



Penderfyniad ar y Gorchymyn

Ymchwiliad a agarwyd ar 23/5/2017
Ymweliad â safle a wnaed ar 25/5/2017

gan Martin Elliott BSc FIPROW

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 13/07/17

Order Decision

Inquiry opened on 23/5/2017
Site visit made on 25/5/2017

by Martin Elliott BSc FIPROW

an Inspector appointed by the Welsh Ministers

Date: 13/07/17

Order Ref: ROW/3158502

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 Pembrokeshire County Council Public Footpath number 2 in the Community of St Dogmaels Definitive Map Modification Order 2015.
- Pembrokeshire County Council (the Council) submitted the Order for confirmation to the Welsh Ministers.
- The Order is dated 22 May 2015 and there were three duly made objections outstanding at the commencement of the inquiry.
- The Order proposes to modify the definitive map and statement for the area by deleting two sections of public footpath 2 and adding new sections of footpath 2 as shown in the Order plan and described in the Order Schedule.

Summary of Decision: The Order is proposed for confirmation subject to modifications set out below in the Formal Decision.

Preliminary Matters

1. I opened a public local inquiry at St Dogmaels Memorial Hall on 23 May 2017. The inquiry sat for three days. I carried out an unaccompanied site visit of the Order routes and surrounding area on the evening of 22 May. I carried out a further accompanied site visit on 25 May.
2. Paragraph 3 of the preamble to the Order refers to public footpath number 3. This is a typographical error and the reference should be to footpath 2. There is also a typographical error in that the word 'scedule' at the top of page 2 should read 'schedule'. The Order, if confirmed will be modified accordingly.
3. Before the inquiry and after the dates set out in the Notice of Order a number of documents were submitted and exchanged between the parties. At the inquiry a number of additional documents, some of which were included in the application bundle, were submitted. However, an opportunity was given to the parties for an adjournment to consider the documents handed in at the inquiry. There is no evidence that anyone has been prejudiced by the submission of the additional documents.

Main Issues

4. The Order has been made under section 53(2)(b) of the Wildlife and Countryside Act 1981 in consequence of events specified in section 53(3)(c)(i) and the first part of

subsection (iii). The test to be considered is whether the discovery by the authority of evidence, when considered with all other relevant evidence, is sufficient to show:

- i) that a right of way which is not shown in the map and statement subsists over land in the area to which the map relates (53(3)(c)(i), the addition of public footpath 2 A-D-C and E-G¹);
- ii) that there is no public right of way over land shown in the map and statement as a highway of any description (53(3)(c)(iii), the deletion of the section of footpath 2 A-B-C and E-F).

5. The test to be applied to the evidence is on the balance of probabilities.
6. In considering the Order I have had regard to Guidance for Local Authorities on Public Rights of Way, October 2016, published by the Welsh Government, in particular paragraphs 4.49 to 5.54. Paragraph 5.51 states that the evidence needed to remove what is shown as a public right of way from such an authoritative record will need to fulfil certain stringent requirements namely, the evidence must be new and the evidence must be of sufficient substance to displace the presumption that the definitive map is correct. Furthermore the evidence must be cogent and there must be positive evidence of any erroneous recording. In addition paragraph 5.54 provides that in the case of deletions the use of a way erroneously recorded on the definitive map cannot be 'as of right' for the purpose of presumed dedication. It is therefore not possible for a right of way to be so dedicated when use is by virtue of it been shown on the definitive map but which is subsequently removed.
7. Following the making of the Order three duly made objections were made. St Dogmaels Community Council and St Dogmaels Footpath Association² object to the deletion of the section of Order route E to F; they raise no objection in respect of the remainder of the Order. It is argued that the section of Order route E to F is a public footpath in consequence of a statutory dedication and dedication at common law. The third objection relates to the absence of a width in respect of those sections of path to be added by the Order. I consider this matter further at paragraphs 57 to 59 below.
8. In 2012 the Council published a consolidated definitive map with a relevant date of 15 June 2010. The Order routes A-B-C and E-F were first recorded on the consolidated definitive map. The issue to be considered is whether the Order routes A-B-C and E-F were recorded on the definitive map in error in 2012 and whether the correct routes should be A-D-C and E-G. Should I find that the Order route E-F was recorded on the definitive map in error I will then consider whether public rights have been acquired over this route.
9. Section 31 of the Highways Act 1980 provides that where a way, other than a way of such a character that use of it could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public, as of right and without interruption, for a period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that the landowner demonstrated a lack of any intention during this period to dedicate the route. The 20 year period

¹ Letters A to G used in this decision relate to points identified on the Order map

² For convenience I shall refer to these two objectors as the objector

applies retrospectively from the date on which the right of the public to use the way was brought into question.

10. Dedication at common law requires consideration of three issues: whether any current or previous owners of the land in question had the capacity to dedicate a highway, whether there was express or implied dedication by the landowners and whether there is acceptance of the highway by the public. There is no evidence of any express dedication. Evidence of the use of a path by the public as of right may support an inference of dedication and may also show acceptance by the public. In a claim for dedication at common law, the burden of proving the owner's intentions remains with the claimant.
11. The objector disputes whether there has been 'the discovery of evidence' enabling an order to be made. However, the discovery of a drafting error amounts to a discovery of evidence. The Council assert that the inclusion of the Order routes A-B-C and E-F on the 2012 definitive map was in consequence of a drafting area.
12. I was referred to the case of *Trevelyan v Secretary of State for the Environment, Transport and the Regions (CA) [2001] EWCA Civ 266* and in particular paragraph 38 which is relevant in respect of deletions from the definitive map.
13. My attention was brought to the case of *R v SSEFRA on the application of Norfolk County Council [2005] EWHC 119 (Admin)*. This provides that where there is a conflict between the definitive map and statement it is appropriate to consider the available evidence to determine which is correct as part of the review process. The Council also referred to *R (Leicestershire County Council) v Secretary of State for Environment, Food and Rural Affairs (QBD) [2003] EWHC171 Admin* where the only issue which the Inspector had to determine was essentially which was the correct route to be shown on the map. This required him to consider whether, in accordance with section 53(3)(c)(i), a right of way not shown subsisted, and also, in accordance with section 53(3)(c)(iii), whether there was no public right of way over land shown on the map.

Reasons

Order route A-B-C/A-D-C

14. As noted above the objector does not object to this part of the Order. Nevertheless I am required to consider whether the route A-B-C was recorded in error and that the correct alignment is A-D-C. I have considered the evidence before me and conclude that the route A-B-C was recorded in error on the definitive map published in 2012 and that the correct alignment should be A-D-C. The Order should therefore be confirmed in this respect.

Order route E-F/E-G

15. In 1958 the Parish Council produced a parish survey map in connection with the production of the definitive map and statement under the National Parks and Access to the Countryside Act 1949. The map shows a route which follows the jetty along an alignment E-F although it is not clear whether the map shows the route continuing to the end of the jetty. No draft map has been found but the provisional map, dated 30 September 1959, shows a route along the jetty.

16. A Pembrokeshire County Council Engineers plan dated November 1959 shows a route following the alignment E to G.
17. An objection was raised to the inclusion of footpath 2 on the provisional map and a Quarter Sessions appeal committee was held on 11 January 1960. The consent Order indicates that the alignment of footpath 2 was that shown on the plan produced to the committee which was the County Engineers plan of November 1959. The Order states that the public have no right of way over any part of the remainder of the applicant's land. Although the extent of that land is not identified in the Order the map identifies the route of footpath 2. However, the jetty was in the ownership of the applicant for the consent Order. In my view the statement in respect of the existence of rights of way would apply to the jetty. The Order would not have extinguished any pre-existing rights, nor would it preclude rights from being shown to exist at a later date, but gives a clear indication that the route E to F was not a public right of way. The Order indicates that the alignment of footpath 2 is along the route E to G.
18. I note the submissions by the objector that there was nothing to authorise a radical change to the way footpath 2 was depicted. However, the Order makes the intentions clear and includes a map, the plan produced by Pembrokeshire County Council and agreed by the solicitors acting on behalf of the appellant, showing the route leading from E to G. There is nothing to indicate that the correct procedures were not complied with and in the absence of any such evidence some weight should be given to the consent Order. The depiction of the route in the Order is consistent with correspondence between the County Council and the solicitor acting on behalf of the applicant (inquiry document 1) which indicates that the route in question, used by the public, was a route corresponding with the route E to G.
19. It should be noted that the subsequent definitive map dated 1960 shows a route leading to the beach and not along the jetty. In the absence of evidence to the contrary it must be presumed that the correct procedures were followed and the route was correctly recorded on the definitive map. The recording on the definitive map is consistent with the consent order which was in connection with an objection to the recording of the route on the provisional map.
20. The definitive statement describes the route as '*Footpath leaves the unclassified County Road at Cnwcau via fieldgate and descends steeply via Penrhyn-bach to Cei-bach. (Cnwcau 140491 to Cei-bach 144492)*'. It is noted that the statement identifies the route to Cei Bach, which the objector contends refers to the jetty. Whilst this might suggest that the route leads to Cei Bach the statement does not provide any indication that the route continued to the end of the jetty. The Council suggests that the description could describe a path running to a location shown on the maps as Cei Bach. Although the Ordnance Survey maps identify Cei Bach I am not persuaded that this area relates to the jetty and the beach. I also note the assertions of Mrs Mill that the shore and beach at Cei Bach has been so called since at least the 18th century. This evidence was unchallenged but I have not been provided with any evidence to support the assertions. Nevertheless the statement does not describe the route to the end of the jetty and the 1960 definitive map does not show a route along the jetty.
21. As regards the grid references, the enlarged map prepared by the objector (SDCC-43) shows that the termination point identified relates to a grid square which falls within an area covered by sea. It should be noted that the original definitive map was prepared at 1:25000 scale and as such it would be difficult to provide a grid reference to such accuracy. Whilst the enlarged map indicates that the grid reference is closer

to the end of the jetty than point G the grid reference given is not the end of the jetty. I do not consider that the grid reference assists in establishing the termination point of footpath 2.

22. The objector suggests that local subscription was a prime source for the maintenance of the jetty. The Parish Council minutes of 20 June 1960 indicates that an estimate was to be obtained for the cost of pointing the Cei Bach wall. At the meeting on 17 August 1951 the Parish Council agreed to spend £31 and the accounts outline the expenditure on 6 November of that year. Although there was expenditure on Cei Bach Wall it is not clear from the minutes that this relates to expenditure on the jetty. As suggested by the Council the pointing could have been on the high stone wall adjacent to the route E to G. In any event, it does not necessarily follow that the funding of repairs to a jetty means that the structure carries a public footpath.
23. The Ordnance Survey maps dated 1889, 1906 and 1976 show a route which corresponds with the route E to G. None of the maps indicate the existence of a route between E and F. Whilst the Ordnance Survey maps do not record public rights the maps do not support the existence of a route between points E and F.
24. On 21 May 1958 Cemaes Rural District Council wrote to the Commissioner for Crown Lands reporting that a notice had been erected to the effect that the lifeboat house and jetty are private property. The correspondence states that the public, particularly fishermen, have always used the pier and jetty. In subsequent correspondence Cemaes Rural District Council accepts that the lifeboat house is private property but makes the point that the public have a right of access over the pier and jetty which they have enjoyed over the years without interruption.
25. Whilst the correspondence from the District Council supports use of the jetty and beach by the public it provides no information as to how the jetty was accessed and there is nothing to indicate that the public were exercising a right to pass and repass on foot. As such the correspondence does not assist in determining whether or not a public footpath subsists over the jetty. The correspondence provides no information in respect of access from point E down the coastal cliff.
26. In February 1959 the District Coastguard Officer reported to the Crown Estate Commissioners on the condition of the jetty. It was reported to be in good repair but records the presence of a notice on the jetty and the doors of the lifeboat slip stating 'This jetty private property do not damage or touch boats'. The report states that the District Officer had been informed by local residents that the public have always made use of the small beach and harbour. However, the correspondence provides no information as to the type of use of the area and provides no evidence as to a public right of way on foot along the jetty.
27. It is noted that the objector has copies of a map dated 2001 provided by Pembrokeshire County Council entitled 'Existing Public Rights of way St Dogmaels CC PCC 21 December 2001'. The maps were provided in connection with a rights of way survey. Whilst the map shows the route E to F as a public right of way the maps are working copies, do not reflect the route shown on the definitive map at the time and have no legal standing; there is also no information as to how they were compiled. The objector has also submitted a map which, information suggests, is a 'working map' during the time when Dyfed County Council was the surveying authority; this would have been after 1 April 1974. The map shows the route E to F. Again, as accepted by the objector, the maps have no formal status and do not evidence the

existence of public rights. A walkers guide 'Popular Walks near St Dogmaels' also shows the jetty as a popular footpath. However, the guide was produced in 2012 using the definitive map which then showed the route along the jetty.

28. The Council state that the route E to G has had public money expended on its maintenance and have provided signage indicating a route to the beach. Evidence from Anthony Richards is that the route E to G has been maintained for over 25 years and that the National Park Authority took action to fence off the route leading from point E down to the jetty in 1994. This supports the existence of a public right of way E to G but does not preclude the existence of public rights along the route E to F.
29. The Council make the point that from point E the route to point F descends extremely steep terrain and finds it difficult to understand how the route will have been used by the public on a regular basis. Although the terrain is steep this does not preclude the existence of public rights.

Conclusions on evidence

30. Whilst the route E to F was shown on the parish survey and the provisional map an objection was made to the recording of the route on the provisional map. The consent Order of the Quarter Sessions appeal committee held on 11 January 1960 Order provides clear evidence that the route E to G was considered to be public; the Order provides no support for a route E to F. The subsequent definitive map showed a route down to the beach close to the boathouse and not a route along the jetty. The accompanying definitive statement identifies a route to Cei Bach but not along the jetty. The Ordnance survey maps provide no evidence of a route between E and F but provide evidence as to the physical existence of a route E to G. It is not disputed that the Council have signed and maintained a route to the beach which includes the section E to G.
31. The consolidated definitive map published in 2012 shows the route E to F. However, there is no evidence that the alteration of the route on the definitive map was in consequence of any legal event. Having regard to all the evidence the correct alignment of footpath 2 is the route E to G. The evidence in my view is sufficient to displace the presumption that the definitive map is correct. The evidence is also cogent and, in the absence of any legal event, the recording on the definitive map of the route E to F is erroneous and, more likely than not, in consequence of a drafting error. In view of my findings it is necessary to consider whether the route E to F is a public right of way in consequence of a statutory dedication or dedication at common law.

Statutory dedication section 31 Highways Act 1980

When the right to use the way was brought into question

32. It is first necessary to consider when the right to use the way was brought into question. I was referred to the case of *Fairey v Southampton County Council [1956] 2 QB 439* which is relevant. In October 2014 Mr and Mrs Mill of Penrhyn Castle made an application to amend the position of two sections of footpath shown on the consolidated definitive map published in 2012. It was also in 2014 when Mr and Mrs Mill erected notices on the jetty saying 'Private no right of way'. The application and notices would have brought the right to use the way into question.

33. In 2012 the Council published its consolidated definitive map with a relevant date of 15 June 2010. Although the definitive map was not published until 2012 use of the route E to F would from 15 June 2010 have been by right. Given that use became by right this would have brought the right to use the way into question and this sets a relevant period of 1990 to 2012.
34. In around 1983 or 1984 a fence was erected at point E. Photographic evidence indicates that the fence was in place in around 1985 and remained in place in early 1988. Similarly towards the end of 1994 the Pembrokeshire National Park Authority erected a fence at point E which remained in place until around the summer of 1995. The erection of the fence is evidenced in correspondence between Mrs Mill and the Pembrokeshire Coast National Park Authority. There is nothing to suggest that those who used the way were prevented in their use by the fences or understood that the fences challenged their right to use the way.
35. Having regard to the above I take the view that the right to use the way was brought into question in 2010. This sets a relevant twenty year period of 1990 to 2010.

Evidence of Use

36. In support of its objection the objector submitted 25 user evidence forms (UEFs). I have closely examined these UEFs which indicate occasional use of the route E to F. The earliest use dating from the 1930s. However, a number of UEFs refer to accessing the jetty from the beach or crossing over the jetty to continue to rocks and pools to the north. Others refer to accessing the jetty from the beach and returning up footpath 2 to the road. Some identify use of footpath 2 from the road down to the jetty. Many of the UEFs refer to the jetty as being, for example, a community asset, an extension to the beach and a prominent landmark. There is no evidence that use was challenged or interrupted or that use was by force or in secret; I consider below the issue of use with permission.
37. The objector also submitted additional statutory declarations, proofs of evidence and UEFs from a number of individuals. Many of these individuals had previously completed UEFs although a number had not done so. The statements indicate occasional use of the Order route. However, as with the UEFs, reference is made to accessing the jetty via the beach over rocks or up the rungs and continuing northwards along the coastline. Many accessed the jetty by walking from Poppit Sands some by kayak or swimming, again from Poppit Sands. The statements indicate widespread use of the jetty for swimming, fishing, dabbling for crabs, taking picnics, relaxing and other recreational activities.
38. A number of individuals gave evidence as to their use of the route E to F and their knowledge and use of the area. This was largely consistent with the evidence contained in the UEFs and additional statements.
39. Mrs Mill who, with her husband, purchased Penrhyn Castle, including the jetty the old boathouse and slipway from her mother in 1979 said that she rarely saw people using the route E to F and made the point that, when she saw people, most had come across at low tide from Poppit Sands.
40. The Council suggested that the oral evidence of user was not credible in particular because witnesses said that their use was not interrupted by fences. The evidence is that towards the end of 1994 a fence was erected at point E and was in place until

early summer 1995 when the fence was cut back. I do not accept, as asserted by the objector, that the photograph of the fence taken in November 1994 shows the top strand of wire missing. In my view the fence clearly obstructs the route. As such those using the route during this period would have had to have crossed over a fence.

41. Of those who gave evidence to the inquiry in respect of the fence erected in 1994 neither Colin Wilks, Chris Evans or Barrie Forster recall the route being obstructed by a fence. Gwenda Mark accepted that it was possible that she did not use the route during the winter when the fence was present. Jane Davidson recalled a fence cut away and lying on the ground but could not recall any dates. She also made the point that she perhaps only used the route up the coastal cliff to point E once a year.
42. There is also evidence as to fencing in place from 1983/1984 to 1998, Christopher Evans had no recollection of fences and accepted in cross examination that it was possible that he did not use the route in the early 1980s up to 1988. The majority of the time he had accessed the jetty from Poppit Sands and his use of the slope was infrequent. Mr Forster did not recall any fencing in the 1980s but said that he tended not to go to the jetty at that time. Jane Davidson had no memory of wooden topped fencing in the 1980s but as noted above recalled fencing lying on the ground although could not remember the date. Martin Griffiths did not recall any fence, however, his evidence as to the route used was unclear. Whilst in cross examination he referred to a route down the slope to the jetty in response to questions from me he said he took a route down to the boathouse and then across rocks to the jetty. It may be the case that Martin Griffiths was not using the route from point E directly onto the jetty. Richard Evans did not recall any fencing but said in cross examination that after the 1970s he did not use a route via Penrhyn Castle but used the beach. Lila Saywood accepted in cross examination that, given she did not recall the fencing, it was fair to say that she did not use the route from point E to the jetty at the time when the fencing was in place. The proof of evidence of Des Thomas refers to a vague recollection of a wooden fence which was there for a short period. He climbed over the fence.
43. The fact the individuals identified above did not recall a fence obstructing the route suggests to me that they did not use the route in the period when the fences were present or had forgotten that the fences were in place. This reduces the weight which can be given to their evidence of use. In respect of the other evidence of use, the fact that most individuals make no mention of a fence when a fence was clearly present diminishes the weight which can be given to the untested evidence.
44. I note the point made by the objector that the argument about the fence is specious as there were other ways of gaining access to the jetty. Whilst other routes may have been available the issue is whether the route E to F has been used such as to raise a presumption of dedication. Use of other routes to access the jetty cannot give rise to a presumption of dedication on the route E to F. Furthermore, accessing the jetty in itself does not give rise to a presumption of dedication on a route leading from point E.
45. The Council also made the point that the evidence that no signs were seen suggests that users were not taking access via the route up the steps or the route up the rungs onto the jetty. That in their view calls into question how often users used a route up to point E and then turned off.
46. In 1953 a sign was fixed to the jetty stating 'THIS JETTY IS PRIVATE PROPERTY DO NOT DAMAGE OR TOUCH BOATS'. The sign was replaced in 1977 with one stating

'PRIVATE JETTY DO NOT DAMAGE OR TOUCH ROPES BOATS OR POSTS. The notice remained until the early 1980s. In 1953 a notice was erected on the boathouse stating 'NOTICE THIS BOATHOUSE SLIPWAY AND JETTY ARE PRIVATE PROPERTY'. The notice was replaced in 1974 with 'THIS PLATFORM BOATHOUSE SLIPWAY & JETTY ARE PRIVATE PROPERTY'. The sign remains in place although was not present when the boathouse doors were damaged following storms in 2014.

47. Whilst few recall signs I do not consider that this calls into question the frequency of use of the route up the steps to point E and down to the jetty. It is quite possible that memories are at fault. Given the wording of the sign and its location it may also have been the case that users did not consider them relevant in respect of the use of the Order route E to F. As noted by the objector the notices appear to be directed to ownership and a request not to damage or touch ropes boats or posts. I will consider below, if necessary, the notices in the context of the landowner demonstrating a lack of intention to dedicate.
48. It was suggested by the Council that if frequent use of the jetty was being made then the evidence of repairs to the jetty would have been observed. Mrs Mill said that maintenance of the jetty had been extensive and frequent since 1953; this is evidenced by copies of invoices relating to work being carried out. Whilst few recalled maintenance being carried out on the jetty or recall evidence of maintenance it is clear from the photographic evidence that some of the repairs involved significant plant and activity. However whilst regular maintenance was carried out it is not in my view on a frequent basis. It is quite possible that those visiting the jetty did so when repairs were not being carried out. The fact that there is little recollection of maintenance does not in my view diminish the weight to be given to the evidence of use.
49. The Council makes the point that the claimed route from point E to the jetty is extremely steep. Mr Cloud said it was hard to understand how claimants could have used the route on a regular basis. I accept that the path leading from point E crosses steep terrain. However, the fact that the route is steep does not prevent the statutory dedication of the route. The issue to be considered is whether the use is sufficient to raise a presumption of dedication.

Use as of right

50. Use which is as of right is without force, secrecy or permission. There is no evidence that use was with force or in secret. However, the Council contend that there are instances of permission being granted to use the jetty. Mrs Mill said that since 1953 all boats had been moored with her and her husband's permission. She also indicated that she had given permission to others to use the jetty with people coming to the house or approaching her on the beach seeking permission.
51. The granting of permission to use the jetty for specific purposes would render use of the jetty for those purposes to be with permission. However, there is no evidence that those who have completed UEFs and additional statements have been granted permission to use the Order route. The granting of permission to some does not mean that use by others was with permission.

Conclusions on evidence of use

52. The Council referred to the case of *Dyfed County Council v Secretary of State for Wales 91990) 59 P. & C.R. 275*. This advises that where a route is used only for the

purpose of activities such as sunbathing, swimming, fishing then use of the route is not capable of giving rise to a presumption of dedication. However, where the route was used purely for walking then such use could give rise to a presumption of dedication. The evidence before me indicates that whilst some used a route E to F many went to the jetty to carry out recreational activities such as swimming, fishing, sunbathing and picnicking. Others continued across the jetty along the coast to the north. Some of those swimming from the jetty swam round to the beach, climbed the steps E to G and then returned to the jetty from the bottom of the slope. Individuals and groups, some of which were large, spent, in some instances, several hours or the whole day on the jetty. Such use is not consistent with the use of a way to pass and repass. On the analysis of the evidence of use of a route E to F this is limited in frequency and often to gain access to the jetty to pursue recreational activities.

53. For a presumption of dedication to arise there must be sufficient use to bring it home to a reasonable landowner that a right is being asserted against them. The issue is how the matter would have appeared to the landowner. The evidence before me suggests widespread use of the jetty for a variety of recreational purposes and use of a route over the jetty to gain access to the coastline to the north. Whilst there has been some use of the route E to F much of this use has been in connection with activities on the jetty. The evidence of use of the route E to F is somewhat limited in frequency and given the activities on the jetty I do not consider that it is sufficient to have brought home to a reasonable landowner that a right to pass and repass was being asserted. As such the evidence is insufficient to raise a presumption that the way has been dedicated as a public footpath in a twenty year period of 1990 to 2010. Had the right to use the way been brought into question in 1983 and 1994 with the erection of the fences then my conclusion, for the same reasons, would be the same. If the right to use the way had been brought into question in 2014 then use for two years of that period would have been 'by right' and therefore not capable of giving rise to a presumption of dedication.
54. In view of my findings it is not necessary to consider whether use was without interruption or whether the landowner demonstrated a lack of intention to dedicate a way. However, it is necessary to consider dedication at common law.

Dedication at common law

55. I shall firstly consider whether the evidence of use is sufficient to raise an inference of dedication at common law. I have already considered the evidence of use in the context of use from 1963 to 2010 and have concluded that the evidence of use from 1963 is insufficient to raise a presumption of dedication. As such the evidence of use is insufficient to infer that the landowner had dedicated a public footpath.
56. It is noted that the earliest use stems from the 1930s, this is only by one individual. Others started using the route in the 1950s although the use is similar to that identified at paragraph 52 above. Whilst the evidence suggests use for a considerable period I revert to my observations at paragraphs 53 above which are equally applicable in respect of an inference of dedication in consequence of use. In my view the evidence of use is limited and insufficient to raise an inference of dedication at common law. In view of this conclusion I have not considered the other issues identified at paragraph 10 or the effect of the 1960 Order. Notwithstanding this, the 1960 Order does not support the existence of a public footpath along the route E to F.

Width

57. The Wildlife and Countryside Act (Definitive Maps and Statements) Regulations 1993 indicate that a width should be included in any Order. An objection is raised on the basis that the Order does not specify widths for the routes to be added by the Order. The Council initially requested modification of the Order to include a width of 1 metre. However, the objection in respect of the width was maintained.
58. I note the submissions of Mr Kind and agree that the width of a public right of way is a matter of evidence and in the absence of evidence as to width then the width must be determined on what is reasonable having regard to the circumstances.
59. On the site visit held on 25 May it was noted that the width of the section A-D-C was 1.2 metres, the width being defined by shallow banking on each side of the path. In respect of the section E to G the route follows a flight of steps effectively cut into the coastal cliff. The width on this section, being the width of the steps, varied between 1.1 and 1.4 metres. I propose to modify the Order accordingly.

Other Matters

60. Concerns were raised by many of the witnesses as to the loss of access to the jetty which many held in fond memories, others referred to the jetty as a valuable community asset. Whilst I note these matters the 1981 Act does not allow such considerations to be taken into account.

Conclusions

61. 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 subject to modifications.

Formal Decision

62. The Order is proposed for confirmation subject to the following modifications:
- At line 2 of the paragraph numbered 3 delete the number '3' and insert in its place the number '2'. At page 2 insert 'h' into the word 'schedule'.
 - At Part 1 of the Schedule to the Order under the 'Description of path or way to be added' at paragraph 'a' at line 4 after the word 'metres' insert '*having a width of 1.2 metres*'. At paragraph 'b' at line 3 after the word 'metres' insert '*having a width varying between 1.1 and 1.4 metres*'
63. Since the confirmed Order would affect land not affected by the Order and not show a way in the Order as submitted I am required by virtue of Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

Martin Elliott

Inspector

APPEARANCES

For Pembrokeshire County Council:

Tina Douglass	Of Counsel, instructed by Pembrokeshire County Council
who called	
Matt Cloud	Definitive Map Officer, Pembrokeshire County Council
Anthony Richards	Access and Rights of Way Manager, Pembrokeshire Coast National Park Authority
Mary Mill	Landowner

In opposition:

Pete Bland	Representing St Dogmaels Community Council and St Dogmaels Footpath Association
who called	
Penny Rees	
Colin Wilks	
Chris Evans	
Gwenda Mark	
Barrie Forster	
Jane Davidson	
Roy Britton	
Trevor Griffiths	
Martin Griffiths	
Richard Stephens	
Richard Evans	
David Jones	
Lila Saywood	
June Wheeler	
Elizabeth Owens	
Gill Wislocka	

In support of the objectors:

George Allingham

Chair of Pembrokeshire Ramblers

DOCUMENTS

- 1 Email from Caroline Blackburn 17 May 2017
- 2 Additional items provided by SDCC (SDCC 42 to 44)
- 3 Addendum to Proof of Evidence of Mary Mill
- 4 Opening Statement from Pembrokeshire County Council
- 5 Email from Penny Rees 15 May 2017
- 6 Items from Application Documents bundle forming part of 1/98 to 98/98
- 7 Items from Application Documents bundle 1/5 to 5/5 and 1/45 to 45/45
- 8 Correspondence 27 February between Pembrokeshire County Council and St Dogmaels Footpath Association
- 9 3 still photographs taken from cine film
- 10 User evidence form Michael James
- 11 Submission of Mary Alexandra Mill being MAM 1 (Signs), 2 (Hills and Mill Jetty Maintenance – 1953 onwards) and 3 (Wall at Cei Bach and landslips across public path)
- 12 Closing Submissions, St Dogmaels Community Council
- 13 Closing Submissions, Pembrokeshire County Council