

RIGHTS OF WAY COMMITTEE

Date Written	10 th February 2017
Report Author	Cheryl Jones
Service Area	Economic Regeneration
Committee Date	6 th March 2017

To: Chair, Ladies and Gentlemen

Treharris 32, Treharris 33, Treharris 36 and Treharris 39

1.0 SUMMARY OF THE REPORT

- 1.1 To determine applications to record public right of way at Ty Llwyd Parc, Quakers Yard under the Wildlife and Countryside Act 1981.

2.0 RECOMMENDATION(S)

- 2.1 Taking into account all the evidence which has been provided, including historical documents, Councillors are asked to confirm that:
- 2.2 In respect of Treharris 32 (a) on the balance of probabilities there is sufficient evidence to support that the route marked with a pink line between points J – K on the plan 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) to approve the making of the Definitive Map Modification Order to show Treharris 32 as a footpath, (c) to approve the making 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objections or representations are made within the prescribed period or if any objections or representations so made are withdrawn and (d) if any objections or representations are made within the prescribed period and are not subsequently withdrawn then to refer the matter to the Planning Inspectorate for determination.
- 2.3 In respect of Treharris 33 (a) on the balance of probabilities there is sufficient evidence to support that the route marked with a red line between points D – E on

the plan 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) to approve the making of the Definitive Map Modification Order to show Treharris 32 as a footpath, (c) to approve the making of eth 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objections or representations are made within the prescribed period or if any objections or representations so made are withdrawn and (d) if any objections or representations are made within the prescribed period and are not subsequently withdrawn then to refer the matter to the Planning Inspectorate for determination.

2.4 In respect of Treharris 36 (a) on the balance of probabilities there is sufficient evidence to support that the route marked with a light blue line between points H – I on the plan 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) to approve the making of the Definitive Map Modification Order to show Treharris 32 as a footpath, (c) to approve the making of eth 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 and (d) if any objections or representations are made within the prescribed period and are not subsequently withdrawn then to refer the matter to the Planning Inspectorate for determination.

2.5 In respect of Treharris 39 (a) on the balance of probabilities there is sufficient evidence to support that the route marked with a dark green line between points B – C on the plan 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) to approve the making of the Definitive Map Modification Order to show Treharris 32 as a footpath, (c) to approve the making of eth 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 and (d) if any objections or representations are made within the prescribed period and are not subsequently withdrawn then to refer the matter to the Planning Inspectorate for determination.

3.0 INTRODUCTION AND BACKGROUND

3.1 Six claims to record public right of way at Ty Llwyd Parc, Quakers Yard were received by Mid Glamorgan County Council on 23 May 1990. The legal background is to be found at Agenda Item 3.

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 (November 1993) is to be found in the Background Papers. All salient points are contained within that report.

3.3 Two of the six claims are now recorded on the Council's Definitive Map and Statement and therefore warrant no further consideration within this. These are the routes shown as Treharris 13 and Treharris 12 on the plan, Appendix 1, attached to this committee report. They are both recorded as footpaths. The remaining four

paths; Treharris 32, Treharris 33, Treharris 36 and Treharris 39 are still not recorded on the Council's Definitive Map and Statement.

- 3.4 At Committee in 1993 the Mid Glamorgan County Council determined (i) that Modification Orders be made to register six claimed rights of way at Ty Llwyd Parc as public footpaths and amend the Mid Glamorgan County Council, Definitive Map and Statement of Rights of Way to that effect and (ii) that the footpaths to be registered follow the routes as described in the application before the Sub-Committee and (iii) that a report be placed before Highways and Transportation Committee to give consideration to Diversion Orders being made concurrent to the Modification Orders of two of the paths. A copy of the minutes is attached at Appendix 2. In respect of Treharris 32, Treharris 33, Treharris 36 and Treharris 39 no Orders were made.
- 3.4 It is assumed that a possible reason as to why the Orders were not made 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. The decision made by the Mid Glamorgan County Council is a valid decision. However due to the passing of time it is considered expedient that the four routes be returned to Committee and that a new determination be made. There is nothing that is invalid about the decision made by Mid Glamorgan – it is simply considered that it would be unwise to make an Order based on a decision that is now some 23 years old.
- 3.6 The claim for Treharris 33 (shown coloured red on the plan attached) was received by Mid Glamorgan County on 23rd May 1990. As stated at paragraph 3.2 the application and evidence in relation to this claim is to be found in background papers. For ease, attached at Appendix 3 is the short synopsis of the claim as presented to Committee in November 1993.
- 3.7 The claim for Treharris 36 (shown coloured light blue on the plan attached) was received by Mid Glamorgan County on 23rd May 1990. As stated at paragraph 3.2 the application and evidence in relation to this claim is to be found in background papers. For ease, attached at Appendix 4 is the short synopsis of the claim as presented to Committee in November 1993.
- 3.8 The claim for Treharris 32 (shown coloured pink on the plan attached) was received by Mid Glamorgan County on 23rd May 1990. As stated at paragraph 3.2 the application and evidence in relation to this claim is to be found in background papers. For ease, attached at Appendix 5 is the short synopsis of the claim as presented to Committee in November 1993.
- 3.9 The claim for Treharris 39 (shown coloured dark green on the plan attached) was received by Mid Glamorgan County on 23rd May 1990. As stated at paragraph 3.2 the application and evidence in relation to this claim is to be found in background papers. For ease, attached at Appendix 6 is the short synopsis of the claim as presented to Committee in November 1993.
- 3.10 With regard Treharris 39 the residential development of Ty Llwyd Parc has been constructed since the claim was made some 27 years ago. The majority of the alignment of the path between points A and B on the plan attached to this report has

now become adopted highway and the general public therefore have a legal right to pass over this route. Councillors will note that part of the alignment of the adopted highway between points A and B does not strictly follow the route as claimed. The adopted highway route is acceptable to the Council and it is not considered expedient that the route as claimed between points A and B on the plan be recorded. The only section of the route of Treharris 32 that remains to be determined is that section between Point B and Point C.

- 3.11 Committee are referred to the evidence provided within the background papers and Appendix 1, the decision of Mid Glamorgan County Council.
- 3.12 Officers recommendation is that the four routes be recorded on the Council's Definitive Map and Statement and the necessary Orders as set out within the Recommendations section of this report be made.

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	February 2017	Unit 5
Does the report contain any issue that may impact the Council's Constitution?		No