

## **RIGHTS OF WAY COMMITTEE**

Date Written	7 <sup>th</sup> January 2019
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 16**

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

- 1.1 To determine an application to record a public right of way from Sanatorium Hill to its junction with Public Right of Way Gurnos 15 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- 2.1 Taking into consideration all of the evidence which has been provided, including historical documents, Councillors are asked to confirm that: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 16

- (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, Gurnos 16, 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 16 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objections or representations are made within the prescribed period or if any objections or representations so made are withdrawn.

- (d) If any objections or representations are made within the prescribed period and not subsequently withdrawn then to refer the relevant Order to the Planning Inspectorate for determination.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 Sanatorium Hill to its junction with Public Right of Way Gurnos 15 was submitted to Merthyr Tydfil County Borough Council on 20<sup>th</sup> March 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, Gurnos 16, the route commences on the maintainable highway at Point A on the plan, Gurnos 16, grid reference SO04530974 and proceeds along a natural surface initially through an open area in a general easterly direction to terminate at its junction with Public Right of Way footpath Gurnos 15, grid reference SO04620961

The main claimant submitted:

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

The Council is satisfied that this 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. The land is owned by the Trustees of the Plymouth Estate.

### 3.8 Maps

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

The route is depicted on an Ordnance Survey map from 1957 and it is labelled "F.P".

### 3.9 Aerial Photographs

Sections of the route are visible on aerial photographs from 2001, 2003, 2006, 2008, 2010 and 2014.

### 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 December 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 route known as Gurnos 16.

### 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 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 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 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>
Gurnos 15	7 <sup>th</sup> January 2019	Economic Development Unit 5
<b>Does the report contain any issue that may impact the Council’s Constitution?</b>		<b>no</b>