

## Penderfyniad ar y Gorchymyn

Ymweliad â safle a wnaed ar 16/05/17

**gan Susan Doran BA Hons MIPROW**  
**Arolygydd a benodir gan Weinidogion Cymru**  
**Dyddiad: 15/06/2017**

## Order Decision

Site visit made on 16/05/17

**by Susan Doran BA Hons MIPROW**  
**an Inspector appointed by the Welsh Ministers**  
**Date: 15/06/2017**

**Order Ref: ROW/3163913**

**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 and is known as the County Borough of Neath Port Talbot Definitive Map Modification Order No.6/16, 2016, Footpath from Water Street to Footpath 90 Community of Margam.
- Neath Port Talbot County Borough Council submitted the Order for confirmation to the Welsh Ministers.
- The Order is dated 12 August 2016 and there is one objection outstanding.
- The Order proposes to modify the Definitive Map and Statement for the area by adding a Public Footpath as shown in the Order plan and described in the Order Schedules.

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

### **Procedural Matters**

1. This case concerns the recording of a public footpath between an adopted highway off Water Street and Footpath No.90 north-east of Lanmihangel Farm in the Community of Margam, and is based on evidence of claimed use.
2. None of the parties requested to be heard, and this matter has been considered on the basis of the written submissions and an unaccompanied visit to the Order route.
3. I was unable to walk the Order route in full due to overgrowth. I am satisfied, however, on the basis of what I was able to see, and the evidence on file, that I can reach a decision on the Order.

### **The Main Issues**

4. The Order has been made under Section 53(3)(b) of the Wildlife and Countryside Act 1981 ('the 1981 Act'). This requires me to consider whether a period has elapsed during which the public has enjoyed the use of the claimed footpath such that it may be presumed it has been dedicated as a public right of way. Neath Port Talbot County Borough Council ('the Council') relies on a presumption of dedication arising by reference to the tests set out in Section 31 of the Highways Act 1980 ('the 1980 Act').
5. This requires me to establish, on the balance of probability, the date when the right of the public to use the claimed footpath was brought into question; whether the claimed footpath was used by the public as of right and without interruption for a period of not less than 20 years ending on the date on which their right to do so was brought into

question; and whether there is sufficient evidence that there was during this 20 year period no intention on the part of the landowner to dedicate the claimed footpath.

## **Reasons**

### **Map evidence**

6. The Council has provided a series of Ordnance Survey maps for the period 1914 to 1982. Those revised in 1937 and 1941 together with a map of 1947 are the earliest to show the Order route in its entirety as a physical feature in existence on the ground. However, the status of the route depicted is not evident from these maps and it is necessary to consider the claimed evidence of use to establish whether or not a public right of way on foot subsists.

### **When the claimed footpath was brought into question**

7. The application to add the claimed footpath to the Definitive Map and Statement was made in 1996. However, it is evident from the submissions that there are a number of dates referred to by users that could have served to bring into question the public's right to use the Order route. All concern the erection of gates at various points along the route, some of which were locked, varying in date between 1980, the early 1980s, 1988 and 1995. Later dates are given but these are after the date of the application.
8. The applicant indicates a gate had been put up in 1995, prior to the submission of the application, consistent with the evidence of several users, and this would act as a bringing into question, giving a 20 year period of 1975 to 1995. However, the erection of a locked gate during this period would act as an interruption to use capable of defeating the claim. Referring to *Paterson v Secretary of State for the Environment, Food and Rural Affairs* [2010] which held that for the presumption in Section 31 of the 1980 Act to operate it is only necessary to identify any period of 20 years back from a date of bringing into question, the Council concluded that 1980 was the appropriate date. It was in 1980 that the Objector, Mr Radcliffe, installed a locked gate across the route to the south-west of the railway to prevent unwanted access to his land.
9. The early 1980s or 1980 are the earliest dates given by users when a gate first blocked access to the Order route and this is consistent with the Objector's evidence. The locking of a gate is a matter that would bring the public's right to use the way into question, and would come to the attention of users. I have taken 1980 as the date of bringing into question which gives a 20 year period of 1960 to 1980 for the purposes of Section 31.

### **Evidence of use by the public**

10. Evidence from 23 users is relied on by the Council in the form of user evidence forms, witness statements or telephone interviews. Use claimed is during all or part of the 20 year period under consideration, with use by many dating from the 1940s, although I do not rely on forms that do not provide details of the actual years between which use took place. Some use described was to go to work at the former Newlands Colliery which operated between 1918 and 1968 north of the railway, roughly north of points C-E on the Order plan. I have discounted this use as I consider it likely to have been in exercise of a private right. It is possible that some use to visit a Sunday market that operated on or near the former colliery site from 1972 to around 1978 may also have been in exercise of a private right. Accordingly, I have attached reduced weight to it in my assessment.

11. However, the bulk of the user evidence is consistent in describing use for the purposes of recreation and pleasure, for example walking, watching wildlife, blackberry picking and dog walking, with users accessing the Order route from either end. Frequency of claimed use varies from three times a week to weekly and by many, monthly, with other use given as once or twice a year. Use described as 'regular' or 'often', however, does not assist in establishing actual frequency of use.
12. None described their use having been with force during the 20 year period<sup>1</sup> and claimed use was open. The Objector expresses the view that given the 20 year period was too long ago to remember, written evidence from the landowners that permission to walk the route had been granted would be necessary. However, were that the case, and there is no evidence here of any formal permission having been granted, then claimed use by the public would not satisfy the requirement of having been 'as of right'. None of the users indicated they had been given permission to use the Order route, and several refer to acknowledging landowners when using it.
13. Neither is there anything to suggest that use during the 20 year period was interrupted. Users describe their use of the Order route as uninterrupted both when the colliery was operational and when the Sunday markets were held, public use of the Order route not having been prevented at these times. Several users refer to the public being able to walk from Pyle (to the south of H) and being able to continue to Water Street without interruption.
14. Two witnesses who describe accessing the former colliery refer to seeing members of the public using the Order route and recall there being no issue with the public being able to walk through the site.
15. I consider that there has been use of the Order route by the public throughout the 20 year period and that use has been as of right and without interruption. In my view, the volume and frequency of that use is sufficient to raise a presumption of dedication. It is necessary to consider next the actions of the landowners to establish whether that presumption has been rebutted.

***Whether the landowners demonstrated a lack of intention to dedicate the claimed footpath***

16. Both the former colliery and Sunday market affected the Order route in the vicinity of the railway at C. Correspondence dating to 1997 submitted on behalf of some landowners affected by the proposal following the submission of the application to the Council indicates that a right to pass along the track to access the former colliery had been granted by agreement to the owners enabling colliery workers to use the route, but not the public. No copy of this agreement has been provided, so I am unable to reach any conclusions as to its terms and what effect, if any, this has on the Order route.
17. The correspondence explains that following closure of the colliery, the Coal Board leased the land for use as a furniture supermarket/Sunday market and members of the public, as customers, were able to access the site via the track<sup>2</sup>. It then refers to a night watchman who prevented unauthorised access to point C and who would have

---

<sup>1</sup> Some described climbing over locked gates but this was after 1980

<sup>2</sup> I have referred to this issue at paragraph 10 above

---

prevented access beyond in the direction of D. None of the users refer to this in their evidence, and no other evidence has been submitted to support the contention that use by the public was prevented during this period, or indeed when the colliery was operational. The evidence of users is that there was no problem walking through the colliery site along the Order route when it was operating, and equally so when the market was held. The evidence is that the colliery site was owned by British Coal, from C to between E2 and F, until 1996.

18. Accordingly I find that there is insufficient, or indeed no substantiated evidence that the landowner(s) demonstrated a lack of intention to dedicate the claimed footpath during the 20 year period. I therefore conclude that a right of way on foot has been shown to subsist.

### **Other matters**

19. The Objector raises a safety concern where the Order route meets Water Street which is used by heavy traffic accessing the Industrial Estate and where there is no pavement. I understand these concerns. However, I am unable to take such matters as safety, suitability or desirability into account in determining the Order under the 1981 Act.

### **Conclusion**

20. Having regard to these and all other matters raised in the written representations I conclude that the Order should be confirmed.

### **Formal Decision**

21. I confirm the Order.

*S Doran*

**Inspector**