

## **RIGHTS OF WAY COMMITTEE**

Date Written	31 <sup>st</sup> August 2018
Report Author	Geraint Morgan & Cheryl Jones
Service Area	Legal & Economic Development
Committee Date	22 October 2018

*To: Chair, Ladies and Gentlemen*

### **TOWN 25**

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

- 1.1 To determine an application to record a public right of way from Twynyrodyn Hill to Queens 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- 2.1 Taking into consideration all of the evidence which has been provided, including historical documents, Councillors are asked to confirm that: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 25

- (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, Town 25, 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 25 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objections or representations are made within the prescribed period or if any objections or representations so made are withdrawn.
- (d) If any objections or representations are made within the prescribed period and not subsequently withdrawn then to refer the relevant Order to the Planning Inspectorate for determination.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 Twynyrodyn Hill to Queens Road was submitted to the former Mid Glamorgan County Council Merthyr Tydfil County Borough Council on 7<sup>th</sup> February 1994. As successor authority to Mid Glamorgan it falls to this authority to determine the application.
- 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, Town 25, the route commences on the maintainable highway just off Queens Road at Point A on the plan, Town 25 , grid reference SO05460590 and proceeds along a predominantly natural surface in a general southerly direction to terminate on the maintainable highway at Gilfach Cynon, Twynyrodyn Hill at grid reference SO05460585.

#### 3.7 Land Ownership

The land over which the route runs is not registered at the Land Registry. Correspondence has however been received Messrs G Pritchard & Son in 1994 stating that to the best of its knowledge the land is owned by Court Estates. Correspondence from Messrs G Pritchard & Sons further states that the supposed owner of the land will strongly object to the route being recorded as a public right of way.

#### 3.8 Maps

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

The entire route is depicted on Ordnance Survey maps for 1919, 1957, 1978, 1998 and current.

### 3.9 Aerial Photographs

The entire route is obscured by trees on aerial photographs for 2001, 2003, 2006 and 2010. On the 2014 aerial photograph a section which is not obscured by trees is visible.

### 3.9 Site Visits

MTCBC officers have walked the route and it is as described above.

### 3.10 The Claim

The main claimant submitted:

A correctly completed form (Application to modify the Definitive Map) together with a map depicting the route.

Glesni Morgan stated that the path was a fairly well defined path and that she had used the path for 2 years on foot in order to get to Queens Road. Her use covers the period 1992 – 1994.

Gwyneira Pugh stated that the path was well defined and that she had used it for 58 years as a short cut between Queens Roads so that she could avoid the dangerous corner at the entrance to Queens Road. She stated that she had seen other people using the path, that she never got permission to use the route and that the path was overgrown but could well be used for safety sake. Her use covers the period 1935 – 1993.

Dorothy Perry stated that the route was passable and that she had used it for 63 years regularly to get to Queens Road and that the route was overgrown and that she never got permission to use the route. Her use covers the period 1930 – 1993.

Margaret Roberts stated that she had used the route for 51 years on foot to go to the parks and cut out a dangerous corner of the main road. She used the route 3 times per week. She stated that she had seen other people using the route until the pathway became overgrown and that she never got permission to use the route. She further stated that the route was not used now as its condition is too bad, that it could be an asset as a footpath if it were tidied up because of a very busy main road. Her use covers the period 1942 – 1993.

Helen Jones stated that she had used the route for 7 years and that she never got permission to use the route and that she was unable to use the pathway at the time of the claim as it was very neglected and overgrown, it would be a very useful route for myself and others which would enable us to reach our back gardens where no other access exists. Her period of use covers 1986 – 1993.

Rachel Mullins stated that she had used the path regularly for 55 years on foot to go to the family home and as a short cut to the park and school and that she never got

permission to use the route. She stated that she would use the path more often if it was cleared of hedges and overhanging trees. Her period of use covers the period 1938 – 1993.

Beryl and Virtue Jenkins (sisters) stated that they had used the route for over 40 years as a short cut, that the route was overgrown and that the route was being used as a dumping ground and that the route was in use when their mother was going to Twyn school. Their use covers the period 1953 -1993.

Barbara Deards stated that she had used the route for over 20 years until it became impassable and that she never got permission to use the route. She used the route as a short cut and that there were overhanging branches and rubbish dumped along it. Her period of use covers the period 1973 -1993.

Eileen Phillips stated that she had used the route for 51 years on foot to reach her maiden home and to avoid traffic. She stated that she had seen other people using the route and that she never got permission to use the route. She further stated that if the path was kept in its original condition it would take a lot of concern off residents and visitors because of the heavy traffic on the Twynyrodyn Hill and adjoining Queens Road. Her period of use covers the period 1942 – 1993.

Peter Jones stated that he had used the path for 58 years on foot regularly to travel to Queens Road and Brickfield Crescent. He stated that he had seen other people using the path on foot and that the hedges abutting the route were overgrown. His use covers the period 1935 – 1993.

Blodwen Clark stated that she had the path for 58 years on foot regularly to reach her home and to travel to the shops on Queens Road. She stated that she had seen other people using the route on foot and that she never got permission to use the route and that the route had always been a lane to the back entrance to her house. Her use covers the period 1935 – 1993.

Gwenda Pugh stated that she had used the route for over 50 years on foot frequently as an access to Queens Road avoiding the dangerous corner. She stated that she had seen other people using the route and that she had never sought permission. She further stated that the path would be an asset to the neighbourhood as a footpath to Queens Road avoiding the dangerous corner of Queens Road because of a lack of pavement. Her use covers the period 1943 – 1993.

### 3.11 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.

The supposed landowner (Court Estates) objects to the route being recorded as a public right of way. Letters were received from G Pritchard & Co on behalf of the landowner. On 7<sup>th</sup> February 1994 Messrs G Pritchard & Co wrote a letter stating *“to the best of my knowledge owned by Court Estates, of Maendy, Cowbridge ... I would particularly wish to object. To the claim, by any residents of Twynyrodyn that*

*they have had or enjoyed any rights of way over the whole of the land ... To my own personal knowledge, I can confirm that whilst part of this land adjacent to the properties may have been used as access to those properties they have never enjoyed full access over the land ... I had particular reason to make inspection three weeks ago on this site and noted that there has been some attempt, presumed by adjoining owners who I believe are also endeavouring to claim land outside their ownership, to create a right of way over part of the land shown ... I am also aware from my involvement with the surrounding area, and adjoining owners that this exercise of right is very recent, and has not been used for at least 20 years, prior to this recent attempt.*

*On 8th July 1996 a further letter was received from Messrs G Pritchard & Co stating that the owner of Court Estates still objected to the claimed right of way.*

*On 12th July 1996 a further letter was received stating that a sign would be erected indicating that the land was private and that "trespassers will be prosecuted".*

No further communication has been received and no response was received to the Investigation Report. There is no evidence of any sign on site.

#### **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 Town 25.

##### 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 routes 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 8<sup>th</sup> February 1974 and 7<sup>th</sup> February 1994. 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 or 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 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 25	31 <sup>st</sup> August 2018	Economic Development Unit 5
<b>Does the report contain any issue that may impact the Council's Constitution?</b>		<b>no</b>