

RIGHTS OF WAY REPORT



Date Written	9 th August 2012
Report Author	Paul Prygodzicz / Cheryl Jones
Service Area	Economic Development
Committee Date	1 st October 2012

To: Chairman, Ladies and Gentlemen

Troedyrhiw 160

1.0 INTRODUCTION AND BACKGROUND

1.1 THE ROUTE

1.2 Description of Claimed Route

The decision to record the route, Troedyrhiw 160 was determined in a Rights of Way Committee meeting of 29th November 2010, ratified in a meeting of Full Council, 8th December 2010 and included in an unconfirmed Definitive Map Modification Order dated 18th May 2011. The 2010 report is appended at the end of this item.

Subsequent discussion with users and investigations by officers however, has shown that the line of the recorded route is incorrect and the route commences at Point A, grid reference SO04590446 at its western terminus of Public Right of Way Troedyrhiw 12, grid reference SO04590446 and it proceeds along a hardcore track in a general south-westerly direction to Point B, grid reference SO04910444. Here it changes to a general southerly direction and then a general south-easterly direction and continues along the hardcore track to Point C, grid reference SO04990416, where it terminates at the northern terminus of Public Right of Way Troedyrhiw 10.

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 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, via Troedyrhiw 68 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 Melincanid, 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.

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 this claimed route and many others on the Merthyr Village Site.

Mr. Lewis stated that he was born and brought up in this area (Lower Colliers Row), 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 claimed routes for pleasure and, in fact, is on the Merthyr Village Site most days, but prior to 20 years ago, he used this and many other 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 therefore affirms that there should be far more bridleways on the Merthyr Village Site.

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.

During the 1920s strike the men were up there digging in the Patches, shallow pits for coal and these are now filled with water. There is no mining subsidence on the area or this water would drain away. There's a lot of history there, you have to know where to go, the dissenters church, Cyfarthfa Feeder, you can go along the canal bank for a long

distance, there's lots to see, the sidings, screens for the old Cwm Pits, Abernant Tunnel from the Cyfarthfa crossing, Lucy Colliery”.

Mr. Lewis demonstrated an enormous local knowledge and knowledge of the history of the area and related historical anecdotes concerning 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.

He continued:

I never even thought about whether or not we had a right to go there. We lived there, nobody ever stopped us. As well as walking and riding on the paths we went bird nesting. And when I was a child it was all open, it's only since about 1964 that any fences or stiles have been erected”.

Mr. Lewis Lewis' evidence covers the period between 1940 and 2012.

Mr Tony Cousins stated that he uses a number of circular routes and this route is part of these.

He feels that it is very important that PRoW should be kept open to encourage people to exercise, to give access to areas which are naturally beautiful and it would be a shame if people were stopped from using them. He continued,

“These are the main ones which I use regularly – it varies day by day but I go every day and have done so for the past 23 years. I guarantee I use the ones described at least weekly.

I will continue to walk there – and I am only one of a number of people who still walk there. I have never seen anyone there to tell me not to, and have never seen a change anywhere on the land and I walk it all the time.

People who I've spoken to and who have lived here for many years, families who have been brought up there say there have always been rights of way.”

He believed he had the right to use these routes because he had been led to believe that they are registered rights of way by people who have lived in Heolgerrig all their lives.

Mr Cousins' evidence covers the period between 1986 and 2012.

Mr Philip Watkins

Since the route was constructed in the mid 1990s Mr Watkins and his wife have used this route in order to access the mountainside.

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 adding Troedyrhiw 160.

2.2 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.

2.3 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.

3.0 PERIOD OF USE TO BE CONSIDERED

3.1 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 Right 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.

4.0 THE LINE OF THE ROUTE

4.1 The entire route is clearly discernable on the ground.

5.0 MAPS

5.1 The route is depicted on a 2005 Ordnance Survey map.

6.0 AERIAL PHOTOGRAPHS

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

7.0 USER EVIDENCE

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

7.2 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.

8.0 SUMMARY

8.1 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, 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 the 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 on the Plan, Troedryhiw 160 and as described above.

9.0 FINANCIAL IMPLICATION(S)

- 9.1 Officer time is involved in investigating the claims and writing the report. If Councillors determine that the Public Right(s) of Way exist(s), there will be a financial implication in advertising the Order(s) and also for dealing with a Public Inquiry if an Order / Orders is /are made and there is an objection to it / them.
- 9.2 If the Order(s) is / are confirmed, there will be a financial implication in that the route(s) will need to be signed.
- 9.3 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.

10.0 EQUALITY IMPACT ASSESSMENT

- 10.1 It has been identified that an Equality Impact Assessment (EqIA) is not required for the purpose of this report.

11.0 RECOMMENDATION(S) that

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

In respect of Troedyrhiw 160

- a) On the balance of probabilities there is sufficient evidence to support that the route marked with a bold line between Points A - B – C 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.

Councillors are requested to approve the making of the relevant Order as set out above.

GARY THOMAS
DIRECTOR OF CUSTOMER SERVICES

BACKGROUND PAPERS		
<i>Title of Document(s)</i>	<i>Document(s) Date</i>	<i>Document Location</i>
Troedyrhiw 160	August 2012	Unit 5