

Report of the Head of Legal, Democratic Services and Procurement

Rights of Way and Commons Sub-Committee - 3 December 2014

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

Purpose:	To decide whether to: <ul style="list-style-type: none">(a) Refer the Order as made for confirmation(b) Abandon the Order and make another.(c) Request that the Planning Inspectorate sever the Order.(c) Defer consideration until the village green application has been determined.
Policy Framework:	PPO16 of the Countryside Access Plan.
Statutory Test:	Section 118 of the Highways Act 1980.
Reason for Decision:	Members to decide.
Consultation:	All statutory consultees which included 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, BT and Byways and Bridleways Trust.
Recommendation(s):	As previously that the provisions of Section 118 can be satisfied and therefore the Order be referred to the Planning Inspectorate for determination.
Report Author:	Michael. J. Workman
Finance Officer:	Sarah Willis
Legal Officer:	Sandie Richards
Access to Services Officer:	Phil Couch

1.0 Introduction

- 1.1 On the 13th August 2014 this Committee considered the proposal to extinguish the footpath between points A-X and from Y-B-C-D-E-F. At the time the informal consultations were undertaken no objections had been raised. Consequently the 124 objections and the 33 from the local primary school that were subsequently made to the Order were unforeseen.
- 1.2 13 objections were withdrawn with the majority of the outstanding objections being concerned with the determination of the application for village green status. It would appear that the objectors believe that the Order was made to enable the site to be developed in the future. The report is attached for reference.

2.0 Issues Arising from Previous Meeting

- 2.1 At the meeting on 13th August 2014 this Committee expressed concern over the loss of the section of the path A-X that is the subject of the Order where it crosses over the land that is subject of the village green application given the volume of objections to its potential loss.
- 2.2 Due to the objections this Council cannot confirm the Order and so could either abandon the Order or refer the Order to the Planning Inspectorate for its determination.
- 2.3 A third alternative was raised as to whether this Council could refer the Order to the Planning Inspectorate but request that the section A-X be retained and so only the remainder of the path be extinguished.
- 2.4 The Welsh Office Circular 5/93 (and therefore produced in 1993) is still the most recent set of guidelines directly applicable to Wales on processing public path orders. There is no reference to the possibility of dividing or severing an Order. However the more up to date Rights of Way Circular 1/08 and produced in 2008 does make reference to an Inspector's power to modify an order under Section 118 of the Highways Act 1980. This circular applies to England. Consequently the Planning Inspectorate for Wales were asked if this option would be available and the response was that an Inspector "should be able to deal with the modification process".
- 2.5 If this option was pursued and the appointed Inspector agreed to the request and was minded to sever the Order any decision made on that basis would have to be advertised given the result would be the extinguishment of only part of the way.

3.0 Summary

3.1 The Order could be referred as made and the case forwarded that the majority of objections are not relevant as:-

- (a) the existence or otherwise of a village green has no bearing on whether there is a need for the path;
- (b) that there is a suitable alternative in being and adopted, which is the basis for the Order and so the provision of Section 118 can be satisfied.

3.2 The Council could decide to simply abandon the Order and make another so that it only includes the length Y-B-C-D-E-F given:-

- (a) this section can no longer be used;
- (b) there is an alternative via the adopted Estate paths and footways;
- (c) the strong opposition to the loss of the section A-X which had not been raised prior to the Order being made.

3.3 Thirdly the Order could be sent to the Planning Inspectorate and a request made for the Order to be severed so that only the section Y-B-C-D-E-F be extinguished on the same basis as 3.2 above. Three options arise:-

- (a) The request may not be accepted.
- (b) If the request is accepted, the appointed Inspector could nonetheless still decide that the order should not be severed and confirm the order as made.
- (c) The Order is severed although the "modification" to the original order would have to be re advertised and itself subject to objections.

3.4 Finally not to progress the Order until the issue concerning the village green application has been determined. The possible consequences are:-

- (a) The land is not given village green status and so the current position would remain unchanged.
- (b) If the village green application succeeds, then it is possible all the current objections could be withdrawn. However this is not necessarily guaranteed as some members of the public may still consider the public path should remain.

4.0 Equality and Engagement Implications

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

5.0 Financial Implications

Although the cost of referring to the Planning Inspectorate for determination will depend on how it is treated, it is expected to mainly involve officer time and some minimal advertising costs, which can be covered from existing budgets.

6.0 Legal Implications

There are no legal implications associated with this report.

Background Papers: ROW-000232

Appendices:

Appendix A – Site Plan

Appendix B - Previous report to this Committee on the 13th August 2014