



Cyngor Castell-nedd Port Talbot  
Neath Port Talbot Council

## **NEATH PORT TALBOT COUNTY BOROUGH COUNCIL**

### **CABINET**

**DATE: 6<sup>th</sup> January 2021**

**Report of the Director/Head of Legal Services – C. Griffiths**

#### **Matter for Decision**

**Wards Affected:** Ystalyfera

**Report Title:** Proposed Creation and Extinguishment Orders for the footpath from Hodgsons Road to the river Tawe – Community of Ystalyfera

#### **Purpose of the Report:**

To decide whether to make two public path orders to regularise the means of access from Hodgsons Road to the path alongside the river Tawe.

#### **Executive Summary**

- 1.1 This report is intended to deal with two things. Firstly, it deals with the grounds for making a Footpath Creation Order which will provide access to and from Hodgsons Road, the newer housing estate and the riverside path. Secondly, it also sets out the justification for removing the path that has been obstructed,

by the making of an Extinguishment Order under the Highways Act 1980.

## **Background**

- 1.2 On the 29<sup>th</sup> October 2015, this Council considered an application to recognise a public path that had been in existence prior to a housing development by Taylor Wimpey and Barratts. This path is shown as a bold line on plan no. 1, which now passes through a number of houses. A Modification Order was made to recognise the existence of this public right of way. At the same meeting in 2015, the Environment and Highways Cabinet Board also agreed that a Diversion Order should be made to remove the line of this path from passing through eleven properties. The intention was to re-route the path along the perimeter of the housing development and to use the new exit and entrance points into the site at points D2 and H1 as required by the planning permissions. Consequently, the Modification Order and the Diversion Order were made at the same time to give legal status to the path and the latter to then move the path. If no objections had been made, both Orders could have then been confirmed at the same time.
- 1.3 Both Orders were made on the 10<sup>th</sup> June 2016, but an objection was lodged to the Diversion Order by a local resident who lives alongside the path at point H1. The Order was referred to the Planning Inspectorate who concluded the Order contained a drafting error and so rejected the Order. However, the decision did not consider the merits of the objection which was whether the alternative route as shown in the Diversion Order was satisfactory.
- 1.4 A second Diversion Order was then made on the 6<sup>th</sup> April 2017, which placed the alternative path in the same position as before, but this time an objection was submitted by a different

person, being the local representative of the Rambler's Association. The original objector made no representation to this second order. The appointed Inspector considered the alternative path via the new estate roads but concluded new entry and exit for the path at point H1 was too far away from the point where it originally joined the riverside path. Therefore, the Order was rejected.

- 1.5 The Objection from the Rambler's Association considered a better alternative for the path would be via 'Llys Y Arfon', to join the path alongside the river at point G1 shown on plan no.3. This would appear to be the only viable alternative option, given a more direct link south east from point D1 to the river would require extensive works due to the steepness of the embankment leading up to the river from point D1.
- 1.6 Since the second diversion was made, the estate roads have been adopted under a section 38 agreement to the Highways Act 1980. Whilst a diversion order can, in part, include existing public paths or bridleways, it cannot incorporate adopted footways. Therefore, it will not be possible to divert this path under section 119 of the Highways Act 1980 as originally recommended to the Environment and Highways Cabinet Board in 2015.

### **Possible Solution**

- 1.7 The alternative option is to make concurrent extinguishment and creation orders under sections 118 and 26 of the Highways Act 1980 respectively.
- 1.8 An advice note issued by the Planning Inspectorate and as revised in January 2018, highlights the provision within sections 118 permitting extinguishment orders to be dealt with concurrently with creation orders. The advice note provides

inter alia that, 'when considering the confirmation of a public path extinguishment order, in particular the extent to which the highway would be likely to be used by the public apart from the order, regard should be had to the extent the creation----- would provide an alternative to the way being extinguished.'

### **Grounds for a Creation Order under section 26 of the Highways Act 1980.**

- 2.1 This Council needs to be satisfied there is a need for the footpath and has to take account of the extent to which the path would add to the convenience and enjoyment of a substantial section of the public or to the convenience of the residents in the area.
- 2.2 The application to register the path, shown A-B-C-D-E on plan no. 2, resulted in the making of the Modification Order and was supported by 42 people who gave their reasons for using the path as a means of reaching the path at the river at point E, before continuing in either direction alongside this river. Since the application, no current survey has been undertaken, but it is evident that for residents of Hodgsons Road, situated at point A on plan no.2 (or point A1 on plan no. 3), the path had provided a convenient means of access to the river. Consequently, the path shown on plan no. 3 shows the proposed route for the creation order which would provide access from Hodgsons Road to and from the housing site at point D2 and also provide a link from the estate road called Llys yr Afon to the path at the river at point F1.
- 2.3 Secondly, the planning consent for the developer required the provision of access into and out of the site as shown by D2 on plans 1 and 3. This was in recognition of the need to provide pedestrian access for both residents within the new housing

development and those living outside. In addition, formalising access at point F1-G1 would serve a similar purpose for those groups of people to reach the path at the river.

- 2.4 The Council also has to take account of the effect that the creation of a path would have on the rights of those persons interested in the land. Secondly, the Council also has to take account of the requirement to provide compensation should the value or any interest in the land be depreciated as a consequence of the coming into operation of the Creation Order.
- 2.5 In deciding whether to confirm an order the Council should also take account of any material provision of its Rights of Way Improvement Plan.
- 2.6 The most relevant objective in the Rights of Way Improvement Plan under the 'Statement of Action' is 'Objective 4' which states that public rights of way should meet the needs of users, now and for the future. In this regard, the current proposal is to ensure alternative access is maintained between Hodgsons Road and the river as well as considering the needs of the users living within the housing estate.

### **Grounds for making an Extinguishment Order under section 118 Highways Act 1980.**

- 3.1 The first test is that the Council have to be satisfied that it is expedient that the path shown on plan no. 2 A-B-C-D-E, should be stopped up on the basis that the path is not needed for use.
- 3.2 Clearly the path cannot be used due to the housing development and there is no viable alternative in close proximity. However, the creation of an alternative route shown

on plan no.3 provides the grounds for justifying the extinguishment of this modification order route.

- 3.3 The second test concerns whether or not having made the order, the Council can justify confirming that order. It has to have regard to the extent to which the path is likely to be used, having regard to the effect which the extinguishment of the path would have on the land served by the path. In addition, consideration should be given as to whether compensation would be due to anyone who would be disadvantaged by the loss of the public path.
- 3.4 The path is no longer available and the confirmation of the order would not adversely affect anyone who occupies or owns the land over which it crosses. It would be to the benefit of those whose houses have been built on the path, to have its legal status removed. Therefore, this second test can be satisfied. As a consequence, it is not envisaged that anyone would be able to claim compensation for the loss of this path.
- 3.5 The Council should also take account of any relevant policies contained in its Rights of Way Improvement Plan.
- 3.6 The extinguishment order is removing a path that was originally a path that provided access to and from the river. As indicated in paragraph 2.5, as a result of providing an alternative by means of access by a creation order, it is taking account of the needs of the users set out in 'Objective 4' contained within the Rights of Way Improvement Plan.

## **Conclusion**

- 4.1 It is considered the making of these two orders will resolve a long outstanding issue.

- 4.2 In addition, given the original modification order was not confirmed due to the objection to the diversion order, it is recommended that this Modification Order also be confirmed if no objections are received to the Extinguishment and Creation Orders.

## **Financial Impacts**

- 5.1 No implications

## **Integrated Impact Assessment**

- 6.1 A first stage impact assessment has been undertaken to assist the Council in discharging its legislative duties (under the Equality Act 2010, the Welsh Language Standards (No.1) Regulation 2015, the Well Being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016. The first stage assessment has indicated that a more in-depth assessment is not required. A summary is included in Appendix 1.

## **Valleys Communities Impacts**

- 7.1 No implications

## **Workforce Impacts**

- 8.1 No implications.

## **Legal Impacts**

- 9.1 Whilst the recommendations are not discharging a duty under the Highways Act 1980, this Council has the discretion to do so if it deems that the two orders are expedient and can be justified. The relevant tests powers have been set out in paragraphs 2.1 to 3.6 for both the creation and extinguishment orders.

### **Risk Management Impacts**

- 10.1 Given the problem associated with the obstructed path has been long outstanding, it is necessary to make every effort to resolve this matter. That is for the convenience of those whose houses have been built over the path, those whose access to the river has never been formalised no remedied and for those to be able to utilise the short cut into and out of the housing area as originally set out in the planning consent, in particular for those living in those streets to the north east of the site. Not to do so would potentially render this Council liable for criticism.

### **Consultation**

- 11.1 Prior to this report, a standard list of organisations were consulted such as the Ramblers Association, their local representative, the Byways and Bridleways Trust, the Community Council, the Local Member along with Taylor Wimpey and Barratts homes as well as all those whose houses are affected by the line of the existing path and those who live close to the proposed new route where it exits and enters the housing estate.

### **Recommendation**



- 12.1 That public path Creation Order is made pursuant to Section 26 of the Highways Act 1980 in respect of the route shown A1-B1-C1-D1-D2-E1 and also F1-G on plan No. 3.
- 12.2 That an Extinguishment Order is also made pursuant to Section 118 of the Highways Act 1980 in respect of the route shown A-B-C-D-E on plan No. 2.
- 12.3 If no objections are received to the two orders then they be confirmed along with the modification order made earlier under the provisions of the Wildlife and Countryside Act 1981 as shown as a bold line on plan No. 1.

### **Reasons for the Proposed Decision**

- 13.1 That the current proposals be implemented for the following reasons:-
  - a) There is a need to provide a public path from Hodgsons Road to the river Tawe given this Council had agreed that a public path had existed from that road to the river prior to the housing development
  - b) That given the housing development has obstructed the line of the original path, an alternative is needed. As the previous attempt to divert the path failed, the option to place one of the exit points at G1 shown on plan no.3 is the only alternative viable solution.
  - c) That due to the adoption of the estate roads within the housing development another diversion order cannot be made, but making an extinguishment and creation order at the same time would still achieve the same result. This will remove the line of

the path that passes through the housing estate and provide and alternative by making a creation order.

## **Implementation of the Decision**

14.1 The decision is proposed for implementation after the three day call in period.

## **Appendices**

15.1 Appendix 1 – Impact Assessments

Plan no. 1  
Plan no. 2  
Plan no. 3

## **List of Background Papers**

None

## **Officer Contact**

Mr Michael Shaw – Principal Solicitor – Litigation  
Tel No. 01639 763260  
Email: m.shaw@npt.gov.uk