

## **RIGHTS OF WAY COMMITTEE**

Date Written	3 <sup>rd</sup> September 2018
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Service Area	Legal & Economic Development
Committee Date	22 October 2018

*To: Chair, Ladies and Gentlemen*

### **TOWN 8, 39 and 40**

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

- 1.1 To determine a route that runs from Cae Mari Dwn to Pantyffyn Road 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- 2.1 Taking into consideration all of the evidence which has been provided, including historical documents, Councillors are asked to confirm that: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 Town 40

- (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 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) above to approve the making of the Definitive Map Modification Order to show Town 40 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objections or representations are made within the prescribed period or if any objections or representations so made are withdrawn.
- (d) If any objections or representations are made within the prescribed period and not subsequently withdrawn then to refer the relevant Order to the Planning Inspectorate for determination.

In respect of Town 39

- (e) On the balance of probabilities there is sufficient evidence to support that the route marked with a bold black line between Points C - D 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.
- (f) On confirming (a) above to approve the making of the Definitive Map Modification Order to show Town 39 as a footpath.
- (g) 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objections or representations are made within the prescribed period or if any objections or representations so made are withdrawn.
- (h) If any objections or representations are made within the prescribed period and not subsequently withdrawn then to refer the relevant order to the Planning Inspectorate for determination.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 The route came to the attention of the Council as part of a rights of way survey in the 1970s.
- 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 Route

As depicted on the plan the route commences on the maintainable highway at Cae Mari Dwn at Point A, grid reference SO05450638 and proceeds in a general easterly direction to Pantyffyn Road, Point D, grid reference SO05740642. The section between Point A and Point B (the (Cae Mari Dwn end) has been built over for a considerable time. The section between Point B and Point C is already recorded on the Council’s Definitive Map and Statement as Town 8. The section between Point C

and Point D proceeds fairly steeply uphill and then between Vernon and Edwards Close two housing estates. The surface is predominantly natural.

The sections left for determination today are the sections between Point A and Point B (Town 40) and between Point C and Point D (Town 39).

### 3.7 Land Ownership

The two sections that remain for determination are in unknown ownership.

### 3.8 Maps

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

Sections of the route are depicted on Ordnance Survey maps for 1875, 1919, 1957, 1978 and the current.

The draft survey map of rights of way clearly shows the route as route 51. The accompanying schedule describes the route as point 51 as being *“F.P commences on Cae Mari Dwn and proceeds through farm on a generally easterly direction along a track partly covered by trees, then uphill between houses to terminate on Pantyffyn Road, Mountain Hare. Length 350 yards, width 5 foot”*

### 3.9 Aerial Photographs

Sections of the route not obscured by trees are visible on aerial photographs for 1945, 2001, 2003, 2006, 2010 and 2014.

### 3.10 Site Visits

MTCBC officers have walked the route. The section between Point A and Point B has become partially obstructed the remainder of the route is as described above.

### 3.11 The Route

No application in respect of this route has been received. The route forms part of a path that was identified in the rights of way survey of the mid 1970s. The section recorded as Town 8 has been on the Definitive Map and Statement for a considerable time. In the current Definitive map and Statement the route is described as *“commencing at G.R. SO 05500741 approximately 55 metres of Caemaridwn and proceeding in a south easterly direction for 25 metres to G. R. SO 05510639 thence in an easterly direction for 55 metres to G. R. SO 05560638 and finally in a north easterly direction for 65 metres to G. R. SO 05620641 a point approximately 120 west of Pantyffyn”*.

The section of path between Point B and Point C was diverted under s210 Town and Country Planning Act 1971 to its current alignment. No diversion or any order has ever been made to the section which runs between Point A and Point B or between Point C and Point D.

On 8<sup>th</sup> September 1977 the County Engineer wrote to Mr Howells of 51 Wallhead Road stating *"investigations carried out revealed that the route is considered to be a public right of way"*.

An internal memorandum of the same date states *"the story is that this person has denied access to an established right of way and that there are a lot of people ready to give statements that they have had uninterrupted use"*.

On 28<sup>th</sup> October 1977 a letter was received from Thomas W Lewis solicitors of 11 Church St, Merthyr Tydfil stating *"we thank you for your letter dated 21<sup>st</sup> October, the contents of which have been notified to our clients. As they believe that you would not make the statement if you did not have evidence that this access way has been freely used by the public since at least the 1940s, they are prepared to accept the position and will take down the obstruction. However, they point out that, apart from the damage they suffer from vandalism from this direction, horses and sheep frequently stray from your Council's adjoining land which, we believe is let off for grazing. They therefore enquire whether your Council will be prepared to construct a cattle grid, or erect a stile, at the spot in question"*.

On 19<sup>th</sup> August 1980 Mr & Mrs Brunsdon the then owner of the section between Point A and Point B wrote to the Council as follows *"you may recall some previous correspondence in relation to this matter about 2 years ago, when you stated that the matter of the footpath which crosses both your council's land (over the school site) and our land at Caemaridwn Farmhouse, where the footpath joins the public highway known as Caemaridwn, would be dealt with at the time of the building of the school.*

*This is of course now proceeding and, having had discussions with Miss S Nurse of the Architects Department, they advise me that from their own individual departments' point of view they see no objection to a suggestion I made that the path (for the final 30 yards or so for which it crosses our property) should be diverted on to a strip of land bordering the school site and the portion of the footpath over our property (the Farm) be closed.*

*I am therefore making this formal application to you, as the Highway Authorities for the area, for such a diversion order, presumably under S111 of the Highways Act 1959.*

*This diversion would be over land which mostly forms part of the school site but would also involve taking a strip of our land near the public highway and a piece of our land further back to achieve the necessary width and to allow for some "banking" on a sloping site. We are of course happy to release this land for this purpose.*

*There would also be of course extra cost to the authority in the form of fencing and so on, but we are prepared to contribute towards this by handing over to the County the garage at the front of our property (which they wish to buy and which is apparently worth approximately £350) at a nil valuation.*

*Although the reason we wish the path diverted is the amount of trouble we have so far experienced from vandalism with the few local children and the fears we have*

*that this will increase greatly once there are 600-700 extra children there daily at the school, we do feel that the diversion would also be beneficial both to the school and the general public using the path.*

*From the public's point of view a path maintained by the local authority would be in far better condition than the present one which is extremely uneven and badly drained, not to mention that people often have to thread their way through cars being repaired or taken to pieces (at the former barn, now used as a car repair garage) or past horses being groomed or exercised (there are four) and an extremely ill-tempered cockerel".*

In an internal memorandum of 5<sup>th</sup> September 1980 the County Engineer and Surveyor stated "*should Mr & Mrs Brunson still want the footpath diverted the new highway would have to be within their property and I would expect the new highway to be a footpath to a width of 1.5m and be of blended hardcore construction or similar approved, all at no expense to the County Council*".

There is no further correspondence in relation to this section of path on file.

Planning applications have however been received in respect of the section between Point A and Point B.

On 12<sup>th</sup> June 2006 the Rights of Way section wrote to a concerned resident in respect of the section between Point A and Point B "*as we have no legal powers in relation to sections of claimed path, it was not possible to place an enforceable condition on the planning applications for the claimed path to be accommodated, although the owners of Plot 5 and 6 have made provisions on their plans for the claimed route*".

On planning permission P/04/0612 there is an informative which states "*the section of the diverted Claimed right of way illustrated on the approved plans shall be protected at all times*".

On 19<sup>th</sup> January 1998 the then MP Ted Rowlands wrote to the Council requesting that the section between Point C and Point D be resurfaced and this was a much used path of convenience to the school and residents.

### 3.12 Observations from landowners and other interested parties

An Investigation Report into this route was distributed to all interested parties in May 2018. No comments were received.

## **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 routes known as Town 39 and Town 40.

#### 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 this route and historic evidence exists that the route is a footpath.

#### **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 9<sup>th</sup> September 1957 and 8<sup>th</sup> September 1977. The Council is satisfied that the path was being used at that time. The path still continues to be used.

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 USER EVIDENCE**

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

#### **8.0 SUMMARY**

8.1 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 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.

8.2 Officers have presented historic as well as user evidence for the existence of this route.

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

- 8.4 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.
- 8.5 It is concluded that on the balance of probabilities all the requirements of S. 31(1) and (2) Highways Act 1980 has 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.
- 8.6 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.
- 8.7 Officers therefore recommend that footpath shown between Points A – B and between C - D on the attached plan be recorded on the Council’s Definitive Map and Statement.

**9.0 FINANCIAL IMPLICATIONS**

- 9.1 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.
- 9.2 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.

**ELLIS COOPER**  
**CORPORATE DIRECTOR PLACE AND**  
**TRANSFORMATION**

**COUNCILLOR GERAINT THOMAS**  
**REGENERATION, PLANNING AND**  
**COUNTRYSIDE**

<b>BACKGROUND PAPERS</b>		
<b>Title of Document(s)</b>	<b>Document(s) Date</b>	<b>Document Location</b>
Town 39 and 40	3 <sup>rd</sup> September 2018	Economic Development Unit 5
<b>Does the report contain any issue that may impact the Council’s Constitution?</b>		<b>no</b>