Regulatory Committee
Meeting to be held on 16th September 2020

Part I

Electoral Division affected:
Rossendale South

Wildlife and Countryside Act 1981
Definitive Map Modification Order Investigation
Addition of Footpath along dismantled railway line from Strongstry Bridge to Stubbins Station
File No. 804-614
(Annex 'A' refers)

Contact for further information:
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Executive Summary

Application for the addition of a Footpath from Footpath Ramsbottom 45 north of Strongstry Road along the dismantled railway to Stubbins Vale Road (U3623) at Stubbins Station and shown on the Committee plan between points A-B-C-D-E-F-G-H, in accordance with File No. 804-614.

Recommendation

(i) That the application for the addition of a footpath on the Definitive Map and Statement of Public Rights of Way along the dismantled railway at Stubbins Station, in accordance with File No. 804-614, be accepted.

(ii) That an Order 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 a Footpath from Footpath Ramsbottom 45 north of Strongstry Road along the dismantled railway to Stubbins Vale Road (U3623) at Stubbins Station on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-B-E-F-G.

(iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Lancashire County Council

Background

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition of a Footpath from Footpath Ramsbottom 45 north of Strongstry Road along the dismantled railway to Stubbins Vale Road (U3623) at Stubbins Station on the Definitive Map and Statement of Public Rights of Way.

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

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

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

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

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

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

<u>Rossendale Borough Council</u>

Rossendale Borough Council provided no response to the consultation request.

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	7901 1873	Open junction with Footpath Ramsbottom 45 east of Buckden Cottages
B	7902 1873	Point on tarmac section of dismantled railway from where application route leaves the tarmac to continue south
C	7902 1870	Metal railing fence across application route at Strongstry bridge
D	7905 1852	Point at which the application route leaves the top of the railway embankment to deviate around factory extension
E	7906 1844	Point at which the application route rejoins the top of the railway embankment after deviating around the factory extension
F	7913 1810	Application route turns south east to descend from railway embankment north of subway
G	7911 1809	Application route passes through gap in boundary fence (currently blocked by a blue industrial container)
H	7911 1809	Junction with Stubbins Vale Road (U3623)

Description of Route

A site inspection was carried out in February 2020.

The application route commences at a point on Footpath Ramsbottom 45 east of Buckden cottages and approximately 40 metres north of the junction with Strongstry Road. (Point A on the Committee plan).

From point A the route extends east through a gap in a stone wall along a tarmac path clearly signed as part of National Cycle Route 6. Wooden bollards positioned across the gap restrict the width to exclude cars.

The application route follows the tarmac path for approximately 5 metres onto land which once carried a railway line (now dismantled) at point B. At point B the tarmac

path turns 90 degrees to continue north along the dismantled railway towards Irwell Vale. The application route turns 90 degrees south at this point to go the opposite way along the dismantled railway along a clearly defined but unsurfaced track.

After approximately 30 metres Strongstry Road passes under the former railway which was carried by Strongstry Bridge at point C. Entry onto the bridge is fenced off by what appears to be quite an old metal railing fence. Several of the metal railings can be seen to have been cut out of the fence and it is easily possible to step through the fence at this point and to continue along the application route. Immediately on the south side of the metal railing fence is a second metal fence which has been erected immediately to the rear of the older fence and this has also been cut so that access is available by stepping through the gap in the two fences in one action.

Once through the fences it is possible to continue along the application route over the railway bridge and south along the dismantled railway on a clearly defined track with evidence of recent use (footprints in the mud). Approximately 30 metres from the bridge a small trench has been cut across the full width application route. It is possible to step across the trench – which exposes fresh earth and appears to have been recently cut - to continue along the application route to point D.

At point D the application route descends east from the top of the railway embankment down a set of wooden steps to run along the bottom of the railway embankment adjacent to fencing separating it from the East Lancashire Railway - for approximately 60 metres before then ascending the slope via a second set of wooden steps to re-join the former railway track at point E.

From point E the application route continues south along the top of the dismantled railway for approximately 350 metres to point F where a fence is positioned across the dismantled railway immediately prior to a subway which passes underneath and formed the original access to Stubbins Station. From point F the application turns to continue in a west south westerly direction alongside the wall of the subway to descend to point G where a large blue industrial metal container has been positioned across the route to prevent access. Signage on the fencing adjacent to the container states that no unauthorised persons are allowed beyond that point and that for their own safety persons should not enter due to the occurrence of fallen tree branches. Beyond the blue metal container the application route continues for a short distance to point to the junction with Stubbins Vale Road (U3623).

Whilst access onto the application route was not available to or from the application route at point H local dog walkers passing the site directed the Investigating Officer to a gap in the fencing to the rear of a War Memorial just north of point H which they explained had been used to access the route since it was blocked at point G.

From the site inspection it appeared that a substantial trodden track had existed along the full length of the application route consistent with the user evidence and that frequent recent use was still being made of most of the route, except at point F where it was blocked.

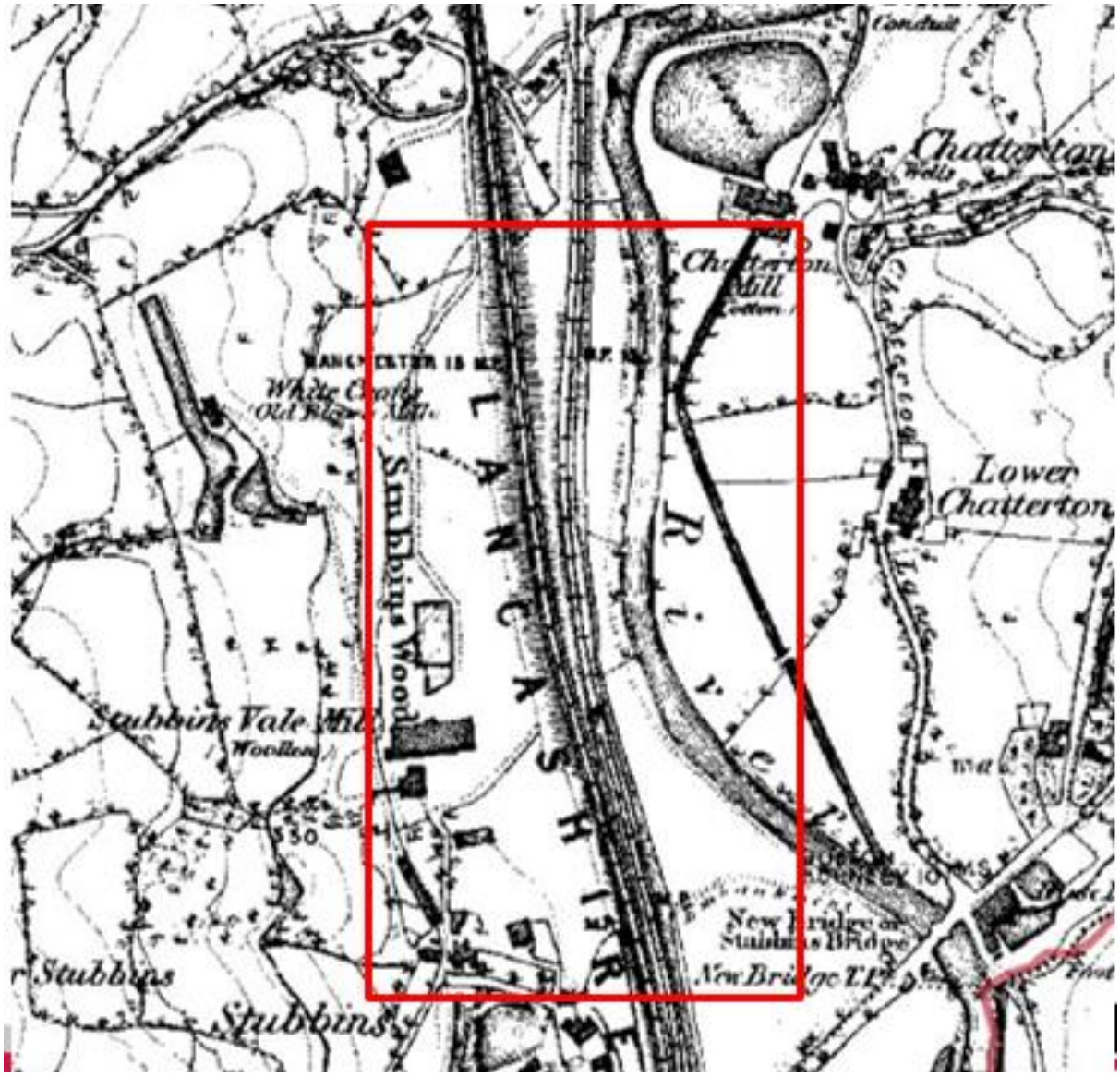
Map and Documentary Evidence

The application under consideration relates to the addition of a footpath along the former track bed of the former East Lancashire Railway which was opened in 1846. The railway between Ramsbottom and Accrington ceased to operate in 1966 and the track bed removed in approximately 1970-1972.

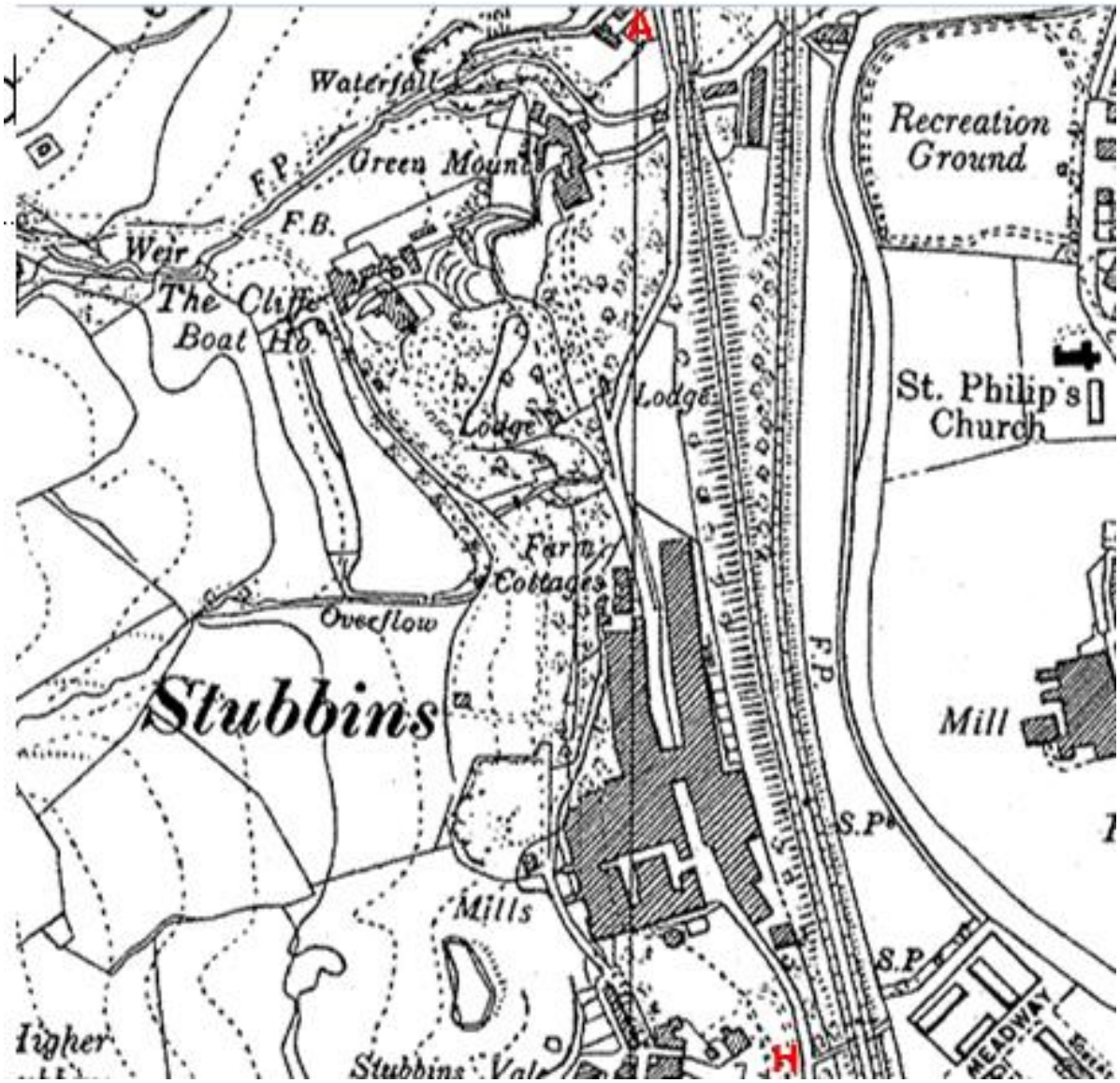
There is no claim that the application route existed as a footpath prior to the closure of the railway and removal of the railway track and for that reason many of the usual maps, plans and other documents which would normally be examined are not included in this report.

Document Title	Date	Brief Description of Document & Nature of Evidence
6 Inch Ordnance Survey (OS) Map 79	1850	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-47 and published in 1850.[1]

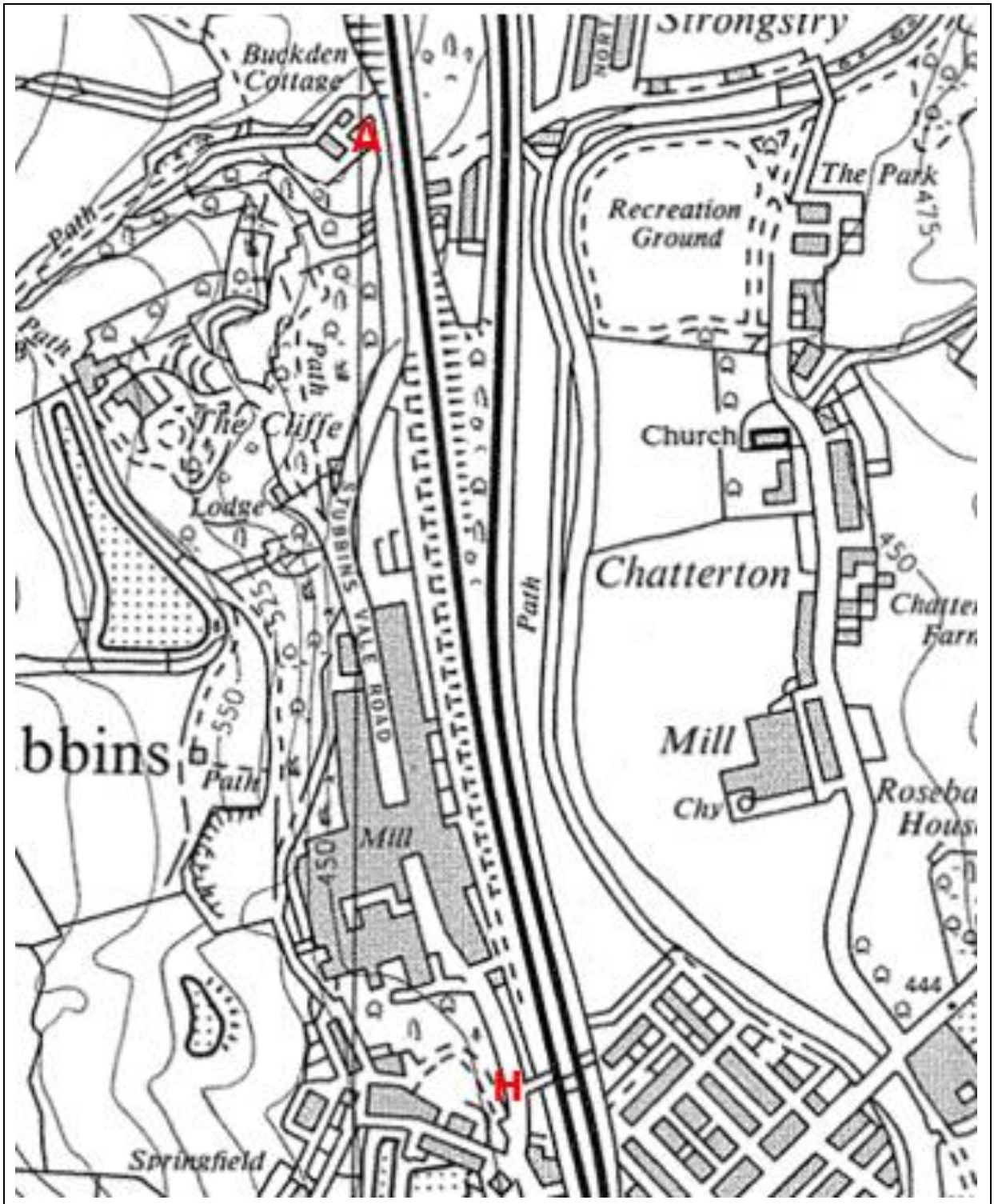
[1] The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published 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		Included by way of background information - The application route is not shown but the map has been included to illustrate that the railway was in existence from the mid 1800's with no suggestion that the route existed at that time.
Investigating Officer's Comments		The application route did not exist in 1844-47.
6 Inch OS Map **Sheet 71NE**	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.



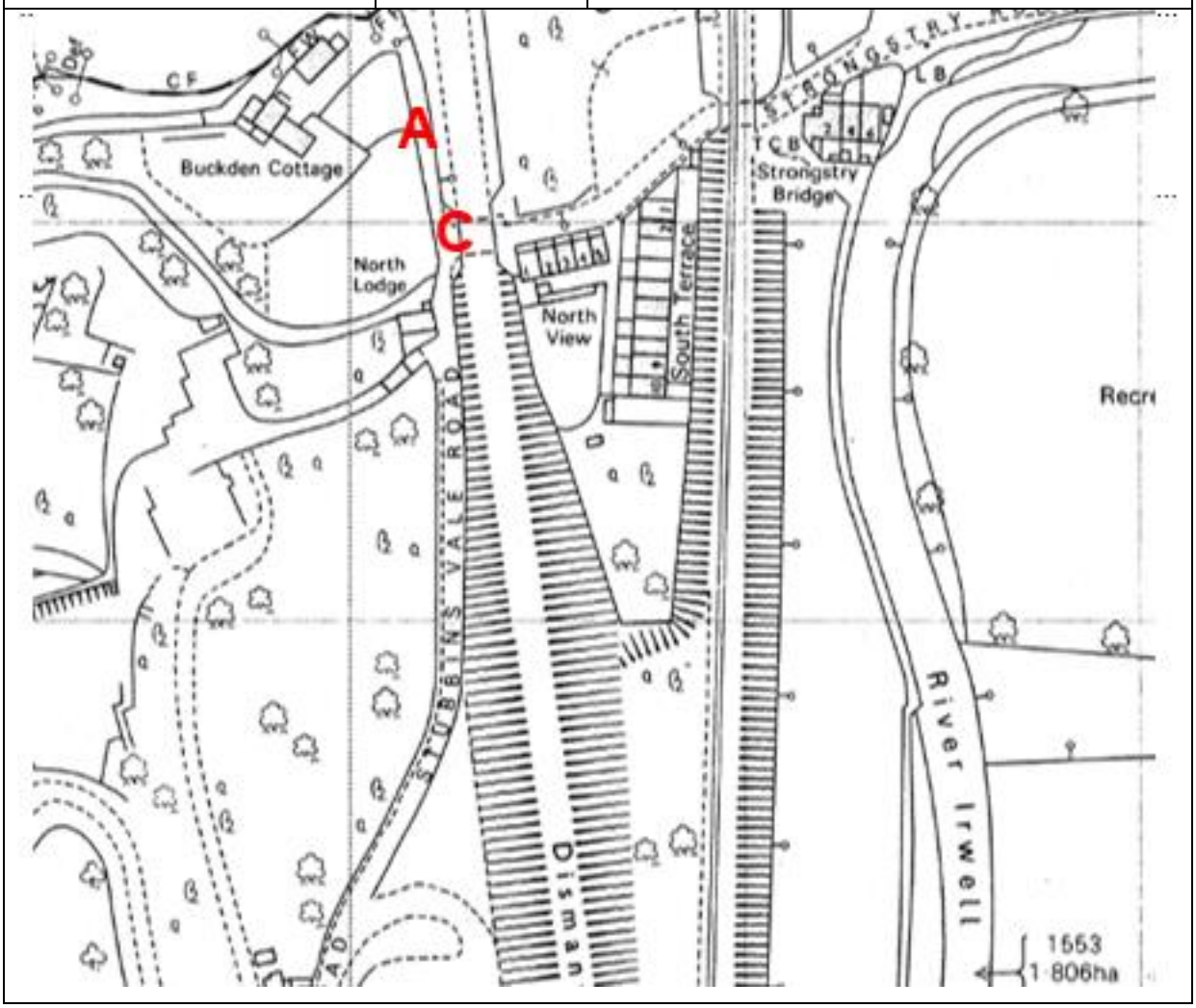
Observations		The application route is not shown and the railway was still in existence.
Investigating Officer's Comments		The application route did not exist when the used as the base map for the Revised Definitive Map was revised in the 1930s.
6 Inch OS Map **Sheet 71NE**	1964	Further edition of the 6 inch OS map revised 1962-1964 and published 1968.

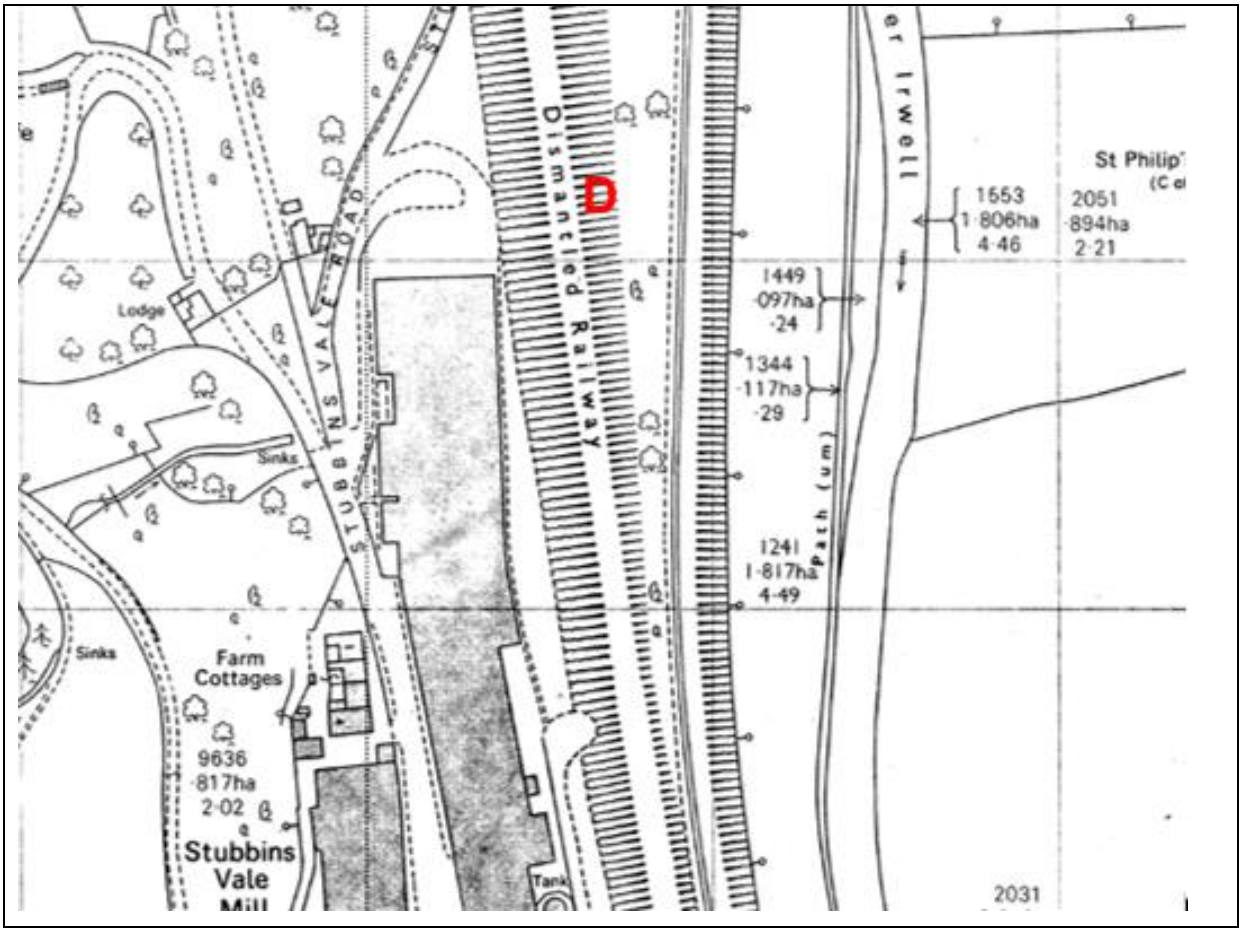


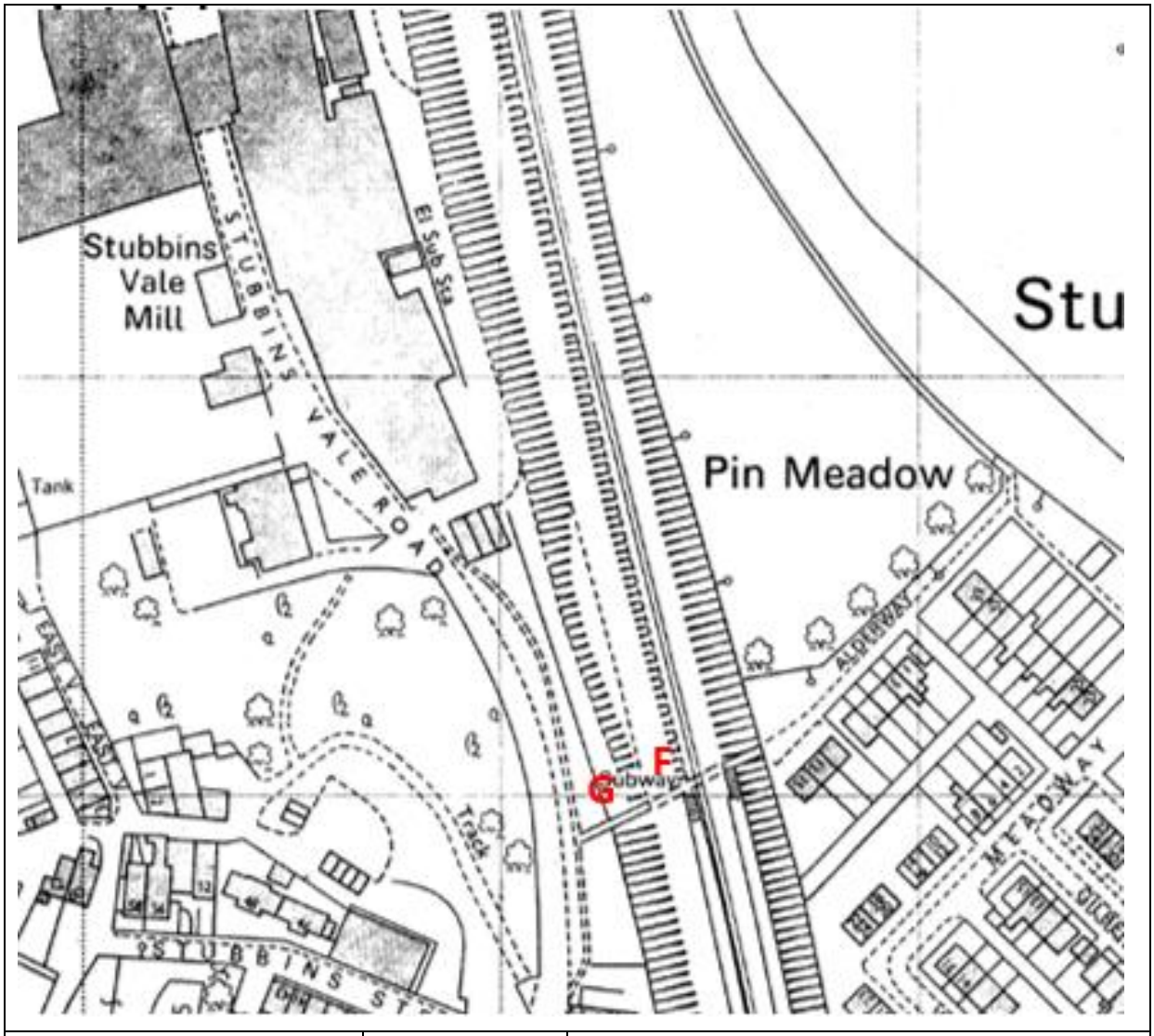
Observations		The application route is not shown and the railway line is still shown to exist.
Investigating Officer's Comments		The application route did not exist in the early 1960s (when the map was revised) immediately prior to the closure of the railway line in 1966.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view

		on GIS.
Observations		Tree cover means that it is not possible to see in detail the land crossed by the application route. The railway line can be seen clear of trees and it appears that the railway line may still be in existence when comparing it to the railway line which remained unaffected by the closure which

		runs parallel with it.
Investigating Officer's Comments		It is not possible to see from the photograph whether access was available along the application route on foot and no inference can be drawn with regards to the existence of public rights.
1:2500 OS Map SD 7818-7918	1983	Further edition of 25 inch map reconstituted from former county series revised in 1982 and published 1983 as national grid series.

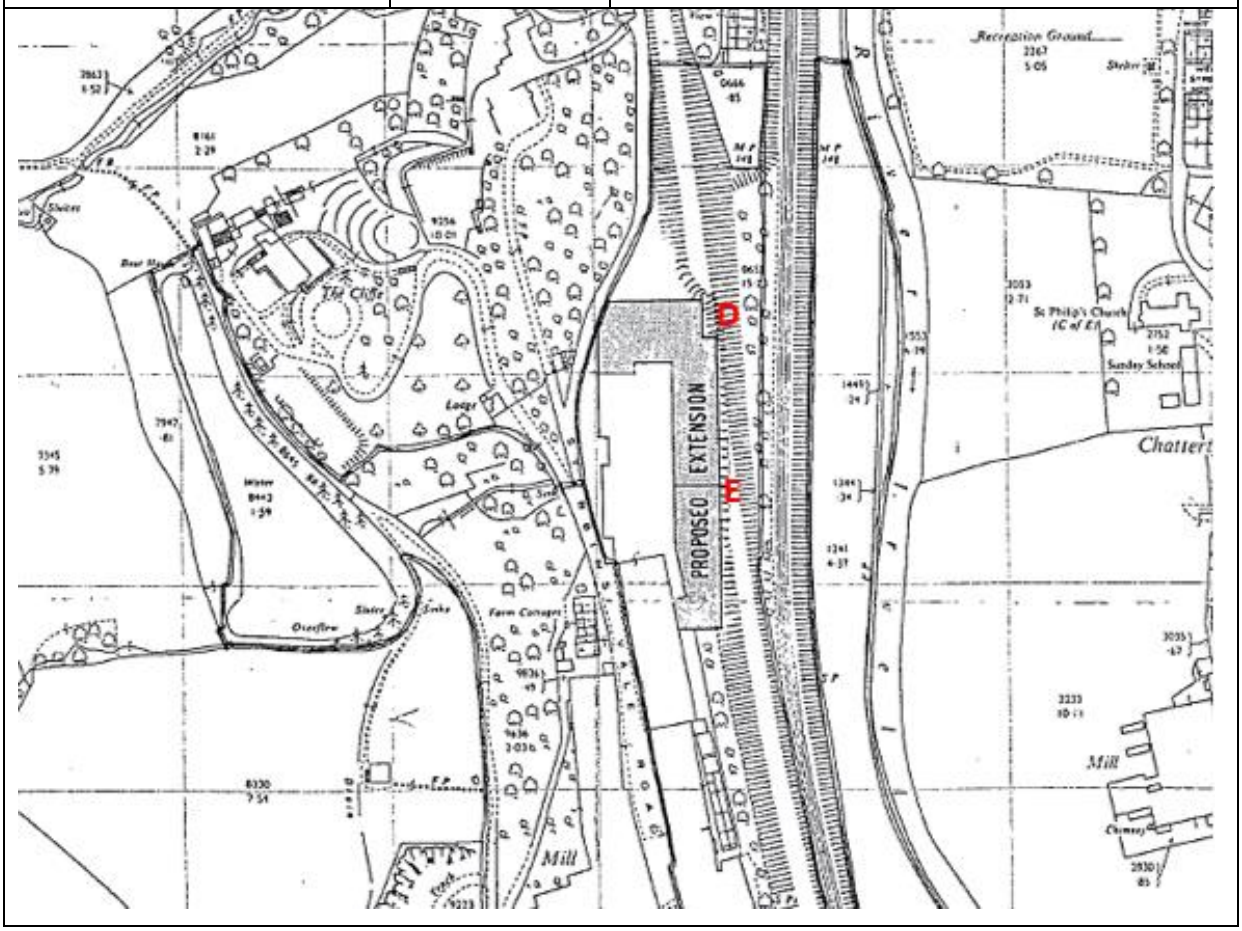


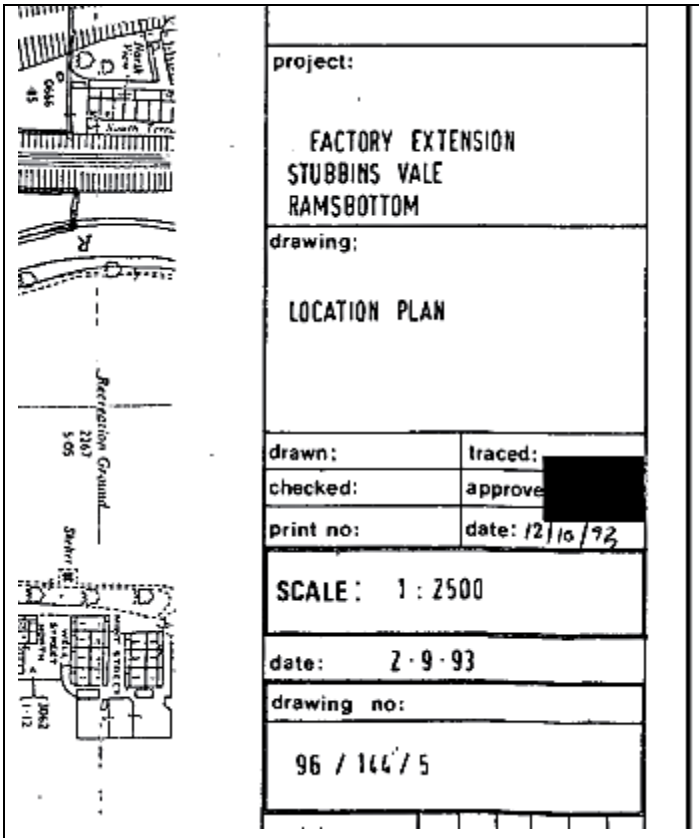

D
Dismantled Railway
STUBBINS VALE ROAD
Lodge
Sinks
Sinks
Farm
Cottages
9636
·817ha
2·02
Stubbins
Vale
Mill
Tank
1449
·097ha
·24
1344
·117ha
·29
1241
1·817ha
4·49
1553
1·806ha
4·46
2051
·894ha
2·21
St Philip'
2031



Observations		The application route is not shown. However the railway is shown to have been dismantled. From point A a solid line is shown across the start of the route suggesting the existence of a boundary through which it would have been necessary to be able to pass through. At point C the route is shown to cross the railway bridge. Dashed lines are used to indicate the extent of the bridge structure but there is no solid line which would indicate the existence of some sort of boundary fence across the route. Between point C and point F a clear strip is shown along the top of the railway embankment with no deviation of the route down the embankment and then back up onto it between point D and point E.

		Between point F and point G no route is shown coming off the top of the embankment and a boundary fence is shown across the route at point G.
Investigating Officer's Comments		This is the earliest OS map examined to show that the railway track had been removed. It looks like it would have been possible to walk the length of the dismantled railway between point C and point F in 1982-3 consistent with the user evidence provided. It also appears that the route at that time would have been along the top of the embankment without a need to deviate off the top of the embankment between point D and point E as the factory to the west of the railway had not been extended at that time. It is unclear from the OS map whether informal access existed onto and off the dismantled railway between points A-B and points F-G-H.
Details of Planning Permission granted to extend Stubbins Vale Mill	1993/1994	Copy of Planning Permission granted by Rossendale Borough Council in 1994.

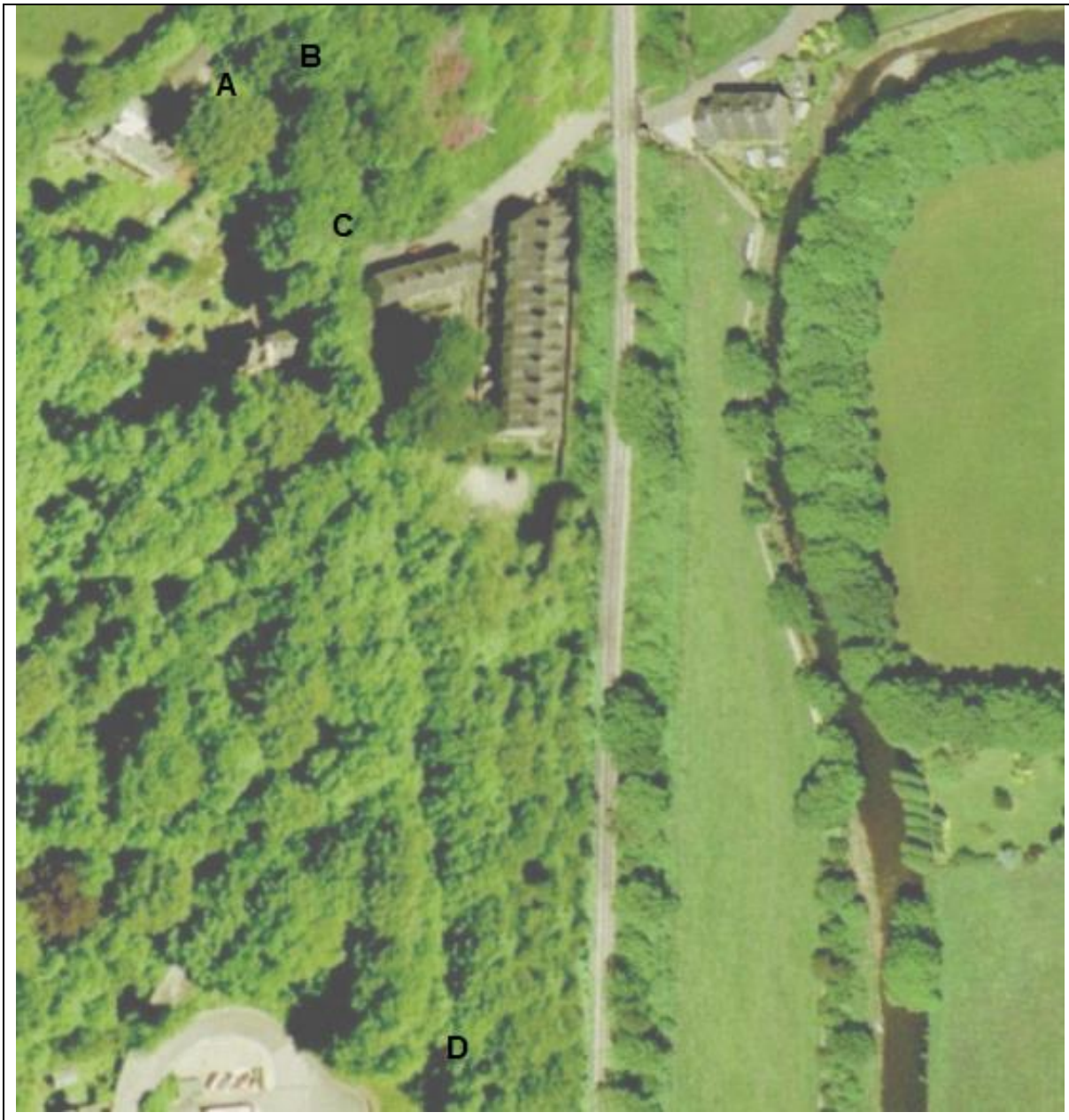




Observations		The applicant made reference to the application route being diverted and the provision of wooden steps following the granting of planning permission referenced as Application 13/518 to extend Stubbins Vale factory. Enquiries were made to the Borough Council who provided a copy of the Planning Permission granted in 1994. Two plans where attached to the Planning Permission referenced as drawing nos. 96/144/5 and 96/144/5a. Planning permission was granted to extend the factory with associated car parking, servicing and landscaping. A note included in the granting of planning permission stated that the permission should be read in conjunction with a letter from the Agent/Landowner dated 25th November 1993 in relation to the submission of a plan referenced 96/144/9 showing revisions to the yard area and the applicant's willingness to allow the public to 'continue to use the informal footpath along the disused railway

		embankment.' Further enquiries were made to Rossendale Council regarding the letter and plan but the Borough Council were unable to find either.
Investigating Officer's Comments		The extension of the factory resulted in changes to the embankment and appears to have resulted in the diversion of the application route between point D and point E. References to use of the route along the embankment as part of the planning process suggest that it was already in use by the public prior to the request for planning permission in 1993 and supports the user evidence submitted as part of the application. The landowners appear to acknowledge that use had been made of the route along the embankment and accepted continued use along what was described as an 'informal footpath.' However, the knowledge of public use but absence of any mention of a need to divert any rights suggest it was not considered to be a public right of way at the time but that should be taken in the context that at that time public rights of way matters were regarded with less rigour than now. The wording of the missing letter is important as it could have indicated acceptance that rights already existed, dedication of new rights or permission for the public without dedication. Without the letter no particular interpretation can be presumed.
Emails provided by the applicant relating to the provision of steps on the application route		Emails were submitted by the applicant in support of the application.
Observations		The applicant explained that emails from senior employees of Voith demonstrated the previous owners of the lands consent to public access and works undertaken (construction of the steps) to facilitate access. The email referred to was from Harry Storey who, it is explained, worked at Voith 'for many years' and was sent to

		Andrew Rothwell who also worked at Voith. In the email Harry Storey explained that the steps were put in for public use, due to the bridge being unsafe at the Strongstry end. He also explained that the railway was for public use to walk on and that the company gave permission for people to walk across the car park instead of them coming down further on. As part of the investigation of this application the Investigating Officer contacted Harry Storey who explained that he worked at the factory from 1969 to 2010 and was Operations Manager from 2000- 2010. Contact was also made with Andrew Rothwell who also worked for Voith who confirmed that the steps referred to in the email from Harry Storey were the ones along the old railway between points D and E on the Committee plan and that permission was given for walkers 'etc.' to use the rear carpark of what was Voith instead of using the old Railway path if they so desired. He observed that the footpath (application route) had been used for more than 20 years by mill workers on lunch breaks, people out for a walk and also dog walking. He also commented that there was also a path that led from the bottom of the steps D and E that took a course along the side of the railway and exited at the rear of the houses in Strongstry which was also used by the residents of Strongstry.
Investigating Officer's Comments		The emails and further information provided detail knowledge of use by the public by former employees of the landowner and an understanding that use of the route was accepted by the landowner who provided steps to assist the public and also gave permission for the route to be accessed from an additional point via the factory carpark.
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations		The photograph was taken during the summer months when the trees were in full leaf and it is not possible to see the application route in any detail.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
Photographs supplied by county council project officer	2007	An officer currently working on various cycleway initiatives within the county was consulted about the application and provided a series of photographs of the application route taken in 2007. He explained that in 2007 he worked in the 'Remade' team which was part of the former Environment and planning Directorate.

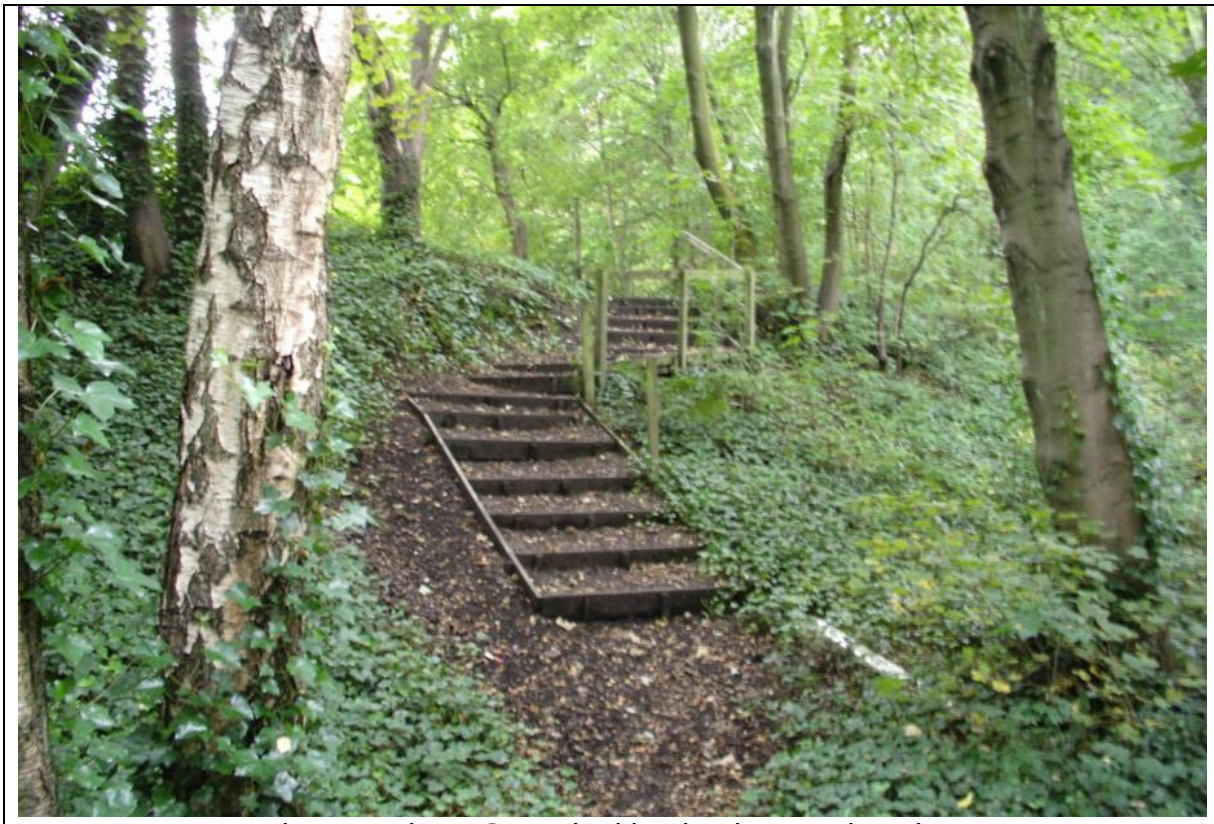
		The photographs were taken when the remade team where undertaking a feasibility study into the creation of a promoted cycleway along numerous sections of the dismantled railway including the application route.

Photograph 1 - Point A

Photograph 2 - Between point B and point C

Photograph 3 - Fence at point C looking towards point B

Photograph 4 - Steps from point D

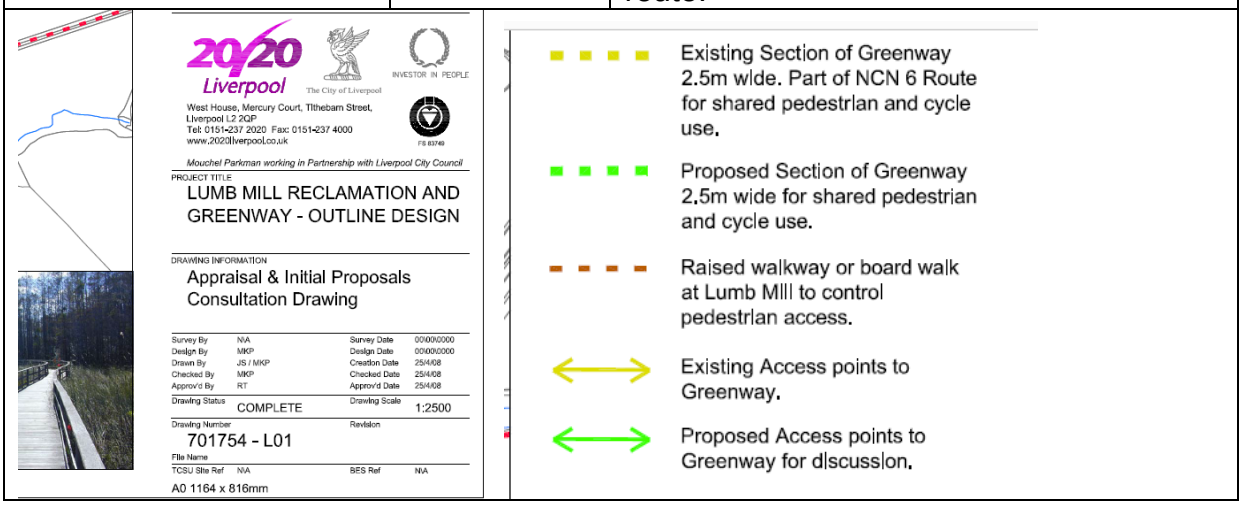


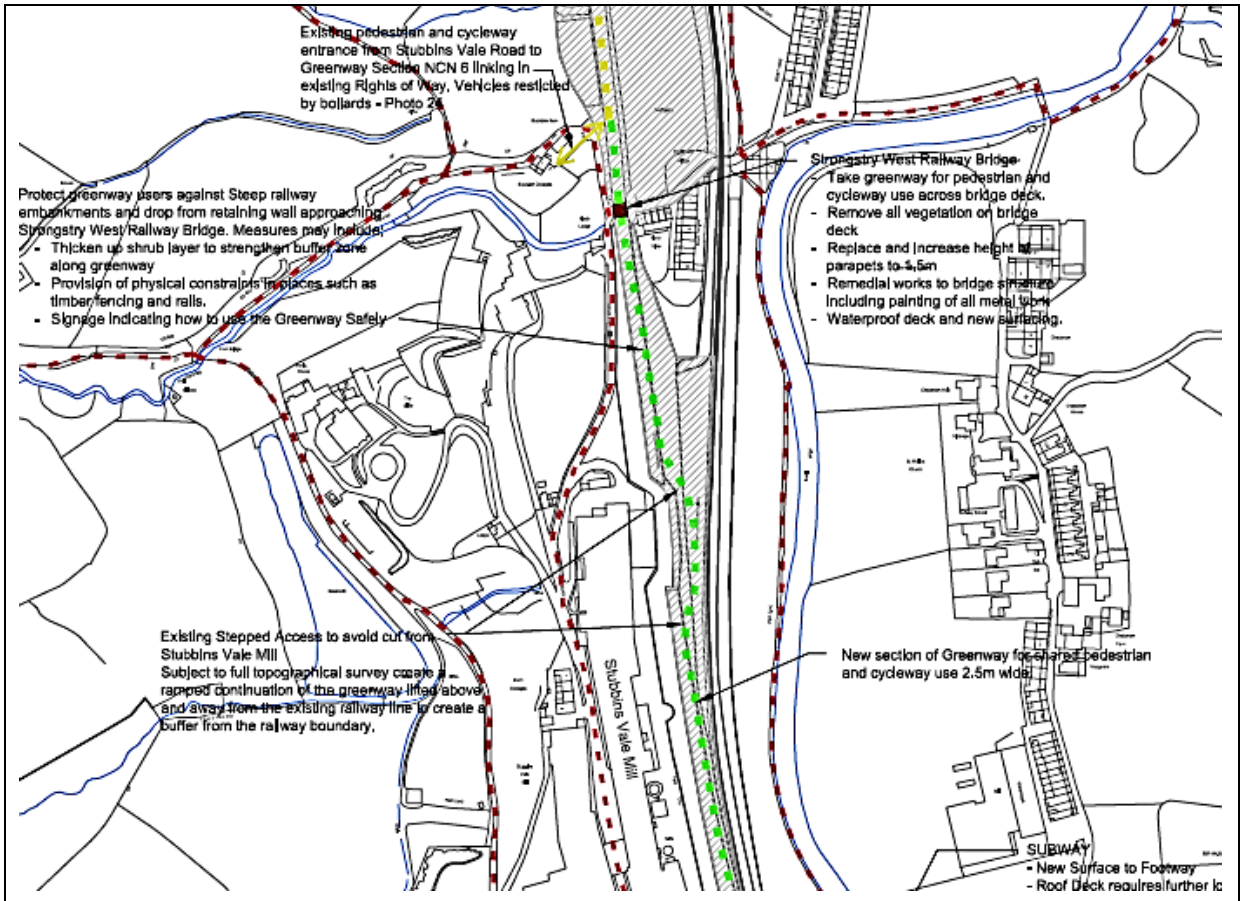
Photograph 5 - Steps looking back towards point D

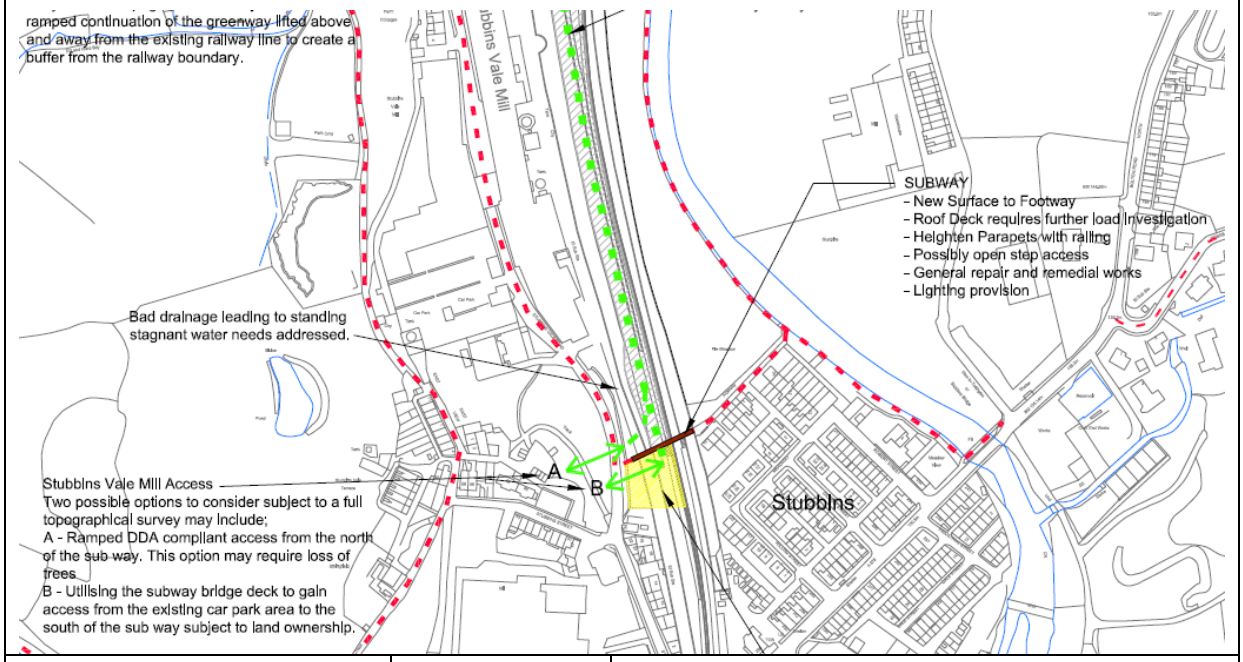
Photograph 6 - Point G

Observations		Photograph 1 shows the application route at point A. The tarmac cycle route leading north towards Irwell Vale was already in existence and signed as a cycle route at that time. The application route from point A to point B appeared open and available to use and from point B heading south

		towards point C the application route can be seen as a wide and substantial unsurfaced track. Photographs 2 and 3 show the fence across the route at point C. This appears to be the same fence that is across the route today. A gap can be seen which has been cut out of the fence and which appears to be large enough to climb through. The track both before and after point C looks to be wide and clear of vegetation and appears to be capable of use. Photographs 4 and 5 show the wooden steps down the embankment from point D. They look to be quite worn in 2007 suggesting that they were constructed some years earlier. On both photographs the steps are clear of vegetation and the path looks to be well used. Photograph 6 shows the application route passing through a gap in the wooden fence at point G. From looking at the formation of the fence the gap appears to have been provided rather than having formed due to a break in the fence.
Investigating Officer's Comments		The application route existed and was capable of being used in 2007. The photographs were taken when the trees were in full leaf but the route is not overgrown and the path appears to be well worn. The fact that the fence existed across the route at point C did not appear to have prevented or deterred use.
Lumb Mill Reclamation Greenway Project	2008	Plan of proposed construction of a cycletrack/greenway along the application route.







Observations		This plan was drawn up in 2008 by county council officers involved in looking at extending and linking sections of existing, or recently agreed and constructed cycleway within Rossendale. The plans show the proposed work along the application route which would be required

		to provide a 2.5 metre wide shared access (walkers and cyclists) path which would then be incorporated into the National Cycleway Route. The plan refers to the existing stepped access between point D and point E but makes no specific reference to whether the application route was currently in use or its believed status other than the fact that it was not shown on the plan as a public footpath.
Investigating Officer's Comments		The fact that the application route was not shown on the plan as a public footpath is not surprising as it is not recorded as one on the Definitive map and Statement. Discussions to construct the route as a cycleway or 'Greenway' do not necessarily mean that the route was not already considered to be a public footpath – or could not become a public footpath – as the project was looking specifically at creating a promoted route open to cyclists which would be physically constructed to a high standard. Many existing public footpaths were utilised as part of the cycleway/greenway project at this time. The project officer involved in the scheme at the time explained that whilst much work was undertaken on the ground from the 1990s through to more recently the public legal status of the routes constructed often wasn't recorded. Concerning the application route itself the project officer recalled that in 2007-08 there already appeared to be significant use of the application route on foot. He explained that although the landowners at that time (Voith) agreed in principal to the construction of the greenway/cycleway this was never progressed for financial reasons and that it was deemed a low priority due to the fact that there was a good alternative to the application route via Stubbins Vale Road which was owned by the county council and, at that time, received very limited use.
Remade photograph	2008	Photograph taken by county council project officer in 2008.

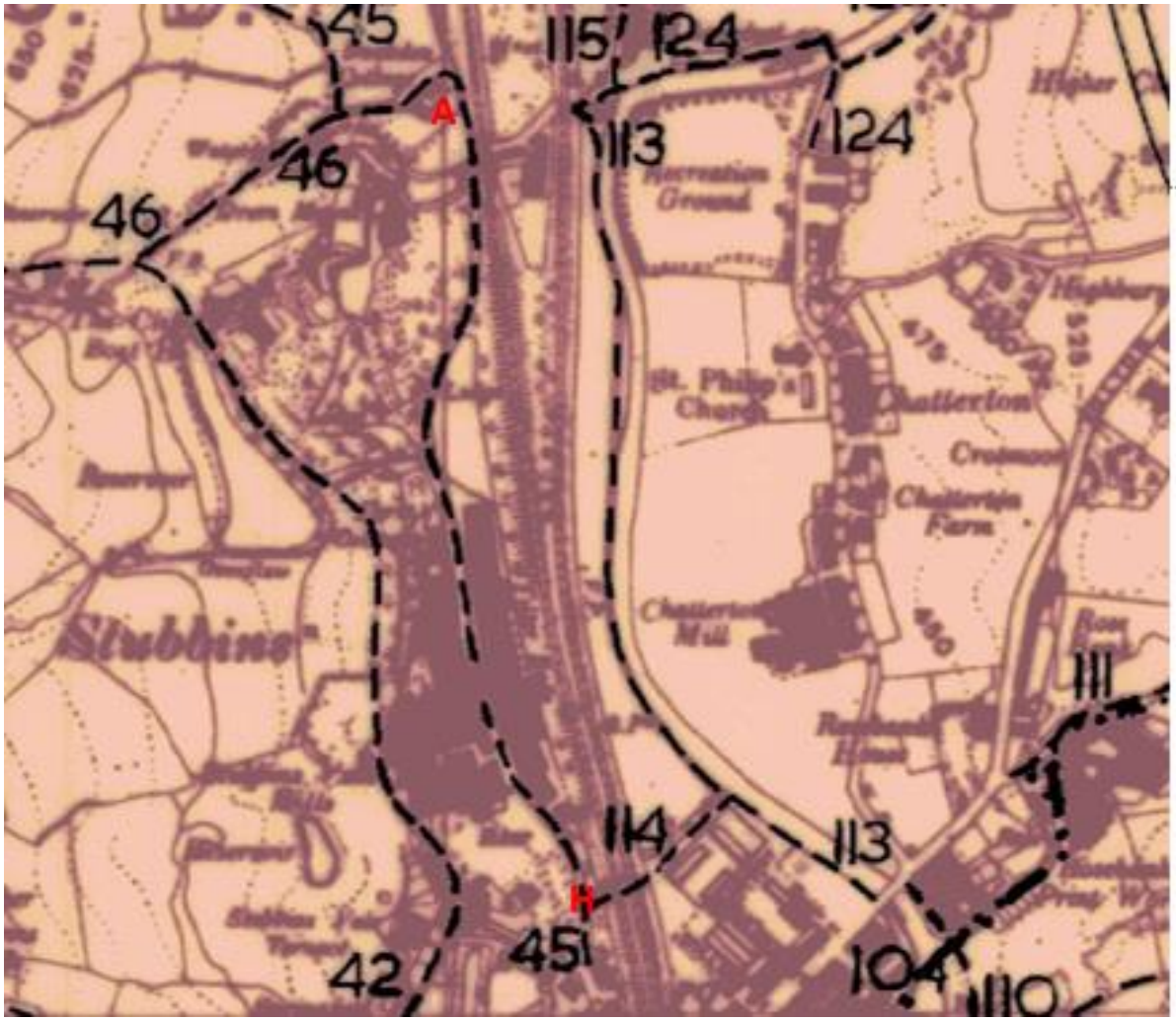
Observations		The photograph shows the fence across the route at point C and shows more clearly than the photographs taken a year earlier the gap cut in the fence to allow access.
Investigating Officer's comments		A gap existed in the fence at point C allowing access along the route in 2008 and supports the user evidence submitted from members of the public claiming to have used the route.
Aerial Photograph	2016	Aerial photograph available to view on GIS.

A
D

Observations		The photograph is of very limited evidential value due to the fact that the route is obscured by tree cover. However, particularly between point A and point D a fine line can be seen in the trees consistent with the line of the application route.
Investigating Officer's Comments		Taken with all other available site evidence the application route probably existed in 2016 although it is not possible to confirm from the aerial photograph whether access was available along the full length.
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 where 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.
Observations		The application route is within Ramsbottom which was a municipal borough in the early 1950s so a parish survey map was not compiled.
Draft Map		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.
Observations		The application route was not shown on the Draft Map and no objections or representations were made to the county council about it.
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 was not shown on the Provisional Map and no objections or representations were made to the county council about it.
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 shown on the First Definitive Map although this is not surprising as the railway was still in existence in the 1960s and there is no suggestion that the application route came into existence until the closure of the railway and removal of the track in the early 1970s.
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 25th 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 1st 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 shown on the Revised Definitive Map.
Investigating Officer's Comments		From 1953 through to 1973 there is no indication that the application route was considered to be a public right of way by the Surveying authority. There were no objections or representations from the public to the fact that the route was not shown when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map. The fact that the application route is not shown is not surprising because the railway was still in existence in the 1960s and there has been no suggestion that the application route came into existence until the closure of the railway and removal of the track in the early 1970s.
Highway Adoption Records including	1929 to present day	In 1929 the responsibility for district highways passed from district and

maps derived from the '1929 Handover Maps'		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. 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 being publicly maintainable on the List of Streets by the county council and that part of the application route between point A and point B which comprises of part of the tarmac surfaced cycle route promoted as part of the National Cycleway has no recorded public legal status.
Investigating Officer's Comments		No inference can be drawn regarding public rights.
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		There are no Highway Act 1980 Section 31(6) deposits lodged with the county council for the area over which the application route runs.
Investigating Officer's Comments		There is no indication by any landowners under this provision of non-intention to dedicate public rights of way over their land.
Photographs of the application route in use		The applicant submitted a number of photographs said to illustrate the fact that that the application route had been used by families and railway enthusiasts in the past.

Photograph 1

Photograph 2

Photograph 3

Observations		Several of the photographs were submitted by an individual who had completed a user evidence statement (Ann Howard) including those reproduced as photographs 1 and 2 above. Mrs Howart explains that the picture of the snow was taken in 1996 and the other photograph dated from the early 1990s. It is not possible to pin point exactly where on the route either photographs were taken. Photograph 3 is undated and shows a person leaning over a fence to take a picture of the East Lancashire Railway. It is not possible to be sure of the exact location but could have been between point D and E on the application route.
Investigating Officer's		The photographs were submitted to

Comments		illustrate use of the application route. Whilst they may help provide useful supporting information – particularly when read in conjunction with completed user evidence forms – on their own they are of little value as it is unclear exactly where they were taken or whether the person taking the photograph or using the route was doing so with permission or in the belief that the route was a public right of way.

The affected land is not designated as access land under the Countryside and Rights of Way Act 2000 and is not registered common land. Between point A and point C the land crossed by the application route has been designated as a biological heritage site by the county council.

Landownership

The land crossed by the application route between point A and point C is in the registered ownership of Michael Robert Lord of three different addresses in Canterbury, Germany and Rochdale. The land was purchased in March 2017 and is subject to the requirement to maintain a stock proof fence long part of the boundary referred to as A-B-C (or X-Y-Z) in the title documents and shown on the title plan. This corresponds to the erection of a stock proof fence across the application route at point C.

Covenant included in Title LA858164:

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The following are details of the personal covenants contained in the
Transfer dated 14 January 2000 referred to in the Proprietorship
Register:-

"Within one month of the date hereof the Transferee will erect a
stockproof fence between the points A-B-C on the plan annexed hereto
and shall thereafter maintain the same in good repair"

NOTE: The points A-B-C referred to are shown marked X-Y-Z in blue on the
filed plan.
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The application route from point C through to point H is owned by Melba Products Limited who purchased the land in May 2019. A similar requirement to maintain stock proof fencing in the proximity of the railway is included in the Title document (LA 444612) with reference to lettering A-B-C and D-E but the Land Registry plan does not include any lettering to confirm the locations referred to.

Lancashire County Council own Stubbins Vale Road (LA 706148).

Summary

The application relates to use of a dismantled railway and is based primarily on the submission of a substantial amount of user evidence. Map and documentary

evidence confirms the existence of the railway and the fact that the rails were still in situ until the early 1970s and the earliest OS map to show the railway as having been dismantled was published in 1983 (having been revised in 1982).

Of significance is the fact that in 1993 the company owning the land crossed by the application route applied for planning permission to extend Stubbins Vale Mill and in doing so would interfere with the railway embankment along which the application route ran. Unfortunately much of the correspondence relating to the granting of planning permission could not now be found but it did appear that there was already use of the railway line by that time by the public and that the company acknowledged this use, agreed to it continuing and appear to have been responsible for the construction of wooden steps in diverting the original route to allow for their factory extension.

The exact date that the steps were constructed is not known but it believed to have been soon after planning permission was granted and reference to the path being closed while work was carried out and the path re-routed appear to pre date the twenty year period back from when the route was blocked off by the current landowner.

Photographic evidence from the 2007-2008 shows the route very similar to how it was when the Investigating Officer inspected the route in 2019 and the gap in the metal railing fence at point C appears to have been the accepted point of access.

In summary, the available map, documentary and photographic evidence, together with the recollections of the route from the county council project officer looking at the creation of a cycleway along the route, supports the evidence of use submitted.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The Applicant provided the following supporting information:

1. A map extract marking existing 'paths' and marking the locations of the obstructions placed on the application route in November 2019 (at points C and G on the Committee plan).
2. A Map showing the route of the 'proposed' DMMO.
3. Emails from senior employees of Voith said to demonstrate the previous landowners consent to public access and works undertaken (steps created) to facilitate that access.
4. Photographs of the steps installed by the previous owner to facilitate 'public' access.
5. Evidence of the strategic intent by Local Authority to designate the path as a cycle route once funding was available, and creating section 19 of the National Cycling Network Route 6.
6. Seven user evidence forms (forms provided by Lancashire county council).
7. Pictures of the application route in use by families and railway enthusiasts.
8. Forty Eight user evidence forms (forms provided by Ramblers Association)

9. Photographs of the blue metal industrial container used to block the application route at point G in November 2019.
10. Minutes of Residents Association meetings discussing attempts to communicate with and co-operate with the new owners of the land.

Duration of Use

The user evidence forms collectively provide evidence of use going back as far as 1984 and up to 2019 when the application to record the right of way was made.

20+ Years Including the years (1999 to 2019)	1-19 Years	Not Specified
27	26	2

Frequency of Use

The majority of the 55 users stated that they used the route weekly or daily with five stating that they used the route more than once per day. One user simply specified that they used the route 'regularly' and two did not specify.

More than once daily	Daily	Weekly	Monthly	Yearly	'Regularly'	Not Specified
5	9	27	10	1	1	2

Reasons for Use

Of those who specified their reason for using the route, the most common answer was for dog walking. Others noted scenic walks and leisure and one user stated that they used the route for commuting in addition to recreation.

One user stated use on horseback in addition to use on foot and one stated use on bicycle in addition to use on foot.

Other Users of the Route

Seven users recorded having seen others using the route, three stated this to be constant during their own use, one stated the route was popular, one that they saw others daily and one stated that they saw others frequently. One did not specify how frequently they saw others using the route.

Of these seven all recorded others using the route on foot, three recorded use by others on bicycles and two recorded use by others on horseback.

Consistency of the Route

The majority of the 55 users stated that the route had always followed the same route, of those nine users stating the route had changed most cited a redirection

Has the Application Route Always Followed Same Course?			
Yes	No	Don't know	Not Specified
42	9	2	2

using steps built in 1994, one mentioned diversion of the route due to a fallen tree.

Unobstructed Use of the Route

None of the 55 users recalled having been prevented from using the route.

All but one of these users had seen no signs or notices restricting or prohibiting access on the route. The one user who did acknowledge signs along the route was highlighting those erected in 2019 with the blocking of the route, which prompted the application

Fifty users were aware of no stiles or gates along the route; three responded that they did not know.

Most users did not specify having seen obstructions on the route, of the thirteen that did twelve referenced railings at Strongstry Bridge, which have been opened up. One user suggested this opening was made in the 1990s, another stated that it had been open since 2005. The applicant states that the previous landowner created the opening in the fence.

The one remaining user who recorded an obstruction referred to barriers erected during the construction of the steps, which diverted the route circa 1994.

Route Obstructed		
Yes	No	Not specified
13	1	41

Information from the Landowners

Melba Swintex responded to the consultation, first confirming their landownership.

In relation to the application route they highlighted unstable vegetation which they believe to be a hazard and could lead to potential injury claims. They noted steel fencing originally erected at either end of the route by the previous occupants in order to prevent public access and stated that this fencing was cut down without permission.

Melba Swintex included a letter from the Managing Director of Voith, the previous occupants of the site, explaining that Voith did not give consent for the public to walk

across the land and they did in fact experience issues with public trespassing over the land.

Melba Swintex acknowledged that they had blocked the route and cited health and safety concerns. They stated that steel fencing was erected at either end of the path to deter trespassing, along with warning signs indicating that the land was private and that any access to the public was prohibited. They noted that within a matter of days this fencing was cut down. Melba Swintex further stated that none of its personnel had been approached about the footpath before this occurred, and furthermore they experienced further trespassing onto the property. They noted that as a result of this they once again blocked off the path with a much more substantial barricade.

Mr Martin Lord also responded to the consultation, first confirming his landownership. Mr Lord went on to note that his land was crossed by an 'unadopted footpath' which forms part of National Cycle Network route 6.

Mr Lord drew attention to the requirement to maintain a stock proof fence long part of the boundary referred to as A-B-C (or X-Y-Z) in the title documents and shown on the title plan. This corresponds to the erection of a stock proof fence across the application route at point C. When asked for further details relating to the hole in this fence Mr Lord was not able to identify who had opened it despite efforts to establish this through prior investigations.

Mr Lord passed on information provided by the secretary of the Strongstry residents association who estimated that the hole in the old fence had been created approximately 15 - 20 years ago.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

- Substantial user evidence.
- Absence of signs and notices along the route stating that the route was not public prior to 2019
- Absence of action taken by landowners to discourage use of the route.
- Map and other documentary evidence supporting the physical existence of the route since at least the 1970's.
- Provision of alternative access via steps when part of the original route was affected by development in 1994.

Against Making an Order(s)

- Access along the route for at least part of the time period was via a hole cut in a fence across the route at point C.

Conclusion

The application is that the route A-H has already become a footpath in law and should be recorded on the Definitive Map and Statement of Public Rights of Way. The majority of the users claim that the route has always followed the same route apart from 9 users who acknowledge the fact that the route did alter slightly in 1994 when the then factory owner constructed wooden steps to enable the public to continue to use the route after they had implemented the provisions in the 1994 planning permission.

As there is no express dedication 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 section 31 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.

Considering initially whether there are circumstances from which dedication could be inferred at common law. It is advised that Committee has to consider whether evidence from the maps and other documentary evidence coupled with user evidence indicates that it can be reasonably inferred that in the past the landowner(s) intended to dedicate the route as a public right of way.

The analysis of the map and documentary evidence indicates that the route did not physically exist prior the closure and subsequent dismantle of the railway line in 1970/72.

Sufficient as of right use agreed by the owners may be circumstances from which dedication can be inferred. The previous landowner has acknowledged that members of the pubic did use the route in 1993. Planning permission granted in 1994 to extend Stubbins Mill refers to the application route being diverted and the provision of wooden steps being constructed to assist public use of the route while the mill yard was redeveloped. Such actions by the then landowner demonstrates that in 1993 the applicant had knowledge of the public using the route and further showing a willingness to allow the public to 'continue to use the informal footpath along the disused railway embankment. Such acknowledgement of public use of the route in 1993 is consistent with the period of use detailed in the user evidence forms.

However, the wording of the missing letter which was to be read in conjunction with the planning permission is important as such letter could indicate acceptance that public rights existed, the dedication of new rights or permission for the public without dedication. Without the letter no particular interpretation can be presumed.

From looking at the user evidence it would appear that there has never been any clear action by previous owners to prevent use by the public and use by the public has continued for many years such that, on balance, there may be sufficient evidence from which to infer dedication at common law.

Looking next at the criteria for a deemed dedication under section 31 of the Highways Act 1980, use of the route needs to be by the public 'as of right' (without force, secrecy or permission) and without interruption over a sufficient 20 year period

immediately prior to the route being called into question. In this matter, the evidence indicates that access to the route was obstructed in November 2019, therefore the 20 year period under consideration for the purposes of establishing deemed dedication would therefore be 1999-2019. As the 20 year period of use we are concerned with commences after the construction of the steps in 1994 the fact that 9 users recall using the "original" slightly different route up to 1994 is not relevant as such time period falls outside of the 20 year period under consideration.

The applicant has provided 55 user evidence forms in support of the application which refer to use of the route from as early as 1984. 27 users have provided evidence of use during the period under consideration. A number of users have made reference to having witnessed other users whilst using the route themselves. 27 of the users claim to have used the route on foot weekly and 9 users claim to have used the route daily and 5 users claim to have used the route more than once a day with all claiming to have used the route 'as of right'.

None of the users recall having ever been told that the route was not a public right of way, nor do any users refer to having been turned back or having asked permission to use the route. It is therefore suggested that there is sufficient evidence of use of the claimed route by the public as of right to raise a presumption of dedication for the period 1999-2019.

Evidence has been submitted regarding the requirement to maintain a stock proof fence across the route at point C. Site evidence, photographs and maps all confirm the existence of this fence but also show that the fence – which clearly existed in 2008 – had a section removed which made it possible for pedestrians to pass through it. None of the users providing evidence appear to have considered this fence to have been erected to prevent them accessing the route or appear to consider that by stepping through the gap in the fence they were using a route that they had no right to use. Arguably the person who actually created the gap, if it was one of the users of the way, should be discounted from evidence of use because it was not 'nec vi' (without force) and therefore was not 'as of right'. However, other people subsequently stepping through the gap were doing so as of right and the fact that use continued could suggest a strength of belief that users had a right.

A current Landowner has expressed concerns with regards to how this application may cause health and safety issues over their land. However, whilst this representation is acknowledged, it is submitted that the concerns are not relevant considerations under either s31 Highways Act 1980 or under common law.

In conclusion, taking all of the evidence into account, the Committee on balance may consider that the provisions of section 31 of the Highways Act 1980 can be satisfied. In addition, or in the alternative, Committee may also consider that it can be reasonably alleged that there is sufficient evidence from which to infer dedication of a public footpath at common law.

Committee is therefore advised to accept the application, make an Order and promote the Order to confirmation.

Risk management

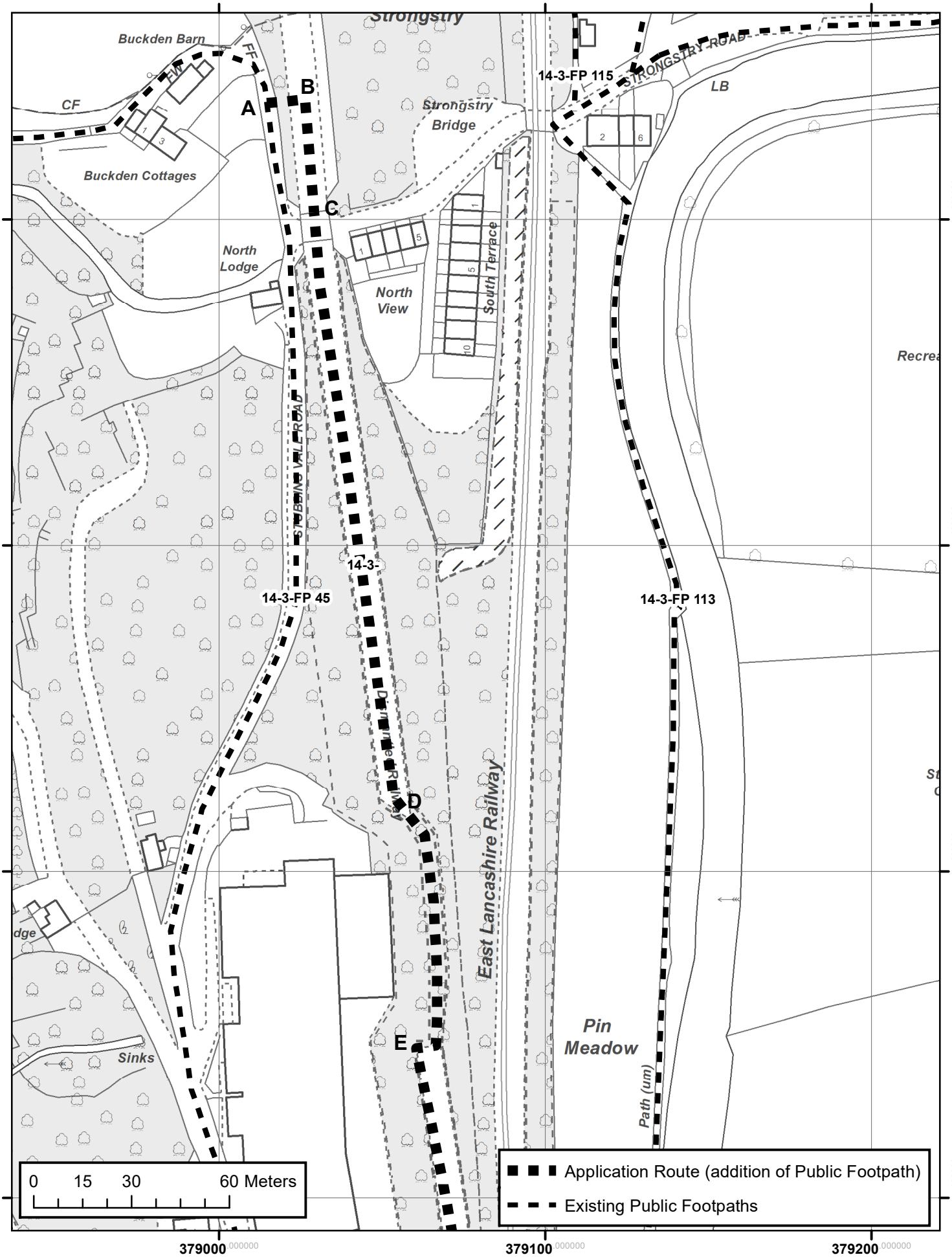
Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' included in the Agenda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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-614		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A



Lancashire County Council	Public Rights of Way PROW@lancashire.gov.uk 01772 530317	**Wildlife and Countryside Act 1981** **Addition of Footpath along dismantled railway line from Footpath Ramsbottom 45 near to Strongstry Bridge along dismantled railway line to Stubbins Vale Road near Stubbins Station**	**1:1,500**

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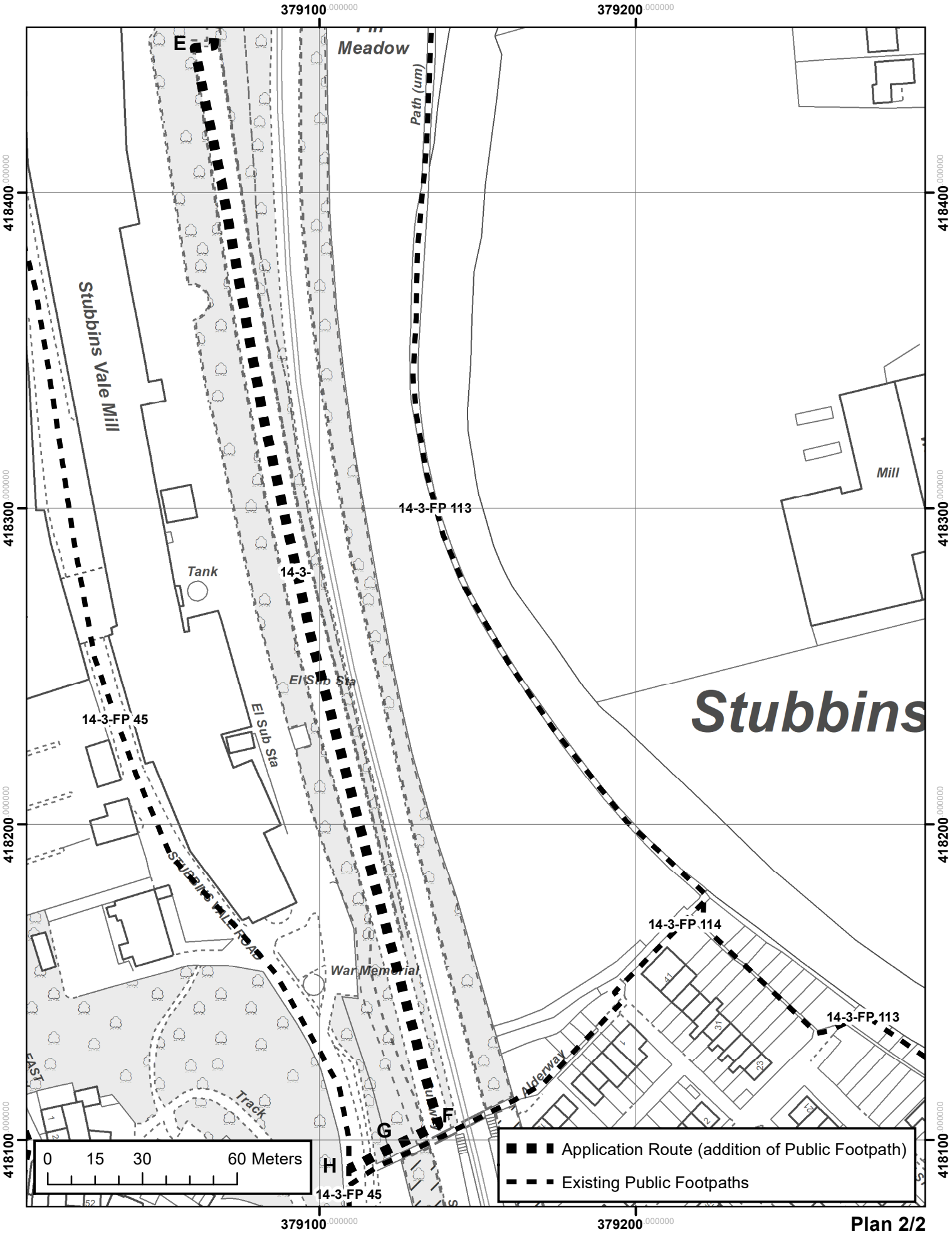
Plan 1/2



Plan 2/2

Lancashire County Council	Public Rights of Way PROW@lancashire.gov.uk 01772 530317	**Wildlife and Countryside Act 1981** **Addition of Footpath along dismantled railway line from Footpath Ramsbottom 45 near to Strongstry Bridge along dismantled railway line to Stubbins Vale Road near Stubbins Station**	**1:1,500**	N W E S

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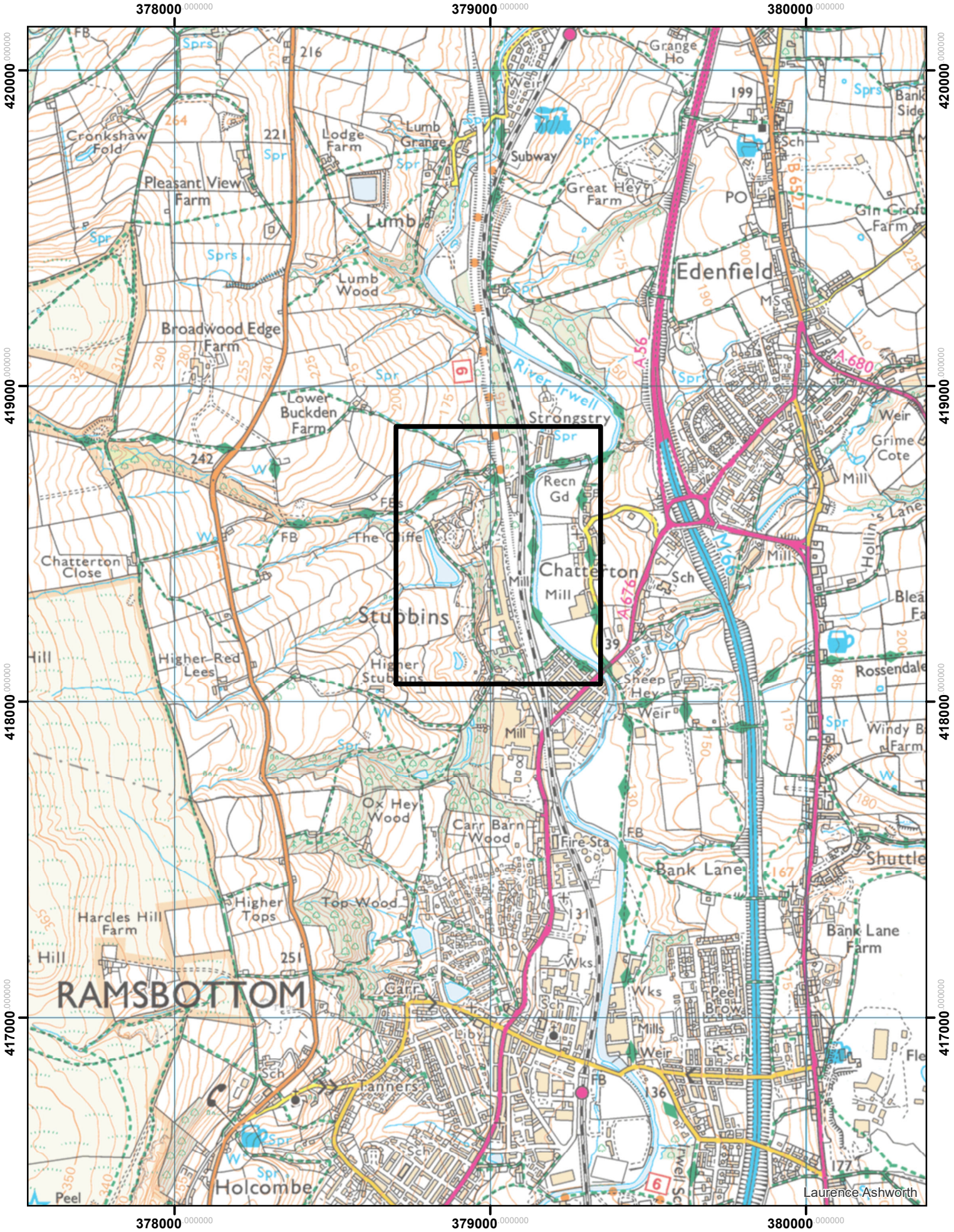

Lancashire County Council	Andrew Mullaney Head of Planning and Environment	**Wildlife and Countryside Act 1981** **Addition of Footpath at Stubbins, Ramsbottom, Rossendale LOCATION PLAN**	1:15,000	N W E S

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