



RIGHTS OF WAY CABINET COMMITTEE - 15TH SEPTEMBER 2014

SUBJECT: APPLICATION FOR A MODIFICATION ORDER TO AMEND THE MONMOUTHSHIRE COUNTY COUNCIL DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY IN RESPECT OF DELETING FOOTPATH 147 IN THE COMMUNITY OF Mynyddislwyn

REPORT BY: ACTING DEPUTY CHIEF EXECUTIVE

1. PURPOSE OF REPORT

- 1.1 To consider and determine an application to DELETING the footpath shown on the Definitive Map and Statement.

2. SUMMARY

- 2.1 The report sets out the evidence regarding the applications to DELETING the footpath leading from Heolddu Lane to Tyla Gwyn Farm to Lane, Wyllie.

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 Keeping the Definitive Map and Statement under continuous review as detailed within the Rights of Way Improvement Plan.

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 DELETE a path identified on the definitive map and statement. Document No. 1 gives an explanation of the term "public rights of way".

The application is being dealt with under the Wildlife and Countryside Act 1981, Section 53 (3) (c) (iii) to DELETE Footpath 147 in the Community of Mynyddislwyn.

4.2 Introduction

- 4.3 For identification purposes the location of the footpath is shown on Document No. 2 which is an area just above Wyllie and reproduced from the ordnance survey mapping by use of the Authority's Geographical Information System.

- 4.4 An application has been received under Section 53(3)(c)(iii) of the Wildlife and Countryside Act 1981 from Mr. John Thomas-Davies to modify the Definitive Map and Statement for the County of Monmouthshire by deleting the footpath from Heolddu Lane to Tyla Gwyn Farm. This path is registered on the definitive map and statement for the former County of Monmouthshire (relevant date 1st July 1952) as Footpath No. 147 in the Community of Mynyddislwyn and indicated on the plan marked Document No. 3 along the bold black lines A-B.
- 4.5 A copy of the Definitive map (scale 1:5,000) relevant date 1st July 1952 is included as Document No. 4
- 4.6 The path is described in the definitive statement, relevant date 1st July 1952, as follows:-
Footpath No. 147 Mynyddislwyn Right Not Disputed 1880 O.S.
Leave Heolddu Lane at gateway east of Penheolddu, east then southeast skirting Tyla Gwyn Farm to lane.
A copy of the Definitive Statement is included as Document No. 5
- 4.7 The footpath crosses land owned by three separate landowners, one is the applicant and the others are the owners of Tyle Gwyn Farm and Tyle Gwyn House.
- 4.8 Research has been undertaken to determine the validity of the application by collating, as far as possible, all **Documentary Evidence** available, together with the crucial **Evidence** provided by the applicant and the evidence from other those persons who have known the land in question, together with evidence supplied from local users of the use of the footpath in question.
- 4.9 The applicant has confirmed that he has served notice on the known landowners. The landowners are identified in Document No. 6, Mr. John Thomas-Davies's land edged in red, Mr. and Mrs. Down's is edged in blue and Mr and Mrs Tiley's is edged in green.
- 4.10 **Documentary Evidence**
Under Part VI of the "National Parks and Access to the Countryside" Act 1949, Section 27 of the act placed a duty on all County Councils to prepare Statutory Maps showing all the Public Rights of Way for their particular areas
The preparation of the definitive map and statement was processed through three specific stages, namely; Draft, Provisional and Definitive. The definitive map and statement for CCBC was partly prepared by Glamorgan and Monmouthshire County Councils. Document No. 7 provides details of how this was processed.
A copy of an enlarged copy of the Draft Map is attached as Document No. 8
A copy of the Provisional Map is attached as Document No. 9
A copy of the Definitive Statement is attached as Document No. 5.
- 4.11 **Definitive Map and Statement County of Monmouthshire**
The definitive map and statement for the Monmouthshire area has not been updated and accordingly only reveals information correct at the relevant date of the 1st July 1952.
The justification of the Right of Way to be included on the Definitive Map and Statement for Footpath No. 147 in the Community of Mynyddislwyn is based on the Ordnance Survey 1st Edition for 1880, a copy of the 1880 map is shown in Document No. 10 which has been obtained from the Gwent Archives Office. An enlarged copy of the area of Tyle-Gwyn is

attached as Document No. 11.

Document No. 12 shows the area crossed by the footpath in 1873-1888. There is a double dashed line indicating a route through the fields which enters into the Tyle Gwyn area. There is a line across separating the field where there may have been an access point, near the well, but it is not clear whether or not it terminates on the lane.

Document No. 13 shows the area crossed by the footpath in 1900-1904. On this particular map the double dashed lines indicate a route through to Tyle-Gwyn but it is not clear if the route goes down the drive or to the dairy mentioned by Mr. Thomas-Davies in his evidence.

Document No. 14 shows the area crossed by the footpath in 1919-1921. Again this shows the dashed lines as mentioned above and shows the route through the field but it is not clear where the route terminates.

Document No. 15 shows the area crossed by the footpath in 1959-1973. This map now shows the route as a track through the fields but as in the previous documents it isn't clear where the route terminates.

Document No. 16 is an aerial photograph generated from the Authority's G.I.S. dated 1991, together with an enlargement of the area surrounding Tyle Gwyn Farm and House. The track leading across the field and down to the farm is quite clear and it can be seen that the ground is being well managed and this is probably due to farm machinery.

Document No. 17 is an aerial photograph generated from the Authority's G.I.S. dated 2001, together with an enlargement of the area surrounding Tyle Gwyn Farm and House. On both aerial photographs it can be seen that there are many more tracks through the fields but that the track does not connect to the rear of Tyle Gwyn Farm where the definitive line joins.

Document No. 18 is an aerial photograph generated from the Authority's G.I.S. dated 2004-5, together with an enlargement of the area surrounding Tyle Gwyn Farm and House. The same comments apply as 2001.

Document No. 19 is an aerial photograph generated from the Authority's G.I.S. dated 2006, together with an enlargement of the area surrounding Tyle Gwyn Farm and House. The same comments apply as 2001 and 2004-5.

Document No. 20 is an aerial photograph generated from the Authority's G.I.S. dated 2010, together with an enlargement of the area surrounding Tyle Gwyn Farm and House. The same comments apply as 2001 and 2004-5.

Landowner and Applicant

4.12 Mr. John Anthony Thomas-Davies

Document No. 21 is a copy of the letter and application W.C.A. 5 received from Mr. Thomas-Davies dated 20th April 2013. Document No. 22 is a copy of the letter received from Mr. Thomas-Davies dated 25th March 2013. The enclosures are identified as Documents No. 22- - 40

Mr. Thomas-Davies has supplied a statutory declaration, dated 8th March 2013, in respect of his application (Document No. 23) providing evidence to support his application to delete the footpath on the grounds that it has been included on the Definitive Map and Statement in error. The land surrounding Tyle Gwyn has always been used to graze livestock and the working farm track through the ground was used for farm machinery and not as a public right of way. Neither his father nor the tenant farmer, Mr. Watkins, raised any objection to the footpath being included on the Definitive Map and Statement at the appropriate time and he wonders whether this was an oversight on their part or whether they were not aware of its inclusion.

Tyle-Gwyn has been owned by his family since 1865 and at that time the farm track run across the farmland to a milking shed and dairy. The track only went as far as the dairy, which is now a ruin. Local residents from Wyllie Village used to come up to the farm to collect milk and used a private footpath to gain access as identified in JAT-D-2 which is not on the line of the alleged footpath.

Mr. Thomas-Davies provides details of the farm tenants and occupiers of Tyle Gwyn Farm and Tyle Gwyn House. Mr. Thomas-Davies visited the property with his father from 1945 onwards and knew Mr. and Mrs. Watkins who were the farm tenants for many years. He lived at the property during the late 1980s and 1990s and became friends with many local residents. During that time no one used the alleged footpath nor did anyone claim that a footpath existed through the ground.

Mr. Thomas-Davies first became aware of the alleged footpath when the former Gwent County Council contended that it must run down the front drive. This seemed improbable to Mr. Thomas-Davies that such a use of the drive had been permitted. However, since Caerphilly CBC took over responsibility the footpath is stated to be across the farm garden and onto the back lane. He is not aware of any evidence of an access onto the back lane and due the difference levels felt it was most unlikely.

Mr Thomas-Davies points out that footpaths across adjacent farms were marked with "FP." but that the alleged footpath is marked with "TK" on ordnance survey maps and should not have been identified as a footpath to be included on the Definitive Map and Statement. He makes the point that many farms have tracks across them that are not public rights of way.

Evidence to Support Application

4.13 Mrs. Lorraine Ruff (Document No. 24)

Mrs. Ruff's statutory declaration, dated 17th May 2009, is identified as Document No. 23. Mrs. Ruff moved to Heol Du Farm in 1957 and has lived there for over fifty-two years. She is well acquainted with neighbouring farms in the area and the footpaths crossing each. She believes that Footpath 147 Mynyddislwyn has been wrongly designated as a public footpath. She has always known the farm track used purely for the benefit of the owners and tenants of Tyle Gwyn Farm. From her farmhouse she has a clear view of the majority of this footpath and she states that she has never seen anyone using this footpath. She regularly sees ramblers using other footpaths in the area. She was aware of relatives of her late husband who lived in a neighbouring farm who used the path to get to services in a chapel in Wyllie but did so with the consent and knowledge of the owner of Tylle Gwyn Farm. She further states that there has never been any footpath signs or other indication of the existence of the footpath near the start of the footpath on Heolddu Road.

4.14 Reginald Ruff (deceased) Document No. 25

Mr. Ruff's statutory declaration, dated 17th May 2009, is identified as Document No. 25. Mr. Ruff was born at Heolddu Farm and lived there all his life (87 years). He was well aware of the footpaths in the area and was familiar with the land surrounding his farm and that of his neighbours.

He was of the view that the footpath in question was wrongly designated as a public footpath. During his lifetime he only knew the footpath as a farm track, which was used purely for the benefit of the owners of the farm, Tyle Gwyn. He regularly saw ramblers using other footpaths in other areas but not the footpath in question.

4.15 Mr. Stephen Watkins (Document No. 26)

Mr. Watkins' statutory declaration, dated 21st December 2012, and his signed statement dated 26th February 2009, is identified as Document No. 26 and Mr. Watkins was born at Tyle Gwyn

Farm in 1942 and lived there for 23 years. He was familiar with the land which formed Tyle Gwyn Farm and also the neighbouring farms. He was aware of the footpaths in the area.

His parents moved to Tyle Gwyn farm in 1938 and remained there as tenants for about 50 years. He knew the farmland from childhood until the tenancy was terminated in 1988 and during this time he was never aware of members of the public using the footpath in question as a right. He believes the footpath in question has been wrongly designated as a public right of way. He only knew the footpath as a farm track for the benefits of Tyle Gwyn Farm.

4.16 Mr. D.J. Coonick (Document No. 27)

Mr. Coonick's statutory declaration, dated 17th December 2012, is identified as Document No. 27. Mr. Coonick is the tenant of Tyle Gwyn Farm and has worked the land alongside his father ever since he took the tenancy in 1984.

Mr. Derek Oliver has permission to shoot vermin on the farmland to assist with the overall management of the farm and he is the only person he has seen walking across the land since 1984.

During the period of his tenancy he has never seen any other person walking on the footpath in question into Tyle Gwyn Farm.

4.17 Mr. J. Coonick (Document No. 28)

Mr. Coonick's statutory declaration, dated 17th December 2012, is identified as Document No. 28. Mr. Coonick is the tenant of Tyla Gwyn Farm, Wyllie and has been since 1984 and his family have worked the land since then to the present day. As mentioned in Mr. Coonick's son's statutory declaration the only person who has been seen walking across the ground is Derek Oliver.

Mr. Coonick has never seen anyone during his tenancy walking on a footpath or otherwise across the land at Tyla Gwyn Farm.

4.18 Mr. A.E. Down of Tyle Gwyn Farm (Document No. 29)

Mr. Down's statutory declaration, dated 1st February 2013, is identified as Document No. 29. Mr. Down moved into the property in December 2004, and is aware that the footpath in question runs across the farmland, enters his neighbours' land before crossing into his and running alongside of his house and through his garden.

He is a keen walker and cyclist and spends a lot of time exploring the land around where he lives. He has spoken to other local ramblers and cyclists and since he has lived there he has never seen anyone crossing the farmland using the footpath nor has anyone asked for access to use the footpath.

4.19 Mrs. J. Down of Tyle Gwyn Farm (Document No. 30)

Mrs. Down's signed statement, dated 18th March 2009, is identified as Document No. 30. Mrs Down moved into the property in December 2004, and does not believe that the footpath in question rightfully exists. She has never known anyone using it and there is no evidence of any access having been established.

4.20 Mr. A. Beddoe (Document No. 31)

Mr. Beddoe's statutory declaration, dated 17th February 2009, is identified as Document No. 30. Mr. Beddoe was born in 1946 and in 1961 when he was 14 years old his father was appointed as Under-Manager for Wyllie Colliery and his family moved to the above address. Mr. Beddoe recalls a footpath leading from the steep lane leading up to Tyle Gwyn to the farmyard. As a child he played with Mr. Watkins' children who lived in Tyle Gwyn Farm.

In 1962 his father was appointed Colliery Manager and his family moved to Tyle Gwyn that year. In 1965 the family left Tyle Gwyn and moved into the new Manager's House (now called Fernlea, The Avenue, Wyllie) which had been built by the National Coal Board.

In 1970 he married Gwynville Grant (maiden name). She was also born in 1946 and had lived in Wyllie all her life and also played with the children at Tyle Gwyn Farm. She also recalled local residents from Wyllie village collecting milk by using the footpath from the lane to the farmyard. Sadly his wife died in 2001 and a copy of her statement made in 1999 is included In Document No. ?

He joined the British Transport Police in 1970 and became a dog handler in 1979 and retired in 1998. During the period of 19 years as a dog handler he exercised his police dogs up the back lane past Tyle Gwyn. From 1961 to present time he has never seen or heard of anyone walking a footpath past Tyle Gwyn or across any part of Tyle Gwyn Farm,

He is of the opinion that the footpath has been registered as a public footpath in error.

4.21 Mr. C.K. and Mrs. C. Fletcher (Document No. 32)

Mr. Fletcher's statutory declaration, dated 19th February 2013, is identified as Document No. 32. Mr. and Mrs. Fletcher moved into 22 Tir Bach Road, Wyllie in early 1967 shortly after they were married and moved to the above property in mid 1981. Their property abuts the access road leading to Tyle Gwyn House and Tyle Gwyn Farm. They have walked various paths in the area and the only time they have entered Tyle Gwyn property was for visiting the residents there.

They consider that there is no public footpath across any part of Tyle Gwyn property, neither the farm nor beside the two houses. The footpath in question has been wrongly designated as a public footpath.

They have never seen or heard of anyone using the said footpath at any time since 1967.

4.22 Mr. & Mrs. Marsh, Tyla Gwyn House, Wyllie (October 1995) (Document No. 33)

Mr. and Mrs. Marsh's signed statement, October 1995 and Mr. Marsh's statement dated 19th February 2009 is identified as Document No. 33. Mr. and Mrs. Marsh lived at Tyla Gwyn House and at the time of their first statement and had never heard of a footpath through the property. Mrs. Marsh was born in the area in 1957 and to the best of her knowledge had never known of a footpath at Tyla Gwyn. The local residents they spoke to could not remember there being one.

Mr. Marsh lived at Tyla Gwyn for a period of 8 years from 1989-1997 as a tenant of Mr. Thomas-Davies. He is not aware of a footpath or right of way in the vicinity of the dwelling known as Tyla Gwyn. During his time at the premises he did not see anyone walk or ask if it was a right of way or footpath. The friends he made in the village never mentioned any sort of passageway through and he believed that it is private property.

4.22 Mr. E.F. Symons (Document No. 34)

Mr. Symons' statement, dated 10th March 1996, is identified as Document No. 34. Mr. Symons used to live at Graig Farm, Mynyddislwyn. He confirms that he had known Tyl-y-Gwyn Farm for at least sixty years and there had never been a path or track over the land.

4.23 Mr. C. Tiley, Tyle Gwyn House (Document No. 35)

Mr. Tiley's signed statement, dated 2nd March 2009, is identified as Document No. 35. Mr. Tiley has lived at the above property since December 2003 and during the whole period of residency has never been aware of people using or attempting to use the alleged footpath which is said to run across Tyle Gwyn Farm.

4.24 Mrs. J. Tiley, Tyle Gwyn House (Document No. 36)

Mrs. Tiley's statement, dated 2nd March 2009, is identified as Document No. 36. Mrs. Tiley confirms her husband's statement as above.

4.25 Mr. Peter Watkins (Document No. 37)

Mr. Watkins' signed statement, dated 16th March 1996 and 20th March 2009, are identified as Document No. 37. Mr. Watkins states that his parents rented Tyla Gwyn Farm from 1939 to 1987. He moved to the farm with his family in 1940 where he spent his boyhood. His father died in 1983 and he took over managing the farm for his mother until 1987.

In his experience the track shown on the ordnance survey map was never used or regarded as a public path. This track was never regarded as a through-fare during this time. His father's aunt and uncle had rented the land from the early 19th century when at that time the abutters in the main house were members of the Thomas-Davies family. He does not recollect his father mentioning the existence of a public footpath.

4.26 Mrs. J.A. Gibbon (nee Watkins) (Document No. 38)

Mrs. Gibbon's letter, dated 17th March 1996, and signed statement dated 10th February 2009 are identified as Document No. 37. Mrs. Watkins confirms that there has never been a right of way through Tylas Gwyn Farm from the beginning of the 19th century up until 1986 when her mother vacated the farm. Mrs. Watkins was born at the farm in 1949 and left there in 1960. During the time her family lived at the farm she testifies that there was no public footpath across the farm.

4.27 Mr. S. Oliver (Document No. 39)

Mr. Oliver's letter dated 25th September 1996, is identified as Document No. 39. Mr. Oliver confirms that he has lived in Wyllie all of his life and worked for the Forestry Commission and regularly walked all of the footpaths. To his knowledge FP147 was never walked by the public and was a cart track used only by the farmer, Mr. Watkins, now deceased, and his family. Mr. Oliver is referred to in Messrs. Coonick's statements and he has permission to shoot vermin on the ground.

However, there is a letter from Mr. Oliver dated 1st September 1995, asking for stiles to be put in and the footpath cleared at Tyla-Gwyn Farm, Wyllie Village, path No. 147.

4.28 Mr. John Thomas-Davies (Document No. 40)

Mr. Thomas-Davies' letter, dated 19th January 1997, is identified as Document No. 40. The letter enclosed original statements from four people (some of which are identified above) supporting his view that that there was never a public right of way across his land.

4.29 Councillor Mrs. Janet Jones (Document No. 41)

Councillor Mrs Janet Jones' e-mail, dated 13th March 2013, is identified as Document No. 41. Cllr. Jones has lived in the area for over 30 years and has no knowledge of a right of way leading from Tyla Gwyn Farm. She spoke to several former residents, Mr. Beddoes who lived at the farm from 1961-1963 and never knew anyone enter the garden claiming to be on a right of way. She spoke to Robert and Tracy Williams who lived at the property (Cllr. Jones has confirmed that the dates referred to her in email are incorrect and they lived there for 3 years rather than 10 years) and the only person they could recall in their garden trying to trace the right of way was a walker who had a copy of the definitive map and was trying to find his way through. She also discussed the footpath with Mr. and Mrs Downs who have lived at the farm for 10 years and they have never seen anyone attempt to use a footpath through their garden.

General information on Footpath

- 4.30 The issue of whether the footpath was incorrectly shown on the Definitive Map and Statement was first brought to the attention of Gwent County Council on 27th September 1994, when Mr. Steve Young from Groundwork Trust attempted to install way markers on the footpath.
- 4.31 Mr. Thomas-Davies believed the footpath had been incorrectly added to the Definitive Map and Statement and wished to challenge this.
- 4.32 Three separate letters were received from local residents from Wyllie enquiring on the outcome of discussions with Mr. Thomas-Davies in respect to the footpath. They stated residents in Wyllie and the Ramblers Clubs needed FP147 signposted as soon as possible.
- 4.33 As Mr. Thomas-Davies' letter dated 12th October 1995, included five statements from people stating that as far as they were concerned there were no public rights of way across Tyla Gwyn Farm, Gwent CC wrote to the three residents seeking further information on their knowledge of the footpath.
- 4.34 Council for a resolution. Mr. Thomas-Davies raised the matter again in January 1997 and was informed to complete an application under the Wildlife and Countryside Act 1981 to delete the footpath but this was not received.
- 4.35 In July 1998 the Ramblers Association Gelligaer Group reported that they were unable to use FP147 Mynyddislwyn due to a locked gate and unable to gain access through Tyle-Gwyn Farm. This issue was again raised by the Group in February 2000 and the Rights of Way Warden erected a new sign and the landowner/tenant opened the gate.
- 4.36 Access to the footpath was again raised in September 2004 by one of the local councillors. Following a meeting with the owner of Tyle Gwyn Farm House it was agreed that a stile would be constructed in the fence line to allow access but it is not clear from the file whether this was undertaken.
- 4.37 In August 2007 the padlock was again cut off the field gate at the beginning of the footpath following a complaint.
- 4.38 Document No. 43 includes photographs taken of the footpath commencing at Heolddu Lane, which includes the field gates along the footpath, the obstructed fence line, Mr. and Mrs Downs' garden and the termination of the footpath.
- 4.39 Correspondence was then entered into with Mr. Thomas-Davies In 2008 where he again stated that he believed the footpath had been included on the Definitive Map and Statement in error.
- 4.40 Attempts were made to resolve access to the footpath by installing kissing gates and the possibility of a diversion of the right of way was also considered. However, as Mr. Thomas-Davies believed that the footpath had been included on the Definitive Map and Statement in error he could not agree to the diversion.
- 4.41 Further correspondence between the Authority and Mr. Thomas-Davies led to the application to challenge the Definitive Map and Statement and seek the Authority's Rights of Way Cabinet's consideration of the evidence to conclude whether or not this is the case.

Summary

- 4.42 At the time the Draft Map, Provisional Map and Definitive Map and Statement were being prepared Mr. and Mrs Watkins were tenants of the farm and lived at Tyle Gwyn having lived there from 1938-1988. Footpath No. 147 Mynyddislwyn has a note 'Right not disputed' on the Definitive Statement and Mr. Thomas-Davies believes that his father and Mr. Watkins might not have been aware of the provisional registration to object. He is of the view that the farm

track had wrongly been included on the Definitive Map and Statement as it was only used for agricultural purposes.

- 4.43 Mr. Thomas-Davies' family had owned Tyla Gwyn Farm since 1865. He accompanied his father to the property in 1945 and his family lived there until the 1950's.
- 4.44 In 1995 he became aware of Footpath No. 147 Mynyddislwyn when Groundwork Trust attempted to install signing on it. Since that date he has disputed its existence culminating in the application to challenge the inclusion of the footpath on the Definitive Map and Statement.
- 4.45 The statutory declarations provided with his application support the view that the footpath was not used by walkers and was solely for the use of the farm. The period covered by these declarations is from 1936 to 2012.
- 4.46 It is noted that the land has been used for livestock from 1938 to the current date and that the track was once used to gain access to the dairy shed.
- 4.47 As mentioned in Mr. Downs' statement there is no evidence on the ground of access through his garden and onto the lane and also no evidence of access in the fence line to Tyle Gwyn Farm. The Definitive Statement is very brief and does not provide any information in respect of gates/stiles along the footpath.
- 4.48 It is unclear from historical maps where the footpath crossed the land at Tyle Gwyn Farm before terminating on the lane.
- 4.49 Out of the three residents who wished the footpath open two of them have moved away and the other, Mr. Oliver, has permission to use the ground to shoot vermin.
- 4.50 As part of the Consultation Process Gelligaer Ramblers Association; Islwyn Ramblers Association and the Open Spaces Society will be provided with a copy of the draft report and any comments they submit will be appended to the report.
- 4.51 As Councillor Jan Jones is supporting Mr. Thomas-Davies' application only Councillor Colin Durham will be consulted on the draft report and any comments received from him will be appended to the report.

5. EQUALITIES IMPLICATIONS

- 5.1 There are no potential equalities implications on this report and its recommendations on groups or individuals who fall under the categories identified in Section 6 of the Council's Strategic Equality Plan. There is no requirement for an Equalities Impact Assessment Questionnaire to be completed for this report.

6. FINANCIAL IMPLICATIONS

- 6.1 The cost of Modification Orders and Confirmation Orders, in the region of £2,500, raised under the Wildlife and Countryside Act 1981 are met by the Authority, this includes adding a new path; Deleting a path and varying status/definition to the Definitive Map and Statement.
- 6.2 If Members support the application that Footpath 147 in the Community of Mynyddislwyn has been included on the Definitive Map and Statement in error objections to the Order could be received which if not withdrawn would not to be sent to the Welsh Ministers for determination. The Welsh Ministers could call a Public Inquiry to determine the Order.
- 6.3 However if Members do not support the application then the applicant can appeal to the Welsh Ministers and again could result in a Public Inquiry being called.

6.4 The cost of a Public Inquiry is difficult to determine as it depends on the complexity of the case and whether or not a barrister is required. However it could be up to £10,000 together with the cost of several members of staff involved in collating the information to be provided for the Welsh Ministers (Legal Services and Public Rights of Way). .

7. PERSONNEL IMPLICATIONS

6.1 None.

8. CONSULTATIONS

8.1 For List of Consultees see Document No. 44. A copy of the draft report has been circulated and any comments received are appended to this report.

9. RECOMMENDATIONS

9.1 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 footpath be Deleted
- ii) Rejecting the claim.

10. REASONS FOR THE RECOMMENDATIONS

10.1 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 Cabinet function delegated to this Committee.

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

List of Documents

Explanation of the term "public rights of way" Document No. 1

Location Map Document No. 2

Map identifying Footpath No. 147 in the Community of Mynyddislwyn Document No. 3

Copy of Definitive Map Document No. 4

Copy of Definitive Statement Document No. 5

Map identifying landowners and confirming of serving of W.C.A. 6 on all other landowners Document No. 6

Documentary Evidence – explanation of Draft, Provisional and Definitive Maps Document No. 7

Draft Map Document No. 8

Provisional Map Document No. 9

Ordnance Survey Map dated 1880 Document No. 10

Enlarged copy of Ordnance Survey Map dated 1880 Document No. 11

Historical Map dated 1873-1888 Document No. 12

Historical Map dated 1900-1904 Document No. 13

Historical Map dated 1919-1921 Document No. 14

Historical Map dated 1959-1973 Document No. 15

Aerial Photograph dated 1991 and enlargement Document No. 16

Aerial Photograph dated 2001 and enlargement Document No. 17

Aerial Photograph dated 2004-5 and enlargement Document No. 18

Aerial Photograph dated 2006 and enlargement Document No. 19

Aerial Photograph dated 2010 and enlargement Document No. 20

Letter dated 20th April 2013 from Mr. J. Thomas-Davies, the applicant and a copy of W.C.A. 5 Document No. 21

Letter dated 25th March 2013, from Mr. J. Thomas-Davies enclosing documentation to support his application Documents No. 22 – 41.

Letter from the former Gwent County Council, dated 14th March 1996, to Mr. Thomas-Davies Document No. 42

Photographs taken of Footpath No. 147 Mynyddislwyn Document No. 43

Consultee List Document No. 44

ETP/ROW/FP147 Mynyddislwyn held at Pontllanfraith Offices

LIST OF CONSULTEES:

Mrs Pauline Elliott, Head of Regeneration and Planning
Mr Phil Griffiths, Manager, Countryside and Landscape Services
Mrs Gail Williams, Monitoring Officer/Principal Solicitor
Mr Richard Beaugie, Secretary and Programme Co-ordinator, Islwyn Ramblers, 76 Cefn Road, Rogerstone, NP10 9AS
Gelligaer Ramblers, Mr. Anthony Vallario, 19 Lon Pennant, Blackwood NP12 1EL
Mrs. J. Hyett, Woodlands Farm, Caerphilly Mountain, Caerphilly, Mid Glamorgan CF8 1NF
Countryside Council for Wales Unit 4, Castleton Court, Fortan Road, St. Mellons, Cardiff CF3 0LT
Open Spaces Society, Open Spaces Society, Ms M. Thomas, 15 Carlton Terrace, Crosskeys, Gwent NP11 7BU
The Ramblers Association, 2nd Floor, Camelford House, 87-90 Albert Embankment, LONDON SE1 7TW
Royal Mail Property Holdings West, Estates Surveying Division, Archway House, 77 Ty Glas Avenue, Llanishen, Cardiff CF4 5YG
Wales & West Utilities, Wales & West Utilities House, Spooner Close, Celtic Springs, Coedkernew, Newport NP10 8FZ
Western Power Distribution, Map Response Team, Mapping Centre, Lamby Way, Rumney, Cardiff CF3 2EQ
Incoming Notice Reception (South Wales), P.P.404B Telecom House, Trinity House, Hanley ST1 5ND
Dwr Cymru Welsh Water, Legal Dept, Pentwyn Road, Nelson, Treharris CF47 6LY

Councillor C. Durham

CONSULTATION RESPONSES:

Applicant

A letter has been received from the applicant, Mr. J. Thomas-Davies, dated 3rd August 2014, apologising for his inability to attend the meeting. A copy is attached as Document No. 45

Open Spaces Society

A letter has been received from Ms. M. Thomas, local representative for the Open Spaces Society, dated 30th June, 2014, which is attached as Document No. 46, opposing the deletion of Footpath No. 147 in the Community of Mynyddislwyn.

There has been no further responses from Ms Thomas, or indeed any of the other consultees.

Comments on the Response

Ms Thomas calls into doubt the comments made in the witness statements that they had never seen anyone using the right of way and states that she and Liz Holland have used the footpath.

Ms. Thomas has asked for further time to visit the archives to view other maps and to investigate hearsay that the Islwyn Running Club used the footpath.

She refers to the footpath linking in with other rights of way. The footpath ends terminates on a green lane but the Sirhowy Valley Walk is just a few metres down the lane. Although it can be agreed that it would be a useful link the evidence as to whether or not it should have been included on the Definitive Map and Statement should not consider this when making a decision.

She believes that a number of the witness statements should be withdrawn but they form part of the evidence submitted by the applicant so must be included. It is for the Cabinet Members to decide whether they consider the witness statements true records. It should be borne in mind that the witness statements are statutory declarations sworn before a solicitor.