

**MONMOUTHSHIRE COUNTY COUNCIL
REPORT**

**SUBJECT: 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**

DIRECTORATE: Operations (Chief Executives)

**MEETING: LICENCING & REGULATORY COMMITTEE - RIGHTS OF WAY
 ADVISORY PANEL**

DATE: 19th July 2016

DIVISIONS/WARDS AFFECTED: Devauden

1. PURPOSE

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.

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, members must themselves 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

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 attached map in Appendix 1, and to seek confirmation of the order. The details of the case are included in the Reports Appendix 2.

3. KEY ISSUES

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.

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.

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

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.

4. REASONS FOR RECOMMENDATION

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

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 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. CONSULTEES

Corporate Management team, all select Committee Chairman
Head of legal service, Head of Finance, Head of Operations, Licensing and Regulatory Committee Members

7. BACKGROUND PAPERS

Appendix 1 –Location Plan
Appendix 2 - Report and document bundle produced by Robin Carr Associates.

8. AUTHOR

Paul Keeble
Traffic & Network Manager

CONTACT DETAILS

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monmouthshire
sir fynwy

Future Generations Evaluation (includes Equalities and Sustainability Impact Assessments)

| | |
|--|---|
| <p>Name of the Officer</p> <p>Paul Keeble</p> <p>Phone no: 01633 644733 E-mail: paulkeeble@monmouthshire.gov.uk</p> | <p>Please give a brief description of the aims of the proposal</p> <p>To determine the status of the c53-16 which is recorded as an Unclassified County Road but was subsequently struck off the highway records for reasons which have not yet been determined. As a result of this action it is necessary to investigate and resolve to remove the ambiguity over the status of the route.</p> |
| <p>Name of Service: Highways, Operations Division</p> | <p>Date Future Generations Evaluation form completed</p> <p>29th June 2016</p> |

NB. Key strategies and documents that may help you identify your contribution to the wellbeing goals and sustainable development principles include: Single Integrated Plan, Continuance Agreement, Improvement Plan, Local Development Plan, People Strategy, Asset Management Plan, Green Infrastructure SPG, Welsh Language Standards, etc



1. **Does your proposal deliver any of the well-being goals below?** Please explain the impact (positive and negative) you expect, together with suggestions of how to mitigate negative impacts or better contribute to the goal.




| Well Being Goal | Does the proposal contribute to this goal? Describe the positive and negative impacts. | What actions have been/will be taken to mitigate any negative impacts or better contribute to positive impacts? |
|--|--|---|
| <p>A prosperous Wales Efficient use of resources, skilled, educated people, generates wealth,</p> | <p>Neutral</p> | <p>N/A</p> |

| Well Being Goal | Does the proposal contribute to this goal? Describe the positive and negative impacts. | What actions have been/will be taken to mitigate any negative impacts or better contribute to positive impacts? |
|---|--|---|
| provides jobs | | |
| A resilient Wales Maintain and enhance biodiversity and ecosystems that support resilience and can adapt to change (e.g. climate change) | Neutral | N/A |
| A healthier Wales People's physical and mental wellbeing is maximized and health impacts are understood | Confirming the status of this highway will ensure that people are able enjoy walking this route. | N/A |
| A Wales of cohesive communities Communities are attractive, viable, safe and well connected | Neutral | N/A |
| A globally responsible Wales Taking account of impact on global well-being when considering local social, economic and environmental wellbeing | Neutral | N/A |
| A Wales of vibrant culture and thriving Welsh language Culture, heritage and Welsh language are promoted and protected. People are encouraged to do sport, art and recreation | Confirming the status of this highway will ensure that people are able enjoy walking this route. | N/A |
| A more equal Wales People can fulfil their potential no | Neutral | N/A |

| Well Being Goal | Does the proposal contribute to this goal? Describe the positive and negative impacts. | What actions have been/will be taken to mitigate any negative impacts or better contribute to positive impacts? |
|---|--|---|
| matter what their background or circumstances | | |
| | | |

2. How has your proposal embedded and prioritised the sustainable governance principles in its development?

| Sustainable Development Principle | Does your proposal demonstrate you have met this principle? If yes, describe how. If not explain why. | Are there any additional actions to be taken to mitigate any negative impacts or better contribute to positive impacts? |
|--|---|---|
|  <p data-bbox="210 906 340 935">Long Term</p> <p data-bbox="394 692 551 922">Balancing short term need with long term and planning for the future</p> | N/A | |
|  <p data-bbox="192 1161 358 1190">Collaboration</p> <p data-bbox="398 948 546 1145">Working together with other partners to deliver objectives</p> | N/A | |

| Sustainable Development Principle | Does your proposal demonstrate you have met this principle? If yes, describe how. If not explain why. | Are there any additional actions to be taken to mitigate any negative impacts or better contribute to positive impacts? |
|--|---|---|
|  <p>Involvement</p> <p>Involving those with an interest and seeking their views</p> | <p>The landowners and other interested parties have been kept fully informed of the review of the status and classification of this route including the sharing of reports from specialist lawyers and more recently an invitation to comment on the draft investigation report including attendance at a public meeting.</p> | <p>N/A</p> |
|  <p>Prevention</p> <p>Putting resources into preventing problems occurring or getting worse</p> | <p>N/A</p> | |
|  <p>Integration</p> <p>Considering impact on all wellbeing goals together and on other bodies</p> | <p>N/A</p> | |

3. Are your proposals going to affect any people or groups of people with protected characteristics? Please explain the impact, the evidence you have used and any action you are taking below. For more detailed information on the protected characteristics, the Equality Act 2010 and the Welsh Language Standards that apply to Monmouthshire Council please follow this link:<http://hub/corporatedocs/Equalities/Forms/AllItems.aspx> or contact Alan Burkitt on 01633 644010 or alanburkitt@monmouthshire.gov.uk

| Protected Characteristics | Describe any positive impacts your proposal has on the protected characteristic | Describe any negative impacts your proposal has on the protected characteristic | What has been/will be done to mitigate any negative impacts or better contribute to positive impacts? |
|----------------------------------|--|--|--|
| Age | N/A | | |
| Disability | N/A | | |
| Gender reassignment | N/A | | |
| Marriage or civil partnership | N/A | | |
| Pregnancy or maternity | N/A | | |
| Race | N/A | | |
| Religion or Belief | N/A | | |
| Sex | N/A | | |
| Sexual Orientation | N/A | | |

| Protected Characteristics | Describe any positive impacts your proposal has on the protected characteristic | Describe any negative impacts your proposal has on the protected characteristic | What has been/will be done to mitigate any negative impacts or better contribute to positive impacts? |
|----------------------------------|--|--|--|
| Welsh Language | N/A | | |

- 4. Council has agreed the need to consider the impact its decisions has on important responsibilities of Corporate Parenting and safeguarding. Are your proposals going to affect either of these responsibilities?** For more information please see the guidance <http://hub/corporatedocs/Democratic%20Services/Safeguarding%20Guidance.docx> and for more on Monmouthshire's Corporate Parenting Strategy see <http://hub/corporatedocs/SitePages/Corporate%20Parenting%20Strategy.aspx>

| | Describe any positive impacts your proposal has on safeguarding and corporate parenting | Describe any negative impacts your proposal has on safeguarding and corporate parenting | What will you do/ have you done to mitigate any negative impacts or better contribute to positive impacts? |
|---------------------|--|---|---|
| Safeguarding | N/A | <i>Safeguarding is about ensuring that everything is in place to promote the well-being of children and vulnerable adults, preventing them from being harmed and protecting those who are at risk of abuse and neglect.</i> | |
| Corporate Parenting | N/A | | |

5. What evidence and data has informed the development of your proposal?

The review of C53-16 has involved a detail study and review of all available information and the employment of a specialist Rights of Way Consultants to compile the detailed investigation and consultation report as attached.

6. SUMMARY: As a result of completing this form, what are the main positive and negative impacts of your proposal, how have they informed/changed the development of the proposal so far and what will you be doing in future?

This report seeks to clarify the status of the route as a restricted byway under section 53 (3)(c) (i) of the Wildlife and Countryside Act 1981 and to the Definitive Map and Statement.

7. ACTIONS: As a result of completing this form are there any further actions you will be undertaking? Please detail them below, if applicable.

| What are you going to do | When are you going to do it? | Who is responsible | Progress |
|--|-------------------------------------|---------------------------|-----------------|
| Add c53-16 to the Definitive Map and Statement | After Cabinet Member approval | Paul Keeble | TBA |

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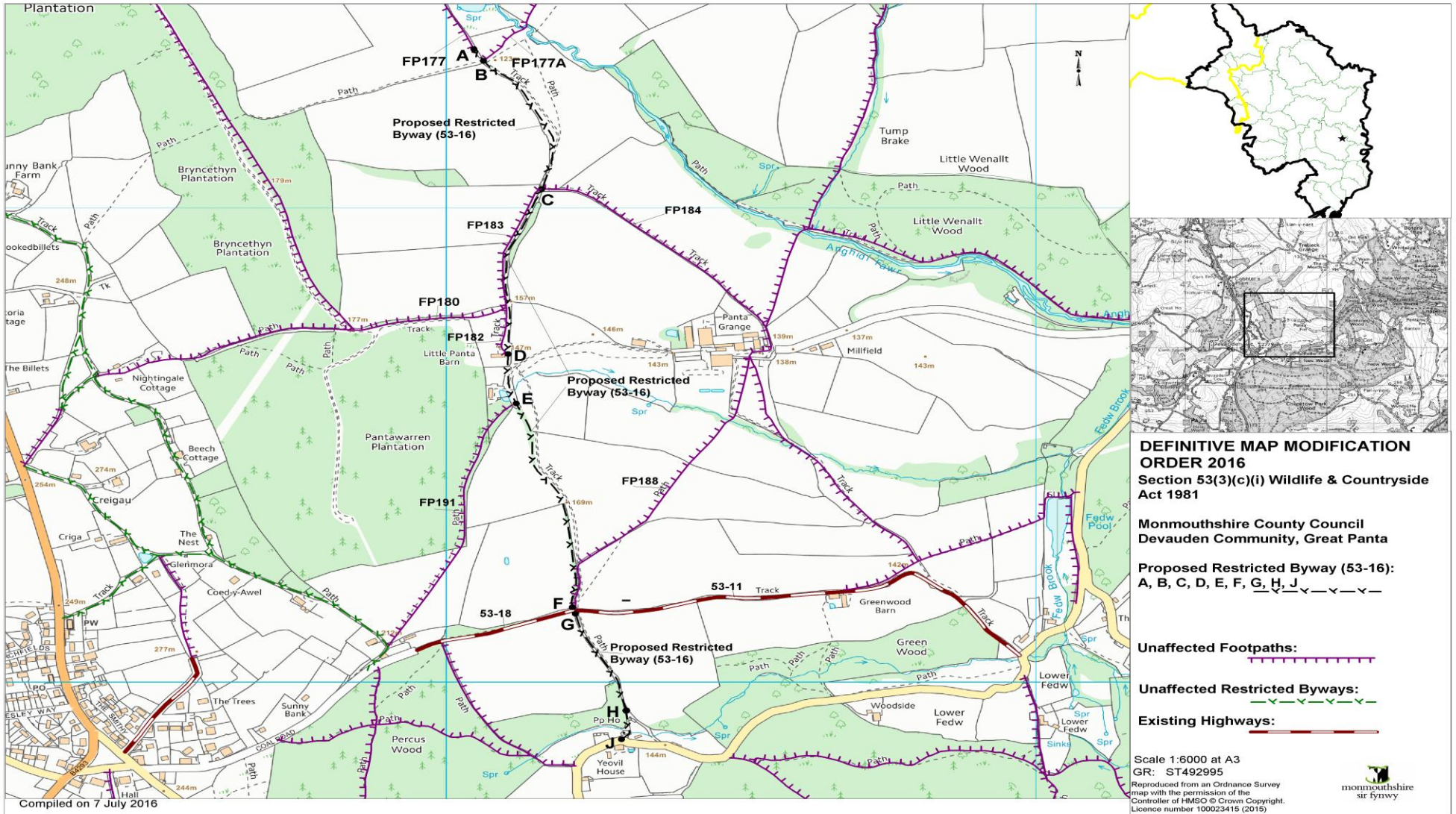
8. MONITORING: The impacts of this proposal will need to be monitored and reviewed. Please specify the date at which you will evaluate the impact, and where you will report the results of the review.

| | |
|--|--|
| The impacts of this proposal will be evaluated on: | |
|--|--|

9. VERSION CONTROL: The Future Generations Evaluation should be used at the earliest stages of decision making, and then honed and refined throughout the decision making process. It is important to keep a record of this process so that we can demonstrate how we have considered and built in sustainable development wherever possible.

| Version No. | Decision making stage | Date considered | Brief description of any amendments made following consideration |
|--------------------|--|------------------------|--|
| | <i>e.g. budget mandate, DMT, SLT, Scrutiny, Cabinetetc</i> | | <i>This will demonstrate how we have considered and built in sustainable development throughout the evolution of a proposal.</i> |
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| | | | |

Appendix 1



Appendix 2