
RIGHTS OF WAY REPORT



Date Written	6 th February 2014
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Service Area	Economic Development
Committee Date	24 th February 2014

To: Chairman, Ladies and Gentlemen

TROEDYRHIW 144

PURPOSE OF THE REPORT:

To give further consideration to the reasons for making a definitive map modification order.

1.0 INTRODUCTION AND BACKGROUND

- 1.1 In 2011 a definitive map modification order was made to record the route of Troedyrhiw 144 on the Definitive Map and Statement following a committee resolution in November 2010. The 2010 report is appended to this agenda item.
- 1.2 The 2010 report describes the route together with the evidence that was taken into account and elected members are referred to section 1.1 to 1.6 of the appended report. Although the order was made on the basis that members were satisfied that the requirements of s53(3)(c)(i) Wildlife and Countryside Act 1981 were met, the reasoning in the 2010 report also refers to the evidence satisfying s53(3)(b) of that Act in relation to presumed dedication. This relies on the statutory presumption in s31(1) Highways Act 1980 being satisfied.
- 1.3 An objection to the order was received. In preparing the necessary documentation to refer the matter to the Planning Inspectorate it is evident that the requirements of s31(1) Highways Act 1980 could not have been met as there was less than 20 years use.
- 1.4 Section 31(1) Highways Act 1980 relates to dedication of a way as a highway where there has been at least 20 years use. Section 31(1) states "*where a way over any land, other than a way of such a*

character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was intention during that period to dedicate it.”

- 1.5 Section 31(9) Highways Act 1980 confirms that the statutory presumption in s31(1) Highways Act 1980 does not oust the common law principles that apply to dedication of highways. It provides “*Nothing in this section operates to prevent the dedication of a way as a highway being presumed on proof of user for any less period than 20 years, or being presumed or proved in any circumstances in which it might have been presumed or proved immediately before the commencement of this Act.*”
- 1.6 The Haul Road was constructed in the mid 1990s, and the 2010 committee report at 3.2 states that it had been available for public use since 1994. This only allows for a maximum of 16 years public use at the time of the committee report in November 2010. This is insufficient to record a route when relying on s31(1) Highways Act 1980. It is therefore necessary to ascertain whether the public right to use the route has come about through the common law.
- 1.7 With regard the common law use does not give rise to any presumption of an intention to dedicate but is merely evidence which might suggest such an intention. The onus of proof lies on the person claiming a way as public to show that the facts, taken as a whole, are such that the rightful inference to be drawn from them is that there is an intention to dedicate the way as public. No minimum period of time for the use is required but the longer the period, the stronger may be the inference of intention to dedicate. In some cases relatively low periods have been accepted to infer that there was an intention to dedicate at the common law. These cases relied on heavy use. In the case of *R v Petrie* (1855) eight years was found to be sufficient, in the case of *Rugby Charity Trustees v Merryweather* (1790) six years was sufficient and in the case of *Rowley v Tottenham Urban District Council* (1914) three years was sufficient.
- 1.8 In order to satisfy the test at common law it is necessary to show that the use is without force, without secrecy and without permission.
- 1.9 The provisions of s31 Highways Act 1980 have not superseded the principles of implied dedication that existed at common law before the Rights of Way Act 1932 (as s31(9) Highways Act 1980 confirms).
- 1.10 Troedyrhiw 144 has only been in existence for a maximum of 16 years. The recording of this route on the Definitive Map and Statement can therefore only be made under the common law. In the case of *Nicholson v Secretary of State for the Environment* (1996) it was stated

“prima facie the more intensive and open the user and the more compelling the evidence of knowledge or acquiescence, the shorter the period that will be necessary to raise the inference of dedication...”

- 1.11 Where the common law is being relied on the test of intention to dedicate still applies. There are two distinct landowners with regard to this route; the Forestry Commission own the eastern section and at the time of the report to committee in 2010 the western section was in the ownership of Merthyr Village Limited. On 18th September 2013 the western section was transferred into the ownership of Marvel Limited. This transfer is still pending with the Land Registry.
- 1.12 Members are also referred to Agenda Item 3 which contains further legal background.
- 1.13 With regard the eastern section this has been in the ownership of the Welsh Assembly Government in the guise of the Forestry Commission. The Forestry Commission have dedicated a number of other rights in the Gethin Woods, three of which directly join this route. These routes were dedicated by the Welsh Government in 2010.
- 1.14 The eastern section was owned by Merthyr Village Limited between 2001 and 2013. Prior to that the land was owned by Celtic Energy Limited. On 18th September 2013 this parcel of land was transferred to Marvel Limited. This transaction is still pending at the Land Registry.
- 1.15 Evidence of use, at the time of presenting the 2010 committee report was provided by Lewis Lewis. The first paragraph of page 155 of the 2010 report states with respect to Mr Lewis Lewis *“Mr Lewis Lewis confirmed the route of this specific claim on a map and stated that he has used it regularly since its creation in 1994. He described how the route is a means of access to other routes and how he uses it as a section of several circular routes which he regularly uses.”*
- 1.16 Mr Paul Brown, at the time of the 2010 committee report stated that he had regularly used this route as a section of a longer route. He also uses this route in order to access the Blaencanaid furnace and the Cwm Pits. He stated that he used to use this route, on average, two or three times a month, perhaps less during the winter months and that he had used the route since 1994.
- 1.17 Messrs Colin Davies, John Gamlin and David Price also stated at the time of the 2010 committee report that they were regularly using this route as part of a number of circular routes.
- 1.18 Mr Clive Thomas stated at the time of the 2010 report that he used this route as a section of other walks.

- 1.19 Mr and Mrs Malcolm and Charlotte Connolly also stated at the time of the 2010 committee report that they were regularly using this path and had done so since its construction in 1994.
- 1.20 Since the time of writing the 2010 committee report all the above have confirmed their use of the route and also stated that they often see people walking the same route.
- 1.21 All stated that they more frequently use this route as compared to the route of the Parish Road, Troedyrhiw 45 (in this section) as it is a much easier walk and it is in a good state of repair.
- 1.22 This route joins and passes 3 public rights of way. On the plan, Troedyrhiw 144, at its start point, Point A, it joins Public Right of Way Bridleway Troedyrhiw 85. At Point B it joins Public Rights of Way Footpaths Troedyrhiw 93 and Troedyrhiw 94 (one leading north to Blaencanaid Farm and one leading south to the Parish Road).
- 1.23 This route, as depicted on the plan, Troedyrhiw 144, also passes, joins or crosses 10 claimed public rights of way. At Point C it joins claimed public right of way Troedyrhiw 193. At Point D it crosses claimed public right of way restricted byway Troedyrhiw 45. At Point E it crosses claimed public right of way footpath Troedyrhiw 155 and within metres it crosses claimed public right of way footpath Troedyrhiw 46. At Point F it joins claimed public right of way footpath Troedyrhiw 133. At Point G it crosses claimed public right of way Troedyrhiw 66. At point H it crosses claimed public right of way byway open to all traffic Troedyrhiw 175. At Point I it joins claimed public right of way footpath Troedyrhiw 147. At Point J it crosses claimed public right of way bridleway Troedyrhiw 72 and at Point K it terminates to join claimed public right of way bridleway Troedyrhiw 160.
- 1.24 All of the routes mentioned in the two preceding paragraphs are used by the public. All people interviewed have stated that they use this route in order to access the routes mentioned in the 2 preceding paragraphs or that they will access those routes off this one.
- 1.25 Mr Lewis Lewis stated at the time of the committee report in 2010 that no one had ever stopped him going on to any area on the mountainside and that until recently the whole area was open.
- 1.26 Mr Paul Brown stated at the time of the 2010 committee report that he believed that he had a right to walk this path and that he had never sought or been given permission to use the route.
- 1.27 Messrs Colin Davies, John Gamlin and David Price stated at the time of the 2010 report that none of them had ever asked permission of anyone to walk the route and that they had never been challenged whilst using it.

- 1.28 Mr Clive Thomas stated at the time of the 2010 report that he had never had his use of this route challenged and that he had never sought permission to use the route.
- 1.29 Mr and Mrs Malcolm and Charlotte Connolly stated at the time of the 2010 report that neither of them had sought permission to use the route and that neither of them had ever been challenged whilst using the route
- 1.30 Officers are of the view that, having regard to the evidence as a whole, there is sufficient evidence to record the route as a footpath, based on the common law test for dedication.

2.0 FINANCIAL IMPLICATION(S)

- 2.1 Officer time is involved in investigating the route and writing the report.
- 2.2 As Councillors are aware, financial implications are not to be considered by the Committee when determining this application as the County Borough Council has a statutory duty to make an Order if it believes that there is sufficient evidence to support it.

3.0 EQUALITY IMPACT ASSESSMENT

- 3.1 An Equality Impact Assessment has been prepared for the purpose of this report and no negative effects have been identified.

4.0 RECOMMENDATION(S) that

- 4.1 Councillors give further consideration to the reasons for making the order and confirm that, notwithstanding that the period of use is insufficient to satisfy s31(1) Highways Act 1980, there is sufficient evidence to record the route of Troedyrhiw 144 as a footpath based on the common law and that the order should have been made on this basis under s53(3)(c)(i) Wildlife and Countryside Act 1981.

GARY THOMAS
DIRECTOR OF CUSTOMER SERVICES

BACKGROUND PAPERS		
<i>Title of Document(s)</i>	<i>Document(s) Date</i>	<i>Document Location</i>
Troedyrhiw 144	4 th February 2014	Civic centre