

PLANNING SUB-COMMITTEE (PUBLIC RIGHTS OF WAY)

Minutes of a Remote meeting held on 20th November, 2024.

The Sub-Committee agenda is available [here](#).

The Meeting recording is available [here](#).

Present: Councillors G. Bruce, P. Drake, N.P. Hodges, N.C. Thomas and E. Williams.

Also present: Councillors E.J. Goodjohn, W.A. Hennessy and J. John (Cabinet Member for Leisure, Sport and Wellbeing).

Name of Public Speaker:	Agenda Item:	Reason for Speaking:
D. Powell	Agenda Item 6 – Application for Modification of Definitive Map and Statement Wildlife and Countryside Act 1981 S53(3)(c)(i) – From the Adopted Highway at Boverton Mill Farm to the Public Footpath No. 3 at Summerhouse Point, Llantwit Major	An individual in support of the application.

Councillors E.J. Goodjohn and G. John spoke on Agenda Item 6 – Application for Modification of Definitive Map and Statement Wildlife and Countryside Act 1981 S53(3)(c)(i) – From the Adopted Highway at Boverton Mill Farm to the Public Footpath No. 3 at Summerhouse Point, Llantwit Major – in their capacity as Vale of Glamorgan Councillors.

(a) Announcement –

Prior to the commencement of the business of the Sub-Committee, the Democratic and Scrutiny Services Officer read the following statement: “May I remind everyone present that the meeting will be live streamed as well as recorded via the internet and this recording archived for future viewing.”

(b) Appointment of Chair –

RESOLVED – T H A T Councillor N.C. Thomas be appointed as Chair for the Sub-Committee for the remainder of the current Municipal year.

(c) Appointment of Vice-Chair –

RESOLVED – T H A T Councillor P. Drake be appointed as Vice-Chair for the Sub-Committee for the remainder of the current Municipal year.

(d) Minutes –

RESOLVED – T H A T the minutes of the meeting held on 6th September, 2023 be accepted.

(e) Declarations of Interest –

Councillor E. Williams declared a personal interest in relation to Agenda Item No. 6. The nature of the interest was that Councillor E. Williams was also a Member of Llantwit Major Town Council and had been involved in meetings in relation to the application previously. Councillor Williams stated that he would be looking at the application from afresh.

Councillor G. John, not a Member of the Public Rights of Way Sub-Committee, declared a personal interest in Agenda Item No. 6 in that he was a member of Llantwit Major Town Council and was speaking as a Vale of Glamorgan Councillor opposed to the application.

(f) Application for Modification of Definitive Map and Statement Wildlife and Countryside Act 1981 S53(3)(c)(i) – From the Adopted Highway at Boverton Mill Farm to the Public Footpath No. 3 at Summerhouse Point, Llantwit Major (DP) –

The report detailed a claim that a route running from the adopted highway at Boverton Mill Farm to the public footpath no. 3 at Summerhouse Point, Llantwit Major (as set out in the Appendix to the report) should be recorded as a public footpath in the Definitive Map and Statement with a width of 3 meters.

The report set out the relevant evidence and legal tests, including the weight that could be given to that evidence, to inform a determination on whether or not to make a Definitive Map Modification Order (DMMO).

The Sub-Committee was required to assess the evidence and determine whether to make an appropriate DMMO capable of giving effect to that evidence, or to decline the application. In making the determination the Sub-Committee had to base its consideration on the legal tests outlined in the Investigation Report appended to the report.

Members were apprised on the following matters by way of a PowerPoint presentation delivered by Mr Gwyn Teague:

- Legal Framework – Highways Act 1980 s31,
- Legal Framework – Common Law,

- Mechanically propelled vehicles,
- Back ground and user evidence,
- Landowner notification,
- Site ownership and mapping background,
- Particulars, Plans and Conditions of Sale, Boverton, Glamorgan,
- Car Park application,
- User evidence,
- Documentary evidence, and
- Case assessment.

Mr. Teague advised that the Natural Environment and Rural Communities Act 2006 (s67) (NERC 2006) extinguished all unrecorded public rights for mechanically propelled vehicles in the country. For vehicular rights not to have been extinguished a route had to meet one of the following criteria:

- (a) it is over a way whose main lawful use by the public during the period of 5 years ending with commencement was use for mechanically propelled vehicles,
- (b) immediately before commencement it was not shown in a definitive map and statement but was shown in a list required to be kept under section 36(6) of the Highways Act 1980 (c. 66) (list of highways maintainable at public expense),
- (c) it was created (by an enactment or instrument or otherwise) on terms that expressly provide for it to be a right of way for mechanically propelled vehicles,
- (d) it was created by the construction, in exercise of powers conferred by virtue of any enactment, of a road intended to be used by such vehicles, or
- (e) it was created by virtue of use by such vehicles during a period ending before 1st December, 1930.

B to E were not triggered, as there was no list of streets (b); no enactments (c); no powers exercised (d) or evidence of public vehicles prior to Hafod in 1932 (e). The remaining criteria in (a) required that the main lawful use by the public between 16th November, 2001 and 16th November, 2006 be by mechanically propelled vehicles. Mr. Teague advised that the mere use of the track by mechanically propelled vehicles was insufficient to qualify – main use need be demonstrated for those rights not to have been extinguished in 2006.

As such it was appropriate to determine the main public use of the route during the relevant five years. That required an examination of the comparative weight of user type.

In the case of A-B 32 user evidence forms covering 33 users were initially submitted in support of the application. Following consultation on the initial findings of the Council's investigation report a large number of statements were submitted attesting to use of the track and seeking withdrawal of the application in favour of recognition of the track as a road. Mr. Teague stated that these statements appeared to have been generated as part of a campaign and followed a templated response. 171 such statements were referred to the County Council.

Of the 171 templates, 162 provide a standardised indication that they used the track to walk and drive to the car park at Summerhouse Point. No further information on frequency of use over the period specified on each is included or indication of frequency by user type and as such they were of limited value in determining the main use that was being undertaken. Where users had deviated from the template in the remaining 9 cases, 4 did not extend to use in the 5 years prior to NERC, 2 indicated more frequent use on foot than by car and 3 did not provide sufficient detail on frequency by user type to determine main use.

User Evidence Forms were offered to those submitting statements where return addresses were available in order to gather sufficient information to make a more reliable assessment of main use. 25 user evidence forms were returned in addition to the 33 users who initially responded. One user submitted an evidence form both initially and prior to consultation. The total number of distinct users described in evidence forms was therefore 57.

In conclusion, Mr. Teague advised that the route of the track A-B had been well established over a series of centuries. It was likely to have become maintainable at public expense in 1730 and was certainly being maintained at public expense through the 19th Century. The character of the route, facilities served by it and activities undertaken on it lend support to historic use by all categories of non-motorised vehicle.

Crown ownership from a period through 1936-1960 interferes with the statutory basis for acquisition of rights and the introduction of access by licence, with steps to communicate it to the public, from 1976 to October 1987 frustrates this further. Challenges to use around July 2007 were also noted.

There was however no indication that any event that might have caused pre-existing rights to be extinguished upon acquisition by the Crown occurred. As such the barriers to establishing rights post 1936 were immaterial as strong evidence existed in favour of those rights already having been established prior to that period. It remained an open question as to whether mechanically propelled vehicular rights might have been established over the route. It was found however that no exception within NERC 2006 was triggered and as such any unrecorded vehicular rights that may have existed on the track would have been extinguished upon commencement of s67 of NERC 2006. Officers had therefore recommended making an order to record the route as a Restricted Byway.

Councillor G. John, not a member of the Sub-Committee and speaking as a local Vale of Glamorgan Council ward member, stated that there was evidence that this road was an unclassified public highway, similar to the road at the bottom beach that was built by local people in the 18th century. Glamorgan County Council, under the guidance of Doctor Holden, put an application for a car park because of the need for a car park and the number of vehicles going down the road. Councillor John commented that those living at the house at the end of the route required access for vehicles, including visitors and deliveries. Farmers also used the route on a regular basis, as did a number of other people like fishermen who still go down there fishing. Were these people expected to park at Mill Barn and walk down, which would be a

problem for those living at Mill Barn. He added there would likely be many objections raised by action groups about vehicles using the public footpath.

Councillor E.J. Goodjohn, not a member of the Committee and speaking as a Vale of Glamorgan Councillor, agreed with and supported Councillor John, as she had recently visited the site and had accessed the car park at the bottom of the route. She added that the Council should not restrict access to that point for the public by any means.

The next public speaker was a Mr. David Powell, who indicated that he was speaking as an individual Town Councillor. Mr. Powell commented that he was in favour of the application which had taken 16 years of evidence and negotiations to get where we were today and hence the support for the application several years ago without any success. The only option left was to follow the existing roadway leading to the beach. The footpath would also allow for an additional option to get to the South Wales and the Welsh coastal path.

Mr. Powell stated that massive amounts of information had been gathered by Llantwit Major Town Councillors and supplied to prove the public rights of way had been to the beach for hundreds of years. The massive amount of evidence showed no doubt access being used by people, including walking, riding and driving for many, many generations, without any obstruction or confrontation until recent years .

He added that the request of local residents for the application submitted in 2015 was for footpath 61, footpath 55 and three footpaths to be created along what was considered at the time a public - private track. That went to Sub-Committee in 2016, where the proposal was supported by Llantwit Major Town Councillors and the local MP. Mr. Powell stated that he was just one of the hundreds of residents who supported the application. Documents in 2018 provided legal, conclusive proof and existence of the location of a public right of way. The documents provided were not to try and obtain a new right of way, but to prove a right of way existed. Mr. Powell stated that the creation of a footpath on the road would not interfere with the vehicle access for private residence would leave at. The original application was for a footpath so people could walk down uninterrupted, and residents deserved to be able to walk the ancient road, unobstructed or put in danger.

In reply to the speaker, Mr. Teague advised that the Sub-Committee would be required to assess whether the public rights of way may have been brought into existence by their historic use of it, or by what had gone on in the past. In terms of motorised vehicle use, the route had been used by vehicles, but the effect of the NERC Act was that the route was extinguished.

It was clarified that the NERC Act had extinguished all public rights, but private rights still remained, which meant that the route could still be used by those that lived at the bottom of the route on what would be a restricted byway.

Councillor P. Drake queried the width of the footpath. In reply, Mr. Teague advised that there was a requirement for the Local Authority to check that the width of the path was suitable for vehicles.

Councillor E. Williams stated that it was clear that the route had been used by vehicles and he noted that some action groups had a different view in terms of the impact of the NERC Act. Councillor Williams then moved officers' recommendations for a Modification Order to be made.

With no further comments or questions, the Sub-Committee subsequently

RESOLVED – T H A T the Vale of Glamorgan Council make a Definitive Map Modification Order in respect of the application.

Reason for decision

Having regard to the contents of the report and discussions at the meeting.