

Regulatory Committee
Meeting to be held on 27 September 2006

Part I - Item No. 5

Electoral Division affected:
Rossendale North

Wildlife and Countryside Act 1981
Claimed Public Footpath from Public Footpath No. 1 to Public Footpath No. 9,
Rawtenstall, Rossendale Borough
Claim No. 804/421
(Annex 'A' refers)

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Executive Summary

The claim for a public footpath from Public Footpath No. 1 to Public Footpath No. 9, Rawtenstall, Rossendale Borough, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/421.

Recommendation

- i) That the Claim for a public footpath from Public Footpath No. 1 to Public Footpath No. 9, Rawtenstall, Rossendale Borough, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/421, be accepted; and
- ii) That an Order be made pursuant to Section 53 (2) (b) and Section 53 (3) (c) (i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement of Public Rights of Way a footpath from a point on Public Footpath No. 1, Rawtenstall, (GR. 81060 27254), in a general north-easterly direction to a point on Public Footpath No. 9, Rawtenstall, (GR. 81131 27325), a distance of approximately 104 metres, and shown between points A-B-C-D on the attached plan.

Background

A claim has been received for a footpath extending from a point on Public Footpath No. 1, Rawtenstall, immediately to the north of its junction with Public Footpaths Nos. 4 and 94, Rawtenstall, to a point on Public Footpath No. 9, Rawtenstall, immediately to the west of its junction with Public Footpath No. 4, Rawtenstall, a distance of approximately 104 metres, and shown between points A - D on the attached plan, (GR 81060 27254 to 81131 27325), to be added to the Definitive Map and Statement of Public Rights of Way.

Consultations

Rossendale Borough Council

The Borough Council has not submitted any observations on the Claim.

Parish Council

There is no Parish Council for this area.

Claimant/Landowners/Supporters/Objectors

The evidence submitted by the claimant/landowners/supporters/objectors and observations on those comments is included in 'Advice – Director of Legal Services Observations'.

Advice

Environment Director's Observations

Description of claimed route

The claimed route commences at a point on Public Footpath no. 1 Rawtenstall approximately 4 metres north west of the junction between Public Footpaths nos. 1 and 4 and shown as point A on the attached plan.

The claimed route extends in a north-easterly direction parallel to Public Footpath no. 4 Rawtenstall (legally recorded to the south of the claimed route within the boundaries of the watercourse). From point A the claimed route follows a tarmac access road approximately 3 metres wide, which provides access to the CPA Social and Bowling Club and a number of residential properties. A street light is located on the claimed route close to point A.

The claimed route passes the front of the Social Club but is separated from the Club by a substantial stone wall. Access to the club is via a pedestrian gate near to point A and vehicular access is also available by travelling along the claimed route to a small car parking area on the north side of the claimed route which is accessed just before reaching point B.

Between point A and point B the claimed route is bounded by a stone wall on the south which forms part of the man-made stone banking that defines the route of the watercourse (Limy Water). On the north side, the route is bounded first by a stone wall and then a wooden fence, both of which mark the boundary of the Social Club on the claimed route. There are no signs, gates or barriers at point A indicating whether the claimed route is public or private.

Ornate iron gates have been erected across the claimed route at point B. The gates were open when the claimed route was inspected and access through them was freely available. The gates are approximately 5 foot high rising to over 6 foot high

where they come together in the centre. If the gates were locked there would be no access over or around them for pedestrians attempting to use the claimed route. A lock exists as an intrinsic part of the gate but it was not possible to determine whether it was used at the time of the inspection. There was no evidence of any notices or signs on the gates that indicated their purpose.

Beyond point B the claimed route continues in a general north-easterly direction along a well-maintained 3-metre wide concrete block paved surface. To the south of the route the watercourse moves away from the claimed route and is no longer separated from the route by a wall. A well maintained mown grass verge now separates the claimed route from the watercourse.

Vehicular access is available from the claimed route to a number of residential properties on the north side of the route. Just beyond point B on the south side of the claimed route there is a telegraph pole and the concrete block paving has been extended to pass completely around the telegraph pole to provide a passing place/ parking area for vehicles.

At point C the claimed route no longer follows the 3 metre wide concrete block paved access road (which continues in a north and then north westerly direction to further residential properties). Instead the claimed route continues in a general north-north-easterly direction across the mown grass verge to point D where it meets Public Footpath no. 9 Rawtenstall. There is no visible worn track across the grass verge and no signs, gates or barriers indicating whether the claimed route is public or private from this point.

Documentary evidence

A variety of maps, plans and other documents were examined to try to find when the claimed route came into being, and to help determine what its status might be.

The earliest map examined that shows the area was Yates' map of 1786. The map names the village of 'Love Clough'. It shows Limy Water and a scattering of buildings in the area of the claimed route, but no roads, tracks or paths between them. A map produced between 1804 and 1810 to show the land owned by the Duke of Buccleuch shows the village in much the same way, with no roads or tracks between the buildings. The next map examined was Greenwood's map of 1818. This map shows the modern Commercial Street crossing the brook, and continuing to the north-west, but is of too small a scale to show minor paths or tracks. Hennessey's map of 1830 shows the village in much the same way as Greenwood did some 12 years earlier.

There is no tithe or enclosure map for Loveclough.

The first edition of the six-inch Ordnance Survey map for the area was published in 1849. This map probably shows the buildings that are now known, as shown on the attached plan, as the Club near point A, and The Barn, Clough Fold Barn and Love Clough Fold Farm to the north of point B. Other buildings are shown which have since been demolished. There is a gap between the rear yard of the building that is now the social club and the bank of the brook, which probably corresponds with the

claimed route between points A and B, but the rest of the claimed route is not shown as an actual path or track, but the line B-D crosses what appears to be open ground.

The next map examined was the first edition of the 25-inch map published in 1893. This map shows the claimed route from A to B as a narrow gap between the bank of Limy Water and the enclosed rear yards of buildings as described above. Beyond point B there is an open area within which the buildings mentioned above stand as shown on the 6-inch map, as well as a terrace of 4 cottages, (now demolished). The buildings are named as Love Clough Farm. A stepping-stone crossing of the brook is shown to the north of the footbridge at point D, with a track that corresponds with Public Footpath no. 9. There is a collection of buildings on the opposite side of the brook from the claimed route, with a row of double pecked lines, signifying a path or track of some sort, leading from the far north-eastern side of the buildings along the side of the brook, before crossing it where Public Footpath no. 10 meets Public Footpath no. 4, as shown on the attached plan.

The next edition of the 25-inch map, published in 1911, shows the buildings on each side of Limy Water in much the same way as on the 1893 map. Apart from the length A – B, no path or track is shown corresponding with the rest of the claimed route. The terrace of cottages (now demolished) referred to above, is named as Love Clough Fold on this map. Line B-D would be across an area of open ground at Love Clough Farm.

The 1930 25-inch map still does not show more of the claimed route as a bounded track other than A to B. The terrace of cottages is no longer shown. The open area remains south east of the farm buildings.

The 25-inch map published in 1962 shows the length A to B as on earlier maps. There is a solid line across the track at point B, which would probably indicate the presence of a gate. There are some pecked lines across the open area between the brook and the farm buildings, which is now enclosed gardens. These pecked lines indicate a change of surface across the open area that becomes an unfenced track along the immediate eastern side of the building named on the attached plan as Clough Fold Barn. This continues northwards then eastwards to Public Footpath no. 9. Part of this unfenced track can be seen as a double row of pecked lines north of point D on the attached plan. This unfenced track from point B is not the route claimed as a public footpath but the route as claimed crosses open ground.

Aerial photographs confirm that the surfaced roadway along which the claimed route runs did not exist in 1945 or 1963. Photographs dated 1989, supplied by a resident, show a rough stoned surface yard area between the buildings, which continues as a track immediately against the eastern wall of the building now called Clough Fold Barn on the attached plan. The most recent aerial photograph, taken between 1999 and 2004 shows the surfaced roadway. There also appears to be a trodden path between the roadway and Limy Water from point B to D, but not along the claimed route.

In summary therefore, it appears that a complex of farm buildings known as Love Clough farm has existed on the site from at least the end of the 18th century. In 1849 access is recorded as being possible along the claimed length A to B to an open

yard area between the buildings. A track corresponding to Public Footpath no. 9 northwards from the far side of the yard, by the stepping stone crossing of the brook, has also existed from at least that date. The claimed route B-D crosses the open area although there is no marked path between B and D is shown on maps until 1962 – however this track is not the claimed route. Photographic evidence confirms that the surfaced track nearer to the buildings still existed in the late 1980s and likewise the open area nearer to the watercourse. The buildings at Love Clough Farm are now renovated and some renamed as The Barn, Clough Fold Barn, Loveclough Fold Farm as shown on the attached plan and a new access roadway has been constructed.

It is advised that the line claimed is not shown on the Ordnance Survey Maps as being blocked at any time by any building and would appear to have been across an area of open ground. There are however no documents which assist in determining the status of the claimed route.

Comment is made later in this report about the correct location of a public footpath being on the other bank of the watercourse. However it is advised that Public Footpath no. 4 Rawtenstall, shown on the attached plan, is recorded as lying in the brook. The earliest map produced in the mid 1950s by Rawtenstall Municipal Borough in preparation of the Definitive Map was the Draft Map. This map clearly shows the footpath drawn in the brook. Whether this was deliberate, or an error, is not known. The depiction of the path in the brook was copied at each stage in the production of the Definitive Map, up to and including the current Definitive Map, First Review. It is the case that there is map evidence that a path or track has existed since at least 1893 from the rear of buildings on the opposite side of Limy Water from the claimed route, starting from approximately where the word 'Drain' is on the attached plan. The path on old OS maps is shown continuing along Public Footpath no. 4 to Burnley Road and northwards to the reservoirs on Public Footpath no. 10.

Comment

Director of Legal Services Observations

Information from the Applicant

In support of the Claim the applicant has submitted 156 evidence of use forms indicating knowledge of the route for over 70 years (3); 60-69 years (5); 50-59 years (8); 40-49 years (12); 30-39 years (22); 20-29 years (28); 10-19 years (25); less than 10 years (43); and ten unspecified periods.

The forms indicate use of the route for over 70 years (1); 60-69 years (5); 50-59 years (7); 40-49 years (11); 30-39 years (20); 20-29 years (27); 10-19 years (25); less than 10 years (49), and eleven unspecified period of use.

The usage has been mainly for pleasure purposes, leisure, recreation, bird-watching, dog-walking, walking, running, access to and from school, work and shops, visiting friends and relations, and as access to fishing and the countryside, and ranges from daily, 2/3/4/5 times per week, weekly, fortnightly, monthly, to less frequently.

One witness mentions use of the route in a vehicle; several mention use on bicycles.

Other than as detailed below, the majority of the witnesses state that there are no prohibitory notices on the route; they have not been stopped or turned back whilst using the route (other than very recently); they have not been employed by any landowner over which the route passes; there have been no stiles, locked gates or fences across the route, other than those gates recently erected in or around June, 2004; they have not sought permission to use the route; and that the claimed route has always followed the same line.

Several witnesses refer to members of the local Angling Club being stopped from using the route, and refer to 'others' having been told the route is private, (although it is believed that such challenge has only been in fairly recent times). It has been stated by users that the gates have only recently been erected and, whilst looking imposing, being closed, and giving the impression of being a private driveway, they are not locked. One witness did ask the farmer for permission to use the route approximately 38 years ago. A further witness mentions that the farmer at that time did not stop anyone at all from using the claimed route.

Two of the witnesses are members of the family who were tenant farmers at Love Clough farm for thirty years, and a small number of witnesses worked for the farmer when children. The wife of the farmer states that she is aware that people have used the path to the brook side and the other family member, who lived at Love Clough Farm since 1962 says that this (claimed) route has always been used by the public.

One witness refers to there being stepping stones at the river before the erection of the bridge.

Information from others.

The residents of the properties on the old Love Clough Farm site refer to the collection of the residencies as Loveclough Fold. Some of them have objected to the Claim. One such resident is the owner of the land over which the claimed route B-D runs.

It is submitted that there was never an issue regarding a footpath existing along the access area to the six converted barns and old farmhouse. The search completed by solicitors showed that there was no footpath or right of way along the access route, but that a footpath existed on the other side of the river (Public Footpath No.4) connecting to Public Footpath No.10 and also Public Footpath No.9 which crossed stepping stones and then ran inside the garden (along the river bank) and then on through adjacent farmland.

The footpath in question served a group of small terraced houses which existed on the east bank of the river and were later demolished in the 1950/60s. These houses served as accommodation for workers of Loveclough Dye Works who owned the whole site until the 1980s.

The farm was sold to Riley Brothers, who owned and farmed the land adjacent to the dye works. They later sold the land to a developer, K and S Ainsworth, who sold the

properties in a derelict state to the current occupiers and others over a period of 3 to 4 years. The new access road was built in the late 1990s. The residents had asked for it to be redirected away from the properties. The current access road is not the same route as originally used by people who worked on the farm.

Riley Bros. submit that Tootal Print Works initially owned the land at Loveclough Fold, along with the dwellings; J and G Bridge rented the farm. In 1983 Rileys purchased the land from Tootal and Mr J Bridge continued to live in the farmhouse and rent a small plot of land until his retirement. In 1988 following Mr Bridge's retirement Rileys decided to sell the farmhouse and surrounding barns for development. In March 1989 these were sold to K and S Ainsworth and Rileys retained the surrounding land for farming purposes. At no time have Rileys ever given permission for people to use the path in front of the properties as a footpath although they don't deny that some locals may have used it to visit the farm to collect milk over the years. However, whilst they owned the land, permission has never been sought either verbally or written, nor would it have been granted.

Rileys also own the surrounding lodges and Loveclough Angling Club rent the lodges shown on the map between Public Footpaths Nos.9, 10 and 4, (the agreement with the club that access was gained preferably via the main road, the A682, or via the existing footpath on the opposite side of the river to the properties at Loveclough Fold). The Club were contacted verbally by Mr S Riley on the 26th April, (2005 ?) and advised that if they did not use the correct footpath, i.e. the one on the opposite side of the river that is clearly marked with stiles and footpath signs, then their rental of the lodges would be revoked.

They state that Public Footpath No.4 has always been through the factory yard, in-between the two buildings, over a stile along the riverside and turning right up the hillside or between the lodges as per Public Footpath No.10, land owned by Rileys. There are stiles and footpath signs, which were installed by the Council. However, these signs are poorly marked from Commercial Street. They are, however, clearly marked from the stile to the rear of the buildings, marked as drain on Public Footpath No.4.

It is stated that the Riley family have farmed the surrounding areas for over 100 years and at no time has it been common knowledge that a footpath runs in front of the dwellings at Loveclough Fold. Even though they have not always owned the land surrounding Loveclough Fold, they have always been neighbouring farmers.

There is some mention of use by the public by the residents. One refers to local people being interested in the renovation works and taking time to talk to the few people walking by "mainly ramblers" and never stopping people admiring the surrounding area. One refers to the new gates causing tension as people were used to being able to walk down the new access road to the footpath network. They refer to increased use in recent years.

The residents of the properties at Loveclough Fold have questioned the view of the Environment Director (detailed elsewhere in this Report) that Public Footpath No.4 runs down the middle of the river. They consider that this is not the case, but that Public Footpath No.4 runs on the opposite side of the river to the properties and

through the courtyard of the property on the other side. It is submitted that this is a key point as it goes right to the heart of one of the main reasons that this claim is being made. The dotted line marking the footpath is actually clearly shown on the opposite side of the river and entering the courtyard. It is submitted that the Definitive Statement clearly states that the path runs on the northerly side of the river, between existing Hurstwood buildings.

It is submitted that the development of the print works, who constructed the lodges between Public Footpaths Nos. 4, 9 and 10 to increase the water flow for the productivity of the textile industry made it impossible to walk through the river. There is actually a bridge which, to access the river, would involve an 8 to 10 foot jump from the bridge to get into the river, causing significant injury, even loss of life. The bridge has been in use for at least 70 years so no one has used this path for at least 70 years. It is assumed this was when the Council constructed the footpath on the opposite side of the river – Public Footpath No.4, hence the Council's construction of the stiles, bridge and signage to join Public Footpath No.4 to Public Footpath No.10. Also, the River Limey has been subject to severe flooding, causing nearby properties to be harshly flooded, at least 3 times in the last 40 years, surely an unsuitable location for a public footpath.

It is submitted that, between 1988 and 1991, the four old farm buildings were renovated into six residential properties, the land developed into gardens and the properties were occupied. The road through the Fold was not developed at this time and nobody walked the area, ramblers using Public Footpath No.4 on the opposite side of the river. Around this time the area was designated as a Conservation Area.

From the time of occupation of the houses, up to 1992, problems arose with certain members of the fishing club driving at speed along the unmade path and parking on the open ground. At one time, a sign was put up stating 'Private Road – No Vehicular Access'. This was done on a Friday. By Sunday lunchtime it was in pieces in the river.

Soon afterwards, an agreement was reached with the fishing club so that members did not drive along the path, though some continued to walk along it to the lodges to avoid the stile on Public Footpath No.4, although this was contrary to the lodge owners wishes.

It is submitted that Messrs Ainsworth had sold the various properties as separate lots, but retained the open area, on which stood an old shed or barn, plus the area between the properties and the river. This area should have been paved and landscaped but this was never done.

Finally, in 1996, one of the residents sought to have the unsightly barn removed. Messrs Ainsworth would not do this, and an Enforcement Order was issued. Through planning permission, the residents obtained the right to retain the walls but had to build the road and undertake the landscaping of the riverside at their own expense. This was done under the close scrutiny of the planning department of Rossendale Borough Council and with the understanding that there was not a public footpath through the Fold.

An objection was received to the use of Tegular blocks instead of 'proper cobbles' which came from the Claimant.

Work on the road and landscaping was done in the summer of 1997. Messrs Ainsworth retained the responsibility for landscaping the open area, but failed to do this as they hoped for planning permission for a new house. When it became apparent that such permission would not be forthcoming, the land was sold to one of the residents, who is at last able to undertake the necessary work

The relevance of the above is, it is submitted, twofold. Firstly, the residents take their responsibilities seriously as occupants of a Conservation Area. Secondly, due to the hard work of the residents, the appearance of the area was transformed. Also in 1997, Hurstwood Developments Ltd., the owners of the former redundant factory site across the river, brought the buildings into use as workshops for vehicle and machinery maintenance. Also a caravan was put into house the engineer who works at the site.

Prior to this time, most walkers, particularly those with local knowledge, used Public Footpath No.4, through the works yard. The changes brought about by the workshop and caravan meant that this no longer had the appearance of a public footpath, whereas on the Loveclough Fold side there was now an attractive pathway and from this time that pathway saw more use.

Only occasionally have residents spoken to people about the footpath. On one occasion two members of the fishing club dropped litter, and on another, people banged the gate against the stone wall. As a result, they now take no action.

It is submitted that, around 1997, a sign for the Rossendale Way was put on Public Footpath No.4 on the stile behind the works buildings by Lancashire County Council, though this is not visible from Commercial Street. It is stated that Public Footpath No.4 is clearly shown on the north side of the river on the Mario Maps.

Other than the sign above, not visible from Commercial Street, there is a marked absence of signs. Rossendale Borough Council has been approached about this, most recently about two years ago, but to no effect. The last reply from them suggested something might be done when the new estate was complete.

Over the years, on three occasions, the residents have put up signs or maps. On every occasion these signs have been thrown into the river.

In 2002 Elite Homes purchased part of the factory site from Hurstwood Developments, who retained the workshops to the north of the river, and set about constructing just over fifty houses. During 2003, problems arose with prospective buyers driving along the pathway of Loveclough Fold at speed, thus endangering the lives of the children who live in the Fold. Later in the same year and into 2004 further problems arose with people from the new houses bringing their dogs to the riverside area, often without leads.

In March 2004 when one of the residents attempted to mow the grass on the riverside verge, he had to move more than forty lots of dog-mess before he could

start. The residents decided immediately to put up gates after consulting the local Planning Office. Apart from restrictions as to colour and height, both of which have been met, there was no difficulty. In the intervening week or so a sign was put on the wall asking dog-walkers to respect the area. This was thrown in the river.

As soon as the gates went up, there was reaction from some residents of Commercial Street, and members of the club next to the Loveclough Fold houses.

Several residents got into conversation with occupiers of the new estate and the position was explained. To avoid repetition of the story, a map was attached to the gate showing the position of Public Footpath No.4. This, too, was thrown into the river, this time by the occupier of the caravan who freely admitted as much. He said "I don't want people walking past my window". He also stated that Hurstwood did not want the footpath through the area where they intended to construct 'expensive houses', as it would reduce the value of the site.

After the gates were installed, rather more people than normal came walking in Loveclough Fold. Some walked on the Loveclough Fold side, mainly long-time residents of the area. Others, often people who had looked up the footpath maps on the Internet, used Public Footpath No.4. In response to that, the occupier of the caravan put up wire screens to block the path and the Footpath Officer, who was only in post a short time, was called, by whom the residents do not know.

On his second visit the Footpath Officer confirmed that Loveclough Fold was not a public footpath, and told the occupier of the caravan to take the fences down as they were blocking Public Footpath No.4. He took the fences down for a short time only, then re-instated them within a few days. The footpath is still blocked by a caravan.

Some 56 new houses have recently been built on the adjacent derelict land at the bottom of Commercial Street, known as Penny Lodge Dell. These works are almost complete. In addition to this development, however, the existing workshop property through which the existing footpath runs has also been granted planning permission for the development as housing by Hurstwood, the current owners. The residents are of the firm belief that this Claim is an attempt to remove the route of the existing footpath from that land so as to enable a much more profitable development to be build, as not only will there be more land available but also there won't be the perceived inconvenience of having a public footpath running past one or two of the houses which will be detrimental to the value of the properties.

As a result of the new housing development and the increase of people in the area, particularly dog walkers, there became a large number of people wanting to walk their dogs through Loveclough Fold. As a result of that the grass banking running along the river side and the land which it joins to became constantly fouled by dogs. This was mainly because firstly, they had no knowledge of the correct footpath route; this footpath has been in use for the past hundred years. Secondly, if they had been aware of the correct footpath route, they would not have been able to use it as it is constantly blocked by Hurstwood Developments.

With the completion of the new banks, bridge and road, an easier route had been created than that of confronting the occupier of the caravan and climbing a stile.

Residents in the new housing estate (Penny Lodge Dell) began walking the road, many with their dogs and fouling the lawn areas adjoining the river. It was pointed out to people that these were actually part of the gardens and that the road was private, and that the footpath was on the other side of the river.

In August 2004 Rossendale Borough Council were contacted regarding the failure to maintain the footpath, even though they were aware that an employee of Hurstwoods had deliberately blocked the access and is still blocked to this day. A representative of Rossendale Borough Council came down to see residents of Loveclough Fold regarding the matter of the footpath access (or lack of it). He viewed the site, returned to the office, checked the relevant maps, and confirmed that the footpath and access is on the opposite side of the river, between the buildings of Hurstwood Developments.

To summarise, the residents of the Loveclough Fold believe that the Modification Order should not be made for the following reasons:-

1. All walks that can be made by using the proposed footpath can be made using the existing Public Footpath No.4. There is no need to introduce a new, parallel path.
2. Use of the path prior to 1987 was to, not through, the farm. The existing Public Footpath No.4 divided near the present bridge and a short length crossed the river by stepping stones to the farm. This can be verified by the Riley family, previous owners of the land in question and owners of all adjacent fields.
3. Rossendale Borough Council has consistently failed to mark the various paths, particularly Public Footpath No.4. The change in use and appearance around 1997 has led to much greater numbers of walkers taking the route through Loveclough Fold, in the absence of directional signs. In addition, Public Footpath No.4 has been effectively blocked at various times, by metal fencing, machinery, and latterly an old caravan.
4. The application is, in essence, malicious. The Claimant has destroyed a sign put up by residents and objected to work being done in Loveclough Fold. The Claimant has not been seen to use the path.
5. If the Order was to be granted, it would open the way for commercial gain by the owners of the land opposite. Planning permission exists for a small number of dwellings, and clearly the owners would much prefer, and find it financially beneficial, not to have a public footpath through the development. It is anticipated that the owners would argue that there was already a parallel path, and seek to close the part of Public Footpath No.4 going through their land, thereby switching the path from their side of the river to Loveclough Fold, a process not normally approved. It should be noted that the owners of the factory site erected walls around the front of the site in 2004 in anticipation of developing the land and left a gap of approximately one metre for the footpath indicating that they are aware of the existence of Public Footpath No.4 through their land.

Further objections have been made on the grounds that acceptance of the Claim, and the confirmation of a subsequent Definitive Map Modification Order, would have an adverse effect on security, peace and tranquillity, litter, dog-fouling and hygiene. The Committee will, of course, be aware that, although these points are important to those persons making them, they are amenity objections and have no bearing on whether or not the path exists in law.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of the Claim

Strong user evidence

All except a few are sure line is as claimed

Line has been available for many years along bounded section A-B then across open ground B-D

Tenants of the farm 1958-88 confirm knowledge of public use

Against Accepting the Claim

Information indicating sufficient lack of intention to dedicate and challenge to use but only recently.

Conclusion

This claim is that there is already a public right of way along the line shown A-D on the plan and that this should be recorded as a public footpath on the Definitive Map.

It is noted in this matter that there are a large number of people who have given evidence of their use of this line. The years during which they have used the route have been put into chart form attached hereto. Use of the route would appear to have taken place over several decades increasing steadily over the years.

There is no express dedication by an owner. For dedication to be inferred at Common Law there needs to be circumstances from which it can be inferred that the owner gave the route over to be used by the public. The owner until the 1980s was Tootal Ltd of the Print Works and part of the route (B-D) passed through an open area of a farm tenanted by the Bridge family from Tootal since 1958. It is advised that it appears that no action was taken to dissuade public use and the use was known to Mrs Bridge and at least one other family member.

Ownership of A-B remained with Tootal Ltd although the very first section near point A has been owned by a succession of Housing developers as part of development land to the south and west of the claimed route and again there is no evidence of action taken against public use.

Even after ownership of land crossed by B-D passed to Rileys and then Ainsworths there is no evidence of negative actions taken in the face of public user and it may be that there is evidence on balance that the route had been given up to public use

on foot. It may be considered that the user by the public and the owners seeming acquiescence in same could on balance be sufficient circumstances from which to infer a dedication of the route as a public right of way.

For dedication to be deemed under Section 31 of the Highways Act 1980 the use by the public has to be over the twenty years immediately preceding the route being called into question. It would appear that there has been challenge to the use of the route recently, there is reference to signage and in particular when the gates were erected in 2004. Taking 2004 as being when the users recognised that their use was challenged, use would have to have been without interruption 1984-2004 and despite all the renovation works and the paving of part of the claimed route the users do not seem to have been interrupted in their use. There is some reference to debris in the past on the open area south east of the buildings but again no mention by users of the route being obstructed such that use was sufficiently interrupted.

Until 1988 this open area crossed by B-C was owned by the Riley brothers and it is suggested that there is no reference to any sufficient lack of intention to dedicate being demonstrated at that time. The Riley brothers now say that they did not intend there being a right of way but seemingly took no action at the time of their ownership. From 1988 to 2003 the open area was in the ownership of the Ainsworths and again it may be considered that there is no reference to any sufficient lack of intention to dedicate on their part.

There are a few users who refer to the line of their route changing slightly and it is suggested that they may have used the old track nearer the buildings and then changed to walk the new access road. The overwhelming majority of users however, when asked if their route had always been on the claimed line stated that it had.

There is a known public footpath very near to this claimed line. The line of the recorded right of way is in the watercourse and although the Definitive Statement for this section of FP4 would seem to refer to a route on dry land, it is advised that a Statement needs a line to apply to and in this matter the line is in the watercourse as advised by the Environment Director. The issue of whether there is evidence of a public right of way on the southern side of the watercourse is not before the Committee as part of this matter. This would need to be the subject of a further application. The Committee may however be concerned to decide whether this route, if considered to subsist as a footpath, may be the correct route and the line in the water being in error. It is advised however that the evidence of existence of this claimed route as a public footpath in the 1950s and therefore being that which should have been recorded as the correct route is slight. There is, it is suggested insufficient evidence for the existence of this route to be cogent evidence of an error and that instead it may be that the dedication of this claimed route as separate public route lies more with user since the 1950s

It is suggested that public use of the claimed line has been tolerated by owners until very recently. Use seems to have increased due to the non availability of a route on the other side of the watercourse, to more people living in the area and more use by those fishing in the lodges and this use is now challenged. However lack of action by owners in the past may mean that the route may on balance be deemed or inferred

as already dedicated as a public footpath. Taking all the evidence into account Committee may be minded to consider that the claim be accepted.

Alternative options to be considered - N/A

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

Paper	Date	Contact/Directorate/Ext
All documents on Claim File Ref: 5.24575 (804/421)		J Blackledge, County Secretary & Solicitor's Group, Ext: 33427

Reason for inclusion in Part II, if appropriate

N/A