



Cyngor Castell-nedd Port Talbot
Neath Port Talbot Council

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

Regeneration and Sustainable Development and Cabinet Board

5TH February 2021

Report of the Head of Legal and Democratic Services – Mr Craig Griffiths

Matter for Decision

Wards Affected: Seven Sisters

Report Title : Alleged public footpath via the railway footbridge from No. 20 to A4109

Purpose of the Report:

- 1.1 To determine an application for a footpath Modification Order to recognise the public's right to use a footbridge over the railway in the centre of Seven Sisters marked A – B on the attached plan No. 1.

Executive Summary:

- 2.1 The Board is under a duty to make a decision by the impartial analysis of the evidence before it.
The report considers the legal tests that have to be applied before looking at the evidence in support of the claim, as well as any other contrary evidence. Additional information is

provided as to why the public say they use the footbridge in the appendices and reasons given as to why it is recommended a modification order should be made.

Background:

- 3.1 The application has been supported by 23 people who allege an average of 48 years use of the bridge, 16 of whom claim to have used this bridge for a minimum of 30 years.
- 3.2 The footbridge is owned by Network Rail who have temporarily closed the bridge due to safety concerns for the public. Network Rail have stated they 'understand this to be a private crossing without rights to the public but with the obligation to the railway as its provision under the deed'. The deed referred to was made in 1986 between the Neath and Brecon Railway Company and Neath Rural District Council and Others.
- 3.3 Network Rail have indicated that they intend to refurbish the bridge rather than remove it, although there is no indication as to when this would occur.
- 3.4 The bridge has been included in the Schedule of Buildings of Local Importance dated April 2019, as part of the Local Development Plan 2011 – 2026. It is listed under the section on the Dulais Valley but this in itself does not afford the bridge any legal status or protection for the purposes of the application.

The Law:

- 4.1 An application is based on the provision of Section 31 of the Highways Act 1980, which presumes the owner of the land or in this case; the structure, has been dedicated to the public due for a minimum of 20 years uninterrupted use. In addition, it is alleged that there is no evidence of any contrary intention

during that period to dedicate the way as a public one. The relevant extract of Section 31 is shown in Appendix 1.

4.2 The twenty year period referred to above is calculated by either:

(a) Establishing the date when the path was first obstructed which has the effect of calling into question the existence of the alleged public right or:-

(b) The date of the application itself.

Of the two possible dates, it will be the earlier which is taken to represent the end of the twenty year period.

In this example, the application was made on the 19th July 2019, and the closure of the bridge occurred earlier the same year, consequently, the relevant twenty year period is 1999 – 2019.

4.3 Under common law, it is possible to infer a public path has been dedicated whether that use is more or less than a period of twenty years. However, there needs to be evidence of a positive expression by the owners that they have dedicated the way, rather than a lack of any contrary evidence.

4.4 Section 53 of the Wildlife and Countryside Act 1981, places an obligation on this Council to consider any evidence that shows a public path exists. Section 53 is shown in Appendix 2. The Council needs to be satisfied that the evidence is sufficient and if so, should make a modification order which has the effect of amending the Council's record of its public paths, namely the Definitive Map and Statement.

4.5 The basis for making a modification order is established by the application of the following tests:

- (a) That this Council is satisfied that a public right of way exists on the balance of probabilities.
- (b) Or that this Council can be satisfied that it is reasonable to allege a public right of way exists

Under a) the test may be satisfied on the balance of probabilities where it can be shown that it is more likely or probable than not that the relevant test is made out from all the evidence before the Council.

Under b) however, the Council only needs to be satisfied that it is reasonable to conclude that a public way does exist. This decision can however only be made if Network Rail are unable to establish a contrary intention to dedicate a public path during the relevant twenty year period. The case law which has clarified the distinction between these two tests is included in paragraph (a) to Appendix 3.

- 4.6 The creation of a public right of way over an accommodation bridge running over a railway line could also be held incompatible for the purposes and objects of a railway company if it prevented the widening of the rails. However, in this case, nothing has been submitted by Network Rail that such a widening will take place at this location. Paragraph (b) in Appendix 3 cites the two relevant cases.

The Evidence

- 5.1 It is evident that the bridge has been in use for many decades, for example, 9 people claim to have been walking over the bridge for at least 60 years. 6 people have been interviewed, including the applicant who is also the Local Member to obtain further details of their use and knowledge of the bridge and surrounding area. One of the questions raised for example, is why the public would opt to use this bridge when there is a road bridge some 60 metres to the south west which passes over the

railway. The varying accounts by these people can be found in Appendix 4.

- 5.2 Footpath No. 29 leads directly to the base of the steps of the footbridge and so there is an implication that the public would continue to or from this footpath via the footbridge as the opposite end of the footbridge leads directly to the pavement alongside the A41069.
- 5.3 In May 1984, a letter was sent to the former West Glamorgan County Council from the then British Rail. It stated that there was an intention to undertake work to repair the bridge. In that letter, the area Civil Engineer stated, 'the former station footbridge at Seven Sisters carries a public right of way over the railway and has recently been proposed for heavy repairs'. This is an acknowledgement that at that time the public had been making use of this bridge, as alleged by 9 of the supporters to this application. These 9 claim to have used the bridge from at least 1959, which is for over 60 years.
- 5.4 The letter also went on to explore the possibility of demolishing the bridge but with the offer of providing an alternative via a level crossing. Consideration was then given to the alternative via the road bridge some 60 metres away via C – D. Consequently, this is a clear acknowledgement that to close the path over the bridge would require a separate alternative route and in this case, an additional one to the existing road bridge.
- 5.5 The other issue with such a route being claimed in villages and towns is to examine whether the path can be said to be in use by the public at large rather than a limited group of people who happen to live in close proximity to the path and for whom it provides a useful shortcut. Such users would be classed as a special user group who whilst they may not access the path directly from their houses, are the only ones who would use the path rather than those who live further away. Plan No. 2 plots

the distribution of where the supporters to the claim reside, which still excludes one person as he lives outside the area shown by this plan.

- 5.6 Appendix 5 provides a summary and includes two test cases which dealt with this concept. Given the wide distribution of the supporters to this application, it is clear that the path can be said to have been used by the public at large. In addition, the reasons given for using the path are varied as contained in the accounts shown in Appendix 4. In order to follow the routes as specified by some of these residents, a more detailed street plan has been appended at the end of Appendix 4 as plan number 3.
- 5.7 Network Rail indicated that they understand the deed of 1896 made the bridge a private crossing but a copy of that deed has not been provided and so it is not possible to comment on what impact this deed would have on the validity of this claim. However, Network Rail have been asked to provide any evidence they consider would affect this Council's decision and so it can only be assumed that there is nothing further they wish to submit at this stage.

Conclusion :

- 6.1 Whilst the accounts by the supporters to this application span a period well in excess of the relevant period of 1999 – 2019, none ever recall the bridge being closed or having any notices which indicated the bridge was not available for public use.
- 6.2 The user evidence alleges continuous use throughout the relevant period and no evidence has been forwarded to show there was any interruption during the period 1999 – 2019.

- 6.3 No evidence has been submitted to show any contrary intention to dedicate the way over the bridge during this period.
- 6.4 It is also evident from the accounts by the witnesses that the location of the bridge does provide a shortcut between various locations either side of the railway and that the road bridge in itself would not provide such a convenient alternative.
- 6.5 The user evidence also shows longer use than that required under section 31 of the Highways Act 1980. The implication of the use by 9 individuals for a minimum of sixty years, extending back into the late 1950's and early 1960's, is that British Rail would have been aware of its use after the passenger service ceased to operate in 1962. Their letter of March 1984 establishes this fact and suggests the route had already been expressly dedicated to the public. This could be taken as evidence of a dedication under common law and adds further weight to the application.

Financial Impacts :

- 7.1 There are no financial impacts associated with his report.

Integrated Impact Assessment :

- 8.1 A first stage impact assessment has been undertaken to assist the Council in discharging its legislative duties (under the Equality Act 2010, the Welsh Language Standards (No. 1) Regulations 2015, the Well Being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016. The first stage assessment has indicated that a more in-depth assessment is not required. A summary is included in appendix 6.

Valleys Communities Impact :

9.1 No implications

Workforce Impact :

10.1 No implications

Legal Impacts :

11.1 It is necessary to discharge the duties set out under the Highways Act 1980, the Wildlife and Countryside Act 1981 and the case law, the relevant sections of which are included in appendices 1, 2 and 3 respectively.

Risk Management Impacts :

12.1 There are no risks associated with implementing the statutory duties outlined above, provided the relevant legislation is applied correctly and this Council comes to its decision in an impartial way.

Consultation :

13.1 The standard list of those to be consulted included for example, the Ramblers Association and their local representative, the Byways and Bridleways Trust, Open Spaces Society and Natural Resources Wales as well as the Community Council and the owners of the foot bridge referred to above.

Recommendation :

14.1 That a Modification Order is made under Section 53 of the Wildlife and Countryside Act 1981 to register the path shown A – B on plan No. 1 and of no objections are received to confirm the same as an unopposed order.

Reasons for the Proposed Decision

15.1 There is sufficient evidence that the footbridge has been subject to a period of uninterrupted use for a minimum period of 20 years. This satisfies the provisions of section 31 of the Highways Act 1980 which presumes the way has been dedicated as a highway to the public.

Implementation of a Decision :

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

Appendices :

- 1 Explanation of the relevant provisions from the Highways Act 1980
- 2 Extract from the relevant provisions of Section 53 of the Wildlife and Countryside Act 1981
- 3 Case law referred to in paragraphs 4.5 and 4.6
- 4 Summary of the User Evidence from those interviewed
- 5 Explanation of a “Special User Group”
- 6 Impact Assessment – First Stage
Plans 1 – 3

List of Background papers

None

Officer Contact :

Mr. Michael Shaw – Principal Solicitor – Litigation

Tel No. 01639 763260

Email – m.shaw@npt.gov.uk