

MINUTES OF A SPECIAL MEETING OF THE RIGHTS OF WAY PANEL HELD IN  
COMMITTEE ROOM 1 CIVIC OFFICES, ANGEL STREET, BRIDGEND ON  
WEDNESDAY 7<sup>TH</sup> SEPTEMBER 2005 AT 12.00 NOON .

Present: -

Councillor R M Granville - Chairperson

Councillors

G C Lewis  
K Watkins  
H M Williams

Observers:

Mr G J Wheeler - British Horse Society

Officers:

Mr A Green - Head of Highways  
Mr A Mason – Rights of Way Officer  
Mr M A Galvin – Senior Cabinet and Committee Officer

17 APOLOGIES FOR ABSENCE

Apologies were received from:-

Councillor K S Hunt  
Councillor C James  
Councillor M C Wilkins  
Mr R Hart-Jones (Ramblers Association)

18 DECLARATIONS OF INTEREST

None

19 MINUTES OF THE PREVIOUS PANEL MEETING

RESOLVED: That the minutes of the meeting of the Rights of Way Panel dated 25<sup>th</sup> July 2005 be approved as a true and accurate record.

20 BRIDGEND COUNTY BOROUGH COUNCIL DEFINITIVE MAP AND  
STATEMENT: PUBLIC RIGHTS OF WAY IN THE MATTER OF THE CLAIMED  
RIGHT OF WAY RUNNING FROM BROOKFIELD HOUSE, CWMDU ROAD TO  
BRIDLEWAY 36 MAESTEG NR FFOS FARM, CWMDU, MAESTEG.

The Executive Director – Environment submitted a report, together with attached Appendices 1 to 41 in respect of a claimed Right of Way at the above location.

The report in question was divided into two specific sections. 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) provided details of all the information the Council has obtained during its research into the application to be determined. The Highways Officer summarised this section of the report as follows.

He confirmed that 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 Brookfield House, Cwmdy Road, Maesteg to Bridleway 36 Maesteg near Ffos Farm in the Maesteg Town Council area, as a public right of way in the Definitive Map and Statement.

The report initially included details of supporting information, then went on to give some background to the application and how the issue was brought to the attention of the preceding authorities of Mid Glamorgan County Council and Ogwr Borough Council. This was in the form of correspondence from a number of local people within the Maesteg area with regard to the status of this route.

Details of these exchanges of correspondence were shown in paragraphs 13 –22 of the report and Appendices 2-6.

A formal application to register the route was made by a Mr G K Evans towards the end of June 1991. This followed an exchange of correspondence between the County Council and Mr O'Brien (a local resident) during which 25 'Evidence Forms' had been submitted, which provided evidence of use of the route varying between 15 and 62 years. Paragraphs 25-31 and Appendices 7-9 of the report referred.

The Highways Officer further advised that a list of the primary and secondary sources that may provide documentary evidence of a claimed right of way had been created. The completed checklist for this application was shown in Appendix 11 and the second table that gave additional comments was provided in Appendix 12 to the report.

A summary of the documentary evidence was provided in paragraphs 48-119 of the report whereby copies and extracts from some of the documents were detailed in Appendices 13-22.

Some of this information reflected that there was not only evidence substantiating a right of way, but also that the route had evidence of vehicular rights therefore classing it as a byway open to all traffic.

The first edition 1:2500 scale Ordnance Survey plan of this area was dated 1876, and shows the claimed right of way coloured orange/yellow. Personal experience of the Rights of Way Officer suggests that by comparing other similarly coloured routes in an area with the maintainable highways of today can determine what may have been public roads at the time. A comparison of the other routes in this area of Maesteg indicated that this route was similar in its manner to other public roads in the area at the time.

Ordnance survey maps have been examined and the route is clearly marked on the majority of them.

Further historic documentary evidence concerning the status of the claimed right of way included:-

- The fact that the route was shown on the original survey of public rights of way as part of the preparation for the Definitive Map but was removed prior to the publication of the draft map. The reason for this was that the Maesteg Urban District Council had surfaced the track, believing it to be a vehicular highway between the original survey and publication of the draft map.
- Correspondence from 1959 suggesting that the claimed right of way was a highway the responsibility of which lied with the Maesteg Urban District Council.
- During two public inquiries in the 1980's into the reclassification of Cart Road Bridleway 36 Maesteg to the south east of Ffos Farm the Inspectors confirmed the belief that there was evidence to indicate that the claimed route was a highway.
- Resolutions of various committees of the Maesteg Urban District Council from 1932, 1934 and 1957 indicate that this route is likely to have been maintained by that Council.

The predecessor County Council and this authority had received significant evidence of use of the route over a sustained time period.

A bar chart in Appendix 28 of the report summarised the claimed use as indicated on the Evidence Forms that have been submitted by various people which indicated use of the path up to the present day.

The Evidence Forms, the number of which totalled 30, were shown in Appendix 25. These forms gave some significant indication that the route was in fact a claimed right of way.

Appendix 27 (No.s 1-3) showed information provided by 4 persons interviewed by Officers regarding the validity of the route in question.

Within a month of receiving the application, Mid Glamorgan County Council received an objection from the National Farmers Union on behalf of Mr Walter Rees, the then owner of the land in question. Details of that objection and the Council's response were provided in paragraphs 201-205 and Appendix 30 and 31 of the report.

As a result of the County Borough Council's investigations in the year 2000, the Council received a further objection from Mr Kennedy and Miss Davies, the executors of Mr Rees' estate. Within his letter Mr Kennedy provided seven reasons for objecting to the proposal. These were indicated in Paragraph 211 of the report.

In order to determine the application before them Members were made aware of the legal background to the investigation of claimed rights of way. Details of this together with recent judgements in respect of similar cases and Central Government guidance on such issues was provided in paragraphs 177 to 199 of the report.

Paragraphs 216-233 of the report, provided details of all the consultations and responses received in relation to this application. Copies of these were found in Appendices 36-41 of the report.

The Rights of Way Officer advised the Rights of Way Panel that the applicant had, on receipt of notice of the Council's intention to hold this meeting to determine the application, withdrawn his application. However, the Panel were advised that this would not affect the process and their decision as to whether to make an order, as the Council had a duty to make an order if it had found evidence to suggest that a public right of way existed.

In determining the application for a Modification Order as submitted by a Mr G K Evans, the Highways Officer advised the Rights of Way Panel that they had a number of available options. Having considered the evidence before them Members must decide whether :-

- (1) To make a Modification Order to add the route to the Definitive Map and Statement as a Footpath.
- (2) To make a Modification Order to add the route to the Definitive Map and Statement as a Bridleway
- (3) To make a Modification Order to add the route to the Definitive Map and Statement as a Byway Open to All Traffic
- (4) 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.

In light of the information contained in the report, Officers concluded that on the balance of probability there was sufficient evidence to reasonably conclude that a right of way as a Byway Open to All Traffic subsists along the path marked with a bold black dashed line on the plan shown in Appendix 1 of the report and that this evidence has not been rebutted with sufficient counter evidence by the landowners.

Having considered the report and the advice given by Officers at the meeting in relation to this application, it was

- RESOLVED:
- (1) That on the balance of probability the Panel were of the opinion that there is sufficient evidence to support that the route marked with a bold black dashed line on the plan in Appendix 1 to the report, has been used for such a period to adequately raise presumption that it has been dedicated as a Byway Open to All Traffic (BOAT), and that this evidence has not been rebutted by any other evidence so provided.
  - (2) That approval be given for the making of a Definitive Map Modification Order, to show the route described within paragraph 286 of the report as a BOAT in the Definitive Map and Statement.
  - (3) That approval be given for the confirmation of the Definitive

Map Modification Order made as a result of (2) above, provided no objections or representations are made within the prescribed period, or if any so made are withdrawn.

- (4) That if any objections or representations are made within the prescribed period and are not subsequently withdrawn, then the Order be referred to the Planning Inspectorate for ultimate determination.

The meeting closed at 12.25pm