

# **NEATH PORT TALBOT COUNCIL**

## **Environment, Regeneration and Streetscene Services Cabinet Board**

28th October 2022

### **Report of the Head of Legal and Democratic Services Craig Griffiths**

Matter for Decision

#### **Wards Affected:**

Cwmllynfell and Ystalyfera

### **Proposed Extinguishment Order and Creation Order for parts of footpath no's 85, 86 and 87 at Gelliwarog Farm.**

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

1. To determine whether to make an extinguishment order to remove three sections of public footpaths that join at the yard of Gelliwarog Farm.
2. To determine whether to make a creation order for alternative paths which bypass Gelliwarog Farm.

#### **Executive Summary**

3. This report proposes to make an extinguishment order for 3 footpaths at Gelliwarog Farm, whilst simultaneously creating alternative paths in their place.

4. The reason for the proposal is on the grounds of public safety, to allow the public to avoid wading across a working farmyard.

## **Background**

5. The Definitive Map and Statement show three public footpaths all meeting at a working farmyard at Gelliwarog Farm.
6. The owners of the farm state that having the public walk through the farmyard raises concerns for public safety. The farmyard is used daily for the movement of livestock and also has vehicles driving into and out of the yard. In addition, as the location is quite remote, the owners raise concern about their own security with the footpaths passing alongside the farmhouse.
7. Accordingly, consideration can be given to an extinguishment order to remove these three paths from passing through the yard, provided that alternative paths are offered by means of a creation order.
8. Usually moving a path from one position to another would be done via a diversion order, but since three paths meet at one point, this would only be possible if it were done in two stages; a more appropriate method is to make an extinguishment order and creation order at the same time.
9. A plan attached at appendix 2 identifies the footpaths using a series of letters at various locations.

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

10. The first test is that the Council must be satisfied that it is expedient that the length of paths shown A-F-B, and F-G-H-I-E should be extinguished on the basis that these paths are not needed for public use.
11. One of the grounds for deciding that a public path is not needed for use is that there are suitable alternatives in place, namely A-B which substitutes for A-F-B and C-D-E which provides an alternative to F-G-H-I-E.
12. The second test concerns whether or not having made the order, the Council can justify confirming that order. It must have regard to the extent

to which the path is likely to be used and having regard to the effect the extinguishment of the path would have on the land served by the path.

13. In this case the alternative to A-F-B via A-B is a more convenient route and at a slightly higher elevation avoiding the yard. The path A-B enables the public to continue in either direction, therefore the extinguishment of the section A-F-B will have no adverse effect.
14. Regarding the length F-G-H-I-E, the owners of the land have indicated that due to the boggy nature of the field between points H-I-E, they do not recall ever seeing anyone attempting to use this section and so have never needed to provide a stile or gate at points H and I. As such it is their view that there will be no loss to the public if this path is extinguished. The alternative being offered does pass over slightly firmer grounds between points C-D though still remains wet underfoot between D-E.
15. 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 paths pass over the applicants land and it is they who have requested the changes to the network. Consequently, it is not envisaged that anyone would be able to claim compensation for the loss of this path.
16. In deciding whether to confirm an order, the Council should also take account of any material provision of its Rights of Way Improvement Plan Section 4.1.4 and 4.1.6 are the most relevant
17. The extinguishment order would therefore improve the network around Gelliwarog farm.

### **Grounds for a Creation Order**

18. 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.
19. The path A-B provides an improved alternative to that which passes through the yard A-F-B. It is at a slightly higher elevation and so provides better views and contains one pedestrian gate, as does the existing path.

The difference being is that there is gate located at point A rather than the existing at point B. As such it is considered this path would be more convenient than the existing and ultimately avoid users having to pass through the yard.

20. The path C-D-E is not defined on the ground but would provide access as a substitute for the route F-G-H-I-E. It crosses two fields with the section C-D being more elevated than the whole of F-G-H-I-E. It provides better views across the area and whilst partly boggy, does not cross such saturated and wet grounds as the existing length F-G-H-I-E. Gates are position at points C and D whereas there are three field boundaries to cross via the exiting section.

## **Conclusion**

21. In deciding whether to confirm an order, the Council should also take account of any material provision of its Rights of Way Improvement Plan.
22. In Section 4.1.4, it states that the rights of way network is not static and whilst extinguishments are rare, there is a tendency to divert paths on to more appropriate routes.
23. In Section 4.1.6, it states that the rights of way network is an historic one which does not always meet current needs, and that opportunities to improve access provision are actively pursued.
24. It is considered the making of this order will assist in providing two acceptable alternative paths to the existing lengths which are less suitable.
25. It is considered the making of this order will resolve the issue around concerns for public safety and provide a more suitable means of access in the vicinity of this farmyard.

## **Financial Impacts**

26. There are no financial implications with this report.

## **Integrated Impact Assessment**

27. 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**

28. There are no valley community impacts associated with this report.

## **Workforce Impacts**

29. There are no workforce impacts associated with this report.

## **Legal Impacts**

30. 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 can be justified. The relevant tests have been set out above.

## **Risk Management Impacts**

31. Given the problems the owners have highlighted, it is considered necessary to make every effort to resolve this matter. As such it would be for the convenience of both the public and the owners of the farm.

## **Consultation**

32. 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 and Local Members.

## **Recommendations**

33. 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-F-B and F-G-H-I-E 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.
  - That a public path Creation Order is made pursuant to Section 26 of the Highways Act 1980 in respect of the route shown A-B and C-D-E 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**

34. That the orders be made as it is considered expedient to remove the junction of these three paths from the yard of Gelliwarog farm and provide the public with formal access across the land in substitute for the existing lengths concerned.

## **Implementation of Decision**

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

## **Appendices**

36. Appendix 1 Integrated Impact Screening Assessment
37. Appendix 2 Plan for Footpath Nos. 85, 86 and 87 Community of Cwmllynfell.

## List of Background Papers

38. None.

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