

RIGHTS OF WAY REPORT



Date Written	29 th April 2014
Report Author	Cheryl Jones
Service Area	Economic Development
Committee Date	12 th May 2014

To: Chairman, Ladies and Gentlemen

VAYNOR 25

PURPOSE OF THE REPORT:

To further consider the options available with regard Vaynor 25.

1.0 INTRODUCTION AND BACKGROUND

- 1.1 Vaynor 25 is recorded on the Definitive Map and Statement for Merthyr Tydfil County Borough Council as follows "Map Nos: SO.00 Footpath from the A470 Trunk Road in Cefn Coed leading south to Job's Lane; approximately 283 metres in length". It is shown on the plan, Vaynor 25.
- 1.2 On the 13th February 2014 a report was presented to the Rights of Way committee (copy attached) in which the Rights of Way Committee recommended "*the necessary pre consultation exercise with regard extinguishment of the footpath is undertaken; and the matter be returned to the next available rights of way committee*". That report is appended to this item.
- 1.3 This pre-consultation exercise took place between the 6th March and the 21st March 2014.
- 1.4 The following responses were received:-

A. COUNCILLOR HOWARD BARRETT

This path has been in dispute for a long time with the land owner (locked gate), so how can the ROW state the one of the reasons for closure is the lack of usage by the public. On Monday (17th March) the Vaynor Forum was notified of the decision which wasn't received very

favourable. This prompted an organised walk (attached email) on Vaynor 25 on Thursday (20th March), this walk with difficulty has taken place but I am waiting for more opinions from various groups who did the walk.

Therefore I am against the decision to have the path closed at this time and until I receive more information off both sides (ROW officers and the local interest parties).

B. COUNCILLOR LISA MYTTON

Councillor Mytton supports Councillor Barrett's comments.

C. LYNN ASHRAF

At the Vaynor forum meeting held last Monday we were told that there is a proposal to close a footpath (Vaynor 25) in Cefn Coed. Our local Councillors Howard Barrett and Lisa Mytton have received letters dated 6th March from Cheryl Jones of the Rights of Way (R of W) department with notice of the proposed closure of Vaynor 25. Members of the community or concerned groups had until Friday 21st to respond and object, which the VF did. As far as I know the Naturalists (Nats) had no knowledge of the imminent closure. Had I not happened to be at the VF meeting, the Nats would have known nothing about the proposed closure until it was too late to take action. This is absolutely unacceptable.

At the VF meeting about a year ago, two members of the R of W team were present but were adamant that they were only there to observe and not to comment. They must have been aware of the strength of feeling from the Nats, MT Ramblers and residents about blocking of the footpath. It was a very heated discussion, and yet, even with the rule of law on our side and the strength of the local opinion, nothing has been done to force the opening of the path.

The footpath in question has a gated entrance at the south end which has been locked for several years, during which time we have been trying (through R of W) to have it re-opened, without success. The letter to the councillors did say that '...as it is no longer required for public use... we propose to extinguish the footpath'. It is definitely required for public use, we made that absolutely clear at the meeting she attended.

The footpath is an important link in a trail planned to connect our two reserves, Cilsanws, and across the valley Penmoelallt woodland – but the blocking of the footpath in question has prevented us from creating the trail.

A group of VF and Nats members tried in vain to walk it a few days ago but we were blocked by an overgrown tree at the northern end and

thick brambles at the southern end. It is completely inaccessible and no-one from the council has attempted to do anything about it.

I have looked on the Welsh Assembly Gov web site about regulations for changing use or closing a right of way and it clearly states that....

Local Authorities must...

- Publish notices of all orders in a local paper
Has this been done and if so, when?*
- Display then by the path
We found no evidence of notices*
- Display the notices at principal council offices in the area
Has this been done?*

Other questions that need answering:-

Why has the path been allowed to become impassable?

Why has the R of W team allowed it to remain locked for years?

Why has the R of W team been (in my opinion) completely unhelpful and have, I believe, refused to attend a meeting of the VF to give us an explanation for the reasons for the possible closure of the footpath?

Why is there no sign post at the south end of the path – there used to be one there.

And finally, has anyone in the R of W dept read MTCBC's web site under 'Rights of Way'? Here it is:-

Council responsibilities

- Keeping public rights of way clear of undergrowth*
- Strimming and routine maintenance*
- Assisting landowners with maintenance of stiles and gates*
- Waymarking paths to help users find their way*
- Maintaining most bridges and culverts*

Landowner / Occupier responsibilities

- Keeping any rights of way on their land clear of overgrowth (i.e. hedge outgrowth across the path)*
- Maintaining any stiles and gates which are needed on the path*
- Keeping the path free from obstruction – including growing crops*
- Not ploughing field edge paths, or any restricted byway or byway*
- Reinstate cross-field paths after ploughing etc (in accordance with the Rights of Way Act 1990)*

The council has a responsibility to ensure that rights of way are kept free of obstruction and that their surface is kept in a reasonable condition.

The council has a duty to protect the rights of the public to use and enjoy rights of way and to ensure that they remain open and usable at all times. The Council offer advice on blocked or disputed public rights of way, and, where appropriate will take necessary action.

There is a right to pass and re-pass along highways at all times. Footpaths and Bridleways are highways. They only differ from other forms of highway, such as roads, by the type of traffic entitled to use them. Lack of use has no effect on the legal existence of a Right of Way.

The council also work with land owners / occupiers over which a path exists making sure they are free from:

- *Obstruction*
- *Danger*
- *Blocking*
- *Interference*

How can this be written on your web site when there is total disregard of many of its points by your staff?

We will fight this closure to the end. We cannot understand how and why this decision was ever made.

Regards, Lynn Ashraf

A response was sent to Mr Ashraf on 3rd April. A copy of the Council's response is attached.

With regard the footpath being an important link between the 2 reserves an application to record a public right from the Grawen Road end of the public right was received on 16th January 1991. This would lead to Penmoelallt. This application is yet to be determined. With regard the Cilsanws end there is a public right of way known as Vaynor 24 which is on the Upper High Street approximately 50 metres away from Vaynor 25 and on the opposite side of the road leading towards Merthyr Tydfil.

Further correspondence was received from Mr Ashraf on 25th April:

Thank you for your reply, I have looked back in my inbox and no email from anyone at the council arrived on that date. I have one more update for you, at a meeting last evening of the Naturalists we discussed the footpath and we are willing to take on the cost and time for the upkeep of the path in the future

D. VAYNOR FORUM

We note that you are unable to attend the Forum meeting on 14th April 2014. To facilitate a full and factual debate could you possibly forward

via the ward members a copy of your minutes or notes outlining the reasons why the local authority are contemplating closure.

A dozen or so members attempted to walk the footpath on Thursday 20th March and the reasons that FP25 remains unused is that it is either blocked or locked off and overgrown as illustrated on the attached photographs.

Members will be recommending to the full meeting that the Vaynor Community Forum request that MTCBC carry out their statutory duties in line with the Web Site printed overleaf and:-

- Remove the iron gate at Grawen Lane and erect sign posts indicating that a footpath exists.*
- Clear the footpath of vegetation overgrowth and lay a walk able surface.*
- Remove the steel post and rail stile some 20 metres in the Upper High Street end which acts as physical and physiological barrier. Could you please inform us from your records when and by whom this obstruction was erected. The obstruction debars all but very fit and ambulant persons from climbing it and proceeding further. (This may have been an attempt to stop animal trespass, previously a problem in the area).*
- Reset the stone stile at Upper High Street in its original position at pavement / ground level. It appears to have been substantively raised on a brick plinth and then back filled to a rear height of a metre forming a banked hurdle.*

We are informed that the Old Vaynor & Penderyn RDC & Vaynor Community Council maintained the footpaths on a two year maintenance cycle.

Yours truly

Phillip Griffiths

Hon. Sec. Vaynor Community Forum

(4 photographs attached – these are appended at the end of this report).

A response was sent to the Vaynor Forum on 3rd April 2014. A copy of the Council's response is attached.

E. **JOHN GRIFFITHS**

Regarding the right of way that runs adjacent to and through my land, I would like draw your attention to the following:

- i. I have always maintained that the right of way is unsafe and that this has always been of great concern to me. I first notified the right of way department of my concerns many years ago.*

- ii. *There has always been some debate about who would provide insurance cover for a person who could potentially (and in my view likely) become injured on the right of way.*
- iii. *I have owned the land for 14 years and for the first 2 years the right of way was unlocked, and the only people to attempt to use it were teenagers who used it as a hiding place to participate in their drug and alcohol abuse. At that time I spoke to a member of the local constabulary about the situation and was advised that I should secure the entrance.*
- iv. *Following that a gate was put on and locked to stop these teenagers going in.*
- v. *Since then not one person has attempted to use the right of way. In fact in the last 3 months the gate has been unlocked and no one has attempted to enter or walk the right of way. I am aware of this as the periphery of my security cameras covers the entrance of the right of way.*

If I can be of further assistance please don't hesitate to contact me.

Further correspondence was received later that day stating the following:-

- 1. *One of the gates was already in place when I bought the property.*
- 2. *Contrary to some opinions the right of way goes nowhere. It is also in a better condition now than it was prior to my occupation, and supports various wildlife such as foxes, rabbits, snakes and various birds.*
- 3. *I have never been against genuine ramblers, but I have had a fear of a serious accident occurring at the quarry which has a 30ft drop. Hence my request for insurance cover.*
- 4. *This campaign to maintain an unused and extremely dangerous right of way is driven not by genuine ramblers, but by fishermen etc, with the support of the Vaynor forum and local councillors. And prior to the last few weeks these people have never attempted to use the right of way even though it has been open for a significant amount of time.*

If I can be of further assistance please don't hesitate to contact me.

F. **SUZANNE JONES** (via email)

I welcome the council proposal to close the right of way on the following grounds:-

- 1. *During the 19 years I have lived at the adjoining property (Nantsiarad) I have rarely seen it used, in fact, no more than 3 or 4 times during this period.*
- 2. *I understand that it leads to a dead end.*
- 3. *As it is the Council's duty to clear it of undergrowth every year it is a needless expense at a time when Council needs to cut costs in line with Government instructions. This may help keep my annual Council Tax at an acceptable level.*

4. *Although crime is not a common event in this area the right of way does allow those with criminal intentions to gain unseen access at the rear of my property.*
5. *If closed the right of way path will revert to the wild thus allowing a natural habitat to flourish encouraging increased bird life.*

I can understand the reluctance of ramblers and walkers to see any right of way closed but in this instance they must surely bow to common sense and recognise that closure will not cause any real loss.

G. **GLENYS GOUGH (via email)**

I have not seen anyone using this footpath during my time of living here. This goes back to 1976.

Further to our conversation I have NO objection to the proposed extinguishment of the footpath going diagonally across my property.

- 1.5 Members are referred to the previous report and in light of the comments that have been received in relation to the pre-consultation exercise at 1.4 A – G above they are requested to pay particular attention to paragraphs 16, 17 and 18 of the said report. Members are also referred to the legal background for an extinguishment order which is to be found at Agenda Item 4 and the council's enforcement policy which is to be found in background papers. Members are also referred to the Council's Gating Policy which is also to be found in background papers.

2.0 ENFORCEMENT, DIVERSION OR EXTINGUISHMENT

- 2.1 Although not recommended at the last meeting of the Rights of Way Committee members are again advised, as in the previous report at paragraph 20, that there are 3 options available to the Council which need to be considered. These are enforcement, extinguishment or diversion.
- 2.2 The legal background for an extinguishment order is to be found at Agenda Item 4. The council can have only one reason in law under s118 Highways Act 1980 for making a public path extinguishment order and that is that it appears to it expedient on the ground that the footpath, bridleway or restricted byway is not needed for public use. A slightly different test of expediency has to be applied on the confirmation of an order and that is that it is expedient to do so having regard to the extent to which it appears that the path or way would be likely to be used by the public and having regard to the effect which the extinguishment would have on the land crossed by the path. Regard must also be had to the rights of way improvement plan.

- 2.3 Members considered diversion at the last meeting and considered that this would not be appropriate.

3.0 FINANCIAL IMPLICATION(S)

- 3.1 Should members decide that the footpath be extinguished a notice advertising this order will need to be placed in the local newspaper and on site. These costs will be met out of the existing budget.
- 3.2 Should members opt for an extinguishment order it is possible that a Public Inquiry would follow and an Inspector could award costs against the local authority. The amounts awarded against the local authority are not known as these are at the discretion of the Inspectorate.
- 3.3 Members are advised that there will be financial implications should the council decide to take enforcement action. These costs are not quantifiable at present but these may be recovered.

4.0 EQUALITY IMPACT ASSESSMENT

- 4.1 An Equality Impact Assessment has been prepared for the purpose of this report and no negative effects have been identified.

5.0 RECOMMENDATION(S) that

EITHER

- 5.1 Enforcement action be taken to clear the right of way against all land owners.

OR

- 5.2 a) Councillors approve the making of the Extinguishment Order under Section 118 of the Highways Act 1980.
- b) To approve the confirmation of the Extinguishment Order made as a result of (a) above provided no objections or representations are made within the prescribed period or if any objections or representations so made are withdrawn.

- c) If any objections or representations are made within the prescribed period and are not subsequently withdrawn then to refer the relevant order to the Planning Inspectorate for determination.

ELLIS COOPER
DIRECTOR OF CUSTOMER SERVICES

BACKGROUND PAPERS		
<i>Title of Document(s)</i>	<i>Document(s) Date</i>	<i>Document Location</i>
Vaynor 25 File	2014	Rights of Way section Unit 5