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FOR THE NORTH WEST

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25 April 2005

Your Ref: LSG4/prow/sps/804/392
Our Ref: PNW/5063/529/44

Dear Sir

**WILDLIFE AND COUNTRYSIDE ACT 1981 : SECTION 53 AND SCHEDULE 14
APPEAL AGAINST LANCASHIRE COUNTY COUNCIL'S REFUSAL TO ALLOW A
MODIFICATION TO THE DEFINITIVE MAP IN RESPECT OF CLAIMED FOOTPATH
FROM MARTHOLM VIADUCT, GREAT HARWOOD, HYNDBURN TO PF NO.11, READ,
RIBBLE VALLEY BOROUGH, CLAIM NO: 804/392**

I enclose a copy of the Secretary of State's decision letter in respect of the above-named appeal.

Yours faithfully

I GARLAND





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FOR THE NORTH WEST

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25 April 2005

Dear Sir

**WILDLIFE AND COUNTRYSIDE ACT 1981; SECTION 53 AND SCHEDULE 14
CLAIMED FOOTPATH FROM MARTHOLME VIADUCT, GREAT HARWOOD, TO PF
NO. 11, READ.**

1. I am directed by the Secretary of State for Environment Food and Rural Affairs to refer to your appeal under section 53 of and paragraph 4(1) of Schedule 14 to the Wildlife and Countryside Act 1981 against the decision of the Lancashire County Council not to make an order to modify the definitive map and statement for the area by adding to it footpath, about 900 metres in length, along part of the route of a dismantled railway line between the southern end of Martholme Viaduct, Great Harwood, and public footpath no. 11, Read. The route of the claimed footpath is shown on the attached plan, running between points A, B and C.

2. All the representations which you and Lancashire County Council and other interested parties have submitted about the appeal have been fully considered.

Appellant's case

3. The application which you made to Lancashire County Council (LCC) was made on the basis that a right of way had been established by uninterrupted use by the public. In support of this you provided ten user witness statements and a letter of support from Read Parish Council who provided a further thirteen witness statements. You point out too that the use of the route is also supported by Ribble Valley Council.

4. In your view the statements provide evidence of uninterrupted use of the path from the 1960s, when the railway became disused and the track was lifted, to late in 2001, when the LCC erected the secure fence at the viaduct. You say that during that period the only other barrier encountered was a traffic barrier at the Read end of the route. The comments made by the landowner conflict with the evidence of users who



provided statements, few of whom report having seen any signs indicating that the land was private.

5. In your view the LCC have given too much weight to the comments made by the landowner and tenants of the caravan site as opposed to the evidence of use of the route.

Objections to the application

6. LCC report that the owner of the land objected to the application on the ground that the land has been kept private since it was acquired following closure of the railway and that signs to this effect, barriers and gates have been in place at various places along the route. That objection was supported in sixteen letters and a petition containing 86 signatures. Those further letters also state that barriers and signs have been in place stating clearly that no public right of way existed over the route.

LCC case

7. LCC say that their reasons for refusing the application are fully set out in the report considered by committee. They say that use of the route has only been available for use since the 1960s, when the railway was closed and the track lifted, and that use appears to have commenced shortly after that. They say that any use of the path might be regarded as having been brought into question in about 1993, when a gate in a fence at the viaduct was locked, thereby preventing access to the viaduct, or in 2001, when a more substantial security fence was put in place. They point out, however, that claimed use of the path during the relevant period is countered by the evidence provided by and in support of the owner of then land. That information suggests that use of the path has been challenged consistently by the landowner, by the erection of signs and barriers, which shows a lack of intention by the landowner to dedicate the route as a public right of way. In the circumstances LCC say they are not persuaded that dedication of the route as a public right of way can be inferred at common law or by meeting Highways Act tests.

8. The report acknowledges that LCC have in the past investigated the possibility of establishing a cycle route along the claimed route and that this remains a desirable aim. It states too that this idea was supported by other parties. However, that does not provide evidence to support the claim the subject of this appeal.

Appraisal

9. All the representations submitted about the appeal have been fully considered.

10. It is noted that in this case no historic or other documentary evidence has been provided and so the claim relies entirely on whether or not a public right of way has been acquired by uninterrupted use.

11. The user evidence forms which you submitted in support of the application do indicate that the route appears to have been used by members of the public for a period

in excess of twenty years; that is from some time in the 1960s and 1993 when use of it appears to have been brought into question by the locking of the gate in the fence at the viaduct. Conversely, however, it is not clear that the claimed use has been uninterrupted. Some of those who provided statements indicate that at least one barrier prevented access at the Read end of the path. In addition, the owner of the land crossed by the route, supported by tenants of the caravan site, has stated that barriers and signs have been in place during most if not all of the relevant period making clear that the land was private and that no public right of way existed over the route. Although you argue that any barriers in place prior to 2001 did not prevent access to the route, it is considered that the existence of those barriers, and of the signs which he argues were in place, indicates strongly an unwillingness on the part of landowners to agree to public access or to dedicate the route as a public right of way.

12. You mention that LCC and the Borough and Parish Councils and others have expressed support for the idea of this route being opened for use, possibly as a cycleway. However, that is a separate issue for LCC or others to consider and is not considered relevant to the determination of your appeal, which is against LCC's refusal to make an order to add the path to the definitive map.

13. For those reasons it is considered that the evidence which you provided in support of your appeal does not, singularly or cumulatively, cause the Secretary of State to believe, on balance of probability, that a public footpath exists or is reasonably alleged to exist over the claimed route. After careful consideration of the representations made the Secretary of State concludes that there is insufficient evidence to support your claim that the definitive map and statement for the area should be modified by adding to it a footpath over the route described above and shown on the attached plans. The Secretary of State does not propose, therefore, to give any direction to Lancashire County Council to make a modification order and hereby dismisses your appeal.

13. A copy of this letter has been sent to Lancashire County Council.

Yours faithfully



M Farquhar

Authorised by the Secretary of State
to sign in that behalf