

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

ENVIRONMENT AND HIGHWAYS CABINET BOARD

29 October 2015

REPORT OF HEAD OF LEGAL SERVICES – DAVID MICHAEL

SECTION A – MATTER FOR DECISION

WARD AFFECTED: YSTALYFERA AND GODRE'R GRAIG

**ALLEGED PUBLIC FOOTPATH FROM GLAN YR AFON ROAD
TO FOOTPATH NO. 194, COMMUNITY OF YSTALYFERA**

Purpose of report

To consider the evidence submitted alleging public footpath from point F to point E on Plan No.1

Background

An application was submitted in 2000 to register the path that follows the River Tawe, from Glan Yr Afon Road at point F to join Footpath No. 194 at point E as shown on the attached plan.

The claimed path proceeds from the path at point F where it leaves a car park before passing along a tarmacked path and through a kissing gate shown as (KG). The path continues alongside a viewing platform shown VP, before passing through a second metal kissing gate (KG). At point G one short spur path leads upslope for a distance of 75 metres to join Glan Yr Afon Road. The claimed public path however does not include this short section of path, but continues via the top of the embankment before passing down a series of steps at about point C to the same path but as a lower level. The path continues alongside the river before joining Footpath No. 194 and the relatively new footbridge over the River Tawe close to Point E.

This application was originally supported by ten people but as a result of applications to have the two other connecting paths recognised as public ones, (the subject of the two other reports);

eight people have been identified as having used this length of path. A total of eighteen claimants, thirteen of whom at the time they provided their evidence, have each alleged to have walked the path for the minimum period of twenty years. The average length of use being thirty five years for all eighteen people.

The path is under the ownership of four separate bodies, one being the River and Tributaries Angling Association Ltd. Who own the path between points F and G, this Council between points G and C, Green Belt Holdings Ltd. from points C-C1 and some 190 metres south west from D1, and Taylor Wimpey between points C1 and D1.

The obligation to determine the status of a path if alleged to carry public rights is governed by the provisions of the Wildlife and Countryside Act 1981, the relevant extract of which can be found in Appendix 1. The application did not identify all the relevant landowners and so was not compliant with the provisions of the 1981 Act. As such the Council was never bound by the time limit to determine the claim. However given evidence had been submitted, the claim was investigated from 2000. Once officers had identified all the landowners there appeared to be no opposition to the recognition of the path as a public right of way, and so efforts were made to secure dedication agreements with the owners of the path. No objections were received from Green Belt Holdings Ltd.

The Tawe and Tributaries Angling Association did agree to the proposal, but were unable to finalise a dedication agreement as all their trustees who would have been authorised to act on behalf of the club were deceased by the time agreement could have been made. In addition the club indicated they were in the process of changing their constitution and so have indicated they cannot enter into such an agreement.

On 6th March 2003, this Council dedicated the path that passed over the land X-C under its ownership. However there is no formal or legal entitlement to the public to access this section of path given the remaining length of the route between points F and X and also between points C and E is not registered as a public path.

Due to the lack of progress in securing any future dedication agreements, the evidence should be considered on its merits and a decision taken as to whether the public have acquired the right to

use the section of path from the Glan Yr Afon Road, point F to Footpath No. 194, Point E as originally alleged.

The first issue to determine is to calculate the relevant period. The application was made under Schedule 14 of the 1981 Act on the basis there has been a minimum twenty year period of uninterrupted use, which is sufficient to raise the presumption the way has been dedicated to the public as a public right of way. Appendix 2 includes the relevant provisions and tests that need to be satisfied under the Highways Act 1980.

The relevant period is established either by determining when the alleged right to use the way was called into question or the date of the application itself, but whichever is the earlier. According to those interviewed, no one has ever challenged or barred the way throughout the use made of the path. Consequently the date of the application 11th February 2000 would usually define the end of the relevant period. However, as indicated the application did not comply with the provisions of the 1981 Act, and so it cannot count as the calling into question. Consequently the claim cannot be assessed under the usual 20 year rule as contained in the Highways Act 1980. Consideration should be given as to whether there has been dedication under common law the conditions of which are set out in Appendix 3.

The Evidence

Five of the supporters have been interviewed including the current and previous local Member. Four of these five people said they have used the whole length concerned for periods in excess of forty years. They confirmed the path has been available throughout this period. The embankment or bund (X-C) over which part of this path passes has been a long established feature which appears on the 1899 Edition of the Ordnance Survey Plan. The section between C and E although lower than the bund was raised from an even lower level to its present height to protect the residential development as part of the planning condition. However the alignment of the path was unaffected.

The initial site inspection was undertaken in March 2000, where it was noted the path proceeded from point F to X, along a stone based track generally 1-2 metres wide. The site inspection note then records the path passed along the top of an embankment but mostly overgrown by bramble and gorse which at that time made

progress difficult prevented progress between points veg 1 and veg 2. The inspection noted the path was clear either side of these points.

The inspection stated reasonable progress is prevented. Some signs that an occasional walker has persevered through this section". On approaching from the south west, the officer stated "continued north east along the top of the embankment for some 50 metres (that is after having reached the top of the steps at point C) before progress was prevented by gorse and bracken some 2.0-2.5 metres in height interlaced with bramble and nettle".

Comment

Gorse does not die in the winter months and it has been estimated that it would take between 3 and 5 years for gorse to grow to this height. Whilst this does not necessarily mean the path had been inaccessible for 3-5 years it does suggest that the path may have been overgrown due to the additional bramble and nettles from at least one summer.

If the embankment was this overgrown by the end of the winter 1999/2000 it suggests it had been overgrown from at least the end of the summer of 1999. On the one hand the site inspection note said reasonable progress was prevented, suggesting access would have been possible, given the comment that there were signs of an occasional walker having persevered along the path.

Common Law

The route could have been dedicated under common law as explained in more detail in Appendix 3. Whilst a lesser or greater period than twenty years could be taken to reflect such a presumed dedication, use alone would not be sufficient. There would have to be evidence of some positive measures taken by the landowners to facilitate and encourage public use.

In this example consideration could be given either to the period since the path was cleared of the bramble and gorse, which would be sometime after 2000, or before mid to late 1999 based on the site inspection. The alleged use after 2000 comprises eight people, four of whom would each claim eleven years use, three for eight years and one who would claim five years use. Prior to the path being overgrown, assuming this occurred as early as mid 1999, there are fifteen people who average thirty four years use.

The north eastern section of the path F-X is under the ownership of the Tawe and Tributaries Angling Club, who purchased the land in 1981. The path was noted to comprise soil and stone and in good condition in 2000. In approximately 2005 the then, Countryside Council for Wales provided a grant to this Council to tarmac the path, where it passed over the land belonging to the Angling Club. This was done on the basis the club were going to enter into a dedication agreement with this Council to create a public right of way on foot. Consequently it is evident that the club had accepted the public status of the path and were content to improve and encourage that use.

Three benches have been installed in the vicinity of point X. As indicated previously, a series of approximately sixteen steps were installed at point C all on land under this Council's ownership. The Council has already dedicated its land to the public. The remainder of the path was in part set out as a soil/stone based path with convenient links to Footpath No. 194 and the footbridge over the River Tawe.

Whilst it is not known if the path became overgrown during any other previous periods, there is nonetheless evidence of long established use with some indication from two of the four landowners, one being this Council that measures were taken to improve and encourage public access.

Consultation

This item has been subject to external consultation

Appendices

Plan No. 1
Appendix 1
Appendix 2
Appendix 3

Recommendations

That a Modification Order be made under the provisions of the Wildlife and Countryside Act 1981 to show the path F-X -C-D-E as a public footpath and if no objections are received to confirm the same as an unopposed Order.

Reasons for the Proposed Decision

Under common law it could be concluded the path had been accepted by at least two of the present landowners including this Council. Access has also been alleged to have been enjoyed by eight people prior to 1960 and so the path has acquired a reputation as one that could be used by the public over a period in excess of 50 years.

Consequently a Modification should be made to recognise the route between points F-X and between C-E as a public footpath only. The section X-C has already been dedicated as a public footpath but has yet to be added to the Definitive Map as it does not connect to any other public path at either of its points of termini. Consequently as no legal event modification order was made for this section of path to have it included to the Definitive Map the entire length of the claimed route F-X--C-D-E could be included into the one modification order.

List of Background Papers

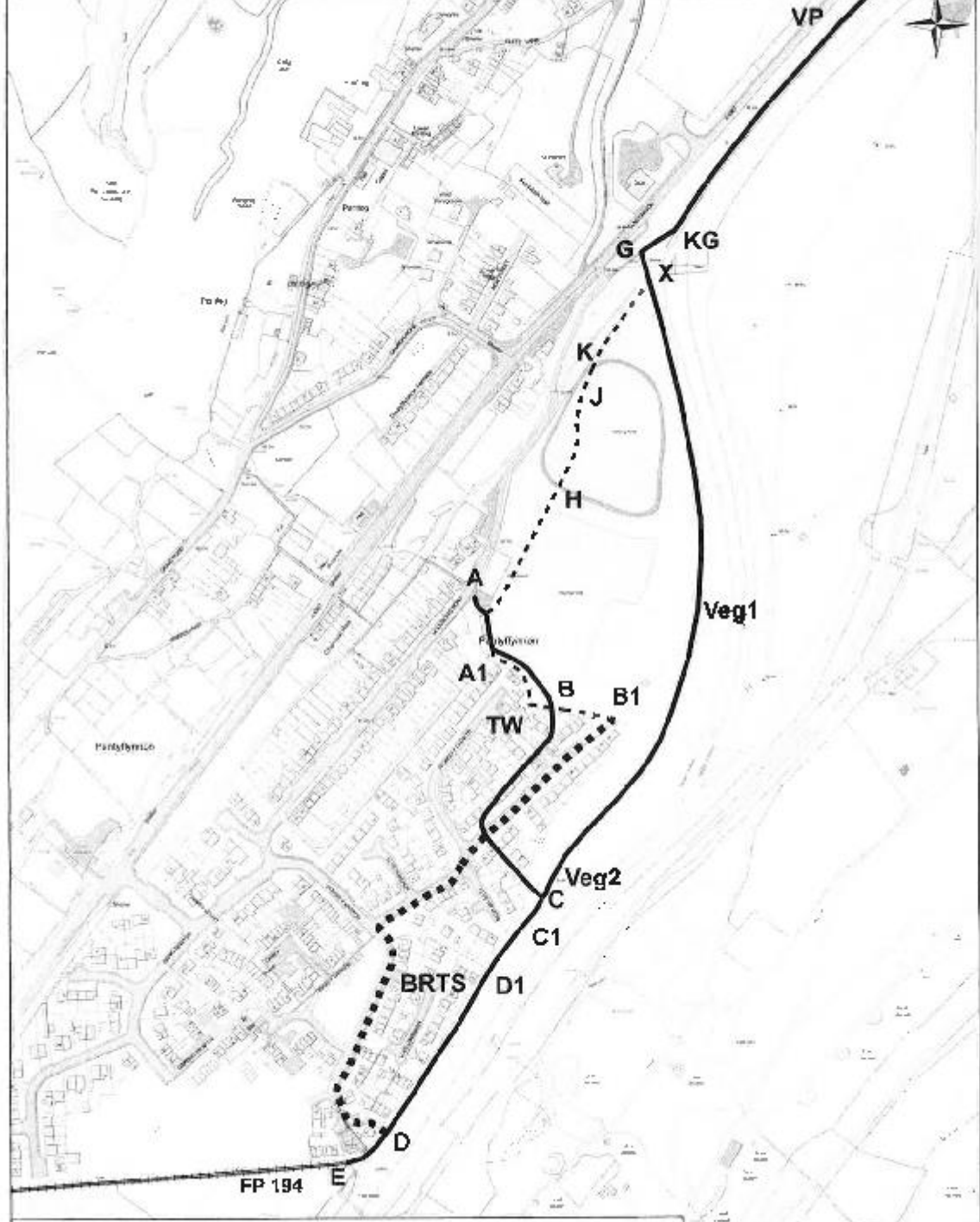
M08/24

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Alleged Public Footpath from Hodgsons Road to Riverside Path A - C
 Alleged Public Footpath from Hodgsons to Footpath 194 Ystalyfera G - E
 Alleged Public Footpath from Hodgsons to Welr A - F

PLAN 1



Claimed Path	—————	Scale 1:3000
Proposed Diversion	- - - - -	Grid Ref: 27615 20758 - 27608 20712
Footpath 194	Ordnance Survey Crown Copyright © 2015. Ordnance Survey Licence 100023292

APPENDIX 1

WILDLIFE AND COUNTRYSIDE ACT, 1981

Section 53 Duty to keep the Definitive Map and Statement under continuous review.

- (2) As regards every Definitive Map and Statement, the Surveying Authority shall:
 - (a) as soon as reasonably practical after commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in Sub-Section 3; and
 - (b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.

- (3) The events referred to in Sub-Section 2 are as follows:
 - (b) the expiration, in relation to any way in the area to which the map relates of any period such that the enjoyment by the public of the way during that period rises a presumption that the way has been dedicated as a public path or restricted byway;
 - (c) the discovery by the Authority of evidence which (when considered with all other relevant evidence available to them) shows:
 - (i) that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to Section 54A a byway open to all traffic;

- (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description;
- (iii) that there is no public right of way over land shown in the map and statement as a highway of any description or any other particulars contained in the map and statement require modification.

APPENDIX 2

HIGHWAYS ACT, 1980

Section 31. Dedication of way as a highway presumed after public use for 20 years.

Where a public way over land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption of a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during this period to dedicate it.

For Section 31(1) Highways Act, 1981 to operate and give rise to a presumption of dedication the following criteria must be satisfied:

- the physical nature of the path must be such as is capable of being a public right of way
- the use must be 'brought into question', i.e. challenged or disputed in some way
- use must have taken place without interruption over the period of twenty years before the date on which the right is brought into question
- use must be *as of right* i.e. without force, without stealth or without permission and in the belief that the route was public
- there must be insufficient evidence that the landowner did not intend to dedicate a right of type being claimed
- use must be by the public at large

APPENDIX 3

DEDICATION UNDER COMMON LAW

No minimum period of use is required, but the claimants must show that it can be inferred by the landowners conduct, that he or she had actually dedicated the route. User of right, is not of itself necessarily sufficient. Under statute, twenty years, if proved to have been uninterrupted will be sufficient to show presumed dedication.

Under common law it is still possible that use was due to the landowners tolerance rather than because that landowner had intended to dedicate. Consequently there needs to be evidence that the landowner (or owners) for whatever period is being considered, acquiesced to that use and took measures to facilitate public use.

Obviously this means the landowners have to be identified and evidence that they wished to have the route dedicated to the public.

No minimum period of use is required, but the claimants must show that it can be inferred by the landowners conduct, that he or she had actually dedicated the route. Use is not of itself necessarily sufficient as opposed to section 31 of the Highways Act 1980 where after twenty years, if proved to have been uninterrupted will be sufficient to show presumed dedication.

Under common law it is still possible that use was due to the landowners tolerance rather than because that landowner had intended to dedicate. Consequently there needs to be evidence that the landowner (or owners) for whatever period is being considered, acquiesced to that use and took measures to facilitate public use.

This means the landowners have to be identified and that there is evidence to show they wished to have the route dedicated to the public.