

# **CITY OF CARDIFF COUNCIL CYNGOR DINAS CAERDYDD**

## **PLANNING COMMITTEE MEETING**

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**TITLE: Section 53 Application, Wildlife And Countryside Act 1981: Ely River Paths**

**REPORT OF DIRECTOR: Andrew Gregory, City Operations, Highways, Neighbourhood Services**

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### **PORTFOLIO:**

#### **Reason for this Report**

1. To recommend the Planning Committee to direct Legal Services to make a Definitive Map Modification Order modifying the Definitive Map and Statement recognising Public Rights of Way at the designated locations.

#### **Background**

2. An original application was made in 2015 to record a Public Right of Way based on 20 year use, as of right, and without hindrance following the erection of heras fencing by a developer and a fence by a private landowner.

#### **Issues**

3. The PROW team received an application accompanied by over 20 path users claiming unhindered 20 year usage, as of right for a 20 year period prior to that right being brought into question by the erection of the obstructing wire fence.

Two landowners objected to the claims and the PROW team, as the Surveying Authority, have evaluated the submitted evidence to determine the application by:

- assessing the submitted Application and Evidence forms,
- conducting interviews of those who submitted evidence,
- consulting historic maps
- and evaluating objections received by landowners for their validity.

In addition, the PROW Team undertook site visits and interviewed, at random, path users who confirmed substantial use far greater than the 20 year period required by Highway Law.

While reaching its conclusion the PROW Team could only assess evidential submissions since the law governing Public Rights of Way is quite clear that anyone's opinion is irrelevant, and items such as suitability, desirability and security must be ignored.

There is documentary evidence proving over 50 years usage by four residents. No evidence to prove contrary in a 20 year period prior to the public's right being questioned was submitted by any landowner.

In conclusion, based on evidence alone, there is overwhelming, factual, documentary evidence to support the paths use, as of right, and no contrary evidence, therefore, the paths must be acknowledged as existing highway and recorded on the Definitive Map and Statement as Public Rights of Way.

#### **Local Member consultation (where appropriate)**

4. Local Ward members consulted.

#### **Reason for Recommendations**

5. The Public Rights of Way Team, acting within their powers as the Surveying Authority for the Highway Authority, have determined on evidence alone, that there is a presumed dedication in law of 20 years usage, which is the sole criteria aside of any suitability, desirability, security issues or opinion to determine the validation of a Public Right of Way.

#### **Financial Implications**

**6. No**

#### **Legal Implications (including Equality Impact Assessment where appropriate)**

**7. No**

#### **HR Implications**

8. No

## **RECOMMENDATIONS**

9. To recommend the Planning Committee to direct Legal Services to make a Definitive Map Modification Order modifying the Definitive Map and Statement recognising Public Rights of Way at the designated locations.

### **NAME OF DIRECTOR**

**Date**

*The following appendices are attached:*

*The following background papers have been taken into account*

1. Application Forms
2. Section 53 Applicant Evidence
3. Section 53 Application Interviews
4. Map of Footpaths
5. Site Notices
6. Mr Groves Objection (Page 1)
7. Mr Groves Objection (Page 2)
8. Dr Harris Objection
9. Confirmation of No Objection
10. PROW Letter to Mr Groves