

# **NEATH PORT TALBOT COUNTY BOROUGH COUNCIL**

## **ENVIRONMENT, REGENERATION & STREETSCENE SERVICES CABINET BOARD**

**19th January 2023**

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

Matter for Decision

#### **Wards Affected:**

**Alt-wen**

#### **Proposed modification order for byway No.24 in the Community of Cilybebyll**

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

1. To determine whether to make a modification order to downgrade a part of byway no.24, to a public footpath.

#### **Executive Summary**

2. This report considers the grounds for making a modification order to downgrade part of a byway to a public footpath.

3. A byway open to all traffic gives the public the right to drive vehicles along such a designated track, however a section of byway no.24 is not considered suitable for vehicular traffic, in that it is insufficient in width and includes a set of steps.
4. The proposal is to make a modification order, which will downgrade a part of the byway to a public footpath.

## **Background**

5. Byway no.24 is shown in the Definitive Map and Statement as commencing on a cul-de-sac off Alltwen Hill and proceeding along a road to the side of Alltwen Primary School, before passing along a set of steps. The plan at appendix 2 shows the byway starting at point C and ending at point B; the set of steps is shown at points A - B.
6. A public byway open to all traffic gives the public right to drive vehicles along such a designated track. Given it is not possible to take a vehicle up a set of steps, it is necessary to consider either re-classifying this section of the byway under the Highways Act 1980 or assessing whether the byway was incorrectly recorded. It is considered that the byway may have been incorrectly recorded, when the review of all public paths was undertaken as a result of the National Parks and Access to the Countryside Act 1949. If it is concluded that this happened, a modification order could be made under the Wildlife and Countryside Act 1981 to correct that error.

## **Grounds for modification**

7. The path appears on the 1918 and 1942 editions of the Ordnance Survey as a track to Dyffryn Road. It is not possible to say from the map whether vehicles could have obtained access along its entire length, but there is no reason to presume the steep gradient which now contains the steps, was different to the present time. It is also not known precisely when the steps were created
8. The two Ordnance Survey editions depict a slightly wider track compared to the subsequent editions, although this may be on account of the small scale of the plans - 1:10000. Today, the section containing the steps, only measures between 1 and 1.5 metres wide.

9. The steps are first shown on the Ordnance Survey 1964 edition, although a local resident has indicated that her mother believes the steps have been in existence since approximately the 1950's.
10. The Parish Council surveyed the path in 1950 and noted a stile at point B where the path meets Dyffryn Road. This stile is written on the plan used to survey this path, which indicates that no vehicles could have accessed Dyffryn Road by at least this date.
11. The path was shown in the first draft map of 1955, the Provisional Map of 1964 and the first Definitive map of 1970, as a public footpath. It was only at the Draft Special Review in 1971 ("the 1971 review"), that the path was upgraded to a byway. It is possible the intention was to recognise public vehicular access to the school and to those properties towards point A, but for some reason the flight of steps was also included in this upgrading.
12. The 1971 review was primarily intended to re-classify any roads used as public paths into either byways, bridleways or footpaths. It appears therefore, that the 1971 review was used as an opportunity to re-designate the footpath. Evidently, vehicular access to schools and individual properties would normally be secured as public roads via adoption agreements and then added to the list of streets. The 1971 review was never intended to be used for this purpose, which suggests that its re-classification was never dealt with properly and consequently resulted in this mistake.
13. Curiously the section which can be driven by vehicles is quoted in the Definitive Map as having a width of 3 feet, whereas there is a minimum width of 4 metres for the length between points A-C. This also suggests there was some confusion at the time as to the status of this path. It is suggested that this error in the Definitive Map and Statement is also corrected.
14. Several appendices attached to this report contain information on the evidence that the Council must consider when determining whether to make a modification order.
15. Appendix 3 provides an extract from the Wildlife and Countryside Act 1981, which places an obligation on this Council to consider what evidence may exist for re-classifying this path in whole or in part.

Appendix 4 provides further information on the grounds that need to be considered, should the Definitive Map be amended on an evidential basis.

Appendix 5 summarises the history of the compilation of the Definitive Map and Statement as required by the National Parks and Access to the Countryside Act 1949.

## **Financial Impacts**

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

## **Integrated Impact Assessment**

17. 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**

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

## **Workforce Impacts**

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

## **Legal Impacts**

20. The recommendations are discharging a duty under the Wildlife and Countryside Act 1981 to correct any errors that are discovered in the Definitive Map and Statement.

## **Risk Management Impacts**

21. There are no risk management implications from this report.

## **Consultation**

22. 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 the Local Member.

## **Recommendations**

23. It is recommended that having due regard to the Integrated Impact Screening Assessment
- That a modification order be made under Section 53 Wildlife and Countryside Act 1981 to downgrade the length of Byway no.24, shown on the attached plan between points A and B, to a public footpath. If no objections are received to the order then this order be confirmed as unopposed.
  - That the Definitive Map and Statement be amended to reflect the width from 3 feet to 4 metres between points A and C.

## **Reasons for Proposed Decision**

24. That taking into consideration the available historical evidence set out in the report, there are sufficient grounds to alter the designation of the section of public Byway No.24 shown A-B on the attached plan.

## **Implementation of Decision**

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

## **Appendices**

26. Appendix 1- Integrated Impact Screening Assessment
27. Appendix 2 - Location Plan
28. Appendix 3 - Wildlife and Countryside Act 1981
29. Appendix 4 - Grounds for altering the Definitive Map
30. Appendix 5 - History of the compilation of the Definitive Map and Statement

## **List of Background Papers**

31. None.

## **Officer Contact**

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