

## **Regulatory Committee**

Meeting to be held on the 15<sup>th</sup> September, 2004

### **Part I - Item No. 5**

Electoral Division affected:  
Great Harwood and Ribble  
Valley North East

#### **Wildlife and Countryside Act 1981**

**Claimed Public Footpath from the Southern end of the Martholme Viaduct,  
Great Harwood, Hyndburn Borough, to Public Footpath No. 11, Read, Ribble  
Valley Borough**

**Claim No. 804/392**

(Annex 'A' refers)

Contact for further information:

S P Southworth, 01772 533430, Legal Services Group

Mrs A Taylor, 01772 534608, Environment Directorate

#### **Executive Summary**

The claim for a public footpath from the southern end of the Martholme Viaduct, Great Harwood, Hyndburn Borough, to Public Footpath No. 11, Read, Ribble Valley Borough, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/392.

#### **Recommendation**

That the Claim for a public footpath from the southern end of the Martholme Viaduct, Great Harwood, Hyndburn Borough, to Public Footpath No. 11, Read, Ribble Valley Borough, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/392, be not accepted.

#### **Background**

A claim has been received for a footpath extending from a point at the southern end of the Martholme Viaduct, Great Harwood, Hyndburn Borough, at its junction with land owned by the County Council on which there is a concessionary bridleway along a former railway line, following the dismantled railway line to a point on Public Footpath No. 11, Read, Ribble Valley Borough, a distance of approximately 900 metres, and shown between points A - C on the attached plan, (GR 7512 3381 to 7589 3413), to be added to the Definitive Map and Statement of Public Rights of Way.

## **Consultations**

### **Hyndburn Borough Council**

The Borough Council has no objections to the application and has no relevant evidence in support of, or contrary to, the application.

### **Ribble Valley Borough Council**

The Borough Council's Countryside Officer comments that the proposals would have the effect of bringing the rights of way network closer to the urban conurbation of Great Harwood and, therefore, the Borough Council has no objections to the proposal.

### **Read Parish Council**

The Parish Council comment that, although there was no official footpath across the viaduct, it had been used by the public for walking access to Great Harwood from Read since the railway was closed in the 1960's.

(The Parish Council has also submitted thirteen 'evidence of use' forms which were presented to them at a meeting in June, 2002, the details of which are contained in the Head of Legal Services Observations.)

### **Claimant/Landowners/Supporters/Objectors/Others**

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

## **Advice**

### **Environment Director's Observations**

#### **Description of Claimed route**

The claimed route is from point A which is on the boundary of land to the south owned by Lancashire County Council. The land is used as recreational public space and includes a concessionary footpath/bridleway, which was established as part of the reclamation of the Martholme railway and colliery, and links Martholme Lane and Mill Lane. Land to the north of point A is the viaduct itself owned by Railway Paths Ltd.

This claim has been considered as linking with the recreational space from which, if the claim were accepted, access could be provided onto and from the route.

However, at the present time, and for a number of years, access to point A has been difficult if not impossible because 20metres to the south of point A across the width of the viaduct and the parapet walls is a security fence, approximately 2 metres high. There is no other way to access point A or leave the claimed route at point A other

than to cross this fenceline. The end of the parapet wall up to the security fence has been coated with anti vandal paint, although it would appear that people have been climbing over the fencing at this point (several footprints are clearly visible in the paint).

At the time of inspection a retired man was using the concessionary path on the Council's land, with his dog, and he made comments that, whilst he was unable to use the route towards Burnley since the security fence was erected, he stated that there were still people who did use the claimed route despite the difficulty in gaining access to it.

From Point A the claimed route crosses the viaduct where there are no discernable features visible, other than the embankment boundary with Martholme Lane below the viaduct structure.

There are paths visible through the grass, which is growing on the former railway. Over the viaduct there is a "main" pathway visible roughly along the centre of the bridge as well as several meandering paths to the sides of this. The width available is approximately 8 metres between the parapet walls.

At the far end of the structure, at point B, ownership changes and there is a barricade of trees and bushes which have been placed across the end of the structure - these appear to have been placed in an area of land which has been excavated to form a trench to a depth of approximately 1 metre. It is possible to climb over the trees and it appears that there are three points where people may have crossed this feature (two on the westerly side and one on the east). A photograph of the end of the parapet wall shows where the growth of brambles etc. leaves an access to one of these crossing points.

The end of the stone parapet wall on the westerly side shows signs of damage underneath the coping stones - this would appear to be caused by the machinery which excavated the trench or positioned the felled trees. The rest of the structure would seem to be in a very good condition, with the walls in good order and only a small amount of shrub growth from the surface and no plants in the stonework.

Beyond the cut trees and the trench the former track bed is clear and open with trees grown up from both sides of a track and stretching off into the distance. This is approximately 5 metres wide. On the easterly side of the route facing users on the route there is a notice fixed to a metal post stating 'Private Property. This land is private property. All persons are warned not to trespass on it'. It is placed at the top of the embankment slope, to the side of where the tracks would have been laid. It appears that this area has been disturbed quite recently and that the trees etc from a length of approximately 10 metres have been removed, presumably the source of those in the barrier. There also is a metal pipe which has been excavated and seems to have been turned to the south and ending over the sloping bank.

The claimed route continues to follow the disused railway line with trees to both sides and a clear, wide path. The surface is firm and even with little surface growth with a pair of faint tracks visible. There was one area where a muddy depression

existed and it was possible to see footprints as well as animal tracks to the side of the puddle in the centre of the track.

There is no height restriction along this section and there is only one tree which has fallen across the route, but with adequate room to pass beneath it.

After a distance of approximately 300 metres the wooded sides disappear and there is a wide, open grassed area with a track approximately 4 metres wide in the centre, with wide areas to both sides with bramble and nettle growth.

After approximately 80 metres an area of land between the former track bed and the field boundary wall on the southerly side has been excavated. A metal pipe had been exposed in the ground and appears to be the same pipe that was exposed at the viaduct and turned out over the slope at point B. On this excavated area are tipped pieces of concrete etc. on the southern side of a very well used vehicular track. There is a metal field gate in the stone wall on the south side, and approximately 70 metres further along on the northerly side there is another metal field gate into a cattle holding pen within the former railway line.

From this point there is a very well used track running towards a caravan park. After approximately 30 metres there are trees growing up both sides of the well-used track. A flight of steps leads down the slope of the bank on the southern side with a handrail made from scaffolding. It leads from the claimed route to a gap in the stone wall which has a green painted metal panel placed across the opening. This has a gateway included in it. There are spikes to the side of the panel and barbed wire to the top and to both sides. To the easterly side of this panel there is an old metal field gate placed across the level area to the side of the stone wall. This is a well-used private access from the caravan site, which is in the same ownership as this part of the former railway land.

The claimed route continues to follow the well-used access track. After approximately 180 metres there is a large, locked, green metal gate across the route with a similar length of fence running from this to the north to the boundary of the former railway land and the woodland. This is also topped with barbed wire. To the south of the gate are two metal mesh security fence panels. The southern most of these was leaning against one of the trees. Fastened to the extended post on the southern side is a notice on the route facing users of the route with the same format and wording to that referred to above at point B.

At a point approximately 1 metre to the west of the above gate, there are two metal stanchions set in the ground, the one on the north side having a bracket fixed to it. The one on the south side has a loop fastened to it, through which a metal tube is linked by a loop onto the post. It appears that this would have been a barrier, closing across the track onto the bracket on the other post. This appears to have been an access control, prior to the erection of the gate. Whilst the metal gate and the attached fences does form a barrier to the claimed route it is possible to pass the end of the mesh panel where it ends short of the stone wall which is the caravan site boundary. This involves passing around or through a multi trunk tree at the bottom of the slope down from the former track bed. Beyond the tree and the mesh panel there is a visible area of trodden growth up the slope between the fence panels, and the

former metal tube barrier, referred to above. This is approximately 1 metre wide and shows signs of use. Whilst the use of the claimed route is obviously discouraged, there was evidence that this point had been used to gain access onto the claimed route, with a worn path clearly visible.

The claimed route passes beyond the gateway and over a wide, open area used extensively by vehicles for parking, turning and for material storage. This extends to join Public Footpath No. 11, Read, over a macadam surfaced occupation road leading to the Caravan Park and farm beyond at point C.

In summary, the concessionary path on the Council's land to the south of this claimed path is very well used all the way up to the security fence. This use is either as a circular walk, down the steps and back along Martholme Lane, or as a cul-de-sac path and returning along the disused railway line. Despite the security fence, there is evidence that people do gain access onto the railway viaduct. This was confirmed to the Rights of Way Officer at the time of inspection by a local resident. The surface of the viaduct is clear, although grassed over, and there are paths clearly visible through the grass.

At the far end of the viaduct there is a barrier of tree and shrubs placed, and whilst this appears to be difficult to cross, it is quite easy to cross, and far less dangerous to anyone who has already crossed the security fence. There is then a warning notice in place, which can only be read by someone who has already crossed the viaduct.

The whole of the next 700 metres approximately is over the disused railway line and is over a clear, grassed track approximately 4 metres wide. This has trees to both sides for the majority of its length, all of which give a clear headroom sufficient to allow for considerable vehicular use which has taken place over approximately 300 metres.

Before reaching the access road that carries Public Footpath No. 11, Read, there is a large metal gate and barrier placed over the claimed route approximately 1 metre beyond a metal tube, open between stanchions, which would appear to have been an earlier obstruction that has been made more effective by the gate etc. It is possible to gain access to the public footpath by passing to the southern side of the barrier and back onto the former railway line. This obstruction is easier to pass than either of the two previous ones, and again it is possible to see that this access has been well enough used to make a route visible on the surface. Facing to the east is a second warning notice.

In conclusion, despite the considerable barriers, there appears to be a significant use of the claimed route.

### **Documentary evidence**

A variety of maps, plans and historic documents were examined to try to determine when the claimed route came into being and to obtain any information that would help determine its status.

The claimed route is based entirely on a disused railway track and viaduct. The line was built in the second half of the nineteenth century as the Lancashire and Yorkshire Railway, Great Harwood loop, the line from Great Harwood to Padiham being completed in 1877. The last passenger train ran in 1957, with goods traffic ending in around 1964.

There is no map or documentary evidence to support or counter the claim. Ordnance Survey maps confirm both the construction dates of the railway, and when the line was dismantled. There is no modern map evidence to corroborate when various types of barrier across the route was erected, but none of them are shown on maps published in 1988 and 2000, although admittedly these are small-scale maps. The fence line erected by the County Council in 1992/3 is not shown on the 2000 map.

### **Head of Legal Services Observations**

#### **Information from the Applicant**

In support of the claim, 10 evidence of use forms (from 15 persons) have been submitted.

The forms indicate use of the route for up to 30 years (7); 25 years (3); 21 years; 15 years; 5 years; and 4 years (2).

The usage has been mainly for pleasure purposes, exercise, dog-walking, going to work, bird-watching, and as part of a circular route. The usage ranges from twice daily, daily, 2/3/4/5 times per week, weekly, monthly, and less frequently.

One witness refers to use of the route on a bicycle.

One of the witnesses refers to dozens, even hundreds of people using the route, every week for the past 30 years.

Another of the witnesses refers to use whilst leading walks with groups of Blackburn Ramblers.

Several of the witnesses refer to gates and fences on the route, although it would appear in some references that these were erected in 2001, possibly in response to the outbreak of Foot and Mouth Disease. Witnesses refer to a large steel fence (up to ten feet high) erected by the County Council near the viaduct in late 2001. Witnesses also refer to trees being felled across the route, north of the viaduct, in 2001, causing obstruction to use. One of the witnesses refers to Notices on or near the route,

One of the witnesses refers to an occasion when he was prevented from using the route when trees were being chopped down. The claimant refers to an incident in November, 2001, when he was challenged by the farmer about 100 yards from the eastern end of the route and told that he was trespassing.

The witnesses confirm that they were not working for any owner or occupier of land crossed by the claimed route at the time of using it; they were not visiting the owner or occupier as a relative or friend; they did not seek or obtain permission to use the route; they have not been stopped or turned back whilst using the route (other than detailed above); and they have not come across any locked gate or other obstruction to the route, (again, other than detailed above).

Further evidence in support

In addition to the forms submitted by the claimant, a further 13 evidence of use forms (from 17 persons) have been submitted by the Parish Council.

The forms indicate use of the route for up to 35 years (3); 30 years (4); 25 years (3); 22 years (2); 20 years (2); 13 years (1); and 10 years (2).

The usage has been mainly for pleasure purposes, exercise, jogging, dog-walking, going to visit relatives, and as part of a circular route. The usage ranges from daily, 2/3 times per week, weekly, twice monthly, monthly, and less frequently.

One witness refers to use of the route on a bicycle.

Again, a number of the witnesses refer to gates and fences (wire mesh) along the route, although it would again appear that these were erected in 2001, possibly in response to the outbreak of Foot and Mouth Disease. Witnesses refer to a large steel fence (up to ten feet high) erected by the County Council near the viaduct in late 2001. Witnesses also refer to trees being felled across the route, north of the viaduct, in 2001, causing obstruction to use. One of the witnesses refers to Notices on or near the route, but no further details are given.

One of the witnesses refers to an occasion when he was prevented from using the route when trees were being chopped down.

One of the witnesses refers to there having been a fence and gate at the southern end of the viaduct, but this has been mostly broken down over the years. (A further witness refers to this as having been taken away.) Another witness refers to the erection of a sign reading "Private Property – All persons are warned not to trespass on it" in January, 2002. One witness refers to seeking permission to use the route merely out of politeness.

One witness refers to a notice adjacent to Dunkirk Farm Lane (near point C) stating no public right of way; a ditch being dug next to the viaduct abutment approximately 10 years ago; and having been given permission to use the route, being told it was not a public right of way.

A further witness refers to two signs erected in the late 1990's referring to 'private land – no right of way'; and to a metal bar being bolted across the route on occasions.

The witnesses were not working for any owner or occupier of land crossed by the claimed route at the time of using it; they were not visiting the owner or occupier as a

relative or friend; they did not seek or obtain permission to use the route (other than detailed above); they have not been stopped or turned back whilst using the route (other than detailed above); and they have not come across any locked gate or other obstruction to the route, (again, other than detailed above).

Information from Landowner of the eastern section of the route and other objectors

An objection to the claim has been submitted by the owner of Bridge Hey Wood Caravan Park, Dunkirk Farm, on the grounds that the land has been kept private with the use of signs, barriers and gates, etc, at various points along the claimed route. It is submitted that, after the cessation of railway operations, his late mother bought the land from British Railways to aid farming activities and for the use of owners of caravans on their caravan park (who had access via a gate from the park).

It is further submitted that over two hundred witnesses will back his claim that the land in question has always been closed to the general public.

In that connection, sixteen letters, together with a petition bearing 86 signatures, have been submitted in support of the landowner's objections to the claim.

The signatories to the petition (mainly residents at the caravan park) state that they have always been assured that the land crossed by the claimed route is private land, upon which they have exclusive private access to exercise their dogs, etc. To their knowledge, this land has, for some considerable time, been closed to the public, from the Great Harwood side of the viaduct to the public footpath on the private access road to Dunkirk Farm, by means of signs and barriers which, on occasions, have been broken down.

One of the witnesses who has submitted a letter, with knowledge of the caravan park for over 40 years, submits that, after the closure of the railway line, the stretch of land was bought by Dunkirk Farm for ease of movement of cattle from one pasture to another. At that time, the path became private, and signs to that effect were erected. Subsequently, however, horses, cycles and motor cycles began to be ridden on the land, resulting in the installation of gates. Caravaners are, however, granted permission to use the path to exercise dogs, etc.

Two other witnesses, also with 40 years knowledge of the land, having owned a caravan at the park since 1962, state that barriers and signs stating 'private land – no right of way' have always been placed at both ends of the land. They have, on numerous occasions, witnessed the landowner request trespassers to keep off the land, and have themselves done likewise, (although it is not stated on whose authority they have so done).

Similarly, two witnesses having a tenancy on the site since the late 1960's state that they were only allowed to rent a plot on the caravan site on the understanding that they must not trespass on any other part of the farm property – however, as tenants, they were allowed to walk along the old railway track under strict restrictions.

Dwellers at the park for 22 years have stated that they have always been assured that the land in question was for the use of the people who owned caravans on the



park, as well as for the farmer to gain access to his land and move cattle between fields – not for public use.

Two further witnesses associated with the park for 15 years, and subsequently purchasing a caravan at the park some 9 years ago, state that, during that time, the path in question has always been recognised as part of the caravan park to be used by owners and their visitors for recreation and exercising their pets. During that time it has always had some form of barrier, firstly a fence and padlocked gate, replaced by a pole type barrier, also padlocked, and finally replaced by the present metal fencing and gate. A sign post with the words 'private land – no right of way' has always been in place at the Read end of the track. A sign at the viaduct end was nailed to a tree and similarly read 'private land – no right of way'. It is submitted that, if coming from the south end of the viaduct, one would have to jump down a drop of five feet to continue walking in the Read direction or, alternatively, climb five feet on to the viaduct if walking north to Martholme. It is submitted that the change in ground level was created in 1967 or 1968 when the railway company sold the ballast from under the railway lines and sleepers to outside contractors who removed it.

Other witnesses, residents at the caravan park, have made similar points regarding the granting of permission for caravan owners to use the track; the signs indicating that the land was private property; the presence of fences and gates at either end of the claimed route; and the challenges to users by either the farmer or the residents of the park.

Further submissions have been made on the grounds that the acceptance of the claim, and the confirmation of a subsequent Definitive Map Modification Order, would have an adverse effect upon farming operations, safety, security, peace and tranquillity, nuisance, litter, damage and vandalism at the caravan park, together with the view that there already is an adequate number of other public footpaths in the area.

Further information from officers and files at Lancashire County Council

The County Council owns land immediately to the south of point A. The land was purchased in 1991 although a reclamation scheme of land of the former railway was mooted as early as 1971 when British Railways approached the Council to see whether the Council was interested in acquiring the land. By 1980 discussions involved a large area of land crossed by all the claimed route but in 1981 the owner of the land to the east of the viaduct (the present owner's late mother) is recorded as having informed the Council in writing that she did not wish to sell the land in her ownership as it provides excellent access to her fields on both sides of the railway line and it was recorded that "in general the feeling of the owners seems to be that the proposed public access along the track is not acceptable being, in their view, a further difficulty with which they will have to contend".

Reference is then made "that in view of the objections expressed by the landowners to the proposed footpath link it was not felt reasonable to proceed to acquire land to the east of the viaduct". The scheme was restricted to land south of the viaduct. In a letter to Hyndburn Borough Council, the County Planning Officer, in 1981, explains that he has considered the possibility of a footpath link along the former railway

across Martholme Viaduct but this had not proved feasible “due to objections from landowners and farmers north of the viaduct which will prohibit a formal footpath being created”. However he noted “an informal footpath route already exists and I anticipate this will continue in the future”

Planning application for the scheme was presented to the Development Control Committee in 1989 and reclamation work commenced 1991-3. Further work was done to land near the old railway but lying at a lower level off Martholme Lane and steps were put in to connect these two areas of land.

Recollections of officers on site in 1992/3 is that there was a fence erected near to the Council’s boundary (and point A) between the parapets of the bridge which said fence had a kissing gate in it originally which would have provided access to this claimed route. However this kissing gate was locked in 1993 to prevent access onto the viaduct and beyond. Officers recall that the gate was locked with padlock and chain because of the objections and actions to block the route taken by owners to the east of the viaduct. The route was closed and steps were put in by the County Council down to lower ground from near the southern end of the viaduct. The Council did not intend people to be left with a cul de sac route but created a circular route using the steps. Before the steps the land formed a very steep slope down to the lower ground.

There were clearly concerns about access even for bridleway use and a letter to a local Member of Parliament states that the County Council had no rights of access beyond their boundary and no scope to provide a reasonably long linear ride.

Officers recall that since the reclamation work was completed, the fencing put across the parapets was broken down on occasions but repaired and in September, 2001, it was replaced by the security fencing there today.

In October, 2002, the County Council’s Senior Cycling Officer instigated land ownership investigations with a view to the establishment of a cyclepath along the disused railway line from Great Harwood to Padiham. At the same time support for a possible cyclepath was identified through the REMADE project. (REMADE – Reclamation and Management of Derelict Land in Lancashire – is a countywide partnership project funded by the NWDA.) Sustrans on behalf of Railpaths has subsequently confirmed support for the use of the Martholme viaduct as a cyclepath and indeed Railpaths acquired ownership of the viaduct with the intention of bringing about such use. When the landowner to the east of the viaduct was contacted in 2003 he declined to consider allowing the disused railway line to be used as a cyclepath as he felt that it would exacerbate current problems with vandalism and theft from his caravan park. However, in order to maximise the potential public benefit from reclamation of the former railway line, it remains desirable to secure use for pedestrians and cyclists along the claimed length.

## **Assessment of the Evidence**

The Law – See Annex ‘A’

### In Support of the Claim

Evidence of use over many years and frequent  
Evidence of use without interruption  
Evidence of use without seeing signage  
Trodden path  
Reference to use despite the barriers

### Against accepting the Claim

Actions by the landowners of land at point A (The County Council) - fencing  
Actions by landowners of the eastern part of the route – fencing, barrier, felled trees, signage, representations to the County Council at the time of proposed reclamation scheme

### Conclusion

For this route to be recorded by an Order as a public footpath it must be considered that it could be reasonably alleged that it has been dedicated as such. As advised, (see Annex A) for such an Order to be confirmed it must be considered on balance of probabilities that the route has been actually dedicated to public use and is in existence.

Dedication can be inferred at Common Law or deemed to have happened with the provisions of S31 Highways Act 1980 being satisfied.

Looking for dedication at Common Law it is necessary to look at all the circumstances from which a dedication could be inferred. In this matter it is suggested that the circumstances would have to be a period of use but the actions of landowners must also be considered to see whether they acquiesced in the use and gave the route over to public use or whether they demonstrated by taking overt actions that they did not intend the route to be a highway.

The route has only been available for use since the 1960s when the railway was dismantled. The land to the east of the viaduct has been in the ownership of a farming family since that time. Lancashire County Council became owners of land at the western end of the route 13 years ago. However it may be considered that the County Council have taken action intending to deny access to the route. The present fence replaced an earlier one with a locked gate. The actions of previous owner of the western end of the viaduct is not known. It may also be considered that the owners to the east of the viaduct have also taken actions demonstrating that they have not regarded the route as public. There is reference to signs, physical barriers and representations made. It is suggested that to find actual dedication of this route by the owners at Common Law is difficult.

Looking secondly at whether, despite what landowners say now, there can be a dedication deemed, this requires that the use has to have been as of right without interruption and without sufficient evidence of landowners not intending to dedicate

the use of the route. The use has to be for twenty years prior to the route being called into question.

It is, therefore, necessary to consider whether there is such a period of twenty years. It is suggested that the route would be called into question by the County Council steel fence in 2001, it is also suggested, working back, that failing to remove the felled tree barrier after the "Foot and Mouth" problems of 2001 would call the route into question and even before that, the fencing off of the route just near point A by the County Council locking the kissing gate would call the route into question in 1993. It may be that the locking of the pole across the route near point C referred to by one of the users could call the route into question but it is advised that the event would have to be sufficient at least to make it likely that some of the users were made aware that their use of the route as highway was challenged. The challenges to use made by the owners could also call the route into question so long as they had the similar effect.

Some users refer to seeing signage in the late 1990s which perhaps would have challenged their use of the route, signage which the landowners say was there throughout their ownership since the track was removed and they purchased the land. If it is considered that such signage was there it may be that its appearance on the route could be an effective calling into question although it must be noted that many users specifically say that they saw no notices or only saw them in recent years and, therefore, even if the notices were there it may be that they failed to challenge use sufficiently to call the route into question for the purposes of S31 Highways Act 1980.

The Committee will have to decide on balance whether there has been a calling into question of the route if a dedication is to be deemed under the Statutory provisions but also even if there is a calling into question and twenty years use prior to it, there still has to be no sufficient evidence of lack of intention to dedicate before a dedication can be deemed to have happened.

The Highways Act 1980 at S31(3) says that "where an owner has erected, in such a manner as to be visible by persons using the way, a notice inconsistent with the dedication of the way as highway" and has "maintained the notice", the notice is "sufficient evidence to negative the intention to dedicate". It may, therefore, be considered that signage has been on this route sufficiently to demonstrate such a lack of intention to dedicate.

In addition case law is clear that other actions not specifically referred to in S31 can also indicate sufficient lack of intention to dedicate and again the representations by the landowners throughout the long period of time leading up to the reclamation scheme may be just such actions. These actions by the landowners would possibly on balance be sufficient to prevent a dedication from being deemed in this matter irrespective of which actual event was taken as calling the route into question.

In this matter it is very probable that the route was used by the public once the railway was dismantled. Signs were possibly unclear or ignored or did not last very long. Likewise challenge of some use was largely ineffective and the locking of the kissing gate led to the fence being broken down. Even the more recent barriers of

the felled trees and the metal fence have not stopped all use. Sometimes persistent use indicates resentment of an interruption and if such defiance is itself acquiesced in by owners, this may indicate that there has been an earlier effective dedication. In this matter it is suggested that such continued use has not been acquiesced in. Barriers have been repaired, replaced and strengthened.

It is suggested that in the end the signs on the route, if considered on balance to have been there as claimed by owners, would be sufficient at law to prevent the use particularly in the 1970s and 1980s from establishing a highway, (basing the calling into question as the locking of the kissing gate in 1993). Case law states that a single act of interruption by the owner is of much more weight upon the question of intention than many acts of enjoyment.

Considering all the information available, on balance, the Committee may feel that the claim is not able to 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: 804/392		S P Southworth, Legal Services Group, Ext: 33430

Reason for inclusion in Part II, if appropriate

N/A