

RIGHTS OF WAY CABINET COMMITTEE – 2ND MARCH 2012

SUBJECT: APPLICATION FOR A MODIFICATION ORDER TO AMEND THE MID GLAMORGAN COUNTY COUNCIL DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY IN RESPECT OF ADDING A PATH IN THE COMMUNITY OF RUDRY

REPORT BY: CHIEF EXECUTIVE

1. PURPOSE OF REPORT

- 1.1 To consider and determine an application to ADD a path to the Definitive Map and Statement in the Community of Rudry.

2. SUMMARY

- 2.1 The report sets out the evidence regarding the application to ADD a footpath from Edward Thomas Close to Starbuck Street, Rudry to the Definitive Map and Statement together with evidence from land owners disputing its existence.

3. LINKS TO STRATEGY

- 3.1 The Wildlife and Countryside Act 1981 places a duty on the council to maintain an up to date Definitive Map and Statement
- 3.2 The Rights of Way Improvement Plan has committed the Council to keeping the definitive map and statement under continuous review.

4. THE REPORT

4.1 Background

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. Document No. 1 gives an explanation of the term “public rights of way” and the role of this Committee.

The application for a claimed right of way leading from Edward Thomas Close to Starbuck Street, Rudry, is being dealt with under the Wildlife and Countryside Act 1981, Section 53(3)(c)(i).

4.2 Introduction

- 4.2.1 An application has been received under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 from Mrs. J. Lewis to modify the Definitive Map and Statement of the Mid Glamorgan County Council by ADDING a footpath leading from Edward Thomas Close to Starbuck Street,

Rudry. The date when the right of way first came into question was approximately 3rd June, 2007, when the new owners erected wooden fencing panels to prevent public access and this was reported to the Authority.

- 4.2.2 The location of the claimed right of way is shown on Document No. 2 within the circled area. This has been reproduced from the Ordnance Survey mapping by use of the Authority's Geographical Information System.
- 4.2.3 The route of the claimed path can be located in Document No.3 along a bold broken red line shown as A-B. The application W.C.A.5 was received by the Authority on 13th May, 2009. (Document No. 4)
- 4.2.4 The Claimed Right of Way commences from Edward Thomas Close, Rudry and proceeds in a north easterly direction and terminates at the side of 16 Garth Place, Rudry on Starbuck Street. The total length of the claimed path is 29 metres with a width of 2 metres.
- 4.2.5 The applicant notified the Authority, by submitting Notice W.C.A.7, (Document No. 5) that she had served notice on the landowners, Mr. and Mrs. Williams, 16 Garth Close, Rudry.
- 4.2.6 The claim is supported by nine (9) User Evidence Forms most of which have been completed by the residents of Rudry who claim to have used the route on a regular basis.
- 4.2.7. 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 Caerphilly County Borough Council received 9 submitted User Evidence Forms (W.C.A.8), all of which have been completed by people who claim to have used the route regularly. All but one reside in Rudry and have used the path as a public footpath without interference for a period varying between 3 and 58 years.
- 4.3.2 The user evidence forms have been studied and the Council's CROW Support Officer, Mrs. J.E. Piper, has interviewed all the persons who submitted the forms by, CROW Support Officer. During investigations into the application four additional supporters to the claim were interviewed who had not submitted evidence user forms.
- 4.3.3 The interview notes are appended to this report as Appendix II.
- 4.3.4 Detailed in Table 1 are the salient points from the evidence user forms and interviews.
- 4.3.5 From the evidence provided in the evidence user forms and the interviews, the users believed the footpath to be public as it had been used through the generations as a short cut. The path was established by local residents over 78 years ago and was used by workmen who used it as a short cut to gain access to the back lane and through the fields. The evidence shows that the use was varied and included visiting friends and family, short cut to the bus stop and also to the public right of way leading to Waterloo. The path was used to visit the shop and Post Office. The path was used on a regular basis with some using it several times a day and others once or twice a week.
- 4.3.6 The users have confirmed that no notices were displayed stating that the path was private and that they had not asked permission to use the path. Some of the users could recall the small gate but no-one had been prevented from using the path until June 2007 and they confirmed that they had never seen the gate locked during their use of the path.

4.4 Correspondence

- 4.4.1 Letters were received from the Rudry Community Council, dated 23rd July and 20th August, 2007 relating to the claimed right of way being blocked. A response was sent on 29th August, 2007, advising on the procedure in respect of applications to add footpaths to the Definitive Map through the Wildlife and Countryside Act 1981.
- 4.4.2 On 24th February, 2009, Councillor Mrs. Aldworth contacted the Rights of Way Section in respect of the claimed right of way being blocked. The situation was explained to Councillor Aldworth advising that until such time as an application was submitted no action could be taken.
- 4.4.3 The application was then submitted by Mrs. Lewis on 13th May, 2009.

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 to the claimed footpath was looked for on all the maps listed below.

Historical Map dated 1919-1921 (Document No. 15)

It can be seen from this map that within the circled area there is an open area between the Rudry Hotel and 16 Garth Close (Post Office), Rudry. A dotted line is shown at the side of the Post Office indicating a pavement or path.

Historical Map dated 1959-1973 (Document No. 16)

It can be seen from this map that within the circled area there is an open area between the Rudry Hotel and 16 Garth Close (Post Office), Rudry. A dotted line is shown continuing half way up the side of 16 Garth Close indicating a pavement or path.

Draft Definitive Map – Edition of 1922 (Document No. 17)

The claim right of way is identified within the circled area which shows an open area between the public house and Post Office.

Undated map showing the extent of the Adopted Highway in the Rudry Village and within the circled area it shows an open area between the Rudry Hotel and 16 Garth Close (Post Office), Rudry (Document No. 18)

Aerial Photograph dated 2001 (Document No. 19)

The circled area indicates the right of way and it can be seen from the aerial photograph that a car and caravan is parked next to 16 Garth Close, Rudry.

Aerial Photograph dated 2004-2005 (Document No. 20)

The circled area indicates the right of way and it can be seen from the aerial photograph that a car is parked next to 16 Garth Close, Rudry and a gap can be seen between the wall of the public house and the garden wall of 16 Garth Close.

Aerial Photograph dated 2006 (Document No. 21)

The circled area indicates the right of way and it can be seen from the aerial photograph that a car is parked next to 16 Garth Close, Rudry.

Aerial Photograph dated 2010 (Document No. 22)

The circled area indicates the right of way and it can be seen from the aerial photograph that a caravan is parked next to 16 Garth Close, Rudry. It also shows that there is no longer a gap between the wall of the public house and the garden of 16 Garth Close.

Photographic Evidence

Mr. Williams, 16 Garth Close, Rudry (Document No. 23)

Photographs taken of his property by the CROW Support Officer.

Photo 1

This shows the wooden fence panels put in place by Mr. Williams to prevent access to the claimed footpath.

Photo 2

This shows the wooden fence panels put in place by Mr. Williams at the rear of the property to prevent access to the claimed footpath.

Photo 3

This shows the gap between the public house and the garden wall which Mr. Williams has filled with material to incorporate into his garden.

Photo 4

This shows the old stables referred to in Mr. Templeman's evidence.

Mr. Farmer, 1 Garth Close, Rudry (Document No. 24)

Painting of 1 Garth Close, Rudry. Photograph taken of the painting of his property. This shows an old post and the old green footpath sign on the ground next to the wall. It has been stated by several of the users that there was a footpath either side of Starbuck Street giving access to the back lane.

EDWARD THOMAS CLOSE

- 4.4.2 The Authority's records show that the first residents moved into Edward Thomas Close in May 1982. Quite a number of the evidence users state that they used to visit residents in the bungalows. The period of time from 1982 to the time the path was called into question (2007) is 25 years.

4.5 Land Ownership

- 4.5.1 The property adjacent to the claimed right of way was previously a Post Office and is identified as 16 Garth Close, Rudry, CF83 3DL. The freehold of this property was registered with the Land Registry on 23rd June, 1932.
- 4.5.2 The land over which the claimed right of way crosses was added to the title of 16 Garth Close, Rudry, on the 30th January, 1986, and was purchased from the Mid Glamorgan County Council. The Rudry Hotel purchased land adjacent to the claimed right of way to construct a car park.
- 4.5.3 The applicant served Notice W.C.A. 7 on the owners of the land identified as A-B in Document 2, namely Mr. Lyndon and Mrs. Chloe Alice Williams, 16 Garth Close, Rudry, who purchased

the property on the 19th December, 2006. The property is now up for sale.

- 4.5.4 An interview was undertaken with Mr. L. Williams, on 22nd February, 2011, by the CROW Support Officer and the information he provided is set out in paragraphs 4.5.5 – 4.5.12.
- 4.5.5 Mr. and Mrs. Williams purchased the property from the previous owners Gareth & Karen Thomas on the 19th December, 2006.
- 4.5.6 He closed the claimed right of way in the first year he moved in as he was having problems with people walking their dogs and allowing them to urinate/mess on the path. He also had problems during the summer months when men drinking in the pub next door used his path to urinate instead of going back into the pub to use the toilet facilities.
- 4.5.7 Before closing the path he had made enquiries to see who used the path and as the shop and Post Office had been removed did not see any use for it. He contacted the Rights of Way Section to clarify whether the path was recognised as a right of way and whether or not it was an adopted highway. He was informed that it was neither.
- 4.5.8 He believed that the previous owners who had a shop allowed the residents of the bungalows at the rear of the pub (Edward Thomas Close) to use it to gain access to the shop.
- 4.5.9 Mr. Gareth Thomas owned it prior to Mike Templeman's family and he ran a Post Office and Shop.
- 4.5.10 Mr. Thomas had a gate at the bottom of the garden and locked it every Christmas Eve in order to keep the path closed once a year and preventing it from becoming a right of way. The gate kept getting stolen and was replaced many times.
- 4.5.11 The shop was closed a few years before Mr. Williams moved in.
- 4.5.12 Mr. Williams decided to bring the path back within his garden for more privacy as well as the other issues raised.

PREVIOUS OWNER – MR. MIKE TEMPLEMAN

Mr. Mike Templeman was interviewed by the CROW Support Officer, on the 22nd February, 2011 in Mr. Williams' property. Mr. Templeman stated that the property had been in his family since 1890 and had belonged to his parents and grandparents. He believed it had been in his family since it had been built. His aunt owned it for 40 years and his grandparents before that – at least 80 years in the family.

The ground to the side of the property and between the pub was open land and was owned by Garth Farm who also owned the village green and the land in front of Bryngolau.

Mr. Templeman could recall the land being used unofficially as a lorry park during the nights. The Brewery refurbished the public house and bought the land from the Council (Garth Farm was a Council owned farm at the time) for a car park and this was when Mr. Templeman's family purchased the strip of land between his property and the pub.

Mr. Templeman could recall that years ago Starbuck Street was a dead end and that the lane at the rear was the main route through.

When Mr. Templeman's family bought the strip of land from the Council it was on condition that they did not build on it. The Council did not refer to any footpath on the land when it was sold.

The old buildings at the back of the house were used to store paraffin. The land next to the house was used as access for the tankers who would deliver 200 gallons. Access was

always required for tankers and other delivery vehicles delivering goods to the shop.

A gate was installed preventing access and was locked once a year. The gate kept being stolen even the iron one which was installed.

PREVIOUS OWNER – GWYNETH ADDIS

Mrs. Addis sold the property in November 1996 to Gareth and Karen Thomas.

PREVIOUS OWNERS – GARETH AND KAREN THOMAS

The previous owners, Gareth and Karen Thomas owned the property from November 1996 to 19th December, 2006. They ran the Post Office and Gareth would deliver the pension to several of the pensioners in Thomas Edward Close. A telephone interview with Mr. Thomas confirmed that the claimed footpath was used to access the Post Office and Shop but he did not believe it was a right of way. He had been informed that the gate should be locked once a year to prevent it becoming a right of way. However, the gate was falling off and he had not locked it. He stated that local residents used the claimed right of way to access the shop but nothing stopped them from walking the whole length of the claimed path. He confirmed that he had incorporated the claimed right of way into his garden and always thought of it as part of the garden. He allowed people to use the claimed right of way to gain access to his shop but never intended it to become a right of way.

4.6 SUMMARY

- 4.6.1 The Authority has received an application to add a footpath to the Definitive Map and Statement. Evidence has been submitted that the route has been used by local residents but two previous landowners state that there was no intention to dedicate the footpath as a right of way and have stated that a gate has been locked once a year in an attempt to prevent it becoming a public right of way. Local residents have stated that they have never asked for permission to use the footpath and have never been prevented from using it until 2007 when the new owners erected wooden fencing panels to prevent access. None of the evidence users could recall the gate ever being locked.
- 4.6.2. As detailed in Document 1 the evidence submitted needs to show that the footpath has been used for a period of 20 years without interruption and as a right. The date the footpath first came into question is June 2007 and therefore the 20 year period commences from June 1987. The property was owned in 1987 by Gwyneth Addis until November 1996 when it was owned by Gareth and Karen Thomas who owned it for 10 years until it was sold to the current owners, Mr. and Mrs. Williams in December 2006. The applicant and supporters state that the footpath has been used without interference for a period varying between 3 and 58 years.

5. FINANCIAL IMPLICATIONS

- 5.1 The cost of an order should Members resolve to support the application, is in the region of £1,800.00. If it is agreed to add the footpath to the Definitive Map and Statement the cost of the order and the cost of opening of the footpath would be the responsibility of this Authority. Whatever Members' decision, should representations be received this may result in a public inquiry. This cost may exceed £10,000.

6. PERSONNEL IMPLICATIONS

- 6.1 None.

7. CONSULTATIONS

- 7.1 For List of Consultees see Appendix 1. Comments received on the draft report are appended to the report.

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 that the path be registered
 - ii) Rejecting the claim

9. REASONS FOR THE RECOMMENDATIONS

- 9.1 To comply with its duty to keep the definitive map and statement under continuous review

10. STATUTORY POWER

- 10.1 Wildlife and Countryside Act 1981. This is a Council function delegated to this Committee

Author: Mrs. June E. Piper, CROW Support Officer.

List of Documents

1. Description of Rights of Way Document No. 1
2. Location Plan Document No. 2
3. Plan showing claimed right of way Document No. 3
4. Application Form WCA5 submitted by Mrs. Lewis Document No. 4
5. Form WCA7 served on landowner Document No. 5
6. Evidence User Forms Document Numbered 6 –14
7. Historical Mapping 1919-1921 Document No. 15
8. Historical Mapping 1959-1973 Document No. 16
9. Draft Definitive Map Document No. 17
10. Extent of Adopted Highway Document No. 18
11. Aerial Photograph 2001 Document No. 19
12. Aerial Photograph 2004-2005 Document No. 20
13. Aerial Photograph 2006 Document No. 21
14. Aerial Photograph 2010 Document No. 22
15. Photographs of the blocked claimed right of way Document No. 23
16. Photograph of painting of No. 1 Garth Close, Rudry Document No. 24
17. E-mail received from Mr. L. Williams Document No. 25
18. E-mail from Rudry Community Council Document No. 26
19. Letter received from Mr. P. Gilbert Document No. 27
20. Letter received from Open Spaces Society Document No. 28

ETP/ROW/CROW 209 held at Pontllanfraith Offices