

**ENVIRONMENT AND HIGHWAYS
CABINET BOARD**

REPORT OF HEAD OF LEGAL SERVICES – DAVID MICHAEL

13TH NOVEMBER 2014

SECTION A – MATTER FOR DECISION

WARD AFFECTED: GLYNCORRWG

**ALLEGED PUBLIC BRIDLEWAY – AVON STREET TO BRIDLEWAY
18, GLYNCORRWG**

Purpose of Report

To consider an application for a public bridleway from Avon Street to Bridleway 18 Glyncorrwg.

Background

- 1.1 An application was submitted in 2008 and supported by 32 persons who claim a public bridleway exists along the route shown on the attached plan at Appendix 5. Details of how the matter was processed are detailed in Appendix 1. Of those who submitted user evidence forms, there are 25 persons, who themselves have stated they have ridden horses via this way for at least 20 years. All have said they have also walked the path.
- 1.2 The basis of the application is that through continuous and uninterrupted use, there is a presumption the way has become dedicated to the public under Section 31 of the Highways Act 1980. The relevant extract of which can be found in Appendix 2.
- 1.3 This Council is under an obligation to consider the application under the provisions of the Wildlife and Countryside Act 1981, the relevant extract being included in Appendix 3.
- 1.4 In addition to considering the tests under Section 31 of the Highways Act 1980, it is also incumbent on the Council to have regard to the possibility that presumed dedication of the way has occurred under Common Law. The tests for which are included within Appendix 4.

- 1.5 In order to consider whether the way has been the subject of a presumed dedication, it is necessary to determine the minimum period of twenty years, known as the relevant period. This is calculated by counting retrospectively from the first date at which the alleged right of way was called into question. If however, the date of the application precedes this date, then it is the application date which can be said to call into question the existence of the alleged public path.
- 1.6 One point of termination of the path is at Avon Street and is currently obstructed by a caravan and car. To the rear of both is a padlocked gate, with only sufficient room on the side to enable a person on foot to pass. As such, the route cannot be used by equestrians.
- 1.7 A site visit on the 21st October 2011 revealed a caravan only but on the 7th August 2013 a car had been parked alongside the caravan containing a note stating “permissive footpath” and denying a footpath exists. The path passes diagonally up slope immediately after passing through the gate and is only wide enough to permit one person to walk. However on an accompanied site visit, one of the Claimant said the path used to be wide enough for two people to ride alongside each other. At one point the slope on the uphill side of the path has partially collapsed which makes progress even on foot, difficult.
- 1.8 Nine people were interviewed; eight by telephone, two no longer wished to support the claim and another said he has not ridden the path at all. Four on providing further details, stated they did not ride the path for the length of time quoted in their user evidence forms. Whilst those forms reflected use of the way until 2008, after being interviewed said their use ended in 1990, 2000, 2006, 2003 or 2005. Consequently the accuracy of the remainder of the information contained in the user evidence forms may not be reliable.
- 1.9 According to the Principal Claimant, the caravan was placed across the entrance to the path in 2011 but the gate appeared in about 2005 or 2006. However, another supporter said the caravan first appeared in 2005 or 2006 but could not recall when the gate was installed. Another who said he ceased using the path somewhere between 2003 and 2005 said he does not recall seeing a gate or caravan. Consequently it is likely that either the caravan and/or gate first blocked the path in or around 2005 and so this date can be taken to be the occasion when the alleged existence of the public path was first called into question. Therefore the relevant period would be 1985-2005.

- 1.10 Even assuming the information in the other user evidence forms may not be accurate, given the number of supporters, it is fair to conclude that the way has been in use throughout this twenty year period on foot and on horseback.

Crown Land

- 2.1 The land over which the claimed bridleway passes is under the ownership of Natural Resources Wales (until recently the Forestry Commission). It was conveyed to the Minister of Agriculture, Fisheries and Food in 1963 from the Dunraven Estate. In effect, it is Crown land and unless a special agreement has been made between the Crown and the Council under the Highways Act 1980, Section 31 of the same Act (Appendix 1) does not apply (nor even to land held in trust by the Crown). There is no evidence of any special agreement under Section 327 of the Highways Act 1980. Consequently, there cannot be a presumption of dedication over this land under Section 31 for the period 1985-2005.
- 2.2 The implication therefore is that for Section 31 of the Highways Act 1980 to apply, the applicant would have to show there was presumed dedication prior to the acquisition of the land in 1963 by the Minister of Agriculture, Fisheries and Food. Therefore the relevant period for this purpose would be 1943-1963. There is no evidence of any use earlier than 1956 and so the application of Section 31 must be dismissed.

Common Land Dedication

- 3.1 The Planning Inspectorate's guidelines on "Definitive Map Orders: Consistency Guidelines provide advice that under Common Law there can be a presumption of dedication of a way over Crown land.
- 3.2 There are two distinct elements that are required to allow dedication under Common Law:
- (i) There must be positive action on behalf of the owner that clearly shows an intent to dedicate;
 - (ii) The public must use the land in a manner consistent with the intended use of dedication.

Consequently, mere use of the way with the presumed inference that the path is dedicated would be insufficient.

3.3 Since approximately 2005, a gate was placed across the path making it impossible for equestrians to continue. Natural Resources Wales have stated they have no records of the locked gate nor do they consider it is one they installed but say it could be a gate installed during an earlier time. They do not hold the key, nor have they removed the gate.

3.4 In summary, Natural Resources Wales have stated:

- (i) They have not managed the route as if it were a public right of way;
- (ii) It is not maintained by them and do not apply the tree safety inspection regime appropriate for public rights of way;
- (iii) They do not recognise use of the route has been by right, nor do they have any records of use by equestrians or bicycles. (They acknowledge members of the community have used the route as a “desire” line to reach Bridleway No. 18).

As landowners their position is that they do not nor have ever taken any measures to show any intent to dedicate the path as a public one. Consequently, it cannot be presumed that the present owners have ever taken any proactive measures to encourage or enable public use of the path.

3.5 Consequently, even though it is acknowledged the path is in use, of itself use under Common Law, as already indicated, is not sufficient to raise the presumption the way has been dedicated.

Conclusion

4.1 It is evident neither a statutory presumption of dedication nor under Common Law can be inferred and so even though the application has been well supported, for the reasons already given, it cannot be concluded that the way has been dedicated to the public.

Appendices

Appendices 1,2,3,4 and Plan attached at Appendix 5 to this report.

Recommendations

That no Modification Order be made and so the application be refused.

Reasons for Proposed Decision

It cannot be concluded that the way claimed has been dedicated to the public because neither a statutory presumption of dedication nor under common law can be inferred.

List of Background Papers

Officer Contact

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COMPLIANCE STATEMENT

ALLEGED PUBLIC BRIDLEWAY – AVON STREET TO BRIDLEWAY 18, GLYNCORRWG

(a) Implementation of Decision

The decision is proposed for implementation after the three day call-in period.

(b) Sustainability Appraisal

Community Plan Impacts

Economic Prosperity	..	No Impact
Education & Lifelong Learning	..	No Impact
Better Health & Wellbeing	..	No Impact
Environment & Transport	..	No Impact
Crime & Disorder	..	No Impact

Other Impacts

Welsh Language	..	No Impact
Sustainable Development	..	No Impact
Equalities	..	No Impact
Social Inclusion		No Impact

(c) Consultation

This item has been subject to external consultation

APPENDIX 1

- (a) The applicant was unable to provide information on the ownership of the land so notices addressed to the owner/occupier were posted on site.
- (b) The application as with any other is subject to its level of priority at the time of its making. As such it could not be processed until October 2011.
- (c) A site visit was undertaken on the 21st October 2011 with the letters being sent in December 2011 and January 2012 to nineteen claimants requesting further information.
- (d) Only four responded; one said he had no knowledge of the claim; one was no longer interested; one had not ridden the route since 1990 and another had not used the route since 2001. Therefore due to the inadequate response and the lack of evidence, it was not possible to evaluate the validity of the application.
- (e) The principal claimant did not respond until April 2012 and did not attend a pre-arranged interview the following year in August 2013.
- (f) A further fourteen letters were sent to Claimants on the 2nd and 4th May 2012, but only four people responded, one of whom stated he had not ridden the path.
- (g) Clarification was sought from the Forestry Commission in May 2012 as to whether they could prove they have title to the land and on what basis they object. No clarification was received at that time.
- (h) In addition a further nine letters were sent to claimants on the 17th May 2012, 19th November 2012 and 16th July 2013. One claimant responded and was interviewed. A further email to the Forestry was sent on the 1st August 2013 to which a response was received on the 12th September 2013 showing their land ownership of the path.

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

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.

DEDICATION UNDER COMMON LAW

No minimum period of use is required, but the claimants must show that it can be inferred by the landowners conduct, that he or she had actually dedicated the route. User of right, is not of itself necessarily sufficient. Under statute, twenty years, if proved to have been uninterrupted will be sufficient to show presumed dedication.

Under common law it is still possible that use was due to the landowners tolerance rather than because that landowner had intended to dedicate. Consequently there needs to be evidence that the landowner (or owners) for whatever period is being considered, acquiesced to that use and took measures to facilitate public use.

Obviously this means the landowners have to be identified and evidence that they wished to have the route dedicated to the public.

No minimum period of use is required, but the claimants must show that it can be inferred by the landowners conduct, that he or she had actually dedicated the route. Use is not of itself necessarily sufficient as opposed to section 31 of the Highways Act 1980 where after twenty years, if proved to have been uninterrupted will be sufficient to show presumed dedication.

Under common law it is still possible that use was due to the landowners tolerance rather than because that landowner had intended to dedicate. Consequently there needs to be evidence that the landowner (or owners) for whatever period is being considered, acquiesced to that use and took measures to facilitate public use.

This means the landowners have to be identified and that there is evidence to show they wished to have the route dedicated to the public.

APPENDIX 5 - PLAN

