

## Regulatory Committee

Meeting to be held on Wednesday, 30 January 2019

Electoral Division affected:  
Skelmersdale East;

**Wildlife and Countryside Act 1981**  
**Definitive Map Modification Order Investigation**  
**Addition of a footpath along Ayrefield Road past Ayrefield House to Footpath Up Holland 2**  
**File No. 804-600**  
(Annex 'A' refers)

Contact for further information:

Claire Blundell, 01772 533196, Paralegal Officer, County Secretary and Solicitors Group, [Claire.blundell@lancashire.gov.uk](mailto:Claire.blundell@lancashire.gov.uk)

Jayne Elliott, 01772 537663, Definitive Map Officer, Planning & Environment Group, [Jayne.elliott@lancashire.gov.uk](mailto:Jayne.elliott@lancashire.gov.uk)

### Executive Summary

Application for the addition to the Definitive Map and Statement of Public Rights of Way, of a footpath along Ayrefield Road past Ayrefield House to Footpath Up Holland 2, in accordance with file No. 804-600.

### Recommendation

- (i) That the application for a footpath along Ayrefield Drive past Ayrefield House to Footpath Up Holland 2, in accordance with File No. 804-600, be accepted.
- (ii) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (c)(i) the Wildlife and Countryside Act 1981 to add a footpath along Ayrefield Road past Ayrefield House to Footpath Up Holland 2 on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

### Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for a footpath to be added along Ayrefield Road past Ayrefield House to Footpath Up Holland 2 on the Definitive Map and Statement of Public Rights of Way.

The county council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so

its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

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

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

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

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

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

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

## **Consultations**

### West Lancashire Borough Council

The Borough Council have confirmed that they have no objection to the application to record the route as a public footpath but have provided no other information.

### Up Holland Parish Council

The Parish Council are the applicants for the order to be made. The Parish Council first made contact with the county council about making an application in 2014 but did not submit it until 2018.

## 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     | 5229 0758           | Junction of application route with the eastern end of the publicly maintained road U1167 (Ayrefield Road) |
| B     | 5257 0763           | Application route leaves Ayrefield Road to pass through gate  |
| C     | 5265 0763           | 90 degree bend in the application route immediately south of a brick outbuilding                          |
| D     | 5267 0760           | Junction of application route with Footpath Up Holland 2  |

### **Description of Route**

n.b. References to public rights of way shown on the Definitive Map and Statement are generally given in the form '08-21-FP02' or 'Footpath Up Holland 2' but are referenced below in the abbreviated form 'Footpath 2' for brevity since all those referred to are in Up Holland in West Lancashire Borough.

A site inspection was carried out by the Investigating Officer on 18 September 2018.

The total length of the route is 400 metres.

The application route commences at the eastern end of the publicly maintainable section of Ayrefield Road (U1167) just past the end of a row of houses (point A on the Committee plan). The start of the route is not obviously marked but there is a line in the tarmac which indicates that from point A the application route had been quite recently tarmacked for a short distance of approximately 40 metres from point A to the entrance to Ayrefield Hall which is situated to the north of the application route. Beyond the entrance to Ayrefield Hall the application route continues along a roughly tarmacked/stone surfaced road which is bounded on either side by fencing and hedges and from which there are a number of access points to properties situated along the route and to adjacent fields.

The route between point A and point B varies in width between 3.5 metres and 7.5 metres and there is evidence of regular vehicular use.

At point B, the application route leaves the road immediately before the gated entrance into Ayrefield House whilst the roadway curves round to continue in a north easterly direction.

At point B, the application route is crossed by a padlocked field gate and immediately to the side of the gate is a small pedestrian gate.

Nailed to the post from which the field gate is hung are two small signs which state 'Private Footpath' and 'Dogs to be on Leads' and attached to the pedestrian gate is a larger sign which appears to have been put up fairly recently (it is not weathered or faded in any way) which states:

'Permissive Footpath over private land.

This path is private but the landowner gives permission for respectful walkers to cross this land to connect public footpath #2 and Ayrefield Road.

The permission is given providing:

All dogs must be on a short lead

Dog mess must be cleared up

Gates must be closed behind you.

Please note: This land is used to farm poultry, goats and pigs. These animals roam freely on the land. Please respect the home of these animals and enjoy your walk!

Thankyou.'

Photographs taken by the county council in 2014 also show the padlocked field gate at point B but shows what looks to be a recently erected ladder stile adjacent to the gate with the same two signs saying 'Private Footpath' and 'Dogs to be on Leads' on the gate post.

Beyond point B, the route continues in a generally easterly direction along a track approximately 4 metres wide which is bounded on either side by walls. The wall to the north separates the route from the area immediately around Ayrefield House, whilst the wall to the south appears to have been constructed some time ago to define the route and to act as a revetment to the land to the south which is at a slightly higher level.

Approximately 55 metres from point B, the wall on the south side of the route becomes less obvious and although the line of it can be seen much of it has fallen into disrepair; the application route continues to the south of a brick building, currently used to stable a variety of animals, to a bend in the track (point C).

At point C, the route turns to continue in a generally south south easterly direction across an open area grazed by animals. There was no obvious trodden route leading from point C, although there was evidence of very recent earth works including the clearance and regrading of the land to accommodate a pond.


Close to point D, a walked route was visible on the ground (on land undisturbed by recent works) and at point D, the route was crossed by a kissing gate in the field boundary onto which the same signage had been attached as was visible at point B.



At point D, the route meets Footpath 2 which then continues in a generally south easterly direction across an open pasture field.

Photographs taken in 2014 by the county council of the route between point C and point D show a fallen tree close to point D which blocked the route (although it appeared possible to climb over/through the fallen branches). A well-trodden track was visible approaching point D from point C.

### Map and Documentary Evidence

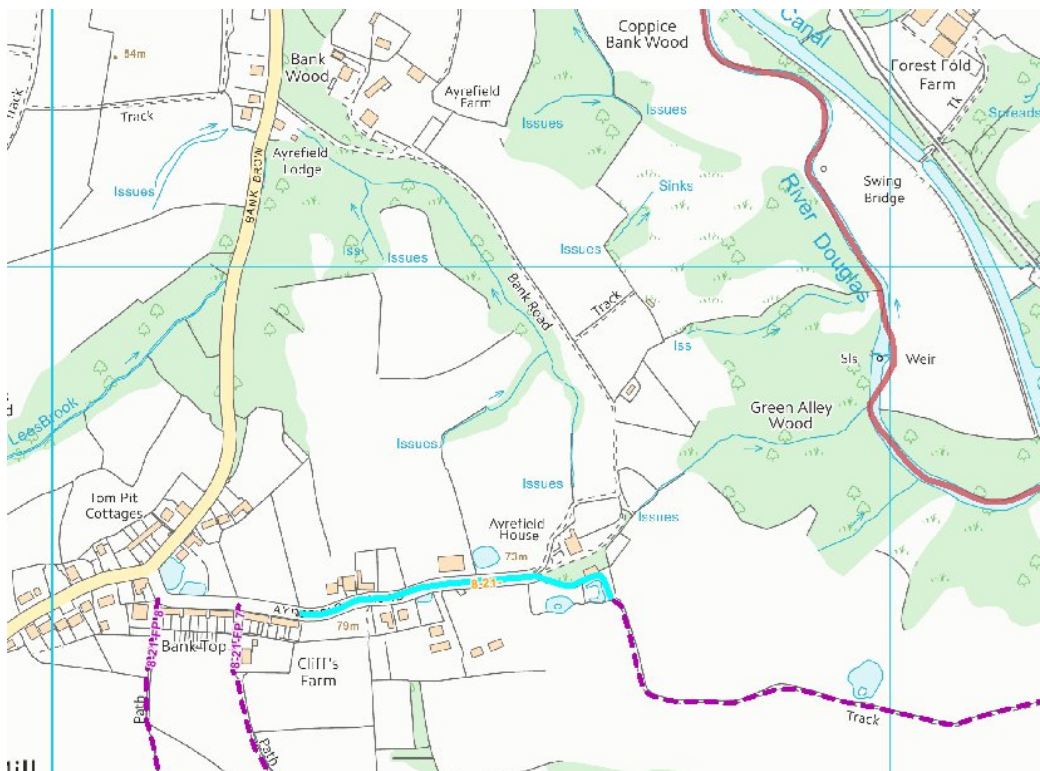
| Document Title  | Date | Brief Description of Document & Nature of Evidence   |
|---|------|--|
| <b>Yates' Map of Lancashire</b>   | 1786 | Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown. |
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| Observations  |      | The application route is not shown.  |
| Investigating Officer's Comments  |      | The route did not exist as a major route at the time but it may have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.  |
| <b>Greenwood's Map of</b>   | 1818 | Small scale commercial map. In contrast to other   |

Lancashire

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.



Enlarged extract of Greenwood's Map



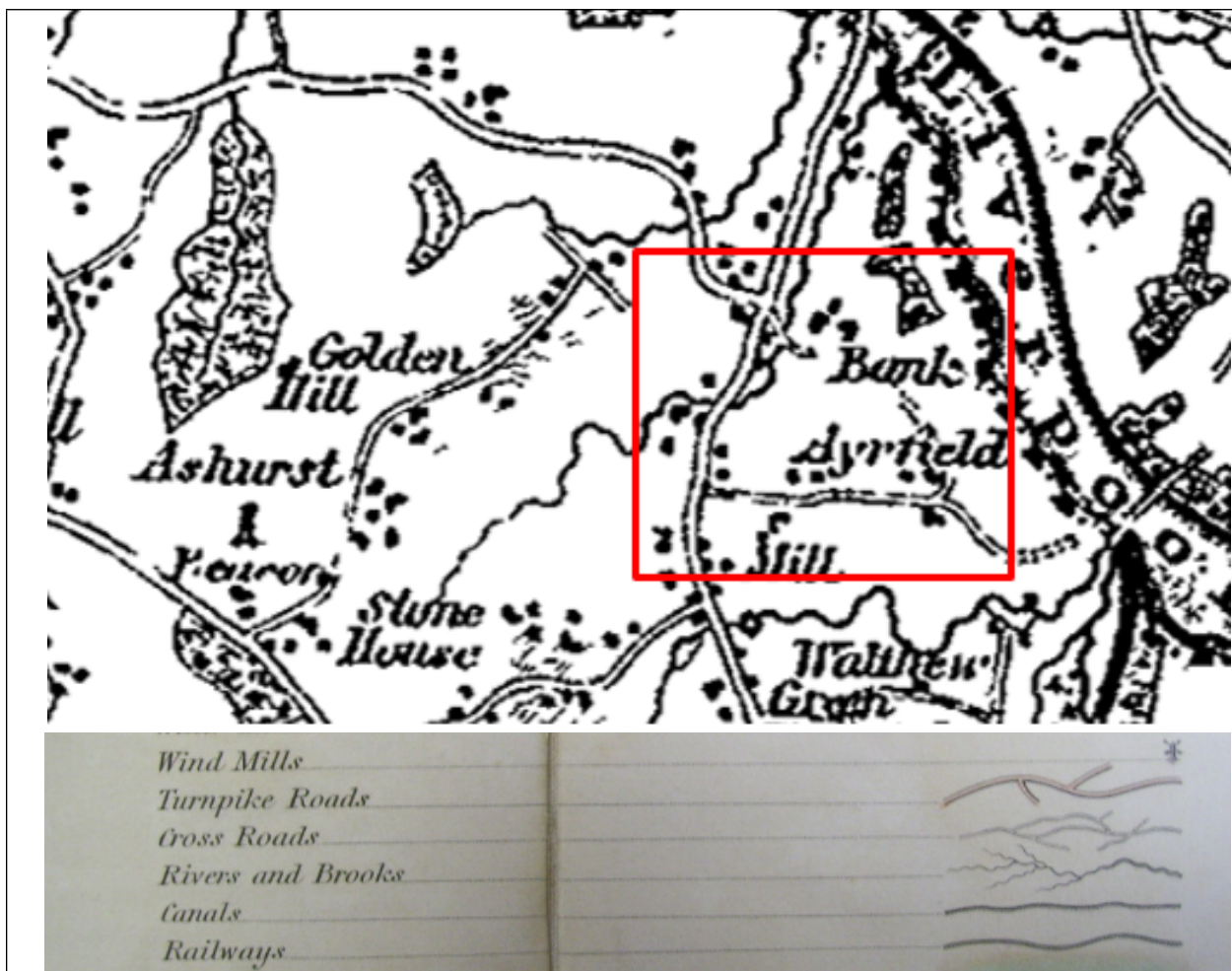
Modern GIS map showing highlighted area on Greenwood's Map

Observations

A route consistent with the Ayrefield Road is shown and buildings marked 'Ayrefield' can be

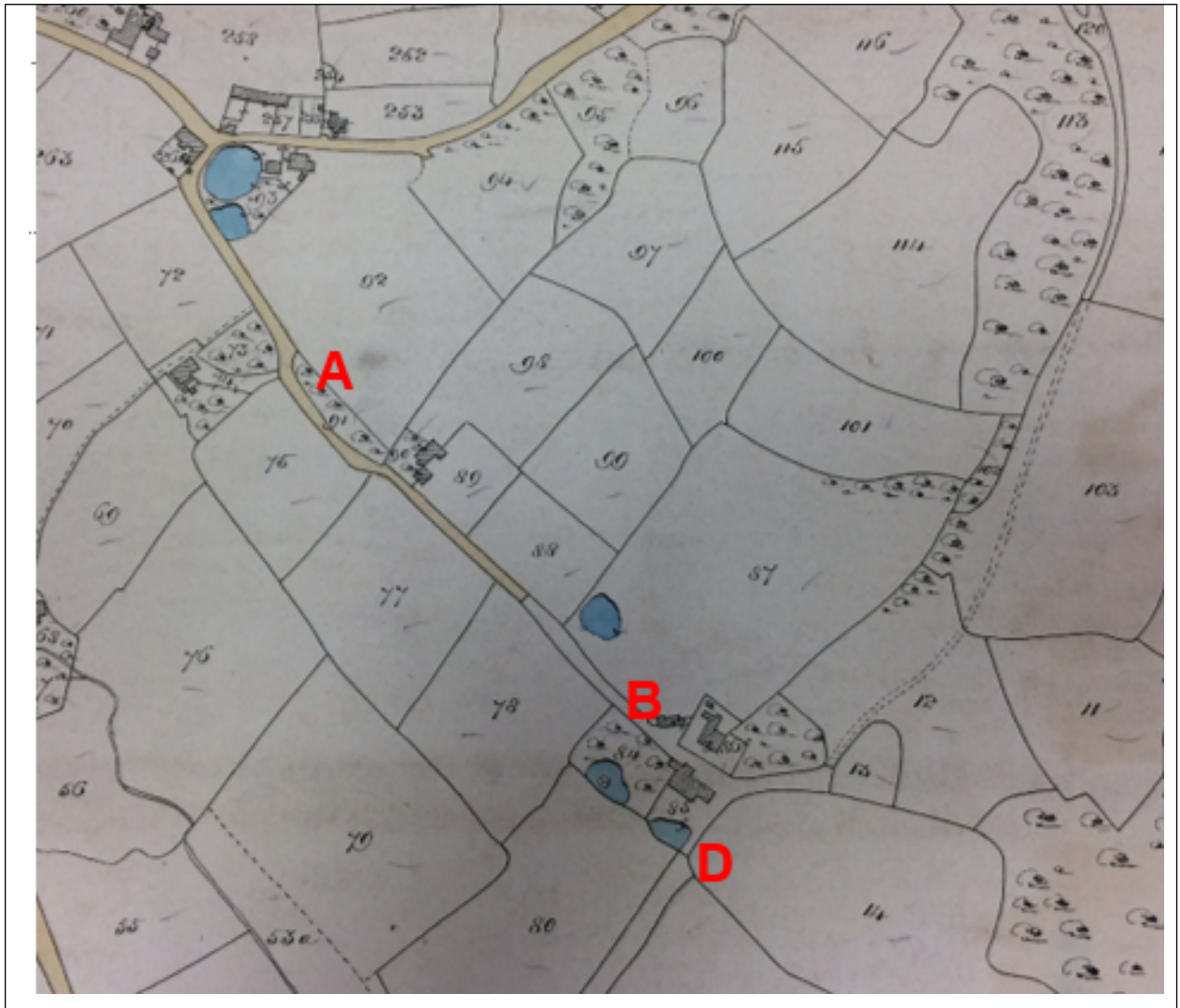
|                                   |      |  |
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|                                   |      | <p>seen. The route shown extends east south east from Bank Brow turning 90 degrees after passing the building labelled 'Ayrefield' to continue north. This route is likely to include the application route between point A and point B but the application route from point B to point D is not shown.</p> <p>An extract of the modern GIS map showing the area crossed by the application route – and in particular the routes of Ayrefield Road and Bank Road is included above to illustrate the distinctive 'loop' made by the two roads from Bank Brow. It should be noted that Bank Brow is a steep route downhill from its junction with Ayrefield Road northwards to where it flattens out on the approach to Ayrefield lodge. The steepness of this route may partly account for the existence of Bank Road and Ayrefield Road – both providing easier access to Ayrefield in the early 1800s.</p> |
| Investigating Officer's Comments  |      | <p>The route now known as Ayrefield Road (including the application route from point A to point B) and Bank Road probably existed as a substantial route in 1818.</p> <p>The route between point B and point D may have existed but it did not appear to exist as a major route. It may have existed as a minor route which would not have been shown due to the limitations of scale so no inference can be drawn in this respect.</p>  |
| <b>Hennet's Map of Lancashire</b> | 1830 | <p>Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.</p>  |





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| <p>Observations</p>                     |  | <p>Ayrefield Road – including the application route between point A and point B is shown on the map as a cross road. Buildings are shown marked as 'Ayrefield' in the proximity of Ayrefield Hall and Ayrefield House and a route is shown continuing through Ayrefield in a north north westerly direction to 'Bank' where a gap is shown, most likely on such a map, the break could be because the word 'Bank' was written across the route at this point rather than any gap on the ground.</p> <p>From the buildings at Ayrefield a further route is shown extending in a south easterly direction towards the canal. This may have included the application route between point C and point D but it is not possible to tell due to the small scale.</p> |
| <p>Investigating Officer's Comments</p> |  | <p>The route under investigation between point A and point B existed in 1830 and appears to be shown as part of a 'cross road'. It is not fully known what is meant by this term. 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</p>   |

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|   |      | <p>or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i>). It is unlikely that a map of this scale would show footpaths although a route which may have been part of the application route between point C and point D is shown. Many properties are shown on this map with no access road or track to them but that part of the application route along Ayrefield Road (point A to point B) is shown passing properties and connecting to routes that are now recorded as public vehicular highways. It is considered likely that Hennet's map shows routes depicted as through routes that were generally available to the travelling public in carts or on horseback and therefore suggests that by inclusion on the map the route under investigation between point A and point B may have been considered to be a public bridleway or carriageway.</p> |
| <b>Canal and Railway Acts</b>                     |      | <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>There are no proposed or existing canals or railways in the area crossed by the application route.</p>  |
| Investigating Officer's Comments                  |      | <p>No inference can be drawn with regards to the existence of public rights.</p>   |
| <b>Tithe Map and Tithe Award or Apportionment</b> | 1843 | <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>  |





Observations

The application route is shown as a part of a longer un-numbered route from Bank Brow through point A towards point B and is shaded in the same way as routes now recorded as public vehicular highways. Before reaching point B a line is shown across the route and beyond that point the route, although still shown as a bounded track, is not coloured and is numbered as part of plot 85. The track passes through point B to continue between buildings (not named on the map) to a T junction just beyond the buildings from where one route bears left and the other turns 90° to the right and continues to a gated junction at point D on the application route.

The application route itself – between points B – C-D is not shown and passes through plots numbered 84 and 85.

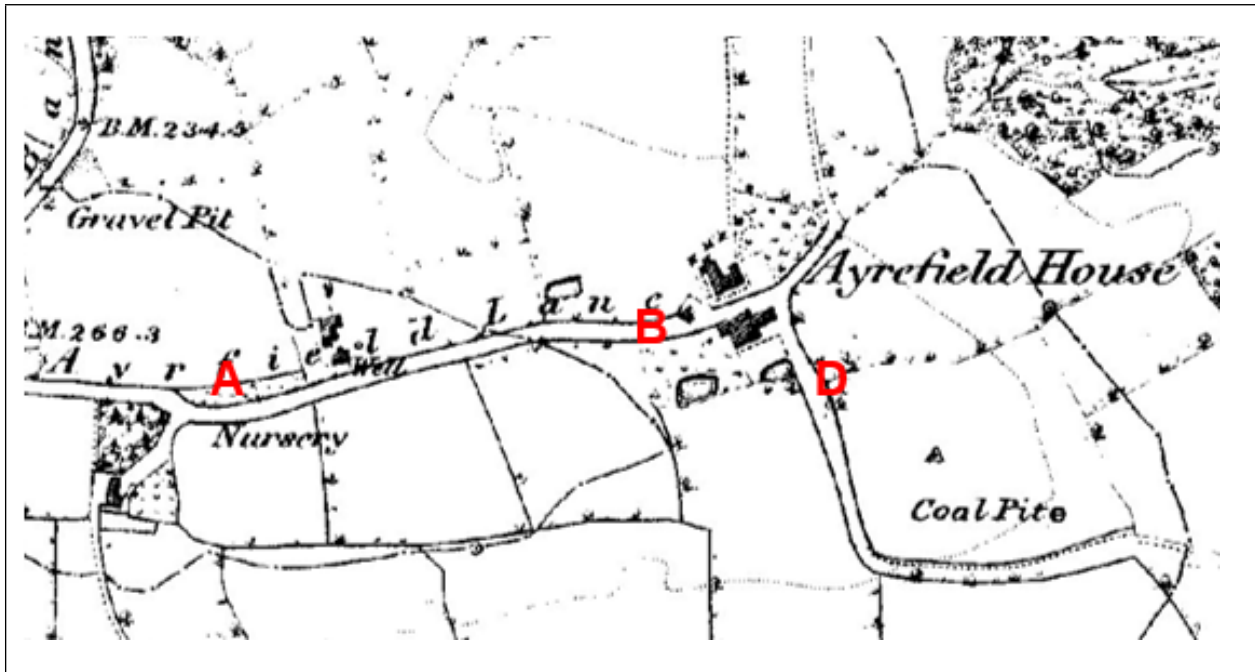
From point D an enclosed (uncoloured) route continues straight then 90° left and is numbered 82.

Plots 82, 84 and 85 are all described in the Tithe Award as being owned by Reverend Charles

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|   |      | <p>Kendrick and occupied by Pye Halsall. Plot 82 is described as 'lane' with no tithe payable. Plot 84 is described as an orchard, 85 as House and garden and 86 (which is numbered on the map as being the building to the north of the road just before the 'T junction') is described as fold and lane. No tithes are listed as being payable for any of the above detailed plot numbers.</p> <p>Public roads appeared to be shown coloured but not numbered on the map.</p>   |
| Investigating Officer's Comments                |      | <p>The application route between point A and point B existed in 1843 as part of a longer route. Part was shown in the same way as other routes which appear to have been considered as being public roads but a line is shown across the route beyond which the route is not shown coloured suggesting that it was either considered to be of a lower public status or was of an inferior condition – or possibly both.</p> <p>The application route between point B and point D is not shown and is unlikely to have existed. A route is shown, however, passing between the properties and then turning south west to point D (and beyond) and which appears to have provided access through Ayrefield prior to the application route B-C-D being in existence.</p> |
| <b>Inclosure Act Award and Maps</b>             |      | <p>Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.</p>  |
| Observations                                    |      | <p>No Inclosure Award was found for the area under investigation.</p>   |
| Investigating Officer's Comments                |      | <p>No inference can be drawn with regards to the existence of public rights.</p>  |
| <b>6 Inch Ordnance Survey (OS) Map Sheet 93</b> | 1849 | <p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1845 and published in 1849.<sup>1</sup></p>  |

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



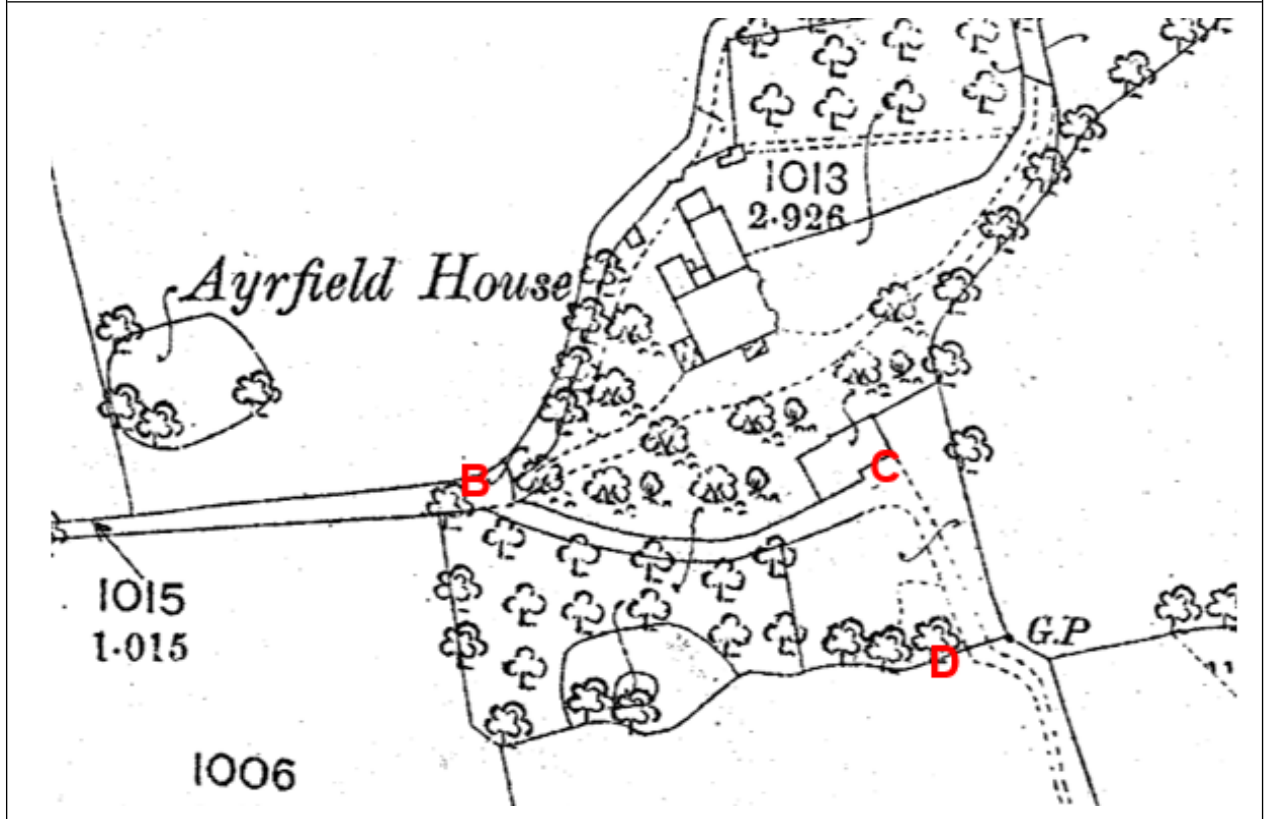
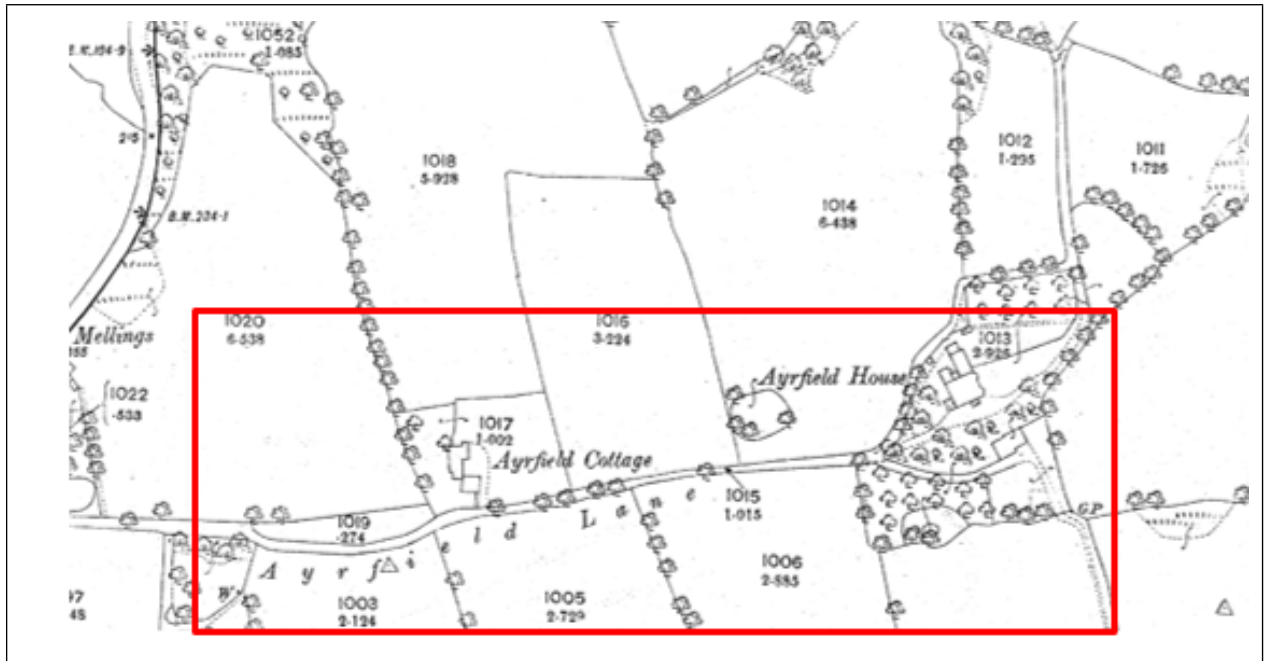


Enlarged extract of the 1849 map with the application route overlaid

Observations

The application route between point A and point B is shown as part of a longer route which extends east from Bank Brow and continues – to include the application route between points A-B to pass between the buildings marked as

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|                                   |      | <p>Ayrefield House. The route from Bank Brow to Ayrefield House is named as Ayrefield Lane on the map and is shown as being open and accessible (i.e. not gated).</p> <p>The application route from point B to point C is not shown but it appeared to be possible to pass between the buildings and turn right to continue in a generally southerly direction along an enclosed track to point C and then continue along the track through point D and then to continue along the track – consistent with the route now recorded as Footpath 2 to get to the river at the Weir at 'Dean Old Lock'.</p> <p>Beyond Ayrefield House Ayrefield Lane also continued north and then north westerly to Bank House.</p> |
| Investigating Officer's Comments  |      | <p>A route consistent with the route to be added between point A and point B existed in 1849 and formed part of a named route (Ayrefield Lane) which provided access to a number of properties including Ayrefield House from where it split with one section looping back round to Bank Brow and Bank House and another route (which included the application route between point C and point D) leading to properties situated at the Weir on the River Douglas. Both parts of the route (point A - point B and point C - point D) appeared to be capable of being used on foot, horseback and by vehicles of that time.</p> <p>The application route between point B and point C did not exist in 1849.</p>   |
| <b>25 Inch OS Map Sheet 93-01</b> | 1895 | <p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1893 and reprinted 1895.</p>   |





Observations

The full length of the application route is shown.

Between point A and point B the application route runs along the bounded access road named as Ayrfield Lane on the map.

From point B a new track is shown which was not shown on the earlier edition of the 6 inch map. The route is bounded on either side but is not gated at point B - a dashed line across the

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|   |  | <p>route indicating a possible change in surface but not suggesting that access onto the route was restricted by a gate or barrier.</p> <p>From point B the bounded route is consistent with the application route and continues to point C from where it turns to continue in a generally southerly direction as an unbounded track to point D. At point D a line is shown across the track suggesting the existence of a gate. The letters 'G.P' are written next to the track at point D which it is likely to mark the existence of a 'guide post' (sign post).</p> <p>North of point B a further route is shown running to the west of, and then continuing north past, Ayrefield House to continue as Bank Road.</p> <p>No part of the application route (or Ayrefield Lane and Bank Road) are shown coloured or shaded on the map.</p>   |
| <p>Investigating Officer's Comments</p> |  | <p>The whole of the application route existed in 1895 as part of a longer route with the section between point B and point D constructed to provide a route around the edge of Ayrefield House rather than passing through the middle of the grounds of the property. The existence of a guide post at point D suggests that use of the route was not limited to the landowners (who would have known which route to take).</p> <p>The fact that part of the route was named on the map (Ayrefield Lane) is evidence that it was known locally by that name and is consistent with use of the route by the public at least on horseback at that time.</p> <p>The existence of gates along a public route (point D) would not have been considered unusual in the 1800s particularly in the proximity of farms or in rural locations. Gateways, if they were found to exist, were shown by the surveyor in their closed position although this is not necessarily a true reflection of what may have been the position on the ground.</p> <p>Shading was often used to show the administrative status of roads on 25 inch maps prepared – primarily between 1884 and 1912. All metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road sheet. The route under investigation is not shown in that</p> |



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|  |      | way suggesting that it was not considered to be such a road at that time.  |
| <b>25 inch OS Map Sheet 93-01</b>        | 1908 | Further edition of the 25 inch map surveyed in 1892, revised in 1907 and published in 1908.  |
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| Observations                             |      | <p>The full length of the application route is shown as part of a longer route.</p> <p>The route does not appear to have altered since the earlier edition of the 25 inch Ordnance Survey map. The guide post at point D is not shown but a route from close to point D extending north to Bank Road is shown which avoids passing through the garden of Ayrefield House and a guide post is located on this route.</p>        |
| Investigating Officer's Comments         |      | <p>The application route existed in 1908 as part of a longer through route and appeared to be capable of being used at least on foot and possibly on horseback at that time. Routes are shown both to the north and south of Ayrefield House suggesting that through routes existed along Ayrefield Lane, Footpath 2 and Bank Road and that routes had been provided around the property – instead of directly through it.</p> |
| <b>Ordnance Survey Object Names Book</b> |      | <p>When the Ordnance Survey was collecting information to put on its second series of published maps the surveyors recorded the names of anything that was to be shown on the maps. The Ordnance Survey Object Names Book for an area records these names, the description of the item named, and the local</p>  |

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|                                  |      | person attesting to the name. The descriptions usually state where the road started and finished, and often described them as a road, lane or drove road. The descriptions often drew a distinction between what was believed to be public and private and included information about who owned or maintained bridges. |
| Observations                     |      | An online search of the Object Names Book records deposited at The National Archives was made but the Book for Ordnance Survey Map sheet 93NW could not be found.  |
| Investigating Officer's Comments |      | No inference can be drawn with regards to the existence of public rights.  |
| <b>Bacons Map</b>                | 1904 | G W Bacon was a publisher of maps and in 1890 his 'Commercial and Library Map of Lancashire from the Ordnance Surveys' was published, and later reprinted. As the title states, the maps he published were derived from Ordnance Survey maps.  |



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| Observations |  | GW Bacon was an American entrepreneur who moved to London and was known to have been involved in numerous business ventures including the publication of world maps. The maps of the British Isles were at a small scale and as such only the more significant routes are generally shown. Commercial maps of this nature were expensive to produce and to purchase and as a result routes shown were often considered to be public through routes. |
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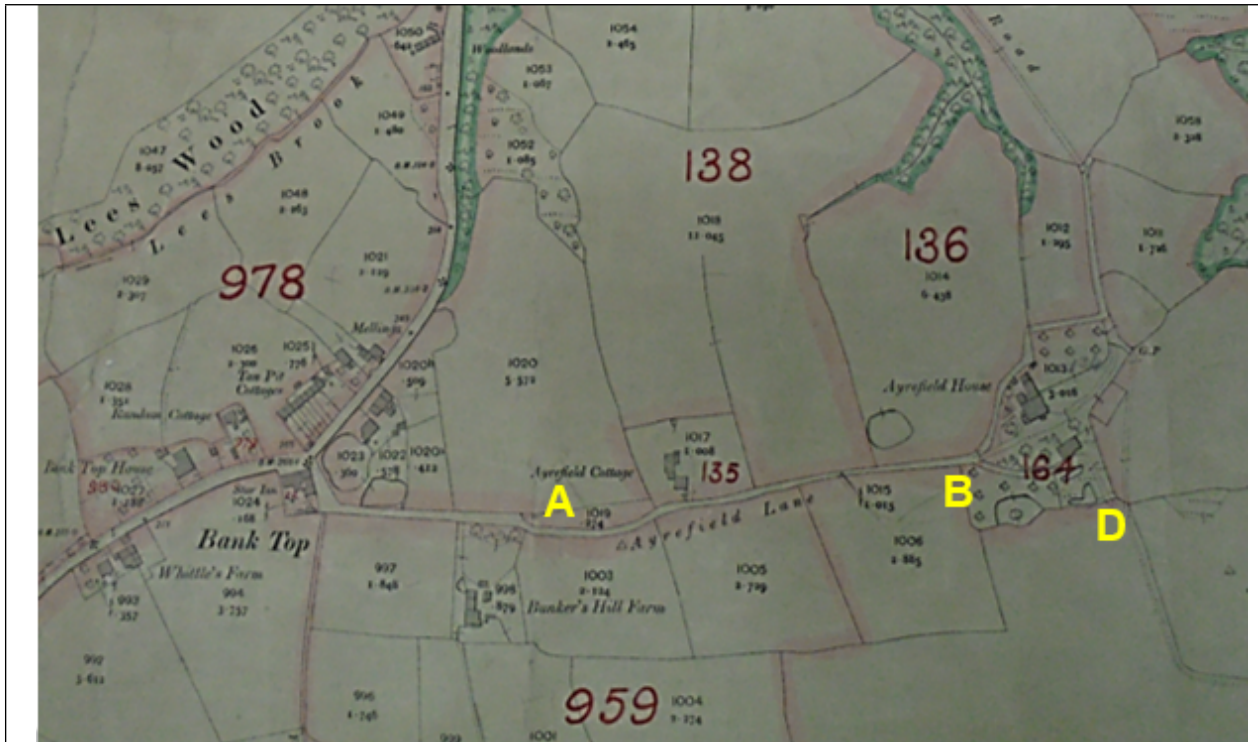
|                                  |      |   |
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|                                  |      | <p>The application route between point A and point B is shown as part of a longer route and is shown in the same way as routes now known to carry public vehicular rights supporting the fact that it existed as a substantial physical route at that time and that it was probably available for use by the public on horseback and possibly with vehicles.</p> <p>The application route between point B and point D is not shown.</p>   |
| Investigating Officer's Comments |      | <p>The application route between point A and point B existed as a substantial route which was probably capable of being used as part of a through route by vehicles. The application route between point B and point D was not considered to be a significant vehicular route and was therefore not shown on the map.</p>   |
| <b>Finance Act 1910 Map</b>      | 1910 | <p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership 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</p> |



noted that if no reduction was claimed this does not necessarily mean that no right of way existed.



County Records Office

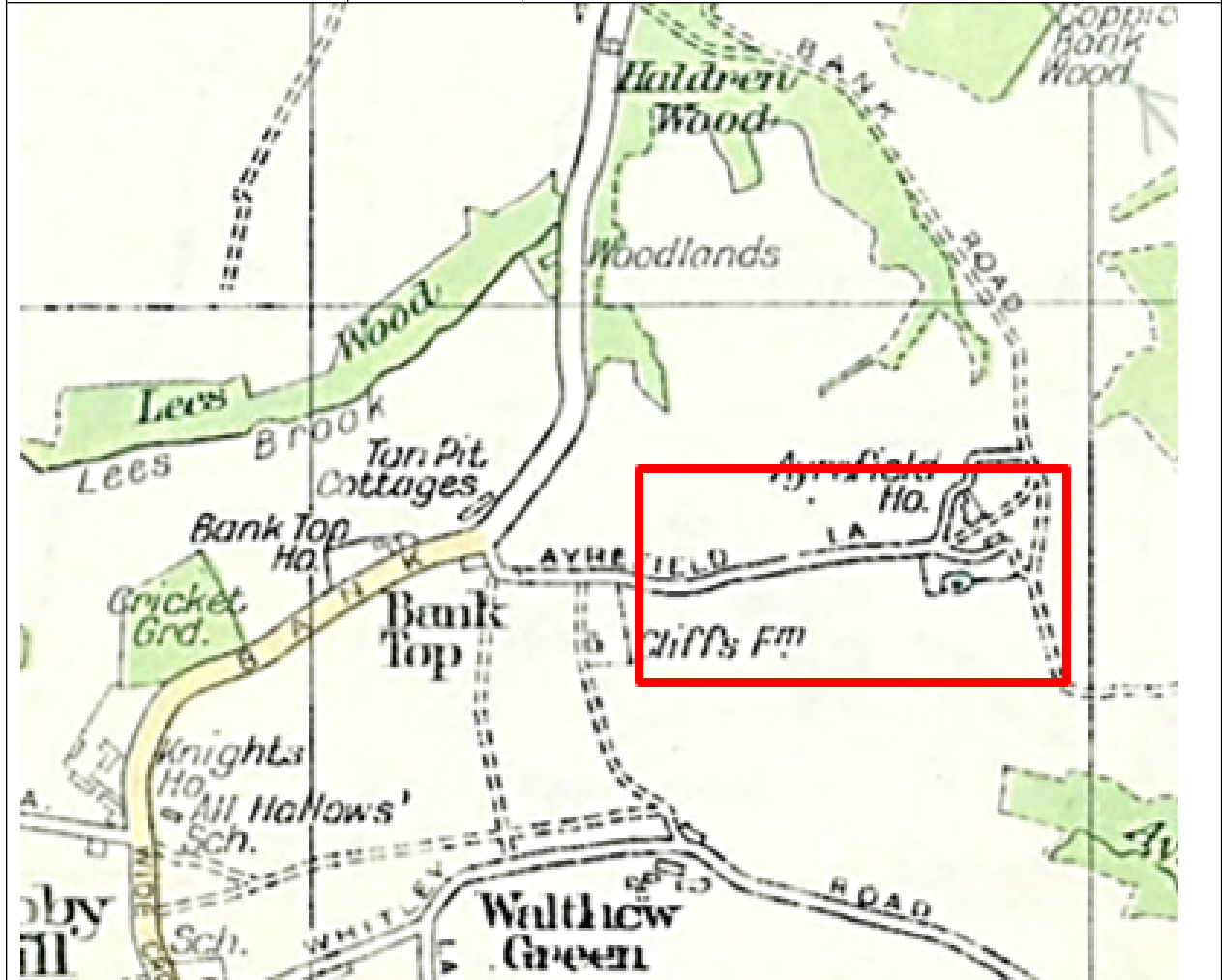


The National Archives

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| <p>Observations</p>                     |  | <p>The plan deposited at the County Records Office shows the application route between point A and point B excluded from the numbered hereditaments together with the rest of Ayrefield Lane. The route between point B and point D is shown included in the numbered plot 164 but this number has been crossed out on the map deposited in the County Records Office and '134' written in pencil. The route is shown in the same way on the plan deposited in The National Archives.</p> <p>The Field Book entry for hereditament 134 describes the property as Ayrefield House, garden and stables. It is listed as being owned by GH Banks of Winstanley Hall and occupied by Thomas Witter. There is no reference to the application route and no deduction is listed for public right of way or user. A £10 deduction is listed for easements but the type of easement is not stated.</p> |
| <p>Investigating Officer's Comments</p> |  | <p>The exclusion of the route between point A and point B from the taxable hereditaments is good evidence of, but not conclusive of, public carriageway rights. Several of the numbered plots are split by the route giving further weight to the belief that the route under investigation was considered to be for public use and that it</p>  |

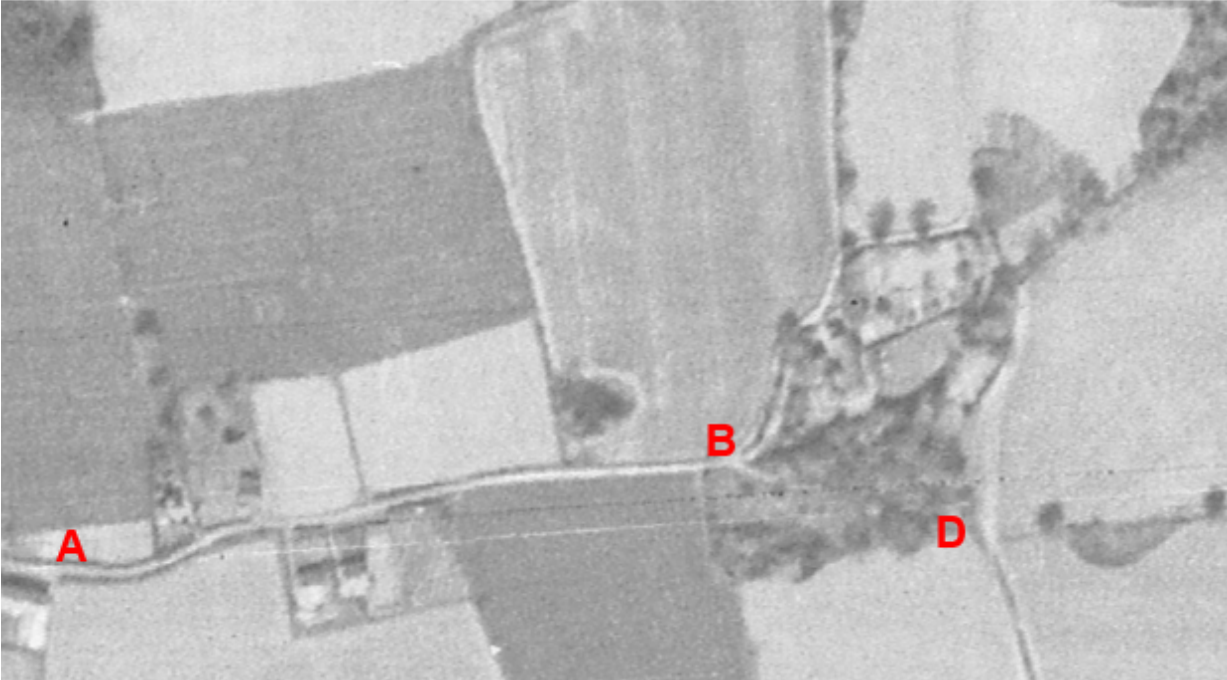
|  |            |   |
|--|------------|---|
|  |            | <p>carried public vehicular rights (as public footpaths and public bridleways were normally included within the numbered plots).</p> <p>The maps showed land in private ownership and, by implication, land not recorded as being privately owned may have been regarded as being in public ownership or it may have been that ownership was unknown.</p> <p>With regards to the route between point B and point D the owners of the land did not acknowledge the existence of any public rights over the land crossed by the application route at the time of the valuation.</p> |
| <b>25 Inch OS Map sheet 93-1</b>                                 | 1928       | Further edition of 25 inch map (surveyed 1892, revised in 1926 and published 1928.  |
|  |            |   |
| Observations   |            | <p>The full length of the application route is shown as part of a longer route.</p> <p>It is shown unaltered from the previous editions of the 25 inch Ordnance Survey maps.</p>  |
| Investigating Officer's Comments                                 |            | The application route existed as part of a longer through route and appeared capable of being used.   |
| <b>Authentic Map Directory of South Lancashire by Geographia</b> | Circa 1934 | 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. The introduction to the atlas states that the  |

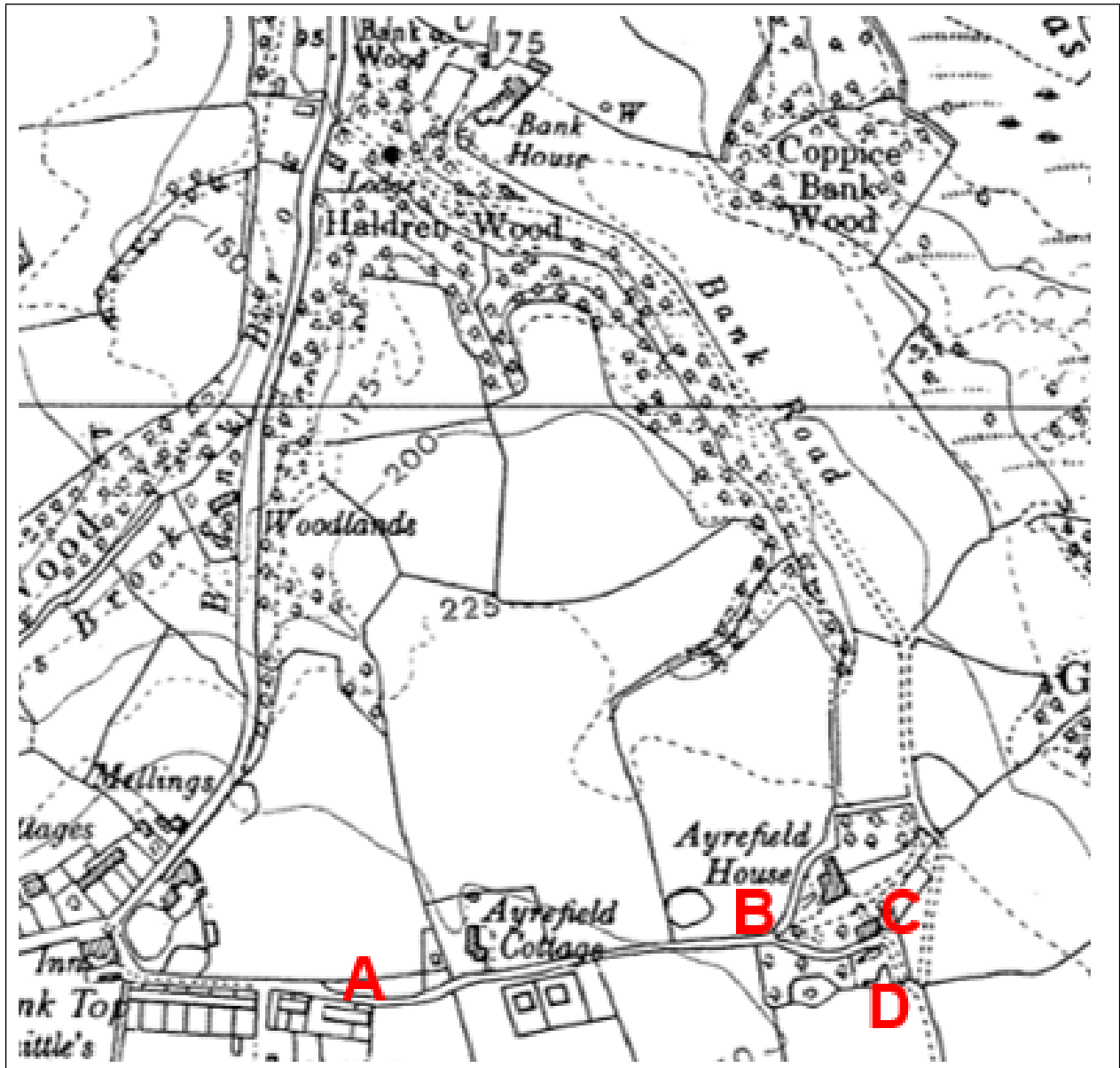
|  |  |  |
|--|--|--|
|  |  | publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'. |
|--|--|--|



|                                      |       |  |
|--------------------------------------|-------|--|
| Observations                         |       | The full length of the application route is shown as part of a longer through route. Between point A and point B the route is shown as part of a longer route named as Ayrefield Lane. |
| Investigating Officer's Comments     |       | The route under investigation is shown in the atlas consistent with other routes carrying public vehicular rights (at least between point A and point C).                              |
| <b>Aerial Photograph<sup>2</sup></b> | 1940s | The earliest set of aerial photographs available was taken just after the Second World War in the  |

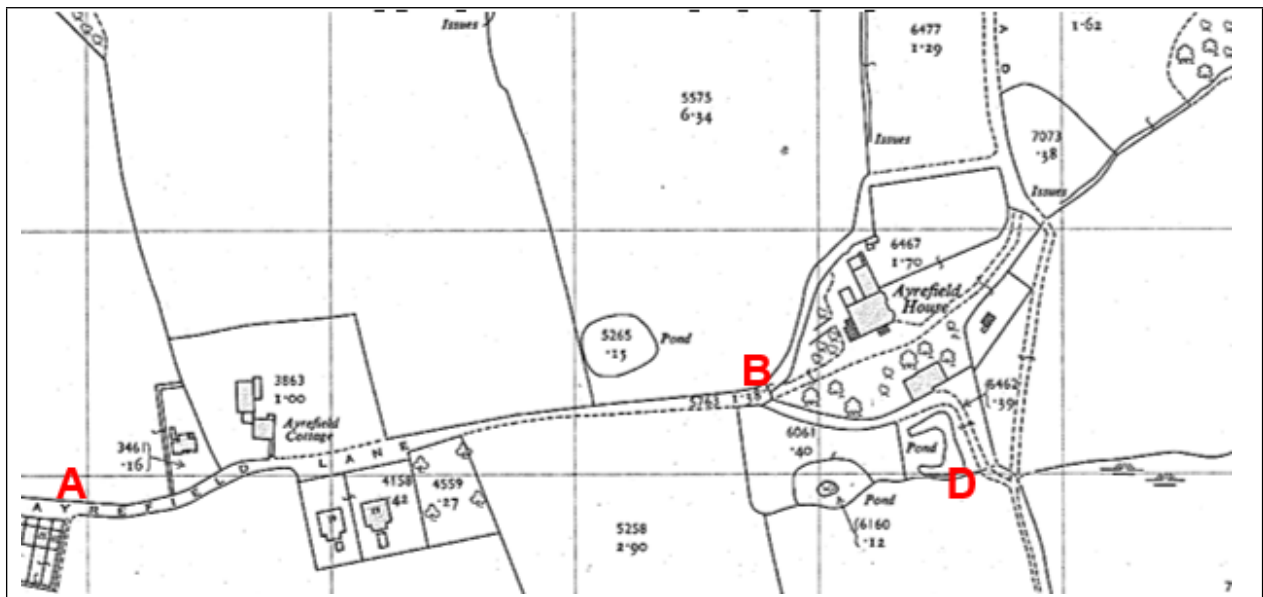
<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring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

|  |      |   |
|--|------|---|
|  |      | 1940s and can be viewed on GIS. The clarity is generally very variable.   |
|  |      |   |
| Observations   |      | The application route can be clearly seen between point A and point B as part of a longer route. The way in which it shows up on the photograph is suggestive of a route used by vehicles. From point B to point D only part of the route can be seen due to tree coverage and it is not possible to see whether any gates existed across it. |
| Investigating Officer's Comments   |      | The route to be added existed in the 1940s.   |
| <b>6 Inch OS Map sheet SD 50NW</b>   | 1955 | The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.  |

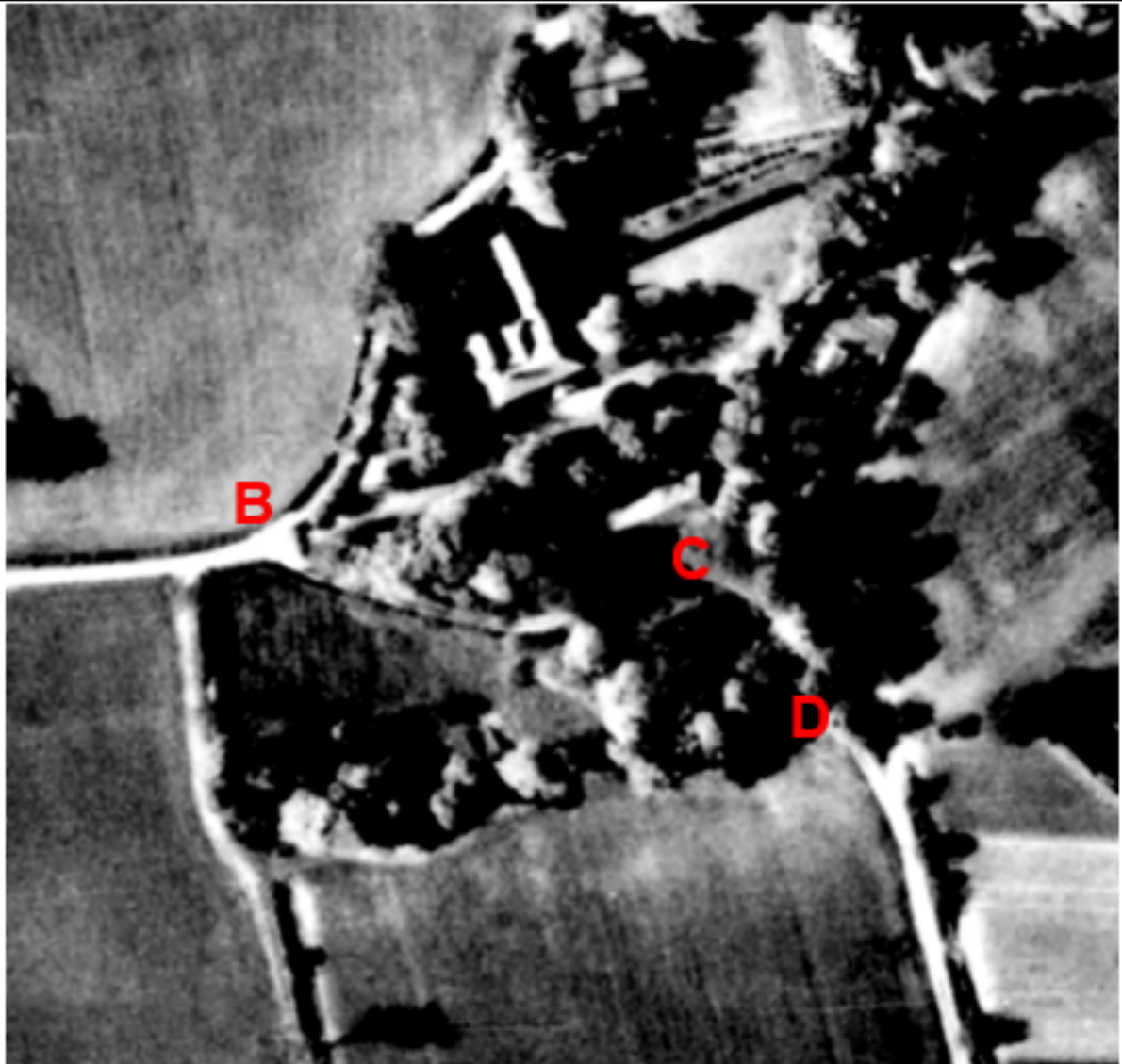


|                                  |      |   |
|----------------------------------|------|---|
| Observations                     |      | The full length of the application route is shown as part of a longer route. Ayrefield Lane is not named on the map. Additional houses are shown to exist along Ayrefield Lane east of point A and also opposite Ayrefield Cottage. |
| Investigating Officer's Comments |      | The route to be added existed in the 1930s as part of longer routes and provided access to a number of properties.  |
| <b>1:2500 OS Map</b>             | 1959 | Further edition of 25 inch map reconstituted from former county series and revised in 1959 and published 1959 as national grid series.  |





|                                  |       |   |
|----------------------------------|-------|---|
| Observations                     |       | The full length of the application route is shown as part of a longer route. The application route appeared to be crossed by a continuous line at point B and partially at point D. |
| Investigating Officer's Comments |       | The route to be added existed in the 1950s as part of a longer route with a gate at point B and possibly at point D.  |
| <b>Aerial photograph</b>         | 1960s | The black and white aerial photograph taken in the 1960s and available to view on GIS.  |



|                                  |      |   |
|----------------------------------|------|---|
| Observations                     |      | The application route can be clearly seen as part of Ayrefield Lane from point A to point B. At point B a significant track can be seen curving round towards point C suggesting that the application route from point B through to point D was clearly defined and being used by vehicles in the 1960s. From point D a substantial track can be seen continuing south along the route of Footpath 2. |
| Investigating Officer's Comments |      | The application route existed as part of a significant route in the 1960s.  |
| <b>Aerial Photograph</b>         | 1999 | Aerial photograph available to view on GIS.   |





|                                  |      |  |
|----------------------------------|------|--|
| Observations                     |      | The application route between point A and point B can be clearly seen as part of a longer route providing vehicular access. The application route from point B to point D cannot all be seen due to tree cover but near point B can be seen but appears lightly used. A trodden line appears visible along the route of Footpath 2 south of point D much less prominent than in the 1960s. |
| Investigating Officer's Comments |      | The application route between point A and point B existed and was capable of being used. The route between point B and point D appears to have existed to link to Footpath 2 although it is not possible from the photograph to see whether any gates or stiles existed.   |
| <b>Aerial Photograph</b>         | 2008 | Aerial photograph available to view on GIS.  |



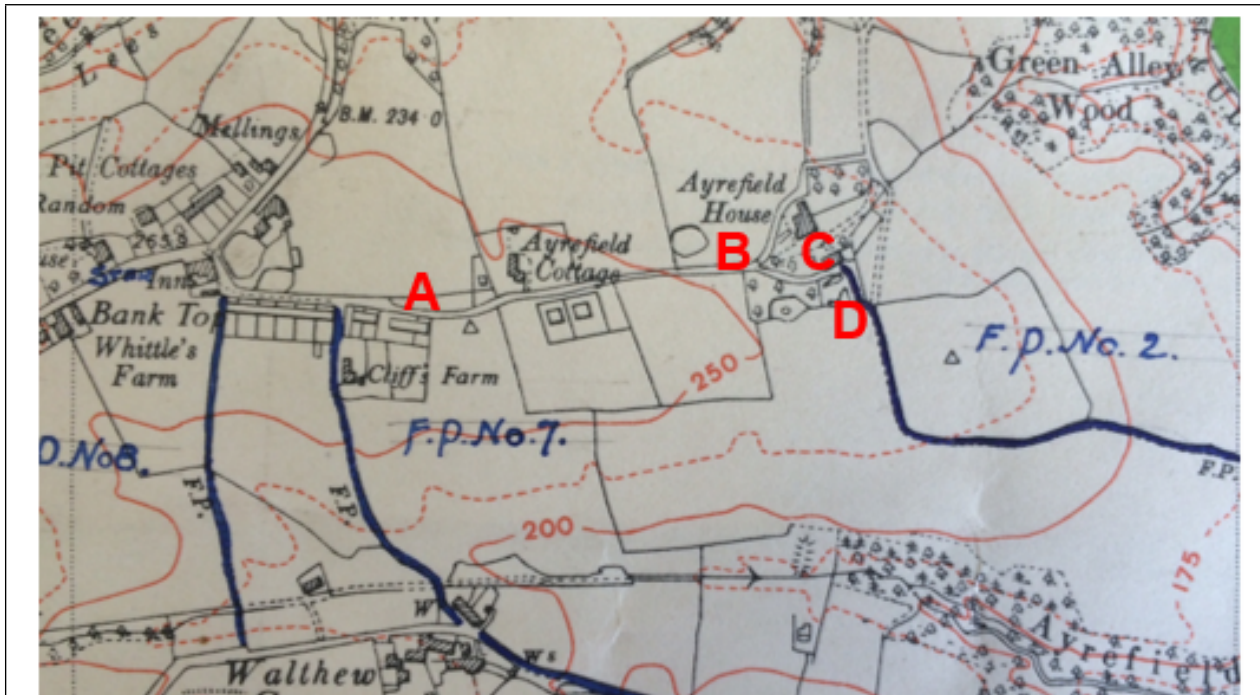
|                                  |      |  |
|----------------------------------|------|--|
| Observations                     |      | The application route between point A and point B can be clearly seen as part of a longer route providing vehicular access. The application route from point B to point D cannot be seen due to tree cover. A trodden line appears visible along the route of Footpath 2 south of point D. |
| Investigating Officer's Comments |      | The application route between point A and point B existed and was capable of being used.   |
| <b>Aerial Photograph</b>         | 2016 | Aerial photograph available to view on GIS.  |



|                                  |       |   |
|----------------------------------|-------|---|
| Observations                     |       | The application route between point A and point B existed and was capable of being used. A gate can be seen across the application route at point B and the line of the route from point B to point C is mostly visible and appears to be accessible. Between point C and point D the line of the route appears clear apart from the tree that has fallen across it close to point D.   |
| Investigating Officer's Comments |       | The application route between point A and point B existed and was capable of being used. The route between point B and point D appears to have existed to link to Footpath 2 although it is not possible from the photograph to see whether the gate at point B was unlocked or what access was alongside it (a pedestrian gate or stile). A tree can be seen across the route close to point D which is referred to later in the report. |
| <b>Definitive Map Records</b>    |       | 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.<br><br>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.  |
| <b>Parish Survey Map</b>         | 1950- | The initial survey of public rights of way was  |

|                  |      |  |
|------------------|------|--|
|                  | 1952 | carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the county council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the county council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas. |
| Observations     |      | The area crossed by the application route was part of the Urban District of Skelmersdale and Holland in the 1950s for which no parish survey was completed.  |
| <b>Draft Map</b> |      | The Draft Maps were given a “relevant date” (1 <sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 <sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.   |





NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE  
ACT 1949.

~~SURVEY OF PUBLIC RIGHTS OF WAY.~~

APPLEY BRIDGE and ROBY MILL and VILLAGE.

| No. of path. | Kind of path. | Position.  | Length in Miles. |
|--------------|---------------|--|------------------|
| ✓ 1.         | F.P.          | Commencing in cart way, close to Speakman's shop, Appley Lane and leading Westerly for approximately 700' thence Southerly along line of hedge approximately 1,000', thence Westerly along hedge line to reach and pass through farm yard to Halliwell Farm and road to reach Holland Lees Road. | .47 miles.       |
| ✓ 2.         | F.P.          | From point East of Ayrefield House <del>along line of 500'</del> Southerly thence Westerly to Weir near Dean Cottage.  | .50 miles.       |
| ✓ 3.         | F.P.          | Southerly from Dean Cottage Weir, to join to Footbridge crossing boundary stream at Head of Dean Wood.   | .26 miles. ?     |
| ✓ 4.         | F.P.          | Commencing at Stepping stones in Dean Wood stream, thence N. to junction point to Ayrefield Road and to Footpath leading to Footbridge as F.P. 3.  | .24 miles. ?     |

Observations

Most of the route was not shown on the Draft Map but Footpath No. 2 was shown from point C along the application route to point D and then continued in a south south easterly direction.

Footpath 2 was described in the Draft Statement as being from a 'point east of Ayrefield House ~~along line of 500'~~ Southerly thence westerly to

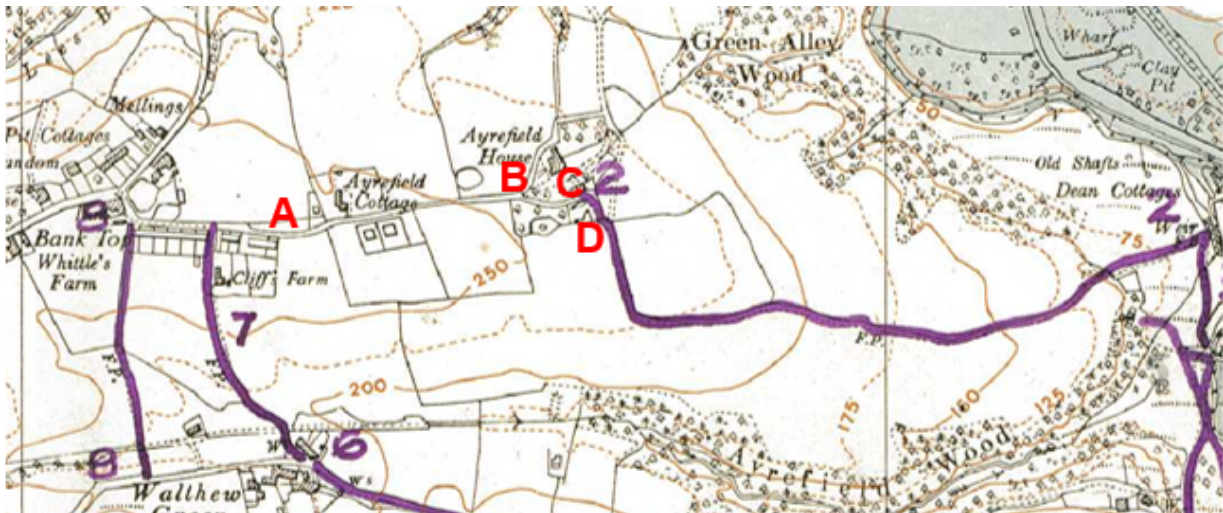
Weir near Dean Cottage'. The words 'Along line of 500' ' have been crossed out.

Representations were made to the county council by the Ramblers Association about the fact that Ayrefield Lane and Bank Road were not shown. The status of the route was queried by the Ramblers Association who said that if they were not public roads then they should be recorded as public paths.

A handwritten note on the list of representations states 'public highways' next to the representation made about Ayrefield Lane and Bank Road.

**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 application route between point C and point D is shown as part of Footpath Up Holland 2. The application route from point A to point C is not shown on the Provisional Map.

The Draft Statement had been altered to read 'From point East of Ayrefield House Southerly thence westerly to Weir near Dean Cottage'.

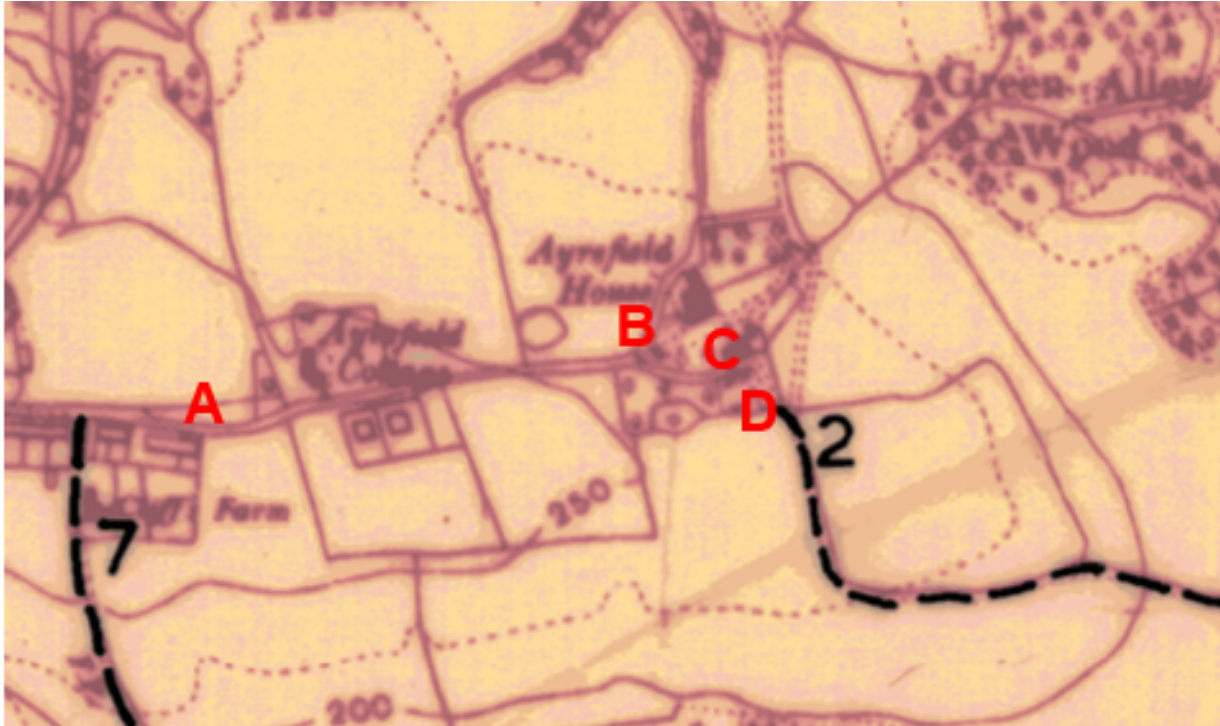
No representations were made by landowners with regards to how the application route was

|   |  |   |
|---|--|---|
|   |  | shown.  |
| <b>The First Definitive Map and Statement</b> |  | The Provisional Map, as amended, was published as the Definitive Map in 1962. |



|  |  |   |
|--|--|---|
| Observations   |  | The application route between point C and point D was shown as part of Footpath Up Holland 2.   |
| <b>Revised Definitive Map of Public Rights of Way (First Review)</b> |  | Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 <sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process. |





|                                  |  |
|----------------------------------|--|
| Observations                     | No part of the application route is recorded on the Revised Definitive Map (First Review).   |
| Investigating Officer's Comments | <p>The application route between point C and point D is consistently shown as part of Footpath Up Holland 2 from the preparation of the Draft Map to the publication of the First Definitive Map. It is not shown on the Revised Definitive Map (First Review) but no legal order could be found suggesting that it had been legally extinguished or diverted.</p> <p>It has been found across Lancashire that (a) the small scale (6 inch to 1 mile) of the OS maps used to prepare the Parish Survey, Draft, Provisional, First Definitive and Revised Definitive Map (First Review) (b) the thickness of the pens used to draw the lines to denote the routes and (c) the fact that the maps were drawn and then reproduced at least 5 times during the process – it is not known by whom – have resulted in a significant number of drafting errors occurring on maps in some areas, particularly where the base map is unclear or cluttered.</p> <p>In this particular case part of the application route C-D is shown on three maps (Draft, Provisional and First Definitive) as part of Footpath Up Holland 2. There appears to be no reason why it was not shown on the Revised Definitive Map (First Review) other than a</p> |



|   |                            |  |
|---|----------------------------|--|
|   |                            | <p>drafting error explained by the fact that the draftsman (who was very unlikely to have personal knowledge of the route) did not continue the ink line through the area shown on the base map as woodland to point C.</p> <p>The fact that the application route between point A and point C was not shown on the Draft Map of public rights of way was queried under the formal process by the Ramblers Association in 1953. It appears to have been considered and concluded that the route (at least from point A to point B) formed part of the public highway that it was not necessary or appropriate to record on the Definitive Map. If only the route between point A and point B was considered to be a public highway then this would still leave a question about how the public accessed the recorded route of Footpath Up Holland 2 at point C so it appears that the application route between point B and point C was also considered to be public highway in 1953.</p>  |
| <p><b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b></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 Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at public expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p> |



Plan provided by LCC to Arnold Fooks Chadwick Solicitors 17 July 2001

Observations

There is no 1929 Handover Map available for the area crossed by the application route.

A search of Lancashire County Council highway records was made with regards to the application route.

Ayrefield Road is currently recorded on the adoption records held by the county council as being adopted for a length of 207 metres from the junction with Bank Brow. The application route between point A and point B is not recorded as being publicly maintainable.

However, a letter and map dated 17 July 2001 from Lancashire County Council Highways to Arnold Fooks and Chadwick Solicitors explains that the route shown red on the plan (which included the application route A-B) was considered to be the adopted length of Ayrefield Lane.

A further letter dated 5 January 2006 from Lancashire County Council Highways to the Land Registry states that the adopted length of Ayrefield Road was 207 metres from 'Roby Mill' suggesting that the adopted section was then considered to stop at point A and not include the

|   |             |  |
|---|-------------|--|
|   |             | <p>application route.</p> <p>No correspondence could be found to explain the differing information.</p>  |
| Investigating Officer's Comments  |             | The application route is not recorded as being publicly maintainable on the List of Streets by the county council. However, there is conflicting information about the route between point A and point B.  |
| <b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b> |             | <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 route runs.   |
| Investigating Officer's Comments  |             | There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over their land.  |
| <b>Lancashire County Council public rights of way reports</b>                       | 1992 - 2015 | A search was made of Lancashire County Council public rights of way inspection and report files for any reference to the application route.  |
| Observations  |             | Two reports referred to Footpath Up Holland 2  |

|                                  |  |  |
|----------------------------------|--|--|
|                                  |  | <p>dated 1992 but neither gave specific locations. The first report concerned increased use of Footpath 2 by horse-riders and in particular use by a local riding school at Gathurst which was causing the surface of the route to become churned up. A second report referred to the location of a footpath signpost on Ayrefield Road and was recorded as being in relation to Footpath 2. There were no details about the exact location of the signpost and the person reporting it was indicating that it pointed the wrong way rather than being in the wrong place.</p> <p>A report form completed on 20 September 1999 by the West Lancashire Group of the Ramblers Association stated that a gate had been locked at Ayrefield House on the route of Footpath 2. The report noted that there was a stile adjacent to the locked gate. The grid reference provided by the Ramblers Association is for the existing gate at point B on the application route.</p> <p>The route was inspected by a member of the county council's public rights of way team on 8 November 1999 and the path was described as being clear.</p> <p>Further reports were dated 2014; the first dated 6 July 2014 stated that the footpath through the grounds of Ayrefield House was impassable due to the owners felling a large tree across the path. It also stated that a very high stile had been erected which was dangerous and that there was no facility for dogs. The person making the report believed that the owners were attempting to restrict use.</p> <p>Two further reports made in the same month refer to the new owners of Ayrefield House deliberately obstructing the footpath by felling a tree and a dangerous step stile erected (at point B on the application route) making it difficult for elderly residents.</p> <p>A report dated 26 April 2015 referred to the erection of private path signs at point B on the application route and states that the footpath sign had been removed and placed on the ground inside the property.</p> |
| Investigating Officer's Comments |  | Reports from the early 1990s suggest use of the route by horse riders from a local riding school and the fact that a signpost was erected  |

indicating knowledge and use of the route.

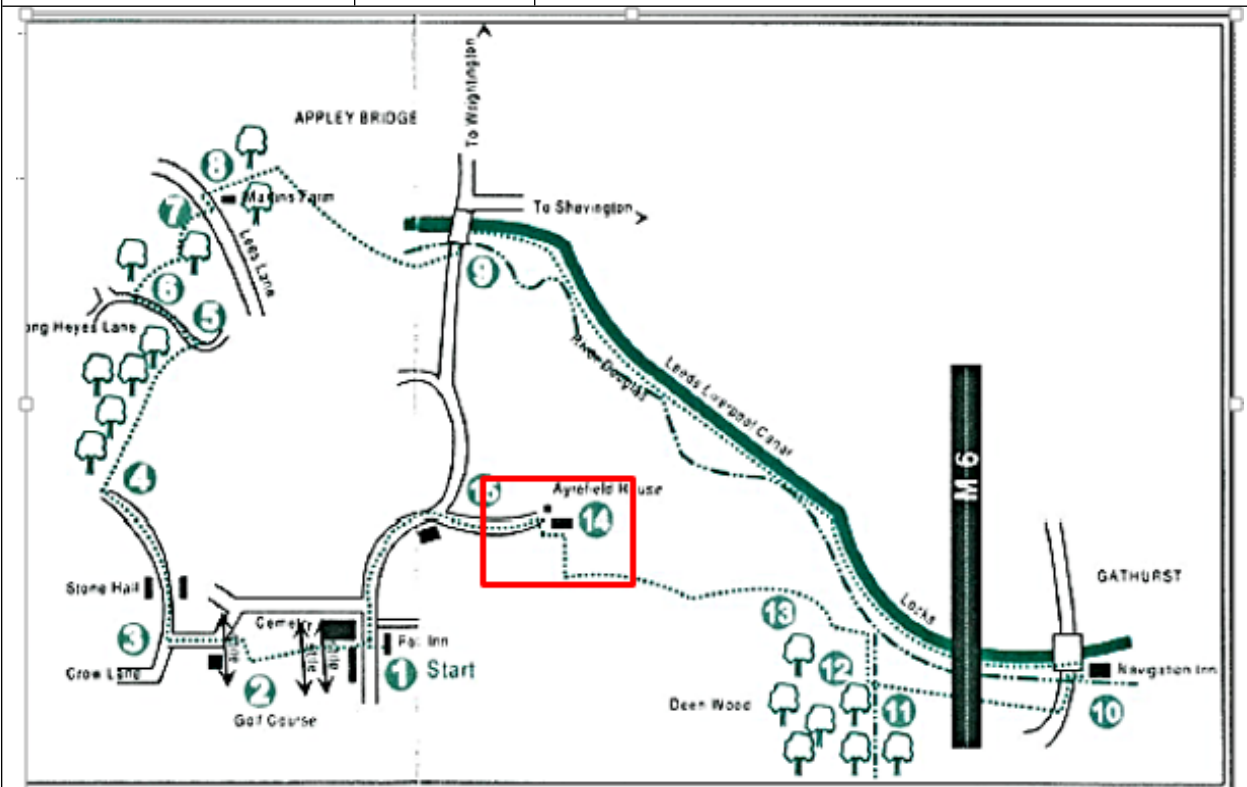
The gate at point B appears to have been locked in 1999 but with a stile alongside it providing access.

There is nothing on the county council's files indicating that use of the route by pedestrians had been challenged until 2014 when there are numerous reports about the new landowners erecting a difficult stile, erecting private signs and felling a tree which obstructed the route.

This coincides with the time that the county council were first contacted by the Up Holland Parish Council with regards to making an application to record the application route as a public footpath and prompted the county council officers to visit the site to take some photographs of the route.

**Parish Council Leaflets** 1995-1996

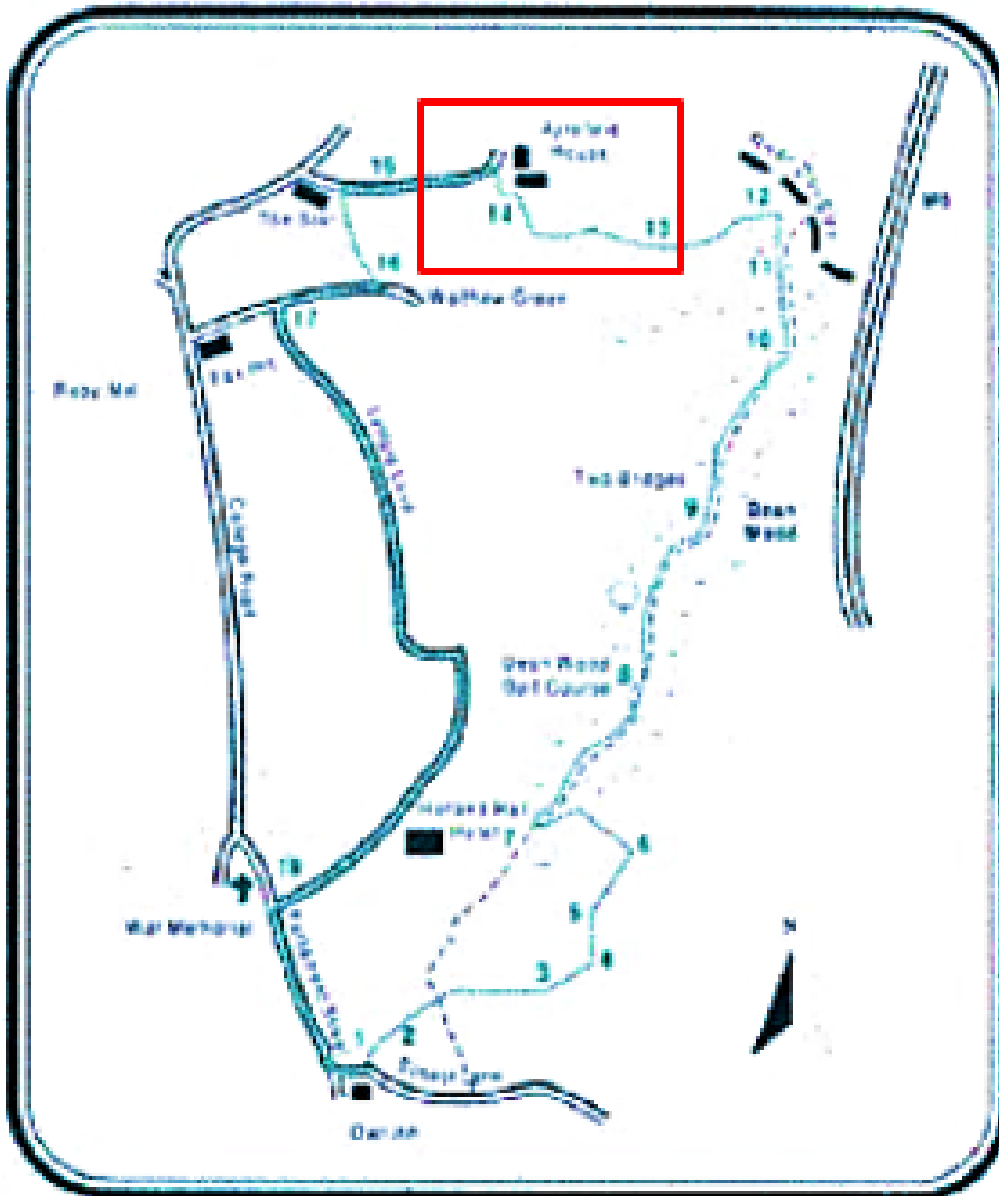
Two series of walks leaflets were produced by Up Holland Parish Council in 1995-1996. The leaflets were produced with help from the county council, West Lancashire Borough Council, local community groups and businesses.



A circular walk from Roby Mill to Appley Bridge



**map of route**  
(numbers correspond with text)



**Upholland Parish Council  
Footpath Walks 1995**

A Circular Walk through Dean Wood and Lafford Lane from the Owl Inn

Observations

The application route was included in two walk leaflets produced by the parish council in 1995-1996.

In both leaflets use of the application route is described as being from Footpath 2 (point D) where a kissing gate was located. The leaflets

|                                  |  |   |
|----------------------------------|--|---|
|                                  |  | describe the route as passing through the kissing gate into the grounds of Ayrefield House with the path turning left in front of the barn and then passing between two stone walls to turn left at 'the gate' and then following the road to the Star Inn.   |
| Investigating Officer's Comments |  | <p>The parish council have confirmed that the application route was included in the leaflets under the belief that the route was a public route.</p> <p>The leaflets refer to a gate at point B suggesting that access in 1995/6 was via the gate (and not an adjacent stile).</p> <p>The inclusion of the route in two locally produced leaflets supports the view that the route was used at least on foot by the public and was considered to be part of the public network.</p> |

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**

The land crossed by part of the route between points A and B at the very eastern end of the route is part of Ayrefield Hall which is privately owned.

The section of the route between the Ayrefield Hall land and point B lies on unregistered land.

The land crossed by the route between points B and D is part of Ayrefield House which is privately owned.

### **Summary**

The application route between point A and point B appears to have existed as a substantial road from the early 1800s as part of a longer route linking to Bank Road and providing access to a number of properties.

It was excluded from the taxable hereditaments as part of a longer route in 1910 and was not recorded as a footpath on the Draft Map of public rights of way. Its status was questioned as part of the legal process of preparing the Definitive Map and it appears to have been accepted that it was a public highway carrying public vehicular rights and was therefore not included on the map as a footpath.

The application route from point B to point C was constructed sometime in the mid to late 19<sup>th</sup> Century (and was clearly shown on the 25 inch OS map published in 1895). It appears to have been constructed to provide access around, instead of through the grounds of Ayrefield House, and connected to Bank Road and the route of Footpath 2. It too appears to have been considered to be a public highway in the

1950s – hence the fact that it was not included on the Definitive Map as part of Footpath 2 but it was not excluded from the taxable hereditaments in 1910 or referred to by the county council Highways Dept. as part of the adopted section of Ayrefield Lane in the 2001.

It was consistently shown on Ordnance Survey maps from 1895 onwards, originally ungated – possibly until the late 1950s and only more recently (1990s onwards) with access being restricted to use of a stile or gate adjacent to the field gate.

The application route between point C and point D was recorded as part of Footpath 2 until the Definitive Map was revised in 1975 (with a relevant date of 1<sup>st</sup> September 1966) and there appears to be no explanation other than a drafting error for the fact that it is no longer recorded as part of Footpath 2.

The map and documentary evidence examined supports the view that the route has existed since at least the late 19<sup>th</sup> Century and that until 2014 use of the route was unchallenged.

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

### Information from the Applicant

The applicant submitted the following documents with the application:

1. 6 user evidence forms (\*5 forms were completed in 2014 and 1 in 2017\*);
2. Parish footpath walks leaflets from 1995 and 1996;
3. Email from former Parish Councillor John Hilton referencing a conversation with a former maintenance manager at Ayrefield House;
4. 2 aerial photographs held by Lancashire County Council; and
5. photos

#### Summary of user evidence form 1

Has known and used the route from Roby Mill to Gathurst via Ayrefield Road on foot since 1986 until 2014. They used the route 250-300 times per year for exercise and leisure. The route has not changed its line in the 28 years they have used the route. There is a gate at the Roby Mill end of the route and a recently (user evidence form completed 2014) erected stile at the Gathurst end. These are never locked and do not prevent access to the route. The user has never been stopped or turned back whilst using the route and has never been told that the route is not a public right of way. They have never seen notices marking the land as private until recently (again user evidence form completed in 2014). They have never asked permission to access the route or worked for the landowner over which the route passes. They further provide that there is a sign stating 'public footpath' which points out the route. Prior to the new stile being erected they were able to walk from Ayrefield Road towards Gathurst but the height and nature of the stile prevents them from accessing the route due to disability.

#### Summary of user evidence form 2

Has known and used the route from Roby Mill to Dean Wood via Ayrefield House from 1952 until 2017 by foot numerous times per year for recreational

purposes. During this time they have frequently seen others walking along the route too. The route line has not changed in the 65 years they have been using it. There are stiles and gates on the route but they are never locked and do not prevent access to the route. They were never told that that the route was not a public right of way on foot and they have never been turned back nor heard of anyone else being turned back whilst using the route. They have never noticed any signs on the route to say that the land is private or not a public route. They have never asked permission to access the route, nor worked for the landowner. They further provide that the route is a permissive footpath alongside the house with a notice to that effect on the access gate. The present owner now allows numerous goats to roam freely along the footpath which the user has found to be a deterrent as one of them is rather aggressive.

#### Summary of user evidence form 3

Has known and used on foot the route from the bottom of Bank Brow to Gathurst via Ayrefield House for 71 years from 1943 until 2014 up to 100 times per year. They have seen many other walkers using the route as well. Up until 15 years prior (1999) there had not been any gates or stiles on the route. A gate was locked but this did not prevent them from using the route as they climbed over it. They were stopped by the owner on the route 12 months ago (September 2013) and told that the route was not a public right of way on foot but they just carried on. They have heard of others having been stopped on the route as well. On the route heading towards Bank Brow 'private no route' signs have been erected on 4 gates. The user further provides that their grandfather and father used the route from 1917. The footpath and road from Bank Brow to Ayrefield House was the way into the house with the lodge at Bank Brow.

#### Summary of user evidence form 4

Has known and used the route between points B and D (Ayrefield Road and Gathurst) via Ayrefield House grounds from 1979 until 2014 at least 3 times per week for recreational walks. They always use the route on foot and see others on foot, as well as occasionally seeing cyclists using the route. The route line has never changed in their 36 years of usage. A stile was erected in approximately October 2013 at SD 352571 407636, which is large, non-negotiable with dogs and difficult for the elderly to get over. The previous open access adjacent to the field gate is now blocked. In August 2014 a willow tree was felled across the footpath at SD 352 679 407598 to obstruct the footpath but this was removed after local objections. There was a public footpath sign adjacent to the gate which has been removed on several occasions since the ownership of the property has changed hands. The user was stopped by the new owners in autumn 2013 who suggested that they were in private grounds. The user has heard of similar stories of intervention from other locals since 2013. The user further provides that they have spoken with an employee of the former owner of the land who told them that for 100 years it had been considered a public right of way and always maintained as such. They have never asked for permission to use the route not worked for the landowner.

#### Summary of user evidence form 5

Has known and used the route from Roby Mill to Gathurst on foot from 1986 until 2014 250-300 times per year for exercise and leisure. The route has always run along the same line throughout their 28 years' use. There is a gate at the start of the route and a stile at the end. These have never been locked and did not prevent them from using the route. They have never been stopped or turned back whilst using the route. When the new stile was erected they have heard of others being stopped or turned back because of it. They have never seen any notices to say that the route is private until recently (user evidence form completed in 2014). They have never asked permission to use the route nor worked for the landowner. They further provide that there is a sign in place stating that the public footpath is in this direction.

#### Summary of user evidence form 6

Has known and used the route from Roby Mill to Gathurst on foot between 2001 and 2014 for dog walking 2 to 3 times per week to the Leeds Liverpool Canal/Dean Wood. They saw other people walking the route as well on a regular basis. They have never been stopped or turned back whilst using the route nor have they been told by a landowner or tenant that the route is not a public right of way. They have never asked permission to use the route nor worked for the landowner. Several weeks ago (form completed August 2014) a notice was erected by the gate saying 'private right of way'. Approximately 3 months ago (May 2014), the current owners changed the access point for pedestrians from a gap between the wall and the left hand side of the gate (when approaching from Ayrefield Road) to a non-standard stile on the right of the gate which prevents access with a dog, small children or if disabled. Also, the owners felled a tree at the other kissing gate leading into the pasture which has been left lying across the path for several weeks. The user further provides that this route has always been marked by a public footpath sign and a yellow Lancashire walk sign at both ends of the path. It also features in a number of local walking books as a right of way.

#### Information from Others

The Clerk to Up Holland Parish Council spoke to the Business Manager for the Convent of Notre Dame based at Lancaster Lane, Parbold in 2014 who explained that the Convent had owned Ayrefield House for approximately 100 years before selling it in 2013.

He expressed considerable surprise that the route through Ayrefield House was not recorded as a right of way and stated that in his opinion it was most likely that the Convent did not "know" the position regarding the footpath and therefore it was simply "accepted" as a historical right of way. He raised the point that the footpath has been clearly marked as a right of way for many years and that even though he personally had not seen many people use the path on his visits to the property evidence suggested regular usage. Maintenance was necessary and this work included "stoning" the footpath which was prone to flooding during wet weather to ensure it was safe for users.



The former gardener who worked there for 13 years also confirmed to the parish council that the route between points B-C-D was accepted as a path used by the public and that the upkeep and safety were important considerations for the management.

#### Information from the Landowner

An adjoining land owner telephoned the county council to ask whether the change in status would affect the access they have to fields owned along the route. They were informed that whilst the county council cannot provide any reassurance of anyone's own private rights, any private rights which do exist would not be affected by the proposed change in status.

Simon Woods, owner of part of the route, has objected to the application for a footpath to be recorded over his land.

### **Assessment of the Evidence**

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

#### In Support of Making an Order

- Map and other historical documentary evidence supporting the physical existence of the route since at least 1895.
- User evidence in relation to part of the route between points B to D.
- Absence of action taken by the landowners to discourage use of the route until 2013/14.
- Presence of public footpath sign until circa 2013
- Until 2014, absence of signs and notices along the route suggesting that the route was not public

#### Against Making an Order

- Signage since 2014 indicating the route is private which militates against inference of common law dedication during the current ownership.
- Vague user evidence in relation to the part of the route between points A to B.

#### Conclusion

As there is no express dedication, the Committee is required to consider whether there is sufficient evidence from which a dedication of the route between points A-B-C-D can be deemed under section 31 of the Highways Act 1980 and/or inferred at common law.

Considering firstly the statutory test; in order to raise a presumption of dedication, use of the route needs to be by the public 'as of right' (without force, secrecy or permission) and without interruption over a full 20 year period immediately prior to the route being called into question. This presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way.

The first consideration is to determine when the public's right to use the route was called into question. The evidence from users, as well as the county council's own files, indicates that the owner of the land crossed by the route between points B to D first took steps to challenge the users' right to use the route as a public footpath in 2014 when they erected a steep stile at point B, felled a tree across the route near point D and subsequently erected private path signs. Accordingly it is suggested that the 20 year period under consideration for the purposes of establishing deemed dedication would be 1994 to 2014. Alternatively the calling into question could be considered to be in 2013 when at least two witnesses were challenged by the new owner and this seems to have become known amongst local users.

Five of the six users have used the route for the duration of the 20 year period under consideration, with the other user having used it for a large part of that period (13 years). However, none of the users provided plans with their user evidence form marking the line they walked and their description of their starting point and destination point on the route is, in most cases, quite generalised. Nevertheless, the content of the forms suggests that the users are at the very least all referring to the route between points B and D. Three users describe the route as starting at Roby Mill. This is the road that joins Ayrefield Road to the south west. One user describes starting at the bottom of Bank Brow, which is the road that joins Ayrefield Road to the north east. These four users all state that their destination was Gathurst (to the south east of the route). It can be reasonably assumed, if they were starting out at either Roby Mill or Bank Brow, and walked between sections B to D that these four users walked along section A to B too as there would be no other access point. The other two users provide grid reference starting points that are in close proximity to but not on the claimed route. One of these users lives at No. 3 Ayrefield Road (located to the west of point A) and describes using the route to walk the dog from home to the canal/Dean Wood (which is located to the south east of the route). Their description of the route then accords with the other user evidence forms as regards points B to D of the route. Again it can be reasonably assumed that they walked across section A to B to reach point B. The final user describes going from Roby Mill to Dean Wood, so again it can be assumed that they walked the full length of the claimed route.

Two of the six users claim to have used the route 250-300 times per year; two users up to 3 times per week (equating to approximately 156 times per year); one user claims 100 times per year and the other user "numerous" times. All claim to have done so without permission and for recreational type purposes, which is consistent with use of a public right of way. They all claim that the route was open and accessible to pedestrians until 2014 when a difficult stile was erected by the new owner of the land between points B and D and a tree felled across the path. No signage indicating that the route was private was present until 2014/2015.

In light of this, it is advised that for the period 1994 to 2014 there is sufficient evidence of 'as of right' use of the route by the public between points A and D to raise a presumption of dedication. In relation to the statutory rebuttal, it is advised that there is no evidence of any action taken by any owner of the land crossed by the route to demonstrate a lack of intention to dedicate the route as a public footpath within the 20 years prior to 2014. It follows that, on the balance of probabilities, a public footpath subsists (i.e. it meets the higher test for confirmation) as claimed between points A and D.

Looking next at dedication of a highway at common law; it is advised that Committee has to consider whether evidence from the maps and other documentary evidence coupled with user evidence indicates that it can be reasonably inferred that in the past the landowners intended to dedicate the route as a public right of way and the public have accepted it. Use of the route by the public must be 'as of right' and there is no fixed period of use or particular date from which use must be calculated retrospectively.

For section A to B, the analysis of the map and documentary evidence reveals that a substantial route is depicted on all historical OS maps, as well as maps from the early 1800s (e.g. Greenwood's 1818 commercial Map of Lancashire) which pre-date the first OS maps, and that such route appears to be capable of being used on foot and horseback. There is also evidence from the Finance Act 1910 Map that this section of the route was excluded from the taxable hereditaments, which could be done in circumstances where land was crossed by a public right of way. Consideration ought to be given to the conclusions drawn in 1953 following a challenge by the Ramblers Association to this section having been excluded from the Draft Map of public rights of way. The section was never included because it was considered to form part of the public highway which was not required to be recorded on the Draft Map. As recently as 2001 an officer of the county council, in correspondence with a firm of solicitors, expressed the view that this section formed part of the adopted length of Ayrefield Lane. Furthermore, the majority of the route between points A and B runs across unregistered land and is bounded by registered titles. The fact that the majority of this section was not included in any of the adjoining titles and remains unregistered could be seen as further evidence of the landowner's intention to dedicate as public highway. The short section of the route from point A that crosses Ayrefield Hall land is shown as forming part of Ayrefield Road on Ayrefield Hall's registered title plan (under Title No. LAN24302) and the registered title plan for Ayrefield House (under Title No. LAN77868) shows the unregistered part of section A to B immediately to the west of point B as forming part of Ayrefield Road. In relation to the actions of any of the landowners, there appears to have been nothing done to prevent use of the route between section A to B and there is no suggestion that use of this section was permissive, secretive or by force. In conclusion and notwithstanding the fact that a small section between A and B is included within an adjoining registered title (that of Ayrefield Hall), Committee is advised that the actions of the landowners have been such that an intention to dedicate the land as highway between points A and B may be reasonably inferred at common law and that user evidence demonstrates an acceptance of that dedication.

For sections B to D, the historical evidence showing that there was a path on the ground dates back to 1895. The 1895 25 inch OS Map indicates that this path

provided a route around the edge of Ayrefield House rather than passing through the middle of the grounds of the property. This suggests that the landowner at the time, rather than taking steps to indicate they had no intention to dedicate land as highway, actually took positive steps to divert the path to a more convenient and less intrusive location. Furthermore, a guide post was present at point D of the route which supports the view that this was to assist members of the public wanting to use the route. This section of the route remained visible on subsequent editions of the 25 inch OS Map published in 1908 and 1928, as well as the 6 inch OS Map in 1955. During the production of the Definitive Map, section C to D of the route was considered to form part of Footpath 2 but we surmise that due to a drafting error it was not included as part of Footpath 2 on the final version of the Map. There is no evidence suggesting that pre 2013/14 any of the landowners of this section of the route took any action to demonstrate a lack of intention to dedicate the route as highway. In fact, one user reports having been told by a landowner that it was a public right of way and the Parish Council were under the belief in 1995/96 that this section formed part of the public network when they produced leaflets showing the full length of the claimed route as a local walk. Since 2014, the landowner has erected signs indicating 'permissive footpath over private land'. Notwithstanding this, the treatment of this section of the route by previous landowners over many years suggests that it is reasonable to infer an intention to dedicate the land as a public footpath at common law. The described use of this part of the route by the users over the years (since the 1940s in one case) demonstrates an acceptance of that dedication.

In conclusion, on the balance of probabilities and taking all of the evidence into account, the Committee may consider that the higher statutory test for dedication of a public right of way between points A to D can be satisfied. Additionally or in the alternative, Committee may also consider that the common law test for inference of dedication is satisfied for the full extent of the route claimed. Committee is therefore advised to accept the claim for the route marked A-B-C-D to be added to the Definitive Map and Statement as a public footpath and promote the Order to confirmation.

### **Risk Management**

Consideration has been given to the risk management implications associated with this application. 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 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:  
804-600

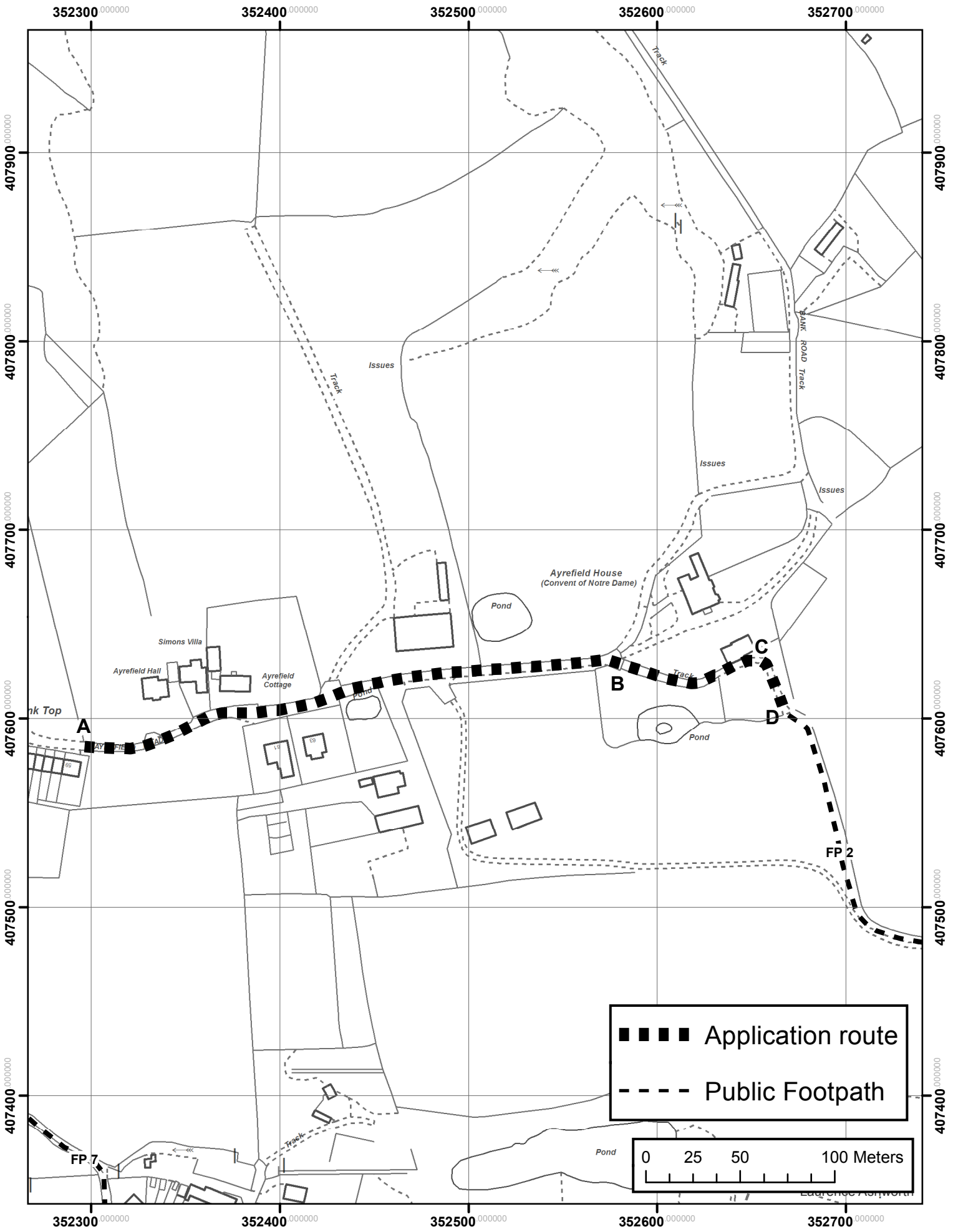
Claire Blundell, 01772  
535604, County Secretary  
and Solicitors Group



Reason for inclusion in Part II, if appropriate

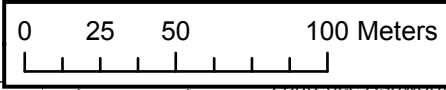
N/A







|   |                   |
|---|-------------------|
|  | Application route |
|  | Public Footpath   |



**Andrew Mullaney**  
Head of Planning and Environment

**Wildlife and Countryside Act 1981**  
**Addition of public footpath along Ayrefield Road to Footpath 2 Upholland at Ayrefield House**

1:2,500



The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed. Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.

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