

DATE	29 April 2019
TITLE	Section 53, Wildlife and Countryside Act 1981 An application to register on the Definitive Map a footpath from the western end of Mawddach Crescent to Barmouth Bridge, Community of Arthog.
PURPOSE	To consider whether the Authority should make a Modification Order
RECOMMENDATION	That members decide whether or not to dedicate a public right of way between Mawddach Crescent and Barmouth Bridge
AUTHOR	Head of Environment Department

1.0 INTRODUCTION

- 1.1 A report was presented to the Planning Committee on the 25th of June 2018 in respect of 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 was made on the basis that the public had walked the path shown on the plan provided as Appendix 1 between points A and B unhindered, continuously and as of right (that is without the landowner’s permission) over a period of more than twenty years.
- 1.3 The report of 25 June 2018 explained that the original application received in August 2014 was to register the path between points A and B, a route that passes in front of the houses on Mawddach Crescent. The report also explains that during the 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. Section B- C being a route west of Mawddach Crescent to the Barmouth Bridge.
- 1.4 The report to committee recommended that the application be rejected; however the Planning Committee resolved to support the application. The decision of the Committee being :

To approve the application to add the public footpath to the Council’s Definitive Map and Statement as shown by A-B on the plan provided in Appendix 1 of the report on the following grounds:

- That the path had been used by walkers over a period of twenty years between 1942 up to 1962; and
- That the signs for that period, from the evidence submitted, were not sufficiently (legally) effective to prevent the assumption that the

highway had been dedicated under section 31(1) Highways Act 1980, and

- Specifically that the sign “Private Road” seen on the photographs in the report referred to vehicles only, and it was not intended to prevent walkers from using the plot.

1.5 The Committee’s decision authorises the making of an order to register section A – B, however no decision was made on whether or not to register the entire route shown on Appendix 1 as A – B- C.

1.6 The purpose of this report is to ask the Committee for its decision on whether or not to register the path shown between B and C on the plan. A decision is required before the order to register the route between A – B can be made and subject to the Committee’s decision whether to include in the order the entire route shown as A - B – C or the plan.

1.7 The June 2018 report and supporting information presented to the Planning Committee and the decision reached can be seen on the following link.

<https://democracy.cyngor.gwynedd.gov.uk/ieListDocuments.aspx?CId=135&MId=2487&Ver=4>

2.0 LEGAL BACKGROUND

2.1 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.

2.2 Section 53(2) of the 1981 Act requires surveying authorities to modify their definitive maps and statements by order as soon as reasonably practicable after the occurrence of any of the events specified in section 53(3).

2.3 The most relevant specified event option for our scenario is the one found in paragraph (b) of section 53(3) which reads:

“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 or restricted byway.”

2.4 As to how the provision “raises a presumption that the way has been dedicated as a public path or restricted byway” operates, one needs to turn to section 31 of the Highways Act 1980.

2.5 Section 31(1) of the Highways Act 1980 (HA 1980) states:-

“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.”

2.6 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.”*

2.7 Section 31(3) states:

“Where the owner of the land over which any such way as aforesaid passes—

- (a) has erected in such manner as to be visible to persons using the way a notice inconsistent with the dedication of the way as a highway, and*
- (b) has maintained the notice after the 1st January 1934, or any later date on which it was erected,*

the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.”

2.8 What constitutes a legally effective notice in order to rebut the presumption of the way having been dedicated by long user, and so create the landlord's contrary intention to dedicate?

- (a) The House of Lords (as it was then called) held in R (on the application of Godmanchester Town Council v Secretary of State for Environment, Food, and Rural Affairs and Cambridgeshire CC [2007] UKHL 28 (“Godmanchester”) that upon the true construction of section 31 (1) “intention” meant what the relevant audience, namely the users of the way, would reasonably have understood the landlord's intention to be.
- (b) The House of Lords in Godmanchester held the law as stated by Lord Justice Denning in Fairey v Southampton CC (1956) 2 QB 439 was correct. The reasonable user would have to understand the landowner was intending to disabuse him of the notion that the land was a public highway.
- (c) The presumption of dedication at common law (on which section 31(1) is based) involved a dialogue between the landowner and the public. A landowner had to communicate his intention to the public in some way if he was to satisfy the requirements of the proviso. Section 31(1) requires “sufficient evidence” that there was no such intention.
- (d) The specific steps available in section 31 for landowners to make their lack of intention known (notices, deposit of plans, declaration) would be otiose if their contrary intention did not have to be demonstrated objectively.

(e) In addition, the provisions of section 31(3) gives us guidance.

2.9 Section 31 is supplemented by Section 32 of the Highways 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

2.10 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.

2.11 Section 31 simplifies the Common Law rule by stating that certain assumptions prevail unless the contrary is proved.

Legally irrelevant matters

2.12 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.

3.0 Brief Description of the route

3.1 The route shown as B- C on the Appendix 1 plan is approximately 610m in length following the former tramway constructed in the 1900s to transport materials used in the construction of roads, embankments and houses as part of the intended development of Arthog as a holiday destination.

3.2 At its western end (point C) the route links with the path along the Barmouth Bridge. Some 100m east of point C the tramway once passed over a bridge which by the 1980s had disappeared completely. The section once occupied by the bridge is tidal and is impassable at high tide.

3.3 For clarity the route is refereed within various statements as the tramway , the embankment and the Cob.

4.0 Evidence in support and against dedication

4.1 In considering whether or not to dedicate the route between A - B - C members are directed to the evidence provided as part of the report of June 2018. The evidence is presented in full in the appendices that accompany this report.

4.2 A summary of the evidence that refers directly to section B- C is recapped in the following sections of this report.

4.3 Evidence in support of dedicating route B-C

Statements of evidence: 110 statements of evidence were received in support of the application, and are summarized in table form in Appendix 4 and 4.2. The user evidence suggests that the route was used as a means of getting to Barmouth from Arthog and vice versa and the use of section B – C is described or implied in Appendix 4 by users 1, 2,5,6 11,19,20,21,22,23,24,26, 36, 38, 40, 42,47,50,51,53,56,60, 61 and by users 9, 12, 28,47,48,50 in Appendix 4.2.

Guide books: The applicant provided extracts from the following Publications:

Ward Lock's publication "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."

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

"After crossing the bridge, pedestrians pass over loose sands to a road on the left forming an embankment and from that to a footpath at the foot of the hill."

A similar description appears in their Red Guide "North Wales Southern Section" 5th Edition, dated 1918/ 19.

"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."

4.4 Evidence against dedicating Route B-C

Challenges : It is alleged that the late owner of Fegla Fawr actively challenged anyone who strayed from the recognised public footpaths. The route shown as B- C follows the former tramway built in 1902 on Fegla Fawr land between the southern end of Barmouth Bridge and Mawddach Crescent. This is evidenced in a letter from the Council dated 24 October 2006 in response to a complaint by a member of the public. The letter is provided as Appendix 9.

Public Notice “Y Dydd”: a public notice from Miss D J Roberts of Fegla Fawr appeared in the 11.10.1957 edition of Y Dydd, (Appendix 16). The notice publicly announces the immediate closure of the embankment due to its dangerous condition.

Statements objecting to dedication: Appendix 8 provides a summary of the objections received to the application and includes the following statements relating to the route between B and C:

Statement by Hannah, Duncan and Jean Cromety:

- As a family, the respondents camped on the Fegla Fawr5 Hill once or twice a year from the early 1`970’s until 1982 and recall Miss Roberts (owner of Fegla Fawr) regularly challenging people crossing her land.
- The evidence for a PROW across the causeway is weak because the route was not included on the Definitive Map nor was it included in the Review. Further to this, there is considerable documentary evidence that Miss Roberts took active steps to prevent a Prow being established.
- Part of the causeway is impassible at high tide.
- The respondents believe that Miss D Roberts would only agree to dedicate a public right of way along the causeway on the basis that the Council pay for upkeep.

Statement by M Francis

- Mrs. Francis has provided a Public Notice published in “y Dydd” dated 11.10 .57 from Miss D J Roberts of Fegla Fawr announcing the immediate closure of the path due to the dangerous condition of the footbridge on the flood embankment from Arthog to Barmouth bridge.

Statement by J Hall and L Oakley

- Regarding the route across the Cob, Miss D Roberts always rejected there was any foot[path along there

5.0 The 20 year period

5.1 The Planning Committee of 25 June 18 concluded that the evidence and specifically the existence of the signs at Mawddach Crescent was not sufficient to demonstrate that the landowners had intended to prevent the public from using the route A- B and that it was possible to show that a period

of 20 years from 1942 to 1962 had passed before the right of the public to use the route was brought into question.

- 5.2 In considering whether or not to make an order to register section B – C the Committee must consider if the 20 period between 1942 and 1962 can be applied to the entire route of A – B – C.

6.0 Decision

- 6.1 The Committee is asked to decide :-

- a. To approve the application to add the public footpath to the Council's Definitive Map and Statement as shown by B- C on the plan provided in Appendix 1 of the report on the grounds that the path had been used by walkers over a period of twenty years between 1942 and 1962.
An order will therefore be made to register the route shown as A-B –C on the Appendix 1 plan.

or

- b. To refuse the application to add the public footpath to the Council's Definitive Map and statement as shown by B-C on the plan provided in Appendix 1 on the grounds that there is insufficient evidence to demonstrate unhindered and continuous use between 1942 and 1962.
In accordance with the Committee's decision of 25 June 2018 an order will therefore be made to register only the route shown as A – B on the Appendix 1 plan