



## **RIGHTS OF WAY COMMITTEE**

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|----------------|---------------------------------|
| Date Written   | 1 <sup>st</sup> September 2017  |
| Report Author  | Geraint Morgan / Cheryl Jones   |
| Service Area   | Legal & Economic Regeneration   |
| Committee Date | 25 <sup>th</sup> September 2017 |

*To: Chair, Ladies and Gentlemen*

### **Gurnos 11**

#### **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- 2.1 Taking into account all the evidence which has been provided, including historical documents, Councillors are asked to confirm that: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 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 public right of way at Dan y Castell was received by Mid Glamorgan County Council on 20<sup>th</sup> 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, grid reference SO05420852, its junction with claimed public right of way Gurnos 10, and proceeds in a general south-easterly direction to Point B, grid reference

So05480846. It continues to Point C, grid reference SO05550847 where it terminates.

3.3 An Investigation Report was prepared and this was sent to interested parties on 4<sup>th</sup> August 2017.

3.4 Apart from the main claimant the local authority has found no evidence of use 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.

#### Ordnance Survey Maps

3.6 The route is not recorded on any Ordnance Survey map

#### Aerial Photographs

3.7 The route is not shown on any aerial photograph.

#### Site Visits

3.8 Officers of the Council have been unable to find the route on the ground.

#### The Claim

3.9 The main claimant submitted the relevant certificates describing the route.

### **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. 21<sup>st</sup> March 1970 to 20<sup>th</sup> March 1990.

Councillors will note from the Report before them that there is no evidence of use for the path.

#### 4.4 The Line of the Route

The line of the route is not discernible on the ground.

#### 4.5 Historical and Other Evidence

The route is not depicted on any cartographic sources.

The route is not depicted on any aerial photographs.

#### 4.6 User Evidence

Councillors will note that apart from the main claimant there is no user evidence.

### **5.0 SUMMARY**

5.1 Councillors will note from the Report before them that there is no evidence to warrant to justify the recording of a route.

### **6.0 FINANCIAL IMPLICATIONS**

6.1 There are none.

### **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**

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