



Order Decision

Site visit on 19 March 2020

by Sue Arnott FIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 29 June 2020

Order Ref: ROW/3224385

'Order A'

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Lancashire County Council (Cob Lane/Cockhill Lane to Kelbrook Wood) Definitive Map Modification Order 2015¹.
- The Order is dated 30 December 2014. It proposes to modify the definitive map and statement for the area by adding a public bridleway in Foulridge parish, as shown on the Order map and described in the Order schedule.
- There was one objection outstanding when Lancashire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs.

Summary of Decision: Confirmation of the Order is proposed, subject to the modifications set out in the Formal Decision below.

Order Ref: ROW/3224387

'Order B'

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Lancashire County Council Definitive Map and Statement of Public Rights of Way Kelbrook Wood, Foulridge to Castle Road, Laneshaw Bridge (Definitive Map Modification) Order 2013.
- The Order is dated 27 November 2013. It proposes to modify the definitive map and statement for the area by upgrading to bridleway status a series of footpaths in the parishes of Foulridge and Laneshaw Bridge, as shown on the Order map and described in the Order schedule.
- There was one objection outstanding (and one representation in support) when Lancashire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food & Rural Affairs.

Summary of Decision: Confirmation of the Order is proposed, subject to the modifications set out in the Formal Decision below.

Procedural Matters

1. There are two orders before me for determination but essentially there is one route at issue here. It leads from the junction of Cob Lane and Cockhill Lane² shown as point A on Order Plan 1) at its western end to Castle Road (also known as Skipton Old Road) in the east (at point J on Order Plan 5), passing to the south of Kelbrook Moor and Kelbrook Wood between these two points which lie some 2.665 km (1.7 miles) apart.
2. These two Orders were made by Lancashire County Council (LCC) at different times, Order A replacing an earlier order made in 2007³ for the same section of

¹ As noted immediately below, the Order is dated 30 December 2014.

² Also referred to as Moss Houses Road

³ This Order was formally rejected by the Secretary of State on 9 September 2019 [reference ROW/3224386]

the route (A-B) that was not confirmed due to technical issues. However when LCC resolved to make the 2007 Order to record a public bridleway between A and B, it rejected as insufficient the evidence supporting the claimed upgrading of the footpaths which are at present shown on the definitive map between points B and J. Following a successful appeal⁴ on behalf of the original applicant⁵, LCC made Order B on the direction of the Secretary of State.

3. Having previously concluded that the evidence was not sufficient to justify Order B and, given the potential inconsistency in supporting only Order A⁶, LCC has now taken a neutral stance as regards confirmation of both Orders. In the absence of any backing from the order-making authority, the British Horse Society (BHS) has submitted a case for confirmation on behalf of supporters of both Orders.

The Main Issues

4. In short, the main issue here is whether the evidence is sufficient to show that, on a balance of probability, a public bridleway can be presumed to have been established along the Order route(s) long in the past and, in the absence of any formal closure, still exists today.
5. LCC made Orders A and B under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) on the basis of events specified in sub-sections 53(3)(c)(i) and (ii)⁷ respectively. It follows from this that, if I am to confirm one or both Orders, in each case I must be satisfied that the evidence available is sufficient to show, on a balance of probability, that:
 - in relation to Order A (where the claimed route shown on the Order map between points A and B is not shown in the definitive map and statement at present) that a public bridleway subsists and therefore should be added; and
 - in relation to Order B (where the claimed route B-C-D-E-F-V-W-X-G-Y-H-J is presently recorded in the definitive map and statement as public footpaths 65 (Foulridge) and 19, 18, 16, 14, 12 & 8 (Colne)) that a public bridleway subsists such that these footpaths should be upgraded; and
 - modifications to the details recorded in the definitive statement for other rights of way which join the Order route(s) are necessary as a result of the addition and upgradings proposed by Orders A and B respectively.
6. Three additional matters have been raised by the BHS relating to details within the Orders.
7. Firstly, the BHS makes the case that the descriptions of the proposed modifications as set out in Part I of the schedule for both Orders should not include the width as this is a detail which should be more properly noted in the definitive statement and hence in Part II of the schedule. Further, it points out that the description of the width does not comply with current guidance.

⁴ Decision reference NATROW/Q2371/529A/07/41 issued on 5 January 2011

⁵ The appeal was pursued by the South Pennines Packhorse Trails Trust on behalf of the Trawden Forest & Borders Bridleway Association

⁶ This would result in a cul-de-sac which, in the absence of special circumstances, goes against current guidance.

⁷ Although not explicitly stated in either Order A or B, it would appear that events defined in sub-section 53(3)(c)(iii) are also engaged insofar as both Order schedules refer to "other particulars contained in the map and statement (which) require modification". However, no issue has been raised in this respect.

8. Secondly, it argues that no limitations should be included at all in either Order since there is no evidence to show these were in existence when the way was first dedicated as a highway.⁸
9. Thirdly, the BHS submits that Order B is incorrectly drafted insofar as it includes in Part II of its schedule a proposed statement for the entire route including the section proposed in Order A. Further, there is an inconsistency as regards the reference to limitations in Order A as "field gates" which are noted simply as "gates" in Order B.

Legal submissions

10. On 17 March 2006 the Trawden Forest and Borders Bridleway Association made an application to LCC seeking to have the whole of the route from A to J recorded on the definitive map as a public bridleway. This was supported by a substantial assembly of historical documents that had been gathered through local research.
11. As I have noted above, in 2007 LCC decided to accept the case for an order to record A-B but rejected the remainder of the route. An appeal was lodged in relation to B-J and, on the basis of a lengthy report from an Inspector dated 3 June 2009, the Secretary of State directed LCC to make what is now Order B.
12. However, the Appeal Inspector had concluded that the evidence pointed to the existence of an old vehicular highway and recommended that LCC be directed to make an order to record it as a restricted byway. In the decision letter that followed in January 2011 the Secretary of State⁹ agreed with the Inspector's conclusions but considered that an appeal under paragraph 4(1) of schedule 14 to the 1981 Act could relate only to the application as made and that a surveying authority could not be directed to make an order for public rights of way higher than those claimed.
13. The BHS submits that, since no new evidence has been discovered to counter the documentary case considered by the Appeal Inspector, it is expected that the Secretary of State will now come to the same conclusion on that evidence.
14. In support of this argument, the BHS refers to the case of *Baroness Cumberlege of Newick v Secretary of State for Communities and Local Government and DLA Delivery Limited* [2017] EWHC 2057 and on appeal *DLA Delivery Limited v Baroness Cumberlege of Newick* [2018] EWHC Civ 1305. The Society submits this provides support for the principle that similar evidence of fact should be treated consistently by Inspectors acting on behalf of a Secretary of State. The BHS therefore asks that Order B should be confirmed.
15. Further, it submits that it follows from the Appeal Inspector's conclusions as respects B-J that unless the route A-B is also a highway of at least bridleway status then the bridleway terminates at point B. There is no evidential or legal reason why the status of A-B should differ from the status of B-J and there is no explanation for a cul-de-sac to this point. The route originally claimed in 2006 was from A to J, from highway to highway. The BHS therefore also seeks confirmation of Order A.

⁸ The BHS recognises the need to retain gates for stock control purposes but points out these could be authorised by the highway authority if necessary under Section 147 of the Highways Act 1980.

⁹ Then, Caroline Spelman MP

16. In determining these two Orders, I 'stand in the shoes of' the Secretary of State. Whilst the *Cumberlege* case did not involve rights of way, the clear message from the Courts was that the Secretary of State should have been "aware of his responsibility for securing consistency in ...¹⁰ decision-making" and "to take reasonable steps to ensure that his own decisions on cases of the same kind, in the same district ... were consistent with each other – or, if they were not consistent, that the inconsistency was clearly explained."
17. Where, as here, the case itself is the same, the legal test remains the same, and the evidence is (almost) the same, then there can be no justification at all for reaching a different conclusion, that is unless the additional evidence points in the opposite direction so as to tip the balance of probability towards a different result. (In such a scenario, any apparent inconsistency would be clearly explained by the 'new' evidence.)
18. I therefore unequivocally accept the BHS's submissions. In January 2011 the Secretary of State unambiguously stated that she agreed with the Appeal Inspector's recommendation, so I too must adopt his conclusions insofar as the facts remain the same. However, two points arise from this.
19. The first is that the Appeal Inspector analysed the historical evidence before him in some detail and concluded, on a balance of probability, that it was sufficient to show that the appeal route (B-J) formed part of a public vehicular highway dating back to the seventeenth century (at least). Taking account of the effect of Section 67 of the Natural Environment and Rural Communities Act 2006, he recommended that the status of the route should be recorded as a restricted byway.
20. That is not the category of highway proposed in either of these Orders. Consequently, if I am to adopt the findings of the Appeal Inspector, then the outcome must be a proposal to confirm Order B subject to modifications to alter its status to restricted byway. Subject to any evidence which might justify a different conclusion in respect of A-B, the same would apply to Order A.
21. The second point which follows from this is that I need to examine carefully the 'new' evidence which was not before the Appeal Inspector and to weigh this in the context of all the other evidence he considered back in 2009 to establish whether it should lead to a different outcome.

Reasons

Context

22. Whilst I have examined the several old maps, historical documents and photographs that were considered as part of the appeal, I do not propose to review each one individually, only to reach the same conclusions as the Appeal Inspector. In these somewhat unique circumstances, I am attaching to this Decision, a copy of his Report to the Secretary of State from 2009 so that his analysis is readily available together with her subsequent Appeal Decision¹¹.
23. Besides the additional documentary evidence submitted by the BHS recently, I have had the advantage of walking the route in question and seeing for myself

¹⁰ "development control" (Lindblom LJ at paragraph 46; *DLA Delivery Limited v Baroness Cumberlege of Newick* [2018] EWHC Civ 1305)

¹¹ Although these are in the public domain, copies are not accessible online.

- the nature of the ground over which it passes. The Appeal Inspector was provided with photographs (as am I) and he noted¹² that these showed the physical characteristics of the way, but there is no substitute for actually seeing the ground over which the claimed route passes, the land profile and gradients. and the gateways that were walled up long ago.
24. Although the objector challenges any rights at all over section A-B, he has submitted that the majority of the route is used on foot only and has been since 1981 at least¹³. Having walked between points B and J myself, it is clear that the only physical evidence is of use on foot, the type of user being restricted in a number of places by stiles, although adjacent gateways are clearly visible though blocked or locked. Indeed the 2006 application did not claim user in recent times (other than on foot).
25. This case rests on evidence of use from long ago, in fact from the seventeenth century. In short, records from 1655, 1664 and 1665 reveal that, on the sworn evidence of local users, landowner James Hartley of Shawhead was indicted for obstructing a highway. No defence was offered at Lancaster Assizes and, by order of the Court, the obstructions were removed by the 'overseers of the highways for the Manor of Colne'. It appears that some years later the same landowner again obstructed the way and further depositions were made by local users but the outcome of any action taken is not documented.
26. On 8 September 1655 the route at issue was described thus: "*a comon highe way leadinge from the markt towne of Clitherowe in this County to the markt towne of Skipton in the County of York att a place called the Great-edge where the people of this Comonwealth have tyme out of mynde used to ride goe & passe with their carte carriage catle & otherwise*".
27. It is argued that the highway in question is now the Order route(s) and, in the absence of any evidence to show this old road was ever lawfully closed, it must still exist today.
28. In his report, having examined the seventeenth century evidence, the Appeal Inspector concluded that "*a public highway ran from Foulridge over Great Edge, Kelbrook Moor and Piked Edge and Jepps Causeway and that this is in the vicinity of the appeal route*"¹⁴.
29. After considering the later evidence before him, he concluded: "*Whilst there is no single item of evidence which identifies the exact location of the highway identified in the Assize papers the evidence consistently shows a route along that of the appeal route. There is no evidence to support the existence of any other route along a similar alignment to that described in the Assize papers. On balance the route described in those papers follows the alignment of the route identified by the other evidence. Although none of the evidence, with the exception of the Assize papers, provides clear evidence of a public highway, when taken as a whole the evidence is supportive of the Assize documents. Although I consider the evidence to be very finely balanced it is sufficient to demonstrate, on the balance of probabilities, the existence of a public vehicular highway along the appeal route.*"¹⁵

¹² In paragraph 113

¹³ Since 1981 the objector has run a fully authorised commercial clay shooting centre immediately adjacent to the route between points B and E.

¹⁴ Paragraph 96

¹⁵ Paragraph 115

Assessment of the 'new' evidence

30. Since the Appeal Decision was issued, new research has revealed an additional relevant document dated 21 September 1655. This is a further deposition from local users of the way, William Barcroft and John Hargraves, who stated on oath that they had known there to have been a highway "*at Great Edge leading betwixt Clitherow & Skipton ... for all travellers & passengers horses or other Cattle with Carts or Carriages*" until the way was blocked by the stone walls built by James Hartley in May 1655.
31. This document is entirely consistent with others from this period that were previously considered and noted in the Appeal Inspector's Report.
32. Through further investigation, the BHS has clarified the origins of the documents referred to during the appeal as 'the Assize papers' and now by the BHS as 'the Barcroft Papers'. On further examination it appears these were from the private collection of the Parker Family which included records from the Barcroft estate. These are most probably the case papers of Thomas Barcroft who was one of the solicitors for the Lordship of Foulridge; in 1655, he was involved in the matter before the Lancaster Assize Court.
33. This being established, the weighting of some of the documents previously considered can be clarified. In particular the agreement brokered by John Hargreaves in 1664 between James Hartley and Messrs Barcroft (T), Hartley (W) and Barcroft (A) was not before the Court and therefore essentially a private matter between the parties. Insofar as this referred to the route as a 'usual or private way', the Appeal Inspector did not accept "*that an agreement overrides the evidence of the indictment at the Assize Court which clearly refers to a public highway.*"¹⁶ I concur with his finding.
34. Neither do the documents which post-date this agreement appear to have been before the Court. Besides sworn statements from local people who confirm the existence of a highway, they include what the BHS describes as the equivalent of a request for counsel's opinion on the matter. These reveal that James Hartley had obstructed the highway a second time, first by locking the gates he had previously been permitted to install, then by walling up the gateways. It would therefore appear that solicitors Thomas Barcroft and William Hartley were considering taking further action to re-open what they, and their witnesses, clearly considered to be a highway that pre-dated inclosure of the commons here.¹⁷
35. The BHS submits, and the Appeal Inspector accepted, that whatever happened subsequently, the judgement of the Lancaster Assize Court in 1655 remains strong evidence of an ancient highway. In my view, that is a sound conclusion and the newly discovered evidence does not change that.
36. It is not disputed that no evidence has been found to show that what was accepted by the Court as a highway over three centuries ago has been extinguished in the intervening period. The question is therefore whether this highway followed the route which is now the subject of Orders A and B, there being no contemporary map or plan to illustrate its alignment.

¹⁶ Paragraph 94

¹⁷ Said to have been in 1618 although there is no direct evidence to support this

The route of the 1655 highway

37. The BHS accepts that it is not possible to identify the precise line of the seventeenth century highway solely from the documents of that period.
38. However it points to the conclusion of the Appeal Inspector (noted above at paragraph 12) and submits that, as he stated, later mapping evidence shows the remnants of a physical route which, in the absence of any other likely route, is, on balance, the common highway referred to in the account of the conviction of James Hartley for obstruction.
39. In addition to the 17th century evidence, the key historical documents that were considered as part of the appeal include (in date order):
- A plan of the Shawhead Estate 1752
 - Commercial maps¹⁸ by Jeffries 1772, Yates 1786, Cary 1787, Smith 1801, Teesdale and Stocking 1828
 - A map of the Honour of Clitheroe 1804-1810
 - Greenwood's map 1818
 - The Thornton in Craven Inclosure map 1825 and Award
 - Hennessey's map 1830
 - The Ordnance Survey (OS) 1st Edition 1" to 1 mile map 1840
 - The Foulridge Tithe Apportionment 1842 and Map 1846
 - The Colne Tithe Apportionment 1842 and Map 1845
 - Survey (1843), plan (1843) and map of the Township of Colne by John Greenwood (1844)
 - OS maps including 6": 1 mile maps 1844-48; OS 1": 1 mile 1870-1880
 - Plans of Copy House and Shaw Head Estates 1872 and sales particulars and plan of the same dates 1873
 - A map of the Chapelry of Colne c1875
 - OS maps 1": 1 mile 1898, 1914 and 1924; 25": 1 mile 1892-1894 and 1910-1912 & 1932 revisions; 2½": 1 mile 1958; 1:2500 1972
 - Records prepared under the Finance Act 1910
 - Records prepared under the National Parks and Access to the Countryside Act 1949 for the compilation of the definitive map and statement
 - Land registry plans for LA736518 (Laycock) and LA604319 (Copy House)
40. The BHS has supplied better copies of some documents than those provided to the Appeal Inspector; these are helpful but do not appear to reveal any previously overlooked information. However the BHS draws particular attention

¹⁸ Whilst not specifically mentioned by the Appeal Inspector, these were made available at this stage

to the clearer copy of the Finance Act records which show that the walled section of the Order A route (from point A eastwards to a gate west of point B) was excluded from adjacent hereditaments on both sides¹⁹. In the absence of any other explanation for this, the generally accepted inference is that this is good evidence the route was considered to be a public highway, most probably of vehicular status.

41. In terms of new evidence that was not before the Appeal Inspector, the BHS has provided copies of documents discovered by a local researcher relating to the sale and conveyance of the Hare and Hounds Inn and Farm (now the Black Lane Ends Tavern) in 1907, together with an abstract of title dated 1838 and other references dating from 1947 back to 1773. Part of this estate included the land through which the Order B route section G-J passes.
42. On the plan submitted, this route is coloured and marked "Occupation Road", although there is no information included to identify any particular party entitled to rights over it. The BHS submits that this description of the way suggests it was capable of use by horses and vehicles, not simply on foot, as might be implied by the OS 25" to 1 mile map of 1894 which labels it "FP".
43. I agree with that interpretation, although there is no inference to be drawn from these documents to suggest the way was then available to the public. However, in the context of earlier evidence, and particularly the documents associated with the sale of Copy House and Shaw Head Estates in 1872/3, the 1907 description 'occupation road' (G-Y-H-J) is not inconsistent with the similarly non-specific reference to the Order route (F-V) as 'cart road' in the 1873 sales particulars. Both imply a way that was capable of use by vehicles of the day although no specific rights of way were defined.
44. One significant difference is that the 1872/3 documents contained a reference to "*the old highway leading from (Colne) to Skipton*" that was "*contiguous to*" Lot 14 (the Copy House Estate). Having considered the meaning of 'contiguous' in this context, the Appeal Inspector concluded²⁰ that this "*old highway, and therefore the claimed route, passes through²¹ lot 14*". It seems to me that by the late nineteenth and early twentieth century, the extent of any public rights over the way were somewhat equivocal, yet there was still a fading recognition that an old road had once existed here.
45. A further 'new' document is supplied: a copy of the conveyance plan for the sale of Harwes Farm (formerly Copy Farm) in 1956 together with details of the current registered title.
46. The Land Registry records "*a right of way at all times and for all purposes for the Purchasers and their successors in title owners and occupiers of the property hereby conveyed through Great Edge Farm to Skipton Old Road*", as coloured brown on the plan. In fact the plan shows a different route between points E and C but the continuation westwards is nonetheless labelled as "BRIDLE ROAD TO FOULRIDGE, KELBROOK AND COLNE". The BHS submits this is evidence of the public bridleway status of the Order route(s).

¹⁹ The Appeal Inspector did not consider the Order A route in relation to these records.

²⁰ At paragraph 106

²¹ My emphasis

47. I treat this piece of evidence with some caution since it is clear there is no historical basis for the route marked brown. In fact a further right of way is provided for the benefit of Harwes Farm along a "footpath and bridlepath" southwards via Jerusalem Farm, described on the map as "BRIDLE PATH TO (HIGHWAY FROM COLNE TO LOTHERSDALE²²)"; whilst the public footpath recorded along this line on the definitive map is without prejudice to any higher rights, there has been no suggestion from earlier evidence of any public bridleway in this direction. It seems to me the terms are used loosely in these property documents and are, in any event, prescribing specific private rights.
48. Whilst this 'new' evidence does not preclude the existence of a long-standing highway along the Order B route over and above the footpath status currently recorded on the definitive map, I am not convinced this reference to the way as a 'bridle road' adds any significant weight to the balance.

Summary

49. In reaching my conclusions, I return to the essential question: was the highway that was the subject of the indictment in 1655 the route that is now the subject of these two Orders? Whilst a finely balanced decision, in 2009 the Appeal Inspector was satisfied that it was, at least in respect of Order B, and as I have noted at paragraph 12 above, in January 2011 the Secretary of State explicitly agreed with his conclusions.
50. The new evidence that has come to light since then does not, in my view, shift the balance to any significant extent. The addition of further seventeenth century witness evidence lends even more support to the ancient highway recognised by the Assizes Court being "*at Great Edge leading betwixt Clitherow & Skipton*". That is entirely consistent with the other evidence from that period considered by the Appeal Inspector.
51. The 1907 documents relating to the Hare and Hounds Inn and Farm at Black Lane Ends are equivocal; they provide evidence of a defined right of way (and most probably one for vehicles) but offer no support for this being a public one. However, when weighed in the context of the evidence as a whole, I do not consider this alters the balance of probability appreciably one way or the other; in fact it adds as much as it removes.
52. As I have noted above, in my view the 1956 property records for Harwes Farm offer little in terms of establishing the route of the old highway but do not undermine any of the historical evidence.
53. In summary I find the 'new' evidence that has been discovered since the Appeal Inspector considered the matter in 2009 does not disturb in any way his conclusion that the highway asserted in the Lancaster Assizes in 1655 lay in the vicinity of the appeal route (now the Order B route). In the absence of evidence to support any other possible alignment that might fit the written descriptions of the highway²³ obstructed by James Hartley, I similarly conclude that, on a balance of probability, the route(s) now identified in Orders A and B formed part of that long-distant road "*leading betwixt Clitherow & Skipton ... for all travellers & passengers horses or other Cattle with Carts or Carriages*".

²² The words are barely visible on the edge of the plan but are expressed in the property register

²³ Various descriptions as a public highway between Clitheroe and Skipton, from Foulridge over Great Edge, Kelbrook Moor, Piked Edge and Jepps Causeway

54. In conclusion, and on the basis of the information provided, I am satisfied that the relevant statutory test is met: that, on a balance of probability, a public right of way for vehicles as well as for horses and pedestrians has been shown to subsist over the Order routes A-B and B-C-D-E-F-V-W-X-G-Y-H-J.
55. Having concluded that the way was historically a public carriageway, being available to all types of traffic, the effect of more recent legislation must be taken into consideration. Sub-section 67(1) of the Natural Environment and Rural Communities Act 2006 (the 2006 Act) provides that on 2 May 2006 any existing public right of way for mechanically propelled vehicles (MPVs) was extinguished if it was over a way which, immediately before that date, was not shown in the definitive map and statement or was shown as either a footpath, bridleway or restricted byway unless such rights were saved by virtue of falling into one of the categories for exemption.
56. No submissions have been made which suggest that any part of the Order route(s) should be considered as exempt from the effect of the 2006 Act. As a result, any previously existing public rights for MPVs will now have been extinguished, leaving the route between A and J as a restricted byway. I must therefore propose modifications to both Orders to amend the status of the route(s) in question.

Other matters

57. The objection raises concerns over the practicality and suitability of the claimed route for horse riding alongside a well-established shooting centre and shooting school. The business was set up in 1981 and has operated here ever since. The objector expresses serious concerns over the impact of the intermittent noise, with shots being fired without any predictable pattern which is more likely to frighten and spook horses using the Order route(s).
58. Although I fully understand the problems he foresees, these are not matters that are relevant to my consideration of this Order which is based on the premise that a public highway has *already* been established, albeit long ago.
59. The BHS makes several submissions concerning technical aspects of the Order.
60. Firstly, on the matter of gates, I agree that neither Order should record the presence of gates or other limitations since there is no evidence to support their existence when the highway was dedicated for public use, pre-1655. The need for gates for practical purposes may be addressed through accepted authorisation procedures provided under the Highways Act 1980.
61. I therefore propose to delete all references to gates and other limitations from both Orders. This will also deal with the inconsistency issue noted in paragraph 9 above.
62. Secondly, as regards the width of the Order routes, I acknowledge the logic of the point made by the BHS insofar as such details are generally included in the definitive statement (which is modified by Part II of the Order schedule) and not on the definitive map itself (to which Part I applies). However, the prescribed '*Form of Modification Order*' set out in schedule 2 (which relates to Regulation 4) of the Wildlife and Countryside Regulations 1993 does require, in "*Part I: Modification of the Definitive Map*", a description of the "*position, length and width of the path or way in sections ...as indicated on the map*". Therefore I cannot agree that the widths included in Part I of the schedules to

- Orders A and B are inappropriately noted there and I decline to make all the modifications suggested by the BHS generally in relation to this point.
63. The BHS also submits that the description of the width in Order A does not comply with current guidance to surveying authorities in England although it does not specify in what respects. I interpret this to refer to the description of the width in the schedule as "varying ... between 4 and 7.5 metres". In fact this echoes wording in Part I which states the width varies "between 4 and 7.5 metres according to the width between the walls for 320 metres".
64. I agree with the BHS that to set out the widths more precisely would better satisfy the requirements of current guidance but I do not accept that the way it has been presented is inaccurate or misleading, or even that it not accepted practice. Indeed the published guidance is non-statutory. However, in view of my conclusion in paragraphs 68-69 below as regards the relationship between the two orders, I can see that it would be prudent to ensure the detailed widths identified within Order B also appear in the schedule to Order A.
65. I therefore propose to modify the widths stated in both Part I and Part II of the schedule to Order A so as to define with greater accuracy the route between points A and B and remove any potential for conflicts within the details recorded.
66. The final issue raised by the BHS concerns the inclusion in Order B of details which relate to the route added in Order A. The BHS argues that Order B is incorrectly drafted insofar as it includes in Part II of its schedule a proposed statement for the entire route including A-B.
67. I understand why LCC has chosen to do this: essentially, this is because what was part of Footpath 65 (B-C-Z²⁴) is to be re-numbered as a part of the intended Bridleway (now Restricted Byway) 67 (A-B-C-Z). To make sense of this would appear to require a two-step approach whereby firstly, on confirmation of Order A, the new right of way A-B is added to the definitive map and statement; as a second stage, on confirmation of Order B, B-C-Z is upgraded on the definitive map but, as regards the definitive statement, the particulars of both Footpath 65 and the previously added Bridleway (now Restricted Byway) 67 will need to be varied.
68. I do not see a problem with that approach in principle, but it is important that the changes proposed in each Order are supported by relevant evidence. As regards Order A, I have concluded above that, on a balance of probability, the route A-B formed part of the ancient highway which continued to point J and therefore that the route should be recorded on the definitive map as Restricted Byway 67. The consequence of this is that changes to adjoining public footpaths 44, 44A, 44B and 65 are necessary insofar as they are affected by the addition of the newly added route. They are therefore appropriately dealt with as part of Order A.
69. Turning then to Order B and, having been satisfied that, on a balance of probability, the evidence is sufficient to support the upgrading of the route between B and J to a restricted byway, confirmation of the Order will see B-C-Z (at present a part of Footpath 65) upgraded to the status of restricted byway. The consequential variation of the particulars held in the definitive statement for Footpath 65 (to remove any reference to B-C-Z) and for Restricted Byway

²⁴ Where my point Z lies on the boundary between the parishes of Foulridge and Laneshaw Bridge (Colne)

67 (to modify the description of A-B, as added by Order A, to also include B-C-Z) can be justified. However the further modification of Footpaths 44, 44A and 44B are not, in my view, appropriately dealt with in Order B since they are not a consequence of the upgrading of B-C-Z or its re-numbering as one route A-B-C-Z. I therefore propose to remove from Order B references in Part II of the Order schedule to Footpaths Foulridge 44, 44A and 44B.

70. Having scrutinised the details of both orders, I have noted some inconsistencies in the grid references given for certain points and distances. I am therefore proposing to amend the details given in Order A for the grid reference of point B and the overall length of A-B (which are correctly stated in Order B), and to correct the grid references in Order B for the intersection of A-B with Footpath 44A and 44B (which are correctly stated in Order A).
71. There is also an error in Order A insofar as it states it is to be cited as "The Lancashire County Council (Cob Lane/Cockhill Lane to Kelbrook Wood) Definitive Map Modification Order 2015". It was made on 30 December 2014 and its title clearly states the date of the Order to be 2014. For the avoidance of any confusion in future, I propose to correct this minor mistake.

Conclusion

72. Having regard to the above and all other matters raised in the written representations, and on the basis of the conclusions set out in my paragraphs 54 to 56 above, and paragraphs 61, 65, 69, 70 and 71, I propose to confirm Order A followed by Order B, but with modifications to amend the status of the Order route and modify various details as referred to in the paragraphs stated.

Formal Decision

73. Firstly I propose to confirm **Order A** subject to the following modifications²⁵:

On the Order map

- In the key, amend "Bridleway to be added A-B" to read "Restricted Byway to be added" and amend notation depicting A-B;

In the Order

- In line 3 of Article 3, amend "2015" to "2014".

In the Order schedule

- Delete the word "Bridleway" wherever it occurs and substitute the words "Restricted Byway";

PART I MODIFICATION OF THE DEFINITIVE MAP: DESCRIPTION OF PATH OR WAY TO BE ADDED

- In lines 2- 4 delete "being 6 metres wide for 160 metres, then varying between 4 metres and 7.5 metres according to the width between the walls for 320 metres, and then 3 metres wide for 50 metres,"
- In line 6 delete 530 metres and substitute "560 metres";

²⁵ For clarity, I have underlined the amended text

PART II MODIFICATION OF THE DEFINITIVE STATEMENT:
VARIATION OF PARTICULARS OF PATH OR WAY

- For Foulridge 67:
 - In "Position": delete (from lines 6 & 7) "then runs downhill to pass through stone gateposts 3 metres apart at SD 9114 4307" and (from lines 9 & 10) "pass through a field gate at SD 9118 4308, and then continues a short distance to terminate at";
 - In line 11 delete "SD 9119 4308" and substitute "SD 9121 4308";
 - In "Width": delete existing entry and substitute:
 - "SD 9066 4305 to SD 9074 4305 – 6 metres
 - "SD 9074 4305 to SD 9081 4304 – 3.5 metres
 - "SD 9081 4304 to SD 9095 4305 – 6 metres
 - "SD 9095 4305 to SD 9113 4307 – 5 metres
 - "SD 9113 4307 to SD 9121 4308 – 3.5 metres
 - In "Other particulars": delete all limitations listed
 - In "Length" delete "0.53 km" and substitute "0.56 km";
- For Foulridge 44:
 - In "Position": add "*Part upgraded to public bridleway – DMMO (No.8) Order 1997 confirmed on 24 September 2002";

74. Secondly, I propose to confirm **Order B** subject to the following modifications:

On the Order maps

- In the key, amend "Order route" (B-E etc) to read "Order route: Restricted Byway" and amend notation depicting Order routes B-E, E-F-V-W, W-X-G-Y and Y-H-J;

In the Order schedule

- Delete the word "Bridleway" wherever it occurs and substitute the words "Restricted Byway" with the exception of (1) reference to Colne Bridleway 228 in the entry for Colne 8 and (2) anywhere in the entry for Colne 228 other than the reference to Colne bridleway 8;

PART I MODIFICATION OF THE DEFINITIVE MAP:
DESCRIPTION OF PATH OR WAY TO BE UPGRADED

- In paragraph 2 line 6 delete "through a gate and";
- In paragraph 3 line 2 delete "a gate at"; in line 7 delete "to a gate"; in line 10 delete "through a gate";
- In paragraph 4 line 3 delete "passes through a gate and"; in lines 6 and 7 delete "there is a stone wall." and "passes through a gate and"; in line 8 delete "rising" and "-wards a stone boundary wall and gate at"; in line 14 delete "a gate in a wall at"; in line 20 delete "to a gate" and in line 22 delete "and a gate";

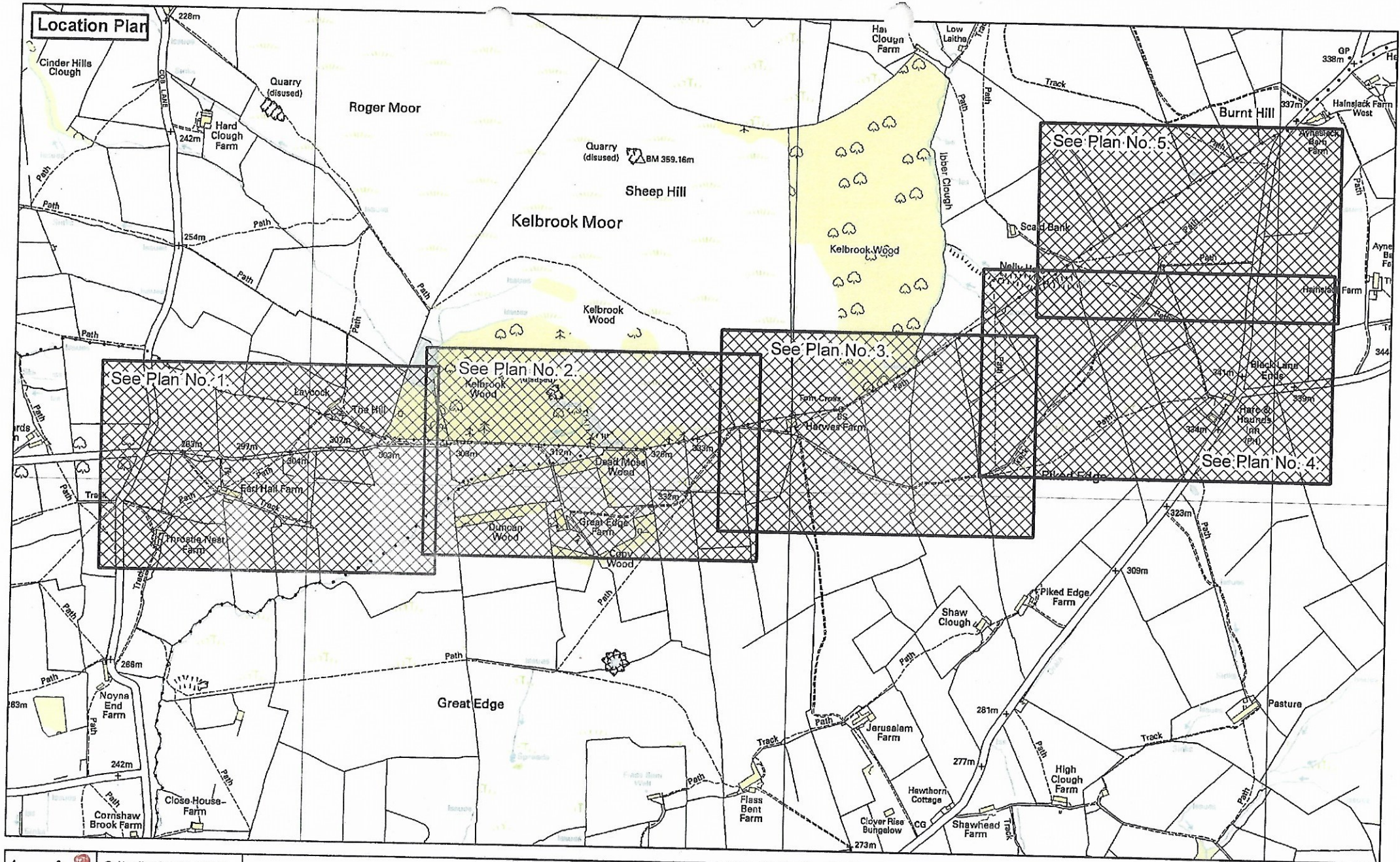
PART II MODIFICATION OF THE DEFINITIVE STATEMENT:
VARIATION OF PARTICULARS OF PATH OR WAY

- In line 1 delete "added for Foulridge 67 and", and delete "44, 44A and 44B substituting "67";
- For Foulridge 67:
 - In "Position": amend grid references to read (in line 3) SD 9073 4305 and (in line 4) SD 9082 4305; delete from line 7 "through a 3 metre wide gate", from lines 7 & 8 "to a gate 3 metres wide"; and from line 11 "through a 3 metre wide gate at SD 9147 4308 and";
 - In "Other particulars": delete all limitations listed;
- Delete individual entries for Foulridge 44, 44A and 44B;
- For Colne 19:
 - In "Position": delete from lines 2 & 3 "through a gate at SD 9169 4308 and";
 - In "Other particulars": delete all limitations listed;
- For Colne 18:
 - In "Position": delete from line 2 "through a gate at SD 9189 4313" and from line 3 "through a gate";
 - In "Other particulars": delete all limitations listed;
- For Colne 16:
 - In "Position": delete from line 2 "through a gate", from line 4 "a gate with stone step stile alongside at", and in line 6 "a gate at";
 - In "Other particulars": delete all limitations listed;
- For Colne 14:
 - In "Position": delete from line 4 "a gate in a wall"
 - In "Other particulars": delete all limitations listed;
- For Colne 8:
 - In "Position": delete from lines 2 & 3 "a gate in a fence at" and from line 5 "and a gate";
 - In "Other particulars": delete all limitations listed.

75. Since the Orders would, with the modifications I propose, show as a highway of one description a way shown in the Orders (as made) as a highway of another description, I am required by virtue of Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 to give notice of my proposal to modify the Orders and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

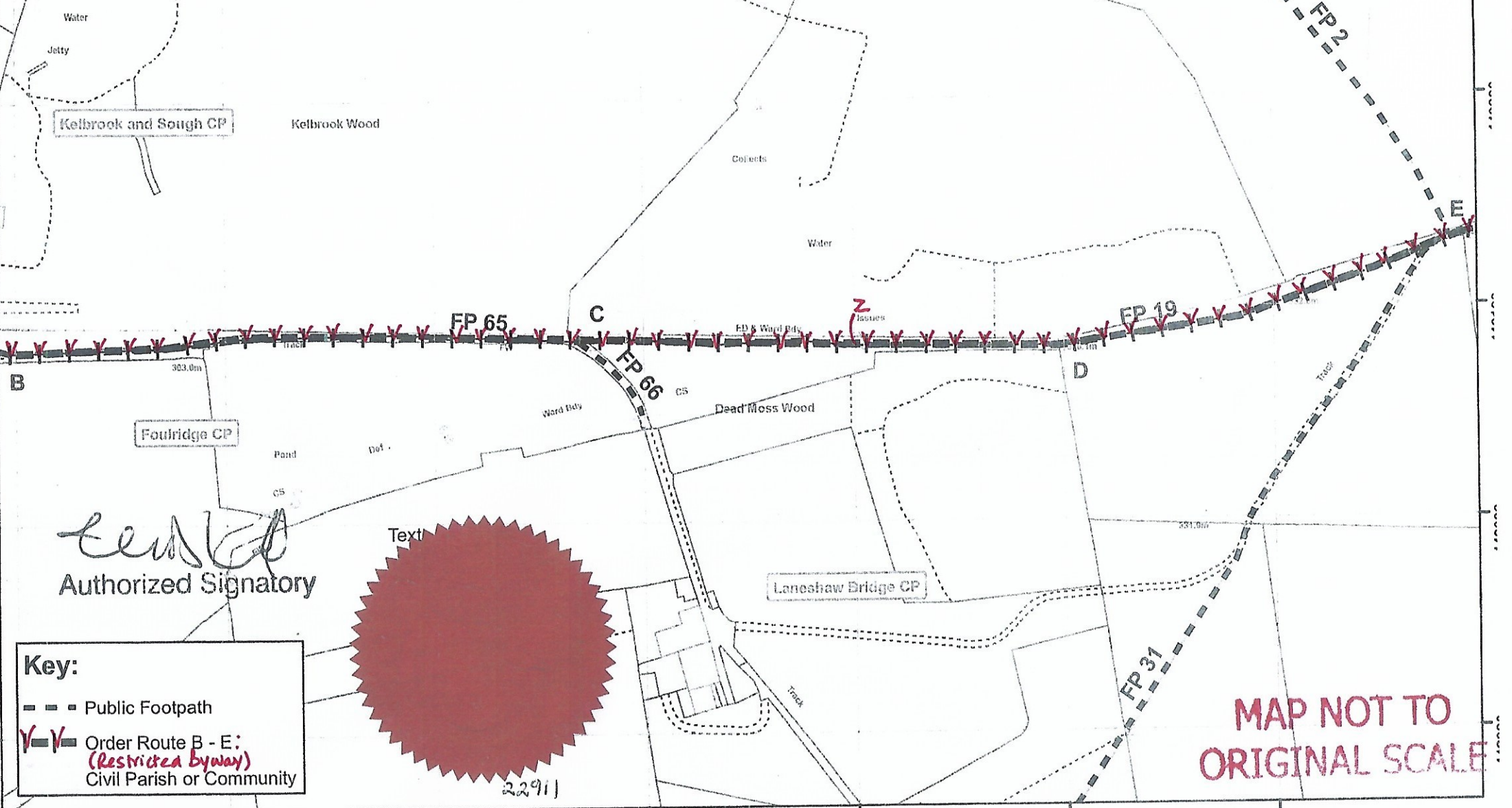
Sue Arnott

Inspector



	<p>G. Harding B.Eng., C Eng., FICE, FIHT, MCMI. Environment Director</p>	<p>Wildlife & Countryside Act 1981.</p>	<p>804/440</p>	<p>1:10,000</p>
		<p>a) Claimed Bridleway from Cob Lane / Cockhill Lane, to junction with Public Footpath No 65, Foulridge, Pendle Borough. b) Claimed upgrading to Bridleway of Public Footpath Nos 65,(pt) Fourridge: 19, 18,16, 14, 12 and 8, Coine, Pendle Borough.</p>		<p>4</p>
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Plan No. 2.



Key:

- - - Public Footpath
- Y-Y Order Route B - E:
(Restricted Byway)
Civil Parish or Community

Lancashire County Council
 Jo Turton
 Executive Director
 for Environment

Wildlife & Countryside Act 1981
 Claimed upgrading to Bridleway of Public Footpath Nos. 65, (part) Foulridge: 19, 18, 16, 14, 12, and 8 Colne, Pendle Borough

1:2,500



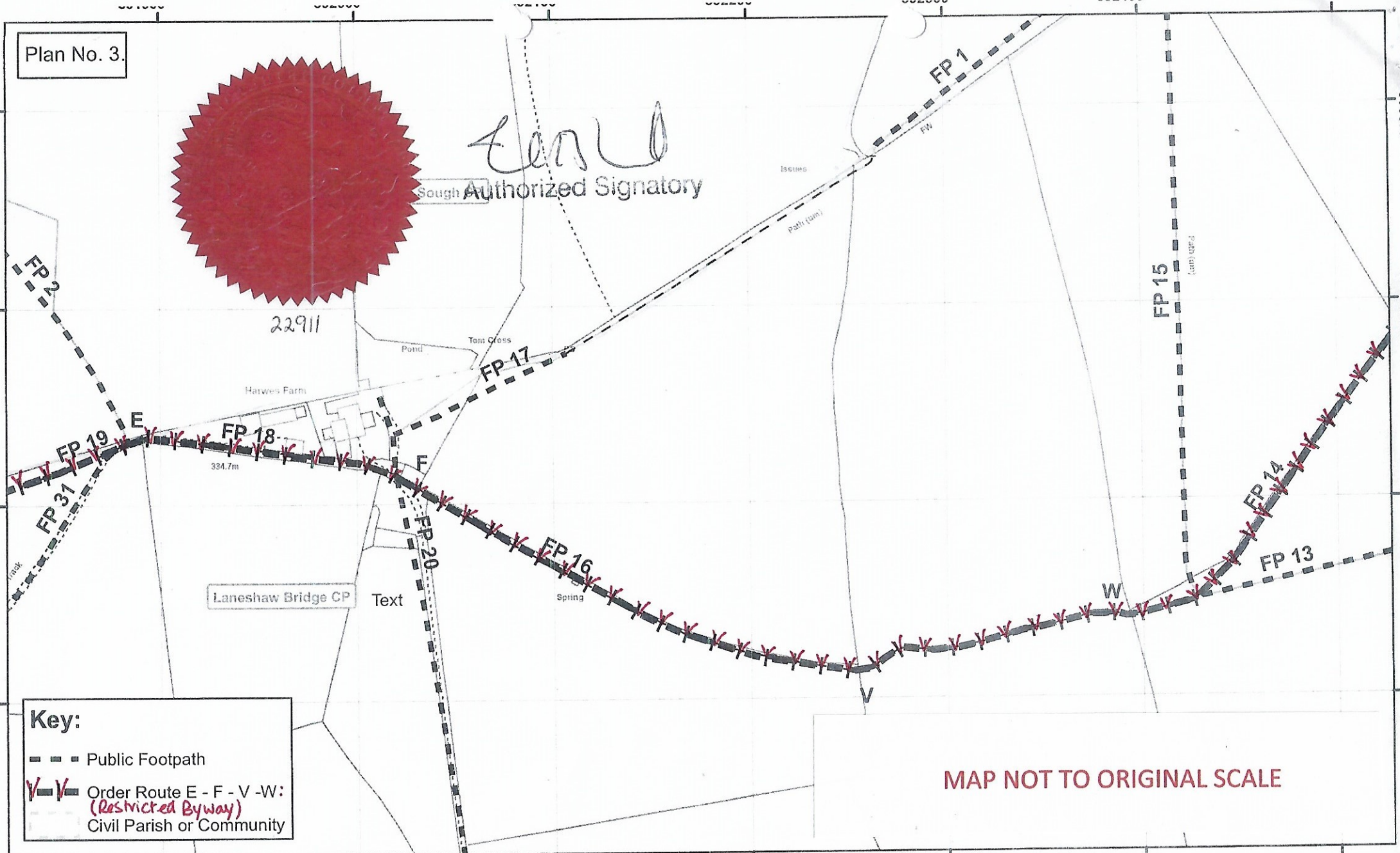
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Plan No. 3.



Text

Authorized Signatory



Key:

- - - Public Footpath
- V-V Order Route E - F - V -W:
(Restricted Byway)
Civil Parish or Community

MAP NOT TO ORIGINAL SCALE

391900 392000 392100 392200 392300 392400 392500

Lancashire County Council
Jo Turton
Executive Director
for Environment

Wildlife & Countryside Act 1981
Claimed upgrading to Bridleway of Public Footpath Nos. 65,(part) Foulridge: 19, 18, 16, 14, 12, and 8 Colne, Pendle Borough

1:2,500

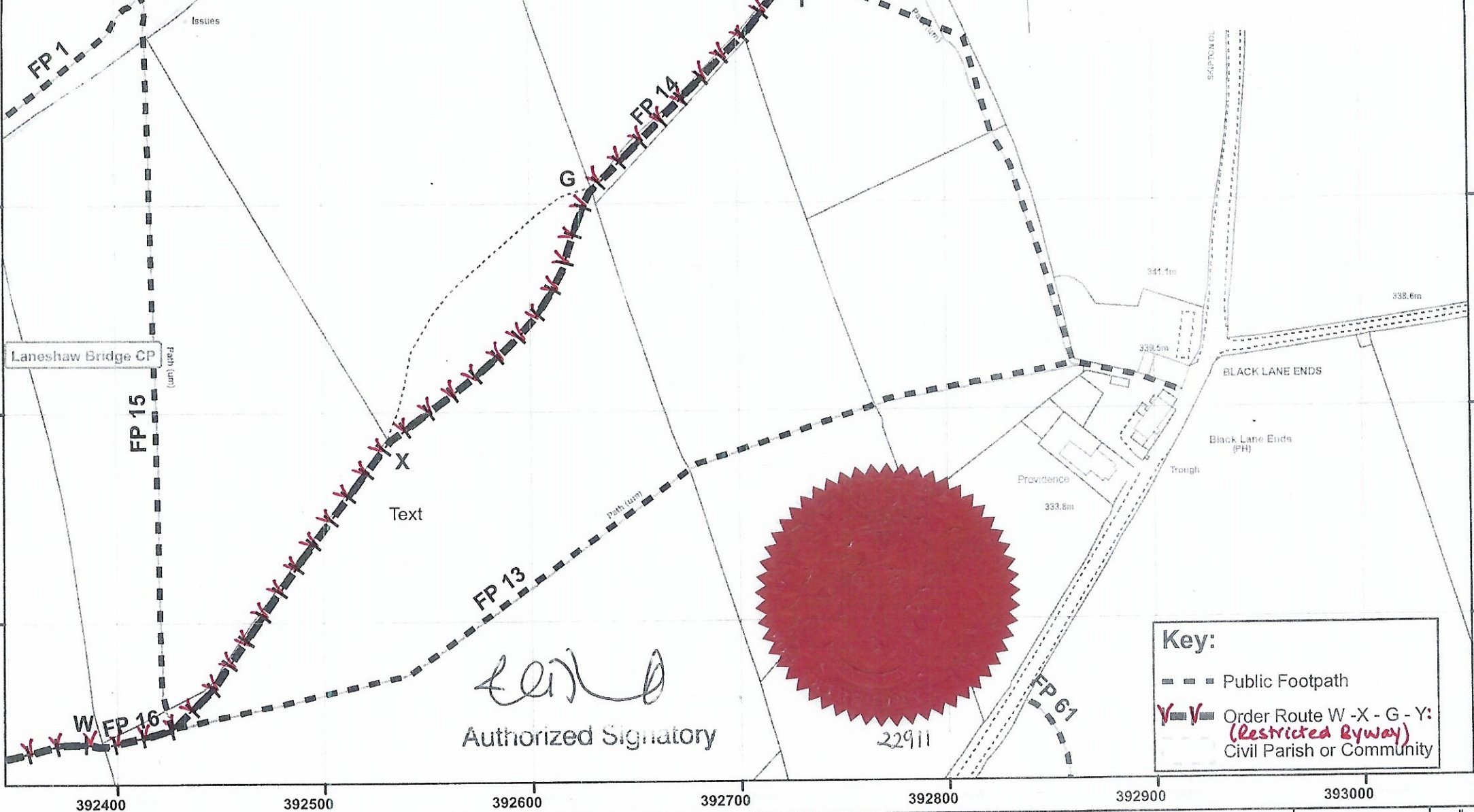


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Plan No. 4.

Keilbrook and Sough CP

MAP NOT TO ORIGINAL SCALE



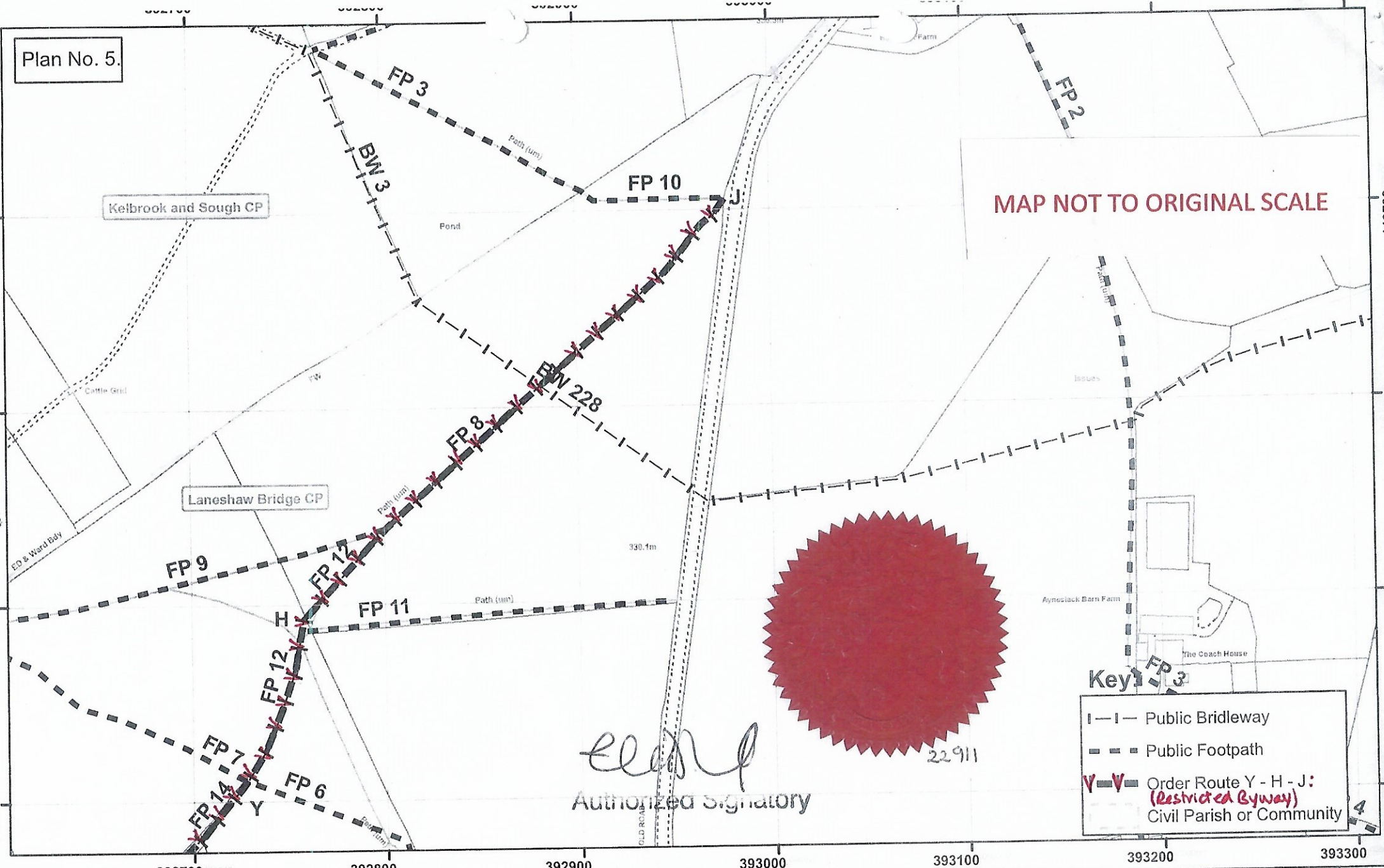
Key:

- Public Footpath
- Y-V Order Route W-X-G-Y: (Restricted Byway) Civil Parish or Community

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Plan No. 5.

MAP NOT TO ORIGINAL SCALE



Key

- |— Public Bridleway
- · · Public Footpath
- Y-V Order Route Y - H - J:
(Restricted Byway)
- Civil Parish or Community

Edna
Authorized Signatory

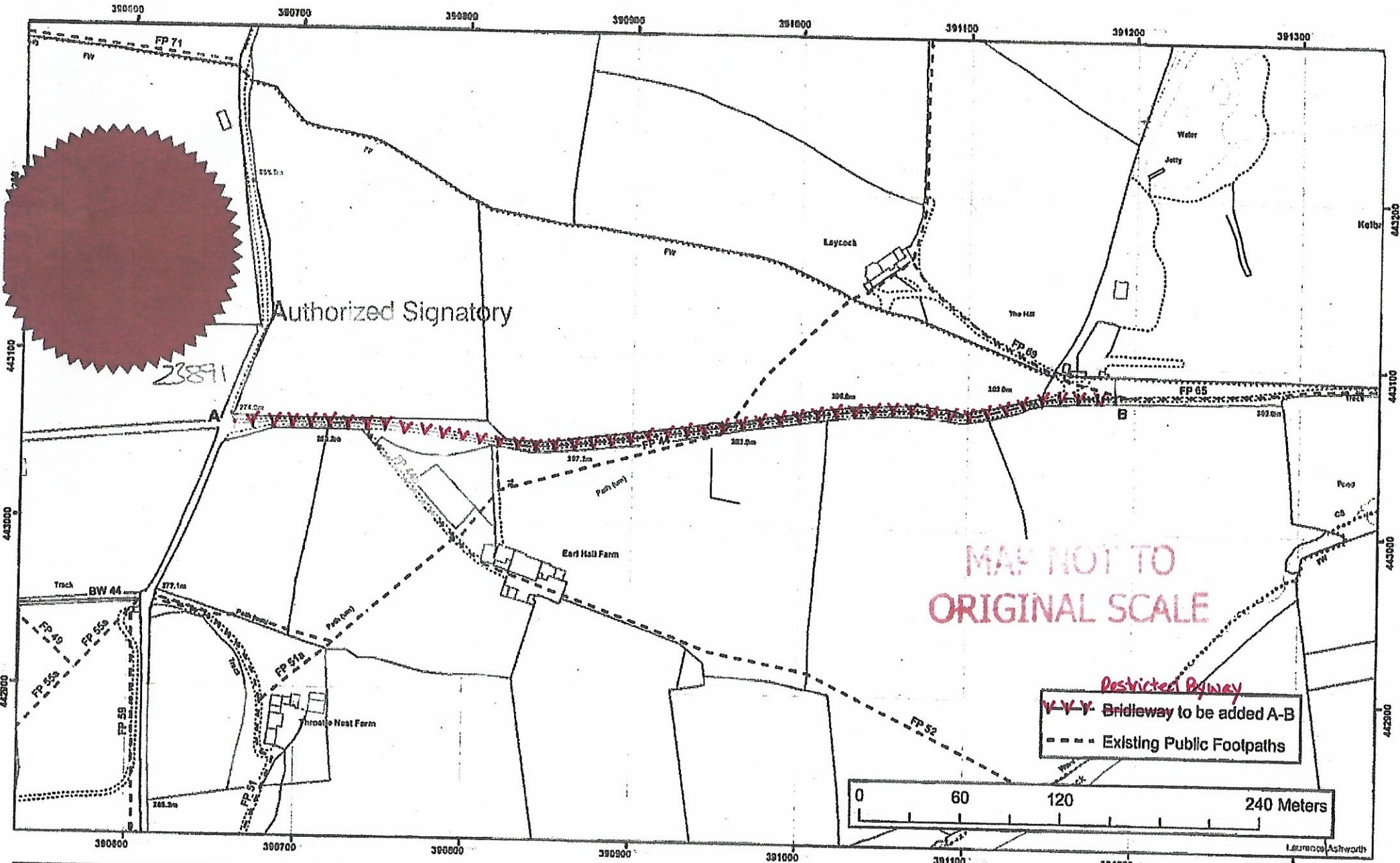
Lancashire County Council
Jo Turton
Executive Director
for Environment

Wildlife & Countryside Act 1981
Claimed upgrading to Bridleway of Public Footpath Nos. 65, (part) Foulridge: 19, 18, 16, 14, 12, and 8 Colne, Pendle Borough

1:2,500



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	<p>Steve Browns Interim Executive Director for the Environment</p>	<p>Wildlife and Countryside Act 1981 Addition of Bridleway from Cob Lane/Cockhill Lane, to junction with Public Footpath 65 Foulridge, Pendle Borough Application 804-440</p>	<p>1:1250</p>
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Ms S Hogg
South Pennine Packhorse Trails Trust
The Barn
Mankinholes
TODMORDEN
Lancashire
OL14 6HR

National Rights of Way Casework Team

Citygate
Gallowgate
Newcastle upon Tyne
NE1 4WH

Switchboard: 0191 201 3300
Direct line: 0191 202 3595
Fax: 0191 202 3998

Email: Geraldine.Christie@gone.gsi.gov.uk

Your ref:

Our ref: NATROW/Q2371/529A/07/41

Date: *SM* January 2011

Dear Madam

WILDLIFE AND COUNTRYSIDE ACT 1981 – PARAGRAPH 4(1) OF SCHEDULE 14

YOUR APPEAL ON BEHALF OF TRAWDEN FOREST AND BORDERS BRIDLEWAYS ASSOCIATION AGAINST THE DECISION OF LANCASHIRE COUNTY COUNCIL NOT TO MAKE AN ORDER UNDER SECTION 53 (2) OF THE 1981 ACT TO UPGRADE FOOTPATHS TO BRIDLEWAYS AT FOULRIDGE AND COLNE, PENDLE BOROUGH

1. I am directed by the Secretary of State for the Environment Food and Rural Affairs to refer to your appeal on behalf of the Trawden Forest and Borders Bridleways Association, made under section 53(5) of, and paragraph 4(1) of Schedule 14 to the Wildlife and Countryside Act 1981 against the decision of Lancashire County Council not to make an order to modify their Definitive Map and Statement. The modification you have sought on the Association's behalf is the upgrading of footpath 65 Foulridge (part) and footpaths 8, 12, 14, 16, 18 and 19 Colne, all of which are in the borough of Pendle.

2. An Inspector, Martin Elliott BSc FIPROW, has carefully considered all of the submissions made in the appeal and has submitted his report to the Secretary of State. A copy of the report is attached as Annex A to this letter. Your case is set out at paragraphs 12 to 58 of the Inspector's report, the case for the Council is at paragraphs 59 to 84 and representations from interested parties are at paragraph 7.

3. The Inspector's assessment of the evidence and conclusions is set out in paragraphs 85 to 135. In reaching his conclusions, the Inspector has noted in paragraphs 8 to 10 the additional evidence that you have provided since the County Council reached its decision. He notes the Secretary of State's view that an appeal should be based on the evidence submitted to the surveying authority with the original application and states that he has based his recommendation on that evidence. However, in paragraphs 133 and 134, he

concludes that the new evidence is “not inconsistent” with the evidence submitted with the original application although it does not assist further in determining the appeal. The Inspector recommends at paragraphs 136 and 137 that the appeal should be allowed. However, he concludes that the evidence may support the modification of the Definitive Map and Statement for higher public rights of way along the claimed route than you have sought and that a direction should be given to Lancashire County Council to make an order for a restricted byway. He recommends that the Secretary of State may wish to consider making a direction for a restricted byway along the claimed route.

4. The Secretary of State agrees with the Inspector’s conclusions, and accepts his recommendation to allow the appeal. However, she considers that she may determine an appeal under paragraph 4(1) of Schedule 14 to the 1981 Act only in relation to the application originally made and that she may not direct a surveying authority to make an order for public rights of way that are higher than those claimed in the application.

5. In this case, you have applied to the County Council for a modification to the Definitive Map and Statement upgrading the whole length of the claimed route from a public footpath to bridleway status. The Secretary of State considers that she may determine your appeal only on your application. She does not accept the Inspector’s recommendation to direct the County Council to make an order for a restricted byway, which would carry higher public rights of way than the bridleway rights you have claimed. However, she accepts that the County Council may wish to consider whether, on the evidence and in the light of the Inspector’s conclusions, it is appropriate to make an order for the higher restricted byway rights.

6. For these reasons, the Secretary of State hereby allows your appeal. The Secretary of State has directed the Council, in accordance with paragraph 4(2) of Schedule 14 to the Wildlife and Countryside Act 1981, to make an Order under section 53(2) of, and Schedule 15 to the Act to modify the Definitive Map and Statement for the area to upgrade footpaths along the claimed route to bridleway status.

7. This decision is given without prejudice to any decisions that may be given by the Secretary of State in exercise of her powers under the said Schedule 15.

8. A copy of this letter has been sent to Lancashire County Council.

Yours faithfully



G.M. CHRISTIE

Authorised by the Secretary of State for Environment, Food and Rural Affairs
to sign in that behalf

Enc:



Report to the Secretary of State for Environment, Food and Rural Affairs

by **Martin Elliott BSc FIPROW**

an Inspector appointed by the Secretary of State
for Environment, Food and Rural Affairs

The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ GTN 1371 8000

Date: 3 June 2009

WILDLIFE AND COUNTRYSIDE ACT 1981

REPORT INTO AN APPEAL BY

SUSAN HOGG OF THE SOUTH PENNINE PACKHORSE TRAILS TRUST ON BEHALF OF
TRAWDEN FOREST AND BORDERS BRIDLEWAYS ASSOCIATION

AGAINST THE DECISION OF

LANCASHIRE COUNTY COUNCIL

NOT TO MAKE AN ORDER UNDER SECTION 53(2)

TO UPGRADE THE STATUS OF PUBLIC FOOTPATHS 65 FOULRIDGE (PART) AND
8,12,14,16,18 AND 19 COLNE TO BRIDLEWAYS

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File Ref: NATROW/Q2371/529A/07/41

- This Appeal is made under Schedule 14, Paragraph 4 (1) to the Wildlife and Countryside Act 1981 ("the 1981 Act").
- The Appeal is made by Susan Hogg of the South Pennine Packhorse Trails Trust, on behalf of Trawden Forest and Borders Bridleways Association against the decision of Lancashire County Council not to make an Order under Section 53(2) of the 1981 Act.
- The application of 17 March 2006 was refused under notice dated 11 May 2007.
- The appellant claims that a Modification Order should be made to alter the status of public footpaths 65 Foulridge (part) and 8, 12, 14, 16, 18, and 19 Colne shown on the map and statement to the status of bridleway.

Summary of Recommendation: I recommend that the appeal be allowed.

Procedural Matters

General

1. I have been appointed to report to the Secretary of State for Environment, Food and Rural Affairs on the above mentioned appeal made in accordance with Paragraph 4 of Schedule 14 to the Wildlife and Countryside Act 1981 ("the 1981 Act").
2. The evidence in this case is documentary. I have not visited the site but am satisfied that I can make a recommendation without the need to do so.
3. This report consists of the material points made in the submissions, an assessment of the evidence against the relevant criteria and my conclusions and recommendation.
4. For identification purposes points A to J, referred to in this report, relate to those identified on the location plans submitted by the Council and appended to the Council's report to the Regulatory Committee dated 9 May 2007. The appellant introduces further location points and these points (U1, U2, B1 and G1) are identified on an annotated copy of the Ordnance Survey 1:2500 1893 submitted by the appellant. Appendices referred to in this report relate to the submissions from the appellant.
5. The original application, made by the Trawden Forest and Borders Bridleway Association, relates to a route between Cob Lane and Castle Road as shown on the location plan A-J. The Council resolved to make a modification order in relation to the western part of the claimed route identified as A to B. The appeal relates to the refusal of the Council not to upgrade public footpaths 65 Foulridge (part) and 8, 12, 14, 16, 18 and 19 Colne (B to J on the plans).
6. The appellant, as part of the grounds for appeal, makes representations in relation to the general conduct of the investigation of the application by the Council. These are not matters to be considered in making my recommendation or for consideration by the Secretary of State.

Representations from interested parties

7. Representations have been received from a number of interested parties. The representations refer solely to the suitability and desirability of the claimed route. The Secretary of State may wish to note that such issues cannot be

taken into account in relation to the 1981 Act. My recommendation must be made on the evidence before me measured against the criteria set out below at paragraph 86.

New evidence

8. The appellant, as part of the appeal process, has introduced new evidence to that considered by Lancashire County Council when determining the original application. The Council has had the opportunity, as part of the appeal process, to consider this new evidence and does not change its view on the appeal. The Secretary of State may wish to note that the appeal should be based on the evidence submitted with the original application and my recommendation is based thereon. Nevertheless the Secretary of State may wish to note this additional evidence. New evidence which is material to the appeal is, in the main, identified by reference to Supplementary Evidence. I have considered the new evidence in relation to the appeal route and have reached conclusions thereon separately to that submitted with the application.
9. The appellant identifies, in correspondence, the need to carry out further research into Land Registry matters and indicates that they are content for the Council to provide copies. The Council has supplied Land Registry plans but the appellant has not made any submissions in respect of the plans. However, the Council has referred to these plans in the report to the Regulatory Committee.
10. In respect of the 1752 Plan of the Shawhead Estate there is a dispute as to whether or not this plan was available as part of the original application. The Secretary of State may note that there is no reference to this plan in the original application and on balance it appears to me that the 1752 plan constitutes new evidence.

Description of route

11. The route commences from point B on the location plans located approximately 500 metres to the east of Cob Lane at a point where footpath 65 Foulridge meets the claimed route from the north. From point B the claimed route continues in an easterly direction for approximately 850 metres to a point adjacent to Copy House (known as Harwes Farm) (point E). From Copy House the route continues in a south easterly direction for approximately 260 metres to point V before returning to an easterly then north easterly direction for approximately 1000 metres to its junction with Castle Road (point J). The initial section of the claimed route passes along a surfaced track before continuing over grass pasture and moorland; sections of this part of the way are visible as an open sunken track or along a narrow grass bank. The section D to U2 follows a walled lane. The visible width of the route varies between 1.5 metres and 7 metres.

The Case for the Appellant

The material points are:

12. The appeal concerns the assessment and evaluation of specific historical documents and their interrelationship.

Assize Documents 1655 to 1665

13. The documents relating to the obstruction of a highway, by a James Hartley at Piked Edge between 1655 and 1665, record the existence of a common highway leading from the market town of Clitheroe to the market town of Skipton. The route led between the Foulridge road over Kelbrook Moor and the north part of Piked Edge to Jep Causeway and on to the Colne to Skipton road; the route crossed Great Edge. The way is also referred to as '*the highway*' and '*an usual highway*' there is no reference as to how the way is maintained. The Ordnance Survey Landranger series shows the appeal route which passes over the saddle between Great Edge and Kelbrook Moor. The Assize papers describe the route as '*leading from the town of Foulridge and other partes adjacent over a place called Kellbrookmoore*'.
14. The common highway was part of a market town road between Clitheroe and Keighley and Skipton. This suggests a division of ways across Piked Edge pasture with the Skipton road (the appeal route) heading north east to join the Colne to Skipton road north of Black Lane Ends. The Keighley road would have headed south via Jerusalem Farm, crossing the Colne to Skipton road and continuing southwards via Monkroyd to Wycoller Causeway in Trawden. Both routes would have been obstructed at point 'a' on the 1752 Shawhead Estate plan.
15. The appeal route is an ancient highway, predating the inclosure of the common on Great Edge and, prior to inclosure, would have been an unfenced road over open ground. As the inclosure of the common was not carried out under an Act of Parliament, but by a decree of Court of the Duchy of Lancaster 1618, the commissioners would not have had the power to stop up or divert the highway. Whilst Hartley claims that '*the commissioners set out no way there*' it appears that any early inclosure was carried out without authority. The appellant refers to the case of *R v Blakemore* (1852) 2 Den. 410, 432 cited at an inquiry relating to Holme Chapel Road which states that if the commissioners '*set out a road without power to do so under an Act of Parliament, it is rather evidence of an existing road and of a liability to repair it rationae tenurae*'. Records relating to copyhold land in the Honor of Clitheroe give an account of proceedings in relation to unauthorised closure of land in the Manor of Colne. Local officials were asked to '*enquire and present those that encroach upon your respective Inn grounds or the Highways.*' The appellant contends that at the time there was an assumption that highways should not be affected by inclosure.
16. The antiquity of the route, the fact that it crossed copyhold land and is a highway in private ownership indicates a *rationae tenurae* maintenance liability. As such, those required to maintain the way could not be required to improve it, hence its current physical characteristics; the way remains a medieval road. This explains why sections of the road crossing pasture were not subject to tithe and therefore not recorded in the tithe apportionment of 1842 and also why certain sections are not always identified as a road on later maps.
17. James Hartley was successfully indicted for the obstruction of a highway. His grievance is based on the fact that he was required to maintain the road as the copyholder of the estate. Both the appeal route and the highway subject to the 1665 indictment are both privately maintainable. In an attempt to fend off further indictment a compromise is reached for the route to be used only by

persons acting on behalf of Foulridge Township. This, on balance, should not override the Assize papers since it does not have legal authority. James Hartley uses the fact that he has to pay '*King's rent*' on a piece of ground that he cannot use to justify that he has walled up the route.

18. The Council dismisses the 1655 to 1665 evidence by saying that '*There is not sufficient information to give the location of this matter or the outcome of the Court Action*'. The location of the route is minutely described in the Assize papers. In 1655 - 1665 there were no road maps but the examination of later evidence (estate plans, tithe and township maps, Ordnance Survey maps) makes it possible to identify the route and identify the location of the obstructions erected by James Hartley; the route is quite apparent on the ground.
19. There is no record of further court action against James Hartley and in the absence of any further proceedings it must be assumed that no legal proceedings were taken.
20. The papers from 1655 to 1665 are strong evidence of the existence of a public road and the Council admit that there is no record of the road being legally stopped up. If the Council accepts, as they have done, that the remainder of the claimed route is a road then it must be accepted that the appeal route is a road and therefore should be recorded as a restricted byway.
21. The Council argue that the appeal route is not the highway referred to by the Assize documents on the basis that it is privately maintained and therefore cannot be a highway. Further, that the appeal route is not shown on certain documents. The route in the Assize documents is a common highway which meets the necessary criteria:
 - a) it runs through the townships of Foulridge and Colne,
 - b) it has to run to the north of the Colne Skipton Road and in an east west direction,
 - c) it runs over Great Edge and across Piked Edge Pasture on the north side of Piked Edge,
 - d) it has to predate and cross the Shawhead Estate and must be gated,
 - e) it has to be privately maintainable under copyhold tenure.
22. Whilst the Council question the location of Jepp or Jepps Causey the Assize papers describe it clearly as the continuation of the highway across Piked Edge Pasture. The word '*causey*' from old French means '*a causeway or raised way*' and frequently refers to roads crossing marshy ground or to describe post-medieval packhorse routes. A section of causeway is still visible on the appeal route (G to W); this is where the route crosses ground saturated with water. The Assize documents refer to a way between Foulridge and Jepp Causeway and this places the causeway to the east of the Shawhead Estate.
23. As regards the observation that the documents from 1664 refer to '*private rights*' the document does not refer to such rights. The route is described as the '*usual or private way*'. The way is a '*private way*' in that it is privately maintainable.

24. The appellant refers to a previous case relating to a route known as Holme Chapel Road. The appellant notes that in that case the Council considers the road was not as important as other roads and was only expected to cater for local traffic. The Council also took the view that the fact that Holme Chapel Road was not included in the vestry minutes list of township roads because the purpose of the survey was to define roads repairable at public expense; the road was excluded because it was privately maintainable. The same situation applies to the appeal route which is not included in the lengths of roads maintainable by the township. It was also stated that since the road was not as important as other roads, and was only expected to cater for local traffic, provided an explanation for it being maintained at private expense. There are marked similarities with the appeal route.
25. For a way to be indicted at quarter sessions it must have been a highway (Supplementary Evidence 3, Richard Burn, *The Justice of the Peace*, 1776, XVI). The indictment of 1655 fulfils the criteria set out by Burn and the 1773 Highway Act. The seriousness of the matter is reflected in the fact that Hartley is indicted in the Assize Court. In 1665 further proceedings were envisaged but not pursued; this suggests that Hartley removed the obstructions.
26. The appellant refers to the Council's committee report:

'In conclusion, there appears to be evidence that the claimed route may have been the old road from Skipton to Colne in the 1600s, with remnants of this old road appearing in tithe maps and other maps produced around 1840. This was still in local memory [i.e. the 1873 sale plan and particulars, see document 1873 sale plan a, p. 2] when one of the estates of the area was sold, and confirmed by the recollection of a local farmer at a public inquiry in 2002. No evidence has been found to show that this old route has ever been legally closed.'

Given this conclusion it seems illogical that the Council refused to make an order for the route simply on the basis of the 1664 document.

Plan of Shawhead Estate 1752

27. The Shawhead Estate is identified in the Assize papers as belonging to James Hartley from at least 1655. The plans show the appeal route E-F-V with the section F-V running diagonally as an unfenced road across Great Coppy, the most northernmost close of the estate. Two gateways are marked 'a' and 'b' (F and V on the location plan) and the inescapable conclusion is that the two gateways were those obstructed by James Hartley in 1655 and 1665. Assize papers show that these gates were subsequently sanctioned by Foulridge Township. Along the northeast side of the road is written 'From a to b 52 Perches' this is the area of road for which John Hartley had to pay rent although the way was a highway. Great Coppy is described in 1664 as '*a certain parcel of recently improved common or waste of the lands belonging to Colne called piked Edge Pasture, being part of the inheritance of James Hartley.*' The Assize documents make it clear that the route predates the inclosure of Great Coppy.
28. The Council takes the view that the fact the route is shown on the plan as crossing the unfenced county boundary at point E means that the plan does not show the appeal route. However, in 1752 there may well have been a route branching north. The 1894 Ordnance Survey map indicates a route turning to the north at this location while the appeal route is shown continuing west.

Honor of Clitheroe map 1810

29. The appeal route is not shown although the section of the route A-U, where the tithe describes the area as '*lane and waste*', is shown as other roads. The boundary of the Honor does not coincide with the township/county boundaries. The map shows the Colne Township uncoloured, denoting copyhold land, whereas Foulridge is freehold land. This distinction explains the differing regimes for highway repair in Colne with landowners being liable for repair, *rationae tenurae* rather than repaired by the township.

Thornton inclosure map 1825

30. Although not within the parish of Thornton, two sections of the claimed route U-B1 (named Moor Lane) and U2-D are shown on the inclosure map. The southern boundary of the section E-F is also shown. Section U-B1 (forming part of U-U1) is recorded in the Foulridge tithe apportionment as plot 602 '*Lane and waste*' in the list of roads and is not in private ownership. Section U2-D is shown in the Colne tithe apportionment as the walled plot 2554 recorded as a road not in private ownership. Neither of these two sections is subject to tithe. The section D-E (Dead Moss on the inclosure map) is plot 2324 in the Colne tithe. The southern boundary of the section E-F is also shown on the inclosure map and this is part of the highway and cart road shown on the Copy House estate sale plan. The inclosure evidence suggests that the name Moor Lane can be applied to the whole route from Cob Lane east to the Shawhead Estate.

Pre Ordnance Survey County maps

31. The appellant notes the question raised by the Council as to why the appeal route is not shown on pre Ordnance Survey county maps. The appellant says that many old routes were not shown on old county maps because they were no longer used as main roads. Highways not maintainable by the inhabitants at large would not have been considered to be of good enough standard by commercial mapmakers to be promoted as main roads. The Stockings map of 1828 was intended to show the road network suitable for travellers in carriages. Unimproved routes such as the appeal route would not have been considered suitable for this purpose. The point has been made that there are similarities between Holme Chapel Road and Piked Edge, both being public highways and privately maintained. The Council had previously accepted (Appendix 10, decision letter for Holme Chapel Road) that the latter was not as important as turnpike roads but still a public highway; the fact that the way was not shown by Yates, Stockdale or Greenwood was not regarded as significant. Whilst in respect of Holme Chapel Road case (App 10 paragraph 21) the Council said that the route was not included in the vestry minutes '*presumably because it was privately repairable*'. This situation is exactly the same as Piked Edge.

Map of the County Palatine of Lancaster 1818 by C G Greenwood

32. The map, shows the section of route A-U as a cross road. The remainder of the route is not shown which suggests that it was not considered to be a carriageable road in the early 19th century (Appendix 5). The Assize papers make it clear that the route led from Foulridge to the Colne-Skipton road. The appeal route retains its original medieval character at its eastern end; there is no evidence that it has ever been improved. The owner of a *rationae tenurae* road only had to maintain its existing state and any improvements could only be carried out at the expense of the township. Given the condition of the road it is

unlikely that Greenwood and other 19th century map makers would have shown it as suitable for travellers.

Map of the County Palatine of Lancaster 1828 and 1829 by G Hennet

33. As with Greenwood's map Hennet's map shows the first section of the route leading from point A although it appears that the route crosses the county boundary. Nevertheless, as with the Greenwood map, the Assize papers make it clear that the route led from Foulridge to the Colne-Skipton road. Hennet may have based his map on earlier maps rather than on an actual survey.

Survey of the Township of Colne c. 1843

34. The survey lists the various plots in numerical order; the numbers correspond with those on the Township and tithe maps. The Colne to Skipton road is plot 2261 but no owner is listed for plots 2554 (Moor Lane U2 -D), 234 (Dead Moss D-E and 2371 road G-G1).

Plan of Township of Colne

35. The Township plan, possibly dated 1843, was probably prepared for the Township map published in 1844 which states that the plan is based on an 1843 survey by John Greenwood. Township or Poor Rate maps were being produced from the 1780s for assessments for the poor and highway rates, two functions administered by the parishes/townships. The appeal route Moor Lane (U2 to D) is shown adjacent to plot 2322 as on the tithe map; the road itself does not have a plot number. As regards the appeal route D to W, where the route is unfenced, it is not shown. This suggests that the road attracted no rate allowance; this was one of the reasons given by James Hartley for obstructing the way in 1665. There would be no need to indicate the way on the Township map since the way was not publicly maintainable. The plot number 2331 for Copy House is located in the farmyard as on the tithe. The section V-W does not have a plot number; this was presumably a mistake as it is numbered on the 1844 Township map and the tithe map. The section W-G-G1 is walled and numbered 2350 and 2371 as on the tithe. The final section G1-H-J is not shown and the inference is that there was no rate allowance on the roadway.

Map of the Township of Colne by John Greenwood 1844

36. The map, based on a survey by John Greenwood, shows the appeal route in the same way as on the tithe and the 1843 Township maps with the exception of some minor details. The section U2-D (Moor Lane) is numbered 2554 and the plot number 2331 is printed on the road rather than the farmyard as on the tithe and 1843 township maps. At point E the road turns north to the township boundary rather than to the western boundary of the estate. The walled sections V-G1 are still apparent and the route is not shown between G1 and J. The same is applicable to the section F-V although it is clearly there on the three estate maps between 1753 and 1873.

Tithe records

37. Whilst the Council states that only part of the claimed route is not shown in private ownership on the tithe records, this is not correct. The route is recorded as public from A to D. The section A to U is not specifically mentioned in the Foulridge apportionment but the assumption of the Council, that the way is public, is not unreasonable. The same presumption must apply to the section

from U to the Foulridge/Colne boundary described as 'lane and waste' in the list of roads and also to Moor Lane, listed as a public road. Additionally the section from F to the end of the walled section east of G are described as road or named (Cow Lane). The assumption that sections, which are listed in the apportionment as being owned, cannot be highways is wrong. Highways come into being by presumed dedication by the landowner and acceptance by the public. The highway itself is only vested in the highway authority with the ownership of the subsoil remaining with the landowner.

1842 Foulridge Tithe Award and Tithe Map 1845 to 1846

38. The plan accompanying the 1842 award shows Cob Lane as leading '*To Skipton*' and the section of route A-U is unnumbered but possibly included with Cob Lane in the apportionment. The claimed route continues beyond point U through plot 602 to U1 and is described as '*Lane and Waste*'. No tithe charge is assigned to the plots included in the list of roads and they are not recorded as being in private ownership. Beyond the Foulridge boundary is Moor Lane (U2-D) and its inclusion on the Foulridge plan indicates the significance of the route, hence the involvement of Foulridge Township in the indictment against James Hartley. Moor Lane is identified in the Colne tithe as a public road. The Council states that the tithe refers to this length as a road with no owner or occupier.
39. The Council appears to accept the tithe map evidence as showing the claimed route from A to B as a public road. The section of the appeal route between points U and C is specifically mentioned in the list of roads in the Foulridge apportionment. The continuation of the road where it enters Colne Township is Moor Lane, identified in the apportionment as a road without an owner. The Council is inconsistent in its interpretation of the tithe evidence.

1842 Colne Tithe Award and Tithe Map 1845 to 1846

40. The map shows the section of route from U2 to V. Moor Lane is numbered 2554 and the plot to the south is identified as 2322. Plot 2554 is described as '*Road adjoining no. 2322*'. The entry is listed in the section headed '*Roads*' which includes known public roads (the Colne – Skipton road). The road is not shown where it crosses plot 2324 (D to E) (Dead Moss) but is clearly shown at Copy House (E to F) as an unnumbered walled lane. The route is shown on the 1st Edition 1:2500 Ordnance Survey as an unfenced minor road. The section from E to Copy House is shown on the Colne Township map as '*House, Barn etc*' although the draft map shows the lane as unnumbered. The tithe map also shows the lane as being separate from the adjacent buildings. Where the Council say that the route continues over pasture this is plot no. 2334 and is named as High Copy and is described as pasture. The section F to V does not show the line of the road although the route is clearly shown on the estate plans and on the 1:2500 and 6 inch Ordnance Survey maps. It was not necessary to identify grass roads crossing open ground as they would have been subject to tithes. From point V to G 1 (A point approximately midway between G and H) the route is shown as a walled lane with a gate at V and G. This section has two plot numbers 2345 (V to W listed under the section Piked Edge) and 2350 (W to G). Plot 2345 is described as a road, not pasture, and 2350 is called '*Cow Lane*'. From G to G1 the appeal route is numbered 2371 again described as road. Beyond G1 the route is not shown; where the road crosses pasture and is unfenced, it would be subject to tithe.

1872 Plan of Copy House and Shawhead Estates

41. The 1872 estate sale plan shows how the old Shawhead Estate has grown since 1752. The plan shows Copy House with the appeal route running from F to V as on the 1752 estate plan. The section E to F has been walled in on either side and the whole route E to V is coloured sienna, as is the farmyard at Copy House. The appeal route is annotated '*cart road*'. Where the route enters the estate at point E there is a gate and there appears to be a gateway where the route enters the farmyard but no indication of a gate. A gate is shown on the eastern boundary at point V. As the road predates the building of Copy House it is clear that the latter accommodates the road. There is no evidence that the route was disrupted or diverted when the Shawhead Estate was divided. The suggestion that the development of Copy House would not take place adjacent to a public highway does not make sense. It is the most obvious place for the development as the access already existed. No easements appear to have been granted because presumably none were needed for the use of a public road.
42. The plan of Shawhead Estate, south of the Copy House Estate, shows a '*Road*' starting to the northwest of the farmhouse and running through the farmyard. The '*Road*' continues south through the croft and continues as a '*Cart Road*' down the west side of lot 18. A footpath is shown crossing the estate from east to west via the farmyard. At the southernmost portion of the Shawhead Estate the cart road continues to the Colne to Skipton road and is annotated '*Highway*' '*From Keighley*' '*To Colne*'.

Sale particulars and plan of Copy House and Shawhead Estates 1873

43. The sale of the Copy House and Shawhead Estates took place on 12 and 13 June 1873. The sale particulars for the Shawhead Estate reserve right of road for Lot 14 (Copy House) over the cart road shown on the plan leading to and from the Colne – Skipton highway; the cart road is shown on the 1872 estate plan. Lot 14 is described as contiguous to the old highway to Skipton. The plan of lot 14 shows the appeal route (E-F-V) with the section (E-F) listed as '*ROAD*' in the sale particulars; no private right is granted over the appeal route. At the bottom of the page containing the details of lots 13,14, and 16 there is the following information:

'Lots 13 and 14 lie about three miles from the Market town of Colne, the latter lot lying contiguous to the old highway leading from that place to Skipton.'

The only road shown crossing lot 14 is the appeal route. In the Collins Dictionary of the English Language 1979 '*contiguous*' is defined as '*adj. 1. touching along the side or boundary; in contact. 2. physically adjacent; neighbouring. 3. preceding or following in time. [C17: from Latin contiguous from contingere to touch; see CONTACT].'* The information fits exactly with the description of the route obstructed by James Hartley. There is no other road running from Foulridge to the Colne-Skipton road.

44. The Council suggests that the route cannot be a highway because if it were then there would be no need to grant an easement from lot 14 over lot 13. The easement ensures access from the northern part of the estate to the Colne-Skipton road. The fact that the old highway adjacent to lot 13 is the turnpike highway from Colne to Skipton is not an issue. The old highway has been bypassed partly because it had no strategic function. The old highway

mentioned in the sale particulars is the appeal route that crosses lot 14. Whilst the way has fallen into disuse it remains a highway for cars and carriages, etc.

45. It is unlikely that the estate agents selling the property would make a mistake in this matter since they would be liable for damages if the details of the properties were not accurate. This is a sale on a Chancery Court order.

A History of the County of Lancaster 1906 (Supplementary Evidence 2)

46. The entry for Foulridge mentions the old road leading east from Foulridge village to Skipton. *'The principal road leads north from Colne Through Foulridge village by Acornley to Skipton in Yorkshire: the older road to Skipton turns off to the east at Foulridge'*. The roads referred to are the road leading north through Kelbrook and the claimed route running east from Foulridge.
47. The entry for Colne describes the ridge extending east - west to the north of Colne. It is along this plateau that the claimed route runs and described in the Assize papers as the ancient road from Clitheroe to Skipton.

1910 Finance Act

48. The appellant notes that the Council introduced the evidence from the 1910 Finance Act. The appellant submits copies of the field books and transcripts containing abridged entries (Supplementary Evidence 4).
49. From the 1910 Finance Act records the appellant concludes that the claimed route is shown over its entire length crossing eight hereditaments. The walled section A to U is excluded from the adjacent hereditaments. Section U to U2 is shown on the Ordnance Survey base plans and is described in the field books as part of a roadway from Earl Hall to Copy House. No allowances are claimed but the land is crossed by the access road (a public right of way) to Great Edge and a stream.
50. In relation to the section U2 to J, an allowance for rights of way is claimed for each of the five hereditaments as summarised:

Section	Hereditament	Name	Allowance	Rights of way
U2 – E	6119	Great Edge	£30	Appeal route, three footpaths, access road
E-V	6121	Copy House	£25	Appeal route, 1 footpath, access road
V-W	6122	Shaw Clough	£15	Appeal route, 2 footpaths, access road
W-G	6123	Piked Edge	£20	Appeal route, 2 footpaths, access road
G-J	6127	Black Lane End	£20	Appeal route, 3 footpaths

51. Where an access road is shown that only serves the property, and does not join a public path of any sort, it is probably safe to assume that it was not a public

right of way; it may have since become one. The allowance for public rights of way for all the hereditaments is relatively high and it is unlikely that the allowances are just for footpaths. Footpaths normally carry a nominal allowance (£5), an allowance for £20-£30 usually indicates a public right of way of a higher status. The allowance would also reflect, not just the length and status of any public right of way, but also the land type. Land is described as moorland, rough pasture and meadow, lack of proximity to the town is also noted in the case of Shaw Clough. The claimed route only gives access to three dwellings and the Ordnance Survey base map shows at least ten footpaths joining the claimed route. This suggests that the claimed route must be a highway of a higher status than footpath. The field books are consistent with the earlier evidence and the criteria deduced from the Assize documents

Ordnance Survey maps

52. The 1896-1930 map, which the appellant points out was not submitted as part of the original application, is derived from the 1896-99 1 inch map revised in 1927 and published in 1912. The map shows the appeal route from point A to U1 and F to J as an '*other*' road.
53. The 1844 6 inch map shows a route from A to B1 as a cross road but the appeal route is not shown. Between F and V the route is shown as an unfenced cross road and between V and G1 as a fenced cross road. The section (W-G), identified as Cow Lane on the tithe documents, is shown as an unfenced cross road. Double dotted lines may indicate the line of the causeway which is still evident today. The cross road continues as a walled route to G1 and to point H as a cross road fenced to the north. From H to J the route is shown as a footpath; the 1894 1:2500 sheet annotates this section 'FP' in line with surveyor's instructions (Supplementary Evidence 9). The appellant refers to the 1841-54 Characteristics Sheet which applies to the 1844 Ordnance Survey map. Reference is also made to Supplementary Evidence 6 relating to the first Ordnance Survey maps of Lancashire (6 inch, 1 inch and 1:2500) and Supplementary Evidence 7 referring to early Ordnance Survey Characteristic Sheets.
54. The 1857 old series shows the route A to C as a cross road. Between C and V the appeal route is not shown but from V to G1 the route is shown as a cross road, from G1 to J the route is not shown. With the exception of the section U2 to D and E to F the sections shown on the map correspond with the tithe maps. In both cases the absence of the road from the map cannot be taken as the non existence of a highway. In the case of a tithe map a grass road would be subject to tithe whereas the Ordnance Survey is showing the contemporary road network and not roads fallen into disuse. The standard disclaimer (Supplementary Evidence 8), which did not appear until 1888, is not shown on this or the 6 inch map. The appellant refers to Supplementary Evidence 6.
55. The 1896 to 1930 Ordnance Survey half inch to one mile map shows the claimed route as an '*other road*' (i.e. unclassified). Supplementary Evidence 10 refers to the depiction of roads according to their administrative status. The appellant points out that the evidential value of early maps, showing roads according to their administrative status, should not be dismissed simply by reference to the standard disclaimer.

56. The 1894 1:2500 edition is the first map to show the whole of the claimed route as a minor road as far as its junction with footpath Pendle 9 to the east of point H. From this point to point J the route is annotated 'F.P.'

Topographical Evidence (Supplementary evidence 1)

57. The old series Ordnance Survey map makes the shape of Great Edge and Piked Edge hills very apparent with the appeal route running along the bottom of the northern scarp. The appellant makes the point that the claimed route takes the optimal line along the watershed, avoiding steep gradients and boggy ground; this is characteristic of prehistoric trans-Pennine routes (F Riding, Settlement in Blackburn Hundred: Prehistory to Medieval, April 1969, appendix 2). The appeal route follows the Foulridge Gap, described as '*dry valley*' and a '*low col almost exactly on the watershed between the Calder and Broughton Beck Drainages...*' The appellant refers to 'The Glacial Geology of Colne and District' (appendix 3) but does not draw any conclusions as to the significance of this evidence. Reference is also made to the 'Geology of the County of Lancaster' (appendix 4). The appellant points out that the geological map clearly shows the curve of the Great Edge-Piked Edge upland block with the claimed route running between the old county boundary and the millstone grit.

Photographs

58. The appellant submits a number of photographs of the claimed route and identifies the features thereon. The appellant does not reach any specific conclusions from the photographs as to the status of the way.

The Case for Lancashire County Council

The material points are:

59. For an order to be made the County Council would need to be satisfied, on balance, that a bridleway could reasonably be alleged to subsist along the claimed route. The committee was advised of the higher test in order to confirm any order where the route would need to be shown to actually have been dedicated. The committee was entitled to reach the conclusion that there was insufficient evidence for the appeal route.
60. The Council submits that the interpretation of the various historic documents is consistent with the Consistency Guidelines¹.
61. The Council notes the submission by the appellant of an Order decision relating to a claim for byway open to all traffic. It is submitted that the route in that case came into existence being noted in the Manorial Court Rolls in 1809; the route could therefore not be recorded on earlier maps. The route is nevertheless recorded on the Teesdale Hennet map of 1830. The evidence relating to this route is not equivalent to that in the case of the appeal.

Assize records

62. The Assize records seem to refer to there being a highway of a higher status than footpath existing somewhere in this area in the 1650s; the Council do not dispute that there was a public highway. However, the highway is not

¹ Definitive Map Orders: Consistency Guidelines, The Planning Inspectorate.

sufficiently described so as to identify it as being along any part of the claimed route.

63. The appellant correctly quotes some of the descriptions of the route from the various documents but it appears that the highway referred to is likely to be north of the claimed route 'over a place called Kellbrook Moor' or to the south 'at a place called Great Edge'. It is submitted that there is nothing to indicate that the highway is along the line of any of the claimed route. The deduction that the appeal route is a highway pre dating 1618 is not based on sufficient evidence.
64. The agreement to resolve controversies between various local owners in 1663 dealt with a private way; the documents from 1664 refer to private rights. Without further evidence it may equally be the case that this private route is part of, or perhaps all of, the appeal route. The landowners agreed to enter and leave Pike Edge Pasture at a particular point and continue along the north side of the hill; this would perhaps indicate the line of the appeal route and may account for the apparent physical existence of a route.
65. It is suggested that a highway of 1650 would be shown on early county maps but there is no evidence from such maps.
66. The claimed route is recorded on the tithe maps and 1910 Finance Act but again this is insufficient to indicate that the claimed route was known to be a public highway by the nineteenth century.

Shawhead Estate plan 1752

67. The Council notes that this document has not previously been considered and points out that such evidence should be discounted from the appeal process. The 1752 Shawhead Estate plan shows some kind of a route running across a line F-V. However, the route is shown as continuing northeast at point F into Yorkshire and this is not the claimed route. The Council submits that it is difficult to claim that the appeal route is the route of an old highway when in 1752 there was no route (F-E). The suggestion that points 'a' and 'b' on the 1752 plan are gates referred to in 1655 is without foundation; they are clearly points from which the measurement of 52 perches is taken.

Honor of Clitheroe 1804-1810

68. This map shows the section of route A-B as a road but the appeal route is not shown. Coloured lines on the map along part of the route are identified in the key as boundaries of divisions of land and do not relate to the claim.

Thornton inclosure 1825

69. Although the inclosure map relates to land in Yorkshire a short length of the route is shown in the vicinity of point B and is named Moor Lane. The land to the south of Kelbrook Moor to be inclosed in Yorkshire, over which the claimed route passes, is referred to in the award as 'open common in the County of Lancaster'.

Greenwood 1818, Hennet 1830

70. Only the section A-B is shown on the Greenwood map and is shown in the key as a cross road. The appeal route is not shown. Hennet's map shows the route in the same way as Greenwood.

Colne tithe 1842 and Foulridge tithe 1842/45

71. The tithe map evidence shows the route as an enclosed track along about half of its length. The part of the claimed route in Foulridge is not shown in private ownership and could therefore be regarded as part of the public highway network but only part is denoted 'Road'. In contrast 80% of the route in Colne is in private ownership, only 33% of the route in private ownership is described as a road or lane. These sections do not join with each other to form a through route.

Plan and Survey of Township of Colne c. 1843

72. The plan is an unsigned draft and its purpose is not known. The survey is not thought to provide any more information than the tithe schedule.

Survey of Township of Colne 1844

73. The map is very similar to the Colne tithe map of 1842. The claimed route is shown in the same way as on the tithe map with the same numbers used for fields and other plots. There is no field book to explain the numbering. None of the claimed route is depicted by double or single dotted lines to denote footpath or open road as identified in the key. As with the tithe map some sections are bounded on both sides by solid lines and therefore may be depicted, in accordance with the key as a '*bye or cross road*'. It is not clear what this term means but it presumably was more than a footpath and would therefore have been useable on horseback at least.

Ordnance Survey 1857 Old Series

74. It is agreed that this map shows the claimed route between point A and C. The section B-C has a boundary to the south side and it is agreed that the route extends to G1.

Plan of Copy House and Shawhead Estate 1872

75. The map shows that Copy House has been built on the line of the route shown on the plan of 1752. If the route shown on the 1752 plan was an old public route then it is unlikely that it could be disrupted and diverted to allow a property to be built across it. There is a clear distinction in the mind of the surveyor between a 'road' and 'cart road' but this is not explained. There are clearly gates on the route.

Sale Particulars and Plan of Copy House and Shawhead Estates 1873

76. The Shawhead Estate was clearly a large plot of land being split up and sold separately. If the claimed route was public there would have been no need to grant lot 14 a right of road over lot 13 to reach the highway leading from Colne to Skipton; this was clearly done.

77. The highway shown on the plan of lot 13 is clearly described as the highway 'from Colne to Skipton'. Although it is accepted that lots 13 and 14 are described as if it is lot 14 which is contiguous to the old highway it is submitted that it is lot 13 which lies contiguous and next to the highway. It is suggested that a mistake was made in describing 'the latter' plot being contiguous to the highway instead of the 'former' plot.

1910 Finance Act

78. Maps prepared under the 1910 Finance Act show that all the claimed route is in private ownership with the exception of the section A-U. The length U to the Foulridge/Colne boundary is shown to be in the ownership of Foulridge Parish Council.
79. In relation to the specific hereditaments, number 7064 was clearly not considered to be a public highway because the route is not outside any hereditament. The roadway is stated to be through the land from Earl Hall to Copy House Farm and this indicates a private route. In respect of hereditaments numbered 6119, 6121, 6122, 6123 and 6127, the field books show that the deduction for public routes are for footpaths only. There is no mention of a public route with a higher status.

Photographic evidence

80. The Council notes the photographs submitted by the appellant, some of which were included with the original application. It is the case of the Council that there are indications on the ground of a track on parts of the appeal route. However, evidence of terrain and field markings does not usually provide evidence of public or private status.

Geological and topographical evidence

81. The Council notes the documents submitted on geology and local history but concludes that they cannot provide sufficient evidence from which to infer the dedication of a bridleway.

Conveyance 1956

82. The plan attached to the conveyance shows the holding for Harwes Farm; rights of way, some of which are along the claimed route, are coloured. The written extract from the conveyance refers to these as being private rights however, the plan does show D-E as part of a bridleway but this does not continue to F-V. It is suggested that a private conveyance is not showing public rights.

Conclusion

83. If the claimed route is the line of an old, long used, highway referred to in court records of 1655 why is the route not shown on pre-Ordnance Survey county maps. The location of Jepp Causey is unknown. If the claimed route is the line of an old highway why was the route not shown on the plan dated 1752 and why and how could Copy House be built over it.
84. The Council submits that when the evidence is considered as a whole it is insufficient to infer the dedication of the route for the public on horseback.

Conclusions

Introduction

85. In considering the evidence reference is given (in square brackets) to earlier paragraphs where appropriate.
86. The Council refers to the fact that to make an order they would need to be satisfied that a bridleway could reasonably be alleged to subsist. To confirm any subsequent order it would need to show actual dedication of a route along the line claimed [59]. The Council has concluded that the evidence does not show, on balance, that bridleway rights are reasonably alleged to subsist. It appears to me that the test which the Council has applied relates to the tests identified in section 53(3)(c)(i) of the 1981 Act. Whilst this is applicable to the section of the original application route A to B the section B to J (the appeal route) is already recorded on the definitive map with the status of footpath.
87. In my view the correct test to be applied in respect of the appeal route is that provided under section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981. This section provides that an order should be made on the discovery by the authority of evidence which (when considered with all the other relevant evidence available to them) shows that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description. The test to be applied to the evidence is on the balance of probabilities.

Consideration of Evidence

Assize records 1655 to 1665

88. The extracts and transcripts of the Assize papers indicate that on 8 September 1655 a James Hartley was indicted at Lancaster Assizes for the obstruction of a highway. James Hartley is said to be of Shawhead. The highway is described in the papers as '*a common highe way leadinge from the markt towne of Clitherowe in this County to the market towne of Skipton in the County of York att a place called the Great-edge where the people of this Commonwealth have tyme out of mynde used to ride goe & passe with their carte carriage catle & otherwise...*' The obstructions were ordered to be removed and the overseers of the highways within the township were required to ensure their removal. No defence was given to the indictment and an order was made for the removal of the obstructions. James Hartley subsequently removed the obstructions and agreed on 10 November 1655 to make gates large enough for the passage of cart, carriage and packhorse in the places where the obstructing walls had been pulled down over Piked Edge.
89. In 1664 the papers refer to a dispute relating 'to one usuall or private way' between Foulridge and Jepps Causeway and through Pike Edge Pasture being part of the inheritance of James Hartley. An agreement was reached whereby those in dispute were given a right of passage over the way.
90. Papers from 1665 refer to a highway 'for 50 years past' from Foulridge over Kellbrook Moor and the north part of Piked Edge to Jep Causeway leading to the highroad between Colne and Skipton. Reference is made to James Hartley being indicted at Lancaster Assizes and that the gateways on the highway had been chained and subsequently walled up. A William Threfall and a Henry

Rycroft refer to the highway as being such for the past forty and fifty years respectively. Further, reference is made to a highway '*for 40 . 50 . 60 yeres so to be a causey layd there many yeres*'. The way was used '*long before the commons were divided*'. It appears that action was considered to restore access for carts carriages and '*horspacks*'. The papers indicate that James Hartley alleges that he was unable to find the ground allotted to him unless the way referred to lay within that land. Further, that the way was not set out by the commissioners and that he pays Kings rent, '*it being copyhold*'. On that basis he stopped up the way.

91. In my view the Assize papers clearly refer to a public highway for vehicles from Foulridge over Great Edge, Kelbrook Moor and the north part of Piked Edge; these locations can be found on the location plan. The evidence suggests that the highway ran in the vicinity of the appeal route although from the Assize papers it is not possible to determine the exact location. Reference is made to Jepps Causeway and again whilst the specific location is unclear it is apparent that the causeway forms part of the route referred to in the documents. The appellant notes the physical existence of a raised section of the appeal route [22]. Whilst there is nothing to directly support that this forms part of Jepps Causeway the Secretary of State may wish to note that the location is consistent with the descriptions of the way. The later papers refer to the way existing before the inclosure of the common and there is no evidence to suggest that the inclosure in 1618 [15] had any powers to stop up or divert the way.
92. As regards the later Assize documents and the agreement between James Hartley and others, the way is referred to as a usual or private way. The Council is of the view that the way referred to is private [65]. The appellant considers that the route is privately maintainable [16] and that the reference to private way refers to this liability rather than a private right of way. I do not accept the contention that the reason for his grievance in respect of the way was that he had to maintain the way; there is nothing from the Assize documents to support this [17]. It appears to me that his grievance is based on the fact that he pays rent for land which he cannot use; this does not necessarily mean that the way was a *rationae tenurae* highway. The appellant says, in respect of the 1665 papers, that there is no reference as to how the way is maintained [13]. However, bearing in mind the existence of the way prior to inclosure, the extract of the case cited [15] would suggest that the way was maintainable at private expense. As such this may provide an explanation as to the use of the term private but, in the absence of any clear definition of the term in this context, I am unable to reach any clear conclusion.
93. As regards the reference to the Holmes Chapel Road case [24] whilst this may exhibit similarities in respect of the appeal, in the context of maintenance liabilities, this does not provide any evidence in relation to the location of the appeal route. However, the view taken by the Council in that case provides further support to the contention that the way was privately maintainable and therefore not shown on other records. I note the assertion by the Council that the evidence in the Holmes Chapel Road case different [61] but I am not led to believe that the appellant is reliant on that evidence in support of the status of the appeal route. The appellant uses the case as a comparison in relation to maintenance liabilities.
94. Whilst the Secretary of State may consider that the use of the term private refers to the maintenance liability it should be noted that the agreement

provides for access by a limited number of people and this does not suggest that the way is a public highway. From the description of the way it appears to relate to the same route as identified in 1665. However, given that the agreement relates to a small number of individuals it may very well be the case that the route follows a different alignment to the route of the public highway. In any event I do not accept that an agreement overrides the evidence of the indictment at the Assize Court which clearly refers to a public highway.

95. Further documents from 1665 clearly express a view that the route referred to in the Assize papers is a public highway which predates the inclosure of the area. The appellant points out that the inclosure of the common would not have resulted in the stopping up of the way [15] and in my view no evidence has been put forward to suggest that any inclosure would have done so. The Council appear to accept, by reference to the Regulatory Committee Report that there has been no closure of the route [26].
96. The evidence suggests to me that a public highway ran from Foulridge over Great Edge, Kelbrook Moor and Piked Edge and Jepps Causeway and that this is in the vicinity of the appeal route.

Thornton Inclosure Map 1825

97. The section of the claimed route U to B1 is shown on the map as Moor Lane and shows a section of route at U2. This map shows the physical existence of these sections of route at the time of any survey. However, in the absence of any award, no conclusions can be reached as to the status of the way, noting that the land falls outside the area to be inclosed. Similarly it cannot be said that the whole route identified is called Moor Lane [29] there is no evidence to support this. As regards the section E – F this may show the southern boundary of the claimed route but again no conclusions can be reached as to its status.

Foulridge tithe 1842 to 1845

98. The Foulridge tithe documents show part of the claimed route including a section outside Foulridge Township. Plot number 602 is recorded as 'Lane and Waste' in the section of the apportionment relating to roads; no tithe is charged and the land is not occupied. The Council accepts that part of the route in Foulridge could be regarded as part of the road network but that not all is recorded as such [72].
99. In my view the Foulridge tithe records show the section of the claimed route from B to U2 as a lane and is recorded in the apportionment along with other public roads. However, this does not necessarily mean that the way was considered to be public. The tithe evidence needs to be considered in the context of all of the other evidence.

Colne tithe 1845 to 1846

100. The section of claimed route U2 to D is identified in the schedule of roads as a 'Road adjoining no. 2322'. The section E to F is shown as a walled lane and not subject to tithe. V to W is numbered plot 2345, W to G 2350 and G to G1 2371. These plots are recorded as being occupied and referred to as 'road', 'Cow Lane' and 'road' respectively. I note that these latter plots are identified as land at Piked Edge. The remainder of the claimed route is shown as being occupied and described as pasture.

101. Again, as outlined above, the reference to the route as a road or lane does not necessarily mean that the way is public. It is noted that sections of the route have occupiers and this does not in my view support the existence of public rights. Neither does this disprove the existence of public rights since such rights could exist over private land [35]. As regards the remaining sections identified as pasture, as suggested by the appellant [39], it may very well be the case that a road, public or private, is not identified because its existence had no effect on the titheable lane. The absence of any reference to a road, or the existence of a continuous route [72], does not disprove the existence of public rights; tithe awards were not primarily concerned with public highways, and any maintenance liabilities, but with the raising of tithes. The evidence from the Colne tithe needs to be considered in the context of all other available evidence.

Map of Township of Colne by John Greenwood 1844

102. This map shows the appeal route in a similar fashion to the Colne tithe [36]. Township plans were prepared for assessments for the poor and highway rates [35]. The appellant does not reach any specific conclusions on the map. In my view whilst the maps show sections of the claimed route, which are identified as roads in the survey, there is no indication as to whether the roads are public or private. However, as with the tithe records, the absence of a route does not disprove the existence of public rights. The Council notes that sections of the route are shown on the Greenwood map of 1844 as 'bye or cross road' [73]. This term might suggest that the surveyor thought the way was a public highway but the map on its own does not demonstrate such rights and needs to be considered in the context of the other evidence.

1872 Plan of Copy House and Shawhead Estates

103. The plan for Copy House shows the appeal route annotated 'cart road' and is described in the schedule as a road. As regards the suggestion that the property has been built on the road [76], whilst the map does appear to show the property on plot 5 referred to as a road in the schedule, the schedule also identifies a plot 3 which is identified as 'House, Barn, Yard, &c'. There appears to be a clear distinction between the property and the road although there is a discrepancy in relation to the numbering of the plots. In any event the appeal route itself has not been built over and remains available through the yard. The plan shows the physical existence of a cart road. It is recognised that there are gates over the route [75] but this does not preclude the existence of public rights.

104. The plan of the Shawhead Estate shows a road passing the western side of Shaw Head (identified on the location plan as Jerusalem Farm). The road continues to the Colne to Skipton road. The appellant does not reach any conclusions on this plan [31] and I note that the document does not relate to any part of the claimed route. The map does however suggest a division of the Keighley road from the appeal route [14].

Sale particulars and plan of Copy House and Shawhead Estates 1873

105. The sale particulars reserve a right of road across lot 13 for the owner of Lot 14 over the cart road leading to and from the Colne - Skipton highway [32]. The Council suggests that to grant a right was unnecessary if the claimed route was public [77]. Whilst I note this proposition, if the occupier of plot 14 wished to

access the main highway from Colne to Skipton then a right of access would be needed over plot 13. This does not demonstrate that the claimed route is not public only that a right of access would be required over plot 13.

106. As regards the contention that a mistake was made in identifying the Lot numbers [78], it should be expected that sale particulars are prepared with some degree of accuracy [34] in depicting and providing information on properties to be sold. Some weight should therefore be given to this evidence which refers to lot 14 lying contiguous to the 'old highway' leading from Colne to Skipton. It is also noted that the details relating to lot 13 refer to a highway rather than 'old highway', there appears to be a distinction between the two highways. In relation to whether or not the 'old highway' and therefore the claimed route is contiguous with lot 14, I do not think that the term necessarily means that the road has to be next to the plot. In my mind, contiguous could equally relate to a route running through the lot. On balance the evidence suggests that the old highway, and therefore the claimed route, passes through lot 14. Lot 14 shows the claimed route (E-F-V) and the section E-F is listed as a road in the sale particulars. It is not clear from the sale particulars that the 'old highway' is the route recorded as a road.

Pre Ordnance Survey County maps

107. The Honor of Clitheroe map 1810 shows the majority of the route originally claimed from point A to approximately point B, the remainder is not included. Similarly the maps of the County Palatine of Lancaster produced by Greenwood [30] and Hennet [32] (1818-1829) show the initial section as a cross road but not the appeal route. The maps do not assist in determining the status of the route but the absence from the maps does not preclude the route from having a public status. It may very well be the case that the route was not shown because it was not accessible by carriage at the time of the survey [58] or did not exist as a feature which the surveyor wished or was required to record.
108. The appellant refers to Stocking's map of 1828 and the Council's interpretation of other Pre Ordnance Survey maps [58]. I revert to comments made in the above paragraph.

1910 Finance Act plans

109. With the exception of the section A to U (part of the original application) the route is not excluded from the adjacent hereditaments. In the absence of the field books, considered below at paragraphs 122 and 123, no conclusions can be reached as to the status of the way. However, the fact that the way is not excluded from the adjacent hereditaments does not disprove the existence of public rights [80] only that the land was included in the hereditament and therefore subject to tax.

Ordnance Survey maps

110. The 1844 map shows sections of the appeal route as a cross road [54]. Whilst the appellant considers that the double dotted line may indicate the line of a causeway I think it could equally depict a surfaced section of the route between verges. Nevertheless I do not think these features are mutually exclusive in the way that they may be shown. The 1844 map shows the appeal route to be just to the north of Piked Edge. The 1848 map again shows sections of the route F-H as a fenced or unfenced track and from point H as a single dashed line. The

1894 map shows the route in its entirety as a fenced or unfenced track, the section H – J is annotated '*f.p.*'. This indicates a route suitable for pedestrian traffic but does not provide any distinction as to whether or not those rights are public or private. The 1857 map also shows sections of the appeal route as a cross road. The map of 1912 shows the route in the same way as the 1894 map.

111. The maps show the physical characteristics of the route at the time of survey subject to limitations provided by scale. The maps do not by themselves provide evidence as to the status of the way. The depiction of the route as a cross road may indicate a public highway but this evidence needs to be considered in the context of the other evidence.

Conveyance 1956

112. The plan accompanying the conveyance shows the section of the claimed route as being coloured. The written conveyance is not submitted although the Council say that these refer to the ways as being private [83]. In the absence of all the documentation no conclusions can be drawn as to the significance of the colouring. It should be noted that conveyances are drawn up to establish property rights and are not generally concerned with rights of the public. The evidence before me does not assist in determining the status of the way.

Photographic evidence

113. The photographic evidence shows the physical characteristics of the way and it is accepted by the Council that the photographs give an indication, in parts, of a track [81]. However, as suggested by the Council, photographs do not usually provide evidence of the status of a route. The Secretary of State may wish to note that not all of the photographs submitted by the applicant were originally submitted with the application. However, no distinction is made between the photographs. In view of my conclusions in respect of the photographs, the fact that new photographs have been submitted does not alter that conclusion.

Conclusions on documentary evidence

114. Looking at the evidence as a whole the Assize papers provide clear evidence of the existence of an ancient highway from Colne to Skipton. From the description of the route provided by the papers the route is shown to cross an area of land in the vicinity of the appeal route. There is nothing to suggest that such a route has been stopped up. The sale particulars of 1873 refer to the old highway between Colne and Skipton and on balance the evidence indicates that the route passes through the land to be sold. The tithe records refer to a road and part of the route in Foulridge is listed amongst other public roads. Other sections are not subject to tithe although it is accepted that certain sections of the route are occupied but these are identified as a road. The Colne tithe identifies the route as crossing Piked Edge. Part of the route is identified in the schedule of roads and other sections are identified as road. The Township map provides similar evidence to that of the tithe. The Greenwood map of 1844 identifies the route as a 'bye or cross road' and this, given the existence of a public highway, supports the fact that the appeal route was considered to be a public highway. The Ordnance Survey maps show, to varying degrees, a route corresponding with the appeal route and again the 1844 and 1857 maps describe the way as a cross road. Whilst the route is not shown on pre Ordnance Survey County maps, and not excluded from the adjacent

hereditaments on the 1910 Finance Act records, this does not preclude the existence of any highway.

115. Overall I conclude that the evidence shows the existence of a public highway in the vicinity of the appeal route. Whilst there is no single item of evidence which identifies the exact location of the highway identified by the Assize papers the evidence consistently shows a route along that of the appeal route. There is no evidence to support the existence of any other route along a similar alignment to that described in the Assize papers. On balance the route described in those papers follows the alignment of the route identified by the other evidence. Although none of the evidence, with the exception of the Assize papers, provides clear evidence of a public highway, when taken as a whole the evidence is supportive of the Assize documents. Although I consider the evidence to be very finely balanced it is sufficient to demonstrate, on the balance of probabilities, the existence of a public vehicular highway along the appeal route. As such the route will carry bridleway rights.
116. The Secretary of State may wish to note that section 67 of the Natural Environment and Rural Communities Act 2006 provides that an existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which, immediately before commencement of the Act was not shown in the definitive map and statement, or was shown as either a footpath, bridleway or restricted byway. However, sub-sections 67 (2) and (3) of the 2006 Act provide certain exceptions to the statutory extinguishment of rights for mechanically propelled vehicles.
117. There is no evidence that any of the exceptions apply and therefore any rights for mechanically propelled vehicles will have been extinguished. As such the evidence suggests that the way is a restricted byway.

New Evidence

Plan of Shawhead Estate 1752

118. The plan shows a route running between points F-V and is annotated '*from a to b 52 Perches*'; there is no key to the plan from which any conclusions as to the status of the way can be drawn. The appellant considers that points '*a*' and '*b*' refer to gateways which were obstructed by James Hartley in 1655 and 1665 [27]. In my view there is no evidence to suggest that the lettering shows the existence of a gate or that these were the points which were obstructed. Notwithstanding this, the obstructions took place on the Shawhead Estate on a route from Foulridge to the Colne to Skipton road. In the absence of any other route it is perhaps more likely, although no means certain, that any obstructions were on the route shown. If the Secretary of State is of the view that the obstructions took place on the route shown then this adds weight to the route shown on the plan being part of the old road and therefore the appeal route. There is nothing to support the contention that the figure for the area given equates to the area of land for which James Hartley had to pay rent [27]. It is nevertheless accepted that James Hartley was the occupier of Shawhead Estate as indicated by the Assize papers.
119. The Council makes the point that to the north of point F (point '*a*' on the 1752 plan) the route shown on the plan does not follow the claimed route [68]. Whilst this is the case, as I have indicated above, no conclusions can be reached from the plan as to the status of the route depicted. Furthermore the absence

of the route in 1752 does not disprove its existence; the later map evidence clearly indicates a route on the alignment of the appeal route.

Survey of the Township of Colne and Township plan

120. The survey [40] lists the various plots and the numbers correspond with those on the township and tithe maps. The survey does not provide any additional evidence to that provided by the 1844 township map and the earlier tithe awards. The township plan prepared for the township map of 1844 [41] also shows the appeal route in a similar fashion to the tithe map and again does not provide any further evidence as to the status of the way.

A History of the County of Lancaster

121. The document refers to the old road to Skipton running east from Foulridge [47]; this provides supportive evidence as to the existence of an old highway. However, the evidence does not provide any further information as to its precise location nor does it provide evidence of the dedication of the appeal route [82]. Whilst the entry for Colne refers to a plateau [48] there is nothing from the document that indicates that the claimed route follows this feature. Nevertheless the entry refers to Piked Edge which is referred to in the Assize documents in describing the old highway.

1910 Finance Act Field books

122. None of the appeal route is excluded from the adjacent hereditaments (paragraph 109 above) however, a number of reductions are made for public rights of way. The appellant claims that due to the size of the allowance it is unlikely that the reductions are made purely for footpaths [52]. The Council contends that the field books show the deduction for public routes is for footpaths only [80]. In my view the field book entries show a deduction for public rights of way. However, due to the existence of a number of rights of way in the various hereditaments it is difficult identify which rights of way gave rise to any deduction. The evidence can only show that rights of way passed through the various hereditaments. As regards the size of the allowance [52], whilst it may be relatively large, it cannot be concluded that this was because of a right of way with a greater status than footpath. The size may equally reflect the numbers of public rights passing through the hereditaments. There is however nothing from the field books to suggest that the deductions were only for footpaths. I note the suggestion that the records demonstrate higher rights [52] but the fact that a number of footpaths join the footpath does not mean the way is of a higher status; it could equally be a footpath. The route may also access dwellings but any right of access may be private.

123. The Finance Act field books demonstrate the existence of public rights passing through the same hereditaments as the appeal route but they do not provide evidence as to the status of the way.

Ordnance Survey

124. The appellant includes a number of additional items of Supplementary Evidence relating to Ordnance Survey mapping which I summarise below. Supplementary Evidence 6 and 7 provides background information in relation to the production of Ordnance Survey maps. The appellant does not draw any particular conclusions from this evidence and in my opinion, whilst the evidence provides a

background to Ordnance Survey mapping it does not assist in determining the status of the appeal route.

125. Supplementary Evidence 8 outlines that the disclaimer did not appear until 1888 and that the shading of roads according to their administrative status is evidence of a highway particularly on early maps before 1888. The Secretary of State may wish to note that this is the view of the appellant given as part of the Supplementary Evidence. The Supplementary Evidence adds, by reference to '*The Ordnance Survey of the UK, 1886*' that the annotation of 'F.P.' on Ordnance Survey maps does nothing more than demonstrate the presence of a footpath on the ground whether or not a public right of way.
126. Supplementary Evidence 9 outlines that from 1883 all permanent footpaths, public or private, must be shown and that the term 'F.P.' was used to distinguish between routes traversable by horses and wheeled traffic.
127. Supplementary Evidence 10 provides details of instructions that roads should be shown according to their administrative status [56]. The 1844 circular states 'All metalled public roads for wheeled traffic kept in good repair by highway authority...will in future be shaded.' Further, 'The object of this instruction is to enable draftsman preparing the 1" map to distinguish by proper characteristics between carriage roads, cart track, or disused carriage roads, and also to distinguish between these and bridle roads and foot paths.' The appellant considers that the status of the roads on early Ordnance Survey maps should not be disregarded as a consequence of the standard disclaimer [56] 'The representation on this map of a Road, Track or Footpath is no evidence of the existence of a right of way.'
128. In my view Supplementary Evidence 8, 9 and 10 provides background information in relation to Ordnance Survey mapping. I have already reached a number of conclusions in relation to the Ordnance Survey mapping and there is nothing from the supplementary evidence which alters that view, the evidence supports those conclusions.
129. The 1896-1930 Half inch to one mile road map shows the appeal route as an 'other road' [53]. From Supplementary Evidence 10 it appears that some distinction was made between the various categories of roads. This evidence suggests that since the way is not coloured then the way is considered to be a carriage road, cart road or disused carriage road. However, this does not demonstrate that the way was necessarily public. As suggested in Supplementary Evidence 10 the object of the instruction was to distinguish between metalled public roads and other roads. As regards the effect of the standard disclaimer this does not preclude routes shown on the maps from being public but in any event the purpose of the mapping was to record topographical features and not to establish the status of routes shown on the maps. The 1896-1930 map does not in my view provide any additional support to the appeal but is entirely consistent with the depiction of the route on other Ordnance Survey maps.

Topographical evidence

130. The appellant suggests that the claimed route takes the optimum line, avoiding steep gradients and boggy ground [46]. Appendix 2 of the appellants submissions refer to the use by prehistoric man of routes along ridges and hills. Appendix 3 describes the topographical features of Foulridge and Great Edge.

The map from *The History of the County of Lancaster* (appendix 4) shows the topographical features of the land crossed by the appeal route. This evidence does not demonstrate that the appeal route is public and neither does it provide any information as to its precise location.

The Justice of the Peace, 1776, Richard Burn

131. The document provides details as to the 'Presentment or indictment of highways in general' and indicates that any indictment must show that the way is common to all the King's people. The document supports the fact that the way is considered to be a public highway. The document provides background information in relation to the indictment of highways but the fact that the indictment in 1655 relates to a public highway does not appear to be disputed.

Supplementary Evidence 5

132. The notes attached to the photographs refer to Joseph's Place and Supplementary Evidence 5 provides background as to its location. The appellant makes no submissions on this document and I do not consider that the evidence offers any assistance as to the status or location of the way.

Conclusions on new evidence

133. The 1752 Estate plan shows the existence of the appeal route but no conclusions can be reached as to the status of the route. The Survey of the Township of Colne, the Township plan and 'The History of the County of Lancaster' do not provide any additional evidence as to the status or location of the way. I find that the 1910 Finance Act records are inconclusive due to the number of rights of way which pass through the various hereditaments. It cannot be concluded that any deductions were made as a consequence of vehicular or equestrian rights. The submissions in relation to the Ordnance Survey maps provide a background to the mapping and supports conclusions reached in respect of these maps. As regards the topographical evidence, whilst this provides some background information, the evidence does not evidence the existence of public rights along the appeal route. The 1776 document supports the fact that the way referred to in the Assize documents was a public highway but it is noted that the evidence from the indictment is not disputed.

134. The new evidence does not assist further in determining the appeal but is not inconsistent with the evidence submitted with the original application.

Overall Conclusion

135. For the reasons given above, I conclude that Lancashire County Council was not justified in its decision.

Recommendation

136. I recommend that the appeal be allowed and that Lancashire County Council be directed to make an order to add a bridleway along the alignment B to J as identified on the plan appended to the Regulatory Committee report dated 9 May 2007.

137. The Secretary of State will note that, whilst the appeal was in relation to the existence of a bridleway, the evidence suggests that the way should be recorded as a restricted byway. The Secretary of State may wish to consider

whether or not it is appropriate for the Council to be directed to make an order for a restricted byway.

Martin Elliott

Inspector