

## Penderfyniad ar y Gorchymyn

Ymchwiliad a gynhaliwyd ar 09/05/2017

**gan Mark Yates BA (Hons) MIPROW**

**Arolygydd a benodir gan Weinidigion Cymru**

**Dyddiad: 25/07/2017**

## Order Decision

Inquiry held on 09/05/2017

**by Mark Yates BA (Hons) MIPROW**

**An Inspector appointed by the Welsh  
Ministers**

**Date: 25/07/2017**

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**Order Ref: ROW/3160124**

**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 Pant 12 Definitive Map Modification Order 2015.
- The Merthyr Tydfil County Borough Council ("the Council") submitted the Order for confirmation to the Welsh Ministers.
- The Order is dated 15 December 2015 and there was one objection outstanding when the Order was submitted for confirmation to the Welsh Ministers.
- The Order proposes to add a footpath ("the claimed route") to the definitive map and statement, as detailed in the Order Map and Schedule.

**Summary of Decision: The Order is not confirmed.**

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### Procedural Matters

1. I held a public inquiry into the Order on 9 May 2017 at the Orbit Business Centre, Merthyr Tydfil having made an unaccompanied visit to the site the previous day. I conducted a further visit following the close of the inquiry accompanied by representatives of the Council and the objector (Miss Clayton).
2. The Council identified three owners of the land crossed by the claimed route and these parties were notified of the making of the Order. However, towards the end of the inquiry, Miss Clayton queried the ownership of a section of the route. Following consideration of the Land Registry documentation, the Council concluded that there was no registered owner of the land in question. In order to address this procedural issue, the Council sought and was granted a dispensation to place notices on site in accordance with paragraph 3(4) of Schedule 15 to the 1981 Act. No additional party made an objection or representation to the Order during the period specified in this notice.
3. I address the requested modification to the extent of the claimed route when evaluating the evidence. In light of my conclusion in paragraph 21 below, there is no need for me to consider the other potential modifications put forward at the inquiry.
4. All of the points referred to below correspond to those delineated on the Order Map.

### Main Issues

5. The Order is made under Section 53(2)(b) of the 1981 Act, relying on the occurrence of an event specified in Section 53(3)(b) of the Act. Therefore, for me to confirm the Order, I need to be satisfied that the evidence that has been discovered shows the
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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 footpath. The burden of proof to be applied is the balance of probabilities.

6. The relevant statutory provision, in relation to the dedication of a public right of way, is found in Section 31 of the Highways Act 1980. This requires consideration of whether there has been use of a way by the public, as of right and without interruption, for a period of twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.
7. If the statutory test fails I shall consider the issue of common law dedication. An implication of dedication may be shown at common law if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication. Evidence of the use of a way by the public as of right may support an inference of dedication, and may also be evidence of the acceptance of a dedication by the public.

## **Reasons**

### ***Statutory dedication***

#### *When the status of the claimed route was brought into question*

8. Miss Clayton draws attention to the sign that existed on the gate at the entrance to the yard of Garth Farm. However, a number of issues arise out of this sign most notably that it was not placed on the claimed route but the connecting route which has been found to be a public bridleway. Further, the visible wording fails to clearly indicate that the route was not considered to be a public right of way. Nor was it visible to people travelling southwards. The only potential challenge to use of the claimed route is documented in the user evidence form ("UEF") completed by Mrs Steele and is stated to have occurred in 2005.
9. In the absence of evidence of sufficient action being taken to challenge public use of the claimed route I concur with the Council that it was the application<sup>1</sup> to add the route to the definitive map in July 2006 that served to bring its status into question. It follows that the relevant twenty year period to be considered for the purpose of statutory dedication is 1986-2006.

#### *The user evidence*

10. Fourteen UEFs have been submitted from people in support of the application to add the claimed route to the definitive map. The Council's witness (Ms Jones) confirms that no follow up interviews were undertaken to clarify information contained in the forms but clarification was sought in terms of the route people claimed to have used. In my view, bearing in mind that the UEFs consist of two pages of standard questions, the forms should be seen as a starting point. Only one of the users (Mr Rogers) gave evidence at the inquiry. This means that it was not possible for the user evidence to be clarified to any reasonable extent. Mr Mumford raised concerns at the inquiry regarding the length of time taken for the matter to be determined. Whilst outside of my control, this issue may have impacted upon the availability of potential witnesses.

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<sup>1</sup> Made by Mr Mumford on behalf of the Pant Residents Committee

11. A proportion of the users state that their use spanned a specified number of years. This means there is a degree of uncertainty regarding the exact periods of their claimed use. However, the use by two people had clearly ceased prior to the onset of the relevant period. Of the remaining twelve users, Mrs Steele's occasional use appears to have covered the last two years of this period and Mr Phillips' use occurred only once. In terms of the long periods of use specified in some of the UEFs, there have been changes in the area most notably in relation to the closure of the railway in the 1960s. A mountain railway now operates in the area<sup>2</sup> and the claimed route proceeds partly within its car park. The frequency of use in many cases is specified in general terms such as "*now and again*", "*periodically*" and in two cases "*frequent*". This makes it difficult to quantify the extent of the claimed use.
12. Whilst Mr Rogers cannot remember any of the gates along the claimed route being locked, he acknowledges that it was a long time ago. Miss Clayton states that the gates at Garth Farm were locked in the evenings. This indicates that any locked gates may not have been encountered by the public given the rural setting of the route. It is apparent that the present gate at point C was only locked after the end of the relevant period. In terms of the tractor and baler present, it cannot be determined that these prevented the public from continuing over the remainder of the route. The livestock present at times are likely to have only served as a potential deterrent to use for limited periods. Miss Clayton and her partner (Mr Scadden) draw particular attention to the presence since the 1980s of the fence at point G which is presently topped by barbed wire. However, the evidence in the UEFs suggests that access was available over this section for a period of time.
13. A particular issue of concern is the alignment and extent of the route used. In response to a point raised by Miss Clayton, the Council requests that the Order is modified to extend the claimed route 94 metres southwards from point A so that it links with the road. Miss Clayton also draws attention to the responses by Mr Rogers in cross-examination regarding the route he used through the yard of Garth Farm and in the locality of Blaen y Garth. Three aerial photographs, which span the period of 2001-2006, show potential signs of wear in relation to parts of the claimed route. However, I consider the aerial photographs to be of limited weight given the overall period of the claimed use and the fact that it cannot be determined whether the worn parts were caused by public use. The Ordnance Survey ("OS") maps provided do not cover the relevant period.
14. The Council sought further clarification from the users regarding the route they used. Ten people drew the route or routes they used on a plan, including eight people whose use appears to have encompassed the relevant period. Whilst there are points where the route used is generally consistent, most notably F-G-H, there are significant variations elsewhere both in terms of the alignment and extent of the route used. In some case, people have marked two routes which vary to some extent. There is some support for the two variations highlighted by Mr Rogers but the maps are far from consistent in relation to the route used in these locations. Only one of the users indicates that they continued through to the road near to the point where the Council wishes the Order to be modified. Three of the relevant users appear to have not continued to the south-west of Blaen y Garth or the former station nearby.

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<sup>2</sup> Mr Rogers estimates that this was opened in the late 1970s or early 1980s.

15. Miss Clayton gave evidence at the inquiry regarding a lack of observed use of the claimed route where it passes through Garth Farm and this was supported by Mr Scadden. They state that a significant amount of time is spent in the locality of the farm yard. The Council's report into the application also records that written responses were received from other people attesting to a lack of observed use. There is a clear conflict of evidence and some weight should be given to the oral evidence of Miss Clayton and Mr Scadden. I do not consider that it can be said that no use occurred bearing in mind the evidence in the UEFs and the oral evidence of Mr Rogers. There would also presumably have been some use of the connecting bridleway in this location. However, the evidence of the objectors at the inquiry means that there are further concerns about whether there was public use to such an extent as to raise a presumption of the dedication of a footpath over the claimed route.
16. Having regard to the above, I am not satisfied on balance that the evidence is sufficient to raise a presumption of dedication under statute in relation to the claimed route. Therefore, the first part of the statutory test is not satisfied and there is no need for me to consider the issue of statutory dedication further.

### ***Common law dedication***

17. The issues outlined above will also for the most part have a bearing on the assessment of the user evidence for the purpose of common law dedication. Whilst the claimed route could have been used to access the former train station, the UEFs do not provide any indication of significant use for this purpose in the past.
18. The OS maps date back to 1875 and modern features have been overlaid over them which leads to some problems in distinguishing the historical features. It appears that the B-E and G-H sections are longstanding features. However, there is nothing to suggest that these sections were originally part of a through route and they could have been solely private means of access in relation to the two farms. Only the 1957 OS map shows signs of a path between the two sections. This could be reflective of public use but it could equally correspond to private use. I am also not satisfied that anything more can be gleaned from the aerial photographs.
19. Overall I am not satisfied on balance that the evidence is sufficient to raise an implication of dedication at common law.

### **Other Matters**

20. Issues relating to whether it is desirable for the claimed route to be recorded as a public right of way are not relevant to my decision.

### **Conclusion**

21. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should not be confirmed.

### **Formal Decision**

22. I do not confirm the Order.

*Mark Yates*

**Inspector**

## APPEARANCES

### For the Council:

Ms R. Parekh

## Counsel instructed by the Council

She called:

Ms C.A. Jones

Public Rights of Way Project Officer

### Other Supporters:

Mr W. Rogers

Mr A. Mumford

## Applicant

## The Objectors:

Miss M. Clayton

Mr C. de Winton

Mr A. Scadden

## DOCUMENTS

1. Additional photographs supplied by Miss Clayton
2. Map showing the proposed modified route
3. Land Registry map