

RIGHTS OF WAY REPORT



Date Written	15 th September 2014
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Service Area	Economic Development
Committee Date	20 th October 2014

To: Chairman, Ladies and Gentlemen

TREHARRIS 34

PURPOSE OF THE REPORT: To determine a public right of way from Twynygarreg to Cefn Forest Woods and Millennium Park

1.0 INTRODUCTION AND BACKGROUND

- 1.1 The route from Cilhaul to Trelewis was submitted to Merthyr Tydfil County Borough Council (MTCBC) on 21st August 1990.
- 1.2 A further claim to record a Public Right of Way (footpath from Twynygarreg to Cefn Forest Woods and Millennium Park) was received on 9th November 2009.
- 1.3 The evidence for these claims is contained within the Treharris 34 and Treharris 45 files.
- 1.4 The County Borough Council is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53(3)(b) and (c) Wildlife and Countryside Act 1981 sets out the tests that need to be met when reaching a decision; also current case law needs to be applied.
- 1.5 An order will only be made if the evidence shows that: (a) a right of way “subsists” or is “reasonably alleged to subsist” or (b) “the expiration ... of any period such that the enjoyment by the public ... raises a presumption that the way has been dedicated as a public path”.
- 1.6 When considering evidence, if it is shown that a highway once existed then highway rights continue to exist (“once a highway, always a

highway”) even if a route has since become disused or obstructed unless a legal order stopping up or diverting the rights has been made.

1.7 The legal background is to be found in Agenda Item 3.

1.8 Description of Claimed Route (21st August 1990)

The route as depicted on the plan, Treharris 34, by a bold black line commences at Point A on the plan, grid reference ST09859778 at a gate on the maintainable Highway at Cilhaul and proceeds in a general easterly direction to a gate at Point B, grid reference ST09939778. It then continues through the Millennium Park in a general south-easterly direction to Point C, grid reference ST09979776. Here it reverts to a general easterly direction and continues to Point D, grid reference ST10049777. It then continues in a general south-easterly direction to Point E, grid reference ST10119768. It then reverts to a general easterly direction, crosses a footbridge and continues to its termination at Point F, grid reference ST10149769 on the maintainable highway.

1.9 Description of Claimed Route (9th November 2009)

The route, as depicted on the plan, Treharris 45, by a dashed black line, commences at Point A at its junction with Treharris 21 at grid reference ST09659741 and proceeds in a general north-easterly direction to point B, grid reference ST09679753, the route then continues in a general north – north westerly direction to point C, grid reference ST09609782, the route continues in a general north – north westerly direction to point D, grid reference ST09559794. The route finally proceeds in a general northerly direction to its termination point at Cefn Fforest at Point E, grid reference ST09549806.

At Point C the route splits into two, the first part continues to point D as described above whilst the second part proceeds in a general east south- easterly direction to a gate at point F, grid reference ST09859778 before continuing to point G, grid reference ST09989776.

At point D the route again splits into two, the first part continues to point E as described above whilst the second part proceeds in a general north-easterly direction to point H, grid reference ST09739809.

With the exception of the section between Point F and Point G this second claim has been investigated and presented before Committee.

This section between Point F and Point G is the same section as between Point A and Point B on the plan, Treharris 34.

With regard the sections that have already been placed before committee, these are known as Treharris 45 and Treharris 2. Objections have been received in respect of Treharris 45 and Treharris 2 and a Public Inquiry is due to be held in January 2015.

1.10 Land Ownership

The land affected by this route are owned by Mr Michael Thomas and Merthyr Tydfil County Borough Council.

1.11 Maps

Sections of the route are depicted on 1919 and current OS maps.

1.12 Aerial Photographs

The route is evident on 1967 and 2010 aerial photographs.

1.13 Site Visits

MTCBC officers have walked the route and found it as described above.

1.14 Current landowners and other interested parties

An Investigation Report into this route was distributed to all interested parties in August 2014. This Report contained all of the information available to the Authority to that date.

Mr Thomas has requested that the Farmers' Union of Wales respond on his behalf.

He also (correctly) assumes that there will be an opportunity to make a formal objection at a later date.

1.15 Observations and Information from Users

1) Summary of claim:-

Claimants stated that they walked this route to visit family and friends.

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 recording the route known as Treharris 34.

2.2 Status

PRoW can be claimed as a Footpath, Bridleway, Restricted Byway or BOAT.

- 2.4 Officers must investigate the claim at the highest status substantiated by the evidence; the investigation could conclude that the route does not exist.
- 2.5 User and historic evidence demonstrate use of this route and historic evidence exists that the route is a footpath.

3.0 PERIOD OF USE TO BE CONSIDERED

- 3.1 In the absence of any challenge to the right of way in question, the normal period looked at for the purpose of the establishment of the right of way for long user is 20 years prior to the date of the application itself. In this case Officers consider that it would be the period between 22nd August 1970 and 21st August 1990; user evidence exists for this period. A section of the route was also brought into question on 9th November 2009.
- 3.2 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 highway, as there is insufficient evidence that there was no intention during that period to dedicate them.
- 3.3 During the relevant period for consideration the route has been available for public use.

4.0 THE LINE OF THE ROUTE

- 4.1 The route is discernible on the ground.

5.0 HISTORICAL AND OTHER EVIDENCE

- 5.1 The route has been depicted on a number of cartographic sources. Depiction of this route on the various maps as described in the body of this Report indicates 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.
- 5.2 The route is depicted on a number of aerial photographs.

6.0 USER EVIDENCE

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

7.0 LANDOWNERS AND OTHER INTERESTED PARTIES

7.1 The following landowners and interested parties have made the subsequent objections to the recording of this route.

7.2 Mrs Rachel Saunders for farmers Union of Wales wrote on behalf of Mr Michael Thomas:

"I enclose a response to the above mentioned claimed right or way on behalf of our member Mr Michael Thomas and I would be grateful if the following points could be taken into account.

I would like to clearly state that Mr Thomas wishes to lodge a formal objection to the entire claimed route.

At Point 7.4 of the Treharris 34 Report, it states that 'Mr David Thomas – Twyn Y Garreg Farm, Treharris has requested that Mr Glyn Davies of the Farmers' Union of Wales act on his behalf.' We are unsure whether there is another application relating to David Thomas of Twyn Y Garreg but Mr. Michael Thomas owner of Cefn Forest Farm has asked us to act on his behalf.

Further on, point 7.4 states that tenants have made several written responses and the tenant's father had never dedicated any paths to public use and, in fact, had denied access to the public in the 1960s.' We do not understand where these comments relate to in relation to our member Mike Thomas and these comments are very confusing.

Can you please clarify whether these comments should be included in this Treharris 34 report at all and if not, can you please delete these comments and re-send the report so we can provide a comprehensive objection?

We note that you have two different descriptions of claimed route for Treharris 34; one applied for in August 1990 and the other in November 2009. It appears that the application included in this report is the 1990 application and we are unable to locate the application apparently made in November 2009.

Can you please provide the application made by the public on the 9th of November 2009 as we have been unable to locate it in this report?

It appears that part of the route detailed in Appendix 2 has already been subject to a modification Order – Points A – E is Treharris 45 and Point D to H is Treharris 2. Please note that Mr. Thomas has made objections to both Treharris 45 and Treharris 2 and we understand that the Planning Inspector is now dealing with the matter.

Can you please confirm whether you are applying for this entire route to be classed as Treharris 45?

Which map should we be using for Treharris 34 as maps contained in Appendix 1 and Appendix 2 are both different?

In relation to Appendix 1, the claimed route appears to commence at Point A which we assume to be the metal gates at the end of Cilhaul Estate. This gate was installed by mistake by the Council and should be a solid fence. This is confirmed at point 6.1 of your report with specific reference to the Council's Engineering Department which states 'the then owner of the farm Mrs M Morgan was asked by Engineering Department if she wanted a gate/stile on the boundary linking the reclamation site to Cilhaul Estate. She did not want either a gate or stile and insisted on a solid fence (post and wire type) to be erected at this time.' Therefore Point A should not be accessible from Cilhaul Estate and no member of the public should have access to our member's land. It is unreasonable for our member to have to allow public access onto his land because the Council made a mistake as to the type of fence required.

Your report states that the period to be looked at in order to determine whether the applicant had uninterrupted usage is November 1989 to November 2009. Engineering Department reports that 'the main scheme commenced in August 1998 and was completed in August 2000. During this period the site was the responsibility of the main contractor who tried to ensure that the site was safe during construction and public entry was prevented..'

Therefore there was at least two years during which the public could not have accessed the route in question and uninterrupted usage is not proven.

In relation to Appendix 2, we have previously made a number of objections to the claimed route and will condense these comments as they relate to Treharris 45 and Treharris 2.

A housing development has been built upon Point A and therefore members of the public are unable to access this footpath. Council may wish to argue that the alleged route can be accessed via a piece of land running adjacent to the new housing development but this is not included in the applicant's statement and the Council have no legal right or ability to create this new connection.

Point E cannot be viewed as a footpath as it does not lead anywhere and simply terminates in the middle of the woodland owned by our member. The proposed route cannot be accessed anywhere from the other end as this is not included in the applicant's statement and the local authority does not have the power to create a footpath. Therefore the claimed route does not lead anywhere and cannot be used by the applicants as a direct route. Legally users of the claimed route should turn around once they reached Point E but in practise, this is unlikely to

happen as there is no guidance within the woodland and members of the public would end up trespassing on our members land.

Points C – F have already been discussed during the Rights of Way Committee on Monday 18th March 2013 as Treharris 1. The evidence from the Council states that the evidence provided for this route does 'not appear on the main claim form or the evidence form supplied by Mr Rees these routes have not been investigated as part of this exercise.' Therefore insufficient evidence meant that the council rejected the application and there is no further or additional evidence provided in the current report to rebut this previous finding.

The route from Points C – F is overgrown and impassable due to foliage and trees. It is clear from viewing the site that no one has ever walked this route.

The route between Points F – G has been mentioned previously in our letter that no member of the public should be able to access our members land at Point F. Mr Thomas is aware that some members of the public walk their dogs up through Millennium Park from Point G to Point F but these are members of the public that Mr Thomas has given express permission to enter onto his land. Mr Thomas has never provided general access onto his land by members of the public and objects to this route being added to the Definitive Map.

We would be grateful if you would consider our comments made on behalf of Mr Mike Thomas and look forward to hearing from you in respect of our questions.

In respect of the comments made by Rachel Saunders on behalf of Mr Thomas the Rights of Way Department responded to Mrs Saunders on the 11th September 2014 stating the following:

I acknowledge receipt of your letter dated 22nd August 2014.

Two claims which overlap in places have been received. As indicated in paragraph 1 of the Investigation Report 2 claims were received, one in 1990 and 1 in 2009. As these claims overlap in places all the evidence that the council has to date in relation to these routes has been included within the Investigation Report.

I attach a copy of the claim made in 2009. For the avoidance of doubt I confirm that copies of these papers have also been sent to the other parties consulted as part of this Investigation report. They have been asked to provide any comments, should they have any, by 19th September 2014.

This route will be referred to committee as Treharris 34.

Appendix 1 shows the extent of the 1990 claim. The entirety of this claim remains to be determined. Appendix 2 indicates the extent of the 2009 claim. As stated in paragraph 3.1 (the final paragraph on the first page) with the exception of the section between points F and G this has been determined.

For the avoidance of doubt those sections of the route that have already been the subject of the Committee report with regard to Treharris 45 will not be redetermined. Those sections have already been considered by the council. Only those sections of the route that have not been previously considered will be presented to committee.

It is envisaged that Treharris 34 will be presented to the Rights of Way committee on 20th October 2014. A copy of the committee report will be placed on the council's website prior to the meeting.

Since sending out the letter no further communication has been received on behalf of Mr Thomas.

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 ways deemed to have been dedicated as highway. There is insufficient evidence that there was no intention during that period to dedicate them.
- 8.2 Officers have presented historic as well as user evidence for the existence of this route.
- 8.3 Officers consider that the evidence above establishes the existence of the right now claimed, i.e., over the relevant period and at all material times before it.
- 8.4 Taking all of the above into account and in conjunction with the historical evidence, the interviews with claimants, it is evident that a right of way does exist over this route.
- 8.5 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 included on the application. 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.
- 8.6 Taking the above into account, an Order to modify the Definitive Map and Statement should therefore be made under S.53(3)(b) Wildlife and

Countryside Act 1981. Officers are satisfied that the requirements of S.53 (3)(b) have been met and that the Public Rights of Way exist

- 8.7 Officers therefore recommend that a footpath be recorded in respect of this route.

9.0 FINANCIAL IMPLICATIONS

- 9.1 Officer time is involved in investigating the route and writing the report. If Councillors determine that the public right of way exist, there will be a financial implication in advertising the Order and also for dealing with the Public Inquiry if an Order is made and there is an objection to it.
- 9.2 If the Order is confirmed, there will be a financial implication in that the routes will need to 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.

10.0 EQUALITY IMPACT ASSESSMENT

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

11.0 RECOMMENDATION(S) that

- 11.1 Taking into consideration all of the evidence which has been provided, including historical documents, Councillors are asked to confirm that

11.2 In respect of Treharris 34: -

- 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 – D – E – F on the plan, Treharris 34, has been used for such period so as to raise presumption that it has been dedicated as a footpath, 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 Treharris 34 as a footpath.
- 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.

ELLIS COOPER
DIRECTOR OF CUSTOMER SERVICES

BACKGROUND PAPERS		
<i>Title of Document(s)</i>	<i>Document(s) Date</i>	<i>Document Location</i>
Treharris 34 & 45 Files:	September 2014	Unit 5