

BRECON BEACONS NATIONAL PARK AUTHORITY

Telephone (01874) 624437

Plas y Ffynnon
Cambrian Way
Brecon
Powys LD3 7HP

Dear Member

A meeting of the **ACCESS AND RIGHTS OF WAY COMMITTEE** will be held in **CONFERENCE ROOM 1, PLAS Y FFYNNON, CAMBRIAN WAY, BRECON ON 9TH MARCH 2004 at 10.00 a.m.** when your attendance is requested.

Yours sincerely

CHRISTOPHER GLEDHILL
CHIEF EXECUTIVE

Cllr J Griffiths
Cllr Mrs M Morris
Cllr R Williams
Cllr M Thomas, MBE
Cllr E Williams
Cllr A Baynham (Chairman)
Cllr Mrs I Lewis

Cllr H L P James
Cllr R Wilcox
Mrs P Thomas
Mr J Suter
Mr C Young
Mrs M Taylor

Fire Evacuation Advice

***In the event of a fire, please exit the building via the main staircase,
and assemble in the car park at Assembly Point 3***

AGENDA

1.0 MINUTES

- 1.1 To receive the minutes of the Access and Rights of Way Committee held on 21st October 2003, and to authorise the Chairman to sign them as a correct record. **(Annex 1)**
- 1.2 To receive the minutes of the following meetings of the Local Access Forums:
- **Eastern Area Local Access Forum (Annex 2)** *Richard Ball*
 - **Central Area Local Access Forum (Annex 3)** *Richard Ball*
 - **Western Area Local Access Forum (Annex 4)** *Richard Ball*

Recommendation: That the minutes of the Local Access Forums be noted.

2.0 CORRESPONDENCE

To receive and consider the attached schedule of correspondence and make any recommendations thereon. (Below).

3.0 MEMBERS DECLARATION OF INTEREST

To receive any declarations of interests from members regarding items to be considered on the agenda (***Members' attention is drawn to the Declaration of Interests sheet circulated with the Attendance Sheet at the meeting, and the need to record their interests in writing.***)

4.0 DECISIONS RELATING TO THE DEFINITIVE MAP: CREATION, DIVERSION AND EXTINGUISHMENT ORDERS - HIGHWAYS ACT 1980

4.1 Application for a Public Path Diversion Order, Public Footpath No. 14 in the Community of Llangors (Annex 5) *Eifion Jones*

File reference: PAR804/511/D/14

Applicants: Mr & Mrs Bennett, The Wern, Llanfihangel Talyllyn, Brecon
Location: The Wern, Llanfihangel Talyllyn
Grid Ref: SO115273
Map No: SO12NW
Community: Llangors

Summary of Definitive Route: From a point to the south east of The Wern at a stile and proceeding in a west north westerly direction across enclosure no. 5033 and passing to the north of The Wern and through a stable block and yard. Then across enclosure no. 3532 to a gate leading onto a dismantled railway. Total length approximately 310 metres.

Summary of Proposed Route: From a point to the east south east of The Wern and proceeding in a generally north westerly direction across enclosure no. 5033 and crossing the access road to The Wern. Continuing across enclosure no. 5033 and thence into enclosure no. 4043 and turning to a south west south westerly direction and to a gate leading onto a dismantled railway. Total length approximately 390 metres.

Consultation Responses

- | | |
|---|---|
| Powys County Council
(Planning) | - "the proposal seems a sensible solution to a long-standing problem" |
| Powys County Council
(Highways) | - no objections |
| Llangors Community Council | - "Based on the strength of public feeling, the Llangors Community Council cannot support the proposed move...we understand that local residents feel strongly that they should be allowed to continue walking along the current footpath and do not want to be diverted to a longer route. Mr and Mrs Bennett, the current owners of The Wern, were aware that this footpath existed when they bought the property" |
| Llangors Community Council (joint response from two Community Councillors received separately from the above) | - "why was the proposal to divert the footpath not included when Mr and Mrs Bennett, The Wern, applied for planning permission from the National Park Authority for the long standing outbuildings? If they did not need planning permission from the National Park Authority to build because it is a so called temporary long standing outbuilding, then why is a temporary building taking precedence over a long standing |

footpath? – which they knew was there when they bought The Wern Cottage and certainly, before they started to build the outbuildings. We need a strong opinion as to why you should move the footpath, and we would like to know why Mr and Mrs Bennett cannot accept people walking past on a public footpath like everyone else, and why they object to others walking from A to B by the shortest route.”

- | | |
|-------------------------------|---|
| County Councillor | - no objection |
| Countryside Council for Wales | - no reply |
| Ramblers Association | - “no objections in principle to a diversion of this path, but are not happy with the detail of the current proposal...The proposed route is considerably longer than the definitive one, so would not be as convenient to use. We believe that the present waymarked route is the best option, passing between Wern Cottage and the barn obstruction.” |
| Open Spaces Society | - no reply |
| Byways and Bridleways Trust | - no reply |
| British Horse Society | - no reply |
| Auto Cycle Union | - no reply |
| Statutory Undertakers | - no objections |

Policy/Legal Considerations: the effect of the proposal in the first instance, is to correct an anomaly on the Definitive Map created by the erection of a building across the line of the footpath shown on the map. In the second instance, it is to improve the security of the buildings at The Wern.

Notice of intention to carry out development for agricultural purposes was submitted on the then National Park Committee on the 24th August 1987. The proposal was approved by letter dated the 27th August 1987. No mention is made in the notice or in the letter of the existence of a public footpath or the effect the development would have upon the footpath. Building commenced as proposed. No record exists of any reports or complaints arising from the consequences of this action.

It is evident, on site, that an alternative route was, probably at some later time, installed and waymarked by National Park staff. This route takes an

obvious route between The Wern and its outbuildings and is the route currently in use by members of the public. Clearly, the line of the footpath on the Definitive Map has been unavailable for use since the late 1980s.

Presumably, the consultees are referring to the use of this footpath in their responses and not to the footpath shown on the Definitive Map as they have come to know the footpath in use as the correct route.

In considering an application for a public path diversion order the Authority must be satisfied that:-

- i) it is expedient that the line of the path should be diverted in the interests of the owner, lessee or occupier of land crossed by the path or of the public;

and, before confirming an order as an unopposed order, that:-

- ii) the path will not be substantially less convenient to the public in consequence of the diversion, and;
- iii) it is expedient to confirm the order having regard to the effect which the diversion would have on public enjoyment of the path as a whole.

The benefit of the diversion in providing an unobstructed route for the footpath is clear. In terms of distance the original line of the footpath is approximately 310 metres in length whereas the length of the proposed diversion is approximately 390 metres in length. An additional 80 metres. Looking at the proposal as a whole it is not considered that the diversion would be substantially less convenient than the original, taking into account the nature of the terrain and the slight increase in distance. Neither is there considered to be a negative effect on the public's enjoyment of the path as a whole as the essential character of the footpath and its surroundings will remain largely the same.

Members may wish to consider whether a site visit would be appropriate prior to making a final decision on this application.

Recommendations:

- a) that the application to divert public footpath no. 14 in the Community of Llangors be approved and that the Chief Executive be instructed to make an order under section 119 of the Highways Act 1980;***

- b) that all charges be waived in accordance with paragraph (d) (ii) (correction of definitive map anomalies) of the Authority's policy concerning the recovery of costs for public path and rail crossing orders;*
- c) that an order be made subject to the applicant entering into an agreement with the National Park Authority to meet all costs involved in bringing the diversion route of the public footpath into a fit condition for use by the public and that all works are completed to the satisfaction of the Chief Executive;*
- d) if no representations or objections are duly made to the order during the statutory objection period, or if any so made are withdrawn, that the Chief Executive be authorised to confirm the order as an unopposed order.*

4.2 Application for a Public Path Extinguishment Order/Public Path Creation Agreement, Public Footpath No. 43 in the Community of Goetre Fawr (Annex 6) *Eifion Jones*

File reference: PAR804/403/E/43

Applicant: Mr & Mrs Ogden, Mr Baynham, Mr & Mrs Edwards,
Mrs Turberville, Mrs Legg, Mr Jones, Mr & Mrs Hodder
Location: New Barn/Cwm Farm/Oriel Garn, Mamhilad, Pontypool
Grid Ref: SO306055
Map No: SO30NW
Community: Goetre Fawr

Summary of Definitive Route: From a point approximately 80 metres to the north of Oriel-garn and proceeding in a westerly direction across enclosures nos. 9044 and 8056 and through the curtilage of New Barn. Then across enclosures no. 4953 and along a track and through the curtilage of Cwm Farm to the junction with public footpath no. 45. Total length approximately 690 metres.

Summary of Proposed Route: From a point approximately 150 metres to the north of Oriel-garn and proceeding in a westerly direction across enclosures nos. 8958, 8056 and 6659 then turning to a generally south westerly direction across enclosure no. 4953 to form a junction with footpath no. 45 approximately 110 metres north east of Cwm Farm. Total length approximately 610 metres.

Consultation Responses

Monmouthshire County Council	- no reply
Goetre Fawr Community Council	- no reply
County Councillor	- no reply
Countryside Council for Wales	- no reply
Ramblers Association	- no objection
Open Spaces Society	- no objection
Byways and Bridleways Trust	- no reply
British Horse Society	- no reply
Auto Cycle Union	- no reply
Statutory Undertakers	- no objections

Policy/Legal Considerations: The extinguishment/creation proposal has resulted from long negotiation with the seven landowners that are affected. Part of the difficulty with footpath no. 43 is due to what is shown on the Monmouthshire County Council Definitive Map. On the Map, footpath no. 43 is not shown as a through route to the Old Abergavenny Road - it is approximately 10 metres short. The 10 metre section passes through a private garden that is hedged on both the road and field sides. The garden has been confirmed as being in private ownership by the District Land Registry for Wales. It is unlikely therefore that it can be considered to be part of the highway verge.

Whilst no footpath is shown across the garden on the Definitive Map the Statement reads "Opposite Rosetree Cottage off Old Pontypool-Abergavenny Road, stile, garden, stile, ploughed field...". This suggests that a footpath did cross the garden and also indicates that the garden was in existence at the time of the original survey in the early 1950s.

However, section 56 of the Wildlife and Countryside Act 1980 states that "a definitive map and statement shall be conclusive evidence as to the particulars contained therein to the following extent, namely where the map shows a footpath, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had therefore a right of way on foot..."

This suggests that if a path has been omitted from the map, the inclusion of its particulars in the statement provides conclusive evidence neither of its position or width, nor even of its existence. This interpretation appears to be generally accepted by the Open Spaces Society, The Ramblers' Association and the Welsh Assembly Government. This leaves the Authority in the position that a Definitive Map Modification Order is required to extend the footpath on the map to the road. However, apart from the statement there is no evidence to support the inclusion of the extension. This is not assisted by the fact that the footpath, apparently, has not been used for a period of 50 years.

Clearly, this makes promoting a Definitive Map Modification Order difficult.

In an attempt to secure a through route to the road negotiation with the landowners was undertaken and this had to involve a quid pro quo element. This involved discussing a new location for a through route allied to the extinguishment of the old footpath including the additional section contained in the statement.

As well as providing a through route the proposal put forward will also:-

- i) move the footpath from the curtilage of four residential properties thus increasing privacy and security;
- ii) provide a safer more protected access point onto the Old Abergavenny Road. An access point at point A on the map would require steps adjacent to the carriageway and a stile over the intervening boundary. Visibility at this point is poor as pedestrians would emerge straight onto the road through the hedge;
- iii) correct an apparent drafting error on the definitive map;
- iv) provide an alternative which is more convenient than the original route.

The proposal will negate the need for a modification order to correct the definitive map, which is likely to have been opposed, and will allow the Authority to bring this longstanding matter to an amicable and early conclusion. The landowners' co-operation has been paramount in finding a solution to the problem created by the Definitive Map and it is recommended that this be reflected in a waiving of some of the fees associated with the application for an extinguishment order.

Recommendations:

- a) that the application to extinguish public footpath no. 43 in the Community of Goetre Fawr be approved and that the Chief Executive be instructed to make an order under section 118 of the Highways Act 1980;***
- b) that all of the Authority's standard charge be waived in accordance with paragraph (d) (ii) (correction of definitive map anomalies) of the Authority's policy concerning the recovery of costs for public path and rail crossing orders and that the applicants contribute a total of £300 towards the costs of the press notices associated with the making and confirmation of the order;***

c) if no representations or objections are duly made to the order during the statutory objection period, or if any so made are withdrawn, that the Chief Executive be authorised to confirm the order as an unopposed order;

d) that the proposal for the creation of a public footpath be approved and that the Chief Executive be instructed to enter into an agreement under section 25 of the Highways Act 1980 with the landowners.

4.3 Application for a Public Path Diversion Order, Public Footpath No. 5 in the Community of Maescar (Annex 7) *Eifion Jones*

File reference: PAR804/516/D/5

Applicants: Mr E. H. and Mrs M. B. Jones, Penybont Farm, Sennybridge
Location: Penybont Farm, Sennybridge
Grid Ref: SN926286
Map No: SN92NW
Community: Maescar

Summary of Definitive Route: From a point to the south east of Pen-y-bont from its junction with a county road and proceeding in a north westerly direction along the edge of enclosure no. 6352. Then through the farmyard at Pen-y-bont and along a farm track in a northerly direction to the edge of a woodland. Total length approximately 280 metres.

Summary of Proposed Route: From a point to the south east of Pen-y-bont from its junction with a county road and proceeding in a north westerly then northerly direction along the edge of enclosure no. 6965. Then entering a woodland in enclosure no. 5875 and proceeding in a west north westerly direction to a farm track. Total length approximately 280 metres.

Consultation Responses

Powys County Council (Planning)	- "the proposals look straightforward and a general benefit to all"
Powys County Council (Highways)	- no comments
Maescar Community Council	- support application
County Councillor	- no reply
Countryside Council for Wales	- no reply
Ramblers Association	- "happy with what is being proposed. The new route

presents an easier, safer, and more pleasant alternative to going through the farmyard”

Open Spaces Society	- no reply
Byways and Bridleways Trust	- no reply
British Horse Society	- no reply
Auto Cycle Union	- no reply
Statutory Undertakers	- no objections

Policy/Legal Considerations: the effect of the proposal would be to move the footpath away from a working farmyard and provide a more commodious route partly through a small woodland. The diversion will utilise existing field gates at points A and C but a kissing gate will be required at point B. It is considered that the proposal will result in an improvement in the network and provide a route that is substantially as convenient to the public.

The application was submitted in July 2003 and is therefore subject to the Authority’s charging policy at that time, that is, that costs would be waived on applications to divert public paths out of working farmyards. This is reflected in the recommendation. Members are reminded that the policy was amended at the Committee’s previous meeting in October 2003 such that costs are no longer waived for applications of this type.

Recommendations:

- a) that the application to divert public footpath no. 5 in the Community of Maescar be approved and that the Chief Executive be instructed to make an order under section 119 of the Highways Act 1980;***
- b) that all charges be waived in accordance with paragraph (c) (diverting public paths out of working farmyards) of the policy concerning the recovery of costs for public path and rail crossing orders as at July 2003;***
- c) that an order be made subject to the applicant entering into an agreement with the National Park Authority to meet all costs involved in bringing the diversion route of the public footpath into a fit condition for use by the public and that all works are completed to the satisfaction of the Chief Executive;***
- d) if no representations or objections are duly made to the order during the statutory objection period, or if any so made are withdrawn, that the Chief Executive be authorised to confirm the order as an unopposed order.***

5.0 CONSULTATIONS ON COUNTRYSIDE AND RIGHTS OF WAY ACT 2000

5.1 Consultation on Proposals for Legislation – Use of Mechanically propelled Vehicles on Rights of Way (Annex 8 & 9) *Eifion Jones*

5.1.1 Background

Members are informed that DEFRA and the National Assembly for Wales have recently issued a consultation paper on proposals for new legislation that deal with the use of mechanically propelled vehicles on rights of way. A copy of the consultation paper is shown at **Annex 8**.

The paper proposes a variety of measures with regard to the use of mechanically propelled vehicles in the countryside and, building on the Countryside and Rights of Way Act 2000, to clarify what vehicular rights exist over the present rights of way network.

The paper also proposes that the Government repeal section 34A of the Road Traffic Act 1988 due to the presence of an irrebuttable presumption in this part of the legislation. Following careful consideration the Government has concluded that section 34A is incompatible with Article 6(2) of the European Convention on Human Rights which requires the presumption of innocence in criminal trials until guilt is proven.

The paper states that the decision not to implement section 34A does not undermine the Government's resolve to tackle the problem arising from the use of rights of way by mechanically propelled vehicles. The Government intends to combine the better enforcement of existing legislation and management of vehicles with new legislation that gives certainty about the public vehicular rights that exist. It is also intended to remove the unsuitable and unsustainable approach that results in modern, mechanically propelled vehicles exercising rights, which were established in the days of horse drawn vehicles.

DEFRA has requested that consultees consider the seven proposals contained within the consultation paper. Comments have been requested by the 19th March 2004.

Officers have prepared the response shown at **Annex 9**.

5.1.2 Implications of the legislation

The paper contains proposals that are far reaching in terms of the development of highway law. Proposals 3 and 4 are the most significant as they seek to differentiate, in law, between mechanically and non-mechanically propelled vehicles as far as the acquisition of vehicular rights are concerned. Such a distinction does not exist at present as all vehicles, both modern and ancient, are treated the same.

The significance of the proposals is that reference to historic use by, or other evidence relating to, non-mechanically propelled vehicles will no longer give rise to the establishment of byways open to all traffic (subject to certain exceptions). Beyond one year from the commencement of the legislation such evidence will only give rise to the establishment of restricted byways, upon which driving a mechanically propelled vehicle without lawful consent is an offence.

As stated above, the Government intends to introduce a cut-off date after which the above proposal will operate. It is also inviting views on whether the current 2026 cut-off already included in the Countryside and Rights of Way Act 2000 should be brought forward where it applies to evidence of usage by mechanically propelled vehicles. The claimed advantage of doing this would be to bring forward the certainty attached to the definitive map in respect of these rights.

Recommendation: Members are asked to approve the response prepared by officers as the formal response of the Authority to the consultation on the proposals for legislation with regard to the use of mechanically propelled vehicles on rights of way.

6.0 INFORMATION ITEMS

6.1 Completed Orders

Eifion Jones

Members are advised that the following Orders have been completed and that the new routes are now operative:

Carmarthenshire

- i) Brecon Beacons National Park Authority Footpath No. 48/94 at Carregfoelgam in the Community of Llangadog Public Path Diversion Order 2003
- ii) Brecon Beacons National Park Authority Footpath No. 44/51 at Pantglas in the Community of Dyffryn Cennen Public Path Diversion Order 2003

Monmouthshire

- iii) Brecon Beacons National Park Authority Footpath No. 135 at Troed-y-rhiw in the Community of Goetre Fawr Public Path Diversion Order 2003
- iv) Brecon Beacons National Park Authority Footpath No. 122 at Byrgwm Mawr in the Community of Goetre Fawr Public Path Diversion Order 2003
- v) Gwent County Council (Community of Crucorney Fawr Path No. 474) Public Path Diversion Order 1994
- vi) Gwent County Council (Community of Crucorney Fawr Path No. 322 and 325 at Llwynceilyn Public Path Diversion Order 1994 and (Community of Crucorney Fawr Path No. 324) Extinguishment Order 1994
- vii) Brecon Beacons National Park Authority (Community of Crucorney Fawr Paths Nos. 152 and 153 at The Pant) Public Path Diversion Order 2003
- viii) Brecon Beacons National Park Authority (Community of Crucorney Fawr Paths No. 354 at Penywern) Public Path Diversion Order 2003

Powys

- ix) Brecon Beacons National Park Authority Footpath No. 9 in the Vale of Grwyney Community Public Path Diversion Order 2003
- x) Brecon Beacons National Park Authority (Community of Ystradfellte, Path No. 19 at Tir-Canol) Public Path Diversion Order 2003
- xi) Brecon Beacons National Park Authority (Community of Ystradfellte Footpath No. 84 at Clyn-gwyn) Public Path Diversion Order 2003
- xii) Brecon Beacons National Park Authority (Community of Llangattock)(Byway Open to All Traffic at Ffynnon Gron, Ffawyddog) Modification Order 2003

Recommendation: that Members note the content of the report.

6.2 Functions of Access Authorities

Richard Ball

Members are advised that the National Park Authority has received advice regarding the Functions of Access Authorities (**Annex 10**) from the Welsh Assembly Government. This advice is basically a summary of the main legislative provisions within the Act relating to Access Authorities which the National Park Authority was therefore already aware of.

Members are advised that the Access Officer is currently involved with the areas of work identified at 4c, 4d and 4e of Annex 10. BBNPA are working closely with other Access Authorities, Relevant Authorities and CCW to ensure that the access provisions of CRow Act are implemented with consistency throughout Wales.

Access Authorities also have the power to appoint wardens with respect to Access Land (Annex 10 section 4b) and key organisations which already provide warden services (for example, CCW, Forestry Commission, National Trust and National Parks) are currently investigating ways of better co-ordinating the work of their services. CCW have agreed to arrange a conference in Spring of 2004 to discuss the resulting 'Wardens Concordat'.

Access Authorities also have powers to make and enforce bylaws in respect of Access Land. It is not anticipated that new bylaws will be required to manage our duties under the access provisions of the Act, however this matter will be kept under review after the new rights of access come into force in Spring 2005.

Recommendation: that Members note the content of the report .

6.3 Public Notices for Public Path Orders

Eifion Jones

Members will recall that at the last meeting of the Committee there was a discussion regarding the cost of advertising public notices in relation to the making of public path orders and definitive map modification orders. The Rights of Way Officer was requested to raise the matter at the next available meeting of the County Surveyors' Society.

The matter was duly raised at that meeting and the Rights of Way Officer will give a verbal report on the matter at the Committee meeting.

7.0 OTHER BUSINESS

Such other business as is, in the opinion of the Chairman, of such urgency as to warrant consideration.

SCHEDULE OF CORRESPONDENCE

1. To receive apologies for absence
2. Such other correspondence as, in the opinion of the Chairman, is of such urgency as to warrant consideration.