
RIGHTS OF WAY REPORT



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Service Area	Economic Development
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To: Chairman, Ladies and Gentlemen

Treharris 31

PURPOSE OF THE REPORT:

To determine a public right of way from Rockview Road, Cardiff Road, Edwardsville to Pen-y-graig Farm on the mountain top.

1.0 INTRODUCTION AND BACKGROUND

- 1.1 A claim to record a Public Right of Way between Rockview, Cardiff Road, Edwardsville and Penygraig Farm on the mountain top was submitted to Merthyr Tydfil County Borough Council on 28th April 1990.

The legal background is to be found at Agenda Item 3.

1.2 The Route

As depicted by a bold black line on the plan, Treharris 31, the route commences at Point A, grid reference ST08809843, its junction with the maintainable highway, and proceeds in a general south-westerly direction for a very short distance to a Forestry Commission barrier at Point B before continuing to Point C. It then proceeds in a general southerly direction to Point D where it changes to a general south-easterly direction and continues to Point E. From here the route continues in a general south-south-easterly direction to Point F where it turns to a general south-south-westerly direction to Point G and then continues in a general south-easterly direction to Point H from where it continues generally eastward to Point I. The route then turns to a general southerly direction and proceeds through the school grounds of Edwardsville Primary School to Point J. On leaving the School yard it

continues on a tarmacadamed path and then down steps to terminate on the maintainable highway at point K, grid reference ST08839685.

The route has a natural surface between Points A – I and the remainder of the route is tarmacadamed.

Between Points A – G the route varies between 2 – 3 metres in width; it is 1 metre wide between Points G - I, it is of no defined width in the section through the school yard and is between 1.7 and 2.5 metres wide between Points J - K.

The route submitted in this application is not depicted on the Definitive Map.

1.3 Land Ownership

At the time of the claim the land was owned by Mid-Glamorgan Education Department and by Forestry Commission (Wales).

The current owners of different sections of the land are Merthyr Tydfil County Borough Council and the Welsh Government (occupied by the Forestry Commission).

1.4 Maps

Sections of this route are depicted on the Merthyr Tydfil Tithe Map, 1850 and the 1875, 1919, 1957, 1978 and the Rhondda & Merthyr Tydfil / Tudful 1:25,000 revision, 2005 Ordnance Survey maps.

1.5 Aerial Photographs

Sections of the route are depicted on aerial photographs dated 1967, 2008 and 2010.

1.6 Site Visits

MTCBC officers have walked the route with the exception of the section within the school yard (which is fenced off) and found it as described above.

1.7 Investigation Report

An Investigation report into this route was distributed to all interested parties in May 2011. This Report contained all of the information available to the Authority to that date.

Landowners made no further observations at that time.

1.8 Landowners observations

Correspondence received at the time of the claim indicates that the Forestry Commission was then in agreement with the route. Considerable correspondence was also subsequently received from governors of Edwardsville Primary School which indicated that they recognized the public right of way and sought a diverted route around the school.

Current landowners were advised of this route in March 2011. At that time an e-mail was received from the Welsh Government stating that the Forestry Commission is responsible for their portion of the land. Mr. Karl Charlton, then area manager for Forestry Commission (Wales) wrote that he would not be in favour of creating this PRoW for a number of reasons:

- it is open access land,
- they have carried out work on this path to make it suitable for community use , and
- *“The additional costs that FCW will have to bear by the creation of new PROW, will have to be met from public funding yet will provide no greater benefits to local people”.*

The Education Department MTCBC, has verbally agreed to dedicate the section of the route which runs through the school yard and then apply to have the route diverted to its currently-used alignment.

The MTCBC Estates Department confirmed ownership of a short section and also that they have no objection to the creation of a pedestrian PRoW but would not support the creation of any vehicular rights.

1.9 Observations and Comments of Users

There were two main claimants who submitted:

Two correctly completed forms WCA 5 (Application to modify the Definitive Map),

Correctly completed form WCA 7 (confirming that the main claimants have served notice on the owner/occupiers),

(Identical) letters with additional information and copies of extracts from two Ordnance Survey (OS) maps have been received. One map was a copy taken from house deeds (dated 10th May 1900) and the claimed route was marked with an “X” at its commencement and termination and on the other map (a 1959 revision) the route was depicted by an orange felt pen. The route only extends as far as the entrance to Penygraig Farm in the north and goes through a lane to the south-west of the Congregational Church which is marked *“rights of way reserved”*

in the south. The entire route as presented for determination by Councillors today is supported by a map drawn up by a Mid Glamorgan officer at the time of the claim.

The claimants stated:

“This footpath was acknowledged by Merthyr Tydfil Borough Council as a public right of way, when in 1969 they extinguished the right of way, which previously went through the main entrance to the school, and built a brick wall alongside the Congregational Church, in the form of an alley between the school playground and the church.

The footpath runs from the foot of the mountain, winds its way up to fields and woods (known as the Lilly Whites) then on to Penygraig Farm, now owned by the Forestry Commission. Incidentally, from the farm there is a road which eventually ends alongside Treharris Church.”

Seven correctly completed evidence forms dated between June 1996 and 1997 (two from the same person), five showing a minimum of 20 years use (the sixth had evidence of 18 months use), all claiming this route as a footpath for public use. One claimant stated that there used to be a stile at the point of entry into the Forestry Commission-owned land and another that there is a notice *“public keep to the path, remainder of site private property”* at this point.

In addition to the evidence forms there are a number of other completed claim forms in relation to this route:

Seven Forms of Notice of Application for a Modification Order; one form was signed by three people.

Five Forms of Application for a Modification Order; one form states that a copy of a 1919 OS map was attached – although this is no longer on the file; one form was signed by three people.

Four signed and dated Forms of Certificate of Service of Notice of Application for Modification Order - ownership information not completed. One form was signed by one of the main claimants who described events when she maintains that the path was re-routed in the area of the school.

- Mr Watkins stated in October 2007 *“that although Council Officials thought that the alleyway between the school yard and the church at Rockview was something to do with the school ... the alleyway was built to accommodate the Right of Way to the mountainside”*.
- He stated *“we used to go through the main gate entrance of the school, through the school yard and up to the mountain side ...officials stopped*

us using this method, so the village people complained and the brick wall was built in the school yard making an alleyway for our right of way”

- *He further stated that “ the right of way has been used for many years, I remember when Quakers Yard Grammar School was on the site where the Primary school now stands we went through the main gate walked between the Grammar school and the Junior school past the tennis court belonging to the grammar school then on to the end of the grammar school where there was a gate allowing people to reach the mountainside.*
- *There are two gates one at the bottom and one at the top of the alley, but they are continually locked and have been for many years. They are not used by the school. I think it is stop people getting into the school property without being seen, also to stop pupils leaving school without being seen”.*

In response to the March 2011 informal consultation to the route:

- A letter in support of this claim was received from one of the main claimants who appended a letter which she had sent to the Council in May 1997. Mrs Sheila Jones confirmed the line of the route in the south and wrote “ ... *any connection with the school which is fenced off. This Right of Way is in constant use by many people in the village ie. dog walkers, families with children, children who play on the mountain, even cyclists and motor bike riders on a daily basis”.* Mrs Jones also gave evidence of seeing members of the Ramblers Association using the route. She continued, “*It is an established and well used path to the top of the mountain and you can walk for miles”.* Mrs Jones has used this route since 1963 but has knowledge of it from her mother-in-law since the 1950s.
- Mr. D. Thomas phoned on behalf of claimant, Mrs K Markham. He stated that Mrs Markham wishes to confirm that she still uses the route on a daily basis – in fact, more so since retirement. Mr. Thomas also stated that he uses the route on a daily basis, as does his son.

Following the distribution of the Investigation Report in June 2011, twelve people from Edwardsville have written in support of this route and make the following comments.

- Mrs Sheila Jones again replied and expressed concern that the Investigation report would not be seen by many people and could cause a delay in responses to MTCBC. She stated that she has lived in Edwardsville since 1963 and has been involved in previous disputes concerning this path, the only remaining means of access to the mountain. She stated,

- *“This existing right of way was given to us as an alternative to another route near the school yard when Edwardsville Primary School was built. A brick passageway was built between the school yard and the church allowing access to the mountain from Rockview Cardiff Road Edwardsville to Penygraig Farm at the mountaintop. When the Forestry became involved a stile was put at the top of the path. Later green spiked railings were put, guarding the school from passers by”.*
- Mrs Jones gave evidence that many villagers walk the route and that she has seen the ramblers there. She concludes by requesting that her objections to closure be noted.
- H C Quick, Secretary, United Reformed Church, Treharris writes on member’s behalf that they have no objection to the use of the route. He observes that the path is well used by family walkers, dog walkers and children and says that as exercise is good for health such paths should be kept open for regular use by people. He also states that without such routes there would be more dog fouling on streets.
- Mr. David W Thomas supports this route and stated that he has a personal interest as he cuts back thorns etc regularly. He uses the access from the school on a daily basis, sometimes more often when exercising his son’s and daughter’s dogs. He refers to a sign “Public Keep to Path – Remainder of Site Private Property”. He maintains that anyone born in the village would have walked on the mountainside with their parents during childhood and would subsequently have used this route to picnic and camp- and mentions two boys in their 20s, now serving in the armed forces who used this route. He believes that use of this route is part of our heritage to access all the natural beauty and wildlife of the mountainside. Mr. Thomas gave information of the historic significance of Penygraig Farm. He concludes
 - *“I know that I write on behalf of the majority of the villagers of Edwardsville who hope that their access to ‘Mynydd Mawr’ will remain unfettered”.*
- Mrs Christine Phillips wrote in support of this right of way. She referred to the sign “Public Keep to Path – Remainder of Site Private Property” and stated that she uses the access from the school on a daily basis to keep fit and healthy. Born and bred in Edwardsville she has played, walked on and picnicked on ‘Mynydd Mawr’ and took her children there also. She stated that everyone who has been brought up in Edwardsville has always enjoyed and will continue to enjoy use of this route to access the mountain. Mrs Phillips also stated that she knows she writes on behalf of many villagers when she asks that this access will remain.

- Mr. Wayne Kinsey e-mailed that he has heard of planned work regarding the access lane to the mountain which runs alongside the English Congregational Church and requests further information. He expresses opposition to any rumours concerning closure of this route.
- Mrs Sally Thomas wrote that this route is in constant use as access by people for walks to the mountainside above the village. She sees this as the last remaining means of access to the mountain and feels *“strongly that this should not be withdrawn due to some bureaucratic argument of who is responsible for maintaining it”*.
- Ms Caroline Barnett writes that she has no objection to this route being used. She gave evidence of regular use of the route to the mountain top over 39 years for herself and her children. She sees its use by dog walkers as a means of keeping dog fouling off streets. Mrs Barnett requests that the right of way remains.
- Mr Adam Williams gave evidence of use for 5 years and all of her life for his wife. He stated that they and their children often use the route for walks up the mountain, originally accessing the northern section of this route from the path running past the swimming pool until this access was denied them. He says that they often see other ramblers, dog walkers and cyclists. He urges that this route be kept open.
- Mr and Mrs Townsend write as concerned parents and a dog owner. Mr Townsend believes that the “public path” is a long-standing right of way. He gave evidence of daily use by himself and wife (to walk their dog) and also use by his children, grandchildren and children whom his wife child-minds. He stated that this is a very popular route for dog owners and the public and is the only remaining access route to the mountain. He urges that it be kept open.
- As an adjoining landowner, Mrs Catherine Morgan expressed her disappointment that she was not sent an Investigation Report or any communication from the Council. She understands that the route is to be closed and objects to this as she uses the route regularly and also recognizes that *“a lot of people walk this way with their dogs and family”*. She used this route to access the mountain to play as a child.
- Mr William Evans wrote that he has been made aware that the Council is considering closing this route and would object to such an action. He stated that he is a regular user of the route, the only remaining access to the woodland and mountainside, an area *“extensively used by residents and visitors to the area”*.

- Mrs M Richards wrote that she believes that this route is in jeopardy and would object to such action.
- Mrs K. E. Markham confirmed that she uses this route daily to walk her dog and also that it is well used by dog walkers, ramblers, walkers and cyclists. She stated that this is now the only access route up to the mountain and that it *“joins the parish road which goes to Dowlais”*. The route in the south is marked on her deeds (copy submitted to MTCBC). Mrs Markham stated that her father and other villagers fought for this section in the 1960s when the school was built and *“The path was in the 90s changed to go behind the Church when the green fence was put around to secure the school”*. She and other dog walkers maintain the route by cutting back brambles and removing rubbish.
- Mrs Andrea Jones, MTCBC Estates Dept confirmed that a small section of this route is within MTCBC ownership and that the Council has no objection to the creation of a pedestrian right of way but would not support any rights for vehicular access.

1.10 Other Evidence in relation to this route

This route links with a network of other routes on the mountain top.

These routes will be presented to committee in the future.

The route is depicted as a footpath (un-numbered) on a map drawn for a draft survey of rights of way in 1991.

A section of this route was diverted on the ground when Edwardsville Primary School was built, but the legal process was not undertaken. Governors have subsequently written several times to the MTCBC expressing concerns surrounding security and suggesting alternative means of accessing the track to the mountain. This view was and is supported by the Council’s Education Department.

Most of this route runs on land which has been designated a SINC.

2.0 ASSESSMENT

2.1 This assessment is to assist Councillors in determining the application before them today; an application to modify the Definitive Map and Statement by recording the route known as Treharris 31.

2.2 Status

PRoW can be claimed as a Footpath, Bridleway, Restricted Byway or BOAT.

Officers must investigate the claim at the highest status substantiated by the evidence; the investigation could conclude that the route does not exist.

User and historic evidence demonstrate use of this route as a footpath

2.3 Period of Use to be Considered

In the absence of any challenge to the right of way in question, the normal period looked at for the purpose of the establishment of the right of way for long user is 20 years prior to the date of the application itself. In this case Officers consider that it would be the period between the 29th April 1970 and 28th April 1990; user evidence exists for this period.

Councillors will note from the Report before them that the path has been enjoyed by the public as of right and without interruption for a full period of twenty years and the way deemed to have been dedicated as a highway, as there is insufficient evidence that there was no intention during that period to dedicate it.

During the relevant period for consideration the route has been available for public use.

2.4 The Line of the Route

With the exception of the section within the school yard, the route is discernible on the ground. The school yard is tarmaced.

2.5 Historical and Other Evidence

Sections of the route have been depicted on a number of cartographic sources. Depiction of this route on the various maps as described in the body of this Report indicates that a track / path existed at that particular time; it is not indicative of public rights on the route. It is, however, evidence of the existence of the track / path and the way in which this claimed route links with other routes.

Sections of the route are depicted on a number of aerial photographs.

2.6 User Evidence

Councillors are requested to take into account user evidence as described above.

2.7 Landowners and Other Interested Parties

In 1994 Forestry Commission accepted this route although they objected to it in 2011.

3.0 SUMMARY

- 3.1 Councillors will note from the Report before them that the path has been enjoyed by the public as of right and without interruption for a full period of twenty years and the way deemed to have been dedicated as a highway. There is insufficient evidence that there was no intention during that period to dedicate it.
- 3.2 Officers have presented historic as well as user evidence for the existence of this route as a footpath.
- 3.3 Officers consider that the evidence above establishes the existence of the rights now claimed, i.e. over the relevant period and at all material times before it.
- 3.4 Taking all of the above into account and in conjunction with the historical evidence, the interviews with claimants, it is evident that a right of way does exist over this route.
- 3.5 It is concluded that on the balance of probabilities all the requirements of S. 31(1) and (2) Highways Act 1980 have been met for the route included on the application. It is considered that a presumption of dedication has arisen and that this presumption has not been rebutted by sufficient evidence of lack of intention to dedicate by the landowner of any part of the route. An Order to modify the Definitive Map and Statement could therefore be made under S 53 (3)(b) Wildlife and Countryside Act 1981.
- 3.6 Officers therefore recommend that a footpath be recorded on the Definitive Map and Statement as depicted on the Plan, Treharris 31 and as described above.
- 3.7 If approved, this route will be recorded as Treharris 31.

4.0 FINANCIAL IMPLICATION(S)

- 4.1 Officer time is involved in investigating the route and writing the report. If Councillors determine that the public right of way exists, there will be a financial implication in advertising the Order and also for dealing with the Public Inquiry if an Order is made and there is an objection to it.
- 4.2 If the Order is confirmed, there will be a financial implication in that the route will need to be signed.
- 4.3 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.

5.0 EQUALITY IMPACT ASSESSMENT

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

6.0 RECOMMENDATIONS(S)

6.1 Taking into consideration all of the evidence which has been provided, including historical documents, Councillors are asked to confirm: -

In respect of Treharris 31

- a) That on the balance of probabilities there is sufficient evidence to support that the route marked with a bold black line between Points A – B – C – D – E – F – G – H – I – J – K on the plan, Treharris 31, has been used for such period so as to raise presumption that it has been dedicated as a footpath, and that the evidence has not been rebutted by other evidence.
- b) On confirming (a) above to approve the making of a Definitive Map Modification Order to show it as a footpath.
- c) To approve the confirmation of the Definitive Map Modification Order made as a result of (b) above provided no objections or representations are made within the prescribed period or if any objections or representations so made are withdrawn.
- d) If any objections or representations are made within the prescribed period and not subsequently withdrawn then to refer the relevant Order to the Planning Inspectorate for determination.

GARY THOMAS
DIRECTOR OF CUSTOMER SERVICES

BACKGROUND PAPERS		
<i>Title of Document(s)</i>	<i>Document(s) Date</i>	<i>Document Location</i>
Treharris 31	October 2013	Unit 5