

## **RIGHTS OF WAY REPORT**



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Service Area	Economic Development
Committee Date	20 <sup>th</sup> October 2014

*To: Chairman, Ladies and Gentlemen*

## **PANT 12**

**PURPOSE OF THE REPORT:** To determine a public right of way from Pant Road through Blaenygarth Farm to Garth Lane Pant Merthyr Tydfil.

### **1.0 INTRODUCTION AND BACKGROUND**

- 1.1 The route from the Pant Road to Garth Lane Pant Merthyr Tydfil was submitted to Merthyr Tydfil County Borough Council (MTCBC) on the 25<sup>th</sup> July 2006.
- 1.2 The evidence for this claim is contained within the Pant 12 file.
- 1.3 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.
- 1.4 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”.
- 1.5 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
- 1.6 The legal background is to be found in Agenda Item 3.

## 1.7 Description of Claimed Route

As depicted on the plan by a bold black line the route commences at Point A on the plan, grid reference SO05970959 and proceeds in a general north-north westerly direction for approximately 40 metres to Point B, grid reference SO05960963, it then proceeds in a general north-north easterly direction for approximately 46 metres through a field gate to point C, grid reference SO05990967 and proceeds in a general north-north easterly direction for approximately 106 metres through a field gate to point D, grid reference SO06070975 it then proceeds in a general north-north easterly direction for approximately 58 metres to point E, grid reference SO06070979 where it then proceeds in a general east-south easterly direction for approximately 48 metres to point F, grid reference SO06110977 it then proceeds in a general south-south easterly direction for approximately 216 metres to point G, grid reference SO06260962. It then proceeds in a general east-south easterly direction for approximately 147 metres through a field gate to point H, grid reference SO06380955 and through another field gate at point I, grid reference SO06400955. It then proceeds in a east-south easterly direction for approximately 79 metres to its termination point at grid reference SO06450954, point J, that joins Public Right of Way bridleway Pant 11. The length of the route is approximately 740 metres long and approximately 3 – 5 metres wide.

## 1.8 Land Ownership

The land affected by this route is owned by Brecon Mountain Railway Company Ltd, Beacons Leisure Ltd and Margaret Clayton.

## 1.9 Maps

A section of the route is marked “FP” on the 1957 map.

## 1.10 Aerial Photographs

Sections of the route are depicted on aerial photographs dated 1967, 1981, 1991, 2008 and 2010.

## 1.11 Site Visits

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

## 1.12 Current landowners and other interested parties

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

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

#### 1.13 Observations and Information from Users

#### 1.14 Summary of claims:-

Claimants stated that they walked this route to get to Pant Station to catch the train.

Mr Roy Lister stated that he had walked the route now and again for 60 years. He also stated that there were kissing gates, hand gates and stiles.

Mrs Joan Lister stated that she had walked the route periodically over 60 years prior to the date of the claim and also to get to Pant Station to catch the train. She stated that there were kissing gates, hand gates and stiles.

Mr John Clark stated that he had walked the route for over 50 years prior to the date of the claim 2006 regularly in the early days occasionally in the latter days to catch the train to Talybont for camping, fishing and leisure. He also stated that there is a large gate in place at the moment but the old stile has been removed and a fence put in place that has been taken down by walkers a number of times.

Ms Rosemary Steele stated that she had walked the route for 2½ years prior to the date of the claim for leisure. She also stated that a gate had been installed.

Ms Sarah Price stated that she had walked the route for over 25 years prior to the date of the claim to gain access to the Narrowgauge and onto main road – circular route back to Pant. She also stated that the stile was removed many years ago and a fence in place which has to be climbed over.

Mr David Phillips stated that he had used the path once for leisure.

Mr Ian Clark stated that he had walked the route for over 25 years prior to the date of the claim for leisure.

Mr Clive Evans stated that he had walked the route for over 65 years prior to the date of the claim for walks.

Mrs Marylyn Evans stated that she had walked the route for over 60 years prior to the date of the claim for walks.

Mrs Hilary Hodgson stated that she had walked the route for over 40 years prior to the date of the claim through the summer season for country walks. She also stated that there was a field gate and stile.

Mrs Winifred Morgan stated that she had walked the route for over 31 years prior to the date of the claim, several times per month to go picking blackberries, going for a walk and getting to Pant Station. She also stated that there was a large gate and kissing gate at the entrance and large gates and stile at the end.

Mr Edmund Morgan stated that he had walked the route for over 50 years prior to the date of the claim, several times a week to check on sheep, to get to Pant Station and to go for walk. He also stated that there was a large gate and kissing gate at the entrance and large gates and stile at the end.

Mrs Sylvia Kinsey stated that she had walked the route for over 50 years prior to the date of the claim, several times per week, playing, walking, picking blackberries, riding a horse and getting to Pant Station. She also stated that there was a large gate and kissing gate at the entrance and large gates and stile at the end.

Mr William Rogers stated that he had walked the route for over 35 years prior to the date of the claim, 4 times a year for recreation. He also stated that there was a field gate, stile and handgate.

## **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 Pant 12.

### **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 26<sup>th</sup> July 1986 and 25<sup>th</sup> July 2006; user evidence exists for this period.

- 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 Mr CBP de Winton chartered surveyor for CLA Cymru wrote the following on behalf of Mrs Clayton which was received on the 12<sup>th</sup> August 2014:

*“Miss Clayton contends the said proposed Right of Way has never been used as claimed in this report. Miss Clayton has resided at Amt Farm since the 1950’s with her parents. When her father died in 1981 the ownership of the farm passed to her. She has been on site the majority of this time farming and managing the land. She can categorically say the alleged footpath has never been used during this time. She further claims that if anyone has been observed walking over any part of her land they are politely told there are no rights of way and that they are trespassing.*”

*There are a number of photographs attached to the above named report which are misleading. I am told horses from the neighbouring field have recently broken the poorly maintained fence and have gained access, this giving the appearance that there is some sort of path. In one of the photographs a horse print can be seen, see attached.*

*At the gate marked H on the plan. An old baler has been parked up in this location for the past 20 years. Chickens were also kept some 15/16 years ago, where the gates in and around this area were all kept locked to prevent problems with vermin. The vegetation is also extremely overgrown. No way has this been 'regularly' used by pedestrians. See photograph D.*

*In addition at point G on the same plan, the barbed wire fence has also been insitu for the last 30 years, see the various photographs. There is no sign around it which suggests regular usage by people on foot. See photograph G.*

*Miss Clayton is of the opinion that the whole idea of this footpath has come about on the back of the Inspector's decision to award a bridlepath in 2004/5 through her farmstead up to the Gas plant, as all the 'so called' witness statement suggest as they are all dated around the same time in 2006.*

*Miss Clayton and I have looked closely at the proposed route of Pant 12. The route of Pant 12 between I and finishing at point J. There is an old tractor parked there and has dine so for at least 15 years. There are no signs to suggest people have regularly used this route. See photographs A, B and C. Indeed the most logical route to use would be to walk around the rear of the farm buildings as annotated 'suggested route' and not as claimed on the report from points I and J. As stated no one would walk up from the first gate at Garth Farm, then walk up the road to just short of the second gate a then literally double back on themselves, they would simply walk along the 'suggested route'. With this in view there is a fundamental error in the evidence that has been produced, thus questioning this whole exercise? Indeed Miss Clayton can categorically confirm she has never seen anyone walking along the route as claimed, especially between points I and J.*

*Indeed Miss Clayton suspects when Ms. Jones visited the site and subsequently wrote this report, the route she took was indeed the route as described above, and not walking along the route I and J. Thus we are disputing the very accuracy of the claims and statements and the accuracy of the route which is being claimed in the first place.*

*In 1956 when the property was purchased there was never any suggestion this was indeed a route or path and has since never been used.*

*Having looked at the evidence as produced, the third and second statements from the end, Miss Clayton has been able to identify the correspondents, they were the former owners of Garth Farm, namely Edmund Morgan and his daughter Sylvia Kinsey. Again in our view these two witnesses don't qualify as they owned or were closely related to the owner of the land and thus with the very nature of ownership don't need permission to use their own land!!*

*Miss Clayton also goes on to say that since 1956, she cannot recall any of the owners of the Waterworks Cottage, which is situated past the second gate, as ever using the claimed footpath and certainly not using the suggested route between points I and J.*

*In conclusion on behalf of Miss M Clayton, we are disputing the report and the statements, it is clear that the route as described has in no way been used as claimed, in fact there are physical obstructions and no evidence on the ground, we thus suggest the route from at least G to J is not included as part of this claim as it is has simply not been used as claimed”.*

- 7.3 A further letter was received on the 20<sup>th</sup> August 2014 from Mr de Winton on behalf of Miss M Clayton stating:

*“I have been asked to write a further letter of objection on behalf of our member Miss M Clayton*

*I refer to the plans which have been sent out and subsequently revised following your report dated 7<sup>th</sup> July 2014.*

*I am concerned about the two versions of the map. Firstly the earlier version, if the route as stated had been walked as claimed then a gate and a fence would have been encountered by the walkers, clearly this would not be a regular route enjoyed by many as they would have had to climb fences etc. I note that a subsequent route has been suggested and the points D, E and F have been incorporated. I am concerned if the original route as claimed has now had to be changed to the 16<sup>th</sup> June version, are the statements correct or have they been fabricated as the route on the ground as stated in the earlier version of the plan does not stack up as it has had to be revised to the current version?*

*In addition Miss Clayton and her long time farm worker are adamant they have never seen anyone using the route as it came onto their land namely from points H – J.*

*I am aware the route was walked by people coming off the train at Pant Station and then walking along the path to the hill. The window I gather you are looking at this is between 1986 and 2006. I am aware Pant Station closed on the 31<sup>st</sup> December 1962, how then can people access the Hill from the station which closed in 1962 from 1986 to 2006?*

*Finally, if people were going from Pant Station to the 'Open Hill' would they access the 'Open Hill' using the shortest and most direct method, in a straight line (as suggested) rather than going a rather convoluted way via the proposed route, partly going along the proposed Pant 12 route from F to J?*

7.4 The following correspondence was received from Mr D Van-Poucke:

*"My name is David Van-Pouke and I worked for Margaret Clayton from 1980 up to 2001 on numerous occasions. With regard to the need for a proposed footpath I never saw anybody use this route".*

7.5 The following correspondence was received from Mr Scadden:

*"I have resided fulltime at Garth Farm since 1990, during which time I have assisted daily with the stock management for Margaret Clayton.*

*The route of the proposed path is directly over land which is used on a regular basis for the handling and sorting of sheep and cattle, together with the storage of tractors and machinery. At one time, Garth Farm owned around 1,400 sheep, so this area would have been in use 3 or 4 times a week.*

*During the period since 1990, I can swear that I have never seen anyone using this proposed route, or the land as a footpath.*

*I trust my statement will be considered in the decision making process".*

7.6 The following correspondence was received from Mr Smith

*"I can never recall anyone using the claimed right of way. I have worked for the Clayton family for over 40 years. I have never seen anyone walk across the farmyard as shown on the plan from point I to point J".*

7.7 The following correspondence was received from Mr Isaac:

*"For over twenty years my son and I have been engaged by Miss Clayton doing agriculture work, namely fencing, silage and haymaking.*

*At no time have I or my son seen members of the public walking on the contested walkways of Miss Claytons property".*

7.8 The following correspondence was received from Miss Clayton:

*"I can swear on oath people have never ever walked across my farm yard as shown on the plan point I to point J.*

*The pant residents committee are just trying it on".*

7.9 The following correspondence was received from Cooke & Arkwright:

*“Further to your letter dated 7<sup>th</sup> July 2014 regarding the proposed recording of a public right of way around the perimeter path of Brecon Mountain Railway to Blaen-Y-Garth Farm through to Garth Lane, Pant, we can confirm that neither of our clients, the Trustees of Plymouth Settled Estate of Earl of Plymouth Estates (Holdings) Limited own any land that will be affected by this proposal. Therefore, we do not object in this instance”.*

## **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 exists, 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 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.

## **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 Pant 12 : -

- 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 – G – H – I – J on the plan, Pant 12, 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 Pant 12 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**

<b>BACKGROUND PAPERS</b>		
<i>Title of Document(s)</i>	<i>Document(s) Date</i>	<i>Document Location</i>
Pant 12 Files:	September 2014	Unit 5