



Rheilffordd Canolog Môn Cyf Anglesey Central Railway Ltd

23 September 2020

Mrs Janet Finch-Saunders AM
Cadeirydd Pwyllgor
Senedd Petitions
Cynulliad Cenedlaethol Cymru
Cardiff Bay
Cardiff
CF99 1NA

Annwyl/Dear Mrs Finch-Saunders

P-05-913 - 'Creation of Lôn Las Môn Multi-Use Path'

If we may take this opportunity to update the information contained within our original submission of the 27 March 2020 and in particular the subject of the Community Rail License issued by Network Rail and held by this company as and from the 19 August 2011.

Standardisation of legal documentation by Network Rail at the commencement of 2020 resulted in further negotiations on the terminology and technical content of our Community Rail License to ensure the work being undertaken by our group was covered in all eventualities. Final agreement was achieved, and our License now runs concurrently to September 2021.

Reference to our previous statements relating to the long-term Lease with Network Rail. Our respective legal teams have continued with their due diligence on the 63 page formal documentation, and if we may draw an analogy to our negotiations relating to that of the elements of a 24 hour clock, we are now at 23:59 minutes, anticipating the formal acceptance and signing within the very near future of the 99 year Lease.

Without wishing to denigrate the standing of the petitioner it is important to recognise the respective disparity between the presented public image and that of the “behind the scenes” activities.

The attached document, posted on the Facebook page of Lôn Las Môn on the 21 September 2020, clearly demonstrates their intent and the breach of the law of trespass they are inducing members of the public in which to participate.

Whilst their claim the offence of trespass is in essence a civil and not a criminal breach of the law, if you refer to the attending documentation of legal notation it will be noted that in the circumstances in which it is a criminal offence is usually trespass on railway property.

It is our understanding, upon receipt of a telephone conversation from Network Rail yesterday, they are in possession of the aforesaid information and will be formulating the appropriate action.

We stated in our final paragraph of the 27 March 2020 communication to you that we would proffer our assistance, or guidance, to assist the group or corporate body who wished to develop a multi user pathway, not germane to the rail corridor, but alongside the rail corridor, to achieve their objectives.

However, in retrospect, if the petitioners proposed activities on the 26 September 2020 are an indication of their modus operandi, and they proceed to execute their intentions, then we will have to distance ourselves from any involvement with this specific group.

If we are in a position to provide to you any additional information, please do not hesitate to contact the undersigned.

Yn gywir / Yours sincerely



Lôn Las Môn

Posted on Facebook page

21 September 2020

WANTED this Saturday 26th September at 9am volunteers armed with heavy gardening equipment to start clearing the railway line from Lôn Las Cefni towards Pentre Berw.

It is an organised trespass/clearing and for those of you who maybe concerned at the legality of being on the line we have been informed that it is not a criminal offence and that the police would not be notified.

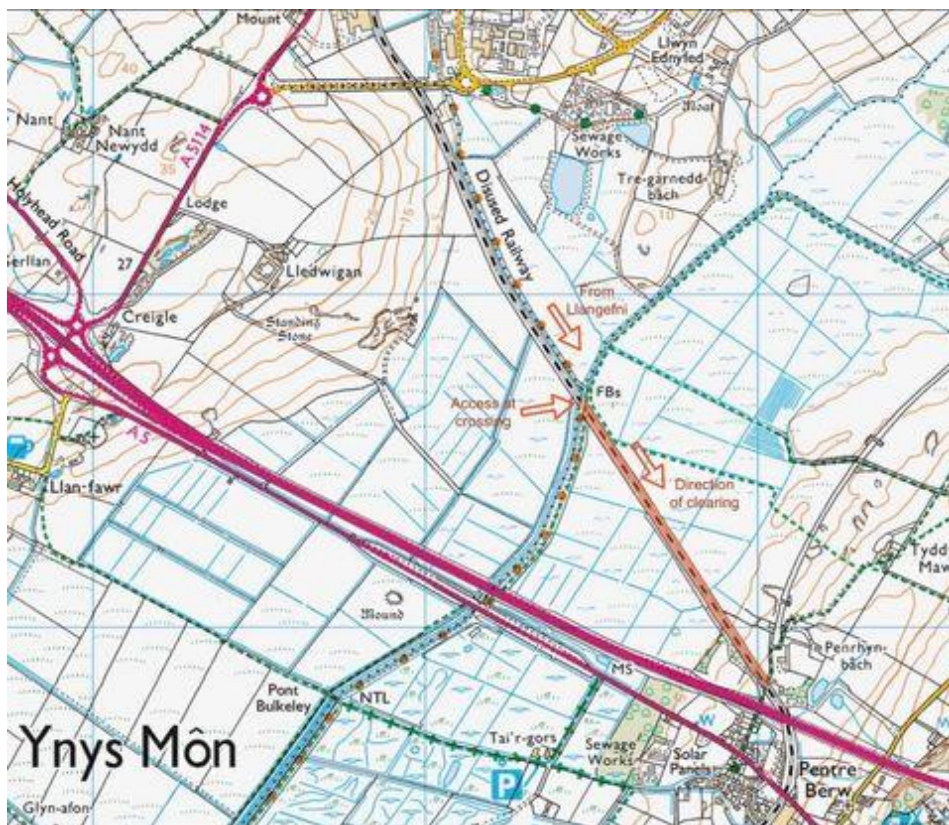
It is a civil offence and that the claimant would have to be Network Rail itself which is our aim. Social distancing will have to be observed and masks worn.

We do suggest that you bring heavy cut resistant gloves as the thorns are thick and sharp.

As we are not funded we are unable to provide equipment so bring your own. We would ask that if you know of anybody who does have heavy duty equipment, strimmers etc then please encourage them to come. The growth is very challenging and it will be a tough to start with. Bring your own snacks and water as you can see from the map we will be in the middle of nowhere.

We suggest that you park in Llangefni and walk or cycle along Lôn Cefni to where the Amlwch railway line crosses the path. The walk is roughly half a mile. There is a wooden barrier to climb over to get onto the line which is around 1 meter high.

Our aim is to clear a pathway directly into Pentre Berw so people can use the line that was built by local people for the benefit of local people.



What is trespass to land?

Trespass to land is a civil wrong under the law of tort. Trespass is not, for the most part, a criminal offence. However, trespass on residential property which amounts to 'squatting' has been a criminal offence since 2012.

Trespass in English (and Welsh) law is mostly a civil tort rather than a criminal offence. The circumstances in which it is a criminal offence are usually trespass on educational premises, railway property, protected sites, etc.

In English law, trespass to land involves the "unjustifiable interference with land which is in the immediate and exclusive possession of another". It is not necessary to prove that harm was suffered to bring a claim, and is instead actionable *per se*. While most trespasses to land are intentional, the courts decided that it could also be committed negligently. Accidental trespass also incurs liability, with an exception for entering land adjoining a road unintentionally. Although previously a pure tort, the Criminal Justice and Public Order Act 1994 created some circumstances in which trespass to land can also be a crime.

Land is defined as the surface, subsoil, airspace, and anything permanently attached to the land, such as houses. The rights of landowners over airspace are not unlimited

Possession does not necessarily mean the ownership of land, but the right to eject or exclude others from it.

Interference

The main element of the tort is "interference". This must be both direct and physical, with indirect interference instead being covered by negligence or nuisance.¹ "Interference" covers any physical entry to land, as well as the abuse of a right of entry. If the person has the right to enter the land but remains after this right expires, this is also trespass. It is also a trespass to throw anything on the land. For the purposes of trespass, the person who owns the land on which a road rests is treated as the owner; it is not, however, a trespass to use that road if public.

Civil trespass

The civil law provides remedies to those who are harmed by the conduct of other people. Trespass to land is one of the oldest actions known to the common law and consists of any unjustifiable intrusion by a person upon the land in possession of another. When a trespass is alleged, it is for the

trespasser to justify the 'trespass' to avoid the consequences; for instance, they have a licence to occupy the property, or a legal right of way across someone's land.

To prove trespass there must be an intention to interfere with the right of possession, and this includes removing a part of land or property belonging to someone else. Even a minimal encroachment on someone's property may amount to trespass.

Trespass to land does not require proof of damage for it to be actionable in the courts. If damage is caused by a trespasser, a charge of criminal damage can ensue.

What are the types of trespass?

The most common form of trespass is entry by the trespasser on to the plaintiff's land. Other forms of trespass include:

- Placing objects on the land, such as fly tipping.
- Removing land or property from the plaintiff's land.
- Abusing an existing right to be on someone else's land, including remaining on the land when permission has expired.
- Other actions that are deemed to be trespass under specific statutes.

There are other forms of trespass. As land includes subsoil and airspace, trespass can include using someone else's land to drill down to access minerals beneath the property. Similarly, invasion of the airspace above land may constitute a trespass (limited to the height at which the invasion would interfere with the full use of the land). For example, overhanging eaves or other structures on a building that overhang an adjoining property may amount to a trespass.

What amounts to authorised entry to land?

If the alleged trespasser can prove they were authorised to be on the land in question, they can defend a claim against them for trespass. Permission to enter the land can be granted in a number of ways, including:

- Express permission given by the plaintiff, whether verbal or written, such as in the form of a licence or a ticket.
- Legal right of way, such as an easement over the land.
- Public rights of way.

However, where there is an authorised right to be on the land, that right must not be exceeded or abused, otherwise a trespass may have been committed. For instance, if an individual has the right to use a specific field for exercising horses, they must not go outside of that area. If a licence permits someone to be on the premises until 10pm but they remain on site after 10pm, they will be trespassing. If a theatre goer is asked to leave the theatre because of their behaviour, they will be trespassing if they refuse to leave.

Where a licence or other form of permission is revoked, authorisation to be on the land or property is withdrawn. If the licensee still goes onto the property thereafter, they may be trespassing.

Necessity

Sometimes, it is necessary to go onto someone else's land without authorisation. Necessity is a defence to trespass to land. For example, the police and other law enforcement authorities have power to go onto land in the lawful execution of their duties.

In addition, under the Access to Neighbouring Land Act 1992, an occupier can make an application to the court for an access order to enable them to enter the adjoining/adjacent land to carry out repairs. The court will not, however, make the order where the adjoining occupier would suffer interference with, or disturbance with the full use or enjoyment of his land, or would suffer hardship to such a degree that it would not be reasonable to grant the order. The court may require the applicant to pay compensation for any loss or damage or any loss of privacy or other substantial inconvenience.

Who can sue?

The person who has "immediate and exclusive" possession of the land that has been subject to trespass can sue. Possession refers to occupation or physical control of the land (this may or not be the legal owner of the property – e.g. it could be the tenant in commercial property).

The plaintiff may seek damages, or an injunction, or both. If the trespass is continuing, an application for an injunction can be made – but it will have to be proved that the trespasser is in unlawful possession or use of the land.

Where the trespass is trivial, damages may be nominal, and an injunction refused. Where a trespass concerns some use of the land without causing damage, the damages will be measured.