



## Order Decision

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by Vicki Hirst BA(Hons) PG Dip TP MA MRTPI

an Inspector appointed by the Welsh Ministers

Date: 04/09/2023

Reference: CAS-01934-T3F5M0

Site address: Traeth Bychan, Llaneugrad, Anglesey

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- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Cyngor Sir Ynys Môn/Isle of Anglesey County Council (Addition of Footpath at Traeth Bychan, Llaneugrad Community) Modification Order 2022.
- The Isle of Anglesey County Council submitted the Order to the Welsh Ministers for confirmation.
- The Order is dated 1 March 2022 and there was one objection outstanding when the Order was submitted to the Welsh Ministers.
- The Order proposes to modify the Definitive Map and Statement for the area by adding one footpath as shown on the Order plan and described in the Order schedule.
- A site visit was made on 2 March 2023.

**Summary of Decision: The Order is confirmed subject to the modification set out in the Formal Decision.**

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### Procedural and Background Matters

1. The Order arose from an application made in 2008 to Anglesey County Council (the Council) as Order Making Authority (the OMA) by Mr Brown. The application sought to modify the Definitive Map and Statement by adding one footpath. The OMA considered the evidence supported the claim and made an Order to record the route as a public footpath.
2. The path to be added commences at public footpath no 2 in Llaneugrad. It proceeds in a northerly direction to a kissing gate at the top of a slipway and follows the slipway to terminate at the Mean High Water Mark on Traeth Bychan.
3. Since the Order was submitted to the Welsh Ministers the objection to the Order has been withdrawn.
4. The evidence submitted to the Welsh Ministers did not include the documentary evidence or its investigation report that the OMA had referred to in reaching its conclusion to make the Order. I therefore requested this information to inform my decision. No further consultation was carried out on this information as it had already been the subject of consultation during the OMA's processing of the application. I am therefore satisfied that no prejudice has occurred in taking it into account.

5. The Order refers to the width of the path being approximately 3 metres. Approximate widths are usually only appropriate where the evidence indicates the same (for example in documentary evidence). In this case the evidence does not provide any conclusive indication of the width and having sought its view, the OMA is satisfied that the width should be recorded as 3 metres with the deletion of the word “approximate”. I have no evidence to the contrary and I shall modify the Order accordingly.

### **Main Issues**

6. The Order was made under Section 53(2)(b) of the 1981 Act in consequence of the occurrence of events specified in Section (3)(c)(i). The main issue is therefore whether the discovery of evidence by the OMA when considered with all other relevant evidence available is sufficient to show, on the balance of probabilities, that a right of way which is not shown in the Definitive Map and Statement subsists on the route in question. The Order has been made on the basis of documentary and user evidence.
7. In respect of user evidence, Section 31 of the Highways Act 1980 (the 1980 Act) permits dedication of a public right of way to occur through a long period of use. It provides that where a way has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, that way is deemed to have been dedicated as a highway unless there is sufficient evidence that during that period the landowner had no intention to dedicate it. Use ‘as of right’ means use which has been without force, secrecy, or permission. The period of 20 years is calculated retrospectively from the date when the right of the public to use the way was brought into question, either by a notice or otherwise.
8. Accordingly, I must establish the date when the public’s right to use the Order route was brought into question. I then need to establish whether the evidence determines whether there has been uninterrupted use of the path by the public for at least 20 years prior to that date and whether there is sufficient evidence that there was no intention on the part of the landowners during that 20-year period to dedicate public footpath rights over the route. I also need to be satisfied that the way is not of such a character that use of it could not have given rise to any presumption of dedication.
9. Alternatively, if the evidence is insufficient to satisfy the statutory tests, I am required to consider whether the evidence is sufficient for an inference of dedication of a public highway at common law to be drawn. In this circumstance, I would need to examine whether there was express or implied dedication by the owner of the land in question and whether there is evidence of acceptance of the claimed right by the public. The burden of proof lies with those that assert the existence of a public path.

### ***Documentary and Historical Evidence***

10. The OMA has provided a number of historical Ordnance Survey (OS) maps, aerial photographs and extracts from documents. The maps date from 1888 and indicate the presence of a route from this date onwards. It is more distinct from 1920, with the continuation of the path around the headland to Penryhn annotated as a footpath on the 1963 map.
11. Whilst some of the aerial photographs are not very distinct, those from 1945, 1950, 1957, 1969, 1982, 1990, 1992, 2000, 2006, and 2009 clearly indicate the presence of a way along the Order route terminating at the beach. From 1982 the slipway onto the beach is very evident.
12. The OMA has also provided an extract from the Parish records in relation to the Definitive Statement for public footpath No 2 Llanelugrad that joins the Order route at its southern end. Whilst I note the OMA’s contention that the documents and description in the

Statement suggest that the path should run to the beach, the Order map, which is the primary document, clearly shows the path to end at a point further south from the beach. Nevertheless, the Statement description does suggest the way was intended to be recorded to the beach.

13. The extract from the undated "Two Lighthouses Walk" leaflet includes reference to access onto the beach via the slipway and was waymarked as such. I have no evidence as to the date this walk was promoted or when the waymarks were displayed but they do suggest the route was included in a publicised walk in the area. However, this does not provide conclusive evidence that the path subsists.
14. In conclusion I find the OS maps and aerial photographs do indicate the physical presence of a path on the claimed route. Notwithstanding, they do not in themselves demonstrate the use was by members of the public. Furthermore, whilst other documentary extracts suggest this route was promoted for use by the public and did go to the beach, the evidence before me is not sufficient to demonstrate the route was used by members of the public. As such I am unable to conclude from the documentary evidence that a public footpath subsists on the claimed route.
15. It is therefore necessary to consider whether the use of the claimed path can be presumed to have been dedicated in accordance with the provisions of the 1980 Act or to be inferred to have been dedicated at common law.

### ***Statutory Dedication – Section 31 of the Highways Act 1980***

#### ***User Evidence – when the use of the claimed route was brought into question***

16. In support of the claimed route, I have been provided with a number of user evidence forms. In respect of the date the use of the route was brought into question, a few users refer to the erection of a private sign on the path/gate in July or August 2007. I am also in receipt of an article in the Daily Post dated 27 July 1987 reporting on the erection of a private property sign between the beach and caravan park.
17. I have no other evidence to suggest the use of the path was brought into question at any other time and the OMA has relied on the relevant date as being 2007. I am satisfied from the evidence before me that the use of the path was brought into question in July/August 2007 and the relevant period for consideration is therefore July 1987 – July 2007.

#### ***Evidence of use by public – 1987 – 2007***

18. Many of the user evidence forms are accompanied by a map indicating the subject path. Most of the forms also provide a grid reference which appears to be in the vicinity of the slipway annotated on the Order between points B and C. I am therefore satisfied that the submitted evidence relates to the route before me.
19. Of the user evidence forms provided, 14 demonstrate use during the whole of the relevant period. In addition, several others demonstrate use for part of the relevant period, in particular between 2000 and 2007. The majority of users claim regular use of the path some comprising numerous times a year and others a few times a year.
20. Whilst not all users refer to the presence of gates, a number do refer to the kissing gate at the entrance near the beach. However, none recall any locked gates or other obstructions on the route or being turned back or advised that access was not allowed. The only signage referenced is that erected in 2007 and which triggered the use being brought into question. I have no evidence the use was interrupted during the requisite period and the user evidence does not suggest the path was of such a character its use could not give rise to any presumption of dedication.

21. The OMA refers to an interview with the former landowner who was aware of members of the public using the path and which he believed to be a public footpath. He is quoted as saying he never stopped anyone using the path and he renewed both the field and kissing gate during his ownership. Both gates were in situ when he bought the land.
22. I have no evidence to suggest the use of the path was other than as of right and have insufficient evidence to show there was a lack of intention on the part of the landowners during the requisite period to dedicate public footpath rights over this route.
23. As such I find the statutory tests to be met and no consideration under common law is necessary.

### **Overall Conclusions**

24. I have taken into account all other matters raised. Taking the evidence as a whole, I conclude the relevant statutory tests have been met and that on the balance of probabilities a public footpath subsists on the route shown in the Order and on the Order map. I conclude that the Order should be confirmed with a modification.

### **Formal Decision**

25. I confirm the Order subject to the following modification:
- In the final sentence of the "Description of the path or way to be added" in the Schedule, Part 1, delete the word "approximately" after "its width" and before "3 metres".

*VK Hirst*

INSPECTOR