



RIGHTS OF WAY COMMITTEE

| | |
|----------------|---------------------------------|
| Date Written | 25 th August 2017 |
| Report Author | Geraint Morgan & Cheryl Jones |
| Service Area | Legal & Economic Regeneration |
| Committee Date | 25 th September 2017 |

To: Chair, Ladies and Gentlemen

Gurnos 10

1.0 SUMMARY OF THE REPORT

- 1.1 To determine an application to record a public right of way at Dan y Castell 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- 2.1 Taking into account all the evidence which has been provided, including historical documents, Councillors are asked to confirm that: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 Gurnos 10 (a) on the balance of probabilities there is sufficient evidence to support that the route marked with a dashed line between points A- 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 Gurnos 10 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objections or representations are made within the prescribed period or if any objections or representations so made are withdrawn and (d) if any objections or representations are made within the prescribed period and are not subsequently withdrawn then to refer the matter to the Planning Inspectorate for determination.

3.0 INTRODUCTION AND BACKGROUND

- 3.1 A claim to record public right of way at Dan y Castell was received by Mid Glamorgan County Council on 20th March 1990. As successor authority it falls to Merthyr Tydfil County Borough Council to determine the claim. The legal background is to be found at Agenda Item 3.
- 3.2 The claimed is as depicted on the plan at Appendix 1. The route commences at Point A on the plan, its junction with Public Right of Way Gurnos 1, grid reference SO04870900 and it proceeds initially along a tarmacadam surface in a general south-easterly direction to a field gate. From here It continues in a general south-easterly along a natural surface to a further field gate. From here the route becomes fenced on both sides and eventually reverts to a tarmacadam surface. At point B the route changes to a general north-north-easterly direction and continues to terminate at Point C, grid reference SO05460856, its junction with the maintainable highway, Sanatorium Hill.
- 3.3 An Investigation Report was prepared and this was sent to interested parties on 9th February 2017.
- 3.4 Apart from the main claimant the path is used by the general public.

Land Ownership

- 3.5 There are two owners of the land. No observations have been received from either owner. An adjoining landowner has commented on the Investigation Report and states that the route passes outside the built-up premises contained within the perimeter fences.
- 3.6 A letter has been received from John E Jeremy, Chartered Surveyor on behalf of one of the owners. They state as follows:-

Mr Jones has farmed the land for a number of years, and regularly has issues with persons claiming to be walking the footpath (A-E). He would welcome this be stopped and diverted (F-I) for the following reasons.

- i. The existing path runs through the farmyard, passing close to Livestock buildings. There is also traditional machinery in daily use on the yard, and for Health and Safety reasons, this is not desirable, as some machinery having restricted vision particularly when there are trailers reversing on the concrete yards. It is well reported that Farming Industry is one with high number of cases of accidents/fatalities with machinery on farmyards. The diversion would remove this safety concern.
- ii. The farming enterprise has on a regular basis been subject to vandalism (stock fences), theft of property (tools and equipment) and injury to stock (eventual causing death by stress). Matters have been reported to the Police and crime numbers to support reported incidents are available. The diversion order would reduce these issues away for the Farmyard, buildings and dwelling on Danycastell.

- iii. Dany Castell farm abuts the A465 at its southern boundary; there have been instances where vandalism to stock fences and gates left open has resulted in stock being injured by vehicular on Highways. Albeit, to date this has not resulted in a serious accident.
- iv. The diversion route would make it easier to identify those not authorised to be on the farmyard at unsociable hours to be apprehended. Security would be enhanced, and this would impact on what investment could be made on the property as it is felt that this is hampered with level of damage caused by vandalism due to inability to apprehend.
- v. Animal Welfare, with increased legislation it is proving difficult to manage these unauthorised persons on the land with animals (dogs) so close to buildings. A recent example is that due to Avian Influenza Prevention Zone the keeper of poultry must adopt certain controlled access to outside areas. But with PROW close to poultry shed this could not be achieved. So much so that unauthorised person's dogs killed all poultry on holding as they were housed indoors.

Mr Jones feels that the route to the North would not impact on those genuine Walkers, but allow him to have some control ability to reprehend those on the paths when it is evident they are not using PROW to pass and re-pass lawfully.

- 3.7 The observations are noted. However, the Local Authority is of the view that the route does not exist along that claimed and further note that the owner acknowledges that people do use the route through the farmyard.

Ordnance Survey Maps

- 3.8 With the exception of the part of the route that runs through Garn the entire route is depicted on the 1875 Ordnance Survey map. This southern section (the section not depicted) has been realigned. Dan-y-Castell farm is referred to as Llwyn-moelgoch on this plan. The building referred to as Garn has now been demolished. The section from the commencement of the route at Public Right of Way Gurnos 1 to just north of the old Garn building is clearly demarked on the 1875 map.
- 3.9 With the exception of the part of the route that runs through Garn the entire route is depicted on the 1919 Ordnance Survey map. This southern section (the section not depicted) has been realigned. Dan-y-Castell farm is referred to as Llwyn-moelgoch on this plan. The building referred to as Garn has now been demolished. The section from the commencement of the route at Public Right of Way Gurnos 1 to just north of the old Garn building is clearly demarked on the 1919 map. The path is labelled "F.P."
- 3.10 With the exception of the part of the route that runs through Garn the entire route is depicted on the 1957 Ordnance Survey map. This southern section (the section not depicted) has been realigned. Dan-y-Castell farm is referred to as Llwyn-moel-goch on this plan. The building referred to as Garn has now been demolished. The section from the commencement of the route at Public Right of Way Gurnos 1 to just north of the old Garn building is clearly demarked on the 1957 map. The path is labelled "FP".

- 3.11 The entire route is depicted on the 1978 Ordnance Survey map. By this time Llwynmoelgoch has been renamed Dan-y-Castell. The section to the north-west of Dan-y-castell farm is labelled "Track" whilst the section to the south-east of Dan-y-castell farm is labelled "Path".
- 3.12 The entire route is depicted on the current Ordnance Survey map. The section to the north-west of Dan-y-Castell farm is labelled "Track".

Aerial Photographs.

- 3.13 Aerial photographs from 1945 onwards have been examined. As with the Ordnance Survey maps with the exception of the section in the south and the sections that are either partially obscured or totally obscured by trees the entire route is visible on aerial photographs for 1945, 2001, 2003, 2006, 2008, 2010 and 2014. It can be seen from the 1945 aerial photograph that the A465 Heads of the Valleys Road has not been constructed. The aerial photographs show the route following the claimed alignment.

Site Visits

- 3.14 Officers of the Council have walked the route and found it as described above.

The Claim.

- 3.15 The main claimant submitted the relevant certificates describing the route.

Other Evidence

- 3.16 In 1971 the Merthyr Tydfil County Borough Council Public Path Extinguishment Order Town and Country Planning Act 1968 section 95 The County Borough of Merthyr Tydfil (Industrial Estate No. 2 Site) Public Path Extinguishment Order 1971 was made. This Order was confirmed on 25th May 1971 and it extinguished a section of path that would have been an extension to this route. It does not describe the whole of the footpath which lead from Bryniau Road, Galon Uchaf towards Llyn Moelgoch wood.
- 3.17 In 1983 an application to divert the footpath was received, an Order to divert the footpath was subsequently made. This resulted in a Public Inquiry being held on 14th and 15th August 1984. The Inspector's decision was that the footpath be not diverted. The Secretary of State confirmed the Inspector's decision with a letter on 17th January 1985.
- 3.18 On 3rd April 1991 Castell Holdings Ltd wrote to the Council requesting that the same footpath be closed and diverted. Nothing came of this application.
- 3.19 In 1996 an Order was made by the Council following an application being received under s257 Town and Country Planning Act 1990. Objections were received to this Order. The Order was never confirmed.

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 Gurnos 10.

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.

Evidence of vehicular use of this claimed route has been submitted. It is officer's opinion that this was all private use, e.g. for delivery to farms, working on farms and farm-to-farm traffic.

Officers are of the opinion that equestrian use of this route was limited and was with the permission of the owner.

User and historic evidence demonstrate public use of this route as a footpath.

Officers therefore present this route as a footpath.

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. 21st March 1970 to 20th March 1990.

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 a highway, as there is insufficient evidence that there was no intention during that period to dedicate it.

During the relevant period for consideration the route has been available for public use.

4.4 The Line of the Route

The line of the route is clearly discernible on the ground.

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 adjoining landowners' comments and submissions above.

5.0 SUMMARY

5.1 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 way deemed to have been dedicated as a highway. There is insufficient evidence that there was no intention during that period not to dedicate it.

5.2 Officers have presented historic as well as user evidence for the existence of this route as a footpath.

5.3 Officers consider that the evidence above establishes the existence of the rights now claimed, i.e. over the relevant period and at all material times before it.

5.4 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.

5.5 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.

5.6 Officers therefore recommend that the footpath Gurnos 10, marked with a dashed line between Points A - B – C be recorded on the Definitive Map and Statement.

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.

8.0 HUMAN RIGHTS ACT

8.1 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.

8.2 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.

8.3 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.

8.4 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 GERAINT THOMAS
CABINET MEMBER REGENERATION
AND PUBLIC PROTECTION

| BACKGROUND PAPERS | | |
|--|-------------------------|--------------------------|
| Title of Document(s) | Document(s) Date | Document Location |
| Rights of Way | August 2017 | Unit 5 |
| Does the report contain any issue that may impact the Council's Constitution? | | No |