

RIGHTS OF WAY COMMITTEE – 19TH DECEMBER 2006

**SUBJECT: DIVERSION OF CLAIMED RIGHT OF WAY AT WERNCAIACH FARM,
NELSON**

REPORT BY: DIRECTOR OF THE ENVIRONMENT

1. PURPOSE OF REPORT

- 1.1 To consider an application for diversion of the claimed right of way at Wern Caiach Farm, Nelson

2. SUMMARY

- 2.1 To consider an application by the landowner for the diversion of the claimed right of way in the community of Caerphilly.

3. LINKS TO STRATEGY

- 3.1 Environmental improvements, sustainable development
- 3.2 The Authority has a duty to maintain the Definitive Map and Statement

4. THE REPORT

- 4.1 The Authority has received an application in respect of the diversion of the claimed right of way at Wern Caiach Farm, Nelson leading from the path provided by the Nelson By-Pass Side Roads Order at the rear of Springfield Terrace, leading through Wern Caiach Farm to terminate on Caerphilly Road, The path is indicated on plan and attached as Document No.1 between points A – E – B - C
- 4.2 The claim application for this path was considered by Members of this Committee at its meeting on the 15th September 2003 when it resolved to support the application and make a Modification Order. An order was made on the 21st November 2003 and was the subject of an objection during the statutory time period which expired on the 27th January 2004
- 4.3 As the objection was not withdrawn the Authority was unable to confirm its own order and accordingly the matter was referred to the Secretary of State for Wales for determination.
- 4.4 The Planning Inspectorate appointed an Inspector to consider the order and objection at a Public Inquiry held at Llancaiach Fawr on the 13th June 2006. The result of the Public Inquiry is that the Inspector confirmed the order with amendments.
- 4.5 The landowner Mr.Nicholls has subsequently made application for the diversion of the confirmed path The alternative being suggested by Mr.Nicholls is to re-route the down the existing steps onto the rear lane of Springfield Terrace, and following the lane between Nos51 and 53 to its termination on Caerphilly Road. The two alternatives being suggested by Mr.Nicholls are indicated on Document No.2 by a bold black dashed line between points A – D, or A – E - D

4.6 The Authority has undertaken a pre-order consultation exercise with interested parties. During his exercise a petition containing 66 signatories was received making representation against the diversion of the path.

4.7 The petition states that;

- We the undersigned, being residents of Nelson and familiar with the above claimed R.O.W., object to the proposed diversions from its original route for the following reasons: -
- Both routes A-D and A-E follow the existing 1998 “temporary” route along the 10ft wide lane between Nos51-53 Springfield Terrace.
- This lane provides access and/or egress for the garages of 31 houses, and also delivery vans, lorries and skips etc, to those houses. The lane is too narrow to allow both vehicle and pedestrian usage with safety.
- Access to Caerphilly Road is directly opposite Cullen`s busy warehouse and the below street level Wern Cottages. At this point traffic visibility is poor in both directions, and there is no footpath on the opposite side until nearing the kissing gate entrance to our new park and the Ridgeway path, opposite the original R.O.W. route
- We also note both proposed routes are completely outside the property of the owner. Surely a 1st for a footpath diversion

4.8 The Local Members Councillors Derrett and Blackman have been advised of the diversion application.

4.9 Councillor Mrs M.Derrett has indicated that she opposes the application and would also like to attend the meeting when this application is considered.

4.10 Councillor Mrs A.Blackman has advised of her support for the application indicating that;

“The objective of a footpath is to go from point A to point B. In this case that is from Springfield to Heol Fawr and vice versa”. Councillor Mrs A. Blackman has also advised that she has not decided which of the two alternatives she prefers and wishes to reserve the right to attend the Rights of Way Committee meeting to speak on the issue.

4.11 The Nelson Community Council have indicated in their letter dated 17th October 2006, copy attached as Document No.3 that the Council resolved;

to support the outcome of the Inquiry and wishes the path to be reinstated along its original route in accordance with the decision of the Inspector.

4.12 From the highway view the proposed alternative will;

- increase the conflict between pedestrians and vehicles in the rear lanes
- terminate at a position on the main highway which has reduced vision for both pedestrian and vehicle in either direction along the highway
- reduce pedestrian access on opposite side of Caerphilly Road
- the alternative section of path being created by the application is minimal compared with the existing path.

5. FINANCIAL IMPLICATIONS

5.1 None. Cost of order and associated works will be borne by applicant dependent upon Committee resolution

6. PERSONNEL IMPLICATIONS

6.1 None.

7. CONSULTATIONS

7.1 Cabinet Member for Highways and Transportation, County Borough Councillor K. Griffiths.

7.2 Chairman of Rights of Way Committee, Councillor D. Carter.

7.3 Vice Chairman of Rights of Way Committee, Councillor N. Dix.

7.4 Chief Engineer, Mr. Mark Rees-Williams.

7.5 Transportation Manager, Mr. C. Campbell.

7.6 Head of Legal Services, Mr. D. Perkins.

8. RECOMMENDATIONS

8.1 Members have two choices namely;

reject the application or
formalise the temporary route

8.2 Having regard to the points detailed in paragraph 4.12 above there are a number of grounds which may lead to an objection to any proposed diversion order, which the Authority would have difficulty in defending through a Public Inquiry.

8.3 Members may however after due deliberation resolve to support the application in which case then a diversion order will be processed under Section 119 of the highways Act 1980 in accordance with the following descriptions;

Description of existing path or way;

A footpath of a width between 1.4 – 4.0 metres commencing at a point approximately 39 metres south east of the centre of the property known as No.49 Caerphilly Road and proceeding in a north easterly direction, passing through a gate at the end of the tarmacadam path before descending at the rear of Wern Caiach Farm Cottage and turning to a north north westerly direction to its termination on Caerphilly Road at a point approximately 10 metres north east of Wern Caiach Farm Cottage a total distance of 71 or thereabouts and shown on plan by a bold black line between points A-B-C

Description of new path or way

A new path to a width of between 1.4 – 4.0 metres commencing at a point approximately 39 metres south east of the centre of the property known as No.49 Caerphilly Road and proceeding in a north westerly direction to its termination on the maintainable rear lane of Springfield Terrace at a point approximately 37 metres south east of the centre of the said property a total distance of 2 metres or thereabouts and shown on plan by a bold black dashed line between points A-D

9. REASONS FOR THE RECOMMENDATIONS

9.1 In the interests of the public.

10. STATUTORY POWER

10.1 Highways Act 1980 – Section 119 Diversion of Footpaths and Bridleways. This is a Council function which is delegated to this committee for determination.

Author: A.J. Sander Senior, Assistant Engineer Rights of Way
Consultees: Keith Donovan, 9 Laurel Drive, The Bryn, Pontllanfraith, Blackwood NP12 2PR
Cyclist and Touring Club, Cotterell House, 69 Mead Row, Godalming, Surrey GU7 3HS
Auto Cycle Union, Wood Street, Rugby Warwickshire, CV21 2XY
Countryside Council for Wales Unit 4, Castleton Court, Fortan Road, St.Mellons, Cardiff CF3 0LT
Open Spaces Society, 25A Bell Street, Henley-on Thames, Oxon RG9 2BA
The Ramblers Association, 2nd Floor, Camelford House, 87-90 Albert Embankment, LONDON SE1 7TW
Royal Mail Property Holdings West, Estates Surveying Division, Archway House, 77 Ty Glas Avenue, Llanishen, Cardiff CF4 5YG
Wales & West Utilities, Malago House, Bedminster Road, Bedminster, Bristol BS99 5RS
NRSWA Section, Mapping Centre, Western Power Distribution, Duffryn Bach Terrace, Church Village Pontypridd, CF38 1NB
Incoming Notice Reception (South Wales), P.P.404B Telecom House, Trinity House, Hanley ST1 5ND
NRSWA Section, AIS Bureau, Hyder Operations, Duffryn Bach Terrace, Church Village Pontypridd, CF38 1NB.
British Driving Society, 27 Dugard Place, Bedford, Warwick CV38 8DY
Mrs. J. Hyett, British Horse Society Representative, Woodland Farm, Caerphilly Mountain, Mid Glamorgan CF8 1NF
British Horse Society, Stoneleigh Deer Park, Kenilworth, Warwickshire CV8 2XZ
Mrs. S.L. Davy, Secretary to the Byways and Bridleways Trust, P.O.Box 117 Newcastle upon Tyne, NE3 5YT
Mr. R.S. Pruddah, Representative of Cyclists Touring Club, 19 Bernard Street, Cwmcaru
County Borough Councillor M. Derrett
County borough Councillor A. Blackman
Mr. A. Hoskins, Clerk to Nelson Community Council, "Ty`r Ffynon", 40 High Street, Nelson, Mid Glamorgan CF46 6UE

Background Papers:
ETP/ROW/CROW57 - Report held at Council Offices, Pontllanfraith