

EXECUTIVE BOARD MEMBER DECISIONS MEETING FOR ENVIRONMENT

Report of the Director of Environment

19th July 2019

PUBLIC RIGHT OF WAY AT LLWYNTEG, LLANNON

Purpose: Application to Modify the Definitive Map and Statement of Public Rights of Way for Carmarthenshire near Llwynteg, in the Community of Llannon, under section 53 and schedule 14 of the Wildlife & Countryside Act (1981)

Head of Service & Designation. Steve Pilliner, Head of Highways & Transport	Directorate Environment	Telephone No. 01267 228150
Author & Designation Jason Winter, Countryside Access Assistant	Directorate Environment	Telephone No 01554 742257

1. BACKGROUND AND EXPLANATION OF ISSUES

In July 2018 Carmarthenshire County Council received an application to record a Public Right of Way (Bridleway) at Llwynteg, Llannon. The claimed route follows an existing registered Public Footpath (33/62) from the public road (C2130), north towards Durclawdd Fawr. It then follows a track east to Durclawdd Fach before heading south-east to re-join the public road (C2130). The route is known locally as "The Ponds". Location map attached as Appendix 3.

The application was made in response to a section of the alleged bridleway being closed to the public via a locked gate in January 2018. Accompanying the application are twenty one supporting statements (see appendix 4) from members of the public describing their use of the route, with seven of these specifying that the route has been used without force, secrecy or permission for over 20 years (minimum term required for presumed dedication of a public right of way under s31 Highways Act 1980).

The statements specify the route has been used by walkers, horse riders and people on bicycles for pleasure purposes on a regular basis.

Additional information provided by the statements include:

1. Residents were welcoming and polite, and happy to chat to path users – indicates an acceptance of the existence of public rights by residents living along the route.
2. Never been signage to say route isn't public – also indicates an acceptance of the existence of public rights.
3. Was told permission to use the route was not required by previous owner – suggests public use is as of right.
4. Aware the track was private property but never prevented from using the route by the previous landowner – most public rights of way cross privately owned land which carries a defined public right of access.
5. Route known locally as The Ponds – supports local recognition of the route.
6. Farm gates along the routes were occasionally found to be shut when cattle were being moved – gates being closed does not preclude the existence of public rights, there is no mention of the gates being locked to prevent public access.
7. Often see and pass others using the route – supports the level of public use of the route indicated by the number of supporting statements received, prior to the gate being locked.

2. OTHER EVIDENCE

Additional research into the construction of the newer section of track, used as part of the alleged bridleway from Durclawdd Fach to the road, concluded it was created during the early 1980's. This was built as additional access to Durclawdd Fach around the same time that planning permission was granted for Ty Gwennol and supports the duration of use detailed in the statements that support public use exceeding 20 years.

3. CONSULTATION

Consultations have been carried out in respect of this application as detailed in the Executive Summary, see Appendix 1 for copy of initial consultation letter.

Following this initial consultation, eight objections to the application were received, see Appendix 2 for details of objections. The main grounds for objection state the lane was blocked with closed gates for 2 to 3 weeks per year. Evidence of the gates being locked has been requested however none has so far come to light.

Statements from previous owners were also obtained and these too stated that gates were regularly closed for stock control and to prevent a public right of way being established.

The additional information requested would have helped to establish if the methods of closure constituted a clear lack of intention to dedicate a public right of way over the land however no response has been received to date.

4. CONCLUSIONS

The application to modify the Definitive Map and Statement for Carmarthenshire was made in the prescribed form in July 2018. The evidence in favour of the claim includes seven statements specifying use of the route as a bridleway without force, secrecy or permission for over 20 years. A further fourteen statements support the application, alleging use of the route as a bridleway but for a lesser duration. The users who have submitted statements have given specific details which suggest that affected landowners have accepted their right to use the route to the extent that one individual was told that asking permission was not required. The route has acquired a 'local' name, "The Ponds" and until the route was blocked recently with a locked gate(s), use was allegedly regular and unhindered.

The counter evidence against the claim states that access was restricted for a number of weeks throughout the year by closing gates. There is however, no evidence to suggest that the gates were locked to prevent access or that signs were erected stating private or permissive access or similar.

Having considered the user evidence submitted with the application under section 31 of the Highways Act (1980) and concluded further investigations, it can be resolved that there is sufficient evidence to suggest the presumption of dedication of this route as a public bridleway. We are therefore satisfied that the application meets the tests laid out in section 53(3)(c)(i) of the Wildlife and Countryside Act, 1981, namely:

The discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows –

- (i) 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, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic.

The objections received do not provide conclusive proof of a lack of intention to the above-mentioned presumption of dedication. The statements made by the objectors indicated a possible contradiction to the alleged public right of way but they did not give sufficient detail or documentary support. An opportunity was given to further clarify and evidence the content of the objections received but nothing further has been submitted.

The Council has now concluded their investigations and based on the evidence available we believe that for the Authority to meet its ongoing statutory obligations to maintain the Definitive Map and Statement, a Definitive Map Modification Order should be made to add a Public Right of Way (bridleway), which is not currently recorded, to it.

If the Order is made the County Council will carry out a further 42 day public consultation, as required by the 1981 Act. If there are no objections, then the County Council can confirm the Order, and it will come into force. If there are valid objections to the Order, then the Order will need to be referred to Welsh Government for an independent decision.

If new information is discovered as a result of the consultation, then it may be necessary for the Authority to re-examine the case.