

WILDLIFE AND COUNTRYSIDE ACT 1981

THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY FOR THE COUNTY OF LANCASHIRE

THE LANCASHIRE COUNTY COUNCIL DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY PUBLIC FOOTPATHS AT BANKS ENCLOSED MARSH, NORTH MEOLS, WEST LANCASHIRE BOROUGH (DEFINITIVE MAP MODIFICATION) ORDER 2014

THE ORDER MAKING AUTHORITY'S COMMENTS ON THE OBJECTIONS TO THE ORDER

During the specified period for objections and representations to the Order, the Order Making Authority ("OMA") received six objections.

Five of the objectors dispute the status of the public right of way¹. They believe that the Order route carries higher rights and should be recorded on the DMS as a public bridleway rather than a footpath.

The remaining objector disputes the existence of any public right of way across the Order route².

The points of objection are summarised in italics below with the OMA's response indented as follows:

ET Landnet Limited on behalf of Southport Land and Property Company Limited

Southport Land and Property Company Limited purchased the land over which all five Order routes run in 1990 and were the registered owners of all land crossed by the Order routes when the Order was made in 2014.

Any public use of the Order Routes has consistently been challenged both by signs, structures and verbally, such challenges being by and on behalf of the owners for the time being of the land. In addition to personal challenges from the landowner, the land is subject to diverse agricultural and sporting activities with those involved being under clear direction from the landowner that persons other than those lawfully permitted to be on the land should be challenged. Any other user has therefore been controversial and thus cannot have been user "as of right".

The Objector did not provide any evidence of such challenges as part of the objection submitted or specify when challenges were made or by whom. No dates relating to challenges, signs or structures were provided and it is not clear whether by reference to 'the landowner' these are specific references to challenges made on or behalf of the current landowner (post 1990).

¹ Donna Cumia, Colin James, Sonia James, Karen Restall and Jodi Ryan

² ET Landnet Limited on behalf of Southport Land and Property Company Limited

The OMA have found no evidence of challenges, signage or structures that brought the public use of the Order routes into question between 1978 and 1998. A previous submission made on behalf of Southport Land & Property Company Limited by Yates Barnes Solicitors ([Document 9](#)) as part of the pre-order consultations related to this and another separate Order that has already been determined by the Planning Inspectorate. The submission provided detail with regards to the current (2013) landowner's submission that public use of the Order routes was challenged primarily by members of various shooting syndicates including the Southport and District Wildfowlers Association and makes references to private signs and no trespassing signs having been erected although no specific dates or locations are given. Details of that submission were included in the OMA's report to the Regulatory Committee and were considered at that stage ([Document 24](#)).

The OMA have been presented with substantial numbers of user evidence forms for each of the five Order routes from a cross section of local people who had used the Order routes on a regular basis over the twenty year period 1978-1998 believing the routes to be public. Details of that use is submitted to the Planning Inspectorate.

The OMA made the Order on the basis of user evidence submitted as part of the application. Following an initial assessment of that user evidence the OMA considered that there was sufficient evidence to show that a right of way (footpath) existed on the balance of probabilities over all five routes.

The OMA have no reason to doubt the information supplied by the users and interviews have been carried out by experienced Officers to prepare Witness Statements for a significant number of users providing additional information relating to their use of the routes ([Documents 36-51](#)).

Looking at the twenty years 1978-98 the OMA consider that the user evidence in this matter is sufficient, and that the public used all five Order routes as of right and without interruption during the 20 year period to raise the presumption of deemed dedication.

The OMA also assert that evidence of use of the route prior to 1990 is sufficient to indicate that the owners at that time (1979 -1990) did nothing to stop the public use and from which their intention to dedicate public footpath rights could on balance be inferred.

Common law does not require there to be twenty years of use and as the use communicated to the OMA would appear to be as of right and exercised by sufficient members of the public then it is considered that dedication of the route at common law could, on balance be inferred.

Details relating to challenges to public use documented in the user evidence statements and confirmed by the interviews with witnesses quite clearly demonstrate a substantial number of members of the public were using the Order routes on a regular basis between 1978 and 1998 without challenge.

The previous owner of the land, the Scarisbrick Estate, permitted access to the land upon payment for such access. Such user by permission that thereby occurred cannot be user "as of right". The action requiring payment for access also demonstrates that the owner had no intention to dedicate any route to the public.

The objection states that this was the case but has provided no supporting evidence that permission was given to members of the public who were using the routes on foot. Users submitting evidence of use forms or witness statements do not refer to asking for or being given permission to use the Order routes and confirm that this was not the case. None of the users refer to paying to use the routes or being asked to pay and none refer to knowing people that had been asked to pay to use the routes. Use of the routes continued after the Scarisbrick Estate was sold in 1979 and no evidence has been presented by the objectors of permissive access being granted to the public to use the five Order routes between 1968 and 1998.

The Objector refers to a statement from Mr Alan Jones in the pre-order submission made by Yates Barnes Solicitors in 2013 (Document 9). Attached to the statement was a document dated as being signed in 1952 which was a permit which allowed Mr Jones to shoot wildfowl on the sea marsh beyond the new sea embankment. The objector refers to this document as illustrating that use of the order routes was not 'as of right' and that the landowner had no intention to dedicate public rights because payment was required.

The document referred to is included below for ease of reference:

NOT TRANSFERABLE.

No. 185

SCARISBRICK & NAYLOR-LEYLAND ESTATES.

Scarisbrick Estate Offices, 150 Lord Street, Southport.

Mr. A. W. Jones,
207, The Green, Acelaston.

having paid the sum of One Shilling for the privilege has permission, subject to the Wild Birds Protection Act and Orders, to shoot WILD FOWL (but not game) on the Sea Marshes and foreshore OUTSIDE the embankment at Banks ~~and Ormsay~~ belonging to Captain Charles Ewald Scarisbrick and The Trustees of the Naylor-Leyland Settled Estate, during the period commencing 12th August, 1952 and ending 31st January, 1953 and any legally authorised extension thereof.

This permit does not grant the privilege of passing with Motor Vehicles along the PRIVATE ROADS on Banks Marsh as this is prohibited.

Shooting on SUNDAYS and the making of FLEETING HOLES is also prohibited.

Dated this 11th day of August 1952

J. Booth
AGENT.

IS The bearer is authorized to demand production of a current Marsh Shooting Permit from any person carrying a gun on the marshes and in the event of such permit not being produced to demand his name and address.

The OMA do not consider this submission to be relevant several grounds. Firstly, it relates to payment made for a shooting permit and not for payment to use the Order route. Secondly, references to the permit not granting 'the privilege of passing with Motor Vehicles along the PRIVATE ROADS on Banks Marsh' provides no specific details as to which 'roads' are being referred to and relates specifically to the passing of private vehicles. By inference, this may suggest access on foot along such routes did not require permission. Thirdly, the document dates back to 1952 whereas the statutory period (and common law period) under consideration for the confirmation of this Order is 1978-1998 (i.e. much later).

No specific evidence relating to payment or granting of permission to the public at large of any of the 5 Order routes has been found.

Further, those engaged in any permitted activity on the land cannot have used the order routes as of right.

The Order has not been made on the basis of evidence from persons who may have been crossing the land because they had specific permission to do so in relation to a permitted activity or because of the granting of private access rights.

The user evidence submitted in relation to each of the five Order routes is from members of the public who list various reasons for walking/running the routes as being primarily for exercise, recreation, dog walking, nature walks and going out to the new embankment to look at the view. Many users refer to local traditions and past times which involved walking out to the New Embankment and to the Outer Marsh to partake in annual customs such as Easter egg rolling. They refer to fishing in the pools and drains, picnicking on the New Embankment and to swimming in the pools. A recurring theme is that generations of local people have used these routes openly, not in secret and without permission.

The OMA acknowledge that as well as a substantial amount of public use being made of the routes there has also been private use as documented by the objectors.

It is not uncommon for private access rights to be granted over public rights of way – whether those public rights are recorded or not and the OMA maintain the view that there is sufficient evidence on the balance of probability to show that public rights subsist along all 5 Order routes.

Two of the Order Routes were subject to claims at the time of the preparation of the Definitive Map and such claims were defeated upon the challenge of the landowner. The remaining routes were not subject to a claim and were not therefore subject to consideration. That the landowner at that time engaged in the challenge process and that it was found that the routes in question were not public rights of way, demonstrates that there has been no intention to dedicate the ways to the public and that any evidence of use at that time was not sufficient to prove dedication.

The OMA made the Order to record the five routes as public footpaths on the basis of user evidence post-dating (by a significant time) the publication of the original Definitive Map and Statement.

It is possible for a right of way to come into existence after the publication of the Definitive Map. It is also possible that, on the discovery of new evidence, a route which was determined not to exist as part of the original production of the Definitive Map, did in fact exist at that time and should now be recorded on the Map and Statement.

In this case, the fact that the applications to record the routes as public footpaths was not submitted until 2012 does not mean that they were not public rights of way long before that date.

The Order is made on the basis of user evidence submitted since the preparation of the original Definitive Map and the evidence relates specifically to use of the routes between 1978 and 1998 although it is also noted that evidence of use of all five routes was submitted going further back than 1978 and into the 1960s which would become more relevant if the Planning Inspector considered the date of the calling into question of public rights was any earlier than 1978.

None of the user evidence has been subject to cross-examination and the weight that should be given to it in those circumstances should be limited. Further, unless tested by cross-examination, the credibility of the user evidence cannot be established so as to discharge the burden on those seeking confirmation of the Order (see below). In particular, users claiming to have used the alleged path through Cross Bank Covert (from points S to U on the Order Plan) where they have forced access by cutting barbed wire, will have used any way thereby created contentiously and such use cannot have been "nec vi" and thus cannot be use as of right.

A substantial number of individuals provided evidence of use of the route. Users consistently recounted use of the five Order routes over lengthy period of time, recalled seeing others using the routes and believing them to be public rights of way.

Following the making of the Order a cross-section of witnesses who completed user evidence forms have been interviewed by the OMA and have provided Witness Statements consistent with their user evidence forms (Documents 33-50). None refer to using any of the Order routes by force, by permission or in secrecy. None refer to any of the Order routes being blocked or fenced off until 2010-2012.

This evidence can be considered and tested as part of the referral process. It is not necessary for particular witnesses to have used a way sufficiently to shown that the Order should be confirmed but the overall sum of the evidence to show on the balance of probabilities that the public rights subsist.

With specific reference to Order route 5 through Cross Bank Covert none of the users refer to cutting barbed wire or using the route by force within the 20 year period under consideration.

The burden of proof is upon those seeking confirmation of the Order to demonstrate that user has occurred without force, without secrecy and without permission. The

standard is upon a balance of probabilities. Only if that is demonstrated does any burden fall upon the objector to prove that there has been no intention to dedicate within the period of 20 years relied upon in support of confirmation. Whilst the untested evidence of use may raise a reasonable allegation, it does not satisfy the burden for the order to be confirmed.

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 any of the 5 Order routes 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, public footpaths subsist along all 5 Order routes in accordance with section 31 of the Highways Act 1981.

There is no evidence to support any case based on common law dedication by a previous landowner. As set out above, the actions of the current and previous owners were consistent with there being no intention to dedicate any ways to the public. Mere use is insufficient to prove common law dedication.

As set out in the OMAs Statement of Grounds ([Document 3](#)) if a statutory dedication of a highway is found by the Planning Inspectorate not to exist 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, and information provided by Tom Fawcett about management of the land after it had been sold by the Scarisbrick Estate, it would be reasonable on balance, in the absence of a statutory dedication, for a dedication to be inferred at common law.

Objections disputing the status of the public rights of way

The five objections listed below are based on the fact that the OMA has made an Order to record public footpath rights whereas the objectors believe they should be recorded as public bridleways.

The OMA has considered the available evidence and spoken to a number of users who refer to seeing horses being ridden along Order routes 1,2,3 and 4.

The OMA concluded that whilst there did appear to have been some reported use of Order routes 1,2,3 and 4 on horseback evidence of such use did not span the 20 years 1978-1998 under consideration and was mainly reported sightings of use from people walking the Order routes. In addition, there was no evidence presented that any of the routes were being used as through routes or that there was access from the ends of the route onto the New Embankment meaning that horse riders turned back when reaching the boundary fences at the landward side of the New Embankment.

The OMA considered there was insufficient evidence to make an Order to record any of the 5 Order routes as bridleways and are still of that opinion.

In addition, following a 2025 Planning Inspectorate decision into whether public bridleway rights existed over land in close proximity to the 5 Order routes being considered now, the Planning Inspector appointed to that case reversed a decision on a proposed modification to record a bridleway across land owned by the Environment Agency on the basis that The North West Water Authority Land Drainage Act 1976 Byelaws that applied to land crossed by that route constituted a lack of intention to dedicate bridleway rights over the land concerned ([Document 33](#)).

Should the Planning Inspector be presented with evidence of equestrian use in this case further consideration of that decision and the implications of the byelaws on the land crossed by the Order routes may need to be made.

Colin James, 67 Banks Road, Crossens, Southport, PR9 8JL

Objects to the routes described as proposed walkways at Fiddlers Ferry (and the way along the sluice) being recorded as footpaths because he believes that they should be recorded as bridleways. He explains that he has lived at Fiddlers Ferry since 1968 and has used all the routes with horses for riding and accessing the village since 1968 until present (2015) along the paths behind their property extending out onto the marsh.

Mr James failed to respond to the OMA's requests for further information about his use of the Order routes and did not provide any evidence at the 2023 public inquiry into the route along the sluice (referenced above). It is therefore difficult for the OMA to assess the weight to be placed on his evidence and the mere assertion of use of the Order routes on horseback is insufficient for officers to revert to the OMA's Regulatory Committee to consider seeking a modification of the Order to record bridleway rights.

Sonia James, 67 Banks Road, Crossens, Southport, PR9 8JL

Objects on the basis that the routes should be public bridleways. Explains that she purchased an equestrian property in 1966 on Banks Road and was joined there by her husband (Colin James) in 1968. States that one of the reasons for buying the property was because of there being a good network of routes to use. She ran a livery stable from this location for over 50 years and used the Order routes behind their property leading out onto the marsh on horseback until the present time (2015).

The OMA has learnt that sadly Mrs James has passed away so is unable to expand upon her objection. Her description of use of the Order routes to the rear of her property suggests reference to Order route 3 and Order route 4. On the face of it, she appears to have used the Order routes on horseback during the period under consideration, but we don't know the frequency of use nor can we question her about any of the other circumstances surrounding her equestrian use of the Order routes. Consequently, the weight that can be placed on Mrs James' evidence is limited.

Donna Cumia, 64 Lawson Street, Southport, Merseyside, PR9 7QX

Objects to the routes being recorded as footpaths because she believes that they are bridleways. She states that she has ridden the paths since 1976 and has also driven a pony and trap along them. She states that the paths have always been passable by horses and a good width for several to pass at once.

The OMA subsequently spoke to Ms Cumia who clarified that her parents owned the livery stables on Banks Road and she used the Order routes unchallenged daily from around 1979 independently (she was then aged 9 and may have used them before then accompanied by her mother) up to the early 1990s when she moved abroad for a short time.

Ms Cumia's evidence of equestrian use of the Order route is limited and despite making several further attempts in 2025 to speak to Ms Cumia no further information has been provided. The OMA therefore considered there to be insufficient evidence for officers to revert to the OMA's Regulatory Committee to consider seeking a modification of the Order to record bridleway rights.

Jodi Ryan, 50 Fairhavon Road, Southport PR9 9UH

Objects to the routes being recorded as footpaths because she believes that they are bridleways. Explains that she rode her pony along them regularly because they were safe and that they were wide enough so that when she met other people riding along them they could pass easily.

Ms Ryan failed to respond to the OMA's requests for further information about her use of the Order Route and we now know that she has moved out of the area but we do not have her new postal address.

The OMA considers that without clarification from Ms Ryan very little weight can be placed on her objection and that the assertion of use of the routes on horseback is insufficient for officers to revert to the OMA's Regulatory Committee to consider seeking a modification of the Order to record bridleway rights.

Karen Restall, 7 Hartlands Avenue, Southport, PR9 9FT (now lives at 16 Glenpark Drive, Churchtown, PR9 9FA).

Objects to the routes being recorded as footpaths because she believes that they are bridleways. Explains that she has ridden the routes since 1976 until the present day (2015) and that she has never been stopped or challenged and believes that she has a right to ride the routes. She also states that many of her friends also rode the routes who would provide additional statements detailing their use.

The OMA subsequently received clarification from Ms Restall that she used the routes with a horse unchallenged daily between 1976 and 1989. She then moved away from the area for 10 years returning in 1999.

Ms Restall's evidence of equestrian use of the Order routes is limited and no clarification as to whether she used all of the Order routes has been received.

The OMA considers that without clarification very little weight can be placed on the objection and that the assertion of use of the routes on horseback is insufficient for officers to revert to the OMA's Regulatory Committee to consider seeking a modification of the Order to record bridleway rights.

The Environment Agency

The Environment Agency own the New Embankment at the foot of which four of the Order routes terminate (Routes 1, 2, 4 and 5) and on top of which one (Order route 3) also terminates.

The Environment Agency are not a statutory objector to this Order but when consulted about the application prior to the making of the Order they did object in part.

The response letter received on 7th February 2014 (**Document 9**) is detailed in the Regulatory Committee report (**Document 24**) whereby it was mistakenly reported that the Environment Agency had no objection to the applications for Order routes 1 and 4 because both had ramps up the side of the embankment which could be used without creating a significant health and safety risk or potential risk to the structure.

It is in fact Order routes 1 and 3 and not, as previously stated by the OMA, Order routes 1 and 4 that the Environment Agency have no objections to.

The Environment Agency objected at the pre-order stage to Routes 2, 4 and 5 because there were no pre-existing ramps up the side of the embankment to access the crest of the embankment.

The OMA contacted the Environment Agency in 2025 with regards to referring this Order to the Planning Inspectorate. At that point it became apparent that it was an apparent oversight by the Environment Agency that they did not reiterate their initial objection when the Order was made.

As such the OMA is including the objection made in relation to Order routes 2, 4 and 5 in this document:

Any new footpath would be directly up the side of the flood defence which is steep and would possibly be a health and safety risk. In addition, such access would result in damage to the structure which is an active flood defence. Any structure installed to facilitate access up the embankment would interfere with the operations of the Agency to maintain the flood defence.

In response to this objection the OMA assert that there is no proposal to create any new footpaths and that the Order made seeks to record existing public footpath rights only.

In response to the objection made, Order routes 2, 4 and 5 all meet public footpaths that are recorded to run along the landward side of the sea embankment at points I, R and V respectively. As such they do not traverse the slope onto the top of the embankment, would not result in any damage to the structure or require any infrastructure to facilitate access.

The Environment Agency have subsequently noted that whilst the King Charles III Coastal Path is designated as running along the Definitive Footpaths (i.e. base of the embankment) they are aware that people do walk along the top so as to enjoy a good view. Management of this route and access from the Order routes onto the top of the embankment are issues that could be addressed separately to the determination of this Order.

The Environment Agency have provided no evidence as part of their objection that the order routes have not been dedicated as public footpaths by virtue of public use between 1968 and 1998.

Conclusion

The OMA submits that the objections received do not in any way undermine the evidence that the Order routes are, on balance, already public footpaths in law, and respectfully request that the Planning Inspector confirms the Order subject to the following modifications:

1. In paragraph 2 of Part I of the Schedule to the Order, to amend the description of Route 2 to clarify that it meets Public Footpaths 40 and 39 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 paragraph 2 of Part II of the Schedule to the Order to amend the description of Route 2 to clarify that it terminates at the junction with Public Footpaths 40 and 39 North Meols (not Public Footpaths 38 and 39 North Meols as stated in the Order).
3. In paragraphs 1,2 and 4 of Part II of the Schedule to the Order to amend the 'Limitations and Conditions' for Order routes 1,2 and 4 by deleting the words 'Field gate and' and thereby recording the 'Limitations and Conditions' for each of those three routes simply as 'stile' (at the specified grid reference).