

<b>DATE</b>	<b>23 December 2024</b>
<b>TITLE</b>	<b>Wildlife and Countryside Act 1981 An application to register a public footpath on the Definitive Map and Statement, Nefyn Harbour, Town of Nefyn.</b>
<b>PURPOSE</b>	<b>To consider whether the Authority should make a Definitive Map Modification Order.</b>
<b>RECOMMENDATION</b>	<b>That the application be REJECTED on the grounds that the code of presumed dedication under section 31 (1) Highways Act 1980 cannot be satisfied.</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”) to register on the Definitive Map a Public Footpath in the Town of Nefyn.
- 1.2 The application is made on the basis that the public has walked this path, as of right, that is unhindered, continuously, and not in secret and without the landowner’s permission over a period of twenty years.

## **2.0 BACKGROUND**

- 2.1 In December 2018, an application was received from Councillor Gruffydd Williams the local member of Cyngor Gwynedd (the Council), under Section 53 of WCA 1981, to register on the Definitive Map and Statement a public footpath that connects from Public Footpath number 19 in the Town of Nefyn (OS Grid Reference SH 29631 40814) and leading down in a northerly direction to the beach, then along the shoreline edge to Nefyn Harbour (OS Grid Reference SH 29613 41018).
- 2.2 Copies of the application, user evidence forms and statements submitted by users and landowners’ representations are held by the Council on file.
- 2.3 The original application was found to be defective due to the sequence in which the forms were submitted by the applicant. To rectify the issue, the applicant was invited to resubmit the application in accordance with the legislation.
- 2.4 The revised application was received in November 2021.
- 2.5 The claimed footpath, as indicated on the report plan, is shown in red between points A – B – C – D and E, as found in Appendix 1.
- 2.6 Description of the claimed route: The claimed footpath starts at Point A on the plan, at its junction with Public Footpath number 19 in the Town of Nefyn. From point A, travelling in a northerly direction down a narrow steep path with several steps one reaches a sandy beach at Point B. From Point B, the claimed route then continues in a northerly direction passing immediately on its left side several beach huts towards ‘Pen Ogfa’ at Point C. From Point C, the claimed route crosses a small section of grass and continues onto the patio of ‘Hendafarn’. From ‘Hendafarn’, the claimed route follows a low stone wall on its left and also the properties ‘Glan Mor’ and ‘Hafod y Mor’ towards another grassed section at Point D. From Point D, the claimed route continues on the grass section in front of further beach huts until it terminates at Point E, adjacent to the rockpools. A photograph of the rockpools

and other points can be seen in Appendix 2. The total length of the route is approximately 213 metres with a variable width of up to 2.5 metres.

- 2.7 A public footpath sign is located between 'Pen Ogfa' and 'Hendafarn'. The Council has no record to show that this sign belongs or was installed by the Council.
- 2.8 Public Footpath number 19e in the Town of Nefyn as shown on the plan terminates immediately behind one of the huts. Because of a landslide (as shown in one of the photographs in Appendix 2), public use of the same is not possible and for present purposes, this public footpath ought not to be considered as part of the local public rights of way network.
- 3.0 After reading the application package and taking legal advice the author of this report is of the view that it is imperative for the Council to reject the application on the following grounds-
- 3.1 **Failure 1:** Part of the claimed route as between points B to E on the plan cannot be identified on the ground and it has no discrete boundaries. As it does not exist in an identifiable manner on the ground it is not possible to ascertain whether actual use has been made of the same (whether by the public or otherwise). In particular, it is argued that in walking, members of the public would be liable to use the claimed route or any other part of the beach (depending on the tide), and have been reasonably expected to recall that the route they did in fact use over a given period was indeed the claimed route.

It follows from the above that the following provision from the code is not satisfied: "... other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication...". In particular, the common law required certainty as to the extent of the way in the sense it is identifiable on the ground. Here, this requirement cannot be satisfied.

- 3.2 Public policy objection: As the claimed route cannot be identified then those objecting to the application never had any way of knowing the alleged public use, and in particular such objectors were incapable of objecting to the alleged public use, within the 20 year period or otherwise. Landowners literally did not see those who have alleged to have used the claimed route.
- 3.3 **Failure 2:** The Council argues the claimed route was primarily used by those who occupied or owned the huts and/or boats on the beach. In particular, the northern terminus of the claimed route has no connection to a highway or a public rights of way network, and terminates at point E. As the public at large never used the route then such use could never be considered as of right, and therefore the code of presumed dedication under section 31 (1) Highways Act 1980 cannot be satisfied.
- 3.4 For the sake of completeness, I shall now recite the relevant law, commentary, and particulars of the land.

#### 4.0 LEGISLATIVE FRAMEWORK

- 4.1 A highway may be created by implication 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 from a period of undisputed use as of right by the public.

- 4.2 Section 53(2) of the WCA 1981 creates a duty for the surveying authorities (and this includes the Council) 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).
- 4.3 The most relevant specified event for our scenario is the one found in paragraph (c)(i) of section 53(3).
- 4.4 Section 53(3)(c)(i) of the 1981 Act 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...”*.
- 4.5 Where the evidence in support of the application is user evidence, Section 31(1) of the Highways Act 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.”*
- 4.6 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.*
- 4.7 Section 31(1) the route provides that proof of twenty years continuous user “as of right” endorses a claim that a highway exists. Determining a claim based on public use of an alleged highway under Section 31 it is therefore necessary:-
- firstly to establish whether or not there has been use by the public “as of right” for twenty years prior to the right of the public to use the route being brought into question and;
  - secondly to determine whether or not there is sufficient evidence of a lack of intention by the landowner to dedicate the way to the public during the period which would have the legal effect of overturning the presumption that the highway legally exists.

## 5.0 CYNGOR GWYNEDD POLICY

- 5.1 **Equality Act 2010** - The Council is subject to public sector duties under the Equality Act 2010 (including Welsh public sector duties). In accordance with these legal duties when making decisions, Councils must pay due regard to the need (1) to eliminate unlawful discrimination (2) advance equality of opportunity and (3) encourage good relations based on the protected characteristics. And pay due regard to the social economic duty under Section 1 of the Act. The committee is asked to pay attention to its findings when making a decision.
- 5.2 **The Well-being of Future Generations (Wales) Act 2015** - The Well-being of Future Generations (Wales) Act 2015 involves improving the social, economic, environmental, and cultural well-being of Wales. The act places a well-being duty on public bodies aimed at delivering the seven well-being goals which is a Wales that is prosperous, resilient, healthier, more equal with cohesive communities and vibrant culture and thriving Welsh language which is globally responsible. The recommendation has been prepared by paying attention to the Act's requirements and addressing the five ways of working.

- 5.3 **Welsh Language Standards (Section 44 Welsh Language (Wales) Measure 2011.** The Council is required to consider the effect that a change in any policy or procedure (or the creation of a new policy or procedure), will have on opportunities for people to use the Welsh language and to ensure that the Welsh language is not treated less favourably than English.
- 5.4 **Socio-Economic Duty** - Wales has now implemented this duty which is part of the Equality Act 2010 giving a duty to address socio-economic disadvantage in strategic decisions.
- 5.5 **Armed Forces Act 2021** - Councils must pay due attention to the impact of this proposal on those who serve or have served in the Armed Forces, together with their families.
- 5.3 An assessment was undertaken to consider the above Acts and as a result, it has not identified any specific impact resulting from the decision.

## 6.0 LEGALLY IRRELEVANT MATTERS

- 6.1 Factors such as public safety, security, desirability, suitability or need - whilst genuine concerns - cannot be taken into account by the Authority when making a decision. Therefore, whilst there may be some genuine concerns about the *possible* conflict between public access and land management, these concerns cannot be taken into account when determining an application to modify the Definitive Map and Statement. The whole process is concerned with determining whether or not public rights actually exist.

## 7.0 LANDOWNERSHIP

- 7.1 A part of the claimed footpath crosses land with no current known owner.
- 7.2 In the case of unknown ownership, affixed Notices stating an application has been made to Cyngor Gwynedd for a Definitive Map Modification Order, were placed on the site address to "the Owner and Any Occupiers" of the land.
- 7.3 A search has been made of the Land Registry database and it has been ascertained that the claimed route also affects the following titles:-

	Title Ref.	Registered owner
1	CYM535429	CHRISTOPHER LAYTON BLACKHAM, Manor Farm, Church End, Leckhampstead, Buckingham, MK18 5NY.
2	CYM351395	PETER JOHN SWASH, 18 Brooklands Drive, Goostrey, Cheshire, CW4 8JB. MICHAEL JAMES DAWSON SWASH, 3 Bridewell Street, Wymondham, Norfolk, NR18 0AR. KENNETH STUART SWASH, 3 Aston, Claverley, Wolverhampton, WV5 7DZ.
3	CYM143326	MICHAEL BRIAN JONES, Garth Celyn, Ffordd Dewi Sant, Nefyn, Pwllheli, LL53 6EG.
4	CYM132531	PHILIP HANDLEY STUNT, 23 Bro Gwylwyr, Nefyn, Pwllheli, LL53 6LF.
5	CYM383267	DIANA MURIEL GREENHILL, Hamilton, 95 Raglan Road, Reigate, Surrey, RH2 0ES.
6	CYM64017	HYWEL ROWLANDS, Penrhyn, Rhodfa'r Mor, Nefyn, Pwllheli, LL53 6EB.
7	CYM603977	ROBIN JAMES BLACKHAM and AMANDA SAMANE BLACKHAM, Penogfa, Nefyn, Pwllheli, LL53 6EP.
8	CYM59719	JANE SPENCER, Hafod-Y-Mor, The Beach, Nefyn, Pwllheli, LL53 6EP.
9	CYM48840	JANE SPENCER, Hafod-Y-Mor, The Beach, Nefyn, Pwllheli, LL53 6EP.
10	CYM676037	LOUISE MARIE JOHNSON, Glan Y Mor, Nefyn, Pwllheli, LL53 6EP.
11	WA528290	JANE SPENCER, Hafod-Y-Mor, The Beach, Nefyn, Pwllheli, LL53 6EP.

12	WA544580	JANE SPENCER, Hafod-Y-Mor, The Beach, Nefyn, Pwllheli, LL53 6EP.
13	WA975906	ANGELA JOSEPHINE THACKRAY and ALISON MARY THACKRAY, 9 Firs Close, Formby, Liverpool, L37 1PU. PHILIPPA JANE THACKRAY, 32/3, Gosford Place, Edinburgh, EH6 4BH.
14	WA747461	LOUISE POTTER, Bishops Grange, Bishops Lane, Buxton, SK17 6UP. DIANA COOKE, Kermarquer, 56160, Ploerdut, Brittany, France.
15	WA474696	JOHN BOARDMAN MAKINSON Solicitor, and JANET SCOTT MAKINSON, 8 Lache Lane, Chester, CH4 7LR.
16	CYM730126	KENNETH RODNEY GRAHAM GARSIDE, Castell Pentraeth, 1 Lon Y Traeth, Nefyn, Pwllheli, LL53 6EF.
17	CYM696470	JAMES JUSTYN GREENHALGH, Jacamar, Gorelands Lane, Chalfont St. Giles, HP8 4HQ.
18	CYM378123	CADARN CYF, Bodelen, Llithfaen, Pwllheli, LL53 6PA.
19	WA514716	REBECCA JOY SIMPSON, NICOLA JANE DYMOCK, PHILIPPA JANE THACKRAY and JAMES EDWARD SPENCER c/o Jacamar, Gorelands Lane, Chalfont St. Giles, HP8 4HQ.
20	CYM693736	STEPHEN TREVOR ALLINSON, Hafod Y Bryn, Lon Penrallt, Nefyn, Pwllheli, LL53 6EW.
21	WA507674	HELEN JOAN INGHAM, 9e Rawlinson Road, Southport, Merseyside, PR9 9NP.
22	WA584452	HELEN JOAN INGHAM, 9e Rawlinson Road, Southport, Merseyside, PR9 9NP.
23	WA582033	DAVID ANTHONY TWIST, Rhydelen, Lon Y Castell, Nefyn, Pwllheli, LL53 6EE.
24	CYM807365	HEATHER MARY STANTON and ENDAF WILSON, 1 Trem Y Don, Bryn Glas, Nefyn, Pwllheli, LL53 6HS.
25	CYM619460	NIA WYN PERCY, 31 Denton Road, Cardiff, CF5 1PD.
26	WA508111	HYWEL ROWLANDS, Tan Y Graig, Boduan, Pwllheli, Gwynedd.
27	WA476245	ADRIAN JAMES GARSIDE, 2848 East Lake, Sammamish Parkway, NE Sammamish, WA98074, United States of America.
28	WA765614	JAN DORIAN BHAGEERUTTY, The Deanery, Church Road, Broseley, Shropshire.
29	WA728032	NICHOLAS PAUL LINDLEY, 1 Chaseley Close, Etching Hill, Rugeley, Staffordshire.
30	WA896802	JAMES FABIAN SEAMAN, JILLIAN RUTH SEAMAN, GUY RICHARD SEAMAN and JENNIFER MARY SEAMAN, Bay Holme, Lon-Tyn-Pwll, Nefyn, Gwynedd, LL53 6EN.
31	CYM164016	JILL ANGELA ELSA JONES, 159 Woodhouse Lane East, Timperley, Altrincham, Greater Manchester, WA15 6AN.
32	WA595556	MICHAEL KENNETH JONES and JENNIFER SUSAN JONES, 93 Station Road, Hatton, Derbyshire.
33	CYM317438	THE QUEEN'S MOST EXCELLENT MAJESTY IN RIGHT OF HER CROWN c/o The Crown Estate Commissioners, 1 St James's Market, London, SW1Y 4AH.
34	No title	RHEOLWR STADAU, Adran Tai ac Eiddo, Cyngor Gwynedd, Swyddfa'r Cyngor, Caernarfon, LL55 1SH.

## 8.0 USER EVIDENCE

- 8.1 There is no statutory minimum level of users required to show sufficient use to raise a presumption of dedication, however, use of the way must be used by the public or the community.
- 8.2 The public must have used the way without challenge and "as of right" (that is, without force, secrecy or permission) over a period of 20 years.
- 8.3 The 20 year period may be shown at any time in the past and is generally taken to run backwards from the time when the use of the path was first called into question.

- 8.4 The application by Councilor Gruffydd Williams is supported by 28 Statements of Evidence showing evidence of public use ranging from the end of 1930s to present day. The table provided in Appendix 3 summarises the claimed use as indicated in the Statements. Each user is given a user reference number, which is used to identify them in the body of the report.
- 8.5 During November 2021, telephone interviews were carried out with twelve of the 28 witnesses in support of the claimed route. Each of the 12 claimants then provided further witness statements and these documents can be seen in Appendix 4. During the interviews, the claimants were asked to clarify and expand upon their evidence.
- 8.6 The user evidence shows that users 19 and 27 first started using the route at mid-late 1930's, users 16 in the 1940's, users 8,11, and 22 in the 1950s, users 3, 4, 20 and 26 in the 1960s, users 1, 2, 6, 12, 13, 14 and 15 in the 1970s, users 5, 7, 17, 18, 23 and 24 in the 1980s, and users 9, 10 and 25 from the 1990s. User 21 did not specify.

## 9.0 LANDOWNERS' VIEWS

- 9.1 Consultation has been carried out with the various landowners as listed in the table in paragraph 7.3.
- 9.2 A summary of the landowners' responses can be seen in Appendix 5.

## 10.0 CONSULTATION

- 10.1 Consultations with user groups and statutory undertakers were carried out in accordance with the Rights of Way Review Committee Practice Guidance notes. Information collected from this process is considered below:-

### 10.2

Consultee	Response
Ramblers Association	No response
The British Horse Society	No response
Welsh Trail Riders Fellowship	No response
British Driving Society	No response
Power Systems	No response
Nefyn Community Council	In full support of application.
Mrs Maggie Barry, Ramblers County Footpath Secretary (Arfon / Dwyfor)	No response
Gary Thompson, The Crown Estate	Crown Estate land does not encroach the land of which the alleged public right of way is situated.
Natural Resources Wales	Support the cause of registering as a right of way.  Has observed many people using the path at high tide.  Expresses the importance of the path in connection with the Wales Coastal Path.  Concerns relating maintenance in relation to how

	unstable the cliffs can be.
Alwyn Thomas, Openreach BT Notice Handling Centre	Not affected by proposition.
The Byways and Bridleways Trust	No response
CTC National Cyclists Organisation	No response
Auto Cycles Union	No response
Dwr Cymru	No response
Open Spaces Society	No response

## 11.0 DATE OF BRINGING INTO QUESTION

- 11.1 In order to make out a case under Section 31 of the Highways Act 1980 it is necessary to establish a date when the right of the public to use the route was brought into question.
- 11.2 In this particular case, and in light of paragraph 3.0, the author argues that there is no date of presumed dedication.

## 12.0 CONCLUSION

- 12.1 It is concluded that the route marked on A to E (on the plan in Appendix 1) should not be recorded on the Definitive Map and Statement.
- 12.2 If the recommendation is accepted, the applicant has the option of appealing against the decision to the relevant Welsh Minister.

## 13.0 RECOMMENDATION

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

## 14.0 BACKGROUND PAPERS

**File: 53B/Dwyfor/FPNefynHarbour**