

## **RIGHTS OF WAY REPORT**



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Service Area	Rights of Way Section
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To: *Chairman, Ladies and Gentlemen*

### **Determination of application to record a Public Right of Way, Troedyrhiw 144**

#### **1.0 INTRODUCTION AND BACKGROUND**

##### **1.1 Description of Route**

The route, as depicted on the plan, Troedyrhiw 144, commences on the Forest Road, Public Right of Way, bridleway Troedyrhiw 85, at Point A, grid reference SO03090446, and proceeds quite steeply downhill through coniferous plantation on a hard core road known as the Haul Road. It runs initially in a general south-easterly direction to Point B, grid reference SO03190437 where it changes to a general north-easterly direction and continues to Point C, grid reference SO03230438. Here it turns to a general easterly direction and continues, crossing its junction with Public Rights of Way Troedyrhiw 93 and 94 and then continuing on a gradually decreasing gradient. The route passes a track to the Blaencanaid Furnace, then Troedyrhiw 193 (before Councillors for determination today), and then crosses the Parish Road, restricted byway Troedyrhiw 45 (a route included in the 2010 Order) and Troedyrhiw 46 (a route included in the 2010 Order). The route continues, passing Troedyrhiw 133 from the north (a route before Councillors for determination today) and then continues to Point D, grid reference SO04540448 where it changes to a general south-easterly direction. The route crosses Troedyrhiw 66 and then Troedyrhiw 49 (routes included in the 2010 Order) and then enters an area of open grassland and reverts to a general easterly direction at Point E, grid reference SO04670438. It crosses the route of Troedyrhiw 72 (a route included in the 2010 Order) and continues, to terminate at Point F, grid reference SO04910441, a point on Troedyrhiw 160 (a route which is before Councillors for determination today).

Councillors are advised that officers have walked sections of this route and the entire route on a number of occasions and have always observed others walking it.

They are also advised that Officers identify this route as one which is well-used and well-recognised and is now a main walked route between Abercanaid and Mynydd Aberdâr. It is also a route which is used to access a number of other routes in the west Merthyr area.

## 1.2 Land Ownership

The land is owned by Forestry Commission (Wales) and Merthyr Village Ltd.

## 1.3 Maps

The route from the west to the Merthyr tunnel is depicted as an “other road” on the Ordnance Survey Explorer Rhondda & Merthyr Tydfil / Merthyr Tudful, 2005.

## 1.4 Aerial Photographs

The entire route is depicted on 2008 and 2010 aerial photographs.

## 1.5 Site Visits

Officers have made a number of site visits to different sections of this route and found it clearly defined and as described above. On each occasion they saw a minimum of four people using the route. Whilst walking adjacent routes, e.g. the Parish Road, they also saw people walking on Troedyrhiw 144.

## 1.6 User Evidence

Mr Lewis Lewis has not submitted any maps in evidence but clearly demonstrated his knowledge of the routes on the maps shown to him. He commented on the claimed routes and many other tracks on the Merthyr Village Site.

Mr Lewis stated that he was born and brought up in this area (Lower Colliers Row, within the Merthyr Village Site), worked in this area, bought a house there in 1964 and only moved because the house was too small when his children were born. For the past 20 years he has only used the routes in the west Merthyr area for pleasure and, in fact, walks there most days. Prior to 20 years ago, he used the routes for both access to work and for pleasure, and in fact always rode on most of them, especially as a young man with a group of others (whom he named).

He stated:

*“No one has ever tried to stop me going up there and I can take anybody up there and show them the way around, all the paths, the stiles and gates.*

Mr Lewis demonstrated an enormous local knowledge and knowledge of the history of the area and related historical anecdotes re routes of the trains etc

and of individuals using the various paths. He described the position of stiles and gates on the Merthyr Village Site in detail.

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 this 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.

He stated that no one has ever stopped him going onto any area of the mountainside and until recently the whole area was open. *"I never even thought about whether or not we had a right to go there"*.

Mr Lewis Lewis' evidence for walking routes in the west Merthyr area covers the period between 1940 and 2010.

Mr Paul Brown confirmed the route on a map and that he uses this, the Haul Road, as a section of different circular routes. He described it as a route which he uses to access other walks and areas within the whole of the west Merthyr area. He used to walk on this and several other routes in the West Merthyr area, on average, two or three times a month, perhaps less during winter – and has done so since he moved to Heolgerrig in 1979, using this particular route since 1994. He believes he has a right to walk this path (and the others) and has never sought or been given permission to use it.

Mr Brown stated that he, his wife and son would go for walks in this area and he also uses these walks to take photographs. He described a number of routes which he uses, saying that he uses far more than he actually claimed, going south as far as the Cwm Woods – this is a route which he incorporates into a walk going to the Cwm Pits or to Blaencanaid Furnace.

Mr Brown stated that he can no longer use the Merthyr Village area because it is fenced. He stopped using it early 2008; an additional reason was that there was the run-up to the election and he didn't have as much time as usual (Mr Brown is a MTCBC Councillor).

Mr Brown said that in the main he followed the routes on the map – although some routes on the ground are more clearly defined than others. He usually spent about 2 hours out walking and would criss-cross a number of routes although always kept to the routes when clearly defined. The routes have not changed during the period of his usage.

Mr Brown's evidence for use of routes within the whole of the west Merthyr area covers the period between 1979 and 2008.

Messrs Colin Davies, John Gamlin and David Price gave evidence that they walk from Heolgerrig on a daily basis, either alone or together. They use the Haul Road as a section of a number of circular routes which they walk. None of them has ever asked permission of anyone to use the route, have never had their use of it challenged and do not recognise any obstructions on it.

Mr Clive Thomas, local amateur historian/industrial archaeologist stated that he has used this route as a section of walks using other routes; he has never asked permission of anyone to use the route, has never had his use of it challenged and does not recognise any obstructions on it.

Mr Malcolm Connolly stated that this road was constructed in the 1990s for the removal of stone from the quarry in the west. He often walks sections of this route even after being prevented from doing so when the Merthyr Village area was fenced. He accesses it from the north via any of the paths which were the subject of the 2010 Order or which are before Councillors today (with the exception of Troedyrhiw 93), or from the west, from the Forest Road and uses all sections of the Haul Road as parts of different circular walks.

He has never asked permission of anyone to use the route, has never had his use of it challenged and does not recognise any obstructions on it.

Mrs Charlotte Connolly also stated that this road was constructed in the 1990s for the removal of stone from the quarry in the west. She often walks sections of this route even after being prevented from doing so when the Merthyr Village area was fenced. She accesses it from the north via any of the paths which were the subject of the 2010 Order or which are before Councillors today (with the exception of Troedyrhiw 93), or from the west, from the Forest Road and uses all sections of the Haul Road as parts of different circular walks.

She has never asked permission of anyone to use the route, has never had her use of it challenged and does not recognise any obstructions on it.

## **2.0 CONSULTATION**

Representatives of the Forestry Commission (Wales) have indicated that they are not prepared to dedicate this route – although they have dedicated a number of others in the area. They do however, acknowledge that this route is used by the public - for walking only – and have erected signs on it, directing people onto the route to the furnace.

## **3.0 ASSESSMENT**

This assessment is to assist Councillors in determining the application before them today; an application to modify the Definitive Map and Statement by adding Troedyrhiw 144.

Officers have been advised that they should consider current use on the ground; they recognise Troedyrhiw 144 as a clearly defined and well-used route. They see it as a “through” route from Abercanaid to the mountaintop and also as a means of accessing many other routes in the area.

### 3.1 Status

A Public Right of Way can be a Footpath, Bridleway, Restricted Byway or BOAT.

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

Officers recognise that this route is a footpath, have user evidence of the route as a footpath and therefore present this route to Councillors as a footpath.

### 3.2 Period of Use to be Considered

The route is presented to you for consideration under two sub-sections of Section 53(3) of the Wildlife and Countryside Act 1981; namely Section 53(3)(b) (long user) and Section 53(3)(c)(i) (historic).

A claim under long-user requires the criteria of certain sections of the Highways Act 1980 to be met, i.e. public use over a period of a minimum of twenty years and no statutory action by the landowner to deny the existence of the Public Rights of Way.

The landowner has not submitted a statement/statutory declaration/map under S.31(6) of the Highways Act 1980 to the Council or erected a notice on site stating that the route is not to become a Public Right of Way.

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.

The route has been available for public use since 1994.

### 3.3 The Line of the Route

The entire route is clearly discernable on the ground.

### 3.4 Aerial Photographs

Depiction of the route on an aerial photograph is evidence of the existence of the route and of usage.

### 3.5 User Evidence

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

Officers have observed a number of people using this route.

### 3.6 Landowners and Other Interested Parties

Councillors are requested to take into account the Forestry Commission (Wales) comments above.

#### **4.0 SUMMARY**

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

Officers consider that the evidence above establishes the existence of the rights now claimed.

Officers present Troedyrhiw 144 for determination as a footpath.

Officers have presented user evidence, evidence on the ground and aerial photography in support of the existence of this route as a footpath.

Taking all the above into account, including interviews with claimants, it is evident that a right of way does exist over this route.

**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. 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.**

Although the claim is based on presumed dedication under Section 31, Highways Act 1980, the Council has a duty to research any other relevant evidence.

This now brings into play consideration of this route under Section 53(3)(c)(i) Wildlife and Countryside Act 1981.

All relevant evidence must be reviewed.

Once the way is established as a way open for public use the maxim “once a highway, always a highway” pertains and subsequent obstructions of the highway are unlawful. It is officers’ view that this route is a highway and has no obstructions.

Due to the user evidence and the documentary evidence, this route is therefore presented to you for consideration under two sub-sections of Section 53(3) of the Wildlife and Countryside Act 1981; namely Section 53(3)(b) [long user] and Section 53(3)(c)(i).

**Taking the above into account, an Order to modify the Definitive Map and Statement should therefore be made under S.53(3)(c)(i) Wildlife and Countryside Act 1981. Officers are satisfied that the requirements of S.53 (3)(c)(i) have been met and that the Public Right of Way exists.**

Officers recommend that a footpath be recorded on the Definitive Map and Statement as depicted between Points A – F on the Plan, Troedyrhiw 144 and as described above.

## **5.0 FINANCIAL IMPLICATIONS**

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 a Public Inquiry if an Order is made and there is an objection to it.

If the Order is confirmed, there will be a financial implication in that the route will need to be signed.

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.

## **6.0 RECOMMENDATIONS that**

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

In respect of Troedyrhiw 144:

### **Either**

1. a) that on the balance of probabilities there is sufficient evidence to support that the route marked with a bold line between Points A – B – C – D – E – F - on the plan, Troedyrhiw 144 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 Troedyrhiw 144 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.

**Or**

- 2. In rejecting (1) above and deciding that on the balance of probabilities insufficient evidence has been provided in support of the application to record the claimed Right of Way, to advise the applicant that their application has been rejected and that they may appeal, in writing, against the decision of the Council to the Planning Inspectorate within 28 days from the date of the decision letter.

6.2 Councillors are recommended to approve the making of the relevant Order as set out in 1 above

**GARETH CHAPMAN  
CHIEF EXECUTIVE**

Appendix