

## **RIGHTS OF WAY COMMITTEE**

Date Written	29 <sup>th</sup> October 2018
Report Author	Geraint Morgan & Cheryl Jones
Service Area	Legal & Economic Development
Committee Date	10 <sup>th</sup> June 2019

*To: Chair, Ladies and Gentlemen*

### **GURNOS 14 & Gurnos 17**

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

1.1 To determine applications to record public rights of way from the maintainable highway close to the Brecon Mountain Railway to the junction with Public Right of Way Gurnos 15 and claimed right of way Gurnos 12 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2.1 Taking into consideration all of the evidence which has been provided, including historical documents, Councillors are asked to confirm that: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 Gurnos 14

- (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 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 Gurnos 14 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objections or representations are made within the prescribed period or if any objections or representations so made are withdrawn.

- (d) If any objections or representations are made within the prescribed period and not subsequently withdrawn then to refer the relevant Order to the Planning Inspectorate for determination.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 Gurnos 17

- (a) 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 Two claims to record public rights of way were submitted to Merthyr Tydfil County Borough Council on 20<sup>th</sup> March 1990. These claims have been investigated together.
- 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 Claims**

As depicted on the plan Gurnos 14 commences at Point C, grid reference SO05070988, its junction with claimed right of way Gurnos 12 and it proceeds in a general north-easterly direction to its junction with claimed right of way Gurnos 17, Point B, grid reference SO05220996. It then continues in a general east-south-easterly direction to terminate at a gate adjacent to the maintainable highway at Point D, grid reference SO05890975.

As depicted on the plan Gurnos 17 commences at Point A, grid reference SO048901000, its junction with Public Right of Way Gurnos 15 and it proceeds steeply up steps in a general easterly direction along a natural surface to terminate at Point B, its junction with claimed right of way Gurnos 14.

The main claimant submitted:

A correctly completed form (Application to modify the Definitive Map).

As mentioned the Council has looked at both these claims at the same time. The Council is satisfied that the section of Gurnos 14 between Point B and Point D is a widely used route as can be seen on the ground; it is not satisfied that the section between Point C and Point B is widely used (in fact it would be impossible to use this section at it would require abseiling down steep rock) .The Council is satisfied that this Gurnos 17 is a widely used route as can be seen on the ground.

### 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.

Gurnos 14. A section of the route is labelled “track” and a section is labelled “F.P.” on a 1957 Ordnance Survey map. On a 1978 Ordnance Survey map the entire route is depicted; a section is labelled “track”. On the current Ordnance Survey map the section between Point C and Point B is not depicted

Gurnos 17 is not depicted on any Ordnance Survey map.

### 3.9 Aerial Photographs

With respect Gurnos 14 with the exception of the section just before the quarry face (i.e. Point C – B) the entire route is visible on aerial photographs for 2001, 2003, 2006, 2008, 2010 and 2014

With respect Gurnos 17 the section of the route not obscured by trees is visible on aerial photographs for 2001, 2003, 2006, 2008, 2010 and 2014.

### 3.10 Site Visits

MTCBC officers have walked the routes and found them as described above.

### 3.11 Observations from landowners and other interested parties

Investigation Reports into these routes were distributed to all interested parties in September 2018. No comments were received.

## **4.0 ASSESSMENT**

4.1 This assessment is to assist Councillors in determining the application before them today; application to modify the Definitive Map and Statement by recording the routes known as Gurnos 14 and Gurnos 17.

## 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 21<sup>st</sup> March 1970 and 20<sup>th</sup> March 1990. The Council is satisfied that the route depicted on the plan between Point A to Point B to Point D was being used at that time and still continues to be used. This should be recorded as Gurnos 14. The Council is not satisfied that the route depicted on the plan between Point C to Point B was being used at that time and should not be recorded.

5.2 Councillors will note from the report before them that the route between Point A – B - D (as described) 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.

5.4 Councillors will note from the report before them that the route between Point C – B (as described) has not been enjoyed by the public as of right and without interruption for a full period of twenty years and the way is not deemed to have been dedicated as highway.

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

6.1 The route between Point A – B – D is discernible on the ground. The route between Point C – B is not 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 route between Point A – B – D 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.

- 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 rights 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 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.
- 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 Right of Way exists.
- 8.7 Officers therefore recommend that footpath shown between Points A – B – D on the attached plan be recorded on the Council's Definitive Map and Statement.
- 8.8 Councillors will note from the Report before them that the route between Point C – B has not been enjoyed by the public as of right and without interruption for a full period of twenty years and the way has not been deemed to have been dedicated as a highway. There is insufficient evidence that there was an intention during that period to dedicate it.

## **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 Order 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  
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>
Gurnos 18	25 <sup>th</sup> June 2018	Economic Development Unit 5
<b>Does the report contain any issue that may impact the Council's Constitution?</b>		<b>no</b>