

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL
REPORT OF THE HEAD OF LEGAL SERVICES
REGENERATION AND SUSTAINABLE DEVELOPMENT
CABINET BOARD

12th April 2019

MATTER FOR DECISION

WARDS AFFECTED: GLYNEATH

**ALLEGED PUBLIC FOOTPATH FROM EARLSFIELD CLOSE
TO GLYNEATH LIBRARY (A-B) COMMUNITY OF GLYNEATH**

Purpose of report

- 1.1** To decide this Council's position in respect of the modification order which has been made to recognise the path A-B as a public right of way on foot shown on the plan attached to this report.

Background

- 2.1** On the 22nd June 2018 the Regeneration and Sustainable Development Cabinet Board rejected an application that was made to register this footpath as a public right of way .(A copy of that report is also appended at the end of this report).
- 2.2** The applicant was served notice on this decision on the 27th June 2018 and exercised his right to appeal to the Welsh Ministers against this Council.
- 2.3** The appointed Inspector determined that appeal on the 4th March 2018 and allowed the appeal.
- 2.4** The Inspector considered the evidence and concluded a modification order could be justified on the basis that it is reasonable to allege the claimed route is a public footpath.

- 2.5 The Inspector did not conclude that a public path exists but that there was sufficient evidence to justify making a modification order. Once an order is made it is open to those who do not agree that a public path exists to object to the modification order. In the event that objections are raised the evidence can be tested at a public inquiry. The applicant and objectors with their respective supporters can then provide their written and verbal submissions at that Inquiry.
- 2.6 In January 2019 the Planning Inspectorate produced their own updated guidance on procedures for considering objections to modification orders under Advice Note No.1. The Inspectorate acknowledged that some orders will be made by Local Authorities that they do not support and that in such circumstances they may object or take a neutral or supportive position.

Consequently this Council needs to decide whether in the light of this appeal it wishes to either:-

- (a) Support the Modification Order
 - (b) Object to the Order
 - (c) Take a neutral position
-
- (a) To support the Order
To now support the order would contradict the Council's earlier decision. It will require the Council to actively promote the Order by compiling signed statements, encourage the authors of those statements to act as witnesses at any future inquiry and produce the necessary bundle of evidence. Ultimately this Council would be responsible for trying to establish such a public footpath exists.
 - (b) To object to the Modification Order
To do so would also require compiling signed statements from any person who may wish to support an objection which is likely to be from the owner of no.8 Earlsfield who had objected to the application prior to the claim being reported to this Board. Again the Council would be responsible for providing a bundle of evidence to show the path could not have been subject to the presumed dedication as claimed.
 - (c) To take a neutral position
If the Council decided it did not wish to object or promote the order it would result in the applicant and objector/s making

their own representations. The Council would assist the Inspector at any public inquiry by providing the venue, advertising the date of the inquiry, make available all the documents which were considered when the matter was determined by the Board and provide any other facilities as necessary.

- 2.7 The Council made its decision and has no obligation to alter its position. It has already acted in a quasi-judicial manner by considering the evidence, including the comments made by the opposing parties to that evidence.

Conclusion

- 2.9 The Council having determined the application on the 22nd June 2018, and therefore fulfilled its statutory obligation has no obligation to be actively involved in either promoting or objecting to the Modification Order it has now been told to make by the Planning Inspectorate. It is therefore recommended that the Council take a neutral stance but assists the Inspector in facilitating an Inquiry in the event an objection is made to the order.

Recommendation

This Council informs the Planning Inspectorate it wishes to take a neutral stance in any subsequent Public Inquiry.

Reasons for the Decision

It is noted that the appeal was allowed and that the Authority have been directed to make a modification order. If there are objections to this order, it is reasonable and consistent with its previous decision, that this Authority take no further proactive part and only assist the Inspector at any subsequent public inquiry.

Implementation

This decision is for immediate implementation.

Consultation

The appeal decision was forwarded to all the local members and affected landowners.

Appendices

Plan

List of Background Papers

M08/64

Officer Contact

Mr Mike Shaw – Principal Solicitor – Litigation
Tel No. 01639 763260 Email:m.shaw@npt.gov.uk