

RIGHTS OF WAY COMMITTEE - 17TH MAY 2004

SUBJECT: APPLICATION FOR A MODIFICATION ORDER TO AMEND THE MONMOUTHSHIRE COUNTY COUNCIL DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY IN RESPECT OF ADDING A PATH IN THE COMMUNITY OF BEDWAS AND MACHEN

REPORT BY: DIRECTOR OF ENVIRONMENT

1. PURPOSE OF REPORT

1.1 To consider an application to add a path to the definitive map and statement

2. SUMMARY

2.1 There is a duty to maintain the definitive map and statement. Members are asked to consider the additional information in support of and against the claim for a right of way at the gable end of Old Rectory Cottage, Bedwas.

2.2 Members are asked to note that better copies of the photographs will be made available on the date of the committee. Any Members wishing to see these in advance should contact the Rights of Way Section.

3. LINKS TO STRATEGY

3.1 There is a duty to maintain the Definitive Map and Statement.

3.2 The Authority has a number of key "cross cutting" objectives which include sustainability, health promotion, social inclusion, equal opportunities (as an employer and in service delivery) and e-government. Officers should seek to ensure that all proposals are in keeping with these wider objectives and reports should, wherever possible, make clear how this will be achieved

4. THE REPORT

Wildlife and Countryside Act 1981 Section 53(3)(c)(i)

Claimed Right of Way leading from Church Street, north east through St. Barrwg's Church Yard to the end of the bridge on Rectory Road, Bedwas and a spur claimed path leading from the bottom of the concrete steps, alongside the eastern end of the Old Rectory Cottage in a south easterly direction to Rectory Road.

4.2 Introduction – Previous History

Reference is made to the report submitted to the Rights of Way Committee on the 7th April 2003, which agreed to be reconvened once a site inspection had been undertaken.

Committee met on site on the 28th April 2003 to see the claimed paths and this was followed by a reconvened meeting at the Tredomen offices when Members resolved;

- (i) The application for a Modification Order to amend the Definitive Map and Statement of Public Rights of Way to add the path leading from Church Street (ST 1708 8918) in a north easterly direction through St. Barrwg's Church Yard to the end of the bridge on Rectory Road (ST 1719 8929) be supported.
- (ii) The application for a Modification Order to amend the Definitive Map and Statement of Public Rights of Way to add a spur path leading alongside the eastern end of Old Rectory Cottage to Rectory Road, Bedwas (ST 1720 8925) be not supported.

Current Position

All parties to the process were advised of the resolution by Recorded Delivery letter dated 1st May 2003 Document No. 87.

Following resolution (i) above, a Modification Order was made on the 17th June 2003 and notices posted at either end of the path on the 26th June 2003. Document No. 88. An objection has been received from one of the landowners to this order. Document No. 89

The applicant was advised of the outcome of the reconvened meeting on the 28th April 2003 Document No. 87, and decided to appeal the outcome under Schedule 14 Paragraph 4 to the National Assembly for Wales. The applicant's appeal was based on a highlighted and annotated copy of the original report Document No. 80 The Authority responded to this by means of a statement Document No. 81.

The applicant made a second submission in response to the Authority's statement Document No. 82.

During investigation of another matter of a nearby registered footpath, aerial photographs were discovered identifying a route alongside the gable end of Old Rectory Cottage. With the combination of clarified and additional information it was considered appropriate to return the claim to Members for further consideration before continuing with the appeal procedure.

The aerial photographs in question were taken on the 13th May 1946, 5th June 1951, 1st June 1962 and 14th May 1979. Documents 83-86 respectively

Although the aerial photographs are not conclusive that a right of way exists, they seem to show a path along the gable end of Old Rectory Cottage, which the claimants say they have used.

Members will recall from the site inspection of the 28th April 2003 that the only evidence of a path was a narrow strip at the base of the road embankment.

The apparent width of the route may be as a result of the lowering of the ground levels, which has resulted in the increase the embankment.

Members may feel they need to determine;

- (i) whether the photograph provides additional evidence as regards the existence or otherwise of a path at the gable end of Old Rectory Cottage.
- (ii) If that path existed, whether it formed a through path between other paths of the highway network or it was part of a network of paths private to the adjacent property.

Whether the evidential value of the photographic evidence shows 20 years continuous use.

The Planning Inspectorate and applicant have indicated their support to hold the appeal procedure in abeyance until after Members have further considered this claim.

A copy of Mr and Mrs. K and M. Williams highlighted report was sent to the following on the 17th December 2003 with a request that comments be received by the Authority no later than the 19th January 2004.

Mr & Mrs. K. and M. Williams, Applicant
Mr and Mrs. G. Harris, Landowner
Clerk to Bedwas, Trethomas and Machen Community Council
County Borough Councillor R.T. Davies,
County Borough Councillor A. Donaldson
County Borough Councillor Mrs. E.M. Aldworth
County Borough Councillor J.R. Davies
Councillor Whittle
Mr. K. Donovan, Ramblers Association

A request was received to extend the closing date for replies and this was agreed to be 16th February 2004.

Replies were received from;

Mr & Mrs. K and M. Williams (Applicant)

Mr. G. Harris (Landowner)

Mr. G. Prosser Supporter of Mr and Mrs Harris, Landowner

County Borough Councillor A. Donaldson (Local Member)

Comments received from County Borough Councillor A. Donaldson Document No. 90

Councillor Donaldson explains that he has lived in the vicinity since 1934, recalls the use of the gable end path and the route becoming blocked. He does not recall the external staircase described by others, and this being supported by the aerial photographs.

Comments from Mr. & Mrs. K. and M. Williams Document No. 91

They query the inclusion of the railway steps within the original report, indicating that they were never part of the footpath network and not shown on Ordnance Survey maps until 1972. They say that separating the claim into two paths has confused the issue. They indicate that evidence was misinterpreted and that supporters were not aware that they had to specifically mention each path. With the agreement of the Planning Inspectorate the claimants have re-interviewed their supporters and provided clarified information. They identify some users have quoted 70-80 years usage, and the recent obstruction supported by a statement by Mrs. Cook. They believe that the aerial photographs show a clear footpath and wish it noted that none show any external building which the owners and their supporters claim existed until the 1960's. They believe that the path has narrowed due to the reduction of ground levels and the lack of maintenance. They query the landownership of the path and say further enquiries are ongoing. They submit new evidence in the form of letters in support that the path has public rights and restate those letters already included within previous reports supporting public status. They believe that with the additional information, there is sufficient evidence to support public status of the gable end path.

Comments received from Mr. & Mrs. Harris Document No. 92

The landowners explain that they have lived in the Grade II listed building since 1994 and that the claim for the right of way must be proven for the 20 years prior to the application made in 2001. They explain that when they purchased the property the area was completely overgrown and impassable. They cite their deeds, property description, local authority search, Ordnance Survey maps, none of which indicate a public path. The existence of mature trees in

the area causing concern to the house required they be removed. They have provided pictures showing overgrowth, renovation and winter scenes in the area around the path. They believe that the trees removed were at least 40 years old. They believe that the steps were constructed in the late 1950's early 1960's. They dismiss the aerial photographs claiming that they are out of time, and most do not show a path. The one photograph depicting a path, is dismissed as white cement capping to the garden walls. They say that the photographs support their comments of tree growth on the path. They deny deliberately obstructing the path, saying it was already overgrown. They reiterate the presence of the external staircase saying that it did exist up until the 1950's and this is supported by witness statements. They have submitted photographs in regard to the scaffolding that it has been suggested obstructed the path. They have stated that the scaffolding did not obstruct the path. There is a comment in regard to landownership. They remain of the opinion that the route should not be classed as a right of way due to the historical nature of the property. Their comments are supported by 13 No. letters and 4 No. witness statements from individuals regarding overgrowth, and non-use of the path over a period of up to 40 years.

Comments received from Mr. D.G. Prosser Document No. 93

Referring to the applicant's first submission to the Planning Inspectorate and to the highlighted and annotated report, reference was made to the apparent contradiction of evidence by Mr. D.G. Prosser. under paragraph 4.10 and that given in Document No. 74. Members are requested to read the report and document together with Mr. D.G. Prosser's letter of the 1st February 2004 and come to their own conclusions on the evidence presented.

5. FINANCIAL IMPLICATIONS

- 5.1 If Members support the application then a Modification Order will be processed. This may well result in an objection which may result in the matter being referred to the National Assembly for Wales for determination which may result in the calling of a public inquiry. The Council has no option but to process this matter in the proper manner and bear the subsequent costs

6. PERSONNEL IMPLICATIONS

- 6.1 None

7. CONSULTATIONS

- 7.1 As detailed within the report

8. RECOMMENDATIONS

- 8.1 That the matter stand adjourned until a site inspection to be followed immediately by a reconvened meeting to determine the application.
- 8.2 That following the site inspection and based on the evidence and information compiled in the submitted documents, Members are requested to determine the application before them by either;
- i) Supporting the claim for the gable end footpath
 - ii) Rejecting the claim

9. REASONS FOR THE RECOMMENDATIONS

9.1 To comply with legislative requirements

10. STATUTORY POWER

10.1 Wildlife and Countryside Act 1981

Author: A.J. Sander Senior Assistant Engineer, Rights of Way

Consultees: As detailed in the report

Background Papers:

Caerphilly County Borough Council, Civic Offices, Pontllanfraith

List of Documents in respect of Responses in regard to the Draft Report in respect of

The Appeal of the Gable end path

Claimed Right of Way from Church Street ST 1708 8918 to Rectory Road ST 1720 8925, Bedwas, Caerphilly

Document No.	Name of Document	Location of Document
80	First Appeal submission to National Assembly	Caerphilly County Borough Council Civic Offices, Pontllanfraith
81	Response by Caerphilly County Borough Council to First Appeal submission	Ditto
82	Second submission to National Assembly	Ditto
83	Aerial photograph dated 13th May 1946	Ditto
83A	Enlargement of aerial photograph dated 13th May 1946	Ditto
84	Aerial photograph dated 5th June 1951	Ditto
84A	Enlargement of aerial photograph dated 5th June 1951	Ditto
85	Aerial photograph dated 1st June 1962	Ditto
85A	Enlargement of aerial photograph dated 1st June 1962	Ditto
86	Aerial photograph dated 14th May 1979	Ditto
86A	Enlargement of aerial photograph dated 14th May 1979	Ditto
87	Recorded delivery letter dated 1st May 2003 advising parties of Members resolution	Ditto
88	Modification Order notice dated 17th June 2003	Ditto
89	Objection received from landowner	Ditto
90	Comments received from County Borough Councillor A. Donaldson	Ditto
91	Comments received from Mr & Mrs. K and M. Williams	Ditto
92	Comments received from Mr & Mrs. Harris	Ditto
93	Comments received from Mr. G. Prosser	Ditto