

NEATH PORTTALBOT COUNCTY BOROUGH COUNCIL
REGENERATION AND SUSTAINABLE DEVELOPMENT CABINET
BOARD

22 September 2107

REPORT OF THE HEAD OF LEGAL SERVICES – DAVID MICHAEL
MATTER FOR DECISION

WARD AFFECTED: COEDFFRANC NORTH

ALLEGED PUBLIC FOOTPATH VIA THE REAR OF GOLWYG-Y-BRYN, COMMUNITY OF COEDFFRANC

Purpose of the Report

To determine the status of the path from points:-
A-B-C (Woodland Road to Ormes Road)
B-E (Woodland Road to Dynevor Road)

Background

- 1.1 An application was submitted in 2005 to recognise a path that passes to the rear of Golwyg-Y-Bryn that formerly passed alongside All Saints Church shown A-B on the attached report. The Church closed in 2006 and was later demolished so that the site could be re-developed to accommodate 6 houses surrounding the cul-de-sac of Golwg-Y-Bryn
- 1.2 In April 2008 a site visit revealed a well-defined stone based path, of unknown ownership, and bordered on its southern side with a timber fence and open to the adjacent hillside on its northern flank. There was no planning condition attached to the consent for the housing development to improve the path A-B shown on plan no.1. According to records from an earlier site meeting with officers, however it is almost certain the developer undertook this work.
- 1.3 The path A-B however only connects to a public highway at point A, being the northernmost limit of the adopted Woodland Road. Newell Road proceeding immediately west of point A is not a recognised public highway as it is not on the list of streets.

- 1.4 At point B the path joins the northern point of the lane running to the rear of Woodland Road, (B-E) this is also unadopted. A path containing some concrete steps proceeds north from point B to join Ormes Road at point C and passes to the rear of four houses numbered 42-48 of Oak Hill Park. Whilst this length of path B-C is not registered as a public right of way the Definitive Statement for footpath No.35 though not specific, does make reference to a path proceeding from Ormes Road to All Saints Church. The Definitive Map depicts an unnumbered footpath leading from Newell road to Ormes Road and shown A-D on the attached plan. However there is no path on the ground via A-D.

The Evidence

- 2.1 Thirteen people including the applicant, completed user evidence forms alleging an average of 34 years use of the path A-B. The landowners at that time had not been identified by the applicant, but nonetheless the applicant received consent from this Council to post notices at either end of the path addressed to the "owner/occupier" providing information on the application. Since 2005, the Land Registry searches have revealed that land containing the path A-B is not registered and so ownership of this length of path remains unknown. The land containing B-C is under the ownership of a Mrs and Mrs McDonald.
- 2.2 There has been no instance of the path A-B-C having been blocked and so the date of the application will count as the date at which the alleged existence of this public path was called into question, that is November 2005. That being the case, the applicant would have to establish there has been a minimum 20 year period of uninterrupted use counting retrospectively from 2005. If so, this would be sufficient to show that there has been a presumption that the route A-B-C had been dedicated to the public by the owner of the land, even though the owner of part of the land A-B is unknown. Section 31 of the Highways Act 1980 specifically provides the statutory framework within which a claim can be evaluated. (Appendix 1)
- 2.3 Unless a public path terminates at a place of interest or view point, it will join another public highway whether that is a public carriageway or any other category of highway such as a public footpath. In this example no one has suggested point B is located at a place of interest or view point. In fact the evidence taken from those interviewed and who supplied additional information, shows they were walking beyond point B to either Ormes Road (point C) or south to Dynevor Road (at point E). Only Dynevor Road is adopted.

- 2.4 Under the provisions of the Wildlife and Countryside Act 1981 (Appendix 2) this Council is under an obligation to investigate any evidence that shows a public right of way exists, even though the path from point B-C and B-E did not form part of the original application as is the case here.

Woodland Road to Ormes Road A-B-C

- 2.5 Of the 13 people who originally supported the application, 7 are still resident at the addresses provided in 2005. Of these 7 three responded to requests to provide additional information this year, two others were interviewed in 2006, but only one of these two persons still reside at the same address as given in 2006. An additional sixth person claims to have walked this path but only provided written evidence. However she also is no longer resident at her previous address. So effectively there are now only 4 people out of these 7 who are still residing at the addresses given previously and who it is thought would continue to support this application.
- 2.6 Three people recently clarified in 2017 that they have made use of this route A-B-C. One said he has been doing so since 1976 and about twice a day but only does so waking from C-B as this direction is downhill and does so in order to reach the shops in Skewen. One of these persons regards this path as a local amenity since he started walking the route in 1964. Another claims use up to 5 times per week since 1991. A fourth person stated in 2006 he has been walking this route up to twice every two weeks since 1976 to access the hills to the north.
- 2.7 The distribution of the 4 claimants are shown in plan no 2 which reflects use from a limited area confirming that it is used by those living in essentially two streets as a useful shortcut. As such it is difficult to conclude the path is used by the public at large. Appendix 3 describes the issues regarding such a group classed as a special user group.

Evidence from the Definitive Map and Statement

- 2.8 A path between Ormes Road and Newell Road is referred to in the Definitive Statement as number 35, "Commences from Ormes Road, Skewen, and proceeds southwards along open ground to All Saints Church" The path as shown in the Definitive Map appears as A-D, which could represent this description although it is shown to the west of the path B-C being claimed. It is recorded as being 75 yards in length (or

68.55 metres). The path A-D is 59 metres and the one in use B-C, 77metres. Also at some point in the past, a limited set of concrete steps have been placed on the path B-C. Whoever was responsible for these steps, whether this Council's predecessor or the Community/Parish Council does provide some evidence of acquiescence by whoever was the owner of the land at that time.

- 2.9 Point C does not connect to a recognised public highway. However Footpath No.35 was considered to terminate on Ormes Road. There is no explanation to indicate why it was concluded such a public right of way should terminate on this unadopted road yet equally no evidence to show that this was a mistake. There is a presumption that the Definitive Map and Statement are correct unless there is good evidence an error was made. According to those interviewed, there has never been a path where footpath for 35 is shown in the Definitive Map (A-D). Of those interviewed in support of this application, one first started using the path in 1946 and the other in 1956 which was at the time the initial review of all possible public paths for this Parish were being considered.

Ordnance Survey Records

- 3.1 The first edition of the Ordnance Survey dated 1876 shows a path leading from Ormes Road at point D and joining the claimed public path mid-way between points A-B. The subsequent edition of 1899 shows a path in almost an identical position to that shown in the Definitive Map (A-D). By the 1918 edition, four railway lines are shown running east to west, bisecting A-D at right angles. Neither the Definitive path A-D nor the claimed public path (B-C) is shown on this edition. Similarly neither of these two paths are shown on the 1940 and 1952 editions. The two later editions being an Ordnance Survey date of the land at the time the Parish Council first considered the existence of possible public paths. The Ordnance Survey edition the Parish Council used for their survey was a revision of the 1940 Ordnance Survey.

Earlier records of the Definitive Map and Statement

- 4.1 Appendix 4 provides an account of the process that led to the production of the current Definitive map and Statement. Footpath No 35 first appears in the Draft Special Review Map dated 1971 as a result of the Coedffranc Parish Council applying to have this path added to that edition of the Map and Statement. This opportunity came from the passing of the Countryside Act 1968. Hence this path never appears on the three earlier editions of the Definitive Map. Curiously the Ordnance

survey had ceased to show a path in this approximate position by the time the 1918 edition had been published, so it is unclear why the Parish Council applied to have footpath No 35 added to the Draft Special Review in 1968 when the path appears to have ceased to exist by 1918 and possibly some years before that. Nonetheless the inclusion of a path in the current Definitive Map and Statement is conclusive evidence of its existence and good evidence would have to be discovered to warrant its deletion from the Map and Statement. This precedent was set on a case concerning *Trevelyan v Secretary of State for the Environment Transport and the Regions* 2001. (Appendix 5)

Conclusion

- 5.1 The 13 people who have provided user evidence from the original application only identified the path A-B. It was only after 4 people provided additional information in 2006 and 2017 has it been possible to confirm people are walking beyond point B to Ormes Road at point C.
- 5.2 Only 3 responded in 2017 to say they continue to support the claim with another who is still resident in the area and upon whom this Council would also wish to rely. However in addition to the user evidence, the existence of some steps along the path B-C suggest acquiescence by the landowner at the time the steps were installed. All three who were interviewed in 2017, confirmed that the position of B-C has not varied through the period of their use.
- 5.3 In contrast point C does not connect to another public highway and any use west of point C along Ormes Road to access the adjacent properties would not reflect use by the public at large. The only evidence of use beyond point C to reach another public highway is from two people who claim to use A-B-C as a means of reaching Drummau Road via the Definitive path H-I.
- 5.4 The number of people who are currently willing to support this application is very limited in extent particularly considering the density of houses in the area. Point C does not connect to another public highway which suggests that A-B-C cannot be regarded as a public right of way. If there is justification for adding A-B-C to the Definitive map it would have to be on the basis that Ormes Road between points C-G-H is a public path, for which there is currently insufficient evidence.
- 5.5 Whilst footpath no.35 A-D shown on the Definitive Map also does not connect to a public highway, there is no basis for concluding that path

should be deleted by means of a modification order as there is no evidence to show that a mistake was made at the time the path was added to the Definitive Map and Statement. In addition if it is considered this path A-D was added in error, then the same reason would apply for the two paths between points F-G and H-I neither of which connect to a public highway at both their points of termini.

- 5.6 It is possible for any person to submit an application to register part of Ormes Road as a public footpath from points C-G-H as a continuation of the route A-B-C so that this provides a continuous link between two public highways. However that claim would have to be supported by a substantial number of people who would be considered to represent the public at large rather than the current application, which was confined to the path A-D and only supported by a few residents who live in the adjacent streets.

Recommendation

That no Modification Order be made to include the length A-B-C into the Definitive Map and Statement.

Reasons for the Proposed Decision

- (a) Only three people have said they will continue to support this application.
- (b) Point C does not connect to a public highway.
- (c) Any use west of point C to access those properties would not constitute use by the public at large.

Woodland Road to Dynevor Road

- 6.1 From the result of the investigation into the above application 2 people indicated in 2017 that they had been making use of the route B-E. Another three who were interviewed in 2006 also claimed to have used this route although one of these is no longer resident. Taken together they reflect an average of 23 years use up until 2005.
- 6.2 Given only 4 can be relied upon to provide supporting evidence Plan no 3 shows the distribution of these 4 people. Their reasons for use, being either to reach the hillside to the north of this area or to walk to the shops in Skewen.

- 6.3 Four persons who are still resident is a very limited number upon which to base a modification order particularly with the number of houses in the area.

Again the degree and extent of use is relevant given the density of houses in this area, one would expect a greater number of people wanting to have this path recognised as a public one.

Documentary Evidence

- 7.1 As a result of the National Parks and Access to the Countryside Act 1949, Parish Councils were given the task of identifying those routes they considered had public path status in their respective areas in each of their parishes. Four paths no longer shown in the Definitive map but in close proximity to this path were initially identified as possible public rights of way, but all deleted from the first draft edition of the Definitive map of 1955. Their removal was on the basis they were private streets and only serving residents to the rear of their properties. One such path was no.9 which is also shown on plan no.3, part of which coincides with the path A-B. However the parish card which was a brief written description of each of the paths identified by the parish Council stated, " From top of Woodland Road (joining path 8) along North side of All Saints Church and then turning South to join Dynevor Road and situate along rear of Woodland Road). Hand written notes were added on to the Parish Card stating "Private Street ! Access road to back entrances of houses" This was clearly an acknowledgment that the length running south of point B was in use for such residents.

Conclusion

- 8.1 There are a limited number of people in support who would say they use the path to reach the shops in Skewen and even they live in relative close proximity to the path. One person can access this path from the rear of their property.
- 8.2 The path from Woodland Road to Dynevor Road was initially considered by the Parish Council in 1955 as a possible public path but later rejected on the basis that it was a route used as a private street.
- 8.3 Evidence would have to be provided to show a greater number of people who could represent the public at large and not those who would use the path as a means of accessing the rear of their properties. On the current

evidence, only 4 persons are still resident .Consequently on the basis there are only 4 people who can support this claim it should be concluded this is insufficient to justify making a modification order.

Recommendation

That no modification order be made to recognise the path via the route B-E.

Reasons for the Proposed Decision

- (a) Only four people support this application which is too low a number to warrant making a modification order particularly given the number of houses in the area.
- (b) These four cannot said to represent the public at large given they live in relative close proximity to the lane.
- (c) In 1955 the former Parish Council initially considered this lane as a possible public right of way but later reversed that decision on the basis that it is used as a private street which reinforces (c) above.

Consultation

The item has been subject to extensive consultation

Appendices

Plan No.s 1-3 and appendices 1-5

List of Background papers

M08/17

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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.

APPENDIX 4

HISTORY OF THE COMPILATION OF THE DEFINITIVE MAP AND STATEMENT

1. The National Parks and Access to the Countryside Act of 1949 placed an obligation on all Councils to produce a Definitive Map and Statement. Parish Councils were given the task of surveying all routes they considered may have legal status. This resulted in the production of what has come to be known as the Parish Map (at the scale of 6" to one mile) and the all too often rather brief description of the path contained on small cards also known as the Parish Card. Some of the descriptions on these cards were more comprehensive than others but in combination with the paths' depiction in the "Parish Map", provide a useful record of what routes were considered to have public path status by 1954.
2. The information was passed to the former Glamorgan County Council who collated the information and produced the first Draft Definitive Map which in their opinion reflected routes considered to be public rights of way on 14th September 1954 which became the "relevant date" of the first Definitive Map published in 1970.
3. The legislation required that the information gathered should be the subject of a series of reviews, which would allow the public and landowners to make representations or objections to the inclusion or absence of routes in the various editions of these earlier Draft Maps. The result was the production of the initial Draft Map and Statement published in 1955. Objections to the inclusion or omission of routes were considered in 1956 and the results of those decisions were again subject to further objections which resulted in a further series of hearings which took place in the 1960s. The Provisional Map and Statement published in 1964 was the effect of those objections so determined. Once published, landowners were given another opportunity to object and these were heard in the Quarter Sessions in around 1968. The result was the production of the first Definitive Map and Statement published in 1970. The passing of the Countryside Act 1968 required all Councils to reclassify routes they had designated as roads used as public (R.U.U.Ps) into either footpaths, bridleways or byways open to all traffic. This resulted in the production of the

Draft Special Review of 1971, published in 1974, to which objections could be made. Those inquiries were mainly held in 1980 which when determined lead to the production of the current Definitive Map and Statement published in 1988.

APPENDIX 5

Trevelyan confirms that cogent evidence is needed before the Definitive Map and Statement are modified to delete or downgrade a right of way. Lord Phillips MR stated at paragraph 38 of Trevelyan that:

“Where the Secretary of State or an Inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh presumption that the right of way exists. Proof of a negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that is necessary to establish that a right of way that has been marked on a definitive map has been marked there by mistake.”