

Regulatory Committee

Meeting to be held on 16 November 2022

Part I

Electoral Division affected:
Ribble Valley North East

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

**Addition of Footpath from Chatburn Old Road, Chatburn, Ribble Valley
Borough**

(Annex 'A' refers)

Contact for further information quoting reference number 804-710:

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Brief Summary

Application and investigation for the addition to the Definitive Map and Statement of Public Rights of Way of a footpath from Chatburn Old Road Chatburn, Ribble Valley Borough.

Recommendation

- (i) That the application for the addition to the Definitive Map and Statement of Public rights of Way of a footpath from Chatburn Old Road, be accepted That the evidence of a footpath reasonably alleged following investigation into the other part of route A-X be accepted
- (ii) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add on the Definitive Map and Statement of Public Rights of Way a footpath from Chatburn Old Road as shown on Committee Plan between points X-A-B-C.
- (iii) That the Order be confirmed if no objections are received but if objections are received the matter be returned to Committee for a decision regarding confirmation, once the statutory period for objections and representations to the Order has passed.

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition to the Definitive Map and Statement of Public Rights of Way of a footpath from Chatburn Old Road to junction with footpath 3-11-FP1 and 3-11-FP 13.

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

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

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

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

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

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 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

Ribble Valley Borough Council

Ribble Valley Borough Council did not provide an official response to the consultation.

Chatburn Parish Council

The Parish Council are the applicants (please see the information from the applicant section).

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
X	7649 4404	Western end of U22924 (the extant Chatburn section of Chatburn Old Road) and junction with 3-11-FP13 and 3-11-FP14
A	7645 4403	Metal kissing gate
B	7647 4394	Application route turns to continue east across field.
C	7656 4395	Junction with 3-11-FP13 and 3-11-FP1

Description of Route

A site inspection was carried out in April 2022.

When the route was inspected by the Investigating Officer in 2022 it was not possible to walk, or to access, any part of it.

From the western end of the extant Chatburn section of Chatburn Old Road it was possible to access 3-11-FP14 which continued north and also the northern end of 3-11-FP13 located immediately west of newly constructed houses off Hare Hill Croft (marked as point X on the Committee plan) but it was noted that the route of 3-11-FP13 was partially blocked by security fencing and that earth works had damaged the surface of the footpath. An alternative route had been provided around the southern boundary of the properties on Hare Hill Croft which linked back onto the legally recorded line of 3-11-FP1 but there was no access to the point at which the application route joined the intersection of the two footpaths (marked as point C on the Committee plan).

From Chatburn Old Road (point X) it was possible to walk west along the old road for approximately 40 metres to the start of the application route at point A.

The application route leaves the old road to pass through a metal kissing gate which was rusted and appeared to have been damaged so that it was bent out of shape.

Metal security fencing had been positioned across the start of the application route making it impossible to access it.

The total length of the application route is 190 metres.

Another member of the County Council's Public Rights of Way Team had been to the site in April 2021 in response to reports that the public footpaths across the site had been obstructed. They took photographs of the application route at that time which showed that it was possible to use it at that time.

The photographs showed that a clearly defined trodden track existed at that time along what appeared to be consistent with the full length of the application route.

Map and Documentary Evidence

A variety of maps, plans and other documents were examined to discover when the route came into being, and to try to determine what its status may be. The land crossed by the application route was affected by the extension of the limestone quarries to the west in the 1960s with no evidence that the application route existed prior to that time. For that reason, much of the early map and documentary evidence normally included in the report to Regulatory Committee is not included below.

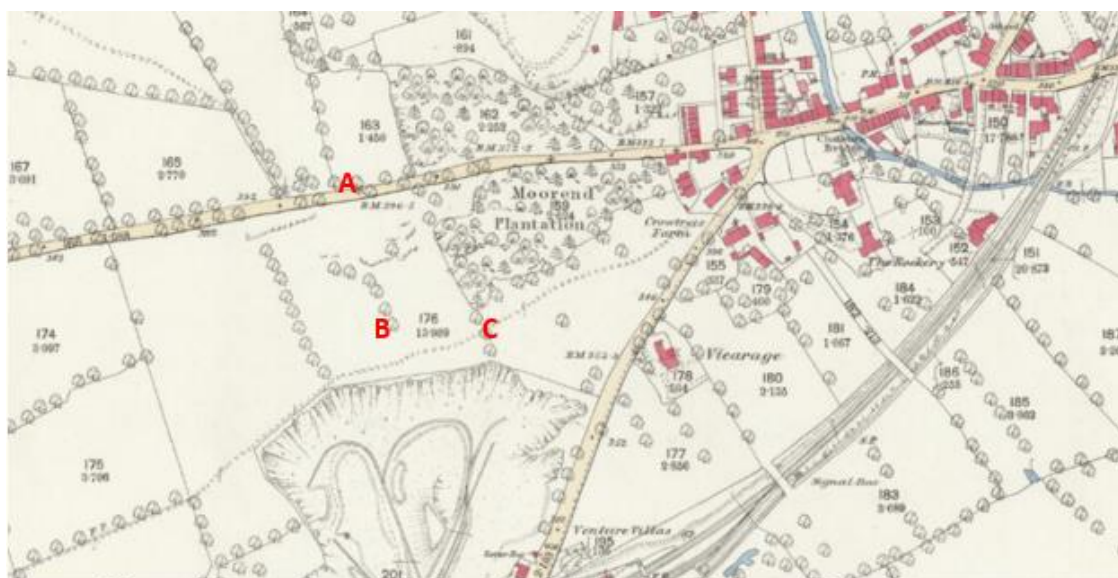
Note: Map insets included below are not to scale.

Document Title	Date	Brief Description of Document & Nature of Evidence
6 Inch Ordnance Survey (OS) Map	1847	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844 and published in 1847. ¹

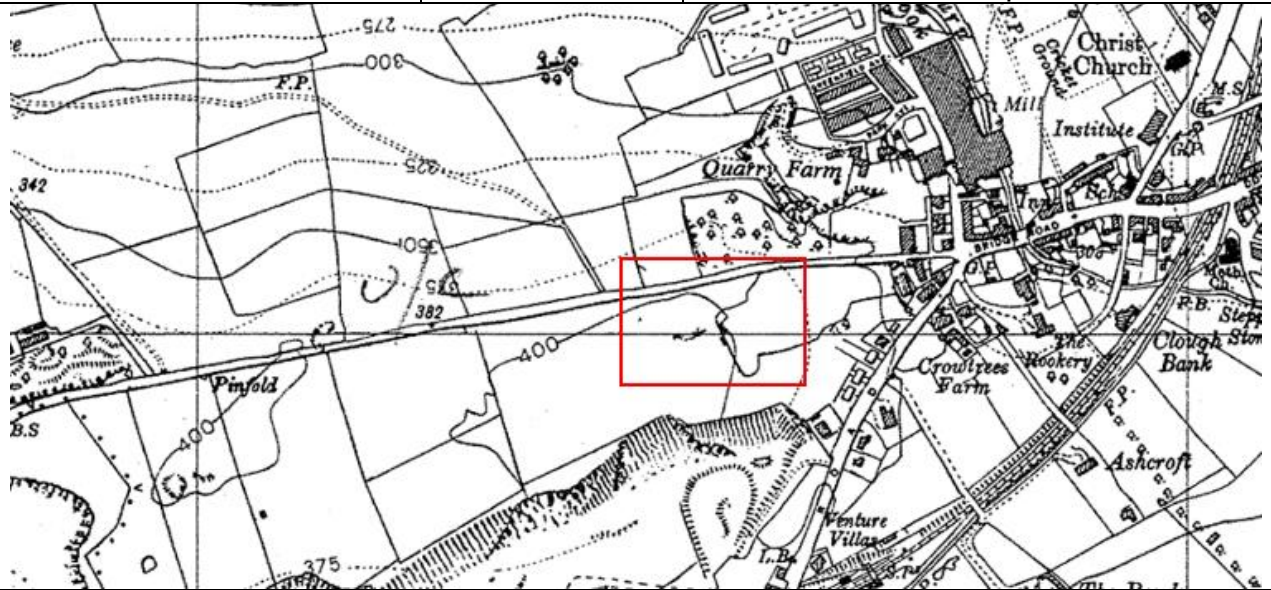
¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the 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		Chatburn Old Road is shown (but not named) and an unfenced route shown by double pecked lines is shown passing through point C but the application route is not shown.
Investigating Officer's Comments		The application route did not exist in 1844.
25 Inch OS Map XLVII.7	1886	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1884 and published in 1886.



Observations		Chatburn Old Road is shown (but not named) and an unfenced route shown by double pecked lines is shown passing
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		through point C but the application route is not shown.
Investigating Comments	Officer's	The application route did not exist in 1884.
6 Inch OS Map 74SE	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.
		
Observations		The application route and the route through which point C runs are not shown.
Investigating Comments	Officer's	The application route did not exist in the 1930s.
Aerial Photograph²	1945-1952	The earliest set of aerial photographs available was taken just after the Second World War and flown between June 1945 and September 1952. They can be viewed on GIS. The clarity is generally very variable.

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



Observations		The application route is not visible as a trodden track on the ground.
Investigating Officer's Comments		The application route did not exist in 1945-1952. Access may have been available but there is no evidence that there was a defined trodden route.
Aerial Photograph	Circa 1968	The black and white aerial photographs flown during the 1960s. The coverage is a mosaic of various flight runs on the following dates: 12-13th May 1961, 1st Jun 1963, 3-4th June 1963, 11th June 1963, 13th June 1963, 30th July 1963, 13th June 1968. The majority of images are from 1963, with the 1961 images mainly covering West Lancashire district, and the 1968 images mainly covering Ribble Valley district.

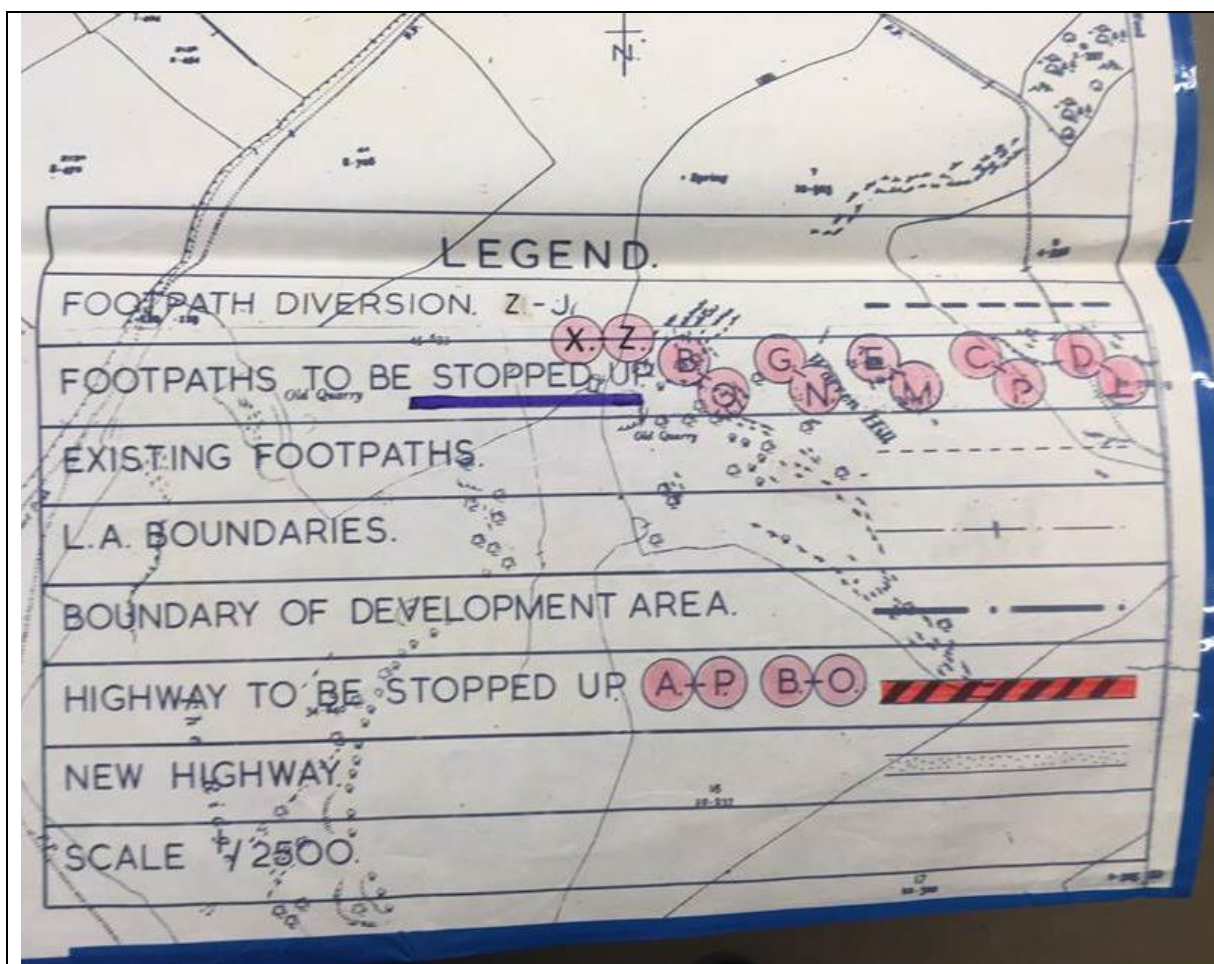


Observations		The quarries to the west of the application route have been extended to the boundary of the application route between point A and point B. West of point A there appears to be access from Chatburn Old Road to the quarry site with a track running parallel to the application route and then along the application route passing through point B to continue south and then east around the edge of the quarry area. The way that the track shows up on the photograph gives the appearance of a route being used by quarry vehicles. The route between point B and point C is not visible on the photograph.
Investigating Officer's Comments		Part of the application route is visible as a significant track on the photograph but appears to form part of a longer route most likely to be used by vehicles accessing the quarry. The application route probably did not exist at this time – although access may have been available along part of it.
Stopping Up Orders	1971	At the request of Lancashire County

Council the Secretary of State for the Environment made an Order under the Town and Country Planning Act 1968 titled 'The stopping Up Of Highways (No 13) Order 1971 on 14th December 1971 to stop up part of Chatburn Old Road and to stop up and divert a number of public footpaths to allow for the expansion of the limestone quarries to the west of the application route.

In addition, an application was made to the Magistrates Court on 16th December 1971 for a stopping up and diversion order under the Highways Act 1959 relating to connected routes outside the limited scope of the 14th December Order. This application was granted.

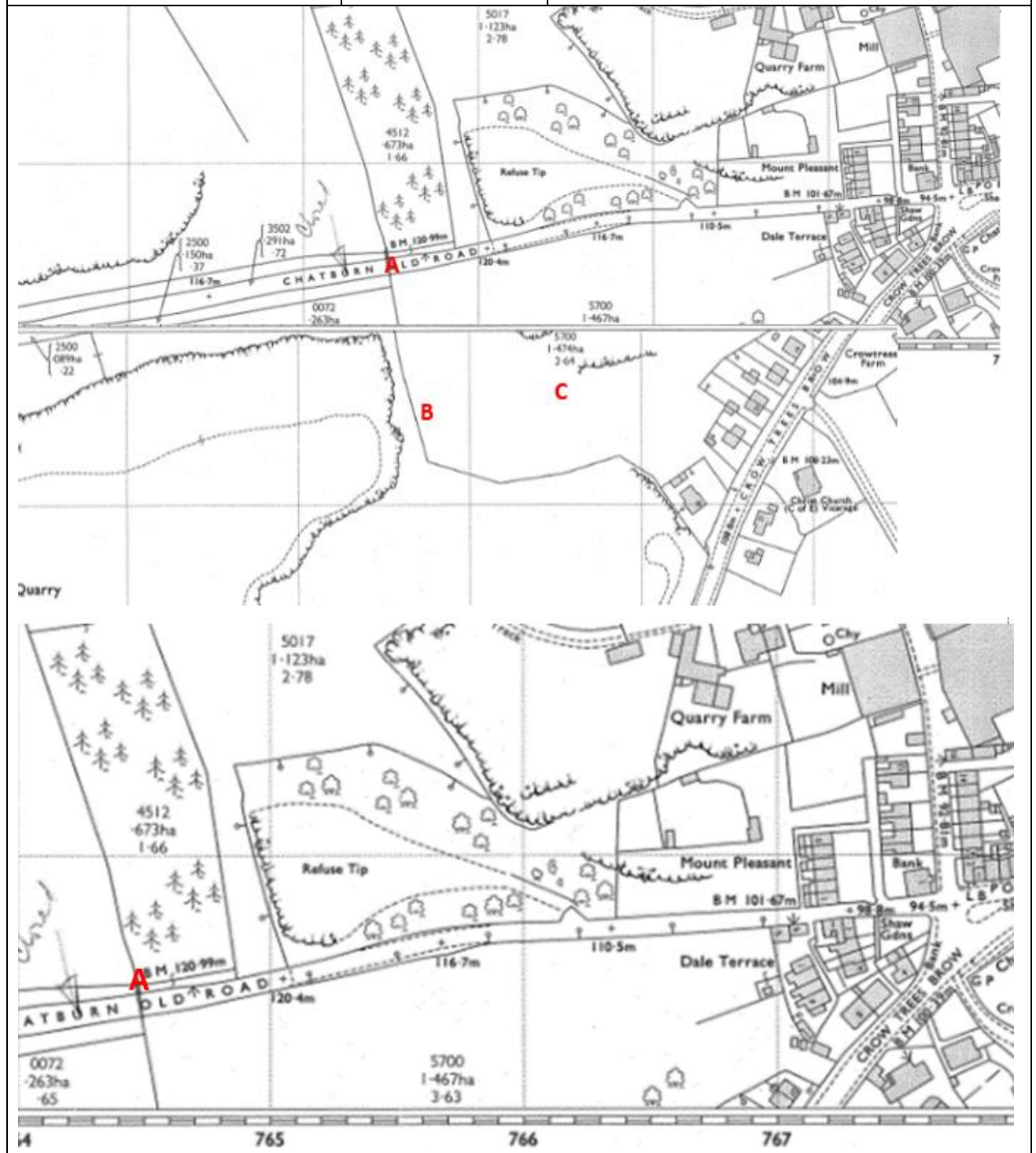




Extracts from the 1971 Order

Observations		The Orders extinguished part of Chatburn Old Road and also parts of 3-11-FP1 and 3-11-FP13. The Orders do not refer to or create any part of the application route and the Order plan does not show the application route. The Orders did however extinguish public rights along that part of Clitheroe Old Road from where it is met by 3-11-FP13 and 3-11-FP14 west to the start of the application route at point A although at the time of writing the current highway records incorrectly show this section of Clitheroe Old Road as being highway.
Investigating Officer's Comments		There is no evidence that the application route existed in 1971. Clarification has been sought from the Highways Team who have confirmed that the section of Clitheroe Old Road from the junction with

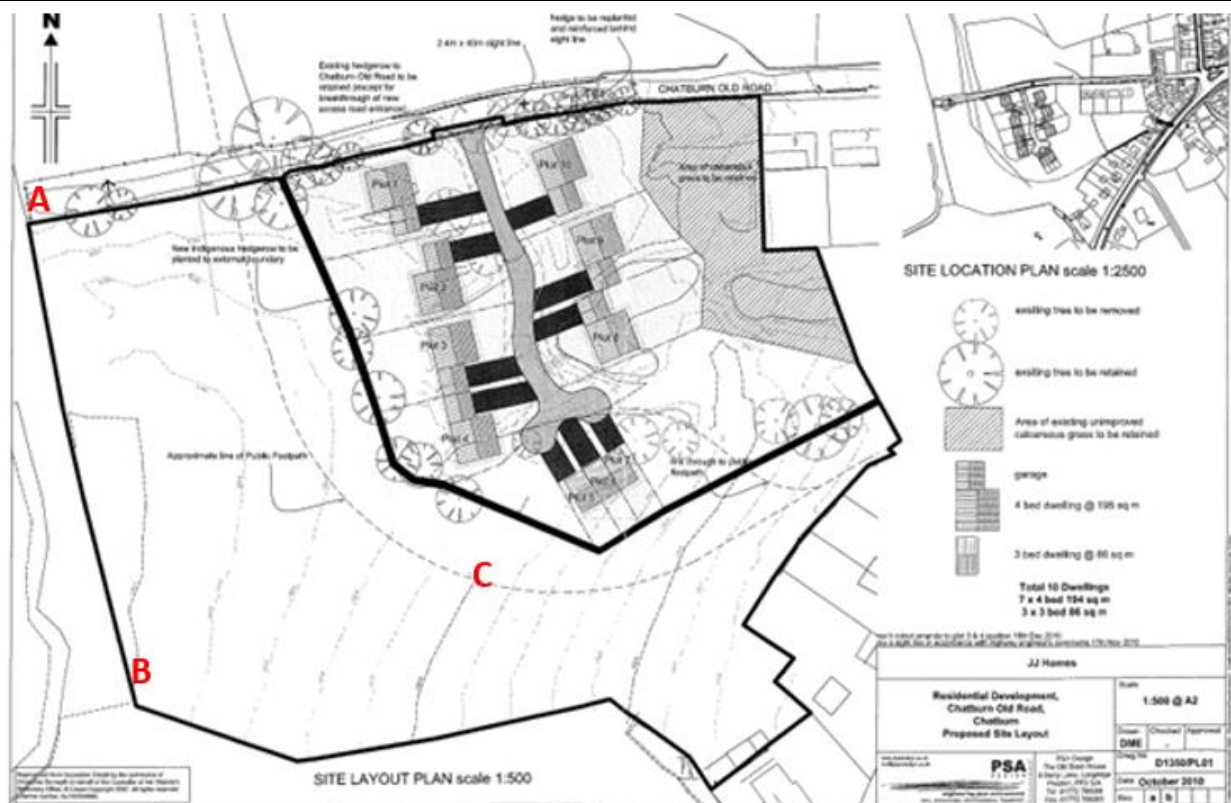
		footpaths 3-11-FP13 and 3-11-FP14 west to the start of the application route (X-A on the Committee plan) is not part of the publicly maintainable section of Clitheroe Old Road and that their records require amending.
1:2500 OS Map SD 7643 and SD7644	1974	Further edition of 25 inch map reconstituted from former county series and revised in 1972 and published in 1974 as national grid series.



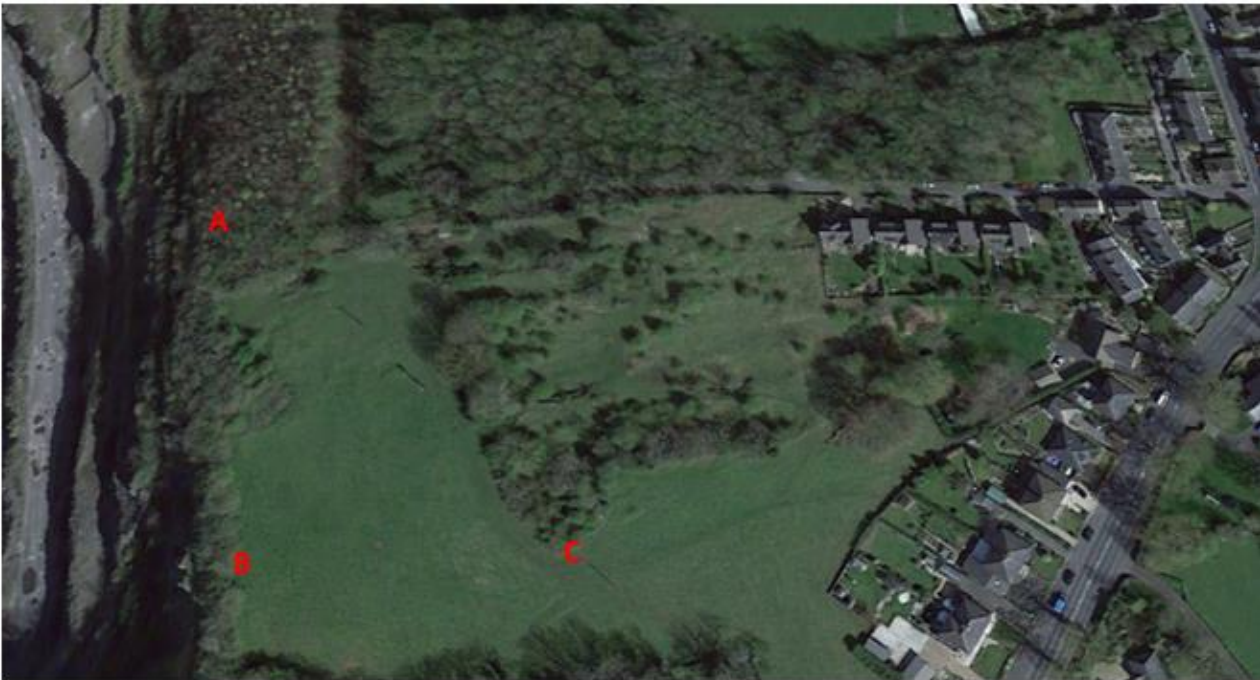
Observations		The application route is not shown. A line is shown across Chatburn Old Road immediately west of point A and a line is shown across the start of the application route at point A.
Investigating Officer's Comments		The land crossed by the application route was surveyed 1 year after the orders were made to extinguish footpaths across it and to close part of Chatburn Old Road. The application route is not shown although it may have been possible to walk the route – if there was access through the fence at point A. There is no route marked on the map however suggesting that there was no evidence on the ground of a trodden route. The line across Chatburn Old Road immediately west of point A suggests that access was prevented or restricted from that point but that it would have been possible to walk along Chatburn Old Road west to reach point A in 1972.
Aerial photograph	2000	Aerial photograph available to view on Google Earth Pro.
		
Observations		The land crossed by the application route appears to be accessible but there is no trodden track along the route applied for. It is not possible to see from the photograph whether access was

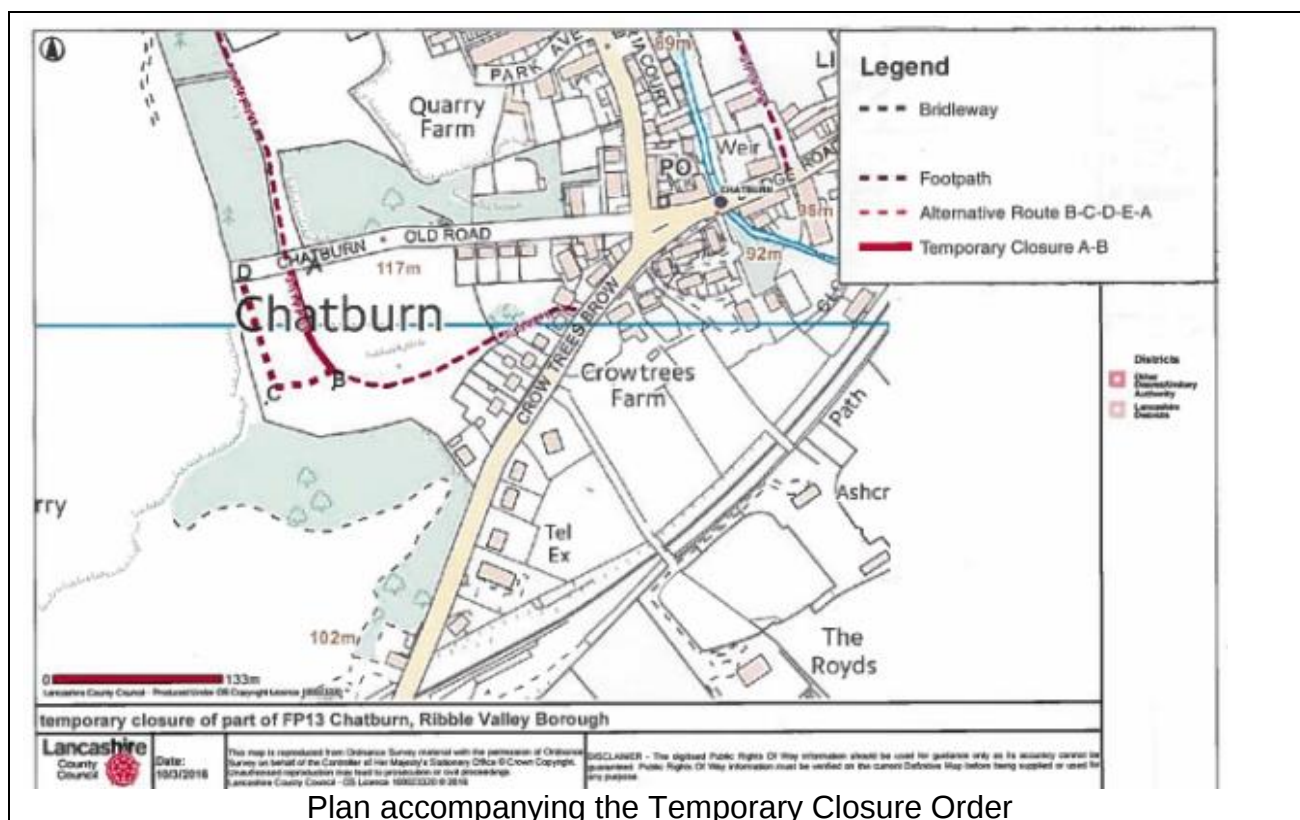
		available at point A. The routes of 3-11-FP1 and 3-11-FP13 are not visible on the photograph.
Investigating Officer's Comments		If the application route was in use in 2000 it does not appear to have been a well-used route. However, it was also noted that the two existing public footpaths crossing the field are not visible on the photograph and it is not unusual for a rural footpath crossing fields not to show up on an aerial photograph even if it is available and being used.
Aerial Photograph	2003	Aerial photograph available to view on Google Earth Pro.
		
Observations		It is not possible to see whether access was available onto the route at point A. No worn track can be seen along the line of the application route – or the existing public footpaths to which it connects.
Investigating Officer's Comments		If access was available at point A it appears that the application route could have been used. However, there is no trodden track suggesting that there were not significant levels of use at that time.
Planning Applications affecting the land crossed by the application route	2011-2014	Plan submitted with an application to build houses Ref: 3/2011/0025 which was not granted, and details of a further application made in 2014 Ref:

3/2014/0618 which was approved with further amendments in 2016



Observations		No reference to the existence of the application route was found in the details relating to either application.
Investigating	Officer's	If it did exist in 2011-2014 the application

Comments		route did not appear to have been considered to be a public right of way that was affected by the development.
Aerial Photograph	2015	Aerial photograph available to view on Google Earth Pro.
		
Observations		The application route is not visible on the aerial photograph. A faint line consistent with part of the route of 3-11-FP1 and 3-11-FP13 is visible on the photograph.
Investigating Officer's Comments		The application route may have been accessible but there is no evidence of use looking at the photograph.
Temporary Closure Order affecting part of FP13	2016-2021	Details of a temporary closure order made by Lancashire County Council under Section 14(1) of the Road Traffic Regulation Act 1984, as amended, the effect of which was to prohibit temporarily any pedestrian use of part of Footpath 3-11-FP13.



Plan accompanying the Temporary Closure Order

Observations		A request was received in 2016 for the temporary closure of 3-11-FP13 from JJ Homes (NW) LLP. The closure was required due to the construction of 10 new properties initially from 30th March 2016 for 6 months but that extensions to the order would be required as the expected finish date of the development was likely to be December 2017. The Order did not refer to any alternative route. The Order plan showed that an alternative route was to be made available by the developer (shown as B-C-D-A on the above plan) which is the section of Clitheroe Old road extinguished in 1971 (A-D) and part of the application route (D-C) and another section C-B. The Order was originally extended until 24th March 2018 and then again until the 24th March, 2021. The alternative route provided by the developer had not been checked on ground
Investigating Comments	Officer's	The information available on the file does not indicate whether the application route was already available on the ground prior to it being 'provided' as the alternative

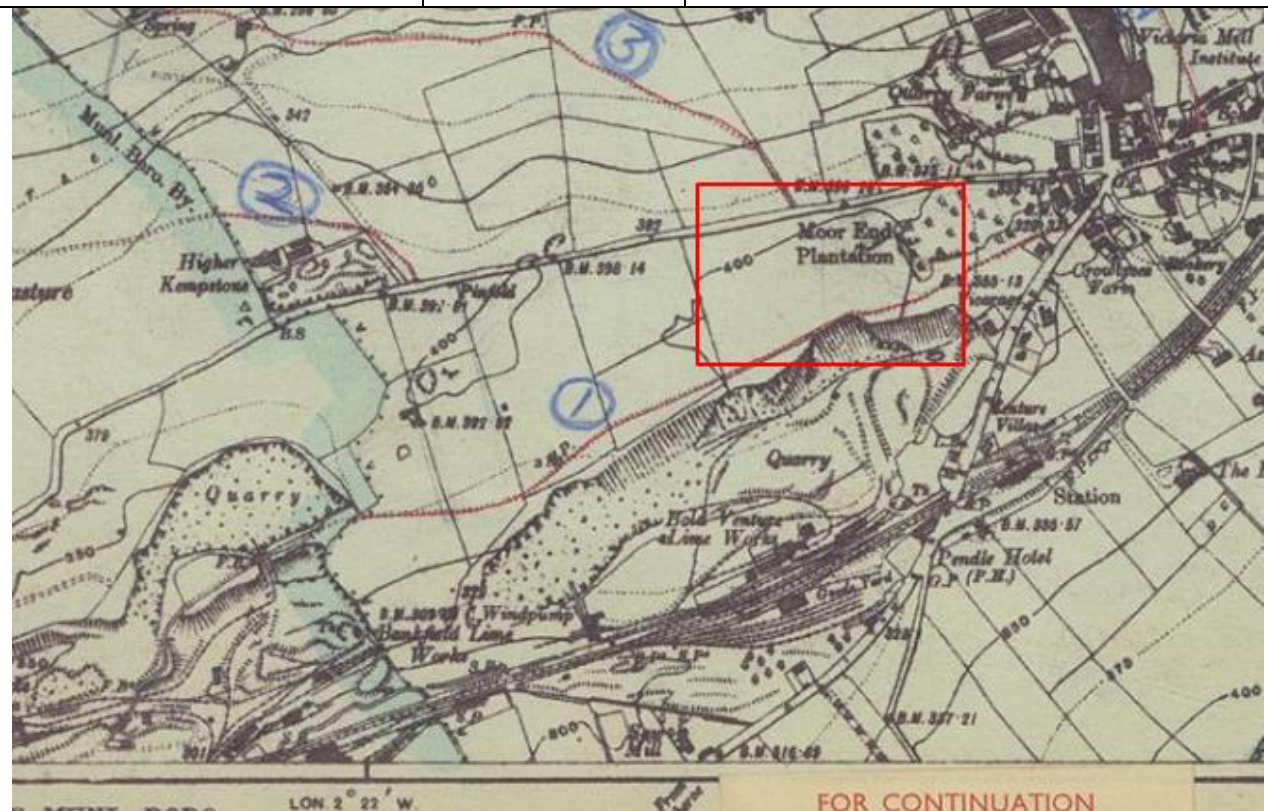
		route to 3-11-FP13. Developers often provide alternative routes which may not already exist or may already be highways. The Order Plan does not indicate the status of the alternative route but it does appear that it is being provided as an alternative to a route that has been closed since least 2016. This does not divert the Footpath 13 rights onto the alternative route. Alternative routes can be on existing highways or none so no inference can be drawn in that respect. There is no information as to whether the alternative route was a permissive route provided with the permission of an owner. Any such permission would not be evident to users.
Aerial Photograph	2018	Aerial photograph available to view on Google Earth Pro.
		
Observations		The construction of the housing development is underway but the application route, which also formed part of the alternative route to 3-11-FP13 at that time, cannot be seen. The route is obscured by tree cover between point a and point B and between point B and point C it appears possible to walk the route but there is no trodden track visible.
Investigating Comments	Officer's	The application route cannot be seen as a visible trodden route on the

		photograph. Access may have been available, particularly as the route was also offered as being the alternative route provided to the public in a temporary closure order.
Aerial Photograph	2020	Aerial photograph available to view on Google Earth Pro.
 The aerial photograph shows a housing development with several houses and a large area of bare earth. Three points are marked with red letters: A is on the left side of the development, B is on the left side of the bare earth area, and C is on the right side of the bare earth area. A trodden track is visible between points A and B.		
Observations		The housing development appears to be close to completion. A trodden track can be seen along part of the application route between point A and point B but the route is not visible between point B and point C.
Investigating Officer's Comments		Access may have been available with care but it is not clear that the full application route or the temporary alternative route were accessible in 2020.
Definitive Map Records		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way. Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.

Parish Survey Map

1950-1952

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

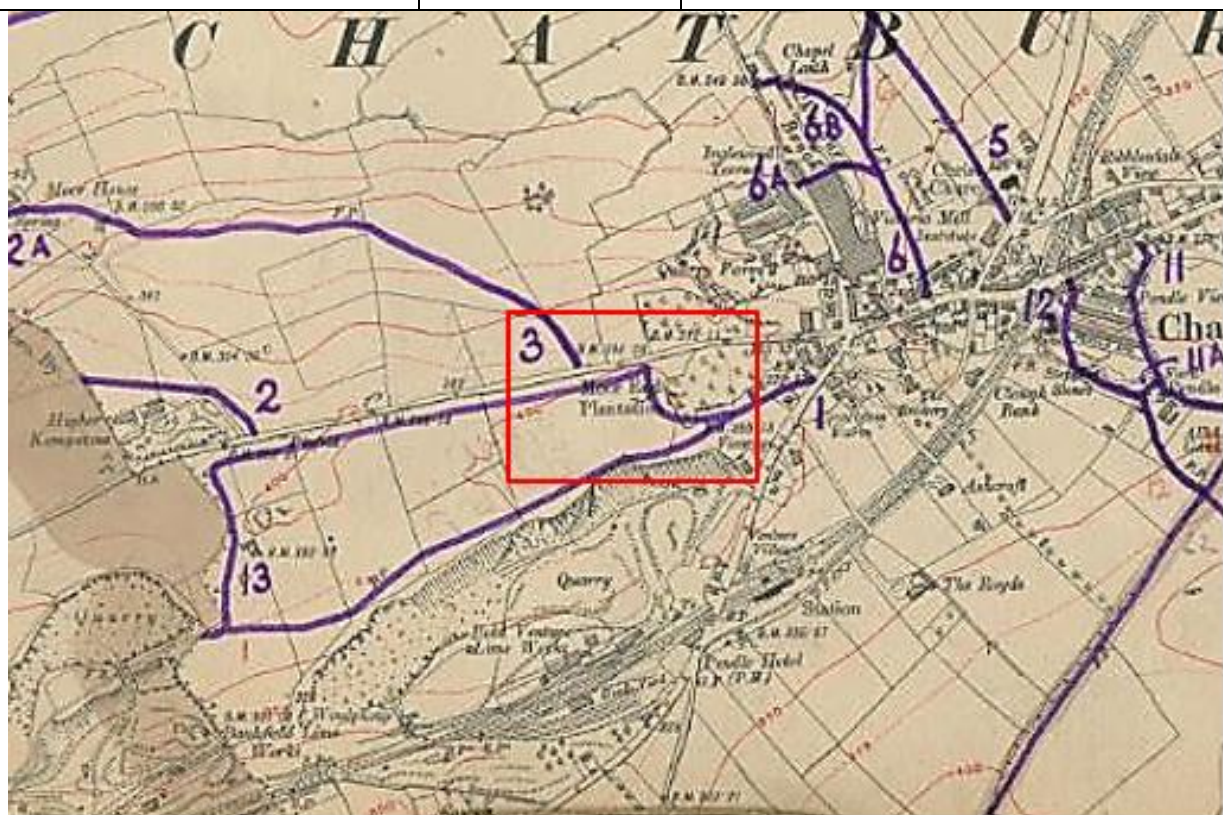


DISTRICT Clitheroe Rural	PARISH Chatburn	No. 1.
MAP SHEET No. 1.	LENGTH	miles
		(to two decimal places)
BRIEF DESCRIPTION (Field F.P. or otherwise)		
Field footpath		
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).		
To Clitheroe Borough Boundary. Starts at kissing gate at Moor End in Crow Trees Brow, Chatburn. Passes through three stiles, leads round the edge of the quarry, running parallel to the Olde Road, Chatburn, then turns south to the Clitheroe Borough Boundary. The diversion around the quarry was agreed with the Lancs County as per plans submitted to the Chatburn Parish Council. <i>to revert to original site when quarrying ceases.</i> Path well defined to the quarry. All stiles and gates in fair condition.		
SURVEYED BY :—	Name	Col. J.F.M. Robinson
	Address	Manor House Chatburn
		A. Hustwaite 6 Greenfield Ave. Chatburn
Date	August, 1950	
50000/F39/4/50		

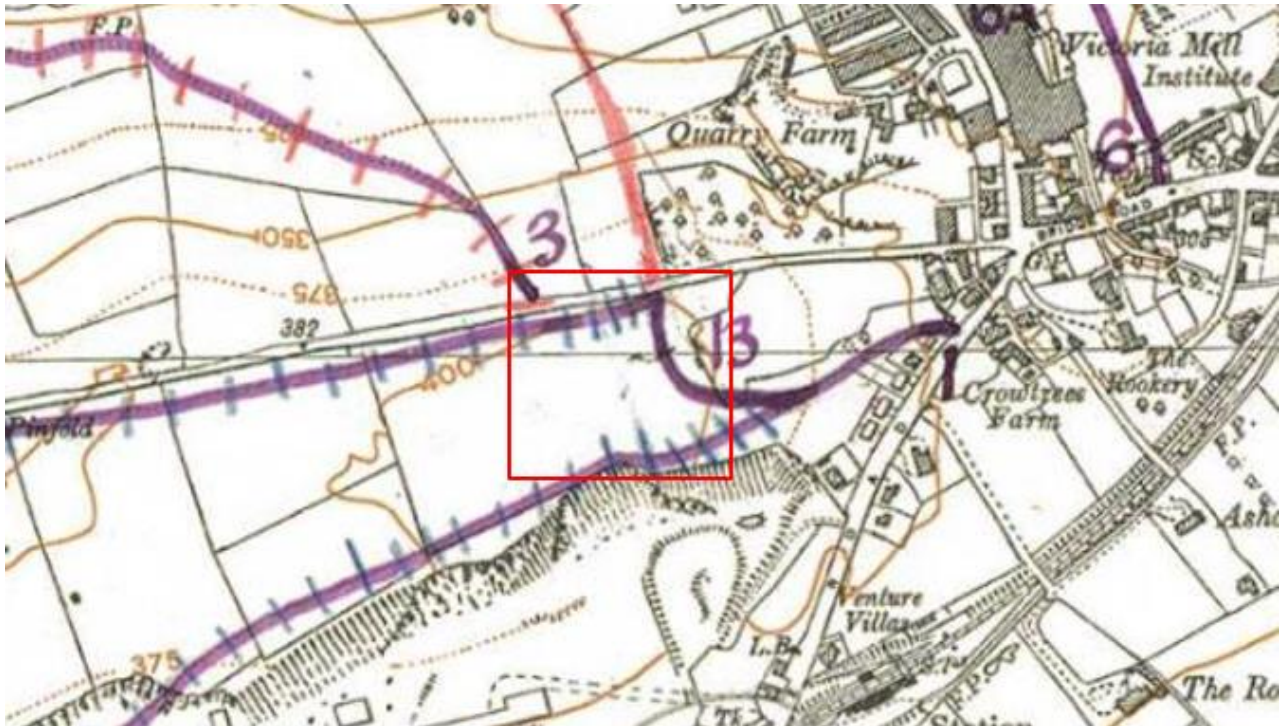
DISTRICT <i>Clitheroe Rural</i>	PARISH <i>Chatburn</i>	No. <i>13.</i>
MAP SHEET No.	LENGTH <i>0.61.</i>	miles
		(to two decimal places)
BRIEF DESCRIPTION (Field F.P. or otherwise)		
<i>Footpath</i>		
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).		
<i>junction footpath No. 1. N of Bankfield line takes in a northerly direction then turning right to run parallel to roadway & branching south to run along eastern side of Moor End Plantation to join to No. 1. again.</i>		
SURVEYED BY :—	Name	
	Address	
Date		
50000/F39/4/50		

Observations 		The application route is not recorded on the Parish Survey Map. A Parish Survey Card dated 1950 describes the route of 3-11-FP1. The route of 3-11-FP13 is not shown on the Parish Survey Map but a handwritten card describes the route of the footpath and it is marked No.13.
Draft Map		The Parish Survey Map and Cards for Chatburn 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” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.
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Observations		The application route is not shown on the Draft Map and there is no record of any objections or representations having been made. Footpath 13 is recorded
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960 and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could

		apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
		
Observations		The application route is not shown on the Provisional Map and there is no record of any objections or representations having been made.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.



Observations		The application route was not recorded on the First Definitive Map and Statement. Footpath 13 is recorded and reaches the Old Road before running parallel to it westwards.
Revised Definitive Map of Public Rights of Way (First Review)		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 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.



Observations		The application route is not recorded on the Revised Definitive Map First Review.
Investigating Comments	Officer's	From 1953 through to 1975 there is no indication that the application route was considered to be public right of way by the Surveying Authority. There were no objections or representations made with regards to the fact that the route was not shown on the map when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	In 1929 the responsibility for district highways passed from rural district councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all 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. 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. 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.
Observations		The application route is not recorded as a publicly maintainable highway on the County council's highway records. Since the application to record the route shown on the Committee plan between points A-B-C was made, investigations have identified that Chatburn Old Road between the junctions with 3-11-FP13 and 3-11-FP14 (marked as point X on the Committee plan) and the start of the application route at point A is not part of the publicly maintainable section of Clitheroe Road and was legally extinguished in 1971.
Investigating Officer's Comments		The fact that the application route is not recorded as a publicly maintainable highway does not mean that public rights of access do not, or cannot, exist. With regards to the section of Chatburn Old Road between point X and point A it does appear that this route was legally stopped up in 1971 but this does not mean that public rights on foot may not have subsequently been dedicated and this will be considered by the Legal and Democratic Services Observations on the user evidence submitted below.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.

Observations		No records relating to the stopping up, diverting or creation of public rights along the route were found.
Investigating Officer's Comments		If any unrecorded public rights exist along the route they do not appear to have been stopped up or diverted.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way). 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).
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the county council for the area over which the application route runs.
Investigating Officer's Comments		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.

The affected land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land.

Summary

This application was based entirely on the submission of user evidence which is detailed below.

No map, photographic or documentary evidence was found to support the physical existence of a route although the application route did cross open land that may have been capable of being walked and shared part of the line with quarry access in 1960s.

Part of the route applied for was understood to have been made available as an alternative to using 3-11-FP13 between 2016-2021 during the construction of a residential housing development which necessitated the temporary closure to the public. In 2021 it appears that the application route was obstructed by security fencing and a different route, which varies from the legally recorded line of 3-11-FP13, was made available.

It was initially considered that Chatburn Old Road extended west as far as point A but whilst investigating this application it became apparent that public rights had been extinguished along the road from point X to point A in 1971. The map and site evidence shows that this part of the road still physically existed after that time and that it appeared capable of being used. The section A-X is not part of the application route but an additional section added following an investigation and confirmation of its use by the users.

Head of Service – Legal and Democratic Services Observations

Landownership

From point A to C the application route runs along land under private ownership of a limited company who has recently acquired same. There is also a caution on the land. A-X is in unknown ownership which is not unsurprising given it is an old highway. There is a caution registered affecting it also.

Information from the Applicant

The Applicant has provided the following information:

1. An application to modify the Definitive Map and Statement to upgrade a footpath at Chatburn Old Road, Chatburn to join an existing footpath which exits at Crow Tree Brow.
2. Map(s) extract marking 'paths'
3. A map showing the route of the 'proposed' modification to the Definitive Map.
4. 15 User Evidence Forms

The 15 user forms have been carefully considered and the information set out below.

Duration of Use

Periods of use vary but together collectively provide evidence of use from the 1990s up to 2021 with no gaps. Periods of use are stated as 1969- 2021; 1960 to 2021; 1980 to 2011 and 2013 to 2021; 1988 to 2010; 1989 to 2019; 2003-2020;1985 to 2021; 1971 to 2021; 1994- 2016; 1970-2021; 2006 to 2021; 1975 to 2016 ; 2000 to 2021; 1984-2001 and 2008-2021 and 2003 to 2021.

There is evidence from users up to the suggested calling into question of 2021 by blocking of the route near the kissing gate.

Frequency of Use

The use of the 15 users vary, with two using the path daily, three using the path weekly, two using the path monthly, two using the path every few month, with one stating once a year, one not specified and four stating they have used the path either daily, weekly, monthly, every few months and yearly.

Daily	Weekly	Monthly	Every few months	Once a year	Not specified	Daily, weekly, monthly, few months, yearly
2	3	2	2	1	1	4

Reasons for Use

Of those who specified their reason for using the route, the most common answer was pleasure. Two users used the route for dog walking, and one user used the route for family walks.

Walks (pleasure, exercise, recreational)	Dog walking	Family walks	Other uses
12	2	1	0

Other Uses of the Route

All the users recorded having seen others on foot whilst using the route.

Consistency of the Route

The majority of the 15 users stated that the route had always followed the same route, two stated no, and one did not provide a response.

Yes	No	Don't Know	Not Specified
11	2	1	1

Route Used

Users described their route in their user evidence forms and most were clearly using a route using the kissing gate on Old Road and then following a route alongside the quarry and then turning east to use 3-11-FP13.

14 users provided maps, drawings and aerial photographs within the user forms, the line drawn on the maps, drawings and aerial photographs by at least ten users was sufficiently similar to the line of route on the Committee Plan to give confidence that the use had been of the application route. Since completing their user forms the users have confirmed their use of A-X to link to the highway network supporting the investigation addition of A-X.

Unobstructed use of the Route

4 users were prevented from using the route, with one user specifying the metal clapper was closed. The majority of users indicated that the rest of the route remained accessible.

13 of the 15 users stated they saw no signs or notices restricting or prohibiting access to the route, whereas two stated there was a footpath sign.

12 users stated they were aware of stiles along the route, of which 2 stated they were there from 2017 to present, one stated they were temporary stiles, and one stated the developer installed the stile, and one did not provide an answer.

14 users stated no permission was given or sought to use the route, one user stated permission was given by the landowner.

One user stated the application route is a well-trodden path and has been for as long as he could remember.

Another user stated the footpath has been in use for many years as evidence by the age of the kissing gate at the start.

Another user stated the route was used from the 1960s and now would be a good time for it be recorded as a public right of way.

Another user stated the developer had shut the kissing gate as the original footpath would have run through the proposed development. They further stated the path always went around the quarry as it was unsafe to be ever used to go through it.

Two users stated the application route should be recorded as a public right of way.

Information from the Landowner

The present landowner company of the land where A-C runs has responded.

It says that it did not receive the letter in August informing them of the application. It makes the following points (many which will be considered in Conclusion section below):

1. That the Applicant has not given notice of its intention to make the application and the application is procedurally flawed.
2. The Council refer to this invalidating an application.
3. That the application should not proceed.
4. They state that the application adds a footpath along the line of a footpath stopped up.
5. They note the line of 3-11-FP13.
6. They state that the application is to add a route on the western edge of the field.
7. The line was stopped up.
8. Footpath 3-11-FP13 was temporarily diverted so that it ran along part of the application route.
9. That it is untenable if the application is based on the footpath prior to 1971 and they note that it may be based on the user evidence.
10. The use between 2016 and 2021 cannot be as of right as it was use of an existing footpath as diverted.
11. They consider the user evidence suggests a footpath was known across the field. It was difficult to identify the line and users were diverting from it. The users thought it was already a footpath and there is no sufficiently cogent evidence of use of a new footpath as of right. The plans presented by the users show more than one line and show uncertainty.
12. The application seems generated because of the owner plans to develop. The landowner has no desire to prevent use of a footpath across the site. Any change in alignment necessary will be dealt with under statutory provisions.

Conclusion

Before considering the application of common law and S31 Highways Act 1980 to the evidence it is appropriate to consider the legal points made by the landowner.

The landowner is owner of all the land where the claimed route A-C runs since this year. Some of it had been sold by the same company in 2019 and is now reacquired. It is not known when the original acquisition occurred. It would however appear that before 2020 or 2021 little action was taken by whoever owned the land.

Responses to points raised by the landowner are as follows -

1. It is understood that the Applicant has now given its notice to landowner and certified same to the County Council.
2. An absence of notification to the landowner that the application has been made does not unmake it nor invalidate it. However any appeal or application for a Sec of State direction by the applicant would be invalid.
3. The application, whether valid or not, has brought evidence to the attention of the Surveying Authority so the matter would still need to be considered.
4. (to 7) A stopping-up in 1971 does not prevent new public rights being established since 1971 on the same line as A-X or across the section of footpath near Old Lane.
8. (and 10) In 2016 part of the application route was stated by the developer to be an alternative to 3-11-FP13. This did not move 3-11-FP13 rights onto it and was not in the Order as an alternative. Alternative routes can be on existing highway, on permissive paths or a combination of both but this was

not clear and certainly not clear to any users. Any permissions were not communicated sufficiently to challenge "as of right" use.

11. Given that the application route crosses open ground it is expected that some users may recall slightly varying lines. All users refer to accessing the old kissing gate at point A but it is the case that, whilst at least 10 then refer to the route running alongside the quarry before turning east, a few consider they took a more diagonal line. It is suggested that the evidence from those referring to the line alongside the quarry and then turning east clearly support the claimed line and provide evidence of use. Should an order be made and any objections received this would benefit from more detailed witness statements being taken.

The application made is that the route marked A-B-C has already become a footpath in law and should be recorded on the Definitive Map and Statement of Public Rights of Way. It is considered that section A-X should also be recorded.

There is no express dedication in this matter therefore Committee should consider on balance, whether there is sufficient evidence from which to infer a dedication at common law from all the circumstances or for the criteria in section 31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years 'as of right' use.

Firstly, looking at whether dedication could be **inferred** at common law; for there to be inferred dedication, the evidence must show clear intention on the part of the landowner(s) to dedicate the route as a public right of way. Committee is advised to consider whether the evidence presented within this report from the various maps, and other documentary evidence coupled with the evidence on site and user evidence indicates that it can reasonably be inferred that in the past the landowner(s) intended to dedicate the route as a public right of way.

There is no map, photographic or documentary evidence to support the physical existence of the route, therefore the evidence for the circumstances and inferred intention is based upon user evidence.

From looking at the user evidence it would appear that there has never been any clear action by owners to prevent use by the public (prior to the calling into question that triggered this application) and use by the public had continued for many years such that on balance there may be sufficient evidence from which to reasonably allege an inference of dedication at common law of this route from all the circumstances. It is suggested that the use has been as of right and no element of permission was introduced when a section of the route was provided as an alternative route to 3-11-FP13. It may be appropriate initially to make the Order and see what further information may be clarified if there are any objections, before promoting to confirmation should Committee be satisfied with the quality of the user evidence. The landowner of today who challenges the application may have further information and being able to prove intention to dedicate may be complex.

Secondly looking at whether there is sufficient evidence from which to reasonably allege a **deemed** dedication under section 31 Highways Act 1980. In order to satisfy the criteria for s31 there must be sufficient evidence of use of the application route by the public, as of right (without force, secrecy or permission) and without

interruption, over the 20-year period immediately prior to its status being brought into question, in order to raise a presumption of dedication. The 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 applicant has provided evidence from 15 users in support of the application 10 of which clearly refer to use of the route on foot. Only 2 of the users stated that they had used it daily until the 'calling into question' when the route was blocked off; 3 users stated weekly use; 2 users stated monthly use and other less frequently. Some of the users state they had seen others using it and many describe it as a well-used route.

Committee's attention is drawn to the fact that although 10- 15 users can be viewed as a relatively low number, Guidance from the Planning Inspectorate indicates that use of the route must be by a sufficient number of people who together may sensibly be taken to represent the public at large. Committee may consider that these users of the route are representative of the public at large.

Their use has to be as of right without permission and it is advised that this would not be affected by the owner offering part of it as an alternative route for a Temporary Closure Order and therefore Committee may consider that the evidence as given does raise a presumption of dedication of a footpath and does satisfy the statutory test.

In conclusion, taking all of the evidence into account, Committee on balance may consider that there may be sufficient evidence of a footpath being able to be reasonably alleged to subsist and therefore make an Order and should no objections be received it would be appropriate to consider the higher test as able to be satisfied and the Order be able to be confirmed. If there are any objections it would be appropriate to clarify the user evidence by taking more detailed statements and it is suggested that Committee may consider the matter should be returned to Committee for a decision regarding confirmation once the statutory period for objections and representations to the Order has passed and further statements from users are taken.

Risk management

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

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

Paper

Date

Contact/Directorate/Tel

All documents on File Ref:
804-710

Ansar Sadiq, 01772
532435, County Secretary
and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

