

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 ABERCARN FROM MANOR PARK TO OAKLAND TERRACE, NEWBRIDGE

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 a previously made Modification Order in respect of a claimed right of way from Manor Park to Oakland Terrace, Newbridge.

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 un-metalled 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

A byway open to all traffic:

pedal cycle.

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, 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.

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

Claimed Right of Way leading from manor Park to Oakland Terrace, Newbridge

4.2 Introduction

An application (Document No. 1) was received by Gwent County Council on 24th May 1989 under the Wildlife and Countryside Act 1981 from Mrs. L.E. Salerno to modify the Definitive Map and Statement for the County of Monmouthshire by ADDING a footpath from Manor Park ST 210 979 to Oakland Terrace ST 210 981, Newbridge.

The location of the claimed right of way is shown in Document No. 2.

The route of the claimed path is shown in Document No. 3 marked A-B-C.

The application was supported by 24 completed User Evidence forms claiming footpath status for the route.

The application was investigated and a report was submitted to the Gwent County Council Planning Committee on 11th December 1990, when it was resolved to support the claim.

A Definitive Map Modification Order was made on the 5th March 1991 (Document No. 4) and representations were received during the objection period.

The representations received were in regard to the width of the path described in the order. In addition the applicant indicated that a fresh application would be made seeking byway status.

The representations were reported to Gwent County Council's Planning Committee on 7th May 1991 when it was resolved not to confirm the order.

Evidence forms seeking byway status were received on the 4th June 1991 but these were not supported by a formal application. Evidence supporting the byway status has subsequently been withdrawn; signed copies of withdrawal have been provided and recorded (Document No. 5).

The width of the path has been agreed with all parties to be 2.1 metres. Each interested party was consulted upon the making of a fresh order to include the amended width to which have all agreed. Document No. 6 details the responses received.

4.3 The Way Forward

In regard to the foregoing it is recommended that the original order made by Gwent Council on the 5th March 1991 be abandoned and a fresh modification order is made in accordance with the following description

Description of the Claimed Right of Way

A claimed footpath to a width of 2.1 metres commencing at a point ST 210 981 at the northern end of Manor Park, Newbridge and proceeds in a mainly northerly direction as a 2.1 metre width track, the first section of the path is concrete for a distance of 56 metres which has a grass verge alongside, a bollard is situated at 59 metres to prevent through traffic, the path then proceeds in a mainly northerly direction as a bituminous macadam and back edged with concrete edging for a distance of 56 metres or thereabouts. The path continues as an unsurfaced earth track for a distance of 39 metres or thereabouts to join the county maintained highway known as Oakland Terrace, Newbridge at ST 210979.

The path has a total length of 169 metres or thereabouts shown on plan (Document No. 3) by

a bold black line between points A-B-C.

4.4 Landowners' Views

There are two landowners, Mr. Coles and Llanover Estate. The section of path owned by each landowner is shown on Document No. 7. A-B shows land within the ownership of Mr. Coles and B-C is land owned by Llanover Estate. Both landowners were contacted regarding the width of the path and have no objection to the width being 2.1 metres.

It had been hoped to enter into a Creation Agreement for the acceptance of the path as a Public Right of Way. Agreement was reached with Mr. Coles' Solicitors, Granville-West, Chivers & Morgan to enter into a Creation Agreement. However, the agents working on behalf of Llanover Estate, R.E. Phillips & Partners, would not enter into an agreement but had no objection to proceeding with the Modification Order.

4.5 Summary

It has been accepted by all interested parties that a public right of way should be created. The width of the path has been agreed as 2.1 metres.

The adding of the path to the Definitive Map and Statement will not prejudice any private vehicular rights of residents adjoining the claimed route.

5. FINANCIAL IMPLICATIONS

The cost of making the Modification Order is £2,700. There is a minor maintenance implication for the surface of the path.

6. PERSONNEL IMPLICATIONS

None

7. CONSULTATION

As this is a quasi-judicial process it is not appropriate to consult with elected members of the Rights of Way Committee.

Only three responses have been received following consultation.

Mr. R.S. Pruddah, Right to Ride Cycling Touring Area Representative (Document No. 8) who indicates that he supports the application for footpath.

Mr. R. Salerno, husband of the applicant. (Document No. 9).

Mr. Salerno raises several issues:-

Mr. Salerno raises pedestrian safety in using the section of claimed path owned by Llanover Estates i.e. B-C which has large potholes and an uneven surface and the narrowness for combined use and the fact that it is unlit. An approach could be made to Llanover Estate to undertake repair works to the surface of the path.

Mr. Salerno states that drainage of water onto the above section of claimed path from land owned by Llanover Estates is the cause of potholes and uneven surface. This matter was raised with the Drainage Section of Highway Operations who state that such drainage would be classed as natural run off and if the Modification Application is successful then any drainage problems affecting the surface of the path would become the responsibility of the

Rights of Way Section to resolve with the adjacent landowner i.e. Llanover Estate.
The provision of passing places for vehicles and pedestrians is not a Right of Way issue.

The provision of street lighting does not form part of the application process for the claimed right of way.

The solution suggested by Mr. Salerno that the present users of the lane bring the lane up to an acceptable standard for adoption for the Highway Authority at their own expense would cost approximately £25,000. This would involve constructing a turning area, road widening to include a 5.5m wide carriageway with footway to one side, surfacing and provision of street lighting.

With regard to Mr. Salerno's comments in relation to drainage, it should be noted that if the Modification Order is successful the right of way is adopted "as found" and adoption does not *prima facie* require the Authority to improve the surface.

Granville-West, Chivers & Morgan, Solicitors, on behalf of Mr. Coles, who support the application provided that the width of the right of way is only 2.1 metres.

8. RECOMMENDATION

That Members consider the application under Section 53 of the Wildlife and Countryside Act 1981 when they can, following a site inspection, on the basis of the evidence and information compiled in the submitted documents, either:-

- i) Supporting the claim as made for a footpath
- ii) Rejecting the claim

9. REASONS

To comply with statutory requirements.

10. STATUTORY POWER

Wildlife and Countryside Act 1981. This is a committee function.

Author: June Piper, CROW Support Officer

Consultees:-

Two Landowners:- Mr. Coles, c/o Solicitors, Granville-West, Chivers & Morgan and Llanover Estate
c/o Agents, R.E. Philips & Partners

Local Members – Councillors L. Ackerman, K. Baker & M. Davies

Applicant – Mrs. M. Salerno

Auto Cycle Local Representative

Cycling Touring Club Local Representative

British Horse Society

Secretary to the Byways and Bridleways Trust

Open Spaces Society

Mr. K. Donovan (Local Ramblers)

Mr. R. Furber

The Ramblers Association

Chief Engineer, Caerphilly County Borough Council,
Civic Offices, Pontllanfraith, Blackwood -NP12 2YW

List of Consultees:

The Applicant

- Mr and Mrs. Salerno, Park View Bungalow, Manor Park, Newbridge, Gwent

Response – 30/08/2002

Mr. Salerno stated that he supported the amended proposed width for the claimed right of way and would raise no objections.

The Landowners

- R.E. Phillips & Davies, 23a Gold Tops, Newport, Gwent, NP9 4UL (Acting on behalf of Llanover Estate)

Response – 21/08/2002 and 16/09/2002

The trustees of Llanover Estate stated that they would raise no objections to a footpath width of 2 metres that was previously suggested by themselves. A letter has been sent to Llanover Estate asking them to consider their previously stated width of the lane of 'approximately' 2.0 metres. Llanover Estate responded by letter dated 16th September 2002 stating that they raise no objection to a Modification Order that quotes a maximum width of 2.1 metres for the footpath.

- Granville-West, Chivers & Morgan, High Street Chambers, Newbridge, Gwent, NP1 4XB (Acting on behalf of Mr. Coles)

Response – 08/2002

Mr. Coles agreed to the amended width of 2.1 metres for the claimed right of way.

The Residents

- Mr and Mrs. Curtis, 'Melmaran House,' 38 Manor Park, Newbridge, Gwent, NP1 4RT

Response – 20/08/2002

Held no objections to the amended proposed width of the claimed Right of Way.

- Mr. R.T. Dimmick, 'Woodview,' 34 Manor Park, Newbridge, Gwent, NP1 4RT

Response –

- Ms. V. Owen, 36 Manor Park, Newbridge, Gwent

Response –

- Mr. Coles, 35 Manor Park, Newbridge, Gwent

Response -