

## MONMOUTHSHIRE COUNTY COUNCIL

### Minutes of the meeting of Licensing and Regulatory Committee – Rights of Way Advisory Panel held in The Council Chamber, County Hall, The Rhadyr, Usk, NP15 1GA on Tuesday, 19th July, 2016 at 10.00 am

**PRESENT:** County Councillor L. Guppy (Chairman)  
County Councillor B. Strong (Vice Chairman)

County Councillors: R. Chapman, D. Evans, J. Higginson and  
A. Webb

County Councillor P.A.D. Hobson, Cabinet Member for Community  
Development attended the meeting by invitation of the Chair.

#### **OFFICERS IN ATTENDANCE:**

Paul Keeble	Traffic and Network Manager
Ruth Rourke	Principal Officer - Countryside Access
Claire Williams	Legal Officer
Richard Williams	Democratic Services Officer

#### **ALSO IN ATTENDANCE:**

Robin Carr – Robin Carr Associates

#### **APOLOGIES:**

Councillors R. Edwards, M. Hickman, J. Prosser and F. Taylor

#### **1. Declarations of interest**

There were no declarations of interest made by Members.

#### **2. DEFINITIVE MAP MODIFICATION ORDER (DMMO). WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION 53 (3)(C)(i): FOR A RESTRICTED BY-WAY 53-16 TO BE ADDED TO THE DEFINITIVE MAP & STATEMENT OF PUBLIC RIGHTS OF WAY**

We received a report in which the Committee was asked to consider if proposed restricted by-way 53-16 should be added to the Definitive Map and Statement.

The Traffic and Network Manager informed the Committee that the Authority was acting in a quasi-judicial capacity and must reach a decision based on the evidence presented. The Committee was not required to resolve conflicts in the evidence and there might well be evidence on both sides of the issue. The Committee must weigh up the evidence using the test of the “balance of probabilities”, and, if on this balance it was reasonable to conclude that the evidence showed that change should be made, the Authority must do so. Although officers have considered the evidence, and made a recommendation based on their appraisal, the Committee must consider the evidence and reach its own conclusions. If a modification order was to be made anyone has a

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right to object. The matter would then be determined by the Planning Inspectorate for Wales.

Members were informed that a number of routes in the Monmouthshire County Council area had been recorded on Highway Authority records as Unclassified County Roads, but were subsequently struck off these records for reasons which had not yet been determined. As a result of this there was some ambiguity over their status. Additionally, these routes would now be subject to the Natural Environment and Rural Communities Act 2006 (NERC Act). This removed vehicular status unless one of the conditions in the act applied.

The status of one such route (Route 53-16) in the Devauden area has been the subject of an ongoing dispute for some years and has been added back to the List of Streets. The List of Streets was not regulated at the current time by any process which allowed for challenge and this led to an ombudsman complaint by the landowner. The ombudsman was satisfied that the Council would reconsider the issue via the Definitive MAP Modification process.

The Highway Authority therefore appointed Robin Carr Associates to undertake the necessary investigations and consultation with a view to producing an advisory report to assist them in determining whether or not the route should be added to the Definitive Map.

The evidence included historical documents, no witness statements and no evidence forms. Two public consultations had been carried out including a public participation meeting and comments had been received.

In addition to the advisory report, Robin Carr provided the Committee with a thorough and detailed presentation into the Status of Monmouthshire Lanes Community of Devauden: Route 53-16.

In response to a question raised by the Cabinet Member, it was noted that the route had most likely fallen out of use over time due to more modern methods of transport / routes being used by the public. However, if vehicular rights of way existed historically, then the rights would still exist today.

Having received the report, the advisory report by Robin Carr Associates and the detailed presentation, Members considered that the evidence presented to the Committee had weighed in favour of making a Modification Order.

The Legal Adviser informed the Committee that the evidence had been clearly presented to Members and that they needed to be satisfied with the evidence received before making a decision.

Having considered all views expressed, it was proposed by County Councillor R.J. Higginson and seconded by County Councillor D.J. Evans that the Committee should accept the advice provided by Robin Carr Associates and that the Licensing and Regulatory Committee – Rights of Way Advisory Panel should advise the Cabinet

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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 a restricted byway, from point A to J shown on the map in Appendix 1 of the report, and to seek confirmation of the order.

Upon being put to the vote, the following votes were recorded:

In favour of the proposal	-	6
Against the proposal	-	0
Abstentions	-	0

The proposition was carried.

We resolved that the Rights of Way Advisory Panel advise 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 a restricted byway, from point A to J shown on the map in Appendix 1 of the report, and to seek confirmation of the order.

**The meeting ended at 11.35 am**