



# **Birchill Access Consultancy Ltd**

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## **REPORT ON: SECTION 26, PUBLIC PATH CREATION ORDER, Y FELINHELI, GWYNEDD**

### **1. Introduction:-**

Birchill Access Consultancy Ltd has been asked to review the Section 26, Public Path Creation Order made by Gwynedd County Council dated 24th January, 2014 to form part of the All Wales Coast Path. In particular we have been asked to assess the steps taken by Gwynedd Council to date and also to address the matters raised by the objector in relation to other possible alternative routes. The site was inspected on 29<sup>th</sup> July, 2014. In addition a desktop survey was carried out to review documentation provided by the council including the landowner's objection and additional paperwork submitted by the objector dated 18<sup>th</sup> July, 2014.

### **2. Key Facts & Background information:-**

- Affected property – 15 metre section of drive to Glan y Mor Lodge, Y Felinheli, Gwynedd
- Land to south owned by Housing Associations.
- Land in front of Glan y Mor Lodge dwelling and to north owned by National Trust forming part of Vaynol Estate.
- National Trust land already designated as having permissive access for walkers.
- National Trust permissive access on foot already exists on track directly in front of Glan Y Mor Lodge.
- Creation agreements to create permanent public footpaths are likely to be forthcoming from National Trust and Housing Associations.
- Current route of Coast Path between Y Felinheli and northern extent of Vaynol Estate currently a significant distance from the coast.

### **3. Wales Coast Path Route Criteria:-**

The Wales Coast Path is an important strategic route around the coast of Wales with significant economic benefits to the local economy. Achieving the best line for the route where it is not ideal at present can only serve to enhance the experience of users of the route.

The Wales Coast Path was officially launched in 5<sup>th</sup> May, 2012 however it is clear that many authorities were under a large amount of pressure to deliver the perfect route. It is apparent that not all of the coast path around the Gwynedd coast is perhaps as close to the sea as it could be and pavements and cycle tracks already in place have instead been utilised to achieve at least some sort of acceptable link to ensure there was a continuous route around Wales.

However it is common sense as the name suggests 'Coast Path' that the route should be as close to the sea as possible and Criteria RC4 of the Criteria & Quality Standards issued by the former CCW states clearly:

***' the route should be as close to the sea as practicable & desirable whilst fully taking into account H&S, land use and management and the desirability of conserving wildlife & the historic environment'***.

It is clear that the intention of Gwynedd County Council is to provide a better route than the current one between Y Felinheli and the northern extent of the Vaynol Estate so that is closer to the sea. The current route has extremely limited to no views of the coast and no real feeling for the user of being on a coast path, so a better route clearly needs to be achieved.

#### **4. Legal aspects of Section 26 Creation Order**

In addition to having powers to create footpaths, bridleways and restricted byways by agreement, local authorities also have a power under Section 26 of the Highways Act 1980, to do so by creation order. It is not a prerequisite for the making of such an order that an authority should have sought, and failed to make an agreement. Before making an order it is a legal requirement to consult other local authorities but there is no requirement to consult the owners and occupiers.

The authority must also be satisfied that it is **expedient** ( ie appropriate, beneficial, convenient, useful) that a path should be created. In considering the matter it must have regard to the extent to which the path or way would add to the **convenience** or **enjoyment** of a substantial section of the public or to the convenience of persons resident in the area.

The authority must also have regard to the needs of agriculture, forestry and the desirability of conserving flora, fauna & geological & physiographical features and must also have regard to the effect which the creation would have on the rights of persons interested in the land, and in doing so should take into account the provisions in s28 Highways Act 1980 under which compensation may be payable.

#### **5. Assessment of council's action**

It is clear that negotiation with the National Trust and the Housing Association to create a public footpath reasonably close to the coast has been reasonably successful and we understand that agreements under Section 25 Highways Act 1980 with these parties are forthcoming. This only leaves a short section of land around Glan y Mor lodge.

The 15 metre section of land under the ownership of Glan y Mor lodge clearly sits in the middle of both these landowners and so it is obvious that the council would wish to pursue an agreement to secure this 15 metre section to link up creating a direct route as possible. It would appear that Gwynedd County Council have clearly attempted to enter into an agreement to create a route that avoids the current short section of private driveway by putting forward a proposal to create a route still on land owned by Glan y Mor albeit slightly to the west of the current tarmaced route. ( see attached creation agreement). In addition the council have offered numerous accommodation works such as fencing, hedging, gating and surfacing which would aid segregating any new path away from the 15m stretch of drive thereby offering the landowner increase privacy and security along this stretch. The Coast Path officer has also attempted to address the concerns of the landowner who has private rights to drive tracks of Vaynol estate regarding safety aspects of cars and walkers by stating in writing that the council have agreed with NT to take on responsibility to improve the track via tree work, improving visibility, creating passing spaces and providing clear signage. Financial compensation was also offered as part of any agreement. It is unfortunate that these negotiations have not been successful and an Order has had to be made although the landowner will obviously have their reasons as to why they will not enter an agreement. It is clear that the intention of the Council was not to have to make an Order unless necessary. We are satisfied that the council has shown good-will and made a considered effort by attempting to enter into an agreement which in itself acknowledges the privacy concerns of Glan y Mor.

Since the order has been made the affected landowner at Glan Y Mor Lodge has objected on grounds mainly regarding privacy and health & safety as this clearly would be of concern to any landowner and is something that should needs to be considered seriously. The landowner submitted their objection to the council on 26<sup>th</sup> February, 2014. A further letter was also submitted to the council dated 18<sup>th</sup> July, 2014 which outlined in more detail 2 alternative options the landowner asked to be considered again. These have been examined and the findings presented below.

## **6. Assessment of alternative routes:**

The landowner has highlighted 2 alternative options to avoid the route passing down the driveway of Glan Y Mor Lodge.

### **Alternative 1: Proposal to utilise other tracks on Vaynol Estate and run to the east/southeast of Glan y Mor re-entering estate via Ffordd Siabod**

#### **(see map headed CAP Map 1)**

*The landowner has supplied photos of this route as well which bears significantly to the east of Glan –y- Mor Lodge, entering onto private woodland /farmland before going through the Vaynol Estate wall before entering via Ffordd Siabod. Birchill Access Consultancy Ltd do not think this is a suitable route at all for a coast path mainly because:-*

- (i) it is not a direct route*
- (ii) it offers no view of the sea until reaching the marina*
- (iii) it would impact on an historical listed building ie namely Vaynol estate wall*

*(iv) it would impact on agricultural land where stock management may be an issue*

**Alternative 2: Proposal route utilising the entire length of Lower Fford Heulyn and going through Vaynol Estate wall (see map headed CAP Map 2)**

*Birchill Access Consultancy Ltd believe this proposal is slightly better than alternative 1 above and would clearly avoid the 15 metres of private driveway however we do not recommend this as a better route than the one proposed for the coast path because*

- (i) it would involve the widening /destruction of part of the Vaynol estate wall*
- (ii) it brings such a route in closer proximity to the driveways of more than 1 other residential dwelling having an impact on several dwellings*
- (iii) it is not as direct as continuing along the 15 metre section of driveway*
- (iv) it does not radically reduce privacy issues for Glan y Mor because people can still walk directly in front of the house as its National Trust land albeit not as a through route*
- (v) it creates more of an enclosed / confined feeling for users as the estate road narrows considerably.*

It is important to look at any alternatives as a whole as the Wales Coast Path is a long distance strategic route and should be as direct as possible. Looking at the proposed coast path between the northern end of the Vaynol Estate and the marina at Y Felinheli there are clear views of the Menai straits for most of the route on National Trust land giving a clear feeling of a route being typical of a coast path. Although the proposed route is due to run down Ffordd Glyder within the estate of Y Felinheli, it is the widest road on the estate and does have some views of being near the sea are afforded as one passes number 63. It is logical that the route should take a direct line as possible to the marina. Whilst it is true that there is no view of the coast directly in front of Glan y Mor lodge due to the high Vaynol estate wall and presence of properties the other side, the most direct route from the National Trust land into the Housing Association land is via Glan y Mor lodge. We feel the proposed 15m link proposed in the current order meets the statutory legal tests laid down in Section 26 of the Highways Act that the route would add to the enjoyment and convenience of a substantial number of the public (ie. Coast path users) but also provide convenience to those resident in the area.

On inspection of the site we have also looked to see if there is any other alternative not already suggested by the objector that would provide an acceptable alternative. Unfortunately in this case we believe there is no better alternative.

## **7. Conclusion:-**

Birchill Access Consultancy Ltd believe Gwynedd County Council have given due regard to the landowners concerns and also considered the alternative routes sufficiently around Glan Y Mor Lodge.

For the reasons given in Section 6 of this report we do not believe that there is any better alternative than the one already outlined in the current Order as the current

route clearly meets both the Coast Path route criteria and Section 26 of the Highways Act 1980. The proposed route is clearly expedient, convenient and enjoyable and would provide a clear direct link from National Trust land into the Y Felinheli estate. It is however unfortunate that a route via agreement was not met as we feel this would have provided the landowner with some screening and privacy from the route at least down their 15 metres section of driveway they own. Both the alternatives suggested by the landowner would involve some destruction of a listed Grade II historical feature and this is not something we would recommend as this is clearly an important historical feature which is owned by the National Trust. Undoubtedly the Order imposes some impact on the landowners privacy etc as there is likely to be increased usage if this route is confirmed as a through public footpath forming the main coastal path route. It is likely that the landowner would wish to claim compensation under Section 28 of the Highways Act 1980.

**Recommendation:-**

It is recommended that Gwynedd County Council proceed to forward the Section 26 Public Path Creation Order onto the Planning Inspectorate Wales for an independent inspector to make a final decision.

Birchill Access Consultancy Ltd.