

RIGHTS OF WAY COMMITTEE

Date Written	25 th November 2016
Report Author	Cheryl Jones
Service Area	Legal and Democratic
Committee Date	12 th December 2016

To: Chair, Ladies and Gentlemen

Gurnos 1

1.0 SUMMARY OF THE REPORT

1.1 To determine an application to record a public right of way from Morlais Castle Quarry to Goitre Lane, Gurnos under the Wildlife and Countryside Act 1981.

2.0 RECOMMENDATION(S)

2.1 The Council dedicate the route of Gurnos 1 as a bridleway.

2.2 That a Dedication agreement be drawn up in respect of the route and once the relevant agreement has been sealed by the Council that a site notice be placed at both ends of the route and that a Definitive Map Modification Order under section 53(3)(a)(iii) Wildlife and Countryside Act 1981 be prepared in order to record the route on the Council's Definitive Map and Statement.

2.3 Subsequent to 2.2 a Definitive Map Modification Order be made to show Gurnos 1 as a Byway Open to All Traffic.

2.4 To approve the confirmation of the Definitive Map Modification Order made as a result of 2.3 above provided no objections or representations are made within the prescribed period or if any objections or representations so made are withdrawn

2.5 If any objections or representations are made within the prescribed period and not subsequently withdrawn then to refer the matter to the Planning Inspectorate for determination.

3.0 INTRODUCTION AND BACKGROUND

- 3.1 A claim to record a public right of way leading from the disused Morlais Castle Quarries to Goitre Lane, Morlais was received by Mid Glamorgan County Council on 20th August 1991.
- 3.2 A report was subsequently prepared for the Mid Glamorgan County Council Highways and Transportation Committee (Rights of Way Committee). A copy of the report (August 1995) is attached as Appendix 1 to this report. All salient points are contained within that report.
- 3.3 At Committee in 1995 the Mid Glamorgan County Council determined that (i) the section of the route indicated on the plan attached at document 2 to the report and marked A – E be registered as a Byway Open to All Traffic and (ii) the section of the route indicated on the same plan marked B - C - D – E be downgraded to a Bridleway by the appropriate statutory means, either by stopping up under the Highways Act 1980 or imposing a Traffic Regulation Order.
- 3.4 A Definitive Map Modification Order was subsequently made and a copy is attached as Appendix 2 to this report.
- 3.5 Although no objections were received to this Order the Order was never confirmed. Due to the passage of time that has elapsed since 1995 and the action taken by the Council (referred to in the next paragraph) it is not considered either prudent or expedient to confirm the 1995 Order. It is assumed that a possible reason as to why the Order was not confirmed would be local government reorganisation in 1996 when the functions in relation to Rights of Way passed from the County Council to the County Borough Council.
- 3.6 Irrespective of that in 1999 the County Borough Council made an Order (Appendix 3) under s26 Highways Act to create a highway along this route. S26 Highways Act 1980 only allows a route with the maximum status of restricted byway to be created. It was therefore not within the powers of the local authority to create a Byway Open to All Traffic. Further due to the fact that the route in question was already de facto in existence a new route was not being created and therefore s26 Highways Act 1980 was not the correct power to use.
- 3.7 Despite the fact that this was the incorrect power to use the Order that was made is void in law due to certainty. A copy of the Order is attached at Appendix 3 to this report. As is evidenced by the 1999 Order the first page refers to a public footpath being created over the entire route whilst Part One of the Schedule refers to a claimed Byway Open to all Traffic and a claimed bridleway. The Order of 1999 is uncertain and therefore void in law.
- 3.8 In order to rectify the issue and as the entire route lies on land in Council ownership it is considered appropriate that it would be prudent for the council to dedicate the claim as a bridleway. This is the highest status that can be accorded to a route under dedication. The line of the route is as depicted in Document 2 attached to Appendix 1.

- 3.9 Subsequent to the route being recorded on the Definitive Map and Statement as a bridleway there is no logical reason why the resolution reached by Mid Glamorgan in 1995 should not be followed. The facts in relation to the claim remain the same and Committee is required under law to determine the claim looking at the 20 year period prior to receipt of the claim. There is nothing either factually incorrect or legally incorrect within the Mid Glamorgan 1995 report and decision.
- 3.10 Subsequent of the route being recorded on the Definitive Map and Statement as a bridleway Committee are advised that a Definitive Map Modification Order should also be made in respect of the route and that the route should be advertised as a Byway Open to All Traffic. The description of the route is as contained within the 1995 Order

4.0 FINANCIAL IMPLICATIONS

- 4.1 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.
- 4.2 If the Order is confirmed, there will be a financial implication in that the route 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.

5.0 EQUALITY IMPACT ASSESSMENT

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

6.0 HUMAN RIGHTS ACT

- 6.1 It is unlawful for a public authority to act in any way which is incompatible with a convention right. The rights which would be considered are rights pursuant to Article 8, Article 1, Protocol 1 and Article 6. The recording of public rights of way on the Definitive Map and Statement does not involve the creation of any new rights but merely records the existence of rights to which the land is already subject. Recording of existing legal rights is not in itself an interference with either respect for private life or private property and in any event the surveying authority has a statutory duty to record all public rights of way which are shown on investigation to subsist.
- 6.2 Article 8 protects the right to respect for family and private life including an individuals' home. This is a qualified right and there may be interference by a public authority if that authority does so with an intention of protecting the right and freedom of others.
- 6.3 Article 1, protocol 1 deals with the protection of property. Again, this is a qualified right and interference of it may take place where it is in the public's interest to do so

subject to the conditions provided by law. Any interference, however, must be proportionate.

- 6.4 Committee should also be aware of Article 6, the focus of which (for the purpose of this committee) is the determination of an individual's civil rights and obligations. Article 6 provides that in the determination of these rights, an individual is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. Article 6 has been subject to a great deal of case law. It has been decided that for rights of way matters, the decision making process as a whole, which includes the right of review by the High Court, complied with Article 6.

ELLIS COOPER
DEPUTY CHIEF EXECUTIVE

COUNCILLOR CHRIS BARRY
CABINET MEMBER NEIGHBOURHOOD
SERVICES & PUBLIC PROTECTION

BACKGROUND PAPERS		
Title of Document(s)	Document(s) Date	Document Location
Rights of Way	November 2016	Unit 5
Does the report contain any issue that may impact the Council's Constitution?		No