



GOVERNMENT OFFICE
FOR THE NORTH WEST

APPENDIX B

Mr R Wilson
Impulse
Glasson
Lancaster
LA2 0BX

Our ref: PNW 5063/529/38

Sunley Tower
Piccadilly Plaza
Manchester M1 4BE
Direct Line: 0161 952 4
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14 August 2002

Dear Mr Wilson,

**WILDLIFE AND COUNTRYSIDE ACT 1981, SECTION 53 AND SCHEDULE
14:
APPEAL AGAINST LANCASHIRE COUNTY COUNCIL'S DECISION NOT
TO MODIFY THE DEFINITIVE MAO BY ADDING THREE FOOTPATHS
AT GLASSON BASIN, LANCASTER.**

I am directed by the Secretary of State for the Environment, Food and Rural Affairs to refer to your appeal under Section 53 and paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 against a decision by Lancashire County Council not to make an order modifying their Definitive map and Statement by adding three footpaths around Glasson Basin:-

- (a) from the Swing Bridge, Tithebarn Hill, to School House, Marsh Lane. (Point A on Map 1 to point B.)
- (b) from School House, Marsh lane, to another point along Marsh lane and to Brows Bridge. (Point B on Map 2 attached through points C and D and then on to points E and F.)
- (c) from Brows Bridge to the Swing Bridge, Tithebarn Hill. (Point G on Map 3 through point H to point J.)

All representations made in support of your appeal have been carefully considered together with those of Lancashire County Council and all of the interested parties..

Appellant's case

You base your claim on evidence of use of the footpaths in question. You have submitted a petition with 72 signatures. Of the signatories, 47 has used the paths for more than 20 years prior to 1999 when the use of the paths was disputed, 23 had used them for less than 20 years, and 2 did not make clear how long they had been using



INVESTOR IN PEOPLE



the path. You have also submitted 34 Public Rights of Way Evidence Forms showing that 19 people had used the paths for over 20 years. These forms showed that the paths were unobstructed and that the right to use the paths was never challenged. You say that use of the paths has not been restricted to the yacht company customers or to local residents. You say that this evidence shows an established use, as of right, going back to the 1930s. You add that prior to 1930, local knowledge, reference books and local authority maps show an established use going back to the 1800's.

You say that the obstructions identified in the Council's statement were only put in place in 1999, when you first submitted your application for a modification of the definitive map.

A further letter of support has been received from a local resident who says that his family have used the paths for over 40 years.

The Council's case

Lancashire County Council say that there is considerable user evidence in support of the claim. However this evidence does not specify which parts of the paths were used. They say that this evidence is not inconsistent with use by permission instead of by right. They also say that there have been attempts by landowners and their tenants to prevent public access to the paths by locked gates, fences and signs.

British Waterways have objected to the claim.

British Waterways say that the majority of the land over which the claimed path (ii) runs is land which they have leased to the Glasson Basin Yacht Co Ltd. This is marked with red dots on Map 4. The Yacht Company is covenanted to prevent any encroachment or acquisition of rights over the premises. As landlords, British Waterways object to this section of the path being made a public right of way, and say that any use has only been by permission. They also question whether the public at large has been using this part of the path as it could only have been used by customers of the yacht company or by local residents on a permissive basis. They also say that this section of the path has been obstructed for a considerable time by locked gates, fences and hedges. However they have no objection to the public using the section of path (ii) between School House and the Yacht Company premises, marked with blue dots on Map 4, subject to the primary needs of the Lancaster Canal Navigation.

Glasson Yacht Co Ltd has also objected. They say that there are gates on the route and that they only allow access to British Waterways staff for the maintenance of the canal.

British Waterways say that footpath (iii) passes over the canal towpath. This is marked yellow on Map 4. They say that any use of this route is of a permissive nature and that no implied or presumed dedication can be assumed either under common law or under S.31 of the Highways Act 1980. They add that S.57 of the British Transport Commission Act 1949 states that no rights of way can be claimed over British Waterways' property.

British Waterways do not object to the use of most of path (i) shown with blue dots in Map 4. However they do say that the section marked in red has been obstructed for a considerable time by locked gates, fences and hedges.

The Council says that two residents of Pennine View have submitted objections saying that they have deterred members of the public from using path (i) at the bottom of their gardens, informing them that the path was for use by British Waterways and the residents and was not a public right of way. They have also said that as most local people know each other they have not denied them access to this path.

The Council says that there have been a number of objections on amenity and safety grounds, but that these are not material to establishing whether a public right of way exists in law.

The Council has also looked at the documentary evidence. OS maps from 1891 to 1971 show paths (i) and (iii) and parts of path (ii) giving access to the boat yard from Marsh lane and the section between Canal Cottage and Brows Bridge. The parish survey for Thurnham showed paths (i) and (ii). These were also shown on the Draft Map for Lancaster Rural District, but were absent from the Provisional Map and all subsequent maps produced in preparation of the definitive Map. There is no record of why these maps were deleted from the Draft Map for Lancaster, but it is presumed that they were removed as a result of a number of successful objections to canal-side paths by British Waterways in other parts of the country.

Appraisal

All representations submitted for and against this appeal have been carefully considered. It is up to the appellant to demonstrate that there is evidence that shows that a right of way, which is not shown on the Definitive Map, either subsists or can reasonably be said to subsist. The Secretary of State can only consider that case on the evidence currently before her.

In making an application for an order to amend the Definitive Map, it is for the applicant to prove that the Definitive Map is in error by the discovery of evidence, which when considered with all of the other available evidence, shows that a mistake was made when those right were first recorded. Both parties should accept that the decision should be on the balance of probabilities, taking all relevant evidence into account, in accordance with the advice set out in paragraph 13 of Annex B of Circular 2/93.

The Secretary of State has first considered the documentary evidence. No documentary evidence was submitted in support of your appeal, but the Council did examine the documentary evidence that was available. Paths (i) and (iii) and parts of path (ii) are shown on OS maps, but this can carry little weight in the Secretary of State's consideration of the case as OS maps only show what is on the ground and do not show the legal status of the route. However the Secretary of State has taken into account the fact that paths (i) and (iii) were removed from the Draft map in 1956.

The Secretary of State has considered the considerable user evidence you have submitted which aims to show that the paths have right of way status. Under Section

31 of the Highways Act 1980, a public right of way is deemed to exist if not less than 20 years use has been enjoyed by the public as of right without interruption unless there is sufficient evidence that there has been no intention during that period to dedicate it. The 20 year period is calculated retrospectively from the date when the public's right to use the route was brought into question. The relevant date in this case is 23 November 1993, the date of your application to Lancashire County Council.

The Secretary of State considers that, although considerable, the user evidence is not decisive. It does not prove that the paths were being used as of right instead of by permission, nor does it specify which parts of the network of claimed paths were being used.

British Waterways and their tenant, the Glasson Yacht Co Ltd, have made it clear that they had no intention to dedicate a considerable length of path (ii) as a public right of way. This is stipulated in the terms of the lease. The Yacht Company say that they have erected signs to show that this is private property and have locked gates along the claimed route, though you say that the signs and locked gates only date from the time of your claim.

British Waterways have also demonstrated that, under the British Transport Commission Act 1949, public rights of way cannot be acquired over their land involved in path (iii) and so any use must have been by permission.

British Waterways say that the northernmost section of path (i) has been blocked by fences and signs for a considerable period of time, though again you dispute when these were erected. The Secretary of State considers that the evidence is inconclusive on this point.

After careful consideration of all of the evidence and the representations, the Secretary of State has come to the view that, on the balance of probability, there is insufficient evidence to support your claim that the three paths should be added to the Definitive Map and Statement. She hereby dismisses your appeal for the reasons stated above.

A copy of this letter is being sent to Lancashire County Council

Yours faithfully,



A BISHOP

City of Lancaster
CLAIM No. 804/361(a)

P.O. Box 9, Guild House, Cross Street, Preston. PR1 8RD.



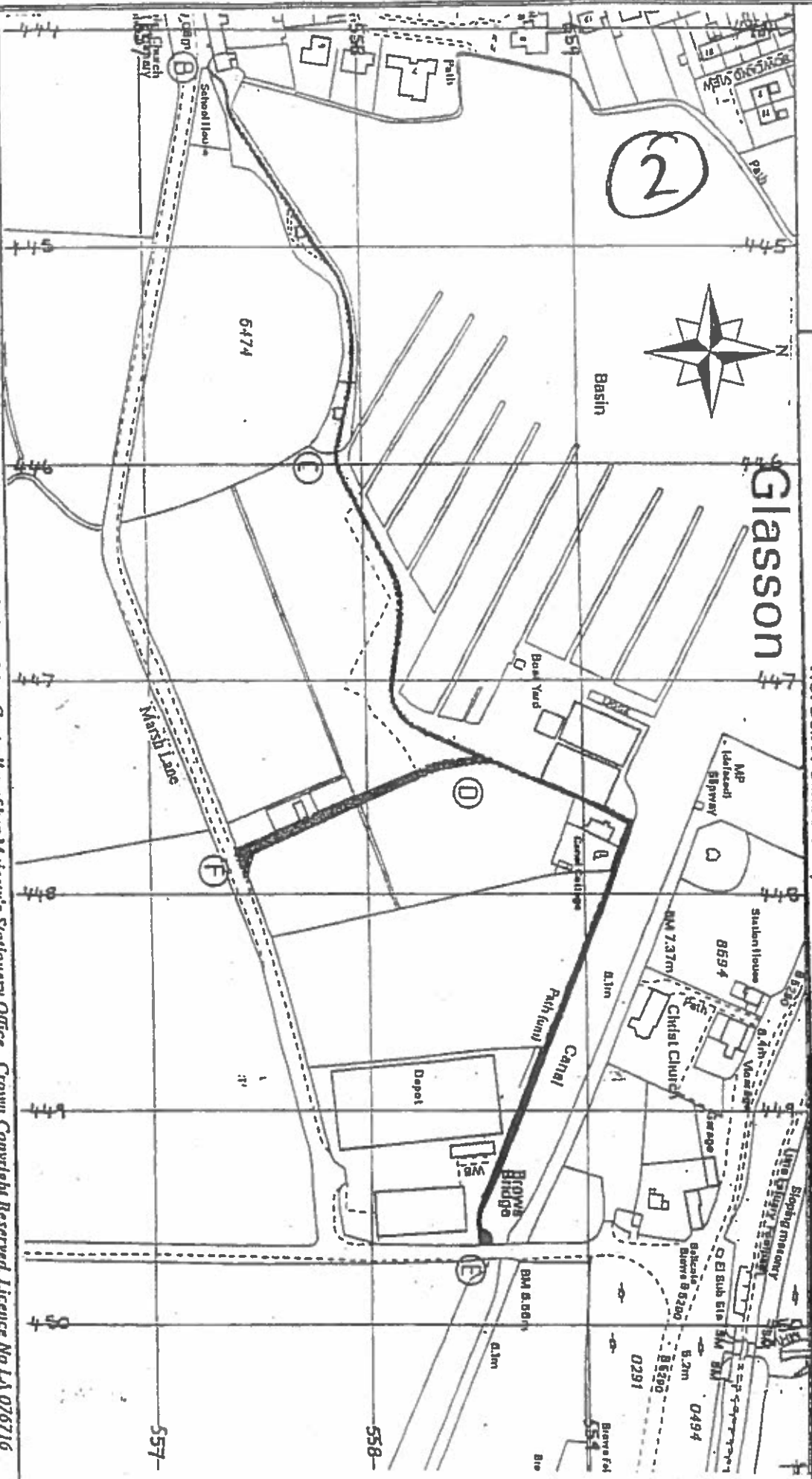
Part of Sheet No.

Lancashire County Council



Wildlife and Countryside Act 1981
 Claimed Public footpath from School House, Marsh Lane, Glasson
 to Marsh Lane and Brouws Bridge, Glasson, City of Lancaster
 CLAIM No. 804/361 (U)

G. Harding D Eng C Eng FCE, FITE, MIMM, Director, Environment Directorate.
 P.O. Box 9, Gull House, Cross Street, Preston, PR1 8RD.

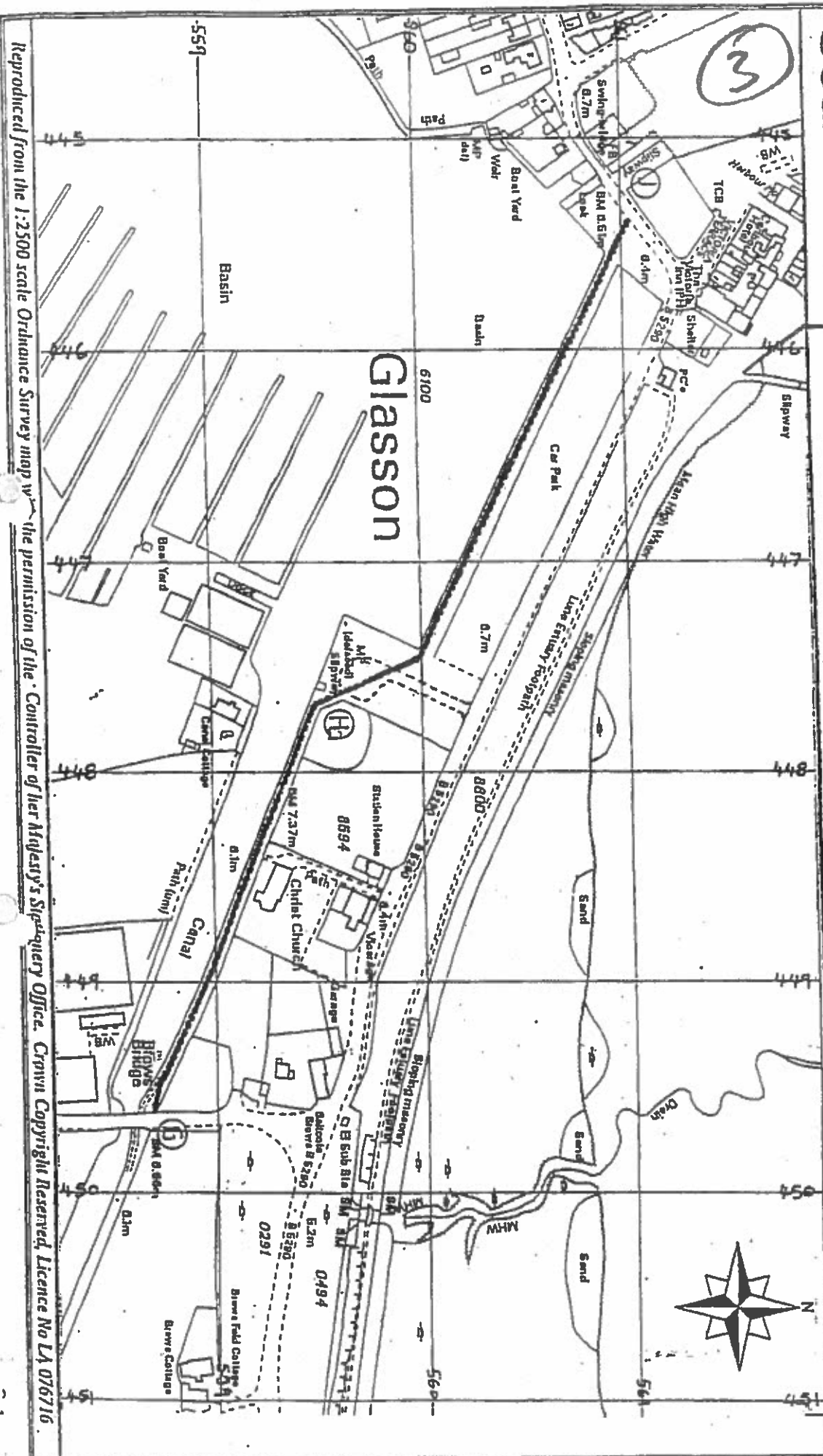


Lancashire County Council



Wildlife and Countryside Act 1981
Claimed Public Footpath from Swing Bridge, Tildesborough Mill,
Glasson to Brown's Bridge, Glasson,
City of Lancaster
CLAIM No. 304/361 (c)

G. Harding II Eng CEng FICE, FIMT, MIMMgl Director, Environmental Directorate,
P.O. Box 9, Guild House, Cross Street, Preston, PR1 8RD.



Name	
Score	1.2500
Title	

Project

LAND MATCHED RED SOLD BY BW OH
05/01/1996 TO GLASSON BASIN YACHT COMPANY

LAND COLOURED BLUE
LEASED BY BW TO
GLASSON BASIN YACHT CLUB

BW OWNERSHIP ETCHED GREEN



Philip W. Zayas