

MINUTES OF A MEETING OF THE RIGHTS OF WAY PANEL HELD IN COMMITTEE ROOM 2/ 3 CIVIC OFFICES, ANGEL STREET, BRIDGEND ON FRIDAY, 21 OCTOBER 2005 AT 11.30AM

Present: -

Councillor R M Granville - Chairperson

Councillors

K S Hunt
C J James
G C Lewis

Councillors

M C Wilkins
H M Williams

Observers:

Mr G J Wheeler, British Horse Society
Mr A R Morgan, Ramblers Association
Mr J Sanders, Ramblers Association

Acting on behalf of the Applicant:

Mr H Joseph (Agent), Watts & Morgan, Estate Agents
Mr J Chubb (Solicitor), David and Snape, Solicitors
Mr R J Lougher, the applicant

Officers:

Mr H Batten - Legal Officer
Mr A Green - Transportation and Engineering
Mr D Mortimore - Transportation and Engineering
Mr M A Galvin - Senior Cabinet Committee Officer
Mrs R Harries - Trainee Cabinet Committee Officer

21 APOLOGIES FOR ABSENCE

Apologies were received from Councillor K Watkins who was attending a WLGA Conference in Cardiff.

22 DECLARATIONS OF INTEREST

None.

23 MINUTES OF THE PREVIOUS MEETING

RESOLVED: That the minutes of the previous meeting of the Rights of Way Panel dated 7 September 2005, be confirmed as a true and accurate record.

24 BRIDGEND COUNTY BOROUGH COUNCIL DEFINITIVE MAP AND STATEMENT: PUBLIC RIGHTS OF WAY IN THE MATTER OF THE DELETION OF FOOTPATH 9 PYLE

The Highways Officer on behalf of the Executive Director - Environment summarised his report in relation to the application to delete Footpath 9, Pyle, Bridgend, as detailed hereafter.

The first part of the report provided background information on the Definitive Map process and the current situation in Bridgend. The remainder of the report, (titled Schedule 1) gave details of all the information the Council has obtained during its research into the application to be determined.

Accompanying the report were a set of appendices numbered 1 - 42 and a separate Appendix document numbered Appendix 18, which was the applicants statement of case. These were then summarised as follows.

The purpose of the report was to determine if sufficient evidence had been adduced to and by the County Borough Council to support a Definitive Map Modification Order being made to delete the public right of way known as Footpath 9 Pyle from the Glamorgan County Council Special Review Definitive Map provided in Appendix 1 and also by a dashed black line on the plan provided in Appendix 2 to the report.

Members were informed that in the application before them the applicants were alleging that the footpath never really existed, and that it came to be included on the Definitive Map in error. They put forward three distinct grounds to support these allegations, namely:-

- (i) the physical characteristics of the route are such that the footpath has always been impossible to walk;
- (ii) witnesses indicate that the footpath has never been used;
- (iii) the Parish Map and Statement on which the Definitive Map and Statement are based are inconsistent with, and contradict each other.

The Highways Officer advised that, if the evidence put forward by the applicant was sufficiently cogent to satisfy the Authority that on the balance of probability the Definitive Map and Statement are in error, then they are obliged to make a modification order under Section 53 of the 1981 Act.

Members were reminded that financial implications were not to be considered by the Panel when determining the application, as the County Borough Council has a statutory duty to make an Order if it believes that there is sufficient evidence to support it. It was reminded that Officer time is involved in investigating reports and dealing with a public inquiry if an Order is made and there are objections or representations to it.

The report initially began by providing information on the background to the application and how the issue was first brought to the attention of the predecessor authority of Mid Glamorgan County Council. This was in the form of correspondence from both the landowner and the Bridgend and District Ramblers Association.

Details of these exchanges of correspondence were shown in paragraphs 4 - 43 of the report and Appendices 3 -17.

A formal application to delete the route was received from David & Snape, Solicitors on behalf of Richard, Mary and R J Lougher on 13 March 1997. Accompanying the application was a statement of case, which consisted of various associated documents.

In applying for such a deletion, the applicants were alleging that the footpath never really existed and that it came to be included on the Definitive Map in error. They put forward three distinct grounds to support these allegations, as follows:-

- the physical characteristics of the route are such that the footpath has always been impossible to walk;
- witnesses indicate that the footpath has never been used;
- the Parish Map and Statement on which the Definitive Map and Statement are based are inconsistent with, and contradict each other.

The applicant's Statement of Case was divided into six sections and was accompanied by 19 Appendices. This document remained in its original format as presented to the County Borough Council in order for Members to appreciate all the information pertaining to the case as put forward by the applicant. This was shown as Appendix 18 in the list of Appendices.

As noted from Appendix 18 the case for the applicant was very detailed and included nine statements in support of their application from former workers, local residents and himself (Appendix J - R of Appendix 18 referred)

According to these statements none of the witnesses had ever seen members of the public walking along the footpath since they have lived at, worked at or visited, the farm.

It was also suggested that as Tytanglwst Farm is not a large holding and the footpath is alleged to have run close to the back of the farm buildings the applicants and their witnesses could not have failed to notice walkers crossing the field. Furthermore, they would have seen physical evidence such as trodden earth, grass or gates, stiles or gaps at the location.

The applicants alleged that Footpath 9 Pyle was shown in error due to the apparent discrepancies in, and between, the Parish Map and Statement and the Special Review Definitive Map and Statement (pages 6 & 7 of Appendix 18 referred).

The applicants also contended that the description of the route as indicated on the parish card/statement (same document) did not correlate with the route drawn on the parish map. Their reason for this was the use of field numbers to describe where the footpath ran.

Full details of the applicant's case for deletion of the route were contained in paragraphs 44 - 60 and Appendix 18 & 19 to the report.

Members were aware that part of the introduction to the report i.e. pages 2 to 6, provided a brief outline of the historical background to the Definitive Map and Statement both generally, and with particular reference to the County Borough area. The application was seeking to determine that the Special Review Definitive Map and Statement were incorrect, and that a footpath that is shown thereon has been shown in error. Comprehensive details therefore of the process for preparing and publishing the Definitive Map and Statement to show that all the procedures required under the legislation were, in fact, followed had been provided and were detailed in paragraphs 61 - 108 and Appendix 20-24 of the report.

The report also provided Members with details regarding the legal background to the application. Details of this together with recent judgements in respect of similar cases and Central Government guidance on such issues was provided in paragraphs 109 to 120 of the report.

The Panel were reminded that their prime consideration was to ascertain whether there was sufficient evidence to reflect that the inclusion of the path on the Definitive Map was incorrect. The standard of proof was a civil one i.e. on the balance of probabilities. Members were required to weigh up the evidence and if, on balance, they considered that the right of way was shown in error on the first Definitive Map and there was no public right of way, then the application should succeed.

A list of primary and secondary sources that indicated documentary evidence of a right of way were included in the report. The completed checklist for this particular application was shown in Appendix 25 to the report, and the second table that gave additional comments was provided in Appendix 26.

A summary of the documentary evidence was provided in paragraphs 121 to 132 and Appendix 27 & 28 of the report.

The Officer went on to explain that, although the burden of proof in any application to delete a public right of way from the definitive map and statement rests with the applicant(s), it is considered appropriate for any other information that the surveying authority may have in its possession to also be put before the Panel. Details of this further information was included in paragraphs 134 to 152 and Appendices 29 - 37 of the report.

Paragraphs 153 - 165 of the report provided details of all the consultations and responses received in relation to the application. Copies of these were shown in Appendices 38 - 41 of the report.

Mr Joseph at the meeting expanded upon reasons why his client felt that the route in question should be deleted and, in turn, Officers gave a series of responses as to why they considered the route that existed should remain a public right of way.

Arising from subsequent discussions that ensued following consideration of the main themes of the report and supporting Appendices, it was

- RESOLVED:
- (1) That the Panel were of the opinion, that on the balance of probabilities, the applicant had not provided sufficiently cogent evidence in support of their application to delete Footpath 9 Pyle from the Special Review Definitive Map and Statement, and therefore it was agreed that their application be rejected.
 - (2) That the applicant be advised that he may appeal, in writing, against the above decision of the Council to the Welsh Assembly Government within 28 days from the date of the decision letter.

The meeting closed at 12.45pm.

