



**Isle of Man
Government**

Reiltys Ellan Vannin


infrastructure
bun-troggalys

Office of the Minister
and Chief Executive

Telephone (01624)686603
Fax (01624)686617
Email: mary.dunne@gov.im

Contact: Mary Dunne
Our Ref: ITT/VG
Your ref:

Date: 13 May 2010

Dear Sir/Madam

Public Inquiry into Public Rights of Way on the Langness Peninsula

I refer to the Public Inquiry in respect of the above matter held between July and October, last year, 2009.

I enclose a copy of the Report from the Inspector, Mr Roy Hickey, appointed to hear this matter.

Hon David Anderson MHK, has considered this report, and in respect of the conclusion that all except five of the paths claimed at the Inquiry as Public Rights of Way, the Minister concurs with the Inspectors findings that these paths have been dedicated to the public as Public Rights of Way. These paths will be duly recorded as such on the Definitive Map and Statement.

The paths dedicated as Public Rights of Way are listed in paragraph 339 of the Inspectors Report, and referenced to a Map of Langness enclosed as Appendix 1 to the Report.

The 5 paths for which the Inspector does not consider that Public Rights of Way have been shown to exist are listed in paragraph 341 of the Report.

The Inspector also considered at the Inquiry the status of the metalled road from the Fort Island Road to the Lighthouse. Although the Inspector recommended that the Department should endeavour to put this matter beyond doubt by inviting the current landowners to dedicate the remaining parts of the road to the public as a highway, the Minister has decided not to accept this recommendation. The Minister is satisfied with the current arrangements for vehicular access by the public to Langness, and that as there is no public parking provision in the vicinity of the Lighthouse it would not be in the public interest for the road beyond the Car Park gate to be opened up to vehicles generally.

Yours faithfully

I T Thompson
Chief Executive

Encs

**Report of the Public Inquiry into Public
Rights of Way on the Langness Peninsula**

Held 20-24 July, 11-13 August and 12-13 October 2009

Roy Hickey

Inspector

March 2010

**Report of the Public Inquiry
into
Public Rights of Way on the Langness Peninsula**

Held on 20th -24th July, 11th -13th August and 12th -13th October 2009

At the Mount Murray Hotel and Country Club, Santon

Roy Hickey
Inspector

March 2010

Report of the Public Inquiry into Public Rights of Way on the Langness Peninsula

Contents

	Page
Introduction.....	8
Acknowledgements	8
Purpose and scope of the public inquiry	9
Context and approach	10
Structure of this report.....	11
Part A: Evidence relating to public rights of way.....	14
1: How the alleged public rights of way were identified.....	14
2: Paths south of the car park.....	15
3: Evidence by Public Rights of Way, Langness (PROWL).....	16
Opening statement by Ian Costain, PROWL: Summary of key points	16
4: Affidavits	21
Periods of use.....	22
Accuracy of the affidavit maps	24
5: Evidence of use by other witnesses.....	25
Circular path and paths around the Herring Tower.....	25
Path to the south of the lighthouse (Section M-Vi-P)	26
Path to the fog horn and Dreswick Point (Point W)	27
Path to point V	28
Additional paths at Tobacco Gullet (Vi-Wi and M-Mi)	28

Paths to Langness Point (Q-U), Port Bravag and Dreswick Harbour (points S and Z)	29
Coastal loops J-K, K-L and L-M	29
Additional path to the Herring Tower (A-E).....	30
Paths over the metalled road (A-I-O-P) and alongside the DAFF fence (G-H-I-li)	30
6: Written and other representations	31
7: Evaluation and conclusions	32
8: Grassland paths	34
9: Evidence by PROWL.....	35
10: Affidavits.....	35
11: Evidence by other witnesses	36
Path to the Provider Stone (AH-AHi).....	37
12: Evaluation and conclusions	37
13: Paths adjacent and crossing the golf course and around Castletown Bay	38
14: Paths adjacent to and crossing the golf course	40
Evidence by Michael Gerrard.....	41
PROWL's additional statement	42
Evidence by Peter Curtis	42
Evidence by Robert Hardinge	43
Evidence by Angus Hoban.....	43
Evidence by other witnesses.....	44
Evaluation of user evidence	45
15: Paths in the vicinity of Langness Farm and the Golf Practice Ground.....	46
Evaluation of user evidence	47
16: Paths to the west of the metalled road.....	47
PROWL's additional statement	48

Evidence by other witnesses.....	49
Evaluation of user evidence	50
17: Evidence by landowners and tenants, DAFF and other individuals.....	50
18: Evidence by Mrs Frances Clarkson	51
Mrs Clarkson's affidavit.....	51
Evidence given in examination.....	52
19: Evidence by Jamie Riggall	54
Witness statement	54
Evidence given in examination.....	55
20: Evidence by Simon Riggall.....	56
Mr Riggall's affidavit.....	56
Evidence give in examination.....	57
Fencing and notices relating to the ASSI	57
Other signs	58
Closure of the land.....	58
Basis on which the public have used the land.....	59
Ownership by Beech Ltd and investigations carried out prior to acquisitions.....	60
21: Evidence by Dr Elizabeth Charter, DAFF.....	60
22: Evidence by Phil Gawne MHK.....	63
23: Evidence by Graham Ferguson Lacey.....	63
Evidence in chief.....	63
Examination.....	66
Actions by previous owners	66
Use of land by the public.....	67
Signs and notices	68

Other possible witnesses	69
24: Evidence by Irene Cowan.....	69
Statement	69
Examination.....	70
25: Written representations and other evidence	70
Northern Lighthouse Board.....	70
G Dugdale	70
Other representations	71
26: Evidence from the 1990 planning inquiry.....	72
27: Evaluation of evidence showing an intention not to dedicate	74
The tests to be applied.....	75
Meaning of 'intention to dedicate' and 'bringing into question'	75
28: 1975/76 dispute over use of the metalled road.....	77
Public notices published by the Attorney General in 1975 and 1976.....	78
29: Challenges by staff at the lighthouse	79
30: Basis on which the public were allowed access and actions by the Riggalls.....	80
Closure of the Riggall's land	81
Signs and notices	81
Maintenance of access during the foot and mouth outbreak	82
31: Impact of the fence, related public notices and other ASSI works.....	83
Laminated ASSI notices.....	84
32: Signs and notices on the golf course	85
33: Views of the Attorney General at time of the 1990 planning inquiry	85
34: Statutory notices given under the Highways Act 1986	86
35: Other challenges and issues	86

36: Date on which other alleged public rights of way called into question	87
Paths on Mr Ferguson Lacey's land	87
Paths over land for which the owner is unknown.....	88
37: Overall conclusions	89
Part B: Use of the metalled road to the lighthouse	92
38: Introduction: Need to consider the status of the road.....	92
39: Correspondence made available by the Attorney General's Chambers	92
Views of the Attorney General in 1946/47	93
Resolution of the 1975/76 dispute by Attorney General Corrin.....	95
Planning Enforcement Officer's report	97
Terms of the 1976 agreement.....	98
Extent of the expressed dedication by the Trustees of Crookall's Estate	99
Opinion of the Attorney General in 1986	99
40: Evidence given at the inquiry relating to the use of the road.....	101
41: Action to prevent the deemed dedication of the road as a highway	102
42: Evaluation of evidence relating to the metalled road.....	103
Opinion of Attorney General Corrin in 1975/76	103
Evidence relating to the closure of the road to vehicles.....	104
Evidence relating to a sign at the Smelt House	104
Signs erected in or after 1975/76	106
Opinions expressed by Attorney General Kneale and Attorney General Cain	107
Did not Attorney General Corrin subsequently modify his views?	108
43: Recommendations regarding the metalled road	109

Appendix 1: Aerial photograph of paths claimed to be public rights of way.....	112
Appendix 2: List of those appearing at the inquiry	112
Appendix 3: List of written representations and representations made by telephone	116
Appendix 4: Additional documents produced during the course of the inquiry	120
Appendix 5: Section 88, Highways Act 1986	124
Appendix 6: Summary of papers made available by Attorney General's Chambers.....	126
Additional correspondence held by the Department of Transport.....	140
Appendix 7: Notes on the ownership of land on Langness Peninsula	144

Report of the Public Inquiry into Public Rights of Way on the Langness Peninsula

Introduction

1. This is a report of a public inquiry which I was appointed by the Minister of Transport to hold to investigate the status of a number of paths on the Langness Peninsula which are alleged by members of the public to be public rights of way. The inquiry opened on Monday July 2009 at the Mount Murray Hotel and Country Club, Santon and initially sat for seven days, from 20th-24th July and 11th-13th August. It then adjourned for six weeks¹ until 12th October, when it sat for two further days.
2. The alleged public rights of way that the inquiry was concerned with are those shown in red on the aerial photograph attached to this report at appendix 1.
3. I have considered all of the representations made to me at the inquiry by those listed at appendix 2 and the written and other representations that have been made as listed in appendix 3. I have also taken into account the documents relating to the issue that were placed on deposit by Department of Transport for inspection prior to the inquiry and the additional documents produced during the course of the inquiry that are listed in appendix 4.
4. Prior to and during the course of the inquiry I made several unaccompanied site visits to inspect the claimed public rights of way, together with two visits, on 24th July and 12th October 2009, when I was accompanied by a number of those who had given evidence at the inquiry.
4. My report and recommendations are set out below.

Acknowledgements

5. I wish to place on record my grateful appreciation for the assistance given to me during the course of the inquiry by officers of the Department of Transport, in particular by Anna Marie Goldsmith, the Inquiry Programme Officer, and by Phil Manktilow and Chris Hannon, Project Coordinator. I similarly wish to record my appreciation for the advice given to me Michelle Norman of the Attorney General's Chambers, and for her assistance in making available the correspondence between the Department and previous Attorneys General.

¹ The adjournment was requested by one of the landowners, Graham Ferguson Lacey, to enable him to prepare a case rebutting the claims made regarding the alleged public rights of way on his land. In the course of the adjournment, however, Mr Ferguson Lacey decided to take no further part in the inquiry.

Purpose and scope of the public inquiry

6. In his letter of appointment the Minister of Transport states:

'The Inquiry is a fact finding inquiry to establish the level of evidence for, and against, the existence of public rights of way on the Langness Peninsula. There are no public rights of way marked on the definitive map of the area and the issue is one of dedication by uninterrupted usage over twenty one years.

The terms of the Inquiry are set out in the following motion which was agreed by Tynwald:

Whereas the Department of Transport intends to hold an inquiry pursuant to section 117 of the Highways Act 1986:

a) as to the status under that Act of:

- I. a certain footpath on the Langness peninsula, namely that which follows the route from the Department's car park around the coastline and passes to the seaward side of the Langness lighthouse,*
- II. a path departing from the circular footpath at the south-western side, leading to Langness Point,*
- III. the road from the car park to the lighthouse perimeter wall, following the perimeter wall to the western side and joining the circular path,*
- IV. a path from the north gate of the lighthouse perimeter wall, following a route east along the existing walkway to the coastal path,*
- V. a path running north-south from the circular footpath to the Herring Tower,*
- VI. a path running north-south from the Herring Tower to join the existing walkway in (iv) above,*
- VII. a path running due east from the Herring Tower along the route of the existing clear path to the coastal path,*
- VIII. two further deviations from the circular footpath to the eastern side, the first passing to the south of the industrial archaeology, and the second as a continuation east of path (iv) above,*

and in particular whether the said footpaths maybe presumed to have been dedicated as a highway under section 88 of the said Act.

b) as to whether in the light of the findings of the said inquiry the Department should exercise its powers under section 39 of the said Act in respect of the said footpaths.

Tynwald now resolves that the powers conferred by the Inquiries (Evidence) Act 2003 shall be exercisable in relation to the said Inquiry.

In addition we understand that representations will be made to you at the Inquiry as to the status of other footpaths than those listed above on the Langness

Peninsula. Could you please consider these other paths as well and submit your recommendations as part of your report.’

7. As anticipated in my letter of appointment, in addition to the paths identified in the Tynwald motion, several other paths elsewhere on the peninsula were identified as alleged public rights of way during the course of the inquiry. I have, as instructed, included those paths in my report and recommendations.

8. A total of 38 witnesses gave evidence during the course of the inquiry as listed at appendix 2. Of these, 30 of the witnesses considered that some or all of the paths that had been identified should be regarded, in law, as having been dedicated as public rights of way and 5 witnesses took a contrary view, believing that the public use of the paths which had taken place had either been as a result of permission granted by the landowner or constituted a trespass against the landowner. Accordingly, these witnesses believed that no deemed dedication of any public rights of way has taken place.

Context and approach

9. This report is in two parts. Part A records and then evaluates the evidence put forward with regard to those paths which, it is claimed, have been used in such a way as to be deemed to have been dedicated as public rights of way. Part B considers separately the status of the metalled road from its junction with Fort Island Road at the Smelt House to the entrance to the lighthouse. The reason why this became necessary is set out in detail at the start of part B, at paragraphs 343 to 346.

10. Underlying the issue of the presumed dedication of any public rights of way are the provisions set out at section 88 of the Highways Act 1986 and the similar provision which exists at common law. These provided that where members of the public have walked or ridden along a consistent line ‘as of right’ – meaning that they have used the path without secrecy, without force, and without having obtained the landowner’s permission - for a number of years and that use was not challenged or interrupted by the landowner in any way, then a public right to use that path is presumed to have been granted.

11. The period prescribed in legislation is that a path must have been used without interruption for a full period of 21 years before a public right of way can be presumed to have been dedicated, with this being counted back from the date when the public’s right to use the path was first brought into question. Similar considerations apply to the dedication of a public right of way at common law but there is no set period of public use. Instead each case must be considered on its individual facts and circumstances. The statute law does not replace the common law and in deciding whether or not a public right of way has been dedicated it is necessary to consider both.

12. Issues such as what constitutes public use ‘as of right’, how a landowner can ‘negative any intention to dedicate’ to stop the presumed dedication of a public right of way from taking place and the action that is required to bring the landowner’s intention to the attention of members of the public who are likely to be using the path have been considered by the courts on several occasions. There are, as a result, a number of specific criteria and

legal tests that must be applied in considering whether or not the dedication of a particular path or way has taken place.

13. Because both the history of how and in what way each individual path will have been used by the public and the actions (or inaction) of the landowner towards that use can be expected to vary from path to path, it is not possible to come to a blanket determination over a wide area such as that of the Langness Peninsula. Rather it is necessary to consider each specific path or group of paths individually, including how they have been used, over what period of time, and the action (if any) taken by the landowner in relation to that use.

14. For each of the alleged public rights of way on Langness the process that I have followed in reaching my conclusions is first to set out and then evaluate the evidence put forward regarding the use that has been made of that path by members of the public. Where the user evidence put forward is insufficient to support the conclusion that the public's use of the path may have given rise to the dedication of a public right of way, no further consideration has been given to that path. However, for those paths for which the user evidence suggests, *prima facie*, that a public right of way might be presumed to have been dedicated, I then go on to first set out evidence of the actions taken by or on behalf of the landowner in relation to that public use or which, witnesses believe, otherwise demonstrates that no public rights of way exist. Finally I then evaluate that evidence as it applies to each individual path or group of paths, including having regard to the legal criteria set out by the courts and the legal tests which must be applied, to come to a conclusion as to whether or not public rights of way have been shown to exist.

Structure of this report

15. Because of the large number of alleged public rights of way that have been put forward, I have considered the evidence relating to their use in three main groups, with each group being further sub-divided as shown in the table of contents. Those main groups are:

- Paths to the south of the car park (sections 2 – 7)
- Paths to the north and east of the Department's car park – referred to at the inquiry as the Grassland paths (sections 8-12)
- Paths adjacent to and crossing the golf course and around Castletown Bay (section 13-16).

16. Having set out the evidence put before me (in so far as it is relevant) I then set out, also for each path or group of paths, my initial conclusions as to whether or not that use appears, *prima facie*, to have given rise to the creation of a public right of way.

17. I then next set out in turn (in sections 17-26) the evidence given at the inquiry by the existing and former owners of the land of the actions which they consider were sufficient to 'negative any intention to dedicate' the paths on their land as public rights of way. Also in this section is the evidence given by other witnesses who believe that no public rights of way have been created and the other evidence that was put forward as demonstrating that

no public rights of way exist. After setting out the tests to be applied (at section 27) this evidence is similarly evaluated to establish whether it does, in fact, show that the public use of a path 'as of right' has been brought into question or otherwise has no basis in law (sections 28-35). Where that is found to be the case, I then determine also the paths to which it applies and the date at which the public's use of those paths was brought into question. It is this date which is the start of the 21 year period for the purposes of section 88 of the 1986 Act.

18. Finally, I compare the date at which the public's use of a path was first brought into question with the date at which that use first became established to determine whether or not a public right of way over it can be presumed to have been dedicated, both under the provisions of section 88 of the 1986 Act and at common law (sections 36 and 37).

Part A: Evidence relating to public rights of way

1: How the alleged public rights of way were identified

19. The motion agreed by Tynwald identified eight specific paths, all in the area south of the Department's car park, which were required to be investigated. Originally numbered I to VIII, the line of each of these was marked on an aerial photograph of the peninsula which was widely circulated prior to the inquiry and which was also used as the starting point for the collection of evidence at the inquiry.

20. In the course of the inquiry further alleged public rights of way were put forward by witnesses, including on the northern part of the peninsula over land occupied by the golf course and around Castletown Bay as far as Hango Hill. As each additional path was identified its line was added to the original photograph, which developed into a composite aerial photograph of all of the alleged public rights of way as shown at appendix 1. It is this composite photograph (also referred to as the inquiry photograph) which is referred to throughout this report.

21. To enable each path and section of path to be specifically located, every path node (i.e. the start and end of each path and every intermediate path junction) was notated alphabetically. The same convention has also been used throughout this report.

22. Because of the large number, the alleged public rights of way are considered below in three groups:

- Paths south of the Department's car park. The nodes on these have been notated A to Z together with li, Mi, Vi and Wi.
- Paths in the area north and east of the car park. These became known at the inquiry as the grassland paths and have been notated AA to AHi
- Paths around and crossing the golf course and along the east coast around Castletown Bay, notated as BA to BZ.

2: Paths south of the car park

23. The eight paths referred to in the Tynwald motion and as shown on the original aerial photograph are all on the lower half of the Langness Peninsula, south of the Department's car park at point A. Together with the additional paths that were identified in the course of the inquiry both by Public Rights of Way, Langness (PROWL) and by other witnesses, they are as set out in the table below:

Origin- al No.	Shown on photograph:	Description:
A: Paths referred to in the Tynwald motion		
I	A-B-Y-D-F-G- J-K-L-M-Vi-P- Q-li-A	From the car park, a circular route around the coastline passing to the seaward side of Langness lighthouse. Commonly referred to at the inquiry as the circular path or 'main arterial route'.
II	Q-R	From point Q on the circular path, west-south-west along Langness Point.
III	A-I-O-P	From the car park, south along the metalled road to the north gate of the lighthouse, then on the western side of the lighthouse wall to the circular path at point P.
IV	O-N-L	From the north gate of the lighthouse, east-north-east to the circular path.
V	B-C-E	South from the circular path at point B to the Herring Tower.
VI	E-H-N	From the Herring Tower (point E), south to join path IV at point N.
VII	E-F	From the Herring Tower (point E) east to join the circular path at point F.
VIII	J-K, K-L, L-M	Three loops to the seaward of the circular path on its eastern side. These were commonly referred to at the inquiry as 'the coastal loops'.
-	G-H-I	A path on the northern side of the fence erected by DAFF from the circular path at point G west to the metalled road at point I.
-	C-D	A path bisecting the north-east corner of the circular path between points C and D.

Origin- al No.	Shown on photograph:	Description:
B: Paths identified by PROWL at start of inquiry		
-	R-T-U	From point R, an extension westward of the path over Langness Point to the outer island.
-	Q-S and Q-Z	Two short paths from the spur to Langness Point close point Q, running north to Port Bravag and south to Dreswick Harbour.
-	I-li	From point I on the metalled road, running west on the northern side of the DAFF fence, to point li on the circular path at the Arches.
-	Spur to W	From the circular path south of the lighthouse compound at point Vi, south west via a footbridge to the former fog horn equipment, then to the south of that equipment to terminate on Dreswick Point at point W.
C: Other paths identified by witnesses in the course of the inquiry		
-	A-E	From the car park, south west to the Herring Tower.
-	Spur to V	A short path running from the junction of the circular path with the path to the fog horn at point Vi, south west to the high-water mark (point V).
-	Shown on inset as Vi-Wi and M-Mi	Two short paths south east of the lighthouse enclosure, running east from the circular path to the head of the north and south arms of Tobacco Gullet. That to the northern arm of the gullet leaves the circular path immediately south of point M; that to the southern arm from its junction with the path to the fog horn at Vi.

3: Evidence by Public Rights of Way, Langness (PROWL)

Opening statement by Ian Costain, PROWL: Summary of key points

24. Mr Costain's opening statement is filed with the inquiry papers. Key points from it are summarised below.

25. Mr Costain said that PROWL regarded the Langness Peninsula as one of the most important landscapes on the Isle of Man and a focal point for much of the south of the Island. There is no doubt that it contains a range of footpaths; they are worn into the fabric

of the landscape and on aerial photographs many of them are as plain to see as the road. There is the circular coastal path beginning and ending at the car park, with a variety of small loops and a spur to the fog horn at Dreswick Point, the path to Langness Point with its spurs to Dreswick Harbour and Port Bravag, the network of paths centred around the Herring Tower and the routes on the grassland next to the car park between the golf course and the heath. There is evidence that these routes have been used and recommended to visitors for more than 130 years.

26. The coastal route clockwise from the golf course and passing seaward of the lighthouse was one of the walks recommended by the Manx writer and poet, T.E. Brown in his guide to walks of 1877. Other guides to feature the walk on Langness have included *Jenkinson's Practical Guide* published in 1874, *Black's Guide to the Isle of Man* published in 1904, the fifth edition of Ward Lock's *Pictorial and Descriptive Guide to the Isle of Man*, the Manx Conservation Council's *Field Guide No. 1 Langness*, reprinted 1990 as a contribution from the Manx conservation societies to their campaign to save Langness from exploitation, and the Cicerone Guide to the Isle of Man published in 2004. The *Isle of Man Street Guide* published in 2004 clearly indicates the circular coastal path, beginning at the car park and passing seaward of the lighthouse as a fact on the ground. Over the years, therefore, the Coastal Path, the Langness Point Path, the Herring Tower Paths and the Cross Peninsular Path have all been walked as a matter of course, and recommended to visitors.

27. Section 88 of the Highways Act 1986 provides that 'Where a way over any land has actually been enjoyed by the public as of right and without interruption for a full period of 21 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.' In collecting affidavits, witness statements, guide book accounts and letters PROWL has shown that the paths have been used 'as of right and without interruption for a full period of 21 years' and that as far as the general public is concerned, there is not just insufficient evidence but there is no 'evidence that there was no intention during that period to dedicate it.'

28. For more than 21 years prior to its closure in 2005, the right of the public to use the way passing south and south-east of the lighthouse compound was not brought into question, and the use of this way was not publicly challenged. There was no notice or pedestrian obstruction on any part of the circular route beginning at the Department's car park and passing seaward of the lighthouse. Neither was there any notice or obstruction on the paths leading to Langness Point, Dreswick Harbour or Port Bravag.

29. The only obstruction to the Herring Tower paths was created by the absence of a kissing gate when the Department of Agriculture, Fisheries and Forestry (DAFF) funded the erection of a stock proof fence as part of a wildlife management plan in 2003. This fence obstructed the straight route between the Herring Tower and the lighthouse.

30. There have been no notices or obstructions on the network of paths across the grassland between the golf course and the heath (i.e. north and east of the car park).

31. Despite extensive efforts, PROWL has found no evidence during this 21 year period

of any conversation between any landowner or tenant and any member of the public using the paths which would have led anyone to suppose that permission was required. Nor has any statutory deposit or declaration been made under section 88 (6) of the 1986 Highways Act.

32. As someone who spent part of her childhood in Castletown, Mrs Clarkson would surely have realised the extent of public usage of the Langness footpaths, and any visit to the area prior to purchasing the lighthouse cottages and the adjoining land would have shown her husband and herself the well-used nature of the paths, the detail of the routes and the frequency of walkers along them. Although not recorded on the definitive map and statement, the well-worn nature of the turf and the regular passage of walkers should have made it plain that 'rights, as yet unrecorded' could well have been established over the land.

33. The public notice published by the Attorney General dated 21st July 1975 specifically requests the public to exercise the right of way over the road to Langness and the lighthouse in such a manner as not to give the landowners or tenant or the lightkeepers and their families any further cause for complaint. A second public notice dated 8th June 1976 stated 'Whilst cars will not be permitted to travel beyond the proposed car park in the direction of the Lighthouse (apart from those having official business) members of the public may use the road to the Lighthouse on foot and they will also be permitted to walk over and rest on Langness between the Lighthouse and Langness Point.' When clarification of this statement was sought, Elsbeth Quayle the local MHK and John Welsh were assured that the public's traditional rights to walk the paths had not been challenged, but rather had been developed into additional rights to wander away from the path. The public therefore continued to use the paths in the belief that they did so 'as of right'.

34. Only the road to the lighthouse was subject to the Public Notice. No mention was made of the use of the east-west path south of the car park wall, or the stone stile leading to the western section of the coastal path, both of which had been in use for generations, and continued to be so used.

35. When the fog horn was decommissioned barrels of concrete were placed across the road between the stone pillars near the car park. These restricted vehicles but had no effect on pedestrian access which continued as before.

36. There have been at least four recent opportunities for landowners to make plain their wish for the Langness footpaths not to be dedicated to the public, if that was the case, but they have not done so. Most recently, when the Department of Agriculture, Fisheries and Forestry (DAFF) installed stock proof fencing on land immediately north, north-west and north-east of the lighthouse, kissing gates were installed in four of the five places where the fence cut across traditional footpaths, clearly indicating acceptance of those footpaths. In the fifth place, south of the Herring Tower, the obstruction caused little inconvenience to the public and was accepted by them as effectively diverting the path. It was not until 2005 that notices appeared claiming the right to 'exclude any person at any time for any reason'.

37. After PROWL had been formed in late 2005 (and based on advice from DoLGE and

the Department of Transport that no action could be taken until obstructions actually appeared) it had concentrated on the paths that had been blocked, namely the paths passing to the seaward side of the lighthouse. The DoLGE Minister had also been advised that the traditional routes were only permissive and nothing could be done, but this was at odds with MHKs' and campaigners' understanding of the June 1976 public notice (published by the Attorney General) and took no account of the July 1975 notice which referred to 'the right of way over the road to Langness and the lighthouse'. Moreover the notices were concerned only with the road, and not the path which had been obstructed.

38. As long ago as February 2002 Tony Brown MHK, now the Chief Minister, was reported as expressing concern that the proposals for an ASSI on Langness may affect an area which the public had enjoyed for hundreds of years and which had a special place in the hearts of the people of Castletown. The Castletown Commissioners, local MHKs and members of the public all supported the recognition of the paths on Langness and public rights of way and could not understand why section 88 of the Highways Act had not been applied.

39. It was in response to a letter from the Attorney General of 21st February 2006 stating that it was his 'duty to protect rights of way for the public if there truly is evidence of such rights' that PROWL began to make affidavit forms available to those people who claimed to have long term experience of using the Langness circular coastal path without stealth, without force and without challenge. The 127 affidavits that have been submitted by PROWL come from across the social spectrum, with many of the people involved being local Manx families.

40. Many of the people who have written to the Department of Transport copied their letters to PROWL. Those from which extracts were quoted by Mr Costain included:

- Stanley Woollock, OBE writing on 9th November, 2005 'I have always assumed that these (Langness) paths constituted a public right of way and I myself have walked them, unhindered for over thirty years.'
- J B Young writing on 28th April, 2006 'This footpath round the lighthouse on the southern end of Langness peninsula formed part of the Senior Boys' Cross-Country course during the years 1981 - 1999. Access was completely unrestricted. Approximately 70 boys ran along it 7 times each Spring Term.'
- John Morgan, writing on 6th April 2009, '... the College cross-country races have taken place annually over Langness peninsular. At that time (1980) the juniors ran to the Haunted House (the ruined Langness Farmhouse) and back, the Middle School, around the rear of the car park and the seniors around the Lighthouse. For very many years, before and after 1980, a standard punishment for pupils of the College who misbehaved was for them to be sent on a run around the lighthouse! ... In my thirty six years association with King William's College I can never recall pupils' access to the paths of the Langness Peninsula ever being challenged, refused or restricted.'

- Juan Watterson of Castletown writing on 15th February 2008 'I walked on Langness for about sixty years and continue to do so on several days each week; I have signed an affidavit to this effect. Until two years ago I had not experienced any restriction on access except that, in the days when the fog horn was still in use, the bridge to the fog horn was closed.'
- John Morgan writing on 12th February 2008, 'My wife and I have lived in Derbyhaven for nearly fifty years. During this time our favourite walk (has) been along the Langness footpaths which, until recently, included the walk around the lighthouse. In all these years we have never had to ask permission to walk around the peninsula and never been denied access. We, therefore, find it unacceptable that a land owner be allowed to close a section of this coastal walk at will. We feel strongly that access around the whole of Langness is a traditional right and sincerely hope that the delegation appointed can resolve this problem to the satisfaction of the Manx people and visitors to the Island.'
- James Gerrard writing on 5th February 5 2008; ' For nearly forty years I have regularly walked on Langness, in particular on the route which passes to the south of property owned by Mr Jeremy Clarkson.'
- Leo Cousins writing on 4th April 2009; 'I can confirm that in respect (of) Langness public footpaths in particular the area north and east of the car park, in other words the grass land between the golf course and the heathland leading towards the Herring Tower I can say with complete confidence that I and several members of my family have walked these paths regularly between the period 1984 - 2005, that the paths were never obstructed (not even for a single day) and that no notice ever informed me that we were only allowed to be there by permission of the landowner.'
- J E Clarke (born in Derbyhaven in 1927 to a father born in Derbyhaven in 1905) 'We both walked Langness all our lives. In all that time there were no restrictions on walking.'
- Anne Kaye writing on 1st May 2009, 'I have lived on the Isle of Man for most of my life, and continuously since 1977. I know Langness particularly well because of my interest in wildlife and birds in particular. I am quite certain that during the 21 years leading up to the obstruction of the paths near the lighthouse in 2005 that there have been no previous obstructions of the paths in this area. The only notice that I have seen was the one prohibiting unauthorised vehicles going towards the lighthouse from the car park.'

41. The accounts that PROWL have received from former lighthouse keepers and their families bear out the assertion that the public believed they were exercising a right when they walked around the peninsula, and went south of the lighthouse sometimes to the fog horn. Letters written by those who had worked at the lighthouse or who had lived there from between 1974 and 1979 and from 1979 to 1984 confirmed that the lighthouse had been a very popular place for walkers and picnickers, that at no time was any objection made to the

use of the peninsula in this way, nor was pedestrian access around the lighthouse or to Dreswick Point ever restricted.

42. From late 2005 until the time of the inquiry PROWL's case – that the paths on Langness had been used 'as of right' without permission being required or refused and without any obstructions being seen until 2005 – had been widely publicised and endlessly repeated. No one has put forward anything to suggest that this claim is wrong or produced any evidence of rebuttal. Nor, despite stressing to supporters the importance of any conversation, notice or obstruction that suggested that permission was needed to use these paths, has anyone come back with such a memory, however vague.

43. It was PROWL's firm belief in 2005, and it remains their conviction today, that under section 88 of the 1986 Highways Act these routes have become highways, and that they should now be recognised as rights of way and protected by the Highways Division of the Department of Transport.

4: Affidavits

44. In support of their claim, PROWL submitted a large number of affidavits sworn by local residents and witnessed by a Justice of the Peace testifying to the resident's unrestricted use of paths on the Langness peninsula. Each affidavit is in a standard form, of which there are three versions relating to paths in this group, and has a map attached illustrating the paths to which it relates. A fourth version relating to the grassland paths is considered separately at paragraphs 107-109 below.

45. The largest number of affidavits, 128, relate to the use of the circular path. Each has an identical map attached showing a route which corresponds broadly to that shown on aerial photograph as running A-B-Y-D-F-G-J-K-L-M-P-Vi-Q-li-A, although with some differences in detail. After giving the signatory's name, address and occupation the affidavit states:

"4. Between the years of _____ and _____ I have walked around Langness peninsula and Langness lighthouse following a route from the car park across the land to the eastern coast passing south of the lighthouse and returning along the western coast along the pathway. At all material times, I have done so freely without any permission ever being requested or given by any other party. At no time have I ever seen any notice erected at or near the pathway or in any other place purporting to grant or withhold permission for myself or any other persons to pass along the pathway.

5. Until late 2005, I have never seen any obstruction placed across the pathway intended to prevent access of persons along it."

46. All of these affidavits were completed between March and May 2006.

47. The second group of 16 affidavits were completed later, between December 2008 and January 2009, and relate to the paths leading to and around the Herring Tower. They

use the same general wording as the first affidavit but describe the route that has been walked as:

“... from the Car Park across the land towards the eastern coast and then south to the Herring (or Round) Tower. I have also followed the Pathways going east and south from the Herring (or Round) Tower.”

48. The attached map shows a route which corresponds to that shown on the aerial photograph on the line A-B-C-E and then a circular path E-F-G-H-E, but again with some clear differences in the detailed alignment.

49. The third group comprising 14 affidavits were also sworn in December 2008 or January 2009. They relate to the paths to Dreswick Harbour and Langness Point and describe the paths walked as being those:

“... from the car park along the western coast of Langness peninsular. From the south western point of the main peninsular I have walked along the pathways to Dreswick Harbour and Langness Point.”

50. In this case the lines marked on the attached map equate to those on the aerial photograph running A-li-Q-Z and Q-R-T-U, but again with clear differences in detail. In addition, it was pointed out in cross examination that the maps attached to these 14 affidavits are not all identical; one omits to show a path to Dreswick Harbour (point Z) and on the others the length of the spur to Z varies.

51. In the second and third group of affidavits, the fifth paragraph is also modified so as to omit the reference to late 2005. It read:

“5. I have never seen any obstruction placed across the pathway intended to prevent access of persons along it.”

52. A number of the people who completed an affidavit also gave evidence in person at the inquiry. In the case of the circular path, it would appear that 12 of the 128 signatories did so, as did nine of the 16 who submitted affidavits in respect of the Herring Tower paths and seven of the 14 whose affidavits related to the Dreswick Harbour and Langness Point paths. I have taken this into account in the weight I have given to the evidential value of the affidavits.

Periods of use

53. The affidavits accord with the evidence given at the inquiry in showing that the use of the paths has extended over a considerable period of time. This is illustrated in tabular form at figure 1 below.

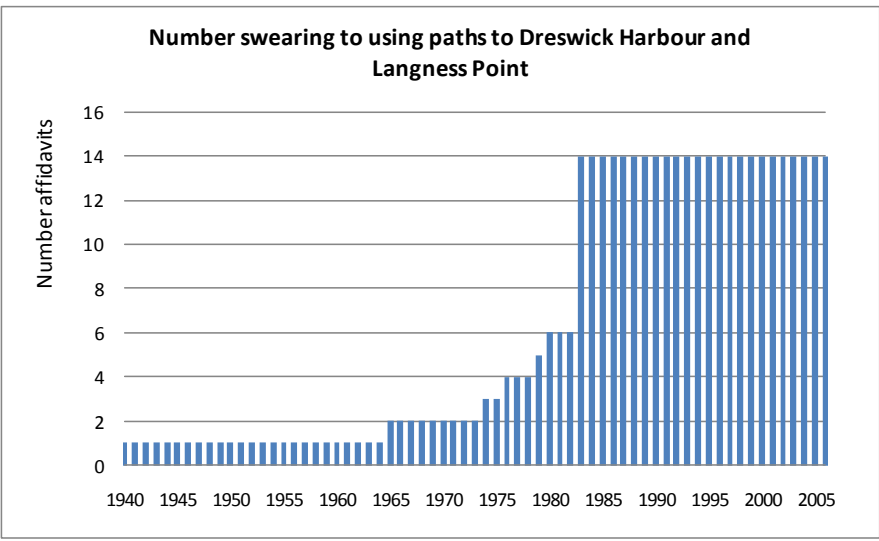
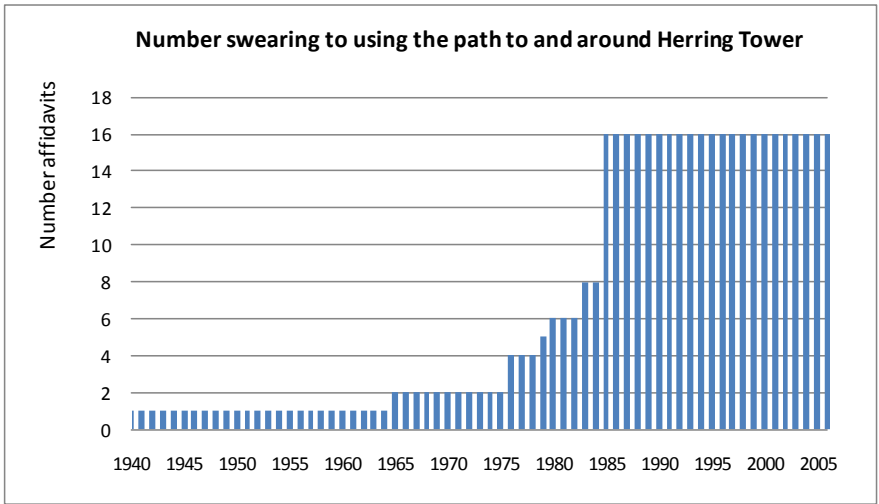
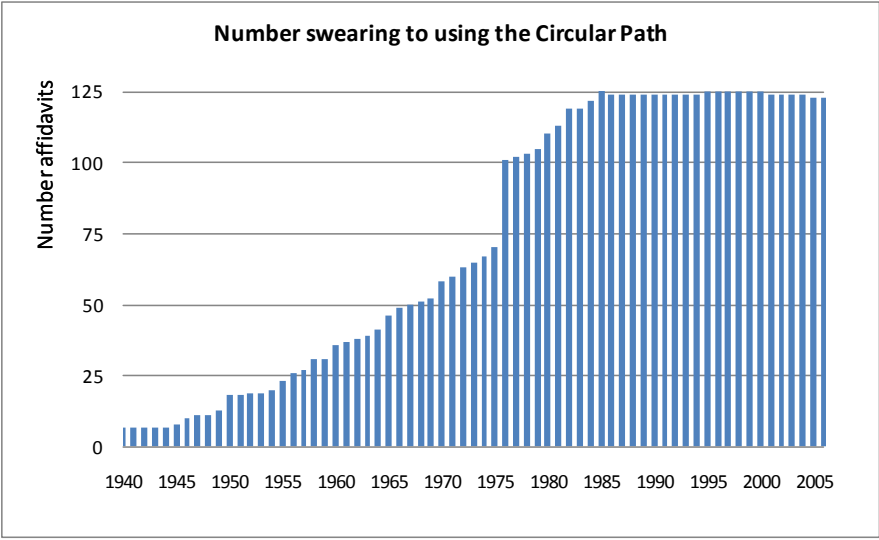


Figure 1: Periods of path use as shown by affidavits

54. In the case of the circular path, more than 120 of the affidavits show the path as already being in use by 1985, with 101 doing so on or before 1976. While fewer signatories have testified to using the route before 1975, nonetheless 58 affidavits record that it was being used in 1970; more than 20 that it was used in the mid-1950s, and seven record use starting during or before 1940. (The earliest recorded use is by three people who started using the path in the 1920s.) In the great majority of cases that use continued until recent years, 110 of the 128 affidavits recording use up to 2005 and a ten up to 2006.

55. The same pattern of use over a considerable period of time is shown by the affidavits relating to both the Herring Tower paths and the paths to Langness Point and Dreswick Harbour albeit that many fewer such affidavits were submitted. All 16 of the signatories whose affidavits relate to the Herring Tower paths have testified to the paths being used in or before 1985, for example, and all 14 of those relating to the Langness Point path to use in or before 1983.

Accuracy of the affidavit maps

56. When the line of the paths marked on the maps attached to the each of the three types of affidavit are compared with those shown on the inquiry aerial photograph, a number of discrepancies can be identified, as they can when compared to the map (document 4) attached to Mr Costain's submission. For example, the alignment of the western and southern sections of the circular path, the western edge of the loop path from the Herring Tower and the line of the path along the promontory to Langness Point are all different to the corresponding paths as shown on the aerial photograph. Similarly, the three coastal loops on the east side of the peninsula (shown as J-K, K-L and L-M on the aerial photograph) are apparently omitted from the map attached to the affidavits.

57. As noted above, there are also inconsistencies in the way the spur to Dreswick Harbour (point Z) is depicted in the third group of 14 affidavits. Moreover none of these affidavits show a path to Port Bravag (point S).

58. Responding to questions about these discrepancies in the course of cross examination, Mr Costain explained the process by which the affidavits had been prepared. A template of the wording of each type of affidavit had been prepared by PROWL based on his and other officers' personal knowledge and experience of the use of the paths on the peninsula. Photocopies, together with a map of the stated route which had also been prepared by the PROWL Steering Group, were then made available to those who supported PROWL and who were known to have used the paths on a regular, long term basis, and who were invited to complete the affidavit by inserting the relevant years of use and other personal details and arranging for it to be witnessed by a Justice of the Peace.

59. Although not able to account for the differences, Mr Costain said the line of each of the paths referred to in the affidavits was obvious on the ground and would also have been well known to each of the individuals who had completed an affidavit having been used by them over a period of many years. In his view, therefore, there would have been no doubt in the mind of any of the signatories as to which of the paths they were intending to refer. The discrepancies did not suggest that people had not followed a defined line but had instead

wandered at will, nor did they imply that a multiplicity of routes existed on the ground. It was the much larger scale aerial photograph available at the inquiry (and on which the aerial photograph attached to this report is based) that should be taken as being the more accurate representation of those paths.

5: Evidence of use by other witnesses

60. In addition to the evidence given by Ian Costain on behalf of PROWL, 29 other witnesses gave evidence at the inquiry regarding their use of paths on the peninsula as public rights of way. All 29 said that they had used either the majority, or (in most cases) all of the paths south of the car park, with two noticeable characteristics being the length of most people's use of the paths and the frequency with which they had been used.

61. A number of witnesses now in their sixties and seventies recalled having been introduced to the peninsula by their parents or said they had first enjoyed walking there as children, and still do so on a regular basis. Both John Christal and Eddy Lowey MLC said they had regularly used the paths on this part of the peninsula since 1946, while Juan Watterson had done so since 1949 and Peter Curtis since 1950. Robert Hardinge and Susan Creer were two further witnesses whose use of the paths had started in the early 1950s. Brenda Crellin, now aged 73, was one of a number who recalled being first taken walking on the peninsula by her parents or another, older relative; an experience which she later enjoyed repeating with her own children. Elin Callister too recalled having used the paths on the peninsula from her childhood in the 1930s.

62. Viewed overall, of these 29 witnesses seven gave evidence that their regular use of the paths started in or before 1950. A further ten said that their use had started in or before 1970 and seven had used started using them before 1985.

63. The frequency of use of the paths varied but the great majority of those giving evidence said they walked on the peninsula several times a month, or several times a week, and that they did so throughout the year. Not all had maintained such frequent use throughout their lives, however; although some had done so, others said that they had initially used the paths regularly while growing up in the area. This was followed by a period in which the witness lived off the island and was able to use the paths only occasionally when returning on holiday or to visit relatives - often it was a much anticipated feature of such a visit - before returned again to very regular use after retiring or returning to live permanently on the Island. John Cristal, Alan Charmer, Robert Hardinge, Juan Watterson and Elin Callister were among the witnesses whose use of the paths followed this pattern. Others like Anne Kaye, Richard Norris and David Greenhalgh who grew up away from the Island or from the Langness area, said they first used the paths on the peninsula on an occasional (albeit regular and repeated) basis when visiting the area. This had later changed to very regular and frequent use once they came to live in Castletown or the surrounding area.

Circular path and paths around the Herring Tower

64. All of those who gave evidence at the inquiry in support of the claimed public rights

of way said they had used both the main circular path around the peninsula and the network of paths centred on the Herring Tower, with many having done so since the 1950s, 1960s or 1970s. Also emphasised was the frequency with which these paths were used, with many witnesses doing so several times a month or even on a daily basis, and the fact that that use continued throughout the year.

65. Historically, there has been a tradition of walking around the entire peninsula either from Castletown or Derbyhaven, as reflected in the guide books referred to by PROWL. More recently, visitors had increasingly come to Langness by car. As well as driving down the metalled road to point P, some witnesses recalled that cars had also been regularly driven down the coast along the line A-li-O (which had then been wider than it is now and without a kissing gate at point li), with visitors often parking to the west of the lighthouse and at the start of the spur to Langness Point. Fred Hodgson, Susan Creer, Brenda Crellin and Elin Callister were among a number of long-time users who told the inquiry that, although there were fewer visitors at that time, all of the paths as identified in the Tynwald motion and PROWL's additional claim had always been clearly apparent and easy to follow on the ground. Nor, until recently, had any of the paths been closed to pedestrians or the public's right to use them as rights of way on foot been challenged.

Path to the south of the lighthouse (Section M-Vi-P)

66. Almost invariably, witnesses to the inquiry emphasised that in following the circular path they had passed to the seaward side of the lighthouse; that this had always been part of the attraction of walking on Langness and that, until October 2005, the line of the path had never been obstructed in any way. Those that did so included John Morgan, John Christal, Angus Hoban, Pat Mudie, Robert Hardinge, and Richard Norris. For Leo Cousins this was always the most interesting part of the walk while Margaret Parnell recalled being able to see seals from the path. Alan Charmer described how it was necessary to step over the large iron pipe that fed the fog horn equipment – it was a handy place to sit and rest. So did Geraldine Batchelor who also described the path around the lighthouse as always being very clear and well used.

67. John Welsh, Elin Callister and Margaret Parnell were among the further witnesses who described in detail the line which the path took. Starting from a point approximately 25 metres in front of the original entrance to the lighthouse (point P) it ran south east down the slope to pass close to, but below, the south west corner of the compound wall. It then swung out in a shallow arc, crossed the concrete path and iron pipe leading to the fog horn before returning to round the south east corner of the compound. From there the path ran parallel to, but some distance away from, the compound wall, following that wall north past the Mariners' Grave and then north east (somewhat closer to the wall) to point M. It was emphasised to me, particularly at the site visit, that the distance between the path and the wall of the compound, of around 8-10 metres, made it impossible to observe in detail the residents of the cottages inside the compound (although it is, of course, possible to see through the field gate that has recently been placed in the wall.) Nor, given the difference in levels, is it possible to see over the wall from this part of the path into the compound.

68. Angus Hoban was among a number of witnesses who referred to the local

importance of the Mariners' Grave which lies immediately to the east the path, opposite the new gate in the compound wall. The grave, which is thought to be a mass grave of shipwrecked sailors, pre-dates the construction of the lighthouse being shown on early OS plans. It was, Mr Hoban said, always marked out by stones that were kept whitewashed by the lighthouse staff. Many older people had always observed the practice of placing wild flowers on the grave as they walked past.

Path to the fog horn and Dreswick Point (Point W)

69. Many of the witnesses including Margaret Parnell, Mrs Cook, John Welsh, Juan Watterson and Richard Norris similarly stated that they had regularly walked along the concrete path laid by the NLB and across the footbridge to reach the fog horn equipment and Dreswick Point. The former was seen as being of intrinsic interest in its own right and an attraction, particularly to children; the latter was a key location from which to view marine wildlife, to fish and access the shore to catch crabs.

70. Margaret Parnell recalled in particular having visited the fog horn regularly with her children, as did Sue Creer who supplied the inquiry with five photographs taken in 1986 and 1990. These show clearly the path and iron pipe crossing the ungated footbridge and the warning sign erected by the NLB alongside it. (See additional document 26). The sign is in the form of a red warning triangle with an exclamation mark and the word 'Noise'. Elin Callister similarly recalled using the path and bridge at this time and the noise sign put up by the NLB. Some time before then an iron gate had also been placed on the bridge by the NLB. This had never been locked however and was later removed. She continued to use the path even after the wooden gate and notice were put up until the whole area had been closed off in October 2005.

71. Richard Norris was another witness who had also regularly visited the fog horn with his children and who recalled the noise sign. Although it had never been closed, he felt the bridge was different in character to the rest of the path and was uncertain as to whether it should be regarded as part of the right of way².

72. John Cristal said that he had visited the fog horn regularly since his childhood in 1946; together with east side of Dreswick Harbour the rocks around the point was one of the best locations on the island for crabbing. Mr Hoban also referred to the importance of Dreswick Point as a prime location to fish and catch crabs, as did Geraldine Bachelor whose husband had often done so while she sat on the rock. For Tony Sloane, who had used the peninsula since the late 1950s, the area around the fog horn was a prime location for watching seals and other marine wildlife. He had previously visited it regularly over many years, including with his grandson and regretted that it was now no longer accessible. For Alan Charmer the ability to visit Dreswick Point was also important in order to be able to throw a wreath into the sea in memory of his uncle.

73. Of all the members of public who gave evidence, Irene Cowan was alone in saying

² A bridge passing over a natural stream or obstacle is, in law, part of the highway.

that although she had visited the area since the 1950s, including that part south of the lighthouse, she had always regarded the area of the fog horn as being out of bounds. The sign put up on the bridge in the last five or six years had confirmed that it was private property.

Path to point V

74. Witnesses were divided in their opinions about whether point V had been regularly accessed by members of the public and, if so, whether a consistent line had been followed to reach it. Angus Hoban, Eddy Lowey and John Christal all told the inquiry that they had often been to V to fish and catch crabs; Susan Creer also said that she recognised a distinct path existed to point V as did Juan Watterson. He told the inquiry that the rock formation along the coast from point A to point V was one of classic sites in British Isles of a geological unconformity. It was visited regularly by parties of geologists and students and he had frequently been to point V in that context.

75. For other witnesses, however, the area was one to be avoided. It was boggy and unpleasant, being near to where the cesspit from the lighthouse discharged and other rubbish had been dumped, and where longtails were also commonly seen. Geraldine Batchelor said that, despite this, a defined path did exist, albeit that it was rough and not very pleasant to use. Mrs Cook however told the inquiry that she did not recognise a defined path to exist; as did Anne Kaye, Michael Gerrard, Richard Norris, Elin Callister, Alan Charmer and Eddy Craine.

Additional paths at Tobacco Gullet (Vi-Wi and M-Mi)

76. The two short paths to the head of each arm of Tobacco Gullet were primarily referred to in evidence given by John Welsh, who supported this by submitting two further affidavits which he and his wife sworn on 17th July 2009. These testify to having walked both paths (and the paths to Port Bravag and Dreswick Harbour) between 1976 and 2005 freely and without permission and to the paths having never been obstructed in that period. Further affidavits were not possible, he said, because of time constraints.

77. Mr Welsh said that when he and Ian Costain met the Tynwald Delegation in February 2008 these two paths had also formed part of the suggested compromise solution they put forward of moving the circular path away from the immediate vicinity of the lighthouse, although this was not referred to in the subsequent report. While Mr Welsh agreed in cross examination that the line of each path was mainly over bare rock and was not therefore clearly visible on the ground, he nevertheless believed that a consistent line for each path had always been followed and that their use by the public over many years justified the recognition of both paths as public rights of way.

78. A number of those who has used the area for crabbing also referred to both of these paths, while Elin Callister said she could recall going to the north side of Tobacco Gullet to picnic where there was 'a little path' down to the shoreline. Eddy Craine also considered that a path existed down to the head of the northern arm of the gullet, but not to the southern arm. Geraldine Batchelor, who had accompanied her husband when he regularly visited the area to go crabbing, recalled the existence of two distinct paths, although both

were very short.

Paths to Langness Point (Q-U), Port Bravag and Dreswick Harbour (points S and Z)

79. PROWL's claim that the public right of way running from point Q along the spur to Langness Point should properly be recorded as extending to the far end of the peninsula on the outermost island (point U) was strongly supported by many of witnesses at the inquiry. The walk had long been a feature of a visit to Langness, albeit that point U was only accessible at low tide and that getting there was physically demanding. Both this and the paths to Port Bravag and Dreswick Harbour had been particularly popular prior to the construction of the car park at point A in 1976, when cars were often parked on the open ground above Dreswick Harbour. It remained especially popular with children in that, to reach the farthest island, it was necessary to cross the two tidal gullets (at points R and T) and scramble down and up the short cliff face at T. For adults, point U was prized for its unique views and as a viewpoint from which to watch sharks, whales, dolphins and other marine wildlife.

80. Among the witnesses who specifically referred to their use of the path between points R and U, Michael Gerrard and Margaret Parnell both said that it was usable but strenuous. Alan Charmer recognised that a path existed although he, personally, was no longer able to use it. Mrs Cook was similarly now too old to get to U, on what she called Goat Island, but recalled having picnicked there in the past. Eddy Craine told the inquiry that he had been to U on many occasions with his son, as did Richard Norris; it gave the best view of the rock islets off the end of the point. Angus Hoban said had been there just three weeks before the inquiry to photograph birds. Leo Cousins too had been there recently; there was quite clearly a line on the ground and that getting to U was 'good fun'.

81. All of the above witnesses had also more regularly used the paths to Port Bravag (point S) and Dreswick Harbour (point Z), as had Geraldine Bachelor and John Welsh, whose two further affidavits also related to these paths. (See additional documents 3a). Witnesses said that they considered distinct paths existed to each location. Port Bravag was a favourite picnic spot and place to go with children, while Dreswick Harbour was renowned as a place to catch crabs, to swim and for its views of the submerged kelp forest. Both were areas which had been very frequently used in the 1960s and 1970s before the car park had been constructed and remained popular locations to visit.

Coastal loops J-K, K-L and L-M

82. Witnesses at the inquiry similarly endorsed PROWL's claim that, in addition to the direct line of the circular path, three coastal loops should be separately identified on the east coast as shown on the inquiry photograph running between points J to K, K to L, and L to M. In doing so they strongly refuted the suggestion by James Ramsden on behalf of Mr and Mrs Clarkson that these were merely undefined sheep tracks.

83. Mrs Cook was one of a number of witnesses who said that these paths had long been used as vantage points from which to watch seals and other wildlife. Although narrow, distinct paths existed and had always been in the same place, the surrounding gorse vegetation channelling walkers and making it difficult to walk other than on the recognised

line. Alan Charmer, Margaret Parnell, Pat Mudie, Juan Watterson, Robert Hardinge and Michael Gerrard all supported Mrs Cook's evidence while Anne Kaye drew a distinction between the definite paths which existed on Langness and the situation on the Calf of Man where there were no distinct tracks through the heather. From 1978 to 1994 she used all three loops with parties from the Young Ornithologists' club which she ran. She was also particularly interested in the loop from L to M because of a rare plant which grew there.

84. Richard Norris said that in addition to the three loops, there were other recognised paths through the gorse in this area, each going out as a spur to a particular vantage point. However the loops identified by PROWL were the main paths. For the naturalist, this was one of the 'best bits' of Langness. Its importance had been recognised when the ASSI fencing had first been put up by the inclusion of kissing gates at L and M and their removal in 2005, so closing this particular loop, had been particularly regrettable. Geraldine Batchelor similarly said that she recognised and had used both the three loops claimed by PROWL and the additional spurs referred to by Mr Norris.

Additional path to the Herring Tower (A-E)

85. The inclusion of the additional path A-E running diagonally from the car park to the Herring Tower was put forward at the inquiry by witnesses including Juan Watterson, Eddie Craine and Angus Hoban. Although apparent on the aerial photograph the line runs through an area of dense gorse and was, unusually, barely discernable on the ground at the time of my site visits. It would therefore, in my opinion, now be very difficult to use. Nevertheless, Juan Watterson said that he continued to do so, on average about once a week, although he admitted that it was 'rather prickly' and that few others now did so. Elin Callister also said that she had used the path until recently and believed there had always been a definite path on that line. Richard Norris had also used the path frequently until it became overgrown, as had Eddy Craine who believed it had once been the main path to the Herring Tower.

86. This evidence was supported by Mr Costain for PROWL; albeit that the path had been omitted from PROWL's initial claim for reasons of simplicity, he considered the this line too had existed for a number of years, from at least the establishment of the car park in 1976 if not earlier. It should, in his opinion, also therefore be recognised as a public right of way.

Paths over the metalled road (A-I-O-P) and alongside the DAFF fence (G-H-I-Ii)

87. Evidence given at the inquiry regarding witness's use of the metalled road from the car park to the southern gate of the lighthouse (A-I-O-P) is summarised separately in part B (paragraphs 386). It shows that, while vehicular use of this part of the road largely ceased following the construction of the car park in 1976, the majority of those giving evidence continued to use it on foot, albeit that it was less popular and used less frequently than the other paths because of the more restricted views. Mrs Cook, Anne Kaye and Pat Mudie were among those who referred to its value in particular in providing a short cut back to the car park if the weather deteriorated, and in enabling a circular walk around the lighthouse to be completed whilst affording some protection from a strong prevailing wind. Mr Norris said

that it was also valued by birdwatchers in that the adjoining vegetation attracted different species of birds to those generally found on other parts of the peninsula.

88. For some of the witnesses, however, use of this part of the road had been made difficult or impossible by the installation of a cattle grid at point I in 2003 as part of the ASSI Management Strategy without any alternative provision for pedestrians. Mr Welsh said he had complained at the time that the cattle grid constituted an obstruction to the highway, but did so to DAFF rather than the Department of Transport.

89. That part of the path across the peninsula alongside the DAFF fence notated G-H-I was among the paths referred to in the Tynwald motion. The remaining section I-II was among the paths identified at the start of the inquiry as an alleged public right of way by PROWL, who also put forward section G-H. However, Mr Costain said that while PROWL recognised the public were also currently using the remaining section H-I, it was, in their view, likely that this came into existence only after the fence had been erected in 2003 as an alternative to the path from H to N which the fence had obstructed. The use of section G-H had also increased as a result of the obstruction of H-N, but in this case there had previously been a recognised path in existence on that line for at least 21 years. The 16 affidavits submitted by PROWL relating to the use of paths around the Herring Tower also include the section of path G-H. Similarly, in PROWL's view, the path from the metalled road to the coast above the arches (I-II) was one which had existed for many years but which had increased in use after the construction of the fence and installation of a cattle grid at point I as part of the ASSI works in 2003.

In the evidence given by other witnesses, however, only Robert Hardinge and Angus Hoban specifically referred to using section I-II, and Margaret Parnell to section G-H. Anne Kaye said that she did not think that section G-I had existed in 1975 while Richard Norris said that he thought it probably arose as a result of the construction of the fence. Similarly, Eddy Craine believed that section H-I arose only after the construction of the fence.

6: Written and other representations

90. In making my assessment I have also read and taken into account the large number of representations made to the Department since 2005 about the paths on Langness, together with the letters written to me by those who were unable to attend the inquiry, as listed at appendix 3.

91. The majority of these, some 59 letters and 21 telephone calls, were received in October and November 2005 following the closure by Mr and Mrs Clarkson of the paths immediately south and east of the Lighthouse, between points L and P. A further 23 letters were received prior to the public inquiry opening in July 2009, and 17 letters and six e-mails while it was in progress or during adjournments. With the exception of four of these letters, and a further single letter received after the inquiry had closed, all of these representations support the case for the recognition of the paths that people have used as public rights of way.

92. The information which they contain reinforces the evidence given at the inquiry, not

only in relation to the paths that have been closed off but more generally, in respect of the use of the paths south of the car park and in relation to a circular walk around the whole of the peninsula. They emphasise in particular the frequency with which many people have used these paths, the very long period of time during which it has been possible to do so 'as of right' - a number of the letters referring to the paths as having been regularly walked for in excess of thirty or forty years - and the absence during that time of any notices or other action by the landowner which might indicate an intention not to dedicate any of the paths as public rights of way. Among the paths specifically identified is a coastal path running to the seaward side of the lighthouse enclosure in the area that is currently closed off and a path from this, crossing the footbridge and leading to the rocks beyond the fog horn equipment on Dreswick Point. More generally, it is clear from the representations that the type of access that has been enjoyed is predominately linear access along defined paths, rather than wandering at will.

7: Evaluation and conclusions

93. It was clear from the large body of evidence put forward by PROWL and other witnesses that this part of the Langness peninsula, south of the Department's car park, has been extensively used by members of the public for many years. The direct evidence given by witnesses was of their enjoyment of Langness for a range of activities dating back, for many, to the 1960s or earlier. Evidence from the guidebooks to the Isle of Man dating from late 19th and early 20th centuries identified by PROWL and the documents from the Attorney General and Department of Transport's file from the late 1930s and 1940s indicate a tradition of public use dating back to at least the late 19th Century and which has continued to the present day.

94. A number of witnesses said that they considered themselves to have a right of rambage, either to the peninsula in general and arising from a tradition of long public usage, or more specifically to the area south and west of the Lighthouse as referred to in the public notice published by the Attorney General in June 1976 following the agreement which he negotiated. Although no such general rights are recognised in Manx law, it is in my view undoubtedly the case that some of the public use that has taken place has involved using parts of the peninsula generally for recreation and without keeping to particular paths or tracks. This is likely to have been particularly the case in the area to the south and west of the lighthouse compound and around Port Bravag and Dreswick Harbour, and to have occurred especially before the construction of the car park in 1976, when cars were commonly driven to beyond the entrance to the lighthouse at point P.

95. It is equally clear, however, that there has been a long tradition of recreational walking on Langness and that for the most part this took place along recognised paths and tracks. Paths have similarly been used to reach a number of specific locations, vantage points or features of interest, in order to pursue particular interests and hobbies. In giving their evidence all of the witnesses were able to describe to me, often in considerable detail, the line of the various paths they had followed as well as the length of time and the reasons for their use. The maritime heath vegetation over much of this area and particularly down the east coast also means that walking other than on a defined line is difficult and

uncomfortable, reinforcing the tendency to keep to a consistent line.

96. It is also notable that (with the exception of the path from A to E, which was overgrown with gorse, and those parts of the paths to V, Mi, W and Wi which are over bare rocks) all of the alleged public rights of way were clearly apparent on the ground at the time of my site visits. The majority can similarly be identified on aerial photographs. While neither of these factors gives any indication, of course, of the period of time that a particular path may have been in use, they are nevertheless indicative of the overall pattern of recreational use which has clearly taken place on this part of the peninsula over a long period of time.

97. In my view, therefore, the overwhelming body of evidence put forward by PROWL and other witnesses to the inquiry, together with the affidavits submitted and other representations regarding the way in which these paths have been used by the public and the period of such use are sufficient to raise an initial presumption that all of the following paths have been dedicated as public rights of way.

- Main circular path, including to the seaward side of the lighthouse, and its short cut (A-B-Y-D-F-G-J-K-L-M-Vi-P-Q-li-A and B-C-D)
- Path to Langness Point and spurs to Port Bravag and Dreswick Harbour (Q-R-T-U, Q-S and Q-Z)
- Spur from the circular path to the fog horn and Dreswick Point (Vi-W)
- Paths to and around the Herring Tower (C-E-H-N, E-F and H-G)
- The three coastal loops (J-K, K-L and L-M)

98. Over and above the question of whether vehicular rights exist over the metalled road from the car park to the lighthouse (A-I-O-P) I consider that the evidence given by witnesses at the inquiry is sufficient to also raise a presumption that a right of way on foot has been dedicated.

99. The evidence given in relation to the other paths in this group is less compelling. Nevertheless, I consider that, on balance, it has been shown that a public right of way has been dedicated from the car park to the Herring Tower on the line A-E. Although I accept that members of the public have accessed the head of both parts of Tobacco Gullet and point V from time to time, I do not consider sufficient evidence has been shown with regard either to the scale of such use or to demonstrate that people followed a sufficiently consistent line as to give rise to the presumed dedication of a public right of way on paths Vi-V, Vi-Wi or M-Mi.

100. Similarly, while I accept that the east-west path H-I-li is currently in regular public use, I do not consider that the evidence put before me, particularly that of its use prior to the erection of the DAFF fence in 2003, is sufficient to give rise to a presumption that a public right of way has been created either under the Highways Act 1986 or at common law.

101. In all of the above conclusions I consider that the right of way that has been shown to exist is a right of way only on foot. Evidence was also given that, prior to 1976, the line A-li-Q down the west coast was regularly used by motor vehicles. That evidence was not in

itself sufficient to determine, nor do I make any comment on the question of, whether a public right of way with vehicles can be presumed to have been dedicated over this route.

8: Grassland paths

102. The area immediately to the north and east of the car park was recalled by some witnesses as having been originally grazed by cattle but is now overgrown grassland with more scrubby maritime heath interspersed with rock outcrops on the coastal fringe. A network of seven paths crossing this area was identified by Ian Costain on behalf of PROWL on the first day of the public inquiry, all of which were claimed to be public rights of way, with a further short path being added during the course of the inquiry. Commonly referred to at the inquiry as 'the grassland paths' they comprise:

Shown on photograph:	Description:
Claimed by PROWL at start of the inquiry	
AA-AB-AE-AG-AH	From a point on the metalled road approximately 90 metres north of the car park, running east to the coastal path at AH.
Y-AH-AF-AD	Continuation northwards of the path along the east coast of the peninsula
X-AM-AB-AC	From the north east corner of the car park running north east to the south east corner of the golf practice field.
X-AI-AJ-Y	From the north east corner of the car park, east to the coast path at Y
AC-AF-AH	From the south east corner of the golf practice field, south-south-east to the coastal path at AF and continuing in that direction to again join the coastal path at AH
AC-AE-AJ-B	From the south east corner of the golf practice field, south-south-west to join the line A-Y at B
AM-AI	Short link path joining X-AB to X-AJ
Paths identified in the course of the inquiry	
AH-AHi	Short spur from the coast path immediately south of AH to the Provider Stone.

9: Evidence by PROWL

103. Mr Costain said that PROWL's claim was based on his own personal use of these paths, that of their Committee and of other PROWL members and on the patterns of use shown in successive aerial photographs. In PROWL's view there appears originally to have been a network of paths in this part of the peninsula centred on Langness Farm which, together with the land on which the car park was constructed, was a place that had traditionally been used informally for car parking. The construction of the Department's car park in 1976 seems to have changed that pattern of use and it is this which appears to have given rise to the development of two of the claimed paths; that from point X to AC and from X to AI.

104. The path running east from a point on the metalled road approximately 90 metres north of the car park (point AA) to the coastal path at AH clearly pre-dates the car park however; it would appear to owe its existence to the Provider Stone which is located among the rocky outcrops on the east coast, a short distance to the east of AH. Similarly it would seem likely that the path running east-south-east to the coast path at Y on the line AM-AI-AJ-Y started originally on the metalled road at AA, with the link to the car park (X-AI) developing later after the car park had been established.

105. The coastal path running Y-AH-AF-AD was also clearly much older than the car park being part of the coastal walk around the peninsula referred to in, for example, Black's Guide to the Isle of Man published in 1904. In PROWL's view, it would have been part of the normal route used by people from Derbyhaven and Castletown to visit the peninsula before cars became common place. Similarly the north-south line AC-AE-AJ-B appeared to be part of an older path running down the centre of the peninsula. To the south it continued in a straight line to the Herring Tower and on to the lighthouse, while to the north it ran alongside the golf practice ground to join the path from Langness Farm.

106. The additional path, comprising a short spur from the coastal path to the Provider Stone at AH_i, was added as a result of information given by witnesses during the course of the inquiry and following the first accompanied site visit. Its inclusion was supported by Mr Costain for PROWL, who commented that several other narrow but well defined paths also existed amongst the rocky outcrops and coastal heath along this part of the coast. These were also thought to have existed for many years and were often used, for example to get a better view when watching the seals or other marine wildlife. They had not been claimed as public rights of way by PROWL however for the sake of simplicity and because, in PROWL's view, the bulk of current public use took part on the claimed paths.

10: Affidavits

107. In support of the claim made for the grassland paths, PROWL submitted six additional affidavits, all of which were sworn and witnessed between 25th June and 8th July 2009. Mr Costain said that while more could have been obtained, the number had been limited following advice given to PROWL by a former Attorney General that this number was more than sufficient to show the paths had been used by the public as public rights of way. The signatories were all people who had not previously completed an earlier affidavit.

108. Each affidavit is in a standard format and has a plan attached on which is marked in blue the car park, the two paths subsequently notated as X-AM-AB-AC and X-AI in red (referred to in the affidavit as “Paths created after the car park was built”), and the remaining five paths identified in PROWL’s submission in green (referred in the affidavit as “Paths created after the car park was built”). The main body of each affidavit state:

‘Between the years of ___ and ___ I have walked across Langness peninsular following not only the Pathways created before 1976 and still in current use but also the Paths created after the car park was built. At all material times, I have done so freely without any permission ever being requested or given by any other party. At no time have I ever seen any notice erected at or near the Pathways or in any other place purporting to grant or withhold permission for myself or any other persons to pass along the Pathways.

I have never seen any obstruction placed across the Pathways intended to prevent access of persons along them.’

109. The period within which each of the signatories testifies to using the paths varies as shown in figure 2 below, two being from 1976 and three from 1977. All six affidavits run to 2008.

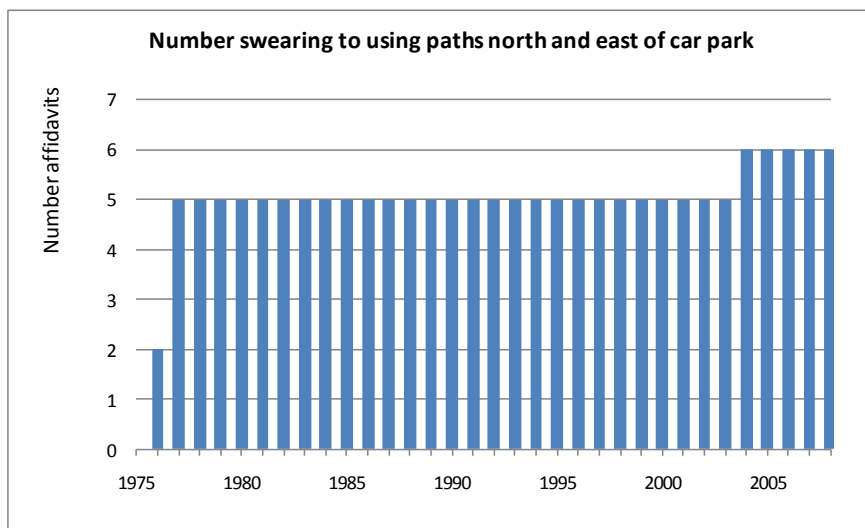


Figure 2: Periods of use, grassland paths

11: Evidence by other witnesses

110. Several other witnesses also referred in their evidence to the inquiry to their use of the grassland paths including Mrs Cook, Angus Hoban, Pat Mudie, Robert Hardinge, Geraldine Batchelor, Margret Parnell and Anne Kaye. However this evidence was, in general, less specific and less detailed than that relating either to their use of the paths south of the car park or in relation to the golf course. The paths used most frequently were those from the car park to the coast, particularly from X to Y, and from the car park to the golf practice ground (X-AC) with walkers then continuing beyond AC towards Langness

Farm. Others said they frequently used this part of the coast path, particularly walking south from AD. Mrs Parnell recalled using these paths together with that alongside the golf practice ground or from AD to BX as part of a circular walk while her husband used the golf practice ground.

111. Mrs Parnell together with Elin Callister, Pat Moodie and Robert Hardinge were also among the witnesses who recalled there having been a wooden stile just south of point AD where the post and wire fence which used to cross the peninsula met the cliff top, and which was also referred to in the evidence given by Simon Riggall (see paragraph 199). There continues to be the remains of both a stone wall and wire fence at this point, just south of where the path makes its way along the cliff face above Martha Gullet, although the few pieces of wood that remain no longer have the appearance of a stile.

112. Few of the witnesses referred to their use of the path down the centre of peninsula (AC-AE-AJ), however, and none referred specifically to having used either the section of path AA-AB or that from AM to AI. Both sections, while still apparent on the ground at the time of my visit, were also notably less well defined than the other paths in this group. They are however included in the paths identified in the six affidavits.

Path to the Provider Stone (AH-AHi)

113. The Provider Stone is a naturally occurring vertical slate outcrop overlooking the sea at point AHi on which has been roughly inscribed 'All – 1853 – lost' and (vertically) 'Provider'. It was referred to by a number of witnesses, including by those who regarded it with the same reverence as the Mariners' Grave (see paragraph 68) and as a feature which was traditionally visited, and respected, by local people. Again I was told that there is a tradition of leaving wild flowers at the spot in memory of those who have lost their lives in shipwrecks on this part of the coast.

114. The stone lies amongst a number of similar, naturally occurring, slate outcrops a short distance to the east of the coast path and is not easy, in practice, to find. At one of the accompanied site visits, however, I was shown a narrow and tortuous, but nevertheless well defined, path leading to it. This leaves the coastal path just south of point AH, which is the junction with the path leading straight to the metalled road at AA. The junction with the path to the stone can be identified by three paving slabs set into the turf on the east side of the coast path and which, I was told, had previously formed the base for a bench. At the time of my visits I found the inscription on the stone itself to be clear and picked out in white, suggesting that it is actively maintained.

12: Evaluation and conclusions

115. While PROWL submitted six affidavits testifying to the use of all of the paths in this group, other than the short spur to the Provider Stone, it otherwise produced little hard evidence regarding the public's use of these paths. The evidence given by other witnesses at the inquiry was also noticeably less detailed and less specific than that given in respect either of the paths south of the car park or those (considered below) to the north. Nevertheless, taken together I consider that, on balance, sufficient evidence has been put

forward to give rise, *prima facie*, to a presumption that all of the paths in this group as set out in the table at paragraph 102 have been dedicated to the public as rights of way.

116. The path from AD to AF and the two alternative lines from AF to AH would appear to me to be part of the continuous path down the whole of the east coast which, as noted earlier, has been enjoyed by the public since at least the 1950s and probably much earlier. I include in this the short spur to the Provider Stone, which is notable feature that local people in particular would have a tradition of visiting.

117. PROWL's suggestion that the sections of path from X to AC and from X to AI may have developed as a result of the construction of the car park in 1976 but that other paths, notably that from AA to AH and AM to Y, are older, appears to be credible but no hard evidence was produced to back this up. Two of the six affidavits submitted by PROWL take as their starting date 1976 and, while I accept some parking already took place around points A and X even before that date, this seems to me to be the more realistic assumption to make regarding the age of these other paths.

118. Surprisingly little evidence was given at the inquiry regarding the specific use by witnesses of the line down the centre of the peninsula, from AC to B. However this too is included in the paths referred to in the six affidavits. When considered in conjunction with the adjoining paths to the north and south (about which strong evidence was produced), it can also be seen as part of a continuous path running down the centre of the peninsula. The origins of this path are similarly impossible to determine but, as with the preceding section to Langness Farm, I consider it likely that this would also pre-date the construction of the car park in 1976.

13: Paths adjacent to and crossing the golf course and around Castletown Bay

119. From the start of the inquiry witnesses made a number of references to other paths which they had used on the northern half of the peninsula and which they considered to be public rights of way, including a path from Hango Hill around the shore of Castletown Bay, and a continuation of the path on the east coast, along the seaward fringe of the golf course to Hango Broogh. I am grateful to Michael Gerrard who, on the third day of the inquiry, undertook to mark the line of these and other alleged public rights of way that he was aware of on a copy of the aerial photograph. This was submitted to the inquiry by him as additional document 12. Subsequently, John Welsh and other witnesses made further additions and amendments to Mr Gerrard's map, to build up the composite picture of alleged public rights of way as shown on the aerial photograph attached to this report and listed in the table below.

120. The road from Castletown to Derbyhaven and the Fort Island Road from Derbyhaven to St Michael's Island (Fort Island) are already recognised by the Department as public highways and are maintainable at public expense. Although included on Mr Gerrard's initial list, no evidence relating to either road was heard at the inquiry and they have been omitted from the alleged public rights of way shown on the final version of the

aerial photograph at appendix 1. Also omitted are any paths on Fort Island in respect of which, similarly, no evidence was heard at the inquiry.

121. It is convenient to consider these alleged public rights of way in three sub-groups; those lying to the east of the metalled road from the Smelt House (point BJ) to the car park (point A) and which are adjacent to or cross the golf course; those also to the east of the metalled road which are in the vicinity of Langness Farm and the golf practice ground; and those to the west of the metalled road around Sandwick.

Shown on photograph:	Description:
Paths to the east of the metalled road adjacent to or crossing the golf course	
AD-BZ-BU-BT-BO-BP-BM	From AD, a continuation of the coast path in a northerly direction on the seaward side of the golf course to the foot of Hango Broogh, then turning north west, past the former open air swimming pool to terminate at point BM on Fort Island Road at the rear of the Golf Links Hotel.
BP-BQ	From the coast path at BP, north east to the top of Hango Broogh
BL-BO	From the Fort Island Road, passing in front of the Golf Links Hotel in a south east direction and crossing the golf course to join the coast path at BO
AL-BY-BZ	A short path running generally north east through overgrown grassland and coastal heath from point AL, through BY to join the coast path at BZ
BY-BU	A further short path running north east from point BY above to the coast path at BU
BS-BT (southern line)	From a point on the metalled road north of Poyll Breinn, through a gateway onto the golf course, turning south and passing to the south of the 11 th green and then in a generally south east direction, passing south of wall of the rifle butts, crossing the 15 th and 3 rd fairways to the coast path at BT.
BS-BT (northern line)	From a point on the metalled road north of Poyll Breinn, through a gateway onto the golf course and then in a south easterly direction, crossing the 11 th fairway, passing to the north of the wall of the rifle butts and crossing the 3 rd and 2 nd fairways to the coast path at BT.
BR-BK	From the metalled road at its junction with the path from Hango Hill, generally east-north-east crossing the golf course to Fort Island Road.

Shown on photograph:	Description:
Paths east of the metalled road in the vicinity of Langness Farm & golf practice ground	
BW-BX-AL-AD	From Langness Farm, passing between the derelict buildings then east to cross the boundary of the golf course at BX, turning south and following the eastern side of the golf course boundary, then south east and passing to the south of the 15 th green and onto overgrown grassland to AL, and continuing south east to join the coast path at AD
AC-BX	From the south east corner of the golf practice field, north-north east along the western side of the field boundary to meet the path from Langness Farm at BX
Paths to the west of the metalled road	
BA-BC-BE-BH-BR	From Hango Hill in a generally south east direction along the shore of Castletown Bay to the metalled road approximately 400 metres south of the Smelt House.
BB-BC	A short path from the Derbyhaven Road, opposite the boundary of King William's College to the path around Castletown Bay
BD-BE	A short path from the Derbyhaven Road, opposite the end of the airport runway to the path around Castletown Bay
BH-BI	A short path from the path around Castletown Bay to the metalled road at the Smelt House

122. In addition to hearing the evidence given by witnesses at the inquiry I was handed eight letters, written during the second adjournment, from people detailing their use of the paths in this group (additional documents 27-34, as listed in appendix 4). Four of these people - Anne Tomkins, David Carran, Raymond Harding and C O'Brien - did not otherwise give evidence at the inquiry. The other four letters, from John Morgan, Anne Kaye, Angus Hoban and Robert Hardinge, confirmed or added to the evidence they had given earlier. I have included this additional evidence in the accounts below and in my assessments.

14: Paths adjacent to and crossing the golf course

123. While Richard Norris, David Greenhalgh and Eddy Craine said that they had never walked on the golf course, and Geraldine Batchelor told the inquiry that she did so only when her husband was playing golf, a number of other witnesses said that they had regularly walked paths both alongside the golf course, following the east coast to Hango

Broogh, and across the course, and that they had done so for many years. Other than where the line crossed a closely mown part of the course, a clear and well defined line for each of these paths had always been apparent on the ground. The witnesses considered that although the use of these paths may now be less than that of those to the south of the car park around the lighthouse and Herring Tower, they were an equally traditional and very long-standing feature of the peninsula and had similarly been enjoyed by members of the public without restriction for many years.

124. The most detailed evidence regarding these paths was that given by Michael Gerrard. The paths were also referred to in the additional statement by PROWL. Peter Curtis, Robert Hardinge and Angus Hoban were among the other witnesses who were able to describe in detail their use of the paths over and adjacent to the golf course.

Evidence by Michael Gerrard

125. Mr Gerrard told the inquiry that he was a keen golfer. He had been a member of the club from 1970 and a committee member from 1980, including a spell as Treasurer and a year as Golf Club Captain. For all of that time he had both walked in the area, on average two or three times a month, and had played golf often on a daily basis. He could state with absolute certainty that paths along the edge of the course in particular had been used by the public regularly and frequently. As a golfer, he would be well aware of people also walking over the course, particularly in the evenings. When the hotel was full it was also not uncommon for non-playing guests to be directed to walk there. No effort had ever been made by the players or the owners of the course to restrict such use, nor had he ever been given any instructions to do so.

126. Recounting the history of its ownership, Mr Gerrard said that the Golf Links Hotel had been owned by Mr and Mrs Makinson since 1930 as had three holes of the golf course, with the remainder of the course being leased from the Trustees of the Crookall's Estate. At the time Mr Gerrard became a committee member in 1980 both Mr Makinson and the Trustees were wishing to dispose of their assets. After declining an offer to buy the land he was renting, a dispute arose between Mr Makinson and the Trustees and the golf club ran for a short time without using the three holes that he owned. The Golf Club too entered into negotiations with the Trustees to buy the course but was unable to raise the money. Eventually it was sold in 1984 to the Riggall family, who later sold it on to the Palace Group. At no time in any of the negotiations in which Mr Gerrard had been involved was reference made by the Trustees to any restrictions having been placed on the public's use of the land or any of the paths which existed over it. Similarly, Mr Gerard said that no effort had ever been made by Mr Makinson or the Trustees to limit public use of those paths in practice.

127. Detailing the routes used, Mr Gerrard said that most people would walk along the coast from south to north, in the same direction as that in which golf was played, following a consistent line from AF to BP and then past the former swimming pool to the road at BM. Occasionally walkers would travel in the opposite direction, although this was regarded as more dangerous. On the other side of the course, most people who walked from Derbyhaven would do so along the road, but people also used to walk alongside the edge of the golf course, especially north of Langness Farm. Another line that was frequently

used, especially in the evening and by local men going fishing, was that crossing the course from BS to BT and people would also cut across the course from BR to BK. Occasionally walkers would be seen using the path across the front of the hotel and around the back of the 18th hole (BL-BO) but this was, in his view, more dangerous because they were hidden from the view of golfers who were playing towards the 18th green. It was part of a golfer's etiquette to make sure no one was in the way before you hit a ball. While he was aware of other golfers occasionally being hit, however, Mr Gerrard was not aware of any incidents in which a walker had been hit by a golf ball.

128. Amongst the letters received, that by e-mail from Pip Kirby of 1st October 2009 corroborates the evidence given by Michal Gerrard. Mr Kirby states that he was a member of the Golf Club from 1989 to 2006, being the Honorary Secretary for three years and Captain in 1999. He is certain that the coastal path along the east side of Langness was and still is used by walkers, almost all of whom were responsible and sensitive to the dangers from golfers playing on the 17th and 18th holes. John A Barman in his letter of 2nd October 2009 states that he was employed as a green keeper in his late teens and early twenties (he was born in 1945) and that the only barriers were those to stop cattle straying onto the golf course. Many people regularly walked around the lighthouse and up the east coast passing the 17th and 18th tees and coming out onto the road at the Golf Links Hotel.

PROWL's additional statement

129. The additional statement read to the inquiry by Ian Costain on behalf of PROWL (additional document 18) describes the line of the path on the east side of the golf course going north from Point AD as being very clearly defined. Its route keeps it well away from the golf course for a while, but then the footpath merges with the golf course paths above the 17th tee. A notice at this point warning walkers and golfers of the dangers of rock climbing is, in PROWL's view, a clear acknowledgement that both have an equal right to walk along this section of the coast. Further north the path leaves the short grass and makes its separate way across the 'rough' and through gorse. Following the paths east of the lily pond, east of the 18th fairway and the 18th green brings the walker to the base of an Iron Age promontory fort at point BP - the site of the green-painted finger post mentioned in several letters. The spur to BQ quite clear, particularly once one reaches the top and is able to look across towards St. Michael's Isle. From BP a clear path exists next to the old hotel swimming pool to the path's junction with Fort Island Road at BM.

130. Among the letters quoted by Mr Costain is that from Nona Welsh who also recalled a finger post with the words 'to Lighthouse' at the old swimming pool (BP); and those from D L Barstow, Anne Tomkins and Raymond Harding all of which refer to the writers' long-term use of the path down the east coast from BM to AD.

Evidence by Peter Curtis

131. Mr Curtis told the inquiry that he had used the paths on Langness since moving to Balasalla at the age of 10 in 1949. He had frequently walked from AD north to BP and BM, including to access the shore when crabbing as a youth, and that he had never been told the land was out of bounds or found the path obstructed. He did not now climb to the top of

the grassy knoll to BQ, but had done so frequently in the past. He had also used the path in front of the Hotel, BL-BO, but only as a golfer; as a walker he would normally take the path behind it, from BP to BM.

132. The path along the coast had always been well defined and visible on the ground, other than for short sections where it was over mown areas of the course. It mainly ran through the long grass or gorse and scrub on the edge of the course but (going south) was along the edge of the fairway around the 18th green and then followed a well established path that was clear of the fairway. From BT to BU it ran on the landward side of the 17th tee, and then continued along a surfaced path towards AD. Between BU and AD the path split; as a walker he would normally take the more seaward line via BZ but he recognised that an alternative line also existed via BY and AL.

133. With regard to the paths that had been identified across the course, Mr Curtis said that he had often walked BS to BT, past the old rifle range. He would normally use the line identified by Mr Gerrard passing to the north of the wall of the butts but recognised there was also a second path around the south side. He was aware, as a golfer, that people also walked across the course from BR to BK but had not personally done so.

Evidence by Robert Hardinge

134. Mr Hardinge had also frequently walked the paths over the golf course throughout his lifetime since the early 1950s whenever he was on the Island, the main path being that around the back of the Golf Links Hotel (BM-BP) and from BQ down the east coast to AD. The one difference from the paths identified by Mr Gerrard was that, in walking from BS to BT, he would go to the south of the rifle range wall and then around the back of the 14th tee where there was less of a risk of conflicting with any golfers. He often saw people walking straight across the golf course at this point however, and also people walking with their dogs on the edge of the golf course from BR to BS rather than along the metalled road. This particularly happened in the evening when there were fewer golfers.

135. In addition to recognising, and using, the alternative routes between BU and BY and from BZ to AL and AD, Mr Hardinge said that a further alternative path used to exist running straight from AD to BY. However this had become overgrown by gorse bushes and was no longer usable.

136. Over the years Mr Hardinge recalled seeing various signs warning walkers to beware of golf balls and not to climb on the rocks but there were never any signs saying there were no rights of way. He knew Murray Crow, the former golf club Professional, and several of the green keeping staff. Whenever he met anyone he would stop for to talk to them, but had never been told he was trespassing or had no right to be there.

Evidence by Angus Hoban

137. Mr Hoban said that he too had walked all of the paths that had been identified on the northern part of the peninsula and that, like Mr Hardinge, he too would have walked to the south of the old firing range. He used to regularly visit the area around the hotel as a youth when caddying and recalled that in the 1970s there had been a wooden sign just after the

old swimming pool at BP reading 'footpath to Langness'. There had always been a well defined path down the whole of the east coast and it was common to see people using it, particularly in the evening when the course was not in use.

Evidence by other witnesses

138. Among the other witnesses, Elin Callister recalled having regularly walked down the east side of the peninsula since she first did so with her parents in the 1940s, including using both path BL-BO in front of the hotel and BM –BP, which she considered to have the more attractive views, to the rear. Although she now walked the complete coastal path less often, it was always a recognised path and had been well used. She also recalled when young using the path across the golf course from BS to BT, in her case passing to the north of the wall. Brenda Crellin, now aged 73, similarly recalled there always having been a continuous path from the old swimming pool at BP down the east side of the peninsula. It had been regularly used by her father, particularly to access the coast for crabbing. Anne Kaye had also used the coast path alongside the golf course - she had done so generally about once a year since the late 1970s - while Mrs Cook said that she previously used the path regularly but had not done so recently. Margaret Parnell similarly told the inquiry that she always understood there to be a path to on the east side of the golf course.

139. Fred Hodgson was another witness who regularly uses the path alongside the golf course, in his case for the past 15 years when returning from a visit to the end of the peninsula to watch seabirds, and including the path to BQ. In some parts the coast path has been mown very close by the groundsmen when tidying the outlying parts of the course but the correct line had always been easy to distinguish. He similarly used the path across the course at BS-BT and would pass to the south of the rifle range, primarily because the dense vegetation in that area meant it was of more interest to him as a bird watcher. He always took care when in the vicinity of golfers but no one has ever challenged his right to be there. He regarded all of the claimed paths as public rights of way even although they were not formally recorded as such. There had been various signs put up from time to time, including signs stating 'Beware of golfers' and 'Private' but he had never seen anything which suggested that he was not entitled to walk on any of the paths.

140. Pat Moodie for the Manx Footpaths Conservation Group said that the east coast route was one that had regularly been used by her walking group with parties of up to 12 people. They would not walk it if the course appeared to be busy, however, or the walking group was too large and if they encountered any golfers on the course they would always wait. None of the groups had ever been stopped or turned back, but they had occasionally been told by golfers they were a nuisance or had been warned of the danger from golf balls. The route followed was always the most coastal one, although she was also aware of the inland alternatives from points BU and BZ to AL and AD.

141. Richard Norris said that while he personally had never walked along this part of the coast, his wife recalled having done so with his late mother-in-law, and that they would have tea at the hotel. This was probably before 1979. He pointed out that in addition to the references that were made in the Black's guide of 1904 and other historic guidebooks referred to by Mr Costain, it was also specifically referred to in *'the Naturalist in the Isle of*

Man' by Larch Garrard, published in 1972.

142. Leo Cousins said that he had regularly walked paths on the peninsula for the past eight years including down the east coast alongside the golf course. Finding and following the path where it ran over rough ground was never a problem but it was occasionally difficult to follow where it passed over close mown areas of the course. He had first visited the area with guests. On enquiring in the hotel about how to get to the start of the coast path the group had been directed to walk across the course to BO, and to ring the bell before crossing the 18th fairway. He had done so many times since then. The golfers he encountered were always very friendly and had never objected to his presence.

143. In the letters received from Anne Tomkins and David Carran both state that they have used the coast path from AD to BP and BM, including the spur to BQ, on a regular basis from 1970 to the present time and have never been challenged or seen any signs or barriers. Similarly, C O'Brien states that he has regularly walked these paths without restriction and believing them to be public rights of way for the past 26 years. Raymond Harding has also used them regularly without any restriction for approximately 38 years, the line having always been clear on the ground and well worn.

144. For PROWL, Ian Costain said that the most commonly used coastal route was that from AD to BZ-BU-BT-BO and BP, together with the spur to BQ and the path at the back of the hotel from BM to BP. All of these should be recorded as public rights of way. Various warning notices had been posted on the golf course from time to time as had polite notices asking walkers to clean up after their dogs, but there had never been any notices denying access or to indicate that paths were not to be regarded as highways. They were not claiming the more inland line AL-BY-BU to be a public right of way. Nor had PROWL received any letters about, or had Mr Costain personally used, the claimed path crossing the golf course from BS to BT or that in front of the hotel from BL to BO.

Evaluation of user evidence

145. In my view the strong evidence presented by several of the witnesses at the inquiry supported by the reference made in the old guide books to the area is more than sufficient to show that from at least the early 1950s (and probably much earlier) a continuous path has been used by members of the public as a public right of way down the east coast of the peninsula from the Fort Island Road and Hango Broogh to point AD. The route most commonly used has been that around the back of the hotel, BM-BP, and then BO-BT-BU-BZ-AD. But there is also, I consider, sufficient evidence to show the existence of a public right of way along the short spur to the top of Hango Broogh (BP-BQ) and over the path across the front of the hotel (BL-BO).

146. Less evidence was given regarding the use of the alternative inland paths from BU to BY or the line BZ-BY-AL. I recognise, however, that walkers walking towards the coast from the direction of Langness Farm may arrive at point AL and then chose to turn north. Moreover, at the time of my site visits, trodden paths were apparent through the dense vegetation leading from point AL to BY and the coast path at BZ and BU as put forward by Mr Gerrard. Although narrow and somewhat tortuous, these were deeply worn into the

surface, suggesting that they had existed for some years. On balance, therefore, I consider that public rights of way can also be presumed, *prima facie*, to have been dedicated over these two paths.

147. Although used less frequently than the coastal path, the evidence given at the inquiry was that there has long been a path crossing the golf course from a point on the metalled road north of Poyll Breinn (BS) to the coast above Horse Gullet (BT). Two distinct lines were identified, however, a direct line passing to the north of the wall of the former rifle butts and the more circuitous route to the south. While the latter is easier to discern on the ground, I am satisfied from the answers given by witnesses that in their use of both of these paths members of the public have followed a more-or-less consistent line. In my view, both of these paths should also be regarded, *prima facie*, as public rights of way.

148. A further path was identified crossing the golf course from BR to BK. I am not satisfied from the evidence given at the inquiry either that sufficient use has been made of this path or that in doing so members of the public followed a consistent line. I do not consider therefore that a public right of way has been shown to exist on this line.

15: Paths in the vicinity of Langness Farm and the Golf Practice Ground

149. Several witnesses described how, prior to the establishment of the car park, the area in front of Langness Farm had been one of the main places at which visitors would park their cars. It continues to be used for this purpose as an alternative to the Department's car park including by Angus Hoban and Alan Charmer. Although the historic Ordnance Survey sheets referred to by the Attorney General (paragraph 380) show a road or track running east from the Farmhouse, the line of this is now heavily overgrown. The route from BW described by witnesses at the inquiry, and which has apparently been followed in practice for many years, after passing between the derelict farm buildings, therefore dog-legs to follow the southern boundary of the field which lies to the north of the original track to the boundary of the golf course at BX. Although currently overgrown, this field was remembered by a number of the witnesses including Anne Kaye, Elin Casllister and Susan Creer as having been renowned for its mushrooms.

150. At point BX the path divides. One path turns south and runs inside the eastern boundary of the golf practice field to AC where it again divides into three, with paths going to the car park (AC-X), down the centre of the peninsula to the Herring Tower (AC-E) and to the east coast at AF and the Provider Stone at AH and AH_i. The second path crosses the boundary onto the golf course before also immediately turning south. It then passes around the back of the 15th green and on to AL and AD.

151. On behalf of PROWL, Ian Costain said that they recognised the path from BW to BX and then both the path to AC and that to AL as being part of the long-established path network in the area. Among the other witnesses who told the inquiry that they regularly used these paths were Angus Hoban, Alan Charmer and Fred Hodgson. Margaret Parnell said she would use them as part of a short circular walk; having walked out to the coast along the path by the rifle butts she would return via AL and BX to the road at BW. David

Greenhalgh said he used the path alongside the practice field and from BX to AL and AD although he had never continued along the coast to BO.

152. Peter Curtiss said that he used BW-BX-AL-AD only infrequently but was aware of many other people having used this line and also the separate path from BX to AC and the car park at X. Similarly Richard Norris said that he had often seen people using the path alongside the practice ground from BX to AC.

153. Among those who submitted evidence in writing, Anne Tomkins, David Carran Raymond Harding and C O'Brien all testified to having used the line BW-BX-AL-AD regularly for many years, with Raymond Harding and C O'Brien having also similarly used BX-AC.

Evaluation of user evidence

154. In my view the evidence given at the inquiry clearly indicates that there has been sufficient public user of all of the paths in this group to give rise to the initial presumption that public rights of way have been dedicated over them. As with the paths adjacent to and crossing the golf course, that use started before the establishment of the car park in 1975.

16: Paths to the west of the metalled road

155. The main path to the west of the metalled road is that running from Hango Hill (point BA) in a south easterly direction around the shore of Sandwick to join the metalled road to the lighthouse (at point BR) approximately 400 metres south of the Smelt House. With the exception of first few metres, where a narrow path descends from Hango Hill down the short cliff face, it is a grassy vehicle-width track with occasional sections over compacted shingle and sand. Two short and equally wide tracks link the path with the Derbyhaven Road, the first (BB-BC) opposite the eastern boundary of King William's College and the second (BD-BE) opposite the end of the airport runway. A third, slightly longer track runs east from point BH to join the metalled road to the lighthouse at point BI, immediately west of its junction with Fort Island Road at the Smelt House and where there is a further small parking area.

156. At the time of my site inspections there was a locked gate across the track at BI but this could be easily circumnavigated by pedestrians. No other barriers existed on it and it was obvious that BB-BC and BD-BE were both regularly used by vehicles, with informal parking areas at both locations. Cars were also driven a short distance down the track from BR and I also observed horse riders using the track in this area on two occasions. Similarly, the Manx Bird Atlas's on-line listing of the top 20 bird watching sites, '*Where to see birds*³', includes the section of path BI-BH-BR in its description of the sites in the Langness area. It is referred to as 'a sandy, motorable track which follows the coast closely from Sandwick southwards for about a quarter of a mile before rejoining the lighthouse road' and is recommended as a place from which to watch birds from a car. The evidence given by

³ At <http://www.manxbirdatlas.org.uk/pgsee018.html> and <http://www.manxbirdatlas.org.uk/index.shtm>

witnesses at the inquiry similarly related to the use of these tracks both by pedestrians and with a vehicle.

157. A further broad track was identified as a public right of way running in a loop on the seaward side of the metalled road from points BV to AK; that is from approximately 440 metres to approximately 270 metres north of the car park at point A. From its appearance on the ground, this too would appear to be regularly used by vehicles but in this case the only evidence given at the inquiry related to its use, as of right, as a footpath.

PROWL's additional statement

158. In an additional statement read to the inquiry by Ian Costain on behalf of PROWL (additional document 18) the following points are made in relation to the paths within this group:

- The route between Hango Hill and Langness Road (BA-BR) is a very popular one and one which he has used since boyhood. It avoids the groundwater which flows across the beach. At the bottom of the descent from the ruins on Hango Hill there used to be a wooden finger post stating 'footpath'.
- It is unusual to drive along the Derbyhaven Road without seeing vehicles parked on one or other of the two crosswind runway car parks (BB-BC or BD-BE). A fair proportion of these drivers and their passengers will be walking the coast.
- In carrying out beach clean-up operations at Sandwick, he has been aware of a constant stream of walkers using the path between BE and BH at all times of the day. Sections BA-BE and BH-BR are also well used, but to a lesser degree.
- The letters to the inquiry from Judith Vernon, Angus Hoban and Eddy Lowie MLC all record the writers' use of these paths throughout the whole of their lifetimes. That from Eddy Lowie similarly recalls the wooden finger post at Hango Hill and that at the swimming pool at BP. It also recalls Mr Lowey using BI-BH as a youth with a horse and cart to collect wrack from the sea shore to use as fertilizer.
- On 17th February 1955 the Town Clerk of Castletown wrote to the Surveyor General in respect of 'public footpaths in the immediate vicinity of Castletown' referring to the existence of a footpath around the Langness Peninsula to the old mine workings, Langness Lighthouse and Fort Island, thence back along the Fort Island Road to Derbyhaven.' The Town Clerk didn't need to be any more precise - everyone knew that the main footpath followed the west coast from Castletown to the Lighthouse, around the south of it and then back along the east coast to Fort Island.
- The flat grassy land between AK and BV is very popular with people who bring a car to the site and sometimes don't walk far at all. On the other hand, the seaward edge of the land is well used by people (especially bird watchers in what can be a bird watcher's paradise) who want to stay as close as possible to the coast.

- In places this path coincides with vehicle tracks. Nearer to AK the footpath is still visible, but there is a lack of continuous evidence 'on the ground' for the traditional footpath that ran along this section of coast. The explanation relates to the storm of 2002 which eroded much of the seaward edge and piled-up a considerable quantity of loose stones on what had previously been a flat path. It is taking time for the vegetation to colonise and stabilise the land, and in the meantime walkers have been obliged to move further inland, onto the shorter grass where their route is currently indistinct.

Evidence by other witnesses

159. To many of the witnesses at the inquiry these heavily used coastal paths, particularly that from BA to BR, were so self-evidently public and had so long been a feature of the area that it was inconceivable that they should not be regarded as public rights of way. They were inherently a part and parcel of the rights of way network on Langness, being the most direct and obvious way to reach the peninsula without the use of a car. Robert Hardinge, who does not have a car, nearly always used this route to access the peninsula and had done so for most of his life. The most comprehensive description of BA to BR and the three smaller paths leading off it, however, was that given by Peter Curtis. He recalled that there used to be a hut at BA used by King William's College as a small bore rifle range which was accessed by the path coming down from Hango Hill. Army cadet shooting competitions would include running a leg along the footpath to BR, then known as 'the Windmill' and back again. The same path from BC or BE had been used by the college as part of the boys' cross country course. It had never been obstructed in any way, nor had anyone ever been prevented from using it. BH to BI had similarly been used all his life, including with vehicles until the gate was erected at BI. As a schoolboy he remembered that a local farmer from Red Gap Farm regularly used to use it with his horse and cart to collect seaweed. It was also normal for many years for cars to be driven from BI to BR and they were still often parked at BR. His sister also very regularly used the path from BA to BR together with that from BV to AK when walking with her children from Castletown to the lighthouse or Langness Point.

160. Michael Gerrard similarly recalled that the track from BI to BR had regularly been used by vehicles until a gate was erected at BI approximately five or six years ago as did David Greenhalgh who had himself driven along it. In her letter to the inquiry, Anne Kaye states that she regularly walked on the line BI-BH-BR and BV to AK. She had also regularly driven BI-BH-BR to watch birds, on average about once a month, until her vehicle became stuck in sand about five years ago.

161. For Fred Hodgson the two paths from Hango Hill around Sandwick Bay and to the west of the road between BV and AK had always been part of his favourite walk. Like Ian Costain he recalled that south of Poyll Breinn further paths had existed to the west of the road as far as BV but these had been obliterated in winter storms of 2002 and could no longer be used. Elin Callister was amongst the witnesses who said they had always used the short path from BH-BI, and which she referred to as 'the Viking Boat path', to get from one side of the peninsula to the other. So too did Anne Kaye, who said she would frequently

park at BI. Pat Moodie and Richard Norris also said that they very regularly used both the path from BA to BR and BV to AK, with Mr Norris referring in particular to the importance of these paths to birdwatchers as the best place to watch birds feeding on Sandwick Bay. The Manx Ornithological Society held an annual walk each September from the car park at point A, via the coastal loop AK to BV and then from BR to BH. He had always assumed the whole of this to be along public rights of way.

162. In the evidence given in the letters I received, C. O'Brien and Raymond Harding both testify to having regularly used all of the paths in this group for the past 26 and 38 years respectively. Anne Tomkins and David Carran record having used the line BD-BE-BH-BR on average three times a week since 1970, and John Morgan recounts how he has walked BA-BH-BI on average twice a day for the past 9 years.

Evaluation of user evidence

163. The evidence given at the inquiry clearly indicates that all of the identified paths in this group have for a long time been both perceived by the public as being an integral part of the public highway network of the area, and used in practice as such. In relation to that part of the track along Sandwick from BH to BR and also the short link to the metalled road at the Smelt House (BI-BH) the evidence was given of long-standing user both by pedestrians and with vehicles. This is, in my view, is sufficient to give rise to an initial presumption that rights over and above those on foot may have been dedicated. Bearing in mind also the character of these tracks I consider that they should be recorded on the definitive map and statement as roads used as public paths (RUPPs); that is, as a highway other than a footpath that is used by the public mainly for the purposes for which footpaths are used.

164. With the exception of the short section of path where it descends from Hango Hill, much of the remainder of the track around Sandwick from BA to BH, together with that from AK to BV, is also of a sufficient width and character to suggest that regular use by vehicles has taken place as well as by pedestrians. The two short tracks linking with Derbyhaven Road (BB-BC and BD-BE) would seem from their appearance to now be mainly used by vehicles, as would those parts of the track around BC and BE that have been developed into informal parking areas. It would seem probable, therefore, that these should properly be regarded as all purpose highways rather than as public rights of way. Nevertheless the only substantive evidence given at the inquiry in relation to any of these tracks was of their use on foot. In the absence of any further evidence showing higher rights to exist, therefore, I consider that the evidence presented to me at the inquiry is sufficient to give rise to the initial presumption that public rights of way on foot have been dedicated over all of the remaining paths in this group.

17: Evidence by landowners and tenants, DAFF and other individuals

165. Evidence was given at the local inquiry by the two current landowners, Mrs Frances Clarkson who, together with her husband, owns the southern part of the peninsula, and Mr Graham Ferguson Lacey whose four companies own the golf link, the Golf Links Hotel and most of the remaining land on the peninsula. Evidence relating to the actions taken by the

landowner and tenant was also given by Mr Simon Riggall and his brother Jamie Riggall. Simon Riggall previously owned and farmed both the land that was acquired by Mr and Mrs Clarkson and, separately, together with his father, that which is now owned by Mr Ferguson Lacey. Jamie Riggall is currently the tenant of that part of the land owned by Mr and Mrs Clarkson which is outside the lighthouse compound and which is let on an agricultural tenancy.

166. This section also sets out in so far as it is relevant the evidence given to the inquiry by Dr Elizabeth Charter of the Department of Agriculture, Fisheries and Forestry (DAFF) regarding the designation of the Area of Special Scientific Interest (ASSI); that given by her current Minister, Phil Gawne, and by Irene Cowan, together with that contained in the statement received from the Northern Lighthouse Board and in the written representations received from those people who do not consider that the paths on Langness should be regarded as public rights of way.

18: Evidence by Mrs Frances Clarkson

Mrs Clarkson's affidavit

167. In an opening statement, Mrs Clarkson read an affidavit prepared in connection with an earlier hearing in the High Court. In it, she said that she grew up in Castletown and was familiar as a child with the Langness Peninsula and with what was, at that time, the working lighthouse on it. She moved away from the Island in approximately 1983 but remained a regular visitor and continued to regard it as her home. She and her husband purchased the property after her mother died in 2000 in order to maintain her links with the Island, because of her and her husband's love of the Island and as a safe and happy environment in which her children could grow up.

168. Before purchasing the property the usual property searches were carried out including specifically to check for the existence of public rights of way. However, none were recorded on the definitive map and statement maintained by the Department of Transport. Mr Simon Riggall, from whom she had purchased the property had explained to her that from time to time he gave permission for the general public to walk around the land at Langness but that he took steps to shut off the land, for example during the lambing season, and maintained signage informing the public that the land was private.

169. The purchase of the property was completed at the end of December 2004 and she and her husband made their first visit to it in or around March 2005. In taking possession, they took care to replace the various signs which were being taken down by the previous owner for reuse elsewhere, and to ensure that, other than for the omission of the name of the previous owners, Great Meadow Estates Ltd, the wording of the new signs was identical to those which they replaced. From the outset, however, problems arose as a result of a group of local people who Mrs Clarkson believed appeared to have a vendetta against Mr Clarkson, presumably arising from his celebrity status. The difficulties encountered included the failure of walkers to keep dogs on a lead as a result of which sheep were chased into the sea on several occasions; walkers failure to clean up after their dogs; walkers who were abusive and aggressive and those who would peer and take photographs through the

kitchen windows of the Clarkson's cottage. As a result of these incidents, and in order to protect the family's privacy, steps were taken to close off a small area, although they remained willing to give permission for the area to be enjoyed on terms and at the times that were convenient to the family.

170. In Mrs Clarkson's view, there is no evidence of the enjoyment of rights of way as of right and without interruption for a full period of 21 years. The public have been interrupted in their access to the land including by the creation of gates, the erection of signs and notices, the ploughing of land and other acts consistent with his ownership by the previous owner, Simon Riggall. In addition, during the dispute which arose over the right of access to the land in 1975/76 a number of matters occurred which interrupted the enjoyment of paths and negative any intention to dedicate any public rights of way. These included the erection of a gate and notice close to the entrance to the lighthouse stating 'Private land. Trespassers will be prosecuted. By order of the Crookall Estate'; the complaints made by members of the public to the Attorney General that they were being excluded and the opinion expressed by the Attorney General that the public had no legal right to walk over Langness; the agreement reached over the provision of the car park, thereby demonstrating the absence of other public rights over the property; and the terms of the public notice published by the Attorney General on 26th July 1976 requesting the public to use the car park and not park on other land.

Evidence given in examination

171. In examination Mrs Clarkson confirmed that a pre-contract report prepared by their advocates noted that, beyond the car park, the metalled road was not maintainable at public expense and formed part of the property they were to purchase. The report also stated that 'It is clear the public have rights of ramblage over Langness (including the open portion of the property you propose to purchase) although there are no public rights of way thereover beyond the public car'. She and her husband had queried this and had been told that there were no formal or legal rights to roam on the Isle of Man but that the vendor had allowed access on a permissive basis. Mr Riggall had also confirmed to Mrs Clarkson that he had given permission to specific groups and individuals to use the land. She was not, however, warned either that the definitive map and statement may not be complete or that other public rights of way may exist which are not shown on it – if that were the case she assumed that the advocate's report would have contained an appropriate warning. Nor was she aware, at the time, that a public right of way could be created through the public's unchallenged use 'as of right' of a path for 21 years. However the previous owner had told her that, acting on legal advice, he had specifically shut off areas to stop public rights of way from coming into being and had also maintained signs on the land to that effect. Moreover the fact that the land had remained open to the public during the foot and mouth outbreak when all public rights of way on the island had been closed demonstrated it to be private land.

172. Recounting her childhood experiences, Mrs Clarkson said that she had frequently walked, and sometimes ridden a horse and cycled, on the peninsula but had always understood that permission was needed to go beyond the car park and particularly in the

area around and to the south of the lighthouse and the lighthouse cottages. There was a notice to that effect at the car park. In practice she took as a working boundary the eye-line of anyone inside the lighthouse compound - you were safe if you could not be seen - and recalled an incident in which she was shouted at and had a fish shaken at her by one of the lighthouse keeper's wives who was hanging out washing.

173. Since taking possession of the land the changes that had been made in practice were minimal. Mr and Mrs Clarkson continued to allow access on a permissive basis when requested to do so and, when asked, have never refused anyone permission to go there for a specific activity. The fencing remained as put up by DAFF and the Clarksons had simply replaced the kissing gates provided by DAFF at points L and M with two short lengths of fencing in order to close off the southern most coastal loop and divert walkers to the north of the lighthouse compound. Before being closed off in October 2005, the flat area south of M was covered with long, dense grass through which there were no discernable footpaths. Beyond that, towards point P the land is boggy and unstable. Other than the concrete path leading over the bridge to the fog horn equipment there were again no discernable paths. To the extent that the area was used by the public, therefore, they wandered over the land without following a set route.

174. Mrs Clarkson similarly considered that there was no defined route over the spur to the Skerries (Langness Point) between points Q and U. There were a number of pinch points where walkers came together to cross the gullies, for example at R, but elsewhere and over most of the area people had simply wandered at will.

175. Mrs Clarkson said she and her husband were aware that large areas of Langness could be dangerous and that many of the paths were steep and slippery. They were very concerned about the potential safety of walkers and were also concerned that they would be a prime target to be sued should an accident occur. Already a dog walker had threatened her with legal action should his dog get injured. Even within the area that is currently fenced off, the footbridge to the fog horn equipment was unsafe and she had stopped members of her own family and visitors from using it.

176. Referring to the negotiations that had taken place with the Tynwald delegation in 2008, Mrs Clarkson said that she and her husband had always made it clear that they did not wish to stop the public from visiting and enjoying Langness but were concerned to ensure that the area in front of the cottage and her garden remained private. The fog horn equipment and gun emplacements in particular were very close to the windows of the cottage, the kitchen door, and to the area when the family enjoyed sitting out in summer and where the children and dogs played. They had initially proposed an agreement similar to that which had been agreed in 1976 that would give the public permissive access to parts of the peninsula. That was not acceptable to PROWL however. Subsequently, the Clarksons had offered to dedicate the circular route on the line from the car park, of A-Y-G-L, around the landward side of the lighthouse compound (N-O-P), and then P-Q-A. They considered this to be a walkable and safe route but beyond this it was difficult to see where a satisfactory path could run. There would also continue to be access to the spur to the islands on a permissive basis. As part of the proposal, Tynwald would at the same time

pass a specific Act confirming this loop path as a public right of way but extinguishing any other public rights which might exist over the peninsula and in particular ensuring that the public had no access to the area to the south and east of the lighthouse enclosure.

19: Evidence by Jamie Riggall

Witness statement

177. Mr Jamie Riggall began by reading his witness statement to the inquiry. Key points were:

- Prior to the Clarksons, Mr Riggall's family owned the land (on the southern part of the peninsula) for 21 years. He is currently the tenant farmer.
- The general public have always been allowed to walk on the land because they have had permission to do so. Whenever the need has arisen, the land has been fenced off, usually for farming purposes. The family has also received legal advice that, in order to prevent any possibility of a prescriptive right arising, the land ought to be shut off once a year. This has been done.
- Before Mr and Mrs Clarkson purchased the land it was impossible for the public to walk around the fenced off land outside the Clarksons' patio. This was because the land had been shut off when the tanks that were on the property that used to hold water and gas were removed, and also when the large iron pipe that fed the fog horn was removed.
- During the foot and mouth outbreak the general public were specifically given permission to walk on the land. All footpaths on the Island were closed off, including those elsewhere on the family's land, but the fact that no footpaths existed on Langness allowed permission to be given so that it could stay open.
- When the Riggall family bought the land, proper conveyancing searches were carried out and the land was found to be free of encumbrances. Specifically there were no rights of way of any kind.
- As a tenant farmer, last year (in 2008) seven sheep were killed caused by dogs chasing the sheep into the sea and two years before (in 2006) four sheep were chased into the sea and killed. He removed the ten remaining sheep into the field which is fenced off completely where there are no walkers. The following day three sheep had been attacked and the vet had to be called and the sheep had to be put down. On this occasion the police had been called to investigate. Nobody should have been walking in the field in any event - signs had been placed around the land but these had been vandalised.
- Consistently, every time signs are put up to remind walkers that the land is private and that dogs should be kept on a lead, these signs are vandalised and torn off. This costs a considerable amount of money.

Evidence given in examination

178. In examination by Mr Ramsden, Mr Riggall identified where each of the four signs, photographs of which had been submitted in evidence with Simon Riggall's affidavit (numbered 169-172) had been placed. The locations were:

Sign stating:	Location:
'Strictly private. Great Meadow Estates Ltd'	On the entrance to the lighthouse close to point P.
'East & West Cottages. Great Meadow Estates Ltd'	On the wall of a lighthouse compound, close to point O. The sign was to direct visitors to the holiday cottages.
'Follow the country code. Please close the gate'	On one of the field gates, close either to point P or O.
'Private Dreswick Harbour'	On the gate at the end of the footbridge leading to the fog horn equipment.

179. There was also a sign stating 'Private land, no vehicles' by the gatepost immediately south of the car park at point A which was put up when the family acquired the land. He deferred to his brother Simon questions about the dates when the four signs above were put up, about the sign and cattle grid at point I, and about signs erected in connection with the ASSI.

180. Mr Riggall similarly deferred to his brother questions about when the closure of the land took place and how this was specifically done. He had not, himself, attempted to close off the land at any time.

181. In answering questions put to him by Mr Costain and others, Mr Riggall said that he had also put up small signs stating 'Private property' and referring also to the Highways Act 1986. These had been put up, at Mr and Mrs Clarkson's request, at various places on the DAFF fencing including from Q to P, from L to M and on the line G-H-I-li. All had been torn down, usually within 24 hours, and had been replaced on two or three occasions during the first two years of the Clarksons' ownership. The signs themselves were made of thin metal. The wording had been determined by Mr Clarkson's attorney.

182. With regard to the issue of dogs worrying livestock, Mr Riggall said that whenever he encountered a walker with a dog he would ask for it to be put on a lead and would explain why this was necessary. Most people did so but a few did not. The incidents referred to in his statement all took place at night and were only discovered when the sheep were found to be missing the next day.

183. The opening of the land during the foot and mouth outbreak was possible because

there were no public rights of way on the land, nor was the land being used at the time for livestock. It was one of only two areas on the Island that remained open for people to walk their dogs.

184. Clarifying the reference in his statement to it being impossible for the public to walk around the fenced off land outside the Clarksons' patio, Mr Riggall confirmed that the only time the public had been discouraged from walking in this area, prior to the Clarksons' ownership, was for health and safety reasons during the periods when the storage tanks and the pipe to the fog horn were being removed.

20: Evidence by Simon Riggall

Mr Riggall's affidavit

185. In the affidavit which he read to the inquiry, Simon Riggall explained that he acquired the property which he sold to Mr and Mrs Clarkson in 2004 in three parcels; from the Commissioners of the Northern Lighthouses in September 1997, from Beech Ltd in July 1999 and by a deed of exchange from Castletown Golf Links Hotel (1968) Ltd in August 1999. Together with his father, he previously owned parts of the property from 1984 to 1987 along with other parts of the peninsula (see paragraph 205). During the ownership of Castletown Golf Links Hotel (1968) Ltd he leased some of the property for agricultural purposes. At none of the times when he acquired the land was he aware of the agreement reached in 1976 between the Trustees of the Crookall Estate and the Attorney General permitting the public to have permissive access to the property.

186. During his ownership Mr Riggall was in regular attendance on the property and asserted his ownership on a frequent basis. Acts of ownership included ploughing, seeding and grazing the land, moving fences, creating paths and restricting access other than to those who had his expressed permission. He gave permission for a memorial bench to be erected to Canon Payne and for diving, fishing and archaeology. Private property and other advisory signs were erected and were in constant use until the completion of the sale to Mr and Mrs Clarkson when they were taken down for use elsewhere.

187. In or about 1986 the land was closed off to allow for safe calving. This caused problems and one of the gates was forcibly removed. During the foot and mouth outbreak, Mr Riggall chose to continue to allow permissive public access. He was interviewed on Manx Radio giving permission as the landowner and it was also made clear in the press that access remained possible when all other footpaths on the Island were closed because the land was in private ownership.

188. In Mr Riggall's view, the constant use of fences, gates and signs and his own conversations with the individuals who had access to the land as a result of his open door policy would have left nobody in any doubt that the land was private and that no public rights of way existed.

Evidence give in examination

Fencing and notices relating to the ASSI

189. The establishment of an ASSI on Langness, including the land then owned by Mr Riggall was first proposed by the Department of Agriculture, Fisheries and Forestry (DAFF) in October 2000. The offer of a management agreement was made to him in December 2001 and became effective in April 2002. In accepting the offer he had signed to confirm that he was the owner of the land and that there are no tenancies, nor do other persons have any rights over the land, other than a right of access to the lighthouse and cottages.

190. Among the works carried out in accordance with the management agreement was the erection of a number of fences. These included a fence running east-west across the whole of the peninsula and one running north east from a point on the western side of the lighthouse compound to the head of a gullet (corresponding to points M and L on the inquiry photograph). Kissing gates to allow for the passage of pedestrians were provided at points G, li, L and M and a gate and cattle grid were installed at the point I where the fence crossed the metalled road. The erection of these and other fences on a part of the peninsula that had previously been entirely open subsequently gave rise to adverse criticisms in the press and in correspondence to DAFF. DAFF responded by explaining that the purpose of the fencing was to create a series of enclosures, enabling the land to be managed in accordance with the ASSI management agreement.

191. In April 2002 a press release was prepared by DAFF to publicise the management agreement. The draft was shown to Mr Riggall and amended by him to make it clear that public access to the land was granted on a voluntary basis, the operative paragraph as amended reading 'The landowner has agreed to continue voluntary public access on the condition that dogs are kept on leads within these fields'. This was done in order to ensure both that the public were fully informed and to protect his rights as landowner.

192. In addition to the press release, laminated notices prepared by DAFF were put up in 2003 and subsequently maintained throughout Mr Riggall's ownership. The A4 size notices were posted at three locations; adjacent to the kissing gates at both end of the DAFF fence at points G and li, and next to the cattle grid and gate where the fence crossed the metalled road at point I. The notice stated, *inter alia*, 'This private land is covered by a section 30 management agreement with the Department of Agriculture, Fisheries and Forestry'. It asked (in capitals) 'Please keep to the path and keep dogs under control' and stated also 'Access by kind permission of the land owner'. Included in the notice was a map showing, in blue, a path running around the outside of the peninsula passing to the seaward side of the lighthouse, together with one along the line of the fence between points G-H-I-li. Mr Riggall told the inquiry that no one queried or challenged him in relation to the notice or its contents.

193. In September 2002 the path between N and L was obstructed by the deposit of a pile of top soil which Mr Riggall imported with intention of improving the fertility of this part of his land. He was ordered by DAFF to remove it, but this was on the ground that the imported soil breached the requirements of the ASSI, not on the ground that it obstructed

the public right of way.

Other signs

194. Photographs of the various signs that had been prominently displayed during Mr Riggall’s ownership, and which were removed for reuse elsewhere when the land was sold to Mr and Mrs Clarkson, were shown to Mr Riggall. He confirmed to the inquiry that the location of these had been as follows:

Sign stating:	Location:
‘Private property’	On the wall of the lighthouse compound by entrance to the courtyard at the south west gate
‘Private property No vehicles’	On the gatepost adjacent to the stone stile, immediately south of the car park at point A
‘Private property’	On the pillar by the cattle grid and gate that had been installed as part of the ASSI management agreement at point I
‘Strictly private. Great Meadow Estates Ltd’	On the entrance to the lighthouse. The words ‘Great Meadow Estate’ were added when Mr Riggall acquired the land from the Commissioners.
‘East & West Cottages. Great Meadow Estates Ltd	On the wall of a building inside the lighthouse compound. (Sign to direct visitors to the holiday cottages)
‘Follow the country code. Please close the gate’	One of a number of signs that had been placed on the gate south of the car park at point A. The gate was frequently left open by visitors to the lighthouse and had also been torn down and thrown into the sea on a number of occasions.

195. Mr Riggall said that a further sign stating ‘Private Dreswick Harbour’ had been put up while working on the fog horn to preserve it and also to close off the area for birds and wildlife.

196. In cross examination Mr Riggall said that he had put up notices to protect the land. He had also put notices in the press and had spoken on local radio. He had not actually put up a notice saying ‘do not walk on this land’, but why should he? He considered that he had given approval for people to walk on the land with his specific notices.

Closure of the land

197. In answer to questions about how and when the land was closed to the public, Mr Riggall said that closure took place from time to time for the purposes of animal husbandry, primarily to allow for safe calving, but was difficult to achieve. Both the gate on the metalled

road at Poyll Breinn and that adjacent to the car park were normally kept closed in order to restrain livestock. In 1986 they were both closed and locked for a period of about three weeks, resulting in a strong protest being made by the Commissioner's for Northern Lighthouses. (See paragraphs 389-390 for the evaluation of this evidence.) However the kissing gates at G and I had never been locked, nor had the new gate at L.

198. For a period of approximately two weeks the public were excluded from an area in the vicinity of the Herring Tower to allow filming to take place. He was unable to remember the date of this, but the closure took place sometime after the ASSI had been established in 2002.

199. Shortly after Mr Riggall purchased the lighthouse in 1997 the Palace Group attempted to deny him access to it by placing cement filled barrels in the gateway at point A. They remained in place for approximately three days (and can still be seen lying beside the road). Neither at that time, however, or subsequently during his ownership was any attempt made to close the stile adjacent to the gateway. Nor during his ownership did Mr Riggall close off the stile which previously existed on the east coast, close to point AD, in the fence which previously ran across the peninsula.

200. Mr Riggall acknowledged that the statements he made in the e-mail exchange of 9th July with Jenny Holt (included in the bundle of evidence submitted on behalf of Mr and Mrs Clarkson) that 'we closed the field at least twice a year to protect the calving and the lambing' and that 'we closed off the whole peninsula at least two or three times a year' were misleading. What had been closed was the gate at Poyll Breinn, although (other than the incident in 1986) this was not locked. Nor was the stile adjacent to the gate at point A ever blocked. The statement in his affidavit that 'in or about 1986 we closed off the land to allow safe calving' was a more accurate description.

Basis on which the public have used the land

201. In response to the comment that witnesses had told the inquiry that people had walked on Langness for 30-40 years, Mr Riggall said that he recognised that the peninsula had been enjoyed by the public for many years. He himself had done so as a child. However, he believed that they did so with permission. He took the view that, as a farmer he had certain rights and that if people wished to stroll over your land they did so with permission and must respect the wishes of the landowner and any gates and signs that were put up. During his ownership of land on the peninsula there had always been notices stating that the land was private. He considered that anyone walking on the land would have seen those notices and believed, therefore, that they did so with his permission. There was rarely any conflict with the public and he was, in general, happy to allow people to walk on Langness unless they did something wrong. There was, however, one person who had persistently let their dog off the lead and allowed it to worry sheep whom he had banned. Conflicts sometimes occurred between walkers and the tenants of the holiday cottages also over the issue of dogs. He also recalled his mother and father being upset by the activities of walkers and their dogs, and by people lighting bonfires on the beach and misbehaving at night whilst cattle were calving.

202. In the last six months of his ownership, he became increasingly concerned after losing six ewes in lamb as a result of attacks by two dogs. He had considered restricting public access to certain times of the day but in practice did not do so.

203. On the occasions when he had told people they were trespassing it was invariably because they had not respected his right as a farmer and had allowed their dogs to chase or worry his livestock.

204. A number of bodies that had been given expressed permission to use the land were listed by Mr Riggall, as were those who had used it without permission and to whom he had objected. The former included Bournemouth University, who sought permission to carry out archaeological investigations, the Manx Bird Atlas who sought permission to catch and ring birds, and local diving clubs and schools. The latter included the use of the peninsula by the Coast Guard to carry out a training exercise, including with vehicles, and use by the Combined Cadet Force (CCF) of King William's College. He had also given specific verbal permission to individuals who accessed the area on foot to fish and catch lobsters in the area around Dreswick Harbour.

Ownership by Beech Ltd and investigations carried out prior to acquisitions

205. Between 1984 and 1987 the majority of the peninsula, some 278 acres, was owned by Beech Ltd, a company that was wholly owned by Mr Riggall and his father, Lt. Col R H D Riggall. This included the whole of the southern part of the peninsula other than the lighthouse compound and the metalled road from the car park. It also included the major part of the golf course, but excluded three holes (the 1st, 2nd and 18th), the club house and the Golf Links Hotel.

206. Mr Riggall told the inquiry that in purchasing this land a very thorough investigation had been carried out by the company's legal advisors into its previous ownership and the rights which existed over it, to establish that it was private land. This included examination of the deeds of the Trustees of the Crookall's Estate and other historic documents. When in 1997 Mr Riggall again acquired part of this land, a further investigation was undertaken to check that nothing had changed from the previous investigation. In cross examination, however, it was established that at no time did either of the investigations attempt to assess the use that had been made of the peninsula by members of the public. Nor was any consideration given to the specific question of whether that use may have given rise to the presumed dedication of public rights of way.

207. Mr Riggall said that it was important to remember that in 1984 the whole place was open and there were very few paths and tracks, primarily those to and around the Herring Tower. In his view, paths only became established and defined as a result of the fencing carried out in connection with the ASSI.

21: Evidence by Dr Elizabeth Charter, DAFF

208. Dr Elizabeth Charter, the Chief Wildlife and Conservation Officer of DAFF, was the officer primarily responsible for the designation of the ASSI in 2000 and for negotiating and

implementing the ASSI management agreement entered into with Mr Riggall in 2002. She attended the inquiry at my request to aid understanding of the documents submitted in evidence relating to that agreement, and to help with related questions which had arisen in the course of Mr Riggall's examination. I am grateful to her for doing so at very short notice. In given her evidence she emphasised – and I accept - that her Department does not have a view on whether or not public rights of way have been established on any part of the Langness Peninsula.

209. Dr Charter told the inquiry that the public's use of the land was not a factor in the designation of the ASSI. It was relevant to the management agreement only to the extent that, in introducing grazing management, the Department did not wish to change the status quo in any way, nor did it wish to give rise to any conflict with the public, and that it had therefore been necessary to put in kissing gates to allow that use to continue.

210. The press release issued by the Department on 9th May 2002 was intended to help ensure the public were aware of why the fencing was required and to inform and educate them about the management agreement, in particular that the presence of the lesser mottled grasshopper required the re-establishment of the grazing management which would have been on that site until about 1985. Although there had been some criticism of the fencing, the concerns expressed at that time had been manly about the aesthetics and changes to the character of the area rather than its effect on public access. The press release would have been disseminated through the Department's media list and would have gone to the Island's newspapers and local radio.

211. In an article about the effect that the fencing had on access to the peninsula subsequently published in the Isle of Man Examiner of 14th January 2003, Dr Charter is quoted as saying 'Far from barracking Mr Riggall we should be thanking him' (for entering into the ASSI management agreement). Referring back to the press release she added 'The land is not a public right of way. It is only through the kindness of the landowner that people can walk around the area'. She confirmed to the inquiry that was her understanding at the time, based on what was shown on the definitive map and statement, but she acknowledged that her expertise was only in wildlife conservation. No investigations been carried out by DAFF to establish whether any additional public rights existed, nor was any advice sought from the Department of Transport as to whether the definitive map was considered to be a complete record of public rights of way in the area.

212. The A4 laminated notice was produced in May 2003, the content being jointly developed by Dr Charter and Mr Riggall, and was put up by DAFF in the three locations (at points G, I and II) stated by Mr Riggall. Some of these notices were removed but these were replaced. The notices remained in place for a sufficient time to become faded.

213. The issue of why the land had been fenced continued to be raised in correspondence with the Department, including in July 2003 by the former Chief Minister, Mr D J Gelling MLC. No further press releases were issued but they continued to explain that the fencing was essential to the creation of the grazing regimes that were necessary for wildlife conservation purposes. It was not intended to restrict or inhibit public access. A

summary of the wildlife importance of the land was also produced in partnership with Mr Ferguson Lacey to inform golfers. It had been published on the Castletown Golf Links website and put up on notice boards for golfers.

214. In answer to questions which I put to her, Dr Charter said that she was aware that public rights of way may exist beyond those which are recorded on the definitive map and statement. She was also aware that the rights of the public to use a public right of way must be respected by the landowner and that such a path could only be diverted or closed by due legal process.

215. She visited the site prior to entering into the management agreement on several occasions and was aware that there was regular public use of the area with several paths and tracks across it. However, she understood from talking to the landowner that this use was on a wholly permissive basis. She did not take advice from the Department of Transport because the designation of the site was based on scientific criteria and the existence of public rights of way was not a significant part of that process. Nor had she appreciated at that time that public rights may exist over Langness that were not formally recorded.

216. Similarly, she accepted that the changes which Mr Riggall made in May 2002 to the Department's draft press release were intended, by him, to indicate that public access to the area took place on a permissive basis and to imply that there were no public rights of way. She did not take advice as to whether this was correct or on the possible consequences of the Department publishing such a statement

217. The map that formed part of the A4 laminated notice shows only a single path running around, and largely outside, the perimeter of the area covered by the ASSI management agreement. Dr Charter confirmed that she was aware that there were a number of other paths across the land but said that the depiction of a single path had been suggested by Mr Riggall. He considered that for the ease of management it would be better if the public were restricted to a single coastal path. The Department had also considered the cost of putting in kissing gates at other points where paths crossed the proposed fence but concluded that it would be simpler and cheaper to restrict access to the two points at each end of the cross fence. Dr Charter said that she did not consider this to be restricting the public's access in any way, nor did she regard it as altering the status quo. In her opinion the other paths were used much less (although no attempt was made to establish the level of usage) and did not justify the cost putting in an additional expensive gate.

218. In answer to questions put to her by Mr Costain, Dr Charter said that the primary purpose of the A4 notice was to remind the public that they needed to keep their dogs on a lead in the area where there were livestock. She accepted, however, that much of the line of the path as shown on the notice was outside the area covered by the ASSI management agreement. This included, for example, that part of the path down the western side of the peninsula and the line on the seaward side of the lighthouse compound.

22: Evidence by Phil Gawne MHK

219. Mr Gawne told the inquiry he had a dual interest in the issue of rights of way on Langness. As the current Minister of Agriculture, Fisheries and Forestry he confirmed that, as Dr Charter had told the inquiry, his Department took an entirely neutral stance on the issue. Nor had the steps that were taken to implement the management agreement been intended to affect the status quo in any way. As the elected member for Rushen, however, he had received a considerable correspondence from constituents since the fencing was erected expressing concern, which he shared, about the loss of the traditional rights which people had enjoyed over Langness for very many years.

23: Evidence by Graham Ferguson Lacey

220. Mr Ferguson Lacey is the Director of four companies, Fort Island Ltd, Castletown Golf Links Ltd, Redford Ltd and Fort Island Golf Lodge Ltd, who between them are the owners of the major part of the land on Langness over which the alleged public rights of way that were identified at the inquiry run, other than those that are on Mr and Mrs Clarkson's land. (The respective ownerships are shown on the map at additional document 14, provided to the inquiry by Mr Ferguson Lacey's advocates.) This includes the whole of the golf course, the area of overgrown grassland to the north east of the car park and the land surrounding the ruins of Langness Farm. However, the land immediately to the east of Hango Hill is not within his ownership.

Evidence in chief

221. Mr Ferguson Lacey began by reading a letter sent on his behalf on 16th July 2009 to the Department of Transport. This states:

'Our Client's position is, there exists a public right of way with vehicles and on foot along the road leading to the Department's car park. There are no public footpaths on the southern portion of Langness beyond the Department's car park. Public access has been by permission, evidenced by the fact that in 1975 an agreement was then reached with the trustees of the late Mr A B Crookall enabling the public to have access foot only from the car park to Langness Point only (if there had been an existing right of way such an agreement would not have been necessary) and also the learned opinion and advice given by Her Majesty's Attorney General to Tynwald Court on 12th December 1989.

The Definitive Map and Statement of Public Rights of Way deposited at the General Registry under the provisions of the Highways Act 1976 [*sic*] do not show any public rights of way on the southern portion of the Langness Peninsula. It follows that when the mapping of the Island took place under the Highways Act 1976 [*sic*] no such rights existed. There has been no amendment to the Definitive Map referred to and no proposed amendment to include rights of way on the southern portion of the peninsula has been published.

There is no evidence of the need for a right of way over any of our client's land. There is no evidence that a substantive section of the public would receive added

convenience by the creation of such a public right of way. That a public right of way would not add to the convenience of persons resident in the area. Our Client is concerned as to the ASSI status of the area; as to the interests of the golf club members; as to the health and safety issues; as to the significant financial damage it will incur as a result of the diminution of the value of its land holdings to the cost of the Government.'

222. Mr Ferguson Lacey said that he negotiated the acquisition of the properties on the peninsula that are under his ownership from the Palace Group in the year 2000. In doing so, he instructed his advocates to satisfy him as to the ownership of the properties, including any public rights of way that may exist. He was helped by the fact that the leader of the legal team, John Quinn, had been involved in the public inquiry in 1990 when the Palace Group had proposed building a second 18 hole golf course and recommended that the inquiry should inform itself of the product of that inquiry. Included in it was a representation in writing by the then Attorney General that no public rights of way existed over the properties then in the Palace Group's ownership (now in his ownership), neither were there any other public rights of way, apart from the road, on the southern end of the peninsula. Having been satisfied that was the case, he had an independent valuation and survey carried out which included rights of way. This confirmed what he had been told by his advocates⁴.

223. Between the exchange of contracts and the completion of the purchase, however, an ASSI order was issued by DAFF without any prior consultation and containing numerous, very onerous conditions. In his view, the issue of the order in this way and when there was no immediate or specific threat to the flora or fauna of the area was unlawful. However, following negotiations a document was concluded with DAFF which, *inter alia*, provides that the party that is subject to the ASSI order is liable for whatever happens on the property. This means that if he gives permission to a third party to carry out an activity and the property is damaged by that third party he remains personally liable. For example, if the property is damaged by off-road motorcyclists or dog walkers abuse the property in any form, he is personally liable. If any act takes place particularly during the nesting season, it can give rise to a criminal act for which he is liable.

224. The conditions imposed by the ASSI have made it extremely difficult to balance, on the one hand, the desire to be a good and generous neighbour, to also protect his legal rights as the owner of the property, and his responsibility to members of the golf club who pay significant annual fees to enjoy the rights they are entitled to. An easy way out of this dilemma would have been for him to accept, as Mr Riggall had done, DAFF's offer of a management agreement under which they would provide fencing to allow the area to be grazed by highland cattle and sheep and other farming activities. However, if the programme had been completed as proposed by DAFF it would have been impossible for

⁴ Mr Ferguson Lacey undertook to make available to the inquiry copies of the assessments that were made on his behalf when he acquired the property in 2000. However, no such documents have been received.

dog walkers to traverse the property by permission, and would have resulted in sheep being killed by dogs or frightened into the sea.

225. Mr Ferguson Lacey went on to say that it is notable that until the issue of the Clarkson's fence arose, there had been no challenge as to the existence of the rights of people that had been allowed by permission to traverse specific pathways over the property. However, the organisation PROWL has sprung up and claims, with increasing rapidity and in a manner that has no legal validity, rights of way that do not exist, and which have never existed other than in the desire of individuals who have enjoyed the permission of owners. Had they done so, he would not have purchased the property.

226. Had the issue of the alleged public rights of way arisen earlier than it had done, Mr Ferguson Lacey said he would have turned the whole of the land in his ownership, other than the golf course, into an area to be fenced by the Department of Agriculture, Fisheries and Forestry to protect the spottled-backed grasshopper [*sic*]. If that had been done, all of the property would need to have been fenced in a manner that would have included fencing going down the cliff face and across the beach in order to protect the golf course from cattle.

227. At the time of the renegotiation of the ASSI order, Mr Ferguson Lacey pointed out to the then Minister that there was need, given the requirements of the order, for the area to be wardened and had offered to pay a half of a warden's annual salary and to provide supporting facilities. The Department continues to confirm how desirable and important this would be, but unfortunately do not have the money to meet their half of the costs.

228. In accepting the offer of a management agreement, Mr Riggall had been required to sign to confirm that he was the owner of the land and that there are no tenancies, nor do other persons have any rights over the land other than a right of access to the lighthouse and cottages. Mr Ferguson Lacey said that he had not, in part, proceeded with the desire of the Department for a management agreement because he knew it would eliminate completely the areas which, by generous and kind permission of the landowner, people were able to enjoy. It was a matter of regret that the campaign by PROWL has given rise to problems that will ultimately end up being determined in the Courts, where he is confident that the validity of his statement that there are no rights of way will be upheld, and where those who have enjoyed the generosity and permission of the owners will be less blessed than they might otherwise have been.

229. Among the issues that he and the Department agreed on was the need to provide signage. That which he had provided included signs denoting it was private land, warning that golf was in play particularly in the area of the road, and signs asking people to be aware of the danger and to slow down. On three occasions those signs had been removed within weeks and in most cases thrown into Derbyhaven Bay.

230. Mr Ferguson Lacey said that he was disappointed that no witnesses had been called to date who could testify specifically to the golf course. Among those that the inquiry should hear from was Mr Murray Crow, who was born in one of the lighthouse cottages and was

the golf professional for 44 years until 2006. There were also captains and past presidents who had knowledge of the golf course for over 65 years and who could testify that there have never been any public rights of way over any part of it, and over 500 members who could similarly testify that there had never been any interference with their golf because of any public rights of way.

231. Commenting on the way the inquiry aerial photograph of alleged public rights of way had developed, Mr Ferguson Lacey said that it had grown 'to look more like a tapestry woven by a fisherman's widow in Derbyhaven with red in areas that are absurd in the extreme'. It seemed to him that if sheep create a pathway, golfers drag a golf bag or a buggy path is created, suddenly they become in the imagination of some public rights of way. He believed that is patently absurd and that there are no public rights of way.

Examination

232. In examination Mr Ferguson Lacey expanded on a number of points made in his opening statement.

Actions by previous owners

233. Mr Ferguson Lacey confirmed that from 1988 to 2000 the majority of the land on the peninsula had been owned by the Palace Group although there were two areas outside their control. One of these was owned by the Riggalls and the other, including three holes of the golf course, by Mr Makison. Subsequently this was brought into the ownership of the Palace Group, but with some land remaining with the Riggall family. At the time of Mr Ferguson Lacey's acquisition in 2000 there was a swap of land with Mr Riggall to tidy up the ownership, resulting in the current pattern of ownership.

234. He said that at the time of the 1990 planning inquiry the Attorney General gave evidence that there were no public rights of way. The issue was a matter of great public interest and it had been proposed by the Palace Group that as a part of planning gain, should planning approval be granted, they would provide certain dedicated rights of way. Such a proposal would not have been made had any public rights of way already existed.

235. Mr Ferguson Lacey was made aware by Duggie Bolton, one of the Directors of the Palace Group who owned the land from 1988 to 2000, that on an annual basis the Group used cement filled barrels to close the road beyond the public car park. Their maintenance of that activity caused tensions with the Riggalls because it inconvenienced the Riggalls accessing their own property. This was, he said, a regular, consistent and documented activity, done for the purposes of establishing there was no public right of way beyond that point.

236. Signage has been provided both by the Palace Group and by him and regularly replaced notwithstanding that it was regularly removed. He has also provided stobbing in areas of the road to prevent vehicles going onto areas that DAFF have advised are of particular importance for nesting. Even some of those have been removed from time to time by people who have no regard for the flora and fauna and want Langness, regardless of its ownership, for themselves and their dogs.

Use of land by the public

237. Mr Ferguson Lacey said that when he acquired the land he was aware that people were walking on it. Primarily this was along the public road to the car park, with some people also walking to the right of the road along the coast towards the lighthouse to exercise their dogs.

238. Questioned specifically about the rights of way which had been alleged to exist over the land in his ownership, Mr Ferguson Lacey said that, in relation to the golf course, while he could not say that people did not from time to time stray onto the golf course or might walk on it with their dogs in the evening when there was nobody about, there are no public paths on the golf course, nor were there any other public rights relative to it. He had a legal responsibility, not just in respect of the ASSI but for the safety of players within the area of the golf course and had also to satisfy his insurer he was acting responsibly. It was particularly irritating when signs warning people of the danger were removed by people who resented private land ownership and the benefits that enjoys.

239. Specifically, the claimed path along the seawards side of the golf course, those passing either side of the hotel (BO-BL and BP-BM) and those crossing the golf course (BR-BK and BS-BT) did not remotely correspond to Mr Ferguson Lacey's understanding of the public's use of the land. The path marked along the edge of the golf course, BY-BU-BT-BO-BP, in particular, would be extremely dangerous for anybody to use as a right of way, other than a golfer, because the prime golf holes nestled to the rocks in that area.

240. Mr Ferguson Lacey said he had no knowledge of the public walking across the golf course on the line BK-BR and that if he found anyone doing so he would ask them to leave. There were a number of occasions in the area of Golf Lodge when he had seen people exercising their dogs and who he had asked to leave the area. It is also in that area that private property signs have been regularly removed and thrown into the bay.

241. Informed that two possible lines had been identified for path BS-BT crossing the middle of the golf course, one to the north of the rifle butts and the other to the south, Mr Ferguson Lacey said that he had no knowledge of the public having ever walked either line. They are in close proximity to tee boxes, greens and key holes and anyone doing so would be in extreme danger of being hit by golf balls.

242. Regarding the alleged public rights of way to the west of the metalled road and around Sandwick, Mr Ferguson Lacey said:

- There was a gate at point BI that was permanently locked. The area of BH-BI was traversed by golfers but there was no regular public use of the track. He did not know how many people may wander over private land in breach of the ASSI order.
- The two alleged rights of way linking to the Derbyhaven Road east of Hango Hill, BB-BC and BD-BE, were not within his ownership.

- The path around Castletown Bay, BE-BH-BR, was in an area which he does not visit regularly and of which he had very little personal knowledge. He could not therefore testify to its use. However, on two occasions he has been advised that people were in this area on horseback and had reported this to the police as a breach of the ASSI order. He understood that DAFF have done likewise.
- He accepted that people walked along the metalled road as of right.

243. In relation to the alleged paths in the vicinity of the ruin of Langness Farmhouse, Mr Ferguson Lacey said that the area crossed by BW-BX is deliberately overgrown because of its importance to the spottled-backed grasshopper [*sic*]. He could not comment on whether people may have trespassed over it. Similarly, he had no knowledge of the use that may have been made by the public of the network of alleged paths to north east of the car park (X-AI-AJ-Y, X-AM-AB-AC, AC-AE-AJ-B, etc) or of the path AA-AB-AE-AG-AH. If they have been so used, it would be an act of trespass.

244. Apart from the golf course, the peninsula was actively farmed until 17-20 years ago and has all sorts of tracks running over it. These are the result of hundreds of years of agricultural use and the presumption that they have been created by the public simply does not stand up to scrutiny. However, Mr Ferguson Lacey said that he is aware of widespread trespass on his property. The only substantive resolution of this, as offered by DAFF, would be to fence the entire area and put it back to its former agricultural use.

Signs and notices

245. Mr Ferguson Lacey confirmed that there is a sign in front of the hotel, between points BL and BO, stating 'Private property'. He said that similar signs had also been put up to the rear of the hotel on the line BM-BP but were among those that had been removed. He had no knowledge of there ever having been a footpath sign in the area around BO or BP stating 'to the lighthouse'.

246. At the time of my site visit I noted that there was a sign posted at the north east corner of the car park stating 'The green keeping staff of Castletown Golf Links would like to respectfully ask all persons currently exercising their dogs on the golf course (which is private property) to be responsible for clearing up after their animals. We have to work with it. Many thanks in advance'. A similarly worded sign was also posted in the area of overgrown grassland to the north of the path between points AL and AD. Mr Ferguson Lacey said that these and other similar signs had been put up with his authority. They had also been repeatedly removed and had to be replaced. In his view, while the sign acknowledged people were using the area, they did so with his permission: he had given a measure of permission from time to time, but that permission had at all times been conditional on the conduct of people and the right to remove that permission at any time. He had done so not infrequently.

247. Asked about the sign that I observed on the path along the seaward side of the golf

course near to point BU warning of the danger or rock climbing⁵, Mr Ferguson Lacey said that in referring to 'walking and playing golf' the sign was addressed to those who may be accompany golfers, either as their guests or as caddies. It was not, in his view, an acknowledgement that members of the public may be walking there in their own right.

248. He was not aware of the remains of a stile between AD and AF and had no suggestion as to why a stile might be necessary at that point.

Other possible witnesses

249. Asked to suggest the names of other people who should be called to give evidence in respect of the golf course, Mr Ferguson Lacey said that, in addition to the former Professional, Murray Crow, who had been based at the course for 44 years, the inquiry should invite the current Head Green Keeper, Mark Kitchener, and past Presidents and Captains such as Eric Alexander and others. Geoffrey Carron, who was a current member of the Committee, also had a longstanding knowledge of the golf course. All of these had day to day, expert knowledge of the type of question he had been asked. The evidence they could give would ensure that the evidence given to the inquiry was as complete as it could possibly be.

24: Evidence by Irene Cowan

Statement

250. Irene Cowan was the only other witness to speak at the inquiry who did not consider the paths which existed on Langness to be public rights of way. Reading from a letter written to the Inspector, Mrs Cowan said that she was now aged 67. From the age of 6 to 11, she would go during the summer holidays with her father, who was a coach driver, on regular trips to the Langness lighthouse. It was a very popular destination. She was allowed to play only south of the lighthouse as the rest was private property. It was well fenced and intensively farmed with crops, cattle and sheep. The fog horn was always out of bounds. Only in the last 25 years has she become aware of the gun emplacements as she was never allowed to go there as a child.

251. In the 1980s Elsbeth Quayle, MLC had been instrumental in an inquiry which held that the only public access was via the tarmaced road. Having regularly walked on Langness for the past 25 years she has seen a gradual process in which wire fences have been trampled, walls broken down and new tracks have appeared. Car access to the lighthouse was stopped for short periods by oil drums placed on the road south of the car park making it necessary to access the land over the existing stile. There had been at least one sign in the past few years at the neglected field south of the golf practice field (i.e. between BW and AA) to the effect that the land was private. There had also been a sign in the last five or six years stating that the fog horn was not accessible as it was private property.

⁵ The sign reads 'WARNING! Rock climbing is DANGEROUS the ground is unstable. Walking & playing golf in this location is at your own risk.'

252. Having looked at the Island footpath maps she believed that it is quite clear there are not, and never have been, any footpaths on Langness and that the area has been enjoyed because of the amenable landowners.

253. Mrs Cowan said she has kept copies of the foot and mouth notices that were published in 2001. These prohibit access along grade 4 roads and public footpaths but nowhere do they mention Langness. This leads her to believe it is still private property.

254. She has never met Mr or Mrs Clarkson but believe they have had a raw deal.

Examination

255. In examination, Mrs Cowan said that she considered that the use of the peninsula had increased as a result of the foot and mouth outbreak. She recognised that a lot of tracks were used but did not regard them as public footpaths; she had always considered that she was on private land and probably should not be there. The fences which had existed at the head of the practice field and on the path from Langness Farmhouse (i.e. at points AC and BX) were ones which had gradually been trampled down. She did not regard the existence of stiles such as that which still existed at point A and which had previously existed near AF as evidence which pointed to the existence of public footpaths.

25: Written representations and other evidence

Northern Lighthouse Board

256. Prior to the local inquiry, the Department's Programme Officer wrote to the Northern Lighthouse Board on 17th June 2009 explaining that a public inquiry was to be held to investigate the public rights of way that were alleged to exist over the Langness Peninsula and asking whether the Board had any record of members of the public being excluded from any part of the peninsula when it was in their ownership.

257. In his reply of 1st July, Roger Lockwood CB, the NLB's Chief Executive states:

'I can confirm that the Northern Lighthouse Board does not hold any record on file of excluding members of the public from any section of the Langness Peninsula when we were in ownership of the Lighthouse estate, nor does our corporate memory recall any such exclusions in that area.'

G Dugdale

258. Following closure of the local inquiry, I received on 28th October an undated letter from Mr G Dugdale who was First Assistant Lighthouse Keeper at Langness for three years, from 7th April 1993 to 7th April 1996. Relevant points from this are:

- When first visiting the Lighthouse in February 1993 he had seen two notices on the lighthouse gate stating 'Private road' and 'No unauthorised access, by order of the Commissioners of the Northern Lighthouse Board'. The gate was closed but unlocked. Having walked through it he was challenged by the Principal Lighthouse Keeper who informed him he was walking on private land.

- The access road to the lighthouse was owned by the Lighthouse Board.
- Mr Dugdale understood the Lighthouse Board to own all of the land outside the lighthouse enclosure other than the field (to the west of the access road) which was owned by the Riggalls. The only public right of way was on the seaward (western) boundary of this field.
- From April 1993 to April 1996 it was part of Mr Dugdale's duty to inform the public that no right of way existed or access existed around the lighthouse to the sea, except for the footpath on the Castletown (western) side of the Riggall's field. A log was kept in the lighthouse recording these challenges.
- He spoke to an average of 150 people a year to explain they were on private land and that there were no public rights of way other than the footpath on the side of the field. No one ever challenged this statement. He would then give them his permission to access the peninsula and, almost invariably, they would ask to see inside the lighthouse.
- The two notices were always in place during his tour of duty but the access gate was never locked. This was to enable access in case of an emergency.

Other representations

259. The bundle of documents submitted to the inquiry by advocates acting for Mr and Mrs Clarkson include, *inter alia*, three letters written to the Clerk of Tynwald, by David Baron, Paul Quayle and Chris Blackburn on 17th, 18th and 18th February 2008 respectively, and statements made on 9th July 2009 by Mr and Mrs Trevor Baines and Richard Formby. None of the representations received prior to the opening of the inquiry listed in appendix 3 contradict or oppose the claims made regarding the existence of alleged public rights of way but five of those received during the inquiry's adjournment do so. These are the two representations from Bob Kneen of 24th September and 7th October, the letter from Roger C Rawcliffe of 26th September, and the two letters of 19th August from Paul Quayle and Keith Kerruish both of which were also forwarded by the Clarkson's advocates.

260. The letter from David Barron states that, before retiring to Scotland, he lived and worked on the Island since 1971, including working for the Malew Parish Commissioners from 2003 to 2005. He considers that the land on the Langness Peninsula has always been in private ownership with the exception of the tarmac roadway which belonged to the Northern Lighthouse Board. For many years the access gates were locked to allow access only on business to the lighthouse. He remembers several lighthouse keepers who used volubly to request that walkers did not go around past the lighthouse as it was dangerous and too close to the fog horn.

261. Mr Barron was previously employed by the Palace Group during the time the group owned the Castletown Golf Links Hotel and the land at Langness with the intention of creating a second golf course. He had no direct involvement in the planning application but believes that restrictions were placed by the Group on public use of the private land. At one

stage the decision was taken to block off the road (except for access to the lighthouse) to prevent members of the public from roaming on the land.

262. As a dog owner, Mr Barron states that he walked the area frequently throughout the year for 30 years, but never met any members of the public, with or without a dog, walking to the rear of the lighthouse.

263. The representation from Chris Blackburn states that he was a director of Dean Wood Estate Agents when the lighthouse cottages were sold by tender approximately 14 years ago and believes that there was no public right of way around the southern perimeter of the cottages and land adjoining the lighthouse. That from Richard Formby states that he has known the Riggall family all his life and believes that the land was shut off at various times of the year to protect livestock. Roger Rawcliffe states that he and his wife have walked around Langness for almost 50 years and 60 years respectively, including over the southern part of the peninsula and the golf course, but always considered that they did so by permission, not as of right. The gate by the car park was sometimes locked and on occasions had a sign stating that there was no right of way beyond it. The representation from Bob Kneen states that, when he was a student at King William's College from 1949 to 1954, pupils were forbidden to go further than the Herring Tower or the Haunted House (Langness Farm). Beyond the Haunted House was a notice erected by the Northern Lighthouse Board forbidding entry other than to those with permission.

264. The remaining representations referred to in paragraph 259 whilst expressing sympathy for Mr and Mrs Clarkson and recounting recent personal experiences, do not contain any factual information that is relevant to the question of whether there has been a presumed dedication of any of the alleged public rights of way.

26: Evidence from the 1990 planning inquiry

265. In his evidence to the current inquiry Graham Ferguson Lacey referred to the earlier planning inquiry, held in 1990 into a proposal by the Palace Group to build a second 18 hole golf course on the southern part of the Langness Peninsula, and to the evidence which, he said, had been given to that inquiry by the then Attorney General. A copy of the inspector's report of that inquiry had earlier been received from Brenda Crellin⁶.

266. The Attorney General in 1990 was T. W. Cain (later Deemster Cain) who held office from January 1980 to October 1993. I understand from the Attorney General's Chambers that (although it is possible that their records may be incomplete) they have no record either of his appearing at the planning inquiry or of his having expressed an opinion at that time on the issue of public rights of way relating to Langness. The correspondence previously made available to me however includes an exchange between Attorney General Cain and the Surveyor General which took place four years earlier, in 1986. In it, he expresses an

⁶ See additional document 19: Report of a Special Inquiry appointed by the Governor in Council into an application for approval in principle to construct an 18 hole golf course on land at Langness, Derbyhaven, Malew, held 18-22 and 25-27 June 1990, Inspector J. Peake, Dip TP (Lond) MRTPI.

opinion on the status of the metalled road from the Smelt House to the Department's car park, but not specifically on the wider issue of access to the peninsula in general. (This correspondence is reported more fully in paragraphs 380-382 below and assessed at paragraphs 409-411.)

267. In the light of this, prior to the inquiry resuming in October I asked the Department's Inquiry Officer, Anna Marie Goldsmith, to go through all of the archived papers relating to the 1990 planning inquiry held by the Department of Local Government and the Environment and to copy any which make reference either to the opinion of the Attorney General or, more generally, to the issue of public access. In practice she, too, could find no evidence to suggest either that the Attorney General appeared at the inquiry or had otherwise been involved with regard to the planning application. However, several of the inquiry papers do make reference to the issue of public access. In addition to the report of the Inspector, those which Ms Goldsmith copied comprise:

- 'Ecological appraisal and nature conservation proposals'. Report by the Golf Course Wildlife Trust for the applicant, the Palace Group Ltd, October 1989
- Statement of case made by the Malew Parish Commissioners dated 3 May 1990
- Proof of evidence by Mr S Harrison, Director of the Manx Museum and National Trust, May 1990
- Additional technical and supporting evidence submitted to the inquiry by the Manx Museum and National Trust
- Letters of objection from the Manx Conservation Council, Advisory Council on Planning and the Environment for the Isle of Man, the Isle of Man Natural History and Antiquarian Society, the British Butterfly Conservation Society and McLeod Shipley, Architects.
- 20 letters of objection from individuals, of which two are examples of a standard letter. This is referred to having been submitted by a much larger (but unspecified) number of objectors.

268. In the report submitted to the inquiry on behalf of the applicant, the Golf Course Wildlife Trust describes public access as being 'a very controversial issue since there is no official right of way but people have for years had free use to walk around the peninsula. There would be a public outcry if the Palace Group were to close off access altogether (which they are entitled to do) [*sic*] and similarly it is feared that a golf course would conflict severely with preferred pathways currently used. There are a number of pinch points on the existing golf course which are cited as examples'. The report's authors consider that the basis of this problem 'is that the southern part of the peninsula is perceived as common land with full and free access to the public, even though it is well known that this is not true. The creation of a golf course here would constrain this hitherto free access.'

269. A quotation (in one of the letters of objection)⁷ from a press release by the Palace Group announcing the planning application also acknowledges the public access that was taking place. It refers to the existing golf course as being 'probably a godsend in terms of keeping one of the Island's beauty spots intact, free from development and keeping access for the public to enjoy the peninsula. We would not want to change this, merely control it.'

270. More specifically, in discussing the impact of the proposed new southern course, the Golf Course Wildlife Trust's report makes several references to what it described as 'the existing coastal footpath'. It notes for example that holes 5 and 6 would be close to the cliff edge and that 'there will be conflicts with public access since the cliff walk along this section is one of the prime features of the peninsula'. Similarly, the fairway to hole 8 is described as following the coastal pathway used by walkers, while hole 9 also 'conflicts with the footpath route in much the same way as currently happens at the 17th tee on the existing course'.

271. The objections from the conservation bodies and from members of the public similarly confirm the long tradition which existed of public access to the whole peninsula. A number of these refer to the 'public ramblage' or 'freedom to wander at will' which had existed and been enjoyed 'for generations'. Others however refer to 'the many footpaths', 'the de facto footpaths' or 'numerous established rights of way'. Similarly, while two of the letters⁸ suggest that the access which took place derived from permission granted by previous landowners, others refer to access as having been enjoyed without hindrance and as of right.

27: Evaluation of evidence showing an intention not to dedicate

272. The following sections of the report considers in turn each one of the factors which, it was suggested at the inquiry, are sufficient to have prevented public rights of way from becoming established over Langness – which show that the owner of the land had no intention to dedicate the way as a highway - or which otherwise demonstrate that no such rights exist. These include the various actions that have been taken by or on behalf of the owners, such as closing the land to the public and putting up notices that witnesses considered were sufficient 'to negative the intention to dedicate'. It also includes the more general factors which witnesses believe are important in demonstrating that no public rights of way have been created or otherwise exist over Langness.

273. As noted earlier, in determining whether public rights of way exist over Langness it is not possible to treat the peninsula as a whole; rather it is necessary to consider the facts and circumstances relating to each individual path, or group of paths, that are claimed as public rights of way. Similarly, no single action by any of the landowners applies to all of the alleged public right of way. In determining for the purposes of section 88 of the 1986 Act

⁷ Quoted by Hazel Hannan MHK in a letter of 30th November 1989 to the Secretary of the Planning Committee.

⁸ From the Isle of Man Branch of the British Butterfly Conservation Society received on 22nd November 1989 and from Joyce Warham dated 22nd November 1989.

the period of time over which an alleged public right of way has been used, whether the landowner made clear his intention not to dedicate the way to the public and the date (if any) when the public's right to use that way was brought into question, it is therefore necessary to identify the period of time each individual path has been used and the specific date when that use 'as of right' was challenged.

274. Accordingly, whenever I conclude that the public's right to use a way has been brought into question, I then also identify the specific paths to which that challenge relates and (as far as possible) the date on which it took place. It is this date which is the start of the 21 year period for the purposes of section 88(1) of the 1986 Act.

The tests to be applied

275. Section 88(1) of the 1986 Act provides that 'Where a way ... has actually been enjoyed by the public as of right and without interruption for a full period of 21 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it'. Under section 88(2) the period of 21 years is 'to be calculated retrospectively from the date when the right of the public to use the way is brought into question'.

276. The way in which each path has been used by the public and the length of time they have done so have already been taken into account in coming to an initial conclusion about whether, *prima facie*, a public right of way has been created. The tests now to be applied in order to come to a final conclusion are those which relate to the proviso to this part of the statute, namely:

- Is there evidence that the owner of the land (i.e. the person with the legal capacity to dedicate rights over that land in perpetuity to the public) or another person acting on his behalf made clear his intention not to dedicate the way to the public – to 'negative his intention to dedicate', and,
- If so, were those intentions made known to the public in order to bring the public's right to use the way into question?

Meaning of 'intention to dedicate' and 'bringing into question'

277. The meaning of the phrase 'intention to dedicate' has been considered by the courts on a number of occasions, most recently by the House of Lords in *Godmanchester and Drain*⁹. The case deals with the proviso to section 31 of the Highways Act 1980 in England and Wales, and, by extension, the same proviso to section 88 of the Highways Act 1986 in the Isle of Man, reversing the judgement reached in a number of earlier decisions by the Court of Appeal and overturning the previously held view that a landowner did not need to publicise his lack of intention to dedicate to users of the way. In his leading judgement, Hoffmann LJ quoted with approval the comments of Denning LJ (as he then was) in *Fairey*

⁹ R (on the application of Godmanchester and Drain) v. Secretary of State for the Environment, Food and Rural Affairs [2007] UKHL 28 (20 June 2007).

*v Southampton County Council*¹⁰ that “In my opinion a landowner cannot escape the effect of 20 years' prescription by saying that, locked in his own mind, he had no intention to dedicate In order for there to be 'sufficient evidence that there was no intention' to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large – the people who use the path... – that he had no intention to dedicate.”

278. Hoffmann LJ held that “upon the true construction of section 31(1)¹¹, ‘intention’ means what the relevant audience, namely the users of the way, would reasonably have understood the owner’s intention to be. The test is ... objective: not what the owner subjectively intended nor what particular users of the way subjectively assumed, but whether a reasonable user would have understood that the owner was intending, as Lord Blackburn put it in *Mann v Brodie* [1885], to ‘disabuse [him] of the notion that the way was a public highway”.

279. In addition to the above principles, *Godmanchester and Drain* established that for a landowner to be able to benefit from the proviso to section 31 [section 88 in the Isle of Man] there must not only be ‘sufficient evidence’ that there was no intention to a dedicate, and that evidence must be inconsistent with an intention to dedicate, but it must also be contemporaneous, being brought to the attention of those people who are using the way at the time that use was taking place. Subsections 31(3), (5) and (6) specify actions which will be regarded as “sufficient evidence” but they are not exhaustive; section 31(2) referring to the right being brought into question by notice “or otherwise”.

280. The two most recent cases to consider the question of what act or acts constitute ‘bringing into question’ are those of *Dorset County Council*¹² and *Applegarth*¹³. In the *Dorset* case, Dyson LJ again quotes with approval the comment by Lord Denning in *Fairey v Southampton County Council* referred to above adding “Whatever means are employed to bring a claimed right into question they must be sufficient at least to make it likely that some of the users are made aware that the owner has challenged their right to use the way as a highway”.

281. The issue of whether the ‘bringing into question’ must be by or on behalf of the owner of the land was considered in *Applegarth*. In this case Munby J took the view that

¹⁰ *Fairey v Southampton County Council* [1956] 2 QB 439.

¹¹ Section 31(1) of the Highways Act 1980. The wording is identical to Manx legislation, in section 88 of the Highways Act 1986, other than for the required period of use which is 20 years in England and 21 years in the Isle of Man.

¹² *R v Secretary of State for the Environment, Transport and the Regions ex parte Dorset County Council* 1999

¹³ *Applegarth v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 487 (28 June 2001)

“Whether someone or something has “brought into question” the “right of the public to use the way” is, as it seems to me, a question of fact and degree in every case”, suggesting that any action which raises the issue may be sufficient. However the courts do not appear to have considered the question of how the 20 year period (21 years in the Isle of Man) should be calculated when there is *no* identifiable event which has brought into question the use of a path or way. This specific circumstance therefore remains a grey area¹⁴.

282. In considering the actions and other evidence put forward as challenging the public’s right to use the claimed paths, the questions I have therefore to consider are:

- Was the action which is claimed to show the owner had no intention to dedicate the way taken by or on behalf of the owner of the land (i.e. the person who had the capacity to dedicate a right of way over the land to the public)?
- Was that action sufficient to bring it home to the public that the owner was challenging their use of the path as of right?
- Was it made clear to the public using the path (or, at least, a sufficient number of them) at the time that use took place that that was the owner’s intention?

283. Similar tests apply in relation to the creation of a right of way at common law, i.e. the landowner must have taken steps to make clear his intention not to dedicate the way to the public and that intention must also have been communicated to the public in some way, albeit that there is no specified period of 21 years.

28: 1975/76 dispute over use of the metalled road

284. The 1975/76 dispute over the status of the metalled road is analysed in detail in part B of this report. As noted there (at paragraph 392) I consider that Attorney General Corrin was correct in his view that the uninterrupted public use of the road prior to 1975 had given rise to the dedication of a vehicular right of way, and that these rights apply to the whole of the metalled road as far as the entrance to the lighthouse at point P.

285. Disregarding the issue of vehicular rights, I consider that there is also sufficient evidence to show, independently, that a public right of way on foot exists over the metalled road between the car park and point P. The Attorney General’s file shows quite clearly that the road had been used by members of the public to visit the lighthouse since before 1939 and that, despite the wide public concern over the restrictions placed on its use by vehicles in 1975, use by pedestrians at least as far as the entrance to the lighthouse was never obstructed in any way. It is uncertain as to what extent use of the road beyond that point

¹⁴ An application by a member of the public for a path or way to be recorded would not normally by itself constitute ‘bringing into question’. For this reason amending legislation was introduced in England and Wales in 2001 which provides that, where there is no identifiable event, an application for an order to be made to record the way can be used as the date on which its use was brought into question. There is currently no equivalent provision in Manx legislation.

was interrupted as a result erection of a gate and notice at point P in December 1975, although there is no indication that the gate was ever locked in practice and the wording of the notice ('Private land. No parking vehicles. Trespassers will be prosecuted. By order, Crookall Estate Trust') is ambiguous in so far as it applies to pedestrians. It is clear, however, that neither was erected with the authority of the landowner, with both the Trustees of the Crookall's Estate and the Northern Lighthouse Board specifically denying that they had either given authority for, or had any knowledge of, the works being carried out. They cannot therefore be regarded as negating an intention to dedicate a public right of way over the road.

Public notices published by the Attorney General in 1975 and 1976

286. Two public notices were published by the Attorney General, on 21st July 1975 and 8th June 1976, as summarised in Appendix 6 (folios 117/118 and 9/10 respectively). The first of these was objected to by the Trustees of the Crookall's Estate and it cannot, therefore be taken as representing the views of the landowner. The second notice which was accepted by both the Trustees and by the Northern Lighthouse Board and can therefore be regarded as having been published with their authority.

287. The notice states that 'Whilst cars will not be permitted to travel beyond the proposed car park in the direction of the Lighthouse (apart from those having official business) members of the public may use the road to the Lighthouse on foot and they will also be permitted to walk over or rest on Langness between the Lighthouse and Langness Point.' Again, this is somewhat ambiguous.

288. The evidence given by witnesses at the local inquiry indicates that both the 1976 public notice and the reports of the agreement which the Attorney General gave at the time to local MHKs as relayed to Mr Welsh, have subsequently given rise to some confusion, with a number of the witnesses believing – wrongly - that the agreement granted a 'right to ramblage' over at least the southern part of the peninsula. The agreement was clearly a compromise and the ambiguity inherent in it may, to a large extent, have been intentional. It enabled the public to continue to enjoy access to the whole of the peninsula, at least on foot, while also addressing the concerns of the lighthouse staff and the Crookall's Trust and which arose from vehicles being driven over land in the vicinity of the lighthouse cottages.

289. What is surprising is that nowhere, either in the 1976 agreement or the negotiations which preceded it, is any mention made of the possible existence of public rights of way. I have considered – but reject as untenable – the possibility that this was because no defined paths existed on this part of the peninsula at that time. Although it is likely that they were not as clearly defined on the ground as they later became, to accept that there were no paths at all would be to disregard the considerable strength of the evidence given by witnesses at the local inquiry, many of whom described in detail their experiences in walking on the peninsula from the 1960's or even earlier, the many supporting written representations and the evidential value of the published guidebooks which shown that, from at least the end of the 19th century, a circular walk around the peninsula was a recognised attraction of the area. In my view, therefore, it more likely that the Attorney's General's disregard for the question of rights of way derived from a wish to limit the extent

of the dispute as far as possible by focussing on the use of the road by vehicles, together with a pragmatic recognition (as noted earlier) that pedestrian use of the peninsula had not been restricted in any way and was not, at that time, under threat.

290. Accepting, therefore, that the alleged rights of way around and in the vicinity of the lighthouse and towards Langness Point were in existence in 1976, the question I have to ask myself is that posed by Lord Denning - would a member of the public reading the Attorney General's 1976 public notice be aware that the owners of the land were challenging their use 'as of right' of those paths? The answer has clearly to be 'no'. On the contrary, the tone of the notice is to reassure the public that the access which they had previously enjoyed, on foot, would continue to be available to them. Some people may have also considered that they were being given additional privileges – a 'right to ramblage' - over and above those conferred by any public rights of way. But I have no doubt that had members of the public considered that the permission being granted (which although no doubt welcomed was non-statutory and could be modified or withdrawn at any time) was intended to replace their use of the paths over that part of the peninsula as of right, the protests which had proceeded the agreement would have continued and intensified.

291. For these reasons I cannot accept either of the two public notices published by the Attorney General in 1975 and 1976 as being sufficient to negative the intention of the landowner to dedicate any of the alleged public rights of way.

29: Challenges by staff at the lighthouse

292. In a letter received only after the local inquiry had closed, G Dugdale states that from April 1993 to April 1996, when serving as First Assistant Lighthouse Keeper at Langness, it was part of his duties to challenge walkers in the vicinity of the lighthouse to inform them that there was no right of way around the lighthouse and they were trespassing. He did so, he believes, on around 150 occasions a year. (See paragraph 258). The letter from David Barron (paragraph 260) also recalls several lighthouse keepers who, in his words, 'used, volubly, to request that walkers did not go around past the lighthouse as it was dangerous and too close to the fog horn'. In her evidence to the inquiry Mrs Clarkson recounted an incident when, as a child, she was shouted at by the wife of a member of the lighthouse staff (paragraph 172), while Mrs Cowan recalled that, also as a child, the area of the fog horn was always out of bounds (paragraph 250).

293. It is unfortunate that Mr Dugdale's letter was received so late in the day and that neither he nor Mr Barron was able to attend the inquiry where their statements could have been tested in cross examination. Both letters directly contradict the substantial body of evidence given to the inquiry by other witnesses, as does the evidence given by Mrs Clarkson and Mrs Cowan on this point. For example, all of those who gave evidence in support of the alleged public rights of way claim to have enjoyed unrestricted use of the coastal path to the seaward side of the lighthouse and never to have been challenged, often over a considerable period of years, with a number also testifying to their use of the path onto Dreswick Point.

294. While I accept the Mr Dugdale may have believed it to have been part of his duties to challenge walkers, such a challenge will only have been effective if it can be shown that he was acting with the specific authority of the landowner. Although he does not describe exactly the area of land which he patrolled, it is clear that part of the land, for example that south and west of the lighthouse compound, was owned at the time not by the Northern Lighthouse Board but by the Palace Group (or possibly the Riggalls). Moreover, although the precise attitude of the NLB in the period between 1993 and 1996 is not known, it is clear from the Attorney General's correspondence (reviewed in part B) that in 1975/76 they took a relaxed attitude towards the presence of the public in the area, other than within the lighthouse compound, while the NLB letter of 1st July 2009 referred to a paragraph 256 suggests that that attitude continued for the remainder of their ownership.

295. In these circumstances I cannot accept the evidence in either Mr Dugdale's letter or Mr Barron's letter or the challenges referred to by the other witnesses as being sufficient either to negative the intention to dedicate or to bring into question any of the alleged public rights of way.

30: Basis on which the public were allowed access and actions by the Riggalls

296. In the evidence given to the inquiry both Simon Riggall and Jamie Riggall cited a number of actions which, it was claimed, would have left members of the public walking on the peninsula in no doubt that the landowner had no intention of dedicating any of the paths which existed as public rights of way. These included the erection and maintenance of signs and notices, the closure of the land from time to time to allow safe calving, permitting the land to remain open to the public during the foot and mouth outbreak and general acts of ownership such as ploughing, cropping and fencing the land. Simon Riggall also told the inquiry he believed that, as a farmer, he had certain rights and that if people wished to walk over his land it was implicit they did so with his permission (paragraph 201).

297. In assessing this evidence I draw a distinction between those actions taken prior to the implementation of the ASSI management agreement with DAFF, the majority of which I do not regard as bringing the public's use of the paths on the land 'as of right' into question, and those relating to or derived from the agreement and which, in my view, do give rise to such a question.

298. I accept that Simon Riggall was sincere in his belief that those who were walking on his land did so with his permission, but there is no indication that he communicated this understanding to those who were using the paths. Similarly, the 'acts of ownership' which he referred to such as ploughing and cropping the land and moving fences are normal farming activities commonly encountered by walkers on much of the land crossed by public rights of way. There is no reason why those walking on Langness should regard them as bringing into question their use of the paths there.

299. The great majority of those who gave evidence regarding their use of the paths and who believed that they did so 'as of right' were local people from Castletown, Ballasalla and

the surrounding area and it would, in my view, have been relatively easy to correct this misunderstanding, if that is what it was, about the basis on which the paths were able to be used. Nor (with one exception) do I consider the signs and notices that were put up by the Riggalls after they acquired the land, the closure of the land which has taken place, or the maintenance of public access during the foot and mouth outbreak to be sufficient to negative the presumed dedication of the paths on the land as public rights of way.

Closure of the Riggall's land

300. The evidence given about the closure of the land was contradictory and uncertain. Both Jamie Riggall in his opening statement and Simon Riggall in his affidavit stated that the land has been regularly closed-off on at least one day every year and also at other times, as necessary, to allow for calving and for other purposes. In his subsequent supplementary statement (as set out in the e-mail of 9th July 2009 to Jenny Holt) Simon Riggall states that 'we closed the fields at least twice a year to protect the calving and the lambing', and later in the same document that 'we closed off the whole peninsula two or three time a year'. In an earlier letter sent to the Department by Mr and Mrs Clarkson's attorney (then Simon Mann) on 8th November 2006, the land is described as having been 'completely closed to the public several times over the past 21 years'.

301. In practice the only occasion on which an attempt was made to completely close the land within their ownership and of which there is documentary evidence appears to be that in 1986, when the gate on the metalled road at Poyll Breinn was both closed and locked as, possibly, was that at point A. For the reasons set out later in part B I consider that the road both at Poyll Breinn and at point A was, by that time, already a public highway and locking either gate would therefore have been unlawful. Moreover, no attempt was made to close the stile adjacent to the gate at A, which remained open to walkers, as did the alternative path giving access to the peninsula along the east coast. I also take the same view in relation to the attempt that was apparently made by the Palace Group to close the road at point A by placing cement filled barrels in the gateway, and which was referred to both by Mr Riggall and Mr Ferguson Lacey (paragraphs 199 and 235 respectively) – this similarly cannot be regarded as having any relevance to the use any of the alleged public rights of way on foot.

302. The claim by Jamie Riggall, in his opening statement, that before Mr and Mrs Clarkson purchased the land it was impossible for the public to walk around the fenced off land outside the Clarkson's patio was similarly clarified in cross examination; Mr Riggall confirmed that the only time the land had been closed was for a limited period during the removal from the lighthouse of the redundant storage tanks and the iron pipe that fed the fog horn. I do not regard either this or the other occasional temporary closures of part of the land, such as those which may have taken place to allow for calving or around the Herring Tower for filming, as being sufficient to bring into question the existence of any public rights of way over that land.

Signs and notices

303. The signs and notices put up and maintained by the Riggalls prior to the sale of the

land in December 2004 are, with one exception, similarly insufficient to bring into question the existence of any public rights of way on the land.

304. Those that were put up on the wall of, or inside, the lighthouse compound, such as that pointing the way to 'East & West Cottages' do not, in my view, have any relevance to the alleged public rights of way, whilst that stating 'Follow the country code, please close the gate', to the extent that it is relevant, does no more than indicate that the public were expected to use the gate on which it was placed.

305. Three other notices were also cited as being sufficient to bring the existence of any rights of way into question; that put up immediately south of the car park at point A stating 'Private property. No vehicles' (and which replaced a similarly worded sign prohibiting vehicles other than those on lighthouse business put up by the NLB after the 1975 agreement); that at point I stating 'Private property'; and that on the gate erected at the end of the bridge to the fog horn equipment stating 'Private Dreswick Harbour'. For the reasons set out in part B, I consider that the whole of the metalled road to point P had already become a public highway before the land was acquired by Simon Riggall and it follows, therefore, that the first two of these signs could not in my view have any effect on the status of the road. Disregarding the status of the road as a public highway, I would also take the same view in relation to the establishment of a public footpath from point A to point O, in that the signs at A specifically refers to use by vehicles while that at point I (as some of those who were questioned about it the inquiry observed) does no more than state the obvious - that the land is private. Given their respective positions, I also think it reasonable for a walker on coming to the second sign at I to ascribe to it the same general meaning as the first one at A (i.e. that it applied only to vehicles). For a sign at either of these positions to bring the existence of a public footpath along the road into question it would, in my view, be necessary to state specifically that there was no public right of way or no access on foot.

306. I take a different view in respect of the third sign, that on the footbridge to Dreswick Point (path Vi-W). Again the sign does not specifically refer to the public right of way; it is also incorrect in referring to Dreswick Harbour rather than Dreswick Point. Nevertheless, unlike the previous sign put up by the NLB (a red warning triangle and exclamation mark stating simply 'Noise') this sign and the position in which it was placed, attached to the gate at the head of the footbridge, clearly indicates that the owner does not wish members of the public to cross the footbridge. It can therefore be taken as bringing the existence of any right of way carried by that bridge into question.

307. The exact date on which the footbridge sign was put up was not firmly established but was sometime after the land was acquired by Simon Riggall in September 1997 and before it was sold to Mr and Mrs Clarkson in December 2004. It is sufficient for the purposes of this report to take this range of dates.

Maintenance of access during the foot and mouth outbreak

308. Both Simon Riggall and Mrs Clarkson cited Mr Riggall's action in allowing his land at Langness to remain open during the foot and mouth outbreak in 2001 as being, in their view, sufficient to bring the existence of any public rights of way over the land into question.

309. Understandably, Mr Riggall's generosity in allowing the public to continue to use the land when all recorded public rights of way on the Island were closed by Order was widely reported in the Island's newspapers and he was also interviewed on local radio. No evidence was produced at the inquiry to show the substance of those reports or exactly what was said in the interviews, but Mr Riggall told the inquiry that he had made it clear that he gave his permission, as landowner, for the public to access the land and that it was also made clear in the press reports that access remained possible when all footpaths on the Island were closed because the land was in private ownership.

310. I accept both Mr Riggall's understanding of his position as landowner at the time and his recollection of how the matter was reported. There is, however, nothing to show that he made it clear, either in the press reports or the radio interviews, that he believed it was possible to give permission for public access to continue not only because the land was privately owned but specifically because, in his view, there were no public rights of way over the land. Indeed, in answering a specific question on this point Mr Riggall said that he did not consider it necessary to do so.

311. It would, in my view, be unreasonable to expect those members of the public who were familiar with the paths on Langness and who heard the interview or read the press reports to appreciate this as being a possible consequence of Mr Riggall's action without it being explicitly spelt out, i.e. that in permitting the public to have access to the land Mr Riggall was challenging their use of any existing paths as public rights of way. That was not, in any event, the reason why Mr Riggall chose to permit public access to continue and I do not think it can now be taken as demonstrating, as was claimed, that no public rights of way exist over the land or as bringing the existence of those rights into question.

31: Impact of the fence, related public notices and other ASSI works

312. The fence that was erected early in 2003 in connection with the ASSI Management Agreement had direct effect on the alleged public right of way running south from the Herring Tower by obstructing the path at point H. Similarly the construction of a cattle grid at point I without any alternative provision for pedestrians constituted an obstruction for walkers, and was reported as such to DAFF by Mr Welsh. Although instigated by DAFF, the fence was erected with the authority of the landowner as was the construction of the cattle grid. I therefore regard the obstruction caused by the fence at point H as bringing into question the public's right to use the path H-N for the purposes of section 88(2) of the 1986 Act. If my view that the metalled road had, by that time, already become a public highway is not accepted, then I would similarly regard the cattle grid as bringing into question a right of way on foot along the road on the line A-I-O. The exact date that these works were carried out was never established but can be assumed to be January 2003.

313. The fence did not obstruct the alleged rights of way on either the west or east coasts, however, with kissing gates being provided at points G, L, M and Ii specifically, as Dr Charter acknowledged, in recognition of the number of people using the coastal path and in order, in her words, not to affect the status quo. Nor was the public's use of the paths elsewhere on this part of the peninsula affected physically in any way.

314. Simon Riggall told the inquiry that he had amended the draft DAFF press notice of April 2002 to state clearly that the landowner had agreed to continued voluntary public access on the condition that dogs should be kept on leads within these fields (i.e. in the new enclosures to be created). The emphasis of the press notice, however, is on the benefits to wildlife that will result from the reintroduction of grazing after an absence of nearly 20 years and changes to the cropping of arable areas. In my view, the purpose of the reference that is made to public access was not to flag-up any change in the basis on which that access took place but is to reassure the public that access would continue as before, despite the fencing and other stock control measures that were being introduced. Moreover, no evidence was given that, as a result of the press notice, either the management agreement or, more particularly, the basis on which access was being permitted to the land, was widely publicised in the area. I cannot accept the press notice, therefore, as bringing the use of any of the paths on the land as of right into question.

Laminated ASSI notices

315. A more explicit reference to there being no public rights of way, however, was contained in the statement by Dr Charter in the report in the Isle of Man Examiner of 14th January 2003, that “the land is not a public right of way. It is only through the kindness of the landowner that people can walk around the area”. Although she was only repeating what she had been told by Mr Riggall this statement should, in my view, have alerted those who were using the paths on Langness to the potential challenge to their right to do so.

316. The laminated A4 notice subsequently erected at the end of May 2003 alongside the kissing gates at G and Ii and at the cattle grid (point I) similarly stated, *inter alia*, that access was by kind permission of the landowner. Many of those who gave evidence at the inquiry said they had never seen these notices, although the evidence from Mr Riggall and Dr Charter was they had been replaced regularly until the land changed hands in December 2004. Those who had seen and read them did not perceive the notices as challenging or bringing into question their use of any of the existing paths, which they continued to regard as being used ‘as of right’.

317. I accept that the primary purpose in putting up the notices was to endeavour to ensure that walkers’ dogs were properly controlled in those areas where stock had previously been reintroduced under the ASSI management agreement. Nor were the notices specific in stating the paths to which they referred; the attached map showing only the line of the coastal path (broadly corresponding that claimed as G-J-K-L-M-Vi-P-Q-Ii) and the ‘new’ path along the line of the fence G-H-I-Ii. However, unlike the earlier DAFF press release, the notices were strategically posted at the three access points to the southern part of the peninsula through which, because of the existence of the fence, anyone who wished to walk on the peninsula south of the fence would have to pass. This would include those intending to walk the coastal path south of the lighthouse, the paths to the north and west of the lighthouse compound and that to Langness Point. In these circumstances I consider that, together with the statement by Dr Charter in the Isle of Man Examiner, the wording of the laminated notices, their positioning and the length of time they remained in place are on balance sufficient to satisfy the requirements of section 88(3) of the 1986 Act – i.e. they are

sufficient evidence to negative the intention to dedicate these paths as public rights of way.

318. Accordingly, I consider that, for the purposes of section 88 (2) of the 1986 Act, the use as of right of the following alleged public rights of way was brought into question from May 2003:

- That part of the circular path south of the DAFF fence on the line G-J-K-L-M-Vi-P-Q-
li
- The three coastal loop paths J-K, K-L and L-M
- The path to the north and west of the lighthouse compound ((L-N-O-P)
- The path from point Q to the end of Langness Point (Q- R-T-U).
- Two paths from the above spur, close to its junction with the circular path at Q, to Port Bravag and Dreswick Harbour. (Points S and Z respectively).

32: Signs and notices on the golf course

319. The signs and notices that were in place on the golf course at the time of the local inquiry are recorded in paragraphs 246-247 above. In my view, bearing in mind the tests that must be applied, none of these is sufficiently explicit to bring into question the existence of any public right of way on the land.

33: Views of the Attorney General at time of the 1990 planning inquiry

320. In his evidence to the inquiry Mr Ferguson Lacey placed great emphasis on the assurance which he believed had been given by the Attorney General at the time of the 1990 planning inquiry that no public rights of way existed on Langness other than over the metalled road. I accept Mr Ferguson Lacey is sincere in believing such as assurance to have been given although, as noted at paragraphs 266-267, it has been impossible to affirm the Attorney General's involvement in the planning inquiry in any way. Nor, of course, would the expression of an opinion by the Attorney General extinguish or otherwise alter the status of any public rights which had already become established in law over Langness at that time, albeit that they were not recorded on the definitive map or statement.

321. Where such an opinion would be relevant to the present inquiry, however, is if it could be shown that the Attorney General's views had either been stated in public (either at the planning inquiry or elsewhere) or reported in such a way as to make it clear to those using the paths over Langness that any rights to do so were being brought into question. Similarly, it would clearly be helpful if it could be shown that in reaching such an opinion Attorney General Cain had undertaken a detailed assessment of the contemporary and previous public's use of the paths over Langness and the actions of the landowners towards that use. Neither is the case.

322. Far from bringing the use of the paths into question, the evidence given at the

planning inquiry, including that given on behalf of the landowner, the Palace Group, recognised the public's use of the whole peninsula that was then taking place. This included, for example, reference to the path on the eastern side of the golf course and several of the specific paths then being used, and recognition of the outcry that would arise were that access to be prevented. Moreover, the impact that the development would have on the public's use of the peninsula was one of the main grounds of objection.

323. The only evidence of any assessment having been made by Attorney General Cain is that contained in the January 1986 correspondence with the Surveyor General, referred to at paragraphs 380-382 and 409-411 below. This shows that in giving his opinion (which is confined to commenting on the status of the metalled road) he took into account only the historic documentary evidence (from the 1867 OS mapping and sale in 1888 of the land to the NLB), the partial dedication of the metalled road in 1976 and the opinions previously expressed regarding the road by other Attorneys General.

34: Statutory notices given under the Highways Act 1986

324. The Highways Act 1986 and, before that, the Rights of Way Act 1933 both contain two specific provisions under which the owner of land may protect himself by showing that he does not intend to dedicate any public rights of way over that land. Section 88 (5) provides that where a notice inconsistent with the dedication of a path as a highway and which has been put up so as to be visible to path users is torn down or defaced, the landowner may instead give notice to the Department that the way is not dedicated as a highway. Section 88 (6) contains a further, separate, provision enabling a landowner to deposit with the Department a map and statement showing the ways (if any) which he acknowledges to have been dedicated as highways. A statutory declaration may then also be given, renewable every six years, the effect of which is to protect the owner from any claims that the public's use of a path or way on that land has given rise to the creation of a highway.

325. I understand that the Department of Transport has no record of any such notice or declaration having been given prior to 2006 relating to any part of the Langness Peninsula, nor was any referred to as having been given at the inquiry. In a letter to the Director of Highways dated 8th November 2006 sent by Simon Mann LL B on behalf of Mr and Mrs Clarkson, however, notice is given under section 88 (5) of the Highways Act 1986 that the Clarksons do not intend any part of their land to be dedicated as a highway¹⁵. This notice therefore also brings into question the alleged public rights of way on Mr and Mrs Clarkson's land with effect from the date on which it was sent.

35: Other challenges and issues

326. In view of the conclusions reached at paragraphs 306, 312, 318 and 325 above it is not necessary for me to consider in detail the obstruction of the alleged rights of way south and east of the lighthouse by Mr and Mrs Clarkson in October 2005 when they replaced the

¹⁵ Filed with Public Letters at document LCF0036.

kissing gates at points L and M with fencing, and the associated notices that were put up at that time. However, in my view, these too clearly bring into question the existence of any public rights of way for the purposes of section 88 (2) of the 1986 Act and at common law.

327. Both Simon and Jamie Riggall and Graham Ferguson Lacey told the inquiry that before acquiring the land they had carried out extensive enquiries into the previous ownership and the rights which existed over it, and that they had both been assured that no public rights of way of any kind had been shown to exist. These reports were, of course, private to the prospective purchasers; they cannot therefore be regarded as bringing the existence of any public rights of way over the land into question for the purposes of section 88 of the 1986 Act. I cannot comment on the extent to which those investigations, or the advice given to the prospective purchasers, may have been defective in failing to recognise that public rights of way may exist that are not currently recorded on the definitive map and statement. No evidence was given at the local inquiry, however, to show that any assessment had previously been made of the use of the paths on the land by members of the public, or to establish the basis on which that use was taking place.

328. A number of other issues were raised at the inquiry which, although a concern to the landowners, are not material to the question of whether public rights of way can be shown to have been dedicated to the public either at common law or under the Highways Act 1986 and which I am therefore unable to take into account in my determination. These include the need for the alleged public rights of way, their suitability for public use, the effect that the alleged rights of way may have, if shown to exist, on the value of property or the landowners' privacy and the potential conflict with other land uses.

329. I have considerable sympathy with Simon and Jamie Riggall over the losses which they both suffered as a result of dogs worrying livestock but this is, similarly, not relevant to the issue before me regarding the presumed dedication of any public rights of way. Nor is the conflict which Mr Ferguson Lacey believes to exist between the use of a right of way by members of the public on the one hand, and on the other the duties and obligations falling on the owner of any land which has been designated as an ASSI under the Wildlife Act 1990. My understanding is that ASSI designation is not intended to place on the landowner any greater obligations arising from the use by members of the public of any right of way than would otherwise be the case. This is, however, a matter on which DAFF should be asked to give advice.

36: Date on which other alleged public rights of way called into question

Paths on Mr Ferguson Lacey's land

330. For a number of the alleged public rights of way on Mr Ferguson Lacey's land no evidence has been put forward to show any physical interruption of the public's use of the way. Nor have any signs or notices been put up, or other action taken prior to the local inquiry, to call into question the use of those ways 'as of right'. In his evidence to the inquiry, however, Mr Graham Ferguson Lacey was unequivocal in stating that, other than the public road from Derbyhaven to Fort Island and the metalled road leading to the Department's car park, no public rights of way existed on his land. The forum in which this

statement was made clearly brings it to the attention of those using the paths in question.

331. In the absence of any other evidence I have therefore taken 13th August 2009, being the date on which Mr Ferguson Lacey appeared before the inquiry, as the date on which the public's right to use the alleged rights of way over his land was brought into question. The alleged rights of way in question are:

- That part of the circular path north of the DAFF fence on the line li-A-B-Y-D-F-G, together with path B-C-D.
- Paths relating to the Herring Tower; A-E, C-E-H, E-F and H-G.
- The Grassland paths; X-AM-AB-AC, X-AI, AM-AI-AJ-Y, AA-AB-AE-AG-AH, AC-AF-AH-AHi, AG-Y, AC-AE-AJ-B.
- Paths between Langness Farm and the east coast; BW-BX-AL-AD and AC-BX.
- Path along the east coast; Y-AH-AF-AD-BZ-BU-BT-BO-BP-BM together with BO-BL, BP-BQ, AL-BY-BZ and BY-BU.
- Paths crossing the golf course; BS-BT (both north and south alignments) and BI-BH.
- Paths around Sandwick and Castletown Bay; BE-BH-BR and AK-BV.

Paths over land for which the owner is unknown

332. No landowner has been identified for the small number of alleged public rights of way identified at the inquiry on the land that is immediately east of Hango Hill and to the west of that owned by Mr Ferguson Lacey.

333. As noted above at paragraph 281, the courts do not appear to have considered the question of how the 21 year period should be calculated when there is *no* identifiable event which has brought into question the use of a path or way and this specific circumstance therefore remains a grey area. However, in the light of the comments made by Munby J in *Applegarth* that "Whether someone or something has "brought into question" the "right of the public to use the way" is, as it seems to me, a question of fact and degree in every case", I take the view that the date of the local inquiry should be taken as the relevant date for the purposes of section 88(2). It was on that day, once the paths had been identified as alleged public rights of way, that their status was called into question by being open to challenge at the inquiry – as indeed all of the paths on Mr Ferguson Lacey's land were. I accordingly take the date as being 20th July 2009.

334. An alternative construction would be to say that, because it is not possible to identify a specific period of 21 years for the purposes of section 88(1), this renders the provisions of section 88 as a whole inoperative. Even if that were to be the case, however (and I do not think such a construction to be credible) dedication of the ways concerned could still have taken place at common law where no period of user is specified.

335. The map supplied to the inquiry of Mr Ferguson Lacey's land ownership indicates that the land which is not in his ownership is that crossed by path BB-BC, together with sections of path BA-BC and BC-BE. Path BD-BE appears to be on the boundary of the two ownerships. The details of ownership should however be checked by the Department.

37: Overall conclusions

336. The analysis set out above has identified two dates – of January 2003 and May 2003 – when the rights of the public to use all but one of the alleged public rights of way on Mr and Mrs Clarkson's land were brought into question. A somewhat earlier date, sometime after September 1997, applies to the remaining path; that to Dreswick Point (point W). In the case of the alleged public rights of way over Mr Ferguson Lacey's land and over the remaining land to the west for which the owner is unknown the date at which the public's use was brought into question can be taken as that of the local inquiry – 13th August and 20th July 2009 respectively.

337. It follows that, for the purpose of section 88(1) of the 1986 Act, the period of 21 years commences either in January 1982, May 1982 or sometime after September 1976 for the paths on Mr and Mrs Clarkson's land. It is clear, however, from the evidence presented at the inquiry that the use 'as of right' of all of these paths comfortably pre-dates even the earliest of these dates. Strong and persuasive evidence was given by a large number of witnesses of their use of the paths as of right from the 1950s, 1960s and early 1970s, with supplementary evidence to show there has been public use of at least the circular path for more than one hundred years.

338. In relation to the paths on Mr Ferguson Lacey's land and that to the west adjacent to Hango Hill the period of 21 years commences in August and July 1988. Here too the public use of all of those paths which have initially been shown to be public rights of way precedes these dates by a comfortable margin.

339. The conclusion I draw, therefore is that all the paths identified at paragraphs 306, 312, 318, 331, 335 can be deemed to have been dedicated as public rights of way for the purpose of section 88 of the Highways Act 1986 and at common law. In summary, these are:

- The circular costal path south of the car park (A-B-Y-D-F G-J-K-L-M-Vi-P-Q-li-A) together with path B-C-D
- The three coastal loop paths J-K, K-L and L-M and spur to Dreswick Point (Vi-W)
- The path to the north and west of the lighthouse compound ((L-N-O-P)
- The path from point Q to the end of Langness Point (Q- R-T-U)

- Two paths from the above spur, close to its junction with the circular path at Q, to Port Bravag and Dreswick Harbour. (Points S and Z respectively)
- Paths relating to the Herring Tower; A-E, C-E-H-N, E-F and H-G
- The Grassland paths; X-AM-AB-AC, X-AI, AM-AI-AJ-Y, AA-AB-AE-AG-AH, AC-AF-AH-AHi, AG-Y, AC-AE-AJ-B
- Paths between Langness Farm and the east coast; BW-BX-AL-AD and AC-BX
- The path along the east coast; Y-AH-AF-AD-BZ-BU-BT-BO-BP-BM together with BO-BL, BP-BQ, AL-BY-BZ and BY-BU
- Paths crossing the golf course; BS-BT (both north and south of the rifle butts) and BI-BH
- Paths around Sandwick and Castletown Bay; BE-BH-BR and AK-BV.
- Paths in the vicinity of Hango Hill; BA-BC-BE, BB-BC and BD-BE

340. With the exception of path BI-BH-BR which has been shown to be a road used as a public path (RUPP), the rights which are carried by all of these paths were shown from the evidence put before me to be rights of way only on foot.

341. From the evidence put before me I do not consider that public rights of way have been shown to exist on the following:

- A path running west from point H to the Arches (H-I-Ii)
- A path from the circular path to point V (Vi-V)
- Two paths to the head of Tobacco Gullet (Vi-Wi and M-Mi)
- A path crossing the golf course on the line BR-BK

342. In the light of the above conclusions, I recommend that the Department of Transport should take steps to amend the Definitive Map and Statement accordingly as required by section 92 of the Highways Act 1986.

Part B: Use of the metalled road to the lighthouse

38: Introduction: Need to consider the status of the road

343. My letter of appointment instructs me to establish what evidence exists for and against the existence of public rights of way on the Langness Peninsula, in particular whether any footpaths can be presumed to have been dedicated under section 88 of the Highways Act 1986. The determination of what rights exist over an all-purpose highway, including use by vehicles is, ultimately, a matter for the courts. Strictly speaking, therefore, the consideration of whether vehicular rights exist on the metalled road is beyond the terms of my appointment.

344. The issue of the use of the metalled road from Fort Island Road (the Smelt House) to the lighthouse (BJ-P) was nevertheless raised at the local inquiry in two different ways. First, attention was drawn to the interruption in the public's use of the road, including use with vehicles at Poyll Breinn. This was, it was claimed, sufficient to cast doubt on the status of the road as a highway and thus called into question the rights of the public to use the road to access the Department's car park.

345. The question of the rights of the public to use the metalled road, including with motor vehicles, was also central to the earlier dispute which arose in 1975, to which many of the witnesses who gave evidence referred. It was resolved by the direct intervention of the then Attorney General who personally brokered an agreement with the two landowners involved, leading both to the establishment of the Department's car park and to the publication of two notices setting out the basis on which the public could continue to use the road and have access to land south of the Lighthouse in the vicinity of Dreswick Harbour. Again, these issues are relevant to the current inquiry in a number of ways; the correspondence made available to the inquiry by the Attorney General's Chambers records not only the opinion of successive Attorneys' General since 1939 regarding the status of the road, but also the attitude and actions of the landowner and tenant farmer at that time toward the public's use of the road and of the peninsula in general. Moreover, the establishment of the car park and publication of the public notices have clearly influenced the public's perceptions about, and use in practice of, both the metalled road and the southern part of the peninsula.

346. For all of these reasons (and because the existence or otherwise of those rights potentially has a bearing on the presumed dedication of public rights of way elsewhere on the peninsula) it is necessary to also review the available evidence relating to the use of the surface road and reach a conclusion about the public rights which (in my view) subsist over it. I do so here in the second part of my report.

39: Correspondence made available by the Attorney General's Chambers

347. The correspondence and other papers made available to the inquiry show that the Attorney General was consulted about, and became directly involved in endeavouring to negotiate a settlement of, the question of the status of the metalled road on two separate

occasions; between 1939 and 1947 and again in 1975/76. A further opinion on the status of the road was also sought in 1986.

348. In addition to setting out the views of the three of the four Attorney Generals who held office during this period, the correspondence has been valuable in providing documentary evidence of how, historically, both the road and the southern part of the peninsula in the vicinity of the lighthouse have been used by the general public and in enabling an understanding of the contemporary approach towards that use by the owners and tenant of the land. The key documents are referred to in the discussion below; a fuller summary of the papers in so far as they relate to the questions that are relevant to the current inquiry is set out at appendix 6. The folio numbers quoted relate to the numbering given to the papers by the Attorney General's Chambers¹⁶ and can be cross referred to that appendix.

349. The two landowners for the whole of the period up to 1984 were the Commissioners of Northern Lighthouses (also referred to as the Northern Lighthouse Board (NLB)) who had purchased the land on which the lighthouse was built in 1888 from J. E. S. Taubman, and the Trustees of the Crookall's Estate. They appear to have been the successors in title to Taubman's estate and to have owned the remainder of the agricultural and open land on the peninsula and that occupied by most of the golf course. The tenant of the agricultural and open land from 1934 until after 1979 was E. W. Faragher.

350. It should be borne in mind that entrance to the lighthouse throughout the whole of this period was by the gate near to the south west corner of the lighthouse enclosure, close to point P. The gate on the northern boundary, at point O, was only formed in recent years.

Views of the Attorney General in 1946/47

351. The Attorney General's papers show that his advice regarding the status of the road was first sought by the Highway Board as long ago as 1942. The issue arose then not because of any interruption or challenge to its use by the public but because of the poor condition of the road as a result of use by RAF lorries and the desire of the Highway Board to respond to public pressure to put the road back into repair. However the Trustees of the Crookall's Estate, who appear to have been, at that time, owners of the majority of the land on the peninsula, informed the Surveyor General 'that they do not wish to waive their rights that this is a private road' (fol. 205 dated 20th July 1942). He therefore sought the advice of the Attorney General in order to be certain that the road was a public highway before incurring expenditure on it.

352. Included with the Surveyor General's request was a copy of a report made three years earlier, in August 1939 by the Divisional Surveyor describing the road together with a detailed report by a local resident, Charles Lanigan outlining its history and a further letter in which he identifies six local residents willing to testify 'to their free and unrestricted use of the road and to the absence of any barriers' for periods of between 30 and 70 years (fols.

¹⁶ Papers have been numbered in reverse order, i.e. starting with the most recent.

208, 206 and 197 respectively).

353. In the event detailed consideration of the issue was deferred until after the war when it was again raised with the then Attorney General, G. S. J. Kneale, by the Highway Board on 18th November 1946. In addition to considering the earlier papers from 1942, Mr Kneale examined the Asylum plan relating to the peninsula that had been filed in the General Registry in respect of the estate of Mr J. E. S. Taubam and copied from a survey of 1848, and the deeds dated 5th June 1888 conveying land from Mr Taubman's estate to the Commissioners of the Northern Lights.

354. According to Mr Lanigan (fol. 206) there had originally been 'a properly constructed road' as far as the ruined farmhouse (Langness Farm) which had 'obviously been public since the building of the farmhouse. Beyond that there was a cart road to the gate of what is now known as the Lighthouse field'. (This corresponds to the gateway immediately north of the present day car park at point A.) The track then entered the field and turned right, following the coast to the outer mine, close to Langness Point. The mines had been worked successfully within Lanigan's memory and the track used to carry the ore to be shipped from Castletown.

355. The 1888 deeds showed that, in addition to the land now comprising the lighthouse compound, Taubman conveyed to the Commissioners strips of land from the lighthouse to Dreswick Point and Dreswick Harbour, together with a strip running north to the site of the present day car park (point A) which was to be used 'as a footroad of six feet wide'. (It was this land on which the metalled road was subsequently constructed by the Northern Lighthouse Board, apparently in contravention of the terms of the conveyance.) From this point Taubman also granted the Commissioners a private right of way over the line of the track and road described by Lanigan to the Smelt House (at the junction of the Fort Island Road) and beyond that to Derbyhaven village. In the light of this the Attorney General advised the Surveyor General 'I think it can therefore be safely assumed that the owners of Langness did not recognise any public rights of way over the road in question up to at least 1889, otherwise it would not be necessary to grant any right of way to the Commissioners of Northern Lights' (fol. 190, letter dated 25th November 1946).

356. After noting also that 'there are gateposts north of the site of the former water windmill, and there is a gate across the way at a point south of the Langness buildings' the Attorney General in the same letter added 'You will therefore appreciate that it is entirely a question of evidence as to whether or not a public right of way has been established I am aware that the road has been extensively used by the public for the purposes of visiting the Lighthouse, and the fact that it has been used for carrying wrack from the shore by persons other than the owners, plus the evidence of old inhabitants would be of the utmost assistance in establishing a public road, but it would be of importance to ascertain whether or not there was a sign on the old Smelt House, or elsewhere, claiming the road to be a private road, and negating the intention to dedicate a way as a highway. There was a sign of some kind affixed to the Smelt House which may now be obliterated.' The letter concludes by noting that, if no progress can be made with the Trustees (in agreeing the status of the road) 'it may be necessary for the Highway Board to consider whether or not it

is worth while instituting legal proceedings ... particularly having regard to the fact that the Crookall Trustees have apparently not stopped any persons using the roadway' (Ibid).

357. Although soundings made by the Attorney General suggested that the Trustees of the Crookall's Estate might be willing to agree that part of the road was public, the Highway Board nevertheless continued to take the view that 'the road should be public all the way from Derbyhaven to the Lighthouse', their Secretary noting also that 'considerable pressure is being brought to bear upon my Board to establish by legal action that this is a public road' (fol. 186 dated 7th February 1947). After discussing the issue further with the Chairman of the Trustees, the Attorney General again wrote to the Highway and Transport Board on 11th February (fol. 185) stating that, while it was possible that the Trustees would agree to the roadway being a public road up to the southern gate (i.e. at start of the road constructed by the Commissioners, point A on the aerial photograph) they would not agree to an extension beyond this point. It was, he said, in his view 'quite clear that a public right of way could not be claimed beyond this gate, as the facility was expressly given only to the Northern Lighthouse Commissioners as a right of way to the land acquired by them and there has always been a gate across the way – the road leading only to the lighthouse' (fol. 185, 11th February 1947). However the Attorney General also commented in the same letter 'Quite frankly I think that whether or not the Crookall's Trustees are approached, the public will continue to use the road and are unlikely to be stopped from doing so unless this privilege is abused. On the other hand, if you specifically raise the point with the Trustees, they might take action to prevent the exercise of this privilege and we certainly could not successfully plea a public right of way in respect of this portion of the roadway'.

358. Despite this advice both the Highway and Transport Board and, subsequently, the Attorney General nevertheless continued to negotiate with the Trustees for a further nine months but without any progress being made. In this period the Trustees let the golf links for a period of 21 years to a new tenant, Mr Makinson, who insisted that a claim be made that the road was not a public highway. On 6th November 1947, therefore, the Attorney General wrote to the Board advising that it should now decide whether or not to institute legal proceedings. Given that these would be likely to be protracted and involve considerable time and expense, however, such action would not, in his view, be justified unless and until the public were stopped from using the way (fol.177).

359. The subsequent decision of the Highway Board is not recorded, However, it can be assumed that the advice in folio 177 was accepted in that no further action appears to have been taken at that time towards formally determining the status of the road.

Resolution of the 1975/76 dispute by Attorney General Corrin

360. The matter again came before the Attorney General, now Mr A. G. Corrin, in June 1975 when a number of complaints were made to him by members of the public about two notices that had been put up on 'the iron gate' which existed at that time at Poyll Breinn. One of these stated simply 'Private No Entry'. The other, put up in the name of the Northern Lighthouse Board, stated that entry by vehicles was prohibited other than to those on official business. It is clear from the file that, even although vehicles were not physically prevented

from using the road, the notices gave rise to wide concern and there was considerable public pressure to ensure that the unrestricted access that had been enjoyed to the lighthouse up to that time was preserved.

361. Attorney General Corrin initially took a different view to his predecessor in 1947. Writing to the Commissioners of the Northern Lighthouses on 23rd June 1975 (fol.158), within days of the first complaints being received, he is unequivocal in stating 'The evidence I have received from members of the public is such that I am satisfied that there has been an unrestricted right of way for the public on foot and by vehicles beyond the Iron Gate to the end of the Langness Road for upwards of 40 years. I have some personal knowledge of the situation as I have travelled along this road from time to time both on foot and in vehicles without any restrictions for over 30 years'. Eleven days later, on 4th July 1975 (fol.146), he again wrote to the Advocates for the Commissioners stating that he has had 'numerous letters and telephone calls from members of the public, many of whom allege unrestricted access along this road for upwards of 40 years' and that 'consequently, I have no alternative ... than to consider the institution of legal proceedings in order to secure the restoration of the public's rights'. This is followed by a handwritten note of a conversation on 17th July (fol.137) in which he told the Advocate that unless access is not restored 'to the status-quo' within 4 days a 'petition for status will be lodged'.

362. On 21st July 1975 the Attorney General published the first of two public notices in local newspapers in which he announced that, following negotiations, the prohibition of vehicular traffic along the road to the Lighthouse will be removed with immediate effect (fol.117). The notice lists the principal complaints of the landowners'; that some members of the public have a) parked on the verge above the road, b) left gates open, c) allowed dogs to wander and occasionally chase cattle, d) camped overnight, e) impeded staff in reaching the lighthouse, f) trespassed on lighthouse property with a potential consequence of causing a danger to shipping and g) driven in a noisy manner at night, so disturbing the keepers and their families. To meet some of these complaints, it states, it has been agreed that cars will be permitted to park in a designated area within reasonable distance of the Lighthouse. Those who take their cars to Langness are requested to park in the designated area and to exercise the right of way over the road in such a manner as not to give the landowners, the tenant or the keepers any cause for complaint.

363. Although the wording of the notice had been agreed with (and amended by) the Advocate acting on behalf of the Trustees of the Crookall's Estate, almost immediately following publication the Chairman wrote to the Attorney General stating the no such agreement had been reached, that the Trustees have never, and do not agree to a car park, and that 'the right of way is for the road only and not on any part of our land' (fol.110, dated 29th July 1975). There then followed a further round of negotiations led by the Attorney General to identify a suitable site for the car park. In October, however, a number of further reports were received from members of the public that a gate was being erected opposite the entrance to the lighthouse at the end of the metalled road (i.e. near to point P) to prevent vehicles from continuing along the unmetalled part of the road toward Dreswick Harbour. On completion of the gate in December, it was also reported that a notice had

been put up by it stating 'Private land. No parking vehicles. Trespassers will be prosecuted. By order, Crookall Estate Trust' and that a mechanical digger had been used to open up a trench for 800 yards on the unfenced side of the metalled road to the boundary of the NLB's ownership (point A). This effectively prevented vehicles either from passing each other or being driven off the carriageway to park (see fols.101, 93 and 88). In January 1976 it was reported that a further notice with the same wording has also been put up at the first gate, at Poyll Breinn (fols. 56, 54 and 51).

364. Both the Trustees for the Crookall's Estate and the Northern Lighthouse Board assured the Attorney General that they had not given any authority for either the gate or the notices, the NLB adding also that the Principle Lighthouse Keeper (whose appointment had preceded the appearance of the first notice the previous June) had not carried out the work (fols. 97, 79). Nevertheless, members of the public who had been monitoring the situation closely were convinced that he had done so, pointing out that the gatepost, tools and other materials had been clearly visible, stored in the lighthouse enclosure while work was in progress (fols. 103, 101, 93). The responsibility for this work was never established.

Planning Enforcement Officer's report

365. A detailed report by the Planning Enforcement Officer dated 9th January 1976 (fol.67), apparently requested by the Attorney General, describes the position on the ground at that time and records interviews that took place both with the tenant farmer, E. W. Faragher, who had occupied the land since 1934, and the new Principal Lighthouse Keeper, J. W. Richie.

366. The report notes that until 1968 the road was in a rough, unmade state and this provided some discouragement to sightseers. Until the recent controversy there was no bar or restriction on proceeding to lighthouse area. However, vehicular traffic had steadily increased and was now excessive in summer. It is this which had led to confrontation. At northern end of Mr Faragher's land (at Poyll Breinn) was a metal gate with a notice 'This gate must be kept closed'. The gate had a catch but no lock. A second field gate (at point A) had a drawbolt but was also unlocked. From here the road had been trenched and fenced to prevent parking, with a small turning circle with and a further gate and notice (as described at paragraph 363) in front of the lighthouse enclosure. Although unlocked, this gate and the fencing prevent cars from proceeding further towards Langness Point.

367. In his interview Mr Faragher complained to the Planning Enforcement Officer about various problems arising from the public's access to his land (obstructions, gates left open, litter, etc) but stated that pedestrian access has never been challenged over his land. The pedestrians keep principally to seaward fringes and on towards Langness Point. The Principal Lighthouse Keeper 'expressed his feelings strongly' about noisy vehicles being driven over land in vicinity of the lighthouse but also stated that, 'except within the lighthouse enclosure, pedestrian access had never been restricted or challenged. The staff now endeavour to persuade pedestrians to leave Dreswick Point where the fog horn is installed. Drivers of vehicles attempting to park in the turning area are asked to move on however and this, and absence of parking, has caused bad feeling'.

368. The report concludes that 'the public generally believe they have full rights of access, including vehicular, over this part of the peninsular but this premise seems doubtful and is of course resisted by the Crookhall Trust [*sic*] and the Tenant farmer. Demonstrations of public rights by walking over the generally accepted popular areas of the land do not appear to have been opposed subject to the usual cautions one would expect about shutting gates and controlled dogs on leads, however, the passage and parking of cars on the land is resisted and prima-facie the Crookhall Trust seem to be in a strong position about this'.

Terms of the 1976 agreement

369. After further meetings in March 1976, the Attorney General was able to inform the two local MHKs, Elsbeth Quayle and Eddie Lowey, that a final agreement had been reached with the landowners for the construction of a car park on its present site, 700 yards from the lighthouse. A second draft public notice was also prepared. Following a further delay to enable the transfer to the Department of the land on which the car park was to be built, this was published on 8th June 1976 (fol.9).

370. Other than that for the transfer of the land on which the car park was constructed, no formal written agreement was made between the parties to the 1976 agreement. To determine what rights - if any - were conferred on the public it is necessary to rely on the published public notice, the text of which had been agreed by all of the parties. The Attorney General's understanding of what had been agreed and his views on the public rights of way which existed are also set out in a letter he wrote to the Highway and Transport Board reporting on the terms of the agreement (fol. 19 dated 25th May 1975). However this is subject to the obvious caveat that his views may not necessarily accord with those of the other parties.

371. The published notice begins by stating that:

'Following negotiations with the Trustees of the Estate of the late A. B. Crookall as owners of Langness, and after consultations with the Commissioners of the Northern Lighthouses and Mr. Faragher the tenant of Langness, an agreement has been reached whereby members of the public will be able to continue to enjoy access to Langness Point.'

372. Five terms are then set out, of which 1, 2 and 5 concern the use and construction of the car park. This is to be available free of charge during the hours of daylight 'thereby enabling members of the public to travel by private car from Derbyhaven along the road to that point'. However parking will only be permitted in the car park, 'not on the land or the roadway itself'.

373. The remaining two terms concern the rights of the public on foot:

'3. Whilst cars will not be permitted to travel beyond the proposed car park in the direction of the Lighthouse (apart from those having official business) members of

the public may use the road to the Lighthouse on foot and they will also be permitted to walk over or rest on Langness between the Lighthouse and Langness Point.

4. Members of the public who do avail themselves of the opportunity of visiting Langness in future should bear in mind the land is tenanted and stocked, and that the utmost care should be taken not to give cause for complaint to Mr. Faragher the tenant, and in particular that dogs should be kept under leash at all times.'

374. In reporting the terms of the agreement to the Highway and Transport Board (fol. 19) the Attorney General states that 'the Crookall Trustees agreed to permit members of the public to use the whole of the area between the Lighthouse and Langness Point on foot the condition being that vehicles would be parked in the official car-park'. He added that 'Langness Point is private land and the Crookall Trustees have every right to prevent the public from entering upon it. On the other hand, I am satisfied that there is a public right of way along the Langness Road to the Lighthouse but having reached the Lighthouse I am also satisfied that any encroachment upon Langness itself is a trespass'.

375. Later on in the same letter, after referring to the willingness of the Trustees to grant a lease of the land for the car park, the Attorney General states 'Furthermore, the Trustees are prepared at this stage to dedicate the whole of the Langness Road in their ownership between the first farm gate and the last farm gate as a public highway. This would include that portion of road abutting upon which the car park is to be constructed. The last few yards to the Lighthouse are not in the ownership of the Trustees ... Furthermore, that portion of the road where it leaves the main Derbyhaven Road and crosses the Golf Course whilst in the ownership of the Trustees has been let with the Golf Links ... and the Trustees are not therefore in a position at this stage to dedicate that portion of road There is however a public right of way by vehicle over this portion of the road'.

Extent of the expressed dedication by the Trustees of Crookall's Estate

376. In the course of his evidence to the inquiry regarding the construction of a cattle grid and locking the iron gate at Poyll Breinn in 1986 (see paragraphs 197 and 389), Simon Riggall said that he understood there to have been only a limited dedication of the highway to the public by the Trustees of the Crookall's Estate. In the light of this I enquired about, and was given, a copy of a deed of dedication relating to the part of road (additional document 20a).

377. The deed, which was entered into between the Estate Trustees and the Highway and Transport Board, dedicates as a public highway only that part of the road from the former gate at Poyll Breinn to that immediately south of the car park. The Board covenants that this shall be repairable by the inhabitants at large. The dedicated section is referred to as being 'part of the private road leading from Derbyhaven to Langness Lighthouse' but there is otherwise no reference to the remainder of the road.

Opinion of the Attorney General in 1986

378. Included with the copy of above deed of dedication was a further exchange of

correspondence which took place between the Highway Board and the then Attorney General, T. W. Cain regarding the public rights over the road between Derbyhaven and the car park (additional document 20b) and which had arisen as a result of action by the Board following the construction of the cattle grid. In a letter of 30th January 1986, the Surveyor General refers to the agreement reached in 1976 for the lease of the land for the car park and dedication of a public highway between the car park and Poyll Breinn. He notes that:

'According to our records the section between A and B' (i.e. from Fort Island Road to Poyll Breinn) 'did not reach a conclusive agreement. The Minutes of the Meeting record that "the Board notes that in due course the Trustees of the Crookall Estate will consider the dedication as a public highway of the section of the Langness Road which passes over the Golf Links and meanwhile it is the opinion of the Attorney General that a vehicular right of way exists over this section of road". At that time the Trustees of the Crookall Estate did not have the power to grant a dedication over the section A to B because of the terms of a lease by the trustees to the Castletown Golf Club.

379. He asks the Attorney General to check the basis on which his predecessor had made this statement, adding 'We are extremely anxious that a vehicular right should be secured for the public if it does not already exist over this section of road'.

380. In his reply, Attorney General Cain first reviews the available documentary evidence. In addition to the Asylum plan that had been referred to in the earlier correspondence by Attorney General Kneale (see paragraphs 353) he identifies two Ordnance Survey sheets published in 1867 (sheets XVI 16 and XIX 4) which show a road running to beyond Langness Farm as far as the modern car park and which is coloured brown, consistent with the depiction of a public road. However, this colouring also extends to the track which is shown running east of Langness Farm and which, in his view, 'could not possibly be considered to be a public road'. Consequently, the colouring of the road from Derbyhaven could also not be taken as evidence that it was regarded as a public road.

381. In Attorney General Cain's view, however, the most important documentary evidence was that of the Deed of Conveyance of 5th June 1888 from H. E. S. Taubman to the Commissioners of the Northern Lighthouses. He again notes that the conveyance includes a strip of land, six foot wide, from the lighthouse to point A, commenting that 'Strangely, Taubman did not merely grant the Lighthouse Commissioners a right of way but conveyed a strip of land over which this new footroad would be made', and from the end of which Taubman also granted a right of way to the public road at Derbyhaven. He concludes:

'From this Deed it is quite clear that while there was physically, by 1879 [*sic*], a road leading from Derbyhaven to the site of the modern car park this was not a public right of way, but was a private road over which Taubman granted the Lighthouse Commissioners a private right of way'.

382. Noting also that the 1976 dedication covered only that part of the road from Poyll Breinn to the car park he comments:

‘That clearly suggests that that section of road was a private road up to the time of its dedication. In my opinion the section of roadway A to B remains a private road over which the Lighthouse Commissioners have a right of way, but over which the public do not have a right of way.

It could be reasonably argued that there is now a presumption of dedication of the road as a public right of way by virtue of user by the public, as of right and without interruption, for at least the last 21 years.

When my predecessor expressed the view that a vehicular right of access existed over the section of the road A to B, he must have had in mind that a public right of way had probably come into existence by long use, and that the owners of the land had never taken any steps by notice or otherwise to negative their presumed intention to dedicate the road as a public highway’.

40: Evidence given at the inquiry relating to the use of the road

383. Comparatively little evidence was given at the inquiry of the use made of the surface road from the Smelt House to the Department’s car park by walkers, pedestrian use being primarily along those sections of the road where there was no convenient alternative, i.e. from points BR to BV and from AK to A. It was suggested by Mr Costain that there was now a greater need to walk on the road than previously as a result of shingle thrown up in the 2002 winter storms. This had obliterated the additional paths which used to exist seaward of the road.

384. Nearly all of the witnesses said they had driven along the road, however, many having done so since the 1970s or earlier. Originally there were only two gates, the large iron structure at Poyll Breinn and a metal farm gate at the start of the NLB’s section of the road (immediately south of the current car park) at point A. These gates were often closed, particular that at Poyll Breinn, although all the witnesses stated that they were never locked.

385. John Welsh, Peter Curtis and several other witnesses told the inquiry that, prior to the car park being established in 1976, it was common practice to drive the whole length of the metalled road to the lighthouse entrance, and then to continue onto the unmade section of road which existed at that time towards Dreswick Harbour, with cars being parked on land to the west of the lighthouse, above Dreswick Harbour and at the start of the spur to Langness Point. This is corroborated both by the correspondence between Mr Welsh and the Attorney General from 1975/76 (copies of which appear both on the Attorney General file and in Mr Welsh’s own submission to the inquiry) and two press reports submitted by Mr Welsh recording the protests which took place following the erection of the ‘vehicles prohibited’ notices in June 1975. Since the car park had been established, however, all of those who gave evidence at the inquiry and who were in the practice of driving to Langness said they parked there, even although remainder of the surface road was unobstructed and could physically be used by vehicles.

386. Pedestrian use of the road beyond the car park from A to P continued however, and the majority of those giving evidence said they had used this part of the road on foot, albeit that it was less popular and used less frequently than the other paths because of the more restricted views it offered. Mrs Cook, Anne Kaye and Pat Mudie were among those who referred to the value of this part of the road in providing a short cut back to the car park if the weather deteriorated, and in enabling a circular walk around the lighthouse to be completed whilst affording some protection from a strong prevailing wind. Mr Norris said that it was also valued by birdwatchers in that the adjoining vegetation attracted different species of birds to those generally found on other parts of the peninsula. However, some of the witnesses said that their use of this part of the road had been restricted after the installation of a cattle grid and gate at point I in 2003 as part of the ASSI Management Agreement. No alternative had been provided and the grid was difficult to negotiate. Mr Welsh said he had complained at the time the cattle grid was constructed that it constituted an obstruction to the highway, but did so to DAFF rather than to the Department of Transport.

41: Action to prevent the deemed dedication of the road as a highway

387. At the local inquiry, details were given of various actions by the owners of the land which, it was put to me, had brought the public's use of the road into question to a sufficient degree to negate any intention on part of the landowners to dedicate the road as a highway to the public. All were actions which had taken place since the land had been acquired by Great Meadow Estate in 1984. In addition to general acts consistent with the ownership of the land, such as ploughing, the erection of fences and the creation of paths, these included:

- The construction of a cattle grid and closure and locking of the iron gate at Poyll Breinn by Mr Simon Riggall and his father, Lt. Col R H D Riggall in 1986. (This is the same incident as that referred to in paragraph 378 above). Documentary evidence was supplied of the strong objection made at the time by the NLB in preventing access to the lighthouse and cottages by the lighthouse keepers and their families
- The closure, at the same time, of the farm gate immediately south of the car park at point A. This had also been resisted, with the gate being damaged (in Mr Riggall's view, by the lighthouse keepers or their families) and eventually being taken off its hinges and thrown into the sea
- The closure from time to time of either or both of the gates, so as to prevent public access during calving and lambing
- Obstruction of the road, also at point A, by barrels filled with concrete, placed there by the Palace Group following the sale of the lighthouse in 1997
- The erection of a gate and construction of a cattle grid in 2003 at point I

- The notices put up and maintained at points A and I initially by Mr Riggall during his ownership of the land and subsequently by the present owners, Mr and Mrs Clarkson.

388. Many of these points have already been considered in part A of my report. To the extent they have not already been dealt with, they are considered further below.

42: Evaluation of evidence relating to the metalled road

389. In both his evidence to the inquiry and in his written affidavit, Mr Simon Riggall makes it clear that when he and his father acquired the land in 1984 they had no knowledge either of the agreement reached by the Attorney General in 1976 with the Trustees of the Crookall's Estate or of the two public notices that had been published. In constructing the cattle grid and locking the gate at Poyll Breinn in 1986, therefore, they did so in the belief that they had full control over use of the road.

390. I accept that Mr Riggall and his father acted in good faith. Nevertheless it seems to me that, for the reasons which I set out below, it is beyond doubt that by the time the Riggall's acquired the land in 1984 the public had acquired the right to use the road as a highway, including use with vehicles. I also take the view, again for the reasons set out below, that those rights extend to the whole of the metalled road, from its junction with Fort Island Road at least as far as the south-west gate of the lighthouse (point BJ to P), if not beyond there to Dreswick Harbour.

Opinion of Attorney General Corrin in 1975/76

391. The above summary illustrates that while Attorney General Kneale in 1947 and Attorney General Cain in 1986 respectively did not consider that the public had a right to use the road with vehicles, Attorney General Corrin apparently had no doubt, from the outset of his involvement in June 1975, that the public had enjoyed an unrestricted right of way along the road 'for upwards of 30 years'. Unfortunately the file gives no indication of how he reached that conclusion; nor does there appear to have been a structured, methodical examination of the available evidence. But as the Attorney General himself notes (in fol.158) he had a personal knowledge of the road having used on foot and in a vehicle for more than 30 years. It can be assumed, therefore, that he would have been well aware of the extensive recreational use that was clearly being made of the road at that time, with people driving to beyond the lighthouse and parking near to Dreswick Harbour, a practice which the report of August 1939 (fol. 208) shows was already well established almost forty years earlier. Moreover it is clear from the 1975/76 correspondence that the members of the public using the road had not been restricted or challenged in any way and that they also believed they did so as of right.

392. In my view, therefore, and for the reasons also set out below, I consider that Attorney General Corrin was correct in his assertion and that, on the balance of probability, dedication of the whole of the metalled road as a public highway could be deemed to have taken place before 1975. I have found nothing to indicate that evidence existed, either at that time or subsequently, that would be sufficient to negative such a presumed dedication

of the road as a highway and which he overlooked, or of which he was unaware. In taking this stance, it is necessary also to set out why I consider Attorney General Kneale and Attorney General Cain were wrong in taking a contrary view. I do so at paragraphs 406 to 411 below.

Evidence relating to the closure of the road to vehicles

393. The documentary evidence that is available indicates that the road from its junction with Fort Island Road to beyond the original (south west) entrance to the lighthouse remained open and unobstructed from at least 1939, and very probably much earlier, until a further gate was erected opposite the entrance to the lighthouse in November 1975, and until the construction of a cattle grid and closure of the gate at Poyll Breinn in 1986. Throughout the whole of this period two gates existed on the road to prevent cattle from straying, the 'iron gate' at Poyll Breinn and a gate just south of the present car park (point A) at the end of the strip of land owned by the NLB and on which the access road had been built. There is, however, no evidence that either gate was ever locked to prevent the passage of members of the public; indeed the correspondence from members of the public both in 1939/42 and in 1975/76 specifically states the road had always been unobstructed.

394. Even after the erection of the additional gate beyond the lighthouse (at point P) in 1975 and the trenching carried out alongside the road from there to point A to prevent off-road parking, the road to the lighthouse remained open and available to vehicles. This is confirmed both by the Enforcement Officer's report of 9th January 1976 (fol. 67) and Attorney General's letter of 14th January 1976 to Mr Welsh (fol. 62).

395. Similarly, witnesses at the inquiry, several of whom remembered using the road with vehicles before the construction of the car park, stated that while one or both of these gates may sometimes have been closed (particularly that at Poyl Breinn) they were never locked; the normal practice was simply to open the gate, drive through, and close it afterwards. Folio 67 records that there was a notice on the Poyll Breinn gate in 1976 to this effect stating 'This gate must be kept closed'.

Evidence relating to a sign at the Smelt House

396. In noting, in 1946, in his letter to the Surveyor General that 'the road has been extensively used by the public', Attorney General Kneale also makes reference to 'a sign of some kind affixed to the Smelt House which may now be obliterated' claiming the road to be private and negating the intention to dedicate the way as a highway (fol. 190). This is, however, the only reference to such a sign. Neither of the Divisional Surveyor's two, otherwise detailed, reports (fols. 209 and 208) from that period mention it; nor is it referred to by Attorney General Corrin in the 1975/76 correspondence.

397. I would, of course, expect Attorney General Corrin to have been well aware of the importance of such a sign. Given his knowledge about, and personal use of, the road for the previous 30 years, I consider it inconceivable that had such a sign existed and been visible he would have failed to mention it. Nor was the existence of such a sign referred to by the Trustees of the Crookall's Estate, despite their insistence that the road was not a public

highway, or by any of the members of the public.

398. The conclusion I draw, therefore is that even if such a sign did once exist (and assuming also that it was erected by the owner of the land and was so worded as to have the effect of negating any intention to dedicate) it was no longer clearly visible to members of the public using the road from some time before 1946. The question then arises as to whether such a sign would remain effective, and if so for how long, in negating the owner's intention to dedicate the way as a highway once it ceased to be clearly visible to those using the road?

399. I can find no reference to this specific issue having been addressed by the courts. But the general principles regarding the way in which the owner of the land must make clear his intention not to dedicate a way to the public have been set out on a number of occasions, most recently in the judgement given by the House of Lords in 2007 in the case of *Godmanchester and Drain*¹⁷ as referred to earlier in part A. They are that owner's intention must be made sufficiently clear to the members of the public that are using the way (whether by the erection of a notice or by some other means) so as to 'disabuse those persons of the notion that there was a public right'. In doing so, their Lordships quoted with approval the comment made earlier by Denning L.J. in *Fairey v Southampton County Council* [1956] 2 QB 439 "I think that in order for the right of the public to have been 'brought into question', the landowner must challenge it by some means sufficient to bring it home to the public that he is challenging their right to use the way, so that they may be apprised of the challenge and have a reasonable opportunity of meeting it".

400. Assuming those criteria were met by a notice displayed at the Smelt House some time before 1947 (and that is not certain) it would, in my view, be unreasonable to expect the protection afforded by such a notice to cease the moment it was torn down, defaced or was no longer clearly visible. But neither can the landowner expect that protection to remain indefinitely; he must maintain or replace the sign or take some other appropriate steps to make his continued intention not to dedicate the way as a public highway clear to those who are using it if a presumption of dedication at common law is to be avoided. Although not of course relevant to the dedication of a vehicular highway at common law, the provision made at section 88 of the Highways Act 1986 sets a period of 21 years, counting back from the date when the public's right to use the way is first brought into question, during which use of a way as of right must have not have been challenged or brought into question by the landowner.

401. In this case, no notice appears to have been visible at the Smelt House for at least 28 years prior to 1975/76. In my view therefore, even if such a notice did once exist and even if it was sufficient to negative the intention of the owner to dedicate of the road as a highway – and neither of these is at all certain - Attorney General Corrin was still entitled to reach the conclusion he did, that the way had been dedicated to the public as a highway

¹⁷ R (on the application of Godmanchester and Drain) v. Secretary of State for the Environment, Food and Rural Affairs [2007] UKHL 28 (20 June 2007).

some time before 1975.

Signs erected in or after 1975/76

402. Four signs were erected on the metalled road in the course of the 1975/76 dispute:

- Two signs on the 'iron gate' at Poyll Breinn put up in June 1975, one, attributed to NLB, prohibiting entry to vehicles other than those having business at the Lighthouse, the other stating 'Private. No entry'.
- A sign put up in December 1975 on the unmetalled portion of the road opposite to the entrance to the lighthouse stating 'Private land. No parking of vehicles without authority. Trespassers will be prosecuted. By Order, Crookall Estate Trust'.
- A further sign put up at 'the first gate' (presumably that at Poyll Breinn) in January 1976 with an identical wording to that put up in December.

403. Setting aside the question of the wording of these signs, I do not accept any of them as being sufficient to negative a presumed intention to dedicate the road as a highway as to do so the notice must have been put up by, or with the authority of, the owner of the land. Despite the reference made to the Northern Lighthouse Board and the Trustees of the Crookall Estate, both bodies specifically denied having authorised the signs to the Attorney General (see, for example, fol. 79). Nor was there any indication they had been put up by the tenant, Mr A. W. Faragher. (While members of the public believed that the signs had been put up by the Principal Lighthouse Keeper, responsibility was never firmly established.)

404. Following the establishment of the car park in 1976, a further sign was apparently put up on the road at or near to point A prohibiting entry to vehicles other than those having official business at the lighthouse. This was replaced with a similarly worded sign put up on the stone gatepost at A at the time the ownership of this land was transferred to Simon Riggall, with Mr Riggall's sign being replaced in turn by one put up by Mr and Mrs Clarkson when they took over ownership of the road in December 2004. A notice stating 'Private property' was also placed by Mr Riggall on the gatepost at point I and was similarly replaced by an identically worded sign in the same position by Mr and Mrs Clarkson. If I am correct in my conclusion set out at paragraphs 392 and 401 above, all of these signs would have been erected only after public vehicular rights had been established on the road. They could therefore have no effect on those rights. (Their effect in relation to establishment of a pedestrian right of way from point A to point P disregarding the issue of vehicular rights has been commented on already in paragraph 305 above.)

405. Two signs currently exist on the verge of the metalled road as it crosses the golf links, one just south of point BI and the other near to BR. The wording on both signs is 'Warning! You are crossing a golf course, Proceed with caution'. I do not regard either sign as relevant to the question of what rights exist over the road.

Opinions expressed by Attorney General Kneale and Attorney General Cain

406. In the opinion given in February 1947, whilst accepting that the question of what rights existed over the road was a question of evidence, Attorney General Keale considered it to be 'quite clear that a public right of way could not be claimed beyond this gate' (i.e. the gate at point A) 'as the facility was expressly given only to the Northern Lighthouse Commissioners as a right of way to the land acquired by them and there has always been a gate across the way – the road leading only to the lighthouse' (fol. 185, 11th February 1947). I respectfully disagree. The question of whether a public right of way has been acquired by deemed dedication depends, on the one hand, on how, in what way and over what period of time the road had been used by the public, and on the other, on the actions (or inactions) of the owner of the land towards that use. The fact that the land was conveyed to the Commissioners for a specific purpose is, in my view, irrelevant, as is the mere physical existence of a gate or the fact that the road leads only to the lighthouse.

407. It is also clear that the objection to the acquisition of any public rights over this part of the road came not from the Northern Lighthouse Commissioners, but from the Trustees of the Crookall's Estate. The letter of 11th August 1942 (fol. 202) records that, as owners of the adjoining land, the Trustees had a right to the free and uninterrupted use of the land on which the road had been built, but it was the Northern Lighthouse Commissioners who owned the land and who had constructed and were responsible for the maintenance of the road. While the Board expressed some reluctance (in the same letter) to contribute to the cost of its reconstruction, their views on whether or not the use of the road by the public amounted to presumed dedication (or, indeed, whether the Commissioners were willing to expressly dedicate the road to the public) appear never to have been sought.

408. In my view therefore, even if the Crookall Trust had previously taken steps to challenge the public's use of the road as of right (and there is no evidence that they did), it is questionable whether that would have been sufficient to negative the intention *of the owners* of the land to dedicate way to the public. Without knowing what the views of the Lighthouse Commissioners might have been towards that use, all that can be said (at least from the papers currently available) is that while there was evidence in 1946/47 of the public's use of the road up to and beyond the lighthouse, including with vehicles, it is not possible to say whether that use had given rise to the dedication of the road as a highway.

409. I similarly disagree with the reservations that were expressed by Attorney General Cain in 1986 as outlined in paragraphs 380 to 382 above. In my view, the fact that the short section of road which existed at that time running east from Langness Farmhouse may have been wrongly shown coloured brown on the Ordnance Survey maps of 1867 to indicate that it was a public highway (and there is no evidence that this was, in fact, a mistake) is immaterial to the question of whether public rights had come into existence over the remainder of the road.

410. Nor do I accept that, as Attorney General Cain asserts, because the expressed dedication made in 1976 by the Trustees of Crookall's Estate covers only that part of the road from Poyll Breinn to the car park, this suggests either that the section of the road so

dedicated was a private road up to that point, or that the remainder of the road was private. On the contrary, such evidence as currently exists suggests that the Trustees had, by that time, accepted that the whole of the road as far as the lighthouse was a public highway. For example, in objecting to Attorney General Corrin's first public notice in 1975, the Chairman of the Trustees makes it clear that he is objecting only to the car park, stating that 'the right of way is for the road only' (fol. 110). Similarly, the statement in the Attorney General's letter of 14th January 1976 to the Chairman of Trustees that he 'appreciates that the public vehicular right of way from Derbyhaven to the Lighthouse is in no way obstructed' (fol. 63) does not appear to have generated any response from the Trustees.

411. The issue of the expressed dedication of the road arose only after agreement had been reached on the proposal to establish a car park and the wording of the related public notice. Both the dedication and the transfer of the ownership of the land for the car park to the Highway Board came about because, as the Attorney General explained in his letters of 12th March and 17th May 1976 (fols. 29 and 23) the Highway Board belatedly realised that it could not (in the Board's view) incur any of the necessary expenditure without having an interest in the land. The reason why the dedication was restricted to only part of the road is not explained in the 1976 correspondence but is subsequently made clear in the Surveyor General's letter of 30th January 1986; it is that the remainder of the road passed over the golf links and the terms of the lease to Castletown Golf Club precluded the Trustees from expressly dedicating that part of the road as a highway. However it is clear that Attorney General Corrin believed that, irrespective of any specific dedication, vehicular rights of way already existed over this section of road by virtue of deemed dedication as a result of long user. I also share that view.

Did not Attorney General Corrin subsequently modify his views?

412. It could be argued that, despite Attorney General Corrin's initial certainty that vehicular rights existed over the whole of the metalled road, the terms of the agreement that he negotiated, as published in 1976, indicate that he had subsequently modified his views. No action was taken, in practice, to assert the public right to use the highway and the statement, in particular, that 'cars will not be permitted to travel beyond the proposed car park in the direction of the Lighthouse (apart from those having official business)' suggest that that he had come to agree with the view taken by his predecessor in 1947 and as subsequently expressed by Attorney General Cain in 1986 that this part of the road, at least, remained private.

413. I disagree. There is nothing in the correspondence to suggest the Attorney General modified his views in any way; on the contrary, in his letter of 14th January 1976 to Mr Welsh (fol. 62) he is quite clear in stating that the vehicular right of way to the lighthouse remains unobstructed; what is being prevented by the Crookall Trust is the parking of vehicles on private land away from the highway and in respect of which no action could be taken. Similarly, in his letter to the Highway Board of 25th May 1976, in which he reports the agreement that has been reached with the Trustees, he again states 'I am satisfied that there is a public right of way along the Lighthouse Road to the Lighthouse' (fol. 19).

414. The Attorney General would, however, have been well aware that, given the narrowness of the road and the absence of anywhere to park, to insist that the NLB or the Trustee's of the Crookall Estate acknowledge the public's right to use the metalled road with vehicles would have had little practical value, but would almost certainly have prevented an agreement from being reached. It would therefore have prolonged the dispute, which the Attorney General was under pressure to resolve as quickly as possible, and may even have widened it if, for example, the Trustees were to also object to the other recreational activities that were taking place on the land.

415. I therefore regard the terms of the agreement as set out in the notice published in June 1976 as reflecting the pragmatic desire of the Attorney General to reach a negotiated solution to the problems that had arisen, and to do so quickly whilst avoiding a time consuming and costly legal process that would, at the end of the day, have been of little practical benefit to members of the public. Moreover, by taking the pragmatic stance that he did, the Attorney General was able to secure from the Crookall's Estate the voluntarily dedication of land on which a car park could be constructed, albeit at some distance from the lighthouse, and which was of real public benefit.

43: Recommendations regarding the metalled road

416. At the local inquiry Mr Ferguson Lacey said that he accepted that the metalled road over his land, from the Smelt House to the car park (points BJ to A) was a public highway. Its status in law as a highway does not depend on the landowner's acquiescence but formal confirmation of Mr Ferguson Lacey's statement would nevertheless be helpful in finally putting the matter beyond doubt. Formal dedication to the public of that part of the road from Poyll Breinn to the car park has already taken place by virtue of the deed entered into by the Trustees of the Crookall's Estate in 1976. I recommend that Mr Ferguson Lacey be invited by the Department to similarly now dedicate the remainder of the metalled road that remains within his ownership.

417. As noted above, I consider that the status of the road as a highway extends beyond the car park to the original entrance to the lighthouse over the portion of road (A to P) now owned by Mr and Mrs Clarkson. I recommend that they too should similarly be invited by the Department to acknowledge the status of the road by formally dedicating that part of it to the public as a highway – although I accept that they may be reluctant to do so.

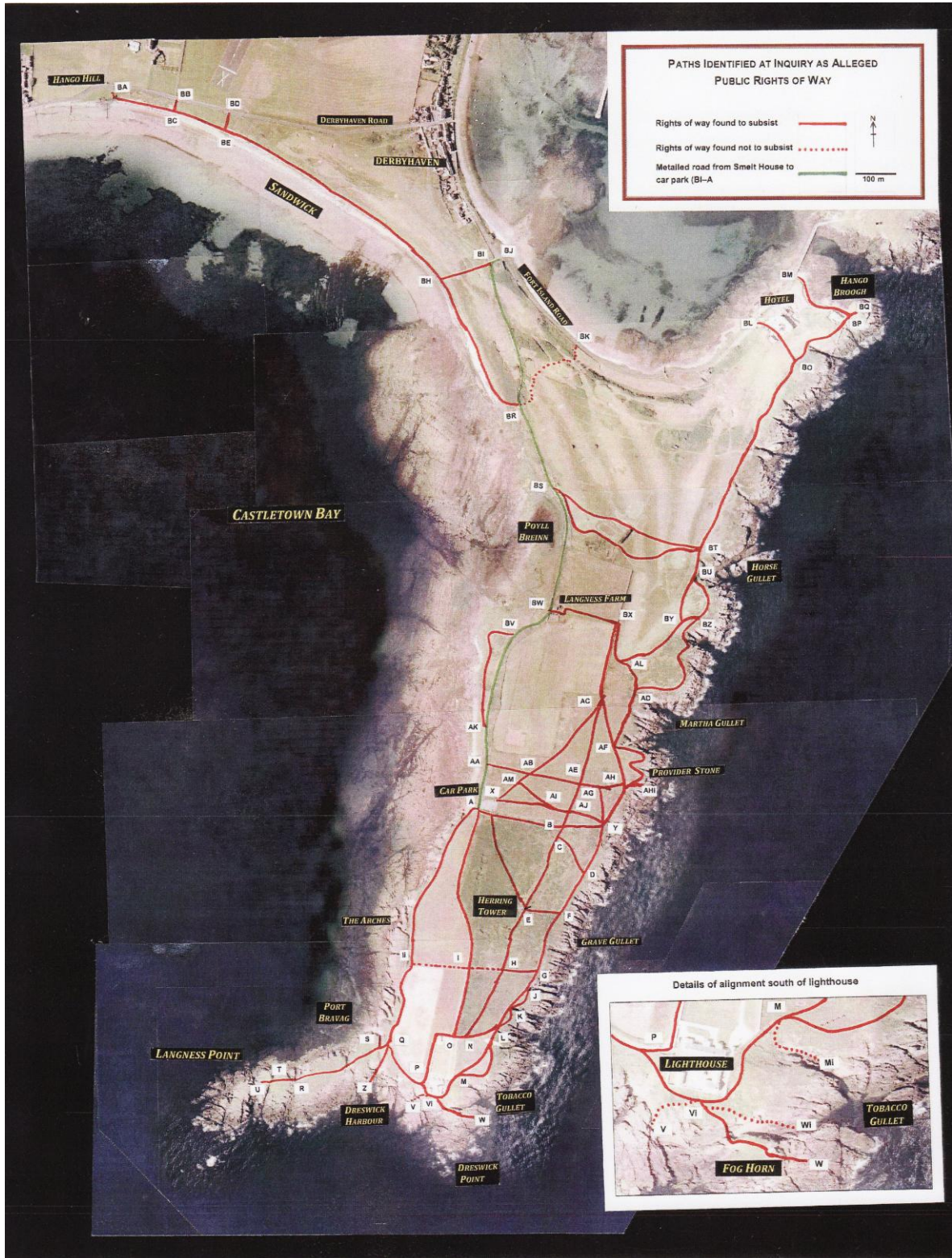
418. In the event that formal dedication cannot be secured, the Department will need to consider whether, in the absence of any impediment to the public's use of the road to the car park, further action to confirm the status of this part of the road is justified. With regard to the remaining section A-P, given that action will be required to modify the Definitive Map and Statement in accordance with my findings at part A, I recommend that consideration should be given at that time to recording this section as a road used as public path (RUPP) – that is, as a highway other than a footpath or other type of public right of way which is used mainly for the purpose for which footpaths are used. Recording it in this way would accord with how the road beyond the car park is currently used in practice whilst still

preserving the higher rights which exist over it.

419. In practice, it would appear that there is almost universal compliance with the request made in the Attorney General's 1976 public notice (albeit that this has no force in law) that those who drive to Langness should take their cars no further than the car park. I do not consider that either formal recognition of the existence of vehicular rights or recording the way as a RUPP is likely to materially alter the status quo; there is unlikely to be a return to the situation in the early 1970s when cars were routinely driven to beyond the entrance to the lighthouse.

420. Many people will, however, be likely to welcome the recognition of their ability to drive lawfully to the lighthouse if it is necessary to do so. This will, for example, enable a person who is disabled or who has restricted mobility to be driven there as a passenger before the car is parked in the car park. Nevertheless the situation should be carefully monitored. If, in the event, use of this part of the road by vehicles again increases to a level which is unacceptable, the correct course would be for a Traffic Regulation Order to be made under the Road Traffic Regulation Act 1985.

Appendix 1: Aerial photograph of paths claimed to be public rights of way





Isle of Man
Government

Reilys Ellan Vannin



infrastructure

bun-troggalys

Office of the Minister
and Chief Executive

Department of Infrastructure

Sea Terminal Building, Douglas, Isle of Man, British Isles IM1 2RF

www.gov.im/infrastructure

Appendix 2: List of those appearing at the inquiry

Day 1: Monday 20th July 2009

Opening statements

Bruce Hannay, Director of Highways, Department of Transport
Ian Costain on behalf of Public Rights of Way, Langness (PROWL)
James Ramsden, Counsel, representing Mr and Mrs Clarkson

Evidence from witnesses

Edmond (Eddy) Lowey MLC
Mike Watson
Margaret Pimblett
John Morgan
Ian Costain
John Christal

Day 2: Tuesday 21st July 2009

Ian Costain (continued)
Mrs Cook
Angus Hoban
Pat Mudie, Chairman, Manx Footpaths Conservation Group
Alan Charmer
Robert Hardinge
Jamie Riggall
Anne Kaye

Day 3: Wednesday 22nd July 2009

Juan Watterson
Michael Gerrard
John Welsh
Margaret Parnell
Juan Watterson
Elin Callister
Richard Norris
Eddy Craine

Day 4: Thursday 23rd July 2009

Geraldine Batchelor

Frances Clarkson

Day 5; Wednesday 11th August 2009

Simon Riggall

Peter Curtis

James Quinn (Advocate for G. Ferguson Lacey)

Robert Hardinge

Angus Hoban

Brenda Crellin

Fred Hodgson, Manx Footpath Task Force

Day 6; Thursday 12th August 2009

Juan Watterson

Mike Gerrard

David Greenhalgh

John Welsh

Dr Elizabeth Charter, DAFF

Phil Gawne MHK

Tony Sloane

Richard Norris

Michael Gerrard

Leo Cousins

Day7; Friday 13th August 2009

James Quinn (Advocate for G Ferguson Lacey)

Graham Ferguson Lacey

Pat Mudie, Chairman, Manx Footpaths Conservation Group

Robert Pilling, Chairman, Malew Commissioners

Day 8; Monday 12th October 2009

Richard Bedford

Susan Creer

Irene Cowin

Day 9; Tuesday 13th October 2009

Closing statements

Jenny Holt, Advocate, Moroneys, representing Mr and Mrs Clarkson
Ian Costain on behalf of Public Rights of Way, Langness (PROWL)

Note

Accompanied site visits were made by the Inspector on Friday 24th July and Monday 12th October 2009.

Appendix 3: List of written representations and representations made by telephone

The following is a list of the names of those who made written representations, or who are recorded as having telephoned to express their concern, and whose views I have taken into account. As well as the letters and telephone calls received by the Department, these include representations made to the Minister and those that were forwarded to the Department by MHKs. The list excludes the on-going correspondence which PROWL and Mr John Welsh had with the Department (and which I have also taken into account) and the further letters that were handed in at the inquiry, as shown in appendix 4.

T denotes representations made by telephone, E representation sent by e-mail.

1. Representations received prior to the local inquiry

Name	Date		Name	Date	
Mrs Mercer	25/08/2005	T	Mrs P Gellion & B Roe	02/09/2005	
Mrs H De Backer	07/09/2005	T	Mrs L B Hawes	16/09/2005	
Mrs E Hewison	11/10/2005		Mrs S Creer	11/10/2005	
Frank Preece	12/10/2005	T	Mrs G Benson	18/10/2005	
Mrs R W L Smith	12/10/2005		Mrs S Cooper	12/10/2005	
Mrs S M Stembridge	12/10/2005		Mrs Susan Kirby	12/10/2005	T
Mrs & Mrs J Morgan	13/10/2005		Mrs Costain	13/10/2005	T
Mrs W Carter	13/10/2005	T	A Irving	14/10/2005	
Mr & Mrs G K Cooper	14/10/2005		Mrs A Newman	14/10/2005	T
Mrs A Watterson	14/10/2005		Mrs M Parnell	14/10/2005	
Mrs S Marsh	14/10/2005		R M Kennaugh	14/10/2005	
D M Kirton	15/10/2005		Drs D & K Sharpe	16/10/2005	
Stephen Gorry	16/10/2005		Mr & Mrs Morgan	17/10/2005	T
Mrs Whitstone	17/10/2005	T	R Webber	17/10/2005	T
Mrs K Clarke-Smith	18/10/2005		Mrs Maley	18/10/2005	T
Mrs K I Broadbent	19/10/2005		Ms J Gullen	19/10/2005	T
R D Baddon	19/10/2005		Simon Court	19/10/2005	
N Webb	19/10/2005	T	Mrs C Dickson	20/10/2005	
Mr & Mrs T Ashton	21/10/2005		Anita Parnell	24/10/2005	
John & Freda Dennis	24/10/2005		Mr Hodge	24/10/2005	
Norah McAney	24/10/2005		Phil Craine	24/10/2005	
Carrie Costain	25/10/2005		Ms Oleg Mann	26/10/2005	
Mrs Allen	27/10/2005	T	Peter S Crellin	27/10/2005	
Mr & Mrs C V Walters	28/10/2005		R & S Norris	28/10/2005	

Name	Date	Name	Date
Noel Clarke	29/10/2005	Catherine Hiamsen	31/10/2005
M M Crosland	31/10/2005	Mrs G Cowley	31/10/2005 T
Mrs S E Deighan	31/10/2005	Mrs Ellis	31/10/2005 T
Mrs Bunce	01/11/2005 T	Peter Matthews	01/11/2005 T
Steve Jackson	01/11/2005	A N Quillin	03/11/2005
Dick Hodges	03/11/2005	Matthew Creer	03/11/2005
Mrs Justice	03/11/2005 T	S Harrison	03/11/2005
Myra Cook	03/11/2005	R H Bedford	03/11/2005
Kate Woodley	04/11/2005	Adam & Margaret Kelly	05/11/2005
Mr C Brookes	06/11/2005	Pat Kneen	06/11/2005
Mrs M Moore	07/11/2005	Mrs Robbie	07/11/2005 T
Miss Ria Kirby	08/11/2005	S B de C Baker	09/11/2005
Dr. N M Bailey	10/11/2005	Mrs Kitching	10/11/2005 T
Phyllis White	12/11/2005	Beryl Newbold	15/11/2005
Mrs H U Dean	15/11/2005	John & Freda Dennis	15/11/2005
K Lennon	30/11/2005	Eva Shrewsbury	18/12/2005
J L Welsh	27/02/2006	Manx Ftpath Cons Grp	21/03/2006
R H Bedford	28/03/2006	F. Kirk	09/04/2006
Mrs H Kay	24/10/2006	Nona Welsh	06/02/2008
R A Couch	07/12/2008	Ken Kyme	17/12/2008
R H Bedford	18/12/2008	Mrs P Mudie MFCG	12/01/2009
Anne Kaye	01/05/2009	Mrs P Mudie MFGC	16/06/2009
Mrs J. Saunders	24/06/2009	Virginia Seed	24/06/2009
E E Callister	26/06/2009	R H Bedford	01/07/2009
Lillian Watterson	01/07/2009	Ray Hughes	02/07/2009
Beryl Newbold	03/07/2009	R Wilson	05/07/2009
Richard Norris	06/07/2009	R J Cregeen	07/07/2009

2. Received while the inquiry was in progress or during adjournments

Name	Date	Name	Date
Elin E Callister	15/09/2009	J L Welsh	05/09/2009
Michael Gerrard	29/9/2009	R M Kneen	24/09/2009 E
Roger C Rawcliffe MA	26/09/2009	Susan Creer	30/09/2009 E
Keith Kerruish FRICS	19/08/2009	Paul Quayle	19/08/2009

Name	Date	Name	Date
Felicity Hawtin	01/10/2009	John A Barman	02/10/2009
Sally & Wendy Mercer	02/10/2009	Pip Kirby	01/10/2009 E
Ian L Kitchen	02/10/2009	Alwyn C Collister	01/10/2009
Andrew Cooil	01/10/2009	D McWilliams (forwarded by PROWL)	20/08/2009
G E Kitching	01/10/2009	John Collister	02/10/2009
David Wilkie	02/10/2009 E	D McWilliams (in Braille)	02/10/2009
Bob Kneen	07/10/2009 E	Susan Creer (attaching photos)	08/10/2009 E

3. Received after the inquiry had closed

Name	Date
G Dugdale	28/10/2009

Appendix 4: Additional documents produced during the course of the inquiry

Doc No	From	Description
Day 1: Monday 20th July 2009		
1	Jenny Holt, Moroneys	Undated letter to Jeremy Clarkson from Dr John C Taylor relating to use of land between lighthouse and fog horn
2	D J Christal	Letter of 18 th July to Inspector
3	J L Welsh	Letter of 13/7/09 from Attorney General's Chambers
3a	J L Welsh	Affidavits dated 15/7/09 sworn by Mr Welsh and Mrs Welsh
4	J L Welsh	Comments on D Baron's letter of 17/2/08 to Tynwald
5	J L Welsh	Response to the affidavit by Mrs F Clarkson
6	J L Welsh	Response to the affidavit by Simon Riggall
7	Ian Costain, PROWL	Addendum to statement of evidence
8	C Hannon, Dept of Transport	Letter of 16/7/09 received from James Quinn setting out position on behalf of Fort Island Ltd and Graham Ferguson Lacey
Day 2: Tuesday 21st July 2009		
9	F W Hodgson	Further letter dated 20/7/09 from Manx Footpath Task Force
10	J W Williams	Letter dated 21/7/09 testifying to use of paths
Day 3: Wednesday 22nd July 2009		
11	Juan Watterson	List of paths walked regularly according to DoT map numbering of 21 st July.

Day 4: Thursday 23rd July 2009		
12	Michael Gerrard	Aerial photo marked up to show additional claimed path on north of Peninsula and over the golf course.
Day 5: Tuesday 11th August 2009		
13	Peter Curtis	Statement read to inquiry and aerial photo showing paths walked
14	James Quinn	Map showing ownerships of land
15	Fred Hodgson	Statement read to inquiry
16	Simon Riggall	Bundle of papers relating to designation of ASSI by Dept of Agriculture referred to in evidence to inquiry
17	Simon Riggall	Correspondence referred to in evidence from March-May 1986 relating to construction of cattle grid and gate on road by Great Meadow Estate
18	Ian Costin	Additional statement dated 6 th August read to inquiry and bundle of papers labelled as exhibit nos. 234 - 262
19	Brenda Crellin	Report of Special Inquiry held June 1990 into proposed construction of 18 hole golf course
20	Attorney General's Chambers	Documents requested by Inspector: - Copy of deed of dedication dated 13/1/77 by Crookall Trust to IoM Highways and Transport Board - Exchange of correspondence Jan-Feb 1986 between the Board and Attorney General regarding rights over the road
Day 5: Wednesday, 12th August 2009		
21	J L Welsh	Further statement to inquiry relating to 17 above
22	J L Welsh	Further statement to inquiry relating to the Attorney General's file on the agreements reached in 1975/76
23	Jenny Holt	Article about the effect of ASSI fencing published in the Isle of Man Examiner, 14 th January 2003

Day 7: Thursday, 13th August 2009		
24	Pat Mudie	Programme of summer and winter walks organised by the Manx Footpaths Conservation Group
25	Mr Pilling, Malew Commissioners	Copy of planning application made by Fort Island Ltd on 24/3/03 for development of Langness Farm
Day 8: Monday, 12th October 2009		
27	Sue Creer (by e-mail)	5 photographs taken in 1986 and 1991 showing fog horn, footbridge and sign warning of noise on path to W
27	Mr John Morgan	Letter dated 28/7/09 detailing the use made of paths on the northern part of peninsula.
28	Anne Kaye	Letter dated 5/8/09 and signed map detailing the use made of paths on the northern part of peninsula.
29	Anne Tomkins	Letter dated 6/8/09 and signed map, as above.
30	David Carran	Letter dated 6/8/09 and signed map, as above.
31	Raymond J Harding	Letter dated 5/8/09 and signed map, as above.
32	Angus Hoban	Undated letter and signed map, as above.
33	R Hardinge	Letter dated 2/8/09 and signed map, as above.
34	C O'Brien	Undated letter and signed map, as above.

Appendix 5: Section 88, Highways Act 1986

Presumption of dedication as highway:

- (1) Where a way over any land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of 21 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.
- (2) The period of 21 years referred to in subsection (1) is to be calculated retrospectively from the date when the right of the public to use of way is brought into question, whether by such a notice as is mentioned in subsection (3) or otherwise.
- (3) Where the owner of the land over which any such way passes -
 - (a) has erected in such manner as to be visible to persons using a way a notice inconsistent with the dedication of the way as a highway, and
 - (b) has maintained the notice after the 18th June 1933 or any later date on which it was erected,the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.
- (4) In the case of land in the possession of a tenant for a term of years, or from year to year, any person for the time being entitled in reversion to the land shall, notwithstanding the existence of the tenancy, have the right to place and maintain such a notice, but so that no injury is done thereby to the business or occupation of the tenant.
- (5) Where such a notice is torn down or defaced, a notice given by the owner of the land to the Department that the way is not dedicated as a highway is, in the absence of proof of a contrary intention, sufficient to negative the intention of the owner to dedicate the way as a highway.
- (6) An owner of any land may at any time deposit with the Department-
 - (a) a map of the land on a scale of not less than 1:10,560, and
 - (b) a statement indicating what ways (if any) over the land he admits to have been dedicated as highways;

and in any case in which such a deposit has been made, statutory declarations made by that owner or his successors in title and lodged by him or them with the

Department at any time-

(i) within 6 years of the date of the deposit, or

(i) within 6 years of the date on which any previous statutory declaration was last lodged under this section,

to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the said map has been dedicated as a highway since the date of the deposit, or the date of the lodgement of such previous declaration, as the case may be, are in the absence of proof of a contrary intention sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.

- (7) Nothing in this section affects any incapacity of a corporation or other body or person in possession of land for public or statutory purposes to dedicate a way over that land as a highway if the existence of a highway would be incompatible with those purposes.
- (8) Nothing in this section operates to prevent the dedication of a way as a highway being presumed on proof of user for any period less than 21 years, or being presumed or proved in any circumstances in which it might have been presumed or proved immediately before the passing of the Rights of Way Act 1933.

Appendix 6: Summary of papers made available by the Attorney General's Chambers

Papers made available to the inquiry by the Attorney General's Chambers covering the period July 1942 to June 1975 show that there was, for much of that time, uncertainty over the rights of the public to use the road to the lighthouse from its junction with Fort Island Road (points BI to P). Three of the officers who held the post of Attorney General during this period expressed an opinion; Mr R. B. Moore (up to 1945), Mr S. J. Kneale (1945 - 1957) and Mr J. W. Corrin (from December 1974). The last of these, Mr J. W. Corrin, intervened personally by negotiating the agreement which led to the establishment of the Department's car park in 1976. Three other officers also held the post of Attorney General between 1957 and December 1974 but there is no indication that either was involved in, or expressed a view about, the issue.

The inquiry was also given separately copies of a further exchange of correspondence which took place in 1986 when the Attorney General, then Mr T. W. Cain, was again asked for his opinion on the status of the metalled road. (Filed with the additional inquiry documents; see document 20.)

Having examined the papers in detail, I consider that much of the information they contain is directly relevant to my inquiry, not only in relation to the access road to the Lighthouse gate but in the rights which the public may have to access Dreswick Harbour, Langness Point and the southern end of the peninsula in general. The following is a summary of that information in so far I consider it to be relevant, and which has been taken into account in my report and recommendations.

The following abbreviations have been used:

AG	Attorney General
A / TCE	Advocates for/ Trustees of the Crookall's Estate
A / NLB	Advocates for / the Northern Lighthouse Board (Also referred to as the Commissioners for Northern Lights)
CT	Crookall Trustees
DS	Divisional Surveyor
SG	Surveyor General
S / HTB	Secretary to / the Isle of Man Highways and Transport Board

Folio numbers are those given to the papers by the Attorney General's Chambers. The text shown in quotation marks is a direct quote, that in italics denotes my own comments or explanation. All the documents are letters unless otherwise stated.

The main summary excludes additional papers from the period 1947 to 1963 held on the Department of Transport's file. Key points from these are briefly listed at the end of the summary.

Folio No. Date Document: Content

Correspondence during period of office of Attorney General R. B. Moore, (1921-1945)

209/210 24/7/42 **From DS to SG:** Quotes from a report of 14/8/39 (see *below*) stating '[The road] has always been a cart road, and right of way to Langness, being used by Farmers cultivating the adjacent lands, by Farmers carting wrack from the shore, by the Company working the Mines, and by the General Public desirous of visting Langness.' Also stated by Mr Chas Lanigan that before the road was allowed to get into bad repair he frequently saw 30 private cars parked at the Lighthouse on Sundays in summer.

Quotes Clerk to the Castletown Commissioners, C. Watterson, who has known the road for the past 60 years during which time there has been no restriction on traffic to and from the lighthouse. Also the previous Harbour Master at Derbyhaven as similarly stating no restriction on vehicles for past 50 years. Both are prepared to give signed statement.

Suggests inquires made of NLB and Insular Rolls Office regarding ownership of the road 'and [to] further clarify the position regarding any claims made by the Trustees of Crookall Estate'.

208 14/8/39 **DS to SG**, setting out information given to him by Chas. Lanigan: States road is approx 1½ miles long and in very bad state of repair. Passes through the property of the late A. B. Crookall and contains two gates to prevent cattle from straying, the first ½ mile from Derbyhaven and the second 1¼ miles, at the entrance to what is known as the Lighthouse field, is the end of the original road. (*NB These would correspond to the gates at Poyll Breinn and that immediately south of the current car park*). A footpath on the west side continues to the end of the Peninsular.

Lighthouse was completed in 1880 and to facilitate passage to it a road was constructed on the east side of the field. Whether this is a private road or not is uncertain because when the NLB were negotiating for the purchase of the land it was discovered that the previous owner had no clear title. Is understood that the Board would hand over the road without question.

206/207 23/7/42 **Chas. Lanigan to DS:** Quotes three residents of Derbyhaven aged 76, 70 and 68 as stating that the road has always been unrestricted and neither of the gates has ever been locked so as to prevent free

Folio No.	Date	Document: Content
		<p>passage.</p> <p>Refers to the road up to the ruined farmhouse (Langness Farm) as being 'properly constructed'. Beyond that was a cart road to the gate of the Lighthouse field. The track then entered the field and turned right, following the coast to the outer mine, close to Langness Point. These mines have been worked successfully within Lanigan's memory and the track used to carry the ore to be shipped from Castletown.</p> <p>About 1879 NLB purchased land to construct the Lighthouse. The present road, ¼ mile long running on left side of field straight to Lighthouse was constructed by the NLB.</p> <p>Notes that the TCE claim the road from Derbyhaven to Lighthouse is a private road which they have the power to close if necessary. Against this are the statements of the oldest inhabitants that there has always been an unrestricted right to traverse the road and at no time has there been any barriers to prevent that use.</p>
205	20/7/42	TCE to SG: Trustees do not wish to waive their rights that this is a private road.
203	6/8/42	SG to AG: enclosing above correspondence (f.209-205): Notes Highway Board has for a long time considered making this into a satisfactory road but cannot spend the money required unless satisfied it is a public highway. Asks for AG's opinion on whether public or private.
		Adds that Lanigan has told SG that 'many years ago' a gate was locked by Mr A. Faragher (the tenant farmer) but that this was broken down by a farmer who wished to obtain some wrack from the shore.
202	11/8/42	NLB to SG: Confirms that NLB are owners of the road running 800yds from gate at SW corner of compound. Also have a (<i>private</i>) right of way from there to Derbyhaven.
197	31/8/42	Chas. Lanigan to SG: Identifies six local residents willing to swear an affidavit testifying to their free and unrestricted use of the road and to the absence of any barriers for periods of 60, 70, 60, 32, 32 and 30 years respectively.

Folio No.	Date	Document: Content
196	3/9/42	<p>SG to AG: Can find no evidence that Highway Board have ever repaired the road. Has been informed that a person who used to purchase all of the wrecks that occurred on Langness used to have difficulty in crossing the land between the road and the wreck and sometimes had to pay compensation, but never any difficulty in using the road.</p> <p>Notes that TCE have refused to contribute to the costs of any repairs asserting that they have private rights. Is concerned that if this is not challenged, will be taken by the Trustees as an admission the road is private and may attempt to close it.</p>
195	9/9/42	<p>AG to SG: Matter should remain in abeyance until after the war. Board will then need to give serious consideration to whether or not they are prepared to fight determine the status of the road,</p>

Correspondence during period of office of Attorney General S. J. Kneale (1945-1957)

192	18/11/46	<p>SG to AG: Refers to previous correspondence and again requests AG's opinion on status of the road.</p>
190/191	25/11/46	<p>AG to SG: AG has inspected the Asylum plan of Langness prepared in 1848 and the deed of conveyance to the NLB dated 5/6/1888. The latter grants a right of way to the NLB from above Langness Farmhouse to Derbyhaven. AG also notes that 'there are gateposts north of the site of the former water windmill, and there is a gate across the way at a point south of the Langness buildings'.</p> <p>These facts would indicate that up to at least 1889 there was no public right of way, and it is therefore entirely a question of evidence as to whether or not a public right of way has been established.</p> <p>AG also notes that 'the road has been extensively used by the public for the purposes of visiting the Lighthouse, and the fact that it has been used for carrying wrack from the shore by persons other than the owners, plus the evidence of old inhabitants would be of the utmost assistance in establishing a public road, but it would be of importance to ascertain whether or not there was a sign on the old Smelt House, or elsewhere, claiming the road to be a private road, and negating the intention to dedicate a way as a highway. There was a sign of some kind affixed to the Smelt House which may now</p>

Folio No.	Date	Document: Content
		be obliterated.'
186/187	7/2/47	<p>SHTB to AG: Board takes the view that the road should be public all the way from Derbyhaven to the Lighthouse.</p> <p>Encloses draft letter to be sent to TCE (f.187) noting that 'considerable pressure is being brought to bear upon my Board to establish by legal action that this is a public road'. States that the evidence furnished to the Board 'would appear to clearly indicate that there has been a dedication' and asks whether Trustees are prepared to concede road is public.</p>
185	11/2/47	<p>AG to SHTB: Refers to conversation with Chairman, TCE reporting complaints by the tenant farmer about problems caused by the number of people resorting to Langness Farm beyond the gate at 'Kittle Hill', south of the Madoc memorial (<i>This is the second gate, at Point A</i>). Did not anticipate any difficulty in getting the Trust to agree the road was public up to that point but that they would not agree to an extension beyond that gate.</p> <p>AG states 'I think it is quite clear that a public right of way could not be claimed beyond that gate, as this facility was only given expressly to the NLB as a right of way to the land acquired by them and there has always been a gate across the way - the road leading only to the lighthouse. The road was apparently constructed by the NLB'.</p> <p>Considers that, whether or not TCE are approached, the public will continue to use the road and are unlikely to be stopped from doing so unless this privilege is abused. On the other hand, if you raise the point with them, TEC might take action to prevent the privilege being exercised, 'and we certainly could not successfully plea a public right of way in respect of this portion of the roadway'.</p>
184	23/9/47	<p>TCE to SHTB: Trustees feel there have been no rights vested in the public to use the road. Both the tenants of the Golf Links and of the farm would object strongly to the road being made available as a public highway. 'Trustees are therefore not prepared to concede that this is a public road.'</p>
177	6/11/47	<p>AG to SHTB: Reports that AG has endeavoured to negotiate with TCE and the tenant farmer, E. W. Faragher, but that Trustees adhere to the view that the road is not a public highway. In addition, the golf</p>

Folio No. Date Document: Content

links now let to Mr Makinson who has insisted that the claim be made that it is not a highway.

Advises that HTB must now decide whether to institute formal proceedings but that, if they do, the proceedings will be protracted and involve considerable time and expense. Appears to the AG that such action is not justified unless and until the Crookall's Trustees, or others with the power to do so, stop people from using the way.

Presumably this advice was taken as there is then no further correspondence, other than for a brief file note by the Government Secretary that 'It seems better to leave that which is comparatively well alone' (f.175, dated 18/9/57) until letters of complaint were received in June 1975.

Correspondence during period of office of Attorney General J. W. Corrin (1974 – 1979)

- | | | |
|---------|---------|---|
| 174 | 11/6/75 | P. N. Moore to HTB , forwarded to AG, protesting against the actions of NLB in closing the road to Langness. Has personally used the road for more than 40 years without interference. |
| 171 | 16/6/75 | Reply from AG stating 'I understand ... that both the NLB and the TCE acknowledge that there is a right of way to the Langness Lighthouse but that such a right is a public footpath only and is not a vehicular right'. (NB. The file gives no indication of basis on which the AG came to this understanding.) |
| 170 | 23/7/75 | W. G. Callister to AG : Reports the closure of the road to Langness Point. Has always been an unrestricted right of access going back to the time when cars and motorcycles were first introduced. |
| 168/169 | 17/6/75 | J. L. Welsh to AG : Complains about closure of the road. Has enjoyed unrestricted access to road and land for 20 years. Told by NLB that 'the road is not closed to vehicles on a visit to the light.' |
| 164/167 | 17/6/75 | K. G. Cooper to AG : Reports two notices put up on the 'iron gate' (presumably that at Poyll Breinn). One, attributed to NLB, prohibits entry to vehicles other than those having business at the Lighthouse, the other states 'Private. No entry'. States that his parents have driven the road for more than 30 years to enjoy the view from the Lighthouse. |

Folio No.	Date	Document: Content
161	19/6/75	Mrs K. Cooil to AG: Protests at closure of road to vehicles. Can still walk to Langness, but unfair to those elderly or disabled.
158	23/6/75	AG to NLB: Refers to complaints received about notices, effect of which is to deprive the public from having access either on foot or by vehicles to the whole of that part of Langness in proximity to the lighthouse, including a substantial area not in the ownership or possession of the Board. States 'The evidence I have received is such that I am satisfied that there has been an unrestricted right of way for the public on foot and by vehicles beyond the Iron Gate to the end of the Langness Road for upwards of 40 years. I have some personal knowledge of the situation as I have travelled along this road from time to time both on foot and in vehicles without any restrictions for over 30 years'. Asks NLB for an explanation before contemplating legal action to protect the public's interests.
154/155	25/6/75	J T Watterson to AG: Suggests action in closing off lighthouse the responsibility of a newly appointed Head Keeper, who has taken similar action elsewhere. Road may have been private but this fact hardly known to people other than the landowners. Have personally used road for over 40 years; never known it to be closed or gates locked. Concerned that elderly people may no longer able to reach lighthouse.
148/150	2/7/75	P.N. Moore to AG: Observations suggest no pedestrians turned away but some people put off walking along road by 'Private No Admittance' sign. Also attributes action in closing road to Head Lighthouse Keeper.
146	4/7/75	AG to ANLB: Threatens to institute legal proceedings to secure restoration of public's rights. Asks NLB to restore the status quo, both for pedestrians and vehicles, on a without prejudice basis.
141/143	9/7/75	P. N. Moore to AG: Complains that his daughter was harassed and ordered off the land by the Principle Lighthouse Keeper, with support from Assistant Keepers and their families. Keeper has also roped off part of Dreswick Harbour claiming it to be

Folio No.	Date	Document: Content
		private.
137	17/7/75	Handwritten notes by AG: Has told ANLB if access not restored to status-quo within 4 days a petition will be lodged. Advocate admits vehicular rights exist and says TCE also been advised of this.
136	undated	Handwritten notes by AG: 'The access of the general public with motor cars to the Lighthouse area will be immediately restored'.
135	undated	First draft of public notice with handwritten amendments.
134	17/7/75	H. N. Kinsley to AG: Has enjoyed driving to Langness for 30 years and walking on the peninsula. Never been stopped or molested in any way.
133 132	18/7/75	AG to ANLB and ATCE: Encloses copies of draft Notice which AG intends to publish on 21/7. Asks for any amendments.
128	21/7/75	N. Kinley to AG enclosing one from NLB (f.130): NLB says that notice was erected by Mr Richie on the gate at the boundary of NLB property. Kinley states it is, in fact, on the second gate at Poyll Breinn and not on NLB property.
127	21/7/75	ANLB to AG: Returns statement as agreed by NLB with amendments. Asks that the statement should not refer to the proposed cattle grid as NLB not yet able to discuss it with TCE, but asks that amendments be made to refer to the Lighthouse Keeper's specific complaints. Reference made to one specific case of trespass by a group of men who switched off some lighthouse machinery.
126	22/7/75	AG to ANLB: Thanks Advocate for amendments which have been agreed with TCE and tenant farmer. Now issued the statement to the press.
117/118	21/7/75	Copy of notice as published under AGs signature in IoM Weekly Times, IoM Examiner, Manx Star and IoM Courier/Herald. States that the prohibition of vehicular traffic along the road to the

Folio No.	Date	Document: Content
		<p>Lighthouse will be removed with immediate effect. Lists principal complaints of the landowners' that some members of the public have a) parked on the verge above the road, b) left gates open, c) allowed dogs to wander and occasionally chase cattle, d) camped overnight, e) impeded the keepers in reaching the lighthouse, f) trespassed on lighthouse property with a potential consequence of causing a danger to shipping, and g) driven in a noise manner at night, so disturbing the keepers and their families'. To meet some of these complaints has been agreed that cars will be permitted to park in a designated area within reasonable distance of the Lighthouse. Those who take their cars to Langness are requested to park in the designated area and to exercise the right of way over the road in such a manner as not to give the landowners, the tenant or the keepers any cause for complaint.</p>
113/114	25/7/75	<p>ATCE to ANLB: Confirm that the Trustees and the tenant agree to the public statement and are satisfied that the control of traffic can be dealt with by a controlled parking area.</p> <p>Points out that the original conveyance only gives NLB a right of way on foot to the Lighthouse over the strip of land conveyed to them. Board have changed that use to vehicular without any agreement and have also varied the line of the road to run alongside the Lighthouse area.</p> <p>SG is to advise Trustees regarding construction of a turning circle and parking area. Notes that in the conveyance, the Board own a roadway from the lighthouse to the two landing places (<i>ie Dreswick Harbour, point Z and Port Bravag, point S</i>). That road is unfenced. Asks for a locked gate in the fence of the car park to prevent trespass by vehicles onto the Islands and onto pasture land.</p>
110	29/7/75	<p>Chairman, TCE to AG: Astounded to read public announcement. No such agreement was reached and Trustees have never and do not agree to a car park. 'The right of way is for the road only and not on any part of our land'.</p>
109	31/7/75	<p>AG to Chairman, TCE: Cannot accept any of the statement made in letter. Statement had full approval of TCE by your advocate and was modified at their request. AG also has personal knowledge that the tenant was consulted and willingly agreed to the statement being</p>

Folio No.	Date	Document: Content
		made.
106/107	21/8/75	ANLB to ATCE: Reports that a meeting has taken place with the NLB, SG, Chairman of TCE and tenant farmer. A site for car park had been identified but this was not acceptable to the Chairman of the Trustees. Was agreed that a gate would be erected opposite the Lighthouse entrance as requested (<i>in f. 110</i>) but ANLB advised that this should not be locked until it is decided how far the alleged public right of way extends.
103/105	26/10/75	K. Cooil to AG: Reports work taking place outside gate to Lighthouse, apparently by Mr Ritchie.
101	6/11/75	N. Kinley to AG: Reports Head Lightkeeper has started work on erection of a gate opposite the lighthouse entrance at the end of the surfaced road. Has been told it will be kept locked; the purpose is to stop cars from proceeding along the unsurfaced section of road to Dreswick Harbour. Notes that this section of road has existed for as long as surfaced section and is where cars park, away from the grazing land and the lighthouse.
99	6/11/75	AG to ANLB: Was under the clear impression that rights of the public to travel to the Point of Langness had been dealt with. If information about erection of a gate is correct, AG is surprised Head Keeper should act in this way. 'I am quite determined that the rights of the public in this area will be protected and I am quite prepared to take legal action to enforce the public rights'.
97	24/11/75	ANLB to AG: Have contacted NLB. Secretary has replied that at no time have any instructions been given to the Lightkeeper to erect a gate across the end of the surfaced road. Nor has the Principle Lightkeeper carried out any such works.
94	25/11/75	AG to ATCE: Refers to above correspondence. Can only assume, therefore, that the gate is being erected by the Crookall Trustees. Asks for confirmation.
93	29/11/75	H. N. Kinley to AG: Details the work being carried out to erect a gate. Cannot state categorically that he saw the Head Keeper actually

Folio No.	Date	Document: Content
		<p>doing the work, but has no doubt that is the case. Material and tools are stored inside lighthouse compound.</p> <p>Has spoken to tenant farmer, Faragher. He has been ill and had no knowledge of the work being carried out.</p>
88/89, 85/87	14/12/75	<p>K. Cooil and J. Welsh to AG: Report a gate now erected over the unmade portion of the road outside the Lighthouse entrance. Notice put up stating 'Private land. No parking of vehicles without authority. Trespassers will be prosecuted. By order, Crookall Estate Trust'.</p> <p>A mechanical digger also used to open up a trench for 800 yards along the unfenced side the NLB's surfaced road. This effectively closes off that part of the road to vehicles as there is nowhere to park and no passing places.</p> <p>Notice is ambiguous as it is not clear whether 'trespasser will be prosecuted' refers to motorists or those exercising their right to walk to the end of the peninsula.</p>
84	15/12/75	<p>AG to E. Lowey MHK, (reporting progress with the negotiations): 'The position has not changed since August last. There is a public right of way by car to Langness, and I know of no one who has been prevented from travelling to Langness since the press announcement. I, myself, travelled by car to Langness in September and found several other cars there. On the other hand, it is up to the public to use the rights which they have in such a manner so as not to cause offence or damage to the property of the Crookall Trustees or the Lighthouse Board.'</p>
79	17/12/75	<p>AG to E. W. Faragher: Advised by NLB and TCE that no authority given for either gate or notice. Must therefore assume they are your responsibility. Am determined that the rights of the public to have access to Langness are preserved. Require you to immediately remove the notice and either remove the gate or ensure it remains unlocked.</p>
75/78	22/12/75	<p>K. Cooil to AG: Further information indicating gate was erected by Head Keeper and notice painted by an Assistant Keeper. Noticed bus driver leaving gate open but tenant farmer was indifferent.</p>

Folio No.	Date	Document: Content
72	5/1/76	<p>AG to E. Lowey MHK: 'Now, the landowners, whilst not blocking the road, have obstructed the use of Langness Point to the public.' Notes the Point is private property and AG cannot legally insist it is made available. Proposes to attempt further discussions in hope of resolving position.</p>
67/70	9/1/76	<p>Detailed report by Planning Enforcement Officer: Notes Faragher has farmed area since 1934. Land is part arable, part rough grazing. Until 8 years ago the road was in a rough, unmade state and accordingly some discouragement to sightseers. Until the recent controversy there was no bar or restriction on access to lighthouse area but vehicular traffic has steadily increased and is now excessive in summer. It is this which has led to confrontation.</p> <p>At northern end of Faragher's land (<i>at Poyll Breinn</i>) is metal gate with a notice 'This gate must be kept closed'. Has catch but no lock.</p> <p>A second field gate (<i>at point A</i>) has a drawbolt but is also unlocked. Road from here trenched and fenced to prevent parking. In front of lighthouse enclosure is a small turning circle with further gate and notice (as at f.88 above). Gate and fencing prevent cars from proceeding further towards Langness Point but is unlocked.</p> <p>In discussion, Mr Faragher complains of problems (obstructions, gates left open, litter, etc) but states that pedestrian access has never been challenged over his land. Pedestrians keep principally to seaward fringes and on towards Langness Point.</p> <p>Also interviewed Head Keeper, J. Richie. Expressed feelings strongly about noisy vehicles in vicinity of Lighthouse, but confirmed that, except within the lighthouse enclosure, pedestrians never restricted or challenged. Staff now endeavour to persuade pedestrians to leave Dreswick Point where fog horn is installed. Drivers of vehicles attempting to park in turning area asked to move on and this, and absence of parking, has caused bad feeling.</p> <p>Report concludes that the public generally believe they have full rights of access, including vehicular, over this part of the peninsula but this premise seems doubtful and is resisted by CT and tenant farmer. 'Demonstrations of public rights by walking over the generally accepted popular areas of the land do not appear to have been opposed subject to the usual cautions one would expect about</p>

Folio No.	Date	Document: Content
		shutting gates and controlled dogs on leads, however, the passage and parking of cars on the land is resisted..’.
65/66	13/1/76	J. Welsh to AG: More work carried out to effectively seal any passing places on the road. Has little doubt that Lighthouse staff responsible, but being done in the name of Crookall Trust.
63/64	14/1/76	AG to Chairman, TCE: Has been inundated with complaints regarding public access. Understands that Trust has no objection to pedestrians walking over Langness and the gate is unlocked. Also the public vehicular right of way to Langness is in no way obstructed. Appreciates Trust’s position and the problems that have arisen but is mindful of the large number of people who go to Langness by car because they are unable to walk there. Asks for a meeting to try to resolve dispute on an agreed basis.
58/60	15/1/76	J. Welsh to AG: Asks why vehicular right of way now stops at lighthouse when people have previously driven to Dreswick Harbour. Complains that while new gate may not be locked it cannot be opened as not yet hinged.
56 54 51	17/1/76 18/1/76 20/1/76	J. Welsh, K. Cooil & E. Lowey MHK to AG: Report that a further notice now erected ‘at the first gate’. Wording as at f.88, deters people from exercising their rights. Asks for it to be removed and for guidance to be given on the public’s rights.
36, 35, 34	11/3/76	AG to ATCE and ANLB: Refers to joint meetings held on 3, 4 and 10/3 at which final agreement was reached with the landowners for construction of a car park 700 yds from lighthouse. A draft press statement (<i>copy not on file</i>) was approved by all those present.
32	undated	Note to Mrs Quayle MHK and E Lowey MHK: Agreement reached with non-Government bodies but Highway Board cannot spend money on car park because it is private land. Have written again to TCE asking them to dedicate road up to first gate. Cannot make public statement until clarified.
29/30	12/3/76	AG to Chairman TCE: Asks for dedication of the road as far as first gate. Points out advantages to the Trust.

Folio No.	Date	Document: Content
19/21	25/5/76	<p>AG to SHTB: Sets out background and reports to HTB on the agreement reached in principle with the TCE, NLB and tenant farmer.</p> <p>Has been agreed that, in consideration of the construction of a car park, Trustees will permit the public to use whole of the area between the Lighthouse and Langness Point on foot, on condition that cars are parked in the car park. States 'Langness Point is private land and the Crookall Trustees have every right to prevent the public from entering upon it. On the other hand, I am satisfied that there is a public right of way along the Lighthouse Road to the Lighthouse, but having reached the Lighthouse I am also satisfied that any encroachment on Langness itself is a trespass.'</p> <p>Notes further meetings held since March with Trustees to try to persuade them that a legal interest in the land (<i>for the car park</i>) should be given to the Board and that the road should be dedicated. Are prepared to grant 20 year lease of the land (<i>NB: land was subsequently conveyed outright</i>) and also prepared to dedicate the whole of the road between first and last farm gates as a public highway (<i>from the gate at Poyll Breinn to that at point A.</i>) Not able to dedicate last few yards to Lighthouse as not in ownership of the Trustees.</p> <p>Notes Trustees are not in a position to dedicate that portion of the road from the Derbyhaven Road (<i>i.e. Smelt House</i>) which crosses the golf course because this has been let to the owners of Castletown Golf Links Hotel. 'There is, however, a public right of way by vehicles over this portion of the road'.</p> <p>Scheme is fully supported by House of Keys. Asks HTB to agree the proposals so that a public announcement can be made.</p>
17	1/6/76	<p>SG to AG: HTB agrees to accept the scheme and will construct the car park on land to be leased from CT. Will adopt Langness Road from first to last farm gates as a public highway. Understands that a public right of way for vehicles exists over the rest of the road.</p>
13	9/6/76	<p>ANLB to AG: Asks AG to confirm in writing the agreement reached relating to the road and car park so as to take client's instructions.</p>
12	10/6/76	<p>AG to ANLB: Sets out terms of what has been agreed. Vehicles will be requested not to travel further than the farm gate adjoining the car</p>

Folio No. Date Document: Content

park (*point A*). ... 'The general public will, however, be entitled to walk along the Lighthouse Road and go beyond the Lighthouse and walk over and ramble on the land of Langness'.

9/10 8/6/76 **Text of public notice as published.** States that following negotiations with the TCE and after consultation with the NLB and the tenant farmer, an agreement has been reached whereby members of the public will be able to continue to enjoy access to Langness Point. Sets out the terms agreed. *These include:*

'3. Whilst cars will not be permitted to travel beyond the proposed car park in the direction of the Lighthouse (apart from those having official business) members of the public may use the road to the Lighthouse on foot and they will also be permitted to walk over or rest on Langness between the Lighthouse and Langness Point.'

4. Members of the public should bear in mind the land is tenanted and stocked, should take care not to give cause for complaint to the tenant, and should keep dogs under leash at all times.

Additional correspondence between 1947 and 1963 held by the Department of Transport

July 1950 Surveyor General agrees to a request by the Trustees of Crookall's Estate to paint out part of an RAC direction sign erected in 1949 at Derbyhaven indicating the distance to Langness on the grounds that the sign suggests that the road to Langness is public.

July 1950 Complaint received from Southern Hackney Carriage Proprietors' that the driver of a coach to Langness has been told he was trespassing and threatened with prosecution. Writer states that frequent coach tours are made to Langness and that he personally has used the road for 30 years.

Board declines to intervene. Owners maintains road is private and Board do not consider it suitable for coaches.

August 1950 Letter from E H Stenning of Castletown in respond to request from SG for information on the use or status of the road. Offers to give a sworn affidavit that he has regularly driven a motorcycle and side car to Langness without interruption or hindrance since 1912. Always believed the road to be public. In 1911 when rifle range was being

	constructed, owner acknowledged to him the presence of a right of way.
June 1957	Lieutenant Governor is concerned over condition of the road; request that Highway Board reopens the issues of its status in view of its use by considerable numbers of visitors.
August 1957	NLB states it is prepared to agree in principle to dedicate road to public use. Trustees of Crookall's Estate are not willing.
November 1961	Pressure from IoM Tourist Board to repair road to Langness although understood it is in private ownership.
September 1963	Complaint from Malew Parish Commissioners that coaches are using the road. Ask for coaches to be prohibited or for passing places to be constructed. Informed by Highway Board that as the road is private the Board are unable to act.

Additional 1986 correspondence between the Surveyor General and Attorney General Cain

(NB. The plan originally attached to the correspondence is missing but the points referred to as A, B and C can be assumed to be the Smelt House, Poyll Breinn and the car park respectively.)

Additional document 20b 30/1/86	SG to AG: Refers to 1976 agreement with Crookall Trust for lease of car park and dedication of a public highway from B to C. Notes that Trustees were unable to dedicate section of road between A and B (Smelt House to Poyll Breinn) because of terms of their lease to Golf Club. However, AG's opinion was that vehicular rights existed. Current owner, Col Riggall, has constructed cattle grid at B and Highway Board is looking to him to contribute to the cost of constructing a bypass. Asks AG Cain to check the basis on which AG Corrin believed road was a highway.
20c 13/2/86	AG to SG: Reviews historic documents; <ol style="list-style-type: none"> 1. Asylum plan copied from survey of 1848. Shows an unfenced road to Langness Farm. No road beyond there and no road on Derbyhaven shore beyond Smelt House. 2. OS Sheets XVI 16 and XIX 4 of 1867. Shows road as far as car park which is coloured brown, as is a spur running east from Langness Farm. AG considers that as this spur could not possibly be a public road, the plans cannot be taken as evidence that the whole of the road was public. 3. Deed of Conveyance of 5/6/1888, conveys land to NLB including strip of land to be used as a footroad between

lighthouse and car park. Also granted a right of way over the existing road (as shown on 1867 plan) to Derbyhaven village.

Notes section B-C recently dedicated as a public right of way. This clearly suggests road was private up to that time. In AG's opinion, section A-B remains a private road over which there is no public right of way.

Could reasonably be argued there is now a presumption of dedication by virtue of public use, as of right, for 21 years.

Does not know of any evidence that Crookall Trustees gave any indication of their intent to negative their presumed dedication. When Attorney General Corrin expressed an opinion, he must have had in mind that rights of way had probably come into existence by long use.

Notes it would be highly desirable to have status of the road made certain by a Deed of Dedication.

Appendix 7: Notes on the ownership of land on Langness Peninsula

On 5th June 1888 the Commissioners for the Northern Lights acquired from Mr J. E. S. Taubman ownership of the land now comprising the lighthouse compound, together with strips of land from the lighthouse to Dreswick Point and Dreswick Harbour and a strip of land to be used 'as a footroad of six feet wide' between the lighthouse and the present day car park (point A). (It is this strip of land on which the surfaced road was constructed by the Northern Lighthouse Board for use by vehicles, apparently in contravention of the terms of the conveyance.) Mr Taubman also granted a right of way over the existing road (as shown on the O.S. map of 1867) from the site of the present day car park to Derbyhaven. This would imply that Mr Taubman then owned the whole of the peninsula.

By 1945 the major landowner is referred to in the Attorney General's correspondence as being the Trustees of the Estate of the late Mr A. B. Crookall. The tenant farmer was Mr E. W. Faragher (also sometimes referred to as A. Faragher) who held the tenancy from 1934 until at least 1976.

In 1984, Beech Ltd acquired 278 acres of land, described at the inquiry by Simon Riggall as comprising the whole peninsula other than for the hotel, three holes of the golf course (18th, 1st and 2nd) and Mr Makinson's bungalow. Beech Ltd was wholly owned by Simon Riggall and his father, Col. R. H. D. Riggall. A major part of this land including most of the golf course was disposed of to the Palace Group in 1987 or 1988, in which Mr Riggall also initially had an interest. It was subsequently sold in 2000 to the present owner, Mr Graham Ferguson Lacey and is currently held by four of his companies; Fort Island Ltd, Castletown Golf Links Ltd, Redford Ltd and Fort Island Golf Lodge Ltd. (See map at additional document 14).

The land which he sold to Mr and Mrs Clarkson in 2004 was acquired by Simon Riggall in three tranches; by conveyances from the Commissioners for Northern Lighthouses on 4th September 1997 and from Beech Ltd on 1st July 1999, and by a deed of exchange with Castletown Golf Links (1968) Ltd on 6th August 1999. He also had a lease, for agricultural purposes, of some of the land then owned by Castletown Golf Links Hotel Ltd.

The bulk of the land then in Simon Riggall's ownership was conveyed to Mr and Mrs Clarkson on 13th December 2004. He retains ownership of a small area on the west coast comprising the rock arches which he put into Trust. This is inaccessible on foot and is not affected by any of the alleged public rights of way.