CYMDEITHAS Y CERDDWYR / RAMBLERS' ASSOCIATION
CYNGOR RHANBARTH POWYS
POWYS AREA RAMBLERS' ASSOCIATION

"Mae Cymdeithas y Cerddwyr yn hyrwyddo cerdded yng nghefn gwlad, yn diogelu llwybrau cyhoeddus, yn ymgyrchu dros fynediad i dir agored ac yn amddiffyn harddwch cefn gwlad."

"The Ramblers' Association promotes rambling, protects rights of way, campaigns for access to open country and defends the beauty of the countryside."

"Bala" Presteigne Road Knighton Powys LD7 1HL Tel [redacted] Email [redacted]

Mr David Foster
Powys County Council
Neuadd Maldwyn
Severn Road
Welshpool
SY21 7AS

22 October 2001

Your ref: PE/MG598 DF/LT

Dear Sir

CREATION OF BRIDLEWAY LG964(A) AND EXTINGUISHMENT OF BRIDLEWAY LG964 - COMMUNITY OF LLANGUNLLO

I refer to the concurrent Creation and Extinguishment Orders published by Powys County Council on 13 December 2000. I am now able to amplify the objections of the Ramblers' Association. Whilst writing of behalf of the RA we believe that as the largest single organisation representing walkers' interests, and as a charity, we can speak for the interests of all walkers.

This matter was initially the subject of a Pre-Order Consultation. The view of the RA at the time was that if a better alternative route could not be proposed then the RA would not object. Some correspondence followed about alternative routes but despite my wish, made via the Rights of Way Section, to meet the landowner to explore alternatives, no meeting took place. I understand latterly from Mr Lewis, the landowner, that this request was not passed to him. My view at the time therefore was that he had no wish to meet me but I now understand from meeting him on 22 October that he not been made aware that I had earlier wished to discuss the proposals with him.

Initially the proposal was for the bridleway to be diverted. Only when the orders were published did it emerge that they were for a concurrent Creation and Extinguishment. No discussions took place with the Council on this basis While pre-order consultations are not a requirement on the Council I agree that they can serve a useful purpose - but only if they are seen to a conclusion, even if that is only to clarify each party's views. On this occasion the consultation was terminated, after my letter dated 24 January 2000, by the Rights of Way section and before this point had been reached.

At that time the reason given by the applicant was that he was seeking to remove any possible likelihood of accidental injury as the bridleway now runs within sight line of a recently developed shooting range. It is important to note at the outset that the bridleway existed long

before the shooting range was developed. It is noted from the signed and dated planning application that it is stated that no public right of way would be affected by the development. In a number of subsequent planning applications for further development of the site the same erroneous statement that no public right of way would be affected has been repeated.

A visit reveals that the development has indeed created a danger to users of the bridleway. There is abundant evidence of broken clays all over the bridleway and for a wide distance around. This danger must have been very obvious from the inception of the development. It is inconceivable that it could have been overlooked. It was also negligent of the planning authority of the day to grant permission when a glance at the map would have revealed the existence of the bridleway a mere 50 metres distant.

The shooting facility has been in use for a period of some years but it is not clear why at this very late stage the applicant has been prompted to act to try to avoid the danger created to users of this right of way. However, upon receiving the application the response of the County Council has been to seek to legitimise a situation which should never have arisen. This response is very disappointing in view of the duty of the Council to assert and protect the rights of the public to the use and enjoyment of, and to prevent so far as possible the stopping up or obstruction of, all their highways. (Highways Act 1980 s.130). We would rather have seen the Council's first response to be to protect users of the right of way - not to facilitate its removal by the costly means of two public path orders.

Furthermore, a survey of the route on 5 September 2001 reveals that beyond the stone and earth path section it is currently obstructed by illegal ploughing-out and cropping for the full width of the bridleway. At this stage I am assuming that the minimum width of the field edge bridleway, as it is otherwise undefined, should be 3 metres.

A relatively new post and wire fence has also been constructed across the bridleway creating another illegal obstacle.

Where the path leaves the headland to cross the field it has also been illegally ploughed and cropped and this length, from headland to the road, should be a minimum width of 2 metres Evidence of shattered clays is also to be found across this further distant and higher section.

It is the duty of the Council to deal with these obstructions and, again, it has to be noted that they have failed to do so. Instead, rather than carry out its duty the Council has chosen to publish a path order that would have also have the side effect of reducing the overall length of bridleway for which it has a maintenance liability by creating an alternative path partly over a grass field and partly on a metalled road. While this is an outcome the Council may desire *(Policy ROW6)* its promotion of path orders, if only in part for this purpose, is not provided for in legislation and in this case fails even to satisfy the Council's own policy of balancing the needs of the public. In any case the aim of making alterations to the public path network by legal order with the leading objective of reducing the overall length of paths to be maintained by the Council is not one the Ramblers' Association supports. In practice what the Coucil proposes in this case is to resolve its long standing failure to maintain the existing route by co-operating instead with the landowner in re-drawing the definitive map of the area and legitimising an abuse of the planning process. I do understand that the Rights of Way Section were presented with a *fait accompli* so far as the existence of the shooting range is concerned but I am disappointed that its subsequent actions have compounded the error.

As a general agreed policy, applications for path orders should not be processed while the route is obstructed. On this occasion however I am considering the application as if the path was open and in a usable condition. However, this is subject to my view that any later comments on the number of people who use the path must be seen in the context of the current deterrent effect upon walkers of the ploughing, cropping, fencing and shooting activities of the owner and the further discouragement of use arising from the failure of the Council to provide signposts at both ends of this bridleway; another requirement that it has failed to fullfil since the Countryside Act 1968.

I note that the orders take the form of concurrent Highways Act 1980 S.26 Creation and S.118 Extinguishment Orders.

DoE Circular 2/93, Circular 5/93 (Welsh Office) Annex C paragraph 36 makes it clear that where a Diversion order or Extinguishment order is made in association with a Creation Order, the Creation Order has to be considered first, on its own and on its merits, without any judgement being made about the other order. The interpretation is endorsed by High Court judgement on the Pensax decision in Hereford and Worcester, *The Ramblers' Association v the Secretary of State for the Environment, High Court of Justice CO/2662/90, March 1992,* which arose from a public inquiry where creation and extinguishment Orders were considered concurrently. The RA's challenge to the decision was based on the view that the Inspector had taken the view that so long as the creation order provided an alternative, that was enough: he had failed to apply the test set out in section 118. Moreover he had not considered the merits of the creation order on its own. That view was shared by the Treasury Solicitor, acting on behalf of the Secretary of State, as the following extracts from the consent to judgement shows (the "Respondent" is the Secretary of State):

"Creation Order"

The respondent accepts that he failed to pay any or any sufficient regard to the extent to which the path would add to the convenience or enjoyment of a substantial section of the public or to the convenience of persons resident in the area as required by section 26(1)(a) of the 1980 Act to do"

"Extinguishment Order"

The respondent accepts that he erred in law in failing to consider (as section 118(5) of the Highways Act 1980 by implication requires him to do) the extent to which the Public Path Creation Order if confirmed would provide an alternative path or way for the right of way proposed to be extinguished by the Extinguishment Order.

So far as the RA is aware, the approach to be taken in relation to concurrent creation and extinguishments has not been considered by the courts: this case, although not a hearing in court, can therefore be considered as setting guiding principles for inspectors. These are, first, that the creation order must be judged against the tests for creation orders in section 26 and, second, that the adequacy of the alternative which would be provided by the creation Order (if confirmed following the consideration of the section 26 tests) must be considered when considering the extinguishment Order. See also *'Rights of Way - A Guide to Law and Practice' 3rd. Edition (p169).*

In the present case therefore, considering first the Creation Order under S.26 (1) (a), the new path would not, to any extent, add to the convenience or enjoyment of a substantial section of the public, or to the convenience of persons resident in the area. From point A on the Order map users leaving the B4356, or coming from the other two routes meeting there at Griffin Lloyd and wishing to go to Cefn Suran already have the use of bridleway LG964. Those leaving point A to go in the direction of Llangunllo would be provided with a route that takes them off the direct road to a point on the road U1092 which they would join only to re-descend to the B4356 on a narrower and less safe road. Indeed it is very difficult to see why anyone would wish to use the Creation Order route to leave the B4356 merely to return to it by way of U1092, or *vice versa*.

Considering S.26 (1) (b) there is no apparent effect of the creation upon the rights of the persons interested in the land crossed by the creation route itself. It may be that if one extends this consideration to the effects upon the land crossed by bridleway LG 964 then a benefit can be seen to the owner in stopping people from using the bridleway and thus avoiding the danger of their being injured. However, once again, this is a danger that has been created by the applicant.

I conclude that in this case the section 26 tests for the creation of a bridleway have not been met and the Creation Order should not be confirmed.

The public path network is a permanent feature of the countryside, open to anyone, and it will be used in perpetuity by generations to come, without qualification and free of charge. While the Ramblers' Association recognises the enterprise of the shooting facility, and its value to the local community, it is of a less permanent nature than the path network. We consider that the Rights of Way Section should have taken the same view and acted to protect a permanent right of way for all people and not have sought to extinguish it when perfectly simple ways are readily available to safeguard both the path and the shooting facility. Powys County Council's own document *"A Strategy for Public Rights of Way and Access in Powys" (March 1997)* states in paragraph 5.4.2, where it considers extinguishments, *"Temporary circumstances preventing or diminishing the use of the path by the public will be disregarded"*. We consider that the Council should have applied its own policy and chosen instead not to risk public money on publishing such questionnable legal orders when, with the slightest imagination, an alternative solution was available.

I do not seek to say that no changes can be made to the path network and it is a matter of record that the RA in Powys has not objected to the great majority of path orders published by the Council. A similar situation arose recently at Cefn Suran with the important distinction there that a reasonable alternative route had been proposed and the RA was therefore able to agree to the Orders made.

However if, despite my view, it were to be concluded that the tests for the Creation Order had been met consideration would then turn to the extent to which it, if confirmed, would provide an alternative to the subject of the Extinguishment Order (Bridleway LG 964). *"Account should of course be taken of the convenience of this alternative path compared to that which is to be extinguished and, if it is significantly less than that currently enjoyed by users of the existing path authorities will need to consider whether the criteria set out in section 118(1) of the Act have been met". Care should also be taken to ensure that full consideration is given*

to all the matters set out in ... section 118". (DoE Circular 2/93, Circular 5/93 (Welsh Office) Annex C paragraph 36).

From examination of the proposed route in the Creation Order it is immediately apparent that the user is being diverted away from any sensible walking objective, in this case particularly the continuing network of footpaths and bridleways around Cefn Suran and beyond. The route passes between the clubhouse and a high hedge and is a plainly inferior experience to the existing route. It would also be necessary for some trees to be felled to create a field edge route of the minimum width of 3 metres. The proposed route continues across pasture towards a layby new gate at the road. The point of termination of the new route is substantially less convenient than the existing because it is 210 metres further from the present termination point on a more or less straight line for Cefn Suran yet no more convenient for any other conceivable destination for users of the existing path it seeks to replace.

Users would clearly prefer to reach the road (U1092) 210 metres further up, as it is already possible to do by using the existing bridleway. The additional 210 metres is wholly on a metalled surface. Here I will only briefly mention the undesirability of this arising from danger due to vehicles, the narrowness of the road, with high banks, twisting bends and no verges to provide refuge for walkers or for riders, the extra difficulties for those with visual or hearing disabilities and the likelihood of mud and splashing from vehicles. It would be extremely foolish to add this length of very narrow, steep and twisting metalled road to a route where walkers, equestrians and vehicles are mixed together. Here it is appropriate to add that this is the only road to and from a motor rally school less than 1km away enhancing the prospect of a serious accident!

By contrast the existing bridleway begins pleasantly past a pond and stream and rises gently and safely with open airy views increasing as height is gained. The road is reached where it is rather more level than at the proposed access point lower down where the creation route joins it. Neither are the banks as steep or the road as twisting.

The extent to which the present bridleway would be likely to be used by the public would be undiminished by the Creation Order route which would provide no sensible, similarly pleasant or safe alternative. I am not able to comment on the volume of user on the present bridleway other than to repeat that the failure of the Council and landowner to maintain it, as is the duty of them both, must have deterred some members of the public from the full enjoyment, to which they are entitled, of this part of the public path network

It is therefore my view that the proposed creation route is far inferior to the present route and I repeat that it is not sufficient to say merely that it provides an alternative but that the alternative must meet all the tests.

Even if the creation order were to be confirmed the existing bridleway would continue to be the first choice for most, probably all, walkers The existing bridleway is therefore needed and the extinguishment order should not be confirmed. In these circumstances, *ie* if the Creation Order is confirmed and the Extinguishment Order is not, then both paths would exist.

I have no comment to make about the spur of LG 964 extending beyond U1092.

I trust that a further opportunity will be afforded the Ramblers' Association to help, with others, including Mr Lewis the landowner, whom I have since met and had discussions with, to come to a solution that will meet the needs of walkers if recourse to a full public inquiry is to be avoided.

Precautions to safeguard users must have been taken in the past and I suggest that these should continue to be used. This is no more than is routinely done everywhere else in the countryside by wardens when shooting takes place in the proximity of public rights of way. It seems to me the obvious and complete solution to problem even if it is not ideal to the owner. However, as this is a situation that has arisen out of his own actions the RA does consider that it is now incumbent on him to accept the small degree of inconvenience this precaution would entail. It also has the merit of making no further charge on the public finances and it is likely to be acceptable to walkers.

Yours faithfully

[redacted]

ROBERT SEABROOK
Powys Area Footpath Secretary