

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

WARDS AFFECTED: NEATH EAST AND BRITON FERRY EAST

ALLEGED PUBLIC FOOTPATH FROM GARDNERS LANE TO EAGLESBUSH VALLEY (A-B-C) AND TO YNYSMAERDY ROAD, VIA CEFN COED FARM (B-E-F), COMMUNITY OF BRITON FERRY AND NEATH

Purpose of Report

To determine an application to register a public footpath from points A-B-C and B-E-F as shown on Plan No.1

Background

This application was made on the 19th August 2010. Point A is at Gardners Lane being Byway No. 11 and point C at Byway No.7. The length of path B – D forms the accommodation road to Cefn Coed Farm (near point D) although the vehicular road continues almost as far as the former railway cutting at point E (known locally as the “Incline”). This road then proceeds west to join Pant Howell Ddu at point G. The length E to F forms the remainder of the claimed public path and passes over the former railway cutting which is under the ownership of this Council. It has not been designated as a public highway nor open space.

The application was originally supported by sixteen people who allege an average of thirty seven years use with one additional person having come forward claiming part use of the paths for most of the 60 years he has lived in the area.

The owners of Cefn Coed Farm, Eaglesbush Cottage House (the latter being close to point A) and another who owns some of the lane between points A1 and B, object to the application. No other representations

have been made from any of the other organisations and individuals who have been consulted.

Because the claim is based on long term use of these paths, the test will be to ascertain whether there has been a minimum uninterrupted period of twenty years to show there has been a presumption of dedication under the Highways Act 1980. The relevant extract is contained in Appendix 1 also whether there is sufficient evidence under common law to show the owners of the routes wished to dedicate the route as a public footpath. This is summarised in Appendix 2.

Appendix 3 sets out the tests under the provisions of the Wildlife and Countryside Act 1981. It should be noted that this Council does not necessarily have to conclude a public path exists on the balance of probabilities as required under Section 53(3) (b). It can also make a modification order on the basis it is reasonable to allege a public path exists under Section 53(3) (c) (i). So the issue is whether the Council can be justified in making a modification order. A further explanation of this second test is summarised in Appendix 4

The minimum twenty year period must be calculated from the first occasion the alleged existence of the public path was called into question. The twenty year period is calculated by counting retrospectively from that date.

In this case, the routes according to the applicant had always been open for use until a locked gate was placed across the road at point D in 2009. There is evidence of earlier locked gate/s at this location and also at points A and B. If that is established, then the relevant period would have to be re-calculated. In the case of A-B-C it is 1971-1991 as considered below.

The alleged existence of a public way can also be called into question by notices being placed alongside a path specifically denying the existence of a public way (Case law has established that notices stating "private" or "no through road" would not count as challenging the public's right to use a path). In addition a landowner may avail themselves of the opportunity to deposit a statement of their non-intention to dedicate a public way to the Local Authority. They would have to reproduce that statement every ten years (although that requirement was formerly every six years). Part of this claim public footpath is affected by such a statement at point A1 which was made in 1993. Subsequent statements were made in 1999 and 2005.

The Evidence

As indicated, point E is not at a public highway, as the land is a former railway cutting which climbs gradually from point F to point E. In this instance five persons indicated in their user evidence forms that they had walked to Ynysmaerdy Road at point F directly via this "Incline". Another two after being interviewed confirmed they had walked directly from point E to point F, leaving a total of seven persons who would say they have walked the route either A-B-D-E-F or C-B-D-E-F that is one highway to another.

On the 2nd October 1992 this Council rejected an application to register a public byway between points A and C. As a result of that claim, a significant amount of evidence was forwarded for and against that application. The evidence focused on the existence or otherwise of locked gates at points A and B, whether there were notices prohibiting public access and the reputation of the former owner of the Eaglesbush Estate who died in 1978. This earlier landowner had allegedly turned people off the land, although precisely where, how often and over what period was the subject of some dispute.

Route A-B-C (Under statutory period of 20 years)

There are a total of sixteen people who claim to have walked this length of path for an average of twenty five years up until the 2009 when the current application was submitted. Whilst the application itself can count as a calling into question, as indicated above, this length of path is affected by the statement of non-intent made in 1993 and has been renewed until 2005. Therefore there is no 20 year period counting retrospectively from 2009. Whilst this would change the relevant period to 1973 -1993, the previous owner of the Eaglesbush Estate on receipt of the application for a public byway objected in 1991. This therefore means the relevant period will be 1971 – 1991.

There are eight individuals who would claim to have been walking this length of the route in excess of twenty years prior to 1991, four of whom have been interviewed including the applicant. The other four were asked to provide further information on up to six occasions but none responded. The issue being that whilst the evidence forms submitted provide a summary of their use, it is often the case that on being interviewed there can be a significant difference between the two accounts. One example was a person who had stated his use commenced in 1951 and continued until 2009, but at the interview said he had only used the route for a few years from 2000. Consequently

evidence by only four people upon whom this Council can rely is too low to justify making a modification order.

The reasons given for using this way were principally for enjoyment and that it formed part of a longer circular walk. One of these four persons indicated he first started owning dogs in 1965 and from then used this route about four times a year until the present day.

Reputation of the previous landowner until 1978

The application concerning a public byway revealed an issue over whether the earlier owner of the Eaglesbush Estate had made it clear to users, by whatever means that he did not consider such a public path existed. That Estate included the length of the paths A-B-C and B-E. He died in 1978 and whatever action that may have been taken would affect the period 1971-1991. The supporters of the earlier claim said they do not recall ever being approached by the former owner of the Estate prior to 1978.

As a result of the previous application, numerous individuals had given evidence in support of the objector regarding his actions. Of these, three said the owner would challenge people and another who was his employee said he would stop people walking this route A-B-C on behalf of the owner and continued to do so until 1980. However the applicant for the present claim stated that his father knew this earlier landowner and that if there had been an issue with the public using these paths he and his family would have known about it. This is contradicted by the present owners of Cefn Coed Farm whose father was a tenant of this earlier owner of the estate from 1943 and who said his father was under instruction to lock the gate at point D. In addition that he was informed that the Estate owner would lock the gates at points A and B on Sundays.

Gate at Gardners Lane (Point A)

The claimed path commences at Gardners Lane, also registered as Byway No. 11 where there is still a gate post. It is alleged that there was a gate across the entrance to the claimed public path which was kept locked at least throughout the ownership of this earlier landowner until 1978.

None of the six claimants who were interviewed recall ever seeing a locked gate at this location. Three recall a gate, one of whom said it was

ornamental and had to be kept open for other residents to access their properties; one said there was a kissing gate alongside.

From the earlier evidence concerning the 1991 application, there were various accounts from those who supported the earlier owner at the time:-

- (a) One said he knew the person responsible for locking the gate until 1975, another stated the gate was invariably locked.
- (b) Four stated the gate was locked but gave no dates.
- (c) Another said the gate was periodically locked between 1977 and 1991.
- (d) One person said the gate was last locked about 5 years before the owner died in 1978.

In contrast there were eleven people who either provided signed statements or letters in support of the claimed byway. Five made specific reference to questions about this particular gate, one stated the gate was never closed, one of the three who lived at Eaglesbush Cottages (shown at point A1 on the plan) from 1968-1971 and the subsequent owner from 1971-1991 both said there was never a locked gate at this location. Another who said he used these routes stated no gates existed throughout his use of the road from 1964-1991. Another stated the last time the gate was locked at this location was in 1946.

One person stated no gates had existed along this particular route, two considered no gate had been locked for 30 years and another said 35 years prior to 1991.

Gate close to Fernlea Cottage (formerly Pitt Cottage) point B

It was alleged that the former estate owner until his death in 1978 also kept a locked gate at this location:-

- (a) One resident of this cottage from 1977-1991 stated the gate outside her property was locked on Sundays until the owner died in 1978 after which time they remained open. According to the current owners of Cefn Coed Farm they were employed by the occupier of that cottage to remove one half of the missing double gate in 1990/91.

- (b) However one person who delivered milk in the area during the 1960s said he never saw them locked, although one would assume he never delivered on a Sunday. The applicant has suggested that there could have been deliveries on Sundays if the business was only operated by one person and given there were no refrigerators at that time.
- (c) Another person who occasionally used the path on a Sunday said he never saw them locked.
- (d) One who said he was employed by the Estate said they were never locked.
- (e) Another two who used the path until 1985 and 1991 respectively do not recall a locked gate.
- (f) Another said the earlier owner was not as vigilant in his later years but he nonetheless made attempts to lock these gates until 1978.
- (g) One of the previous owners of Cefn Coed Farm stated he had used part of this route to access his Farm and stated the gate was last closed in 1958.

There is evidently contradiction between the accounts given by various people, although some weight should be given to the former occupiers of the cottage at point B during the relevant period, who said the gates were locked on a Sunday until 1978. This being corroborated by others who said, that whilst the owner was less vigilant in his later years, he nonetheless made attempts to lock these gates until 1978. One of the reasons the claimed public byway was rejected was due to the periodic locking of this gate throughout this earlier period of use. There is less certainty over the accounts concerning the gate at point A.

Since the matter was considered by this Council a ruling was made at the Court of Appeal concerning R -v- Secretary of State for Wales, ex parte Emery 1996. This considered what obligation there is on a Council to make a modification order under the two tests and summarised in Appendix 4

Conclusion

The difficulty with accepting the claimed public path is that it is not known how many of these previous potential witnesses could be relied

on to support the claim in consideration of the gates at points A or B given that application was determined some twenty three years ago.

There are only four people who currently can be relied on to show use for the period 1971 – 1991 taking into account the statement of non-intent to dedicate the path from 1993 and the previous landowner's objection in 1991

Some weight should be given to the evidence from the person who moved into the cottage close to the gate at point B in 1977 who stated that it was last locked in 1978.

Consequently under the above test it is difficult to conclude it is reasonable to allege such a way exists on foot.

Recommendation

That no modification order be made for the length of path A-C.

Reasons for the Decision

There are insufficient numbers of witnesses who could be relied on to show evidence of use throughout the relevant period from 1971 – 1991. Secondly an unknown number of witnesses who could comment on the existence or otherwise of locked gates at points A and B, but good evidence there was a locked gate at point B until 1978.

Alleged Public footpath from C-B-D-E-F (under a statutory period of 20 years)

Given the gate at point B was unlocked by 1978 and removed by 1989, then there is a sufficient period of more than 20 years between this date and 2009 when the application was submitted. According to the applicant 2009 being the first occasion in the path to Cefn Coed Farm was blocked by the gate at point D.

This length of path is unaffected by the above mentioned statement of non-intent and so it is necessary to consider if a period of twenty years uninterrupted use can be found for the period 1989- 2009

As regards the existence of a locked gate or otherwise at point B, the previous occupier of the adjacent cottage has stated that the gate was not locked after 1978 which was when the former owner of the Estate Mr. Rice Evans died. One witness stated that he was employed to

remove the gate in 1989. Therefore the issue of whether this gate interrupted public use during the relevant period can be discounted.

There are sixteen people, who originally supported this current application, plus the additional person referred to above, although two persons after being interviewed said they had never walked as far as Cefn Coed Farm from point B. The average use is thirty six years for the 15 persons.

Of the sixteen people that completed user evidence forms five stipulated that they had walked via the "Incline" to Ynysmaerdy Road that is from point E to F, all of whom claim to have used this path for the full twenty year period. After interviews a further two people said they had used this section of path thus linking one highway to another (C-B-F) and who themselves had used the route for the full twenty years.

Four do not recall the gate at point D but another said they did, two, including the applicant said there was a gap alongside the gate and another said the gate was always open when he passed by. One of the witnesses who came forward in support of the objector noted such a gap was available although another supporter to the objector considered otherwise.

The applicant recalls an earlier wooden gate but said this was not as wide as the current one, but in any event was only tied in a closed position. If necessary it was convenient to walk around the gate rather than untie the gate. He stated this was then replaced by another metal gate, approximately 8 ft. wide which he states was never locked but it was only when the current even wider metal gate was installed, that it completely obstructed the way. None of those interviewed said they were ever challenged when walking this route.

This account which claims the gate was not locked (or indeed absent) is refuted by the owners of Cefn Coed Farm. One of the owners and occupiers of Cefn Coed Farm has provided a detailed account of the history of the three gates at this point. In summary that the earlier wooden gate was locked occasionally, mostly throughout the winter months as the track south of this point was not used so often by himself nor by his parents. In 1972/73 it was replaced by a metal 10ft wide gate which was locked or nailed to the post and that this gate remained in place until the wider gate was installed in 2009. In the 1970s he stated his brother and he used to walk from the farm via this gate to go to school via their access track to Pant Howell Ddu. He recalls having to climb over the gate at this position on numerous occasions.

Consequently it is his view there has been no uninterrupted use of this route throughout the past forty years.

The owners of Cefn Coed Farm have provided written evidence from twenty plus a detailed account from one of the owners of the Farm, all of whom were asked to comment on the existence or otherwise of a locked or secured gate at point D during the period 1989 to 2009. Four were interviewed in person and another interviewed on the telephone. Given the conflict of evidence and in most cases their detailed recollection of this gate their evidence has been summarised in Appendix 5.

The Route South of the Gate, D-E

The farm accommodation road or track that proceeds south east from this gate initially coincides with the claimed public path but that accommodation road turns in a westerly direction and appears on the attached plan as E1 to G. According to one of the owners of this farm, the road immediately south of this gate became overgrown from about 1979 /1980 after they had left school, and machinery had become larger and so the track was used less frequently. Part of the track was re-opened in 1991/1993 to access fields to the south and the access road to Pant Howell Ddu widened in 2004. The claimed public path continues south east from the gate at point D to join the incline at point E.

The applicant agrees the route became very overgrown during this period but questions why the gate would be locked if the route was so difficult to use and why would persons clamber up a steep bank if they knew the gate was going to be locked.

Five persons clarified how they accessed “the incline” at point E from point D. The accommodation road to Cefn Coed is at a higher level than “the incline”, there being a steep bank as one approaches point E from point D, but almost vertical if attempting to join the “incline” the further north east one proceeds from this point. There is also a more gradual and well-worn track from point E₁ which also provides a link to the accommodation road to Cefn Coed Farm. All five confirmed it is the route between points D and E which is used, even though it is almost too steep to walk today. This, according to the applicant, is due to the landowner having bulldozed soil on the top of the path in order to widen and level the farm access track. According to the applicant, this has made the path far steeper than it once was. Secondly this movement of soil occurred after the new gate was installed at point D. So according

to the applicant, the route claimed from point D to E was available until 2009.

The landowner as stated that construction of the road occurred in 2004 and so by implication the route used to access the "incline " would have been steeper from that date and not 2009.

The remainder of the route via the Incline to Ynysmaerdy Road E to F was used by all seven and claimed by all as part of the longer circular walk.

The Incline is under the ownership of this Council and the Estates Section have stated it is regarded as an open space. They have also stated the public have been permitted to use the path but no notices or any other indication given to the public that they were only there by permission. There is a distinction between using a way by consent as that use will be "by right" as opposed to the exercise of a right which is in effect trespass for a sufficiently long period so that its use is "as of right". This latter type of use satisfies the requirement of Section 31 of the Highways Act 1980 from which the way is presumed to have become dedicated as a public right of way. In other words use "as of right" will convert to a public right after a sufficient period of time whereas "by right", simply retains a permissive use that can be revoked by the landowner.

The Council has periodically cut back the vegetation from either side of this track, improved the side drains, and has installed a motorcycle barrier at the point "the incline" joins Ynysmaerdy Road at point F. Consequently this Council may be said to have acquiesced to the use made of this path by the public.

Conclusion

The gate at point B having been unlocked by 1978 means that there is a potential period of 20 years counting retrospectively from 2009. Given the evidence suggests the relevant period is from 1989-2009 then the route from point C-B-D-E-F can be considered According to one person this gate was removed by him in 1989.

There is nonetheless a conflict between what the claimants say regarding a locked gate at point D, or indeed the existence of a gate at all, and the landowners account and their witnesses.

The evidence from the objectors witnesses suggests they had at least as much reason to use the path as the claimants and in the case of the person who worked at the farm, (and another who made visits to the farm) had more reason to specifically access this route. The objectors case is that the gate was kept secure for most of the time by a lock, so that use could not have been uninterrupted as required by Section 31 of the Highway Act 1980. The owners permitted some people to use the path who needed to open the gate by providing the key or combination number to the lock.

The applicant and two others, suggest that it was possible to walk around the gate if it was too problematic to untie the binding on the gate. Whilst this is disputed by one of the objector's witnesses, although agreed to be the case by another, such a deviation would be acceptable if the route is already recognised as a public path. In those circumstances such a gate would then be considered to be an obstruction to the way and so the public would be entitled to take such measures as required to walk around the obstruction. However in this case the path is not registered as a public way and the owners do not recognise the path has such status. Having to walk around a gate would be a concession that the public's use was being interrupted by that gate whether locked, or according to the claimants case only secured in the closed position.

According to the landowners work on the new access road to Pant Howell Ddu from point E1 commenced in 2004 and so resulted in the route to the "incline" being made steeper. However at this point in time neither the applicant nor the landowners have suggested the alignment of the path was changed.

So the issue to address is whether it is reasonable to allege a path exists as outlined in Appendix 4. In this case it cannot be concluded it is reasonable to reject the evidence from the witnesses for the objectors. Their evidence is credible and detailed comprising twenty who, on the whole are able to corroborate the account of others.

Common law Dedication E to F

This Council has not taken any measure to dissuade the public from using the length of the "Incline" between points E and F and in fact have installed two barriers at the point it joins Ynysmaerdy Road which prevents motorcycles from accessing the "Incline." This would give the impression that pedestrian access is acknowledged. However the length

of the “Incline” which is the subject of this application does not connect to any other public highway at point E. The claimants have not said they walk from Ynysmaerdy Road as far as point E and then return the same way. Point E is not a specific place of interest, and so it would not be possible to consider registering this limited section of path.

As a result of the evidence provided it would not be possible to make a modification order and therefore the application should be refused.

Recommendation

That no modification order be made for the length of path C-B-D-E-F as a public footpath and the application be refused

Reasons for the Proposed Decision

Whilst the gate at point B does not interfere with the use throughout the relevant period, 1989-2009, there is credible evidence from the owners of Cefn Coed farm that a gate at point d was periodically locked during this period, therefore no uninterrupted use can be established to show a presumed dedication by the landowners. Therefore there can be no 20 year period of presumed dedication under the Highways Act 1980

Whilst this Council has not taken any measures to inform the public that no such right of way exists along the “Incline”, via E-F, point E does not connect to any other public highway, nor place of interest, nor view point and cannot qualify as a cul-de-sac public footpath. Therefore there can be no presumed dedication under common law.

Consultation

This item has been subject to external consultation.

Appendices

Plan
Appendices 1-5

List of Background Papers

M08/23

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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 actually 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 which established 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.

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 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 4

The second test being whether an allegation is reasonable or not. The Court of Appeal decision concerning R v Secretary of State for Wales ex part Emery 1996 held this will depend on the circumstances. So that if the evidence from witnesses as to user conflicts with the objector's evidence, but it would be reasonable to accept the evidence of uninterrupted use and also be able to reject the evidence against the allegation, then it would seem reasonable to allege such a right. In other words unless the objector can provide evidence that it was not possible to conclude the way had become dedicated, then an order should be made and the evidence tested at a subsequent public inquiry. In this example the evidence is conflicting given the alleged use by the claimants to have been uninterrupted is refuted by the evidence from the objectors at Cefn Coed farm.

APPENDIX 5

Seven persons were able to comment on the later part of the relevant period. Two of whom have ridden horses along the route B-D but thereafter via the track between point E₁ and point G shown as a vertical broken line. All stated the gate was sometimes locked and at other times unlocked. One of these persons was given the number to the combination lock from 2005 until the present day.

The other rider who started using the route in 2007 owns a livery to the south of this area. He would begin his ride from Pant Howell Ddu so that if the gate was locked he would only have to make a shorter detour than if he approached the gate at point D from point B. He mentioned that his daughter would often have to turn back at this gate while riding her horse.

Two persons started walking the path in 2002 (one of whom owned a dog) and again both stated this gate was locked on various occasions. One of these persons said it was locked most of the time in the winter but would have been left open more frequently in the summer. Two others said they started using the path in 1990 and found the gate locked on many occasions.

Thirteen of the twenty witnesses were able to make reference to their use of the path throughout the relevant period and before 1989.

One had worked for a neighbouring farm who helped at Cefn Coed Farm throughout the 1970's until the mid-1980's. He recalls having to jump off the tractor to unlock the gate when approaching Point D from Pant Howell Ddu. (Another person who also worked on another farm in the 1970's recalls his employer having a key to the lock on this gate).

However, from the late 1980's into the early 1990's he did some work at Cefn Coed Farm and confirmed the same gate remained locked. However, the track became overgrown and unused and was secured with a chain and stapled shut. That the farm access road to Pant Howell Ddu E₁ to G was opened in 2004-2005 (Four other persons have also stated this) and it was at this time a combination lock replaced the earlier padlock on the gate at point D. His recollection is very clear as he helped upgrade and widen the access road from Point B-D in 2006-2008. He further clarified that in 2009 the gate at Point D was replaced with the present wider gate.

Another who said he had cause to visit Cefn Coed on numerous occasions from 1972 until the present day said that this gate was locked most of the time.

Another resident who has lived close to the route A-B-C for 35 years and who stated she has ridden, walked and cycled the route B-D said there has always been a gate at Point D. If she was riding and the gate was locked she would have to turn back, but if on foot would climb over the gate. Similarly one other person stated she used the route for the same reasons and unless walking her dog which she could lift over the gate, she would also have to turn back.

Another witness said she recalls the padlock being replaced with the combination lock. If her daughter wanted to ride her horse she would telephone the owners of Cefn Coed Farm to ask them if they would open the gate. If she was only walking her dog she would climb over the gate. On other occasions she has been told where the key to the padlock was hidden or subsequently been given the number for the combination lock.

Four other long term residents have provided detailed information. Two brothers who have kept dogs over the last 40 years say they have walked the whole area most days and stated they used the route B-D every few days. One was interviewed and stated the gate was locked 95% of the time when he and his brother passed the farm. The earlier gate was chained to the post with a nail and padlocked. In his view it would not have been possible to walk around the gate as it was too overgrown.

The remaining two witnesses used the route B-D for running, one from 1984-1995, and the other 1985-2014. They recall the earlier gate and the other noted the newer one. Both said they would find the gate locked on some occasions and on others it would be left open.

One said he kept an aviary close to point D and he along with a friend would tend to the birds every day from the late 1990's to the early 2000 and again confirmed the gate at point D was mostly locked.