

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

ENVIRONMENT, REGENERATION & STREETSCENE SERVICES CABINET BOARD

2nd December 2022

Report of the Head of Legal and Democratic Services Craig Griffiths

Matter for Decision

Wards Affected:

Rhos

Proposed Extinguishment Orders for part of Footpath No.38, Community of Cilybebyll

Purpose of the Report

1. To decide whether to make a public path extinguishment order to remove a path which passes through two gardens.

Executive Summary

2. This report is intended to consider the justification for removing the path that forms a remnant of an earlier and longer path which was lost due to a housing development.
3. The alternative means of access now available to the public is via the footway of the estate roads.

4. An Extinguishment Order under the Highways Act 1980 would enable this to be achieved.

Background

5. All references to location points below, refer to points shown on the plan attached at Appendix 2.
6. Footpath no. 38 originally crossed through fields and extended from Neath Road at point A and proceeded approximately in a southerly direction to join footpath no. 39, positioned at the southern end of the path shown at point H.
7. The majority of this previous north-south field path no longer exists, due to the housing development, with the alternative means of access being from points A to H via the footways of the estate roads.
8. The link to footpath no. 39 at point H was provided by an order from the Secretary of State in 1967 at the time of the housing development.
9. The path shown I-D-E was not part of the original footpath but was added in 1978 to provide a short cut between the east and west parts of the road named Delffordd. The length of path under consideration therefore is essentially a remnant of that earlier north south-path, which was never properly accommodated at the time the houses were built.
10. This proposal involves some 142 metres of public path shown C-C1-D. Half of this length between points C and C1, passes along the access drive to the properties of Carogan, Tirbach Farm and Ty Ni as well as passing to the rear of no. 29 Heol y Nant. The extinguishment of this section of public path will have no effect on whatever private rights exist for those properties mentioned above. The remaining half crosses over the gardens of Carogan and Tirbach Farm, which is between points C1 and D.
11. The path is obstructed by the trunk of a mature tree at point C1 where it crosses between the two gardens of Carogan and Tirbach Farm, there is also a gate at point D.
12. One person has asked why the path is unavailable and has stated that he would wish to use the path. The local representative of the Ramblers

Association indicated that a lack of signage may have been a factor in the public not being aware of the existence of this section of path.

13. Nonetheless the enquiry into the paths status and condition provided the impetus to consider the matter with landowner at this time and who is most affected by the path.

Possible solution

14. It is considered the only two options are either to reopen the path or make an extinguishment order on the basis the path C-C1-D is not needed for public use on the grounds set out below.

Grounds for making an Extinguishment Order.

15. The first test is that the Council have to be satisfied that it is expedient that the path shown on plan C-C1-D, should be extinguished on the basis that the path is not needed for use.
16. The path is obstructed at point C1 although this in itself cannot be taken into account when considering this test. A case concerning a diversion order in 2021, considered the expediency test at the Court of Appeal. It concluded that account could be taken of the security and privacy of the occupier of the property affected by the existence of a public path passing in close proximity to their house. This test could apply in this example for those residents of Tirbach and Carogan.
17. 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.
18. Regarding the effect the order will have on the public and whether the path is likely to be used. The path could be reopened but as indicated above, there have been no complaints over the nature of the paths condition. Also a letter from the Local Representative of the Ramblers Association and in conjunction with this representative's meeting with the Neath Port Talbot Ramblers, has expressed they have no wish to object

to this proposal. Consequently, it is not known whether anyone would object to the loss of the path, but in any event it is considered the grounds for its extinguishment can be satisfied.

19. Regarding the effect of the order on the land served by the path, this would include the land over which the path crosses and the land to which the path connects. It is clearly in the interest of those residents whose gardens are crossed by the path.
20. The land to which the northern and southern end of the path joins, is already served by a public footway at points C and D.
21. The confirmation of the order would not adversely affect anyone who occupies the land over which the path crosses and evidently will be to the benefit of those whose houses are directly affected by the path to have its legal status removed. Consequently, it is not envisaged why these individuals would wish to claim compensation over the loss of this section of the path.
22. The path connects to the registered path at point D so anyone wanting to make their way to either points I, G or E can use the estate footways. The distances via the current path and utilising the paths south of point D via points B- C-C1-D-E-F-H is 497 metres but via the footways of the estate roads via B-F-H is 534 metres.
23. Therefore, this second test can be satisfied. As a consequence, it is not envisaged that anyone else would be able to claim compensation for the loss of this path.
24. 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 with PROW that are shown going through housing estates”
25. In conclusion, it is considered the making of this order will resolve a long outstanding issue.

Financial Impacts

26. There are no financial implications associated 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 is it expedient to make the order and can be justified. The relevant tests have been set out above.

Risk Management Impacts

31. Given the problem associated with having an obstructed and under used path outstanding for a long period, it is necessary to make every effort to resolve this matter. That is for the convenience of those whose gardens contain part of the path and to give effect to the housing development which has resulted in the loss of the original field path.

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, the Local Member along with those whose houses are affected by the line of the existing path.

Recommendations

33. That having due regard to the integrated impact screening assessment, an Extinguishment Order is made pursuant to Section 118 of the Highways Act 1980 in respect of the route shown C-C1- D shown on the attached plan.
34. If no objections are received to the order then this order be confirmed the same as unopposed.

Reasons for Proposed Decision

35. That the current proposals be implemented for the following reasons:-
36. There is a need to resolve the issue of this length of path which crosses over two gardens.
37. The housing development has resulted in the loss of the original field path, but that access across the site from Neath Road to public footpath no.39 can still be obtained mainly via the estate roads.

Implementation of Decision

38. The decision is proposed after the three day call in period.

Appendices

39. Appendix 1- Integrated Impact Assessment
Appendix 2 - Plan of footpath no. 38

List of Background Papers

40. None.

Officer Contact

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