

MINUTES OF A MEETING OF THE RIGHTS OF WAY PANEL HELD IN COMMITTEE ROOM 2/3, CIVIC OFFICES, ANGEL STREET, BRIDGEND ON TUESDAY, 12 SEPTEMBER 2006 AT 11.30AM

Present: -

Councillor R M Granville - Chairperson

Councillors

K S Hunt
C E Hughes
C J James

Councillors

G C Lewis
K Watkins
H M Williams

Observers:

Councillor R D Jenkins
J Sanders - Ramblers Association

Officers:

A Mason - Rights of Way Officer
K Davies - Rights of Way Officer
H Roblin - Legal Officer
M A Galvin - Senior Cabinet and Committee Officer

M Russell – Co-owner of the land subject to the report.

37 APOLOGIES FOR ABSENCE

Apologies were received from G Wheeler of the British Horse Society.

38 DECLARATIONS OF INTEREST

None.

39 MINUTES OF THE PREVIOUS MEETING

RESOLVED: That the minutes of a special meeting of the Rights of Way Panel dated 12 December 2005, be accepted as a true and accurate record.

40 BRIDGEND COUNTY BOROUGH COUNCIL DEFINITIVE MAP AND STATEMENT - PUBLIC RIGHTS OF WAY IN THE MATTER OF THE CLAIMED RIGHT OF WAY RUNNING FROM FEDERATION LANE TO ALEXANDRA AVENUE (VIA THE CHILDREN'S PLAYGROUND), PONTYCYMMER

The meeting of the Panel had been preceded by a site visit of the location subject of the report, by Members and Officers.

The Panel had in front of them two reports and two sets of Appendices which related to the above matter received from the Executive Director - Environment.

The first report was the original report to the adjourned meeting of the 23 November 2005. Accompanying that report were a set of appendices numbered 1 - 21. The second report was a supplementary report which had been put

together specifically for today's meeting. Accompanying that report was another set of appendices labelled A - K.

Both reports and sets of appendices were summarised as follows.

The purpose of the reports 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 showing a path running from Federation Lane to Alexandra Avenue, Pontycymmer, as a public right of way in the Definitive Map and Statement. The claimed path was shown by a bold black dashed line on the plan in Appendix 1 of the original report.

Members were aware that financial implications were not to be considered when determining the application as the Council had a statutory duty to make an Order if it believed that there was sufficient evidence to reasonably allege that a public right of way subsists.

A formal application to register the route in question was made by Mr A W Griffiths on 25 November 1998. Evidence was received from 20 individuals, indicating use of the route between the years 1925 to 1998.

The Rights of Way Officer advised that Mr Griffiths may have been prompted to apply for a Modification Order, as planning permission had recently been granted to develop the land over which the claimed right of way proceeded. There also appeared to have been a dispute between parties in relation to the exact location of the eastern boundary of Mr Griffiths' property.

It was advised that the County Borough Council investigated the application between August 2005 and July 2006.

The County Borough Council subsequently was provided with evidence concerning the use of the path by 20 people in two different ways, relating to the use of the route over varying periods ranging between fifteen and seventy five years. Fifteen 'Evidence Forms' were submitted and other evidence was obtained by way of conducting interviews.

Of the 15 'Evidence Forms', two were completed by couples. All of these Forms were included in analysis shown in paragraphs 38 - 58 of the original report. Copies of all the Evidence Forms were shown in Appendix 6 of the original report. The main points from the evidence so submitted were:-

- 65% of the claimants who answered the question indicated that the route was well defined;
- 94% believed the route to be a footpath;
- The claimants were equally divided for how long they had known the path between the 21-30, 31-40, 41-50 and 51-60 year time spans;
- None of the claimants indicated that they used the route on anything other than a regular/often basis;
- Although 18% of claimants indicated that there was builder's rubble on the path none of the people completing the forms indicated that there were ever any stiles, gates, notices or obstructions present on the path;
- None of the claimants ever sought permission to use the path;
- In 94% of cases the claimants categorically stated that they had always used the same route;

- In all cases where the question was answered the claimants indicated that they had not used the route to exercise some private right of access.

Seven people were interviewed in 2005 and details of the information provided at those interviews was included in Appendix 7 of the original report.

The Officer added that, as a result of the further information obtained by both the landowners and the Council, following the adjournment of the original Panel meeting, it was felt necessary to re-interview the claimants that were interviewed last year. Those interviews took place in May this year and the information that arose therefrom was detailed in paragraphs 40 to 55 and Appendix G (A - C) of the supplementary report.

It subsequently became clear that five of the seven people who were interviewed were adamant that no gate had existed on the route and that the other information, particularly certain photographic information that had been obtained did not suggest otherwise. A Mr Prosser confirmed the existence of a gate, between the late 1930's and 1953 following which he had moved out of the area. A Mr Bryant subsequently agreed that a dark area on the sale catalogue photograph might have been a gate. He had gone on record as stating that he could not remember having to open such a gate though.

Mr Griffiths' theory was that the dark area on the photograph was the unpainted side of his boundary wall. Mr Griffiths had also provided other photographs but these too were of little help in determining whether or not a gate existed on this route.

The landowners formally responded in October 2000 in the form of background information on the use of the site and the claimed right of way. A plan dated 1911 (see Appendix 9 of the original report) indicated that there was to be a gate erected at the entrance to the claimed right of way.

The Officer went on to confirm that in September 2004 further background information was provided by Mr M Russell, co-owner of the site, suggesting that the main reason for the application was a land dispute. A further letter in May 2005 reiterated this.

Details of Mr Canton's letter, the Council's response thereto and further discussions and correspondence with Mr Russell were shown in paragraphs 70 - 89 and Appendices 8 to 13 of the original report.

Mr Canton was interviewed in August 2005 where he confirmed that the land had been in his family since 1943 and that there had been a gate at the side of the property, until the whole property was destroyed in approximately 1998. He also produced the original plan from 1911.

Mr Canton also confirmed that the property had been let during the 1980's and 1990's to a Mr Galtry who would confirm the existence and continuous repair of the gate. He also indicated that he himself had engaged a company on several occasions to both erect fencing and mend the gate.

Both Mr Galtry and Woodward Construction confirmed that the gate had existed and that they had, in the past repaired it. Details of Mr Canton's interview and the information from Mr Galtry and Woodward Construction could be found in paragraphs 90 to 102 and Appendices 14 and 15 of the original report.

The Officer reminded the Panel that the original meeting of the Rights of Way Panel was postponed at the request of the landowners who wished to seek further legal advice. This resulted in officers having a second meeting with Mr Canton and a letter being received from the landowner's barrister, Mr J Reed.

Mr Canton had showed officers a catalogue from an auction sale that was held in 1984. The photograph in the catalogue (see Appendix A of the supplementary report) showed the building on the site as having been constructed as per the 1911 plan (see Appendix 8 of the original report). The landowners contended that the gate at the start of the claimed right of way could also be seen in this photograph. The claimant's response to this was contained in paragraphs 40 - 45 to the supplementary report.

In a letter Mr Reed put forward a number of reasons which the landowners claim rebuts the assertion that the path had become a public right of way through 20 years use.

Details of these reasons together with the Council's comments and claimants responses to them were shown in paragraphs 12 to 24, 41 to 42 and 51 to 55, and Appendices B and C of the supplementary report.

The Council also received a further letter of support for the landowners from a Mr N C Jones. Details regarding Mr Jones' involvement with the area in general and the site in particular were included in paragraphs 25 to 30 and Appendices D and E of the supplementary report.

The Officer confirmed that a list of the primary and secondary sources that may provide documentary evidence of a claimed right of way had been created and that the completed checklist for this application and the second table that provided additional comments were included in Appendices 16 and 17 of the original report.

The Ordnance survey maps from 1919, 1940 and 1962 (see Appendices 19 to 20 of the original report) showed various boundary lines in the vicinity of Belle Vue and the claimed right of way. Whilst these solid lines possibly suggested that there was some form of boundary at these points which may have been an impediment to the use of the route, this could not be confirmed with any degree of certainty.

During further investigations the Council obtained an aerial photograph from 1971, (see Appendix F of the supplementary report). The Authority's comments on this could be found in paragraphs 32 to 38 of the supplementary report.

Details of the legal background in relation to the matter was provided in paragraphs 96 to 103 of the original report and 61 to 69 of the supplementary report.

Section 31 of the Highways Act 1980 provides for the presumption of dedication of a public right of way following 20 years continuous use. The Officer reminded that there was significant evidence detailed in the report to indicate that the route in question satisfied this criteria.

The Officer added that the Panel needed to consider whether there was sufficient evidence to reasonably allege that this presumption is raised. The landowner on the other hand, had to show evidence that there was no intention on his part to dedicate such a route.

Applications to modify the definitive map based on user and/or historic documentary evidence the Officer advised, needed to proceed through two stages, the order stage and the confirmation stage. The purpose of these reports was to enable the Panel to determine if an Order should be made, and therefore, it is a test that should be applied at the Order making stage that should be examined here.

The Officer added that the significance of the wording of Section 53(3)(c)(i) of the Act, was crucial to the Panel's decision as to whether to determine to make an order and a number of court cases had determined the correct approach to take in this regard. Examples of these were highlighted in paragraphs 62 to 69 and Appendix J of the supplementary report.

The County Borough Council had undertaken the required consultations whilst investigating the application. Paragraphs 111 - 115 of the original report provide details of all the consultations and responses received.

The Ramblers Association representative, Mr A Morgan had agreed that a Modification Order should be made and a copy of his letter was shown in Appendix 21 of the original report.

In light of the new information contained within the supplementary report the Council had re-drafted a conclusion to the original report. The Officer therefore advised that Members should disregard the original conclusion shown at paragraphs 116 to 131 of the report to the Rights of Way Panel on the 23 November 2005, and should instead look at the new conclusion provided in Appendix K of the latest supplementary report.

The Officer further advised that paragraphs 1 to 17 of the new conclusion provided a summary of all the information obtained during the Council's investigation into this application. He added that paragraphs 18 to 23 were particularly important and duly read these paragraphs for the benefit of the Panel.

The Officer then proceeded to give some examples of previous case law where there had been decisions made on matters not dissimilar to that which was presently before the Panel. These were referred to in paragraph 69 of the supplementary report.

In conclusion, the Officer advised that in his opinion, sufficient user evidence had been produced to support a statutory claim that a right of way existed over the route subject of the report.

Notwithstanding the above, there did appear to be a conflict with the evidence, provided by the landowner, particularly in relation to whether the route had/was always available for use. From both the original and supplementary reports, the landowners were adamant that a locked gate had always prevented access to the southern end of the claimed path. However, the Officer added the documents provided by the landowners did not conclusively show that the claim was bound to fail.

In paragraph 123 of the original report the Officer indicated that on the basis of the information received, the path as a public right of way had been brought into question in the 1950's. There was conflicting evidence as to how long the gate remained in situ after that date, however the Officer reminded Members that according to the owner and occupier of the land, the gate remained in place

during the 1960's, 1980's and 1990's when the property had been rented. He added however, that there was no recollection of any gates during these dates by any of the claimants.

The Officer finally stated, that after having considered the matter once more; taking into account both the original and newly presented evidence, and after re-interviewing the claimants, he concluded that there was such conflicting evidence that, in his opinion, the application could only truly be determined at a public inquiry, where evidence may be confirmed or destroyed by the witnesses being cross examined by an Inspector.

He therefore concluded by adding that although the evidence was conflicting, by reasonably accepting one side and reasonably rejecting the other, it was in his opinion reasonable to allege that the right of way would be shown to exist and that the test for making an Order is therefore satisfied.

The Chairperson then invited questions from the Panel.

Members commended yet another comprehensive Officer's report and made a number of comments, which generally were as follows:-

- What conclusive evidence, (if any), is there of a gate ever existing along the claimed right of way;
- There seems a very fine balance between evidence submitted by both sides i.e. the claimant and landowner. Perhaps evidence should be decided by way of the holding of a public inquiry;
- Even if a gate had been in existence, there was no barrier at the back of the property restricting access. We should follow the guidance of our Officers;
- I have known the area for some time, and though the route was used by children to go to school and miners to go to work, I was never aware of a gate positioned anywhere on the route;
- If we accept the evidence that is before us today, are we reasonably accepting that a right of way has been shown to exist;
- Is there knowledge of anyone having been refused access along this route by the landowner.

The Officer suitably responded to the above questions, as well as other queries that were raised.

The Chairman before a period of summing up, then gave Mr Russell an opportunity to explain his views, having heard the Officer's submission and Members responses to this.

Mr Russell stated that research had shown that a gate had, in the past, existed along the route and that there had been evidence to reflect this, including photographic evidence. He added that the bar chart indicated regular use of the route over a period of time, which again was evidence to confirm the existence of a defined footpath.

It was questionable that due to the condition of the route and, where it led to, i.e. a children's playground, it would have been largely unused other than by children or teenagers. He added that in his opinion, he did not believe that any claimants used it for a period in excess of ten years, as it was not user friendly.

He added that there was evidence of a conflicting nature as to whether or not the route could be regarded as a public right of way.

Mr Russell also questioned the logic in referring this to the Welsh Assembly Government and possibly holding a public inquiry, due to the unnecessary expense this would incur if such a procedure was followed.

The route in question he added, was just a short cut that was not used that often and was of no real benefit to anyone.

He urged the Panel to use common sense and reject the claim, as it was a spurious one and that it would be a waste of both time and money to settle this in court.

The Rights of Way Officer appreciated the comments of Mr Russell and reminded Members, that they were here to specifically make a judgement based on all of the evidence contained in the report.

Following consideration of the report, and associated submissions made by those in attendance at the meeting, it was

RESOLVED: (1) That although the evidence is conflicting, by reasonably accepting one side and reasonably rejecting the other, it is reasonable to allege that the right of way marked with a bold black dashed line on the plan in Appendix 1 to the report would be shown to exist and therefore the test for making the Order is satisfied.

(2) On resolving 1 above, approval then be given to the making of a Definitive Map Modification Order to show the route described as follows, as a Public Footpath in the Definitive Map and Statement:-

“ The claimed footpath commences at Point A on the map Grid Reference SS90519148 being a point 45 metres east north east from the centre of the eastern boundary of the property known as Ffaldau House, Alexandra Avenue and will proceed firstly on the level in a generally northerly direction for 15 metres to Point B Grid Reference SS 90519150 where it will continue down a slope in a generally northerly direction for 12 metres to Point C at Grid Reference Ss90509151 at which point the path turns and runs in a west north westerly direction again on the level for 12.8 metres to Point D at Grid Reference Ss 90499151 being a point 54 metres north north east from the centre of the eastern boundary of the property known as Ffaldau House, Alexandra Avenue. The total length of the footpath will be approximately 39.8 metres”.

If a Modification Order is made the footpath will have a width which varies between 0.6 and 0.9 metres.

(3) If any objections or representations are made within the prescribed period and are not subsequently withdrawn, then the Order will be referred to the National Assembly for Wales for determination.

The meeting closed at 12.23pm.