

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

ENVIRONMENT AND HIGHWAYS CABINET BOARD

12 June 2017

REPORT OF HEAD OF LEGAL SERVICES – DAVID MICHAEL

MATTER FOR DECISION

WARDS AFFECTED: NEATH EAST AND BRITON FERRY EAST

ALLEGED PUBLIC FOOTPATH FROM GARDNERS LANE TO EAGLESBUSH VALLEY (A-B-C) AND TO YNYSMAERDY ROAD VIA CEFN COED FARM (B-E-F) COMMUNITIES OF BRITON FERRY AND NEATH

Purpose of report

- 1.1 To decide this Council's position in respect of the modification order which has been made to recognise the paths C-B-E-F as a public right of way on foot shown on the plan attached to this report.

Background

- 2.1 On the 7th July 2016 this Board rejected the application that was made to register the paths shown on the attached plan as public rights of way on foot (A-B-C and B-E-F).
- 2.2 The applicant was served notice on this decision on the 13th July 2016 and exercised his right to appeal to the Welsh Ministers against this Council.
- 2.3 The appointed Inspector determined that appeal on the 7th February 2017 and allowed the appeal in part whilst dismissing the other part.
- 2.4 The Inspector considered the evidence and concluded a modification order could be justified whilst recognising there is a conflict of evidence between those members of the public in

support of the application and those members of the public who support the objection.

- 2.5 The Inspector did not conclude that a public path exists but that there was sufficient evidence to justify making a modification order. Once an order is made it is open to those who do not agree that a public path exists to object to the modification order. It is virtually certain objections will be made, in which case the conflict of evidence acknowledged to exist by the Inspector, can be tested at a public inquiry. The applicant and objectors with their both of their supporters can then provide their written and verbal submissions at that Inquiry. Thus implementing the decision as considered by the Court of Appeal in R v Secretary of State for Wales ex part Emery 1996 where it was acknowledged such a conflict of evidence can only be scrutinized in a public inquiry.
- 2.6 This Council has been directed by the Planning Inspectorate to make a modification order for the length of path C-B-E-F. The Inspector dismissed the appeal for the length of path A-B. It is noted that the principal landowners are likely to object to the order given their comments as shown in the previous report. (A copy of that report is appended.)

Consequently this Council needs to decide whether in the light of this appeal it wishes to either:-

- (a) Support the Modification Order
 - (b) Object to the Order
 - (c) Take a neutral position
- (a) To support the Order
To now support the order would contradict the Council's earlier decision. It will require the Council to actively promote the Order by compiling signed statements and encourage the authors of those statements to act as witnesses at any future inquiry. Ultimately we would be responsible for providing a bundle of evidence to establish such a public footpath exists.
- (b) To object to the Modification Order
To do so would also require compiling signed statements from those who support the objection and to collaborate with the landowners of Cefn Coed Farm who are the principle landowners and likely to object to the making of the order. Again the Council would be responsible for providing a

provide a bundle of evidence to show the path could not have been subject to the presumed dedication as claimed.

(c) To take a neutral position

If the Council decided it did not wish to object or promote the order it would result in the applicant and objector/s making their own representations. The Council would assist the Inspector at any public inquiry by providing the venue, advertising the date of the inquiry, make available all the documents which were considered when the matter was determined by the Board and provide any other facilities as necessary.

2.7 In October 2014 the Planning Inspectorate produced their own guidance on procedures for considering objections to modification orders. The Inspectorate acknowledged that some orders will be made by Local Authorities that they do not support and that in such circumstances they either take a neutral stance or object.

2.8 The applicant has asked to address the Board as he wishes the Council to now support the order. However he has been advised that there is no procedure for the public to speak at the Board and in any event it would not be equitable for one party to do so in the absence of the objectors also putting their case to the Board. The Council made its decision and has no obligation to alter its position. It has already acted in a quasi-judicial manner by considering the evidence, including the comments made by the opposing parties to that evidence. To allow the opposing parties to make their verbal representations at this stage risks interfering with that process, particularly if new evidence is introduced.

Conclusion

2.8 The Council having determined the application on the 7th July 2016, and therefore fulfilled its statutory obligation has no obligation to be actively involved in either promoting or objecting to the Modification Order it has now been told to make by the Planning Inspectorate order. It is therefore recommended that the Council take a neutral stance but assists the Inspector in facilitating an Inquiry in the event an objection is made to the order.

Recommendation

This Council informs the Planning Inspectorate it wishes to take a neutral stance in any subsequent Public Inquiry.

Reasons for the Decision

It is noted that the appeal was allowed and that the Authority have been directed to make a modification order. If there are objections to this order, it is reasonable and consistent with its previous decision, that this Authority take no further proactive part and only assist the Inspector at any subsequent public inquiry.

Consultation

The appeal decision was forwarded to all the local members and affected landowners.

Appendices

Plan

List of Background Papers

M08/23

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