



RIGHTS OF WAY CABINET – 1ST DECEMBER, 2016

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

REPORT BY: CHIEF EXECUTIVE OFFICER

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 Abercarn.

2. SUMMARY

- 2.1 The report sets out the evidence regarding the application to ADD a footpath from Gilboa Road to New Bryngwyn Road, Newbridge to the Definitive Map and Statement which is not objected to by the landowners.
- 2.2 The Authority is under a duty to resolve applications received under the Wildlife and Countryside Act 1981 even if they have been received prior to Local Government Reorganisation as in this instance. The Authority is currently working through the backlog of applications.

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.
- 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 Gilboa Road to New Bryngwyn Road, Newbridge, is being dealt with under the Wildlife and Countryside Act 1981, Section 53(3)(c)(i).

4.2 Introduction

- 4.2.1 An application was received under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 by the former Gwent County Council from Mr. R.S. Medcraft to modify the Definitive Map and Statement of the Monmouthshire County Council by ADDING a footpath leading from Gilboa Road to New Bryngwyn Road, Newbridge. The date when the right of way first came into question was on the 16th September, 1993, when the application was submitted.
- 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 16th September, 1993. (Document No. 4)
- 4.2.4 The Claimed Right of Way commences opposite No. 6 Gilboa Road alongside a field gate and proceeds in a south easterly direction and terminates at the side of No. 1 New Bryngwyn Road, Newbridge. The total length of the claimed path is 155 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 landowners, The Trustees of Llanover Estate, c/o R.E. Phillips & Davies, 23a Gold Tops, Newport, who owned the first section of land. The landowner was unknown for the remaining section so notices were displayed on site for a four week period from 16th December, 1993.
- 4.2.6 The claim is supported by twenty (20) User Evidence Forms which have been completed by the residents of Fields Park, Newbridge, who claim to have used the route on a regular basis. (Document No. 6)

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 The former Gwent County Council received 20 submitted User Evidence Forms (W.C.A.8), all of which have been completed by people who claim to have used the route regularly. At the time of the application all had used the path as a public footpath without interference for a period varying between 8 and 65 years, although some were not able to use it due to tipping and overgrowth in the year before the application was submitted.

4.3.2 In order to ensure that all landowners had been notified of the application to add the footpath to the Definitive Map and Statement notices were placed by the former Gwent County Council on the section of footpath south of Llanover Estate's land for one month. These were maintained for a period of one month. No response was received.

4.3.3 The former Gwent County Council undertook initial investigations. The users were asked for information on any structures on the footpath and identified that a stile had been installed in the fence line at the beginning of the footpath, next to the locked field gate and that it had no step and another stile was located in the boundary fence line between Llanover Estate's land and the unknown landowner. The users stated that they used the footpath regularly as a short cut, no-one had prevented them using the footpath, no signs identified it as private and no-one was challenged using the footpath.

4.3.4 The former Gwent County Council consulted interested parties and Llanover Estate. Llanover Estate had no objection to the footpath being added to the Definitive Map and Statement; the Gwent RA Footpath Secretary supported the application and the former Islwyn Borough Council had no objection to the footpath being added to the Definitive Map and Statement.

4.3.5 However, no further action was taken and the file was passed to Caerphilly County Council in 1996 upon Reorganisation.

4.3.6 When planning permission was sought for the residential development on New Bryngwyn Road in 2006 the developers did not include the claimed right of way within their boundary of ownership. However, following complaints from a local dog walker that the path was obstructed contact was made with Barratt South Wales, the developers, who agreed to leave sufficient room for the claimed footpath. This section of footpath has been maintained on a regular basis by one of the local residents.

4.3.7 Due to the length of time taken to investigate this particular application only nine who completed the evidence user forms are still living in the area (this includes the applicant). Copies of the evidence user forms are attached to this report as Documents 6). The evidence forms have been studied and the Council's CROW Support Officer, Mrs. J.E. Piper, has interviewed the applicant and sent letters to the remainder users who submitted the forms requesting a meeting. Unfortunately only one person responded.

4.3.8 The applicant, Mr. Medcraft (Document No. 6), was interviewed on 10th March, 2015. Mr. Medcraft used the footpath as a short cut and when it started getting overgrown he used to cut back the brambles to keep the footpath open. He recalled that local residents started tipping material on the site so Llanover Estates decided to install a field gate to prevent this. Access to the footpath was still available as an old stile had been in place before the gate was erected.

4.3.9 Mr. Medcraft became aware of the footpath from living in the vicinity and confirmed that there were no signs stating it was private. There was also a stile located at the point of change over of landownership. Many people used the footpath as it was a lot easier than walking up the hill. Unfortunately over the years it became too overgrown for him to maintain access. He has spoken to several local residents who said they would welcome this footpath being made

available as there are no buses to Fields Park. It would be of benefit to parents with young children and the elderly providing a safe off road short cut. There is only a short section of footway from New Bryngwyn Road to Gilboa Road so the claimed route would provide a good safe off road route for residents and visitors.

- 4.3.10 One of the users who no longer lives at the address stated that when the Fields Park Football Club was built the waste from the site was tipped over the top of the footpath which meant users had to climb the steep banking which had got more difficult each year due to the rain and wear making it deeper and harder to climb.
- 4.3.11 Mr. Darrell Meredith e-mailed regarding the reopening of the footpath and confirmed that he had previously used the footpath but has not done so for several years due to over-development of some new build properties adjoining the path. He also mentioned that the reopening of this path may minimise the amount of irresponsible dog walkers who use Fields Park football pitch as a dog toilet.
- 4.3.12 Mrs. Margaret Lewis who lives at No. 4 The Villas confirmed that she had lots of memories walking the footpath from New Bryngwyn Road to Gilboa Road and wishes to see the footpath repaired and put back to good use again.
- 4.3.13 Mr. and Mrs. Price who live at No. 2 The Villas confirm that they also have lots of memories walking the footpath and wish to see the footpath repaired and put back to good use again. They moved to their current property in June 1996. Mr. Price used the path for a few years and the stile was still there when he moved in. The Water Board did some work in the area and the stile was never replaced
- He could recall there was someone who rented the ground and put up a polytunnel on the ground.
- He confirmed that if the footpath were to be cleared the Newbridge UA would definitely use it as part of their walks.
- 4.3.14 Mrs. Hitchman who lives at 6 The Villas phoned to say she was not keen to see the footpath cleared as she stated that there had been anti-social behaviour on the footpath in the past.
- 4.3.15 Detailed in Table 1 are the list of users with the dates and the amount of time they had used the footpath up to the date of the application. (Document No. 7)
- 4.3.16 The writer also recalls using this footpath as a short when she kept her horse in Fields Park. This would have been in 1972-1973. She used to catch the bus and get off just above the turning to New Bryngwyn Road and walk along to the garage. Just past the garage was a footpath which went up through the trees and came out on Gilboa Road. It was quite a good short cut and saved walking up the steep hill of Gilboa Road.

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 1959-1973 (Document No. 8)

Within the circled area there is an indication of a footpath along the claimed route and it is identified as FP. There is a land parcel line where the land changes from woodland and this is where users mention a stile was in place. The footpath continues to the side of No. 1 New Bryngwyn Road.

Historical Map dated 1959-1992 (Document No. 9)

Again within the circled area there is an indication of a footpath along the claimed route which is identified as FP. Again the different land parcel can be seen where the land ownership changes. The footpath can be clearly seen at the side of No. 1 New Bryngwyn Road and at the side of the garage.

Definitive Map (Document No. 10)

Within the circled area the claimed right of way is identified with a red line. This was marked on the Definitive Map following the receipt of the application being made in 1993. The red line follows the indication on the map of a footpath which is identified as FP.

4.5 Land Ownership

4.5.1 As mentioned previously Llanover Estate own the land where the footpath commences at Gilboa Road but no known landowner has been identified for the remainder of the land.

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 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 as a short cut for a considerable number of years. Local residents have stated that there has been no notices stating that the footpath is private but the footpath has become overgrown and they have been unable to use it.

4.6.3 Llanover Estate, who own land over which a section of the claimed right of way crosses, are agreeable to the footpath being added to the Definitive Map and Statement.

4.6.4 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 16th September, 1993 and therefore the 20 year period commences from September 1973. The applicant and supporters state that the footpath has been used without interference for a period varying between 8 and 65 years.

5.0 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.

6.0 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.

7.0 FINANCIAL IMPLICATIONS

- 7.1 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 footpaths to the Definitive Map and Statement the cost of the order and the cost of opening of the footpaths 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.

8.0 PERSONNEL IMPLICATIONS

- 8.1 None.

9.0 CONSULTATIONS

- 9.1 For List of Consultees see Appendix 1.

- 9.2 The Ward Members, Cllrs. Ackerman, Baker and Johnson all support the application to add this footpath to the Definitive Map and Statement.

9.3 Mr and Mrs. Price who live in The Villas, Gilboa Road, e-mailed to support the application. As residents of Gilboa Road, which does not have a pavement outside their gates, they state that the opening of the path would greatly assist the residents of Fields Park, Edwards Terrace and also Gilboa Road. The path would provide a much safer passage which would cut out the hill and busy traffic. They belong to the Newbridge U3A Group which has two walking groups and they are sure they would use the footpath as part of one of their walks from time to time.

10.0 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 that the paths be registered
- ii) Rejecting the claim

11.0 REASONS FOR THE RECOMMENDATIONS

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

12.0 STATUTORY POWER

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

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

Consultees: See 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. Form WCA6 served on landowner Document No. 4
5. Application Form WCA5 submitted by Mr. Metcalfe Document No. 5
6. Evidence User Forms Document Numbered 6
7. Table 1 – Details of users Document No. 7
8. Historical Map dated 1959-1973 Document No. 8
9. Historical Mapping 1959- 1992 Document No. 9
10. Definitive Map Document No. 10.

ETP/ROW/CROW 90 held at Tredomen House.

APPENDIX 1

LIST OF CONSULTEES

Draft report sent to the following for comments:-

Mr. T. Stephens, Development Control Manager
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
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 L. Ackerman
Councillor K. R. Baker
Councillor G. Johnson

The Applicant - Mr. R.S. Medcraft