

Regulatory Committee

Meeting to be held on 11 March 2020

Part I

Electoral Division affected:
Wyre Rural Central

Wildlife and Countryside Act 1981

Definitive Map Modification Order Investigation

Addition of a Footpath from Footpath Preesall 1 running along the sea embankment and ramp to Fluke Hall Lane, Wyre Borough

File No. 804-502

(Annex 'A' refers)

Contact for further information:

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Executive Summary

Investigation into the addition of a Footpath to be recorded on the Definitive Map and Statement of Public Rights of Way from a point on Footpath Preesall 1 running along the sea embankment and ramp to Fluke Hall Lane, Wyre Borough, in accordance with File No. 804-502.

Recommendation

- (i) That the application for a Footpath from a point on Footpath Preesall 1 to 'the public ramp' to be recorded on the Definitive Map and Statement, and shown on the Committee plan by a thick dashed line between point A and point B, in accordance with File no. 804-502, be accepted.
- (ii) That an Order be made pursuant to Section 53 (2)(b) and Section 53 (3)(b) and Section 53 (c)(i) of the Wildlife and Countryside Act 1981 to add a public footpath from a point on Footpath Preesall 1 along the sea embankment and ramp to a point on Fluke Hall Lane on the Definitive Map and Statement of Public Rights of Way as shown on Committee Plan between points A-B-C.
- (iii) That being satisfied that the higher test for confirmation can be met the Order be promoted to confirmation.

Background

An application was submitted in 2009 under Schedule 14 of the Wildlife and Countryside Act 1981 for the addition of a public footpath from a point on Footpath Preesall 1 to a location described by the applicants as, 'the public ramp' and shown on the Committee plan by a thick dashed line between point A and point B.

The application was submitted by Pilling Parish Council because, as they explained, the recorded length of Footpath Preesall 1 did not extend as far as the ramp and that it exited the top of the embankment at point A on the Committee plan to continue down a grassy slope and join Fluke Hall Lane at point D on the Committee plan.

The ramp referred to in the application has no recorded public status and the investigations carried out following receipt of the application have therefore also considered the use of the ramp to exit the sea wall onto Fluke Hall Lane (i.e. the route shown on the Committee plan by a bold dashed line between point B and point C).

The county council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53(3)(b) and (c) of the Wildlife and Countryside Act 1981 set out the tests that need to be met when reaching a decision; also current Case Law needs to be applied.

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

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

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

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

When considering evidence, if it is shown that a highway existed then highway rights continue to exist (“once a highway, always a highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made. Section 53 of the Wildlife and Countryside Act 1981 (as explained in Planning Inspectorate’s Advice Note No. 7) makes it clear that considerations such as suitability, the security of properties and the wishes of adjacent landowners cannot be considered. The Planning Inspectorate’s website also gives guidance about the interpretation of evidence.

The county council’s decision will be based on the interpretation of the evidence discovered by officers and documents and other evidence supplied by the applicant, landowners, consultees and other interested parties produced to the county council before the date of the decision. Each piece of evidence will be tested and the evidence overall weighed on the balance of probabilities. It is possible that the

council's decision may be different from the status given in any original application. The decision may be that the route has public rights as a footpath, bridleway, restricted byway or byway open to all traffic, or that no such right of way exists. The decision may also be that the route to be added or deleted varies in length or location from what was originally considered.

Consultations

Wyre Borough Council

When consulted about the application to add the route A-B the Borough Council commented that the modification appeared to be a reasonable request in order for people to safely leave the embankment by the ramp. They also commented that the route was currently in use and had been for many years.

Preesall Town Council

Both Preesall Town Council and Pilling Parish Council consider this route makes sense with the way public use the footpath at present.

Applicant/Landowners/Supporters/Objectors

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

Advice

Head of Service – Planning and Environment

Points annotated on the attached Committee plan.

Point	Grid Reference (SD)	Description
A	3890 5001	Junction with Footpath Preesall 1 on top of sea embankment
B	3892 5001	Point on ramp on top of sea embankment
C	3893 5000	Junction with Fluke Hall Lane and Bridleway Preesall 6 at bottom of ramp
D	3891 5000	Junction of Footpath Preesall 1 and Public Bridleway 6 Preesall

Description of Route

A site inspection was carried out by the county council prior to the submission of the application in 2008 and photographs taken recording what the route looked like at that time. These photographs have been used to describe what the route looked like

at that time and a further site inspection was carried out by the Investigating Officer in 2019 to note any changes since that time.

The route applied for commences at point A on the Committee plan which is the point at which the recorded route of Footpath Preesall 1 leaves the concrete surfaced footpath which runs along the top of the sea embankment approximately 20 metres before the concrete path meets the ramp.

From Point A Footpath Preesall 1 is recorded as leaving the top of the sea embankment to descend down a grassy slope onto the route now recorded as Bridleway Preesall 6 at point D on the Committee plan. Whilst the footpath is accessible between point A and point D it is not marked and there is no worn or surfaced track indicating regular use.

A well-trodden route off the top of the sea wall, down the grassy slope onto Bridleway Preesall 6, does however exist 85 metres west south west of point D providing access down from the top of the embankment (Footpath Preesall 1) to a parking layby which was signed in 2008 as a public footpath from Bridleway Preesall 6. In 2019 when the site was re-inspected this sign was no longer present.

From point A the route applied for continues along a concrete surfaced path, approximately 1.8 metres wide for a distance of approximately 20 metres to the open junction with a concrete ramp which provides access from Fluke Hall Lane, over the embankment to the foreshore (point B).

Access onto the ramp is not gated or restricted in anyway and the only signage located on or close to the ramp in 2008 was a Lancashire Constabulary sign stating 'No Unauthorised Vehicles' positioned with reference to access over the ramp onto the foreshore and a small printed notice in a plastic cover stating that the beach was closed to cockling from 31st May 2008 to 30th April 2009.

Painted onto the surface of the route just before point B were the words 'No Cycling' which is something that was repeated at a number of locations along Footpath Preesall 1.


The application submitted by Pilling Parish Council was described as extending from point A to point B which was described as the public slipway onto Fluke Hall Lane.

The slipway has no recorded public status and to access Fluke Hall Lane and Bridleway Preesall 6 it is necessary to walk down the concrete slipway from point B to point C. The slipway is approximately 4 metres wide and access onto it/from it is not gated or restricted in any way.

From point B (on top of the embankment) a tarmac surfaced route existed over the slipway to continue north east along the top of the embankment for a short distance before this route was blocked off by fencing and it was impossible to continue along the embankment towards Pilling. This is not part of the route under consideration.

The total length of the route under investigation is 30 metres.

Map and Documentary Evidence

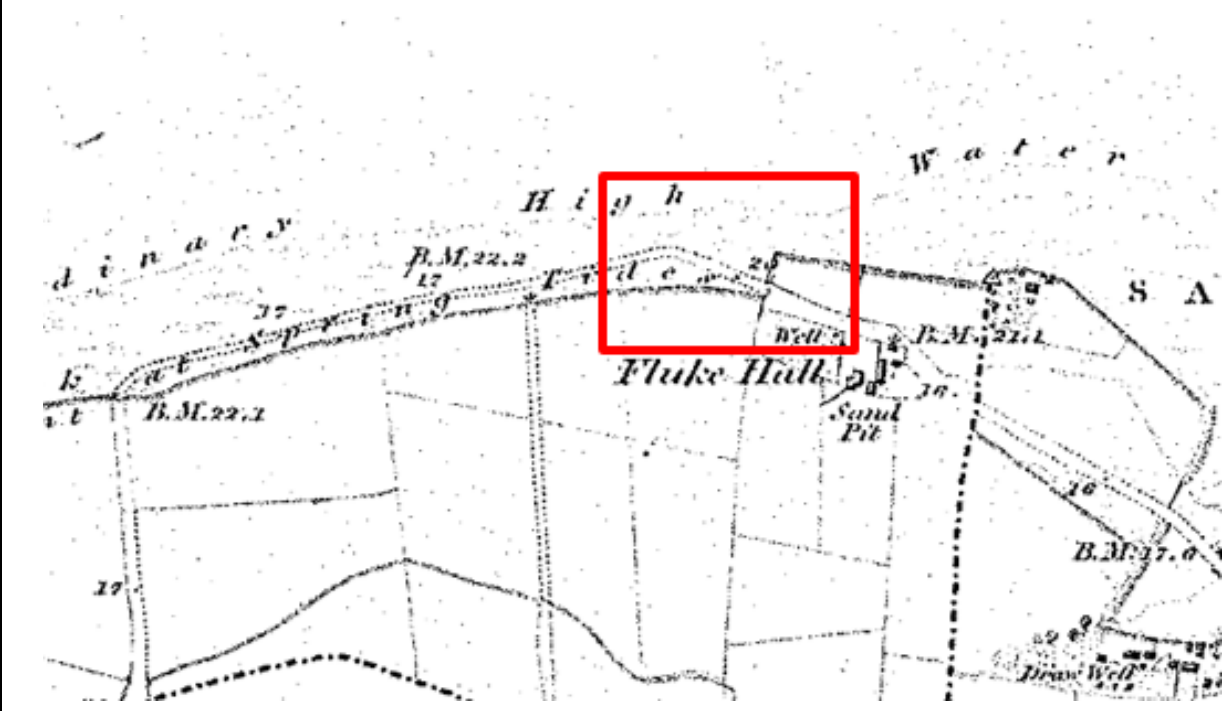
Document Title	Date	Brief Description of Document & Nature of Evidence
Yates' Map of Lancashire	1786	Small scale commercial map. Such maps were on sale to the public and hence to be of use to their customers the routes shown had to be available for the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale also limited the routes that could be shown.
		
Observations		The route under investigation is not shown and the area crossed by it appears to be either undeveloped or foreshore. Fluke Hall and Fluke Hall Lane are not shown on the map.
Investigating Officer's Comments		The route under investigation did not exist as a major route at that time. This map pre-dates the ramp and current embankment. It may have existed as a minor route but due to limitations of scale would not have been shown no inference can be drawn in this respect.
Greenwood's Map of Lancashire	1818	Small scale commercial map.



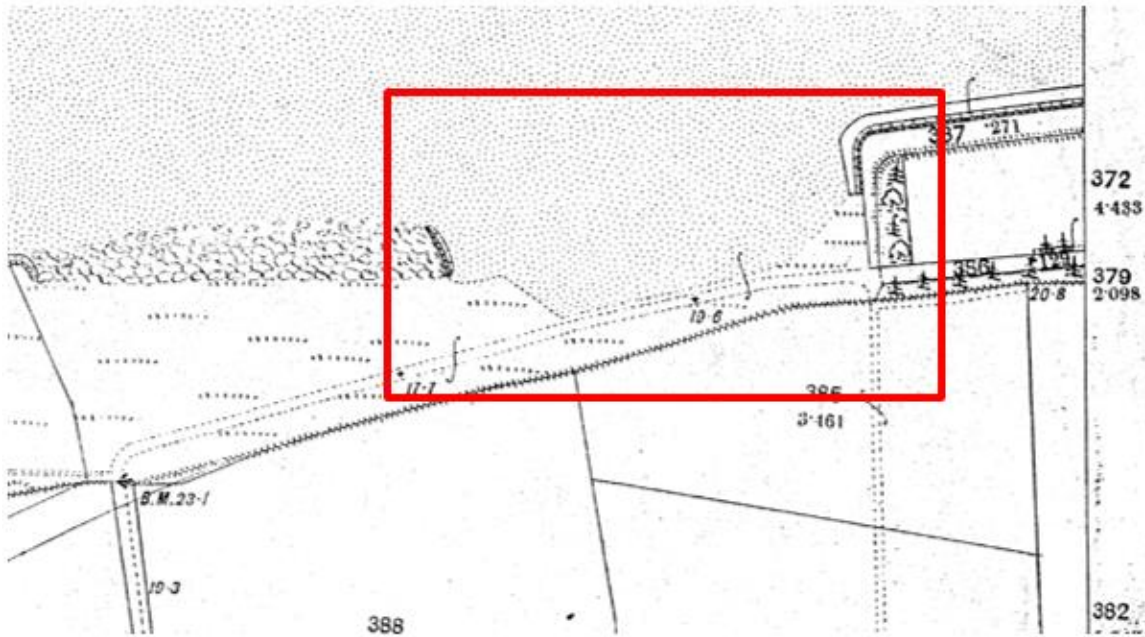
Observations		The route under investigation is not shown. A 'Hall' likely to be Fluke Hall is marked but Fluke Hall Lane is not shown.
Investigating Officer's Comments		The route under investigation did not exist as a major route at that time. This map pre-dates the ramp and current embankment. It may have existed as a minor route but due to limitations of scale would not have been shown no inference can be drawn in this respect.
Hennet's Map of Lancashire	1830	A further small scale commercial map. In 1830 Henry Teesdale of London published George Hennet's Map of Lancashire surveyed in 1828-1829 at a scale of 7 1/2 inches to 1 mile. Hennet's finer hachuring was no more successful than Greenwood's in portraying Lancashire's hills and valleys but his mapping of the county's communications network was generally considered to be the clearest and most helpful that had yet been achieved.
Observations		The route under investigation is not shown.
Investigating Officer's Comments		The route under investigation did not exist as a major route at that time. This map pre-dates the ramp and current embankment. It may have existed as a minor route but due to limitations of scale would not have been shown no inference can be drawn in this respect.
Canal and Railway Acts		Canals and railways were the vital infrastructure for a modernising economy and hence, like motorways and high speed rail links today,

		legislation enabled these to be built by compulsion where agreement couldn't be reached. It was important to get the details right by making provision for any public rights of way to avoid objections but not to provide expensive crossings unless they really were public rights of way. This information is also often available for proposed canals and railways which were never built.
Observations		The land crossed by the route under investigation is not affected by any canals or railways and there do not appear to have been any proposals to construct either in the past.
Investigating Officer's Comments		No inference can be drawn.
Tithe Map and Tithe Award or Apportionment	1839	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		The Tithe Map for Preesall with Hackensall was not inspected as its publication pre-dated the construction of the sea wall and ramp.
Investigating Officer's Comments		No inference can be drawn.
Inclosure Act Award and Maps		Inclosure Awards are legal documents made under private acts of Parliament or general acts (post 1801) for reforming medieval farming practices, and also enabled new rights of way layouts in a parish to be made. They can provide conclusive evidence of status.
Observations		There is no Inclosure Award for Preesall.
Investigating Officer's Comments		No inference can be drawn.
6 Inch Ordnance Survey (OS) Map	1848	The earliest Ordnance Survey 6 inch map for this area surveyed in 1844-45 and published in 1848. ¹

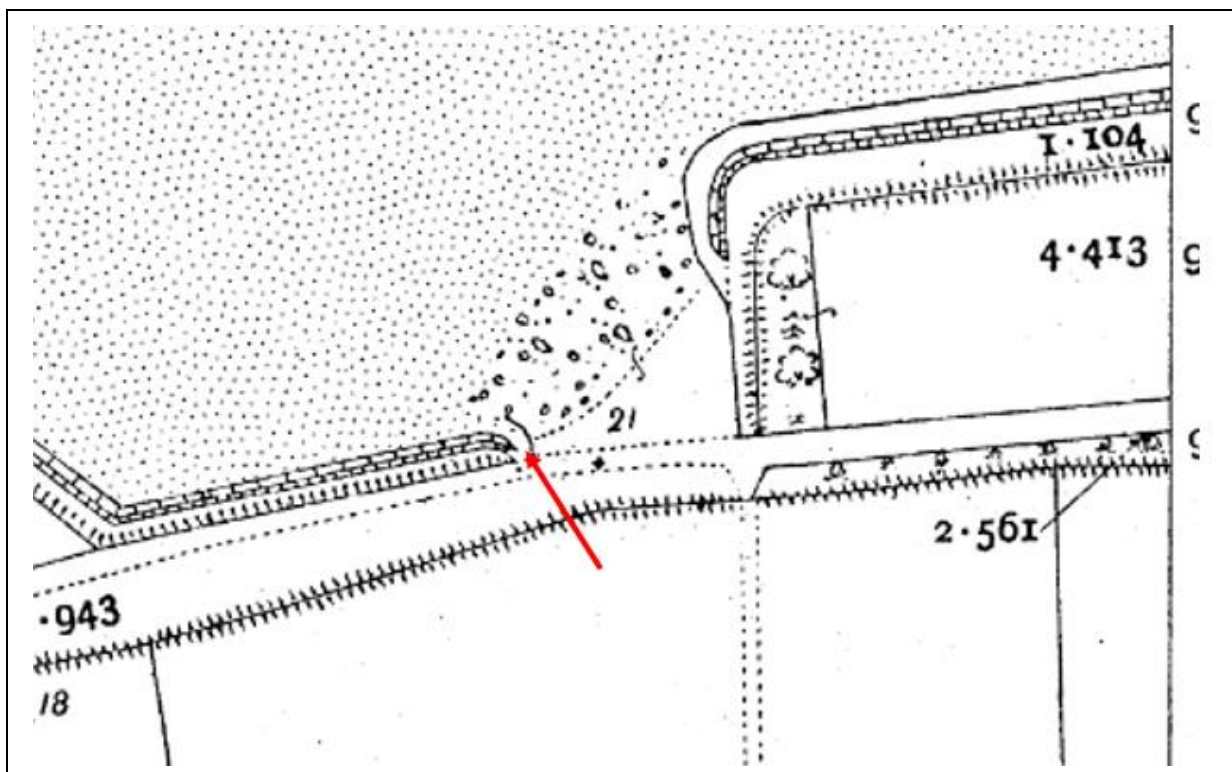
¹ The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840s. The large scale 25-inch maps which were first published in the 1890s provide good evidence of the position of routes at the

		
Observations		<p>The route under investigation is not shown.</p> <p>Fluke Hall Lane and the route now recorded as Bridleway Preesall 6 are shown but the sea embankment along which Footpath 1 is recorded to run, and the ramp providing access from Fluke Hall Lane are not shown.</p>
Investigating Officer's Comments		<p>This map pre-dates the ramp and current embankment. The route under investigation did not exist in 1844-45.</p>
25 Inch OS Map	1892	<p>The earliest OS map at a scale of 25 inch to the mile. Surveyed in 1890 and published in 1892.</p>

time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.

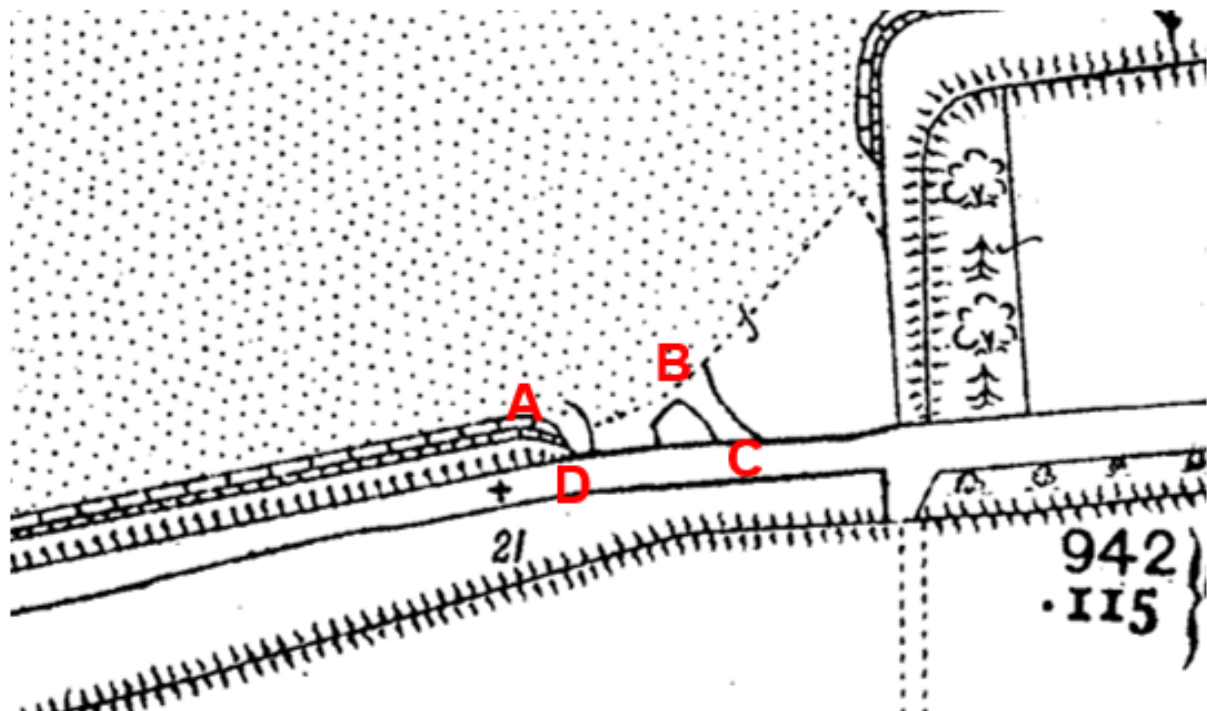


Observations		<p>The route under investigation is not shown.</p> <p>Fluke Hall Lane and the route recorded as Bridleway Preesall 6 are shown but the sea embankment and ramp providing access to the shore are not shown.</p>
Investigating Officer's Comments		<p>This map pre-dates the ramp and current embankment. The route under investigation did not exist in 1890.</p>
25 inch OS Map	1912	<p>Further edition of the 25 inch map re-surveyed in 1890, revised in 1910 and published in 1912.</p>

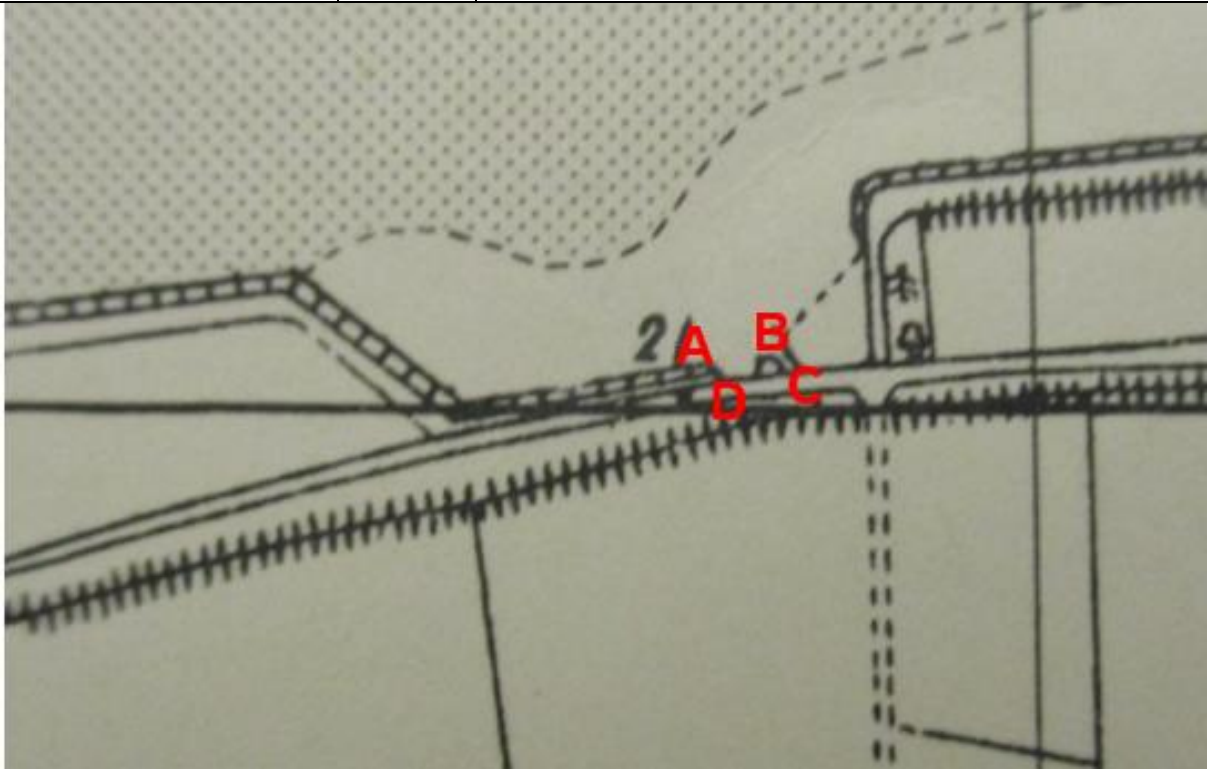


Observations		The sea embankment, or its predecessor, along which Footpath Preesall 1 runs is recorded and shown on the map and there appears to be access from Fluke Hall Lane to the shore. A walked route is not shown along the top of the embankment.
Investigating Officer's Comments		The route under investigation probably did not exist in 1910.
Finance Act 1910 Map	1910	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence. Making a false claim for a deduction was an offence although a deduction did not have to be claimed so although there was a financial incentive a public right of way did not have to be admitted.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p>

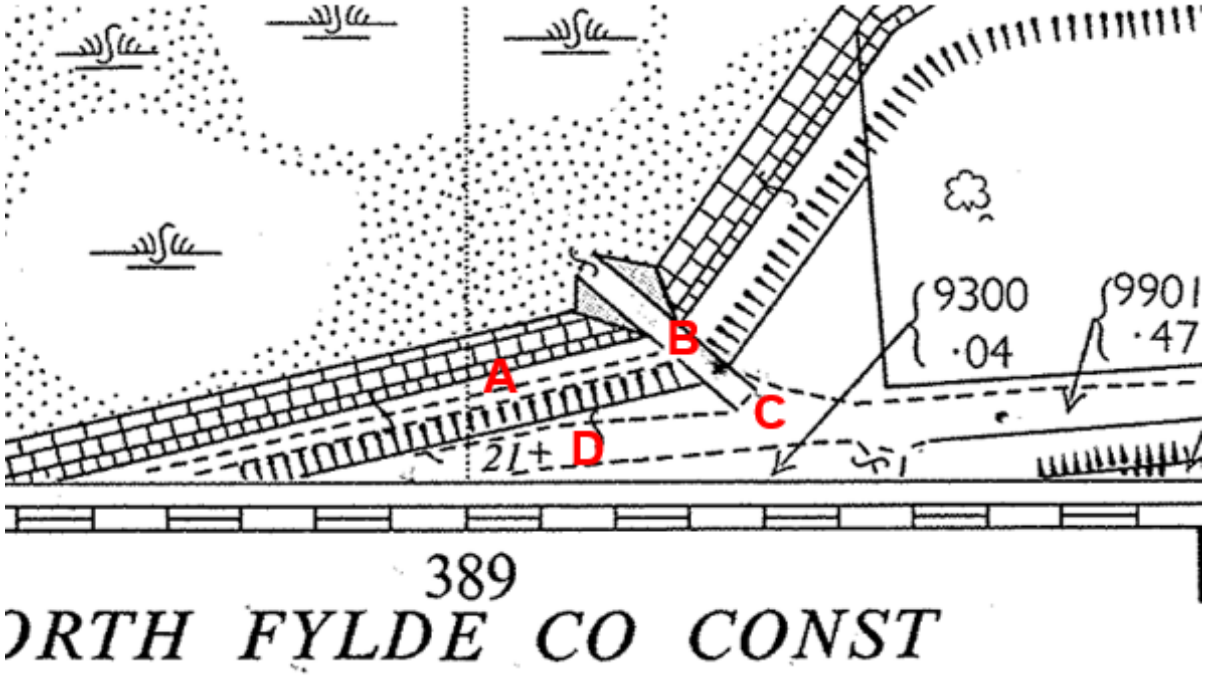
		An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.
Observations		The Finance Act Map was not available to view at the County Records Office.
Investigating Officer's Comments		No inference can be drawn.
25 Inch OS Map	1932	Further edition of 25 inch map (re- surveyed 1890, revised in 1930 and published 1932.

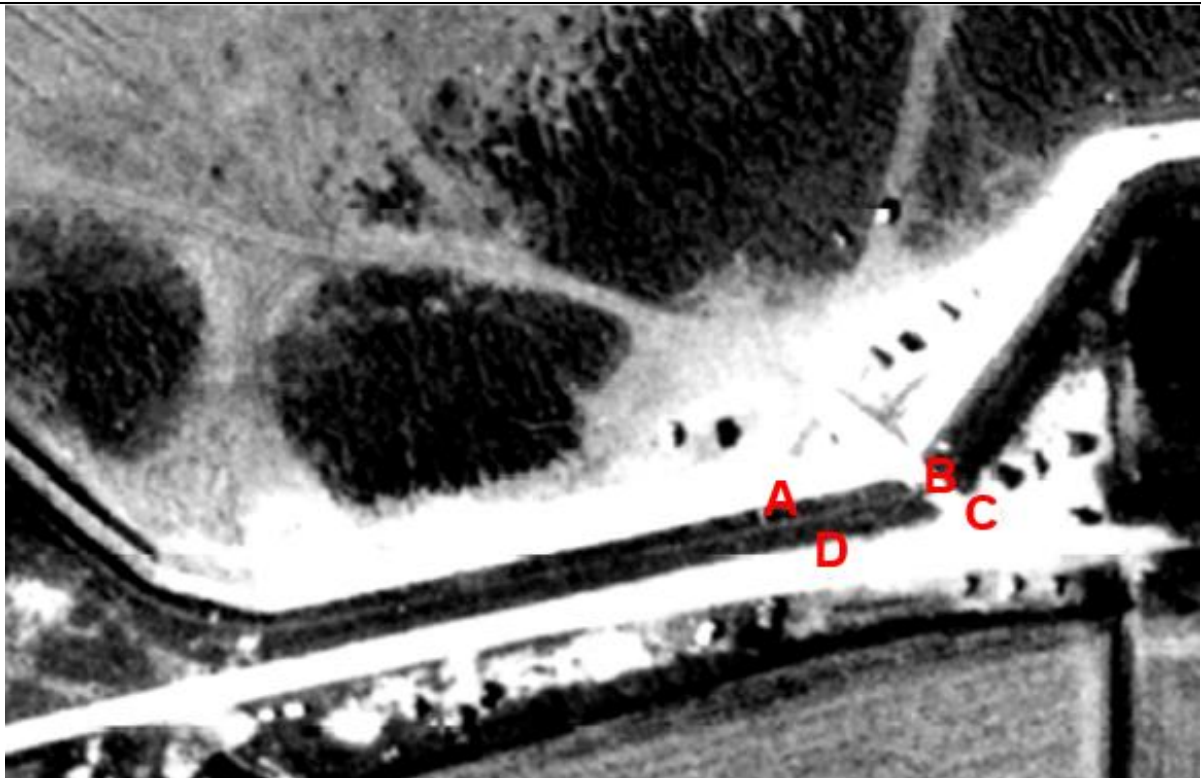


Observations		The route under investigation is not shown. Measurements taken from the map indicate that the sea embankment ended at the approximate position of point A adjacent to an access point onto the shore. A further access is shown between point C and point B that corresponds to the location of the modern day ramp.
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Investigating Officer's Comments		The route under investigation probably did not exist in 1930.
Aerial Photograph²	1940s	The earliest set of aerial photographs available was taken just after the Second World War in the 1940s and can be viewed on GIS. The clarity is generally very variable.
Observations		No aerial photograph of the land crossed by the route under investigation was available to view.
Investigating Officer's Comments		No inference can be drawn.
6 Inch OS Map	1955	The OS base map for the Definitive Map, First Review, was published in 1955 at a scale of 6 inches to 1 mile (1:10,560). This map was revised before 1930 and is probably based on the same survey as the 1930s 25-inch map.
		
Observations		The area is shown in the same manner as it was on the 1932 25 inch map.
Investigating Officer's Comments		The 1955 OS was revised in the 1930s and the 1955 OS map largely reflects what the area looked like at that time. It appears that the route under investigation probably did not exist in the

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

		1930s and although it is not possible to be certain that changes to the sea wall had not occurred by 1955 it is likely that anything significant (for example the extension of the sea wall through to point B) may have been shown.
1:2500 OS Map	1968	Further edition of 25 inch map reconstituted from former county series and revised in 1967 and published 1968 as national grid series.
		
Observations		The sea wall is shown to have been significantly changed including that it was extended from point A to the ramp at point B. A track (double pecked line) is shown along the top of the embankment between point A and point B. The ramp is shown providing access from Fluke Hall Lane to the shore. Access appears to be available at point B onto the ramp and down the ramp to point C. No path is shown continuing north east along the embankment from point B. Access off the embankment at point A (along the route recorded as Footpath Preesall 1) to point D is not shown and would involve a steep slope.
Investigating Officer's Comments		The route under investigation appears to be capable of being used in 1967 and is the only marked route off the embankment and onto Fluke Hall Lane.
Aerial photograph	1960s	The black and white aerial photograph taken in the 1960s and available to view on GIS.



Observations		The aerial photograph shows the route under investigation between point A and point B and clearly shows the ramp between point B and point C. No worn track between point A and point D (the recorded route of Footpath 1) is visible.
Investigating Officer's Comments		The route under investigation existed and appeared to be used in the 1960s.
Aerial Photograph		Aerial photograph taken 18 May 1988 available to view at County Records Office.



Observations

on the photograph and the brightness of the feature suggests that it may have recently been replaced/repared. The ramp between point B and

		point C also shows up clearly.
Investigating Officer's Comments		The route under investigation probably existed in 1988.
Aerial Photograph	2000	Aerial photograph available to view on GIS.



Observations		A faint line can be seen along the top of the embankment and the ramp is clearly visible. The faint line extends from point A to point B to meet the ramp and no worn track can be seen between point A and point D.
Investigating Officer's Comments		The route under investigation appeared to be capable of being used in 2000.
Aerial Photograph	2010	Aerial photograph available to view on GIS.



Observations		The route along the top of the embankment can be clearly seen extending through point A to point B onto the ramp. Access onto and over the ramp appears to be available.
Investigating Officer's Comments		The route under investigation appeared to be capable of being used in 2000.
Definitive Map Records		<p>The National Parks and Access to the Countryside Act 1949 required the County Council to prepare a Definitive Map and Statement of Public Rights of Way.</p> <p>Records were searched in the Lancashire Records Office to find any correspondence concerning the preparation of the Definitive Map in the early 1950s.</p>
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in those areas formerly comprising a rural district council area and by an urban district or municipal borough council in their respective areas. Following completion of the survey the maps and schedules were submitted to the County Council. In the case of municipal boroughs and urban districts the map and schedule produced, was used, without alteration, as the Draft Map and Statement. In the case of parish council survey maps, the information contained therein was reproduced by the County Council on maps covering the whole of a rural district council area. Survey cards, often containing considerable detail exist for most parishes but not for unparished areas.
Observations		The route under investigation is in Preesall which is a former Urban District Council. No parish survey map or cards are therefore available.
Draft Map		The Draft Maps were given a "relevant date" (1 st January 1953) and notice was published that the draft map for Lancashire had been prepared. The draft map was placed on deposit for a minimum period of 4 months on 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into these objections, and recommendations made to accept or reject them on the evidence presented.

				right of way.
.1	Footpath	Commences at Clarence Avenue runs eastwards along top of sea embankment to Fluke Hall Road. Path varies from being on Grass to Concrete - to loose sand and stones and passes round two defence emplacements and is joined at intervals by paths 2,3,4 and 5 on route.	2-50	Not known
.2	Footpath	Footpath from Shore southwards	0-12	Not known

Observations		No Draft Map was available to view but the route of Footpath Preesall 1 was included in the Draft Statement and was described as being along the top of the sea embankment to Fluke Hall Lane.
Provisional Map		Once all representations relating to the publication of the Draft Map were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.



Observations		The route under investigation is not shown on the
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		Provisional Map and there is no record of any representations being made regarding the fact that it was not included. The OS base map used for the production of the Provisional Map was surveyed in the 1930s. The section of map that is relevant to this investigation is on the fold of the map and is not easy to see. Footpath (Preesall) 1 is shown and extends as far as point A on the Committee plan. The section of sea embankment that carries the route under investigation between point A and point B is not shown on the OS base map that was used to produce the Draft Map and the ramp (point B to point C) is not shown.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the Definitive Map in 1962.

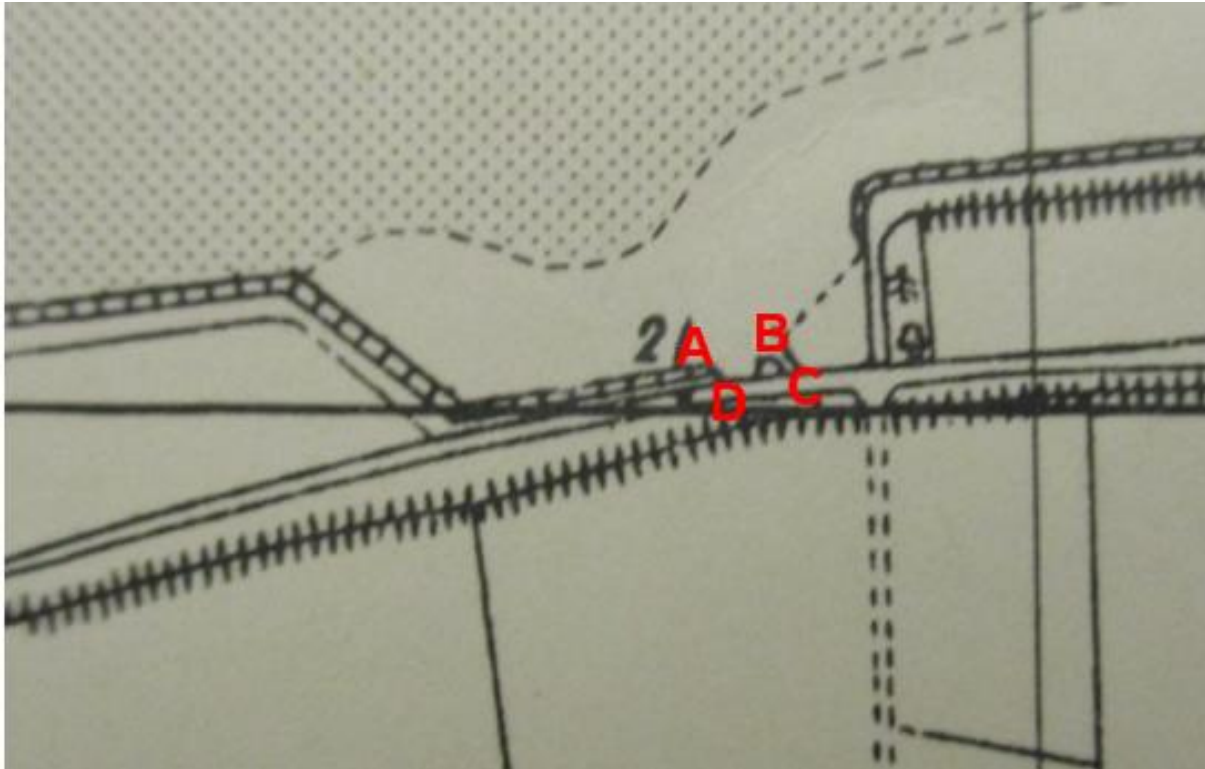


Observations		The route under investigation was not shown on the First Definitive Map and no representations were made to the county council.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the

		<p>County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.</p>
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Extract from the Revised Definitive Map (First Review)



Extract from the 6 inch to 1 mile scale OS base map used for the publication of the Revised Definitive Map (First Review) Revised 1932 & published 1955

URBAN DISTRICT OF PREESALL		Administrative County of the County Palatine of Lancaster National Parks and Access to the Countryside Act. 1949 Revised Definitive Rights of Way Map.	
1. No. of Path	2. Kind of Path	3. Position	Length in miles to 2 places decimals
1.	Footpath	Commences at Clarence Avenue runs eastwards along top of sea embankment to Fluke Hall Road; path varies from being on grass to concrete - to loose sand and stones and passes round two defence emplacements and is joined at intervals by paths 2,3,4 and 5 on route.	2.50

Observations

The route under investigation is not shown. Footpath Preesall 1 is described as running along the sea embankment to Fluke Hall Lane but there is no description of how the route exits the embankment to join the road. The OS base map used to produce the map was of a small scale which limited the detail that could be shown and in this particular case the section of embankment and ramp – which existed by at least the 1960s – were not actually shown on the OS base map used to draw the routes of the public rights of way on.

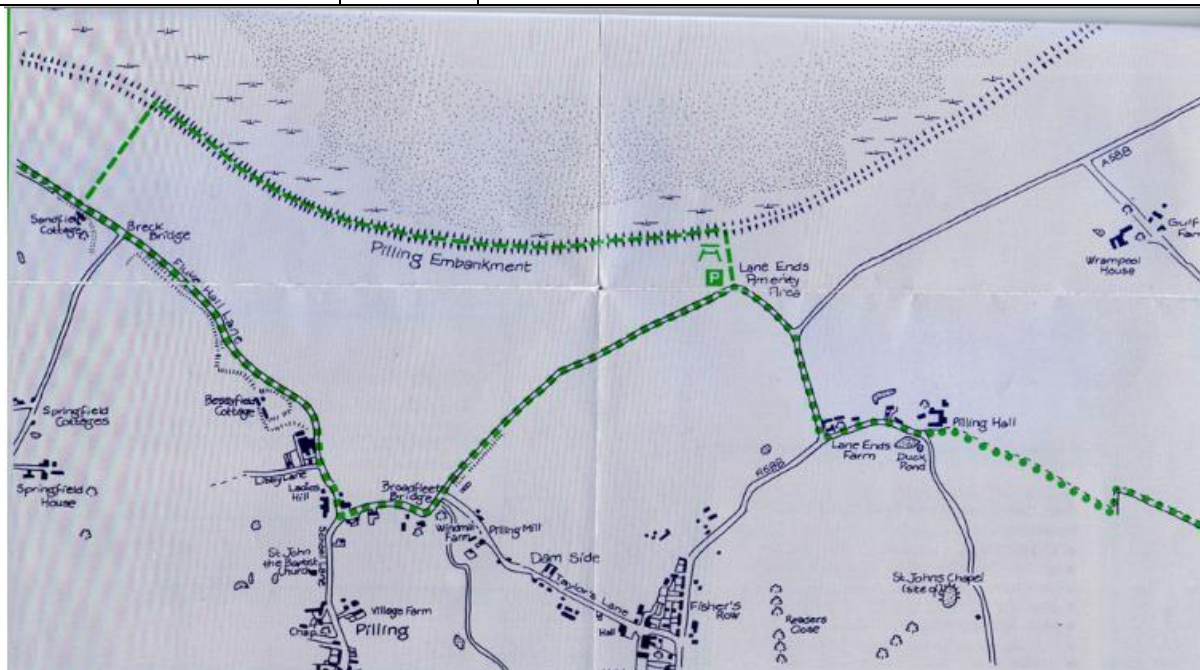
Investigating Officer's

It appears that from the 1950s through to 1973

Comments		<p>there is no indication that the route under investigation was considered to be public right of way by the Surveying Authority. There were no objections or representations made with regards to the fact that the route was not shown on the map when the maps were placed on deposit for inspection at any stage of the preparation of the Definitive Map.</p> <p>However, as the Definitive Statement is unclear how the footpath exactly got to Fluke Hall Lane and the map was drawn at a small scale and using a base map which did not show the section of sea embankment and ramp which were in existence in the 1960s it is possible that the route under investigation may have been the route used by the public at that time.</p>
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		No Highways Act 1980 Section 31(6) deposits have been lodged with the County Council for the area over which the route under investigation runs.
Investigating Officer's Comments		There is no indication by a landowner under this provision of non-intention to dedicate public rights

		of way over their land.
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	<p>In 1929 the responsibility for district highways passed from district and borough councils to the County Council. For the purposes of the transfer, public highway 'handover' maps were drawn up to identify all of the public highways within the county. These were based on existing Ordnance Survey maps and edited to mark those routes that were public. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded.</p> <p>A right of way marked on the map is good evidence but many public highways that existed both before and after the handover are not marked. In addition, the handover maps did not have the benefit of any sort of public consultation or scrutiny which may have picked up mistakes or omissions.</p> <p>The County Council is now required to maintain, under section 31 of the Highways Act 1980, an up to date List of Streets showing which 'streets' are maintained at the public's expense. Whether a road is maintainable at public expense or not does not determine whether it is a highway or not.</p>
Observations		There is no Handover Map deposited in the county records office for the area crossed by the route under investigation and the route is not recorded as being publicly maintainable on the List of Streets by the County Council.
Investigating Officer's Comments		No inference can be drawn regarding the existence of public rights.
Information obtained from LCC PROW parish files	1950 - 2015	A search was made of the Lancashire county council public rights of way files for the parish of Preesall.
Observations		<p>Records searched indicated that the sea wall was subject to two temporary closure orders in the 1980s to allow North West Water to carry out works to improve the sea wall. The first closure order was made on 2nd July 1984 for a period of three months and was described as closing the path along the sea embankment to the point 'where Public Footpath No. 1 Preesall leaves the embankment.' No plan showing the extent of the closure was attached.</p> <p>The second closure Order came into force on 6th April 1987 and remained in force until 6th</p>

		November 1987. It was described as including that part of Footpath 1 Preesall from its junction with Footpath 3 Preesall, for a distance of 1980 metres to its junction with Fluke Hall Lane. No plan was attached to the Order.
Investigating Officer's Comments		The closure Orders would have affected use of the route in 1984 and 1987 whilst work was carried out to improve the sea embankment.
Pilling Parish Council website		Details about the history of the embankment on Pilling Parish Council website.



Pilling Embankment

Observations		The website explains that the embankment north of Fluke Hall Lane to Lane Ends car park was constructed in 1981 and that access is allowed on a concessionary basis along the route on the attached plan. There appears to be no public access from the ramp at point B along the embankment in a north westerly direction until you reach Pilling embankment as shown on the plan.
Investigating Officers comments		There is no public access along the embankment north east of the ramp at point B which would indicate that people walking along the embankment from Knott End/Preesall to Fluke Hall Lane would need to exit the sea embankment along the route between points A-B-C (if not before) and if they did cross the slipway would not have been able to continue along the embankment towards Pilling.

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

Landownership

The majority of the land crossed by the route under investigation is in the registered landownership of the Holden Family of Proctors Farm, Pilling Lane, Preesall, FY6 0HH. Title numbers LA931180 and LAN149004.

The remaining small proportion of the land crossed by the route under investigation is registered in the landownership of Mrs Mary Whiteside of New Ridge Farm, Fluke Hall Lane, Pilling, Preston, Lancashire PR3 6HQ. Title Number LAN72125.

Summary

The route under investigation did not physically exist until at least the 1930s. The sea defence wall between point A and point B is shown to have existed by the 1960s (as shown on aerial photographs and the 25 inch OS map revised in 1967 and published 1968). The exact date of its construction is unknown and when the Definitive Map was prepared in the 1950s it appears that the route of Footpath Preesall 1 was only considered to extend as far as the original section of sea wall that terminated at point A.

From the 1960s until the present time the map and photographic evidence examined supports the user evidence and suggests that the route under investigation was capable of being used. It appears likely that once the section of sea wall extending from point A to the ramp (point B) had been constructed this was more likely to be the route used by people walking the route of Footpath 1 as opposed to traversing the steep bank between point A and point D.

No documentary evidence relating to the public status of the ramp crossed between point B and point C has been found although it clearly existed and was accessible from the route between point A and point B from the 1960s.

The 1988 aerial photograph shows the embankment and ramp as being recently repaired/improved which is consistent with the information that temporary closure notices were in place for Footpath 1 in 1984 and 1987 but which would have affected use of the route at that time.

Head of Service – Legal and Democratic Services Observations

Information from the Applicant

The Applicant, Pilling Parish Council, submitted an application for a Modification Order on 9th November 2009. Along with this, they submitted 46 User Evidence Forms, a MARIO map showing the route in red and photographs of the location as it appears at present.

The User Evidence Forms that were completed in 2009 report usage of the route to or from Fluke Hall Lane, via 'the ramp', going back as far as 1929 and up to 2009

when the application to record the right of way was made. 23 people report 40+ years of regular usage. 24 of the users reported using the route more than once a month and of those 24, claimed use varies between 'at least 730 times' per year and 15-20-times per year.

Duration and Frequency of Usage					
Less than 20 Years Use	20-39 Years Use	40-49 Years Use	50-59 Years Use	60+ Years Use	Unspecified
14 Of these 14, 1 user reported use of at least 730 times a year, 1 at least 4 times a week, 1 at 150times a year, 1 around twice a week, 1 in excess of 100 times per year, 1 at 52 times per year, 3 at 25 times plus per year, 2 at 12 times per year and 1 at 10 times per year. 1 failed to identify frequency and another was 'unable to say'	10 Of these 10, 1 user reported use as 365 days per year, 1 at 100-150 times per year, 1 approximately 30 times per year, 2 at 20 times per year, 1 at 10 times per year and 4 at less than 10 times per year.	11 Of these 11, 1 user reported use as 'almost daily', 1 at least once a week, 1 at 50 times per year, 1 at 40 times per year, 1 at 20 times per year, 1 at 11 times per year and 5 at 10 times per year or less.	2 Of these 2, 1 user reported use of a minimum of 52 times per year/at least once a week and 1 user at 30 times per year..	7 Of these 7, 1 user reported use at 5 days per week, 1 at 3 or 4 times per week, 1 at 15-20 times per year, 1 at once a month, 1 at 10 times per year, 1 at '5ish' times per year and 1 reported use as 'Often'.	2 Of these 2, 1 user reported use as 'several times a year' and 1 reported use twice per week 'most years since being a child' (user born in 1961).

44 of the 46 users reported using the route on foot. Other reported usage consisted of vehicular, horseback and bicycle and the most common reason of use reported was for pleasure and enjoyment.

Mode of Use			
On Foot	Bicycle	Horseback	Vehicular
44 Of these 44, 31 have used the route on foot for 20 or more continuous years.	16 Of these 16, 9 have used the route on bicycle for more than 20 continuous years. 3 have failed to specify exactly when or for how long they used the route via bicycle. Use has been reported between 1930 and 2009 on bicycle.	19 Of these 19, 5 have used the route on horseback for more than 20 continuous years. Use has been reported between 1944 and 2009 on horseback.	8 Of these 8, 4 have used the route via a motorised vehicle for more than 20 continuous years.2 have not specified. Use has been reported between 1965 and 2009 via vehicle.

Reason for Use		
Pleasure and Enjoyment	Dog Walking	Other/not specified
29	15	2

Of the 46 Forms submitted, nobody reported ever being prevented from using the route or being told that there was not a public right of way on foot. One User reported that, recent to 2009, a police sign went up which read "no unauthorised vehicles", this however does not discourage use on foot. Two users mention stiles but these appear to be off the route that is under investigation. Another user mentions 'large stones (boulders)' blocking the way during 2001 due to foot and mouth regulations, which were later removed. The user states that horses could get past but not cars. It is not made clear whereabouts on the route this may have taken place. The remaining 43 user evidence forms report that there were never any obstructions on the route under investigation.

41 of the 46 Users reported that to their knowledge the way has always run over the same route. In response to this question, the other 5 users stated as follows:

- 'more or less'
- 'very much the same'
- 'roughly same route'
- 'believe changes made in 1984'
- 'to my knowledge since the sea wall was re-done after the 1977 floods'

Nobody reported having ever been given permission to use the route.

9 people make reference to either using the route with others or seeing others using the route. This includes using the route with friends and family, some reporting the

use over several generations including with children, grandchildren and great grandchildren.

Family	Friends	Strangers	Clients
4 people reported using the route with immediate family. 2 of those people also reported using the route with children, grandchildren and great grandchildren.	3 people reported using the route with friends.	3 people reported seeing 'the community, residents and visitors' using the route on a regular basis.	1 person reported using the ramp as a means of disability access for clients when working as a care assistant.

Information from Others

A response was received from a nearby landowner, Mr Wells, who was concerned that the application may affect his land. A copy of the plan and a guidance leaflet was sent to Mr Wells' Solicitor. Mr Wells replied on 20th April 2010 asking what would be gained by the proposed modification and pointed out that there was an existing sign saying no cycling on the path in question.

Information from the Landowner

Mr Raymond Holden wrote to LCC on 24th March 2010 to fully support the order, which he said reflected the public usage over many years.

Since the Original Application Mr Holden has also registered his three sons as landowners to his land. They have since been consulted and comments invited. Mr Graham Holden Contacted LCC via telephone where he verbalised that he supported the order.

Mrs Whiteside did not respond to the Consultations.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of Making an Order(s)

- There is consensus that the footpath reflects the public use and will provide a way for the public to safely leave the embankment by the ramp.
- Substantial user evidence.
- Absence of signs and notices along the route stating that the route was not public.
- Absence of action taken by landowners to discourage use of the route.

- Map and other documentary evidence supporting the physical existence of the route since at least the 1960's.

Against Making an Order(s)

Conclusion

The application is that the route A-B has already become a footpath in law and should be recorded on the Definitive Map and Statement of Public Rights of Way.

Committee will note that the application was described as extending from point A to point B, referred to as the public slipway onto Fluke Hall Lane. The slipway currently has no recorded public status. However, to access Fluke Hall Lane it is necessary to walk down the concrete slipway/ramp from point B to point C. The route under investigation therefore also includes the additional section of the route B-C and the evaluation is on this basis.

It is advised that as there is no express dedication that Committee should consider, on balance, whether there is sufficient evidence from which to have its dedication inferred at common law from all the circumstances or for the criteria in section 31 Highways Act 1980 for a deemed dedication to be satisfied based on sufficient twenty years "as of right" use to have taken place ending with this use being called into question.

Considering initially whether there are circumstances from which dedication could be inferred at common law. It is advised that Committee has to consider whether evidence from the maps and other documentary evidence coupled with user evidence indicates that it can be reasonably inferred that in the past the landowner(s) intended to dedicate the route as a public right of way.

The analysis of the map and documentary evidence indicates that the route under investigation A-B existed from at least the 1960s. From the 1960s the evidence supports the physical existence of the route A-B and the evidence of use and suggests that the route under investigation was capable of being used. Whilst no documentary evidence as to the public status of the ramp shown on the route between points B and C has been located, it is clear that this section of the route existed and was also available for use from the 1960s.

Sufficient as of right use acquiesced in by the owners may also be circumstances from which dedication can be inferred. From looking at the user evidence it would appear that there has never been any clear action by owners to prevent use by the public and use by the public has continued for many years such that, on balance, there may be sufficient evidence from which to infer dedication at common law.

Looking secondly at the criteria for a deemed dedication under section 31 of the Highways Act 1980, use of the route needs to be by the public 'as of right' (without force, secrecy or permission) and without interruption over a sufficient 20 year period immediately prior to the route being called into question. In this matter, the evidence indicates that access to the route was denied for two periods during 1984 and 1987 as a result of temporary closure orders to allow North West Water to carry out works

to improve the sea wall. However, whilst it is acknowledged that the temporary closure orders were in place, none of the users refer to the same or indicate that use was prevented as a result of such. Accordingly, it is suggested on balance that the "calling into question" would be the application itself in 2009 and that the 20 year period under consideration for the purposes of establishing deemed dedication would therefore be 1989-2009.

The applicant has provided 46 user evidence forms in support of the application which show use of the route from as early as 1929. All users have provided evidence of use during the period under consideration. A number of users have also made reference to having used the route with others or having witnessed other users whilst using the route. 44 of the users claim to have used the route on foot on a regular basis 'as of right' with others also referring to having used the route on pedal cycle, on horseback and vehicular use. Whilst one user refers to large stone boulders blocking the way in 2001 due to foot and mouth, it is also stated that these did not prevent use on horseback, only by vehicle. In any event the Planning Inspectorate Advice Note 15 (Breaks in User caused by Foot and Mouth Disease) provides that 'it does not seem that the temporary cessation of use of ways solely because of the implementation of measures under the Foot and Mouth Disease Order 1983 could be classified as an "interruption" under section 31(1).'

Whilst, in addition to use on foot, reference is made to vehicular use, use on pedal cycle and on horseback it is suggested that there is a lack of clear evidence provided on the user forms indicating which parts of the route, if any, were used by these other users with evidence provided such as 'going on and off the beach at Fluke Hall', 'access horse to the shore' and 'used the bridleway on horseback'. In addition to this, officers of the county council recall that in the early 1990's there were reports of unlawful use of Footpath Preesall 1 by horse riders and cyclists and that this involved the erection of signs by public rights of way officers. From hereon in at the latest, it is therefore that use on horseback and by cyclists was questioned/challenged. In addition to this there is the Lancashire Constabulary sign located on or close to the ramp stating 'No Unauthorised Vehicles' and painted signage present along the route and Footpath Preesall 1 stating 'No Cycling'.

None of the users recall having ever been told that the route was not a public right of way, nor do any users refer to having been turned back or having asked permission to use the route. It is therefore suggested that there is sufficient evidence of use of the claimed route by the public as of right to raise a presumption of dedication for the period 1989-2009.

A representation has been received from a nearby landowner expressing concerns with regards to how the application may affect the land. However, whilst this representation is acknowledged, it is submitted that the concerns are not relevant considerations under either s31 Highways Act 1980 or under common law.

In conclusion, taking all of the evidence into account, the Committee on balance may consider that the provisions of section 31 of the Highways Act 1980 can be satisfied. In addition, or in the alternative, Committee may also consider that it can be reasonably alleged that there is sufficient evidence from which to infer dedication of a public footpath at common law.

Committee is therefore advised to accept the application, make an Order and promote the Order to confirmation.

Risk Management

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

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

Paper	Date	Contact/Directorate/Tel
All documents on File Ref: 804-502		Simon Moore, 01772 531280, County Secretary and Solicitors Group

Reason for inclusion in Part II, if appropriate

N/A