

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 GLANHOWY ROAD TO PONTGAM BUS STOP IN THE COMMUNITY OF MYNYDDISLWYN

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 Glanhowy Road to Pontgam Bus Stop.

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 Glanhowy Road in a southeasterly direction to Pontgam Bus Stop on the A4048 in the Community of Mynyddislwyn.

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. J. Jones to Modify the Definitive Map and Statement of the County of Monmouthshire Council by ADDING a footpath from Glanhowy Road (ST 17587 93769) leading in a southerly direction to Pontgam Bus Stop on the A4048 (ST 17767 93485). Document No. 2 illustrates the location of the claimed route within the black circle. The route of the claimed path can be located in Document No. 3 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 9th January 2004.
- 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 for a section of the path shown in Document No. 5 (A-B). The remainder of the path (B-C) is in unknown ownership so Mrs. Jones displayed a notice on both ends of the path (shown in Document No. 5) to confirm that an application had been submitted under the Wildlife & Countryside Act 1981 for a period of 28 days. No objections were received.
- 4.2.3 The Claimed Right of Way commences at ST Point A 17587 93769 on the plan (Document No.3) at ST 17767 93485 Point B.

Description of the Path

The path commences at the southern end of Glanhowy Road, Wyllie, opposite No. 1 and proceeds in a southerly direction. The width at the commencement of the path is 1.3-1.7m which has a tarmaced surface, at approximately 35 metres the path goes under an old railway bridge (which now forms part of the cycleway network). There is a street lighting column at the side of the bridge which is the only working light on the path. The width under the railway line bridge is 3.6m with a tarmac path width of 2.20m. There is another street lighting column at the southern end of the bridge which is not working. After the bridge the path continues in a southerly direction with a tarmac path width of 1.2 – 1.3m, the width of the path including grass verges is 3 m. The path slopes gently for the next 172m (at 134 m there is a stream that runs under the pathway). There is another street lighting column alongside the path again not in a working condition. . There is also evidence of water coming across the pathway further up which is possibly due to springs in the area. The path has chain link fencing which is broken in places from alongside the stream to the footbridge. The path crosses the new Pont Islwyn Footbridge, which has 9 steps on the northern side and 6 steps on the southern end. The bridge has a width of 1.4m. There is further chain link fencing either side of the path to protect users from the river. The path continues between two fence lines, the left-hand side protecting the river, the right-hand side has fence posts only. There are two further disused street lighting columns along this section. The path is level for approximately 170m then changes to a southeasterly direction up a short steep slope. The path terminates adjacent to the bus stop on the county maintained A4048 road. The total length of the path is approximately 375 metres.

Document No. 28 includes photographs of the claimed path.

4.2.4 The claim is supported by twenty-two (22) completed User Evidence Forms (Document No's 6-27) (3 pages each) all of which have been completed by the residents of Wyllie and other areas 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 The majority of the users are residents of Wyllie and claim to have used the path without interference for a period varying between 1 and 50 years, comprising a total of 453 years usage. (Two users have moved out of the village since completing the evidence user forms) Eleven of the users have been using the paths for more than 20 years

4.3.2 Each person who provided User Evidence Forms was asked to attend an interview to clarify the information they provided. 13 out of the twenty-two users were interviewed at home, one responded for her husband and daughter who had completed evidence forms and 7 of the users were interviewed by phone.

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:

- **Councillor Mrs. Janet Jones (Document No. 6)**

Interviewed at home on 18th November 2004.

Usage of path: Cllr. Jones has used the path for 30 years on foot since she moved to the village. Cllr. Jones uses the path 4-6 times a month.

Purpose: Cllr. Jones always believed the path to be public and has known it since she moved to the village 30 years ago. The path is well used by the public and was previously used by miners when the Wyllie Colliery was in use. Cllr. Jones uses the path for access to the public houses at Ynysddu, which saves using taxis. She also uses it for walking generally in the area. The residents hold an annual Duck Race on the river bridge.

Other users: The villagers use it for access to the bus stop, for walking, taking children to and from school in Ynysddu. Cllr. Jones has seen cyclists using it also.

Route: Cllr. Jones always follows the same route which is well defined. The surface being rough tarmac with a width of 2-4 feet, narrowing down by the river path due to overgrowth. There are several structures on the path, two bridges – the old stone railway bridge and the iron footbridge over the river. There are several street lighting columns but there is only one which is working which is location at Glanhwy Road (this was renewed in the last year or two). It has been approximately ten years since the rest of the street lighting has been working.

Permission: Cllr. Jones has never asked for permission to use the path or witnessed any signs stating it was private. Cllr. Jones believed the path was public.

- **Hayley Townsend (Document No. 7)**

Interviewed at home on 18th November 2004.

- Usage of path: Ms. Townsend has used the path for 30 years. At one time she used it twice daily, but now uses it on a weekly basis at weekends, in the summer evenings used it more.
- Purpose: Mrs. Townsend uses it for leisure, to catch the bus for college, for work. Her child attended Ynysddu School and she used it regularly then. She uses it to walk to the pub and family in Ynysddu. Her son now uses it to go to school and for visiting friends in Ynysddu. Ms. Townsend believed the path to be a village path and a public path.
- Other users: Ms. Townsend has seen many people using the path, cyclists, walkers, dog walkers, parents taking their children to school, college students using it to catch the bus and people accessing the bus stop for work.
- Route: Ms. Townsend has always followed the same route which she states to be approximately 1 metre in width. The path is well defined, the surface being in a bad state of repair with a rough tarmac surface. There are two bridges on the path and several street lamp posts.
- Permission: Ms. Townsend has never asked for permission to use the path or witnessed any signs stating it was private.

▪ **Mr. T. Wilkins (Document No. 8)**

Interviewed at home 15th November 2004.

- Usage of path: Mr. Wilkins has used the path for two years. He uses it once a month usually on Sundays for a circular walk.
- Purpose: Mr. Wilkins uses the path for walking and it provides a circular walk down the claimed path into Ynysddu and back along the cycle track into Wyllie. Mr. Wilkins believes the path was created for the miners going to Wyllie Colliery. Following this, regular use of the path became custom and practice by local residents. Mr. Wilkins stated that a new bridge was built which he feels endorses the public right of way over the path. He also stated that the previous bridge was maintained by the former Islwyn Borough Council.
- Other users: Mr. Wilkins has seen locals using the path for walking and each summer a Duck Race is organized for fundraising.
- Route: The path is well defined with a tarmac surface, this is being eroded and is deteriorating in the vicinity of the stream alongside the path. Mr. Wilkins stated that he was aware of street lighting posts, fencing alongside the path where it adjoins the river and two bridges, the new bridge over the river and the old railway bridge on the path. He states that the width of the path is approximately 1 metre.
- Permission: Mr. Wilkins has never asked for permission to use the path and had not seen any notices that the path was private.

▪ **Mrs. C. Greenow (Document No. 9)**

Interviewed at home on 15th November 2004.

Usage of path: Mrs. Greenow has used the path for 2 years and usually uses it once a month at a weekend.

Purpose: Mrs. Greenow uses the path for walking. She states that it provides easy access to the main road and bus stop. She became aware of the path through the community.

Other users: Mrs. Greenow has seen people walking along the path, walking dogs and some use it for cycling.

Route: Mrs. Greenow states that the path is well defined with the tarmac deteriorating in parts and it is also uneven in places. She recalls there being two bridge and that there is fencing alongside the river. She believes the path is approximately 1 metre in width.

Permission: Mrs. Greenow has never asked anyone for permission to use the path and cannot recall any signs stating that the path is private.

▪ **Mrs. Seline Moffat (Document No. 10)**

Interviewed at home on 18th November 2004.

Usage of path: Mrs. Moffat has used the path for 10-11 years usually twice a week.

Purpose: Mrs. Moffat has used the path for leisure walking, access to the bus stop for shopping, walking generally and to the shops in Ynysddu. There is only a Post Office in Wyllie now.

Other users: Mrs. Moffat has seen villagers walking to visit friends/family, people walking dogs. Her child minder uses it regularly to catch the bus on the A4048.

Route: Mrs. Moffat has always followed the same route which she states is well defined, with the surface being tarmac but horrendous in parts. She states the path only changes where the surface is being eroded. She believes the width of the path is 3-4 foot but it varies throughout. She identified the path when she moved to Wyllie 10-11 years ago.

Permission: Mrs. Moffat does not recall seeing any signs stating the path to be private and has never asked anyone for permission to use the path.

▪ **Mr. Moffat (Document No. 11)**

Interviewed at home on 18th November 2004.

Usage of path: Mr. Moffat has used the path for 8-9 years, at weekends, once a month.

Purpose: Mr. Moffat has used the path mainly for leisure walks.

Other users: Mr. Moffat confirms seeing local villagers using the path for general walking and also the Duck Race which is held annually.

Route: Mr. Moffat found the path when he moved to Wyllie. The path is well defined with a surface of tarmac but water eroding the surface in parts. The width of path varies and at the commencement of the path it is approximately 9-10 foot but during the summer months with the overgrowth it narrows to 2 foot. He recalls two bridges on the path, the old railway line bridge and the footbridge over the river.

Permission: Mr. Moffat has never asked permission to use the path and could not recall any signs stating that the path was private.

▪ **Mr. Watkins (Document No. 12)**

Interviewed by phone on 21st October 2004.

Usage of path: Mr. Watkins has used the path for 14/15 years on foot and bicycle.

Purpose: Mr. Watkins became aware of the path as a child when he moved to Wyllie. He uses the path to visit family in Ynysddu on Wednesday, Saturday and Sunday evenings. Mr. Watkins also uses the path to gain access to the bus stop. He uses the path 2-4 times a week. Walking and access to the village on a daily basis. Mr. Watkins used the path at one time to walk to work at Nine Mile Point Industrial Estate, Cwmfelinfach.

Other users: Local residents use it on foot for access to the bus stop and walking children to the school in Ynysddu or visiting family/friends.

Mr. Watkins states that the path has been used by the generations over the years and quite a number use it as a circular route to walk down into Ynysddu then come back up along the cycle track into Wyllie.

Route: Mr. Watkins always follows the same route and the path is well defined. He states that in the summer the path gets overgrown and gets very muddy in winter by the leat. Water is running down the path and eroding the surface. Mr. Watkins believes the path is approximately 1 metre wide. The surface of the path was tarmaced approximately 8 years ago, probably by the previous authority, but the surface has now deteriorated in parts. Mr. Watkins states that it is not easy to use the path during the dark evenings and mornings as there are only one or two lights now working.

Permission: Mr. Watkins never asked for permission to use the path and has not seen any signs stating the path was private. Mr. Watkins always believed the path was public.

▪ **Mr. A. Thomas (Document No. 13)**

Interviewed Andrew Thomas' father at home on 24th November 2004.

Usage of path: Mr. Thomas confirmed that his son has used the path for approximately 10 years and uses it several times a week.

Purpose: Andrew Thomas uses the path to catch the bus and to visit friends in Ynysddu. Mr. Thomas stated that as they lived locally they were aware of the path, previously lived in Ynysddu. Mr. Thomas always believed the path to be public and used it when a youngster. He could recall the bridge being damaged by flooding and when the bridge had to be replaced.

Mr. Thomas has researched the history of Wyllie and has given permission for photographs and information from his web site to be included later in the report.

Other users: Mr. Thomas confirmed that Andrew's friends use the path regularly and local villagers use it to access the bus stop.

Route: Mr. Thomas is aware that the path is well defined and tarmaced and the path becomes slippery in the winter. He thought the path width was approximately 3 feet.

Permission: Mr. Thomas could not recall seeing any sign stating the path was private and neither he nor his son had ever asked anyone for permission to use the path.

▪ **Mr. J. Parry (Document No. 14)**

Interviewed by phone on 18th November 2004.

Usage of path: Mr. Parry has used the path for 31 years, mostly on weekends.

Purpose: Mr. Parry has used the path to catch the bus for work, visiting friends and family in Ynysddu and generally for leisure walks.

Other users: Mr. Parry has seen local people using it for walking and to catch the bus for shopping.

Route: Mr. Parry identified the path when he moved to the area and as far as he knew the public had always used it. The path is well defined and mostly tarmaced. The width of the path being just over 4 foot. There are two bridges, one old railway bridge and the river bridge.

Permission: Mr. Parry has never sought permission to use the path from anyone and cannot recall any sign on the path indicating it as private.

▪ **Mr. Oliver (Document No. 15)**

Interviewed at home on 18th November 2004.

Usage of path: Mr. Oliver has used the path over 33 years, both on foot and horseback. He has used it daily 2 to 3 times a day during this period. Doesn't use it quite so much now that he no longer has his horses.

Purpose: Mr. Oliver has used the path for walking and access for feeding his ponies at Pontgam.

Other users: Mr. Oliver has seen villagers and ramblers using the path, and also residents from Ynysddu. He could also recall the Hunt using it many years ago prior to the erection of the new footbridge.

Route: Mr. Oliver stated that the path is well defined, tarmac to the bridge. Mr. Oliver has used the short cut across the field from the footbridge to the bus stop opposite the steps to Pontgam. He mentioned that youngsters use the short cut across the field during the summer months.

Mr. Oliver gave some history on the path. He stated that before Wyllie village was built livestock used to be taken down from the fields where Wyllie village is now situated and under the railway line to graze on the fields below. He believes the path was constructed in 1924 when the Wyllie Colliery was opened and always thought the path was public. The miners used it until 1968 when the colliery closed.

Mr. Oliver stated that the path was well defined and begins from Glanhowy Road as a car track of 10-12 ft to just under the railway line

bridge where it narrows to footpath width. There is a footbridge over the river and the old railway line bridge was erected to enable farmers to take their stock to the fields below. There are streetlights on the path although these have not been working for many years.

Permission: Mr. Oliver never asked anyone for permission to use the path and cannot recall any sign stating the path to be private.

▪ **Mrs. Parry (Document No. 16)**

Interviewed by phone on 18th November 2004.

Usage of path: Mrs. Parry uses the path two or three times a week, mostly Wednesdays, and used it every day when she was working. She has used the path for approximately 41 years.

Purpose: Mrs. Parry used the path to catch the bus to work every day. She now uses the path to catch the bus for shopping in Newport and uses it to visit her family in Ynysddu. Mrs. Parry states that this is the only path to the bus stop at Pontgam for residents to catch the bus to Newport and Blackwood. There is another path at the top of the village, known locally as 'The Rocky' but this is steep and becomes slippery during the autumn/winter months. Mrs. Parry stated that most residents prefer to use the claimed path to catch the bus at Pontgam.

Mrs. Parry mentioned that miners had used the path when the colliery was open and she had always known of the path.

Other users: Mrs. Parry was aware of miners using the path previously. Now mothers with children use the path, college students use it for access to the bus stop; her own children had used it. During the summer months there are a lot of people walking up and down the path.

Route: Mrs. Parry always follows the same route and the path is well defined. She could recall phoning the Authority over the years requesting the overgrowth on the path to be cut. There is only one street light working. The path is tarmaced but this is very rough in parts and Mrs. Parry believes the path could be improved. Mrs. Parry started off the petition to get the bridge repaired. She states that the new footbridge over the river is not suitable for disabled use as there are several steps on it. Mrs. Parry also stated that the old railway bridge is not in a very good condition.

Mrs. Parry states that the width of the path is two people walking side by side when the overgrowth is cut back or single file when overgrowth needs cutting.

Permission: Mrs. Parry has never asked for permission to use the path and has not seen any signs stating the path was private.

▪ **Mrs. Dando (Document No. 17)**

Interviewed at home on 20th October 2004.

Usage of path: Mrs. Dando uses the path twice daily. Mrs. Dando has used the path ever since she moved to Wyllie approximately 39 years ago.

Purpose: Mrs. Dando became aware of the path when she moved to the village and her neighbours always used it. Mrs. Dando previously used the path to catch the bus to Cwmfelinfach whilst she was working. Now she uses the path to go to Ynysddu to look after her granddaughter, her son lives in Alexandra Road. Her children also used the path previously to catch the bus to Crosskeys College. Mrs. Dando uses the path as a cycle route also, and finds it difficult to use in the dark mornings and nights due to the uneven surfaces. She gets off the bike and walks when there are other people using the path and manages to carry it up the steps over the footbridge. The steps also cause problems for mothers with prams/pushchairs. The fencing alongside the river has been removed.

Other users: Mrs. Dando recalls that previously the path was used by the miners. The men working at the Colliery put a rope across the river to hoist themselves across before the bridge was constructed. Mrs. Dando could also recollect that the bottom field adjacent to the A4048 was used as a sports field and during the summer months, fetes and carnivals used to be held there also. Mrs. Dando cannot recall the grass being cut for the last 10 years but prior to this it had been cut.

A lot of mothers with their children use the path to go to school and visiting family and friends in Ynysddu. They also use the path as access to the bus stop. Mrs. Dando stated that it is dangerous at night to use the path, it is very dark as there are no streetlights.

Route: Mrs. Dando always follows the same route and the path is well defined. She states that the condition of the path is very uneven and was tarmaced years ago. When the pavements were renewed in Glanhwy Road the beginning of the path was patched up. Mrs. Dando believes the width of the path is enough for one person to walk, the path being rough tarmaced which dips slightly in the middle. The new footbridge was erected a few years ago. There are telegraph poles which house the old streetlights which were working about 5 years ago.

Permission: Mrs. Dando has never asked for permission to use the path and has not seen any signs stating the path was private. She believed the path belonged to the Authority.

▪ **Ms. Pritchard (Document No. 18)**

Interviewed by phone on 6th April 2005.

Usage of path: Ms. Pritchard has used the path for approximately 3-4 years on foot and uses it on weekdays and sometimes at weekends. She was told about the path by a friend when she moved to the area and always thought the path to be public.

Purpose: Ms. Pritchard uses the path twice a day on weekdays to take her son to school at Ynysddu.

Other users: Ms. Pritchard has seen many people using the path for walking their dogs, parents taking children to school and people using the path to the bus stop.

Route: Ms. Pritchard has always followed the same route and notes that there is a bridge over the river. She states that the path is a vital route into

the village but mothers find it difficult to negotiate the steps of the bridge with pushchairs.

Permission: Ms. Pritchard has never asked for permission to use the path.

▪ **Mrs. Minton (Document No. 19)**

Interviewed at home on 5th November 2004.

Usage of path: Mrs. Minton has used the path since 1946, approximately 60 years, and uses it a minimum of once a week and more when she has hospital appointments.

Purpose: Mrs. Minton uses the path to access the bus stop.

Other users: Mrs. Minton stated that local people use the path for access to the bus stop for work, students for college. Walkers and dog walkers use it. She can also recall cyclists using it. Mrs. Minton can recall her husband telling her the path was used when the pit was sunk in the 1920's. The path was used by the miners as it was the only access. They used to put a rope across the river before a bridge was constructed. The miners used it for about 40 years. It is the main route in and out of the village.

Mrs. Minton believes the path is essential for the village. The way out of the village along the road, known locally as 'The Private', she believes the road is too busy for people walking alongside it. The other alternative route is 'The Rocky' which she states is too steep for the elderly and it sometimes becomes very slippery. The buses only run once an hour.

Mrs. Minton recalls that fetes were held on the field next to the path alongside the A4048. Football games were also held there, the Whitsun walk out and games were held at the field.

Route: Mrs. Minton has always followed the same route but states that the surface of the path needs repairing and the overgrowth requires cutting back together with street lighting to be replaced. Mrs. Minton states that during the summer months the path becomes very overgrown and during the winter there is a lot of water running down the path. This has been exacerbated since the building work started on the new development at the bottom of Glanhwy Road. She states the width of the path is approximately 1 yard. There are two bridges, the footbridge over the river and the old railway bridge over which the cycleway crosses.

Permission: Mrs. Minton has never asked for permission to use the path. And does not recall any notices stating that the path was private.

▪ **Ms. McCoy (Document No. 20)**

Interviewed by phone on 4th March 2005.

Usage of path: Ms. McCoy has used the path for approximately 8 years (her husband has used it for 10 years) on foot daily.

Purpose: Ms. McCoy uses the path every weekday to take her children to school at Ynysddu and uses it four times a day during the school period. She

states that this path is essential to her in order that she may take her children to and from school safely. If the route wasn't available then there would be a 30-minute detour to take the children to school.

Other users: Ms. McCoy has seen other people using the path on foot. People use the path for walking their dogs and access to the bus stop. Most people using the path are local residents of the area. She also points out that it is very difficult for mothers with pushchairs to negotiate the footbridge due to the steps. She states that this is the only access route into the village from the Ynysddu/Pontgam area.

Route: Ms. McCoy has always followed the same route. There are two structures on the path, the old railway bridge and the bridge over the river. She also mentions that at times water runs down the path.

Permission: Ms. McCoy has never asked for permission to use the path.

▪ **Ms. S. Griffiths (Document No. 21)**

Interviewed by phone on 4th November 2004.

Usage of path: Ms. Griffiths has used the path for 5 years and uses it every day when in college.

Purpose: Ms. Griffiths uses the path to catch the bus for shopping and college. Ms. Griffiths became aware of the path from local knowledge – everyone used it.

Other users: Ms. Griffiths has seen locals using the path to gain access to the bus stop for shopping, work and access for Ynysddu.

Route: Ms. Griffiths has always followed the same route and notes that there is a bridge over the river. The path is approximately 2 person width, and does not have a very good surface, it is overgrown in parts and is well defined. There are potholes half down the path and during the winter months water runs down the path.

Permission: Ms. Griffiths has never asked for permission to use the path and cannot recall any signs stating the path is private.

▪ **Mrs. V. Griffiths (Document No. 22)**

Interviewed at home on 5th November 2004.

Usage of path: Mrs. Griffiths has used the path for over 50 years, at one time every day but now approximately twice a week.

Purpose: Mrs. Griffiths uses the path for access to the bus stop and visiting relations in Ynysddu. She has also seen horse riders using it.

She became aware of the path as a child through local knowledge.

Other users: Mrs. Griffiths has seen local people using the path for access for the bus and for walking and cycling.

Route: Mrs. Griffiths states that the path is well defined with the surface rough in patches. Water is breaking up the surface. The width of the path varies; it is the width of the railway bridge at the commencement of the

path and then goes down to about 4ft for the remainder of the path. There are grass verges either side of the path.

Permission: Mrs. Griffiths has never asked for permission to use the path. And cannot recall seeing any notices stating the path was private.

▪ **Mr. T. Griffiths (Document No. 23)**

Interviewed at home on 24th November 2004.

Usage of path: Mr. Griffiths has used the path for 25 years and uses it every weekday, five times a week.

Purpose: Mr. Griffiths uses the path to visit relatives in Ynysddu and also as access to the bus stop.

Mr. Griffiths believed the path was public and was aware of the path before he moved to Wyllie 25 years ago. Residents in Ynysddu also use the path. New bridge was erected a few years ago as the previous bridge was in disrepair. Assumed the path was public as the Authority put in Newbridge.

Other users: Mr. Griffiths has seen youngsters using the path to catch the bus for Crosskeys College. Residents from Ynysddu use it for walking/visiting. A lot of people use the path to the bus stop.

Route: Mr. Griffiths has always followed the same route which is well defined. The path is tarmaced in most places and believes he can recall the Authority carrying out this work. Water is eroding the surface of the path. There are two bridges, river bridge and railway arch. The path alongside the river is of good surface but not tarmac. The width of the path is approximately 1 metre alongside the river and approximately 5ft wide on the other side of the bridge.

Permission: Mr. Griffiths has never asked for permission to use the path and cannot recall any signs stating the path is private.

▪ **Mr. & Mrs. K. & A. Lewis (Document No. 24) Ms. K. Lewis (Document No.25)**

Interviewed at home on 24th November 2004.

Usage of path: Mrs. Lewis used the path for 18 years, her husband over 25 years and daughter 10 years. Husband uses it five times a week and their daughter, once a week.

Purpose: Mrs. Lewis used the path regularly when she first moved to the area. Mr. Lewis uses it regularly for walking their dogs and their daughter uses the path to catch the bus from Pontgam.

Other users: Mrs. Lewis has seen friends, neighbours and villagers using the path for walking and for access to the bus stop.

Route: Mrs. Lewis has always followed the same route and has used the field at the side of the river also. Mrs. Lewis recalls that there is a bridge over the river and the old railway bridge with cycleway above she states that the tarmac is very rough in parts and the path gets overgrown with brambles in the summer. Also the lighting is not very good. The width of the path is approximately 1-2 metres.

Mr. Lewis lived in the area from childhood, being born in No. 2 Glanhwy Road and she became aware of the path when she moved to the area through her husband. Mr. Lewis has always followed the same route and notes that there is a bridge over the river. The path is approximately 2 person width, and does not have a very good surface, it is overgrown in parts and is well defined. There are potholes half down the path and during the winter months water runs down the path.

Permission: Mr. Lewis has never asked for permission to use the path and cannot recall any signs stating the path is private.

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

Interviewed at home on 5th November 2004.

Usage of path: Mr. Carpenter was born in Wyllie and has always known the path. He used to play football on the field. Mr. Carpenter has used the path for 35 years 3 times a week.

Purpose: Mr. Carpenter uses the path for leisure, walking the dogs but states that there are too many potholes to walk the baby down there.

Other users: Mr. Carpenter has seen mostly local people using the path for walking, some with their dogs; people using the path to catch the bus, also children using it for school and students to catch the bus to college.

Route: Mr. Carpenter has always followed the same route which he states is well defined. He states that the surface of the path is appalling and the path has been broken up by builders' rubble from the new housing site.

Mr. Carpenter states that there is a small bridge over a stream and bridge over the river. He mentioned that there is a problem of access with the steps when using it with prams and cycles. The width of the path is 4-5 foot at the top end and 3.5 feet at the bottom end.

Permission: Mr. Carpenter has never asked for permission to use the path and cannot recall any signs stating the path is private.

▪ **Mrs. J. Carpenter (Document No. 27)**

Interviewed by phone on 7th December 2004.

Usage of path: Mrs. Carpenter has used the path for 20 years on an ad-hoc basis when living in Argoed and used it to visit her Grandmother in Wyllie. She has used it regularly over the last 6 years.

Purpose: Mrs. Carpenter uses it for leisure walking. The annual Duck Race and to catch the bus. She mainly uses it at weekends in winter but in the summer evenings uses it more regularly.

Other users: Mrs. Carpenter recalls seeing a lot of locals using the path and a few strangers. A lot of locals and visitors attend the duck race.

Route: Mrs. Carpenter has always followed the same route. She recalls the path to be rough tarmac with two bridges. She wasn't sure on the width of the path. She became aware of the path through her husband. And always thought it was public.

Permission: Mrs. Carpenter has never asked for permission to use the path and cannot recall any signs stating the path is private.

4.4 Documentary Evidence

- 4.4.1 As mentioned in the User Evidence Forms the claimed path was originally used by the miners when the Colliery was opened in 1924 and was used until the colliery closed in 1968.
- 4.4.2 A Deed of Easement dated 22nd October 1941, was entered into by the Trustees of the Tredegar Settled Estates and Others with the Mynyddislwyn Urban District Council for a period of 49 years at a cost of one shilling and one shilling per annum without deduction. This sum was to be paid on the first day of January each year and although the Deed of Easement was dated 22nd October 1941, the term of 49 years commenced on the 1st January, 1932 and the annuity payment commenced on 1st January 1933. The Easement was for a footbridge and footpath over the River Sirhowy and land situated in the Parish of Mynyddislwyn in the County of Monmouthshire. (Document No. 29)
- 4.4.3 The Deed of Easement was requested by the Mynyddislwyn Urban District Council to allow access for the residents of Wyllie Village to the then Ynysddu New Road (now the A4048).
- 4.4.4 One of the conditions of the Deed of Easement:-
- 6(b) That neither these presents nor anything herein contained nor anything done hereunder shall in any way whatsoever operate as or be deemed a dedication of the said footbridge or the said footpath to the public user but that the said right of way and liberties shall be deemed to be enjoyed only with the consent of the Grantors the Trustees and the Company under this Deed.
- 4.4.5 It can be seen from this condition that the owners did not intend for the path to be dedicated as a public right of way.
- 4.4.6 The Deed of Easement covers the section of footpath where the owner is unknown.
- 4.4.7 The Deed of Easement expired on the 1st January 1981. A letter was received by the former Islwyn Borough Council, from Healey & Baker, International Surveyors, Valuers and Auctioneers of Real Estate, dated 31st December 1980. (Document No. 30) The letter indicated that their clients were prepared to enter into a new Deed to run from 1st January 1981, for a period of 21 years at a rental of £30 per annum.
- 4.4.8 This correspondence was forwarded to the former Gwent County Council who were responsible for rights of way. The Rights of Way Section confirmed that the footpath was extensively used by the residents of Wyllie as it provided a short cut to the bus stop. It had been the intention of the Authority to register the footpath as being public at the forthcoming Quinquennial Review at the request of the Borough Council. However, in view of the Agreement between the Newport Consolidated Estate (previously identified as Tredegar Settled Estate) and the former Mynyddislwyn Urban District Council which states specifically that the footpath will not become public it was intended to review this course of action.
- 4.4.9 A letter dated 24th February, 1981, was then sent by the former Gwent County Council to Messrs. Healey & Baker, enquiring whether the estate would be prepared to enter into a Dedication Agreement under the provisions of the Highways Act 1980, thereby making the footpath public for all time.
- 4.4.10 Messrs. Healey & Baker informed the Gwent County Council that their clients had disposed of their freehold interest in the land over which the footpath runs. Information on the new owners was not provided but it was confirmed that they were being represented by Messrs. Phillips & Davies.

4.4.11 Gwent County Council wrote to Phillips & Davies requesting the footpath be dedicated as a public highway by their clients. However, no further correspondence is available.

PONT ISLWYN FOOTBRIDGE

4.4.12 When the footbridge (Pont Islwyn) over the River Sirhowy, which forms part of the claimed path, was considered in a dangerous condition and had to be removed and replaced with a new footbridge, the Consultancy Section of the Engineering Division endeavoured to locate the owners of this section of land. A search of the Land Registry indicated that the land is unregistered and is not affected by any caution against first registration or any priority notice.

4.4.13 A letter was sent to R.E. Phillips asking if the land was owned by Llanover Estate and they confirmed on the 9th March, that Llanover Estate did not own the land.

4.4.14 Following receipt of the application to claim the path under the Wildlife and Countryside Act 1981, a letter was sent to R.E. Phillips & Partners detailing the previous correspondence with Gwent County and Messrs. Healey and Baker. A response was received confirming that they have no information about the ownership of the land.

4.4.15 The Pont Islwyn Footbridge (Document No. 31) was closed on the 23rd October 1998, due to flood damage. The central pier was dislodged due to the heavy river flow leaving the bridge in a hazardous condition. However, due to the inconvenience to the residents of Wyllie it was reopened and signs were erected stating 'Weak Bridge' one person maximum to use this bridge at any one time. A petition was received on the 4th February 1999, requesting works be undertaken to repair the footbridge.

4.4.16 The bridge was replaced in 2000.

DEFINITIVE MAP

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

HISTORICAL MAPS

4.4.18 Document No. 32 shows a map of the area dated 1900-1904. This shows a section of the path and the footbridge. It can be seen that this is before the Colliery was in place and the construction of the Wyllie Village.

4.4.19 Document No. 33 shows a map of the area dated 1938-1953. This shows the claimed footpath together with an additional footpath which some of the residents use during the summer months across the field.

OTHER INFORMATION

4.4.20 Mr. Nigel Browning worked as a Highway Inspector for the former Islwyn Borough Council and confirmed that remedial works were undertaken to the path by the Authority which also included cutting back overgrowth.

4.4.21 Document No. 34 gives the history of Wyllie Colliery.

4.4.22 History of Wyllie Village

4.4.23 Wyllie Village was founded in 1924-26 this was because the village of Wyllie was constructed for the purpose of housing the workers of the colliery. If anyone finished employment in the colliery they had to vacate their house. The colliery was worked from 1924-68. The Colliery and the village were named after Lt. Col. Alexander Keith Wyllie who was born in Liverpool in 1853. He was the Director of both Tredegar Companies and Oakdale Colliery.

4.5 Summary

- 4.5.1 The Authority has received an application under the Wildlife & Countryside Act 1981 to ADD a path to the Definitive Map and Statement for Monmouthshire in the Community of Mynyddislwyn.
- 4.5.2 The application is supported by 22 evidence user forms. It appears from the evidence provided that this is a well defined route and provides a very useful link to the bus stop on the A4048 to enable residents to catch buses up and down the valley. It also provides a link to the A4048 to access Ynysddu and Pontgam.
- 4.5.3 The users of the path vary in generations, young mothers with children going back and fore to the school in Ynysddu and also for access to the bus stop. Older children use the path to gain access to Ynysddu School. Students use the path for access to the bus stop to catch buses to college. Residents use it for visiting friends and relatives in Ynysddu and surrounding area. It is used by the older generation to catch the bus to do their shopping/hospital appointments or visiting friends and family. It is also used for walking dogs and generally leisurely walks. There is circular walk into Ynysddu using the path and then coming back along the cycle path.
- 4.5.4 During the summer months many more people use the path when the annual duck race takes place down the river. In previous years the path was used to access the field adjacent to the A4048 for local fetes and playing football.
- 4.5.5 The path was originally constructed to allow access for miners to the Wyllie Colliery. The path was recognised by the former Mynyddislwyn Urban District Council as a useful path for the villagers and entered into a Deed of Easement for the use of the path for 49 years.
- 4.5.6 The former Gwent County Council also recognised the usefulness of the path to the villagers and had endeavoured to obtain a Dedication Agreement from the landowners. However, the land was sold and no known landowners could be found.
- 4.5.7 This Authority replaced the defective Pont Islwyn bridge in 2000 and this was felt by the residents as a recognition of the need for the footpath for the residents of the Wyllie Village.
- 4.5.8 There are two further accesses out of the village that can be used, known locally as 'the Rocky' which is a pathway at the northern end of the village which leads to the A4048 and the bus stop and the main access road into the village, known locally as 'the private road'. A number of people use the Rocky when they wish to access the Pontllanfraith/Blackwood area but quite a number of the older residents find the path too steep and slippery in the winter months. The main access road is believed to be too busy for pedestrians to use safely.
- 4.5.9 Many of the users of the claimed path wish to see the surface of the path improved and have also requested street lighting. However, it should be noted that if the Modification Order is successful the right of way is adopted "as found" and adoption does not prima facie require the Authority to improve the surface.
- 4.5.10 There is a possibility that if the Modification Order is successful then funding may be found elsewhere to carry out some improvements to the path i.e. surfacing, street lighting.

5. FINANCIAL IMPLICATIONS

- 5.1 The cost of the making of a Modification order for Footpath status is £1,800.

6. PERSONNEL IMPLICATIONS

- 6.1 None.

7. CONSULTATIONS

7.1 See attached list.

7.2 Only two responses were received, one from the applicant who is also the local councillor and the other from the Ramblers' Association.

7.3 Councillor J. Jones' comments are as follows:-

If this path were to close or fall into disrepair this would cut off pedestrian access from the Southern end into Wyllie Village and cause severe inconvenience to residents. This is an essential right of way for the village, evidenced by the petition and erection of a new iron bridge when the old bridge failed in 1999 and the statements of users which were taken in 2004/5.

I fully support this application and would ask members to support the claim as made for a footpath.

7.4 The Ramblers' Association's comments are as follows:-

Given both the quality and weight of evidence produced, we support the claim that the route should be registered as a "Public Right of Way".

8. RECOMMENDATIONS

8.1 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
- ii) Rejecting the claim

9. REASONS FOR THE RECOMMENDATIONS

9.1 To comply with legislative requirements and keep the Definitive Maps and Statement under continues review as part of the Wildlife & Countryside Act 1981.

10. STATUTORY POWER

10.1 Wildlife and Countryside Act 1981. This is a committee function.

Author: Mrs. June E. Piper, CROW Support Officer
Consultees: Local Members – Councillors J. Jones (also the Applicant)
Auto Cycle 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)
Mrs. J. Pritchard, Area Footpaths Officer
The Ramblers Association.
Chief Engineer, Caerphilly County Borough Council,
Civic Offices, Pontllanfraith, Blackwood -NP12 2YW