

## 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 I, PLAS Y FFYNNON, CAMBRIAN WAY, BRECON ON 23<sup>RD</sup> FEBRUARY 2006** at 10.00 a.m. when your attendance is requested.

Yours sincerely

**CHRISTOPHER GLEDHILL**  
**CHIEF EXECUTIVE**

Cllr P Ashton  
Cllr Mrs M Morris  
Cllr J Morris  
Cllr K Pathak  
Cllr E Williams  
Cllr A Baynham (Chairman)  
Cllr A Carrington

Cllr M Reece  
Cllr P Hopkins  
Mrs P Thomas  
Mr J Suter  
Mr P Seaman  
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

### I.0 MINUTES

I.1 To receive the minutes of the committee meeting held on 7th October 2005 and to authorise the Chairman to sign them as a correct record. (**Annex 1**)

I.2 To receive the minutes of the following meetings of the Local Access Forums:

Western Area Local Access Forum 08/09/05 (**Annex 2**)

Richard Ball

Eastern Area Local Access Forum 20/09/05 ( <b>Annex 3</b> )	Richard Ball
Central Area Local Access Forum 28/09/05 ( <b>Annex 4</b> )	Richard Ball
Western Area Local Access Forum 08/12/05 ( <b>Annex 5</b> )	Richard Ball
Eastern Area Local Access Forum 14/12/05 ( <b>Annex 6</b> )	Richard Ball
Central Area Local Access Forum 21/12/05 ( <b>Annex 7</b> )	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 PUBLIC SPEAKING**

To give opportunity for members of the public to address the Committee in accordance with the Authority's Public Speaking Scheme.

## **5.0 DECISIONS RELATING TO THE DEFINITIVE MAP : CREATION, DIVERSION AND EXTINGUISHMENT ORDERS – HIGHWAYS ACT 1980**

### **5.1 Application for a Public Path Diversion Order, Public Footpath No. 4 in the Community of Maescar (Annex 8) *Eifion Jones***

File reference: PAR804/516/D

Applicant: National Park Authority  
 Location: Broomfield, Defynnog Road, Sennybridge  
 Grid Ref: SN923283

Map No: SN92NE  
Community: Maescar

**Summary of Definitive Route:** From a point on the A4067 to the south east of Broomfield, Defynnog Road, Sennybridge and proceeding in a generally north westerly direction through a garden and across a wooded bank to the junction with public footpath no. 2 adjacent to Afon Senni. Total length approximately 120 metres.

**Summary of Proposed Route:** From a point on the A4067 to the north of Broomfield, Defynnog Road, Sennybridge and proceeding in a generally south westerly then north westerly direction along a well defined path across a wooded slope to the junction with footpath no. 2 adjacent to Afon Senni. Total length approximately 100 metres.

### Consultation Responses

Powys County Council (Countryside) - "...proposal seems eminently sensible...may very well represent a correction of a drafting error on the Definitive Map..."

Powys County Council (Technical and Local Services)

- no comment
- Maescar Community Council - no reply
- County Councillor - no reply
- Countryside Council for Wales - no reply
- Ramblers Association - no objection
- 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

**Details of application:** The application has been submitted under section 119 of the Highways Act 1980 in the interests of the landowner and of the public. It is proposed to divert footpath no. 4 for the following reasons:-

- i) to make the route more representative of the usage on the ground. The route of the diversion has clearly been in use for many years;
- ii) to correct a possible drafting error on the Definitive Map.

**Conclusion:** The basic effect of the application is to correct what appears to be a drafting error on the Definitive Map. The route shown on the Definitive Map crosses the garden area of Broomfield and then crosses a wooded slope adjacent to Afon Senni. The route in use on the ground follows the boundary

between Broomfield and Cylmor, two of the properties that lie adjacent to the A4067. This has clearly been in use for some time. Some items of furniture are evident on this route and it is clear that this is the accepted route of the footpath and is being maintained as such.

Discussions have taken place with all the affected landowners. No objections have been forthcoming to formalising the present situation.

**Recommendations:**

- (i) **that the application to divert footpath no. 4 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;**
- (ii) **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.**

**5.2 Application for a Public Path Diversion Order, Public Footpath No. 44 in the Community of Dyffryn Cennen (Annex 9) Eifion Jones**

File reference: PAR804/202/D

Applicant: H and P Llewelyn, Hendy, Llandyfan, Ammanford,  
Carmarthenshire  
Location: Hendy, Llandyfan  
Grid Ref: SN664169  
Map No: SN61NE  
Community: Dyffryn Cennen

**Summary of Definitive Route:** From a point to the west of Hendy and proceeding in a generally easterly direction along the access road to the farm. After passing through the cartilage of the farm the footpath continues along a track and onto the open hill. Total length approximately 370 metres.

**Summary of Proposed Route:** From a point to the west of Hendy and proceeding in a generally south easterly direction along a field edge and onto the open hill. Total length approximately 350 metres.

**Consultation Responses**

Carmarthenshire County Council	- no reply
Dyffryn Cennen Community Council	- application fully supported
County Councillor	- no reply

Countryside Council for Wales	- no reply
Ramblers Association	- "...in complete agreement"
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

**Details of application:** the application has been submitted under section 119 of the Highways Act 1980 in the interests of the landowner. It is proposed to divert footpath no. 44 for the following reasons:-

- i) to provide a route that avoids the farmyard and farm buildings at Hendy;
- ii) to provide the owners of Hendy with increased privacy and security;
- iii) to provide a more direct route to the hill (common land)

**Conclusion:** the effect of the proposal is to move the footpath away from the curtilage of Hendy largely on the basis of privacy and security. The alternative route being proposed is sensible and follows parallel to a field boundary. It is slightly shorter and more direct and is not considered to be substantially less convenient to the public. Arguably, it will improve public enjoyment of the path as a whole.

Part of the footpath lies on land in the ownership of the National Park Authority. The land is registered common to which the public has a right of access on foot. The Authority consented to the footpath being diverted on its land in its meeting on the 10<sup>th</sup> February 2006.

**Recommendations:**

- (i) ***that the application to divert footpath no. 44 in the Community of Dyffryn Cennen be approved and that the Chief Executive be instructed to make an order under section 119 of the Highways Act 1980;***
- (ii) ***that an order be made subject to the applicant reimbursing all the Authority's costs in accordance with paragraph (a) and (b) of the policy concerning the recovery of costs for public path and rail crossing orders;***
- (iii) ***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;*

- (iv) *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.*

## **6.0 DECISIONS RELATING TO THE DEFINITIVE MAP: MODIFICATION ORDERS – WILDLIFE AND COUNTRYSIDE ACT 1981**

### **6.1 Application for Modification of the Definitive Map and Statement to Amend the Route of Public Footpath No. 41 in the Town of Talgarth (Annex 10-39)** *Eifion Jones*

File ref. PAR804/517/M/41

- 6.1.1 Under the terms of the Delegation Agreement with Powys County Council the National Park Authority is required to keep the Definitive Map and Statement under continuous review and, upon the discovery of evidence, make amendments to the Map and Statement, by order, as necessary. This application, made under Section 53 of the Wildlife and Countryside Act 1981, upon the discovery of evidence by officers, requires the Authority to consider the making of a Definitive Map Modification Order to amend the route of public footpath no. 41.

The application stems from the discovery of a drafting error on the Definitive Map which appears to have originated in the late 1980s/early 1990s during the preparations for the Powys County Council (Former County of Breconshire) Review Map and Statement which was published in 1992. Upon that Map footpath no. 41 is shown in a different location to its originally registered position.

The purpose of this report is to review the available evidence and invite the Committee to decide whether the change on the Definitive Map was justifiably made and, if not, whether an order should be promoted to amend the Definitive Map.

#### **6.1.2 The Proposal:**

- 6.1.3 Notice of the application was served on the landowners on the 9<sup>th</sup> May, 2005.

- 6.1.4 Details of the proposals are shown on the map at **Annex 10**.

## **6.1.5 Description of the route (as shown on the Definitive Map)**

6.1.6 Public Footpath no. 41 proceeds from the public road near Trefecca Fawr in a generally north north easterly direction through enclosures nos. 2580, 2990 and 3000 and around the edge of enclosure no. 3801 (where the footpath was recently subject to a Public Path Diversion Order). The footpath then turns north easterly and proceeds through the gardens and the buildings of nos. 1, 2 and 3 College Lane, Trefecca. A total distance of approximately 375 metres.

## **6.1.7 Legal Background**

6.1.8 Section 53 of the Wildlife and Countryside Act 1981 imposes a statutory duty upon the Authority and by sub-section (2) the Authority shall-

“(a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3).”

The events specified in subsection (3) include:

“(3)(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows-

(i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way to which this Part applies;

(ii) .....

(iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.”

6.1.9 The leading case on modification orders is a judicial review decision in the High Court in 1989 and known as “the O’Keefe case” (R. v Isle of Wight County Council, ex parte O’Keefe (1989)). A number of aspects of the authority’s investigation and determination were closely scrutinised in that case and there were four particular issues which can be used as a way of examining the duty upon the authority in handling such matters:

(a) there is a duty on the Authority to investigate and this report contains the full particulars of the result of the Rights of Way Officer’s careful examination of all the evidence;

(b) the Authority must consider all the evidence and decide whether a modification order should be made. It is for the Authority to apply the law to the facts put before it;

(c) the relevant law has to be considered by the Authority. The statutory duty is set out in 6.1.8 above and the report contains advice on the weight attached to certain evidence before the Authority;

(d) in coming to a decision, the Authority must act in accordance with the rules of natural justice and must act in a quasi-judicial manner. The Authority must not take into account irrelevant considerations and must in turn consider all relevant considerations. The application must be dealt with fairly.

6.1.10 The report concludes with a recommendation. It is for this Committee to consider the evidence and, on a balance of probabilities, either accept or reject the recommendation.

**6.1.11 Notices were served upon:**

6.1.12 Mr Chris O'Meara, Old Court, Brobury, Herefordshire HR3 6DX

6.1.13 Mrs Diana Hawes, "Caeredin", 1 College Lane, Trefecca, Brecon, Powys LD3 0PP

6.1.14 Mr and Mrs Park, Penpentre, College Lane, Trefecca, Brecon, Powys LD3 0PP

6.1.15 Mr Gareth Davies, 42 Belgrave Road, Abergavenny, Monmouthshire NP7 7AG

6.1.16 Miss Carol Price and Miss Jane Robinson, Tremangel, 3 College Lane, Trefecca, Brecon, Powys LD3 0PP

6.1.17 Mr Simon Davies, Oedfan, Trefecca, Brecon, Powys LD3 0PP

**6.1.18 Consultations**

6.1.19 Consultations were carried out with the following groups on 3<sup>rd</sup> June, 2005:

Powys County Council - Technical and Local

Powys County Council - Countryside

Talgarth Town Council

County Councillor

Countryside Council for Wales

Ramblers' Association

British Horse Society

Byways and Bridleways Trust

Open Spaces Society



Auto-Cycle Union  
National Grid PLC  
SWALEC  
Dŵr Cymru Welsh Water  
British Gas  
Environment Agency  
British Telecom  
Royal Mail

The comments received are listed below:-

- 6.1.20 Powys County Council (Countryside) - "I have no information to add about the alleged diversion of the footpath, as shown on the original Definitive Map and 1968 Review. I would say that if no legal order can be found, it does not necessarily mean that one was not made and confirmed. It is certainly very unusual for a path to be shown as diverted on a Definitive Map edition, without a confirmed order prompting it; but it is not impossible. You have evidence to show that on a balance of probability no confirmation was ever made for a diversion order.

In preparing the Draft and Provisional Review Maps (which in Breconshire were in effect modifying maps, only showing those lengths of paths affected by confirmed legal orders, without showing any of the remainder of the public path network) it is possible that a copy of a draft or unconfirmed order was mistaken for a confirmed order.

As the officer responsible for checking the 1992 Definitive Review Map prior to co-ordinating its publication, I am well aware of the 1000+ mistakes introduced by the map consultants in transferring information from 1:25000 to 1:10000 scale in the late 1980s. In correcting that many glaring errors, it was inevitable that more would prove to exist that I failed to identify.

When I drafted the Consolidation over the next year or so, and published it in 1994, where very slight obvious errors were found, I corrected them; but it was largely an exercise of adding all legal changes that had occurred since the Relevant Date of the Review in 1968.

In my opinion, you are following the correct course of action for such a muddled situation on the Definitive Map. Identify and analyse, from the available evidence, what is the most likely error to have occurred, on a balance of probability, and promote a Definitive Map Modification Order to correct that error."

- 6.1.21 The Ramblers Association - "I can really add very little to what you have discovered in the way of evidence." A member of the Ramblers' Association "knows someone who lives at Trefecca who can remember the path going through what is now the garden of Oedfan. It seems certain that a diversion

order was intended but probably not carried out”... “It could be that an Order was made by Brecknock Borough and was not passed to Powys when they took over path responsibility, so it just might be worth further enquiries to say Defra and the public records office, Kew.”

## **6.1.22 Evidence discovered to substantiate the application**

### **6.1.23 Ordnance Survey Editions**

6.1.24 25” Second Edition (1904) (**Annex 11**) - original line of the footpath marked as a double-pecked line and annotated “F.P.”

### **6.1.25 Definitive Map Records**

6.1.26 Original Survey Card (1954) (**Annex 12**) - notes extent of footpath between “Trefecca-Fawr” and “Trefecca College” with northern termination point “60 yds south of chapel”. Footpath noted as obstructed at time of survey.

6.1.27 Original Rough Drawings (contemporaneous with above) (**Annex 13**) - footpath registered along a route consistent with 6.1.24 albeit at 6” scale. Obstructions noted at northern end of footpath.

6.1.28 Breconshire County Council Definitive Map and Statement (1967) (**Annex 14**) - footpath is registered along a route consistent with 6.1.24 and 6.1.27. However, the full extent of the footpath is highlighted in yellow, with a small pencil line adjacent to the northern end (presumably indicating that a diversion has taken place after the Map was published). The Statement (**Annex 15**) reads “Footpath from the county road near Trefecca-fawr leading north to the Methodist Chapel”.

6.1.29 Breconshire County Council Provisional Review Map and Statement (1968) (**Annex 16**) - a diversion is indicated at the northern end of the footpath by means of two coloured lines. One indicates “Footpath” the other “Deletion”. The Statement (**Annex 17**) reads “Footpath from unclassified county road no. 156 near Trefecca-fawr leading north to the Methodists chapel; approximately 380 yards in length (Diverted)”.

6.1.30 Powys County Council (Former County of Breconshire) Review Map and Statement (1992) (**Annex 18**) - footpath largely registered along a route consistent with 6.1.28 but the change in the Provisional Review Map has been incorporated. However, the diversion has migrated in an easterly direction by approximately 30 metres. The Statement (**Annex 19**) reads “Footpath from unclassified county road no. 156 near Trefecca-fawr leading north to the Methodist Chapel; approximately 380 yards in length (Diverted in the Review)”.

- 6.1.31 Powys County Council Consolidated Definitive Map and Statement (1994) (**Annex 20**) - footpath is registered along a route consistent with 6.1.30 the diversion having been incorporated into the Powys County Council Consolidated Definitive Map and Statement. The Statement (**Annex 21**) reads “Footpath from unclassified county road no. 156 near Trefecca-fawr leading north to the Methodists chapel; approximately 380 yards in length”.
- 6.1.32 Planning Documents (1964) - associated with construction of ‘Oedfan’, Trefecca
- 6.1.33 Letter from architects to Ministry of Transport (13/4/64) (**Annex 22**) - explaining that the client has decided that a diversion is unnecessary and that a stile in a flank wall would suffice.
- 6.1.34 Planning application and architect drawing (17/4/1964) (**Annex 23**) - showing effect of house on footpath with position of new stile and proposed route of rerouted footpath within the same enclosure.
- 6.1.35 Observation of County Surveyor regarding footpath (22/4/1964) (**Annex 24**) - states “necessary to have footpath diverted...no objection...provided appropriate steps are taken with regard to the diversion of the footway”.
- 6.1.36 Letter from Ministry of Transport to District Council Surveyor (30/4/1964) (**Annex 25**) - states that a diversion is necessary as development is proposed on the site.
- 6.1.37 Letter from Ministry of Transport to County Council (4/6/1964) (**Annex 26**) - requesting that the County Council accept responsibility for the diverted footpath.
- 6.1.38 Ministry of Transport Draft Diversion Order and Public Notice (30/6/1964) (**Annex 27**) - copy of a “draft of an Order proposed under Section 153 of the Town and Country Planning Act 1962” including a plan showing a diversion wholly within enclosure 309.
- 6.1.39 Letter from architects to Ministry of Transport (9/7/1964) (**Annex 28**) - stating that plan included with draft order is incorrect.
- 6.1.40 Minutes of Hay Rural District Council (23/7/1964) - letter received from the Ministry of Transport stating that it is proposed to make an order under section 153 of the Town and Country Planning Act 1962 for the diversion of a footpath from the Trefecca - Cefn Mawr Road to Trefecca Fawr.
- 6.1.41 Letter from County Council to County Planning Officer (15/9/1964) (**Annex 29**) - new plan prepared. Comments requested.

- 6.1.42 Letter from County Planning Officer to Brecknock County Council (17/9/1964) (**Annex 30**) - new plan acceptable.
- 6.1.43 Minutes of Hay Rural District Council (26/11/1964) - letter received from the Ministry of Transport with Notice of the making of an order authorising the diversion of a length of FP No. 41 at Trefecca and involving the provision of a new path.
- 6.1.44 Letter from Mrs Olwen Davies, Oedfan, Trefecca to Hay Rural District Council (22/10/1968) (**Annex 31**) - Mrs Davies requests that footpath no. 41 be deleted from the Definitive Map.
- 6.1.45 Minutes of Hay Rural District Council (28/11/1968) - letter received from Mrs O J Davies with reference to footpath no. 41 in the Talgarth Parish and asking its deletion from the definitive map in the second draft stage. The Clerk reported that Mrs Davies' letter had been forwarded to the County Planning Officer and submitted the reply stating that it was only possible to object to the diversion of the path in the Draft Review and suggesting that Mrs Davies apply to the Council for the closure under section 110 of the Highways Act 1959. Resolved that the Breconshire County Council and the Talgarth Parish Council be asked if they have any objection to the stopping up of the footpath on the ground that the path is not needed for public use.
- 6.1.46 Minutes of Talgarth Parish Council (1968) - state that a letter was received from Hay Rural District Council (dated 9/12/1968) informing the Parish Council that an application had been received from Mrs Davies of Oedfan, Trefecca to delete footpath 41 from the Definitive Map. The observations of the Parish Council were requested. The Parish Council took the view that the footpath was no longer needed and that the application be supported.
- 6.1.47 Minutes of Hay Rural District Council (2/1/1969) - letter received from Talgarth Parish Council with reference to footpath 41, Talgarth Parish, stating that as the path is not needed for the use of the public they recommend that the application for its closure be acceded to.
- 6.1.48 Letter from County Planning Officer to Clerk of the County Council (17/2/1969) (**Annex 32**) reference Footpath 41, Talgarth Parish - states that the Planning Authority could agree to the extinguishment. Also states that it is not particularly relevant that a diversion order was made and confirmed under section 153 of the Town and Country Planning Act 1962 to allow Mrs Davies' house to be built.
- 6.1.49 Minutes of Breconshire County Council Planning Committee (14/3/1969) (**Annex 33**) - state that the County Council had received an application from Hay Rural District Council for consent under section 112 of the Highways Act 1959 to make an extinguishment order for footpath no. 41 under section 110 of

the same Act. It was resolved that consent be granted. The minutes also state that footpath no. 41 was diverted by order to allow the building of a house by the applicant for the extinguishment order.

- 6.1.50 Minutes of Hay Rural District Council (22/5/1969) - letter received from the County Council stating that the County Planning Committee had considered the question of footpath no. 41, Talgarth Parish, when it was noted that the Parish Council raised no objection and the Planning Committee agreed to raise no objection to the closure of the footpath by the Council under Section 110 of the Highways Act 1959.

Conclusions - These documents show that a change was made to the Definitive Map during 1967/1968 as a consequence of the diversion process. However, the change can only come about if an order has been made and confirmed. In this case no order or, more importantly, no confirmed order has been discovered despite local research and enquiries being made of Powys County Council, The Department of Transport, the Welsh Assembly Government, Ordnance Survey and the Ramblers Association all of which may, in their present or former guises, have received a copy of the order and the confirmed order. No correspondence has been discovered during the period between 17/9/1964 and 22/10/68 and it is therefore assumed that, if any existed, it has been lost. However, the memorandum from the County Planning Officer to the Clerk of the County Council described at 6.1.48 suggests very strongly that, in this case, an order was made and confirmed under section 153 of the Town and Country Planning Act 1962. This is supported by the minutes of the Breconshire Planning Committee dated the 14/3/1969 and described at 6.1.49 which state that the footpath was diverted by order and, by the minutes of Hay Rural District Council dated the 26/11/1964 and described at 6.1.43 which state that an order was made. It is reasonable to conclude therefore given the available evidence and on the balance of probability, that a diversion order was made and confirmed with regard to footpath no. 41.

6.1.51 Planning Documents (1979 - 1980) (Annex 34)

- 6.1.52 Appeal documents (sent by former National Park Committee to the then Welsh Office) relating to a refusal of planning consent for College Lane:

- (a) in answer to the question “as far as you are aware are there any rights of way running over the site?” the answer is “no”
- (b) in answer to the question whether an order stopping up or diverting a footpath, bridleway or other highway would be necessary in order for development to be carried out, the answer is “no, footpath 41 lies adjacent to but outside site boundary”

6.1.53 Correspondence (1987) (Annex 35)

6.1.54 Letter from R A Brown (on behalf of the National Park Officer) to Mr MacPherson (18/3/1987) - the letter states, with reference to footpath 41, that “the new path is entirely within the grounds of Oedfan. Footpath 41 therefore does not cross your property or any part of enclosure 318.”

6.1.55 Statutory Declaration by Andrew Jones (2002) (Annex 36)

6.1.56 Recalls that in 1964 or thereabouts footpath 41 was diverted from its original line to the one now shown on the Definitive Map.

Conclusions - it is clear from the minutes of the Breconshire County Council Planning Committee dated the 14/3/1969 and described at 6.1.49 that consent was given by the County Council to Hay Rural District Council to extinguish footpath no. 41. This is confirmed by the Hay Rural District Council minutes dated the 22/5/1969 and described at 6.1.50. Without this consent, which was a specific requirement of the Highways Act 1959, the Rural District Council could not make an order. However, no evidence has been discovered to suggest that Hay Rural District Council actually made or had an order confirmed. Minutes of the Rural District Council have been examined over a period of 10 years between 1964 and 1974, the period after 22/5/1969 being the most crucial. The Council was disbanded in April 1974 due to local government reorganisation. No resolution can be found to indicate that the Council determined the application for extinguishment formally. There is no minute to suggest that an order was made or confirmed. There is no further mention of the footpath after the item in the minutes dated the 22/5/1969 and described at 6.1.50. Therefore, footpath no. 41 is still registered on the Definitive Map which is conclusive proof, without any evidence to the contrary being available, that it exists and was not extinguished. The planning documents from 1979 and 1987 support the fact that the footpath was still in existence at those dates. The statutory declaration by Andrew Jones is not corroborated by any of the available evidence and may lead to the conjecturable conclusion that an informal diversion of the footpath was agreed between the owner of Oedfan and the adjacent owner. However, given that a diversion was formally done by order at approximately the same time and that in all probability, Breconshire County Council agreed to accept responsibility for the footpath diverted in the order, it is difficult to see why this would have occurred and why the County Council would have allowed it to occur.

**6.1.57 Summary**

6.1.58 From documentary sources there is very strong evidence suggesting that a public path diversion order was made and confirmed in the period between 1964 and 1967 relating to footpath 41. The changes made to the Breconshire County Council Definitive Map (1967) and the Breconshire County Council Provisional

Review Map and Statement (1968) were therefore justified. However, between the publication of the Provisional Review Map (1968) and the Powys County Council (Former County of Breconshire) Review Map (1992) a change had occurred, moving the footpath from Oedfan into College Lane, without any evidence whatsoever of an associated order being made. The likely explanation therefore is that a drafting error occurred when information was transferred from one map to the other. The consultation response from Powys County Council alludes to this - "...As the officer responsible for checking the 1992 Definitive Review Map prior to co-ordinating its publication, I am well aware of the 1000+ mistakes introduced by the map consultants in transferring information from 1:25000 to 1:10000 scale in the late 1980s." Also, in 1987 the letter from the National Park Officer to Mr MacPherson stated that "the new path is entirely within the grounds of Oedfan. Footpath 41 therefore does not cross your property".

It can only be concluded that an error occurred on footpath 41, was not identified, and consequently appeared on the published Definitive Map in 1992 and later transferred to the current Definitive Map published in 1994.

An application has therefore been made for a Definitive Map Modification Order to correct the error and amend the route of footpath no. 41 to reflect the position of the then new footpath as contained in the order made by the Ministry of Transport.

### **6.1.59 Response of landowners**

6.1.60 Some of the affected landowners have submitted comments following receipt of a draft copy of this report. Those responses are shown at **Annex 37** and **Annex 38**.

### **6.1.61 Conclusion**

6.1.62 The Committee may decide to modify the Definitive Map under the provisions of Section 53 of the Wildlife and Countryside Act 1981 upon the discovery of evidence by the Authority, which when considered with all other relevant evidence available to them shows-

that there is no public right of way over part of the land shown in the map as a highway of any description and, that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates.

6.1.63 The Committee must not take into account the desirability or otherwise of the footpath, or the way in which it may affect a person or persons. The issue must be judged on whether or not the evidence supports the allegations that-

there is no public right of way over part of the route of the public footpath and that a right of way not shown in the map and statement subsists or is reasonably alleged to subsist over other land.

6.1.64 The Committee must decide, in accordance with the legislation, if, on the balance of probability, the inclusion of part of the public footpath on the Definitive Map is incorrect. If it is satisfied that this is the case then it should resolve to promote an order to modify the Definitive Map by amending the route of the path. If the Committee is not so satisfied then it should refuse the application.

#### **6.1.65 Recommendation:**

*That a modification order be promoted under the provisions of Section 53 of the Wildlife and Countryside Act 1981 to delete part of public footpath no. 41 in the Town of Talgarth and to add a footpath not shown in the Map and Statement that is reasonably alleged to subsist so as to reflect the position of the then new footpath as contained in the order made by the Ministry of Transport in 1964.*

## **7.0 INFORMATION ITEMS**

**7.1 Appeal by Mr G W H Williams against the Brecon Beacons National Park Authority's decision to make a Direction to exclude the right of access from land at Groesffordd, Ammanford for a period of 1 year which was not as requested by the applicant (Annex 39)**

**Richard Ball**

### Introduction

Section 25 of the Countryside and Rights of Way Act allows entitled people to apply to the Relevant Authority to restrict or exclude the right of access conferred by section 2 of the CROW Act if they consider it necessary to do so to avoid danger to the public. The Countryside Access (Exclusion or Restriction of Access) (Wales) Regulations 2003 describe how the applicant should apply to exclude or restrict the right of access and the process that the Relevant Authority should undergo in making a decision.

Mr Williams (the applicant) submitted an application to exclude the right of access to land at Groesffordd for an indefinite period because he grazes cows, calves and one bull on the parcel of land which is 17.34 hectares in extent.

The National Park Authority made a Direction to exclude the right of access for a 12 month period after which it was to be reviewed, this therefore was not in accordance with the application.



The Applicant appealed against the decision by the Authority and the Planning Inspectorate who hear such appeals have made a decision to dismiss the Appeal.

### The Planning Inspectorate's Decision (Annex 39)

The Planning Inspectorate agreed with the points that the Authority made in its statement of case and noted that on the issue of the bull that is kept on the land: "...there may be a variety of options available in order to reduce any risk to an acceptable level and which fall short of a total indefinite exclusion as applied for."

The Inspector suggested a number of options that should be explored such as erecting warning notices, identifying routes away from the holding pens and excluding people with dogs.

The Inspector also makes the point that the issue of access for people with dogs in the vicinity of suckler cows should be carefully considered and states that the national restriction of having dogs on leads (in the vicinity of livestock) may not be an adequate solution.

The Inspector agreed with the Authority opinion that the Direction as given would allow the Authority to assess these options with the Appellant.

The Inspector concludes his report by stating that:

"Bearing all the above points in mind I consider that the exclusion of the public from the access land for an indefinite period is unnecessary and I am satisfied that the Direction given by the BBNPA under section 25(1)(b) imposes the minimum level of restriction necessary."

### Actions relating to the Planning Inspector's decision and previous AROW recommendation

At a previous meeting of the Access and Rights of Way Committee members asked officers to report progress on negotiating alternative access management arrangements at this site. Due to Mr Williams' appeal there has been no progress on this and it is understood that Mr Williams is currently considering whether to appeal against the Planning Inspector's decision.

**Recommendation:** *That members note the content of the report.*

## **7.2 Completed Orders**

**Eifion Jones**

Members are advised that the following Orders have been completed:

## **Powys**

- i) Brecon Beacons National Park Authority Path No. 20 (Community of Talgarth at Wernfawr) Public Path Diversion Order 2003.
- ii) Brecon Beacons National Park Authority Footpaths Nos. 14 and 18 at Penybryn in the Community of Llangors Public Path Diversion order 2005.

## **Carmarthenshire**

- iii) Brecon Beacons National Park Authority Footpath No. 49/29 at Blaenllechach in the Community of Llanddeusant Public Path Diversion Order 2004.

***Recommendation: that Members note the content of the report***

## **8.0 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