

Regulatory Committee

Meeting to be held on 1st July 2015

Electoral Division affected:
Rossendale North

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of Footpath at Love Clough Fold from Public Footpath No. 1 to Public Footpath No. 9 Rawtenstall, Rossendale Borough

File No. 804-518

(Annex 'A' refers)

(Appendices A, B and C refer)

Contact for further information:

Megan Brindle, Legal and Democratic Services, 01772 535604

Megan.brindle@lancashire.gov.uk

Jayne Elliott, Public Rights of Way, Planning and Environment, 07917 836626

Jayne.elliott@lancashire.gov.uk

Executive Summary

Investigation into the addition of a public footpath between Public Footpaths No. 1 and No. 9 Rawtenstall at Love Clough in accordance with file no. 804-518 and the consideration of an Order to add to the Definitive Map and Statement a public footpath.

Recommendation

1. That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to record a Public Footpath on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C-D.
2. That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.
3. That the 2006 Order made following the Committee Decision of 27 September 2006 concerning application 804-421 be submitted to the Secretary of State requesting non-confirmation.

Background

In 2005 an application was received for a footpath starting at point A on the Committee plan but following a different alignment to the route that is the subject of this report.

The 2005 application was accepted by Committee at their meeting on 27 September 2006 and a Definitive Map Modification Order was made. Copies of the Committee report and Legal Order are appended to this report.(Appendices A and B refer)

Objections were received to the making of the Order and following further investigation it was discovered that the Order route had only come into existence on that alignment following the development of farm buildings into residential properties in the late 1980s. However, the map and documentary evidence, and evidence of use submitted with the application appeared to relate more closely to the layout of the buildings when they were part of a working farm, before redevelopment took place. It was therefore decided to investigate the matter again to determine, using all the evidence, exactly where a public right of way might lie.

Interviews were carried out with a number of the users that had filled in forms that were submitted with the original application and all users were sent a photocopy of a photograph of the site prior to development with a request that they mark on the route that they claimed to have used.

As a result of those interviews it is the view of Officers that there is insufficient evidence to promote the 2005 Order through to confirmation and an investigation has now been carried out into the route shown on the Committee plan by a bold dashed line and marked between points A-B-C-D.

In addition to the problems of the evidence, Orders are drawn up under Regulations of 1993 which prescribe what notations have to be used on a definitive map but also states that these same notations should be used on order maps. This provision was not followed by many authorities and notations which were technically incorrect had become standard. The Order Map for this 2006 Order shows the public footpath as a solid black line which does not comply with the Regulations.

The Planning Inspectorate had in the past accepted many orders with incorrect notations but stated in a letter to all authorities of 7 September 2011, that they would *'accept any order containing incorrect notation if the order was made prior to 7 September 2011.'* The Planning Inspectorate Advice Note 22 was revised on 1st May 2013, attached as appendix A, and this no longer allows Authorities to submit Orders where an incorrect notation is used and states *"... an order is considered to be fatally flawed if the wrong notation or non-standard notation (i.e. notation other than that set out in SI 1993 No.12) is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation."*

A full investigation has been carried out of the route marked between points A-B-C-D on the Committee plan and this report details that investigation and the evidence that was brought to light following the interviews carried out by Officers of Legal and Democratic Services.

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”

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

The County Council’s decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by the applicant, landowners, consultees and other interested parties produced to the County Council before the date of the decision. Each piece of evidence will be tested and the evidence overall weighed on the balance of probabilities. It is possible that the Council’s decision may be different from the status given in any original application. The decision may be that the routes have public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists. The decision may also be that the routes to be added or deleted vary in length or location from those that were originally considered.

Consultations

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

Applicant/Landowners/Supporters/Objectors

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

Advice

Public Rights of Way, Planning and Environment Service’s Observations

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	8105 2725	Junction with Rawtenstall Footpath 1
B	8108 2727	Unmarked point at which the route under investigation moves away from the bank of the watercourse.
C	8110 2730	Point at which the route under investigation passes

		the south east corner of the building now known as Clough Fold Barn.
D	8113 2733	Junction with Rawtenstall Footpath 9

Description of Route

A site inspection was carried out on 13th November 2014.

The route under investigation commences at a point on Public Footpath no. 1 Rawtenstall on the north side of the bridge over Limy Water and shown as point A on the Committee plan.

From point A the route under investigation extends in a north-easterly direction parallel to Public Footpath 4 Rawtenstall (legally recorded to the south of the route under investigation within the boundaries of the watercourse) following a tarmac access road approximately 3 metres wide, which provides access to the CPA Social and Bowling Club and a number of residential properties. A street light is located on the route close to point A.

The route under investigation passes the front of the Social Club but is separated from the Club by a substantial stone wall. Access to the club is via a pedestrian gate near to point A and vehicular access is also available by travelling along the route under investigation to a small car parking area on the north side of the route which is accessed just before reaching point B.

Between point A and point B the route under investigation is bounded by a stone wall on the south side which forms part of the man-made stone banking that defines the route of the watercourse (Limy Water). On the north side, the route is bounded first by a stone wall and then a wooden fence, both of which mark the boundary of the Social Club. There are no signs, gates or barriers at point A indicating whether the route is considered to be public or private.

Ornate iron gates have been erected across the route at point B. The gates were open when the route was inspected and access through them was freely available. The gates are approximately 5 foot high rising to over 6 foot high where they come together in the centre. If the gates were locked there would be no access over or around them for pedestrians attempting to use the route. A lock existed as an intrinsic part of the gate but it was not possible to determine at the time of the inspection whether it was used. A notice was erected on the gates (which had not been present in 2005 when the original application was made) which stated "Private Road (Resident access only) Please Keep Dogs on Lead & off the Grass Verge".

Beyond point B the land over which the route under investigation passes no longer looks like it did during the time that it is claimed to have been used because the farm buildings have been redeveloped into a number of residential properties.

From point B the route under investigation continues in a generally north-easterly direction but is now obstructed by the garden wall of The Barn. The line of the route passes through the front garden and into the garden of the neighbouring property (Clough Fold Barn) which has been split into two properties and extended on the

eastern end. Detailed measurements have not been taken but this extension appears to extend out across the route (at point C).

From point C the route continues through the garden of 2 Clough Fold Barn, passing through the boundary between 2 and 1 Clough Fold Barn (no access) and across the garden area to the east of 1 Clough Fold Barn. Access along the route is further prevented by a boundary wall/hedge.

The route then crosses a private access road that provides access to a number of properties and then passes through a wooden fence (no access) to continue across a garden area in a north-easterly direction and another wooden fence (no access) to reach Public Footpath 9 Rawtenstall at point D.

The total length of the route is 120 metres.

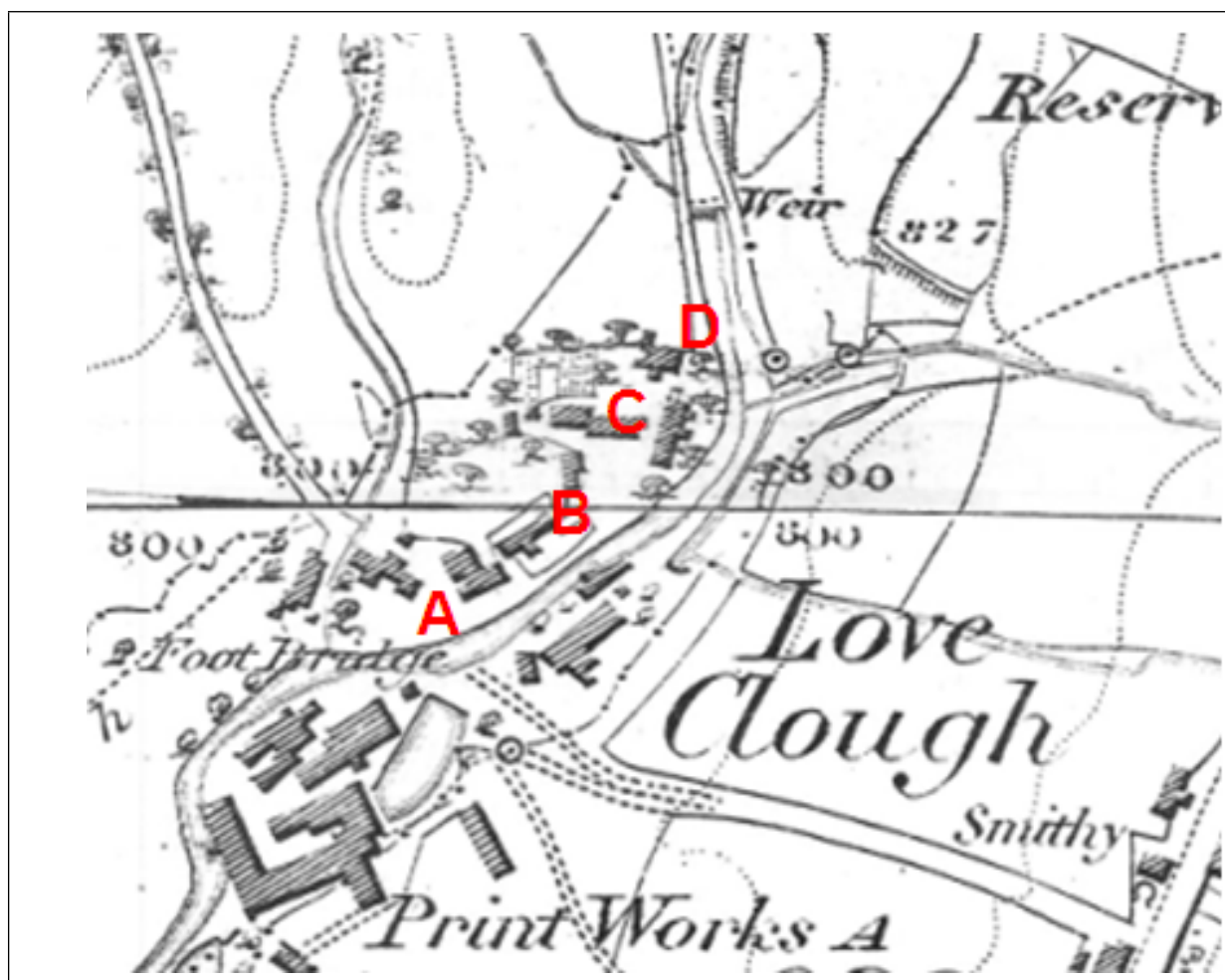
Map and Documentary Evidence

Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
Observations		The map shows and names the village of 'Love Clough'. It shows Limy Water and a scattering of buildings but the route under investigation is not shown.
Investigating Officer's Comments		The route did not exist as a major route at that time although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
Honour of Clitheroe Map	1804-1810	A privately produced map of land owned by the Honour of Clitheroe – Henry Duke of Buccleuth and Elizabeth Dutches of Buccleuth. It specifically showing the boundaries of coal leases granted by them. 'Roads' were identified in the key but there was no apparent distinction between those which may have been considered to be public or private.
Observations		'Love Clough' is shown and named on the map but the route under investigation is not

		shown.
Investigating Officer's Comments		The route did not exist as a major route at that time although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.
Observations		The map shows Commercial Street crossing Limey Water, and continuing to the north west. It shows a number of buildings and names them as 'Low Booth'. The route under investigation is not shown.
Investigating Officer's Comments		The route did not exist as a major route in 1818 although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
Hennet's Map of Lancashire	1830	A further small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7½ inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.
Observations		Love Clough is shown and named but the route under investigation is not shown.
Investigating Officer's Comments		The route did not exist as a major route in 1830 although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any

		public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The route under investigation does not cross land affected by the planned construction of a canal or railway.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment		Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		There is no Tithe Map in the County Records Office for the area under investigation.
Investigating Officer's Comments		No inference can be drawn.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		No Inclosure Award was found for the area under investigation.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map sheets 64 and 72	1849	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-7 and published in 1849. 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

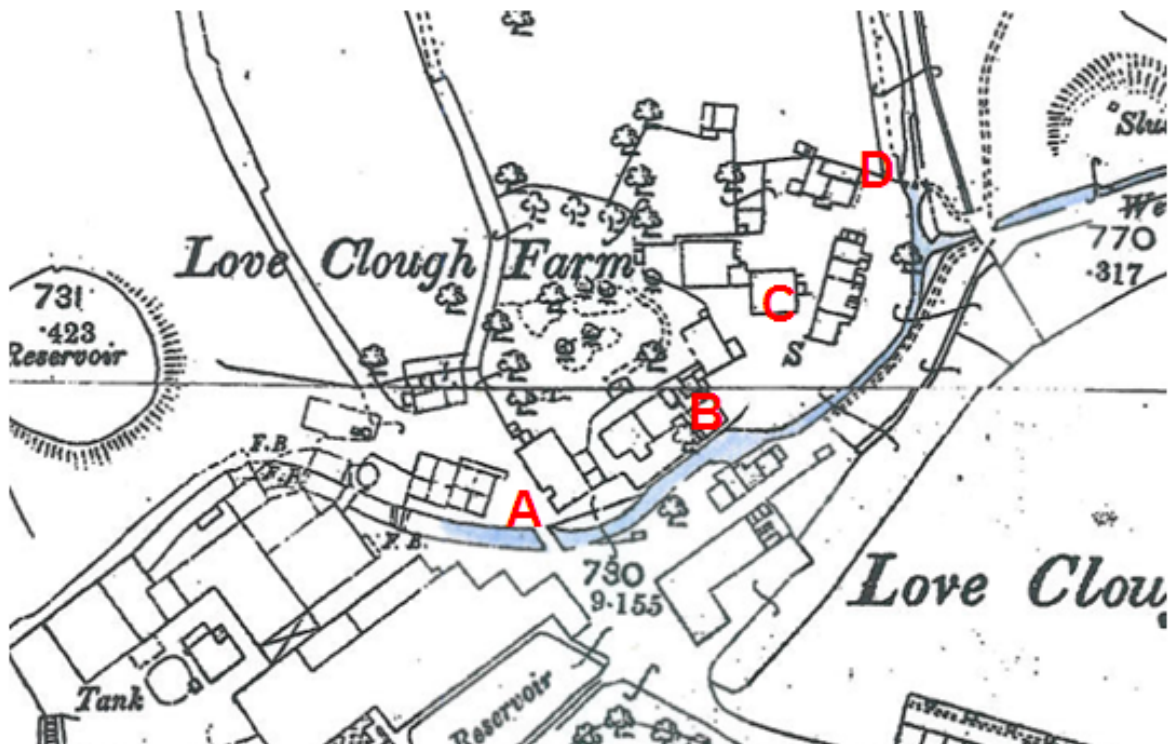


Observations

The map shows a number of buildings in close proximity to the route under investigation which are not named. The route is not shown on the map although access onto it appears to be available at point A passing between the watercourse and a building and then continuing along a more restricted but accessible length to the south east of a second building to point B. From point B the route is not shown but it appears that it could have been possible to pass across open ground to point C where the line of the route passes between buildings. Further buildings are shown on either side of the route under investigation between point C and point D – some of which may have been clipped by the route. From point D a track is shown leading north along the western side of Limy Water


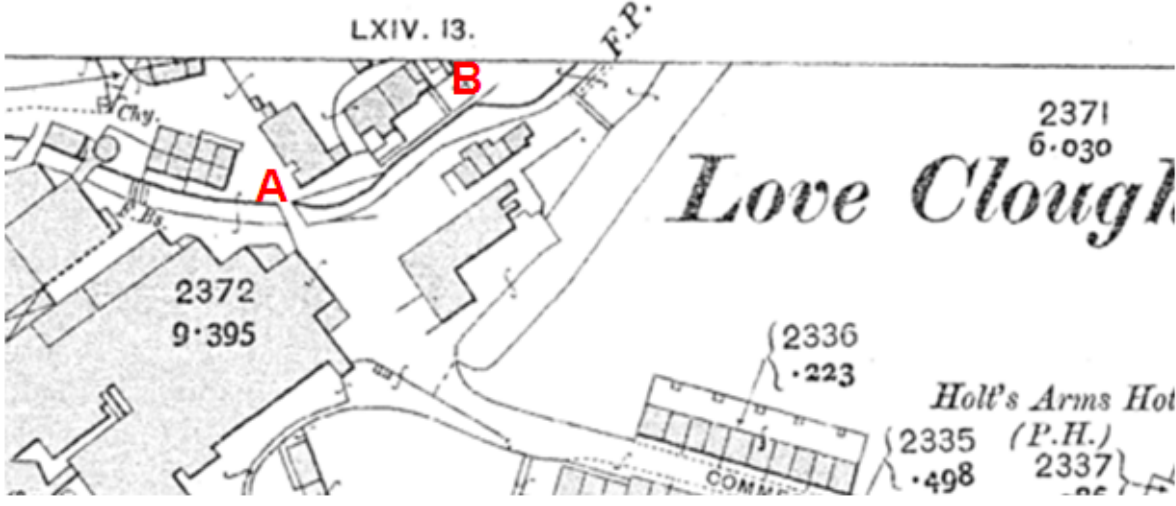
mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally 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.

		consistent with the route now recorded as Rawtenstall Footpath 9.
Investigating Officer's Comments		The route under investigation did not exist as a defined route on the ground in 1849 although it may have been physically possible to pass along the route – or close to the line of the route - between the properties shown.
25 Inch OS Map	1893	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1891 and published in 1893.

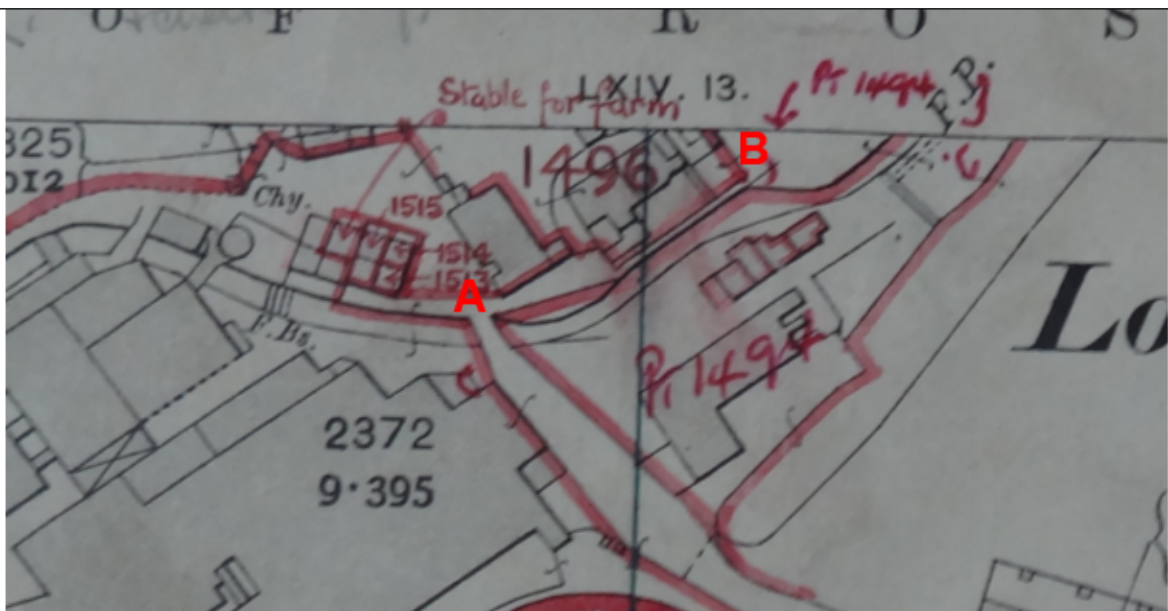


Observations		<p>The 25 inch scale map provides more detail than the earlier 6 inch map. The blue colouring on the map extract has been added by the County Council to clarify the location of the watercourse.</p> <p>The map shows that the route under investigation crossed an open strip of land between the building and the watercourse from point A separated from the properties to the north of the route by a boundary. Partway between point A and point B this strip narrows considerably (to approx. 1 metre) as far as just beyond point B.</p> <p>From here the route under investigation is not shown as a defined route but crosses an open area of land to point C. Between point</p>
--------------	--	--

		<p>C and point D some buildings are shown to the east of the route which the line of the route passes through - although access appears available on either side of the buildings to point D.</p> <p>At point D a line is shown across what appears to be the boundary of the farm north of which is a track which is consistent with the route now recorded as Rawtenstall Footpath 9. Immediately east of the line is the watercourse and on the east side of the watercourse there is a double pecked line leading from/to it suggesting that a route existed to or across the watercourse at this point.</p> <p>The buildings between point A and point D collectively appear to form part of Love Clough Farm (named on the map). The area through which the route under investigation appears to be farm with additional buildings which may have been a collection of barns and cottages associated with the farm.</p>
Investigating Officer's Comments		<p>The route under investigation did not appear to exist in 1891 although access along most of it may have been available. Between point C and point D buildings extended across the route.</p> <p>Pedestrian access to these buildings appears to have been via the route under investigation between point A and point B suggesting that the 1m wide section was passable.</p>
25 inch OS Map	1911	Further edition of the 25 inch map surveyed in 1892, revised in 1909 and published in 1911.

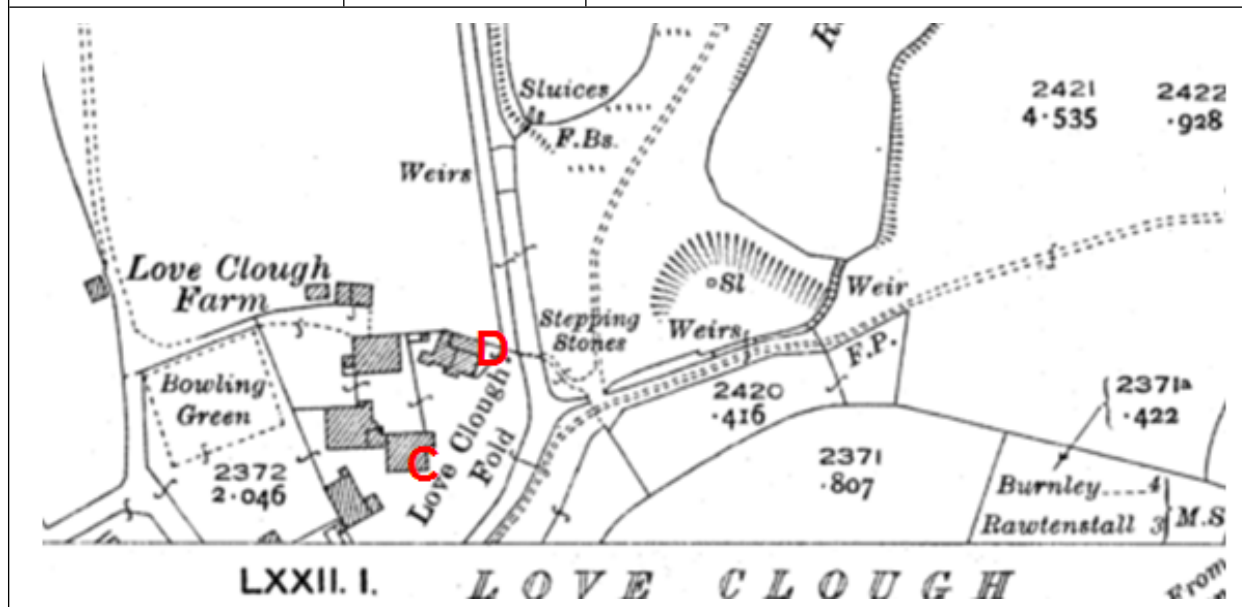
		
		
<p>Observations</p>		<p>Shows the area similar to the earlier (first) edition of the 25 inch map. An open access way to the farm buildings appeared to exist between point A and point B the width of which was defined by boundaries. The buildings through which the route under investigation passes between point C and point D are labelled as Love Clough Fold. At point D a boundary is shown across the route of what is now Rawtenstall Footpath 9 and immediately east of point D stepping stones are marked on the map providing a crossing of Limy Water.</p>
<p>Investigating Officer's Comments</p>		<p>The route under investigation did not appear to exist in 1909. Access along most of it may have been available with some buildings over it near point C and point D.</p>

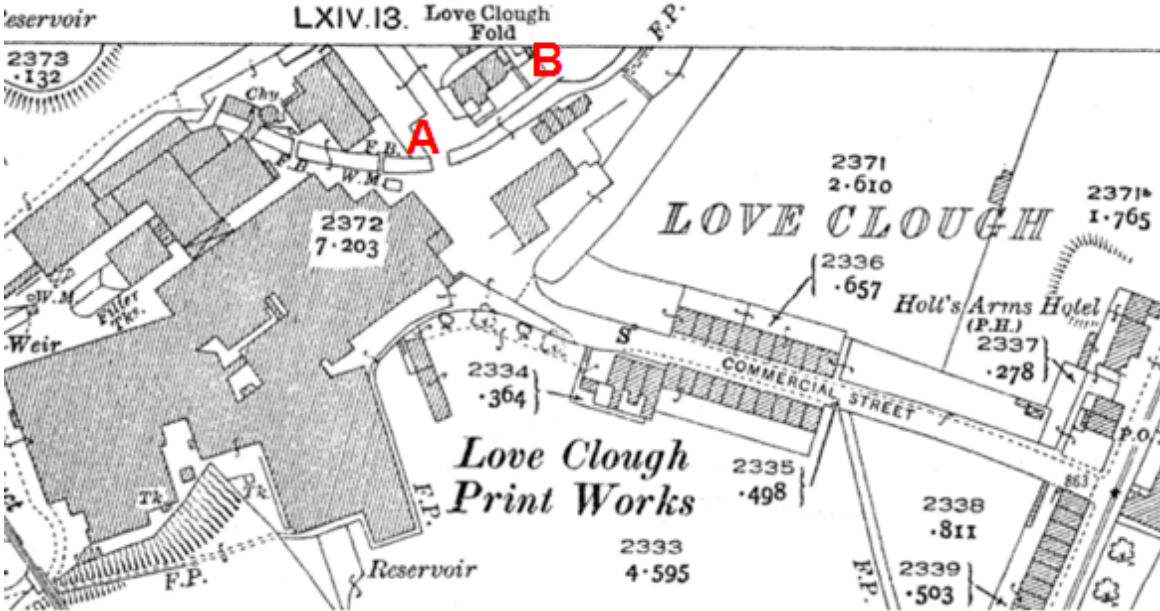
		<p>Pedestrian access to these buildings appears to have been via the route under investigation between point A and point B suggesting that the 1m wide section was passable.</p>
<p>Finance Act 1910 Map</p>	<p>1910</p>	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>



Observations		<p>No Finance Act records are available in County Records Office and it has therefore been necessary to request a copy of the Map and relevant Field Book entries from the National Archives.</p> <p>The route under investigation is not excluded from the numbered hereditaments. The quality of one of the maps held at the National Archives Office is very poor but it appears that the whole length of the route under investigation was included in a single numbered hereditament labelled as part of 1491. It has not been possible to locate a copy of the field book to see whether any deductions were made for the existence of a public right of way.</p>
--------------	--	---

Investigating Officer's Comments		<p>The route under investigation was not excluded from the numbered hereditaments suggesting that it was not considered to be a vehicular public highway at that time. Because it has not been possible to find the relevant field book no inference can be drawn with regards to whether the landowner at that time considered the route to be a public footpath or bridleway. However, as the plot number covered a much larger area than the one crossed by the route under investigation it is unlikely that the field book would have provided strong evidence of the existence (or not) of public rights.</p>
25 Inch OS Map	1930	Further edition of 25 inch map (surveyed 1891, revised in 1928 and published 1930)



		
Observations		<p>Access to the properties labelled as Love Clough Fold still appears to be via the route under investigation between point A and point B and this is shown to be of a greater width than on earlier editions of the map. The cottages that had been located on the route between point C and point D are not shown and the full route appears to be available.</p>
Investigating Officer's Comments		<p>The route under investigation did not appear to exist in 1928. However access along it may have been available to link to the route of Footpath 9 and the stepping stones adjacent to point D.</p>
Aerial Photograph ²	1940s	<p>The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.</p>

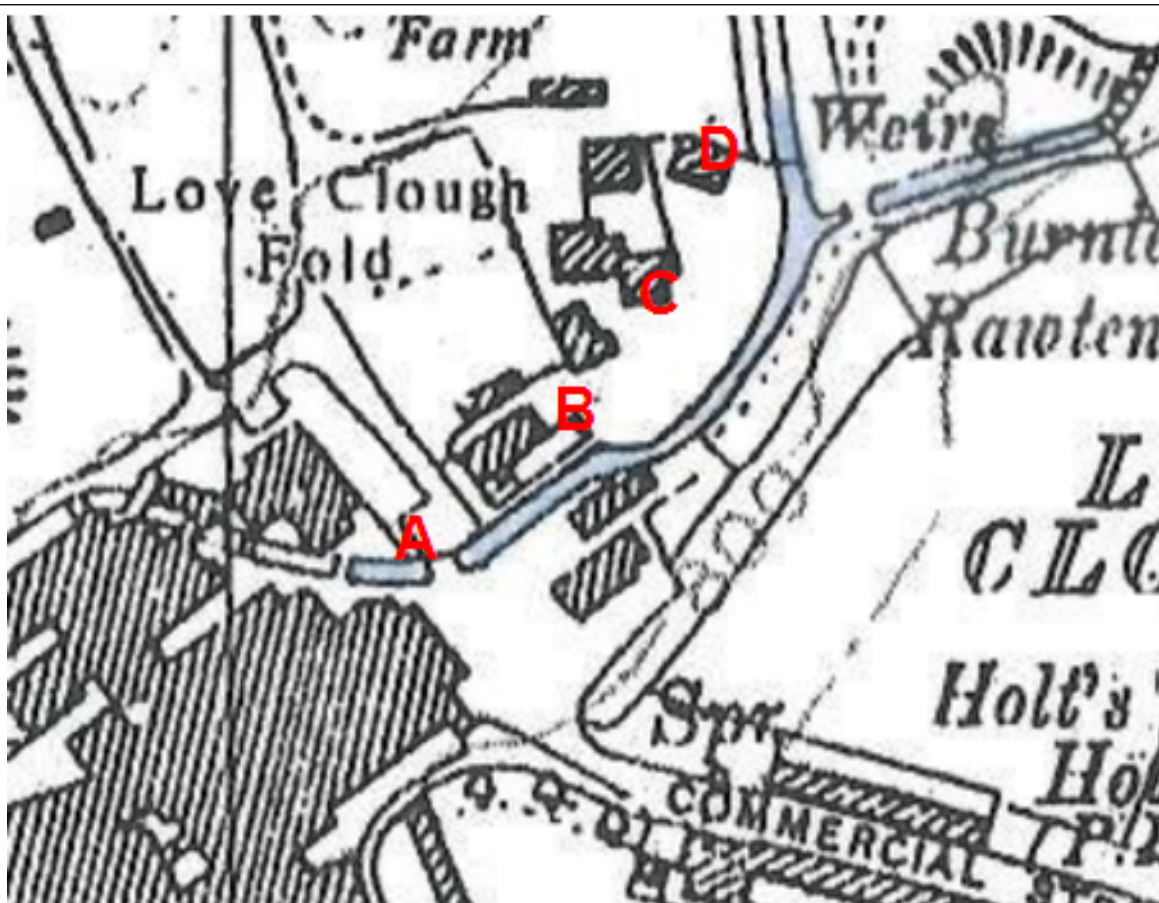
² Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant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



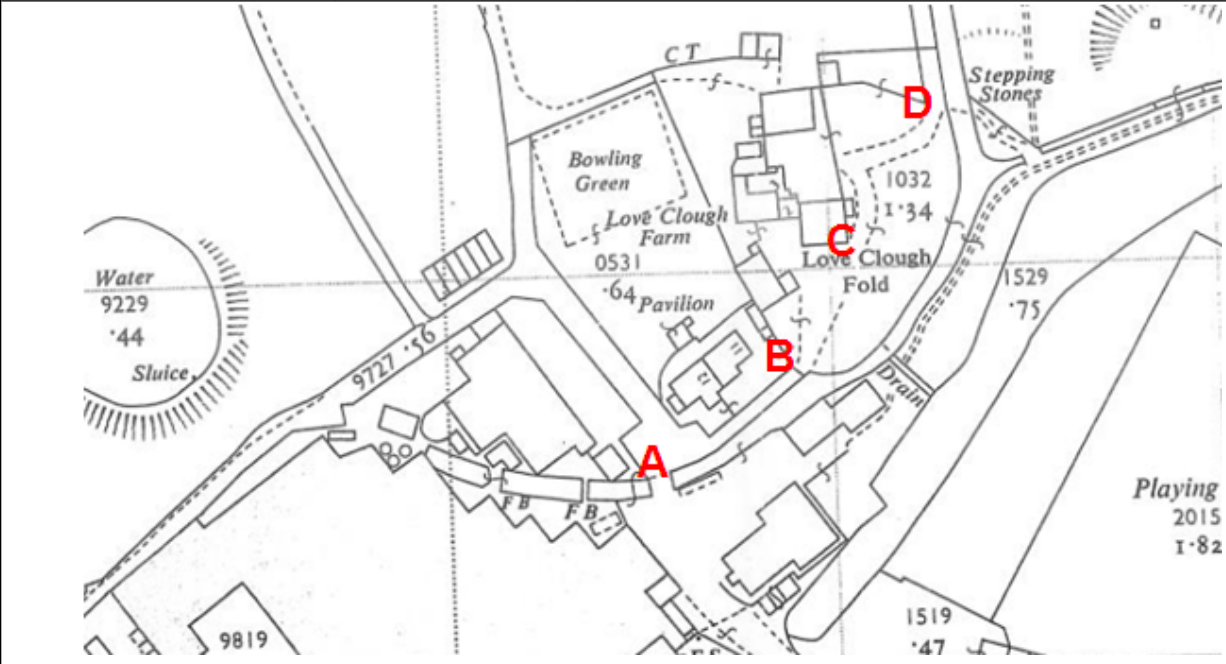
Observations		The route between point A and point B cannot be seen due to tree cover. Between point B-C-D a faint route corresponding largely with the route under investigation can be seen.
Investigating Officer's Comments		Access along the route between point A and point B cannot be seen but a faint line can be seen extending from point B suggesting that it was available. A faint line can be seen between point B-C-D which is consistent with use of a route on foot.
Authentic Map Directory of South Lancashire by Geographia	Circa 1934	An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map. The publisher claimed to have incorporated new districts, streets and trunk roads in the atlas and acknowledges the assistance of municipal and district surveyors when compiling the book.



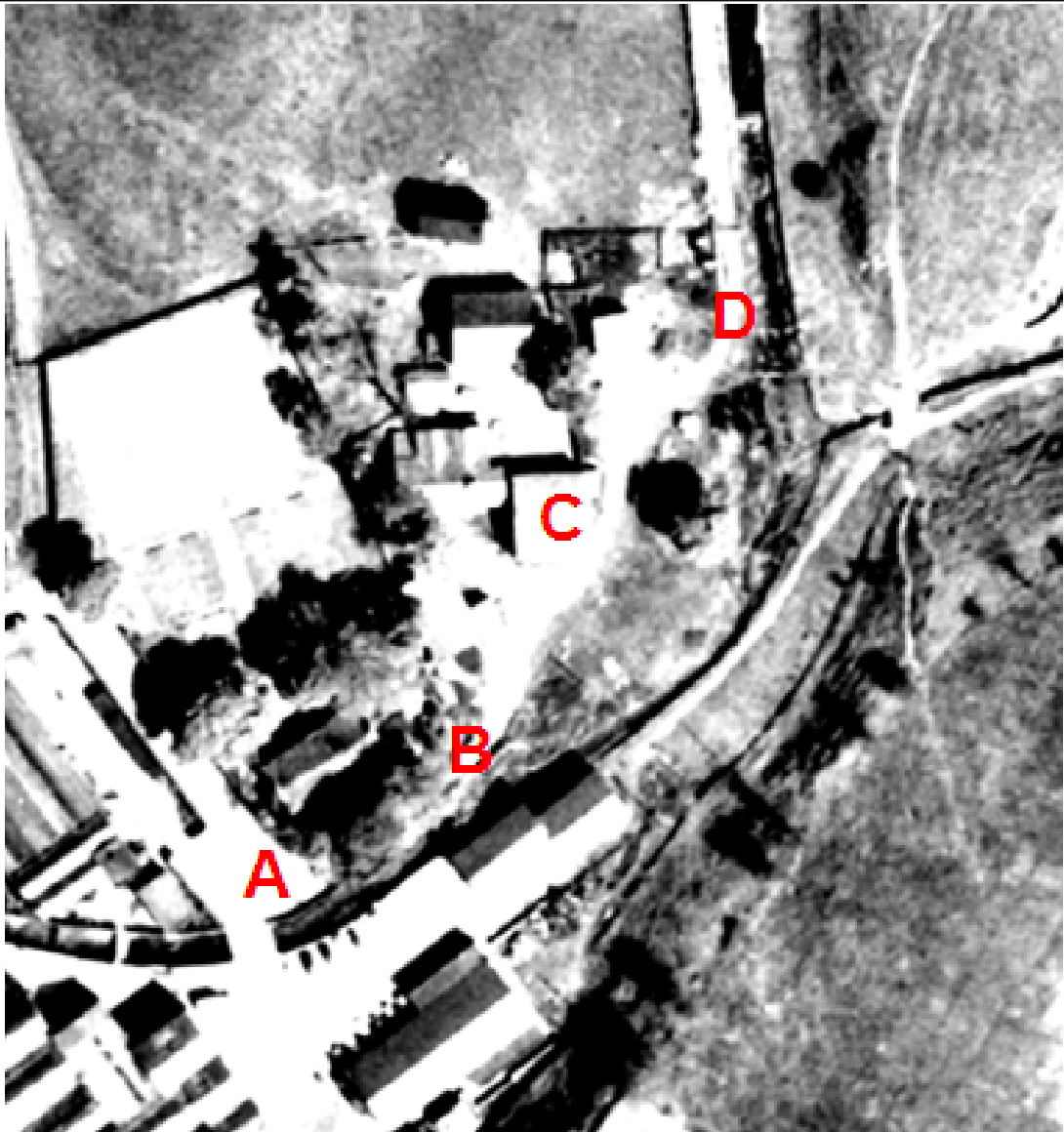
Observations		The route under investigation (and the route of Footpath 9 Rawtenstall) are not shown on the map.
Investigating Officer's Comments		If the route under investigation existed at the time that the map was compiled it was not considered to be a sufficiently important or vehicular highway to be included on a map of this kind.
6 Inch OS Map	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		<p>This 6 inch map has been enlarged and the watercourse coloured blue by officers so that the detail can be seen easily within the report.</p> <p>A solid line is shown across the route just east of point A and beyond that the route would have passed along the enclosed section to point B. The route is not shown between point B-C-D although no feature is shown which might have prevented access. A line is shown across the route just north of point D.</p> <p>An alternative access is shown to Love Clough Fold further north of the route under investigation.</p>
Investigating Officer's Comments		<p>The route under investigation is not shown although it may have been available on the ground. Access may have been restricted close to point A and immediately beyond point D.</p>
1:2500 OS Map	1962	<p>Further edition of 25 inch map reconstituted from former county series and revised in 1960 and published 1962 as national grid</p>

		series.
		
Observations		<p>The map shows access onto the route at point A being open and the route is shown along an enclosed strip between point A and point B. A line is shown across the route at point B and a track is indicated (double pecked lines) along same line as the route under investigation to point C. This track continues to point D via access to a property between point C and point D but was unenclosed suggesting the route C-D may have been available.</p> <p>Access onto Footpath 9 appears to be available from point D and the words stepping stones are shown adjacent to point D.</p>
Investigating Officer's Comments		<p>Access onto the route under investigation appears to be available at point A and the route accessible to point B. A gate is probably in existence at point A but it is not possible to determine from the Ordnance Survey mapping. A visible track existed through Love Clough Fold to point D which deviates slightly from the route under investigation but indicates that access was available through the property and not just to it. The track is unbounded (as indicated by pecked lines) so it was likely that anyone walking from point B to point D could have taken a direct route.</p>

		<p>An extract of this map was also submitted by the Residents Association who have objected to the application. They consider that the map does not show the application route and that the 'beaten track' provided vehicular access to the farm and outbuildings. The Investigating Officer would agree that the track shown through Love Clough Fold would more than likely have provided vehicular access to the farm and buildings. However, its physical existence as a route through the farmyard also supports and is consistent with the user evidence that has been submitted in relation to this application.</p>
Aerial photograph	1960s	<p>The black and white aerial photograph taken in the 1960s and available to view on GIS.</p>



Observations		Although it appears to be, it is not possible to be certain whether access was available between point A and point B due to tree cover. A clearly defined track can be seen extending from point B on the photograph to point C and on to point D.
Investigating Officer's Comments		The aerial photograph supports the user evidence that has been submitted that the route under investigation existed on the ground and shows that it appeared to be capable of being used in the 1960s.
Aerial Photograph	2000	Aerial photograph available to view on GIS.

		
Observations		<p>By 2000 it can be seen that there have been changes to the area crossed by the route under investigation. Access between point A and point B can be seen to exist along a hard-surfaced road which then extends in a north easterly direction before curving round to intersect the route under investigation between point C and point D. The route under investigation does not appear to be accessible between point B and point C and from point C to the interception of the new 'road' midway between point C and point D but from this point to point D the route under investigation can be seen.</p>
Investigating Officer's Comments		<p>Redevelopment of the farm has resulted in the construction of an access road and the fencing off of land to provide garden areas. It may still have been possible to walk the route under investigation between point A and point B but use of the full length of the route under investigation on its exact alignment was no longer possible.</p>
Aerial Photograph	2010	Aerial photograph available to view on GIS.




Observations		Further development of the site has taken place. The route under investigation still exists between point A and point B but access along the route between point B and point D is obstructed by numerous fences and garden areas.
Investigating Officer's Comments		The route under investigation may have been useable between point A and point B but not between B and D.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council rural district I areas and the maps and schedules were submitted to the County Council. In the case of urban districts and municipal boroughs the map and schedule produced was used, without alteration, as the Draft Map and Statement.

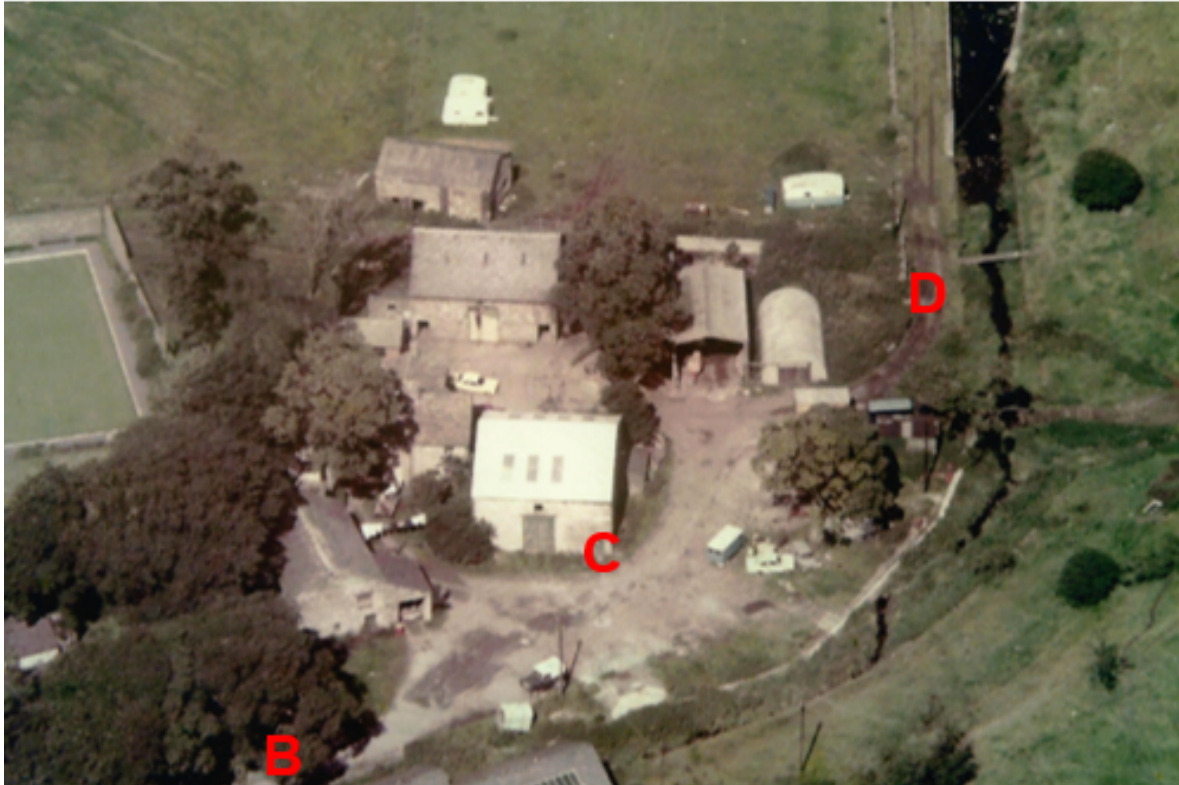
Observations		Rawtenstall was a municipal borough in the early 1950s and so a parish survey map was not compiled.
Draft Map		The Draft Maps were given a “relevant date” (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 st 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 route under investigation was not shown on the Draft Map of Public Rights of Way for Rawtenstall and there no representations made to the County Council in relation to 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 route under investigation was not shown on the Provisional Map and there were no representations made to the County Council in relation to it.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The route under investigation was not shown on the First Definitive Map and Statement.
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 route under investigation is not shown on the Revised Definitive Map of Public Rights of Way (First Review).
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the route under investigation was considered to be a public right of way by the Surveying Authority. There were no objections to the fact that the route was not shown from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
Photographs provided by Mr David Collinge	Undated but prior to redevelopment of farm	Mr Collinge completed a user evidence form that was submitted with the 2005 application and when interviewed by Legal Services provided the photographs subsequently used to confirm the route that people claim to have used.



Observations		The photograph clearly shows the building that was subsequently converted into the two dwellings that make up Cloughfold Barn (adjacent to point C) and the property known as 'The Barn' with a track passing the buildings that corresponds to the route under investigation and which shows the continuation onto Footpath 9 and the crossing of the watercourse adjacent to point D. The shape of the track and footprint of the buildings is consistent with the 1:2500
--------------	--	---

		map reconstituted from former county series and revised in 1960 and published 1962.
Investigating Officer's Comments		The route under investigation physically existed leading from point B through point C and on to point D when the photograph was taken and appeared to be capable of use.
Undated photograph		Undated photograph submitted with 2005 application.
		
Observations		This undated photograph shows the building that is now known as the CPA Social and Bowling Club and the walled route between point A and point B providing access to the farm as being open and available.
Investigating Officer's Comments		The photograph confirms that the route between point A and point B existed as a walled route and that access appeared to be available to the farm yard.
Aerial Photograph submitted by Loveclough Fold Residents Association	C1960	Aerial photograph submitted by Loveclough Fold Residents Association.



Observations

The aerial photograph is undated but is thought by the Residents Association to have been taken in the early 1960s. It provides a clear view of the farm yard through which the application route runs between point B and point D.

The photograph clearly shows the building that was subsequently converted into the two dwellings that make up 'Clough Fold Barn' (adjacent to point C) and the property known as 'The Barn'.

A wide track consistent with vehicular access to and around the various farm building can be clearly seen and the full length of the route under investigation between point B and point D looks to have been accessible through to point D.

The shape of the track and footprint of the buildings is consistent with the 1:2500 map reconstituted from former county series and revised in 1960 and published 1962.

Investigating Officer's Comments

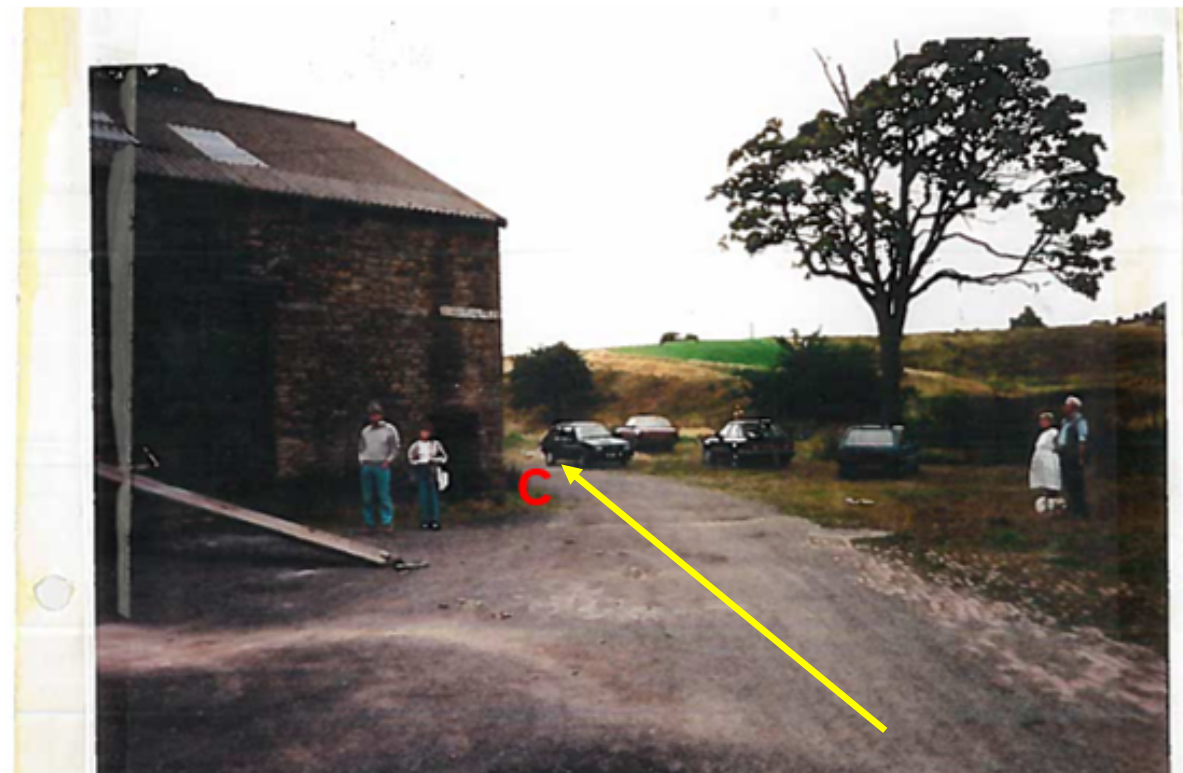
The route under investigation physically existed leading from point B through point C and on to point D when the photograph was taken and appeared to be capable of use. The fact that the route passed through a

		farm along an access route also used by vehicles is not inconsistent with public rights of access on foot.
Photographs submitted by Mr Ashworth	1989	<p>When consulted about the original application in 2005 the owner of Loveclough Fold Farm wrote a letter objecting to the application and enclosed a number of photographs, three of which are included below.</p> <p>Mr Ashworth said that he purchased Loveclough Fold Farm in 1989.</p> <p>Photograph 1 has the date September 1989 handwritten on the back of it. Mr Ashworth states that it shows the 'access road past barns owned by Mr and Mrs Smith and Mr and Mrs Felinish' and states that the 'access road' goes round to the farm yard and dairy.</p> <p>Photograph 2 also has the date September 1989 written on the back of it. It is said by Mr Ashworth to show the 'access road' past the front of the barn owned by Mr and Mrs Felinish and round into the farm yard/dairy.</p> <p>Photograph 3 is undated but is described by Mr Ashworth as showing the 'access road' as it 'was'. He describes the access road as running close to the gable end of the barn and round the back of the farm to the dairy, barn and muck midden.</p>

Photograph 1



Photograph 2



Photograph 3



Observations		The photographs provide further evidence of the layout of the farm and associated buildings prior to redevelopment. They show the access route passing through point C which appeared to consist of a mixture of compacted stone/earth.
Investigating Officer's Comments		The photographs are consistent with earlier aerial photographs and Ordnance Survey plans that show the farm prior to redevelopment. The route through point C appears to be open and available to use and the fact that the route passed through a farm along an access route also used by vehicles is not inconsistent with public rights of access on foot.
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

		<p>was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the County council for the area over which the route under investigation runs.
Investigating Officer's Comments		There is no indication by 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.

Landownership

Point A shown on the committee plan is owned by Avonbraid Limited, Molteno House, 302 Regents Park Road, London N3 2JX. Part of the route between A and B is unregistered. Part of the route near Point B and Point D is owned by David Haworth Ashworth and Alison Jane Ashworth, Loveclough Fold Farm, Loveclough, Rossendale, Lancs BB4 8QT. David Stuart Hemsall and Diane Ewart-Jones, The Barn, Loveclough Fold, Rossendale, Lancashire BB4 8QT are also affected by this route. Point C is owned by Stephen Felinski and Sally Ann Felinski, 1 Clough Fold Barn, Loveclough Fold, Rossendale, Lancs BB4 8QT, and the land just after Point C is owned by James Richard Tozer and Dawn Kimberley Tozer, 2 Clough Fold Barn, Loveclough Fold, Loveclough, Rossendale, Lancashire BB4 8QT.

Summary

The early maps do not show the route with the exception of A-B which was defined by boundaries shown on County Series Ordnance Survey maps. The route under investigation would have linked to the stepping stones.

The 1930 25 inch Ordnance Survey map does not show the route under investigation– other than the enclosed section between point A and B but access along the route may have been possible through the farm as reinforced by the 1940s aerial photograph which shows a faint line consistent with pedestrian use between point B-C-D.

The most relevant pieces of map and photographic evidence examined are the 1:2500 OS map published in 1962, the 1960s aerial photograph, undated photographs taken by David Collinge believed to be dated from the 1960s and the aerial photograph submitted by the Loveclough Fold Residents Association (c1960) all of which clearly show that a physically defined route consistent with that of the route under investigation existed through the farm prior to redevelopment and that it appeared to be capable of being used.

Legal and Democratic Service's Observations

16 users of the 2006 Order route were interviewed and it came to light that the evidence they provided relates up until 1989/1990 to the route shown on the attached committee plan A-B-C-D, their evidence is set out below (these user forms were completed in 2004). The use after 1989/1990 was of the new access track at the development

All 16 users have used the old track through the farm on foot. The years from which they used the route varies:

1930 (1) 1933 (1) 1939 (1) 1956(1) 1947 (1)
1950 (1) 1954(1) 1958(1) 1961(2) 1967(1)
1969 (1) 1972 (1) 1974 (1) 1980 (1)
1 user did not specify.

The main places the users were going included the Printworks, the CPA Club, walking to other Public Rights of Way, fishing lodges, Crawshawbooth, Whinny Hill, Commercial Street, riverside, Clowbridge and other surrounding countryside. The main purposes for using the route included walking the dog, for pleasure / leisure, fishing, picnics and walking to work. The use of the route per year varies from 2-5 times, 20-35 times, once per week, 150 per year, 3-4 times per week, almost every day and constantly.

None of the users have ever used the route on horseback, however 2 users have used the route on a motorcycle / vehicle between the years of 1972-1986 and 1992-1999.

Most users agree that the route has always run over the same line however one user mentions there was a slight variation from near the buildings to the new road in 1986

(as he recalled). Another user states 'no' to this question but didn't provide any further details.

9 users agree that there are no stiles / gates / fences along the route, 1 user mentions where the two tall black gates are at the moment there used to be a farm gate, another user mention having trouble getting over the stile just over the bridge, 2 users state new gates were erected in 2004 and one of the user mentions the gates are closed but unlocked and one other user mentions there are gates adjacent to the CPA Club. However none of the users mentions any of the gates / stiles being locked or preventing any access.

2 of the users worked for a landowner, one worked on Rileys Farm from 1972-1991 but never received any instructions and the other worked for a local farmer (J Bridge) between the years of 1969-1977 and also never received any instructions.

Since the dwellings have been built one user has been told they had no right to use the path, one user has received unkind looks but has not been confronted or ever turned back, and another user has been stopped but carried on along the route. 6 of the users however have heard of others being stopped or turned back, some of these mention that others no longer use the route.

8 of the users have never been told that the route they were using is not a public right of way, however other users provided the following information, 1 user was told about 5 years before 2004 that the route was not a public right of way and was a private way, another user has been told it is private and has not used the route since, another user was challenged by children and told that they couldn't go through the gate as it was private, and 1 user mentions the members of Loveclough Angling had been stopped and told that the land was private and that they had no right to use the path.

2 users mention seeing notices along the route that state 'private', and none of the users have ever asked permission to use the route.

Further information has been provided by users since the interviews were carried out, this information is set out below.

- 1 user mainly used the route for work (Printworks) however Printworks shut down in 1980 but continued to use the route to walk the dog.
- Developers started work on the land in early 1990, even though work was ongoing users could still use the route
- 1 user used this route for family walks growing up and then continued to use the route when he joined the fishing club
- A user was told 'probably 1999' when people moved in that the path was private, but then let the user walk through
- A user mentions that when the developments took place they put the gardens where the track used to run
- Another user has used it since 1961 for getting to work, or going to the club and lodge for past time activities, when the owners sold to the developers a new track was put in and fenced

- 1 user mentions that when using the route to get to the club or during the summer time when walking the dog he would meet lots of people along the way other dog walkers and children playing
- Before 2004 1 user states that nobody said anything to him when he used the path and he often took his kids down to play
- A few of the users mentioned the previous owners never bothered about people using the route and they were only challenged / prevented when the new owners arrived

After carrying out the interviews officers wrote to the other users who did not attend an interview with a copy of the photograph provided by Mr Collinge to ask them to draw on the exact route they used before the development was carried out, 58 users replied and marked on the route along the old track. It is considered that their pre 1989 use is use of the old farm track and therefore the user evidence in this matter is significant.

Information from the Landowners

Recent consultations have been carried out with the landowners regarding the route shown on the attached Committee plan, their information is detailed below.

The landowners affected by the route have formed Loveclough Fold Residents Association and the Chairman Mr David Hemsall has provided a response on their behalf, the initial points raised in the first letter are as follows:

1. Lancashire County Council's consultation letter was identical to the consultation letter submitted for the previous claimed route in 2005, a copy of this letter was attached.
2. He states that residents complied with the terms of that letter and the matter was then concluded in favour of the residents.
3. The only other query relating to Loveclough Fold was raised in 1997 after the previous landowners had failed to comply with an Enforcement Order; at Rossendale Borough Council's Development Control Sub-Committee meeting on 7 May 1997, retrospective planning permission was given (a copy of this was provided) and the relevant Enforcement Order was withdrawn (copy provided).
4. Your letter does not explain why an issue which was settled almost a decade ago is now being exhumed. (Lancashire County Council have since replied to Mr Hemsall to explain the procedure)
5. The resurrection of a matter long since settled strikes residents as being frivolous, vexatious and calculated to cause anxiety and stress.

Mr Hemsall then submitted further evidence to support his objection. He provided a copy of a 1960's aerial photograph and a copy of the Ordnance Survey map of 1960. And states 'the aerial photograph of what in the 1960s was a farm and its outbuildings: the vehicles shown allow pretty precise dating. With respect, I venture to suggest that this is superior to the bodged up panorama which you sent on a previous occasion. I am bound to point out that the present dwellings consist of either (1) the buildings shown or (2) more recent structures erected on the footprint of those farm buildings.'

He then goes on to say 'the second attachment is a copy of the Ordnance Survey map of 1960 which clearly shows the scene depicted in the aerial photograph. From both the attachments, it will be clear that (a) there was no path - and certainly none going towards the footbridge which simply did not exist then - and (b) the beaten track shown both in the photograph and on the map gave vehicular access to the farm and its outbuildings. Neither attachment shows any trace at all of the claimed path.

Indeed, it is the residents' contention that this evidence points to the existence of only one definitive path: that on the south east bank of the Limey Water which is a matter which, with the assistance of an independent expert, the residents are pursuing as a wholly separate matter.'

Avonbraid Limited who own the land around Point A on the committee plan provided a plan that outlines their ownership but didn't actually provide any comments regarding the claimed public footpath.

An objection to the consultation of the Order that was made in 2006 by the residents of the properties affected by the route provides the information below about a route before the development.

The residents say that there was never an issue regarding a footpath existing along the access area to the six converted barns and old farmhouse. The search completed by solicitors showed that there was no footpath or right of way along the access route, but that a footpath existed on the other side of the river (Public Footpath No.4) connecting to Public Footpath No.10 and also Public Footpath No.9 which crossed stepping stones and then ran inside the garden (along the river bank) and then on through adjacent farmland.

They say that the footpath in question served a group of small terraced houses which existed on the east bank of the river and were later demolished in the 1950/60s. These houses served as accommodation for workers of Love Clough Dye Works who owned the whole site until the 1980s.

The residents explained that the farm was sold to Riley Brothers, who owned and farmed the land adjacent to the dye works. They later sold the land to a developer, K and S Ainsworth, who sold the properties in a derelict state to the current occupiers and others over a period of 3 to 4 years.

Riley Bros. submit that Tootal Print Works initially owned the land at Love Clough Fold, along with the dwellings; J and G Bridge rented the farm. In 1983 Rileys purchased the land from Tootal and Mr J Bridge continued to live in the farmhouse and rent a small plot of land until his retirement. In 1988 following Mr Bridge's retirement Rileys decided to sell the farmhouse and surrounding barns for development. In March 1989 these were sold to K and S Ainsworth and Rileys retained the surrounding land for farming purposes. At no time have Rileys ever given permission for people to use the path in front of the properties as a footpath although they don't deny that some locals may have used it to visit the farm to collect milk over the years. However, whilst they owned the land, permission has never been sought either verbally or written, nor would it have been granted.

To summarise, the residents of the Love Clough Fold state:-

- 1. All walks that can be made by using the proposed footpath can be made using the footpath on the opposite side of Limy Water. There is no need to introduce a new, parallel path.*
- 2. Use of the path prior to 1987 was to, not through, the farm. The existing Public Footpath No.4 divided near the present bridge and a short length crossed the river by stepping stones to the farm. This can be verified by the Riley family, previous owners of the land in question and owners of all adjacent fields.*

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order

User evidence

Aerial photographs showing available route

OS map evidence

Photographs

Connection to footpath network and stepping stones

No evidence of action by landowner prior to 1989

Against Making an Order

Location being working farm

Possible access to the farm

Another footpath nearby

Conclusion

This matter is unusual in that it stems from the realisation , following interviewing witnesses, that the line of the more modern access route claimed in 2004 was not on the same line as the pre 1989 route used by members of the public. Instead the route followed an old track through the farm which was there until approximately 21990 when the development of the farm into residences began. The route through the farm has been investigated further and the evidence is detailed in the report.

There is no express dedication and so Committee is asked to consider whether there is sufficient evidence from which to deem dedication under S31 or infer dedication from all the circumstances at common law.

Considering S31 it is considered that there were some challenges to some users of the route as early as 1989 but the main challenge would be a at that time when the development of the site affected the old route which became incorporated into new garden areas. It is suggested that the twenty years of use to be considered would be 1969-1989 or 1970-1990

Looking at the user evidence from both those interviewed and those who provided user form and confirmation of their route, it is suggested that the local users used the track through the farm then tried to continue on the line of the new access track at the development and this is why their use refers to use upto 2004.

Looking back to an earlier period of use it is suggested that there is sufficient evidence of use by the public without interruption and with no evidence of actions taken by the landowner for the twenty years being considered such that dedication can be deemed under S31. Committee are asked to discount evidence from the user who worked at the farm as this use would probably not be as of right.

Considering also the use of the route and lack of action by the owner as circumstances from which the owners intention to dedicate a footpath for the public could be inferred, it is suggested that this evidence too would be sufficient from which to draw such an inference of a dedication in the years before the new development post 1989.

Taking all the evidence into account , on balance, Committee may consider that there be sufficient evidence to make an Order in this matter to record a footpath on route A-D and promote same to confirmation.

As the earlier 2006 Order has objections it must be submitted to the Secretary of State but as the evidence of a footpath on the 2006 Order line is now difficult to sustain and there is the additional issue of incorrect notation, Committee may feel it is appropriate to withdraw support from that Order and submit it to the Secretary of State requesting non- confirmation.

Alternative options to be considered - N/A

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-518		Megan Brindle , 01772 535604, Legal and Democratic Services

Reason for inclusion in Part II, if appropriate

N/A

RIGHTS OF WAY SECTION**ADVICE NOTE No 22****USE OF CORRECT NOTATION ON DEFINITIVE MAP MODIFICATION ORDERS AND PUBLIC PATH ORDERS****Introduction**

1. The purpose of this Advice Note is to inform all Order Making Authorities (OMAs) about the Planning Inspectorate's expectations in terms of the notation to be used in order maps. It supersedes the advice contained in our letter of 7 September 2011 which was issued to all OMAs in England.
2. This advice note is publicly available but has no legal force.

Background

3. All new opposed orders are checked by us to ensure they are valid in terms of the relevant regulations. One of the things we check is the notation used on the order map to depict the way being stopped-up/deleted, added, diverted, upgraded or downgraded.

Definitive Map Modification Orders

4. Regulation 3 of the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993 (SI 1993 No.12) states that '*Rights of Way to which part III of the Act (public rights of way) applies shall be shown on the definitive map as indicated in Schedule 1 of these Regulations*'. Schedule 1 sets out the various line styles to be used to depict footpaths, bridleways, restricted byways and byway open to all traffic. The notation for a restricted byway is the same as that previously used to depict a road used as a public path – either a green broken line or a broken line and small arrow heads as thus: v_v_v_v_. Different options are provided for each type of way.
5. Regulation 6 of SI 1993 No.12 clearly states that '*Regulations 2 (map scale) and 3 (notation) above shall apply to the map contained in the modification...order as they apply to a definitive map*'.
6. On this basis, an order is considered to be fatally flawed if the wrong notation or non-standard notation (i.e. notation other than that set out in SI 1993 No.12) is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation.
7. If the same order happens to contain a new route of the same type, for example the deletion and addition of a restricted byway, then the route to be deleted could be shown as a broken green line and the route to be added as a broken line and small arrowheads or vice-versa.
8. In our view, the unaffected routes should also be shown using the appropriate notation as it helps with clarity. In all cases, the map key should clearly identify the different notation types used and what they

mean. For additional clarity, the map key should also clearly describe the points of the order route i.e. A-B-C against the relevant notation style.

9. In addition to using the correct notation, OMAs are reminded that the Regulations also set out specific colours for the various line styles. These must be adhered to. The Regulations do not refer to the use of red ink for any line style but, in any event, we prefer you not to use this colour as it is used by Inspectors if they need to modify an order.
10. It has been argued that the increasing reliance on the use of digitally prepared maps makes it difficult to apply the correct notations. We do not consider this to be an acceptable excuse for not adhering to the notations set out in the Regulations.
11. Another concern that has been expressed is the fact that a map produced in colour may become unclear if reproduced in black and white. We do not consider this to be a problem so long as the map key clearly identifies the different line styles used and what they mean. Again the map key should clearly describe the points of the order route i.e. A-B-C against the relevant notation style.

Public Path Orders

12. Authorities should ensure that they follow the appropriate Regulations¹ when preparing public path orders. Public path orders are considered to be fatally flawed if the wrong notation or non-standard notation is used to depict the routes affected by the order. We will therefore reject any order containing incorrect notation.
13. Again, our view is that the unaffected routes should be shown using the appropriate notation as set out in SI 1993 No.12 as this helps with clarity (paragraph 8 above refers).

Combined Orders

14. Combined orders are covered by the Public Rights of Way (Combined Orders)(England) Regulations 2008 as amended by the Public Rights of Way (Combined Orders)(England) (Amendment) Regulations 2010. Whilst they do not specifically state what notation should be used on order maps, Regulation 5 (of the 2008 Regulations) requires that, where a combined order is to be made, the combined order shall be in the form prescribed for an order of the type in question (e.g. a creation order or a diversion order). This is supported by the Guidance for English Surveying Authorities issued in October 2010 which contains, at Annex 1, model forms for each type of order. These clearly state that routes to be stopped-up/diverted shall be shown by a bold continuous line and ways to be added as a bold broken line.
15. On this basis, and unless further guidance is produced by Defra, OMAs will be expected to use the notation set out in the form of order under the relevant public path order regulations.

¹ SI 1993 No.10 for orders under the Town and Country Planning Act 1990 and SI 1993 No.11 for orders under the Highways Act 1980

Regulatory Committee

Meeting to be held on 27 September 2006

Part I - Item No. 5

Electoral Division affected:
Rossendale North

Wildlife and Countryside Act 1981

Claimed Public Footpath from Public Footpath No. 1 to Public Footpath No. 9, Rawtenstall, Rossendale Borough

Claim No. 804/421

(Annex 'A' refers)

Contact for further information:

J Blackledge, 01772 533427, County Secretary & Solicitor's Group

Mrs A Taylor, 01772 534608, Environment Directorate

Executive Summary

The claim for a public footpath from Public Footpath No. 1 to Public Footpath No. 9, Rawtenstall, Rossendale Borough, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/421.

Recommendation

- i) That the Claim for a public footpath from Public Footpath No. 1 to Public Footpath No. 9, Rawtenstall, Rossendale Borough, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/421, be accepted; and
- ii) That an Order be made pursuant to Section 53 (2) (b) and Section 53 (3) (c) (i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a footpath from a point on Public Footpath No. 1, Rawtenstall, (GR. 81060 27254), in a general north-easterly direction to a point on Public Footpath No. 9, Rawtenstall, (GR. 81131 27325), a distance of approximately 104 metres, and shown between points A-B-C-D on the attached plan.

Background

A claim has been received for a footpath extending from a point on Public Footpath No. 1, Rawtenstall, immediately to the north of its junction with Public Footpaths Nos. 4 and 94, Rawtenstall, to a point on Public Footpath No. 9, Rawtenstall, immediately to the west of its junction with Public Footpath No. 4, Rawtenstall, a distance of approximately 104 metres, and shown between points A - D on the attached plan, (GR 81060 27254 to 81131 27325), to be added to the Definitive Map and Statement of Public Rights of Way.

Consultations

Rossendale Borough Council

The Borough Council has not submitted any observations on the Claim.

Parish Council

There is no Parish Council for this area.

Claimant/Landowners/Supporters/Objectors

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

Advice

Environment Director's Observations

Description of claimed route

The claimed route commences at a point on Public Footpath no. 1 Rawtenstall approximately 4 metres north west of the junction between Public Footpaths nos. 1 and 4 and shown as point A on the attached plan.

The claimed route extends in a north-easterly direction parallel to Public Footpath no. 4 Rawtenstall (legally recorded to the south of the claimed route within the boundaries of the watercourse). From point A the claimed route follows a tarmac access road approximately 3 metres wide, which provides access to the CPA Social and Bowling Club and a number of residential properties. A street light is located on the claimed route close to point A.

The claimed route passes the front of the Social Club but is separated from the Club by a substantial stone wall. Access to the club is via a pedestrian gate near to point A and vehicular access is also available by travelling along the claimed route to a small car parking area on the north side of the claimed route which is accessed just before reaching point B.

Between point A and point B the claimed route is bounded by a stone wall on the south which forms part of the man-made stone banking that defines the route of the watercourse (Limy Water). On the north side, the route is bounded first by a stone wall and then a wooden fence, both of which mark the boundary of the Social Club on the claimed route. There are no signs, gates or barriers at point A indicating whether the claimed route is public or private.

Ornate iron gates have been erected across the claimed route at point B. The gates were open when the claimed route was inspected and access through them was freely available. The gates are approximately 5 foot high rising to over 6 foot high

where they come together in the centre. If the gates were locked there would be no access over or around them for pedestrians attempting to use the claimed route. A lock exists as an intrinsic part of the gate but it was not possible to determine whether it was used at the time of the inspection. There was no evidence of any notices or signs on the gates that indicated their purpose.

Beyond point B the claimed route continues in a general north-easterly direction along a well-maintained 3-metre wide concrete block paved surface. To the south of the route the watercourse moves away from the claimed route and is no longer separated from the route by a wall. A well maintained mown grass verge now separates the claimed route from the watercourse.

Vehicular access is available from the claimed route to a number of residential properties on the north side of the route. Just beyond point B on the south side of the claimed route there is a telegraph pole and the concrete block paving has been extended to pass completely around the telegraph pole to provide a passing place/ parking area for vehicles.

At point C the claimed route no longer follows the 3 metre wide concrete block paved access road (which continues in a north and then north westerly direction to further residential properties). Instead the claimed route continues in a general north-north-easterly direction across the mown grass verge to point D where it meets Public Footpath no. 9 Rawtenstall. There is no visible worn track across the grass verge and no signs, gates or barriers indicating whether the claimed route is public or private from this point.

Documentary evidence

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

The earliest map examined that shows the area was Yates' map of 1786. The map names the village of 'Love Clough'. It shows Limy Water and a scattering of buildings in the area of the claimed route, but no roads, tracks or paths between them. A map produced between 1804 and 1810 to show the land owned by the Duke of Buccleuch shows the village in much the same way, with no roads or tracks between the buildings. The next map examined was Greenwood's map of 1818. This map shows the modern Commercial Street crossing the brook, and continuing to the north-west, but is of too small a scale to show minor paths or tracks. Hennessey's map of 1830 shows the village in much the same way as Greenwood did some 12 years earlier.

There is no tithe or enclosure map for Loveclough.

The first edition of the six-inch Ordnance Survey map for the area was published in 1849. This map probably shows the buildings that are now known, as shown on the attached plan, as the Club near point A, and The Barn, Clough Fold Barn and Love Clough Fold Farm to the north of point B. Other buildings are shown which have since been demolished. There is a gap between the rear yard of the building that is now the social club and the bank of the brook, which probably corresponds with the

claimed route between points A and B, but the rest of the claimed route is not shown as an actual path or track, but the line B-D crosses what appears to be open ground.

The next map examined was the first edition of the 25-inch map published in 1893. This map shows the claimed route from A to B as a narrow gap between the bank of Limy Water and the enclosed rear yards of buildings as described above. Beyond point B there is an open area within which the buildings mentioned above stand as shown on the 6-inch map, as well as a terrace of 4 cottages, (now demolished). The buildings are named as Love Clough Farm. A stepping-stone crossing of the brook is shown to the north of the footbridge at point D, with a track that corresponds with Public Footpath no. 9. There is a collection of buildings on the opposite side of the brook from the claimed route, with a row of double pecked lines, signifying a path or track of some sort, leading from the far north-eastern side of the buildings along the side of the brook, before crossing it where Public Footpath no. 10 meets Public Footpath no. 4, as shown on the attached plan.

The next edition of the 25-inch map, published in 1911, shows the buildings on each side of Limy Water in much the same way as on the 1893 map. Apart from the length A – B, no path or track is shown corresponding with the rest of the claimed route. The terrace of cottages (now demolished) referred to above, is named as Love Clough Fold on this map. Line B-D would be across an area of open ground at Love Clough Farm.

The 1930 25-inch map still does not show more of the claimed route as a bounded track other than A to B. The terrace of cottages is no longer shown. The open area remains south east of the farm buildings.

The 25-inch map published in 1962 shows the length A to B as on earlier maps. There is a solid line across the track at point B, which would probably indicate the presence of a gate. There are some pecked lines across the open area between the brook and the farm buildings, which is now enclosed gardens. These pecked lines indicate a change of surface across the open area that becomes an unfenced track along the immediate eastern side of the building named on the attached plan as Clough Fold Barn. This continues northwards then eastwards to Public Footpath no. 9. Part of this unfenced track can be seen as a double row of pecked lines north of point D on the attached plan. This unfenced track from point B is not the route claimed as a public footpath but the route as claimed crosses open ground.

Aerial photographs confirm that the surfaced roadway along which the claimed route runs did not exist in 1945 or 1963. Photographs dated 1989, supplied by a resident, show a rough stoned surface yard area between the buildings, which continues as a track immediately against the eastern wall of the building now called Clough Fold Barn on the attached plan. The most recent aerial photograph, taken between 1999 and 2004 shows the surfaced roadway. There also appears to be a trodden path between the roadway and Limy Water from point B to D, but not along the claimed route.

In summary therefore, it appears that a complex of farm buildings known as Love Clough farm has existed on the site from at least the end of the 18th century. In 1849 access is recorded as being possible along the claimed length A to B to an open

yard area between the buildings. A track corresponding to Public Footpath no. 9 northwards from the far side of the yard, by the stepping stone crossing of the brook, has also existed from at least that date. The claimed route B-D crosses the open area although there is no marked path between B and D is shown on maps until 1962 – however this track is not the claimed route. Photographic evidence confirms that the surfaced track nearer to the buildings still existed in the late 1980s and likewise the open area nearer to the watercourse. The buildings at Love Clough Farm are now renovated and some renamed as The Barn, Clough Fold Barn, Loveclough Fold Farm as shown on the attached plan and a new access roadway has been constructed.

It is advised that the line claimed is not shown on the Ordnance Survey Maps as being blocked at any time by any building and would appear to have been across an area of open ground. There are however no documents which assist in determining the status of the claimed route.

Comment is made later in this report about the correct location of a public footpath being on the other bank of the watercourse. However it is advised that Public Footpath no. 4 Rawtenstall, shown on the attached plan, is recorded as lying in the brook. The earliest map produced in the mid 1950s by Rawtenstall Municipal Borough in preparation of the Definitive Map was the Draft Map. This map clearly shows the footpath drawn in the brook. Whether this was deliberate, or an error, is not known. The depiction of the path in the brook was copied at each stage in the production of the Definitive Map, up to and including the current Definitive Map, First Review. It is the case that there is map evidence that a path or track has existed since at least 1893 from the rear of buildings on the opposite side of Limy Water from the claimed route, starting from approximately where the word 'Drain' is on the attached plan. The path on old OS maps is shown continuing along Public Footpath no. 4 to Burnley Road and northwards to the reservoirs on Public Footpath no. 10.

Comment

Director of Legal Services Observations

Information from the Applicant

In support of the Claim the applicant has submitted 156 evidence of use forms indicating knowledge of the route for over 70 years (3); 60-69 years (5); 50-59 years (8); 40-49 years (12); 30-39 years (22); 20-29 years (28); 10-19 years (25); less than 10 years (43); and ten unspecified periods.

The forms indicate use of the route for over 70 years (1); 60-69 years (5); 50-59 years (7); 40-49 years (11); 30-39 years (20); 20-29 years (27); 10-19 years (25); less than 10 years (49), and eleven unspecified period of use.

The usage has been mainly for pleasure purposes, leisure, recreation, bird-watching, dog-walking, walking, running, access to and from school, work and shops, visiting friends and relations, and as access to fishing and the countryside, and ranges from daily, 2/3/4/5 times per week, weekly, fortnightly, monthly, to less frequently.

One witness mentions use of the route in a vehicle; several mention use on bicycles.

Other than as detailed below, the majority of the witnesses state that there are no prohibitory notices on the route; they have not been stopped or turned back whilst using the route (other than very recently); they have not been employed by any landowner over which the route passes; there have been no stiles, locked gates or fences across the route, other than those gates recently erected in or around June, 2004; they have not sought permission to use the route; and that the claimed route has always followed the same line.

Several witnesses refer to members of the local Angling Club being stopped from using the route, and refer to 'others' having been told the route is private, (although it is believed that such challenge has only been in fairly recent times). It has been stated by users that the gates have only recently been erected and, whilst looking imposing, being closed, and giving the impression of being a private driveway, they are not locked. One witness did ask the farmer for permission to use the route approximately 38 years ago. A further witness mentions that the farmer at that time did not stop anyone at all from using the claimed route.

Two of the witnesses are members of the family who were tenant farmers at Love Clough farm for thirty years, and a small number of witnesses worked for the farmer when children. The wife of the farmer states that she is aware that people have used the path to the brook side and the other family member, who lived at Love Clough Farm since 1962 says that this (claimed) route has always been used by the public.

One witness refers to there being stepping stones at the river before the erection of the bridge.

Information from others.

The residents of the properties on the old Love Clough Farm site refer to the collection of the residencies as Loveclough Fold. Some of them have objected to the Claim. One such resident is the owner of the land over which the claimed route B-D runs.

It is submitted that there was never an issue regarding a footpath existing along the access area to the six converted barns and old farmhouse. The search completed by solicitors showed that there was no footpath or right of way along the access route, but that a footpath existed on the other side of the river (Public Footpath No.4) connecting to Public Footpath No.10 and also Public Footpath No.9 which crossed stepping stones and then ran inside the garden (along the river bank) and then on through adjacent farmland.

The footpath in question served a group of small terraced houses which existed on the east bank of the river and were later demolished in the 1950/60s. These houses served as accommodation for workers of Loveclough Dye Works who owned the whole site until the 1980s.

The farm was sold to Riley Brothers, who owned and farmed the land adjacent to the dye works. They later sold the land to a developer, K and S Ainsworth, who sold the

properties in a derelict state to the current occupiers and others over a period of 3 to 4 years. The new access road was built in the late 1990s. The residents had asked for it to be redirected away from the properties. The current access road is not the same route as originally used by people who worked on the farm.

Riley Bros. submit that Tootal Print Works initially owned the land at Loveclough Fold, along with the dwellings; J and G Bridge rented the farm. In 1983 Rileys purchased the land from Tootal and Mr J Bridge continued to live in the farmhouse and rent a small plot of land until his retirement. In 1988 following Mr Bridge's retirement Rileys decided to sell the farmhouse and surrounding barns for development. In March 1989 these were sold to K and S Ainsworth and Rileys retained the surrounding land for farming purposes. At no time have Rileys ever given permission for people to use the path in front of the properties as a footpath although they don't deny that some locals may have used it to visit the farm to collect milk over the years. However, whilst they owned the land, permission has never been sought either verbally or written, nor would it have been granted.

Rileys also own the surrounding lodges and Loveclough Angling Club rent the lodges shown on the map between Public Footpaths Nos.9, 10 and 4, (the agreement with the club that access was gained preferably via the main road, the A682, or via the existing footpath on the opposite side of the river to the properties at Loveclough Fold). The Club were contacted verbally by Mr S Riley on the 26th April, (2005 ?) and advised that if they did not use the correct footpath, i.e. the one on the opposite side of the river that is clearly marked with stiles and footpath signs, then their rental of the lodges would be revoked.

They state that Public Footpath No.4 has always been through the factory yard, in-between the two buildings, over a stile along the riverside and turning right up the hillside or between the lodges as per Public Footpath No.10, land owned by Rileys. There are stiles and footpath signs, which were installed by the Council. However, these signs are poorly marked from Commercial Street. They are, however, clearly marked from the stile to the rear of the buildings, marked as drain on Public Footpath No.4.

It is stated that the Riley family have farmed the surrounding areas for over 100 years and at no time has it been common knowledge that a footpath runs in front of the dwellings at Loveclough Fold. Even though they have not always owned the land surrounding Loveclough Fold, they have always been neighbouring farmers.

There is some mention of use by the public by the residents. One refers to local people being interested in the renovation works and taking time to talk to the few people walking by "mainly ramblers" and never stopping people admiring the surrounding area. One refers to the new gates causing tension as people were used to being able to walk down the new access road to the footpath network. They refer to increased use in recent years.

The residents of the properties at Loveclough Fold have questioned the view of the Environment Director (detailed elsewhere in this Report) that Public Footpath No.4 runs down the middle of the river. They consider that this is not the case, but that Public Footpath No.4 runs on the opposite side of the river to the properties and

through the courtyard of the property on the other side. It is submitted that this is a key point as it goes right to the heart of one of the main reasons that this claim is being made. The dotted line marking the footpath is actually clearly shown on the opposite side of the river and entering the courtyard. It is submitted that the Definitive Statement clearly states that the path runs on the northerly side of the river, between existing Hurstwood buildings.

It is submitted that the development of the print works, who constructed the lodges between Public Footpaths Nos. 4, 9 and 10 to increase the water flow for the productivity of the textile industry made it impossible to walk through the river. There is actually a bridge which, to access the river, would involve an 8 to 10 foot jump from the bridge to get into the river, causing significant injury, even loss of life. The bridge has been in use for at least 70 years so no one has used this path for at least 70 years. It is assumed this was when the Council constructed the footpath on the opposite side of the river – Public Footpath No.4, hence the Council's construction of the stiles, bridge and signage to join Public Footpath No.4 to Public Footpath No.10. Also, the River Limey has been subject to severe flooding, causing nearby properties to be harshly flooded, at least 3 times in the last 40 years, surely an unsuitable location for a public footpath.

It is submitted that, between 1988 and 1991, the four old farm buildings were renovated into six residential properties, the land developed into gardens and the properties were occupied. The road through the Fold was not developed at this time and nobody walked the area, ramblers using Public Footpath No.4 on the opposite side of the river. Around this time the area was designated as a Conservation Area.

From the time of occupation of the houses, up to 1992, problems arose with certain members of the fishing club driving at speed along the unmade path and parking on the open ground. At one time, a sign was put up stating 'Private Road – No Vehicular Access'. This was done on a Friday. By Sunday lunchtime it was in pieces in the river.

Soon afterwards, an agreement was reached with the fishing club so that members did not drive along the path, though some continued to walk along it to the lodges to avoid the stile on Public Footpath No.4, although this was contrary to the lodge owners wishes.

It is submitted that Messrs Ainsworth had sold the various properties as separate lots, but retained the open area, on which stood an old shed or barn, plus the area between the properties and the river. This area should have been paved and landscaped but this was never done.

Finally, in 1996, one of the residents sought to have the unsightly barn removed. Messrs Ainsworth would not do this, and an Enforcement Order was issued. Through planning permission, the residents obtained the right to retain the walls but had to build the road and undertake the landscaping of the riverside at their own expense. This was done under the close scrutiny of the planning department of Rossendale Borough Council and with the understanding that there was not a public footpath through the Fold.

An objection was received to the use of Tegular blocks instead of 'proper cobbles' which came from the Claimant.

Work on the road and landscaping was done in the summer of 1997. Messrs Ainsworth retained the responsibility for landscaping the open area, but failed to do this as they hoped for planning permission for a new house. When it became apparent that such permission would not be forthcoming, the land was sold to one of the residents, who is at last able to undertake the necessary work

The relevance of the above is, it is submitted, twofold. Firstly, the residents take their responsibilities seriously as occupants of a Conservation Area. Secondly, due to the hard work of the residents, the appearance of the area was transformed. Also in 1997, Hurstwood Developments Ltd., the owners of the former redundant factory site across the river, brought the buildings into use as workshops for vehicle and machinery maintenance. Also a caravan was put into house the engineer who works at the site.

Prior to this time, most walkers, particularly those with local knowledge, used Public Footpath No.4, through the works yard. The changes brought about by the workshop and caravan meant that this no longer had the appearance of a public footpath, whereas on the Loveclough Fold side there was now an attractive pathway and from this time that pathway saw more use.

Only occasionally have residents spoken to people about the footpath. On one occasion two members of the fishing club dropped litter, and on another, people banged the gate against the stone wall. As a result, they now take no action.

It is submitted that, around 1997, a sign for the Rossendale Way was put on Public Footpath No.4 on the stile behind the works buildings by Lancashire County Council, though this is not visible from Commercial Street. It is stated that Public Footpath No.4 is clearly shown on the north side of the river on the Mario Maps.

Other than the sign above, not visible from Commercial Street, there is a marked absence of signs. Rossendale Borough Council has been approached about this, most recently about two years ago, but to no effect. The last reply from them suggested something might be done when the new estate was complete.

Over the years, on three occasions, the residents have put up signs or maps. On every occasion these signs have been thrown into the river.

In 2002 Elite Homes purchased part of the factory site from Hurstwood Developments, who retained the workshops to the north of the river, and set about constructing just over fifty houses. During 2003, problems arose with prospective buyers driving along the pathway of Loveclough Fold at speed, thus endangering the lives of the children who live in the Fold. Later in the same year and into 2004 further problems arose with people from the new houses bringing their dogs to the riverside area, often without leads.

In March 2004 when one of the residents attempted to mow the grass on the riverside verge, he had to move more than forty lots of dog-mess before he could

start. The residents decided immediately to put up gates after consulting the local Planning Office. Apart from restrictions as to colour and height, both of which have been met, there was no difficulty. In the intervening week or so a sign was put on the wall asking dog-walkers to respect the area. This was thrown in the river.

As soon as the gates went up, there was reaction from some residents of Commercial Street, and members of the club next to the Loveclough Fold houses.

Several residents got into conversation with occupiers of the new estate and the position was explained. To avoid repetition of the story, a map was attached to the gate showing the position of Public Footpath No.4. This, too, was thrown into the river, this time by the occupier of the caravan who freely admitted as much. He said "I don't want people walking past my window". He also stated that Hurstwood did not want the footpath through the area where they intended to construct 'expensive houses', as it would reduce the value of the site.

After the gates were installed, rather more people than normal came walking in Loveclough Fold. Some walked on the Loveclough Fold side, mainly long-time residents of the area. Others, often people who had looked up the footpath maps on the Internet, used Public Footpath No.4. In response to that, the occupier of the caravan put up wire screens to block the path and the Footpath Officer, who was only in post a short time, was called, by whom the residents do not know.

On his second visit the Footpath Officer confirmed that Loveclough Fold was not a public footpath, and told the occupier of the caravan to take the fences down as they were blocking Public Footpath No.4. He took the fences down for a short time only, then re-instated them within a few days. The footpath is still blocked by a caravan.

Some 56 new houses have recently been built on the adjacent derelict land at the bottom of Commercial Street, known as Penny Lodge Dell. These works are almost complete. In addition to this development, however, the existing workshop property through which the existing footpath runs has also been granted planning permission for the development as housing by Hurstwood, the current owners. The residents are of the firm belief that this Claim is an attempt to remove the route of the existing footpath from that land so as to enable a much more profitable development to be built, as not only will there be more land available but also there won't be the perceived inconvenience of having a public footpath running past one or two of the houses which will be detrimental to the value of the properties.

As a result of the new housing development and the increase of people in the area, particularly dog walkers, there became a large number of people wanting to walk their dogs through Loveclough Fold. As a result of that the grass banking running along the river side and the land which it joins to became constantly fouled by dogs. This was mainly because firstly, they had no knowledge of the correct footpath route; this footpath has been in use for the past hundred years. Secondly, if they had been aware of the correct footpath route, they would not have been able to use it as it is constantly blocked by Hurstwood Developments.

With the completion of the new banks, bridge and road, an easier route had been created than that of confronting the occupier of the caravan and climbing a stile.

Residents in the new housing estate (Penny Lodge Dell) began walking the road, many with their dogs and fouling the lawn areas adjoining the river. It was pointed out to people that these were actually part of the gardens and that the road was private, and that the footpath was on the other side of the river.

In August 2004 Rossendale Borough Council were contacted regarding the failure to maintain the footpath, even though they were aware that an employee of Hurstwoods had deliberately blocked the access and is still blocked to this day. A representative of Rossendale Borough Council came down to see residents of Loveclough Fold regarding the matter of the footpath access (or lack of it). He viewed the site, returned to the office, checked the relevant maps, and confirmed that the footpath and access is on the opposite side of the river, between the buildings of Hurstwood Developments.

To summarise, the residents of the Loveclough Fold believe that the Modification Order should not be made for the following reasons:-

1. All walks that can be made by using the proposed footpath can be made using the existing Public Footpath No.4. There is no need to introduce a new, parallel path.
2. Use of the path prior to 1987 was to, not through, the farm. The existing Public Footpath No.4 divided near the present bridge and a short length crossed the river by stepping stones to the farm. This can be verified by the Riley family, previous owners of the land in question and owners of all adjacent fields.
3. Rossendale Borough Council has consistently failed to mark the various paths, particularly Public Footpath No.4. The change in use and appearance around 1997 has led to much greater numbers of walkers taking the route through Loveclough Fold, in the absence of directional signs. In addition, Public Footpath No.4 has been effectively blocked at various times, by metal fencing, machinery, and latterly an old caravan.
4. The application is, in essence, malicious. The Claimant has destroyed a sign put up by residents and objected to work being done in Loveclough Fold. The Claimant has not been seen to use the path.
5. If the Order was to be granted, it would open the way for commercial gain by the owners of the land opposite. Planning permission exists for a small number of dwellings, and clearly the owners would much prefer, and find it financially beneficial, not to have a public footpath through the development. It is anticipated that the owners would argue that there was already a parallel path, and seek to close the part of Public Footpath No.4 going through their land, thereby switching the path from their side of the river to Loveclough Fold, a process not normally approved. It should be noted that the owners of the factory site erected walls around the front of the site in 2004 in anticipation of developing the land and left a gap of approximately one metre for the footpath indicating that they are aware of the existence of Public Footpath No.4 through their land.

Further objections have been made on the grounds that acceptance of the Claim, and the confirmation of a subsequent Definitive Map Modification Order, would have an adverse effect on security, peace and tranquillity, litter, dog-fouling and hygiene. The Committee will, of course, be aware that, although these points are important to those persons making them, they are amenity objections and have no bearing on whether or not the path exists in law.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

Strong user evidence

All except a few are sure line is as claimed

Line has been available for many years along bounded section A-B then across open ground B-D

Tenants of the farm 1958-88 confirm knowledge of public use

Against Accepting the Claim

Information indicating sufficient lack of intention to dedicate and challenge to use but only recently.

Conclusion

This claim is that there is already a public right of way along the line shown A-D on the plan and that this should be recorded as a public footpath on the Definitive Map.

It is noted in this matter that there are a large number of people who have given evidence of their use of this line. The years during which they have used the route have been put into chart form attached hereto. Use of the route would appear to have taken place over several decades increasing steadily over the years.

There is no express dedication by an owner. For dedication to be inferred at Common Law there needs to be circumstances from which it can be inferred that the owner gave the route over to be used by the public. The owner until the 1980s was Tootal Ltd of the Print Works and part of the route (B-D) passed through an open area of a farm tenanted by the Bridge family from Tootal since 1958. It is advised that it appears that no action was taken to dissuade public use and the use was known to Mrs Bridge and at least one other family member.

Ownership of A-B remained with Tootal Ltd although the very first section near point A has been owned by a succession of Housing developers as part of development land to the south and west of the claimed route and again there is no evidence of action taken against public use.

Even after ownership of land crossed by B-D passed to Rileys and then Ainsworths there is no evidence of negative actions taken in the face of public user and it may be that there is evidence on balance that the route had been given up to public use

on foot. It may be considered that the user by the public and the owners seeming acquiescence in same could on balance be sufficient circumstances from which to infer a dedication of the route as a public right of way.

For dedication to be deemed under Section 31 of the Highways Act 1980 the use by the public has to be over the twenty years immediately preceding the route being called into question. It would appear that there has been challenge to the use of the route recently, there is reference to signage and in particular when the gates were erected in 2004. Taking 2004 as being when the users recognised that their use was challenged, use would have to have been without interruption 1984-2004 and despite all the renovation works and the paving of part of the claimed route the users do not seem to have been interrupted in their use. There is some reference to debris in the past on the open area south east of the buildings but again no mention by users of the route being obstructed such that use was sufficiently interrupted.

Until 1988 this open area crossed by B-C was owned by the Riley brothers and it is suggested that there is no reference to any sufficient lack of intention to dedicate being demonstrated at that time. The Riley brothers now say that they did not intend there being a right of way but seemingly took no action at the time of their ownership. From 1988 to 2003 the open area was in the ownership of the Ainsworths and again it may be considered that there is no reference to any sufficient lack of intention to dedicate on their part.

There are a few users who refer to the line of their route changing slightly and it is suggested that they may have used the old track nearer the buildings and then changed to walk the new access road. The overwhelming majority of users however, when asked if their route had always been on the claimed line stated that it had.

There is a known public footpath very near to this claimed line. The line of the recorded right of way is in the watercourse and although the Definitive Statement for this section of FP4 would seem to refer to a route on dry land, it is advised that a Statement needs a line to apply to and in this matter the line is in the watercourse as advised by the Environment Director. The issue of whether there is evidence of a public right of way on the southern side of the watercourse is not before the Committee as part of this matter. This would need to be the subject of a further application. The Committee may however be concerned to decide whether this route, if considered to subsist as a footpath, may be the correct route and the line in the water being in error. It is advised however that the evidence of existence of this claimed route as a public footpath in the 1950s and therefore being that which should have been recorded as the correct route is slight. There is, it is suggested insufficient evidence for the existence of this route to be cogent evidence of an error and that instead it may be that the dedication of this claimed route as separate public route lies more with user since the 1950s

It is suggested that public use of the claimed line has been tolerated by owners until very recently. Use seems to have increased due to the non availability of a route on the other side of the watercourse, to more people living in the area and more use by those fishing in the lodges and this use is now challenged. However lack of action by owners in the past may mean that the route may on balance be deemed or inferred

as already dedicated as a public footpath. Taking all the evidence into account Committee may be minded to consider that the claim be accepted.

Alternative options to be considered - N/A

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

Paper	Date	Contact/Directorate/Ext
All documents on Claim File Ref: 5.24575 (804/421)		J Blackledge, County Secretary & Solicitor's Group, Ext: 33427

Reason for inclusion in Part II, if appropriate

N/A

Lancashire
County Council



LOCATION PLAN

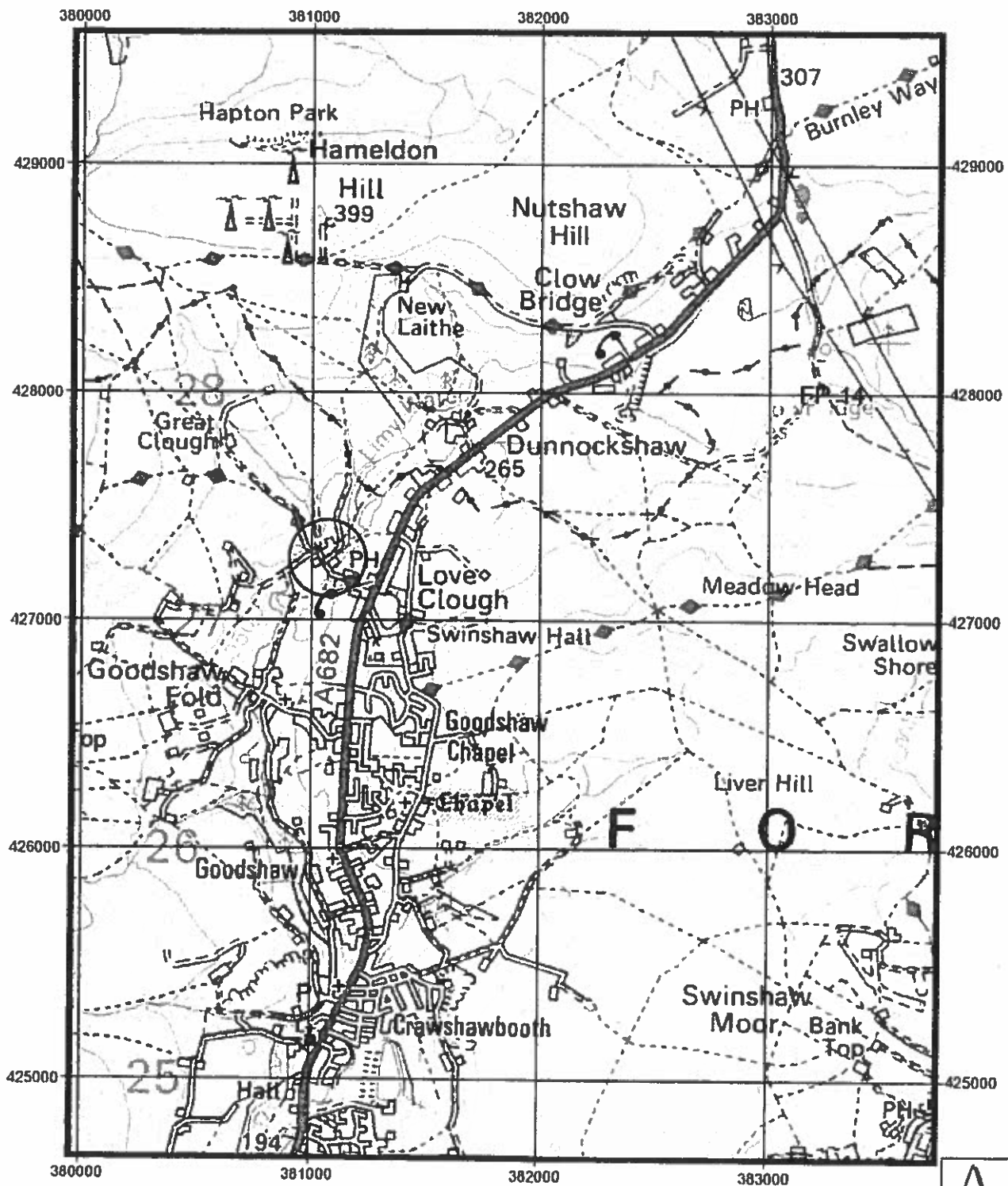
Wildlife and Countryside Act 1981

Claimed public footpath from

Public Footpath no. 1 to Public Footpath no. 9 Rawtenstall, Rossendale

Claim no. 804/421

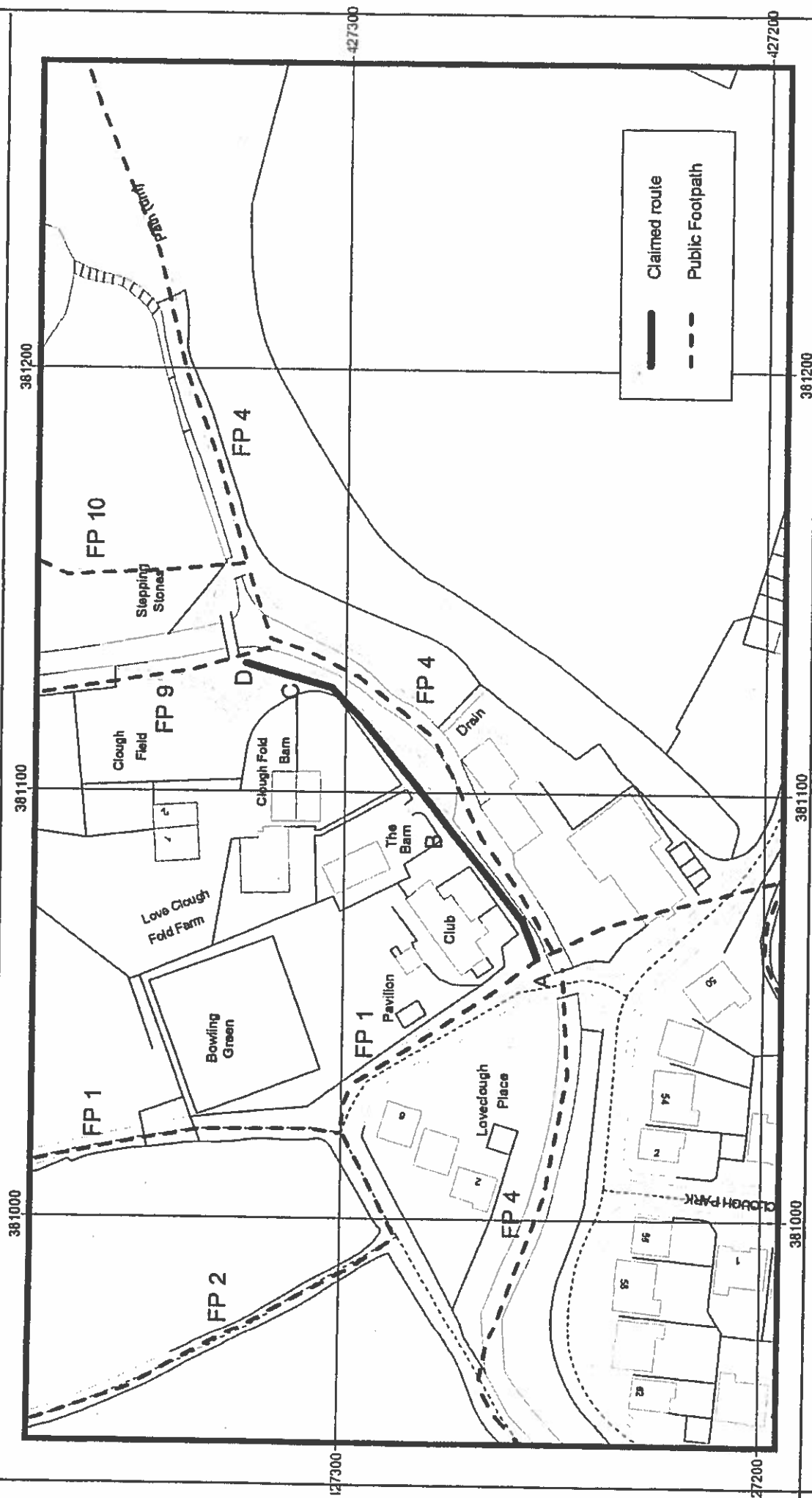
G. Harding B Eng, FICE, FIHT, MIMgt, Director, Environment Directorate.
P.O. Box 9, Guild House, Cross Street, Preston. PR1 8RD

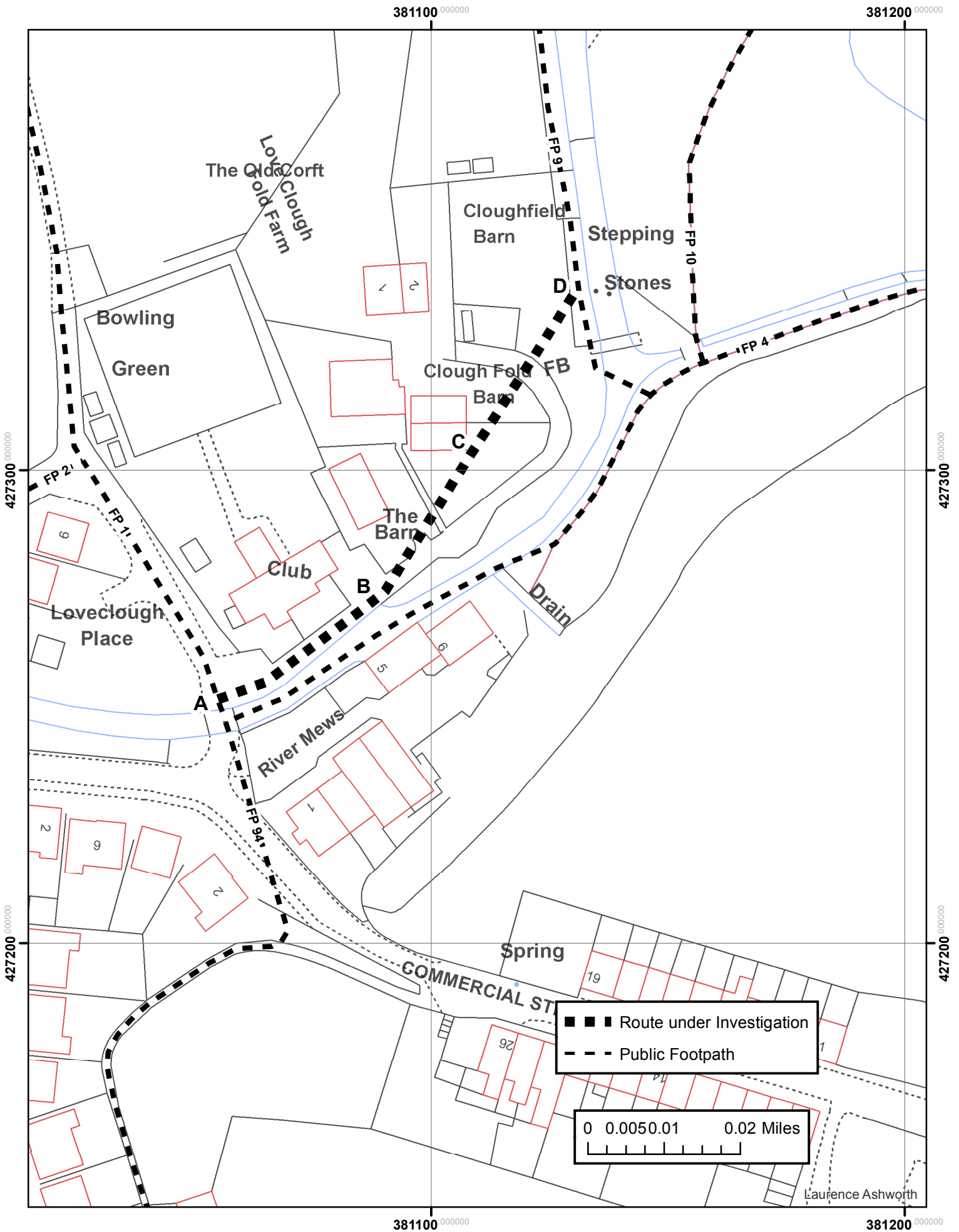


Reproduced from the 1:25000 scale Ordnance Survey map with the permission of the
Controller of her Majesty's Stationary Office. Crown Copyright reserved, Licence No 076716

Part of sheet

G. Harding B Eng, FICE, FIHT, MIMgt, Director, Environment Directorate,
P.O. Box 9, Guild House, Cross Street, Preston, PR1 8RD





381000 000000

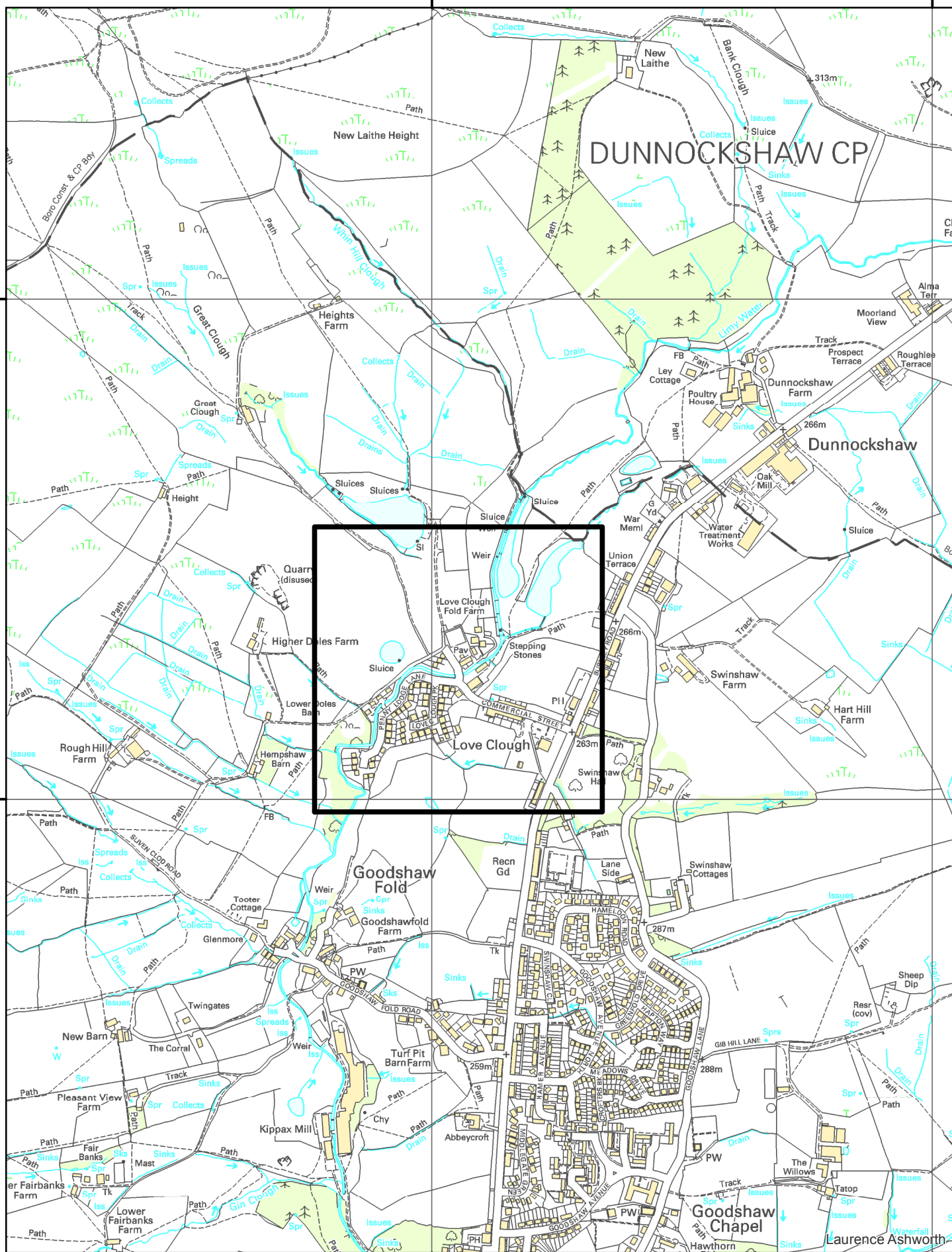
382000 000000

428000 000000

428000 000000

427000 000000

427000 000000



381000 000000

382000 000000



Steve Browne
Interim Executive Director
for the Environment

Wildlife and Countryside Act 1981

Addition of Public Footpath at Loveclough, Rawtenstall, Rossendale Borough

LOCATION PLAN File No. 804-518

1:10,000



The digitised Rights of Way information should be used for guidance only as its accuracy cannot be guaranteed. Rights of Way information must be verified on the current Definitive Map before being supplied or used for any purpose.

This Map is reproduced from Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office (C) Crown Copyright.
Unauthorised reproduction infringes Crown Copyright and may lead to Prosecution or civil proceedings. Lancashire County Council Licence No. 100023320

