



## **RIGHTS OF WAY COMMITTEE**

Date Written	28 <sup>th</sup> November 2016
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Service Area	Economic Development
Committee Date	12 <sup>th</sup> December 2016

*To: Chair, Ladies and Gentlemen*

### **Cyfarthfa 69**

#### **1.0 SUMMARY OF THE REPORT**

- 1.1 To determine an application to record a Public Right of Way from Horeb Cottages to Winchfawr, Heolgerrig

#### **2.0 RECOMMENDATION that**

- 2.1 The application be rejected as on the balance of probability insufficient evidence has been provided in support of the application to record the claimed Right of Way, and to advise the applicant that their application has been rejected and that they may appeal in writing against the decision of the Council to the Planning Inspectorate within 28 days from the date of the decision letter.

#### **3.0 INTRODUCTION AND BACKGROUND**

- 3.1 A claim to record a public right of way leading from Horeb Cottages to Winchfawr, Heolgerrig was submitted to Merthyr Tydfil County Borough Council (MTCBC) on 29<sup>th</sup> July 1997. The legal background is to be found at Agenda Item 3.

#### **3.2 Description of Route**

- 3.3 The claimed route, as depicted on the attached plan, Cyfarthfa 69 commences at Point A, grid reference SO02870590, its junction with the maintainable highway and it proceeds in a general westerly direction along a tarmacadam / hardcore surface to

Point B, grid reference SO02680593. Here it changes to a general south-westerly direction and continues passing immediately through a locked field gate and proceeding along a natural grassed surface to a further field gate to terminate at Point C, grid reference SO02590589, its junction with an unadopted highway.

#### 3.4 Land Ownership.

There is one known land owner. The section between Point B and Point C, which is in known ownership, is jointly owned by Haulwen Marshallsea, Rhoswen Catherine Marshallsea and Birion Albert Marshallsea. The other section, between Point A and Point B is unregistered land and is in unknown ownership.

#### 3.5 Ordnance Survey Maps.

3.6 The entire route is depicted on the 1875, 1919, 1957 and 1978 Ordnance Survey maps. The entire route is depicted as footpath on the current Ordnance Survey map.

#### 3.7 Aerial Photographs.

3.8 The entire route is visible on aerial photographs for 2001, 2003, 2006, 2008, 2010 and 2014.

#### 3.9 Site Visits

3.10 Officers of the Council have walked the route and found it as described in paragraphs 3.3 above.

#### 3.11 The Claim.

3.12 The main claimant, Mr Cummings, (now deceased) submitted the relevant certificates describing the route together with 30 correctly completed evidence forms all claiming use of the route as a footpath.

3.13 In respect of the entire length of the claimed route Mr Pedlar claimed that he had used it for over 60 years and that there was an obstruction.

3.14 In respect of the entire length of the claimed route Mr Meyrick claimed that he had used it for over 60 years and that there were no obstructions.

3.15 In respect of the entire length of the claimed route Mr Ellinson claimed that he had used it for over 8 years and that there were no obstructions.

3.16 In respect of the entire length of the route Ms Marshallsea claimed that she had used it for 34 years and that there were no obstructions.

3.17 In respect of the entire length of the route Mr Mashallsea claimed that he had used it for over 30 years and that there were no obstructions.

- 3.18 In respect of the entire length of the route Mr Berryman claimed that he had used it since 1976 occasionally travelling from Winchfawr to Heolgerrig. He also stated that there were stiles at both ends.
- 3.19 In respect of the entire length of the route Ms Brenda Morgan claimed that she had used it for 68 years for recreation and visiting relatives and that there were no obstructions.
- 3.20 In respect of the entire length of the route Mrs Battenbo claimed that she had used it for 17 years for walking and that there were no obstructions.
- 3.21 In respect of the entire length of the route Mr Jones claimed that he had used it for 10 years to walk his dog and that there were no obstructions.
- 3.22 In respect of the entire length of the route Mrs Stafford claimed that she had used it for over 40 years to visit relatives and that there were no obstructions.
- 3.23 In respect of the entire length of the route Mrs Williams claimed that she had used it for 18 months for walking and that there were no obstructions.
- 3.24 In respect of the entire length of the route Mr Williams claimed that he had used it for 32 years for walking and that there were no obstructions.
- 3.25 In respect of the entire length of the route Mr Richards claimed that he had used it for 40 years for walking and that there were no obstructions.
- 3.26 In respect of the entire length of the route Mr Wallace claimed that he had used it for 58 years for walking and that there were no obstructions.
- 3.27 In respect of the entire length of the route Mrs Richards claimed that she had used it for 70 years for going to school.
- 3.28 In respect of the entire length of the route Mrs Childs claimed that she had used it for 30 years to get home and that there were no obstructions.
- 3.29 In respect of the entire length of the route Mr Roynon claimed that he had used it for 75 years regularly during school days and that there were no obstructions.
- 3.30 In respect of the entire length of the route Mrs Lambert claimed that she had used it for 30 years for walking and that there were no obstructions.
- 3.31 In respect of the entire length of the route Miss Davies claimed that she had used it all her life for visiting and stated that there were locked gates.
- 3.32 In respect of the entire length of the route Ms Phillips claimed that she had used it for 20 years for walking and that there were no obstructions.
- 3.33 In respect of the entire length of the route Mrs Williams claimed that she had used it all her life for visiting relatives and that there were no obstructions.

- 3.34 In respect of the entire length of the route Mrs Evans claimed that she had used it for 40 years taking children for walks.
- 3.35 In respect of the entire length of the route Mrs Mahoney claimed that she had used it for 12 years for walking and there were no obstructions.
- 3.36 In respect of the entire length of the route Mr Hopkins claimed that he had used it all his life for access and that there were locked gates.
- 3.37 In respect of the entire length of the route Mrs Hopkins claimed that she had used it all her life for visiting and that there were locked gates.
- 3.38 In respect of the entire length of the route Mr King claimed that he had used it for 60 years to travel from Corner house to the Patch and that there were no obstructions.
- 3.39 In respect of the entire length of the route Mrs Peters claimed that she had used it all her life for walking and that there were no obstructions.
- 3.40 In respect of the entire length of the route Ms Price claimed that she had used it all her life for walking.
- 3.41 In respect of the entire length of the route Mrs Jones claimed that she had used it for 14 years for walking and that there were no obstructions.
- 3.42 In respect of the entire length of the route Mr Cummings claimed that he had used it for 30 years for recreation and that there was a stile at the top and a gate at the bottom.
- 3.43 In respect of the entire length of the route Mrs Evans claimed that she had used it for 37 years for walking and that there were no obstructions.
- 3.44 In respect of the entire length of the route Mrs Wills claimed that she had used it for over 30 years for walking.
- 3.45 In respect of the entire length of the route Ms Rogers claimed that she had used it for over 60 years and that there were no obstructions.
- 3.46 In respect of the entire length of the route Mrs Richards claimed that she had used it for over 60 years to visit family and recreation and that there were no obstructions.
- 3.47 In respect of the entire length of the claimed route a claimant claimed that they had not observed anyone using the route and that there was a gate for private use,
- 3.48 In respect of the entire length of the claimed route Mr Murphy claimed that he had not observed anyone using the route and that it was only accessible in dry months.
- 3.49 On 12<sup>th</sup> September 1997, George Tudor & De Winton solicitors for Mr Marshallsea, wrote to the Council stating "*our clients inform us that they have lived in the area for a number of years and are not aware of Mr Cummings using the alleged footpath. It is interesting to note that a number of applications have been forwarded by Mr*

*Cummings including a right of way in relation to all traffic, a bridleway and now a footpath. Our clients instruct us that they do not believe that Mr Cummings could have used the alleged route for the period provided in his evidence form as it is believed that he has been in ill-health for a number of years.”*

- 3.50 On 8<sup>th</sup> August 1995, the Council wrote to the main claimant, Mr Cummings, stating that Mr Coughlin of the Council had walked the route on 4<sup>th</sup> August 1995. In relation to the condition of the claimed route Mr Coughlin observed that the original route obviously followed a small stream or natural drainage ravine and that it was clearly overgrown and not negotiable as a footpath. This observation by Mr Coughlin of the Council predates the date of the application and demonstrates that the claimed Right of Way had already become impassable in 1995 (some 2 years prior to the date of the claim).
- 3.51 Mr Coughlin commented in August 1995 that as the original route was not negotiable that walkers had clearly been attempting to use an alternative route which involved walking into an adjacent field on the north side and connecting with a locked gate. It can therefore be seen that as early as 1995 the gate was already locked.
- 3.52 In respect of the entire length of the claimed route Miss Marshallsea claimed that no one has ever wanted to use the path and that there was a gate for private use as long as she could remember. A further email was sent to the Rights of Way Department stating:

*“Many thanks for your letter dated 31 October which was delivered to me recently by the current occupier of 72 High Street Dowlais (who identified me through one of the documents and eventually tracked me down on social media). For this reason my response is delayed, however, I feel it is important to clarify a number of points in order that you have all the information to hand when making any decision. Given that you are reviewing the application almost 20 years later it is almost impossible to verify the accuracy of some of the statements that were presented by Noel Cummings (deceased).*

*The background summary correctly identifies my family as owners of part of land (being part of the land referred to in the application). I have lived in Heolgerrig all of my life and am very familiar with the area, my parents have also lived in the area for over 50 years and I am therefore able to speak from personal experience and draw on the knowledge my parents have in respect of the area known as “The Patch”. I can say with absolute certainty that the track marked on the plan (attached) was never used as a public right of way. Specific individuals (and visitors) did use it to access cottages on foot only (in particular a cottage in the area shown hatched green on the plan) but that was by the occupant of the cottage and this use was infrequent (because the land is usually very boggy) and ceased many years ago when the cottage was demolished. None of those individuals are claiming any rights (as there is no reason to exercise them even if they did). The present owner of that parcel of land has erected stables / barn over that area, therefore, making access possible.*

*The letter from the planning department of MTBC dated 8 August 1995 acknowledges that the route follows a stream and is not negotiable as a footpath -*

*that has not changed. The planning manager also acknowledges that in the circumstances it is “unreasonable to expect the adjacent landowner to provide an alternative route”*

*No one has used the track as an access way since the cottage was demolished. In fact part of the track shown on the plan is within my boundary and no one has required access over it for at least 30 years. I confirmed this in the statement I submitted in 1998 and that position has not changed*

*Most of the declarations in support of the application acknowledge that their use of the access was to visit relatives etc. Some of the declarations make reference to a different access and so the statements would need to be re-visited although I suspect it would be difficult as some of these individuals have since died).*

*In summary the access way was never a “public” access way but used by individuals to access cottages. The access way is wholly unsuitable to use as a footpath but the cottages are no longer there and so this is not a problem. If you do want to revisit then please could you provide coloured plans to be annexed to the statutory declarations.*

## **4.0 ASSESSMENT**

4.1 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 Cyfarthfa 69.

### 4.2. Status

PRoW 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.

Officers are of the opinion that the footpath use of this route was if not limited, then along a different alignment, and was without the permission of the owner.

Even though user evidence has been supplied to demonstrate use some users have stated that access was unimpeded whilst others acknowledge that they were unable to use the route unimpeded as at least one or indeed both of the gates along the route were locked. The fact that a gate is locked implies that the public are not welcome and that the route is not a public right of way; i.e no permission is being given. Locking of a gate also demonstrates a lack of permission to use the route. Further an employee of the council walked the route in 1995 and found the route to be impassable.

### 4.3 Period of Use to be Considered

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; i.e. 30<sup>th</sup> July 1977 to 29<sup>th</sup> July 1997.

Councillors will note from the Report before them that the path has not been enjoyed by the public as of right and without interruption for a full period of twenty years and there is insufficient evidence to presume that dedication as a right of way has occurred.

During the relevant period for consideration the route has not been available for public use.

#### 4.4 The Line of the Route

The tarmacadam section of the route is clearly discernible on the ground. The section between the gates is not clearly discernible.

#### 4.5 Historical and Other Evidence

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.

The route is depicted on a number of aerial photographs.

#### 4.6 User Evidence

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

#### 4.7 Landowners and Other Interested Parties

Councillors are requested to take into consideration the landowners' comments and submissions above.

### **5.0 SUMMARY**

- 5.1 Councillors will note from the Report before them that the path has not been enjoyed by the public as of right and without interruption for a full period of twenty years and the way has not been deemed to have been dedicated as a highway. There is insufficient evidence that there was an intention during that period to dedicate it.

### **6.0 FINANCIAL IMPLICATIONS**

- 6.1 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.

6.2 If the Order is confirmed, there will be a financial implication in that the route 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.

## 7.0 EQUALITY IMPACT ASSESSMENT

7.1 An Equality Impact Assessment has been considered relating to this document and no negative effects have been identified at this stage.

**ELLIS COOPER**  
**DEPUTY CHIEF EXECUTIVE**

**COUNCILLOR CHRIS BARRY**  
**CABINET MEMBER FOR**  
**NEIGHBOURHOOD SERVICES & PUBLIC**  
**PROTECTION**

<b>BACKGROUND PAPERS</b>		
<b>Title of Document(s)</b>	<b>Document(s) Date</b>	<b>Document Location</b>
Cyfarthfa 69	December 2016	Unit 5
<b>Does the report contain any issue that may impact the Council's Constitution?</b>		<b>No</b>