

NEATH PORT TALBOT COUNCIL

Regeneration and Sustainable Development Cabinet

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 for parts of footpath No.233 positioned between Maengwyn and Cwmdu in the Community of Ystalyfera

Purpose of the Report

1. To decide whether to make an order to remove that section of path which has been obstructed by a housing development since the 1960's.

Executive Summary

2. 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 three properties and subsequently has been closed to the public from the 1960's.

Background

3. This is a long outstanding issue, in that the Definitive Map and Statement continues to show a public path running through three houses and four garages.
4. The path shown A-B-C-D on the attached plan was never diverted via an alternative route shown A-E-F-G on the attached plan. This was proposed at the time the houses were built, but was never progressed. However, the path was closed 6 years ago.
5. The proposed alternative path was closed 6 years ago and in any event is considered unsuitable as highlighted in paragraph 13 below. In addition, a convenient existing alternative can be used via the footway of Maengwyn and Pencwmdu estate roads.
6. Since the original alternative path was closed, no complaints have been received and it therefore appears there are good grounds for extinguishing the existing section of path A-B-C-D which passes through these houses.

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

7. The first test is that the Council has to be satisfied that it is expedient that the path shown on the attached plan A-B-C-D should be stopped on the basis that the path is not needed for use.
8. Clearly the path cannot be used due to the housing development. However, there is a suitable means of walking to and from the two points of the path at points A and D by walking west from point A via the footway of Maengwyn and Pencwmdu or north from point D.
9. 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 and 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.

10. 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.
11. 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".
12. The extinguishment order would remove a path that is a continuation of the same numbered path which lies within the road known as Maengwyn and the access track to Cilmaengwyn Ichaf farm to the north of point A. Accordingly, the remainder of footpath 233 has lost its original purpose as it has been subsumed into the adopted highway.

Possible use of the alternative path A-E-F-G.

13. This path was set out when the housing development took place but was not made the subject of a diversion order to replace the current path A-B-C-D and so was never registered as a public path.
14. It is not known what use was made of this path before it was closed 6 years ago by the installation of a small gate at point A and a 3 metre high metal fence at point F.
15. No complaints have been received since its closure, the length between points A and E passes between two breeze block walls creating an alleyway and the remainder of the path emerges into the yard of 17 garages. This path does not contain street lighting, whereas the route via the footways of the estate does and so the alternative is considered less suitable.
16. The distance from points A-B-C-D is 121 metres, between A and D via Maengwyn and Pencwmdu is 184 metres and between A-E-F-G is 167 metres, therefore there is no significant increase in the distance for the

public using the footway, as opposed to the possibility of utilising the now close alternative path.

17. It is considered the making of this order will resolve an outstanding issue and the additional distance of using the estate road as opposed to opening the nose closed alternative 17 metres which could be considered insignificant.

Financial Impacts

18. There are no financial implications associated with this report.

Integrated Impact Assessment

19. 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

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

Workforce Impacts

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

Legal Impacts

22. 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

23. The section of path under consideration has been obstructed since the 1960's. It is no longer needed due to the change in character of the area

since the Definitive Map was produced. Therefore 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

24. 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 Members and Tai Tarian who own some of the land. Additionally those households who are affected by the line of the existing path as well as the householder whose property is alongside the now closed alternative path. The only response that was received came from the Neath Port Talbot Ramblers Association who support the extinguishment of the path.

Recommendations

25. It is recommended, that having due regard to the integrated impact screening assessment, that public path Extinguishment Order is made pursuant to Section 118 of the Highways Act 1980 in respect of the route shown A-B-C-D shown on the attached plan. If no objections are received to the order then this order also be confirmed as unopposed.

Reasons for Proposed Decision

26. That the current proposal be implemented for the following reasons:-
 - (a) There is a need to resolve the depiction of a public path running through houses when a suitable alternative exists.
 - (b) The alternative originally provided was never made the subject of a diversion order at the time of the housing development. Yet since its closure there has not been any demand to have it reopened.
 - (c) That due to the existence of the estate roads within the housing development, a suitable alternative is available via the footways which further supports the case that the path A-B-C-D is not needed.

Implementation of Decision

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

Appendices

28. Appendix 1- Impact Assessment
29. Appendix 2 - Plan

List of Background Papers

30. None.

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