

SUBJECT: DEFINITIVE MAP MODIFICATION ORDER SECTION 53 (C) (i) WILDLIFE & COUNTRYSIDE ACT 1981 RESTRICTED BYWAY (53-16) GREAT PANTA DEVAUDEN

MEETING: ICMD County Councillor Bryan Jones

DATE: 27th June 2018

DIVISION/WARDS AFFECTED: Devauden

1. PURPOSE:

To withdraw and re-make the Definitive Map Modification Order (DMMO) made on the 22nd of January 2018 (Individual Cabinet member decision determined on the 30th of November 2016 (Appendix 2) in respect of adding restricted byway 53-16 and 177B Devauden. The route is shown A to B on the plan attached (Appendix 3).

2. RECOMMENDATIONS:

For the reasons outlined in this report, it is recommended that the unconfirmed Definitive Map Modification Order (DMMO) dated the 22nd of January 2018 should be withdrawn to deal with the technical issues which have been raised following the making of the Order and subsequent objections received and all relevant parties to be notified accordingly.

3. KEY ISSUES:

On the 19th of July 2016 a report was considered by the Rights of Way Advisory Panel to consider if the proposed restricted byway 53-16 should be added to the Definitive Map and Statement. Section 53(2) of the Wildlife and Countryside Act 1981 (WCA 1981), requires the Council to consider and determine cases such with a view to making an order under section 53 (3) (c) (i) of the WCA 1981 to change the Definitive Map & Statement.

The Rights of Way Advisory Panel advised the Cabinet Member for Community Development to make a Modification Order (under Section 53 (3) (c) (i) of the Wildlife and Countryside Act 1981 to add to the Definitive Map and Statement restricted byway, from point A to J shown on the map and to seek confirmation of the order.

On the 30th of November 2016 the Cabinet Member for Community Development having considered the documentary and other evidence, and the recommendations of the Rights of Way Advisory Panel (Appendix 2), made a decision supported by an individual cabinet member report to add to the Definitive Map and Statement a restricted byway from Point A to J shown on the map (Appendix 3).

Following the making two objections and one representation had been duly lodged in respect of the above Order. Whilst such objections and representations are outstanding

the County Council cannot confirm the Order but must instead refer the matter to the Planning Inspectorate for determination.

Following the expiration of the objection period Officers of the Authority, in consultation with Mr Carr (Robin Carr Associates), have duly reviewed the lodged objections and submissions in progressing further. The schedule attached to the Order described the Points between C and D on the plan as running along the alignment of part of Public Footpath No. 182. It has been concluded that this section of the Order Route does not reflect the route that was investigated, nor that which was considered as part of the decision-making process. It has further been concluded that the Order Route should run parallel to Public Footpath 182 in a similar manner to its alignment adjacent to Public Footpath No. 183 (also between C and D on the Order Plan). It is essentially an unfortunate error in the drafting of the Order, which will need to be rectified if the Order is to be confirmed.

It is also a second anomaly within the existing Order. Route (A-B) on the Order Route is currently not shown on the Definitive Map but it appears that it is clearly referenced as a Public Footpath within the Definitive Map and Statement. Section A-B would therefore appear to have been omitted from the Definitive Map in error when it was drafted, probably due to it being in the join of two map sheets. The current order would appear to rectify this situation (i.e. by adding A-B to the Definitive Map as a Restricted Byway) however the legal situation is not quite so straight forward. The County Council's statutory duty to make an Order is triggered when there is discovery of evidence which raises a "reasonable allegation" that public rights subsist, where none have been previously recorded. However, where rights are already recorded in the Definitive Map and Statement, the duty to make an Order is only triggered where the alleged rights are shown "on balance of probability" to subsist. Whilst Officers are satisfied that the public rights set out within the Order are "reasonably alleged" to subsist, full consideration has not been given to whether, or not, those rights do, on the balance of probabilities subsist. Consideration of this latter test was not considered necessary given that the route was understood, albeit mistakenly, not to be on the Definitive Map and Statement.

The County Council has two available options in dealing with the above issues, firstly the order could be referred to the Planning Inspectorate with a request that it be confirmed subject to modifications that would address the anomalies. The second option is to seek to abandon the current order and to make a new Order which resolve the anomalies. Therefore after further consideration the Officers are seeking approval to adopt with the second option. The second option is the most appropriate (which will allow once the order is re-made and allowing for a period of objection) that should the County Council receive any objections that any subsequent Inquiry or other proceedings to concentrate entirely on the substance of the Order (i.e. evidential matters) rather than also having to deal with the technical issues.

The statutory process still requires the order to be sent to the Welsh Minister requesting that it is not confirmed. The order will be sent to the Welsh Ministers requesting that it is not confirmed together with the re-made order and any subsequent duly lodged objections and submission documents.

4. OPTIONS APPRAISAL

This report offers Cabinet an update on the need to withdraw and remaking the Definitive Map Modification Order (DMMO) made on the 22nd of January 2018 (Individual Cabinet member decision determined on the 30th of November 2016 (Appendix 2) in respect of adding restricted byway 53-16 and 177B Devauden. As such an option appraisal is not required.

5. EVALUATION CRITERIA

This report provides an update for Cabinet on the reasons for withdrawing and re-making the Definitive Map Modification Order (DMMO) and on this basis an evaluation criteria is not required.

6. REASONS:

The reasons for the recommendations under point 2 are outlined in this report. The proposed action of withdrawing the previously approved order and re-making of a new order will ensure that should the County Council receive objections, then that any subsequent Inquiry or other proceedings will concentrate entirely on the substance of the Order rather than also having to deal with the technical issues.

7. RESOURCE IMPLICATIONS:

The Council are legally obliged to make a Definitive Map Modification Order if public highway rights are reasonably alleged to subsist. Such Orders must be advertised in the local press and if objections are received, and not subsequently withdrawn, the Order must be referred to the Welsh Assembly Government/Planning Inspectorate for determination, and may lead to a local public inquiry.

The re-making of the order will be undertaken in-house although with assistance from Robin Carr Associates. Publication of the draft order will follow the standard process and be published in the local paper and made available for inspection at the council offices. The cost of making the order will be met from the highway traffic budget.

8. WELLBEING OF FUTURE GENERATIONS IMPLICATIONS (INCORPORATING EQUALITIES, SUSTAINABILITY, SAFEGUARDING AND CORPORATE PARENTING):

The main equality impacts identified in the assessment (Appendix 1) are summarised below for members' consideration:

- Improves access for all and supports health & well-being as well as tourism.
- The opening up of the route will have a negative impact upon the existing wildlife and habitat.

The actual impacts from this report's recommendations will be reviewed initially after 1 year of implementation and then in accordance with MCC PROW procedures for routine inspections.

9. CONSULTEES:

SLT and Cabinet

10. BACKGROUND PAPERS:

Appendix 1 – Future Generations Evaluation

Appendix 2 – Cabinet Report 30th November 2016

Appendix 3 – Route Plan

11. AUTHOR:

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12. CONTACT DETAILS:

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Evaluation Criteria – Cabinet, Individual Cabinet Member Decisions & Council

Title of Report:	
Date decision was made:	
Report Author:	

What will happen as a result of this decision being approved by Cabinet or Council?

What is the desired outcome of the decision?
What effect will the decision have on the public/officers?

12 month appraisal

Was the desired outcome achieved? What has changed as a result of the decision? Have things improved overall as a result of the decision being taken?

What benchmarks and/or criteria will you use to determine whether the decision has been successfully implemented?

Think about what you will use to assess whether the decision has had a positive or negative effect:
Has there been an increase/decrease in the number of users
Has the level of service to the customer changed and how will you know
If decision is to restructure departments, has there been any effect on the team (e.g increase in sick leave)

12 month appraisal

Paint a picture of what has happened since the decision was implemented. Give an overview of how you fared against the criteria. What worked well, what didn't work well. The reasons why you might not have achieved the desired level of outcome. Detail the positive outcomes as a direct result of the decision. If something didn't work, why didn't it work and how has that effected implementation.

What is the estimate cost of implementing this decision or, if the decision is designed to save money, what is the proposed saving that the decision will achieve?

Give an overview of the planned costs associated with the project, which should already be included in the report, so that once the evaluation is completed there is a quick overview of whether it was delivered on budget or if the desired level of savings was achieved.

12 month appraisal

Give an overview of whether the decision was implemented within the budget set out in the report or whether the desired amount of savings was realised. If not, give a brief overview of the reasons why and what the actual costs/savings were.

Any other comments

