

REPORT OF ACCESS & RIGHTS OF WAY MANAGER

SUBJECT: PUBLIC PATH ORDERS AND PUBLIC PATH CREATION AGREEMENTS

Purpose of Report

A report for information to update Members on the Public Path Orders and Public Path Creation Agreements made by the National Park Authority during 2018.

Background

At the National Park Authority meeting of 28th March 2018 Members asked to be kept informed of the Public Path Orders and Creation Agreements made the National Park Authority. The power to make Public Path Orders & Public Path Creation Orders is provided by the Highways Act 1980. These specific powers were later conferred on the National Park Authority by the Environment Act 1995. These powers are the means by which local authorities can make permanent legal changes to the route and status of public rights of way.

The power to make Creation Agreements and Public Path Orders has been delegated to officers.

The most common application of the powers is the making of Public Path Diversion Orders and since 1996 the National Park Authority has made 71 Diversion Orders to alter the route of existing public rights of way. In addition 24 Public Path Creation Agreements have been made whereby landowners dedicate a new public right of way to be maintained thereafter by the National Park Authority.

Diversion Orders may be needed to provide the minimum deviation in order to accommodate approved development resulting from a planning application or more commonly, to improve the efficiency of an agricultural holding or the privacy of a dwelling. In every case the legislation requires that a balance must be struck to ensure that the public interest is not compromised in terms of the path users' convenience and enjoyment. Usually the diverted route will have advantages in terms of its accessibility. The most common scenarios where a Creation Agreement may be needed is when a part of the Pembrokeshire Coast Path is lost due to coastal erosion, necessitating the establishment of an alternative route; to provide a strategic missing link in a network of public rights of way or upgrade the status of a route from public footpath to bridleway.

In summary, the procedure for making any Public Path Order requires an Order to be drafted, signed and sealed by the National Park Authority. Bilingual public notices then need to be served on interested parties and stakeholders, published in the local press and posted on the path in question. A statutory period of consultation follows and if there are no written objections, the National Park Authority can proceed to confirm the Order in accord with the notification requirements outlined above. Creation Agreements entail a more simplified procedure, reflecting the agreement of

the parties involved but will often entail the payment of compensation by the National Park Authority to the landowner dedicating the public right of way.

Public Path Diversion Orders confirmed in 2018:

- Public footpath PP86/42, St Justinians, St Davids (Pembrokeshire Coast Path realignment)
- Public footpath PP71/7, Trewern, Nevern (relocation of public footpath from fields/farmyard to woodland)
- Public footpath PP87/40, Moylegrove (relocation of public footpath from steep slope and garden to woodland)
- Public footpaths PP77/5, Pontypridd (relocation of public footpath from yard/gardens to rough pasture)
- Public footpath PP5/42, Cwm Mawr, Penycwm (by necessity due to the grant of planning permission)
- Public footpath PP86/48 Lower Treleddyn, St Davids (by necessity due to the grant of planning permission)

Public Path Creation Agreements made in 2018:

- Public footpath PP87/59, Foel Hendre, St Dogmaels (replacement for Coast Path lost to landslide)
- Public footpath PP87/54, Pengarn, St Dogmaels (widen Coast Path affected by landslide)

In addition, a number of Traffic Regulation Orders & Notices were made by the National Park Authority to temporarily close a public right of way where there is a danger to the public or to facilitate works. In most cases an alternative route is managed for the duration of the closure.

- Public footpath PP87/54, Foel Hendre, St Dogmaels (in the interests of public safety; Coast Path lost to landslide)
- Public Footpath PP87/2, Penrhyn Bach, St Dogmaels (works in connection with planning permission; alternative route provided)
- Byway PP72/55, Bryneithin, Newport (works in connection with planning permission; partial closure restricting motor vehicles only)
- Public footpath SP86/29, St Nons, St Davids (in the interests of public safety; Coast Path lost to landslide; alternative route provided)
- Public footpath PP74/4, Druidston (in the interests of public safety; Coast Path surface damage; alternative route provided)

Comparisons

These powers are widely used by local highway authorities and National Park Authorities in England and Wales in their management of the public rights of way network.

Options

The National Park Authority has the option to enter into Management Agreements with landowners, made under Section 39 of the Wildlife & Countryside Act 1981.

These agreements are used to upgrade the status of a public footpath to a bridleway; create new routes or provide area based access. These are not usually permanent changes, being limited to a fixed term to reflect the wishes of the landowner concerned.

Financial considerations

The National Park Authority has a statutory obligation to pay compensation to a landowner when a Creation Agreement comes into operation. The Authority has sought guidance from the Valuation Office Agency specifically in respect of the rates of compensation for the creation of public paths. This guidance ensures that a fair rate of compensation is paid to landowners and enables the Authority to be consistent in its dealings with landowners. Compensation can be agreed or determined by arbitration or tribunal. Public Path Diversion Orders are generally for the benefit of landowners who waive their right to compensation, the procedure entitles the National Park Authority to recover costs from the applicant where appropriate, such as the cost of advertising notices in the local press.

Risk considerations

The vast majority of Public Path Orders are unopposed, however, if formal written objections are received in respect of the making of a Public Path Diversion Order then the Order cannot be confirmed by the National Park Authority and must either be withdrawn or referred to the Welsh Government who would appoint an inspector to determine the Order. An inspector has the discretion to convene a public inquiry or hear the case by written representations. Officers must therefore be confident that every Diversion Order will meet the requisite legal tests and the scrutiny of an inspector.

Compliance

Public rights of way have a significant role to play in delivering the second statutory purpose of National Parks to provide opportunities for people to enjoy the special qualities of the National Park. Public rights of way also make a significant contribution to the duty to foster the economic and social well-being of resident communities. Public rights of way also provide opportunities for healthy exercise contributing to several well-being objectives of the National Park Corporate Plan and providing clear linkages to the Well-being of Future Generations Act 2015. The power to make Creation Agreements can preserve the continuity of the Coast Path or provide a strategic missing link in a network of public rights of way.

Human Rights/Equality issues

The statutory procedures entailed make provision for landowners to claim compensation for the dedication of public right of way. There is also a statutory right for the public to make formal written representations to Public Path Orders.

Biodiversity implications/Sustainability appraisal

Biodiversity implications are taken into consideration when making a Public Path Orders and Creation Agreements.

Welsh Language statement

No issues

Recommendation

That Members note the report.

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