

Penderfyniad ar y Gorchymyn

Ymweliad â safle a wnaed ar 19/04/2017

**gan Vicki Hirst BA(Hons) PG Dip TP
MA MRTPI**

Order Decision

Site visit made on 19/04/2017

**by Vicki Hirst BA(Hons) PG Dip TP MA
MRTPI**

Dyddiad: 27/06/2017

Date: 27/06/2017

Order Ref: ROW/3161466

The Welsh Ministers have transferred the authority to decide this Order to me as the appointed Inspector.

- This Order is made under Section 118 of the Highways Act 1980 (the 1980 Act) and is known as the (Footpath Pentyrch No. 63) Stopping Up Order 2014.
- The County Council of the City and County of Cardiff submitted the Order for confirmation to the Welsh Ministers.
- The Order is dated 9 April 2014 and there was one objection outstanding when the County Council of the City and County of Cardiff submitted the Order for confirmation.
- The Order proposes to extinguish a public right of way as shown on the Order plan and described in the Order Schedule.

Summary of Decision: The Order is confirmed.

Procedural Matters

1. The Order was submitted to the Welsh Ministers for confirmation as there was one outstanding objection.
2. I undertook an accompanied visit on 19 April 2017 with representatives from the Council, from Cemex who operate the quarry across which the path passes, and one interested party. I was unable to walk the route to be extinguished due to the steep terrain as a result of previous quarry workings. Due to the quarry workings and the subsequent regeneration of vegetation it was difficult to establish the exact route of the path. Nonetheless I was able to view much of the route from the surroundings and I am satisfied from my observations on site that I am able to reach a decision.
3. None of the parties requested a hearing or inquiry to present evidence in respect of the Order. I have therefore considered the case on the basis of the written representations forwarded to me.

The Main Issues

4. In determining whether it is expedient to confirm the Order to extinguish the footpath, I am required by Section 118(2) of the 1980 Act to have regard to:
 - the extent (if any) to which it appears that the path would, apart from the order, be likely to be used by the public; and

- the effect which the extinguishment would have as respects land served by the path, with account being taken of the provisions as to compensation.
5. Section 118(6) of the 1980 Act requires me to have regard to any material provision of a rights of way improvement plan prepared by the local highway authority.
 6. In considering the extent to which the path is likely to be used I must disregard temporary obstructions to the current path.

Reasons

Background

7. The subject path is one of several paths that traverse the woodland surrounding the nearby Taffs Well Quarry. Due to the quarrying activities a number of the paths have become inaccessible.
8. The Order before me is one of several Orders that have been made by the Council for extinguishment and diversion. From the evidence before me the other Orders have been confirmed by the Council and included alternative routes and a loop route within the woodland. The Council is satisfied that these routes would provide links between the south and north of the quarry workings which was not originally the case.

The extent to which the path would be likely to be used by the public

9. In making the Order the Council is satisfied that it is expedient to extinguish the footpath as it is not needed for public use. It offers no further explanation other than the footpath is un-useable as it has been physically removed.
10. Given the quarrying activities that have taken place it is evident that a large part of the footpath is no longer able to be used as the route is effectively cut off by the quarry face. Furthermore, it was apparent from my site visit that the southern part of the path to be extinguished which is not within former workings, was nonetheless on very steep terrain and was heavily overgrown.
11. Section 118(6) of the 1980 Act requires any temporary circumstances preventing or diminishing the use of a path by the public to be disregarded. However, in this case, it seems to me that much of the obstruction to the route as a result of former quarrying is of a permanent nature. Whilst part of the route is not within the former workings it nonetheless no longer serves part of a through route due to the quarry face.
12. My consideration is concerned with whether the path would be likely to be used by the public, apart from the Order. I noted on my site visit that in the area surrounding the quarry and in the vicinity of footpath 63 there was evidence of a number of alternative routes and ad hoc use of the surrounding woodland. A number of routes were well trodden. In my assessment it is likely that the public would use the southern section outside the quarry workings if it were available. However, this use is likely to be minimal given that the route no longer makes any connections to the surrounding area and terminates at the quarry edge.
13. I note that there has not been any weight of objection to the Order and that the only objector has not wished to continue a dialogue with the Council in respect of his concerns. I note that his concern seemed to relate to the closure of the wood to the public which is not the intent. Nevertheless, from my own observations of the recreational use of the woodland in the vicinity of the path, I conclude that the

southern section of the Order route is likely, apart from the Order, to be used to a minor extent.

The effect that the extinguishment of the footpath would have as respects land served by it

14. It appears from the evidence before me that the surrounding woodland is in the ownership of Cemex who applied to the Council for the Order. As the landowner of the land is clearly supportive of the Order I am satisfied that there would be no issues arising on the land served by the footpath.

Whether it is expedient to confirm the Order

15. In my assessment the re-instatement of the path would require considerable restoration work. I noted on my site visit that the old workings are of some age and have naturally restored themselves with established semi-mature vegetation now in place. The re-instatement of the path would require extensive engineering works and would result in the removal of much of the naturally regenerated vegetation. I note that the path lies within or close by the Cardiff Beech Special Area of Conservation (SAC) and the Garth Wood Site of Special Scientific Interest (SSSI) and in this context I consider there would be an unfortunate loss of important protected natural habitat that has considerable value for biodiversity.
16. The southern section of the path falls outside the former quarry working area. Nonetheless it follows steeply sloping terrain within a dense woodland area. Whilst there is the potential for this part of the path to be re-opened with some clearance and engineering work, it would terminate at the former quarry edge and would have no meaningful linking route. I concur with the view of Cemex that there is no alternative route available due to the topography.
17. Furthermore, the surrounding area contains a network of paths and alternative routes and a loop route within the woodland would be provided as part of other Orders confirmed by the Council. Whilst these alternative routes are not part of the Order before me, they would clearly be beneficial to the wider enjoyment and recreational use of the woodland. Furthermore, I have had regard to the Council's Rights of Way Improvement Plan and note that it seeks to resolve all current anomalies and produce an up to date definitive plan, whilst improving the visibility of the network on the ground. The Order before me would conform with these objectives.

Conclusions

18. I conclude that the southern section of the Order route is likely, apart from the Order, to be used to a minor extent. I am satisfied that there would be no issues arising on the land served by the footpath. Other alternative routes would be provided within the woodland and would be beneficial to its enjoyment. Furthermore, there is no realistic prospect of the footpath being reinstated due to the extent of work necessary and which would have unfortunate associated impacts on established vegetation. I conclude that on balance it is expedient to confirm the Order.
19. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives as required by Section 8 of the WCFG Act.

Formal Decision

20. I confirm the Order.

Vicki Hirst

INSPECTOR