

**NEATH PORT TALBOT COUNTY BOROUGH COUNCIL  
ENVIRONMENT AND HIGHWAYS CABINET BOARD**

**24 November 2016**

**REPORT OF THE HEAD OF LEGAL SERVICES  
– D.MICHAEL**

**MATTER FOR DECISION**

**WARD AFFECTED: PONTARDAWE**

**Alleged Public Footpath from Herbert Street to High Street  
Community of Pontardawe**

**Purpose of the Report**

To determine the application to register a public footpath from points A-B-C as shown on the plan.

**Background**

- 1.1 An application was made in 2002 to recognise a route A-B-C as shown on the attached plan as a public footpath. The claim was supported by ten persons seven of whom are still resident at the addresses given previously. Appendix 1 sets out the relevant provisions of the Wildlife and Countryside Act 1981 which places an obligation on all Councils to process any such applications.
- 1.2 The path is undefined between points A-B as it passes over an area of tarmac alongside a building before reaching the beginning of a well-defined footpath B-C which passes alongside the canal.
- 1.3 The route A-B claimed passes alongside the adjacent building via the entrance to two car parks one being situated at the rear of the Castle

Hotel and the other to the rear of the properties numbered 6 to 11 High Street.

- 1.4 The length A-B is under the ownership of this Council but there is no information as to who owns the length B-C. This latter section is paved, contains a street light. The three bollards at point B prevent cars from parking and blocking access to the path from B-C.
- 1.5 West Glamorgan County Council re-surfaced the path B-C in the 1980's as part of an urban regeneration scheme for Pontardawe. This section of path has received some periodic maintenance but there has been no commitment to formerly adopt this part of the path.

#### Relevant Period

- 2.1 This is calculated by counting retrospectively from the first occasion the alleged public status of the path was called into question. Given there has been no such instance on record, the date of the application will provide the end of the twenty year period. Therefore the test is to consider whether there has been sufficient uninterrupted use throughout the period 1982-2002. Appendix 2 sets out the tests under the Highways Act 1980.
- 2.2 Of the seven remaining supporters, six responded to recent requests for further information and who confirmed they still wished to support this application. One indicated the first year he started using the path was 1982, but all the remaining five have stated their use commenced before this date. None have said they were ever challenged nor considered their access was purposely obstructed to prevent them from using this route.
- 2.3 Two people said the route forms a short cut to access shops in either Herbert Street or High Street, one stated he walked his dog this way and another said it formed part of a longer walk.
- 2.4 No particular action has ever been taken by this Council or indication given to the public not to walk the length A-B since it owned the land in 1987. There is no evidence the previous owner made any effort to prevent access between 1982-1987.

- 2.5 There is however evidence that the route A-B has been blocked by cars parking alongside the adjacent building. A site visit in January 2016 revealed two cars on the line of the route. Also a photograph taken in July 2004 showed a parked car at this location, suggesting this had been common practise. The issue is whether this practise occurred between 1982–2002, because any need to deviate from the route so claimed would constitute an “interruption” to that use. This would fail the test set out under Section 31 of the Highways Act 1980. The specific conditions concerning the right to deviate or take an alternative route/s is considered in Appendix 3 but these would not apply in this case.
- 2.6 Three people stated cars do park on the route whereas another two said this was not the case. One of these persons stated that at about the time the improvements were made to Pontardawe in the 1980’s, there were parking restrictions in place and double yellow lines painted alongside the building next to A-B. She recalls people being booked for parking at this location. However there is no record of this Council having initiated such restrictions. The resident would say that parking was not the problem it is today and so people did not need to park across this route as there was always space to the rear of the Castle Hotel.
- 2.7 The photograph taken in 2004 and the evidence of the three referred to above suggests the route A-B appears to have been obstructed even if only periodically. Furthermore if yellow lines were painted alongside this building, this shows there had been a parking problem. The public can not deviate from a claimed public path by walking around parked cars but still claim use of that route to have been uninterrupted.
- 2.8 Given the periodic obstructions to the length A-B and the fact that it is not a defined route the length A-B cannot have been dedicated to the public. Nonetheless consideration should be given to the length B-C as to whether it could be recognised as a public path independently of A-B.
- 2.9 The route B-C does not connect one public highway to another, nor to land at point B over which the public have any other right of access, such as a public path or common. It would therefore form a cul-de-sac path by terminating at point B with no right of access other than to return to point C. Consequently there is no justification for only recognising B-C as a public path.

## **Recommendation**

That the application to register the route A-B-C as a public footpath be refused.

## **Reasons for the Decision**

The precise line of the claimed path A-B according to the evidence been periodically obstructed by cars.

The length B-C cannot be considered as a separate public right of way, as it does not connect to another public highway at point B and no one has said they return to point C on having reached point B.

## **Consultation**

This item has been subject to external consultation

## **Appendices**

Plan

Appendices 1 – 3

## **List of Background Papers**

M08/16

## **Officer Contact**

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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 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.

## APPENDIX 2

### 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 3**

- 1.1 There is a general principle that the public cannot claim a right to wander over land, being distinct from an application to register land as a village green for sports and recreation. Nor can the public claim land to be registered as Access land as provided by the Countryside and Rights of Way Act 2000. Some Access land was previously designated as common land where rights to air and exercise have been granted by statute or under the Law of Property Act 1925.
- 1.2 The case concerning Wimbledon and Putney Commoners Cornerwaters -v- Dixon 1875, was referred to in a more recent High Court case regarding Fernlee Estates Ltd -v- City and County of Swansea 2001. In the latter case the Inspector at the original public inquiry pointed out where a route from one point to another goes across open land the route need not follow a precise path. He made reference to the first case mentioned above. That case concerned a number of defined tracks across a common claimed for private use, and that the use of one or another would not defeat the claim.
- 1.3 With regard to the present case there is no alternative defined track across the land and unlike the test case above, the route as claimed has been periodically blocked by parked cars. So the reason for deviating was different to the use of the alternative routes across the common.