

Appendix 5

Responses to final consultations

East Cliff and West Cliff (Proposals 1, 2 and 3 on Plan 3)

Response from a local horse rider – "...proposed bridleway seems very viable and is substantially the route that is ridden at the moment."

He mentions potential objections being generated by using the road at West Cliff, however, the permissive route does not incorporate the private track at West Cliff, therefore neither will the creation order route (see proposal No.2 on Plan 3).

Response from Ramblers and Gower Society Representative – "We welcome the amendments which will result in a significant improvement to the rights of way in the area."

Response from a resident of West Cliff – "The proposals now displayed at the corner of the NT car park in Southgate seem very good. They will avoid soil erosion on the cliff edge, and reduce danger to young riders and conflict between riders and dog-walking pedestrians. They will also mean that work that the National Trust has already done putting up bridle-path signs and filling in will not have been wasted. Congratulations on a good piece of work."

Pobbles and Pennard Burrows (Proposals 4, 5, 6, 7 and 8 on Plan 4)

Response from Local Horse Rider – "Establishing a public bridleway to Pobbles beach would be of great benefit. It is a route that has been ridden for many years, even before it became a permissive way courtesy of Pennard Golf Club."

Response from Local Resident with petition from residents attached to response – "I write in support of the proposal to recognise the used routes and provide a linking up and improving the network. In support of this principle I enclose a copy of a petition which was completed in the village just over a year ago. It contains 612 signatures requesting that the existing golf club path alongside the car park is formalised as a safe route from Pobbles beach for walkers and horses."

"I note that the proposal is now for a footpath along the existing permissive path (see proposal No. 4, Plan 4). I am aware that the Rights of Way team have had detailed and ongoing discussions with the golf club and the Gower Riding Club over the last year due to physical constraints of path width a footpath is proposed instead of a Bridleway. On behalf of those who organised and signed the petition I enclose a copy to show the strong support in the village for safe routes."

(N.B, the proposal to make No.4 a bridleway became impractical once a suitable width for a bridleway could not be guaranteed, which could jeopardise the safety of both user groups if accessed at the same time).

Response from Ramblers and Gower Society Representative – "It is noted that the boardwalk on the existing path (see proposal No.8)...is currently in a dilapidated state. It is hoped that the inclusion of this path as a right of way will lead to a significant improvement in its condition." (N.B, improvement works have already begun to remove and replace the boardwalk, using Coastal Access grant funding).

"The alterations in the valley above Pobbles Beach are welcomed" (see proposals 5, 6 and 7).

Pennard Golf Course (Proposals 10, 11, 12, 13 and 14 on Plan 4)

Response from Local Horse Rider – "The permissive way beside Pennard Road is coloured green (meaning it will be a bridleway). This would be acceptable in principle but as marked the northern divide would bring riders very close to the playing area" (N.B, this has been accounted for and the routes now follow the presently permissive route used by horse riders, skirting the playing area). "The proposals seem very sensible and they regularise current safe uncontroversial practice. I can give them my full support."

Response from local resident and member of Pennard Peddlers Cycle Club – "I write to object to the proposed rerouting of bridleway 6" (Proposal No. 10).

"Since 1985, my family and others have periodically cycled across the golf course from 6A to 6D. My objection to the proposed new route is that it will be impassable to cyclists, unless hardcored, as much of it comprises loose sand. One can neither cycle across sand, nor would one want to as sand is very abrasive and would quickly destroy bike chains, gears, bearings, brakes etc".

"I suggest a compromise. For cyclists, section 6A-6B should be retained, but 6B-6C-6D could be re-routed as 6B-6E-6D. The latter does entail a little sand, but it can be cycled around."

"Please note that I do not currently ride horses, but have done so, and from a horse riders prospective [sic] I would have no objection to the proposed rerouting of bridleway 6. My objection is from a cyclists prospective [sic]. Maybe it would be possible to separate the horse and cycle routes."

"If it would help the Golf Club, I would have no objection to section 6A-6B being rerouted around hole-18, provided it was hardcored or similar (i.e. not loose sand)."

Officer comments

The above response is the sole remaining adverse comment to the proposals. The points raised in the response are valid and may demonstrate a need for PD 6 by a section of the public. However, taking into account the responses supporting the alternative routes being created, it is possible to demonstrate that the need to use the alternatives by horse riders and pedestrians, who are already using the routes on the ground, might be construed as being greater than that of a local cyclist. A bridleway is predominantly for pedestrians and horse riders. That being said, it may be possible to negotiate a compromise to resolve the issues raised by the objector, such as a permissive cycle path across the proposed footpath.

The objection suggests a small diversion rather than downgrading the bridleway, some surfacing works or to provide a separate route suitable for cyclists. Attempts should be made to negotiate a resolution to the objection so as not to jeopardise the proposals as a whole.

Appendix 6 Highways Act 1980

Concurrent Highways Act Orders

- Section 118(5) and Sch 6 para 3(2) allow extinguishment orders to be considered concurrently with creation or diversion orders. However, even if considered concurrently, the orders must each stand on their own.
- Guidance given by the Planning Inspectorate to its inspectors (Rights of Way Section, Advice Note No.9, 7th Revision October 2009) states "Express provision is made in section 118(5) of the Highways Act 1980 for public path extinguishment orders to be dealt with concurrently with creation and diversion orders. When considering the confirmation of a public path extinguishment order, in particular, the extent to which the highway would be likely to be used by the public apart from the order, regard should be had to the extent that the creation or diversion would provide an alternative to the way being extinguished" (pg 7, para 32).
- Furthermore, "When dealing with such orders concurrently, each order should be considered separately on its own merits and decisions made in each case. Consequently, a decision letter should specifically cover for each order those matters relevant to the consideration of whether it should be confirmed" (pg 7, para 33).
- This interpretation of the legislation with regards concurrent orders is backed up by the Department for Environment, Food and Rural Affairs' guidance for Local Authorities in their Rights of Way Circular 1/09. It states "care should be taken to ensure that full consideration is given to all of the matters set out in both section 26 and section 118" (pg 34, para 5.54) when considering concurrent orders, suggesting the orders should meet the tests individually, despite being considered concurrently.
- In the Planning Inspectorate's Guidance on Procedures for Considering Objections to Definitive Map and Public Path Orders (November 08), where the inspector has considered the two orders, but cannot confirm the extinguishment order, "he/she will not generally confirm the creation or diversion orders" (pg 33, para 6.31) suggesting that should the extinguishment order not be confirmed, neither would the proposed alternative.

There are no provisions allowing extinguishment and creation orders to be drafted in the same order, nor is there a provision for *creation agreements* to be considered concurrently. Both have been tested in caselaw.

Appendix 7
s. 118 Highways Act 1980

S.118. Stopping up of footpaths, bridleways and restricted byways

- (1) Where it appears to a council as respects a footpath, bridleway or restricted byway in their area (other than one which is a trunk road or special road) that it is expedient that the path or way should be stopped up on the ground that it is not needed for public use, the council may by order made by them and submitted to and confirmed by the Welsh Ministers, or confirmed as an unopposed order, extinguish the public right of way over the path or way.

An order under this section is referred to in this Act as a 'public path extinguishment order'.

- (2) The Welsh Ministers shall not confirm a public path extinguishment order, and a council shall not confirm such an order as an unopposed order, unless they are satisfied that it is expedient so to do having regard to the extent (if any) to which it appears to them that the path or way would, apart from the order, be likely to be used by the public, and having regard to the effect which the extinguishment of the way would have as respects land served by the path or way, account being taken of the provisions as to compensation contained in section 28 above as applied by section 121 (2) below.
- (3) A public path extinguishment order shall be in such form as may be prescribed by regulations made by the Welsh Ministers and shall contain a map, on such scale as may be so prescribed, defining the land over which the public right of way is thereby extinguished.
- (4) Schedule 6 to this Act has effect as to the making, confirmation, validity and date of operation of public path extinguishment orders.
- (5) Where, in accordance with regulations made under paragraph 3 of the said schedule 6, proceedings preliminary to the confirmation of the public path extinguishment order are taken concurrently with proceedings preliminary to the confirmation of a public path creation order, public path diversion order or rail crossing diversion order then, in considering-
- (a) Under subsection (1) above whether the path or way to which the public path extinguishment order relates is needed for public use; or
 - (b) Under subsection (2) above to what extent (if any) that path or way would apart from the order be likely to be used by the public;

The council or Welsh Ministers, as the case may be, may have regard to the extent to which the public path creation order, public path diversion order, or rail crossing diversion order would provide an alternative path or way.

- (6) For the purposes of subsections (1) and (2) above, any temporary circumstances preventing or diminishing the use of the path or way by the public shall be disregarded.

(6A) The considerations to which-

- (a) The Welsh Ministers are to have regard in determining whether or not to confirm a public path extinguishment order, and
- (b) A council are to have regard in determining whether or not to confirm such an order as an unopposed order,

Include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over which the order would extinguish a public right of way.

Appendix 8
s.26 Highways Act 1980

S.26. Compulsory powers for creation of footpaths, bridleways and restricted byways

- (1) Where it appears to a local authority that there is a need for a footpath, bridleway or restricted byway over land in their area and they are satisfied that, having regard to-
- (a) the extent to which the path or way would add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area; and
 - (b) the effect which the creation of the path would have on the rights of persons interested in the land, account being taken of the provisions as to compensation contained in s.28 below,

it is expedient that the path or way should be created, the authority may by order made by them and submitted to and confirmed by the Welsh Ministers, or confirmed by them as an unopposed order, create a footpath, bridleway or restricted byway over the land.

An order under this section is referred to in this Act as a 'public path creation order'; and for the purposes of this section 'local authority' means the county council or district council.

- (2) Where it appears to the Welsh Ministers in a particular case that there is a need for a footpath, bridleway or restricted byway as mentioned in subsection (1) above, and they are satisfied as mentioned in that subsection, they may, after consultation with each body which is a local authority for the purposes of this section in relation to the land concerned, make a public path creation order creating a footpath, bridleway or restricted byway.
- (3) A local authority shall, before exercising any power under this section, consult any other local authority or authorities in whose area the land concerned is situated.
- (3A) The considerations to which-
- (a) the Welsh Ministers are to have regard in determining whether or not to confirm or make a public path creation order, and
 - (b) a local authority are to have regard in determining whether or not to confirm such an order as an unopposed order,

include any material provision of a rights of way improvement plan prepared by any local highway authority whose area includes land over

which the proposed footpath, bridleway or restricted byway would be created.

- (4) A right of way created by a public path creation order may be either unconditional or subject to such limitations or conditions as may be specified in the order.
- (5) A public path creation order shall be in such form as may be prescribed by regulations made by the Welsh Ministers, and shall contain a map, on such scale as may be so prescribed, defining the land over which a footpath, bridleway or restricted byway is thereby created.

Schedule 6 to this Act shall have effect as to the making, confirmation, validity and date of operation of public path creation orders.