

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 196

1.0 INTRODUCTION AND BACKGROUND

1.1 Description of claimed route

The route, as depicted on the plan, Troedyrhiw 196 commences at a gate and adjacent stile, the eastern terminus of Public Right of Way Bridleway Troedyrhiw 12, grid reference SO05070451 and proceeds in a general north-easterly and then easterly direction to a field gate and adjacent stile at Point B, grid reference SO05130452 and then proceeds to Point C, grid reference SO05150451, a point on the Taff Trail, Public Right of Way, Bridleway Troedyrhiw 79 where it terminates.

The surface is tarmacadam/concrete throughout.

1.2 Land ownership

The land is owned by Merthyr Village Limited.

1.3 Maps

The route is depicted on Ordnance Survey Maps of 1998 and 2005.

1.4 Aerial Photos

The route is depicted on aerial photos of 2008 and 2010.

1.5 Government Orders and Records

In the Cardiff – Glan Conwy Trunk Road (A470) (Pentrebach – Cefn Coed Diversion, Side Roads) Order 1994 Footpath 13 is depicted on Site Plan 1 of the said Order. It is described in Schedule 1 of the said Order being “a refuted footpath which ran from a Point 76 metres east

of the disused Glamorganshire Canal at Pitwood House, Upper Abercanaid, for a distance of 185 metres generally south-westwards direction". This refuted footpath was stopped up and an alternative highway, now known as Troedyrhiw 12 created under the Side Road Order. Troedyrhiw 12 was created as a bridleway. However only that section immediately affected by the A470 was created.

1.6 Site Visit

MTCBC officers walked the route on several occasions and found it as described above. Other walkers were observed on each occasion.

2.0 CONSULTATION

2.1 User Evidence

Mrs Charlotte Connolly

Mrs Connolly stated that she and her father had been born at Lower Colliers Row and her mother at Melincanaid. Mrs Connolly stated that she occasionally walks this route in order to access routes over the remainder of the West Merthyr site.

Mr Malcolm Connolly

Mr Connolly stated that he occasionally walks this route in order to access routes over the remainder of the West Merthyr site.

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.

3.0 ASSESSMENTS

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 196.

Officers have been advised that they should consider current use on the ground: they recognise Troedyrhiw 196 as a clearly defined and well used route and an important link between legal Public Rights of Way. This route forms an essential part of the Rights of Way network by linking routes to the east of the A470 to routes lying to the west of the A470. It also enables a long circular route to be recorded.

3.1 Status

A Public Right of Way 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.

This route links Public Right of Way Bridleway Troedyrhiw 12 with Public Right of Way Bridleway Troedyrhiw 79, the Taff Trail.

The route is therefore presented to you for consideration as a bridleway under Section 53(3)(c)(i).

4.0 PERIOD OF USE TO BE CONSIDERED

- 4.1 The route is presented to you for consideration under two sub sections of Section 53(3) 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 to the Highways Act 1980 to be met i.e. Public use over a period of the minimum of 20 years and no statutory action by the landowner to deny the existence of the Public Right of Way.

The Landowner had not submitted a statement/statutory declaration/map under Section 31(6) (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 and the way deems to have been dedicated as a highway as there is insufficient evidence that today was no intention during that period to dedicate it.

The route has been available for public use.

The approval of this route will complete a long bridleway route between Heolgerrig, Gethin Woodlands and Abercanaid.

5.0 THE LINE OF THE ROUTE

- 5.1 The entire route is clearly discernable on the ground.

6.0 MAPS AND AERIAL PHOTOGRAPHS

- 6.1 Depiction of this route on the various maps as described in the body of this report indicate 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.

- 6.2 Depiction of the route on an aerial photograph is evidence of the existence of the route and of usage – although the available photographs are taken in the summer and foliage may obscure sections of the route.

7.0 USER EVIDENCE

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

8.0 SIDE ROAD ORDER

- 8.1 The Side Roads Order of 1994 clearly demonstrates that the route of refuted footpath 1/13 should continue to the Taff Trail.

9.0 SUMMARY

- 9.1 Councillors will note from the report before them that the path has been enjoyed by the public as of right and without interruption 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 have presented user evidence, historic evidence and documentary evidence in support of the existence of this route as a bridleway.

Officers consider this is an essential link between Public Right of Way Bridleway Troedyrhiw 12 and Public Right of Way Bridleway Troedyrhiw 79, a section of the Taff Trail.

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

The approval of this route will complete a long bridleway route between Heolgerrig, Gethin Woodlands and Abercanaid.

Officers present Troedyrhiw 196 for determination as a bridleway. It is concluded that on the balance of probability all the requirements of Section 31(1) and (2) Highways Act 1980 have been met for the route. It is considered that 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 Section 53(3)(b) Wildlife and Countryside Act 1981.

Officers are also required to look at Section 53(3)(c)(i) 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 here that this highway was established long before modern times and therefore continues to be a highway despite any subsequent obstructions.

Taking the above into account, an Order to modify the Definitive Map Statement should be made under Section 53(3)(c)(i) Wildlife and Countryside Act 1981. Officers are satisfied that the requirements Section 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 and as described above.

10.0 FINANCIAL IMPLICATIONS

10.1 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.

10.2 If the Order(s) is / are confirmed, there will be a financial implication in that the route(s) will need to be signed.

10.3 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.

11.0 EQUALITY IMPACT ASSESSMENT

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

12.0 RECOMMENDATION(S) that

Taking into consideration all of the evidence which has been provided including historical documents, Councillors are asked to confirm that in the case of the claimed public right of Way Troedyrhiw 196: -

- 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 on the plan, Troedyrhiw 196 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 the Definitive Map Modification Order to show Troedyrhiw 196 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 representation so made are withdrawn.
- d) If any objections or representations are made within the prescribed period and not subsequently withdrawn then to refer the Order to the Planning Inspectorate for determination.

Councillors are recommended 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 196	August 2012	Unit 5