

Piper, June

From: MS THOMAS [maggie.sian@btinternet.com]
Sent: 28 July 2014 11:17
To: Piper, June; Powell, Andrew
Subject: Application to Reclassify the Restricted Byway 367 in the Community of Abercarn
Attachments: response to consultation.doc; response map.jpeg; 100.JPG; 104.JPG; 105.JPG

Dear June & Andy,

The Photos were taken on 20/7/14 and give an indication of Mr. Roberts' determination not to co-operate. Photo 100 of C on the map, where there should be a temporary stile and photos 104 at point X on the map with the hurdles and large bales to be seen clearly in the background & 105 is of the padlocked gate. The gate was padlocked - we checked!

This is more than five years on from Julian Derrick's first complaint! It says all that has to be said about Mr. Roberts' level of co-operation.

Regards
Maggie







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28/7/14

Dear Mrs. Piper,

Re: Application to Reclassify the Restricted Byway 367 in the Community of Abercarn.

The Open spaces Society opposes the application to Reclassify the Restricted Byway 367 in the Community of Abercarn and feels that CCBC has complicated the issue by applying for a reclassification over the whole of the way.

A Definitive Map Modification order should not change the status of a way, but reflect accurately the public rights that already exist over a way, but have been recorded inaccurately. In *Burrows v the Secretary of State for Environment, Food and Rural Affairs* (2004) the court held that “ there had to be new evidence, which when considered with other evidence, justified the modification.” The words in this paragraph are taken from 5.2.5. of *Rights of Way – A Guide to Law and Practice*. By John Riddall and John Trevelyan. The authors of this book are considered to be authorities on rights of way.

There is clear evidence that the route from Cefn Pennar Farm to Pant-y-resk Road (Y to A on the attached map) has been recorded inaccurately on the Definitive Map. If the application were to seek a modification of this part of the way only, the Open Spaces Society would not oppose it.

Conversely there is no evidence put forward to suggest that the remainder of the route was classified incorrectly and thus those parts should remain a restricted byway. If there were a benefit to the public by reclassifying the parts from X to B to Y on the map then that would be a different matter, but such a reclassification would *not* benefit the public. Although it has not been included in the application Mr. Roberts claimed at one time that milk was transported via the cartroad (X to B to Y) by cart to Cefn Pennar Farm. However, the lower part of the way (Y to A on the attached map) was used by residents on foot going to Cefn Pennar to buy milk. This gives credence to the view that Y to A on

the attached map should have been classified a footpath, but the remainder of the way is a restricted byway.

It may seem perverse to accept a modification of the way from Y to A on the attached map, but to oppose the reclassification of the whole of the way. However, there would be repercussions if the rest of the way were to be reclassified as a footpath. Section 147 Highways Act 1980 bestows power to authorise the erection of stiles etc. on footpaths or bridleways. Mr. Roberts has already informally requested permission to put barriers of some sort along this part of the way. While the way is a restricted byway, permission cannot be granted, but if the way were to become a footpath section 147 of the Highways Act could be invoked. This would clearly be substantially less convenient to the public. Mr. Roberts' past behaviour speaks for itself. He has illegally erected a series of hurdles along the restricted byway (X to B on the attached map) and made them almost impossible to negotiate without cutting the binder twine. Most walkers do not carry a knife with them when going for a walk. Despite being contacted by CCBC officers on a number of occasions Mr. Roberts has failed to comply with requests to ensure that members of the public can use the way easily. In addition Mr. Roberts has obstructed the way with large bales. Although it would be possible, if the way were to become a footpath, to give Mr. Roberts permission to erect gates that must be left open at all times, other than when stock is being moved, we must judge Mr. Roberts on past behaviour. It would be an unacceptable drain on the public purse to be continually trying to ensure that Mr. Roberts complies with the law. On 20/07/14 I tried to visit the site with Islwyn Ramblers' rights of way officer. The gate at point X was padlocked, there was barbed wire on the top of the gate. From the gate we could see hurdles across the byway at short, regular intervals and behind that, large bales. At C on the map there was a fence with barbed wire across the top. I believe that Mr. Roberts was provided with a stile some months ago so that B to C could be a temporary permissive route, while the two landowners and the authority were given time to plan the application to vary the right of way and divert part of it. Mr. Roberts cannot be trusted. Dr. McGregor should take some blame as she has left Mr. Roberts in charge of part of her land. It should have been clear a long time ago that Mr. Roberts would not co-operate with efforts to get this way open to the public, as is their right.

In section 5 of the Report by the Acting Director of Environment it is stated that "There are no potential equalities implications". I disagree. When it comes to using a right of way, disability is not only about wheelchair use. Putting extra obstacles on a way can affect those with poor sight and those with worsening mobility. My own doctor has congratulated me on my perseverance with walking despite an arthritic knee and a history of sciatica. For many people negotiating stiles is becoming more and more of a problem as they get older. Attempting to negotiate hurdles tied up with binder twine is almost impossible. Trying to open gates which are not hung properly can cause sciatica. I am not an expert on disability issues, but even I can see the problems if this way is downgraded to a footpath. If the restricted byway is reclassified as a footpath and Mr.

Roberts is allowed more gates across the way, there would be serious equality implications. A disability expert should be involved to consider all of Mr. Roberts' plans if CCBC is seriously considering the reclassification of this part of the way. CCBC must be aware of the equalities implications for it has a policy to replace stiles with kissing gates wherever possible.

In Mr. Roberts' witness statement he has not fully completed the form so it not clear whether he is referring to the whole of the way or just a part. Although he states that he has not seen anyone use the way, he recently reported an incident to the Police and gave the name of a member of the public he thought might be to blame as he had seen him use the right of way. It is interesting that in his statement in section 13 where Mr. Roberts describes any stiles etc., on the way, he only mentions a field gate. He must know that the other obstructions that have been there for at least four years are illegal or surely he would have mentioned them! There is plenty of photographic evidence of these obstructions over a period of years.

Dr. Anne McGregor's witness statement is somewhat disingenuous. She may have owned the property for 20 years but she has not lived there for some considerable time. Mr. Roberts' son lived there before he emigrated and since that time the property has mostly been empty. When CCBC tried to contact Dr. McGregor regarding the right of way a few years ago, she claimed that she did not receive the letters, which were sent over a period of a few months. It may well be true that Dr. McGregor has never seen anyone use the way, but that is not surprising, bearing in mind she has hardly lived there. In the Report by the Acting Director of Environment it is mentioned that she states that " no-one had used the path in question nor has anyone asked for access. She was told this by the Craggs, who owned Cefn Pennar before she did." However, CCBC has documentary evidence that the Craggs were well aware of the right of way. What the Craggs or previous occupants from Canada allegedly said to Dr. McGregor should be disregarded. Some people believe that if a right of way is not used for 20 years it ceases to become a right of way. This is untrue. Although Dr. McGregor lives elsewhere she still has a responsibility to ensure that the rights of way over her land are unobstructed and easy to use. Leaving Mr. Roberts in charge of creating a permissive right of way, until the issues can be solved legally shows that she is a poor judge.

There are only two witness statements and both of those are owners of the land in question. It should be remembered that Dr. McGregor lives elsewhere and is unlikely to see users of the right of way. Mr. Roberts has erected illegal obstacles, put up signage which contains untruths and has even tried to pass himself off as Dr. McGregor to stop the public right of way being cleared. He continues to put up illegal obstacles to ensure that the public cannot use the path. Both Dr. McGregor and Mr. Roberts have a pecuniary interest in the outcome of this application.

It is stated in the Report by the Acting Director of Environment that “ The diverted route is far more commodious than the definitive line.” The field, where the diversion is planned can get exceedingly wet as there are issues and spreads in the vicinity. Whether it really is more commodious depends on the exact location of the line that the diversion will take and **that has not been revealed**. It would be helpful to know why the author of this report believes that the route would be more commodious. My thesaurus gives “spacious” and “roomy” as synonyms for commodious. The Open Spaces Society would not oppose the diversion of the right of way from B to C if it were to remain the same width as the way from B to Y. If it is narrower, it cannot be claimed that it is substantially as convenient to the public or indeed more commodious. The exact route should be planned so that it is not over issues or springs or other wet ground. The exit onto the highway at Pany-y-resk Road should be via a gap or a gate and the ground carefully graded to ensure that it is not a muddy, steep slope, which would be dangerous. Full details should be clear and available before the order is made. If these terms are not met then the Open Spaces Society will oppose the order if it is made. In the Report by the Acting Director of Environment it is mentioned that the Open Spaces Society opposed the diversion during the pre-consultation exercise. I requested permission to visit the site and walk the route of the planned diversion. I was told that Dr. McGregor refused permission. It was impossible to make an informed judgment without visiting the site and thus there was no option but to oppose it.

This particular problem has cost the authority a great deal of money and use of officers' time in these last few years. Admittedly some of the blame can be attributed to Monmouthshire County Council in the creation of the Definitive Map and statement. However, other costs have been sustained by the failure of Dr. McGregor to ensure that her mail is secure and to leave her land with someone trustworthy. She is the owner of some of the land and has a responsibility for that land. She should ensure that she is contactable by the authorities. Mr. Roberts is also to blame for costs and use of officers' time by his unreasonable behaviour. The Open Spaces Society does not want the authority to incur any more unnecessary costs. I have been told that without the diversion, to reinstate the right of way along the line shown on the Definitive Map would prove very costly. However, the public has a right to cross this land and it is incumbent on the authority to ensure that walkers can cross it safely along a way that is at least as “commodious” as the present line. At present A to Y on the map has a very firm surface. The part of B to Y that I have been able to walk is also firm underfoot. If the diversion is to go ahead then B to C must be similarly easy to use and firm underfoot. Until reassurances have been given regarding the exact route and width of the diversion The Open Spaces Society opposes the diversion.

Yours sincerely,