

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: GODRE'R GRAIG

**ALLEGED PUBLIC PATH FROM HODGSON'S ROAD TO
FOOTPATH NO. 194, COMMUNITY OF YSTALYFERA**

Purpose of the Report

To consider the evidence submitted which alleges a public footpath from points A to C on plan no.1

Background

An application was made in 2003 to register a public path from Hodgson's Road to the River Tawe via A-B-C as shown on the attached plan. Appendix 1 sets out the relevant provisions on which such a claim can be made and Appendix 2 includes the relevant tests under the Highways Act 1980. In order to satisfy these provisions the applicant must be able to demonstrate there has been a minimum period of twenty years uninterrupted use, counting retrospectively from the first occasion the public's alleged right was called into question. This challenge could either be by way of notices prohibiting access, verbal challenges from the owners of the land or by some physical obstruction which blocked the route.

This claim has been supported by fourteen people who completed user evidence forms, ten of whom were interviewed. A further batch of eleven user evidence forms were forwarded in 2007, one of these signatories was interviewed in 2008 and another twelve forms

submitted in 2008, and again one of these contributors was interviewed.

The majority of public paths link one public highway to another unless they terminate at a view point or place of interest. Whilst the application initially specified a point alongside the river (C), the plans submitted with the user evidence forms indicated some people were continuing to walk south west to Footpath No. 194 at point E and others via the raised embankment in the opposite direction from C-G.

There are a total of forty two people, who say they have walked from Hodgson's Road to the River Tawe A-B-C, fourteen of whom say they have continued to walk to Footpath No. 194 C-E.

This matter has not been brought before this Board until now because the area between points B and C was the subject of planning permission.

One of the Developers previous agents had indicated that provision would be made for the public to use a path to enter and exit the development site so that the public would still be able to access the riverside path from Hodgson's Road, even though that route would be different to the one so claimed. The site has been occupied by two different development companies, namely Barratts and Taylor Wimpey Developments (shown TW and BTS respectively).

The approved plans for the Taylor Wimpey site include a footpath link at its north eastern end up to the adjacent field at point B1 which is intended will be adopted as a public footpath.

The original plans for the site now developed by Barratts, identified a footpath link to the Riverside walk and this was included into a Section 38 agreement on the 14th June 2014 for adoption. This will therefore provide a public footpath from Llys Harry to point D.

The application having been outstanding for so long requires determining, as no formal path is in existence through the site and the path originally claimed has been blocked. If a public footpath does exist then it needs to be recognised. The original route has been lost as it has been built upon by houses, and so a formal alternative ought to be sort if this application to register this path is approved.

Landownership

The path which passes over the land between points A and B is under the ownership of the Carreg-Yr-Afon Trustees who have given a verbal undertaking that they are content to designate a public path across their ground provided it runs along the perimeter of their land.

Most of path alongside the river between points C and E, passes over land under the ownership of Greenbelt Ltd with a lesser section under the ownership of Taylor Wimpey Developments Ltd.

Consideration needs to be given to the status of the original path. If it is to be accorded public status then the landowners with the agreement of this Council and the public have the option of diverting the path to an acceptable alternative.

Evidence

The route as claimed was inspected on the 9th September 2005 prior to any of the development taking place, although the site had been enclosed with fencing by this time. Part of the route was overgrown but identified at that time and is shown as A-B-C. This plan shows the original route superimposed on to the development site.

Forty three people claim to have walked from A - B - C for an average of twenty-nine years and fourteen have said they have continued to walk from point C as far as Footpath No. 194 (point E) for an average of thirty-six years. Five were interviewed and said they have been walking along the riverside path between points C - E for an average of fifty-two years.

The reasons given for using the route include either taking their children or grandchildren for walks and four mentioned dog walking. None ever recalled meeting landowners let alone being turned away. There is a general view that from sometime in 2005 a fence was installed, around what is now the development site, preventing access which resulted in the loss of the original path.

No evidence has ever been forwarded to refute the assertion that the route claimed has been accessible for a period of at least forty years.

Of the fourteen people who have claimed to have made use of the route to Footpath No. 194 only four do not live in Hodgson's Road. Of

the forty three who claim to have walked from this road to the river, seventeen live in houses other than Hodgson's Road. Consequently, the issue to consider is whether the path is being used by the public at large if, in the case of the route to Footpath No. 194 seventy two percent of the users live in Hodgson's Road.

The public at large has never been clearly defined, but Appendix 3 provides two examples of case law where a different interpretation was placed on the need to show use from people living further afield or not being confined to one particular area.

In this example, it is evident the majority of those who are likely to use the path for the longer periods quoted will reside in Hodgson's Road, given the Road's close proximity to the path and the fact that some of those properties have been in existence since before 1918. Those who do reside there, live at various houses throughout its length are which reflects the path's greater appeal. Plan no. 2 shows the approximate distribution of the where the claimants reside.

Consultation

This item has been subject to external consultation

Appendices

Plan No. 1

Plan No. 2

Appendix 1

Appendix 2

Appendix 3

Recommendations

That a Modification Order be made to register a public path via the route A-B-C-D-E and if no objections are made to confirm the same as an unopposed order.

Reasons for Proposed Decision

There is no evidence to show why those who claim to have enjoyed walking the route have been challenged until the installation of the fence in 2005. It should therefore be assumed use was uninterrupted throughout the period 1985-2005.

Secondly that the use has been sufficiently widespread to reflect the public at large.

List of Background papers

M08/2

Officer Contact

Mr Iwan Davies – Principal Solicitor – Litigation
Tel No. 01639 763151 Email:i.g.davies@npt.gov.uk

COMPLIANCE STATEMENT

ALLEGED PUBLIC PATH FROM HODGSON'S ROAD TO FOOTPATH NO. 194, COMMUNITY OF YSTALYFERA

(a) Implementation of Decision

The decision is proposed for implementation after the three day call-in.

(b) Sustainability Appraisal

Community Plan Impacts

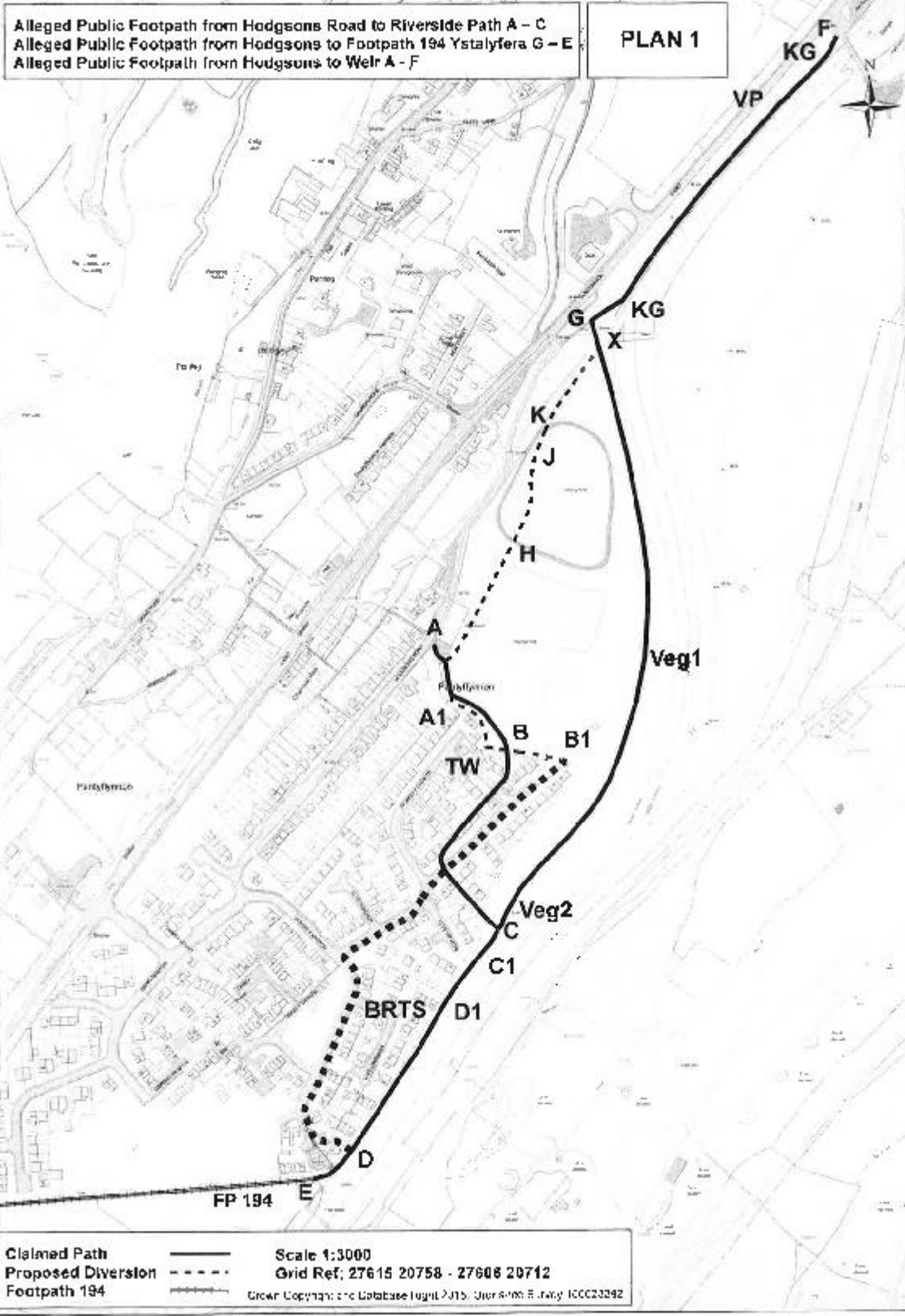
Economic Prosperity	..	No impact
Education & Lifelong Learning	..	No impact
Better Health & Wellbeing	..	No impact
Environment & Transport	..	No impact
Crime & Disorder	..	No impact

Other Impacts

Welsh Language	..	No impact
Sustainable Development	..	No impact
Equalities	..	No impact
Social Inclusion	..	No impact

(c) Consultation

This item has been subject to external consultation



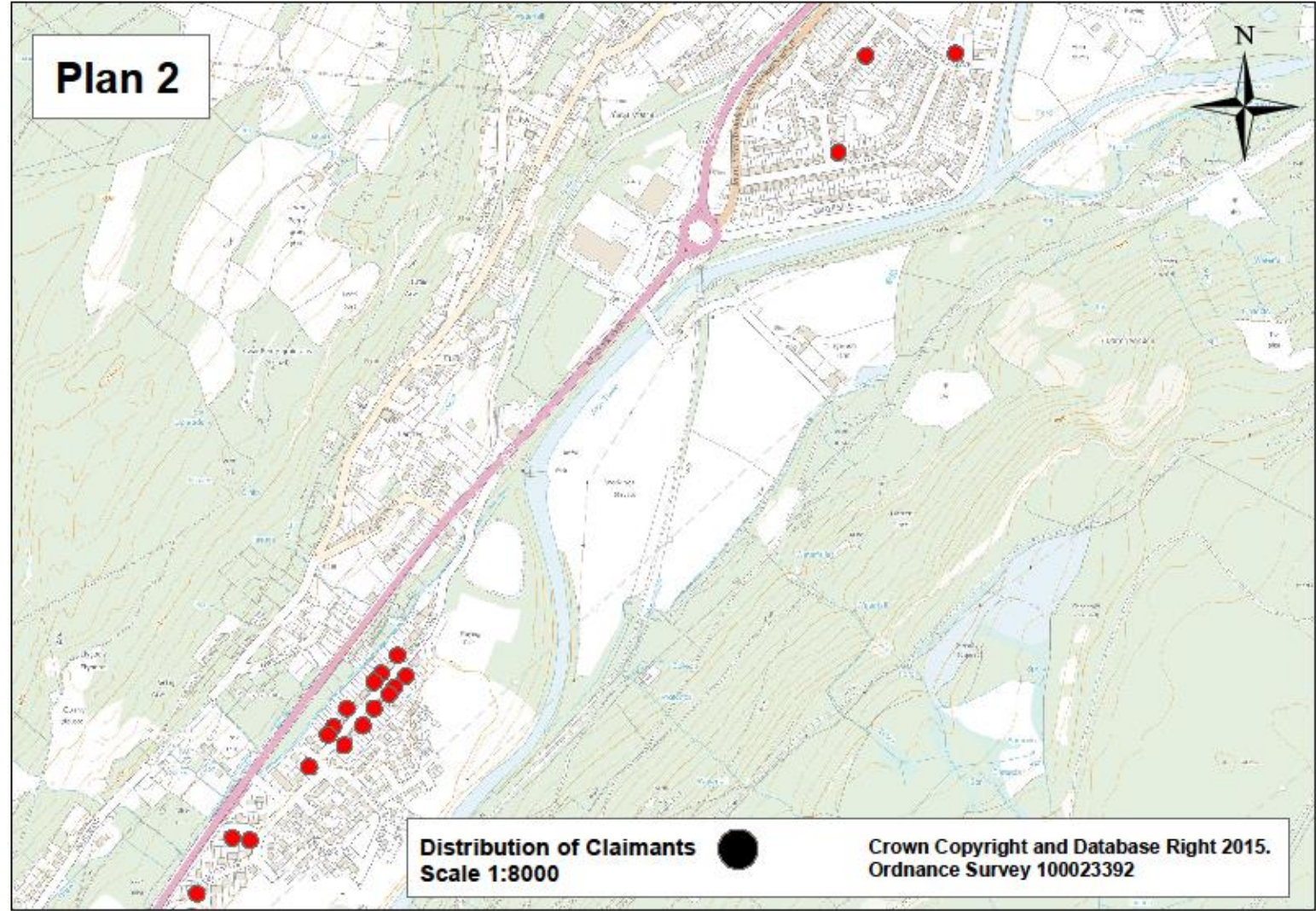
Plan 2



Distribution of Claimants
Scale 1:8000



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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 the 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 raises 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

SPECIAL USER GROUPS

- (a) The Planning Inspectorate has produced advice on this matter in that they say there is no strict legal interpretation of the term 'public'. The dictionary definition being 'the people as a whole' or 'the community in general'. Arguably and sensibly that use should be by a number of people who together may be taken to represent the people as a whole/the community.

- (b) In contrast to this view was the decision made by Lord Parke in Poole -v- Huskinson 1834 who concluded: "there may be dedication to the public for a limited purpose...but there cannot be dedication to a limited part of the public". This case was quoted by an Inspector in 1997 appointed to consider an application to add a public bridleway to the Definitive Map for North Yorkshire County Council. Here the route had also been in use for 40 to 50 years. That Inspector concluded: "In the case before Lord Parke, residents of the same parish were held to constitute a limited part of the public and I therefore believe the inhabitants of the Parish of Cliffs should also be held to constitute a limited part". The Inspector refused to confirm the Order.