

Report of the Head of Legal, Democratic Services and Procurement

Rights of Way and Commons Sub-Committee - 17 July 2013

**PUBLIC PATH 64  
COMMUNITY OF LLANRHIDIAN HIGHER**

<b>Purpose:</b>	To decide to re-make the Modification Order for the same purpose.
<b>Policy Framework:</b>	The Countryside Access Plan, Section 4.12.
<b>Statutory Tests:</b>	Section 53(3)(c).
<b>Reasons for Decision:</b>	<ul style="list-style-type: none"><li>(i) The original modification was rejected by the Planning Inspectorate.</li><li>(ii) It has not been possible to resolve the anomaly by negotiation.</li><li>(iii) A Modification Order has to be re-made due to the time that has elapsed since the first. This Committee has to re-determine the matter.</li></ul>
<b>Consultation:</b>	The landowners of Penyrheol and Caerau, Finance, Economic Regeneration and Planning.
<b>Recommendation(s):</b>	It is recommended that a Modification Order should be made to amend the written statement to describe Footpath No. 64 as passing via Penyrheol Farm as shown in the Definitive Map.
<b>Report Author:</b>	M J Workman
<b>Finance Officer:</b>	Kim Lawrence
<b>Legal Officer:</b>	S Richards

**1.0 Background**

- 1.1 On 6<sup>th</sup> August 2009 the issue concerning the report was submitted to the Cabinet Member for Economic and Strategic Development (as appended to this report). It highlighted the anomaly which exists between the depiction of Footpath No. 64 in the Definition Map and its description in the Statement.

- 1.2 On 5<sup>th</sup> November that year a modification was made to correct the error on the basis the Definitive Map is correct and so the description in the Statement was altered to reflect the alignment of the path shown in the Definitive Map.
- 1.3 The path is shown passing alongside Penyrheol Farm and the owners and occupiers objected on the basis the Statement reflects the correct position of the path.
- 1.4 As a result the Order was referred to the Planning Inspectorate which was rejected, but not on the evidence, rather that the Order should have included a plan showing the path and that the incorrect sub-section of the Wildlife and Countryside Act 1981 was quoted.
- 1.5 Issue was taken with the decision and some concession from officers within the Inspectorate that the Order as drafted could be acceptable. It was nonetheless returned to the Council on 8<sup>th</sup> October 2010 by the appointed Inspector with further advice from the Inspectorate received on 15<sup>th</sup> December 2010 and on 11<sup>th</sup> July 2011.
- 1.6 As the Order had been rejected, an opportunity arose to pursue an alternative means of resolving the problem as this had been previously suggested by the then Local Member. One option was to consider the possibility of diverting the path to a route that would be mutually acceptable to the owner, this Council and the public.
- 1.7 From 6<sup>th</sup> September 2011 until 20<sup>th</sup> March 2013, various attempts had been made to identify an alternative route which would be acceptable to both the objector to the original Order and the neighbouring premises, namely Caerau, over whose land the path is described in the Statement. The proposal was in effect to initially place the alternative path approximately along the boundary of the two properties, before bringing the path to the south of Penyrheol Farm into the "sunken lane". In the event, the owner of Penyrheol informed this Council in a letter dated 20<sup>th</sup> March 2013 that they are unable to consider a diversion of the path until the issue of the Modification has been determined.
- 1.8 As such the position now reverts to that of August 2009 when this Council decided the written statement should describe the path that passes alongside Penyrheol Farm. The reason for bringing the second report to Committee is twofold:
  - (a) Under the provisions of the 1981 Act, the date specified in the Order must not be more than 6 months before the making of the Order.
  - (b) Since the Order was made the objection letter set out a number of issues to which reference should be made before another decision is taken.

- 1.9 So if there is a resolution by this Committee to make an Order, the date specified in that Order should not be more than 6 months after that meeting.
- 1.10 Given the previous decision was made approximately three and a half years ago, a new resolution is needed.
- 1.11 Since the Order was made the objection letter made several points as to why the Order should have shown the public path via Caerau. Two additional unsigned statements were submitted, one from the uncle and one from the cousin of the present owner (born in 1922 and 1942 respectively). The former, who was born at Penyrheol Farm recalls the occasion when the funeral procession was diverted away from passing north alongside that farm which he states was due to the gradient of the track. He also stated he saw no one use the path via Penyrheol. The cousin said the southern part of the lane was almost impossible to walk due to springs and wells, but said cattle were taken this way although with difficulty, which is why in his opinion no one travelled that way.
- 1.12 The letter raised questions of the report.

In summary:

- (i) That owners of Penyrheol Farm deny having seen anyone use the path alongside their property and that is supported by the statements by the mother and aunt of the owner.
- (ii) That reference to Section 31 of the Highways Act 1980 is considered to be relevant by the Council, but there is no evidence of use of the path alongside Penyrheol. Consequently the section cannot be applied.

Comment - Reference to Section 31 was given to identify one of the means by which a public path may be presumed to have become dedicated. The report does point out that in this case the anomaly has stemmed from a conflict between the Map and Statement since the Draft Map and Statement was produced in 1954. Consequently it is not necessary to establish a minimum period of twenty years' use since 1954.

- (iii) That the report accepts there was rubble in the path between points B and G and so it should be established when this first prevented access to establish the first date the route was called into question.

Comment - The objector did not offer any date, as it would be they who presumably would know (if anyone) when this occurred. In any event, unless that obstruction occurred before 1954, then such a date would be irrelevant.

- (iv) There is no evidence of use throughout the twenty years immediately preceding the date the electric gate was installed across the path in 2004.

Comment - Again, there is no requirement to establish this is the case.

- (v) That there is no evidence of common law dedication.

Comment - This is an issue as to whether either one of the other of the routes were subject to such dedication.

- (vi) That there is no evidence of use since the land evaluation was undertaken as a result of Finance Act 1910.

Comment - This may or may not be relevant, depending on how much weight is given to the significance of this evaluation.

- (vii) That the owners of Penyrheol Farm were unaware of the series of reviews of the Definitive Map and Statement.

Comment - This would not be considered relevant, provided this Council's predecessors complied with the requirements of the National Parks and Access to the Countryside Act 1949, then it is incumbent upon those occupiers and owners of land at the time of the reviews to make their objections or representations known to their Surveying Authority.

- (viii) That because the funeral procession was diverted away from the path, this constitutes a challenge to the existence of the public way.

Comment - No date is given as to when this occurred, the reason given by the relation was the gradient and ground conditions were unsuitable for the procession.

- (ix) That too much weight is given to the depiction of the path in the Definitive Map.

Comment - The report has provided a balanced assessment within paragraph 10.1.

## **2.0 Conclusion**

- 2.1 The evidence on the balance of probabilities that the public path should be described as passing via Penyrheol Farm has not altered by any information provided in the objection letter. Consequently the original resolution should stand.

### **3.0 Financial Implications**

3.1 There are no financial implications with regard to this report.

**Recommended:-** That a Modification Order should be made to amend the written statement to describe Footpath No. 64 as passing via Penyrheol Farm as shown in the Definitive Map.

**Background Papers:** Row-92

**Appendices:** The report of 2009