

RIGHTS OF WAY COMMITTEE – 25TH JULY 2005

SUBJECT: APPLICATION FOR A MODIFICATION ORDER TO AMEND THE DEFINITIVE MAP OF PUBLIC RIGHTS OF WAY FOR THE COUNTY OF MID GLAMORGAN IN RESPECT OF RECTIFYING AN ANOMALY BETWEEN THE DEFINITIVE MAP AND DEFINITIVE STATEMENT IN RESPECT OF FOOTPATH NO.21 IN THE COMMUNITY OF RHYDYGWERN

REPORT BY: DIRECTOR OF THE ENVIRONMENT

1. PURPOSE OF REPORT

- 1.1 To consider and determine an application to amend an anomaly between the definitive map and definitive statement.

2. SUMMARY

- 2.1 Evidence is presented related to an application to amend the definitive map

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 full delegated powers to determine applications for Definitive Map Modification Orders under Section 53 of the Wildlife and Countryside Act 1981.
- ii) By the term "public rights of way" we 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 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 in accordance with these requirements. The said procedures are referred to latter 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 does, or does not exist. Each application must be dealt with on its own merits, noting the interests of both the applicants, the landowners and objectors.
- vii) The application before you is concerned with rights that are alleged to exist and not as to whether it would be prudent or beneficial to delete them. Members are also required to view the route of the rights of way in question.
- viii) 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.
- ix) If following the site visit the Committee decides not 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 within 28 days of the applicant being given notice of the Committee decision.
- x) Department of Environment circular number 18/90 (being Welsh Office circular number 45/90) provides guidance in relation to the consideration of applications to modify the definitive map and statement made under the provisions of Part III of the Wildlife & Countryside Act 1981 and states:-

"In making an application for an Order to delete or down grade a right of way it will be for those who contend that there is no right of way or that a right of way is of a lower status than that shown, to prove that the map is in error by the discovery of evidence which when considered with all other relevant evidence clearly shows that a mistake

was made when the right of way was first recorded. The Authority is required by paragraph 3 of Schedule 14 of the Act to investigate the matters stated in the application. However, it is not for the Authority to demonstrate that the map is correct but for the applicant to show that an error was made. The advice contained in paragraphs 14 and 16 of Annex to circular 1/83, regarding the considerations applicable to the deletion or down grading of rights of way is again relevant and is reproduced at Annex 1. In making an Order the Authority must be able to say in accordance with Section 53(3)(c)(iii), that there is no public right of way over land shown in the map and statement as a highway of any description.

- xi) Authorities will be aware of the need to maintain an authoritative map and statement of the highest attainable accuracy. The evidence needed to remove a public right of way from such an authoritative record will need to be cogent. The procedures for identifying and recording public rights of way have in successive legislation being comprehensive and thorough. Whilst they do not preclude errors particularly where recent research has uncovered previously unknown evidence or where the review procedures have never been implemented they would tend to suggest that it is unlikely that a large number of errors would have been perpetuated for up to forty years without being questioned earlier. Where an Authority is disposed to make an Order deleting/down grading a right of way it should consider the need for additional consultation - for example with local user groups - or publicity to ensure that all the evidence from the public concerning the existence or status of the route is available.

Annex 1

Paragraphs 14 and 16 of Annex A to circular 1/83 read as follows:-

14 - Sub-section 3(c) relates to the discovery by surveying Authorities of evidence which shows that a right of way not shown on the map and statement subsists or is reasonably alleged to subsist and should therefore be shown: of that a right of way already shown is of a different status and should be up or down graded or that it does not in fact exist and should be taken off; or that the particulars contained in the statement require modification. These provisions apply to footpaths, bridleways and byways open to all traffic.

16 - Surveying authorities whenever they discover or are presented with evidence which suggests that a definitive map and statement should be modified are required to take into consideration all other relevant evidence available to them concerning the status of the right of way involved before making an Order they must be satisfied that the evidence shows on the balance of probability that a right of way of a particular description exists or that a way shown on the map is not in fact a public right of way. The mere assertion without any supporting evidence that a right of way does or does not exist would be insufficient to satisfy that test. The limitations on the admissibility of evidence that formerly applied in the case of deletions have been removed thus enabling any evidence that is relevant to be taken into consideration. The conclusive evidential effect of definitive maps and statements, means, however, that the evidence must show that no right of way existed as at the relevant date of the definitive map on which the way was first shown. Equally, claims of presumed dedication which are based solely on the fact that a way shown on the definitive map would not be acceptable since the only event that can give rise to a presumption of dedication is user as a right. It would be necessary therefore in the face of evidence which shows that "no right of way exists to demonstrate that the path or way has been used without interruption and as a right for twenty years for it to remain on the definitive map".

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

Footpath No.21 in the Community of Rhydygwern

4.02 Introduction

- 4.03 For identification purposes the location of the path is shown on Document No.1 which is an area south east of Machen and has been reproduced from the Ordnance Survey mapping by use of the Authorities Geographical Information System, GIS.
- 4.04 A copy of the definitive map is attached as Document No.2. For clarification Document No.2A is an enlarged copy of the Definitive Map
- 4.05 Footpath No.21 Rhydygwern is described in the accompanying definitive statement as;
- Footpath 21 RHYD-Y-GWERN
Length 128 Width 2.4
Commences at Forge Bridge; proceeds eastwards along the bank of the River Rhymney and terminate at the junction with footpath 23 (entrance to Tyn-y-waun Farm).
- 4.06 Members are invited to note reference to the phrase “proceeds eastwards along the bank of the River Rhymney”. Most of the map based evidence conflicts with this. In comparison between the definitive map and definitive statement it appears that there are two distinctly separate paths.
- 4.07 An area of land to the east of Forge Bridge, Machen and south of the track leading east alongside the River Rhymney has been the subject of a planning application for residential development, No.P/05/0367, Document No.3.
- 4.08 If one compares the proposed development plans Document No.3 with the definitive map Document No.2, it appears apparent that footpath No.21 Rhydygwern crosses the site.
- 4.09 In considering the definitive map with the definitive statement, there appears to be an error in one of the documents. The definitive statement indicates a route following the bank of the River Rhymney whereas the definitive map indicates a route diagonally across land to the south of the riverbank subject to planning permission.
- 4.10 Usually when a public right of way is affected by a planning consent the Authority can consider the diversion of the path under Section 257 of the Town and Country Planning Act 1991. One of the requirements is that the applicant controls the land onto which they wish to provide an alternative route or they have the written consent of the landowner accepting the alternative path on their land. Despite exhaustive research on behalf of the developers and this Authority we have been unable to identify the owner of the track alongside the River Rhymney. The Authority had identified this path as requiring attention some time ago, but due to staffing and financial constraints decided not to consider modifying the map and statement until a later date.
- 4.11 The developer has requested the Authority investigate this matter through the Wildlife and Countryside Act 1981 as it appears this is the only remedy to allow the development to take place. To assist the Authority in this regard the developers have offered to incur the costs of the order process.
- 4.12 During the preparation of the definitive map and statement, and having regard to the administrative area involved, Glamorgan County Council requested the assistance of the former parish councils. This involved the parish councils preparing maps and statements for their individual parish areas. In this regard, this authority is fortunate in inheriting the original parish maps and statements from Mid Glamorgan County Council at Local Government re-organisation in 1996 for the Rhydygwern area.

- 4.13 Attached as Document No.4 which is a copy of the parish map. Document No.5 is a copy of the parish statement in respect of CRF21 Rhydygwern and Document No.5A is a copy of the parish statement in respect of CRF23 Rhydygwern, referred to as the parish cards. Parish survey appears to have been carried out by D.F.I.Lovett, 20 Park Place, Cardiff between 12th October 1952 and 13th December 1952.
- 4.14 In regard to the parish map, it appears that the route in question was originally considered as a Cart Road Footpath running along the river bank in a west to east direction. The parish card describes the path as following the river bank to the entrance of Tyn-y-waun Farm.
- 4.15 Once the Parish councils had collected all the relevant information, it was sent to Glamorgan County Council who collated all the information and produced the Draft Definitive Map (Document No.6) and Statement, Document No.7, relevant date 14th September 1954. The Draft map and statement was published on the 31st January 1955, and was available for public inspection and open to representation by the public.
- 4.16 The Draft Map Document No.6 indicates the path by a dashed green line as a Cart Road. The Draft Definitive Statement Document No.7 records the path as a Cart Road Footpath. The route indicated on the draft definitive map indicates the path as commencing at Forge Bridge and leading in a general south easterly direction to its junction with Cart Road Footpath No.23 and Footpath No.24. The Draft Definitive Statement records the path as;
- Commences at Forge Bridge; proceeds eastwards along the bank of the River Rhymney and terminates at junction with CRF23 (entrance to Tyn-y-waun Farm).
- 4.17 However the first sentence of the parish record in respect of footpath No.24 Document No.17 sheds doubt on the accuracy of the draft definitive map in respect of Cart road footpath No.21. The statement records footpath No.24 as;
- Commences on cart road footpath 23 approximately 50 yards south of the River Rhymney, at wooden rails etc
- 4.18 This would coincide with the route on the parish map.
- 4.19 Once all representations were received by Glamorgan County Council, and resolved the Provisional Map (Document No.8) and Statement was published on the 1st May 1964. This records the path as a cart road footpath.
- 4.20 As part of the review procedure under the National Parks and Access to the Countryside Act 1949 and Countryside Act 1968, Glamorgan County Council published a Limited Special Draft Review Map and Statement in March 1974. This exercise involved the recognition of all legal events since the relevant date of the definitive map and statement namely the 14th September 1954 to 1st January 1971. In addition the opportunity was taken to reclassify all cart roads to either footpath, bridleway or byway open to all traffic. There were no representations to the reclassification of cart road footpath No.21 Rhydygwern to footpath. The revised map did not however correct the line of the path.
- 4.21 As no landowner can be identified and the Authority has been asked to determine the matter, notices (WCA 6) were posted at either end of the affected length of the path on the 4th May 2005 and maintained for one month until the 1st June 2005. A copy of the certified notice is included as Document No.9.
- 4.22 In considering the accuracy of the definitive map the opportunity has been taken to identify the correct route by comparison of the particulars with older maps. Included as Document No.10 is a copy of the base map similar to that used by the parish council during the initial survey. This particular map is a 1:10,560 commonly known as a 6" map. It is a 1922 edition, surveyed in 1874, revised in 1915. For clarification an enlarged copy of the area is included as Document No.11. These maps indicate a route alongside the river bank together with two routes across the

old coal levels none of which coincide with the definitive map. Only the route on the river bank corresponds with the description given in the definitive statement and the entrance to Tyn-y-waun Farm..

- 4.23 Document No.12 is a copy of the OS map published between 1884 and 1891 scale 1:10,560. This map has been enlarged to a scale of 1:2,500. This shows a route alongside the river, and access to Tyn-y-waun Farm, together with a single route across the coal levels, this second path appears to generally follow the definitive map route, whereas the route on the river bank corresponds with the definitive statement given in the definitive statement and the entrance to Tyn-y-waun Farm..
- 4.24 Document No.13 is a copy of the OS map published between 1873 and 1888 scale 1:2,500. As with the previous document the map indicates a route alongside the river, and access to Tyn-y-waun Farm, together with a single route across the coal levels, this second path appears to generally follow the definitive map route, whereas the route on the river bank corresponds with the definitive statement given in the definitive statement and the entrance to Tyn-y-waun Farm..
- 4.25 Document No.14 is a copy of the OS map published between 1900 and 1904 scale 1:2,500. This document offers no additional information to that already detailed in documents 11 and 12.
- 4.26 Document No.15 is a copy of the OS map published between 1919 and 1921 scale 1:2,500. This map clearly shows a route on the river bank and access to Tyn-y-waun Farm, corresponding with the definitive statement. The route across the old coal levels starts and crosses the definitive map route, but appears to terminate further away from the Forge Bridge.
- 4.27 Document No.16 is a copy of the OS map published between 1959 and 1973 scale 1:2,500. This map clearly shows a route on the river bank and access to Tyn-y-waun Farm, corresponding with the definitive statement. The route across the old coal level bears more south east to terminate at the rear of Riverside Cottage, whereas the definitive map route terminates a distance north of Riverside Cottage.
- 4.28 Summary**
- 4.29 The definitive map and statement relevant date 14th September 1954 prepared by Glamorgan County Council under the National Parks and Access to the Countryside Act 1949 records path No.21 in the Community of Rhydygwern as a Cart Road Footpath.
- 4.30 The Provisional map and statement relevant date 14th September 1954 prepared by Glamorgan County Council under the National Parks and Access to the Countryside Act 1949 together with the Definitive Map and Statement also records path No.21 in the Community of Rhydygwern as a Cart Road Footpath.
- 4.31 The Limited Special Draft Map and Statement Council relevant date 1st January 1971 prepared by Glamorgan County under the National Parks and Access to the Countryside Act 1949 and the Countryside Act 1968 records path No. 21 in the Community of Rhydygwern as a footpath.
- 4.32 As a result of a recent planning application it has come to light that there may be an error on the Special Draft Map and Statement.
- 4.33 The Parish map and card record path No.21 Rhydygwern as commencing at Forge Bridge and following the bank of the River Rhymney. The Draft, Provisional and Definitive maps indicate the path commencing at Forge Bridge and proceeding in a south easterly direction across land subject to the recent planning application. The statements for the maps record the path as commencing at Forge Bridge and following the bank of the River Rhymney.,
- 4.34 The developers have asked the Authority to promote a Modification Order to rectify the anomaly between the map and statement.

- 4.35 The various maps produced in the report indicate a path on the river bank but also a path across the area of the planning application. The statement for the various maps can be read as correct in respect of path No.21 and can be read as supporting the route indicated on the maps.
- 4.36 Closer inspection of the definitive statement particularly in regard to footpath No.24 Rhydygwern does however raise concern over the route of path No.21 on the map. The description of footpath No.24 clearly describes its own commencement and termination on other paths which appears to make it clear the location of all the paths in question.
- 4.37 In order to correct the definitive map it will be necessary to realign footpath No.21 along the bank of the river Rhymney and extend footpath No.23 in the Community of Rhydygwern to its junction with the realigned part of footpath No.21 in accordance with the statement

5. FINANCIAL IMPLICATIONS

- 5.1 Cost of Modification Order to be borne by developers

6. PERSONNEL IMPLICATIONS

- 6.1 None

7. CONSULTATIONS

- 7.1 Clerk to the Bedwas and Machen Community Council
County Borough Councillor Mrs. E.M. Aldworth
County Borough Councillor J.R. Davies
County Borough Councillor R.T. Davies
County Borough Councillor A. Donaldson
Wards Solicitors
K.Donovan, Ramblers Association local representative
Mr.M-R.Williams, Chief Engineer
J.Cooper, Transportation Manager
D.Perkins, Head of Legal Services
- 7.2 The only reply to the consultations was received from Wards Solicitors acting on behalf of the developer/applicant. This correspondence is attached. Wards Solicitors also attached copies of statements they had received from previous owners of the land crossed by footpath No.21 Rhydygwern.

8. RECOMMENDATIONS

- 8.1 That Members following a site inspection 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) Support the claim as made to amend the definitive map to bring it into line with the definitive statement
 - ii) Reject the claim

9. REASONS FOR THE RECOMMENDATIONS

- 9.1 To comply with statutory requirements

10. STATUTORY POWER

10.1 Wildlife and Countryside Act 1981. This is a delegated function of this committee.

Author: A.J.Sander, Senior Assistant Engineer, Rights of Way
Consultees: Clerk to the Bedwas and Machen Community Council
County Borough Councillor Mrs. E.M. Aldworth
County Borough Councillor J.R. Davies
County Borough Councillor R.T. Davies
County Borough Councillor A. Donaldson
Wards Solicitors
K.Donovan, Ramblers Association local representative
Mr.M.R.Williams, Chief Engineer
J.Cooper, Transportation Manager
D.Perkins, Head of Legal Services

Background Papers:
Council Offices, File ETP/ROW/FP21 Rhydygwern Modification Order Application, Pontllanfraith
Offices, Blackwood