

## **Report of Director of Environment to Executive Board Member Decisions Meeting**

### **PROPOSAL TO DIVERT PART OF BYWAY OPEN TO ALL TRAFFIC 57/42 – BRYNDIAS FARM, PINGED**

#### **Introduction**

Carmarthenshire County Council has received an application to divert the above mentioned Byway Open to All Traffic (BOAT) under section 117 of the Highways Act 1980 (HA80). The application has been made by the owners of Bryndias farm over which the BOAT passes. They have made the application for reasons security and public safety.

The proposed diversion will the middle section of BOAT 57/42 from its present alignment through the middle of the residential curtilage of Bryndias Farm, onto an adjacent, purpose built track which by-passes the yard and buildings (see attached plan – appendix 1).

Before submitting the application under s117 HA80 to the Magistrates Court, the Council as the relevant Highway Authority should give consideration test laid out in s116 HA80; that is that it appears a highway (other than a Trunk Road or Special road) can be diverted so as to make it nearer or more commodious to the public. This is the test that the justices composing the court will consider before determining whether to make an Order to divert any BOAT.

In respect of this test, the proposed diversion, if made, would divert members of the public entitled to use the BOAT (walkers, cyclists, horse riders, horse drawn vehicles & motorised vehicles) from the gated curtilage of the house and outbuildings at Bryndias Farm onto an adjacent track constructed for the purpose of providing an alternative, more commodious route. The proposed route has no gates and no potential for conflict with activities being undertaken by the occupiers of the property.

#### **Consultations**

A 28 day consultation has been carried out in respect of this proposal, commencing on 13<sup>th</sup> May 2015 (see attached – appendix 2). This consultation incorporated all those statutory consultees required to be given notice when an application is made for an s116 Order listed in Schedule 12 HA80. Additionally, all relevant user groups, local interested parties and utility companies were consulted. The consultation outlined the proposal and invited comment.



One email of support was received by Councillor Hugh Shephardson, one of the three County Councillors whose wards are affected by the proposal.

An email from the area British Horse Society representative confirmed that they had no objections to the proposal and BT Openreach similarly confirmed that they had no objections.

Two objections were received via email, both citing similar reasons for objection, namely the view that the specified width of the proposed new route of the BOAT is inadequate. The first was received from the Southern Respondent for LARA, received on the 18<sup>th</sup> May 2015; the second was from the Chair of the Carmarthenshire LAF, received 5<sup>th</sup> June 2015 (see attached – appendix 3)

Having sought some clarification of the LARA objection and re-visited the site to take additional measurements the Authority responded to the two objections via email on the 13<sup>th</sup> and 8<sup>th</sup> July 2015 respectively.

The response outlined a number of points outlined below:

1. There is no statutory width for a BOAT.
2. There is no recorded width for BOAT 57/42.
3. To ascertain an appropriate width for the proposal, an average of the width of the existing route of 57/42 subject to the diversion was taken.
4. In response to the objections, the width of the rest of route has been established to ensure the width of the proposal is sufficient for this BOAT as a whole.
5. The average surfaced width of the proposed section of BOAT and the width of the remainder of the route are comparable.
6. The verges surrounding the surfaced area of the existing BOAT increase the total width of the route beyond that which was specified in the diversion proposal letter.
7. The surfaced width of the proposed route is adequate in the context of BOAT 57/42.
8. In addition, the proposed route is more accessible to the public as it is not gated.
9. The overall width of the proposed route will be increased by including verge areas alongside to bring the total width into line with the remainder of the route.

(for full responses, see attached – appendix 4)

The objectors were given an opportunity to reconsider their objections having reviewed my response; both parties withdrew their objections.

No further correspondence in respect of the proposal has been received to date.



## **Conclusions**

The basis for the application and its effect on the BOAT has been fully considered.

Both objections submitted have been withdrawn following a short exchange of correspondence.

It appears to the Authority that the application satisfies the test laid down under section 116 HA80, in that it makes the route more commodious to the public through increased accessibility (no gates) and reduced potential conflict with private land use (away from curtilage of property).

Taking this into account it is recommended that the diversion application be approved for submission to the Magistrates Court so that it can be considered by the justices under s116; if the court considers that the test has been met then an Order can be made.

Appendices 1 to 4 attached.

