

In the matter of TREBORTH HALL

NEW LANDOWNER CONSULTATION - 31ST MARCH 2024

**TO THE APPLICATION MADE BY MENNA BAINES ON BEHALF OF
PENTIR COMMUNITY COUNCIL TO RECORD "TREBORTH HALL"
AS A PUBLIC FOOTPATH**

FOLLOWING LANDOWNER CONSULTATION OBJECTIONS - 12TH JAN 2024

**James Irvin Margetson BA (Hons) MA
5 Ty Ysgol Coed Menai, LL57 2RX**

Affected Landowner

N.B. The consultation process for the addition of route B-C raises serious procedural fairness concerns. Providing landowners only 24 days (7th March 2025 to 31st March 2025) to research, gather evidence, and formulate responses to claims affecting their property rights falls significantly short of what could reasonably be considered adequate. Rights of way determinations involve complex legal and historical analysis, often requiring examination of archives, collection of counter-evidence, and consultation with legal advisors. This abbreviated timeframe effectively handicaps landowners' ability to meaningfully participate in a process that could substantially impact their property rights and land management. The rushed nature of this consultation phase undermines confidence in the procedural integrity of the entire application process and raises questions about whether affected parties have been afforded a genuine opportunity to have their interests properly considered.

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1. Creation of a Footpath - Gwynedd Council Planning Permission - Part of Route A-B and Route B-C

I wish to draw your attention to Gwynedd Council's own planning documents which contain evidence that directly contradicts the basis for the proposed DMMO.

In October 2009, Gwynedd Council's Countryside and Access Unit submitted a planning application C09A/0520/25/R3 for the "creation of a footpath" in this exact area (Exhibit 1). This application was approved by the Planning Committee on December 2, 2009, and formal planning permission was granted on March 17, 2010 (Exhibit 2). The official planning permission document explicitly approves "CREU LLWYBR TROED" (Welsh) and "CREATION OF FOOTPATH" (English) at "GERDDI TREBORTH, TREBORTH, BANGOR." The planning report contains several critical statements relevant to this consultation:

- The application explicitly described "an application for the creation of a footpath, the re-surfacing of an existing unofficial footpath". The Council's own Countryside and Access Unit characterised the path as "unofficial" in this formal document.
- The entire application was for the "creation" of a footpath, not recognition of an existing one, indicating the Council understood that no formal right of way existed at that time.
- The planning report clearly distinguishes between "formal public footpaths and informal footpaths through the University grounds which have been used over the years by members of the public... on an informal basis." This represents the Council's official acknowledgment that paths in this area were not public rights of way despite informal use. This distinction is legally significant, as it explicitly categorises the use as 'informal' rather than establishing historic rights of way. The Council's own document describes exactly the kind of use that does not establish public rights of way if it is understood to be informal or permissive rather than 'as of right'.
- The document states: "There is no planning history relating to the route of the footpath / access way." While this primarily refers to previous planning applications or decisions, it raises a compelling question: If these routes had truly been used so extensively by the public as to establish historic rights of way, as now claimed through 197 user statements, wouldn't this significant public use have been known to the Council's Countryside and Access Unit in 2009-2010? These are the very officers with responsibility for rights of way matters, who would have been familiar with well used paths in the area. Yet their approach - explicitly seeking to 'create' a footpath rather than recognise an existing one, and describing paths as 'unofficial' and 'informal' - clearly indicates they had no awareness of substantial public use sufficient to establish historic rights of way. The fact that evidence of supposedly widespread historic use only emerged years after the Council had already determined no such rights existed through both planning permission and a Creation Order raises serious questions about the credibility of the retrospective user statements now being presented.

This planning application and subsequent permission in 2010 directly preceded the 2012 Creation Order for the Wales Coastal Path, showing a consistent understanding by the Council that these routes required creation rather than recognition of existing historic rights.

Legal and Procedural Considerations

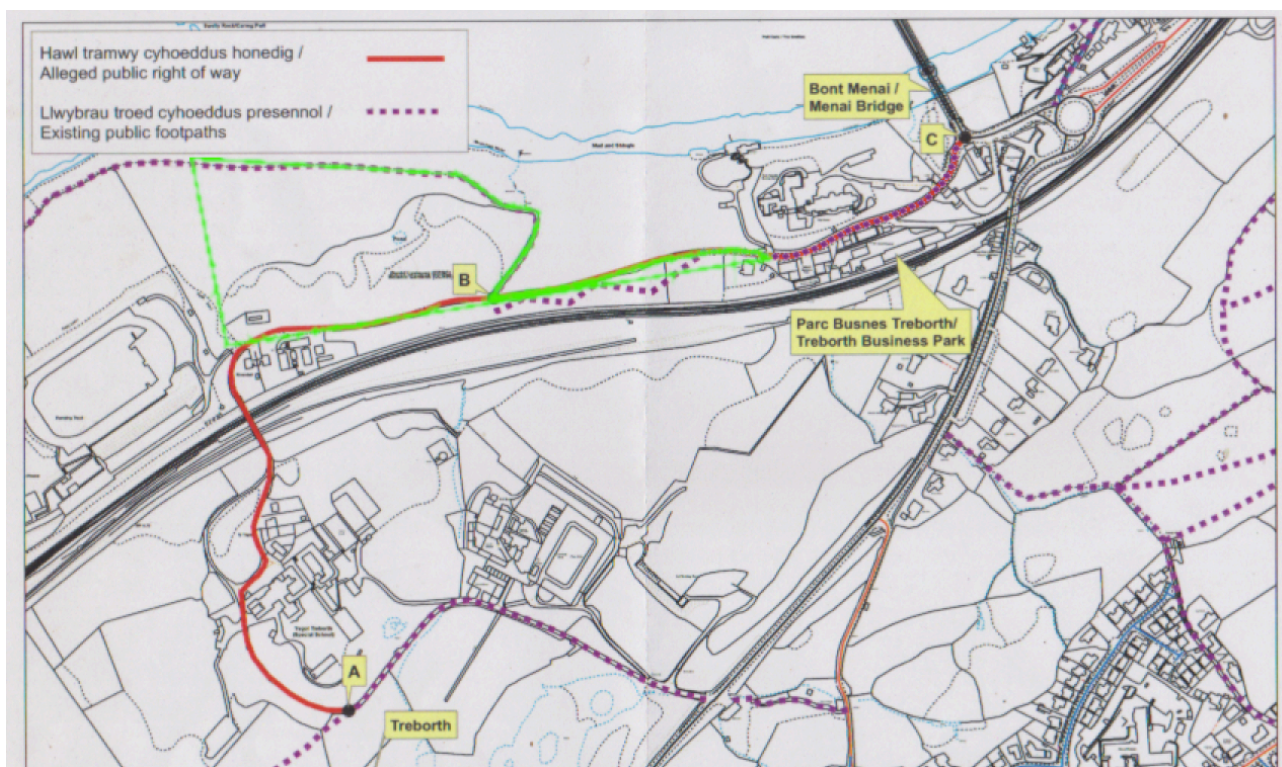
This 2009 and 2010 planning documents raises significant issues that should be considered before proceeding with a DMMO:

1. The Council's own Countryside and Access Unit - the very department with expertise in rights of way matters - formally determined in 2009 that these were "unofficial" and "informal" paths requiring "creation" rather than historic recognition.
2. This 2009 determination logically connects to the 2012 Creation Order. Together, they show a consistent position that no historic rights existed.
3. This planning document represents contemporaneous evidence that carries significantly more weight than retrospective claims made years later.
4. For a DMMO application based on historic use to succeed, it must demonstrate use by the public 'as of right' for the required period, allowing for a presumption of dedication by the landowner. The 2009 planning document suggests the opposite - that any use was understood to be 'informal' or permissive rather than 'as of right,' and that no implied dedication had occurred since the creation of a new route was deemed necessary.

The 2009 planning application and subsequent approval in 2010 therefore creates an insurmountable contradiction for the current DMMO application. The Council cannot reasonably maintain that historic public rights of way existed along routes they themselves formally classified as "unofficial" and "informal" paths requiring "creation" rather than historic recognition.



1.1 Planning permission was granted for the creation of the route through the Botanic Garden in 2010



1.2 The creation of a new footpath through the Botanic Garden in 2010 follows the same alignment as the proposed historic route through the Botanic Gardens

2. Route B-C has already been registered as part of 2012 Creation Order

Part of Route B-C has already been formally established through a Public Path Creation Agreement dated August 20, 2012, under Section 25 of the Highways Act 1980 (Exhibit 3). This legal instrument was used to create part of the Wales Coastal Path through Treborth Botanic Garden.

This 2012 Creation Order creates an irreconcilable legal contradiction with the current DMMO application:

1. By executing a Creation Order under Section 25 of the Highways Act 1980, Gwynedd Council formally determined that no public rights existed over route B-C prior to August 20, 2012. This was not a casual administrative choice but a deliberate legal mechanism specifically designed to establish new rights where none existed previously.
2. By now including route B-C in a DMMO application based on historic use, the current application claims that public rights did exist over this same section through long term historic use predating 2012.

This represents a fundamental legal contradiction. At this consultation stage, the Council has an opportunity to recognise this contradiction and decline to make a DMMO for route B-C based on their own 2012 legal determination.

If the Council were to proceed with including route B-C in a DMMO, they would effectively be claiming their 2012 Creation Order was "unnecessary" because historic rights already existed. This current situation raises serious questions about the 197 user evidence statements now being presented:

1. Why didn't these 197 users come forward during the extensive 2009-2012 Creation Order process, which included public notices?

2. If these users genuinely believed they had rights over route B-C, why would they have remained silent when the Council was undertaking a formal legal process to create new rights?
3. How can user statements collected after the Creation Order outweigh the Council's own formal legal determination made in 2012 after thorough professional assessment?

Recognising this contradiction now and excluding route B-C from the DMMO would be the appropriate course of action to maintain consistency and uphold the integrity of the rights of way determination process.

Professional and Legal Implications

The 2012 Creation Order has significant implications that cannot be disregarded:

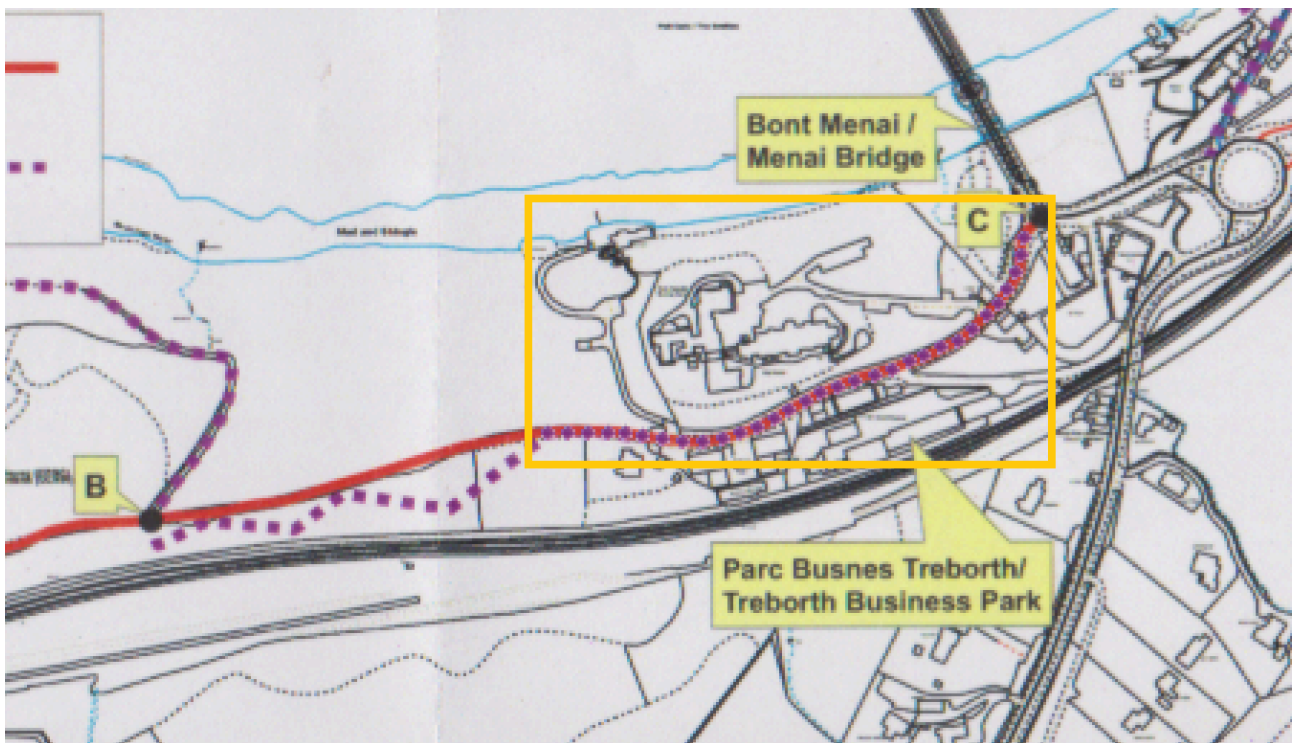
1. Statutory Duty - Rights of way officers have a statutory duty to use the appropriate legal mechanism based on the evidence available. If evidence supported the existence of historic rights in 2012, they would have been obligated to use a modification order, not a creation order.
2. Extensive Three Year Process - The Creation Order was the culmination of a thorough three year planning process (2009-2012) involving multiple professionals, extensive planning, proper due diligence, and required public notices. This process would have provided ample opportunity for anyone aware of historic rights to come forward.
3. Landowner Agreement - As landowner, Bangor University participated in this agreement, acknowledging that no public rights existed previously.
4. Contemporaneous Professional Assessment - The Creation Order represents the Council's official, contemporaneous assessment of the status of these paths, conducted with full knowledge of the site and its usage patterns.

Why a Creation Order Was Used

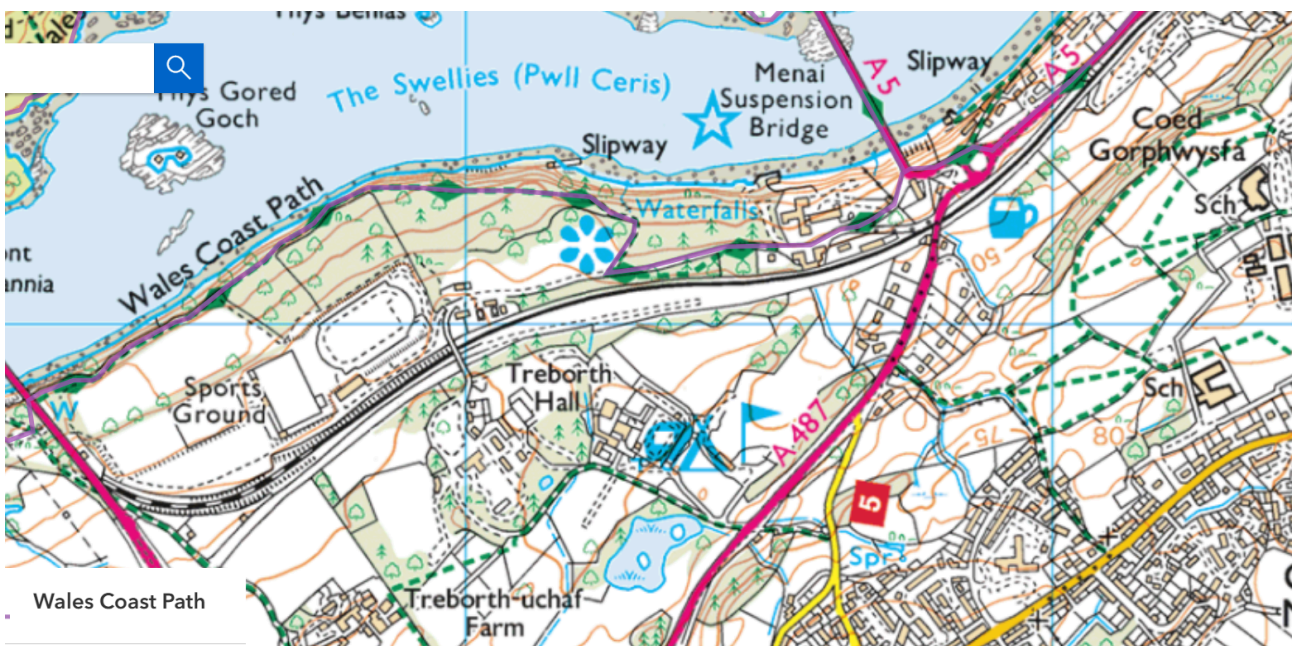
The evidence indicates that qualified professionals chose a Creation Order rather than a Modification Order because:

1. Insufficient Evidence of Historic Rights: Their assessment determined the evidence did not support the existence of public rights through historic use.
2. Permissive Rather Than "As of Right" Use: Any previous use was understood to be permissive rather than establishing legal rights.
3. Professional Judgment: Rights of way officers used their expertise to determine the appropriate legal mechanism based on the evidence available.

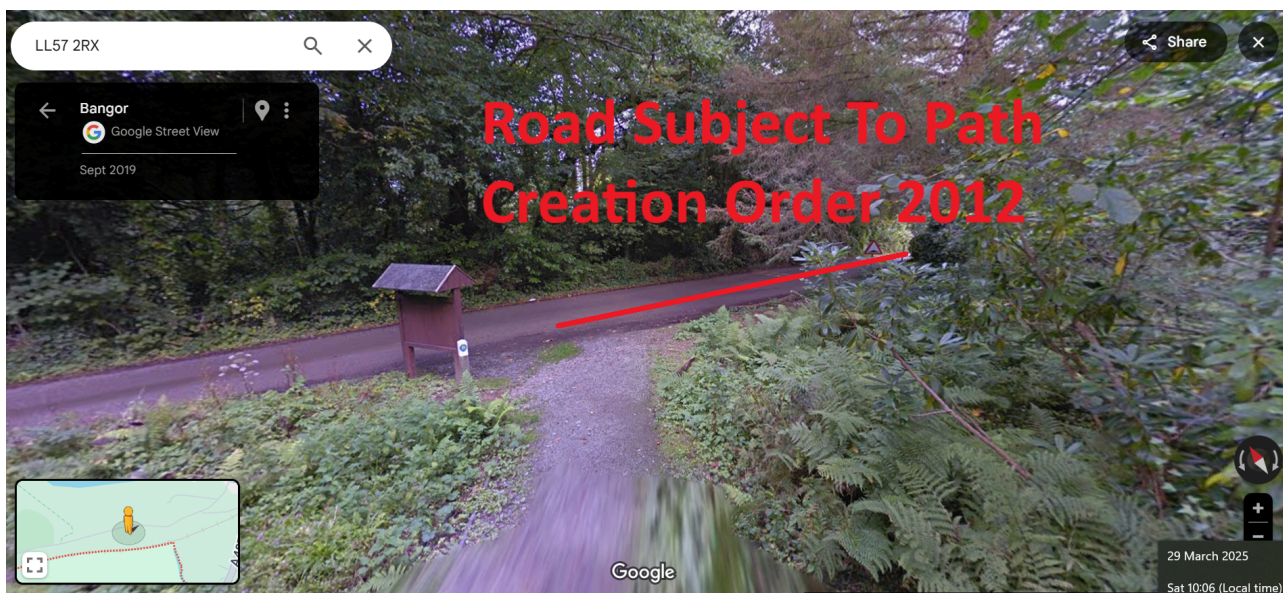
The inclusion of route B-C in the current DMMO application represents a significant procedural irregularity that cannot be sustained. Gwynedd Council made a formal legal determination in 2012 that no public rights existed over this section prior to the Creation Order. The current application directly contradicts this previous determination



2.1 Public Path Creation Order 2012 Follows the exact alignment now claimed to be a Historic DMMO path between section B-C



2.2 The alignment of the Wales Coastal Path which runs through points B-C



2.3 The tarmac road that was created as a footpath in 2012 as part of the Wales Coastal Path which runs through points B-C

3. User Evidence Maps Limited to Route A-B: Strategic Addition of B-C Without Supporting Evidence

Analysis of the user evidence submitted with the DMMO application reveals a significant evidentiary gap that undermines the inclusion of route B-C:

- The Council has provided approximately 28 detailed user evidence statements with accompanying maps. However, all of these signed route maps specifically show only route A-B, ending at point B (coastal path intersection).
- None of the detailed user evidence maps submitted with the application show users continuing along route B-C toward Menai Bridge. This represents a fundamental gap in the evidence required to establish historic use of the complete route now claimed in the DMMO application.
- The significance of this evidence gap becomes clear when considering that route A-B connects to the Wales Coastal Path at point B - a path that did not exist before its creation in 2012. This timing is critically important, as it means:
 - Historic evidence ending at point B cannot be claimed to continue beyond it along a path that didn't exist
 - Any evidence of continuing beyond point B after 2012 would be use of the newly created path, not historic use
- The inclusion of route B-C in the DMMO application appears to serve a strategic purpose rather than reflecting historical evidence - namely, to create a connection to the wider network. This suggests B-C was added to create connectivity rather than because evidence supported historic rights along this section.
- The apparent motivation to include B-C to create network connectivity rather than based on specific user evidence undermines the legal basis for a DMMO, which must be based on evidence of historic use of the specific route claimed, not network planning considerations.

This analysis of the user evidence maps reveals that while there may be alleged user evidence for route A-B (though subject to the other contradictions previously discussed), there appears to be no specific mapped

evidence supporting the inclusion of route B-C in the DMMO application in any of the detailed user evidence.

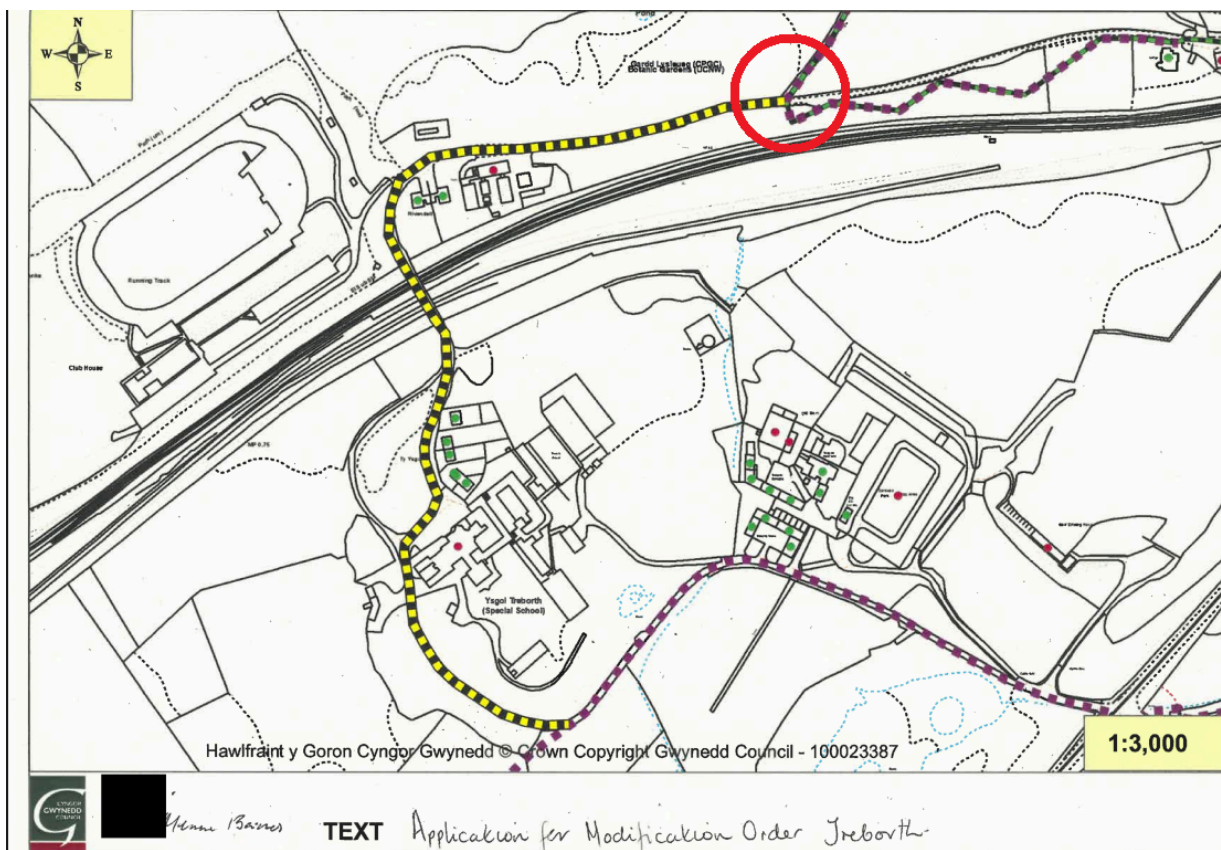
The absence of mapped evidence for route B-C, combined with the fact that this section appears to have been added primarily to create network connectivity to a path that didn't exist before 2012, provides compelling grounds for excluding route B-C.

The application submitted by Menna Baines and Pentir Community Council provides clear evidence that the original claim was specifically limited to route A-B:

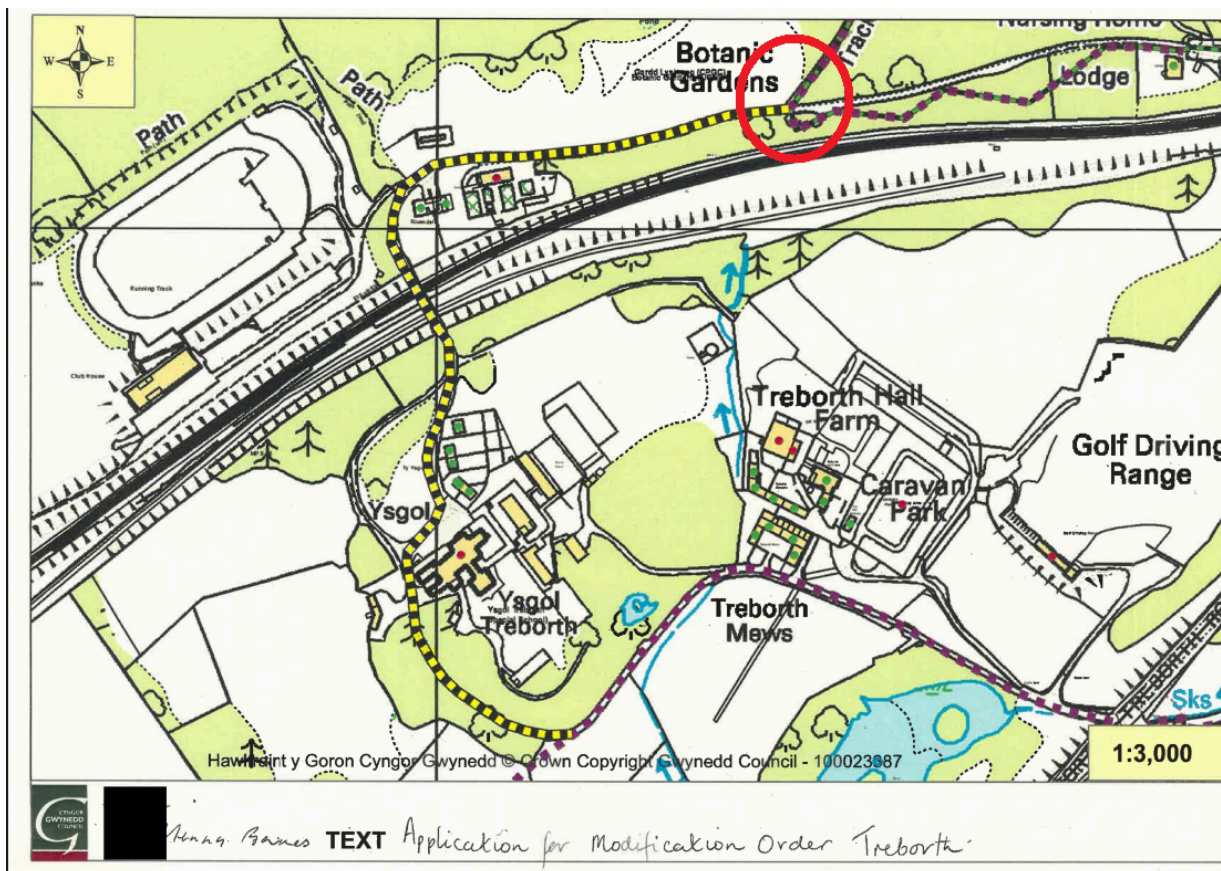
- The application form explicitly defines the terminal points of the claimed route as starting from "OS Grid Ref SH55706 (at point prior to Penrhos Football Club field)" and ending at "point below Treborth Botanical Gardens, opposite parking bay where footpath 22 Pentir commences" - with no mention of continuing to point C.
- The maps submitted with the original application show the claimed route (marked with yellow and black dashed lines) terminating at the Botanical Gardens area (point B), not continuing toward Menai Bridge (point C).
- The description and maps submitted by Menna Baines and Pentir Community Council demonstrate their own understanding that the claimed right of way was limited to route A-B, connecting with existing footpath 22 Pentir at that point.

This evidence conclusively demonstrates that the original application was specifically formulated and submitted as a claim for route A-B only. The subsequent addition of route B-C represents a substantial expansion beyond the scope of the original application, without corresponding evidence from the applicants themselves that they had claimed for this additional section.

The Council's decision to expand the application beyond what was originally claimed by Menna Baines and Pentir Community Council raises serious questions about the procedural propriety and evidential basis of including section B-C in any resulting order.



3.1 Map submitted with the original application show the claimed route (marked with yellow and black dashed lines) terminating at the Botanical Gardens area



3.2 Map submitted with the original application show the claimed route (marked with yellow and black dashed lines) terminating at the Botanical Gardens area

O/From : _____ (iii)

I/To: _____

* Ychwanegu'r (LLWYBR TROED)
(LLWYBR MARCH) (GILFFORDD
CYFYNGEDIG) (GILFFORDD AGORED
I BOB TRAFFIG)

2

* Adding the (FOOTPATH) (BRIDLEWAY)
(RESTRICTED BYWAY) (BYWAY OPEN
TO ALL TRAFFIC)

O/From : OS Grid Ref SH551706 (at point prior to Penrhos Football Club field,
where footpath veers across field towards Treborth Uchaf field) (iii)

I/To: Passing in front of Old Treborth School, past school houses,
over Railway bridge to point below Treborth Botanical
Gardens, opposite parking bay where footpath 22 Pentir
Commences.

3.3 The application form explicitly defines the terminal points of the claimed route

4. Council's Own Rights of Way Officer Recommended Creation Order for Route A-B in 2016

A highly significant email from Dewi Owen, Gwynedd Council's Rights of Way Officer, dated June 22, 2016 (to the Pentir Community Council clerk) (Exhibit 4) directly contradicts the basis for the current DMMO application regarding route A-B:

In this official correspondence referring specifically to "the ownership of the land of the old Treborth school" (route A-B), Mr. Owen advises: "I have also attached an extract from the 'Way Bible' which is 'Rights of Way- a Guide to Law and Practice' by John Riddall and John Trevelyan which describes how a new Way can be created through an agreement between a community council and a land owner under section 30 of the Highways Act 1980."

This recommendation from the Council's own Rights of Way expert has profound implications for route A-B:

1. As the Council's Rights of Way Officer, Mr. Owen had the expertise, authority, and professional duty to identify the appropriate legal mechanism for establishing rights over route A-B based on the evidence available.
2. His specific recommendation of a Creation Order under Section 30 of the Highways Act 1980 confirms his professional assessment that insufficient evidence existed to support a Modification Order based on historic rights over route A-B.
3. This recommendation came in 2016, with full awareness of the usage patterns and available evidence regarding route A-B at that time. This represents a contemporaneous professional assessment rather than a retrospective claim.

4. The email specifically discusses "the land of the old Treborth school" and ownership details for "Mark Irvin Margetson and Susan Elizabeth Margetson" (the landowners), confirming it addresses precisely the same area (route A-B) now included in the DMMO application.
5. The current DMMO application's inclusion of route A-B directly contradicts this expert recommendation without explaining what substantial new evidence has emerged since 2016 to justify this reversal.

This evidence from the Council's own Rights of Way Officer provides one of the strongest arguments against including route A-B in a DMMO. Mr. Owen advised that a Creation Order was the appropriate mechanism for this specific route - not a Modification Order based on historic rights.

5. Consistent Council Position: Creation Orders Recommended for Both Routes A-B and B-C

A revealing pattern emerges when examining the Council's own documented positions regarding routes A-B and B-C over time:

For route A-B:

- In 2016, Dewi Owen, Gwynedd Council's Rights of Way Officer, specifically advised Pentir Community Council to pursue "a new Way...created through an agreement between a community council and a land owner under section 30 of the Highways Act 1980." This professional recommendation for route A-B clearly indicates that, as recently as 2016, the Council's own expert determined that no historic rights existed to justify a Modification Order.

For route B-C:

- In 2009, the Council's planning document (ref: C09A/0520/25/R3) described the paths as "unofficial" and applied for "the creation of a footpath," clearly indicating no historic rights were recognised.
- In 2012, the Council executed a Creation Order under Section 25 of the Highways Act 1980 to establish the Wales Coastal Path through this area, again confirming no historic rights were recognised.

This consistent pattern reveals a fundamental contradiction in the current DMMO application:

1. For both routes A-B and B-C, the Council's own staff have repeatedly determined that Creation Orders, not Modification Orders, were the appropriate legal mechanism because no historic rights existed.
2. Multiple Council departments (Rights of Way, Planning, Countryside Access) all independently reached the same conclusion - that paths in this area required creation, not modification.
3. This position was maintained consistently from 2009 through 2016, showing it was not a one time error but a sustained professional assessment.

4. The current DMMO application represents an unexplained reversal of this consistent position for both route segments.
5. The evidence shows that both routes A-B and B-C have a similar administrative history - both were consistently treated as requiring creation rather than modification by Council officials with professional expertise.

This coherent pattern of Council determinations over time provides compelling evidence that neither route A-B nor route B-C meets the criteria for inclusion in a DMMO application based on historic rights. The Council's own consistent position over many years has been that these routes required creation, not modification - a position that directly contradicts the basis of the current application.

22/6/16

To: elwyn.jones

From: Dewi Owen

Subject: Land ownership - Treborth Hall

Dear Friends

I am sorry for the delay before I get back to you regarding the ownership of the land of the old Treborth school.

I am enclosing a copy of the "transfer" of part of the Gwynedd Council land which is relevant to Treborth Hall

As you can see all the land within the red border is relevant to the new owners, namely Mark Irvin Margetson and Susan Elizabeth Margetson.

I understand the land on the north side of the railway track is relevant to Bangor University - point of contact was Steven Douthwaite. I'm not sure who owns the bridge over the railway.

I have also attached an extract from the "Way Bible" which is "Rights of Way- a Guide to Law and Practice" by John Riddall and John Trevelyan which describes how a new Way can be created through an agreement between a community council and a land owner under section 30 of the Highways Act 1980.

I will be on holiday for two weeks from tomorrow and so you are welcome to come back as soon as I return to my Work if you need more information or further advice on the way forward.

Dewi Wyn Owen

6. 2020 Correspondence Reveals Prior Failed DMMO Attempt and Reactive

Motivation

The May 2020 correspondence from Councillor Elwyn Jones (Clerk of Pentir Community Council) (Exhibit 5) reveals critical information that undermines the current DMMO application:

The email states: "there was a request to divert one of the paths around the Treborth school area several years ago, and also to register the road past the golf course as a public right of way."

Most significantly, the email candidly admits: "This was mainly because of the attitude of the owner of Treborth School towards walkers and indeed other members of the public who were going to the Penrhosgarnedd Junior Football field site."

This correspondence has several crucial implications:

1. The reference to gathering evidence ("individuals should confirm in writing that they had walked the road for a specific period of years") describes the standard DMMO evidence gathering process. However, the email explicitly states "Nothing came of the meeting for whatever reason" - indicating a previous DMMO attempt was unsuccessful or abandoned.
2. The email candidly admits the motivation was "mainly because of the attitude of the owner" - revealing that the attempt to establish rights was a reaction to access disputes, not recognition of long established historic rights. This reactive motivation undermines the legal basis for a DMMO, which requires historic rights to have been established through long term use, not created in response to recent disputes.
3. The discussion about "diverting" a path "around the Treborth school area" implicitly acknowledges that no public right of way existed through the school itself. If historic rights already existed through the school grounds (as now claimed), there would be no need to discuss diversions.

This correspondence provides compelling evidence that as recently as 2020, the Council's own understanding was that these routes did not have established public right of way status. Moreover, it reveals that attempts to establish such rights were motivated by reactions to access disputes with the landowner, not by recognition of historic rights - a motivation that fundamentally undermines the legal basis for a DMMO.

The abandonment of a previous DMMO attempt, followed by Dewi Owen's 2016 recommendation for a Creation Order instead, strongly suggests that the evidence for historic rights was deemed insufficient - yet another DMMO is now being pursued without explanation of what substantial change in circumstance justifies this reversal.

7. 2016 Path Creation Discussions Directly Contradict Current Historic Rights Claims

The correspondence between Councillor Elwyn Jones and Dewi Owen (Exhibit 5) also references discussions from 2016 about creating new paths near Treborth School, which fundamentally contradicts the current DMMO application claiming historic rights through the school grounds:

The email refers to discussions from 2016 ("We touched on this back in 2016"), establishing that as recently as nine years ago, both Pentir Community Council and Gwynedd Council were pursuing creation of new paths rather than recognition of historic ones.

In 2016, the discussions explicitly focused on creating new paths - "to divert one of the paths around the Treborth school area" and "to register the road past the golf course as a public right of way." This focus on creation directly contradicts current claims that established historic rights already existed at that time.

Dewi Owen's reference to the Community Council wanting "to reach an agreement with the owner under Section 30, Highways Act 1980" confirms they were pursuing creation of new rights in 2016, not recognition of existing ones.

The specific intent in 2016 to create paths "around" the school area rather than through it clearly indicates both councils understood that no historic public rights existed through the school grounds.

If historic rights had truly existed for 20+ years as now claimed, these rights would have already been established by 2016, making the creation discussions unnecessary and inappropriate.

This evidence from 2016 creates a significant contradiction for the current DMMO application. The same bodies now claiming historic rights existed were, in 2016, actively discussing the creation of new paths precisely because they understood no such historic rights existed.

The fact that both councils were discussing creating paths around the school in 2016, rather than recognising rights through it, provides compelling evidence that the current DMMO application claiming historic rights through routes A-B and B-C lacks credibility and foundation.

---Original Message---

From: Jones Elwyn (CYNG/COUN) Cyngorydd.Elwyn.Jones@gwynedd.llyw.cymru Sent: 04 May 2020 16:37

To: Owen Dewi Wyn (AMG) dewiwynowen@gwynedd.llyw.cymru; Williams Euryn (AMG)

eurynwilliams@gwynedd.llyw.cymru; Williams Dafydd Wyn (AMG)

dafyddwynwilliams@gwynedd.llyw.cymru; Jones Gerallt (AMG) geralltjones2@gwynedd.llyw.cymru

Cc: Baines Menna (CYNG/COUN) Cyngorydd.MennaBaines@gwynedd.llyw.cymru

Subject: FW: Ysgol Treborth

Good Afternoon friends

Paths, Paths and more paths!!!

Hope you are all keeping safe whatever the case

Possibly one or two of you remember, there was a request to divert one of the paths around the Treborth school area several years ago, and also to register the road past the golf course as a public right of way. This was mainly because of the attitude of the owner of Ysgol Treborth towards walkers and indeed other members of the public who were going to the Thursday football field site at Penrhosgarnedd.

There was a site meeting to discuss the course that the diversion should follow as well as guidance that individuals should confirm in writing that they had walked the road for a certain period of years.

Nothing came of the meeting for whatever reason and while some have been away for a period, obviously the problem hasn't gone away as Dafydd Jones-Morris, one of the Pentir Community Councillors, faced it again this morning before sending the email below.

Councillor Jones-Morris also refers to a lack of signage.

Have there been signs there perhaps that have been removed?

If not, is it possible to get some there that would then confirm the course of the public footpath through Glan Menai. Thank you

Regards

Elwyn

Clerk of Pentir Community Council

8. Council's Rights of Way Officer Confirmed No Recorded Public Rights of Way in 2020

Dewi Owen's statement that "there is no public road connecting Treborth Road and Treborth Botanical Gardens" confirms that no public rights of way were recorded on the definitive map for these routes as of May 2020. (Exhibit 6)

While this statement doesn't technically rule out the possibility of unrecorded historic rights, his subsequent advice is particularly telling. Rather than suggesting that evidence be gathered to modify the definitive map (which would be appropriate if he believed unrecorded rights existed), he specifically advised about the process to "*create* a public path through use of 20 years or more."

This advice, combined with his 2016 recommendation for a Creation Order, strongly suggests his professional assessment was that the evidence did not support claims of unrecorded historic rights. If he had believed such rights existed but were simply unrecorded, the appropriate advice would have been to pursue a Modification Order to recognise them, not to suggest *creating* new rights through use of 20 years or more.

9. Both Council Officer and Community Council Previously Favoured Creation Orders Over Historic Claims

A critical aspect of Dewi Owen's 2020 email is the revelation that both the Council's Rights of Way Officer and Pentir Community Council themselves previously considered creation orders to be the appropriate mechanism, rather than pursuing historic rights claims through a DMMO:

He states: "We touched on this back in 2016 but I'm not sure if Pentir Community Council wanted to go down this road they wanted to try to reach an agreement with the owner under Section 30, Highways Act 1980, themselves."

This statement has profound implications for the current DMMO application:

1. Dewi Owen, the professional expert responsible for advising on rights of way matters, clearly identified a creation process as the appropriate mechanism, indicating his professional judgment that evidence for historic rights was insufficient.
2. The reference to Pentir Community Council wanting "to try to reach an agreement with the owner under Section 30" reveals that the very same community council now supporting a historic DMMO previously recognised that a creation agreement was the appropriate approach.
3. This indicates that as recently as 2016-2020, both the Rights of Way Officer and the Community Council had considered the evidence and specifically chose not to pursue a DMMO based on historic rights, instead favouring creation processes.
4. The desire to "reach an agreement with the owner" explicitly acknowledges the private rights of the landowner and the need for their consent - a position fundamentally inconsistent with claims that public rights already existed.

5. The current DMMO application represents a complete reversal of the Community Council's previous position without explanation of what substantial new evidence justifies this dramatic change.

This evidence establishes that the very parties now pursuing a DMMO based on historic rights previously determined that such an approach was inappropriate and instead favoured creation processes. This prior determination by both the professional Rights of Way Officer and the Community Council themselves directly contradicts the basis of the current DMMO application.

The fact that both parties specifically considered and decided against pursuing historic rights claims in favour of creation processes provides compelling evidence that the current DMMO application does not meet the legal requirements for establishing public rights of way based on historic use.

dewiwynowen@gwynedd.llyw.cymru> Sent: Wednesday, 6 May 2020 14:47 To: Jones Elwyn (CYNG/COUN) <Cynghorydd.BlwynJones@gwynedd.llyw.cymru; Williams Euryn (AMG) *eurynwilliams@gwynedd.llyw.cymru*; Jones Gerallt (AMG) <genalltjones2@gwynedd.llyw.cymru Copy/Cc: Baines Menna (CYNG/COUN) *wynwilliams@gwynedd.llyw.cymru* Subject: RE: Ysgol Treborth

Good afternoon friends

I would first like to confirm that there is no public road connecting Treborth Road and Treborth Botanical Gardens through the old Treborth School.

As you can see I have attached three plans, one showing the network between the two bridges and two others showing the area around the old school in more detail. As you can see footpath number 12 of Pentir community council follows the access road to the old school, from Treborth Road A487, but it turns off at the beginning of the bend before reaching the school and goes through a kissing gate (without a gate - where there is also a signpost with two arrows showing the direction of the path) and then over a wooden stile to the agricultural fields of Treborth Uchaf Farm and then comes out to Bronwydd Road over a ladder stile near Glan Menai. Therefore there is no public status for the rest of the road from the kissing gate onward to the old school and beyond to Treborth Botanical Gardens.

The Way Forward

Obviously there is no status to this road at the moment so there is a process that a member of the public can follow in order to create a public footpath through use of 20 years or more. We touched on this back in 2016 but I'm not sure if Pentir Community Council wanted to go down this road or if they were trying to reach an agreement with the owner under Section 30, Highways Act 1980, themselves.

Yours sincerely

*Dewi Wyn Owen
Senior Rights Officer*

10. 2001 Correspondence Reveals Gate Installation, Access Control, and University Motives

The 2001 correspondence between the University of Wales, Bangor and Gwynedd Council (Exhibit 7) reveals three crucial elements that directly undermine the current DMMO application:

1. The Council explicitly states "The School has stopped the problem by putting a gate on the bridge over the railway." This confirms that a physical barrier was installed along the claimed route no later than 2001, creating an obstruction that would prevent the establishment of uninterrupted public use necessary for a rights of way claim.
2. The statement that the School "stopped the problem" by installing the gate demonstrates active management and control of access along the route. This kind of deliberate access control is fundamentally inconsistent with the establishment of public rights of way, which requires uninterrupted use "as of right" without permission or hindrance.
3. The University's inquiries about potentially upgrading the road or creating a one-way system reveal their motivation for establishing formal rights along this route. This indicates they did not believe such rights already existed - if they had, they would not need to seek permission for modifications or new arrangements.

These elements from the 2001 correspondence are particularly significant for the current DMMO application because:

- The gate installation in 2001 means that any claim based on 20 years of uninterrupted use would need to show such use occurred entirely before 2001
- The active management of access contradicts claims that use was "as of right" rather than by permission
- The University's inquiries about creating new access arrangements directly contradict current claims that historic rights already existed

This evidence from 2001 establishes that physical obstructions and access control measures were in place for over 20 years, effectively preventing the establishment of the uninterrupted public use required for a successful DMMO application based on historic rights.

11. 2001 Correspondence Confirms Designated Access Route Excludes School Grounds

The 2001 correspondence between the University of Wales, Bangor and Gwynedd Council contains a statement that directly contradicts claims of public access through the school grounds:

The Council's memorandum explicitly states: "The current situation is that the Council leases the running track from the university and that the entrance to it is the road from Borth Bridge."

This statement has significant implications for the current DMMO application:

1. The Council formally identifies the road from Borth Bridge (Menai Bridge direction) as "the entrance" to the running track, not the route through the school grounds. This official designation of a specific access route strongly implies that other routes, including through the school grounds, were not recognised as legitimate public access paths.
2. This statement reflects the institutional understanding of both the Council (as lessee) and the University (as lessor) regarding the proper and authorised access route to facilities in the area.

3. By specifying "the entrance" (singular), the Council indicates there was one recognised access route, not multiple public rights of way to the facilities.
4. The reference to lease arrangements for the running track further confirms the private, managed nature of these facilities and their access routes, contradicting claims of established public rights.

This evidence directly contradicts the current DMMO application's claim that historic public rights of way existed through the school grounds. The official designation of the Borth Bridge road as "the entrance" to these facilities demonstrates that routes through the school grounds were not recognised as legitimate public access paths by either the Council or the University.

The fact that this statement appears in official correspondence between the landowner and the Council provides compelling evidence that neither party recognised the existence of public rights of way through the school grounds, further undermining the basis for the current DMMO application.

12. Athletics track plan struck by road block - 13th July 1994

Athletics track plan struck by road block

THE council wanting to build an athletics track at Treborth have not considered that part of the approach road is privately owned, it has been claimed.

Arfon Council — already at the centre of controversy over the track plans — have not asked them about their road.

Treborth Residents' Association do not not like the idea of a sports ground, approached through botanical gardens containing rare species.

Mr Gareth Jones said his company were not against the development. But they could have "made life difficult" for the council if had.

He explained that for some time they had not maintained the road because Bangor University, who own the gardens and nearby sports field, had not contributed to its upkeep.

"Why should we have to maintain a road used by so many other people," said Mr Jones. "It's very busy, especially at evenings and weekends."

Assurance

"The council have not consulted us, but we bought the road in 1987 from British Rail."

Mr Jones said they own the piece of road between two lodge houses.

"We want assurance that this road will be done up sufficiently to take a large volume of traffic," he added.

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A historical newspaper article titled "Athletics track plan struck by road block" (Exhibit 8) provides clear contemporary evidence that the road in question was recognised as private, not public:

The article explicitly states "THE council wanting to build an athletics track at Treborth has discovered that part of the approach road is privately owned, it has been claimed." This contemporary documentation directly confirms that the road was recognised as privately owned.

The article notes "Menai Electrical say Arfon Council — already at the centre of controversy over the track — has not asked them about their road," indicating that even the Council at that time acknowledged private ownership of the road.

Most significantly, the article documents that the road was "bought... in 1981 from British Rail," which demonstrates a clear chain of private ownership, incompatible with public right of way status.

This newspaper evidence directly contradicts any claim that the road was historically recognised or used as a public right of way. It shows the Council itself recognised the private status of this road, and any public use after this published declaration of private ownership would have been understood to be permissive or contested, not "as of right" as required for establishing a public right of way.

13. New super track 'ready by June' - 5th April 1995

A newspaper article titled "New super track 'ready by June'" (Exhibit 9) provides additional historical context that supports the institutional nature of the Treborth Sports facility. The article discusses how "Arfon is served by six secondary schools at present" and details plans for organised, supervised access for school children "on three evenings a week during June, between 4 pm and 8 pm."

This evidence further demonstrates that access to these facilities was managed and formalised through specific institutional arrangements rather than being an area with established public rights of way. The scheduled, supervised nature of access reinforces that this was not treated as an area with general public thoroughfare rights.

New super track 'ready by June'

THE eight-lane international standard athletics track at Treborth is expected to be ready for use in June.

But councillors have been asked to support a special initiative.

The plea comes from Arfon Council's chief technical officer Ieuan Lewis who wants to help generate interest in athletics and provide local young people with a positive introduction to the track.

Arfon is served by six secondary schools, and the idea is to offer track use to the athletes of the schools on three evenings a week during June, between 4 pm and 6 pm.

Children

The six schools would be paired together and each pair allowed to bring up to 30 children to the track on a selected evening for four weeks.

Mr Lewis said the children would be accompanied and coached by their physical education teachers.

Other coaches would be recruited from Eryri Harriers and through the newly-appointed athletics development officer for North Wales, Leanne Crutchley.

14. Clwb Peldroed Pentref Penrhosgarnedd Under 11's - April 5th 1995

A newspaper photograph of Clwb Peldroed Pentref Penrhosgarnedd Under 11's (Exhibit 10) provides further evidence of the permissive nature of access to routes A-B. The caption explicitly states that "Club officials would also like to thank Ysgol Treborth for the use of their field and facilities," clearly demonstrating that access to these areas was by permission of the school, not by public right. This formal acknowledgment of permitted use directly contradicts claims that these routes were used "as of right" - a necessary criterion for establishing a public right of way. Instead, it confirms that users recognised and acknowledged the need for permission to access these facilities, consistent with their private rather than public status.



15. Special day for friends who help the garden grow - 30th October 1997

A newspaper article titled "Special day for friends who help the garden grow" (Exhibit 11) (dated 30th October 1997) provides additional context regarding access to the Treborth Botanic Gardens near point B-C. The article describes how a visitor accessed the gardens: "It was a special open day so I went along, finding the way down a narrow lane. The gardens lie between the railway and the Menai Strait."

This description is significant for two reasons: first, it refers to a "special open day," indicating controlled, occasional public access rather than general public rights; second, it describes finding "the way down a narrow lane" as part of discovering the gardens, not as using an established public right of way. The characterisation of this as a "special open day" directly supports the understanding that regular public access was not established by right, but was permitted on specific occasions. This further undermines claims that route B-C had the status of a public right of way.

Special day for friends who help the garden grow

ON Saturday, October 18, Professor Roy Evans, vice-chancellor of the University of Wales, Bangor, planted a rare conifer from Taiwan to mark the official launch of the Friends of Treborth Botanic Garden.

It was a special open day so I went along, finding the way down a narrow lane. The gardens lie between the railway and the Menai Straits.

Sir Joseph Paxton of Crystal Palace fame, designed the Britannia Park pleasure gardens on the site in the last century.

The University bought the land in the 1960s, and Len Beer, a plant-collecting friend of Roy Lancaster, was involved in its redevelopment.

The Botanic Garden is now valuable for teaching and research having a diversity of environment in ornamental gardens, woodland, grassland and seashore, including a site of special scientific interest (SSSI).

I wandered through the tropical greenhouses where Sugar Cane and a ten foot Bolivian Fuchsia towered above me

with its tryphylla flowers.

A white Swamp Lily, *Crinum x Powellii*, was about four feet tall and perfumed the air. There were plenty of orchids, the most eye-catching being a blue beauty called Blue Vanda or *Vandanthus Rothschildianus*.

At the display of Living Stones, succulents that look like pebbles, I learned they are now classified as *Mesembryanthemaceae*, the same family as Livingstone Daisies.

Outside, there was the appetising smell of frying mushrooms. Nigel Browne, curator of Treborth, had led families on a Fungus Foray collecting a surprising array of fungi, tiny coloured growths on fallen wood, small toadstools, and puffballs among them. They were cooking the two edible species out of the 80 different varieties found in the grounds.

Not far from the main buildings is the curious Rhizotron. This is the largest underground laboratory in Europe.

Above ground are plots that can be given experimental treatment and the effects can be observed below the surface through a glass screen.

Time lapse photography records the

life of insects, worms and mini beasts among the roots.

I asked Nigel Browne what the role of the Friends of Treborth would be.

"To improve public awareness and to provide help and financial support for developments such as education, research and conservation," he said. "Treborth is an important amenity, too."

The University finances the Botanic Garden but Friends can help to fund special projects such as new collections of plants.

The subscription is just £5 entitling members to advice and help in identifying plants and problems. They will receive a newsletter with information on lectures and workshops that they can attend on topics such as growing exotic plants, and shrubs.

In January there will be one on re-potting orchids. For all this, I gladly parted with my fiver to join the other 170 Friends of Treborth.

● On November 7, at 7.30 pm, Maldwyn Thomas, broadcaster, writer and plant explorer, will give a talk, *Plantsman in China*, at the main arts centre in the top college, College Road, Bangor. Charge: £1 to members, £2 to non members.



Seeds of wonder: The Treborth botanic Gardens held an open day earlier this month.

16. Running battle over gardens - 2nd May 1994

A newspaper article titled "Running battle over gardens" (Exhibit 12) provides compelling evidence regarding the status of routes through the Treborth area, particularly relevant to route B-C:

- The article explicitly states "The gardens are owned by the college's school of biological sciences and run as a field station for teaching and research." This clearly establishes:
 - The institutional ownership of the land including access route
 - The specific scientific and educational purpose of the site
 - That it was not intended as a public recreational area or thoroughfare
- Botanical gardens curator Nigel Brown objects to the athletics track proposal specifically because the access road would "run right through the heart of the botanical gardens." This statement has several important implications:
 - The access road (corresponding to route B-C) was considered an integral part of the botanical gardens themselves
 - It was not viewed as a separate public thoroughfare
 - Changes to its use required formal objections and planning considerations
 - The curator, as an institutional authority, considered the road part of the protected garden area
- The article discusses a formal planning application for changes affecting the area, demonstrating that:
 - Any changes to access or use required formal planning permission
 - Multiple organisations (Treborth and District Residents' Association, Bangor Civic Society, CPRW, Welsh Historic Gardens Trust, Victorian Society) were involved in protecting the area
 - This level of oversight and restriction is inconsistent with established public rights of way
- The description of the area as "a field station for teaching and research" reinforces that:
 - Access would have been controlled for institutional purposes

- Public use would have been understood as permissive rather than by right
- The primary purpose was academic and scientific, not public recreation or access

This contemporaneous newspaper account provides strong evidence that route B-C was part of a private institutional facility with specific scientific purposes, not a public right of way. The formal objections to changes affecting this route further demonstrate that it was not recognised as having established public access rights, but rather was subject to institutional control and protection as part of the botanical gardens.

Running battle over gardens

By Gerald Williams
Daily Post Staff

OPPOSITION is mounting to a plan to build an athletics track next to botanical gardens on a site overlooking the Menai Strait once earmarked for a grand Victorian park.

The University College of North Wales, Bangor, wants to build the synthetic track and a car park at its sports ground at Treborth.

But the site is next to the botanical gardens created in the early 1960s in a mainland conservation area between the Menai suspension and Britannia bridges.

The gardens are owned by the college's school of botanical sciences and run as a field station for teaching and research.

They are made up of an ancient woodland, a cultivated garden and greenhouses.

Biological gardens curator Nigel Brown, who lives at Treborth, is among those who have objected to the planning application which will be considered by Arfon Borough Council's planning committee on Wednesday.

Treborth and District Residents' Association, members of the Bangor Civic Society, the CPRW, the Welsh Historic Gardens Trust and the Victorian Society of the British Isles are also objecting to the siting of the athletics track.

Mr Brown said yesterday: "We feel the University College's decision is ill considered, and that there are other more accessible sites for the sports track."

There are three main objections to the proposal, he said. One is that the access road would "run right through the heart of the botanical gardens."

The Treborth site formed part of a grand Victorian park envisaged in the 1850s by Sir Joseph Paxton, the great Victorian landscape gardener.

Secondly, said Mr Brown, the athletics track would have a synthetic surface, which would be artificial in a landscape conservation area close to the Menai Straits, which is to become a marine nature reserve.

Thirdly, the close proximity of a well-used sporting facility with floodlights might lead to ecological damage to the mature, ancient woodland.

Bangor City Council has, however, raised no objection to the proposed development.

17. Evidence from Council's Own Highways Department Confirming Private Road Status - 31st March 2015

A planning document from Gwynedd Council's own Streetcare and Transportation Service (Reference C15/0180/25/LL) (Exhibit 13) provides definitive evidence regarding the status of roads in the Treborth area. This document, related to planning for new industrial units at Treborth Business Park, contains an explicit statement from the Council's highways authority that directly confirms the private status of the road:

"The site adjoins a private road and therefore permits are not required to join the highway... There is no objection to this either as this part is also a private estate." (Translation of: "Mae'r safle'n ochri a ffordd breifat ac felly nid oes angen trwyddedau ar gyfer ymuno a'r briffordd... Nid oes gwrthwynebiad i hyn ychwaith gan mae'r rhan yma hefyd yn stad breifat.")

This statement is particularly significant because:

1. It comes from the Council's own highways authority - the department with specific expertise and responsibility for road status determinations
2. It explicitly designates the road as "private" ("ffordd breifat"), using the precise legal terminology relevant to rights of way status
3. It confirms the entire area is a "private estate" ("stad breifat"), establishing the private status of the broader site
4. It is a recent, formal planning determination that builds upon and confirms the historical private status established by earlier evidence

This official Council determination directly contradicts any claim that the routes in this area are public rights of way. The Council cannot reasonably maintain that historic public rights existed over routes that its own highways authority has explicitly designated as "private" in official planning documents.

Exhibit 13

Gwasanaeth Trafnidiaeth a Gofal Stryd /, Streetcare And Transportation Service, PENCADLYS, STRYD Y JEL, Caernarfon, LL551SH

C15/0180/25/LL

Reference

Proposal Unedau diwydiannol newydd / New industrial units

Main Location Treborth Business Park, Ffordd Bronwydd, Treborth, Gwynedd, LL57 2NX

Mae'r safle'n ochri a ffordd breifat ac felly nid oes angen trwyddedau ar gyfer ymuno a'r briffordd. Hefyd er nad oes darpariaeth parcio penodol ar gyfer pob uned dangosir bwriad i gwneud defnydd o'r llecynnau gyferbyn. Nid oes gwrthwynebiad i hyn ychwaith gan mae'r rhan yma hefyd yn stad breifat.

The site adjoins a private road and therefore permits are not required to join the highway. Also although there is no specific parking provision for each unit an intention is shown to make use of the spaces opposite. There is no objection to this either as this part is also a private estate.

18. University Curator's Correspondence Confirming Lack of Historic Rights - January 2024

Correspondence from University Curator Natalie Chivers (Exhibit 14) provides significant evidence that undermines claims of historic public rights of way. Her email regarding the claimed route contains language that directly supports the position that no historic rights exist.

Ms. Chivers states: "We welcome the Modification Order and are happy for another PROW to be created through university land." This specific wording is crucial - she expresses willingness for a path "to be created" rather than referring to recognition or confirmation of an existing right. This choice of language clearly indicates the University's understanding that no historic rights exist and that a new creation would be required to establish public rights.

Furthermore, she describes the proposed route as being "complimentary to the Wales Coast Path PROW that runs through the arboretum and woodland." This reference to the Wales Coast Path (established through the 2012 Creation Order) reinforces the understanding that properly established rights of way in this area have been created through formal legal processes, not through historic use.

While Ms. Chivers acknowledges that people have used the route "for years," this observation alone does not establish public rights of way. Her explicit reference to being "happy for another PROW to be created" demonstrates that even with this history of use, the University does not consider historic public rights to have been established.

As the University is the landowner of a significant portion of the claimed route, this correspondence from their Curator provides compelling evidence that the appropriate mechanism for establishing any public rights would be through a Creation Order similar to that used for the Wales Coast Path in 2012, not through a DMMO claiming historic rights.

Exhibit 14

Thank you for sending through the Statements of Evidence for the route through Treborth detailed in red. Acclaimed route:

We are aware of the public using the acclaimed route. Many of our visitors, neighbours, staff, students, contractors, and volunteers have used this route for years either as a circular walk or for access to/from the A487, prior to being challenged.

No action has been taken to prevent or deter the public from walking the route that runs through university land. We welcome the Modification Order and are happy for another PROW to be created through university land. It is complimentary to the Wales Coast Path PROW that runs through the arboretum and woodland.

19. Bangor University's Concealment of Third Party Challenges - January 2024

A revealing email exchange (Exhibit 14) between University staff demonstrates that the University deliberately chose to conceal information about third party challenges to public use of the claimed route.

In this internal correspondence, a University staff member states: "As was discussed, I would not include information about third parties trying to prevent others to use the path. These people have no legal right to do so and the Council only requires our actions."

This admission is significant for several reasons:

1. The University explicitly acknowledges they were aware of third parties challenging people using the path. This directly contradicts any claim that use of these routes was uncontested or "as of right."
2. The correspondence shows a conscious decision to withhold this relevant information from the Council. This raises serious concerns about the completeness and accuracy of the University's landowner response.

3. For a DMMO to succeed, it must be shown that use was "as of right" - without force, secrecy, or permission. Evidence of challenges directly undermines this requirement. The University's decision to conceal this information suggests awareness that these challenges would weaken the case for a DMMO.
4. This concealment calls into question the reliability of user evidence that may have similarly omitted mentions of challenges or contested use.

This internal correspondence reveals that the University was aware of facts that would undermine the DMMO application but chose not to disclose them. This deliberate concealment of relevant information should be considered when assessing the credibility of evidence supporting the DMMO application.

Exhibit 14

Hi Wayne

Sori, ges I alwad arall yn syth arol fi ddod offffon hefo ti. [Sorry, I had another call straight after I came off the phone with you]

Fel a drafodwyd, ni fuaswn yn cynnwys gwybodaeth am third parties sy'n ceisio nadu I eraill ddefnyddio'r path. Does gan y bobl yma ddim hawl cyfreithiol I wneud hynny a dim ond ein gweithredoedd ni mae'r Cyngor yn ofyn am. [As was discussed, I would not include information about third parties trying to prevent others to use the path. These people have no legal right to do so and the Council only requires our actions.]

Rwyf felly'n awgrymu ateb fel a ganlyn yn unig: [I've therefore suggested the following response:]

Acclaimed route:

. We are aware of the public using the acclaimed route. Many of our visitors, neighbours, staff, students, contractors, and volunteers have used this route for years either as a circular walk or for access to/from the A487, prior to being challenged.

No action has been taken by the University to prevent or deter the public from walking the route that runs through university land

•We have not challenged the public, locked the gates, or made any other effort to deny a public right of way.

Please do not hesitate to contact us should you require more information.

Diolch [Thanks]

Sarah

20. Bangor University's Response Based on Reviewing Others' Evidence, Not Independent Historical Knowledge - 7th May 2024

The University's FOI response (Exhibit 15) contains a revealing admission about the basis of their statements regarding historical use of the claimed routes:

• The University is aware of the public using the acclaimed route. Many of our visitors, neighbours, staff, students, contractors, and volunteers have used this route for years either as a circular walk or for access to/from the A487.

The University made this statement having had sight of evidence submitted to the Local Authority by members of the public. The University has staff who have worked at the University for a period in excess of 25 years who can recall coming and going from university land via Treborth Hall as far back as 1992.

This admission is significant because it clearly indicates that the University's assertions about historical use are not based on their own independent institutional knowledge or records, but rather on their review of

evidence already submitted by others. This fundamentally undermines the evidentiary value of their statement for several reasons:

1. The University is essentially repeating claims made by others rather than providing independent corroboration based on their own historical records or institutional knowledge.
2. This creates a circular evidentiary problem - the University's statement cannot be considered independent verification of user evidence when it is itself based on that same user evidence.
3. The absence of reference to any official University records, policies, or documentation regarding these routes suggests no formal recognition of public rights existed within the institution's official position.
4. The University notes only that they "have staff who have worked at the University for a period in excess of 25 years who can recall coming and going from university land via Treborth Hall as far back as 1992." This vague reference to individual staff members' memories lacks the specificity and formality of proper institutional evidence.

This admission significantly weakens Bangor University's contribution to the evidence base for the DMMO application. Rather than providing independent institutional confirmation of historic public rights, the University has merely acknowledged awareness of claims made by others without substantiating these claims through their own records or formal institutional position.

21. Bangor University's Contradictory Statements About Gate Locking - 7th May 2024

The University's FOI response (Exhibit 15) contains a significant self contradiction regarding access control that undermines their position:

First, the University categorically states: "The University has not challenged the public, locked the gates, or made any other effort to deny a public right of way."

However, in the very next paragraph, they directly contradict this claim: "The University did install a gate, near Treborth Lodge, and did, at one time, lock the same overnight. The locking of the gate was to prevent vehicular access overnight and did not interfere with access on foot."

This contradiction is revealing for several reasons:

1. Despite initially denying having locked gates, the University immediately admits to exactly that practice, demonstrating they did indeed exert control over access to their grounds.
2. The installation and overnight locking of gates clearly shows that the University actively managed access to these routes rather than treating them as public rights of way.
3. By controlling access hours the University was exercising discretion that is inconsistent with public right of way status, which would require unrestricted 24 hour access.
4. This direct self contradiction within their own response raises serious questions about the reliability of the University's other assertions regarding these routes.

The University's attempt to downplay the significance of gate locking by claiming it "did not interfere with access on foot" misses the legal significance of such actions. For public rights of way to be established, use must be "as of right" - without permission, force, or secrecy. By installing gates and implementing selective access policies, the University was clearly establishing a permissive regime incompatible with public rights of way.

This self contradictory evidence further supports the conclusion that routes A-B and B-C do not meet the criteria for inclusion in a DMMO based on historic use but were instead subject to the University's institutional management and control.

22. Gate Locking Establishes Access Control Regardless of Pedestrian Bypass - 7th May 2024

The University's claim that locking the gate "did not interfere with access on foot" because pedestrians could walk around it misses the fundamental legal significance of such access control measures:

Legal Intention, Not Physical Barrier: For establishing or refuting public rights of way, what matters is the legal intention demonstrated by actions, not whether a physical barrier was completely effective. The act of installing and locking a gate clearly communicates an intention to control access, regardless of whether some users could circumvent it.

- By installing and locking gates, the University was explicitly asserting its ownership rights and control over the land. This assertion is legally incompatible with dedicated public rights of way, which would require the landowner to have surrendered control.
- Pedestrians who walked around the locked gate would have been aware they were circumventing an access control measure, reinforcing their understanding that access was permissive rather than by right.
- Numerous rights of way cases have established that gates, even those that can be bypassed, are relevant evidence of landowner control that prevents the establishment of public rights. The ability to bypass does not negate the legal significance of the access control measure.
- For public rights to be established, use must occur "as of right" - without force, secrecy, or permission. Users bypassing a locked gate would be using force (circumventing an access control) or secrecy (evading the landowner's attempt to control access), both of which prevent the establishment of public rights.

The University's installation and locking of gates, regardless of whether pedestrians could walk around them, represents clear evidence of land management and access control that is fundamentally inconsistent with public right of way status.

Exhibit 15

• *The University has not challenged the public, locked the gates, or made any other effort to deny a public right of way."*

The University did install a gate, near Treborth Lodge, and did, at one time, lock the same overnight. The locking of the gate was to prevent vehicular access overnight and did not interfere with access on foot. Please see photographs 1, 2 and 3 below.

23. University's Admission of Restricted Opening Hours - 18th November 2022

The University's response to questions about Treborth Botanic Garden's historical access hours (Exhibit 16) reveals important information about the managed and restricted nature of public access to the area:

- The University clearly states on their website that "The external gardens are open during daylight hours," establishing that access has never been unrestricted 24/7 as would be expected for a public right of way.
- When directly asked if public access has never been permitted 24/7, the University notably fails to provide a straightforward answer, instead responding only about "glasshouses and associated buildings" while avoiding addressing the external areas that include the claimed routes.
- The reference to "staff being available to assist and/or greet users" clearly establishes an institutional management framework for access, consistent with permissive use rather than public rights.
- A genuine public right of way would be available 24 hours a day, 365 days a year, without restriction. The daylight hours only policy is fundamentally incompatible with public right of way status.
- The entire framework of "opening hours" demonstrates that the University has always considered these areas to be under their institutional control, not public rights of way.

This evidence directly contradicts the requirement that use must be "as of right" (without permission) to establish a public right of way. By explicitly limiting access to daylight hours and framing access in terms of staff availability, the University has clearly established a permissive regime that prevents the establishment of public rights of way.

The University's evasiveness when directly questioned about 24/7 access to external areas further suggests they recognise this contradiction but are unwilling to explicitly acknowledge it. This evidence further supports the conclusion that routes A-B and B-C do not meet the criteria for inclusion in a DMMO based on historic use.

Exhibit 16

Q2: What are the historical opening and closing times of [Treborth]?

A history of the Garden can be viewed on the University website here: About Us | Treborth Botanic Garden | Bangor University

CLARIFICATION: The university website states "The external gardens are open during daylight hours". Has this always been the policy for the botanical garden?

Yes, in relation to staff being available to assist and/or greet users of the garden.

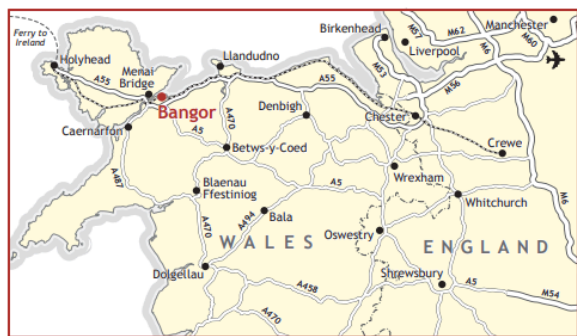
So public access is not or has never been permitted 24/7?

Public access to the glasshouses and associated buildings is not and has never been permitted 24/7.

24. Map produced by Bangor University in 2014 showing no route through Treborth Hall

The omission of any route through Treborth Hall on the 2014 Bangor University directions map is significant in assessing claims of historic public rights of way. If a legitimate historic route existed the university would have had practical incentives to show it, as it would represent a valuable access option for students, staff, and visitors to reach their Treborth Sports Site and Botanic Gardens.

This map was specifically designed for navigation purposes, making the absence of any connection through Treborth Hall particularly telling as it represents significant evidence of the contemporary understanding of available routes to university facilities in 2014. The university, as a major institution with interest in providing accurate access information, did not recognise any established path connecting through Treborth Hall to their property.



Directions

By Air

The best airport for both overseas and domestic flights is Manchester. This is the third busiest airport in the UK with a wide range of services. More information can be found at www.manaairport.co.uk

By Rail

There are up to 15 rail connections to Bangor each day from Manchester Airport (reduced service at weekends) and journey times vary from 2 hours 15 minutes to 3 hours. All journeys require one change, usually at Crewe, but some require two changes. There is an on-line timetable and booking facility at www.nationalrail.co.uk

Bangor has excellent rail connections to all parts of the UK with direct trains from London taking as little as 3.5 hours. An on-line timetable and booking facility is available at www.nationalrail.co.uk

By Road

Visitors driving to Bangor are advised to approach North Wales via the M6 and M56 before joining the A55 expressway to Bangor. The M6 provides links to all parts of the UK via the motorway network. Follow the blue or red route to reach the Halls & Conference office.

By Ferry

High speed and conventional services sail from the Dublin area to the port of Holyhead, 25 miles from Bangor. Convenient ferries from Northern Europe (Holland, Germany and Scandinavia) arrive at ports in the Humber Estuary from where the M62 motorway leads to the M6.

24.1 2014 Map by Bangor University showing no route through Treborth Hall

25. Council's Own Documentation Confirms Private Access Status for Route A-B - 24th July 2012

Exhibit 17 contains important evidence from the Council's own documentation regarding the status of access to the former Ysgol Treborth/Coed Menai site, which directly relates to route A-B:

The document states: "As noted in the letter, an officer from the Property Service attended a meeting in March in order to explain any effect that the closure of Ysgol Coed Menai would have on the Riding Group. It was carefully explained to the Group that any sale of the site would be subject to tenancy on specific parts of the site. Also, a lease and licence would be established to protect any use they made of the facilities."

This statement is significant for several reasons:

1. The reference to establishing "a lease and licence" to protect the Riding Group's use of facilities clearly demonstrates that access to this area was by permission only, not by public right.
2. The need for formal legal arrangements (lease and licence) confirms that the Council itself viewed access to this site as requiring specific legal permission, not as an established public right of way.
3. The involvement of the Council's Property Service in managing access arrangements further confirms that this was treated as private property with controlled access, not as land with established public rights.
4. The statement "Discussions are also taking place with the other users of the site, although few in number" confirms that only specific, authorised users had legitimate access to the site - not the general public through rights of way.

This Council document directly contradicts claims that route A-B was historically recognised or used as a public right of way. Instead, it provides clear evidence that access to this area was managed through formal permission arrangements, with the Council itself treating the route as private property requiring specific authorisation for use.

This evidence from the Council's own records strongly supports the conclusion that route A-B does not meet the criteria for inclusion in a DMMO based on historic public use.

Exhibit 17

6.6.7. As noted in the letter, an officer from the Property Service attended a meeting in March in order to explain any effect that the closure of Ysgol Coed Menai would have on the Riding Group. It was carefully explained to the Group that any sale of the site would be subject to tenancy on specific parts of the site. Also, a lease and licence would be established to protect any use they made of the facilities. Discussions are also taking place with the other users of the site, although few in number.

26. Council's Own Assessment Contradicts User Evidence Claims about Route A-B - 24th July 2012

A particularly revealing statement in the Council's documentation (Exhibit 17) directly contradicts the claims of widespread historical community use of route A-B:

The Council's own assessment states: "We acknowledge that there is collaboration between the Riding Group and the school, but that otherwise the connection between the school and the community is weak."

This official Council assessment has profound implications for the credibility of the user evidence:

1. The Council's finding of "weak" community connection fundamentally contradicts the claims of 197 users who assert regular historical use of routes through the school grounds. If 197 local residents had indeed been regularly using routes through the school grounds for decades, the connection between the school and community would, by definition, be strong rather than weak.
2. This assessment was made by Council officers with direct knowledge of the site and community relationships, making it a more reliable indicator than retrospective user statements collected specifically for the DMMO application.
3. The Council's current willingness to proceed with a DMMO based on claims of extensive community use directly contradicts their own prior formal assessment that community connections to this site were "weak."
4. The Council's documented assessment that community connections were "weak" suggests that, from an institutional perspective, they had no awareness of significant public use of routes through the site prior to the DMMO application.
5. This assessment was made in the context of a formal school closure process, where the Council would have been obligated to thoroughly consider all community impacts - including established rights of way if they existed.

This Council document provides compelling evidence that calls into question the credibility of the 197 user statements claiming historic use of route A-B. The stark contradiction between the Council's own assessment of "weak" community connection and the subsequent claims of extensive historical community use warrants careful consideration in determining whether route A-B meets the criteria for inclusion in a DMMO.

Exhibit 17

6.6.8. *We acknowledge that there is collaboration between the Riding Group and the school, but that otherwise the connection between the school and the community is weak. We predict a positive effect and a score of +2 in relation to relocating the PRU at Llanwnda and the potential to develop strong community connections through opening a PRU at Llanwnda.*

27. Transition from Residential to Day Use School Supports Private Status - 1st April 2003

Exhibit 18 contains significant information about the historical status of Ysgol Treborth/Coed Menai that further supports the private, institutional nature of route A-B:

The document states: "Once the school's status has been amended, the school's current residential arrangements will terminate. Those children who attend Coedmenai will be able to travel daily from 1st September..."

This information has important implications for the status of routes through the school grounds:

1. Residential Institutional Status: The document confirms that Ysgol Treborth/Coed Menai previously operated as a residential institution, not just a day school. Residential schools typically maintain higher levels of security and access control for child protection and safety reasons.
2. Controlled Access Environment: As a residential facility for children, the school would have had policies restricting public access through the grounds, making it highly unlikely that routes through the premises would have been treated as public rights of way.
3. Institutional Security Requirements: Residential facilities for children are legally required to maintain controlled access environments. This obligation would have been incompatible with allowing unrestricted public access through the grounds.
4. Professional Duty of Care: The school's administrators would have had a professional duty of care to restrict public access through residential school grounds, further contradicting claims that routes through the premises were treated as public rights of way.
5. Evidence of Transition: The reference to children being "able to travel daily" after the change indicates that access arrangements were carefully managed and controlled, consistent with private institutional status rather than public access.

This evidence further undermines claims that route A-B was historically recognised or used as a public right of way. The documented residential status of the school establishes a context in which public rights of way through the grounds would have been inconsistent with the institution's legal obligations and duty of care to resident children.

Exhibit 18

4.0 *Once the school's status has been amended, the school's current residential arrangements will terminate. Those children who attend Coedmenai will be able to travel daily from 1st September, and in future, the Authority intends to develop the role of the Glanwnion Unit at Dolgellau to provide for children from those areas in the South of the County where it would be unreasonable to expect them to travel daily.*

28. Official Discussions on "Future of the Property and Grounds" Confirm Private Status - 1st April 2003

Exhibit 19 provides additional evidence regarding the institutional control and management of the Ysgol Coed Menai site that is relevant to route A-B:

The document states that following the proposal to change the school's status to a day school, there would be "an opportunity to consider the outcomes of discussions with the Unions regarding the future of the property and grounds, and the financial implications of the change of status."

This statement has several important implications:

1. Institutional Management: The reference to discussions about "the future of the property and grounds" confirms that the entire site, including any routes through it, was subject to formal institutional management and decision making.
2. Property Status: The linkage between "property and grounds" in these discussions indicates that the grounds (which would include route A-B) were considered part of the institution's property, not public rights of way.
3. Union Consultation: The involvement of Unions in discussions about the future of the property and grounds indicates that access arrangements were considered staff employment matters, not public access issues.
4. Financial Considerations: The reference to "financial implications" in relation to property and grounds indicates that access routes had economic value to the institution, inconsistent with public right of way status.
5. Formal Decision Making Process: The entire context shows a formal institutional decision making process regarding the future use of the property and grounds, with no reference to accommodating or recognising public rights of way.

This evidence further supports the conclusion that route A-B was historically managed as part of the institution's private property, not as a public right of way. The formal discussions about the "future of the property and grounds" would have been the natural context for acknowledging any public rights of way if they existed, yet no such acknowledgment is documented.

The Council's own records thus confirm that they treated the school grounds, including route A-B, as institutional property subject to formal management decisions, not as land with established public rights of way.

Exhibit 19

6. YSGOL COED MENAI

Submitted the report of the Director of Education, Culture and Leisure.

RESOLVED To approve the publication of a Statutory Notice of Gwynedd Council's intention to amend the status of Ysgol Coedmenai to a day school for children with emotional and behavioural difficulties from 1st September 2003. The final decision will be considered at a further meeting of the Board, following an official two month period during which any objections may be lodged and when there will also be an opportunity to consider the outcomes of discussions with the Unions regarding the future of the property and grounds, and the financial implications of the change of status.

29. Historical School Minutes Confirm Private Access Control

School minutes from Ysgol Treborth dating back to the 1950s and 1960s provide compelling historical evidence of long-standing private control of access through the school grounds:

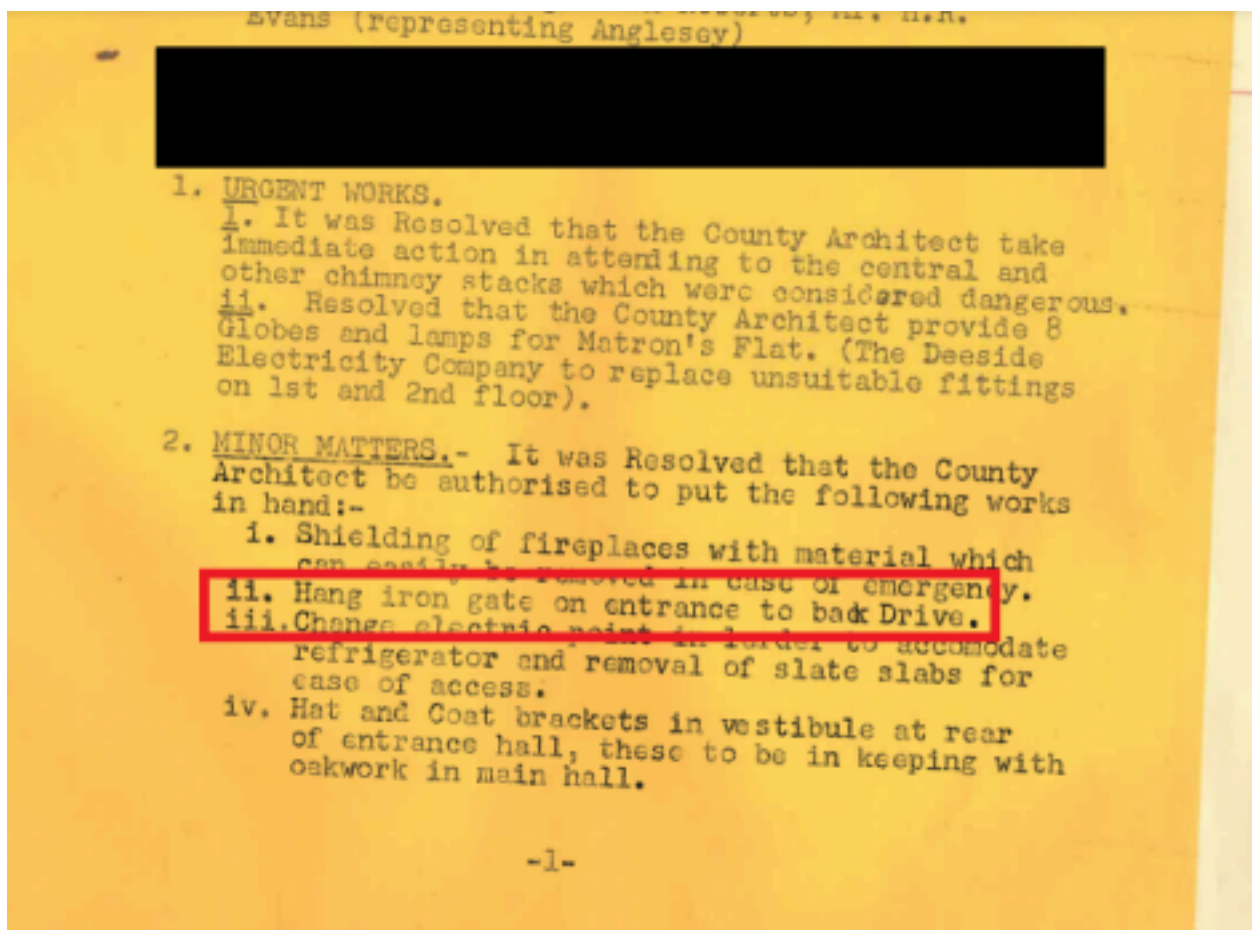
1. A minute dated March 14, 1951 records a decision to "Hang iron gates on entrance to back drive." This documents that physical barriers to control access were installed over 70 years ago, establishing a clear history of access management long before any claimed public rights.

2. Another entry from the same date notes "Gate and fencing to divide school grounds from farm," further confirming that the school grounds were physically separated from surrounding areas with barriers to control movement.
3. Most significantly, a minute from July 18, 1956 contains a clause requiring contractors to "ensure their entry on to the drive, when they commence operations, is limited to their workmen and vehicles, and that steps be taken to prevent entry by the general public." This explicit instruction to prevent public access directly contradicts claims that public rights of way existed through these grounds.
4. A minute from February 28, 1964 references "Path leading from Treborth Uchaf to the school" and discussion about permission to divert this path. This confirms that any paths in the area were subject to formal diversion processes through the proper authorities, not established as irrevocable public rights of way.

This historical evidence from official school minutes establishes that:

- Physical barriers were installed to control access as early as 1951
- Explicit measures were taken to prevent public access through school grounds
- Any paths in the area were subject to formal permission and diversion processes

These historical records provide compelling evidence that routes through the school grounds were actively managed as private, not public. The explicit instruction to prevent public access in 1956 is particularly significant.



1951.03.14 **Hang iron gates on entrance to back drive**

- n. Cause of general damp.
- o. Painting or other treatment to outside walls.

iii. Area adjoining Main Hall.

a. Courtyard at back.

- 1. Replacing existing cobble-stones with concrete.
- 2. Conversion of outhouse as Porter/Caretaker's room.
- 3. Conversion of other out-house for Laundry work.

b. Aviary - General repairs and new roof.

c. Area at rear - alternative estimates for -

- 1. Concreting the whole of the area, and provision of dwarf parapet wall to prevent indiscriminate use by lorries when carting fuel, and
- 2. Area of approximately 52' x 23' to be crazy paved - remaining portion to boiler house chute to be concreted. Provision of dwarf parapet wall as above.

d. Replacing present granite chippings on paths with round pebble gravel.

iv. Site - General

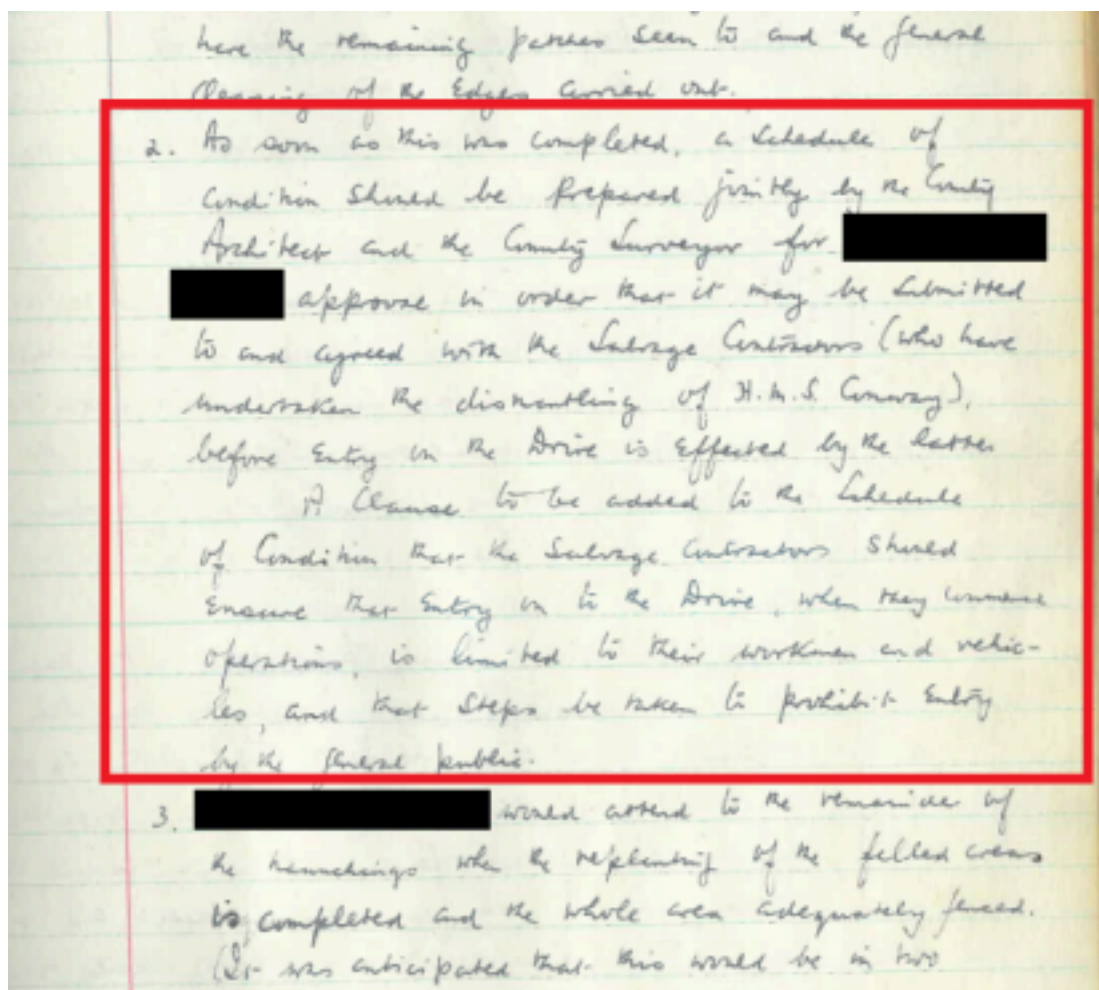
- a. Gate and fencing to divide School Grounds from Farm.

4. WORKS CONSIDERED TO BE CONTRACTOR'S RESPONSIBILITY.-

The County Architect was instructed to draw the attention of the Contractor to the following items which should receive immediate attention:-

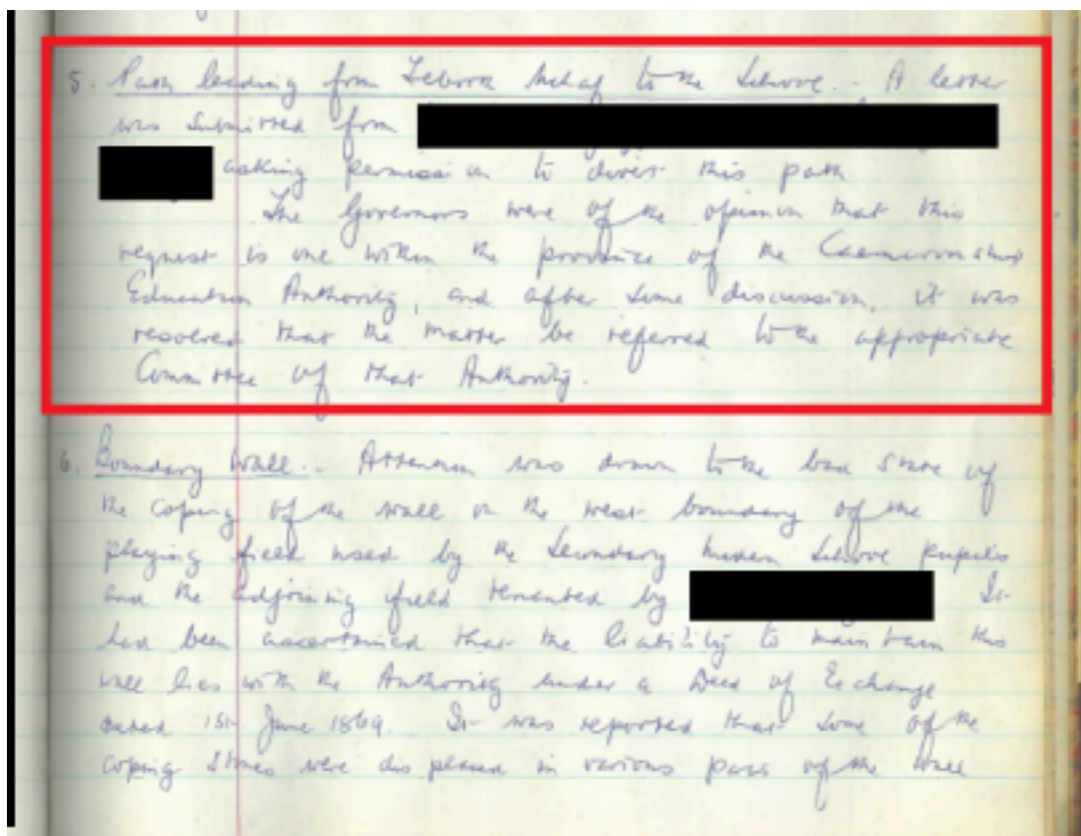
- a. Main vestibule block floor to be planed and generally cleaned up - finished in light shade.
- b. Faulty plastering (general) - various patches etc.

1951.03.14 pg3 3.4 **Gate and fencing to divide school grounds from farm**



1956.07.18 As soon as this was completed, a schedule of condition should be prepared jointly by the country architect and the county surveyor for [REDACTED] approval in order that it may be submitted to and agreed with the salvage contractors (who have undertaken the dismantling of H.M.S Conway), before entry on the drive is effected by the latter. **A clause to be added to the schedule of condition that the salvage contractors should ensure their entry on to the drive, when they commence operations, is limited to their workmen and vehicles, and that steps be taken to prevent entry by the general public.**

[REDACTED] would attend to the remainder of the haunchings when the replanting of the felled areas is completed and the whole area adequately fenced. (It is anticipated that this would be in two years time.)



1964.02.28 Path leading from Treborth Uchaf to the school. A letter was submitted from [REDACTED] asking permission to divert this path. The governors were of the opinion that this request is one within the province of the Caernarvonshire Education Authority and after some discussion. It was agreed that the matter was referred to the appropriate committee of that authority.

30. Treborth Business Park Photos

Photographic evidence shows signs positioned along the route at Treborth Industrial Units pre dating 2010. Their strategic placement at a key point along the claimed route is consistent with landowner management of access rather than public right of way status. These signs would have been visible to users of the route, indicating that any access was likely understood to be subject to conditions or permissions rather than by established public right.



27.1 Signage along the route at Treborth Industrial Units indicating Private nature



27.2 Signage along the route at Treborth Industrial Units indicating Private nature

31. Conclusion

After careful review of the extensive documentary evidence, historical records, and official correspondence spanning over 70 years, it is clear that routes A-B and B-C do not meet the legal criteria for inclusion in a Definitive Map Modification Order based on historic public rights of way.

Overwhelming Evidence Against Route A-B

The evidence against route A-B (through the former school grounds) is particularly compelling:

1. The area's historical use as a residential school facility required controlled access for child safety and security, making public rights of way through the grounds incompatible with its institutional purpose.
2. The Council's statement that "the connection between the school and the community is weak" directly contradicts claims of extensive community use through the school grounds.
3. Dewi Owen, the Council's own Rights of Way Officer, specifically advised in 2016 that a Creation Order under Section 30 of the Highways Act 1980 would be the appropriate mechanism for establishing rights through this area - not a Modification Order based on historic rights.
4. As recently as 2016-2020, both Gwynedd Council and Pentir Community Council were discussing creating paths "around" the school area rather than recognising rights through it, confirming their understanding that no historic rights existed.
5. Public use of route A-B through the botanic garden has always been permissive in nature. The garden operates as a managed facility, thereby preventing the modification of the definitive map.

Definitive Evidence Against Route B-C

The evidence against route B-C (connecting to the Wales Coastal Path) is equally substantial:

1. The Council's own 2009 planning document (ref: C09A/0520/25/R3) explicitly described these as "unofficial" and "informal" footpaths and applied for "the creation of a footpath" - clearly indicating no historic rights were recognised.
2. The Council executed a Creation Order under Section 25 of the Highways Act 1980 to establish the Wales Coastal Path through this area - the legal mechanism specifically used when no public rights previously existed.
3. The detailed user evidence maps submitted with the application stop at point B (the Wales Coastal Path intersection), with none showing use continuing along route B-C, creating a fundamental evidential gap.
4. Route B-C appears to have been added to the application primarily to create network connectivity to a path that didn't exist before 2012, not because evidence supports historic rights along this section.
5. Similarly, route B-C has only ever been accessible through permissive use as part of the controlled botanic garden environment. This permissive nature of access means users have always accessed this route 'by right' rather than 'as of right,' thus precluding the modification of the definitive map.

Consistent Official Position Until Recently

The documentary record reveals a remarkably consistent position by Council officials over many years:

1. **2001:** Correspondence confirms access was actively controlled by gates, with the Council acknowledging that "the entrance" to facilities was via Borth Bridge, not through the school grounds.
2. **2009:** Planning documents describe paths as "unofficial" and apply to "create" rather than recognise footpaths.
3. **2012:** The Council uses a Creation Order for the Wales Coastal Path, confirming no historic rights existed.
4. **2016:** Rights of Way Officer Dewi Owen advises pursuing a Creation Order rather than a Modification Order.

5. **2020:** Correspondence still refers to potential "registration" of routes, confirming they were not yet considered to have public status.

This consistent position was maintained by multiple Council departments (Rights of Way, Planning, Property) over more than two decades, showing it was not a one time error but a sustained professional assessment based on the available evidence.

Procedural Concerns

The current DMMO application also raises significant procedural concerns:

1. **Contradictory Council Positions:** The Council's current willingness to proceed with a DMMO directly contradicts its own prior formal determinations about these routes.
2. **Reactive Motivation:** The correspondence candidly admits that attempts to establish rights were "mainly because of the attitude of the owner" - revealing a reactive response to access disputes rather than recognition of established rights.
3. **Route B-C Addition:** The addition of route B-C appears to serve a strategic network planning purpose rather than reflecting historical evidence, which is an improper basis for a DMMO.

Conclusion and Request

Based on this comprehensive body of evidence, I respectfully request that the Council decline to make a DMMO for routes A-B and B-C. The evidence clearly demonstrates that these routes do not meet the legal criteria for establishing public rights of way based on historic use.

List of Exhibits

- Exhibit 1 - Planning application for the Creation of a footpath at Treborth ...
- Exhibit 2 - Creation of a footpath along historic route.pdf
- Exhibit 3 - Public Path Creation Order 2012.pdf
- Exhibit 4 - Dewi Owen Correspondence 2016.pdf
- Exhibit 5 - Elwyn Jones correspondence 2020.pdf
- Exhibit 6 - Dewi Owen correspondence 2020.pdf
- Exhibit 7 - 2001.11.14 University of Wales Bangor Correspondence Gwynedd C...
- Exhibit 8 - Bangor_Anglesey_Mail_1994_07_13_13.pdf
- Exhibit 9 - Bangor_Anglesey_Mail_1995_04_05_9.pdf
- Exhibit 10 - Bangor_Anglesey_Mail_1995_10_04_45.pdf
- Exhibit 11 - The_North_Wales_Weekly_News_1997_10_30_30.pdf
- Exhibit 12 - Daily_Post_The_Paper_for_Wales_1994_05_02_13.pdf
- Exhibit 13 - Private estate planning comments.pdf
- Exhibit 14 - FOI2970 - Redacted Correspondence - ICO Decision (1).pdf
- Exhibit 15 - FOI Bangor University.pdf
- Exhibit 16 - FOI2620 - Treborth.pdf
- Exhibit 17 - 07_01_Reorganisation of Education for Pupils with Emotional and ...
- Exhibit 18 - Council_board_20030401 day school 2.pdf
- Exhibit 19 - council_board_20030401 day school.pdf