

MINUTES OF A SPECIAL MEETING OF THE RIGHTS OF WAY PANEL HELD IN
COMMITTEE ROOM 2/ 3 CIVIC OFFICES, ANGEL STREET, BRIDGEND ON
MONDAY, 12 DECEMBER 2005 AT 11.15AM

Present: -

Councillor R M Granville - Chairperson

Councillors

K S Hunt
G C Lewis

Councillors

K Watkins
H M Williams

Observers:

Mr J Sanders, Ramblers Association

Officers:

Mr A Green - Transportation and Engineering
Mr H Batten - Legal Officer
Mr A Mason - Rights of Way Officer
Mr M A Galvin - Senior Cabinet Committee Officer
Mrs K Davies - Legal Executive

Members of the Public

Mr A Hooper)
Mrs C Hooper) - Landowners
Mrs A Davies - Applicant

28 APOLOGIES FOR ABSENCE

Apologies were received from the following:-

Councillor C James
Mr G J Wheeler
Mr P Green (other landowner)

29 DECLARATIONS OF INTEREST

The Legal Officer advised that Councillor Wilkins had turned up for the site visit to the claimed right of way held immediately before the meeting. The Legal Officer however, advised her that it may not be in her best interests to take part in either the site visit or the Rights of Way Panel meeting that followed, due to the fact that the applicant was known to her.

30 MINUTES OF THE PREVIOUS MEETING

RESOLVED: That the minutes of a special meeting of the Rights of Way Panel dated 16 November 2005, be accepted as a true and accurate record.

31 BRIDGEND COUNTY BOROUGH COUNCIL DEFINITIVE MAP AND STATEMENT: PUBLIC RIGHTS OF WAY IN THE MATTER OF THE CLAIMED RIGHT OF WAY RUNNING FROM ANGELTON GREEN TO BRIDGEND ROAD, PENYFAI

The report of the Executive Director - Environment outlined an application for a route running from Angelton Green to Bridgend Road, Pen y Fai. The report included two sections, with pages 2 - 5 providing background information on the Definitive Map process and the current situation in Bridgend. The remainder of the report, titled Schedule 1, provided details of all the information the Council has obtained during its research into the application.

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 show a path running from Angelton Green to Bridgend Road, Pen y Fai, as a public right of way in the Definitive Map and Statement.

Section 53(2) of the Wildlife and Countryside Act 1981 imposes a statutory duty upon the Surveying Authority to make:

'by order such modifications to the map and statement as appear to them to be requisite in consequences of the occurrence, before that date, of any of the events specified in subsection(3)'

The events specified in subsection (3) were provided in paragraph 4 of the report. Further details of how Section 53 should be applied by the Council and how it relates to the current application were provided in paragraphs 5 - 11 of the report.

The matter was first brought to the attention of the Council in 1999 by Bridgend's AM and the local Member for the area. Local residents were then concerned that Beazer Homes had sold land to an individual who was now preventing access to that land which the residents had allegedly used for twenty years.

The response from the County Borough Council confirmed that neither Beazer Homes nor the new owner had committed an offence by erecting the fence referred to in the report. Furthermore, no registered public rights of way existed over the land in question and therefore, no obstruction was being caused. Also it indicated in a letter previously sent to the Bridgend AM that legislation does exist which enables routes that have been used by the public in excess of twenty years to be added to the Definitive Map. It was also suggested that the appropriate application forms had been sent out twice over the past eighteen months and the Council were still waiting for them to be returned.

Details of these exchanges of correspondence were found in Appendices 2 - 6 of the report.

The formal application was made by Mrs Davies on the 22 November 1999 but the matter was not investigated by the Council until 2005. At that time only three people were willing to be interviewed although eight still supported the application.

The County Borough Council had been provided with evidence concerning the use of a path by twelve people in two different ways. That evidence relates to the

use of the land over varying period of between four and thirty years. The Council received 11 'Evidence Forms' in total and gained other evidence by interviews.

The bar chart in Appendix 13 of the report summarised the claimed use as indicated on the 'Evidence Forms' as well as from the applicant's interview. The chart showed that nine people had used a path for a twenty year period from 1979 - 1999 - the date when the application was made. However, this may not be the first time the way was brought into question.

Copies of all these forms themselves were shown in Appendix 11 to the report.

The main points from the evidence were:-

- All the claimants who answered the question indicated that the route was well defined.
- All of the claimants believed the route to be a footpath.
- More than half of those who indicated a time span admitted that they had known of the path for between 21 and 30 years.
- 36% of claimants used the path more than twice a week.
- All of the people completing the forms indicated that there were never any stiles, gates, notices or obstructions present on the path.
- None of the claimants ever sought permission to use the path.
- In only 45% of cases the claimants categorically stated that they had always used the same route.
- In all cases the claimants indicated that they had not used the route to exercise some private right of access.

The County Borough Council subsequently interviewed three people who had completed 'Evidence Forms' supporting the application. (Appendix 14 of the report refers).

The applicant did not complete an 'Evidence Form' however she was interviewed. She also provided further evidence in support of her case following the interview. That further evidence took the form of notes made, and four letters written in August 1999 together with photographs taken at the time. This could be found in paragraphs 84 and 89 - 95 respectively, as well as Appendix 14 & 16 - 19 of the report. The applicant was present at the meeting and expanded upon the reasons why an application had been made.

During the interview with a claimant it was usual practice to ask that person to draw on a plan, the line of the route that they are claiming to have used. Copies of such plans provided were detailed in Appendix 14 of the report after each statement with a composite plan being provided in Appendix 15.

Following receipt of the application the County Borough Council received an objection from Mr Hooper who was the owner of the land over which the majority of the claimed right of way ran. In addition Mr Hooper deposited with the Council a statutory declaration confirming what, if any, public rights of way existed over his land.

Details of Mr Hooper's objection including the Council's response and the significance of the statutory declaration were provided in Appendix 20 - 22 of the report.

Mr Hooper again subsequently wrote to the Council objecting to the application and providing reasons to support that objection, including supplementary evidence.

Mr Hooper was interviewed by officers in August 2005 during which he confirmed his objection to the application. He also provided evidence including photographs to support his case. Details of this can be found in Appendix 23 - 29 of the report. Both Mr and Mrs Hooper were present at the meeting and expanded upon the reasons why they objected to the application so made.

A second landowner was affected by the application. This person has also been interviewed by officers and information in respect of this was detailed in Appendix 30 and 31 of the report.

As the land was once owned by the local Health Authority, it was felt appropriate to contact the Estate Manager at Glanrhyd Hospital. It was also felt important to establish if the area had to be fenced off by statute as it was previously a mental hospital.

Details of the information provided by the Health Authority were shown in paragraphs 133 - 136 of the report.

A list of the primary and secondary sources that may provide documentary evidence of a claimed right of way has been created. The completed checklist for this application was shown in Appendix 32 and the second table that provides additional comments was provided in Appendix 33 to the report.

An aerial photograph from 1971 had also been obtained and a copy of this is provided in Appendix 34 to the report. No documentary evidence had been found to substantiate the application.

Members also had to be made aware of the legal background to the investigation of a claimed right of way. Details of this were provided in paragraphs 96 to 103 of the report. Members were then advised of certain customary legal considerations to be taken into account when considering applications of this nature.

Section 31 of the Highways Act 1980 provides for presumption of dedication of a public right of way following twenty years continuous use. The evidence in this case was provided by eleven 'Evidence Forms' nine of which indicated that the public had used such a route in excess of twenty years.

As could be seen from paragraphs 85 to 87 of the report those claimants who were interviewed, together with the applicant were asked to mark on a plan where they had walked. The plan in Appendix 15 showed the alignment they drew.

The significance of the fact that not all the routes are identical was highlighted during a recent seminar attended by the Rights of Way Officer. Details of this could be seen in paragraphs 101 and 102 of the report.

Paragraphs 142 - 146 of the report provided details of all the consultations and responses received regarding the application.

The Ramblers Association representative, Mr A Morgan made a number of comments in respect of this application and a copy of his letter detailing these was shown in Appendix 35 to the report.

Officers then came to their conclusions regarding all the evidence provided in relation to the application.

As indicated in the report it was extremely important that for public user to be relied on, either for the purposes of common law dedication or under Section 31 of the Act, the user must have been of a single defined route. Officers were of the opinion that this was not the case. They felt it was more likely that the public wandered at will over the area in question as opposed to using one defined route to get from A to B.

In determining the application for a Modification Order the Panel had two options open to it. Having considered the available evidence it should decide whether:

1. To make a Modification Order to add the route to the Definitive Map and Statement as a Footpath, or
2. Agree that insufficient evidence has been provided to allege that public rights exist and in that case to reject the application and advise the applicant that they may appeal, in writing, against the decision of the Council to the National Assembly for Wales within 28 days from the date of the decision letter.

On the balance of probability Officers felt that insufficient evidence had been provided to show that the presumption of dedication contained under legislation had been raised and that the path marked with a bold black dashed line on the plan shown in Appendix 1 of the report, should not be registered as a public right of way.

Mr Wheeler of the British Horse Society submitted a written submission due to his absence at the meeting, which concurred with the conclusions reached by officers in recommending that the application so submitted be not granted.

RESOLVED: (1) That on the balance of probability the Panel were of the opinion that, there was insufficient evidence to show that the presumption of dedication contained in the 1980 Act (Section 31(1)) had been raised and, therefore that the applicant be advised that their application for the registration of a right of way running from Angelton Green to Bridgend Road, Pen y Fai, be rejected.

- (2) That the applicant be advised of their right of appeal against the above decision to the National Assembly for Wales, within 28 days from the date of the decision letter.

32 BRIDGEND COUNTY BOROUGH COUNCIL DEFINITIVE MAP AND STATEMENT: PUBLIC RIGHTS OF WAY IN THE MATTER OF THE CLAIMED RIGHT OF WAY RUNNING FROM ANGELTON GREEN TO HILLSIDE, PENYFAI

The Rights of Way Officer advised that the circumstances relating to this application as detailed in the report of the Executive Director - Environment were

exactly the same as the previous report, other than there was a further landowner of this section of land in comparison to the above application.

Arising from brief discussions that ensued on the content of this second report, it was

- RESOLVED: (1) That on the balance of probability the Panel were of the opinion that, there was insufficient evidence to show that the presumption of dedication contained in the 1980 Act (Section 31(1)) had been raised and, therefore that the applicant be advised that their application for the registration of a right of way running from Angelton Green to Hillside, Pen y Fai, be rejected.
- (2) That the applicant be advised of their right of appeal against the above decision to the National Assembly for Wales, within 28 days from the date of the decision letter.

The meeting closed at 11.55am.