

---

## **RIGHTS OF WAY REPORT**



Date Written	7 <sup>th</sup> February 2014
Report Author	Cheryl Jones
Service Area	Economic Development
Committee Date	24 <sup>th</sup> February 2014

*To: Chairman, Ladies and Gentlemen*

### **TROEDYRHIW 160**

#### **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 2012 a definitive map modification order was made to record the route of Troedyrhiw 160 on the Definitive Map and Statement following a committee resolution in October 2012. The matter had previously been referred to committee in November 2010. Both reports are appended to this agenda item.
- 1.2 The 2012 report describes the route together with the evidence that was taken into account and elected members are referred to section 1.2 to 1.7 of the appended 2012 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 and 2012 reports 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 This route was constructed in the mid 1990s, following the construction of the A470 (T) road. The Cardiff – (Glan Conwy Trunk Road A470) (Pentrebach – Cefn Coed Diversion, Side Roads) Order 1994 created Public Rights of Way Troedyrhiw 10 and Troedyrhiw 12 which are recorded on the Definitive Map and Statement. 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 160 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 is one landowner for this route. At the time of the reports to committee in 2010 and 2012 the land was in the ownership of Merthyr Village Limited. On 18<sup>th</sup> September 2013 it 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 Evidence of use, at the time of presenting the 2010 committee report was provided by Malcolm Connolly and Charlotte Connolly. Both confirm use of the route.
- 1.14 This route joins and passes 3 public rights of way. On the plan, Troedyrhiw 160, at its start point, Point A, it joins Public Right of Way bridleway Troedyrhiw 12. At Point F it joins Public Right of Way bridleway Troedyrhiw 99 and at its termination point, Point H, it joins Public Right of Way bridleway Troedyrhiw 10.
- 1.15 This route, as depicted on the plan, Troedyrhiw 160, also passes, joins or crosses 6 claimed public rights of way. At Point B it crosses claimed public right of way footpath Troedyrhiw 68. At Point C it joins claimed public right of way footpath Troedyrhiw 148. At Point D it joins claimed public right of way footpath Troedyrhiw 158. At Point E it joins claimed public right of way footpath Troedyrhiw 144. At Point F it crosses claimed public right of way bridleway Troedyrhiw 72. At point G it crosses claimed public right of way bridleway Troedyrhiw 73.
- 1.16 All people interviewed have stated that they use this route in order to access other routes off this route.
- 1.17 All those interviewed stated that they had never been challenged in their use of the route.
- 1.18 Officers are of the view that, having regard to the evidence as a whole, there is sufficient evidence to record the route as a bridleway, 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 160 as a bridleway 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**

<b>BACKGROUND PAPERS</b>		
<i>Title of Document(s)</i>	<i>Document(s) Date</i>	<i>Document Location</i>
Troedyrhiw 160	6 <sup>th</sup> February 2014	Civic centre