

RIGHTS OF WAY COMMITTEE – 19TH DECEMBER 2006

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 LON MAES YR HAF ROAD TO TY BRACHTY TERRACE, CROESPENMAEN.

REPORT BY: DIRECTOR OF THE ENVIRONMENT

1. PURPOSE OF REPORT

- 1.1 To consider a Modification Order application in respect of a path at Lon Maes yr Haf Road to Ty Brachty Terrace, Croespenmaen.

2. SUMMARY

- 2.1 The report sets out the evidence regarding an application to claim a right of way from Lon Maes yr Haf Road to the B4251 Ty Brachty Terrace, Croespenmaen with a solution in the form of a Creation Agreement.

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 will 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 proposed 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 Order.

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

Claimed Right of Way from Lon Maes yr Haf Road to the B4251 Ty Brachty Terrace, Croespenmaen

4.2 Introduction

- 4.2.1 Gwent County Council received 11 evidence user forms on the 12th January, 1993, to add footpaths at Croespenmaen to the Definitive Map. Document No. 1 identifies several footpaths supported by the user evidence forms. The footpaths have been split into separate applications. This report refers to the request to add a footpath from Lon Maes yr Haf Road between Georgia House and The Paddocks, and runs between 1 Pleasant View and Manwell Bungalow terminating on B4251 Ty Brachty Terrace, Claimed Right of Way 89.
- 4.2.2 An application W.C.A. 5 was not received to support the application. Document No. 2 is a location map of the area. The route of the claimed path can be located in Document No. 3 as A-B-E-F.
- 4.2.3 Investigations into the application were commenced by Gwent County Council but no action was taken at the time of the application in 1992.
- 4.2.4 The Authority was contacted by the owner of Georgia House, which abuts the footpath, who was concerned that the line of the footpath may be changed following building works within the grounds of The Paddocks. Consequently, discussions took place with Mr. F. Knight of The Paddocks, who had received planning approval to erect a dwelling on his land. Mr. Knight requested permission to amend the route of the claimed path over land within his ownership to the rear of Georgia in order to incorporate this land within the curtilage of the grounds of the property he intended to build. This particular area is very overgrown and it is Mr. Knight's intention to cut back all the overgrowth and several trees which will improve the appearance of the area. There is currently a fence line shown as A-E (Document No. 3) separating Mr. Knight's garden and the claimed path.
- 4.2.5 Mr. Knight is agreeable to enter into a Creation Agreement under Section 25 of the Highways Act 1980 and an amended route has been agreed shown on Document No.3 as B-C-D-E.
- 4.2.6 On checking with the Electoral Register Section it was discovered that only four of the evidence users still reside in the area. A letter was sent to the remaining four evidence users seeking their withdrawal of the claimed right of way in favour of the Authority entering into a Creation Agreement with Mr. Knight. Two of the evidence users have agreed to this course of action but despite several reminders the remaining two have not responded.
- 4.2.7 Mr. Knight is also agreeable to enter into a Creation Agreement to add a further section of footpath which is used regularly by local residents shown as E-G in Document No. 3. This would provide a link to Bridleway No. 127 Abercarn which links into Cemaes Road Estate and to the rear of Pleasant View.
- 4.2.8 The section of footpath shown as E-F in Document No. 3 was purchased by Abercarn Urban District Council from Llanover Estate on the 31st October, 1939. Document No. 4 is a letter from Llanover Estate dated 7th November, 1955 agreeing to the footpath. This footpath is very well used and the overgrowth is cut back on a regular basis by the Rights of Way Section.

4.3 Creation of Public Footpath

- 4.3.1 As mentioned previously, the landowner, Mr. Knight, has agreed to enter into a Creation Agreement.
- 4.3.2 The route of the Creation Agreement is shown on Document No. 3 as A-B-C-D-E and E-G on Document No. 3. The total length of the path A-B-C-D-E is approximately 90 metres and E-G is approximately 90 metres..
- 4.3.3 It is considered it would be appropriate to resolve the claim by entering into a Creation Agreement as both parties agree with this solution.
- 4.3.4 Description of Paths to be Created:

The footpath commences on Lon Maes yr Haf Road, Croespenmaen, between Georgia and The Paddocks in a north easterly direction. The path width at the beginning of the path is 1.4 metres and has an old tarmac surface for a few metres, with a gently slope before changing to a grassed surface. The path is fenced on either side and widens to 1.6m and then narrows at the end of both fencelines to 1.5m. The path then follows a northerly direction, north-north easterly direction, north-north westerly direction where the path narrows to 0.9 metres between fenceline and hedge and narrows to 0.6m. The footpath terminates on the main B4251 Ty Brachty Terrace. The total distance of the path is 90 metres and is shown as A-B-E-F on Document No. 3.

The footpath commences approximately 30 metres south east of the centre of the property known as Manwell Bungalow. The path follows a north-north easterly direction, has a width of 2 metres, is fenced either side, has a mixture of grassed and stony surface and terminates at its junction with Bridleway 127 Abercarn. The total length of the path is 90 metres and is shown as E-G on Document No. 3.

4.4 Summary

The Authority is unable to pursue the addition of the footpath under the Wildlife and Countryside Act 1981 as no formal application has been submitted. In order to protect the access to local users of the footpath it is recommended that the Authority enter into a Creation Agreement with the landowner, for the path shown as A-B-C-D-E and F-G on Document No. 3.

5. FINANCIAL IMPLICATIONS

- 5.1 If the Authority enters into an agreement with the landowner through a Creation Agreement the Authority is required to advertise the Creation Agreement in one local newspaper. An assumed cost of £750.00.
- 5.3 If the Authority agree to pay the legal costs of the Creation Agreement, approximately £500, then this will be added to the above.

6. PERSONNEL IMPLICATIONS

- 6.1 None.

7. CONSULTATIONS

- 7.1 As listed.

8. RECOMMENDATIONS

- 8.1 That Members agree to enter into a Creation Agreement with Mr. F. Knight of The Paddocks for provision two paths as detailed in 4.4.

8.2 It is recommended that the Authority pay the legal costs involved in the Creation Agreement.

9. REASONS FOR THE RECOMMENDATIONS

9.1 To provide an expeditious and satisfactory solution to the claim under the Highways Act 1980.

Author: June Piper, CROW Support Officer.
Consultees: The Applicant.
The Landowner

Background Papers: File ETP/ROW/CROW89 Pontllanfraith Offices