

**NEATH PORT TALBOT COUNTY BOROUGH COUNCIL
ENVIRONMENT AND HIGHWAYS CABINET BOARD**

28 January 2016

REPORT OF HEAD OF LEGAL SERVICES – D.MICHAEL

SECTION A – MATTER FOR DECISION

WARDS AFFECTED: RESOLVEN

**ALLEGED PUBLIC FOOTPATH FROM TONCLWYDA TO
FOOTPATH NO. 7 COMMUNITY OF CLYNE AND MELINCOURT**

Purpose of report

To determine the application made to register the path shown A-B-C in Appendix 1 as a public footpath.

Background

An application has been submitted to this Council to recognise a 70 metre length of path as a public right of way. The route commences on Tonclwyda Road and joins Footpath No. 7 to the rear of the property known as Plas Y Bryn (Appendix 1).

Sixteen people supported this claim who allege an average of 39 years use of the path which became blocked in the early part of 2015 by a fence at Point A. This resulted in the application being submitted to this Council.

Under the provisions of the Wildlife and Countryside Act 1981, any member of the public is entitled to request the Council review its legal record of public rights of way, by amending its Definitive Map and Statement. This being the legal record of all know public paths. (Appendix 2 provides the relevant extract of the 1981 Act). If the public can show there has been a minimum period of 20 years uninterrupted use, then there will be a presumption in law, that the owners have dedicated the path as a public right of way. (Appendix 3 includes the relevant extract from the Highways Act 1980)

Description of the path

The route was inspected on the 5th August 2015 from either end showing clear evidence of a worn earth path, although partially overgrown by encroaching vegetation. The path proceeds down slope from Point A before becoming almost level between points B and C. It is at point C the path joins the registered public footpath No. 7.

The Evidence

The primary reason given for the use made of this path is that it provides an alternative means of access to Footpath No 7 for those wishing to walk to and from Ynysarwed on the northern side of the River Neath.

Given the provisions of Section 31 of the Highways Act 1980 (Appendix 3), it is necessary to determine if there is a period of 20 years uninterrupted use. This is calculated by counting retrospectively from the first occasion the alleged right of the public was called into question. This is identified as the point in time when someone closes the path or the action of the landowner makes it clear to the public that he or she does not recognise such a right exists. According to the evidence, 2015 was the first time the path was closed when the fence referred to earlier was placed alongside Tonclwyda and across the entrance to the first at Point A.

No response has been received from those who it is believed own the field and who were allegedly responsible for placing the fence across the path. Consequently 2015 should be taken as the date the alleged public path was called into question.

According to the evidence submitted, all sixteen claimants say they have each walked the path for 20 years ending in 2015.

The figure in the right hand side column gives the number of people who gave the following reasons for walking the path:-

a)	Walking for pleasure	10
b)	To access the Post Office in Clyne from Ynysarwed	3
c)	To go fishing in the canal or river	3

d)	Walking their dogs	2
e)	To access the bus stop in Clyne from Ynysarwed	2
f)	Visit family or friends	1
g)	Access shops in Clyne from Ynysarwed	1
h)	To access Rock and Fountain Public House from Clyne to Ynysarwed	1
i)	To go running	1

Evidently the path provides a means of reaching the bridge which crosses the River Neath via the aqueduct. For example for those living in Ynysarwed they stated there is a better bus service from Clyne and also use the path to visit the Post Office and Shops in Clyne. Conversely for those living in Clyne, it forms part of a network of paths as well as a means of accessing the towpath on the northern side of the River.

Distribution of Claimants

Nine live in either Tonclwyda, Maespwll or Ynys Yr Afon, three in Ynysarwed, two in Lletty Dafydd one at New Road in Clyne and another in Cimla, Neath. As such the general 'spread' of those in support can be considered to represent the public at large, as opposed to a limited number who live in close proximity to the path.

The Construction of the Aqueduct and A465 Dual Carriageway

The primary reasons for the use of the path has been to cross the River Neath. There have been periods of time when the formal means of crossing the river and the construction of the A465 dual carriageway resulted in the access across the River Neath being closed. (Appendix 4 sets out the approximate dates when these works were being undertaken).

The issue is whether the interruption of that use over the River Neath would affect the relevant period for the use of the claimed public path. Even though the primary reason given for using the claimed public path was to cross the river, the path A-B-C itself was not closed and unaffected by the removal of the earlier aqueduct. It is the challenge to the use of the claimed public path that is relevant and there is no evidence to show any effort was made to do so prior to 2015.

Secondly the closure of the river crossing would not affect the use of the claimed public path to access to the canal towpath No. 8, nor prevent those from walking as far as the river or making use of Footpath No. 7. If certain people chose not to use the path due to the closure of the bridge, that does not undermine their claimed uninterrupted use of 1995-2015. It just means some used it less and some chose not to use it at all. In fact two people stated that they used the claimed public path A-B-C to view what progress was being made when the new aqueduct was under construction

Appendices

1-7

Recommendation

A modification order be made under the provisions of the Wildlife and Countryside Act 1981 to add the path A-B-C to the Definitive Map and Statement and if no objections are received to confirm the same as an unopposed order.

Reasons for Proposed Decision

Those who it is assumed own the field have not made any comment on the validity of this application, although opportunities were afforded to them to do so. Therefore, it is unknown whether they would contest the existence of the public path.

There is sufficient evidence to show the public have been able to use the path A-B-C for the requisite minimum period of 20 years throughout 1995-2015. Consequently a modification order should be made to include the path A-B-C to the Council's Definitive Map and Statement.

List of Background Papers

M08/60

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APPENDIX 2

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 anyway 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 3

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 4

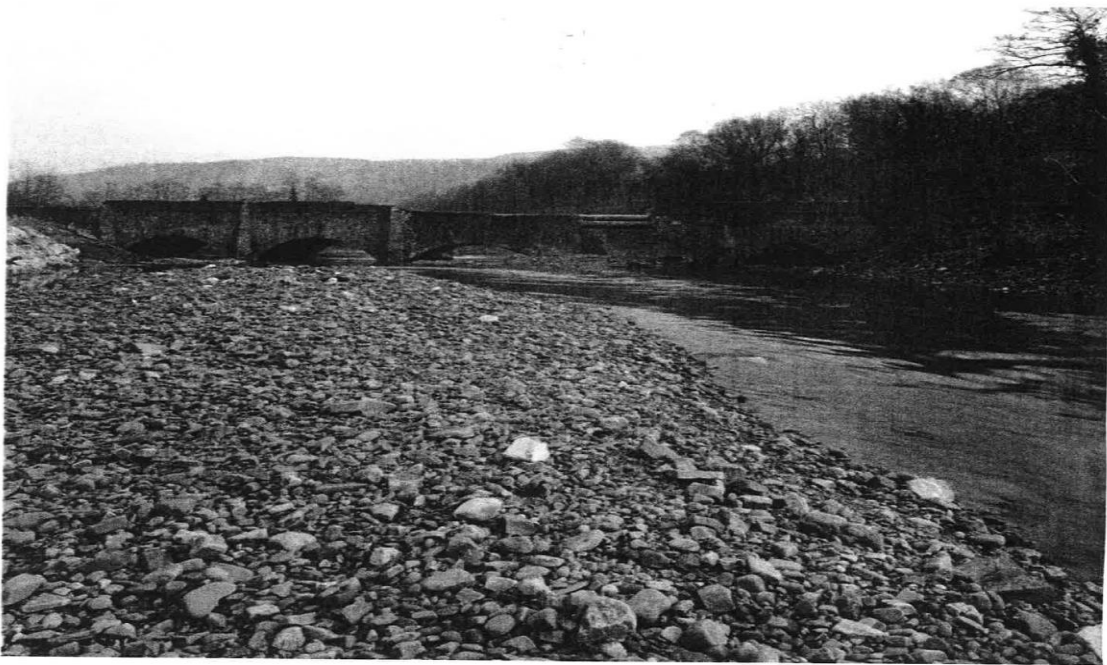
The River Crossing

- 1.1 Two masonry arches collapsed in a flood in the winter of 1979/1980 (Boxing day of 1979) although there was earlier damage which resulted in the canal water being carried across the River Neath by three pipes (Appendix 5 shows the pipes to the right side of the bridge). So whilst there was no formal crossing after the 1979 damage many people were allegedly able to use these pipes to cross the river. One pipe was situated above and to the side of the other and so it has been said that people could use the higher pipe for support. This is shown more clearly in the later photograph (Appendix 6)
- 1.2 A footbridge was placed across the river in 2001 sometime around March that year which remained in place until 2007 (Appendix 6). This had to be removed to enable the newer and present aqueduct to be built which was completed in February 2008 (Appendix 7). So between March 2007 and February 2008, there was no means of crossing the River Neath.

The A465

- 2.1 Work on the dual carriageway on the northern side of the river commenced in January 1994 and the road opened in February 1997. During the period of construction no access was available according to two claimants and in fact the original footpaths on the northern side of the river were eventually diverted to their present position.

APPENDIX 5



APPENDIX 6



APPENDIX 7

