

Report of the Head of Legal, Democratic Services and Procurement

Rights of Way and Commons Sub-Committee - 23 April 2014

AN ANOMALY AT THE JUNCTION OF BRIDLEWAY AND FOOTPATH NO. 10 - COMMUNITY OF ILSTON

Purpose:	To consider the justification for either upgrading footpath No. 10 to a bridleway or downgrading bridleway No. 10 to a footpath.
Policy Framework:	The Countryside Access Policy No. 4.
Reason for Decision:	No Modification Order can be made given the lack of specific user evidence by those who allege to have ridden footpath No. 10.
Consultation:	The Open Spaces Society, British Horse Society, The Ramblers Association, Community Council, The Local Member, the previous representative of the Ramblers Association, Somerset Trust, Gelli Deg (Local Resident), Nicholaston Farm, Gower Commoners Association, Parc Le Breos Riding School, previous local representative of the British Horse Society.
Recommendation(s):	It is recommended that no Modification Order be made.
Report Author:	Mike Workman
Finance Officer:	S Willis
Legal Officer:	S. Richards.
Access to Services Officer:	K. Roderick.

Introduction

- 1.1. The current Definitive Map shows this public path as part footpath and part bridleway. (Shown A-B-C-D-E) The junction of the two coincides with the boundary of the former Parishes of Penmaen and the area described as "Land common to the communities of Llanrhidian Higher, Lower, Nicholston, Penrice and Reynoldston".

- 1.2. The junction of these paths does not connect to any other public highway equal to or above that of a public bridleway. Consequently there is no reason why the status of this highway should change at the junction of this boundary. Point E connects to public bridleway No. 8 and point A joins the adopted highway.
- 1.3. This Council therefore is obliged to resolve this anomaly and the basis and justification for doing so is governed by the provision of Section 53(2)(b) and Section 53(3)(c)(ii) (as set out in Appendix 1).
- 1.4. The two most probable options are to either upgrade one or downgrade the other.

The History of the Path No. 10

- 2.1. The path commences at its eastern end on Bridleway no. 8 at point E and is described as a bridleway in the parish of Penmaen. At point C the path becomes a footpath but passes into what was described as “Lands Common to the Communities of Llanrhidian Higher, Lower, Nicholston, Penrice and Reynoldston”. As such there was no Parish Council for this area. The former Parish of Nicholston did not record this footpath between points A and C as being in their Parish and so it was correctly omitted from their Parish Map and Card. However when the Draft Map was published in 1955, it was included as a footpath although never described in any statement as there was no Parish Council for this area of land. This footpath was then retained in all the subsequent editions of the maps until the present day. The history of the way in which the current Definitive Map came into being is set out in Appendix 2.
- 2.2. There is a footpath No. 10 which was recognised by the Parish of Nicholston, but its most eastern point commences at point A on the plan, and proceeds west to Perriswood. It appears the additional footpath No. 10 between A and C was “added on”, but by whom and why is unknown.

- 2.3. With regard to Bridleway No. 10 in the former Parish of Penmaen, this was originally described as a footpath by that Parish Council when they included the path into their Parish Map and Survey. It was described as commencing on Talbot Road (at point F) and terminating at the Parish Boundary at (point C).
- 2.4. When the Draft Special Review map was published in 1972, the former Glamorgan County Council added the length E-D as a result of previous objections to there being no record of this path being shown on the First Definitive map of 1970. As such it was added as a spur to footpath number 10.
- 2.5. Objections were then made to the Draft Special Review Map because the length D-E was not shown as a public bridleway. An inspector was appointed to hold the subsequent public inquiries to consider objections to the Draft Special Review which were held in 1980

At the inquiry two people gave user evidence and this Council's predecessor also submitted a user evidence form.

The inspector concluded footpath No. 10 between points C-D-E should be upgraded to a public bridleway. However the Inspector did not consider the path west of point C and so his decision created the present anomaly.

The Current Evidence (Documentary)

- 3.1. The Ordnance Survey were not responsible for cataloguing public highways, even though many are shown on their plans. Their remit was to survey features, including tracks and paths irrespective of whether they may have been public ways, private ways, or even routes that simply were in existence at the time of the survey, but which became lost before the next survey.

- 3.2. The first, second and third editions of the ordnance survey dated 1878, 1899 and 1915, respectively all show path No. 10 from points A to E which confirms the path has been a long established feature.
- 3.3. The Tithe Map and Apportionment dated 1836, was intended to show land which was in production and of some value to the owners. Any land that was of little or no value was omitted from these records particularly if they were showing linear routes that were non-titheable. These have sometimes been interpreted as public ways. In this example the tithe map does not show this track.
- 3.4. The Beaufort Estate Plans of 1903 were also checked, but equally do not identify this path.
- 3.5. As such there is no documentary evidence that assists in resolving this anomaly.

Rural Common CL8

- 4.1. All of path No. 10 passes across what is common land and has now been designated as access land under The Countryside and Rights of Way Act 2000. This provides the public with a right to wander over land on foot only for the purposes of open - air recreation.
- 4.2. Whilst the Law of Property Act 1925 gave the public similar rights of access to all urban or metropolitan commons, this did not extend to Rural Commons. The exception being unless an Order of Limitation was made to specifically provide the public with such access. In this example, no such deed was made for CL8. Consequently there was no pre-existing right to ride across this common. As such, any use made on horseback would have been without the consent of the owner, nor under any licence.
- 4.3. Section 13 of the Countryside and Rights of Way Act 2000 prevents use of a route over access land giving rise to a claim under Section 31 of the

Highways Act 1980. Therefore the question is whether there is sufficient user evidence prior to the coming into force of the Countryside and Rights of Way Act 2000.

User and Other Evidence

- 5.1. As a result of the existence of this anomaly the usual informal consultations were undertaken and responses received by individuals of the Community Council.
- 5.2. The Community Council stated that footpath No. 10 should be upgraded to a public bridleway but did not provide any evidence.
- 5.3. A letter was received by the Parc Le Breos Riding School stating their clients use the path to ride, but no names of the individuals were forwarded as requested on three occasions. The previous representative of the British Horse Society has provided evidence of his use from between the period 2005 - 2013
- 5.4. The previous local representative of the British Horse Society stated there are many people who ride along this path, but again no names were provided.
- 5.5. Consequently there is only one individual upon whom this Council could rely and that is insufficient to justify making a Modification Order. The use referred to by the riding stables is anecdotal. There is no information on the precise periods and circumstances of their use, nor information as to whether they rode the path concerned as opposed to any other tracks in the immediate vicinity of this public footpath.
- 5.6. Two residents of nearby houses , one of whom has moved away from this location, stated they live within sight of footpath No. 10 (throughout the periods 1973 - 2009 and 1992 - 2009). One stated they see horse riders passing almost on a daily basis. However only one of the properties would be able to view the use by horses on the public footpath, that is west of point C.

In addition the landowners from one of the nearby farms have stated that they can see riders on this route.

Summary of User/Other Evidence

- 5.7. Whilst there are those who say footpath No. 10 is used by horse riders, only one person has been identified to have provided evidence and that is for a period of less than twenty years. As such there is insufficient user evidence upon which this Council could depend should it wish to make a modification order.
- 5.8 An alternative resolution is to downgrade bridleway no.10 to a public footpath but the Inspector who considered the objection at the special review was satisfied there was sufficient evidence to be able to upgrade the length of footpath C-D-E to a bridleway.

Conclusion

- 6.1. It is not possible to justify upgrading the footpath due to the lack of any individuals who can provide their own accounts of what their periods and frequency of use has been. It is also difficult to know whether they followed the footpath along its entire length. Nor can the bridleway between points C-D-E be downgraded given the previous decision referred to above.
- 6.2. As there is insufficient evidence to warrant making a modification order for the present time the anomaly will have to remain. An alternative option would be to consider making a public path order to regularise this anomaly. This could be pursued at a later date.

Recommended - that no modification can be made to correct the anomaly existing at point C on the plan attached to this report.

7.1. Equality and Engagement

The procedure and tests that are applicable to determine the anomaly do not require an equality and engagement assessment.

8.2. Legal Implications

There are none other than those contained in the report.

9.1. Financial Implications

There are no financial implications to making a modification order.

Appendices:

Appendix 1 - Relevant extract from the Wildlife and Countryside Act 1981.

Appendix 2 - History of the compilation of the Definitive Map and Statement.

WILDLIFE AND COUNTRYSIDE ACT, 1981

Section 53 Duty to keep the Definitive Map and Statement under continuous review.

- (2) As regards every Definitive Map and Statement, the Surveying Authority shall:
- (a) as soon as reasonably practical after commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in Sub-Section 3; and
 - (b) as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence on or after that date, of any of those events, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence of that event.
- (3) The events referred to in Sub-Section 2 are as follows:
- (b) the expiration, in relation to anyway in the area to which the map relates of any period such that the enjoyment by the public of the way during that period rises a presumption that the way has been dedicated as a public path or restricted byway;
 - (c) the discovery by the Authority of evidence which (when considered with all other relevant evidence available to them) shows:
 - (i) that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to Section 54A a byway open to all traffic;

- (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description;
- (iii) that there is no public right of way over land shown in the map and statement as a highway of any description or any other particulars contained in the map and statement require modification.

**HISTORY OF THE COMPILATION OF THE DEFINITIVE MAP
AND STATEMENT**

1. The National Parks and Access to the Countryside Act of 1949 placed an obligation on all Councils to produce a Definitive Map and Statement. Parish Councils were given the task of surveying all routes they considered may have legal status. This resulted in the production of what has come to be known as the Parish Map (at the scale of 6" to one mile) and the all too often rather brief description of the path contained on small cards also known as the Parish Card. Some of the descriptions on these cards were more comprehensive than others but in combination with the paths' depiction in the "Parish Map", provide a useful record of what routes were considered to have public path status by 1954.
2. The information was passed to the former Glamorgan County Council who collated the information and produced the first Draft Definitive Map which in their opinion reflected routes considered to be public rights of way on 14th September 1954 which became the "relevant date" of the first Definitive Map published in 1970.
3. The legislation required that the information gathered should be the subject of a series of reviews, which would allow the public and landowners to make representations or objections to the inclusion or absence of routes in the various editions of these earlier Draft Maps. The result was the production of the initial Draft Map and Statement published in 1955. Objections to the inclusion or omission of routes were considered in 1956 and the results of those decisions were again subject to further objections which resulted in a further series of hearings which took place in the 1960s. The Provisional Map and Statement published in 1964 was the effect of those objections so determined. Once published, landowners were given another opportunity to object and these were heard in the Quarter Sessions in around 1968. The result was the production of the first Definitive Map and Statement published

in 1970. The passing of the Countryside Act 1968 required all Councils to reclassify routes they had designated as roads used as public (R.U.U.Ps) into either footpaths, bridleways or byways open to all traffic. This resulted in the production of the Draft Special Review of 1971, published in 1974, to which objections could be made. Those inquiries were mainly held in 1980 which when determined lead to the production of the current Definitive Map and Statement published in 1988.