

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

Background

On 10th July 2012, the North Meols Parish Council submitted five separate applications to Lancashire County Council (the relevant surveying authority) for an order under Section 53(2) of the Wildlife and Countryside Act 1981 (the "1981 Act") modifying the Definitive Map and Statement of Public Rights of Way ("DMS") by adding to it the following routes:-

1. A public footpath from the junction of George's Lane and public bridleways 48 & 49 North Meols running in a north westerly direction ending at the junction with public footpaths 38 & 39 North Meols.

This application was referenced by the Order Making Authority (hereinafter referred to as the OMA) as 804-526 ([Document 26](#)) and the route subsequently referred to as Application Route 1.

Evidence submitted in support of the application comprised of an extract from the 1910 Finance Act Map, 25 inch Ordnance Survey (OS) Map published 1911, Extracts from Highway Board and Maintenance Minute Books, Extract from the Authentic Map Directory of South Lancashire c.1934, 1 inch OS map published 1961 and 67 user evidence statements.

2. A public footpath from the junction of Charnley's Lane and public bridleways 47 & 48 North Meols running in a north westerly direction ending at the junction with public footpaths 39 & 40 North Meols (n.b. incorrectly identified in Part I and Part II Order as 38 & 39 but the purport is clear from the description and Order Map).

This application was referenced by the OMA as application 804-527 ([Document 27](#)) and the route subsequently referred to as Application Route 2.

Evidence submitted in support of the application comprised of an extract from the 1910 Finance Act Map, Extracts from Highway Board and Maintenance Minute Books 1909, 25 inch Ordnance Survey (OS) Map published 1911, 1 inch OS map published 1961 and 67 user evidence statements.

3. A public footpath starting from the junction with public bridleway 47 North Meols in a northerly direction through a break in the old sea embankment then south west along and adjacent to an old sea defence embankment to the junction with public footpath 40 North Meols.

PUBLIC FOOTPATHS AT BANKS ENCLOSED MARSH, NORTH MEOLS, WEST LANCASHIRE
BOROUGH (DEFINITIVE MAP MODIFICATION) ORDER 2014

This application was reference by the OMA as application 804-528 ([Document 28](#)) and the route subsequently referred to as Application route 3.

Evidence submitted in support of the application comprised of an extract of an OS map published in 1896, 1911 Report from Agent to the Trustees of the Scarisbrick Estate, OS Map published 1911, OS 1 inch map published 1961, 1960s aerial photograph, OMA 'modern map' showing the old embankment across the drainage ditch, 42 user evidence statements.

4. A public footpath starting from the junction with bridleway 47 North Meols in a north westerly direction to the junction with Footpath 40 North Meols.

This application was reference by the OMA as application 804-530 ([Document 29](#)) and the route subsequently referred to as Application route 4.

Evidence submitted in support of the application comprised of an extract of the Finance Act Map records from 1910, the Authentic Map Directory of South Lancashire dated circa 1934, OS Map published 1911, 1 inch OS map published 1961 and 49 user evidence statements.

5. A public footpath starting at the junction with public bridleway 48 North Meols, close to Cross Bank Cottage continuing in a north westerly direction through Cross Bank Covert to Public Footpath 39 North Meols.

This application was referenced by the OMA as application 804-531 ([Document 30](#)) and the route subsequently referred to as Application route 5.

Evidence submitted in support of the application comprised of a 1932 entry in the Record Book from the Scarisbrick Estate and 50 witness statements.

The applicant for all five routes is listed as North Meols Parish Council but it subsequently became apparent that work to collect user evidence forms and to research the history of the routes was co-ordinated predominately by a local individual. Whilst the North Meols Parish Council submitted the five applications and supported the applications at the time the elected Councillors serving on the Parish Council have to a greater extent now changed and a new Parish Clerk appointed. Whilst the Parish Council have indicated they still supported the promotion of the Orders individual Councillors are not as familiar with the applications as they were in 2012. The local individual who co-ordinated the application has liaised with the current Parish Council and has continued to provide assistance to the OMA in preparing the submission bundle.

Having received the applications in 2012, Officers from Lancashire County Council (OMA) investigated whether a public right of way exists over the five application routes and prepared a single report of their recommendations ([Document 24](#)).

The report documents that Officers initially recommended accepting Applications 2,3,4 and 5 but rejecting Application 1. Further information was however submitted by the local individual co-ordinating the application and endorsed by the Parish Council ('Applicant') specifically relating to Application route 1 ([Document 26](#)).

This report was considered by the OMA's Regulatory Committee on 26th March 2014 where the Committee was informed that having considered the additional information provided, officers had altered their recommendation in relation to Application route 1 and now suggested that all five Applications should be accepted, and an Order made.

Having examined all the information presented the Committee agreed that there was sufficient evidence from which a dedication could be reasonably alleged under the provisions of S31 of the Highways Act and by inference at Common Law and that it was appropriate that an Order (or Orders) be made and promoted to confirmation (See the "Committee Minutes" at [Document 15](#)).

Notice of the OMA's decision to make the Order, including a statement of reasons for making the Order, was sent to affected individuals on 9th May 2014 (See the "Notice of Decision" at [Document 15](#)).

A single Definitive Map Modification Order listing all five Application routes was duly made on 18th December 2014 (the "Order") ([Document 1](#)). The Order was made under Section 53(2)(b) of the 1981 Act, relying on the occurrence of an event specified in Section 53(3)(c)(i) of the 1981 Act, namely the discovery by the surveying authority of evidence which (when considered with all other relevant evidence available to them) showed that rights of way (being public footpaths) which were not shown in the map and statement subsist or are reasonably alleged to subsist over land in the area to which the map relates.

Notice of the making of the Order was served to affected individuals and prescribed organisations, erected on site and published in the local press in accordance with paragraph 3 of Schedule 15 of the 1981 Act ([Document 6](#)).

During the specified period for objections and representations to the Order, the OMA received six objections ([Document 4](#)). It is noteworthy that only one objector disputes the existence of a public right of way along the Order routes. The other five objectors dispute the status of the public rights of way. They believe that the routes carry higher rights and should be recorded on the DMS as public bridleways rather than footpaths.

In addition to the statutory objections, the Environment Agency, who own land crossed by the Order routes, objected to Order routes 2, 4 and 5 when originally consulted prior to the Order being made ([Document 9](#)). In an oversight on their part they did not submit a statutory objection following the making of the Order but have since indicated (email dated 3rd March 2025) ([Document 9](#)) that their original objection still stands. For

that reason, details of that objection, and the OMA's comments thereon are included in the OMA's Comments on Objections ([Document 5](#)).

The 6 statutory objections and one non statutory objection have not been withdrawn so the Order is opposed and cannot be confirmed by the OMA. Consequently, the OMA is submitting the Order to the Planning Inspectorate for a determination on confirmation.

The Order Routes

The Order Routes are in North Meols, in the District of West Lancashire.

All five Order routes radiate out across land known as Hesketh Enclosed Marsh to connect to a recorded public footpath which runs along the base of the 'new' sea defence embankment beyond which is a large expanse of marshland known as Hesketh Out Marsh. The public footpath along the 'new' sea defence embankment was recorded (numbered sequentially as public footpaths 36, 37, 38, 39 and 40) when the First Definitive Map was published in 1962 (with a relevant date of 1st January 1953).

The Order routes are numbered 1-5 in the Order consistent to how they were numbered in the Regulatory Committee report detailed above as Application routes 1-5 and the lettering used on the Order Map is also consistent with the lettering used in that report.

Photographs of all 5 Order routes were taken in June 2014 and a PowerPoint presentation shown to Regulatory Committee is included in the OMA's submission bundle ([Document 25](#)).

Detailed descriptions of the Order routes as they appeared in 2013/2014 are included in the Regulatory Committee reports although it should be noted that the site evidence post-dates the evidence of use relied on in this case by at least 5-7 years and in many instances much more.

Order Route 1

Shown by a thick dashed line on Order Map 2 between points A-B-C-D-E

The Order route commences at the junction of George's Lane (a publicly maintainable vehicular highway) and public bridleways 48 & 49 North Meols (at point A on the Order Map) and runs in a north westerly direction along a farm track bounded on either side by drainage ditches. It crosses a culvert at point B and a further culvert and field boundary at point D immediately after which it meets public footpaths 38 & 39 North Meols on the landward side of the sea embankment at point E. A metal field gate and

adjacent wooden stile are positioned across the Order route at point D. The gate was padlocked shut in 2013-2014.

The Order route is 3 metres wide and approximately 570 metres long.

Order Route 2

Shown by a thick dashed line on Order Map 2 between points F-G-H-I.

The Order route commences at the junction of Charnley's Lane (a publicly maintainable vehicular highway) and public bridleways 47 & 48 North Meols (at point F on the Order Map) and runs in a north westerly direction along a farm track crossing a culvert at point G and a further culvert and field boundary at point H immediately after which it meets public footpaths 39 & 40 North Meols on the landward side of the sea embankment at point I. A metal field gate and adjacent wooden stile are positioned across the Order route at point H. The gate was padlocked shut in 2013-2014.

The Order route is 3 metres wide and approximately 570 metres long.

Order Route 3

Shown by a thick dashed line between points J-K-L-M-N-O on Order Map 1.

The Order route commences from the junction with public bridleway 47 North Meols (point J on the Order Map) running in a northerly direction along a farm track through a break in the remains of an old sea embankment to a junction of farm tracks at point K and continues in a generally south westerly direction along a farm track to the north of, and running parallel to the old sea embankment to point M where it passes southwards through a hedge then continues south west as a narrower trodden path (now overgrown) along the base of the old sea embankment to cross a culvert at point N and continuing a south westerly direction to the junction with Public Footpath 40 North Meols at point O. Fencing and earth works to create a deep drain across the Order route prevented access at point N in 2013/14.

The Order route is 3 metres wide between points J-K-L-M and 1.5 metres wide between points M-N-O. It is approximately 770 metres long.

Order Route 4

Shown by a thick dashed line between points K-P-Q-R on Order Map 1.

The Order route commences at the junction of farm tracks at point K on the Order Map and continues in a north westerly direction along a farm track to cross a culvert at point P and a further culvert and field boundary at point Q immediately after which it meets Public Footpath 40 North Meols on the landward side of the sea embankment at point R. A metal field gate and the remains of a wooden stile are positioned across the Order route at point Q. The gate was padlocked shut in 2013-2014.

The Order route is 3 metres wide and approximately 635 metres long.

Order Route 5

Shown by a thick dashed line between points S-T-U-V on Order Map 2.

The Order route commences at the junction with public bridleway 48 North Meols close to Cross Bank Cottage (point S on the Order Map 2) and continues in a north westerly direction along the top of an embankment through Cross Bank Covert to point T where the path crosses a culvert and continues in a north westerly direction along the top of the embankment to point U where the path crosses a culvert immediately after which it passes through a field boundary to meet public footpath 39 North Meols on the landward side of the sea embankment at point V. Fencing at point S and point V and earth works at points T and U prevented access along the Order route in 2013-2014.

The Order route is 1.5 metres wide and approximately 520 metres long.

Landownership

When the applications were made all of the land affected was owned by the Southport Land & Property Co. Ltd. with the exception of the new sea embankment at which the five routes meet public footpaths 38, 39 and 40 North Meols (D-E Route 1, H-I Route 2, N-O Route 3, Q-R Route 4 and U-V route 5) which was owned by the Environment Agency.

Southport Land & Co Ltd. had purchased the land crossed by the Order routes in 1990 and it was stated in the Regulatory Committee report ([Document 24](#)) that the Southport Land & Co Ltd. had explained in their pre-Committee consultation submission that the land was previously part of the Scarisbrick Estate.

Further research carried out by the OMA revealed that the land did not pass directly from the Scarisbrick Estate to Southport Land & Co Company but that the land crossed by the Order routes was sold by the Estate in 1979 to the DCL and Associated Company Pension Scheme ('DCL'). It is then understood that Guinness PLC took over DCL in the mid-1980s with the land transferred to the Guinness Pension Scheme. Guinness PLC sold the land to Mountleigh Investments Ltd in 1989 who subsequently ceased trading and sold to Southport Land and Property Co Ltd in 1990.

The additional information relating to the ownership between 1979 and 1990 is relevant to the OMA's case as detailed later in this submission.

In 2024 the land crossed by Order route 1 (A-B-C-D) was sold to Baxters High Brow Produce Limited of Highbrow Farm, George's Lane, Banks (Land Registry Title LAN292325). The rest of the land crossed by the Order routes is still understood to be in the ownership of Southport Land & Property Co. Ltd. and the Environment Agency (February 2025).

Legal Issues

For the Order to be confirmed, the Inspector needs to be satisfied that, on the balance of probability, the evidence discovered by the OMA, when considered with all other relevant evidence, is sufficient to show that public footpaths that are not shown on the DMS subsist along the Order routes 1-5 and that the DMS requires modification.

The provisions of the Wildlife and Countryside Act 1981 set out tests which must be addressed in deciding whether the DMS should be modified. If it appears to the OMA that the DMS require modification in consequence of the occurrence of an event specified in S53(3)(c)(i) of the 1981 Act namely the discovery by the OMA of evidence which (when considered with all other relevant evidence available to them) shows that rights of way which are not shown in the map and statement subsists or are reasonably alleged to subsist over land in the area to which the DMS relates, namely public footpaths.

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)(c)(i) comprises of two separate questions, one of which must be answered in the affirmative before an Order is made under that subsection. The rights of way applied for have to be found on balance to subsist (Test A) or able to be reasonably alleged to subsist (Test B). This second test B is easier to satisfy, but it should be noted it is the 'higher' Test A which needs to be satisfied in deciding whether to confirm the Order.

In the case of *Todd and another v Secretary of State for Environment, Food and Rural Affairs* [2004] EWHC 1450 Evans-Lombe J made it clear that the confirming authority (whether the local authority confirming an unopposed order or the Secretary of State confirming an order) must be satisfied on the balance of probabilities that the rights of way subsist. This means that when considering the confirmation of an order, the Secretary of State is only able to consider whether on the balance of probabilities the rights of way subsists.

Accordingly, for the Order to be confirmed, the Inspector needs to be satisfied that, on the balance of probability, the evidence considered by the OMA, when considered with all other relevant evidence is sufficient from which to infer that footpaths were already dedicated on the Order routes and that the five separate Order routes numbered 1-5 and shown on the Order Maps should be added to the DMS as footpaths.

The evidence relating to each of the five Order routes is set out by the OMA in the Statement of Case and should be considered specifically in relation to each of the Order routes in turn. If the Planning Inspector considers that the evidence on the balance of probabilities is insufficient to show any one of the five routes subsists it is possible for the Planning Inspector to still confirm the Order subject to a modification.

The OMA assert however that the higher legal test (Test A) can be met for all five Order routes.

It should be noted that a common law dedication of a footpath may be inferred if the evidence points to an intention on the part of the landowner to dedicate. The burden of proof is on the applicant or Order Making Authority to prove, on the balance of probabilities, the dedication. Evidence of use of an Order 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 public right has been dedicated. No minimum period is prescribed, nor do the public rights need to be called into question; all the circumstances must be taken into account. The use needs to be 'as of right' which means it must be open, without secrecy, force or permission.

It should also be noted that a relevant statutory provision in relation to the dedication of a public right of way at statute is Section 31 of the Highways Act 1980 (the "1980 Act"). Section 31 provides that where a way has actually been enjoyed by the public, 'as of right' (meaning without secrecy, force or permission) and without interruption, for a period of twenty years prior to its status being brought into question, the way is deemed to have been dedicated as a highway, unless there is sufficient evidence that the landowner demonstrated a lack of any intention during this period to dedicate a public right of way. Section 31 does not necessarily preclude dedication of a public right of way under common law, however.

It is the view of the OMA that all five of the Order routes subsists as footpaths and should be recorded as such on the DMS ([Document 24](#)).

The OMA assert that there is sufficient evidence relating to all 5 Order routes to satisfy the Statutory test under Section 31 and that the 20 year period under consideration is March 1978 to March 1998. In the alternative, the OMA also consider that within that period there is also sufficient evidence from which dedication of all 5 Order routes can be inferred on balance at common law whereby the owners of the land at that time did nothing to stop public use and from which their intention to give the route up to be a public footpath could on balance be inferred through use by the public.

Evidence

The historical map and documentary evidence, which was evaluated by experienced officers and considered by the Regulatory Committee on 2nd July 2014, is detailed in the Committee Report ([Document 24](#)) but is not all relied on by the OMA (unless specifically detailed below) other than to illustrate that the routes physically existed and appeared to be capable of being used during the relevant period of time referred to.

Order Route 1

Shown by a thick dashed line on Order Map 2 between points A-B-C-D-E

Whilst the full length of Order route 1 physically existed from the late 1800s (as evidenced by the Scarisbrick Estate Papers and plan documented in the Regulatory Committee report ([Document 24](#))) the OMA are not relying on the historical map and documentary evidence in relation to Order route 1.

The Order route was constructed as part of the drainage of Banks Enclosed Marsh and from the early 1900s onwards the Order route was shown on all OS maps examined, was excluded from the numbered hereditaments on the 1910 Finance Act Map, was shown on aerial photographs taken in the 1940s and 1960s, named as part of George's Lane on the Authentic Map Directory of South Lancashire published circa 1934 and clearly appeared to have been capable of being used by the public for a substantial period of time.

The Order route was recorded on the Parish Survey Map in 1952 as a footpath and described in the survey card as a 'Roadway' linking to the footpath recorded along the base of the new sea defence embankment. It was shown on the Draft Map as a footpath but described in the Draft Statement as a Road Used as Public Path' but received an objection lodged by the landowners (the Scarisbrick Estate) in 1953. The appeal against the inclusion of the route was successful and it was not shown on the Provisional Map or First Definitive Map.

Maps and aerial photographs post-dating the early 1950s confirm that the route remained unaltered from when constructed and appeared to be capable of being used but do not indicate whether a public right of way had subsequently been dedicated over it. Accordingly, the OMA consider that the determination of the existence of footpath rights depends on the evidence of public use and whether dedication of a public footpath can be presumed to have occurred in accordance with section 31 of the 1980 Act or inferred at common law between 1979 and 1998.

With regard to the statutory test of presumed dedication, and specifically the date that the public's use of Order route 1 was brought into question the owner of the land crossed by Order route 1, the Southport Land & Property Company Limited, made a statutory declaration under section 31(6) of the 1980 Act on 23rd March 1998.

In the absence of any firm evidence of earlier challenges to the public's use of Order route 1, the OMA took the landowner's statutory declaration as the event which brought the public's use of Order Route 1 into question and dedication of public footpath rights is presumed to have occurred in accordance with the relevant legislation between 1979 and 1998.

A recent Order Decision for ROW/3282977 (for an adjacent DMMO application submitted by the same applicant for a way across land owned by the same company) ([Document 35](#)) determined that the year in which a nearby (but unconnected) route was called into question was 1994. Whilst the routes detailed in both Orders crossed land in the same ownership the route in question in the other Order crossed a separate parcel of land that was fenced off by the Southport Land & Property Company to provide a stock proof field used for grazing and for car boot sales which effectively prevented access along that route. 1994 was determined to record the date of

challenge (erection of fencing) but there is no suggestion that with regards to the Order for the 5 routes detailed in this Statement of Case that 1994 should be taken as the date that public rights were also called into question.

With regards to Order route 1 there is no evidence that the Order route was blocked off prior to 1998. Users of the route consistently refer to access being available along the full length via a stile at point D. Ownership of the land crossed by the Order route changed in 1979, again in the mid-1980s and once more in 1990. The DMMO application was not made until 2012 – 22 years after the land was purchased by Southport Land and Property Company Limited and 14 years after Southport Land and Property Company Limited made a statutory declaration under Section 31(6) of the Highways Act 1980. It is clear from the user evidence that a significant amount of uninterrupted use continued along the Order route until 2012 and beyond (although the OMA reiterate that it is not disputed that the period of time under consideration is 1978-1998 as previously stated).

The OMA draw the Inspector's attention to the detailed analysis of user evidence contained in the Regulatory Committee report ([Document 24](#)) and to the user evidence forms themselves.

The OMA, having reviewed the user evidence submitted, have undertaken interviews with local people who have used the Order route over a substantial period.

Detailed Witness Statements have been submitted by the OMA for a cross-section of members of the public detailing use of the Order route to include the period 1978-1998 ([Documents 36-51](#)).

69 user evidence statements were submitted in support of the application for Order route 1 ([Document 19](#)). At least 53 users documented regular use of Order route 1 within the 20 year period 1978-1998 with 33 having used it for the full 20 year period ([Document 19](#)).

Of significance is that many of the users document how they were born and grew up in Banks village and had lived there all their lives. Use of the routes through several generations is recorded. Local people refer to walking the route to get out to the Marsh, learning to swim in the pools, fishing, picnicking on the embankment and local traditions like egg rolling on the New Embankment at Easter time.

Some document moving to the village as adults and exploring the local area to find which routes they could use. In doing so they make reference to starting to use Order route 1 because they saw other people using it and that there were never any signs indicating that it was private or they wouldn't have gone down it.

Many of those completing user evidence forms also completed forms for other routes detailed within the Order and many would use the routes as part of various circular walks radiating out from the village.

PUBLIC FOOTPATHS AT BANKS ENCLOSED MARSH, NORTH MEOLS, WEST LANCASHIRE
BOROUGH (DEFINITIVE MAP MODIFICATION) ORDER 2014

Virtually all the users refer to seeing others walking the route and/or walking with others. Many users walked dogs and were frequent users of the path. Some referred to seeing horses and bicycles along the route or using the route on bicycles and horseback but of those interviewed it appeared that much of the use on bicycles referred to use as children when they would go out to play. No evidence was submitted suggesting horses used the route to get onto the New Embankment or the Marsh but several users referred to riding horses along the track returning back the same way. Mindful of a number of objections to the Order based on the fact that those objectors consider the route should be recorded as a public bridleway, the Inspector's attention is drawn to these references.

Many users (on foot) refer to a stile and gate at the far end of Order route 1 (at point D on the Order Map). Many refer to the gate being locked but refer to pedestrian access always being available via a stile. None of the users refer to private signs in relation to use of the route itself although some do explain that by 2012 signs had been erected close to point A. None of the users refer to signage during the 20 year period 1978-1998. None of the users refer to being stopped or challenged within the 20 year period but there are references to challenges made post-1998 – mainly in 2010-2012.

Overall, the evidence suggests regular pedestrian use of Order route 1 by the public over a prolonged period. The full length of Order route 1 appears to have been accessible to the public, with nothing to suggest that entry was forced or undertaken secretly. The flat and open nature of the landscape means that persons walking the Order route would be clearly visible from a distance and the evidence presented to the OMA demonstrates that public use went unchallenged.

On balance, the available evidence indicates that Order Route 1 had been used as a footpath by the public, as of right and without interruption, for a full period of 20 years from 1974 to 1994 such that a presumption of deemed dedication under section 31 is raised.

The only landowner who is reported to have taken any steps to try to prevent public use of Order Route 1 is the Southport Land & Property Company (which own the land crossed by section A-C) and it seems that this owner had owned the land for at least eight years before taking any action that was noticeable by the public and/or effective.

The Southport Land & Property Company contend that the Scarisbrick Estate did not intend the Order routes to be dedicated as public rights of way. The successful challenge to the inclusion of the Order route on the Draft Map in 1953-1955 suggests that at that time there was no intention to dedicate public rights. Correspondence between the Scarisbrick Estate, Parish Council and OMA during the period 1976-1977 suggests a lack of intention but no details of further communication have been found. Crucially, any lack of intention did not appear to have been communicated to the public.

Significantly, there was already evidence of a great deal of regular public use of the route by the 1970s which continued through to the late 1990s and beyond. User evidence forms completed make no reference to being stopped or challenged, asking

permission to use the routes or using them secretly or with force in the 1970s when the land was still owned by the Scarisbrick Estate.

Shooting on both the Enclosed and Outer Marsh appears to have taken place for as long as people can remember, with a number of older residents recounting stories of how they had guns as children and would go out to shoot birds. Such activities are hard to comprehend in a modern world where guns must be licenced, stored securely and use strictly regulated. One elderly gentleman recounted a story about how as teenagers he and his friends would put their guns on their back and cycle through the village to go shooting. It is clear from the user evidence forms, and from the interviews that have taken place, that public use of the Order routes and of the Outer Marsh co-existed with the shooting without apparent issue until post 1998 when, in 2010-2012 accounts of a shooting syndicate challenging public use started to be reported.

Since the making of the Order documentation relating to a public inquiry held in 2001 regarding another route on land owned by Southport Land & Property Company has been located and examined. Within the bundle of documents was a copy of a draft statement prepared for the 2001 inquiry for Mr Edward Crowhurst ([Document 46](#)). Mr Crowhurst had worked for the Scarisbrick Estate between 1954 and 1979 as an Estate Foreman. He confirmed that the Estate was sold in 1979. Whilst his statement related to the route now recorded as bridleway (numbered BW0812047, BW0812048 and BW0812049) it is significant because the 5 Order routes now under consideration all radiate out from that bridleway across land formerly owned by the Scarisbrick Estate.

Mr Crowhurst stated:

'All the years that I worked for the Scarisbrick Estate I recall that lots of members of the public used to visit the marsh. They would walk along the tracks. I recall mothers pushing prams and walking with youngsters. Everyone treated the land with respect and the farmers and landowners never stopped anyone.'

Mr Crowhurst's statement was prepared in 2001 and the OMA were unable to locate a signed copy. Mr Crowhurst was however listed as having given his evidence in person at the public inquiry ([Document 32](#)) with nothing to indicate that his evidence would have varied from what was stated. Mr Crowhurst has since passed away.

It therefore appears that within the statutory 20-year period under consideration (1978-1998) the Scarisbrick Estate only owned the land during the first of those years (1978) and that the Estate Foreman acknowledged routes across the Estate were well used by the public at that time.

A second statement relating to the 2001 public inquiry was prepared by Mr Thomas Fawcett ([Document 49](#)) who, explained that between 1980 and 1989 he was employed by Cluttons, Estate Agents and Land Agents as the Managing Agent for the owners of the land crossed by all five Order routes. In the statement he explains the various changes to landownership between 1979 and 1990.

Again, the statement was prepared in relation to the routes now recorded as bridleways, but it is significant in that Mr Fawcett explained that he visited tenants on the land every two months and stated:

'At no time did the landowners from 1979 to 1989 take any action or request Cluttons or myself to take any action in respect of any public rights of way or use of tracks across the land. The public rights or their use of the tracks were never an issue. No signs were erected nor any notices filed.'

The statement on the OMA's file is not signed and Mr Fawcett was not called to present his evidence in person at the Inquiry. However, the content of the Statement does explain that the Scarisbrick Estate no longer owned the land crossed by the Order routes after 1979 and that between 1979 and 1980 the Managing Agent for the land stated that throughout that period the relevant landowners took no action in respect of the use by the public of routes across the land and did not request any action be taken in respect of public use of any tracks across the land.

The OMA contacted Mr Fawcett in 2025 and he confirmed that the details contained within the Statement about the landownership and lack of any action being taken with respect to public use were correct ([Document 50](#)).

Therefore, taking all available evidence into account, the OMA considers that there is insufficient evidence that between 1978 and 1998 that any freehold owners of the land crossed by Order Route 1 had taken any overt action to disabuse the public of the belief that the way had been dedicated to public use. As there is no evidence to rebut the presumption of dedication raised by the user evidence, the OMA considers that, on the balance of probabilities, a public footpath subsists along Order Route 1 in accordance with Section 31.

If a statutory dedication of a highway is found not to exist on the balance of probabilities by the Planning Inspector, the OMA rely in the alternative upon a dedication at common law with reference to use of the route by the public during the period 1979 to 1990. Given the information provided by Mr Fawcett (above) together with the quantity of frequent and regular use, it would be reasonable on balance, in the absence of a statutory dedication, for a dedication to be inferred at common law.

Order Route 2

Shown by a thick dashed line on Order Map 2 between points F-G-H-I.

Whilst the full length of Order route 2 physically existed from the late 1800s (as evidenced by the Scarisbrick Estate Papers and plan documented in the Regulatory Committee report ([Document 24](#))) the OMA are not relying on the historical map and documentary evidence in relation to Order route 2 except were mentioned below.

The Order route was constructed as part of the drainage of Banks Enclosed Marsh and from the early 1900s onwards the Order route was shown on all OS maps examined, was excluded from the numbered hereditaments on the 1910 Finance Act

Map, was shown on aerial photographs taken in the 1940s and 1960s, and clearly appeared to have been capable of being used by the public for a substantial period of time.

The Order route was recorded on the Parish Survey Map in 1952 as a footpath and described in the survey card as a continuation of Charnley's Lane to the embankment. It was shown on the Draft Map as a footpath but received an objection lodged by the landowners (the Scarisbrick Estate) in 1953. The appeal (1955) against the inclusion of the route was successful and it was not shown on the Provisional Map or First Definitive Map.

Maps and aerial photographs post-dating the early 1950s confirm that the route remained unaltered from when constructed and appeared to be capable of being used but do not indicate whether a public right of way had subsequently been dedicated over it. Accordingly, the OMA consider that the determination of the existence of footpath rights depends on the evidence of public use and whether dedication of a public footpath can be presumed to have occurred in accordance with section 31 of the 1980 Act between 1978 and 1998 or inferred at common law between 1979 and 1998.

With regard to the statutory test of presumed dedication, and specifically the date that the public's use of Order route 2 was brought into question the owner of the land crossed by Order route 2, the Southport Land & Property Company Limited, made a statutory declaration under section 31(6) of the 1980 Act on 23rd March 1998.

In the absence of any firm evidence of earlier challenges to the public's use of Order route 2, the OMA took the landowner's statutory declaration as the event which brought the public's use of Order Route 2 into question.

With regards to Order route 2 there is no evidence that the route was blocked off prior to 1998. Ownership of the land crossed by the Order route changed in 1979, again in the mid-1980s and once more in 1990. The DMMO application was not made until 2012 – 14 years after the statutory declaration detailed above was made – and it is clear from the user evidence that a significant amount of uninterrupted use continued along the Order route until well into the 2000s and beyond.

The OMA draw the Inspector's attention to the detailed analysis of user evidence contained in the Regulatory Committee report ([Document 24](#)) and to the user evidence forms themselves ([Document 20](#)).

The OMA, having reviewed the user evidence submitted, and have undertaken interviews with local people who have used Order route 2 over a substantial period.

Detailed Witness Statements have been submitted by the OMA for a cross-section of members of the public detailing use of the Order route to include the period 1978-1998 ([Documents 36-51](#)).

68 user evidence forms were submitted in support of the application for Order route 2 ([Document 20](#)). At least 50 users documented regular use of Order route 2 within the 20 year period 1978-1998 with at least 33 having used it for the full 20 year period.

Of significance is that many of the users document how they were born and grew up in Banks village and lived there all their lives. Use of the routes through several generations is recorded with a number of recollections about how well used the route was by local families going out to the New Embankment and the Outer Marsh from the village. Users recounted stories about egg rolling on the New Embankment at Easter time, learning to swim in the pools on the Outer Marsh, picnics with family members on sunny days and how the marsh itself was akin to a beach during the summer months.

Many of those completing user evidence forms also completed forms for other routes detailed within the Order and many would use the routes as part of various circular walks radiating out from the village. Together with Order route 1 it was clearly apparent from looking at an Ordnance Survey map that George's Lane and Charnley's Lane were the two main routes leading out of the centre of the village to the New Embankment and Outer Marsh. Many of the users interviewed referred to the most frequently used circular route used being a loop encompassing Order routes 1 and 2.

Virtually all the users refer to seeing others walking the route and/or walking with others. Some referred to seeing horses and bicycles along the route or using the route on bicycles and horseback themselves although the consensus of opinion was that use on horseback was infrequent and that riders would have to turn back at the northern end of the route because of the stile. Mindful of several objections to the Order because those objectors consider the route should be recorded as a public bridleway, the Inspector's attention is drawn to these references.

Many users (on foot) refer to a stile and gate at the far end of Order route 2 (at point H on the Order Map). Some refer to the gate being locked but refer to pedestrian access via a stile. None of the users refer to private signs in relation to use of the route itself although some do explain that by 2012 signs had been erected close to point F and some refer to a ditch being dug across the route south east of point H around the same time. None of the users refer to being aware of any signage during the 20 year period 1978-1998. None of the users refer to being stopped or challenged within the 20 year period and references to challenges are post-1998 – mainly in 2010-2012.

Overall, the evidence suggests regular pedestrian use of Order route 2 by the public over a prolonged period. The full length of Order route 2 appears to have been accessible to the public, with nothing to suggest that entry was forced or that use was undertaken secretly. The flat and open nature of the landscape means that persons walking the Order route would be clearly visible from a distance and the evidence presented to the OMA demonstrates that public use between 1978 and 1998 went unchallenged.

On balance, the available evidence indicates that Order Route 2 had been used as a footpath by the public, as of right and without interruption, for a full period of 20 years

from 1974 to 1994 such that a presumption of deemed dedication under section 31 is raised.

The only landowner who is reported to have taken any steps to try to prevent public use of Order Route 2 is the Southport Land & Property Company (which owns the land crossed by section F-H) and it seems that this owner had owned the land for at least eight years before taking any action that was noticeable by the public and/or effective in calling public rights into question.

The Southport Land & Property Company contend that the Scarisbrick Estate did not intend the Order routes to be dedicated as public rights of way. The successful challenge to the inclusion of the Order route on the Draft Map in 1953-1955 suggests no intention to dedicate public rights at that time. Correspondence between the Scarisbrick Estate, Parish Council and OMA during the period 1976-1977 also suggests a lack of intention to dedicate but no further communication has been found and crucially, any lack of intention in the mid-late 1970s prior to the sale of the Estate did not appear to have been communicated to the public.

The user evidence forms submitted provide evidence of a great deal of public use of the route by the 1970s which continued through to the late 1990s and beyond. User evidence forms completed make no reference to being stopped or challenged, asking for permission to use the route or that use was in secret or by force at any point in the 1970s through to 1998.

Documentation relating to a public inquiry held in 2001 regarding another route on land owned by Southport Land & Property Company is referenced in relation to Order route 1 and is equally relevant to the case for the confirmation of the Order in relation to Order route 2. To recap, Mr Edward Crowhurst, who had worked for the Scarisbrick Estate between 1954 and 1979 as an Estate Foreman stated ([Document 46](#)):

'All the years that I worked for the Scarisbrick Estate I recall that lots of members of the public used to visit the marsh. They would walk along the tracks. I recall mothers pushing prams and walking with youngsters. Everyone treated the land with respect and the farmers and landowners never stopped anyone.'

A second statement relating to the 2001 public inquiry was prepared by Mr Thomas Fawcett ([Document 49](#)), the Managing Agent for the owners of the land crossed by all five Order routes between 1980 and 1989.

Mr Fawcett visited tenants on the land every two months and stated:

'At no time did the landowners from 1979 to 1989 take any action or request Cluttons of myself to take any action in respect of any public rights of way or use of tracks across the land. The public rights or their use of the tracks were never an issue. No signs were erected nor any notices filed.'

Taking all available evidence into account, the OMA considers that there is insufficient evidence that between 1978 and 1998 any freehold owners of the land crossed by

Order Route 2 had taken any overt action to disabuse the public of the belief that the way had been dedicated to public use.

As there is no evidence to rebut the presumption of dedication raised by the substantial and detailed user evidence submitted, the OMA considers that, on the balance of probabilities, a public footpath subsists along Order Route 2 in accordance with section 31.

If no statutory dedication of a highway is found on the balance of probabilities by the Planning Inspector, the OMA rely in the alternative upon a dedication at common law and specifically to use of the route by the public during the period 1979 to 1990. Given the evidence of Mr Fawcett and the quantity of frequent and regular use throughout this time, it would be reasonable on balance, in the absence of a statutory dedication, for a dedication to be inferred at common law.

Order Route 3

Shown by a thick dashed line on Order Map 1 between points J-K-L-M-N-O.

The OMA are not relying on the historical map and documentary evidence in relation to Order route 3 except where mentioned below.

With the exception of the Order route between points J-K map and documentary evidence of the existence of the route is limited.

The best supporting evidence to be considered in conjunction with the user evidence is the aerial photographs taken in 1963 and 1988 ([Documents 57-58](#)).

Accordingly, the OMA consider that the determination of the existence of footpath rights depends on the evidence of public use of Order route 3 and whether dedication of a public footpath can be presumed to have occurred in accordance with section 31 of the 1980 Act between 1978 and 1998 or inferred at common law.

With regards to the statutory test of presumed dedication, and specifically the date that the public's use of Order route 3 was brought into question the owner of the land crossed by Order route 2, the Southport Land & Property Company Limited, made a statutory declaration under section 31(6) of the 1980 Act on 23rd March 1998.

In the absence of any firm evidence of earlier challenges to the public's use of Order route 3, the OMA took the landowner's statutory declaration as the event which brought the public's use of Order route 3 into question.

With regards to Order route 3 there is no evidence that the route was blocked off prior to 1998. Ownership of the land crossed by the Order route changed in 1979, again in the mid-1980s and once more in 1990. The DMMO application was not made until 2012 – 14 years after the statutory declaration referred to above was made– and it is clear from the user evidence that a significant amount of uninterrupted use continued

along the Order route until fencing was erected and a ditch dug across the route at point N circa 2010.

The OMA draw the Inspector's attention to the detailed analysis of user evidence contained in the Regulatory Committee report ([Document 24](#)) and to the user evidence forms themselves ([Document 21](#)).

The OMA, having reviewed the user evidence submitted, and have undertaken interviews with local people who have used Order route 3 over a substantial period.

40 user evidence forms were submitted in support of the application for Order route 3 ([Document 21](#)). At least 32 users documented regular use of Order route 3 within the 20 year period 1978-1998 with at least 22 having used it for the full 20 year period.

Of significance is that many of the users document how they were born and grew up in Banks village and lived there all their lives. Use of the routes through several generations is recorded.

Many of those completing user evidence forms also completed forms for other routes detailed within the Order and many would use the routes as part of various circular walks radiating out from the village.

Virtually all the users refer to seeing others walking the route and/or walking with others. Several recall that the route along the Old Embankment was partially fenced and would be grazed by the cows off the New Embankment for several weeks every year to keep the grass down. Some refer to the wildlife and birds that you would see when walking this particular route.

Many users refer to the route crossing the drain at the eastern end (point N) being a significant track through to the New Embankment until it was blocked by fencing, signage and a deep trench being dug out to prevent access. This work was carried out after the Statutory Deposit was made in 1998. None of the users refer to being aware of any signage during the 20 year period 1978-1998. None of the users refer to being stopped or challenged within the 20-year period and references to challenges are post 1998 – mainly in 2010-2012.

Overall, the evidence suggests regular pedestrian use of Order route 3 by the public over a prolonged period. The full length of Order route 3 appears to have been accessible to the public, with nothing to suggest that entry was forced or that use was undertaken secretly. The route ran adjacent to part of a very old sea embankment with various references to birdwatching and walking the route with children to appreciate the wildlife found along the embankment. The open nature of the landscape meant that persons walking the Order route would be clearly visible from a distance and the evidence presented to the OMA demonstrates that public use between 1978 and 1998 went unchallenged.

On balance, the available evidence indicates that Order Route 3 had been used as a footpath by the public, as of right and without interruption, for a full period of 20 years

from 1974 to 1994 such that a presumption of deemed dedication under section 31 is raised.

The only landowner who is reported to have taken any steps to try to prevent public use of Order Route 3 is the Southport Land & Property Company (which owns the land crossed by section J-K-L-M-N) and it seems that this owner had owned the land for at least eight years before taking any action that was noticeable by the public and/or effective in calling public rights into question.

The Southport Land & Property Company contend that the Scarisbrick Estate did not intend the Order routes to be dedicated as public rights of way but no evidence has been found to show any lack of intention to dedicate the route having been communicated to the public who were not in the area in the early 1950s and who were using the route prior to the sale of the Estate in 1979.

The user evidence forms submitted provide evidence of public use of Order route 3 in the 1970s which continued through to the late 1990s and beyond. User evidence forms completed make no reference to being stopped or challenged, asking for permission to use the route or that use was in secret or by force at any point through to 1998 when the Statutory Declaration was made.

Documentation relating to a public inquiry held in 2001 regarding another route on land owned by Southport Land & Property Company is referenced in relation to Order route 1 and is equally relevant to the case for the confirmation of the Order in relation to Order route 3. Mr Edward Crowhurst, who had worked for the Scarisbrick Estate between 1954 and 1979 as an Estate Foreman stated ([Document 46](#)):

'All the years that I worked for the Scarisbrick Estate I recall that lots of members of the public used to visit the marsh. They would walk along the tracks. I recall mothers pushing prams and walking with youngsters. Everyone treated the land with respect and the farmers and landowners never stopped anyone.'

A second statement relating to the 2001 public inquiry was prepared by Mr Thomas Fawcett ([Document 49](#)), the Managing Agent for the owners of the land crossed by all five Order routes between 1980 and 1989.

Mr Fawcett visited tenants on the land every two months and stated:

'At no time did the landowners from 1979 to 1989 take any action or request Cluttons of myself to take any action in respect of any public rights of way or use of tracks across the land. The public rights or their use of the tracks were never an issue. No signs were erected nor any notices filed.'

Taking all available evidence into account, the OMA considers that there is insufficient evidence that between 1978 and 1998 any freehold owners of the land crossed by Order Route 3 had taken any overt action to disabuse the public of the belief that the way had been dedicated to public use.

As there is no evidence to rebut the presumption of dedication raised by the substantial and detailed user evidence submitted, the OMA considers that, on the balance of probabilities, a public footpath subsists along Order Route 3 in accordance with section 31.

If no statutory dedication of a highway is found by the Planning Inspector on the balance of probabilities, the OMA rely in the alternative upon a dedication at common law and specifically to use of the route by the public during the period 1979 to 1990. Given the quantity of frequent and regular use throughout this time, it would be reasonable on balance, in the absence of a statutory dedication, for a dedication to be inferred at common law.

Order Route 4

Shown by a thick dashed line on Order Map 1 between points K-P-Q-R.

Whilst the full length of Order route 4 physically existed from the late 1800s (as evidenced by the Scarisbrick Estate Papers and plan documented in the Regulatory Committee report ([Document 24](#))) the OMA are not relying on the historical map and documentary evidence in relation to Order route 4 except where referenced below.

The Order route was constructed as part of the drainage of Banks Enclosed Marsh and from the early 1900s onwards the Order route was shown on all OS maps examined, was excluded from the numbered hereditaments on the 1910 Finance Act Map appearing to be considered an extension of Bank Pace (now Bridleway BW0812047 from Ralph Wife's Lane to point K), was shown on aerial photographs taken in the 1940s and 1960s, shown on the Authentic Map Directory of South Lancashire published circa 1934 and clearly appeared to have been capable of being used by the public for a substantial period of time.

The route remained unaltered from when constructed and appeared to be capable of being used but the maps and documents examined do not indicate whether a public right of way had subsequently been dedicated over it. Accordingly, the OMA consider that the determination of the existence of footpath rights depends on the evidence of public use and whether dedication of a public footpath can be presumed to have occurred in accordance with section 31 of the 1980 Act or inferred at common law.

With regards to the statutory test of presumed dedication, and specifically the date that the public's use of Order route 4 was brought into question the owner of the land crossed by Order route 4, the Southport Land & Property Company Limited, made a statutory declaration under section 31(6) of the 1980 Act on 23rd March 1998.

In the absence of any firm evidence of earlier challenges to the public's use of Order route 4, the OMA took the landowner's statutory declaration as the event which brought the public's use of Order route 4 into question.

With regards to Order route 4 there is no evidence that the route was blocked off prior to 1998. Ownership of the land crossed by the Order route changed in 1979, again in

the mid-1980s and once more in 1990. The DMMO application was not made until 2012 – 14 years after the Southport Land & Property Company Limited made a statutory declaration and it is clear from the user evidence that a significant amount of uninterrupted use continued along the Order route continuing through to at least 2010.

The OMA draw the Inspector's attention to the detailed analysis of user evidence contained in the Regulatory Committee report ([Document 24](#)) and to the user evidence forms themselves ([Document 22](#)).

The OMA, having reviewed the user evidence submitted, and have undertaken interviews with local people who have used Order route 4 over a substantial period of time and detailed witness statements are included with the OMA's submission ([Documents 36-51](#)).

44 user evidence forms were submitted in support of the application for Order route 4 ([Document 22](#)). At least 34 users documented regular use of Order route 4 within the 20 year period 1978-1998 with at least 20 having used it for the full 20 year period.

Of significance is that many of the users document how they were born and grew up in Banks village and lived there all their lives. Use of the routes through several generations is recorded.

Many of those completing user evidence forms also completed forms for other routes detailed within the Order and many would use the routes as part of various circular walks radiating out from the village.

Virtually all the users refer to seeing others walking the route and/or walking with others. Some referred to seeing horses and bicycles along the route or using the route on bicycles and horseback with references to horse use being infrequent and not continuing beyond the stile at point Q and that bicycles were either lifted over the stile or left lying on the ground or propped up against the fence at point Q. Mindful of several objections to the Order because those objectors consider the route should be recorded as a public bridleway, the Inspector's attention is drawn to these references.

Many users (on foot) refer to a stile and gate at the far end of Order route 4 (at point Q on the Order Map). Most refer to the gate being locked but refer to pedestrian access via a stile. None of the users refer to private signs in relation to use of the route itself although some do explain that by 2012 signs had been erected close to point K. None of the users refer to signage during the 20-year period 1978-1998. None of the users refer to being stopped or challenged within the 20-year period but there are references to challenges made post-1998 – mainly in 2010-2012.

Overall, the evidence suggests regular pedestrian use of Order route 4 by a substantial number of people over a prolonged period. The full length of Order route 4 appears to have been accessible to the public, with nothing to suggest that entry was forced or that use was undertaken secretly. The open nature of the landscape meant that persons walking the Order route would be clearly visible from a distance and the

evidence presented to the OMA demonstrates that public use between 1978 and 1998 went unchallenged.

On balance, the available evidence indicates that Order Route 4 had been used as a footpath by the public, as of right and without interruption, for a full period of 20 years from 1974 to 1994 such that a presumption of deemed dedication under section 31 is raised.

The only landowner who is reported to have taken any steps to try to prevent public use of Order Route 4 is the Southport Land & Property Company (which owns the land crossed by section K-P-Q) and it seems that this owner had owned the land for at least eight years before taking any action that was noticeable by the public and/or effective in calling public rights into question.

The Southport Land & Property Company contend that the Scarisbrick Estate did not intend the Order routes to be dedicated as public rights of way but no evidence has been found to show any lack of intention to dedicate the route having been communicated to the public from 1978 prior to the sale of the Estate in 1979.

The user evidence forms submitted provide evidence of public use of Order route 4 in the 1970s which continued through to the late 1990s and beyond. User evidence forms completed make no reference to being stopped or challenged, asking for permission to use the route or that use was in secret or by force at any point through to 1998 when the Statutory Declaration was made.

Documentation relating to a public inquiry held in 2001 regarding another route on land owned by Southport Land & Property Company is referenced in relation to Order route 1 and is equally relevant to the case for the confirmation of the Order in relation to Order route 4. Mr Edward Crowhurst, who had worked for the Scarisbrick Estate between 1954 and 1979 as an Estate Foreman stated ([Document 46](#)):

'All the years that I worked for the Scarisbrick Estate I recall that lots of members of the public used to visit the marsh. They would walk along the tracks. I recall mothers pushing prams and walking with youngsters. Everyone treated the land with respect and the farmers and landowners never stopped anyone.'

A second statement relating to the 2001 public inquiry was prepared by Mr Thomas Fawcett ([Document 49](#)), the Managing Agent for the owners of the land crossed by all five Order routes between 1980 and 1989.

Mr Fawcett visited tenants on the land every two months and stated:

'At no time did the landowners from 1979 to 1989 take any action or request Cluttons of myself to take any action in respect of any public rights of way or use of tracks across the land. The public rights or their use of the tracks were never an issue. No signs were erected nor any notices filed.'

Taking all available evidence into account, the OMA considers that there is insufficient evidence that between 1978 and 1998 any freehold owners of the land crossed by Order route 4 had taken any overt action to disabuse the public of the belief that the way had been dedicated to public use.

As there is no evidence to rebut the presumption of dedication raised by the substantial and detailed user evidence submitted, the OMA considers that, on the balance of probabilities, a public footpath subsists along Order Route 4 in accordance with section 31.

If no statutory dedication of a highway is found by the Planning Inspector on the balance of probabilities, the OMA rely in the alternative upon a dedication at common law and specifically to use of the route by the public during the period 1979 to 1990. Given the quantity of frequent and regular use throughout this time, it would be reasonable on balance, in the absence of a statutory dedication, for a dedication to be inferred at common law.

Order Route 5

Shown by a thick dashed line on Order Map 1 between points S-T-U-V.

Order route 5 passes through an elevated strip of woodland known as Cross Bank Covert. The OMA are not relying on historical map and documentary evidence in relation to Order route 5.

Accordingly, the OMA consider that the determination of the existence of footpath rights depends on the evidence of public use and whether dedication of a public footpath can be presumed to have occurred in accordance with section 31 of the 1980 Act or inferred at common law.

With regards to the statutory test of presumed dedication, and specifically the date that the public's use of Order route 5 was brought into question the owner of the land crossed by Order route 5, the Southport Land & Property Company Limited, made a statutory declaration under section 31(6) of the 1980 Act on 23rd March 1998.

In the absence of any firm evidence of earlier challenges to the public's use of Order route 5, the OMA took the landowner's statutory declaration as the event which brought the public's use of Order route 5 into question.

With regards to Order route 5 there is no evidence that the route was blocked to prevent the public walking the route prior to 1998. Ownership of the land crossed by the Order route changed in 1979, again in the mid-1980s and once more in 1990. The DMMO application was not made until 2012, i.e. 14 years after the statutory declaration was made by Southport Land & Property Company Limited, and it is clear from the user evidence that a significant amount of uninterrupted use continued along the Order route after 1998.

The OMA draw the Inspector's attention to the detailed analysis of user evidence contained in the Regulatory Committee report ([Document 24](#)) and to the user evidence forms themselves ([Document 23](#)).

The OMA, having reviewed the user evidence submitted, and have undertaken interviews with local people who have used Order route 5 over a substantial period of time.

51 user evidence forms were submitted in support of the application for Order route 5 ([Document 23](#)). At least 35 users documented regular use of Order route 5 within the 20 year period 1978-1998 with at least 19 having used it for the full 20 year period.

Of significance is that many of the users document how they were born and grew up in Banks village and lived there all their lives. Use of the routes through several generations is recorded with references to some of the older users knowing the route from childhood and playing in the woods as children.

Many of those completing user evidence forms also completed forms for other routes detailed within the Order and many would use the routes as part of various circular walks radiating out from the village.

Fewer users refer to seeing others walking the Order route but this may be because it ran through enclosed woodland but users still referred to walking it accompanied by others. Some refer to walking it to see birds and wildlife – particularly as there were so few woodlands in the area.

Many users refer to a stile or gap in the fencing at the far end of Order route 5 (at point U on the Order Map). None of the users refer to signage during the 20-year period 1978-1998. None of the users refer to being stopped or challenged within the 20-year period but there are references to challenges made post 1998 and to the route being blocked off by barbed wire and deep trenches being dug across it after that time.

Users consistently referred to there being a trodden track along the full length of the Order route which followed along the top of the embankment in the woodland. The trodden track crossed a culverted drain at point T. With no indication that the track was created or used for vehicular use it appears that there must have been a significant amount of frequent use on foot to create such a path.

Whilst there were references to a variety of birds in the woodland none of the users reported having been stopped or challenged when using the route until after 1998. One user explained that he was told not to go into the woods in the 1960s but that was as a child when he played there.

Overall, the evidence suggests regular pedestrian use of Order route 5 by the public over a prolonged period with site evidence confirming the existence of a trodden route was still clearly visible in 2013.

The user evidence suggests that the full length of Order route 5 was accessible to the public, with nothing to suggest that entry was forced or that use was undertaken secretly.

On balance, the available evidence indicates that Order Route 5 had been used as a footpath by the public, as of right and without interruption, for a full period of 20 years from 1974 to 1994 such that a presumption of deemed dedication under section 31 is raised.

The only landowner who is reported to have taken any steps to try to prevent public use of Order Route 5 is the Southport Land & Property Company (which owns the land crossed by section S-T-U) and it seems that this owner had owned the land for at least eight years before taking any action that was noticeable by the public and/or effective in calling public rights into question.

The Southport Land & Property Company contend that the Scarisbrick Estate did not intend the Order route to be dedicated as public rights of way but no evidence has been found to show any lack of intention to dedicate the route having been communicated to the public during the statutory period 1978-1998 and from 1978 prior to the sale of the Scarisbrick Estate in 1979.

The user evidence forms submitted provide evidence of public use of Order route 5 in the 1970s which continued through to the late 1990s and beyond. User evidence forms completed make no reference to being stopped or challenged, asking for permission to use the route or that use was in secret or by force at any point through to 1998 when the Statutory Declaration was made.

Documentation relating to a public inquiry held in 2001 regarding another route on land owned by Southport Land & Property Company is referenced in relation to Order route 1 and is equally relevant to the case for the confirmation of the Order in relation to Order route 4. Mr Edward Crowhurst, who had worked for the Scarisbrick Estate between 1954 and 1979 as an Estate Foreman stated ([Document 46](#)):

'All the years that I worked for the Scarisbrick Estate I recall that lots of members of the public used to visit the marsh. They would walk along the tracks. I recall mothers pushing prams and walking with youngsters. Everyone treated the land with respect and the farmers and landowners never stopped anyone.'

A second statement relating to the 2001 public inquiry was prepared by Mr Thomas Fawcett ([Document 49](#)), the Managing Agent for the owners of the land crossed by all five Order routes between 1980 and 1989.

Mr Fawcett visited tenants on the land every two months and stated:

'At no time did the landowners from 1979 to 1989 take any action or request Clottons of myself to take any action in respect of any public rights of way or use of tracks across the land. The public rights or their use of the tracks were never an issue. No signs were erected nor any notices filed.'

Taking all available evidence into account, the OMA considers that there is insufficient evidence that between 1978 and 1998 any freehold owners of the land crossed by Order route 5 had taken any overt action to disabuse the public of the belief that the way had been dedicated to public use.

As there is no evidence to rebut the presumption of dedication raised by the substantial and detailed user evidence submitted, the OMA considers that, on the balance of probabilities, a public footpath subsists along Order route 5 in accordance with Section 31.

If no statutory dedication of a highway is found by the Planning Inspector on the balance of probabilities, the OMA rely in the alternative upon a dedication at common law and specifically to use of the route by the public during the period 1979 to 1990. Given the quantity of frequent and regular use throughout this time, it would be reasonable on balance, in the absence of a statutory dedication, for a dedication to be inferred at common law.

Conclusion

The OMA submits that public footpath rights subsist along all 5 of the Order routes. The OMA further contends that the criteria for a modification of the DMS under section 53 of the 1981 Act are satisfied.

The OMA decided that the Order should be promoted to confirmation because the higher test for confirmation is met. The objections received to the Order do not give any grounds for the OMA to reverse its decision on promoting the Order to confirmation. The OMA therefore respectfully requests that the Planning Inspector confirms the Order subject to the following modifications:

1. In Part 1 and Part 2 of the Order to amend the description of Route 2 to clarify that it meets Public Footpaths 39 and 40 North Meols on the landward side of the sea embankment (not Public Footpaths 38 and 39 North Meols as stated in the Order).
2. In Part 2 of the Order to amend the 'Limitations and Conditions' for Order routes 1,2 and 4 by deleting the word 'Field gate' from each and recording the 'Limitations and Conditions' for those three routes as stile' only.