

## **RIGHTS OF WAY COMMITTEE**

Date Written	12 <sup>th</sup> January 2021
Report Author	Cheryl Jones / Geraint Morgan
Service Area	Economic Development / Legal
Committee Date	10 <sup>th</sup> February 2021

To: Chair, Ladies and Gentlemen

### **TOWN 8**

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

- 1.1 Concerns have been raised in relation to the Health & safety of staff and pupils at Cyfarthfa High School and a contributory factor to this is the existence of the Public Right of Way that runs through the school grounds. Consideration of this has led officers to the conclusion that the route known as Town 8 should be extinguished.

#### **2.0 RECOMMENDATIONS that**

- 2.1 Councillors approve the making of the Extinguishment Order made under Section 118B of the Highways Act 1980.
- 2.2 To approve the confirmation of the Extinguishment Order made as a result of 2.1 above provided no objections or representations are made within the prescribed period or if any objections or representations so made are withdrawn.
- 2.3 If any objections or representations are made within the prescribed period and not subsequently withdrawn then to refer the relevant Order to the Planning Inspectorate for determination.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 Town 8 is recorded on the Definitive Map and Statement for Merthyr Tydfil County Borough Council as follows “Town 8 commencing at G.R. SO05500641

*approximately 55 metres east of Caemaridwn and proceeding in a south easterly direction for 25 metres to G.R. SO05510639 then in an easterly direction for 55 metres to G.R. SO05560638 and finally in a north easterly direction for 65 metres to G.R. SO05620641 a point approximately 120 metres west of Pantyffyn”.*

- 3.2 Town 8 can only be accessed via a path that runs between Vernon Close and Edwards Place. A Definitive Map Modification Order to record this route was made in 2018, however an objection was received and the matter was referred to the Planning Inspectorate for determination. The Planning Inspectorate did not confirm the order so this path has no legal status. Technically, it is also possible to access Town 8 via Summerhill Place; this would be by using the path recorded as Town 40 on the Definitive Map and Statement. This path is obstructed. To all intents and purposes Town 8 and Town 40 form a cul-de-sac.
- 3.3 Concerns were raised in relation to health and safety issues at the School and one of the issues raised was relating to the public right of way running through the school grounds. This led to a letter being received from the Chair of Governors outlining their concerns which reads as follows:

**1. *The right of Way in Question.***

*Reference is made to the document prepared for the “Town 39 Definitive Map Modification Order”. Appendix 2, of that document, is a plan, which shows a right of way that runs through the grounds of Cyfarthfa High School. On that plan, it is marked by a broken red line and labelled 108/8. This right of way is recorded on the Council’s Definitive Map and Statement as “town 8”. It is this right of way that is the subject matter of this email.*

*The complete right of way, (of which 108/8 forms part), at one time ran from the rear of Vernon Close, to Summerhill Place. Now right of way 108/8 terminates in a dead end, as the section, that originally ran from the boundary of the school grounds, to Summerhill Place, was built over many years ago. The school is unaware of any steps being taken by the Local Authority, to remove these buildings and restore the right of way. The section, that has been built over, is marked by a solid blue line and labelled 108/40X on the plan at appendix 2 of the document referred to above.*

*The building over of part of the right of way and its termination in a dead end, greatly reduce the benefit that any local resident can derive from its continued existence. The only purpose that the right can be used for is to gain access to the school grounds. The present state, of parts of this pathway can be seen at appendix 7, of the above document.*

**2. *Reasons for Concern.***

*The right of way in question runs right through the school grounds. This is the central point, the crux and the focus of the matter. To the North of the right of way are the main school grounds and buildings. To the South is a sports pitch with an all-weather surface and a second area with a tarmac surface, which is the school’s fire assembly point. To mitigate the dangers created by a right of way running the school grounds the pathway has railings running on both sides of it. This can also be seen from the photographs at appendix 7. As the right of way runs through the school grounds and cuts them in two it has been necessary to place gates in the fencing to allow pupils and staff to move from one side of the pathway to the other. During the school day*

*these gates are left open, as the grounds across the pathway from the main school buildings are in constant use. It is in use, not only for lessons but also for general recreational use by the pupils. It is a particularly valuable recreational facility during the Autumn and Winter months due to the all-weather surface.*

*Any person or persons with an ill intent could quite easily gain access to the school grounds and buildings via this right of way. A determined individual could quite easily climb over the fence in the event of the gates being closed and locked.*

*Consideration of the route marked 108/8 as referred to above, will illustrate how close this right of way runs, to the main school buildings. The School Governors and the Headmaster have been concerned about the dangers associated with this right of way for some time. These concerns have recently been brought into sharp focus by the production of two reports.*

*i). Report of Mr Mike Brook.*

*Mr Brook is a Counter Terrorism Security Adviser with the Wales Extremism and Counter Terrorism Unit. In his recent report, Mr Brook referred to the vulnerability of the school site and specifically states that;*

*“...my intentions during the visit was to consider security from a terrorist and extremist view and not purely crime reduction. But as mentioned during my visit good security designed to reduce the risk from terrorism is also good crime reduction activity”.*

*“A perimeter is the first line of defence to any building. It will not only delay unauthorised entry until a response can be deployed but it will deter any would be attacker as it shows that the venue has been target hardened and there is security minded management in regards to those attending the venue”.*

*“In respect of invacuation and lockdown the aim is to protect pupils and staff from dangerous dogs/animals in the school precincts, disruptive students/parents/visitors, dangerous incidents in the vicinity of the school and terrorism”.*

*The existence of a public right of way running through the school grounds runs counter to all attempts to increase the security and safety of the school site.*

*A particular concern is the fear that an evacuation or invacuation of the school site becomes necessary when a considerable number of pupils and staff are using the all-weather area. Would it be better to close the gates or open the gates? Taking the wrong option could have very unfortunate consequences.*

*Mr Brook’s report recommended that a review of the boundary of the school site be undertaken and detailed recommendations made. It would appear necessary to include the existence of this right of way and the potential dangers caused by it in any such review.*

*ii). Health and safety Audit Summary Report.*

*This report was compiled as a result of a visit to the school, on the 2nd December 2019 by a number of senior officers of the Merthyr Borough Council.*

*The report recommended carrying out risk assessments of, inter alia traffic movement on the premises (both pedestrian and vehicular) and site security. It is the view of the governing body that any such risk assessments would highlight the*

*potential risks to the safety of the staff and students caused by the existence of a right of way running across the school site.*

*The report contained a section dealing with the “public footpath between premises and playing fields” and went on to state: “The school has highlighted concerns over a public footpath that runs between the rear of the school kitchen area and the fire assembly point and astro-turf pitch”.*

*The report referred to the desire of the school to have the footpath extinguished or diverted. The rights of way officer who was present for part of the visit, expressed the opinion that the statutory criteria necessary for such an extinguishment or diversion did not exist. As will be seen from this document, we respectfully disagree.*

### **3. The Statutory Provisions.**

#### *i). Highways Act 1980 Sec. 118B(1)(b)*

*This section applies where it appears to a council that a highway, which runs across school grounds should be stopped up if it is expedient to do so to protect staff and pupils from violence or the threat of violence.*

*It is important to note that the threat of violence is sufficient for the section to become operative. It is not necessary for an incident to occur before steps can be taken. The section allows steps to be taken to prevent any unfortunate occurrence before it takes place. This is particularly important in the context of the report prepared by Mr Brook from the Wales Extremism and Counter Terrorism Unit. The existence of this right of way must make the school more vulnerable should any terrorist incident take place.*

#### *ii). Highways Act 1980 Sec. 118B(8)*

*This section, requires a council to be satisfied that the making of a stopping up order is expedient and to have regard to all of the circumstances before taking steps to stop up a right of way and in particular to have regard to:*

*a) Any other measures that have been or could be taken for improving or maintaining the security of the school.*

*As can be seen from the photographs in appendix 7 of the document referred to above, there is a fence that runs along both sides of the pathway as it crosses the school grounds. Unfortunately, a determined individual would have little difficulty in climbing over this fence. To enable staff and pupils to pass from one side of the fenced pathway to the other there is a gate. This gate is left unlocked during the hours when the school is open, this is because the area is in constant use both for lessons and recreationally. Moreover, the school fire assembly point is across the path and fence from the main school buildings. If the gate was closed except for lessons then the school would lose a valuable all weather facility that is extensively used.*

*b) Whether it is likely that the coming of into operation of the order will result in a substantial improvement in that security.*

*The removal of the right of way will create a perimeter around the school that can be much better observed and strengthened to help prevent any unwanted and unwarranted intrusions.*

c) *The availability of a reasonably convenient alternative route.*

*The right of way originally formed part of a longer route that ran from Pantyffyn Road, which is to the East of the school to Summerhill Place, which is to the West of the school. On the plan at appendix 2, to the documentation prepared in relation to the "Town 39 Definitive Map Modification Order", this original route is indicated by 3 separate sections;*

i) *By a brown broken line, marked 108/39X.*

ii) *By a red broken line marked 108/8.*

iii) *By a solid blue line marked 108/40X*

*The route marked 108/40X was built over many years ago and can no longer be used as a right of way, or indeed a path of any kind. There are now a number of substantial dwellings houses built over its path. These houses were built some time ago.*

*The right of way in question, that marked by a broken red line and labelled 108/8, does not allow any user to do anything than walk along the path until the point where it is built over, turn around and retrace their steps. The only exception to this is that the path can give access to the school ground either by using the gate or climbing over the fence.*

*In the circumstances there seems little to be gained from an alternative route when the original concludes in a dead end. There are however, two alternatives to the original route that ran from Pantffyn Road to Summerhill Place. They are routes 108/26 and 108/9, on the plan referred to above. Both are longer routes for someone wishing to walk from Pantffyn Road to Summerhill Place than the original path joining these two points. They are both of more value as it is no longer possible to access Summerhill Place along the original route of the right of way in dispute.*

d) *The effect which the extinguishment of the right of way would have on the properties served by the right of way.*

*This is dealt with by Section 28 of the Highways Act 1980.*

iii). *Highways Act 1980 sec. 28(1).*

*This subsection deals with possible claims for compensation by those owners of land who are affected by the stopping up of the right of way. It has two limbs;*

*Firstly, an owner of land will be entitled to compensation if it can be shown that the value of their property has depreciated as a consequence of any stopping up order. In this case there can be no depreciation in value as the right of way terminates in a dead end and there are far better alternative routes.*

*Secondly, an owner of land will be entitled to compensation if it can be shown that damage has been suffered to their enjoyment of their land by the stopping up of the right of way. There can be disturbance to a property owner's enjoyment of their property for exactly the same reasons as set out above.*

iv). *Highways Act 1980 sec 28(4).*

*This subsection makes clear that there is no entitlement to compensation unless the stopping up, is “actionable at his suit”. The statute creates no new entitlement to compensation. There is only an entitlement to compensation under the statute in those circumstances where a court of law would award damages. Such circumstances do not exist in this case.*

#### **4. The Present Position.**

*The School have made their concerns known to the local authority. There has been correspondence discussions and meetings.*

*A letter was received dated the 6th December 2019, which stated inter alia, that the appropriate criteria are not met the school would have to pay an application fee of £3206.50 and that the school would have to sign an agreement to pay any compensation.*

*With the utmost respect and as can be seen from the above, the school strongly disagrees with the view that the appropriate criteria have not been met. Quite clearly they have. The school would have to pay any compensation that it was ordered to pay but again, as set out above, the requirements for there to be an entitlement to compensation do not exist in this case. The school has not seen the basis for requesting an application fee. Section 118B of the Highways Act, states, “This section applies when it appears to a Council”. There is no reference to a separate applicant.*

*A further email was received on the 23rd April, in which the school was asked to provide details for a suitable diversion of the route and if not why not. To repeat there cannot be a diversion of a route that terminates in a dead end. In addition, there are already in existence much better alternative routes.*

#### **5. Conclusion.**

*The school formally requests that the Merthyr Tydfil Borough Council exercise the statutory power given to it, by The Highways Act 1980 Section 118B, to stop up the right of way, marked by a broken red line and labelled 108/8, at appendix 2 to the documentation, produced in support of the Town 39 Definitive Map Modification Order.*

*The school is concerned about the potential danger created by the right of way and is mindful of section 75 of the Education Act 2010.*

*Gareth Morgan  
Consultant  
Industrial Disease*

3.4 A further letter was received on the 17<sup>th</sup> July 2020 from the Chair of Governors.

*We thank you for your letter of the 3<sup>rd</sup> June, regarding the above. As you are aware, the school Governors’ are extremely concerned about the existence of the right of way that runs through the school ground and is now under consideration.*

*That concern is due to the dangers that the right of way could create for pupils and staff alike. The Governors’ concerns were set out in a letter dated 29<sup>th</sup> May 2020 and addressed to Sue Walker. A copy of that letter is attached.*

*In addition, on the 2<sup>nd</sup> July 2020 an inspector appointed by Welsh Ministers published a decision reference ROW/3239935. The inspector did not confirm an order made by Merthyr Tydfil County Borough Council made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. The Order that was not confirmed was the Town 39 Definitive Map Modification Order 2018.*

*The route, the subject matter of the Inspectors decision, is marked 108/39x on the plan at appendix 2 to the documents prepared for the Town 39 Definitive Map Modification Order. The result of this decision is that there is now no access to the route, marked 108/8 on the plan referred to above. Moreover, the route marked 108/40x cannot be used, as it has been built over. The consequences is that the current right of way, 108/8, is now marooned, there being no rights of access or egress.*

*We are of the view, that the present circumstances justify the stopping up of the right of way 108/8, on the plan referred to above, on the additional ground of Section 118 Highways Act 1980. This in addition to the grounds set out in section 118B. Section 118, allows the stopping up of a footpath when it appears that it would be expedient to do so, on the grounds that it is not needed for public use being without access or egress.*

- 3.5 On the 30<sup>th</sup> June 2020 the Rights of Way Department initiated a consultation process into extinguishing the path known as Town 8.

The criteria to extinguish the path under health & safety grounds is to be found under section 118B Highways Act 1980 which relates to the stopping up of certain highways for purposes of crime prevention, etc.

- 3.6 Section 118B Highways Act 1980 states:

1. This section applies where it appears to a council:-
  - (a) that as respects any relevant highway for which they are the highway authority and which is an area designated by the Secretary of State by order for the purposes of this section, the conditions in subsection (3) below are satisfied and it is expedient, for the purpose of preventing or reducing crime which could otherwise disrupt the life of the community that the highway should be stopped up, or
  - (b) as respects any relevant highway for which they are the highway authority and which crosses land occupied for the purpose of a school, it is expedient for the purpose of protecting the pupils or staff from
    - (i) violence, or the threat of violence.
    - (ii) harassment.
    - (iii) alarm or distress arising from unlawful activity, or
    - (iv) any other risk to their health or safety arising from such activity, that the highway should be stopped up.
2. In subsection (1) above 'relevant highway' means
  - (a) any footpath, bridleway or restricted byway.
  - (b) any highway which is shown in a definitive map and statement as a footpath, a bridleway, or a restricted byway, but over which the public have a right of way for vehicular and all other kinds of traffic, or

- (c) any highway which is shown in a definitive map and statement as a byway open to all traffic, but does not include a highway that is a trunk road or a special road.
- 3. The conditions referred to in subsection (1)(a) above are:
  - (a) that premises adjoining or adjacent to the highway are affected by high levels of crime, and
  - (b) that the existence of the highway is facilitating the persistent commission of criminal offences.

It further states section 8 that:

The Secretary of state shall not confirm a special extinguishment order made by virtue of subsection (1)(b) above, and a council shall not confirm such an order as an unopposed order unless he or, as the case may be, they are satisfied that the stopping up of the highway is expedient as mentioned in subsection (1) (b) above and that it is expedient to confirm the order having regard to all the circumstances, and in particular to-

- (a) any other measures that have been or could be taken for improving or maintaining the security of the school
- (b) whether it is likely that the coming into operation of the order will result in a substantial improvement in that security,
- (c) the availability of a reasonably convenient alternative route, or if no reasonably convenient alternative route is available, whether it would be reasonable practicable to divert the highway under section 119B below rather than stopping it up.
- (d) the effect which the extinguishment of the right of way would have as respects land served by the highway, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121 (2) below.

#### **4.0 CONSIDERATION OF STATUTORY CRITERIA AND INFORMATION SUPPLIED**

- 4.1 Having considered the statutory criteria as laid out in Section 118B Highways Act 1980 the Council is satisfied that it would be expedient to make the order following the comments received from Mr Mike Brooks which read as follows:-

*“The existence of a public right of way running, through the school grounds, runs through counter to all attempts, to increase the security and safety of the school site. A particular concern is the fear that an evacuation or invacuation, of the school site becomes necessary when a considerable number of pupils and staff are using the all-weather area. Would it be better to close the gates or open the gates? Taking the wrong option could have very unfortunate consequences.*

*Mr Brooks’ report recommended that a view of the boundary of the school site be undertaken and detailed recommendations made. It would appear necessary to include the existence of this right of way and the potential dangers caused by it, in any such review.”*

- 4.2 It is considered that an order would protect pupils and staff from the following:

- (i) violence, or the threat of violence



- (ii) harassment
- (iii) alarm or distress arising from unlawful activity, or
- (iv) any other risk to their health or safety arising from such activity, that the highway should be stopped up.

4.3 Having considered that it is expedient to make the order the Council must then consider whether it would be expedient to confirm the order taking into consideration all the circumstances and in particular the matters set out within section 118B (8) Highways act 1980. Looking at each of those matters individually:

- (a) Any other measures that have been or could be taken for improving or maintaining the security of the school, the gates need to be left open during school hours for security purposes.
- (b) The school will be more secured.
- (c) Consideration has been given to an alternative route, which would mean that the route would run past a primary school and that brings into account all the above reasons for extinguishing the route next to a high school. No suitable alternative route exists.
- (d) The school is located on council property and it is considered that no compensation would be awarded.

4.4 Having considered all the relevant criteria and the circumstances pertinent to this case officers are of the opinion that should no objection to the order be received that it would be expedient to confirm the order.

**ALYN OWEN**  
**DEPUTY CHIEF EXECUTIVE**

**COUNCILLOR GERAINT THOMAS**  
**CABINET MEMBER FOR**  
**REGENERATION AND PUBLIC**  
**PROTECTION**

<b>BACKGROUND PAPERS</b>		
<b>Title of Document(s)</b>	<b>Document(s) Date</b>	<b>Document Location</b>
2021 Rights of way report	2020 – ongoing	Unit 5 / Civic Centre
<b>Does the report contain any issue that may impact the Council's Constitution?</b>		<b>No</b>