

**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: MARGAM

**ALLEGED PUBLIC FOOTPATH FROM WATER STREET TO
FOOTPATH NO.90 COMMUNITY OF MARGAM**

Purpose of Report

To determine the status of the path shown on Plan No.1 from point A – H.

Background

An application was made in 1996 to register a public path along the route shown A-H on Plan No. 1. No landowners were identified by the applicant and so notice of the claim was not served on any owners as required by the provisions of the Wildlife and Countryside Act 1981.

It was not until 2006, the applicant served notice of his claim on the only two known owners.

It is still possible for a Council to determine an application that has not been compliant with the Act. The difference being the date of the application cannot count as a “calling into question” of the existence of the alleged public path. This date can also be identified when the path becomes either obstructed or some other indication the landowner does not wish to dedicate the path as a public right of way. Secondly, the applicant has no right of appeal to the Welsh Ministers against the Council for not having determined the application.

Under the 1981 Act, the Council is nonetheless obliged to consider any evidence it discovers that shows a public path may exist. Appendix 1 enclosed, highlights the relevant part of those provisions.

In 1997 an objection was made by the National Farmers Union on behalf of three landowners, two of whom still have a legal interest in the land

containing the path. An objection has also been made by one of the persons referred to, who makes use of the lane to access land held by him in close proximity to the railway line. The grounds for his objection are set out in Appendix 6 and this Council's comments to the objection are also included in that Appendix.

It is not known who owns the path or lane between Points A and B as it remains unregistered.

The path A-H provided access to the former Newlands Colliery, which was sited at about NC as shown on Plan No. 2. The Colliery opened in 1918 and closed in 1968. Claimants have said access was via A-B from Water Street and from Pyle via H-B.

After the colliery closed a Sunday Market was held on the same site from approximately 1972 until 1980.

From 1982 until around 1990, two firms had been engaged in extracting coal from the tip which was still in existence. They transported the coal to a washery at Cribwr Colliery identified as CC on Plan No. 2.

The area was subsequently landscaped.

The Evidence

Seven people submitted evidence forms in 1997 although subsequent user evidence has been submitted since that time. Appendix 2 provides the details of what has been received over the last 18 years.

To date there are 9 people who have stated they would continue to support this application four of whom have provided signed statements.

Therefore it is the current user evidence from the nine persons which is now most relevant in coming to a decision.

The minimum 20 year period of use

The issue to determine is whether there has been a minimum period of 20 years "uninterrupted" use which would establish the owners had dedicated the route as a public footpath.

This 20 year period is calculated by counting retrospectively from the first occasion the use was "uninterrupted". This can be taken to have been the placing of a locked gate, other barrier or fence across the way or alternatively, the placing of a notice alongside the path making it clear to the public no such public path exists. Appendix 3 includes the relevant provisions of the Highways Act 1980.

A record of site visits was made in 1996, 2007 and 2015. That undertaken in 1996 found two sealed gates at point A1, an unlocked gate at B and a sealed and partly collapsed gate at point D. A detailed description can be found in Appendix 4.

The subsequent visit made in 2007 is included in Appendix 5 which discovered a padlocked gate at point B. Both visits therefore show there was a well-defined path for its entire length, but also containing obstructions.

One of the previous owners who occupied the former site of the Newlands Colliery between 1989 and 2004 stated in 1996, that the gate at point D had been sealed for between 10 and 15 years. Thereby suggesting there had been an obstruction since at least 1986.

A more recent site visit in 2015 included a meeting with another owner of some of the adjacent fields, in particular those to the north west of the path A-B. That owner stated that after the Sunday Market ceased trading, the field marked CP, which has been used by the previous owner as a car park, became occupied by up to 70 caravans belonging to travellers. After obtaining a court order, the current owner installed a locked gate across the road at about A₂ in 1980 as shown on Plan No. 1. This was to prevent travellers from returning as well as taking other measures to prevent access. According to this owner the gate was kept locked until about 1990.

According to the accounts provided, the sealed gate at point D discovered in 1996, the padlocked gate at B in 2007 shows there could have been no 20 year period of uninterrupted access after 1996.

The former occupier of the Colliery site stated there was a gate across the claimed public path from at least 1986. The current owner states a locked gate was across the path from as early as 1980. This therefore suggests the earliest time use was interrupted was in 1980, which would result in the relevant period being 1960-1980.

Appendix 2 provides the details of those upon whom this Council can rely to continue to support this application, under the heading "Interviewed 2015". Two of the persons do not themselves claim to have walked the path for the full 20 years from 1960-1980.

The Sunday Market

The coal that was being transported to the Cribwr Colliery occurred after 1980. So the first issue to address is whether there was any interruption

to the public using the path throughout the period the Sunday Market was trading.

The National Farmers Union stated the market operated from 1972 until 1980. Four claimants quoted the market opened sometime in the 1970's; others were not specific but acknowledged it occurred after the colliery closed.

The Farmers Union stated a night watchman would have been employed at the site to protect the premises even after the colliery closed, but there is no evidence for this. No reference has been made to this statement by those interviewed. According to these claimants the market was a popular destination but nonetheless posed no problem in being able to continue in either direction from the market.

The Newlands Colliery (1918-1968)

This colliery closed in 1968 and so would have been operational for 8 of the 20 year relevant period. The National Farmers Union and one of the current owners of land adjacent to the path A-B stated a night watchman would have been employed to prevent unauthorised access through the site, although this has yet to be corroborated by any supporting evidence.

Seven claimants said there was no problem in walking through the site when the colliery was operating. One suggested that most people who used the path probably knew many of the miners working at that colliery.

Map Evidence

The colliery is, as expected, absent from the 1921 edition of the ordnance survey which has a survey date of 1914 which is 4 years before the colliery opened. The colliery first appears on the 4th edition with a survey date of 1941, with an extension to the tip eastwards on the 1947 survey. Both editions show the path running alongside the railway between points B and C, and situated at the perimeter of the site of the colliery.

On the 1962 edition, which was also surveyed that year, the plan shows a turning circle adjacent to the entrance at point B but within the site of the colliery. The path joins this turning circle as it is approached from point C and leaves immediately via the bridge. The plan suggests the path did not pass over any mineral railways, between buildings or over coal tips. This would imply the path did not cross into the operational area of the colliery. However the bridge at point B provided vehicular access from the road A-B to the colliery, as evidenced by the 1952

planning application below. Consequently it can be assumed many vehicles accessing the site would have passed back and forth over this bridge. In this regard pedestrians and vehicles would have been using the same route. However it is not known how many vehicles would have been passing across this bridge in any one day nor whether this was an issue for the owners of the colliery, "Cribbwr Collieries Limited."

One claimant said the road A- B was extended from Point A₁ – B to serve the colliery. The 3rd edition of the ordnance survey shows the road only extending as far as point A1 and first appears for its full length to point B on the 1941 survey. The 1982 survey is the next to follow on from the 1962 survey and identifies the site of the Newlands colliery as a disused mine but the road still in existence as previously.

In addition a planning application was made to Port Talbot Council in March 1952 to erect new buildings at the colliery. The plan attached to that application clearly shows the bridge an annotated "Main Entrance-Buses and Lorries etc. " It also shows the turning circle referred to above in more detail, showing the path approaching that circle from the south east. Consent was granted on the 4th April 1972 with no conditions attached to that consent.

Conclusion Grounds for making an Order

Under the provisions of the Wildlife and Countryside 1981 this Council can make an order if it considers the evidence satisfies one of two tests which are contained under S53 (3) (c) (i) Appendix 1. That is whether a public path subsists or it is reasonable to allege one subsists. In the case of the latter, an order can be justified if there is no credible evidence that the land owner had no intention to dedicate the path. There is the assertion the public would have been prevented from walking through the colliery during the period 1960-1968 from two objectors but no specific evidence to support that contention. This is contrasted by seven claimants who have said there was no issue in walking through the colliery when it was operating.

Consequently a modification could be made on this basis in the absence of any counter evidence.

Recommendation

That a Modification Order be made to recognise the path from Points A-H as shown on plan no.1 as a public footpath and if no objections are received, to confirm the same as an unopposed order.

Reasons for the Proposed Decision

The evidence suggests public use was first interrupted in 1980 resulting in a relevant period from 1960 – 1980. There are nine people who continue to support this application seven of whom have stated that there was no problem in passing through the colliery when it was operating. There is no evidence to establish that the public were denied access through the colliery. Under the test set out in Appendix 1 it is therefore justifiable for the Council to make a modification order.

Consultation

This item has been subject to extensive consultation

Appendices

Plan No's 1 -2
Appendices 1-6

List of Background Papers

M08/4

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APPENDIX 1

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 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 rises 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.

APPENDIX 2

SUMMARY OF THE USER EVIDENCE

Date of submission of evidence

Forms completed in 1995
Submitted in 1997

Average no .years

1.

1935 – 1995 }
1945 – 1995 }
1942 – 1968 }
1958 – 1995 }
1970 – 1995 }

43

Forms submitted/completed in 1997

2. 1940 – 1998 }
1932 – 1998 }

62

Forms submitted in 1998

3. 1953 – 1998 }
1940 – 1998 }
1947 – 1998 }
1968 – 1998 }

46

Those interviewed in 1998

4. 1956 – 1998 }
1930's – 1998 }
1945 – 1998 }
Unknown - 1998 }
1960's – 1998 }
1936 – 1998 }
1940 – 1998 }
1961 – 1998 }
1946 – 1998 }
Unspecified period

43

APPENDIX 3

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 4

Site Report 26th January 1996

1. Commences at the limit of the county highway beside Bethel Chapel, Water Street, Kenfig Point A.
2. Passes generally in a north easterly direction for 470 metres over a 4 metre wide tarmac road bounded on both sides.
3. At some 125 metres north east of the Chapel the road (which formerly served Newlands Colliery) is sealed by two metal field gates which are wired together (Point A1).
4. At Point B on the north side of the bridge over the railway there is an unlocked field gate.
5. The path then turns south east initially over soft grassy land for 110 metres to Point C.
6. At Point C the path becomes a bounded lane some 2.5 metres wide with a soil/stone base surface and continues in this condition for 130 metres to Point D.
7. At Point D there is a sealed metal field gate which has partially collapsed and awkward to cross when approaching from the North West.
8. The path continues as a bounded 3 metre wide path also soil/stone based for some 70 metres before encroaching vegetation narrows the well-worn track to between 1 and 1.5 metres for the remaining 80 metres to Point E.
9. At Point E there is a short (5 metre) worn link up the northern bank to a 4 metre wide stone based Hall Road which parallels section E-F.

10. From Point E to Point H some 100 metres the encroaching vegetation narrows a well-worn track to less than 1 metre in places probably because of a number of walkers use the haul road. However, this section is still passable.

11. At Point F the path turns south onto a partly tarmacked bridge over the railway then south east for a total of 400 metres along a bounded 2 metre wide stone based path to a junction with Footpath No. 90. Section G-H has an available width between the fences of 3 metres but this has narrowed to the 1-2 metres by encroaching vegetation.

APPENDIX 5

A gate was padlocked at Point B but no visible sign of any path between Points B and C. After Point C the path becomes more defined but after some 100 metres becomes impassable due to overgrown vegetation. The path re-appears from Point D and once over the bridge between Points G and H the path is well defined and maintained.

APPENDIX 6

- (1) That because the application was made in 1996 the presumption is that those who made the claim were asserting they had a right to walk to path at that time
- (2) Therefore there should be a presumption the application was based on an uninterrupted period of 20 years use counting retrospectively from 1996.
- (3) However that was found wanting after investigation. Consequently this raises the question as to what weight should be placed on there having been uninterrupted use for the earlier period 1960-1980 when the subsequent period has been found to be incorrect.

Comment

- (1) The case commencing R U Oxfordshire County Council ex parte Sunningwell Parish Council 1999 establishes what users believe is irrelevant. It is a question of whether the landowner acquiesced to that which is relevant.
- (2) The case commencing Paterson V Secretary of State for Environment, Food and Rural Affairs 2010 has established that in order for section 31 of the Highways Act 1980 to operate, it is only necessary to identify some period of twenty years spanning back from any date when the alleged public right of way was called into question.
- (3) The claimants have acknowledged the existence of gates across the path at various times in the past.

Of the nine currently in support

Two people ceased walking the paths after 1982, another person could not recall when the gates were locked but said he nonetheless jumped over them. Another remembered locked gates but estimated this was 1997. The applicant stated that by the year 2000 more gates had been installed and locked.

Those who submitted evidence forms in 1997 but are no longer available to continue to support this application

One person said three gates had been installed over the 12 years prior to 1997, another stated gates were put up in 1988 after the reclamation of the land. One person acknowledged two gates had been installed but

gave no dates, and three other people each made reference to two gates on the path.

The above highlights those supporting the claim did acknowledge the existence of gates on the route, but none do so for the earlier period of 1960-1980.

- (4) It is difficult to find evidence as to what measures were taken by those in possession of the land affected by this application prior to 1980.

Comment

The current owners of the path have not been identified and the application can only be assessed on evidence that is available. The other affected owners have not come forward with any comments.

- (5) Secondly if it is alleged a public right of way exists, why was no application made in 1980 when the path became obstructed?

Comment

Is it not possible to say why members of the public did not approach the Council in the early 1980's when it is suggested this was the time the path was first obstructed. It is also unknown why the path was not considered when the reviews were undertaken of the existence of public paths under the National Parks and Access to the Countryside Act 1949. However many paths were not included at that time, which is the reason why Section 53 of the Wildlife and Countryside Act 1981 enables the Council to continuously review its Definitive Map and Statement. This can be done on the receipt of applications or on the discovery of evidence which shows the map and statement needs amending.