



## **RIGHTS OF WAY CABINET COMMITTEE**

### **MINUTES OF THE RECONVENED MEETING HELD AT PENALLTA HOUSE, TREDOMEN, ON MONDAY, 15TH SEPTEMBER 2014 AT 2.00 P.M.**

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PRESENT:

Councillor K. James - Chairman

Councillors:

D.V. Poole (Cabinet Member for Community and Leisure Services), Mrs B. Jones (Deputy Leader and Cabinet Member for Corporate Services).

Together with:

P. Elliott (Head of Regeneration and Planning), P. Griffiths (Principal Planner), A. Powell (Countryside Access and Rights of Way Officer), J. Piper (CROW Support Officer), R. Crane (Senior Solicitor), H. Lewis (Legal Assistant), S.M. Kauczok (Committee Services Officer).

#### **1. APOLOGIES FOR ABSENCE**

Apologies for absence had been received from Councillors T.J. Williams (Highways, Transportation and Engineering) and R. Woodyatt (Social Services).

#### **2. DECLARATIONS OF INTEREST**

Councillor Mrs B. Jones declared an interest in agenda item 5 - Application for a Modification Order to amend the Monmouthshire County Council Definitive Map and Statement of Public Rights of Way in respect of deleting Footpath 147 in the Community of Mynyddislwyn. Consequently, consideration of this item was deferred to a date and time to be agreed as there were only two Members of the Committee remaining who were able to vote on this matter.

Mrs. J. Piper, CROW Support Officer, declared an interest in agenda item 4 as she had provided evidence of use of both bridleways.

#### **3. APPLICATION FOR A MODIFICATION ORDER TO VARY THE MONMOUTHSHIRE COUNTY COUNCIL DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY IN RESPECT OF THE STATUS OF A PATH IN THE COMMUNITY OF ABERCARN AND DIVERSION OF A SECTION OF THE RIGHT OF WAY**

Members were asked to consider and determine an application to vary the status of Restricted Byway 367 in the Community of Abercarn shown on the Definitive Map and Statement and also to consider the diversion of a section of the right of way through Cefn Pennar Farm. Prior to the meeting Members and Officers met on site to view and walk the route of the paths.

Following complaints from a local rambler and members of the Islwyn Ramblers Society that the public rights of way was not available for use, several meetings have taken place and correspondence has been ongoing, to try and resolve the situation. The report sets out the evidence that the status of the public right of way has been shown as a cart road footpath for the whole of its length whereas it is only available as a footpath for a section of it. The Natural Environment and Rural Communities Act 2006 reclassified all cart road footpaths and cart road bridleways to restricted by-ways. The Committee was asked to decide on the evidence provided whether or not the status of the public right of way should be varied to that of a footpath on the Definitive Map and Statement and whether they supported the application to divert the section of right of way at Cefn Pennar Farm.

Two landowners own the land over which the public right of way crosses. Mr. G. Roberts of Pant-y-Resk Farm and Dr. A. McGregor of Cefn Pennar Farm. Dr. McGregor addressed the Committee in support of her application to divert the public right of way crossing her land away from her property. She confirmed that she had not been aware of any public rights of way over the ground when she purchased the property and had never seen anyone using the route. In addition, she had not been informed of the existence of a public right of way when an extension had been built to the side of the house. Dr. McGregor circulated copies of Document 13, which formed part of the agenda and referred to the unsuitability of the track in certain places for horses and vehicles, as had been witnessed during the earlier site inspection. It would appear that an error had occurred by identifying the public right of way as a cart road footpath for the whole length when a section could not physically be used for same. Mr. G. Roberts endorsed Dr. McGregor's statement and declined the invitation to address the Committee.

Ms. M. Thomas, representing the Open Spaces Society, was then invited to address the Committee. Ms. Thomas outlined the reasons for the Society's opposition to the application, as set out in her letter dated 28th July 2014 attached to the report (Document No. 19). She felt that there was clear evidence that the route from Cefn Pennar Farm to Pant-y-Resk Road had been recorded inaccurately on the Definitive Map and that if the application was to seek a modification of this part of the way only, the Open Spaces Society would not oppose it. However, without being able to visit the site and make an informed decision, she felt that there was no option but to oppose the application. She sought assurances that the diverted right of way would be as accessible and commodious as the present line and in response to her concerns regarding obstructions on the right of way, Officers advised that this matter would be taken up with the landowner.

Following consideration and discussion, on the basis of the evidence and information submitted, it was moved and seconded that the recommendation at 9.1(iii) in the report be approved. By a show of hands this was unanimously agreed.

RESOLVED that the diversion of the right of way as shown in Document No. 15 which will be processed under Section 118 of the Highways Act 1980 be approved in accordance with the following descriptions:-

Description of a section of the existing path or way to be diverted:-

From the junction with Pant-y-Resk Road this path goes N. along a footpath and passes at the farm and the road is then a cart road up the junction with the road leading to Ty-Coedcae. (A-B)

Description of alternative path or way:-

A new path commences from the junction with Pant-y-Resk Road the path goes northwest and then bears in a northeasterly direction to reach the junction with the road leading to Ty-Coedcae (C-B). A total distance of 345 metres

The width of the alternative path or way to be consistent with the status agreed by members i.e. 1.8 metres if footpath (as it is hedged on one side and fenced on the other) and 3 metres if restricted byway.

**4. APPLICATION FOR A MODIFICATION ORDER TO AMEND THE MONMOUTHSHIRE COUNTY COUNCIL DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY IN RESPECT OF DELETING A PATH IN THE COMMUNITY OF MYNYDDISLWYN**

Members were asked to consider and determine two applications which had been received under Section 53(3)(iii) of the Wildlife and Countryside Act 1981 from Mr. J.E. Purnell, Caer'llwyn Bach, Ynysddu and Mr. C.G. Robinson, Caer'llwyn Mawr, Ynysddu to modify the Definitive Map and Statement by deleting two paths from Caer'llwyn Bach to Caer'llwyn Mawr. Prior to the meeting Members and Officers met on site to view and walk the route of the paths.

Research had been undertaken to determine the validity of the claim by collating, as far as possible, all documentary evidence available, together with the crucial user evidence provided by the applicant of the claim and evidence from other users of the Rights of Way network in this area.

The bridleways cross land owned by three separate landowners, two are the applicants in this case and the other an adjoining landowner. The bridleways and the connecting footpaths were included on the Definitive Map and Statement following the initial survey of rights of way under the National Parks and Access to the Countryside Act 1949. As there were no objections received to their inclusion they were published as part of the Monmouthshire County Council's Definitive Map and Statement with a relevant date of 1st July 1952.

The information provided by both applicants and some of the evidence users indicates that they were not aware of the bridleways running from Caer'llwyn Bach Farm to Caer'llwyn Mawr Farm. Mr. Purnell's application and letter provides evidence to support his application that the bridleway has been incorrectly shown on the Definitive Map and Statement in that its inclusion was based on the Ordnance Survey Map dated 1878 and 1879. A copy of the Ordnance Survey Map dated 1879 is included in the report as Document No. 13.

Following the officer's presentation of the report, the Chair invited Reverend Dylan Bate to address the Committee on behalf of Mr. and Mrs. Purnell of Caer'llwyn Bach Farm. Reverend Bate confirmed that neither Mr. or Mrs. Purnell remembered the bridleway being used and that air imagery analysis showed no evidence of use. In addition, egress from the stile would be dangerous for horse riders and reference was made to a letter from the Traffic Management Advisor, Gwent Police dated 8th August 2014 (Document No. 34) relating to the access and egress point onto Twyn Gwyn Road. It was also pointed out that the deletion of the right of way would be in the interests of crime prevention as Caer'llwyn Bach Farm had been broken into on a couple of occasions. Reverend Bate concluded that the extinguishment of the right of way would be a one off cost and would avoid future maintenance costs.

Ms. M. Thomas was then invited to present her case on behalf of the Open Spaces Society. During the course of her presentation Ms. Thomas reaffirmed that the Open Spaces Society opposed the extinguishment and deletion of the two bridleways. Having studied the report and the documentary evidence in detail she did not believe that there was any proof to show that the bridleways did not exist.

Following consideration and discussion, on the basis of the evidence and information submitted, it was moved and seconded that the recommendation at 9(ii) in the report be approved. By a show of hands this was unanimously agreed.

RESOLVED that the claim be rejected.

**5. APPLICATION FOR A MODIFICATION ORDER TO AMEND THE MONMOUTHSHIRE COUNTY COUNCIL DEFINITIVE MAP AND STATEMENT OF PUBLIC RIGHTS OF WAY IN RESPECT OF DELETING FOOTPATH 147 IN THE COMMUNITY OF MYNYDDISLWYN**

As there were only two Members of the Committee present who could determine this item in view of the declaration of interest made by Councillor Mrs. B. Jones, the item was deferred for consideration at a date and time to be agreed.

**6. REVIEW OF THE PROCEDURE FOR APPLICATIONS UNDER THE WILDLIFE AND COUNTRYSIDE ACT 1981**

The report sets out the way in which applications under the Wildlife and Countryside Act 1981 are currently dealt with and proposes a way forward.

Under the terms of the Wildlife and Countryside Act 1981 members of the public and landowners may make application to modify the Definitive Map of Public Rights of Way and/or Statement to add, delete or amend particulars contained therein. This process is called “a claim”. Once an application is submitted in the prescribed manner the Authority has a statutory duty to investigate it to its conclusion and agree whether or not the application is supported or rejected.

It was noted that there is a backlog of claims, some of which pre-date Local Government Reorganisation in 1996. Due to the complexity of some claims the time taken to investigate one claim and submit it to the Rights of Way Cabinet Committee for determination can take in the region of a year. However, this may be extended if either the applicant or the landowner challenges the decision, which could result in a Public Inquiry. The process for dealing with claim applications is set out in the report under paragraph 4.3. It was now considered appropriate to review the current procedure in view of complaints received by the Authority that recent applications are not being dealt with due to the current date order procedure.

Members' attention was drawn to Document 5 attached to the report, which identifies a process that is clear to understand and implement. It would appear to be less time consuming in terms of collating data to prioritise claims and would allow the Authority to deal with applications that have a positive impact on the network. It would also allow those applications, which appear to have little chance of succeeding, to be dealt with and closed and not added to the backlog of applications.

Following consideration and discussion, it was moved and seconded that the recommendation in the report be approved subject to any review being undertaken in consultation with the Cabinet Member for Regeneration, Planning and Sustainable Development. By a show of hands this was unanimously agreed.

RESOLVED that in future, applications under the Wildlife and Countryside Act 1981 be dealt with in line with the proposals contained in Document 5 attached to the report. A review will be undertaken whenever necessary in consultation with the Cabinet Member for Regeneration, Planning and Sustainable Development.

The meeting closed at 2.55 p.m.