

## **Regulatory Committee**

Meeting to be held on 13 May 2015

Electoral Division affected: Skelmersdale East
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### **Wildlife and Countryside Act 1981**

#### **Definitive Map Modification Order Investigation**

#### **Upgrading of Wrightington Footpath 21 to Bridleway between Moss Lane and Mossy Lea Road, Wrightington, West Lancashire**

**File No. 804-561**

(Annex 'A' refers)

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### **Executive Summary**

Investigation into the upgrading of Wrightington Footpath 21 between Moss Lane and Mossy Lea Road, West Lancashire Borough to a bridleway, in accordance with file no. 804-561.

### **Recommendation**

1. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (c)(ii) of the Wildlife and Countryside Act 1981 to upgrade Wrightington Footpath 21 between Moss Lane and Mossy Lea Road to bridleway on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D-E-F-G.
2. That being satisfied that the test for confirmation can be met the Order be promoted to confirmation.

### **Background**

An investigation has been carried out into the status of Wrightington Footpath 21 between Moss Lane and Mossy Lea Road following the submission of user evidence by Wrightington Parish Council claiming that the route should be recorded as a bridleway on the Definitive Map and Statement of Public Rights of Way as shown between points A-G on the Committee plan. The application itself is self-started by the Planning and Environment section of Lancashire County Council.

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"
- "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 of a particular status existed then those 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 are not relevant to the determination of what the status is, although they may be important to subsequent management of the route. 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 District Council

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

### Wrightington Parish Council

The Parish Council are fully supportive of this application.

Applicant/Landowners/Supporters/Objectors

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

## Advice

### Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	5358 1094	Open junction with Moss Lane
B	5359 1096	Width of route narrows between fence surrounding electricity substation on north west side of the route and tree protruding from boundary on south east side of path
C	5365 1103	Route adjacent to rear boundary fence of Wrightington Hotel and Country Club
D	5377 1114	Route adjacent to adjoining field boundary to north
E	5388 1117	Width of route restricted by large tree growing within the boundaries of the path
F	5396 1120	Open junction with Mossy Lea Fold
G	5406 1124	Open junction with Mossy Lea Road

### Description of Route

Site inspections were carried out in September 2014 and January 2015.

The route under investigation commences at point A on Moss Lane, immediately south of Wrightington Hotel and Country Club.

Access onto the route from the lane is open and unrestricted. A public footpath signpost is situated at the start of the route indicating its recorded status and additional Lancashire County Council notices have been attached to the signpost advising that it should not be used by horses or unauthorised vehicles.

From point A the route under investigation is 5 metres wide enclosed between post and sheep netting fences and hedges/trees that separate it from the hotel premises to the north and a field to the south. The surface of the route is firm with a compacted stone strip down the centre and grass down either side. There is evidence of recent use by horses (hoof prints).

Between point A and point B the width of the route tapers to 2.6 metres at point B where it passes between a fenced-off electricity substation (which is not accessed from the route) and a mature tree which protrudes into the route from the south eastern fence line.

Beyond point B the route continues at a width of approximately 4 metres enclosed between the boundary fences of the hotel to the north and the field to the south.

Trees along the hotel boundary have been cut back and maintained to a height suitable for pedestrians but the higher branches are at a height that would affect anyone riding a horse.

Between point B and point C the useable width reduces to approximately 2 metres due to the branches extending out across the path from the hedges and trees growing along either side of the route.

From point C the views from the route open up along the north side and although it is still enclosed from the adjacent fields there is just a post and wire fence to the north. A mature hedge bounds the route on the southern side all the way to point F and between the wooden post and wire fence and hedge there is a useable width of approximately 2.5 metres. The surface of the path from point A through to point F appears to have been recently mown.

A large tree is situated within the width of the route under investigation at point E which restricts the width available to use at this point to between 1.5 metres – 2 metres depending on whether the adjacent hedge has been cut back.

Beyond point E the path continues rising gradually uphill with a drop down on the northern side of the path of approximately 1 metre within the boundaries of the enclosed path. There is still approximately a 1.5 metres – 2 metres wide level path available to use above the 'drop' which extends over a distance of approximately 10 metres.

At point F the route passes onto a tarmac surfaced parking area at the front of two properties (6 and 8 Mossy Lea Fold). It then continues along an access road known as Mossy Lea Fold past a number of residential properties that are accessed from the route. The route also provides access to a field to the south. This part of the route is approximately 4 metres wide and the surface comprises of compacted stone and soil. A streetlight is positioned half way along Mossy Lea Fold between point F and point G.

The route under investigation ends at the open junction with Mossy Lea Road at point G on the Committee plan. It is signed as a public footpath and also as Mossy Lea Fold. Lancashire County Council notices are attached to the public footpath signpost advising the public that the route should not be used by unauthorised vehicles or horses.

The total length of the route is 585 metres.

### **Map and Documentary Evidence**

<b>Document Title</b>	<b>Date</b>	<b>Brief Description of Document &amp; Nature of Evidence</b>
<b>Yates' Map of Lancashire</b>	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they

were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.



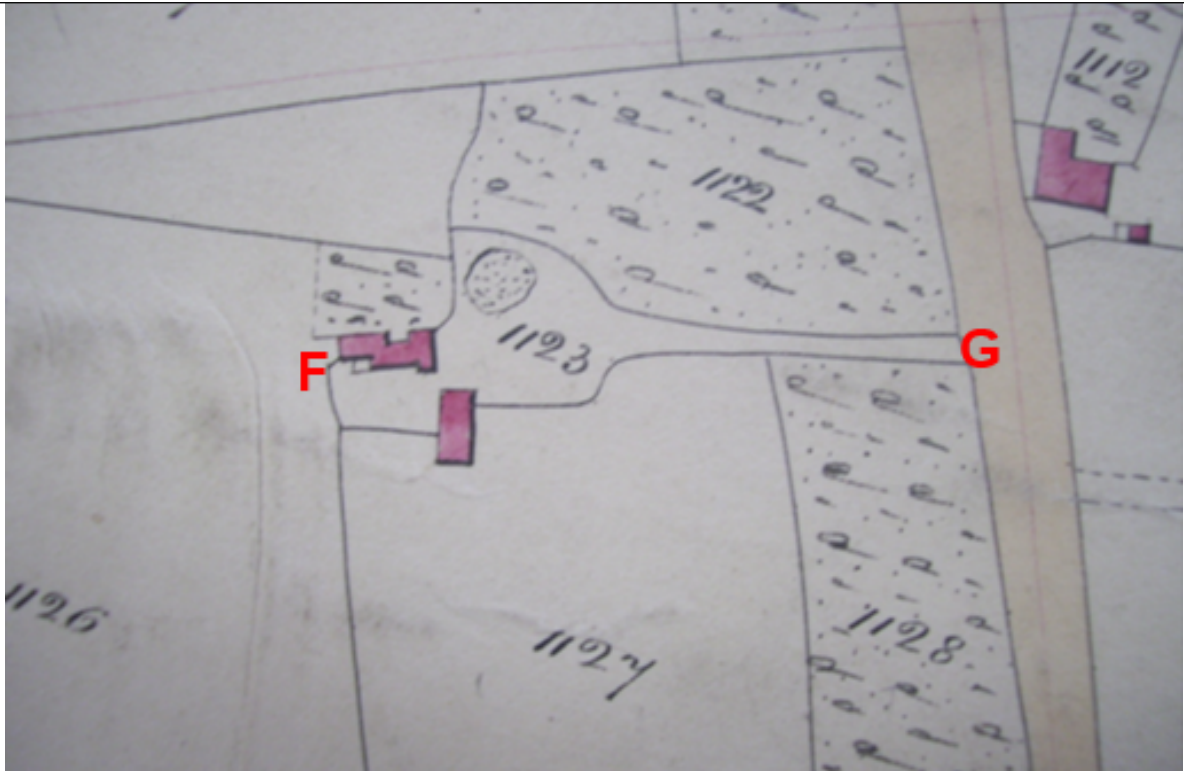
Observations		Moss Lane and Mossy Lea Lane are shown but the route under investigation is not shown on the map. Two buildings are shown east of point A but the means of access to the properties is not shown
Investigating Officer's Comments		It is likely that the route, if it existed in 1786, would have been of little significance and was therefore not included on the map.
<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



Observations		The area through which the route under investigation runs is shown within the white box on the inserted plan. Moss Lane and Mossy Lea Road are shown but the route under investigation is not.
Investigating Officer's Comments		It is likely that the route, if it existed in 1818, would have been of little significance and was therefore not included on the map.
<b>Hennet's Map of Lancashire</b>	1830	A further 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.
Observations		Moss Lane and Mossy Lea Road are shown but the route under investigation is not.
Investigating Officer's Comments		It is likely that the route, if it existed in 1830, was of little significance and was therefore not included on the map.
<b>Canal and Railway Acts</b>		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of


		way. This information is also often available for proposed canals and railways which were never built.
Observations		The route under investigation does not cross land for which there were any planned railways or canals.
Investigating Officer's Comments		No inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>	1841	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.



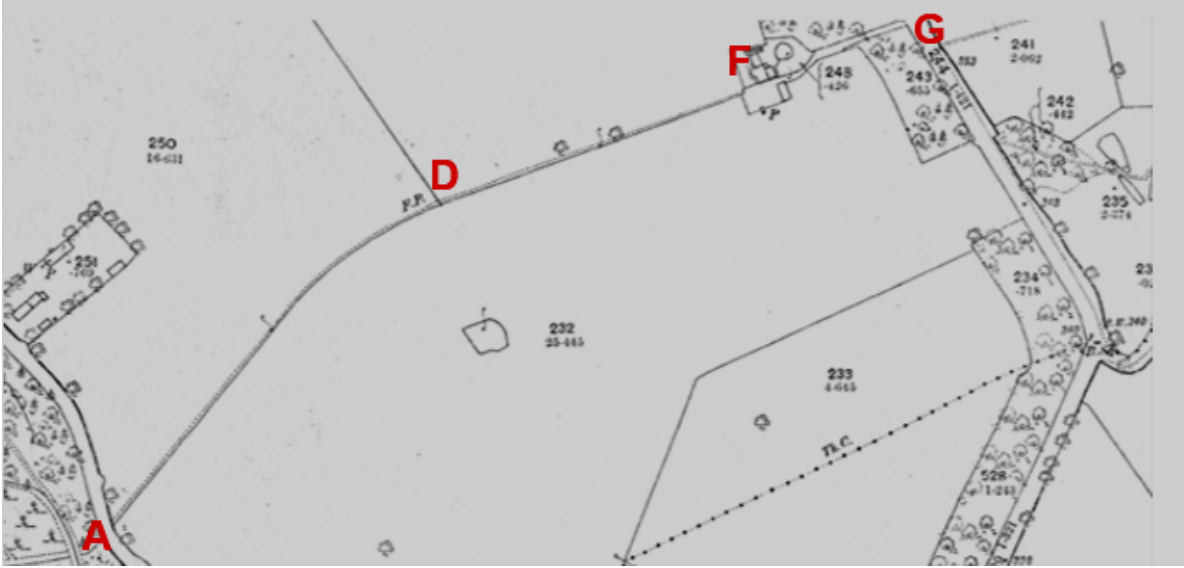


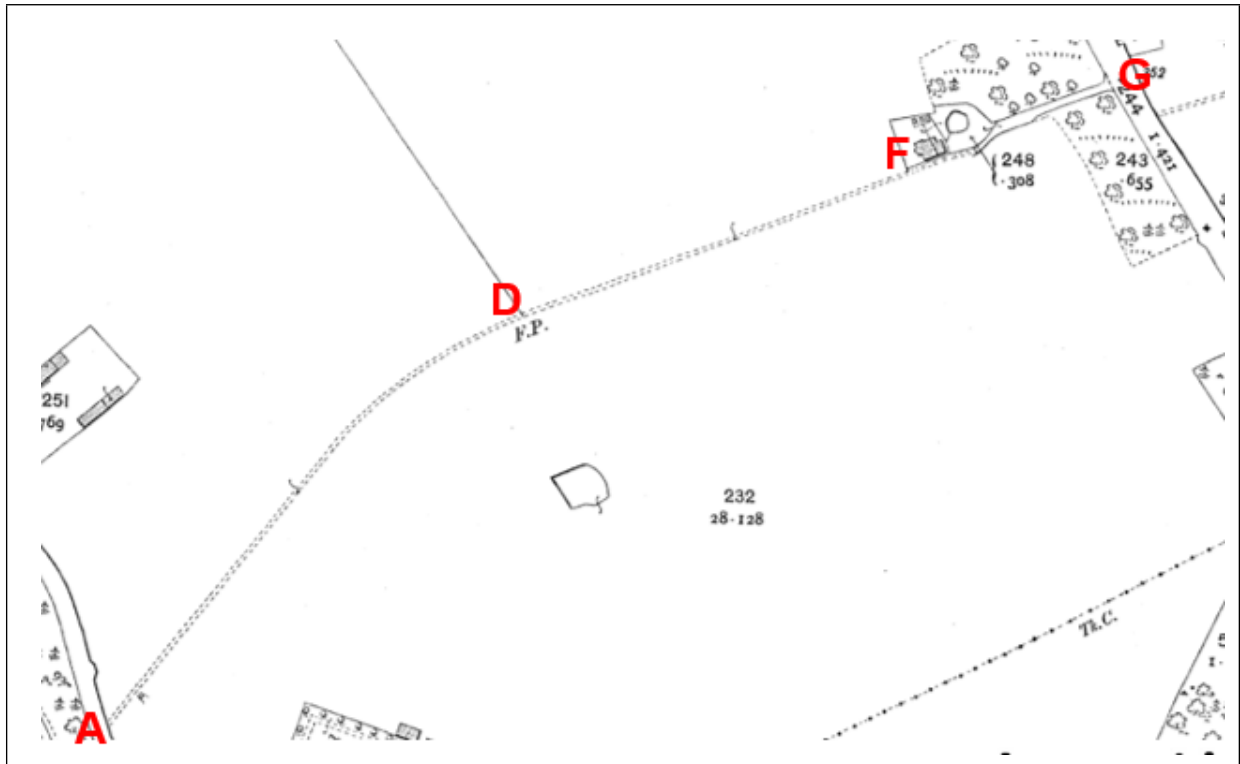
Observations		<p>The Tithe Map and Apportionment held in the County Records Office was inspected.</p> <p>Between point A and point F the route under investigation is not shown to exist on the Tithe map and there is no reference to its existence in the Tithe Award. Between point F and point G the route under investigation is shown as the access to Mossy Lea and is included as part of the numbered plot 1123. No reference is made to the existence of a public right of way along it.</p>
Investigating Officer's Comments		<p>The route under investigation probably did not exist in 1841.</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 at the time.</p>
Observations		<p>There are no Inclosure Award records for the parish of Wrightington held at the County Records Office.</p>
Investigating Officer's Comments		<p>No inference can be drawn.</p>
<b>6 Inch Ordnance</b>		<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1845-6 and published in</p>



Survey (OS) Map		1849. <sup>1</sup>
		
Observations		<p>The route from point A on Moss Lane is not shown but it appears that the area over which the Hotel and Country Club have been built (to the north of the route under investigation) was the site of the former Green Slate Collieries with two coal pits marked; the most southerly being close to the route under investigation. A track is shown leading to the colliery between point D and point F but is shown to run on the south side of a hedge line so may not be on the exact alignment of the route now under investigation.</p> <p>The route under investigation can be seen as a pecked line leading to and from the properties in the location of the properties now numbered 6 and 8 Mossy Lea Fold. Beyond point F to point G the route under investigation can be clearly seen providing access to the properties and exiting onto Mossy Lea Road (a Turnpike Trust Road at that time).</p>
Investigating Officer's		It appears that parts of the route under

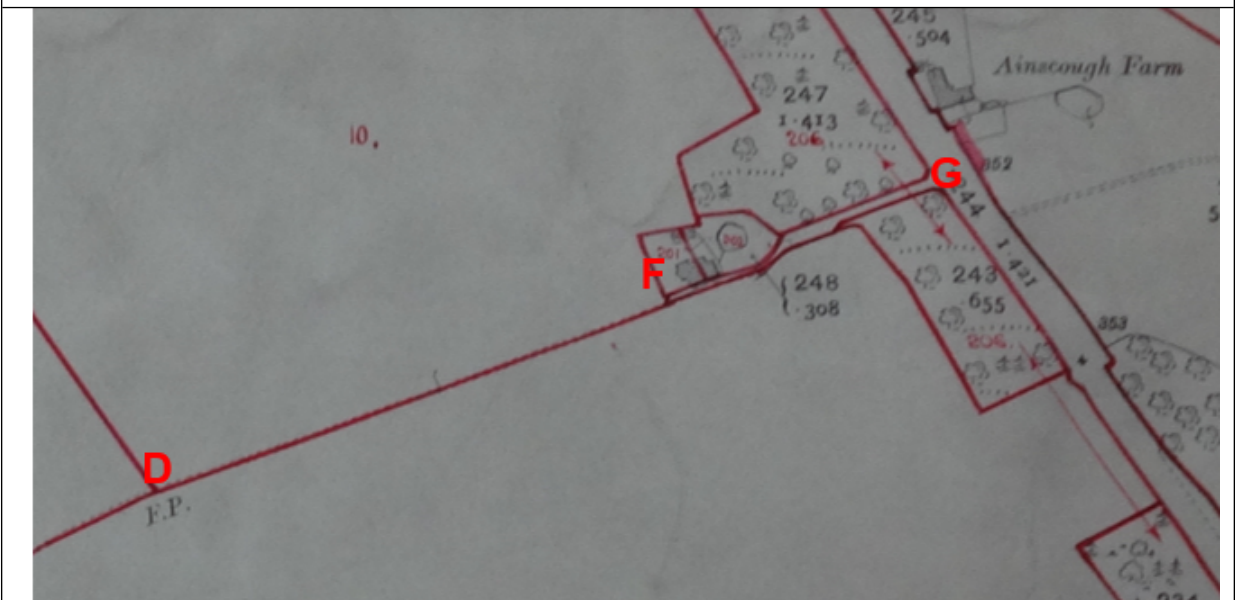
<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published 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.

Comments		investigation physically existed in 1849 but it did not form a through route from point A to point G. The track from Mossy Lee Fold, mostly on the south side of the field boundary, appeared to provide access directly to the Colliery although it did not appear to be the main or sole access.
<b>25 Inch OS Map</b>	1894	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1894.
		
Observations		Green Slate colliery is no longer shown to exist and the full length of the route under investigation is shown from point A through to point G and is annotated as a footpath (F.P.). Lines are shown across the route at points A, D and F which may indicate the existence of gates and/or stiles. A field boundary is shown to exist between point A and point F and the route marked as a footpath is shown to follow the north side of the field edge.
Investigating Officer's Comments		The route physically existed on the ground in 1894 and appeared to be capable of being used. It is not possible to determine from the OS map whether horses could (or did) use the route and it appears that gates and/or stiles may have existed at points A, D and F and that the OS surveyor at that time recorded the path as being a footpath in appearance as opposed to a more substantial track which would be more likely to indicate equestrian use at that time..
<b>25 inch OS Map</b>	1908	Further edition of the 25 inch map surveyed in 1892, revised in 1907 and published in 1908.



<p>Observations</p>		<p>When the 25 inch map was revised in 1907 the route under investigation was shown in the same position as it had been previously but it appears that there was no longer a field boundary along the southern side of the route between points A to F. However the field numbers given on the OS map still differentiate between the different plots of land as though the boundary had remained in place.</p> <p>The route under investigation is shown by double pecked lines and labelled as a footpath (F.P). Lines are shown across the route at point A and at point D suggesting that gates and/or stiles may have existed at these points.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation existed in 1907 and appeared to be capable of being used. It is not possible to determine from the map whether horses would have used the route at that time.</p>
<p><b>Finance Act 1910 Map</b></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</p>

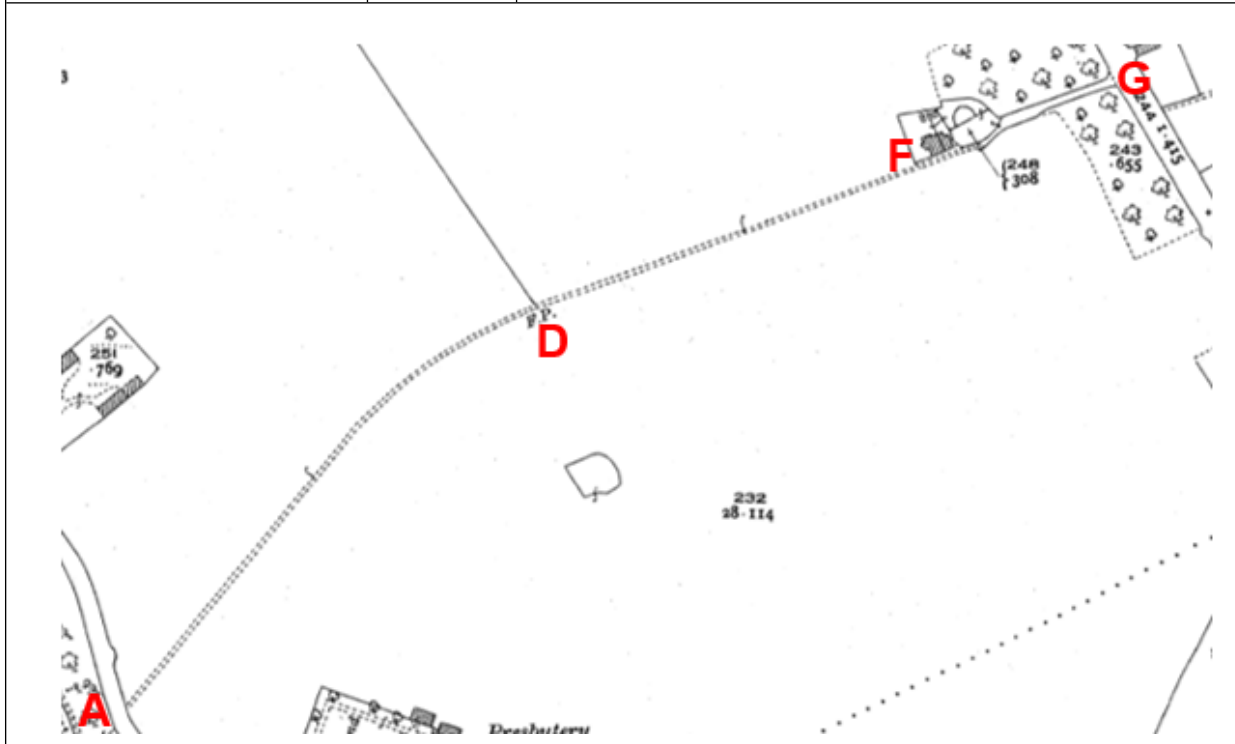
		<p>under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, 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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<p>Observations</p>		<p>There are no Finance Act Records in the County Records Office for the area under investigation so it was necessary to request an inspection of the Finance Act records at the National Archives.</p> <p>The Finance Act Map was photographed and it</p>
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		<p>can be seen that a red line denoting the boundary of separate numbered hereditaments has been drawn down the centre of the route under investigation from point A through to point F. An inspection of the OS 25 inch base map used shows that there was no physical boundary recorded by the OS adjacent to the route at that time but that a worn track shown by doubled pecked lines and annotated as being a footpath (F.P.) existed.</p> <p>It is therefore not possible to determine whether the route under investigation was considered to be part of hereditament (plot) numbers 19, 10 or 557 or whether it was considered to be part of all three.</p> <p>The Field Book entry for plot 557 could not be found at the National Archives so it is not possible to find out who owned and or occupied this land or whether a deduction for public rights of way or user was claimed.</p> <p>No deduction for public right of way or user was made in respect of hereditament (plot) 10 which is described as 'Hunger Hill, Wrightington'. The photocopied field book extract is of poor quality and it is not possible to read the details of the landowner and occupiers names.</p> <p>A deduction of £14 was made for public right of way or user within hereditament 19. But the exact route or routes are not specified. The book records the following details 'footpaths (8) 1200 yards through land and farmyard' and the property is described as New House Farm, Wrightington. The landowner is not listed – 'See no. 7' and occupiers given as being Samuel Horncliffe and Robert Cuterley.</p> <p>Between point F and point G the route under investigation is excluded from the numbered hereditaments.</p>
Investigating Officer's Comments		<p>No inference can be drawn from the Finance Act records with respect to the route between point A and point F.</p> <p>Between point F and point G the route was excluded from the numbered hereditaments suggesting that it may have been considered to be part of the public vehicular highway network at that time.</p>
<b>25 Inch OS Map</b>	1928	Further edition of 25 inch map (surveyed 1892,

revised 1926 and published 1928.



Observations

The route under investigation is shown as an open route across fields between point A and point F and as an enclosed route from the properties east of point F to point G. Lines are shown across the route at point A and point D which may indicate the existence of gates or stiles.

Investigating Officer's Comments

The route under investigation existed in 1928 and appeared to be capable of being used. It is not possible to determine from the map whether horses would have used the route at that time.

**Authentic Map  
Directory of South  
Lancashire by  
Geographia**

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 publisher claimed to have incorporated new districts, streets and trunk roads in the atlas and acknowledges the assistance of municipal and district surveyors when compiling the book.



Observations		The full length of the route under investigation is shown on the map as a track (double pecked line) to point F and as a more substantial route between point F and point G.
Investigating Officer's Comments		The route under investigation existed in the 1930s – possibly as a substantial track - but was not considered to form part of the public vehicular network.
<b>Aerial Photograph<sup>2</sup></b>	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.

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





Observations		A close examination of the photograph suggests that the dark line between A and F that can be seen is consistent with the way that a hedge would show up and on the north side gaps appear visible in the hedges at point D and also point F suggesting that the route may have been on the north side of the hedge. Between point A and point F it was barely visible on the ground.
Investigating Officer's Comments		The photograph shows the route consistent with the low level use of a public path between point A and point F.
<b>6 Inch OS Map</b>	1965	OS map published in 1965 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



Observations

The full length of the route under investigation is shown with the section between point A and point F shown as a field edge path running along the north side of a field boundary and labelled as a footpath (F.P.). Access from point F to the route along the front of the properties between point F and point G is shown differently on this map to maps produced before or after this date, here suggesting that there was no direct link through from point F to point G. However, this failure to align the route is considered to be more likely to be a result of the scale of the mapping as there is other documentary evidence confirming that the route connected through at that time.

Solid lines are shown across the route indicating that gates and/or stiles may have existed at point A, point D and point F.

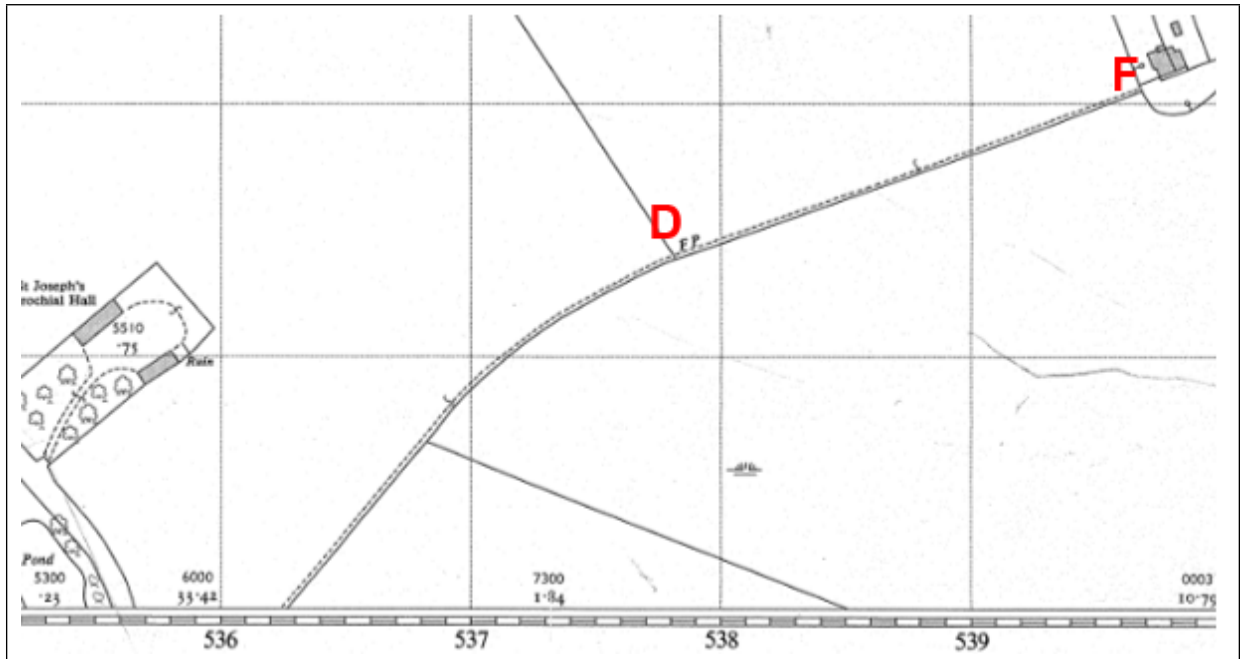
Investigating Officer's Comments

The route between point A and point F is shown to follow a field boundary but is not enclosed. It is not possible to determine from map evidence whether the route was being used by horses at this time.

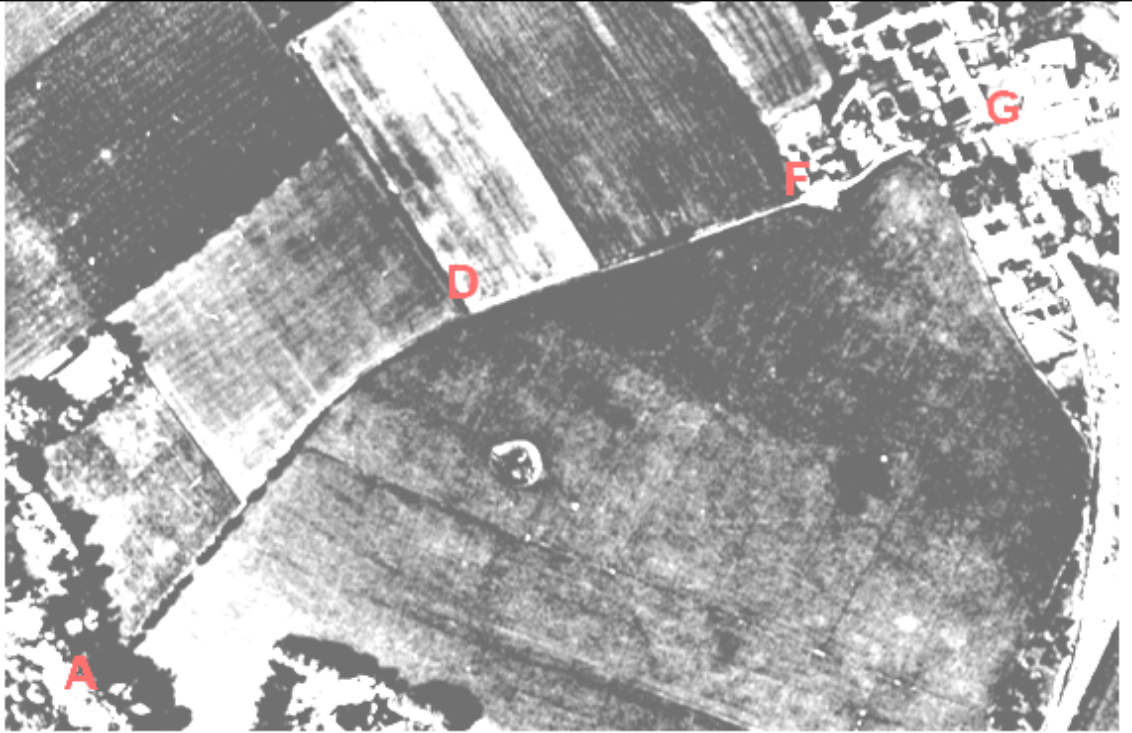
**1:2500 OS Maps**

1959 and part 1966

Further edition of 25 inch map reconstituted from former county series and revised in 1958 and 1965 and published 1958 and 1966 as national grid series.



<p>Observations</p>		<p>The 1959 1:2500 OS map shows that the route under investigation followed a field boundary from point A to point B with lines across the route indicating the possible existence of gates and/or stiles at point A, point D and point F. The route is again shown by the use of a single dashed line and annotated as a footpath (F.P) by the OS.</p>
<p>Investigating Officer's Comments</p>		<p>The full length of the route existed and appeared to be capable of being used although gates and/or stiles may have existed at point A, point D and point F which could have restricted access to certain types of user.</p>
<p><b>Aerial photograph</b></p>	<p>1960s</p>	<p>The black and white aerial photograph taken in the 1960s and available to view on GIS.</p>



Observations		The route under investigation can be seen as a worn track between point A and point F and as a more significant route between point F and point G. It is not possible from the photograph to determine whether any gates or stiles existed across the route at that time. The route appears to be bounded by a hedge along its southern side between point A and point F.
Investigating Officer's Comments		The route existed as a physical feature in the 1960s but it is not possible to determine from photograph whether the route was being used by horses at this time.
<b>Aerial Photograph</b>	1988	Aerial photograph available to view at Cuerden depot.



Observations		The full length of the route under investigation can be seen. The hotel has been built north of the route between point A and point C but it is not possible to see whether the route had been fenced off (enclosed) along this section. The route between point C and point F still appears to be open (not enclosed) along the northern side. It is not possible to see whether there are any gates or stiles across the route from the photograph.
Investigating Officer's Comments		The route existed as a physical feature in 1988 but it is not possible to determine from photograph whether the route was being used by horses at this time.
<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.  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>	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area

and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.



Observations

The surveyors recorded the route under investigation as a 'C.R.F.' on the map which indicated that they were describing its physical attributes as being that it was a cart road mainly used by the public as a footpath.

The parish survey card describes the route as a footpath from Moss Lane to Mossy Lea Road (As per 1932 Act Schedule). It is described on the survey card as 'Path starts at wicket gate between R.C. Chapel and estate workshop on Moss Lane, continues along hedge side through a gap in cross fence, past cottages to Mossy Lea Road opposite Messrs. Sharrock's workshop.' The survey card was dated 1951.

<b>Draft Map</b>		<p>The parish survey map and cards for Wrightington were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		<p>The route under investigation is shown on the Draft Map of Public Rights of Way as a public footpath and there were no objections to inclusion or the recorded status of the path.</p>
<b>Provisional Map</b>		<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 route under investigation is shown on the Provisional Map of Public Rights of Way as a public footpath and there were no objections to inclusion or the recorded status of the path.</p>
<b>The First Definitive Map and Statement</b>		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962.</p>
Observations		<p>The route under investigation was considered to be a public footpath in the 1950s.</p>
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		<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 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</p>

		have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Observations		The route under investigation is shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review) as a public footpath.
Investigating Officer's Comments		The route under investigation was not considered to have changed status by the 1960s.
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded. A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>





Observations		The hand drawn records derived from the 1929 handover maps show the route of Wrightington FP 21 between point A and to a point just east north east of point F coloured purple to indicate footpath status but do not include the final section just beyond point F to point G.
Investigating Officer's Comments		<p>The records inspected appear not to show the final section of the route known as Mossy Lea Fold as part of the recorded public footpath. However, these records have no legal status with regards to the recording of public footpaths and it looks like a simple drafting error occurred as the footpath is shown on one printed map sheet but not the other (i.e. it was drawn on one sheet but the final section along Mossy Lea Fold failed to be drawn on the other sheet).</p> <p>The highway records inspected confirmed that Mossy Lea Fold is not considered to be a publicly maintainable vehicular route.</p>
<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		There are no statutory deposits which could

		indicate that the landowners did not intend to dedicate bridleway rights covering the period of time during which it is claimed that the route was being used as a public bridleway.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights of way over this land.
<b>Lancashire County Council Public Rights of Way file records</b>	1956 - 2015	A comprehensive search was carried out of the archived public rights of way letters and reports of issues relating to public rights of way in the parish of Wrightington.
Observations		<p>Files dating back to 1956 where searched and a substantial body of correspondence was found to exist dating back to 1959 when Mr Fred Berry, owner of 110 Mossy Lea Road (now numbered 9/8 Mossy Lea Fold) instructed solicitors to write to the County Council regarding a footpath and occupation road passed his premises. The route is described as a public footpath and an occupation road and it is clear that the route referred to is Wrightington Footpath 21. The letter says that a stile (at point A on the Committee plan) was being bypassed by people breaking through the hedge and as a result farm vehicles, horses and motorcyclists were now using the route of the footpath and damaging the surface. The letter states that Mr Berry owned land on either side of the path and that he had erected two posts in the path (at point F on the Committee plan) to prevent unauthorised use. Mr Berry requested that the County Council re-erected a stile that had previously erected at the start of the path on Moss Lane (point A).</p> <p>The County Council refused to erect the stile at point A on the grounds that they had no authority to do so and in 1962 there is further correspondence from which it appears that horses from a local riding school had continued to use the route and that there had been a number of confrontations between Mr Berry and Mr Roocroft – the owner of the riding stables.</p> <p>By 1963 it appears that the posts erected by Mr Berry had been removed and that the route was again being used by farm vehicles and horses.</p> <p>Further correspondence in 1964 refers to Mr Berry renewing his complaint about the surface of the path. Mr Berry again requested that the County Council reinstated a kissing gate</p>

	<p>(previously referred to as a stile) that he stated existed at point A until about 1956.</p> <p>A memorandum dated 1964 stated that the accommodation road (footpath) had been purchased by the adjoining landowner - Mr T Calderbank, Lake House, Moss Lane, Wrightington - who had removed the structures erected by Mr Berry and that the farmers farming the fields adjacent to the route had permission to gain access to the fields via the footpath.</p> <p>The memo also stated that Mr Calderbank previously lived in the house now occupied by Mr Berry when his mother still lived in Lake House and that Mr Berry's actions had generated considerable strong local feeling with regards to his interference with 'the rights and privileges of usage enjoyed by local people over a very long time'.</p> <p>In 1964 the County Council wrote to Mr Berry stating that as the public's right of access on foot did not appear to be being interfered with by people using it on horseback or motorcycles then they would not be taking any further action at the present time and would not be erecting a kissing gate at point A as it would not serve any useful purpose. Reference was also made to fact that the posts erected by Mr Berry had been done so on land not in his ownership and without lawful authority.</p> <p>Further correspondence was sent to Mr Berry in 1968 following his complaint that the surface of the route had been damaged by farm vehicles and the County Surveyor makes reference to the fact that since the removal of a stile '3 years ago' horse riders and motorcyclists had been using the route – adding to its unsatisfactory condition. The County Council did not take any action other than erecting a public footpath signpost.</p> <p>In 1974 the Wigan Footpath Society reported that the path was in poor condition due to use by horses. The County Council report noted that the path was slightly muddy but still considered it to be reasonable and noted that there was evidence of 2 horses having used the route.</p> <p>Further correspondence was found from 1978 when Mr Berry submitted a complaint to the Local Ombudsman alleging that the County</p>
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		<p>Council had failed to replace stiles or to prevent damage to the surface of the route under investigation.</p> <p>The Local Ombudsman dismissed the complaint in a decision letter dated 12 September 1978. In the letter he stated that he had no power to investigate the actions of the local authority before 1 April 1974 and concentrates on actions since that date. The County Council, in defence of their actions explained that the question of whether horse riders could use a footpath was one for the landowners and that if such use was permitted they would only intervene if the surface was being damaged or pedestrians obstructed. In this case it was stated that both landowners had confirmed in September 1977 that they had granted permission for horse riders to use the path.</p> <p>However the County Council then corresponded with the two landowners – Mr Laithwaite of 2 Tunley Lane Farm, and Mr Calderbank of Lake House who both subsequently withdrawn their permission for horse riders to use the path. A letter dated 13 June 1978 from Mr Laithwaite has been kept on file to that effect but states that on no account must any stiles or gates be erected. A letter from Mr Calderbank withdrawing his permission for horse riders to use the path has not been kept but in a letter from the County Council to Mr Calderbank dated 15<sup>th</sup> May it is noted that Mr Calderbank had withdrawn his permission. The Local Ombudsman makes reference to seeing a letter dated 15<sup>th</sup> May withdrawing permission.</p> <p>On the basis that horse riders were no longer permitted by the landowners to use the route the Local Ombudsman discontinued the investigation.</p> <p>In 1979 further complaints were made to the County Council by a resident that lived along the footpath about the condition of the surface of the route between point F and point G and the fact that it was still being used by horses. The County Council inspected the route but considered it to be satisfactory for public use on foot.</p> <p>In 1980 one of the local residents again complained about horses and queries the</p>
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		<p>making of a local byelaw to stop them but this is not acted upon.</p> <p>Throughout the 1990s there are sporadic complaints about the condition of the surface of the route between point F and point G and requests for the County Council to improve the surface, No work appears to have been carried out as the footpath was considered to be fit for pedestrian use.</p> <p>In 1998 and 1999 further reports related to the section A to F being overgrown and requesting that it be cleared so that horses could use the verges instead of churning up the central section and in 2000 a further report was submitted about horses using the route and confronting a local resident who was walking with a dog off the lead.</p> <p>From 2000 onwards regular reports were submitted from the Parish Council and local residents about the path between point A and point F being overgrown (surface and/or hedges) with reports that the County Council had cleared surface vegetation and contacted landowners – referred to as Wrightington Country Club, Peter and David Carr of Sandholme Farm and Tom Green of Chisnall Hall. Occasional references were made to horses using the route.</p>
Investigating Officer's Comments		<p>There appears to have been a significant amount of equestrian use throughout the period, some of which appears to have been by permission and some as of right. Challenges by someone not the landowner appear to have been continually defied suggesting that there was a belief that there were equestrian rights. The repeated Council inspections and the conclusion that the path was acceptable for walkers suggests that this equestrian use was not of such a nature that it was a nuisance to existing public rights.</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 landowners affected are listed below, this includes those affected by the proposed upgrade where the route encroaches onto their land.

- Liverpool Roman Catholic Archdiocesan Trustees Incorporated of Archdiocesan Offices, Croxteth Drive, Liverpool L17 1AA
- Whelan Hotel co Limited, Loire Drive, Robin Park, Wigan, Lancashire WN5 0UH
- Thomas Green and Marian Green of Chisnall Hall Farm, Mossy Lea Road, Wrightington, Lancs
- John Frank Winnard, 48 Manse Avenue, Wrightington, Wigan, Lancs WN6 9RP
- Timothy Calderbank, Boundary Farm Cottage, Boundary Lane, Wrightington, Wigan, Lancs WN6 0YX
- Pauline Folding, Brewery Cottage 8 School Lane, Standish, Wigan, Lancs WN6 0TD
- Christine Reddington, Brewery Cottage 8, School Lane, Standish, Wigan, Lancs WN6 0TD
- Alan Henry Wain Cooke and Jacqueline Anne Cooke of 8 Mossy Lea Fold, Wrightington, Lancs WN6 9RD
- Ian Thomas Carney and Pamela Margaret Carney, 4 Mossy Lea Fold, Wrightington, Wigan, Lancs WN6 9RD
- Andrew Mcevoy and Elizabeth Mcevoy of 2 MossyLea Fold, Wrightington, Wigan, Lancashire WN6 9RD
- Stephen Charles Brittle and Paula Jayne Cranham of 112 Mossy Lea Road, Wrightington, Wigan, Lancs WN6 9RD
- Sharon Joan Tomlinson of Ribblebank House, Riverside, Ribchester, Lancashire PR3 3XS
- Tenant - Kristine Diane Jackson of Abbeville, Hall Lane, Wrightington, Wigan, Lancs WN6 9EL

## Summary

The route under investigation was recorded as a public footpath as part of the definitive map process dating back to the 1950s and its publicly recorded status was not challenged as part of that process.

None of the commercial maps, Ordnance Survey maps or aerial photographs examined provide sufficient evidence to suggest that the route should have been historically recorded as a public bridleway.

The parish survey card dated 1951 records the existence of a wicket gate at point A, the removal of which at some point towards the end of the 1950s appears to have triggered complaints by a resident (Mr Berry) who lived adjacent to the footpath that the route was then being used by horses.

Mr Berry erected a structure in the path to prevent horses but this was subsequently removed as it appeared that although he owned land on either side of the footpath he did not own any part of the route itself.

Use of the route appears to have continued until at least 1978 when the two landowners at that time - Mr Calderbank and Mr Laithwaite – stated that they were withdrawing their permission for horses to use the route. No physical barriers preventing use appear to have been erected as the route also provided private vehicular access to a number of properties and to fields.

From 1978 it appears from the County Council files that there has continued to be some use of the route by horse riders as evidenced by the reports submitted about horses using the path, the surface conditions and regular reports about the path and hedges being overgrown – which were said to have hindered pedestrians and also horse riders although County Council inspections suggested that the path was usable.

No further correspondence since 1978 documents Mr Laithwaite or Mr Calderbank or subsequent landowners specifically allowing or preventing horses using the route.

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

25 user evidence forms have been submitted to the Council as part of this investigation, 1 of these user forms has been excluded as it is incomplete. 10 of the forms are evidence of use on a non-mechanically propelled vehicle (a bicycle) and 14 forms are evidence of use on horseback. The information supplied in these forms is set out below:

#### **Evidence of use on a non-mechanically propelled vehicle - 10 user evidence forms**

The years in which the users have known the route varies from 80 years, 69 years, 60 years, 52 years, 50 years, 48 years and 31 years. 10 of the users have all used the way on a non-mechanically propelled vehicle, and the years in which they used the route varies:

1933-2013	1940s-1950s	1944-1950	1945-1960	1950-2013
1955-1982	1958-2013	1965-1995	1965-2013	1982-2014

The main places the users were going to and from include, St Joseph's School to St Joseph's Church, country walks, to the church, general leisure activities, from Mossy Lea Road to Wrightington Country Club, Mossy Lea Road to four lane ends and to the fishponds.

The main purposes for using this route was to see friends, for pleasure, for prayers at church, exercise, leisure activities and for church services. The use of the route varies from daily, weekly, frequently to 15-20 times per year.

10 users also used this route on foot, the years in which this occurred varies  
1940s-1950s      1945-1960      1950-2013      1955-1982      1962-1968  
1965-2013      1965- 1995      1982-2014

None of the users have used the route on a motorcycle / vehicle but 6 of these users have used the way on horseback during the years of 1960-2005, 1989-2005, 1940s-1950s, 1960-2013 and 1967-2000, 1 user does not mention during which years he used the route.

9 of the users agree the route has always run over the same line, 9 users have never seen any stiles / gates / fences across the route, 1 user mentions seeing a stile near St Joseph's church with a gap, but no further details have been provided. 8 users agree that they have never been prevented access when using the way.

None of the users have been a landowner of the land the route crosses and 9 users have never been a tenant for the land affected, however 1 user mentions that their grandparents were tenants of the lower of the 2 houses and provided his name, this user mentions that they don't know of any instructions received.

None of the users have ever been stopped or have had to turn back when using the route, nor have they ever heard of anyone else being stopped or turning back when using the route.

All 10 users have never been told by anyone that the land crossed by the way was not public, the users have also never seen any signs along the way or have ever asked permission to use the route.

At the end of completing user evidence forms users further information is requested, this information is shown below:

- "My brothers and I walked the paths on a daily basis to and from school. We caught the bus from St Joseph's church the paths were the shortest way from school to bus stop. I also hacked out with friends and rode my bike up and down the pads nobody ever stopped us or said otherwise everybody used it"
- "This route is used because of the danger of walking / cycling / horse-riding past the BP Garage / roundabout, speed of traffic at Junction B5238 towards St Joseph's Church. This path must be kept open for anyone who wishes to enjoy the pleasure of the countryside and is safer than the road"



- "I have never been stopped or questioned or deliberately turned away when riding this track. I have used the track on my own and in company with other riders over the years"
- "This was known as the church pad and was more of a wide well cindered track and was the main route for people of Wrightington to get to the church and back walking"
- "I think it is important to use public rights of way on a regular basis or they soon grow over. This particular right of way is a useful cut-through to avoid a busy stretch of road near the BP garage where Bradley Wiggins was knocked off his bike. Local residents made an effort to keep the wider part of mossy lea fold accessible by employing a local tradesman, Mr Colin Schofield, to resurface it at least once to my knowledge"
- "a good short cut and safer"

#### Evidence of use on horseback (14 users)

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

1953-2013	1957-2013	1984-2013	1961-2014	1963-2013	1964-2014
1966-2013	1972-2013	1986-2013	1988-2013		

13 users have used the way on horseback or leading a horse along the route, the years in which they used the route varies:

1950-2013	1960-2005	1963-1998	1963-2014	1966-1974	1966-2013
1968-2014	1972-1975	1983-2013	1986-2008	1988-2010	1988-2013
1993-2008	1993-2013	1996-2013			

The main places the users were going to and from include, Tunley Moss, Moss Lane, Mossy Lea Road, Wrightington Country Club, Prescotts Farm, Hunger Hill, Standish, Arbour Lane many of the users visit these places on a circular route. The main purposes for using the route include hacking / horse riding, for pleasure, going to shows, exercising horses, to miss out on a dangerous road. The use per year varies from weekly, 35 times, 30 times, 20 times, 15 times, once per month, 10 times and 2 or 3 times.

8 of the users also used the route on foot during the years of 1960-2014, 1963-2013, 1963-2008, 1972-1975, 1958-2013, 1974-2014, and 2000-2013.

None of the users have ever used the route on motorcycle / vehicle, however 4 of the users have used the route on a bicycle, between the years of 1963-2014, 1963-2008, 1960-2013 and 1974-2014. None of the users have ever used the route by other means.

10 users all agree that the route has always run over the same line, 4 users did not provide a response to this question, 13 users have never seen any stiles, gates or fences along the route and they agree that they have never been prevented access.

13 users have never worked for a landowner of the route nor have they ever been a tenant over the land which the route runs. The same 13 users have never been

stopped from using the route and they have also never heard of someone else being stopped or having to turn back when using the route.

13 users have never been told by anyone that the route they were crossing was not a public right of way, they have never seen any signs along the route or asked permission to use the route.

At the end of completing user evidence forms users further information is requested, this information is shown below:

- "If this path is closed to the general public this would be detrimental to the public and the countryside. This is a safe place for walkers and horse riders to get through busy traffic avoiding four lane ends. The closure would affect people of all ages in a negative manner."
- "Using this path enables you to avoid a very dangerous stretch of road (round BP Garage - where Sir Bradley Wiggins got knocked off his bike) I stable my horse at Wrightington and will continue to use this path as long as I am able to ride, More bridleways need to be open in Wrightington not closed."
- "Route allows avoidance of a busy stretch of road going to the motorway roundabout"
- "Always know this pathway as a public right of way since starting at St Joseph's school in 1958. As children in the class walked to the church on many occasions with the teachers using this pathway"
- "I used this path regularly as a girl being a pupil at St Joseph's school, we walked and rode with friends up and down the pads. On a school day the church provided transport to school but my brothers and others had to make our own way home from school to St Joseph's church to catch a bus home which meant going down the pads."
- "I have always used this route for horse riding as part of a circular ride from Standish to Wrightington. Especially for hacking and going to and from charity farm shows."
- "Found it important to avoid using busy road and motorway roundabout - instead could use bridge and cut through to pepper lane."
- "I have used this route over the years as a circular route from Standish to Wrightington when riding horses."
- "This route is very important as it cuts off a very dangerous main road that goes past St Joseph's church to the BP garage. This route makes it much safer for children on push bikes as well as horses that do no harm to the environment."

#### Information from others

A letter has been received from the residents of 112 Mossy Lea Road. They state the ownership of the land Mossy Lea Fold is believed to belong to Mrs Calderbank resident of Tunley Lane (and her family one resident of Mossy Lea Fold Mrs J Cook daughter).

They state that this lane is never maintained and several years ago they paid with permission from the Council and the Calderbank family to maintain the trees as they have a Tree Preservation Order on them. As in the agreement they need to be maintained every year, and for the last 3 years this has never happened, the

residents ask who will maintain this.

The horses already use this pathway on a regular basis.

Cars and vans of both residents and visitors travel down at high speeds, which to the residents is a danger in itself.

The pathway in front of the houses towards Mossy Lea Road is very uneven, with large pot holes and even bigger puddles, so who will maintain this.

The fence of 112 Mossy Lea Road consists of 16.5 fence panels which have been hit by wagons on several occasions, and are replaced by the residents at great expense, what happens if an incident occurs damaging the property as most of the time the residents are at work and never see it happening.

Their final issue is just a personal one, being that they have lived at this address since 2002 and have had several dealings with the Council over planning and building of a house / garage / noise pollution / noisy neighbours, and an illegal 6'3 fence built next to their property, nothing has been done about any issues they raise. In the past they have reported that someone has cut the trees, bushes etc without permission for their own benefit so what will change or be done about this bridleway.

#### Response from Jacqueline Cook

Jacqueline Cook has provided deeds of ownership of this route and states that she and on behalf of the other co-owners object to the upgrade to Bridleway of this route.

She has lived at 8 Mossy Lea Fold since 1996 and her property is on the footpath. She has had to complain several times about issues with horse riders using the footpath.

The path is quite narrow and gets very muddy. Horses churn the path up even more and cause it to be very uneven and dangerous. She knows of at least one instance where her elderly neighbour fell and broke her arm due to the imprints left by horses. She also knows of several locals who have been afraid to use the footpath because of fear of a similar thing happening.

She mentions there is also a blind corner about halfway down the path and when on foot it is impossible to see a horse approaching. There are many people who use this path and the health and safety risk would be too great.

In the past, they have had problems with several horses using the path at a time and also on occasions galloping up with no regard for footpath users. Her own young children have been put at risk while playing in their own garden as the footpath cuts across our property.

They have also had instances where riders have lost control of their horses and have to use the larger tarmac area at the front of our property to bring them under control leaving deep skid marks on the tarmac.

They have repeatedly asked several riders not to use the footpath and explained to them the many safety issues raised by riding on a footpath.

#### Letter from 2 Mossy Lea Fold

These residents have comments and concerns about the proposed upgrading:

1. The only access they have to their house is down Mossy Lea Fold which as far as they are aware is a private right of way (easement) and follows the same route as part of the current public footpath. They are not aware who owns this land but Mossy Lea Fold provides private vehicular access to 3 houses and a farmer's field. If changing the footpath to a bridleway restricts vehicular access down Mossy Lea Fold and therefore to their house then they would have strong objections.
2. The current surface of Mossy Lea Fold is in a bad state of repair. Upgrading to a bridleway would increase usage of this easement and therefore they would have concerns over the state of the ongoing maintenance of the surface, and ask where responsibility for the maintenance lie would?
3. Their driveway is very tight with visibility very difficult when reversing (straight out onto the footpath). It is also very difficult for those who are on Mossy Lea Fold / the footpath to see them emerging from their driveway. This isn't a problem with walkers who aren't travelling at speed however this may raise concern if the footpath is upgraded and cyclists are travelling at speed straight past their driveway entrance as they may not see each other.
4. Given the tight vehicular access and the fact they need to reverse onto Mossy Lea Fold they have concerns that they would not be able to see a horse approaching – and the reaction time of the rider – and lack of anywhere to go could result in an unnecessary accident.
5. The track is very narrow in parts where it runs alongside the field. Horses have already been known to gallop up this track leaving no space for any walkers to pass – there is also a blind bend, they have 2 young children who use this path frequently to access Wrightington Country Club and are therefore extremely concerned that this would be putting their children in unnecessary danger.
6. Too frequently they are having to reverse off the track onto Mossy Lea Fold which is done blindly due to horses already coming down Mossy Lea Fold. Reversing in this manner onto a 30mph road is obviously extremely dangerous, especially given they are often completing this manoeuvre with young children in their vehicle.

#### Comments from John Winnard

John Winnard is one of the registered owners of the top half of the field bordering Mossy Lea Road and the footpath.

He would personally be against the footpath being upgraded to a bridleway mainly from a health and safety point of view. There have been several occasions when there have been incidents when horses, presumably unauthorised, have been cantering up the path when families have been trying to walk along and it will only be a matter of time before someone is hurt. He mentions from site you can see that the path is fairly narrow and there is also a blind spot where a horse rider cannot see ahead properly about halfway down. The horses also churn up the ground which makes it difficult for families to enjoy the walk along what is supposed to be a “footpath”.

## Comments from Anthony Winnard

Anthony Winnard is part landowner in respect to this matter, his Grandfather, Tom Calderbank who lived at "Lake House" was one of the original owners and on his demise it was willed to the five children's families.

Due to the obscured view which a rider would encounter and the lack of width of the footpath, surely this would be an accident waiting to happen which he certainly would not be a party to and must express his objection strongly.

He states would it not be prudent to employ an independent Health and Safety Officer to assess the implications of the footpath to a change of use to bridleway and the probability of a serious accident due to people's folly.

He also wonders who would be liable if there was an accident if there was a change of use.

## **Assessment of the Evidence**

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

#### In Support of Making an Order

- User evidence
- Some historical map evidence

#### Against Making an Order

- Strong historical map evidence

## **Conclusion**

The route under consideration is currently recorded as a public footpath. The application is to upgrade the section of footpath from points A-B-C-D-E-F-G to a bridleway, as it is suggested the public footpath carries higher public rights.

Committee should note that as the route already appears on the definitive map as a public footpath, it is not sufficient to satisfy the lesser test of reasonably alleging the existence of bridleway rights, neither is it necessary for there to be conclusive evidence of the existence of a higher public right than a public footpath, instead the standard of proof required is the balance of probability.

There is no evidence of an express dedication and therefore Committee is invited to consider whether a dedication of bridleway rights can be inferred, on balance, from all the circumstances at common law or deemed under s.31 Highways Act 1980.

Looking firstly at whether dedication can be inferred at common law. Committee is advised to consider whether evidence from the Old County maps and other documentary evidence coupled with the evidence on site does on balance indicate how the route should be recorded. The Head of Service - Planning and Environment has considered the historical map evidence. There does not appear to be sufficient evidence from the early commercial maps, ordnance survey maps or aerial photographs to suggest the route was in existence as a bridleway, or had it been in existence it was of little significance. However; there does appear to be some documentary evidence from the Head of Service - Planning and Environment to suggest the route was being used by horses. A complaint in 1950 from Mr Berry suggested the route was being used by horses after the wicket gate (at point A) was removed.

The Planning and Environment written records also suggest that in 1977 permission had been granted by two landowners allowing the public footpath to be used on horseback. There is subsequently two letters from the same landowners dated May and June 1978 withdrawing their permission for horses to use the path. This suggests that it was highly likely the footpath was being used on horseback during this period up until the permission was withdrawn in 1978 suggesting the landowner did not intend to dedicate the land at this point in time.

The County Council records also suggest there had been some continued use of the route by horse riders after 1978 due to reports submitted by the public that horses were using the route however; apart from the above there does not appear to be any other corroborative map evidence supporting the path being used on horseback.

On balance, the map and other documentary evidence is in itself considered to be insufficient to conclude the route was a historical public bridleway and it is therefore suggested to committee that inferred dedication cannot on balance be satisfied.

Committee is therefore advised to consider whether deemed dedication under S.31 Highways Act 1980 can be satisfied. Committee will be aware that in order to satisfy the criteria of S.31 there must be sufficient evidence of use of the claimed route by the public, as of right and without interruption, over the twenty-year period immediately prior to its status being brought into question, in order to raise a presumption of dedication. This presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way.

*R (on the application of Godmanchester and Drain) v SSEFRA (2007)* is the most recent case addressing the meaning of s31 (2) with regard to what acts constitute 'bringing into question'. By reference to earlier case law: "Whatever means are employed to bring a claimed right into question they must be sufficient at least to make it likely that some of the users are made aware that the owner has challenged their right to use the way as a highway". On balance there does not appear to be any act challenging users but instead it is reasonable to conclude on balance that the bringing into question of the route would be the submission of the user forms by Wrightington Parish Council and the self-started application by the Environment Directorate in December 2014. Therefore the relevant twenty year period under consideration would be December 1994 – December 2014

Wrightington Parish Council has submitted user evidence forms supporting the route has been used on horseback as well as user forms supporting the route has been used on a bicycle.

19 of the user evidence forms indicate the route has been used on horseback (although it should be noted that none of these users had used the route with a horse and cart) and 14 users confirm the route has been used on a bicycle during the 20 year period under consideration. Use of the route appears to be sufficiently frequent and users do not report any instances of being stopped or turned back from using the route hence use of the route has been without stealth, force or secrecy. Committee will however note that use was with permission during 1978-1979. There is no evidence in support from the landowners to suggest they had granted any permission after 1979 or stopped or prevented people from using the route on horseback.

Although the landowners do object to this application it is acknowledged by them that the route was used on horseback. It is noted there was a sign advising the route should not be used by horses or unauthorised vehicles but there is no evidence to suggest that failure to comply with this notice was policed. From the evidence it is noted there had been no gate after 1950 preventing use on horseback again suggesting the route was not used by force.

It is suggested to Committee that taking all the relevant evidence into account, on balance dedication as a bridleway under S.31 can be deemed and the footpath under consideration should be recorded as having bridleway status.

### **Risk Management**

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

**Alternative options to be considered - N/A**

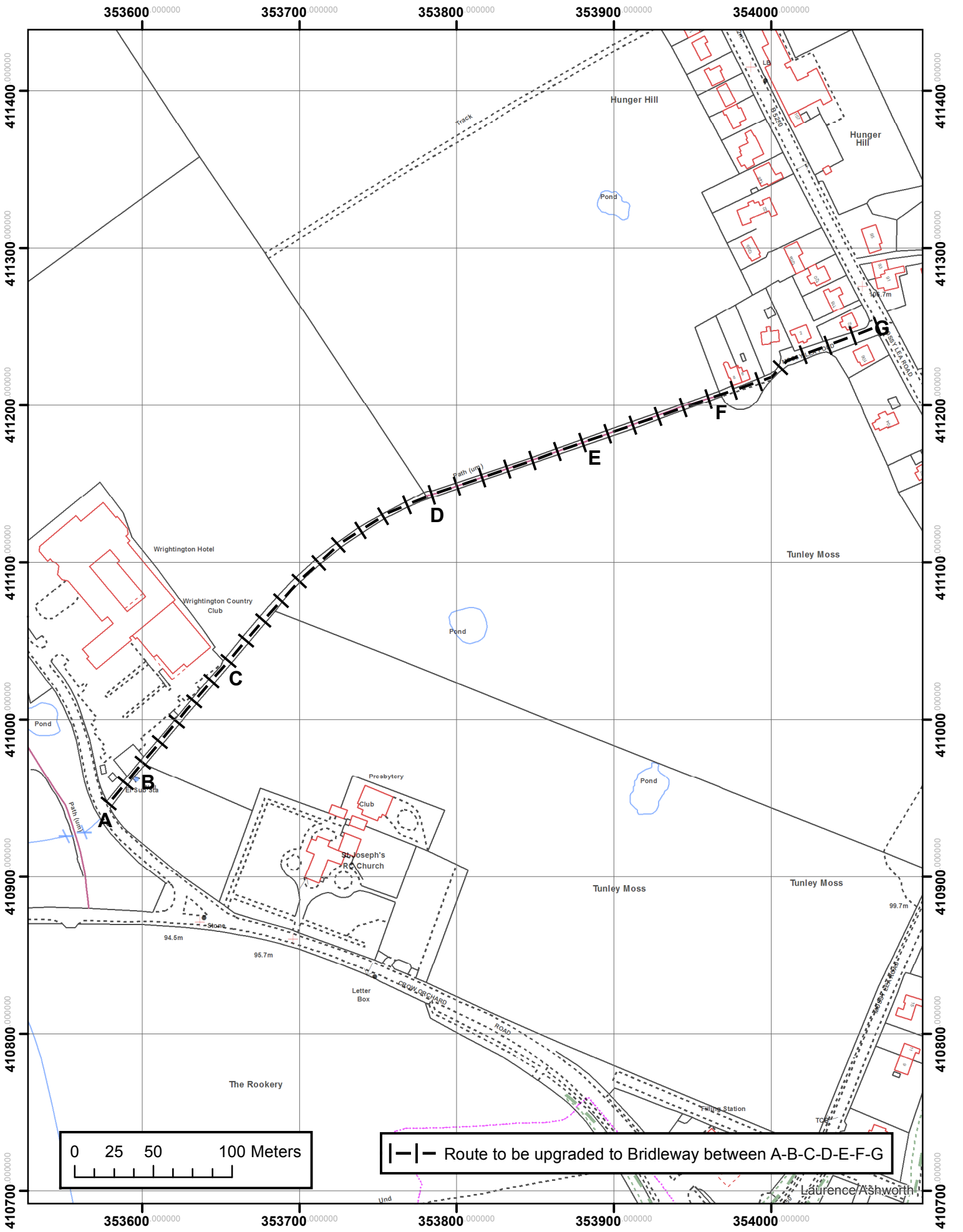
### **Local Government (Access to Information) Act 1985**

#### **List of Background Papers**

<u>Paper</u>	<u>Date</u>	<u>Contact/Directorate/Tel</u>
All documents on File Ref: 804-561		Megan Brindle , 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A



Steve Browne  
Interim Executive Director  
for the Environment

**Wildlife and Countryside Act 1981**  
**Upgrade of Public Footpath 21 Wrightington, West Lancashire District to Public Bridleway**

1:3,000



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