

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

24 November 2016

REPORT OF THE HEAD OF LEGAL SERVICES

- D.MICHAEL

MATTER FOR DECISION

WARDS AFFECTED: NEATH NORTH, NEATH SOUTH AND CIMLA

**Alleged Public Footpath Between Rookwood Close, The Meadows
And Afan Valley Road, Community Of Neath**

Purpose of Report

- 1.1 (a) To consider the evidence submitted in 2012 in support of the application to register a public footpath via what is known locally as the "horseshoe" C-G-H-J-K-B-C and its link to Gnoll Avenue C-D-F-T.
- (b) Additionally to consider the evidence presented that shows there is some public use for the routes A-B, D-E, N-P, O-P, K-L-M, Q-R , Q-S and C-U. All shown on the Location Plan.

Background

- 1.2 The route between points A-B-C-D- F-T and C-G-H is under the ownership of this Council. The length A-B-C being stone and earth based. A-B contains a series of intermittent timber boarded steps where the path increases in gradient and downslope to a pedestrian bridge over the stream near point B. The length B-C is on average a level 3-4 metres wide track. The remainder of the route to point T and as far as point G comprises tarmac and suitable for motor vehicles, although not adopted as a public highway. East of point G it is stone based as far as point J. From here the path narrows from 2 metres to half a metre in width as far as point B.

The section of path from point H to K is unregistered with the Land Registry but between points K and B is recorded as being under the ownership of three separate titles.

- 1.3 K-L-M provides a link from “The Meadows”, which passes between two houses before crossing over a small stream and along a well-defined stone based track some 2 – 4 metres wide to join the circular path at point K.
- 1.4 O- P and N-P merge before passing over a footbridge to join the cul de sac of “Woodview”. The land is registered to three landowners north and south of the footbridge.
- 1.5 Q-R and Q-S are well defined earth paths which pass through woodland. The former is rarely more than 1-1.5 metres wide, and the latter up to 3 metres in certain sections. Access to the opposite bank at points R and S is via a ford. Both paths are under the ownership of one person.
- 1.6 D-E is a well-defined 5 metre wide tarmacked path that provides a short cut to those residents living at Rooks Close and at the northern part of Cimla Road.
- 1.7 C-U This is a 2-2.5 metre wide tarmacked path which contains a metal gate positioned at the rear of the two houses. The path is under the ownership of this Council.

Requirement to Consider all the Evidence

- 1.8 The provisions of the Wildlife and Countryside Act 1981 obliges this Council to determine the application, the relevant extract of which are contained in Appendix 1 under Section 53(3)(b). However, under section 53(3)(c) this Council can consider evidence which has been discovered in addition to that submitted in support of the application. These additional routes are listed in paragraph 1.1 (b) above.

Consultation

- 1.9 All the usual organisations were informed including the six local Members, the Community Council, this Council’s Estates Section and all the known owners affected by the paths.

The Evidence in Support of the Application

- 1.10 Fourteen user evidence forms were submitted in support of the application, which identified this “horseshoe” or circular route, eight of whom were interviewed to obtain clarification on which paths were used to access this “circular” route.

1.11 Taking the information from those who were not interviewed together with those who were, nine identified the length A-B, four D-E, eight D-F-T. Six claimed use of K-L-M, the two paths N-P and O-P, four claimed Q-R and Q-S and two said they had used C-U.

Decision 1 - (B-C-G-H-J-K-N-O- S-B)

(The Circular Route)

2.0 Fourteen people have alleged an average of 35 years.

The Relevant Period

2.1 Under the terms set out in the Highways Act 1980, a minimum period of twenty years needs to be established, in order to demonstrate the path has been subject to a presumed dedication of a public right of way. Appendix 2 includes the relevant extract of this Act.

In order to calculate the twenty year period, the date from when the use of the way was called into question will mark the end of that period. In this example no action has been identified as satisfying that requirement. Alternatively, the date of the application can also mark the point in time when the twenty year period ends.

The application was made in 2012 and so the relevant period will be 1992 – 2012.

2.2 With the exception of one person, all the other thirteen people have used the whole of the circular walk for more than twenty years although not necessarily on the one walk. Ten for example have quoted more than 40 years use.

Reasons and frequency for use vary. Differences in the use of the “northern” part of the circular route compared to the “southern” section varies depending on where people live.

2.3 One person walked from Neath town to his place of work on Afan Valley Road (C-A1) and so incorporating the length B-C from 1976-2001 twice a day, four times a week. Three indicated they have taken their dogs on this route on a frequent basis and another three used part or all of the southern limb (K-B) to walk or cycle to Neath. One said he used this area for cross country running when in school, and later for rugby training. Another does a significant amount of walking and cycling for recreation. Two people said they’ve used the path C-B-K to visit relations or friends living at “Brynau Wood” and “The Meadows” respectively.

Documentary Evidence

3.1 The length of path H-J appears to coincide with a route identified as a highway on a schematic plan (not to scale) produced in 1722 and on a plan of the Gnoll Estate in 1740. The former plan is titled “A View of the

Highway Leading from the Town of Neath unto a place called Evyl Vach.....” (taken to be reference to the present Efail Fach).

- 3.2 The Gnoll Estate plan of 1740 shows the route J-H extending virtually in a straight line north west from point H and to pass through what is now called “The Pond” to join the current B4344, called “Harley Lane”. On the earlier plan there is a street called “Harle Street” and taking account the accuracy and scale of the 1740 plan, it is likely this coincides with the present day Harley Lane.
- 3.3 A more detailed explanation of the implication and accuracy of the 1722 plan is referred to in Appendix 3.
- 3.4 Of more significance is an indictment dated the 10th May 1722 raised against the then owner of the Estate at this time, being Sir Henry Mackworth who was found to have obstructed the “Kings Highway” by building a dam and creating a pond over and across the highway which caused the road to become permanently flooded. (This is reference to the road that passed to the north of Gnoll House) Sir Henry Mackworth provided an alternative road which the jury found to be of a better standard than the original. The report from that Court also stated “the said Sir Henry Mackworth hath obliged himself to continue the said way and keep it in repair from the publick use.....”
- 3.5 This implies that both the owner and the Court regarded the way as a public highway. That the alternative had been set out and used and accepted by the public. Quite where this alternative was situated is unclear from the Court report. Appendix 4 provides a comment on the significance of this indictment.
- 3.6 Another earlier but more recent Gnoll Estate Plan and Reference Book dated 1812 shows the route from point through H-G-C. The earlier plan of 1741-1768 (entitled “lands belonging to Mackworth”) does show the original route before it was flooded. The current road between H-G-C is absent from this plan. It is assumed this roadway must have been flooded by 1740 due to reference to the earlier court proceedings but for some reason the plan had retained the earlier route even though it was no longer passable.
- 3.7 The Estate plan of 1845 shows the Pond and the route H-G-C and the whole of the circular route with the route from point C to point T. However, there is no reference in the apportionment to roads or highways in relation to the fields through which this route passes.

Ordnance Survey

- 3.8 This circular route appears on all the editions including the first of 1877, the second edition at around 1898, the third of 1919, the fourth of 1935 and the first metric scale of 1970. Whilst the ordnance survey was not tasked with identifying public highways, these editions in combination with the earlier estate plans reveal that the southern limb of this circular route (C-K) has existed since 1812 including the length K-J-H.

Conclusion

3.9

1. There is sufficient evidence of 20 years use counting retrospectively from the date of the application in 2012.
2. No objections have been made by any of the known landowners nor any evidence presented to show why these paths have not been dedicated to the public.
3. This Council has not taken any measures to prevent the public from using the route where it passes over its land.
4. This circular route and its link to Gnoll Avenue first appear on the 1845 title plan and has consistently been shown on all the subsequent 1:2500 editions of the ordnance survey. This confirms it has been a long established route.

Recommendation (Decision 1)

That a Modification Order should be made to include the length of footpath C-G-H-J-K-S-B-C to the Definitive Map and Statement and if no objections are received to confirm the same as an unopposed order.

Reasons for the Proposed Decision

The documentary evidence in combination with the user evidence provides compelling evidence in favour of recognising this route as a public footpath.

Decision 2 - A-B

User Evidence

- 4.1 Nine people allege use of this path, six of whom have been interviewed. Counting retrospectively from 2012, each person claims to have walked this path for more than 20 years. Their average use being 37 years.

Reasons for use include two who said they walk to Neath, three who walk their dogs, one to go to his place of work (but only via the length A1-B) and another to visit friends.

The initial length between points A and A1 is undefined. It passes over an open area of rough grass running approximately parallel and along the eastern perimeter of this field. It passes to the west of a gas substation before entering the woodland as a well-defined path.

Work/Maintenance of the Path

- 4.2 This Council has installed a series of steps and landings made of timber along its length and a timber bridge and point B to enable people to cross over the stream. The date for when this work was undertaken has yet to be established.

One of the supporters became a volunteer ranger after retiring in 2001 and assisted the Council in maintaining these steps and bridge which had periodically been vandalised.

- 4.3 By its action this Council has actively encouraged people to use this length of path. Once a landowner sets out a path and particularly if it is improved and maintained, then this can be interpreted as an express dedication of the way to the public provided it is accepted by the public. Acceptance by the public is evidenced by their use of the path and in these circumstances that use would not have to amount to a minimum of 20 years to establish a dedication. Under common law a lesser period could be sufficient if it can be shown that the landowner has taken active measures to enable the public to use a path. Appendix 5 sets out the conditions under which a common law dedication could be established.

Documentary Evidence

- 4.4 This path does not appear on any ordnance survey plans not even on the most recent digital survey of 2016.

Conclusion

4.5

1. The length of user is sufficient to show the path has been subject to a presumed dedication under the Highway Act 1980. No objection has been made nor any reason advanced to show why such a presumption cannot be made on the evidence submitted.
2. Secondly the action by this Council would hold as good evidence that it has expressly dedicated the path under common law. A lesser period than 20 years would be sufficient to establish such an intention.
3. This route also provides an obvious link to the circular route referred to earlier from Afan Way and a means of walking to Neath or Gnoll County Park from Cimla.

Recommendation (Decision 2)

That a Modification Order be made to recognise the path A-B as a public footpath to the Definitive map and Statement and if no objections are made to confirm the same as an unopposed order.

Reasons for the Proposed Decision

There is sufficient user evidence and also this Council having improved and been instrumental in maintaining the path, has in effect expressly dedicated the path to the public.

Decision 3 - K-L-M

(Link to The Meadows)

- 5.1 Commencing on the Meadows this “alleyway” between house No’s 59 and 61 is just under 4 metres wide, tarmacked and adopted. As the path reaches the end of the curtilage of the rear of the two houses it becomes an earth path less than 1 metre wide to descend into a steep gully before re-emerging on to a 2 metre wide track at point L. This widens to 3 metres at point K. It is clearly well used and there are six persons who have come forward who claim to have made use of this path for an average of 42 years. One person said he visits his friend who lives at The Meadows about twice a month and has done so for the last 15-20 years. For another couple who live at Greenwood Drive, it provides one of the two means of accessing the circular path.
- 5.2 It is evident that when the houses were built at The Meadows a condition was imposed to provide access to the track running to the rear of these properties. According to one person who lives in “The Meadows”, the path passing between these two houses has been in existence in excess of 20 years as these houses were built before this time. He moved into his house in 1996.
- 5.3 Of the fifteen plans attached to the user evidence forms 8 people identified this path, although one in his interview stated he had not used this short cut. As this short path was included in the application, the relevant period is 1992-2012 as the date of the application can be used to calculate the relevant period. It can be concluded there are sufficient numbers of people who can be relied on to support this application.
- 5.4 Finally consideration should be given to where the claimants live as these individuals should be able to represent the public at large, rather than a limited number who live in close proximity to the path, and for whom it would solely provide a useful short cut. The latter would constitute a special user group. Appendix 6 contains a plan showing the approximate distribution of where the users of this path live and it is evident apart from one, that these persons walk from different parts of Cimla and Neath. Consequently, it can be concluded those in support do represent the public at large

Conclusion

5.5

1. Whilst the total number of people in support comprises 7, this should be considered sufficient to justify making a modification order given all 7 would continue to support this application.
2. No objection or reason has been given to refute that access has been enjoyed over the 20 year period.
3. The fact a path was set out between the two properties at the time of the housing development indicates it was acknowledged there was a demand for access, which is why the length of path between the two houses has been adopted.

Recommendation (Decision 3)

That a modification order be made to add the length of path between points K-L-M to the Definitive Map and Statement and if no objections are received to confirm the same as an unopposed order.

Reasons for the Proposed Decision

There is sufficient user evidence, as well as the fact that provision was made for part of the path when the housing development took place to enable the public to reach the land to the north of the estate.

Decision 4 - O-P and N-P

(Link to Woodview)

- 6.1 Six people have said they use both these paths to obtain access to Woodview which passes over a footbridge before joining the hammerhead via a staggered pedestrian barrier.
- 6.2 All identified these two links on the plans attached to the application and so the relevant date will be 1992-2012. Apart from one person, all have stated they have each walked both these paths for a minimum of 20 years, their average use being 38 years. Reasons from three stated that they would visit friends in nearby houses and three to access the circular path.
- 6.3 One of the claimants lives in Woodview, but the remainder live further afield. The issue regarding a special user group was referred to in paragraph 3.4 which addresses whether those using a particular path can be said to represent the public at large. In this example one of the claimants lives in Woodview, the remaining five reside at locations shown in the plan contained in Appendix 7.
- 6.4 An offset barrier evidently designed to prevent motorcyclists was installed at the point the path joins the hammerhead, recognition that access has been enjoyed by the public.
- 6.5 The pedestrian bridge is not necessarily the one installed for public use. The 1st, 2nd, 3rd, 4th and 1970 editions ordnance survey plans show there was a bridge previously providing access to Preswylfa Farm. These earlier ordnance survey editions suggest a wider crossing than the current bridge. According to the view of one of the supporters, the historic map evidence suggests this shows the only access to Preswylfa was via this bridge, until the northern access road was constructed in the mid-18th century.

Conclusion

- 6.8 Five persons who can show use to be by the public at large is a low number, considering its close proximity to a large housing area. However the provision of a pedestrian barrier and the existence of the footbridge indicates that the landowners have accepted this path has been enjoyed by the public. Therefore it can be presumed the path has been dedicated.

Recommendation (Decision 4)

That a modification order be made to add these two paths Q-P and W-P to the Definitive Map and statement and if no objections are received to confirm the same as an unopposed order.

Reasons for the Proposed decision

Apart from the user evidence being adequate, the existence of a footbridge and pedestrian barriers at the cul de sac, indicate an acceptance that the public were making a link to this part of the housing estate.

Decision 5 - C-D-F-T

(Link to Gnoll Drive and Gnoll Avenue via Memorial Gates)

- 7.1 This is a 4 metre wide tarmacked road with evidence of use by nine persons who say this is their preferred means of access to the circular route when either coming from or to Neath. Each person alleges their use to be in excess of 20 years and the average use from all 9 is 45 years.
- 7.2 The reasons for their use coincide with those reasons for using the circular path dealt with previously.
- 7.3 This route also forms a vehicular access to the car park at the lake adjacent to point C. It is nonetheless un-adopted and so it not formally recorded as any category of public highway even though it is under the ownership of this Council.

Conclusion

- 7.4 This access forms the principal means of reaching the other paths from and to Neath. There has been no indication it was ever obstructed nor action taken by this Council to inform the public it has been a permissive road. Given the car park and the lake nearby it is evident it would provide the public with the most obvious link to the circular route and another means of reaching Gnoll Park.

Recommendation (Decision 5)

That a modification order be made to add the path C-D-F-T as a public footpath only to the Definitive Map and Statement and if no objections are received to confirm the same as an unopposed order.

Reasons for the Proposed Decision

Evidently one of the main access points into the circular route passing through the memorial gates and being tarmacked. It is supported by a sufficient numbers of people that can establish uninterrupted use over a minimum period of twenty years.

Decision 6 - C-U

(Gnoll to Cimla Crescent)

- 8.1 On the whole a 2 metre wide tarmacked path containing a metal gate midway along its length providing access from the Gnoll to Cimla Crescent. Clearly a well maintained path under the ownership of this Council but not formally adopted. Of those interviewed only 2 specified this path as one they used, although a brief site visit revealed it is well used.

Conclusion

- 8.2 In order to add this path to the Definitive map and Statement there would need to be further recorded evidence of use to justify its inclusion.

Recommendation (Decision 6)

That no modification order be made.

Reasons for the Proposed Decision

Whilst evidently set out for public access to even include a pedestrian gate, there is insufficient user evidence on file.

Decision 7 - D-E

(Link to Rook Close and Cimla Road)

- 8.3 This path varies in width between 4 and 5 metres is tarmacked with 4 people having specified this to be a link that they have used although of these four, only two have come forward to be interviewed.
- 8.4 It is un-adopted and so has not been given any formal status as a public highway.
- 8.5 This route appears on all the earlier editions of the Ordnance Survey namely the 1st, 2nd, 3rd, 4th and that of 1970, showing a lodge at the point it now joins Cimla Road, (point E) and providing another means of access to Gnoll House.

Conclusion

- 8.6 Whilst this route would appear to have been available and in use for a considerable period of time and clearly set out to provide access for those living in the adjacent streets , only two people can be relied on to support adding this path to the Definitive map. Consequently, this route cannot currently be recognised as a public footpath on such a low number of people.

Recommendation (Decision 7)

That no modification order be made regarding the length D-E.

Reasons for the Proposed Decision

Insufficient user evidence currently available on file upon which this Council can depend to establish any dedication of this route.

Decision 8 - Q-R and Q-S

(Link from Castle Road)

- 9.1 These two routes were identified by four individuals on being interviewed as additional links to the path that lies in the area known as “The Dingle”. Both are earth paths varying in width between 1 and as much as 4 metres wide passing through woodland.
- 9.2 The owner of the land containing these two paths has objected to recognising these as public footpaths. That they are the only two means of access to his land and stated that neither he nor any member of his family has ever seen anyone else use these paths. Furthermore that the routes are hazardous due to the ground conditions and the existence of some unstable trees.
- 9.3 Irrespective of the objection, it is difficult to justify recognising either as a public path on the current evidence, but should a future application be made, then both routes could be considered anew at that time.

Recommendation (Decision 8)

That no modification order be made for either of the paths Q-R nor Q-S.

Reasons for the Proposed Decision

There is insufficient user evidence and that use has in any event been challenged.

Consultation

The items have been subject to extensive consultation.

Appendices

Appendix 1-8

List of Background Papers

M08/13

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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

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.

APPENDIX 3

The plan is dated 1722, not drawn to scale, nor accurate in its representation of the alignment or length of the roads. It nonetheless shows two routes, one named Harle Lane passing to the north of Gnoll House and another route leading to that property but passing on the southern side of that House. These two roads join at Neath Church (St. Thomas) to the west of Gnoll House. The title of this plan is “a view of the highway leading from the town of Neath unto a place Eviol Fach and thence into the Church of Michaelstone super avon and also of a way pretended to be the highway leading directly from Neath aforesaid into the said Church of Michaelstone.”

Given the lack of accuracy of the plan it is unclear how much if any of the road passing to the south of Gnoll House coincides with the southern limb of the circular C-B-S-K. It does suggest however that the length J-H forms part of this earlier road which passed to the north of Gnoll House and therefore considered to be a highway at that time.

APPENDIX 4

This indictment was presented in 1722 to the “Grand Jury and Jury of Homage” a manorial Court, now abandoned, which dealt with civil matters over which the Lord of the Manor had jurisdiction. This he could exercise over his tenants but had no power to deal with criminal acts; this could be granted to a trusted lord by the Crown, which were known as a Court Leets.

In this example the indictment was served within the manorial court system and the alleged obstruction of the Kings Highway being dealt with as a nuisance rather than a criminal act, as it would be today. Therefore this indictment cannot be considered in the same terms as a prosecution in the Magistrates Court as an offence under the current Highway Act 1980. Nonetheless it is evidence that this earlier Court and by his subsequent action, Sir Henry Mackworth, considered the route to be a highway for public use. It therefore adds weight to the contention that at least part of the northern limb of this circular route (J-H) has been a way for public use since at least 1722.

APPENDIX 5

COMMON LAW DEDICATION

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.

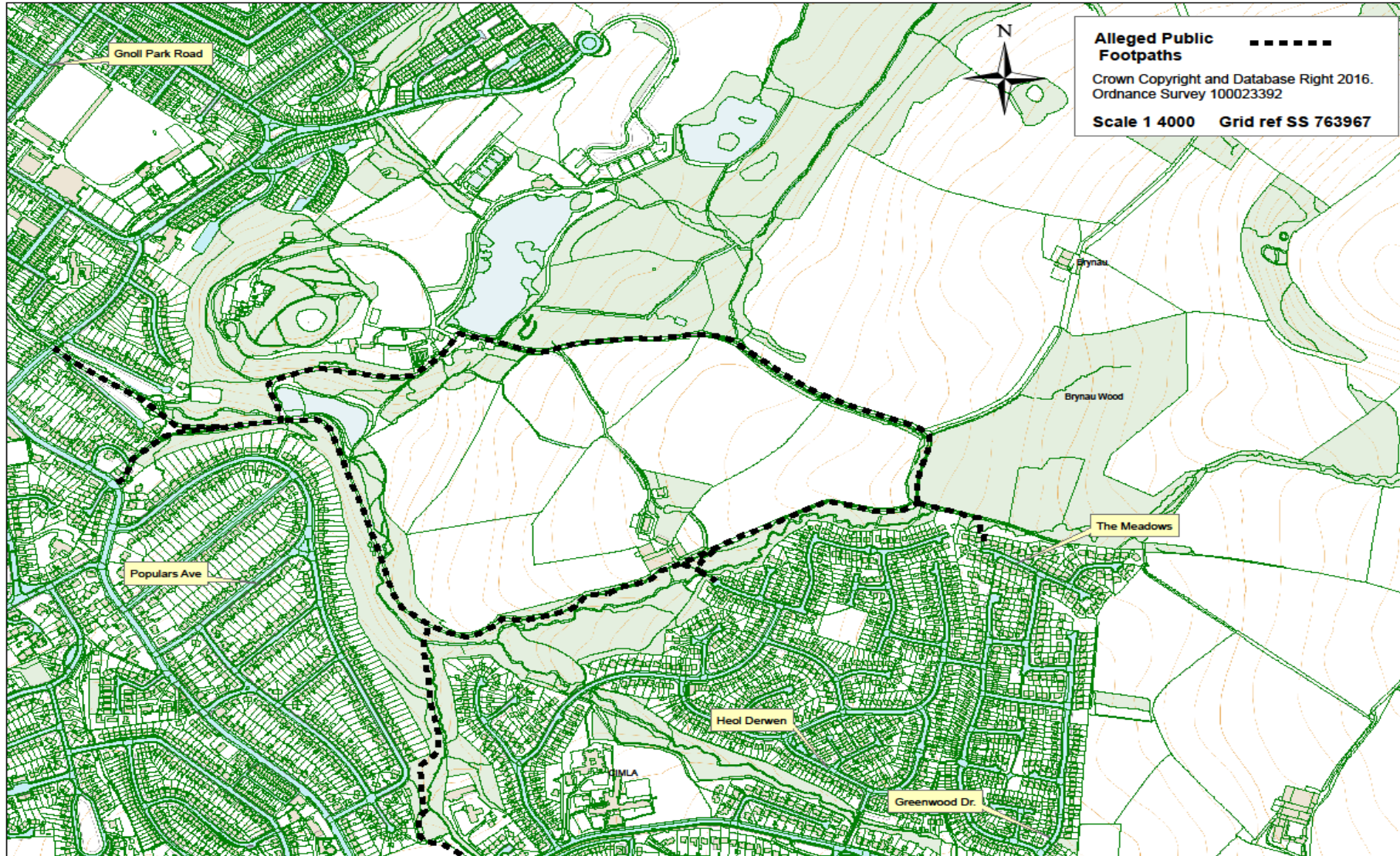
Obviously this means the landowners have to be identified and evidence that they wished to have the route dedicated to the public.

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 6

PLAN SHOWING DISTRIBUTION OF CLAIMANTS



APPENDIX 7

PLAN SHOWING DISTRIBUTION OF CLAIMANTS



