

## RIGHTS OF WAY COMMITTEE - 25TH JULY 2005

**SUBJECT: APPLICATION FOR A MODIFICATION ORDER TO AMEND THE DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY FOR THE COUNTY OF MONMOUTHSHIRE IN RESPECT OF ADDING A PATH FROM LLANERCH LANE TO PRINCE ANDREW ROAD, TRINANT, IN THE COMMUNITY OF ABERCARN**

**REPORT BY: DIRECTOR OF THE ENVIRONMENT**

---

### 1. PURPOSE OF REPORT

1.1 To consider and determine an application to add a path to the definitive map and statement.

### 2. SUMMARY

2.1 Evidence is presented in support of an application to claim a right of way from Prince Andrew Road to Llanerch Lane, Trinant.

### 3. LINKS TO STRATEGY

3.1 There is a duty to maintain the Definitive Map and Statement.

3.2 The Authority has a number of "cross cutting" objectives which include sustainability, health promotion, social inclusion, equal opportunities (as an employer and in service delivery) and e-government. Officers should seek to ensure that all proposals are in keeping with these wider objectives and reports should, wherever possible, make clear how this would be achieved.

### 4. THE REPORT

#### 4.1 Background

- i) As Members are aware this Committee has delegated powers to determine applications for Definitive Map Modification Orders under Section 53 of the Wildlife and Countryside Act 1981. This report relates to an application to ADD a path to the definitive map and statement.
- ii) The term "public rights of way" is used to mean paths, tracks and unmetalled roads over which the public have the right to walk and in some cases ride horses and possibly drive motor vehicles.

These may be classified as follows:-

A **footpath**: over which the right of way is on foot only.

- A **bridleway**: over which there is a right of way on foot and on horseback or leading a horse, and also for the use of a pedal cycle.
- A **byway open to all traffic**: this means a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used.
- iii) The Wildlife and Countryside Act 1981 places a duty on the County Borough Council to keep the existing definitive map under continuous review, make Modification Orders as necessary to take account of the occurrence of events requiring the map to be modified and to prepare definitive maps for any part of the area not previously surveyed.
  - iv) The definitive map and statement will be modified by means of Orders made by the surveying authority i.e. the County Borough Council. The Wildlife and Countryside Act enables any person to apply to the surveying authority for an order to amend the definitive map.
  - v) The procedure for making such an application is detailed in Schedule 14 of the Wildlife and Countryside Act. The application before you has been compiled to these requirements. The said procedures are referred to in the report.
  - vi) When determining the application before you, members will be acting in a quasi-judicial capacity. Before making an order, members must be satisfied that the evidence shows, **on the balance of probabilities**, that a right of way of a particular description exists. Each application must be dealt with on its own merits, noting the interests of both the applicants and the landowners.
  - vii) The application before you is concerned with rights that are alleged to already exist and not as to whether it would be prudent or beneficial to create them. The suitability of a way for users who have a right to use it, for example the nuisance that they are alleged to cause are not factors that should be considered by the Committee. **Members are also required to view the route of the right of way in question.**
  - viii) When considering the evidence that follows, members must be aware of the provisions of Section 31 of the Highways Act 1980 thus enabling members to determine whether there is sufficient weight of evidence to make an order.

Section 31 of the Highways Act states:-

"where a way over any land other than a way of such a character that use of it by the public could not be given rise at common law to any presumption of dedication, has been actually enjoyed by the public as a right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated a highway unless there is sufficient evidence that there was no intention during that period to dedicate it."

If in the case before you members are satisfied that the right of way has been used for a period in excess of 20 years, then there arises a presumption that the owner intended to dedicate the path as a right of way. It should be noted by members that the said 20 year period must be calculated retrospectively from the date when the way was first called into question.

- ix) If following the site visit the Committee decides to make an Order, then once this decision has been reached the County Borough Council has to give notice of its general effect. Following members' decision there is a right of appeal to the National Assembly for Wales. A period of at least 42 days from the date of first publication of the notice must be allowed for objections.

If there are any valid objections the County Borough Council has to refer the Order, together with the objections to the National Assembly for Wales who will then arrange for the Order and the objections to be considered by an independent Inspector. If no valid objections are made within the said objection period then the County Borough Council may confirm the order itself as an unopposed Order.

### **Wildlife and Countryside Act 1981 Section 53(3)(c)(i)**

#### **Claimed Right of Way (footpath) leading from Llanerch Lane in a northerly direction to Prince Andrew Road, Trinant, in the Community of Abercarn.**

#### **4.2 Introduction**

- 4.2.1 An application (W.C.A.5)(Document No.1) has been received under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 from Mrs. G. Teague to Modify the 1971 Definitive Map and Statement of the County of Monmouthshire Council by ADDING a footpath from the side of No. 29 Prince Andrew Road (ST 20884 00236) leading in a southerly direction to Llanerch Lane, Trinant (ST 20832 99946). Document No.3 illustrates the location of the claimed route within the black circle. The route of the claimed path can be located in Document No.2 shown by a bold broken black line identified between Points A & B. The application W.C.A.5 (Document No.1) was received on the 24th April 2003.
- 4.2.2 The claimant has confirmed that she has served notice (W.C.A.7 Document No.4) on the landowners, Caerphilly County Borough Council and Mr. S. Walker.
- 4.2.3 The Claimed Right of Way commences at SO 20884 00236 (Point A) on the plan (Document No.2) along the side of No. 29 Prince Andrew Road. It proceeds in a southerly direction on a 6ft tarmac path next to No.29 Prince Andrew Road, then changes to a south-westerly direction as it crosses FP72 Abercarn and continues in a south westerly direction until it reaches the gravel track around the sports field. It continues in a southwesterly direction and follows a 9' wide gravel track before turning in front of the pavilion continuing in a southeasterly direction, when the surface changes to 4' paving slabs. The route continues over a grass surface and in a southerly direction to a small gateway (which has now been replaced by fencing by Mr. Walker) and meanders in a southerly direction through land adjoining Trinant Infants School where it passes through a five bar gate (currently padlocked by Mr. Walker) and ends on Llanerch Lane at SO 20832 99946. The total length of the path is approximately 386 metres.
- 4.2.4 The claim is supported by twenty-seven (27) completed User Evidence Forms (Document No's 5-31) (3 pages each) all of which have been completed by the residents of Trinant who claim to have used the route on a regular basis.
- 4.2.5 Research has been undertaken to determine the validity of the claim by collating any **Documentary Evidence** available as well as the crucial **User Evidence** provided by the local residents.

#### **4.3 User Evidence**

- 4.3.1 Each user is a resident of Trinant and claims to have used the path without interference for a period varying between 9 and 40 years, comprising a total of 736 years usage.
- 4.3.2 Each person who provided User Evidence Forms was asked to attend an interview to clarify the information they provided. Ten out of the twenty-seven users were interviewed at home, eight of the users were interviewed by phone, one user at the office and eight did not respond to several requests for an interview. Of the eight who did not respond, the mother and wife of two users responded on their behalf and one other user was too ill to be interviewed.

- 4.3.3 Each user interviewed was asked to identify the line of path that they have regularly walked and all confirmed the path shown on Document No. 2 as the path used.
- 4.3.4 The user evidence forms have been studied and the information from each form and where possible information from an interview has been collated as follows:
- 4.3.5 Due to the Data Protection Act the addresses of the users have been removed.

▪ **Miss D. Jones (Document No. 5)**

Interviewed by phone on 19th November 2003.

Usage of path: Miss Jones has used the path for 21 years on foot and horseback. She continues to use the path and climbs over the locked gate.

Purpose: Walking and access to the village on a daily basis.

Other users: Local residents use it on foot, walking dogs, cycling and on horseback. Elderly residents use it to gain access to the Post Office.

Route: Miss Jones always followed the same route which is well defined. The path is of varying widths and surfaces. She recalls a gate in front of the Pavilion which was always left open. An agricultural gate has been erected at the entrance to the path at Llanerch Lane which has been padlocked.

Permission: Miss Jones never asked for permission to use the path. A sign was erected recently stating 'Private Keep Out'.

- **Mr. & Mrs. Richards (Document Nos. 6 & 7)**  
▪ **(Mr. Richards is a former caretaker of the Trinant Infants School and Mrs. Richards worked at the School)**

Interviewed by phone 21st November 2003.

Usage of path: Mr. & Mrs. Richards have used the path for over 30 years on foot several times a week.

Purpose: Visiting friends and walking generally.

Other users: Local residents and strangers on foot from top site for Post Office and school.

Route: Mr. & Mrs. Richards always followed the same route. A locked gate now prevents access.

Permission: Mr. & Mrs. Richards never asked for permission to use the path as they always thought it was a public path.

- **Mrs. M. Thomas (Document No. 8)**

Interviewed 17th November 2003.

Usage of path: Mrs. Thomas used the path for 27 years on foot every day until gate erected but she is now unable to climb over.

Purpose: Visiting family at top half of the village (used to live in that area at one time). Use it for walking generally and for access to Trinant Club and shops.

Other users: Mostly locals who use it regularly for work, shops, Post Office, school, walking and exercising dogs. Picnics have also been held on the ground.

Footballers/villagers parked on the land adjacent to Trinant Infants School when fetes and matches were held on the sports field.

Route: Mrs. Thomas always followed the same route which is well defined. Footballers erected a small gate at the Pavilion to prevent trespass of sheep onto the sports field from the ground next to the Trinant Infants School. Five bar gate erected by Mr. Walker this year (2003) no gate or fence existed previously.

Permission: Mrs. Thomas never asked for permission to use the path and always believed it was a public area. A sign was erected recently stating 'Private Keep Out'.

▪ **Mr. C. Thomas (Document No. 9)**

Interviewed 17th November 2003.

Usage of path: Mr. Thomas used the path for 10 years on a daily basis. Continues to use path by climbing over gate.

Purpose: Visiting family at top half of the village (used to live in that area at one time). Uses it for walking generally and for access to Trinant Club and shops. Used the path for work two years ago when living at top of the village. Also use it for exercise. Links to the Ebbw Valley Walk.

Other users: Local residents use it regularly for work, shops, Post Office, school, walking and exercising dogs. Picnics have also been held on the ground. Also strangers and footballers use it on foot.

Footballers/villagers parked on the land adjacent to Trinant Infants School when fetes and matches were held on the sports field.

Route: Mr. Thomas always followed the same route which is well defined. Footballers erected a small gate at the Pavilion to prevent trespass of sheep onto the sports field from the ground next to the Trinant Infants School. Five bar gate erected by Mr. Walker this year – no gate or fence existed previously.

Permission: Mr. Thomas never asked for permission to use the path. A sign was erected recently stating 'Private Keep Out'.

▪ **Mr. J. Williams (Document No. 10)**

Interviewed 12th November 2003.

Usage of path: Mr. Williams used the path for 34 years – two/three times a day. On foot and bicycle. Continues to use the path and climbs over the locked gate.

Purpose: Walking the dog and visiting family in Prince Andrew Road.

Also used the path when working in Newbridge.

- Other users: Local residents use it to access the Post Office and Infants school. They also use it for walking dogs. Strangers have also been seen using the path.
- Route: Mr. Williams always followed the same route which is well defined. There are two gates on the path, one by the Pavilion and the second at the entrance to the path on Llanerch Road which has been locked. This means a long way round for residents who are unable to climb the gate.
- Permission: Mr. Williams never asked for permission to use the path. A sign was erected this month stating 'Private Keep Out'.

▪ **Mr. & Mrs. Jenkins (Document No. 11)**

18th November 2004 – Mrs. Jenkins by telephone.

- Usage of path: Mrs. Jenkins has used the path for over 10 years and Mr. Jenkins since childhood. The path was used every day at one time but only occasionally now.
- Purpose: To visit parents at Prince Andrew Road and taking children to school.
- Other users: Both locals and strangers on foot and horseback. Used for visiting the Post Office. Walkers and mothers with children have been seen using the path.
- Route: Mr. & Mrs. Jenkins have always followed the same route until the gate was locked at Llanerch Road. The path provided a good short cut.
- Permission: Mr. & Mrs. Jenkins never asked permission to use the path.

▪ **Mr. & Mrs. Cook (Document No. 12)**

Not Interviewed.

- Usage of path: Mr. & Mrs. Cook used the path most days for approximately 30 years.
- Purpose: To visit family at Pentwyn.
- Other users: Both locals and strangers have been seen using the path on foot and horseback.
- Route: Always followed the same route but now blocked by gate.
- Permission: Mr. & Mrs. Cook never asked for permission to use the path.

▪ **Mrs. G. Teague (Document No. 4)**

Interviewed 9th January 2004.

- Usage of path: Mrs. Teague has used the path for 9 years, nearly every day and sometimes twice a day.
- Purpose: Walking the dog, visiting family and a short cut to Trinant Club. Has used the path since the gate has been locked but found great

difficulty in climbing the gate.

- Other users: Local residents, parents with children especially when the school was open and to attend a play area that was once situated by the pavilion. Children on bikes, horse riders, many people use it for access to the Post Office.
- Route: Mrs. Teague always followed the same route which is well defined. The surface is grassed at the beginning of the path, rough gravel around the sports field and then tarmac up the hill to Prince Andrew Road. The path is of varying widths. There has always been a gate a short way in front of the Pavilion which is usually left open. A five bar gate was erected in February 2003, at the commencement of the path in Llanerch Lane, which was usually left open. In April 2003 a lock was fitted and new fencing erected to prevent use.
- Permission: Mrs. Teague never asked for permission to use the path. A sign was erected in approximately December 2003 stating 'Private Keep Out'.

▪ **Mr. P. Robinson (Document Nos. 13 & 47)**

Interviewed 9th January 2004.

- Usage of path: Mr. Robinson has known the path all his life and started using it in 1966 (37 years). Used the path twice daily. Mr. Robinson's brother lived in Yew Tree Cottages and he used the path to visit and to access fields behind the cottages. The path passed the side of No. 2 Yew Tree Cottages and which is shown on an old map of the area dated 1959-1973 (Document No. 47 & 48). He continued to use the path to access the fields following the demolition of the cottages. Still uses the path by climbing over the locked gate.
- Purpose: Initially to visit brother and walk in the fields, then for walking the dog and to attend Trinant Club.
- Other users: Local residents, parents with children especially when the school was open and to attend a play area that was once situated by the pavilion. Children on bikes, horse riders, many people use it for access to the Post Office.
- Route: Mr. Robinson used the path in 1966 when the area was fields and before the refuse tip was in place. The area of the refuse tip was restored and then used for a sports field. When the housing estate was erected in the 1960's a short cut was developed through to Prince Andrew Road. This was used by residents to visit relatives and for access the Post Office. This route is well defined with the surface being grassed at the beginning of the path, rough gravel around the sports field and then tarmac up the hill to Prince Andrew Road. Mr. Robinson believes the gate in front of the pavilion was erected by Mr. Walker. He could also recall a wall at the rear of the cottages.
- Permission: Mr. Robinson never asked for permission to use the path. A sign was erected in approximately December 2003 stating 'Private Land Keep Out'.

▪ **Mrs. Hibberd (Document No. 14)**

Interviewed 17th November 2003.

Usage of path: Mrs. Hibberd has used the path several times a week for 33 years.  
Purpose: Used the path to gain access to the Post Office and Bus Stop and also for walking the dog. Also for visiting brother at Prince Andrew Road.

Other users: A lot of locals use the path as a short cut to Prince Andrew Road from Llanerch Lane on foot. The users are young mothers with children, neighbours, dog walkers, walkers, horse riders and OAP's.

Route: Mrs. Hibberd always used the same route until Mr. Walker chained up a gate across the path.

Permission: No. A sign has recently been erected stating private land.

Mrs. Hibberd has an aerial photograph hanging on her living room wall which shows a person using the path, the photograph is dated 1993. Mrs. Hibberd believes that Mr. Walker is trying to claim the land and is inconveniencing all residents in the area.

▪ **Mr. S.J. Wood (Document No. 15)**

Interviewed by telephone.

Usage of path: Mr. Wood has used the path once or twice a day for 30 years and continues to use the path by climbing the gate.

Purpose: Walking, visiting shop and Post Office.

Other users: Has seen both locals and strangers using the path on foot. Also mentioned that people use the path to gain access to the village of Crumlin for work, etc.

Route: Always followed the same route and recalls a 3' gate near the pavilion with a farm gate which has been chained.

Permission: Mr. Wood never asked for permission to use the path but recently a sign was erected stating the land was private.

Mr. Walker bought the land from Mr. Wood's father-in-law about 10 years ago. Mr. Woods states that the cottages were demolished approximately 40 years ago.

▪ **Mr. M.E. Smith (Document No. 16)**

Interviewed 12th November 2003.

Usage of path: Mr. Smith has used the path three to four times a week for 34 years. Mr. Smith continues to use the path by climbing over the gate.

Purpose: Walking.

Other users: Has seen both locals and strangers using the path on foot and children on bicycles.



Route: Mr. Smith always followed the same route until the recent obstruction was put in place. There were no distinctive boundaries until recently.

Permission: Mr. Smith has never asked for permission to use the path.

Mr. Smith suggested that an alternative route to the section that crosses the land adjacent to the school could be alongside the boundary wall to the school.

▪ **Mrs. W.M. Potter (Document No. 17)**

Interviewed: 12th November 2003.

Usage of path: Mrs. Potter used the path on foot nearly every day and sometimes twice a day for approximately 34 years. Not able to climb the gate to continue use.

Purpose: Walking the dog, watching games on the sports field.

Other users: Has seen both locals and strangers walking the route to go to the Post Office, school (until closed) and bus stop on the Pant.

Route: Mrs. Potter followed the same route until recently when Mr. Shane Walker padlocked the large gate on Llanerch Lane blocking access to the park.

Permission: Mrs. Potter never asked for permission as she didn't believe it was necessary as it was widely used by the public. Recently a sign has been erected stating private land.

Mrs. Potter states that Llanerch Lane becomes very narrow past the Infants School at Slow sign and she was recently hit by car. The roadway is too dangerous at this section for pedestrians. People have always had access through gates mentioned (always open). Children now play in roadway. Cars speeding in this area.

▪ **Mr. & Mrs. Jenkins (Document No. 18)**

Interviewed Mrs. Jenkins 12th November 2003 by telephone.

Usage of path: Mrs. Jenkins has used the path for 10 years and Mr. Jenkins for 32 years both on foot and several times a week. They continue to use the path by climbing gate.

Purpose: Mrs. Jenkins uses it for visiting family. Mr. Jenkins used it for school when it was open and to access the Post office. They also use it to take grandchildren for picnics and used to sit by the Yew Tree which has now been cut down.

Other users: Has seen both locals and strangers using the path for walking dogs, picnics and horse riders.

Route: Mr. & Mrs. Jenkins always use the same route which varies in width and surfaces throughout.

Permission: Mr. & Mrs. Jenkins did not seek permission to use the path. Until recently the gate was always open, but now it is shut and locked both ends.

▪ **Mr. J. Williams (Document No. 19)**

Interviewed by phone 14th January 2004.

Usage of path: Mr. Williams has used the path on foot approximately three times a month for over 30 years. Mr. Williams continues to use the path by climbing over the gate.

Purpose: To visit the Post Office and son in Wesley Terrace.

Other users: Has seen both locals and strangers using the path mostly on foot. Walking dogs and generally walking.

Route: Mr. Williams always followed the same route.

Permission: Mr. Williams never asked for permission to use the path. Notice only erected recently stating private land. The small gate by the Pavilion has also been wired up to prevent access, a lock was placed on the five bar gate last year

Mr. Williams knows the previous owner of the cottages, he was born in Wesley Terrace and lived in the area all his life.

▪ **Mr. J.P. Solway (Document No. 20)**

Not Interviewed.

Usage of path: Mr. Solway has used the path on foot every week for 13 years.

Purpose: Recreation; exercise and Post Office.

Other users: Has seen other people using the path on foot.

Route: Mr. Solway always followed the same route.

Permission: Mr. Solway never asked for permission to use the path.

▪ **Mrs. M. Hale (Document No. 21)**

Interviewed by phone 17th November 2003.

Usage of path: Mrs. Hale has used the path on foot two to three times a week for 40-50 years. Unable to continue use as difficult to climb over gate.

Purpose: Mrs. Hale used the path as a child for walking to school. Visiting daughter, Post Office, walking and exercising the dog. Provides a good short cut and easy access. Always used the path for children when in school and for the park

Other users: On foot locals and strangers taking a short cut to football pitch and clubhouse. Also people used the path to access the school and the park.

Route: Mrs. Hale always followed the same route.

Permission: Mrs. Hale never asked for permission to use the path and always assumed it to be attached to school grounds. Was informed by person

chopping down the trees that the path was not public. A notice stating private land has only recently been erected.  
Mrs. Hale recalls that where the small gate is situated in front of the pavilion there used to be a stile.

Old School Road buildings demolished before Yew Tree Cottages.

▪ **Mr. Maurice Hale (Document No. 22)**

Not interviewed .

Usage of path: Mr. Hale used the path on foot on a weekly basis for 30 years.

Purpose: Walking and Post Office.

Other users: Has seen both locals and strangers using the path on foot.

Route: Mr. Hale always followed the same route.

Permission: Mr. Hale never asked permission to use the path. Recently fencing has been erected and a lock put on the gate.

▪ **Mr. Michael Hale (Document No. 23)**

Not interviewed.

Usage of path: Mr. Hale used the path on foot on a regular basis for over 20 years.

Purpose: Access for school, Post Office and Crumlin. Also for visiting sister.

Other users: Has seen both locals and strangers using the path on foot.

Route: Mr. Hale always followed the same route.

Permission: Mr. Hale never asked permission to use the path.

▪ **Mr. J. Williams (Document No. 24)**

Interviewed: 12th November 2003.

Usage of path: Mr. Williams Over 25 years on foot every day.

Purpose: Visiting family. Used it as a child to go to school. Use the path for access to work in Newbridge.

Other users: Has seen both locals and strangers using the path on foot. People use it for walking, walking dogs, visiting family and Post Office.

Route: Always followed the same route.

Permission: Never asked permission to use the path. Recently fencing has been erected, together with barbed wire (this was removed by persons unknown) and a lock put on the gate. Fencing was also tied to the small gate in front of the pavilion in an attempt to prevent access.

Mr. Williams stated that Mr. Walker had started cutting the grass over the last 5 years.

▪ **Mrs. A. Jenkins (Document No. 25)**

Not Interviewed.

Usage of path: Mrs. Jenkins too frequently to list for over 18 years.  
Purpose: Visiting friends and access to the park.

Other users: Has seen both locals and strangers using the path on foot.

Route: Always followed the same route.

Permission: Mrs. Jenkins never asked permission to use the path.

▪ **Mr. R. Carpenter (Document No. 26)**

Interviewed 13th February 2004.

Usage of path: Mr. Carpenter has used the path on foot and horseback up to six times a day for approximately 32 years.

Purpose: From 1980 used the first section of the path adjoining the school to attend the sports ground and also for washing the footballers' sports clothing and delivering goods.

In 1971 Mr. Carpenter kept goats on the site next to the school in a Goat's cote. This was on land owned by Mr. Lawry James (previous owner of No. 2 Yew Tree Cottages) who informed him that he was not allowed to put a gate at the Llanerch Lane entrance, to allow his goats out of the cote, as there was a right of way through the ground.

Other users: Has seen local residents using the path for walking, walking dogs, horse riding and children playing. His grandchildren used to erect a tent on the ground next to the school for short holidays.

Route: Mr. Carpenter always followed the same route.

Permission: Mr. Carpenter never asked permission to use the path.

When Mr. Carpenter used the land next to the school for his goats he used to keep his caravanette on the land also.

Approximately 15-18 years ago a horse was kept on the ground next to the school.

Mr. Carpenter believes the small gate was erected by Mr. Walker, together with the five bar gate which now has a lock on it preventing access.

Mr. Carpenter states that Mr. Walker has taken over the footpath and more ground from Caerphilly County Borough Council.

▪ **Mrs. D. Davies (Document No. 27)**

Not Interviewed – very sick at present.

Usage of path: Mrs. Davies has used the path four or more times a week since the cottages known as Yew Tree Cottages were pulled down 40-50 years ago.

Purpose: Visiting sister living in Prince Andrew Road.

Other users: On foot visitors came with children to play on the swings (there used to be a park near the Pavilion) and there was a nice seat where old people would sit and watch the children playing.

Route: Mrs. Davies always followed the same route. Someone tied the gate and cut the Yew tree down. Someone threw the gate on the side.

Permission: Mrs. Davies never asked permission to use the path.

▪ **Mrs. C. Tovey (Document No. 28)**

Interviewed: 22nd November 2003.

Usage of path: Mrs. Tovey used the path every day on foot for 22 years.

Purpose: Walking the dog, visiting the park, Prince Andrew Road and Rugby Club at top of village.

Other users: Has seen both locals and strangers using the path on foot and horseback. It is used for walking, some for work, children and mothers for school and park.

Route: Always followed the same route until the gate was tied.

Permission: Mrs. Tovey never asked permission to use the path.

Mrs. Tovey stated that the footballers used the area next to the school to park their cars.

Mrs. Tovey suggested an alternative path alongside the wall of the school.

▪ **Mr. P. Connett (Document No. 29)**

Not Interviewed.

Usage of path: Mr. Connett used the path on foot every day for 30 years.

Purpose: Walking and visiting the Post Office.

Other users: Has seen locals using the path on foot and children on pushbikes.

Route: Mr. Connett always followed the same route. A lock has been placed on the gate.

Permission: Mr. Connett never asked permission to use the path.

▪ **Mr. K. A. Bates (Document No. 30)**

Not Interviewed.

Usage of path: Mr. Bates used the path every day on foot for 20 years.

Purpose: School, walking the dog and visiting the Post Office.

Other users: Has seen many people using it mostly on foot but some on pushbikes and horseback.

Route: Mr. Bates always followed the same route.

Permission: Mr. Bates never asked permission to use the path.

▪ **Mrs. D.M Robinson (Document No. 31)**

Interviewed by phone 8th December 2003.

Usage of path: Mrs. Robinson used the path two or three times a week on foot for approximately 35 years. Unable to climb gate to continue to use path.

Purpose: Walking to visit friends, family and walking dog. Also used path to visit niece in Woodland Drive whose property backs onto the park.

Other users: Has seen local residents using the path on foot for walks, children, park and school. Also for Post Office.

Route: Mrs. Robinson always followed the same route.

Permission: Mrs. Robinson never asked permission to use the path.

Mrs. Robinson lived in Yew Tree Cottage from 1948 to 1955 as a tenant. She recalls a lean to at the back of the cottages and locals used to call and ask if they could walk through to the fields. She thought it was a right of way and used to allow them through.

4.3.6 Of the 27 evidence forms, 21 No. wish to claim the route as a footpath, 5 No. wish to claim it as a footpath and bridleway, 1 No. was unsure. Only two users have used it themselves with a horse, Mr. Carpenter when he had a horse on the ground used it for 2- 3 years, Miss Jones used it for approximately 15 years when she kept her horse near the BMX track and used it when there was traffic on Llanerch Lane i.e. hay making/ tractors. Miss Jones would use the path as a bridleway if this status was granted.

4.3.7 Phone Interview with Mrs. Lewis, former Headteacher of Trinant Infants School (Document No. 32)

Mrs. Lewis reported to Property Services in November 1998 that Mr. Walker was encroaching onto Council owned land adjoining the Trinant Infants School. Mrs. Lewis reported that a man employed to cut overgrowth on the Recreation Ground had also strimmed the triangular area adjoining the school and she had heard that Mr. Walker had intended to graze horses on the land. Mrs. Lewis also reported that following the incident, fencing and a gate had been erected. Mr. Walker arranged for workmen to maintain the section of land next to the school for quite a number of years. Mrs. Lewis told workmen carrying out this work that the land belonged to this Authority and that they should not be working on it and requested that they leave. The area was used for the school children to undertake nature studies.

Mrs. Lewis was aware that local residents used the land adjacent to the school as a pathway and witnessed many people using it on a regular basis. From the claimed path near the Pavilion a gate provides access into the school buildings and grounds. Mrs. Lewis would only allow access through this area for parents to leave their children at school.

4.3.8 Phone Interview with Mr. Watkins, former Caretaker of Trinant Infants & Infants School (Document No. 33)

The Caretaker, Mr. Watkins, stated that Mr. Walker arranged for workmen to carry out maintenance of the ground next to the school. Mr. Watkins had thought the land belonged to Mr. Walker until the dispute over the claimed right of way was raised. Mr. Watkins confirms that the pathway through the ground was used on a regular basis by local residents.

#### 4.3.9 Phone Interview with Ms. Sharon Samuel (Document No. 34)

Ms. Samuel's grandparents, Mr. & Mrs. James, owned No. 2 Yew Tree Cottages. She recalled the land being sold to Mr. Walker in 1987. She could recall where No. 2 Yew Cottages were located and stated that Mr. Walker had fenced off land to the east of the property which was land on which Old School Road Cottages were located as well as land to the west. (See Document Nos. 41 & 42 which shows a map of the area dated 1959-1973). Ms. Samuel stated that fencing had been erected since the school had closed approximately 18 months ago.

Ms. Samuel used the path herself for many years and recalled the Yew Tree was to the right of the path.

#### 4.3.10 Document No. 47 shows photographs taken of the section of the claimed path adjacent to and locking of gate since receipt of the application to claim the path as a Right of Way.

### 4.4 Documentary Evidence

#### 4.4.1 The documentary evidence studied in conjunction with the User Evidence is outlined below. During the investigation of a claimed route a near match was looked for on all the maps listed.

### Ordnance Survey Maps etc./ Viewed During Investigations

#### Definitive Map

The claimed route does not appear of the Definitive Map and Statement.

#### Photographic Evidence

An aerial photograph (Document No. 35) was reproduced from the Authority's Geographical Information System to determine if the claimed route has been physically present at any time. The photographic evidence identifies a path from Prince Andrew Road to Llanerch Lane through the recreation ground and then through the land adjoining the Trinant Infants School down to the gate at Llanerch Lane quite distinctly. The path on the aerial photograph follows the claimed path.

Mrs. Teague provided a book of "Trinant in Photographs" by Clive Daniels, which included an aerial view of Trinant and Cwmnant photographed in 1993 (Document No. 36), which shows clearly the line of the path from Prince Andrew Road around the sports field, and alternative view of the district shows the area of The Pant, Trinant (Document No. 37). An enlargement of a section of area of the claimed route on land adjoining the school grounds (Document No. 38) clearly shows a well-defined path alongside the Yew Tree. A photo taken in 1947 shows the Yew Tree Cottages) and enlargement of the cottages is shown on Document No. 39. The photographs have been reproduced with kind permission from the Old Blakehouse Publications, Abertillery.

### 4.5 Landownership

#### 4.5.1 The land over which the claimed right of way passes through lies in the ownership of Caerphilly County Borough and Mr. S. Walker. The Council's land is identified in Document No. 40 and is shown hatched and Mr. Walker's land is identified edged in black.

#### **4.6 Landowner's Views**

- 4.6.1 A meeting was held with representatives of the Legal Section, Education and Leisure Divisions to agree action to be taken regarding encroachment upon the Authority's land. As mentioned previously, the Authority is in dispute over land ownership with Mr. Walker who claims that he owns all the land edged in black on Document No. 46. One approach that was considered at the time was to erect fencing around the Authority's land but to keep the claimed right of way available to the public.
- 4.6.2 Following receipt of the application for the claimed path the relevant sections within the Authority were contacted and they agreed to dedicate the section of path over land within their responsibility as a Public Right of Way. Property Services have agreed to dedicate the section of path upon land which has now been transferred from Education Services to their Division.
- 4.6.3 A letter, dated 14th May 2003 was sent to Mr. Walker requesting a meeting to discuss the claimed right of way but no response was received. A letter was received from Mr. Walker's Solicitor, dated 15th July 2003, regarding the claim. A letter was then sent to Mr. Walker's Solicitor requesting a meeting with Mr. Walker. No response was received from Mr. Walker or his Solicitor.
- 4.6.4 Mr. Walker contacted the office 7th January 2004 requesting a view of the Definitive Map. Mr. Sander and Mrs. Piper met Mr. Walker. Document No. 43 is a note of the meeting. Mr. Walker stated that he was unaware of the application for the claimed right of way and he had moved from the address in Croespenmaen to his mother's address in Trinant. It was agreed that all previous correspondence would be hand delivered to this address and that a further meeting with Mr. Walker would take place following his perusal of this information. Mr. Walker's Solicitor wrote to the Authority on 23rd February 2004 requesting a site meeting. Shortly after receipt of this letter Mr. Walker called at the offices (3rd March 2004) (Document No. 44 is a note of the meeting) and as he was due to go on holiday it was agreed that a letter be sent to his solicitor requesting a site meeting from week beginning 3rd April, 2004. Again no response was received to this letter and a further letter was sent by Recorded Delivery to Mr. Walker's Solicitors on 27th April 2004, and a copy hand delivered to Mr. Walker's mother's address, requesting a site meeting by Friday, 7th May 2004.
- 4.6.5 A letter has been received from Mr. Walker's Solicitors stating that there is a substantial dispute between their client and the Council regarding the relative rights of the Council and their client in relation to the land over which the right of access is claimed. Unless such time as those issues are resolved they feel it inappropriate that any further action be taken in relation to the right of way issue.

#### **4.7 Land Ownership Dispute**

- 4.7.1 There is currently a land dispute between the Council and Mr. Walker in respect of the land edged black in Document No. 40. The issues raised with regard to the dispute are currently being investigated by Legal Services.

#### **4.8 Planning Application**

- 4.8.1 Mr. Walker has submitted an application for outline planning application for one dwelling on the land adjacent to Trinant Infants School. (Document No. 46). Mr. Walker states in his application that he is the owner of the land in question. Planning and Legal Services are currently investigating this application and are aware of the application to claim a path through this section of land
- 4.8.2 The Planning Committee has subsequently approved the planning application as they found it in line with development control policies. Neither land ownership issues nor the existence of rights of way across a site are prima facie reasons for refusal.



## **4.9 Summary**

- 4.9.1 The Authority has received an application under the Wildlife and Countryside Act 1981 to ADD a path to the Definitive Map and Statement in the Community of Abercarn.
- 4.9.2 The application is supported by 27 evidence user forms. Mr. Robinson stated that a path had been established by users before Yew Tree Cottages were demolished (approx. 40 years ago). Mr. Robinson used the path at the side of No. 2 Yew Tree Cottages before the cottages were demolished to access the fields at the rear. When Mrs. Robinson was a tenant of Yew Tree Cottages, from 1948-1955, she recalled people using the path and had thought it was a public right of way. Mr. Carpenter stated that Mr. Lory James who owned No. 2 Yew Tree Cottages had believed it was a right of way and would not allow him to erect any fencing whilst he was using the land for keeping goats.
- 4.9.3 It can be seen from the enlarged aerial photograph (Document No. 38) that a pathway can be seen near to the right of the Yew Tree.
- 4.9.4 From the interviews undertaken with the supporters of the claimed path it was noted that the path became more popular when the housing estate at Prince Andrew Road was developed and residents used the route as a short cut to the Post Office, school and visiting relatives. The evidence forms refer to the fact that the path is regularly used by residents for walking, exercising their dogs and taking their children to the recreation ground. It was noted from the evidence provided that other users of the path are cyclists and horse riders.
- 4.9.5 Due to the issue of the land ownership it is recommended that the Authority, should it decide to support the claim, proceeds with the Modification Order process for the whole of the path rather than accepting a dedication of part of the route from the Authority's Housing, Leisure and Property Services Divisions.
- 4.9.6 On the basis of the evidence and information compiled in the submitted documents, Members are requested to determine the application before them by either: -
- i) Supporting the claim as made for a footpath or alternatively a bridleway.
  - ii) Rejecting the claim.

## **5. FINANCIAL IMPLICATIONS**

- 5.1 The cost to the Authority for a Modification Order is £2,600.

## **6. PERSONNEL IMPLICATIONS**

- 6.1 None.

## **7. CONSULTATIONS**

- 7.1 See list of consultees.
- 7.2 Following consultation on the draft report only two responses were received. One from Mr. Pruddah of the Right to Ride Network (Document No. 48) and the other from Lewis & Lines, Solicitors, acting on behalf of their client, Mr. S. Walker see Document No. 49.
- 7.3 Mr. Pruddah supports the application to add the path to the Definitive Map and Statement.
- 7.4 Lewis and Lines' letter states that Mr. Walker does not believe there is an established

pathway over his land. The dates of the photographs supplied have been requested but have not been received to date. Comments relating to the numbered points made in Lewis & Lines' Letter:-

1. It is for the ROW Committee to decide on the evidence provided within this report as to whether or not there is an established pathway over this land.
2. Residents within the area state that the gate was always left open prior to this application dated 24th April 2003.

The Legal Department who are dealing with the land ownership issues have confirmed that the gate was left open prior to the cutting down of the Yew Tree and other trees on this land in March 2003.

There has never been any requirement of a stile as access has always been available through the unlocked gate.

3. The lack of visual evidence of the path may be due to the fact that the location of the trees and footpath was completely dug up by Mr. Walker or his workers when they cut down the Yew Tree and other trees and bushes on this ground, thus completely obliterated any evidence of the footpath. Added to this is that evidence has been given that Mr. Walker prevented use of the pathway following the removal of trees by locking the gate and erecting fencing across the path behind the Pavilion.

Photograph 2 is a recent photograph of the ground on which the grass has just been cut. Document No. 50 shows photographs C, D, & E taken following the cutting of the trees and bushes.

Document No. 51 shows an aerial photograph taken in 1993 (colour photograph of Document No. 37) where the path can be seen to the east side of the Yew Tree. An enlargement has also been taken and when closely studied a person can be seen actually using the path. A pathway can also be seen to the west of the Yew Tree. This pathway was created by children who used to go through a gap in the fence line. Residents didn't use this route as they found it difficult to get under the hedges but children being so much smaller used it as a short cut. This photograph was supplied by Mrs. Hibberd.

4. Photograph No. 3. The claimed path is actually to the right-hand side of the photograph. The entrance to the pathway is not shown on this photograph as it is further to the right. The entrance gate has been replaced with fencing to prevent use of the pathway.
5. Photograph No. 4. The claimed path is actually to the left-hand side of this picture and is not shown in the photograph. The pathway did not cross any land where the brambles grow. The fencing at the rear of the pavilion was erected after the application to claim the path had been submitted. In fact a small gate was in place in the previous fence line to allow access into the sports ground.
6. Photographs No. 5 and 6. Quite a lot of fencing has been broken around the school ground following the closure of the school. As will be noted in Document No. 32 the Headmistress would only allow parents with children going to the school to use the pathway through the school ground. This pathway was only available when the school was in use. Photograph B, Document No. 50 shows the location of where users have been cutting the fence in an attempt to use the path since the erection of new fencing and removal of small gate

7. It will be noted from the evidence provided by the claimants that no permission to use the claimed path was ever sought as claimants believed route to be public. In addition no evidence form relates to the school path.
8. It is unclear from the evidence provided as to whether the gate was erected by Mr. Walker or the footballers. It is also unclear when the gate was installed. It was a small gate as can be seen in Document No. 47 – Photo No. 1, an enlarged photo of this has been made see Document No. 50. It would seem unlikely that such a gate would be provided for use by a horse and evidence users do not recall a horse belonging to Mr. Walker ever being kept on this ground. Photograph A in Document No. 50 shows the location of where previous small gate was located. .
9. This is irrelevant to the application for the claimed path. However, having spoken to the Leisure Department they are aware that access is gained from properties at Woodland Drive onto the Council owned playing field and as these are only pedestrian accesses the Authority has never had any objections to same.
10. Once an application is received to claim a right of way under the Wildlife & Countryside Act 1981 the path is marked in red on the Definitive Map to identify the path should planning applications be received which would be affected by it.

## **8. RECOMMENDATIONS**

- 8.1 That the matter stand adjourned until a site visit is arranged, to be followed immediately by a reconvened meeting to determine the application.

## **9. REASONS FOR THE RECOMMENDATIONS**

- 9.1 To comply with legislative requirements.

## **10. STATUTORY POWER**

- 10.1 Wildlife & Countryside Act 1981.

Author: June Piper, CROW Support Officer  
Consultees: The Applicant, Mrs. G. Teague.  
Two landowners:-  
Mr. S. Walker  
The Authority (Property Services and Leisure Services)  
Local Member – Cllr. V. Jenkins  
Auto Cycling Local Representative  
Cycling Touring Club Local Representative  
British Horse Society  
Secretary to the Byways and Bridleways Trust  
Open Spaces Society  
Mr. K. Donovan (Local Ramblers)  
The Ramblers Association.

Background Papers:  
File ETP/ROW/CROW185/Report held at Council Offices, Pontllanfraith