

MONMOUTHSHIRE COUNTY COUNCIL

**Minutes of the meeting of Licensing and Regulatory Committee held
at The Council Chamber, County Hall, The Rhadyr, Usk, NP15 1GA with remote
attendance on Monday, 30th January, 2023 at 10.00 am**

PRESENT: County Councillor Tony Easson, (Chairman)
County Councillor John Crook, (Vice Chairman)

County Councillors: Christopher Edwards, Simon Howarth,
Alistair Neill, Sue Riley, Dale Rooke, Jackie Strong, and
Armand Watts

ALSO IN ATTENDANCE:

County Councillors Jill Bond, Sara Burch And Peter Strong
Stephen Mayo – Walker
Peter Rawlings – Walker
Hillary Baynton – Walker
Nicholas Park – Landowner
Chris Carter – Range Warden
Richard Williams – Range Owner
Tony Morgan – Secretary Cardiff Small Arms Club Range User

OFFICERS IN ATTENDANCE:

Ruth Rourke	Countryside Access Manager
Mandy Mussell	Definitive Map Officer
Shaun Pritchard	Public Rights Of Way Enforcement Officer
Ben Davies	Solicitor
Richard Ray	Paralegal
Wendy Barnard	Democratic Services Officer
Gavin Pugh	Assistant Rights of Way Officer

APOLOGIES:

County Councillor Ann Webb

1. Election of Vice Chair

County Councillor John Crook was elected Vice Chair.

2. Declarations of Interest.

County Councillor Tony Easson declared a personal, non-prejudicial interest pursuant to the Members' Code of Conduct in respect of all agenda items as he was aware of the anti-social behaviour issues around the application by Monmouthshire County Council.

3. Wildlife and Countryside Act 1981 - Section 53 Definitive Map Modification Order Route, A to G, Footpaths 83 and 84 Caldicot - The Seawall.

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We received a report and presentation from the Countryside Access Manager and Definitive Map Officer and were informed that, under Section 53 of the Wildlife and Countryside Act 1981, the Authority has a duty to keep the Definitive Map and Statement under constant review. To meet this duty the Council is required to consider and determine cases with a view to making an order to change the Definitive Map and Statement (DM&S). The bringing into question of the route on the crest of the sea wall along with the public's response necessitated research to determine whether, on the balance of probabilities, public rights do already exist through the site. Common Law and relevant legislation were explained. The presentation lasted 1.5 hours and detailed, location, land registry, objections, historical map evidence, definitive map and statements, aerial photos, site photos, and user evidence.

The purpose of the report is to consider all the historical evidence and decide whether to add the alleged footpaths to the DM&S for Monmouthshire. The Routes to be added in the community of Caldicot, are detailed on the order map.

Following the presentation, Members were invited to discuss, and comment and members of the public had the opportunity to speak, as follows:

- The Committee must not consider need, nuisance or suitability; only decide if the public have walked the route for a significant period.
- A Member asked about access routes to the firing range.
- A member of the public who lived in Caldicot had walked the route and said the flag posts made sense.
- A member of the public said he had used the sea wall path since he was 8 and he was now 70 and it was a lovely walk
- A member of the public noted the Wales Coastal Path route which runs inland of the two ranges was ugly and a more dangerous route for walkers and that the sea wall was a good path.
- A member of the public confirmed that there has been a sea wall concrete path underneath the buttress for at least 60/70 years and it is a popular walk used daily.
- The County Councillor for the area (who was representing the Firing Range), disputed several aspects of the evidence such as the path on the Definitive Map is accepted as eroded, is on the bullet catcher not the sea wall and the positioning of the sentry boxes and kissing gates do not confirm the original path as they are located to spot boats that are in range to ensure firing stops. The Ministry of Defence (MoD) is unaware that there will be higher footfall on its range (G to N). There is no gain in making the route official as further sections will require review. When Red flags fly, walkers wait to pass over the bullet catcher whilst a ceasefire is requested, and guns checked for no ammunition. There are no bylaws covering public use. Health and Safety officers consider the site well managed.
- A Member of the public stated that 16 local authorities and two national parks realigned the Coastal Path to follow the Welsh Coastline closely and safely. It was stated that the MoD has not been consulted and evidence includes photos in breach of National Security. The Strava heat map is incorrect and a different version is available. The footfall counter referred to the wrong range. Numerous requests for adequate signage to advise of the footpath closure have been made. Historically the footpath was situated in the river not on the top of the bank.
- Referring to a photo with a man walking his dog with an empty Sentry box, a member of the public stated this was a day when the range was not open.
- Accurate footfall evidence was requested before a decision is made.

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- A Member of the public witnessed firing on the range on a Sunday with no red flags up. It was responded that clay pigeon shooting was taking place for which flags are not required.

(County Councillor D. Rooke left at 11.53am)

- The Chair asked why a 1.3-mile section only was under consideration. The section of the route, A to G, is the only section that has been brought into question by the obstructions installed by Severnside Rifle Range. It was explained that there is an existing footpath on and off the sea wall at various places. There's already a path across the sea wall towards the MoD site that's not in dispute. Evidence shows that after the sea wall was moved, there are two paths. Walkers continue to walk along the crest of sea wall and were unaware of the footpath that previously followed the alignment of the historical sea defences. There are more points along the path north and south where similar modification orders will be required. It was more prudent to review this section as it was disputed by the public and there was no access.
- The Countryside Access Enforcement Officer confirmed there is currently a temporary traffic regulation order for the existing footpath from the bottom of Fisherman's Lane to beyond the MoD range and the end of the Footbridge over the motorway. Signs have been erected and have been regularly pulled down. Metal signs have also been wrenched off and many hard-plastic signs have had to be replaced.
- A Member questioned access to justice as there was lengthy evidence from Monmouthshire County Council (MCC) whereas objectors had five minutes to respond and cross examine. MCC officers had a legal team and objectors would incur a cost to represent themselves. The Chair explained that speaking time limits are the same as for Planning Committee (4 minutes with latitude from the Chair).
- The Officer explained that the report was put out for consultation with ample time to submit comments; any received were incorporated in the presentation. This point was disputed.
- Regarding signage, it was suggested that substantial signs had not been erected.
- A Member stated that the evidence clearly shows people have used the path for many years and this is the point for decision.
- The representative of Rogiet Community Council stated that it is very supportive of the recommendation by MCC to make an amendment to the definitive map noting the vast body of evidence for a historical footpath along the crest of the sea wall and there is evidence that it is a widely used public right-of-way.
- The County Councillor representing the firing range asked if the sea wall could be a permissive path. In response, it was explained that the path's status has been brought into question by the path being blocked thus legally requiring the Authority to consider the route evidence and tests under the Wildlife and Countryside Act.

The Countryside Access Manager summed up by stating "The Authority acts in a quasi-judicial capacity. There is no requirement to resolve conflicts in the evidence. The Committee must weigh up the evidence on a balance of probabilities and if, on balance, it's reasonable to conclude that the evidence shows that change should be made then it must do so. There is a further opportunity for people to object to the process. The final matter would be resolved by a public hearing or an inquiry or by written representations by Planning Environment Decisions Wales (PEDW)".

The Solicitor then reminded the Committee Members that they were asked to consider and decide based on the evidence provided whether rights of way that are not shown on the Definitive Map and Statement subsist or are reasonably alleged to subsist on the crest of the

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sea wall and that the status of the ways are footpaths. If the Committee agrees that there is evidence to suggest that a pathway subsists or reasonably alleged to subsist then the Head of Law would be instructed to make a Definitive Map Modification Order that will proceed to a consultation process of 42 days when objections can be raised. If the objections can't be resolved, then the matter is forwarded to Planning Environment Decisions Wales (PEDW).

It was confirmed that there is no provision for private deliberation at today's meeting.

RECOMMENDATIONS:

1. Members are invited to consider evidence provided (Appendix 3) and agree that rights of way that are not shown on the Definitive Map and Statement "*subsists, or is reasonably alleged to subsist*", on the crest of the seawall and that the status of the ways are footpaths.
2. If this is agreed, then to authorise the Head of Local Democracy and Legal Services to make a Definitive Map Modification Order, under section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 for the Routes, A to G, to classify them as footpaths, numbers 83 and 84 Caldicot (354), and to confirm the order if no objections are received.

DECISION:

Following a vote, the decision was in favour of the recommendations. Monmouthshire County Council can now make the Definitive Map Modification Order and once the order is made there will be a period of 42 days to receive objections.

The meeting ended at 12.21 pm