

RIGHTS OF WAY COMMITTEE – 29TH MARCH 2006

SUBJECT: CREATION AGREEMENT WITH RUPERRA CONSERVATION TRUST

REPORT BY: DIRECTOR OF THE ENVIRONMENT

1. PURPOSE OF REPORT

- 1.1 To consider entering into a Creation Agreement with the Ruperra Conservation Trust for the provision of a bridleway.

2. SUMMARY

- 2.1 The report sets out information regarding an application to claim bridleways and upgrade footpaths within and adjoining the Ruperra Conservation Trust. Negotiations have taken place with the applicant, users, Ruperra Conservation Trust and one of the adjoining landowners and an agreement has been reached for a bridleway to be created on the Ruperra Conservation Trust land and the upgrading of a footpath together with creation of a bridleway on land owned by Mr. J. Wells.

3. LINKS TO STRATEGY

- 3.1 There is a duty to maintain the Definitive Map and Statement.
- 3.2 The provision of a long distance bridleway has been included in the Local Transport Plan and the Rights of Improvement Plan.
- 3.3 The Authority is seeking to promote access to the countryside and the creation of a bridleway in the Ruperra Conservation Trust will greatly assist.

4. THE REPORT

4.1 Background

- i) As Members are aware this Committee has delegated powers to determine applications for Definitive Map Modification Orders under Section 53 of the Wildlife and Countryside Act 1981. This report relates to an application to ADD a path to the definitive map and statement.
- ii) The term "public rights of way" is used to mean paths, tracks and unmetalled roads over which the public have the right to walk and in some cases ride horses and possibly drive motor vehicles.

These may be classified as follows:-

A **footpath**: over which the right of way is on foot only.

A **bridleway**: over which there is a right of way on foot and on horseback or leading a horse, and also for the use of a pedal cycle.

A **byway open to all traffic**: this means a highway over which the public have a right of way for vehicular and all other kinds of traffic, but which is used by the public mainly for the purpose for which footpaths and bridleways are so used.

- iii) The Wildlife and Countryside Act 1981 places a duty on the County Borough Council to keep the existing definitive map under continuous review, make Modification Orders as necessary to take account of the occurrence of events requiring the map to be modified and to prepare definitive maps for any part of the area not previously surveyed.
- iv) The definitive map and statement will be modified by means of Orders made by the surveying authority i.e. the County Borough Council. The Wildlife and Countryside Act enables any person to apply to the surveying authority for an order to amend the definitive map.
- v) The procedure for making such an application is detailed in Schedule 14 of the Wildlife and Countryside Act. The application before you has been compiled to these requirements. The said procedures are referred to in the report.
- vi) When determining the application before you, members will be acting in a quasi-judicial capacity. Before making an order, members must be satisfied that the evidence shows, **on the balance of probabilities**, that a right of way of a particular description exists. Each application must be dealt with on its own merits, noting the interests of both the applicants and the landowners.
- vii) The application before you is concerned with rights that are alleged to already exist and not as to whether it would be prudent or beneficial to create them. The suitability of a way for users who have a right to use it, for example the nuisance that they are alleged to cause are not factors that should be considered by the Committee.
Members are also required to view the route of the proposed right of way in question.
- viii) When considering the evidence that follows, members must be aware of the provisions of Section 31 of the Highways Act 1980 thus enabling members to determine whether there is sufficient weight of evidence to make an order.

Section 31 of the Highways Act states:-

"where a way over any land other than a way of such a character that use of it by the public could not be given rise at common law to any presumption of dedication, has been actually enjoyed by the public as a right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated a highway unless there is sufficient evidence that there was no intention during that period to dedicate it."

If in the case before you members are satisfied that the right of way has been used for a period in excess of 20 years, then there arises a presumption that the owner intended to dedicate the path as a right of way. It should be noted by members that the said 20 year period must be calculated retrospectively from the date when the way was first called into question.

- ix) If following the site visit the Committee decides to make an Order, then once this decision has been reached the County Borough Council has to give notice of its general effect. Following members' decision there is a right of appeal to the National Assembly for

Wales. A period of at least 42 days from the date of first publication of the notice must be allowed for objections.

If there are any valid objections the County Borough Council has to refer the Order, together with the objections to the National Assembly for Wales who will then arrange for the Order and the objections to be considered by an independent Inspector. If no valid objections are made within the said objection period then the County Borough Council may confirm the order itself as an unopposed Order.

Wildlife and Countryside Act 1981 Section 53(3)(c)(i)

Claimed Right of Way – various routes within Coed Craig Ruperra and Upgrading of sections of Footpaths No. 1, 12 and 15 Llanfedw.

4.2 Introduction

- 4.2.1 The Authority received an application from Mrs. June M. Jones to add a bridleway on land within Coed Craig Ruperra to the Definitive Map and also to upgrade sections of Footpaths 1, 12 and 15 Llanfedw. The application is supported by 20 No. Evidence User forms.
- 4.2.2 Document No. 1 is a location plan of Coed Craig Ruperra Woods which is an area south east of Machen and Draethen and indicated within the black circled area.
- 4.2.3 Document No. 2 is a plan which identifies Ruperra Conservation Trust's permissive bridlepath which is the route agreed by all parties shown by a bold black line.
- 4.2.4 Document No. 3 is a plan which identifies land owned by Ruperra Conservation Trust.
- 4.2.5 Document No. 4 is a plan which identifies the land owned by Mr. J. Wells.
- 4.2.6 Document No. 5 is a plan which identifies the land owned by Mr. D. England.
- 4.2.7 Document No. 6 details information provided by Ruperra Conservation Trust in respect of wildlife considerations on Coed Craig Ruperra.
- 4.2.8 Document No. 7 is a plan which identifies the claimed bridleways and upgrading of footpaths to bridleways.
- 4.2.9 Document No. 8 is a plan which identifies the agreed horse route showing the routes of the Creation Agreements with Ruperra Conservation Trust and Mr. J. Wells.

4.3 User Evidence

- 4.3.1 The application is supported by 20 No. Evidence User forms and claim to have used the bridleways between 17 and 60 years, with a total usage of 687 years
- 4.3.2 The applicant and users did not wish to accept the horse route provided by the Ruperra Conservation Trust, as included on Document No. 2, as this was on a permissive basis and did not include all the routes they had ridden in the past.
- 4.3.3 The reason for a reluctance to accept this route is that a permissive path may be withdrawn by a landowner by giving a period of notice. The users wished to protect the routes they had ridden and therefore wished to add the bridleways to the Definitive Map and Statement. The applicant and users would not therefore negotiate an agreed horse route on a permissive

basis.

4.3.4 The applicant has served W.C.A.6 on the three landowners:-

1. Ruperra Conservation Trust
2. Mr. J. Wells
3. Mr. D. England

4.4 Landowners

1. Ruperra Conservation Trust

The Ruperra Conservation Trust created a bridleway through their land and have also included walking routes. The Trust wished to keep horse riders on the bridleways and off certain tracks to protect the door mice and the ancient Motte. (See Document No. 6 for further details) They also wished to keep the horse route and walking routes separate.

The Trust were initially of the opinion that the horse route should remain permissive and were not prepared to negotiate a route with the horse riders to be included on the Definitive Map and Statement. Quite lengthy correspondence has taken place with Ruperra Conservation Trust in an effort to negotiate an agreeable solution to the matter.

The Trust has now had a change of view and agreed to enter into a Creation Agreement under Section 25 of the Highways Act 1980, provided a route could be agreed with the applicant and users for a bridleway. This route would then be included on the Definitive Map and Statement. A meeting was arranged and a route agreed with the applicant. It was considered that the applicant would discuss the route with the horse riders and if they were agreeable then they would be each asked to withdraw their application to claim the horse routes. The applicant requested that re-surfacing of part of the bridleway be undertaken and one of the horse step overs at the entrance point at Spout Cottage (at point W on Document No. 8) be relocated to make it accessible to horse riders as they were currently experiencing difficulty with its location. The applicant also requested that safety rails be erected near one of the culverts to protect horse riders.

The applicant has confirmed in writing that the users have agreed to the negotiated horse route (Document No. 8), which is the same route as the permissive route put in by Ruperra Conservation Trust, and withdrawn their claim for the horse route on the proviso that the Creation Agreement for the bridleway to be added to the Definitive Map and Statement is agreed. The users wished to point out that they felt strongly that there should have been provision for an entrance in the vicinity of West Lodge. However, this could not be agreed with the two landowners, Mr. Wells and Mr. England.

1. Mr. J. Wells

Mr. J. Wells owns the land over which the claim for upgrading of sections of footpath No. 1 Llanfedw, shown as A-B and C and also the claimed route from shown as C-D on Document No. 7. Mr. Wells was contacted and was agreeable to the reclassification from B-C on Footpath No. 1 Llanfedw but not agree to the section A-B of Footpath No. 1 Llanfedw. He was not prepared to agree a bridleway from point C-D on the claimed route.

Following the agreement with Ruperra Conservation Trust and the applicant a further meeting took place with Mr. J. Wells who was informed of the negotiated horse route. He reiterated his previous comments but agreed to the creation of A-AA and CC-C (Document No. 8) as a replacement to reclassification of FP1 Llanfedw A-B and unregistered C-D.

2. Mr. D. England

Mr. D. England was contacted, as landowner of the section of claimed route from D-E Footpath No. 12 Llanfedw; E- F Footpath No. 1 Llanfedw and F-G Footpath No. 15 Llanfedw. (Document No. 7).

Mr. England did not wish to reclassify the footpaths from D-E-F-G to bridleway.

4.5 CREATION AGREEMENTS

4.6 From the negotiations with the landowners, the applicant and users the following is proposed as an amicable solution to this matter.

4.7 A Creation Agreement be entered into with the Ruperra Conservation Trust for the route shown on Document No. 8 G-H-K-J, W-A, B-M-N-O-H; which includes agreement to sections of the claimed route of the horse riders and an additional link from K-W.

4.8 A Creation Agreement be entered into with Mr. J. Wells to upgrade a section of Footpath No. 1 Llanfedw from C-B as a bridleway and also sections AA-A and C-CC as shown in Document No. 8. AA-CC is registered as Bridleway No. 14 Llanfedw.

5. FINANCIAL IMPLICATIONS

5.1 The cost of the Creation Agreements are in the region of £500 each. If the application had been pursued through the Wildlife and Countryside Act 1981, a Modification Order would cost approximately £1,800 and bearing in mind that several of the landowners were not prepared to accept the whole route of the claim then the matter may proceed to the National Assembly for determination which would have incurred considerable costs.

5.2 It is therefore proposed that legal fees for entering into the Creation Agreements with the two landowners be met by this Authority.

5.3 Once the Creation Agreements are completed the bridleways created will be included on the Definitive Map and Statement and there will therefore be a duty on the Authority to maintain same.

6. PERSONNEL IMPLICATIONS

6.1 None.

7. CONSULTATIONS

Cabinet Member for Highways and Transportation, County Borough Councillor K. Griffiths.
Chairman of Rights of Way Committee Councillor D. Carter.
Vice Chairman of Rights of Way Committee Councillor N.Dix.
Chief Engineer, Mr. Mark Rees-Williams.
Transportation Engineering Manager.
Head of Legal Services, Mr. D. Perkins.

8. RECOMMENDATIONS

8.1.1 It is recommended that the Authority enter into Creation Agreements with the two landowners for the relevant sections of bridleways as shown in Document No. 8.

Description of Bridleways to be Created on land owned by Ruperra Conservation Trust

G-H-K-J

A new bridleway to a width of 3m commences at a point (G) approximately 286 metres south of the "Motte". The bridleway proceeds in a north north easterly direction for a distance of approximately 173 metres to point (H), continuing in a north easterly direction for approximately 700 metres point (K), continuing in an easterly direction for approximately 36 metres where it terminates on the Draethen to Michaelstone Road, point (J) approximately 163 metres south of the Iron Bridge Cottage. A total length of approximately 909 metres or thereabouts and shown on plan by a bold black line between points G-H-K-J.

K-W

A new bridleway to a width of 3m commences 36 metres from the Draethen to Michaelstone Road, approximately 600 metres north north east of the "Motte", point (K). The path proceeds in a north westerly and westerly directions running parallel to the Draethen to Michaelstone Road to its termination on the Draethen to Michaelstone Road approximately 7 metres south of the property known as Altfarian a total distance of approximately 600 metres or thereabouts and shown on plan by a bold black line between points K-W.

W-A

A new bridleway to a width of 3m commencing at a point approximately 612 metres north of the "Motte" on the bridleway previously described and proceeds in a south westerly direction following a forestry track to its termination on Footpath 1 Llanfedw at a point approximately 450 metres north west of the "Motte" a total distance of 475 metres or thereabouts shown on plan by a bold black line between points W-A.

B-M-N-O-H

A new bridleway to a width of 3m commences on Footpath 1 Llanfedw at a point (B) approximately 290 metres east north east of the "Motte" and proceeding in a north easterly, then in a southerly, south westerly and south easterly directions to its termination on the bridleway previously described as G-H-K-J at a point approximately 140 metres south east of the "Motte" a total distance of 867 metres or thereabouts and shown on plan by a bold black line between points B-M-N-O-H.

Description of Bridleways to be created on land owned by Mr. J. Wells

A-AA

A new bridleway to a width of 3m commencing at its junction with Footpath No. 1 Llanfedw at a point (A) approximately 452 metres north west of the "Motte", and proceeds in a south westerly direction to its termination at its junction with Bridleway No. 14 Llanfedw (AA) a total distance of 258 metres or thereabouts and shown on plan by a bold black line between points A-AA.

CC-C

A new bridleway to a width of 3m commencing at its junction (CC) with Bridleway No. 14 Llanfedw, at a point approximately 604 metres west of the "Motte" and proceeds south east to its termination at its junction with Footpath 1 Llanfedw at a point approximately 408 metres west of the "Motte" a total distance of 252 metres or thereabouts and shown on plan by a bold black line between points CC-C.

C-B

A new bridleway to a width of 3m commencing at a point approximately 380 metres west south west of the "Motte" (C) and proceeds north east to its termination at a point (B) approximately 295 metres west south west of the "Motte" a total distance of 408 metres or

thereabouts and shown on plan by a bold black line between points C-B.

- 8.1.2 That the legal costs incurred by the landowners in entering into the Creation Agreements be met by this Authority.

9. REASONS FOR THE RECOMMENDATIONS

- 9.1 As mentioned in 5.1, an amicable solution has been found to resolve this matter with the landowners, applicant and users which would alleviate the necessity of pursuing the claimed right of way through the Wildlife and Countryside Act which could have led to the matter being determined by the National Assembly and also a possibility of sections of the bridleways being agreed and others not being agreed ending with dis-jointed bridleways.

10. STATUTORY POWER

- 10.1 Section 25 of the Highways Act 1980.

Author: Mrs. June E. Piper, CROW Support Officer.