

Submission by Janet Finch-Saunders AM

I am speaking with regards to Conwy County Borough Council (Footpath No. 73 in the community of Conwy) Definitive Map Modification Order 2016. It is my wish for this contribution to be understood as one in support of the statement of case made by the Order applicants. Whilst I do not intend to reiterate the case made by the applicants, I do have a number of queries about the objections put forward by Network Rail.

As you will be aware, if the order is confirmed, the definitive map and statement for the area will be amended so that it includes a public footpath in a place where I believe there is evidence to prove that there was and is a public right of way: from a now removed stile adjacent to a bus shelter on the southern side of Glan y Mor Road, across dual railway tracks, to a stone stile which enabled access to the cycle/coastal path and foreshore.

Network Rail objected to the Modification Order arguing that there are not, nor have there ever been public rights of way over the railway at this point. Indeed, they implied that the crossing at this location was provided for private use and that it was never the intention to dedicate this way for the public. Also, it was noted that the original deposited plans and the book of reference for the construction of the railway do not indicate the existence of a public right of way or the existence of the slipway.

As the Order applicants have explained in their statement, it can be reasonably assumed that on the balance of probabilities, and the lack of specific evidence of an easement to a defined landowner, that this crossing is not an occupational crossing as is noted on the St George's Harbour Railway plans 1856 [Evidence I]. Indeed, it appears to be a pre-existing right of way.

This is supported by the fact that I have seen no evidence from Network Rail as to who the landowner/s to who/m these rights were dedicated – strengthening the argument that this was a pre-existing right of way.

Reason to support a suggestion that this is not an occupational crossing but actually a crossing with public access, is given by the appendices to the Working Timetables produced by the railway operators in 1916 and 1937 [Evidence A]. I understand that these lists do not show occupational crossings, and as such, believe that the inclusion of Towyn crossing is strong evidence that it was one to which the public had access.

I am in receipt of a copy of a map from 1877 [Evidence B] which indicates that the location in question used to be a cross roads. Whilst the railway is visible here, it can reasonably be suggested that there would possibly have been an unhindered ability for anyone to turn off the route we know today as Glan y Mor Road and go down to the foreshore, indicating that there was public access before the railway.

This is supported by the article entitled 'A short history of Old Llandudno' in the The Llandudno Advertiser on 22 December 1899 [Evidence Z]. In the column, the following is noted:

'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, passing through Cerrig Duon (Black Stones), and turning up to Morfa Uchaf (Higher Marsh), just opposite the present west entrance to Gloddaeth Street'.

My understanding of this is that the turning left at Tywyn could only be the route currently in dispute. As there is no mention of the railway, the narrative seems to relate to what happened before the line was built. Therefore, this is evidence that there was a right of way at the crossing point before the railway was built – the crossing forming part of a key route to Llandudno.

The evidence I have just highlighted disproves Network Rail's claim that the footpath cannot have been in existence at any time before the railway was constructed.

Further evidence of the weakness of Network Rail's point is the fact that the argument relies on the 1863 Conveyance to note that it does not show the claimed footpath, nor that any reference is made to it.

This is not entirely correct because the slipway is shown as having been constructed in the drawing/map. The way this has been justified by Network Rail is by stating that 'the slipway was therefore provided for the sole purpose of enabling access for fishermen and their boats, and not for allowing the public to cross the railway'. I have not seen any evidence that supports this statement that the slipway was not used by the public. In fact, given how close it is to Glan y Mor Road, the content of the article in the Llandudno Advertiser, and that to a reasonable person the slipway looks like an extension of the highways meeting by the start of the footpath, I believe that it can be suggested that the slipway and the provision of access to it over the railway has in fact been an acknowledgement of a public right of way to the foreshore.

From reading the user evidence forms, I understand that there has been extensive use of the crossing before it was closed in 1992. There being more than 20 years uninterrupted use is indicated in forms completed such as those which highlight use from 1964, 1963, and 1967 to closure [Evidence C1 and Evidence C2]. More so, one individual states that their grandfather had been born in Deganwy in the 1890s and used the crossing with a horse and cart to access the slipway as it was the main access to the estuary and the open sea [Evidence C2]. This is unsurprising when considering that the access to the slipway does seem to have been from Glan y Mor Road, and formed, as I mentioned previously, a cross road enabling public access to the foreshore. This is supported by:

[Evidence D] – Carnarvonshire V9 map dated 1947 which shows the slipway and what is clearly an access point on the opposite side of the railway.

[Evidence E] – Denbighshire County Series 6" to the mile dated 1953 which shows the slipway coming off the railway line.

[Evidence F] – OS map 25" to the mile dated 1959 which shows the slipway and what is clearly an access point on the opposite side of the railway.

That this was used by the public and that a right of way exists was supported by Conwy Town Council as the town clerk and treasurer wrote to the area manager of British Rail on 24 March 1992 stating that there is a right of way at that point to the foreshore [Evidence G]. Tellingly, following this letter the stile was restored. That this correctly leads a reasonable person to believe that there is a public right of way is supported by the letter sent by H Gilles-Smith, Asset Liability Manager, Railtrack PLC on 29 November 2001. In this the following is advised about 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 are provided and are perpetuated. I cannot trace that any signs have been

displayed, at this site, that would lead any user to believe that there was an intention by Railtrack or its predecessors, not to dedicate the route to public use'. [Evidence H]

I understand this to mean that Railtrack and its predecessors acknowledged that there is a route for public use. Indeed, how is it logical for the objectors to note in their statement that 'neither Network Rail nor its predecessors have ever accepted that the Crossing was provided as an access point for the benefit of the public', when the above comment from Railtrack shows that even when the vehicular level crossing was disused, separate pedestrian facilities were provided?

Given the evidence I have already referred to, and the content of the statement by the Order applicants, I think it reasonable to believe that there was public access to the foreshore at the point before the railway was built, and after. Corroborating this is my understanding that the crossing had been well established through an alleged introduction of now removed wooden planks [Evidence C2], the introduction of the removed stile, and the fact that the railway companies have facilitated public access for numerous years since the creation of the railway, enabling test b in *R V Secretary of State for The Environment ex parte Norton and Bagshaw* (1994) to be relied on – the test being that it is necessary to show that a reasonable person, having considered all the relevant evidence, can reasonably allege a right of way to subsist.

Clearly, I think that a reasonable person can suggest that there has been a long established right of way across the railway – what has already been referred to functioning as evidence that the railway intended to dedicate the way as a highway, and therefore that there is an ability to presume that the crossing has been dedicated as a highway under common law, or even Section 31 of the Highways Act 1980. For these to apply, in addition to showing the 20 year use as I have already done, I would like to comment on the ability of Network Rail to dedicate a public right of way.

Firstly, following the case of *British Transport Commission v Westmorland County Council* [1958] AC 126, railway operators were considered to have the capacity to dedicate a public right of way over the railway.

However, as you will be aware, the case of *Ramblers' Association v Secretary of State for the Environment, Food and Rural Affairs* [2017] ('Ramblers' case') has been used to try and argue that the recognition of a footpath would be incompatible with Network Rail's statutory duties to uphold the safe and efficient operation of the railway.

As has been explained by the Order applicants, the Ramblers' case should not necessarily be understood as establishing a precedent against the dedication of a public right of way anywhere along a line. Indeed, I believe that the facts of the current Deganwy situation should be considered on their own merit.

I appreciate Network Rail has a commitment and responsibility to have a safe and efficient railway, but I am slightly concerned that the ALCRM rating for the crossing, (C4 - high risk), is questionable. Indeed, I am not aware of a single fatality at this crossing whilst it was open – which is an important point when considering that it has seen over a century of use. Therefore, if there is a high risk, can I ask:

1. why there does not seem to have been a serious incident whilst the crossing was open;
2. for the Inspector to question carefully how such a dangerous qualification level has been reached;
3. and how Network Rail can suggest that 'the sighting lines of approaching trains [give] insufficient time for able-bodied people to cross the railway should a train appear'?

Clearly, there is always going to be some risk, but in Deganwy, I believe that use over a long period has proven the crossing to be reasonably safe for public use. More so, it actually provides a significant public benefit, as has been noted by the applicant with regards to public health and accessibility to the North Wales Coastal Path. To be clear, the need to consider this is apparent when considering the goal of creating a healthier Wales in the Wellbeing of Future Generations (Wales) Act 2015. The record of proceedings of the National Assembly for Wales will testify to the fact that this has to be taken into consideration. Indeed, when I asked Janet Hutt AM, Deputy Minister and Chief Whip, to confirm that there is a duty on planning authorities to take into account the healthier Wales goal when considering the dedication of a highway, she responded on 14 May 2019 stating: 'Local authorities have to take into account the well-being objectives of the future generations Wales Act and consider the long-term impact of decisions that they make, and, of course, that includes all developments'.

As such, Network Rail can in my opinion lawfully permit or grant a public right of way over a level crossing because it should not amount to allowing an unacceptable risk to one or more users. In fact, it would actually result in a positive public benefit.

Network Rail and its own further ability to permit or grant the public right of way is supported when querying some of their statements about operational efficiency. It is noted in the objection that 'it would not be compatible with railway operational efficiency for Network Rail to dedicate a public footpath over a railway at the site of the Crossing and in a way that would give rise to undue burden on the operation of the railway. This includes the consequential requirement for maintenance and repair...'.

I request that the Inspector be very careful in giving any weight to this point given that it can be safely assumed that maintenance and repair is undertaken at other existing crossings and that public resources have been spent on maintaining this specific highway across the railway previously. This is evidenced by Railtrack's comment on 29 November 2001 that 'separate pedestrian facilities are provided and are perpetuated' [Evidence H]. More so, I am unaware of any evidence which shows that the crossing has impacted on the efficient operation of this branch line in the past, so must suggest that operational efficiency is not a barrier to the confirmation of the Order.

Network Rail has also tabled a further alleged problem to try and block the confirmation of the Order. This is the statement that 'pursuant to the Licence ORR's consent would not be forthcoming in respect of user... as this would fundamentally undermine the business of operating, maintaining and improving the railway network'. If the Inspector is minded to grant the Order, I do not see how we can be sure that the Office of Rail and Road's consent, if required, would not be forthcoming. Therefore, I believe that considerable weight should not be given to this matter.

Also, I would like to add a most interesting point: that Network Rail is not actually completely opposed to permitting crossings onto the network. Clearly, they think this possible because in their document 'Our Approach to Managing Level Crossing Safety', it is noted that 'only in exceptional circumstances shall we permit new crossings to be introduced'. Inspector, I interpret this as evidence of the fact that Network Rail are aware that the Ramblers' case does not establish a precedent against the dedication of a public right of way anywhere along a line. Indeed, if it did, which the applicant has shown it has not, how would Network Rail be able to note that it can permit new crossings?

Given that I have shown that a reasonable person would think that the confirmation of the Order would be compatible with Network Rail's statutory objectives (safety and efficient operation), and

that there is evidence to prove that there has been a public right of way at the crossing point since before the railway was built, and that this was used without interruption until 1992, I believe that my contribution supports the calls for the Order to be confirmed. This is the wish of local residents and elected representatives, so I hope that our views will not go ignored.