

Regulatory Committee

Meeting to be held on 17th March 2011

Electoral Division affected: Accrington South
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Wildlife and Countryside Act 1981

Claimed Public Footpaths running to the south of Public Footpath No. 135

Accrington, Hyndburn Borough

Claim No. 804/466

(Annex 'A' refers)

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Executive Summary

The claim for a public footpath from Public Footpath No. 135 Accrington, Hyndburn Borough, in a south-south-easterly direction to an enclosed track with no recorded public rights, with 2 branches to the west of this route, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/466.

Recommendation

That the claim for a public footpath running from Public Footpath No. 135 Accrington, Hyndburn Borough, in a south-south-easterly direction to an enclosed track with no recorded public rights, with 2 branches to the west of this route, to be added to the Definitive Map and Statement of Public Rights of Way, in accordance with Claim No. 804/466, be accepted in part namely that the claim for section A-X-Z-E on the plan attached be accepted and claimed sections X-Y-D and Y-C be not accepted

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.135 Accrington, Hyndburn Borough, to an enclosed track , for a distance of approximately 330 metres (GR SD 7696 2819 to GR SD 7704 2793) and shown between points A-X-Z-E on the attached plan.

That a further report be presented at a later date regarding the promotion of the Order to confirmation

Background

A claim has been received for a public footpath extending from a point at SD 7696 2819 on Public Footpath No. 135 Accrington, Hyndburn Borough, running

in a general south-south-easterly direction for a distance of 330 metres to a point at SD 7704 2793 on an enclosed track with no recorded public rights, with a branch running from SD 7697 2815 on the claimed route in a general south-south-easterly and then south-westerly direction for a distance of 250 metres to the field boundary at SD 7704 2793, and a further branch running from SD 7699 2810 in a south-westerly direction for a distance of 75 metres to a point at SD 7694 2804 and shown between points A – E, X – D and Y - C on the attached plan, to the Definitive Map and Statement of Public Rights of Way.

Consultations

Borough Council

Hyndburn Borough Council has been consulted but has not responded. It is assumed it has no comments to make.

Parish Council

There is no parish council for this area.

Information from applicant

The evidence submitted by the claimant/landowners/supporters/objectors and observations on those comments is included in 'Advice – County Secretary & Solicitor's Observations'.

Advice

Environment Director's Observations

Site Inspection

Description of Claimed Route July 2008

This claim is for a number of interconnected routes. These are described individually and the lettering on the plan follows that used by the applicant [A, B, C, D and E] with additional points [X, Y and Z] added to assist in the description of parts of the claimed route.

i) Length A – X – Z - E

This section of the claimed route begins at point A on Sandy Lane, recorded on Lancashire County Council highway records as reference X5408, a privately maintained road, and which also carries Public Footpath No. 135 Accrington. Sandy Lane is a stone surfaced track at point A and the claimed route leads from the south side of this where there was a very low stone wall retaining an earth bank. Beyond the wall a width of approximately 2 metres was worn bare of surface growth and there was a substantial green painted metal barrier behind this with a tree and branches across the area behind the barrier. There was a bare earth pathway around the eastern side of the barrier and then behind it and into the field.

Inside the field, approximately 10 metres from point A there was a metal notice fixed to two metal posts. It was to the westerly side of the bare trodden path that was fading into the grass field. The notice read: -

“ Lancashire County Council Private Property These premises / grounds are private and for the use only of authorised persons connected therewith. Persons trespassing or otherwise causing a nuisance or disturbance, including the playing or practicing of games or sport, and the exercising of animals on these premises are committing an offence and may be liable to prosecution. “

The trodden path was through rough grass, nettles etc past the sign and then became fainter as the grass appeared grazed.

To the west of the field and of this northern section of the claimed route, was a surfaced parking area and a gated compound beyond. There were 3 similar notices fixed in this area, one of these on the double metal gates that lead onto the grass field, one on the security fencing alongside the gates and the third on the security fence at the boundary with the field over which this claimed route passes.

The claimed route continued south-south-east across the open field, to point X on the attached plan, with no obvious trodden path over it. At point X, which is not apparent on the ground, the claimed route forked. The route X – Z - E running generally south-east for 90 metres across open grass field with no evidence of any trodden path then as a meandering bare earth path through a belt of mature trees, roughly following the claimed route for 110 metres. Emerging from the trees at point Z the claimed route turned south-west for 55 metres across the open grass field where there was no visible trodden path corresponding to it. Just before point E the claimed route turns south where the path is trodden bare earth down a grass mound to a broken down wall at point E which forms the boundary of the unrecorded track (also referred to within this report as the private access road). The stone wall at point E had been badly damaged and on the day of inspection there was no apparent sign of a stile, opening or a gate being provided in the wall.

This is the end of this section of the claimed route.

ii) Length X – Y - D.

From point X this section of claimed route continued generally south-south-east for 50 metres across the grass field through point Y with no visible trodden path although there seemed to have been a level area approximately 4 metres wide through the sloping field that may have possibly been an old track at one time, although there was no indication of any surfacing apparent.

The claimed route continued beyond point Y for 135 metres and then turned south-west for a further 55 metres down a slope and passed to the west of a low grassed mound to point D. At this point there was a metal railing and timber post fence running to the stone boundary wall. There was no sign of any form of access being provided at point D, close to the corner of the field.

At approximately 10 metres along the field boundary from where it met the stone wall bounding the enclosed track there was a section of dilapidated timber rail fencing

with barbed wire on it. This was on the claim side of the metal railing fence. There was a notice on a nearby timber post stating "*Warning CCTV cameras in operation*". There was no apparent stile in the timber fencing.

Beyond the fence there was an area of rough grass with no sign of a trodden route over it.

iii) Length Y – C.

This length of claimed route from point Y was over the open field down towards the Accrington and Rossendale College sports field. There was no visible path on the ground along the claimed route which after 75 metres reached point C on the attached plan. At point C there was a section of timber railing fence in a wire and barbed wire fence. This section of fencing has been repaired and strengthened and looked like a jumble of timber and wire. However, it was possible to see that there was a short post on the field side that appeared to have been the support at some time for a cross step at a stile.

This section of the claimed route ends at point C although beyond this point there was a visible pathway leading down the grass slope onto an access road within the College sports ground. This pathway was not bare soil, but a strip of approximately 1 metre wide grass that was trodden down.

(All distances and compass directions given are approximate.)

Additional Information

The stone wall forms the boundary of the "private access road" referred to by the claimant in his evidence – it is an enclosed track approximately 3.5 metre wide with a natural surface and a narrow bare earth trodden strip meandering along it. This track is not recorded as a highway on the County Council's records and has not been the subject of this or any other claim under the Wildlife & Countryside Act 1981 to add it to the Definitive Map of Public Rights of Way.

The claimant's original documents included a point B (see the attached plan). In those documents it was stated that there was a stile in the fence at that point. As point B is not on the claimed route, it did not form part of the site inspection.

Summary of the site inspection

These three sections of claimed footpaths do not form any link in the public rights of way network. The only connection to the rest of the recorded highway network is at point A on Sandy Lane, Public Footpath no. 135 Accrington. Generally there was no visible path on sections of the claimed route where it passed over the open field, but the bare earth was visible through the surface vegetation through the belt of trees from Z for a distance of approximately 110 metres towards point X and for short lengths at A and E.

The inspection showed that the use of the sections of the route and the land through which it passes was not invited and that there had been a number of obstructions

that had been placed, strengthened and repaired, to discourage its use, including notices both at the side of the claimed route, and also on the nearby College security fencing.

The access point at the northern end of the claimed route (point A) seems to have been subject to a number of serious attempts to enclose the field and to prevent public access. The barriers that had been placed there showed that they had been improved and strengthened, although access had been forced around the end of the barrier at the time of inspection.

At point A there was no evidence of a stile or any other form of access. The track that carries Public Footpath no. 135 Accrington (Sandy Lane) is at a lower level than the field to the south and it appeared to be or have been enclosed by a stone wall and earth bank. Although this wall was partly broken down, there did not seem to have been any indication that there had been a stile, gap or steps constructed in it to provide access though and up the banking and into the field. The fencing at A was substantial and would appear to have required a considerable amount of work and materials to place in position. The impression was that this had developed over a period of time and been extended and reinforced, rather than built on a single occasion.

Along the rest of the boundary between the field carrying the claimed route and Sandy Lane there was a grass verge to the side of the stone track. This was separated from the adjoining field by trees and hedging. The low stone wall noted at point A at the start of the claimed route may have been present along the whole boundary but there was no obvious evidence of this visible.

The notice near to point A clearly indicated that there is no intention to dedicate the claimed route or any access over the land. However the notice cannot be easily seen from Public Footpath no. 135. Similar notices are fastened nearby in the surfaced parking area to the west, one of which has been placed to face the field over which the claim passes.

The fencing at point C comprised of a length of railing fence that may have contained a stile at some time (there was a short post on the field side with a nail still protruding from its stop) However, at the time of inspection it was not possible to cross this fencing, which again appeared to have been repaired and strengthened over a period of time. The repair work included wire and barbed wire and the placing of several vertical layers of timber. The fence is the boundary to the Accrington and Rossendale College sports ground over which there is no public right of way recorded.

It was also not possible to cross the fencing at point D, where it appeared that the earlier timber fence had been replaced and enhanced by the metal one. Beyond the fence there was an overgrown grassed area extending from the sports field and the building site to the woodland.

The only form of access at point E was through a gap that had been formed where a section of the substantial stone wall had been broken down. This gap in the wall opened onto a wide and well used track over which there is no public right of way

recorded. [The claimant referred to this track as being in use by the general public for more than 60 years and that the owners are aware of this and accept its use but this track is not part of this claim, nor has there been a separate application for it to be added to the Definitive Map under the Wildlife and Countryside Act 1981, nor has there been any formal dedication of the route for public use by the landowners.] As this section was not part of the claim no further inspection of the track was carried out.

The length from X for a length of approximately 180 metres towards D (part of the claimed route) and then a distance of approximately 60 metres to a wicket gate into the wooded valley (not part of the claimed route), follows what may have once been a track running across the field.

Map and Documentary evidence considered

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

DOCUMENT TITLE	DATE	BRIEF DESCRIPTION OF DOCUMENT & NATURE OF EVIDENCE
Investigating Officer's comments		No maps or plans examined show any part of the claimed route. The only documents consulted which did show trodden paths across the land were some aerial photographs.
Aerial Photographs	1945	Aerial photographs can show the existence of paths and tracks, especially across open areas, and changes to buildings and field boundaries for example. Sometimes it is not possible to enlarge the photos and retain their clarity, and there can also be problems with trees and shadows obscuring relevant features.
Observations		The 1945 aerial photograph shows Sandy Lane (Public Footpath no. 135) at the northern end of the claimed route, and the track which the southern end of the claimed route joins. The land in between seems to be agricultural or park land with trees along the eastern and western margins, but no paths across the land are apparent.
Investigating Officer's comments		If people were crossing the land between Sandy Lane and the track to the south, the use was not sufficient to produce a visible worn line across the grass.
Aerial photograph	1963	Black and white aerial photograph taken in 1963.
Observations		The photograph does not show any trodden or worn paths across the land.
Investigating Officer's comments		If people were crossing the land between Sandy Lane and the track to the south, the use was not sufficient to produce a visible worn line across the grass.
Aerial photograph	1989	Colour aerial photograph taken in 1989.

Observations		The photograph shows the primary school to the west of the claimed route before it was enlarged to its current size. A trodden path across the grass is apparent starting from Public Footpath no. 135 (Sandy Lane) leading in a south-easterly direction. However, this path starts from a point to the west of point A and leads across land which is now the car park of the school. The trodden path continues as a straight line in a south-easterly direction towards the private access track referred to earlier, before curving towards point E, although the exact point of access to the enclosed track is not clear. Part of this straight path probably corresponds to the central part of the length A – E of the claimed route. No other parts of the claimed route are shown.
Investigating Officer's comments		The land is obviously being crossed by people or animals but mostly use does not correspond to the claimed route.
Aerial photograph	2000	Colour aerial photograph taken in 2000.
Observations		The photograph shows that the car park next to the school has been constructed. Most of the straight path referred to in the description of the 1989 photograph can still be seen, seeming to enter or pass by the western end of the woodland around the location of the wicket gate shown on the attached plan. It should be noted however that this gateway is not on the claimed route. It is not clear on the photograph if there are marks on the grass starting from point A, or whether the people (or indeed animals) whose use made the long straight path are accessing the field from the school car park. There is no sign of the claimed route X – Z – E. There is however a path visible from the long straight path leading to the south-west. This starts from a point approximately between X and Y, and leads to point C but does not closely correspond to any of the claimed route.
Investigating Officer's comments		Use of the land continues from point B (not on the claimed route) and point C but any use corresponding to the claimed route is slight.
Aerial photograph	2003	The applicant has submitted an undated aerial photograph which, officers believe, was taken in 2003.
Observations		The photograph is similar to the 2000 photograph described above. The long straight path is shown and it roughly corresponds to the claimed length A – X – Y, and a further 50 metres in a south-easterly direction. The rest of this part of the claimed route to D or E is not shown. X – Z – E is not shown. There are a number of other paths or tracks across the open ground, some of which converge on points D or E. A path is shown from point C to join the long straight path between X and Y (also shown on the 2000 photograph).

Investigating Officer's comments		Use of the land continues with access from points A, C, D and E. The routes that appear to be used only correspond with the claimed routes along some short lengths.
Aerial photograph	2006	Colour aerial photograph taken in 2006.
Observations		The photograph shows some marks or lines across the grass but is less distinct. Heavy shade cast by trees near point A obscures this part of the claimed route. Part of the long straight path first seen in 1989 (not entirely the claimed route) can still be seen, as can something which approximates to Y – C, but it is faint. No other parts of the claimed route can be seen.
Investigating Officer's comments		Some use of the land may be continuing at a reduced level. The routes that appear to be used only correspond with the claimed routes along some short lengths.
Draft Map	1955	The routes on the Draft Map had an accompanying description written for each path. The maps were given a “relevant date” (1 st January 1953) and notice was published that the Draft Map had been prepared. The Draft Map was placed on deposit for a minimum period of 4 months on 1 st January 1955 for the public, including landowners, to inspect them and report any omissions or other mistakes. Hearings were held into some of these objections, and recommendations made to accept or reject them on the evidence presented.
Observations		The claimed route was not shown on the Draft Map of Public Rights of Way for Accrington Municipal Borough. There were no formal objections or other comments about the omission of the claimed route
Provisional Map		Once all of the representations were resolved, the amended Draft Map became the Provisional Map which was published in 1960 and was available for 28 days for inspection. At this stage, only landowners, lessees and tenants could apply for amendments to the map, but the public could not. Objections by this stage had to be made to the Crown Court.
Observations		The claimed route is not shown on the Provisional Map of Public Rights of Way. No formal objections or other comments to the omission of the claimed route were made.
The First Definitive Map and Statement		The Provisional Map, as amended, was published as the First Definitive Map and Statement in 1962. Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. Whilst most of the Definitive Map for Lancashire was reviewed, the area formally in the West Riding of Yorkshire was not.

Observations		The claimed route was not shown on the First Definitive Map and Statement of Public Rights of Way.
Revised Definitive Map of Public Rights of Way (First Review)		Legislation required that the Definitive Map be reviewed, and legal changes such as diversion orders, extinguishment orders and creation orders be incorporated into a Definitive Map First Review. On 25 th April 1975 (except in small areas of the County) the Revised Definitive Map of Public Rights of Way (First Review) was published with a relevant date of 1 st September 1966. No further reviews of the Definitive Map have been carried out. However, since the coming into operation of the Wildlife and Countryside Act 1981, the Definitive Map has been subject to a continuous review process.
Observations		The claimed route was not shown on the Definitive Map and Statement of Public Rights of Way (First Review). A claim has been submitted to add the route to the map as a public footpath and that claim is the subject of this report.
Investigating Officer's comments		From 1953 through to 1975 there is no indication that the claimed route was considered to be public by the Surveying Authority, Municipal District Council and public at large due to the extensive consultation process that lasted until 1975 when the Definitive Map of Public Rights of Way (First Review) was actually published.
Statutory deposit and declaration made under section 31(6) Highways Act 1980		<p>The owner of land may at any time deposit with the County Council a map and statement indicating what (if any) ways over the land he admits to having been dedicated as highways. A statutory declaration may then be made by that landowner or by his successors in title within ten years from the date of the deposit (or within ten years from the date on which any previous declaration was last lodged) affording protection to a landowner against a claim being made for a public right of way on the basis of future use (always provided that there is no other evidence of an intention to dedicate a public right of way).</p> <p>Depositing a map, statement and declaration does not take away any rights which have already been established through past use. However, depositing the documents will immediately fix a point at which any unacknowledged rights are brought into question. The onus will then be on anyone claiming that a right of way exists to demonstrate that it has already been established. Under deemed statutory dedication the 20 year period would thus be counted back from the date of the declaration (or from any earlier act that effectively brought the status of the route into question).</p>
Observations		There are no Highways Act 1980 Section 31(6) deposits lodged with the County Council for the area over which the claimed route runs.

Investigating Officer's comments	There is no indication by a landowner under this provision of non-intention to dedicate a public right of way over the claimed route.
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The claimed route does not cross a biological heritage site or a site of special scientific interest. It is not recorded as access land under the provisions of the Countryside and Rights of Way Act 2000.

Summary

In summary therefore the only map or documentary evidence in support of the claimed route are the 4 aerial photographs taken between 1989 and 2006. These photographs show paths and tracks across the field in several directions. Two of the paths are straight, and are therefore more likely to have been made by people rather than animals. One shows use from a point on Sandy Lane to a point on the enclosed track to the south. People have also crossed from this path to the alleged stile at C. Neither of these routes corresponds with claimed routes A – X – Y – E or Y – C. Of the more easterly X – Z – E there is no sign.

If this application is approved by the Regulatory Committee and an Order subsequently confirmed, the Environment Director recommends that an addition to the Definitive Statement for the former Accrington Municipal Borough should be made as follows:

"Public Footpath XX from SD 7696 2819 on Public Footpath No. 135 Accrington, running in a generally south-south-easterly direction for a distance of approximately 330 metres to a point at SD 7704 2793 on an enclosed track with no recorded public rights. Width: 2 metres. Limitations: gap in wall at SD 7704 2793."

"Public Footpath YY from SD 7697 2815 on Public Footpath No. XX Accrington in a generally south-south-easterly and then south-westerly direction for a distance of approximately 250 metres to a field boundary at SD 7704 2793. Width: 2 metres. No limitations."

"Public Footpath ZZ from SD 7699 2810 on Public Footpath No. YY Accrington in a south-westerly direction for a distance of approximately 75 metres to the field boundary at SD 7694 2804. Width: 2 metres. Limitations: None."

County Secretary & Solicitor's Observations Information from the Applicant

In support of the claim the Applicant has submitted 29 evidence of use forms indicating use of the claimed route on foot back to years before the claim by over 50 years (2); 40-49 years (1); 30-39 years (8); 20-29 years (6); 10-19 years (7); and less than 10 years (4).

Usage has varied from 3 times per year to twice daily, with 14 of the users certifying daily use of the route and a further 4 use of at least 150 times per year. Of these 18 frequent users 14 also certify use of more than 20 years.

The route has been used mainly for recreational purposes such as running, dog-walking, bird watching and as a play area for children. It has been used by local residents to access the local rights of way network and so gain access to neighbouring countryside such as Hameldon Hill and The Coppice, although it may be noted that the lane which the claimed route joins at its southern end does not carry a definitive footpath. The claimed route provides a link between the Broadoak housing estate and property in the Sandy Lane area of Accrington, and some use of the route has been as a short cut to visit friends. One person used the route to attend Peel Park Infant School, which lies to the north-east of the claimed route.

(There is a difficulty with evaluating the user evidence in that no maps were attached and although the claimed route is made up of three sections users generally do not specify which section they are referring to. It is also clear that evidence from 16 users is dated 2004 and evidence of use therefore relates up to 2004. Five forms are dated 2006 and only 10 users give evidence of use up to 2007).

Although there are three sections of claimed route, only three of the users have specified which of these they have used. Two have used the middle route (A-X-D), and two have used 'the upper footpath' 'along the top of the field'(A-X-Z-E). The rest of the forms do not specify which of the claimed sections have been used. Only one form refers to any change of route, this being a gentleman who has known and used the route for 56 years and claims that the route changed slightly when the school was built. At that time he asked permission to use the route from Miss Egan, the Head Teacher at the school, and was encouraged by her to use the path.

None of the users have been employed by the owners of the land over which the route passes, or have been tenants of such land. One user did use the route to attend his place of work at Broadoak Works, and claims to have a photograph of workers from that works in the early 1900s enjoying a break in the field across which the claimed route runs. No copy of this photograph has however been provided.

Practically all the forms refer to four stiles giving access to the route at various points, but none report any locked gates. One gentleman who has known and used the route for 36 years refers to a five-barred gate at the northern end of the field where St Ann's and St Joseph's school is today, and a gateway at the bottom. Two users reports having been turned back by a local farmer, who claimed grazing rights on the field, but no-one reports being stopped by the owner of the land until 2005, when two users report being asked by the school not to use the path as the field was intended as an open air classroom. Two users (couple signing one form), however, claim to have been told by the Head Teacher around 2005-6 that they should continue to use the footpaths, as the problem was not with dog-walkers but with the local farmer who claimed grazing rights. In June 2004 'private' signs were been erected on the school car park but several users of the route claim to have thought that these referred to the car park and not to the rest of the field. Also in 2004 there was reference to the school requiring the land as an outside classroom. Other users giving evidence to 2007 refer to a sign has recently been erected near to the school, but not near any of the stiles or access points.

Undated aerial photographs showing worn paths are submitted with the claim, as are undated photographs of the routes and the stiles at points A, B (erected 2005), C

and E. (Following investigation of County Council records it is believed that one of the aerial photographs was taken around 1945, and another in 2003). A further photograph of the stile at point A has been submitted showing it blocked off by 2007 by a wooden cross-piece.

Information from Others

The owners of the enclosed track where point E exits wrote to confirm ownership and did not consider the claim affected their land.

Owners' objection

Lancashire County Council has owned the field over which the claimed route runs since 1949. The field is adjacent to St Anne's and St Joseph's RC Primary School and has been designated for their use. There has been a dispute with a local farmer who claims grazing rights on the site

Lancashire County Council's Directorate for Children & Young People has submitted their objection to the claim, saying that the school faces a daily battle to try to prevent access to the site. They are regularly obliged to mend walls and fences broken down by members of the public and stiles have been inserted in boundaries without permission from the school or from Lancashire County Council. It is stated that the school take regular steps to prevent access but these are not specified. Consideration was given to an area of the site being developed as a natural habitat area but the proposal did not go forward because of the steps involved in ensuring the site was safe and free of hazards. Pupils using the site must be kept safe while attending the school, and the ability of the school to ensure this would be jeopardised by the acceptance of the claimed footpaths, as would any possible future development of the school buildings or the site.

The objection looks at the criteria in S31 Highways Act and submits that it cannot be satisfied. The objector raises the issue of the user evidence being unclear to be able to be sure that the claimed routes were used sufficiently. It is submitted that the actions taken and challenges by the school and their tenant have amounted to actual and physical interruption of the use by the public. It is also submitted that access would have been by force at particular times and in addition school has given permission on several occasions for the public to use the land and this makes use not "as of right". It is submitted that action taken by the owner in erecting notices on the land is sufficient evidence of a lack of intention to dedicate by the owner such that again the criteria of S31 cannot be satisfied. These points made, it is submitted also do not point to an intention by the landowner to dedicate a public right of way. The owner has not acquiesced in use such that a clear intention to dedicate can be inferred and it is therefore submitted that there is no dedication at common law.

Specific actions referred to by the owner and those giving evidence for the objector, taken from minutes of meetings, statements etc. Examples of these are below.

Prior to 1990 the field was used under a licence for mowing and grazing by a local farmer this continued as an annual arrangement. He had erected barbed wire fences

and challenged trespassers. He refers to erecting 3 stiles at A, Y and C to prevent people damaging the fencing.

The tenancy agreement had referred to his obligation to keep existing walls and fences in good repair

Idea of outdoor classroom initiated 2003 – need to prevent public access

800 trees were planted in the field by the school

Notices placed in the field such that the property was private

June 04 railings had been put up next to the gate to prevent people taking dogs onto the field but the same night someone cut the fence further down to allow public access

Schools approached by public claiming to have right of way on the land

2004 Outside classroom project deferred

2005 estimates for fencing obtained

2005 working group rebuilt wall at E

2007 fencing removed, metal bar across a stile had resulted in a new opening being made further up, private property signs removed,

2008 need to secure boundary to field to prevent ingress of cows

2008 chestnut paling had been removed

Other Objections

Objections have been received from the Head Teacher of St Anne's & St Joseph's RC School, their Chairman of Governors and the Salford Diocese Department of Formation Office for Education. The Salford Diocese Department asserts the duty of the school to ensure child safety while attending the school, which would be impossible if public access were recognised. The Chairman of Governors of the school, also objects to free access being allowed to the public over land which is intended to be used as an outdoor classroom and countryside investigation area. The site is a tremendous asset to the school and the facility planned by the school would be available to all educational establishments in the area. He states that on several occasions the school has rebuilt walls and fences, which have been subsequently destroyed by walkers.

The Head Teacher of the school, writes in more detail concerning their plans for the area and steps taken by the school to prevent access and to repair vandalism. Plans for an outdoor classroom include an outdoor theatre, a quiet, reflective place, a river-study area, a nature reserve, a musical facility and an adventure trail, all safe and securely fenced and free from dog excrement, litter, needles and strangers. The school secured a grant of £11,000 to develop a river-study area on the far side of the site. Soil and water were tested for impurities, a tree survey carried out, and metre-high fencing installed around that area to keep the children away from the stream. Within days the lock was removed from the gate, and the gate itself was ripped out. After repairs to the fence several panels were removed and wrapped around a tree. Work was also undertaken to rebuild the dry stone wall bordering the eastern side of the field, but the new sections of wall were knocked down after each session, and part of a subsequent fence was removed to open a space large enough to allow access. The Headteacher does however remark that the farmer who claimed grazing rights had suggested that he would not allow his cattle to graze the field if the dry stone wall were rebuilt, and in any case none of the access routes claimed come into the site from the eastern side.

The Headteacher states that despite the field being gated and locked, dog-owners have insisted on trespassing onto the site. In response to advice from Lancashire County Council's Legal Services Dept, the school acted to secure the field boundaries. Gaps beside the gate, through which trespassers squeezed, were blocked with vertical metal bars, but that same night wire cutters were used to cut the adjoining fence and give open access. The school has had the fence repaired several times, and a stile installed by the farmer was removed and the hedge layered. Someone then formed another stile by driving into the ground railway sleepers which proved impossible to remove by hand. It was decided to plant a mature prickly hedge behind the stile, but until the time was right for planting a 'Private Property' notice was erected. When a dog-walker claimed to be unsure to which area of land the notices applied, further notices were erected, but one by the stile was removed on the same night it was erected.

Two further letters of objection have been received, one from a member of the public and one from a former Head Teacher of St Anne's & St Joseph's School. He points out that the field is a fantastic space and that there has been considerable input into the development of the outdoor classroom for use of the school and of other schools in the area, with the planting of trees and wild flowers. Both writers consider it imperative that the area be reserved for school use and kept safe and free from dog waste.

One of the claimed routes exits onto land owned by Accrington and Rossendale College. The College has confirmed verbally that it has good relations with both the local residents and the school and wishes to remain neutral in the matter of this claim. There is a well-constructed stile at a point on the southern boundary of the college land, which has probably existed for a number of years (suggested up to 100 years), with a 'cow-path' running towards the school. The stile at point C on the attached plan has been rebuilt by the college several times.

Assessment of the Evidence

The Law - See Annex 'A'

In Support of sections of the Claimed Route

User Evidence.

Aerial photographs

Photographs and evidence of stiles and trodden pathways

The enclosed track being a place of public resort or a footpath with no concerns voiced by the owners

Weak test to be satisfied of "reasonably alleged to subsist"

Against Accepting the Claim

All three sections of route are cul de sacs but only one arguably leads to place of public resort

Limitations of the user evidence

Submission that use not "as of right"

Actions by landowners
No corroborating map evidence

Conclusion

The claim is that this route is made up of sections of already existing public footpath and should be recorded on the Definitive Map.

Considering first of all whether highway rights could exist on the sections of the claimed route it is important to appreciate that all three sections are across a field but are cul de sac routes. It is suggested that all three sections start at a point on the recorded highway network but the other ends of the sections do not reach known highways. This has arisen in previous matters and there is some guidance as to how the Planning Inspectorate consider claims for cul de sac routes where users continue onwards from the termination point and do not just stop and retrace their steps. It is advised that the route would need to reach a point of public resort to be claimable as a through route. In this matter it is suggested that point C and D do not reach a place of public resort. Point E however reaches an enclosed lane said to be used by the public. The owner of said track does not say anything to contradict this. It is suggested that the track is either already a footpath but not recorded, or used with permission and can be regarded as a place of public resort.

Applying the concerns about cul de sac routes where use continues beyond the cul de sac claim, it is suggested that the claim for X-Y-D and X-Y-C should not on balance satisfy the test and should not be accepted as being able to be alleged as footpath sections. If Committee have concerns about this they should decide how the land beyond points C and D can be a place of public resort and apply the usual tests to see if routes have been dedicated either through a deemed dedication under S31 or inferred dedication at common law. Assistance in applying these tests will be given at the meeting.

The following conclusion is therefore in respect of route A-E and It is suggested that the Committee proceed to apply their usual investigation as to whether route A-E can be reasonably alleged to have become a public footpath that is, whether it can be reasonably alleged that it has been dedicated.

Considering firstly whether the criteria of S31 Highways Act can be satisfied on balance it is necessary to decide when the route may have been called into question. The claim itself will be sufficient to call a route into question but even before the claim was made actions were being taken by the owner to block access points. Looking at the actions however it may be that they proved ineffective to be a calling in of the route, not sufficiently bringing the challenge to the knowledge of sufficient users, until the blocking of the access points in 2007 just before the claim was made. It is therefore suggested that use 1987-2007 needs to be considered.

When user evidence is less than clear as respects linked sections of a route again it is advised that the test for the making of an order requires the decision maker to only have to be satisfied on balance that footpath rights can reasonably alleged to exist on a route. It is advised that the Committee consider whether the user evidence on balance provide evidence of use of the relevant section. It can be assumed that

the users knew which routes were being claimed and having not restricted their user evidence it is on balance likely that all claimed routes were used by those who did not specify and that there is therefore a body of user evidence of section A-E.

Considering the elements of Section 31 it is advised that the signage and the physical walls/fences without any ready means of access could mean that use by climbing over and ignoring the signs would be use "by force" and not "as of right". It is advised that the routes being physically blocked by walls and a fence for some or all of the twenty years would make it difficult to find that use has been uninterrupted use over the necessary period.

However, in respect of route A-E it may be felt that signage was not sufficiently clear nor the access and exit points blocked for sufficient time.

It is also advised that the placing of the signs and other actions taken by the County Council is evidence of the Council's lack of intention to dedicate this or any other routes as footpaths across the school playing fields. Again there would have to be sufficient evidence up to 2007.

It is suggested, looking at how "as of right" use can now be considered, and how actions by landowners have to be effective, that the Committee may on balance find that the elements of Section 31 for use 1987-2007 of A-E could on balance be satisfied such as to enable the test for making an Order to be satisfied – that is that the route can reasonably alleged to subsist. Without further investigation into the use of A-E it is suggested that the higher test of confirming the Order could not yet be satisfied and it is therefore recommended that a further report be presented in this matter at a later date.

The Committee is advised to also consider whether there is sufficient use or other such circumstances from which dedication as a public footpath can be inferred at Common Law.

With regards to inference at Common Law it is advised that there is no requirement for a calling into question but there is a need to prove on balance that the owner intended to dedicate. Proving that the County Council actually intended dedicating this public footpath on school land at Common Law is clearly problematic. It is suggested that the Council has clearly not had the intention. It had taken some steps and not acquiesced generally in user and clearly in now objecting to the application it would be difficult to infer that the intention of a landowner had so altered.

Taking all the evidence into account it may be considered that there is on balance a problem in accepting claims for the sections of the claimed route to points D and C. In the matter of section A-E the Committee may feel that there is sufficient evidence to reasonably allege that a dedication could be deemed under S31 despite what the authority now says, and that an Order be made and a consideration of the higher test as to the stance to take on confirming any such order be deferred and the Committee seek a further report at a later date. The Committee may therefore consider that the claim be not accepted in respect of sections X-Y-D nor Y-C but that an Order be made in respect of A-X-Z-E but no decision made yet on whether to promote said order to confirmation.

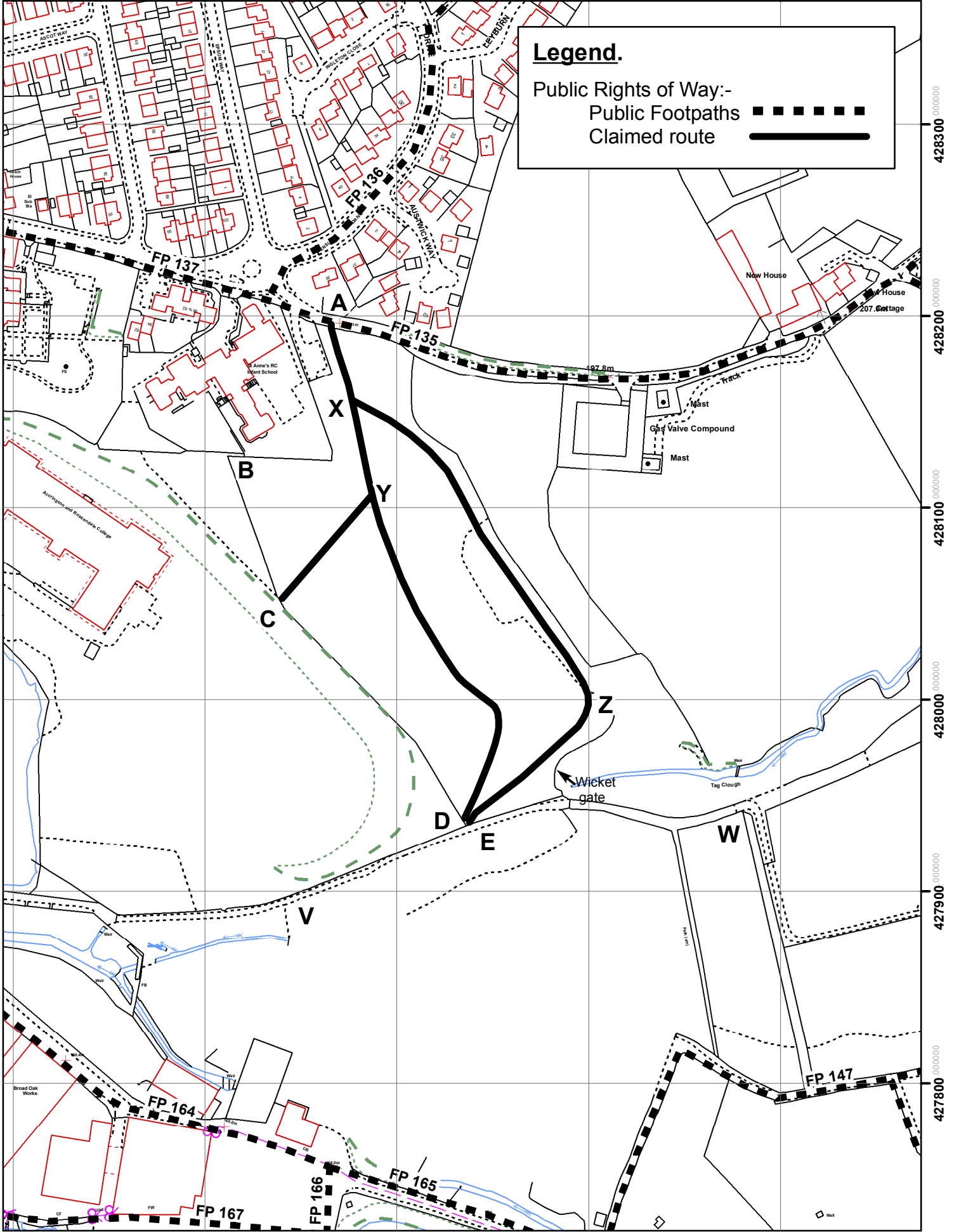
Alternative options to be considered - N/A

Local Government (Access to Information) Act 1985



List of Background Papers

Paper	Date	Contact/Directorate/Tel
All documents on Claim File Ref: 804/506		Saleha Khalid, County Secretary & Solicitors Group 01772 533427

Reason for inclusion in Part II, if appropriate
N/A



Legend.

Public Rights of Way:-
 Public Footpaths 
 Claimed route 

428300 000000
 428200 000000
 428100 000000
 428000 000000
 427900 000000
 427800 000000



G. Harding B.Eng., C Eng.,
 FICE., FIHT, MCMI.
 Environment Director

Wildlife & Countryside Act 1981
 Claimed public footpaths southward
 from Public Footpath No. 135, Accrington, Hyndburn Borough Council.

804/466

Scale 1:2,500



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