

**MONMOUTHSHIRE COUNTY COUNCIL  
REPORT**

<b>SUBJECT:</b>	<b>DEFINITIVE MAP MODIFICATION ORDER 2016, Section 53 (C)(i) Wildlife and Countryside Act 1981, Restricted Byway (53-16), Great Panta, Devauden</b>
<b>DIRECTORATE:</b>	<b>ENTERPRISE</b>
<b>MEETING:</b>	<b>Individual Cabinet Member Decision – Councillor P. Hobson</b>
<b>DATE:</b>	<b>30<sup>th</sup> November 2016</b>
<b>DIVISIONS/WARDS AFFECTED:</b>	<b>Devauden</b>

**1. PURPOSE:**

- 1.1. To consider, under the above legislation if the route shown on the attached map in Appendix 1 should be added to the Definitive Map and Statement.
- 1.2. The Authority is acting in a quasi-judicial capacity and must reach a decision based on the evidence presented. We are not required to resolve conflicts in the evidence and there may well be evidence on both sides of the issue. We must weigh up the evidence using the test of the “balance of probabilities”, and, if on this balance it is reasonable to conclude that the evidence shows that change should be made, we must do so. Although officers have considered the evidence, and made a recommendation based on their appraisal, the Cabinet Member must consider the evidence and reach their own conclusions. If a modification order is to be made anyone has a right to object. The matter would then be determined by the Planning Inspectorate for Wales.

**2. RECOMMENDATION:**

- 2.1. That having considered the documentary and other evidence, and the recommendations of the Rights of Way Advisory Panel (Appendix 2), the Cabinet Member for Community Development make a Definitive Map Modification Order (DMMO) under 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 attached. Also to confirm or seek confirmation of the Order.

**3. KEY ISSUES:**

- 3.1.1 A number of routes in the Monmouthshire County Council area have been recorded on Highway Authority records as Unclassified County Roads, but were subsequently struck off these records for reasons which have not yet been determined. As a result of this there is some ambiguity over their status. Additionally these routes would now be subject to the Natural Environment and Rural Communities Act 2006 (NERC Act). This removes vehicular status unless one of the conditions in the act apply.
- 3.1.2 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 is not regulated at the current time by any process which allows for challenge and this led to an ombudsman complain by the landowner. The ombudsman was satisfied that the Council would reconsider the issue via the Definitive MAP Modification process.
- 3.1.3 The Highway Authority therefore appointed Robin Car 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. A copy of this report and bundle

of supporting evidence form the background papers to this report and are shown in Appendix 2.

- 3.1.4 The evidence includes historical documents, no witness statements and no evidence forms. Two public consultations have been carried out including a public participation meeting and the comments received are shown within the bundle as part of the supporting evidence.
- 3.1.5 The Rights of Way Advisory Panel which met on the 19<sup>th</sup> July 2016 (appendix 1) recommended that the order is made. If the objections made are sustained it is likely that the claim will go to the Planning Inspector for determination.

#### **4 REASONS:**

- 4.1.1 There are a number of historical documents that when taken together argues that, on the balance of probabilities, C53-16 should be recorded as a restricted byway.

#### **5 RESOURCE IMPLICATIONS:**

- 5.1.1 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.
- 5.1.2 The Resource implications of this procedure is not inconsequential however this cannot lawfully be taken into account when determining whether or not to make a Definitive Map Modification Order.

#### **6 WELLBEING OF FUTURE GENERATIONS IMPLICATIONS (INCORPORATING EQUALITIES, SUSTAINABILITY, SAFEGUARDING AND CORPORATE PARENTING):**

- 6.1 The Order if made will neither positively nor negatively impact on the well-being goals or the sustainable development principals. Licencing & Regulatory Agenda item 1, 19<sup>th</sup> July 2016 (Appendix 4).

#### **7 CONSULTEES:**

Corporate Management Team, Rights of Way Advisory Panel Members (Licensing and Regulatory Committee), Select Committee Chairmen, Cabinet Members, Local Member, Head of Finance and Head of Legal Services

#### **8 RESULTS OF CONSULTATION:**

No objections received.

#### **9 BACKGROUND PAPERS**

Modification Order Plan (Appendix 1)

Decision from Rights of Way Advisory Panel (Licencing & Regulatory)held 19<sup>th</sup> July 2016 (Appendix 2)

Robin Carr Associates Report and appendixes (Appendix 3)

Wellbeing and Future Generations Report (Appendix 4)

[Additional Appendices \(Link to Special Licensing Committee 9th July 2016\)](#)

#### **10 AUTHOR**

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