

Regulatory Committee

Meeting to be held on 23 September 2009

Part I - Item No. 7

Electoral Division affected:
Skerton

Wildlife and Countryside Act 1981

Claimed Public Footpath from Vale Road to Slyne Road, City of Lancaster

Claim No. 804/473

(Annex 'A' refers)

Contact for further information:

Mrs S Khalid 01772 533427, County Secretary & Solicitor's Group

Mrs R Paulson, 01772 532459, Environment Directorate

Executive Summary

The claim for a Public Footpath from Vale Road to Slyne Road, City of Lancaster to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/473.

Recommendation

- i. That the Claim for a Public Footpath from Vale Road to Slyne Road, City of Lancaster to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/473, be accepted in part namely that the claim for section A-B-C-D be accepted; that the claim for section D-E be not accepted.
- ii. That an Order be made pursuant to Section 53 (2) (b) and Section 53 (3) (c) (i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a footpath at a point on Slyne Road A6, between 59 Slyne Road and the side of the Melbourne Social Club and Institute (GR SD 4767 6331) for a distance of approximately 52 metres to a point running between the lock up buildings and the rear of the Melbourne Social Club and Institute (GR SD 4763 6330) and shown between points A-B-C-D on the attached plan.
- iii. That, being satisfied that the higher test for confirming said Order can be satisfied, said Order be promoted to confirmation if necessary by sending to the Secretary of State.

Background

A claim has been received for a Public Footpath extending from a point on Vale Road to Slyne Road, City of Lancaster and shown between points A-E on the attached plan, to the Definitive Map and Statement of Public Rights of Way.

Consultations

Lancaster City Council have been consulted and made no observations or comments regarding the application.

Claimant/Landowners/Supporters/Objectors

The evidence submitted by the claimant/landowners/supporters/objectors and observations on those comments is included in 'Advice – County Secretary and Solicitor's Observations'.

Advice

Executive Director for the Environment's Observations

Description of the claimed route in 2009

The claimed route commences at point A on the attached plan (GR SD 4767 6331) at a point on Slyne Road A6, between 59 Slyne Road and the side of the Melbourne Social Club and Institute. The route at this point is 2.5 metres wide and continues in a westerly direction on a tarmac surface with a width of 2.5 metres distance of approximately 16 metres to point B (GR SD 4765 6331). At this point the width is restricted to 2.3 metres by a set of steps that provide access to a side door of the Melbourne Social Club and Institute. The route continues in a westerly direction with a width of 3 metres for a distance of approximately 24 metres, passing the fire exist for the upper levels of the Melbourne Social Club and Institute and continuing to a row of lock up buildings at point C (GR SD 4763 6331).

The claimed public footpath continues in a southerly direction for a distance of approximately 12 metres to point D (GR: SD 4763 6330), running between the lock up buildings and the rear of the Melbourne Social Club and Institute. The length between point C and point D has a width of 3 metres.

At point D the claimed footpath is blocked by a wrought iron gate fixed to stone wall next to the corner of the buildings at either side of the route. The gate has a maximum height of 3 metres and is locked with a chain and padlock. On both sides of the gate the wall in which the gate hinges are set have several holes that appear to be no longer used but appear to have been drilled to accommodate former gate hinges or bolts.

The gradient of the whole claimed route is level and the section marked A – B – C – D has a well-maintained tarmac surface, which continues a short distance (approximately 3 metres) to the south of point D.

At point D the claimed public footpath continues in a southerly direction for a distance of approximately 40 metres with a width of 3 metres to point E at its junction with Vale Road. It passes over a compacted stone surface and runs between the side garden wall and house of 2 Vale Road and the rear garden fences, walls and gates of the row of terrace houses 43 – 55 Slyne Road. A number of these properties have pedestrian gates or vehicles access leading from the claimed route.

The total distance of the claimed route is approximately 92 metres between points A – E.

In summary, the claimed route is approximately 92 metres in length and varies between 2.3 metres and 3 metres in width. Either end of the claimed route is available for use but not as a through route, due to the located gate at point D effectively preventing access.

Documentary evidence

A variety of maps, plans and other documents were examined to find out when the claimed route came into being, and to try to determine what its status might be.

The edition of the 6-inch Ordnance Survey sheet, published 1848, and the 25" to 1 mile Ordnance Survey sheet of 1892 shows the site as open fields. The terraced housing in the area was not built at the time of the survey of these map sheets. As the claimed route forms a route to the side and rear of these later buildings it is not, therefore, considered necessary to examine any maps or documents which pre-date their existence.

The 25" to 1 mile Ordnance Survey sheet published in 1913 shows a building on the site of the Melbourne Sports and Social Club and a gap to the north, along the first part of the claimed route. There is a building shown over the route at point C and a line across the route at points A and D, indicating the possibility of a gate or barrier at these points. The houses on Slyne Road that back onto the claimed route are shown (No. 43 – 55 Slyne Road), as are the houses to the west of D – E. The house immediately to the west of the claimed route is now No. 2, Vale Road. Vale Road is named on the map as Edith Street. D-E is shown as an open route between the terraced housing. It is considered that D-E was already recorded as an adopted highway (see below).

The 25" to 1 mile Ordnance Survey sheet of 1932 shows the same as the 1913 sheet. The 25" to 1 mile Ordnance Survey sheet of 1938 shows a smaller building at point C. Otherwise the information is the same as the 1913 sheet.

The 1:2500 Ordnance Survey sheet of 1956 shows the claimed route in the same way as the 1938 sheet with the exception of the line at point A, the junction with Slyne Road, which is no longer marked. The OS have revised the map at this location (shown by the letters 'rp' on the map). The shape of the building which is now the social club has changed slightly and is now named 'Melbourne Social Club and Institute'. There is still a building shown at point C and a line across the route at point D.

The 6" to 1 mile Ordnance Survey sheet, published in 1957 (revised 1930 - 1945), shows the building on the claimed route at point C. In addition it does not show a gap between the building that is now known as the Melbourne Sports and Social Club and number 59 Slyne Road, along the first part of the claimed route between A and B.

The 6" to 1 mile Ordnance Survey sheet, published in 1968 (surveyed in 1955-1963), does show the claimed route in its entirety for the first time and as with previous editions from 1913 onwards, the claimed route is crossed by a solid line at point D and it is likely that this represents a gate or barrier across the route.

The Pathfinder map, scale 25,000 published in 1977 shows the same information as the 1:2500 Ordnance Survey sheet of 1957.

On the modern Ordnance Survey Mastermap, the route is marked and there is a line across the route at point D, indicating a gate or barrier at this point.

Maps produced under the requirements of the 1910 Finance Act were examined. The Ordnance Survey Map used as the base for the Finance Act 1910 mapped records shows the printed name of Edith Street crossed out and the name Vale Road written by hand. It would appear therefore, that the change in road name occurred around this time. 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 the land crossed by land divided into parcels on which tax was levied, and the accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable). In this matter, part of the claimed route, A-B-C-D, being on the land occupied by what is now known as Melbourne Social Club and Institute, along with land to the rear, is shown wholly in private ownership, as a single parcel of land. The accompanying valuation book contained no claim for a reduction in tax due because the land carried a public right of way.

The part of the claimed route, D-E is shown to be outside any parcel of land recorded to be in private ownership on the 1910 Finance Act maps. Strips of land can be shown excluded from numbered parcels. The Instruction No. 560 to the surveyors, said that the parcels "should continue to be exclusive of the site of the external roadways". It is advised that roadways were said to be routes "subject to the rights of the public" and therefore exclusion of a route indicates that public use was known. This corroborates the view that this section D-E was more than a footpath as footpaths were, it is suggested, more likely to be shown within parcel plots and a reduction claimed.

The current highway records have been examined and show the part of the claimed route D-E, to the rear of Nos. 43-55 Slyne Road as U18476 adopted highway, maintained at public expense. The highways section of the Environment Directorate believes that this length of public highway would appear to be for both pedestrians and vehicular use.

Aerial photographs from 1963, 1988, 2000 and 2006 have been examined. Whilst the photographs are of reasonable quality, it is not possible to determine whether

there are any gates or barriers across the claimed route at the time the photographs were taken.

The claimed route is not shown on any maps produced in preparation of the current Definitive Map. There were no formal objections to the omission of the claimed route when maps produced in preparation of the current Definitive Map were placed on deposit for public inspection.

Summary

Throughout the Definitive Map history there was no record of the claimed footpath although this is not unusual for paths in urban areas.

The earliest Ordnance Survey sheet at the Lancashire Records Office to show the claimed Public Footpath is the 6 inch to 1 mile Ordnance Survey sheet, published in 1968 (surveyed in 1955- 1963). The subsequent editions of the Ordnance Survey sheets that have been examined show the claimed route in its entirety. On this sheet, as with subsequent sheets there is a line across the route at point D, indicating the possibility of a gate or barrier at this point.

The highway records show that the length E-D is adopted highway and the length A-B-C-D has been unobstructed by buildings since the early 1960's. It cannot, however be ascertained from the documents whether public access was available through the gate or fence at point D.

County Secretary & Solicitor's Observations

Information from the Applicant

In support of the claim the applicant has submitted 8 evidence of use forms indicating knowledge of the route for 30-39 years (1) and 20-29 years (7).

The forms indicate use of the route on foot for 30-39 years (1), 20-29 years (4), 10-19 years (2) and 1-9 years (1).

The route has mainly been used to commute to and from school and as such its usage frequency clusters around the school opening time and term times. Users refer to use by others.

The Applicant refers to having done a head count in November 2007 "of the people who would normally use this safe way to school and came to a total of 46 children and 30 parents each way". He is concerned that the alternative route along the narrow footway on Slyne Road is dangerous. He notes that the gate was erected in the Summer of 2007.

Objection by the Owner

Part of the claimed route is in unknown ownership (D-E), however, this section of the route is recorded on the County Council's statutory maintenance records as an

adopted highway U18476 and therefore public rights are already in existence on section D-E.

Melbourne Social Club and Institute Ltd is the current landowner for the section of A-B-C-D. Solicitors on behalf of the Melbourne Club say that the Company has owned the land for several decades and they have objected to the application and have provided copies of letters from Lancashire Constabulary and the insurance brokers, Oval Insurance Broking, giving reasons for the decision to gate the access to part of the claimed route.

The letter from Lancashire Constabulary dated 7th February 2008 states:

“Since the 1st January 2007, there have been two offences committed at the premises, one of theft and a burglary. In both instances, entry was gained to the premises, via access at the alleyway at the rear.

At the time of my visit a gate had been installed to prevent access at the rear and this is secured by means of a chain and padlock. In order to deter any further problems at the social club, I would recommend that this gate remains locked. I would also advise, that consideration is given to the installation of a lockable gate at the front of the premises.”

The letter from Oval Insurance Broking states:

“I refer to your recent telephone conversation... regarding the gates you have installed.

From an insurance perspective I would say that this can only be a sensible thing to do from a claim avoidance angle.

1. It may prevent people coming onto the site who have no reason to be there, although they could bring a claim against the club and its insurers if they are injured by for example an uneven surface. A potentially expensive claim of this type would increase your premium.
2. It may also improve the risk of theft as clearly it is more difficult to move property off site if prevented by a gate.
3. If cars are using the cutting through the grounds it would also lessen the risk of damage to the property by a vehicle and equally the risk of injury to persons on site by road vehicles.

Your insurance policy will cover any legal liability arising from the gates as long as they have been properly installed and are maintained, so I recommend that you keep them in place.”

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim A-B-C-D

- user evidence
- Route open and available until recently
- Lack of specific action indicating lack of intention to dedicate

In Support of the Claim D-E

- user evidence
- List of Streets not conclusively state status of section D-E

Against Accepting the Claim A-B-C-D

- Buildings on route until 1960s
- Present view of landowners
- No reference to footpath rights under the Finance Act 1910
- Only few users for twenty year period

Against Accepting the Claim D-E

- Recorded on County Council's statutory records of highways maintainable at public expense
- Considered to already be of status higher than footpath

Conclusion

The claim is that the public already have right of way on foot along the line A-B-C-D-E shown on the plan and the route should be recorded as a footpath on the Definitive Map and Statement.

The records and documentary evidence for sections D-E and A-D are different and it is therefore suggested that these two sections are considered separately.

Section of the claim D-E

Section D-E is recorded on the County Council's statutory list of highways maintainable at public expense as an adopted highway U18476 and in the absence of an exact date of adoption, similar streets in Lancaster appear to be adopted in the early 1900's. It is therefore advised that this would strongly indicate that this section already has some public status. The way it was recorded on the Finance Act map also points to this. This may be considered to be for all types of traffic, both on foot and vehicular. It is therefore suggested that to now record the section D-E as a footpath where the public is on foot only would not be appropriate as it is considered that higher public rights are already in existence. If the status is higher than footpath it is still the case that the public can use it on foot. Taking all the evidence into account it is suggested that the way this section of the route has been recorded indicates a status higher than footpath and so the Committee may consider that the claim to record footpath rights only on D-E should not be accepted.

Section of the claim A-B-C-D

Section A-B-C-D has no recorded public status. There are no documents whereby this section is expressly dedicated and therefore it is advised that the Committee should consider whether there is sufficient evidence from which dedication of it as a public footpath can be deemed under S31 Highways Act 1980 or inferred at Common Law.

It would appear that there is a difficulty in considering the line of A-D as a way used by the public before the 1960s as there has been a building across the route. Consideration should be given to applying the law relating to inferred or deemed dedication since then.

The 6" to 1 mile Ordnance survey sheet, published in 1968 shows for the first time the claimed route available in its entirety (A-B-C-D-E) and subsequent editions of the Ordnance survey sheets also show the claimed route in its entirety. On the 1968 sheet as with subsequent sheets there is a line across the route at point D which indicates the possibility of a gate or barrier at this point and it is not clear whether public access was available through the gate or barrier. However, it would appear from the evidence that this section has been largely open and available for many years and used by the public without any actions being taken by the owner to challenge the use. Evidence of use on foot goes back to the 1970s, the predominant use commuting on a return journey from Vale Road to Slyne Road to the Skerton St. Luke's Church of England Voluntary Aided Primary School during term time. Other use of route for recreational and pleasure purposes, shopping at a local store and fishing at the canal. Committee will note that the evidence of use presented in this matter is only from a few people however, higher use is indicated by the reference to use by others and the information from the Applicant.

Looking at the provisions of S31 Highways Act 1980 - the Committee may feel on balance that there is sufficient evidence of public use of 20 years user uncontraverted by any credible evidence to the contrary and no credible evidence that there was on the part of the landowner no intention during the period to dedicate the way to the public of this so that the criteria of Section 31 Highways Act 1980 can be satisfied and that dedication of this section as a footpath can be deemed to have occurred following twenty years use 1987-2007 up to the gate being locked in 2007, calling the route into question.

Use of a route on foot with acquiescence by the owner can also be sufficient circumstances from which dedication of a footpath can be inferred at Common Law. The Committee may consider that even before 2007 there may be sufficient evidence from which to infer a dedication of this section as a footpath however, there is a difficulty. Inference at Common Law involves being satisfied that the owner intended to dedicate. Here the owner company objects to the claim and has been the owner for several decades and this makes it difficult to show that this same owner who is now objecting once did intend to dedicate.

Taking all the information into account the Committee may consider on balance that there is sufficient evidence in respect of section A-B-C-D to consider that it can be reasonably alleged that a footpath can be deemed under S31 Highways Act 1980 but the claim for section D-E being already adopted highway should not be accepted. In accepting section D-E and accepting A-D there will be a through route for the public from Vale Road to Slyne Road since public rights are already in existence on section D-E.

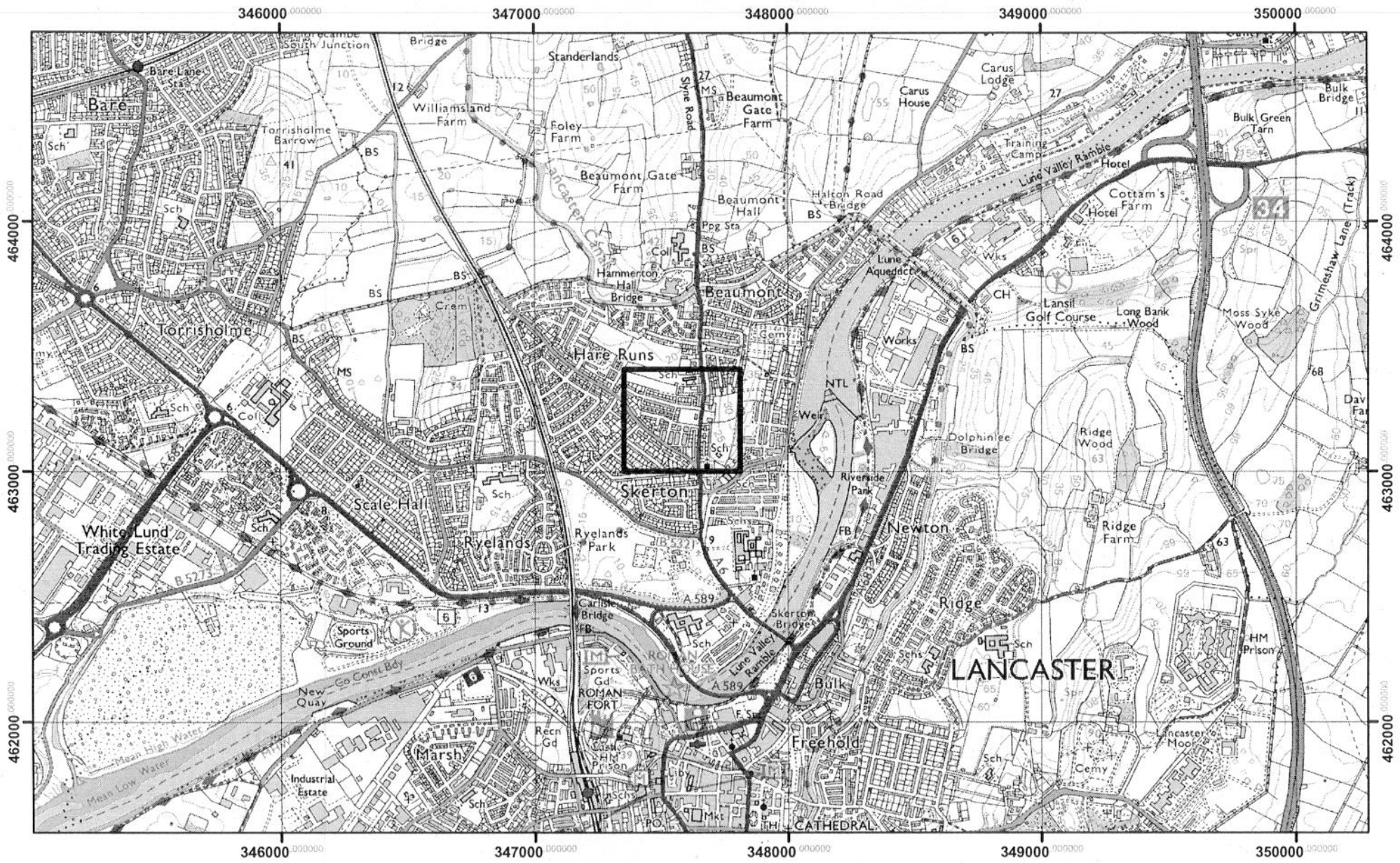
Alternative options to be considered - N/A

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

Paper	Date	Contact/Directorate/Ext
All documents on Claim File Ref: 5.32427 (804/473)	Various	Mrs S Khalid, County Secretary & Solicitor's Group, 01772 533427

Reason for inclusion in Part II, if appropriate

N/A



item 7



Jo Turton
Executive Director
for the Environment

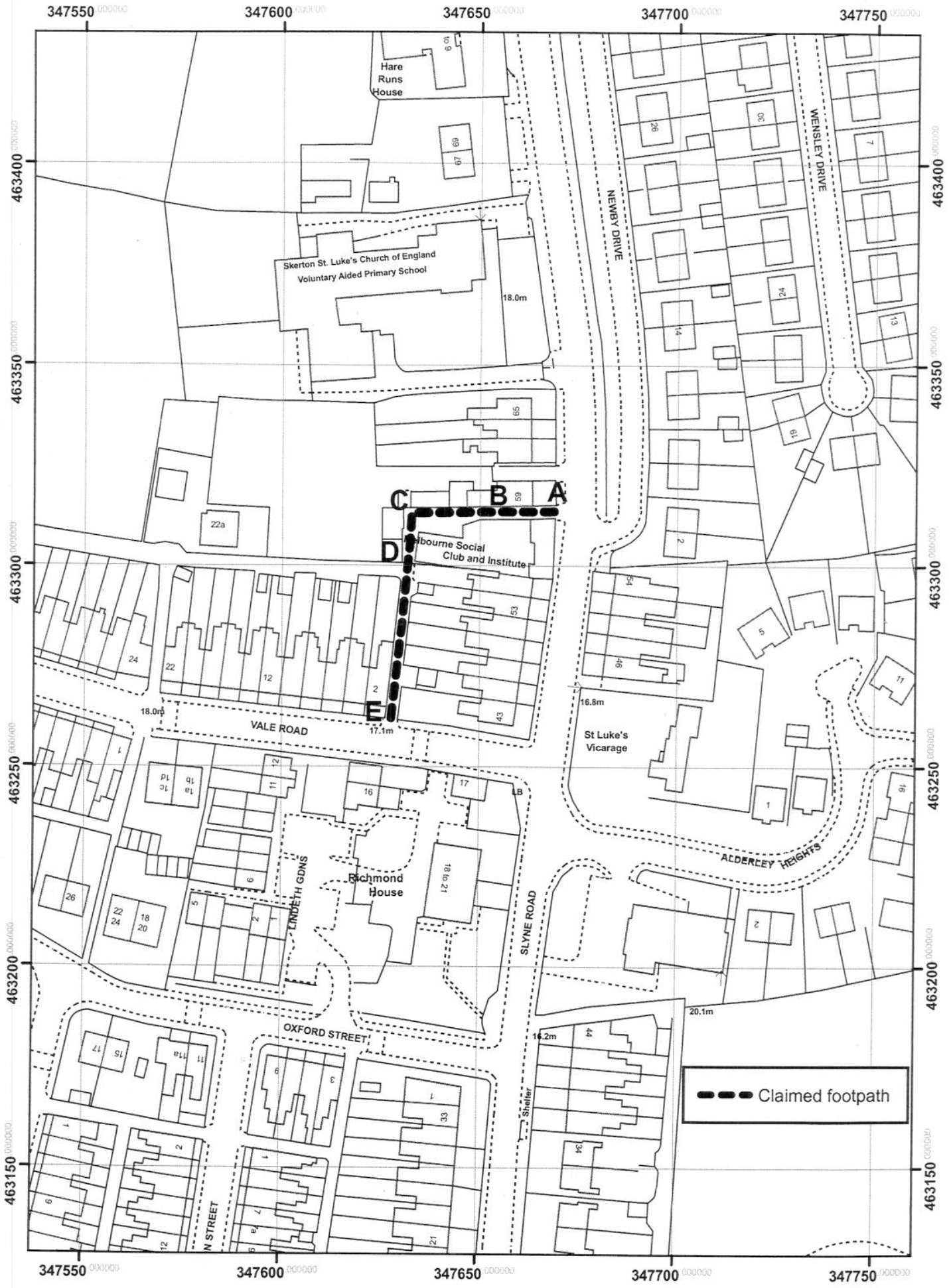
Wildlife & Countryside Act 1981 804/473 Claimed Public Footpath from Vale Road to Slyne Road , Lancaster City
LOCATION PLAN

1:20,000



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VALERO



 Claimed footpath



Jo Turton
 Executive Director
 for the Environment

Wildlife & Countryside Act 1981 804/473
 Claimed Public Footpath from Vale Road to Slyne Road, Lancaster City

1:1,250



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