



RIGHTS OF WAY CABINET COMMITTEE

MINUTES OF THE MEETING HELD AT PENALLTA HOUSE, TREDOMEN ON
THURSDAY, 1ST DECEMBER 2016 AT 2.00PM.

PRESENT:

Councillor T.J. Williams (Cabinet Member for Highways, Transportation and Engineering)
- Vice Chair (Presiding)

Councillors:

D.V. Poole (Cabinet Member for Community and Leisure Services), R. Woodyatt (Cabinet Member for Social Services).

Together with:

P. Griffiths (Principal Planner), A. Powell (Countryside Access and Rights of Way Officer), J. Piper (CROW Support Officer), R. Crane (Senior Solicitor), H. Lewis (Legal Assistant), A. Dredge (Committee Services Officer).

1. APOLOGIES FOR ABSENCE

Apologies for absence had been received from Councillors K. James (Cabinet Member for Regeneration, Planning and Sustainable Development), Mrs B. Jones (Cabinet Member for Corporate Services).

2. DECLARATIONS OF INTEREST

There were no declarations of interest received at the commencement or during the course of the meeting.

3. APPLICATION FOR A MODIFICATION ORDER TO VARY THE MONMOUTHSHIRE COUNTY COUNCIL DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY IN RESPECT OF THE STATUS OF THE PATH (RESTRICTED BYWAY 367 IN THE COMMUNITY OF ABERCARN) AND DIVERSION OF A SECTION OF THE RIGHT OF WAY

Members were asked to consider and determine the proposed correction to the minutes of the Rights of Way Cabinet Committee held on the 15th September 2014, a copy of which was appended to the report (Document 1). The minutes were approved as a correct record by Cabinet at its meeting on the 29th October 2014. Following this meeting it was noted that a correction was required as Recommendation 9 (i) *Supporting the application as made that the status of the Definitive Map and Statement should be varied to change it from a Restricted Byway to a Footpath* had been omitted. It was also noted that the report contained a further error in that it refers to *Section 118 of the Highways Act 1980*, which is a *Stopping of the Right of Way*, but should read refer to *Section 119 for the Diversion of a Right of Way*. This was the last Rights of Way Cabinet Committee held and this is the reason the minutes had not been corrected earlier.

At the meeting on 15th September 2014, Members were asked to consider two matters concerning the application. The first was whether the status of the right of way should be reclassified as a footpath (as per Para 3.1 (i) of the report) and secondly, whether the route should be diverted. Members resolved to agree to recommendation 9.1 (iii) and to approve the diversion of the right of way and this was included in the minutes. However, as the Members supported the application to vary the status of the Restricted Byway to a Footpath the width of the alternative Right of Way or path should be 1.8 metres and not 3 metres.

Following the meeting, a Modification Order was produced to change the status of Restricted Byway 367 in the Community of Abercarn to a Footpath. Objections were received to the Order and as the objectors would not withdraw their objections the Order was sent to the Welsh Government to determine. The Planning Inspectorate has arranged for the Modification Order to be considered by a Planning Inspector at a Public Inquiry on the 7th February 2017.

The Cabinet Members at this meeting were asked to amend the minutes to include recommendation 9 (i) of the report presented on the 15th September 2014:-

- (i) approve the diversion of the right of way as shown in Document Number 15 which will be processed under Section 119 of the Highways Act 1980 in accordance with the following descriptions:-

and that in the description of the alternative way or path that the reference to 3 metres if restricted byway should be deleted.

Following consideration and discussion, it was moved and seconded that the recommendations at paragraph 10.1 (i) and 10.1 (3) in the report dated 1st December 2016, be approved. By a show of hands this was unanimously agreed.

RESOLVED that for the reasons contained in the Officer's report, the errors in the Minutes of the Rights of Way Cabinet held on the 15th September, 2014, be amended to correctly record the resolutions made by Members at that meeting as follows:-

- (i) supporting the application as made that the status of the Definitive Map and Statement should be varied to change it from a Restricted Byway to a Footpath and;
- (ii) approve the diversion of the Right of Way as shown in Document 15 which will be processed under Section 119 of the Highways Act 1980 in accordance with the following descriptions:-

Description of a section of the existing path or way to be diverted:-

- (i) from the junction with Pant-y-Resk Road this path goes north along a footpath and passes at the farm and the road is then a cart road up to the junction with the road leading to Ty-Coedcae. (A-B)

Description of alternative path or way:-

- (i) a new path commences from the junction with Pant-y-Resk Road the path goes north west and then bears in a north easterly direction to reach the junction with the road leading to Ty-Coedcae (C-B). A total distance of 345 metres.
- (ii) the width of the alternative path or way to be consistent with the status agreed by members i.e. 1.8 metres - footpath (as it is hedged on one side and fenced on the other).

4. APPLICATION FOR A MODIFICATION ORDER TO AMEND THE MID GLAMORGAN COUNTY COUNCIL DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHT OF WAY IN RESPECT OF ADDING A PATH IN THE COMMUNITY OF GELLIGAER

Members were asked to consider and determine an application to add a path to the Definitive Map and Statement in the Community of Gelligaer. The application is made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 which is the discovery of evidence which would suggest the Right of Way should be recorded. The application could have been made under Section 53(3)(b) which is based upon long use in excess of twenty years.

Prior to the meeting Members and Officers walked the footpath from number 11 Ogilvie Terrace to the lane at the rear of number 4 Ogilvie Terrace, Deri.

The Rights of Way Support Officer delivered a presentation that provided the Committee with the background to the application. Reference was made to Document 1 (appended to the report) that sets out the evidence required to show that the footpath has been used for a period of 20 years without interruption and as a right. The date the footpath first came into question was 13th/14th August, 2015 and therefore the 20 year period of use commences from August 1995. However additional use before this period is also taken into consideration and two previous applications identify use of the claimed right of way of over 20 years dating back to 1972/73. The land was owned by Mr Shenkroff and is now owned by Mrs Gauden and Mr O'Connell.

The applicant and 28 supporters (who have completed evidence user forms and provided photographs of usage) state that the footpath has been used without interference for a period varying between 10 and 80 years. They confirmed that there has never been any signs stating that the claimed right of way was private land and no-one has prevented them from using it until the site was fenced off on 13th/14th August, 2015.

It was explained that one of the landowners states that during her family's ownership of the land (a period of 45 years) there was no intention to permit or dedicate a footpath across the site. The land had been purchased to build a residential property. Permissive rights were given for those parties who wished to walk their dogs across the site and for others who very occasionally had cause or wanted to use the diagonal route across the site. She categorically states that no permission was given for this to be a dedicated right of way and has always made it clear that it was their intention to build on the land. She considers that the footpath with steps and handrail was constructed by the Council and was on the understanding that this was to be dedicated as a footpath in substitution for the claimed footpath which is said to cross the site. Although the Dedication Agreement was not completed she feels this could be regularised.

Members were informed that the Planning Agent stated the land owners did not give consent to neighbours to cross the land as a right. He believes that the claimed right of way is unnecessary as there are footpaths to the northern and western site boundaries and ready access to footpaths to the south and east. He states that the unauthorised use of the claimed right of way has been infrequent and of little need and that the landowners never intended for their land to be used as a footpath and no consent was given for neighbours to use it.

The Committee were advised that it is not clear as to who constructed the footpath with the steps and handrail. Some residents claim that one of the residents was responsible for constructing the steps but the resident categorically refutes the claim and stated that the Council constructed the steps. The Engineers Department within the Council has failed to establish if they indeed constructed the steps. The footpath and steps are not part of the Authority's adopted highway and as such are not maintained.

Following the Officer's presentation of the report, Ms M. Thomas was invited to present her case on behalf of the Open Spaces Society. She read out her witness statement in support of the application and felt there is more than enough evidence that the diagonal path has been used by residents on a daily basis for more than 90 years continually. Other users have also

accessed the path, including visitors, delivery personnel and NHS workers. In concluding, Ms. Thomas stated there is overwhelming evidence to satisfy the requirements of a Modification Order under Section 53 of the Wildlife and Countryside Act 1981.

Ms C. Sullivan, Planning Agent acting on behalf of Mr M. Toms then addressed the Committee. She explained the background to Mr Toms planning application and stated that the crucial point is that the area referred to is privately owned land. She referred to Document 60m, appended to the report (a letter dated 11th February 2016 sent from Ms K Gauden to the Local Authority). The letter states that at no time during her family's ownership of the land, which extended over a period of 45 years, did they intend to allow, permit or dedicate a footpath across the site. Ms Sullivan also referred to previous planning applications for residential development at the site that did not refer to a right of way. She felt that there are adequate alternative routes around the site for residents and a further new footpath will compromise the property and urged the Committee to reject the claim.

The Chair thanked all parties for their presentations and statements.

Members discussed the alternative routes referred to and felt that they were not a reason to reject the claim. On the balance of probabilities they questioned whether the path exists and stated that it is a Caerphilly County Borough Council Policy to allow Open Access to all. The Committee felt that it was not sufficient to show the property was private and they did not witness any attempts from the land owners to erect signs preventing use of the path. It was considered that the evidence was overwhelming that the path has been used for a number of years.

Following consideration and discussion, it was moved and seconded that the path be registered. By a show of hands this was unanimously agreed.

RESOLVED that the path be registered.

5. 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 BEDWELTTY

Members were asked to consider and determine an application to add a path to the Definitive Map and Statement in the Community of Bedwellty.

Prior to the meeting Members and Officers walked the footpath that leads from Warne Street to Bryngwyn Street (A4049) Fleur-de-lis.

The Rights of Way Support Officer delivered a presentation that provided the Committee with the background to the application. The claimed right of way leads from the side of Woodland Lodge Residential Home, Warne Street in a south westerly direction to alongside the Bryngwyn Service Station to terminate on A4049 (Bryngwyn Street). The application is made under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 which is the discovery of evidence which would suggest the right of way should be recorded. The Authority is not precluded from also taking into consideration a claimed right of way based on 20 years uninterrupted use. Evidence has been submitted that the claimed right of way is a public right of way and the route has been used by local residents for a considerable number of years. The date the footpath first came into question was 6th October, 2010, and therefore the 20 year period commences from 6th October, 1990. Evidence has been provided to show that the footpath A-B has been used on a regular basis for well over the 20 year period. Members were informed that historical maps confirm that a route was available along the claimed route in 1873-88; 1900-1904 and 1919 -1921. Aerial photographs also show a path along the line of the claimed Right of Way.

The Committee were advised that Mr. Davies, the owner of Bryngwyn Service Station has never stopped the local residents using the claimed right of way over land within his ownership and has verbally agreed to a path being separated from his Service Station.

Following consideration and discussion, it was moved and seconded that the path be registered as identified A-B-C in Document 3, appended to the report and new fencing to be installed alongside the footpath to separate it from the service area. By a show of hands this was unanimously agreed.

The Cabinet Members asked Officers to inform the Planning Department that should there be any issues in relation to the planning application for the fence, that this recommendation was endorsed by the Cabinet Rights of Way Committee.

RESOLVED that the path be registered as identified A-B-C in Document 3, appended to the report and new fencing to be installed alongside the footpath to separate it from the service area

6. 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

Members were asked to consider and determine an application to add a path to the Definitive Map and Statement in the Community of Abercarn.

Prior to the meeting Members and Officers walked the footpath from Gilboa Road to New Bryngwyn Road, Newbridge.

The Rights of Way Support Officer delivered a presentation that provided the Committee with the background to the application that is being dealt with under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981. This relates to the discovery of evidence which would suggest the right of way should be recorded. Reference was made to Document 1, appended to the report, that states the evidence submitted needs to show that the footpath has been used for a period of 20 years without interruption and as a right.

The Committee were advised that evidence has been submitted that the route has been used by local residents as a short cut for a considerable number of years. Local residents have stated that no notices have been erected stating that the footpath is private but the footpath has become overgrown and they have been unable to use it. The date the footpath first came into question is 16th September, 1993 and therefore the 20 year period commences from September 1973. The applicant and supporters state that the footpath has been used without interference for a period varying between 8 and 65 years.

It was explained that Llanover Estate, who own land over which a section of the claimed right of way crosses, are agreeable to the footpath being added to the Definitive Map and Statement.

Following consideration and discussion, it was moved and seconded that the path be registered. By a show of hands this was unanimously agreed.

RESOLVED that the path be registered

7. 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

Members were asked to consider and determine an application to add a path to the Definitive Map and Statement in the Community of Abercarn.

Prior to the meeting Members and Officers walked the footpath from High Street, adjacent to Oaktree House, crossing Windsor Avenue and proceeding between numbers 76 and 77, then dividing in two, proceeding west to Cwmtorlais Road and east to Tynewydd Terrace adjacent to number 31 Tynewydd Terrace, Newbridge. The application is being dealt with under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981. This relates to the discovery of evidence which would suggest the right of way should be recorded. The Local Authority is not precluded from also taking into consideration a claimed right of way based on 20 years uninterrupted use.

The Rights of Way Support Officer delivered a presentation that provided the Committee with the background to the application. She confirmed that evidence has been submitted that the route has been used by local residents for a considerable number of years.

Reference was made to Document 1, appended to the report that states the evidence submitted needs to show that the footpath has been used for a period of 20 years without interruption and as a right. The date the footpath first came into question was 2nd November, 1993 and therefore the 20 year period commences from November 1973. The Committee were advised that there is sufficient evidence to show that the footpaths A-B; C-D and D-F, as identified in the plan accompanying the report have been used on a regular basis for well over the 20 year period. This evidence was confirmed by way of historical maps dating back to 1873 and recent aerial photographs that were summarised in the report.

It was explained that Llanover Estate has agreed to enter into a Creation Agreement for the footpath E-D-G-H. This will resolve the problem with the extension of the garden of 31 Tynewydd Terrace. The remainder of the footpath A-B and C-D could then be dealt with by a Modification Order. The surface of the footpath A-B is a concern due to the probability of the former Urban District Council surfacing the footpath many years ago but it not being added to the Adoption Highway Records. Should an injury be sustained it might be difficult to defend as a previous Authority had resurfaced the footpath with tarmacadam.

Following consideration and discussion, it was moved and seconded that the footpath be registered and a Modification Order made for A-B and C-D and enter into a Creation Agreement with Llanover Estate for E-D-G-H. By a show of hands this was unanimously agreed.

RESOLVED that the footpath be registered as detailed in the report and a Modification Order made for A-B and C-D and enter into a Creation Agreement with Llanover Estate for E-D-G-H.

The meeting closed at 3.10 pm.