

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

**7 July 2016**

**REPORT OF HEAD OF LEGAL SERVICES – DAVID MICHAEL**

**MATTER FOR DECISION**

**WARD AFFECTED: PONTARDAWE**

**ALLEGED PUBLIC FOOTPATHS FROM SWANSEA ROAD TO  
FOOTPATH NO. 42 COMMUNITY OF PONTARDAWE**

**Purpose of the Report**

To determine the application made to this Council to recognise the two paths as public rights of way on foot

**Background**

An application was submitted in 2007 to recognise two paths, both of which pass over land under the ownership of the Council as shown on Plan No.1.

The route A-B-C consists of a series of steps and landings sloping downhill from Swansea Road at point A to where the path joins footpath No.42 at point C.

The other path B-D slopes more gradually downhill and comprises tarmac. Both paths have galvanised handrails along one side of their entire lengths.

Lighting columns are situated at points A, C and D, with an additional column placed approximately mid-way between points B and D.

A pedestrian barrier is positioned on the footway where the path joins Swansea Road at point A and another at point D which is also a vehicular width road. These are typically used to either prevent children running directly into oncoming traffic or to prevent motorcycles accessing a path.

**The Evidence**

In order to assess the validity of the application it is necessary to identify:

- (a) either the minimum twenty year period which would be required to satisfy the provisions of Section 31 of the Highways Act 1980 (Appendix 1). This raises the presumption the landowner has dedicated the path to the public in the absence of any contrary intention, assuming that use has been uninterrupted.
- (b) alternatively consider whether there has been a dedication of the path to the public under common law, (Appendix 2) where the owner, that is this Council, has taken measures to encourage and facilitate public use over and above merely acquiescing to that use

The obligation on this Council to consider and investigate this application is governed by the provisions of the Wildlife and Countryside Act 1981 (Appendix 3)

### The Relevant Twenty Year Period

This is usually calculated by counting retrospectively from the first occasions the public's use of the way has been challenged, either by an obstruction of the way, turning members of the public away or by the positioning of notices specifically prohibiting pedestrian access. If such action did not arise, as is the case here, then the date of the application would identify the end of the twenty year period. Given the claim was submitted in 2007, that period will be 1997-2007.

Twelve people submitted user evidence forms in support of this application, although three can no longer be contacted. Nine gave more detailed information when interviewed and claim an average of 33 years use counting retrospectively from 2007; seven people claim to have use of both paths for a minimum of 20 years.

### The History of the Paths

The path A-B-D first appears on the 1984 edition of the Ordnance Survey at a scale of 1:1000. The earlier editions of 1878, 1893, 1918 and that thought to be in the 1940's at a scale of 25 to 1 mile and 1:2500 do not show the steps in A-B-C. However, they do show another diagonal path which joins footpath no.42 about mid-way between points C-D but joining Swansea Road at the same point as the present one at point A.

Footpath No.42, C-D, approximately follows the line of what would have been a towpath. This earlier diagonal path referred to above joined the canal at a lock and footbridge which appears to provide access to the Pontardawe Steel and Tin Plates works on the southern eastern side of the canal. This site is later shown as an Industrial Estate on the 1984 and 1992 edition, and a path leading to these works from what was the lock gates.

One person said the stone stile at point A pre-dates the construction of the path A-B-C.

Whilst this earlier path does not follow the precise alignment of the current one, the ordnance surveys highlights that there has been a path from Swansea Road at Point A to what is now footpath No. 42 from at least 1878.

### User Evidence

One of the claimants estimated that the path A-B-C containing the steps was constructed sometime between 1977 and 1982. The ordnance survey plans are difficult to interpret as showing this path in the 1984 and 1992 editions.

The distribution of those claiming use is shown on Plan no. 2 which shows it is a path favoured by the wider public rather than a limited number who live in close proximity to the path. Use of the path by some of the school pupils should also be considered as representing a wider constituent.

Three indicated it is used by the pupils of Cwmtawe Comprehensive School which is also marked on Plan No. 2, for those pupils presumably living near Swansea Road or disembarking from the bus stop which is at point A. One person said some parents park their cars on that road to collect their children. Another indicated the road was narrowed in order to slow traffic to make it safer for children to cross. The positioning of the two barriers at either end of the path A-B-C suggest it has been recognised the path provides a useful means of access for some pupils of this school. The School was re-sited to the current location in 1996.

One person indicated the paths were used for some who worked at the former Pontardawe Steel Works. Four claimants said they have used this path to reach the retail park now situated between the Leisure Centre and Pontardawe, two said they have walked to the Leisure Centre this way, and two referred to the supermarket as a reason for using the path. One other said he has used the path as a way of walking to Pontardawe and also to visit friends.

The applicant stated she has used the path to walk her dog but noted the bus stop was installed at the point where the path joins Swansea Road.

### Improvement, Maintenance and Character of the Path

In 2007 a site visit revealed part of the tarmac on the section A-B-D had been eroded and in part comprised of broken slabs. There was evidence of an old stone stile and Point A with some of the stone

missing. Since that time the path A-B-D has been re-surfaced with tarmac and the broken stone stile removed.

The handrails according to three people have been broken with some section missing from around 2007. This had remained so when seven people were interviewed in 2009. Since that time both sets of handrails have been replaced or repaired. According to another person, these handrails were also repaired between 1987 and 1989 after they had remained broken for many years.

The older lighting columns referred to at points A, C and D were originally installed in 1969 and substituted by another set positioned alongside in October 2015. A lighting column between Points B and D was installed in July 2012.

## Conclusion

The requirement to shown 20 years uninterrupted use has been satisfied by those in support of the application. The reasons for use can be traced back to the earlier path which joined the canal between points C-D and provided access to the former steelworks, thereafter the industrial estate, and later again onto the present retail park, Leisure Centre and the comprehensive school. Consequently given the evidence of use over the period and in the absence of any evidence to the contrary it is evident the paths have been dedicated to the public through long term use.

## Common Law

In addition this Council as landowner has improved the surface of the path B-D, renewed and repaired the handrails and even provided an additional lighting column on the path B-D. Lighting columns were installed at the three ends of the path by this Council's predecessor. There is also some evidence of previous repairs to the handrails in or around the period 1987 -1989. Also concern over the safety of the pupils walking to and from the comprehensive school which was addressed by the installation of the barrier and Points A and C.

This and previous Councils have taken measures to enable the public to use the paths and on occasions maintain or even improve the paths condition. Consequently this provides evidence of an intention to expressly dedicate the path under common law. That is where the path is set out for public use and the public accept that dedication by their use of it. Therefore it can also be concluded that these two paths have been dedicated under common law thus providing further evidence in justifying the making of a modification order.

## **Appendices**

Plan No. 1

Plan No. 2

Appendix 1

Appendix 2

Appendix 3

## **Recommendation**

That a modification order be made to show the paths A-B-C and B-D as public footpaths and if no objections are received, to confirm the same as an unopposed order

## **Reasons for the proposed decision**

There is sufficient evidence of uninterrupted use during the relevant period.

The reasons for use have varied over the past as the two paths appear to have evolved from the earlier but single path between Swansea Road and what would have been the canal towpath.

This Council has been responsible for improving and maintaining the surface of the two paths as well as in the provision of lighting and handrails. In effect this Council has expressly dedicated the paths to the public.

## **List of background papers**

M08/6

## **Officer contact**

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**Recommended** – that a modification order be made to include the lengths of paths A-B-C and B-D as a public footpath into the Definitive Map and Statement and if no objections are received to confirm the same as unopposed.

## APPENDIX 1

### 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 2**

### **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 dedicated the route. User of right is not of itself necessarily sufficient, nor mere acquiescence by the owner 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, not only acquiesced to that use but either directly or indirectly 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.

For the right of way to be established, it needs to be shown that it has been used openly as of right and for so long a time that it must have come to the knowledge of the owners that the public were so using it as of right. Public user is no more than evidence which has to be considered in the light of all available evidence.

As a matter of proof at common law, the greater the length of user that can be demonstrated the stronger the inference of dedication will usually be.

### **APPENDIX 3**

#### **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 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 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.