

Regulatory Committee

Meeting to be held on 25 January 2023

Part I

Electoral Division affected:
South Ribble West

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Upgrade to bridleway of footpath from Haunders Lane to Liverpool Road, Much Hoole

(Annex 'A' refers)

Contact for further information quoting reference number 804-626:

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Brief Summary

Application to upgrade that part of Footpath 7-8-FP2 from Haunders Lane to Liverpool Road, Much Hoole to bridleway on the Definitive Map and Statement of Public Rights of Way.

Recommendation

- (i) That the application to upgrade part of Much Hoole Footpath 7-8-FP2 to bridleway be accepted in part on section A-B.
- (ii) That an Order(s) be made under the Wildlife and Countryside Act 1981 Section 53 to record bridleway on the Definitive Map and Statement as shown marked green on the Committee Plan A-B-C-D-G.
- (iii) That being satisfied that the test for confirmation can be met the Order(s) be promoted to confirmation.

Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for Footpath 7-8-FP2 to be upgraded to bridleway from Haunders lane to Liverpool Road on the Definitive Map and Statement of Public Rights of Way.

The route applied for is shown on the Committee plan by a black dashed line between points A-B-C-E-F and is currently recorded on the Definitive Map as a public footpath (7-8-FP2). During the course of the investigation carried out by the County Council it was discovered that the historical route of Watery Lane between Haunders Lane and Liverpool Road only followed the route recorded of Footpath 7-8-FP2 between point A to point B on the Committee plan and that the rest of the historical route ran immediately north of the footpath between point B and point C and immediately south of the footpath between point C and point G.

Within this report the Definitive Map line of the recorded footpath is referred to as 'the application route' and the original line of Watery Lane is referred to as 'the historical route'.

No user evidence was submitted in support of the application, which was based on the submission of historical map and documentary evidence, so the route under consideration is the application route but also the historical route between points B-G.

The county council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

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

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

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

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

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 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

South Ribble Borough Council

South Ribble Borough Council provided no response to consultation.

Much Hoole Parish council

Much Hoole Parish Council provided no response to consultation.

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	4563 2281	Gated junction of Watery Lane / 8-7-FP2 with Haunders Lane
B	4588 2290	End of enclosed surfaced track from where a trodden path continues along field edge
C	4622 2270	Walked footpath crosses culverted watercourse
D	4624 2269	NE corner of field, no way across ditch
E	4634 2269	Trodden line crosses field boundary at junction with route historically known as Green Gate Lane
F	4656 2264	Broken pedestrian kissing gate at junction with Liverpool Road
G	4655 2263	Unbroken hedge alongside Liverpool Road

Description of Application Route

A site inspection was carried out in June 2020.



n.b. Reference to public rights of way shown on the Definitive Map and Statement are generally given in the form 7-8-FP2 or Footpath Much Hoole 2. The form '7-8-FP2' has been used in this report.

The application route commences at a point on 7-8-FP2 at the junction with Haunders Lane (point A on the Committee plan).

The application route passes through field gates to run in a generally easterly direction along an enclosed stone surfaced track. The stone surface is 2.5 - 3 metres wide and the enclosed strip approximately 8 metres wide.

The enclosed track ends (point B) with access to fields on either side and the application route continues to the south of a ditch as a trodden path along the field edge through to where the trodden line crosses the ditch via a substantial culvert (point C) wide enough to accommodate farm machinery passing from one field to another. The application route crosses the watercourse at this point although the earlier mapped line of the footpath continues along the south side of the ditch in a generally easterly direction to the corner of the field (point D) where there is no longer any provision for crossing the ditch and hedge. On the north side of the ditch and hedge (just north of point D) is 7-8-FP2 and use on foot is evident on this section with a trodden line continuing along the northern side of a field boundary to pass through a hedge (point E). The trodden route and 7-8-FP2 follow the southern edge of another field then passes through a gap at the south-east corner of the field from where the route is fenced on its north side from a field grazed by horses.

The route exits onto Liverpool Road where there are the remains of a broken wooden kissing gate at point F.

The total length of the route is 1050 metres.

During the course of the investigation, it became apparent that although the applicant specified that the application route was that recorded as 7-8-FP2 the map and documentary evidence submitted in support of the application referred to a slightly different route. This route, where it varies from 7-8-FP2, is shown by a bold dashed green line on the Committee plan and was historically shown as a bounded route within which the watercourse was located. Having examined the maps in detail, it is the Investigating Officer's view that 7-8-FP2 was recorded running alongside, but not within the old boundaries of the historical route from point B through to point G.

Map and Documentary Evidence

Several maps, plans and other documents were examined to discover when the application route and historical route came into being, and to try to determine what their status may be.

Note: Maps reproduced in this report are not to the original scale.

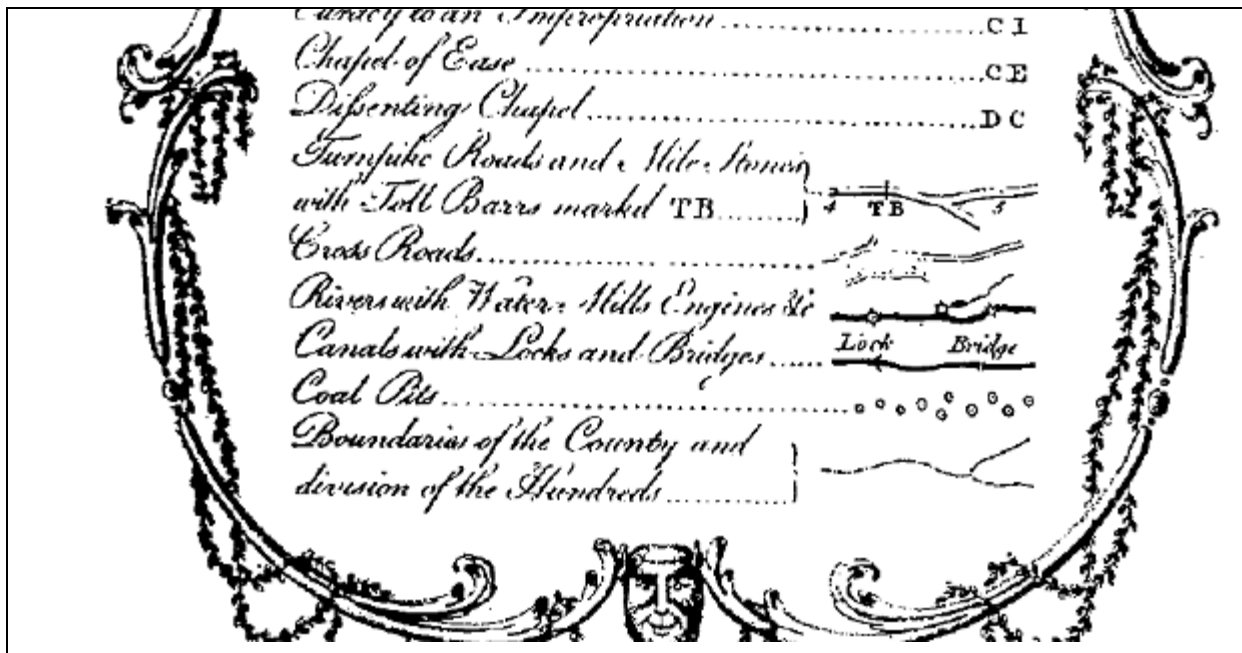
Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map	1786	Small-scale commercial map. Such maps were on sale to the public and



of Lancashire

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.

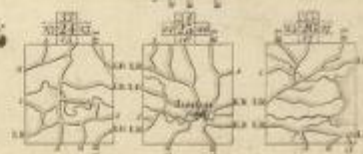




Observations		Neither the application route nor historical route are shown.
Investigating Officer's Comments		The routes probably did not exist at the time or if they did exist, were not considered to be a substantial public vehicular route by Yates. If they did exist it would have been very unlikely for a route considered to be a footpath or bridleway to be shown on such a small-scale map.
Cary's Map of Lancashire	1787	<p>John Cary was described as 'the most representative, able and prolific of English cartographers'. He was as busy a publisher as he was a cartographer and engraver, and until his death in 1835 published a constant flow of atlases, maps, road maps, canal plans, globes and geological surveys. He set new high standards of engraving and map design and in 1787 he published a 'New and Correct English Atlas' containing 46 maps which was re-issued ten times until 1831.</p> <p>In 1794 the Postmaster General commissioned Cary to survey the main roads of Great Britain and his information on roads may be viewed with above average confidence.</p>



The middle figure denotes the number of the plate, and the figures at the top and bottom, explain its connection North and South, and those at the sides, East and West.



Turnpike Roads, thro' enclosed countries

D^o thro' unenclosed d^o

Bye Roads are marked by closer lines, as

N.B. The turnpike Roads to and from London, are distinguished by the letters L.R. which will be a sufficient guide for uniting those Roads, and the junctions of all the other turnpike Roads are shown by figures of reference.

Churches and Chavels

Observations		Neither the application route nor historical route are shown.
Investigating Officer's Comments		The routes probably did not exist at the time or if they did exist, were not considered to be a substantial public vehicular route. If it did exist it would have been very unlikely for a route considered to be a footpath or bridleway to be shown on such a small-scale map.
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.



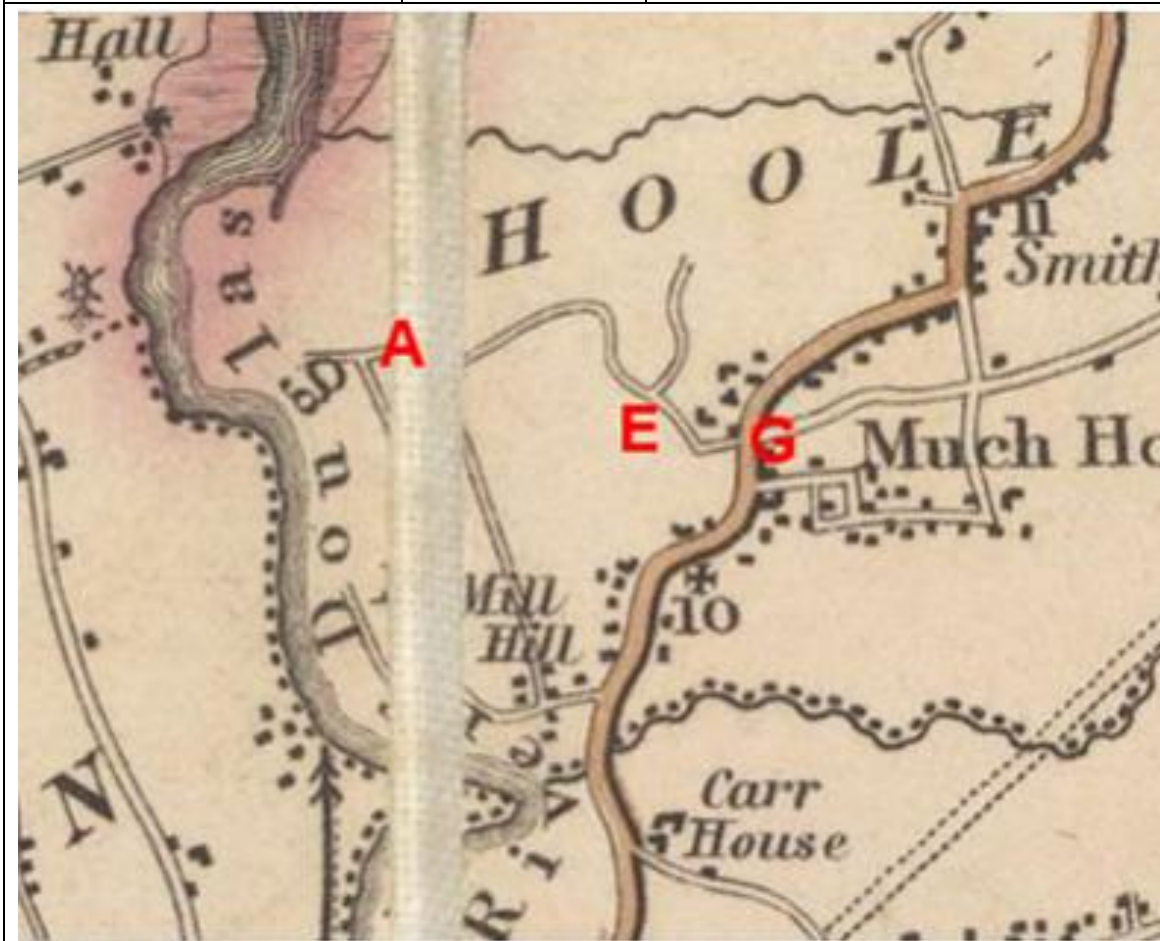


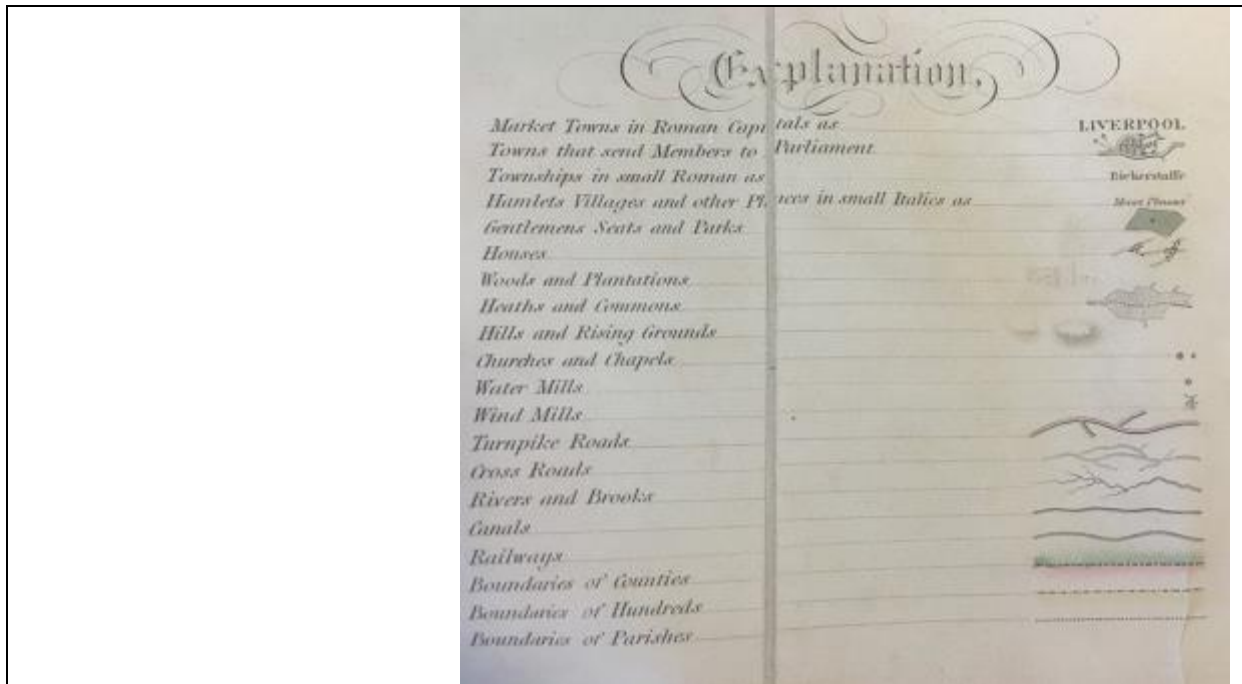
Turnpike Roads _____
 Cross Roads _____
 Towns & other Places _____
 that send Members to Parliaments } _____
 Boundaries of Counties _____

Observations		Neither the application route nor the historical route are shown although a short stub possibly indicating the start of a route can be seen extending west from Liverpool Road consistent with the eastern end of the route at point G.
Investigating Officer's Comments		The routes probably did not exist as a through route at the time or if it did exist, was not considered to be a



		substantial public vehicular route by Greenwood. If it did exist it would have been very unlikely for a route considered to be a footpath or bridleway to be shown on such a small-scale map.
Hennet's Map of Lancashire	1830	Small-scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.





<p>Observations</p>		<p>The full length of a route similar to the application route/historical route is shown as a cross road consistent with how Haunders Lane (a public vehicular routes) is shown. No watercourse is shown affecting it. A route extending north from the application route at point E is also shown as a cross road leading to what appears to be a dead end. The curve of the route is different to the application route or to what was shown as Watery Lane on later maps but not inconsistent in the context of its time and the small scale.</p>
<p>Investigating Officer's Comments</p>		<p>It is not fully known what is meant by this the term 'cross road'. As the only other category of 'road' shown on the map are turnpike roads, it is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i> Manchester High Court (1995) [C94/0205] Judge Howarth examined various maps from 1777-1830 including <i>Greenwoods, Bryants and Burdets</i>. Maps of this type, which showed cross roads and turnpikes, were maps for the benefit of wealthy people and were very expensive. There was "no point showing a road to a purchaser if he did</p>



		<p><i>not have the right to use it.”</i></p> <p>It is unlikely that a map of this scale would show footpaths suggesting that a route existed as a substantial through route which was considered to be more than a public footpath at that time.</p>
Canal and Railway Acts		<p>Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high-speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.</p>
Observations		<p>The land crossed by the application route was not affected by any existing or proposed canals.</p>
Investigating Officer's Comments		<p>No inference can be drawn with regards to the existence of public rights.</p>
Tithe Map and Tithe Award or Apportionment	1841	<p>Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large-scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.</p>



152	Acad	2	21
59		2	7
4		10	23
152		2	25
153		2	30
222		1	33
351		1	8
376			12
379			17
374		1	13
385		9	21
399		2	27
471		3	28
531		7	36
697		1	27
712		2	31
714		1	4
		117	236

Observations

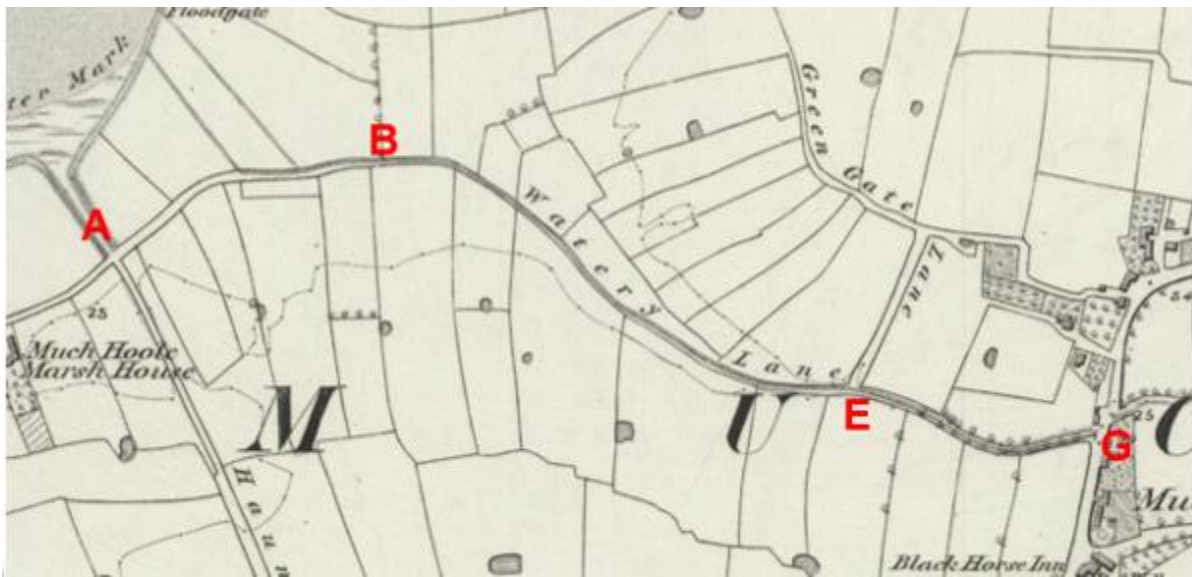
A route consistent with what was later shown as 'Watery Lane' or



		<p>approximating to the full length of the application/historical route appears to be shown as a substantial bounded through route and is numbered as plot 152. A route is shown extending north from point E which is also numbered (153). Both routes are listed at the end of the Tithe Award as roads. No watercourse running along or adjacent to the route is shown.</p> <p>The list comprises of 17 routes which are labelled at the end of the Award as roads. Looking more closely at the 17 routes listed, 11 of those routes are now recorded as vehicular highways for all or most of their length, 3 routes (including the application route) are recorded as public footpaths, but applications have been received for 2 to be upgraded; and 3 have no recorded public status for all or most of their length (including the route extending north from point E).</p>
Investigating Officer's Comments		A route existed in 1841 which was similar to the application/historical route and was considered to be part of the public vehicular highway network at that time.
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		There is no Inclosure Award for the land crossed by the application route.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
6 Inch Ordnance Survey (OS) Map	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-1845 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





Map Source: National Library of Scotland

Observations

The application route is shown starting at an open junction with Haunders Lane (point A) to run north east along a fenced route (in the same way that Haunders Lane, a public vehicular route, is shown). Midway along this enclosed track (between point A and point B) it is joined by a watercourse which is shown by double lines within the boundaries of the lane. A strip of land continues – fenced on either side from the adjacent fields with the

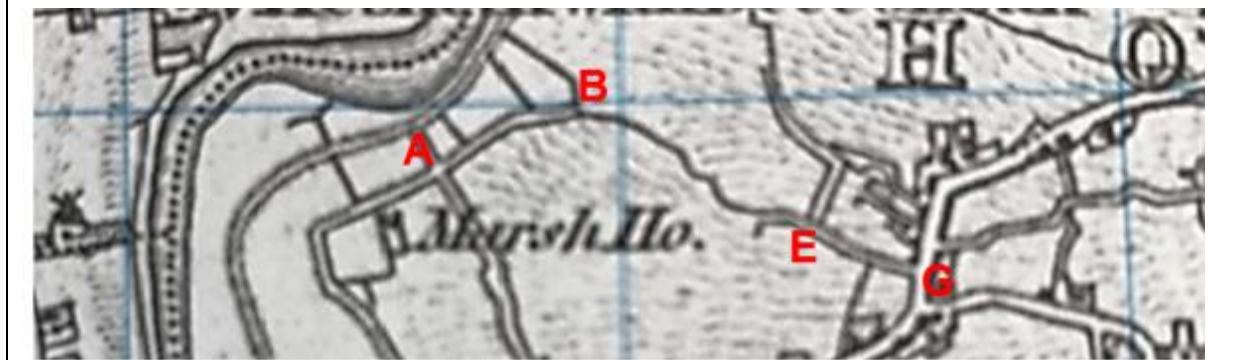
time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.



		<p>watercourse running within it to an open junction with Green Gate Lane (point E). On this section the route is named on the map as 'Watery Lane'.</p> <p>The application route appears to be on or just outside the southern boundary of Watery Lane (the limitations of scale prevent greater precision) then, after crossing the brook and lane, outside the northern boundary. A separate footpath is not shown.</p> <p>At point E the road numbered on the Tithe Map as plot 153 is shown on this map extending north and is named as Green Gate Lane providing access to fields to the north west and east onto Liverpool Road (now known as Liverpool Road and a former turnpike road).</p> <p>From just south of point E Watery Lane continues in a generally easterly direction as a fenced route with the watercourse still shown along it through to point G where it ends at the junction with Liverpool Road. At this point the watercourse is shown emerging from under Liverpool Road. n.b. although described west to east the water would flow east to west although the contours indicate that the fall is very slight.</p> <p>The last section is shown as being tree-lined. The application route immediately to the north of Watery Lane is not shown along the field edge on the north of the lane.</p>
Investigating Officer's Comments		<p>The application route/historical route section A-B existed in 1844-1845 consistent with how it is depicted on the Tithe Map prepared several years earlier. The historical route is shown as part of a significant fenced through route which is named on the map, running through to Liverpool Road (point G). Watery Lane is also shown to connect to another fenced through route at point E suggesting that it would have been capable of being used at that time. The fact that a watercourse is</p>



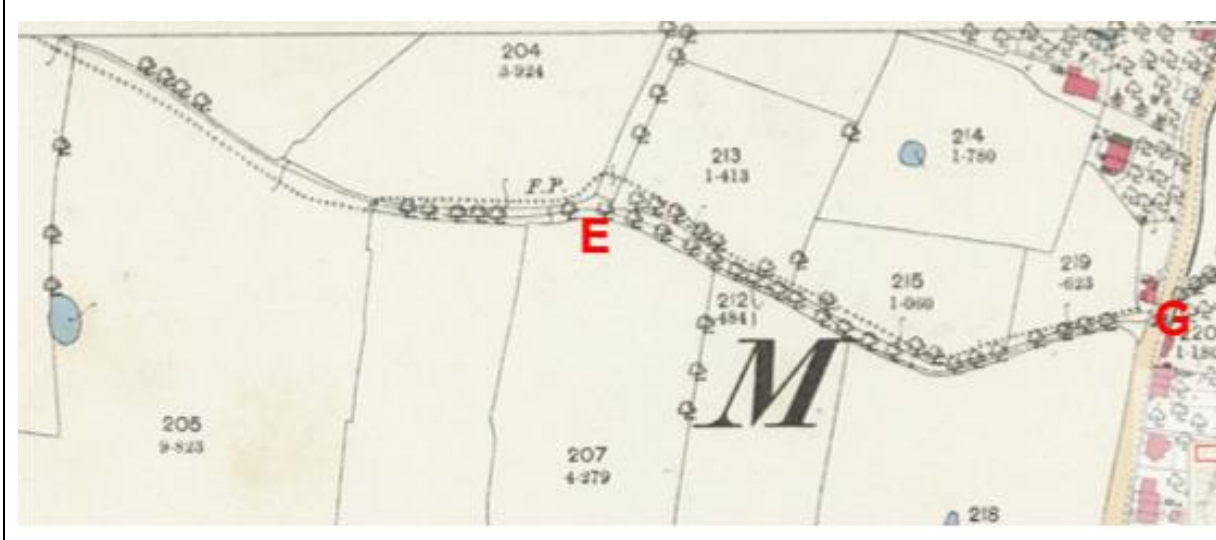
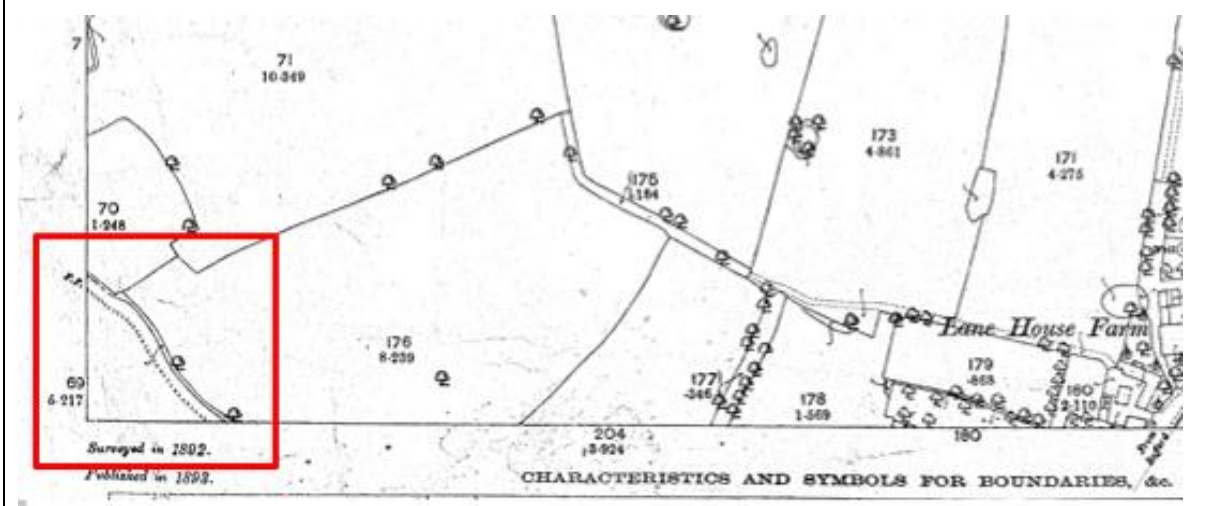
		<p>shown along much of the route and the fall is only 5m over 1km, together with the fact that the route was known as 'Watery Lane' suggests that it may have been quite wet which may explain why the application route alongside Watery Lane later came into existence, something that was quite common at the time. It suggests that it was used by non-pedestrian traffic (horses and carts). The application route from point B through to point F is not shown outside the bounded track suggesting that at that time all traffic using the route – whether on foot or otherwise would travel along the historical route known as Watery Lane.</p>
Cassini Map Old Series	1842-1852	<p>The Cassini publishing company produced maps based on 1" Ordnance Survey maps enlarged and reproduced to match the modern day 1:50, 000 OS Landranger Maps and are readily available to purchase.</p>

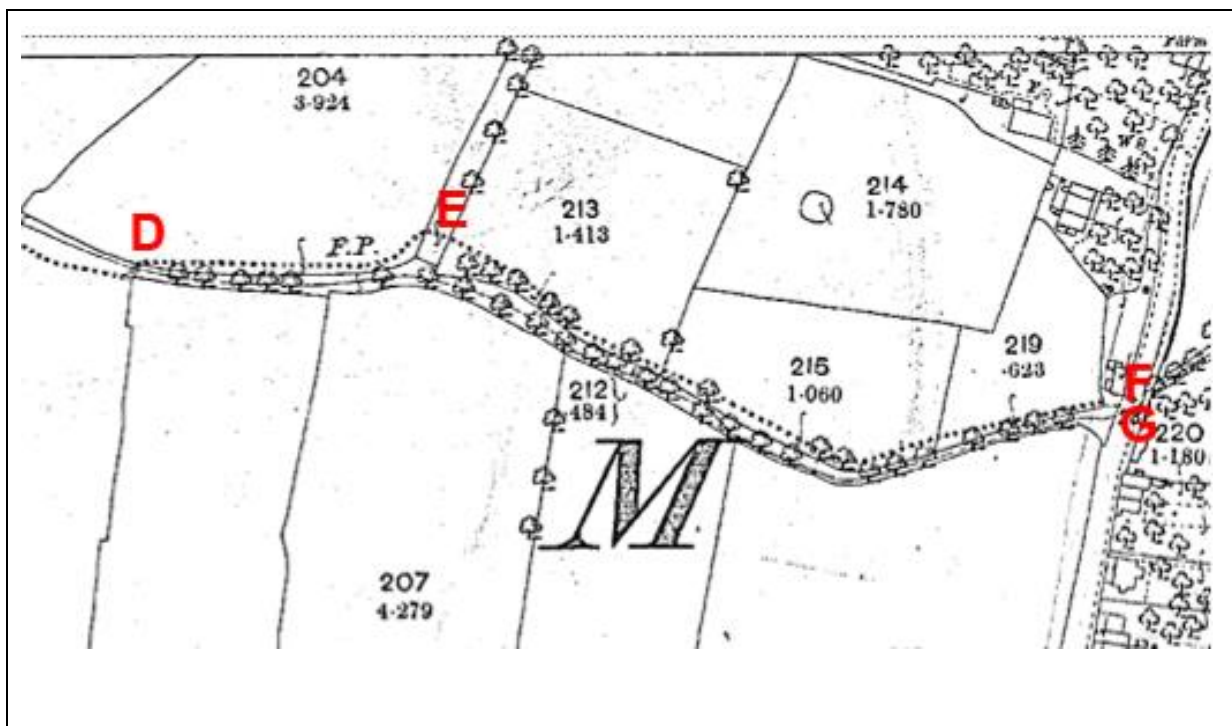


Old Series sheets used to create this map:

Sheet 89, N.E. Quarter, pub. 20th February 1843
 Sheet 89, N.W. Quarter, pub. 20th December 1842
 Sheet 90, N.E. Quarter, pub. 1st October 1842
 Sheet 91, N.E. Quarter, pub. 31st December 1852
 Sheet 91, N.W. Quarter, pub. 31st December 1852
 Sheet 91, S.E. Quarter, pub. 30th June 1852
 Sheet 91, S.W. Quarter, pub. 31st December 1847.

Observations		The application route and historical route Watery Lane is shown as a fenced route from point A to point B. Watery Lane is shown from near point E through to point G with a single line drawn along the middle section consistent with how field boundaries and minor watercourses (less than 15 ft wide) are shown. The application route east of point B is not shown and neither is the historical route of Watery Lane shown between points B and E.
Investigating Officer's Comments		The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The early (First Edition) OS maps on which the Cassini Old Series maps were based were originally produced for military purposes. The inclusion of part of the route on those maps suggests that a substantial route existed at each end, but the middle section of the application route and historical route is not shown, only a stream, suggesting that the route was not a significant through route at that time. The application route east of B either did not exist or was not shown due to limitations of scale.
25 Inch OS Map LXVIII.10 LXVIII.11 LXVIII.15	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891-1892 and published in 1893.





Observations

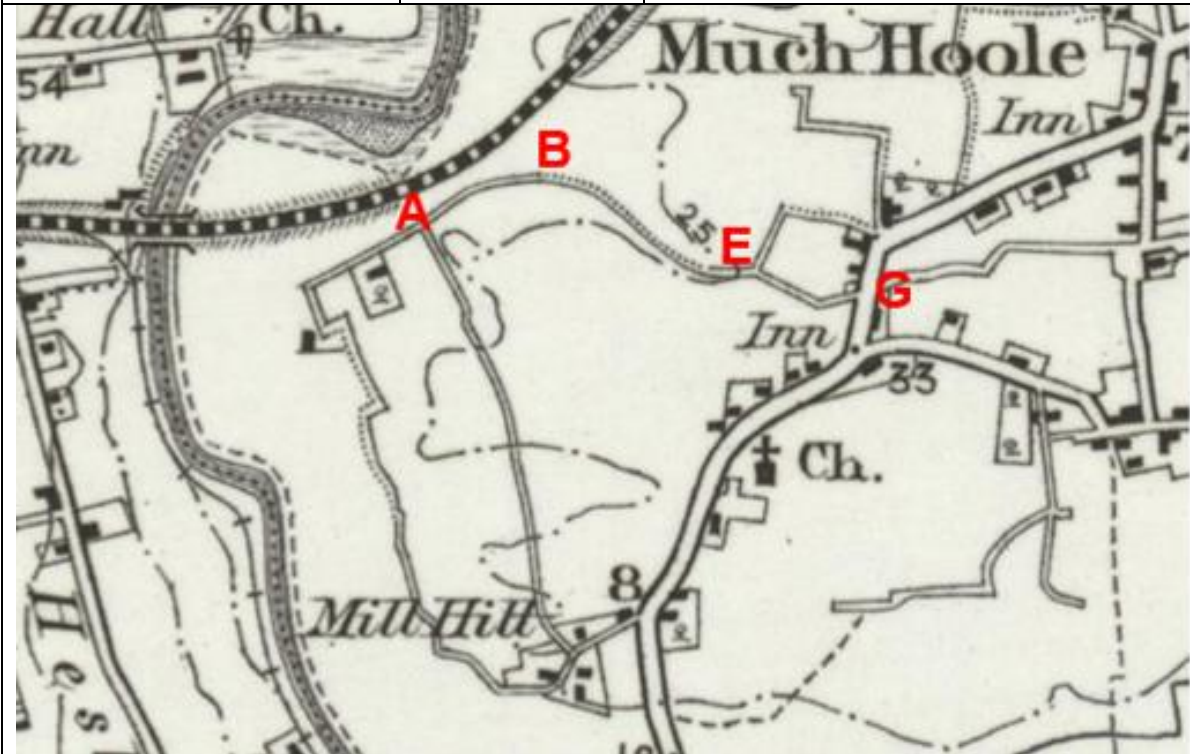
Between point A and point B the application route/historical route are shown as a double fenced route with a dedicated parcel number and acreage. It is not shown with a thickened line along the southern boundary – in contrast to Haunders Lane from which it starts.

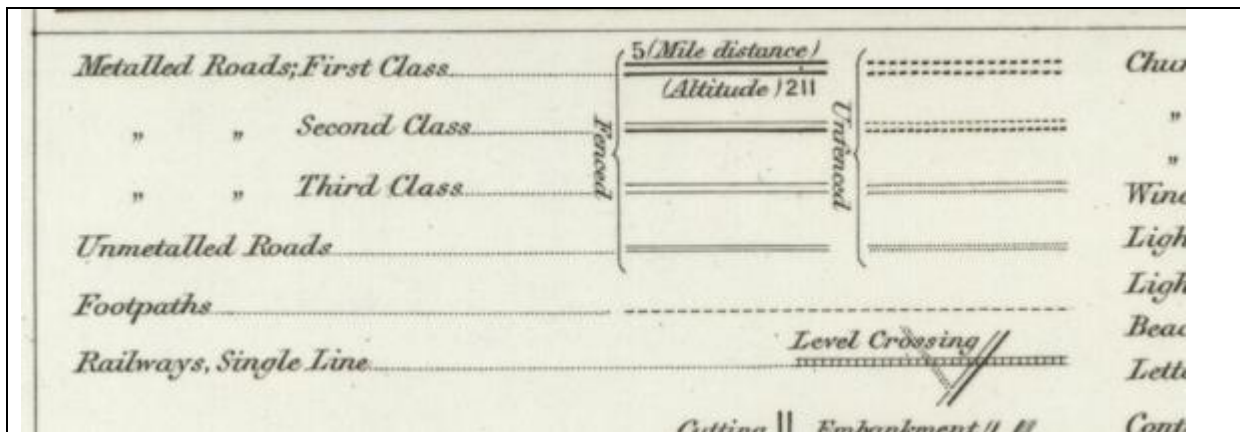
At point B a line is shown across the route beyond which the application route, marked by the use of narrow double-dashed lines, is shown labelled as a footpath (F.P.) running to the south of the watercourse within fields numbered as parcels 21, 20, 69 and 205 and crossed by 3 field boundaries. There is no culvert shown at point C and the footpath continues to the corner of the field (point D) where the route crosses the watercourse to continue east, still marked as a footpath ('F.P.'). The double-dashed line of the footpath bends north and through the fenced route numbered as parcel 177 (point E) and the route shown as F.P. continues generally east along the fields to the north of the double fenced historical route, shown on earlier maps as part of Watery Lane, passing



		<p>through the fields numbered as parcels 213, 215 and 219 and passing through 5 field boundaries between point D and point F – where it exits onto Liverpool Road</p> <p>The historical route named as Watery Lane on the First Edition 6 inch map is no longer named on this map and no longer appears to have been double fenced between points B and D.</p>
Investigating Officer's Comments		<p>The application route between point A and point B existed as a substantial fenced route in 1891-92.</p> <p>Beyond point B Watery Lane is shown to have altered in the 45 years since the First Edition 6" sheet was prepared in such a way as to suggest that any previous use by horses or horse drawn vehicles had declined, or possibly ceased. The application route between point B and point F is shown denoted as a footpath suggesting that when surveyed by the OS the route apparent on the ground was consistent with pedestrian use. The route shown as a footpath between point B and point D was not separated from the adjacent fields but was shown further south in the field than the original bounded route and from point D to point F was shown to the north. The fact that the route of the footpath is shown passing through each of the field boundaries suggests access was via gates, stiles or gaps so it might not have been accessible on horseback.</p> <p>From the point at which the footpath crosses the watercourse at point D the route marked as a footpath is outside the northern boundary of the 1848-mapped route (the historical route) and runs along a line largely consistent with the currently recorded route of 7-8-FP2 through to Liverpool Road at point F. This route is crossed by a number of further field boundaries and would have been inconvenient, if it was passable, on horseback.</p> <p>Between point D and point G Watery Lane (the historical route) is still shown</p>

		<p>although lines are shown across it at point D and point G and the route is not named on the map.</p> <p>The footpath from point B through to Liverpool Road running adjacent to Watery Lane suggests that the historical route between these two points had become difficult due to the watercourse and that pedestrian use followed a route which was firmer and drier underfoot mostly consistent with the route of 7-8-FP2.</p> <p>With reference in particular to the route between point A and point B the Planning Inspectorate Consistency Guide states "Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage." However, it goes on to say that this is far from conclusive evidence of highway status.</p>
<p>1 inch OS Map Preston Sheet 75</p>	<p>1896</p>	<p>1 inch OS map published 1896.</p>







<p>Observations</p>		<p>The scale of this map means that it is not possible to see the same amount of detail as is available on the 25 inch OS map detailed above although both maps were likely to have been published from the same survey.</p> <p>The application route between points A and B is shown as a fenced route consistent with how third class or unmetalled roads are shown. From B to just west of point E the historical route is shown as a third class or unmetalled road, unfenced on the north side but the application route is not shown. From point E a lane extending north and then east to Liverpool Old Road is shown and the historical line (not named) is shown continuing east as a fenced third class or unmetalled road through to Liverpool Road at point G.</p>
<p>Investigating officer's Comments</p>		<p>The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle suggesting that the through roads shown, and in this case Watery Lane (including the application route A-B) rather than the application route B-F, was available for those travellers.</p>
<p>Bartholomew half inch Mapping</p>	<p>1902-1906</p>	<p>The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use</p>

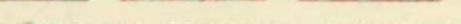
of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.



EXPLANATORY NOTE

First Class Roads 

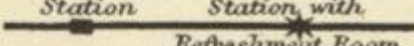
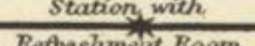
Secondary (Good) 


Indifferent (Passable) 

The uncoloured roads are inferior and not to be recommended to cyclists.

Footpaths & Bridlepaths

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

Railways  Station Station with Refreshment Room 

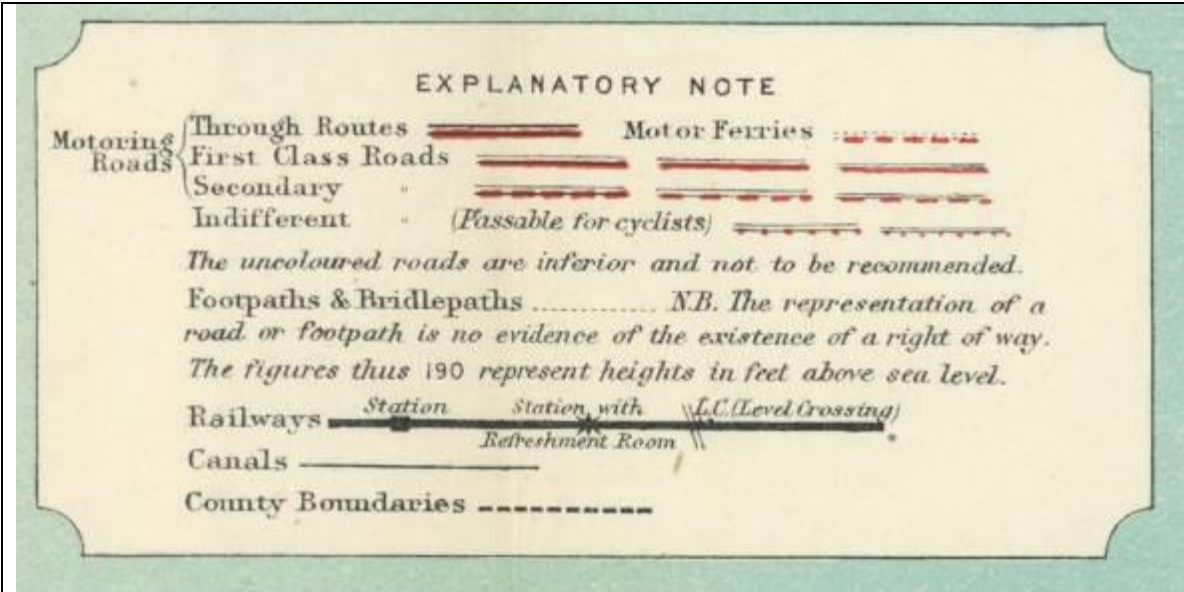
Canals 

County Boundaries - - - - -

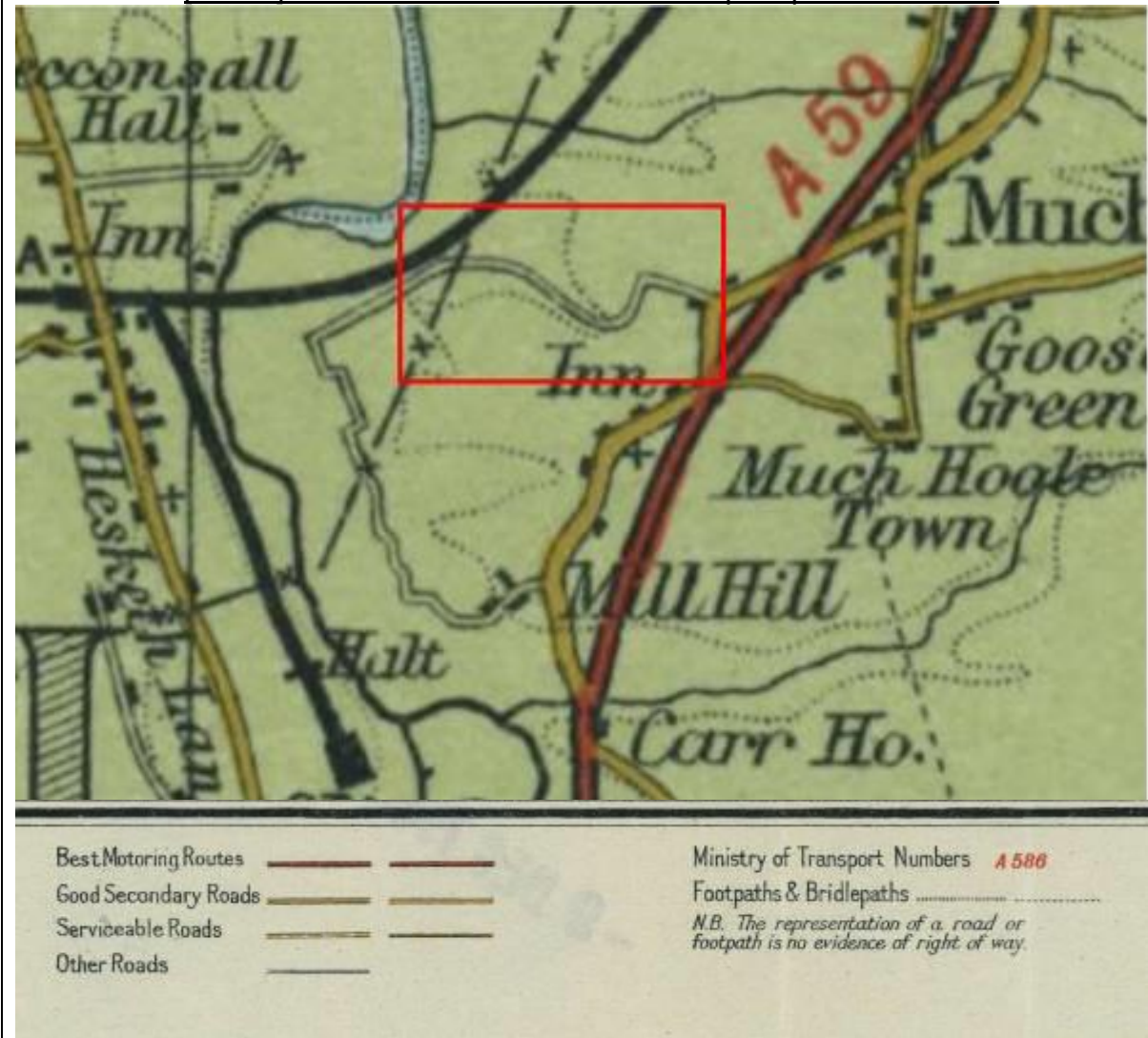
SCALE 1 : 126,720 = 2 MILES TO AN INCH

[above] Sheet 8 - Liverpool and Manchester published 1904





[above] Sheet 8 – Manchester and Liverpool published 1920

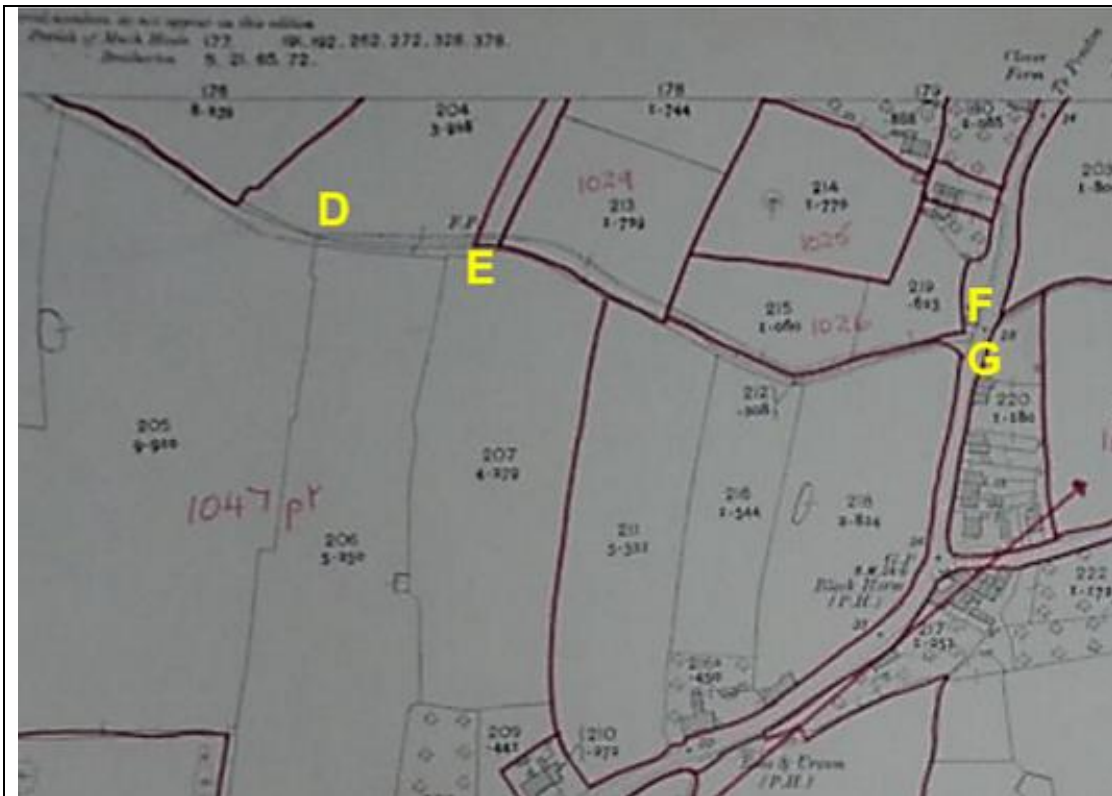


[above] North Lancashire published 1940

Observations		Annotation points are not included on the map extracts above due to the difficulty in inserting them with any
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		<p>accuracy. Watery Lane from point A to point E (on the Committee plan) is shown on all three maps as part of a longer uncoloured (inferior) or 'other road'. From point E the curvature of the route suggests that the route shown through to Liverpool Old Road then went north from point E along the route shown on the Tithe Map and named on the First Edition 6 inch map as Green Gate Lane with no route from point E through to point G shown. Haunders Lane (a public vehicular road) which ran south from point A is not shown on any of the three map editions. The application route section B-F and historical route of Watery Lane E-G are not shown.</p>
<p>Investigating Officer's Comments</p>		<p>OS maps dated before and after the publication of Bartholomew's Maps confirm the physical existence of the application route and Haunders Lane over this period. However the large scale OS maps both before, during and after this time suggest that Watery Lane, at least in part, was no longer bounded along the full length and that an alternative footpath existed running parallel to the route between point D and point F. They also show the route north from point E (Green Gate Lane) being gated in a number of places and partly unenclosed.</p> <p>As Bartholomew's Maps were derived from the Ordnance Survey maps of that time it may be that Haunders Lane and Watery Lane between point E and Liverpool Road had been purposely omitted by Bartholomew suggesting that Watery Lane A-E and then north – east via Green Gate Lane was the more significant route at that time and was capable of being used and considered to be a public vehicular road – albeit of inferior standard to those more widely recommended for use. The omission of the application route east of B is likely to be due to the limitations of scale and that footpath users were not the target customers for these maps.</p>

<p>Finance Act 1910 Map</p>	<p>1910</p>	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <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>
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Map obtained from The National Archives



Map obtained from The County Records Office

Observations

The Finance Act Maps at the National Archives and County Records Office are incomplete for the area crossed by the application route. One sheet (LXVIII.15) was largely (but not wholly) complete.

Sheet LXVIII.15 shows the eastern part of the route. None of the application route is excluded from the numbered plots (nor is the historical route except for a few metres at the junction with



		<p>Liverpool Road).</p> <p>The application route from midway between point B and point C through to point E is included in plot 1047. At point E the route of Green Gate Lane is shown marked up as one plot on the map obtained from The National Archives, but it is not numbered suggesting this may have been excluded. However, the map obtained from the County Records Office does not show this unnumbered strip and instead shows the former route as part of a larger unnumbered plot. The map sheet showing the rest of this route is incomplete, so it is not possible to confirm how this land was ultimately recorded. From point E both the application route and historical route are included in plot 1024 to the next field boundary crossing the route from where the line dividing the plots appears to be the watercourse which runs along Watery Lane. The application route is contained within plot 1026 but the plot to the south of the watercourse is not numbered.</p> <p>The District Valuation Book for Much Hoole was inspected in the County Records Office and it was noted that no deductions were listed for any of the numbered plots through which the application route ran.</p>
Investigating Officer's Comments		<p>The maps covering the application route are incomplete so little inference can be drawn. From the information available the route did not appear to be considered to be a public vehicular route in the early 1900s – which would have most probably been excluded from the numbered plots. In addition, it appears that the owners of the land crossed by the route from at least midway between point B and point C through to point J did not acknowledge the existence of any public rights of way across the plots through which the application route ran as part of the taxation process.</p>

25 Inch OS Map

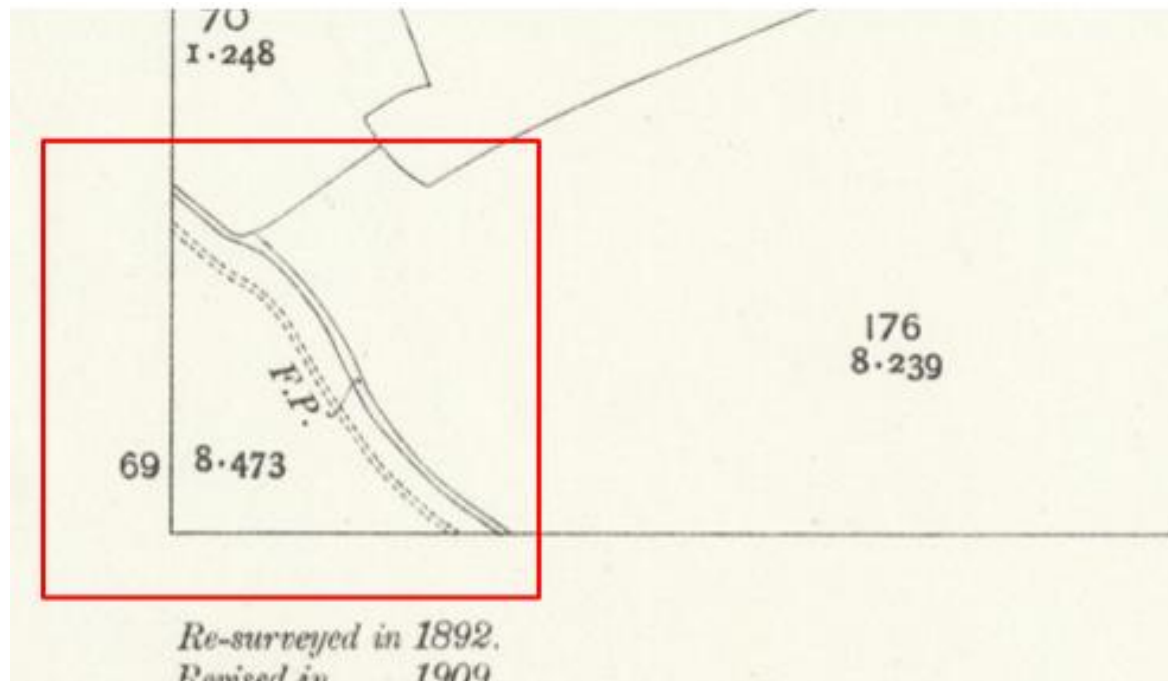
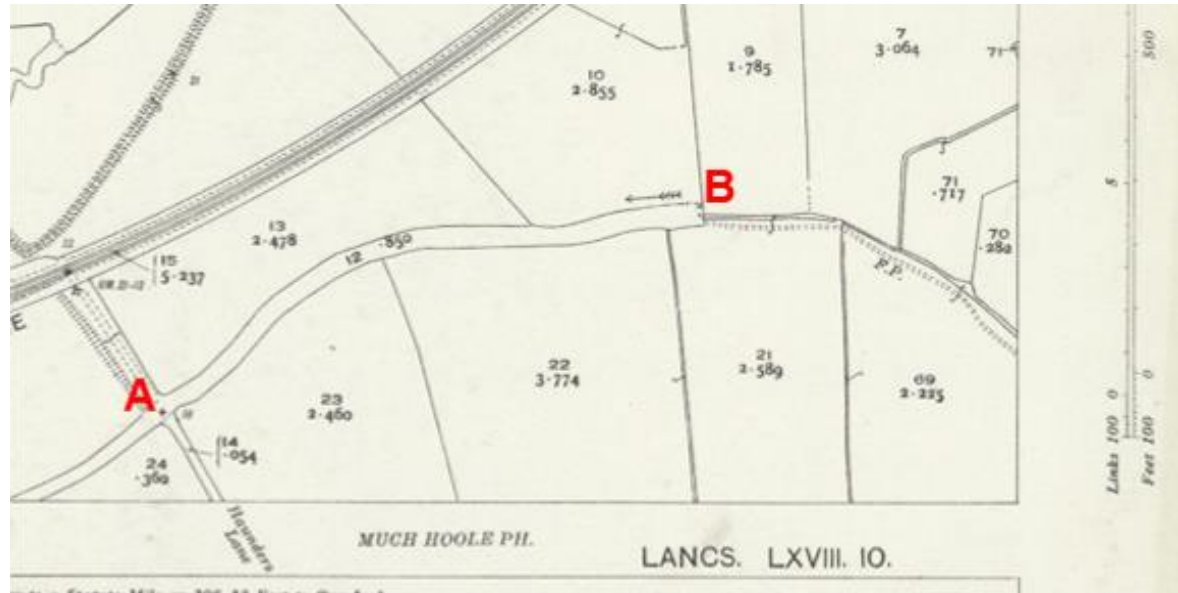
LXVIII.10

LXVIII.11

LXVIII.15

1911

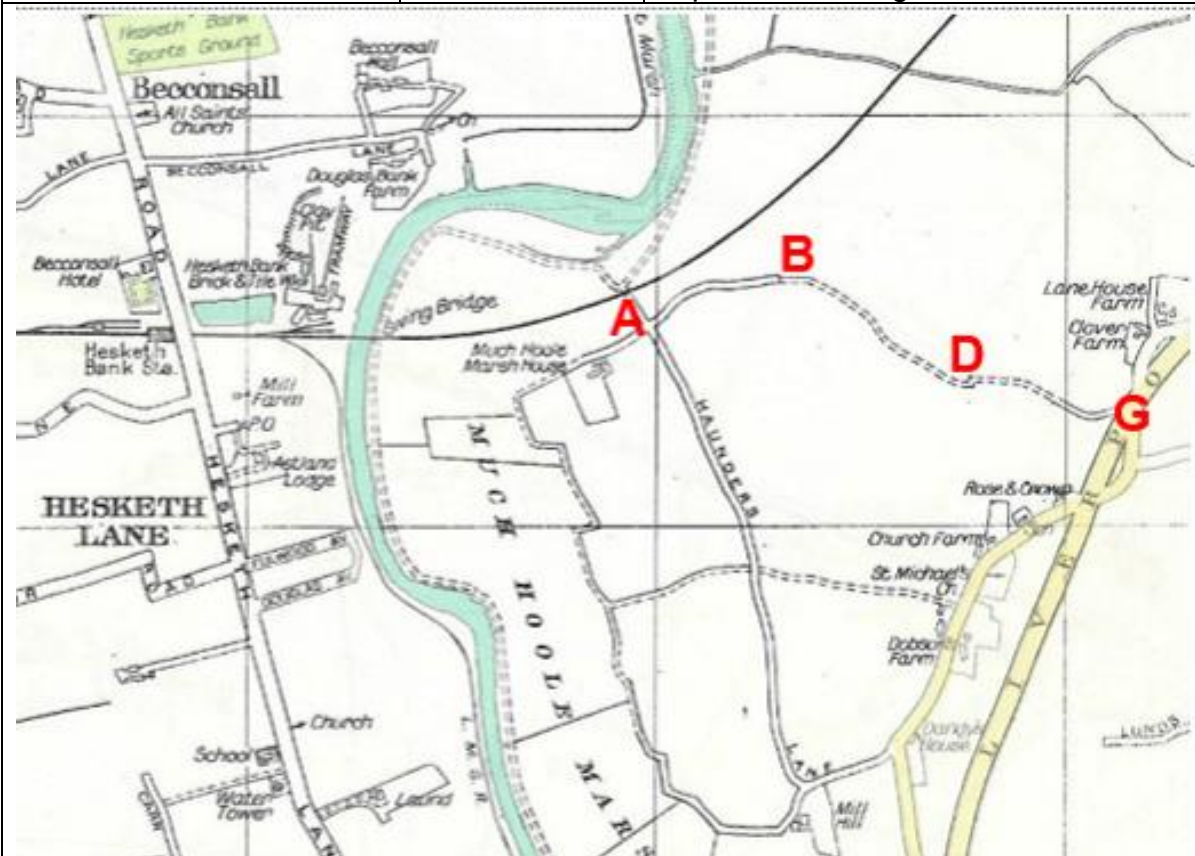
Further edition of 25 inch map (surveyed 1891-1892, revised in 1909 and published in 1911.





<p>Observations</p>		<p>The application route is shown in the same way as it is shown on the earlier edition of the 25 inch OS map. Between point A and point B it is shown as a wide fenced route consistent with how Haunders Lane is shown. From point B it is annotated as a footpath throughout its remaining length crossing 6 field boundaries before reaching point F.</p> <p>From point E Green Gate Lane is no longer shown and between point E and the eastern side of that field the unbroken line representing a boundary feature separating the route marked as the footpath from the historical route of Watery Lane is no longer shown.</p> <p>From that point to Liverpool Road (point G) the historical route is shown between double fences with a stream running within those boundaries.</p>
<p>Investigating Officer's Comments</p>		<p>The application route existed and appeared to be capable of being used – at least on foot. Use on horseback would be dependent on whether access was available through the various field boundaries via gate, gap or stile and cannot be confirmed by looking at the map although the annotation "F.P." suggests not.</p> <p>The historical route from point E through to the eastern end of that field either no longer physically existed or was confined to the narrow strip south of the stream; it is likely that the</p>

<p>Authentic Directory of Lancashire Geographia</p> <p>Map of South by</p>	<p>Circa 1934</p>	<p>historical route was not in use.</p> <p>An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large-scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.</p> <p>The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.</p>
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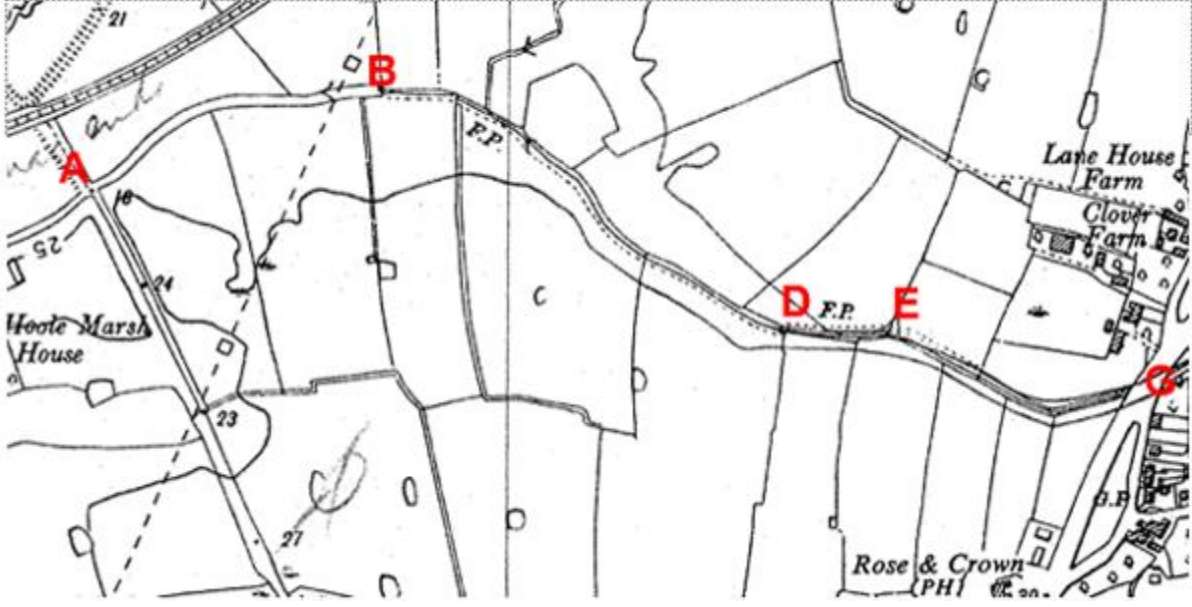


<p>Observations</p>	<p>The full length of the historical route or the application route is unnamed but shown in sufficient detail to show that the first section between point A and point B was a substantial fenced route and the 'kink' at the approximate location of where it crossed the watercourse (point D) suggests that the route shown is the adjacent footpath</p>
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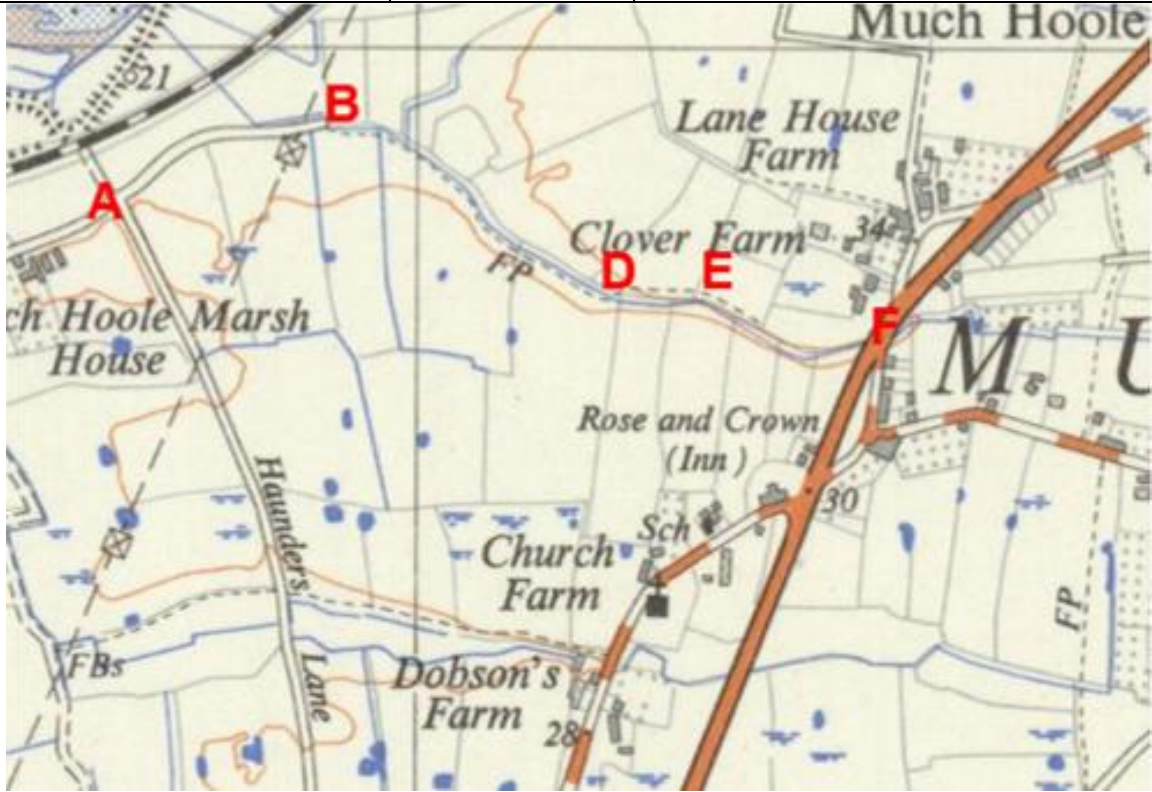
		(not Watery Lane) 7-8-FP2. However the eastern end approaching Liverpool Road (point F or G) was also shown as a double fenced route suggesting that the route shown was Watery Lane.
Investigating Officer's Comments		A route approximating to the application route/historical route existed in the 1930s and is shown in the atlas consistent with how other nearby routes of various statuses are shown. No inference can be made regarding the nature of use (i.e. whether it was on foot, horseback or vehicle) at that time and the scale of the map means that it is not possible to determine whether it was the application route, historical route or a mixture of the two that was actually shown.
Aerial Photograph²	1945-1952	The earliest set of aerial photographs available was taken just after the Second World War and flown between June 1945 and September 1952 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 application route can be clearly seen on the photograph between point A and point B with a track consistent with vehicular use extending north from point B. Between point B and point F the application route and historical route are not visible but can be located by reference to the fact that they follow the watercourse and field boundaries.
Investigating Officer's Comments		It is not possible to determine from the aerial photograph whether the full length of the application or historical routes were passable in the 1940s. The surface is not visible along the full length suggesting that use of much of its use by the 1940s may have greatly diminished or ceased except for use by farm vehicles between point A and point B.
6 Inch OS Map Sheet 42SE	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 application route is shown as a substantial fenced route from point A through to point B. From point B through to point D a dashed line is shown along the field edge and annotated as a footpath. At point D a

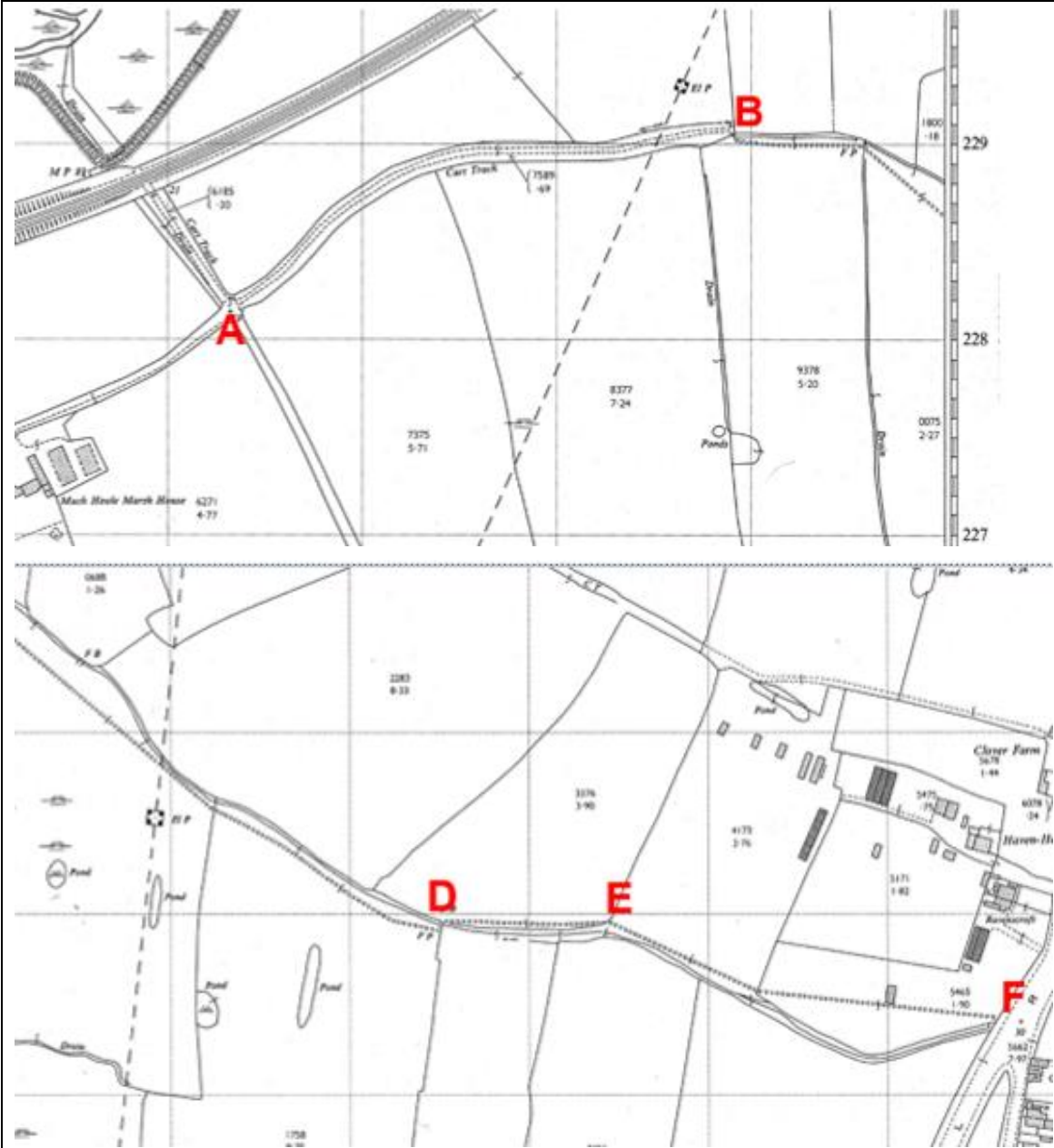


		<p>footpath is shown to cross the watercourse and continue to point E annotated as a footpath. From point E it continues along the field edge to a field boundary from where it appears to follow Watery Lane through to Liverpool Road (point G).</p>
Investigating Officer's Comments		<p>The route is shown consistent with how it was shown on the Street Gazetteer detailed above. The map evidence does not provide strong support of use of the route by horses as a through route at that time.</p>
OS 1:25 000 Map Sheet SD 42	1955	<p>OS 1:25,000 scale map revised between 1908 and 1951 and published 1955.</p>
		
Observations		<p>The application route is shown in the same way as it is shown on the 6 inch OS map detailed above. Both maps show a route from point B to east of point E annotated as a footpath but then do not show the section from there through to Liverpool Road.</p>
Investigating Officer's Comments		<p>The application route existed and appeared to be capable of being used – at least on foot. Use on horseback would be dependent on whether access</p>



		<p>was available through the various field boundaries via gate, gap or stile and cannot be confirmed by looking at the map although the annotation "F.P." suggests not. It appears that Watery Lane from point B through to Liverpool Road may no longer have been in use although the small scale of the map means that this is not entirely clear.</p>
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<p>1:2500 OS Map SD 4522 and SD 4622</p>	<p>1963-4</p>	<p>Further edition of 25 inch map reconstituted from former County Series and revised in 1962-1964 and published 1963-1964 as National Grid Series.</p>
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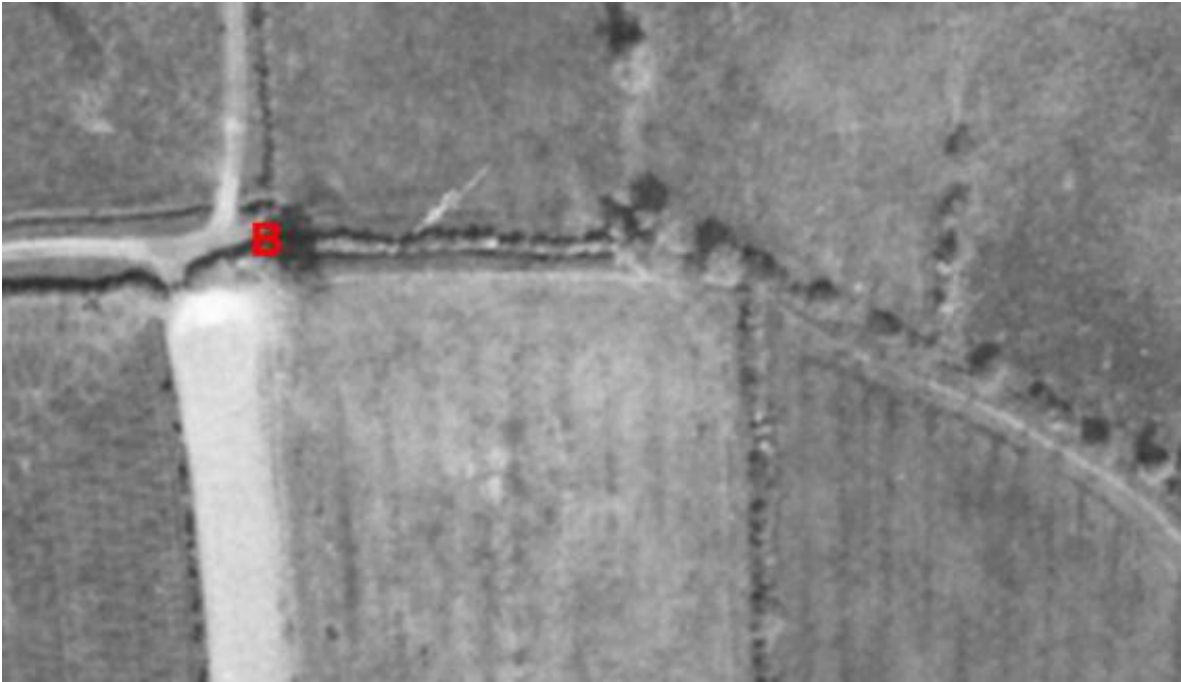
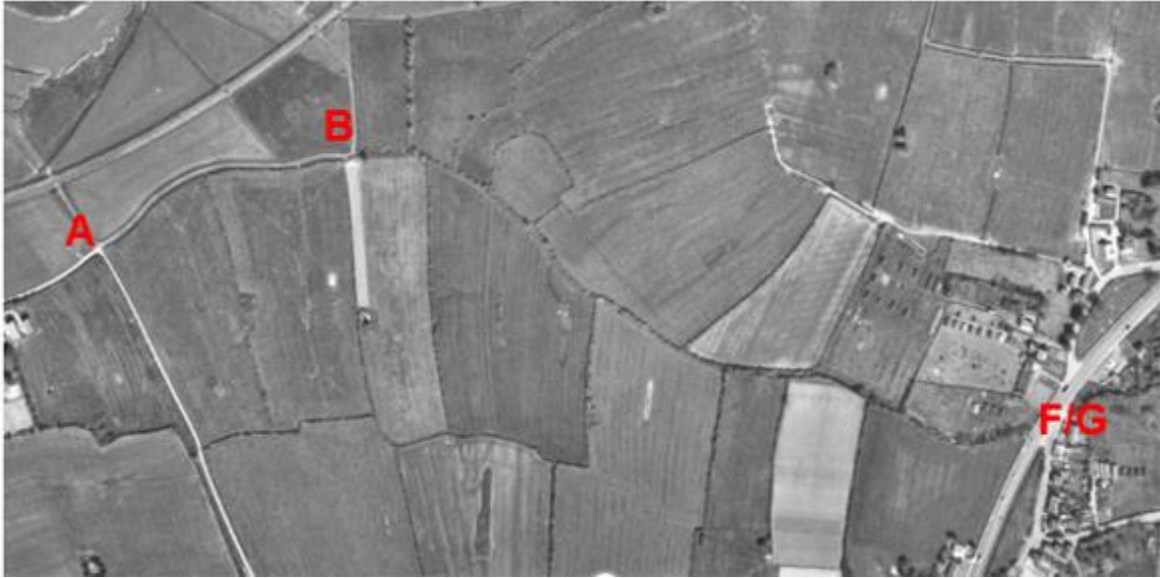


<p>Observations</p>		<p>The application route between point A</p>
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		<p>and point B is again shown as a substantial fenced route labelled as a 'cart track' on the map. Beyond point B a route is marked as a footpath through to point D taking a more direct line than hugging the field edge. There is no crossing point at C. At point D the footpath is shown crossing the watercourse and continuing north of the watercourse to the next field boundary, straight to a further boundary from where a direct route to point F is shown across the field; crossing 5 field boundaries between point A and point F.</p> <p>Unlike on previous maps there are now 3 culverts or bridges shown across the watercourse, which would obstruct passage along the historical route.</p>
Investigating Officer's Comments		<p>The application route appears capable of being used by vehicles between point A and point B. Beyond point B a route is shown through to point F depicted as a footpath and varying from the application route in two places. The straight lines do not indicate the line of the used path but that in the absence of a path on the ground it was OS practice to join access points (gaps, gates or stiles) with a straight line when the surveyor had no other information about the route between points. There is nothing to suggest however that the line of the application route could not be used where the two variations are shown although it does suggest there was little or no evidence of use. The application route appeared to be capable of being used at least on foot. The historical route of Watery Lane – other than the section A-B – no longer appeared to be in use which is confirmed by the 3 culverts or bridges across it.</p>
Aerial photograph	1960s	<p>Aerial photography flown during the 1960s. The coverage is a mosaic of various flight runs on the following dates: 12-13th May 1961, 1st Jun 1963, 3-4th June 1963, 11th June 1963, 13th June 1963, 30th July 1963, 13th June</p>

		<p>1968. The majority of images are from 1963, with the 1961 images mainly covering West Lancashire district, and the 1968 images mainly covering Ribble Valley district.</p>
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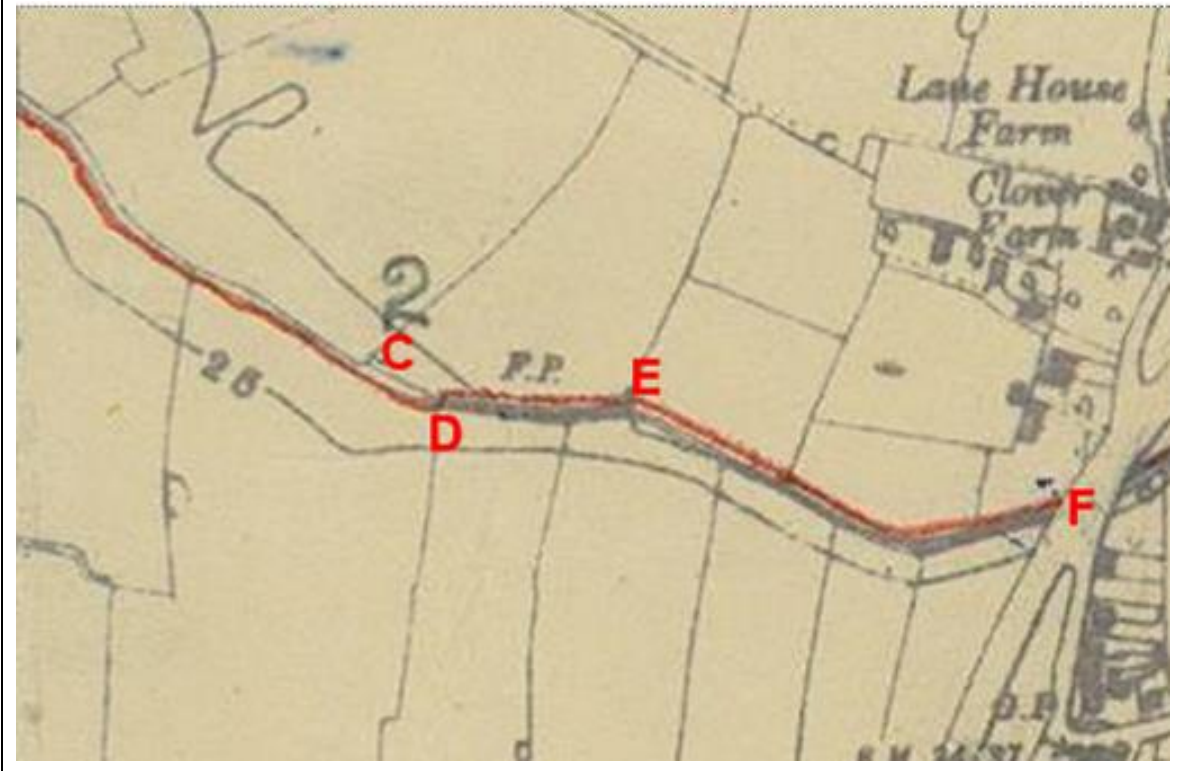


<p>Observations</p>		<p>The application route can be clearly seen on the photograph between point A and point B with a track consistent with vehicular use extending north from point B. Between point B and point F most of the application route is faintly visible as a trodden track consistent with pedestrian use.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>No inference can be made with regards to the existence of public rights, but the</p>



		<p>aerial photograph supports the existence of the route in the 1960s. The route appeared to be used by farm vehicles gaining access to adjacent fields between point A and point B. Beyond point B the route showed up on the photograph consistent with the fact that it was recorded as a public footpath at that time.</p>
<p>OS 1:2500 map SD 4622-4722</p>	<p>1978</p>	<p>OS map revised 1977 and published 1978.</p>
<p>The map shows a route starting from the left, crossing a watercourse at point C (a culvert), then crossing at point D (a footbridge), and continuing through points E and F. The route is marked as a 'Path (u m)'. Field numbers and areas are provided: 3376 (1.578ha, 3.90) and 4173 (1.522ha, 3.76). A pond is shown on the left side of the map.</p>		
<p>Observations</p>		<p>The route is shown in the same way as it was shown on the 1963-64 edition of the maps with one exception. A culverted crossing of the watercourse is shown at point C – which is now used by the public walking the length of the footpath because the footbridge at point D is no longer in existence. However, in 1973 the route of the footpath is still shown to cross a footbridge at point D.</p>
<p>Investigating Officer's Comments</p>		<p>The application route still appeared capable of being used by vehicles between point A and point B. Beyond point B a route is shown through to point F depicted as a footpath and appeared to be capable of being used at least on foot crossing the watercourse via a footbridge at point D but with access also possibly being available via a culverted crossing which may have been suitable for horses at point C. The historical route of Watery Lane – other than the section A-B – no</p>

		longer appeared to be in use.
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>



DISTRICT	<i>Preston Rural District</i>	PARISH	<i>Much Hoole</i>	No.	<i>2</i>
MAP SHEET No.	<i>2, 4 B</i>	LENGTH	miles (to two decimal places)		
BRIEF DESCRIPTION (Field F.P. or otherwise)	<i>Field Foot Path</i>				
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).					
<p><i>Entrance from Liverpool Rd. West Side</i> <i>through swing gate into field, crosses brook wooden plank</i> <i>continues on to old road, over L.M.R. no stile here and joins</i> <i>to 1 foot path.</i></p> <p><i>Stiles in fair condition and foot path used fairly often.</i></p>					
SURVEYED BY :-		Name <i>Fred Barker</i>			
		Address <i>Charon Villa</i>			
Date <i>Byang 3rd 1951</i>		<i>Hoole 2, Preston</i>			

Observations

The parish survey map shows the route that the parish council considered to be a public footpath running along the enclosed section of track between point A and point B. It then shows the route following along the south side of the field boundary and crosses the watercourse at point D. The route to be recorded as a public footpath then continues along the north side of the field boundary south of which is the bounded watercourse, through to point F. The Parish Survey card describes the route as starting on Liverpool Road and passing through a swing gate (point F) into a field and refers to it crossing the brook by way of a wooden plank. The locations of stiles are not marked but there is a comment that they were in good condition and that the path was well used. Footpath Much Hoole 2 was recorded as continuing to the 'old road' and then over the railway to connect to Footpath 1. It is not clear whether the reference to 'old road' referred to the application route between point A and point B or whether it referred to Haunders Lane or the continuation of the route of Footpath Much Hoole 2 north of point A.

Draft Map

The Parish Survey map and cards for



		<p>Much Hoole 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		<p>The application route was shown as part of the footpath and there were no representations or objections made to the County Council about what was shown or omitted. The historical route of Watery Lane from point B through to point G was not shown.</p>
Provisional Map		<p>Once all representations relating to the publication of the Draft Map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.</p>
Observations		<p>The application route was shown as part of Footpath Much Hoole 2 and there were no representations or objections made to the County Council about what was shown or omitted. The historical route of Watery Lane from point B through to point G was not shown.</p>
The First Definitive Map and Statement		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>



<p>Observations</p>		<p>The application route was recorded as part of Footpath Much Hoole 2. The thick pen used to draw the routes on the First Definitive Map means that it is not possible to determine the exact position of the route i.e. whether it was intended to run on the north or south of the watercourse, whether it crossed the watercourse or was consistent with the historical route of Watery Lane is unclear but it is arguable that it followed the lines marked FP on the base OS.</p>
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<p>Definitive Map of Public Rights of Way (First Review)</p>	<p>1966</p>	<p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p>
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<p>Observations</p>		<p>During the course of this investigation it was discovered that the historical route between Haunders Lane and Liverpool Road only followed the route recorded as 7-8-FP2 between point A to point B on the Committee plan and that the rest of the route ran immediately north of the footpath between point B and point C and immediately south of the footpath between point C and point G. It has been noted that the thick dashed line used to denote the route of the footpath on a relatively small scale (6 inch to the mile) OS map means that it is difficult to conclude that the route drawn on the current Definitive Map crosses the watercourse at point D (as shown on earlier maps) as the dash used to show the route crossing the watercourse is more towards point C, where a culvert now exists, but reference to Ordnance Survey maps and the Parish Survey, Draft and Provisional Maps suggest that the correct crossing point was at point D.</p>
<p>Investigating Officer's Comments</p>		<p>From 1953 through to 1975 there is no indication that the application route was considered to be anything other than a public footpath to be recorded on the Definitive Map by the Surveying Authority. There were no objections to the fact that it was recorded as a public</p>



		<p>footpath when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map. The stiles referred to in the Parish Survey Card suggests that it was only usable on foot at that time.</p> <p>The historical route known as Watery Lane, with the exception of the length A-B, was not recorded on the Definitive Map and at no stage during the process did it appear to have been considered to be a public route. This concurs with the historical map and documentary evidence examined whereby it appears that the historical route of Watery Lane fell out of use, probably in the late 1800s use of a route on foot continued or began, running along the historical route A-B and then adjacent to the 'old' route through to Liverpool Road.</p> <p>The fact that the historical route was not recorded on the Definitive Map does not necessarily mean that it does not still exist.</p>
<p>Highway Adoption Records including maps derived from the '1929 Handover Maps'</p>	<p>1929 to present day</p>	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the 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</p>

		<p>Highways Act 1980, an up-to-date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
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<p>Observations</p>		<p>Neither the application route nor historical route, where it varies from the application route, were recorded as a publicly maintainable highways in the County Council's records.</p>
<p>Investigating Officer's Comments</p>		<p>The fact that neither route is recorded as a publicly maintainable highway (other than that part recorded as a public footpath on the Definitive Map and Statement) does not mean that it does not carry any other public rights of access so no inference can be drawn.</p>
<p>Highway Stopping Up Orders</p>	<p>1835 - 2014</p>	<p>Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.</p>

Observations		No legal orders relating to the creation, diversion or extinguishment of public rights have been found.
Investigating Officer's Comments		If public rights are found to exist along the application route they do not appear to have been subsequently diverted or extinguished by a legal order.
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 established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		No Highways Act 1980 section 31(6) deposits have been lodged with the county council for the area over which the application route or historical route runs.
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.
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The affected land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land.

Summary

This investigation has been carried out based entirely on historical map and documentary evidence with no modern user evidence submitted.

As with most cases investigated, there is no single piece of map or documentary evidence which stands alone to confirm the public legal status of the route.

In this particular case the application was for the route recorded as part of 7-8-FP2 to be upgraded to bridleway but as detailed earlier in this report the evidence suggests that the original historical route varied from the application route east of point B.

Looking initially at the historical route:

There appear to be three key documents suggesting that in the mid-1800s a route ran from Haunders Lane through to Liverpool Road alongside and partially consistent with the application route and was named 'Watery Lane'. This was considered to be a vehicular route which could have been used by the public. Hennessey's Map of 1829-1830 shows Watery Lane as a cross road consistent with how other routes with public vehicular access are shown. Just over 10 years later the route is shown on the Tithe Map as a bounded through route which appears to be capable of being used and which was described in the Tithe Award as a road listed at the end of the Award with other routes known to have public vehicular rights.

The First Edition OS 6 inch map shows Watery Lane which is again shown as a fenced through route and the significance of the name is clear as within the boundaries of the lane is a watercourse which flows from Liverpool Road through to part way between point A and point B. Neither Hennessey's Map, the Tithe Map nor the 1st Edition 6 inch OS map showed any lines across the route which could have limited access.

Later maps examined show subtle but significant alterations. From the late 1800s it appears that use of the route described in the Tithe Map as a road declined, most probably because of the presence of the watercourse. Throughout its history (from the mid-1800s onward) the route between point A and point B is consistently shown as a wide bounded route which would be open to all forms of traffic.

From the late 1800s however, travelling from point B eastwards Watery Lane was no longer separated from the adjacent farmland for the entire length. There were at least 3 gates across the lane. The original Watery Lane route from point D through to Liverpool Road was still shown but with lines across it at points D and G, although there was nothing shown to prevent exit from G via point F, and over the following years appears to have completely fallen out of use. This is consistent with the name, Watery Lane; the consistent depiction of a watercourse along the route; the shallow



fall of the lane; the 'winter footpath' alongside and the sunken nature of the lane now. It is the sort of road which was presumably viable in the 18th Century but as traffic increased became unsustainable and unusable.

The application route:

From point B Footpath 7-8-FP2 was crossed by a number of field boundaries which would require the presence of gates, stiles or gaps to continue along the route. A route must have been evident on the ground on the south side of Watery Lane as it was recorded by the OS as a footpath parallel to Watery Lane through to point D where a route, denoted as a footpath, crossed the watercourse to continue along the northern side of Watery Lane through a number of fields to point F (or on a few maps prepared in the 1900s shown linking back into Watery Lane to exit onto Liverpool Road at point G). This suggested that beyond point B the historical route of Watery Lane was unsuitable for use on foot hence a footpath running parallel to it became established. The route recorded in the 1950s as a public footpath appears to follow the historical line from point A through to point B and then takes the route denoted as a footpath on many of the Ordnance Survey maps examined, running parallel to the historical route of Watery Lane, initially on the south side then to the north, to exit onto Liverpool Road at point F.

Map and documentary evidence from the late 1800s onwards is not strong in support of the assertion that the route applied for (i.e. 7-8-FP2) was or could be used by the public as a bridleway from Haunders Lane at point A through to Liverpool Road at point F and there is no modern user evidence in support of the application supporting the dedication of bridleway rights.

However, the investigation detailed above has also looked at the route shown on Hennet's Map of 1830 and depicted on the Tithe Map and mapped on First Edition 6 inch OS map as Watery Lane, which included the application route A-B. In that instance there appears to be some evidence of a route which may have been capable of being used on horseback in the mid-1800s between points A-B and then continuing along the historical route marked on the Committee plan through to point G and although finely balanced it is the Investigating Officer's view that there is sufficient evidence available from which to infer dedication of bridleway, or possibly carriageway, rights at that time which have not been stopped up in law and therefore still remain .

Head of Service – Legal and Democratic Services Observations

Landownership

From point A to point B the application route crosses land which is unregistered, then from point B to point F the application route crosses several parcels of land in private ownership.

Information from the Applicant

The application is based entirely on historical map and documentary evidence.



The applicants supplied extracts of the following maps/documents in support of the application and all are considered above:

1st Edition 6 inch OS map published 1848
Hennet's Map published 1929
2nd edition 1 inch OS map published 1896
1st edition 25 inch OS map published 1893
Bartholomew's half inch map published 1920
OS 1:25,000 scale map published 1955
Tithe Map and Award for Much Hoole 1841

Information from Others

An owner of land adjoining the application route responded to consultation to object to the application and to confirm the land in their ownership. They stated that they have lived in the area for more than 20 years and opined that the application route had not been used as a bridleway in more than 20 years and would add no convenience for the public or the residents of the area.

Acland Bracewell responded to consultation on behalf of Lilford 2005 Limited, an adjoining landowner. They confirmed the land in their ownership and objected to the application on three points, 'existing agricultural use', the 'character of the footpath' and its 'designation and historic use'.

They noted that part of the affected land in their ownership, has been subject to an Agricultural Holdings Act (1986) tenancy agreement (AHA) since 2nd October 1978, between Lilford 2005 Limited and Bracewell Farms Limited. The tenancy originally covered 61.959 acres (25.07ha) before 8.706 acres (3.52ha) were sold on 29th May 2015, subject to tenancy. Thus, both the sold and the retained parcels continue to be subject to the AHA (1986) tenancy agreement.

They further noted that the application route continues to the east, running through a separate parcel of land, also owned by Lilford 2005 Limited and let to Bracewell Farms Limited on an AHA (1986) tenancy, dated 29th January 1976.

The respondent highlighted that both of these AHA (1986) tenancy agreements contain a restrictive covenant which limits the use of the property to agriculture, only. They went on to note that s96(1) of the Agricultural Holdings Act 1986 states that '*agriculture*' includes: '*horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly*'.

They noted that this demonstrates that both parcels of land have been used solely for the purposes of agriculture for over 40 years and whilst the grazing of livestock is permitted, the exercising and 'hacking out' of horses is not. They opined that this provides further supporting evidence to suggest the footpath has never been used by horse riders or cyclists.



Safety concerns were raised with the respondent opining that upgrading the footpath to a bridleway would be dangerous due to the farm machinery moving along the application route.

The character of the footpath was raised with 5 points being noted which the respondent considered would make the route unsuitable for equine use. These generally raised more detailed concerns over safety.

The first point again noted the use of agricultural machinery along the route, drawing particular attention to a sharp bend and raising concerns over visibility.

The second point noted the narrowness of the route on the ground, being less than 3 metres and highlighting the risk of crop damage if riders were to veer off the route, ride two abreast or be spooked by farm machinery.

Steep ditches on each side of the application route were noted as a third issue, the respondent opining that they posed a significant risk of serious injury.

The condition of the surface was also highlighted with the respondent noting that part of the route is loose hardcore, they raised concerns of horses tripping, stating that the surface is not properly bedded in.

The final point of concern raised related to route joining the A59, the respondent noted this is a busy road and opined that this would pose huge risks for horse riders and motorists.

Finally, the respondent considered the designation and historic use of the route. They noted the existing footpath status of the application route and opined that it has therefore never been used for the purposes of horse riding or cycling and has never previously being designated for these uses. They opined that the fact that the application route has been used to provide access for agricultural machinery for over 40 years reinforces the fact that the footpath has never been used by cyclists or horse riders.

Cape Limited, a nearby landowner, contacted the council to object to the application and to note the land in their ownership. They stated that they have owned the nearby land for more than 20 years and opined that the application route had not been used as a bridleway in more than 20 years.

A local resident also contacted the council to object to the application. They stated that they have lived in the area for more than 60 years and opined that recording the application route as a bridleway would add no convenience for the public or the other residents of the area.

Information from the Landowner

Bracewell Farms Limited responded to consultation to object to the application and to confirm the land in their ownership, they also noted that, to their knowledge, the route had never been used as bridleway and they could therefore see no reason why bridleway would add to the enjoyment of the public or residents of the area.



Another landowner responded to consultation to confirm the land in their ownership.

Assessment of the Evidence

The Law - See Annex 'A'

Conclusion

In this matter there is no express dedication and no user evidence and so Committee is asked to consider whether there is on balance evidence from which to infer dedication of bridleway rights at common law.

Looking firstly at the application route:

There is no user evidence and so the evidence is historical documentation and whether there is sufficient evidence to infer on balance that the owner(s) intended it to be more than a footpath. The documentary evidence is summarised and evaluated earlier in the report.

It is suggested that the evidence indicates that section A-B was part of a historical route close by and the evidence is sufficient to infer that this section carries higher bridleway rights as part of the historical route (see below) . The remaining part of the application route B-C-E-F follows the black dashed line on the committee plan and from points B to F is not within the old boundaries of the historical route. The evidence above shows that the application route B to F as a pedestrian route is documented as such from the 1890s and recorded as footpath on the Definitive Map and Statement and it is suggested to Committee that there is insufficient documentary evidence to support a finding of dedication of bridleway rights on B-F and insufficient evidence for an order to be made for this part of the application route.

Secondly looking at the historical route. The documentary evidence is summarised and evaluated earlier in the report. Having found evidence of a historical route A-G shown marked green on the Committee plan it is suggested that how it is documented historically on balance is sufficient evidence from which to infer that it carried at least bridleway rights from many decades ago and Committee may be satisfied that and Order be made that this historical route be added to the Definitive Map and Statement as a bridleway which would involve an upgrading to bridleway of section A-B of the application route.

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.



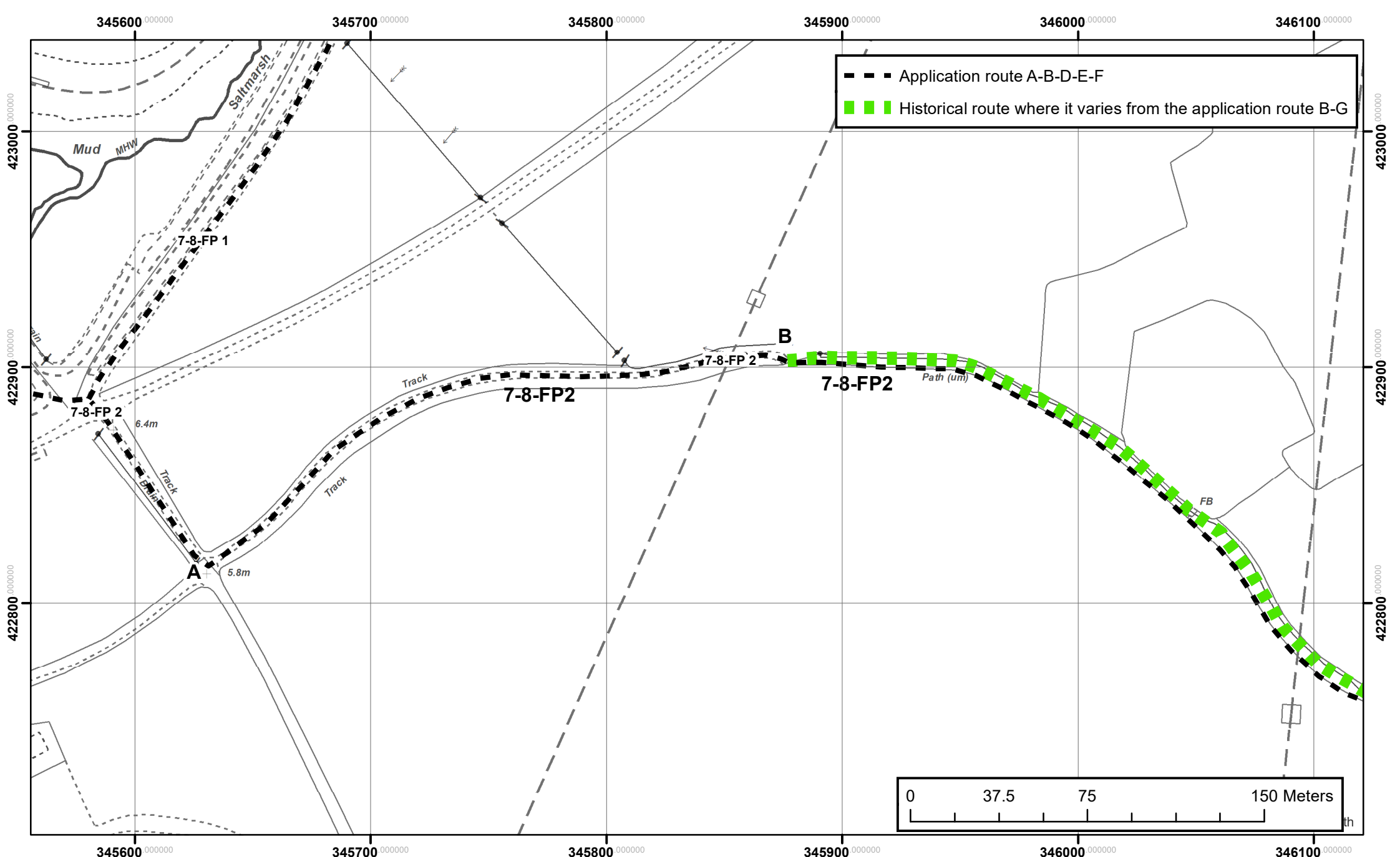
**Local Government (Access to Information) Act 1985
List of Background Papers**

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-626		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate


N/A



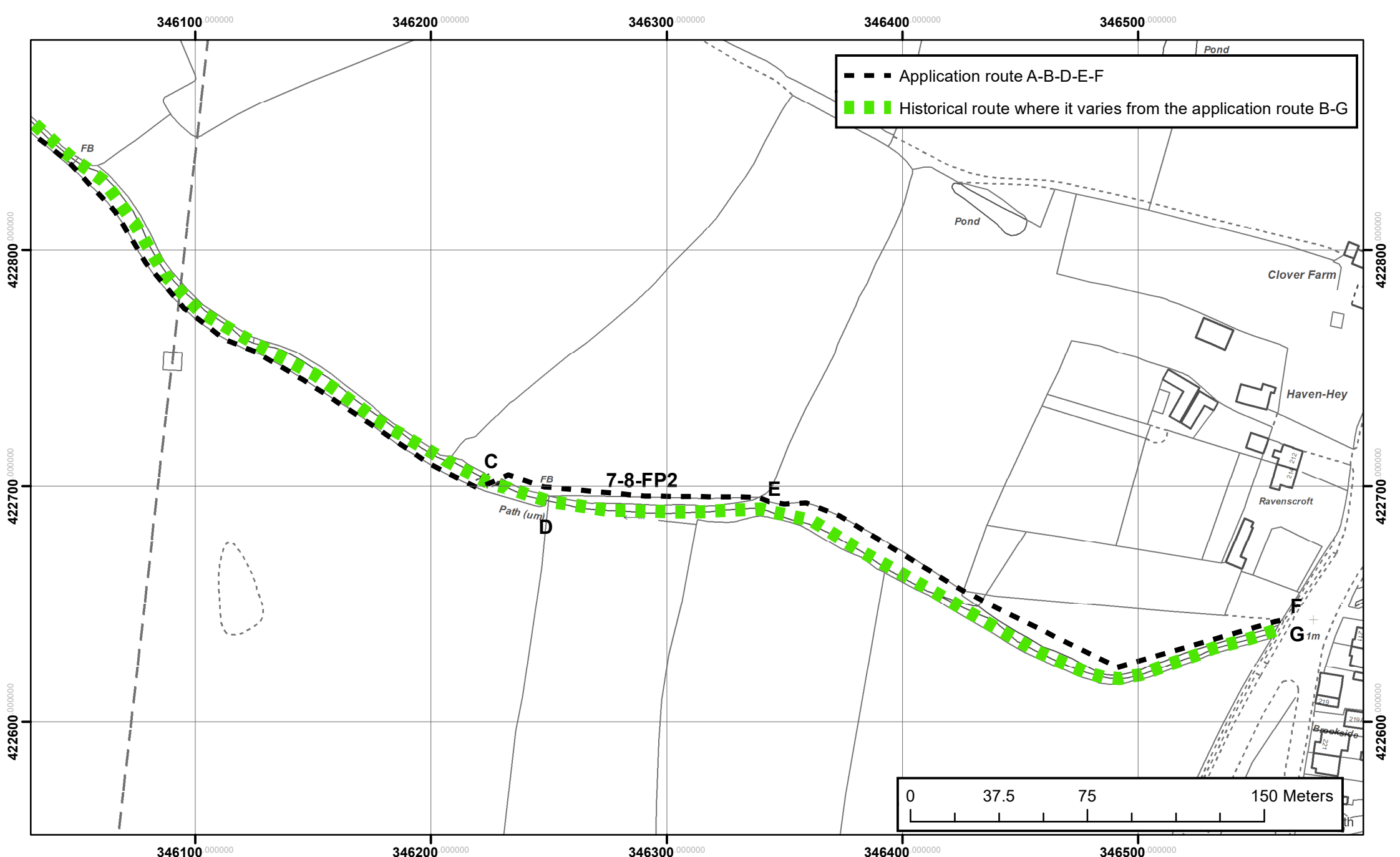



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 PROW@lancashire.gov.uk
 01772 530317

Wildlife and Countryside Act 1981
 Upgrading of Footpath to Bridleway from Haunders Lane to Liverpool Road, Much Hoole

1:2,000


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