

**Report to the Regulatory Committee**

Meeting to be held on Wednesday, 26 March 2025

**Report of the Director of Environment and Planning**

**Wildlife and Countryside Act 1981 Definitive Map Investigation:**

**Whitecroft Barn**

Appendix 1 – Committee Plan

Appendix 2 – Location Map

	<b>Corporate Priorities:</b> Stronger communities;
<b>Electoral Division(s):</b> Ribble Valley South West;	
<b>Contact (quoting reference 804-775):</b> Simon Moore, 01772 531280, Legal & Democratic Services, <a href="mailto:simon.moore@lancashire.gov.uk">simon.moore@lancashire.gov.uk</a> David Goode, 01772 533723, Planning and Environment, <a href="mailto:david.goode@lancashire.gov.uk">david.goode@lancashire.gov.uk</a>	

**Summary**

**Purpose of the Report**

Investigation into the particulars (line, width and limitations) of the public footpath at Whitecroft Barn, Mellor

**Recommendation**

The Regulatory Committee is asked to decide to:

- (i) Make a Definitive Map Modification Order(s) as set out in this report to modify the Definitive Map and Statement to record the correct line and width of public footpath FP0325049 at Whitecroft Barn
- (ii) Promote the Order(s) to confirmation

**Background**

1. Public footpath FP0325049 runs south from Whitecroft Lane through the curtilage of a domestic property known as Whitecroft Barn then into the field behind from where it continues to Preston New Road.
2. The footpath at Whitecroft Barn was recently closed temporarily whilst the property was being renovated. When it was reopened the legal line of the footpath had been blocked and a narrow path constructed along the edge of the property.



3. When officers considered the management of this footpath, in particular requiring the owner to apply for a diversion or to reopen the correct line, it was realised that the line on the Definitive Map and Statement passes through the original footprint of the building. The building predates the recording of the public right of way in the 1950s and it is clear that the footpath should pass to the side of it but the exact line and width are disputed. For that reason it is necessary to make a Definitive Map Modification Order to record the footpath at Whitecroft Barn correctly.
4. Definitive map modification orders must be made solely on the basis of evidence of the existence of public rights of way not on matters of expediency, preference or practicality. Officers have investigated the evidence which forms the basis of this report and its recommendations to make and confirm the Order to correct the legal record of footpath FP0325049.
5. Once the precise line and width is understood the management of the footpath can deal with the practicalities. Solutions can be considered and effected before the definitive map modification order process is complete and it is generally better for the landowner to do this where agreement can be reached.

### **Options and Proposals**

6. Option 1: To not make a Definitive Map Modification Order.
7. Option 2: To make a Definitive Map Modification Order as laid out in this report and to refer it back to Committee following the end of the objection period.
8. Option 3: To make a Definitive Map Modification Order as laid out in this report and to confirm it if there are no outstanding objections/representations but to refer it back to Committee otherwise.
9. Option 4: (Recommended) To make a Definitive Map Modification Order as laid out in this report and to promote it to confirmation, if necessary by submitting the Order to the Planning Inspectorate.

### **Consultations**

10. Landowners and adjacent landowners were consulted along with the Parish and Borough councils and local County Councillor. Consultation also included user groups, statutory undertakers, Environment Agency, Ordnance Survey and Natural England.

### **Advice**

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

11. Please refer to the Committee Plan at appendix 1

### **Description of Route**



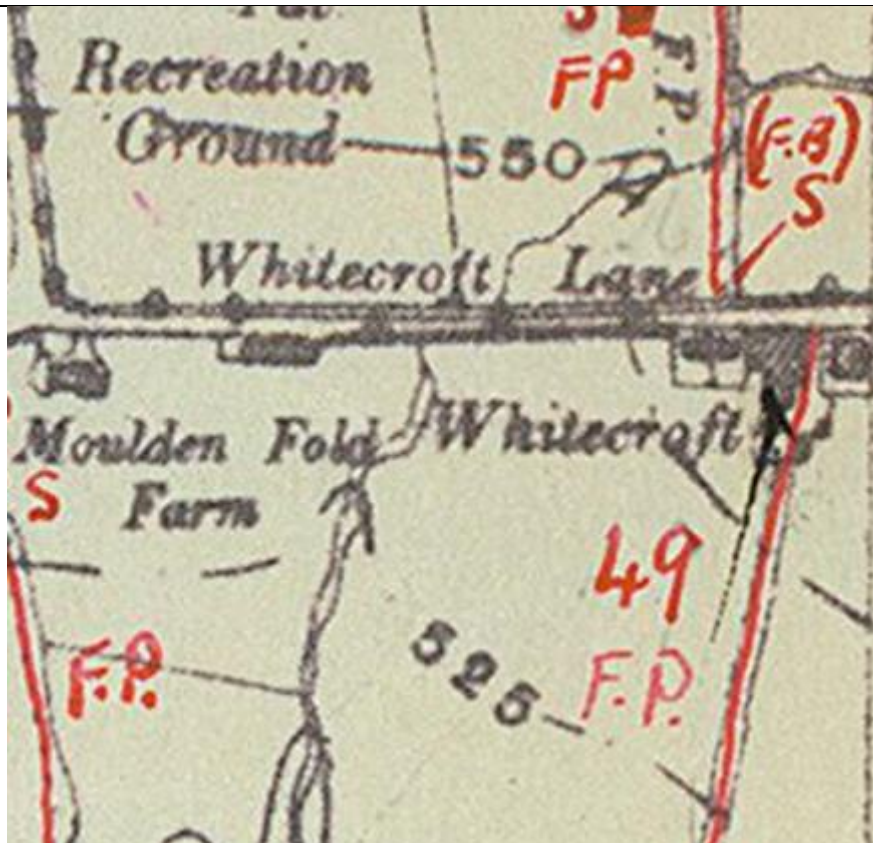
<b>Point</b>	<b>Grid Reference (SD)</b>	<b>Description</b>
A	6539 3050	Gates at junction with Whitecroft Lane
B	6539 3043	South end of driveway at side of house
C	6537 3045	Historical western boundary of farmyard
D	6537 3045	Historical footpath and Definitive Map line intersects with modern fence line

### Map and Documentary Evidence

12. The status of the route through Whitecroft Barn as a public footpath is not in doubt. In this case the map and documentary evidence examined and documented below 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 on the Committee plan is correct.

<b>Document Title</b>	<b>Date</b>	<b>Brief Description of Document &amp; Nature of Evidence</b>
<b>Definitive Map Records</b>		The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.  Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.
<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. Following completion of the survey the maps and schedules were submitted to the County Council. 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	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)				
<del>Cart Road and</del> 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.

Observations

The Parish Survey map was drawn onto the 1933 Ordnance Survey 6" sheet using red pen. However an arrow has been drawn in black pointing to the gap between the southern outbuilding and the southern part of the barn. The significance of this, if any, is unknown. The parish survey map shows the footpath continuing from the occupation road and through the yard. It is evident from the aerial photo in



		<p>the following decade that the occupation road was still double hedged at that time.</p> <p>The survey card is ambiguous. It appears to be at odds with the map. However, it is consistent with the map if interpreted as passing over a stile at the (west) side of a gate into the yard. It is not consistent if "along track to stile on left" means the route leaves the track. This however is how the route is shown on the Draft Map (see below).</p>
<p><b>Draft Map</b></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. Under the legislative provisions the Draft was to show , "a footpath or a bridleway, as may appear to the council to be appropriate, wherever in their opinion such a right of way subsisted, or is reasonably alleged to have subsisted, at the relevant date.". The legal test to show a route was higher than for the parish survey.</p>





<p>Observations</p>	<p>The Draft Map shows the footpath leaving the occupation road (via the vicinity of the gate visible on the 1960s aerial photo detailed later in this report) then curves back into the yard south of the buildings and a walled pen visible on 1940s and 1960s aerial photographs, then through the yard to Whitecroft Lane. The Draft was not drawn by the Parish surveyor. Why the route shown differed from that on the Parish Survey Map is not immediately clear. The Investigating Officer found no map, documentary or photographic evidence to account for the difference but is mindful of the legal test set out above.. The deviation shown on the Draft Map appears to pass into the farmyard then close to a square penned off area visible on the 1940s and 1960s aerial photographs. The map evidence detailed later in the report all indicates that a route was accessible from point E directly through the farmyard but the Draft takes a loop to the west away from that line as shown E-D-C-B on the Committee Plan.</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 made to the Crown Court.</p>





Observations		The Provisional Map shows the footpath through the yard to Whitecroft Lane by the same route as the Draft Map but drawn with a broader stroke which overlaps the outbuilding.
<b>The First Definitive Map and Statement</b>		The Provisional Map, as amended, was published as the Definitive Map in 1962.





RURAL DISTRICT OF BLACKBURN  
PARISH OF WELTON

1. No. of Path	2. Kind of Path	3. Position	4. Length in miles to 2 places decimals	5. Other particulars (if any)
38	Footpath	Ottie Green Farm to junction with footpaths 39,40 and 41 near Kingbank Farm.	0.21	
39	"	Junction of footpaths 38,40 and 41 to Kingbank Farm.	0.03	
40	"	Whizney Lane west to junction footpaths 38,39 and 41 near Kingbank Farm.	0.23	
41	"	Lower Reaps to near Kingbank Farm.	0.23	
42	"	Ottie Green Farm to junction footpaths 44 and 45 near Lower Reaps.	0.24	
43	"	Whizney Lane Farm to Lower Reaps.	0.31	
44	"	Junction of footpaths 45 and 42 to Lower Reaps.	0.07	
45	"	Junction of footpaths 42 and 44 to junction of footpaths 46 and 47.	0.04	
46	"	From Preston New Road near Yew Tree Drive to junction of footpaths 45 and 47.	0.47	
47	"	From Parish Boundary at junction with footpaths 48 to Lower Reaps.	0.14	
48	"	From Parish Boundary at junction with footpath 47 to Lower Reaps.	0.12	
49	"	From Preston New Road near Hacking House north to Whitecroft.	0.51	
50	"	From Preston New Road south to Parish Boundary over Arley Brook.	0.12	

Observations		The Definitive Map and Statement is the legal record. The map shows the footpath meeting Whitecroft Lane via the yard via the route shown on the Draft and Provisional Maps but with an even broader stroke. It can be taken as a copy of the line on the Draft Map which had more precision. The statement is unhelpful in lack of detail.
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		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 the coming into operation of the Wildlife and Countryside Act 1981, the



		Definitive Map has been subject to a continuous review process.
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Observations		<p>The current Definitive Map (Relevant date 1<sup>st</sup> Sept 1966) shows a similar shape of curve in the line of the footpath as shown on the Draft, Provisional and First Definitive Map but the curve has shifted a little to the north so that it leaves the occupation road at the entrance to the yard and passes through the buildings of Whitecroft Barn. Whitecroft Barn existed as a (presumably) agricultural building from the earliest maps OS maps examined (mid 1800s) and those original buildings still existed on the same footprint when the footpath was recorded and Definitive Map subsequently reviewed.</p> <p>No records detailing the path having been diverted onto a different line preceding the preparation of the Revised Definitive Map were found.</p>
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Investigating Officer's Comments		<p>The maps at every stage of this process all show the footpath joining Whitecroft Lane via the yard at point A on the Committee Plan. All except the Parish Survey map show a deviation near the gate from the occupation road into the yard. However whilst the Parish Survey card describes a route which could possibly fit a route utilising a stile adjacent to the field gate leading into the farm yard from the occupation road as shown on the Parish Survey map it also</p>
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		<p>fits a route from a stile leading into the field west of the track (at point E) as shown on the Draft Map and its derivatives. No information detailing why the line altered from that shown on the Parish Survey map to that shown on the Draft, Provisional and First Definitive Map was found.</p> <p>The difficulty in this case is that the description on the Parish Survey card is ambiguous, there is an unexplained black arrow drawn on the Parish Survey map suggestive of some possible feature of relevance and the route is inconsistent with any of the subsequent maps. The Draft Map and its derivatives are not supported by earlier map evidence or 1940s &amp; 1960s aerial photos examined none of which show a way into the farmyard at point C although there is no reason why there could not have been a stile into the yard.</p> <p>The process whereby public rights of way were recorded on maps in the 1950s-1960s involved multiple hand drawn maps being prepared – all at a small scale - and with the exception of the Parish Survey map most likely by people without detailed local knowledge of the exact alignment of the routes being drawn.</p> <p>There was clearly an error when the Revised Definitive Map was drawn showing the curve running through buildings that are very old and likely to predate the public footpath. The current Definitive Map showing the line over the buildings must be incorrect.</p> <p>The full length of the route running from point E in a north-westerly direction to exit onto Whitecroft Lane via the narrow alleyway (shown on a number of OS base maps marked as a footpath (F.P) as detailed later in this report) was not recorded as a public footpath at any stage of the Definitive Map process and no evidence of public rights has been found so the public rights very probably run to the east which is in accord with the Parish Survey, Draft, Provision, First and current Definitive maps.</p>
<p><b>6 Inch Ordnance Survey (OS) Map Sheet LXII</b></p>	<p>1848</p>	<p>The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-6 and published in 1848<sup>1</sup></p>

<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.

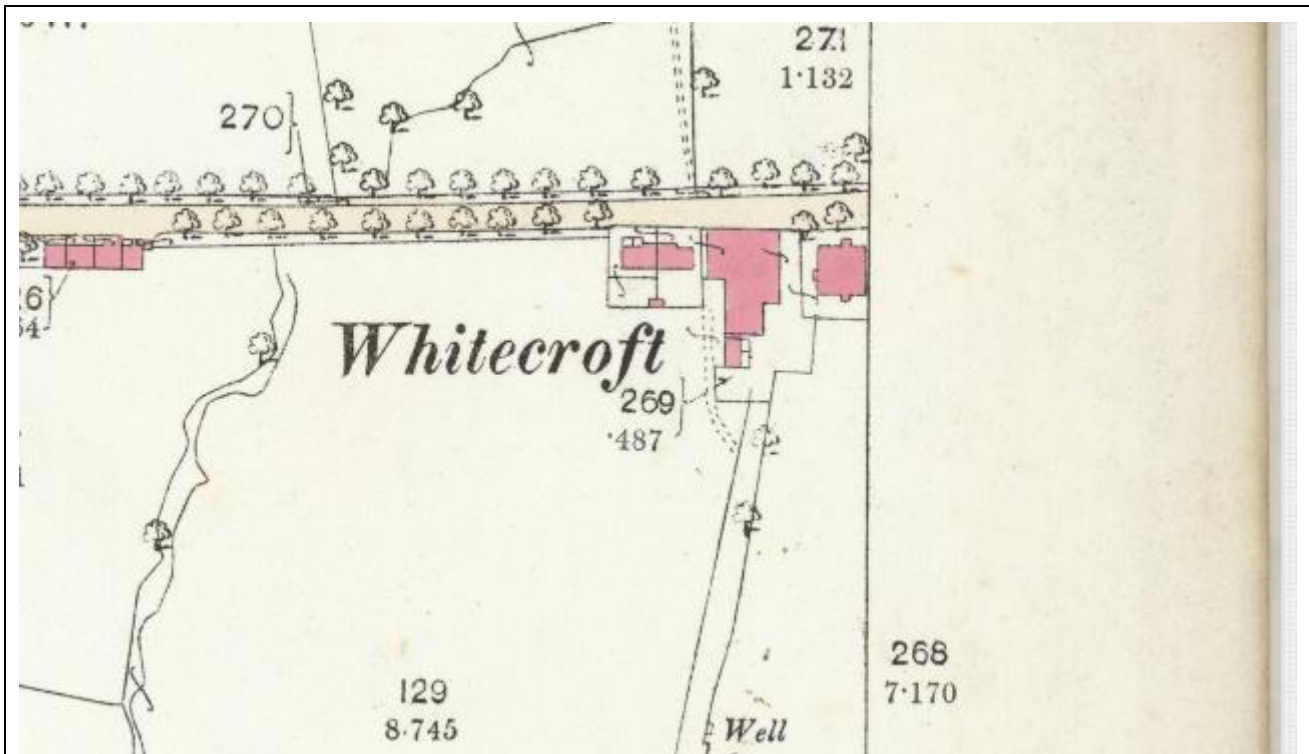




Source: National Library of Scotland <https://maps.nls.uk/view/102343949>

Observations		A road is shown running south-south-west from Whitecroft Lane between what is now Whitecroft Barn and Whitecroft Farmhouse. It appears open to Whitecroft Lane, of similar width initially then narrowing to 5-6m when south of the buildings. It is double fenced for only about 1/3 of the way to Preston New Road (then a turnpike of the Preston and Blackburn Trust).
Investigating Officer's Comments		The open junction suggests no gate or other structure across the road (probably an occupation road) near to Whitecroft Barn. The recorded line of public footpath FP0325049 follows the route of this occupation road now except at the rear of Whitecroft Barn and the map is consistent with those rights being in existence in 1848 although it is probable that the public followed straight through the yard rather than taking the more circuitous route recorded on the Definitive Map and Statement which would have been blocked by the farm buildings then as it is by Whitecroft Barn now and therefore cannot be correct. The more likely line is straight through from point E to A.
<b>First Edition 25 Inch OS Sheet LXII.10</b>	1893	The earliest OS maps at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1893.

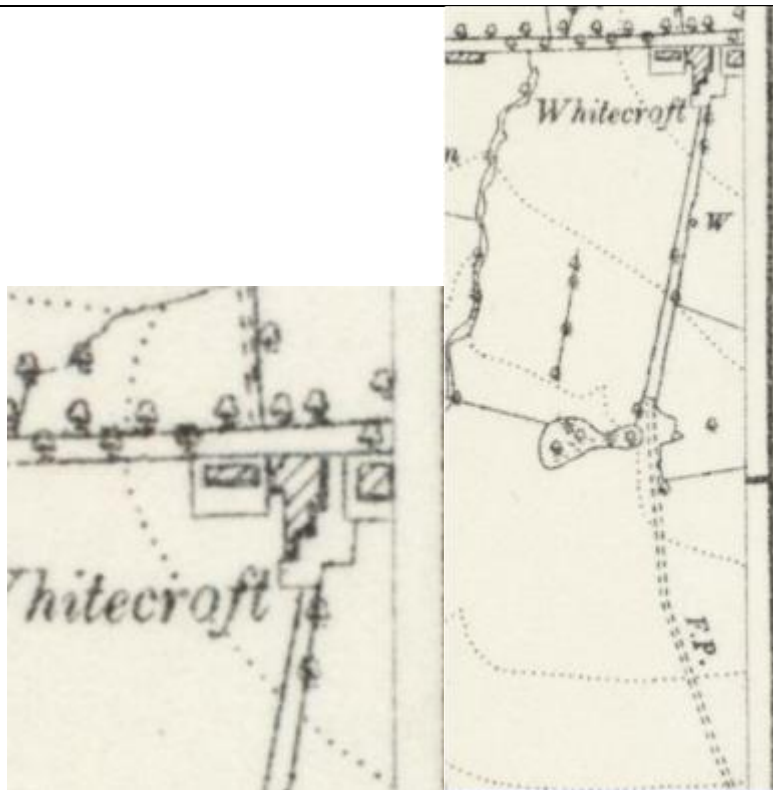




Source: National Library of Scotland <https://maps.nls.uk/view/126517739>

Observations		A fence-line is now shown between Whitecroft Barn and Whitecroft Farmhouse. Whitecroft Lane is coloured, the road south-south-west through the yard is not and there is an unbroken line along the edge of Whitecroft Lane and another across the occupation road at the south end of the yard. A double-pecked line leads off the road to the west side of Whitecroft Barn and a narrow alleyway with a line across each end is shown against the west wall of the house.
Investigating Officer's Comments		The buildings over which the line on the Definitive Map was drawn were there in 1892 so unless the public footpath predated those buildings the Definitive Map line is wrong. Access from Whitecroft Lane and onto the occupation road appears to be gated and within the yard access across the full width appears unrestricted. There is also a path or track leading from the occupation road to the west of the house. It is not possible to know whether the alleyway alongside the west of the house was available to the public and there appears to be a double pecked line leading directly into the rear garden of 12 Whitecroft together with lines across the route which may or may not have contained gates or stiles.
<b>6 inch Ordnance Survey Sheet LXII.SW</b>	1894	2 <sup>nd</sup> Edition 6 Inch Ordnance Survey Sheet surveyed 1892 and published 1894.



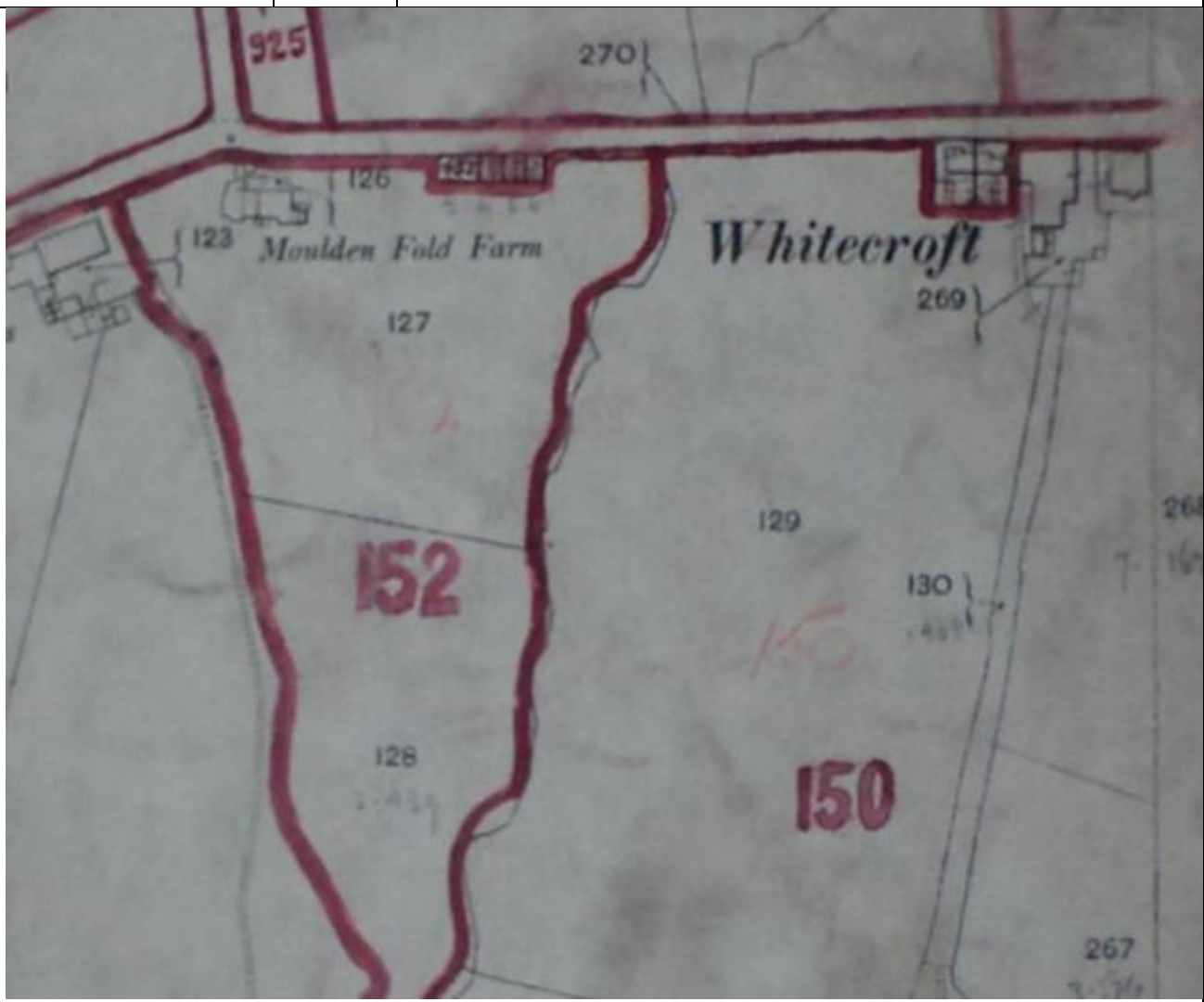


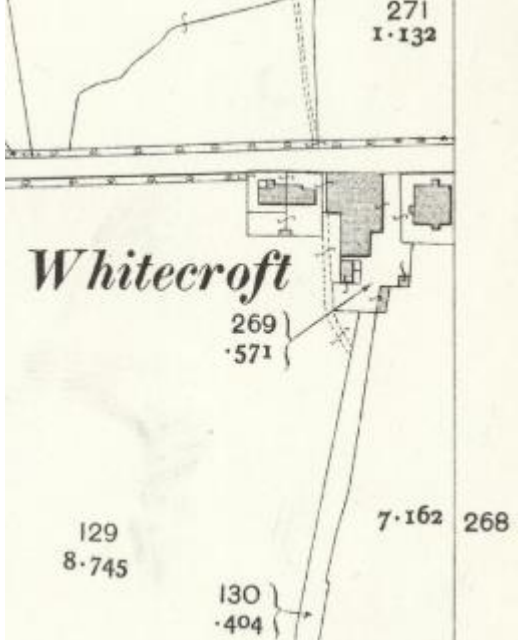
Detail of Whitecroft [above left] and view of the path southwards [above right]  
 Source: National Library of Scotland <https://maps.nls.uk/view/101101919>

Observations		There is an unbroken line across the entrance to the yard from Whitecroft Lane and also from the occupation road. The fence between Whitecroft Barn and Whitecroft Farmhouse, first seen on the 1893 25" map, runs approximately midway between the 2 buildings. There is no path or track shown running to the west from the occupation road. There are buildings shown over the line where the Definitive Map shows the footpath.
Investigating Officer's Comments		This map is in accord with the larger scale map published the previous year which is unsurprising as they were presumably from the same survey. The path to the west is not shown but this is not because footpaths were not shown on this scale as the continuation from the occupation road is marked 'F.P.', as are others on the same sheet. The obvious route straight along the occupation road, through the yard to Whitecroft Lane would appear to be available if the gates were usable or there were adjacent stiles. The route bypassing, to the west, the entrance to the yard from the occupation road (E-D-C-B) is not shown.
<b>Finance Act 1910 Map</b>	1910	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.

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).

An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.



Observations		There is a single parcel, numbered 150, which included any possible route of this footpath.
Investigating Officer's Comments		There is no benefit in looking at the field books. Nothing can be inferred from this in relation to the precise route of the footpath.
<b>25 inch Ordnance Survey Sheet LXII.10</b>	1911	Further edition of the 25 inch map, revised in 1910 and published in 1911.
 <p>Source: National Library of Scotland  <a href="https://maps.nls.uk/view/126517742">https://maps.nls.uk/view/126517742</a></p>		
Observations		<p>This is the same as the 1893 edition except as follows:</p> <ul style="list-style-type: none"> <li>• 2 small buildings are shown in the south-east corners of the yard.</li> <li>• The double-peaked line running to the west of Whitecroft Barn continues to the alleyway</li> <li>• The area of parcels 269 and 268 are slightly different</li> </ul>
Investigating Officer's Comments		There are now 2 ways shown through Whitecroft Barn, on the eastern side through the yard and on the western side through the alley. Whether either or both of these were used by the public and/or had public rights cannot be inferred from this map. Neither route corresponds to that on the Definitive Map which is shown through the buildings or to the full length of the route shown on the Draft, Provisional and First Definitive map.
<b>6 Inch Ordnance Survey Sheet LXII.SW</b>	1913	Further edition of 6 inch sheet revised 1910 and published 1913

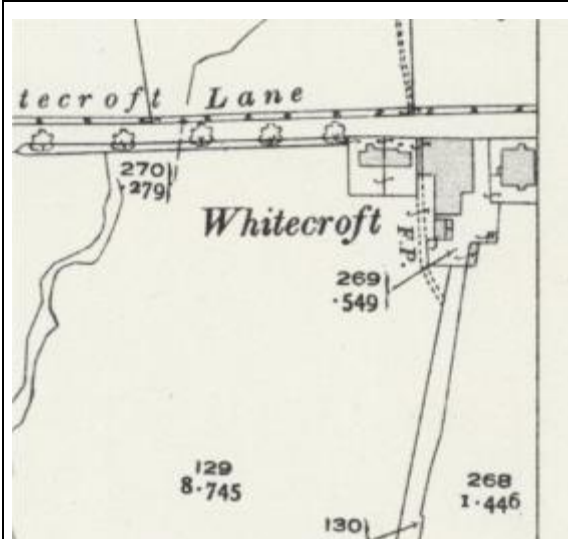




Source: National Library of Scotland  
<https://maps.nls.uk/view/101101916>

Observations		<p>The obvious route is a through route to the east of the building with an unbroken line at each end of the yard, across the occupation road and the junction with Whitecroft Lane.</p> <p>There is a path also marked from the occupation road (with an unbroken line across the path at that point) into the field and running north-west and north of the farm towards Whitecroft Lane. The alleyway shown on the larger scale map is not shown.</p>
Investigating Officer's Comments		<p>The unbroken lines where access can be inferred, such as where a track ends at it, can be taken to be gates or stiles. Surveyors were instructed to show all gateways in this way even if they were open when surveyed. It can be inferred that access between Whitecroft Lane and the occupation road was available through the yard, although not whether it was private or public, and access was available from the west of the occupation road to the south-west of the building, similarly not necessarily public. The current Definitive Map line is blocked by buildings.</p>
<b>25 Inch Ordnance Survey Sheet LXII.10</b>	1932	Further edition of 25 inch map, revised in 1929 and published in 1932.





Source: National Library of Scotland

<https://maps.nls.uk/view/126517745>

<p>Observations</p>		<p>The ways shown either side of Whitecroft Barn, are shown on this sheet in a similar manner to previous maps. The path (double pecked line) from the occupation road is shown connecting to the alleyway, not simply to the south-west of the building, and is marked 'F.P.' No further buildings have been shown but a small enclosure near the south-west of the yard (just to the right of the double pecked lines by the 'F.P.') is now shown. Buildings are shown blocking the current Definitive Map route.</p>
<p>Investigating Officer's Comments</p>		<p>Access appears to be possible either side of Whitecroft Barn but no inference can be made about whether it is public or private. Both routes had gates or stiles indicated by the lines across the way: the one at the entrance to the yard from Whitecroft Lane can be inferred to be a gate, the 3 on the path to the west could have been gates or stiles as could the 2 across the line on the Committee Plan at points E and C. The Ordnance Survey marked 'FP' to clarify the nature of the path not what rights existed. The line of the current Definitive Map route is blocked by buildings.</p>
<p><b>6 Inch Ordnance Survey Sheet LXII.SW</b></p>	<p>1933</p>	<p>Further edition of 6 inch map, revised in 1929 and published in 1933.</p>





Source: National Library of Scotland  
<https://maps.nls.uk/view/101101913>

Observations		As previous editions, this shows a way through the yard with unbroken lines at each end and also a path from the occupation road towards the west of the building. The line on the current Definitive Map is blocked by buildings.
Investigating Officer's Comments		The ways are still shown but no inference can be made about the public rights. There is no way through on the current Definitive Map line.
<b>Aerial Photograph<sup>2</sup></b>	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on LCC GIS. The clarity is generally very variable.

<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.





<p>Observations</p>		<p>The layout of the buildings can be seen, consistent with the mapping. A line can just be discerned corresponding to the gate between the yard and the occupation road. The lighter surface suggests that the occupation road is in use through the gate and yard and there is no visible trodden line or constructed path towards the west side of Whitecroft Barn. The current Definitive Map route is blocked by buildings and the photograph provides no clear evidence suggesting why the Draft Map was drawn a decade later showing a curve in the route rather than travelling along the occupation route straight into the yard.</p>
<p>Investigating Officer's Comments</p>		<p>Shadows and limited resolution of the photograph mean that the entrance to the yard from Whitecroft Lane cannot be seen and nor can the alleyway to the west of Whitecroft Barn. The current Definitive Map route cannot be used.</p>
<p><b>1:10,560 Scale Ordnance Survey Sheet SD63SE - A</b></p>	<p>1956</p>	<p>Further edition of 6 inch map reconstituted from former County Series published in 1956 as National Grid Series. This map was revised between before 1930 to 1955 and is probably based on the same survey as the 1930s 25-inch map. It is the OS base map used for the Definitive Map, First Review.</p>





Source: National Library of Scotland  
<https://maps.nls.uk/view/189180318>

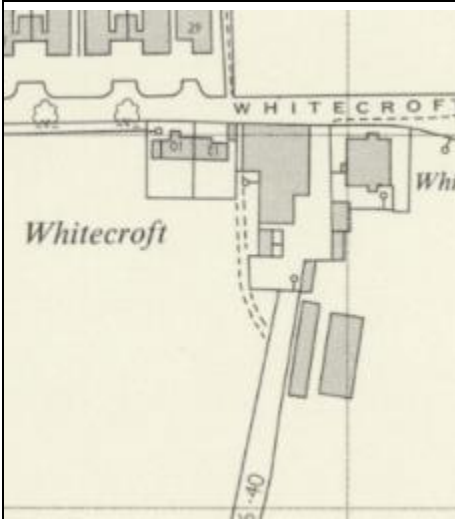


Observations		The yard, with unbroken lines at Whitcroft Lane and the occupation road, is shown as is a path towards the west of the building. There are buildings over the line of the footpath shown on the current Definitive Map.
Investigating Officer's Comments		The way through the yard still appears available, subject to any gates or barriers at either end. The alleyway to the west of Whitcroft Barn cannot be seen due to the limitations of scale but is known to have existed as it is shown on larger scale maps both pre and post-dating this map. The line drawn on the Definitive Map is through the buildings which are shown consistently on Ordnance Survey maps of differing scales from the 1800s onwards and cannot be used.
<b>Aerial photograph</b>	1960s	The black and white aerial photograph taken in the early 1960s (most likely June/July 1963) and available to view on GIS.



Observations		The yard is mostly in shadow but still appears clear through to the occupation road. There is a gate, slightly set back, from the west of the occupation road and a faint trodden line from the field into the back of the main barn (just to the east of the alleyway).
Investigating Officer's Comments		<p>The yard and occupation road were well-used, consistent with a working farm. It is not possible to tell from the photograph whether the public also used that route at that time.</p> <p>Whilst there is no trodden line to the west side of the farm, access through the gate into the field appears to have existed.</p> <p>The public footpath had been recorded for some years before this photograph was taken but the line on the Definitive Map runs through buildings and walls. The line previously recorded on the Draft, and attempted to be transferred to the Provisional and First Definitive Map would have passed over the field and re-entered the farmyard immediately south of the farm buildings across what now appears to be a penned off area of the yard possibly used to hold livestock or for other farming purposes but with gate access to the yard.</p>
<b>1:2500 Ordnance Survey Sheet SD6530</b>	1969	Further edition of 25 inch map reconstituted from former County Series and revised in 1967 and published in 1969 as National Grid Series.





Source: National Library of Scotland  
<https://maps.nls.uk/view/188875914>

Observations		The yard has an unbroken line across the entrances from Whitecroft Lane (point A on the Committee plan) from the occupation road and along the Draft Map line (point C on the Committee plan). The path to the alleyway on the west side of Whitecroft Barn (which similarly has a line across each end) can be seen leading from the west of the occupation road at point E. The line of the Definitive Map route is blocked by buildings.
Investigating Officer's Comments		Very little had changed since the 19 <sup>th</sup> Century in terms of the layout apart from 2 extra small outbuildings in the east and south-east of the yard. Access could apparently be on either side of Whitecroft Barn but the line of the Definitive Map footpath is blocked by buildings and cannot have been used.
<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		None found.
Investigating Officer's Comments		No further inference can be drawn.
<b>Statutory deposit and declaration made under section 31(6) Highways Act 1980</b>		The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).



		Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).
		No Highways act 1980 Section 31(6) deposits have been lodged with the county council for the area over which the route runs.
		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.

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

### Summary

14. 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 for many decades, impossible to use as it passes through an old building (now known as Whitecroft Barn). The Definitive Map is clearly in error.
15. The previous maps in the Definitive Map process (Draft, Provisional and First Definitive) showed a route leaving the occupation lane at or near point E to pass through part of a field and then back into the farmyard along a line not supported by any evidence.
16. The first step in the process, the Parish Survey, included a map which was consistent with the historical Ordnance Survey mapping and took the most obvious line however the description in the card does not support the same simple line and the Draft Map line might reflect an interpretation of that description.
17. We therefore need to consider , bearing in mind that the Definitive Map and Statement has consistently shown a public footpath from Preston New Road near Hacking House to Whitecroft Lane near Whitecroft Barn, the other maps and aerial photographs over the span of years from mid-19<sup>th</sup> Century onwards as well as the First Definitive Map which is taken to reflect the more precise Draft Map. These 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 the alleyway on the western side of Whitecroft Barn could also have been available. However the maps of the Definitive Map process (Parish Survey, 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).

18. There is no support for public rights via the alleyway except for one possible interpretation of the parish survey card which although carrying no legal weight does carry evidential weight, being written by people who were local and engaged in the process of recording the public rights of way – however it is not clear and not supported by the accompanying map.
19. The width in the enclosed yard or driveway on the east of Whitecroft Barn by Whitecroft Lane would be presumed to be the full width of 5.5m between points A and B as there is 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).
20. No limitations are recorded on the Definitive Statement for FP0325049 but the presence of a gate at the junction with Whitecroft 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 Whitecroft 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 a stile.

## **Head of Legal Services Observations**

### **Landownership**

21. Whitecroft Barn is in private ownership by the occupier, the adjacent field to the south is owned by the Woodfold Estate and managed by Ingram and Yorke.

### **Information from the Applicant**

22. There is no applicant in this case.

### **Information from Others**

23. The Ramblers responded to the consultation by referring to the historical mapping and suggesting that there could be a public footpath on both sides of Whitecroft Barn.

### **Information from the Landowner**

24. No specific response to the consultation has been received from the owner/occupier of Whitecroft Barn although he has previously indicated that he considers the Council's information to be incorrect.



25. Ingram and Yorke responded to the consultation by observing that there was minimal impact on their clients' land by the proposed amendment and pointing out that the owner of Whitecroft Barn had previously approached them about diverting the footpath into the field and that they had not agreed.

## **Assessment of the Evidence**

### **The Law – See Annex 'A'**

26. In this matter it is suggested that the section of FP0325049 at Whitecroft Barn shown on the Revised Definitive Map (First Review) and between points A-D (not running via points B and C) on the committee plan 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 1<sup>st</sup> September 1966. The error therefore needs to be shown to have been made in the preparation of this map.

28. Committee is advised to first consider whether section A-B-C-D is already a footpath in law and should be added to the Definitive Map and then whether this means that it was the correct route of the footpath network in 1966 when the route was recorded on the Definitive Map along the line A-D, meaning that A-D should now be deleted from the record.

29. The route A-B-C-D is shown on the Ordnance Survey maps from 1893 onwards as being open and available for use. This route was also 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.

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 committee must apply in reaching a decision; 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.

32. Committee is advised 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, 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 committee plan.

33. With regards to the deletion of the footpath between A-D, the DEFRA Rights of Way Circular 1/09<sup>3</sup> 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 the evidence must be (a) new; (b) of sufficient substance to displace the presumption that the Definitive Map and Statement is correct; and (c) cogent.
34. On the historical OS maps from 1893 to 1969 and aerial photographs from the 1940s and 1960s, there appears to be no route between A-D which was accessible to the public on foot. In fact, in all these records the route would appear to run through buildings within the yard.
35. A-D is not depicted as a public right of way on the Draft Definitive Map and Statement (dated 1<sup>st</sup> January 1953). The route of FP0325049 was shown on this map as running through the yard at Whitecroft skirting the extant buildings and structures, A-B-C-D on the committee plan.
36. When the Provisional Map was prepared the line of the route was distorted, in part due to a broader ink line which 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. This represents a progressive discrepancy from the Draft Map which can be best explained by drafting errors and imprecision.
37. Overall the evidence supports the conclusion that on preparation of the Provisional, First Definitive, and Revised Definitive Maps no public rights existed along the line A-D as shown on the committee plan and that a drafting error, likely caused by one of the reasons outlined above, resulted in the path being drawn on the Provisional, First Definitive, and Revised Definitive Map (First Review) along the line A-D instead of A-B-C-D.
38. Considering the criteria for removing a right of way from the Definitive Map, the Committee is advised 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 it was realised that the line on the Definitive Map passed through a building present at the time the map was drafted. The evidence is cogent and of sufficient substance, being consistent across relevant historic maps and aerial photographs, to rebut the presumption that the Definitive Map correctly records the right of way.
39. Committee may 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.

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<sup>3</sup> Version 2, paragraph 4.33, issued October 2009



## Context and Implications

### Legal (including Human Rights)

40. Lancashire County Council as surveying authority is required under the Wildlife and Countryside Act 1981 Section 53 to keep the Definitive Map and Statement up to date by means of definitive map modification orders to add, delete, regrade or amend particulars. This must be done by consideration only of the evidence of what public rights of way do or do not exist. Any matters relating to the management of those public rights are outside the scope of this decision although it is recognised that such matters often require subsequent management including, where appropriate, further decisions by Committee to amend the public rights.

### Financial

41. Possible financial implications have been considered and none have been identified.

### Equality and Diversity

42. Possible implications on equality and diversity have been considered and none have been identified.

### Risk Management

43. Lancashire County Council as surveying authority is required under the Wildlife and Countryside Act 1981 Section 53 to keep the Definitive Map and Statement up to date by means of definitive map modification orders to add, delete, regrade or amend particulars. As long as the decision is made solely by consideration of the evidence of what public rights of way do or do not exist this presents no risk to the Council.

### Appendices

Appendix	Title
A	Location Map
B	Committee Plan

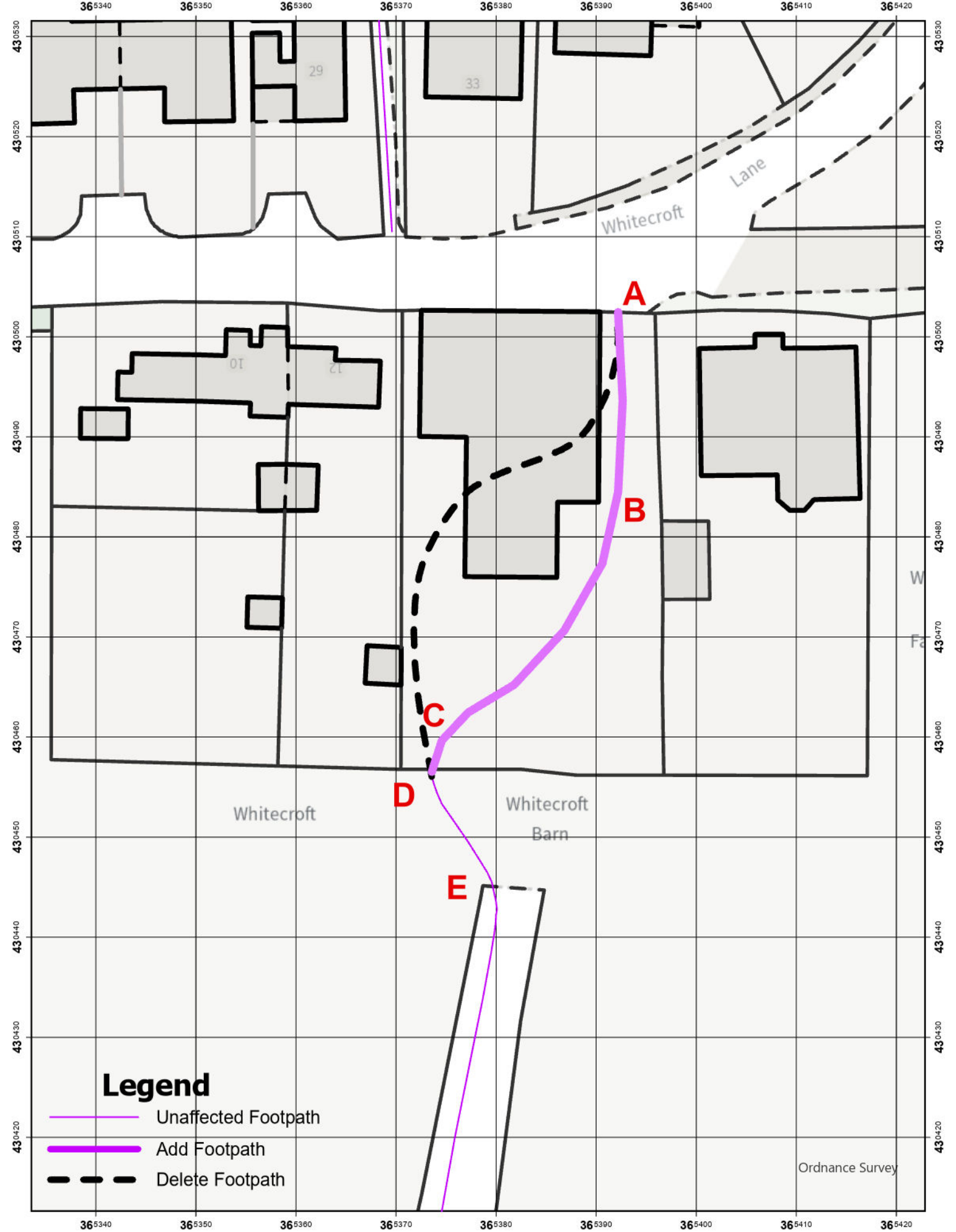
### List of Background Papers

None

### Part II Reason

44. N/A





**Public Rights of Way**  
 PROW@lancashire.gov.uk  
 01772 530317

**Addition and Deletion of Footpath on the Definitive Map and Statement**  
 Ref: 804-775 FP0325049

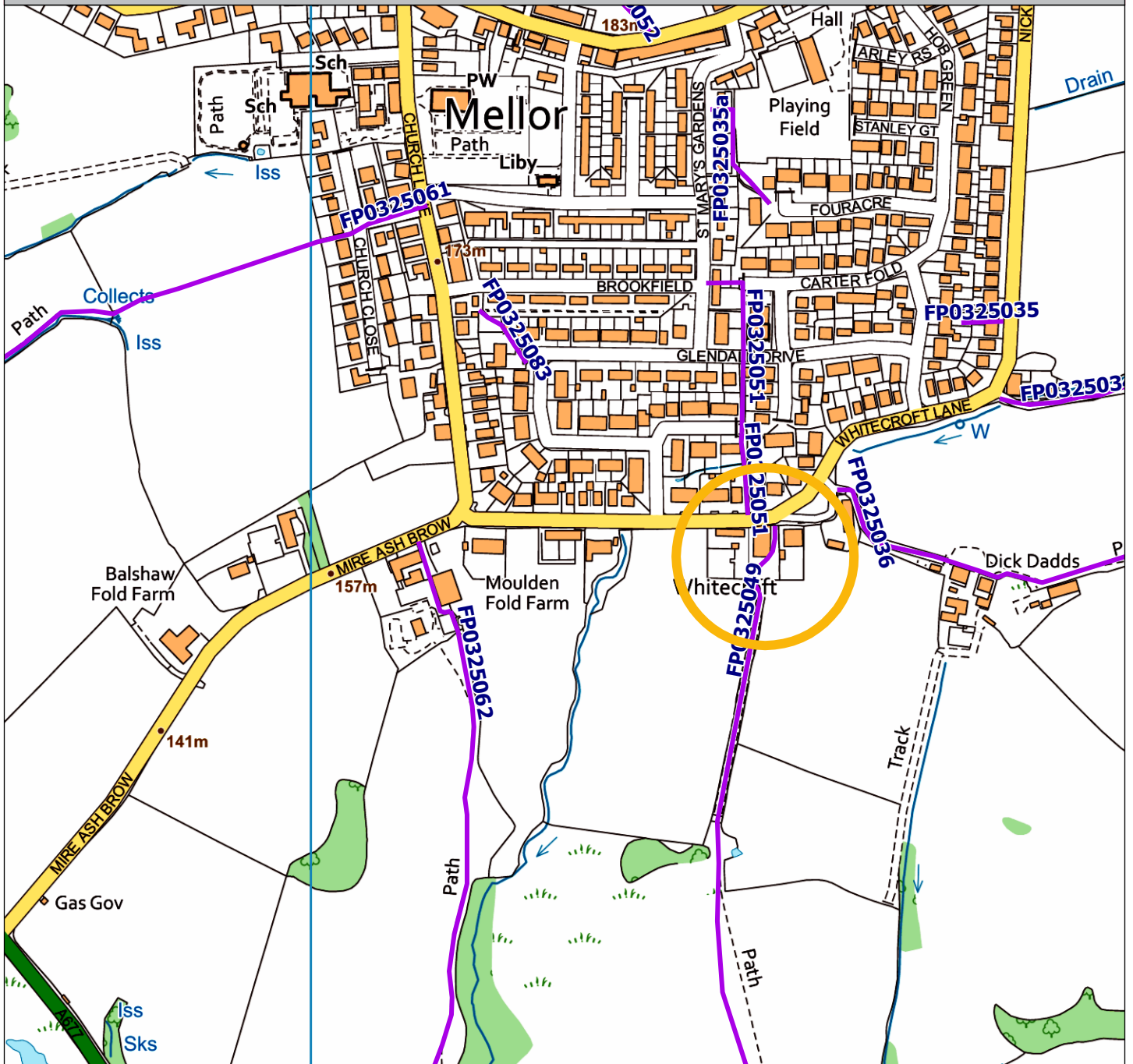
1:400  
 at A4



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

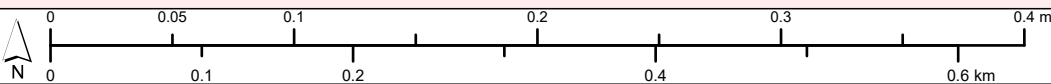
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# Whitecroft Barn, Mellor FP0325049



## Public Rights of Way

- Footpath
- Bridleway
- Restricted Byway
- Byway Open to All Traffic
- Temporary Closure



Map Scale: 1:5,000  
Map Centre: 365214E 430494N