

## Penderfyniad ar y Gorchymyn

Ymweliad â safle a wnaed ar 16/11/16

**gan Alison Lea MA (Cantab) Solicitor**  
**Arolygydd a benodir gan Weinidogion Cymru**  
**Dyddiad: 24/01/17**

## Order Decision

Site visit made on 16/11/16

**by Alison Lea MA (Cantab) Solicitor**  
**an Inspector appointed by the Welsh Ministers**  
**Date: 24/01/17**

**Order Ref: APP/Y6930/W/16/516210**

**The Welsh Ministers have transferred the authority to decide this Order to me as the appointed Inspector.**

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the County Borough of Neath Port Talbot Definitive Map Modification Order No 1/16, 2016, Footpath from Tonclwyda to Footpath No 7, Community of Clyne and Melincourt.
- Neath Port Talbot County Borough Council submitted the Order for confirmation to the Welsh Ministers.
- The Order is dated 5 February 2016 and there is one objection outstanding.
- The Order proposes to modify the Definitive Map and Statement for the area by adding a footpath from Tonclwyda to Footpath No. 7 as shown on the Order plan and described in the Order Schedule.

**Summary of Decision: The Order is confirmed.**

### Preliminary Matters

1. The Order route commences on Tonclwyda Road (marked Point A on the Order plan) and leads downhill and behind a property known as Plas-Y-Bryn to join Footpath No. 7. At the time of my site visit access at Point A was not possible and the route in the vicinity of Point A was overgrown. However, there was a clear path along the majority of the claimed route.

### The Main Issues

2. The Order refers to the occurrence of an event specified in section 53(3)(b) of the 1981 Act, namely 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.
3. The Council relies on Section 31 of the Highways Act 1980 (the 1980 Act) which provides that where a way, other than a way of such a character that the use of it could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public, as of right and without interruption, for a period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that the landowner demonstrated a lack of intention during this period to dedicate the route. The 20 year period applies retrospectively from the date on which the right of the public to use the way was brought into question.

## **Reasons**

### ***When the right to use the way was brought into question***

4. The application was made on 5 June 2015 and was accompanied by 17 user evidence forms. The Council states that 6 of the people who completed forms were interviewed and that all of those interviewed indicated that the first and only time the Order route was obstructed was when fencing was erected at Point A in the early part of 2015.
5. The objector, Mrs Williams, is the owner of the land. She states that there used to be a 2 strand barbed wire fence along Tonclwyda but that in recent times it had rusted away in places and at Point A had been cut and folded back. She states that in December 2014 the remainder of the old barbed wire fence was removed and a new fence consisting of stock proof wire and 1 strand of barbed wire on top was constructed. She accepts that it is the actions of December 2014 which have led to the claim.
6. Accordingly I am satisfied that the right to use the way was brought into question by the erection of a fence in December 2014/early 2015.

### ***Whether there was 20 years' public use prior to the right to use the way being brought into question***

7. All 17 of the people who completed user evidence forms state that they used the path for the full 20 year period. Some of the claim forms refer to as much as 60 years use. Many claim weekly or even more frequent use. Although I note that Mrs Williams' reference to the existence of an earlier barbed wire fence suggests that access at Point A may not always have been possible, she has not provided any detail of this. None of the user evidence forms refers to access having been prevented at any time prior to December 2014/early 2015.
8. The main reasons for using the route are given as walking for pleasure or walking dogs, fishing in the canal or river and accessing the shops, Post Office or bus stop in Clyne from Ynysarwed. I note that from March 2007 until February 2008 it was not possible to cross the river and therefore access between Clyne and Ynysarwed will not have been possible. I also note that after floods in 1979 there was no formal river crossing until a footbridge was installed in 2001.
9. With regard to the latter period, Mary Stanford states on her user evidence form that she "regularly crossed the canal pipes" when no bridge was available. The Council states that "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" and that "many people were allegedly able to use these pipes to cross the river". Mrs Williams states that the pipes could not be accessed due to high galvanised railings being placed at either end to stop people accessing the pipes and I note the photograph which shows the pipes and part of the railings. However, it is unclear to what extent access over the pipes was prevented and none of the user evidence forms refers to a lack of access from Ynysarwed to Clyne between 1979 and 2001.
10. I accept that difficulties in crossing the river may have reduced the number and frequency of people crossing from Ynysarwed to access services in Clyne. However, only 3 of the user evidence forms were completed by people living in Ynysarwed and in any event use of the Order route itself does not involve crossing the river. I have no reason to believe that those claiming use of the Order route for pleasure would have stopped using it at times when it was difficult or impossible to cross the river.

11. Mrs Williams states that the Order route was put in by the electricity board to access the transformer situated adjacent to the path and that this was done in the last 15 years. I note the location of the transformer in relation to the path but query why the electricity board would require access from both Footpath No 7 and Tonclwyda. In any event, given that there seems to be no doubt about the location of the route many claim to have used for over 40 years, it seems unlikely that the use claimed relates to a path put in by the electricity board in the last 15 years.
12. Mrs Williams also suggests that the people completing user evidence forms are not representative of the public as most live in close proximity to the path. However she also states that some of the people who claim to use the path have not lived in the village for the last 20 years and would not have used it during that period, although she does not provide any detail. In fact the evidence forms were completed by people from a range of addresses, not all of which are in close proximity to the Order route and there is no suggestion that use has been limited to a particular class of people.
13. On the evidence before me I accept that the Order route has been used by the public for 20 years prior to the use being brought into question.

***Whether the use was as of right and uninterrupted***

14. To be as of right, the use must have been without force, without secrecy and without permission. Mrs Williams refers to the existence of a barbed wire fence at Point A which she states had rusted away and been cut and folded back but she does not provide any further details and does not claim that access was gained by force. All the user evidence forms state that there were no obstructions on the Order Route and no-one claims that use of the route was in secret or by permission.
15. There is also no evidence that there was any interruption to use of the Order Route. The lack of a footbridge over the river may have reduced the number of people with easy access to the route but would not have interrupted use of the route itself.
16. I therefore conclude that the evidence before me demonstrates sufficient use by the public as of right and without interruption to raise the presumption that the Order route has, on the balance of probabilities, been dedicated as a public footpath.

***Evidence of landowner's intentions***

17. The only evidence of a landowner taking any action to prevent use of the Order route is the actions of Mrs Williams in December 2014 when she states that she removed the old barbed wire fence which had rusted and been cut and folded back and constructed a new one which blocked access. This is the action which brought the public's right to use the way into question. There is no evidence of any signage, challenges to use or any overt acts which would demonstrate a lack of intention to dedicate.

***Conclusions on the evidence***

18. I am therefore satisfied that the evidence before me is sufficient to show on the balance of probabilities that a public footpath subsists over the Order route.

**Conclusions**

19. Having regard to these and all other matters raised I conclude that the Order should be confirmed.

**Formal Decision**

20. I confirm the Order.

*Alison Lea*

**Inspector**