

MERTHYR TYDFIL COUNTY BOROUGH COUNCIL  
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## **RIGHTS OF WAY REPORT**



Date Written	5 <sup>th</sup> November 2010
Report Author	Judith Jones
Service Area	Rights of Way Section
Committee Date	29 <sup>th</sup> November 2010

To: *Chairman, Ladies and Gentlemen*

### **Determination of application to record a Public Right of way, Troedyrhiw 160**

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

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

- 1.2 The route commences at the western terminus of legal bridleway, Troedyrhiw 12, grid reference SO04950446, Point A on the plan, Troedyrhiw 160, and it proceeds on a well-defined man-made track in a general west-south-westerly direction to Point B, grid reference SO04910444 where it turns to a general south-south-westerly direction and continues to Point C, grid reference SO04910433. Here the route changes to a general south-south-easterly direction and terminates on Troedyrhiw 72 (a route which was included in the 2010 Order), at Point D, grid reference SO04930414.

Councillors are advised that officers have observed a number of people using this route and also evidence of equestrian use on the ground.

They are also advised that Officers identify this route as a well-recognised and well-used link between public right of way, bridleway Troedyrhiw 12 and, together with a section of Troedyrhiw 72, public right of way, bridleway Troedyrhiw 10; it is also a link between areas such as Heolgerrig and Rhydycar with Upper Abercanaid.

##### **1.3 Land Ownership**

The land is owned by Merthyr Village Ltd.

##### **1.4 Maps**

The route is depicted on the 2005 Ordnance Survey Rhondda & Merthyr Tydfil / Merthyr Tudful Explorer Map.

## 1.5 Aerial Photographs

The route is depicted on an aerial photograph of 1967.

The route is depicted on a 2008 aerial photograph.

## 1.6 Site Visits

Officers have made a site visit to this route; and found the route clearly defined and as described above.

## 1.7 User Evidence

Mr Malcolm Connolly stated that he lived at Lower Colliers Row when first married and has walked the whole of the area of west Merthyr – including this path - from this time.

He regularly uses this route to walk his dogs, even after being prevented from doing so when the area was fenced. He accesses it from the north, from the Parish Road, either via Troedyrhiw 68 or Troedyrhiw 72 or, less often, but when he wants a longer walk, he may walk down from Heolgerrig; he also occasionally accesses it from the east, from Upper Abercanaid. He has never asked permission of anyone to use this route, has never had his use of any of the paths challenged and does not recognise any obstructions on the route.

Mr Connolly's evidence covers the period between 1965 and 2010.

Mrs Charlotte Connolly stated that she and her father had been born at Lower Colliers Row and her mother at Melincanaid. She was brought up at Lower Colliers Row and at that time her grandmother lived at Melincanaid. She and her husband lived at Lower Colliers Row when they were first married and she and her family have walked the paths on the whole area all their lives. She has used this route for walks as an adult since the 1950s. She accesses it from the north, from the Parish Road, either via Troedyrhiw 68 or Troedyrhiw 72 or, less often, but when she wants a longer walk, she may walk down from Heolgerrig; she also occasionally accesses it from the east, from Upper Abercanaid.

Mrs Connolly gave evidence of early use of this and other routes as routes to work. Her father and many other men walked certain routes to go to the Cwmdu, Cwm Pit and the Lucy Thomas Pits, men came from the Castle Pit past Melincanaid, men also came over the mountain and from Heolgerrig using all the footpaths. This is one of the routes that miners used to and from Upper Abercanaid.

She and her husband have regularly used this route for recreation, for example, to walk their dogs, even after being prevented from doing so when the area was fenced. Mrs Connolly also pointed out that if people were prevented from using the Merthyr Village Site there would be more dog-fouling

of streets and people would become more unhealthy as they would have lost this area for exercise.

She does not recognise any obstructions on the route and she has never been challenged while using the route. She has never asked permission of anyone to use it.

Mrs Connolly's evidence covers the period between the 1950s and 2010.

During site visits, officers have noted people walking this route. There is also evidence on the ground that horse riders use it.

## **2.0 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 160.

Officers have been advised that they should consider current use on the ground; they recognise Troedyrhiw 160 as a clearly defined and well-used route and a link between legal public rights of way. This route forms an essential part of the Rights of Way network by linking routes in the north with routes in the south and to form a long circular route by linking up with the Taff Trail.

### **2.1 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 an important and well-used link between two legal bridleways. They have user evidence of the route as a bridleway and therefore present this route to Councillors as a bridleway.

### **2.2 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.

### 2.3 The Line of the Route

The entire route is clearly discernable on the ground.

### 2.4 Maps

The route is depicted on a 2005 Ordnance Survey map.

### 2.5 Aerial Photographs

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

### 2.6 User Evidence

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

Two people have given evidence of use of this route as a footpath for recreation and leisure during the relevant period. Evidence on the ground indicates that the route is used as a bridleway.

## 3.0 **SUMMARY**

Councillors will note from the Report before them that the path has been enjoyed by the public as of right and without interruption for a full period of twenty years 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 right now claimed.

Officers present Troedyrhiw 160 for determination as a bridleway.

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

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.**

**Officers are also required to look at S.53(3)(c)(i) of the Wildlife and Countryside Act 1981 and 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.

Officers consider that the evidence above establishes the existence of the rights now claimed and that this route forms an essential part of the Rights of Way network by linking routes in the north with routes in the south and to form a long circular route by linking up with the Taff Trail.

**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 bridleway be recorded on the Definitive Map and Statement as depicted between Points A – B – C – D on the Plan, Troedyrhiw 160 and as described above.

#### **4.0 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.

## **5.0 RECOMMENDATIONS that**

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

In respect of Troedyrhiw 160:

### **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 on the plan, Troedyrhiw 160 has been used for such period so as to raise presumption that it has been dedicated as a bridleway, 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 160 as a bridleway.
- 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.
- 5.2 Councillors are recommended to approve the making of the relevant Order as set out in 1 above.

**GARETH CHAPMAN  
CHIEF EXECUTIVE**