

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

16 February 2017

REPORT OF THE HEAD OF LEGAL SERVICES

- D.MICHAEL

MATTER FOR DECISION

WARD AFFECTED: PONTARDAWE

**ALLEGED PUBLIC FOOTPATH FROM WAUNGRON TO FOOTPATH
NO.236, COMMUNITY OF PONTARDAWE**

Purpose of the Report

To determine the status of the path from points B to D

Background

- 1.1 An application was made in 1998 under the provisions of the Wildlife and Countryside Act 1981 (Appendix 1) to recognise the path A-B-D-E as a public right of way on foot.
- 1.2 The path D-E is registered as footpath No.236. The length A-B-C is also registered as a public path given the Community Council who own the land between points A and B₁ entered into a dedication agreement in 2002.

An additional link to the valley was shown to be in use by the public between points B-B₂-C and so the Community Council who also own the land between points B₂ –C included this path into that agreement. To provide a link between the separate parcels of land under that Council's ownership, a compulsory creation order was made to register the path between points B₁-B-B₂ in 2001.

Consequently the status of the outstanding length between points B and D needs to be determined.

- 1.3 The Community Council own the length B-B₃ and the length B₃ – D is registered with two people under the one title. No response has been

received from those two persons who in November 2016 were given a copy of a draft of this report.

The application

- 2.1 in 1998 thirteen people, including the applicant supported this claim, although only seven remain at their addresses given at that time. Four additional people have come forward to support this application since the matter was re-opened this year.
- 2.2 The eleven who are currently supporting this application allege an average of 30 years use up to 1998.

The Route

- 3.1 The majority of the path is rarely more than 0.5 metres wide comprising stone and earth and following the eastern bank of the Upper Clydach River. A section of soil has slumped on to the path approximately mid-way along its length, which has resulted in a series of wooden steps placed on one side of the slope and steps made of logs on the other.

The Evidence

- 4.1 Five of the original claimants along with a more recent supporter have been interviewed. All have confirmed the path in use, has never been obstructed by any gate or fence or any other structure. All said they have never been confronted or challenged by anyone when walking this path. Given there has been no challenge to the use made of this path, its status has never been called in question and no date of challenge can be used to calculate the end of the twenty year period. The twenty year period being the minimum period of use required by the provisions of section 31 of the Highways Act 1980, necessary to show presumed dedication of a public path (Appendix 2).

In the absence of a challenge the twenty year relevant period can be calculated by taking the date of the application, being 1998, as representing the end of that period. Therefore the relevant period will be 1978-1998 and so it is necessary to determine if there has been uninterrupted use throughout this period.

- 4.2 Those who have been interviewed have accessed this length of path from point A as well as point D in addition to the link from Waungron at point C.
- 4.3 The reasons provided for using this path, B-D; include walking their dog (x4), picking blackberries and nuts (x1), taking visitors to the valley (x1). Others have indicated it is simply used for recreational purposes. Four

said this length of path formed part of a longer walk; two said they included the path as part of a longer walk which continues from point D on the western side of the river which passes through the Glanrhyd Plantation.

- 4.4 One of the claimants was responsible for organising a voluntary group which he led from 1980-1992 whose members maintained the whole length of the path in this valley from points A-D. Three others who were interviewed referred to this group, two of whom were also active members. According to the leader, some funding was provided by the then Community Council although that Council are unable to confirm if this was the case. According to the leader this voluntary group used their own tools.
- 4.5 The Community Council have employed a groundsman for the past 21 years (1995- 2016) whose duties included keeping this path clear of overhanging branches and any other vegetation from growing over the path. He has stated that he visits this section of the path approximately six times a year.
- 4.6 One person said the valley had been promoted as a destination for visitors and that an information board was placed at Neath Railway Station and Pontardawe Arts Centre. Another indicated leaflets had also been produced for the same purpose, but there's no record to verify any of these statements.
- 4.7 Four people who were interviewed said they first started using the path in the 1950's, one in the 1970's and another in the 1980's. Two more quoted the 1950's in their written communication and another specified 1977.

Regarding the relevant period 1978-1998, there are seven people who would each claim to have been walking this path throughout this entire twenty year period.

Conclusion

- 5.1 There are sufficient numbers of people who can establish that the path as claimed has been in use throughout the relevant period. Additionally that use has been "uninterrupted" in that during this 20 year period there has been no obstructions across the path. The position of the path has remained the same.
- 5.2 This path has also been maintained by a voluntary group whose supervisor gave the dates as being from 1980 until 1992, so that for 12 years of the relevant period the path received some maintenance by this

group. Additionally a groundsman employed by the Community Council was employed for 3 years within the relevant period, providing further recognition by that Council of the public's use of this path. There is no evidence the registered landowners took issue with its maintenance which effectively reflects some acquiescence to public use.

Recommendation

That a modification order be made to register the path between points B-D as a public right of way on foot only and if no objections are received to confirm the same as an unopposed order.

Reasons for the Proposed Decision

The user evidence is sufficient to show there has been uninterrupted use throughout the relevant period and the work undertaken on the path by volunteers and the groundsman is additional evidence of acquiescence by the landowners.

Consultation

The item has been subject to extensive consultation.

Appendices

Plan and appendices 1 and 2

List of Background Papers

M08/8

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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.

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