

## Regulatory Committee

Meeting to be held on 24 February 2016

Electoral Division affected:  
Lancaster Rural North

### Wildlife and Countryside Act 1981

#### Definitive Map Modification Order Investigation

**Application to record part of Thwaite Brow Lane and Mount Pleasant Lane, in the parishes of Carnforth & Bolton-le-Sands, District of Lancaster as a public bridleway**

**File No. 804-566**

(Annex 'A' refers)

Contact for further information:

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### Executive Summary

Application for a public bridleway along part of Thwaite Brow Lane and Mount Pleasant Lane, in the parishes of Carnforth and Bolton-le-Sands, Lancaster District, in accordance with file no. 804-566.

### Recommendation

1. That the application for a public bridleway along part of Thwaite Brow Lane and Mount Pleasant Lane, Carnforth and Bolton-le-Sands, Lancaster District in accordance with file No. 804-566, be accepted in part only
2. That the section A-B on the plan attached remain recorded on the List of Streets as within the highway width of the A6 Lancaster Road and the section M-N remain recorded as vehicular highway recorded on the List of Streets. Neither of the sections have the characteristics to be able to be recorded as Byway Open to All Traffic on the Definitive Map and statement
3. That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (c)(i)(ii) and (iii) of the Wildlife and Countryside Act 1981 to upgrade Carnforth Footpath 9 (part), Carnforth Footpath 10 and Bolton-le-Sands Footpath 19 to Bridleway (section C-M on the plan attached) and also the addition of public bridleway between points B and C, addition of byway open to all traffic between points N-Q on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan and to alter the particulars on the Definitive Statement.
4. That being satisfied that the tests 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 public bridleway along part of Thwaite Brow Lane and Mount Pleasant Lane, Bolton-le-Sands, Lancaster District for a distance of approximately 1.6km and shown on the Committee plan by thick dashed lines between points A-Q on the Committee plan on the Definitive Map and Statement of Public Rights of Way.

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

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

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

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

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

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

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

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

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

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

The County Council’s decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by the applicant, landowners, consultees and other interested parties produced to the County Council before the date of the decision. Each piece of evidence will be tested and the evidence overall weighed on the balance of probabilities. It is possible that the Council’s decision may be different from the status given in any original application. The decision may be that the routes have public rights as a footpath, bridleway,

restricted byway or byway open to all traffic, or that no such right of way exists. The decision may also be that the routes to be added or deleted vary in length or location from those that were originally considered.

## Consultations

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

Carnforth Parish Council have been consulted and no response has been received it is assumed they have no comments to make.

Bolton-le-Sands Parish Council have also been consulted and no response has been received it is assumed they have no comments to make.

### Applicant/Landowners/Supporters/Objectors

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

## Advice

### Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	4932 6960	Open junction with A6 (Lancaster Road)
B	4937 6963	Route turns south east to cross Lancaster canal via Thwaite End Bridge
C	4939 6962	Junction of Carnforth Footpaths 9 and 28 south east of Thwaite End Bridge
D	4934 6956	Junction of Carnforth Footpaths 9 and 10.
E	4933 6953	Route passes entrance to Thwaite Cottage
F	4932 6950	Field gate across route
G	4932 6944	Field gate in open position on route
H	4932 6939	Junction with Carnforth Footpath 11 immediately north of stream across application route
I	4922 6907	Junction with Carnforth Footpath 14
J	4915 6897	Route passes through stone gateposts
K	4913 6894	Route crosses Carnforth – Bolton-le-Sands parish boundary at Mount Pleasant (unmarked on the ground) and continues as Bolton-le-Sands Footpath 19
L	4908 6888	Access road from Mount Pleasant joins the

		application route
M	4906 6870	Southern end of Bolton-le-Sands Footpath 19 adjacent to Foxfield Cottage
N	4907 6864	Junction of Mount Pleasant Lane with Thwaite Brow Lane and Highfield Lane
O	4885 6863	Unmarked point at which the application route enters Crawstone Wood
P	4878 6866	Stone gateposts on boundary of Thwaite Brow Wood (Common land) and Crawstone Wood
Q	4880 6884	Open junction with Thwaite Brow Lane
X	4932 6925	Line across route shown on Carnforth Tithe Map 1846
Y	4924 6908	Line across route shown on Carnforth Tithe Map 1846
Z	4916 6899	Line across route shown on Carnforth Tithe Map 1846

### Description of Route

A site inspection was carried out 26 November 2015.

The route under investigation ('the route') commences at an open junction with the A6 (Lancaster Road) in the former urban district of Carnforth at point A on the Committee plan adjacent to a bus stop and shelter. It leaves the main carriageway of the A6 and follows a tarmacked road onto which yellow hatching has been painted indicating that the road must not be blocked. It continues in a south easterly then north easterly direction rising gently uphill adjacent to the boundary fence of the towpath of the Lancaster Canal along a 2.8 metre wide tarmacked road. It is fenced from the canal and towpath and joined to the A6 to the north west by a well maintained grass verge on which a sign has been erected stating 'No Parking'. Immediately before reaching point B a stone stile provides pedestrian access from the route to the towpath.

At point B the route turns to continue in a south easterly direction crossing the Lancaster Canal via Thwaite End Bridge (Canal Bridge 127). The stone bridge is surfaced with rough concrete and is wide enough to allow for the single passage of vehicles. The parapets to the bridge have been raised from their original height by the addition of metal railings painted white.

Once across the bridge the route (signposted as a public footpath) continues in a south westerly direction from the junction of four routes (point C) - two of which are recorded as Carnforth Footpaths 9 and 28. From point C the route passes through a wooden field gate which was open on the day of inspection and as indicated by the growth of vegetation around its base appeared not to have been used for some time. Adjacent to the gate was a step through stile which was overgrown with ivy which was impossible to use due to the overgrowth.

The route continues in a south westerly direction adjacent to the Lancaster Canal bounded by a wooden fence and hedge adjacent to the canal and by a stone wall on the south eastern side. The surface of the route consists of compacted stone



approximately 2.8 metres wide with a number of large potholes filled with water consistent with vehicular use of such a track. At point D a pedestrian width trodden track leaves the stone surfaced track to continue as Carnforth Footpath 9 south west towards the canal and past the remains of some lime kilns.

From point D the application route continues in a more southerly direction continuing as a stone surfaced track rising gradually uphill (recorded as Carnforth Footpath 10) to pass the entrance to Thwaite Cottage at point E.

Beyond Thwaite Cottage the route continues in a generally southerly direction rising uphill along a compact earth and stone surfaced track bounded on both sides by mature hedges and trees. It is still wide enough for vehicles to use it but does not appear to be receiving significant vehicular use.

At point F the route is crossed by a wooden gate which closing onto a substantial stone gatepost. The gate catch is easily operable from horseback and a sign on the gate states 'Please close the gate'.

From point F the route continues south bounded on either side by mature hedges. There is a good compact surface and recent evidence of horses using the route (hoof prints and manure).

At point G the route passes an old metal gate secured on a hanging post but not in use and overgrown around the base suggesting that it hasn't been closed across the route for some time.

The route continues, bounded on either side by mature hedges and trees to point H where it is joined by Carnforth Footpath 11 and immediately south of the junction of paths crosses a watercourse which feeds into the canal. The stream is very shallow, with a firm base and is easy to cross on foot.

Beyond point H the route continues as a bounded route varying in width between 2.5 and 3 metres. The adjacent hedges are well maintained and cut back with a number of field gates providing access to the adjacent fields. The route continues in a southerly then more south westerly direction towards Mount Pleasant and is joined by Carnforth Footpath 14 at point I.

The route then continues as a bounded track passing by farm buildings to the west. At point J – as it approaches the farm – it passes through two stone gateposts (no gate) and then crosses a wider open area from which there is access to the farm buildings and Mount Pleasant. The application route continues in a south westerly direction along a hard surfaced track to pass to the east of Mount Pleasant passing through the unmarked parish boundary at point K. It then continues (recorded as Bolton-le-Sands Footpath 19) along the access road past Mount Pleasant to point L where a gated track joins it directly from Mount Pleasant.

The route continues along the access road in a southerly direction bounded on either side and surfaced with a mixture of compacted stone, concrete and tarmac at a width of approximately 2.8 metres.

At point M the route passes Foxfield Cottage (the end of the recorded section of Bolton-le-Sands Footpath 19) from which point the surface is more uniformly tarmacked. It is an enclosed route for a short distance to the cross roads of lanes known as Mount Pleasant Lane, Highfield Lane, and Thwaite Brow Lane at point N. At point N a public footpath signpost is positioned pointing back along the application route towards point M. A further yellow and black sign is clearly visible showing a horse and rider stating 'Think Horse' and containing the wording 'North Lancashire Bridleways Society' indicating that horses may be present on the route.

From point N the application route turns in a general westerly direction along a bounded track. It rises gradually uphill past some stables to the south with evidence that the route is regularly used by horses (hoof prints).

At point O the route passes into Crawstone Woods and then continues unbounded track to point P where it passes between two large stone boulders on the boundary Thwaite Brow Woods. The remains of iron work in one of the posts suggests that it is an old gate post.

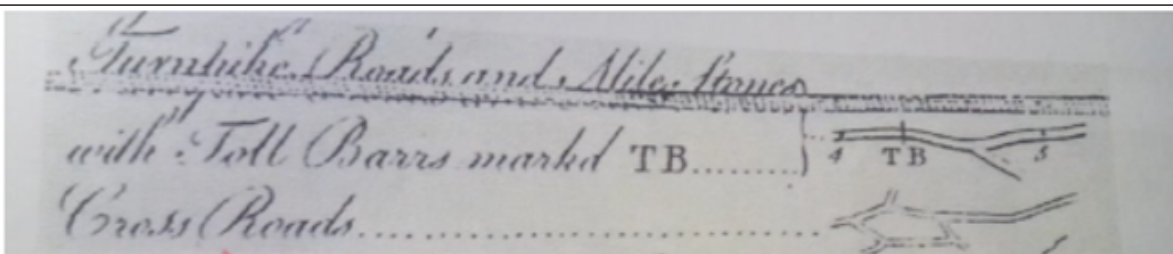
From point P the route continues unbounded as a substantial track for a short distance before turning to continue in a more northerly direction gradually descending to exit onto the tarmac Thwaite Brow Lane at point Q.

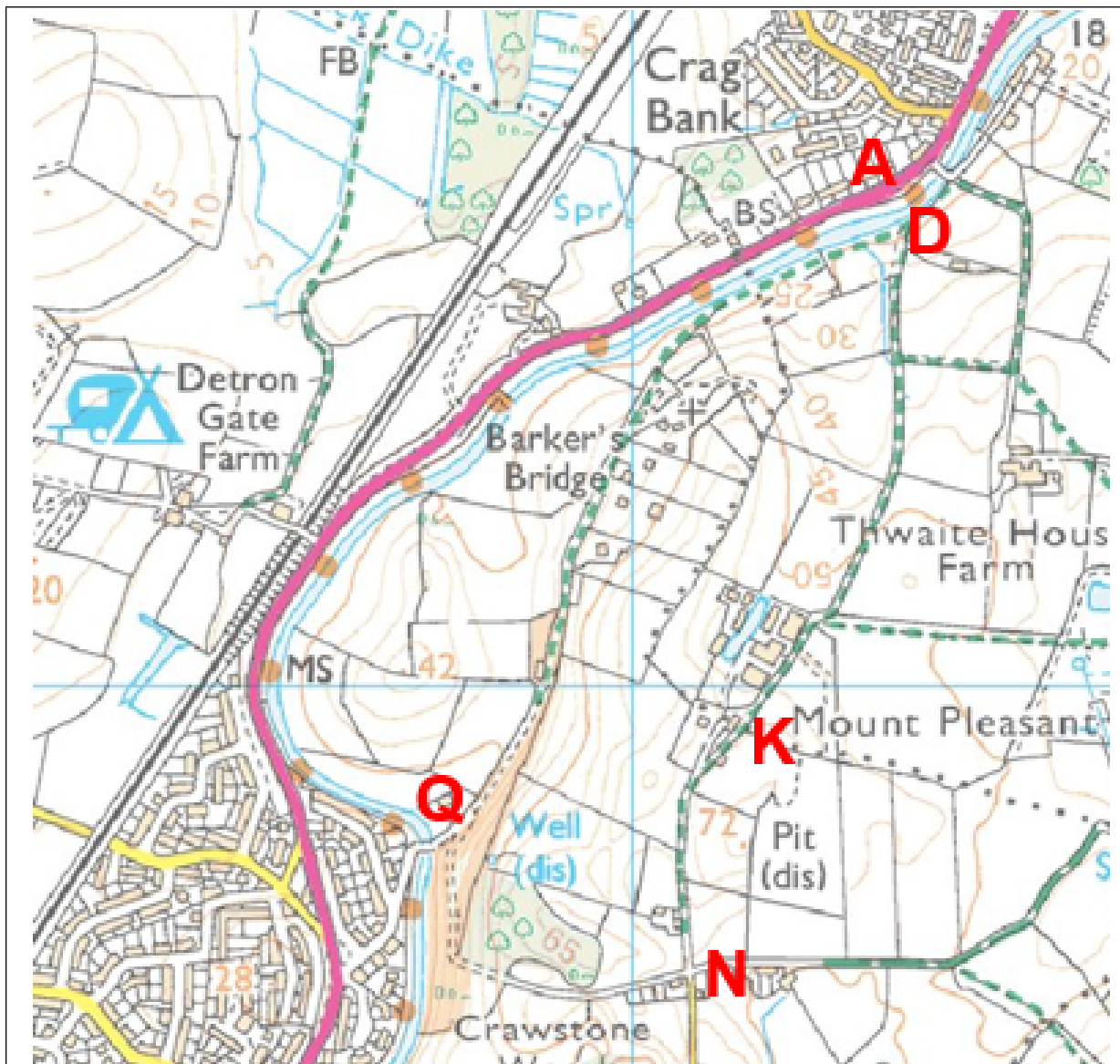
A map erected on Thwaite Brow Lane, close to point Q shows the boundary of Thwaite Brow Wood and the route between point P and point Q. It describes the wood as a community woodland and shows the route as an 'unclassified road'.

The total length of the route is 1.6 km.

## Map and Documentary Evidence

Document Title	Date	Brief Description of Document & Nature of Evidence
<b>Yates's 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. Yates won a £100 award from the Society of Arts for the accuracy of his map so accuracy can be assumed to be relatively high.

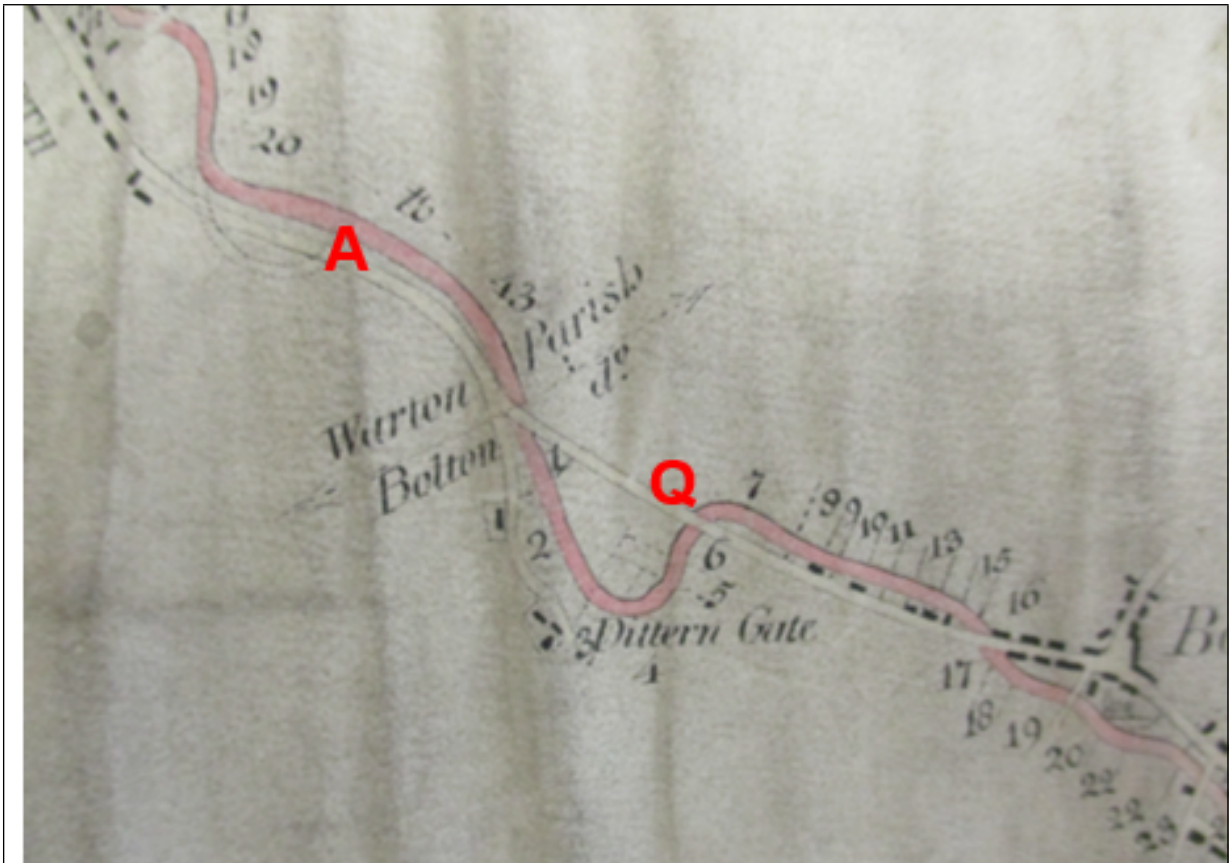




Observations

Yates's Map predates the construction of the Lancaster canal and the modern day route of the A6 between Bolton-le-Sands and Carnforth (which runs parallel to the canal). The main road linking the two settlements in 1786 was part of the Garstang – Heron Syke Turnpike Road, which gained its Act of Parliament in 1751 and which is shown on Yates's Map extending south from Carnforth to pass Thwaite Yeat close to point A and continuing in a general south westerly direction passing through point Q and continuing down to Bolton-le-Sands. Most of the route of the old turnpike road still exists today and can be identified by comparing Yates's Map with the modern OS extract. It is now recorded as Bolton-

		<p>le-Sands Footpath 12 and as part of the metalled section of Thwaite Brow Lane. This route is shown on Yates's Map bounded by thick solid lines indicating that it was recorded by Yates as a Turnpike Road.</p> <p>Leaving the Turnpike Road at 'Thwaite Yeat' is a double dotted line which extends south to Mount Pleasant and which appears to be consistent with the alignment of the route under investigation. It passes Mount Pleasant (point K) and continues south to point N. A way shown by double thin lines (denoting a cross road in the key to the map) is then shown extending in a westerly direction and may have been part of the application route between point N and point Q although it is shown turning to continue in a south westerly direction towards Bolton-le-Sands rather than north west to point Q.</p>
<p>Investigating Officer's Comments</p>		<p>This small scale commercial map was believed to be published primarily to meet the needs of the travelling public. It appears that most of the route under investigation may have existed in 1786 and may have been capable of being used by horses and possibly horse drawn vehicles at that time as public footpaths were not normally shown on a map of this scale.</p>
<p><b>Lancaster Canal Acts</b></p>	<p>1792</p>	<p>Canals were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled them 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.</p>



<p>Observations</p>	<p>The route under investigation crosses the Lancaster Canal between point B and point C via Thwaite End Bridge. The construction of the Lancaster Canal received Royal assent on 11 June 1792. The line of the canal was first surveyed in 1772 with a final survey carried out in 1791 by John Rennie. A map of the Lancaster Canal dated 1792 is available to view in the County Records Office and shows the proposed construction of the canal through Carnforth and Bolton-le-Sands. A Field Book and Book of Reference is also available to view which lists the names of the owners and occupiers of the land crossed by the proposed canal as referenced by a series of numbers on the map. The route of the proposed canal is shown coloured red on the plan. A road is shown extending from the centre of Bolton-le-Sands crossing the proposed canal at two points before reaching point Q. The road is then shown to continue from point Q in</p>
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	<p>a north north easterly direction to the parish boundary where it crosses the canal again and continues north towards Carnforth. The canal bridge on the route under investigation (known as Thwaite End Bridge) is not shown.</p> <p>A series of Acts of Parliament relating to the construction and maintenance of the Lancaster Canal are available to view in the County Records Office and are dated 1792, 1793, 1796, 1800, 1807, and 1819. No specific reference could be found to the construction of the bridge forming part of the route under investigation (Thwaite End Bridge). However, the 1792 Act gave the proprietors of the canal the power to divert, alter, widen, enlarge and extend any bridges, ways or roads necessary to enable the construction and maintenance of the canal. The 1793 Act further stated that the Justices for the County of Westmorland or Lancaster could, where necessary, on the view of two or more Justices of the Peace, alter, divert or stop up any ancient highways or the ways or roads whether public or private. No further details were found relating to the diversion of the former Toll Road between Carnforth and Bolton-le-Sands but it appears that it was subsequently diverted to allow for the construction of the canal and that the proposed bridge shown on the parish boundary on the canal plan was not constructed but that Thwaite End Bridge (forming part of the route under investigation) was constructed instead.</p>
<p>Investigating Officer's Comments</p>	<p>During the construction of the canal the main road between Bolton-le-Sands and Carnforth was altered and the original proposal to construct a bridge across the canal on the parish boundary to provide access along the route of the original turnpike road was never completed. Thwaite End Bridge appears to have been constructed instead providing access to a number of properties and to the route under investigation through Mount Pleasant, which had existed before the canal was built. Thwaite Brow Bridge is recorded as a</p>



		grade II listed building (no. 127). Further information on it has been sought from the Canal and Rivers Trust and North West Waterways about its classification but no additional information has been provided.
<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.



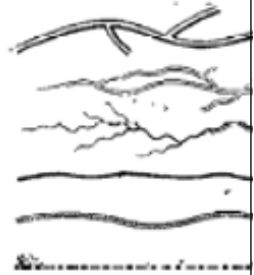
Observations		The Lancaster Canal is shown on the map. The route of the modern day A6 from Bolton-le-Sands to Carnforth is also shown west of the canal in place of the original route shown on the earlier canal plan and Yates's Map. A route consistent with the route under investigation is shown leaving the turnpike road just north of point A and crossing the canal to a junction of routes at point C. From point C a less significant route (depicted in the key to the map as a cross road) is shown extending south past Mount Pleasant consistent with the route under investigation. The route shown passes through the parish boundary in proximity to point K and then continues in a generally southerly direction to Bolton-le-Sands. The route under investigation between point N and point Q is not
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		shown.
Investigating Officer's Comments		<p>A route across the canal existed from the Turnpike Road to point C in 1818. Between point C and point N a route is shown passing east of Mount Pleasant as a cross road providing a possible alternative route to the Turnpike Road for travellers passing between Carnforth and Bolton-le-Sands. The depiction of Mount Pleasant Lane on this early commercial map, sold primarily to travellers, indicates that it may have been accessible to the public on horseback and possibly horse drawn vehicles in 1818 – even if that was not its original intention. However, Greenwood's map was stated to show private roads as well as public ones so the inclusion of part of the route on this map is not strong evidence (on its own) of public vehicular status at that time.</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 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.</p>



*Wind Mills*  
*Turnpike Roads*  
*Cross Roads*  
*Rivers and Brooks*  
*Canals*  
*Railways*  
*Boundaries of Counties*



<p>Observations</p>	<p>A direct route from the Turnpike road (Lancaster Road) across the canal to point C is shown providing access to properties labelled as Thwait Gate, Cockle Hall and Mount Pleasant. From point C a double dashed line is shown, consistent with the route under investigation, leading to Mount Pleasant and continuing to the junction of routes at point N. From point N a route is shown heading west then north to point Q. The alignment of the route differs to the route under investigation but as there are no other routes known to have been in existence through that area, and taking into account the small scale of the map, it is considered likely that the route shown was intended to be the route under</p>
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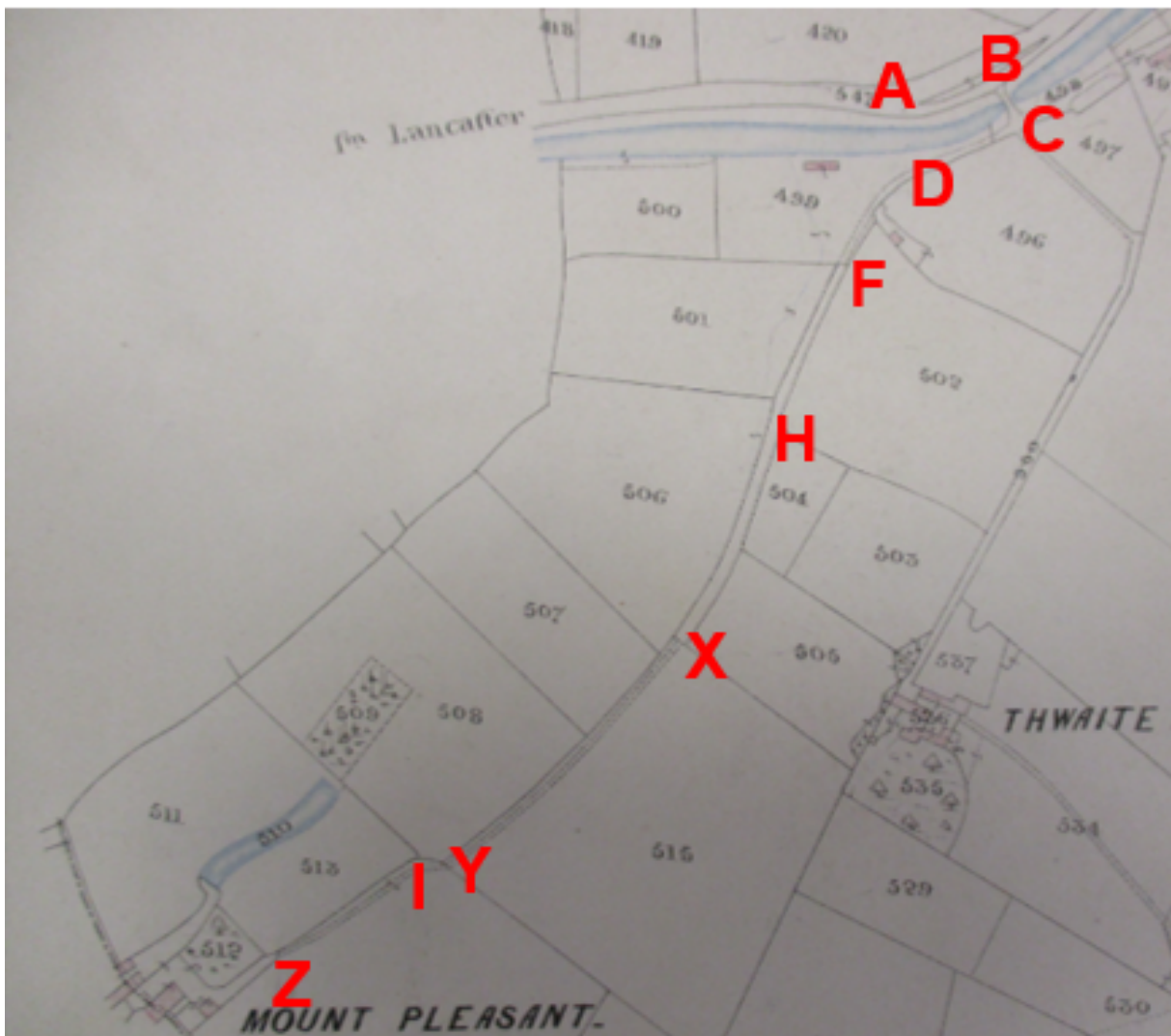
		<p>investigation between point N and point Q.  Hennet's Map also shows the route of the Old Turnpike Road east of the canal from point Q and heading generally north towards Carnforth to cross the canal on the parish boundary.</p>
<p>Investigating Officer's Comments</p>		<p>A route largely consistent with the route under investigation appeared to have existed in 1830. Between point C and point N the route appeared unbounded and narrower than the route shown between point N and point Q (if width of the representation on the map was significant.)  The inclusion of the route on the map provides evidence that it existed in 1830 and limited evidence that it may have been used by the public on horseback – and possibly by horse drawn vehicles at that time.  The route of the Old Turnpike Road crossing the canal on the parish boundary is shown although it is thought that this canal bridge was never constructed suggesting this part of the map was based on the canal plans rather than an actual survey. Such inaccuracies can cast doubt on the accuracy of other details – in particular the alignment of the route between point N and point Q.</p>

**Tithe Map and Tithe Award or Apportionment**

1846

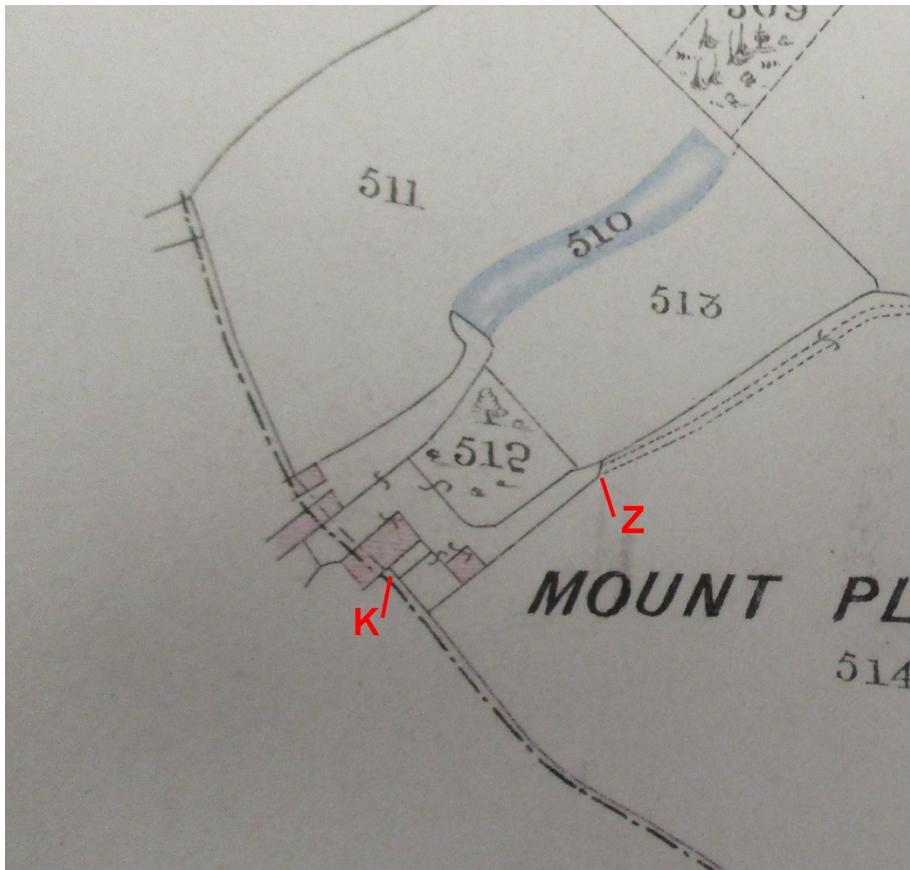
Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show 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.

Carnforth Tithe Map





Carnforth Tithe Map – Detail at Mount Pleasant

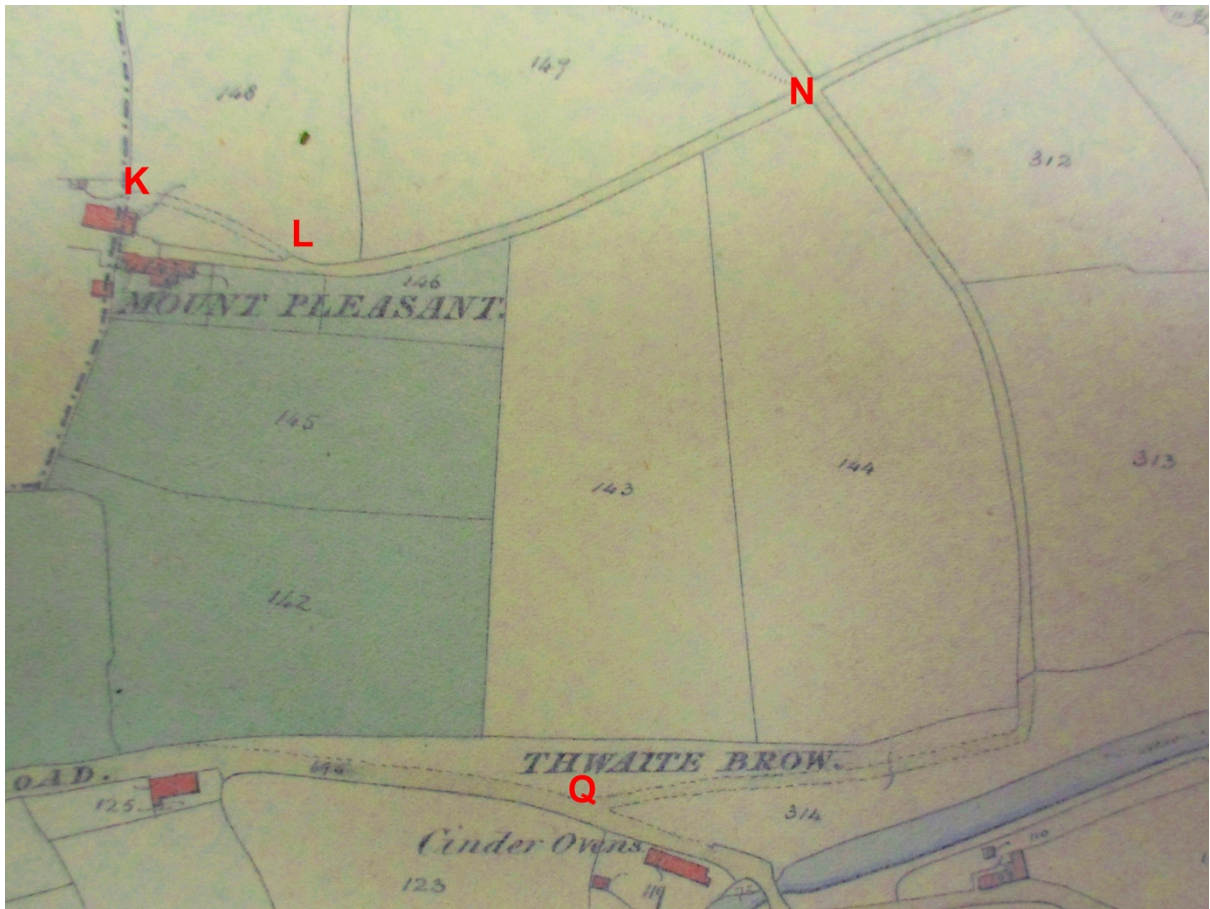


Bolton by the Sands Tithe Map – Detail at Mount Pleasant





Bolton by the Sands Tithe Map



Observations

Tithe Maps for Carnforth and Bolton by the Sands were both produced

<p>Tithe Map for Carnforth</p>	<p>independently in 1846.</p> <p>There is no shading indicating the status of any of the roads shown on the Tithe Map of Carnforth so no inference can be drawn in that respect.</p> <p>The Tithe Map for Carnforth shows in detail the route from point A as it leaves Lancaster Road. Between point A and point B the route appears to be shown as part of the road numbered 547 and described in the Tithe Award as 'Turnpike Road' owned by the Trustees of Lancaster Turnpike Road. A dashed line is shown across the route at point B, immediately preceding the canal bridge which could indicate a change in surfacing at this point. The canal bridge is shown with three separate routes extending from point C: the middle one is the access to Thwaite House (not the route under investigation) numbered 550 which is the number allocated to various routes and listed as 'Public Roads and waste ground' in the Tithe Award. The Bridge B-C is crossed to reach this Public Road section indicating the bridge carried public highway rights.</p> <p>From point C the route under investigation is shown bounded on the south east side by a solid line suggesting the presence of a fence or wall. The north side of the track is shown by a dashed line suggesting that it was not bounded but that a track existed on the ground. The route appears to be contained within plot 499. A building is shown within the plot in the position of the remains of the coke ovens still present on site today. The land is listed as being owned by William Laycock, occupied by Thomas Barton and described as pasture land for which tithes are payable. There is no reference within the Tithe Award to the route under investigation.</p> <p>The property now known as Thwaite Cottage is shown on the Tithe Map and the only access to it at that time (as today) is the route under investigation. The route to (and beyond Thwaite</p>
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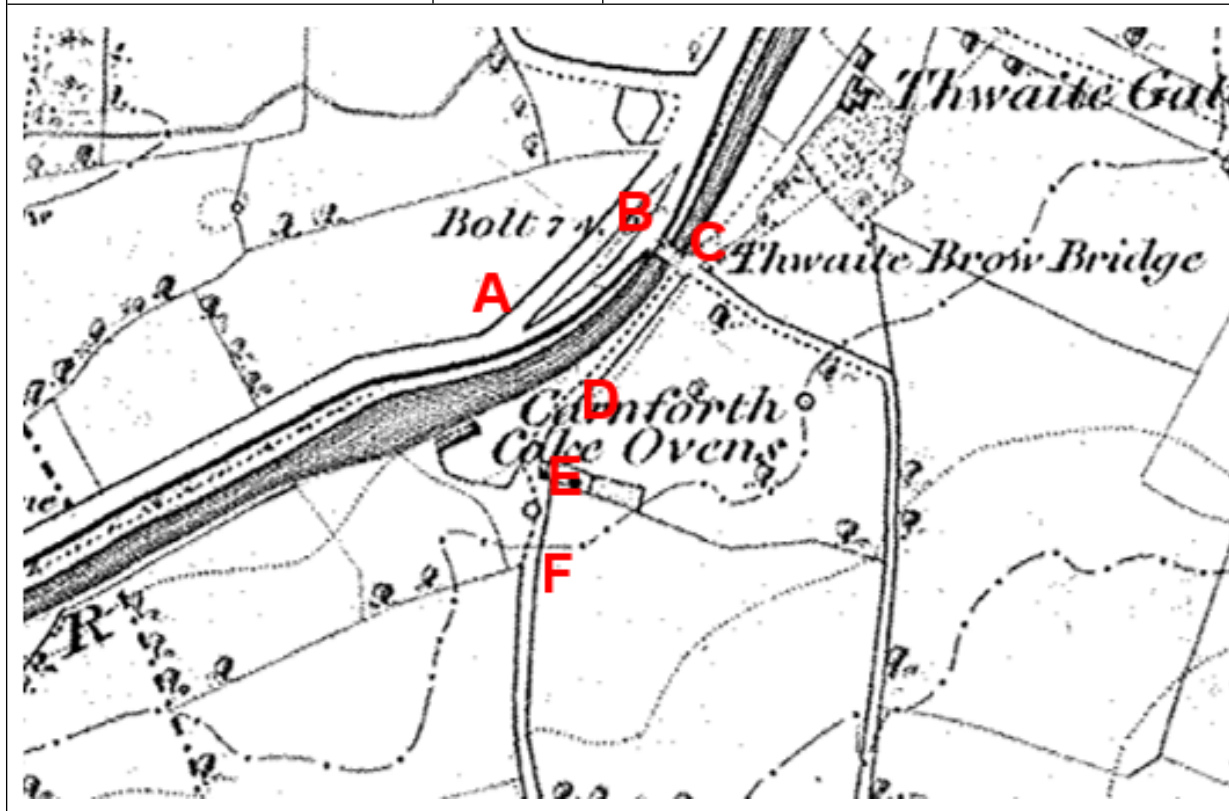
<p><u>The Tithe Map for Bolton by the Sands</u></p>	<p>Cottage) to point F is also included in plot 499.</p> <p>At point F a line is shown across the route suggesting the existence of a gate. Beyond point F the route is shown bounded on either side and is not numbered or included within the adjacent plots through to point X where a line is shown across it indicating the likely existence of a further gate.</p> <p>Beyond point X to point Y – where a further line is drawn across the track – the route under investigation is shown by double pecked lines within the plot numbered 515. The Tithe Schedule lists it as being owned and occupied by Edmund Lawson. The land is described as arable and a tithe payable. No reference to the route under investigation is made.</p> <p>Between point Y and point Z the route is shown to continue as an unenclosed route along the north west edge of a field 514 again owned and occupied by Edmund Lawson. The land is described as arable and a tithe payable.</p> <p>A gate appears to exist from the field at point Z and the route is then shown as bounded on both sides leading to Mount Pleasant. It appears that a way through the farm existed either passing to the north of the buildings or on the route as far as point K (see detailed extract above) via 2 gates either adjacent to the small square building or adjacent to the larger rectangular one by point K.</p> <p>The route shown through the farmyard on the Tithe Map for Carnforth is not numbered or detailed in the Tithe Award suggesting that no Tithes were payable.</p> <p>The Tithe Map for Bolton by the Sands shows the same 2 possible ways past Mount Pleasant but with just 2 gates in each case. The more westerly way is shown shaded from the gate at the south end of the yard.</p> <p>The section between point K and point L</p>
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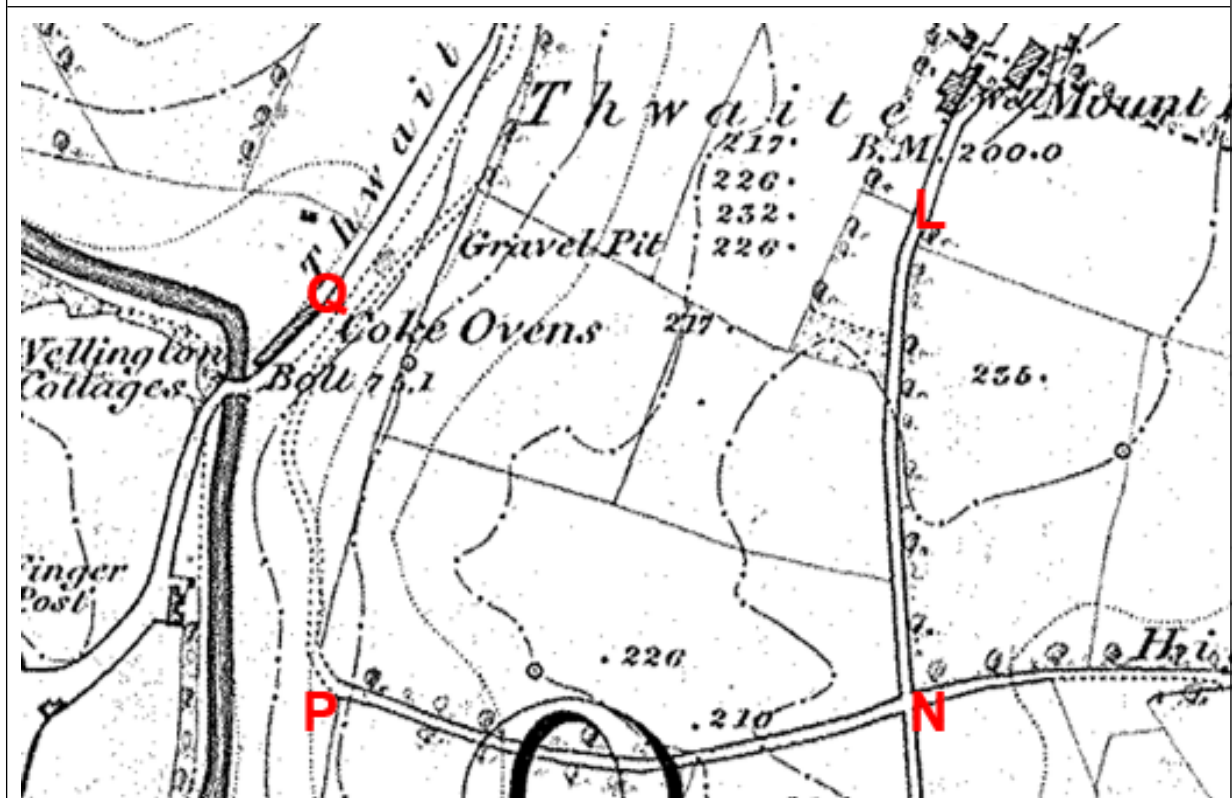
	<p>is shown unshaded by parallel dashed lines suggesting that it existed on the ground but was not bounded by walls or fences and a line is shown across the route close to point L suggesting the existence of a gate. The route between points K-L is included within plot 148 on the Tithe Map. The Tithe Award lists the owner of the plot as John Walmsley and the occupier as William Hunter. The land is described as Chippendale Thwaite and part of site of barn. It is described as 'pasture' and tithes are payable.</p> <p>From point L this shaded route continues along the route under investigation, bounded on either side and separate to the adjacent numbered plots, to the cross roads at point N. Three shaded routes are then shown extending from the cross roads – one of which is the route under investigation.</p> <p>From point N the route under investigation is shown as a shaded and bounded route to point P where a line is shown across it indicating the likely existence of a gate. The route then continues to point Q indicated by parallel dashed lines - suggesting that this section was not bounded from the adjacent land but is shaded in the same way as the rest of the route from point N. Between point P and point Q the route passes through the plot numbered 314 named on the map as Thwaite Brow and which is listed as being in the ownership of Bolton Township and for which no tithes were payable.</p> <p>The majority of roads now recorded as public were shaded and given the number 696 on the Tithe Map and listed as public highways although no part of the route under investigation was numbered.</p> <p>The road which the route joins at point Q was numbered 694 and was also labelled as 'Old Turnpike Road' on the map. The Tithe Award states that it was owned by the Garstang and Herring Turnpike Trust and describes it as 'Turnpike Road'.</p> <p>Most shaded routes meeting the parish</p>
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	<p>boundary were annotated with the ongoing destination but it was noted that there was no such annotation at Mount Pleasant.</p>
<p>Investigating Officer's Comments</p>	<p>It appears from the Tithe Map for Carnforth that the route under investigation existed as a track from point A through to Mount Pleasant in 1846. Between point A and point B it was considered to be part of the public vehicular highway and between point B and point C provided access to a public road numbered 550 leading to Thwaite House. Beyond point C the route was probably gated in a number of places (points E, X, Y and Z) and a substantial part was unbounded and lay within arable parcels of land for which tithes were payable (C-E, X-Z). The investigation route past Mount Pleasant is not clear as there are 2 alternative potential ways through on both maps although the route under investigation is shown more clearly on the Bolton by the Sands Tithe Map. However a different gated route between the buildings may have been available – and part was shaded as road on the Bolton by the Sands Tithe Map. Although the route between point E and point X was excluded from the numbered parcels of land the route between point X and point Z is less clear. The evidence regarding the status of the route in Bolton-le-Sands appears stronger with an alternative way through Mount Pleasant to point L and then the route to point N and point Q being shown in the same way as other public roads in the parish. With regards to gates across public highways their presence would not be inconsistent with public highway in a rural setting in the 1800s and they would often be necessary to control livestock. The land crossed by the route between points P and Q is listed as being owned by the Township of Bolton. No tithes are payable and the information suggests that the woodland was already considered to be common land at that time.</p>

<b>Inclosure Act Award and Maps</b>		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There are no Inclosure Awards deposited in the County Records Office for the area crossed by the route under investigation.
Investigating Officer's Comments		No inference can be drawn.
<b>6 Inch Ordnance Survey (OS) Map</b>	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1845 and published in 1847. <sup>1</sup>



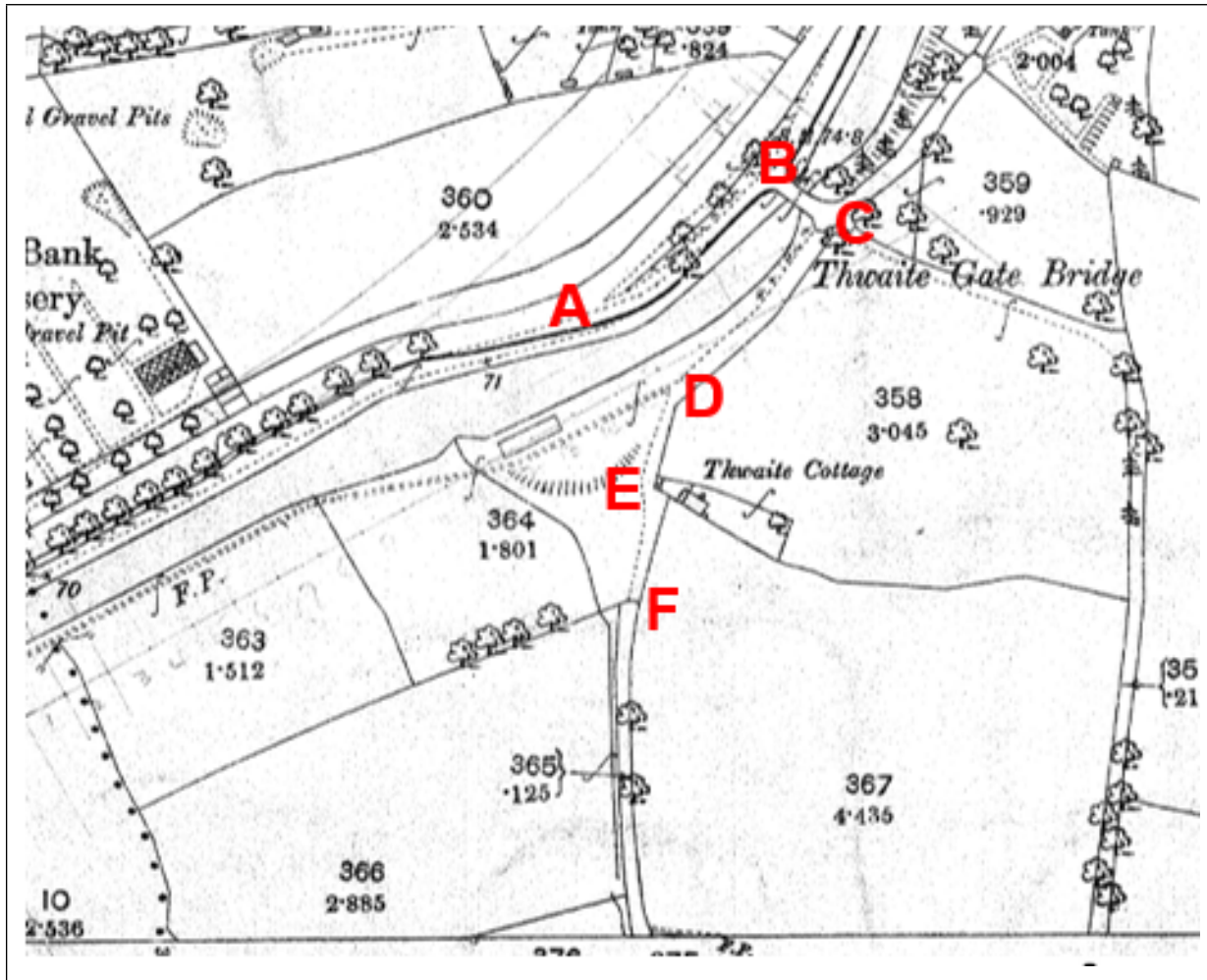
<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published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



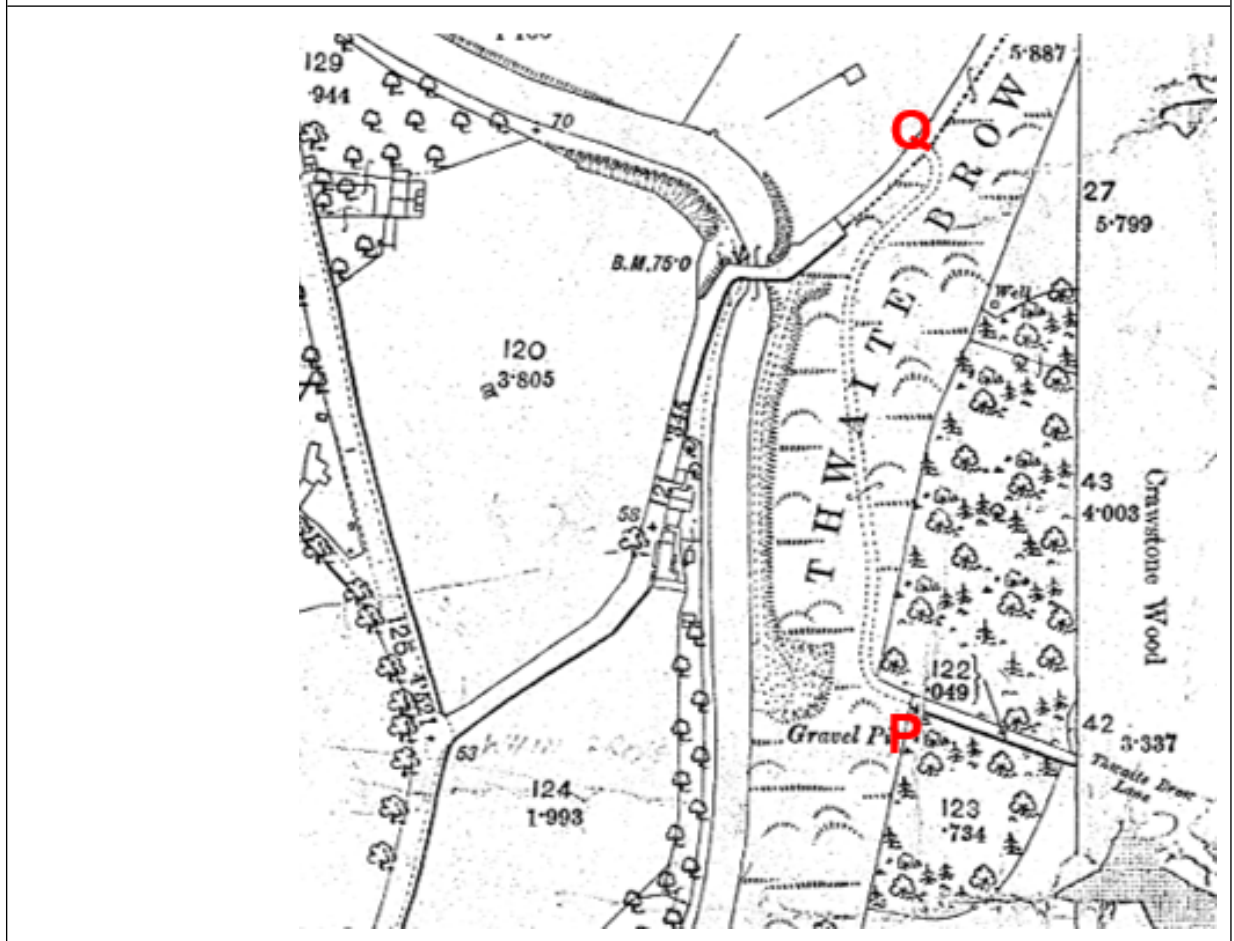
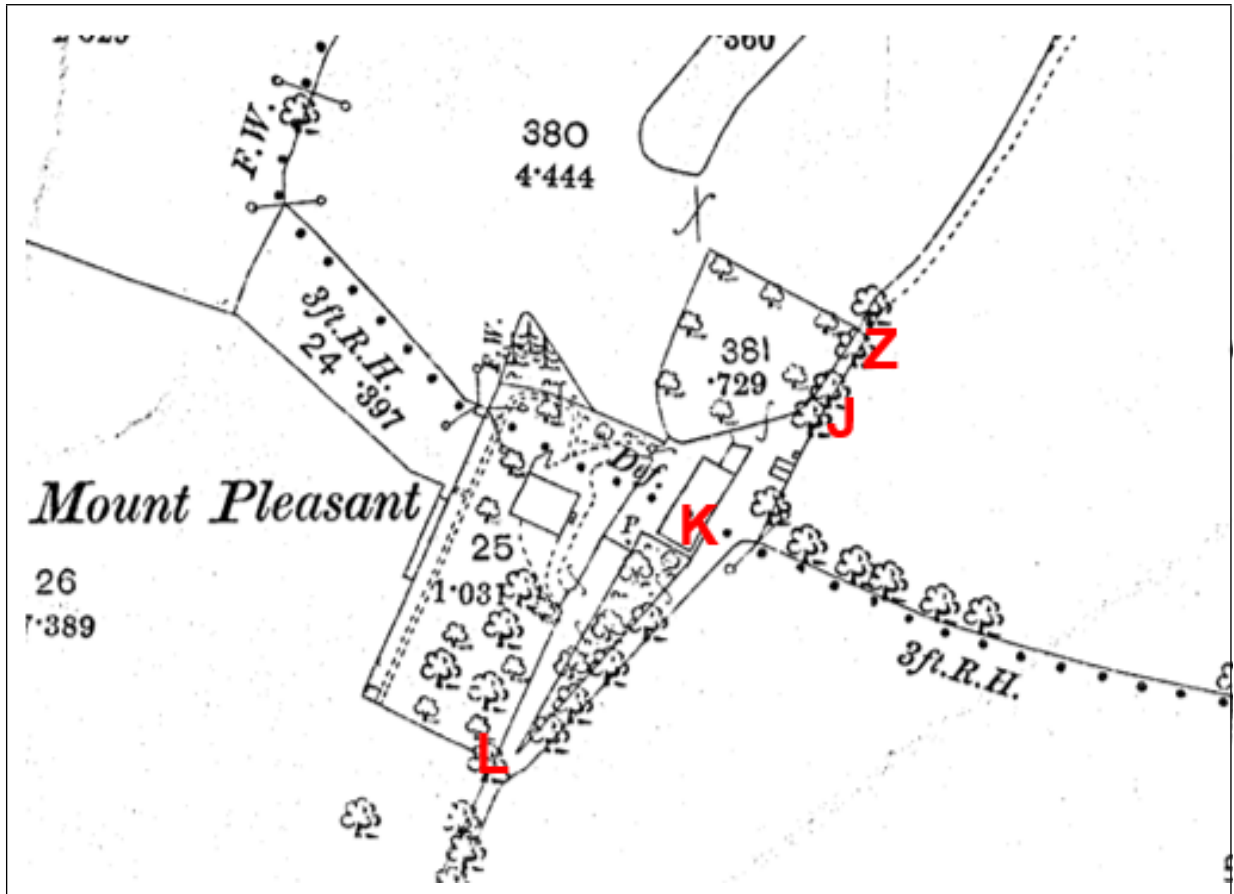
Observations

Surveyed in 1845 and published in 1848  
the first edition 6 inch OS map was being

		<p>prepared at the same time as the Tithe Maps for Carnforth and Bolton by the Sands and shows the route in a very similar way.</p> <p>The route under investigation is shown to exist as an enclosed track between points A-B, and D-X with the section between points X-Y-Z unenclosed. A gated route exists through Mount Pleasant north west of the route under investigation providing a link between point J and point L and the alternative via K appears to be shown with a wall or fence on one side but the connection at point L is unclear. From point L south to point N and then continuing to point P the route is clearly shown as an enclosed route and from point P to point Q an open route through the woodland is shown to exist.</p> <p>Neither of the routes - now known as Mount Pleasant Lane and Thwaite Brow Lane - are named on the map.</p> <p>The old turnpike road between Bolton-le-Sands and Carnforth (Thwaite Brow Lane) is shown on the map and ends abruptly at the canal on the parish boundary illustrating how the construction of the canal cut across the old road and led to the creation of the alternative road (A6).</p>
Investigating Officer's Comments		A through route from B to N and also N to Q existed in 1848 and may have been accessible to horses and horse drawn vehicles at that time.
<b>25 Inch OS Map</b>	1891	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1891.







Observations		<p>The full length of the route under investigation is shown. Lines are shown across the route at point C, point F, point Y, point Z and point P indicating the likely existence of gates. The route claimed now appears to be enclosed through Mount Pleasant between points J-K-L. Between point N and point P the route is named as Thwaite Brow Lane and shown between point N and point P with a thickened line along the south side. The section between point A and point B is also shown bounded by a thickened line on the south east side.</p>
Investigating Officer's Comments		<p>The full length of the route under investigation existed in 1891 as a through route. It appeared to form a substantial route providing access to a number of properties between point A and point N and was probably gated in at least 5 locations.</p> <p>Richard Oliver, 'Ordnance Survey Maps: a concise guide for historians' states; '<i>A solid line closing off a thoroughfare may reasonably be interpreted as a gate.</i>'</p> <p>Although the gates are shown as 'closed' across the route under investigation this cannot be taken as evidence that the Ordnance Survey surveyor found them to be closed (or locked) at the time of the survey.</p> <p>Gates and toll gates across roads and tracks were shown closed by the Ordnance Survey.</p> <p>Many public bridleways and vehicular highways were (and in some cases, still are) gated, particularly in more rural locations. Many of these gates have now been removed (as is the case here) as fields are fenced to keep livestock off routes altogether or because they have been replaced with cattle grids.</p> <p>The route named on the map as Thwaite Brow Lane between point N and point P is shown shaded with a thickened line along the south side as is the section leaving Lancaster Road between point A and point B. Richard Oliver explains that shading (on colour editions of the map) and the use of thickened lines was used</p>



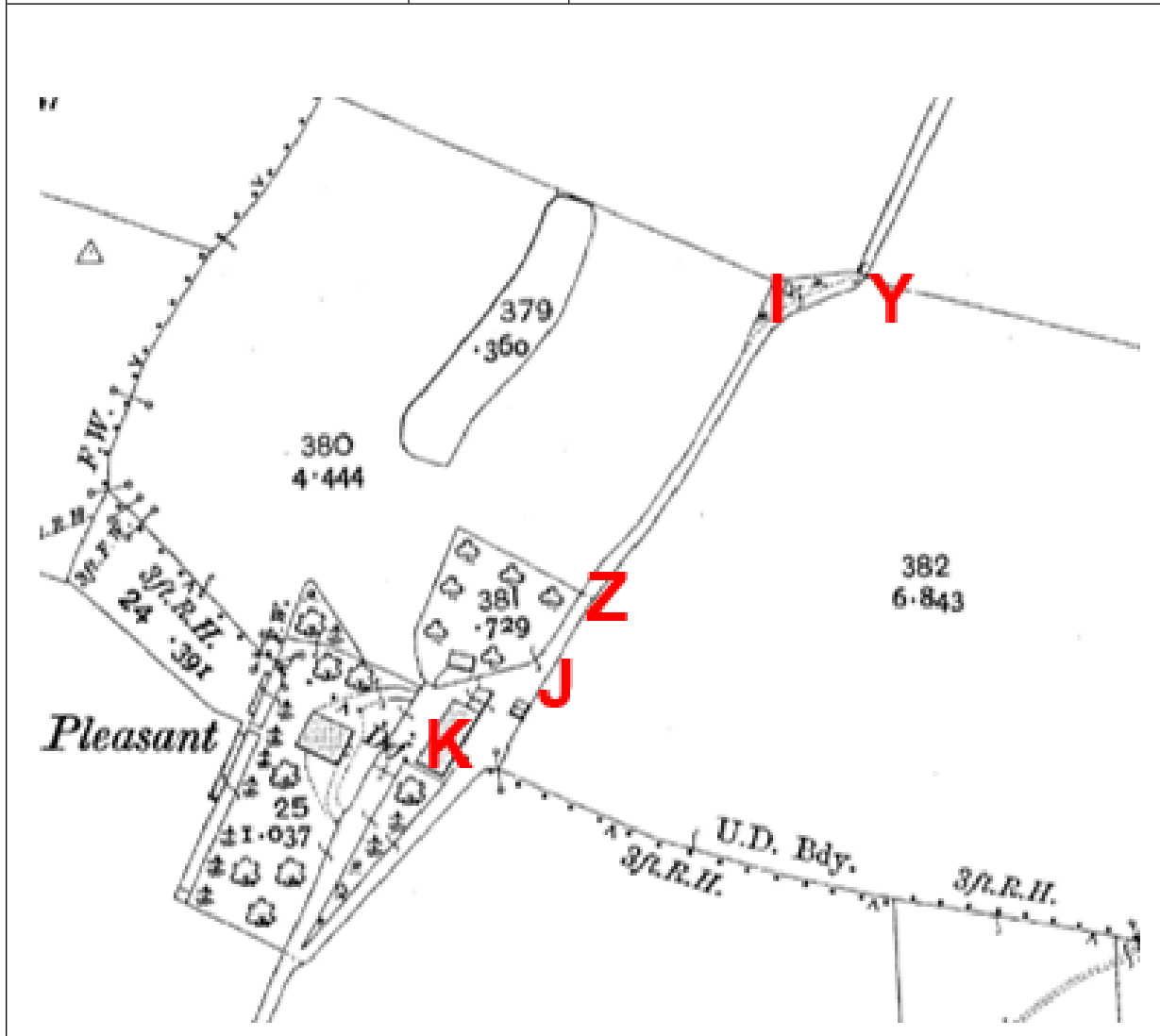
	<p>to show the administrative status of roads on 1:2500 maps prepared between 1884 and 1912. All metalled public roads for wheeled traffic kept in good repair by the highway authority were shaded and shown with thickened lines on the south and east sides of the road indicating that the view at the time of the survey was that the route between points A-B and points N-P formed part of the public road system available to wheeled traffic.</p>
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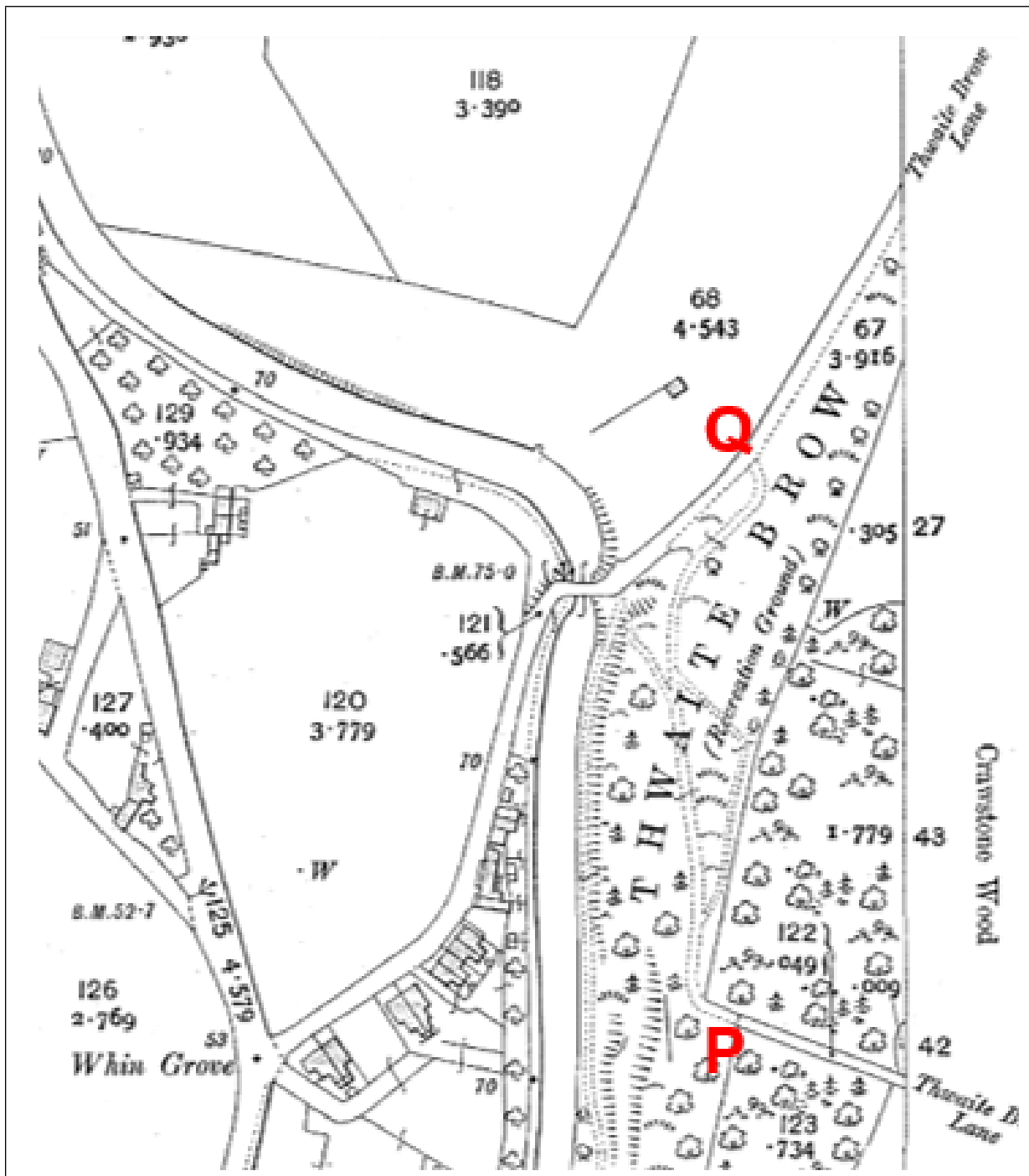
<p><b>Bartholomew half inch to the mile map</b></p>		<p>Copy of online map labelled as being either the 1897-1907 or 1902-1906 edition.</p> <p>The company producing Bartholomew Maps was founded by John Bartholomew in 1826 and went on to produced quality maps covering Scotland, England and Wales. These small scale maps were revised at frequent intervals and produced specifically with tourists and cyclists in mind. They proved popular in the early 1900s due largely to the quality of the road classification information included. The maps distinguished between first class roads and secondary roads for the first time on editions published between 1904 and 1920.</p>
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<p>Observations</p>		<p>This small scale map shows part of the route under investigation. The canal bridge is shown providing direct access from Lancaster Road (A6) to point C. From point C a route is then shown extending in a general southerly direction</p>
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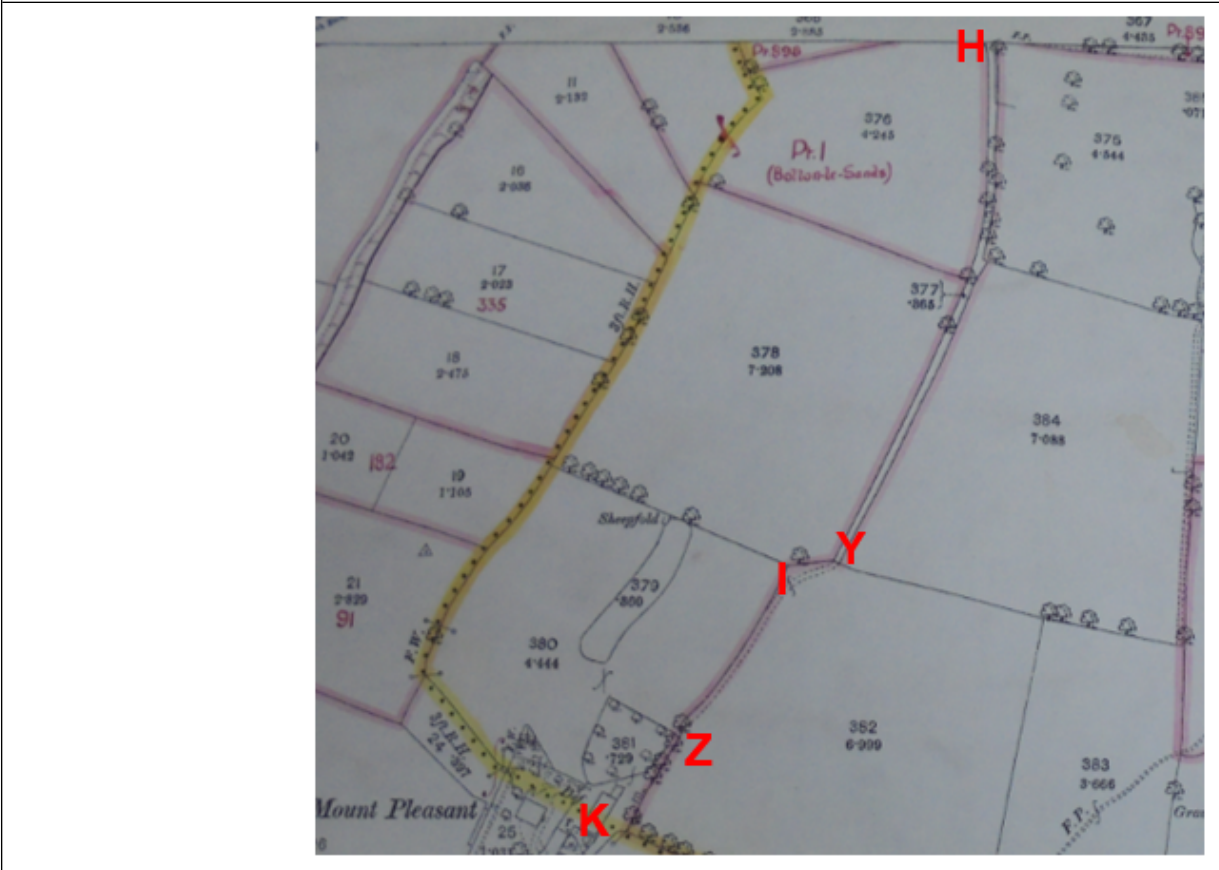
		to Bolton-le-Sands consistent with the route under investigation between point C and point N. The route between point N and point Q is not shown on the map. A key to the map was not available but it appears that first class roads were coloured red.
Investigating Officer's Comments		The route between point B and point N is shown on the map produced primarily for tourists and cyclists suggesting the route may have been available in the early 1900s for use by cyclists and possibly vehicles; cyclists were only allowed to use carriageways not bridleways until 1968. The scale of the map meant that field footpaths were not shown.
25 inch OS Map	1913	Further edition of the 25 inch map resurveyed in 1890, revised in 1910 and published in 1913.



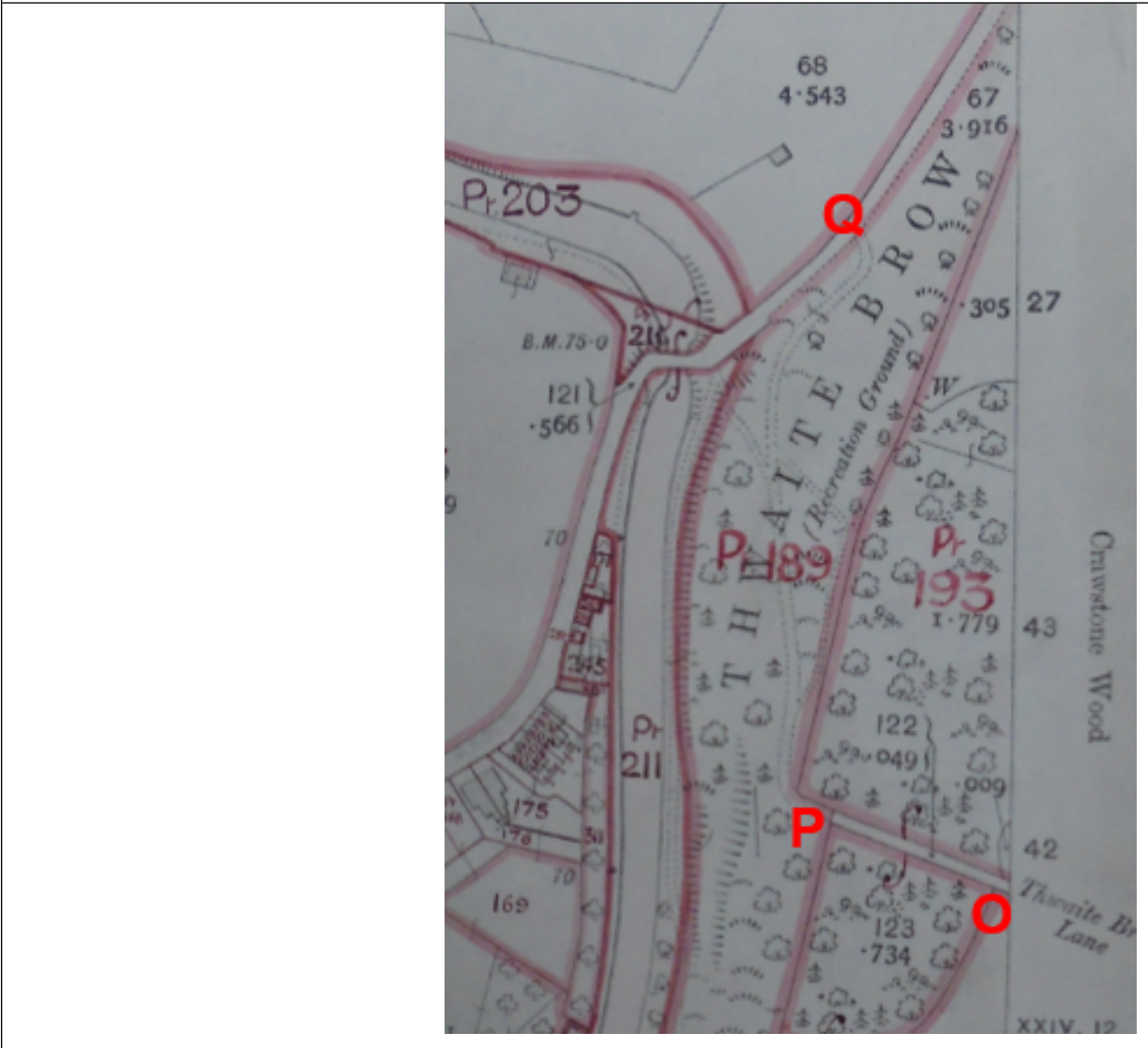
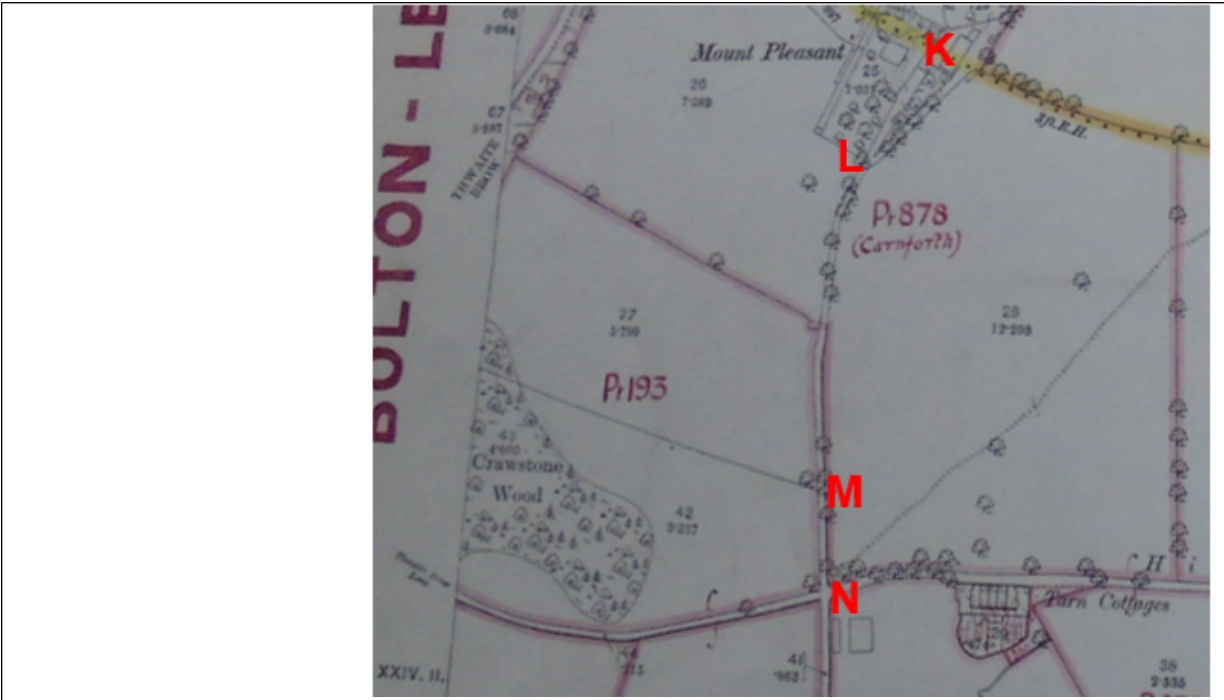


<p>Observations</p>		<p>The whole length of the route under investigation is shown. The section from south of Thwaite Cottage at point F to Mount Pleasant at point J is now all shown as an enclosed route separate from adjoining fields.</p> <p>Between point P and point Q the route is shown to pass through Thwaite Brow which is annotated on the map as being a recreation ground.</p>
<p>Investigating Officer's</p>		<p>Most of the route is now enclosed and</p>

Comments		separate from adjacent farmland indicating more substantial than pedestrian. The route through Thwaite Brow Wood is recognised on the map as passing through a recreation ground.
<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 noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>





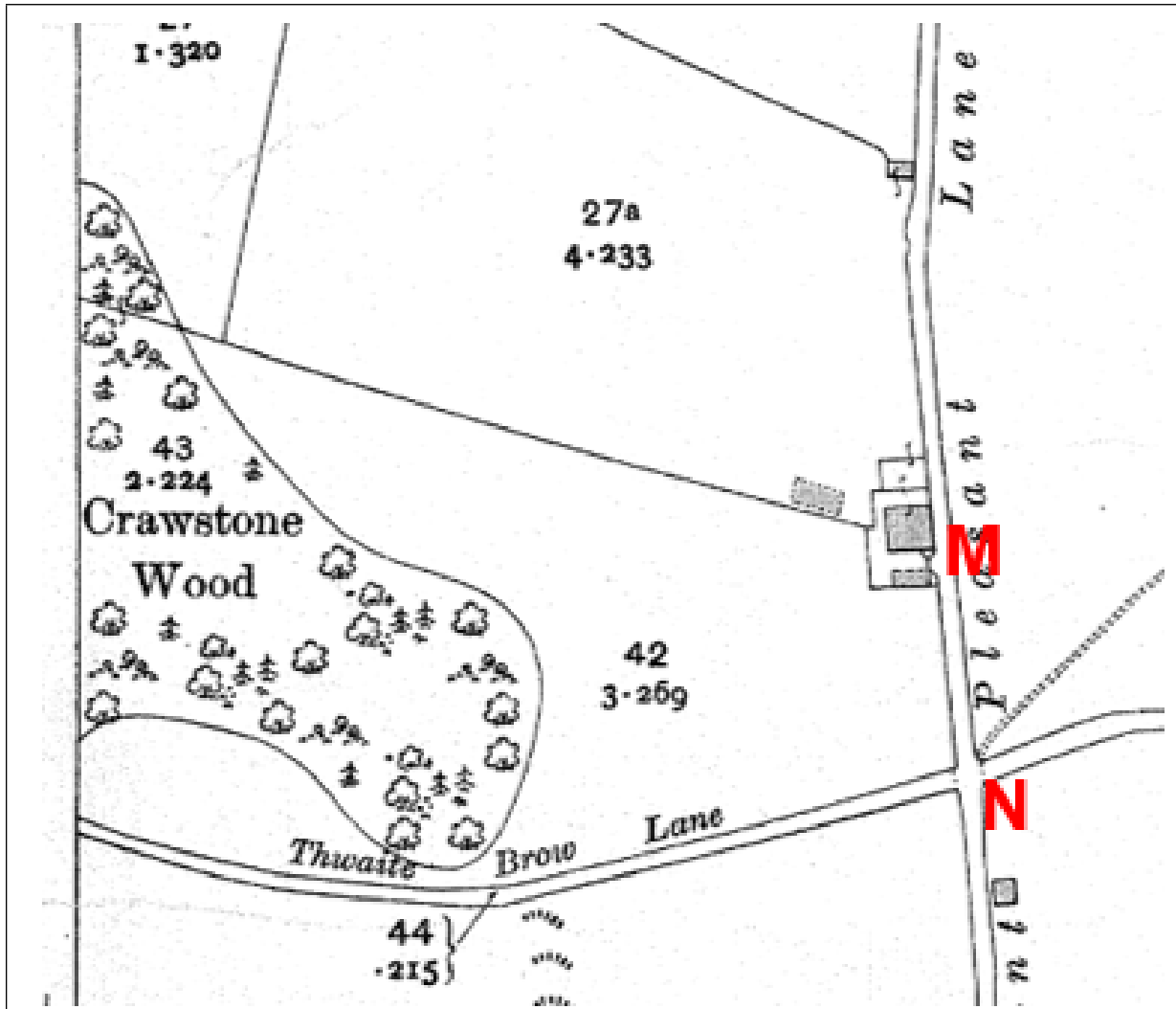


<p>Observations</p>	<p>Finance Act records have been obtained from the County and National Archives.</p> <p>The maps deposited in both Archives are consistent in how they show the route.</p> <p>Between points A-B-C-D the route is shown included within hereditament 30 with the exception of the land forming the actual junction at point C which appears to have been excluded as part of routes leading to Thwaite House and Thwaite Gate. Also hereditament 30 is tinted red but the bridge itself is uncoloured</p> <p>The Field book for hereditament 30 provides very little information other than that the land was owned by the Lancaster Canal Company and consisted of 'land and canal'. The Valuation book does not record any deduction for public right of way or user.</p> <p>Between point D and point F the route appears to have been included within hereditaments 113 and 1007. The Valuation Book details a £10 deduction for public rights of way or user for hereditament 113. Hereditament 1007 is listed as being land owned and occupied by the L and NW Railway Company and described as 'canal and works'. No deduction has been made for public rights of way or user.</p> <p>From point F to the field boundary immediately north of point H the route is included within hereditament 898 listed as being owned by H Coulson and occupied by Mr Battersby. It is described as 'land' and no deduction has been made for public rights of way or user.</p> <p>From the field boundary immediately north of point H to point Y it appears that the route may have been excluded from the large hereditament number 115 - which consisted of land on either side of it and of Thwaite House Farm. This however, appears inconsistent with how the route at either end of this enclosed section is shown.</p> <p>From point X to point Z the unenclosed</p>
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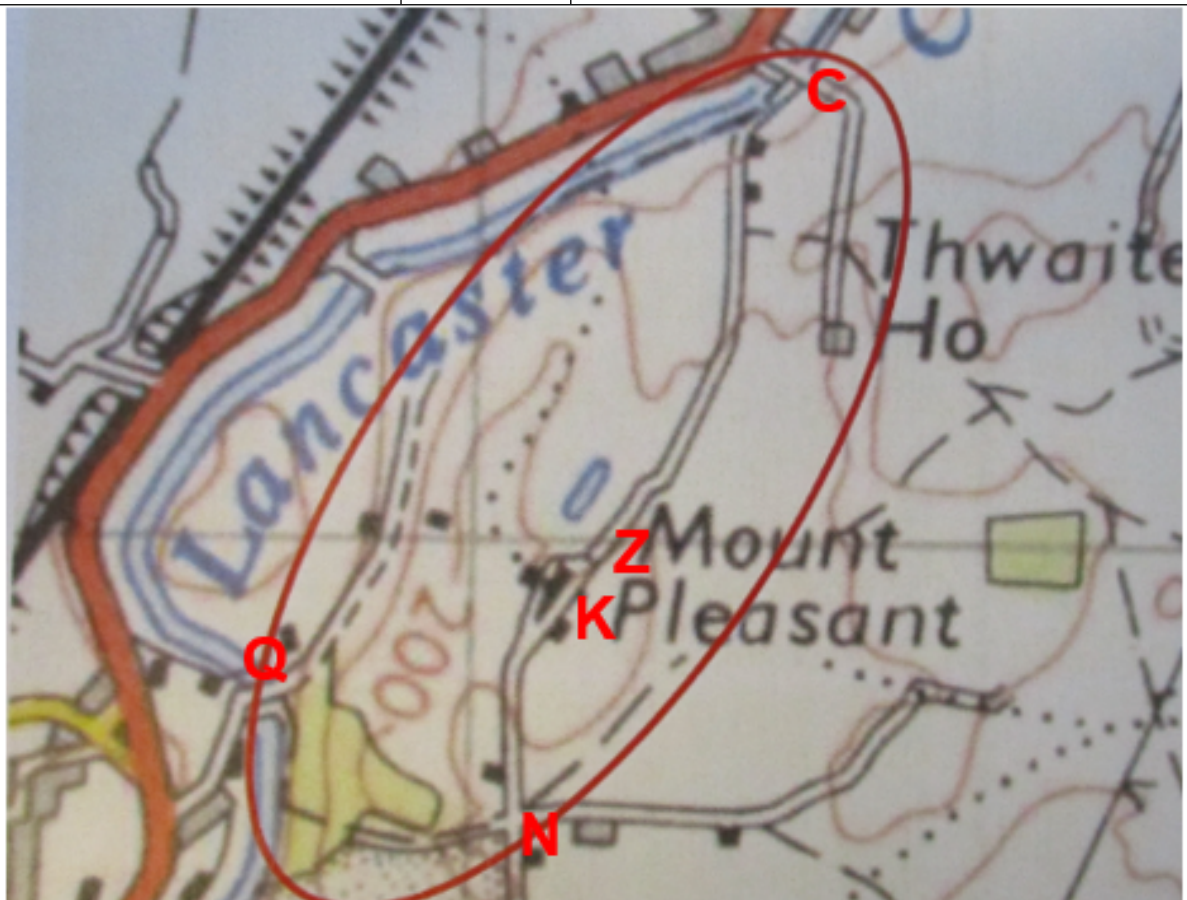
	<p>section of the route is shown to be within hereditament 115. Which is owned by H J Coulson, occupied by Henry Island and described as Thwaite House and adjoining farmland. A deduction of £50 has been claimed for the existence of 'Public footpaths' but the location of them is not specified in the Field Book.</p> <p>Between point Z to approximately 100 metres south of point L the route is included within hereditament 878 (Carnforth) owned and occupied by John Walker of Mount Pleasant. A substantial deduction of £100 was claimed for the existence of public footpaths.</p> <p>The remaining section of the route from a point partway between point L to point M and continuing south to the cross roads at point N is excluded from the numbered hereditaments.</p> <p>The section of the route under investigation from point N to point P is also excluded from the numbered hereditaments with plots on either side of the route braced together and considered under one number.</p> <p>From point P to point Q the route is contained within hereditament 189 with the owner of Thwaite Brow Woods listed as being Bolton-le-Sands parish council. A £15 deduction was claimed for public right of way or user.</p>
Investigating Officer's Comments	<p>It is normal to see an acknowledged public vehicular highway excluded from the numbered hereditaments as part of the process of compiling the taxation records and for routes considered to be public footpaths or bridleways at that time to be included in the numbered hereditaments for which a deduction would be claimed.</p> <p>From the information available from the Finance Act records there appears to be no clear indication that the route from point A to at least midway between points L and M was considered to be a public vehicular highway in 1910. Deductions for the existence of public rights of way or</p>

		<p>user are made by several of the landowners although it is unclear which routes across their land are acknowledge as public rights of way. The reduction of £100 for the hereditament including the section of the route through Mount Pleasant is substantial and may reflect the fact that there was more than one route across the hereditament. The field book specifically states that the reduction is in relation to the existence of public footpaths indicating that public equestrian or vehicular use was not acknowledged. From midway between point L and point N and from point N to point P the route is excluded from the numbered hereditaments suggesting that it was considered to be part of the public vehicular network, or at least public bridleway at that time. The route through Thawaite Brow Wood was not enclosed or bounded which may reflect why it was shown included as part of a numbered hereditament from point P to point Q. A deduction for public right of way or user is claimed for £15 and as the route under investigation is the only route shown to physically exist through the plot at that time it would be reasonable to deduce that the deduction related to it.</p>
<p><b>25 Inch OS Map</b></p>	<p>1932</p>	<p>Further edition of 25 inch map surveyed 1890, revised in 1930 and published 1932.</p>



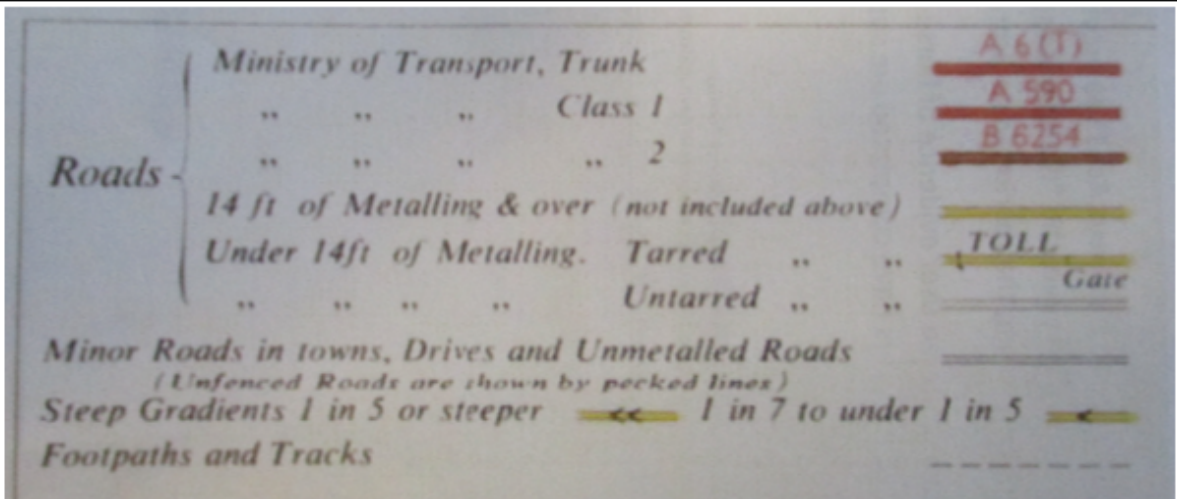
<p>Observations</p>		<p>The full length of the route under investigation is shown on the map and remained unaltered from the earlier edition.</p> <p>The route between point L and point N is named on the map as being part of Mount Pleasant Lane and the route from point N to point Q is named as Thwaite Brow Lane. Gates are still shown to exist along the route.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation existed and appeared capable of being used in 1930. The fact that the route south of Mount Pleasant and from point N to point Q were named on the map is consistent with ways which were considered to be vehicular.</p>

<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.
Observations		There were no aerial photographs from the 1940s available to view in the County Records Office or online.
Investigating Officer's Comments		No inference can be drawn.
<b>1 Inch OS Map</b>	1955	Small scale OS map published in 1955 and supplied by the Applicant.



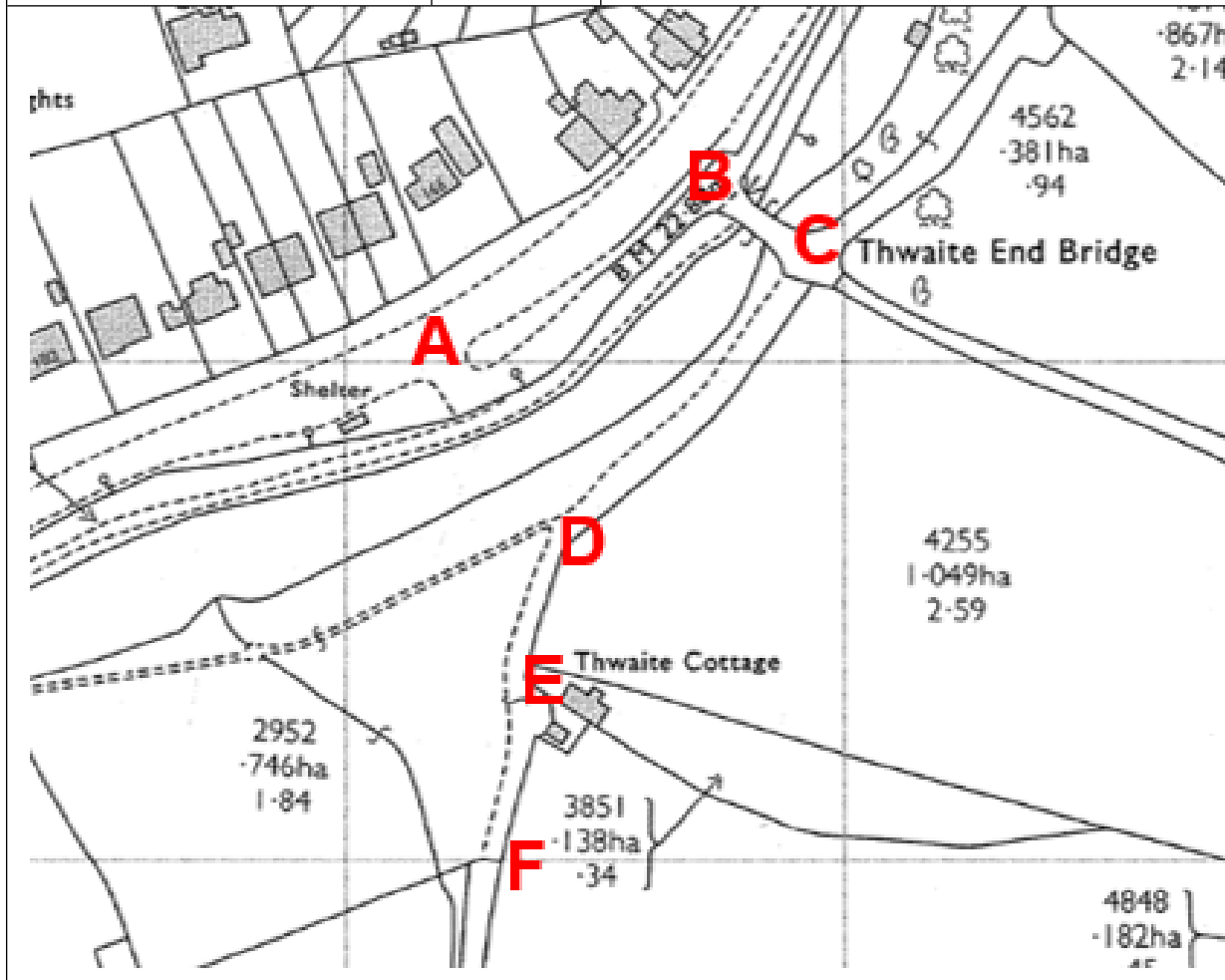

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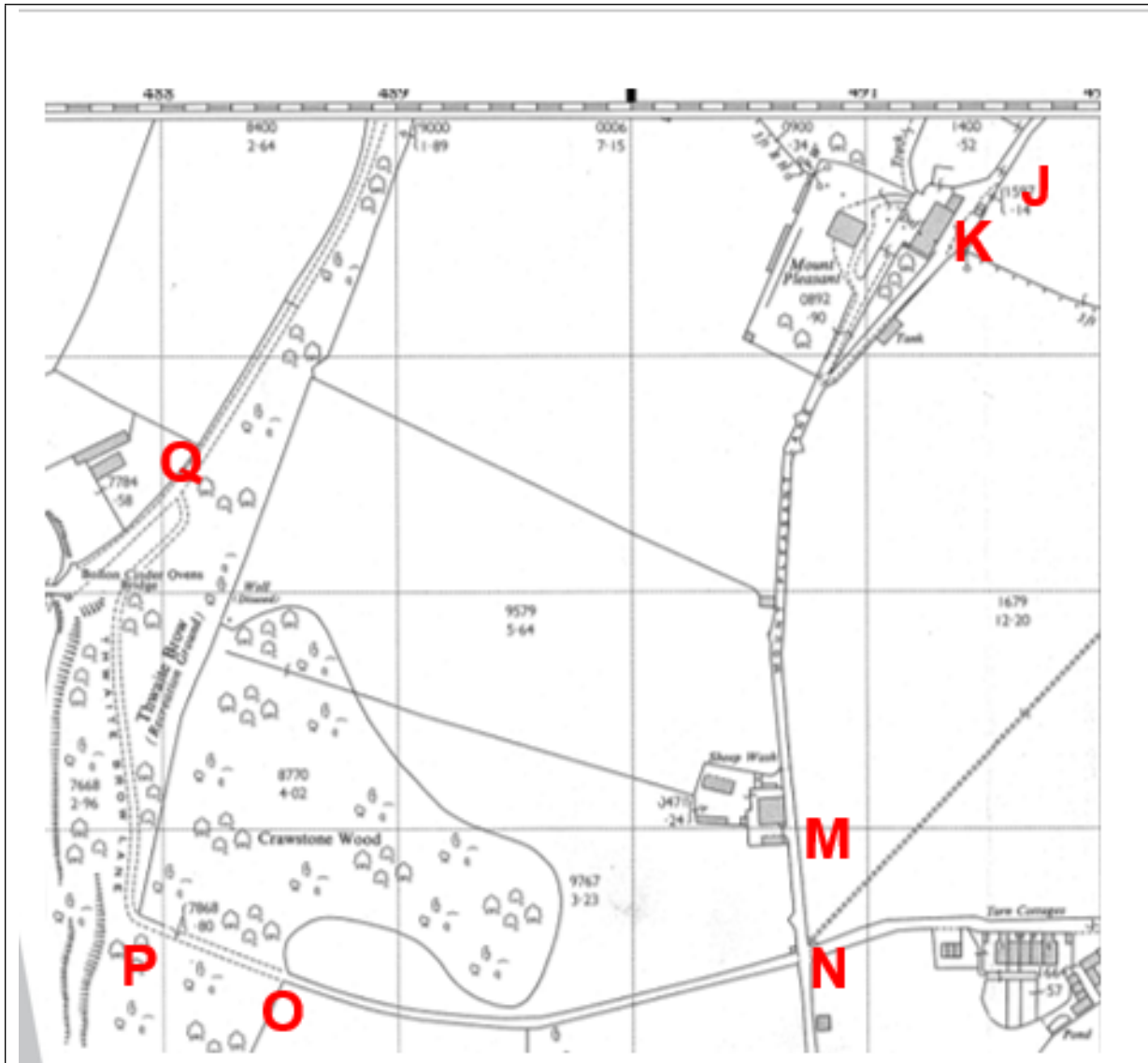
<sup>2</sup> Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring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



<p>Observations</p>		<p>The OS extract inserted into the report was provided as part of the evidence supporting the application. The red line circling the route under investigation has been added by the applicant and does not form part of the original map.</p> <p>The OS Map shows a route from Lancaster Road (the A6) crossing the canal to point C then continuing through Mount Pleasant and down to point N. Gates are shown at point C and point Z. The route is depicted on the map as either an untarred road or unmetalled road. A route is then shown to continue from point N to point Q as a footpath or track as defined in the map key.</p>
<p>Investigating Officer's Comments</p>		<p>The map confirms the existence of the route as a substantial physical route which appears to be capable of use. Whilst the map provides no legal evidence that it was a public route or the type of public use that it may have been receiving it provides supporting evidence regarding the possible use of the route in the 1950s.</p>
<p><b>6 Inch OS Map</b></p>	<p>1956</p>	<p>The OS base map for the Definitive Map, First Review, was published in 1956 at a scale of 6 inches to 1 mile (1:10,560). This map was revised between 1930 and 1945 and is probably based on the same survey as the 1930s 25-inch map.</p>
<p>Observations</p>		<p>The full length of the route under investigation was shown as depicted on the earlier edition of the OS 25 inch map.</p>

Investigating Officer's Comments		The route under investigation existed and appeared capable of being used in the 1930s (the date that the map was revised).
1:2500 OS Map	1968	Further edition of 25 inch map reconstituted from former county series and revised in 1967 and published 1968 as national grid series.





Observations		<p>The full length of the route under investigation is shown and remained largely unaltered. A line is shown across the route at point C suggesting the existence of a gate. Further gates are shown at point F and point J.</p> <p>Mount Pleasant Lane is named between point L and point N and Thwaite Brow Lane is named between point P and point Q.</p>
Investigating Officer's Comments		<p>The full length of the route existed and appeared to be capable of being used in the 1960s.</p>
<b>Aerial photograph</b>	1960s	<p>The black and white aerial photograph taken in the 1960s and available to view on GIS.</p>
Observations		<p>Most of application route is visible on the</p>



		<p>photograph with the exception of those parts obscured by tree cover. It is not possible to see from the photographs whether the route was being used by horses or whether any gates or other structures existed across the route.</p>
Investigating Officer's Comments		<p>The application route existed in the 1960s and was probably capable of being used.</p>
<b>Aerial Photograph</b>	2000	<p>Aerial photograph available to view on GIS.</p>
Observations		<p>Most of application route is visible on the photograph with the exception of those parts obscured by tree cover. It is not possible to see from the photographs whether the route was being used by horses or whether any gates or other structures existed across the route.</p>
Investigating Officer's Comments		<p>The application route existed in the 2000.</p>
<b>Definitive Map Records</b>		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
<b>Parish Survey Map</b>	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>

Bolton-le-Sands Parish Survey Map



**Observations**

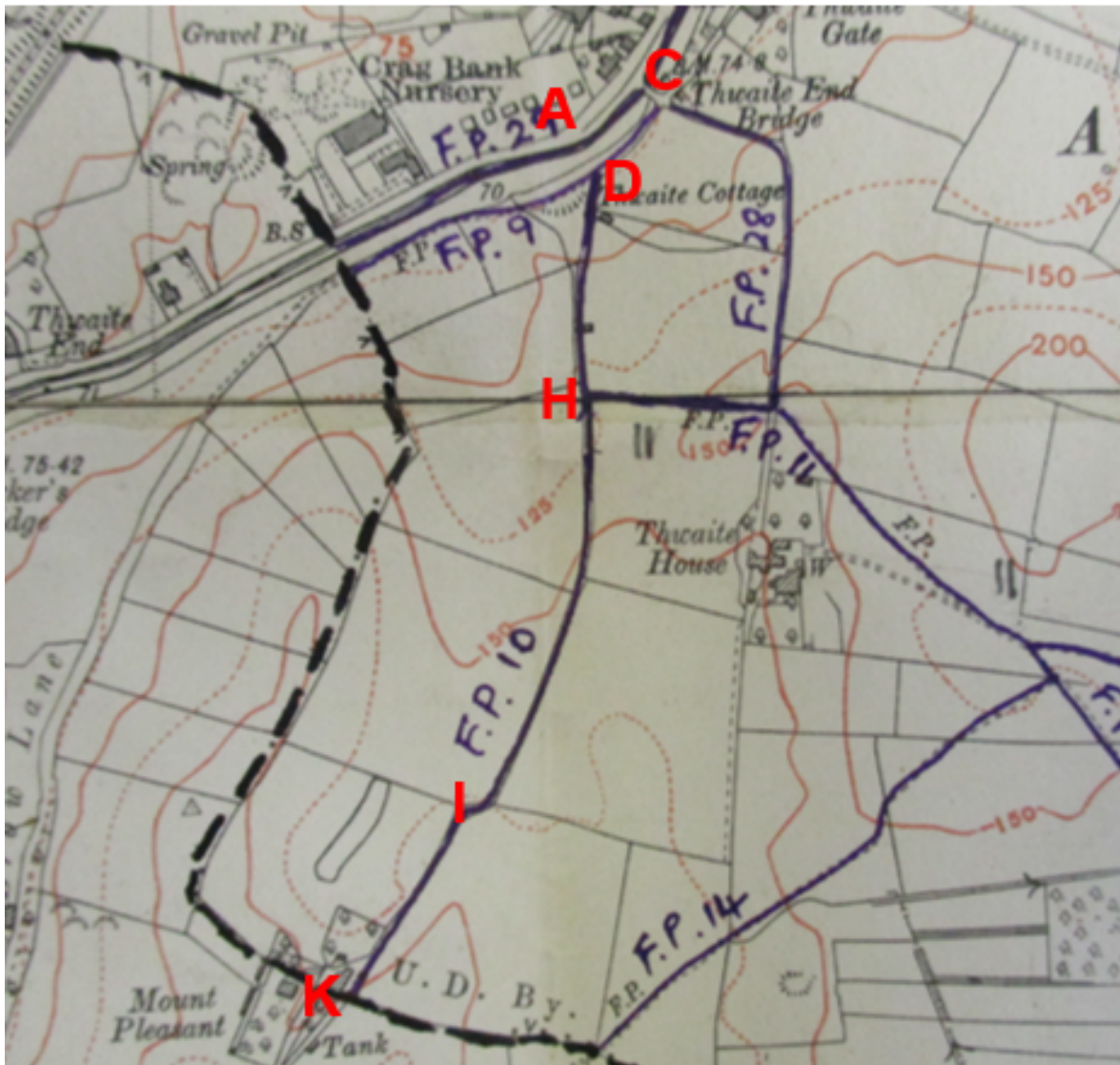
The parish survey map for Bolton-le-Sands does not record any part of the route under investigation as a public right of way. Carnforth was a former urban district for which no parish survey map was completed so no inference can be drawn.

**Draft Map**

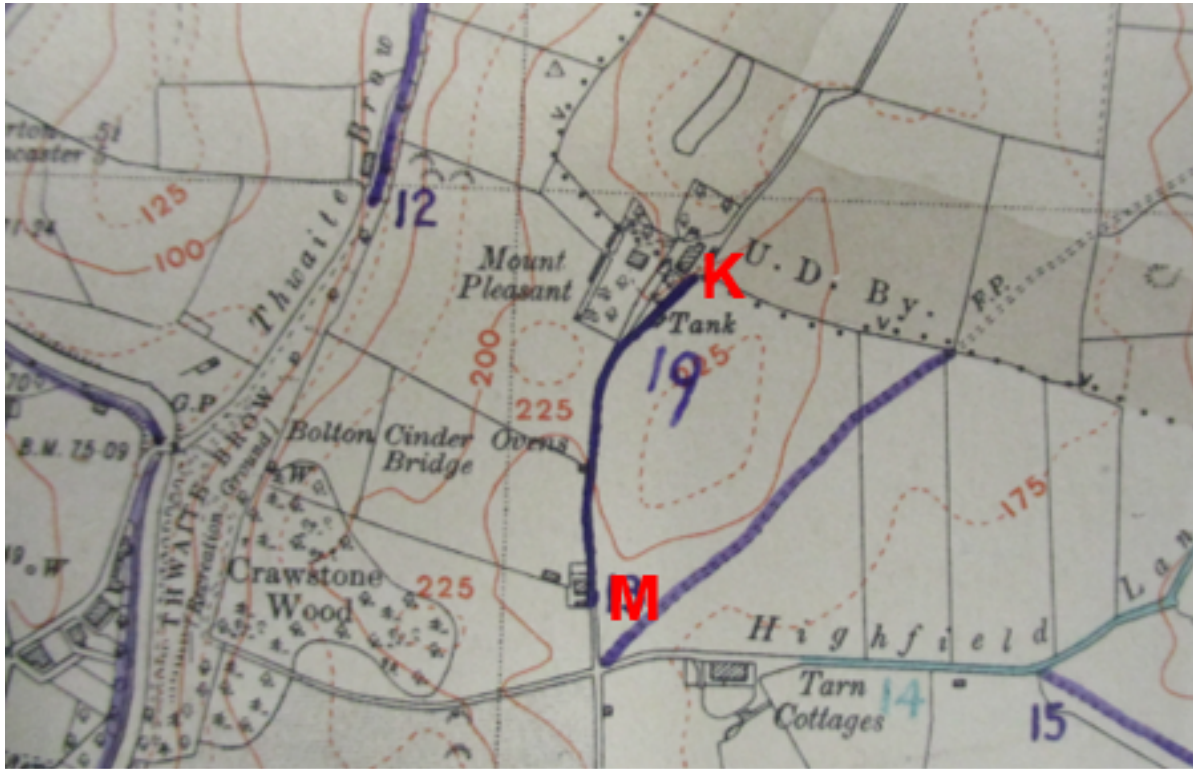
The parish survey map and cards for Bolton-le-Sands were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.

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.

Carnforth UDC Draft Map



Lancaster Rural District Draft Map



Observations

The Draft Map for Carnforth UDC did not show the route as a public right of way between point A and point C. It did however show two public footpaths starting at point C - Carnforth Footpaths 9 and 28. The Draft Statement describes the route of Footpath 9 as starting at the eastern end of Thwaite End Bridge then southwest along canal bank to footbridge and through a gate to U.D. boundary. It describes Footpath 28 as starting at the Travellers Rest (A6), over Thwaite End Bridge then through gateway leading to Thwaite House Lane and along lane to junction with Footpath 11.

The Travellers Rest no longer exists but appears to have been a working men's club located on the A6 in the proximity of point A. Although the description of the route of Footpath 28 describes it as starting on the A6 and crossing the canal bridge the Draft Map shows it starting at point C.

From point C the route under investigation is shown as part of Carnforth Footpath 9

		<p>which is described in the Draft Statement as a cart road 'from near Thwaite Cottage to Mount Pleasant on the U.D. boundary, metalled road throughout. Access by gate near Thwaite Cottage. On some occasions stream crosses road near entrance to 11 F.P. where there are stepping stones. Second gate and stile near Mount Pleasant on boundary.'</p> <p>The Draft Map compiled for Lancaster Rural District shows a public footpath from point M to point N and numbers it as Footpath 19. It is described in the Draft Statement as a footpath "From Carnforth UD boundary to join Unclassified County Road No. 2/95 north of Highfield Lane junction".</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>There was no change to how the route under investigation was shown on the Provisional Map of Public Rights of Way and there were no objections to relating to it.</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>There was no change to how the route under investigation was shown on the First Definitive Map of Public Rights of Way and there were no objections to relating to it.</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</p>



	<p>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.</p>
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<p>Observations</p>	<p>Whilst not shown as a public footpath on the Revised Definitive Map (First Review) or First Definitive Map, between point A</p>
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		and point C the route under investigation is described as comprising part of Carnforth Footpath 28 in the Definitive Statement. Between point C and point M the route under investigation is recorded as a public footpath on the Definitive Map.
Investigating Officer's Comments		The route under investigation between point A and point M was considered to be a public footpath during the preparation of the 1 <sup>st</sup> Definitive Map and Statement through to the 1960s. The route between point N and point Q was not shown on the Definitive Map at any point from the 1950s onwards.
<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 those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>



1929 Road Transfer Map



LCC adoption plan



LCC adoption plan



Observations

The Road Transfer Map for the Rural District of Lancaster was available to view in the County Records Office. It shows part of the route under investigation recorded as a public maintainable highway referenced 2/95 between point N and point M. It also shows the full length of the route between point N and point Q (known as Thwaite Brow Lane) as a public maintainable highway referenced 2/94 but the line has a more pronounced bend than either the contemporary Ordnance Survey maps or the subsequent highway records.

Lancashire County Council records of publicly maintainable highways have also been inspected. The plans often referred to as adoption plans have been scanned and made electronically available. They show the route between point A and point B forming part of the adopted highway (A6). From point B through to point Z the route is not shown coloured on the adoption plan. The scanned plans do not cover the full length of the route under investigation and between point Z to point N then from point N to partway between

	<p>point N and point O there is no scanned adoption sheet available. The remainder of the route through to point Q is shown coloured and is given the reference 2/94 which is consistent with the reference on the 1929 Handover Map.</p>
<p>Investigating Officer's Comments</p>	<p>Between point M and point N and between point N and point Q the route under investigation was considered to be a publicly maintainable highway by Lancaster Rural District Council in 1929. It is likely that when the Draft Map of Public Rights of Way was compiled by the Rural District Council in the 1950s they would have cross referenced these maps with the information available on the 1929 Handover Maps. This may explain why Bolton-le-Sands Footpath 19 was added to the Draft Map and described as joining Unclassified County Road no. 2/95 north of Highfield Lane.</p> <p>There is no 1929 Handover Map available for the Former Urban District of Carnforth so no inference can be drawn with regards to whether any part of the route within Carnforth was considered to be publicly maintained.</p> <p>The digitised 'adoption plans' are incomplete but the information contained on them is consistent with what is shown on the 1929 Handover Maps for the Rural District and the Tithe Map of Carnforth (which showed the route between point A and point B as part of the public highway).</p> <p>The records show which routes are considered to be publicly maintainable and not their legal status. Whilst often a good indication that those routes shown on the map as being publicly maintainable carried carriageway rights this is not always the case. Those sections of the route (M-N and N-Q) which are shown as roads 2/95 and 2/94 respectively are shown in the same manner as other roads on that sheet which are accepted as vehicular including other sections of the same roads.</p> <p>Many public rights of way have been</p>

	<p>found not to have been recorded on these maps – often if unsurfaced at that time so the fact that the route was not recorded as being publicly maintainable does not necessarily mean that it wasn't.</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 the type of public rights nor does not being publicly maintainable imply that it is not highway.</p>
<p><b>Register of Common Land and classification as Open Access land</b></p>	<p>The Register of Common Land in Lancashire is maintained by Lancashire County Council.</p> <p>All Common Land is either Open Access land under the terms of the Countryside and Rights of Way Act 2000 (CROW Act) or with rights for air and exercise under 1925 Legislation. The CROW Act only gave access on foot on Open Access Land.</p>



<p>Observations</p>		<p>Between point P and point Q the route crosses registered common land CL227 and is subsequently also designated as access land under the Countryside and Rights of Way Act 2000.</p> <p>The County Council maintain the register of common land and the land was registered under the provisions of the Commons Registration Act 1965 by application made by Bolton-le-Sands Parish Council on 11<sup>th</sup> December 1969. The registration was undisputed and became final on 1<sup>st</sup> August 1972.</p>
<p>Investigating Officer's Comments</p>		<p>Tithe Map of Bolton-le-Sands recorded the land as being owned by Bolton Township for which no Tithes were payable. The 1<sup>st</sup> edition 25 inch OS map published in 1891 shows the woodland as recreational land both suggesting that the woodland was already considered to be common land in the 1800s.</p>
<p><b>Statutory deposit and declaration made under section 31(6) Highways</b></p>		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any)</p>

<b>Act 1980</b>		<p>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 under investigation 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>On Site interpretation Board</b>	2015	Photograph of interpretation board submitted as part of the Application.





<p>Observations</p>		<p>A notice located close to point Q shows the boundary of Thwaite Brow Wood and the route under investigation passing through it. The site is described as a Community Woodland. The route between points P and Q is shown on the notice as an unclassified road passing through the woodland and continuing towards point O. Footpaths (not necessarily public rights of way) are also shown on the notice (coloured red).</p>
<p>Investigating Officer's Comments</p>		<p>The Woodland is managed by the Thwaite Brow Woods Conservation Group who are believed to have provided the notice close to point Q showing the route to be an unclassified road in accordance with information on the Lancashire County Council records. The applicant provided a photograph of the board and explained that the Bridleways Group worked with the Conservation Group to maintain the route through the woodland.</p>
<p>Local history books</p>		<p>Two local history books were examined as part of the research into this</p>



		application.
Observations		<p>'A Childhood in Carnforth 1915 – 1925' by Marion Russell (published 2000) provides a series of recollections from the author's childhood. On page 84 she recounts communal picnics taking place on land known as 'the Springfield'. She explains that the land was originally used as a wharf in the mid-1800s where coal was unloaded from canal barges and used to produce coke in the adjacent coke ovens. She makes further reference to the history of the 'Springfields' in a further book titled 'How Carnforth Grew – a simple outline to 1900AD' (published 1997).</p> <p>The 'Springfield' is listed as an archaeological site of importance by Lancashire County Council Archaeological Service. It is situated immediately to the west of the route under investigation between point D and point E and is an area adjacent to the canal where coal was unloaded from canal barges onto a quay (which still exists today but is overgrown by reeds). Also located on the field are the remains of some coke ovens where the coal was converted into coke to be used locally.</p>
Investigating Officer's Comments		<p>No direct reference is made to how the spring field was accessed – either historically when the wharf and coke ovens were in use, or later when it appeared to be used as a public recreation/meeting place but the most direct route from Carnforth would have been along the application route between points A-B-C-D.</p>

### Landownership

Canal and River Trust own part of the application route near Mount Pleasant Lane and the A6 Lancaster Road.

They explained that the bridge was an accommodation bridge (or occupation bridge as they were known along the Lancaster Canal) which they considered meant that it was built to provide access for a landowner/farmer, given the name, probably for Thwaite Gate House, but also because of the existence of the old road. The Trust

didn't have any record as to when the railings were attached to the bridge but suggested that it would have been in the 1970s or earlier and that they were probably added because the stone parapets were considered to be too low given the high pedestrian footfall over the bridge.

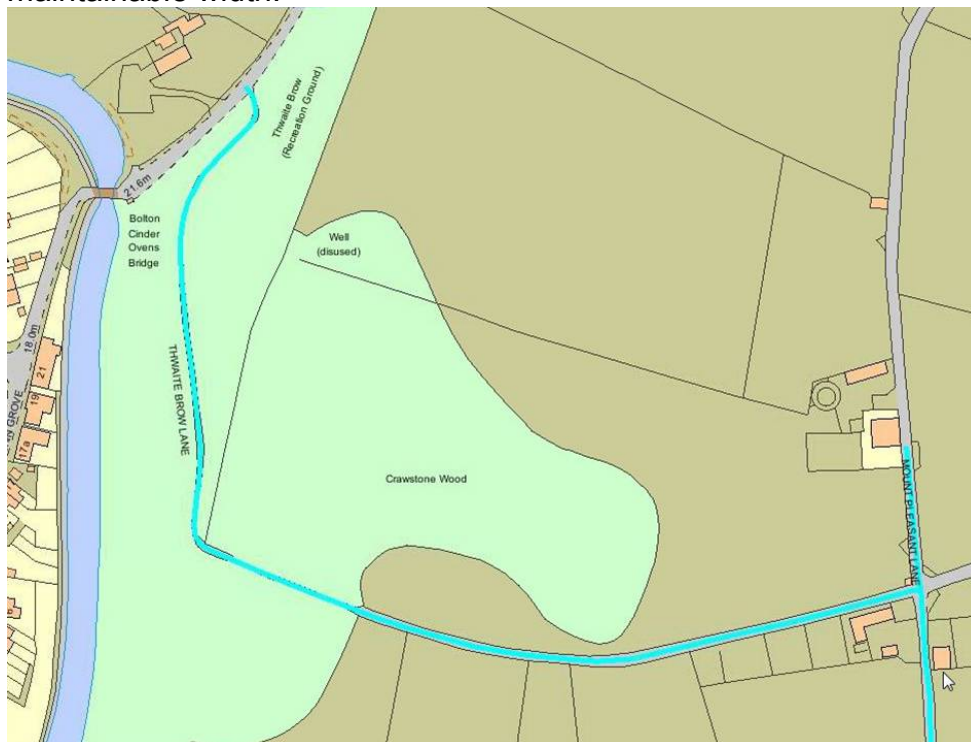
The rest of this route is unregistered.

In their application to register the common land crossed by section P-Q the Parish Council stated that they owned the land.

### **The Natural Environment and Rural Communities Act 2006**

The List of Maintained Streets for Lancashire County Council is held in the form of the GIS (geographical information system) data. This shows sections of the route M-N as part of U18800 and N-Q as F7582. These are shown turquoise below.

The section A-B is part of the width of the A6 which is not apparent from the GIS which only shows centrelines so it is necessary to consult the 'adoption plans' – see Highway Records section above – which shows that A-B is within the publicly maintainable width.



Where there is sufficient evidence for public carriageway the effects of the Natural Environment and Rural Communities Act 2006 would be to extinguish any public mechanically propelled vehicle (MPV) rights from the route where it is recorded on the Definitive Map (C-M) or not recorded on either the Definitive Map and Statement or the List of Streets (B-C). This means that if it is concluded that these sections are carriageways they should be recorded as restricted byways. The exception for ways which have mostly been used by the public in MPVs over the relevant period would not have applied as we are not aware of evidence or allegations of such use.

However points A-B and points M-N-Q are recorded on the List of Streets (and were so recorded in the relevant period preceding commencement of the Natural Environment and Rural Communities Act 2006) and not the Definitive Map and hence any MPV rights over these sections would not have been extinguished, irrespective of recent use, and carriageway rights should either be recorded as a byway open to all traffic or not recorded on the Definitive Map and Statement if they are roads rather than ways which are mainly used for purposes of a public path. A-B is part of the A6 and should not be recorded as byway. We do not have traffic data but the nature of the route can also be taken into account; M-N is a tarmac way in daily use by MPVs whereas N-Q is unsealed and there is no physical evidence of recent use by vehicles.

## **Summary**

The map and documentary evidence examined supports the user evidence in that the route appears to have been a substantial track, largely enclosed, capable of being used by horse riders and possibly vehicles since 1780s.

### A6 (A-B)

This is part of the public road A6, shaded on the 1929 Handover Map, tarmac and used by vehicles. It is therefore not a way to be added to the Definitive Map and Statement.

### U18800 (M-N)

This section of Mount Pleasant Lane is a tarmac road, not affected by the Natural Environment and Rural Communities Act 2006 and in use by vehicles. It is therefore not a way to be added to the Definitive Map and Statement.

### Mount Pleasant Lane (B-M)

The early Commercial Maps indicate that this through route existed from late 1700s and is shown on all subsequent maps examined and the Ordnance Survey maps. These maps were produced for travellers suggesting the route was available for at least horse riders. The fact that the canal bridge was constructed in a location that provided for this through route, as well as access to properties which could have been served by a bridge in an alternative location supports its status.

The Tithe Award and Finance Act 1910 maps show the route south of Mount Pleasant was considered to be public highway and are ambiguous about the northern section which was partly unenclosed and therefore gated and subject to tithes which is not an uncommon situation. By 1910 its importance may have diminished. It is a continuation of the through route so more likely to be of the same status.

The evidence is balanced between supporting historical bridleway or carriageway status: the evidence for vehicular rights on Mount Pleasant Lane L-N is stronger but this would be a cul de sac not leading to a place of public resort. It is therefore recommended to make an Order to record Mount Pleasant Lane B-M as bridleway.

### Thwaite Brow Lane (N-Q)

This way is shown consistently from 1830 onwards; shaded and unnumbered on Tithe Map in 1846; with a thickened line on the 1<sup>st</sup> Edition 25" Ordnance Survey map in 1891; mostly excluded from the Finance Act map, with P-Q shown as a deduction and recorded as a publicly maintainable road on the handover map. It is therefore concluded that this is public carriageway and that the Natural Environment and Rural Communities Act 2006 has not extinguished mechanically propelled vehicle rights.

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

### Information from the applicant

In support of the application, the applicant has provided a statement that includes the following extracts:

1. The application route
2. Map showing the general area of the route
3. Description of the proposed Bridleway route
4. Map showing route of Bridleway applied for
5. Map showing route if Bridleway applied for overlaid on a copy of the Definitive Map
6. A copy of MARIO showing the area
7. Map showing route of Bridleway applied for overlaid on the current OS Map
8. Recent Photographs of the Route & historical Evidence Present.

The applicant also submitted the following documentary documents:

1. Yates's Map of Lancashire, 1":1mile 1986
2. Hennessey's County Map, 1892
3. Tithe Maps of Cumberland and Lancashire, 1846
4. Ordnance Survey First Edition Map, 1891
5. OS 6" Map Lancashire Sheet XXIV
6. OS 6" Map Lancashire Sheet XXIV.SE (Revised 1910, Published 1919)
7. OS 6" Map Lancashire Sheet XXIV.SE (Revised 1930, Published 1933)
8. Ordnance Survey 1":1mile, England and Wales, Revised New Series, Sheet 59 1989
9. Ordnance Survey 1":1mile, 7<sup>th</sup> Series 1952-1961, Sheet 89 Lancaster and Kendal 1955
10. Ordnance Survey 1":1mile, 7<sup>th</sup> Series, 1952-1961, Sheet 89 Lancaster and Kendal 1955

The applicant has provided user evidence forms, these have been split up into 3 routes.

Route 1 (N-A) starting from the junction with Thwaite Brow lane and Mount Pleasant Lane and ending at the A6 Lancaster Road, 11 forms have been provided in support of this route and 1 of those forms has been filled in by two people. The information provided in the forms is set out below:

6 users state they have known the route between the following years:

1972-2012    1983-2013    1985-2012    1987-2012    1998-2013    2000-2013

All 12 users have used the route on horseback or leading a horse, the years in which the users used the route is set out below:

1969-2006    1976-2015    1980-2015    1981-2008    1983-2013    1985-2015(3)  
1988-2013    1998-2013    2000-2013    2003-2015

The user that used the route between 1976-2015 didn't use the full length of the route between the years of 1985-2005 as they just rode from the junction at Mount Pleasant Lane and Thwaite Brow Wood back to Bolton-le-Sands as they got picked up over the canal bridge.

8 of the users also used the route on foot, 4 of those users specified what years:  
1970-2015(2)        1980-2015    2003-2015

1 user also used the route in a motorcycle / vehicle, 2 of the users have cycled along the route and one user have used a horse and trap along the route.

5 of the users have seen others using the route on foot and on horseback or leading a horse, 3 of the users have seen others using the route on a bicycle / horse-drawn vehicle and 1 user has seen someone using the route in a motorised vehicle. All the users agree that the route they were using was the same as the one they used apart from one user who stated that footpaths go off in different directions.

The use of the route on foot or on horseback / leading a horse varies from weekly and monthly 20+ times per year. A user that has also used the route on a bicycle and as a motorised vehicle used the route monthly.

The main purposes for using the route are for pleasure, hacking, exercise, going to work, using the route as a short cut, visiting places along the route and using the route as part of a longer journey.

The main places the users were going to and from include the stables, Bolton-le-Sands, Crag Bank, the beach, Wild Duck Hall, a circular route and to the vets.

All 12 users agree that the route has always followed the same line and none of the users have ever been a landowner or tenant over which the route runs, 2 users however have spoken to adjoining landowners, 1 user is friends with the adjoining landowner and 1 user stated they say 'hello'.

9 users state there is one gate along the route but it has never been locked, it is occasionally closed, 1 user also mentions there is a single wire fence along the track but only at the side and this does not prevent access.

None of the users have ever been stopped or turned back when using the route and 1 user states that they heard of someone else using the route turning back as the horses were scared of the smell of the pig farm.

The 5 users that were asked have never been told the route they were using was not public. All 12 users have never seen any signs along the route, nor have they ever asked for permission to use the route.

At the end of completing the user evidence form users are asked to provide any further information they think is relevant, this information is set out below:

- It's a wide track and lots of users use it, North Lancashire Bridleway Society replaced the gate which was broken in 2012
- I have used this route many times as it is a useful link from Bolton-le-Sands to the shore without having to ride along the A6. I also used it to ride my horse to the vets in Carnforth
- I have driven a horse and trap along the track more times than I have ridden it
- All the residents along the pathway always welcome us and say "Hello" or "Morning" and are friendly towards us whether cycling, horse riding or walking dogs. We both use this route regularly as local residents

Route 2 (N-Q) from the junction of Mount Pleasant Lane and Thwaite Brow Lane travelling in a westerly direction to the start of Thwaite Brow Lane, the applicant has provided 4 user forms for this part of the route, but 1 of the forms has been filled in by 2 people, the evidence is set out below:

The years in which the users have used the route on horseback is as follows:

1987-2015 1980-2015 1985-2015(3)

2 of the users have used the route on a bicycle throughout 1975-2015 and on a horse drawn vehicle between 2000-2015

3 of the user have also used the route on foot between the years set out below:

1970-2015 1980-2015 1983-2015

All 5 users have seen others using the route on foot, horseback / leading a horse, and 4 of the users have seen others on a bicycle / horse-drawn vehicle, and 2 users have seen others on a motorised vehicle. 4 of the users agree the users were using the same way that they use, one user states that there are alternative routes some of which are only accessible on foot.

3 of the users have used the route on foot weekly, and 1 user has used it on foot monthly. 3 have also used the route on horseback monthly and 2 have used the route on horseback weekly. 2 of the users have also used the route by horse-drawn vehicle monthly.

The main purposes for using the route are for pleasure, using the route as a short cut, going to work, exercising and using the route as part of a longer route. The main places the users were going to and from include the stables, Bolton-le-Sands as part of a circular route, or link from Thwaite Brow Lane to Mount Pleasant Lane.

3 of the users agree the route has followed the same line, 2 of the user's state they remember there being another 2 footpaths / bridleways on each side of the woods but these are fenced now. None of the users have ever worked for an owner, tenant, employee or family member of the route, but 2 users states they are friends with an adjoining landowner. None of the users have ever been given permission to sue the route nor have they ever been stopped or turned back.

4 users mention there is a sign on the route which has a map and states 'unclassified road' 'community woodland', this notice was still present when the users filled in their form. 4 users have never seen any stiles, gates, fenced or bridges along the route



nor have they ever seen any obstructions and one person did not provide a response to these questions.

At the end of completing the user evidence form users are asked to provide any further information they think is relevant, this information is set out below:

- My husband and I have used this route very regularly for over 40 years as we both grew up within a mile of the location. In the 1970s all the village children wandered and played daily in the woods and used the track on foot, bicycle and horseback
- The woods used to be open with no fencing or hard-core paths or steps. Now there are routes which are not accessible to horses anymore
- The path from Thwaite Brow Lane through Thwaite Brow Wood helps keep horses and walkers off the A6 by linking it to Mount Pleasant Lane. The A6 through Bolton-le-Sands is very busy and dangerous to ride on. Whereas Mount Pleasant Lane is as named a very pleasant and safe lane to ride.

Route 3 is for the full length of the route (Q-A) from Thwaite Brow Lane through Mount Pleasant Lane to meet Lancaster Road (A6), the applicant has provided 6 forms for the full length of the route and this evidence is set out below:

2 of the users have known of the route between the years of 1983-2013 and 1996-2013. 5 users have used the route on horseback or leading a horse, the years in which the users used the route is set out below:

1978-1987 1978-2015 1983-2012 1991-1995 1997-2013.

1 of the users also used the route on a horse-drawn vehicle between the years of 1978-1988 and a motorised vehicle between 1990-2015.

4 of the users have used the way on foot and 2 users specified this was between the years of 1970-2015 and 2000-2015.

4 users have seen others using the way on foot, on horseback / leading a horse and 2 of these users have also seen others using the route on a bicycle / horse-drawn vehicle, all the users agree they were using the same route as them.

The users used the route on a weekly or monthly basis and the main purposes for using the route was for exercise, hacking and pleasure. The users were going on a circular route via Crag Bank, or to Pasture Lane stables, or using the route as part of a longer journey to Bolton-le-Sands.

All 6 users agree the route has run over the same line and none of the users have ever worked for a landowner or a tenant of the route. One of the users states they have met a past and present landowner who were always very polite and friendly.

5 users refer to 1 gate along the route, but state this has never been locked, it sometimes might be closed but the users open the gate go through and close it behind them, this has never prevented the users to use the route nor has there been any other obstructions. None of the users have ever been stopped or turned back when using the route or seen any signs / notices or asked permission to use the route.

At the end of completing the user evidence form users are asked to provide any further information they think is relevant, this information is set out below:

- I have 20 liveries that use the route. It is essential access to keep horse and rider from having to use the very busy A6
- Route 2 from Mount Pleasant junction into the A6 at Crag Bank is in fact the old route through this way - as can be quite clearly seen - prior to the A6 being built, and is historically used for purpose.

## **Assessment of the Evidence**

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

In Support of Making an Order(s)

Map and documentary evidence  
User evidence

Against Making an Order(s)

Some inconsistencies in the documentary evidence if considering inference of dedication from the documents

Conclusion

The route under consideration is currently partly recorded as a public footpath. Two small sections, it is suggested are of too higher status to be a route which can even be recorded on the Definitive Map.

Committee should note that where 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 higher 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.

It is advised that as there is no express dedication in this matter that the Committee should consider, on balance, whether there is sufficient evidence from which to have its dedication inferred at common law from all the circumstances or for the criteria in S31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years "as of right" use to have taken place ending with this use being called into question.

Looking firstly at whether dedication can be inferred on balance at common law it is advised that the Committee has to consider whether evidence from the maps and other documentary evidence coupled with the evidence on site does on balance indicate how the route should be recorded. The analysis of the map and documentary evidence by the Head of Service – Planning and Environment provides strong evidence that the route (save for sections A-B and M-N are of at least bridleway status and that on balance that a highway open to the public in all

vehicles including carts and carriages has already been dedicated to public use on the section N-Q. The evaluation is by experienced officers and a view taken on balance looking at all the evidence. There are some inconsistencies in the evidence but the evaluation looks at the evidence and evaluates each element as set out in the report.

On balance, Committee may like to consider that the map and other documentary evidence is in itself considered sufficient to conclude that the route was a historic public highway and it is therefore suggested to committee that inferred dedication can on balance be satisfied. It is suggested that the northern section B-M is more likely to have been bridleway status whereas N-Q was part of a vehicular highway. The effect of the Natural Environment and Rural Communities Act however is to extinguish more modern mechanically propelled rights leaving the route as able to be recorded as a restricted byway.

Looking at the strength of the documentary evidence it is considered sufficient to conclude that the route was route dedicated to the public use many decades ago and experienced officers evaluating the evidence suggest evidence indicating bridleway status in the section B-M linking to a vehicular highway N-Q.

Should committee have any reservations as to the strength of the map and documentary evidence it may wish to also consider whether the documentary evidence points instead to a lower status perhaps on section N-Q in particular or whether deemed dedication under S31 Highways Act 1980 or inference at common law can be satisfied from the user of the route. There is strong user evidence of use on horseback which would lead to consideration of the route as a bridleway rather than restricted byway given the type of use being evidenced.

Turning to user, Committee will be aware that in order to satisfy the criteria for S31, 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.

The first consideration is to determine whether the route is called into question it is suggested on balance that the "calling into question" would be the application itself in 2013 and that the 20 year period under consideration would therefore be 1993 – 2013.

On balance, it is suggested that in this matter it may be considered by committee, that there is sufficient evidence of use required for S31 or inference at common law of dedication of a bridleway stemming from more modern use if it were not already considered to have been dedicated many decades ago.

Taking all the evidence into account it is suggested that here is evidence to find bridleway status has been dedicated in section B-M and vehicular status, becoming restricted byway status on section N-Q. Committee is advised that sections A-B and

M-N carrying full vehicular rights of such character are unable to be recorded on the Definitive Map but remain recorded elsewhere in the Council's records.

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

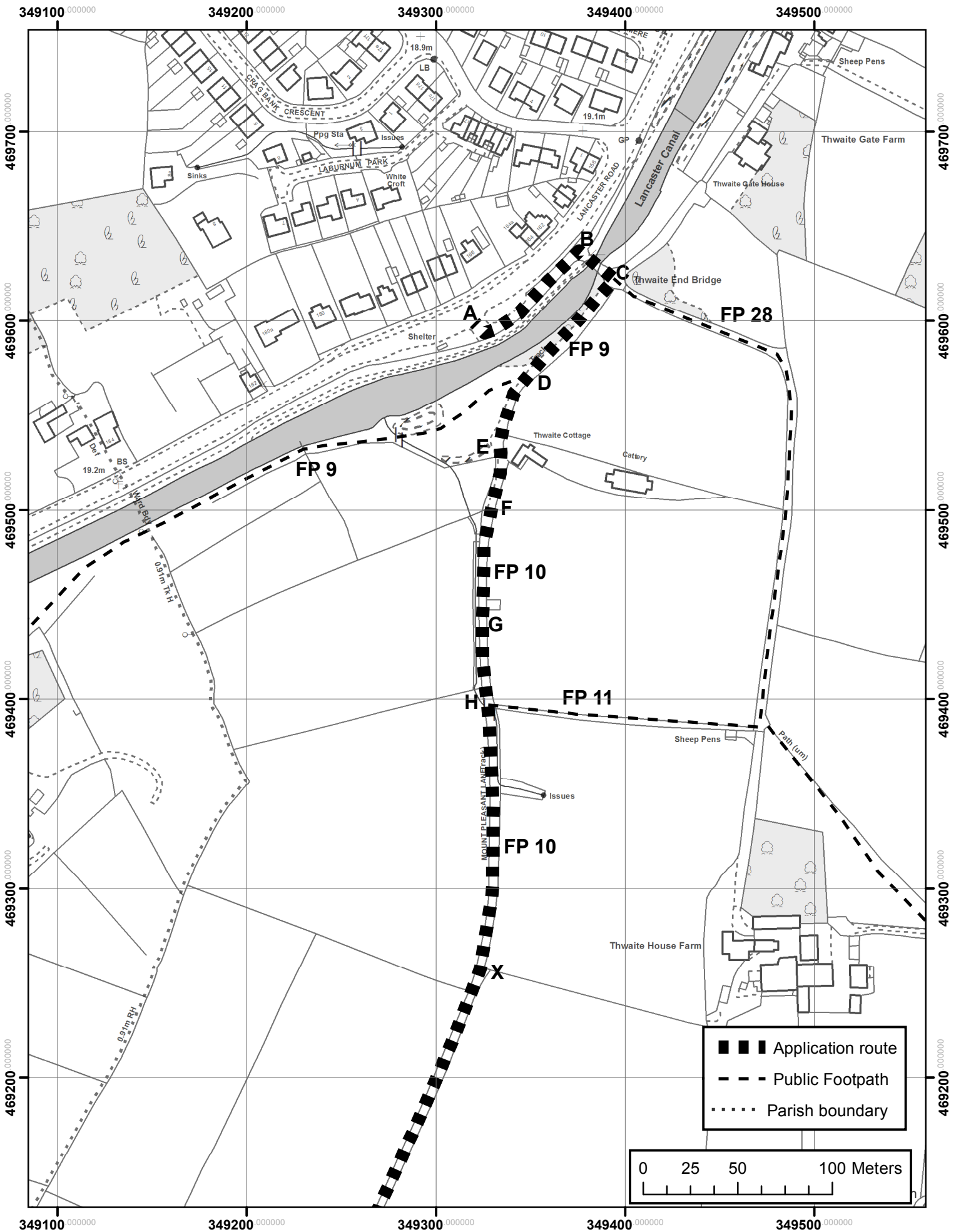
**Local Government (Access to Information) Act 1985  
List of Background Papers**

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-566		Megan Brindle , 01772 535604, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A





**Andrew Mullaney**  
Head of Planning and Environment

Wildlife and Countryside Act 1981  
Application to record part of Mount Pleasant Lane & Thwaite Brow Lane  
(including parts recorded as Footpath 19 Bolton le Sands & Footpaths 9 & 10 Carnforth)  
in the District of Lancaster as public bridleway

1:2,500



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**Plan 1 of 3**







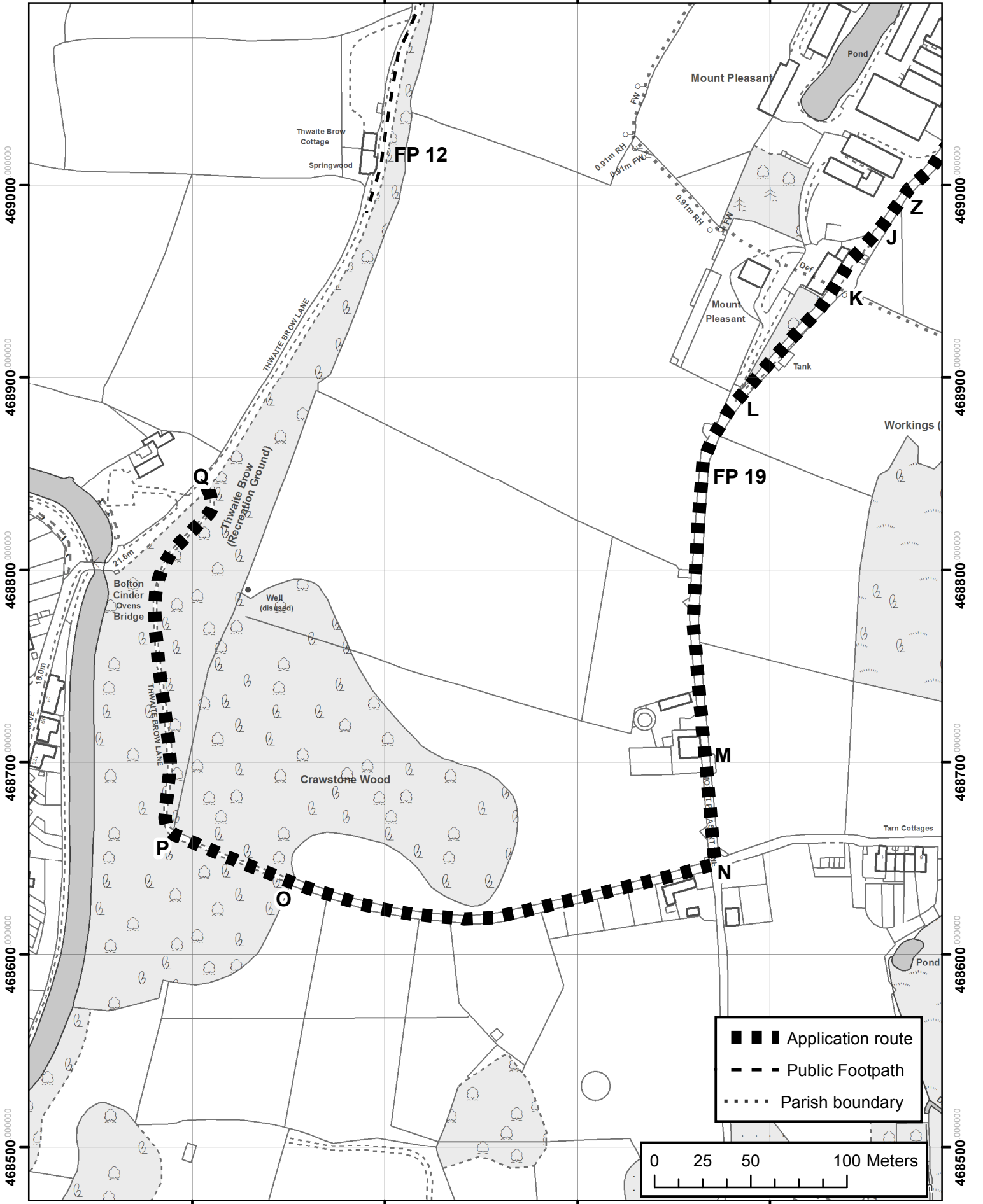





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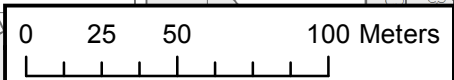
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	Application route
	Public Footpath
	Parish boundary



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