



## RIGHTS OF WAY CABINET – 1ST DECEMBER 2016

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

**REPORT BY: INTERIM CHIEF EXECUTIVE**

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### **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 Bedwellty.

### **2. SUMMARY**

- 2.1 The Authority is under a duty to resolve applications received under the Wildlife and Countryside Act 1981.T
- 2.2 The report sets out the evidence regarding the application to ADD a footpath from Warne Street to Bryngwyn Street (A4049) Fleur-de-lis.

### **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 Countryside and Rights of Way Act (2000) has committed the Council to keeping the definitive map and statement under continuous review.
- 3.3 The Well-being of Future Generations (Wales) Act became law in April 2015. The Act is about improving the social, economic, environmental and cultural well-being of Wales. It requires the Authority to closely consider the long term aim to work better with people and communities and each other, look to prevent problems and take a more joined-up approach in our actions.
- 3.4 Links can be made to all seven of the Well Being Goals however of these four are probably relevant, these being:-
- A resilient Wales
  - A healthier Wales
  - A Wales of cohesive communities
  - A globally responsible Wales

Links can be made to include the other three Well Being Goals within the Rights of Way improvement Plan and the Countryside Strategy:-

- A prosperous Wales
- A more equal Wales
- A Wales of vibrant culture and thriving Welsh language:-

In addition to the Well Being of Future Generations Act the Rights of Way network has significant links to a wide range of other Acts and Strategies notably the Countryside and Rights of Way Act 2000, the Countryside Rights of Way improvement Plan (2007), the Caerphilly Countryside Strategy and emerging Caerphilly Active Travel Plan. The network and usage of the network has links to various social, economic and environmental strategies.

## **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 the side of Woodland Lodge Residential Home, Warne Street in a south westerly direction to alongside the Bryngwyn Service Station to terminate on A4049 (Bryngwyn Street), 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 from Mr. Thurman, 46 Warne Street, Fleur-de-lys under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 The application, submitted on 6<sup>th</sup> October, 2010, is to modify the Definitive Map and Statement of Monmouthshire County Council by ADDING footpaths leading from Warne Street , alongside the Bryngwyn Service Station and terminating on the A4049.
- 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-C. The application W.C.A.5 was received by the Authority on 6<sup>th</sup> October, 2010 but as this had been incorrectly completed a further copy was submitted dated 29<sup>th</sup> October, 2010. (Document No. 4 )
- 4.2.4 The Claimed Right of Way commences at the side of The Woodland Lodge Residential Home, Warne Street (Grid Ref: 158964) and proceeds in a south westerly direction alongside the Ysgol Gyfun Cwm Rhymni School and Bryngwyn Service Station terminating on Bryngwyn Street (A4049) (Grid Ref: 157964). The length of the claimed right of way is A-B-C 125 metres with a width of 1.8 metres.
- 4.2.5 The applicant notified the Authority, by submitting Notice W.C.A.7 (Document No. 5) that he had served notice on the landowner, Bryngwyn Service Station who owns the land shown as A to B and Caerphilly County Borough Council who he believed owned the land shown as B-C. (Document No. 3)
- 4.2.6 However, following investigation it was noted that this Authority did not own the land B-C. As the remainder of the footpath was on land of unknown ownership notices were displayed at either end of the section marked as B to C (Document No. 6) for one month. Mr. Thurman confirmed in writing that he had carried this out but no landowner had come forward.

- 4.2.7 The claim is supported by 23 User Evidence Forms (one which has two users) who reside in the Fleur-de-lys area, who use the footpaths on a regular basis. All but two have used it over the 20 year period with several having used it over 70 years. The footpath provides a very useful safe off road link within the community and is well used by local residents.
- 4.2.8 Mr. Thurman first raised the issue of the footpath in 2001 when he complained that the grass required cutting. Although no application had been received under the Wildlife and Countryside Act 1981 to add the footpath to the Definitive Map and Statement arrangements were made for the Rights of Way Warden to cut it back.
- 4.2.9 Evidence User Forms were received from Mr. Thurman in March 2006 but the application form (W.C.A. 5) and Service of Notice (W.C.A. 7) were not received. Mr. Thurman was informed that without these forms the application was not in the prescribed manner and could not be considered. Additional forms were sent for completion several times over the years and the completed forms were received on the 6<sup>th</sup> October, 2010. In the intervening years the Rights of Way Warden cut back the overgrowth on the footpath following complaints.
- 4.2.10 Further evidence user forms were received in 2012 (additional forms were received from Mr. Thurman and Mr. Hamilton) and have been added to Mr. Thurman's application in support. A copy of all the evidence user forms is included in Document No. 7 which provides details of their usage of the path and general information on the history of the path.
- 4.2.11 Until recently all applications received under the Wildlife and Countryside Act 1981 were dealt with on a date order of application basis which prevented this application being investigated although some work has been undertaken.
- 4.2.12 Due to a change in Policy it was agreed that this application be investigated as it met the new criteria in that it provides a good link to the local community and is well used by parents and children as an off road safe route to school, together with many other residents.
- 4.2.13 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 Detailed in Table 1 (Document No. 8) are the number of years the evidence users have used the footpath and it can be seen that the footpath has been used as early as 1945. Table 2 (Document 8) provides details of the frequency of use and the reason for using the footpath. The footpath provides a safe off road route for the local residents who use it to take their children/grand-children to school, walking their dogs, visiting family and friends, the bus stop and generally walking in the area.
- 4.3.2 The users have confirmed that they have not asked permission to use the path and no notices were displayed stating that the path was private.
- 4.3.3 Several users mention in their evidence user statements that the path was resurfaced with tarmac approximately 30 years ago by a contractor working for the former Islwyn Borough Council.
- 4.3.4 Some of the users complain that the footpath is muddy in places especially during the winter months.
- 4.3.5 The users confirm having seen both local and strangers using the claimed right of way.
- 4.3.6 The applicant, Mr. Thurman, was interviewed on 11<sup>th</sup> February, 2013. The interview notes detail his knowledge of the claimed right of way over the years he had both known and used it. (Document No. 9).

#### 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 1873-1888 (Document No. 10)

It can be seen from this map that there is a route along the line of the claimed right of way.

Historical Map dated 1900-1904 (Document No. 11)

It can be seen from this map that there is a route along the line of the claimed right of way.

Historical Map dated 1919-1921 (Document No.12)

It can be seen from this map that there is a route from Warne Street to Bryngwyn Street along the line of the claimed right of way.

Historical Map dated 1959-1973 (Document No.13)

It can be seen from this map that there is a route from Warne Street to Bryngwyn Street along the line of the claimed right of way.

Historical Map dated 1959-1992 (Document No. 14)

It can be seen from this map that there is a gap where the claimed right of way joins Bryngwyn Street but there is no indication of the remainder of the claimed right of way.

Historical Map dated 1971-1992 (Document No. 15)

There is no indication from this map of the claimed right of way.

Draft Map – (Document No. 16)

It can be seen from this map that there is a route from Warne Street to Bryngwyn Street along the line of the claimed right of way.

Definitive Map – (Document No. 17)

The claimed right of way is identified as a red line and 193.

Aerial Photograph dated 1940 (Document No. 18)

Although not very clear It can be seen that there is a route from Warne Street to Bryngwyn Street along the line of the claimed right of way.

Aerial Photograph dated 1991 (Document No. 19)

This particular aerial photograph shows a path from Warne Street leading to the side of Bryngwyn Service Station. There are a few cars parked in the Service Station but there does appear to be a gap leading onto Bryngwyn Street next to white vehicle or possibly a structure where the claimed right of way terminated.

Aerial Photograph dated 2001 (Document No. 20)

This particular aerial photograph again shows a path from Warne Street leading to the side of Bryngwyn Service Station. There are a few cars parked in the Service Station but the area where the claimed right of way terminates on Bryngwyn Street appears unobstructed.

Aerial Photograph dated 2004-5 (Document No. 21)

This aerial photograph again shows a path from Warne Street leading to the side of Bryngwyn Service Station. There are several cars parked in the area where the claimed right of way terminates and it would appear that the burger van mentioned by Mr. Thurman can be seen alongside the hedge line of Ysgol School.

Aerial Photograph dated 2006 (Document No. 22)

This aerial photograph again show a path from Warne Street leading to the side of Bryngwyn Service Station. In this particular photograph no cars are parked across the line of the claimed right of way leading to Bryngwyn Street.

Aerial Photograph dated 2010 (Document No. 23)

Similar to the 2006 aerial photograph the 2010 Aerial Photograph shows a path from Warne Street leading to the side of Bryngwyn Service Station and no cars are parked across the line of the claimed right of way leading to Bryngwyn Street.

Aerial Photograph dated 2014 (Document No. 24)

The claimed right of way can now be seen from Warne Street leading to the side of Bryngwyn Service Station but due to the shade from the trees the remainder of the route through the parked cars is unclear.

### **Photographic Evidence**

Mr. Thurman provided quite a number of photographs which he has taken over the years of the claimed right of way.

Photographs show the claimed right of way running through open space and water ponding where users had placed boards over the water to provide stepping stones. There are obvious signs of motorbike tracks which had churned up the ground.

In Bryngwyn Service Station cars are blocking the line of the claimed right of way to A4049 Bryngwyn Street so Mr. Thurman and other users have to deviate from the line of the path to pass through the Service Station to the main road (A4049). (Document No 25).

The Authority fenced off the ground next to the claimed right of way in approximately 2011.

In April 2012 Mr. Davies erected a fence around the back of his premises which partially blocked the line of the claimed right of way but he left sufficient room for users to walk around it. (Document No. 26)

Photographs taken on 14<sup>th</sup> September, 2016 show that a play area has been created next to the claimed right of way and new metal palisade fencing has replaced the post and rail. The gap to the side of the fencing at the back of Bryngwyn Service Station and between Ysgol Gymraeg Trelyn School is 2 metres. Cars are parked on the line of the claimed right of way in the Service Station and users have to negotiate their way through this area to Bryngwyn Street (A4049). (Document No. 27)

## 4.5 Land Ownership

- 4.5.1 As mentioned previously W.C.A. 6 was served on the owner of Bryngwyn Service Station, Mr. Davies, informing him of the application under the Wildlife and Countryside Act 1981 to add the footpath which crossed his land to the Definitive Map and Statement. The land owned by Mr. Davies is shown in Document No.28 (CYM607041).
- 4.5.2 The remainder of the footpath was thought to be under the ownership of this Authority so W.C.A.6 was served on this Authority notifying them of the application. When it was found that this was not the case. A land registry search failed to identify the landowner for this section. Mr. Thurman was instructed to place notices at either end of this section seeking the landowner. Mr. Thurman confirmed on the 7<sup>th</sup> December, 2010, that the notices had been maintained on site for one month as prescribed within the legislation where no land owner may be found.
- 4.5.3 In an attempt to resolve the claimed right of way correspondence was entered into with the owner of Bryngwyn Service Station who wished the footpath to be separated from his service area.
- 4.5.4 Quite a number of those using the claimed right of way complained about having to negotiate their way through parked cars and cars using the forecourt of the Service Station. They were concerned for their safety and those of children using the route to school.
- 4.5.5 A meeting took place with Mr. Davies in 2010 and he explained that he was having problems with security and was intending to fence off some of his land but would leave a gap for people to continue using the claimed right of way.
- 4.5.6 Mr. Davies fenced the back of his property with palisade fencing and high mesh panel fencing in order to secure it. Although a section of the claimed right of way was obstructed a through route was still made available to users.
- 4.5.7 A further meeting took place with Mr. Davies of Bryngwyn Service Station on 14<sup>th</sup> September, 2016, where it was suggested that the claimed right of way be sectioned off from his forecourt close to the boundary of the school ground. A footpath of 1.8 m would be required. Mr. Davies agreed verbally to this and wished to continue the high panel mesh fencing to the footway and along the front of the footway in order to secure his property. He has been informed that this would need to be agreed with the Planning Department.

## 4.6 SUMMARY

- 4.6.1 The Authority is using Section 53 (3) (c) (i) of the Wildlife and Countryside Act as the main test of whether or not the claimed right of way should be added to the definitive Map and Statement. This is used when the Authority discovers evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path. However, the Authority is not precluded from also taking into consideration a claimed right of way based on 20 years uninterrupted use. The right must be reasonably alleged to exist.
- 4.6.2 The Authority has been made aware that evidence exists which suggests that the claimed right of way is a public right of way and has been used as such for many years. 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 for a considerable number of years.
- 4.6.3 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 6<sup>th</sup> October, 2010, and therefore the 20 year period commences from 6<sup>th</sup> October, 1990. Evidence has been provided to show that the footpath A-B has been used on a regular basis for well over the 20 year period.

- 4.6.4 From the historical maps it can be seen that a route was available along the claimed route in 1873-88; 1900-1904 and 1919 -1921.
- 4.6.5 From the aerial photographs a path along the line of the claimed right of way it can be clearly seen.
- 4.6.6 Mr. Davies, the owner of Bryngwyn Service Station has never stopped the local residents using the claimed right of way over land within his ownership and has verbally agreed to a path being separated from his Service Station.
- 4.6.7 Photographs provided show a path along the line of the claimed right of way.

## **5. WELL-BEING OF FUTURE GENERATIONS**

- 5.1 This report contributes to the Well Being Goals as set out in Section 3 earlier.
- 5.2 The Act not only identifies goals but advocates five ways of working to ensure that the objectives and sustainability are met and this report has been prepared with that in mind.
- 5.3 Whilst the Public Rights of Way network contributes to all seven Well Being Goals in part the most pertinent four are:-

### **1. A Resilient Wales**

The network extends to over 500 miles and many of these routes have been in place prior to the use of motor vehicles. As such they are often the easiest and most direct routes of access between points. This encourages their use and has benefits in addressing long term issues including health, climate change and poverty all of which assist in making an adaptable but resilient county borough.

### **2. A Healthier Wales**

Usage of the network, be it for recreation or daily business has significant benefits for a physical and mental health and helps address a number of significant health concerns within the county borough notably obesity, cardio vascular and diabetes which are probably problematic in CCBC. Usage of the network is increasing year on year.

### **3. A Wales of Cohesive Communities**

The network links communities and facilities with each other and is usable by the vast majority of residents. A comprehensive and integrated network provides a fully functional and usable access system that benefits all and allows communities to function both directly e.g. ability to access services and individually e.g. through helping prevent or overcome underlying problems such as health and sustainable transport.

### **4. A Globally Responsible Wales**

The carbon impact of the rights of way network is minimal and promotes sustainable transport on a number of counts. Increased local usage has a global effect in terms of slowing climate change and its impacts.

- 5.4 The provision of access helps meet both short and longer term needs and objectives without prejudicing the viability of the network for future generations. Rights of Way and access are fundamental to the daily life of most people and as such the network integrates and is necessary to meet many objectives of the Authority. The designation process, for rights of way, has involved extensive consultation with communities, groups and individuals and

collaboration takes place with other interested parties in terms of the management and maintenance of the network. Formal consultation forms part of these processes, including this report.

## **6. EQUALITIES IMPLICATIONS**

- 6.1 An Equalities Impact Assessment is not needed because the issues covered are for information purposes only, therefore the Council's full EIA process does not need to be applied.

## **7. FINANCIAL IMPLICATIONS**

- 7.1 The cost of a Modification Order should Members resolve to support the application, is in the region of £1,800.00. If the Modification Order is approved then there will be an additional cost to provide a separate footpath to the Service Station with some levelling of the ground and fencing.
- 7.2 As the landowner is not contesting the existence of the claimed right of way it is very doubtful that if a Modification Order is made that any objections would be received. However, it should be noted that if a Modification Order is made and objections received and not withdrawn this may result in a public inquiry, the cost of which may exceed £10,000.

## **8. PERSONNEL IMPLICATIONS**

- 8.1 None.

## **9. CONSULTATIONS**

- 9.1 For List of Consultees see Appendix 1. An e-mail has been received from the Open Spaces Society stating that they have no objections to the application to add this footpath to the Definitive Map and Statement.

## **10. RECOMMENDATIONS**

- 10.1 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.
  - ii) Rejecting the claim.

## **11. REASONS FOR THE RECOMMENDATIONS**

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

## **12. STATUTORY POWER**

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



Author: Mrs. June E. Piper, CROW Support Officer  
Consultees: Full list in Appendix 1

#### 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 Mr. Thurman Document No. 4
5. Form WCA7 served on landowners Document No. 5
6. Letter confirming notices have been displayed on site by Mr Thurman Document No. 6
7. Completed evidence user forms Document No. 7
8. Tables 1 and 2 – Usage of the Claimed Right of Way - Document No. 8
9. Interview Notes Document No. 9
10. Historical Map dated 1873-1888 Document No. 10
11. Historical Mapping 1900 -1904 Document No. 11
12. Historical Mapping 1919-1921 Document No. 12
13. Historical Mapping 1959-1973 Document No. 13
14. Historical Mapping 1959-1992 Document No. 14
15. Historical Mapping 1971-1992 Document No. 15
16. Draft Definitive Map Document No. 16
17. Definitive Map Document No. 17
18. Aerial Photograph 1940 Document No. 18
19. Aerial Photograph 1991 Document No. 19
20. Aerial Photograph 2001 Document No. 20
21. Aerial Photograph 2004-2005 Document No. 21
22. Aerial Photograph 2006 Document No. 22
23. Aerial Photograph 2010 Document No. 23
24. Aerial Photograph 2014 Document No. 24
25. Photographs supplied by Mr. Thurman Document No. 25
26. Photographs supplied by Mr. Thurman Document No. 26
27. Photographs taken of the Claimed Right of Way 14/9/16 Document No. 27
28. Land Registry

ETP/ROW/CROW 193 held at Tredomen House