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## Penderfyniad ar y Gorchymyn

Ymchwiliad a agor ar 15/05/19  
Ymweliad â safle a wnaed ar 16/05/19

**gan Joanne Burston BSc MA MRTPI**  
**Arolygydd a benodir gan Weinidogion Cymru**  
**Dyddiad: 18/07/19**

## Order Decision

Inquiry Opened on 15/05/19  
Site visit made on 16/05/19

**by Joanne Burston BSc MA MRTPI**  
**an Inspector appointed by the Welsh Ministers**  
**Date: 18/07/19**

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**Order Ref: ROW/3208708**

**The Welsh Ministers have transferred the authority to decide this Order to me as the appointed Inspector.**

- This Order is made under Section 53 (2)(b) of the Wildlife and Countryside Act 1981 (the 1981 Act) and is known as the Conwy County Borough Council (Footpath No.73 in the Community of Conwy) Definitive Map Modification Order 2016.
- Conwy County Borough Council submitted the Order for confirmation to the Welsh Ministers.
- The Order is dated 7 March 2016 and there was 1 objection outstanding at the commencement of the local inquiry.
- The Order proposes to modify the Definitive Map and Statement for the area by adding a footpath as shown in the Order plan and described in the Order Schedule.

**Summary of Decision: The Order is confirmed.**

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### Procedural Matters

1. On 15 - 17 May 2019 I held a Public Inquiry at the Conwy Business Centre in Llandudno Junction, having viewed the claimed public footpath from nearby public places, unaccompanied, during the previous afternoon. I made a further unaccompanied site visit on 16 May 2019. Following receipt of closing statements, the Inquiry was closed in writing on 24 May 2019.
  2. One objection was submitted following publication of the statutory notice within the period specified. This was from Network Rail, who is the landowner. A further objection was raised at the Inquiry (Doc 14). This letter was not received within the statutory period and therefore was not accepted by the Order Making Authority as 'duly made'. Nevertheless, I have noted the nature of the objection and address below the points it raises.
  3. The Order Making Authority, Conwy County Borough Council, chose to adopt a neutral stance at the inquiry. The case for confirmation of the Order was therefore led by Mr Guto Bebb (MP) and Cllr Mike Priestley, acting on behalf of the applicants for the modification of the definitive map and local residents, as well as Mr P Bland for Ramblers Cymru.
  4. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its
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contribution towards the Welsh Ministers' well-being objective of supporting cohesive and resilient communities.

### **The Main Issues**

5. The Order is made under Section 53(2)(b) of the 1981 Act and relies on the occurrence of events specified in Section 53(3)(c)(i) of the 1981 Act. Therefore, I need to determine in each case whether the discovered evidence shows that a right of way which is not shown in the map and statement subsists. The test to be applied is the balance of probabilities.
6. Some of the evidence in this case relates to usage of the route. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where it can be shown that a way over land has been enjoyed by the public as of right and without interruption for a full period of 20 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 it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.
7. The case in support also relies upon various historical maps and documents and evidence of public use. In considering the above test, I shall assess whether the documentary evidence is sufficient to infer the dedication of public rights of way of a particular status at some point in the past. Section 32 of the 1980 Act requires a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document which is tendered in evidence, giving it such weight as appropriate, before determining whether or not a way has been dedicated as a highway.

### **Reasons**

#### ***Section 31 of the Highways Act 1980***

##### Calling into question

8. The application to record this route was made by Mr Guto Bebb MP and Cllr Mike Priestley. In initially determining to make an Order in response to the application the OMA decided that the appropriate date of calling into question of the use was 1992, giving a twenty-year period 1972 - 1992. Whilst a further period of 1991 - 2011 was also considered, the rail crossing was closed for a short period in 1992, which would have interrupted this twenty-year period of use.
9. I am satisfied that in January 1992 the objector removed the crossing between points A and B, which was sufficient to have called the use of the claimed route into question. I understand that that the ladder stile was subsequently replaced while the objector investigated the existence of a right of way. Nevertheless, I am satisfied, on the balance of probabilities, that the effective challenge to public use was through the removal of the crossing in January 1992 and therefore the relevant twenty-year period is January 1972 - January 1992.

##### User Evidence

10. Taking the user evidence at face value is supportive of a case being made for sufficient use by a number of individuals within the relevant twenty-year period at a volume that would give rise to a presumption of dedication of public rights over the Order route.

11. However, in these matters the quantity of use is not as important as the quality. The objector made a case that the motivation for the application was in connection with the cycle path, which opened in 2006, on the estuary side of the railway. As the decision-maker I must be aware of the risk of potentially exaggerated information, consciously or unconsciously, put forward. However, equally I must not allow concerns put before me that evidence might not be what it seems to lead me to dismiss it lightly. The motivation for submitting evidence cannot automatically lead to assumptions regarding that evidence.
12. Forty-eight User Evidence Forms (UEF) accompanied the application, however one UEF was incomplete and therefore invalid. In summary 19 of the UEFs claim to have used the route for at least 20 years and the longest period of use was 65 years. However only 6 users claim the use of the route within the period 1972-1992. Many users stated that they used the route to access shops and for recreation with an approximate frequency of once or twice a week. Some UEFs gave further evidence of historic family use of the route since 1890 stating that this was the only access to the estuary.
13. Given this usage I consider that, on the balance of probabilities, there is sufficient evidence, of sufficient quality, to support the presumption of dedication.

Use as of right

14. The Council accepted at the inquiry that the Order should not be confirmed based on a forward-looking assessment of statutory incompatibility in line with the judgment in the case of *Ramblers Association v Secretary of State for Environment, Food and Rural Affairs* [2017] EWHC 716 (Admin) ("*Ramblers*").
15. The claimed route crosses an operational railway, therefore the use over the twenty-year period (as set out above) is qualified by section 56 of the British Transport Commission Act 1949 which sets out that trespass onto the railway is a criminal trespass. A right to do something, such as to cross the railway line, cannot be acquired through long use where the action that would give rise to that right is in itself unlawful.
16. Further, Network Rail submits that it has no capacity to dedicate a new public right of way on the level. The dedication of a public right of way is inconsistent with its obligations to operate a safe and efficient railway network. Moreover, the Licence under which Network Rail operates the railway network does not allow it to sanction a use of the railway which amounts to misuse and which would import an unacceptable level of risk to users.
17. Network Rail drew support from the recent '*Ramblers*' decision<sup>1</sup>. This case relied upon evidence of use by the public of the claimed footpath, which crossed the live rails of the Nottingham – Newark railway at 'Zulu's crossing'. In that case the Inspector in his decision<sup>2</sup> stated that:

*"The claimed footpath crosses an operational railway on level and the dedication of a public right of way in such a location would be incompatible with the statutory objectives of Network Rail with regard to the safe and efficient operation of the railway and its duty to ensure the safety of the public and its passengers. Under the*

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<sup>1</sup> reference also being made to the case of *British Transport Commission v Westmorland County Council* [1958] QB 126 HL (Westmorland)

<sup>2</sup> Order Decision reference: FPS/L3055/7/76

*provisions of previous and current legislation governing the operation of the railway network, Network Rail and its predecessors lacked the capacity to dedicate new public rights of way over the live rails at Zulus Crossing. As Network Rail lacks the capacity to dedicate a public right of way, the way across the live rails is of a character which could not give rise to a presumption of dedication at common law.*

*As dedication of a public right of way at common law cannot have occurred at Zulus Crossing, it follows that the provisions of section 31 of the 1980 Act are not engaged. Furthermore, at all material times during the relevant 20-year period Zulus Crossing has been subject to the provisions of section 55 of the 1949 Act. Any use of the crossing by the public has been unlawful and it is not possible for Network Rail to grant lawful authority for such use. I conclude that as it is not possible for dedication of a public right of way to have occurred at common law the Order should not be confirmed with regard to Zulus Crossing."*

18. In upholding this decision Dove J held that *Westmoreland* was binding authority for the proposition that the determination must be made according to current considerations rather than past or purely hypothetical future concerns. Health and safety issues must constitute major reasons for not dedicating a right of way across a railway; in which case it would be entirely nonsensical to consider factors which were at least 20 years out of date. Citing Lord Radcliffe in *Westmoreland* Dove J held that the test of incompatibility is 'essentially a pragmatic one'. Thus, present, rather than future or past circumstances should be the prevailing considerations, allowing some scope for foreseeable future developments to be assessed.
19. Furthermore, Dove J held that Network Rail did not have an unfettered power to grant easements or dedicate rights of way across the metals. Given that it had already been established that dedicating a right of way was incompatible with its statutory duties, it followed that a power to dispense with criminal liability so as to facilitate the creation of a right of way must also be caught by the incompatibility test.
20. Criminality: It is not evident from the '*Ramblers*' case that the issue of criminality has to be considered at the point when the Order is determined. It therefore seems to me that the issue of criminality needs to be considered in the context of the period when any use is alleged to have occurred. In respect of any historical use, Network Rail refers to the Railway Regulation Act 1840 ("the 1840 Act") and the Regulation of Railways Act 1868 ("the 1868 Act").
21. Section 16 of the 1840 Act specifies that it is a criminal offence to wilfully trespass on any railway and refuse to quit when asked by an officer or agent of the railway company. Further, Section 23 of the 1868 Act states that a person commits a criminal offence if, aside from an authorized crossing, a person passes upon any railway after receiving a warning. Network Rail considers that signage served as a warning for the purpose of the legislation and my attention was brought to examples of historical railway signs.
22. There may well be an assumption that people seen crossing the railway line would have been challenged by railway staff and that appropriate warning signs were erected at strategic locations. However, it is not possible to reach a firm conclusion on the issue of criminality given the period under consideration and the lack of evidence regarding the user and what occurred at the time.
23. Statutory incompatibility: At the Inquiry extensive evidence was provided by Network Rail regarding the safety of the railway and statutory incompatibility. Whilst the Supporters put forward an argument disagreeing with Network Rail, I am more

persuaded by Network Rail's approach to these matters. Indeed, during cross examination the Supporters agreed that Network Rail was the expert authority regarding rail safety. Thus, I agree with my fellow Inspector's reasoning on these matters and that, if this was the totality of evidence, I may have concluded that it is not possible for dedication of a public right of way to have occurred at common law.

24. Nevertheless, the case now before me differs from that of 'Ramblers' as I have substantial documentary evidence from before and at the time of the creation of the railway. If such evidence supports the existence of a path on the claimed route prior to, or at the time of the railway was constructed, then that would suggest that the claimed footpath pre-existed the railway and had been dedicated at some point in the pre-railway age. Accordingly, all subsequent use will be use pursuant of that pre-existing right. If there was a pre-existing footpath, then submissions regarding statutory incompatibility would be irrelevant, the right of way having pre-dated the railway.
25. It is to this documentary evidence I now turn.

### **Documentary Evidence**

#### The early Ordnance Survey maps and 1840 Tithe map

26. The formation of Ordnance Survey ("OS") was a response to a military need for accurate maps. Over the years, OS developed a variety of maps to meet the growing need for accurate and up-to-date maps of the UK and the production of maps for sale to the public became an activity of increasing importance to OS from the early twentieth century. Since the late nineteenth century OS maps have carried a disclaimer to the effect that the representation of a track or way on the map was not evidence of the existence of a public right of way. OS surveys and maps, especially the larger scale plans, provide an accurate representation of routes on the ground at the time of the survey.
27. The 1819 OS map clearly shows a route from the estuary foreshore close to 'Store houses' at Pen-y-bryn towards Tyn-y-coed. I was informed at the Inquiry that the Store houses were historically used in conjunction with a ferry which operated from a point close to 'Ferryhouse' over to Conwy. The Ferry<sup>3</sup> was thought to have been in existence from c.1285. Goods (including stone to build Conwy Castle) and people were said to walk/be transported along the foreshore to either access the road towards Tyn-y-coed or the ferry. The following account is made by Fiona Richards in 'Tywyn in Victorian Times' revised 2012, which links Tywyn to the ferry: "*Non conformity had taken hold in Tywyn and one of the first non-conformists preachers to visit the area was Thomas Hughes who lived in Mochdre. He visited 'Tywyn the Ferry' many times, the first probably in 1771.*" Moreover, it would appear from the submitted Admiralty Charts that the location of the crossing here was dictated by the depth of the water and the location of sand bars within the estuary.
28. No other routes other than that at Store houses and Ferryhouse provide direct access to the estuary foreshore. I see no reason to doubt that the public extensively used this route to access the foreshore and walk along it.
29. This route is again shown in the 1841 OS map, although at this time the route along the foreshore to Ferryhouse is shown as a formal track. At Ferryhouse the then newly constructed Conwy Bridge is shown. It is highly probable that a track was constructed

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<sup>3</sup> Known as the Bodysgallen Ferry

to provide a more reliable link to and from the bridge. Network Rail stated that it was this track which severed the right of way and the public would no longer need access to the estuary at this point. However, the 1841 OS map shows a small spur towards the estuary, below the 'Store houses' which may have provided a slipway for boats and access to the estuary for those walking towards Llandudno, Great Orme or for people foraging for seaweed or shellfish. However, I accept that given the construction of a track towards Conwy the public would no longer need to access the foreshore to reach Ferryhouse, but there would be nothing to prevent them from continuing to do so.

30. The 1862 and 1889 OS maps show the railway running along the seaward side of the routes described above. Whilst the scale of the map makes it difficult to assess in detail the construction of the railway was over the slipway. The railway authority constructed a new slipway, which is clearly shown on the 1889 map. These maps do not indicate a level crossing at this point. However, other level crossings indicated on the Railway Deposit Plans are also not shown.
31. The Tithe Commutation Act 1836 (amended in 1837) converted tithes to a fixed money rent. Tithe documents are concerned with identifying titheable land and consist of the apportionment, the map and the file. Tithe maps are generally good evidence of the topography of the area but can give no more than an indication as to whether a route is public or private, as a private right of way can also diminish the productiveness of the land for tithe assessment, which was the reason for which the documentation was drawn up.
32. The Tithe map shows a route coloured sienna, similar to that shown on the 1819 OS map. However, this route is not numbered, and I have no key or apportionment to ascertain whether this route would have been public or private. Furthermore, other routes are also shown on both maps, but are not coloured on the Tithe map.
33. Overall these maps do not conclusively show whether the routes depicted were public or private but may assist in conjunction with other information.

#### Railway plans

34. Individual railway schemes were promoted by Special Acts. A Parliamentary Standing Order covered Railway Schemes from 1810, with the requirements expanded in the Railways Clauses Consolidation Act 1845, which required public rights of way which crossed the route of a railway to be retained unless their closure has been duly authorised.
35. Although it was not the primary purpose of the deposited plans to record rights of way, they can provide good evidence in this context. Railway deposited documents were in the public domain. The statutory process required for the authorisation of railway schemes was exacting and the book of reference and deposited plans made in the course of the process needed to be of a high standard. Railway plans, which were normally specifically surveyed for the scheme, usually record topographical detail faithfully.
36. The authorisation of railway schemes provided for scrutiny of the plans by involved parties. Landowners would not have wished unnecessarily to cede ownership; Highway Authorities would not have wanted to take on unwarranted maintenance responsibilities and Community / Parish Councils would not have wished their parishioners to lose rights. Therefore, an entry in the book of reference that a way was in the ownership of the 'Surveyor of Highways' may be persuasive evidence of a public right.

37. Network Rail state that the claimed footpath cannot have been in existence at any time before the railway was constructed, given that the line of the railway (as built) was on land that had to be reclaimed from the sea.
38. The first documentation relates to a deposit plan of 1853. This appears to show the route of the railway through enclosures 16 and 3, which run adjacent to the River Conwy towards Llandudno Junction, close to the Order route, and are described in the Book of Reference as 'Road' owned by the Overseers of the Parish. This is probably the same road as shown on the 1841 OS map. As this road was intersected by the railway a bridge was required, noted as spanning 30 feet. However, this alignment was not implemented.
39. In 1855 an amending Act was passed and an extract from the Deposited Plan (dated 1856) shows an 'occupational level crossing' at the point of the claimed route. The Law Commission Consultation Paper 194 – level crossings (dated 2010) has been brought to my attention. This states that "*the best one can say is that an occupation crossing occurred where the railway crossed a private road or way which served a farm, hamlet or village. We think that normally the private road or way would have a pre-existing right of way over it.*"
40. It is Network Rail's case that this occupation crossing was provided solely for fisherman, who required access to the foreshore. However, I have no agreements or other evidence to support this claim and given that a stile and unlocked gate were provided there was nothing to prevent it being used by anyone. Indeed, given the historical access to the foreshore at this location there would be no reason for the public to doubt that this was not to continue via the level crossing.
41. The Plan deposited with the 1861 Act does not appear to show a crossing or slipway. However, the purchase of the land via the 1863 conveyance<sup>4</sup> does show a slipway which continues to provide some evidence of a point of access to the foreshore.
42. A plan titled London and North Western Railway Map, Session 1882 '*Plan of additional lands at Deganwy in the Parish of Eglwys Rhos otherwise Llanrhos*', was brought to my attention by the Supporters. This plan was drawn after the construction of the original railway line. This plan clearly shows a crossing over the railway to link with the slipway and also shows a double pecked line linking the road to the foreshore, directly across the railway line. This would seem to infer both a vehicle and pedestrian crossing. There is no indication as to whether these are public or private crossings and there is no mention of an 'occupation crossing'.
43. Network Rail has confirmed "*For the purposes of defining the powers under which this branch line was constructed, insofar as relevant, the line was authorised by the 1853 Act as amended by the 1855 and 1861 Acts. For the purposes not least the statutory incompatibility discussion, all of the abovementioned Acts incorporate the relevant powers of the Railway Clauses Consolidation Act 1845.*"
44. In this respect, the law in relation to level crossings is a complex combination of public and private acts. I have been helpfully provided with various documents charting the history of the British Transport Commission and various Railway Acts (Doc 4). I also have copies of historic signage used by various railway authorities to warn about

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<sup>4</sup> Between The Queen's Most Excellent Majesty of the first part, The Honourable James Kenneth Howard, the Commissioner of Her Majesty's Woods, Forest and Land Revenues of the second part and The Saint George's Harbour Company to transfer several pieces of land lying between the high and low water mark of the River Conwy, which included the Order Route.

trespass. Nonetheless, I do not know if these signs were historically erected at the nearby stations and in any event, they cannot remove a pre-existing right of way. In this respect given the provision of a publicly accessible stile, crossing and slipway there would be no reason for the public to object to the railway deposit plans.

#### Other documents

45. Prints, postcards and photographs: The supporters have provided a number of early prints to support the existence of public rights and the use of the foreshore. The first is an 1822 watercolour, by Samuel Austin, which shows a track leading down to the foreshore, said to represent the slipway (or access to the foreshore) and the track towards Tyn-y-coed. A modern image is supplied alongside to compare and contrast the features.
46. An antique wood engraved print, dated 1850, depicts Conwy Castle from the Tywyn side of the estuary, with a rowing boat containing four people in the foreground. An engraved print, dated 1861, shows Conwy Castle and the town, again from the Tywyn side of the estuary. In the foreground groups of people are gathered on the foreshore, with a sailing boat hauled up on the sand. An undated print depicts a further similar scene, but a group of people are on horseback heading towards Llandudno Junction. Nonetheless, as these are creative works, their accuracy and reliability as an historical record is unpersuasive. Taken on their own they do not demonstrate public use.
47. The copies of postcards and photographs are not dated but are post construction of the railway line. The railway is fenced off from the road but in some images a wooden ladder stile is visible.
48. Stopping up: Section 33 of the London and North Western Railway Act 1883, states that "*All rights of way along the several streets, footpaths, courts, passages, thoroughfares or highways or portions thereof which shall under the provisions of this Act be stopped up and discontinued....*" The accompanying plan highlights footpaths labelled G, H, I, K to be stopped up. However, these paths do not include the claimed route and from all that I have seen and read this Railway Act was to enable the construction of Deganwy Wharf, rather than stop up level crossings along this entire branch line.
49. Definitive Map: The claimed route is not shown on the Definitive Map. The Supporters state that as the route was accepted as an access to the foreshore they saw no reason to claim it as a footpath. Notwithstanding, during 1981 the Council undertook a review of rights of way, this resulted in a notice of application for modification order<sup>5</sup> which included the claimed route. In 2001 the Council investigated the claims in conjunction with the Railway Authority. The Railway Authority confirmed in a letter dated 29 November 2001 that the Tywyn Level Crossing:

*"This was once a vehicular level crossing probably constructed at the time of the advent of the railway here. Although the crossing is now disused, in as far as vehicles are concerned, separate pedestrian facilities were provided and perpetuated. I cannot trace that any signs have ever been displayed, at this site, which would lead any user to believe that there was an intention by Railtrack or its predecessors, not to dedicate the route to public use."*

<sup>5</sup> The application was submitted on behalf of the Ramblers Association, dated 1987.



50. Whilst Network Rail dismiss the letter written by its predecessor, it would seem to me that, taken in context, the author has undertaken some historical research and would have knowledge of the law surrounding rights of way. It seems reasonable from this letter to assert that there continues to be a route on foot across the railway and that there is no evidence of signs such as would negate an intention to dedicate the route.
51. Following this letter, in 2002, the Council (Doc 1) confirmed that it would not proceed with an Order due to insufficient evidence of use as of right. This position was reiterated in the Council's 'Statement of Grounds'.
52. Conwy tunnel: The Conwy Tunnel was constructed during the 1980's and formally opened in 1991. As part of the project land was compulsory purchased and any private rights removed. However, it should be noted that whilst a private right may have been extinguished, a public right could remain. The construction operations also included a path along the Tywyn side of the estuary towards Conwy town.
53. Cycle route: In 2003, following the construction of the estuary path, a strategic path was created by Conwy County Borough Council in partnership with Sustrans. Planning permission was granted, which included a condition to retain pedestrian access arrangements as detailed on drawing ref ECO01002/CT02E. This drawing provides details of the new steps, alongside the level crossing to provide access to the foreshore. The accompanying notes state that "*Existing right of way to be maintained to include improved access to the beach through the proposed new rock structure.*" Nonetheless, the railway owned land itself is outside the 'red line' area of the permission and therefore works on it would be outside the scope of the permission. The Council confirmed that during construction works (January 2006 – April 2006) it was not possible to maintain public access.
54. Other documents: I read with interest a number of newspaper clippings and letters concerning the closure of the crossing in 1992. These further confirm my findings regarding the 20-year period.
55. At the Inquiry a further article (dated 22 December 1899) was presented (Doc 16) which explains a route to Llandudno "*The other access to the town was along Conway Shore, turning to the left at Tywyn, following along the beach, passing Deganwy (which was then a gentleman's mansion), turning down to the sands...*" Also "*All letters, papers, parcels etc, were carried to and from Llandudno by a short, hardy, strong man – John Hughes by name, who always used to carry the bags to and from Conwy by the sands. He would arrive here each day about 8am, then walk up to Penygwaith, do a hard day's work, and return to Conwy about 6pm; this he did for many years.*"
56. It would appear from this that people would have used the road/track (constructed c.1841) along the shoreline to Tywyn, where this road ended. At this point it would be highly probable that people then used the rail crossing at Tywyn, to access the foreshore<sup>6</sup>, particularly as no other similar crossing point hereabout has been brought to my attention. It is clear that the foreshore was accessed by a variety of people and not solely fishermen. Tywyn was a thriving area at this time and had a population greater than that of Deganwy<sup>7</sup>.

### **Whether the footpath subsists on the balance of probabilities**

<sup>6</sup> Given the construction of the railway in 1858, the slip way at Tywyn would have been used to get down to the foreshore and continue their walk to Llandudno.

<sup>7</sup> Tywyn in Victorian Times, researched by Fiona Richards, Revised 2012, Page 22.

57. Taking the documentary evidence as a whole a route very similar to the Order route has existed for a long time and it is clear that this route has been used by the public to access the foreshore as a destination or for onward travel.
58. But Network Rail state that post the construction of the railway this use took place on a permissive basis rather than having been 'as of right' as required under the 1980 Act.
59. Evidence of use in the 1800's is understandably somewhat limited, with evidence of a continuous 20-year period between 1972 – 1992. However, there is also evidence that the railway authority made clear their lack of intent to dedicate a public right of way, through signage, despite being prepared to permit some access to fishermen. Nonetheless, I have no evidence that such instructions were communicated to the persons who used the path. Moreover, the Railway Authority letter, dated 29 November 2001, would seem to confirm that public use has been established. Use can therefore be established for common law dedication even if the route has been used only by local inhabitants, as long as there is nothing to prevent it being used by anyone. In this case the gate and stile remained, until 1992, available for any persons to use.
60. On balance it is my view that throughout the period since 1992 public use of the Order route has been specifically brought into question on a number of occasions and the railway authority have indicated a lack of intent to dedicate a right of way. In these circumstances it cannot be presumed that a public footpath has been dedicated in accordance with the provisions of the 1980 Act.
61. Nevertheless, bringing all the threads together, I find the evidence in relation to the Order route to be more probable than not of it being a historical footpath pre dating the railway. In particular, the Tithe map and early OS mapping strongly confer a track leading to the foreshore and are suggestive but not determinative of a public road. This track provided the only access in the local area to the foreshore, ferry links and onwards travel to Conwy. In later mapping this track became Pentwyn Road.
62. I have no evidence that this link between the track and the foreshore was severed other than during the construction of the railway. At this time the railway provided both a pedestrian and vehicular crossing over the rails and constructed a new slipway which did not preclude public use. This is most clearly shown on the 1882 Railway Plan, which was completed post construction of the original branch line. The newspaper article, dated 1899, suggests continued use of the foreshore from Tywyn towards Llandudno, accessed using a crossing at Tywyn.
63. Although finely balanced in this case, I am satisfied that the evidence points towards the Order route being available on the ground, pre railway, that was used by the public on foot. Accordingly, all subsequent use will be use pursuant of that pre-existing right and the submissions regarding statutory incompatibility are irrelevant, the right of way having pre-dated the railway.

*Other matters*

64. Concerns were raised regarding the suitability and the increased use of this crossing due to the nearby cycle route. Whilst I understand that these concerns are the matters of most importance to people living here, they are not relevant to the issues I need to consider under the 1981 Act.
65. I note the suggestion that other supporters may not have attended as they felt intimidated and that the decision had been made. I have taken appropriate account

of all the matters raised in writing and would have heard evidence from any interested party at the Inquiry had they wished to provide it.

**Overall Conclusion**

66. I am satisfied that, taking all the evidence together, it has been demonstrated on the balance of probabilities that there has been a dedication and acceptance of a public right of way at common law.

67. Having regard to these and all other matters raised at the Inquiry and in the written representations I conclude that the Order should be confirmed

**Formal Decision**

68. I confirm the Order.

*Joanne Burston*

INSPECTOR

## **APPEARANCES**

### **For the OMA (Neutral stance)**

Mr E Owen, Barrister, Kings Chambers, instructed by:

- Mr R Jarvis, Solicitor, Conwy County Borough Council
- Ms V Currie, Senior Rights of Way Officer, Conwy County Borough Council
- Ms C Turner, Rights of Way Officer, Conwy County Borough Council

### **Supporters**

Mr G Bebb, MP

Cllr M Priestley

Who called:

- Mr M Kerens CMIOSH, Local resident
- Ms M Norwood, Local resident
- Cllr M Priestley, Local resident
- Mr J Pitt, Local resident
- Ms B Bowden, Local resident

Mr P Bland, Ramblers Cymru

Mr & Mrs Arden, Local resident

Ms J Finch-Saunders, Assembly Minister

### **Network Rail (the Objector)**

Mr J Lopez, Barrister, Francis Taylor Building

Who called:

- Ms L Anderson, Network Rail, Liability Negotiations Adviser
- Ms C Booth, Network Rail, Operations Risk Advisor Wales Route
- Mr J Greenwood, Network Rail, Head Liability Negotiations

### **Interested Parties**

Mr C Rigal, Local resident

Mr K Satterly, Sustrans

Dr P Jarvis, Local resident

Ms K Pitt, Local resident

Mr C Hartman, Local resident

Ms S Cotton, local resident

## DOCUMENTS

- Doc 1 Letter dated 8 January 2002, submitted by the OMA.
- Doc 2 NR-1: Network Licence; and Railway Group Standards Code (Issue 4), submitted by the Objector.
- Doc 3 NR-2 Summary of User Evidence Forms, 2013 and 2018 comparison, submitted on behalf of the Objector.
- Doc 4 NR-3: Railway History, British Transport Commission Act 1949 (extract); Regulation of Railway Act 1868 (extract); Railways Act 1993 (extract); and Health and Safety at Work Act 1974 (extract), submitted on behalf of the Objector.
- Doc 5 NR-4 Photographs of 'snaking' train movement, submitted on behalf of the Objector.
- Doc 6 NR-5 Statutory provisions clip, submitted on behalf of the Objector.
- Doc 7 British Transport Commission Act, 1949 (extract), submitted on behalf of the Supporters.
- Doc 8 Extract from proof of Mr Greenwood, submitted on behalf of the Supporters.
- Doc 9 1987 path claims by Wright & Procter, submitted on behalf of the Supporters.
- Doc 10 Timeline, Submitted on behalf of the Supporters.
- Doc 11 Conwy County Borough Council Statement of Grounds, submitted by the OMA.
- Doc 12 \*344 Margaret Mayhew v Secretary of State for the Environment, submitted on behalf of the Supporters.
- Doc 13 Statement of Dr P Jarvis, submitted on behalf of the Supporters.
- Doc 14 Objection Letter, dated 16 May 2019, submitted by Dr K Evans (McMillan).
- Doc 15 Clarification note from Mr M Kerens, submitted on behalf of the Supporters.
- Doc 16 Evidence Z extract from Llandudno Advertiser 1899, submitted on behalf of the Supporters.
- Doc 17 Submission of Ms J Finch-Saunders (AM), submitted on behalf of the Supporters.
- Doc 18 British Transport Commission Act 1949 (extract), submitted on behalf of the Supporters.
- Doc 19 Extract from 'Land disposal by Network Rail: the regulatory arrangements', submitted on behalf of the Supporters.
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