

RIGHTS OF WAY CABINET COMMITTEE – 29TH FEBRUARY 2012

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

REPORT BY: CHIEF EXECUTIVE

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 sets out the evidence regarding the application to ADD a footpath from Dynevor Terrace to Heol Fawr, Nelson to the Definitive Map and Statement.

3. LINKS TO STRATEGY

- 3.1 The Wildlife and Countryside Act 1981 places a duty on the council to maintain an up to date Definitive Map and Statement
- 3.2 Keeping the definitive map and statement under continuous review as detailed within the Rights of Way Improvement Plan.

4. THE REPORT

4.1 Background

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. Document No. 1 gives an explanation of the term “public rights of way”.

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

Claimed Right of Way from Dynevor Terrace to Heol Fawr, Nelson

4.2 Introduction

- 4.2.1 For identification purposes the location of the claimed right of way is shown on Document No. 2 within circled area and is located in Nelson and has been reproduced from the ordnance survey mapping by use of the Authority’s Geographical Information System.

- 4.2.2 An application has been received under Section **53(3)(c)(i)** of the Wildlife and Countryside Act 1981 from Mrs. B.K. Bickley to modify the Definitive Map and Statement of the Mid Glamorgan County Council by ADDING a footpath from Dynevor Terrace to Heol Fawr, Nelson.
- 4.2.3 The route of the claimed path can be located in Document No. 3 along a bold broken red line shown as A-B-C-D. The application W.C.A.5 was received by the Authority on 19th September, 2001
- 4.2.4 The Claimed Right of Way commences at the side of 15 Heol Fawr, Nelson proceeds in a westerly direction and terminates at the side of 28 Dynevor Terrace, Nelson. It crosses adopted highway between points A-B and C-D, the back lanes of Heol Fawr and Dynevor Terrace to which the public has a right of access. Therefore the claimed application relates to points B-C as shown in Document No. 3. The total length of the claimed path is 82 metres with a width of 2.5 metres.
- 4.2.5 The applicant has confirmed that she has served Notice W.C.A.7. on the landowners.
- 4.2.6 The claim is supported by thirteen (13) User Evidence Forms all of which have been completed by the residents of Nelson who claim to have used the route on a regular basis.
- 4.2.7 Research has been undertaken to determine the validity of the claim by collating any **Documentary Evidence** available as well as the crucial **User Evidence** provided by the local residents.

4.3 User Evidence

- 4.3.1 Caerphilly County Borough Council received 13 submitted User Evidence Forms (W.C.A.8), all of which have been completed by people who claim to have used the route regularly. The Evidence Forms are available for inspection in the Planning Division. Each user is a resident of Nelson and has used the path as a public footpath without interference for a period varying between 34 and 70 years, comprising a total of 665 years usage.
- 4.3.2. The user evidence forms have been studied and the information from each form has been collated as follows:

- **Mr. R.D. Hall**

Mr. Hall regards the path as public and has known the path for 34 years. He has used it frequently on foot as access to the garage, bus station, Kwik Save and other local walks. He states that local residents and strangers have used the path and children on bicycles. The footpath had a hedge on one side and fence of the old Social Club on the other. He had never asked permission to use the footpath. He indicated on a plan attached to the evidence user form the line of the footpath.

- **Mrs. A. Sidol**

Mrs. Sidol regards the path as public, has known and used the path on foot since 1966 and used it as a safe short cut to Heol Fawr from Ashgrove. She never asked for permission to use the footpath and witnessed local residents using it on foot. She confirmed that the route was fenced and indicated the line of the footpath on the plan attached to the evidence user form.

- **Mr. P.S Williams**

Mr. Williams regards the path as public and referred to the path as "Crown Field". Mr. Williams has used the path on foot four times a week for 45 years to visit Heol Fawr from Dynevor Terrace and had never asked permission to use it. Mr. Williams confirmed that the footpath runs between boundaries and had seen local residents and strangers using it on foot.

Mr. Williams indicated the line of the footpath on the plan attached to the evidence user form.

- **Mrs. M.D. Owen**

Mrs. Owens regards the path as public and refers to the path as "Crown Field". She has used it on foot weekly for 63 years as access from Heol Fawr to Dynevor Terrace, Kwiksav and Bryncelyn. Mrs. Owens confirms that she has witnessed both locals and strangers using the path on foot. Mrs. Owens has never asked permission to use the path and confirms that the path has wired fencing along old Club boundary.

- **Mr. & Mrs. W. & M. Mumford**

Mr. and Mrs. Mumford regard the path as public and refer to the path as "Crown Field". They have used it four or five times a week for over 50 years. They used the path to walk their dog, to visit the shops and bus stop. They have never asked permission to use the path and confirm that the path has a fence to one side. They have witnessed local residents using the path on foot. They confirmed that the path has always been open even when shows are held on Crown Field. They indicated the line of the footpath on the plan attached to the evidence user form.

- **Mrs. P.A. Smith**

Mrs. Smith has used the path on foot on a daily basis for 60 years to access Dynevor Terrace from Heol Isaf. She has never asked permission to use the footpath and confirms that a fence exists along one side.

- **Mrs. S.J. Lewis**

Mrs. Lewis regards the path as public and has used it on a weekly basis for 54 years. She used the path to cut off the village centre. She has witnessed mainly local residents using the footpath on foot and has never asked permission to use the footpath.

- **Mrs. M.L. Lewis**

Mrs. Lewis regards the path as public and has used it on a weekly basis for over 70 years for walking and shopping. She has witnessed local residents and strangers using the footpath and confirms that she has never asked permission to use the footpath. She confirms that the path has a fence on one side and hedge on the other.

- **Mr. R.D. Parry**

Mr. Parry regards the path as public and has used it on foot three times a week for over fifty years. He has never asked permission to use the path and has witnessed walkers using it.

- **Mrs. E.M. Hanson**

Mrs. Hanson regards the path as public and has used it on foot for 44 years on a daily basis to visit relatives and access to the bus station. He confirms that he has never asked permission to use the path and has witnessed both local residents and strangers using the path on foot. He confirms that part of the route is enclosed between boundaries. Mrs. Hanson believes this is a necessary footpath to avoid busy and dangerous roads.

- **Mrs. M.A. Lapsa**

Mrs Lapsa regards the path as public and has used it for 65 years three or four times a week. She has used it to visit other parts of the village to visit friends, welfare grounds, Kwik Save, Bus Station, Police Station and Doctors Surgery. She has never asked permission to use the path and has witnessed many other people walking on the path and children on bicycles. She

has confirmed that there is a fence along one side of the path. Mrs. Lapsa has indicated on the plan attached to the evidence user form the route of the footpath.

- **Mrs. R.M. Williams**

Mrs. Williams regards the path and has used it on foot for 60 years twice a week when out walking or as a short cut. She has never asked permission to use the footpath and has witnessed both local residents and strangers using the path on foot. She states that the path has been tarmaced in parts.

- **Mrs. B.K. Brickley**

Mrs. Brickley regards the path as public and has used it on a regular basis on foot for 35 years. She has used it to take her children to school, walking to Dynevor Garage, Kwik Save, Welfare Ground, to Doctor's Surgery and Bryncelyn. She has never asked permission to use the footpath and confirms that she has seen both local residents and strangers using the path on foot plus children on bicycles. She states that there is a fence line alongside the old Social Club, a garden hedge and wall. She has indicated on the plan attached to the evidence user form the route of the footpath.

- 4.3.3 Mrs. Lapsa informed the Authority that Mrs. Brickley had moved away and Mrs. Lapsa then agreed to become the applicant for the claimed right of way and submitted W.C.A. 5 on the 1st October, 2010.

4.4 Documentary Evidence

- 4.4.1 The documentary evidence studied in conjunction with the User Evidence is outlined below. During the investigation of a claimed route a near match was looked for on all the maps listed below.

Map provided by Applicant – Identified as 1900 Map:

The map (Document No. 6) on which the applicant states relates to a 1900 map on which she has identified the route with a pink line. The map shows a dotted line on the claimed route.

Map provided by Applicant – identified as 1950's Map

The map (Document No. 7) on which the applicant states relates to a 1950's map on which she has identified the route with a pink line. The map shows the route as a F.P. and a dotted line on the claimed route.

Map provided by Applicant – no date identified.

The map (Document No. 8) on which the applicant has identified the route with a pink line. The map shows the route as a dotted line.

4.5 Land Ownership

- 4.5.1 The applicant served Notice W.C.A. 7 on the owners of the land identified as B-C in Document 3, namely Mr. Peter Davies and Mr. Alan Webb, who were in the process of selling it to developers for a housing estate to be built on the Market Site adjacent to the claimed route.
- 4.5.2 Letters were sent to both owners on 29th October, 2001, seeking their comments on the application to add the footpath over their land to the Definitive Map. The response received from Mr. Webb and on behalf of Mr. Davies, dated 26th November, 2001, objected to the application and stated that they were not prepared to dedicate the path as a highway.

- 4.5.3 The section of the claimed footpath from points A-B and C-D cross adopted highways and therefore the public already have a right of access. The claimed route is therefore identified as B-C.
- 4.5.4 A planning application to erect residential development on the former Cattle Market Site was submitted on 10th August, 2004 by Reginald Moore Ltd, the new landowners. The claimed route remained outside the development site and the developers agreed to surface the path.
- 4.5.5 Reginald Moore Ltd, contacted this office and confirmed that although they had hard cored and rolled the claimed path it was not owned by themselves.
- 4.5.6 A letter was sent to Mr. Webb, the previous landowner enquiring whether or not the claimed route had been retained in his and Mr. Davies' ownership. Mr. Webb contacted the office and confirmed that neither he nor Mr. Davies owned the land over which the claimed route crossed.
- 4.5.7 The new applicant, Mrs. Lapsa, was contacted and requested to display notices on site at B and C for a period of 28 days stating that an application under the Wildlife and Countryside Act 1981 had been submitted to add the footpath to the Definitive Map and Statement. This was undertaken to meet the requirements of the Wildlife and Countryside Act 1981 to allow a landowner to come forward.
- 4.5.8 Mrs. Lapsa confirmed that notices were displayed and maintained on site from Saturday, 30th October 2010 for a period of 28 days. No response has been received to the notices.

4.6 Landowner's Views

- 4.6.1 Mr. Webb and Mr. Davies objected to the application to add the footpath to the Definitive Map in 2001. However, in 2010 Mr. Webb stated that the land over which the claim crosses is not within their ownership.
- 4.6.2 Following notices displayed on site it would appear that there is no landowner for the claimed route.

4.7 SUMMARY

The Authority has received an application to add a footpath to the Definitive Map and Statement. Evidence has been submitted that the footpath has been used without interference for a period varying between 34 and 70 years and that no permission has been sought to use the footpath. No landowner has been identified and the prescribed notice has been displayed on site.

5. FINANCIAL IMPLICATIONS

- 5.1 The cost of an order should Members resolve to support the application, is in the region of £1,800.00. If it is agreed to add the footpath to the Definitive Map and Statement the cost of the order would be the responsibility of this Authority. Whatever Members' decision, should representations be received this may result in a public inquiry. This cost may exceed £10,000.

6. PERSONNEL IMPLICATIONS

- 6.1 None.

7. CONSULTATIONS

- 7.1 For List of Consultees see Appendix 1. Comments received on the draft report are appended to the report.

8. RECOMMENDATIONS

- 8.1 On the basis of the evidence and information compiled in the submitted documents, Members are requested to determine the application before them by either :-
- i) Supporting the claim as made that the paths be registered
 - ii) Rejecting the claim

9. REASONS FOR THE RECOMMENDATIONS

- 9.1 To comply with its duty to keep the definitive map and statement under continuous review.

10. STATUTORY POWER

- 10.1 Wildlife and Countryside Act 1981. This is a Council function delegated to this Committee.

Author: Mrs. June E. Piper, CROW Support Officer.

List of Documents

- 1. Explanation of Rights of Way Document No. 1
- 2. Location Plan Document No. 2
- 3. Plan showing claimed right of way Document No. 3
- 4. Application Form W.C.A.5 Document No. 4
- 5. Certificate Form W.C.A. 7 Document No. 5
- 6. Maps supplied by Applicant Document No. 6-8
- 7. Application Form W.C.A.5 Document No. 9
- 8. Form W.C.A. 6 Document No. 10
- 9. Letter from Applicant Document No. 11
- 10. Letter from Applicant Document No. 12
- 11. Letter from Open Spaces Society Document No. 13
- 12. E-mail from Councillor Mrs. A. Blackman Document No. 14
- 13. E-mail from Councillor Mrs. M. Tucker Document No. 15
- 14. E-mail from Nelson Community Council Document No. 16

ETP/ROW/CROW 175 held at Pontllanfraith Offices