

## Penderfyniad ar y Gorchymyn

## Order Decision

Ymchwiliad a agorwyd ar 28/09/16

Inquiry opened on 28/09/16

gan Sue M Arnott FIPROW

by Sue M Arnott FIPROW

Arolygydd a benodir gan Weinidogion Cymru

an Inspector appointed by the Welsh Ministers

Dyddiad: 10/11/16

Date: 10/11/16

**The Welsh Ministers have transferred the authority to decide this Order to me as the appointed Inspector.**

### Order Ref: U6925/W/2016/516161

- This Order, dated 14 October 2014, is made under Section 118 of the Highways Act 1980 and is known as the Merthyr Tydfil County Borough Council Vaynor 25 Extinguishment Order 2014.
- There were 10 objections and 3 letters of support outstanding when Merthyr Tydfil County Borough Council submitted the Order for confirmation to the Welsh Ministers.
- The Order proposes to close the whole of public footpath 25 in the Community of Vaynor, as shown on the Order plan and described in the Order schedule.

**Summary of Decision: The Order is not confirmed.**

### Procedural Matters

1. I held a public local inquiry into the Order in the Civic Centre in Castle Street, Merthyr Tydfil on 28 and 29 September 2016. I visited the site, unaccompanied, during the afternoon of 27 September. During the second day of the inquiry I adjourned the proceedings so as to make a further inspection of Footpath 25, on this occasion accompanied by both supporters of and objectors to the Order before returning to the Civic Centre to hear final closing submissions.

### Main Issues

2. The Order was made by Merthyr Tydfil County Borough Council (the Council) under Section 118 of the Highways Act 1980 (the 1980 Act). The requirements of this section are that, before confirming the Order, I must be satisfied that it is expedient to extinguish the whole of Footpath 25 as proposed in the Order having regard to:
  - (a) the extent to which it appears that the footpath would, apart from the Order, be likely to be used by the public; and
  - (b) the effect which the extinguishment of the right of way would have as respects land served by the footpath, account being taken of the provisions as to compensation.
3. In addressing the issue of expediency, I am not required to examine too closely the question of whether or not this footpath is needed. That was an issue of foremost importance for the Council when it decided to make the Order but, as demonstrated in the case of *R v Secretary of State for the Environment ex parte Cheshire CC [1991] (QBD)[1991] JPL 537* (the Cheshire case), at this (confirmation) stage I must focus on

the path's likely use in future. The path in question may not be needed if there is an adequate alternative route available, but even if so, the path may still be used simply because people prefer it. Indeed, the Courts have accepted that confirmation is not necessarily ruled out by the fact that the path is likely to be used to more than a minimal extent<sup>1</sup> in future.

4. Section 118(6) of the 1980 Act requires that I disregard any temporary circumstances preventing or diminishing use of the path in question when determining the likely use that might be made of it.
5. The 1980 Act (as amended) also requires me to have regard to any material provisions in any rights of way improvement plan for the area.

## **Reasons**

### ***Background to the Order***

6. This Order has not been made in response to an application to close the footpath from any individual. It has been promoted by the Council itself following consideration of two reports (in February and May 2014) identifying the many difficulties that currently exist along its length.
7. For reference I shall refer to points along Footpath 25 as shown on the map attached to these reports (A – G) rather than use A and B as appears on the Order Map.
8. The problems begin at Upper High Street (at point A) where what was originally a stile into an agricultural field has been modified at various stages in the past. Mr D P Griffiths produced a photograph from the 1960s or 70s showing the garage which formerly stood on the site now occupied by Nantsiarad<sup>2</sup>. On this photo the stile can just be seen in the corner. Although it is not entirely clear, it appears to be in a similar form to its present state, being a combination of bricks and stone with a narrow protruding step. (According to Mrs Gough, the stile had always been in its present condition since she first went to live at Ashville in 1976.) However what cannot be seen in the photograph is the ground level on the non-road side.
9. Over the stile the ground is raised at point A and slopes down towards B. Photos taken by the Council in 2007 show this to be overgrown with brambles, obviously making passage difficult (although on the day of my first visit it had been cleared). The general consensus was that this is the accumulation of tipped garden and other waste.
10. Near point B, Mr D P Griffiths submitted that the extension to Ashville built in 2010 encroaches into the line of the path by some 225mm. However he did not suggest that this prevents access along the footpath although it may technically form an obstruction.
11. What does cause a significant problem at point B is a wall some 1.5 metres high attached to the extension separating the garden from the alternative line of the footpath which runs along the north western and south western boundaries of the Ashville garden. This too is obstructed, in this case by a metal barrier which once formed a stile on the definitive line as it enters the garden<sup>3</sup>. On reaching point C where Footpath 25 leaves Mrs Gough's property there is a post and wire fence.

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<sup>1</sup> A principle articulated by Phillips J in *R v Secretary of State for the Environment ex parte Stewart* [1980] JPL 175 (the *Stewart case*).

<sup>2</sup> The Council's Report in February 2014 noted full planning permission being granted for this development on 16 June 1993 with the consent acknowledging the presence of Footpath 25.

<sup>3</sup> Mrs Gough recalled that the builders of her extension had both erected the wall and re-positioned the metal barrier although not on her direct instruction.

12. Prior to the inquiry, volunteers from the Vaynor Community Forum (VCF) had, after notifying the Council, cleared the vegetation obstructing passage along Footpath 25 so as to enable a better judgement to be made about its future. However, because the path was believed to have been formally diverted on Mrs Gough's land (around two sides rather than directly across) the 'diverted route' had been cleared. The Council confirmed that no diversion order had been made and therefore the definitive line remains extant. During my second visit to the site, with Mrs Gough's agreement, I was able to access her garden in order to walk (as closely as possible) this direct line.
13. It is at this point that the line of Footpath 25 as recorded on the definitive map begins to lose clarity as the vegetation between points C and D is such that it was difficult to identify its true alignment on the ground. Mr D P Griffiths acknowledged that the VCF had opted to cut a path on a safe line, probably uphill of the legal route. This cut path emerges to the east of point D on a new tarmac-surfaced driveway installed by Mr J Griffiths which was said to follow the line of Footpath 25 between points D and E (although this had not been confirmed by survey).
14. Close to point E, there had been a metal gate at point F across the entrance to a narrow section F-G which follows a passageway between high walls and fences of the new properties that replaced the old Grawen Lane Cottages. At the inquiry, Mr J Griffiths admitted that the width of the footpath between F and G is now narrower than it had previously been before Grawen Lane Cottages were demolished<sup>4</sup>. At the point where Footpath 25 joins Grawen Lane (G), there is a metal gate which in the 2007 photo is said to have been rusted shut. However it was accessible on the days of my visits.

### ***Recent history of Footpath 25***

15. Land Registry documents record Mr J Griffiths purchasing his property in 2002 although he applied for planning permission for development in 1999. His house is built on land on which previously stood Grawen Lane Cottages. A witness at the inquiry, Mr A Jones, had lived there from 1996 to 2000 after which the cottages had been demolished. Mr Jones said that during his time there, he had seen regular local use of the footpath although he was aware that some people veered off the public right of way to gain access to the cemetery. Another witness, Mr G P Morgan, produced a photograph from 1976 which showed a sign asking people not to obstruct the footpath.
16. The Council had first contacted Mr J Griffiths in 2001 after he had erected a locked gate across the public right of way at point G. Mr Griffiths had explained that his action had been a response (advised by the Police) to anti-social behaviour by a group of youths together with his concern that he may be liable for any injuries were people to wander off the line off the path and fall near the quarry.
17. By August 2008, in further communication with the Council, Mr J Griffiths re-stated his concerns and was informed by the Council's staff that he had two options: to apply either for a diversion or for closure of the footpath.
18. By March 2011 the path was still found to be impassable with the gate locked at G and overgrown vegetation preventing use. Consequently the Council served notice on Mr J Griffiths requiring him to remove the gate at G. Following another site visit in April 2013 an enforcement notice was again served and sometime in 2014 the gate was unlocked.

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<sup>4</sup> This is evident from the Ordnance Survey maps before the inquiry although no width is recorded in the definitive statement.

19. During this time the path between A and B will have been affected by the works to Mrs Gough's extension and the re-positioning of the metal barrier. However it may be no surprise to find this not being raised with the Council since Footpath 25 had been unavailable as a through-route due to the locked gate at G for at least ten years.
20. I set out the background to this case and its recent history because it is recognised by all concerned that there are many things that have affected Footpath 25 in the past that should not have happened.
21. In his submissions for the objectors, Mr D P Griffiths criticised the Council for its failure to assert the public's rights over Footpath 25 or to respond to complaints about its obstruction. In reply on behalf of the Council, Mr De Feu submitted that I should not be concerned with history or with any lack of action on the part of the Council to enforce the public right of way. He highlighted the *Cheshire* case from which it was clear that these were irrelevant considerations for the purpose of the statutory tests under sub-section 118(2)<sup>5</sup>.
22. As I have noted above, Section 118(6) requires me to disregard such problems along the path's length when looking ahead to the use that might be made of it in future. I have no difficulty in accepting Mr De Feu's submission in principle, and I make no judgement on Council's role. Yet in accepting that what has happened in the past is no indicator of what might happen in future, I cannot fail to recognise that the public has not had easy or consistent access along Footpath 25 for a variety of reasons. I can therefore give little weight to the argument that this path should be closed because it has not been used in recent years.

### ***Temporary circumstances***

23. When considering whether these obstructions are capable of being 'temporary circumstances' that may be disregarded as advocated in sub-section 118(6) of the 1980 Act, I am guided by the words of Phillips J in the *Stewart* case: "*the prime question was, in the case of an obstruction, whether it was likely to endure*".
24. I have applied this question to the problems along Footpath 25 that I have described briefly above to establish whether each will necessarily be 'likely to endure'. The stile at A (if it still serves any purpose) does not preclude access and neither does the raised ground level, although both could be removed or improved. No-one suggested that Mrs Gough's extension should be altered, but the adjoining wall at B could be removed if necessary, as could the fence at C (although Mrs Gough suggested she may prefer to apply to formally divert the path onto the route some people thought was already the public right of way). At the other end of Footpath 25, the gate(s) could be removed or, if authorised<sup>6</sup>, should not prevent public access.
25. The only real debate on this issue arises over the section between points C, D and E, excluding any part of this that follows the tarmac drive which is clearly usable at present. Leaving aside any mature vegetation standing on the line of the path (which can only be established once the precise definitive line is plotted on the ground), one cannot regard the location of the footpath in relation to the steep slope it traverses as a temporary circumstance in my view.
26. At the inquiry, on behalf of the Council Mr De Feu referred me to the case of *R (on the application of Gloucester County Council) v Secretary of State for Environment*,

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<sup>5</sup> Set out in my paragraph 2 above.

<sup>6</sup> Under Section 147 of the 1980 Act a highway authority has power to authorise the erection of stiles or gates across a public footpath or bridleway in certain specified circumstances.

*Transport and the Regions [2001] 82 P & CR 15* (the *Gloucester* case). The situation here on Footpath 25 was not the same as had arisen in the *Gloucester* case (where a section of footpath had ceased to exist because, through erosion, the land carrying the right of way had fallen into a tidal river) but he submitted it was analogous.

27. Although the site visit had not revealed the exact line of this middle section of Footpath 25, Mr De Feu argued that if, as it seemed, the definitive line had been swallowed up by the quarry, then the footpath had been lost and could not be used by the public without deviating onto some other line which was not Footpath 25.
28. I have before me copies of Ordnance Survey (OS) maps dating from 1875, 1919 and 1957. In the late nineteenth century the footpath is clearly marked by the OS high above the nearest face of what was then described as an 'old quarry'. By 1919, after the Balancing Reservoir had been constructed to the east, slight changes in the landform are apparent and the footpath had migrated slightly westwards, lower down the slope but it is still clearly in evidence running alongside a boundary that I interpret to be a fence above the steep slope.
29. This same line appears on the OS 1:2500 map of 1957 annotated 'FP'. Since the first definitive map for this area was prepared in response to the National Parks and Access to the Countryside Act 1949<sup>7</sup>, it would be reasonable to assume that this is the line originally recorded as Vaynor Footpath 25.
30. I have noted that this differs slightly from the digital definitive line added to the 1957 copy provided to me by the Council which is shown on its downhill side. It is not my role here to investigate the accuracy of the current definitive map<sup>8</sup> but from my examination of the paper copy supplied (at 1:10,000 scale) I should say that the line that is depicted on the 1957 OS map lies within the bounds of the line of Footpath 25 as shown on the 1995 Definitive Map.
31. This leads me to conclude that the public right of way that is Footpath 25 existed over the same line from 1919 (at least) to 1957 and since. It is also shown on an OS 1:2500 map supplied by Mr D P Griffiths (as his item Q) although the steep slopes are not marked on this edition; no date has been attached to this map but I estimate it to be from the 1970s or 80s.
32. It seems people walked Footpath 25 on the definitive line throughout the twentieth century sufficient to establish an identifiable path on the ground that was recorded by OS surveyors. That route continued to be walked despite the path's proximity to the steep slope to its western side. No evidence has been put to me to suggest a landfall or any other deliberate intervention that might have altered the ground profile<sup>9</sup> (other than the construction of the recent tarmac drive between D and E). Consequently I must assume that the original definitive path still exists although it may be difficult to identify because of the vegetation that has grown over it during the last 15 years or so. Until the definitive line is surveyed accurately (and very carefully) I cannot conclude that it is impossible to use simply because, amongst the vegetation, it looks very steep.
33. To summarise my conclusions on this issue, I consider all the various conditions along the line of Footpath 25 to be capable of being remedied and therefore to fall under the

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<sup>7</sup> Merthyr Tydfil County Borough Council Rights of Way Improvement Plan: 2.3.1

<sup>8</sup> The Glamorgan County Council Definitive Map and Statement for the Borough of Merthyr Tydfil; relevant date 15 December 1995

<sup>9</sup> I note that Mr J Griffiths stated the land had been used as an ash tip but the period in which this occurred and its precise location was not substantiated.

heading of 'temporary circumstances' such that they can be disregarded for the purposes of establishing the likely future use of the path. The one exception to this is the steep slope to the west side of the definitive line which will undoubtedly 'endure' as it has done for almost a century. As I could not be certain exactly where on the ground the definitive line lies in relationship to the steeper parts of the slope, it is hard to visualise its impact when judging its effects on likely future use. However what is certain is that this is not a temporary circumstance, it is a steep slope and its effect on likely use in future needs to be taken into account.

***The extent to which it appears that the footpath would, apart from the Order, be likely to be used by the public***

34. As Mr De Feu sought to emphasise at the inquiry, it is the likely use in future of the definitive line of Footpath 25 that I must consider here, not the diversion around Mrs Gough's garden, not the path cut by the VCF volunteers and not any other preferred line.
35. Whilst that is quite clearly the case, I am aware that Mrs Gough expressed her inclination to seek a formal diversion if the footpath remains open to the public. There is of course no certainty that the right of way would be re-routed but it is a possibility that needs to be acknowledged. Since it appears that some members of the local community thought it had been formally re-aligned many years ago, it is tempting to assume that such a proposal would not be opposed but I shall stop short of any such supposition.
36. In the Council's view there is unlikely to be more than minimal use of Footpath 25 in future even if the path is open and available for use. It points to a lack of evidence of likely use, whether by local users, through-users or destination users.
37. In short, Mr De Feu submitted that Footpath 25 has no purpose, it is not a short-cut to anywhere, it is not an attractive path, it is difficult to use and there are better opportunities for a walk within the village, especially to the north. The alternative route between points A and G is via Upper High Street which has a made-up footway (on both sides for most of its length), is safe and has street lighting, and which is not substantially different in terms of time or length.
38. Mr D P Griffiths challenged that view, submitting that the VCF had always valued its public rights of way in the past by walking all the paths in the parish periodically and it wished to see Footpath 25 re-instated. This is a country path, not one that needs tarmac, lighting and other 'bling'. He highlighted evidence from people who had used the path regularly in the past before passage began to be obstructed, there being no good reason to suppose this local use would not return if the path were re-opened.
39. Turning to the potential for through-use, I heard from Mrs Ashraf on behalf of the Merthyr Tydfil Naturalists Society that Footpath 25 is a crucial link in a route that the Society hopes to promote to connect its two reserves – one at Cil-Sanws and the other at Penmoelallt. It has a classroom at its woodland site to the west of Footpath 25 and a base from which it operates its conservation work (known as 'Jack-the-Sticks') to the east of Upper High Street. Although in cross-examination Mrs Ashraf accepted that walking via Footpath 25 was not the most direct route, she made the point that one would not choose to walk via Grawen Lane and Upper High Street if, for example, one wanted to look for butterflies.
40. Both Mr D P Griffiths and Cllr Barrett highlighted the future hopes of the area for developing tourism opportunities, especially for walking and cycling. The nearby Taff Trail had made a significant impact and attracted a great many visitors. Whilst it is

anticipated that a branch off this trail will follow a route north towards the Llwyn-onn Reservoir via the old navies' road (the proposed Vaynor Footpath 43), the status of this route is currently disputed. Mr D P Griffiths suggested that Footpath 25 would make an equally good link since it offers superb views of the valley in the vicinity of point C.

41. It is the Council's view that users of the Taff Trail are far more likely to link up with Footpath 43 than with the Order route and Mr De Feu highlighted the lack of evidence to support the objectors' claims.
42. I agree that the claims for a Taff Trail link are largely unsubstantiated yet it is a fact that at present there is no public right of way recorded along the proposed Footpath 43. I also agree with the Council that Footpath 25 is unlikely to be a honeypot for tourists but it is not beyond the realms of possibility that walkers following the long-distance trail might choose to detour up Footpath 25 to appreciate the fine view. Indeed, if Footpath 43 is not confirmed as a public path, then strategic links northwards towards the Reservoir may need to be re-planned.
43. I have noted the February 2014 Council Report which stated (at 16.1) that "*Numerous complaints about the path have been received: these complaints being received via the local councillor, members of the public and the Ramblers' Association*". The Report concluded that people were not walking the definitive line of the right of way. In my view that is not a reason to close Footpath 25; it showed there was use of some parts of it and the complaints indicated a demand for it to be re-opened.
44. Whatever the exact line between points C and E, the land rises on a gradient I estimate to be around 1:6. That would certainly present a challenge to some people with mobility issues but in an area where hill walking is an accepted recreational activity, it would be a source enjoyment for others. Whilst the alternative route advocated by the Council via Grawen Lane and Upper High Street may certainly be more commodious for some people, I can appreciate that others prefer the quietude of a route away from traffic and the splendid view up the valley.
45. Having walked the path (or a near approximation to it), and having read and listened to all the evidence and submissions made in writing and at the inquiry, I find I cannot agree with the Council that this path would be little used if it is retained and made accessible. There is no set level of likely use by which to judge it to be sufficient to justify retaining a public path but I accept there will be past users who will wish to resume their use as well as others who may be new to the route, perhaps doing so as part of a trail connecting the two nature reserves, or as a short circuit close to the village, whether for exercise, pleasure or simply to enjoy the view. I consider this is likely to be more than use to a minimal extent although not extensive.

***The effect the extinguishment would have on land served by the footpath***

46. It was accepted by all parties including the Council that there is no land directly served by this footpath which would be detrimentally affected by its closure and compensation issues are not relevant here.
47. It was not argued by any of the landowners affected that they sought any positive benefits from extinguishment of the footpath, each submitting that the path has been little used if at all. In fact neither Mr J Griffiths nor Mrs Gough were concerned if the path remains although neither do they argue for its retention. As I have mentioned, Mrs Gough sees no reason to retain it but would probably seek to divert it if it stays. Mr J Griffiths' main concern is safety and the proximity of the path to the steep slopes

of the old quarry. Mrs S Jones considered that "closure will not cause any real loss" and would save the needless expense of maintaining a path that no-one uses.

48. Although it is clear that closure of Footpath 25 would be of some benefit to those owning the land it crosses (even though they do not actively seek it), there are no overriding advantages that would derive from closure in terms of the effect on land.

***Material provisions in the rights of way improvement plan (ROWIP) for the area***

49. The Merthyr Tydfil County Borough Council Rights of Way Improvement Plan (undated)<sup>10</sup> sets out a range of improvements the Council sees as necessary to achieve a public rights of way network which is suitable for the needs of all residents of the County Borough and those wishing to visit the locality.
50. At the inquiry, Mr De Feu submitted that the route in question did little to contribute to the wide range of benefits which the ROWIP seeks to achieve. In the Council's view the path is of little recreational value; it is inaccessible for disabled people or people lacking mobility; it is not a tourist attraction nor will it encourage more sustainable means of transport. In short, its continued existence would not contribute to the main aim of the ROWIP – to provide a better network of local paths meeting the needs of as many lawful users as possible.
51. He drew attention to paragraph 2.3.4 which advocates extinguishment where there are particular dangers to the public. Although this relates to anomalies on the definitive map, he suggested that given the danger that is clearly visible along Footpath 25, and that it is a very short link, this may be one such anomaly. He submitted that this is a principle which had wider application to the whole network and is a factor worthy of significant and careful consideration.
52. In response, Mr D P Griffiths argued that the Council had failed to acknowledge the broader issues and the scope for improving Footpath 25 such that it could make a more positive contribution to the rights of way network. In his submission, it had immense potential as a link with the Taff Trail, as part of a trail between the two local nature reserves and as part of a circular walk within the village.
53. I have studied the ROWIP in order to identify any material provisions but I find no evidence to support Footpath 25 being amongst the 98 definitive map anomalies identified by the Council (in Table 12). I therefore do not accept that the statement that extinguishment would be the appropriate course of action might be directed specifically at Footpath 25.
54. I can find no explicit statement setting out the Council's policy on dealing with public path orders, other than recognition (at 2.3.2) that these can be made "relatively easily, quickly and cheaply". In the absence of any published guidance on the Council's approach to proposals for change, I consider it untenable to assume that the preferred solution to a path found to be dangerous would be to close it, rather than to consider whether the public could be protected by some means so that use could continue.
55. The Council's Committee Report in February 2014 considered three possible options for Footpath 25: diversion, enforcement or extinguishment. No record of the

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<sup>10</sup> I note the draft ROWIP was published on 24 November 2006, the consultation period ended on 23 February 2007 and the final plan was expected to be produced in November of that year. The document submitted at the inquiry purports to provide a strategic framework for the management, protection and promotion of the Council's public rights of way network "over the next ten years" yet its "Vision" sets out ambitions for Merthyr Tydfil by 2010. Nevertheless I understand the Plan to be current and have therefore assumed the 10 year period to extend to 2017.



reasoning which led to the decision to pursue closure is noted in the minutes and, although the ROWIP is mentioned at the end of the May 2014 Report, no material provisions were highlighted.

56. I fully accept Mr De Feu's submission that the ROWIP's main aim is "to provide an improved network of local public rights of way which fulfils the needs of as many legal users as possible". I also recognise that the prioritisation of scarce resources is a significant consideration when implementing the action plan (and I shall address this further below). However, I cannot agree that simply because Footpath 25 does not fall within the category of routes that might be used by people with a wide range of abilities and needs that its fate should be permanent closure, thereby precluding use by anyone at all.

57. In summary I find there to be little in the ROWIP to support closure of Footpath 25.

***Whether it is expedient to close the footpath***

58. Finally, I must consider whether it would be expedient to confirm the Order to extinguish the public right of way between points A and G.

59. In the *Stewart* case, the Court recognised that whilst the tests in Section 118<sup>11</sup> concentrate on the likely use in future, when considering the overall expediency of confirming the Order other considerations can be brought into play.

60. In his submissions for the Council, Mr De Feu highlighted the limited resources available to the Council to maintain and improve its rights of way network; decisions must be made in the knowledge of the network as a whole, not in isolation. He argued that confirmation of this Order would allow resources that will otherwise have to be channelled into its reinstatement to be put to better use elsewhere.

61. As I noted above at paragraph 26, Mr De Feu referred to the *Gloucester* case. He pointed out that the availability of resources was accepted by the Court as being a material consideration in that case. In short, the expense of providing a new bridge was out of proportion to the possible advantage of restored access for a small section of the public and was thus not a good use of public funds.

62. In her evidence Ms Jones stated that the cost of re-opening Footpath 25 had been estimated at £5,000 two years ago. The majority of the work necessary would be between points C, D and E where a mini-digger would be required.

63. In response, Mr D P Griffiths argued that the Council's costings were based on a much higher standard of path than would be necessary for a country path of this nature. He was convinced that an accurate survey would reveal the existence of the original footpath that could be restored much more cheaply than the estimate provided.

64. Whilst I suspect Mr Griffiths may be correct, I cannot rely on this. Yet, until the definitive line is identified on the ground, neither can I rely on the Council's conclusion that the path is inherently dangerous, especially given that the path has existed on the same line in close proximity to the slope since 1919 at least.

65. I recognise the challenges facing the Council when balancing budgets and establishing priorities in a climate where resources are short. No figures were submitted to put into a budgetary context the estimated £5,000 but judging this sum in isolation, I should say that it would not be out of proportion to the advantage to local path users of having access restored.

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<sup>11</sup> In fact the *Stewart* case pre-dated the 1980 Act; it considered Section 110, the predecessor of Section 118.

66. In concluding on the question of expediency, I am influenced by the view of Phillips J in the *Stewart* case where he recognised “...*the difficulties of allowing obstructions, or any doubt as to the line of path, to count to any substantial extent as reasons for making a stopping up order. Were that to be so it would mean that the easiest way to get a footpath stopped up would be unlawfully to obstruct it and that could not be the policy*”.
67. One of the points of objection concerned the lack of maintenance and failure to enforce the public’s rights which has led to the present problems along Footpath 25. Objectors argued that the solution should not be to close the path. That approach was strongly criticised in the *Stewart* case when Phillips J concluded that “*it was really not right to (confirm) a stopping-up order merely because the path’s unlawful obstructions of this kind have made it difficult for the public to exercise their rights*”.
68. Whilst the Council’s track record is not a matter for me, I wholly agree with that principle. Accordingly, and as required by the legislation, I have considered any such obstructions along Footpath 25 as ‘temporary circumstances’ and consequently disregarded them when assessing the likely use of the path in future.
69. I recognise that confirmation is not ruled out by the fact that the path is, or is likely to be, used to only to a limited degree. But neither is confirmation required simply because the level of use may be relatively low when compared with high-profile multi-user routes such as the Taff Trail. Other factors also need to be taken into account.
70. Having regard to the statutory tests, to all the relevant issues considered at the inquiry and all the material points in the written submissions before me, all of which I have addressed above, I conclude that it would not be expedient to confirm this Order.

### **Conclusion**

71. Having regard to the above and all other matters raised at the inquiry and in the written representations, I conclude that the Order should not be confirmed.

### **Formal Decision**

72. I do not confirm the Order.

*Sue Arnott*

**Inspector**

## **APPEARANCES**

### **In support of the Order**

Mr B De Feu                      Of Counsel, instructed by Mr G Morgan, Solicitor, Merthyr Tydfil County Borough Council

*Who called:*

Ms C A Jones                      Public Rights of Way Projects Officer, Merthyr Tydfil CBC

### **Also supporting the Order**

Mr J Griffiths

Mrs G Gough

Mr K Rogers

### **Opposing the Order**

Mrs L Ashraf                      Representing Merthyr and District Naturalists Society

Mr G P Morgan

Cllr Mr H Barrett

Mr D P Griffiths                      Representing Vaynor Community Forum

Mr A Jones

## **DOCUMENTS**

1. Copies of statutory objections and letters of support
2. Merthyr Tydfil CBC's Statement of Case together with bundle of documents CJ1-CJ28 together with comments on the objections
3. Proof of evidence of Ms C A Jones

*Submitted at the inquiry:*

4. Plan identifying the status of highways in Cefn Coed
5. Extracts from Ordnance Survey Maps dated 1875, 1919 and 1957
6. Relevant Land Registry documents
7. Full copy of MTCBC Rights of Way Rights of Way Improvement Plan
8. Plan indicating 5m contours in the vicinity of the Order route
9. Statement of Mrs G Gough including photograph
10. Statement of Mr D P Griffiths on behalf of Vaynor Community Forum
11. Photograph submitted by Mr G P Morgan
12. Undated letter from Mr and Mrs Churchill
13. Letter dated 27 September 2016 from Mr I Sullivan