

# APPENDIX 1

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

Rights of Way and Commons Sub-Committee – 17<sup>th</sup> July 2013

### PUBLIC RIGHTS OF WAY ON EAST CLIFF, WEST CLIFF AND PENNARD BURROWS, COMMUNITY OF PENNARD – CONCURRENT PUBLIC PATH ORDERS

<b>Purpose:</b>	To regularise and improve the public rights of way network from East Cliff to Pennard Burrows, Pennard, as part of the Coastal Access Improvement Programme.
<b>Policy Framework:</b>	The Coastal Access Improvement Programme (national) and the Countryside Access Plan 2007-2017 (local).
<b>Reason for Decision:</b>	The proposals will significantly improve the rights of way network from East Cliff to Pennard Burrows, Pennard, as part of the Coastal Access Improvement Programme, and the legal tests for making the orders can be satisfied.
<b>Consultation:</b>	Legal, Finance, Countryside Access, Local Members, Community Council, Byways and Bridleways Trust, The Ramblers Association and Local Representative, British Horse Society and Local Representative, The Open Spaces Society, Countryside Council for Wales, the Green Openspaces and Heritage Alliance and the relevant landowner/s, as well as public notices on site.
<b>Recommendation(s):</b>	It is recommended that: <ol style="list-style-type: none"><li>1) Concurrent public path extinguishment and creation orders be made to realign and add various public rights of way from East Cliff to Pennard Burrows, as shown in plans 3 and 4, as part of the Coastal Access Improvement Programme and regularisation of the Rights of Way Network.</li><li>2) Should any objections to the orders be received and not withdrawn, both orders should be referred to the Planning Inspectorate to determine on behalf of the Welsh Ministers.</li></ol>
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## **1.0 Introduction**

- 1.1 As shown in Plans 1 and 2 (A3 colour versions of the plans will be provided to Members attending committee), the Definitive Map for Pennard around East Cliff and West Cliff (Plan 1) and Pennard Burrows/Golf Course and Pobbles (Plan 2) does not reflect the used routes on the ground. There are also missing links and cul-de-sac/dead-end routes.
- 1.2 Therefore, as part of the Coastal Access Improvement Programme and following several rounds of public consultations and landowner negotiations, a final set of proposed changes and additions has been put forward. These are shown in Plans 3 and 4 (A3 versions will be provided to Members attending committee).
- 1.3 East Cliff and West Cliff form part of the National Trust's land ownership. Pennard Burrows/Golf Course is owned by Pennard Burrows Ltd.

## **2.0 Consultations**

- 2.1 Public consultations were initially carried out in June 2011 to remedy the anomaly of Bridleway PD1 (West Cliff) being a cul-de-sac route (Plan 1). The initial proposals for Pennard Burrows and a link to Pobbles were carried out in October 2011. Notices and plans were placed on site throughout all the consultation periods.
- 2.2 Several objections were received from members of the public to the West Cliff proposals, the majority of whom were residents of West Cliff. A second set of proposals were then consulted on in October 2011 incorporating a much longer link for PD1, extending to East Cliff along the used route adjacent to the loosely metalled track.
- 2.3 Again, responses were received from members of the public, both in support and in opposition to several elements of the proposals. Following officer discussions, meetings with various interested parties on site and discussions with the landowners, it was eventually agreed that a final set of proposals should be consulted on, with further amendments.
- 2.4 The final set of proposals for West Cliff and East Cliff were put out to public consultation on 10<sup>th</sup> December 2012, with the second set of proposals featuring Pennard Burrows and the Golf Course sent out a day later.
- 2.5 No adverse comments were received to the final set of consultations for West Cliff and East Cliff. A summary of the responses to those final proposals is included in Appendix 5.
- 2.6 A 3<sup>rd</sup> and final set of consultations were sent out during March 2013 showing further amendments to the proposals specifically across the Golf Course, the last remaining section of the proposals that received adverse

comments. In these consultations, additional routes which were to be dedicated by the Golf Course were also shown. The responses to these final consultations are also included in Appendix 5.

2.7 One letter of objection was received, from a local resident and keen cyclist, to the downgrading and re-alignment of bridleway PD 6 (proposals No.10 on plan 4). This response is addressed in section 6 and Appendix 5.

2.8 The resulting proposals following the various sets of consultations are shown in Plan 3 (East Cliff and West Cliff) and Plan 4 (Pobbles, Pennard Burrows and Pennard Golf Course). They include the routes which were dedicated as public footpaths by Pennard Burrows Ltd on 24<sup>th</sup> June 2013.

### **3.0 The Proposed Changes**

3.1 Given the scale of the proposed changes, each change has been numbered on Plans 3 and 4, and are listed below. Members are directed to the key for the proposed changes and existing network.

- 1) Create bridleway along worn/used route adjacent to road.
- 2) Create bridleway along permissive route (adjacent to road) to link East Cliff and West Cliff and extinguish drafting error of bridleway PD 1 (N.B The private track known as West Cliff remains unaffected by these proposals).
- 3) Create separate footpath spur along used route to join path to Pobbles as part of the coastpath.
- 4) Spur of footpath PD 4 to be extinguished. Permissive route adjacent to car park formally dedicated by Pennard Burrows Ltd (N.B path in front of club house to remain) linking Pennard Road to PD 4.
- 5) Regularise the Definitive Map by extinguishing footpath PD 4 and create bridleway along permissive route, from Pobbles to the gate near the western end of Bendrick Drive (N.B Bendrick Drive remains a permissive route).
- 6) Additional footpath along used route dedicated by Pennard Burrows on 24<sup>th</sup> June 2013.
- 7) Delete a section of footpath PD 4 and create bridleway along permissive route to Pobbles.
- 8) Additional link to footpath PD 10 dedicated as public footpath by Pennard Burrows Ltd on 24<sup>th</sup> June 2013 as part of the coastpath.
- 9) Extinguish obstructed section of footpath PD 5 (No.9a) and create alternative footpath along used route (No. 9b) to the stepping stones across Pennard Pill.
- 10) Extinguish bridleway PD 6 (see points 11 & 12 for alternatives).
- 11) Create footpath along used/worn route across the golf course.
- 12) Upgrade public footpath PD 7 to bridleway, which is currently a permissive bridleway, with additional link to Sandy Lane.
- 13) Create bridleway along permissive bridleway route around eastern outskirt of golf course, with additional link to Sandy Lane.

14) Create bridleway along permissive route adjacent to Pennard Road to link with additional footpath dedicated by Pennard Burrows. Small section of footpath PD 15 extinguished where shown running along Pennard Road.

3.2 All the routes to be created are along used or presently permissive routes. A large scale aerial plan showing how the Definitive Map for the area would look, should the Orders be made, will be provided via overhead projector at committee.

#### **4.0 Concurrent Public Path Orders**

4.1 As there are many changes being proposed with varying legal implications to each change, the most appropriate method for effecting the changes would be via a creation order under section 26 of the Highways Act 1980 (HA 1980) and an extinguishment order under section 118 of the HA 1980, made concurrently. The additional routes dedicated by Pennard Burrows Ltd (No's 4, 6 & 8) were made via a creation agreement made under section 25 of the HA 1980, and do not form part of the concurrent orders.

4.2 Appendix 6 provides an explanation of concurrent public path orders.

4.3 It is hoped that the various rounds of public consultations and resultant amendments to the proposals has mitigated the likelihood of objections being raised to the proposed orders. However, it is not possible to guarantee that no objections will be raised to either or both orders, should they be made. Should an objection be received to one of the orders, both orders will need to be referred to the Welsh Ministers, as the orders would be made concurrently.

#### **5.0 Legal Grounds and Tests**

5.1 The grounds for making an extinguishment order under S.118 of HA 1980 and the legal tests to be met to confirm such an order are contained in Appendix 7.

5.2 The grounds for making a creation order under s.26 HA 1980 and the legal tests to be met to confirm such an order are contained in Appendix 8.

#### **6.0 The Proposed Extinguishment Order**

6.1 Under section 118 (1) of the Highways Act 1980, "where it appears to a Council as respects a footpath in their area, that it is expedient that the path should be stopped up on the ground that it is not needed for public use, the Council may by order extinguish the public right of way over the path or way."

- 6.2 With the exception of the cyclist whose response is in Appendix 5, the routes proposed to be extinguished are presently little used, if at all, as they either do not follow the worn routes on the ground, are drawn incorrectly on the Definitive Map or are obstructed. Consideration can also be given to any suitable alternatives. The routes proposed to be created are routes that are either permissive footpaths/bridleways or follow the used/worn routes on the ground. Formalising the creation of these suitable alternative and additional routes is addressed in paragraph 8 of this report. In total, approximately 2101 metres of bridleway and 1375 metres of footpath are proposed to be deleted, whereas the creation order and dedication agreements will add approximately 5599 metres of bridleway and 3056 metres of footpath to the network.
- 6.3 In considering whether "it is expedient to confirm the order, regard should be had to (a) the extent to which the path or way would, apart from the order, be likely to be used by the public and (b) the effect which the extinguishment of the right of way would have as respects land served by the path or way."
- 6.4 With regard to (a) above, given the current use by the public of existing alternatives (all the routes to be created are presently used or are permissive routes), combined with the many drafting errors of some of the Definitive Routes, the routes do not appear to have been used for some time. Some of the routes to be extinguished are dead end or cul-de-sac routes, which do not link with other highways, whereas the alternative routes to be created all link to other highways and will vastly improve the rights of way network for both pedestrians and horse riders wishing to access the area.
- 6.5 In considering point (b) and the effect the extinguishment would have on land served by the path, the concurrent extinguishment and creation orders are in effect, one large diversion order. Whilst some parts of the network are being extinguished, there are alternative routes already in existence and being used that the creation order will formalise. The routes dedicated by Pennard Burrows Ltd have also provided additional routes to further improve the network (No's 4, 6 & 8), above and beyond those offered by the creation order.
- 6.6 The routes covered by the orders either pass over National Trust Access land, or they pass over Common Land CL 13: Pennard Cliffs. However, extinguishing the paths or ways will have little or no impact on the land they pass over, as the routes are obstructed, do not follow a worn route or are drafted incorrectly and the suitable alternatives are already well used.
- 7.0 Conclusion on the Proposed Extinguishment Order**
- 7.1 The sole objection to the proposals relates to the deletion of bridleway PD 6 (proposal No.10 on Plan 4). There have been no objections to the



proposed extinguishment of the paths and bridleways (shown on plans 3 and 4) from pedestrians or horse riders, coupled with the use of suitable alternatives and additional routes also shown on said plans, highlights the extent to which the paths are not needed for public use.

- 7.2 The proposed extinguishment order should have no impact on the landowners (The National Trust and Pennard Burrows Ltd) as the proposed alternatives are already in place and in use, with no additional impact to the land served by the paths. The routes are all contained within Common Land area CL 13: Pennard Cliffs or form part of National Trust Access land, which already contains public rights of access for pedestrians.

## **8.0 The Proposed Creation Order**

- 8.1 The grounds for making a public path creation order under s.16 of HA 1980 are contained in Appendix 8. This Council must be satisfied that there is a need for the public paths or ways. It must also take into account the convenience or enjoyment the paths or ways would add to the public, and the effect they would have on the rights of the landowners.

- 8.2 No objections have been received to the proposed creation order routes shown on plans 3 and 4 following the final set of public consultations, and the National Trust and Pennard Burrows Ltd (landowners) are in agreement to the proposals.

- 8.3 With regards to taking into account the effect the routes would have on the landowners, despite the public having access rights on foot over National Trust land, the National Trust also have to take into account protecting wildlife and fauna on their land. By formally recording the presently used routes over their land, with a separate bridleway and footpath and effective way marking the creation order will limit the potential erosion and damage caused to the surrounding wildlife and surface by those wandering freely around East Cliff and West Cliff.

- 8.4 The same can be said for Pennard Burrows Ltd. By promoting use of the existing paths and ways around the burrows and golf course, the creation order, if confirmed, will limit the impact of pedestrians wandering freely around the burrows, reduce the impact of horse riders crossing the burrows directly, which is also common land and reduce the risks involved with horse riders crossing the golf course. In reality, the vast majority of horse riders using the area follow the presently permissive routes around the golf course. The creation order expands on this, and provides links to Sandy Lane as well as removing the need to use Pennard Road for a short distance.

- 8.5 The proposed alternatives are already used by both walkers and horse riders alike, so a creation order would regularise the situation on the ground. There would be no impact on the public's convenience or

enjoyment other than formalising their use by creating public rights of way, rather than the general access rights provided by National Trust Access Land or Common Land CL:13.

8.6 The proposed order, if confirmed, will also help link up East Cliff, West Cliff and Pennard Burrows, whilst also providing a direct link to Pobbles and Pennard Pill as part of the Coastal Access Improvement Programme.

8.7 The creation order conforms with Countryside Access Plan 2007-2017 policies DM 5, PPO 11, PPO 13, PPO 14, PPO 15, PPO 16, MN 16, MN 19 and AL 3.

## **9.0 Conclusion on Proposed Creation Order**

9.1 Taking into account the fact that the public already use the proposed creation order routes, it is possible to demonstrate the need for the routes. The proposed creation order would add to the convenience and enjoyment of the public by extending the network, whilst regularising the rights already being exercised, thus satisfying the criteria set out in S.26 of the Highways Act 1980 (Appendix 8). The Order would add approximately 3498 km of additional bridleways and approximately 1681 metres of additional footpaths to the Definitive Map.

9.2 The rights of the National Trust and Pennard Burrows Ltd, as landowners, have also been considered, and the creation would keep the public to the existing routes without impacting the wildlife and fauna in the area.

9.3 Given the added convenience and enjoyment the proposed creation order would give to pedestrians and horse riders, and the diminished impact on National Trust and Pennard Burrows Ltd land, it appears expedient to make a creation order for the routes shown on plans 3 and 4 appended to this report.

## **10.0 Financial Implications**

10.1 Any surfacing works, maintenance and way marking required to effect the creation order routes will be funded from grants linked to the Coastal Access Improvement Programme.

**Background Papers:** Countryside Access Plan 2007-2017 (this council's Rights of Way Improvement Programme).

**Appendices:** Appendix 1 – Plan 1; Appendix 2 – Plan 2, Appendix 3 – Plan 3, Appendix 4 – Plan 4, Appendix 5 – Responses to Final Consultations, Appendix 6 – Guidance on Concurrent Orders, Appendix 7 – s118 HA 1980, Appendix 8 – s 26 HA 1980