

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL
REGENERATION AND SUSTAINABLE DEVELOPMENT CABINET
BOARD

22 September 2017

REPORT OF THE HEAD OF LEGAL SERVICES – DAVID MICHAEL

MATTER FOR DECISION

WARD AFFECTED: PELENNA

**ALLEGED PUBLIC FOOTPATH FROM JOHN'S TERRACE TO THE
BUSINESS PARK, TONMAWR - COMMUNITY OF PELENNA**

Purpose of the Report

To determine the status of the path from points A-B-C-D.

Background

- 1.1 An application was submitted in 2014 to recognise the path shown on Plan No. 1 as a public footpath under the provisions of the Wildlife and Countryside Act 1981 (Appendix 1). The basis of the claim is that there has been a sufficiently long period of uninterrupted use to establish the path has been dedicated to the public under Section 31 of the Highways Act 1980 (Appendix 2).
- 1.2 The application has been supported by 14 people, 12 of whom submitted user evidence forms. The average length of use for 13 being 29 years.
- 1.3 The length of path between points A-B passes along a vehicular lane providing rear access to those adjacent properties on John's Terrace. Thereafter the path B-D-C passes downhill through rough grass and scrub, it is well defined, being either earth or comprising small stone chippings. Between points C and D, the route crosses over a tarmacked and stone concourse before joining the unnumbered public footpath which passes to the west of the business units.

- 1.4 The building alongside point C was a sports hall which was built in 1991 under the “Tonmawr 2000” scheme. According to 3 people, the path was then constructed later, one stated in 1992. It was laid with stone chippings and edged with timber boards, although there is no edging left and much of the stone chippings are now absent.
- 1.5 According to one resident there was an earlier path providing a link from John’s Terrace to the unnumbered footpath but this had a steeper gradient and was positioned to the east of this current path. One of the claimants stated he had been employed by the Community Council from 1992- 2001 to maintain the path. That there was then a period of a few years before another took on that role. According to this and another person, for the last 2 years no one has been maintaining the path. Consequently some vegetation has partially encroached over part of the path. Therefore according to this person the width of the path has been reduced from 4ft. to 2ft.
- 1.6 In August 2014, the Sports Hall was used as the business premises for the company Coast to Coast Energy, although they are no longer trading as they which went into receivership in October 2016. However the subsequent use of the land did not interfere with access along the path. A slightly steeper step has occurred at point C as the applicant stated part of the bank was cut way to enable large vehicles to access the wider entrance to the building via what was the sports hall. It is not known whether this occurred in 2014 or just after the time an application to create a single storey reception was made in 2005. There’s no record of any other company operating out of the sports hall prior to 2014 and it may be that this date is correct, as one resident stated that the sports hall closed in approximately 2012.

The Evidence

- 2.1 Six people have been interviewed who have confirmed the path has remained in the same position over their period of use (10, 20, 27, 30 and two for 40 years).
- 2.2 Whilst there are fourteen people who originally supported this claim, three are no longer resident at the addresses given when the application was submitted. The remaining eleven apart from one, have all each claimed to have walked this path in excess of 20 years counting retrospectively from the date of the application of 2014. Therefore there is prima facie evidence of long term use.

Special User

- 2.3 Plan no 3 shows the distribution of where those in support of this application reside with the exception of two others one of whom moved to Pontrhydyfen approximately 5 years ago and the one in Neath who has not responded to a request for further information on why she would use this path. The issue being as to whether this number of people living within such a limited geographical area can be said to represent the public at large. Appendix 3 summarises the Planning Inspectorate's guidance which acknowledges there is no case law which has set a precedent.
- 2.4 According to the six interviewed the path has never been obstructed and so the date of the application will count as the date the alleged existence of the path was called into question.
- 2.5 Reasons given for using the path range from walking their dog (2 persons) to watch rugby at the Tonmawr Ground (2 persons) to take children to Primary School (2), to access the former Infants School (2) to attend the Sport Centre (1) and a route used to walk to the Post Office by utilising additional connecting paths on Tonmawr Road as shown on Plan No. 2.
- 2.6 From the consultation exercise with the relevant landowners, there is no evidence the path was obstructed or called into question before 2014.

Housing Development

- 3.1 On the 13th November 2015 outline consent was granted to construct 17 houses on the land crossed by this path. The proposed layout at outline stage is shown on Plan No. 4 which can be seen to have incorporated a path being close to the alignment of that being claimed. The solid line represents the claimed public path and the broken line the proposed alternative. Consequently should detailed consent be granted it would be possible for the landowner to provide this path either by making an application to divert the path should a modification order be made and confirmed, or dedicate the path via either the alternative as set out in the attached plan. Alternatively provide another route should the final development plan vary from that currently shown.

Conclusion

- 4.4 The one outstanding issue is whether those who claim to have used the path can be said to represent the public at large. Nine all live in one street and in only 5 houses, a tenth person until five years ago also lived in one of those same houses.

- 4.5 Any acquiescence by landowners to the use of a path under section 31 of the Highways Act 1980 is still conditional on that use being by the public at large and not to a limited number of people.
- 4.6 If the current owners wish to enter into a dedication agreement under section 25 of the Highways Act 1980 or subsequently agree to provide a public path if and when planning consent to build houses is carried out, then that could be pursued as and when it is deemed appropriate.

Recommendation

As a result of the localised evidence of use, it is not possible to justify making a modification order and therefore the application should be rejected.

Reasons for the Proposed Decision

The use is very localised and so cannot be representative of the public at large.

Consultation

The item has been subject to extensive consultation.

Appendices

Plan No.s 1-4 and Appendices 1-3

List of Background Papers

M08/50

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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

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

SPECIAL USER GROUPS

- (a) The Planning Inspectorate has produced advice on this matter in that they say there is no strict legal interpretation of the term 'public'. The dictionary definition being 'the people as a whole' or 'the community in general'. Arguably and sensibly that use should be by a number of people who together may be taken to represent the people as a whole/the community.

However, Coleridge L J in R -v- Residents of Southampton 1887 said that "use by the public' must not be taken in its widest sense - for it is a common knowledge that in many cases only the local residents ever use a particular road or bridge. Consequently, use wholly or largely by local people may be use by the public as depending on the circumstances of the case, that use could be by a number of people who may sensibly be taken to represent the local people as a whole/the local community".

- (b) In contrast to this view was the decision made by Lord Parke in Poole -v- Huskinson 1834 who concluded: "there may be dedication to the public for a limited purpose...but there cannot be dedication to a limited part of the public". This case was quoted by an Inspector in 1997 appointed to consider an application to add a public bridleway to the Definitive Map for North Yorkshire County Council. Here the route had also been in use for 40 to 50 years. That Inspector concluded: "In the case before Lord Parke, residents of the same parish were held to constitute a limited part of the public and I therefore believe the inhabitants of the Parish of Cliffs should also be held to constitute a limited part". The Inspector refused to confirm the Order.