

RIGHTS OF WAY COMMITTEE - 23RD NOVEMBER 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 MYNYDDISLWYN AT PENNAR LANE, PENTWYNMAWR

REPORT BY: DIRECTOR OF THE ENVIRONMENT

1. PURPOSE OF REPORT

1.1 To consider and determine an application to add a path to the Definitive Map and Statement.

2. SUMMARY

2.1 The report presents evidence on an outstanding objection in respect of a Modification Order for a bridleway of the claimed right of way at Pennar Lane to Cwm-Ffynanau Cottages, Pentwynmawr.

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 "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 would be achieved.

4. THE REPORT

4.1 Background

- i) As Members are aware this Committee has delegated powers to determine applications for Definitive Map Modification Orders under Section 53 of the Wildlife and Countryside Act 1981. This report relates to an application to ADD a path to the definitive map and statement.
- ii) The term "public rights of way" is used to mean paths; tracks and unmetalled roads over which the public have the right to walk and in some cases ride horses and possibly drive motor vehicles.

These may be classified as follows:-

A footpath: over which the right of way is on foot only.

A bridleway: over which there is a right of way on foot and on horseback or

leading a horse, and also for the use of a pedal cycle.

A byway open to all traffic: this means a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used.

- iii) The Wildlife and Countryside Act 1981 places a duty on the County Borough Council to keep the existing definitive map under continuous review, make Modification Orders as necessary to take account of the occurrence of events requiring the map to be modified and to prepare definitive maps for any part of the area not previously surveyed.
- iv) The definitive map and statement will be modified by means of Orders made by the surveying authority i.e. the County Borough Council. The Wildlife and Countryside Act enables any person to apply to the surveying authority for an order to amend the definitive map.
- v) The procedure for making such an application is detailed in Schedule 14 of the Wildlife and Countryside Act. The application before you has been compiled to these requirements. The said procedures are referred to in the report.
- vi) When determining the application before you, members will be acting in a quasi-judicial capacity. Before making an order, members must be satisfied that the evidence shows, **on the balance of probabilities**, that a right of way of a particular description exists. Each application must be dealt with on its own merits, noting the interests of both the applicants and the landowners.
- vii) The application before you is concerned with rights that are alleged to already exist and not as to whether it would be prudent or beneficial to create them. The suitability of a way for users who have a right to use it, for example the nuisance that they are alleged to cause are not factors that should be considered by the Committee. **Members are also required to view the route of the right of way in question.**
- viii) When considering the evidence that follows, members must be aware of the provisions of Section 31 of the Highways Act 1980 thus enabling members to determine whether there is sufficient weight of evidence to make an order.

Section 31 of the Highways Act states:-

"where a way over any land other than a way of such a character that use of it by the public could not be given rise at common law to any presumption of dedication, has been actually enjoyed by the public as a right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated a highway unless there is sufficient evidence that there was no intention during that period to dedicate it."

If in the case before you members are satisfied that the right of way has been used for a period in excess of 20 years, then there arises a presumption that the owner intended to dedicate the path as a right of way. It should be noted by members that the said 20-year period must be calculated retrospectively from the date when the way was first called into question.

- ix) If following the site visit the Committee decides to make an Order, and then once this decision has been reached the County Borough Council has to give notice of its general effect. Following members' decision there is a right of appeal to the National Assembly for Wales. A period of at least 42 days from the date of first publication of the notice must be allowed for objections.

If there are any valid objections the County Borough Council has to refer the Order, together with the objections to the National Assembly for Wales who will then arrange for the Order and the objections to be considered by an independent Inspector. If no valid objections are

made within the said objection period then the County Borough Council may confirm the order itself as an unopposed Order.

Wildlife and Countryside Act 1981 Section 53(2)

Claimed Right of Way At Pennar Lane to Cwm-Ffynanau Cottages, Newbridge

4.2 Introduction

The location of the claimed path is indicated on Document No. 3 within the black circle.

The route of the claimed path is indicated from A-B on Document No. 2.

A Modification Order was made by Gwent County Council on the 13th July 1993, for a Bridleway at Pennar Lane, Newbridge.

The path commences on Ordnance Survey Sheet 19NE at Grid Ref: 197966 and ends at Grid Ref: 193969.

An application was made to Gwent County Council, Document No. 1, Certificate (i) under Section 53(2) of the Wildlife and Countryside Act 1981 by Mrs. Myra Ellis on the 28th July 1992 to ADD a bridleway to the definitive map and statement for the Community of Mynyddislwyn.

The description of the claimed bridleway, as described in the previously made Modification Orders, Document No. 36, is as follows:-

'The bridleway commences at Pennar Lane to the left of stone railway bridge. It has a gravel surface at a width of 2½ metres at its entrance with bushes and trees either side. It then proceeds uphill in a Westerly direction. After 30 metres a wire fence appears on the right of the bridleway which now has more of a grass surface.

At 150 metres there is a barn on the right of the bridleway and farm gates either side of the track. Here the bridleway widens to a 3-metre wide gravel surface. At 170 metres the bridleway levels off and turns slightly to the right. At 190 metres the bridleway goes uphill again with wire fences still either side of it.

After 290 metres the bridleway turns right in a North Westerly direction. At this point the bridleway narrows to approximately 1½ metres in width but the distance between the wire fence remains the same.

At 300 metres the fence on the left gives way to woodland with a stile on the right at 310 metres. At 340 metres there is a stile leading into a field on the left with woodland on the right side of the bridleway. The bridleway now narrows to between 1 and 1 1/3 metres with overgrowth from this point.

After 400 metres there is a farm gate on the right and a stream also on the right side of the bridleway. The surface is rutted and wet in places in this area.

At 500 metres there is a farm gate on the left of the bridleway which now widens to 2 metres.

The bridleway ends after a distance of 520 metres opposite Cwmffynanau Cottages.'

The applicant complied with legislation when not being able to identify the landowner by posting notices on site (Document No. 4) Certificate (ii) and certified this action through Certificate (iii) (Document No. 5).

The application was supported by 31 claimed users of the route, 10 of which used it on horseback, 6 with vehicles and the remainder used it for walking.

The user evidence forms have been studied and the following information has been compiled.

| Name | Used by foot. | Used by horseback | Used with motor vehicle |
|-------------------|----------------------|--------------------------|--------------------------------|
| Mr. A. Charles | 50 years - 1940-1990 | | |
| Mr. R. Bevan | 22 years - 1970-1992 | | 19 years - 1970-1989 |
| Mrs. M. Bevan | 19 years - 1970-1989 | | |
| Mr. S.D. Bevan | 22 years - 1970-1992 | | 19 years - 1970-1989 |
| Mr. K. Bluck | 57 years - 1935-1992 | | 5 years - 1960-1965 |
| Mrs. M. Charles | 28 years - 1962-1990 | | |
| Mr. T.M. Donovan | 21 years 1970 -1991 | 2 years - 1989-1991 | |
| Mrs. M. Donovan | 21 years - 1970-1991 | 12 years - 1980-1992 | |
| Mrs. O. Edwards | 29 years - 1963-1992 | 29 years - 1963-1992 | |
| Mr. C. Evans | 59 years - 1933-1992 | | 2 years - 1940-1942 |
| Mrs. O. Evans | 41 years - 1951-1992 | | |
| Mr. J.R. James | 28 years - 1964-1992 | 5 years - 1982-1987 | |
| Mrs. B.E. James | 28 years - 1964-1992 | 5 years - 1982-1987 | |
| Mr. R.T. James | 30 years - 1962-1992 | | |
| Mrs. P.D. James | 30 years - 1962-1992 | | |
| Mr. L.B. Kinsey | 22 years - 1970-1990 | | |
| Mr. G. Lloyd | 30 years - 1962-1992 | 22 years - 1970-1992 | |
| Mrs. P. Lloyd | 30 years - 1962-1992 | | |
| Mr. D.A. Lloyd | 28 years - 1964-1992 | 14 years - 1976-1990 | |
| Mr. G. Peregrine | 22 years - 1970-1992 | | |
| Mr. J. Roberts | 33 years - 1959-1992 | | 33 years - 1959-1992 |
| Mrs. A. Roberts | 33 years - 1959-1992 | | 33 years - 1959-1992 |
| Mrs. M. Thomas | 35 years - 1957-1992 | | |
| Mr. W. R. Thomas | 35 years - 1957-1992 | | |
| Mrs. C. Williams | 21 years - 1971-1992 | | |
| Mr. E.G. Williams | 31 years - 1959-1992 | | |
| Mrs. J. Williams | 31 years - 1959-1992 | | |
| Mr. A.J. Williams | 27 years - 1965-1992 | | |
| Mr. H.B. Williams | 42 years - 1950-1992 | | |
| Mrs. B. Williams | 42 years - 1950-1992 | | |
| Mr. H. Williams | 24 years - 1968-1992 | 5 years - 1975-1989 | |

Gwent County Council consulted with the following and no objections or representations were received.

- (a) Islwyn Borough Council
- (b) British Telecom
- (c) The County Engineer of Gwent County Council
- (d) The British Horse Society
- (e) The Ramblers Association.

A report was submitted to the Planning Standing Sub Committee of the Gwent County on the 8th June 1993 and approval was given for the making of the Modification Order for Bridleway which was made on 13th July 1994 (Document No. 36).

Notices were erected on site from 21st July 1994, and maintained until 1st September 1994.

During the objection period representation was received from Mr. W.H. Kershaw, of the Welsh Trail Riders Association, dated 8th August 1994 (Document No. 37). Following the objection, the Welsh Trail Riders Association submitted 7 evidence forms detailing use of the route by vehicles and requesting that the route be added as a By Way Open to All Traffic (BOAT).

| Name | Used by foot. | Used by horseback | Used with motor vehicle |
|-----------------|----------------------|--------------------------|--------------------------------|
| Mr. B. Kershaw | | | 21 years - 1973-1994 |
| Mr. K. Bluck* | 15 years - 1936-1951 | | 2 years - 1949-1951 |
| Mr. J. Evans | 13 years - 1979-1992 | | 13 years - 1979-1992 |
| Mr. R. Perring | | | 21 years - 1973-1994 |
| Mr. S. Powell | 44 years - 1950-1994 | | 36 years - 1958-1994 |
| Mr. J. Roberts* | 35 years - 1959-1994 | | 43 years - 1951-1994 |
| Mr. J.A. Wall | | | 10 years - 1973-1983 |

*Two evidence forms have been received from these individuals.

Due to the objection Gwent County Council proposed not to confirm the order but to make a new order to register the route as a Byway Open to All Traffic. (BOAT).

A letter of consultation was sent to the previous Consultees on 8th March 1995, requesting comments on the processing of a Modification Order to add the route as a BOAT. No objections or representations were received.

However, due to local government reorganisation and the backlog of claims no further action has been taken.

4.3 Situation at Present

Correspondence has been received from R.E. Phillips & Partners, on behalf of their client, Llanover Estate, requesting information on the status of the track from Pennar Lane to Cwmffynanau Cottages.

Llanover Estate own land adjacent to the track (see Document No. 45) and believe they are owners of the track although no evidence has been received to substantiate this.

R.E. Phillips have confirmed that Llanover Estate have no objection to the claimed route becoming a BOAT.

The Welsh Trial Riders Association have confirmed that they wish to pursue the claim for BOAT through a Modification Order to add the route to the Definitive Map and Statement.

Consultations have taken place with the following and no objection or representations have been received.

- (a) British Horse Society
- (b) The Local Ramblers
- (c) Ramblers Association
- (d) Auto Cycle Union
- (e) Auto Cycle Local Representative
- (f) Local Members
- (g) Chairman and Vice- Chairman of Rights of Way Committee
- (h) Chairman and Vice-Chairman of Technical Scrutiny Committee
- (i) Cabinet Member for Transportation and Planning

A land search with the Land Registry Office has identified several landowners adjacent to the claimed right of way (see Document No. 46) but not for the claimed route itself.

A letter was sent to the adjoining landowners seeking their comments on the claimed right of way:-

Mr. G.R. Griffiths
Mr. R. Bevan

Mrs. Marian Vaughan
Mr. Adrian N. Perry
Ms. Valma Coles

Mr. Griffiths contacted the office and did not have any objection to the track becoming a BOAT provided that it was not going to be widened and improved. It was explained that the path, if added to the Definitive Map as a BOAT, the route would be accepted in its current condition and that there were no plans to improve it.

A further letter was sent to the foregoing landowners requesting their comments. To date, only Mr. Adrian Perry, Mr. Vaughan and Mrs. Coles have contacted the office.

Mr. Perry stated that he had no objection to the path becoming a BOAT, but was worried about abuse of this route by illegal vehicle use (i.e. unlicensed/uninsured bikes). It was explained that the matter of any illegal use of the path by unlicensed vehicles was a matter for the Police.

Mr. Vaughan contacted the office to explain that his mother, Mrs. Vaughan, had died and that he and his brother and sister would express a joint view on the claimed right of way. Their view is that the lane should be designated part bridleway and part vehicle access. The letter, map and views from Mr. Vaughan are detailed in Document No. 50. Although appreciating Mr. Vaughan's comments the Committee should consider the evidence of the use of the route as either By Way Open to All Traffic or Bridleway but this should be for the path as a whole.

Mrs. Coles contacted the office and explained that she had moved from Oakdale Terrace to 36 Manor Park, Newbridge, a long time ago but the address had not been updated with the Land Registry Office. Her solicitor is now arranging this. She stated that she and her husband recalled a Mr. John Roberts using the path on motorbikes with his friends. Mr. Roberts used to call and ask permission to use the path and it was also used as part of the National Trials. She and her husband used the path for vehicular access to their property and she recalled other people using it. She mentioned that one of the drainage pipes on the path was blocked.

Mr. Kershaw of the Welsh Trials Riders Association has been contacted regarding asking for permission to use the route. Unfortunately, Mr. Roberts died recently so this could not be clarified with him. Mr. Kershaw explained that as a matter of courtesy residents living close to routes to be used for Trials are contacted to let them know that there will be a number of riders using the routes and giving them the dates. This has been misconstrued in some instances when people who thought they were seeking permission. Mr. Kershaw stated that it was the belief of the riders that this route was a vehicular way so there was no need to seek permission to use it.

Local residents in the area were most concerned when contractors moved onto the site of Castle Barn and cleared quite a large amount of the hedging at the entrance to the claimed route. However, following discussion with the contractors it was agreed that the path would not be obstructed and access would be available at all times during their work on site.

Document No. 47 shows the entrance to the path following this work.

A planning application has been received and approved to convert Castle Barn to a dwelling.

Document No. 48 shows the current condition of the lane. There is a section which is very uneven where a stream has eroded the path and drums have been dumped.

The Cwm-Ffynanau Cottages have now been demolished and a new property has been built at this location (Document No. 47 shows a picture of the new property).

4.4 History of the Route

The path at one time was used as access to a property which is shown on the map generated by the Authority's GIS System, from the historical maps and is dated 1900-1904 (Document No. 49)

It would appear from the evidence forms that the claimed path has been used since 1933 on foot, horseback and with vehicles.

A letter on file from the previous local authority, Islwyn Borough Council, indicates that this path was an unadopted highway and was therefore not maintained by the Authority.

4.5 Summary

The path commences on Ordnance Survey Sheet 19NE at Grid Ref: 19710 96633 and ends at Grid Ref: 19306 96923.

Description of the Path

As detailed in 4.2.

As previously indicated Gwent County Council processed a Modification Order for bridleway status which was the subject of an objection, counter claiming Byway status.

All parties involved with the procedure have been consulted with agreement being reached for BOAT status.

Committee should have regard to all information within this report, before deciding whether or not to support the counter claim for BOAT status and processing a Modification Order.

If this action is taken then the previous order can be abandoned. Otherwise, the previous order will need to be sent to the National Assembly together with objections for determination.

5. FINANCIAL IMPLICATIONS

- 5.1 The cost of the making of a Modification order for BOAT status is £2,700. The cost of determining previous order, which may lead to a Public Inquiry, is in excess of £2,700.

6. PERSONNEL IMPLICATIONS

- 6.1 None.

7. CONSULTATION

- 7.1 A copy of the draft report was forwarded to all interested parties seeking comments and two responses were received.

Mr. Pruddah, Right to Ride Network, Newport and Caerphilly Representative (Document No. 51) offering no objections to the application.

Mrs. M. Ellis, the applicant, (Document No. 52) agreeing to the application for BOAT status.

8. RECOMMENDATIONS

- 8.1 That Members, following a site inspection, consider all the information available in deciding whether they believe vehicular rights exist along the claimed route. If so decided a Modification Order for Byway Open to All Traffic should be processed in accordance with the following description:-

The path commences at Pennar Lane to the west of a stone railway bridge. It proceeds up a slight gradient in a westerly direction, passing Castle Barn to the east side where the path levels and bears slightly to the east. At a point approximately 310 metres it passes a stile to FP233 Abercarn. At 340 metres it passes a stile to FP234 Abercarn. The pathway narrows at this point to 1½ metres. At 400 metres there is a stream running alongside the path which has made the surface very wet and rutted. At 500 metres the path widens to 2 metres. The total length of the path is 520 metres.

9. REASONS FOR THE RECOMMENDATIONS

- 9.1 To comply with legislative requirements.

10. STATUTORY POWER

- 10.1 Wildlife & Countryside Act 1981.

Author: June Piper, CROW Support Officer
Consultees: As indicated within report

Background Papers:
As indicated within report