

Regulatory Committee

Meeting to be held on 2nd July 2014

Electoral Division affected: West Lancashire North

Wildlife and Countryside Act 1981

Applications for the Addition to the Definitive Map and Statement of Five Public Footpaths at Banks Enclosed Marsh, North Meols, West Lancashire

Application Nos. 804-526, 804-527, 804-528, 804-530, 804-531

(Annex 'A' refers)

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Executive Summary

Applications for the following five public footpaths in North Meols, West Lancashire to be added to the Definitive Map and Statement of Public Rights of Way:

804-526 – Junction of Georges Lane and bridleways 48 & 49 to the junction of footpaths 38 & 39.

804-527 – Junction of Charnleys Lane and bridleways 47 & 48 to the junction of footpaths 39 & 40.

804-528 - Bridleway 47 south-west to footpath 40.

804-530 - Bridleway 47 north-west to footpath 40.

804-531 - Bridleway 48 following Cross Bank Covert to footpath 39.

Recommendation

1. That the application for a footpath from the junction of Georges Lane and Bridleways 48 & 49 to the junction of Footpaths 38 & 39 North Meols, West Lancashire to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Application No. 804-526, be rejected.
2. That the application for a footpath from the junction of Charnleys Lane and Bridleways 47 & 48 to the junction of Footpaths 39 & 40, North Meols, West Lancashire to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Application No. 804-527, be accepted.
3. That the application for a footpath from Bridleway 47 south-west to Footpath 40, North Meols, West Lancashire to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Application No. 804-528, be accepted.

4. That the application for a footpath from Bridleway 47 north-west to Footpath 40, North Meols, West Lancashire to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Application No. 804-530, be accepted.
5. That the application for a footpath from Bridleway 48 to Footpath 39, North Meols, West Lancashire to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Application No. 804-531, be accepted.
6. That an Order or Orders be made pursuant to Section 53(3)(b) and Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way the following footpaths:
 - a) 'route 2' from the junction of Charnleys Lane and Bridleways 47 & 48 to the junction of Footpaths 39 & 40, North Meols, for a distance of approximately 550 metres and shown between points F-G-H-I on the Committee plan.
 - b) 'route 3' from Bridleway 47 south-west to Footpath 40, North Meols, for a distance of approximately 770 metres and shown between points J-K-L-M-N-O on the Committee plan.
 - c) 'route 4' from Bridleway 47 north-west to Footpath 40, North Meols, for a distance of approximately 635 metres and shown between points J-K-P-Q-R on the Committee plan.
 - d) 'route 5' from Bridleway 48 to Footpath 39, North Meols, for a distance of approximately 520 metres and shown between points S-T-U-V on the Committee plan.
7. That, being satisfied that the higher test for confirming the said Orders can be satisfied, the said Order be promoted to confirmation if necessary by sending it to the Secretary of State.

Background

Five separate applications under Schedule 14 of the Wildlife and Countryside Act 1981 have been received from North Meols Parish Council for five separate public footpaths across land forming part of Banks Enclosed Marsh, North Meols, West Lancashire and shown between points A-B-C-D-E, F-G-H-I, J-K-L-M-N-O, J-K-P-Q-R and S-T-U-V on the attached plans, to the Definitive Map and Statement of Public Rights of Way.

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

An order will only be made 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” or
- “The expiration... of any period such that the enjoyment by the public...raises a presumption that the way has been dedicated as a public path”

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

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

Consultations

West Lancashire Borough Council has been consulted on all 5 applications and no response has been received.

North Meols Parish Council is the applicant for the claims.

Claimant/Landowners/Supporters/Objectors

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

Advice

Executive Director for the Environment's Observations

Points annotated on the attached Committee plans:

Point	Grid Reference	Description
A	SD 3885 2189	Junction of Georges Lane and Public Bridleways 48 & 49 North Meols
B	SD 3868 2213	Culvert
C	SD 3861 2223	Change of surface from compacted earth to grass
D	SD 3852 2235	Culvert and metal field gate in boundary fence

E	SD 3852 2236	Junction with Public Footpaths 38 and 39 North Meols on landward side of sea defence embankment as depicted on Definitive Map.
F	SD 3835 2156	Junction of Charnleys Lane and Public Bridleways 47 and 48 North Meols
G	SD 3819 2178	Culvert
H	SD 3803 2200	Culvert and metal field gate in boundary fence
I	SD 3803 2201	Junction of Public Footpaths 39 and 40 North Meols on landward side of sea defence embankment as depicted on the Definitive Map
J	SD 3796 2119	Junction with Public Bridleway 47 North Meols
K	SD 3796 2121	Junction of two claimed routes adjacent to old sea defence embankment
L	SD 3768 2110	Bend in claimed route adjacent to old sea defence embankment
M	SD 3743 2099	Gap in hedge
N	SD 3731 2089	Ditch across claimed route
O	SD 3730 2088	Junction with Public Footpath 40 on new sea defence embankment
P	SD 3768 2161	Culvert
Q	SD 3761 2170	Culvert and metal field gate in boundary fence
R	SD 3760 2171	Junction with Public Footpath 40 on landward side of sea defence embankment
S	SD 3856 2176	Junction with Public Bridleway 48 North Meols
T	SD 3843 2195	Ditch across claimed route
U	SD 3827 2217	Open ditch and fence across claimed route
R	SD 3827 2218	Junction with Public Footpath 39 North Meols on landward side of new sea defence embankment.

Description of Routes:

A site inspection of all 5 routes was carried out on 9 September 2013 with a further inspection carried out on 13 January 2014.

Application for a Public Footpath from junction of Georges Lane and Bridleway 48 and 49 North Meols, to Footpath 38, North Meols, West Lancashire - Application No. 804-526 (Route 1)

Shown between points A-B-C-D-E on the attached plan.

The route starts at the junction of Georges Lane with Public Bridleways 48 and 49 North Meols (point A).

Access onto the route from the junction of the bridleways and from Georges Lane is open and unrestricted.

Adjacent to the route at point A and positioned high up on a metal post is a sign saying, 'Private, Legal action may be taken against unauthorised persons found on this property'.

From point A the route extends in a straight line in a north westerly direction for its entire length. It is bounded by drainage ditches on either side and crosses a culverted drainage ditch at point B. It consists of a 3 metre wide farm track surfaced with crushed tarmac that has become embedded due to use of the route by heavy farm machinery.

At point C the surface of the route changes to grass which appears to be well maintained and regularly mown.

At point D the route is crossed by a further culverted drain and is then crossed by a 13 foot metal field gate (padlocked). Adjacent to the gate is a substantial wooden stile and a sign saying 'This is Environment Agency property, shooting is strictly prohibited.'

Immediately beyond the gate (and stile) the route ends at point E at the junction with Public Footpaths 38 and 39 North Meols - which runs as a continuous route along the landward base of the new sea defence embankment.

n.b. beyond point E, not forming part of the application route, extending onto the top of the embankment is a graded track, wide enough for vehicular use which provides access to a worn track along the top of the embankment.

The total length of the route is approximately 570 metres.

Application for a Public Footpath from junction of Charnleys Lane and Bridleways 47 and 48 North Meols to the junction of Footpaths 39 and 40, North Meols, West Lancashire – Application No. 804-527 (Route 2)

Shown between points F-G-H-I on the attached plan.

The route starts at point F on the Committee plan at the junction of Charnleys Lane with Public Bridleways 47 and 48 North Meols.

At point F the route of the public bridleway is clearly signed in both directions.

Access onto the route from the bridleway is open and unrestricted. A sign adjacent to point F states, 'Private, Legal action may be taken against unauthorised persons found on this property' and a second sign attached to the same post states 'Danger, no trespassing, shooting in process'.

From point F the route follows a well defined track across arable land which appears to receive regular use by farm machinery and is well maintained. The route extends in a straight line in a north westerly direction crossing a culverted drain at point G and continuing in a north westerly direction to cross a second culverted drain at point H where it is crossed by a 10 foot metal field gate (padlocked) immediately before the junction with Public Footpaths 39 and 40 North Meols at point I on the landward base of the new sea defence embankment. Close to the gate at point H is a wooden

stile in the fencing that is clearly signed on both sides as having been erected by and for the use of the Southport and District Wildfowlers.

n.b. A narrow track extends from point I to the top of the new embankment and looks to have been formed by pedestrian use; this is not part of the application.

The total length of the route is approximately 550 metres.

Application for a Public Footpath from Bridleway 47 south-west to Footpath 40, North Meols, West Lancashire - Application No. 804-528 (Route 3)

Shown between points J-K-L-M-N-O on the attached plan.

The route commences at point J which is a point on Public Bridleway 47 North Meols. The route follows a heavily used vehicular farm access track in a northerly direction through a break in the old sea embankment to point K, this section being duplicated with application 804-530 although if Committee decide that both routes should be added to the Definitive Map and Statement this section should only be included once in any Order(s).

Adjacent to point K two signs have been attached to a tall post reading, 'Danger (No Trespassing) Shooting in Progress' and 'No public right of way, Trespassers will be prosecuted'.

From point K the route turns in a westerly and then south westerly direction along a farm access track to the north of, and running parallel to, the old sea embankment. A well maintained hedge separates the route from the old embankment and on the north side of the route it is open to the arable fields.

At point L there is a gap in the hedge separating the route from the farm access route. The route bends north to then continue in a south westerly direction along the farm track north of the hedge separating it from the old sea embankment.

The route continues for a further 275 metres to point M on the Committee plan where it then passes through the hedge to continue in an south easterly direction along the bottom of the old sea embankment to point N. Between point M and point N the claimed route is overgrown with there is no visible sign of a walked route.

Close to point N on a very tall post are two signs stating 'Private, Legal action may be taken against unauthorised persons found on this property' and 'Danger (No trespassing) Shooting in progress'.

The route is crossed by a deep drain at point N with earth that has been dug from the drain deposited in a mound on the route. Beyond the mound is the drain with no access across it.

From point N the route continues a short distance onto the new embankment where access is prevented by a wooden post and rail fence. Beyond the fence the route continues to its junction with Public Footpath 40 North Meols at point O.

The total length of the route is approximately 770 metres.

Application for a Public Footpath from Bridleway 47 to Footpath 40, North Meols, West Lancashire – Application No. 804-530 (Route 4)

The route is shown between points J-K-P-Q-R on the attached plan.

It starts at point J on the Committee plan where it leaves Public Bridleway 47 North Meols to follow a heavily used vehicular farm access track in a northerly direction through a break in the old sea embankment to point K. (This section is a duplicate of application 804-528, see above.)

At point K there is a sign positioned on a tall post which states 'Private, legal action may be taken against unauthorised persons found on this property'.

From point K the route extends in a north westerly direction in a straight line towards the new sea defence embankment. It follows a well used farm access track between well maintained drains.

At point P the route crosses a culverted drain. Beyond the culvert the route continues in a north westerly direction between two drains. The surface of the route is grass which had been recently mown. There is evidence of vehicular use but this appears to be significantly less than along the section J-K-P.

At point Q a drain crosses the route which has been culverted and on the north west side of the culvert in the boundary fence is a padlocked metal field gate.

Adjacent to the gate is a sign that has been damaged but it appears to be an Environment Agency sign stating that shooting is prohibited. On the other side of the gate there appears to be the remains of a broken stile.

At point R the route meets Public Footpath 40 North Meols on the landward side of the new sea defence embankment. Extending from point R is a worn track onto the top of the embankment that appears to have been created by pedestrian use.

The total length of the route is approximately 635 metres.

Application for a Public Footpath from Bridleway 48 to Footpath 39, North Meols, West Lancashire – Application 804-531 (Route 5)

The route is shown between points S-T-U-V on the attached plan.

It starts at point S on the Committee plan at the junction with Public Bridleway 48 North Meols immediately west of Cross Bank Cottage.

From point S the route is immediately crossed by a post and barbed wire fence with no access.

Beyond the fence the route enters Cross Bank Covert (a strip of woodland designated by the County Council as a biological heritage site) with a further row of barbed wire preventing access. There are various signs prohibiting access and stating that the land is private and also evidence that fencing has been recently cut.

Beyond point S the route extends in a north westerly direction in a straight line towards the new sea defence embankment. It follows a worn track through the woodland along the top of a small embankment to point T where a culverted drain crosses the route. Above the culvert earth forming part of the former embankment has been removed and piled on the route creating a deep and difficult to negotiate dry ditch under which the culvert passes.

Beyond the earthworks and culvert at point T the route continues in a north westerly direction on a clearly defined path through the woodland still following the top of the raised embankment to point R where it is crossed by a drain that appears to have been recently dug out and is impossible to cross. Beyond the ditch is a post and wire fence through which there appears to be a small gap between posts that may have provided access to the route. Beyond the fence the route terminates at point V at its junction with Public Footpath 39 North Meols on the landward side of the sea defence embankment.

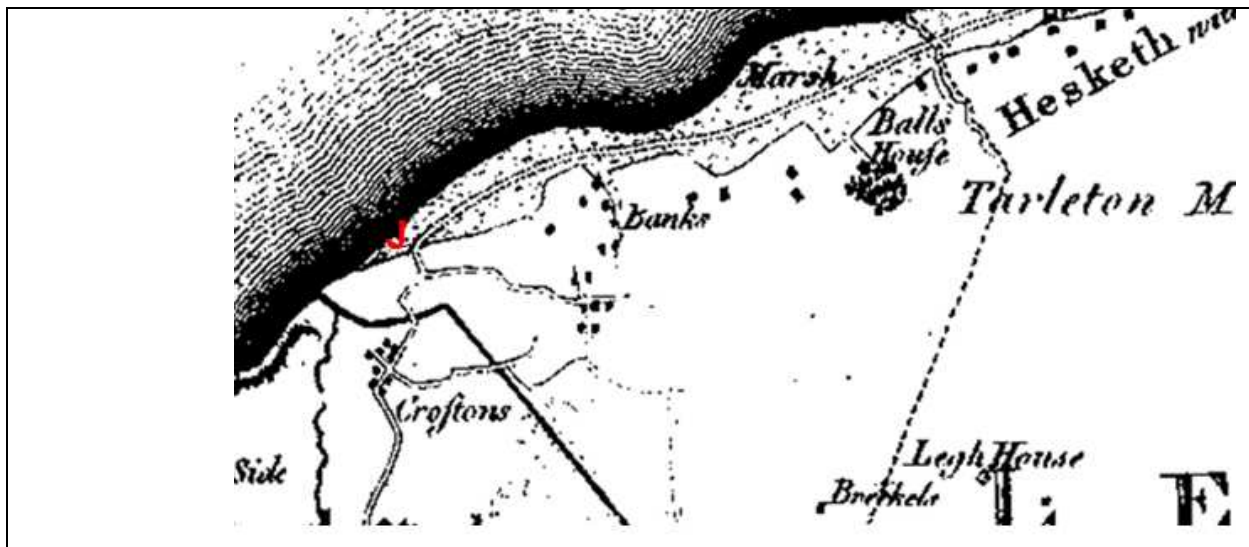
The total length of the route is approximately 520 metres.

Map and Documentary Evidence

Document Title	Date	Brief description of document & nature of evidence
Henry Bankes' Map of Lands in North Meols belonging to Peter Bold 1736 (Crosby Reference library)	1736	This map was surveyed and mapped by Henry Bankes and appears to show the lands in the ownership of Peter Bold, with the acreage of each field, plus the field name or tenant/occupier. The reproduction of this map carries the following statement: 'A copy of the original survey of lands in Southport and Banks in the possession of the Trustees acting in execution of the Trusts of the Will and Codicil of the late Charles Scarisbrick of Southport Hall, Esquire, deceased, and was reproduced by photography (by permission of the Scarisbrick Trustees), by the Southport Corporation in February 1908'.



Observations		
Route 1	The route is not shown. Georges Lane is shown only to exist as far as the start of the route at point A. The new sea embankment had not been constructed and Banks Enclosed Marsh had not been created in 1736.	
Route 2	The route is not shown. Charnleys Lane is shown only to exist as far as the start of the route at point F. The new sea embankment had not been constructed and Banks Enclosed Marsh had not been created in 1736.	
Routes 3,4,5	None of the routes are shown. The new sea embankment had not been constructed and Banks Enclosed Marsh had not been created in 1736.	
Investigating Officer's Comments	The application routes probably did not exist in 1736.	
Yates' Map of Lancashire CRO Ref DDX 99/12	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 to the public to use. However, they were privately produced without a known system of consultation or checking. Limitations of scale would also limit the routes that could be shown.




<p>General Observations</p>	<p>This map clearly shows the distinction between the salt marsh and the cultivated land. The small scale and different surveying techniques mean that it is not possible to overlay maps of this age with more recent maps. However, it was accepted at a public inquiry held in 2001 into the status of Public Bridleway 47 and 48 North Meols that the route shown across the marsh was the Public Bridleway from which the claimed routes start at points J-F-S and A. Note that only point J is marked on the map extract as the exact location of the other points could not be determined.</p>	
<p>Routes 1-5</p>	<p>None of the routes are shown. The new sea embankment had not been constructed and Banks Enclosed Marsh had not been created in 1786.</p>	
<p>Investigating Officer's Comments</p>	<p>The application routes probably did not exist in 1786.</p>	
<p>Greenwood's Map of Lancashire</p>	<p>1818</p>	<p>Small scale commercial map. In contrast to other map makers of the era Greenwood stated in the legend that his map showed private as well as public roads.</p>


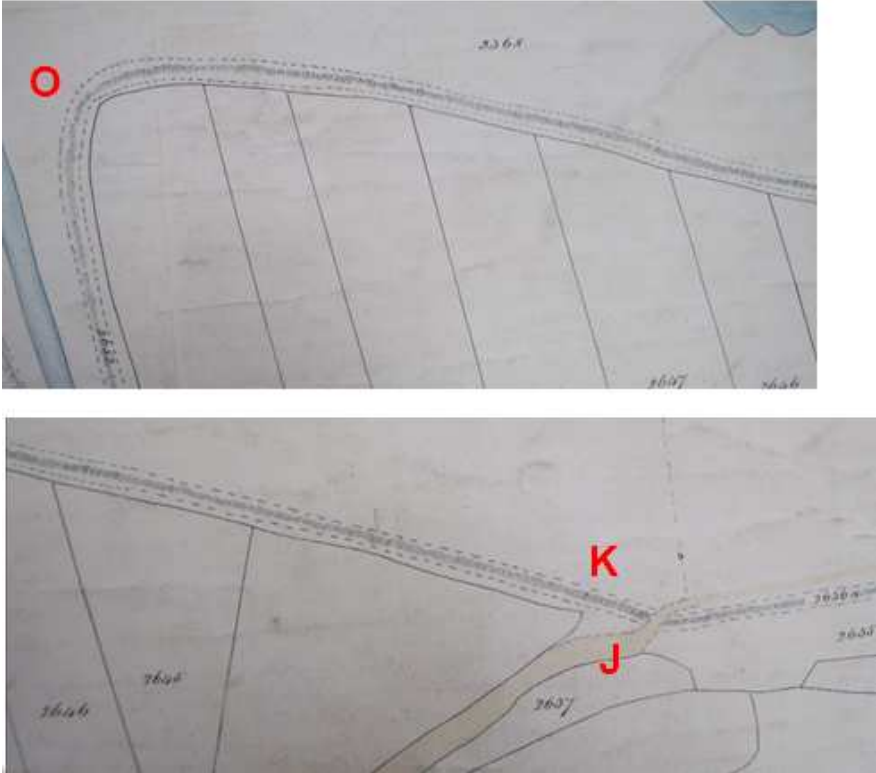




Observations	
Route 1	The route is not shown. Georges Lane is shown only to exist as far as the start of the route at point A. The new sea embankment had not been constructed and Banks Enclosed Marsh had not been created in 1818.
Route 2	The route is not shown. Charnleys Lane is shown only to exist as far as the start of the route at point F. The new sea embankment had not been constructed and Banks Enclosed Marsh had not been created in 1818.
Route 3	The route is not shown. A solid black line is shown extending in a south west direction from point J which may depict the line of the old sea embankment. The new sea embankment had not been constructed and Banks Enclosed Marsh had not been created in 1818.
Routes 4,5	The routes are not shown. The new sea embankment had not been constructed and Banks Enclosed Marsh had not been created in 1818.
Investigating Officer's Comments	The application routes probably did not exist in 1818.
Hennet's Map of Lancashire	1830 Small scale commercial map.





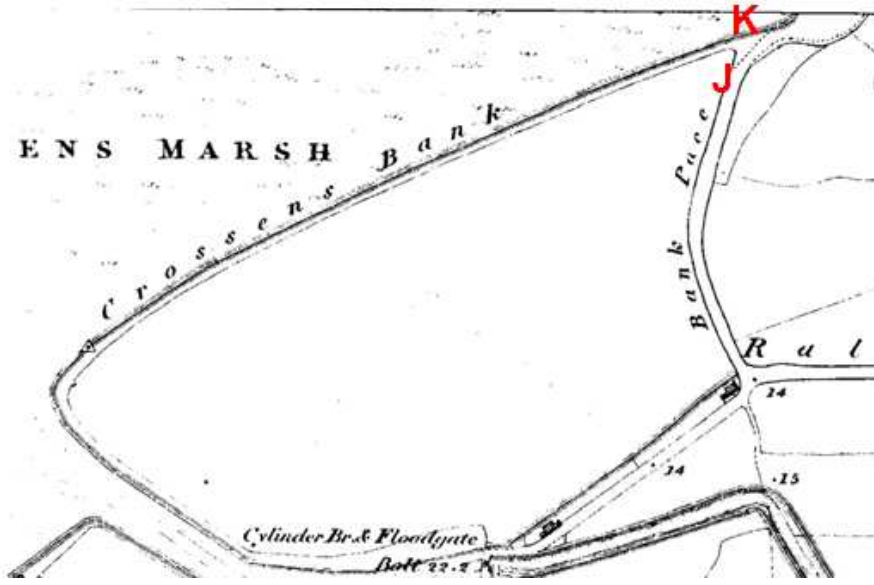
Observations	
Route 1	The route is not shown. Georges Lane is shown only to exist as far as the start of the route at point A. The new sea embankment had not been constructed and Banks Enclosed Marsh had not been created in 1830.
Route 2	The route is not shown. Charnleys Lane is shown only to exist as far as the start of the route at point F. The new sea embankment had not been constructed and Banks Enclosed Marsh had not been created in 1830.
Route 3	The route is not shown. A solid black line is shown extending in a south west direction from point J which may depict the old sea embankment. The new sea embankment had not been constructed and Banks Enclosed Marsh had not been created in 1830.
Routes 4,5	The routes are not shown. The new sea embankment had not been constructed and Banks Enclosed Marsh had not been created in 1830.
Investigating Officer's Comments	The application routes probably did not exist in 1830.
Inclosure Act Award 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 parishes to be made. They can provide conclusive evidence of status.
Observations	There is no Inclosure Award for North Meols.
Investigating Officer's Comments	No inference can be drawn in respect of any of the five routes.

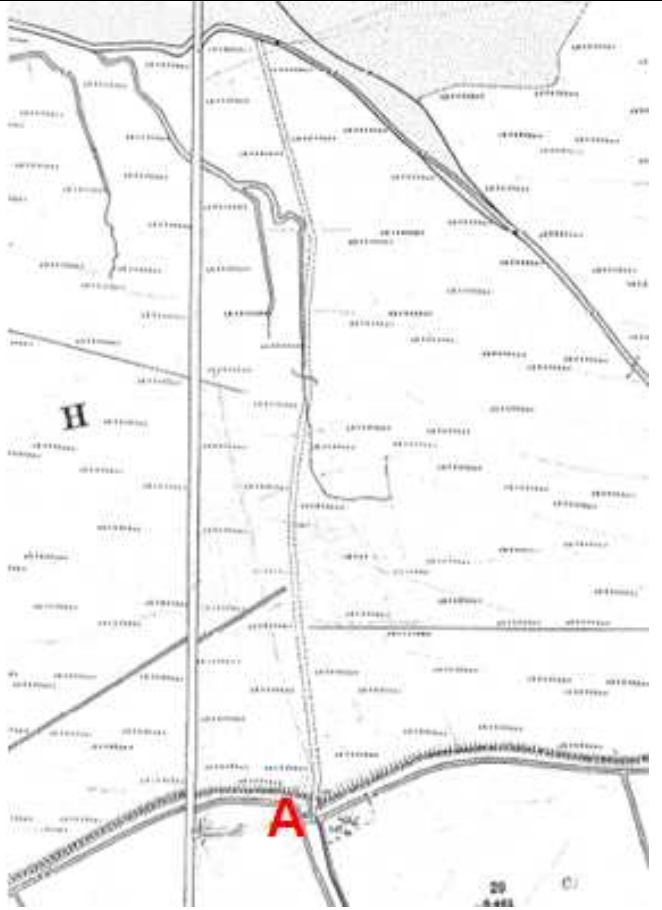
Tithe Map and Tithe Award or Apportionment	1840	Maps and other documents were produced under the Tithe Commutation Act of 1836 to record land capable of producing a crop and what each landowner should pay in lieu of tithes to the church. The maps are usually detailed large scale maps of a parish and while they were not produced specifically to show roads or public rights of way, the maps do show roads quite accurately and can provide useful supporting evidence (in conjunction with the written tithe award) and additional information from which the status of ways may be inferred.
Observations		
Route 1		
Observations	Georges Lane is shown extending as far as the old embankment at point A. Banks Marsh has not been enclosed and the route is not shown.	

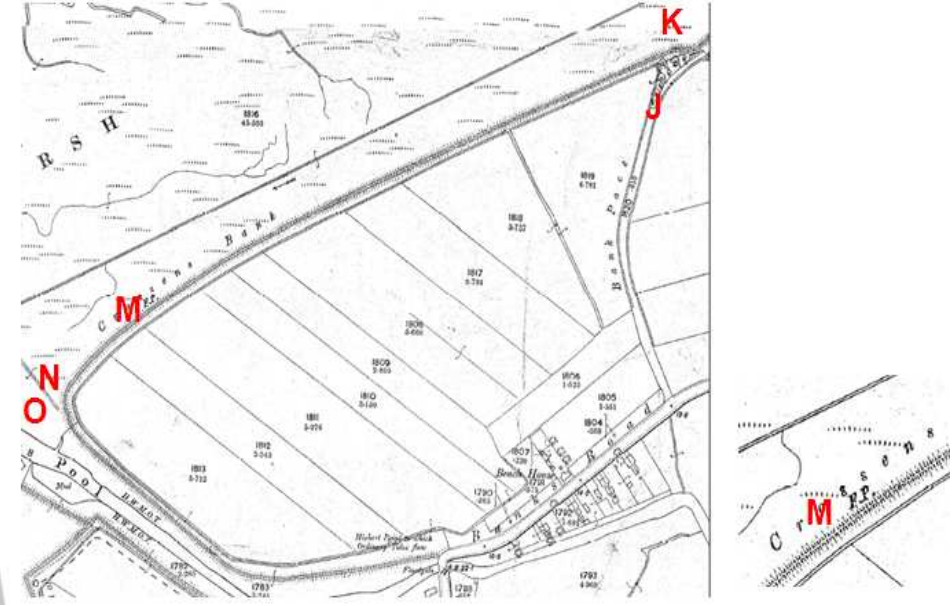
Route 2	
Observations	<p>Charnleys Lane is shown extending as far as the old embankment at point F. Banks Marsh has not been enclosed and the route is not shown.</p>
Route 3	
Observations	<p>Bridleway 47 North Meols is shown shaded brown. The old embankment is shown with just a short break through which the public bridleway passes north east of point J. The route through the embankment is not shown between point J and K and is not shown as a track adjacent to or along the old embankment between point K and point O. The new embankment along which Public Footpath 40 is recorded is not shown.</p>

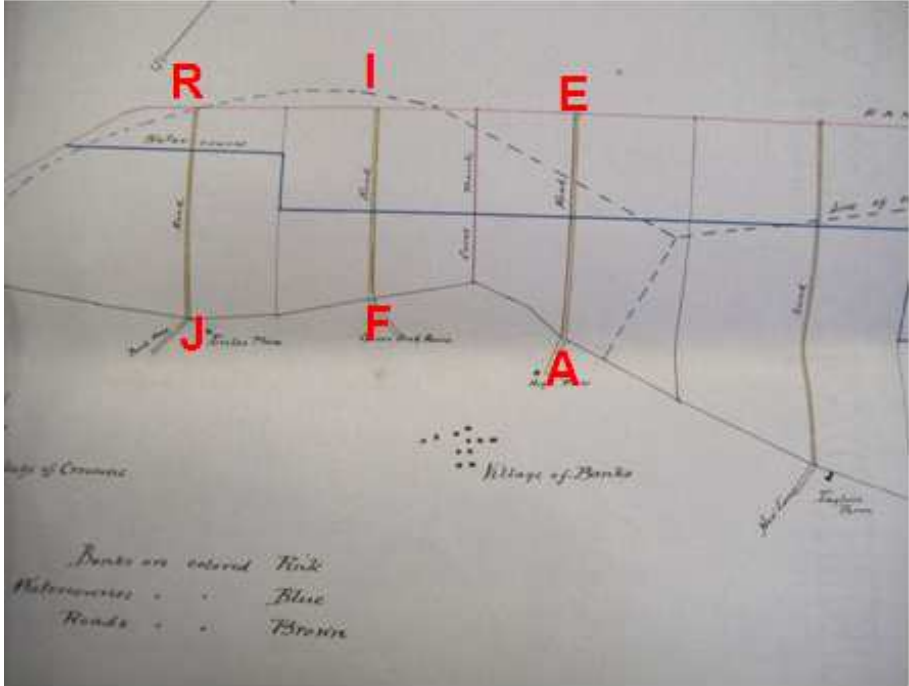
Route 4	
Observations	<p>Bridleway 47 North Meols is shown shaded brown. The old embankment is shown with just a short break through which the public bridleway passes north east of point K. The route is not shown through the embankment between point J and point K. The route is not shown between point K and point R. Banks Marsh has not been enclosed and the new embankment has not been constructed.</p>
Route 5	
Observations	<p>The route is not shown. The old sea embankment in the vicinity of point S is shown but Banks Marsh had not been enclosed and the new embankment had not been constructed. Cross Bank Covert through which the route runs is not shown.</p>
Investigating Officer's Comments	<p>The routes probably did not exist in 1840.</p>

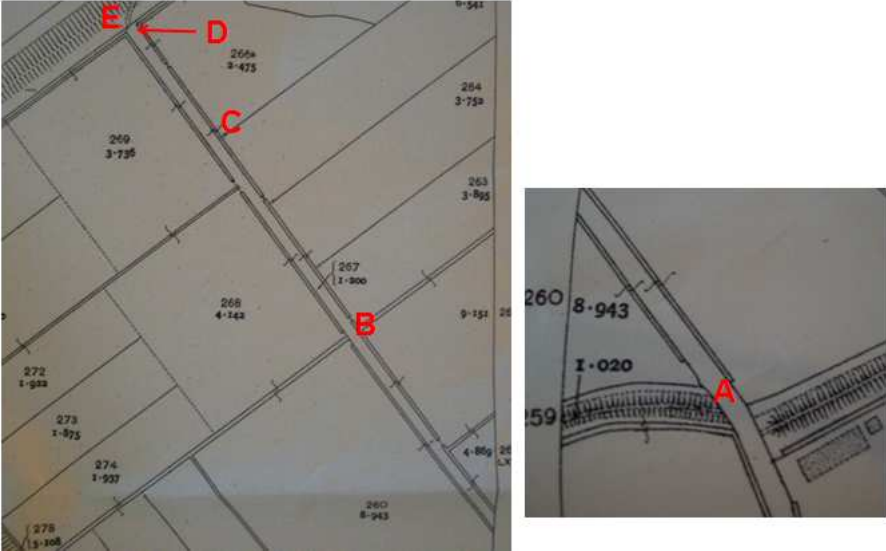
Ordnance Survey Maps	<p>The Ordnance Survey (OS) has produced topographic maps at different scales (historically one inch to one mile, six inches to one mile and 1:2500 scale which is approximately 25 inches to one mile). Ordnance Survey mapping began in Lancashire in the late 1830s with the 6-inch maps being published in the 1840's. The large scale 25-inch maps which were first published in the 1890's provide good evidence of the position of routes at the time of survey and of the position of buildings and other structures. They generally do not provide evidence of the legal status of routes, and carry a disclaimer that the depiction of a path or track is no evidence of the existence of a public right of way.</p>	
6 Inch Ordnance Survey (OS) Map	1848	The earliest Ordnance Survey 6 inch map for this area, surveyed 1845-46 and published 1848.
General Observations	Banks Marsh had not been enclosed in 1845-6.	
Route 1		
Observations	The route is not shown. Georges Lane is shown to extend to point A but is not named on the map. The old sea embankment crosses the route at point A but beyond point A the claimed route is shown to cross Banks Marsh and is not shown on the map.	

Route2	
Observations	<p>The route is not shown. Charnleys Lane is shown on the map extending as far as the start of the route at point F but is not named. At point F the route is crossed by the old sea embankment (named on the map as Goose Dub Bank). Beyond point F the route crosses Banks Marsh and is not shown on the map.</p>
Route3	
Observations	<p>The route is not shown. Public Bridleway 47 North Meols is shown and named as Bank Pace. The route between point J and point K is not marked but appears to have been available. The old embankment is shown and is named as Crosssens Bank. The land to the north of the old embankment has not been enclosed and is named as Crosssens Marsh on the map. There is no evidence of a route along or adjacent to Crosssens Bank.</p>

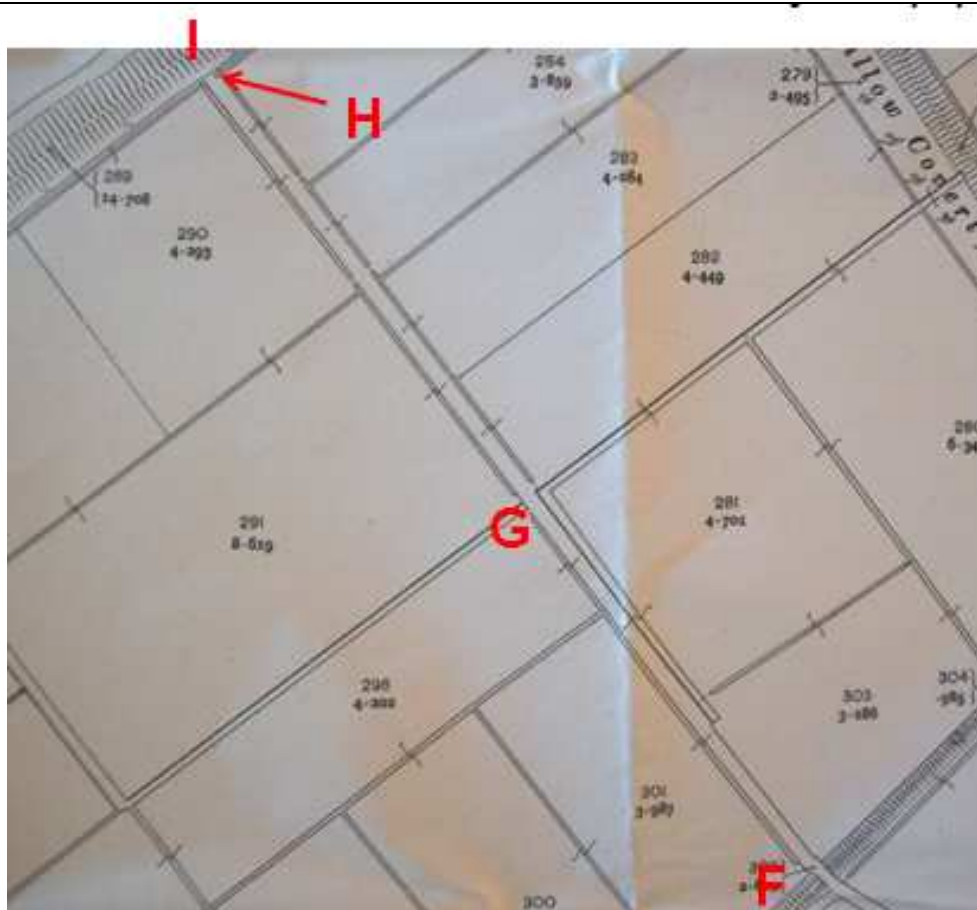
Route 4		
Observations	The route is not shown. Public Bridleway 47 North Meols is shown and named as Bank Pace. The route between point J and point K is not marked but appears to have been available. Beyond point K the route has not been constructed and the land over which it crosses is shown as being part of Crossens Marsh.	
Route 5		
Observations	The route is not shown. The land over which it crosses is shown as being part of the marsh.	
Investigating Officer's Comments	It is very unlikely that any of the 5 routes existed in 1845-46.	
25 Inch OS map	1894	The earliest Ordnance Survey 25 inch map surveyed in 1892 and published 1894.
Route 1		
Observations	The route is not shown. Georges Lane is shown and named on the map and ends at the junction with the old embankment and the start of the route at point A. Beyond point A there is a track shown extending in a northerly direction across the marsh. This track is to the east of the claimed route. The marsh has not been reclaimed and the new embankment does not exist.	

Route 2	
Observations	The route is not shown. Charnleys Lane is shown to extend to point F where it ends at the junction with the old sea embankment and the start of the route.
Route 3	
Observations	The old embankment is shown and is labelled as Crossens Bank. The area between point J and K is shown to be wooded and the route is not shown. The letters 'F.P.' have been drawn adjacent to the bank close to point M. A ditch is shown to exist across point L but the new embankment on which point O is located is not shown.
Route 4	
Observations	The area between point J and K is shown to be wooded and the route is not shown. Beyond point K the route is not shown across the unenclosed marshland.
Route 5	
Observations	The route is not shown across the unenclosed marshland.
Investigating Officer's Comments	
Routes 1,2,4,5	The routes probably did not exist in 1892.
Route 3	The route is not shown on the map but the inclusion by the Ordnance Survey surveyor of the letters 'F.P.' on the map close to point M suggest that a worn 'footpath' may have existed along the embankment in the in 1892.

Scarisbrick Estate Papers	1895	Scarisbrick Estate papers deposited at the County Records Office.
		
Observations	<p>Within the papers are a number of letters and documents relating to the scheme to drain the marsh and to construct the 'new' embankment. It appears from a letter addressed to the Scarisbrick Estate Office from Mr John Bentham dated 8th April 1895 that work to drain the marsh was carried out between 1890-1895 and that by April 1895 work had been completed. The letter also explains that the embankment that carried route 5 (Cross Bank) was constructed to prevent flooding as part of the drainage scheme. There is various correspondence relating to the cost of the work, probable net income to be derived from draining the marsh and the cost of the work carried out. A plan attached to the letter to the Estate Office from Mr Bentham shows three of the routes (1, 2 & 4) coloured brown and labelled as 'roads'. None of the correspondence made reference to any of the routes being constructed as routes to be dedicated for public use.</p>	
Investigating Officer's Comments	<p>Routes 1, 2 & 4 had been constructed by 1895. It is most likely that all three routes were constructed as private access routes across the reclaimed marsh. The embankment that carries route 5 existed in 1895 but there is no evidence to suggest that a path was constructed along it or that it was being used by the public at that time. Route 3 probably did not exist in 1895 (with the exception of the section J-K which also forms part of route 4).</p>	

<p>25 inch OS map</p>	<p>1910/ 1911</p>	<p>Further edition of the 25" map surveyed 1891, revised 1908-9, published 1910 and 1911 OS Sheets 65-15, 67-16 and 75-3</p>
<p>General Observations</p>	<p>It appears from the map that the marshland over which the routes are situated had been enclosed by 1911.</p>	
<p>Route 1</p>		
<p>Observations</p>	<p>The full length of the route is shown. At point A the route appears to be a natural extension to Georges Lane and is shown cutting through the old embankment. From point A, the route extends in a north westerly direction bounded by ditches on either side and crossing a culverted drain at point B. It then continues to point D where it crosses a further culvert and is crossed by a solid line at point D. A track denoted by a double pecked line extends from point D over the embankment and onto the marsh suggesting that a gate could have provided onto the embankment at point D. A number of accesses come off the route into the adjacent fields between point A-B-C-D. The route of Public Footpaths 38 and 39 on the landward side of the new embankment is not shown.</p>	

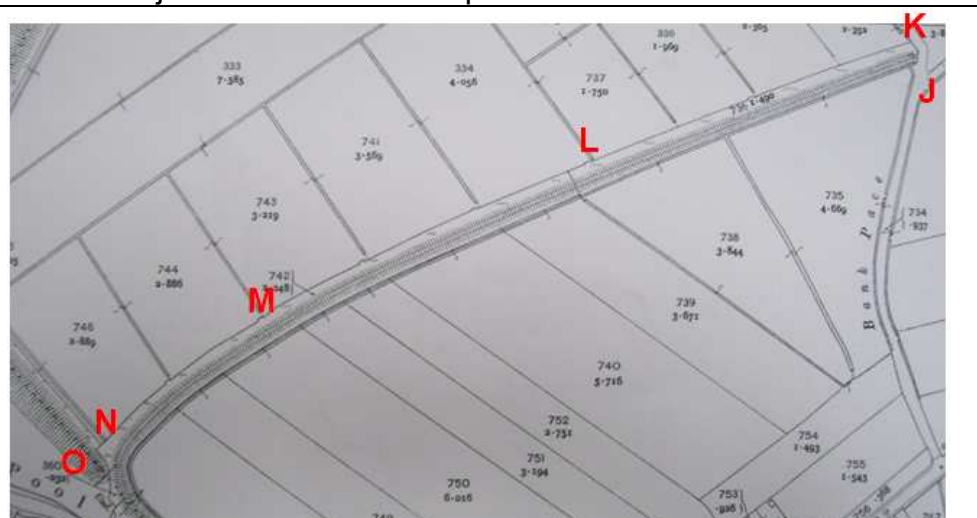
Route 2



Observations


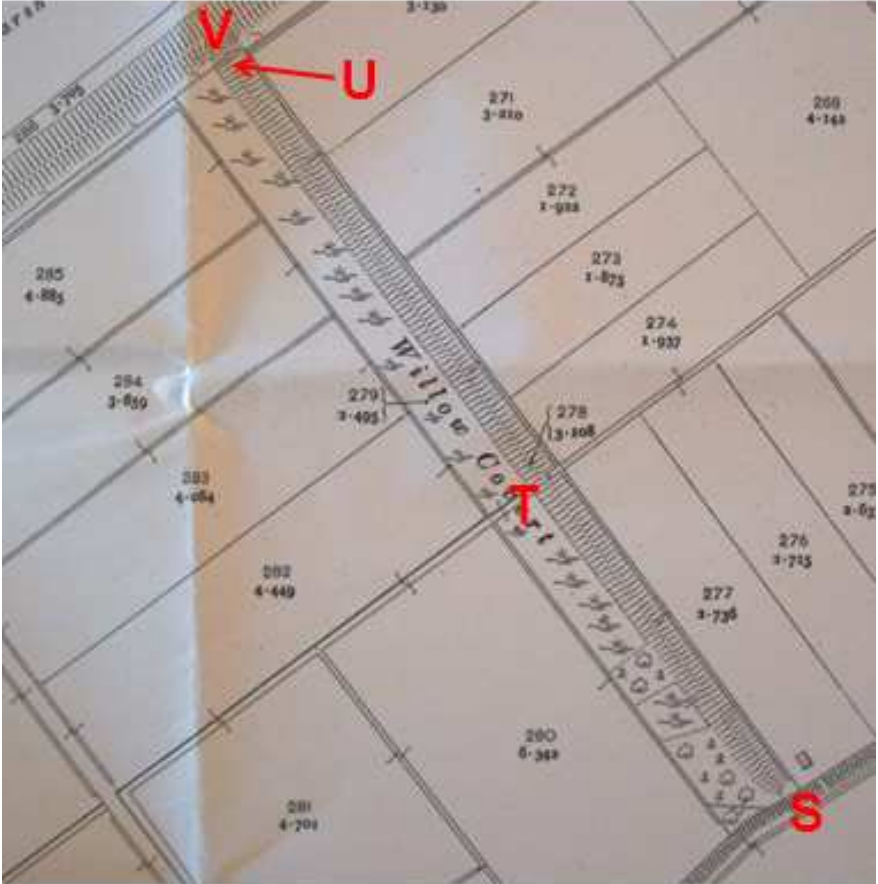
The full length of the route is shown. At point F the route appears to be a natural extension to Charnleys Lane and is shown cutting through the old embankment. It extends in a north westerly direction bounded by on either side and crossing a culverted drain at point G. At point H the route crosses a culvert and is crossed by a solid line (boundary). A number of accesses come off the route into the adjacent fields between points F-G-H.

Route 3



Observations

The route between point J-K is shown on the map but the section between points K-L-M-N-O is not shown. The old embankment is fenced off from the fields to the north and the route would have run down this strip of land at the bottom of the north side of the

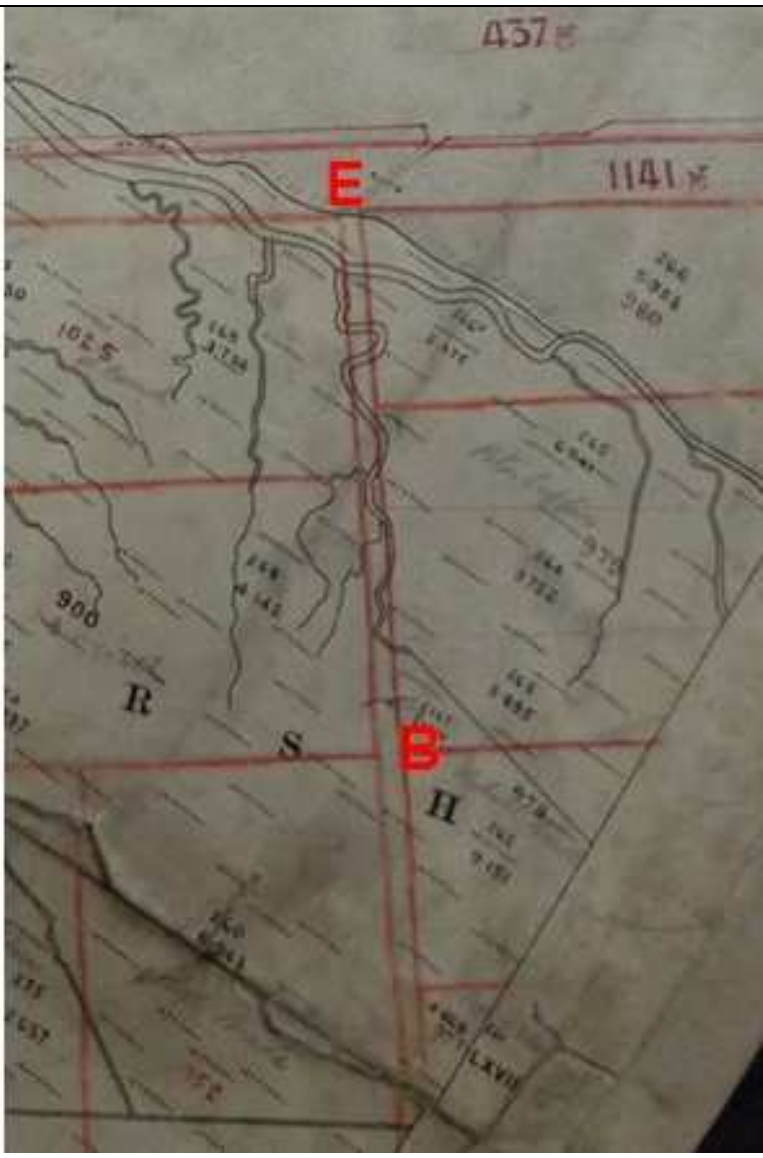
	<p>embankment. The route is crossed by a boundary just beyond point L. The annotation 'F.P.' that was shown on the earlier edition of the map close to point M is not shown on this edition of the map.</p>
<p>Route 4</p>	
<p>Observations</p>	<p>The whole length of the route is shown. It is bounded by drains between points K and Q and crosses a culvert at point P and another at point Q where it is also crossed by a solid black line on the boundary with the new sea defence embankment.</p>
<p>Route 5</p>	
<p>Observations</p>	<p>The route is not shown. An embankment is shown to have been constructed along the full length of the route from point S to point V. There are solid lines across the route at point S and point U</p>


	<p>suggesting the existence of boundaries. A culvert is shown to run underneath the embankment (and route) at point T. The strip of land immediately east and running parallel to the route is named as Willow Covert on the map.</p>	
<p>Investigating Officer's Comments</p>	<p>By 1910-11 the marsh had been enclosed and three of the routes (1,2 & 4) appear to have been purposely constructed as access routes to adjacent fields and to the new sea defence embankment. All three of the routes are crossed by boundaries at the points at which they meet the new sea defence embankment (points E, I and R on the Committee plans) although gated access may have been available. At point E (on route 1) a double pecked line is shown extending from the boundary line onto the embankment which would strongly suggest the existence of a gate at point E. Routes 3 (with the exception of the section between points J-K) and 5 are not shown on the map and do not appear to have existed as worn tracks noted by the Ordnance Survey surveyor on the ground in 1910.</p>	
<p>Finance Act 1910 Map</p>	<p>1910</p>	<p>The comprehensive survey carried out for the Finance Act 1910, later repealed, was for the purposes of land valuation not recording public rights of way but can often provide very good evidence.</p> <p>Maps, valuation books and field books produced under the requirements of the 1910 Finance Act have been examined. The Act required all land in private ownership to be recorded so that it could be valued and the owner taxed on any incremental value if the land was subsequently sold. The maps show land divided into parcels on which tax was levied, and accompanying valuation books provide details of the value of each parcel of land, along with the name of the owner and tenant (where applicable).</p> <p>An owner of land could claim a reduction in tax if his land was crossed by a public right of way and this can be found in the relevant valuation book. However, the exact route of the right of way was not recorded in the book or on the accompanying map. Where only one path was shown by the Ordnance Survey through the landholding, it is likely that the path shown is the one referred to, but we cannot be certain. In the case where many paths are shown, it is not possible to know which path or paths the valuation book entry refers to. It should also be noted that if no reduction was claimed this does not necessarily mean that no right of way existed.</p>

General Observations

There are no Finance Act records held in the County Records Office covering the area affected by the claimed routes. Some extracts of the Finance Act Maps obtained from the National Archives in London were submitted with the applications 804-526, 527 and 530 but further maps extracts and relevant field books entries have subsequently been obtained by the County Council. The Ordnance Survey base map used for the process of drawing up the Finance Act maps predated the enclosure of the marsh and did not show the new sea embankment, claimed routes, field boundaries and drains physically constructed as part of the enclosure process. However, we know that at the time of the valuation the marsh had been drained and enclosed and the resulting layout of drains, boundaries, the new embankment and access routes are drawn onto the Ordnance Survey base maps.

Route 1



	
<p>Observations</p>	<p>The route is shown across two Finance Act maps – Ordnance Survey 25 inch sheets 67/16 and 67/15.</p> <p>On Ordnance Survey map sheet 67/16 Georges Lane is shown to be excluded from the numbered hereditaments and there is no distinction or break shown from the northern end of the publicly recorded section of Georges Lane and the start of the route at point A. From point A the route is not numbered and is excluded from the numbered hereditaments.</p> <p>After approximately 65 metres the route crosses map sheets to continue on sheet 67/15. The survey for the OS base map predates the enclosure of the marsh but the route has been drawn onto the map and excluded from the adjacent numbered hereditaments. At point E the route meets the new sea defence embankment (numbered as part of hereditament 1141).</p>

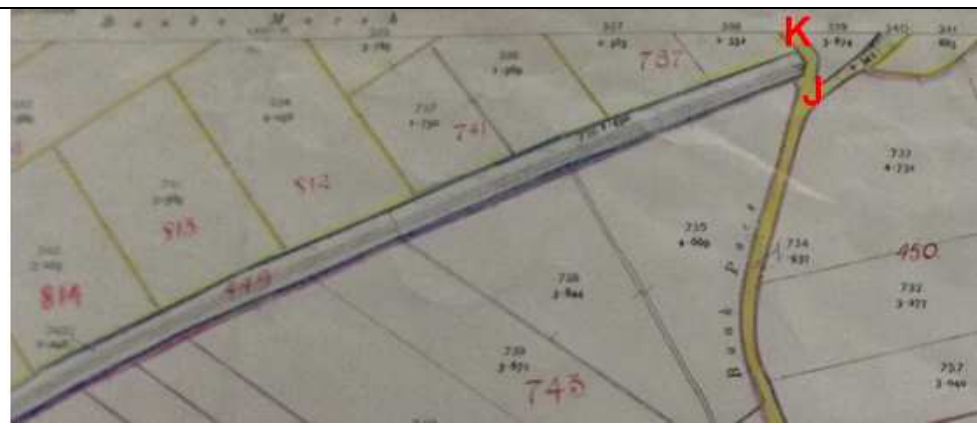
Route 2



Observations

The route is not shown on the OS base map but has been hand drawn onto the map as part of the process involved in the valuation. Charnleys Lane is shown to be excluded from the adjacent hereditaments and no visible line can be seen across the end of the publicly recorded length of Charnleys Lane at point F. The full length of the route from point F to point I has been excluded from the numbered hereditaments although at point I it is shown connecting to the sea defence embankment numbered 1141 (pt) and which is described as 'Banks Marsh, Sea embankment and for which there was no deduction claimed for a public right of way or user.

Route 3

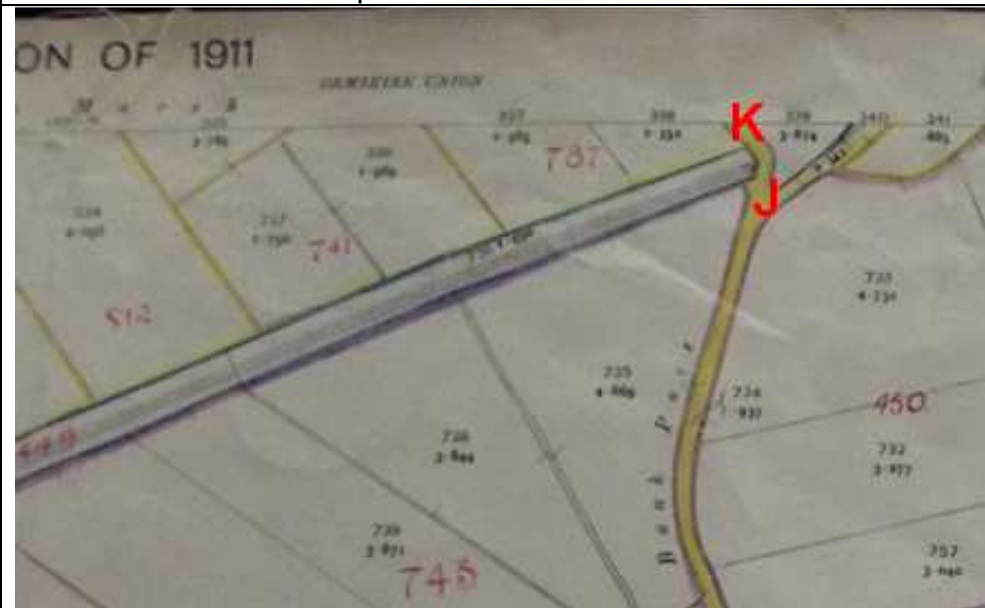


Observations

The first part of the application route between point J-K is coloured yellow and excluded from the numbered hereditaments. The old sea embankment is contained within hereditament 449 which is described in the field book as being used for grazing purposes and as having been inspected by the valuer in 1913. There is no deduction for public rights of way or user and no reference to the existence of a public footpath along the embankment. Field book entries for hereditaments 741, 787, 812, 813 and 814 were also inspected and no deductions were listed in any for the existence of a public right of way.

The Finance Act map covering the route between points M-N-O was not available for inspection.

Route 4



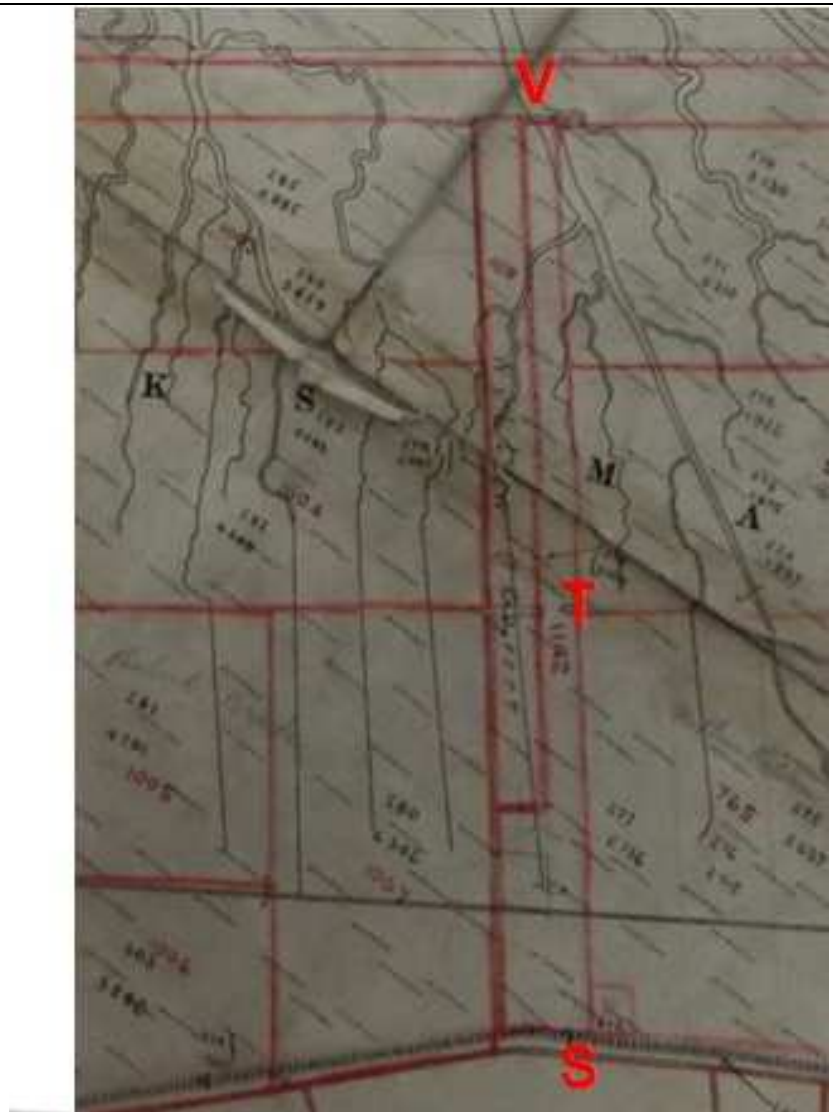
Observations

The route is shown across two OS maps and subsequently two Finance Act maps. The first part of the route from point J is shown on OS map 73/3 dated as being the 1911 edition. Ralph Wife's Lane (now recorded as a public vehicular highway), Bank Pace

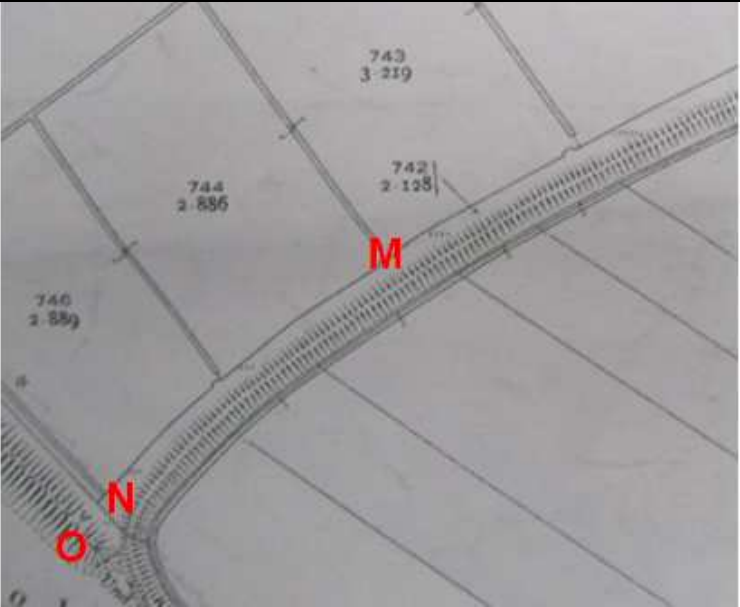
(Public Bridleway 47 North Meols) and route from point J to point K (and continuing north west along the claimed route to the edge of the map sheet) are coloured yellow on the plan and are all excluded from the numbered hereditaments.


The remaining section of the route is shown on the Finance Act Map drawn on the OS 25 inch sheet 67/15. The OS base map does not show the enclosed marsh or new sea embankment. However, the position of the route has been accurately drawn onto the map together with the drains and field boundaries created as part of the enclosure of the marsh and the new sea defence embankment. The route is excluded from the numbered hereditaments. The OS 'field' number and acreage has been written onto the map for the route and also for the surrounding fields. There is no line across the route at point R (where it meets the new sea embankment). The sea embankment has been numbered as being part of plot 1141 which is detailed as consisting of Banks Marsh Sea embankment.


Route 5



Observations	The whole of the route is contained within numbered hereditament 1142. Part of Willow Covert is numbered separately – 1126 and 1128. Hereditament 1142 is listed in the Field Book as 'Cross Bank' and was inspected by the valuer in 1915. It is described as a plantation with no timber value. The valuation includes shooting rights but there is no deduction for a public right of way.
Investigating Officer's Comments	
Route 1	The full length of the route is excluded from the assessable parcels of land shown on the map and appeared to be considered as an extension of Georges Lane suggesting that at the time of the survey it was considered by the landowner to be a public highway.
Route 2	The full length of the route is excluded from the assessable parcels of land shown on the map and appeared to be considered as an extension of Charnleys Lane suggesting that at the time of the survey it was considered by the landowner as being a public highway.
Route 3	<p>The first part of the route between point J and point K is excluded from the assessable parcels of land shown on the map and appeared to have been considered as an extension of Bank Pace (Public Bridleway 47) suggesting that at the time of the survey it was considered by the landowner as being part of the public highway.</p> <p>Between point K and point M the route is not excluded from the hereditaments and no deductions have been claimed for a public right of way or user suggesting that the landowners did not acknowledge the existence of a public footpath or did not consider it worth claiming. The Map and Valuation books were not available for the section M-O so no inference can be drawn in this respect.</p>
Route 4	<p>The first part of the route between point J and point K is excluded from the assessable parcels of land shown on the map and appeared to have been considered as an extension of Bank Pace (Public Bridleway 47) suggesting that at the time of the survey it was considered by the landowner as being part of the public highway.</p> <p>Beyond point K the route is shown on a separate OS map sheet onto which the route has been hand drawn and is again shown excluded from the assessable parcels of land suggesting that at the time of the survey it was considered by the landowner as being a public highway.</p>
Route 5	The whole of the route is contained within hereditament 1142 and no deductions have been claimed for a public right of way or user

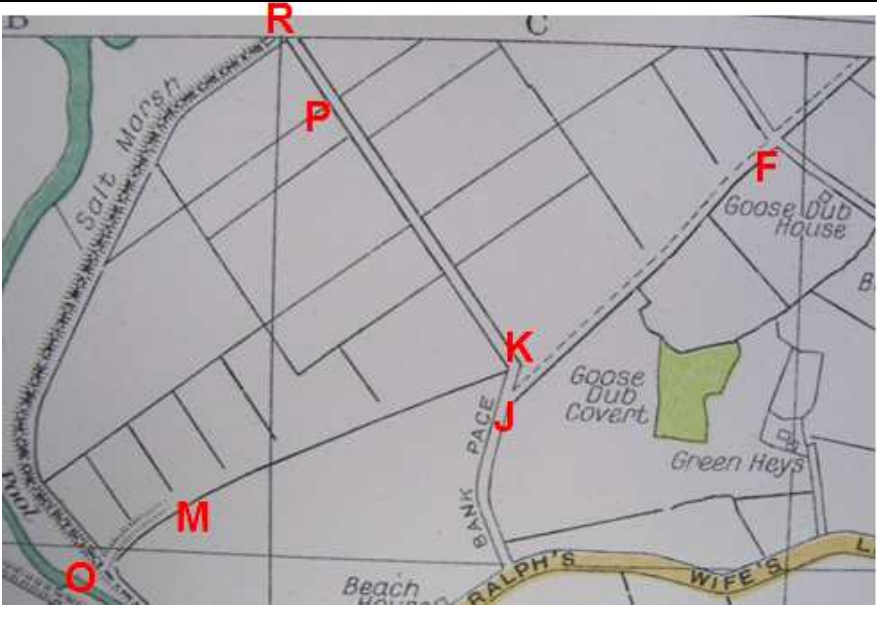
		suggesting that the landowners did not acknowledge the existence of a public footpath or did not consider it worth claiming.
Scarisbrick Estate Drainage Act 1924	1924	The purpose of this private Act was to establish Commissioners to maintain sea embankments and a land drainage system for the Scarisbrick Estate.
Observations		<p>There is no reference to the existence of public rights along any of the five routes.</p> <p>Section 16 of the Act gave Commissioners rights to enter the land to carry out their duties with or without horses or vehicles or on foot and Section 54 of the Act provided that the owners or occupiers of any parts of the lands in question would have the right at all times to pass and re-pass across the embankments and drainage systems for the purpose of obtaining access from any one part to any other part of the land owned or occupied by them.</p>
Investigating Officer's Comments		<p>The Act does not confirm the existence of public rights of access along any of the claimed routes in 1924.</p> <p>The fact that private rights of access were granted to specified persons by the Act does not mean that public rights of access could not have existed along any of the 5 routes at the time that the Act was enacted or at any time since.</p>
25 Inch OS map	1928	Further edition of 25 inch map resurveyed 1892-3, revised in 1926 and published 1928. Only one map sheet published in 1928 could be located – LXXV.3 (75/3) so it has only been possible to comment on two of the routes.
		
Route 3		The route shown between point J and point K in the same way as it was shown on the 1911 edition of the OS map. The remainder of the route is not shown on the map. There

		is one slight alteration to 1911 edition of the OS with the addition of a boundary across the route at point N.
Route 4		The route is shown between point J and Point K in the same way as it is shown on the 1911 edition of the OS 25 inch map.
Investigating Officer's Comments		No inference can be drawn with respect to the routes 1, 2, 4 (between points K-P-Q-R) and 5. With respect to route 3 it is unlikely that it existed in 1928 with the exception of the section J-K which is included on the map and appears capable of being used at that time (and also forms part of route 4)
Highway Adoption Records including maps derived from the '1929 Handover Maps'	1929 to present day	In 1929 the responsibility for county 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 public highways – from A roads to footpaths. However, they suffered from several flaws – most particularly, if a right of way was not surfaced it was often not recorded. 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. The County Council are 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 is irrelevant to whether it is a highway or not.
		

	
<p>Observations</p>	<p>The maps believed to have derived from the handover maps do not show any of the 5 routes as publicly maintainable highways. Georges Lane and Charnleys Lane are recorded as being publicly maintainable up to the start of route 1 at point A and the start of route 2 at point F. The adoption records held by the County Council state that both Georges Lane and Charnleys Lane were adopted in 1929.</p> <p>The electronic records now held by the County Council shows Georges Lane and Charnleys Lane as they were recorded in 1929. However, they also show the first 122 metres of route 1 (from point A) as a privately maintained highway and the first 340 metres of route 2 (from point E) as a public footway.</p>
<p>Investigating Officer's Comments</p>	<p>None of the 5 routes were recorded as publicly maintained highways in 1929. However, many public rights of way have been found not to have been recorded on these maps because they were unsurfaced at that time. None of the 5 routes are currently surfaced, or were thought to have been surfaced at that time.</p> <p>Despite making enquiries it has not been possible to find out why the first 122 metres of route 1 is recorded as a privately maintainable highway or why the first 340 metres of route 2 has been recorded as a footway.</p>
<p>Authentic Map Directory of South Lancashire by Geographia</p>	<p>Circa 1934</p> <p>An independently produced A-Z atlas of Central and South Lancashire published to meet the demand for such a large-scale, detailed street map in the area. The Atlas consisted of a large scale coloured street plan of South Lancashire and included a complete index to streets which includes every 'thoroughfare' named on the map.</p>

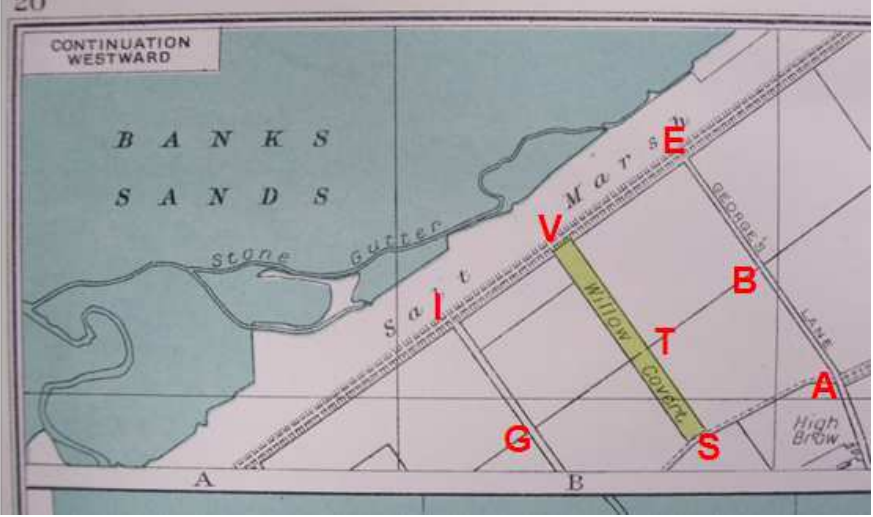
The introduction to the atlas states that the publishers gratefully acknowledge the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected had enabled them to name 'all but the small, less-important thoroughfares'.

Routes 3,4 & 5 (part)



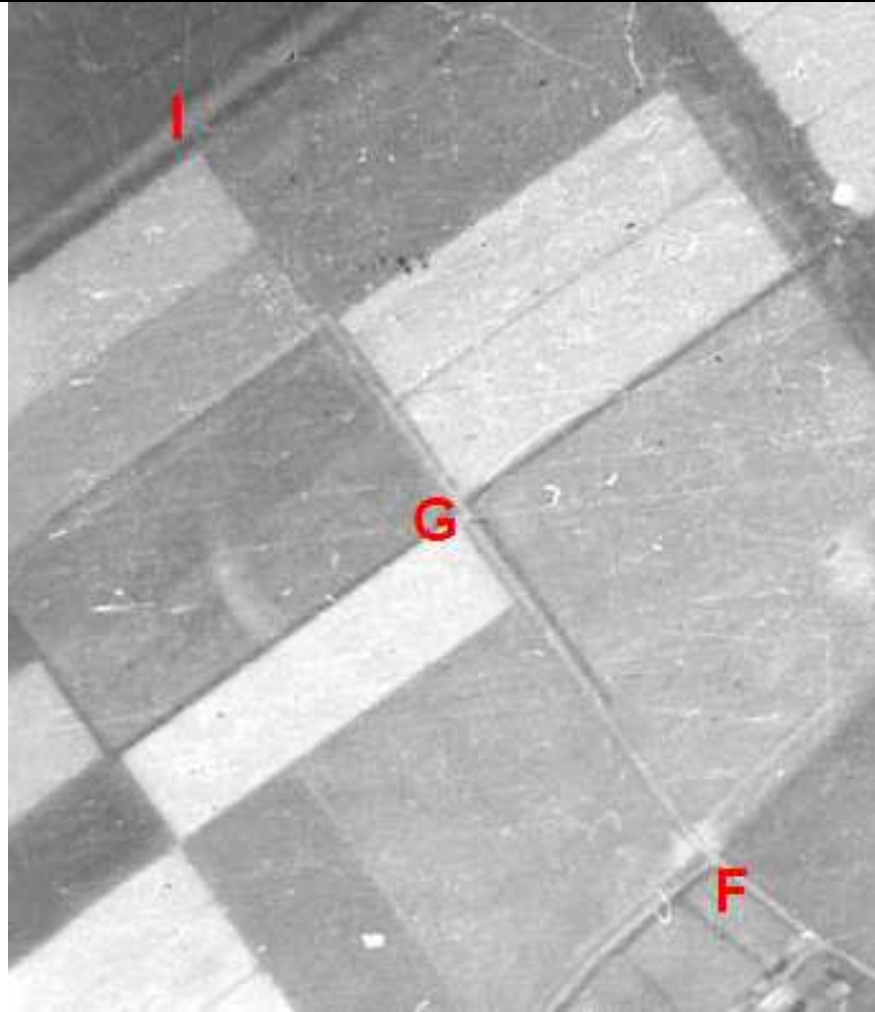
Route 2 (part)



Route 1, 2(part), and 5	
Observations	
Route 1	The route is shown and named as Georges Lane. It is shown as extending out onto the salt marsh at point E. The 'new' sea embankment is shown by a double pecked line and the route is clearly shown joining it.
Route 2	The route is shown as a solid double line in the same way as Charnleys Lane but is not labelled with that name. It is shown extending out onto the salt marsh at point I. The new sea embankment is shown with a double pecked line and the route is clearly shown joining it.
Route 3	The route is shown between points J-K but from K-O is not shown. A solid boundary is shown parallel to the route between point K to point M and the old embankment is marked between point M and point O.
Route 4	The route is shown between solid double lines but not named. It is shown extending out onto the salt marsh at point R. The new sea embankment is shown by a double pecked line and the route is clearly shown joining it.
Route 5	The route is not shown. The woodland is coloured green and named Willow Covert on the map. At point T there is a gap in the line drawn to depict the drainage ditch which would allow access along the route.
Investigating Officer's Comments	
Route 1	The route physically existed in 1934 and appears to have been considered to form part of Georges Lane. The inclusion of the route on the map and the fact that it was named suggests that it may have been available to the public in 1934.

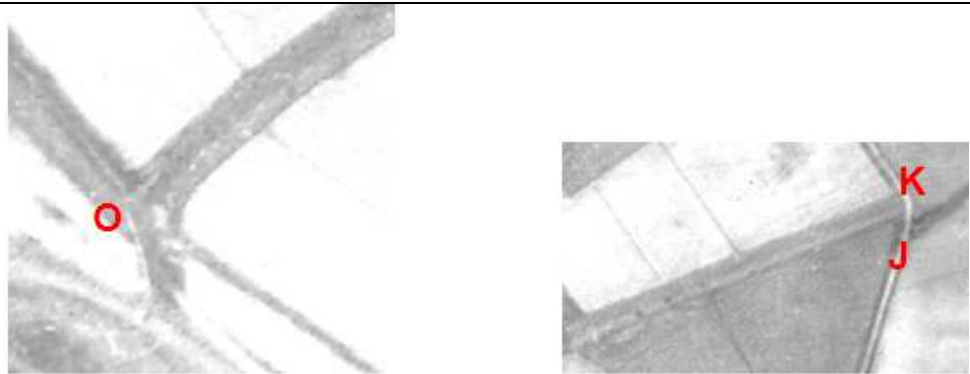
Route 2	The route physically existed in 1934. It was not labelled as part of Charnleys Lane but is clearly shown and its inclusion on the map suggests that public access may have been available.	
Route 3	The route physically existed between points J-K in 1934. Part of the old embankment is shown as a physical feature but there is no suggestion from the map that a worn route existed on the ground as a public footpath along the remaining section of the application route (K-O).	
Route 4	The route physically existed in 1934. It is not named on the map but is clearly shown and its inclusion on the map suggests that it may have been available for public use.	
Route 5	The route is not shown on the map and probably did not exist in 1934.	
Aerial Photographs	1945	<p>Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.</p> <p>The earliest set available was taken just after the Second World War in about 1945. The clarity is generally very variable and in this particular instance the quality of the picture is quite poor.</p>
Observations		
Route 1	The route is not visible as a defined track on the ground. There is only partial coverage and the photograph does not include the section between point C and point E. It is possible to see the culverted drain at point B.	

Route 2

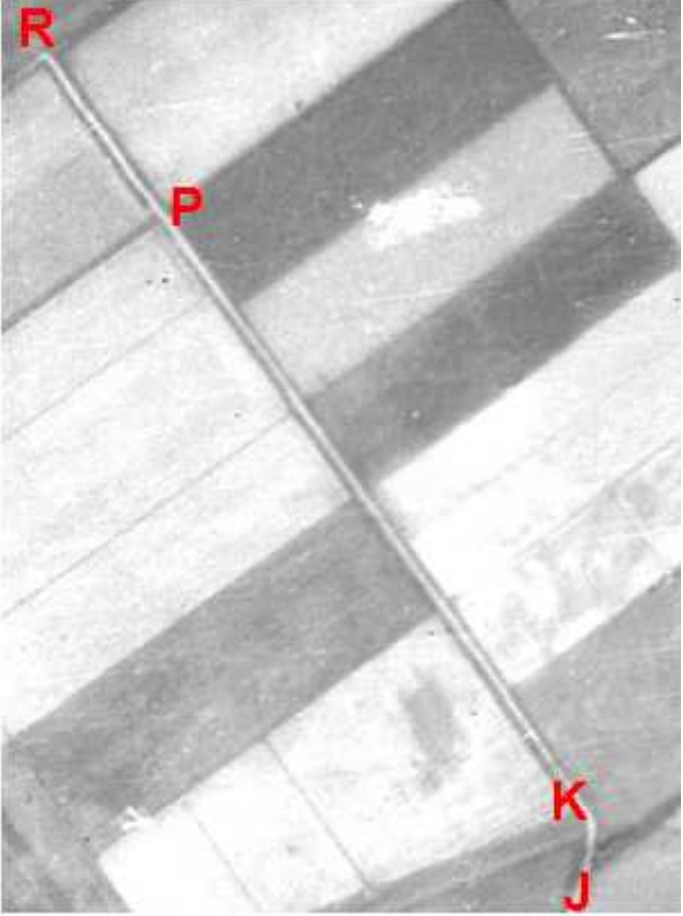


The route can be seen as a faint track leaving Charnleys Lane at point F, crossing the culvert at point G and continuing midway towards point H and point I from whence it appears to end. The route is not visible meeting the new embankment at point I.

Route 3



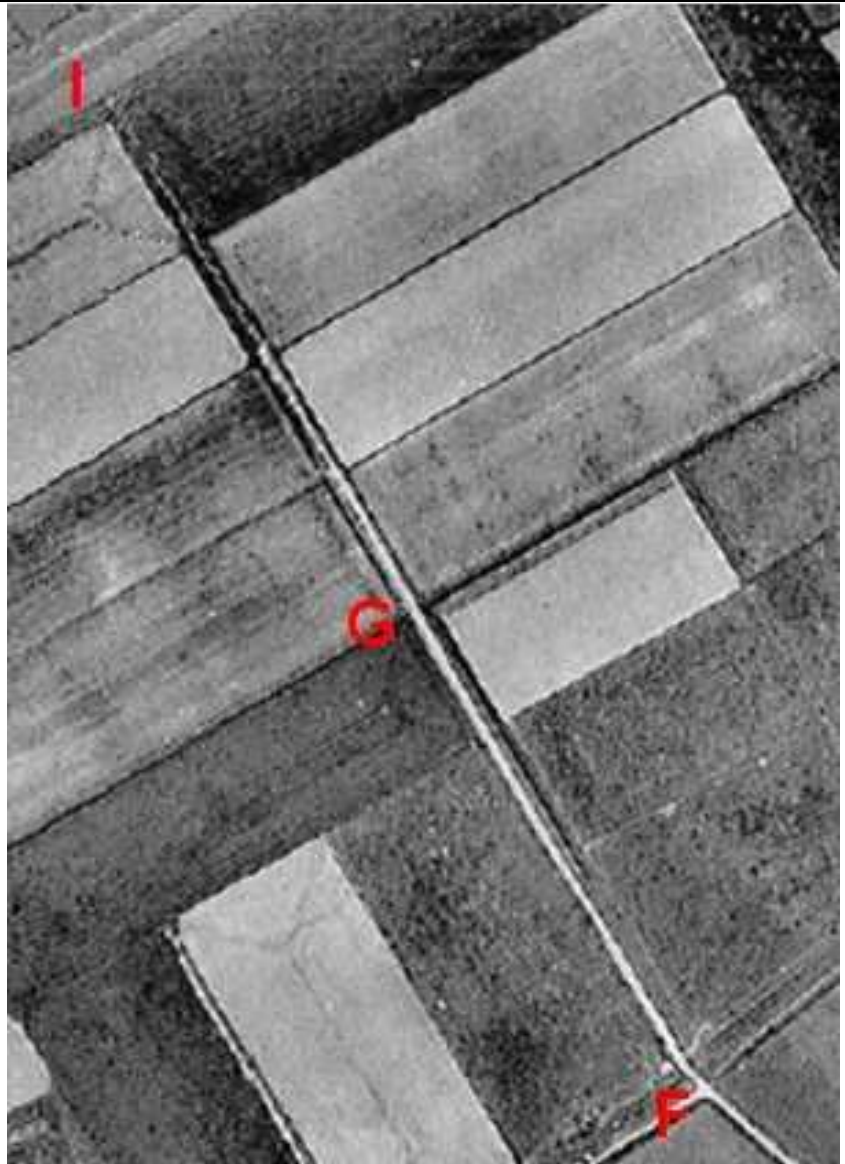
The route between points J-K can be clearly seen as a substantial track. The route between points K-L-M-N-O is not visible although a faint line may indicate the existence of a faint track between point N and point O.

Route 4	
	The route can be clearly seen along its full length as a substantial track. Access onto the 'new' embankment at point R is clearly visible.
Route 5	The route cannot be seen through the woodland.
Investigating Officer's Comments	
Route 1	The route does not appear to have existed as a substantial route at the time that the photograph was taken. No photograph was available of the section between point C and point E so no inference can be drawn with regards to this section.
Route 2	Part of the route existed in 1945 from point F to point G and continuing midway to point H but it was not a substantial farm track and did not appear to continue to point I.
Route 3	The route between points J-K existed and appeared capable of being used in 1945 but the route between point K and point O probably did not exist at that time.
Route 4	The route existed in 1945 and appeared to be capable of being used by the public.
Route 5	Trees obscure the route so no inference can be drawn.

6 Inch OS map	1955	The Ordnance Survey base map for the Definitive Map, First Review, was published in 1955 (although the date of revision of the base map was before 1930) at a scale of 6 inches to 1 mile. This map is probably based on the same survey as the 1932 25-inch map. OS Map Sheet SD 32SE.
Route 1		
Observations		The whole of the route is shown. It is defined by boundary ditches. It is not named on the map but is shown to be open and unrestricted at point A but crossed by a boundary at point D.
Route 2		
Observations		The full length of the route is shown and is defined by the boundary ditches. It is not named on the map but is shown to be open and unrestricted at point F but with a line across the route at point H.
Route 3		
Observations		The route between points J-K is shown. The old embankment is shown but the route between points K-O is not.
Route 4		
Observations		The full length of the route is shown. There appears to be a line across the route at point H suggesting some form of boundary.
Route 5		
Observations		The route is not shown. The woodland is marked and named Willow Covert. The embankment is shown and crosses a drain at point Q.
Investigating Officer's Comments		
Route 1		The route physically existed when the map was revised in the 1930s. Access from/to the route to the new embankment may have been restricted at point D.
Route 2		The route physically existed when the map was revised in the 1930s. Access from/to the route onto the new embankment may have been restricted at point I.
Route 3		The route probably did not exist between points K-L-M-N-O in the 1930s.
Route 4		The route physically existed in the 1930s. Access from/to the route onto the new embankment may have been restricted at point R.
Route 5		The route probably did not exist in the 1930s.

Aerial Photograph	1963	Colour aerial photographs taken in 1963.
Observations		
Route 1	 An aerial photograph of a rural landscape with various agricultural plots. A prominent road or path runs diagonally from the bottom right towards the top left. Three red letters are overlaid on the image: 'A' is at the bottom right corner, 'B' is in the middle of the diagonal path, and 'E' is at the top left corner. The terrain shows different textures and colors, likely representing different crops or field conditions.	
	<p>The route can be clearly seen throughout the full length from the end of the recorded length of Georges Lane at point A through to point E where it appears to provide access onto the new embankment.</p>	

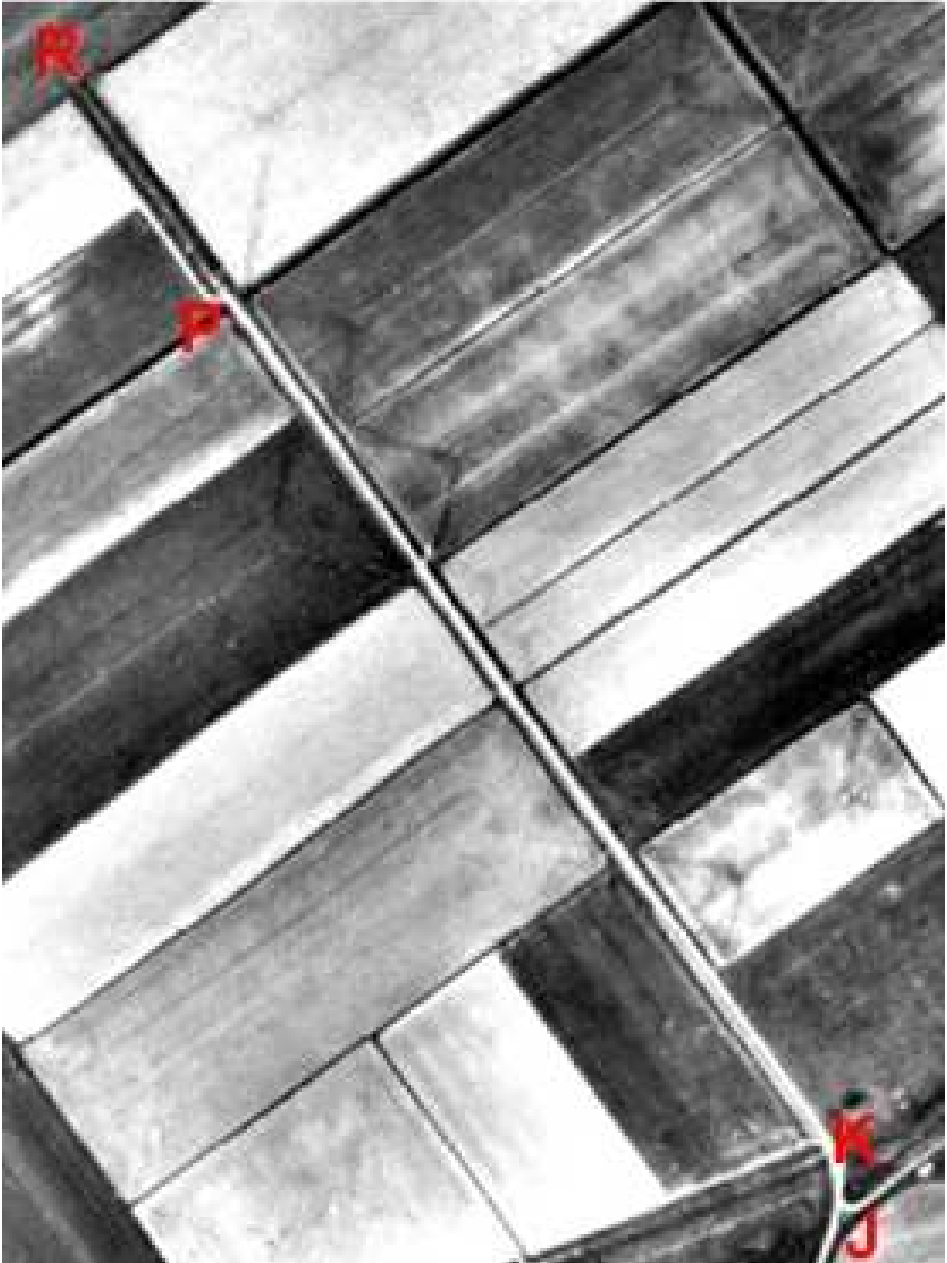
Route 2

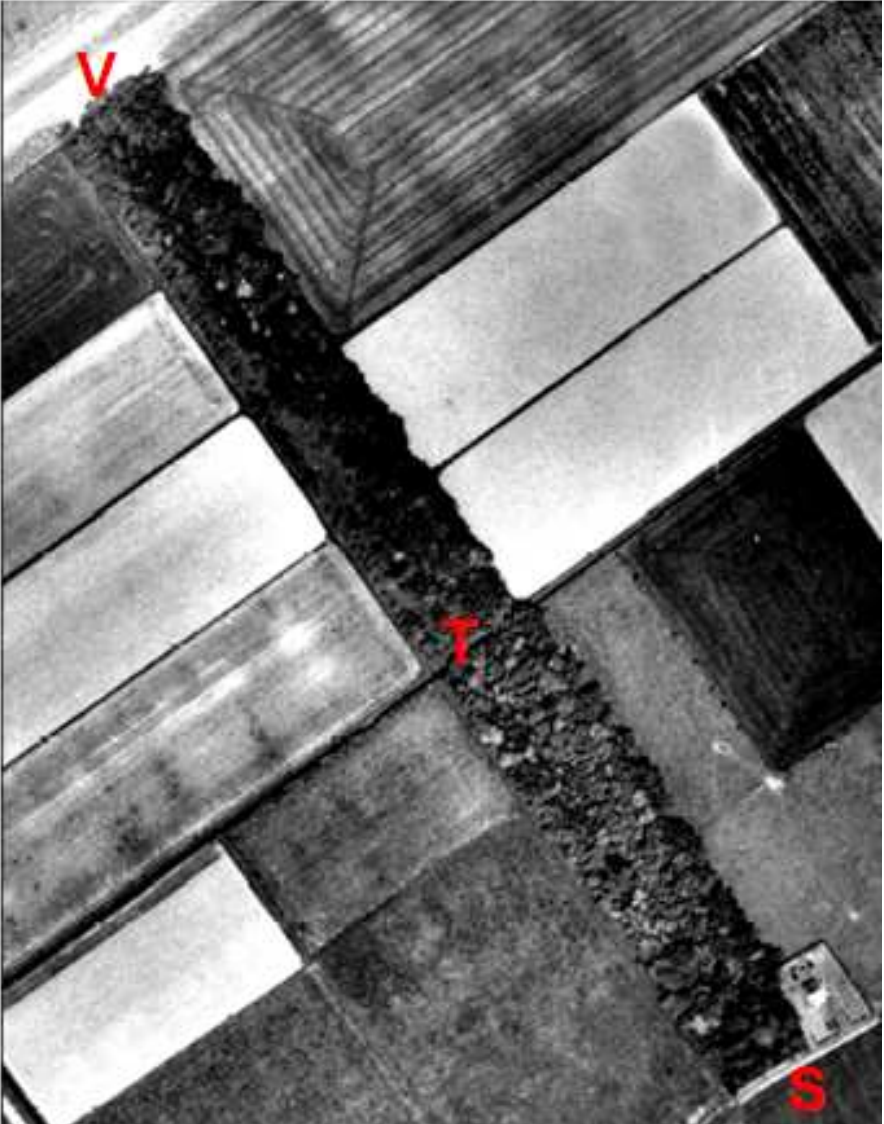


The route can be clearly seen at its junction with Charnleys Lane at point F. It appears to be a well defined track crossing a drain at point G and continuing midway to point I.


Route 3



	<p>The route between points J-K can be clearly seen as a substantial track. From point K extending along the route to point L a track is visible along the route. Beyond point L the field appears to have been cropped removing any trace of the route (if it had existed). Approaching point M the track is again visible along the old embankment to point N where it can be clearly seen crossing the drain and meeting Public Footpath 40 at point O.</p>
<p>Route 4</p>	
	<p>The route is clearly visible as a substantial track for the full length between point J and point I providing access onto the new embankment at point I.</p>

Route 5	
	<p>The route cannot be seen on the photograph. It passes through woodland and no worn track is visible. It is possible to see the drain that cuts through the woodland at point T but it is not possible to see whether there was access across the drain at this point.</p>
Investigating Officer's Comments	
Routes 1,2 4	<p>The route existed as a physical feature that appeared capable of use in 1963.</p>
Route 3	<p>The route between points J-K existed as a physical feature that appeared capable of use in 1963. Between point K and Point M the route was visible in places but it appears that it may have been subject to change due to agricultural operations. It appears that there may have been a route along the old embankment between point M and point N and a route appears to have existed between point N and O in 1963.</p>
Route 5	<p>No inference can be drawn. The route passes through dense woodland and it is not possible to see whether a walked route existed on the ground in 1963.</p>

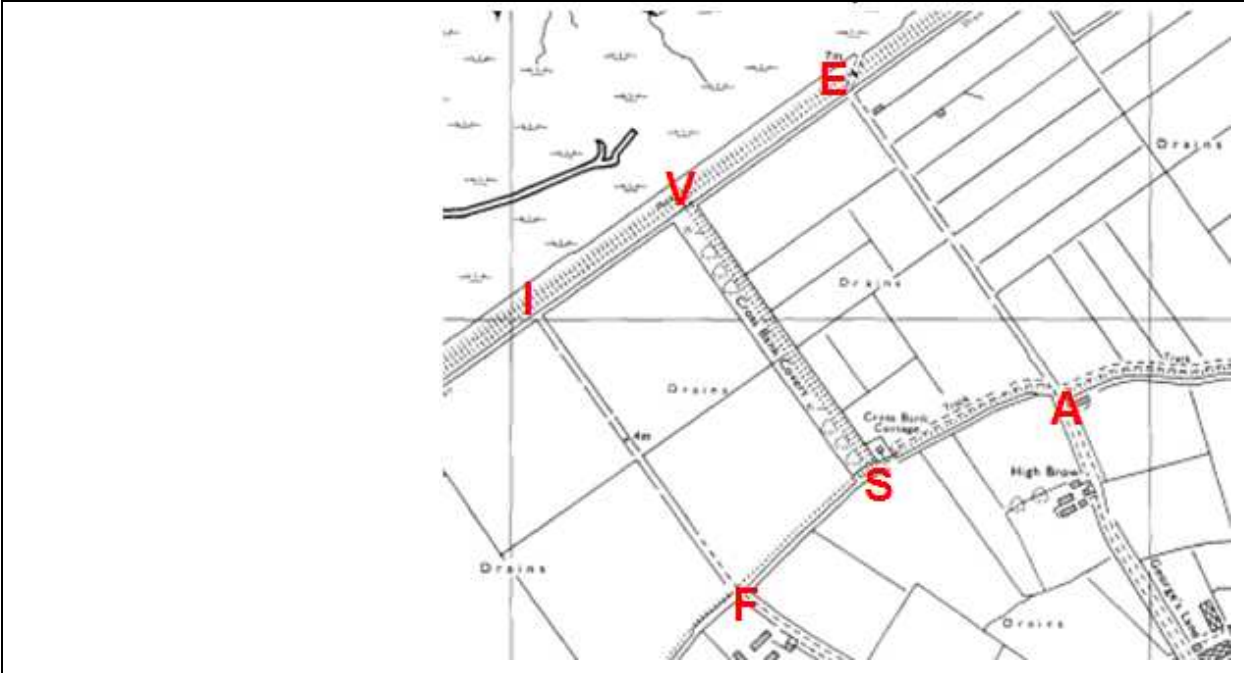
Conveyance relating to plots of land in the parishes of Southport and North Meols	1968	A conveyance entered into between the then vendors of the land and the River Crossens Drainage Board as purchasers was submitted by the Solicitor acting on behalf of the Southport Land & Property Company.
Observations		The conveyance transferred various plots of land to the purchaser including Ordnance Survey field number 742 (as numbered on the 1928 edition of the 25 inch Ordnance Survey map). Plot 742 consisted of the old sea embankment along which part of the route 3 runs between points L-M-N. The conveyance makes no reference to the existence of the route and contains provisions relating to a grant of private access rights to the owners, their tenants and other persons authorised by them to the land (but not by reference to the route).
Investigating Officer's Comments		Land affected by routes 1,2,4,5 was not included within the conveyance so no inference can be drawn in their respect. In relation to route 3 there is no reference in the conveyance to the route being considered to be a public footpath in 1968. However, it is common for conveyances not to include details of public rights of access and common for private rights of access to be included within conveyance agreements - even where public rights exist – especially where the public rights are restricted to foot or horseback and a private right of vehicular access is being granted. For these reasons, it is considered that the fact that the claimed route is not referred to in the conveyance, and the fact that private access rights are contained within the conveyance does not necessarily mean that public rights of access on foot did not exist at the time that the conveyance was entered into, or that a public rights may have subsequently come into being.
1:2500 OS map	1970	Further edition of the 1:2500 scale map revised in 1969 and published in 1970.
Routes 1,2		
Observations		The full length of the route is shown in the same way as it is depicted on the 1911 and 1955 OS maps.

Route 3	
Observations	<p>The route between points J-K is clearly shown as part of a substantial track. From point K to point L the route is shown as a track (double pecked line) adjacent to the old embankment and the OS have labelled it as a 'track' close to point L. The 'kink' in the route at point L is not visible on the map and the 'track' continues along the bottom of the old embankment, bounded from the adjacent fields towards point M. The OS sheet showing the land crossed by the route between point M-N-O was not available to view.</p>
Route 4	
Observations	<p>The route is shown in the same way as it is on the earlier 1911 and 1955 OS maps. It is clearly shown as a track between points J-K and from point K is defined on either side by drains and is labelled as a 'track' with access shown into adjacent fields. The route is crossed by a boundary line at point Q beyond which it continues to end at point O. A route is then shown to continue as a double pecked line labelled as a 'path' onto the top of the embankment.</p>
Route 5	
Observations	<p>The route is not shown. The covert is referred to as 'Bank Covert' as opposed to 'Willow Covert' on this edition of the map. Solid lines are shown across the route at point S and point U. The embankment is shown along the full length of the route and it is culverted at point T but the route is not shown.</p>
Investigating Officer's Comments	
Route 1	<p>The route physically existed and appeared capable of being used in 1969 but access may have been restricted at point D.</p>
Route 2	<p>The route physically existed and appeared capable of being used in 1969 but access may have been restricted at point H.</p>
Route 3	<p>The route physically existed between points J-K, K-L and partway towards point M in 1969. The map showing the land crossed by part of the route between points N-N-O was not available so no inference could be drawn in this respect.</p>
Route 4	<p>The route physically existed and appeared capable of being used in 1969 but access may have been restricted at point Q.</p>
Route 5	<p>The route probably did not exist in 1969.</p>



Land Conveyance	1978	A copy of this conveyance was provided by the Solicitor acting on behalf of the Southport Land & Property Company.
Observations		<p>By this conveyance the Managing Trustees of the Estate agreed with the vendors the purchase of an area of land that included all 5 of the routes under consideration with the exception of that part of route 3 between points N-O. The conveyance reserved to the vendors and their successors in title for the benefit of the owners and occupiers for the time being of Banks Marsh 'foreshaw' "(b) full rights of way at all times for agricultural purposes only over the tracks now or formerly known as Banks Pace leading to Suttons Pace and over Charnley Lane Pace between the points marked C and D and E and F on the said plan."</p> <p>Point C to Point D on the plan is the route 2 – shown on the attached plan between points F-G-H-I.</p> <p>Point E to Point F on the conveyance plan refers to the first part of Public Bridleway 47 (Banks Pace) from Banks Road to the route at point J and then the whole of route 4 between points J-K-P-Q-R.(and part of route 3 between J-K).</p> <p>There is no reference to any part of routes 1,5 or 3 between points K-L-M-N-O.</p>
Investigating Officers Comments		<p>There is no reference to the existence of public rights over any of the 5 routes in the conveyance. However, it is common for conveyances not to mention the existence of public rights even where they have been legally recorded. The conveyance reserves private rights of access across the land but it is normal for these to be included within a conveyance - particularly where it is necessary to reserve a right of private vehicular access. For these reasons, it is considered that the fact that the claimed route is not referred to in the conveyance, and the fact that private access rights are contained within the conveyance does not necessarily mean that public rights of access on foot did not exist at the time that the conveyance was entered into, or that a public rights may have subsequently come into being.</p>
Purchase agreement	1979	A copy of an unsigned agreement made between the vendors (Hindrick Heerema and Emirate Limited) and the purchaser (Nature Conservancy Council) for land at Crossens Bank.
Observations		A copy of the agreement was provided by the Solicitor acting on behalf of the Southport Land & Property Company and was appended to a letter sent to Mr Crooke (Director of the Southport Land & Property Company) from Natural England (formerly known as the Nature



		<p>Conservancy Council) regarding the 'agricultural access rights' afforded to Natural England by the Scarisbrick Estate Drainage Act 1924. The information provided does not include map of area purchased although a plan showing the access provision detailed below was included. The purchase agreement states that the purchasers are entitled to 'full rights of way at all times and for all purposes' over a track referred to as New Lane Pace - which is not a route under investigation and is not recorded as a public right of way - and also 'Full rights of way at all times for agricultural purposes only over the tracks now or formerly known as Bank Pace leading to Suttons Pace and over Charnleys Lane Pace between points C and D and E and F on the said plan'. Points C to D is the route 2 (points F-G-H-I on the attached plan) and points E-F refers to the route of Public Bridleway 48 from Ralph Wife's Lane/Station Road to the Application route at point J on the attached plan and then along the full length of route 4 (between points J-K-P-Q-R). It is stated that these access rights are enshrined in the Scarisbrick Estates Drainage Act of 1924.</p>
Investigating Officer's Comments		<p>The agreement refers to 'full rights of way at all times for agricultural purposes' along routes 2, 4 and part of 3 between points E-F). The use of the term 'Full' rights infers more than a public right of access on foot but suggests a right of access to include vehicular access for agricultural purposes.</p> <p>The fact that public rights are not referred to in the conveyance and the fact that private rights are specified does not mean that public rights of access on foot did not exist or could not have come into being.</p>
Letter from Southport and District Wildfowlers Association addressed to 'Members'	1979	<p>A letter dated 12th August 1979 and sent from the Southport and District Wildfowlers Association to their 'Members' has been submitted by the landowners.</p>
Observations		<p>The letter lists the rules relating to the commencement of shooting on 1st September 1979 and addresses the issue of access points to the marsh. The access is listed as being via the car park on Sea Road, Crossens Pumping Station, Bonny Barn Lane (to the bank), Hundred End and Georges Lane and specifies that no other access points are to be used.</p>
Investigating Officer's		<p>There is no specific reference to access being expressly granted to members of the Association along any of the</p>

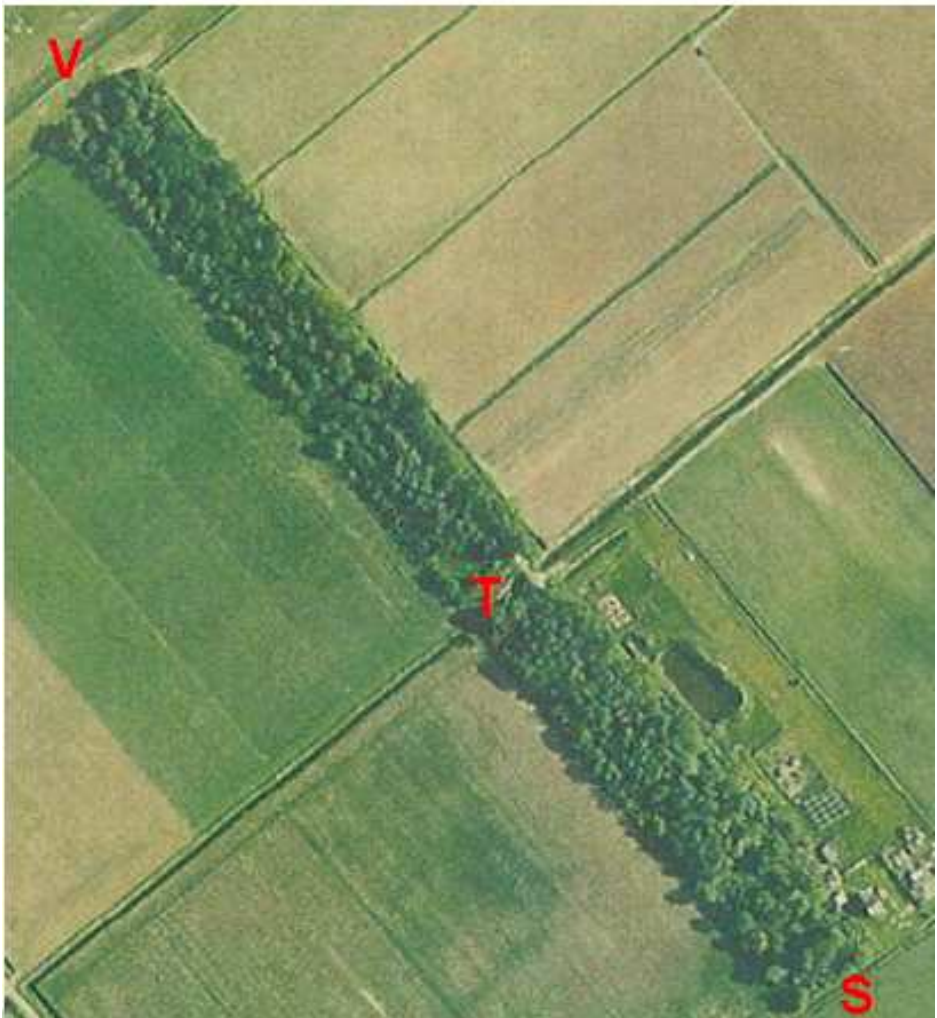
Comments		five application routes. Reference is made to one of the access points being via Georges Lane which could imply use of route 2 (points A-B-C-D) but there is no detail regarding whether use of the route from the end of Georges Lane was as of right (i.e. along a recognised public footpath) or was by permission. There is nothing within the content of the letter that would suggest that any of the five application routes were private routes.
Letter from River Crossens Drainage Board	1979	A copy of a letter from the River Crossens Drainage Board to the Secretary of the Southport and District Wildfowlers Association dated 17 th August 1979 has been submitted by the landowner together with a subsequent agreement providing members of the Association with access over the sea embankment.
Observations		The letter and subsequent agreement grants access on foot to the Association over the (new) sea embankment to gain access to the foreshore.
Investigating Officer's Comments		<p>Neither the letter or the agreement make reference to the Application routes or to any recorded public rights of way. The agreements do not specify that access has been permitted along any of the application routes but refer specifically to access over the sea embankment to get to the foreshore. A legally recorded public footpath exists that provides access onto and along the landward side of the sea embankment which could have been used to gain access to the embankment. Alternatively, use of one or all of the application routes may have been made to access the sea embankment.</p> <p>The documentation does not provide evidence that permission was expressly granted to use any of the five application routes.</p>
1:10 000 OS Map	1983	1:10,000 Ordnance Survey map viewed on Old Maps online website



Observations	Routes 1 (A-E), 2 (F-I), part of route 3 (J-K) and route 4 (J-R) are all clearly shown on the map. Route 3 is not shown along the old embankment between points K-O although the drain at point L is shown as being culverted. Route 5 through Cross Bank Covert is not shown along the embankment.
Investigating Officer's Comments	Routes 1, 2, 3 (between points J-K) and 4 all existed in 1983 and appear to have been capable of being used by the public although access may have been restricted at points D,H and Q. Route 3 is not shown to exist between

		points K-O although access across the drain at point O was possible suggesting that the route may have been available. Route 5 probably did not exist in 1983.
Aerial Photograph	1988	Aerial photographs taken in 1988 and available to view in the County Records Office.
Observations		
Route 1		
	<p>The route is visible throughout its full length and a track can be seen extending from point E beyond the end of the route onto the new sea embankment. On either side of the route are agricultural fields that are accessed from the application route.</p>	
Route 2		

	<p>The route is visible throughout its full length. On either side are agricultural fields that are accessed from the application route.</p>
<p>Route 3</p>	
	<p>The route is clearly visible between points J-K. Between point K and point L the route is visible as a faint track. Between point L and point M it is not possible to see whether the route existed and although the route appears to be available there is no visible worn track on the ground. Between point M and point N there is no obvious worn track on the ground but a worn track can be seen across the drain at point N along the application route to point O.</p>
<p>Route 4</p>	
	<p>The full length of the route is visible providing access to a number of adjacent farm fields. Between point P and point R the surface of the route appeared to be grass as opposed to compacted earth suggesting that it was used much more infrequently than the rest of the route by farm vehicles.</p>

Route 5		
	The route cannot be seen due to dense tree cover. However, access across the drain at point T is visible and appears to be via a bridge or culvert crossing.	
Investigating Officer's Comments		
Route 1, 2, 4	The route existed as a physical feature capable of being walked in 1988.	
Route 3	Whilst not clearly visible throughout its full length it is probable that the full length of the route could have been walked in 1988.	
Route 5	Dense tree cover means that no inference can be made regards whether the route existed or not. However, a means of crossing the drain at point T is visible on this photograph which concurs with the user evidence.	
Letter from Lancashire County Council to Mr Crooke	1993	A letter was sent from Lancashire County Council to Mr G Crooke (Southport Land & Property Co. Ltd) on 9 February 1993 providing Mr Crooke with an extract of the Definitive Map (First Review) for the area that included the land over which the five application routes run.

Observations		The extract of the Map was provided at Mr Crookes request. The landowners have submitted that because the Map does not show the application routes they are not public footpaths.
Investigating Officer's Comments		The Definitive Map (and Statement) is the legal record of Public Rights of Way and is conclusive with regards to the routes shown. However, unrecorded rights of way may also exist – hence the procedure whereby applications can be made to record those rights. The fact that the map does not record the application routes as public footpaths – or that the County Council supplied a copy of the Map with no reference to the application routes - does not mean that the routes could not have already existed as public footpaths in 1993, only that if they did exist those rights were unrecorded.
Public Inquiry decision into Order made under the Wildlife and Countryside Act 1981 to upgrade Footpaths 47, 48 and 49 to Bridleway	2002	In 2002 a public inquiry was held to determine whether an Order should be confirmed to record North Meols Footpaths 47, 48 and 49 as public bridleways. The ways that were the subject of the Order were all on land owned by the Southport Land & Property Co Ltd who objected to the confirmation of the Order. A public inquiry was held and the Order subsequently confirmed.
Observations		The Solicitor acting on behalf of the landowners has submitted that if the application routes were being used by the public at the time of the public inquiry then reference would have been made to them at the inquiry and by the Inspector in her decision letter.
Investigating Officer's Comments		The present Application routes were not the subject of the inquiry and would have been outside the remit of the Inspector and could not have been considered at that time. No inference can be drawn.
North Meols Parish Plan	2004	North Meols Parish Council published a Parish Plan in 2004. A full copy of the plan is available in their records.
Observations		The plan contained a number of proposed actions and timescales for implementation. With regards to public access the only 'action' listed was the proposal to secure a right of access to Ralph Wife's Lane – which referred to a route across land owned by the Environment Agency and Southport Land & Property Co. Ltd. Within the landowner's submissions it is argued that the fact that the Parish Plan did not include access to any of the five application routes adds weight to their argument

		that the routes were not being used and that there was no need identified for the routes to be created as public paths.
Investigating Officer's Comments		<p>The Parish Plan was published six years after use of the application routes was effectively challenged by the submission of a Section 31(6) Statutory declaration (see below).</p> <p>Part of the route along The Sluice providing access to Ralph Wife's Lane was also included within the section 31(6) declaration but is also known to have been physically blocked which may account for why it was included in the Parish Plan.</p> <p>Having spoken to the applicant and members of the Parish Council it appears that the fact that none of the five application routes are included in the plan may be because access along them had not been physically blocked at the time that the Parish Plan was prepared and although the Section 31(6) deposit had been lodged the local community may not have been aware that the routes were not recorded as public rights of way and therefore did not include the need to seek access to them in the plan.</p>
Definitive Map Records		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.
Parish Survey Map	1950-1952	The initial survey of public rights of way was carried out by the parish council in rural district council areas and the maps and schedules were submitted to the County Council. In the case of urban districts and municipal boroughs the map and schedule produced was used, without alteration, as the Draft Map and Statement.
Extract from the Parish Survey map for North Meols		

Observations	
Route 1	The route has been drawn on the parish survey map and numbered '45'. The parish survey card, completed in 1952, records the route as a 'Roadway' and describes it as a 'well defined roadway, continuation of Georges Lane to the embankment'.
Route 2	The route has been drawn on the parish survey map and numbered '46'. The parish survey card, completed in 1952, records the route as a 'Roadway' and describes it as a 'cindered roadway, continuation of Charnleys Lane to river embankment'.
Route 3, 4, 5	The route was not shown on the parish survey map.
Draft Map	The parish survey maps and cards were passed to the County Council who then prepared the Draft Map of Public Rights of Way. The Draft Maps was given a 'relevant date' (1 st January 1953) and notice was published that it had been prepared. It was placed on deposit for a minimum period of 4 months on 1 st January 1955 for the public, including landowners, to inspect 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.
Extract of the Draft Map for West Lancashire Rural District	<p>The image shows a section of a draft map with several routes highlighted in purple. The routes are numbered in blue: 38, 39, 40, 45, 46, 48, and 49. Red letters are placed at various points along the routes: 'I' and 'V' on route 40; 'E' at the top right; 'A' and 'S' on route 48; and 'F' at the bottom. The map shows a grid of land parcels, a river at the top, and a road labeled 'Georges Lane' at the bottom. Other labels include 'GREAT ST. JOHN'S CHURCH' and 'GEOFFREY LANE'.</p>
Observations	
Route 1	The route was shown on the Draft Map coloured purple which indicated that it was to be recorded as a public footpath. It was numbered 45. The Draft Statement described the route as a 'Road Used as Public Path' from junction of nos. 48 and 49 to the river embankment. An objection to the inclusion of the route on the Draft Map (numbered 638) was lodged by T Booth, Agent for The Trustees of the Scarisbrick Estate on 29 th December 1953 stating that "No public right of way is admitted". The reason for the objection is stated as being that the route is a "Farmers' accommodation road only" and evidence in support of the objection detailed as "Notice

	<p>board indicating private ownership; etc."</p> <p>An observations sheet included in the file notes that when consulted by the County Council both the District and Parish Council thought that the path should be retained and under the title 'CPRE and other voluntary bodies' is the comment 'Claim as public path'.</p> <p>A handwritten note attached says that the path was not shown on the 1845 Ordnance Survey map which shows the area as 'Banks Sands' and makes the comment that the land has now been reclaimed.</p> <p>The 1894 Ordnance Survey had also been checked and it was noted that the area was shown in the same way as on the 1845 map.</p> <p>The decision of the subsequent hearings held on 22 July 1955 and 18 August 1955 – which dealt with the footpaths numbered 42, 43, 44, 45 (route 1), and 46 (route 2) was to delete all of the paths listed above from the Draft Map.</p> <p>The Draft Map and Statement is therefore shown with the application route crossed out.</p>
Route 2	<p>The route was shown on the Draft Map coloured purple which indicated that it was to be recorded as a public footpath. It was numbered 46. The Draft Statement described the route as a 'Road Used as Public Path' from junction of nos. 47 and 48 to the river embankment.</p> <p>An objection was lodged to the inclusion of the claimed route on the Draft Map by T Booth on behalf of the Trustees of the Scarisbrick Estate on 29 December 1953 stating that 'No public right of way is admitted' and that the route is only a farmers' accommodation road. In support of the objection it is stated that there is a 'notice board indicating private ownership, etc.'</p> <p>The notes included within the file state that when consulted the parish and district council believed that the path should be retained and that the CPRE and other voluntary bodies 'claim path as public'.</p> <p>Notes on the 1845 and 1894 Ordnance Survey state that the path was not shown and that the area was indicated as 'Banks Sands' with a comment that the land had now been reclaimed.</p> <p>The decision of the subsequent hearings held on 22 July 1955 and 18 August 1955 – which dealt with the footpaths numbered 42, 43, 44, 45 (Route 1), and 46 (Route 2) was to delete all of the paths listed above from the Draft map.</p> <p>The Draft Map and Statement is therefore shown with the claimed route crossed out.</p>

Routes 3, 4, 5	The route was not shown on the Draft Map and there were no objections lodged regarding the fact that it had not been shown.	
Provisional Map	Once all these representations were resolved, the amended Draft Map became the Provisional Map which was published in 1960, and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Quarter Sessions.	
Observations	None of the five routes were shown on the Provisional Map and there were no objections lodged regarding the fact that they had not been shown.	
The First Definitive Map and Statement	The Provisional Map, as amended, was published as the Definitive Map in 1962. Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders and creation orders be incorporated into a Definitive Map First Review	
Observations	None of the five routes are shown on the first Definitive Map.	
Investigating Officer's Comments	<p>The parish council appeared to consider that Application routes 1 & 2 were used by the public in 1952. The objection on behalf of the landowner was considered and the routes found not to exist at the time.</p> <p>Application routes 3, 4 & 5 were not considered to be public rights of way that should be recorded on the Definitive Map and Statement in the 1950s.</p>	
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 County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date in 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.	
Observations	None of the five routes are shown on the Revised Definitive Map and Statement of Public Rights of Way (First Review).	
Investigating Officer's Comments	The Application routes were not considered to have changed status by the 1960s.	
Northern Parishes Local Plan: Proposals Map	1989	The Plan was devised by West Lancashire Borough Council and an extract was submitted by the Solicitor acting on behalf of the Southport Land and Property Co. Ltd.
Observations		The Plan shows route 2 marked up as 'a recreation footpath' labelled as RC 7A. None of the other Application routes are shown. The labelling refers to text within the policy document and the term 'recreational footpath' has no legal status.

Investigating Officer's Comments		It has not been possible to establish the reason for the inclusion of this route in the plan. It may suggest that use of the route by the public had been challenged or that the route had been identified as a good link that the Borough Council wished to promote but without further information from the Borough Council no real inference can be made.
Statutory Deposit and Declaration made under Section 31(6) Highways Act 1980	1998	<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 a certain period from the date of the deposit (or 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). The renewal period was originally 6 years, extended to 10 years and recently to 20 years.</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		There is one Highways Act 1980 Section 31(6) deposit lodged with the County Council for the area over which all five of the Application routes run. The deposit was submitted by Mr GB Crooke and Mrs B Crooke in March 1998 and was renewed on 26 May 2004, 9 March 2010 and 2 February 2012. Within the details of the deposit there is no acknowledgement or acceptance that any of the Application routes are public rights of way.
Investigating Officer's Comments		There is a clear indication from the owners of the land that they did not acknowledge the existence or intend to dedicate any of the Application routes as public rights of way from March 1998 onwards.

None of the land crossed by the five Application routes is designated as access land under the provisions of the Countryside and Rights of Way Act 1990.

The new embankment on which all five of the application routes terminate (at points O, R, I,V and E) is designated by the County Council as Banks Marsh Embankment

biological heritage site together with Cross Bank Covert which includes the whole of Application route 5 shown between points S-T-V-U on the attached plan.

Approximately 100 metres of the Application route 1 from point D extending south east to point C is within the boundary of an area designated as a Site of Special Scientific Interest.

Landownership Information

All of the land affected by the five applications is currently 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 from points D-E (route 1), points H-I (route 2), points N-O (route 3), points Q-R (route 4) and points U-V (route 5) which is owned by the Environment Agency.

Southport Land & Co Ltd purchased the land in 1990 and explained in their submissions that the land was formerly part of the Scarisbrick Estate.

Summaries

Route 1

It is considered very unlikely that the route physically existed until the marsh was drained and the new sea defence embankment constructed around 1895. The route was first shown to exist on the hand drawn plan attached to a letter sent by John Bentham to the Scarisbrick Estate Office in that year.

The first Ordnance Survey (OS) map to show the route was the 25 inch OS map published in 1910-11 (and revised 1908-1909). The route is subsequently shown on all OS maps examined and is also clearly shown on aerial photographs taken in the 1940s, 1960s and 1980s. More recent OS digital maps, aerial photographs and a site inspection carried out in 2013 all confirm that the route has physically existed from 1895 until the present day on the same alignment.

It therefore appears that the route has existed since at least 1895 and would probably have been capable of being used by the public on foot since that time. However, the OS maps and aerial photographs examined all show the existence of a boundary across the route at point D and it is reasonable to conclude that a gate (which may, or may not have been padlocked) existed at this location.

No documentary evidence has been found to show that the route was dedicated as a public right of way when it was originally constructed as part of the scheme to reclaim the marsh and the Scarisbrick Estate papers examined suggest that it was originally constructed as a private estate road.

The 1910 Finance Act documentation shows the route excluded from the numbered hereditaments and appears to have been considered as being part of Georges Lane. This may suggest that at the time that the valuation was carried out the landowner considered the route to be part of the public highway.

The maps derived from the 1929 'Handover Maps' do not show the route as part of Georges Lane but it is known that unsurfaced highways were often left off the maps and it is possible that this is why it was not shown. Current highway records record the first 122 metres of the route from point A as an unadopted highway but no further information can be found regarding when or why this part of the route was recorded.

The Authentic Map Directory of South Lancashire published circa 1934 shows the route and labels it 'Georges Lane'. This commercially produced map is said to have been produced with the assistance of the various municipal and district surveyors who helped incorporate all new street and trunk roads. The scale selected enabled them to name 'all but the small, less-important thoroughfares' so it is possible that its inclusion on the map reflected a belief that the route formed part of a public highway at that time but this map, on its own would not provide strong enough evidence of the public status of the route at that time.

In 1952 North Meols Parish Council included the route on the parish survey map and described it as a well defined roadway and as a continuation of Georges Lane to the embankment. The County Council took this information and prepared the Draft Map but its inclusion was objected to by the landowners (the Scarisbrick Estate) who stated that no right of way was admitted and that the route was a farm accommodation road only. A formal hearing procedure decided, in 1955, that the path should not be recorded on the map as a public footpath.

None of the copies of various conveyance documents submitted by the current landowner make reference to the existence of the route being a public footpath but it is submitted that this does not mean that the route could not have become a public right of way at some point since its construction. Private rights differ from public rights and are normally included within land conveyances – particularly where it is necessary to reserve a private vehicular right even if a public right (which can be altered or extinguished) already exists.

In conclusion, there is map and documentary evidence to support the physical existence of the route from 1895 to the present day suggesting that it has existed since that time and was capable of use by the public.

However, there is no map or documentary evidence suggesting that the route was dedicated as a public right of way when it was originally constructed or that it has been expressly dedicated as such since that time. The Finance Act records and Authentic Map Directory of South Lancashire suggest that the route may have been considered to be a public highway but do not provide strong enough evidence of dedication on their own, particularly as the status of the route was considered under a legal procedure in 1955.

The Parish Council believed the route to be public in 1952 but this was successfully challenged by the landowners as part of the legal process leading to the publication of the Definitive Map providing strong evidence that the route did not exist as a public footpath in 1955. A further indication that there was no intention to dedicate the route is evidenced by a statutory declaration submitted under section 31(6) Highways Act in 1998 by the current landowner.

Route 2

It is considered very unlikely that the route physically existed until the marsh was drained and the new embankment constructed around 1895 and it is first shown on a hand drawn plan attached to a letter written by Mr John Bentham and addressed to the Scarisbrick Estate Office in 1895.

The first OS maps to show the route were the 25 inch OS maps published in 1910-11 (and revised 1908-1909). The route is subsequently shown on all subsequent OS maps examined and also aerial photographs taken in the 1940s, 1960s and 1980s. More recent OS digital maps, aerial photographs and a site inspection carried out in 2013 all confirm that the route has existed from at least 1895 until the current day.

No documentary evidence has been found to show that the route was dedicated as a public right of way when it was originally constructed and from the Scarisbrick Estate papers examined it appears likely that it was originally constructed as a private estate road.

The 1910 Finance Act documentation shows the route excluded from the numbered hereditaments and appearing to form part of Charnleys Lane. This suggests that at the time of the valuation the landowner may have considered the route to be part of the public highway.

The maps derived from the 1929 'Handover Maps' do not show the route as forming part of Charnleys Lane. However unsurfaced highways were often left off the maps and it is possible that this is why it was not shown. Current highway records record the first 340 metres of the route as a footway but no information can be found regarding when or why this part of the route was recorded in this way.

The Authentic Map Directory of South Lancashire published circa 1934 shows the route but does not name it suggesting that it existed as a physical track possibly capable of being used at that time but it does not provide strong evidence regarding public status.

In 1952 North Meols Parish Council included the route on the parish survey map and described it as a continuation of Charnleys Lane to the embankment. The County Council took this information and prepared the Draft Map. The landowners objected to its inclusion stating that no right of way was admitted and that the route was a farm accommodation road only. A formal hearing procedure decided, in 1955, that the path should not be recorded on the map as a public footpath.

None of the copies of various conveyance documents submitted by the current landowner make reference to the existence of the route but it is submitted that this does not mean that it could not have become a public right of way at some point since its construction. Private rights granted along the route differ from public rights and are normally included within land conveyances – particularly where it is necessary to reserve private vehicular rights even if a public right (which can be diverted or extinguished) already exists.

In conclusion, there is map and documentary evidence to support the physical existence of the route from 1895 to the present day suggesting that the route was capable of being used by the public. The map evidence from 1911 onwards shows the existence of a boundary across the route at point H and it is reasonable to conclude that a gate (which may, or may not have been padlocked) existed at this location.

However, there is no map or documentary evidence suggesting that the route was dedicated as a public right of way when it was originally constructed. The Finance Act records suggest that the route may have been considered to form part of Charnleys Lane in 1910 but it is submitted that this does not provide strong enough evidence of dedication on its own.

The Parish Council believed the route to be public in 1952 but this belief was successfully challenged by the landowners (the Scarisbrick Estate) as part of the legal process leading to the publication of the Definitive Map providing strong evidence that the route did not exist as a public footpath in 1955. A further indication that there was no intention to dedicate the route is evidenced by a statutory declaration submitted under section 31(6) Highways Act in 1998 by the current landowner.

Route 3

It is considered very unlikely that the route physically existed until the marsh was drained and the new embankment (to which it connects at point O) was constructed by 1895.

The first edition OS map published in 1848 shows the route between points J-K and the old embankment but not the Application route. The 1892 25 inch OS map also shows the route between points J-K and shows the old embankment with the letters 'F.P' close to point M suggesting that a route may have existed along the embankment at that time. However, the new embankment had not been constructed at that time and access along the full length of the route probably would not have been available.

With the exception of the route between points J-K the Ordnance Survey mapping evidence of the existence of the route is limited.

The 1:25,000 Ordnance Survey map published in 1970 shows the route to exist between points J-K-L and partway to point M suggesting that a route capable of being walked existed to that point in 1970. However the map does not extend as far as points M-N-O so it is not possible to see whether the whole route existed at that time.

The 1:10,000 OS map published in 1983 does not show that the route between points K-O but it can be seen from that map that access across the drain at point N would have been possible suggesting that the route may have been available.

The best supporting evidence to be considered in conjunction with the user evidence are the aerial photographs. All of the aerial photographs inspected showed the section of the route between points J-K.

The 1940 aerial photograph clearly shows a faint line across the culverted drain between points M-N-O. The 1963 aerial photograph provides better evidence that a worn track may have existed with the route between points K-M partially visible but appearing to have been disturbed by agricultural activities. Between point M-N-O it appeared that a worn track existed in 1963.

The 1988 aerial photograph provided evidence that the whole length of the route could have been walked at that time – although only a faint trace of the route can be seen on the ground.

The 1910 Finance Act shows the route between points J-K excluded from the numbered hereditaments with the route appearing to be considered as an extension of Bank Pace (now Public Bridleway 47). The remaining length is included within the numbered hereditaments for which no deductions have been made for a right of way suggesting that it probably did not exist as a public footpath at that time (or possibly that if it did exist, the landowner did not think it worth claiming a deduction).

The Authentic Map Directory of South Lancashire published circa 1934 does not show the route. It shows part of the old embankment between points M-N-O connecting to the new embankment suggesting that access across the drain may have been available at that time but this does not provide evidence of public rights.

The route was not shown on any of the Definitive Map records that were inspected suggesting that it was not considered to be a public right of way in the 1950s.

In conclusion, there is some limited map and aerial photography evidence to support the physical existence of the route from 1910 onwards – the most useful being the aerial photographs - but there is no clear and consistent evidence showing the physical existence of the full length of the route.

A statutory declaration submitted by the current landowners in 1998 under section 31(6) Highways Act 1980 provides a clear indication from the owners of the land that they did not acknowledge the existence of or intend to dedicate the claimed route as a public right of way from March 1998.

Route 4

It is considered very unlikely that the route physically existed until the marsh was drained and the new embankment constructed by around 1895 and the route is shown on a hand drawn plan attached to a letter sent by Mr John Bentham to the Scarisbrick Estate Office in 1895.

The first OS maps to show the route were the 25 inch OS maps published in 1910-11 (and revised 1908-1909). The route is shown on all subsequent OS maps examined and also on aerial photographs taken in the 1940s, 1960s and 1980s.

More recent OS digital maps, aerial photographs and a site inspection carried out in 2013 all confirm that the claimed route has existed from 1895 to the current day.

No documentary evidence has been found to show that the route was dedicated as a public right of way when it was originally constructed and it is likely that it was originally constructed as a private estate road.

The 1910 Finance Act shows the route excluded from the numbered hereditaments with the route appearing to be considered as an extension of Bank Pace (now Public Bridleway 47). This suggests that at the time of the survey the landowner may have considered the route to be part of the public highway.

The Authentic Map Directory of South Lancashire published circa 1934 shows the route but does not name it suggesting that it existed as a physical track at that time but does not provide strong evidence regarding public status.

The route is not shown on any of the definitive map records that have been inspected suggesting that it was not considered to be a public right of way in the 1950s.

None of the copies of various conveyance documents submitted by the current landowner make reference to the existence of the route as a public footpath but it is submitted that it is not uncommon for conveyances not to mention the existence of public rights – even if they are legally recorded.

The 1978 conveyance examined reserved 'full rights of way for agricultural purposes only' to the vendors and their successors in title along the route. This same right is granted to the Nature Conservancy Council in 1979 when they purchased the outer marsh and reference is made to the access agreement dating back to the Scarisbrick Estate Drainage Act 1924 which granted private rights of access to owners and occupiers of the marsh land.

However, it is submitted that it is normal for private rights of access to be included within conveyances – particularly where it is necessary to reserve a private vehicular right - even if a public right (which can be altered or extinguished) already exists. It may also be the case that a public right has come into existence after the date of the conveyance.

In conclusion, there is map and documentary evidence dating back to 1895 to support the physical existence of the route suggesting that it was probably capable of use by the public since that time.

However, there is no documentary evidence suggesting that the route was dedicated as a public right of way when it was originally constructed or that it has been dedicated since that time. The Finance Act records suggest that the route may have been considered to be a public highway in 1910 but it is submitted that this does not provide strong enough evidence of dedication on its own.

The route was not considered to be a public right of way in the 1950s when the parish council compiled the parish survey map that formed the starting point in the process to record public rights of way

A further indication that there was no intention to dedicate the route is evidenced by a statutory declaration submitted under section 31(6) Highways Act in 1998 by the current landowner.

Route 5

It is considered very unlikely that the route physically existed until the marsh was drained and the new embankment constructed around 1895 and the woodland and embankment along which the route runs was first shown to exist on a hand drawn plan attached to a letter sent to the Scarisbrick Estate Office by Mr John Bentham in 1895.

The first OS map to show the marsh after it had been drained was the 25 inch OS maps published in 1910-11 (and revised 1908-1909). The route was not shown on the map and is not shown on subsequent OS maps examined.

The aerial photographs taken in the 1940s, 1960s and 1980s were examined but are inconclusive as the route, if it did exist, cannot be seen due to the dense tree cover.

No documentary evidence has been found to show that the route was dedicated as a public right of way when the marsh was drained and the embankment constructed.

The 1910 Finance Act shows the route included within hereditament 1142 and no deduction is claimed for a public right of way suggesting that the route did not exist as a public right of way or that the landowner did not acknowledge the existence of it.

The Authentic Map Directory of South Lancashire published circa 1934 does not show the route but shows the culverted drain at point T suggesting that access may have been available along the route at that time but does not provide strong evidence regarding public status.

The route is not shown on any of the definitive map records that have been inspected suggesting that it was not considered to be a public right of way in the 1950s or 1960s.

A statutory declaration submitted by the current landowners in 1998 under section 31(6) Highways Act 1980 provides a clear indication from the owners of the land that they did not acknowledge the existence of or intend to dedicate the route as a public right of way from March 1998.

In conclusion, there is no map or documentary evidence to support the physical existence of the route from 1895 to the present day. However, a worn track was found to exist on the ground when the route was inspected in 2014 and if this had existed prior to 1998 it would not have shown up on the aerial photographs due to tree cover and may not have been included in OS map revisions which were often carried out with the help of aerial photography in rural areas.

There is no map or documentary evidence suggesting that the route was dedicated as a public right of way when it the marsh was drained and the embankment constructed or that it has been dedicated since that time. The Finance Act records do not support the view that the route existed as a public footpath in the early 1900s.

A further indication that there was no intention to dedicate the route is evidenced by a statutory declaration submitted under section 31(6) Highways Act in 1998 by the current landowner.

County Secretary & Solicitor's Observations

Information from the applicant

Route 1

In support of the application the applicant has provided 69 user forms, the users acknowledge the route as follows:

0-10(10)	11-20(2)	21-30(14)	31-40(18)	41-50(12)	51-60(6)
61-70(4)	71-80(2)				

56 users specify they have used the way on foot. The main reasons for using the route are walking, leisure, recreation, bird watching, exercise, dog walking, picnics, shooting (but not recently), fishing, visiting friends and family, horse riding, running and cycling.

The use per year varies from 5-6 times, 30+ times, 100-150 times, to weekly, daily, 2-3 times per week and to over 1000 times per year.

All the users that specified stated the way has always run over the same route. 31 users state there is a stile, 11 state there is a gate and 16 other users state 'yes' to there being any stiles, gates, fences. 21 users mention a locked gate / throughway, but only 3 out of all the users mention this has prevented them from using the way, everyone else stated 'no prevention'.

All but 3 users have never been stopped when using the way but many mention of hearing someone being stopped since 2012. 4 users state they have been told by an owner or tenant that the land crossed was not a public right of way. 30 users state they have seen notices / signs recently stating 'private' or 'trespassers will be prosecuted'.

Route 2

In support of the application the applicant has provided 69 user forms, the users acknowledge the route as follows:

0-10(11)	11-20(2)	21-30(10)	31-40(17)	41-50(11)	51-60(8)
61-70(6)	71-80(2)	81-90(1)			

63 users specify they have used the way on foot. The main reasons for using the way are recreational purposes, bird watching, walking, leisure / exercise, dog walking, for picnics, to get onto the marsh, to go fishing and to visit relatives or because the route is part of a circular route.

The use per year varies from once or twice, to more than 10, monthly, over 30, weekly, over 100, over 300 and daily.

All users that specified stated that the route has run over the same line. 27 users stated 'yes' to there being any stiles, gates or fences on the route. 11 users stated there wasn't any. 21 users stated there is a stile and 3 mention a gate. 22 users state the gate/stile/fence was locked and 21 state it was unlocked. However 57 users state that they were not prevented from using the way but 5 users state they had been prevented recently (2012).

5 users have been stopped when using the way and 22 users have heard of someone else being stopped, most users state this has been recently (2012). 5 users have also been told by an owner or tenant that the land crossed was not a public right of way.

31 users state they have seen signs such as 'private', most of them state these signs have only appeared recently. 33 users claim they have never seen any signs or notices.

Route 3

In support of the application the applicant has provided 42 user forms, the users that specified acknowledge the route as follows:

0-10(5)	11-20(2)	21-30(7)	31-40(11)	41-50(8)	51-60(5)
61-70(1)	71-80(1)				

41 users specify they have used the way on foot. The main reasons for using the way are recreational purposes, bird watching, walking, leisure / exercise, dog walking, to gain access, training horses and for jogging.

The use per year varies from between 1-10, over 20, 30-40, over 50, 60-70, 100, 208, monthly, weekly to daily.

All users that specified stated that the route has run over the same line, however 3 users said it hasn't but did not specify any details. 20 users stated 'yes' to there being any stiles, gates or fences on the route. 15 users stated there wasn't any. 5 users state the gate/stile/fence was locked and 16 state it was unlocked. However 32 users state that they were not prevented from using the way but 4 users state they had been prevented recently (2012).

4 users have been stopped when using the way and 10 users have heard of someone else being stopped, most users state this has been recently (2012). 1 user has also been told by an owner or tenant that the land crossed was not a public right of way.

19 users state they have seen signs such as 'private', 18 users claim they have never seen any signs or notices.

Route 4

In support of the application the applicant has provided 51 user forms, the users that specified acknowledge the route as follows:

0-10(7)	11-20(2)	21-30(8)	31-40(13)	41-50(8)	51-60(4)
61-70(2)	71-80(2)				

50 users specify they have used the way on foot. The main reasons for using the way are recreational purposes, bird watching, walking, leisure / exercise, dog walking, visiting friends / family, to get to the marsh and fishing.

The use per year varies from five or six, 10-20, 35-40, to monthly, 80-96, 250, weekly and daily.

All users that specified stated that the route has run over the same line, however one user said it hasn't but did not specify any details. 32 users stated 'yes' to there being any stiles, gates or fences on the route. 12 users stated there wasn't any. 17 users state the gate/stile/fence was locked and 20 state it was unlocked. However 40 users state that they were not prevented from using the way but 3 users state they had been prevented recently (2012).

8 users have been stopped when using the way and 16 users have heard of someone else being stopped, most users state this has been recently (2012). 7 users have also been told by an owner or tenant that the land crossed was not a public right of way.

24 users state they have seen signs such as 'private', most of them state these signs have only appeared recently (2010, 2011 and 2012). 23 users claim they have never seen any signs or notices.

Route 5

In support of the application the applicant has provided 51 user forms, the users that specified acknowledge the route as follows:

0-10(10)	11-20(1)	21-30(5)	31-40(15)	41-50(6)	51-60(5)
61-70(4)	71-80(1)	81-90(0)	91-100(1)		

46 users specify they have used the way on foot. The main reasons for using the way are recreational purposes, bird watching, walking, leisure / exercise, dog walking, picnics, cycling, to play and to gain access.

The use per year varies from once or twice, to more than 10, monthly, over 30, weekly, 60-80, over 100, 250- 300 and daily.

All users that specified stated that the route has run over the same line, however one user said it hasn't but did not specify any details. 23 users stated 'yes' to there being any stiles, gates or fences on the route. 18 users stated there wasn't any. 8 users state the gate/stile/fence was locked and 34 state it was unlocked. However 41 users state that they were not prevented from using the way but 7 users state they had been prevented recently (2012).

6 users have been stopped when using the way and 11 users have heard of someone else being stopped, most users state this has been recently (2012). 7 users have also been told by an owner or tenant that the land crossed was not a public right of way.

20 users state they have seen signs such as 'private', most of them state these signs have only appeared recently (2010, 2011 and 2012). 25 users claim they have never seen any signs or notices.

Southport Land and Property Co. Ltd

An objection has been received from Yates Barnes Solicitors who have been instructed by Southport Land & Property Co. Ltd who are the landowners for most of the land involved, they object to all 5 applications.

Brief

The Scarisbrick Estate has had a shoot on the land for generations and their Client Company have numerous statements from people involved in the shoot confirming there was no footpath through the wood known as 'Cross Bank Covert' and that there were pens in the wood for rearing game birds such as pheasants and partridge. They also have statements from key members of the Southport and District Wildfowlers Association confirming there was no footpath through Cross Bank Covert (Route 5).

Their Client Company have also obtained statements from tenant farmers, from existing and past members of the estate shoot all confirming that all the routes applied for are farm tracks used to access the fields. These statements confirm the existence of signage stating private land that trespassers will be prosecuted but a number of these signs have been vandalised and removed.

Objection

Summary and conclusions of the objection submitted by Yates Barnes Solicitors on behalf of Southport Land & Property Company Ltd

Yates Barnes Solicitors confirm that a deposit under Section 31(6) of the Highways Act 1980 was made in January 1998 and that any evidence and events post 1998 should be ignored. However, the Environment Directorate records show the notice was lodged in March 1998.

The embankment to the north is owned by Natural England which has signage adjoining the embankment erected by Natural England confirming that the land (Embankment) is private land.

The embankment enabled new land to be drained under the Scarisbrick Estate Drainage Act of 1924 which gave to the commissioners statutory rights access to the land for statutory purposes only.

In May 1946 a Tenancy Agreement imposed an obligation upon tenant farmers to prevent to the utmost of his power any new footpaths or encroachments or easements being made over the holding and to do his best to prevent trespass over any part of the holding. This is in other tenancies also that it is fanciful to imagine that the tenants have ignored such obligations.

Tracks have been used for farm access consistently with an intention not to dedicate them for public use.

The lease of Sporting Rights relates to the whole estate and contains a covenant the "he will use his best endeavours to prevent trespassing and poaching and if necessary at his own cost prosecute any offenders". It is considered such lease dates back to 1923.

Substantial evidence has been adduced by the landowner demonstrating that both private associations and public bodies have required permission to access the tracks.

There is reference in documents to the estates roads and they were acknowledged to be private.

On Conveying part of the land in 1968, 1978 and 1979 private rights of way were granted indicating no public rights existed.

Permission has been sought on George's Lane for access by the Nature Conservancy Council all of which demonstrate beyond any doubt that all parties regarded the Land and the farm tracks as private land and that specific permission was required for access thereto.

There is no mention of any paths shown on the local plan proposals map, nor are they mentioned in a 1990 report by professional surveyors or in 2001 in the Planning Inspectorate's Decision following a public inquiry into the bridleway to the south. It is however difficult to avoid the conclusion that the recollections of the Applicant's witnesses may be coloured by their desire to secure what they may perceive to be a "victory" over Mr Godfrey Crook. The evidence of continuing vandalism referred to by the landowner's witnesses with consequential Police enquiries and prosecution in one instance, are matters that cannot be entirely overlooked when assessing the value of witness testimony.

Yates Barnes Solicitors have considered some witnesses and state a number of witnesses would undoubtedly have enjoyed access over the farm tracks to visit relatives no doubt on a regular basis, or as employees or perhaps as members of a

permitted group. Equally, the landowner does not doubt some members of the public, perhaps more in their youth, would have used or played upon the land and farm tracks but it is submitted such user was not "as of right". The landowner would suggest that given the land has for generations been farmed on an intensive scale, was continually occupied by tenant farmers and a game keeper it is extremely unlikely that trespassers would have been ignored or tolerated and that the recollections of the Landowner's witnesses in advising any strangers that they were trespassing and the land was private is more consistent with the reality on the ground.

If provisions of section 31 contended to be able to be satisfied then it is necessary to make the following assumptions:

- i. The tenant farmers have for generations ignored their contractual obligations relating to rights of way and trespass;
- ii. The Sporting Rights tenant and Gamekeeper ignored their contractual obligations to prevent rights of way and trespass;
- iii. At some stage the River Crossens Drainage Board and/or the Nature Conservancy Council and/or Natural England and/or the Southport & District Wildfowlers Association were all mistaken in believing the farm tracks were private roads that required permission from the landowner for their use;
- iv. The Landowner tolerated the breaches of contractual obligations referred to above and took no action on its behalf to prevent trespass;
- v. The absence of any documentary record or reference to the contrary to the Landowner's submissions cannot be explained;
- vi. The statutory declarations commencing in 1998 made by the Landowner were false.

Yates Barnes Solicitors have submitted 15 exhibits to support their objection and are listed below:

1. 1968 Conveyance
2. 1978 Conveyance
3. 1979 purchase agreement
4. 1987 Specific Enquiries
5. Official copy of register of title LA573927
6. Copy of a letter to Mr Crook with LCC response to any rights of way over his land
7. Lease between Sporting rights and landowner
8. Letter to Southport & District Wildfowlers Association asking whether they are prepared to authorise the use of George's Lane
9. Letter from River Crossens Drainage Board to Southport & District Wildfowlers Association, the board indicated their willingness to grant permission to members of the association to pass on foot over the board's sea embankment
10. 1979 Agreement granting permission to pass and re-pass on foot and not otherwise over the embankment owned by the board

11. Letter dated 12 August 1979 setting out the rule for shooting on the marsh identifying various access points to the Marsh including "E. George's Lane.... NO OTHER ACCESS POINTS TO BE USED"
12. Northern Parishes Local Plan
13. Report from Smith Hodgkinson McGinty
14. Letter from LCC confirming the new embankment is now in the ownership of Natural England
15. Copy of leaflet

They have also included 12 witness statements

Witness 1

A director in Southport Land and Property Company Limited states people using the track were only those people who had been granted permission, such as tenant farmers and their employees. He has no recollection of seeing people walking the tracks with dogs whilst he was working in the 1960's on the land. He states since the land was purchased by the company in 1990 he has challenged users and explained they were trespassing and asked them to leave. He explains that in recent years there has been a significant increase in traffic by third parties resulting in them installing gates at the top of Charnleys Lane and Georges Lane, in an attempt to keep unauthorised vehicles off the bridleway and off the estate. He reports vandalism along the land, cut locks, cut fencing recently.

Witness 2

A Farm manager who rents land at Banks Marsh from Southport Land & Property Co Ltd, he quotes the business tenancy which includes prevention of any new footpaths being made, prevent trespass over the land and to give notice to landlords of any continued acts of trespass.

He often highlights to people the signs that state the area is private to prevent people walking in the farm tracks and to prevent trespass. Due to the escalating amount of trespassing and vandalism over the past couple of years he approached Southport Land & Property Co Ltd and had a gate put at the top of Charnleys Lane.

The gate has been vandalised on a number of occasions within a day or 2 of it being erected, numerous locks have been cut and numerous locks have been glued. He states he would not be able to rent this grade 1 arable land in the future if the proposed footpath were approved and it would be seen as high risk.

Witness 3

A resident of Banks Road bought his property in 1969, at that time there was a 5 barred gate adjacent to his property which his neighbour used to take cattle to and from his farm along the road pass the pumping station towards Crossens. The only boundary which was not fenced off was the one between his and his neighbour's field and this was due to the fact that there was a ditch (which ran to the Sluice – a main watercourse which runs to the pumping station).

Soon after he bought his property a new neighbour moved in to the property next door who grew potatoes, sweeds, brassica crops and grain on the field which would make it almost impossible for people to walk.

Towards the end of his neighbours tenancy the 5 barred gate was damaged and then it was removed this was due to the fact that tractors needed to get in and out of the field quickly as it is a 'bad bend'.

A new tenant then moved in and he didn't replace the gate but blocked access with his Cambridge Roller.

Soon after Southport Land & Property Co Ltd took the land back and 'private land' signs were erected adjacent to his property. The new owners then erected a stock proof fence all the way around the boundary of the field including between his property and the field adjacent, this was so the field could be used for sheep winter grazing.

Only recently a number of sheep have escaped due to the fences being cut, he states during his entire residency there has never been a footpath through the field adjacent to his property and has told anyone using the land that it is 'private lane'. He recalls during 1970s a gate was erected part way along Bank Pace this gate has been vandalised and today there are not even gate stubs remaining.

Witness 4

In the late 1970 until 1989/1990 his father had the shoot on the land and Banks and Crossens, these leases were renewed annually. The leases included 'sporting rights' on all the land. During his father's lease of the shoot there was no footpath through Cross Bank Covert. He often attended the shoot with his father and he recalls there were no footpaths on the estate except the part of what is now a bridleway. 5/6 of the proposed footpaths are on Banks Marsh and there were no footpaths on this land, if people had been walking, they or their dogs would have been frightened by gun noise and potentially debris from falling shots.

A condition of the lease to his father was 'to use his best endeavours to prevent trespassing and poaching and if necessary at his own costs prosecute any offenders'.

Witness 5

He was a member of the shooting syndicate in the early 1980s, to the best of his knowledge he does not remember any public footpath through the wood known as Cross Bank Covert, he confirms there were no footpaths anywhere on the estate when he was part of the shooting syndicate.

Witness 6

He was a beater for the shoot at Banks in early 1970s when his friend had the shoot. His friend along with another party had the lease for the sporting rights on the estate for 4/5 years in the mid 1970s. He understands that the land and the tracks across it

are private with the private tracks belonging to the owners of the estate.

Witness 7

He raised game in the field behind the cottage and released the birds into the woods Crossbank Covert, he states there was no public footpath or right of way through the wood and if he saw anyone he would ask them to leave. He then states there were no public rights of way anywhere on the estate and the only people entitled were the landlord, tenants, members of the shoot and the Southport & District Wildfowlers Association who used the track to access the marsh.

Witness 8

He is a member of the shoot on Banks Marsh for 15 years, he states there are no footpaths on any of the farms tracks that are being claimed. As a member of the shoot if he saw someone walking on the tracks or across the field he would approach them & explain they were trespassing & ask them to leave. He state it is only recently over the last two to three years these tracks have been used for walking dogs, riding horses, motorcycles and quad bikes.

In 2011 he took over the shoot and entered into an agreement with Southport Land & Property Co Ltd and he regularly stops people walking with or without dogs, motorcycles and horses on the farm tracks and across the field, some ignore him and others are abusive.

Witness 9

He has been involved in shooting his whole life and he became a member of the Wildfowlers Association of Great Britain in 1937. He found out that Scarisbrick estate were asking for payment to use the farm tracks to the marsh, he didn't agree with this and that is why he wouldn't join the Association. The estate wanted to ensure their private land and private roads remained private. He attaches a document from 1958 showing the payment to use the tracks. He states he has used the tracks with permission since the mid 1940s.

Witness 10

The Chairman of the Southport and District Wildfowlers Association, the Association was established in 1887, he states he has always had a good working relationship with Scarisbrick estate. The Association has had permission from the current owners of the estate (Southport Land & Property Co Ltd) and their predecessors in title for over 100 years to use the farm tracks that continue from the end of Charnleys Land and the end of Georges Lane to access the marsh. He formally requests permission every year from landowner to use the land.

He has over 100 members who all have membership cards, so that if they are stopped by Natural England or Southport Land & Property Co Ltd they can produce evidence of their membership on request. He has on numerous occasions questioned people using the farm tracks, being mindful of people poaching or trespassing, he has contacted the estate owners if he has had concerns. All of his

members are aware of the rules and regulations in terms of ensuring their dogs are on a lead at all times whilst on these farm tracks.

Witness 11

Believes there has never been a public footpath, he has been a member of Southport and District Wildfowlers Association since 1950 and he used to get permits issued to each member of the Southport and District Wildfowlers Association to use the private farm tracks.

He recalls tenant farmers on the estate that had cattle on the land either side of the track that continues from Charnelys Lane towards the outer embankment on the 1950s, the fields at that time were fenced off. They also used to graze the old embankments, there were fenced all the way along the old embankment with gates stiles, as the only footpath was on top of the old embankment, there were no other footpaths on Banks enclosed marsh.

In the early 1940s Georges Lane was used by the fishermen, with horses and carts with permission from Scarisbrick Estate.

Witness 12

A qualified chartered surveyor wrote a report for Clarges Street Investments Ltd in June 1989 and he states if there had been any evidence these farm tracks had been used as footpaths or that there was a footpath through the wood known as Cross Bank Covert during the inspection, he would have highlighted the same in the report. In his view the footpaths would have been a material consideration affecting the viability and management of the estate.

As managing agents, he recalls clearly the track that continues from Georges land, the track that continues from Charnelys Lane and that which runs parallel to the continuation of Charnleys. All these tracks were farm tracks for the benefit of farming tenants working on the estate, to access the fields and were not as far as he was aware footpaths. He does not recall seeing any members of the public walking on these tracks. The tracks were always kept 'in hand' by the owners of the estate so all the owners of the estate could use the tracks to get to the fields.

The Environment Agency

The Environment Agency have confirmed ownership of the new flood embankment at the foot of which four of the routes terminate (at points R, I, V and E) and on top of which one of the routes terminates (at point O). They have stated that in commenting on the applications that they need to assess the impact on the embankment, the management of the embankment, potential health and safety liability as well as the impact on existing users, occupiers and/or tenants.

Within their response they query the route of the existing public footpath along the landward side of the foot of the embankment as they believed the footpath to run

along the top of the embankment, which they have noted is currently used by the public and as such it is on that basis that they have responded.

The Environment Director has responded to confirm that the legally recorded route of the public footpath is on the landward side of the embankment and that the legally recorded public footpaths are correctly shown on the Committee plans. The Environment Agencies concerns relate to the public accessing the path along the top of the embankment which is not part of the application routes.

Routes 1 & 4

The Environment Agency have no objection to these applications because there are ramps up the side of the embankment which could be used to access the crest of the embankment without creating a significant health and safety risk or potential risk to the structure.

Routes 2, 3 & 5

The Environment Agency objects to these proposals because there are no ramps up the side of the embankment to access the crest of the embankment.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Applications

User evidence

Map and documentary evidence

Against Accepting the Claim

Route 1 – use may not have been as of right

Actions of the owner

Conclusion

The claim is that the routes are already footpaths in law and should be recorded as such.

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

Route 1

Shown between points – A-B-C-D-E on the attached Plan

Looking at S.31 Highways Act 1980, the twenty years use by the public is required up to the point the path is brought into question.

This must be an action making it clear to a reasonable number of users that their use of the route is being challenged. User evidence suggests, although no overt action was taken against the users directly, some users had heard of others being prevented from using the route or being told that the land was not a public right of way in around 2012. There are also 30 users claiming that notices/signs had been erected recently stating 'private' or 'trespassers will be prosecuted'. Committee will however note that the current land owner lodged a S31(6) statutory declaration in March 1998 renewing the same on 26 May 2004, 9 March 2010 and 2 February 2012 for the land subject to all five of the claimed routes.

Therefore the "bringing into question" of the route would be March 1998 and the 20 year period of use to consider would be 1998-1978. There are 32 users whose use dates back to 1978 and the majority of these users have used the route prior to 1978, there are some users claiming to have used the route since 1950.

For use to be as of right, it must be without force, secrecy or permission. 11 users acknowledge there was a gate and 21 users mention a locked gate, 3 users mention this prevented them from using the route. The analysis of the OS maps and aerial photographs suggests the existence of a boundary across the route at point D concluding it is reasonable that a gate existed at this location (which may or may not have been padlocked). It is therefore suggested that use on a balance of probability, was not as of right if locked gates were climbed over or accessed, as this would amount to use with force.

A presumption of dedication may be rebutted, if there is sufficient evidence on the part of the landowner to demonstrate that they had no intention to dedicate a public footpath. It is understood the current landowners, Southport Land and Property Company Limited have owned the land since 1990. The 20 year period under consideration means 14 years from 1978-1990 pre-date the landowner's ownership. An earlier landowner had objected to North Meols Parish council including the route on the parish survey in 1952 stating that no right of way was admitted and that the route was a farm. The formal hearing into this matter concluded not to record this route on the map as a public footpath. It is understood the previous owner was the Scarisbrick estate who held the land on trust until 1925 and thereafter distributed the assets amongst the beneficiaries in 1978. As ownership of the land was transferred to the beneficiaries' by 1978 we cannot rely on the objection made by the Scarisbrick Estate in 1952, as landownership changed when the estate was distributed amongst the beneficiaries. There is no evidence to suggest the landowner from 1978 until 1990 took any steps to prevent the public from using the route or any challenges were made to public use.

It is suggested to Committee that it may be difficult to satisfy use was as of right if on a balance of probability it is concluded the gates had been locked and use may have been by force, it is therefore difficult to satisfy deemed dedication under S.31.

Looking instead at common law to see whether dedication can be inferred. There was a gap between 1990 until 1998 (see above) when no action was taken by the current landowner however; the landowner only made his intention clear in 1998 through the lodging of the S.31 statutory declaration. There is evidence to suggest

that use of the route was by force, as there was a gate which on balance was locked and the users do not provide evidence as to how this locked gate was accessed. It is suggested that there may be insufficient evidence from which to infer a dedication of use at common law.

It is suggested to Committee, taking all the information into account, deemed dedication under S.31 and inferred dedication at common law are difficult to satisfy and this claim is refused.

Route 2

Shown between Points F-G-H-I on the attached plan

Looking at S.31 Highways Act. The bringing into question of the route would be the lodging of the S.31 (6) statutory declaration in 1998. The twenty year period under consideration would therefore be as per route 1 from 1978-1998.

Considering next, whether the route was used by the public as of right and without interruption. It appears from the 69 user evidence forms submitted in support of this claim, at least 28 users claim to have used the route during the period under consideration, use of the route dates back to 1934. The users acknowledge there being a stile and gate however; 57 users agree the gate did not prevent them using the way, with 5 users stating that it was only recently in around 2012 that they were prevented from using the route. One user states when the stile was removed this prevented use of the route in 2012.

The users agree that signs have been posted at Point F stating 'Private legal action may be taken against unauthorised persons found on this property ' and a second sign stating 'Danger, no trespassing, shooting in progress' however; 31 users agree these have appeared recently.

The route has existed from at least 1895 and the first OS map to publish the route was 1910-11 and thereafter, the route is displayed on all subsequent OS maps. The route appears on the 1910 Finance Act documentation suggesting the previous landowner considered this route a public highway. However, the landowner objected to this land being added to the parish survey map in 1952 and was successful not to include the route on the parish survey map. The present landowner does not seem to have taken any active steps to prevent use, until 1998 when the statutory declaration was deposited, nor is there any evidence the land owner from 1978-1990 took any action to prevent the public from using the route. The Executive Director of Environment suggests there is evidence to support the physical existence of the route from 1895 and capable of being used by the public.

On balance, Committee is advised that the route was used by a sufficient number of people as of right for a 20 year period and dedication under S.31 can be deemed. Considering the position at common law, whether dedication can be inferred on balance at common law, the previous landowner took overt action and made their intention clear in 1952 (see above). However, when the land was divided in 1978 amongst the beneficiaries of the estate, no overt action seems to have been taken to demonstrate the landowners intention from 1978 until January 1998, it seems that

the route was used as of right by a sufficient number of people during this period and it is suggested that there is sufficient evidence from which to infer dedication from use.

It is suggested to Committee, taking all the information into account deemed dedication under S.31 and inferred dedication at common law can be satisfied and that the claim is accepted and an order is made.

Route 3

Shown between Points J-K-L-M-N-O on the attached plan Committee Plan 1

The twenty year period to consider for the purposes of S.31 would be as above; from 1978 until 1998 as the earliest action taken by the landowner bringing the route into question was the lodging of the statutory declaration in March 1998.

Evidence of use is provided in 42 user evidence forms. Of these, at least 15 claim to have known and used the route since 1978. For use to be as of right, it must be without force, secrecy or permission. 20 users acknowledge there being a stile/gate along the route, 15 users state the gate was locked and 16 state this was unlocked however; 32 users state they were not prevented from using the route, some users have stated they were prevented from using the route since 2012.

The user evidence suggests there was a gate and a stile along the route and the users gained access across the gate via the stile. There is nothing to suggest that use was by force, or that they used the route by stealth. The user evidence suggests that in 2009 the stile was taken out and a deep ditch was dug preventing access. The user evidence is also indicative that signs were put across the route in or around 2009. Use of the route is consistent with use as a public footpath. It is suggested to Committee use was open and from the evidence, use was as of right and without interruption and sufficient in quantity and frequency. Committee should also note that there is some limited map and aerial photographs evidence to support the physical existence of the route from 1910 onwards. As the user evidence is sufficient in number and use, on balance it is suggested the route was used and dedication can be deemed under S.31.

Looking at the common law position, although the intention of the landowner was made clear in 1998, there is no evidence to suggest any overt action was taken to demonstrate the landowner did not intend to dedicate the land during 1978 until March 1998 the period under consideration. It seems the route was used as of right, by a sufficient number of people during this period and it is suggested that there is sufficient evidence from which to infer dedication from use.

It is suggested to Committee, taking all the information into account deemed dedication under S.31 and inferred dedication at common law can be satisfied.

Route 4

Shown between Points J-K-P-Q-R on Committee Plan 1

Looking firstly at whether dedication can be deemed under S.31. The twenty year period to consider for the purposes of S.31 would be as above; from 1978 until 1998, as the earliest action taken by the landowner bringing the route into question was the lodging of the statutory declaration in March 1998.

51 user evidence forms have been provided in support of the claim, of these at least 16 users have used the route since 1978. 32 users agree that a gate and stile was present and 40 users confirm this did not prevent them from using the route. It seems from the evidence that the stile was accessible to get across the gate which suggests use was not with force and was as of right. The users have not been challenged or stopped from using the route until recently in 2012 and the owner did not take any steps during his ownership from 1990-1998 which is part of the period under consideration. There is no evidence to suggest the previous landowner from 1978-1990 took any steps to prevent use.

On balance it is suggested that use was as of right without force, permission or stealth for a full period of 20 years and therefore, deemed dedication under s.31 can be satisfied.

Looking at the Common Law position, the route has appeared on map and documentary evidence since 1895 to date to support a physical existence of the route capable of being used by the public and is a feature of antiquity. The route is excluded from the 1910 Finance Act which suggests the landowner may have considered the route to be part of the public highway. The landowners' during the 20 year period did not take any active steps to show they had no intention to dedicate, and it is suggested that dedication may be inferred. In conclusion dedication can be deemed under S.31 and inferred under common law.

Route 5

Shown between Points S-T-U-V shown on Committee Plan 2

Considering the position under S.31 Highways Act 1980. 51 user evidence forms have been provided, 17 users claim to have used the route since 1978. User evidence suggests signs and notices along the route have appeared recently since 2012 and users have been challenged from using the route since 2012. No action seems to have been taken by the landowner preventing use during the period under consideration.

The twenty year period to consider for the purposes of S.31 would be from 1978 until 1998, as the earliest action taken by the landowner bringing the route into question was the lodging of the statutory declaration in March 1998.

The route appears on the 1910 Finance Act and no dedication is claimed for a public right of way, suggesting the route did not exist as a public right of way. There is no map or documentary evidence to support the physical existence of the route from 1895 to the present day. A worn track is shown on the ground and; it is suggested that as this is a rural area, the dense tree coverage would prevent the route from being shown on aerial photographs.

There is however sufficient user evidence which demonstrates that the route was used by a sufficient number of people during the course of the period under consideration. 23 users acknowledge a stile, gate or fence on the route with 18 users stating there was none present. 8 users state the gate/stile/fence was locked and 34 state it was unlocked. However, 41 users state they were not prevented from using the route which is indicative that the route was available and used by the public as a whole as of right, as the user evidence does not suggest the route was used with force.

Therefore, on balance it is suggested to Committee that there is sufficient evidence for deemed dedication under S.31.

Considering secondly whether dedication can be inferred on balance at common law, it is advised that evidence from the maps in this matter is not the circumstance from which dedication could be inferred but user evidence can be the circumstance from which to infer a dedication. The owners at the time for several years did nothing to stop the public use and from which their intention to give the route up to be a public footpath could on balance be inferred through use by the public.

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

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

Risk Management

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

Alternative options to be considered - N/A

Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on Claim File Ref: 804/5.46086 (804/526, 527, 528, 530, 531)	Various	M Brindle, County Secretary & Solicitor's Group, Ext: 35604
Reason for inclusion in Part II, if appropriate		
N/A		