

CYNGOR SIR POWYS COUNTY COUNCIL

PLANNING, TAXI LICENSING AND RIGHTS OF WAY COMMITTEE

1st July 2021

**REPORT BY: HEAD OF HIGHWAYS, TRANSPORT AND
RECYCLING**

**SUBJECT: Opposed creation and extinguishment Orders:
Determination by Welsh Government**

REPORT FOR: DECISION

**Creation and extinguishment Orders - bridleway 75, footpaths 3, 6, 56
and 71 (Community of Ystradgynlais)**

Background:

On the 12th November 2020, the Planning, Taxi Licensing and Rights of Way Committee considered a package of changes to public rights of way adjoining the haul road to the former Brynhenllys Opencast Coal site, Ystradgynlais. Approval was given to make public path Orders in respect of the changes. For technical reasons, concurrent creation and extinguishment Orders were made, as at appendices A and B.

The Orders were made as a means to resolve a long-standing problem with the legal line of footpath 6, which crosses the Nant Gwrach gorge at a point that is too wide, deep and steep-sided for it to be feasible to construct a footbridge. The proposals would re-route the path to the footbridge that has been in place and in use across the Nant Gwrach for over 20 years. In addition, bridleway 75 would be moved onto an alignment that is considered to be more convenient for the public than the existing legal line of the bridleway, once practical works are carried out.

The proposals would also facilitate land management by moving parts of footpath 6 and bridleway 75 onto field edge routes. Some sections of path that are no longer needed for public use would be removed, namely footpath 71 and a short spur of footpath 56.

Consultation:

Before the Committee was asked to consider the proposals in November 2020, extensive pre-Order consultation was carried out. No objections were made at that time to the proposals, as reflected in the Orders at appendices A and B.

The Orders were advertised on site and in the Brecon and Radnor Express on 11th February 2021; at the same time, statutory consultees were notified of the making of the Order. In view of the ongoing COVID 19 restrictions at that time,

photographs of the existing and proposed new routes were emailed to consultees with copies of the Orders, to avoid the need for site visits. Copies of the Orders were made available on the Council website, so that consultees did not need to visit an office to view them. Emailed copies were available on request, free of charge.

Objections:

One objection has been received to the Orders, from County Councillor Sandra Davies. The objection was duly made, the original email and appended letter having been received on 22nd February 2021. The objection was discussed initially via Teams; once COVID 19 restrictions were sufficiently eased, a site meeting was held with the objector, to discuss the proposals. This has resolved several of the points raised in the original letter of objection.

However, parts of the objection have been sustained, as noted in the revised letter of objection dated 6th May 2021 at appendix C. This relates to the realignment of part of footpath 6 from E-F to alignment E-I-F. The substance of the objection is that the proposal breaks the link of footpath 6 as a continuous path. In addition, the objector comments byway 20 would lead to a dead end.

In response, byway 20 would not become a cul-de-sac legally, if these Orders were to come into effect. It would remain a continuous route, although its connection to bridleway 75 would be moved from point N to point T. As a motor vehicular public right of way, any change to the route of the byway would need to be achieved via the Magistrates Court, not through a public path Order.

The proposals do not sever footpath 6; new footpath 6(A) would serve as a link to ensure that this remains a continuous path, rerouted around the edge of the field for a short distance. It should be noted that due to the slope of the field, point E cannot be seen from point F. However, point I can be seen from points F and E, so there is a direct line of sight to assist walkers in navigating between these points. A waymarker post could be installed at point I to assist with this.

The objection has been discussed with the owner of the land crossed by section E-F. This aspect of the proposal is very much a compromise to facilitate land management, in exchange for the landowner being prepared to offer the public secure use of the existing footbridge over the Nant Gwrach and along the top of the former haul road. In view of the protracted negotiations and extensive consultation that have already taken place to date, the landowner does not wish to consider further amendments now in relation to section E-I-F.

The objector has made comments about the state of repair of the existing paths. It has been explained that these will be addressed at the same time as the rest of the work to make the new paths ready for use. It should be noted that several of the routes that are in use by the public are not on the legal lines of the public rights of way. This package of changes has been in progress since 2007 and it is intended that these issues be resolved through the realignment package. However, maintenance is outside the scope of the matters that can be considered by a Planning Inspector, in relation to the public path Orders.

The Rambler's Association has written an email actively supporting the Orders, which is at appendix D.

Options:

In view of the above, the options are to:

1. Abandon the Orders; this would mean that the situation with regard to footpath 6 remains unresolved. Use of the footbridge that is currently in place is by permission of the landowner, which could be withdrawn. If that were to happen, public access between the eastern and western sides of the Nant Gwrach gorge would effectively be severed. Likewise, current use of the top section of the haul road is permissive; if permission were withdrawn, the public would need to revert to the legal line of bridleway 75 through the adjacent forestry.
2. Submit the Orders to the Planning Inspectorate for determination, with a request that the two Orders be considered concurrently. Given that the Council has promoted the package of changes and there are felt to be significant benefits to the public, it is proposed that the Council takes a supportive stance with respect to confirmation of the Orders.

There is some risk that the Inspector may choose to confirm the creation Order but not the extinguishment Order. To mitigate against this, the Council can ask that the Planning Inspector considers the extent to which the creation Order would provide paths in replacement for those to be extinguished. Provision is made for this under section 118(5) of the Highways Act 1980.

The owner of the land crossed by section E-F of footpath 6 has given consent for the Orders to be submitted to the Planning Inspectorate. No objections have been sustained to the proposals affecting the other landowners concerned.

RECOMMENDATION:

That the file be sent, along with an officer's report in support of the Orders, to the Welsh Government, so that it may be determined by the Planning Inspectorate on their behalf.

APPENDICES:

Appendix A: Creation Order 2021, footpaths 3(A),6(A) and bridleway 75(A)
Ystradgynlais

Appendix B: Extinguishment Order 2021, footpaths 3,6, 56, 71 and bridleway
75 Ystradgynlais

Appendix C: Letter of objection with covering email of 6th May 2021

Appendix D: Email in support of the proposals from Rambler's Association
dated 8th June 2021