

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

Regeneration and Sustainable Development Cabinet

11 March 2022

Report of the Head of Legal and Democratic Services – Mr Craig Griffiths

Matter for Decision

Wards Affected:

Bryncoch South

Proposed Extinguishment Order for the spur or north south section of footpath No.4 running to the rear of the houses of Brookfield, Waunceirch, in the Community of Blaenhonddan

Purpose of the Report

To decide whether to make an order to remove that section of path which has obstructed by the housing development at Waunceirch since the 1960's. This report is intended to deal with the grounds for making an extinguishment order under the Highways Act 1980 given the section of path concerned passes through eleven properties and has been closed to the public from the 1960's.

Background

This is a long outstanding issue, in that the Definitive Map and Statement includes the public path, A-B shown on the attached plan at Appendix 2, as passing through a number of houses and / or their gardens. This path was not diverted or extinguished at the time consent was granted for the housing development. Accordingly, consideration must now be given to an extinguishment order

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

The first test is that the Council has to be satisfied that it is expedient that the length of path shown A-B, and being 450 metres, should be stopped up on the basis that the path is not needed for use.

Evidently, the path cannot be used due to the housing development rendering the path inaccessible. However one of the grounds for deciding that a public path is not needed for use is that there are suitable alternative in place. In this respect, there is a short section of footpath no 4 shown as A-C shown on the attached plan which provides a connection to the footway along Brookfield itself which is shown C-B. This alternative A-C-B being 515 metres in length

Another longer alternative route would be to utilise the existing stone-based path that runs approximately parallel to Brookfield shown D-E-F shown on the attached plan that terminates at Heol Glynderwen. From here it is possible to cross the field via G-

H-I to enter the cul de sac of Mill Race which would eventually enable the public to walk to the original termination point at point B. These routes are in existence but have not been registered as public rights of way. They are permissive paths, which lie on land owned by this Council. The total distance using these two alternative routes and the estate roads is 716 metres. The companion report sets out the grounds for making a creation order to recognise these alternative routes as public rights of way.

It is not possible to create a path directly from E-H due to a copse of trees and so the only viable way of providing an alternative is to offer the public these two paths.

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 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. In this respect, 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 eleven houses, which have been built on the path, to have its legal status removed. Therefore, this second test can be satisfied. Consequently, it is not envisaged that anyone would be able to claim compensation for the loss of this path.

The Council should also take account of any relevant policies contained in its Rights of Way Improvement Plan. In this regard, section 6.0.4 states "Progress has been made in processing legal orders with the number of outstanding legal orders greatly reduced. The need to deal with these remains, with issues to do with historic anomalies on PROW that are shown going through housing estates becoming increasingly prevalent over the last few years"

The extinguishment order would remove a path that was lost when the housing development was completed. Therefore, this section of footpath no 4 has lost its original purpose.

Conclusion

It is considered the making of this order will resolve an outstanding issue and the existing alternative via the footway of Brookfield namely A-C-B does provide a suitable alternative. Secondly formalising the creation of a second alternative via the rear of Brookfield D-E-F and G-H-I whilst longer, does retain part of the character of the original path where it passes to the rear of the properties of Brookfield and offers another means of reaching the destination located at point B.

Financial Impacts

There are no financial implications with this report.

Integrated Impact Assessment

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.

Valleys Communities Impacts

There are no valley community impacts associated with this report.

Workforce Impacts

There are no workforce impacts associated with this report.

Legal Impacts

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 order is expedient and can be justified. The relevant tests have been set out above.

Risk Management Impacts

The section of path under consideration has been obstructed since the 1960's. It is no longer needed due to the alternatives available and so it is necessary to make every effort to resolve this matter particularly for the convenience of those whose houses have been built over the path.

Consultation

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, this Council's own Estates section and also those persons whose houses are affected by the existing public path.

Recommendations

It is recommended that having due regard to the Integrated Impact Screening Assessment that a public path Extinguishment Order is made pursuant to Section 118 of the Highways Act 1980 in respect of the route shown A-B shown on the attached plan at Appendix 2. In the event that no objections are received to the order then this order also be confirmed as unopposed.

Reasons for Proposed Decision

That the current proposal be implemented for the following reasons (1) there is a need to resolve the depiction of a public path running through houses when a suitable alternative exists and (2) that due to the existence of the estate roads within the housing development and the suggested creation order for the paths over the land under this Council's ownership, provides the grounds for extinguishing the path A-B.

Implementation of Decision

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

Appendices

Appendix 1 Integrated Impact Screening Assessment

Appendix 2 Plan Footpath No.4 Blaenhonddan

List of Background Papers

None.

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