

LANCASHIRE COUNTY COUNCIL

ADDITION OF A FOOTPATH FROM FOOTPATH RAMSBOTTOM 45 NEAR TO STRONGSTRY BRIDGE ALONG DISMANTLED RAILWAY LINE TO STUBBINS VALE ROAD, ROSSENDALE (DEFINITIVE MAP MODIFICATION) ORDER 2021

Lancashire County Council's (the Order Making Authority – 'OMA') Comments on Objections

One duly made objection to the Order has been received by the OMA.

A copy of the objection is contained within the List of Documents (Document 4) and is summarised below.

Planning and Law Ltd instructed by Melba Products Limited (owners of the land crossed by the Order route).

The objection to the Order is on the ground that usage of the Order route has been by force due to the damage of metal fences formerly preventing access to the length of the footpath claimed.

It is not known when the fence was erected, but it was not shown on the OS 1:2500 map published in 1983 which had been revised in 1982 (Document 24). If it did exist when Planning Permission was granted in 1994 it does not appear to have prevented access as there is documented discussion about use of the Order route by the public and an agreement to provide steps up and down the embankment as part of a 'diversion'. It is accepted that the fence, which clearly existed in 2008, had a section removed which made it possible for pedestrians to pass through it. None of the users providing evidence appear to have considered this fence to have been erected to prevent them accessing the Order route or appear to consider that by stepping through the gap in the fence they were using a route that they had no right to use. Arguably, only the person who actually created the gap, if it was one of the users of the way, can be discounted from evidence of use because it was not 'nec vi' (without force) and therefore was not 'as of right'. However, the OMA consider other people subsequently stepping through the gap were doing so as of right and the fact that use continued irrespective of the fence suggests a strength of belief that users had a right to use it and were using it without secrecy, without force and without permission.

What appears to be undisputable from the evidence is that the public were getting through the gap in the fence with relative ease and frequency over a lengthy period of time.

Conclusion

The OMA submits that the objection received does not in any way undermine the evidence that the Order route is, on balance, already a public footpath in law, and respectfully requests that the Planning Inspector confirms the Order.