



RIGHTS OF WAY CABINET COMMITTEE – 2ND MARCH 2012

SUBJECT: APPLICATION FOR A MODIFICATION ORDER TO AMEND THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY FOR THE COUNTY OF MONMOUTHSHIRE IN RESPECT OF ADDING THREE PATHS FROM MOUNTAIN ROAD, BEDWAS TO COLLIERY ROAD, BEDWAS

REPORT BY: CHIEF EXECUTIVE

1. PURPOSE OF REPORT

- 1.1 To consider and determine an application to ADD three paths to the Monmouthshire definitive map and statement

2. SUMMARY

- 2.1 Evidence is presented related to an application to ADD three paths to the Monmouthshire 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

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

To ADD three paths in the Community of Bedwas and Machen Leading from Mountain Road, Bedwas to Colliery Road, Bedwas

- 4.1 Introduction
- 4.2 For identification purposes the location of the paths is shown on Document No.1 which is an area north of Bedwas and has been reproduced from the ordnance survey mapping by use of the Authority's Geographical Information System.
- 4.3 An Application has been received under Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 from Mr. D.G Prosser, Hillside Terrace, Bedwas CF83 8AJ to modify the Definitive Map and Statement for the County of Monmouthshire by ADDING 3 paths to the documents. Two of the paths lead from Mountain Road, Bedwas eastwards and the third being a continuation of the first two leading southwards to Colliery Road, Bedwas. Due to non compliance with the legislation in respect of serving notice upon the landowners the application was not formally accepted until 11th December 2007.

- 4.4 The application was supported by one evidence form completed by the applicant attached as Document No.2`
- 4.5 An additional 2 No. evidence forms have subsequently been received from Mrs A.M. Prosser and Mr R.M. Williams received on 2nd January 2008 and 3rd November 2008 respectively. These evidence forms are attached as Documents No.3 and 4
- 4.6 The Wildlife and Countryside Act 1981 allows for a surveying authority to consider modification applications where fresh evidence is produced which has not been previously considered.
- 4.7 The paths that are the subject of this application were previously identified on the definitive map and statement for the former County of Monmouthshire (relevant date 1st July 1952) as footpath No.78, 78A and 79 Bedwas and Machen.
- 4.8 At its meeting on the 4th May 2006 the Rights of Way Committee considered an application by Mrs. G.D. Hutchinson, "Triacre", Mountain Road, Bedwas to modify the Definitive Map and Statement for the County of Monmouthshire by DELETING the three paths identified in paragraph 4.7 from the definitive map and statement.
- 4.9 Members of the committee inspected the routes of the three paths and after discussing the report at the re-convened meeting that followed, Members resolved that:-
- the application for a Modification Order to amend the Definitive Map and Statement of Public Rights of Way for the County of Monmouthshire in respect of deleting three paths from Mountain Road, Bedwas to Colliery Road, Bedwas be supported.
- A copy of the report and minutes are attached as Document No. 5
- 4.10 A Modification Order was subsequently made on the 10th May 2006 (Document No.6) and notices posted at each end of the affected paths from 25th May 2006 and maintained for the duration of the objection period which expired on the 14th July 2006.
- 4.11 No representations were received during the objection period.
- 4.12 The order was Confirmed unopposed on the 19th July 2006 (Document No.7) and notices posted at either end of the affected paths on the 27th July 2006 and maintained until the 7th September 2006.
- 4.13 In the most recent application Mr Prosser alleges that the three paths are shown on the definitive map and in the definitive statement.
- 4.14 From the evidence received, Mr Prosser indicates that he has used the paths for 56 years and his evidence form indicates that people (presumably landowners) did try to stop him from using the paths but as the paths appeared on the definitive map he ignored them.
- 4.15 Mr Prosser offers information contained on the Ordnance Survey plans of 1900 and 1920 as evidence of the existence of public rights.
- 4.16 In support of the application an evidence form was received from Mrs A.M. Prosser on the 2nd January 2008. This refers to same information contained in the evidence form produced by Mr Prosser.
- 4.17 A third evidence form was received from Mr. R.M. Williams on the 3rd November 2008. This suggests the supporter has known the path since about 1998. He has used the route occasionally but not always on the same route. He has not seen others using the path. He offers no further information that supports the claim.

4.18 Landowners

- 4.19 Mrs. Hutchinson of Triacre, Mountain Road, owns the majority of land over which the three footpaths, the subject of this application, are alleged to cross. The evidence she provided in respect of her application to delete the footpaths is included in the report presented to the Rights of Way Cabinet in 2006 see Document No. 8. (4.56 and also Document No. 36 of the report).
- 4.20 Mr. Tranter of 2 Sunnyside, Mountain Road, whose garden the footpath is alleged to cross supplied evidence disputing the existence of a public footpath through his garden and this information can be found in Document No. 8 (4.18). Sadly Mr. Tranter has died but his wife has confirmed that a garage was built many years ago where the alleged footpath gains access to her garden.
- 4.21 Mrs. Lewis of Ty Melin, Mountain Road, provided evidence disputing the existence of a footpath through her garden and this information can be found in Document No. 8 (4.13-4.16 and 4.60). Sadly Mrs. Lewis has died and the property is now owned by Mr. and Mrs. Alsafarr. They have boarded up the area where the locked garden gate previously existed.

Summary

- 4.22 Mr Prosser has made this application seeking the re-registration of the paths which were deleted from the definitive map by the Modification Order on the 24th April 2007.
- 4.23 A copy of the previous report and minutes are included as Document No. 8 to provide background information of the evidence for and against the paths being deleted from the Definitive Map and Statement.
- 4.24 In consideration of this claim, the authority are able to consider applications where fresh evidence is brought to the authority's attention.
- 4.25 Mr. and Mrs. Prosser state that they have known the footpaths over 50 years but have used the footpaths over the last 22 years despite attempts by the landowners to prevent them. Mr. Williams who supports the application has only used the footpath occasionally over the last 10 years.
- 4.26 Mrs. Hutchinson states that the land has been in her family for over eighty years and during that time only friends and family have used any footpaths on the ground.
- 4.27 Mrs. Tranter states that she has lived at her property for 33 years and has only seen Mrs. Hutchinson's family using footpaths on the ground.
- 4.28 Mr. and Mrs. Alsafarr recently moved to Ty Melin and when they bought the property the search undertaken by their solicitor revealed no public rights of way. They would object to any footpath through their garden.
- 4.29 Mr. Gilbert of Gelligaer Ramblers has no objection to the footpaths being added to the Definitive Map and Statement.

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 footpaths to the Definitive Map and Statement the cost of the order and the cost of opening of the footpaths 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

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. J.E. Piper, CROW Support Officer, Rights of Way
Consultees: Mr Prosser, Applicant
Mrs Hutchinson, landowner
Mrs. Tranter, landowner
Mr. and Mrs. Alsafarr
Councillor Mrs. E.M. Aldworth
Councillor R. Davies
Councillor R.T. Davies
Councillor C. Hobbs
Mr. P. Gilbert, Ramblers Association local representative
Mrs. S. Chick, Clerk to Bedwas, Trethomas and Machen Community Council
Mr. N. Liversuch, Countryside and Landscape Manager
Mr. D. Perkins, Head of Legal Services

Background Papers:
ETP/ROW/CROW208, Planning Division

Appendices:

Document No. 1	Location Plan
Document No. 2	Evidence form WCA8A received from Mr G.D. Prosser
Document No. 3	Evidence form WCA8A received from Mrs A.M. Prosser
Document No. 4	Evidence form WCA8A received from Mr. R.M. Williams
Document No. 5	Copy of Modification Order made on 10 th May 2006
Document No. 6	Copy of Confirmation Order made on 19 th July 2006
Document No. 7	Explanation of Public Rights of Way
Document No. 8	Copy of Report and Minutes – ROW Cabinet dated 4 th May, 2006.
Document No. 9	Letter from Mrs. G.D. Hutchinson
Document No. 10	Letter from Mrs. B. Tranter

Document No. 11 Letter from Mr. and Mrs. Alsafarr
Document No. 12 Letter from Mr. P. Gilbert, Gelligaer Ramblers
Document No. 13 Letter from Mr. D.G. Proseer