



## **RIGHTS OF WAY COMMITTEE**

Date Written	3 <sup>rd</sup> November 2017
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Service Area	Legal & Economic Development
Committee Date	18 <sup>th</sup> December 2017

*To: Chair, Ladies and Gentlemen*

### **VAYNOR 43**

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

- 1.1 To determine an application to record a public right of way from Cefn Coed to Llwyn Onn reservoir under the Wildlife and Countryside Act 1981.

#### **2.0 RECOMMENDATION(S)**

- 2.1 Taking into consideration all of the evidence which has been provided, including historical documents, Councillors are asked to confirm that:

In respect of Vaynor 43

- (a) On the balance of probabilities there is sufficient evidence to support that the route marked with a bold black line between Points A- B – C - D - E on the plan, Vaynor 43, 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) above to approve the making of the Definitive Map Modification Order to show Vaynor 43 as a footpath.
- (c) To approve the confirmation 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objections or representations are made within the prescribed period or if any objections or representations so made are withdrawn.

- (d) If any objections or representations are made within the prescribed period and not subsequently withdrawn then to refer the relevant Order to the Planning Inspectorate for determination.

### **3.0 INTRODUCTION AND BACKGROUND**

- 3.1 A claim to record a public right of way from Cefn Coed to the Llwyn Onn reservoir was submitted to Merthyr Tydfil County Borough Council on 16<sup>th</sup> December 1990.
- 3.2 The County Borough is required by law to investigate the evidence and make a decision based on that evidence as to whether a public right of way exists, and if so its status. Section 53(3)(b) and (c) Wildlife and Countryside Act 1981 sets out the tests that need to be met when reaching a decision; also current case law needs to be applied.
- 3.3 An order will only be made if the evidence shows that: (a) a right of way “subsists” or is “reasonably alleged to subsist” or (b) “the expiration ... of any period such that the enjoyment by the public ... raises a presumption that the way has been dedicated as a public path”.
- 3.4 When considering evidence, if it is shown that a highway once existed then highway rights continue to exist (“once a highway, always a highway”) even if the route has since become disused or obstructed unless a legal order.
- 3.5 The legal background is to be found at Agenda Item 3.
- 3.6 Description of the Claimed

As depicted on the plan, Vaynor 43, the route commences at Point A on the plan, Vaynor 43, grid reference SO02840805 on the maintainable highway to the north-west of No. 1 Grawen Cottages and it proceeds in a general south-easterly direction to Point B, grid reference SO02880798. Here it changes to a general south-westerly direction and continues to Point C, grid reference SO02840795. Here it changes to a general north-westerly and continues to a footbridge over the River Taff at Point D, grid reference SO02690808. The surface is of natural earth. This section was presented to Rights of Way committee and is recorded on the Council’s Definitive Map and Statement.

It then continues through the Brecon Beacons National Park to the County boundary at Point E, grid reference SO02390865. This section was not determined by Committee as at that time there was an agreement in place which allowed the National Park to determine this section of the route. Since that date it has been decided between the Council and the National Park that claimed rights of way which fall within the Merthyr Tydfil County Council boundary but which also lie within the Brecon Beacons National Park boundary will fall to be determined by the local authority.

The section that lies further north of the county boundary will be determined by Rhondda Cynon Taff County Borough Council.

Councillors are therefore requested to note that the evidence presented in this report relates to the section of route which lies between Points A – E on the plan, Vaynor 43.

The main claimant (now deceased) submitted:

A correctly completed form (Application to modify the Definitive Map) together with 13 correctly completed evidence forms all claiming this route as a footpath.

Mr Bowen stated that he had used the route from the 1930s for recreation on a regular basis. His evidence covers the period from the 1930s to 1990. He said that there was a stile and a handgate on the route.-

Mr Hall said that he had used the route regularly for 34 years between May – September each year, approximately 10 times per year for leisure purposes and for checking out wildlife especially badgers, otters and kingfishers. His evidence covers the period between 1956 and 1990. He said that there was a stile and a gate but that the stile had broke years ago.

Mrs Bowen said that she had used the route for 40 years for walking and that she used the route frequently. Her evidence covers the period between 1950 and 1990. She said that there was a stile and 2 field gates.

Miss Bowen said that she had used the route for 30 years for walking and that she used the route frequently. Her evidence covers the period between 1960 and 1990. She said that there was a stile and 2 field gates.

Dr Bowen said that he had used the route for 60 years for walking and that he used the route on a weekly basis. His evidence covers the period between 1930 and 1990. He said that there was a stile and 2 field gates.

Mr Baynham said that he had used the route for 27 years for walking approximately 4 times per year. His evidence covers the period between 1963 and 1990. He said that there was a stile and a gate.

Mr Evans said that he had used the route for 65 years for walking on a frequent basis so that he could enjoy the countryside. His evidence covers the period between 1925 and 1990. He said that there was a stile and a gate.

Mrs Hall said that he had used the route for 50 years for walking about 3 times per year with her husband. Her evidence covers the period between 1940 and 1990. She said that there was a stile and a gate.

Mr Evans said that he had used the route for 36 years for walking on numerous occasions. He used the path to observe birds and to study flora. His evidence covers the period between 1954 and 1990. He said that there was a stile and a gate.

Mr Jones said that he had used the route for 35 years for walking approximately 3 – 4 times per year. He used the path to observe natural history. His evidence covers the period between 1955 and 1990. He said that there was a stile and a gate.

Mr Turner said that he had used the route for 50 years for walking on a weekly basis for leisure purposes. His evidence covers the period between 1940 and 1990. He said that there was a stile and a gate.

Mr Evans said that he had used the route for 49 years for walking on a weekly basis for leisure purposes. His evidence covers the period between 1941 and 1990. He said that there was a stile and a gate.

Mr Rees said that he had used the route for 40 years for walking on a regular basis to go fishing. His evidence covers the period between 1950 and 1990. He said that there was a stile and a gate.

Whilst it is acknowledged that many of the points mentioned by the applicants relate to the section that has already been determined the evidence is placed before councillors as it is relevant to the entire route

The route is described as part of the Taff Trail at page 86- 87 of the Taff Trail Official Guidebook by Jeff Vintner. The route is also depicted and described in the Taff Trail pamphlet.

### 3.7 Land Ownership

The main claimant (Kenneth Hall – now deceased) stated that he had notified the landowner.

### 3.8 Maps

Depiction of a route on a map is evidence of a track/path, but NOT of any public rights.

The section between point A and point B is depicted on the 1875 Ordnance Survey map. On the 1919 Ordnance Survey map the section between point A and point B is depicted as a track, the section between point B and point C is not depicted whilst the remainder of the route follows the line of a railway with the wording “footbridge” being marked at the crossing of the River Taff. On both the 1957 and 1978 Ordnance Survey maps the section between point A and point B is depicted as track, the section between point B and point C is not depicted whilst the remainder of the route is labelled “track”.

The remainder of the route is depicted on each of the aforementioned Ordnance Survey maps.

### 3.9 Aerial Photographs

With the exception of the sections which are obscured by trees the entire route is visible on aerial photographs from 2001, 2003, 2006, 2008 and 2010.

### 3.10 Site Visits

MTCBC officers have walked the route the route as described above.

### 3.11 Observations from landowners and other interested parties

An Investigation Report into this route was distributed to all interested parties in August 2015. No further comments were received.

The National Park Authority has been consulted and they have commented on 25<sup>th</sup> October 2017 as follows: "The National Park Authority has been maintaining the section between 302163,208859 and 302704,208080 as if it was a public footpath for many years. This section carries the Taff Trail (walking) route and we have undertaken signage, vegetation clearance, installed a footbridge (at 302398,208518) and maintained the footbridge at 302698,208087 which I understand was installed by Groundwork using public money. We are looking to undertake more work on this bridge. The Authority has used ROWIP funding to undertake a variety of projects on this part of the route over the past decade including replacing the signage. I am not aware that the landowner (Welsh Water) has ever prevented access nor do I have any evidence that signs have been erected in the route which were inconsistent with it being dedicated as a public right of way."

## **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 Vaynor 43.

### 4.2 Status

PRoW can be claimed as a Footpath, Bridleway, Restricted Byway or BOAT.

4.3 Officers must investigate the claim at the highest status substantiated by the evidence; the investigation could conclude that the route does not exist.

4.4 User and historic evidence demonstrate use of these routes and historic evidence exists that the routes are footpaths.

## **5.0 PERIOD OF USE TO BE CONSIDERED**

5.1 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. In this case Officers consider that it would be the period between the 17<sup>th</sup> December 1970 and 16<sup>th</sup> December 1990. User evidence exists for this period.

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

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

## **6.0 THE LINE OF THE ROUTE**

- 6.1 The route is discernible on the ground.

## **7.0 HISTORICAL AND OTHER EVIDENCE**

- 7.1 The routes have been depicted on a number of cartographic sources. Depiction of these routes on the various maps as described in the body of this Report indicates that the tracks/paths existed at that particular time; it is not indicative of public rights on the routes. It is, however, evidence of the existence of the track/path and the way in which these claimed route links with other routes.

## **8.0 USER EVIDENCE**

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

## **9.0 SUMMARY**

- 9.1 Councillors will note from the Report before them that the paths have been enjoyed by the public as of right and without interruption for a full period of twenty years and the ways deemed to have been dedicated as highways. There is insufficient evidence that there was no intention during that period not to dedicate them.
- 9.2 Officers have presented historic as well as user evidence for the existence of these routes.
- 9.3 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.
- 9.4 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 these routes.
- 9.5 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 routes. Orders to modify the Definitive Map and Statement could therefore be made under S 53 (3)(b) Wildlife and Countryside Act 1981.

- 9.6 Taking the above into account, Orders to modify the Definitive Map and Statement should therefore be made under S.53(3)(b) Wildlife and Countryside Act 1981. Officers are satisfied that the requirements of S.53 (3)(b) have been met and that the Public Rights of Way exist.
- 9.7 Officers therefore recommend that footpath shown between Points A – B – C – D – E on the attached plan be recorded on the Council’s Definitive Map and Statement.

**10.0 FINANCIAL IMPLICATIONS**

- 10.1 Officer’s time is involved in investigating the routes and writing the report. If Councillor’s determine that the public rights of way exist, there will be a financial implication in advertising the Orders and also for dealing with the Public Inquiry if an Order is made and there is an objection to it.
- 10.2 If an Order is confirmed, there will be a financial implication in that the routes 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.

**11.0 EQUALITY IMPACT ASSESSMENT**

- 11.1 An Equality Impact Assessment has been prepared for the purpose of this report and no negative effects have been identified at this stage.

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

**COUNCILLOR GERAINT THOMAS**  
**REGENERATION AND PUBLIC**  
**PROTECTION**

<b>BACKGROUND PAPERS</b>		
<b>Title of Document(s)</b>	<b>Document(s) Date</b>	<b>Document Location</b>
Vaynor 43	3 <sup>rd</sup> November 2017	Economic Development Unit 5
<b>Does the report contain any issue that may impact the Council’s Constitution?</b>		<b>no</b>