



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 ABERCARN

REPORT BY: INTERIM 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 Abercarn.

2. SUMMARY

- 2.1 The report sets out the evidence regarding the application to ADD footpaths from High Street, adjacent to Oaktree House, crossing Windsor Avenue and proceeding between numbers 76 and 77, then dividing in two, proceeding west to Cwmtorlais Road and east to Tynewydd Terrace adjacent to No. 31 Tynewydd Terrace, Newbridge.
- 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 Act 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 claimed rights of way leading from High Street, adjacent to Oaktree House, crossing Windsor Avenue and proceeding between numbers 76 and 77, then dividing in two, proceeding west to Cwmtorlais Road and east to Tynewydd Terrace adjacent to No. 31 at 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 by the former Gwent County Council under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 from the then County Councillor Mrs Myra Ellis, who died a number of years ago. The application, submitted on 27th March, 1995, is to modify the Definitive Map and Statement of Monmouthshire County Council by ADDING footpaths leading from High Street adjacent to Oaktree House, crossing Windsor Avenue and proceeding between numbers 76 and 77, then dividing into two, one proceeding west to Cwmtorlais Road and the other east to Tynewydd Terrace adjacent to No. 31.
- 4.2.2 A previous application had been submitted on 2nd November, 1993, but this did not include the path linking Cwmtorlais Road and Tynewydd Terrace which Officers from the former Islwyn Borough Council requested be included. The date when the current right of way first came into question was 27th March, 1995.
- 4.2.3 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.
- 4.2.4 The routes of the claimed path can be located in Document No.3 along a bold broken red line shown as A-B; C-D-E; C-D-F. The application W.C.A.5 was received by the Authority on 27th March, 1995. (Document No. 4)
- 4.2.5 The Claimed Right of Way commences from High Street adjacent to Oaktree House, between 18 and 19 Windsor Avenue, crossing Windsor Avenue and proceeding between 76 and 77, then dividing in two, proceeding west to Cwmtorlais Road and east to Tynewydd Terrace adjacent to No. 31. The length of claimed right of way is A-B 60 metres with a width of 1.8 metres and C-D total length of the claimed path is 37 metres with a width of 1.8 metres. E-D 51 metres with a width of 1.4 metres; D-F 50 metres with a section with a width of 1 metre (only available room between wall and fence line) and the remainder with a width of 1.4 metres.

- 4.2.6 The applicant notified the Authority, by submitting Notice W.C.A.7 that she had served notice on the land agents, R.E. Phillips and Partners, whose client is Llanover Estate (Document No. 5).
- 4.2.7 The claim is supported by 24 User Evidence Forms who resided in Windsor Avenue or High Street, Newbridge, who used the footpaths on a regular basis and a sufficient number have used it over 20 years with some nearly 70 years. The footpaths provide very useful links within the community and are well used by local residents.
- 4.2.8 The footpath from High Street to the rear lane of Windsor Avenue has previously been tarmacked and a handrail fitted to the one side.
- 4.2.9 Prior to reorganisation some research was undertaken by the former Gwent County Council on the earlier application and the former Islwyn Borough Council were asked for their views on the application. They confirmed their agreement to the footpaths being included on the Definitive Map and Statement and suggested the additional footpaths from Cwmtorlais Road to Tynewydd Terrace be added.
- 4.2.10 Since the receipt of the application Llanover Estate has sold a small plot of land where the claimed footpath previously crossed next to No. 31 Tynewydd Terrace shown on Document No. 6 as G-F. Since that time local residents have used an alternative path shown on Document No. 6 as G-H. One of the local residents supplied photographs showing the area which had been blocked (Document No. 7).
- 4.2.11 Due to the length of time taken for this application to be completed out of the 24 users who completed evidence user forms only four continue to reside at Windsor Avenue, Newbridge and one in Bryngwyn Road, Newbridge.
- 4.2.12 In 2005 complaints were received regarding a drop in levels from the section of footpath from High Street to the back lane of Windsor Avenue. The Rights of Way Warden resolved this by constructing a small ramp. From the file it can be seen that over the years the Rights of Way Warden has attended to trees and overgrowth affecting this section of the claimed right of way.
- 4.2.13 In an attempt to resolve the claimed right of way correspondence was entered into with the land agents, R.E. Phillips and Partners. Due to the section G-F being unusable a suggestion was put to them to enter into a creation agreement for the claimed route as A-B; C-D-E and D-G-H but no agreement had been reached.
- 4.2.14 Recently the local residents have been complaining about the deteriorating surface of the beginning of the footpath from High Street to the back lane of Windsor Avenue. This was brought to the attention of R.E. Phillips & Partners as it was believed that this footpath was on land owned by Llanover Estate and it was pointed out that they could be held liable if someone should fall on the footpath.
- 4.2.15 A site meeting took place with a representative of R.E. Phillips & Partners where it was discovered that Llanover Estate did not own the land A-B and C-D and only owned the section E-D-G-H.
- 4.2.16 It is believed that the former Abercarn Urban District Council laid a tarmac surface on the sections A-B and C-D. In the previous U.D.C.s local councillors had access to small amounts of funding towards the end of the financial year and quite often arranged to tarmac sections of footpaths used by local residents.
- 4.2.17 However, the section of footpath from High Street to the rear lane is deteriorating and as there are many elderly residents using it there are concerns that they may fall. As this is a claimed right of way the Authority does not have any responsibility to undertake any remedial work. For photographs of the section involved see Document No 8.

- 4.2.18 A Quotation was requested to see if the footpath could be brought up to a maintainable standard in order that it could become an adopted highway under Section 228 of the Highways Act. However, the quote received was too high to accommodate within the Rights of Way budget.
- 4.2.19 R.E. Phillips has agreed that if the remaining evidence users withdraw their application in respect of G-F they will enter into a Creation Order for a footpath E-D-G-H. One evidence user did not use G-F. Letters were sent to the four residents who completed evidence forms seeking their agreement to the foregoing. This has now been received from all four. Steps will be required in the banking at point H leading on to Tynewydd Terrace.
- 4.2.20 It is believed that the section of the remaining claim A-B and C-D is able to be dealt with as a Modification Order, if agreed, and the remainder as a Creation Agreement.
- 4.2.21 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 included in Table 1 (Document No. 9) are the number of years the evidence users used the footpath and the length of time known the footpath. The routes used by the residents differ but it can be seen that the routes were well used by residents who have since left their properties. Several residents were asked by Islwyn Borough to confirm whether or not they had used the additional routes and therefore did not comment on the route A-B. It can be seen that the footpaths have been used from as early as 1936 and some recalled a small brook that they used to cross and others played in when children. The footpaths provide short cuts to the local residents to visit friends/family, catch the bus and to walk into Newbridge for the shops.
- 4.3.2 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.

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 that there is a route from the main road across the ford and up to Cwmtorlais Road.

Historical Map dated 1919-1921 (Document No. 11)

It can be seen from this map that there is a footbridge over the brook which older residents mentioned and that a path exists between the houses and then splits in two i.e. from the back lane to B; C-D; D-E and D-F.

Historical Map dated 1959-1973 (Document No. 12)

It can be seen from this map that the path from the main road has FP on it and where the path reaches up to Tynewydd Terrace.

Historical Map dated 1959-1992 (Document No. 13)

It can be seen from the map that the path from the main road has FP on it and where the path reaches up to Tynewydd Terrace.

Draft Map – (Document No. 14)

It can be seen from this map that there is a path from the main road leading to Windsor Avenue and to the rear of Windsor Avenue.

Definitive Map – (Document No. 15)

The claimed rights of way are identified as a red line.

Aerial Photograph dated 1991 (Document No. 16)

This particular aerial photograph is not that clear but you can pick up the route between the walls of the terraced houses.

Aerial Photograph dated 2001 (Document No. 17)

The claimed right of way can be seen between the houses and can be seen leading up to Tynewydd Terrace.

Aerial Photograph dated 2004-5 (Document No. 18)

The claimed right of way can be seen between the houses and can be seen at the back of Windsor Avenue leading up to Tynewydd Terrace. This has changed the line of the claimed route D-G-F and residents are using an alternative path up to Tynewydd Terrace D-G-H.

Aerial Photograph dated 2006 (Document No. 19)

The claimed right of way can be seen between the houses and running at the back of Windsor Avenue. However, the garden of No. 31 Tynewydd Terrace has been extended and there is a gap leading up to Tynewydd Terrace.

Aerial Photograph dated 2010 (Document No. 20)

The claimed right of way can be seen between the houses and running at the back of North Road. The path can be seen at the rear of Windsor Avenue and leading through the gap up to Tynewydd Terrace.

Aerial Photograph dated 2014 (Document No. 21)

The claimed right of way can now be seen from the main road and leading across between the houses. Again a path can be seen leading up to Tynewydd Terrace.

Photographic Evidence

Photographs of all of the route (Document No 22).

Llanover Estate sold a plot of land next to No. 31 Tynewydd Terrace upon which the claimed right of way had crossed. This area of land has now become part of the garden of No. 31 Tynewydd Terrace and large gates have been installed thereby preventing any access. As the users were unable to gain access they took an alternative route G-H. The photographs show the condition of the footpath and how it narrows in sections.

4.5 Land Ownership

- 4.5.1 As mentioned in 4.2.10 there is no known landowner of the claimed right of way A-B-C-D but Llanover Estate own the land which the section of claimed right of way E-D-F crosses. They have agreed to enter into a Creation Agreement for the route D-G-H.

4.5.2 As the section A-B was thought to be in the ownership of Llanover Estate no notices were posted on site by the applicant. Although there does not appear to be a known landowner for this section W.C.A. 6 notices will be posted at either end for a period of one month in order that a landowner may come forward.

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 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 2nd November, 1993 and therefore the 20 year period commences from November 1973. There is sufficient evidence to show that the footpaths A-B; C-D and D-F have 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 footpaths A-B and C-D were available in 1873-88 and 1919-1921. However, on the historical maps 1959-1977 and 1959-1992 the additional footpath E-D-F is shown.

4.6.5 From the aerial photograph 2001 the route D-F can be seen, together with the remainder A-B; C-D and D-E.

4.6.6 From the aerial photograph 2004-5 the route D-F - it can be seen that the extension of the garden of No. 31 Tynewydd Terrace has taken place and the section H-G was being established by the users.

4.6.7 From the aerial photograph 2006 a track can be seen alongside the new boundary of 31 Tynewydd Terrace.

4.6.8 From the aerial photograph 2010 again a track can be seen alongside the new boundary of 31 Tynewydd Terrace.

4.6.9 In the aerial photograph 2014 the track leading up to Tynewydd Terrace is in the shade.

4.6.10 As Llanover Estate have agreed to enter into a Creation Agreement for the footpath E-D-G-H this resolves the problem with the extension of the garden of 31 Tynewydd Terrace. The remainder of the footpath A-B and C-D could then be dealt with by a Modification Order.

4.6.11 The surface of the footpath A-B is a concern due to the probability of the former Urban District Council surfacing the footpath many years ago but it not being added to the Adoption Highway Records. Should an injury be sustained it might be difficult to defend as a previous Authority had resurfaced the footpath with tarmac.

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 it is agreed to enter into a Creation Agreement with Llanover Estate the Authority will be responsible for the reasonable legal costs of the Creation Agreement and the cost of constructing steps.
- 7.2 As this is a very old application and the landowners are agreeable to a Creation Agreement 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. This cost of which may exceed £10,000.

8. PERSONNEL IMPLICATIONS

- 8.1 None.

9. 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 A letter has been received from Openreach BT who have apparatus in the area but will not object to the application to add this footpath to the Definitive Map and Statement but insist on maintaining their rights under the appropriate legislation.

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 that the footpath be registered and make a Modification Order for A-B and C-D enter into a Creation Agreement with Llanover Estate for E-D-G-H.
 - 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: 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. Application Form WCA5 submitted by Cllr Mrs. Ellis Document No. 4
5. Form WCA7 served on landowner Document No. 5
6. Plan showing the claimed right of way together with the Creation Agreement Document No. 6
7. Photographs supplied by users of the blocked footpath next to 31 Tynewydd Terrace Document No. 7.
8. Photographs - Document No. 8
9. Details of Use - Table 1 Document No. 9
10. Historical Map dated 1873-1888 Document No. 10
11. Historical Mapping 1919-1921 Document No. 11
12. Historical Mapping 1959-1973 Document No. 12
13. Historical Mapping 1959-1992 Document No. 13
14. Draft Definitive Map Document No. 14
15. Definitive Map Document No. 15
16. Aerial Photograph 1991 Document No. 16
17. Aerial Photograph 2001 Document No. 17
18. Aerial Photograph 2004-2005 Document No. 18
19. Aerial Photograph 2006 Document No. 19
20. Aerial Photograph 2010 Document No. 20
21. Aerial Photograph 2014 Document No. 21
22. Photographs taken of the route Document No. 22

ETP/ROW/CROW 120 held at Tredomen House