

# Agenda Item 7

**Regulatory Committee**  
Meeting to be held on 26<sup>th</sup> March 2014

Electoral Division affected:  
West Lancashire North

**Wildlife and Countryside Act 1981**  
**Claimed Public Footpath from Banks Road to Station Road, North Meols,**  
**West Lancashire Borough.**  
**Claim No. 804/529**  
(Annex 'A' refers)

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## Executive Summary

The claim for a public footpath from Banks Road to Station Road, North Meols, West Lancashire Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/529.

## Recommendation

1. That the claim for a public footpath from Banks Road to Station Road, North Meols, West Lancashire Borough to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/529, be accepted.
2. That an Order be made pursuant to Section 53 (3)(b) and/or 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a Public Footpath from Banks Road (Grid Reference SD 3796 2086) to Station Road (SD 3826 2032), North Meols for a distance of approximately 610 metres and shown between points A-B-C-D-E-F-G-H-I on the attached plan.
3. That, being satisfied that the higher test for confirming the said Order can be satisfied, the said Order be promoted to confirmation if necessary by sending it to the Secretary of State.

## Background

A claim has been received for a public footpath extending from a point on Banks Road to a point on Station Road, North Meols, West Lancashire Borough, a distance of approximately 610 metres, and shown between points A-B-C-D-E-F-G-H-I on the attached plan, to be added to the Definitive Map and Statement of Public Rights of Way.

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 of the Wildlife and Countryside Act 1981 sets 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 if the evidence shows that:

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

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 (as explained in Planning Inspectorate's Advice Note No. 7) 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 on the balance of probabilities. It is possible that the Council's decision may be different from the status given in the 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 claimed.

### **Consultations**

West Lancashire Borough Council has been consulted and no response has been received.

North Meols Parish Council is the applicant for this claim.

Claimant/Landowners/Supporters/Objectors

The evidence submitted by the claimant/landowners/supporters/objectors and observations on those comments is included in 'Advice – County Secretary and Solicitor's Observations'.

Advice

Executive Director for the Environment's Observations

Points annotated on the attached Committee plan.

Point	Grid Reference	Description
A	SD 3796 2086	Junction with Banks Road
B	SD 3798 2079	Fence line shown on Committee plan that is no longer in existence
C	SD 3800 2078	Boundary fence
D	SD 3813 2055	Change of surface
E	SD 3818 2046	Entrance to pump house (disused)
F	SD 3819 2044	Culvert
G	SD 3824 2035	Claimed route passes through metal gateposts
H	SD 3825 2033	Field gate and kissing gate across claimed route
I	SD 3826 2033	Junction with Station Road

### Description of the Route:

A site inspection was carried out in September 2013.

The claimed route is approximately 610 metres long. It commences on Banks Road immediately opposite the start of Public Bridleway 47 North Meols and adjacent to 100 Banks Road (at point A on the Committee plan).

At the start of the claimed route access is blocked by a double wooden post and rail fence which appears to have had barbed wire across it which has subsequently been cut. There is a gap of approximately half a metre between the two fences and it appears that they were constructed in this way so that a new section of hedge could be planted between them (the remainder of the field is bounded by a mature hawthorn hedge which stops short of the boundary with 100 Banks Road at point A).

Immediately beyond the double fence, in the corner of the field, is a small brick substation 136 cm by 79 cm wide, and although partially built across the line of the claimed route it is easy to walk round it. Adjacent to the substation, on the boundary with 100 Banks Road, and clearly visible from the start of the claimed route at Point A, is a sign with the faded word 'private' in red and the more visible wording 'legal action may be taken against unauthorised persons found on this property' in black.

From point A the claim route extends in a south south easterly direction for 70 metres along a field boundary which separates the garden of 100 Banks Road with the field crossed by the claimed route. The claimed route is unenclosed and there is no visible, or worn track on the ground.

At point B on the Committee plan the claimed route is shown to cross a field boundary but on the ground this boundary does not exist. However a boundary fence does cross the claimed route a few metres south east of point B at point C.

At point C the claimed route is crossed by a wooden post and sheep netting fence topped with barbed wire with no access through it. When the claimed route was originally inspected in September 2013 there was no sign at point C. However, on a

further inspection in December 2013 it was noted that a sign had been erected at this point indicating that the land between points C-B-A was private.

Close to point B, to the west of the claimed route and immediately to the rear of the garden fence there is a small wooden gate which was closed but not locked. At the time of inspection it was possible to pass through the gate to access a small stone flagged area adjacent to large metal container. It was then possible to pass round the corner of the fenced off land adjacent to the sluice on a narrow strip of land to rejoin the claimed route south of the fence at point C (although it was difficult to use due to a deposit of garden waste including a number of coniferous branches).

From the fence at point C the claimed route continues in a south easterly direction along a 3 metre grass surfaced track which runs adjacent to The Sluice. The land over which the claimed route passes had been mown and was well maintained. A faint track was visible in the grass that looked to have been formed by people walking along it.

The claimed route continues in a south east direction adjacent to The Sluice passing a series of angling platforms that are accessed from the claimed route and that were constructed in 2000 (information taken from a notice adjacent to claimed route).

At point D the surface of the claimed route changes from being a well maintained grass surface to a 3 metre wide compacted stone track. It continues in a south easterly direction adjacent to The Sluice passing an open area that appears to be used as a parking area to the east.

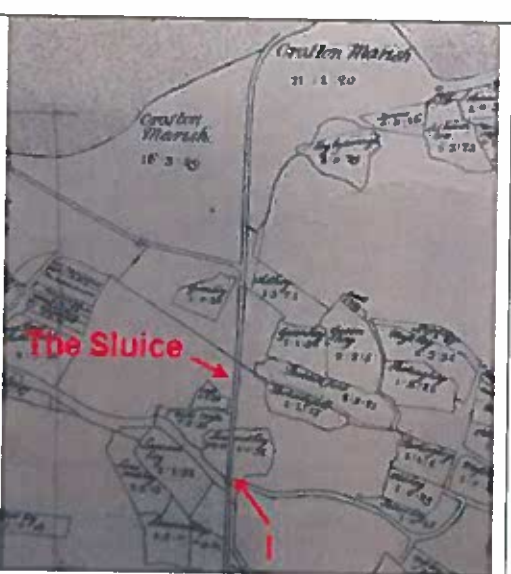
The claimed route continues along the surfaced track to point E where it passes the entrance to a disused pump house and car park.

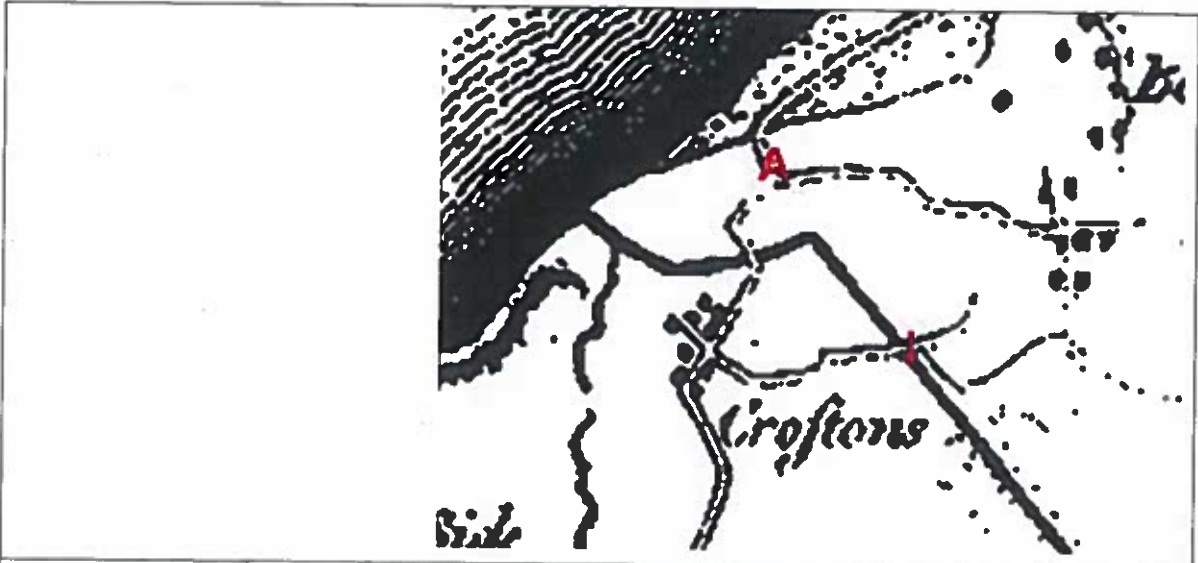
From point E the claimed route continues in a south easterly direction along the stone surfaced track (adjacent to The Sluice) crossing a culvert at point F and continuing in a south easterly direction along the track to point G where there are metal gate posts on either side of the claimed route (but no gate) and signs stating 'Horses prohibited private land' and 'Warning No tipping'.

The claimed route continues a short distance to point H where a substantial 4 metre wide metal gate has been erected across route. The gate was not locked on the day of inspection and alongside it pedestrian access was available via a metal kissing gate (130cm box and 110 cm wide gate). Various signs relating to fishing activities, the provision of fishing permits, and warning against swimming in The Sluice were located at point H but none of the signs suggested that there was no public access for pedestrians along the claimed route. Just beyond point H the claimed route ends at point I where it meets Station Road.

#### Map and Documentary Evidence

Maps, plans and other documents were examined with reference to the claimed route.

Document Title	Date	Brief description of document & nature of evidence
Henry Bankes' Map of Lands in North Meols belonging to Peter Bold 1736 (Crosby Reference Library)	1736	This map was surveyed and mapped by Henry Bankes. The reproduction of this map carries the following statement: 'A copy of the original survey of lands in Southport and Banks in the possession of the Trustees acting in execution of the Trusts of the Will and Codicil of the late Charles Scarisbrick of Southport Hall, Esquire, deceased, and was reproduced by photography (by permission of the Scarisbrick Trustees), by the Southport Corporation in February 1908'.
		
Observations		This map appears to show the lands in the ownership of Peter Bold, with the acreage of each field, plus the field name or tenant/occupier. The map shows that The Sluice existed in 1736. Its alignment (and that of the road network in the area) does not correspond exactly with the later Ordnance Survey maps but it is possible to identify a number of roads and to locate point I on the map. The claimed route is not shown on the map.
Investigating Officer's Comments		The claimed route did not exist as a major route at the time – it may have existed as a minor route but due to the limitations of scale would not have been shown so no inference can be drawn in this respect.
Yates' Map of Lancashire	1786	Small scale commercial map.



Observations		The claimed route is not shown on the map. The Sluice is clearly shown and Banks Road and Station Road are also shown.
Investigating Officer's Comments		The route did not exist as a major route at the time although it may have existed as a minor route which, due to the limitations of scale and the purpose for which the map was drawn meant that it would not have been shown so no inference can be drawn in this respect.
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 his map showed private as well as public roads.



Observations		The claimed route is not shown on the map. The Sluice is clearly shown and Banks Road and Station Road are also shown.
Investigating Officer's Comments		The route did not exist as a major route at the time – it may have existed as a minor route but due to the limitations of scale would not have been shown so no inference can be drawn in this respect.

<b>A New Map of the Country round Manchester by John Stockdale 1818</b>	1818	The map covered an area of thirty or forty miles around Manchester, and its value and utility to people travelling across the area is self evident.
Observations		The claimed route is not shown on the map. The Sluice is clearly shown and Banks Road and Station Road are also shown.
Investigating Officer's Comments		The route did not exist as a major route at the time – it may have existed as a minor route but due to the limitations of scale would not have been shown so no inference can be drawn in this respect.
<b>Hennet's Map of Lancashire</b>	1830	Small scale commercial map.
Observations		The claimed route is not shown on the map although The Sluice, Banks Road and Station Road can be clearly identified.
Investigating Officer's Comments		The route did not exist as a major route at the time – it may have existed as a minor route but due to the limitations of scale would not have been shown so no inference can be drawn in this respect.
<b>Inclosure Act Award and Maps</b>		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801).
Observations		There is no Inclosure Award for North Meols.
Investigating Officer's Comments		No inference can be drawn.
<b>Tithe Map and Tithe Award or Apportionment</b>	1840	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.



**Observations**

The claimed route is not shown as a path or track on the Tithe Map although for a short distance from point A towards point B it appears to pass along a fenced off strip which is not numbered. It appears to have been gated at the end of the fenced off strip where it meets field 165. The claimed route crosses fields 1651, 1652, 1696, 1698. Plot 1651 was owned by Sir Henry Bold Baronet Hoghton and tenanted by Hugh Gregson. It was described as arable land with no reference made to any public rights of way. Plot 1652 was owned by Sir Peter Hesketh Baronet Fletchwood and tenanted by William Howard. It was described as arable land with no reference to a public right of way.


Plot 1696 was also owned by Sir Peter Hesketh Baronet Fletchwood and tenanted by William Howard. It was described as arable land with no reference to a public right of way.

Plot 1698 was owned and tenanted by William Linaker and described as arable with no reference to a public right of way.

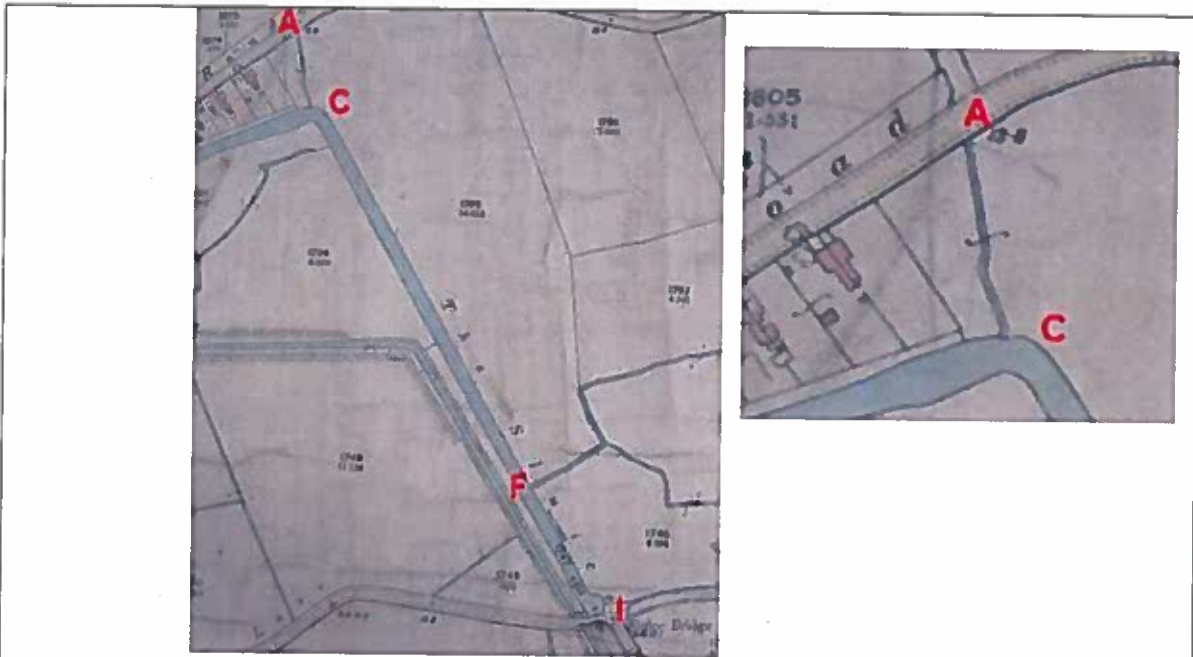


Investigating Officer's Comments		The claimed route probably did not exist in 1840. Access from point A may have been available via a gated access strip but access along the claimed route would have required access through 3 further field boundaries.
Finance Act 1910	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence.</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>

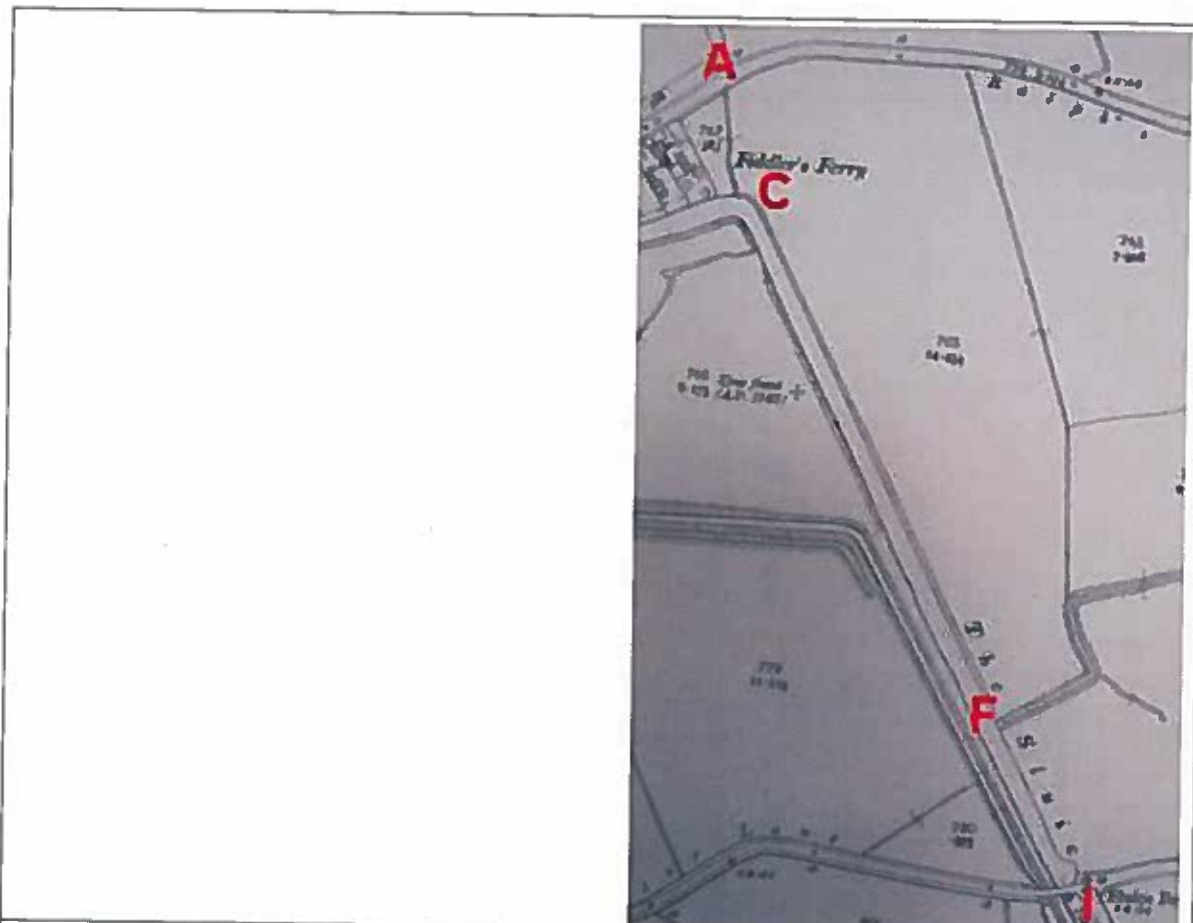


Observations		<p>No Map or Valuation book for this area has been deposited at the County Records Office. A copy of the Finance Act Map and relevant Field book entries were therefore obtained from the National Archives.</p> <p>The claimed route is not shown and is not excluded from the hereditaments (numbered plots).</p> <p>The claimed route crosses hereditaments 747, 749, 804 and 794. No deductions have been claimed for Public Rights of Way or user across any of the hereditaments crossed by the claimed route.</p>
Investigating Officer's Comments		<p>The claimed route was probably not considered to be a public right of way at the time that the valuation was carried out circa 1911 (or was not considered to be worth claiming).</p>
Authentic Map Directory of South Lancashire by Geographia	Circa 1934	<p>An independently produced A-Z atlas of Central and south Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.</p>
		
Observations		<p>The claimed route is not shown on the map although The Sluice, Banks Road and Station Road can be clearly identified.</p>
Investigating Officer's Comments		<p>The route did not exist as a major route at the time – it may have existed as a minor route but due to the limitations of scale would not have been shown so no inference can be drawn in this respect.</p>
Ordnance Survey Maps		<p>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</p>

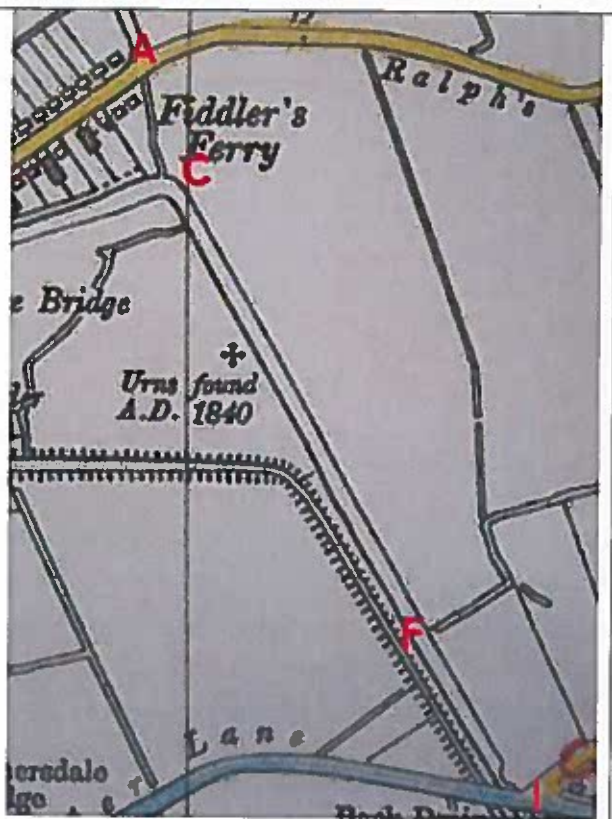
		of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.
6 Inch OS Map	1847	The earliest Ordnance Survey 6 inch map for this area, surveyed 1845-46 and published 1847.
Observations		A route is shown enclosed by fencing from point A for approximately 50 metres towards point B. This route appears to be open (ungated) providing access from the road to a field. The remainder of the claimed route is not shown. The claimed route is crossed by boundaries (most likely fences) at 2 locations between point C and point F. At point F a watercourse appears to feed into The Sluice across the claimed route.
Investigating Officer's Comments		With the exception of the first 50m from point A towards B the claimed route probably did not exist at the time that the Ordnance Survey carried out their survey in 1845-46.
25 Inch OS Map	1894	The earliest Ordnance Survey 25 inch map surveyed in 1892.



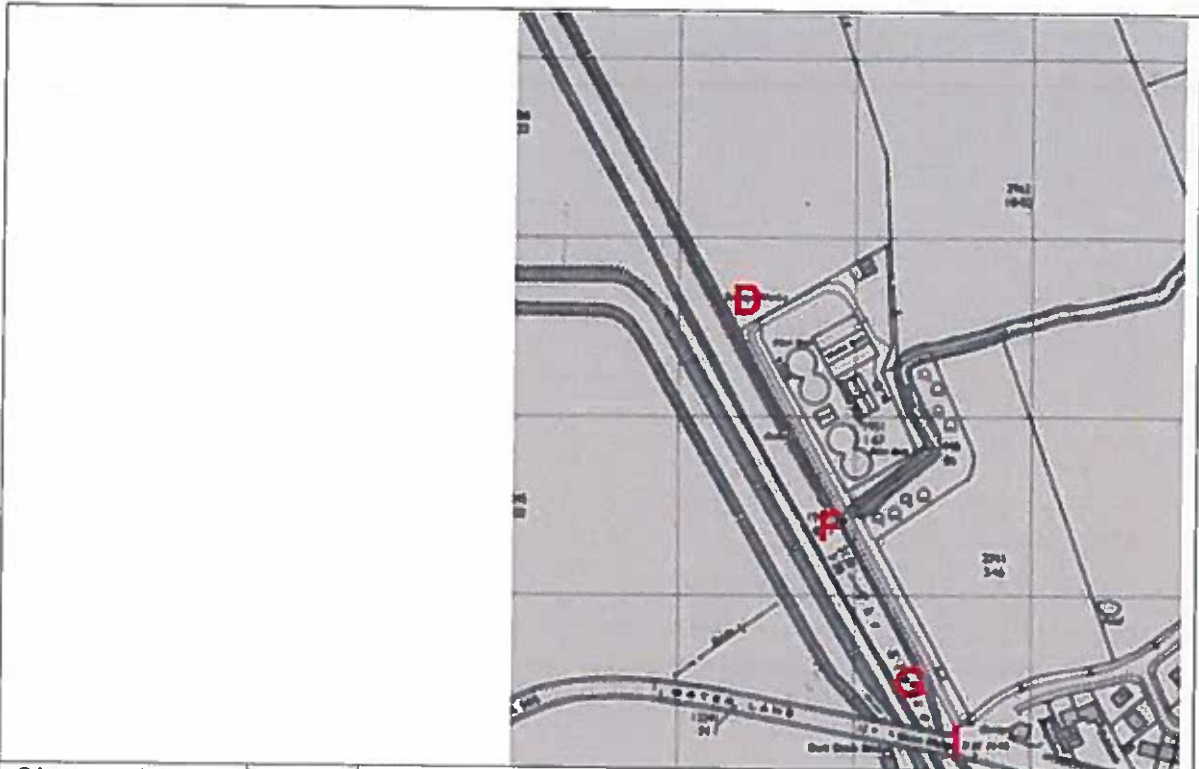
Observations		The claimed route is not shown. A ditch is shown adjacent to the claimed route between points A-C feeding into The Sluice. A further watercourse is shown across the claimed route at point F. No field boundaries are shown across the claimed route.
Investigating Officer's Comments		The claimed route is probably did not exist in 1892.
<b>25 inch OS Map</b>	1911	Ordnance Survey map sheet 75.3, Resurveyed 1892-3, Revised 1909, published 1911.



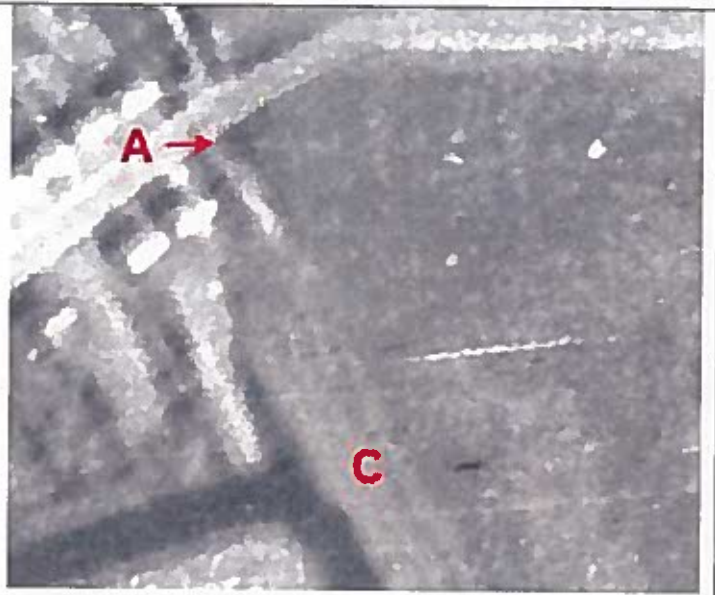
Observations		The claimed route is not shown. A boundary ditch is shown adjacent to the claimed route From point A towards point C feeding into The Sluice. A further watercourse is shown across the claimed route at point F. No field boundaries are shown across the claimed route.
Investigating Officer's Comments		The claimed route probably did not exist in 1909.
25 Inch OS map	1928	Further edition of 25 inch map, resurveyed in 1892-3, revised in 1926 and published 1928.
Observations		The claimed route is not shown and the land across which the claimed route runs remained unaltered from what was shown on the 1911 edition of the 25 inch map.
Investigating Officer's Comments		The claimed route probably did not exist in 1926.
6 Inch OS map	1955	The Ordnance Survey base map for the Definitive Map, First Review, was published in 1955 (although the date of revision was before 1930) at a scale of 6 inches to 1 mile. This map is probably based on the same survey as the 1932 25-inch map.



Observations		<p>The claimed route is not shown. A watercourse is shown running parallel to the claimed route from point A in a south south easterly direction to The sluice, on the boundary between the residential properties and the field over which the claimed route runs. At point F it appears that a watercourse that joins The Sluice had been culverted which would mean that access would now be available along the claimed route at this point. However, it appears that point F was fenced - or possibly gated.</p> <p>The yellow and blue colouring on the base map does not form part of the original map. The colouring is not relevant to the claim.</p>
Investigating Officer's Comments		<p>The claimed route probably did not exist when the map was revised in the 1930s.</p>
1:2500 OS Map	1969	Further edition of the 1:2500 map, revised 1968.



Observations		<p>Only one of the 1:2500 sheet was available at the County Records Office (SD 3820 and 3920). This map sheet covers that part of the claimed route just south of point C to point I. The claimed route is not shown as a physical track between point C and point D. Between point D and point F a pump house has been constructed and an access route provided which is consistent with the claimed route between points D-E-F-G-H-I. At point D the claimed route is crossed by a single pecked line suggesting a change of surface. At point F it can be seen that the watercourse feeding into The Sluice has been culverted to flow under the claimed route.</p>
Investigating Officer's Comments		<p>The claimed route existed as a physical track on the ground between points D-E-F-G-H-I in 1968.</p>
Aerial Photographs	1940s	<p>Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.</p> <p>The earliest set available was taken just after the Second World War in about 1945. The clarity is generally very variable but in this particular instance the quality of the picture is reasonable.</p>

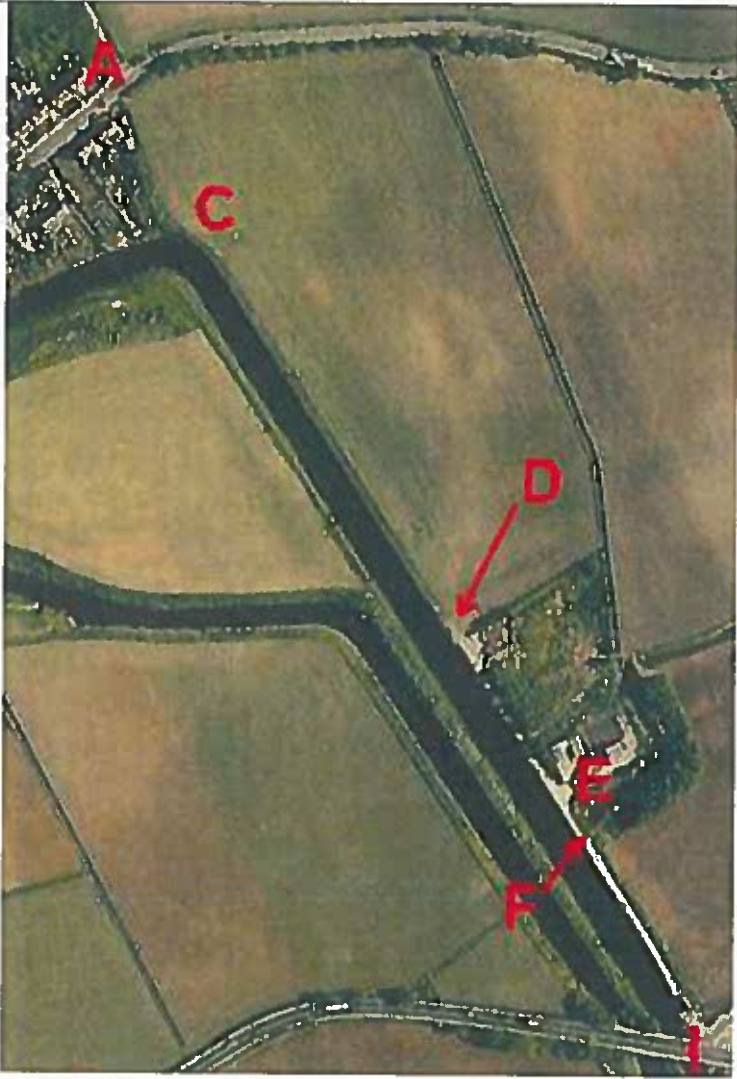




Observations		<p>It is possible to see Banks Road and house nos. 100 and 98 Banks Road. The boundary of the gardens to the field crossed by the claimed route appears different to the present day and it looks like both properties had smaller gardens at that time.</p> <p>At point A there appears to be a lighter area indicative of a well used field entry point. The Sluice can be clearly seen but there is no visible worn track alongside it. There is no field boundary across the claimed route at point B or point C and the pumping station close to point D does not exist. There is no visible exit from the claimed route at point I.</p>
Investigating Officer's Comments		<p>The claimed route was not visible as a walked route in the 1940s. Access onto the claimed route appeared possible at point A although the worn area would be consistent with any used agricultural field access point. No fences or barriers could be seen across any part of the claimed route suggesting that access may have been possible along the full length.</p>
Aerial Photograph	1963	Aerial photograph available on GIS and in County Records Office.






<p>Observations</p>		<p>Access appears to be available through a gap in the hedge at point A and a worn track is visible leading into the field. The claimed route is not visible as a route on the ground between point A and point B although a track can be seen in the proximity of point C leading from the trees along the boundary of the gardens and the field. There is no field boundary across the claimed route at point B or point C. Between point A and point B the boundary between the houses and field through which the claimed route passes appears slightly different to the current day and it appears that the gardens have now been extended into the field towards the claimed route.</p> <p>A wide track is visible along the claimed route between point C and point D. At point D the track narrows slightly as it passes between The Sluice and the pump house. From point D the claimed route continues as a track through to point I where it exits onto Station Road.</p>
<p>Investigating Officer's Comments</p>		<p>Access to the claimed route existed at point A and the route appears to have been accessible between point A and point C. The claimed route existed as a wide track between point C-D-E-F-G-H-I in 1963.</p>

Aerial Photograph	1988	
		
Observations		<p>A worn track is visible leading into the field at point A. The claimed route is not visible on the ground between point A and point C and the field boundary between the gardens and field over which the claimed route runs is different from the present day. There is no field boundary across the claimed route at point B or point C. From point C a faint track is visible adjacent to the Sluice. A clearly visible gap provides access along the claimed route at point D and from point D the claimed route follows a wide access track past the pump house through to point I.</p>
Investigating Officer's Comments		<p>The claimed route appears to have been accessible in 1988.</p>
Aerial Photographs	1998 onwards	<p>The following sets of photographs were all taken after the submission of a Statutory Deposit and Declaration made under section 31(6) Highways Act 1980 by the current owner of the land crossed by the claimed route A-B-C in</p>

		which they did not acknowledge the existence of the claimed route.
<b>Aerial Photograph</b>	1999	
		
		
Observations		Access onto the claimed route appears available at point A but the field boundary/garden boundary alongside the claimed route between points A-B-C differs from the current day. No fencing crosses the claimed route at point B or point C. A faint track can be seen running parallel to The Sluce along the claimed route between point C and point D. No gate or fencing appears to be across the route at point D but a clearly visible route can be seen joining the wider surfaced track and continuing past the pumping station through points E-F-G-H-I. It appears that a gate existed across the claimed route at point H.
Investigating Officer's Comments		The claimed route appears to have existed in 1999.

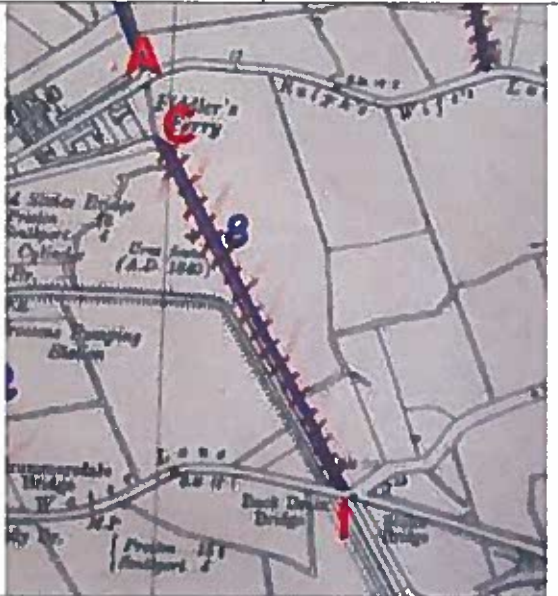
Aerial Photograph	2000	
		
Observations		<p>Access was available into the field at point A. The boundary between the houses and field is difficult to determine but still differs from the present day. A worn track can be seen on the ground along part of the claimed route between points A-B-C and a track also emerges from the trees at the rear of the houses onto the claimed route. There is no boundary fence across the claimed route at point B or point C and the claimed route does not appear to be fenced off from the adjacent field between point C and point D. A faint track can be seen along the claimed route between point C and point D.</p> <p>At point D there appears to be an access way leading to a more clearly defined track which continues from point D-E-F-G-H-I.</p>
Investigating Officer's Comments		The claimed route existed as a worn track in 2000.
Aerial photograph	2010	Aerial photograph available on GIS.



Observations	<p>The most recent photograph pre dating the application. It is not possible to see whether access is available onto the claimed route at point A although it is apparent that the gap in the hedge that had been obvious on the 2000 aerial photograph had been fenced across and the hedge extended from what was shown to exist in earlier photographs. The small brick construction in the corner of the field is visible. The boundary of the gardens of 100 and 98 Banks Road has altered to its current alignment and</p>
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		<p>differs from that shown on the Committee plan.</p> <p>At point B a faint line can be seen across the claimed route that extends in a north easterly direction across the field.</p> <p>The line is not pronounced enough to be an existing field boundary but could mark the line of some sort of temporary boundary that had subsequently been removed.</p> <p>The existing fence across the claimed route at point C is clearly visible and a worn path can be seen extending from the fence line along the claimed route towards point D.</p> <p>This grass covered track continues along the claimed route to point D where cars have been parked adjacent to the route. From point D the claimed route is clearly visible for the rest of its length down to point I. Several other cars can be seen parked along the claimed route and a gate appears to exist across the end of the route at point E.</p>
Investigating Officer's Comments		<p>Access to the claimed route at point A has altered and a fence has been erected across the route at point C. It is not possible to determine from the photograph what access provision there may have been in 2010. The claimed route appears to look similar to what was found on the ground in 2013 with access being prevented by fences at points A and C.</p>
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>
Parish Survey Map	1950-1952	<p>The initial survey of public rights of way was carried out by the parish council in rural district council areas and the maps and schedules were submitted to the County Council. In the case of urban districts and municipal boroughs the map and schedule produced was used, without alteration, as the Draft Map and Statement.</p>



<p><b>Observations</b></p>	<p>The Parish Survey Map for North Meols was produced by North Meols Parish Council. It shows a route marked by a thin red line that roughly corresponds with the claimed route. Between point A and the boundary of The Sluice close to point B the line drawn is on the west side of the field boundary (now within the gardens of 100 and 98 Banks Road). Close to point B the red line crosses a field boundary and is then drawn along the very edge of The Sluice (not alongside it). The route looks to have been originally labelled with the number '4' but this has been crossed out and it has been re-labelled in a different coloured pen with the number '8'. The letters 'C.R.F.' have also been written on the map, together with the word 'No'. 'C.R.F.' was a recognised abbreviation used for labelling a route considered by the surveyor to be a carriage or cart road used mainly as a public footpath. The parish survey card for Footpath 8 describes the route labelled on the map as a field footpath and the detailed description reads ' Poorly defined, grass walk along sluice bank from Fiddlers Ferry to Back Drain Bridge.' It is dated June 1957.</p>
<p><b>Draft Map</b></p>	<p>Lancashire County Council took all the parish survey maps and cards for the rural district areas and drew the routes the parishes believed to be public onto a 6-inch Ordnance Survey map. The Draft Map was given a "relevant date" (1<sup>st</sup> January 1953) and notice was published that the Draft Map had been prepared. The Draft Map was placed on deposit for a minimum period of 4 months on 1<sup>st</sup> January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into the objections, and recommendations made to accept or reject them on the evidence presented.</p>
	

<p>Observations</p>	<p>The claimed route between point A and point C was not shown on the Draft Map or recorded in the Draft Statement. However the claimed route between point C and point I was shown. The thick purple line used to draw the route was drawn within the boundary of The Sluice and not alongside it. The route was described in the Draft Statement as Footpath 8 and described as being from Fiddler's Ferry to Back Lane Bridge. The line was subsequently crossed out with a series of red lines on the Draft Map.</p> <p>The route shown on the Draft Map was subject to a formal objection (Objection No. 619) which was lodged by T Booth, Agent for the Trustees of the Scarisbrick Estate on 19 December 1953 against the inclusion of the path (and its continuation) past fiddlers Ferry to Ralph Wife's Lane. The objection read as follows 'No public right of way is admitted over any portion in the ownership of the Trustees of the Scarisbrick Estate. (The River Bank and land alongside are vested in the Lancashire River Board). The reason for the objection/representation is stated to be "No footpath in existence" and the evidence in support of the objection/representation is also detailed as "No footpath in existence".</p> <p>A handwritten notes appended to the objection file says that FP 8 was not shown on the 1845 or 1894 Ordnance Survey maps. A further sheet records the fact that the District and Parish Council thought that the path should be retained, that the 'CPRE and other voluntary bodies' considered it to be a public path and that a hearing was required.</p> <p>A further objection relating to the same path (No. 694) was lodged by the Lancashire River Board on 31<sup>st</sup> December 1953 and described the route as being 'from Water Lane along the east bank of the main river sluice in a northerly direction to the fence bounding the land owned by the board.' A note appended to the file again refers to the fact that the path was not shown on the 1845 or 1894 OS maps.</p> <p>A further objection - Objection no. 450 was lodged by Liverpool Ramblers Association on 16<sup>th</sup> March 1954 against the omission of a number of routes on Draft Map for North Meols and Scarisbrick and against the removal of a number of paths from Draft Map - including the whole of the claimed route – The objection submitted by the Ramblers Association was split into two parts; firstly an objection that part of the (now) claimed route between</p>
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		<p>points A-C had not been shown on the Draft Map and secondly, that that part of the claimed route between points C - I was proposed to be deleted and that the Ramblers considered that it should be retained.</p> <p>Hearings were held on 22 July 1955 and 18 August 1955 and following consideration of the various objections the County Council determined to delete 'Path 8' from the Draft map and that the claimed route between point A and point C should not be included on the map. Attached to the decision is a typed up copy of County Surveyor's comments that the path was not shown on either the 1845 or 1894 Ordnance Survey.</p>
<b>Provisional Map</b>		<p>Once all representations 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 Quarter Sessions.</p>
		
<b>Observations</b>		<p>The claimed route is not shown on the Provisional Map and there were no objections to the omission of the path. The Ramblers Association, who had objected to its removal, from the Draft Map would not have been able to object to its omission at this stage in the process.</p>
<b>The First Definitive Map and Statement</b>		<p>The Provisional Map, as amended, was published as the Definitive Map in 1962. Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders and creation orders be incorporated into a</p>

		<b>Definitive Map First Review</b>
<b>Observations</b>		The claimed route is not shown on the first Definitive Map.
<b>Investigating Officer's Comments</b>		<p>The parish council appeared to consider that the claimed route (or something similar) was a public footpath in the 1957. However, for reasons not known, only the section corresponding to the claimed route between points C – I was included on the Draft Map and was shown drawn in and not alongside The Sluice. Its inclusion on the Draft Map was subsequently challenged by the landowners. The section A- C (or similar) was not shown on the Draft Map and this was challenged by the Ramblers Association who stated that a route should have been shown and who also challenged the landowner's objections regarding the section C-I. The record of the appeal process is not detailed but it appears from that, and from other appeals within the parish that it was the normal procedure for the County Council to check the 1<sup>st</sup> Edition 6 inch and 25 inch Ordnance Survey maps to determine whether or not the route subject to the appeal was shown. It is not known whether any other research was undertaken. Neither is it known the extent of the evidence presented as part of the appeal procedure that led to the conclusion that the route should not be shown as a public path.</p> <p>However, it appears that in 1955, following an appeal under a formal legal procedure the claimed route was determined not to exist as a public footpath.</p>
<b>Revised Definitive Map of Public Rights of Way (First Review)</b>		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 <sup>th</sup> April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date in 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.
<b>Observations</b>		The claimed route is not shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).
<b>Investigating Officer's Comments</b>		The claimed route was not considered to have changed status by the 1960s.
<b>Statutory Deposit and Declaration made under Section 31(6)</b>		The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years

Highways Act 1980	<p>from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
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Observations	<p>There is one Highways Act 1980 Section 31(6) deposit lodged with the County Council for the area over which the claimed route runs between point A and point C on the Committee plan. The deposit was originally submitted by Mr GB Crooke and Mrs B Crooke on 23 March 1998 and was renewed on 26 May 2004, 9 March 2010 and 2 February 2012. Within the details of the deposit there is no acknowledgement or acceptance that the claimed route A-B is a public right of way. There have been no deposits relating to the remaining length of the claimed route between points C -I.</p>
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Investigating Officer's Comments		<p>There is a clear indication from the owners of the land A-C that they did not acknowledge the existence or intend to dedicate a public right of way between points A-C from 1998 onwards.</p> <p>For the remaining section of the claimed route C - I there is no indication by a landowner under this provision of non-intention to dedicate a public right of way over the claimed route.</p>
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The claimed public footpath does not cross a Site of Scientific Interest or Biological Heritage, nor does it cross access land under the provisions of the Countryside and Rights of Way Act 2000.

### Summary

None of the commercially produced maps support the existence of the claimed route and the maps and documentation produced as part of the Finance Act legislation does not acknowledge the existence of a public right of way.

The claimed route is not shown to physically exist as a worn track on the ground by the Ordnance Survey until the 1969 edition of the 1:2500 Ordnance Survey map from when onwards the section D-E-F-G-H-I is shown to exist as a substantial track.

As part of the legal process leading to the publication of the First Definitive Map North Meols Parish Council included a route – perhaps drawn inaccurately – that they believed to be a public footpath on the Parish Survey Map that they were required to prepare under the National Parks and Access to the Countryside Act 1949 legislation. However, when the County Council took this information and prepared the Draft Map a section of the route roughly corresponding to the claimed route between point A-B-C was not included and the section C-I shown (presumably erroneously) within the Sluice. The landowners objected to the inclusion of the footpath on the map and although this was challenged by the Ramblers Association the County Council, under a formal hearing procedure decided, in 1955, that the path should not be recorded on the map as a public footpath. The Ramblers Association had no further opportunity to object to the decision at that time.

Aerial photographs provide the most useful supporting evidence regarding the availability and use of the route post 1940. They are also a useful aid to show the change that has occurred to the boundary that runs adjacent to points A-B-C.

From the evidence provided by the aerial photographs, the claimed route was not visible as a walked route in the 1940s. However, access onto the claimed route appeared possible at point A and no fences or barriers could be seen across any part of the claimed route suggesting that access may have been possible along the full length.

In 1963 access to the claimed route could be seen to exist at point A and the route appears to have been accessible between points A-B-C. The claimed route existed as a wide track between points C-D-E-F-G-H-I suggesting that it could have been used at that time.

The 1988 aerial photograph also showed that access was available at point A and the route appears to have been accessible between points A-B-C. A faint track is visible between point C and point D and the claimed route existed as a wide track between points D-E-F-G-H-I.

In 1999 (one year after a section 31(6) deposit was lodged in respect of that part of the route between points A-B-C) access onto and along the claimed route appeared possible between point A and point C with a faint track visible between point B and point C. A faint track could be seen running parallel to The Sluice along the claimed route between point C and point D. No gate or fencing appeared to cross the route at point D and a clearly visible route could be seen joining the wider surfaced track and continuing past the pumping station through points E-F-G-H-I with a gate across the claimed route at point H.

By 2010 access to the claimed route at point A had altered and the boundary fence between the field crossed by the claimed route and houses 100 and 98 Banks Road realigned. The claimed route was crossed by a fence at point C and a track was visible in the grass from point C along the side of the Sluice to point D then continuing as a surfaced track to point I. The claimed route appeared to look similar to what was found on the ground in 2013.

### **Ownership**

The Owners of section A-C are the Southport Land and Property Co Ltd since 1990 and the owners of the track crossed by C-I is the Environment Agency. The Environment Agency ownership as confirmed is the land previously held by their predecessor under the Scarisbrick Estate Drainage Act of 1924 and as shown on the plan under that 1924 Statute. They have been owners since 1983 and North West Water prior to that.

### **Description of the New Path for Inclusion in the Definitive Map and Statement if the Order is to be made (and subsequently confirmed)**

The following should be added to the Definitive Statement for North Meols, West Lancashire;

#### **Proposed Schedule to Order**

#### **SCHEDULE**

#### **PART 1**

#### **MODIFICATION OF THE DEFINITIVE MAP**

#### **DESCRIPTION OF WAY TO BE ADDED**

Public Footpath from a junction with Banks Road (point A) adjacent to 100 Banks Road running in a south south easterly direction along the east side of a field boundary for approximately 90 metres on a 1.5 metre wide undefined route to cross

field boundary (point C) and then continuing in a generally south easterly direction parallel to The Sluice for approximately 520 metres as a 3 metre wide path to junction with Station Road (point I).

## PART II

### MODIFICATION OF DEFINITIVE STATEMENT

Add to the Definitive Statement for North Meols the following:

"Public Footpath from a junction with Banks Road at SD 3796 2086, through field boundary and running in a generally south south easterly direction along the east side of a field boundary to SD 3800 2078 where it continues in a general south easterly direction along a 3 metre wide grass surfaced track parallel to The Sluice to SD 3813 2055 from where it continues along a 3 metre wide stone surfaced track, still in a south easterly direction parallel to the Sluice to terminate at SD 3826 2033 where it meets Station Road."

All lengths and compass directions given are approximate.

Width:

1.5 metres between SD 3796 2086 and SD 3800 2078

3 metres between SD 3800 2078 and SD 3826 2033

Limitations and Conditions:

Field gate at SD 3796 2086

Length: 610 metres

### **County Secretary and Solicitor's Observations**

acknowledge the route (in years) as follows:

0-10(1)      21-30(6)      31-40(9)      41-50(4)      51-60(5)      61-70(1)  
71-80(1)      one user has known the route since moving to the area from Bucks (no time limit was provided).

27 users have used the way on foot, 1 user did not specify.

The years in which the route was used varies:

1958-2002(Approx)	1958-1972	1960-2012	1969-1988	1968-2012(2)
1970-2000	1970 onwards	1970 until it was blocked		since 1972(2)
1972-1989	1978-2005	1977 until it was closed	1977-2012	1971-1974
1979-1999	1975-1980	1980-closure	1983-present(2)	1984-closure
1984-2009	1988-2002	1980/81-1987	mid1980s-late1990s	
1950s, 1970s and 2000s	2008-2010			

The users were going:

Home to Embankment, circular home route, Station Road to Ralphs Wifes Lane, walking the dog along the track and back home again, Station Road to Banks Road,

Vicarage Lane going fishing, home to sluice, Ralphs Wifes Lane to Lancaster Drive, to work at Greaves Hall or to visit relatives on Station Road, bus stop at Station Road or friends houses on Ralphs Wifes Lane.

The main purposes for using the route are, pleasure, dog walking, is a short cut, country walk for the user and the dog, exercise, fishing or riding to station road, walking with children, recreation, access, visiting friends, child education, more pleasant walk and safer, travel.

How many times per year the user used the route varies:

2-4 times, 6-10 times per year, mainly summertime, approximately monthly, 20-25, 30-35 times, at least 50, weekly, most days, 200, and all year round.

When asked if any of the users have used the route by way of other means, 18 users stated 'no'. One user used the way on horseback and on bicycle during the years of 1969-1975. Another user used the way on bicycle between the years of 1958-1972. One user states that they used the way on bicycle but didn't specify during which years. Another user used the way on bicycle between the mid 1980s to the late 1990s, 2 users used the way on bicycle between 1983-present, one user used the way on bicycle between the years of 1979-1999 at 10 times per year and 2 users did not specify whether they had used the route by way other means.

4 users have never seen anyone else using the way, 1 user did not specify. 9 users have seen other people walking / jogging along the route but they did not specify which years they saw them. 1 user states they have seen others along the way but doesn't provide any details as to how they were using the way. 2 users have seen people using the way on horseback but didn't provide any details to which years they saw them using the route. 1 user has seen farm workers on a motorcycle/vehicle but no years were specified. Another user has seen others using the way on foot between the years of 1995-2002. 1 user has seen other users walking and on horseback between the years of 1969-1975, another user has seen people using the route on horseback between 1960-present. 1 user states there are always people along the route and possibly on horseback between 1958-1972. 1 user has seen people walking along the route between 1973-1989 most times when they have used the route, and during the years of 2004-2012 half as many people have been seen. 1 user has seen people on horseback, bicycle and walking with dogs in mid 1980s to late 1990s. Another user has seen people walking along the route between the years of 1984-2009, 2 users have seen people using the route on horseback and other means from 1983-present and 1 user has seen others on foot during the years of 1979-1999.

18 users claim the route has always run over the same line, 1 user states 'think so', 4 users did not specify an answer to this question. 2 users answer the question by stating 'fence put up 10-12 years ago', another user states 'no' however they do not provide any further details, 1 user also states 'no' but also mentions 'used for sometime due to being overgrown'.

9 users state there have been no stiles/gates/fences across the route, 4 users did not specify an answer to this question. 4 users state there is a stile/gate/fence along the route but do not provide any details. 2 users claim there is a stile along the route

but do not provide any details. Another user stated there were no stiles/gates/fences along the route up until 2010, one user states there is a gate up to the main road, another user claims there was a stile from 1973-1989 and had been removed by 2004, also by 2004 a gate was installed. 1 user claims there was no fence until the late 1990s. Another user states the path has been fenced off for a number of years, but can't remember the actual access but there was a public footpath sign post. 1 user claims there is a fence at Ralphs Wifes Lane (point A).

11 users state the stiles/gates/fences were not locked, 10 users did not provide an answer to this question. 1 user states they can't remember any gates, 4 users state the stiles/gates/fences were locked but don't provide any details. 1 user states a large gate was locked but the smaller gate was open, 1 user answers by stating 'fence appeared in late 1990s'.

12 users were not prevented from access by any stiles/gates/fences when using the way. 8 users did not specify an answer. 2 users state they were prevented access recently, 1 user was prevented in 2002, another in 2010, another user states they were prevented when the new owner took over the land, and 1 user was unable to gain access from 2004.

23 users have never worked for a landowner over which the route crosses, 5 users did not specify whether they had or hadn't worked for a landowner.

23 users have never been a tenant over which the route crosses the land, 5 users did not specify whether they had or hadn't worked for a landowner.

23 users have never been stopped or turned back when using the route on foot. 1 user thinks she has been stopped previously but didn't provide any details, 1 user states the fence stopped them in late 1990s. 3 users did not specify an answer to this question.

23 users have never heard of anyone else being stopped along the route, 4 users did not specify an answer to this question and 1 user states the 'the fence in late 1990s'.

26 users have never been told by a tenant or landowner that the land they cross is not a public right of way. 3 users did not specify an answer to this question.

16 users have never seen any signs/notices along the claimed route. 3 users did not specify an answer. 1 user states the public footpath signs have disappeared. Another user states they have seen signs since 2010, 1 user states they have seen 'trespassers will be prosecuted' sign, another user stated there were no signs between 1973-1989, 1 user states they have appeared in the past 10 years on Ralphs Wifes Lane, another user states they have seen notices they say 'private land, horse riding prohibited', 2 users have seen signs that state 'private legal action may be taken against unauthorised persons found on this property' and 1 user stated 'yes' to seeing any signs or notices along the claimed route.

26 users have never asked permission to use the route, 2 users did not specify whether they sought permission or not.



## Information from the landowners

### Southport Land & Property Co. Ltd.

An objection has been received from Yates Barnes Solicitors who have been instructed by Southport Land & Property Co. Ltd who are the landowners of the land over which that part of the claimed route between points A-B-C runs and they object to this claim.

They have submitted a statement from Mr David Alan Trow who has lived at 100 Banks Road, the property adjacent to the claimed route, since 1969. In his statement Mr Trow explains that during the time he has lived there, there has not been a footpath through the field adjacent to his property.

He explains that originally there was a farm gate at point A which was used by the tenant farmer to move cattle and that there was an open ditch along the boundary of his property and the field over which the claimed route runs, which fed into The Sluice.

Soon after moving to the property Mr Trow claims that the tenancy of the field passed to Mr Shepton who piped the ditch and grew cereal crops in the field. Towards the end of Mr Shepton's tenancy (no date specified) Mr Trow believes that the gate at point A was damaged and was removed to allow large farm machinery to access the field from the road. Mr Trow recalls the tenant being Mr Gregson who continued to grow crops on the field and who did not replace the gate but left a roller blocking the entrance.

Mr Trow states that when the current owners of the land purchased it they took back responsibility for farming the land and a small electric substation was installed where the gate had been. At this time he also recalls a private sign being erected. New fencing was erected around the field and the entrance to the field altered to a safer position further down Ralph Wife's Lane.

He concludes by stating that during the 43 years that he has lived adjacent to the claimed route there has not been a footpath through the field and that when, on occasion, he has been asked by people walking from Station Road whether they could walk through the field he has said no it is private land.

A further statement has been submitted from Mr Keith Aldersley, who does not give his date of birth but explains that he has lived in the village since he was 4 years old. He explains that he remembers the sewage works being built adjacent to the Sluice in approximately 1955 and says that to his knowledge the claimed route has never been a public footpath. He makes reference to 'the fishermen' having a track along the sluice but states that this does not run through to Ralph Wife's Lane.

A further statement from Mr Godfrey Crooke (one of the Director's of the company that now owns the land crossed by the claimed route between A-B-C) who confirms that he has been familiar with the area for many years and that since the 1960's his company was hired as a contractor for the River Crossens Drainage Authority to clear the numerous drains across the land and that, consequently, he knew the

routes and believed them to be private. He confirms that his company bought the land (crossed by the claimed route A-B-C) in 1990 and that whenever he saw anyone on the farm tracks or across the fields he challenged them, explained that they were trespassing and asked them to leave.

### **The Environment Agency**

The Environment Agency owns the land over which part of the claimed route passes between point C and point I and objects to the footpath application. They state that the route has never been used legally as a path. They also state that other than Environment Agency staff and their contractors, the only other people authorised to access this land are the members of the Southport and District Angling Association. They explain that the Association has the fishing along the watercourse at this location on a long lease (25 years) and that any path in this location will significantly disrupt their use of this land.

They state that the creation of a footpath would lead to trespass on to the adjacent water course (e.g. swimming, canoe/boat launching etc), vandalism and illegal fishing. They are also concerned about the Health and Safety liability as a result of legal and illegal use of the access to the public, occupiers and Agency staff. They are concerned that the creation of the footpath would interfere with the Agency's operations on site and with the Angling Associations use of the site.

To prevent unauthorised access, they state that various signs have been in place 'for some time', erected by both the Agency and the Angling Association. Furthermore they refer to access being obstructed by a locked gate and railings at Station Road and make reference to a sign erected by a neighbouring landowner 'some time ago' at Ralph Wife's Lane (point A).

### **Information from others**

#### **Southport and District Angling Association**

Southport and District Angling Association have been consulted and confirmed that they did not own any of the land crossed by the claimed route. They explained that they leased the fishing rights from the Environment Agency and have been given access to the Sluice via Station Road. They explain that the Environment Agency have a gate across the entrance at Station Road (point H) for which their members hold a key. They explain that part of the gate has a pedestrian access (the kissing gate) which is never locked and that the public use it to walk their dogs. They state that the public do not have a vehicular right of way or access to this path. They also state that they rent the 'old corporation car park' adjacent to United Utilities pump house (and accessed from the claimed route) from Lancashire County Council and that they have vehicular access to this car park.

#### **Mr Trow**

Mr Trow lives at 100 Banks Road and is a landowner affected by the claimed route between point A and point B. As well as providing evidence in opposition to the claim on behalf of the current landowner he was informally consulted by the County

Council. He responded by letter stating that he and his wife have lived at the property for 45 years and that there has never been a public footpath in the field adjacent to the property. He also states that he was aware that the fishing club had access to the Sluice from Station Road but that it had never been classed as a public footpath.

## **Assessment of the Evidence**

### **The Law - See Annex 'A'**

#### **In Support of the Claim**

User evidence

Aerial Photographs

#### **Against Accepting the Claim**

Reference to actions by the owners

#### **Conclusion**

The claim is that this route is already a footpath in law and should be recorded.

There is no express dedication and so it is advised that Committee consider whether a dedication can be deemed under s31 Highways Act or inferred at common law from all the circumstances.

Considering first of all S31. S31 requires the finding of a calling into question from which to run the twenty years back. This must be an action making it clear to a reasonable number of users that their use of the route is being challenged. User evidence would indicate that for the twenty years before the present owner purchased the land crossed by A-C in 1990 no overt actions alerted users to such a challenge. The first actions taken were either challenges, signs, or fencing or the S31(6) deposit by the northern owner after 1990. It would appear that signs erected by the southern owner are not sufficient to indicate use as a footpath was challenged.

User evidence by its nature can be inconsistent and in this matter the information indicates different recollections about when access was prevented. There are no clear references to challenges by people but references to fencing and notices and the deposit under S31(6). Looking at the evidence it would indicate that fencing at point A was erected in the late 1990s or early 2000s with 1998 being a likely year and this was also the date of the S31(6) statement. It is suggested that 1998 may be considered to be the date the route was called into question.

Looking at the twenty years 1978-98 there are 16 users whose use dates back to 1978. It is suggested that even if some action by the present owners may actually be sufficient to be a calling into question earlier than 1998 there are still 7 users of the route as early as 1970 twenty years before the acquisition by the present owner of A-C. It is suggested that committee may consider that the user evidence in this matter is sufficient and exercised as of right and without interruption of the whole route

1978-98 to raise the presumption of deemed dedication. There does not appear to be sufficient evidence of actions by the owners to demonstrate lack of intention to dedicate over the twenty years prior to 1998.

Looking secondly at whether dedication can be inferred on balance at common law it is advised that evidence from the maps in this matter is not the circumstance from which dedication could be inferred but user can be the circumstance from which to infer a dedication. It may be difficult to now indicate an intention to dedicate by the owner of A-C since their acquisition in 1990 but the user of the route prior to 1990 may be sufficient to indicate that the owners at that time for several years did nothing to stop the public use and from which their intention to give the route up to be a public footpath could on balance be inferred.

Common law does not require there to be twenty years of use. The use would appear to be as of right and exercised by sufficient members of the public.

Taking all the information into account the Committee may consider that a dedication in this matter may be deemed or inferred and that an Order be made and promoted to confirmation.

### **Risk Management**

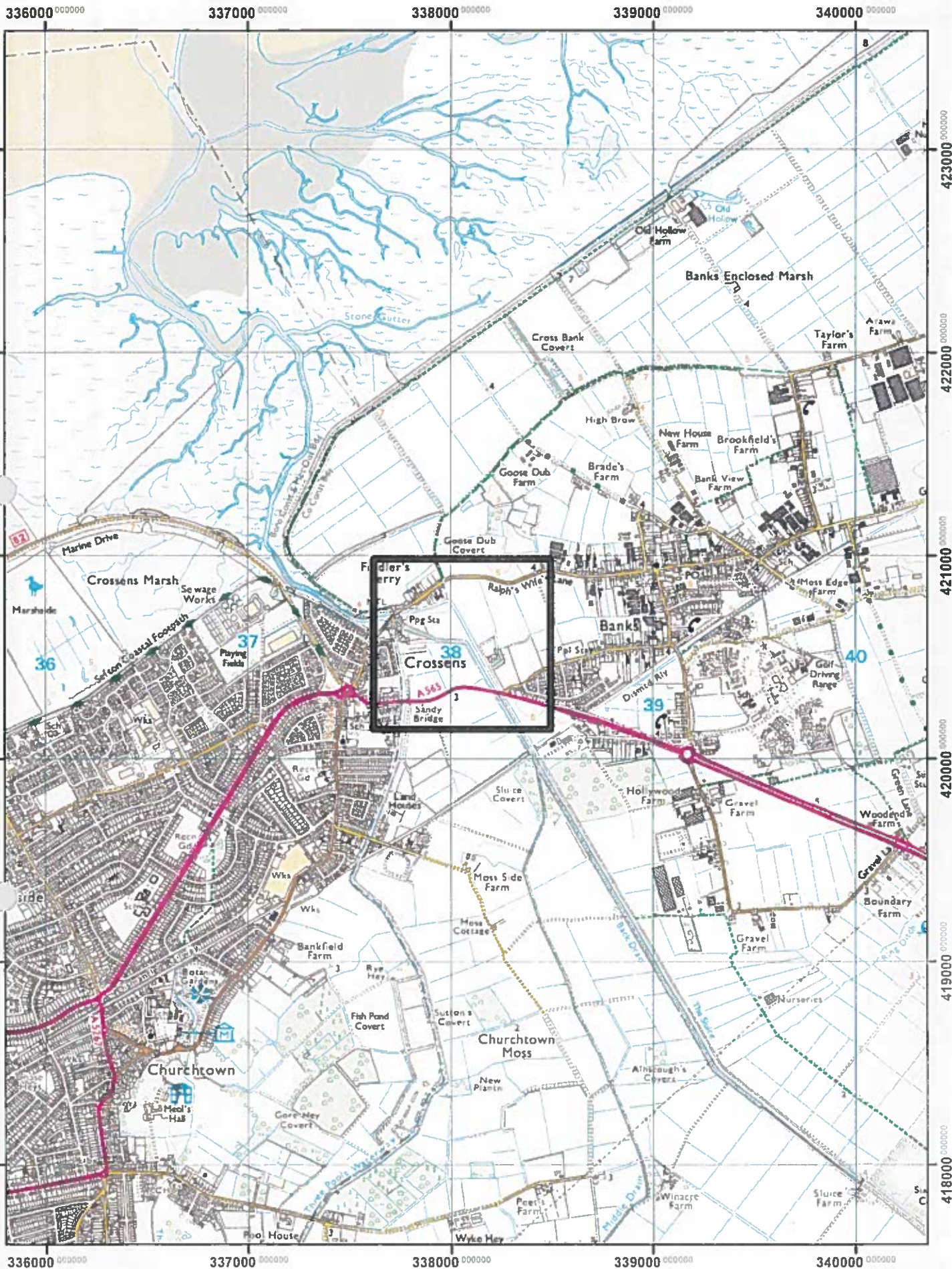
Consideration has been given to the risk management implications associated with this claim. The Committee is advised that the decision taken must be based solely on the evidence contained within the report, and on the guidance contained both in the report and within Annex 'A' to an earlier report on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

### **Alternative options to be considered - N/A**

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

Paper	Date	Contact/Directorate/Ext
All documents on Claim File Ref: 5.46089 (804/529)	Various	M Brindle, County Secretary & Solicitor's Group, Ext: 35604

Reason for inclusion in Part II, if appropriate  
N/A



Lancashire  
County Council

Jo Turton  
Executive Director  
for the Environment

Wildlife and Countryside Act 1981  
Claimed Public Footpath from Banks Road to Station Road,  
North Meols, West Lancashire District - Claim 804/529 LOCATION PLAN

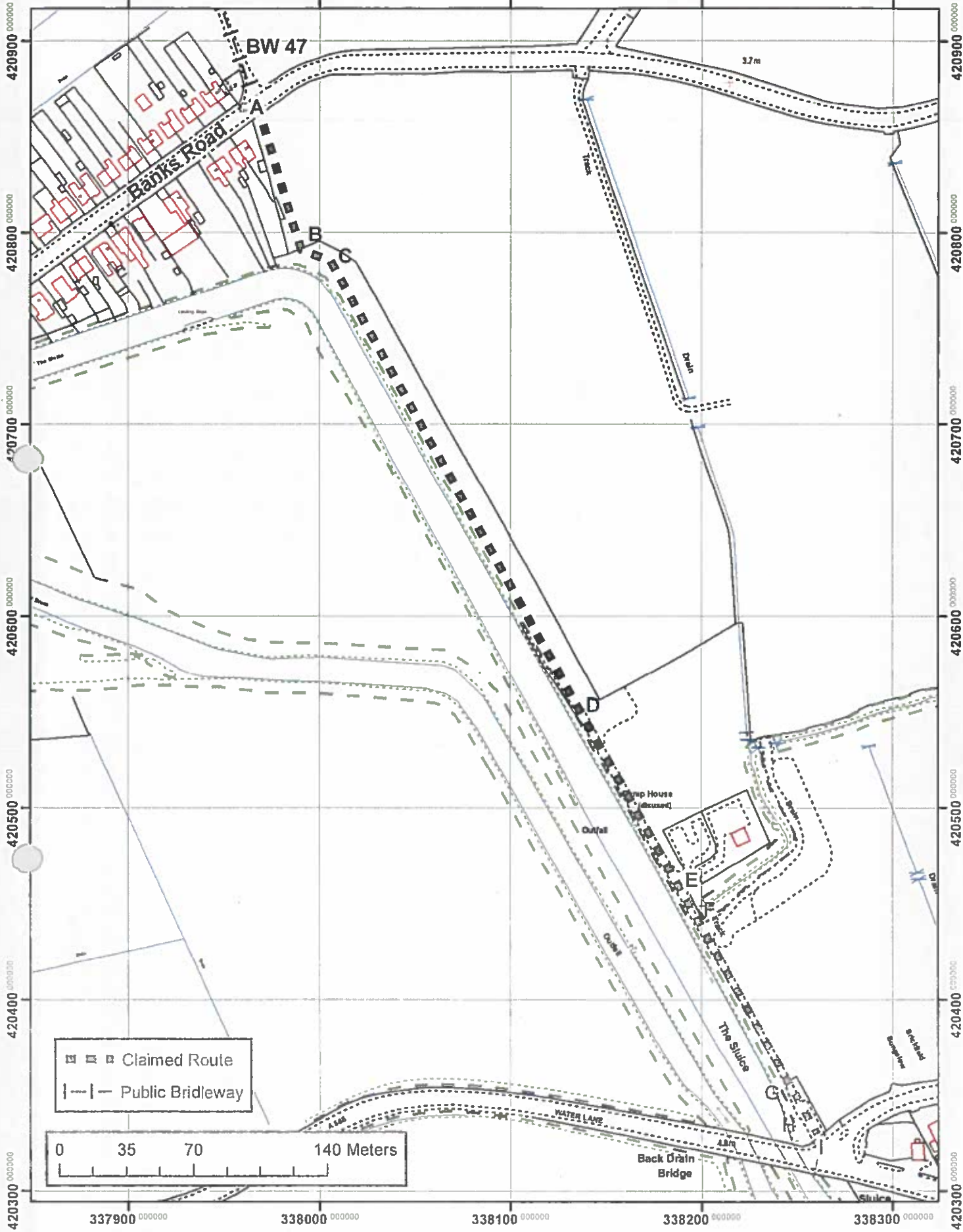
1:24,000



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<p>Lancashire County Council</p>	<p>Jo Turton Executive Director for the Environment</p>	<p>Wildlife and Countryside Act 1981 Claimed Public Footpath from Banks Road to Station Road, North Meols, West Lancashire District - Claim 804/529</p>	<p>1:2,500</p>	
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**Guidance on the law relating to the continuous review of the Definitive Map and Statement of Public Rights of Way**

**Definitions**

The Wildlife and Countryside Act 1981 gives the following definitions of the public rights of way which are able to be recorded on the Definitive Map:-

**Footpath** – means a highway over which the public have a right of way on foot only, other than such a highway at the side of a public road; these rights are without prejudice to any other public rights over the way;

**Bridleway** – means a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway; these rights are without prejudice to any other public rights over the way;

**Restricted Byway** – means a highway over which the public have a right of way on foot, on horseback or leading a horse and a right of way for vehicles other than mechanically propelled vehicles, with or without a right to drive animals along the highway.  
(Mechanically propelled vehicles do not include vehicles in S189 Road Traffic Act 1988)

**Byway open to all traffic (BOATs)** – means a highway over which the public have a right of way for vehicular and all other kinds of traffic. These routes are recorded as Byways recognising their particular type of vehicular highway being routes whose character make them more likely to be used by walkers and horseriders because of them being more suitable for these types of uses;

**Duty of the Surveying Authority**

Section 53 of the Wildlife and Countryside Act 1981 provides that a Surveying Authority shall keep the Definitive Map and Statement under continuous review and as soon as reasonably practicable after the occurrence of any of a number of prescribed events by Order make such modifications to the Map and Statement as appear to them to be requisite in consequence of the occurrence of that event.

*Orders following "evidential events"*

The prescribed events include –

Sub Section (3)

- b) the expiration, in relation to any way in the area to which the Map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway;

- c) the discovery by the Authority of evidence which (when considered with all other relevant evidence available to them) shows –
- (i) that a right of way which is not shown in the Map and Statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, a byway open to all traffic; or
  - (ii) that a highway shown in the Map and Statement as a highway of a particular description ought to be there shown as a highway of a different description; or
  - (iii) that there is no public right of way over land shown in the Map and Statement as a highway of any description, or any other particulars contained in the Map and Statement require modification.

The modifications which may be made by an Order shall include the addition to the statement of particulars as to:-

- (a) the position and width of any public path or byway open to all traffic which is or is to be shown on the Map; and
- (b) any limitations or conditions affecting the public right of way thereover.

#### *Orders following "legal events"*

Other events include

"The coming into operation of any enactment or instrument or any other event" whereby a highway is stopped up diverted widened or extended or has ceased to be a highway of a particular description or has been created and a Modification Order can be made to amend the Definitive Map and Statement to reflect these legal events".

Since 6th April 2008 Diversion Orders, Creation Orders, Extinguishment Orders under the Highways Act 1980 (and other types of Orders) can themselves include provisions to alter the Definitive Map under the new S53A of the Wildlife and Countryside Act 1981 and be "combined orders" combining both the Order to divert and an order to alter the Map. The alteration to the Definitive Map will take place on the date the extinguishment, diversion or creation etc comes fully into effect.

#### Government Policy - DEFRA Circular 1/09

In considering the duty outlined above the Authority should have regard to the Department of the Environment Food and Rural Affairs' Rights of Way Circular (1/09). This replaces earlier Circulars.

This Circular sets out DEFRA's policy on public rights of way and its view of the law. It can be viewed on the DEFRA web site. There are sections in the circular on informing and liaising, managing and maintaining the rights of way network, the Orders under the



Highways Act 1980 and also sections on the Definitive Map and Modification Orders. Many aspects are considered such as -

When considering a deletion the Circular says - "4.33 The evidence needed to remove what is shown as a public right from such an authoritative record as the definitive map and statement – and this would equally apply to the downgrading of a way with "higher" rights to a way with "lower" rights, as well as complete deletion – will need to fulfil certain stringent requirements.

These are that:

- the evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made.
- the evidence must be of sufficient substance to displace the presumption that the definitive map is correct;
- the evidence must be cogent.

While all three conditions must be met they will be assessed in the order listed.

Before deciding to make an order, authorities must take into consideration all other relevant evidence available to them concerning the status of the right of way and they must be satisfied that the evidence shows on the balance of probability that the map or statement should be modified."

Where a route is recorded on the List of Streets as an Unclassified County Road the Circular says – "4.42 In relation to an application under the 1981 Act to add a route to a definitive map of rights of way, the inclusion of an unclassified road on the 1980 Act list of highways maintained at public expense may provide evidence of vehicular rights.

However, this must be considered with all other relevant evidence in order to determine the nature and extent of those rights. It would be possible for a way described as an unclassified road on a list prepared under the 1980 Act, or elsewhere, to be added to a definitive map of public rights of way provided the route fulfils the criteria set out in Part III of the 1981 Act. However, authorities will need to examine the history of such routes and the rights that may exist over them on a case by case basis in order to determine their status."

### **Definitive Maps**

The process for the preparation and revision of definitive maps was introduced by Part III of the National Parks and Access to the Countryside Act 1949.

Information about rights of way was compiled through surveys carried out by Parish Councils (or District Councils where there was no Parish Council) and transmitted to the Surveying Authority (County or County Borough Councils) in the form of Survey Maps and cards.

The Surveying Authority published a draft map and statement and there was a period for the making of representations and objections to the draft map. The Authority could

determine to modify the map, but if there was an objection to that modification the Authority was obliged to hold a hearing to determine whether or not to uphold that modification with a subsequent appeal to the Secretary of State against the decision.

After all appeals had been determined the Authority then published a Provisional Map and Statement. Owners, lessees or occupiers of land were entitled to appeal to Quarter Sessions (now the Crown Court) against the provisional map on various grounds.

Once this process had been completed the Authority published the Definitive Map and Statement. The Map and Statement was subject to five yearly reviews which followed the same stages.

The Map speaks as from a specific date (the relevant date) which is the date at which the rights of way shown on it were deemed to exist. For historic reasons different parts of the County have different Definitive Maps with different relevant dates, but for the major part of the County the Definitive Map was published in 1962, with a relevant date of the 1<sup>st</sup> January 1953 and the first review of the Definitive Map was published in 1975 with a relevant date of 1st September 1966.

### **Test to be applied when making an Order**

The provisions of the Wildlife and Countryside Act 1981 set out the tests which must be addressed in deciding that the map should be altered.

S53 permits both upgrading and downgrading of highways and deletions from the map.

The statutory test at S53(3)(b) refers to the expiration of a period of time and use by the public such that a presumption of dedication is raised.

The statutory test at S53(3)(c)(i) comprises two separate questions, one of which must be answered in the affirmative before an Order is made under that subsection. There has to be evidence discovered. The claimed right of way has to be found on balance to subsist (Test A) or able to be reasonably alleged to subsist. (Test B).

This second test B is easier to satisfy but please note it is the higher Test A which needs to be satisfied in confirming a route.

The statutory test at S53(3)(c)(ii) again refers to the discovery of evidence that the highway on the definitive map ought to be shown as a different status.

The statutory test at S53(3)(c)(iii) again refers to evidence being discovered that there is no public right of way of any description after all or that there is evidence that particulars in the map of statement need to be modified.

The O'Keefe judgement reminds Order Making Authorities that they should make their own assessment of the evidence and not accept unquestioningly what officers place before them.

All evidence must be considered and weighed and a view taken on its relevance and effect.

An Order Making Authority should reach a conclusion on the balance of probabilities. The balance of probability test demands a comparative assessment of the evidence on opposing sides. This is a complex balancing act.

### **Recording a "new" route**

For a route to have become a highway it must have been dedicated by the owner.

Once a route is a highway it remains a highway, even though it may fall into non use and perhaps become part of a garden.

This is the position until a legal event causing the highway to cease can be shown to have occurred, or the land on which the highway runs is destroyed, perhaps by erosion which would mean that the highway length ceases to exist.

Sometimes there is documentary evidence of actual dedication but more often a dedication can be inferred because of how the landowner appears to have treated the route and given it over to public use (dedication at Common law) or dedication can be deemed to have occurred if certain criteria laid down in Statute are fulfilled (dedication under s31 Highways Act).

### **Dedication able to be inferred at Common law**

A common law dedication of a highway may be inferred if the evidence points clearly and unequivocally to an intention on the part of the landowner to dedicate. The burden of proof is on the Claimant to prove a dedication. Evidence of use of the route by the public and how an owner acted towards them is one of the factors which may be taken into account in deciding whether a path has been dedicated. No minimum period of use is necessary. All the circumstances must be taken into account. How a landowner viewed a route may also be indicated in documents and maps

However, a landowner may rely on a variety of evidence to indicate that he did not intend to dedicate, including signs indicating the way was private, blocking off the way or turning people off the path, or granting permission or accepting payment to use the path.

There is no need to know who a landowner was.

Use needs to be by the public. This would seem to require the users to be a number of people who together may sensibly be taken to represent the people as a whole/the local community. Use wholly or largely by local people may still be use by the public. Use of a way by trades people, postmen, estate workers or by employees of the landowner to get to work, or for the purpose of doing business with the landowner, or by agreement or licence of the landowner or on payment would not normally be sufficient. Use by friends of or persons known to the landowner would be less cogent evidence than use by other persons.

The use also needs to be "as of right" which would mean that it had to be open, not secretly or by force or with permission. Open use would arguably give the landowner the opportunity to challenge the use. Toleration by the landowner of a use is not inconsistent

with use as of right. Case law would indicate that the use has to be considered from the landowner's perspective as to whether the use, in all the circumstances, is such as to suggest to a reasonable landowner the exercise of a public right of way.

The use would have to be of a sufficient level for a landowner to have been aware of it. The use must be by such a number as might reasonably have been expected if the way had been unquestioningly a highway.

Current use (vehicular or otherwise) is not required for a route to be considered a Byway Open to All Traffic but past use by the public using vehicles will need to be sufficiently evidenced from which to infer the dedication of a vehicular route. Please note that the right to use mechanically propelled vehicles may since have been extinguished.

### **Dedication deemed to have taken place (Statutory test)**

By virtue of Section 31 of the Highways Act 1980 dedication of a path as a highway may be presumed from use of the way by the public as of right – not secretly, not by force nor by permission without interruption for a full period of twenty years unless there is sufficient evidence that there was no intention during the twenty year period to dedicate it.

The 20 year period is computed back from the date the existence of the right of way is called into question.

A landowner may prevent a presumption of dedication arising by erecting notices indicating that the path is private. Further under Section 31(6) a landowner may deposit with the Highway Authority a map (of a scale of not less than 1:10560 (6 inches to the mile) and statement showing those ways, if any, which he or she agrees are dedicated as highways. This statement must be followed by statutory declarations. These statutory declarations used to have to be renewed at not more than 6 yearly intervals, but the interval is now 10 years. The declaration would state that no additional rights of way have been dedicated. These provisions do not preclude the other ways open to the landowner to show the way has not been dedicated.

If the criteria in section 31 are satisfied a highway can properly be deemed to have been dedicated. This deemed dedication is despite a landowner now protesting or being the one to now challenge the use as it is considered too late for him to now evidence his lack of intention when he had failed to do something to sufficiently evidence this during the previous twenty years.

The statutory presumption can arise in the absence of a known landowner. Once the correct type of user is proved on balance, the presumption arises, whether or not the landowner is known.

Guidance on the various elements of the Statutory criteria:-

- Use – see above as to sufficiency of use. The cogency, credibility and consistency of user evidence should be considered.
- By the public – see above as to users which may be considered “the public”.

- As of right - see above
- Without interruption - for a deemed dedication the use must have been without interruption. The route should not have been blocked with the intention of excluding the users.
- For a full period of twenty years - Use by different people, each for periods of less than twenty years will suffice if, taken together, they total a continuous period of twenty years or more. The period must end with the route being "called into question".
- Calling into question - there must be something done which is sufficient at least to make it likely that some of the users are made aware that the owner has challenged their right to use the way as a highway. Barriers, signage and challenges to users can all call a route into question. An application for a Modification Order is of itself sufficient to be a "calling into question" (as provided in the new statutory provisions S31 (7a and 7B) Highways Act 1980). It is not necessary that it be the landowner who brings the route into question.
- Sufficient evidence of a lack of intention to dedicate - this would not need to be evidenced for the whole of the twenty year period. It would be unlikely that lack of intention could be sufficiently evidenced in the absence of overt and contemporaneous acts on the part of the owner. The intention not to dedicate does have to be brought to the attention of the users of the route such that a reasonable user would be able to understand that the landowner was intending to disabuse him of the notion that the land was a public highway.

### **Documentary evidence**

By virtue of Section 32 of the Highways Act 1980 in considering whether a highway has been dedicated, maps plans and histories of the locality are admissible as evidence and must be given such weight as is justified by the circumstances including the antiquity of the document, status of the persons by whom and the purpose for which the document was made or compiled and the custody from which it is produced.

In assessing whether or not a highway has been dedicated reference is commonly made to old commercial maps of the County, Ordnance Survey maps, sometimes private estate maps and other documents, other public documents such as Inclosure or Tithe Awards, plans deposited in connection with private Acts of Parliament establishing railways, canals or other public works, records compiled in connection with the valuation of land for the purposes of the assessment of increment value duty and the Finance Act 1910. Works of local history may also be relevant, as may be the records of predecessor highway authorities and the information gained in connection with the preparation and review of the Definitive Map.

It should be stressed that it is rare for a single document or piece of information to be conclusive (although some documents are of more value than others e.g. Inclosure Awards where the Commissioners were empowered to allot and set out highways). It is necessary to look at the evidence as a whole to see if it builds up a picture of the route being dedicated as a highway.

It should be noted that Ordnance Survey Maps (other than recent series which purport to show public rights of way and which derive their information from the Definitive Map) contain a disclaimer to the effect that the recording of a highway or right of way does not imply that it has any status. The maps reflect what the map makers found on the ground.

Synergy between pieces of highway status evidence – co-ordination as distinct from repetition would significantly increase the collective impact of the documents.

### **Recording vehicular rights**

Historical evidence can indicate that a route carries vehicular rights and following the Bakewell Management case in 2004 (House of Lords) it is considered that vehicular rights could be acquired on routes by long use during years even since 1930. However, in May 2006 Part 6 of the Natural Environment and Rural Communities Act 2006 came into force. Public rights of way for mechanically propelled vehicles are now extinguished on routes shown on the definitive map as footpaths, bridleways or restricted byways unless one of eight exceptions applies. In essence mechanical vehicle rights no longer exist unless a route is recorded in a particular way on the Council's Definitive Map or List of Streets or one of the other exceptions apply. In effect the provisions of the Act curtail the future scope for applications to record a Byway Open to All Traffic to be successful.

The exceptions whereby mechanical vehicular rights are "saved" may be summarised as follows-

- 1) main lawful public use of the route 2001-2006 was use for mechanically propelled vehicles
- 2) that the route was not on the Definitive Map but was recorded on the List of Streets.
- 3) that the route was especially created to be a highway for mechanically propelled vehicles
- 4) that the route was constructed under statutory powers as a road intended for use by mechanically propelled vehicles
- 5) that the route was dedicated by use of mechanically propelled vehicles before December 1930
- 6) that a proper application was made before 20th January 2005 for a Modification Order to record the route as a Byway Open to All Traffic (BOAT)
- 7) that a Regulatory Committee had already made a decision re an application for a BOAT before 6th April 2006
- 8) that an application for a Modification Order has already been made before 6<sup>th</sup> April 2006 for a BOAT and at 6th April 2006 use of the way for mechanically propelled vehicles was reasonably necessary to enable that applicant to access land he has an interest in, even if not actually used.

It is certainly the case that any application to add a byway to the Definitive Map and Statement must still be processed and determined even though the outcome may now be that a vehicular public right of way existed before May 2006 but has been extinguished for mechanically propelled vehicles and that the route should be recorded as a restricted byway.

### **Downgrading a route or taking a route off the Definitive Map**

In such matters it is clear that the evidence to be considered relates to whether on balance it is shown that a mistake was made when the right of way was first recorded.

In the Trevelyan case (Court of Appeal 2001) it was considered that where a right of way is marked on the Definitive Map there is an initial presumption that it exists. It should be assumed that the proper procedures were followed and thus evidence which made it reasonably arguable that it existed was available when it was put on the Map. The standard of proof required to justify a finding that no such right of way exists is on the balance of probabilities and evidence of some substance is required to outweigh the initial presumption.

Authorities will be aware of the need, as emphasised by the Court of Appeal, to maintain an authoritative Map and Statement of highest attainable accuracy. "The evidence needed to remove a public right from such an authoritative record will need to be cogent. The procedures for defining and recording public rights of way have, in successive legislation, been comprehensive and thorough. Whilst they do not preclude errors, particularly where recent research has uncovered previously unknown evidence, or where the review procedures have never been implemented, they would tend to suggest that it is unlikely that a large number of errors would have been perpetuated for up to 40 years without being questioned earlier."

### **Taking one route off and replacing it with an alternative**

In some cases there will be no dispute that a public right of way exists between two points, but there will be one route shown on the definitive map which is claimed to be in error and an alternative route claimed to be the actual correct highway.

There is a need to consider whether, in accordance with section 53(3)(c)(i) a right of way is shown to subsist or is reasonably alleged to subsist and also, in accordance with section 53(3)(c)(iii) whether there is no public right of way on the other route.

The guidance published under the statutory provisions make it clear that the evidence to establish that a right of way should be removed from the authoritative record will need to be cogent. In the case of *R on the application of Leicestershire County Council v SSEFR* in 2003, Mr Justice Collins said that there "has to be a balance drawn between the existence of the definitive map and the route shown on it which would have to be removed and the evidence to support the placing on the map of, in effect a new right of way." "If there is doubt that there is sufficient evidence to show that the correct route is other than that shown on the map, then what is shown on the map must stay."

The court considered that if it could merely be found that it was reasonable to allege that the alternative existed, this would not be sufficient to remove what is shown on the map. It is advised that, unless in extraordinary circumstances, evidence of an alternative route which satisfied only the lower "Test B" (see page 4) would not be sufficiently cogent evidence to remove the existing recorded route from the map.

### **Confirming an Order**

An Order is not effective until confirmed.

The County Council may confirm unopposed orders. If there are objections the Order is sent to the Secretary of State for determination. The County Council usually promotes its Orders and actively seeks confirmation by the Secretary of State.

Until recently it was thought that the test to be applied to confirm an Order was the same test as to make the order, which may have been under the lower Test B for the recording of a "new" route. However, the Honourable Mr Justice Evans-Lombe heard the matter of *Todd and Bradley v SSEFR* in May 2004 and on 22nd June 2004 decided that confirming an Order made under S53(3)(c)(i) "implies a revisiting by the authority or Secretary of State of the material upon which the original order was made with a view to subjecting it to a more stringent test at the confirmation stage." And that to confirm the Order the Secretary of State (or the authority) must be "satisfied of a case for the subsistence of the right of way in question on the balance of probabilities." i.e. that Test A is satisfied.

It is advised that there may be cases where an Order to record a new route can be made because there is sufficient evidence that a highway is reasonably alleged to subsist, but unless Committee also consider that there is enough evidence, on balance of probabilities, that the route can be said to exist, the Order may not be confirmed as an unopposed Order by the County Council. This would mean that an Order could be made, but not confirmed as unopposed, nor could confirmation actively be supported by the County Council should an opposed Order be submitted to the Secretary of State.

July 2009