

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

22 September 2017

REPORT OF HEAD OF LEGAL SERVICES - DAVID MICHAEL

SECTION A – MATTER FOR DECISION

WARD AFFECTED: TAIBACH

**ALLEGED PUBLIC FOOTPATH COMMENCING ON THE PUBLIC
HIGHWAY NEAR GOYTRE PROCEEDING INTO CWM GWINEU
VALLEY – COMMUNITY OF TAIBACH**

Purpose of the Report

To consider the evidence in support of the application to recognise a path into the Cwm Gwineu Valley as a public right of way on foot as shown on the plan attached to this report.

Background

- 1.1 A set of eleven user evidence forms were submitted in 1981 prior the Wildlife and Countryside Act of that year coming into force. This occurred after the Special Review of the Definitive Map and Statement was completed and the latest edition of the map and statement published in 1988.
- 1.2 In 1991 and 1994 two further batches of user evidence forms were submitted taken together comprised 14, resulting in a total of 25. However no formal application was made and no notice served on any of the affected landowners. However under the provisions of the 1981 Act the Council is under an obligation to consider any evidence that alleges the existence of a public right of way. (Appendix 1)
- 1.3 Whilst this matter had remained outstanding for a considerable period,
 - a) No formal application was submitted and no notice served on the landowners and so this Council was not under any time constraint within which it has been obliged to determine the matter.

b) Irrespective of this, efforts were made to clarify precisely the alignment and extent of the route so claimed, which had not been clearly described in the user evidence forms nor shown on the plans attached. A series of interviews were therefore undertaken with a total of ten individuals in 1991, 1994 and two of the same persons again in 2002. However it was considered there was not enough information available to clarify which routes had been used by a sufficient number of people to be able to provide a report on this matter. Also there was a lack of responses from the remaining claimants to clarify the routes they used. As there were other more pressing formal applications, this claim was thereafter given a low priority.

1.4 The issue arose initially because access into Cwm Gwineu Valley in 1981 had become obstructed by a fence at point A as shown on the attached plan. The new owners of part of the land who had developed a riding school were responsible for closing the path and objected to the suggestion that such public rights of access existed over their land. The remainder of the land affected by the path between points F and G falls under the ownership of Forest Enterprise. In 1997 they purchased the freehold, but from as early as 1948 had leased the land from the Margam Estate. The question to consider is whether under Section 31 of the Highways Act 1980 (Appendix 2) there is sufficient evidence of uninterrupted use from 1961 - 1981 which can satisfy the presumption the way has been dedicated to the public by the relevant landowners

The Claimed Route

2.1 The claimed route commences on the public and vehicular highway which connects Taibach to Bryn. The path passes along the Cwm Gwineu Valley on the southern side of the stream. However its precise point of termination varies according to those who were interviewed, and unknown from the majority of those who initially supported the claim.

2.2 The valley contained a coal mine which opened after the Glen Hafod mine came into being, although by 1958 both were closed. There was a dramway on the northern side of the stream which was used to transport stone from a quarry shown at Point G and situated near Hafod Farm. Consequently local people have allegedly been accessing both routes along this valley as employees as well as for recreational purposes, notably on Sundays when the mine was not operating.

The Evidence (Documents)

- 3.1 An earlier survey was undertaken by what appears to have been Port Talbot Borough Council at the time Parish Councils were doing the same in approximately 1950. This was as a result of the National Parks and Access to the Countryside Act 1949 requiring all Council's to prepare their first draft Definitive Map and Statement. Appendix 3 includes the description of the path with a summary of the process implemented to ultimately produce the current Definitive Map and Statement.
- 3.2 The presumed 1950 survey undertaken by Port Talbot Borough Council, clearly describes the path being claimed as proceeding to the site of the reservoir. The path's length is quoted in two section totalling 270 metres. However as with all such descriptions of possible public paths in these 1950's surveys there is also a summary of the width and length, the total length is quoted as 350 metres. The measurement from the public highway to the western point of the reservoir is 300 metres to the eastern point of the reservoir and 330metres. Clearly this survey did not consider the path terminated at another public highway.
- 3.3 There was a resolution on the 15th October 1981 at a planning committee before West Glamorgan County Council, that this path be included as a right of way in the next review of the Definitive Map and Statement. Also that the landowner be asked to remove the obstruction at the start of the path which comprised a strand of barbed wire placed across the gap to the side of the gate.
- 3.4 The survey in 1950 was a preliminary review of possible public rights of way and yet the path was never included into any of the subsequent and draft editions of the Definitive Map and Statement that is those of 1955, 1964, the first Definitive Map and statement of 1970, nor the Special Review edition of 1971. Secondly, so far as this Council's records are concerned the status of this path was never investigated prior to the 1981 report to the planning committee.

The Evidence (User)

- 3.5 The three sets of user evidence forms did not identify on the attached plans to those forms the full extent of the claimed public path. Of those who were interviewed, four said they walked to Hafod Farm and joined Bridleway No. 35 (point G) near that farm. Periods of use being 1932-1976, 1944-1994, 1952-1991, 1953-2002).

One specified she walked as far as the reservoir from 1959-1991 (Point B), another said to the coal tip (Point D) for an undisclosed period, two stated they went as far as the former dramway wheelhouse (Point C)

from 1951 -1978 ,1951-1991 and another person said he went as far as the bridge, (approximately Point E) from 1951-1981. One of the above also said he walked to the easternmost part of the valley, to join Bridleway No. 35 (point H) from 1953-2002. There is a clearly a significant variation between the accounts as to precisely what extent of path is being alleged as a public one.

- 3.6 Most public paths have their points of termini on other public highways (including public rights of way). The exceptions would be if they were ending at a view point, or place of interest, neither have been cited in this claim. None said they walked as far as the reservoir simply as a destination in itself. One person had said that people also used to take picnics on a grassy area of the valley to the south of the former coal tip.
- 3.7 In addition consideration has been given to whether it is feasible to show that a circular walk has been established as a result of the claimants utilising the tracks on both sides of the stream. None of the people still resident had said that they used the path for this purpose.

Current Support

- 4.1 In 2008 between 14 and 18 letters were sent to those who were known to be still resident at the addresses provided at the time they submitted their user evidence forms. Only 3 responded and said they were willing to continue to support this claim. These three had identified their route as being via the southern side of the stream before crossing at Point E to join Bridleway No. 35 near Hafod Farm. However, only two of these three are now still resident at the addresses previously given. Of these two persons, one has said he walked to the eastern end of the valley 1953-2002 and both stated they went as far as Hafod Farm (1952-1991 and again 1953- 2002).
- 4.2 Part of the paths passes east of Point F into land under the ownership of Forest Enterprise. Section 31 of the Highways Act 1980 does not apply to crown land including Forest Enterprise land. However whilst this was only acquired in 1997 after the end of the relevant period 1961-1981, the definition of Crown land extends to land held in trust by a government department and to include land in which the Crown has an interest. Forest Enterprise have had an interest in the land from when it was leased in 1948. This being the case means that none of the user evidence could be taken into account in respect of the routes east of point F.
- 4.3 Natural resources have also commented that they find no evidence of any public path east of point F though they have dedicated this forest

area as Access land under the provisions of the Countryside and Rights of Way Act 2000.

- 4.4 It is possible for a landowner to dedicate a public right of way under common law but there would have to be evidence that they not only acquiesced to that use, but took positive measures to encourage and facilitate public use of a particular route. Forest Enterprise do not accept any such right has been in existence and two of the claimants acknowledge that it was difficult pass through their land. One claimant stated the land was difficult to cross particularly after the trees had been planted and another person also in support of this claim said there were only sheep tracks over the land but no well defined path. As such there is no evidence that the owners ever took measures to provide or encourage public use from the date the land was leased to what was the Forestry Commission in 1948.

Special User Group

- 5.1 The three batches of user evidence forms were completed by people who lived in two streets in the village of Goytre. A path that is only used by a limited number of people from one locality cannot be considered as representing the public at large. Appendix 4 cites the two cases which highlighted this issue.

Conclusion

- 6.1
- (a) Only three people were willing to support the claim in 2008, one of whom has now moved from the address given previously.
 - (b) Of those interviewed it is clear that people have not been making use of a single route which has been used by a sufficient number of people who can be relied upon today to support a modification order.
 - (c) The routes shown by all the other claimants in the plans attached to their user evidence forms, that is those who were not interviewed, show a path which terminates some 50 metres east of the reservoir and via the southern side of the stream. So that according to their evidence the path does not join another public highway nor a place of interest.
 - (d) Those who supported the application all come from two streets in the one village. It is therefore questionable whether the evidence does reflect use by the public at large.

(e) Lastly, given Forest Enterprise and their predecessors have had an interest in the land since 1948, it cannot be subject to the provisions of s31 of the Highways Act 1980 from this date. There is no one who today can provide support for a minimum period of 20 years prior to 1948.

6.2 There is insufficient support for the claim nor has one route been clearly defined. There is no provision within the Wildlife and Countryside Act 1981 to claim the right to wander over land. Case law has established that only in limited circumstances can there be a right to deviate over a short distance where there are several tracks, but this does not remove the necessity to show clearly established usage of one route that can be defined with some precision. It is also questionable whether use by persons living in only two streets can be said to reflect use by the public at large. Consequently it is considered this claim should be rejected.

Appendices

1-4 and a plan of the paths

Recommendations

That no modification be made for the alleged public path/s situated at Cwm Gwineu Valley.

Reasons for proposed Decision

There is insufficient support for the claim nor has one route been clearly defined. There is no provision within the Wildlife and Countryside Act 1981 to claim a right to wander over land. Case law has established that only in limited circumstances can there be a right to deviate over a short distance where there are several tracks, but this does not remove the obligation to show clearly established use of one route which can be defined with some precision. It is also questionable whether use by persons living in two streets can be said to reflect use by the public at large. Part of the path passes over Crown land which is exempt from being subject to the provisions of s31 of the Highways Act 1980. Consequently it is considered this claim should be rejected.

List of Background Papers

M08/26

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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

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. In their opinion this 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 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.

Description of Path from the presumed 1950 Survey

Commencing on the Goytre to Bryn highway at a wooden stile the bears generally south – east to the site of the Cwmgwinen Reservoir. Initially skirting the marshy area of the pistl (spring) the route is generally over a soil surface which is stone based in some sections. The route crosses a second wooden stile approximately 70 metres from its commencement and is bounded by barbed wire fence on its southern side and by the nant Cwm-y-garn on its northern side. Path passes through a gap (intended for a field gate) in a barbed wire fence after approximately 200 metres.

Length 350 metres and width 1.5 metres

APPENDIX 4
SPECIAL USER GROUP

- (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 can not 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.