

Regulatory Committee

Meeting to be held on 9th September 2015

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| Electoral Division affected: Rossendale West |
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Decision On Appeal Wildlife and Countryside Act 1981 Definitive Map Modification Order Applications

- 1. Application to add a Public Footpath from Laund Lane (Haslingden BOAT 134) to Haslingden Footpath 109, Rossendale Borough**
File No. 804-551
- 2. Application to add a Public Footpath in a circuitous route, starting and ending at a point on Laund Lane (Haslingden BOAT 134), Rossendale Borough**
File No. 804-552
(Appendix 'A' refers)

Contact for further information:

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Executive Summary

A decision on an Appeal made under Section 53 and Schedule 14 of The Wildlife and Countryside Act 1981 against the refusal to make a Definitive Map Modification Order has been received from the Secretary of State for Environment, Food and Rural Affairs.

Recommendation

1. That the Report be noted.
2. That, in the light of the Secretary of State for Environment, Food and Rural Affairs decision to uphold the Appeal lodged in respect of Claim Nos. 804-551 & 804-552, 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 by adding a public footpath
 - a) from Laund Lane (Haslingden BOAT 134) to Haslingden Footpath 109, Rossendale Borough as shown between points A-H-B-C-G on the attached plan
 - b) in a circuitous route, starting and ending at a point on Laund Lane (Haslingden BOAT 134), Rossendale Borough as shown between points C-D-E-F-H-A on the attached plan
3. That should no objections be received the Order be confirmed, but if objections are received the County Council as Order Making Authority submit the Order to the Secretary of State for formal determination, but the County

Council shall notify the Secretary of State that it does not actively support the Order and to adopt a "neutral stance" as regards confirmation of the Order.

Background and Advice

At their meeting on the 17th December 2014, the Regulatory Committee considered a report for Claim Nos. 804-551 & 804-552 (copy attached as Appendix A) for the addition of two Public Footpaths:

1. From Laund Lane (Haslingden BOAT 134) to Haslingden Footpath 109, Rossendale Borough as shown between points A-H-B-C-G on the attached committee plan.
2. In a circuitous route, starting and ending at a point on Laund Lane (Haslingden BOAT 134), Rossendale Borough as shown between points C-D-E-F-H-A on the attached committee plan.

The Committee resolved that the claims were not accepted. Both applicants appealed against this refusal to the Secretary of State for Environment, Food and Rural Affairs, after receiving both appeals it was decided between the Secretary of State and the Order Making Authority that both the appeals would be dealt with together and by the same Inspector. The Secretary of State for Environment, Food and Rural Affairs has allowed the appeals and directed Lancashire County Council to make an Order.

The Inspector has considered the documentary evidence and noted that the map evidence is of little assistance, but the aerial photographs provide some evidence of worn lines in the ground on the general alignment of the Appeal routes. The Inspector states that although the aerial photographs cannot demonstrate how those worn lines came into existence, they suggest that it may have been possible to walk from Laund Lane to Public Footpath 109 Haslingden (claim no 804-551) since the 1940s and this it may have been possible to walk from Public Footpath 109 Haslingden to Laund Lane via the circuitous route (claim no 804-552) since the 1960s.

The Inspector has considered the summary of user evidence prepared by the Council set out in Committee Report (Appendix A). The Inspector notes that use of the 804-551 route commenced in the 1950s and it was used for recreational purposes as part of a longer walk in the immediate area or as a means of access to Cribden Hill and the frequency of use varied between 2 or 3 times per year to 4 times per week.

Use of the 804-552 route commenced in the late 1940s and has continued until the route was blocked by fencing in 2013 and was used for recreational walking, exercising dogs and to watch model aeroplanes being flown from the field and the frequency of use for this route varied from 5 times per year to 4 times per week.

It is noted by the Inspector that access to Laund Hey at Point A shown on the Committee plan was prevented in 2013 when the new fencing was erected by Rossendale Borough Council's grazing tenant but there is no evidence to the land being restricted before this date. The Inspector notes that the Council are aware of a 20 year period in which users used the claimed routes but that the Council

considered that use is likely to have been interrupted by the activities of the model aircraft flying club. The Inspector also notes that Rossendale Borough Council has had a number of tenancies and licenses on the land since 1972 and note their view that the licenses and tenancy agreements demonstrate that use of the land for recreational purposes was with the permission of the landowner and that use of the Appeal routes could not have been 'as of right'.

The appellants however submit that there is no fundamental incompatibility between use of the land for the flying of model aircraft and use of the linear routes over the same land for recreational walking, the appellants mentions that there is no 'interruption' of use and that pedestrians would wait until the model aeroplanes has taken off or landed and that even though the land has been subject to tenancies and agreements, neither have attempted to prevent pedestrian access.

The Inspector agrees with the appellants that the terms on which the landowners has granted licenses to third parties for the use of its land are unlikely to have been brought to the attention of those pedestrians who habitually used the claimed routes during the 20 year period until 2013. The Inspector mentions that an agreement between the landlord and the tenant is essentially a private matter and there would be no reason the for general public to be made aware of the provisions under which the license was granted and if the landowner's intention in granting the licenses was not to dedicate a public right of way, it is unlikely that the public would have been aware of that intention.

The Council's view that the flying of model aeroplanes is a dangerous activity and the use of the land by pedestrians was incompatible with the activities and that there is only evidence of 1 complaint provided by Rossendale Borough Council regarding a near miss when a model aeroplane crash landed is felt by the Inspector to have any evidential basis and the dual use of the land does not appear to be incompatible.

The Inspector mentions that the Council's view that the claimed routes would have been interrupted by the activities of the flying club appears to be little more than an assertion and is in direct contrast to and conflict with the evidence of those who have claim to have walked the routes for a period of 20 years until 2013. The Inspector refers to Section 31 of the 1980 Act regarding interruption of use and states that for any action to qualify there must be some interference with the right of passage and whether any action can be regarded as an interruption is also dependent upon the circumstances of that action as temporary obstructions of a minor natures such as the parking of vehicles or the storage of building materials have not been relevant interruptions.

It is noted by the Inspector that the terms of the licenses granted flying at particular times and days and that it is likely that outside of the authorised hours, members of the public would have been able to pass and re-pass unhindered along the claimed routes. If the use of the claimed routes has been restricted by the model aeroplanes then such restrictions would have been temporary for the duration of the authorised flying hours. The Inspector states that there is no evidence to them that the flying of model aircraft during the authorised hours prevented use of the claimed routes by the public and they do not consider that public use of the claimed routes was effectively interrupted by the flying of model aircrafts.

The Inspector has considered the evidence submitted with both applications and evidence submitted by the Council, Rossendale Borough Council and the appellants about interrupted use and has concluded that the appeals should be allowed and that the County Council are now directed to make an Order.

Consultations - N/A

Alternative options to be considered - N/A

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

| Paper | Date | Contact/Tel |
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| All documents on Claim File Ref: 804-551 & 804-552 | Various | Megan Brindle 01772 535604 |

Reason for inclusion in Part II, if appropriate

N/A