



RIGHTS OF WAY CABINET COMMITTEE– 14TH NOVEMBER 2013

SUBJECT: APPLICATION FOR A MODIFICATION ORDER TO AMEND THE MONMOUTHSHIRE COUNTY COUNCIL DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY IN RESPECT OF EXTINGUISHING A PATH IN THE COMMUNITY OF BEDWELLY

REPORT BY: ACTING DEPUTY CHIEF EXECUTIVE

1. PURPOSE OF REPORT

- 1.1 To consider and determine an application to EXTINGUISH a path from the Definitive Map and Statement.

2. SUMMARY

- 2.1 The report sets out the evidence regarding the application to EXTINGUISH a footpath from Central Avenue to Waunborfa Barn, Cefn Fforest on the Definitive Map and Statement.
- 2.2 The report sets out the evidence that an error has occurred between the Definitive Map and Statement in respect of Footpath 64 in the Community of Bedwellty and seeks a Modification Order to Extinguish Footpath 64 in the Community of Bedwellty. The landowners have dedicated a replacement footpath, which has been used by local residents for over ninety years.

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

- 4.1.1 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 EXTINGUISH a path identified on the definitive map and statement. Document No. 1 gives an explanation of the term “public rights of way”.
- 4.1.2 The application is being dealt with under the Wildlife and Countryside Act 1981, Section 53 (3) (c) (iii) to EXTINGUISH Footpath 64 in the Community of Bedwellty.

4.2 Introduction

- 4.2.1 The Authority has submitted an application under the Wildlife and Countryside Act 1981 to extinguish Footpath 64 in the Community of Bedwellty under Section 53 (3) (c) (iii). Wildlife and Countryside Act Form 6 has been served on both landowners as prescribed in the Act. The application is supported by 6 No. Evidence user forms.
- 4.2.2 For information purposes the location of Footpath No. 64 in the Community of Bedwellty is shown on Document No. 2, within circled area, located in Cefn Fforest and has been reproduced from the ordnance survey mapping by use of the Authority's Geographical System.
- 4.2.3 A copy of the Definitive Map and Statement is attached as Document No. 3.
- 4.2.4 The route of the footpath to be extinguished is shown in Document No. 4 by a bold black line between points A-B, a black dashed line between points D-C-E. identifies the footpath currently walked.
- 4.2.5 It would appear that an error has occurred between the line of the Definitive Map and the Statement. The local councillor and residents have confirmed that the line shown on the Definitive Map has never been used and the footpath described in the Statement and shown as D-C-E in Document No. 4 is the footpath used for well over ninety years.
- 4.2.6 If it is agreed that a Modification Order to extinguish Footpath 64 in the Community of Bedwellty the dedicated footpath will in future be identified as Footpath 64A in the Community of Bedwellty.
- 4.2.7 The cost of Modification Orders, which are in the region of £2,500, are met by the Local Authority.
- 4.2.8 Description of existing path or way to be extinguished:-

F.P. commences at Central Avenue, proceeding west and descending embankment 8' wide with loose surface. 20 yds from commencement iron post erected to prevent use by traffic. After 25 yds runs with wire fence on north side. F.P. swings S.W. with tarred surface for 50 yds at end of tar two posts erected to prevent traffic. Joins lane 100 yds from Waunborfa Barn. Maintained by Local Council.

Description of Dedicated footpath to be identified as Footpath 64A in the Community of Bedwellty:-

Footpath commences at Central Avenue, proceeding west and descending embankment, swings south west and terminates on Waunborfa Road. The footpath is approximately 1.4 metres wide, has a length of 179 metres and has a tarmaced surface. A kissing gate has been installed at approximately 124 metres to prevent misuse by vehicles. The footpath is shown on the plan by a bold black dashed line between points D-C-E.

4.3 Documentary Evidence

- 4.3.1 Maps have been reproduced from the Historical Mapping System and shows the area at various stages:-
- 4.3.2 Document No. 5 shows the area crossed by the footpath in 1919-1921. It is noted that an old quarry is shown on this plan where the definitive line crosses. There are several paths shown on this map.
- 4.3.3 Document No. 6 shows the area crossed by the footpath in 1959-1973. A footpath is shown but not on the definitive line but on the line the local residents have stated that they have used for over ninety years. No indication of the definitive line of the footpath is shown.

- 4.3.4 Document No. 7 shows the area crossed by the footpath in 1961-1992. The footpath referred to by the locals as the walked route is shown but not the definitive line.
- 4.3.5 Document No. 8 is a copy of the Draft Plan of the Definitive Map, together with an enlargement for the area. Footpath 64 in the Community of Bedwellty has been drawn on the map crossing through the quarry area.
- 4.3.6 Document No. 9 is a copy of the Definitive Statement for Footpath No. 64 in the Community of Bedwellty which relates to the January 1950 Edition of the Memorandum prepared by the Commons, open Spaces and Footpath Preservation Society entitled "Survey of Rights of Way."

4.4 Landowners

- 4.4.1 Two separate landowners own the land over which the walked footpath crosses. They have dedicated the footpath shown as D-C-E in Document No. 4 as a public right of way. The surface of this particular footpath has been improved by grant money awarded to the Cefn Fforest Community Partnership.
- 4.4.2 The owners of the section of land (C-D) have written a letter (Document No. 10) to support the application to extinguish Footpath 64 Bedwellty and confirm that the footpath identified as D-C-E in Document No. 4 "is the only footpath" that they have seen or known anyone use in their lifetime. They also state that the definitive line of the footpath "is completely blocked by trees and the Council drains its rainwater directly into this ground". They believe it is in everyone's interest to extinguish the definitive line of the footpath.
- 4.4.3 The owners of the section of land (E-F) have also written a letter (Document No. 11) in support of the application to extinguish Footpath 64 Bedwellty.
- 4.4.4 They state firstly, "the beginning of the erred alignment at point A (Document No. 4), apparently runs along the outer western perimeter of the Coal Yard and on top of a very steep and heavily overgrown embankment. This embankment has always been heavily covered with dense vegetation making it impossible for members of the public to gain access through it. Furthermore, the steepness of the embankment off Waunborfa road has gabion basket support for an earlier landslip which has clearly prevented any alleged public access up to the present day.
- 4.4.5 They further state that "the erred alignment at point A (Document No. 4) passes directly along the southern boundary of the Coal yard and directly across the vehicular parking area outside the yard. This alignment would have clearly brought members of the public and users of the Coal Yard into conflict regarding safety issues. They have never seen any members of the public walk along this part of the erred alignment nor attempted to. Furthermore to the best of their knowledge no members of the public have requested the removal of any parked vehicles allegedly parked upon the footpath or made any official complaint to the relevant authority".
- 4.4.6 However, "on the other hand, over the years they have witnessed members of the public ingress and egress the dedicated footpath between points E-C (Document No. 4). One of the reasons for dedicating the footpath to the public was to minimise any conflict between users of the Coal Yard and public footpath users crossing our property. Historically, public footpath users used this alignment as it was/is the most common sense approach for their safety".

4.5 User Evidence

- 4.5.1 Mr. Lawrence Thomas submitted an Evidence User Form, together with a letter (Document No. 12) and confirmed that he has only ever used the Black Path and has never used or witnessed anyone using the definitive line.

- 4.5.2 Mr. Thomas has lived in Cefn Fforest all his life, and used the path for over fifty years, first in Waunborfa Road and then Pencoed Avenue. As a young boy he always played around the Black Path, the local name for the path shown as E-C-D (Document No. 4). In the winter he was up and down the path on his sleigh. When he left school he went to work in the Corona Factory in Pengam so he used to walk to and from work everyday using the Black Path. He did this for thirty years. When the factory closed down he was transferred to Cardiff so again used the Black Path to catch the train down to Cardiff. When he retired he used the path to take his grandchildren for walks.
- 4.5.3 Mr. Thomas recalled two iron posts halfway down the path and two lamp posts. Just at the bend and the left of the path there is a water course taking all the water down to Waunborfa Road. This was always maintained by Bedwellty Council. The workman doing all the cleaning on the path was Mr. Len Bevan.
- 4.5.4 All the men living in Cefn Fforest and working in Britannia Colliery used the Black Path every day.
- 4.5.5 Mr. Ronald Stoate submitted an Evidence User Form (Document No. 13) to support the application and confirmed that he has only ever used the Black Path and has never used or witnessed anyone using the definitive line.
- 4.5.6 Mr. John Stoate submitted an Evidence User Form (Document No. 14) to support the application and confirmed that he has only ever used the Black Path and has never used or witnessed anyone using the definitive line.
- 4.5.7 Mr. John Stoate has used the Black Path regularly all his life on and off since he can remember. He recalled one lamp post in the middle of the path and one at the bottom. Culvert in the middle of the path with a drainage ditch down the left-hand side. Opposite the culvert there used to be a gate on the right hand-side to Pig's Field. Frank Hiller had a Timber Yard at the bottom of the Black Path and in between the Timber Yard and a water spring was an entrance to the Farmer's Field on the right-hand side.
- 4.5.8 County Councillor Thomas J. Williams submitted an Evidence User Form (Document No. 15) to support the application and confirmed that he has only ever used the Black Path and has never used or witnessed anyone using the definitive line.
- 4.5.9 Cllr Williams states that he has known the Black Path for 70 years and has used it for 50 years walking to work and to walk to the Railway Station.
- 4.5.10 Cllr Williams states that the Black Path has been in operation for over 100 years and maintained by previous Councils Bedwellty U.D.C. and Islwyn B.C. and now by Caerphilly C.B.C.
- 4.5.11 Mr. Peter Coombs submitted an Evidence User Form (Document No.16) to support the application and confirmed that he has only ever used the Black Path and has never used or witnessed anyone using the definitive line..
- 4.5.12 Mr. Coombs has known the Black Path for over 50 years and used it most days all his life. He can recall that Mr. Len Bevan, Council employee, swept and picked litter off the path. He identified the location of three street lights on the path.
- 4.5.13 Mr. Colin A. Thomas submitted an Evidence User Form (Document No. 17) to support the application and confirmed that he has only ever used the Black Path and has never used or witnessed anyone using the definitive line.
- 4.5.14 Mr. Thomas has known the Black Path for seventy years and used it every day from 1956-1983 whilst he was working at Britannia Colliery.

- 4.5.15 Mr. Thomas recalled a lamppost with a light on the corner of the Black Path. He recalled all the men living in Cefn Fforest and working in Britannia Colliery used the Black Path. The Black Path is only path that he has used.
- 4.5.16 Mr. Thomas recalled a ditch just around the corner taking the water from Central Avenue down the Black Path to Waunborfa Road. Mr. Leonard Bevan used to work on the Black Path keeping the water way clean.
- 4.5.17 A meeting took place with Messrs. J and Ronald Stoate, Mr. Thomas and Cllr. T.J. Williams on 14th February, 2013, who confirmed their use of the Black Path. They identified the location of the following:-
- Pig Field at the side of the path; location of the old street lights, culvert, water course and spring.
- 4.5.18 They confirmed the ground where the definitive line is shown was an old quarry over which there was no access. They confirmed that they never used the definitive line and were not aware of anyone who had attempted to use it.

4.6 Summary

- 4.6.1 The local residents and landowners appear to agree that they have never used the definitive line of Footpath 64 in the Community of Bedwellty. Their description of the Black path appears very similar to that footpath described in the Definitive Statement.
- 4.6.2 From the evidence supplied the Black Path appears to have been well used over the years and reference has been to it being maintained by the previously Authorities, namely Bedwellty U.D.C. and Islwyn B.C.
- 4.6.3 The Black Path has now been dedicated as a public right of way by the two owners, which allowed it to be improved for the local residents.
- 4.6.4 The historical maps show the existence of the Black Path and the information supplied by the local residents and the landowners supports the content of the Definitive Statement.

5. FINANCIAL IMPLICATIONS

- 5.1 The Authority paid the legal fees incurred as part of the Dedication (£250), in order to meet the terms of the grant provided to Cefn Fforest Community Partnership, which required the Council to take on the future maintenance of the footpath.
- 5.2 The cost incurred for producing a Modification Order for the Extinguishment of Footpath 64, in the Community of Bedwellty, should it be agreed, will be met by the Authority and is in the region of £2,500.

6. PERSONNEL IMPLICATIONS

- 6.1 None.

7. CONSULTATIONS

- 7.1 For List of Consultees see Document No. 18.

7.2 The Authority were intending to deal with this matter under Section 18 of the Highways Act and undertook a pre-order consultation exercise with Local Members, the community council, user groups and utility companies in respect of extinguishing the footpath. Replies have been received from Western Power and CCW who do not object to the extinguishment. Welsh Water initially objected but withdrew this when a site meeting showed that they were able to access their equipment if necessary.

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 footpath be extinguished
- (ii) Rejecting the claim

It is recommended that the dedicated footpath be added to the Definitive Map and Statement and identified as Footpath 64A in the Community of Bedwellty.

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 the term "public rights of way" Document No. 1
2. Location Plan Document No. 2
3. Copy of Definitive map and Statement Document No. 3
4. Plan showing extinguishment and dedicated footpath Document No. 4
5. Plan dated 1919-1921 Document No. 5
6. Plan dated 1959-1973 Document No. 6
7. Plan dated 1961-1992 Document No. 7
8. Draft Plan Document No. 8
9. Definitive Statement No. 9
10. Letter from Mr. P. Perry and Ms. M. Davies (Document No. 10)
11. Letter from Mr. and Mrs. Soroko (Document No. 11)
12. Evidence form and letter from Mr. L. Thorpe (Document No. 12)
13. Evidence form from Mr. Ronald Stoate (Document No. 13)
14. Evidence form from Mr. John Stoate (Document No. 14)
15. Evidence form from Councillor T.J. Williams (Document No. 15)
16. Evidence form from Mr. P. Coombs (Document No. 16)
17. Evidence form from Mr. C.A. Thomas (Document No. 17)
18. Consultation List (Document No. 18)

ETP/ROW/FP64 Bedwellty held at Pontllanfraith Offices