

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL
ENVIRONMENT AND HIGHWAYS CABINET BOARD

7 July 2016

REPORT OF THE HEAD OF LEGAL SERVICES – DAVID MICHAEL

MATTER FOR DECISION

WARD AFFECTED: BLAENGWRACH

ALLEGED PUBLIC FOOTPATH BETWEEN HIGH STREET, EMPIRE AVENUE AND HEOL Y FELIN, COMMUNITY OF BLAENGWRACH

Purpose of the report

To determine the application to register the paths A-C and B1-D as public footpaths as shown on plan no.1

Background

The application was submitted in 2012 to this Council to recognise the paths shown on the attached plan as public footpaths.

The path between A-C is a vehicular lane, generally 3 metres wide and on the whole comprising gravel being bounded either by a stone wall, wooden fence or a hedge.

The path between B1-B is a field path with 6 steps where the path leaves the access lane to Cwmboyle House (point E). The path slopes uphill, crossing the field before reaching what appears to be the remnant of a stile at B alongside a field gate. Access to Empire Avenue passes along a 3.8 metre wide alleyway to point D where the path crosses the field it is 1.2 metres wide.

The application was supported by 9 persons, one of whom is deceased and 3 of whom agreed to be interviewed, one being the applicant who was met on site. The average length of use for A-C is 34 years and for B1-D, 39 years.

Ownership of the lane A-C is unknown, and the length B1-D being in this Council's ownership.

All the usual organisations have been consulted along with the Local Member and those residents of Cwmboyle House, Tudor Lodge and the Cwmgwrach Rugby Club. Whilst the lane provides access to these properties, only the rugby club responded. Their representative confirmed that the club uses the lane between points C-C1 to access their track to the playing field from point C1. The Club indicated they have no objection to this application.

The issue is to determine if there has been a period of at least 20 years uninterrupted use counting retrospectively from the first occasion that use was called into question either due to the path being closed or from the date on which the application was submitted. According to the evidence below, the path has not been closed to the public for use on foot and so the date of the application will mark the end of the 20 year period. Therefore the relevant period will be 1992- 2012. Appendix 1 provides the relevant extract from the Highways Act 1980 which deals with the 20 year period. Appendix 2 is an extract from the Wildlife and Countryside Act 1981 which requires any Council to consider such an application and determine the status of the path under consideration.

The Evidence

None of the 3 interviewed nor anyone else from their completed user evidence forms indicated the two paths were ever obstructed throughout the time they have been in use. Two persons said bollards were placed in the lane (being up ended railway sleepers) just south of its junction with the access track to Cwmboyle House (B1) This is thought to have occurred in about 2007. These were replaced by the current two large boulders. It is suggested these were only intended to prevent people driving the full length of this lane A-C. It is also contended from the three people interviewed that these did not interfere with pedestrian passage.

There is no record of any other challenge to the public's use of the way hence the relevant period can be taken as 1992-2012.

Seven supporters have stated they have each used the path for at least the 20 year period concerned for A-C and six would say the same for the length B1-C.

The applicant suggested that the Council has occasionally undertaken some maintenance of the path B-C but there is no record of this Council having undertaken such work. The Community Council also said they have never been involved in such work.

History

According to the applicant the “pit head baths” for the former Empire Colliery was located south of this area and closed in the 1970’s. That colliery first appears by that name on the 1914 edition of the ordnance survey although an old coal level appears in that vicinity on the 1877 edition of the ordnance survey. However, another was opened close to point A and so many miners who lived closer to the Empire Colliery and therefore south of this path, would still use the path to change at the baths before returning the same way after their shift was over. The applicant said he worked at this colliery from 1953-1958.

When the Blaengwrach drift mine opened (shown as DM) it provided underground access to the former Empire Colliery. It closed in 1986, and so until that time, the applicant states this path was still in intensive use by miners to access the entrance to this mine.

After this drift mine closed, land reclamation work took place on the area between points B1 and B, which had been a storage yard containing buildings. The area was levelled but raised sufficiently to require the steps being installed at B1.

Map Evidence

The claimed public path is a long established feature as it appears on the 1st edition of the ordnance survey 1875-1877. A mineral railway is shown on the 3rd edition surveyed in 1914, running approximately parallel to this path, but continuing south east to the former Empire Colliery. A second mineral railway appears on a later edition surveyed in 1962 which runs approximately parallel to the first mentioned railway, but extending as far as the drift mine. By the 1984 edition the railway to the former Empire Colliery is absent although the railway to the drift mine is shown as that mine did not close until 1986. This supports the contention that with the path lying in such close proximity to the drift mine, it would have been in use by these miners and would also have provided access for some who worked at the former Empire Colliery.

The use of this path A-C to access the mines falls before the relevant period 1992-2012 but suggests there has been a long established use of the path A-B-C. Nonetheless it is also possible the lane was under the ownership of the National Coal Board given they owned the adjacent land. If that is the case, then during this earlier period, any use of the path by those employed at either of the mines could be interpreted as permissive use across land under the ownership of their employers.

Conclusion

Whilst only 3 people responded to requests to be interviewed those who were, indicated they have seen others use the path over the years.

Ownership of the path A-B-C is unknown and whilst it is possible it is under the ownership of the National Coal Board, no clarification has been received from this Board.

This Council has taken no action to prevent access over the land B1-B since it purchased the field in 1988. So neither path appears to have even been obstructed throughout the period 1992-2012 nor any other action or indication given to the public that there was no right of access.

On the evidence currently available there is sufficient evidence to justify making a modification order.

Appendices

Plan 1

Appendix 1

Appendix 2

Recommendation

A modification order is made to include the two lengths of paths A-B1-C and B1-D as public footpaths only and if no objections are received to confirm the same as an unopposed order.

Reasons for the Proposed Decision

The current evidence suggests:-

The path is historic and in all probability been in use by miners as well as the public since the Empire Colliery was in operation and possibly even before that colliery opened.

Use has been uninterrupted throughout the relevant period

This Council has not taken any action to prevent use where the path passes over the land under its ownership.

Steps and what appears to be a remnant of a stile alongside a gate have been installed giving the appearance that this was for the benefit of the public.

No objections or any evidence has been submitted to counter the applicant's contention that these two paths are public rights of way.

List of Background papers

M08/15

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APPENDIX 1
HIGHWAYS ACT, 1980

Section 31. Dedication of way as a highway presumed after public use for 20 years.

Where a public way over land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption of a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during this period to dedicate it.

For Section 31(1) Highways Act, 1981 to operate and give rise to a presumption of dedication the following criteria must be satisfied:

- the physical nature of the path must be such as is capable of being a public right of way
- the use must be 'brought into question', i.e. challenged or disputed in some way
- use must have taken place without interruption over the period of twenty years before the date on which the right is brought into question
- use must be *as of right* i.e. without force, without stealth or without permission and in the belief that the route was public
- there must be insufficient evidence that the landowner did not intend to dedicate a right of type being claimed
- use must be by the public at large

APPENDIX 2
WILDLIFE AND COUNTRYSIDE ACT, 1981

Section 53 Duty to keep the Definitive Map and Statement under continuous review.

- (2) As regards every definitive map and statement, the surveying authority shall:
 - (a) as soon as reasonably practical after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in sub-section 3; and
 - (b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.
- (3) The events referred to in sub section (2) are as follows:-
 - (b) the expiration, in relation to anyway in the area to which the map relates of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway;
 - (c) the discovery by the Authority of evidence which (when considered with all other relevant evidence available to them) shows:
 - (i) that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A a byway open to all traffic;
 - (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
 - (iii) that there is no public right of way over land shown in the map and statement as a highway of any description ,or any other particulars contained in the map and statement require modification.