

THE LANCASHIRE COUNTY COUNCIL
ADDITION AND DELETION OF FOOTPATH AT WHITECROFT BARN, MELLOR
DEFINITIVE MAP MODIFICATION ORDER 2025

Statement of Case on which the Order Making Authority considers that the
Order should be confirmed

Background

1. In 2024 the footpath at Whitecroft Barn, Mellor was temporarily closed whilst the property was being renovated. When the renovation was complete the footpath had been re-routed to follow a narrow (less than 1m wide) path fenced along the edge of the property.
2. As a result of this Officers within the Order Making Authority (OMA) explained to the owner of the property that they would have to apply for a diversion of the footpath to an agreed width and standard or would need to reopen the footpath on the correct line. At this point, it was realised that the line on the Definitive Map and Statement passed through the original footprint of the building (Whitecroft Barn):

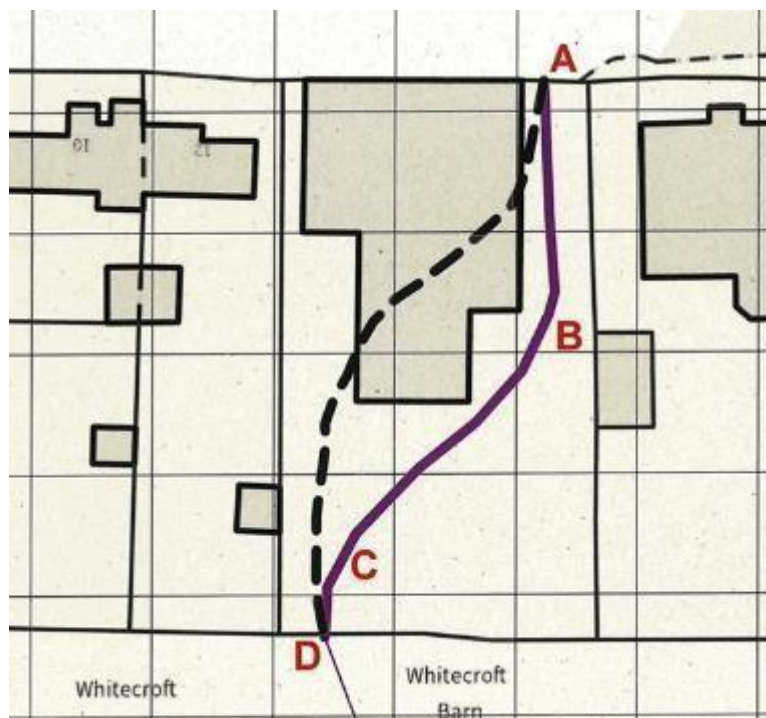


3. The building predates the recording of the public right of way in the 1950s (see OS maps dating back to the 1840s in the Committee Report (Document 19) and it was clear from investigations carried out that the footpath should pass to the east of the building although line and width were disputed by the landowner.
4. Three issues arose: it was not possible to enforce the Definitive Map line of the footpath as the OMA had concluded that it had been recorded passing through the building in error; it was procedurally incorrect to divert the Definitive Map route to a different route if no public rights existed along the definitive route as this would not divert the unrecorded public rights through the former farmyard to the east of the building; the correct route of the footpath needed to be recorded, including details of its width and any limitations so that the OMA could enforce the opening up of the correct line of the public footpath if the landowner was unwilling to submit an acceptable application to divert the public rights under Section 119 of the Highways Act 1980.
5. For those reasons the OMA carried out a detailed investigation which culminated in a report being submitted to the OMA's Regulatory Committee on 26 March 2026 (Document 19) wherein it was recommended to make and promote to confirmation an Order to correct the legal record of Footpath FP0325049 by deleting the route

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recorded on the Definitive Map and Statement (DMS) as shown on the Order Map by a bold broken black line A-D and to add a footpath to the DMS as shown on the Order Map by a thick purple line marked A-B-C-D.

6. The Regulatory Committee decided to make the recommended Order and Notice of the OMA's decision to make an Order was sent to affected individuals on 12th May 2025 (Document 15).
7. A Definitive Map Modification Order was duly made on 12th November 2025 (the "Order") (Document 1). The Order was made under Section 53(2)(b) of the Wildlife and Countryside Act, 1981 ("the Act") because it appeared to the OMA that the Definitive Map and Statement of Public Rights of Way for the County of Lancashire required modification in consequence of the occurrence of an event specified in Sections 53(3)(c)(i) and 53(3)(c)(iii) namely the discovery by the Authority of evidence which (when considered with all other relevant evidence available to them) showed that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, namely a public footpath (shown by a bold broken black line A-D on the Order Map) and that there was no public right of way of any description over land shown in the map and statement as a public footpath as shown on the Order Map by a solid purple line between points A-B-C-D:



8. Notice of Making of the Order was served on affected individuals and prescribed organisations, erected on site and published in the local press in accordance with paragraph 3 of Schedule 15 of the 1981 Act (Document 7).
9. During the specified period for objections and representations to the Order, the OMA received 4 objections and one representation (Document 4). These have not

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been withdrawn so the Order cannot be confirmed by the OMA and consequently the OMA is now submitting the Order to the Planning Inspectorate for a determination on confirmation.

The Order Routes

10. When the Definitive Map was originally prepared in the 1950s the property through which it passed was a working farm and whilst the footprint of the barn remains the same, other smaller buildings to the rear of the barn no longer exist and the farm has been converted into a residential property with parking and a landscaped garden area. The former stone-setted access route adjacent to the building (shown A-B as the route to be added) is now tarmac as shown on photographs shown as part of the Regulatory Committee presentation in 2024 (Document 20).

Route to be deleted:

11. Part of Footpath FP0325049 from its junction with Whitecroft Lane (Point A on the Order Map) running generally south-west then south through the building and garden of the property known as Whitecroft Barn to the boundary with a pasture (Point D on the Order Map); a total distance of 55m and of unknown width.

12. The start of the route to be deleted can be clearly seen on the Google StreetView photograph dated 2009 where it is noted that the path was signposted, that gates existed leading onto the route and the driveway A-B was paved with setts:

Footpath entrance from Whitecroft Lane (2009)



13. Beyond point A part of the route to be deleted is unwalkable as it passes through the building and is best illustrated by reference to an aerial photograph whereby the red arrows indicates the route to be deleted and the yellow arrows indicate the route to be added:

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Route to be added:

14. The route to be added commences from a junction with Whitecroft Lane (Point A on the Order Map) running south along the driveway of Whitecroft Barn (Point B on the Order Map) then south-west through the former farmyard which now forms part of a landscaped garden passing through the unmarked edge of the former farmyard (Point C on the Order Map) to the boundary between the garden and the pasture (Point D on the Order Map); a total distance of 50m.
15. The route to be added is shown on the aerial photograph above marked by yellow arrows.

Route currently available on the ground as set out by the current landowners:

16. References are made in the objections and representation to a route provided by the current landowners along the edge of their property from Whitecroft Lane at point A and running the length of their property (approximately 50 metres) to exit into the pasture field at the rear of the property from where walkers currently cross part of the field to pick up the undisputed section of Footpath FP0325049 where it enters the remains of a bounded track running south towards Hacking House.
17. This route is not a public right of way except in as much as it overlaps with the existing footpath and whilst the landowners put it in to provide access along the edge of their property rather than the historical route A-B-C-D it has no legal status and at less than 1m width is very narrow:

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Legal issues

18. The provisions of the 1981 Act set out tests which must be addressed in deciding whether the DMS should be modified. The OMA made the Order because it appeared to the OMA that the DMS required modification in consequence of the occurrence of an event specified in S53(3)(c)(i) and (iii) namely the discovery by the OMA of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the DMS relates, namely a public footpath A-B-C-D and that there is no public right of way of any description over land shown in the map and statement as a public footpath A-D.
19. The statutory tests at S53(3)(c) firstly require that there has to be evidence discovered.

Footpath deletion

20. In the Trevelyan case (Trevelyan v Secretary of State for the Environment, Transport and the regions (CA) [2001] EWCA Civ 266, [2001] 1 WLR 1264 (BBE)), the Court of Appeal held that where a right of way is marked on the Definitive Map there is an initial presumption that it exists. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus

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evidence which made it reasonably arguable that the right of way existed when it was put on the Map.

21. The standard of proof required to justify a finding that no such right of way exists is on the balance of probabilities and evidence of some substance is required to outweigh the initial presumption.
22. When considering cases where the removal of rights from the DMS is proposed by an order, paragraph 4.33 of the DEFRA Rights of Way Circular 1/095 advises that "*The evidence needed to remove what is shown as a public right from such an authoritative record as the definitive map and statement ... will need to fulfil certain stringent requirements.*" The requirements are that (a) the evidence must be new; (b) the evidence must be of sufficient substance to displace the presumption that the DMS is correct; and (c) the evidence must be cogent.
23. Once prepared, and unless and until subsequently revised, the DMS is regarded as the conclusive record of the existence, at the relevant date of the DMS, of the public rights of way it shows. Therefore, the deletion of a right of way from this record requires sufficient evidence to show that no right of way existed as at the relevant date of the definitive map on which the way was first shown.

Footpath Addition

24. The statutory test at S53(3)(c)(i) comprises two separate questions, one of which must be answered in the affirmative before an Order is made under that subsection. The claimed right of way has to be found, on balance, to subsist (Test A) or able to be reasonably alleged to subsist (Test B). This second Test B is easier to satisfy, but it should be noted it is the 'higher' Test A which needs to be satisfied in deciding whether to confirm the Order even though Test B was sufficient to make the Order.
25. In the case of *Todd and another v Secretary of State for Environment, Food Rural Affairs* [2004] EWHC 1450 Evans-Lombe J made it clear that the confirming authority (whether the local authority confirming an unopposed order or the Secretary of State confirming an opposed order) must be satisfied on the balance of probabilities that the right of way subsists. This means that when considering the confirmation of an order, the Secretary of State is only able to consider whether on the balance of probabilities the right of way subsists.
26. Accordingly, for the Order to be confirmed, the Inspector needs to be satisfied that, on the balance of probability, the evidence considered by the OMA, when considered with all other evidence, is sufficient evidence from which to infer public footpath rights have been dedicated on the Order route A-B-C-D.

Map and Documentary Evidence

27. The status of the route through Whitecroft Barn as a public footpath is not in doubt; no evidence has been discovered suggesting bridleway or byway rights. In this case the map and documentary evidence examined and documented in detail in

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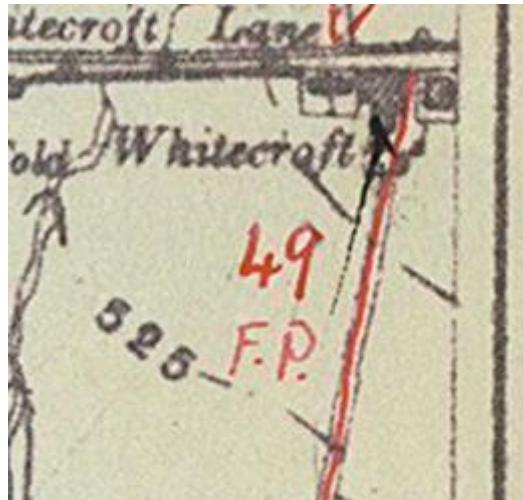
the Regulatory Committee report (Document 19) have been considered to establish the precise line, width and other particulars of the route and to determine whether the route recorded on the Revised Definitive Map between points A-D is correct or not.

28. This Statement of Case does not duplicate the evidence set out in the Regulatory Committee report (Document 19 pages 43-63) but references that evidence as set out in that report.

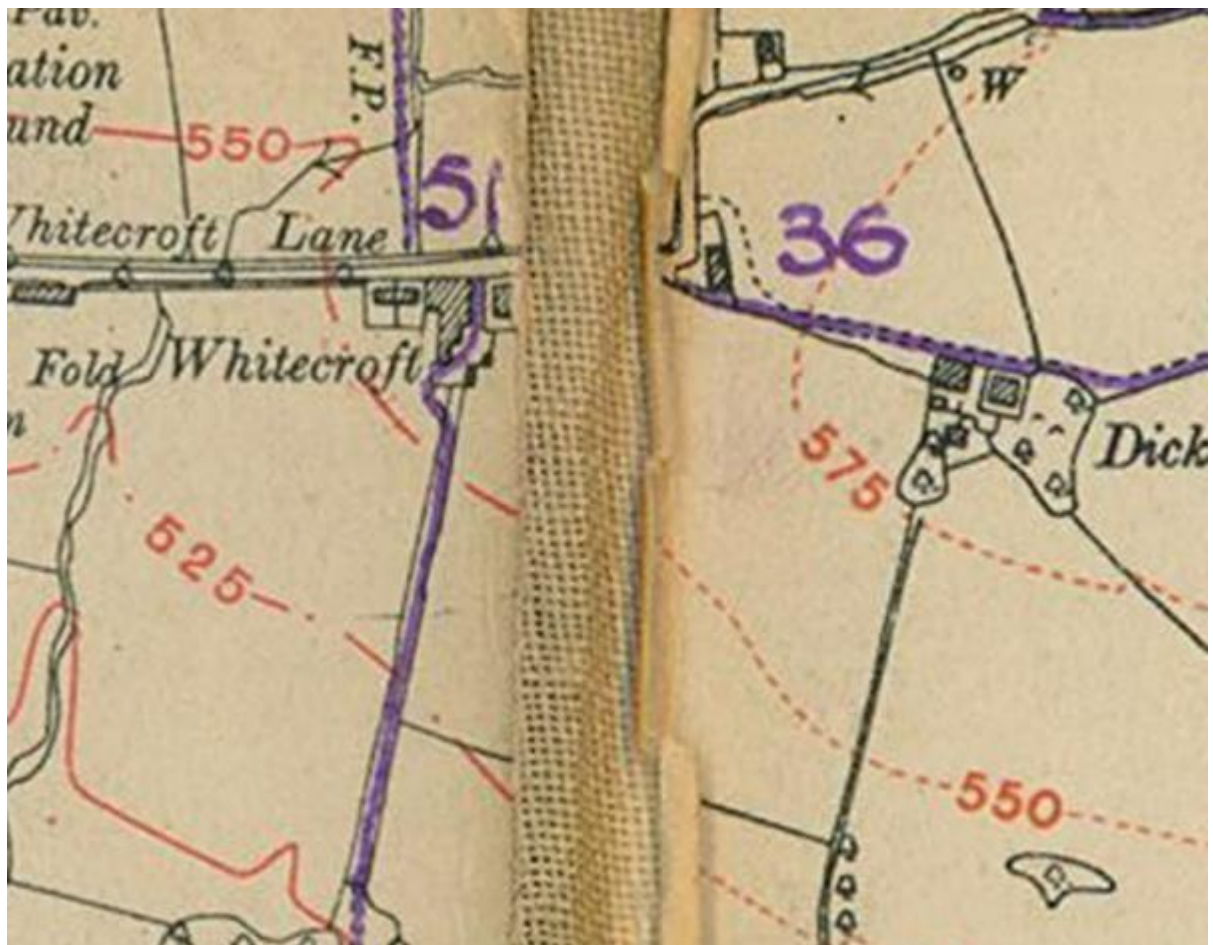
Footpath to be deleted (A-D on the Order Map)

29. The starting position is that a public footpath exists as shown on the Definitive Map and Statement but the line shown on the current Definitive Map is, and has been since at least the 1840s, impossible to use as it passes through an old building (now known as Whitecroft Barn). The Ordnance Survey maps inspected in support of this assertion are the 6 inch OS Map revised 1844-6 published 1848, 25 inch OS map surveyed 1892 published 1893, 6 inch OS Map surveyed 1892, published 1894 (Document 22), 25 inch OS map surveyed 1910, published 1911, 6 inch OS map revised 1910, published 1913 (Document 23), 25 inch OS map revised 1929, published 1932, 6 inch OS map revised 1929, published 1933, 1:10,560 OS map revised 1930-1955 and published 1956 and 1:2500 OS map revised 1967 and published 1969. All maps listed are either included as individual maps in the submission report (Documents 21-35) and/or are embodied into the Regulatory Committee Report (Document 19).
30. In addition, aerial photographs taken in the 1940s and 1960s support the fact that the route recorded on the current DMS was not useable and is clearly in error.
31. The previous maps in the Definitive Map process (Parish Survey, Draft, Provisional and First Definitive) do not show the route passing through the building and all four maps show the route from point A (at the junction with Whitecroft Lane) running down what is now the driveway of Whitecroft Barn (A-B).
32. A -D is not depicted as a public right of way on the Parish Survey Map (below) although the Card (dated 1951) is less clear. The route of the public footpath was shown on this map as running obliquely through the yard at Whitecroft but without the curve of the subsequent maps in the process. The description specifically states '... and skirt the farm buildings....' thus supporting the deletion of A-D:

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33.A-D is not depicted as a public right of way on the Draft Definitive Map and Statement (dated 1st January 1953). The route of the public footpath was shown on this map as running through the yard at Whitecroft skirting the extant buildings, A-B-C-D on the Order Map:



Extract from the Draft Map of Public Rights of Way (Above)

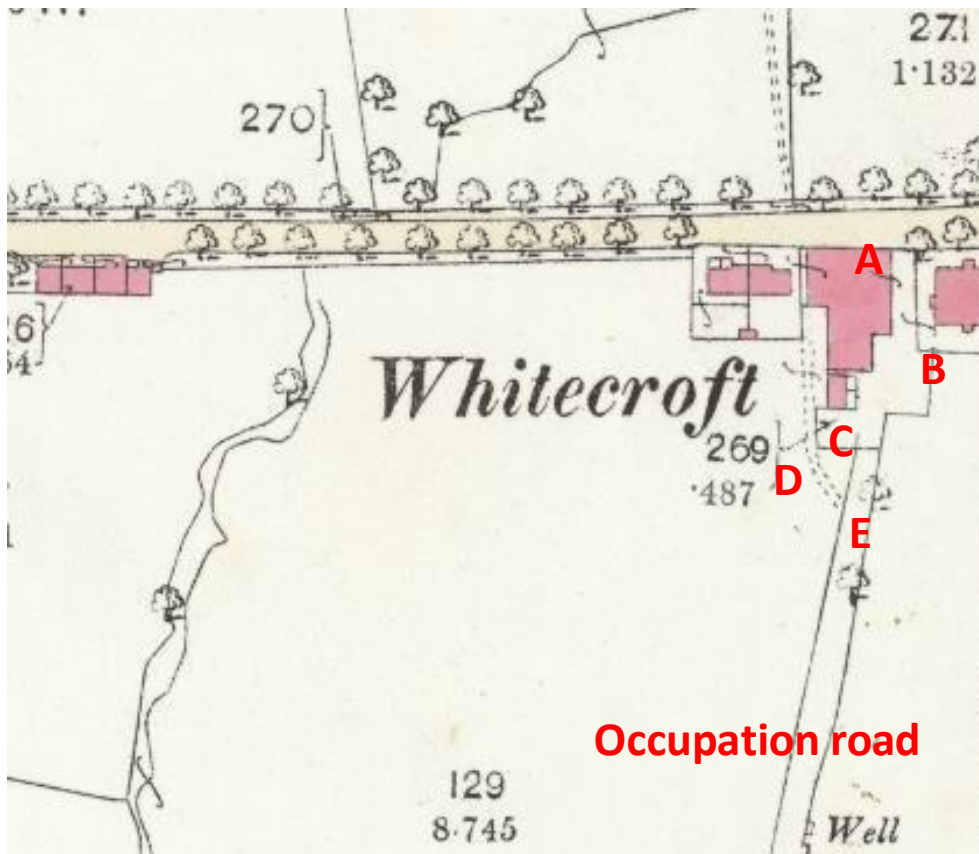
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34. When the Provisional Map was prepared the line of the route was distorted, in part due to a broader ink line which partially intersected some of the buildings in the yard of Whitecroft. The same issue arose with the First Definitive Map, and the Revised Definitive Map exacerbated this problem further, recording the line A-D. The map sequence represents a progressive discrepancy from the Draft Map which can be best explained by careless drafting and imprecision on hand drawn maps reproduced at a small scale and using broad ink lines.
35. Overall the evidence supports the conclusion that on preparation of the First and Revised Definitive Maps no public rights existed along the line A-D as shown on the Order Map and that imprecise drafting resulted in the path being drawn on the current Definitive Map along the line A-D instead of A-B-C-D.
36. Considering the criteria for removing a right of way from the Definitive Map, the OMA consider that evidence of the drafting error is "new" in the sense that it was previously unknown to the county council and was only discovered when the public rights of way team were prompted to consider the management of this footpath following a temporary closure and provision by the current landowners of a narrow fenced off alternative route when it was realised that the line on the Definitive Map passed through a building present at the time the map was drafted.
37. The evidence is cogent and of sufficient substance, being consistent across relevant historical maps and aerial photographs, to rebut the presumption that the Definitive Map correctly records the right of way.

Footpath to be added (A-B-C-D on the Order Map)

38. There is nothing to suggest that it was ever disputed that a public footpath existed from Preston New Road through Hacking House and across fields to exit onto Whitecroft Lane via Whitecroft Barn. Accepting that the route A-D as recorded on the current DMS is in error the OMA therefore looked at all available map and documentary evidence to determine on what alignment the footpath through the former farmyard actually ran.
39. The earliest large scale Ordnance Survey map was surveyed in 1892 and published in 1893:

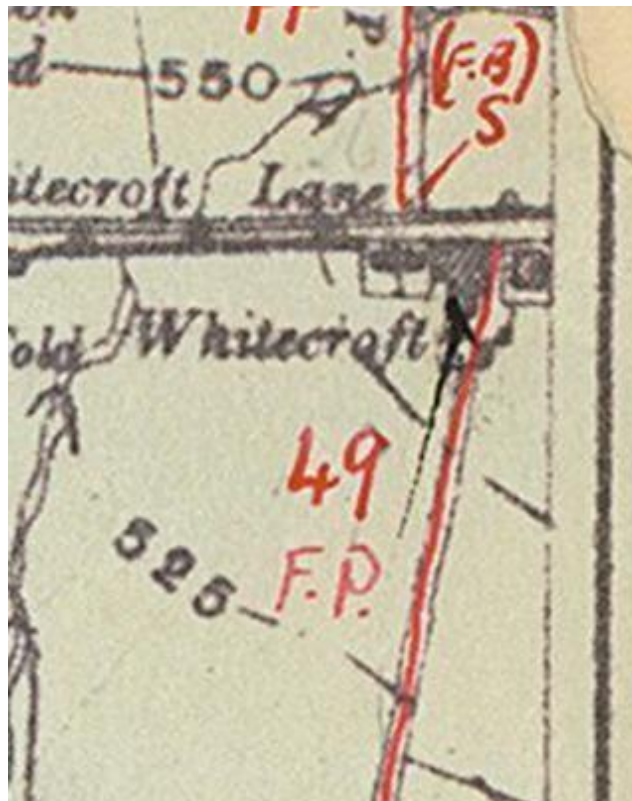
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40. Whilst it is not known exactly when the public footpath was dedicated the Ordnance Survey maps and aerial photographs show that a public right of way could have existed from the occupation road straight through the yard and most suggest that a way via an alleyway on the western side of Whitecroft Barn could also have been available. However, the OMA observed that the maps of the Definitive Map process (Draft, Provisional, First Definitive and First Review Definitive) all show the footpath from the occupation road curving to the west then into the farmyard and joining Whitecroft Lane via the entrance to the farmyard (point A).
41. It is acknowledged that the Parish Survey, carried out in 1951, included a map which was consistent with the historical Ordnance Survey mapping and took the most obvious line along the occupation road and directly through the yard. However, the description in the parish survey card does not support the same simple line and the OMA concluded that the Draft Map line appeared to reflect an interpretation of that description. If the 'cart track to farm' on the card refers to that labelled 'occupation road' on the map (traces of this enclosed track still exist in the field) then the 'stile on left' may have been where the double dashed path is shown leaving the track and the 'stile alongside shippon' could be into the farmyard (the description finishes with 'onto Whitecroft' not 'onto Whitecroft Lane' – omitting the route from the farmyard to the lane is not unusual for descriptions on the Survey Cards; it would have seemed obvious to the authors at the time. Unfortunately both those stiles mentioned are not annotated on the map, in contrast to most others on that sheet – possibly because that path crossed a sheet boundary on

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the Parish Survey Map and whilst the 2 stiles on the eastern sheet were marked, the 3 stiles described on the western sheet were not shown.



DISTRICT	BLACKBURN RURAL	PARISH	MELLOR	No. 49
MAP SHEET No.	394.	LENGTH	0.51 miles (to two decimal places)	
BRIEF DESCRIPTION (Field F.P. or otherwise)				
Cart-track along Footpath.				
DETAILED DESCRIPTION (giving starting point, means of passage and general condition).				
Starts from stile on Blackburn-Preston main road path coincides with approach road to Hacking House Farm, thence along East side of farm buildings to stile which is alongside gate. path then continues in N direction along hedge side and the boundary of a small copse and to stile thence across field to join with cart track to farm. Along track to stile on left and skirt farm buildings to stile alongside shippon and onto Whitecroft.				
SURVEYED BY:—				
Name		Mr. R. S. Prest,	Mr. A. Kinder,	
Address		103, Mellor Lane,	Lower Brunthurst Farm.	
Date		15th May, 1951.	Mellor.	Mellor.

Extracts from the Parish survey Map and Card (Above)

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42. The route shown as a public footpath on the Draft Map produced in 1953 was amended from that shown on the Parish Survey map and is that shown on the Order Map as the route to be added A-B-C-D. It received no objections which would suggest an acceptance by the landowners and the public of the existence of the right of way along this line.



Extract from the Draft Map (Above)

43. As detailed above the route A-B-C-D as recorded on the Draft Map, becomes distorted in the Provisional Map due to the broader ink line which intersects buildings in the yard at Whitecroft, this distortion is exacerbated in the First Definitive Map and particularly in the drafting of the current Definitive Map which recorded the route A-B.
44. No records detailing a diversion have been located which might explain the discrepancy between the Draft Map and the lines plotted on subsequent versions of the Definitive Map. This discrepancy is best explained by a series of imprecise drafts when transferring the recorded line from the Draft Map to the Provisional, First Definitive, and Revised Definitive Maps. The difference between the Parish Survey Map and the Draft Map cannot be ascribed to drafting error and appears to be a deliberate inclusion of the curve but the reason is not known.
31. The Draft Map was prepared considering the same legal test that the OMA applied in reaching a decision to make an Order; a route must subsist or be reasonably alleged to subsist. This test would have been met for the line to be plotted as it was on the Draft Map and as such the line on the Draft Map can be relied upon to provide an accurate record of the route of public rights on the ground at the time it was prepared. The route was then, and can still be, said to subsist or be

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reasonably alleged to subsist as the rights recorded have not been diverted or extinguished.

32. The OMA consider that the evidence points strongly towards the conclusion that when the Definitive Map process was carried out, the public footpath was acknowledged to run along the line A-B-C-D, as shown on the Draft Map. Accordingly, it is recommended that the Definitive Map be modified to conform to the line shown on the Draft Map, A-B-C-D on the Order Map.

45. With regards to the width of the public footpath the OMA concluded that in the enclosed yard or driveway on the east of Whitcroft Barn by Whitcroft Lane would be presumed to be the full width of 5.5m between points A and B on the Order Map as there would have been no reason for the public to have walked only on a particular section of it and in practice they would have had to use the width to move round any activity, vehicles, machinery or animals in the yard. Through the section of the yard further south than the building, users of the footpath would have mostly taken a straight line within the available width which means a width tapering from 5.5m at point B to about 2m where it passes through the former stile between the farmyard and field (point C).

46. No limitations are recorded on the Definitive Statement for FP0325049 but the presence of a gate at the junction with Whitcroft Lane can be inferred from the need for agricultural access historically, Ordnance Survey maps pre-dating the 1950s showing a solid line across the junction and there are stone gateposts although these are positioned at 90 degrees from the matching ones on the adjacent Whitcroft Farm, of which the barn and yard used to be part. Where the footpath passed between the farmyard and the field (point C) there was also the historical need for a gate or stile, with the Parish Survey Card suggesting the existence of a stile.

Summary

31. The OMA consider that the section of FP0325049 at Whitcroft Barn shown on the Revised Definitive Map (First Review) and between points A-D on the Order Map should be deleted and instead a new section of footpath should be recorded between points A-B-C-D.

27. To remove a route from the Definitive Map it is necessary to show on balance that it was put on the Definitive Map in error. In this matter the line of the route to be deleted (A-D) was first shown on the Revised Definitive Map (First Review) dated 1975 but with a relevant date of 1st September 1966. The error therefore needs to be shown to have been made in the preparation of this map.

28. The OMA consider the section A-B-C-D was already a footpath in law when the DMS was first prepared and should therefore be added to the Definitive Map and that the line A-D should now be deleted from the record.

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29. The route A-B-C-D is shown as a public footpath on the Draft Map produced in 1953 and received no objections which would suggest an acceptance by the landowners and the public of the existence of the right of way along this line. Whilst not the most obvious line it was not shown as being obstructed by buildings on the Ordnance Survey maps and if the stiles described in the Parish Survey Card correspond to the unbroken lines shown alongside the cart track and enclosing the farmyard the way would have been passable.
30. The route A-B-C-D becomes distorted in the Provisional Map due to the broader ink line which intersects buildings in the yard at Whitecroft, this distortion is exacerbated in the 1962 Definitive Map and once again in the drafting of the current Definitive Map. No records detailing a diversion have been located which might explain the discrepancy between the Draft Map and the lines plotted on subsequent versions of the Definitive Map. This discrepancy is best explained by a series of drafting errors and imprecision when transferring the recorded line from the Draft Map to the Provisional, First Definitive, and Revised Definitive Maps.
31. The Draft Map was prepared considering the same legal test that the OMA applied in reaching a decision to make an Order; a route must subsist or be reasonably alleged to subsist. This test would have been met for the line to be plotted as it was on the Draft Map and as such the line on the Draft Map can be relied upon to provide an accurate record of the route of public rights on the ground at the time it was prepared. The route was then and can still be said to subsist or be reasonably alleged to subsist as the rights recorded have not been diverted or extinguished.

Conclusion

32. The OMA consider that the evidence points strongly towards the conclusion that the footpath has always run along the line A-B-C-D, as shown on the Draft Map. Accordingly, the Order was made to conform to the line shown on the Draft Map and shown as A-B-C-D on the Order Map.
33. The OMA consider that on balance the route A-B-C-D subsists as a public footpath and should be recorded on the Definitive Map and Statement and the route A-D (not running via points B and C) did not exist at the time of the preparation of the Definitive Map and was recorded in error.
34. There is no evidence that a legal stopping up or diversion of any part of the route has ever taken place and with regards to the route A-B-C-D the legal maxim "Once a highway always a highway" would apply as unless stopped up by proper legal process a highway remains where it was dedicated, even if no longer used.
35. Accordingly, the OMA submits that a footpath subsists along the Order route A-B-C-D and that no public right of way exists along the route A-D. The OMA further contends that the criteria for a modification of the DMS under section 53 of the 1981 Act are satisfied.

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36. The Order includes a limitation of a stile at point A. However, on further examination of the evidence, in particular the Parish Survey Card, it is suggested that the stiles mentioned were at points E (not part of the route to be added) and C (on the former boundary of the farmyard) not at point A. However, at point A there is an unbroken line shown on the Ordnance Survey maps consistent with a farm gate. The OMA therefore requests that Part II of the Order be modified with respect to the limitations to read:
- 'the landowner has the right to maintain:
- a stile at SD 6537 3045
 - a fieldgate at the junction with Whitecroft Lane at SD 6539 3050
37. The OMA decided that the Order should be promoted to confirmation because the higher tests for confirmation are met. The objections received do not give any grounds for the OMA to reverse its decision on promoting the Order to confirmation. The OMA therefore respectfully requests that the Planning Inspector confirms the Order subject to the above modification.