

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

14 September 2018

Report of the Head of Legal Services – C.Griffiths

Matter for Decision

Ward Affected: Crynant

**Alleged Public Footpath from Main Road to Woodland Road,
Community of Crynant**

Purpose of Report

- 1.1 To determine an application which alleges a public right of way on foot which passes alongside the Crynant Rugby Football Club and playground between Woodland Road and Main Road as shown on Plan No. 1.

Background

- 1.2 The claim was made in 2012 and supported by 34 people, who at that time were alleging an average of 29 years uninterrupted use.
- 1.3 The provisions of the Wildlife & Countryside Act 1981 places an obligation on this Council to keep its record of public rights of way up to date. The Council is also obliged to investigate any evidence that may show such a right exists. In such circumstances there are two tests which should be considered:-
- (a) Is it reasonable to allege such a public right exists and/or
 - (b) Whether on the balance of probabilities such a right exists.

The relevant extract from the provisions of the Wildlife & Countryside Act 1981 can be found at Appendix 1.

The Twenty Year Relevant Period

- 2.1 Given the evidence in support of this application is based on long term use; the provisions of Section 31 of the Highways Act would also apply. These provisions can be found at Appendix 2. Consequently the applicant must show there has been a minimum period of 20 years uninterrupted use counting retrospectively from the date the possible existence of the right was first called into question or alternatively from the date of the application, whichever is the earlier. Such a dedication can only be presumed in the absence of any evidence that refutes the existence of this right.
- 2.2 The date of the application is 13th September 2012 and given there is no evidence that the use of the path was challenged, the relevant 20 year period is from 1992 – 2012.

As the application is based on a presumed dedication of a minimum 20 year period, then the applicant has to establish that it is “reasonable to allege such a right”, this being a less onerous obligation than having to show one exists on the balance of probability.

This test was considered in detail in two cases which are explained in Appendix 3 by reference to a Planning Inspectorate decision letter. (reference appeal decision Row/3155940.)

Description of the Route

- 3.1 There is a 1.5m wide footway running along the northern side of a 5 metre wide vehicular track, with a 0.5 metre wide grass verge running parallel to this track on its southern side. This extends from point A-C. At point C there is a steel barrier extending halfway across the width of the road. From this point and continuing eastwards the vehicular road no longer exists but is a 5.5m wide swathe of grass extending all the way to Main Road with the 1.5 metre footway continuing along the northern side of this “lane” also extending to Main Road with a bus shelter at point D. The entire length of this track is approximately 173 metres.
- 3.2 At point B, there is access for vehicles to the Community Centre and on the opposite side of the track close to point C is the Crynant Rugby Club Building with a children’s playground alongside. The rugby fields are situated in the areas marked as points A₁ and A₂.

- 3.3 According to four people, the current layout replaced a rough vehicular road which is shown on earlier ordnance survey plans as 7 metres wide from A-D, with no structures impeding access. The work that was done to improve this earlier road was thought by two people to have been completed at least 10 years ago although another suggested it was in the 1990's. The applicant however estimates it was done around the time of the last Local Government Reorganisation in 1996. The Local Member has been told the work was initiated by a previous Councillor for Crynant. In any event this Council has no written record of the when this road was improved and so it is not possible to say precisely who organised nor carried out the work.
- 3.4 The issue to be determined is what length and width of path should be considered as having been subject to this presumed dedication throughout the relevant period 1992- 2012 as required by the Highways Act 1980.
- 3.5 Prior to 2006/2007; the wider track had been in existence. Nonetheless the current width of "footway" being 1.5 metres in width and which runs parallel to this former road between points C and D, was available for use from 1992. The width of road between points A and C has not changed since 2006/2007, even though a tarmacked pavement has been installed alongside the road (A-C).

As such the width of path that has existed since 1992 includes the whole of the width between points A-C and that 1.5 metre length of path between points C-D.

- 3.6 The application only includes the 1.5m wide path A-D but the actual user evidence in support of the application, includes the use of the greater width between points A-C.

The Evidence

- 4.1 Seven people have responded to requests to provide additional information to that contained in their user evidence forms. The principle reason for seeking further information is to establish the reasons for using this path given initial enquiries suggested it was used primarily as a means of accessing the Rugby Club and the rear entrance to the Community Centre. If so, then this would reflect use to private premises as would anyone visiting other office buildings or commercial premises via a private lane.

- 4.2 Five stated they used the lane to gain access to the Rugby Club, two of whom also accessed the Community Centre via this lane. However, two stated they used this path to take their grandchildren for walks, one of whom said on some occasions to use the playground but also to gain access to the fields from point A as part of a circular walk. Two also said it was used to take their dogs for walks, two to visit either relatives or friends, one walking from Woodland Road to Heol Berllan and the other person walking from Heol Berllan to Woodland Road. Two including the applicant indicated many people living in Woodland Road, Llys Dulais, Heol Y Graig and Bron Allt walk their young children to the Primary School via this path, located at School Road and shown on Plan No. 2. The applicant wished to point out there is a pedestrian crossing located at point D with a better view of oncoming traffic than via the alternative route which would be via Woodland Road (running parallel and to the south of the path under consideration). However no evidence has been provided from any of those persons living in the streets mentioned above. In addition, due to the location of the bus stop at point D one person stated that many people will use the path to reach this stop and when returning home.
- 4.3 The Local Member has indicated that the path is used daily by many people and would herself use the path every Saturday during the rugby season. Additionally a representative of the Crynant Rugby Club in a telephone conversation stated that the club are in agreement with this report's recommendation.
- 4.4 The improvement work to the path has evidently made access more convenient and to the benefit of the public as well anyone visiting the rugby club or using the rear access to the Community Centre on foot.
- 4.5 There is also street lighting located along the length of this path. One lamp is alongside the path at the rear of the Crynant Rugby Clubhouse. The remaining three are located between points C and D. The lighting column located mid-way between points A and C is estimated to have been installed in 1970 with the current lanterns replacing earlier ones in 2012. The remaining three steel columns east of point C to point D were installed in September 2014. The initiative to install these newer lighting stands was funded by an environment project (No. C16600).
- 4.6 The Parish Councils Act 1957 authorises local Councils to install lighting on land containing public ways. This can provide supporting evidence of the existence of a public path if it is known that the lighting was placed

on or alongside a path under this Act. Whilst both sets of lights were only installed in more recent times, and therefore not under this Act, it is clear those and in particular the three installed in 2012 were intended to assist the public wishing to use the path, given the path's improvement works undertaken previously.

- 4.7 Ownership of the path is unknown, no one has come forward to claim any interest in the land and therefore no issue raised with any of the works undertaken.
- 4.8 Those who claim to have made use of this path live in a wide range of locations in Crynant and their approximate locations of their homes are shown in plan no.3. Consequently the use of the path can be said to reflect use by the public at large and not confined to a limited number who live in close proximity to the path. Appendix 4 explains the issue of Special User Groups.
- 4.9 The user evidence establishes there has been sufficient long term uninterrupted use of this path other than those using the path to access the adjacent Community Centre, Rugby Club and playground.

Width of path to be considered

- 5.1 **A-C as previously shown in the 1962 edition of the Ordnance Survey**
- 5.2 Prior to the improvement work the path was wide enough for vehicles and its width varied from a maximum of 5 metres at point A to 3.5 metres at point C. There was some variation in the alignment between the earlier path with that shown today, but with some overlap to include the current "footway" running alongside the vehicular road.

C-D also shown in the 1962 edition of the Ordnance Survey

- 5.3 This path varied from a width of 3.4 metres at point C to a maximum of 5.8 metres although reducing to a minimum of 1.6 metres. Whilst its alignment was slightly different to the current position of the "footway" it can be said to be de-minimus as there was some overlap with its current position.
- 5.4 In light of the above, the minimum width that can be said to have been available from 1992-2012 is that quoted above for the two sections. That is to vary between 3.5 metres and 5 metres for the length A to C

and to include the “footway” and only the “footway” between points C and D at a width of 1.5 metres.

Dedication under Common Law

- 5.5 The only means by which a greater width could be considered is if the path could be said to have been dedicated under common law. This would not require a minimum period of 20 years, but there must be actual evidence of the landowner taking steps to dedicate the way. There can be no presumption that he or she did so. However, the landowner is unknown and therefore it is not possible to infer the actions taken previously by persons unknown.

Recommendation

That a modification order be made to recognise a public footpath between points A and D at the widths specified in paragraphs 4.2 and 4.3.

Reasons for the Proposed Decision

- (a) There is sufficient use of the path throughout the relevant period, in addition to using the way to access the Rugby Club and Community Centre.
- (b) Those who make use of the path can be said to represent the public at large.
- (c) The installation of street lighting and the relatively recent improvement works were evidently done to improve access for all members of the public.

Consultation

The item has been subject to extensive consultation.

Appendices

Plans 1 – 3

Appendices 1 – 4

List of Background Papers

M08/34

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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 any way 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

In *R v Secretary of State for England ex parte Bagshaw and Norton* (1994), it was set out that there were two tests, one of which should be satisfied before an Order is made.

TEST A: Does right of way subsist?

This requires clear evidence in favour of public rights and no credible evidence to the contrary.

TEST B: Is it reasonable to allege that a right of way subsists?

If there is a conflict of credible evidence but no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then a public right of way has been reasonably alleged.

The standard of proof for the “subsists” test is the balance of probabilities. The meaning of “reasonably alleged to subsist” in cases based on user evidence was clarified in the case of *R -v- Secretary of State for Wales ex parte Emery* (1998). In this judgement, Lord Roch stated: “Where an application for a modification order produces credible evidence of actual enjoyment of a way as a public right of way over a full period of 20 years, and there is a conflict of apparently credible evidence in relation to one of the issues which arises under Section 31 of the Highways Act 1980 then the allegation that the right of way subsists is reasonable, and the Secretary of State should so fund, unless there is documentary evidence which must inevitably defeat the claim either for example by establishing incontrovertibly that the landowner had no intention to dedicate or that the way was of such a character that use of it by the public could not give rise at common law to any presumption of dedication.

APPENDIX 4

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 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.