

**Report of the Head of Legal, Democratic Services and Procurement**

**Rights of Way and Commons Sub-Committee – 13 August 2014**

**EXTINGUISHMENT OF FOOTPATH NO. 88  
COMMUNITY OF LLANGYFELACH**

<b>Purpose:</b>	To decide whether to proceed with the Order for confirmation or to abandon the Order.
<b>Policy Framework:</b>	PPO16 of the Countryside Access Plan.
<b>Statutory Test:</b>	Section 118 of the Highways Act 1980.
<b>Reason for Decision:</b>	To decide whether to proceed with the Order for confirmation or to abandon the Order.
<b>Consultation:</b>	All the statutory consultees which included the Local Member, the Clerk to the Community Council, the owner/occupiers of 4 Cae Penpant, 49 Heol Waun Wen, and Penpant House, Dwr Cymru, The Ramblers Association and their local representative, Wales and West Utilities, the British Horse Society and their local representative, the Open Spaces Society, Natural Resources Wales, B.T. and Byways and Bridleways Trust.
<b>Recommendation(s):</b>	That the Extinguishment Order be referred to the Planning Inspectorate for determination
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<b>Finance Officer:</b>	Sarah Willis
<b>Legal Officer:</b>	Sandie Richards
<b>Access to Services Officer:</b>	Phillip Couch

**1.0 Introduction**

1.1 On the 11<sup>th</sup> day of March 2014 this Council made an Extinguishment Order under section 118 of the Highways Act 1980 to remove the length of path shown between points A-B-C-D-E-F. Footpath No. 88 between points A-X is under the ownership of this Council, the remaining sections under the ownership of those who have title to the three separate

properties built on the path. The alternative is vested in this Council having been adopted as public ways.

- 1.2 One hundred and twenty four objections were made to this Order and another thirty three from the pupils of Llangyfelach Primary School.
- 1.3 The Order was made under delegated authority by officers of this Council. As objections have been made to the Order, there is no authority for officers to decide whether the Order should be forwarded to the Planning Inspectorate or be abandoned.
- 1.4 Under the Act, the Council has the discretion to abandon the Order after it has been made if it considers it is not expedient to confirm the Order.

## **2.0 Background**

- 2.1 Lliw Valley Borough Council made a Diversion Order in 1988 to take account of the earlier housing development between points B-C-D-E-F. That Order failed as there was no consent from the owner of land over which the alternative was intended to pass.
- 2.2 Since 1988 further residential development has occurred within Llangyfelach at different times. At each phase alternative paths and footways have been set out by the individual developers which in effect have created an alternative route for Footpath No. 88.
- 2.3 The attached plan shows the alternative route as a broken line which includes tarmacked footpaths via A-X and Y-Z between 1.5 and 2.0 metres in width, but in the case of the latter set in a wider corridor. A-X passes across an area of green open space. The remaining lengths of the alternative includes the footway of Cae Penpant and the footway alongside Maes Teilo.
- 2.4 The footways and footpaths between points A-X-Y-Z and onto Swansea Road have been adopted as public highways and included into this Council's "list of streets". Therefore that adoption has secured the public's right to utilise this alternative walkway.

## **3.0 Grounds for Making an Order under Section 118 of the Highways Act 1980**

- 3.1 An order may be made if it is considered the path is not needed for public use.
- 3.2 The basis for making this Order is evidently due to the existing alternative that has been secured and which is in good condition.
- 3.3 The Council and/or the Welsh Ministers shall not confirm an order unless they are satisfied it is expedient to do so having regard to the extent to which the path would be used by the public.

- 3.4 The objection apart from three letters, are solely concerned with the loss of what is considered to be a village green between points A and X, and the presumption the Extinguishment Order is linked to the potential development of the site. Each objector and the Headmaster of Llangyfelach Primary School were sent a letter explaining the reasons why the Order was made. Secondly that their concerns over the loss of the green area of open space is likely to be determined in October this year, when a public inquiry will be held to determine the outstanding application to register the area as a village green. At the time of writing thirteen people have withdrawn their objection after having received this explanation of why the Order was made.
- 3.5 However two responded to state that they do not wish to withdraw for the following reasons:
- (a) The extinguishment is a forerunner to leaving a plot of land which could then be used for rebuilding.
  - (b) The village green is accessible by this footpath.
  - (c) There may be other access to the village green but none cross the village green.
  - (d) The closure of Footpath No. 88 will result in increased walker traffic through the alternative route.
  - (e) Footpath No. 88 allows access to a local shop through a flat surface, whereas the alternative is via steep incline.
- 3.6 Section 118 also enables a Council or the Welsh Ministers to take account of any other order that has been made to provide an alternative. In this example no additional order is outstanding as the alternative has already been set out and adopted. Consequently consideration can be given to the existing alternative and therefore whether the path being extinguished is likely to be used, given the provision of the alternative.
- 3.7 Therefore addressing the outstanding objections:
- (a) If the site was to be developed, then the consent could make provision for the existing path and in effect build around the path. Alternatively consent for development does provide valid grounds for either diverting or extinguishing the path, if it is necessary to enable the development to proceed. As such whilst the existence of a public path is a material consideration as to whether or what type of comment is granted, it would not of itself prevent a development. Nonetheless there is no outstanding application to develop the site.

- (b)&(c) Should the area being designated as a village green, access to and over that green would be obtainable from all the surrounding paths and adopted roads. There would be no need to retain a public footpath. (notwithstanding a public footpath and the land over which it crosses cannot be designated as a village green).
- (d) There is no path set out across the grass, it is simply a designated line following an old field boundary consisting of a bank and a row of mature trees.
- (e) The alternative therefore is more likely to be used throughout the year as it is tarmacked and also provides access to the same destinations. Secondly apart from the section between X-Z the remaining length is on level ground. There is no level alternative to the section X-Z.

3.8 Section 118 also states that any temporary circumstances preventing or diminishing the use of the path shall be disregarded. Therefore the fact that part of Footpath No. 88 has been built on, is not a reason in itself for extinguishing the path. The basis for why it is considered the Order should be confirmed however is due to the provision of the alternative.

3.9 The decision as to whether or not an Extinguishment Order should be confirmed shall have regard to this Council's Access Policy and the relevant extracts are contained in Appendix 1.

3.10 Any order that diverts, creates or extinguishes a public path can render the Council liable to pay compensation to the owners of the land adversely affected. In this instance the effect the loss of the public right of way would have where it can be shown:

- (a) the value of an interest of a person in land is depreciated; or
- (b) that a person has suffered damage by being disturbed in his enjoyment of the land in consequence of the coming into operation of the Order.

There is no perceived loss to the Council as a consequence of this Order being confirmed and coming into operation. Evidently the confirmation of the Order would be in the interests of those three properties built across the path.

#### **4.0 Conclusion**

4.1 For the above reasons it is considered the order could be confirmed by the Welsh Ministers if it is submitted to the Planning Inspectorate for determination.

## **5.0 Equality and Engagement Implications**

5.1 There are no equality and engagement implications with this report.

## **6.0 Financial Implications**

6.1 There are no financial implications associated with this report.

## **7.0 Legal Implications**

7.1 There are no legal implications associated with this report.

**Background Papers:** ROW-000232

**Appendices:** Appendix 1

## APPENDIX 1

- (a) Policy PPO16 states:

“Extinguishment will be considered where the requisite legal tests are met that the path is no longer needed for public use. This test may be met if there is alternative public access that has effectively replaced the path.”

- (b) Under paragraph 5.16:

“Large scale development can completely alter an existing landscape and the access needs of the public will change considerably. To reflect this change the existing public access may require partial or complete alteration, but in doing so the overall public access should be maintained or enhanced.”

PPO17:

“Diversions of paths across sites affected by development will only be permitted where it is proven that the path must be diverted to enable the development to be carried out, and only then where an acceptable alternative route is provided.”

PPO18:

The stopping up of paths for development will only be permitted in exceptional circumstances.