

<b>DATE</b>	<b>5 February 2018</b>
<b>TITLE</b>	<b>Section 53, Wildlife and Countryside Act 1981 An application to register on the Definitive Map a footpath in front of Mawddach Crescent to Barmouth Bridge, Community of Arthog</b>
<b>PURPOSE</b>	<b>To consider whether the Authority should make a Modification Order</b>
<b>RECOMMENDATION</b>	<b>That the application be REJECTED on the grounds that the owners of the land have taken sufficient action to indicate their lack of intention to dedicate a public right of way.</b>
<b>AUTHOR</b>	<b>Head of Environment Department</b>

## **1.0 INTRODUCTION**

- 1.1 This report refers to an application made to this Council under section 53 of the Wildlife and Countryside Act 1981 (“WCA 1981”) to register on the Definitive Map a public footpath in the Community of Arthog.
- 1.2 The application is made on the basis that the public have walked the path unhindered, continuously and as of right (that is without the landowner’s permission) over a period of more than twenty years.

## **2.0 BACKGROUND**

- 2.1 In August 2014, an application with supporting evidence was received from Mr Huw Roberts under WCA 1981 to register on the Definitive Map and Statement a public footpath in front of Mawddach Crescent which connects on either side to public footpath no.13 in the Community of Arthog.
- 2.2 Copies of the application, user evidence forms and statements submitted by users and landowners are held by the Council on file. The evidence in support of the application is largely that of alleged public use of the route on foot.
- 2.3 The claimed footpath, as indicated on the application plan, is shown between points A and B on the plan provided in Appendix 1.
- 2.4 During investigation of the evidence, it became apparent that many of the users in support of the application also claim public rights between points A – B – C.
- 2.5 If having considered all the relevant available evidence and on a balance of probabilities public footpath rights are reasonably alleged to

exist over the route, the Authority will be obliged to make a Definitive Map Modification Order to register the route on the Definitive Map.

### **3.0 LEGAL BACKGROUND**

3.1 A highway may be created through dedication by the landowner of a public right of passage across his land, coupled by acceptance of the route by the public. Such dedication may be expressed through some overt action; or presumed, either from a period of undisputed use as of right by the public or from documentary evidence recording at some time in the past the status then attributed to the way concerned.

3.2 Section 53 of the Wildlife and Countryside Act 1981 (“WCA 1981”) imposes a duty on Gwynedd Council as “surveying authority” to keep the Definitive Map and Statement under continuous review.

3.3 Section 53(3)(b) of the 1981 Act states that an Order should be made to modify the Definitive Map and Statement where it can be shown that a period of time has expired such that the enjoyment by the public of a path during that time raises the presumption that the way has been dedicated as a public path.

3.4 Section 53(3)(c)(i) of the WCA 1981 specifies that an Order should be made following the discovery of evidence which, when considered with all other relevant evidence, shows *“that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates...”*.

3.5 Where the evidence in support of the application is user evidence, Section 31(1) of the Highways Act 1980 (HA 1980) is applied:-

*“Where a way.... has been actually enjoyed by the public as of right and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate.”*

3.6 Section 31(2) states that *“the 20 years is calculated retrospectively from the date when the right of the public to use the way is brought into question.”*

3.7 Section 31 is supplemented by Section 32 of the Highway Act 1980 which states:

*“A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity*

*of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.”*

### **Common Law**

- 3.8 At Common Law, a right of way may be created through implied dedication and acceptance. The onus of proof is on the claimant to show that the landowner, who must have the capacity to dedicate, intended to dedicate a public right of way; or that public use has gone on for so long that it could be inferred; or that the landowner was aware of and acquiesced in public use. Use of the claimed way by the public must be as of right, however, there is no fixed period of use, and depending on the facts of the case, may range from a few years to several decades. There is no particular date from which use must be calculated retrospectively.
- 3.9 Section 31 simplifies the Common Law rule by stating that certain assumptions prevail unless the contrary is proved.

### **Legally irrelevant matters**

- 3.10 Factors such as public safety, security, desirability, suitability or need cannot be taken into account by the Authority when making a decision. The whole process is concerned with determining whether or not public rights actually exist.

## **4.0 DEVELOPMENT OF ARTHOG TRAMWAYS (1894 – 1905)**

- 4.1 In 1894, Solomon Andrews, a Cardiff-based businessman, bought land overlooking the Mawddach estuary upon which he constructed a terrace of houses, Mawddach Crescent, as part of a project to develop the village of Arthog as a holiday resort.
- 4.2 To facilitate the project, a number of tramways were constructed, the main purpose of which were to transport materials in order to build houses, roads and embankments in the development of the Arthog project. Some of these tramways would also carry passengers, primarily visitors to the area.
- 4.3 A map taken from an article written by a local historian, the late Ifor Higgon, is provided (Appendix 2) which shows the position of these tramways in the vicinity of Mawddach Crescent.
- 4.4 The map shows that a tramway existed at the front of the Crescent (i.e. on the seaward side of the houses) as well as to the rear of the properties. An embankment known as the “Cob” was built in 1902 which extended west across a tidal inlet to link up with the railway embankment at the southern end of Barmouth Bridge. A sluice opening

was made at the Barmouth end of the Cob over which a bridge was built wide enough for a tramcar.

- 4.5 The Mawddach Crescent houses were completed around September 1902. By the summer of 1903 an extended tramcar service opened to the public running from Barmouth Junction to the Crescent which continued over the Cob to Barmouth Bridge. However, the tramway proved to be unprofitable and it is believed that the service terminated at the end of that summer. Following the closure of the service, the work of lifting the tramlines began in 1905<sup>1</sup>.
- 4.6 The route which is claimed follows the line of the disused tramway running in front of the Crescent and proceeding in a westerly direction over the Cob embankment towards Barmouth Bridge.

## **5.0 COUNTY, RURAL DISTRICT AND PARISH/COMMUNITY COUNCIL MINUTES**

- 5.1 Officers have undertaken an investigation of minutes of the Llangelynin Parish Council (LIPC) and also records of the Dolgellau Rural District Council (DRDC) and Meirionethshire County Council (CC). Research has also been made into files held by the former Gwynedd County Council as well as the current Gwynedd Council.
- 5.2 As a result of this research, numerous references have been found in respect of Mawddach Crescent and those considered to be relevant to the application are summarised in Appendix 3.

## **6.0 EVIDENCE IN SUPPORT OF THE APPLICATION**

### **User evidence**

- 6.1 Sixty one Statements of Evidence were received in support of the application.
- 6.2 The table provided in Appendix 4 summarises the claimed use as indicated on the Statements. Each user is given a user reference number which is used to identify them in the body of the report.
- 6.3 Numerous users provided written letters to supplement their Statements. These are provided in Appendix 5.
- 6.4 The level of use over the application route varies between “daily” and “yearly” with the majority claiming to use the route on a weekly or monthly basis.

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<sup>1</sup> Barmouth Junction and Arthog Tramways, Ifor Higgon (1985)

- 6.5 The majority of the users claim a public footpath. There is some evidence to show that the route was used by bicycles. However, it is considered that such use is minimal and of insufficient quantity and frequency to give rise to a presumption of dedication.
- 6.6 The application route has been mainly used for recreational purposes. The user evidence also suggests that the route has also been used as a means of getting to Barmouth from Arthog and vice versa (e.g. users 1, 2, 5, 6, 9, 11, 19, 20, 21, 22, 23, 24, 26, 36, 38, 40, 42, 47, 50, 51, 53, 56, 60 and 61). The most direct way to achieve this would be via “the Cob” embankment.
- 6.7 The majority of the users in support of the application do not mention being challenged by the landowners/residents. Those who do mention being challenged state that they were confronted by a resident living at no.1 (Users 5 and 6). One specifically mentions being challenged by a Mr Bath (User 16) who lived at Mawddach Crescent between 2004 and 2014.
- 6.8 A small number of users claim to have seen signs with the wording “Private Rd” (e.g. Users 16, 18, 19, 20, 33, 34, 42 and 48). Some mention on their evidence forms the existence of a sign directing the public to the rear of the houses (Users 4, 9, 14, 17, 18, 19, 20, 26, 34, 37, 41, 43, 46, 48, 50).
- 6.9 Letters have been provided by former residents Mr Jim Aston and Ms Lynn Walford suggesting that the public used the route without hindrance. These are provided in Appendix 6.
- 6.10 An initial examination of the Statements of Evidence submitted shows that there appears to be, on the face of it, evidence of uninterrupted use of more than 20 years.

#### **Other evidence in support of the application**

- 6.11 As part of the application, the applicant submitted a report entitled “Mawddach Crescent Path – History, Gates and Signage” (Appendix 7) which includes several old photographs of the Crescent over the years. There is a sequence of four old photographs showing the Crescent from its western side. A further photograph shows the eastern approach to the Crescent.
- 6.12 The applicant has also provided an extract from the 11th edition of Ward Lock’s “Barmouth and North Wales (Southern Edition)” published circa 1936/37 which describes a walk from Barmouth to Arthog, as follows:-

*“Walkers after crossing the [Barmouth] Bridge, turn left to a path over an embankment. A couple of hundred yards from the embankment, a terrace of red brick houses comes into view. Continue past the terrace*

*through a gate to a second wicket gate about 120 yards on the right. Through this gate a path leads to Arthog over a level crossing."*

6.13 The applicant is of the opinion that the description refers to a route in front of the terrace.

6.14 Reference is also made in the applicant's report to Ward Lock's North Wales Complete Edition dated 1912 which reads:-

*"After crossing the bridge, pedestrians pass over loose sand to a road on the left forming an embankment and from that to a footpath at the foot of the hill. Passing a terrace of modern villas, continue by the path, till a wicket gate on the right marks the path across marshy ground by a level crossing over the railway to a high road."*

6.15 In their Red Guide 'North Wales Southern Section' 5th Edition, dated 1918/19 the walk is described as follows:-

*"After crossing the bridge, pedestrians can at once go down to a road on the left forming an embankment across the sands, and from that pass to a footpath at the foot of the hill. Following the path through a wicket gate clearly indicated, the high road is reached just by Arthog village."*

6.16 Whilst in this edition, the description does not specifically refer to Mawddach Crescent, the applicant claims that there can be no doubt that the route is exactly that which is referred to in the two other publications.

## **7.0 Evidence showing a lack of intention to dedicate**

7.1 Information received from landowners (current and past) and those who are or have been closely associated with the Crescent reveal that numerous steps have been taken to restrict public use along the claimed route. This evidence is summarised in Appendix 8.

### **CHALLENGES**

7.2 It is alleged by the current landowners that considerable effort has been made to turn users back. For instance, the longest serving current resident states that, on purchasing the property in 1982, the family would adopt the convention of challenging members of the public walking in front of the houses. This suggests that it was, at that time, an established practice. It appears that this course of action was taken up by the newer residents who moved to the Crescent. Details of such action is documented in Appendix 8.

7.3 It is also alleged that the late owner of Fegla Fawr actively challenged anyone who strayed from the recognised public footpaths. This is

evidenced in a letter dated 24<sup>th</sup> October 2006 (Appendix 9) from the Council in response to a complaint from a member of the public regarding signs which had been erected in front of Mawddach Terrace. The author of the letter, Mr D. Coleman (a Council officer who, at the time, had over 30 years experience of Rights of Way work in the Meirionnydd area - now retired) states the following : *“The path you refer to, along with others in the vicinity, has been a contentious issue for as long as the writer can recall, with regular complaints that the landowner was challenging walkers in the vicinity”*. Further to this, the officer submitted, *“it is highly unlikely that a 20 year period could be established – as required by law – during which time public rights could be said to have been established”*.

## **SIGNS**

### **“Private Road” sign on brick wall**

- 7.4 At the eastern entrance to the Crescent, there is currently a “Private Road” sign affixed to a low-level brick wall next to a Royal Mail Post Box. The sign - which appears to be of considerable age – is shown in Appendix 10.
- 7.5 It is unclear when the sign was erected and by whom. Information provided by one of the current residents and an individual in support of the application suggests that the sign dates back to the occupation of the Crescent by the Royal Marines in the 1940s.
- 7.6 Some of the claimants mention having seen this sign. User 42 refers to a “dilapidated sign” which was largely ignored by passers-by. Users 16, 19 and 20 also make reference to a sign by the post box.

### **“Mawddach Crescent Private Road” sign**

- 7.7 It is alleged that two metal signs each stating “Mawddach Crescent Private Road” were put up by the residents around 1999. Both are still in existence - one is affixed to a metal gate outside no.1 Mawddach Crescent, the other affixed to a metal post outside no.8. A photograph of the former sign is provided in Appendix 11.

### **“No entry” sign**

- 7.8 There are two signs currently in existence on either side of the Crescent bearing a “no entry” symbol and the words “STOP – Private Property – Please use public footpath to rear of houses. Thank you”. This sign is shown in Appendix 12. There is strong evidence to show that this sign was erected in 2006 as there is reference to it in a letter of complaint dated October 2006 (Appendix 13). The Council’s response to this letter is provided in Appendix 9 and is referred to in paragraph 7.3.

### **“PRIVATE” sign painted on brick wall**

- 7.9 On the brick wall at the eastern entrance of the Crescent, the word “PRIVATE” is hand-painted in large white lettering next to the Private Road sign referred to in 7.4 above. By today, it is faded as can be seen in the photograph provided in Appendix 14 taken in December 2016. However, a photograph taken during a site visit c.2005/6 shows the exact same sign as being clear and distinct (see Appendix 15). The sign is alleged to have been in place since the mid / late 1960s.
- 7.10 The applicant, Mr Huw Roberts contends that the painted sign reads “Private Road” and that this sign was aimed at preventing motorists, particularly visitors who were unfamiliar with the area. However, the word “road” appears much smaller and finer than the word “Private”. Two of the objectors explain that the word “Private” is painted underneath the metal sign and that the metal sign was placed on top of it.

### **GATES**

- 7.11 It appears that a decision was made by the residents in 1999 to erect a new gate adjacent to no.1 Mawddach Crescent and a cattle grid with a small gate at the other end, outside no.8. It is contested that the gate adjacent to no.1 has been periodically locked since it was erected. Since 2016, however, it is alleged to have been permanently locked.

### **Use by permission**

- 7.12 It is alleged by the objectors that the use made of the claimed path was by permission since some of the users, being part of a small community such as Arthog, would have been known to residents.

### **Public Notice, “Y Dydd”**

- 7.13 A Public Notice from Miss D.J.Roberts of Fegla Fawr which appeared in the 11.10.1957 edition of “Y Dydd” has been provided to the Council (Appendix 16). The notice publicly announces the immediate closure of the embankment due to its dangerous condition. It would appear that no claim was made in respect of a public right of way following this action.

## **8.0 COMMENTS ON THE EVIDENCE**

- 8.1 There is much inconsistency in the Statements of Evidence not only with regard to the existence of the various notices but also as to when they were erected. The evidence suggests that since 2006, six signs have existed on the claimed route, all of which are inconsistent with the

dedication of the claimed route as a highway. The two signs located on the brick wall appear to be of some considerable age. It is therefore surprising that 11 of the 61 users (User Ref : 2, 3, 6, 25, 27, 29, 32, 39, 56, 57 and 60) do not mention in their evidence there being any notices on the claimed route. A further 13 users state that no signs existed on the route or could not recall/were not aware of such signs (User Ref : 7, 8, 23, 24, 28, 44, 47, 52, 53, 54, 55, 58, 59).

- 8.2 Displaying notices on a way is regarded as an effective method of rebutting deemed dedication. Subsection 3 of section 31 HA 1980 provides that the erection and maintenance of a notice will, in the absence of proof of contrary intention, be sufficient evidence to negative the intention to dedicate the way as a highway.
- 8.3 Reference has been made to the three “Private Road” signs which currently exist on the claimed path. In a legal sense, such signs could be construed as showing an intention to deter vehicular traffic rather than users on foot, as asserted by the applicant. However, if read in a common-sense and not legalistic way, the signs give an impression to anyone using or attempting to use the way that entry onto the land was prohibited. Furthermore, given that there existed a public right of way to the rear of the houses, it is reasonable to believe that the residents intended to prevent the public from walking along the front of the houses.
- 8.4 The “Private Road” signs are supplemented by the words “PRIVATE” handpainted in 1 foot high letters on the brick wall which forms the eastern entrance to the Crescent.
- 8.5 The position of the sign is such that it can only refer to the route which is claimed. The message conveyed to the user is clear-cut – that the public are prohibited from using the route ahead. The sign therefore clearly denies a public right of way.
- 8.6 Although, the “PRIVATE” sign is barely discernable these days, the photograph in the Council’s possession shows that it was very much distinct c.2005/6. Moreover, it is probable that the sign was in place for many, many years prior to that date as contended by the objectors. It is surprising that none of the users mention the existence of this sign particularly as it is positioned in such a conspicuous position at the entrance to the Crescent.
- 8.7 There is good evidence in the letter dated October 2006 to indicate that the “No entry” signs have been in place since (at least) that particular year (which disproves the Statements of Evidence which state that the signs are “recent” e.g. Users 1, 4, 11, 15, 36, 48, 49, 50). The “No entry” signs clearly reinforce the landowners’ long-standing position that there is / was no intention to dedicate the route to the public.

- 8.8 Given that signs were in place, it is therefore reasonable to believe that the landowners would also have made efforts to challenge anyone using the claimed route, as indicated in Appendix 8.
- 8.9 The evidence of actions taken by the landowner suggests that any use made by the public would not, on the balance of probabilities, establish a right of way by prescription under section 31 Highways Act 1980.
- 8.10 From examining the user statements, there is an implication that permission was granted to some users which is consistent with the objectors' claims. For instance, User 4 states that he was given access to the foreshore with the landowners' permission suggesting he was, at least, known to them. User 16 states that a former resident used to give her children drinks. User 20 specifically refers to a resident by the name of Mrs Malatratt who would also serve drinks. The additional statement provided by User 21 (who formerly lived in a property adjacent to the Crescent) suggests that he has since returned to the area to visit friends living on the Crescent. User 24 mentions being offered tea whilst passing "as fellow residents" of the Arthog Community. Users 38 and 40 each refer to how their mothers would stop and chat with former residents. User 54 refers to being welcomed by the Edwards family and the residents. In a similar manner, user 55 refers to being welcomed by the residents which included a Mrs Eales and a Ms Bunn.
- 8.11 Although there are numerous references in the Llangelynin Parish Council minutes to a path running past Mawddach Crescent, one must assume that the path referred to is the one which passed behind the terrace since this is the path which was claimed by the Parish Council and County Council as Public Footpath No.25 under the National Parks and Access to the Countryside Act 1949 (NPACA 1949). Further to this, it appears that particular attention was given to Footpath No.25 during the preparation of the Definitive Map for the matter was twice referred to local hearing following objections from the landowner and residents. The decision of the final hearing in 1960 upholds that of the previous hearing held in 1955 in that the route to be put on the Map should run to the rear of the houses.
- 8.12 There is mention in the Parish Council minutes to the Cob embankment being used by the public as well as being listed as a "public path" in the 1935 and 1944 minutes. However, this does not positively evidence a public right of way. The references may reflect the view of the parish council but is by no means conclusive. There is no available evidence to show what process was followed in the production of the list of paths, the level of scrutiny to which the list was subject and whether any public consultation took place.
- 8.13 The likelihood is that LIPC and MCC elected not to include the Cob embankment on the Definitive Map in the early 1950s because it felt that a public right of way did not exist. Indeed, LIPC indicate that the

path from the Crescent to Barmouth Bridge is not a public path in 1957 and acknowledge that the embankment is “private” in 1967. This would appear to be at variance with their previous view.

- 8.14 The closure (or intended closure) of the Cob embankment by Miss Dorothy Roberts in 1957 casts further doubt on the existence of a public right of way across the Cob.
- 8.15 The extracts of the Ward Lock books which have been provided by the applicant do not prove that there exists a public right of way. In any event, the extracts given from the guidebooks published in 1912 and c.1936/7 do not specifically state whether the route passes in front or behind the houses. Under the circumstances, very little weight can be attributed to these documents.

## **9.0 CONSULTATION**

- 9.1 Consultation has been carried out with the interested parties and the responses received are as follows:-
- 9.2 Arthog Community Council – Supports the application (see Appendix 17).
- 9.3 The Meirionnydd Branch of the Ramblers’ Association confirmed that it has no objections to the path being registered. It also confirmed that a number of its members had walked the route over the years. Comments received from six members were provided with the response (Appendix 18).
- 9.4 Councillor Louise Hughes – no response

## **10.0 CONCLUSIONS**

- 10.1 This application hinges on the actions taken by the owners of the land and Members should assess the effect of these actions and whether they are sufficient to prevent a presumption of dedication from being raised.
- 10.2 From examining the available evidence, including the evidence supporting the application and the evidence referred to in Part 7 of this report, it is considered that the requirement of section 31 Highways Act 1980 would not be met.
- 10.3 Officers consider that there have been sufficiently overt acts on the part of the owners of the land to indicate their lack of intention to dedicate the alleged route.

- 10.4 Officers are of the opinion that the evidence considered does not show, on the balance of probabilities, that a right of way subsists or is reasonably alleged to subsist.
- 10.5 It is therefore concluded that the route marked A-B and A-B-C (on the plan in Appendix 1) should not be recorded on the Definitive Map and Statement.
- 10.6 If the recommendation is accepted, the applicant has the option of appealing against the decision to the Planning Inspectorate.

## **11.0 RECOMMENDATION**

- 11.1 That the application to add a public footpath to the Council's Definitive Map and Statement as shown A-B and A-B-C on the plan provided in Appendix 1 be refused.

## **12.0 BACKGROUND PAPERS**

**File 4/2/HT/7CC37/MawddachCrescent**