

Applicant's Statement of Case

**Ribble Valley (Footpath 3-45-FP51) Diversion Order 2023
(Ref: ROW/3322263)**

Land off Mitton Road, Whalley

On behalf of Prospect Homes

Date: December 2023 | Pegasus Ref: P21-1340/R003v4

Author: GL



Document Management.

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1. Introduction

- 1.1. This Statement of Case has been prepared on behalf of Prospect Homes ('the Applicant'), in respect of the following Footpath Diversion Order made by Ribble Valley Borough Council ('the Order Making Authority') under section 257 of the Town and Country Planning Act 1990:

"Ribble Valley (Footpath 3-45-FP51) Diversion Order 2023"

- 1.2. Prospect Homes applied to Ribble Valley Borough Council on 19th October 2022 for an order to divert the above footpath to enable their approved residential development to be delivered (Planning Permission reference: 3/2021/0076).
- 1.3. This Order was made by Ribble Valley Borough Council on 3rd January 2023 with notice given to all relevant parties. This process generated three unresolved objections and was therefore referred to the Secretary of State for Environment, Food and Rural Affairs to determine, with a start date of 17th October 2023 and the case reference **ROW/3322263**.
- 1.4. As the Order Making Authority, Ribble Valley Borough Council provided their Statement of Case within 2 weeks of the start date, which was shared with all interested parties. This set out the effect of the order, the background to the case and the Council's grounds for believing the Order should be confirmed.
- 1.5. This Statement of Case sets out Prospect Homes position as the Applicant and landowner to which the footpath diversion relates (required within 8 weeks of the start date). This document fully supports and endorses the Council's position, with additional information and justification as to why the diversion order should be confirmed.

Effect of the Order

- 1.6. As set out on the Notice of Order, and within the Council's Statement of Case (paragraphs 3 & 4):

"The effect of the Order, if confirmed without modifications, will be to divert the entire width of Footpath 3-45-FP51 running 240m from Mitton Road to Pendle Drive (points A to B), 220m from Pendle Drive to Calderstones Drive, except for the footpath alongside Calderstones Drive (points C to I and J to K) and 40 m from the junction in the path to Calderstones Drive, except for the footpath alongside it (points D to F and G to H) and to create an alternative predominantly of tarmac running through the residential access and landscaping of the proposed development from Mitton Road (grid ref. SD 7267 3753) generally south to another point on Mitton Road (SD 7267 3744) and from Mitton Road (SD 7265 3731) generally south to another point on Mitton Road (SD 7267 3712); points L to M (100m) and N to O (200m) as shown on the order map. The width of the footpath shall be 2m."

- 1.7. An extract of the Order Map is provided over the page for clarity.

Figure 1.1 – Order Map



Council's Grounds for the Order to be Confirmed

- 1.8. The Council's Statement of Case (paragraphs 20–26) sets out the grounds on which the Council believe the order should be confirmed, with paragraph 25 concluding:

"In summary, the alternative route is a suitable replacement for the existing footpath that would be diverted by the Order, and the diversion of the path is necessary to enable the development to take place."

Statement Structure

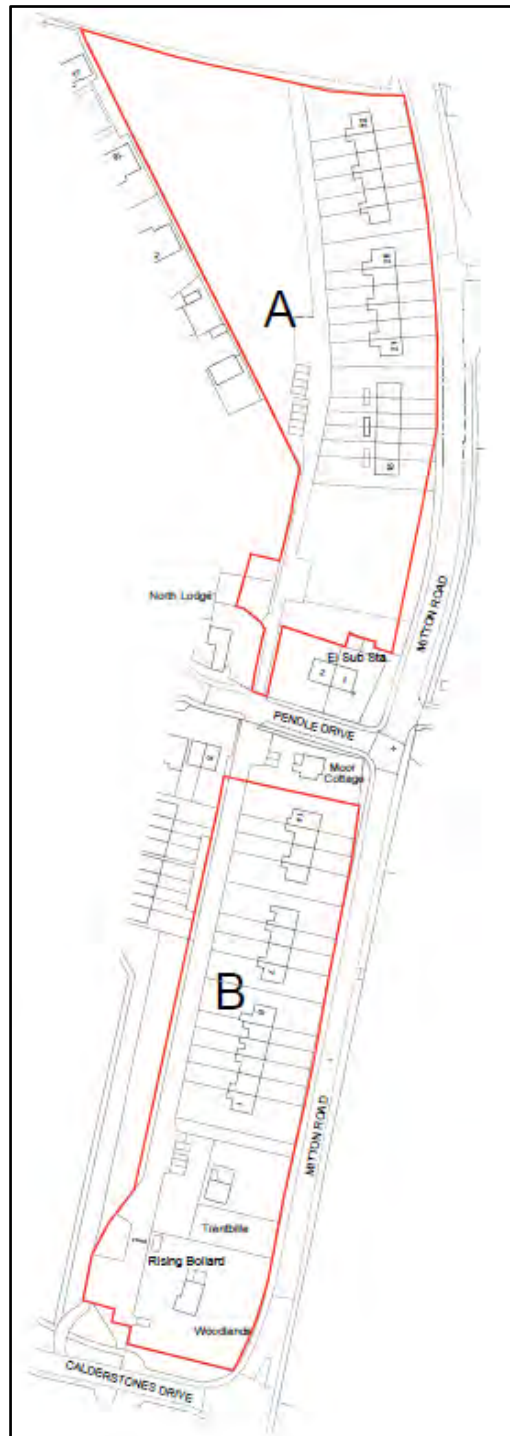
- 1.9. The remainder of this Statement is structured as follows:
- Section 2 – Site Context & Planning Background;
 - Section 3 – The Law;
 - Section 4 – Applicant's Grounds for the Order to be Confirmed; and
 - Section 5 – Conclusions.

2. Site Context and Planning Background

The Site

- 2.1. The Site is lined red on the Order Map at Figure 1.1 and on the Site Location Plan at Figure 2.1 below (as submitted with application 3/2021/0076 and attached at **Appendix 1**).

Figure 2.1 Site Location Plan (as submitted with application)



- 2.2. The site comprises two parcels of land to the west of Mitton Road, Whalley (Parcels A and B above), separated by Pendle Drive. The site formed part of the wider Calderstones Hospital which was redeveloped to provide 34 houses for hospital workers during the 1920s.
- 2.3. This included 18 terraced dwellings (Bridge Terrace) in the northern parcel A, with a triangular area of open land to the rear and a smaller patch to the south. The southern parcel B included 14 terraced dwellings (St Mary's Terrace) and two detached dwellings in the southern parcel B.
- 2.4. By 2020 these houses were largely unoccupied due to a trend of NHS staff no longer wishing to live on site, and had been deemed surplus to requirements by the Mersey Care NHS Foundation Trust.

The Surrounding Area

- 2.5. The site is classed as being within Calderstones, which is a 'Tier 2 Village' in the third tier of Ribble Valley's settlement hierarchy; albeit in reality it functions as a residential suburb of Whalley, which is one of three 'Principal Settlements' in the top tier of the hierarchy (alongside Clitheroe and Longridge) given all of Whalley's shops, schools and other services are within walking distance and there is no material gap between the urban areas.
- 2.6. This suburban residential character is reflected in the fact that the majority of former Calderstones Hospital site has now been redeveloped for housing, with over 300 homes built over the last 20 years (most recently by Taylor Wimpey) and the area now contains over 600 houses in total, which is clearly of a scale associated with a larger and more sustainable settlement; with the hospital now just operating from the southern part of the wider site.
- 2.7. As noted, the shops, schools and services in Whalley are all accessible to pedestrians/cyclists heading south on Mitton Road (or south east on public footpath FP0345009), and these can be accessed via multiple routes from the new housing developments within Calderstones via a combination of adopted footways alongside estate roads and dedicated/standalone footpaths that traverse the areas of public open space, as shown on figure 2.2 over the page.
- 2.8. The site is therefore in a sustainable and permeable location.

Figure 2.2 – Existing pedestrian connectivity within Calderstones



- KEY**
- DMMO Route
 - Alternative Route
 - Public Footpath (FP0345009)
 - Dedicated or Permissive Footpath
 - Footway

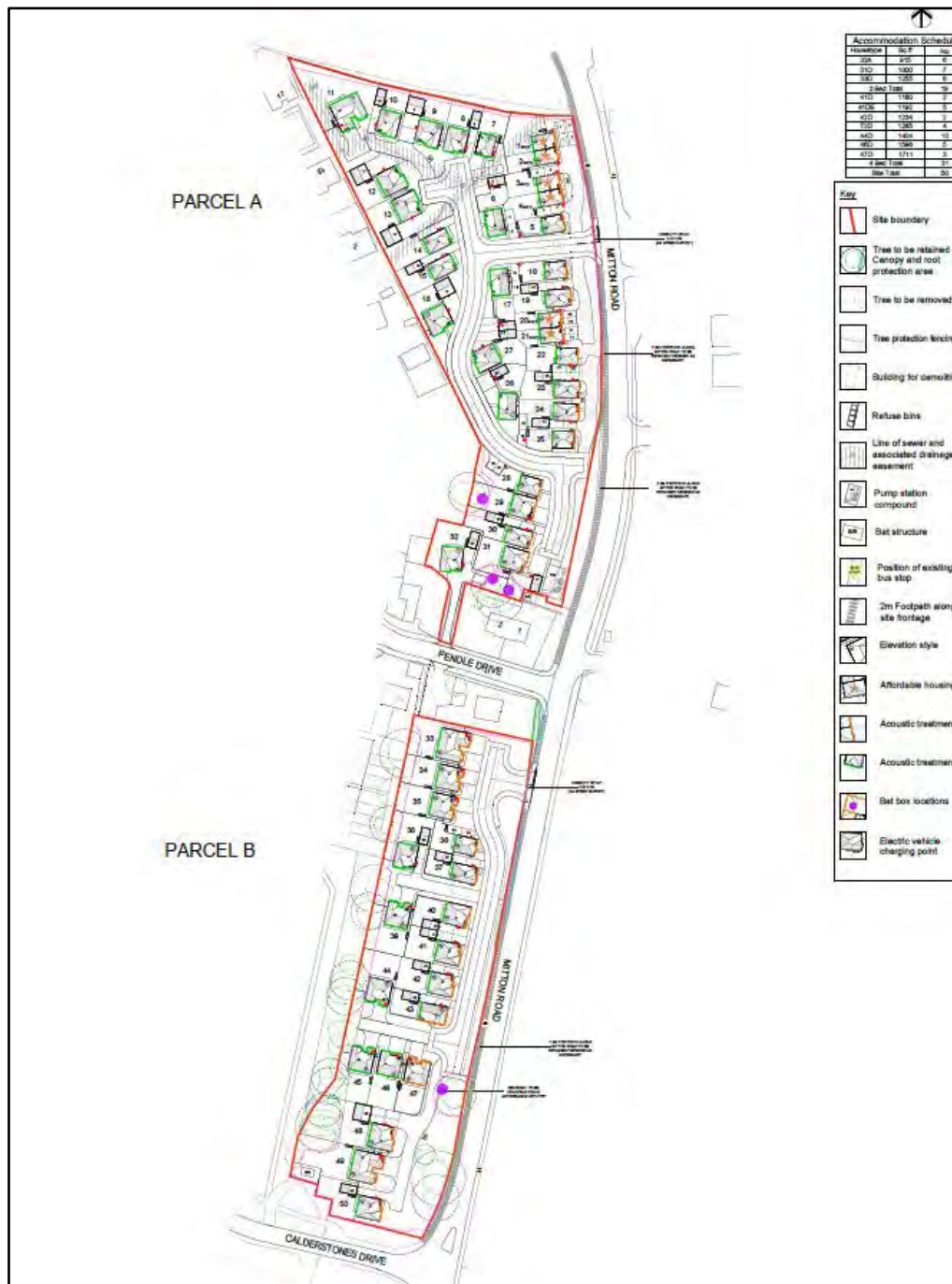
The Planning Permission (January 2021 – February 2022)

- 2.9. During 2020 the former owners of the Site, Mersey Care NHS Trust, marketed the sale of the site. From a number of bidders Prospect Homes was selected as the preferred partner and contracts to acquire the site were exchanged in December 2020. Prospect then submitted a full planning application to redevelop the site on 26th January 2021. The application was registered on 4th February 2021 (Ref: 3/2021/0076) with the following description of development:

“Proposed demolition of 34 existing dwellings and the erection of 50 new dwellings with vehicular accesses, landscaping and other associated works.”

- 2.10. The proposals included a mix of 20 x 3 bed homes (40%) and 30 x 4 bed homes (60%), with 32 dwellings in the northern parcel A, and 18 in the southern parcel B.
- 2.11. The scheme originally included 3 x 3 bedroom affordable units which complied with policy; however this was increased to 6 x 3 bedroom affordable units (comprising 3 x affordable rent and 3 x affordable home ownership) in advance of planning committee on 29th July 2021, to provide additional benefits and overcome concerns raised at the previous committee meeting on 1st July 2021.
- 2.12. The revised scheme was duly supported at committee and was approved on 11th February 2022 once the S106 agreement had been signed. There is thus a valid extant full planning permission for the development which is attached at Appendix 3 to the Council’s Statement of Case. The following approved plans are attached at **Appendix 2**:
- Planning Layout (Ref: MR/W-SJS-PLO1 Rev F) – **Appendix 2a** and extract below at figure 2.3;
 - Boundary Treatment Layout (MR/W-SJS-BTO1 Rev E) – **Appendix 2b**; and
 - Landscape Plans Sheets 1–4 (Ref: 18544B) – **Appendix 2c**.

Figure 2.3 – Prospect approved layout (Ref: MR/W-SJS-PL01 Rev F)



2.13. At the time the planning application went to committee (on 1st July and 29th July 2021), the applicant and Council were aware that a Definitive Map Modification Order (DMMO) application had been submitted to Lancashire County Council to record a footpath through the site and proposed development, with the committee report (Appendix 3 to the Council's Statement of Case) stating at paragraph 5.4.2:

"LCC have received a request to formally designate an existing path to the rear of the terraces as a public right of way. At present the outcome of this is not known but the developer has been made aware of this. It may be that the route would need to be

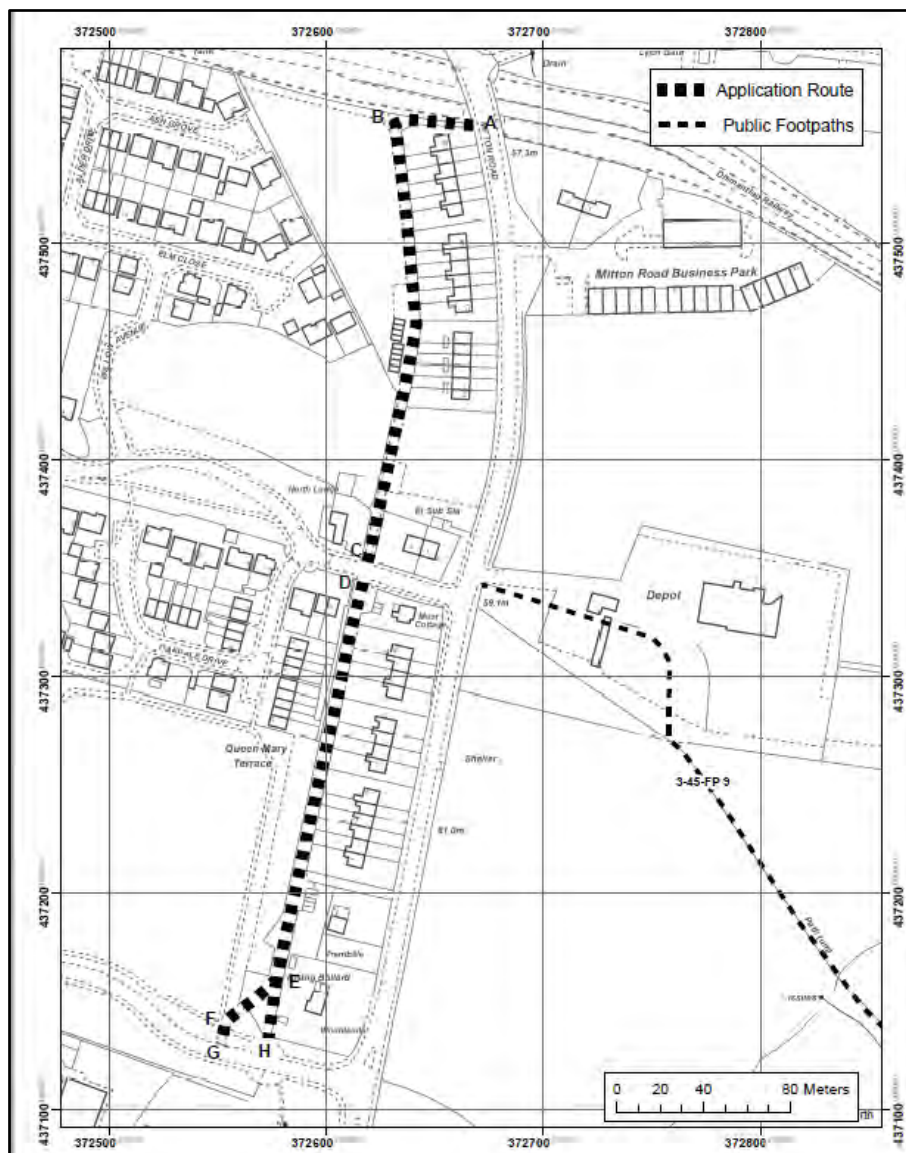
accommodated or diverted. It would appear that a route could be accommodated via Mitton Road or potentially through the site with minor amendments to the layout."

2.14. This confirms an acknowledgment from both Ribbles Valley Borough Council and Lancashire County Council that this DMMO application did not need to hold up the granting of this planning permission as it appeared that an alternative route could be found if required.

The Definitive Map Modification Order (March 2021 – August 2022)

2.15. As noted above, in March 2021 a member of the public submitted an application for a Definitive Map Modification Order (DMMO) under Schedule 14/ Section 53 of the Wildlife and Countryside Act 1981, to record an existing footpath through the site (from Mitton Road to the north west to Calderstones Road to the south). The claimed footpath route is shown below in Figure 2.4 (and attached at **Appendix 3**):

Figure 2.4 – DMMO Application Plan



- 2.16. Whilst both the Trust and Prospect made representations to contest the existence of the claimed route, LCC's Investigation Report detailing its consideration of the DMMO (attached at **Appendix 4**) concluded that the user evidence was sufficient to demonstrate that the footpath had been in consistent use for more than 20 years without any clear action by the owners to prevent use by the public, and this was endorsed by LCC's Regulatory Committee on 10th August 2022.
- 2.17. Accordingly, this route was given the reference **3-45-FP51**, however the actual DMMO Order has been left unsigned/ in draft form by the County Council / Highways Authority with the understanding that Prospect's footpath diversion application was progressing.
- 2.18. For the purposes of the current S257 process, Prospect Homes accept the County Council's conclusions and the existence of footpath 3-45-FP51; as do the other landowners impacted by the existing route, Taylor Wimpey and the NHS (who provide letters of confirmation at **Appendices 5a and 5b** respectively).
- 2.19. It is pertinent that the DMMO process was only concerned with whether this existing route had been consistently used, and did not consider the relative merits of any alternative or diverted route.

Footpath Diversion Order Application (October 2022)

- 2.20. On 25 October 2022 Prospect Homes then made an application to divert the DMMO route 3-45-FP51 pursuant to section 257 of the TCPA 1990 to enable their authorised development to take place (see the proposed diversion map, forms and sealed order attached at **Appendix 6**), and included over the page in Figure 2.5 (which duplicates Figure 1.1):

Figure 2.5 – S257 Diversion Order Map



Description of Proposed Diversion

- 2.21. The sealed order identifies the existing route and the proposed diverted route:

“Part 1 – Description of the existing path or way

The entire width of Footpath 3-45-FP51 running 240m from Mitton Road to Pendle Drive (points A to B), 220m from Pendle Drive to Calderstones Drive, except for the footpath alongside Calderstones Drive (points C to I and J to K) and 40 m from the junction in the path to Calderstones Drive, except for the footpath alongside it (points D to F and G to H) as shown on the attached plan.

Part 2 – Description of site of alternative highway

An alternative footpath shall be created predominantly of tarmac running through the residential access and landscaping of the proposed development from Mitton Road (grid ref. SD 7267 3753) generally south to another point on Mitton Road (SD 7267 3744) and from Mitton Road (SD 7265 3731) generally south to another point on Mitton Road (SD 7267 3712); points L to M (100m) and N to O (200m) as shown on the attached map. The width of the footpath shall be 2m.”

- 2.22. As the above measurements exclude sections of both routes that pass out of the site and onto existing adopted highway, Prospect has also measured the full length of each route, including these sections, as displayed in Figure 2.6 over the page. This shows:
- **Existing/ DMMO Footpath route = 472m total** (including 457m within site from points A-B and C-K and 15m outside site crossing Pendle Drive) (Purple Line in Figure 2.6).
 - **Proposed/ S257 Diversion route = 497m total** (including 288m within site from points L-M and N-O) and 209m outside site along Mitton Road, crossing Pendle Drive and along Calderstones Drive). (Blue Line in Figure 2.6).
- 2.23. The proposed alternative route comprises a combination of the existing adopted footway on Mitton Road (209m/ approx 40%), which has been upgraded by Prospect Homes as part of its S.278 highways improvement works required through its planning consent, and a new route through the interior of the site (288m / approx 60%).
- 2.24. The Applicant has measured the total route at 497m, which is 5% longer than the existing DMMO route of 472m, albeit this difference is considered negligible when considered in the context of the wider footpath network (given that this route will only form a small part of the majority of journeys, which will be to and from other destinations in the wider area).¹
- 2.25. The majority of this existing adopted footway section on Mitton Road has been upgraded as part of the S278 works related to the planning permission to 2m wide with a new surface.
- 2.26. The diverted route runs within the interior of the Prospect site and is separated from the main road by landscaping, trees and POS. The route is 2m wide throughout and comprises a mix of estate road footway, shared surface and a more naturalistic section through the

¹ There is no dispute with the distance measurements in the proposed Order, with the minor discrepancies being a result of rounding.

grassed landscaped areas of the site, creating a pleasant and varied route with physical and visual separation from Mitton Road.

Figure 2.6 – Full length of the existing and alternative routes



Assessment of Proposed Diversion

- 2.27. Ribble Valley Borough Council supported the S257 application, with their statement of grounds for making the Order attached at Appendix 5 of their Statement of Case. In short, these confirm that:

“Although the diversion comprises a longer route, it is not significantly different in extent or direction to the existing route. The end effect of the planning permission will result in the footpath running along the estate road of the new development.”

- 2.28. Accordingly, on 3rd January 2023 they made the order to divert footpath 3-45-FP51. Notice of this was then published in the Clitheroe Advertiser and provided to relevant landowners, public right of way interests groups, Whalley Parish Council, utility companies and other interested parties. Copies of the order and notice were also posted on site and on the Council’s website.

Objections to Proposed Diversion

- 2.29. The Council received a total of 8 objections to the making of the Order (7 within the specified time period and one outside).

- 2.30. Five of these were subsequently withdrawn following further correspondence, including one from the Peak and Northern Footpaths Society; with Prospect proactively engaging with each objector through email exchange with the Council to explain the proposed diversion and alternative routes in more detail (with the relevant correspondence with objectors attached at **Appendix 8**, including a letter and three associated plans²).

- 2.31. However three of the objections remain extant, and the relevant points raised in these are summarised below (and redacted where applicable):

- **Whalley Parish Council (24/01/2023):** Proposed diversion is very close to and rejoins Mitton Road in the middle of the diversion which is a busy/ noisy road (meaning diversion is a futile exercise), where existing footpath took users away from traffic.
- **Resident objection (12/01/2023):** The path is used constantly by children and all residents of the area. It is unsafe to expect a child to use the main road which had regular heavy traffic going to and from the industrial sites.
- **Resident objection (21/04/2023 – received after the deadline for responses):** Existing path is a dedicated route along the rear of Queen Mary and Bridge Terraces, and new route only takes half of it into consideration and is basically walking on the footpaths of the new housing development.

- 2.32. It is these outstanding objections that have required this Order to be referred to the Secretary of State for confirmation.

² Of which one is the Composite Landscape Plan already attached at Appendix 7.

Current Status of Site (November 2023)

- 2.33. Whilst Prospect would have ideally postponed all works until this footpath situation was fully resolved, they took the difficult commercial decision to commence works when the section 257 diversion process began in summer 2022 taking into account that this had the full support of the Borough Council and County Council, and would be concluded before there would be any impact on the existing footpath route.
- 2.34. With Prospect being an SME with just 30 staff and only two live developments the business simply couldn't delay the commencement of works any further, having started the planning process in early 2021 and received consent in February 2022.
- 2.35. Indeed, the timeframes generated by the DMMO and S257 processes have been lengthy, with the original DMMO application under consideration by the County Council for 17 months between 3rd March 2021 and 10th August 2022, due to the effects of the Covid pandemic. The diversion application then took a further 5 months to progress (it was made on 3rd January 2023), then a further 4 months for it to be referred to the Planning Inspectorate (15th May 2023); equating to a total of 26 months.
- 2.36. In light of these delays, the build has progressed closer to the proposed route, however these works have now been halted/ postponed to allow the S257 process to run its course.
- 2.37. In summary, works commenced on site in the summer 2022, and as of November 2023:
- 11 units have been completed, 7 of which are sold and occupied. In selling units on the site, customers have been made aware of the footpath and proposed diversion, which has generally prevented sales from progressing, albeit 2 customers have bought units accepting that they will maintain the existing route through their rear gardens if the diversion is not confirmed.
 - A further 15 are at an advanced stage of build, although works have been halted/ delayed whilst the s.257 application was progressed.
 - Works on most other units on the site have commenced but are at earlier stages.
- 2.38. Therefore, whilst works on site have been underway for some time, it is clear that the development is not substantially complete, with less than a quarter of the units completed, and just 15% of the units occupied. The development cannot be lawfully completed unless and until the footpath is diverted.

3. The Law

- 3.1. The Order was made under section 257 of the Town and Country Planning Act 1990. Section 257(1) provides:

“Subject to section 259, a competent authority may by order authorise the stopping up or diversion of any footpath, bridleway or restricted byway if they are satisfied that it is necessary to do so in order to enable development to be carried out—

(a) in accordance with planning permission granted under Part III or section 293A, or

(b) by a government department.”

- 3.2. Section 259(1) and (2) provide:

“(1) An order made under section 257 or 258 shall not take effect unless confirmed by the appropriate national authority or unless confirmed, as an unopposed order, by the authority who made it.

(2) The appropriate national authority shall not confirm any order under section 257(1) or 258 unless satisfied as to every matter as to which the authority making the order are required under section 257 or, as the case may be, section 258 to be satisfied.”

- 3.3. There is one statutory criterion to be satisfied for the making and confirmation of a s.257 order, namely whether the stopping up or diversion of the public right of way is necessary in order to enable development to be carried out in accordance with planning permission granted (“the necessity test”).

- 3.4. There are two preconditions to that test:

(a) The existence of an extant valid planning permission; and

(b) The extinguishment or diversion is necessary to enable the development to be carried out in accordance with that planning permission.

- 3.5. In determining the latter, the Court of Appeal in *R. (on the application of Network Rail Infrastructure Limited) v Secretary of State for Environment, Food and Rural Affairs* [2018] EWCA Civ 2069 at [25] noted with approval the observation of Holgate J. at first instance:

“The word ‘necessary’ in section 257(1) of the 1990 Act, he said, does not mean ‘essential’ or ‘indispensable’, but instead means ‘required in the circumstances of the case’.”

- 3.6. Further, it was held by the Court of Appeal in *Ashby v Secretary of State for the Environment* [1980] 1 W.L.R. 673 that the development must not have been substantially completed before a s.257 order is confirmed. However, it does not matter that development has already been begun before the order is confirmed nor that the development has already obstructed the public right of way. In *Ashby*, it was accepted that if work on a house, which physically obstructed the highway, was incomplete, then the diversion of the highway was nonetheless “necessary” in order to enable the development to be carried out. Goff LJ stated at [681]:

"If necessary I would say that any further building on the site of the highway, even though it is physically stopped up by what has been done already, is itself a further obstruction which cannot be carried out without an order."

- 3.7. In addition, as the making and confirmation of an order is discretionary, a balancing exercise must be undertaken between the benefits of the order, including the planning benefits arising from the development which will be enabled, and the disadvantages of the order to users of the public right of way ("the merits test"). In doing so, it is not open to the Secretary of State to reconsider whether or not planning permission should have been granted. Instead, it was put as follows by the Court of Appeal in *Vasiliou v Secretary of State for Transport* [1991] 2 All E.R. 77 at [86]:

"He must approach the exercise of his discretion ... on the footing that the issue has been resolved, in favour of the development being allowed to proceed. It is on that basis that he must determine whether the disadvantages and losses, if any, flowing directly from a closure order are of such significance that he ought to refuse to make the closure order."

4. Applicant's Grounds for the Order to be Confirmed

- 4.1. Relevant guidance on the consideration of footpath diversions under S257 is set out within paragraphs 7.14 and 7.15 of the Rights of Way Circular 1/09 (October 2009):

"7.14. Section 257 of the 1990 Act gives local planning authorities the power to make orders to extinguish or divert footpaths, bridleways or restricted byways where it is necessary to enable development for which planning permission has been granted or development by a government department to be carried out. Authorities have no power to make orders for extinguishing or diverting highways carrying rights for motorised vehicles in order to enable development to be carried out. Orders are made by the authority that granted the planning permission or, where permission was granted by the Secretary of State (including a permission contained in a special or general development order, or under an order designating an enterprise zone) or development by a government department, by the authority which in normal circumstances would have granted the planning permission. Note that in Greater London there are detailed variations to the authority to make, confirm and charge for orders under the 1990 Act and its associated regulations.

*7.15 The local planning authority should not question the merits of planning permission when considering whether to make or confirm an order, but nor should they make an order purely on the grounds that planning permission has been granted. That planning permission has been granted does not mean that the public right of way will therefore automatically be diverted or stopped up. **Having granted planning permission for a development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm an order. The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to persons whose properties adjoin or are near the existing highway should be weighed against the advantages of the proposed order (Our emphasis).**"*

- 4.2. In short this confirms that diversion orders need to meet the following tests:

1. **Necessity Test** – to demonstrate that the footpath diversion is necessary to enable a planning permission to be implemented.
2. **Merits Test** – to demonstrate that merits of the footpath diversion and implementation of the associated planning permission outweigh any disadvantages or loss to users of the route.

Necessity Test

- 4.3. It is necessary to divert footpath 3-45-FP51 to implement planning permission 3/2021/0076 as travelling from north to south, the following homes and garages will be partly or fully built over the existing route (as shown on Figure 4.1, over the page, which is a composite Landscape Plan with the existing and proposed diverted routes overlaid, and is also attached at **Appendix 7**):

- Plot 6 – house and garage fully built over route;

- Plot 7 – house fully built over route;
- Plot 8 – garage fully built over route;
- Plot 17 – house and garage fully built over route;
- Plot 27 – house and garage fully built over route;
- Plot 26– house partly built over route;
- Plot 32 – house and garage fully built over route;
- Plot 28 – house partly built over route;
- Plot 39 – house partly built over route;
- Plot 44 – house partly built over route;
- Plot 45 – house partly built over route;

4.4. The gardens of many of these plots would also be significantly compromised if this route was to be retained.

Figure 4.1 – Composite Landscape / Footpath Route Plan



Merits Test

- 4.5. The section 257 process is not a means to re-assess or re-litigate the merits of the granting of the original planning permission. The merits of doing so cannot be questioned. Moreover, the benefits arising from the implementation of that permission (Ref: 3/2021/0076) are an important consideration within the merits test.

Advantages of the implementation of the Planning Permission

- 4.6. The original planning committee report concluded at paragraph 6.1:

“The proposal presents a sustainable form of development which will contribute to housing supply within the district and for the reasons in the appraisal having regard to local and national planning policy.”

- 4.7. Based on a review of the wider committee report and the supporting Planning Statement, this permission will generate the following specific benefits:

- 44 new market homes (and a net uplift of 10 on the existing 34), which will contribute to the Borough’s housing supply.
- 6 new affordable homes (37.5% of the 16 unit net uplift) in a mix of tenures (3 x affordable rent, 3 x shared ownership), which will help meet local affordable need.
- A wider range of house types and sizes (3 and 4 beds across 9 house types) including 6 M4(2) accessible and adaptable homes.
- Higher quality housing, with attractive, modern, energy efficient homes replacing the existing dilapidated 1920s built terraces.
- Efficient use of land, redeveloping previously developed land and increasing density, whilst still providing policy compliant levels of amenity space.
- A capital receipt for the Mersey Care NHS Foundation Trust to reinvest in healthcare.
- A financial contribution of (£9,977.40) via S106 agreement for improvements to off-site recreation/ connectivity around the site.
- Upgrades to the adopted footway on Mitton Road fronting the site via S278 agreement.
- Construction jobs and investment, with an estimated 144 temporary jobs generated on-site and in the wider economy during the construction phase, and over £8.4million in economic output (measured in gross value added) for the regional economy over the same period.
- Increased household expenditure. Once built and fully occupied, the households will generate expenditure in the region of £1.34 million per annum, with a substantial proportion to be retained within Ribble Valley. The dwellings are also expected to generate £250,000 in first occupation expenditure over an 18-month period and over £93,000 per annum in additional Council Tax revenue for Ribble Valley Borough Council.

- 4.8. Accordingly, it is clear that the implementation of the planning permission facilitated by the proposed Order will generate very significant advantages and planning benefits.

Advantages of the proposed diversion

- 4.9. As noted in section 3 and shown on Figure 4.1, the proposed diversion comprises a combination of the existing adopted footway on Mitton Road & Calderstones Drive (209m/ approx 40%) and a new diverted route through the interior of the site (288m/ approx 60%), totalling 497m.
- 4.10. Running north to south the route runs as follows:
- Point A – L (circa 30m) runs along the Mitton Road adopted footway, surface is recently upgraded tarmac, 2m width throughout.
 - Point L – M (100m) diverts into the site and follows the eastern side of shared drive crossing internal estate road, surface is new tarmac, 2m width throughout. Is separated from Mitton Road by landscape verge up to 5m wide including 6 new trees and a continuous hedge.
 - Point M – N (135m) runs along Mitton Road adopted footway, majority of surface is recently upgraded tarmac, 2m width, reduced to 1.5m width in some sections.
 - Point N – O (190m) diverts into the site and crosses the site access road, following the western footway southwards for circa 125m crossing a shared drive and estate road. Surface is new tarmac, 2m width throughout. Is separated from Mitton Road by internal road and landscape verge (totalling 7–9m separation) including 11 new trees and a continuous hedge. Route then runs as a standalone path for circa 65m through an area of landscaping/ POS before linking to the far south east boundary. The surface is grass, 2m width throughout and is separated by landscape verge between 7–9m including 3 further trees along with additional hedge and shrub planting.
 - Point O – H (45m) runs west along the Calderstones Drive adopted footway, which is separated from the carriageway by grass verge circa 20m along. Surface is tarmac, 2m width throughout.
- 4.11. This demonstrates that the majority of existing footway section has been upgraded as part of the S278 works related to the planning permission to 2m wide with a new surface.
- 4.12. The diverted route runs within the interior of the Prospect site and is well separated from the main road by landscaping, trees and POS (with an average separation distance between 5 and 9m). The route is 2m wide throughout the site and comprises a mix of estate road footway, shared surface and a more naturalistic grassed path through the landscaped areas of the site, creating a pleasant, safe and varied route with physical and visual separation from Mitton Road.
- 4.13. Whilst this diverted route is marginally longer (5%) than the existing route which measures 472m, this will have a negligible impact on the majority of pedestrian journeys, as many of these will start and finish at other destinations in the wider area, with this route only forming a small part of that overall journey; with others only using part of the route (i.e. passing through the northern or southern section to/ from Pendle Drive or footpath FPO345009 in the centre of the site).

- 4.14. Notwithstanding this, the diverted route is considered a better/improved route in qualitative terms for the following reasons.
- 4.15. Firstly, this route will also pass along the frontage of a modern outward facing development with good natural surveillance and secured by design features, whereas the existing route ran along the rear access road of a 1920s estate and would also run to the rear of the authorised development with less surveillance making it less safe.
- 4.16. Secondly, the proposed route is a dedicated footpath which is a consistent 2m width throughout the diverted sections ensuring safety for users, whereas the majority of the existing route was an unadopted road of varying width providing access and parking with no defined footway, generating potential conflicts between pedestrians and road users.
- 4.17. Thirdly, the proposed route comprises a mix of surfaces and passes through areas of landscaping and POS creating a more pleasant and varied route than the existing rear roadway, whilst still maintaining a good level of distance. Whilst it is acknowledged that the rear roadway benefitted from trees and landscaping to the west, this is principally the existing mature trees and areas of open space associated with the adjacent park and wider Calderstones Estate which can still be enjoyed via the existing footpath routes as shown in Figure 2.2.
- 4.18. Therefore, it is the Applicant's position that the proposed diversion is advantageous to the existing route, and when combined with the substantial benefits of the planning permission, and the existing alternative routes/ general permeability of the wider area, these merits significantly and demonstrably outweigh any perceived harm to users of the original route.

Response to objections

- 4.19. In addition to the evidence and justification provided above, this section responds to the specific concerns raised within the outstanding objections as follows:

- **Parish Council**

Comment: Majority of diversion is alongside Mitton Road which is busy/ noisy.

Response: Only 209m of the diverted route directly adjoins the adopted highway, with circa 165m on Mitton Road itself (33%). The majority of the Mitton Road footway is 2m and has been widened/ upgraded where possible to a new higher quality flat surface. The remainder of the diverted route (288m) is within the site separated from Mitton Road by POS and landscaping, including a continuous hedge, to create a pleasant route for its users (with a separation distance between 5 and 9m from the road). There are also several other footpath options within existing network to avoid Mitton Road, particularly on the southern section (points C-H&K) as shown in Figure 2.2 above. Furthermore, the existing path was in fact primarily roadway without any dedicated or marked footway and had potential for more conflict with vehicles.

- **Local Resident**

Comment: Path is constantly used by children and others so is unsafe to use the main road, which has heavy traffic from industrial sites.

Response: As above, only 209m directly adjoins the adopted highway, with circa 165m on Mitton Road itself (33%). The majority of the route (288m/ approx 60%) is within the site and separated from Mitton Road by landscaping including a continuous hedge. There are also several other footpath options within existing network that can be used to further avoid Mitton Road. The existing path was in fact primarily roadway without any dedicated or marked footway and had potential for more conflict with vehicles. The dangers to children using the previously enclosed and out-of-sight route will be greatly reduced by the openness of the alternative route offering greater natural surveillance from the new houses.

- **Local Resident**

Comment: Diversion is basically walking on footpaths of new housing development.

Response: The existing path was predominantly (circa 90%) tarmacked roadway that ran to the rear of the original houses located on the site. The diverted route will cross over a series of new footpaths with high quality surfaces, often separated from Mitton Road (for 288m) and even internal estate roads (for circa 170m, with 100m on shared surface private drives and 70m on a grass) by landscaping and POS, creating a pleasant walking environment.

- **Local Resident**

Comment: Existing path was dedicated route and took users away from traffic.

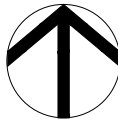
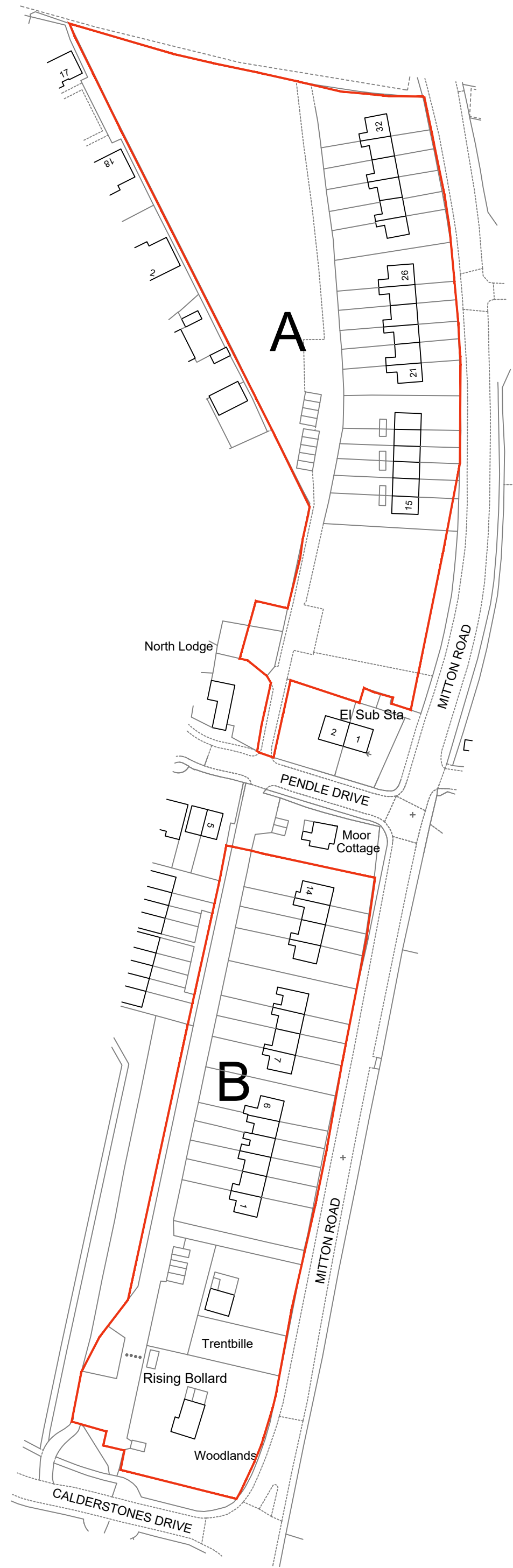
Response: other than section A-B to the north of the site, the remainder of the existing path (circa 430m) was an existing unadopted roadway providing vehicular access and parking to the rear of Bridge Terrace and St Mary's Terrace without any dedicated/ marked footway, so whilst it was largely separated from Mitton Road and other through roads, it had the potential to generate conflicts between cars and pedestrians.

5. Conclusions

- 5.1. This Statement of Case has been prepared on behalf of Prospect Homes in relation to the **"Ribble Valley (Footpath 3-45-FP51) Diversion Order 2023"** made under section 257 of the Town and Country Planning Act 1990 and currently under consideration by the Secretary of State, due to objections raised to the Order.
- 5.2. This Statement of Case sets out Prospect Homes position as the Applicant and landowner to which the footpath diversion relates and fully supports and endorses the Council's position as the Order Making Authority, with additional information and justification as to why the diversion order should be confirmed.
- 5.3. This statement has categorically demonstrated that the proposed diversion meets the necessity and merits tests, as set out in Circular 01/09.
- 5.4. In respect of the necessity test, it has been demonstrated that it is necessary to divert footpath 3-45-FP51 in order to complete the implementation of planning permission 3/2021/0076 as several of the approved homes and garages will be built over the existing route.
- 5.5. In terms of merits, it has been demonstrated that the implementation of the extant planning permission will deliver substantial benefits, which combined with the general permeability of the wider area would outweigh any perceived harm to users of the original route.
- 5.6. Notwithstanding this, it is the Applicant's belief that the proposed diversion is actually advantageous to the existing route, as it provides a dedicated footpath route with good natural surveillance and a mix of surfaces and landscaping around it, compared to the previous route which largely comprised the rear access road for the former 1920s terraces.
- 5.7. Finally, this statement has addressed all the points and concerns raised within the outstanding objections to the Order.
- 5.8. Accordingly, for the reasons set out above, we respectfully request that the diversion Order be confirmed.



Appendix 1 –Site Location Plan (from PP 3/2021/0076)



A PLOTS 28-32 ALTERED TO ACCOMMODATE P/S. RED EDGE SJS 02.12.2020
ALTERED TO V5

Rev	Revision History	By	Date
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Client:

Prospect Homes

Site:

Mitton Road, Whalley

Drawing:

Location Plan

Drawing Number:

MR/W-SJS-LP01

Scale:	Size:	Date:
1 : 1250	A2	19/11/2020

Drawn:	Checked:	Rev:
SJS	.	

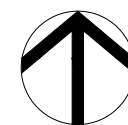
Status:	Planning
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A



Appendix 2 – Approved Plans (from PP 3/2021/0076)



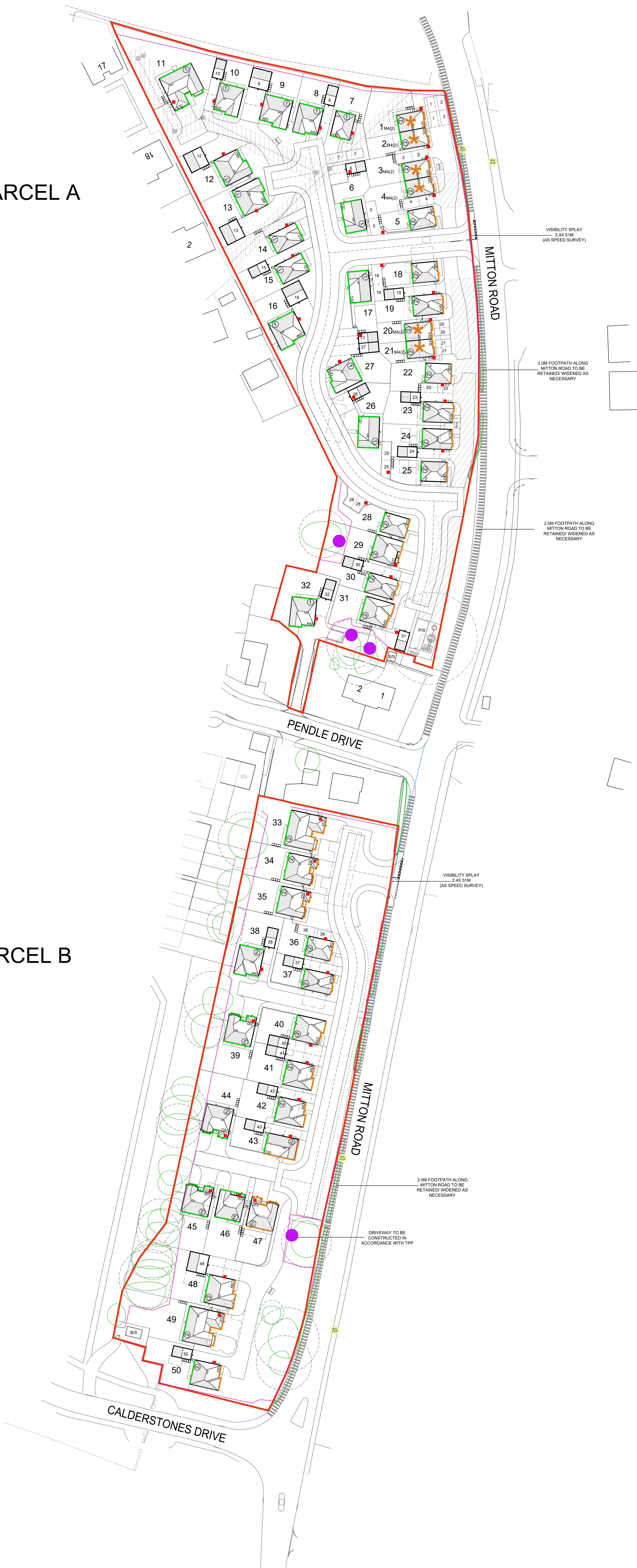
Accommodation Schedule		
Housetype	Sq.ft	No
32A	915	6
31D	1000	7
33D	1255	6
3 Bed Total		19
41D	1180	2
41DE	1192	5
42D	1234	2
T2D	1285	4
44D	1404	10
46D	1596	5
47D	1711	3
4 Bed Total		31
Site Total		50

Key

- Site boundary
- Tree to be retained - Canopy and root protection area
- Tree to be removed
- Tree protection fencing
- Building for demolition
- Refuse bins
- Line of sewer and associated drainage easement
- Pump station compound
- Bat structure
- Position of existing bus stop
- 2m Footpath along site frontage
- Elevation style
- Affordable housing
- Acoustic treatment 1
- Acoustic treatment 2
- Bat box locations
- Electric vehicle charging point

PARCEL A

PARCEL B





Mitton Road, Whalley


prospect.
HOMES


Part of
Riverside



- 

1.8m high close board timber fence (BT002)
 - 

2.2m high close board acoustic timber fence constructed with a minimum mass of 12kg/m₂
 - 

1.8m high wall and fence detail (BT001)
 - 

1.8m high timber gate

PARCEL B

Mitton Road, Whalley

[illegible]

A. SETTING OUT.

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2. IF THE BED IS SEALED WITH CONCRETE THE CONTRACTOR SHALL INFORM THE SITE MANAGER OR LANDSCAPE ARCHITECT TO DETERMINE IF FOOTINGS ARE EXCESSIVE AND CAN BE REDUCED OR PAVED.

B. GROUND PREPARATION.

1. THE FOLLOWING WORKS SHOULD BE CARRIED OUT TO EXISTING TOPSOIL TO ENSURE IT CONFORMS TO BS 3882 1994. TOPSOIL SHOULD BE FREE FROM ROCKS LARGER THAN 50MM IN DIAMETER, CONCRETE, WIRE, BRICK, ALL ROOTS AND LESS THAN 20% CLAY.

C. PLANTING.

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2. TREES TO INCLUDE 1.6M CHESTNUT STAKE 600MM ABOVE GROUND AND 100MM BELOW THE GROUND AND 1 NO. TREE TIE AND SPACER.

3. TURF TO BE PREMIUM GRADE CULTIVATED TURF.

4. ALL CLIMBERS TO INCLUDE PRESSURE TREATED SOFTWOOD TRELLIS WORKS (1.80 X 1.80M) FIXED TO EXISTING WALLS OR FENCES.

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FOLLOWING PLANTING SUPPLY & SPREAD 50MM OF ORNAMENTAL BARK MIXED CONIFER MULCH 30-50MM PARTICLE SIZE TO ALL PLANTED AREAS. FINISHED MULCH LEVELS SHALL BE NO HIGHER THAN 15MM BELOW GRASS OR PAVEMENT LEVELS TO AVOID ANY SPILLAGE ONTO PAVEMENTS OR LAWNS.
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NORTH IS ASSUMED

Existing trees/hedges

Proposed trees

Specimen shrubs

Ornamental shrubs with bark mulch

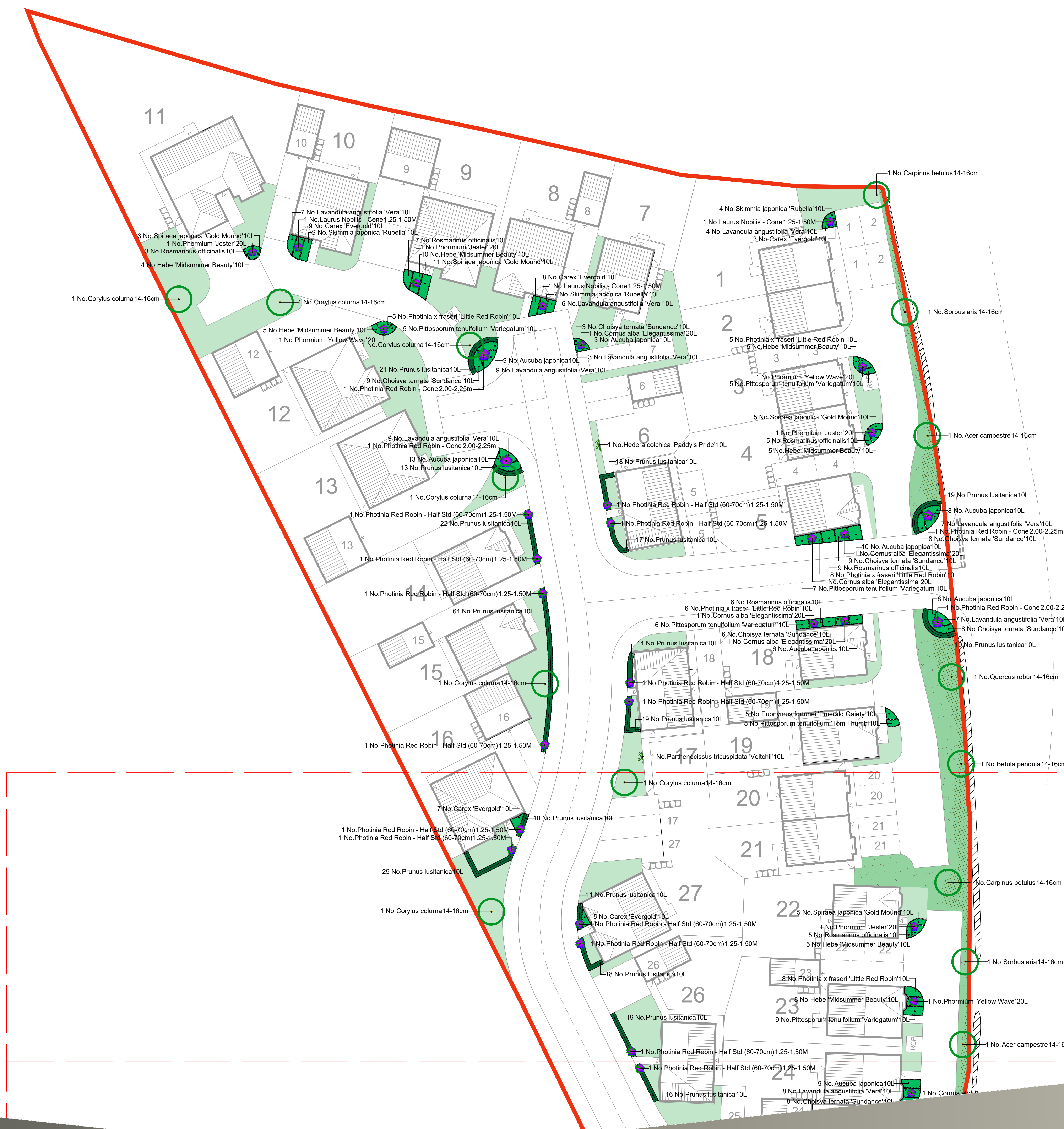
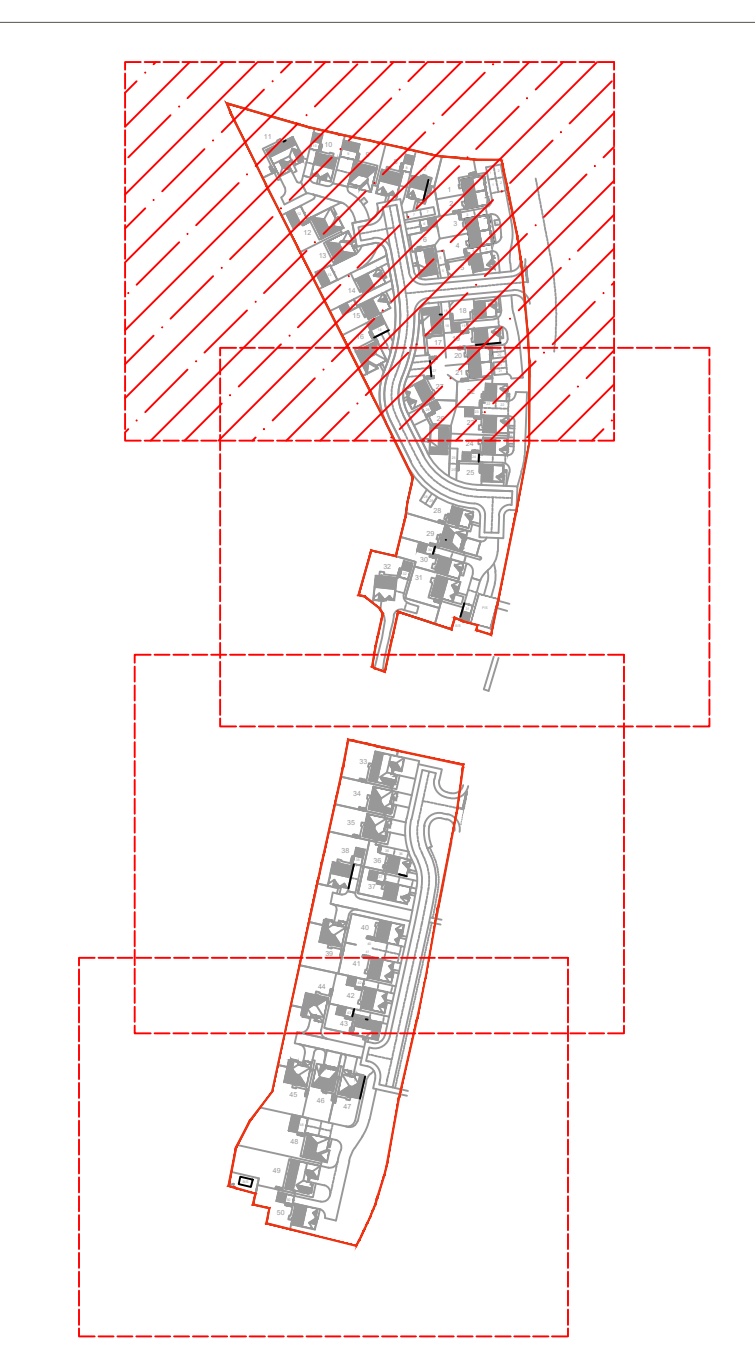
Hedge

Climbers

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Revision			
A	Scheme adjusted to new layout	JW	11.12.20
B	Scheme adjusted to new layout	JW	11.05.21



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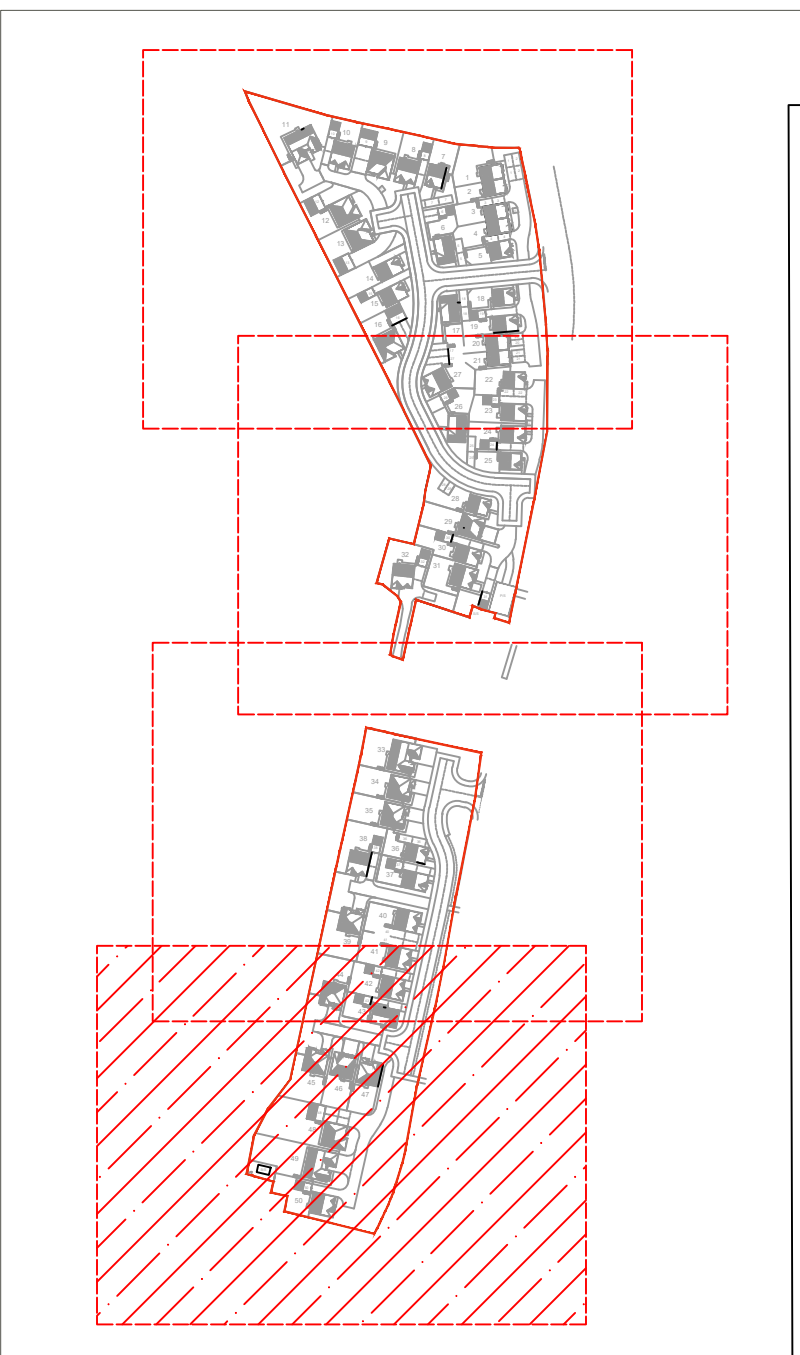
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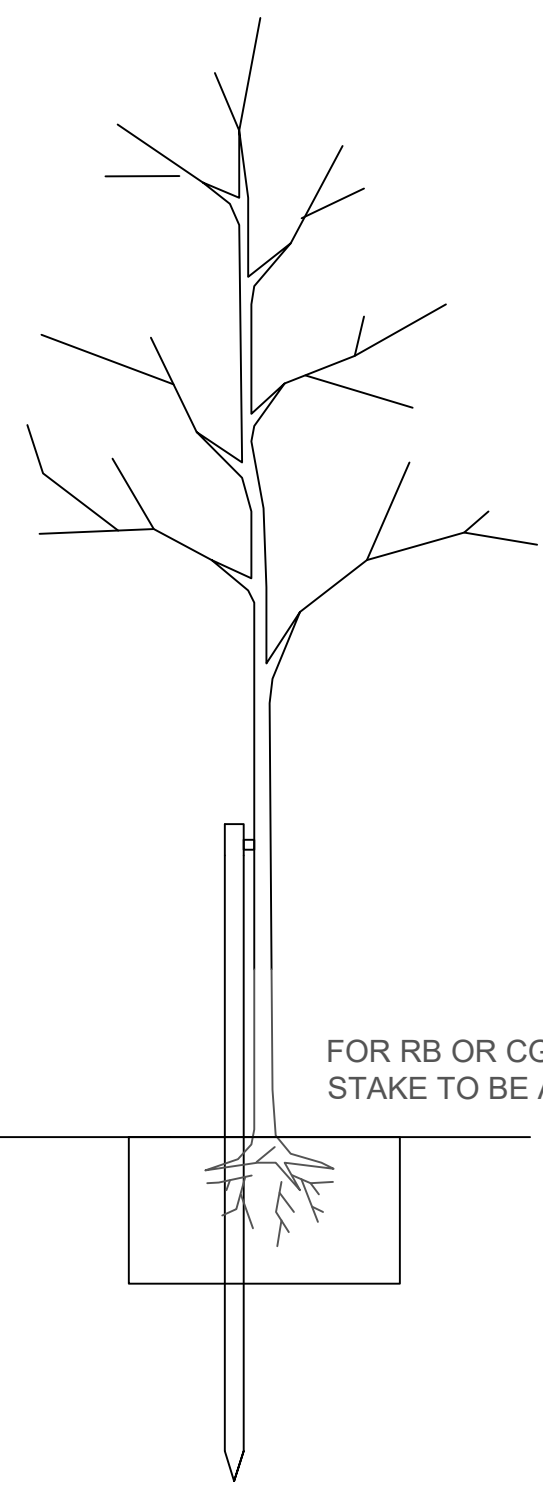
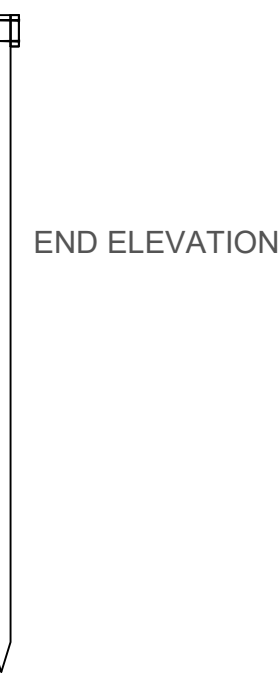
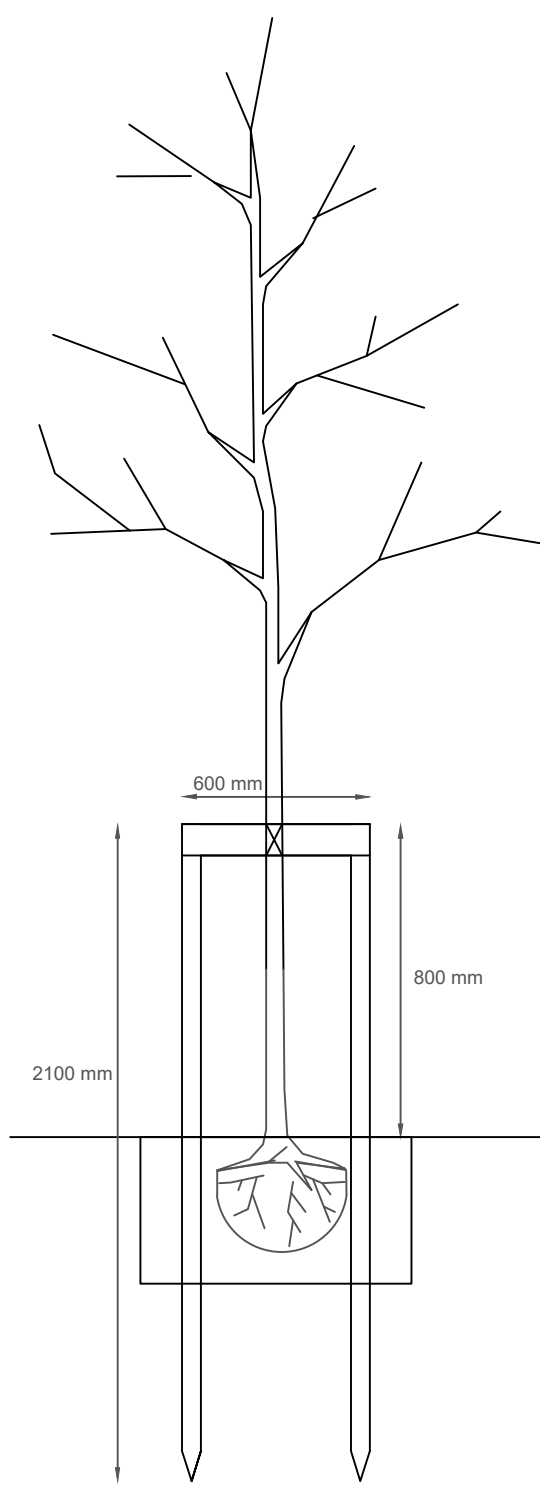


Planting Schedule

Trees		
Number	Species	Girth
5 -	Acer campestre	14-16cm
5 -	Betula pendula	14-16cm
6 -	Carpinus betulus	14-16cm
18 -	Corylus colurna	14-16cm
5 -	Quercus robur	14-16cm
6 -	Sorbus aria	14-16cm

Shrubs		
Number	Species	Pot Size
126 -	Aucuba japonica	10L
53 -	Carex 'Evergold'	10L
98 -	Choisya ternata 'Sundance'	10L
11 -	Cornus alba 'Elegantissima'	20L
22 -	Corylus avellana	60-90/BR
22 -	Crataegus monogyna	60-90/BR
5 -	Euonymus fortunei 'Emerald Gaiety'	10L
70 -	Hebe 'Midsummer Beauty'	10L
8 -	Laurus Nobilis - Cone	1.25-1.50M
125 -	Lavandula angustifolia 'Vera'	10L
22 -	Ligustrum vulgare	60-90/BR
7 -	Phormium 'Jester'	20L
6 -	Phormium 'Yellow Wave'	20L
7 -	Photinia Red Robin - Cone	2.00-2.25m
30 -	Photinia Red Robin - Half Std (60-70cm)	1.25-1.50M
57 -	Photinia x fraseri 'Little Red Robin'	10L
5 -	Pittosporum tenuifolium 'Tom Thumb'	10L
57 -	Pittosporum tenuifolium 'Variegatum'	10L
607 -	Prunus lusitanica	10L
22 -	Prunus spinosa	60-90/BR
59 -	Rosmarinus officinalis	10L
22 -	Sambucus nigra	60-90/BR
43 -	Skimmia japonica 'Rubella'	10L
38 -	Spiraea japonica 'Gold Mound'	10L

Climbers		
Number	Species	Pot Size
4 -	Hedera colchica 'Paddy's Pride'	10L
3 -	Parthenocissus tricuspidata 'Veitchii'	10L



FOR RB OR CG STOCK 12CM & BELOW, STAKE TO BE ANGLED AWAY FROM ROOTS.

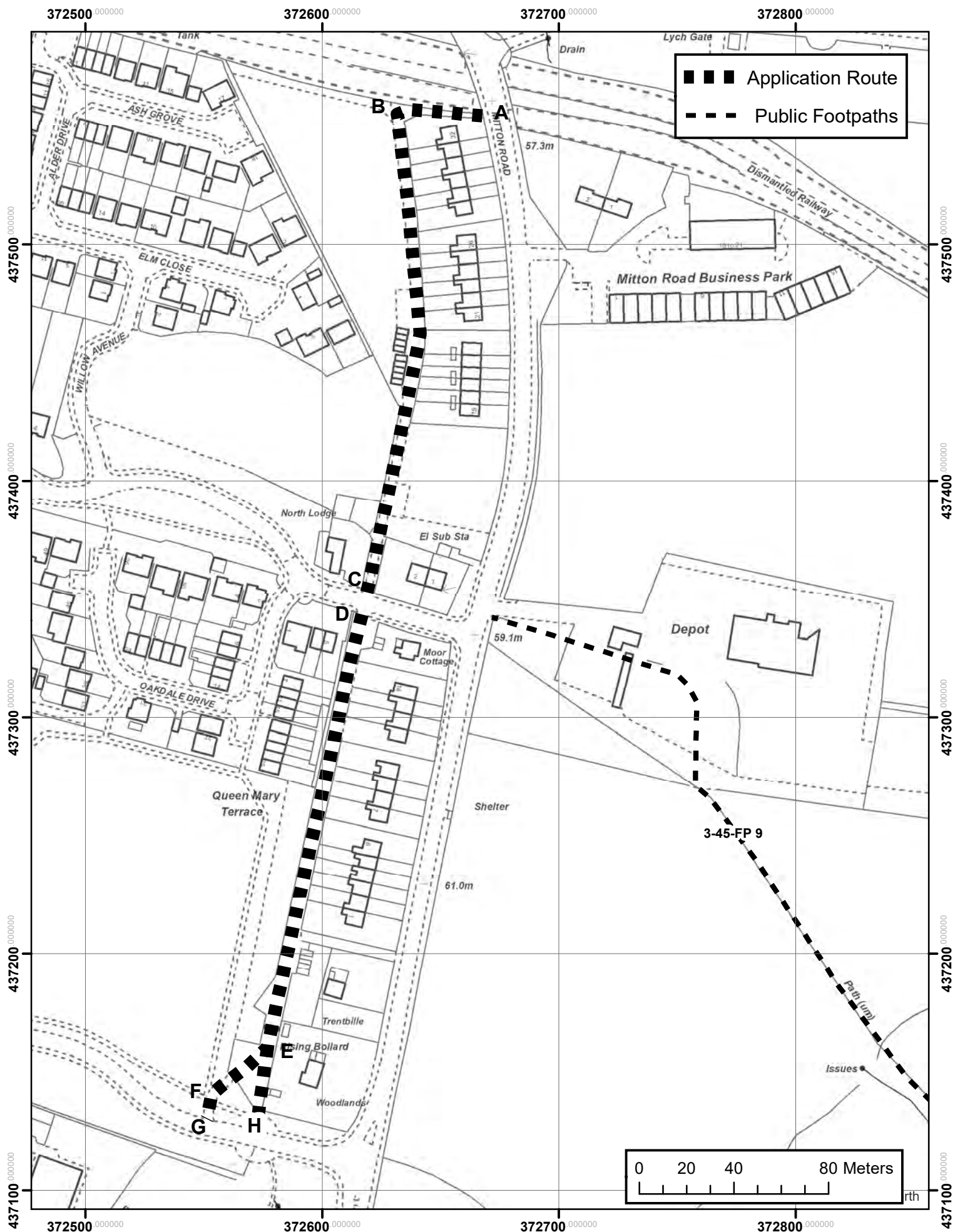
GIRTH	STAKE (MACHINE ROUND)	CROSS BAR	RUBBER BELT	RUBBER SPACER/CUSHION BLOCKS
UP TO 12CM	60MM SINGLE	N/A	25 X 2MM	25MM SPACER
12-18CM	60MM DOUBLE	25 X 100MM	35 X 3MM	75 X 63 X 25MM RUBBER CUSHION BLOCK
18CM +	100MM DOUBLE	50 X 100MM	50 X 3MM	90 X 75 X 44MM RUBBER CUSHION BLOCK

NOTES: ALL TIMBER TO BE PRESSURE TREATED TANALIZED SOFTWOOD.

Revision		
A	Scheme adjusted to new layout	JW 11.12.20
B	Scheme adjusted to new layout	JW 11.05.21



Appendix 3 – DMMO Route Application Map





Appendix 4 – LCC Investigation Report for DMMO App (August 2022)

Regulatory Committee

Meeting to be held on 10th August 2022

Part I

Electoral Division affected:
Ribbles Valley North East

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of Sections of Footpath from Mitton Road to Calderstones Drive, Whalley

(Annex 'A' refers)

Contact for further information quoting reference 804-700:



Brief Summary

Application for the addition on the Definitive Map and Statement of Public Rights of Way of a footpath from Mitton Road to Calderstones Drive, Whalley.

Recommendation

- (i) That the application for the addition of footpaths from Mitton Road to Calderstones Drive, Whalley be accepted.
- (ii) That an Order(s) be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and/or Section 53 (3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way footpath sections from Mitton Road to Pendle Drive and from Pendle Drive to Calderstones Drive as shown on Committee Plan between points A-B-C, D-E-F and E-H.
- (iii) That following the order making and notice period the matter be returned to Committee to decide what stance to take regarding confirmation.

Detail

An application under Schedule 14 of the Wildlife and Countryside Act 1981 has been received to record on the Definitive Map and Statement of Public Rights of Way a footpath from Mitton Road to Calderstones Drive, Whalley.

The county council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so

its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

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

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

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

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

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

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

Consultations

Ribble Valley Borough Council

Ribble Valley Borough Council did not provide an official response to the consultation.

Whalley Parish Council

Whalley Parish Council did not provide an official response to the consultations.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	7266 3755	Junction with Mitton Road
B	7263 3755	Rear (NW corner) of 32 Bridge Terrace
C	7261 3735	Junction with Pendle Drive (north side)
D	7261 3734	Junction with Pendle Drive (south side)
E	7257 3716	Bollards across the route restricting vehicular access
F	7255 3713	Junction with Calderstones Drive footway
G	7255 3713	Junction with Calderstones Drive carriageway
H	7257 3713	Junction with Calderstones Drive footway

Description of Route

A site inspection was carried out in April 2020.

The application route commences at a point on the west side of Mitton Road between the 32 Bridge Terrace and a dismantled railway which ran east-west passing under Mitton Road immediately north of the application route.

At point A there is a wooden fence which has been erected across the start of the application route with a notice attached to the fence stating that there is 'No access'. Immediately behind the fence is a wooden stile with a further sign attached to it stating 'No dog walking, Private Property'.

From point A – beyond the fence and stile – it is possible to see – despite recent overgrowth – a fenced off strip bounded on the south side by a concrete post and wooden panel fence separating it from 32 Bridge Terrace and bounded on the north side by an old iron railing fence separating it from the disused railway. The strip is approximately 1.5 metres wide from point B widening slightly to approximately 2 metres after 25 metres where a second wooden fence has been erected across the route with a west-facing sign reading 'No access'.

Beyond this second fence the route widens to approximately 6 metres at the rear of 32 Bridge Terrace (point B on the Committee plan) where a temporary metal security fence had been erected preventing access east along the application route at point B and running the full length along the rear of the terraced properties known as Bridge Terrace.

From point B the application route continues in a generally southerly direction along a tarmac roadway approximately 4 metres wide which provided vehicular access to the rear of Bridge Terrace and to some garages located on the west side of the route midway between point B and point C. The properties on Bridge Terrace were all

empty when the route was inspected and had been fenced off prior to being demolished as part of a redevelopment scheme.

Street lights were positioned along the west side of the route at intervals and there was open access from the route onto an area of maintained grassland between the application route and the Calderstones housing estate.

Beyond the garages the route is fenced on the west side and streetlights were at intervals along the eastern side of the route.

On approaching point C the route becomes fenced on the eastern side and near Pendle Drive a 'STOP' traffic sign indicating use of the route between point B and point C by vehicles and further signs located on the route (and visible if travelling from point C towards point B) warn vehicles of the presence of pedestrians and that the speed of vehicles should not exceed 15 miles an hour.

At point C the application route meets the northern side of Pendle Drive between properties forming part of the Calderstones NHS Trust.

From the opposite (south) side of Pendle Drive the application route continues from point D in a generally south south westerly direction running along a 6 metre wide tarmac roadway between a low rail at the rear of further Calderstones NHS Trust buildings and security fencing behind Queen Mary Terrace. There are further warning notices regarding the junction of the route with Pendle Drive and there is street lighting at intervals along the west side of the route. The properties making up Queen Mary Terrace had all been vacated and fenced off.

At point E five bollards had been erected across the route which restricted vehicular access.

Beyond point E the application route split with one route crossing an open tarmacked area which appeared to be used for parking cars, to continue south west along a tarmac roadway approximately 3.5 metres wide to a tarmac footway at point F. Calderstones Drive carriageway is at point G.

The other spur continues in a more southerly direction from point E along the edge of the tarmacked area with security fencing on the east side to pass through a gap in some hedging to meet the tarmac footway running along the north side of Calderstones Drive at point H

The total length of the route is 500 metres.

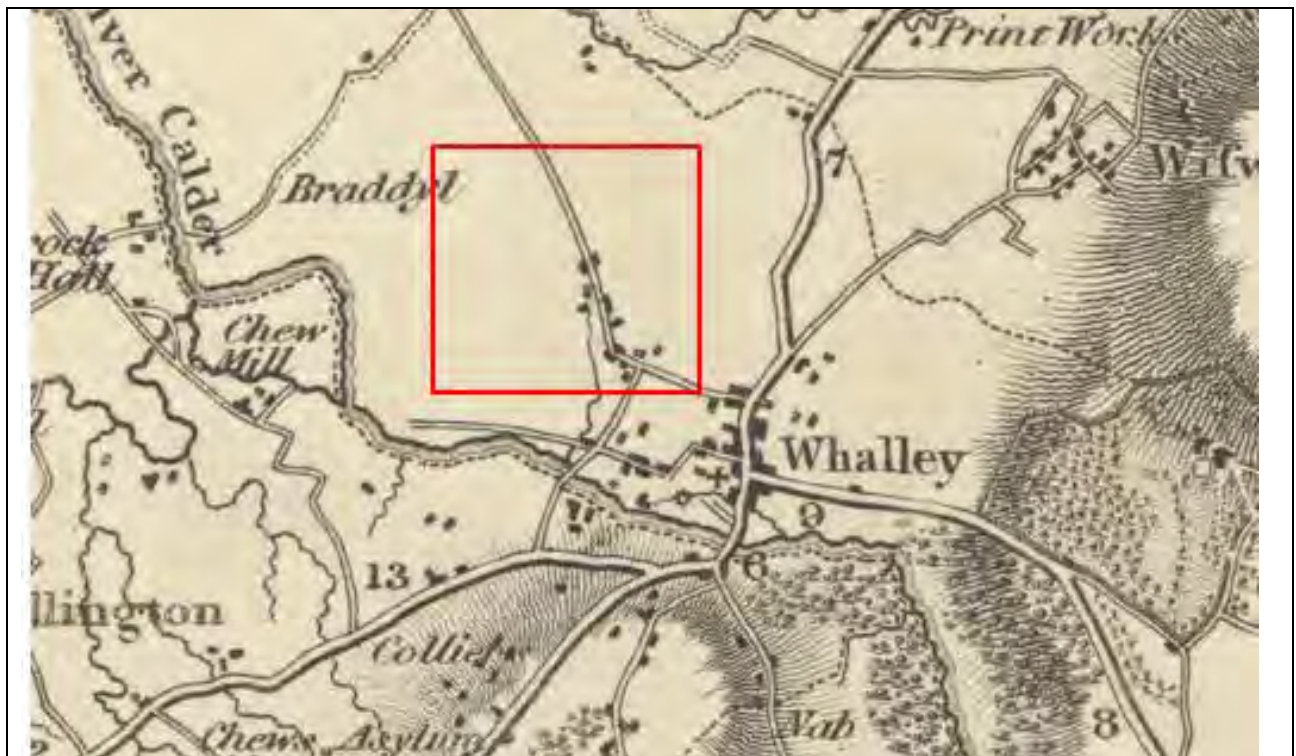
Map and Documentary Evidence

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

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



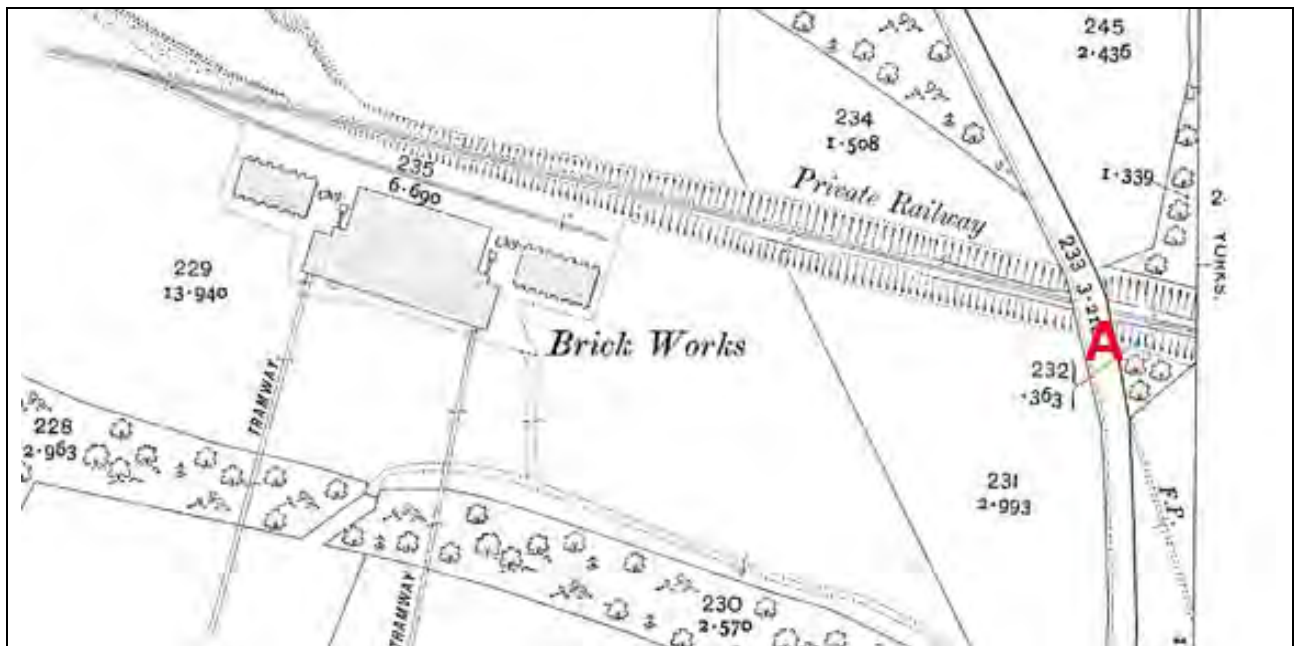
Observations		Mitton Road is shown but the application route is not shown.
Investigating Officer's Comments		The application route probably did not exist at the time or if it did exist, was not considered to be a substantial public vehicular route by Yates. If it did exist it would have been very unlikely for a route considered to be a footpath or bridleway to be shown on such a small-scale map.
Greenwood's Map of Lancashire	1818	Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that this map showed private as well as public roads and the two were not differentiated between within the key panel.



Observations		Mitton Road is shown but the application route is not shown.
Investigating Comments	Officer's	The application route probably did not exist in 1818 or if it did exist, was not considered to be a substantial public vehicular route by Greenwood. If it did exist it would have been very unlikely for a route considered to be a footpath or bridleway to be shown on such a small-scale map.
Hennet's Map of Lancashire	1830	Small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.



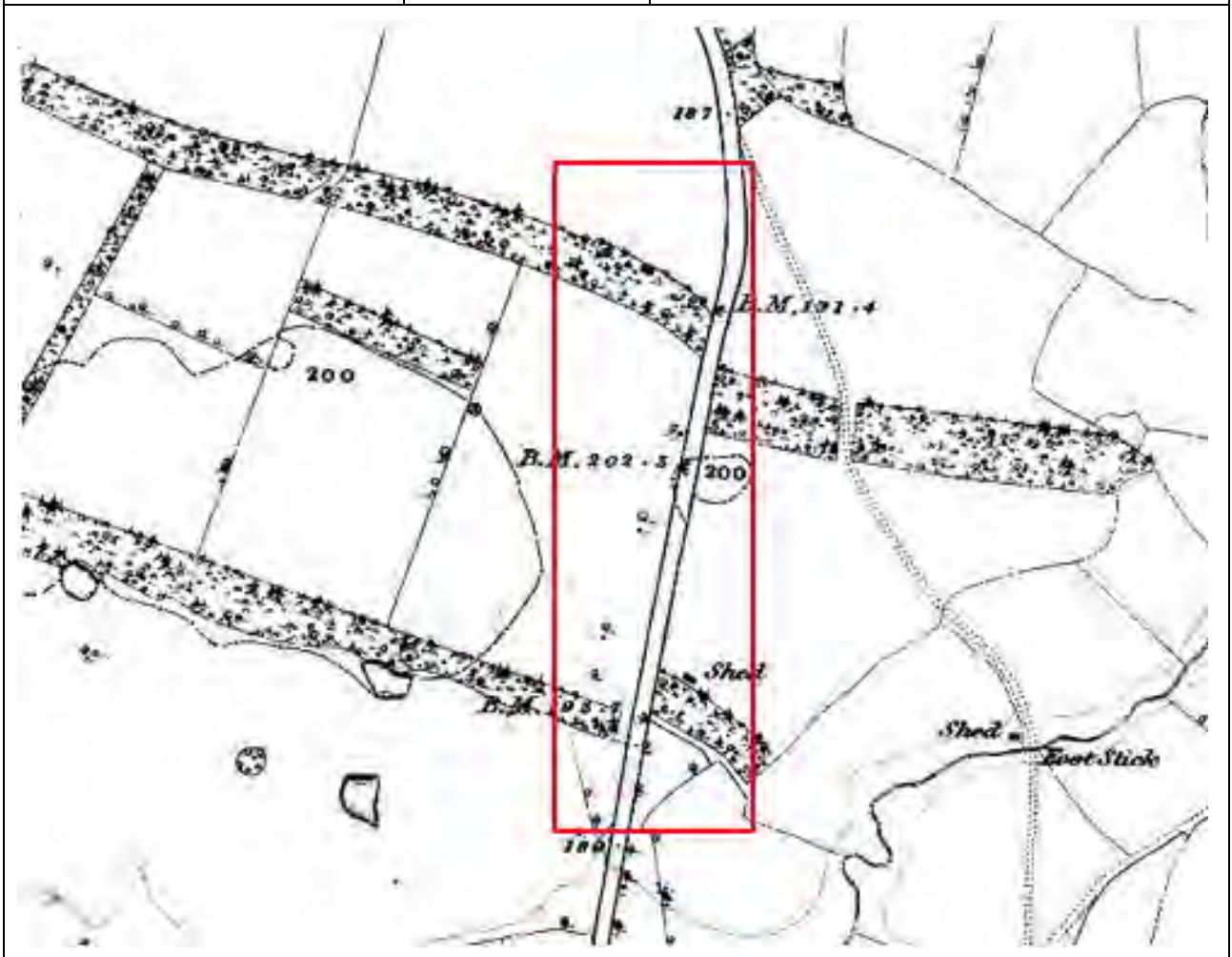
Observations		Mitton Road is shown but the application route is not shown.
Investigating Officer's Comments		The application route probably did not exist in 1830 or if it did exist, was not considered to be a substantial public vehicular route by Hennet. If it did exist it would have been very unlikely for a route considered to be a footpath or bridleway to be shown on such a small-scale map.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today, legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.



Extract from the 25 inch OS Map LV.5 surveyed 1892, revised 1910 and published 1913.

Observations		Between 1892 and 1910 a private railway line was built immediately north of the application route. The railway provided access to a brick works. No records relating to the construction of the railway were found but Ordnance Survey maps detailed later in this report) from before and after the construction of the railway show no part of the application route in existence around the time of its construction.
Investigating Officer's Comments		The application route did not appear to have existed prior to the construction of the railway and does not appear to have been constructed at the time the railway was built. It is therefore very unlikely that any records relating to the construction of the railway would assist in this particular investigation.
Tithe Map and Tithe Award or Apportionment		Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful

		supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		There is no Tithe Map and Award listed at the County Records Office or The National Archives for the area crossed by the application route.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map Sheet LV	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-46 and published in 1848. ¹



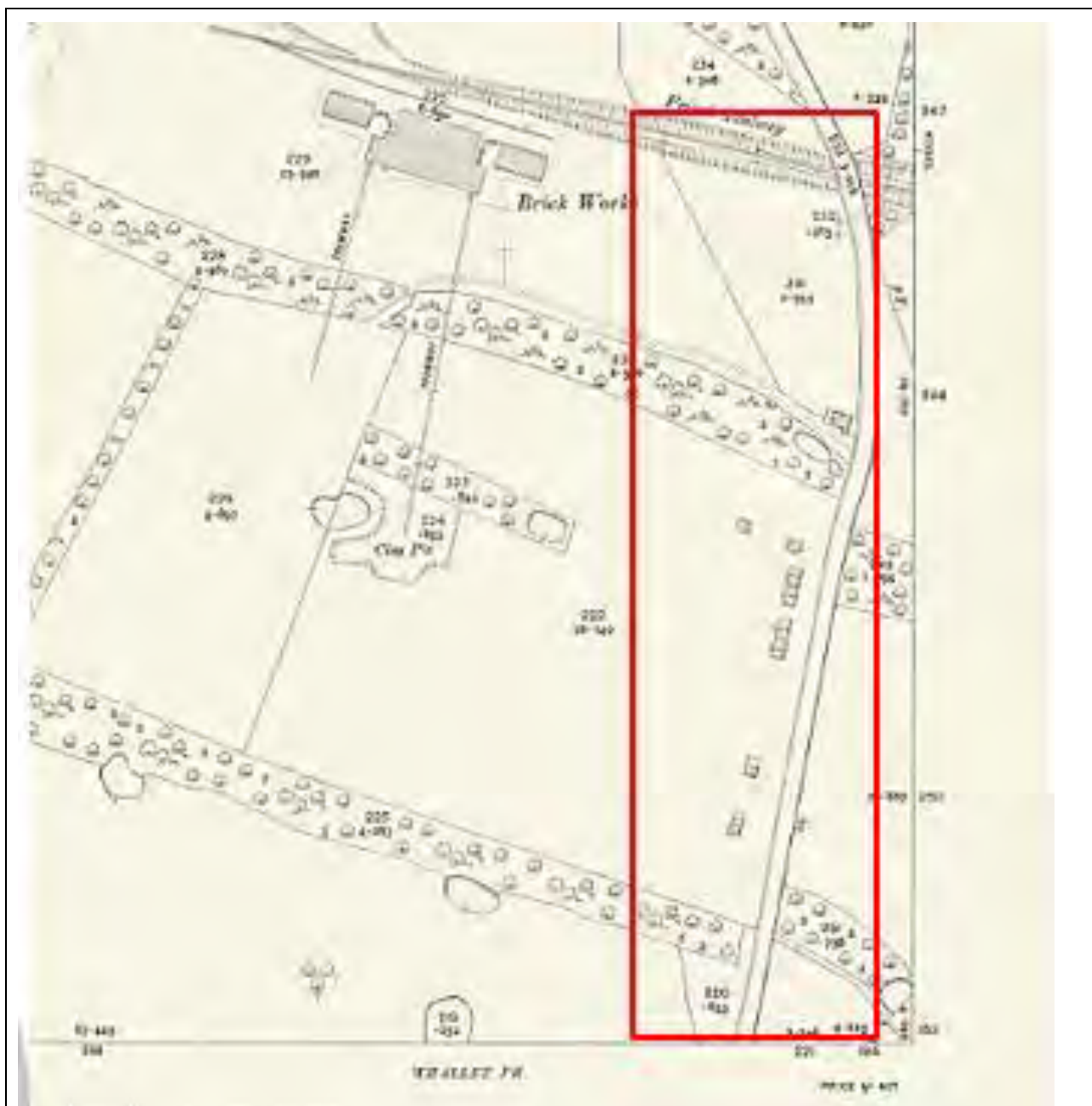
Observations		Mitton Road is shown but the application
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¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one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

		route is not shown.
Investigating Comments	Officer's	The application route did not exist in 1844-46.
25 Inch OS Map Sheet LV.5	1894	The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1892 and published in 1894.



Observations		Mitton Road is shown but the application route is not.
Investigating Comments	Officer's	The application route did not exist in 1892.
25 inch OS Map Sheet LV.5	1912	Further edition of the 25 inch map surveyed in 1892, revised in 1910 and published in 1912.



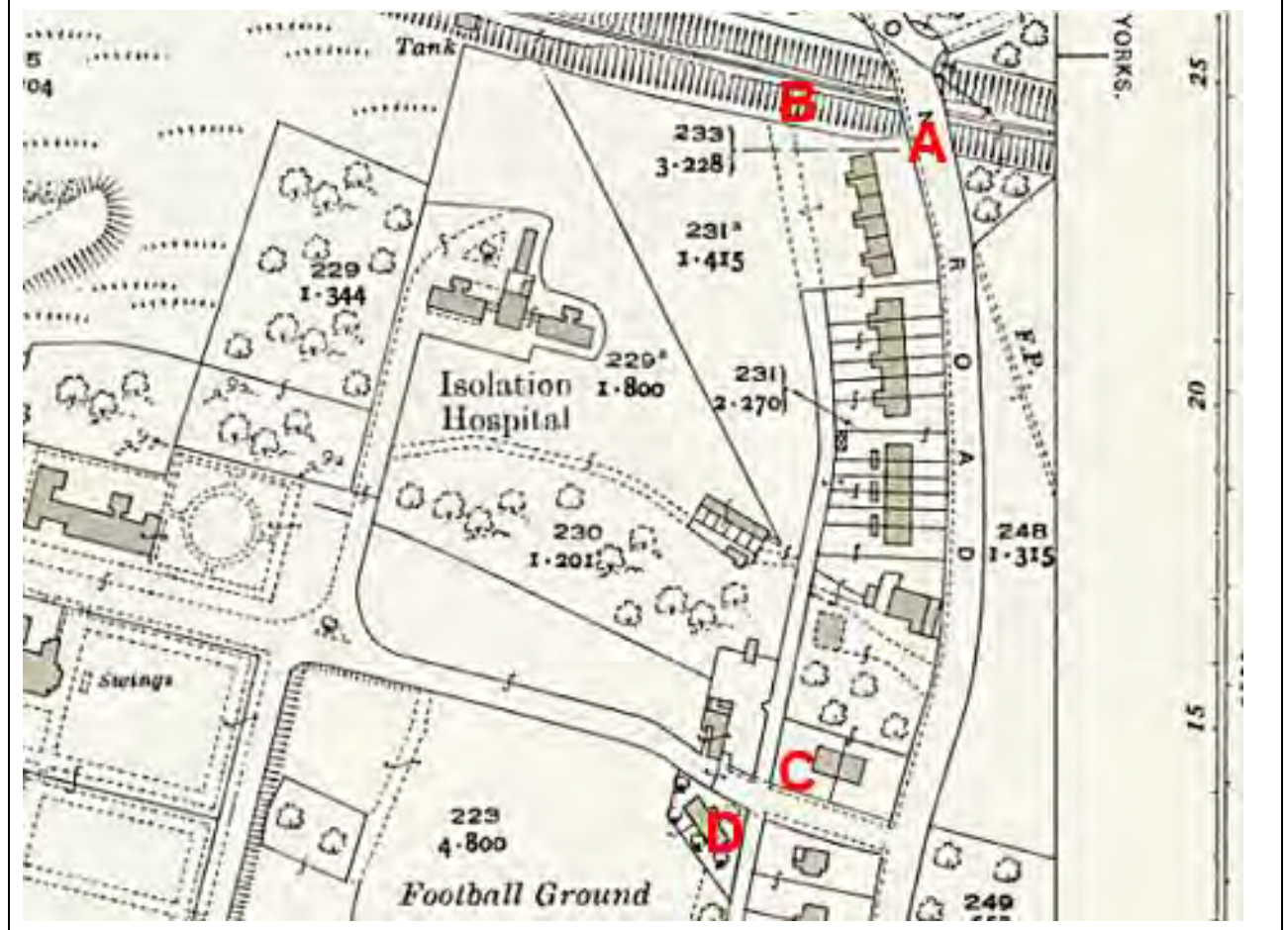
Observations		Milton Road is shown but the application route is not shown. The land crossed by the route has started to see some development. A private railway is shown immediately to the north of the route leading directly to some brick works and some buildings are shown adjacent to Milton Road which appear to have been the first few houses to be built along this stretch of road and which later became known as Bridge Terrace.
Investigating Officer's Comments		The application route did not exist in 1912.
Finance Act 1910 Map	1910	The comprehensive survey carried out

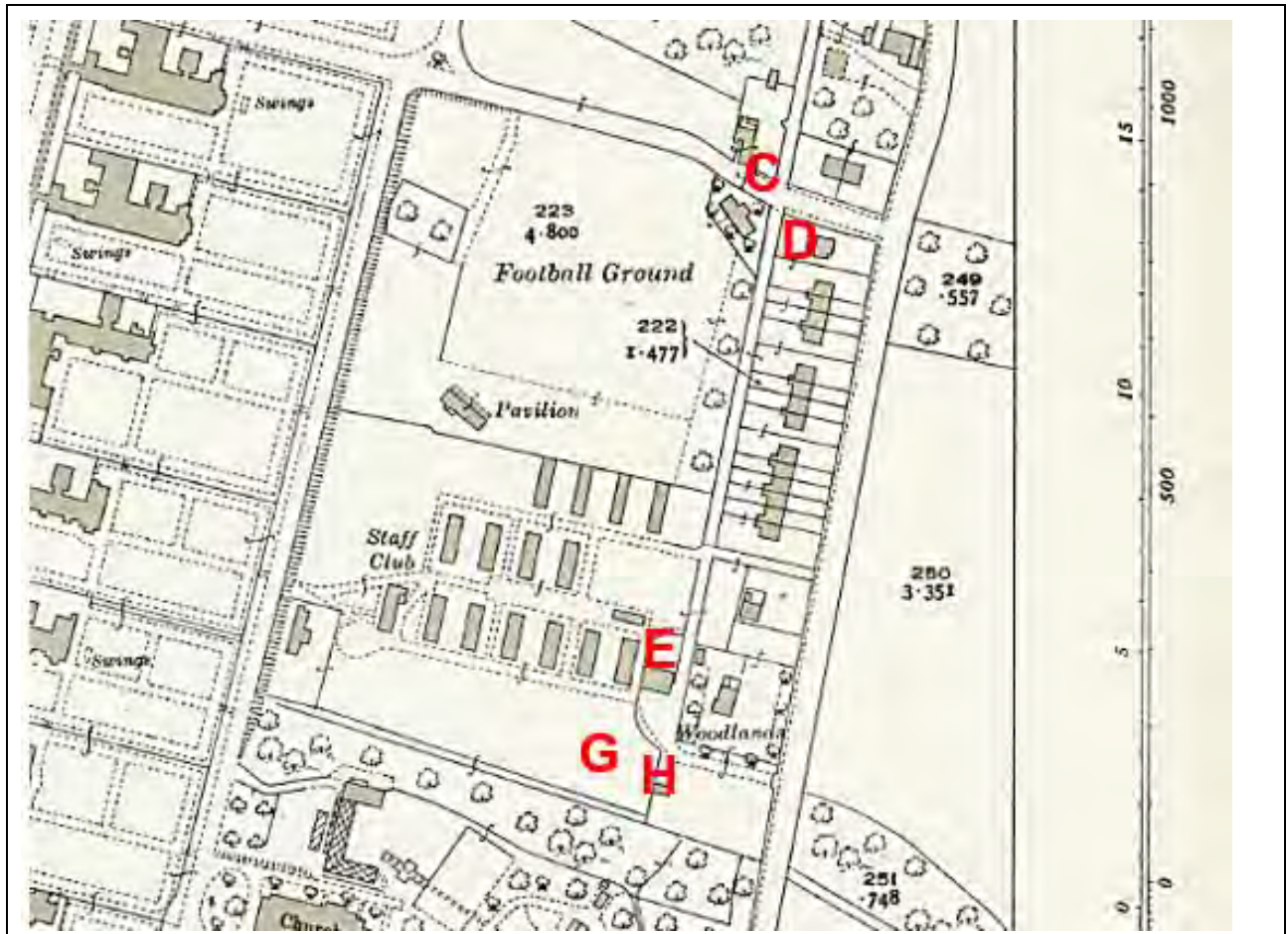
		<p>for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>
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<p>Observations</p>		<p>The application route is not shown to exist on the 25 inch OS base map used for the purpose of completing the valuation.</p> <p>All of the land crossed by the application route is included in a plot numbered 317. The District Valuation Book for Whalley lists the owner and occupier of plot 317 as being Lancashire Asylums Board and describes the land as 'Plantations'. No deductions are listed for public rights of way or user.</p>
<p>Investigating Comments</p>	<p>Officer's</p>	<p>In 1910 the land was in the ownership of the Lancashire Asylums Board suggesting that it had been purchased for the construction of the hospital site. No deductions were claimed for public rights of way or user suggesting that no public rights of way existed – or were</p>

		acknowledged to have existed – prior to the construction of the hospital site.
25 Inch OS Map Sheet LV.5	1932	Further edition of 25 inch map (surveyed in 1892, revised in 1929 and published in 1932.





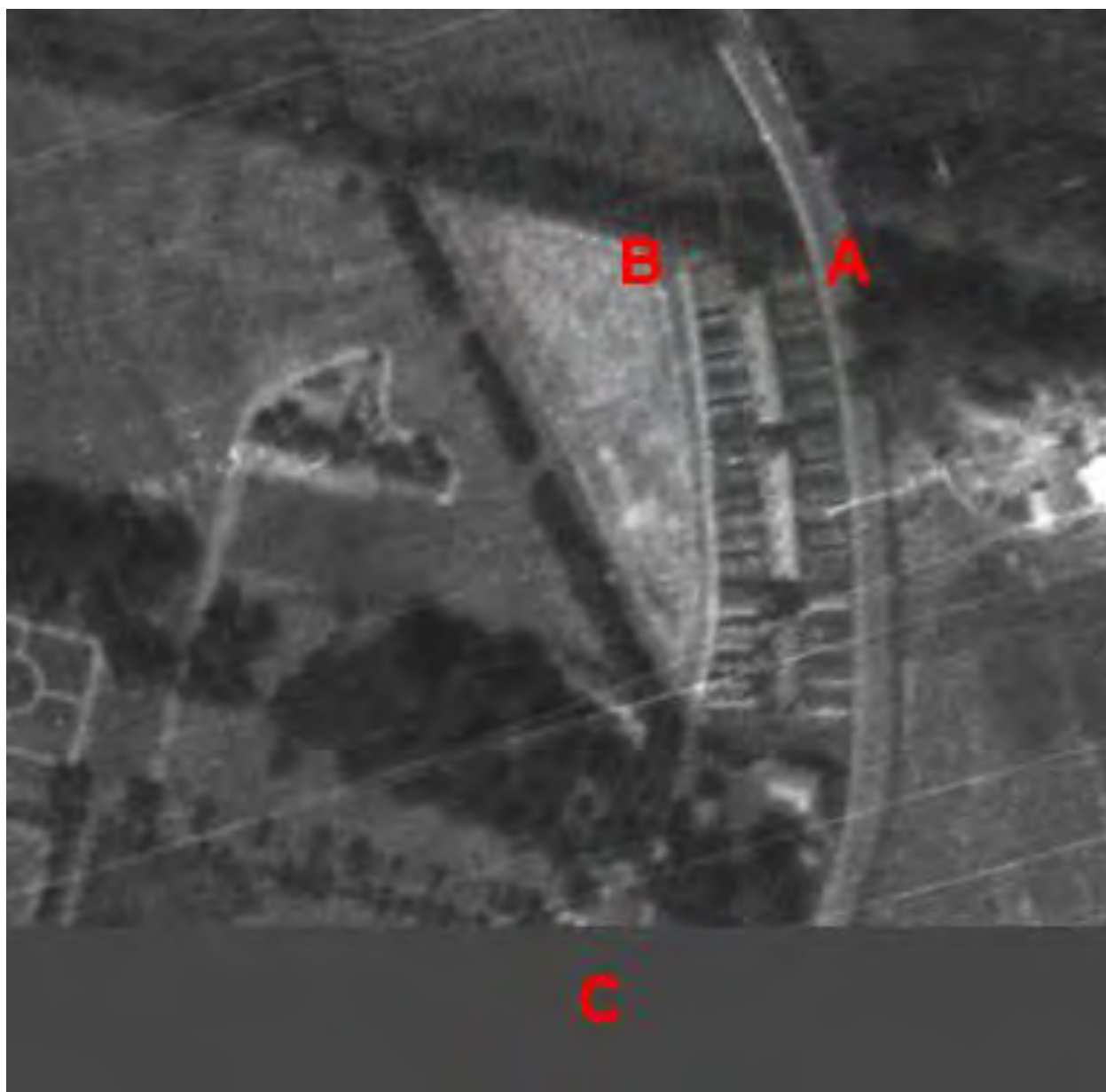
Observations

By 1929 the area crossed by the application route had been developed. A large hospital site is shown which is labelled as being 'Calderstones Institution (Mental Defections)' on the map. The hospital itself appears to be largely to the west of the application route with two access roads leading into the site from Mitton Road – one further south (now known as Chestnut Drive) and the route now known as part of Pendle Drive which crosses the application route between point C and point D.

The terrace houses known as Bridge Terrace is shown. The properties numbered 15-26 Bridge Terrace are all shown fenced off individually indicating the boundaries of each of the properties front and rear gardens. The properties numbered 27-32 are not shown separated by boundary fences and the land immediately north of 32 Bridge Terrace across which the application

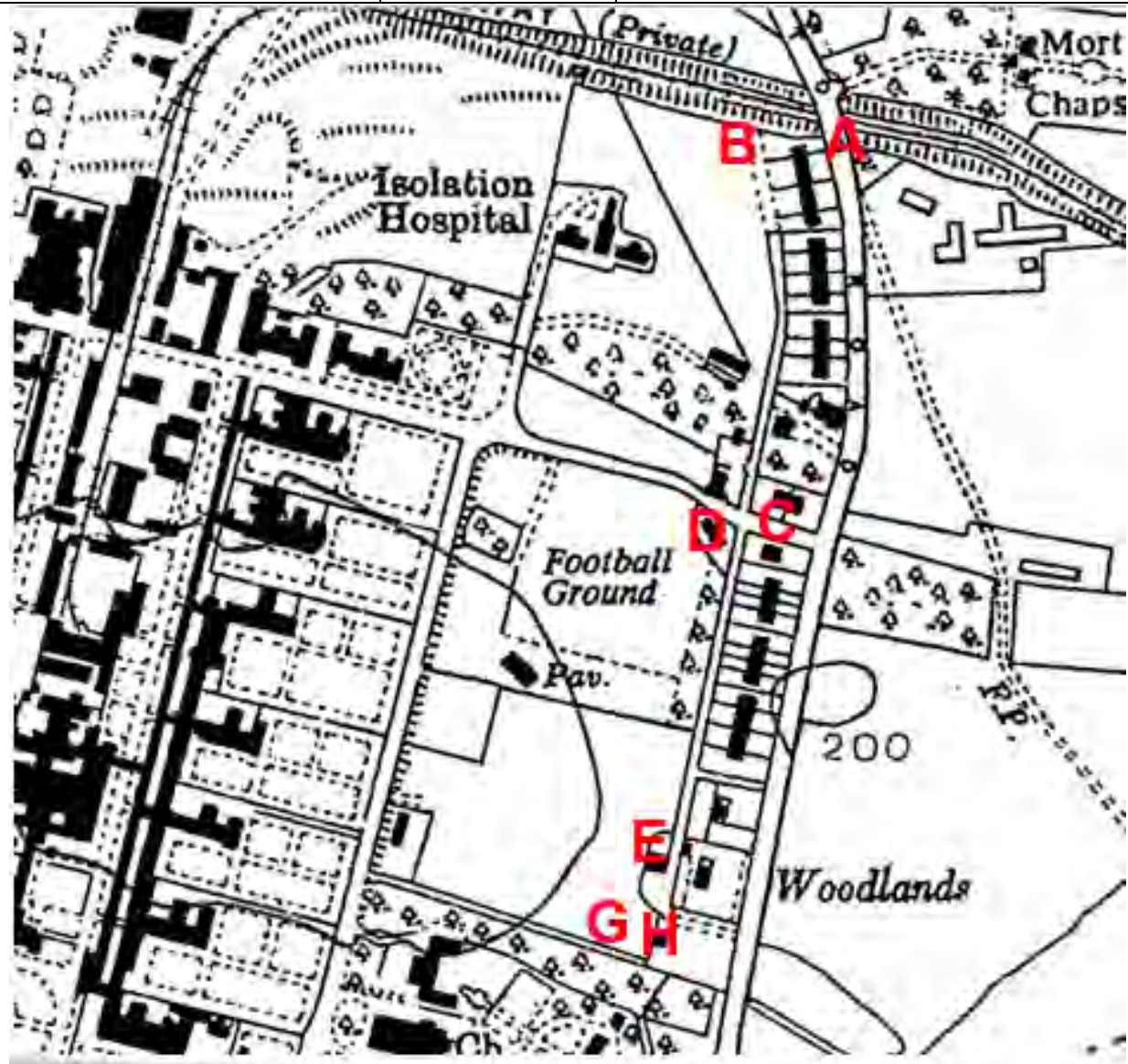
		<p>route runs between point A and point C is not shown as being fenced off separately. The application route is shown between point B and point C although the first 50 metres from point B heading south is shown unbounded with a line across the route. (It is possible that the northern section of the terrace was under construction at the time of the survey.) Beyond this line the application route is shown bounded through to point C where it crosses one of the access roads leading into the hospital site.</p> <p>From point D the application route is shown through point E to point H from where it curves to exit onto Mitton Road south of the property known as Woodland. The application route between points E-F-G is not shown and Calderstones Road is not shown.</p>
Investigating Officer's Comments		<p>Substantial parts of the application route existed by 1928 and appear to have been constructed as part of the development of the Calderstones Hospital site.</p> <p>Access may have been available along parts of the route but not all the route applied for.</p>
Aerial Photograph²	1940s	<p>The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.</p>

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



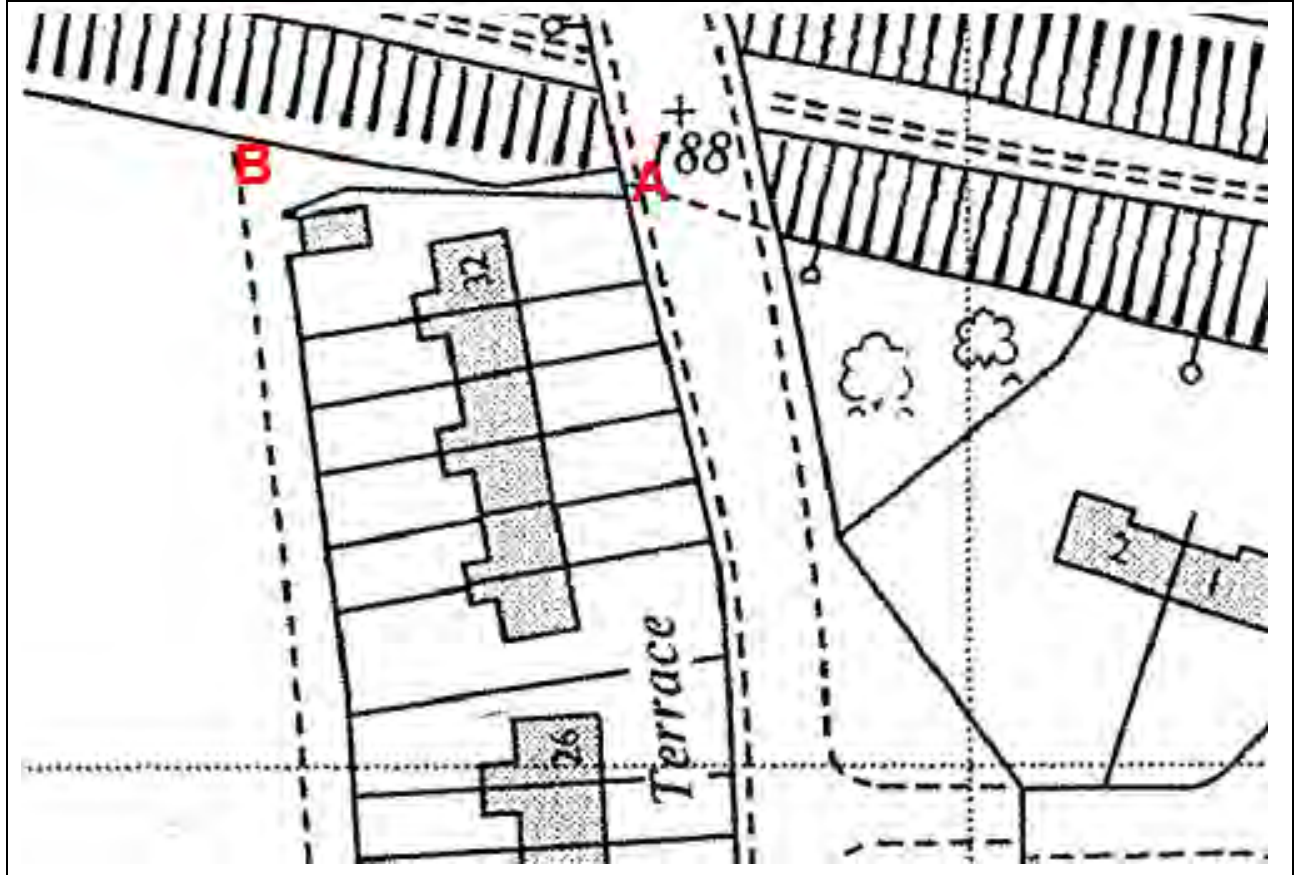
Observations		The aerial photograph taken in the 1940s only shows part of the land crossed by the application route. The application route is not visible between point A and point B but a substantial route can be seen along the back of properties fronting Mitton Road between point B and point C.
Investigating Comments	Officer's	Part of the application route existed in the 1940s, but it is not known whether the route was accessible to the public. Much of the land crossed by the application route is not shown on the photograph so no inference can be drawn with regards to the existence of

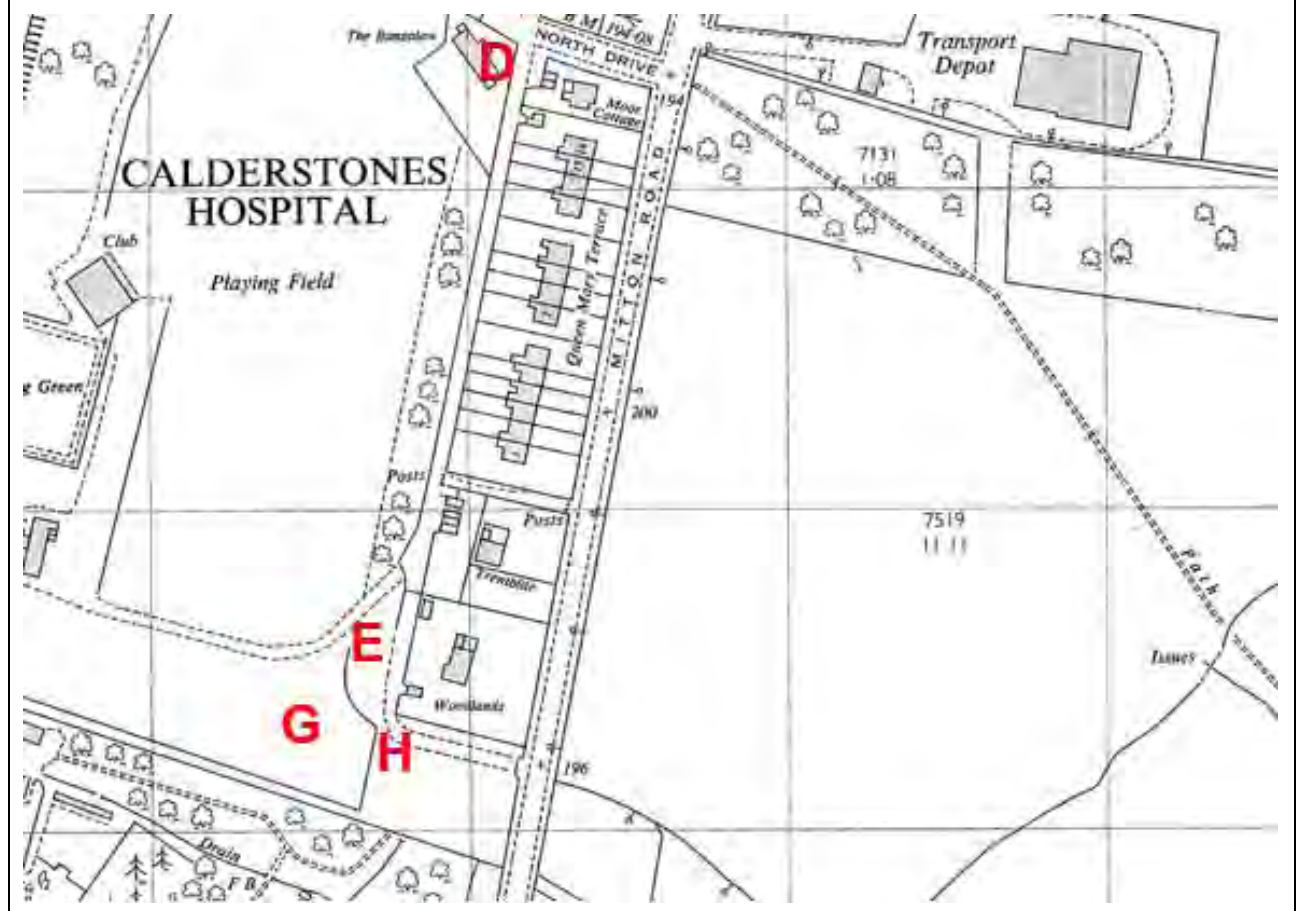
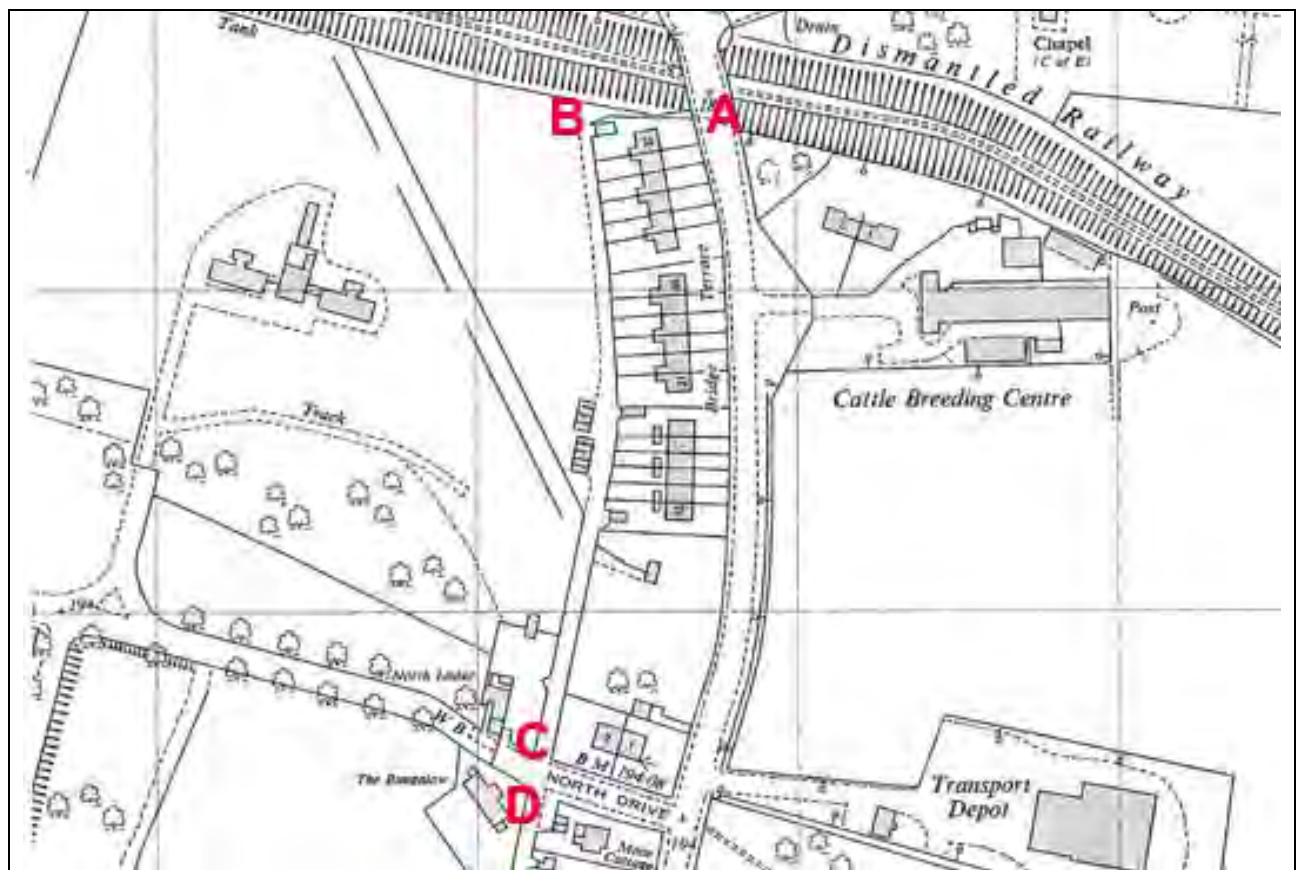
		public rights.
6 Inch OS Map Sheet 73NW	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.



Observations		<p>Parts of the application route are shown.</p> <p>The route between point A and point B is not shown. Between point B and point C and point D and point H the application route existed along the back of properties fronting Mitton Road. From point H access to and from Mitton Road was south of the Woodlands and the application route between points E-F-G</p>
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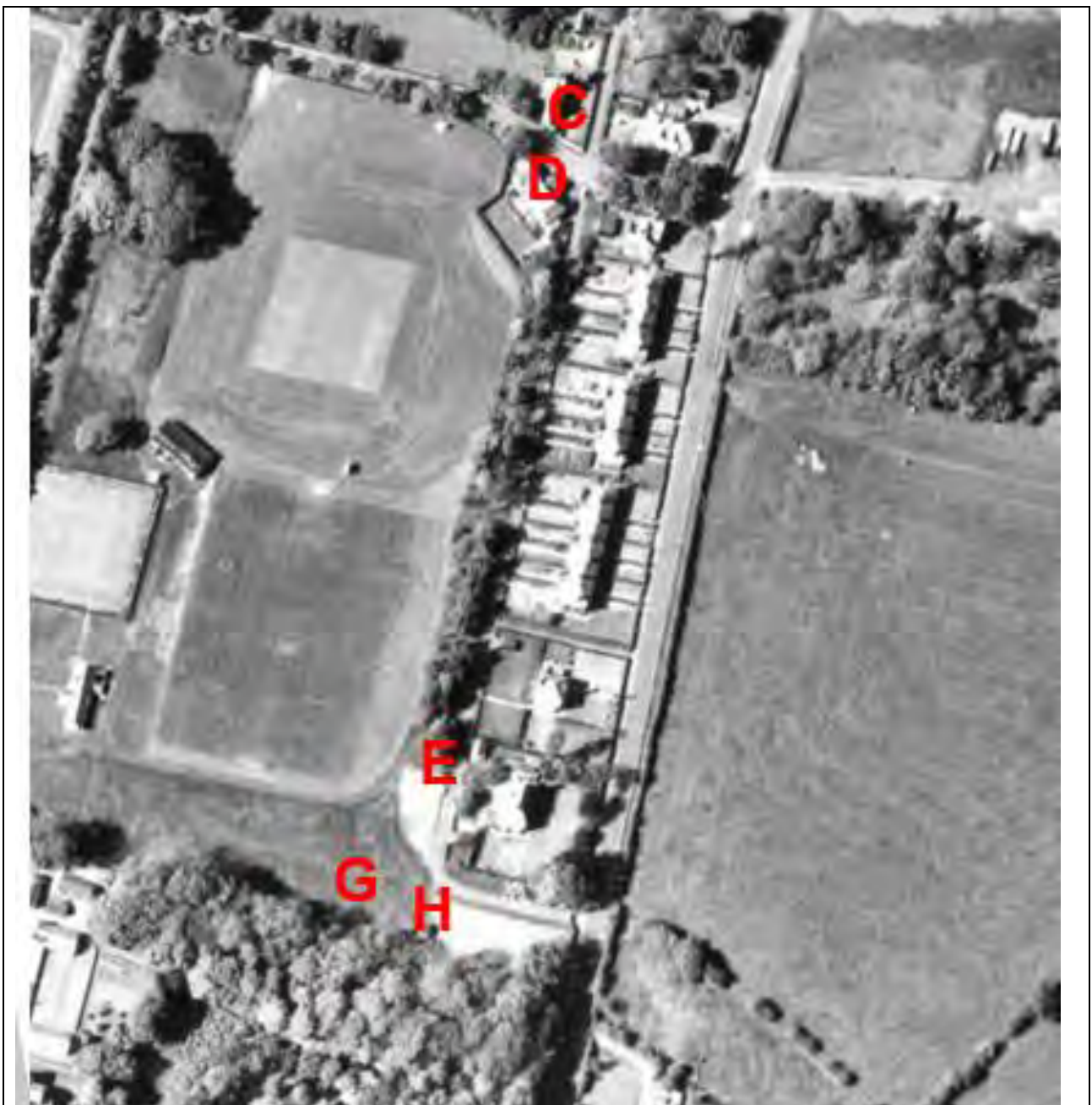
		is not shown.
Investigating Officer's Comments		Parts of the application route existed but appeared to exist to provide access to the rear of properties on Mitton Road. The full length of the route applied for did not exist at this time.
1:2500 OS Map Sheet SD 7237 7337	1968	Further edition of 25 inch map reconstituted from former county series and revised in 1966 and published in 1968 as national grid series.





Observations		A narrow fenced-off gap is shown between point A and point B and beyond point B the application route is shown through to point C and also between point D and point E. The application route between points E-F-G and E-H is not shown.
Investigating Officer's Comments		Parts of the application route existed in 1966 but the full length of the route applied for did not exist at that time.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.





<p>Observations</p>		<p>The application route between point A and point C is shown and appeared to be accessible.</p> <p>The application route between point D and point E is only partly visible due to trees obscuring the view. From point E to point H the application route is clearly visible linking to Mitton Road.</p> <p>The application route from point E through to point G is not shown as a constructed or trodden track although access may have been available long it.</p>
<p>Investigating Officer's</p>		<p>Access along all of the application route</p>

Comments		may have been available in the 1960s although the route between point E-F-G was probably not used.
Aerial Photograph	2000	Aerial photograph available to view on Google Earth Pro.





Observations		The application route between point A and point B is not visible due to tree cover. Most of the route from point B through to point E can be seen as a significant track/roadway. From point E to point H the route can be seen and of significance is the fact that the photograph shows that much of the old hospital site had been cleared and that a new access road (Calderstones Drive) was under construction. The application route between point E and point G is not shown.
Investigating Officer's Comments		The hospital site was under redevelopment in 2000 and Calderstones Drive under construction. Most, but not all of the application route could be seen to exist but no inference can be drawn with regards to public rights.
Aerial Photograph	2003	Aerial photograph available to view on Google Earth Pro.



Observations		<p>Tree coverage and shadows mean that it is not possible to see much of the application route between point A and point C.</p> <p>From point D through to point E the application is clearly visible.</p> <p>Calderstones Drive has been completed and the application route from point E to point H and point E to point G was clearly visible.</p>
Investigating Officer's Comments		The full length of the application route probably existed in 2003.
Google Street View Images	2009-2018	Google Street View Images of point A.



2009



2011



2016



2018

Observations		All four photographs show that access appeared to be available onto the application route at point A via a wooden stile. No signage indicating whether access was considered to be public or private could be seen.
Investigating Comments	Officer's	The application route appeared to be accessible at point A between 2009 and 2016 consistent with the evidence of use provided as part of the application.

Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.</p>



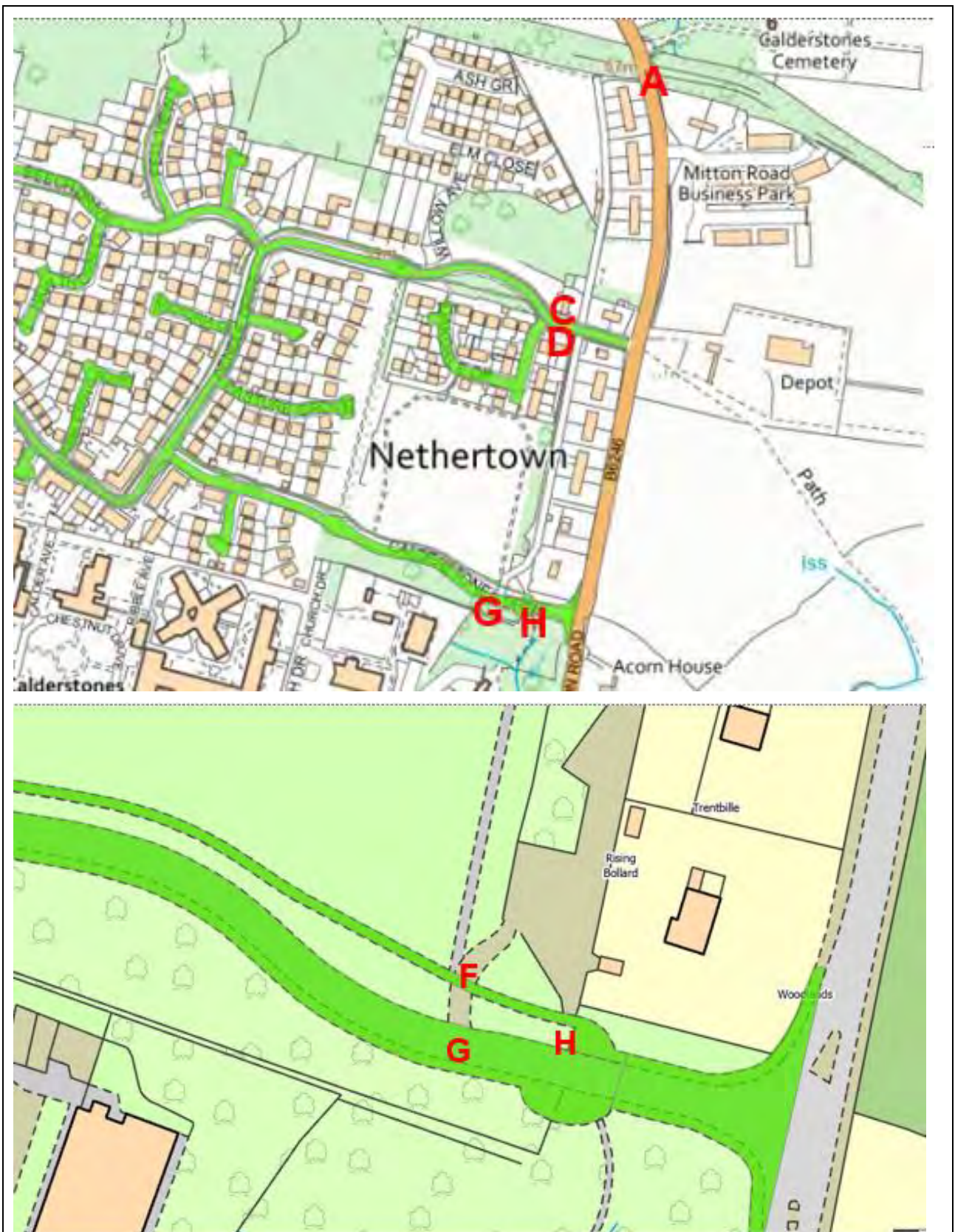
Observations		The application route was not recorded on the Parish Survey Map for Whalley.
Draft Map		<p>The parish survey map and cards for Whalley were handed to Lancashire County Council who then considered the information and prepared the Draft Map and Statement.</p> <p>The Draft Maps were given a “relevant date” (1st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.</p>
Observations		The application route was not recorded on the Draft Map of Public Rights of Way and there were no representations made in relation to it.
Provisional Map		Once all representations relating to the publication of the draft map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The application route was not recorded on the Provisional Map of Public Rights of Way and no representations were made in relation to it.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.
Observations		The application route was not recorded on the First Definitive Map of Public Rights of Way.
Revised Definitive Map of		Legislation required that the Definitive

Public Rights of Way (First Review)		Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
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Observations		The application route is not recorded as a public right of way on the Revised Definitive Map.
Investigating Officer's		The application route was not recorded

Comments		as a public right of way as part of the process of compiling the Definitive Map and Statement.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up-to-date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>



Observations

The application route is not recorded as a publicly maintainable highway in the county council's highway records although it is intersected by Pendle

		Drive between point C and point D and crosses an adopted footway at point F.
Investigating Officer's Comments		The fact that the application route is not recorded as a publicly maintainable highway does not mean that it does not carry a public right of way.
Highway Stopping Up Orders	1835 - 2014	Details of diversion and stopping up orders made by the Justices of the Peace and later by the Magistrates Court are held at the County Records Office from 1835 through to the 1960s. Further records held at the County Records Office contain highway orders made by Districts and the County Council since that date.
Observations		No records relating to the stopping up, diverting or creation of public rights along the application route were found.
Investigating Officer's Comments		If any unrecorded public rights exist along the route they do not appear to have been stopped up or diverted.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already</p>

		been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the application route runs.
Investigating Officer's Comments		There is no indication by the landowners under this provision of non-intention to dedicate public rights of way over this land.

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

Summary

The application was submitted on the basis of user evidence.

There is no map and documentary evidence from which dedication of the route can clearly be inferred and the route is not shown on any of the early commercial maps or first edition Ordnance Survey Maps.

The Map and Book prepared under the provisions of the 1910 Finance Act lists the land crossed by the application route as being owned by the Lancashire Asylums Board at that time and it is clear that much of the route was subsequently constructed by the late 1920s when Calderstones Hospital was built.

The existence of the route from point B through to point E – crossing one of the access roads into the hospital site between point C and point D - is consistently shown as a substantial roadway from the 1920s onwards and clearly provided access to a number of properties built fronting onto Mitton Road but also provided access to hospital land to the west of the route.

Access to the route between point A and point B may have been available but it is not until the 1960s that it is more clearly seen on both OS maps and aerial photographs prepared at that time that a route through existed – albeit narrower than the access road B-C and D-E and therefore consistent with the application for use on foot but not a route used by vehicles.

From point E it appears that up until approximately 2000 access was available through to Mitton Road along a track/roadway immediately south of woodlands. In approximately 2000 – following the demolition of parts of the former hospital site – a substantial modern housing development was completed, and Calderstones Drive constructed. A footpath was agreed to be dedicated north of the carriageway formally creating a highway at point F and H.

The map and documentary evidence examined therefore supports the user evidence submitted.

Head of Service – Legal and Democratic Services Observations

Landownership

From Point A and C and from Point D to near F/H the land was owned at the time of this application by Merseycare NHS Foundation Trust. As of 25/4/22 the sections of the application route owned by Merseycare was sold to Prospect (GB) Limited.

Points C to D and land including F to G are owned by George Wimpey City 2 Limited and this has largely become parts of highways maintainable at the public expense 28/10/2010 having been in a S38 agreement of 2000.

Information from the Applicant

The applicant states the route has been acknowledged by Calderstones as a public footpath. The applicant further states the route has been well used over a period of 20 years according to his knowledge by locals and visitors alike, the "route was well trodden and they provided stiles access."

The Applicant has provided the following information:

1. An application to modify the Definitive Map and Statement to add a footpath(s) from Mitton Road to Calderstones Drive.
2. Map(s) extract marking existing 'paths'
3. A Map showing the route of the 'proposed' Definitive Map Modification Order.
4. 12 User Evidence Forms

The 12 user forms have been carefully considered and the information set out below.

Duration of Use

The user evidence forms collectively provided evidence of use going back as far as 1972 and up to 2021 when part of the route was made inaccessible in 2021 by Merseycare as landowners, and the application to record the right of way was subsequently made.

20+ years Including the years (1972 to 2021)	1 – 19 years	Not specified
5	7	0

Frequency of Use

The majority of the 12 users stated that they used the route daily, with one stating weekly, another one stating monthly, and finally 1 stating occasionally.

Daily	Weekly	Monthly	Occasionally	Not Specified
9	1	1	1	0

Reasons for Use

Of those who specified their reason for using the route, the most common answer was walking/running for pleasure/exercise. Three users indicated they used the route for cycling on a monthly basis. Many users noted they used the route as it was safer to avoid the narrow footpath and cars on the main road, and one stated dog walking.

Walks (pleasure, exercise, recreational)	Avoiding cars on the main road	Other use (eg dogwalking)
7	2	1

Other Users of the Route

The majority of the users recorded having seen others on foot whilst using the route, five users recorded having seen others using the route on horseback and five users recorded having seen others using the route on a bicycle. Numerous users refer to it as a well-used route with one indicating it was in constant use.

Consistency of the Route

The majority of the 12 users stated that the route had always followed the same route, one stated no since the new housing.

Yes	No	Don't Know	Not Specified
11	1	0	0

Route Used

In the Committee Plan, the proposed footpath was marked out at different points from A to H highlighting the route, however the users provided a map of their own within their user forms, the line they drew on their maps was similar to the points marked out in the Committee Plan.

Unobstructed use of the Route

9 of the users were prevented from using the route, 2 specified they were stopped from using the route early 2021, whereby one of the two went onto to state they were prevented at Bridge Terrace. The majority of users indicated that the rest of the route remained accessible and they were still using it at the date of application.

8 of the 12 stated they saw no signs nor notices restricting or prohibiting access to the route, whereas 2 stated not until late 2020 when signs were put up by MerseyCare. A further 2 stated they only saw signs stating no dog walking in 2020.

6 were aware of stiles along the route, 2 stated no, 1 stated they didn't know, and 3 did not provide an answer.

4 users stated there are no gates along the route, 1 stated they didn't know, and 7 did not provide a response.

9 users have stated no permission was given/sought to use the route, of which 1 stated not applicable, and 2 did not provide a response.

One user commented the route has been acknowledged by Calderstones as a public footpath, and that the route has been in use for over 20 years by local residents and visitors alike, stiles were provided on the route and it is a well-trodden path.

Another user commented he uses the path frequently as part of his visits to the area when seeing his friends, and also when walking to and from work to avoid the traffic on the Mitton Road. Further stating the route has been in use for over 20 years and is well used by locals and visitors.

Two users commented the route provides a safe running/walking route for local residents, and that it is safe for families to walk along away from the traffic, and further states it is a wildlife haven, they further go on to state there are over 15 species of birds, reliant on the trees and the route is a corridor for food.

Another user stated the area simply needs the houses refurbishing and then selling/renting, and the path is a safe route for walking.

Information from Others

A consultation letter was originally sent to Councillor Mirfin on 3rd March 2022, however it was passed on to Councillor David Berryman who is the Borough Councillor for Whalley Netherton, who stated it was passed on to him as he is more familiar with the site.

Councillor Berryman states he is unable to advise as to whether there has been an official right of way path, however acknowledged there has been a path running in the past. Councillor Berryman further states "There was a style/gate at the Mitton Road end but the majority of the route followed the 'backs' of Bridge Terrace and Queen Mary Terrace, which was used for vehicular access to these houses. NHS Merseycare claim that this was never a public right of way."

Information from Landowners

The former Landowner Point A and C and from Point D to near F/H stated the sale of the land was completed on 25 April 2022, and object to the application during the period it was under their ownership and state they have no record of the footpath's existence nor its use, and further state they assume the application was submitted to disrupt the development, and point out the application was made on 3 March 2021, a month after planning permission was granted by Ribble Valley Borough Council, planning reference 3/2021/0076. The landowner states there is no consistency to the

user evidence provided, and further state only 3 users satisfy the test under s31(1) Highways Act 1980 of the route being in use for 20 years or more.

The landowner states in accordance with the Open Space Society advice the evidence provided is not satisfactory as some evidence was provided by members of the same family rather than "6 – 10 unrelated people in a sparsely populated area to 30 people or more in a populous area."

The landowner states until 1990, the property was owned by the Secretary of Health who had Crown immunity. Four private property signs were erected in 2019, and the site has been used for mental health services for the last 30 years therefore no access to the public would be granted.

The current landowner of this land as of 25 April 2022 rejects the application and stated it refers to, repeats and relies upon the context provided by the previous landowner in their response to the application. This landowner further adds the following "In respect of the granted planning permission affecting Property ref 3/2021/0078 the planning officer did make reference to this application and commented in the report that the route could be accommodated via Mitton Road." Further to this the current landowner states they are in the process of agreeing a Section 278 agreement in the upgrade of the existing footway adjacent to Mitton Road, the works include the widening the footway to metres where possible, and done to an adoptable standard with edging kerbs and a new surface of tarmac and states this should be taken into account.

Conclusion

The application made is that these sections of route have already become a footpath in law and should be recorded on the Definitive Map and Statement of Public Rights of Way.

The application route starts from a highway, Mitton Road (A), reaches a highway, Pendle Drive between points C and D, and continues as a further section to a highway Calderstones Drive at points F and H.

In respect of Pendle Drive and Calderstones Drive these are now vehicular highways and not able to be recorded on the Definitive Map. There was a S38 Agreement between Alfred McAlpine Homes North West Limited and Ribble Valley Borough Council dated 15/8/2000. 10 (b) of this agreement provided that on Completion of Part 2 works the road or roads shall become a highway or highways and remain forever open for use by the public at large. We are not in possession of the Part 2 certificate (the final certificate was issued to George Wimpey Northwest Limited 28/10/2010.)

Whilst users of the application route were crossing private land between C-D prior to dedication as a highway the intention to dedicate as highway was there from the S38 Agreement dated 15/8/2000.

F-G on the Committee plan is already footpath. This was dedicated in the 2000 S38 Agreement and is more properly added to the Definitive Map by way of a Legal

Event order rather by a DMMO based on user evidence. This short section is therefore not being considered with the rest of the application route.

Committee is therefore considering two separate application routes A-C and D-F/H both of which are connected to recorded highways at each end.

There is no express dedication in this matter therefore Committee should consider on balance, in respect of each route, whether there is sufficient evidence from which to infer a dedication at common law from all the circumstances or for the criteria in section 31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years "as of right" use.

Firstly, looking at whether dedication could be inferred at common law; for there to be inferred dedication, the evidence must show clear intention on the part of the landowner(s) to dedicate the route as a public right of way. Committee is advised to consider whether the evidence presented within this report from the various maps, and other documentary evidence coupled with the evidence on site and user evidence indicates that it can reasonably be inferred that in the past the landowner(s) intended to dedicate the route as a public right of way. Committee must consider whether there is sufficient evidence of the intention to create the actual route being considered in this report.

Substantial parts of the route as applied for and in existence on the ground today were formed as a result of houses being erected in the 1920s.

From looking at the user evidence it would appear that there has never been any clear action by owners to prevent use by the public (prior to the calling into question that triggered this application) and use by the public has continued for many years such that on balance there may be sufficient evidence from which to infer dedication at common law of this route from all the circumstances but it may be appropriate initially to make the Order and see what further information may be clarified before promoting to confirmation

Secondly looking at whether there is deemed dedication under section 31 Highways Act 1980 – in order to satisfy the criteria for s31 there must be sufficient evidence of use of the application route by the public, as of right (without force, secrecy or permission) and without interruption, over the 20 year period immediately prior to its status being brought into question, in order to raise a presumption of dedication. The presumption may be rebutted if there is sufficient evidence that there was no intention on the part of the landowner during this period to dedicate the route as a public right of way.

In this matter, the evidence indicates that the route A-C was obstructed in 2021 by the erection of fencing at point A which called that route into question and prompted the submission of this application in 2021. The route was still accessible other than at point A and most users indicated they were still using it at the time of the application. The date of application 3/3/21 is taken to be the date of calling into question of the unobstructed route D-F/H.

For D-F/H the 20 year period under consideration for the purposes of establishing deemed dedication would be from 4/3/2001 – 3/3/2021. For A-C we do not know the precise date the application route was blocked at point A, users refer to early 2021 and was prior to application 3/3/2021. For A-C we have used a 20 year period 31/1/2001 to 1/2/2021. A more accurate date from additional user evidence may be available.

Whilst some user evidence relates to period prior to 2001 Committee is advised that the provisions of S31 do not apply to the land whilst it was Crown land. The Land ceased to be Crown land when the land transferred from the Secretary of State in 1999 according to the Land Registry.

The applicant has provided evidence from 12 users in support of the application which refer to regular use of the route with the majority of the 12 users stating that they used the route daily on foot. The majority of users state they had seen others using it and many describe it as a well-used route.

All 12 users recorded that the application route has always followed the same course and none of the users refer to having seen signs or notices along the route advising that the route was not public.

Several users reference use from 2011 which would appear to relate to new housing being built in the area.

Committee's attention is drawn to the fact that although 12 users can be viewed as a relatively low number, Guidance from the Planning Inspectorate indicates that use of the route must be by a sufficient number of people who together may sensibly be taken to represent the public at large. Committee may consider that these 12 users of the route are representative of the public at large and therefore the evidence does raise a presumption of dedication of a footpath and does satisfy the statutory test.

The former landowner raises the fact that some of the users are related and/or from same household. Committee is advised that so long as the evidence overall represents the public at large this user evidence can be taken into consideration.

Evidence indicates a no dog walking sign or signs were erected in 2019. One no dog walking sign is visible at point A. This is not considered to be a calling into question as it did not prohibit use, indeed it could be taken as a landowner accepting use for purposes other than dog walking.

Mersey Care NHS Foundation Trust were landowner at the time of the application having acquired the land A-C and D- near E 17/5/2017. They have objected to the application but it is suggested they do not refer to any actions taken which would sufficiently call the route into question until they took action at A and there is a footpath which can be reasonably alleged to subsist.

The current landowner Prospect (GB) Limited only purchased that land 25/4/22 and have confirmed they were made aware of this application as part of planning application prior to their purchase. They have objected to the application but only purchased after the application.

In conclusion, taking all of the evidence into account, Committee on balance may consider that there may be sufficient evidence to make an Order but due to a slightly low number of user evidence Committee may however consider that there is not on balance sufficient evidence such that the higher test for confirmation can be met and may feel that it should not proceed to promote to confirmation at this stage.

If Committee is of the view that it is not satisfied that the higher test for confirmation can be met with the information available the matter should be returned to Committee for a decision regarding confirmation once the statutory period for objections and representations to the Order has passed.

Risk management

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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-700		   County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

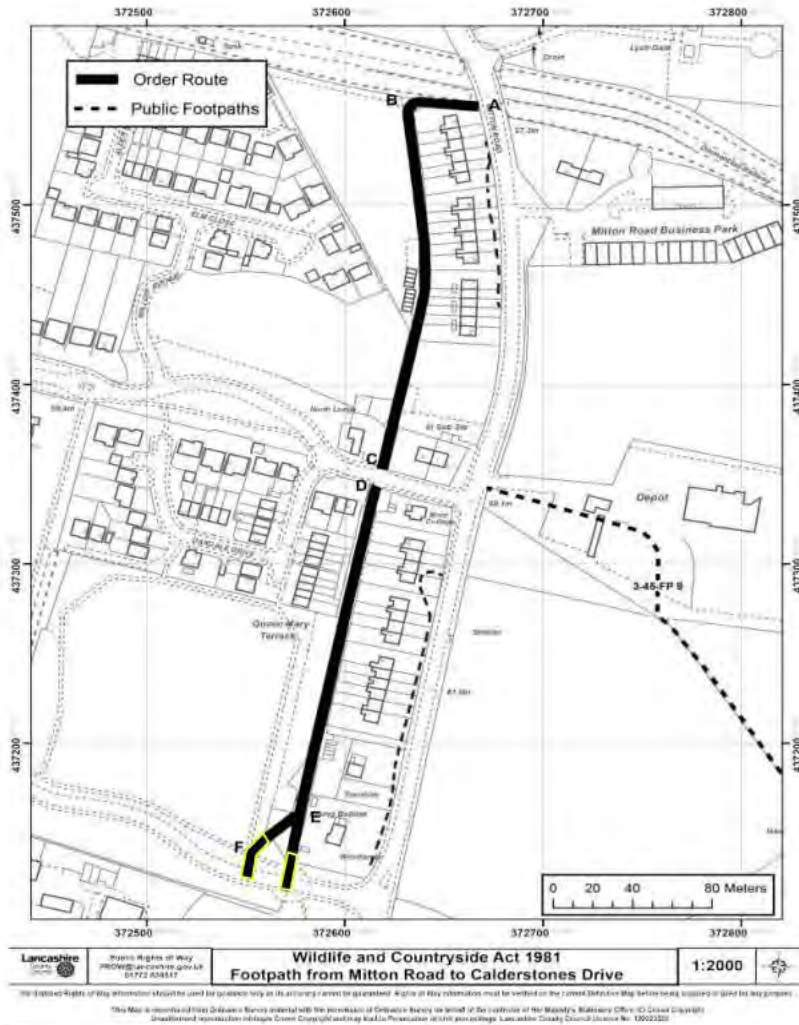
N/A



Appendix 5 – Landowner letters confirming existing footpath

Andrew Denton

Subject: FW: "EXTERNAL" RE: Clitheroe
Attachments: RoW TW.pdf



Subject: FW: "EXTERNAL" RE: Clitheroe

Hi Andy,

I confirm Taylor Wimpey have no objection with the diverting of the footpath as per your email description below and attached plan.

I trust this is sufficient for you application to progress; should you need anything further, please contact me.

Kind regards,

[REDACTED]
Subject: RE: "EXTERNAL" RE: Clitheroe

Warning: This email is from an external sender, please be cautious when opening attachments or links.

Thanks Keiron

The attached plan shows the RoW – thick black line. Most of this is over our land, which we're diverting along the dashed line, all in our ownership. The Council is progressing the diversion but so that it doesn't create a dead-end on the existing RoW they've asked that we check with the landowner of the section highlighted yellow if this can also be diverted/stopped as part of our application – this is owned by the TW Man Co. The Council have said we just need an email trail confirming this.

Cheers

Andy

Andy Denton
Head of Land



Prospect Homes
Unit 5 Meridian Business Village
Hansby Drive, Liverpool L24 9LG

[REDACTED]

[REDACTED]

Subject: RE: "EXTERNAL" RE: Clitheroe

That's ours pal, send over your query and ill take a look. If I cant help ill get the land team to look at it.

Ta,

[REDACTED]

Taylor Wimpey



[REDACTED]

Subject: RE: "EXTERNAL" RE: Clitheroe

Warning: This email is from an external sender, please be cautious when opening attachments or links.

Hi Keiron

I'm good cheers – been at Prospect since Feb.

The site is Calderstones Park, Whalley, Clitheroe – its accessed from Mitton Road, BB7 9YE.

Cheers

Andy

Andy Denton
Head of Land



Prospect Homes
Unit 5 Meridian Business Village
Hansby Drive, Liverpool L24 9LG

[REDACTED]

Subject: "EXTERNAL" RE: Clitheroe

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Hi Andy,

Im fine thanks, how are you?

Could you tell me the site or location. Clitheroe is covered by the Manchester Office and North West Office.

Cheers,

[Redacted signature block]

**Taylor
Wimpey**



[Redacted signature block]

Subject: Clitheroe

Warning: This email is from an external sender, please be cautious when opening attachments or links.

Hi Keiron

Hope you're well. Sorry for the email out the blue looking for help!

Could you put me in touch with the Land lead at TW that covers Clitheroe, South Ribble if poss please.

I'm dealing with a Right of Way claim that crosses one of our sites and a bit of adjacent land owned by a Management Company for an old TW site. Katherine Hindmarsh and Michael Lonnon are the TW Directors of the Man. Co – if its easier to put me in touch direct with these.

Thanks

Andy

Andy Denton
Head of Land



Prospect Homes
Unit 5 Meridian Business Village
Hansby Drive, Liverpool L24 9LG



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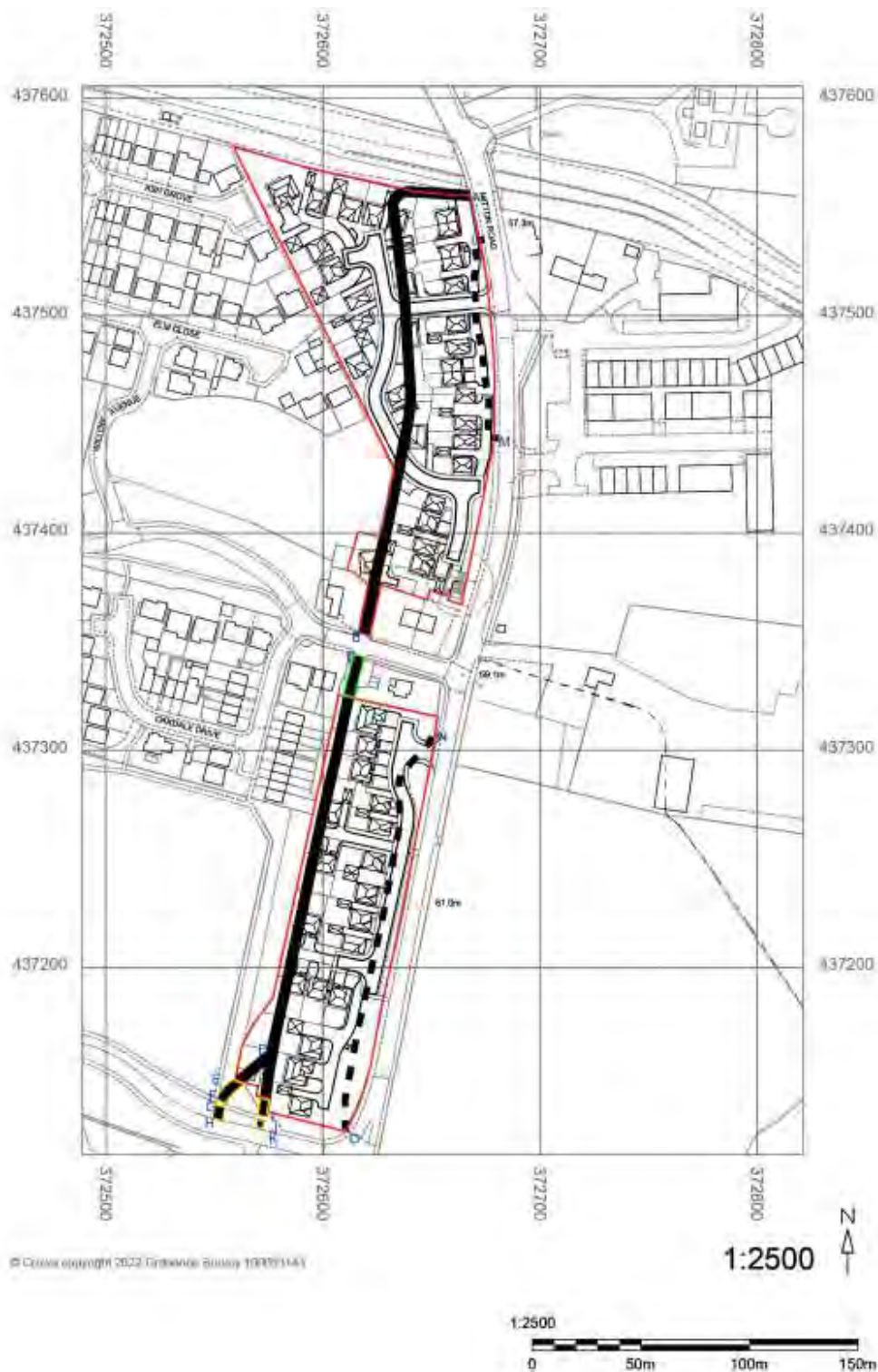
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Subject: FW: "EXTERNAL" Mitton Road - Public Right of Way [HEMP=00031816/00000467]
Attachments: ProposedMittonRoadPROWDiversionNovember2022pdf-V1.pdf

Attached Plan



[REDACTED]

Subject: "EXTERNAL" Mitton Road - Public Right of Way [HEMP=00031816/00000467]

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Hi Andrew

After reviewing the file and advising Michael Devine (Senior Property Manager) he has authorised us to provide the below amended statement:

Mersey Care consent to the diversion application detailed on the attached plan on the basis that if successful any claim to the existing route is extinguished in full

Kind regards

Daniel

Daniel Howlett
Solicitor
Hempsons | Manchester

[REDACTED]

HEMPSONS

[REDACTED]

Hempsons will be closed from 1pm on 22 December until 26 December. We will be open as usual from 27 December.



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Appendix 6 – Footpath Diversion Order Application (October 2022)



Ribble Valley
Borough Council

www.ribblevalley.gov.uk

PUBLIC PATH DIVERSION ORDER

Town and Country Planning Act 1990 Section 257

RIBBLE VALLEY (Footpath 3-45-FP51) DIVERSION ORDER 2023

This order is made by Ribble Valley Borough Council under section 257 of the Town and Country Planning Act 1990 because it is satisfied that it is necessary to divert the footpath to which this order relates in order to enable development to be carried out in accordance with planning permissions granted under Part III of the Town and Country Planning Act 1990 namely; permission 3/2021/0076 proposed demolition of 34 existing dwellings and the erection of 50 new dwellings with vehicular accesses, landscaping and other associated works.

BY THIS ORDER:

1. The footpath over the land shown by a bold black line on the attached map and described in Part I of the Schedule to this order ("the Schedule") shall be diverted as provided below:
2. There shall be created to the reasonable satisfaction of Ribble Valley Borough Council an alternative highway for use as a replacement for the said footpath as provided in Part 2 of the Schedule and shown by bold black dashes on the attached map.
3. The diversion of the footpath shall have effect on the date on which Ribble Valley Borough Council certifies that the terms of article 2 have been complied with.
4. Prospect (GB) LTD is hereby required to pay for the cost of carrying out the works in relation to the highway described in Part 2 of the Schedule.
5. Where immediately before the date on which the footpath is diverted there is apparatus under, in on, over, along or across it belonging to statutory undertakers for the purpose of carrying on their undertaking, the undertakers shall continue to have the same rights in respect of the apparatus as they then had.

SCHEDULE

All distances and compass directions given are approximate.

PART 1

Description of site of existing path or way

The entire width of Footpath 3-45-FP51 running 240m from Mitton Road to Pendle Drive (points A to B), 220m from Pendle Drive to Calderstones Drive,

except for the footpath alongside Calderstones Drive (points C to I and J to K) and 40 m from the junction in the path to Calderstones Drive, except for the footpath alongside it (points D to F and G to H) as shown on the attached plan

PART 2

Description of site of alternative highway

An alternative footpath shall be created predominantly of tarmac running through the residential access and landscaping of the proposed development from Mitton Road (grid ref. SD 7267 3753) generally south to another point on Mitton Road (SD 7267 3744) and from Mitton Road (SD 7265 3731) generally south to another point on Mitton Road (SD 7260 3712); points L to M (100m) and N to O (200m) as shown on the attached map. The width of the footpath will be 2 metres.

The Common seal of
Ribble Valley Borough Council
was hereto affixed this 3 January 2023
in the presence of:

Mayor

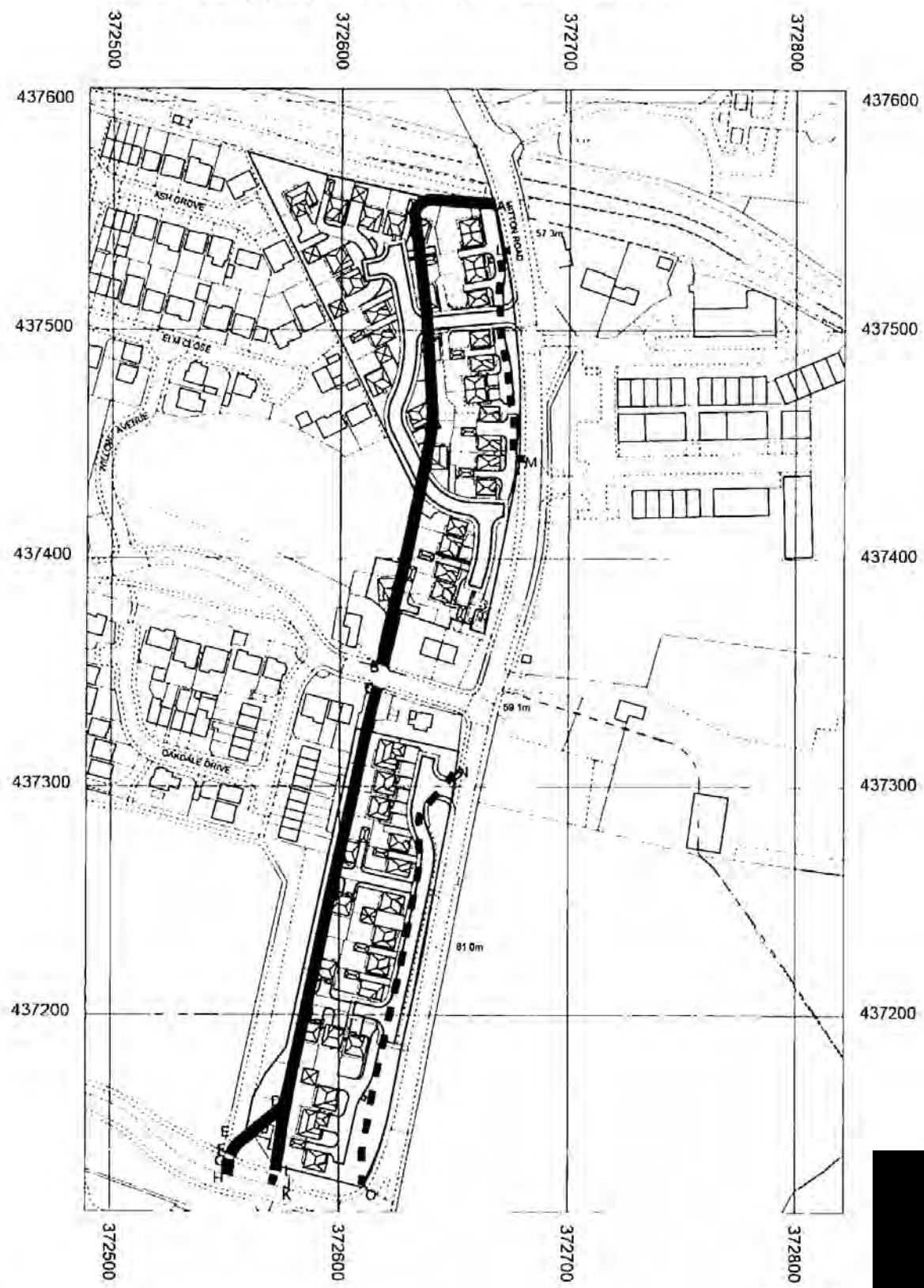


Chief Executive



1992

Public Path Diversion Order
Town and Country Planning Act 1990 Section 257
Ribble Valley (Footpath 3-45-FP51) Diversion Order 2023



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1:2500





Appendix 7 – Composite Landscape Plan

New Route to be Dedicated

DMMO Route

PARCEL A

PARCEL B



Mitton Road, Whalley



Project Name	Project Number	Revision	Date
Prospect Homes	PR001-PR00W	A0	13/01/2023
Mitton Road, Whalley			
PR00W - Alternate Routes			
Scale	1:500	Author	AD
Drawn	SR	Checked	AD
Revised		Legal	



Appendix 8 – Prospect Homes correspondence with objectors on s.257 application

08 February 2023

Dear Sir/Madam

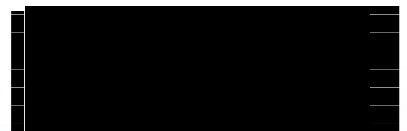
RE: APPLICATION 3/2022/1044 PUBLIC RIGHT OF WAY TO THE REAR OF FORMER QUEEN MARY TERRACE AND BRIDGE TERRACE MITTON ROAD WHALLEY BB7 9JS

We are aware that a number of objections have been received in response to our above application. Prospect Homes is the developer that has acquired the site from the NHS and now developing it for new homes.

Given that the objections raise similar points, at this stage we are providing this one response for the attention of each respondent. If helpful we would also be happy to meet with each respondent to discuss the proposals further. We have provided some further details of our proposals below and attached, which hopefully address some of the points raised:

- By way of some background, planning permission for the redevelopment of the site was granted on 22/02/22 (ref 3/2021/0076) and we are now pursuing the above application under s.257 of the Town and Country Planning Act to formally divert the public footpath. As the development has received planning consent the matters for consideration now regard identifying a suitable route for the diversion through the approved layout.
- A key concern raised by many of the objections regards the safety and enjoyment by users if the path is to be diverted along Mitton Road. To confirm, the diversion is not proposed to run entirely along the existing footway on Mitton Road but rather run largely inside the development boundary, separated from Mitton Road by a landscaped border, planted with trees, shrubs and a hedge along this strip, as illustrated on the attached plans. This is intended to create a green buffer and physical separation for users of the route from Mitton Road. Consideration was given to creating a separate path in the landscaped border, but this would reduce the green buffer from the main road which would be to the detriment of both footpath users and residents.
- Where the diverted route does need to pass onto Mitton Road, these short sections will run along the existing footway, which although currently narrow in places will be widened, resurfaced and have improved street lighting delivered as part of our development.
- Whilst only one diversion route is shown on the application plan (as required under the application process) there are a number of other pedestrian routes that can be taken both through and around the approved development, which are highlighted on the attached plans.
- We do also consider that the proposed diversion would improve safety along the route with more natural surveillance provided from the new houses that would overlook the route, as opposed to the existing route that was quite isolated to the rear of the previous derelict properties and if left in place would effectively become a back alley behind the new homes to be built

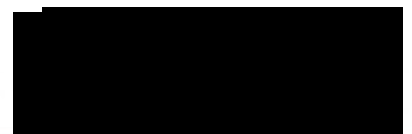
Whilst certainly not unappreciative of the changes for users of the existing footpath, we hope that the benefits of the development can also be considered - in the redevelopment of a longstanding derelict site for new homes including 6 affordable homes prioritised for local people along with financial contributions Prospect will make to improve Whalley Woodland. We are also unusual from other developers in that any profit generated on the scheme is reinvested by our parent, the Riverside Group (a 'not-for profit' registered charity), to fund homelessness, care facilities for the elderly and the provision of affordable homes. As Prospect is relatively small operation of only 30 staff and 2 live schemes this year, the scheme is of huge significance to our business.



If we are not able to resolve objections to our application, Ribble Valley Council will need to refer the decision to the Secretary of State (SoS). We would as such be grateful if, on review of the above information, you could formally withdraw your objection. Given the time critical nature of this application, if we do not hear from you within 14 days we will need to assume your objection remains and request that the Council refer the decision to the SoS.

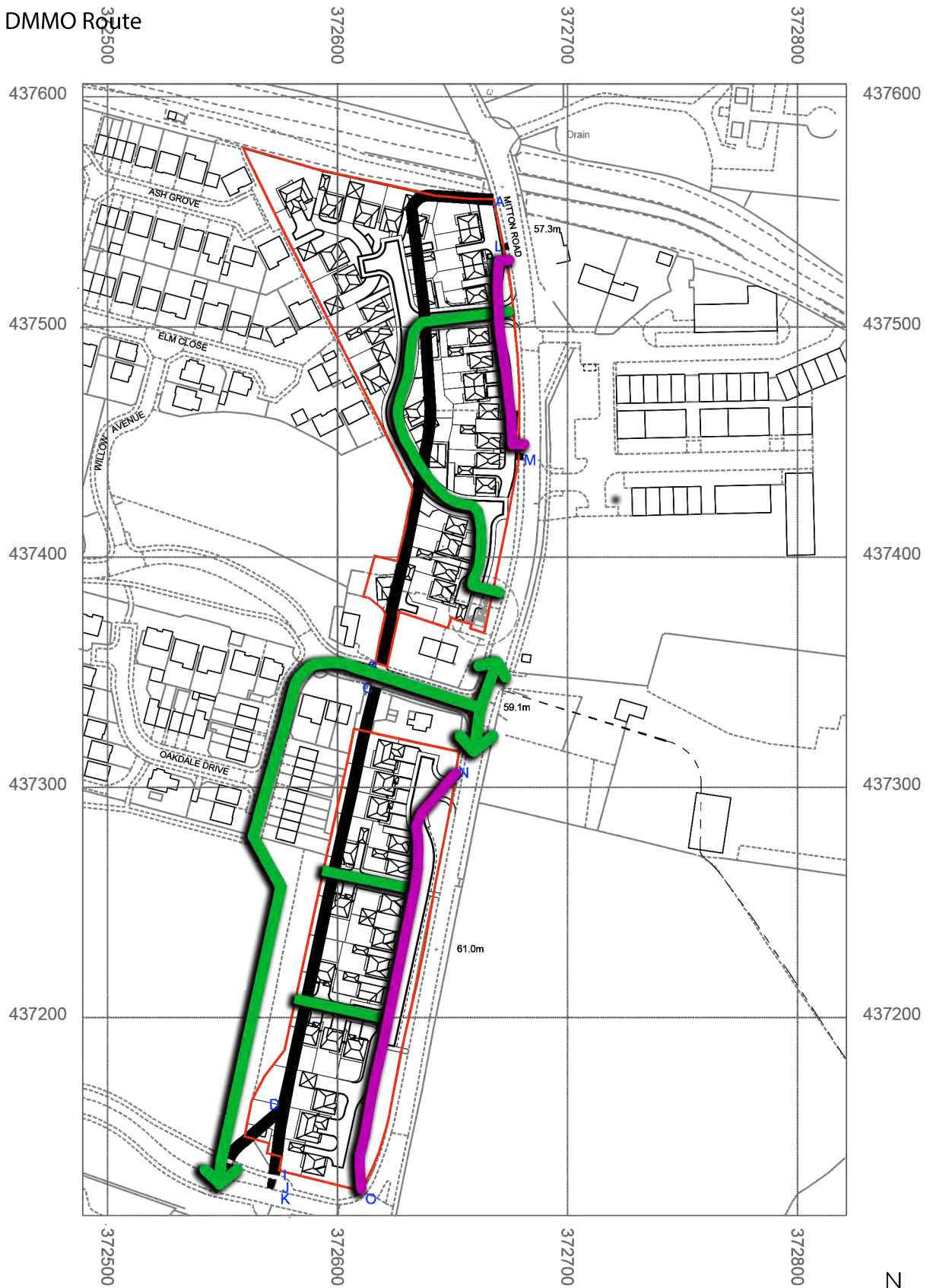
Yours Faithfully

Prospect GB (Ltd)





- Other Access
- Alternative Route
- DMMO Route



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Town & Country Planning Act 1990 (as amended)
Planning and Compulsory Purchase Act 2004

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