

## Regulatory Committee

Meeting to be held on 10<sup>th</sup> August 2022

### Part I

Electoral Division affected:  
West Lancashire East

#### Wildlife and Countryside Act 1981

#### Definitive Map Modification Order Investigation

#### Addition of Restricted Byway known as Dark Lane from Lee Lane, Bispham to Bentley Lane, Hilldale

(Annex 'A' refers)

Contact for further information quoting reference number 804-707:

Ansar Sadiq, 01772 532435, Paralegal Officer, County Secretary and Solicitors Group, [Ansar.Sadiq@lancashire.gov.uk](mailto:Ansar.Sadiq@lancashire.gov.uk)

Jayne Elliott, 01772 537663, Public Rights of Way Definitive Map Officer, Planning and Environment Group, [jayne.elliott@lancashire.gov.uk](mailto:jayne.elliott@lancashire.gov.uk)

#### Brief Summary

Application for the addition to the Definitive Map and Statement of Public Rights of Way of a Restricted Byway known as Dark Lane from Lee Lane, Bispham to Bentley Lane, Hilldale.

#### Recommendation

- (i) That the application for a Restricted Byway along Dark Lane be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a Restricted Byway along Dark Lane as shown on Committee Plan between points A-B-C-D-E-F.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

#### Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received for the addition to the Definitive Map and Statement of Public Rights of Way a Restricted Byway from Lee Lane, Bispham to Bentley Lane, Hilldale.

The county council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out

the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

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

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

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

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

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate’s website also gives guidance about the interpretation of evidence.

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

## **Consultations**

### West Lancashire District Council

West Lancashire District Council did not provide an official response to the consultation.

### Bispham Parish Council

Bispham Parish Council did not provide an official response to the consultation.

### Hilldale Parish Council

Hilldale Parish Council did not provide an official response to the consultation.

## Applicant/Landowners/Supporters/Objectors

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

### **Advice**

#### **Head of Service – Planning and Environment**

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	4947 1328	Wall across start of route at junction with Lee Lane (U5295) and Old Lane (U458)
B	4951 1325	Fence across application route
C	4952 1324	Culverted access between the application route and footpath 8-6-FP3
D	4969 1313	Fence across the application route on parish boundary
E	4977 1309	Fence across the application route
F	49791308	Open junction with Bentley Lane (C174)

### **Description of Route**

A site inspection was carried out in July 2021.

The application route commences at the junction of Lee Lane (U5295) and Old Lane (U458) at point A on the Committee plan. Lee Lane and Old Lane provide public vehicular access through to Sill's Farm and Blackleage Cottage, both north of point A and a route through to Back Lane, Mawdesley.

From Lee Lane the application route is blocked by a stone wall built across it (point A). Behind the wall a well-maintained hedge has grown up and there is no access onto the application route. To the north a driveway leads off Old Lane to Blackleage Cottage. The land crossed by the application route between point A and point B appears to have been incorporated into the garden of the property.

Immediately west of point A on Lee Lane there is a wooden stile and gateway providing access into the field immediately south of the application route and from the stile it is possible to walk along the field edge parallel to the application route to join the route recorded as 8-6-FP3 adjacent to point C.

From the field it is possible to view part of the application route between point A and point B. The surface of the route is overgrown and difficult to see. Hedges (overgrown) and trees appear to line part of the route and part appears to be open and incorporated into the garden of Blackleage cottage.

A wooden fence crosses the route on the boundary of the property (point B). Although very overgrown with nettles a watercourse appears to run from the culvert (point C) along the application route for a short distance, approximately 10 metres, to the fence (point B).

The watercourse is culverted (point C) to allow access to and across the application route to the field north of the application route.

Beyond point C the application route is fenced along the north east side but is open to the field on the south west side. Whilst overgrown it is possible to walk parts of the application route as there is evidence that the cows grazing the adjacent fields gain access to it. The remains of what appears to be an old route are evident.

The route is of a significant width, 7-8 metres wide, and is sunken and quite boggy in the base. The watercourse along the base is largely silted up, overgrown and no longer flowing freely.

A further fence exists across the route (point D) preventing access although it can be seen that the route continues as an overgrown sunken track separated by fencing from a school playing field to the south and the grounds of Bentley Lodge to the north.

An old iron railing fence can be seen in the trees growing on the application route (point E) and access between points E and D is not possible.

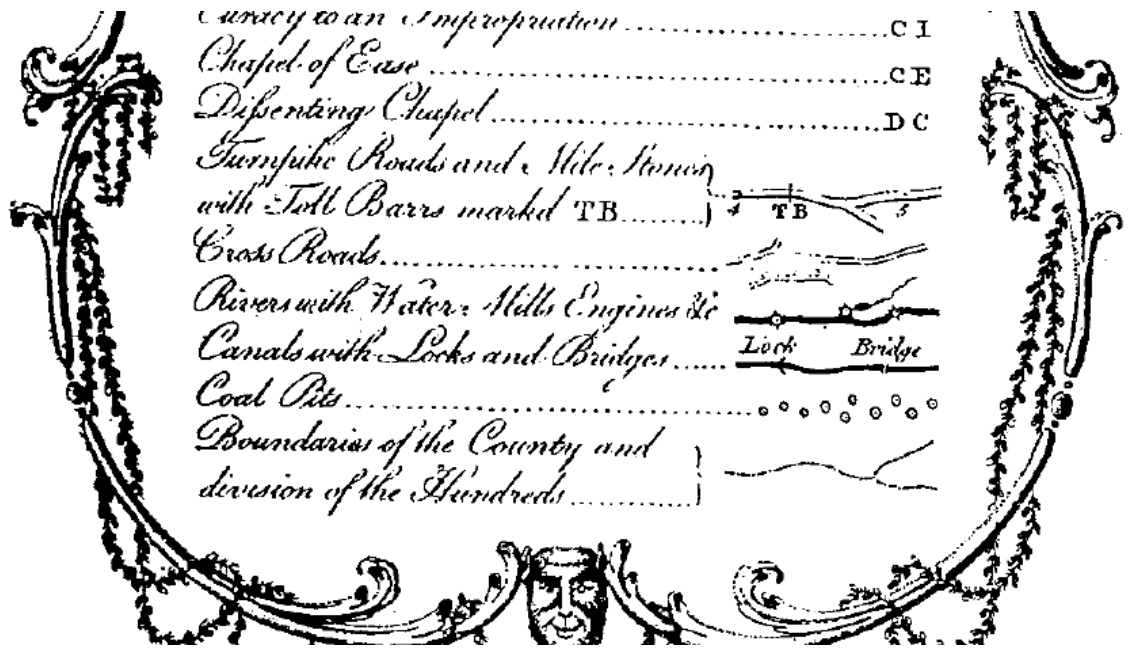
Between point E and point F the application route is a grass track providing access to a field to the south of the application route. The application route meets Bentley Lane at an open junction (point F).

The total length of the route is 375 metres.

### **Map and Documentary Evidence**

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

<b>Document Title</b>	<b>Date</b>	<b>Brief Description of Document &amp; Nature of Evidence</b>
<b>Yates' Map of Lancashire</b>	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.



Observations		The application route is not shown. Lee Lane to which the route connects is not shown although a short stub possibly indicating the start of Lee Lane can be seen extending north from Malkiln Lane indicating that it may have existed at that time. Bentley Lane is shown as a significant through route.
Investigating Comments	Officer's	The application route probably did not exist as a through route at the time or if it did exist, was not considered to be a substantial






		public vehicular route by Yates at that time.
<b>Stockdale's Map</b>	1818	An early commercial map included in a book titled 'A description of the country from thirty to forty miles round Manchester' by J Aikin MD and is titled 'A new map of the country round Manchester' dated 1818. There is some uncertainty about the date of the map as the book was originally published in 1795. There is no key to the map.



Observations		There is no key to the map and it appears to be roughly drawn. The application route is not shown and nor is Lee Lane to which it connects.
Investigating Officer's Comments		The application route probably did not exist as a through route at the time or if it did exist it may have been that Stockdale did not consider the route to be sufficiently significant and this section was not surveyed, as surveys were expensive.

<b>Greenwood's Map of Lancashire</b>	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.
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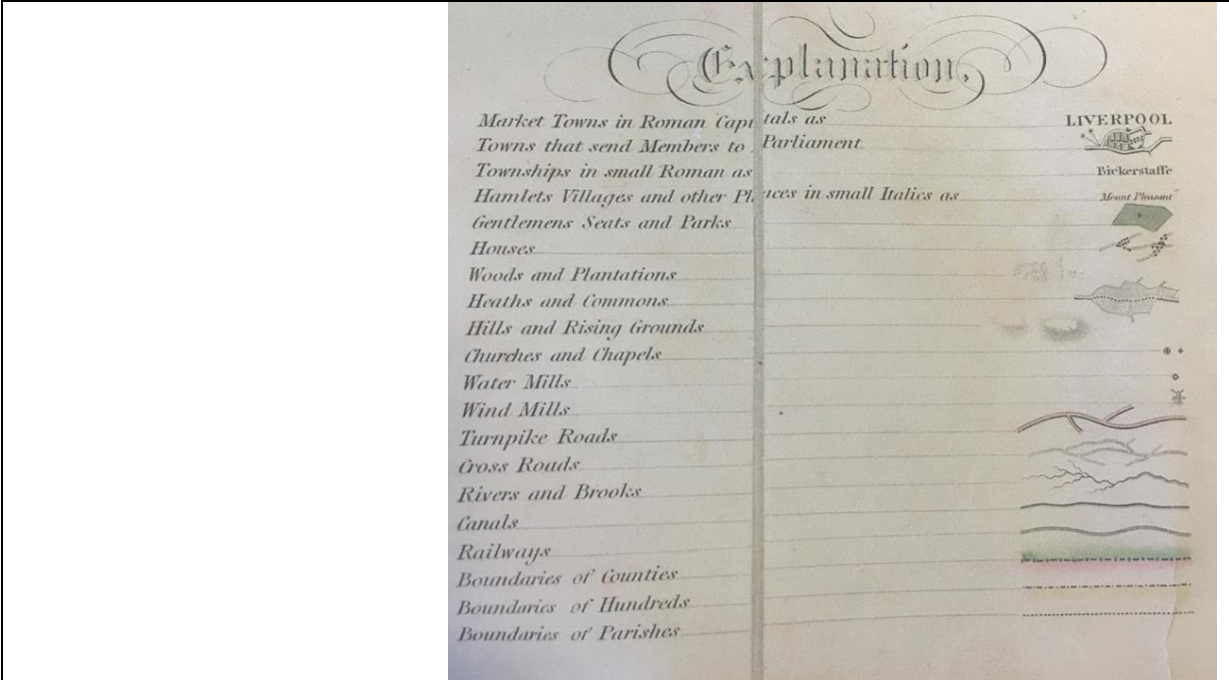
<p><i>Turnpike Roads</i> ————— </p> <p><i>Cross Roads</i> ————— </p> <p><i>Towns &amp; other Places</i> ————— </p> <p><i>that send Members to Parliament</i> } ————— </p> <p><i>Boundaries of Counties</i> ————— </p>
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Observations		The full length of the application route is shown as a cross road in the same way that Lee Lane and Bentley Lane are shown.
Investigating Officer's Comments		The application route existed in 1818 and appeared to be capable of being used by vehicles (horse and cart) at that time. It is not known what was meant by the term cross road but the route was shown consistently with how other routes now known to carry public vehicular rights are shown.
<b>Hennet's Map of</b>	1830	Small-scale commercial map. In

**Lancashire**

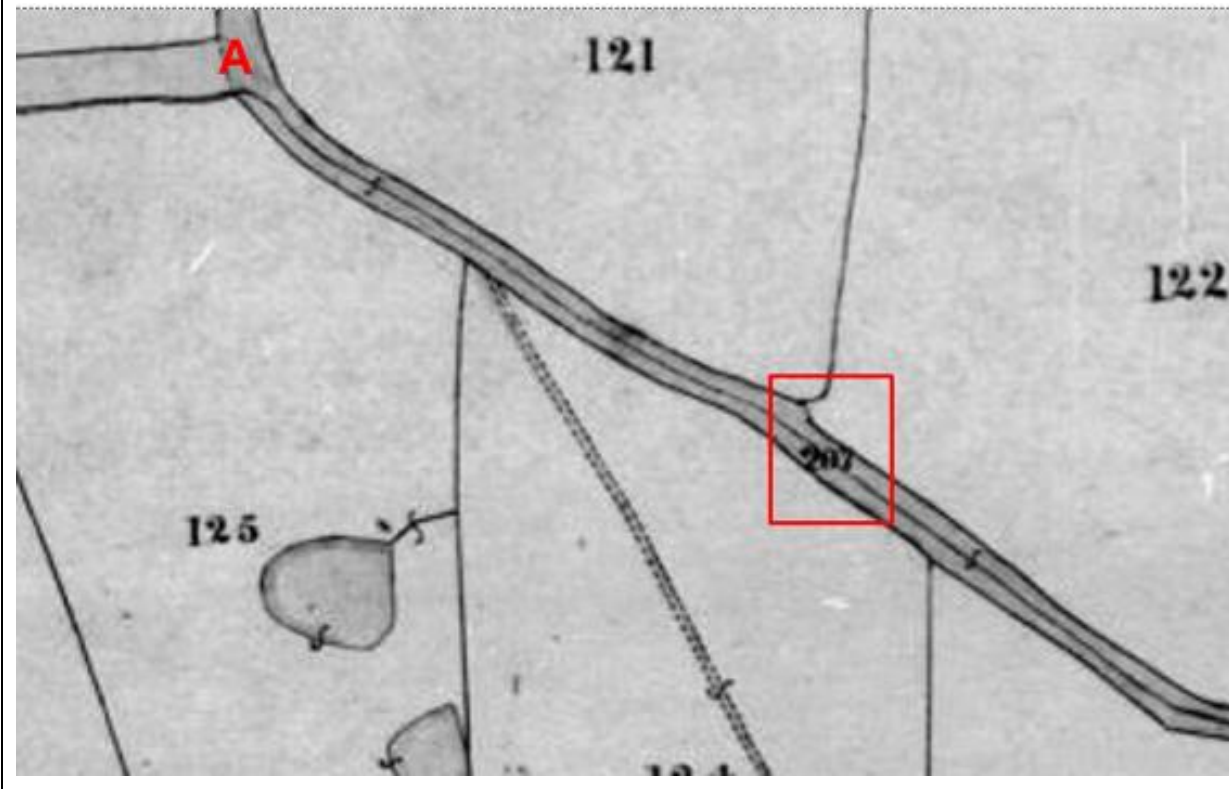
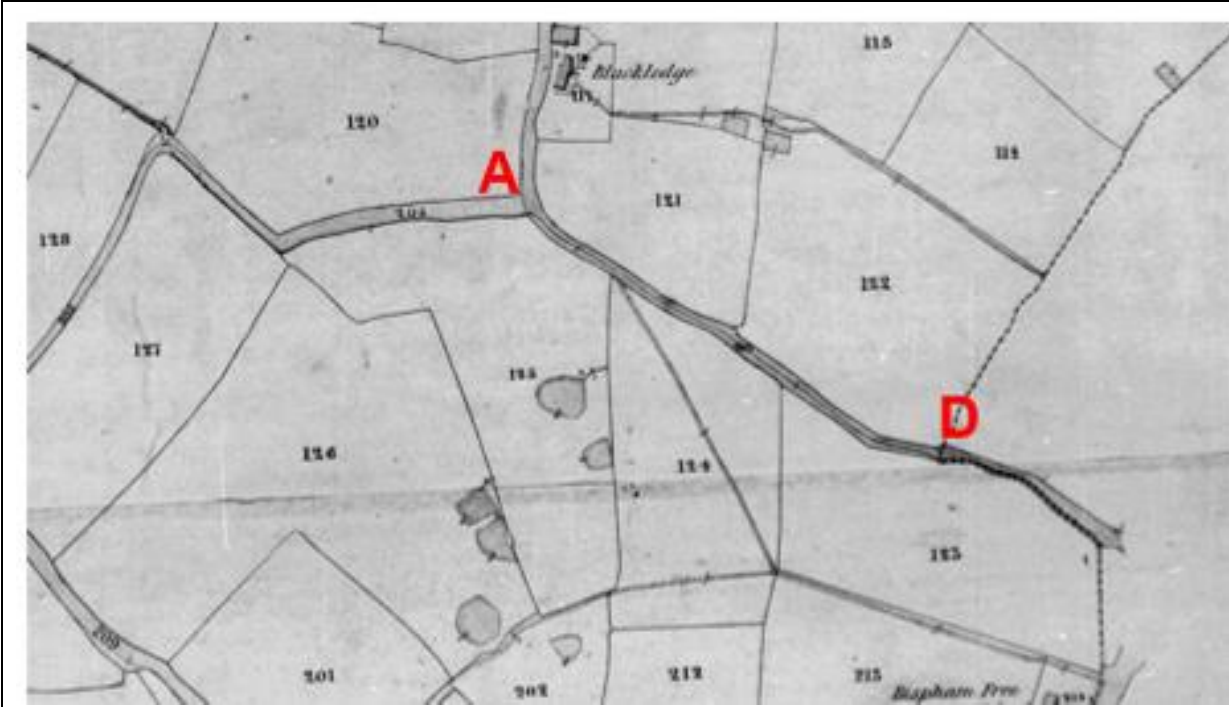
1830 Henry Teesdale of London published George Hennessey's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennessey's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.

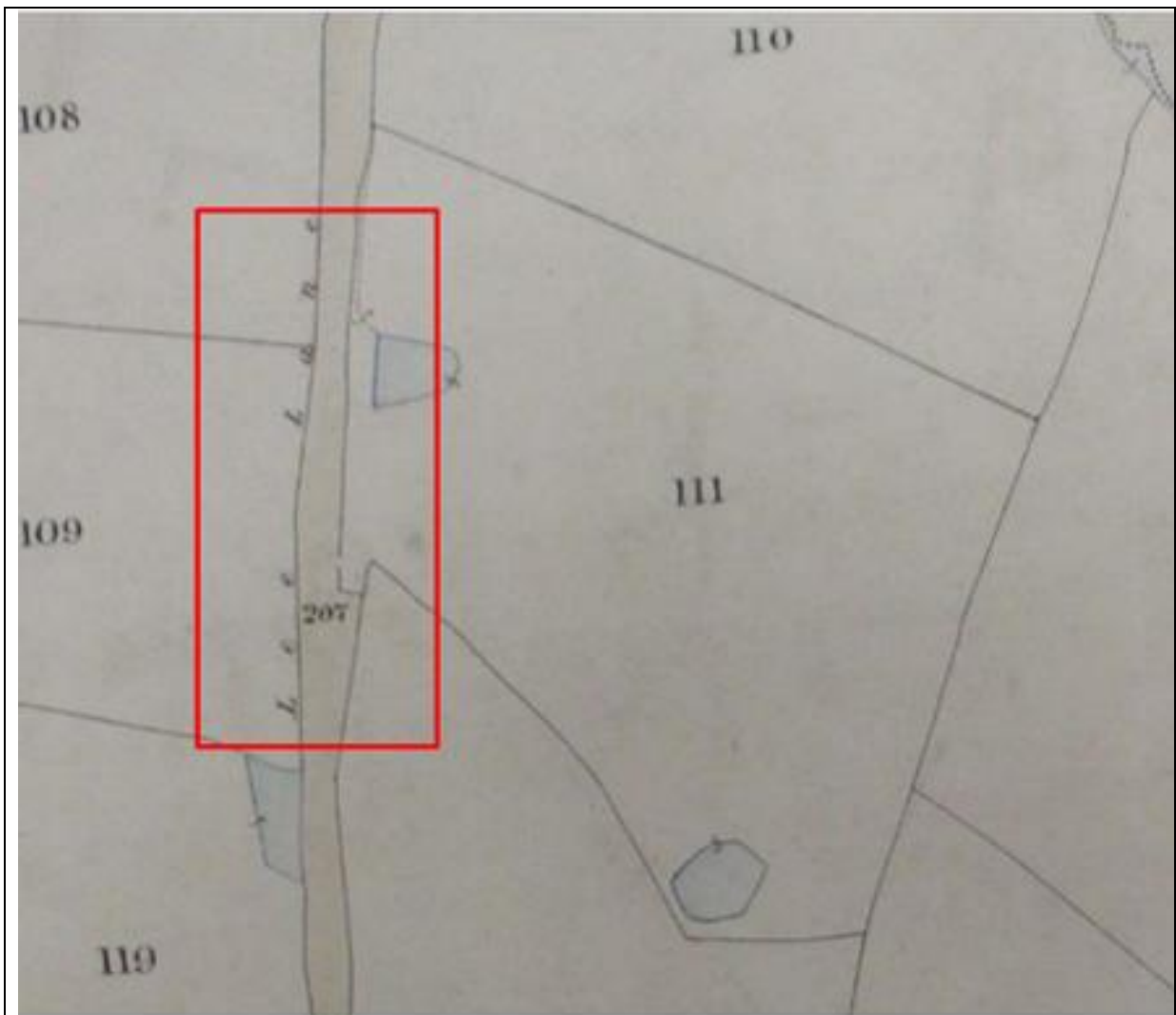




Observations		The application route is shown as a cross road connecting to other routes now recognised as public vehicular routes.
Investigating Officer's Comments		<p>The application route existed in 1830 as a substantial route. It is not fully known what is meant by the term cross road but as the only other category of 'road' shown on the map are turnpike roads, it is possible that a cross road was regarded as either a public minor cart road or a bridleway (as suggested by the judge in <i>Hollins v Oldham</i>).</p> <p><i>Hollins v Oldham Manchester High Court (1995) [C94/0205] Judge Howarth examined various maps from 1777-1830 including Greenwoods, Bryants and Burdetts. Maps of this type, which showed cross roads and turnpikes, were maps for the benefit of wealthy people and were very expensive. There was "no point showing a road to a purchaser if he did not have the right to use it."</i> and it is unlikely that a map of this scale would show footpaths.</p>
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 land crossed by the application route is not affected by an existing canal or railway and there are no known proposals to have constructed either in the proximity of the route in the past.
Investigating Officer's Comments		No inference can be drawn with regards to the existence of public rights.
<b>Tithe Map and Tithe Award or Apportionment for Bispham</b>	1840	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.





yard &c _____		1	2	15
	<i>Public Roads</i>			
19		1	3	12
20		1	3	16
208		"	2	35
206		3	"	24
207		1	2	28
208		1	1	24
209		3	3	4
210		1	1	9
211		1	1	35
221		"	1	5
240		1	3	8
244		2	1	14
		1	21	2 14

Observations

The Tithe Maps and Awards

		<p>deposited at the County Records Office and The National Archives were both inspected and found to contain the same information. The Map deposited in The National Archives was dated 1840 whilst the copy deposited in the County Records Office was dated 1845.</p> <p>The full length of the application route is clearly shown as a substantial bounded route with a watercourse shown down the centre from point D to point A (the 2 sides being braced together across the watercourse to indicate they were the same parcel). At point D the parish boundary is shown across the route and continuing along the southern boundary of the route indicating that from point D through to point F the application route was outside Bispham Parish. Despite not falling within the parish boundary the continuation of the route towards point F is shown indicating that the route continued through to Bentley Lane. No lines are shown across the route which may have indicated that there were no gates across the lane.</p> <p>The application route is numbered as part of plot 207 which also included the route now recorded as Old Lane (an unclassified county highway). Old Lane is named on the Map as Lee Lane and is numbered as plot 207 north of Blackledge.</p> <p>Plot 207 is listed at the end of the Tithe Award under the heading 'Public Roads'.</p> <p>The public roads listed in the Tithe Schedule do not have details of either an owner or occupier. Twelve numbered routes are listed as public roads and the other 11 have all been identified on a map</p>
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		<p>and are all now recorded as part of the public vehicular highway network – including that part of plot 207 north of point A.</p> <p>In the first part of the Schedule are all the parcels of land in private ownership. Several 'roads' are listed here too but are recorded with both an owner and occupier. These roads are shown ending at farms or fields, and are described as 'accommodation' road, or 'road and waste'.</p>
Investigating Officer's Comments		<p>The Tithe Map shows that the full length of the application route existed as part of a bounded through route in 1840 which appeared wide enough for vehicles (carts).</p> <p>There are no lines shown across the route possibly suggesting that it was not gated and that access was freely available along the full length.</p> <p>There is a clear distinction between the first part of the Award Schedule (land in private ownership) and the second part – where the application route is clearly listed as a public road reinforcing the view that the application route formed part of the general purpose highway network whilst those in the first section were private accommodation roads to land or property.</p>
<b>Tithe Map and Tithe Award or Apportionment for Wrightington</b>	1841	Tithe Map and Award showing the eastern end of the application route.





## Old Series sheets used to create this map:

Sheet 79, N.E. Quarter, first published 7th November 1840  
 Sheet 80, N.W. Quarter, first published 1st October 1842  
 Sheet 89, N.W. Quarter, first published 20th December 1842  
 Sheet 89, S.W. Quarter, first published 1st August 1843  
 Sheet 90, N.E. Quarter, first published 1st October 1842  
 Sheet 90, S.E. Quarter, first published 8th April 1842

Turnpike or main roads



Other roads



Unfenced roads



Mileages; turnpike gates; toll gates

**S T.P. T.G.**

County boundaries



Parish or township boundaries (on some sheets only)



Church



Windmill



Lighthouse



Railways



Cuttings



Embankments



Tramways and freight-only railways



Woodland



Parkland



Foreshore: sand; boulders; rocks



Legend source - <http://www.cassinimaps.co.uk/shop/pagelegend.asp>

Observations		The application route can be clearly seen on the map as a through route linking to other routes now recorded as public vehicular highways. It is shown as an 'other road' i.e. not turnpike or main road.
Investigating Officer's Comments		The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The early (First Edition) OS maps on which the Cassini Old Series maps were

		<p>based were originally produced for military purposes in case they were needed for defence. The inclusion of the route on the map suggests that a substantial route existed.</p> <p>No legends (map keys) existed on the original Old Series maps. Dr Richard Oliver (B.A., D.Phil., F.B.Cart.S.) notes that abbreviations and symbols were always employed but their usage, depiction and meaning evolved during the 70 plus years that it took to complete the old series mapping. Although a comprehensive legend is therefore impossible, some signs were (with minor variations) consistently used and these are shown on the map legend included above as found on the Cassini maps website and provided by Dr. Richard Oliver.</p> <p>The application route's inclusion on this map as a road suggests that it was available to be used on horseback and probably with vehicles at that time although we do not know, taking the map on its own, whether that use was public or private.</p>
<p><b>6 Inch Ordnance Survey (OS) Map</b></p> <p><b>Sheet 84</b></p>	<p>1848</p>	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1845 to 1846 and published in 1848.<sup>1</sup></p>

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<sup>1</sup> The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.



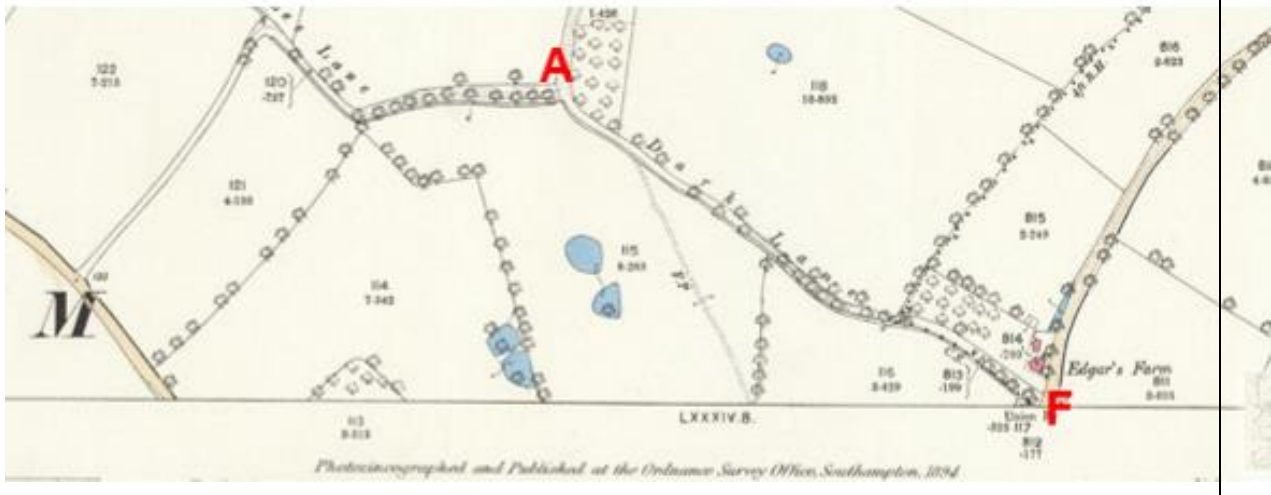
Observations

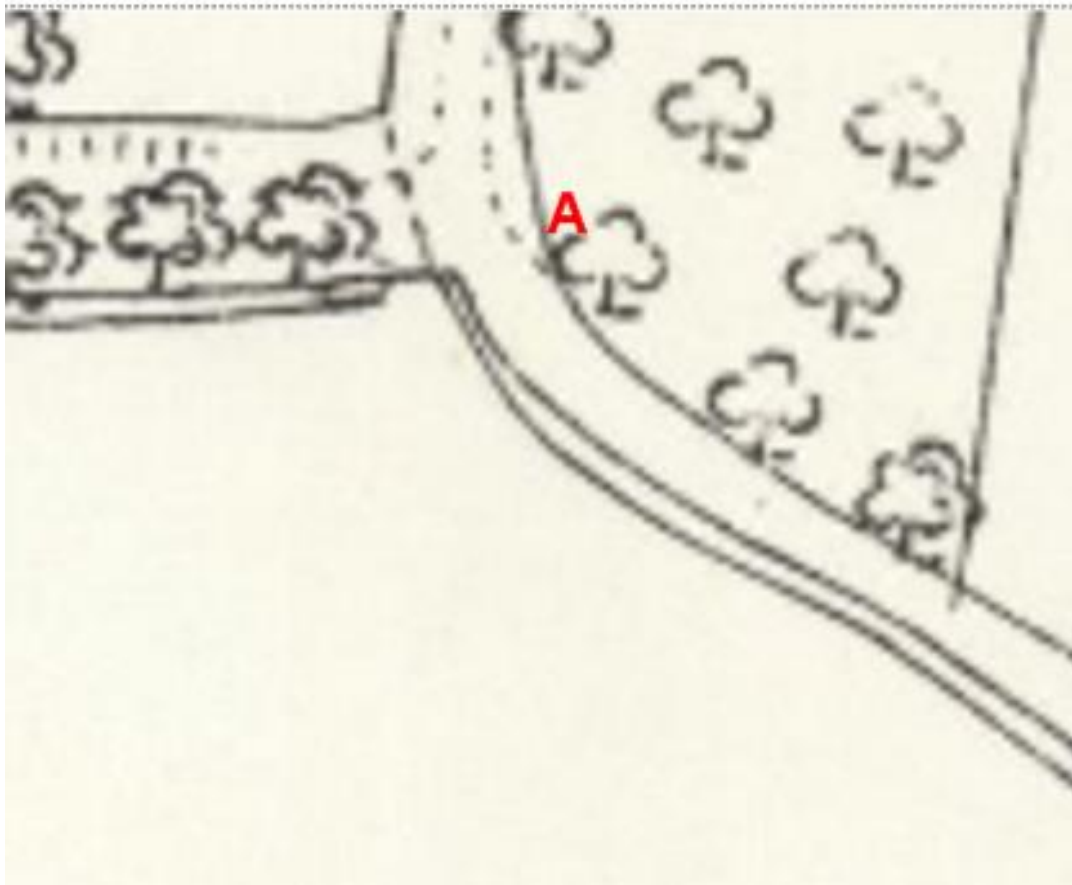
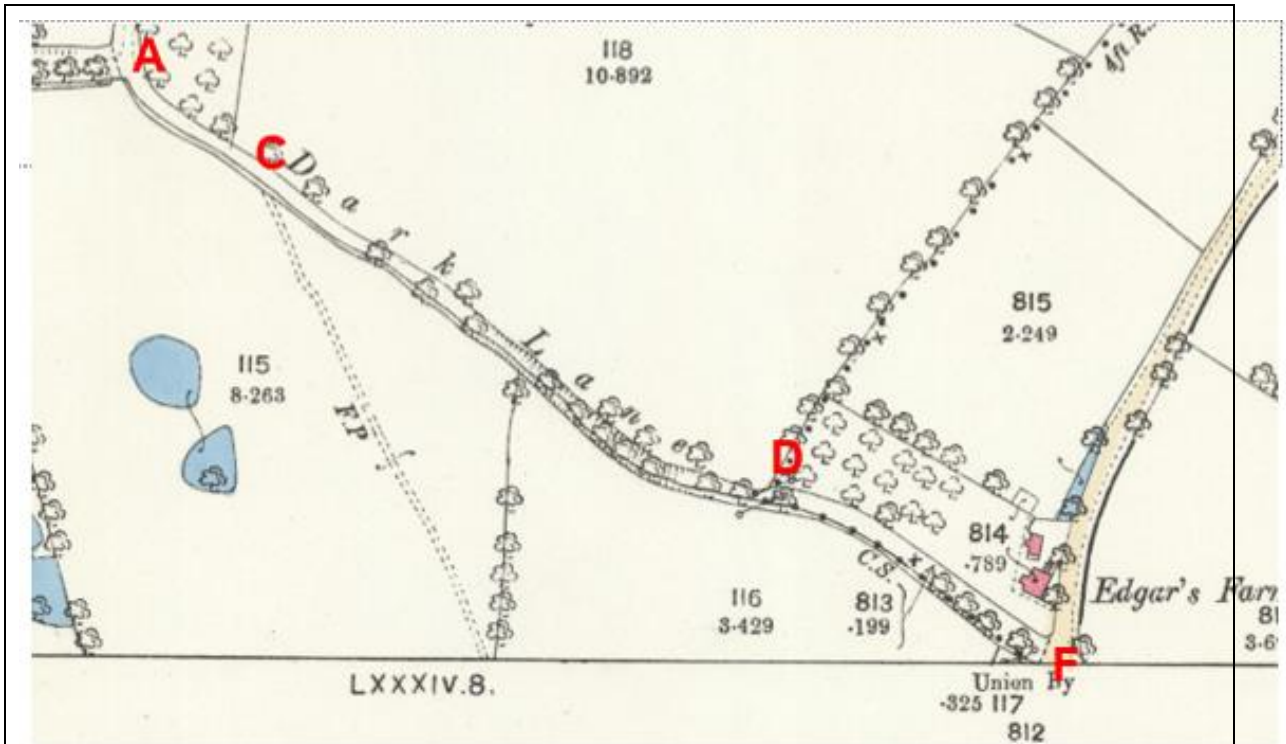
The full length of the application route is shown as a bounded route connecting at either end to routes recorded as public vehicular highways today. The route is labelled as Dark Lane and no lines are shown across it suggesting

		<p>that it was not gated. The width of the route is shown which is consistent with other routes over which there is a public right of access with vehicles. A line is shown down the centre of the route from point E through to point A indicating the existence of a watercourse.</p> <p>At point C a route denoted by double dashed lines is shown joining the application route leading from the side of Bispham Free Grammar School.</p>
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<p>Investigating Officer's Comments</p>		<p>The full length of the application route existed and appeared to be capable of being used in 1845 to 1846. It is considered that a substantial named and bounded through route connecting to two other public vehicular highways would have been at least a public bridleway and may have carried public vehicular rights. The fact that an unbounded track leading from the side of the school also feeds into the route suggests that use was made of at least part of it (A-C) as a direct route through to the school – presumably on foot.</p>
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<p>25 Inch OS Map LXXXIV.4</p>	<p>1894</p>	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1893 and published in 1894.</p>
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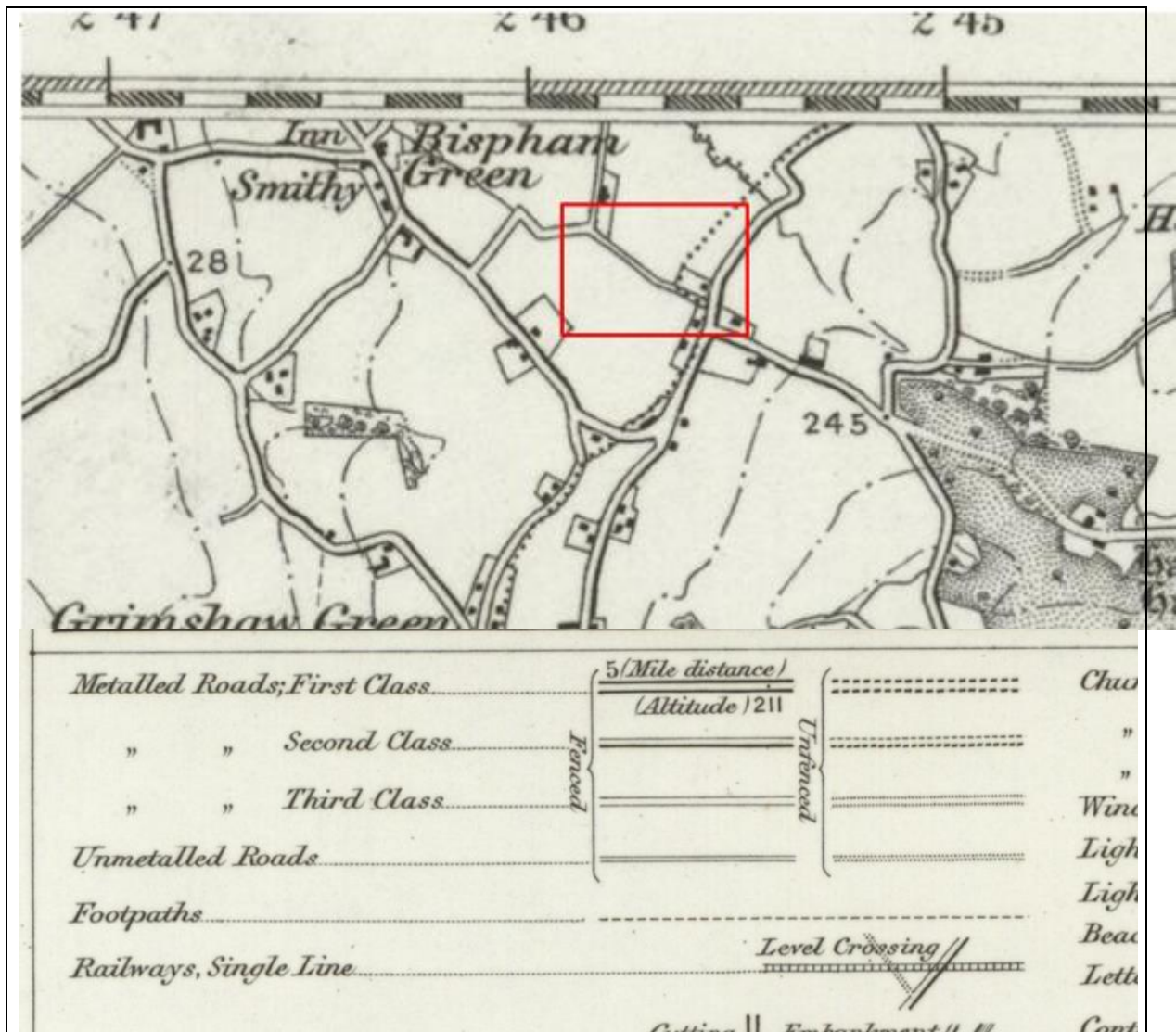


<p>Observations</p>		<p>The full length of the application route is shown and is named on the map as Dark Lane.</p> <p>It is the application route rather</p>
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		<p>than Lee lane which appears to be the continuation of Old Lane; this makes the link between Sills Farm and Bentley Lane rather than via Lee Lane onto Maltkiln Lane.</p> <p>Neither Lee Lane, Old Lane or Dark Lane (the application route) are shown coloured or with a thickened line along the south or eastern side. Bentley Lane however is shown in such a way.</p> <p>A watercourse is shown contained within the application route but this larger scale map places the watercourse towards the south side not the centre of the road; it is again shown as a fenced/bounded route which is consistent with the public vehicular routes to which it connects. No lines are shown across the route suggesting that there were no gates across it. The watercourse is shown as the parish boundary between point D and point E – consistent with how it is shown on the earlier 6 inch OS map and Tithe Map.</p> <p>A route leading to and from the school is shown marked as a footpath (F.P) joining the application route at point C.</p> <p>A parcel number is shown between point D and point F (813) with the acreage listed as .199.</p>
Investigating Officer's Comments		<p>The full length of the application route existed in 1893 as a significant bounded through route which appeared to be capable of being used on horseback and with horse drawn vehicles at that time.</p> <p>The fact that it was named as a road on the map is evidence that it was known locally by that name and is consistent with use of the route by the public at least on horseback at that time. A route labelled as a footpath is shown to join the route at point C but the</p>

		<p>application route is not labelled as a footpath - again suggesting it appeared to be higher status route when the OS carried out its survey. The fact that the route is not shown with a thickened line to one side on the black and white copy of the map and shaded on the coloured copy in the way that Bentley Lane is shown suggests that the application route – and Lee Lane – were not considered to be publicly maintained vehicular routes deemed to be in 'good repair' at that time. Shading and colouring were often used to show the administrative status of roads on 25 inch maps prepared between 1884 and 1912. The Ordnance Survey specified that all metalled public roads for wheeled traffic kept in good repair by the highway authority were to be shaded and shown with thickened lines on the south and east sides of the road. 'Good repair' meant that it should be possible to drive carriages and light carts over them at a trot. The fact that the route is not shown in this way is not inconsistent with how it is shown on the early commercial maps and the Tithe records but may indicate that the surface was not of a high standard and that whilst it may have been passable by horse drawn vehicles – particularly as it provided access to and from Sills Farm – it may not have been considered to be in 'good repair'.</p> <p>The fact that the route is shown with a dedicated parcel number and acreage is not unusual. The Planning Inspectorate Consistency Guide states "Public roads depicted on 1:2500 maps will invariably have a dedicated parcel number and acreage." However, it goes on to say that this is far from conclusive evidence of highway</p>
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		status.
<b>6 inch OS Map Sheet 84NE</b>	1894	6 inch OS map surveyed 1892-93 and published 1894.
Observations		The full length of the application route is shown as a named through route connecting to public vehicular routes at either end. A footpath leading from the Grammar School is shown joining the route at point C.
Investigating Officer's Comments		The application route existed as a substantial bounded named through route which appeared to be capable of being used in 1894. It is considered that a substantial through route connecting to public vehicular highways at either end is consistent with a way which carried at least a public bridleway and may have carried public vehicular rights.
<b>1 inch OS Map Sheet 84 - wigan</b>	1896	Small-scale Ordnance Survey map revised 1895 and published 1896.



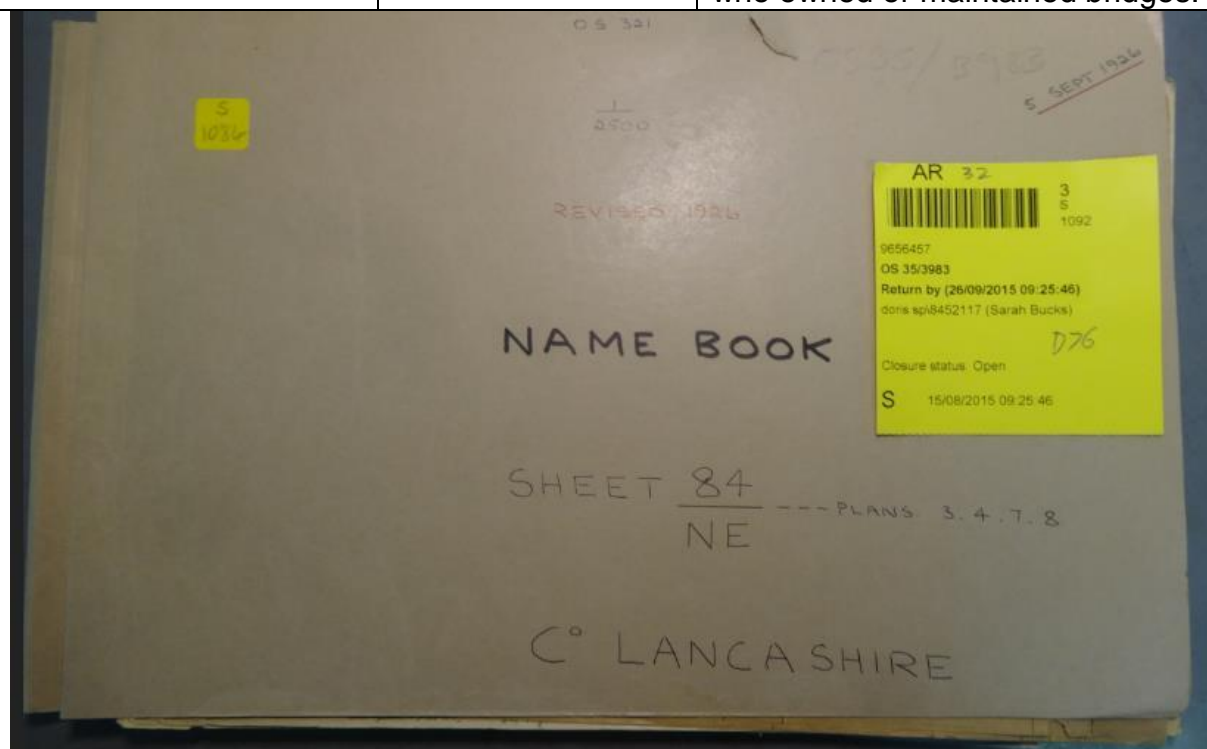
Observations

The full length of the application route is shown as an enclosed through route. It appears to be depicted on the map as an unmetalled road with a line across the route at point F. Lees Lane is shown to be wider than the application route – possibly indicating that it was shown as a third class road whilst the application route was shown as being unmetalled.

Investigating Officer's Comments

The original scale of the map (1 inch to the mile) means that only the more significant routes are generally shown. The purpose of the map in the late 1800s would probably have been to assist the travelling public on horseback or vehicle so the inclusion of the

		<p>route on this map is suggestive of a route that was capable of being used at least on horseback and possibly with horse and carts.</p>
<p><b>Ordnance Survey Object Names Book</b></p>		<p>When the Ordnance Survey was collecting information to put on its second series of published maps the surveyors recorded the names of anything that was to be shown on the maps. The Ordnance Survey Object Names Book for an area records these names, the description of the item named, and the local person attesting to the name. The descriptions usually state where the road started and finished, and often described them as a road, lane or drove road. The descriptions often drew a distinction between what was believed to be public and private and included information about who owned or maintained bridges.</p>



<del>Lee Lane</del>	Lee Lane ✓	See O.S. 2500 of 1911 Mr E. Lawrence (See OS 230 attached)	84	11, 11, 11, 11, 11	Applies to a District Road extending from Lee Cottages, to a point 5 chains S of Sills Farm at end of Old Lane.		Yours
<del>Dark Lane</del>	<del>Dark Lane</del> Obsolete ✓	See O.S. 2500 of 1911 (authority: [unclear]) (See OS 230 attached) written to Sills Esq to state a gent only Estate Office Boston	84	11, 11, 11, 11, 11	Applies to a disused road situated from a point S of Edgar's Farm to a point 5 chains S of Sills Farm.		

Please sign and return the list to me.

Yours faithfully, *W.K.*

To E. Lawrence Esq  
Surveyor of Highways, Chorley 10 Cap

NAME.	Plan and Parcel No.	Parish, Situation, and Owner's Name.	Corre
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Observations

A copy of the Object Names Book for OS Sheet number 84NE was obtained from the National Archives.

The cover of the book states that it was revised in 1926 but details within the book confirm that it was initially prepared in 1907 prior to the publication of the second edition OS maps and was then used to check and update records in relation to the publication of the third edition maps in 1927.

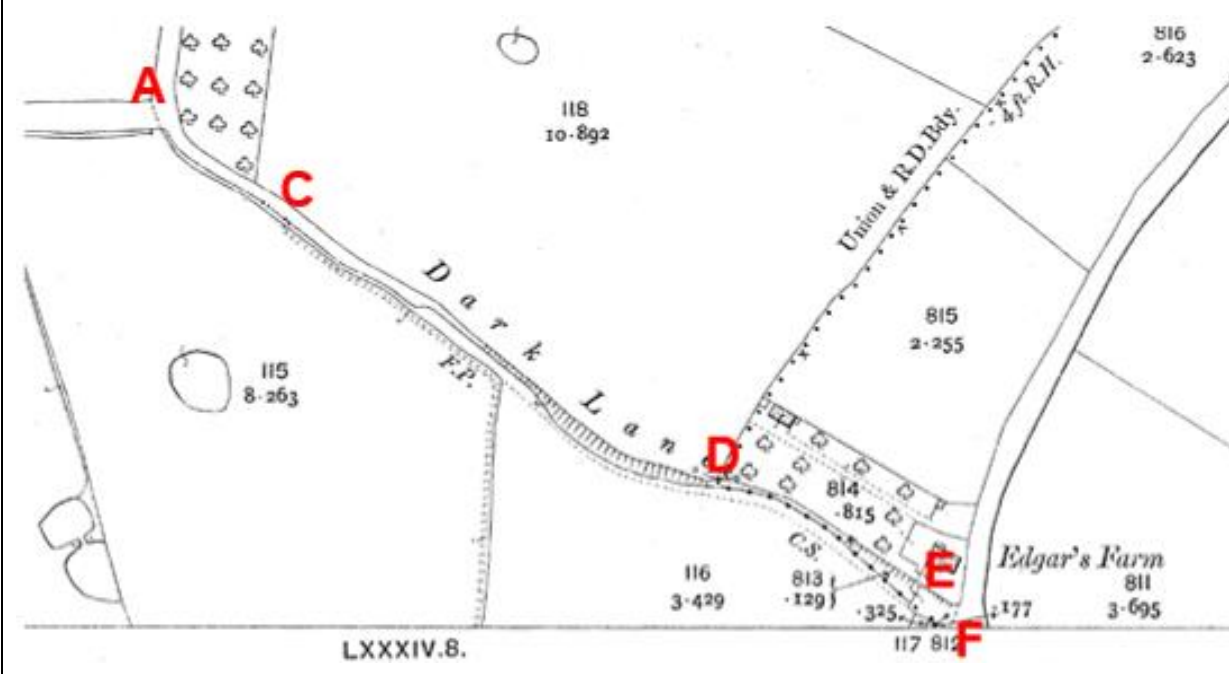
The initial entry made in 1907 lists Dark Lane as a disused road situated from a point south of Edgar's Farm to a point 5 chains south of Sills Farm. The authority for the information provided was stated to be 'Mr Lawrence' who was listed later in the book as being the Highways Surveyor for Chorley RD Council.

When the book was subsequently used ahead of the publication of a further map revision in 1927 the entry for Dark Lane was crossed out and the word 'Obsolete' written

		<p>next to it. The authority for doing so was 'WE Hale Esq. Estate Agent, Derby Estate Office, Preston.</p> <p>In comparison, Lee Lane and Bentley Lane are both described as District Roads in the book with the authority for the information again being stated as coming from Mr Lawrence.</p>
<p>Investigating Officer's Comments</p>		<p>In 1907 it appears that Dark Lane (the application route) had become disused. It was described as a road but not as a 'District Road', although this may be because it was now 'disused' and in describing it in such a way it does appear that it must have been used in the past. There is no specific reference to whether the route was a public vehicular highway which was just not used anymore or whether, if it had been a public vehicular route in the past, it had legally been extinguished. The authority for the information provided came from the Surveyor of Highways for Chorley Rural District Council. It should be noted however that the application route between point A and point D was in Bispham at that time under the direct control of West Lancashire Rural District Council and between point D and point F the route was in the Parish of Wrightington which was part of Wigan Rural District so neither section was the responsibility of Chorley Rural District Council for whom Mr Lawrence was employed.</p> <p>By 1927 the route was described as obsolete and the name Dark Lane crossed out. Again, there is no information regarding whether any public rights of access that may have historically existed along the route had been legally extinguished but it appears that by the early 1900s use of the route by</p>

		carts or on horseback – and possibly on foot -may have ceased.
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<b>25 inch OS Map LXXXIV.4</b>	1908	Further edition of the 25 inch map surveyed in 1893, revised in 1907 and published in 1908.
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Observations		<p>The application route is shown named as Dark Lane. It is still shown as a fenced/bounded route from point A to midway between point C and point D but beyond there the route is no longer fenced along the south side through to point E. At point E a line is shown across the route.</p> <p>The footpath which originates by the school on Bentley Lane has altered since it was shown on the earlier edition of the 25 inch map to run along the eastern boundary of field number 115 to meet the application route midway between point C and point D and rather than joining it at that point it runs along the edge of the field south of the application route to point C where it joins the application route.</p> <p>Between a point midway along C-D and point E the route is shown with banking on the north</p>
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		indicating the sunken nature of the route – possibly due to a combination of the watercourse and use of the route over a period of time.
Investigating Officer's Comments		<p>The way that the route is shown on the 1908 OS map supports the comments made in the OS Names book the previous year that the road was now disused. A line is shown across the route at point E which may indicate the existence of a gate but may also have indicated fencing existed across the route. The footpath is shown to join the route at point C suggesting that use may still have been made of the application route on foot between point A and point C and if the line across the route at point E was gated or a stile or gap was available then access may still have been available along the full length.</p> <p>The fact that it is still named on the map as Dark Lane may suggest that whilst noted in the OS Names Book as being disused it was still known and recognised by that name and that information may not have been provided about it having legally extinguished – just that it was disused.</p>
<b>6 inch OS 84NE</b>	1909	Further 6 inch OS map revised 1907 and published 1909.



**CHARACTERISTICS**

<p><i>6 Inch Scale</i></p> <p>Double Lines of Railway Single do. &amp; Tramways Main Roads Minor do.</p> <p>Level Crossing Bridges/Under Bridges</p> <p>Parks Woods Rough Pasture Forest Pasture Marsh Railroad Bridge Navigation Canal</p>	<p>Contours (Instrumental) 200 (Sketched) 125 <i>(Before 1885 all Contours were shown by dotted lines)</i></p> <p>Gravel Pit Quarry</p> <p>Antiquities, Site of Arroy, showing direction of flow of water Trigonometrical Station Bench Mark (B.M.) Well Leveling Picket</p> <p><i>Six Inch Scale</i></p> <p>The large figures under the Parish name thus CLAUGHTON 3785 2 4 represent its area in Acres, rods, &amp; perches. The Latitudes are given on the margin to every 30 seconds, &amp; the Longitudes to every minute.</p>	<p><i>2 1/2 Inch Scale</i></p> <p>Every parcel is numbered, thus 27 Its area is given underneath in Acres, thus 4.370 Braces, indicating that the spaces so connected are included in the same reference number and area.</p> <p><i>Leveling</i></p> <p>The Altitudes are above the mean level of the Sea, at Liverpool. The Contour altitudes are written thus 200 All other altitudes along roads, and to Trig. Stations, obtained by Spirit Levelling are written thus 200 (Six Inch Scale), 300 (2 1/2 Inch Scale), the dot or cross showing the spot at which the altitude is taken. The altitudes with the letters B.M. marked against them, refer to marks made on Buildings, Walls, Milestones &amp;c. The altitudes at the Trig. Stations are given of the surface of the ground &amp; also of the upper side of the centre stone marking the Station.</p>
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Ordnance Survey Office, Southampton, May, 1897.  
Price Sixpence

Characteristic Sheet source: [View map: Examples of the Characters of Writing and the Characteristics of the Photozincog... - Ordnance Survey Characteristic Sheets \(nls.uk\)](#)




Observations


This 6 inch map was derived from the same survey as the 25 inch map published in 1908. The route is shown and is named on the map as Dark Lane. Whilst still shown it appears less prominent than Lee Lane and Bentley Lane and is indicated as being a sunken lane

		<p>for parts of its length.</p> <p>The footpath leading from the school on Bentley Lane is shown joining the application route at point C.</p>
Investigating Officer's Comments		<p>The application route existed and was still known as Dark Lane but use by vehicles and possibly on horseback may have declined by the early 1900s.</p>
<b>Bartholomew half inch Mapping</b>	1902-1906	<p>The publication of Bartholomew's half inch maps for England and Wales began in 1897 and continued with periodic revisions until 1975. The maps were very popular with the public and sold in their millions, due largely to their accurate road classification and the use of layer colouring to depict contours. The maps were produced primarily for the purpose of driving and cycling and the firm was in competition with the Ordnance Survey, from whose maps Bartholomew's were reduced. An unpublished Ordnance Survey report dated 1914 acknowledged that the road classification on the OS small scale map was inferior to Bartholomew at that time for the use of motorists.</p>

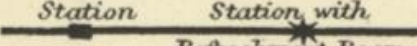
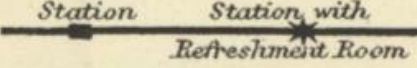
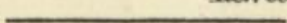



EXPLANATORY NOTE

First Class Roads   
 Secondary " (Good)   
 Indifferent " (Passable)   
*The uncoloured roads are inferior and not to be recommended to cyclists.*

Footpaths & Bridlepaths 

*N.B. The representation of a road or footpath is no evidence of the existence of a right of way.*

Railways  Station  Station with Refreshment Room  
 Canals   
 County Boundaries 

SCALE 1 : 126,720 = 2 MILES TO AN INCH

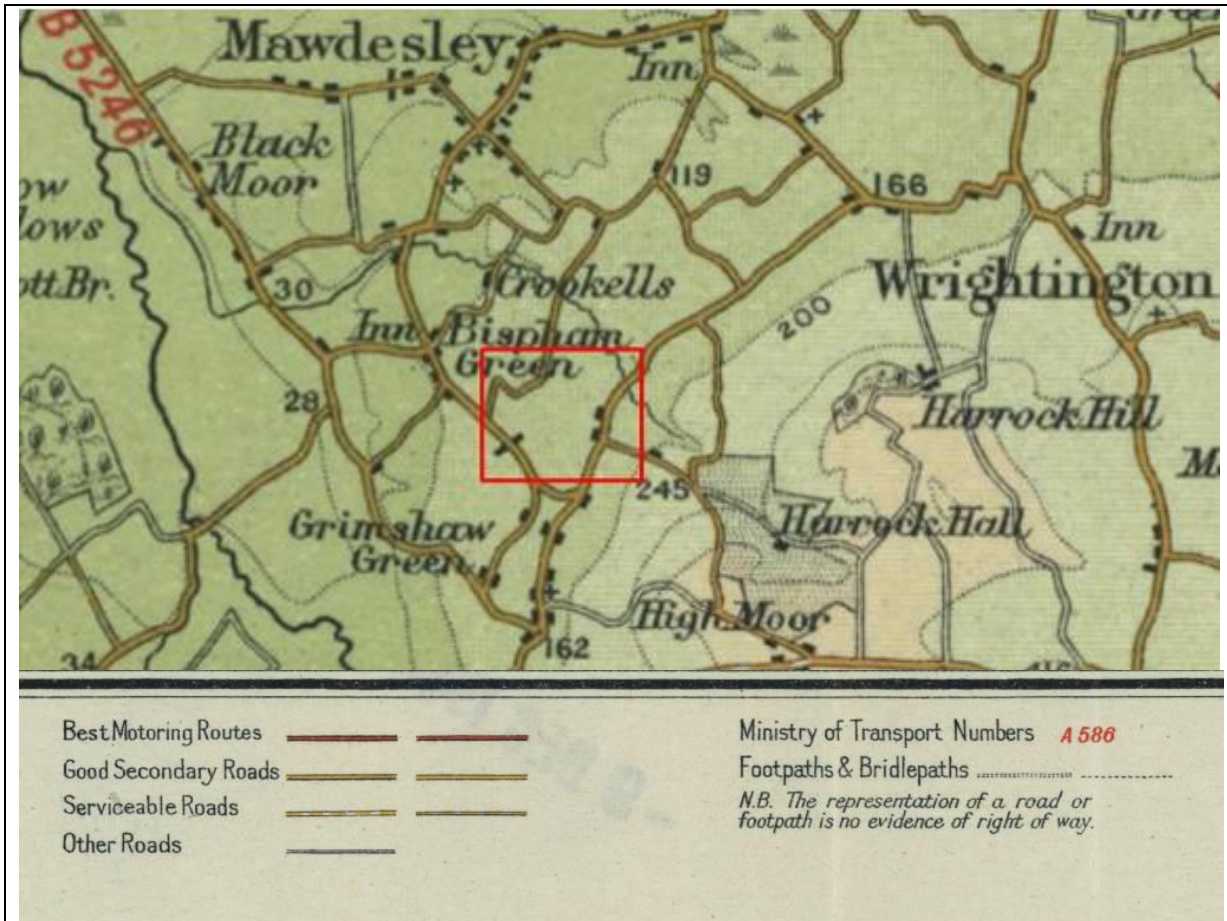


EXPLANATORY NOTE

Motoring Roads	{	Through Routes		Motor Ferries	
		First Class Roads			
		Secondary			
		Indifferent		(Passable for cyclists)	

The uncoloured roads are inferior and not to be recommended.  
 Footpaths & Bridlepaths ..... N.B. The representation of a road or footpath is no evidence of the existence of a right of way.  
 The figures thus 190 represent heights in feet above sea level.

Railways Station Station with Refreshment Room L.C. (Level Crossing)  
 Canals   
 County Boundaries

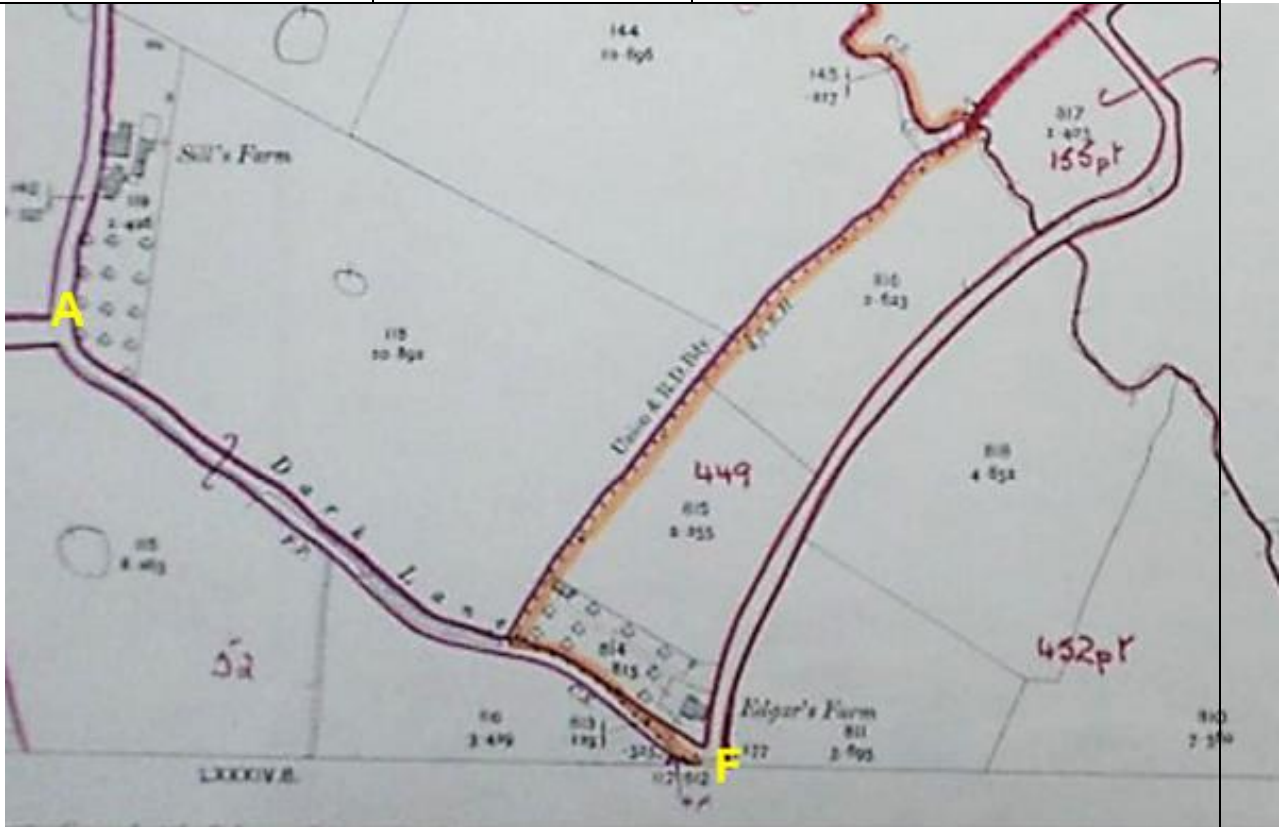


1941

<p>Observations</p>		<p>The application route is shown on Bartholomew's small-scale map published in 1904 as an indifferent (passable) road whereas Lee Lane from the junction with the application route through to Maltkiln Lane is shown uncoloured referred to in the key as being inferior and not to be recommended.</p> <p>By 1920 the application route is no longer shown and Lee Lane is still shown uncoloured (inferior and not to be recommended). By 1941 the application route is still not shown but Lee Lane and Old Lane are shown as good secondary roads.</p>
<p>Investigating Officer's Comments</p>		<p>The fact that the route is shown on the earliest edition of the map published in 1904 as being passable but is not shown on later editions of the map appears to concur with the information provided by the OS Names Book</p>

		<p>in that the route, referred to as a road in the OS Names Book, became disused (at least as a vehicular through route) by the early 1900s.</p> <p>The fact that the route is not shown on the 1920 and 1941 edition of the maps does not mean that it no longer physically existed but does suggest that it was not considered to be a usable public vehicular route at that time.</p>
<p><b>Finance Act 1910 Map</b></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</p>

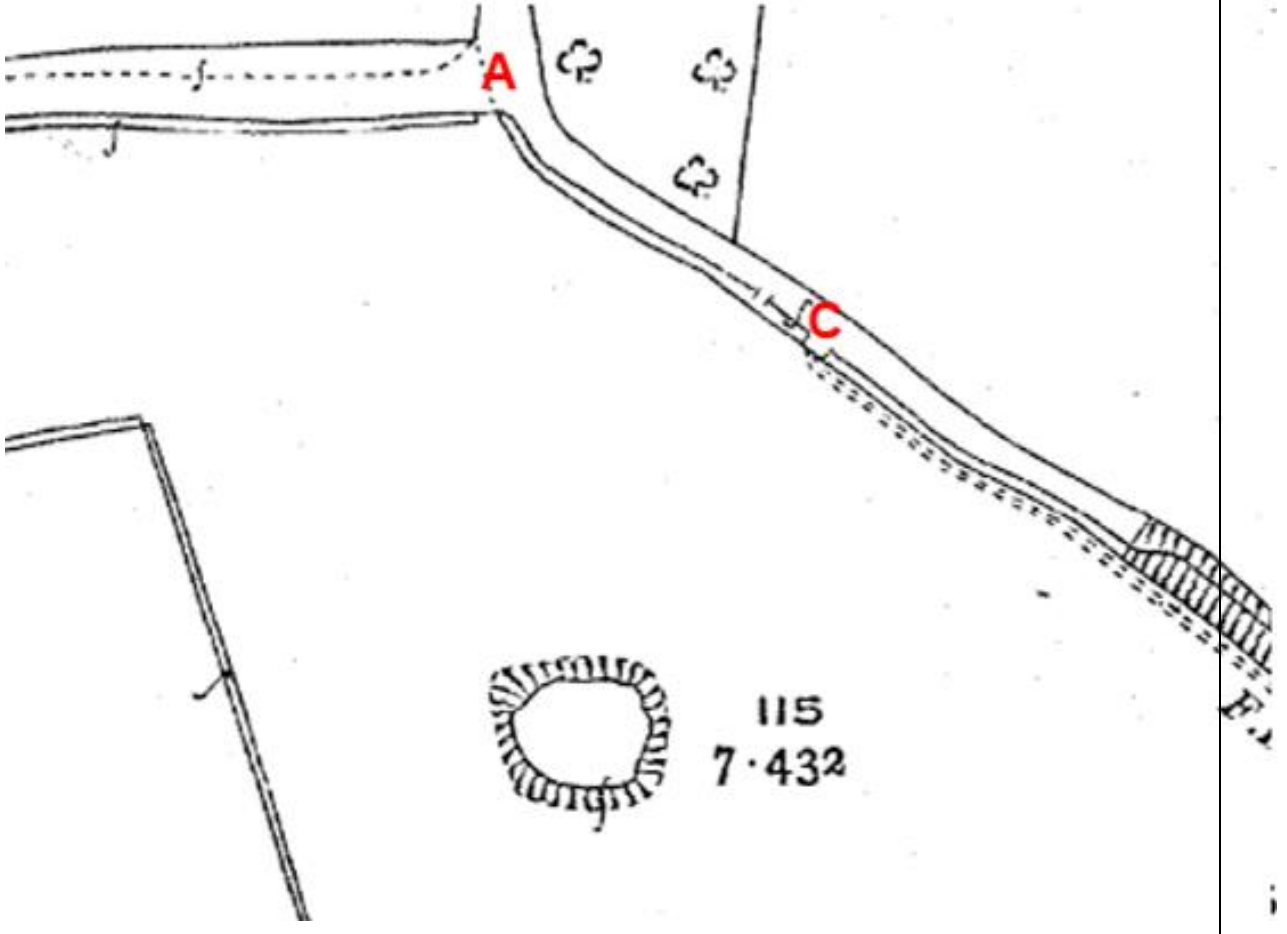
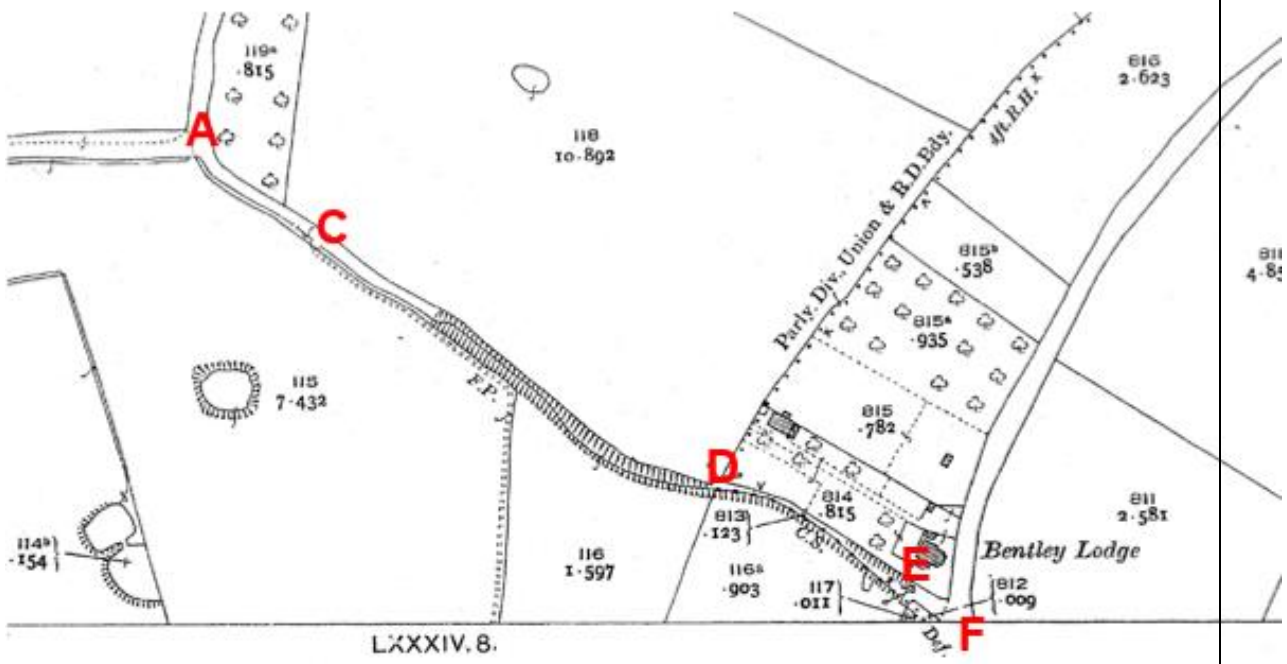
	<p>Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
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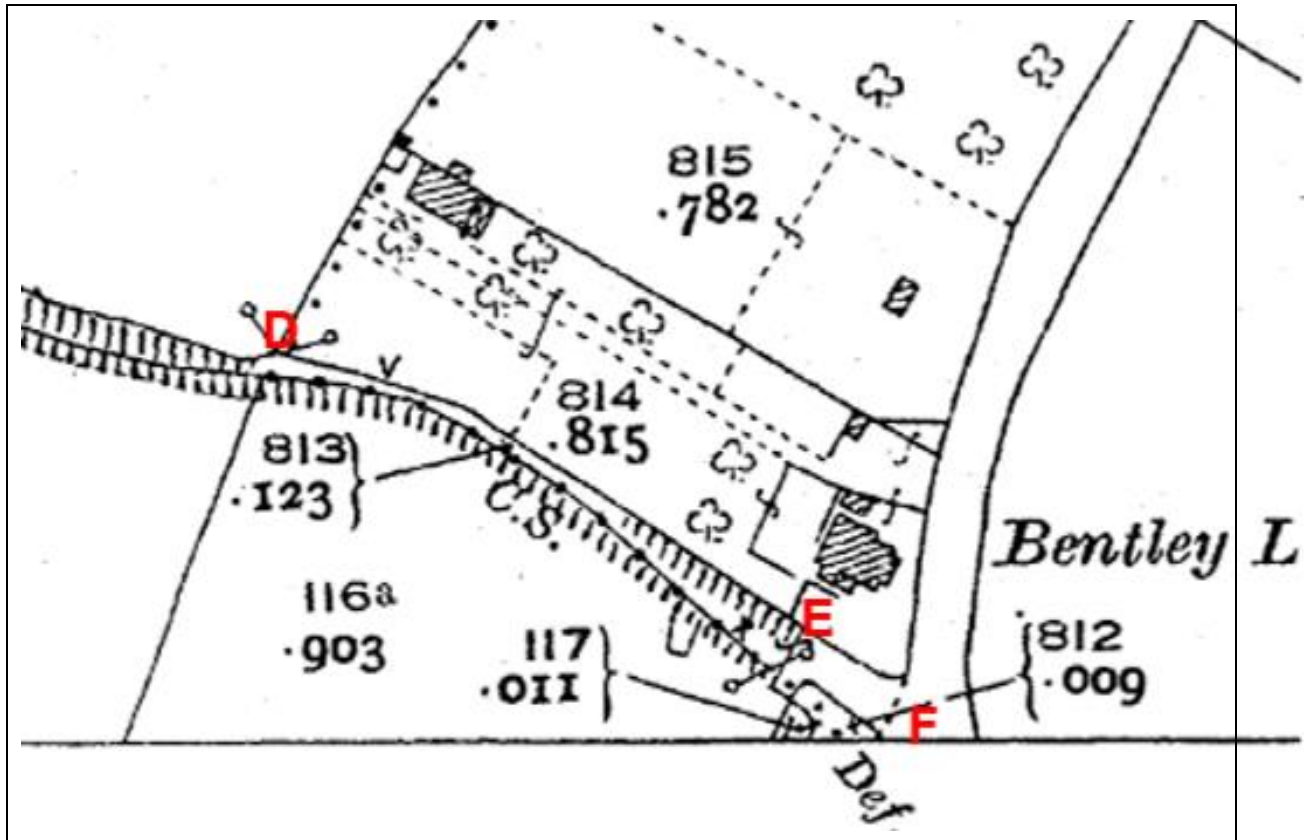


<p>Observations</p>	<p>The full length of the application route is shown excluded from the numbered plots in the same way that Lees Lane, Old Lane and Bentley Lane are shown excluded. Land on either side of the route is shown braced together and included in one plot number (52).</p>
<p>Investigating Officer's Comments</p>	<p>The map prepared under the provisions of 1910 Finance Act shows the whole of the route excluded from adjacent land in private ownership. The Act required all land in private ownership to be recorded so that it</p>

		<p>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 the accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable). The Instruction No. 560 to the surveyors said that the parcels 'should continue to be exclusive of the site of the external roadways'. It is advised that roadways were said to be routes 'subject to the rights of the public' and therefore exclusion of a route may indicate that public use was known but not necessarily vehicular status. Whilst there may be other reasons for a route to be excluded – notably cases of private roads set out in Inclosure Awards with no assigned landownership - but in this instance there is no evidence to suggest that the route derived from the Inclosure process and current landownership details show landownership is unregistered and unknown, indicating that the route's status was more likely than not excluded because it was considered to be public.</p> <p>In this instance therefore the exclusion of the route from the taxable hereditaments is good evidence of, but not conclusive of, public carriageway rights and the fact that the route passes through land recorded under the same plot number – but which has been deliberately excluded from it – provides further support that in the early 1900s the route was still considered to be a public vehicular highway.</p>
<p><b>25 Inch OS Map LXXXIV.4</b></p>	<p>1928</p>	<p>Further edition of 25 inch map (surveyed 1893, revised in 1926)</p>

and published in 1928.





<p>Observations</p>		<p>The full length of the application route is shown but is no longer named on the map. The footpath now recorded as 8-6-FP3 on the Definitive Map and Statement is shown joining the application route at point C with a culvert shown to provide access onto the route. South east of point C a line is shown across the application route beyond which the route is shown as being below the level of the surrounding land with the watercourse along the bottom through to point E where a second line is shown across the route.</p>
<p>Investigating Officer's Comments</p>		<p>The application route no longer appears to be capable of being used along the full length by vehicles or on horseback and may have been fenced off at either end of the gullied sections. Access on foot appears to have been available from point C through to point A as a continuation of the footpath marked on the map.</p>

		<p>The removal of the name of the lane from the map is consistent with the information provided in the Ordnance Survey names book whereby the name 'Dark Lane' was crossed out and referred to as being 'obsolete' in 1927.</p>
<p><b>1932 Rights of Way Map</b></p>		<p>The Rights of Way Act 1932 set out the mechanism by which public rights of way could be established by user and under which landowners could deposit maps to show highways already in existence and to indicate that they didn't intend to dedicate further rights of way. The Commons, Open Spaces and Footpath Preservation Society (which became the Open Spaces Society) who were the prime instigators of this Act and the later 1949 Act, called for local authorities to draw up maps of the public rights of way in existence (a quasi pre-cursor of the Definitive Map). This is set out in 'The Rights of Way Act, 1932. Its History and meaning' by Sir Lawrence Chubb [M]. The process for consultation and scrutiny followed in Lancashire is not recorded but some of the maps exist including maps for the following areas are available for inspection at County Hall: Lunesdale Rural District (RD), Lancaster RD, Burnley RD, Garstang RD and West Lancashire RD.</p>



West Lancashire Rural District Map



Wigan Rural District Map

<p>Observations</p>		<p>The map for West Lancashire shows a route marked up with a thick blue line and numbered as part of a network of paths with the number 1. The route marked appears to be along the southern side of the application route as opposed to along it for part of the route although the scale of the map and thickness of the pen make it difficult to determine exactly what was being recorded. Another route is shown on the same map extract but coloured with a purple pen and marked with the number 1. No key to the map was found and the complete map of Bispham shows a mix of purple and blue numbered routes.</p> <p>The Map prepared for Wigan Rural District does not show the application route as a route considered to be a public right of way.</p>
<p>Investigating Officer's Comments</p>		<p>Little is known about the origin of these maps but they are contained in large folders titled as being the 1932 Rights of Way Map for West Lancashire District and Wigan Rural District. No map keys were found and there are no written lists detailing the routes shown.</p>

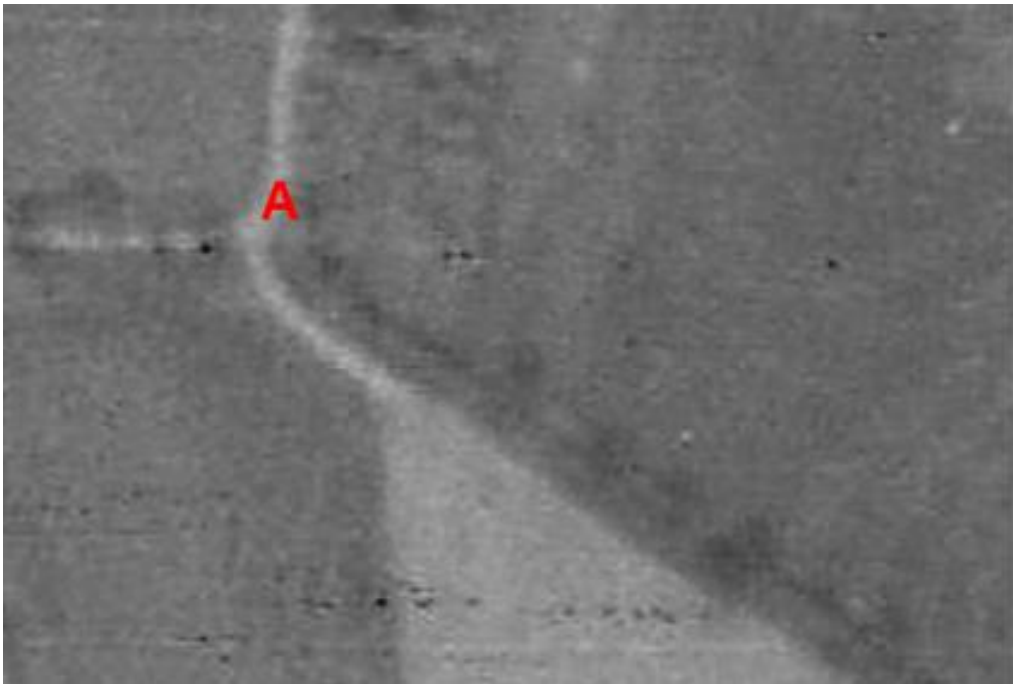
		<p>The West Lancashire Map shows a route from Lees Lane at point A through to Bentley Lane at point F connecting to other routes now recorded as public footpaths. This suggests that a route was either still in existence and being used – possibly just on foot – or was considered to exist as a route which should be recorded as a public right of way.</p>
<p><b>Authentic Directory of Lancashire Geographia</b></p> <p><b>Map of South by</b></p>	<p>Circa1934</p>	<p>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.</p> <p>The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.</p>



Observations		The full length of the application route is shown but not named. It is shown to be much narrower than Lee Lane/Old Lane and Bentley Lane and is not shown as a bounded route throughout the full length. A route consistent with 8-6-FP2 and 8-6-FP3 is shown connecting to the application route approximately midway along it.
Investigating Officer's Comments		The application route existed in the 1930s and is shown in the atlas consistent with how other nearby routes recorded as footpaths are shown. The way the route is shown is not suggestive of public vehicular use but is more suggestive of a route capable of being used on foot or horseback at that time.
Aerial Photograph <sup>2</sup>	1940s	The earliest set of aerial photographs available was taken

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

just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.



Observations

The quality of the 1940s aerial photograph is poor. The location of the route can be identified by field



is shown joining the application route and from there the footpath turns south away from the application route a single dashed line can be seen continuing east south east marking the unfenced edge of the application route to point E. Lines can be seen across the application route at point D and point E.

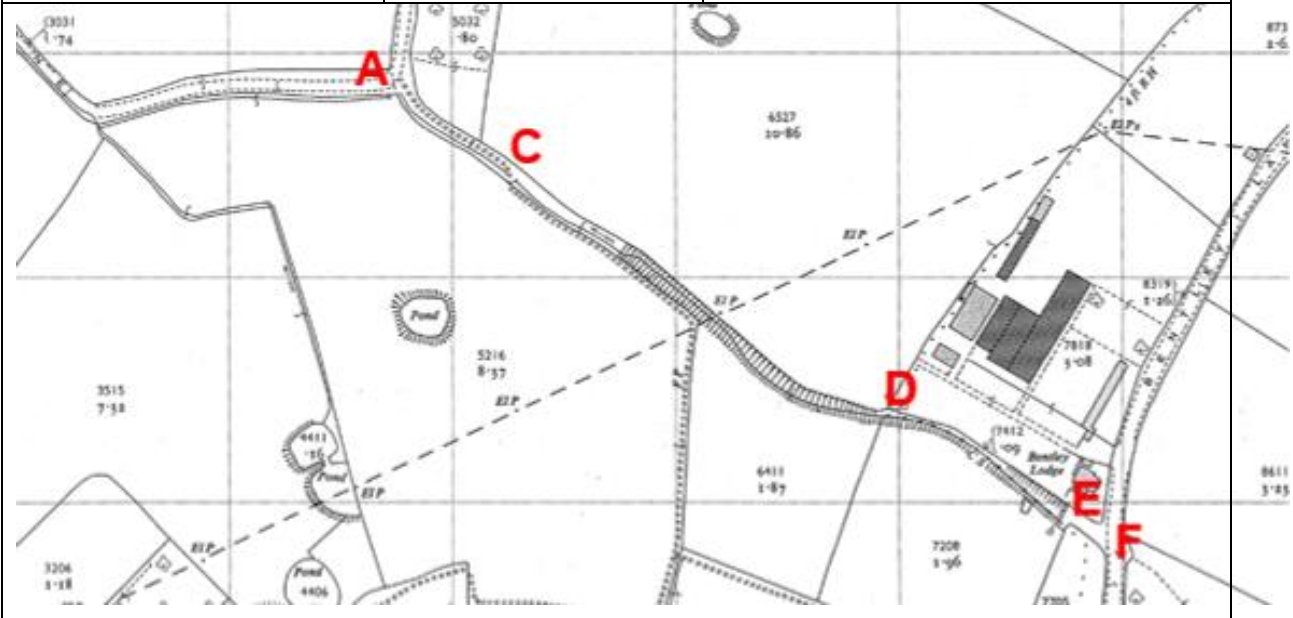
Investigating Officer's Comments

The application route between point A and point C appeared to be accessible – at least on foot in the 1930s. Beyond point C it may have been capable of being used at least on foot and the fenced section of the route between point E and point F then provided access through to Bentley Lane.

1:2500 OS Map SD 4913

1960

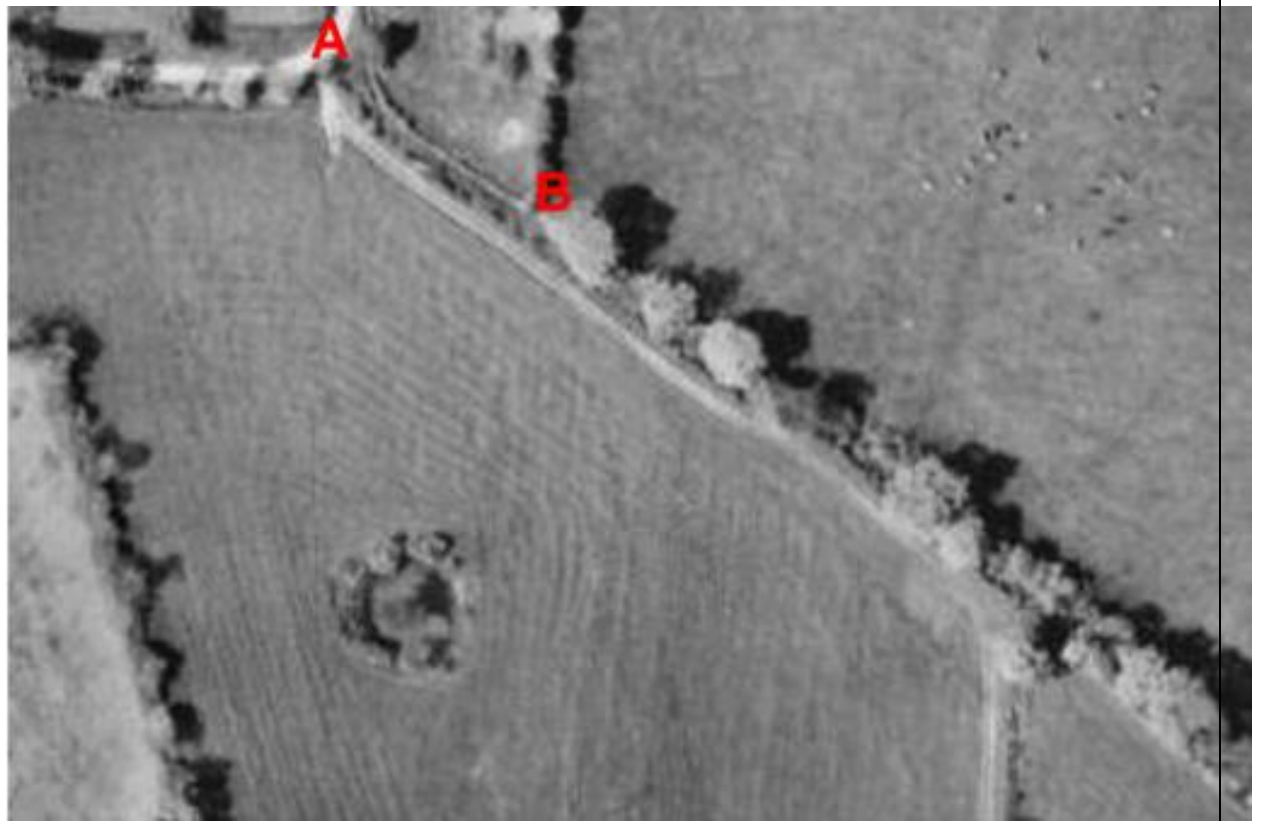
Further edition of 25 inch map reconstituted from former county series and revised in 1959 and published 1960 as national grid series.



Observations

The map shows that access onto the application route at point A was unrestricted and a track/path is shown through to point C from where it crosses a culvert and the boundary/fence along the south side of the application route and then continues along the field edge

		as 8-6-FP3. Beyond point C no track/path is shown but a watercourse is shown flowing along the route with markings indicating that the bounded route was now a gully with the water course flowing along the bottom through to point E where a line is shown across the route. Between point E and point F the route is shown with unrestricted access out onto Bentley Lane.
Investigating Officer's Comments		The application route existed between point A and point C in 1959 and appeared to be capable of being used – at least on foot. Between point C and point E the old route was still in existence but did not appear to be capable of being used – it was a sunken lane with a watercourse along it; suggesting that little or no use was being made of a through route from point A to point F by that time.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.





<p>Observations</p>		<p>Most of the application route is obscured by trees/hedges but there is little evidence of use. From point A to point B a trodden track can be seen but beyond that point the route is not visible. A route into the field immediately south of point A can be clearly seen</p>
<p>Investigating Officer's Comments</p>		<p>The photograph provides no evidence suggesting that the application route was capable of being used or was being used in the 1960s.</p>
<p><b>Topography</b></p>		<p>Topography is the study of the land surface. In particular, it lays the underlying foundation of a landscape. For example, topography refers to mountains, valleys, rivers, or craters on the surface of land crossed by a route under investigation and how that route is affected by it. Map and documentary evidence should be read in conjunction with topographical evidence to help us to understand the original purpose of a route and why use of some routes may have increased whilst use of others declined.</p>

Observations		<p>Historically the application route formed part of a longer route (as shown on the Tithe Map and first edition 6 inch OS map) that exited onto Bentley Lane close to a Grammar School and public house. It was known as 'Dark Lane' suggesting possibly that it felt dark and enclosed as evidenced by the fact that at that time it was bounded on both sides with trees and contained a small watercourse which flowed along or adjacent to the full length – all physical features that are still evident today.</p> <p>The route was consistently shown to be bounded on either side until more recent times with a watercourse running within the boundaries (width) of the route from point E to point A and adjacent to the route from point F to point E.</p> <p>When making an inspection of the route in 2022 it is important to remember that it may have looked very different in the late 1700s and early 1800s and the fact that a watercourse was shown running along a rural route is not necessarily uncommon.</p> <p>The watercourse within Dark Lane appears to have been a highway drain flowing within Bannister Lane from Bannister Brow and under Bentley Lane into Dark Lane. Beyond Dark Lane it flowed along Lee Lane then into Bispham Green. Highway drains were not always ditches at the side of the road and many examples can be found where they follow the centre and meander within the highway width. By 1890s this drain followed the sides of Bannister Lane, Bentley Lane (short section) and Lee lane whereas it was fairly central in Dark Lane. The water and traffic together probably wore</p>
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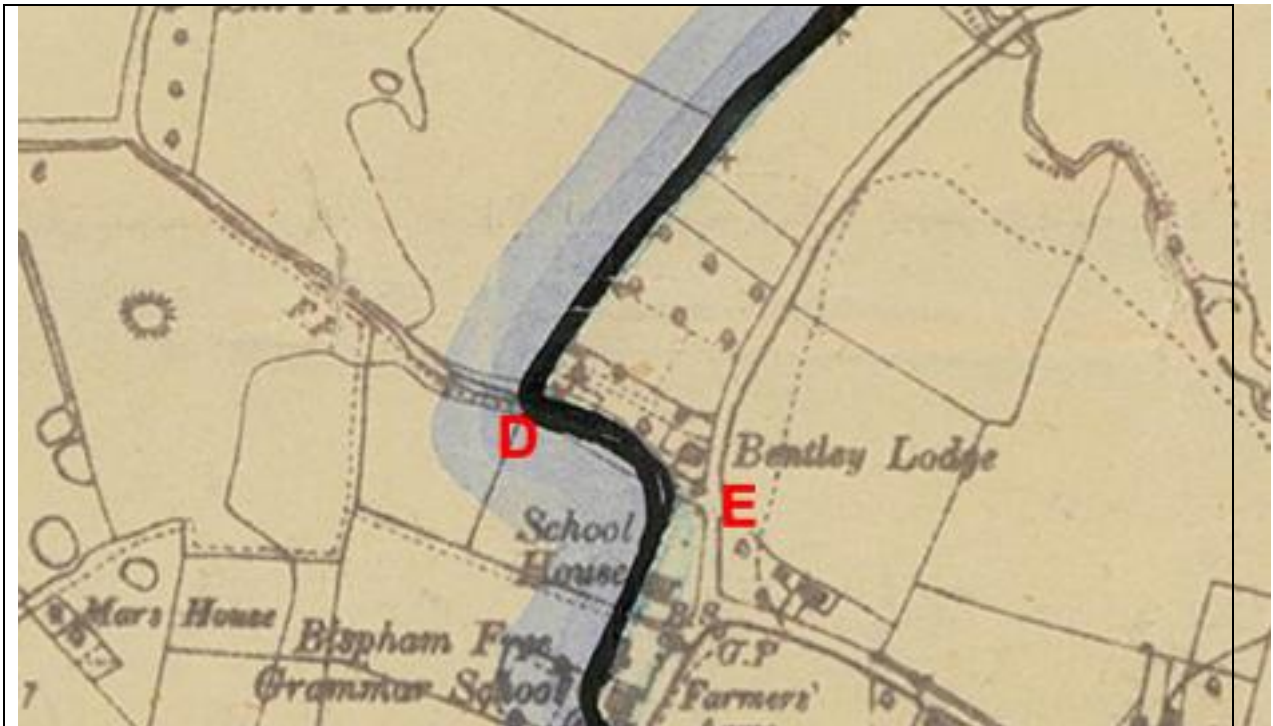
		<p>away at the surface and increased the depth of the holloway, particularly from point E to partway between point D and point C, and whether this reflected the fact that Dark Lane had already started to fall out of use or whether it was the reason it fell out of use is impossible to tell. With an alternative albeit longer route available via Lee Lane use of Dark Lane declined to the point that it was fenced off and no longer used. We do not know what the watercourse was like except that it appears to have been a minor highway drain. It might have been possible for carts to span it and others to walk adjacent to it or perhaps all traffic paddled along it or a combination of the two but the route was of a width that would have accommodated use on horseback or with horse drawn carts and the fact that the route is now more overgrown and more gullied than it would have been originally does not mean that it no longer physically exists.</p>
<p>Investigating Officer's Comments</p>		<p>The application route was the full width of the bounded (fenced) route shown on the Tithe Map and first edition 6 and 25 inch Ordnance Survey Maps. Whilst the watercourse may have gradually deepened or widened over time there is nothing to suggest that historical use of the route did not include traversing along the actual watercourse itself and the use of the land on either side of the watercourse (within the fenced off strip).</p>
<p><b>Definitive Map Records</b></p>		<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</p>

		any correspondence concerning the preparation of the Definitive Map in the early 1950s.
<b>Parish Survey Map</b>	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.



DISTRICT	<i>West Lancashire R.D.C.</i>	PARISH	<i>Bispham</i>	No.	<i>3</i>
MAP SHEET No.	<i>LXXIV N.E.</i>		LENGTH	<i>.15</i>	miles
BRIEF DESCRIPTION (Field F.P. or otherwise)			(to two decimal places)		
<i>Field F.P.</i>					
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).					
<i>This F.P. commences approx 66 yds S.E. of the junction of Lee Lane &amp; Old Lane &amp; proceeds in a S.Easterly, &amp; Southerly direction until it joins F.P. No. 2 This F.P. is completely ploughed up.</i>					
SURVEYED BY :—		Name			
		Address			
Date		<i>3. 10. 1951</i>			
<small>50000/F39/4/50</small>					

Parish Survey Map and one of the survey cards for Bispham



Wrightington Parish Survey Map (Wigan Rural District)

Observations

The parish survey map for Bispham does not record the application route as a public right of way. However, of significance is the fact that it does show a footpath starting on the route at point C which is labelled as number 3. The accompanying parish survey card describes the route of Footpath 3 as commencing approximately 66 yards south east of the junction of Lee Lane and Old Lane (point A). By recording the footpath as starting on the application route at point C it implies that the parish council believed, in 1951, that the application route (at least between point A and point C) carried higher public rights of access which it was not appropriate or necessary to record on the Definitive Map (i.e. that the route was a public vehicular highway).

Between point D and point F the application route is within the parish of Wrightington. A thick line is shown on the parish survey map

		<p>along the application route between point D and point E indicating the parish boundary. The application route is not recorded on the parish survey map as a public right of way.</p>
<b>Draft Map</b>		<p>The parish survey map and cards for Bispham and Wrightington were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1<sup>st</sup> January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>

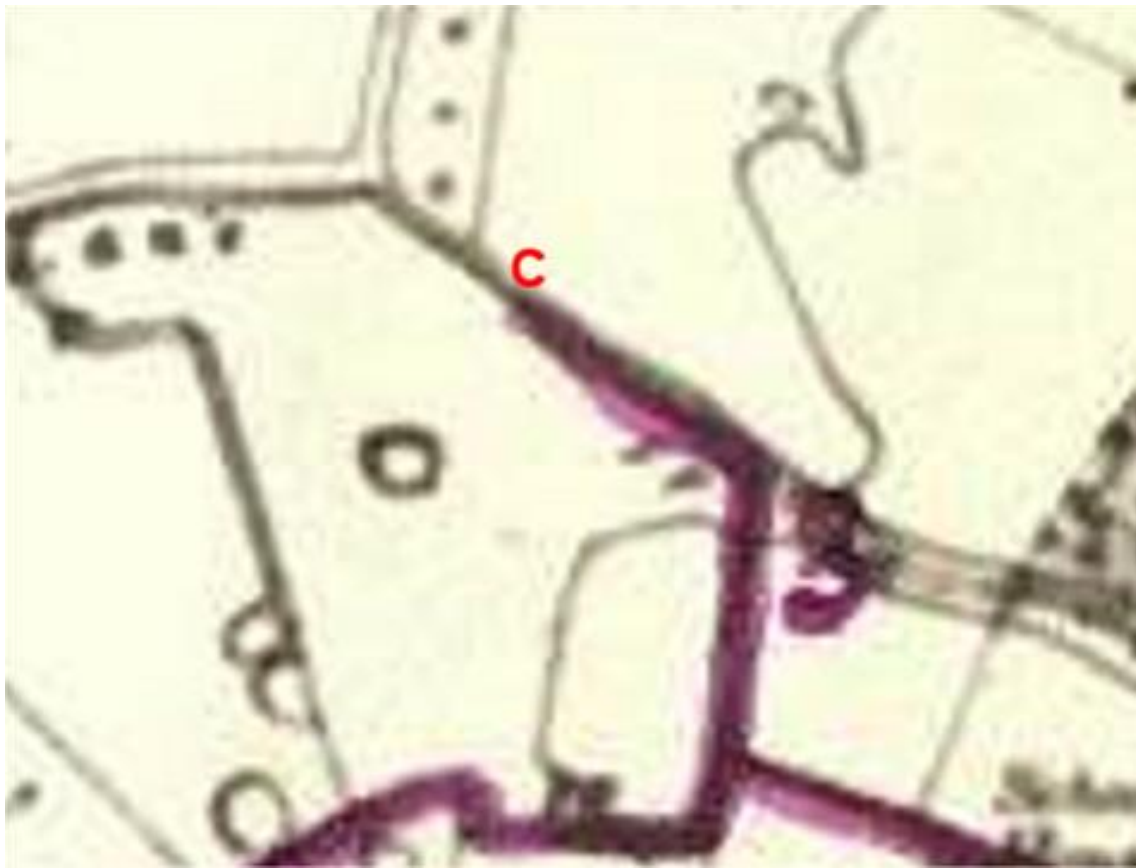


Draft Map for Bispham

<p>Observations</p>		<p>The application route was not shown on the Draft Map of Public Rights of Way and no representations or objections were made relating to it.</p>
<p><b>Provisional Map</b></p>		<p>Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960 and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be</p>

		made to the Crown Court.
Observations		The application route was not shown on the Provisional Map of Public Rights of Way and no representations or objections were made relating to it.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.





<p>Observations</p>		<p>Although difficult to interpret due to the scale of the map and thickness of the purple pen used the First Definitive Map indicates that the route 8-6-FP3 ran along the field edge adjacent to the application route and joined the application route at point C.</p> <p>The application route itself was not recorded on the First Definitive Map.</p>
<p><b>Revised Definitive Map of Public Rights of Way (First Review)</b></p>		<p>Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25<sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1<sup>st</sup> September 1966. No further reviews of the Definitive Map have been carried out. However, since</p>

the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.



Administrative County of the County Palatine of Lancaster: Date of Review 1st. September 1936  
 NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949  
 PARISH OF BISPHAM. Review of Definitive Rights of Way Map

1. No. of Path	2. Kind of Path	3. Position	4. Length in miles to 2 places decimals	DEFINITIVE MAP Other particulars (if any)
1	Footpath	Parish Boundary - Hall Lane.	0.19	
2	"	Chorley Road - Malt Kiln Lane.	0.30	
3	"	Lee Lane - No.2.	0.15	
4	"	Back Lane - Lee Lane.	0.26	
6	"	Malt Kiln Lane - Green Lane.	0.38	
7	"	" " " - Eccle's Lane.	0.38	
8	"	Robin Lane - Parish Boundary.	0.02	

Observations

The application route is not shown on the Definitive Map of Public

		Rights of Way (First Review) but the Statement describes 8-6-FP3 as meeting Lee Lane.
Investigating Officer's Comments		From 1953 through to 1975 there is no indication that the application route was considered to carry a public right of way of the type to be recorded on the Definitive Map and Statement by the Surveying Authority. There were no objections or representations made regarding the route from the public when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.
<b>Highway Adoption Records including maps derived from the '1929 Handover Maps'</b>	1929 to present day	<p>In 1929 the responsibility for district highways passed from rural district councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up-to-date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine</p>

whether it is a highway or not.



Bispham (West Lancashire Rural District Council)



Wrightington (Wigan Rural District Council)



LCC Highway Records

Observations		Dark Lane is not recorded on any of the Highways lists of publicly maintainable streets. No records relating to the stopping up, diverting or creating of public rights along the route were found.
Investigating Officer's Comments		If any unrecorded public rights exist along the route they do not appear to have been stopped up or diverted.
<b>Highway Stopping Up Orders</b>	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No legal orders relating to the

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

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

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

This Act effected a blanket extinguishment of unrecorded public rights for mechanically propelled vehicles (MPVs) with certain exceptions. Prior to this carriageway rights did not discriminate between vehicles which were mechanically propelled, such as cars and motorbikes, and those which were not, such as bicycles, wheelbarrows, horse-drawn carriages, donkey carts, etc. If Committee concludes that the evidence shows that, on the balance of probability, public carriageway rights exist on the application route it is then necessary to consider whether the Natural Environment and Rural Communities Act 2006 has extinguished public rights for MPVs. The application route was, at the time of the Act not recorded as a public footpath/bridleway and was not on the List of Streets (maintained at public expenses) and it does not appear to have been used mainly by the public in MPVs. There is no claim that any other of the other exemptions apply. Therefore, in the event that public carriageway rights are shown to exist and the appropriate status for the application route to be recorded on the Definitive Map and Statement would be Restricted Byway, with public rights with non-mechanically propelled vehicles, horses or on foot.

### **Summary**

It is rare to find one single piece of map or documentary evidence which is strong enough to conclude that public rights exist and it is often the case that we need to examine a body of evidence, often spanning a substantial period of time, from which public rights can be inferred.

From the maps examined, the route is first shown on Greenwoods Map published in 1818 and then again on Hennes's Map published in 1830. On both of these small-scale maps it is shown as a crossroad in the same way as other routes recorded as public vehicular highways are shown.

The Tithe Map and Award for Bispham dated 1840 clearly shows the route consistent with how other public vehicular routes are shown and specifically lists it in as a public road in the Tithe Award. This view is further enforced by the fact that the eastern end of the route is also shown on Tithe Map for Wrightington 1841 in the same way as other public vehicular routes are shown.

Early OS maps examined from the mid to late 1800s confirm that the application route remained a substantial bounded through route until at least the early 1900s. It was named on the OS 6 inch and 25 inch maps as Dark Lane and was also shown on the early 1 inch OS maps – all of which is consistent with the fact that it was considered to be a public road in the 1840s.

The District Valuation (Finance Act) map shows the route excluded from the numbered plots in the same way that Lees Lane, Old Lane and Bentley Lane are shown excluded and significantly shows land on either side of the route braced together and included in one plot number (52) and provides further support that in the early 1900s the route was still considered to be a public vehicular highway.

From the early 1900s however the evidence suggests that the route fell out of use – quite possibly because of the existence of the watercourse along it and the fact that it was noted from at least the late 1800s onwards as being quite gullied at least along the section between points C and E.

The map evidence suggests that from the 1930s onwards the route may not have been as accessible and was possibly fenced off at point E and part way between point C and point D.

Use of part of it at least may however have continued – as suggested by the fact that a footpath – recorded in the 1950s as 8-6-FP3 – was consistently shown as joining the application route at point C.

The Parish Survey carried out by Bispham Parish Council as part of the preparation of the Definitive Map and Statement in the 1950s identified the footpath as one that should be recorded on the Definitive Map and Statement but significantly it did not record the application route from point A to point C as part of the public footpath but stopped at point C suggesting that the parish council considered that the application route already carried public rights of access which did not require recording on the Definitive Map and Statement.

A search of records held at the County Records Office and on the London Gazette website has failed to locate a legal order extinguishing public rights along the application route suggesting that if it was already considered to be dedicated as a public vehicular route in the 1840s and despite the route falling out of use, those public rights have not been legally extinguished.

Since use of the route declined and then ceased altogether the route has become blocked and the holloway gradually deepened by the water but evidence of the route still exists on the ground and although not as easy to use as it would have been in the past it has not been lost due to erosion.

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

### **Landownership**

From point A to a point part way between C and D the application route runs along land which is unregistered. From this point part way between C and D until point D it is in private ownership. From point D to E the southern part of the land is owned by the Trustees of Richard Durning's School Charity, and the northern part is in unknown ownership but a caution has been registered against first registration and

from point E to point F it is not in a registered ownership but is affected by this caution.

#### Information from the Applicant

The applicant has provided with the application extracts from various maps – all considered and referred to above.

#### Information from the Landowner

Of the landowners that responded to the consultation, all objected to the application providing various different reasons as to why.

One Landowner returned the map of the proposed area marking out the area under their ownership whereby part of the application route runs along the border, however no further comments were provided.

One Landowner strongly objects to the application route, and any route that doesn't follow the original footpath line. The original footpath line has always been on the school field side of the dividing fence, allowing fast access at the top of the brook to the road is from the school field itself. The stile in the corner was removed approximately 10 years in order to make it more secure for the primary school. The Landowner further states she recalls from her youth that the footpath on the plan never ran through her land.

Another landowner objects to the application on the basis that the original hawthorn hedge is still there and runs right up the stream, and the boundary of their land is there. The landowner states she has photos of bluebells, snowdrops and wildlife such as owls and bats. The landowner states her brother may have the original deeds to the boundaries of the land which will prove the area is owned by them to the stream, and the only pathway they are aware of is on the school field side, and not on their side.

Another landowner's reasons for objecting to the application is that they feel it will cause an intrusion to the natural habitat of the wildlife there such as the owls nesting in the trees along the brook, the landowner states there is no natural path and there are bluebells along the proposed route.

Another landowner stated he will object to any change to the present footpath and that there has never been a footpath on Bentley Lodge. The landowner recalls in the 1950's school children including himself walking on the school field side of the brook for nature walks with the Headteacher.

#### **Conclusion**

The Application is that this is an old vehicular highway and ought to be recorded on the Definitive Map and Statement as a restricted byway - modern mechanically propelled vehicular rights having been extinguished by the Natural Environment Rural Communities Act 2006.

There is no user evidence and so Committee are advised to consider how the route is shown on the several historic documents to consider evidence of inference of dedication by the owner.

In this matter Committee is referred to the evidence and Summary of this evidence set out above and it is advised that in this matter there is sufficient evidence that this route was already regarded as part of the highway network in the early nineteenth century and continued to be recorded as such on the various documents and that on balance a dedication by an owner many decades ago can be inferred. Disuse of a route does not take away the public rights. There has been no legal stopping up of those rights and so it is advised that the legal maxim "once a highway always a highway " will apply. Owners' comments of today do not affect where this old highway runs.

Committee may consider that an Order should be made to record this old route as restricted byway.

### **Risk management**

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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-707		Ansar Sadiq, 01772 532435, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A

