and 4 users did not provide an answer to this question.

Of those users whose use goes back to the 1960s and before into the 1950s or even 1948 most refer to a stile at point C but some do not recall a stile. One user since the 1960s refers to the stile being introduced

2 users worked for John Bridge on Clough Farm, they never received any instructions and one user states 'as kids we were allowed to roam free'. None of the users have ever been a tenant of the land in question.

1 user was stopped by a tenant of the new houses and was told it was not a Public Right of Way, the user did not turn back and continued to use the route. 1 user had heard that Hurstwood blocked the footpath, and other user heard Hurstwood installed a caravan on site, the occupant of which some found intimidating, another user had heard of some acquaintances being stopped from going through, and another users had heard of people being stopped by residents. 1 other user has also heard of others being stopped from using the route but did not provide any further details. 1 user was told by a woman that builder had had the right of way stopped this was in August 2012.

2 users have seen notices or signs along the route but didn't provide any details, another users stated that the stile was marked with LCC way marker signs. None of the users have ever asked permission to use the way, however 1 user has spoken to landowners when crossing the land.

After completing the user evidence forms, user are asked to provide any further information they think is necessary, this information is set out below:

- This path has been used all of my life
- This footpath was in existence along the banks of Limey Water long before the property was constructed

- The alternative route was also used until the owner of the land fenced it off. Though they have installed a gate at each end of the garden, both are padlocked
- Some years ago after someone spotted the poor mapping of the route, (it was shown on the river bed) closed the road erected fences and laid down grass. I have continued to use it as path on other side of river was blocked by Hurstwood building works
- It is obvious that somewhere along the history of this map, that an error has occurred in the ordnance of this map. The footpath has never gone through the middle of the stream (Limey Water)
- The path is part of a fairly easy walking route that is available for all abilities to use and takes in some interesting and varied scenery
- On behalf of Rossendale Roamers we would like the stile to be reinstated and the route made an official right of way thereby completing a route between Crawshawbooth and Clowbridge
- I have used this footpath most often in the 1970s, particularly during the summer to access the bottom lodge for picnics and leisure with friends
- I have used this footpath many times over the years from the 1960s up to the 90s when I haven't used it just as much but still want to access this with family and grandchildren
- I have used this path regularly for many years as a route towards Hameldon Hill and Burnley. It has always been considered a right of way

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

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order for the deletion

footpath recorded in watercourse where no evidence of point of entry or use

Evidence of alternative route (s) at the time it was first recorded

Likely error following line of watercourse

Against Making an Order to delete

possibility of a footpath up a watercourse

No challenge to how it was recorded in 1953

Evidence of alternative route(s) based on low user evidence numbers and on south side is issue of whether an access north of point C was used or whether stile at point C existed that early

In support of Making an Order for addition of route A-D

User evidence

Corroboration by mapping and documentary evidence

Reported view of Owner of C-D

No action by owners until possibly 1990s or later

Against Making an Order for addition of route A-D

The corroboration from mapping and documentary evidence may not assist corroborating access at the boundary at point C until possibly 1960s
Action by developer in possibly 1990s possibly indicates sufficient lack of intention to dedicate – date unclear

Conclusion

In this matter it is claimed that the line shown on the Definitive Map should be deleted and another section be added.

Looking first at the claim to delete a route from the definitive map

It is advised that to remove a route from the Definitive Map it is necessary to show on balance that it was put on the Definitive Map in error. In this matter the route to be deleted (X-Y on the plan attached) was first shown on the Definitive Map with a relevant date of 1953 and so the error needs to be shown to have been made in 1953.

Case Law (Trevelyan) confirms that cogent evidence is needed before the Definitive Map and Statement are modified to delete a right of way. Lord Phillips MR of the Court of Appeal stated that:

“Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake.”

One such evidence of error could be sufficient evidence of a correct route. In caselaw (Leicestershire case) Collins J held that in these circumstances, “it is not possible to look at s53(3)(c)(i) (adding a route) and s53(3)(c)(iii) (deleting a route) in isolation because there has to be a balance drawn between the existence of the definitive map and the route shown on it which would thus have to be removed” He went on “if (the decision maker) is in doubt and is not persuaded that there is sufficient evidence to show the correct route is other than that shown on the map, then what is shown on the map must stay because it is in the interests of everyone that the map is to be treated as definitive where you have a situation such as you have here, it seems to me that the issue is really that in reality section 53(3)(c)(iii) will be likely to be the starting point, and it is only if there is sufficient evidence to show that that was wrong – which would normally no doubt be satisfied by a finding that on

the balance of probabilities the alternative was right – that a change should take place. The presumption is against change, rather than the other way round”.

It is therefore suggested that the Committee first considers whether the claimed section A-D is already a footpath at law and should be added to the Definitive Map and then whether this means this or another route was the correct route of the footpath network in 1953 and therefore the actual footpath route was recorded as this route on the Definitive Map in error in 1953.

Committee may find that there is sufficient evidence of A-D being a footpath in law or another footpath exists such that its/their existence is on balance the proof of the error in recording X-Y but if the committee is not persuaded that there is sufficient evidence to show the correct route is other than that shown on the map, then what is shown on the map must stay unless there is further sufficient evidence that an error was made.

Committee is there advised to consider whether A-D is already a footpath in law – on balance of probability – satisfying the criteria in S31 Highways Act or dedication able to be inferred at common law?

Evidence for A-D being already a footpath in law

Considering first inference of dedication at common law.

There is some indication of a route available in the mapping and documentary evidence although the access was near point C rather than at point C prior to possibly the 1960s. No document available however is sufficient to indicate public use. The circumstances from which to infer dedication therefore will be the user evidence and how landowners took no action such that their intention to dedicate can be inferred. The owners of C-D, the Rileys would seem to have indicated their acquiescence of this being a public route and when the printworks, Tootal Ltd, owned the land where the route ran until the early 1980s they seem to have taken no action and a stile was even provided at some point in time by presumably the printworks or the farm owners.

Evidence of sufficient use for sufficient period of years with no action taken by owners is arguably the evidence from which to indicate inference of dedication at common law by owners prior to the developers' purchase of A-C.

Considering the criteria for deemed dedication from use under S31 Highways Act The deeming of dedication needs to consider 20 years use back from a calling into question of the route. In this matter the removal of the stile and the construction of a post and wire fence in 2012 would be a calling into question and the use considered 1992-2012 but within these twenty years, although use continues, there is the action by Hurstwood Developments Ltd. There is no clear year evidenced for when their employee on site takes some action to block access by fencing and even by a caravan and no clear evidence that this action was authorised by the owners of the land. The Applicant assesses the action as not working to stop public access. It is however referred to and recalled by several users. It may be that this action was sufficient to call the use of the way into question. The difficulty is to establish the year of this calling in. This is not possible on the information to hand but would appear likely to have been in the 1990s. Further interviews with users will need to clarify this.

Whichever year it was and assuming it was on Hurstwood authority it is suggested that on balance this action first brought this route into question. Looking carefully at the user evidence it is clear that there is sufficient user from the 70s 80s and 90s to show the twenty years user required as of right without interruption of whichever years the relevant twenty years are.

Looking at the information and evidence it is suggested that the Committee may consider that the criteria of S31 can be satisfied in this matter on balance in particular with a little more clarity sought for the date of the calling into question and dedication able to be deemed to have occurred of a footpath along the line A-B-C-D

Does the existence of A-D or other evidence sufficiently prove X-Y is a footpath line recorded in error in 1953?

A previous application for an extinguishment and creation order near to this location was considered by Cttee in Feb 2006 it was reported that "the definitive route has been recorded in the watercourseand is unwalkable throughout its full length. The watercourse is bounded on either side by man-made banking which appears to date back to the time when the land formed part of a factory site, when the original Definitive Map was being prepared. There is no evidence that the watercourse has changed its alignment since the Definitive Map was drawn.

It is not known why part of Public Footpath No. 4, Rawtenstall, was recorded as running down the water course, but the Environment Director accepts that it is possible that the public historically used a route either to the north or the south of the watercourse and that the route recorded on the Definitive Map was incorrect.

In dealing with this matter, the Environment Director has looked at all of the maps prepared as part of the Definitive Map procedure, together with old Ordnance Survey maps and aerial photographs. It has not been possible to determine where people historically walked and the Environment Director could, therefore, not instigate a Definitive Map Modification Order to be made on the basis that the footpath was recorded incorrectly and should be recorded along a different route." The extinguishment and creation Orders were made and confirmed subsequently

Whilst the Environment Director in February 2006 had not got any user evidence, in September 2006 Committee considered a report regarding a claim for a footpath on the north side of Limy Water at this location. Committee also considered a further report in July 2015 regarding the line of this footpath which was claimed to already exist in law on the northern side of the watercourse and Committee were satisfied that there was sufficient evidence that a footpath on a line to the north of the watercourse did subsist on balance and an Order was to be made. The Order has not yet completed its procedure and is not yet able to be confirmed and may yet not satisfy the test for confirmation.

Committee has therefore already decided that there is sufficient evidence to record a footpath on the northern side and the evidence was largely user evidence with some corroboration from mapping and aerial photographs. The sufficiency of evidence may have come from user in more modern decades but some of that user evidence did date back to 1953 and it is arguable that this route on the northern side

could have been the footpath already in existence and the footpath intended to be recorded when the Definitive Map maker drew the route of FP4 in the watercourse..

In considering the line A-D as claimed it is suggested above that Committee may consider that the evidence is sufficient for it to be a footpath in law. Whether it existed on the line at point C in 1953 is difficult to assess on the information to hand but even if point C was not such a set point of access, in earlier years it is possible that there was access slightly further north and there may have been a public footpath on the south side of the Limy Water also in 1953. There is a small amount of user evidence dating back to 1953.

It seems that there is possible evidence of a route on the northern side and/or also the southern side of the watercourse and the existence of at least one of them in 1953 would explain the wish to record a route at the location. Poor mapping skills seem to have lead to the route being put into the watercourse itself rather than on one or both of the banks. It is advised that Committee may wish to consider that the error is proved on balance by the existence of alternative route or routes.

If unsure that the routes on either side of the watercourse were footpaths by 1953 Committee may consider that there is evidence that there was not physically a footpath in the watercourse and that an error was made to record one there irrespective of the possibility of there already being alternative route or routes already being footpaths in 1953. The section recorded in the water used to extend further south than point X and if walked along the footpath user would have passed under various old footbridges and other bridges at the printworks. This may have been unlikely.

Summary

Taking all the relevant evidence into account about line A-B-C-D it is suggested that Committee may be satisfied that there is sufficient evidence for an Order to be made to add the route A-D to the Definitive Map as being already a footpath in law and that there is sufficient evidence to delete X-Y from the map by way of an Order.

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: 804-576 and 804-577	Various	Jane Turner, 01772 532813, Legal and Democratic Services

Reason for inclusion in Part II, if appropriate

N/A